FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

MUR 7324[1]
DATE COMPLAINT FILED: Feb. 20, 2018
DATE OF NOTIFICATIONS: Feb. 27, 2018
DATE OF LAST RESPONSE: June 11, 2018
DATE OF ACTIVATION: Sept. 20, 2019

ELECTION CYCLE: 2016
SOL EXPIRATION: Aug. 5, 2021/Sept. 20, 2021

COMPLAINANTS: Common Cause
Paul S. Ryan
Allen J. Epstein

RESPONDENTS: Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer
Donald J. Trump
A360 Media, LLC f/k/a American Media, Inc.
David J. Pecker
Michael D. Cohen

MUR 7332
DATE COMPLAINT FILED: Feb. 27, 2018
DATE FIRST AMENDED COMPLAINT FILED: May 9, 2018

[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 American Media, Inc. violated the Act due to American Media, Inc. paying a woman not to disclose information about Trump. Because this allegation is the subject of MUR 7324, and in order to consider the totality of that allegation, we have administratively severed that allegation from MUR 7637 and joined it with MUR 7324. *See* First Gen. Counsel's Rpt. at 1, n.1, MUR 7637 (NRA-ILA, *et al.*) (open matter). Consequently, the complainant in MUR 7637, Allen J. Epstein, is now a complainant in MUR 7324; the respondents from MUR 7637 with respect to this allegation were already respondents in MUR 7324.

	DATE SECOND AMENDED COMPLAINT FILED: Aug. 6, 2018 DATES OF NOTIFICATIONS: Mar. 1, 2018, May 10, 2018, Aug. 9, 2018, May 17, 2019 DATE OF LAST RESPONSE: June 11, 2018 DATE OF ACTIVATION: Sept. 20, 2019
	ELECTION CYCLE: 2016 SOL EXPIRATION: Aug. 5, 2021/Sept. 20, 2021
COMPLAINANTS:	Free Speech for People Shanna M. Cleveland
RESPONDENTS:	Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer Donald J. Trump A360 Media, LLC f/k/a American Media, Inc. David J. Pecker Dylan Howard Michael D. Cohen
	MUR 7364 DATE COMPLAINT FILED: Apr. 12, 2018 DATE OF NOTIFICATIONS: Apr. 19, 2018 DATE OF LAST RESPONSE: June 11, 2018 DATE ACTIVATED: Sept. 20, 2019
	ELECTION CYCLE: 2016 SOL EXPIRATION: Dec. 17, 2020/Sept. 20, 2021
COMPLAINANT:	Common Cause
RESPONDENTS:	Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer Donald J. Trump A360 Media, LLC f/k/a American Media, Inc. David J. Pecker Dylan Howard Michael D. Cohen
	MUR 7366 DATE COMPLAINT FILED: Apr. 16, 2018 DATE OF NOTIFICATIONS: Apr. 20, 2018 DATE OF LAST RESPONSE: June 11, 2019 DATE ACTIVATED: Sept. 20, 2019

	ELECTION CYCLE: 2016
	SOL EXPIRATION: Dec. 17, 2020/ Sept. 20, 2021
COMPLAINANT:	American Bridge 21st Century Foundation
RESPONDENTS:	Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer Donald J. Trump A360 Media, LLC f/k/a American Media, Inc. David J. Pecker Michael D. Cohen Timothy Jost
RELEVANT STATUTES AND REGULATIONS:	52 U.S.C. § 30101(8), (9) 52 U.S.C. § 30102(e)(2) 52 U.S.C. § 30104(b) 52 U.S.C. § 30109(a), (d) 52 U.S.C. § 30116(a) 52 U.S.C. § 30118(a) 11 C.F.R. § 100.52(d)(1) 11 C.F.R. § 100.73 11 C.F.R. § 100.132 11 C.F.R. § 101.2 11 C.F.R. § 104.3(a), (b) 11 C.F.R. § 104.13(a) 11 C.F.R. § 109.3 11 C.F.R. § 109.20 11 C.F.R. § 110.1(b)(1) 11 C.F.R. § 114.2
INTERNAL REPORTS CHECKED:	Disclosure Reports
FEDERAL AGENCIES CHECKED:	

I. INTRODUCTION

The Complaints in these four matters allege that American Media, Inc., which is now A360 Media, LLC[3] ("AMI"), and Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer (the "Trump Committee") violated the Federal Election

[3] *See infra* note 17 and accompanying text.

Campaign Act of 1971, as amended (the "Act"), in connection with payments AMI made to two individuals in advance of the 2016 presidential election to suppress negative stories about then-presidential candidate Donald J. Trump's relationships with several women.[4] Specifically, the Complaints allege that then-AMI corporate officers David J. Pecker and Dylan Howard worked with Michael D. Cohen, who served as Trump's personal attorney, to negotiate a payment of $150,000 to Karen McDougal in August 2016 for the purpose of influencing Trump's election by suppressing her story of an alleged personal relationship with Trump.[5] The Complaints in MURs 7364 and 7366 further allege that AMI also negotiated a $30,000 payment to Dino Sajudin in December 2015 to prevent publication of a rumor Sajudin had heard that Trump had fathered a child with an employee at Trump World Tower.[6]

In its Responses, AMI asserts that the press exemption and the First Amendment preclude investigation of the allegations and further contends that the payments to McDougal and Sajudin were *bona fide* payments.[7] In his Response to three of the Complaints, Cohen claims that the allegations are speculative and AMI's publishing decisions are not subject to the Act.[8] The Trump Committee asserts that the Complaints fail to establish any nexus between the Trump

[4] The Trump Committee's treasurer during the 2016 election cycle was Timothy Jost; its current treasurer is Bradley T. Crate.

[5] MUR 7324 Compl. at 2 (Feb. 20, 2018); MUR 7332 Compl. at 1-2 (Feb. 27, 2018); MUR 7364 Compl. at 4 (Apr. 12, 2018); MUR 7366 Compl. at 2 (Apr. 17, 2018).

[6] MUR 7364 Compl. at 4; MUR 7366 Compl. at 2, 5-6.

[7] MURs 7324/7332 AMI Resp. (Apr. 13, 2018); MURs 7364/7366 AMI Resp. (June 8, 2018); MUR 7332 AMI Supp. Resp. (June 8, 2018); MUR 7637 AMI Resp. (Sept. 11, 2019).

[8] MURs 7324/7364/7366 Cohen Resp. (June 8, 2018). Cohen did not submit a response to the Complaints in MURs 7332 and 7637.

Committee and the transactions between AMI, McDougal, and Sajudin.[9] Trump did not respond in his personal capacity. After the Responses were filed, Cohen pleaded guilty to willfully causing an unlawful corporate contribution concerning the payment to McDougal and is currently serving the remainder of his sentence under home confinement in connection with that plea.[10] AMI entered into a non-prosecution agreement with the Department of Justice ("DOJ") regarding the payment to McDougal.[11]

As discussed below, the available information indicates that Trump, Cohen, and Pecker agreed in August 2015 that Pecker, as President and CEO of AMI, would catch and kill stories that could be damaging to Trump's prospects in the 2016 presidential election, and that in August 2016 — at the direction of Trump and as part of that agreement — Pecker, Howard, and AMI paid McDougal $150,000 to suppress her story of a sexual relationship with Trump, which allegedly occurred while he was married, from becoming public before the 2016 presidential election. Based on the available information, it also appears that Pecker, Howard, and AMI paid Sajudin $30,000 in December 2015 to prevent Sajudin from publicizing his story that Trump had fathered a child with an employee of Trump World Tower. Accordingly, we recommend that the

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[9] MURs 7324/7332 Trump Committee Resp. (Apr. 17, 2018); MUR 7364 Trump Committee Resp. (June 8, 2018); MUR 7366 Trump Committee Resp. (June 8, 2018); MUR 7637 Trump Committee Resp. (Sept. 13, 2019).

[10] *See* Tr. of Proceedings before Hon. William H. Pauley III at 23-24, 27, *United States v. Cohen*, No. 1:18-cr-00602-WHP (S.D.N.Y. Aug. 21, 2018), https://assets.documentcloud.org/documents/4780185/Cohen-Court-Proceeding-Transcript.pdf ("Cohen Plea Hearing"); Tom McParland, *Michael Cohen Released to Home Confinement Because of COVID-19 Concerns*, NEW YORK LAW JOURNAL (May 21, 2020), https://www.law.com/newyorklawjournal/2020/05/21/michael-cohen-released-to-home-confinement-because-of-covid-19-concerns (reporting Cohen's initial release); Mem. of Law in Supp. of Pet'r's Emergency Mot. for a TRO at 4-9, 12-23, *Cohen v. Barr, et al.*, No. 1:20-cv-5614-AKH (S.D.N.Y. July 20, 2020), ECF No. 5 (summarizing Cohen's initial release to home confinement, his return to prison, and his petition to be returned to home confinement); Order Granting Prelim. Inj., *Cohen v. Barr, et al.*, No. 1:20-cv-5614-AKH (S.D.N.Y. July 23, 2020), ECF No. 30 (granting Cohen's request to be returned to home confinement).

[11] 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").

Commission: (1) find reason to believe that AMI, Pecker, and Howard violated 52 U.S.C. § 30118(a) by making and consenting to make prohibited corporate in-kind contributions; (2) find reason to believe that Trump violated 52 U.S.C. § 30118(a) by knowingly accepting prohibited contributions; (3) find reason to believe that the Trump Committee violated 52 U.S.C. § 30118(a) by knowingly accepting prohibited contributions; and (4) find reason to believe that the Trump Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) and (b) by failing to report the contributions. We further recommend that the Commission find reason to believe that these violations were knowing and willful and authorize compulsory process. Finally, we recommend that the Commission take no action at this time as to the allegations that Cohen and former Trump Committee treasurer Timothy Jost violated the Act and Commission regulations.

II. FACTUAL BACKGROUND

Trump declared his presidential candidacy on June 16, 2015, and registered the Trump Committee, his principal campaign committee, with the Commission on June 29, 2015.[12] Michael D. Cohen was an attorney for the Trump Organization,[13] worked as special counsel to Trump, and served as a Trump Committee surrogate in the media.[14] AMI was a publishing

[12] MUR 7319 Compl. at 3 (Feb. 14, 2018) (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/) (open matter); Trump Committee, Statement of Organization, FEC Form 1 (June 29, 2015).

[13] Trump Organization, LLC is a limited liability company ("LLC") organized under the laws of New York on August 4, 1999 and its registered agent is National Registered Agents, Inc. The available information does not indicate its tax election status for federal tax purposes. *See* N. Y. Dept. of State, Div. of Corps., *Search Our Corporation and Business Entity Database*, https://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_SEARCH_ENTRY (search entity name: "Trump Organization LLC") (last visited Sept. 30, 2020).

[14] Government's Sentencing Mem. at 11, *United States v. Cohen*, No. 1:18-cr-00602-WHP (S.D.N.Y. Dec. 7, 2018) ("SDNY Cohen Sentencing Memorandum"); *Report on the Investigation into Russian Interference in the 2016 Presidential Election*, U.S. Dep't of Justice, Vol. 1 at 53 (March 2019) (identifying Cohen as a former executive vice president at the Trump Organization and "special counsel to Donald J. Trump"); *Hearing with Michael Cohen, Former Attorney to President Donald Trump before the H. Comm. on Oversight and Reform*, 116th Cong. at 11 (Feb. 27, 2019), https://docs house.gov/meetings/GO/GO00/20190227/108969/HHRG-116-GO00-20190227-SD003.pdf ("House Oversight Testimony") (stating that for more than 10 years, Cohen served as

company headquartered in New York, New York.[15] In 2016, one of AMI's publications was the *National Enquirer* (the "*Enquirer*"), which is a weekly print and online tabloid publication.[16] In August 2020, AMI reportedly was renamed A360 Media, LLC and plans were announced to merge it with Accelerate 360, a logistics firm.[17] Pecker was the President and Chief Executive Officer of AMI until the merger and reportedly became an executive advisor to the new company.[18] Howard was AMI's Vice President and Chief Content Officer and reportedly left

executive vice president and special counsel at the Trump Organization and then worked as Trump's personal attorney when he became President); MUR 7324 Compl. at 8 (referring to Cohen as a "top attorney" at the Trump Organization and as Trump's "fix-it guy"); *see also* 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 (available in VBM) ("WSJ Jan. 12 Article") (cited by MUR 7324 Compl. at 8, MUR 7332 Second Amend. Compl. at 2 (Aug. 6, 2018), MUR 7364 Compl. at 3, and MUR 7366 Compl. at 5) (referring to Cohen "as a top attorney at the Trump Organization").

[15] *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).

[16] 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, who has not been identified as a respondent in this matter; 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.

[17] 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"). Both A360Media and Accelerate 360 are reportedly controlled by Chatham Asset Management, a New Jersey hedge fund. *Id.* A360 Media, LLC and another entity named A360 Media Holdings, LLC are registered in Delaware. Del. Dept. of State, Div. of Corps., *General Information Name Search*, https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx (search entity name: A360 Media) (last visited Sept. 30, 2020). AMI appears to be doing business as A360 Media, LLC per recent media reports. *See, e.g.*, NY Times Aug. 21 Article.

[18] MURs 7324/7332 AMI Resp. at 1, n.1; NY Times Aug. 21 Article.

the company on March 31, 2020.[19] From 2013 to 2017, Howard was the Editor in Chief of the *Enquirer*.[20] Karen McDougal is a model and actress.[21] Dino Sajudin is a former doorman for Trump World Tower in New York City.[22]

The available information indicates that during Trump's 2016 presidential campaign, AMI and its executives, Pecker and Howard, after discussions with Trump and Cohen, acting as an agent of Trump, paid $150,000 to Karen McDougal to purchase the rights to her claim that she engaged in a relationship with Trump beginning in 2006, while he was married.[23] Cohen

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[19] 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 (available in VBM). Howard was not notified as a respondent in MURs 7324 and 7366 because he was not as clearly identified in those Complaints as he was in the MURs 7332 and 7364 Complaints. As discussed below, we recommend that the Commission find reason to believe that Howard knowingly and willfully violated 52 U.S.C. § 30118(a) by making and consenting to prohibited corporate in-kind contributions in MURs 7332 and 7364 and recommend that the Commission name and notify Dylan Howard as a respondent in MURs 7324 and 7366.

[20] MURs 7324/7332 AMI Resp., Aff. of Dylan Howard ¶ 2.

[21] 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")).

[22] Joe Palazzolo & Michael Rothfeld, THE FIXERS at 146 (2020) ("The Fixers") (Palazzolo and Rothfeld are two of the authors of *The Wall Street Journal*'s 2016 reporting as described *infra* at note 23; The Fixers expands upon the reporting in that article); *see also* MUR 7364 Compl. at 4 (citing Jake Pearson and Jeff Horwitz, *$30,000 Rumor? Tabloid Paid for, Spiked, Salacious Trump Tip*, ASSOCIATED PRESS (Apr. 12, 2018), https://www.apnews.com/f37ecfc4710b468db6a103a245146172 ("Sajudin AP Article")).

[23] News reports and Cohen's testimony have identified Trump, AMI, Pecker, Howard, Keith Davidson, McDougal, and Stephanie Clifford as the persons anonymously referenced in documents — including the SDNY Information and Warrant Affidavit — pertaining to DOJ's investigation and prosecution of Cohen, as follows: Trump is "Individual-1"; the Trump Organization is the "Company"; AMI is "Corporation-1"; Pecker is "Chairman-1"; Howard is "Editor-1"; Davidson is "Attorney-1"; McDougal is "Woman-1"; and Clifford is "Woman-2." *See, e.g.*, Information at 11-19, *United States v. Cohen*, No. 1:18-cr-00602-WHP (S.D.N.Y Aug. 21, 2018), ECF No. 2 ("SDNY Information"); Agent Aff. in Supp. of Appl. for Search and Seizure Warrant, *United States v. Cohen*, No. 1:18-cr-00602-WHP (S.D.N.Y. Apr. 8, 2018), ECF No. 48-1 ("Warrant Affidavit"); Joe Palazzolo, Michael Rothfeld, and Lukas I. Alpert, National Enquirer *Shielded Donald Trump from Playboy Model's Affair Allegation*, WALL ST. J. (Nov. 4, 2016), https://www.wsj.com/articles/national-enquirer-shielded-donald-trump-from-playboy-models-affair-allegation-1478309380 (available in VBM) ("WSJ 2016 Article") (cited by MUR 7324 Compl. at 4, MUR 7332 First Amend. Compl. at 5 (May 9, 2018), MUR 7332 Compl. at 3, and MUR 7364 Compl. at 4) (describing the circumstances of AMI's payment to McDougal and identifying the parties involved); Ronan Farrow, *Donald Trump, a Playboy Model, and a System for Concealing Infidelity*, THE NEW YORKER (Feb. 16, 2018), https://www.newyorker.com/news/news-desk/donald-trump-a-playboy-model-and-a-system-for-concealing-infidelity-national-enquirer-karen-mcdougal ("McDougal New Yorker Article") (cited by MUR 7324 Compl. at 6,

pleaded guilty to criminal violations of the Act in connection with AMI's payment to McDougal and his own payment to adult film actress and director Stephanie Clifford, who also alleged an affair with Trump while he was married; Cohen's sworn allocution and testimony indicate that his participation in the payments to both McDougal and Clifford was for the "principal purpose of influencing the [2016 presidential] election."[24]

AMI entered into a Non-Prosecution Agreement with DOJ on September 21, 2018.[25] In that Non-Prosecution Agreement, AMI admitted that it made the payments to McDougal to

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MUR 7332 First Amend. Compl. at 5, MUR 7332 Compl. at 3); Jim Rutenberg, Megan Twohey, Rebecca R. Ruiz, Mike McIntire & Maggie Haberman, *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") (cited by MUR 7324 Compl. at 8 and MUR 7332 First Amend. Compl. at 4) (describing the circumstances of AMI's payment to McDougal and Cohen's payment to Clifford, and identifying the parties involved); House Oversight Testimony at 11, 30, 100, 132 (specifically identifying Trump as "Individual-1"; detailing the events surrounding AMI's payment to McDougal; naming AMI, the *Enquirer*, Pecker, Howard as participants in catch and kill; and identifying Pecker as having "expended" funds to pay McDougal on Trump's behalf); Joe Palazzolo, Nicole Hong, Michael Rothfeld and Rebecca Davis O'Brien, *Donald Trump Played Central Role in Hush Payoffs to Stormy Daniels and Karen McDougal*, WALL ST. J. (Nov. 9, 2018), https://www.wsj.com/articles/donald-trump-played-central-role-in-hush-payoffs-to-stormy-daniels-and-karen-mcdougal-1541786601 (available in VBM) ("WSJ Nov. 9 Article") (expanding on the reporting conducted for the WSJ 2016 Article, which is cited by the Complaints in MURs 7324, 7332, and 7364); The Fixers at 313, 317.

[24] *See* Cohen Plea Hearing at 23, 27-28 (pleading guilty to knowingly and willfully violating 52 U.S.C. § 30118(a) by "causing" AMI to make a payment totaling $150,000 in 2016 to McDougal, and to knowingly and willfully violating 52 U.S.C. § 30116(a)(1)(A) by making an excessive contribution in the form of a payment totaling $130,000 to Clifford, to ensure that both women did not publicize damaging allegations before the 2016 presidential election and thereby influence that election); *see also* SDNY Information ¶ 41-44. 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. *See* 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), ECF No. 2, 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 and McDougal payments 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. Cohen's payments to Clifford are separately addressed in the First General Counsel's Report for MURs 7313, 7319 and 7379 (Michael D. Cohen). *See* First Gen. Counsel's Rpt., MURs 7313, 7319 and 7379 (Michael D. Cohen) (open matter).

[25] AMI Non-Prosecution Agreement at 3. Pecker and Howard were reportedly granted immunity in exchange for their cooperation. Gabriel Sherman, *"Holy Shit, I Thought Pecker Would Be the Last One to Turn": Trump's* National Enquirer *Allies Are the Latest to Defect*, THE HIVE-VANITY FAIR (Aug. 23, 2018), https://www.vanityfair.com/news/2018/08/donald-trump-national-enquirer-allies-defect-david-pecker-michael-cohen; WSJ Nov. 9 Article; Jim Rutenberg, Rebecca R. Ruiz & Ben Protess, *David Pecker, Chief of* National Enquirer*'s Publisher, Is*

ensure that she did not publicize her allegations and "thereby influence [the 2016 presidential] election."[26]

A. Pecker, Trump, and Cohen Enter into a Catch and Kill Agreement for Trump's Campaign

In August 2015, Trump reportedly met with Cohen and Pecker in his Trump Tower office and asked Pecker what Pecker could do to help his campaign.[27] AMI admitted that, at that meeting, "Pecker offered to help deal with negative stories about [Trump's] relationships with women by, among other things, assisting the campaign in identifying such stories so they could be purchased and their publication avoided."[28] Trump reportedly directed Pecker to work with Cohen, who would inform Trump,[29] and "Pecker agreed to keep Cohen apprised of any such negative stories."[30] Cohen, in his sworn testimony, confirms that there was an agreement that

Said to Get Immunity in Trump Inquiry, N.Y. TIMES (Aug. 23, 2018), https://www.nytimes.com/2018/08/23/us/politics/david-pecker-immunity-trump html.

[26] *See* AMI Non-Prosecution Agreement, Ex. A ¶ 3.

[27] WSJ Nov. 9 Article (citing "people familiar with the meeting" and noting that the article is based on "interviews with three dozen people who have direct knowledge of the events or who have been briefed on them, as well as court papers, corporate records and other documents"); AMI Non-Prosecution Agreement, Ex. A ¶ 3 ("In or about August 2015, David Pecker, the Chairman and Chief Executive Officer of AMI, met with Michael Cohen, an attorney for a presidential candidate, and at least one other member of the campaign."); The Fixers at ix-xi, 313-14, 381 (describing the August 2015 meeting, stating that Pecker told DOJ about that meeting, and explaining authors' reporting and research process that included interviews with many sources, public documents, and media accounts); *cf.* House Oversight Testimony at 30 ("[T]hese catch and kill scenarios existed between David Pecker and Mr. Trump long before I started working for [Trump] in 2007.").

[28] AMI Non-Prosecution Agreement, Ex. A ¶ 3. Pecker reportedly also suggested that "[h]e could use the *Enquirer* to slime Trump's political opponents, both Republican and Democrat." The Fixers at x; *see also id.* at 158-61, 166-67 (detailing the *Enquirer*'s negative coverage of Trump's opponent Ted Cruz during the Republican primary as it coincided with Trump's attacks on Cruz, the *Enquirer*'s persistent attacks on Trump's other opponents, including, *inter alia*, Hillary Clinton, Marco Rubio, and Bernie Sanders, and noting that the *Enquirer* published over 60 negative stories about Trump's opponents prior to Trump becoming the Republican nominee while also publishing stores that praised Trump).

[29] The Fixers at xi.

[30] AMI Non-Prosecution Agreement, Ex. A ¶ 3.

AMI would catch and kill negative stories involving Trump to avoid publication of those stories, describing catch and kill as working with news outlets to identify and purchase the rights to news stories of interest and avoid their publication.[31]

It is not publicly known whether AMI either purchased directly or steered to Cohen and the Trump Committee other Trump-related stories. In June 2016, Howard had reportedly "compiled a list of the dirt about Trump accumulated in AMI's archives, dating back decades."[32] After Trump won the 2016 presidential election, Cohen reportedly requested everything the *Enquirer* had regarding Trump, leading Howard and others to order the consolidation of Trump-related materials in a safe at AMI offices in New York.[33] Press reports indicate that during the first week of November 2016 Howard ordered his staff at the *Enquirer* to destroy documents held in an office safe, including documents that were related to Trump.[34]

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[31] House Oversight Testimony at 30 (Cohen testified that "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."); *see also* Michael Cohen, DISLOYAL: A MEMOIR 81-90 (2020) ("Cohen Book") (detailing a 2007 example of catch and kill efforts by Cohen, Pecker, and Trump, and stating that Trump instructed Cohen at that time to work with Pecker to catch and kill a negative story about Trump's alleged actions involving a woman).

[32] Ronan Farrow, CATCH AND KILL: LIES, SPIES, AND A CONSPIRACY TO PROTECT PREDATORS 17 (2019) ("Farrow, Catch and Kill"). The list reportedly included approximately 60 items and was titled "Donald Trump Killed" in reference to stories about Trump that had been "killed." *See* Politics & Prose Interview by Sunny Hostin with Ronan Farrow in Washington, D.C. (Oct. 21, 2019), https://www.youtube.com/watch?v=FaTi090FVAA (available in VBM) (45:38-47:39).

[33] Farrow, Catch and Kill at 17.

[34] Farrow, Catch and Kill at 16-17; *see also* Daniel Lippman, *Ronan Farrow:* National Enquirer *Shredded Secret Trump Documents*, POLITICO (Oct. 14, 2019), https://www.politico.com/news/2019/10/14/ronan-farrow-national-enquirer-shredded-trump-documents-046711; House Oversight Testimony at 128, 160 (Cohen confirming that he asked Pecker for the "treasure trove" of stories purchased by Pecker).

B. AMI Payment to Karen McDougal

1. AMI's Agreement with McDougal

On June 15, 2016, Keith Davidson, an attorney representing former Playboy model Karen McDougal, reportedly contacted Howard about the potential sale of the rights to McDougal's story about her alleged affair with Trump while he was married.[35] Pecker and Howard then informed Cohen about the McDougal story and AMI began negotiations to obtain the rights to her story "[a]t Cohen's urging and subject to Cohen's promise that AMI would be reimbursed."[36] Howard reportedly interviewed McDougal on June 20, 2016, and following the interview, indicated to McDougal that her story was worth a limited sum without "stronger documentation" of the relationship.[37] Howard, Pecker, and Cohen reportedly discussed the situation via conference call that day, and the three men agreed that AMI would not make an immediate offer.[38] On June 27, 2016, Cohen purportedly informed Trump about McDougal's story; Trump reportedly then telephoned Pecker and asked him to make the McDougal story go away.[39]

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[35] AMI Non-Prosecution Agreement, Ex. A ¶ 4; The Fixers at 164; WSJ Nov. 9 Article. In March 2018, after filing a lawsuit against AMI challenging her contract, McDougal stated in a CNN interview that her relationship with Trump began in June 2006 and ended in 2007, while Trump was married to his current wife, Melania Trump. Jim Rutenberg, *Ex-Playboy Model Karen McDougal Details 10-Month Affair with Donald Trump*, N.Y. TIMES (Mar. 22, 2018), https://www nytimes.com/2018/03/22/us/politics/karen-mcdougal-interview html ("NY Times Mar. 22 Article") (cited by MUR 7366 Compl. at 3).

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

[37] The Fixers at 164-65; AMI Non-Prosecution Agreement, Ex. A ¶ 4; MUR 7366 Compl. at 5; *compare* McDougal New Yorker Article (stating that Howard initially valued McDougal's story at $10,000), *with* The Fixers at 164-65 (stating that Howard initially valued McDougal's story at $15,000).

[38] The Fixers at 165; *see* WSJ Nov. 9 Article.

[39] The Fixers at 166; Cohen Book at 285 (stating that Trump "immediately called Pecker"); *see* WSJ Nov. 9 Article.

McDougal, under the impression that AMI was not interested in purchasing her story, began discussions with another media entity, ABC, in an effort to "get in front of the story."[40]

On July 19, 2016, Trump became the Republican presidential nominee.[41] In July 2016, Davidson reportedly informed Howard that he was fielding an offer from ABC but that McDougal wanted to receive a payment and assistance with her career.[42] Howard and Pecker updated Cohen, who in turn reportedly informed Trump of the situation, and they decided to move forward with an offer to McDougal.[43] Howard and Davidson reportedly then negotiated a contract between AMI and McDougal.[44]

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[40] McDougal Interview with Anderson Cooper, CNN (Mar. 22, 2018), http://edition.cnn.com/TRANSCRIPTS/1803/22/acd.02 html (video available at https://www.cnn.com/videos/us/2018/03/23/karen-mcdougal-full-interview-ac.cnn) ("CNN McDougal Interview") ("[AMI] had a 12-hour window to accept whether they wanted the story or not. They didn't want the story . . . . I still have to get in front of the story because it's still getting put out there. So, we went to ABC. They were very interested in the story."); *see* McDougal New Yorker Article (indicating that AMI had "little interest" in McDougal's story); McDougal Complaint ¶¶ 12-13 (indicating that McDougal was informed that AMI had "no interest" in purchasing her story); MUR 7324 Compl. at 7 (quoting McDougal New Yorker Article); MUR 7332 Compl. at 3 (citing same); Cohen Book at 285 ("By late July, Davidson was pitting ABC News and American Media against each other. McDougal was trying to parlay her affair with Trump into a way to revive her career, or what tiny bit of it might be left, an understandable ambition, but the last thing on anyone else's mind. When I heard about the ABC initiative, I knew it was time to act."). ABC reportedly agreed to a confidentiality agreement that prevented the network from publishing McDougal's story without her consent. The Fixers at 166; *see* McDougal Complaint ¶ 13 (indicating that McDougal was in negotiations with ABC and confirming that ABC signed a confidentiality agreement).

[41] The Fixers at 166; 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.

[42] The Fixers at 166-68; *see* WSJ Nov. 9 Article.

[43] AMI Non-Prosecution Agreement, Ex. A ¶ 4 (stating that "AMI communicated to Cohen that it would acquire the story to prevent its publication"); The Fixers at 168; *see also* WSJ Nov. 9 Article; McDougal New Yorker Article; MUR 7366 Compl. at 5 (citing McDougal Complaint).

[44] The Fixers at 168-69; *see also* WSJ Nov. 9 Article; McDougal New Yorker Article; McDougal Complaint ¶¶ 14, 42, 46-47 (stating that AMI showed renewed interest in purchasing the rights to McDougal's story after she shared with Davidson her concerns about publicly telling her story).

AMI and McDougal entered into a contract on August 6, 2016,[45] whereby AMI purchased the "Limited Life Story Rights" to the story of McDougal's relationship with "any then-married man" — Trump — in exchange for the payment of $150,000.[46] In addition, 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.[47] Davidson allegedly told McDougal that AMI would purchase her story with the purpose of not publishing it because of Pecker's friendship with Trump.[48] On August 10, 2016, AMI sent a $150,000 payment to Davidson for the rights to McDougal's story.[49] McDougal alleges that as early as October 2016, AMI staff appeared to lack interest in the columns that McDougal agreed to have published in her name.[50]

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[45] The contract was allegedly sent to McDougal on August 5, 2016, and she signed the contract the next morning. McDougal Complaint ¶¶ 48-55. Davidson reportedly sent the signed contract to Howard and AMI's in-house counsel, Cameron Stracher. The Fixers at 168-69 (noting that Davidson informed ABC that McDougal would not proceed with the network and stating that Davidson notified Cohen of the signed contract).

[46] 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"); McDougal New Yorker Article; MUR 7324 Compl. at 8 (quoting McDougal New Yorker Article); MUR 7332 Compl. at 4 (citing WSJ 2016 Article). On March 22, 2018, McDougal was interviewed by CNN and discussed her relationship with Trump at length, as well as how it led to her negotiations with AMI. *See* NY Times Mar. 22 Article (summarizing details of the interview where McDougal discussed her relationship with Trump); CNN McDougal Interview at 37:20-40:30 (discussing McDougal's negotiations with AMI).

[47] MURs 7324/7332 AMI Resp., Aff. of Dylan Howard, Ex. A at 1; *see* MUR 7332 Compl. at 3 (citing McDougal New Yorker Article); *see also* MUR 7332 First Amend. Compl. at 6 (citing McDougal Complaint ¶ 59).

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

[49] *See* AMI Non-Prosecution Agreement, Ex. A ¶ 5; *see also* Cohen Book at 286 (alleging that Pecker asked a former employee named Daniel Rotstein to use his Florida consulting company as a pass-through for AMI's payment to Davidson).

[50] McDougal Complaint ¶¶ 57-60. However, it does appear that AMI ultimately published several columns under McDougal's name. 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.").

AMI acknowledges in the DOJ Non-Prosecution Agreement that the payment of $150,000 was substantially more than AMI would normally have agreed to pay because it relied upon Cohen's commitment that AMI would be reimbursed.[51] Further, AMI acknowledges that its "principal purpose in entering into the agreement was to suppress the model'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."[52] AMI has 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."[53]

2. Role of Cohen, Trump, and the Trump Committee

During the negotiations concerning McDougal's story, AMI and McDougal's lawyer, Davidson, reportedly kept Cohen informed as to the status of the discussions; Cohen in turn updated Trump.[54] AMI reportedly notified Cohen on multiple occasions: upon the initial

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[51] 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.").

[52] *See id.*

[53] *Id.*, Ex. A ¶ 8; *cf.* The Fixers at 169 (noting that Pecker consulted with a campaign finance "expert" before signing off on the McDougal transaction and "believe[ed] the contract with McDougal was legally sound" because AMI agreed to pay her for future work in addition to purchasing her story rights); WSJ Nov. 9 Article ("Mr. Pecker researched campaign-finance laws before entering into the McDougal deal . . . . After speaking with an election-law specialist, Mr. Pecker concluded the company's payment to Ms. McDougal wouldn't violate the law, because the magazine covers and health columns gave him a business justification for the deal.").

[54] The Fixers at 166, 168-69; WSJ Nov. 9 Article; *cf.* House Oversight Testimony at 29-30 (Question: "Mr. Cohen, in your 10 years of working for Donald Trump[,] did he control everything that went on in the Trump Organization? And did you have to get his permission in advance and report back after every meeting of any importance." Answer: "Yes. There was nothing that happened at The Trump Organization . . . that did not go through Mr. Trump with his approval and sign-off, as in the case of the payments.").

outreach from Davidson, after its interview with McDougal, when Davidson warned Howard that ABC was interested in McDougal's story, and when AMI was in the process of finalizing the agreement with McDougal.[55] Shortly after McDougal signed the agreement with AMI, Davidson reportedly contacted Cohen and informed him that the McDougal transaction had been completed.[56] Cohen testified that he worked with AMI to keep McDougal's story from becoming public and that AMI's payment to McDougal "was done at the direction of Mr. Trump and in accordance with his instructions."[57] Cohen's role in the transaction allegedly came as a surprise to McDougal, who stated that Davidson and AMI staff failed to tell her that they were coordinating with Trump "representatives" during the negotiation of her original agreement with AMI.[58]

In late August and September 2016, Cohen requested to Pecker that AMI assign Cohen the "limited life rights portion" of AMI's agreement with McDougal, which "included the

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[55] The Fixers at 164-166, 168-69 ("Cohen soon learned of the ABC talks from the American Media executives and alerted Trump. They decided now was the time to buy."); *see also* Cohen Book at 284-89 (describing Cohen and Trump's involvement with AMI's payment to McDougal and stating "[w]hen I heard about the ABC initiative, I knew it was time to act").

[56] MUR 7324 Compl. at 10 (quoting NYT Feb. 18 Article); The Fixers at 169 (noting that, when Davidson advised Cohen that the contract was fully executed, Cohen already knew and Trump knew too and was "grateful"). Cohen reportedly denied recalling these communications with Davidson when contacted by *New York Times* reporters prior to his plea agreement. *See* NYT Feb. 18 Article.

[57] U.S. House of Representatives Permanent Select Committee on Intelligence, Executive Session, Michael Cohen Dep. at 117, 119 (Feb. 28, 2019), https://docs.house.gov/meetings/IG/IG00/20190520/109549/HMTG-116-IG00-20190520-SD002.pdf ("House Intelligence Deposition"); *see* Cohen Plea Hearing at 23 ("[O]n or about the summer of 2016, in coordination with, and at the direction of, a candidate for federal office, I and the CEO of a media company at the request of the candidate worked together to keep an individual with information that would be harmful to the candidate and to the campaign from publicly disclosing this information. After a number of discussions, we eventually accomplished the goal by the media company entering into a contract with the individual under which she received compensation of $150,000.").

[58] McDougal Complaint ¶ 20.

requirement that the model not otherwise disclose her story."[59] Trump and Cohen reportedly also wanted Pecker to turn over AMI's Trump-related materials because of the concern that Pecker might leave AMI.[60] Pecker agreed to assign the life rights to an entity Cohen created for a payment of $125,000.[61] The assignment agreement was drawn up, and on September 30, 2016, Pecker signed the agreement, which transferred the limited life rights to McDougal's story to an entity set up by Cohen.[62]

In a tape recording made by Cohen during a September 2016 meeting with Trump, Trump and Cohen appear to discuss the circumstances surrounding the assignment agreement between AMI and Cohen and how Trump would buy the rights to McDougal's story from AMI.[63] In an interview that aired on the evening the tape recording was made public, Rudy

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[59] *See* AMI Non-Prosecution Agreement, Ex. A ¶ 6.

[60] The Fixers at 169 ("Cohen was pushing American Media to turn over all its archival material on Trump, in case Pecker left the company. Cohen and Trump didn't want a new chief executive with no loyalty to Trump to have control over it."); WSJ Nov. 9 Article ("Concerned Mr. Pecker might leave American Media, Mr. Cohen wanted to buy other materials the company had gathered on Mr. Trump over the years, including source files and tips. In a meeting at the Trump Organization offices in early September, Mr. Cohen told Mr. Trump of his plan.").

[61] AMI Non-Prosecution Agreement, Ex. A ¶ 6; The Fixers at 169-71 (identifying the Cohen-created entity as Resolution Consultants, LLC, and explaining that the $25,000 difference between the amount paid to McDougal and the amount to be paid for the assignment accounted for McDougal's future AMI work); *see also* WSJ Nov. 9 Article. Because AMI purchased the rights to feature McDougal on two magazine covers and publish columns attributed to her, "Cohen and Pecker said that Trump would be liable for only a hundred and twenty-five thousand dollars of the company's payment to her." Jeffrey Toobin, *Michael Cohen's Last Days of Freedom*, THE NEW YORKER (Apr. 29, 2019), https://www.newyorker.com/magazine/2019/05/06/michael-cohens-last-days-of-freedom ("2019 New Yorker Article"); *see* Cohen Book at 285-86 ("The deal included $150,000, with $25,000 allocated for payment for her appearance on the cover of two magazines owned by American Media. That meant Trump was on the hook for $125,000 to be repaid to Pecker's company.").

[62] AMI Non-Prosecution Agreement, Ex. A ¶ 6; *see* SDNY Cohen Sentencing Memorandum at 12.

[63] Chris Cuomo, Kara Scannell & Eli Watkins, *CNN Obtains Secret Trump-Cohen Tape*, CNN (July 25, 2018), https://www.cnn.com/2018/07/24/politics/michael-cohen-donald-trump-tape/index.html (accompanying CNN video containing Trump/Cohen audio recording available in VBM) ("CNN Article") (cited by MUR 7332 Second Amend. Compl. at 3); *see also* Cohen Book at 287 ("I decided I needed to record a conversation with Trump about the payment for two reasons. First, to show Pecker that I was asking Trump to repay the obligation, and second, to have a record of his participation if the conspiracy ever came out. . . . I could sense the stakes were getting higher and higher as I explained the details of the transaction with McDougal to Trump. As a precaution, my iPhone was digitally memorializing our exchange."). The recording was reportedly seized by the Federal Bureau of

Giuliani, counsel for Trump, acknowledged that the tape recording reflects a conversation between Trump and Cohen about "how they're going to buy the rights" to McDougal's story from AMI but argued that there is "[n]o indication of any crime being committed on this tape."[64] At one point in the recording, Cohen says, in an apparent reference to the entity he would later create for the purchase, "I need to open up a company for the transfer of all of that info regarding our friend, David," which is reportedly a reference to Pecker.[65] According to Cohen, Trump asks "So what do we got to pay for this? One-fifty?"[66] Later, Trump asks "What financing?" and Cohen tells Trump, "We'll have to pay."[67] Cohen also states: "I've spoken with [Trump

Investigation ("FBI") when it raided Cohen's office. *See* Matt Apuzzo, Maggie Haberman & Michael S. Schmidt, *Michael Cohen Secretly Taped Trump Discussing Payment to Playboy Model*, N.Y. TIMES (July 20, 2018), https://www.nytimes.com/2018/07/20/us/politics/michael-cohen-trump-tape.html (cited by MUR 7332 Second Amend. Compl. at 3). The recording was one of twelve audio recordings seized by the FBI during its raids of Cohen's homes and office later released to DOJ. *See* MUR 7332 Second Amend. Compl., 3-4, Ex. 1 (showing that, on July 23, 2018, the Special Master who reviewed legal privilege claims in connection with these search warrants filed a Special Master Report, reporting that the parties had withdrawn claims of privilege in connection with these materials). Lanny Davis, counsel for Cohen, released the recording to CNN, which aired it on July 25, 2018. *See* CNN Article.

[64] *See* The Ingraham Angle, *Giuliani Responds to Release of Secret Trump-Cohen Recording*, FOX NEWS CHANNEL 3:05-3:10 (July 24, 2018), https://www foxnews.com/transcript/giuliani-responds-to-release-of-secret-trump-cohen-recording (video available in VBM) (introducing Giuliani as "personal attorney for President Trump"); CNN Article (citing same).

[65] *See* CNN Article; Cohen Book at 287 ("That was how we talked: euphemistically, circling a subject carefully, choosing words that might allow for some ambiguity."). On September 30, 2016, Cohen registered Resolution Consultants LLC in Delaware; he dissolved it on October 17, 2016, the day he registered another entity, Essential Consultants LLC in Delaware. *See* Warrant Aff. ¶ 35.b, c; Cohen Book at 288.

[66] Cohen Book at 287 (recalling "I told Trump that the amount we're paying should include all the 'stuff' that Pecker had on him. By 'stuff' I meant any and all other salacious Trump stories we believed he possessed" and indicating that Trump responded "Yeah, I was thinking about that. . . . Maybe he gets hit by a truck."); *see* CNN Article.

[67] *See* CNN Article. Trump then says "pay with cash," but it is unclear whether he is instructing Cohen to pay with cash. *See id.* Cohen then says "no, no," however the context is unclear. *See id.* During the CNN segment addressed in the CNN article, it is reported that Trump's team argued that Trump said "don't pay with cash . . . check." *Cuomo Prime Time* (CNN television broadcast July 24, 2018) (video available in VBM).

Organization Chief Financial Officer] Allen Weisselberg about how to set the whole thing up with funding."[68]

According to Cohen, Trump was supposed to make the payment to AMI but "elected not to pay it."[69] In October 2016, after Cohen signed the assignment agreement but before Pecker was paid the $125,000, Pecker notified Cohen that he was cancelling the agreement and requested that Cohen tear up the agreement signed by Pecker.[70] AMI never received any reimbursement or payment from Cohen, Trump, or anyone else for its payment to McDougal; however, Trump reportedly thanked Pecker for purchasing McDougal's story.[71]

Even after discussions about the assignment agreement ended, Cohen and AMI continued to discuss how to deal with the McDougal story, exchanging multiple calls and texts on November 4, 2016, when AMI's payment to McDougal was reported in *The Wall Street*

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[68] CNN Article. In speaking with CNN, Alan Futerfas, a Trump Organization lawyer, rejected the notion that the reference to "cash" in the tape recording "refers to green currency" because Trump and the Trump Organization would not in the ordinary course make such a payment using actual cash. *Id.* Similarly, Giuliani denied that Trump would "set[] up a corporation and then us[e] cash." *Id.* CNN further reported that Futerfas would not speculate as to whether the payment referenced in the conversation would have come from the Trump Organization or Trump's personal finances. *Id.*

[69] House Oversight Testimony at 100 (noting that "Pecker was very angry because there was also other moneys that David had expended on [Trump's] behalf" for which Pecker also was not reimbursed); *see also* 2019 New Yorker Article ("According to Cohen, McDougal's appearance on the cover of one of [AMI's] magazines, *Muscle & Fitness Hers*, led to a sizable increase in sales, and Trump decided that A.M.I. had received its money's worth in the deal" because, as Cohen said, "'[i]t sold over two hundred and fifty thousand dollars' worth of print, which was the highest for the whole year. So you invest a hundred and fifty, you make two hundred and fifty, you still have her for another cover, and for two years on the blog. It was a good deal.'"). Pecker reportedly "used to yell at Cohen about" the fact that Trump did not repay AMI, to which Cohen responded, "'David, why are you yelling at me? Go yell at Trump.'" 2019 New Yorker Article (noting that sources indicated "that A.M.I. stopped asking for reimbursement on the advice of its lawyers"); *see also* The Fixers at 170-71 ("Cohen told Pecker that Trump was dragging his feet because he was cheap and no longer wanted to pay"); WSJ Nov. 9 Article.

[70] AMI Non-Prosecution Agreement, Ex. A ¶ 6; The Fixers at 170-71 (reporting that Pecker asked Cohen to tear up the assignment agreement after Pecker consulted with Stracher, AMI's in-house counsel); WSJ Nov. 9 Article.

[71] AMI Non-Prosecution Agreement, Ex. A ¶ 6; The Fixers at 198, 314 (stating that Trump thanked Pecker in January 2017 at Trump Tower and that Pecker told DOJ that Trump thanked him); *see also* WSJ Nov. 9 Article.

Journal.[72] These communications between Cohen, Pecker, and Howard were focused on strategizing about how to handle McDougal, providing comments to *The Wall Street Journal* in connection with the story, and discussing the implications of the article, which appeared four days before the election.[73] Cohen allegedly noted to Howard that an unnamed individual, believed to be Trump, was "pissed" about the publication of the story, and Howard told Cohen that AMI's payment to McDougal "looks suspicious at best."[74]

In addition to Cohen's alleged reference to Trump's knowledge about the McDougal story breaking, the available information also indicates that Trump spoke directly to Pecker around that time.[75] The *Wall Street Journal* article was published online the evening of November 4th, and Pecker allegedly spoke to Trump on the telephone the following morning.[76]

Despite Cohen and Trump's knowledge of the AMI payments, the campaign, through Trump Committee spokeswoman Hope Hicks, publicly denied any knowledge of the payments

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[72] Warrant Affidavit ¶ 40. 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.

[73] *See* Warrant Affidavit ¶ 40.a-e (recounting Howard's text message to Cohen that stated, "Let's let the dust settle. We don't want to push her over the edge. She's on side at present and we have a solid position and a plausible position that she is rightfully employed as a columnist"). As the story was breaking, Cohen and Howard discussed McDougal's reluctance to provide a statement to Davidson and strategized about how best to handle McDougal; Cohen also allegedly forwarded Howard an image of an email from a reporter at *The Wall Street Journal* asking for comment on the story. *Id.* ¶ 40.a-b.

[74] *Id.* ¶ 40.c (stating the FBI agent's belief that "Cohen was referring to Trump when he stated 'he's pissed.'" and recounting that Cohen asked Howard "how the *Wall Street Journal* could publish its article if 'everyone denies,'" with Howard responding, "'Because there is the payment from AMI. It looks suspicious at best'").

[75] *Id.* ¶ 40.d (Cohen texted Pecker late that evening: "The boss just tried calling you. Are you free?" and then texted Howard: "Is there a way to find David quickly?").

[76] *Id.* ¶ 40.e.

and asserted that McDougal's story about a relationship with Trump was "'totally untrue.'"[77] AMI asserted to *The Wall Street Journal* that "it wasn't buying Ms. McDougal's story for $150,000, but rather two years' worth of her fitness columns and magazine covers as well as exclusive life rights to any relationship she has had with a then-married man" and said that it "'has not paid people to kill damaging stories about Mr. Trump.'"[78]

After the November 4, 2016, article in *The Wall Street Journal* was published, McDougal retained new counsel and negotiated an amendment to her original agreement with AMI ("Amendment"), which allowed her to "respond to legitimate press inquiries regarding the facts of her alleged relationship with Donald Trump."[79] In the Amendment, AMI agreed to "retain the services" of two public relations professionals for a total of six months to provide public relations and reputation management services and coordinate responses to the press with AMI.[80] However, for more than a year after that, AMI instructed McDougal to say nothing about her alleged relationship with Trump and ghostwrote email responses for McDougal to send to

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[77] WSJ 2016 Article; *see* The Fixers at 194 (reporting that Trump dictated Hicks's response to *The Wall Street Journal*); WSJ Nov. 9 Article. Additionally, Hicks reportedly told DOJ officials that Pecker informed her of the substance of his response before he sent it to the *Journal*. The Fixers at 314.

[78] WSJ 2016 Article. In a June 2017 article, however, Pecker admitted to *The New Yorker* that AMI's payment to McDougal contained elements relating to his personal friendship with Trump and was predicated on her not "bashing Trump and American Media." Jeffrey Toobin, The National Enquirer's *Fervor for Trump*, THE NEW YORKER (June 26, 2017), https://www newyorker.com/magazine/2017/07/03/the-national-enquirers-fervor-for-trump ("2017 New Yorker Article") (cited by MUR 7332 First Amend. Compl. at 6 and MUR 7332 Compl. at 3).

[79] MURs 7324/7332 AMI Resp., Ex. B (Amendment to Name and Rights License Agreement signed by McDougal on November 29, 2016, and by AMI on December 7, 2016); McDougal Complaint, Ex. B (same).

[80] MURs 7324/7332 AMI Resp., Ex. B; McDougal Complaint, Ex. B.

inquiring reporters.[81] AMI also allegedly provided the reporters with "false and misleading information" and later threatened McDougal with litigation if she told her story to reporters.[82]

C. AMI's Involvement in Payments to Other Individuals

1. Dino Sajudin

In November 2015, AMI reportedly entered into an agreement, which was subsequently amended in December 2015, with Sajudin, a former doorman at Trump World Tower in New York City, in connection with information he claimed to have about an alleged Trump "love child."[83] Sajudin reportedly "first approached the *Enquirer* in the early stages of the 2016 campaign" by calling the publication's tip line with a rumor he had heard about Trump having fathered an illegitimate child in the late 1980s with a former employee of the Trump Organization.[84] According to press reports, Sajudin initially signed a standard "boilerplate contract" with the *Enquirer*, agreeing to be an anonymous source who would be "paid upon

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[81] McDougal Complaint ¶¶ 19, 66-73.

[82] McDougal Complaint ¶¶ 19, 21, 74, 84-87; MUR 7332 First Amend. Compl. at 7 (citing McDougal Complaint ¶ 84). On March 20, 2018, McDougal filed a Complaint for Declaratory Relief that asked the court to declare her contract with AMI void because the contract was allegedly fraudulent and illegal. McDougal Complaint ¶ 5. In April 2018, AMI and McDougal reached a settlement agreement ending her lawsuit against the company and executed a new agreement, in which McDougal received the life rights to her story back from AMI and retained the $150,000 payment. Jim Rutenberg, *Ex-Playboy Model, Freed from Contract, Can Discuss Alleged Trump Affair*, N.Y. TIMES (Apr. 18, 2018), https://www.nytimes.com/2018/04/18/us/politics/karen-mcdougal-american-media-settlement.html ("McDougal Settlement New York Times Article") (cited by MUR 7332 First Amend. Compl. at 8); MUR 7332 AMI Supp. Resp. at 10-12, Ex. A. AMI obtained the right to receive "up to $75,000 of the profits from any deal" McDougal made regarding her story during the subsequent twelve-month period. *See* McDougal Settlement New York Times Article; MUR 7332 AMI Supp. Resp. at 11, Ex. A.

[83] Sajudin AP Article; The Fixers at 146. CNN published Sajudin's original agreement with AMI and its subsequent amendment. Source Agreement and Amendment, CNN (Aug. 24, 2018), https://cdn.cnn.com/cnn/2018/images/08/24/sajudin.ami.pdf (available in VBM) ("Sajudin Agreement").

[84] *Prez Love Child Shocker! Ex-Trump Worker Peddling Rumor Donald Has Illegitimate Child*, RADAR ONLINE (Apr. 11, 2018), https://radaronline.com/exclusives/2018/04/donald-trump-love-child-rumor-scandal/ ("Radar Online Article") (cited by MURs 7364/7366 AMI Resp. at 7, 10); Sajudin AP Article ("After initially calling the Enquirer's tip line, Sajudin signed a boilerplate contract with the Enquirer, agreeing to be an anonymous source and be paid upon publication.").

publication."[85] Reportedly, after Sajudin entered into an agreement to serve as a source, the *Enquirer* initially investigated the story, dispatching reporters and sending "a polygraph expert to administer a lie detection test to Sajudin in a hotel near his Pennsylvania home."[86] According to press reports, although the *Enquirer* initially avoided reaching out to Trump Organization employees, after the Trump Organization learned of the investigation when a reporter contacted Trump's assistant, Rhona Graff, Cohen contacted Howard and "pleaded with him not to publish the story."[87] On December 9, 2015, Sajudin reportedly took and passed a polygraph test testing how he learned of the rumor.[88] After passing the polygraph test, Sajudin reportedly "pressed the tabloid to pay him immediately, threatening to walk otherwise."[89]

On December 17, 2015, AMI reportedly agreed to make an "up front" $30,000 payment to Sajudin to prevent him from discussing the rumor about Trump fathering a child.[90] That agreement stated that Sajudin would be subject to a $1 million penalty "if he shopped around his information."[91] Immediately after Sajudin signed the agreement, the *Enquirer* reportedly

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85 Sajudin AP Article; *see also* Radar Online Article; The Fixers at 146.

86 Sajudin AP Article; *see also* The Fixers at 146-47 (noting that the investigators refrained from contacting Trump Organization employees).

87 The Fixers at 147-48.

88 Radar Online Article.

89 The Fixers at 148.

90 MURs 7364/7366 AMI Resp. at 8; MUR 7364 Compl. at 4, 7 (citing Sajudin AP Article); Ronan Farrow, The National Enquirer, *A Trump Rumor, and Another Secret Payment to Buy Silence*, THE NEW YORKER (Apr. 12, 2018), https://www newyorker.com/news/news-desk/the-national-enquirer-a-donald-trump-rumor-and-another-secret-payment-to-buy-silence-dino-sajudin-david-pecker ("Sajudin New Yorker Article"); MUR 7366 Compl. at 2 (citing Sajudin AP Article).

91 MUR 7364 Compl. at 6 (quoting Sajudin AP Article); Sajudin Agreement.

stopped investigating the story.[92] In the summer of 2017, Howard reportedly claimed that the investigation was terminated on its merits because Sajudin "lacked any credibility,"[93] however, four longtime *Enquirer* staffers reportedly challenged this interpretation, claiming that they "were ordered by top editors to stop pursuing the story before completing potentially promising reporting threads" and further claimed that the "publication didn't pursue standard *Enquirer* reporting practices."[94]

Reportedly, current and former AMI employees had noticed several aspects of the payment to Sajudin that caused it to differ from other payments to sources. A former AMI reporter and editor noted that it was unusual for the company to pay for a tip when it did not publish an article, reportedly stating "AMI doesn't go around cutting checks for $30,000 and then not using the information."[95] Similarly, according to *The New Yorker*, a source stated: "It's unheard of to give a guy who calls A.M.I.'s tip line big bucks for information he is passing on secondhand. We didn't pay thousands of dollars for non-stories, let alone tens of thousands. It was a highly curious and questionable situation."[96] Other staffers reportedly concluded that the

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92 Sajudin AP Article; The Fixers at 148-49.

93 Sajudin AP Article.

94 *Id.*

95 *Id.* According to the *Associated Press*, "AMI threatened legal action over reporters' efforts to interview current and former employees and hired the New York law firm Boies Schiller Flexner, which challenged the accuracy of the AP's reporting." *Id.* (noting that *RadarOnline*, also owned by AMI, "published details of the payment and the rumor that Sajudin was peddling" on the same day that the AP Article was published, stating "that the *Enquirer* spent four weeks reporting the story but ultimately decided it wasn't true"); *see also* The Fixers at 148 (noting that the payment, while not unheard of, "was a break with the tabloid's typical policy of paying for stories upon their publication, and a large sum relative to most source payments").

96 Sajudin New Yorker Article.

$1 million penalty to stop the tipster from talking about the tip indicated that the payment was part of a catch and kill.[97]

Although the Sajudin payment is not addressed in the AMI Non-Prosecution Agreement or Cohen's plea, the payment to Sajudin was made after the purported August 2015 agreement between Pecker, Trump, and Cohen that AMI would catch and kill stories that could reflect negatively on Trump during the campaign.[98] Furthermore, press reports suggest that the decision to pay Sajudin, outside AMI's normal investigation practices, resulted from Pecker or another high level AMI official directing that payment.[99] Cohen, meanwhile, told the *Associated Press* "that he had discussed Sajudin's story with the magazine when the tabloid was working on it" but said that "he was acting as a Trump spokesman when he did so and denied knowing anything beforehand about the *Enquirer* payment to the ex-doorman."[100] AMI reportedly released Sajudin from the contract at some point after the 2016 presidential election.[101]

2. Stephanie Clifford

As discussed above, Cohen paid $130,000 to Stephanie Clifford, a well-known adult-film actress and director who used the professional name Stormy Daniels, to prevent the publication

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97 Sajudin AP Article; s*ee also* The Fixers at 148 (noting that the $1 million penalty, while likely unenforceable in court, ensured that a source "wouldn't take the tabloid's money and disappear or blab to another publication. It was meant to scare them.").

98 *See* WSJ Nov. 9 Article.

99 Sajudin New Yorker Article; *see also* The Fixers at 148 (claiming that "[t]he reporters suspected interference from Pecker").

100 Sajudin AP Article (noting that the "parent" of the *Enquirer* made the payment to Sajudin). According to Cohen, after AMI made the payment to McDougal, "Pecker was very angry because there was also other moneys that David [Pecker] had expended on [Trump's] behalf," and Trump declined to reimburse AMI for the other funds as well. House Oversight Testimony at 100.

101 *See, e.g.* Sajudin AP Article.

of her story concerning her 2006 alleged relationship with Trump. Shortly after *The Washington Post* published a video recording of Trump appearing on the television show *Access Hollywood* in 2005, in which Trump "bragged in vulgar terms about kissing, groping and trying to have sex with women,"[102] Davidson, the same attorney who had represented McDougal in her negotiations with AMI, reportedly contacted Howard at AMI and offered to confirm Clifford's story on the record.[103] AMI, reportedly because it had already invested significant sums in paying to silence negative stories and was growing uncomfortable, did not purchase Clifford's story.[104] Instead, it appears that AMI directed the Clifford story to Cohen.[105]

D. The Complaints and Responses

The Complaints in MURs 7324, 7332, and 7366 allege that there is reason to believe that, by paying McDougal $150,000, AMI made and the Trump Committee accepted a prohibited corporate contribution because the payment was not included within the scope of the press exemption and was an expenditure made for the purpose of influencing the 2016 presidential election that was coordinated with Cohen, an agent of Trump.[106] All three Complaints also

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[102] David A. Fahrenthold, *Trump Recorded Having Extremely Lewd Conversation About Women in 2005*, THE WASHINGTON POST (Oct. 7, 2016), https://www.washingtonpost.com/politics/trump-recorded-having-extremely-lewd-conversation-about-women-in-2005/2016/10/07/3b9ce776-8cb4-11e6-bf8a-3d26847eeed4_story html ("Fahrenthold Article"); *see* Warrant Affidavit ¶ 32.

[103] Farrow, Catch and Kill at 345 ("[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* SDNY Information ¶ 32.

[104] *See* Farrow, Catch and Kill at 345.

[105] *See* First Gen. Counsel's Rpt., MURs 7313, 7319 and 7379 (Michael D. Cohen) (open matter) (discussing, *inter alia*, alleged violations of the Act in connection with Cohen's payment to Clifford).

[106] MUR 7324 Compl. at 14-15; MUR 7332 Compl. at 8; MUR 7366 Compl. at 7-9; *see also* MUR 7637 Compl. at 1 (merged in relevant part into MUR 7324).

allege that the Trump Committee failed to report receipt of the in-kind contribution and failed to report the making of an expenditure.[107] The MUR 7332 Complaint further alleges that AMI's payment to McDougal was an excessive contribution to the Trump Committee.[108]

The Complaints in MURs 7364 and 7366 allege that by paying Sajudin $30,000, AMI made, and the Trump Committee accepted, a prohibited corporate contribution in the form of a coordinated expenditure.[109] The Complaints in MURs 7364 and 7366 further allege that the Trump Committee failed to report the receipt of the $30,000 in-kind contribution from AMI and the $30,000 expenditure to Sajudin.[110]

With two exceptions, the Responses filed in this matter pre-date AMI and Cohen's subsequent public admissions and clarifications made in connection with their respective non-prosecution agreements, plea agreements, and congressional testimony.[111] Cohen filed a Response to three of the Complaints in June 2018, before his 2019 congressional testimony, stating only that the Complaints in MURs 7324, 7364, and 7366 are speculative and "not supported by the facts or the law" because "the alleged business transactions and any publishing

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[107] MUR 7324 Compl. at 15-17; MUR 7332 Compl. at 7-8; MUR 7366 at 10.

[108] MUR 7332 Compl. at 8. In addition, the MUR 7366 Complaint alleges that Trump, the Trump Committee, Cohen, AMI, Pecker, and former Trump Committee treasurer Timothy Jost engaged in a conspiracy to violate 52 U.S.C. §§ 30104, 30118, and 30125(e). MUR 7366 Compl. at 10-12. The Complaint's conspiracy allegations are not within the Commission's jurisdiction.

[109] MUR 7364 Compl. at 11-12; MUR 7366 Compl. at 9.

[110] MUR 7364 Compl. at 12-13; MUR 7366 Compl. at 10.

[111] 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. *See supra* note 1. 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. The Trump Committee's Response in MUR 7637 stated that it has already addressed all allegations in its previous responses filed with the Commission. MUR 7637 Trump Committee Resp. at 1.

decisions" "were not subject" to the Act.[112] Cohen did not submit a response in connection with MURs 7332 and 7637. Generally, AMI's Responses to the Complaints in these matters assert that the payment to McDougal was exempt from regulation under the press exemption.[113] Alternatively, AMI argues that the payment to McDougal "was compensation for *bona fide* content for AMI's publications, to license her name and image, and for a limited life story right, not 'for the purpose of influencing an election.'"[114] In addition, AMI argues that payments for silence are not contributions or expenditures because silence is not a "thing of value" under the Act, the payment was for a legitimate business purpose,[115] and the MUR 7324 and 7332 Complaints fail to show how the McDougal payment was coordinated with an agent of the Trump Committee.[116]

In its Responses to the Complaints in MURs 7324, 7332, and 7366, the Trump Committee argues that the "private transaction" between AMI and McDougal was "a media entity's editorial and business decision not to publish information it received from a private arm's-length, bargained-for exchange between two represented parties neither involving nor

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112 MURs 7324/7364/7366 Cohen Resp. at 1.

113 MURs 7324/7332 AMI Resp. at 1-2, nn.1-2 (noting that Pecker and Howard chose not to file separate responses and that AMI's Response addresses their potential liability as officers of AMI); 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).

114 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").

115 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. McDougal also appeared on a 2017 cover of AMI magazine *Muscle and Fitness Hers*, which, according to AMI, was the highest selling issue of the magazine for that year. *Id.*

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

having any connection to the [Trump] Committee."[117] The Trump Committee further asserts that the payment to McDougal could not be a contribution or expenditure because it was not for the purpose of influencing a federal election because the record did not include information establishing a nexus between the Trump Committee and AMI's payment to McDougal.[118] The Trump Committee also asserts that AMI reportedly contacted Cohen only to "corroborate" McDougal's story "and proved unable to do so."[119]

Similarly, in its Response to MURs 7364 and 7366, which predates the AMI Non-Prosecution Agreement, AMI asserts that the Sajudin payment was exempt from regulation under the press exemption.[120] AMI contends that it investigated Sajudin's allegations regarding Trump and determined that, although Sajudin may have heard rumors regarding his allegation that Trump had fathered a child with a former employee, "AMI could not confirm the veracity of the underlying allegation" and ultimately determined that Sajudin's story regarding Trump was untrue.[121] AMI further contends that the Sajudin payment was not for the purpose of influencing a federal election and that the MUR 7364 Complaint is based on speculation.[122] The Trump Committee asserts that no nexus exists between the Trump Committee and the transaction

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[117] MURs 7324/7332 Trump Committee Resp. at 1; *see also* MUR 7366 Trump Committee Resp.; MUR 7637 Trump Committee Resp. at 1 (referencing response in MURs 7324/7332).

[118] MURs 7324/7332 Trump Committee Resp. at 2; *see* MUR 7366 Trump Committee Resp. at 2.

[119] MURs 7324/7332 Trump Committee Resp. at 3.

[120] MURs 7364/7366 AMI Resp. at 1-2. The Trump Committee filed a Response in connection with MUR 7366 but did not specifically address the allegations regarding AMI's payment to Sajudin. MUR 7366 Trump Committee Resp. at 1-2. The Trump Committee did not file a response for MUR 7364.

[121] MURs 7364/7366 AMI Resp. at 2, 9.

[122] MURs 7364/7366 AMI Resp. at 2-3.

between AMI and Sajudin and cites to articles concerning other press outlets' decisions to not publish Sajudin's story.[123]

Trump did not file a response to any of the Complaints in this matter. Nonetheless, both Trump and Giuliani, as counsel for Trump, have addressed publicly on Twitter the allegations regarding the payment to McDougal, arguing that the payment did not violate the law. For example, soon after Cohen's guilty plea, Trump and Giuliani both alleged that the payments to McDougal and Clifford were not unlawful.[124] Trump and Giuliani also tweeted about the payments in December 2018, around the time of Cohen's sentencing, again tweeting that the

[123] MUR 7364 Trump Committee Resp. at 2-3; MUR 7366 Trump Committee Resp. at 2; *see also* Radar Online Article (claiming that "Many organizations have since tried [to verify and publish Sajudin's claims]. . . including *The Wall Street Journal*, *The New York Times*, and *The Associated Press*.").

[124] Donald J. Trump (@realDonaldTrump), TWITTER (Aug. 22, 2018, 9:37 AM), https://twitter.com/realDonaldTrump/status/1032260490439864320 ("Michael Cohen plead [sic] guilty to two counts of campaign finance violations that are not a crime."); Rudy Giuliani (@RudyGiuliani), TWITTER (Aug. 23, 2018, 4:11 AM), https://twitter.com/RudyGiuliani/status/1032540830794428416, (Aug. 23, 2018, 5:50 AM), https://twitter.com/RudyGiuliani/status/1032565618204004353 (stating that the "payments, as determined by the Edwards FEC ruling, are NOT ILLEGAL" and directing followers to an opinion piece in *The Hill* by Mark Penn, "demonstrating [that] Cohen pled guilty to two payments that are not violations of the law").

payments were not violations of the Act.[125] Trump also tweeted that he "never directed Michael Cohen to break the law."[126]

III. LEGAL ANALYSIS

The available information indicates that AMI paid $150,000 to McDougal for the purpose of influencing the 2016 presidential election by preventing a potentially damaging story about Trump from becoming public before the election. Based upon the available information, it appears that the payment to McDougal was made with Trump's knowledge, at the urging of and with the promise of repayment by Cohen, acting as an agent of Trump, and as part of an agreement between Trump and AMI to catch and kill any potentially damaging stories about Trump's relationships with women so that such stories would not become public during the 2016 campaign. Likewise, the available record indicates that AMI's payment of $30,000 to Sajudin was made as part of this same catch and kill agreement. Although AMI contends that its payments to McDougal and Sajudin concern the business and editorial decisions of a press entity and thus are not subject to Commission regulation, the available information indicates that

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[125] Rudy Giuliani (@RudyGiuliani), TWITTER (Dec. 8, 2018, 1:20 PM), https://twitter.com/RudyGiuliani/status/1071469692882182144 ("The President is not implicated in campaign finance violations because based on Edwards case and others the payments are not campaign contributions."), (Dec. 9, 2018, 10:54 AM), https://twitter.com/RudyGiuliani/status/1071795258177019905 ("No collusion, no obstruction now [sic] campaign finance but payments to settle lawsuits are not clearly a proper campaign contribution or expenditure. No responsible lawyer would charge a debatable campaign finance violation as a crime . . . ."), (Dec. 13, 2018, 9:49 AM), https://twitter.com/RudyGiuliani/status/1073228301332869120 (sharing link to an opinion piece in *The Daily Signal* by Hans von Spakovsky, which argued that Cohen arranging payment to McDougal did not violate the law), (Dec. 14, 2018, 11:53 AM), https://twitter.com/RudyGiuliani/status/1073622122235355136 ("CORRECTION: I didn't say payments were not a big crime. I have said consistently that the Daniels and McDougall [sic] payments are not crimes and tweeted a great article yesterday making that point. If it isn't a witch-hunt why are they pursuing a non-crime."), (Dec. 19, 2018, 10:04 PM), https://twitter.com/RudyGiuliani/status/1075587822449500161 ("The payments to Daniels and McDougall [sic] do not violate the law. Congress has spent millions settling sexual harassment claims against members which are not reported as campaign contributions. Why aren't those Congressmen under investigation."); Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 13, 2018, 8:25 AM), https://twitter.com/realDonaldTrump/status/1073207272069890049 ("Cohen was guilty on many charges unrelated to me, but he plead [sic] to two campaign charges which were not criminal. . . .").

[126] Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 13, 2018, 8:17 AM), https://twitter.com/realDonaldTrump/status/1073205176872435713 ("He was a lawyer and he is supposed to know the law.").

AMI's payments to McDougal and Sajudin were not made in connection with AMI's business or editorial functions. Instead, the available information indicates that AMI's payments were made to benefit Trump's campaign, were made at Trump's direction, and, for the reasons explained below, were not covered by the press exemption. Thus, the available information supports the conclusion that the AMI's payments were expenditures coordinated with Trump and thus constituted in-kind contributions to Trump and the Trump Committee.

As such, AMI, Pecker, Howard, Trump, and the Trump Committee appear to have violated the Act by making, consenting to the making, and knowingly accepting corporate contributions in the form of payments from AMI to McDougal and Sajudin. Moreover, the Trump Committee failed to publicly disclose the resulting contributions, as required under the Act. Finally, as explained below, the record indicates that there is reason to believe that all of these violations were knowing and willful.

A. Press Exemption

Under 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,"[127] 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."[128] Under Commission regulations, the phrase

[127] 52 U.S.C. § 30101(8)(A).

[128] 52 U.S.C. § 30101(9)(A).

"anything of value" includes all in-kind contributions.[129] In-kind contributions include, among other things, coordinated expenditures.[130]

Under the Act, the 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."[131] This exemption is called the "press exemption" or "media exemption."[132] Costs covered by the exemption are also exempt from the Act's disclosure and reporting requirements.[133] If the press exemption applies to AMI's payments to McDougal and Sajudin, then those payments would not be contributions or expenditures under the Act.

To assess whether the press exemption applies, the Commission uses a two-part test.[134] The first inquiry is whether the entity engaging in the activity is a "press entity."[135] Second, the Commission determines the scope of the exemption by applying the two-part analysis presented

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129 11 C.F.R. § 100.52(d)(1).

130 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).

131 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.

132 Advisory Op. 2011-11 (Colbert) at 6 ("AO 2011-11"); Advisory Op. 2008-14 (Melothé) at 3 ("AO 2008-14").

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

134 Advisory Op. 2005-16 (Fired Up!) at 4 ("AO 2005-16").

135 *Id.*

in *Reader's Digest Association v. FEC*: (1) whether the entity is owned or controlled by a political party, political committee, or candidate; and (2) whether the entity is acting within its "legitimate press function" in conducting the activity.[136]

The Commission has long recognized that an entity otherwise eligible for the press exemption "would not lose its eligibility merely because of a lack of objectivity in a news story, commentary, or editorial, even if the news story, commentary, or editorial expressly advocates the election or defeat of a clearly identified candidate for Federal office."[137] Nonetheless, "the Commission is also mindful that a press entity's press function is 'distinguishable from active participation in core campaign or electioneering functions.'"[138] In other words, "the press exemption covers press activity, not campaign activity by a press entity."[139]

Although the Commission considers "legitimate press function" broadly, not all actions taken by press entities are considered legitimate press functions for purposes of the media exemption.[140] The court in *Reader's Digest Association* reasoned that:

> [T]he statute would seem to exempt only those kinds of distribution that fall broadly within the press entity's legitimate press function. It would not seem to exempt any dissemination or distribution using the press

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136 *See Reader's Digest Ass'n v. FEC*, 509 F. Supp. 1210, 1214-15 (S.D.N.Y. 1981); AO 2011-11 at 6-7. When determining whether the entity was acting within the scope of a legitimate press function at the time of the alleged violation, the Commission considers two factors: (1) whether the entity's materials are available to the general public; and (2) whether they are comparable in form to those ordinarily issued by the entity. *See Reader's Digest Ass'n*, 509 F. Supp. at 1215; Factual & Legal Analysis at 4, MUR 7231 (CNN); Advisory Op. 2016-01 (Ethiq) at 3. However, because the activity here does not include the publication of any materials, this second factor is not relevant to the analysis.

137 Factual & Legal Analysis at 5, MUR 7206 (Bonneville International Corp.) (quotation marks omitted) (quoting AO 2005-16 at 6); Factual & Legal Analysis at 3, MUR 6579 (ABC News, Inc.).

138 AO 2011-11 at 8 (quoting AO 2008-14).

139 *Id.*

140 *See McConnell v. FEC*, 540 U.S. 93, 208 (2003) (commenting that the press exemption "does not afford *carte blanche* to media companies generally to ignore FECA's provisions").

> entity's personnel or equipment, no matter how unrelated to its press function. If, for example, on Election Day a partisan newspaper hired an army of incognito propaganda distributors to stand on street corners denouncing allegedly illegal acts of a candidate and sent sound trucks through the streets blaring the same denunciations, all in a manner unrelated to the sale of its newspapers, this activity would not come within the press exemption.[141]

When analyzing a press entity's activities outside of the distribution of news stories, commentary, and editorials through media facilities, a court has found the press exemption applicable when the actions in question pertain to seeking subscribers or promoting the publication.[142] A district court has also observed that the Commission has a limited ability to investigate activities that potentially may be normal press functions but are nevertheless unusual; such activities may be subject to additional scrutiny only to determine if they are, indeed, within the press exemption.[143]

When distinguishing between an entity's legitimate press functions and its participation in campaign functions, the Commission has applied the Supreme Court's "considerations of form" analysis as set forth in the U.S. Supreme Court's *FEC v. Massachusetts Citizens for Life* decision ("*MCFL*"), which examined whether the activity in question is comparable in form to the press entity's regular activities, considering whether the complained-of activities and content

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[141] *Reader's Digest*, 509 F. Supp. at 1214; *see also McConnell*, 540 U.S. at 208 (noting that the press exemption "does not afford *carte blanche* to media companies generally to ignore FECA's provisions"); AO 2011-11 at 8 ("While the press exemption covers press activity, it does not cover campaign activity, even if the campaign activity is conducted by a press entity").

[142] *FEC v. Phillips Publishing Inc.*, 517 F. Supp. 1308, 1313 (D.D.C. 1981) (applying the press exemption to a letter soliciting new subscribers).

[143] *Phillips* at 1313-14.

are produced in the same manner, using the same people, and subject to the same review and distribution as the press entity's general activities.[144]

In an Advisory Opinion analyzing the formation of a political committee by television personality and talk show host Stephen Colbert, the Commission concluded that certain activities undertaken by the press entity (Viacom) would be covered by the press exemption but that other activities would not. Coverage of the political committee created for Colbert's television show would be covered by the press exemption; however, Viacom could not create content for Colbert's committee for distribution outside of his television show, or administer the political committee, because such activities would amount to "active participation [by Viacom] in core campaign or electioneering functions."[145] In reaching this conclusion, the Commission explained that to allow Viacom to produce content for the Colbert committee to distribute beyond the show under these circumstances "would stretch the boundaries of the press exemption far beyond those contemplated by Congress and the Supreme Court."[146]

Consistent with this analysis, the Commission has found that a press entity's sale or purchase of airtime would not fall within the press exemption.[147] Similarly, the Commission has

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144 AO 2011-11 at 8 (citing *FEC v. Mass. Citizens for Life ("MCFL")*, 479 U.S. 238, 251 (1986)).

145 *Id.* at 9.

146 *Id.* (citing *MCFL*, 479 U.S. at 251; *Reader's Digest Ass'n*, 509 F. Supp. at 1214; *McConnell*, 540 U.S. at 208).

147 Factual & Legal Analysis at 8-9, MUR 7073 (Meluskey for U.S. Senate, Inc.) (finding that the press exemption did not cover a candidate's radio show when the candidate or a business entity affiliated with the candidate paid radio stations to air his radio show); *see also* Factual & Legal Analysis at 6, MUR 6089 (People with Hart) (finding that a station does not act as a press entity when it sells airtime to another party and cedes editorial control).

explained when analyzing "legitimate press functions" that "the provision of personnel to benefit a political campaign is not a legitimate press function."[148]

Here, the available information indicates that the press exemption does not cover AMI's payments to McDougal or Sajudin. AMI appears to be a press entity that has produced news stories on a regular basis through a variety of periodical publications,[149] and AMI represents that it is not owned or controlled by a political party, political committee, or federal candidate.[150]

Although AMI appears to argue that the First Amendment in general protects it from mere inquiry into why it chooses not to run stories, such inquiry is unnecessary in this matter because AMI, after submitting its Response, admitted in its Non-Prosecution Agreement with DOJ that its actions were not undertaken in connection with any press function but were rather to benefit Trump, a personal friend of Pecker, and his campaign.[151] Similarly, AMI's assertion in its Response that it developed renewed interest in McDougal's story because she had "elevated her profile" by launching her own beauty and fragrance line[152] is directly refuted by AMI's subsequent admission in its Non-Prosecution Agreement that its "principal purpose in entering into the agreement was to suppress [McDougal's] story so as to prevent it from influencing the

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148 AO 2008-14 at 6.

149 AMI Non-Prosecution Agreement, Ex. A ¶ 1; MURs 7324/7332 AMI Resp., Howard Aff. ¶¶ 5-11.

150 MURs 7324/7332 AMI Resp. at 12; *see also id.*, Howard Aff. ¶ 3.

151 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).

152 MURs 7324/7332 AMI Resp. at 6.

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."[153] As a result, AMI's editorial judgment is not at issue in these matters, because AMI has already acknowledged that it made or facilitated the payments to McDougal and Clifford for an electoral, as opposed to editorial, purpose.[154]

In addition to this admission, AMI's payment to McDougal would not meet the standard set forth in *MCFL* as applied by the Commission for determining whether its payment was a legitimate press function. According to AMI, the payment was for an amount more than AMI would typically pay for stories because AMI expected to be reimbursed by Trump.[155] This acknowledgement, along with information indicating that AMI valued McDougal's contributions to its publications at significantly less than the $150,000 it paid to her, strongly indicates that the payment to McDougal is inconsistent with AMI's regular treatment of other sources, that the payment was not made to secure material to be used in producing and distributing content, and that the payment was not made in the same manner as, or even in connection with, AMI's general activities as a press entity.[156] Consistent with the Commission's analysis in AO 2011-11, allowing AMI to assert the press exemption here despite its admissions that its activity was

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

154 AMI Non-Prosecution Agreement at 1-3 (stating that "AMI accepts and acknowledges as true the facts" contained in Exhibit A).

155 *Id.*, Ex. A ¶ 5; *see also* McDougal 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.").

156 *See* WSJ Nov. 9 Article (reporting that, in Pecker and Cohen's contemplated agreement to transfer the rights to McDougal's story to Trump for $125,000, "the magazine covers and fitness columns, the rights to which the publisher would retain" were valued at $25,000).

undertaken for political purposes "would stretch the boundaries of the press exemption far beyond those contemplated by Congress and the Supreme Court."[157]

AMI's involvement in both the payment to McDougal and the payment Cohen made to Clifford on behalf of Trump, along with the overlap of individuals involved in the discussion and negotiation of both payments, as well as AMI's admitted involvement in an effort to identify and purchase stories damaging to Trump's campaign, suggest an ongoing pattern of using AMI resources to make payments for the purpose of benefitting Trump's campaign.[158] In October 2016, Davidson, the same attorney who had represented McDougal in her negotiations with AMI, reportedly contacted Pecker and Howard at AMI and offered to confirm Clifford's story on the record.[159] According to press reports, AMI, unwilling to make an additional payment to benefit Trump's campaign, nevertheless served as an intermediary to facilitate Clifford's silence[160] and put Davidson in touch with Michael Cohen, who then negotiated a $130,000 agreement to purchase Clifford's silence.[161] Davidson's reported multiple negotiations with

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157 AO 2011-11 at 9.

158 *See* SDNY Information ¶¶ 24-44; WSJ Jan. 12 Article (outlining details of the payment to Clifford); Farrow, Catch and Kill at 345 (noting AMI's involvement in the payments to McDougal, Sajudin, and Clifford).

159 *See* SDNY Information ¶ 32.

160 *See supra* Section II.C.2; Farrow, Catch and Kill at 345 ("[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."); The Fixers at 176-78 (reporting Howard's initial interest in and Pecker's reluctance to purchasing the rights to Clifford's story and Howard's involvement in the negotiations); *see also* WSJ Nov. 9 Article ("Mr. Cohen asked American Media to buy Ms. Clifford's story. Mr. Pecker refused on the grounds that he didn't want his company to pay a porn star.").

161 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* McDougal New Yorker Article; SDNY Information ¶ 32; The Fixers at 178; WSJ Nov. 9 Article.

AMI, each of which ultimately resulted in a payment to prevent the publication of a story that might damage the Trump campaign, indicate his awareness of AMI's general willingness to purchase stories in order to benefit Trump's campaign, and not for legitimate press activity.[162] Finally, AMI's own admissions to DOJ that it had "offered to help with negative stories about [a] presidential candidate's relationships with women by, among other things, assisting the campaign in identifying such stories so they could be purchased and their publication avoided,"[163] indicate an ongoing pattern of using AMI resources to make payments for the purpose of benefitting a candidate, admittedly without regard to its editorial decisions or press-related activity such as disseminating news and increasing readership.[164]

AMI's payment to Sajudin fits this pattern as well. Experienced *Enquirer* staffers reportedly identified "the abrupt end to reporting combined with a binding, seven-figure penalty to stop the tipster from talking to anyone" as hallmarks of a catch and kill operation.[165] Further,

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[162] *See* McDougal Complaint ¶ 47 (alleging that Davidson told McDougal that AMI "would buy the story *not* to publish it, because Mr. Pecker (AMI's CEO) was a close friend of Mr. Trump" (emphasis in original)); *see also* The Fixers at 164-65; WSJ Nov. 9 Article.

[163] AMI Non-Prosecution Agreement, Ex. A ¶ 3.

[164] *See* MURs 7324/7332 AMI Resp. at 5. AMI appears to argue that the First Amendment in general protects it from inquiry into why it chooses not to run stories and asserts that any inquiry would be chilling on the press. *Id.* at 20-21. However, no such inquiry is necessary in this matter because AMI, after submission of its Response, admitted that its actions were not undertaken in connection with AMI's work as a conglomerate of press entities but rather to benefit a personal friend of Pecker. Specifically, AMI admits that Pecker "offered to help with negative stories about [a] presidential candidate's relationships with women by, among other things, assisting the campaign in identifying such stories so they could be purchased and their publication avoided." AMI Non-Prosecution Agreement, Ex. A ¶ 3. To support its argument, AMI cites to cases that address situations not present in the instant matters. *Miami Herald* addresses a situation where a right of reply statute requiring a publication to provide equal space was struck down, affirming the rights of a publication to select its content. *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 254-57 (1974). Similarly, the decision in *Clifton* centered around the authority to regulate a publication's decisions on what content to include in a voter guide. *Clifton v. FEC*, 114 F.3d 1309, 1310-1311 (1st Cir. 1997). AMI's editorial judgment is not at issue in these matters, because AMI has already acknowledged that it made or facilitated the payments to McDougal and Clifford for an electoral, as opposed to editorial, purpose.

[165] MUR 7364 Compl. at 5 (quoting Sajudin AP Article).

sources who purportedly were involved with the investigation of Sajudin's tip reportedly stated that the decision to stop investigating was not an editorial decision but one made by Pecker personally.[166] One of those sources added, "There's no question it was done as a favor to continue to protect Trump from these potential secrets. That's black-and-white."[167] Finally, former AMI employees stated to *The New Yorker* that Cohen was kept apprised of the investigation of Sajudin's story, indicating that the decision to purchase and silence Sajudin's story was made for political, rather than editorial, purposes.[168] These statements, which detail the ways in which the payment was not comparable to AMI's regular activities in form, scale, personnel, or process, indicate that the decisions surrounding AMI's decision to pay Sajudin amounted to "active participation in core campaigning functions," and were not the sort of activity intended to be protected under the press exemption.[169]

Available information suggests that Sajudin possessed information, which, like Clifford's and McDougal's information, could have harmed Trump's chances of winning the 2016 presidential primary and general elections.[170] Like Clifford and McDougal, Sajudin was

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166 Sajudin New Yorker Article; *see also* The Fixers at 148-49.

167 Sajudin New Yorker Article.

168 *See id.* Other sources indicate that Cohen learned of the story when a reporter, unbeknownst to her editors, contacted Rhona Graff. After learning of this call, Cohen reportedly contacted Howard and "pleaded with him not to publish the story." The Fixers at 147.

169 *See* AO 2011-11 at 8 (quotation marks omitted).

170 *Compare* AMI Non-Prosecution Agreement, Ex. A ¶ 3 (outlining the overall agreement to "help deal with negative stories about that presidential candidate's relationships with women by, among other things, assisting the campaign in identifying such stories so they could be purchased and their publication avoided"), *with* MURs 7324/7332 AMI Resp., Howard Aff., Ex. A ¶ 7 (requiring McDougal to maintain her silence about her relationship with "any then-married man" and providing that AMI would be entitled to $150,000 in damages for any breach), *and* MUR 7313 Amend. Compl., App. 1, Ex. 1 ¶ 5.1.2 (requiring Clifford not to disclose any confidential information and providing a $1,000,000 penalty should Clifford disclose such confidential information), *and* Sajudin Agreement at 4 (outlining an extension of the exclusivity period contained in the agreement to extend "in

reportedly paid for that information, in his case by AMI, and faced significant financial consequences were he to discuss that information publicly.[171] Given AMI's admissions that its payments to McDougal were part of an overall scheme to benefit Trump in the election by identifying and purchasing stories that could damage Trump, the available information supports the reasonable inference that AMI's purchase of Sajudin's story was part of that same scheme to benefit a candidate and was undertaken without regard for editorial or other legitimate press function-related considerations.

In light of all of these circumstances, which include AMI's express admissions that it used a press entity's resources to provide benefits to a candidate, which were unrelated to its legitimate press function, the press exemption does not apply to the payments at issue.

B. The Commission Should Find Reason to Believe that AMI's Payments to McDougal and Sajudin Were Prohibited Corporate Contributions

1. The Commission Should Find Reason to Believe that AMI's Payments to McDougal and Sajudin Were Coordinated Expenditures

a. Coordination

The Act and Commission regulations prohibit corporations from making contributions to candidate committees in connection with a federal election.[172] Likewise, it is unlawful for any candidate, candidate committee, or other person to knowingly accept or receive such a prohibited contribution, and for any officer or director of a corporation to consent to any such

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perpetuity" and its violation to carry a $1 million penalty). *See also* Sajudin AP Article ("The company only released Sajudin from his contract after the 2016 election amid inquiries from the Journal about the payment.").

[171] *See supra* Section II.C.1; The Fixers at 148; Sajudin Agreement at 4; *see also* House Oversight Testimony at 128, 132 (Cohen discusses Pecker's actions to protect Trump and appears to refer to the payment to Sajudin).

[172] 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

contribution.[173] The Commission has consistently found that payments by a third party that are intended to influence an election and are "coordinated" with a candidate, authorized committee, or agent thereof are "coordinated expenditures" that result in a contribution by the person making the expenditure to the candidate or political committee with whom the expenditure was coordinated.[174]

The available information indicates that AMI's payments to McDougal and Sajudin were "coordinated" with Trump and his agent Cohen because they were made "in cooperation, consultation or concert with, or at the request or suggestion" of Trump, personally, and Cohen in his capacity as an agent for Trump.[175]

Trump reportedly held the August 2015 meeting with Pecker and Cohen, in which Pecker agreed to purchase negative stories on behalf of Trump and his campaign, in his office at Trump Tower, suggesting that he was aware of, and agreed to, the plan to have AMI make payments to individuals in possession of stories damaging to the Trump campaign in order to help his campaign.[176] Further, Trump appears to have maintained an ongoing role in and awareness of AMI's negotiations with individuals possessing potentially damaging stories by contacting AMI

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173 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d)-(e).

174 *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).

175 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(a)-(b).

176 *See* WSJ Nov. 9 Article; AMI Non-Prosecution Agreement, Ex. A ¶ 3.

directly, and by receiving updates concerning AMI's negotiations from Cohen.[177] For example, according to press reports and Cohen himself, on June 27, 2016, after Cohen notified Trump that AMI was in contact with McDougal, Trump telephoned Pecker and asked Pecker to make McDougal's story go away.[178] Press reports also indicate that later, when AMI informed Cohen that McDougal was fielding an offer from ABC for her story, Cohen updated Trump; Cohen also subsequently notified Trump once McDougal signed the agreement with AMI.[179] The available information also indicates that AMI reportedly initially placed a low value on McDougal's story but was nevertheless directed by Trump to purchase her story.[180] Thus, the record indicates that AMI acted in consultation with and at the request or suggestion of Trump.

In addition, AMI has admitted in its Non-Prosecution Agreement with DOJ that it made its payment to McDougal "in cooperation, consultation, and concert with, and at the request and suggestion of one or more members or agents of a candidate's 2016 presidential campaign, to ensure that a woman did not publicize damaging allegations about that candidate before the 2016 presidential election and thereby influence that election," and the available information makes clear that Cohen served as an agent of Trump in his discussions with AMI.[181]

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177 The Fixers at 166-68 (detailing Trump's awareness of AMI's negotiations with McDougal); Cohen Book at 285 (stating that, after receiving an update from Cohen about McDougal's story, Trump "immediately called Pecker"); *see also* WSJ Nov. 9 Article.

178 *See* The Fixers at 166; Cohen Book at 285.

179 *See* The Fixers at 168-69; *see also* House Oversight Testimony at 29-30 ("[Question:] Mr. Cohen, in your 10 years of working for Donald Trump[,] did he control everything that went on in the Trump Organization? And did you have to get his permission in advance and report back after every meeting of any importance. [Answer:] Yes. There was nothing that happened at The Trump Organization . . . that did not go through Mr. Trump with his approval and sign-off, as in the case of the payments.").

180 *See supra* Section II.B.

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

As relevant here, the Commission has defined an "agent" of a federal candidate as "any person who has actual authority, either express or implied," to engage in certain activities with respect to the creation, production, or distribution of communications.[182] That definition applies in the contexts of coordinated communications and non-communication coordinated expenditures.[183] The Commission has explained that "[t]he grant and scope of the actual authority, whether the person is acting within the scope of his or her actual authority, and whether he or she is acting on behalf of the principal or a different person, are factual determinations that are necessarily evaluated on a case-by-case basis in accordance with traditional agency principles."[184] It has also explained that "[a]n agent's actual authority is created by manifestations of consent (express or implied) by the principal to the agent about the agent's authority to act on the principal's behalf."[185] Further, the regulatory definitions of "agent" "cover the wide range of activities prohibited by [the Bipartisan Campaign Reform Act of 2002] and the Act, thereby providing incentives for compliance, while protecting core

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182 11 C.F.R. § 109.3.

183 *Id.*; *see also id.* § 109.21(a) (addressing actions of "an agent" with respect to coordinated communications); *id.* § 109.20(a) (addressing non-communication activities of "an agent" with respect to coordinated expenditures); Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 425 (Jan. 3, 2003) ("Coordination E&J") (explaining that section 109.20(b) applies to "expenditures that are not made for communications but that are coordinated with a candidate, authorized committee, or political party committee"); Advisory Op. 2011-14 (Utah Bankers Association); 11 C.F.R. § 300.2(b)(3) (defining "agent" of a federal candidate or officeholder as "any person who has actual authority, either express or implied . . . to solicit, receive, direct, transfer, or spend funds in connection with any election"); Definitions of "Agent" for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4975 (Jan. 31, 2006) ("Agency E&J") ("[Agent means] 'any person who has actual authority, either express or implied' to perform certain actions."); Coordination E&J, 68 Fed. Reg. at 423 (explaining that "agent" definition at section 109.3 is modeled on the definition set forth in section 300.2(b)).

184 Coordination E&J, 68 Fed. Reg. at 425.

185 Advisory Op. 2007-05 (Iverson) at 3-4 ("AO 2007-05") (citing Agency E&J, 71 Fed. Reg. at 4976 and stating that if a candidate or federal officeholder provides an individual "with actual authority to solicit and receive contributions, then [that individual] would be an agent of a [f]ederal candidate or officeholder") (internal citations omitted).

political activity."[186] Finally, the Commission has explained that the definitions of "agent" are broad enough to capture actions of individuals with certain titles or positions, actions by individuals where the candidate privately instructed the individual to avoid raising non-Federal funds, actions by individuals acting under indirect signals from a candidate, and actions by individuals who willfully keep a candidate, political party committee, or other political committee ignorant of their prohibited activity.[187] Thus, the Commission has concluded that an individual is an agent of the candidate when the candidate "provides [that individual] with actual authority."[188]

The available information in this matter indicates that Trump provided Cohen with actual authority to engage with AMI in the catch and kill scheme. With respect to the McDougal payment scheme, it appears that Cohen played a crucial role in identifying to AMI Trump's interest in suppressing the story, negotiating, on Trump's behalf, the terms of AMI's payment, and negotiating (even if unsuccessfully) the terms of Trump's repayment of those funds, acting at Trump's direction and with his approval to proceed.[189] The guilty plea from Cohen, the admissions from AMI, and information in press reports about Cohen's actions taken on Trump's authority and Trump's manifestations of assent for those actions, all support the conclusion that

186 Agency E&J, 71 Fed. Reg. at 4976-77.

187 *Id.* at 4978-79.

188 AO 2007-05 at 4.

189 AMI Non-Prosecution Agreement, Ex. A ¶¶ 4-6 (stating that AMI began negotiations with Davidson and McDougal "[a]t Cohen's urging and subject to Cohen's promise that AMI would be reimbursed"); The Fixers at 147-48, 166-68 (detailing Cohen's involvement in the McDougal payment scheme); Cohen Book at 284-89 (same).

Cohen was acting as an agent of Trump when he facilitated the payment from AMI to McDougal.[190]

Finally, the available information supports the inference that AMI's payment to Sajudin was also made in accordance with the catch and kill agreement between Trump and AMI. The payment to Sajudin was made in late 2015, subsequent to Trump's August 2015 meeting and agreement with Cohen and Pecker.[191] The amount of the payment was also unusual when compared to AMI's payments to legitimate sources, because it was paid prior to publication or investigation, was for a substantial sum, and carried an even more substantial penalty for disclosure. The circumstances and timing of the payment support a conclusion that the payment was part of AMI's catch and kill agreement with Trump, because AMI paid Sajudin after agreeing to catch and kill such stories on behalf of Trump. Additionally, Cohen has appeared to testify to his awareness of the payment to Sajudin.[192] A payment made by AMI pursuant to the catch and kill agreement between Pecker, Trump, and Cohen is a payment made by AMI in consultation with and at the request or suggestion of Trump and Cohen, as an agent of Trump.

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190 The available information indicates that Trump, directly and through his counsel, Giuliani, has not denied that Cohen's actions in connection with the McDougal and Clifford payments were undertaken as Trump's agent. *See supra* Section II.D. The lawfulness of the activity is not, however, relevant to the agency determination; the Commission has explained that it "rejects . . . the argument that a person who has authority to engage in certain activities should be considered to be acting outside the scope of his or her authority any time the person undertakes unlawful conduct. It is a settled matter of agency law that liability may exist 'for unlawful acts of [] agents, provided that the conduct is within the scope of the agent's authority, whether actual or apparent.'" Coordination E&J, 68 Fed. Reg. at 424 (quoting *U.S. v. Investment Enterprises, Inc.*, 10 F.3d 263, 266 (5th Cir. 1993)).

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

192 *See* House Oversight Testimony at 128, 132 (discussing Pecker's actions to protect Trump and appearing to refer to the payment to Sajudin, as well as Cohen and Trump's attempt to purchase the rights to stories silenced by AMI and the "treasure trove of documents" related to those stories).

Accordingly, the AMI payments to McDougal and Sajudin meet the definition of "coordinated" in 11 C.F.R. § 109.20(a) in that they were made in cooperation, consultation or concert with, or at the request or suggestion of Trump or Trump's agent Cohen. The coordinated payments would constitute in-kind contributions from AMI to Trump and the Trump Committee if they were "expenditures," that is, made for the purpose of influencing Trump's election.

b. For the Purpose of Influencing an Election

The "purpose" of influencing a federal election is a necessary element in defining whether a payment is a "contribution" or "expenditure" under the Act and Commission regulations.[193] In analyzing whether a payment made by a third party is a "contribution" or "expenditure,"[194] the Commission has concluded that "the question under the Act is whether" the donation, payment, or service was "provided for the purpose of influencing a federal election [and] not whether [it] provided a benefit to [a federal candidate's] campaign."[195] The electoral purpose of a payment may be clear on its face, as in payments to solicit contributions or for communications that expressly advocate for the election or defeat of a specific candidate, or inferred from the surrounding circumstances.[196]

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

194 52 U.S.C. § 30101(8)(A)(i), (9)(A)(i).

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

196 *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.)

When electoral purpose is not apparent on its face, the Commission has previously concluded that payments would result in a contribution or expenditure if they were made to potentially advance a candidacy, if they were made because of the beneficiary's status as a federal candidate, or if the payment was coordinated with the candidate or his campaign.

For example, in Advisory Opinion 1990-05, the Commission concluded that the publication expenses of a newsletter by a candidate-owned company would be expenditures if the newsletter referred to the candidate's campaign or qualifications for office, referred to issues or policy positions raised in the campaign (by the candidate or her opponents), or if the distribution of the newsletter significantly expanded or otherwise indicated that it was being used as a campaign communication.[197] The Commission indicated that any discussion of issues or policies "closely associated" with the candidate's federal campaign "would be inevitably perceived by readers as promoting your candidacy," and the newsletter would therefore be "viewed by the Commission as election-related and subject to the Act."[198]

Similarly, in Advisory Opinion 2000-08, the Commission concluded that a donor's provision of a monetary "gift" to a federal candidate to express "gratitude" and "deep appreciation" to him for running for office would be made to influence a federal election — notwithstanding the donor's statements that he intended that the gift be used solely for personal

(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 the *only* purpose — acknowledging that "[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).

197 AO 1990-5 at 4.

198 *Id.* at 2, 4.

expenses and did not "wish to directly support [the candidate's] campaign" — because "the proposed gift would not be made but for the recipient's status as a Federal candidate; it is, therefore, linked to the Federal election" and "would be considered a contribution."[199]

Conversely, the Commission has previously found that activity by or in connection with a federal candidate that is undertaken for any number of non-electoral purposes — including, *e.g.*, activity to advance a commercial interest,[200] fulfill the obligations of holding federal office,[201] or engage in non-candidate oriented election litigation [202] — does not necessarily result in a

[199] AO 2000-08 at 2-3.

[200] *E.g.*, Advisory Op. 2012-31 (AT&T) at 4 (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 Rpt. at 13-17, MURs 5474 and 5539 (Dog Eat Dog Films) (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 (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");

[201] *E.g.*, Advisory Op. 1981-37 at 2 (Gephardt) (concluding that 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).

[202] *E.g.*, Factual & Legal Analysis at 8, MUR 7024 (Van Hollen for Senate) (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").

"contribution" or "expenditure," even if such activity confers a benefit on a federal candidate or otherwise impacts a federal election.

With respect to the McDougal payment, it is unnecessary to infer the circumstances behind the payment; both AMI and Cohen have already acknowledged, in a sworn plea, agreement, and testimony, that the purpose of paying McDougal was to prevent her story from influencing the election. In the AMI Non-Prosecution Agreement, AMI explicitly admits that its "principal purpose in entering into the agreement [with McDougal] was to suppress the model's story" and "to ensure that [she] did not publicize damaging allegations about [Trump] before the 2016 presidential election and thereby influence that election."[203] Further, AMI admits that the payment to McDougal was part of an overarching scheme in "assisting [the] campaign" in identifying and purchasing "negative stories about [his] relationships with women" to prevent their publication.[204] Cohen admits that he worked with AMI, the *Enquirer*, Pecker, and Howard to catch and kill McDougal's story and that his work with AMI in connection with the $150,000 payment was done "at the request of the candidate."[205]

Even absent AMI and Cohen's explicit admissions, consistent with prior matters in which the Commission found the payment resulted in a contribution or expenditure, the overall record in these matters — including the timing of the negotiations and payments to McDougal and Sajudin, the terms of the agreements relative to AMI's usual practices, the release from the non-disclosure provisions shortly after the election, and the coordination between AMI, Trump, and

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

204 *Id.* ¶ 3.

205 House Oversight Testimony at 30, 99-100 (noting that Pecker had paid hush money to other individuals in addition to McDougal); Cohen Plea Hearing at 23; *see supra* note 23.

Cohen[206] — indicates that the payments would not have been made absent Trump's status as a candidate. As with the facts the Commission considered in Advisory Opinions 1990-05 and 2000-08, the available information in this matter supports the conclusion that the purpose of the McDougal and Sajudin payments *was* to influence the 2016 election, irrespective of any incidental effects they may have had on Trump personally.[207] Although McDougal and

[206] *See supra* Sections II.A, B, C.1 (discussing McDougal and Sajudin's negotiations with AMI after the August 2015 meeting between Pecker, Cohen, and Trump, during which they agreed that Pecker would catch and kill negative stories about Trump's relationships with women so that they were not published before the election); AMI Non-Prosecution Agreement, Ex. A ¶ 5 (acknowledging that $150,000 payment to McDougal was substantially higher that AMI would normally pay); Sajudin AP Article (reporting that the amount and circumstances of the Sajudin payment — $30,000 for secondhand information regarding a story that was abandoned mid-investigation and that was never published — were inconsistent with AMI's standard practices, indicating to the *Enquirer* staffers who spoke on the subject that it was part of a catch and kill operation). Sajudin's story was decades old, second-hand, and like McDougal and Clifford's stories, was not purchased until Trump's campaign was underway, indicating that, given the timing and agreement between AMI, Trump, and Cohen, the purchase of the stories was aimed at improving Trump's chances of winning the presidency. *Cf.* First Gen. Counsel's Rpt., MURs 7313, 7319, and 7379 (Michael D. Cohen) (open matter) (discussing Trump's increased interest in silencing stories shortly after winning the presidential nomination and following the release of a video recording of Trump appearing on the television show "Access Hollywood" where he discussed his treatment of women and concluding that this timing was tied to the 2016 presidential election).

[207] *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." AO 2000-08 at 3; *see also* 52 U.S.C. § 30114(b) (prohibiting use of campaign funds "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 (Feb. 9, 1995) ("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."). 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 (KITPAC) at 4; *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 pursuing his or her usual employment," and (3) whether the payments would not have been made but for the candidacy"). Because the available information indicates that the McDougal and Sajudin payments were 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

Sajudin's stories involved years- and decades-old allegations, respectively, and Pecker and Trump reportedly have a longstanding friendship such that "critical coverage of Trump vanished" once Pecker "took over" AMI,[208] AMI's specific catch and kill effort to obtain and prevent the publication of damaging stories, including McDougal's and Sajudin's, began only after Trump became a candidate for president in June 2015.[209]

Thus, the available information supports the conclusion that AMI's payments to McDougal and Sajudin were coordinated with Trump and were made for the purpose of influencing Trump's election, resulting in AMI making "coordinated expenditures" under the Act.[210]

need not also analyze whether the payment would constitute personal use if paid by the Trump campaign. *See* AO 2000-08 at 3-4.

[208] 2017 New Yorker Article.

[209] *See* Donald J. Trump, Statement of Candidacy (June 22, 2015); AMI Non-Prosecution Agreement, Ex. A ¶ 3 (admitting that "Pecker offered to help deal with negative stories about [Trump's] relationships with women by, among other things, assisting the campaign in identifying such stories so they could be purchased and their publication avoided"); 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) (recapping Trump's 2015 campaign launch). Although the Trump Committee asserts that AMI's payment to McDougal was a "private" and commercial transaction, the Trump Committee relies on arguments that AMI has disavowed in its later admissions to DOJ, which also contradict AMI's Responses and affidavit that it submitted to the Commission; thus, the Trump Committee's arguments are not credibly supported by the record. *Compare* MURs 7324/7332 Trump Committee Resp. at 1, MURs 7366 Trump Committee Resp. at 2 (citing three AMI press releases issued prior to the execution of the AMI Non-Prosecution Agreement), *and* MURs 7324/7332 AMI Resp. at 29-30, *with* AMI Non-Prosecution Agreement, Ex. A ¶¶ 2-9.

[210] In addition, the payments to public relations firms by AMI under the Amendment to the McDougal agreement, which were used to allow AMI to control the narrative surrounding McDougal's story and further prevent McDougal from speaking about her relationship with Trump, likely were made for the purpose of influencing the 2020 presidential election and likely were coordinated expenditures resulting in in-kind contributions from AMI to Trump and Trump Committee. We would examine this subsequent payment arrangement further in our proposed investigation.

2. The Commission Should Find Reason to Believe that AMI's Payments to McDougal and Sajudin Were Prohibited Corporate In-Kind Contributions to the Trump Committee

Because the available information indicates that AMI's payments to McDougal and Sajudin were coordinated expenditures made for the purpose of influencing the 2016 election, the record supports a reason to believe finding that the payments constituted in-kind contributions from AMI to Trump and the Trump Committee that must have been reported by the Trump Committee as both contributions from AMI to the Trump Committee and expenditures by the Trump Committee to McDougal and Sajudin.[211] Further, because the payments were in-kind contributions to the Trump Committee, they were subject to the contribution limits and prohibitions set forth in the Act and Commission regulations.[212] The Act and Commission regulations prohibit corporations from making contributions to candidate committees.[213] 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 corporation to consent to making any such contribution.[214]

The Commission has previously found violations of the Act by a corporation and its officers in connection with similar payments to third parties.

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211 *See* 11 C.F.R. § 109.20(b).

212 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.

213 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

214 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d)-(e).

Similarly, in MUR 7248, the Commission found reason to believe that Cancer Treatment Centers of America and several of its corporate officers violated 52 U.S.C. § 30118 by making and consenting to prohibited corporate contributions where the corporate officers engaged in a reimbursement scheme whereby executives were reimbursed via bonuses for their political contributions.[217]

While corporate contributions to candidate committees are *per se* prohibited and do not require proof of the contributor's knowledge of the violation, AMI has admitted to DOJ that it knew that corporations are prohibited from contributing to candidate committees like the Trump Committee.[218] The AMI Non-Prosecution Agreement states:

> 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

[217] 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).

[218] AMI Non-Prosecution Agreement, Ex. A ¶ 8.

> the request of a candidate or campaign, are unlawful. At no time did AMI report to the Federal Election Commission that it had made the $150,000 payment to [McDougal].[219]

Thus, AMI has admitted that it made the payment to McDougal while knowing that it was unlawful.[220] It is reasonable to infer, further, that AMI also knew its payment to Sajudin was unlawful when it made that payment in December 2015.

The available information also indicates that Pecker and Howard, officers of AMI,[221] did not merely consent to the McDougal and Sajudin corporate in-kind contributions, but also actively participated in the decision to make the contributions by negotiating, in consultation with Trump and Cohen, the amounts that would be paid and the terms of the agreements.[222] Howard is the signatory on AMI's agreement with McDougal.[223] As in MUR 7248, Pecker and Howard violated the Act by consenting to the payments to McDougal and Sajudin.[224]

Moreover, the available information indicates that the Trump Committee and Trump knowingly accepted the in-kind corporate contributions from AMI. Trump's acceptance of AMI's prohibited contributions can be reasonably inferred from Trump's instrumental

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219 *Id.*

220 *See infra* Section III.D; *see also* 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.").

221 Pecker, as the President and CEO, and Howard, as Vice President and Chief Content Officer, were officers of AMI and their ability to act on the corporation's behalf can be reasonably inferred from their actions in the negotiations with McDougal and Sajudin, from Howard's signature on AMI's agreement with McDougal, and Howard's discussion and approval of the Sajudin negotiations, as evidenced in his statements in the AMI-published Radar Online Article.

222 *See supra* Section II.B.

223 *See* MURs 7324/7332 AMI Resp., Aff. of Dylan Howard, Ex. A.

224 *See supra* notes 215-217 and accompanying text.

involvement in the agreement that AMI would catch and kill stories damaging to the Trump campaign. The available information indicates that Trump was directly involved in the catch and kill scheme generally, and specifically with respect to AMI's decision to purchase McDougal's story.[225] Trump reportedly participated in the August 2015 meeting with Pecker and Cohen, during which the catch and kill plan was agreed upon; Trump reportedly communicated with Cohen and Pecker about the prospect of AMI acquiring the McDougal story throughout the process, including by asking Pecker to make the story go away even though Pecker, Howard, and Cohen had earlier decided not to do so; and Trump thanked Pecker for suppressing the story after the election after Trump failed to reimburse AMI as originally planned.[226]

The September 2016 tape recording of the meeting between Trump and Cohen further indicates Trump's direct knowledge of AMI's payment to McDougal.[227] The tape recording Cohen made during a September 2016 meeting with Trump supports Cohen's testimony that Trump had direct knowledge of the assignment agreement just weeks after the underlying agreement with McDougal had been executed.[228] Although it is not publicly known at this time whether Trump's payment for the assignment was to have come from Trump personally or the

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[225] House Intelligence Deposition at 117, 119; *see also* The Fixers at 164-71, 198 (reporting that Trump was involved in the decision for AMI to purchase McDougal's story and that Cohen notified Trump after the agreement with McDougal was executed).

[226] WSJ Nov. 9 Article; The Fixers at 164-69, 198.

[227] *See* House Oversight Testimony at 100 (testifying that Cohen, Pecker, and Trump planned to transfer the rights to McDougal's story to an entity owned by Cohen, in exchange for Trump's payment of $125,000 to AMI); CNN Article; WSJ Nov. 9 Article.

[228] CNN Article. During the meeting, Cohen appears to tell Trump that he "need[s] to open up a company for the transfer of all of that info regarding our friend David," referring to David Pecker. *Id.* During one exchange, Trump appears to ask "What financing?" and Cohen says "We'll have to pay." *Id.* Trump then appears to say "pay with cash," however the recording is unclear as to whether Trump is telling Cohen to pay with cash. Cohen then appears to state "I've spoken with [Trump Organization Chief Financial Officer] Allen Weisselberg about how to set the whole thing up with funding." *Id.*

Trump Organization, the information indicates that Trump had knowledge of AMI's payments and was involved in decisions concerning the contemplated repayment to AMI, including a reported conversation with Pecker soon after publication of the *Wall Street Journal* article regarding AMI's payment to McDougal.[229] Additionally, Trump's counsel, Giuliani, publicly acknowledged that the Trump-Cohen recording related to "buying the story rights," which lends further credence to the conclusion that Trump knew, at the time of that recording, that AMI had made payments in cooperation, consultation or concert with, or at the request or suggestion of Trump himself.[230] Despite the Trump Committee's public denial,[231] Trump's direct knowledge of the AMI payment can be imputed to the campaign,[232] and the available information indicates that both Trump and the Trump Committee knew about AMI's payment to McDougal and knowingly accepted the resulting prohibited corporate in-kind contribution.

Additionally, Trump appears to have also gained knowledge of AMI's expenditures via Cohen. As explained above, Cohen acted as an agent of Trump in his interactions with AMI concerning AMI's payment to McDougal to influence the 2016 presidential election.[233] Cohen has testified that the payment to McDougal "was done at the direction of Mr. Trump and in accordance with his instructions" and was premised on AMI's understanding that Trump would reimburse AMI for its payment to McDougal as evidenced by the negotiations between AMI and

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229 Warrant Affidavit ¶ 40.e.

230 CNN Article.

231 *See* WSJ 2016 Article.

232 *See* 52 U.S.C. § 30102(e)(2); 11 C.F.R. § 101.2; Factual & Legal Analysis at 6, MUR 6566 (Lisa Wilson-Foley for Congress) ("[A]ny candidate who receives a contribution does so as an agent of the candidate's authorized committee").

233 *See supra* Section III.B.1.

Cohen for assignment rights to the story.[234] Thus, Cohen indicates that, not only was he acting as an agent of Trump, but that, in that capacity, he kept Trump apprised of AMI's payment to McDougal.

In addition, given the August 2015 catch and kill agreement between Trump, Pecker and Cohen, Cohen's reported communications with Howard concerning the *Enquirer*'s investigation of Sajudin's story, and the numerous factors suggesting that negotiations with Sajudin deviated from the standard investigatory practices at the *Enquirer* but were consistent with the catch and kill agreement, a reasonable inference can be made that Pecker likely informed both Cohen and Trump about the Sajudin payment while Cohen was acting as an agent of Trump such that it appears that Trump and the Trump Committee knowingly accepted the in-kind contribution from AMI in the form of AMI's payment to Sajudin.[235]

Thus, we recommend that the Commission find reason to believe that AMI, Pecker, and Howard violated 52 U.S.C. § 30118(a) by making and consenting to prohibited corporate in-kind contributions. We also recommend that the Commission find reason to believe that Trump and the Trump Committee violated 52 U.S.C. § 30118(a) by knowingly accepting prohibited corporate contributions.[236]

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[234] House Intelligence Deposition at 117, 119; *see also* AMI Non-Prosecution Agreement, Ex. A ¶¶ 5-6; The Fixers at 168-69 (reporting that Trump was involved in the decision for AMI to purchase McDougal's story and that Cohen notified Trump after the agreement with McDougal was executed).

[235] *See* House Oversight Testimony at 128, 132 (appearing to discuss AMI's payment to Sajudin); The Fixers at 147-48.

[236] Our recommendation as to Cohen is discussed below. *See infra* Section III.E.

C. The Commission Should Find Reason to Believe that the Trump Committee Failed to Disclose the AMI Payments to McDougal and Sajudin

The Act and Commission regulations require political committees to file periodic reports accurately disclosing all of their receipts, disbursements, and debts and obligations, including coordinated expenditures.[237] These disclosure requirements serve important transparency and anticorruption interests, as they "provide the electorate with information as to where political campaign money comes from and how it is spent[,] . . . [and] deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity."[238] Political committees must report the total amount of all receipts and disbursements for the reporting period and, for a committee authorized by a candidate, the election cycle;[239] itemize the name and address of each person from whom the committee received contributions aggregating in excess of $200 in an election cycle, along with the dates and amounts of the contributions;[240] and itemize the name and address of each person to whom the committee made expenditures exceeding, in aggregate amount or value, $200 per election cycle, as well as the date, amount, and purpose of the expenditures.[241]

The available information indicates that the Trump Committee violated its disclosure obligations under the Act when it failed to provide required contribution information in

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237 52 U.S.C. § 30104; 11 C.F.R. § 104.3.

238 *Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976); *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").

239 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a)(3), (b)(2).

240 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4)(i).

241 52 U.S.C. § 30104(b)(5)(A); 11 C.F.R. § 104.3(b)(4)(i).

connection with AMI's payments to McDougal and Sajudin, which were not disclosed on any Trump Committee reports filed with the Commission.[242] A coordinated expenditure must be reported as both a contribution received by, and an expenditure made by, the authorized committee of the candidate with whom the expenditure was coordinated.[243] Thus, the Trump Committee should have reported receipts from AMI and offsetting disbursements to McDougal and Sajudin,[244] including the dates, amounts, and purposes of the in-kind contributions.[245]

The Trump Committee did not disclose the McDougal and Sajudin payments because the available information indicates that Trump, Cohen, Pecker, Howard, and AMI intended for the payments to be concealed from public view, thereby insulating Trump and the Trump Committee and depriving the public of information about Trump before the election.[246] Accordingly, we recommend that the Commission find reason to believe that the Trump Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) and (b) by failing to report required information in its Commission filings.

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242 *See generally* Trump Committee 2015-2016 Disclosure Reports.

243 11 C.F.R. § 104.13(a)(3); *see also* 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).

244 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) (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).

245 52 U.S.C. § 30104(b)(3)(A), (b)(5)(A); 11 C.F.R. § 104.3(a)(4)(i), (b)(4)(i).

246 AMI Non-Prosecution Agreement, Ex. A ¶¶ 5-6, 8.

D. The Commission Should Find Reason to Believe that the Violations Set Forth Above Were Knowing and Willful

The Act prescribes additional penalties for "knowing and willful" violations,[247] which are defined as "acts [that] were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law."[248] This standard does not require knowledge of the specific statute or regulation that the respondent allegedly violated; it is sufficient to demonstrate that a respondent "acted voluntarily and was aware that his conduct was unlawful."[249] Such awareness may be shown through circumstantial evidence from which the respondent's unlawful intent may be reasonably inferred,[250] including, for example, an "elaborate scheme for disguising" unlawful acts.[251]

The available information supports a reason to believe finding that AMI, Pecker, and Howard's foregoing violations were knowing and willful. AMI, through its Non-Prosecution Agreement, admitted that it knew its actions were unlawful.[252] Furthermore, Pecker's overt

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

248 122 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).

249 *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)).

250 *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.

251 *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)).

252 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"). AMI's non-prosecution agreement does not extend to the Commission. *Id.* at 1-2. Similarly, in prior matters, a

agreement with Trump and Cohen and Howard's direct involvement in the negotiations indicate that both Pecker and Howard were parties in a scheme to both hide the stories and the payments.[253] Pecker and Howard's reported actions to destroy the contents of a safe containing stories purchased by AMI also suggest awareness of the illegality of their actions.[254] Further, Pecker's reported reluctance to proceed with the assignment agreement after consulting with AMI counsel Stracher indicates that Pecker understood the potentially negative optics of AMI's payment to McDougal becoming public.[255] Although Pecker reportedly consulted with a campaign finance expert before sanctioning AMI's payment to McDougal, the McDougal agreement itself was structured in such a way as to hide the appearance of impropriety or illegality — by paying McDougal not just for her story but also, pretextually, for future work; AMI reportedly did not seek such work from McDougal until after AMI's payment to McDougal was publicly reported in the press.[256] Howard also texted Cohen that AMI's payment to

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) (July 17, 2018); Second Gen. Counsel's Report at 11, n.32 and accompanying text, MUR 6865 (Jose Susumo Azano Matsura) (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 and AMI's Non-Prosecution Agreement clearly did not vindicate all of the Act's discrete enforcement interests in this matter as it relates to these Respondents. *See* AMI Non-Prosecution Agreement at 1-2; Cohen Plea Hearing at 23; SDNY Information ¶ 44.

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

254 Farrow, Catch and Kill at 16-17.

255 *See supra* note 70 and accompanying text; The Fixers at 170-71 (reporting that Pecker discussed the rights transfer with Stracher, "who told the media executive that he'd be crazy to sell McDougal's story to Trump. The optics would be terrible if it ever came out"); WSJ Nov. 9 Article.

256 *See* The Fixers at 169; *see also* WSJ Nov. 9 Article.

McDougal "looks suspicious at best."[257] Further, Howard reportedly exchanged text messages with a relative the night of the general election in 2016, in which he wrote that Trump would pardon him for his actions related to "electoral fraud."[258] Thus, the available information indicates that the unlawful actions that served as the basis of AMI's Non-Prosecution Agreement were undertaken by Pecker and Howard in their capacity as officers and agents of AMI.[259] As such, the information indicates that AMI, Pecker, and Howard knew that AMI's payments to McDougal and Sajudin violated the Act, and they acted voluntarily and with awareness of unlawfulness when they negotiated the agreements with McDougal and Sajudin and made the corresponding payments.

Further, the available information indicates that the Commission should find reason believe that Trump, and the Trump Committee, acting through Trump as its agent,[260] likewise acted knowingly and willfully. According to press reports, Trump participated in AMI's decision to purchase McDougal's story, and at the August 2015 meeting, he instructed Pecker to work with Cohen to prevent any potentially damaging stories from becoming public in an effort to help Trump's campaign.[261] Consistent with the available information regarding Trump's

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[257] Warrant Aff. ¶ 40.c (recounting that Cohen asked Howard "how the *Wall Street Journal* could publish its article if 'everyone denies,'" with Howard responding, "'Because there is the payment from AMI. It looks suspicious at best'").

[258] The Fixers at 196-97 (quoting Howard's text messages, including "At least if [Trump] wins, I'll be pardoned for electoral fraud" and "At least now we get pardoned").

[259] *See supra* Section III.B.2; *see also supra* note 25 (citing articles reporting that Pecker and Howard were reportedly granted immunity in exchange for their cooperation).

[260] *See* 52 U.S.C. § 30102(e)(2); 11 C.F.R. § 101.2.

[261] WSJ Nov. 9 Article; The Fixers at ix-xi; *see also* Cohen Plea Hearing at 23 ("[O]n or about the summer of 2016, in coordination with, and at the direction of, a candidate for federal office, I and the CEO of a media company at the request of the candidate worked together to keep an individual with information that would be harmful to the candidate and to the campaign from publicly disclosing this information. After a number of discussions, we

involvement, Cohen asserts that he worked with AMI on the purchase of McDougal's story at the direction of Trump and that he negotiated and executed the assignment of rights to McDougal's story with AMI with the understanding that Trump would ultimately pay for the rights.[262] Further, the available information indicates that Trump and Cohen also wished to purchase AMI's trove of documents regarding Trump due to a concern about what might happen to the documents if Pecker left AMI.[263] The available information also indicates that Cohen kept Trump apprised of the status of AMI's efforts.[264] The recording of Trump and Cohen's conversation, which Trump's personal counsel, Giuliani, has confirmed, dealt with Cohen's efforts to purchase the limited life rights to McDougal's story from AMI, and indicates Trump's knowledge of the payment and awareness that such payments were unlawful.[265]

As to the Sajudin payment, although the current record is less fulsome, the available information provides a basis to conclude that the Sajudin payment is consistent with the catch and kill agreement between Pecker, Trump, and Cohen, an agreement which AMI has acknowledged in the context of the McDougal payment it knew was unlawful.

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eventually accomplished the goal by the media company entering into a contract with the individual under which she received compensation of $150,000.").

[262] *See* House Intelligence Deposition at 117, 119; House Oversight Testimony at 100; 2019 New Yorker Article.

[263] The Fixers at 169; *see also* WSJ Nov. 9 Article.

[264] *See, e.g.*, The Fixers at 168-71; WSJ Nov. 9 Article.

[265] Trump has also publicly stated that he is an expert on campaign finance. *See Larry King Live: Interview with Donald Trump*, CNN 25:13-25:19 (Oct. 8, 1999), https://www.youtube.com/watch?v=gEVzCtcT-Mo ("I think nobody knows more about campaign finance than I do because I'm the biggest contributor."); *see also* The Fixers at 341.

Accordingly, we recommend that the Commission find reason to believe that the violations of the Act by Trump, the Trump Committee, AMI, Pecker, and Howard, as set forth above, were knowing and willful.

E. The Commission Should Take No Action at this Time as to Cohen

The available information, including Cohen's own admissions, indicates that Cohen, at Trump's direction, worked with Pecker and Howard to ensure that AMI purchased McDougal's story in an effort to keep her story, which was potentially damaging to Trump, from becoming public just a few months before the 2016 presidential election. There is also sufficient information in the record to infer that Cohen also knew about AMI's payment to Sajudin. However, given Cohen's role as an agent of Trump in the context of the allegations at issue in these matters, and our recommendations as to Trump and the Trump Committee, we recommend that the Commission take no action at this time as to Cohen.[266]

F. The Commission Should Take No Action at This Time as to Jost

Timothy Jost was notified in connection with the allegations in MUR 7366 because that Complaint specifically identified him as a Respondent. Jost was the Trump Committee's treasurer during the 2016 presidential campaign, including at the time it filed its disclosure reports that failed to disclose the McDougal and Sajudin payments.[267] Although the available

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[266] *Cf.* Certification at 2, MUR 7048 (Cruz for President) (Apr. 9, 2019) (taking no action at this time as to agent of committee); First Gen. Counsel's Rpt. at 14, MUR 7048 (Cruz for President) (recommending same); *see also* First Gen. Counsel's Rpt., MURs 7313, 7319 and 7379 (Michael D. Cohen) (open matter) (recommending that the Commission find reason to believe that Cohen violated the Act in connection with his payment to Clifford based on Cohen's direct liability rather than as agent to Trump or the Trump Committee).

[267] 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* Trump Committee, Statement of Organization, FEC Form 1 (June 29, 2015); Trump Committee, Amend. Statement of Organization, FEC Form 1 (Jan. 20, 2017).

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,[268] 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 of the Trump Committee.

IV. PROPOSED INVESTIGATION

The investigation would focus on developing the factual record concerning the extent to which AMI, in accordance with the catch and kill scheme, made payments to individuals who possessed information that was potentially damaging to Trump's campaign to establish the amount in violation attributable to corporate contributions from AMI to the Trump Committee. Specifically, we will seek information about AMI's payments to such individuals, including the following: materials collected from other state, federal, and congressional investigations relating to the same activity; identification of other stories purchased by AMI with the intent of influencing the 2016 presidential election pursuant to the catch and kill scheme; communications between Trump, the Trump Committee, their agents (including Cohen and Weisselberg), and AMI and its officers, directors, and agents; communications between counsel for individuals whose stories were purchased with the intent of influencing the 2016 presidential election pursuant to the catch and kill scheme, including Davidson, AMI and its officers, directors, and

[268] 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.").

agents, and Trump and the Trump Committee and their agents; and internal communications among AMI employees concerning stories purchased by AMI with the intent of silencing the story and thus influencing the 2016 and 2020 presidential elections, as well as related financial documents, bank records, and publication policies. In addition, we will seek the same information regarding AMI's payments to public relations professionals on behalf of McDougal and any other individuals. We will seek to conduct our investigation through voluntary means but recommend that the Commission authorize the use of compulsory process, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary.

V. RECOMMENDATIONS

MURs 7324, 7332, 7364, and 7366

1. Find reason to believe that A360 Media, LLC f/k/a American Media, Inc. and David J. Pecker knowingly and willfully violated 52 U.S.C. § 30118(a) by making and consenting to prohibited corporate in-kind contributions;

2. Find reason to believe that Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer knowingly and willfully violated 52 U.S.C. § 30118(a) by knowingly accepting prohibited contributions;

3. Find reason to believe that Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer knowingly and willfully violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) and (b) by failing to report the required information with the Commission;

4. Find reason to believe that Donald J. Trump knowingly and willfully violated 52 U.S.C. § 30118(a) by knowingly accepting prohibited contributions;

5. Take no action at this time as to the allegations that Michael D. Cohen violated the Act and Commission regulations;

MURs 7324 and 7366

6. Name and notify Dylan Howard as a Respondent;

MURs 7332 and 7364

7. Find reason to believe that Dylan Howard knowingly and willfully violated 52 U.S.C. § 30118(a) by making and consenting to prohibited corporate in-kind contributions;

MUR 7366

8. Take no action at this time as to the allegations that Timothy Jost violated the Act and Commission regulations;

MURs 7324, 7332, 7364, and 7366

9. Approve the attached Factual and Legal Analyses;

10. Authorize the use of compulsory process; and

11. Approve the appropriate letters.

December 4, 2020
Date

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Acting General Counsel

Charles Kitcher
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ELW 2/22/2021

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: A360 Media, LLC f/k/a American Media, Inc. MURs 7324, 7332, 7364, and 7366
David J. Pecker

I. INTRODUCTION

The Complaints in these four matters allege that American Media, Inc., which is now A360 Media, LLC[1] ("AMI") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), in connection with payments AMI made to two individuals in advance of the 2016 presidential election to suppress negative stories about then-presidential candidate Donald J. Trump's relationships with several women. Specifically, the Complaints allege that then-AMI corporate officers David J. Pecker and Dylan Howard worked with Michael D. Cohen, who served as Trump's personal attorney, to negotiate a payment of $150,000 to Karen McDougal in August 2016 for the purpose of influencing Trump's election by suppressing her story of an alleged personal relationship with Trump.[2] The Complaints in MURs 7364 and 7366 further allege that AMI also negotiated a $30,000 payment to Dino Sajudin in December 2015 to prevent publication of a rumor Sajudin had heard that Trump had fathered a child with an employee at Trump World Tower.[3]

In its Responses, AMI asserts that the press exemption and the First Amendment preclude investigation of the allegations and further contends that the payments to McDougal and Sajudin

[1] *See infra* note 12 and accompanying text.

[2] MUR 7324 Compl. at 2 (Feb. 20, 2018); MUR 7332 Compl. at 1-2 (Feb. 27, 2018); MUR 7364 Compl. at 4 (Apr. 12, 2018); MUR 7366 Compl. at 2 (Apr. 17, 2018).

[3] MUR 7364 Compl. at 4; MUR 7366 Compl. at 2, 5-6.

were *bona fide* payments.[4] After AMI's Responses were filed, Cohen pleaded guilty to willfully causing an unlawful corporate contribution concerning the payment to McDougal and is currently serving the remainder of his sentence under home confinement in connection with that plea.[5] AMI entered into a non-prosecution agreement with the Department of Justice ("DOJ") regarding the payment to McDougal.[6]

As discussed below, the available information indicates that Trump, Cohen, and Pecker agreed in August 2015 that Pecker, as President and CEO of AMI, would catch and kill stories that could be damaging to Trump's prospects in the 2016 presidential election, and that in August 2016 — at the direction of Trump and as part of that agreement — Pecker, Howard, and AMI paid McDougal $150,000 to suppress her story of a sexual relationship with Trump, which allegedly occurred while he was married, from becoming public before the 2016 presidential election. Based on the available information, it also appears that Pecker, Howard, and AMI paid Sajudin $30,000 in December 2015 to prevent Sajudin from publicizing his story that Trump had fathered a child with an employee of Trump World Tower. Accordingly, the Commission finds

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[4] MURs 7324/7332 AMI Resp. (Apr. 13, 2018); MURs 7364/7366 AMI Resp. (June 8, 2018); MUR 7332 AMI Supp. Resp. (June 8, 2018); MUR 7637 AMI Resp. (Sept. 11, 2019); *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).

[5] *See* Tr. of Proceedings before Hon. William H. Pauley III at 23-24, 27, *United States v. Cohen*, No. 1:18-cr-00602-WHP (S.D.N.Y. Aug. 21, 2018), https://assets.documentcloud.org/documents/4780185/Cohen-Court-Proceeding-Transcript.pdf ("Cohen Plea Hearing"); Tom McParland, *Michael Cohen Released to Home Confinement Because of COVID-19 Concerns,* NEW YORK LAW JOURNAL (May 21, 2020), https://www.law.com/newyorklawjournal/2020/05/21/michael-cohen-released-to-home-confinement-because-of-covid-19-concerns (reporting Cohen's initial release); Mem. of Law in Supp. of Pet'r's Emergency Mot. for a TRO at 4-9, 12-23, *Cohen v. Barr, et al.*, No. 1:20-cv-5614-AKH (S.D.N.Y. July 20, 2020), ECF No. 5 (summarizing Cohen's initial release to home confinement, his return to prison, and his petition to be returned to home confinement); Order Granting Prelim. Inj., *Cohen v. Barr*, *et al.*, No. 1:20-cv-5614-AKH (S.D.N.Y. July 23, 2020), ECF No. 30 (granting Cohen's request to be returned to home confinement).

[6] 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").

reason to believe that AMI and Pecker knowingly and willfully violated 52 U.S.C. § 30118(a) by making and consenting to make prohibited corporate in-kind contributions.

II. FACTUAL BACKGROUND

Trump declared his presidential candidacy on June 16, 2015, and registered Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer (the "Trump Committee"), his principal campaign committee, with the Commission on June 29, 2015.[7] Michael D. Cohen was an attorney for the Trump Organization,[8] worked as special counsel to Trump, and served as a Trump Committee surrogate in the media.[9] AMI was a publishing company headquartered in New York, New York.[10] In 2016, one of AMI's publications was the

[7] 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).

[8] Trump Organization, LLC is a limited liability company ("LLC") organized under the laws of New York on August 4, 1999 and its registered agent is National Registered Agents, Inc. The available information does not indicate its tax election status for federal tax purposes. *See* N. Y. Dept. of State, Div. of Corps., *Search Our Corporation and Business Entity Database*, https://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_SEARCH_ENTRY (search entity name: "Trump Organization LLC") (last visited Sept. 30, 2020).

[9] Government's Sentencing Mem. at 11, *United States v. Cohen*, No. 1:18-cr-00602-WHP (S.D.N.Y. Dec. 7, 2018) ("SDNY Cohen Sentencing Memorandum"); *Report on the Investigation into Russian Interference in the 2016 Presidential Election*, U.S. Dep't of Justice, Vol. 1 at 53 (March 2019) (identifying Cohen as a former executive vice president at the Trump Organization and "special counsel to Donald J. Trump"); *Hearing with Michael Cohen, Former Attorney to President Donald Trump before the H. Comm. on Oversight and Reform*, 116th Cong. at 11 (Feb. 27, 2019), https://docs house.gov/meetings/GO/GO00/20190227/108969/HHRG-116-GO00-20190227-SD003.pdf ("House Oversight Testimony") (stating that for more than 10 years, Cohen served as executive vice president and special counsel at the Trump Organization and then worked as Trump's personal attorney when he became President); MUR 7324 Compl. at 8 (referring to Cohen as a "top attorney" at the Trump Organization and as Trump's "fix-it guy"); *see also* 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") (cited by MUR 7324 Compl. at 8, MUR 7332 Second Amend. Compl. at 2 (Aug. 6, 2018), MUR 7364 Compl. at 3, and MUR 7366 Compl. at 5) (referring to Cohen "as a top attorney at the Trump Organization").

[10] *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).

National Enquirer (the "*Enquirer*"), which is a weekly print and online tabloid publication.[11] In August 2020, AMI reportedly was renamed A360 Media, LLC and plans were announced to merge it with Accelerate 360, a logistics firm.[12] Pecker was the President and Chief Executive Officer of AMI until the merger and reportedly became an executive advisor to the new company.[13] Howard was AMI's Vice President and Chief Content Officer and reportedly left the company on March 31, 2020.[14] From 2013 to 2017, Howard was the Editor in Chief of the *Enquirer*.[15] Karen McDougal is a model and actress.[16] Dino Sajudin is a former doorman for Trump World Tower in New York City.[17]

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[11] 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.

[12] 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"). Both A360Media and Accelerate 360 are reportedly controlled by Chatham Asset Management, a New Jersey hedge fund. *Id.* A360 Media, LLC and another entity named A360 Media Holdings, LLC are registered in Delaware. Del. Dept. of State, Div. of Corps., *General Information Name Search*, https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx (search entity name: A360 Media) (last visited Sept. 30, 2020). AMI appears to be doing business as A360 Media, LLC per recent media reports. *See, e.g.*, NY Times Aug. 21 Article.

[13] MURs 7324/7332 AMI Resp. at 1, n.1; NY Times Aug. 21 Article.

[14] 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.

[15] MURs 7324/7332 AMI Resp., Aff. of Dylan Howard ¶ 2.

[16] 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")).

[17] Joe Palazzolo & Michael Rothfeld, THE FIXERS at 146 (2020) ("The Fixers") (Palazzolo and Rothfeld are two of the authors of *The Wall Street Journal*'s 2016 reporting as described *infra* at note 18; The Fixers expands upon the reporting in that article); *see also* MUR 7364 Compl. at 4 (citing Jake Pearson and Jeff Horwitz, *$30,000 Rumor? Tabloid Paid for, Spiked, Salacious Trump Tip*, ASSOCIATED PRESS (Apr. 12, 2018), https://www.apnews.com/f37ecfc4710b468db6a103a245146172 ("Sajudin AP Article")).

The available information indicates that during Trump's 2016 presidential campaign, AMI and its executives, Pecker and Howard, after discussions with Trump and Cohen, acting as an agent of Trump, paid $150,000 to Karen McDougal to purchase the rights to her claim that she engaged in a relationship with Trump beginning in 2006, while he was married.[18] Cohen pleaded guilty to criminal violations of the Act in connection with AMI's payment to McDougal and his own payment to adult film actress and director Stephanie Clifford, who also alleged an affair with Trump while he was married; Cohen's sworn allocution and testimony indicate that his participation in the payments to both McDougal and Clifford was for the "principal purpose of influencing the [2016 presidential] election."[19]

[18] News reports and Cohen's testimony have identified Trump, AMI, Pecker, Howard, Keith Davidson, McDougal, and Stephanie Clifford as the persons anonymously referenced in documents — including the SDNY Information and Warrant Affidavit — pertaining to DOJ's investigation and prosecution of Cohen, as follows: Trump is "Individual-1"; the Trump Organization is the "Company"; AMI is "Corporation-1"; Pecker is "Chairman-1"; Howard is "Editor-1"; Davidson is "Attorney-1"; McDougal is "Woman-1"; and Clifford is "Woman-2." *See, e.g.*, Information at 11-19, *United States v. Cohen*, No. 1:18-cr-00602-WHP (S.D.N.Y Aug. 21, 2018), ECF No. 2 ("SDNY Information"); Agent Aff. in Supp. of Appl. for Search and Seizure Warrant, *United States v. Cohen*, No. 1:18-cr-00602-WHP (S.D.N.Y. Apr. 8, 2018), ECF No. 48-1 ("Warrant Affidavit"); Joe Palazzolo, Michael Rothfeld, and Lukas I. Alpert, National Enquirer *Shielded Donald Trump from Playboy Model's Affair Allegation*, WALL ST. J. (Nov. 4, 2016), https://www.wsj.com/articles/national-enquirer-shielded-donald-trump-from-playboy-models-affair-allegation-1478309380 ("WSJ 2016 Article") (cited by MUR 7324 Compl. at 4, MUR 7332 First Amend. Compl. at 5 (May 9, 2018), MUR 7332 Compl. at 3, and MUR 7364 Compl. at 4) (describing the circumstances of AMI's payment to McDougal and identifying the parties involved); Ronan Farrow, *Donald Trump, a Playboy Model, and a System for Concealing Infidelity*, THE NEW YORKER (Feb. 16, 2018), https://www newyorker.com/news/news-desk/donald-trump-a-playboy-model-and-a-system-for-concealing-infidelity-national-enquirer-karen-mcdougal ("McDougal New Yorker Article") (cited by MUR 7324 Compl. at 6, MUR 7332 First Amend. Compl. at 5, MUR 7332 Compl. at 3); Jim Rutenberg, Megan Twohey, Rebecca R. Ruiz, Mike McIntire & Maggie Haberman, *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") (cited by MUR 7324 Compl. at 8 and MUR 7332 First Amend. Compl. at 4) (describing the circumstances of AMI's payment to McDougal and Cohen's payment to Clifford, and identifying the parties involved); House Oversight Testimony at 11, 30, 100, 132 (specifically identifying Trump as "Individual-1"; detailing the events surrounding AMI's payment to McDougal; naming AMI, the *Enquirer*, Pecker, Howard as participants in catch and kill; and identifying Pecker as having "expended" funds to pay McDougal on Trump's behalf); Joe Palazzolo, Nicole Hong, Michael Rothfeld and Rebecca Davis O'Brien, *Donald Trump Played Central Role in Hush Payoffs to Stormy Daniels and Karen McDougal*, WALL ST. J. (Nov. 9, 2018), https://www.wsj.com/articles/donald-trump-played-central-role-in-hush-payoffs-to-stormy-daniels-and-karen-mcdougal-1541786601 ("WSJ Nov. 9 Article") (expanding on the reporting conducted for the WSJ 2016 Article, which is cited by the Complaints in MURs 7324, 7332, and 7364); The Fixers at 313, 317.

[19] *See* Cohen Plea Hearing at 23, 27-28 (pleading guilty to knowingly and willfully violating 52 U.S.C. § 30118(a) by "causing" AMI to make a payment totaling $150,000 in 2016 to McDougal, and to knowingly and

AMI entered into a Non-Prosecution Agreement with DOJ on September 21, 2018.[20] In that Non-Prosecution Agreement, AMI admitted that it made the payments to McDougal to ensure that she did not publicize her allegations and "thereby influence [the 2016 presidential] election."[21]

A. Pecker, Trump, and Cohen Enter into a Catch and Kill Agreement for Trump's Campaign

In August 2015, Trump reportedly met with Cohen and Pecker in his Trump Tower office and asked Pecker what Pecker could do to help his campaign.[22] AMI admitted that, at that meeting, "Pecker offered to help deal with negative stories about [Trump's] relationships with women by, among other things, assisting the campaign in identifying such stories so they could

willfully violating 52 U.S.C. § 30116(a)(1)(A) by making an excessive contribution in the form of a payment totaling $130,000 to Clifford, to ensure that both women did not publicize damaging allegations before the 2016 presidential election and thereby influence that election); *see also* SDNY Information ¶ 41-44. 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. *See* 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), ECF No. 2, 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 and McDougal payments 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.

[20] AMI Non-Prosecution Agreement at 3. Pecker and Howard were reportedly granted immunity in exchange for their cooperation. Gabriel Sherman, *"Holy Shit, I Thought Pecker Would Be the Last One to Turn": Trump's* National Enquirer *Allies Are the Latest to Defect*, THE HIVE-VANITY FAIR (Aug. 23, 2018), https://www.vanity fair.com/news/2018/08/donald-trump-national-enquirer-allies-defect-david-pecker-michael-cohen; WSJ Nov. 9 Article; Jim Rutenberg, Rebecca R. Ruiz & Ben Protess, *David Pecker, Chief of* National Enquirer*'s Publisher, Is Said to Get Immunity in Trump Inquiry*, N.Y. TIMES (Aug. 23, 2018), https://www.nytimes.com/2018/08/23/us/ politics/david-pecker-immunity-trump html.

[21] *See* AMI Non-Prosecution Agreement, Ex. A ¶ 3.

[22] WSJ Nov. 9 Article (citing "people familiar with the meeting" and noting that the article is based on "interviews with three dozen people who have direct knowledge of the events or who have been briefed on them, as well as court papers, corporate records and other documents"); AMI Non-Prosecution Agreement, Ex. A ¶ 3 ("In or about August 2015, David Pecker, the Chairman and Chief Executive Officer of AMI, met with Michael Cohen, an attorney for a presidential candidate, and at least one other member of the campaign."); The Fixers at ix-xi, 313-14, 381 (describing the August 2015 meeting, stating that Pecker told DOJ about that meeting, and explaining authors' reporting and research process that included interviews with many sources, public documents, and media accounts); *cf.* House Oversight Testimony at 30 ("[T]hese catch and kill scenarios existed between David Pecker and Mr. Trump long before I started working for [Trump] in 2007.").

be purchased and their publication avoided."[23] Trump reportedly directed Pecker to work with Cohen, who would inform Trump,[24] and "Pecker agreed to keep Cohen apprised of any such negative stories."[25] Cohen, in his sworn testimony, confirms that there was an agreement that AMI would catch and kill negative stories involving Trump to avoid publication of those stories, describing catch and kill as working with news outlets to identify and purchase the rights to news stories of interest and avoid their publication.[26]

It is not publicly known whether AMI either purchased directly or steered to Cohen and the Trump Committee other Trump-related stories. In June 2016, Howard had reportedly "compiled a list of the dirt about Trump accumulated in AMI's archives, dating back decades."[27] After Trump won the 2016 presidential election, Cohen reportedly requested everything the *Enquirer* had regarding Trump, leading Howard and others to order the consolidation of Trump-

[23] AMI Non-Prosecution Agreement, Ex. A ¶ 3. Pecker reportedly also suggested that "[h]e could use the *Enquirer* to slime Trump's political opponents, both Republican and Democrat." The Fixers at x; *see also id.* at 158-61, 166-67 (detailing the *Enquirer*'s negative coverage of Trump's opponent Ted Cruz during the Republican primary as it coincided with Trump's attacks on Cruz, the *Enquirer*'s persistent attacks on Trump's other opponents, including, *inter alia*, Hillary Clinton, Marco Rubio, and Bernie Sanders, and noting that the *Enquirer* published over 60 negative stories about Trump's opponents prior to Trump becoming the Republican nominee while also publishing stores that praised Trump).

[24] The Fixers at xi.

[25] AMI Non-Prosecution Agreement, Ex. A ¶ 3.

[26] House Oversight Testimony at 30 (Cohen testified that "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."); *see also* Michael Cohen, DISLOYAL: A MEMOIR 81-90 (2020) ("Cohen Book") (detailing a 2007 example of catch and kill efforts by Cohen, Pecker, and Trump, and stating that Trump instructed Cohen at that time to work with Pecker to catch and kill a negative story about Trump's alleged actions involving a woman).

[27] Ronan Farrow, CATCH AND KILL: LIES, SPIES, AND A CONSPIRACY TO PROTECT PREDATORS 17 (2019) ("Farrow, Catch and Kill"). The list reportedly included approximately 60 items and was titled "Donald Trump Killed" in reference to stories about Trump that had been "killed." *See* Politics & Prose Interview by Sunny Hostin with Ronan Farrow in Washington, D.C. (Oct. 21, 2019), https://www.youtube.com/watch?v=FaTi090FVAA (45:38-47:39).

related materials in a safe at AMI offices in New York.[28] Press reports indicate that during the first week of November 2016 Howard ordered his staff at the *Enquirer* to destroy documents held in an office safe, including documents that were related to Trump.[29]

B. AMI Payment to Karen McDougal

1. AMI's Agreement with McDougal

On June 15, 2016, Keith Davidson, an attorney representing former Playboy model Karen McDougal, reportedly contacted Howard about the potential sale of the rights to McDougal's story about her alleged affair with Trump while he was married.[30] Pecker and Howard then informed Cohen about the McDougal story and AMI began negotiations to obtain the rights to her story "[a]t Cohen's urging and subject to Cohen's promise that AMI would be reimbursed."[31] Howard reportedly interviewed McDougal on June 20, 2016, and following the interview, indicated to McDougal that her story was worth a limited sum without "stronger documentation" of the relationship.[32] Howard, Pecker, and Cohen reportedly discussed the situation via conference call that day, and the three men agreed that AMI would not make an immediate

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[28] Farrow, Catch and Kill at 17.

[29] *Id.* at 16-17; *see also* Daniel Lippman, *Ronan Farrow:* National Enquirer *Shredded Secret Trump Documents,* POLITICO (Oct. 14, 2019), https://www.politico.com/news/2019/10/14/ronan-farrow-national-enquirer-shredded-trump-documents-046711; House Oversight Testimony at 128, 160 (Cohen confirming that he asked Pecker for the "treasure trove" of stories purchased by Pecker).

[30] AMI Non-Prosecution Agreement, Ex. A ¶ 4; The Fixers at 164; WSJ Nov. 9 Article. In March 2018, after filing a lawsuit against AMI challenging her contract, McDougal stated in a CNN interview that her relationship with Trump began in June 2006 and ended in 2007, while Trump was married to his current wife, Melania Trump. Jim Rutenberg, *Ex-Playboy Model Karen McDougal Details 10-Month Affair with Donald Trump*, N.Y. TIMES (Mar. 22, 2018), https://www nytimes.com/2018/03/22/us/politics/karen-mcdougal-interview html ("NY Times Mar. 22 Article") (cited by MUR 7366 Compl. at 3).

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

[32] The Fixers at 164-65; AMI Non-Prosecution Agreement, Ex. A ¶ 4; MUR 7366 Compl. at 5; *compare* McDougal New Yorker Article (stating that Howard initially valued McDougal's story at $10,000), *with* The Fixers at 164-65 (stating that Howard initially valued McDougal's story at $15,000).

offer.[33] On June 27, 2016, Cohen purportedly informed Trump about McDougal's story; Trump reportedly then telephoned Pecker and asked him to make the McDougal story go away.[34] McDougal, under the impression that AMI was not interested in purchasing her story, began discussions with another media entity, ABC, in an effort to "get in front of the story."[35]

On July 19, 2016, Trump became the Republican presidential nominee.[36] In July 2016, Davidson reportedly informed Howard that he was fielding an offer from ABC but that McDougal wanted to receive a payment and assistance with her career.[37] Howard and Pecker updated Cohen, who in turn reportedly informed Trump of the situation, and they decided to

[33] The Fixers at 165; *see* WSJ Nov. 9 Article.

[34] The Fixers at 166; Cohen Book at 285 (stating that Trump "immediately called Pecker"); *see* WSJ Nov. 9 Article.

[35] McDougal Interview with Anderson Cooper, CNN (Mar. 22, 2018), http://edition.cnn.com/TRANSCRIPTS /1803/22/acd.02 html (video available at: at: https://www.cnn.com/videos/us/2018/03/23/karen-mcdougal-full-interview-ac.cnn) ("CNN McDougal Interview") ("[AMI] had a 12-hour window to accept whether they wanted the story or not. They didn't want the story . . . . I still have to get in front of the story because it's still getting put out there. So, we went to ABC. They were very interested in the story."); *see* McDougal New Yorker Article (indicating that AMI had "little interest" in McDougal's story); McDougal Complaint ¶¶ 12-13 (indicating that McDougal was informed that AMI had "no interest" in purchasing her story); MUR 7324 Compl. at 7 (quoting McDougal New Yorker Article); MUR 7332 Compl. at 3 (citing same); Cohen Book at 285 ("By late July, Davidson was pitting ABC News and American Media against each other. McDougal was trying to parlay her affair with Trump into a way to revive her career, or what tiny bit of it might be left, an understandable ambition, but the last thing on anyone else's mind. When I heard about the ABC initiative, I knew it was time to act."). ABC reportedly agreed to a confidentiality agreement that prevented the network from publishing McDougal's story without her consent. The Fixers at 166; *see* McDougal Complaint ¶ 13 (indicating that McDougal was in negotiations with ABC and confirming that ABC signed a confidentiality agreement).

[36] The Fixers at 166; 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.

[37] The Fixers at 166-68; *see* WSJ Nov. 9 Article.

move forward with an offer to McDougal.[38] Howard and Davidson reportedly then negotiated a contract between AMI and McDougal.[39]

AMI and McDougal entered into a contract on August 6, 2016,[40] whereby AMI purchased the "Limited Life Story Rights" to the story of McDougal's relationship with "any then-married man" — Trump — in exchange for the payment of $150,000.[41] In addition, 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.[42] Davidson allegedly told McDougal that AMI would purchase her story with the purpose of not publishing it because of Pecker's friendship with Trump.[43] On August 10, 2016, AMI sent a $150,000 payment to Davidson for the rights to McDougal's

[38] AMI Non-Prosecution Agreement, Ex. A ¶ 4 (stating that "AMI communicated to Cohen that it would acquire the story to prevent its publication"); The Fixers at 168; *see also* WSJ Nov. 9 Article; McDougal New Yorker Article; MUR 7366 Compl. at 5 (citing McDougal Complaint).

[39] The Fixers at 168-69; *see also* WSJ Nov. 9 Article; McDougal New Yorker Article; McDougal Complaint ¶¶ 14, 42, 46-47 (stating that AMI showed renewed interest in purchasing the rights to McDougal's story after she shared with Davidson her concerns about publicly telling her story).

[40] The contract was allegedly sent to McDougal on August 5, 2016, and she signed the contract the next morning. McDougal Complaint ¶¶ 48-55. Davidson reportedly sent the signed contract to Howard and AMI's in-house counsel, Cameron Stracher. The Fixers at 168-69 (noting that Davidson informed ABC that McDougal would not proceed with the network and stating that Davidson notified Cohen of the signed contract).

[41] 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"); McDougal New Yorker Article; MUR 7324 Compl. at 8 (quoting McDougal New Yorker Article); MUR 7332 Compl. at 4 (citing WSJ 2016 Article). On March 22, 2018, McDougal was interviewed by CNN and discussed her relationship with Trump at length, as well as how it led to her negotiations with AMI. *See* NY Times Mar. 22 Article (summarizing details of the interview where McDougal discussed her relationship with Trump); CNN McDougal Interview at 37:20-40:30 (discussing McDougal's negotiations with AMI).

[42] MURs 7324/7332 AMI Resp., Aff. of Dylan Howard, Ex. A at 1; *see* MUR 7332 Compl. at 3 (citing McDougal New Yorker Article); *see also* MUR 7332 First Amend. Compl. at 6 (citing McDougal Complaint ¶ 59).

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

story.[44] McDougal alleges that as early as October 2016, AMI staff appeared to lack interest in the columns that McDougal agreed to have published in her name.[45]

AMI acknowledges in the DOJ Non-Prosecution Agreement that the payment of $150,000 was substantially more than AMI would normally have agreed to pay because it relied upon Cohen's commitment that AMI would be reimbursed.[46] Further, AMI acknowledges that its "principal purpose in entering into the agreement was to suppress the model'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."[47] AMI has 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."[48]

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[44] *See* AMI Non-Prosecution Agreement, Ex. A ¶ 5; *see also* Cohen Book at 286 (alleging that Pecker asked a former employee named Daniel Rotstein to use his Florida consulting company as a pass-through for AMI's payment to Davidson).

[45] McDougal Complaint ¶¶ 57-60. However, it does appear that AMI ultimately published several columns under McDougal's name. 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.").

[46] 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.").

[47] *See id.*

[48] *Id.*, Ex. A ¶ 8; *cf.* The Fixers at 169 (noting that Pecker consulted with a campaign finance "expert" before signing off on the McDougal transaction and "believe[ed] the contract with McDougal was legally sound" because AMI agreed to pay her for future work in addition to purchasing her story rights); WSJ Nov. 9 Article ("Mr. Pecker researched campaign-finance laws before entering into the McDougal deal . . . . After speaking with an election-law specialist, Mr. Pecker concluded the company's payment to Ms. McDougal wouldn't violate the law, because the magazine covers and health columns gave him a business justification for the deal.").

2. Role of Cohen, Trump, and the Trump Committee

During the negotiations concerning McDougal's story, AMI and McDougal's lawyer, Davidson, reportedly kept Cohen informed as to the status of the discussions; Cohen in turn updated Trump.[49] AMI reportedly notified Cohen on multiple occasions: upon the initial outreach from Davidson, after its interview with McDougal, when Davidson warned Howard that ABC was interested in McDougal's story, and when AMI was in the process of finalizing the agreement with McDougal.[50] Shortly after McDougal signed the agreement with AMI, Davidson reportedly contacted Cohen and informed him that the McDougal transaction had been completed.[51] Cohen testified that he worked with AMI to keep McDougal's story from becoming public and that AMI's payment to McDougal "was done at the direction of Mr. Trump and in accordance with his instructions."[52] Cohen's role in the transaction allegedly came as a surprise to McDougal, who stated that Davidson and AMI staff failed to tell her that they were

[49] The Fixers at 166, 168-69; WSJ Nov. 9 Article; *cf.* House Oversight Testimony at 29-30 (Question: "Mr. Cohen, in your 10 years of working for Donald Trump[,] did he control everything that went on in the Trump Organization? And did you have to get his permission in advance and report back after every meeting of any importance." Answer: "Yes. There was nothing that happened at The Trump Organization . . . that did not go through Mr. Trump with his approval and sign-off, as in the case of the payments.").

[50] The Fixers at 164-166, 168-69 ("Cohen soon learned of the ABC talks from the American Media executives and alerted Trump. They decided now was the time to buy."); *see also* Cohen Book at 284-89 (describing Cohen and Trump's involvement with AMI's payment to McDougal and stating "[w]hen I heard about the ABC initiative, I knew it was time to act").

[51] MUR 7324 Compl. at 10 (quoting NYT Feb. 18 Article); The Fixers at 169 (noting that, when Davidson advised Cohen that the contract was fully executed, Cohen already knew and Trump knew too and was "grateful"). Cohen reportedly denied recalling these communications with Davidson when contacted by *New York Times* reporters prior to his plea agreement. *See* NYT Feb. 18 Article.

[52] U.S. House of Representatives Permanent Select Committee on Intelligence, Executive Session, Michael Cohen Dep. at 117, 119 (Feb. 28, 2019), https://docs.house.gov/meetings/IG/IG00/20190520/109549/HMTG-116-IG00-20190520-SD002.pdf ("House Intelligence Deposition"); *see* Cohen Plea Hearing at 23 ("[O]n or about the summer of 2016, in coordination with, and at the direction of, a candidate for federal office, I and the CEO of a media company at the request of the candidate worked together to keep an individual with information that would be harmful to the candidate and to the campaign from publicly disclosing this information. After a number of discussions, we eventually accomplished the goal by the media company entering into a contract with the individual under which she received compensation of $150,000.").

coordinating with Trump "representatives" during the negotiation of her original agreement with AMI.[53]

In late August and September 2016, Cohen requested to Pecker that AMI assign Cohen the "limited life rights portion" of AMI's agreement with McDougal, which "included the requirement that the model not otherwise disclose her story."[54] Trump and Cohen reportedly also wanted Pecker to turn over AMI's Trump-related materials because of the concern that Pecker might leave AMI.[55] Pecker agreed to assign the life rights to an entity Cohen created for a payment of $125,000.[56] The assignment agreement was drawn up, and on September 30, 2016, Pecker signed the agreement, which transferred the limited life rights to McDougal's story to an entity set up by Cohen.[57]

In a tape recording made by Cohen during a September 2016 meeting with Trump, Trump and Cohen appear to discuss the circumstances surrounding the assignment agreement between AMI and Cohen and how Trump would buy the rights to McDougal's story from

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53 McDougal Complaint ¶ 20.

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

55 The Fixers at 169 ("Cohen was pushing American Media to turn over all its archival material on Trump, in case Pecker left the company. Cohen and Trump didn't want a new chief executive with no loyalty to Trump to have control over it."); WSJ Nov. 9 Article ("Concerned Mr. Pecker might leave American Media, Mr. Cohen wanted to buy other materials the company had gathered on Mr. Trump over the years, including source files and tips. In a meeting at the Trump Organization offices in early September, Mr. Cohen told Mr. Trump of his plan.").

56 AMI Non-Prosecution Agreement, Ex. A ¶ 6; The Fixers at 169-71 (identifying the Cohen-created entity as Resolution Consultants, LLC, and explaining that the $25,000 difference between the amount paid to McDougal and the amount to be paid for the assignment accounted for McDougal's future AMI work); *see also* WSJ Nov. 9 Article. Because AMI purchased the rights to feature McDougal on two magazine covers and publish columns attributed to her, "Cohen and Pecker said that Trump would be liable for only a hundred and twenty-five thousand dollars of the company's payment to her." Jeffrey Toobin, *Michael Cohen's Last Days of Freedom*, THE NEW YORKER (Apr. 29, 2019), https://www newyorker.com/magazine/2019/05/06/michael-cohens-last-days-of-freedom ("2019 New Yorker Article"); *see* Cohen Book at 285-86 ("The deal included $150,000, with $25,000 allocated for payment for her appearance on the cover of two magazines owned by American Media. That meant Trump was on the hook for $125,000 to be repaid to Pecker's company.").

57 AMI Non-Prosecution Agreement, Ex. A ¶ 6; *see* SDNY Cohen Sentencing Memorandum at 12.

AMI.[58] In an interview that aired on the evening the tape recording was made public, Rudy Giuliani, counsel for Trump, acknowledged that the tape recording reflects a conversation between Trump and Cohen about "how they're going to buy the rights" to McDougal's story from AMI but argued that there is "[n]o indication of any crime being committed on this tape."[59] At one point in the recording, Cohen says, in an apparent reference to the entity he would later create for the purchase, "I need to open up a company for the transfer of all of that info regarding our friend, David," which is reportedly a reference to Pecker.[60] According to Cohen, Trump asks "So what do we got to pay for this? One-fifty?"[61] Later, Trump asks "What financing?"

[58] Chris Cuomo, Kara Scannell & Eli Watkins, *CNN Obtains Secret Trump-Cohen Tape*, CNN (July 25, 2018), https://www.cnn.com/2018/07/24/politics/michael-cohen-donald-trump-tape/index.html ("CNN Article") (cited by MUR 7332 Second Amend. Compl. at 3); *see also* Cohen Book at 287 ("I decided I needed to record a conversation with Trump about the payment for two reasons. First, to show Pecker that I was asking Trump to repay the obligation, and second, to have a record of his participation if the conspiracy ever came out. . . . I could sense the stakes were getting higher and higher as I explained the details of the transaction with McDougal to Trump. As a precaution, my iPhone was digitally memorializing our exchange."). The recording was reportedly seized by the Federal Bureau of Investigation ("FBI") when it raided Cohen's office. *See* Matt Apuzzo, Maggie Haberman & Michael S. Schmidt, *Michael Cohen Secretly Taped Trump Discussing Payment to Playboy Model*, N.Y. TIMES (July 20, 2018), https://www.nytimes.com/2018/07/20/us/politics/michael-cohen-trump-tape.html (cited by MUR 7332 Second Amend. Compl. at 3). The recording was one of twelve audio recordings seized by the FBI during its raids of Cohen's homes and office later released to DOJ. *See* MUR 7332 Second Amend. Compl., 3-4, Ex. 1 (showing that, on July 23, 2018, the Special Master who reviewed legal privilege claims in connection with these search warrants filed a Special Master Report, reporting that the parties had withdrawn claims of privilege in connection with these materials). Lanny Davis, counsel for Cohen, released the recording to CNN, which aired it on July 25, 2018. *See* CNN Article.

[59] *See* The Ingraham Angle, *Giuliani Responds to Release of Secret Trump-Cohen Recording*, FOX NEWS CHANNEL 3:05-3:10 (July 24, 2018), https://www foxnews.com/transcript/giuliani-responds-to-release-of-secret-trump-cohen-recording (introducing Giuliani as "personal attorney for President Trump"); CNN Article (citing same).

[60] *See* CNN Article; Cohen Book at 287 ("That was how we talked: euphemistically, circling a subject carefully, choosing words that might allow for some ambiguity."). On September 30, 2016, Cohen registered Resolution Consultants LLC in Delaware; he dissolved it on October 17, 2016, the day he registered another entity, Essential Consultants LLC in Delaware. *See* Warrant Aff. ¶ 35.b, c; Cohen Book at 288.

[61] Cohen Book at 287 (recalling "I told Trump that the amount we're paying should include all the 'stuff' that Pecker had on him. By 'stuff' I meant any and all other salacious Trump stories we believed he possessed" and indicating that Trump responded "Yeah, I was thinking about that. . . . Maybe he gets hit by a truck."); *see* CNN Article.

and Cohen tells Trump, "We'll have to pay."[62] Cohen also states: "I've spoken with [Trump Organization Chief Financial Officer] Allen Weisselberg about how to set the whole thing up with funding."[63]

According to Cohen, Trump was supposed to make the payment to AMI but "elected not to pay it."[64] In October 2016, after Cohen signed the assignment agreement but before Pecker was paid the $125,000, Pecker notified Cohen that he was cancelling the agreement and requested that Cohen tear up the agreement signed by Pecker.[65] AMI never received any reimbursement or payment from Cohen, Trump, or anyone else for its payment to McDougal; however, Trump reportedly thanked Pecker for purchasing McDougal's story.[66]

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[62] *See* CNN Article. Trump then says "pay with cash," but it is unclear whether he is instructing Cohen to pay with cash. *See id.* Cohen then says "no, no," however the context is unclear. *See id.* During the CNN segment addressed in the CNN article, it is reported that Trump's team argued that Trump said "don't pay with cash . . . check." *Cuomo Prime Time* (CNN television broadcast July 24, 2018).

[63] CNN Article. In speaking with CNN, Alan Futerfas, a Trump Organization lawyer, rejected the notion that the reference to "cash" in the tape recording "refers to green currency" because Trump and the Trump Organization would not in the ordinary course make such a payment using actual cash. *Id.* Similarly, Giuliani denied that Trump would "set[] up a corporation and then us[e] cash." *Id.* CNN further reported that Futerfas would not speculate as to whether the payment referenced in the conversation would have come from the Trump Organization or Trump's personal finances. *Id.*

[64] House Oversight Testimony at 100 (noting that "Pecker was very angry because there was also other moneys that David had expended on [Trump's] behalf" for which Pecker also was not reimbursed); *see also* 2019 New Yorker Article ("According to Cohen, McDougal's appearance on the cover of one of [AMI's] magazines, *Muscle & Fitness Hers*, led to a sizable increase in sales, and Trump decided that A.M.I. had received its money's worth in the deal" because, as Cohen said, "'[i]t sold over two hundred and fifty thousand dollars' worth of print, which was the highest for the whole year. So you invest a hundred and fifty, you make two hundred and fifty, you still have her for another cover, and for two years on the blog. It was a good deal.'"). Pecker reportedly "used to yell at Cohen about" the fact that Trump did not repay AMI, to which Cohen responded, "'David, why are you yelling at me? Go yell at Trump.'" 2019 New Yorker Article (noting that sources indicated "that A.M.I. stopped asking for reimbursement on the advice of its lawyers"); *see also* The Fixers at 170-71 ("Cohen told Pecker that Trump was dragging his feet because he was cheap and no longer wanted to pay"); WSJ Nov. 9 Article.

[65] AMI Non-Prosecution Agreement, Ex. A ¶ 6; The Fixers at 170-71 (reporting that Pecker asked Cohen to tear up the assignment agreement after Pecker consulted with Stracher, AMI's in-house counsel); WSJ Nov. 9 Article.

[66] AMI Non-Prosecution Agreement, Ex. A ¶ 6; The Fixers at 198, 314 (stating that Trump thanked Pecker in January 2017 at Trump Tower and that Pecker told DOJ that Trump thanked him); *see also* WSJ Nov. 9 Article.

Even after discussions about the assignment agreement ended, Cohen and AMI continued to discuss how to deal with the McDougal story, exchanging multiple calls and texts on November 4, 2016, when AMI's payment to McDougal was reported in *The Wall Street Journal*.[67] These communications between Cohen, Pecker, and Howard were focused on strategizing about how to handle McDougal, providing comments to *The Wall Street Journal* in connection with the story, and discussing the implications of the article, which appeared four days before the election.[68] Cohen allegedly noted to Howard that an unnamed individual, believed to be Trump, was "pissed" about the publication of the story, and Howard told Cohen that AMI's payment to McDougal "looks suspicious at best."[69]

In addition to Cohen's alleged reference to Trump's knowledge about the McDougal story breaking, the available information also indicates that Trump spoke directly to Pecker around that time.[70] The *Wall Street Journal* article was published online the evening of November 4th, and Pecker allegedly spoke to Trump on the telephone the following morning.[71]

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[67] Warrant Affidavit ¶ 40. 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.

[68] *See* Warrant Affidavit ¶ 40.a-e (recounting Howard's text message to Cohen that stated, "Let's let the dust settle. We don't want to push her over the edge. She's on side at present and we have a solid position and a plausible position that she is rightfully employed as a columnist"). As the story was breaking, Cohen and Howard discussed McDougal's reluctance to provide a statement to Davidson and strategized about how best to handle McDougal; Cohen also allegedly forwarded Howard an image of an email from a reporter at *The Wall Street Journal* asking for comment on the story. *Id.* ¶ 40.a-b.

[69] *Id.* ¶ 40. c (stating the FBI agent's belief that "Cohen was referring to Trump when he stated 'he's pissed.'" and recounting that Cohen asked Howard "how the *Wall Street Journal* could publish its article if 'everyone denies,'" with Howard responding, "'Because there is the payment from AMI. It looks suspicious at best'").

[70] *Id.* ¶ 40.d (Cohen texted Pecker late that evening: "The boss just tried calling you. Are you free?" and then texted Howard: "Is there a way to find David quickly?").

[71] *Id.* ¶ 40.e.

Despite Cohen and Trump's knowledge of the AMI payments, the campaign, through Trump Committee spokeswoman Hope Hicks, publicly denied any knowledge of the payments and asserted that McDougal's story about a relationship with Trump was "'totally untrue.'"[72] AMI asserted to *The Wall Street Journal* that "it wasn't buying Ms. McDougal's story for $150,000, but rather two years' worth of her fitness columns and magazine covers as well as exclusive life rights to any relationship she has had with a then-married man" and said that it "'has not paid people to kill damaging stories about Mr. Trump.'"[73]

After the November 4, 2016, article in *The Wall Street Journal* was published, McDougal retained new counsel and negotiated an amendment to her original agreement with AMI ("Amendment"), which allowed her to "respond to legitimate press inquiries regarding the facts of her alleged relationship with Donald Trump."[74] In the Amendment, AMI agreed to "retain the services" of two public relations professionals for a total of six months to provide public relations and reputation management services and coordinate responses to the press with AMI.[75] However, for more than a year after that, AMI instructed McDougal to say nothing about her alleged relationship with Trump and ghostwrote email responses for McDougal to send to

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[72] WSJ 2016 Article; *see* The Fixers at 194 (reporting that Trump dictated Hicks's response to *The Wall Street Journal*); WSJ Nov. 9 Article. Additionally, Hicks reportedly told DOJ officials that Pecker informed her of the substance of his response before he sent it to the *Journal*. The Fixers at 314.

[73] WSJ 2016 Article. In a June 2017 article, however, Pecker admitted to *The New Yorker* that AMI's payment to McDougal contained elements relating to his personal friendship with Trump and was predicated on her not "bashing Trump and American Media." Jeffrey Toobin, The National Enquirer's *Fervor for Trump*, THE NEW YORKER (June 26, 2017), https://www newyorker.com/magazine/2017/07/03/the-national-enquirers-fervor-for-trump ("2017 New Yorker Article") (cited by MUR 7332 First Amend. Compl. at 6 and MUR 7332 Compl. at 3).

[74] MURs 7324/7332 AMI Resp., Ex. B (Amendment to Name and Rights License Agreement signed by McDougal on November 29, 2016, and by AMI on December 7, 2016); McDougal Complaint, Ex. B (same).

[75] MURs 7324/7332 AMI Resp., Ex. B; McDougal Complaint, Ex. B.

inquiring reporters.[76] AMI also allegedly provided the reporters with "false and misleading information" and later threatened McDougal with litigation if she told her story to reporters.[77]

C. AMI's Involvement in Payments to Other Individuals

1. Dino Sajudin

In November 2015, AMI reportedly entered into an agreement, which was subsequently amended in December 2015, with Sajudin, a former doorman at Trump World Tower in New York City, in connection with information he claimed to have about an alleged Trump "love child."[78] Sajudin reportedly "first approached the *Enquirer* in the early stages of the 2016 campaign" by calling the publication's tip line with a rumor he had heard about Trump having fathered an illegitimate child in the late 1980s with a former employee of the Trump Organization.[79] According to press reports, Sajudin initially signed a standard "boilerplate contract" with the *Enquirer*, agreeing to be an anonymous source who would be "paid upon

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[76] McDougal Complaint ¶¶ 19, 66-73.

[77] McDougal Complaint ¶¶ 19, 21, 74, 84-87; MUR 7332 First Amend. Compl. at 7 (citing McDougal Complaint ¶ 84). On March 20, 2018, McDougal filed a Complaint for Declaratory Relief that asked the court to declare her contract with AMI void because the contract was allegedly fraudulent and illegal. McDougal Complaint ¶ 5. In April 2018, AMI and McDougal reached a settlement agreement ending her lawsuit against the company and executed a new agreement, in which McDougal received the life rights to her story back from AMI and retained the $150,000 payment. Jim Rutenberg, *Ex-Playboy Model, Freed from Contract, Can Discuss Alleged Trump Affair*, N.Y. TIMES (Apr. 18, 2018), https://www.nytimes.com/2018/04/18/us/politics/karen-mcdougal-american-media-settlement.html ("McDougal Settlement New York Times Article") (cited by MUR 7332 First Amend. Compl. at 8); MUR 7332 AMI Supp. Resp. at 10-12, Ex. A. AMI obtained the right to receive "up to $75,000 of the profits from any deal" McDougal made regarding her story during the subsequent twelve-month period. *See* McDougal Settlement New York Times Article; MUR 7332 AMI Supp. Resp. at 11, Ex. A.

[78] Sajudin AP Article; The Fixers at 146. CNN published Sajudin's original agreement with AMI and its subsequent amendment. Source Agreement and Amendment, CNN (Aug. 24, 2018), https://cdn.cnn.com/cnn/2018/images/08/24/sajudin.ami.pdf ("Sajudin Agreement").

[79] *Prez Love Child Shocker! Ex-Trump Worker Peddling Rumor Donald Has Illegitimate Child*, RADAR ONLINE (Apr. 11, 2018), https://radaronline.com/exclusives/2018/04/donald-trump-love-child-rumor-scandal/ ("Radar Online Article") (cited by MURs 7364/7366 AMI Resp. at 7, 10); Sajudin AP Article ("After initially calling the Enquirer's tip line, Sajudin signed a boilerplate contract with the Enquirer, agreeing to be an anonymous source and be paid upon publication.").

publication."[80] Reportedly, after Sajudin entered into an agreement to serve as a source, the *Enquirer* initially investigated the story, dispatching reporters and sending "a polygraph expert to administer a lie detection test to Sajudin in a hotel near his Pennsylvania home."[81] According to press reports, although the *Enquirer* initially avoided reaching out to Trump Organization employees, after the Trump Organization learned of the investigation when a reporter contacted Trump's assistant, Rhona Graff, Cohen contacted Howard and "pleaded with him not to publish the story."[82] On December 9, 2015, Sajudin reportedly took and passed a polygraph test testing how he learned of the rumor.[83] After passing the polygraph test, Sajudin reportedly "pressed the tabloid to pay him immediately, threatening to walk otherwise."[84]

On December 17, 2015, AMI reportedly agreed to make an "up front" $30,000 payment to Sajudin to prevent him from discussing the rumor about Trump fathering a child.[85] That agreement stated that Sajudin would be subject to a $1 million penalty "if he shopped around his information."[86] Immediately after Sajudin signed the agreement, the *Enquirer* reportedly stopped investigating the story.[87] In the summer of 2017, Howard reportedly claimed that the

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80 Sajudin AP Article; *see also* Radar Online Article; The Fixers at 146.

81 Sajudin AP Article; *see also* The Fixers at 146-47 (noting that the investigators refrained from contacting Trump Organization employees).

82 The Fixers at 147-48.

83 Radar Online Article.

84 The Fixers at 148.

85 MURs 7364/7366 AMI Resp. at 8; MUR 7364 Compl. at 4, 7 (citing Sajudin AP Article); Ronan Farrow, The National Enquirer*, A Trump Rumor, and Another Secret Payment to Buy Silence*, THE NEW YORKER (Apr. 12, 2018), https://www newyorker.com/news/news-desk/the-national-enquirer-a-donald-trump-rumor-and-another-secret-payment-to-buy-silence-dino-sajudin-david-pecker ("Sajudin New Yorker Article"); MUR 7366 Compl. at 2 (citing Sajudin AP Article).

86 MUR 7364 Compl. at 6 (quoting Sajudin AP Article); Sajudin Agreement.

87 Sajudin AP Article; The Fixers at 148-49.

investigation was terminated on its merits because Sajudin "lacked any credibility,"[88] however, four longtime *Enquirer* staffers reportedly challenged this interpretation, claiming that they "were ordered by top editors to stop pursuing the story before completing potentially promising reporting threads" and further claimed that the "publication didn't pursue standard *Enquirer* reporting practices."[89]

Reportedly, current and former AMI employees had noticed several aspects of the payment to Sajudin that caused it to differ from other payments to sources. A former AMI reporter and editor noted that it was unusual for the company to pay for a tip when it did not publish an article, reportedly stating "AMI doesn't go around cutting checks for $30,000 and then not using the information."[90] Similarly, according to *The New Yorker*, a source stated: "It's unheard of to give a guy who calls A.M.I.'s tip line big bucks for information he is passing on secondhand. We didn't pay thousands of dollars for non-stories, let alone tens of thousands. It was a highly curious and questionable situation."[91] Other staffers reportedly concluded that the $1 million penalty to stop the tipster from talking about the tip indicated that the payment was part of a catch and kill.[92]

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88 Sajudin AP Article.

89 *Id.*

90 *Id.* According to the *Associated Press*, "AMI threatened legal action over reporters' efforts to interview current and former employees and hired the New York law firm Boies Schiller Flexner, which challenged the accuracy of the AP's reporting." *Id.* (noting that *RadarOnline*, also owned by AMI, "published details of the payment and the rumor that Sajudin was peddling" on the same day that the AP Article was published, stating "that the *Enquirer* spent four weeks reporting the story but ultimately decided it wasn't true"); *see also* The Fixers at 148 (noting that the payment, while not unheard of, "was a break with the tabloid's typical policy of paying for stories upon their publication, and a large sum relative to most source payments").

91 Sajudin New Yorker Article.

92 Sajudin AP Article; s*ee also* The Fixers at 148 (noting that the $1 million penalty, while likely unenforceable in court, ensured that a source "wouldn't take the tabloid's money and disappear or blab to another publication. It was meant to scare them.").

Although the Sajudin payment is not addressed in the AMI Non-Prosecution Agreement or Cohen's plea, the payment to Sajudin was made after the purported August 2015 agreement between Pecker, Trump, and Cohen that AMI would catch and kill stories that could reflect negatively on Trump during the campaign.[93] Furthermore, press reports suggest that the decision to pay Sajudin, outside AMI's normal investigation practices, resulted from Pecker or another high level AMI official directing that payment.[94] Cohen, meanwhile, told the *Associated Press* "that he had discussed Sajudin's story with the magazine when the tabloid was working on it" but said that "he was acting as a Trump spokesman when he did so and denied knowing anything beforehand about the *Enquirer* payment to the ex-doorman."[95] AMI reportedly released Sajudin from the contract at some point after the 2016 presidential election.[96]

2. Stephanie Clifford

As discussed above, Cohen paid $130,000 to Stephanie Clifford, a well-known adult-film actress and director who used the professional name Stormy Daniels, to prevent the publication of her story concerning her 2006 alleged relationship with Trump. Shortly after *The Washington Post* published a video recording of Trump appearing on the television show *Access Hollywood* in 2005, in which Trump "bragged in vulgar terms about kissing, groping and trying to have sex with women,"[97] Davidson, the same attorney who had represented McDougal in her negotiations

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93 *See* WSJ Nov. 9 Article.

94 Sajudin New Yorker Article; *see also* The Fixers at 148 (claiming that "[t]he reporters suspected interference from Pecker").

95 Sajudin AP Article (noting that the "parent" of the *Enquirer* made the payment to Sajudin). According to Cohen, after AMI made the payment to McDougal, "Pecker was very angry because there was also other moneys that David [Pecker] had expended on [Trump's] behalf," and Trump declined to reimburse AMI for the other funds as well. House Oversight Testimony at 100.

96 *See, e.g.* Sajudin AP Article.

97 David A. Fahrenthold, *Trump Recorded Having Extremely Lewd Conversation About Women in 2005*, THE WASHINGTON POST (Oct. 7, 2016), https://www.washingtonpost.com/politics/trump-recorded-having-extremely-

with AMI, reportedly contacted Howard at AMI and offered to confirm Clifford's story on the record.[98] AMI, reportedly because it had already invested significant sums in paying to silence negative stories and was growing uncomfortable, did not purchase Clifford's story.[99] Instead, it appears that AMI directed the Clifford story to Cohen.

D. The Complaints and Responses

The Complaints in MURs 7324, 7332, and 7366 allege that there is reason to believe that, by paying McDougal $150,000, AMI made a prohibited corporate contribution because the payment was not included within the scope of the press exemption and was an expenditure made for the purpose of influencing the 2016 presidential election that was coordinated with Cohen, an agent of Trump.[100] The MUR 7332 Complaint further alleges that AMI's payment to McDougal was an excessive contribution to the Trump Committee.[101] The Complaints in MURs 7364 and 7366 allege that by paying Sajudin $30,000, AMI made a prohibited corporate contribution in the

lewd-conversation-about-women-in-2005/2016/10/07/3b9ce776-8cb4-11e6-bf8a-3d26847eeed4_story html ("Fahrenthold Article"); *see* Warrant Affidavit ¶ 32.

[98] Farrow, Catch and Kill at 345 ("[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* SDNY Information ¶ 32.

[99] *See* Farrow, Catch and Kill at 345.

[100] MUR 7324 Compl. at 14-15; MUR 7332 Compl. at 8; MUR 7366 Compl. at 7-9; *see also* MUR 7637 Compl. at 1 (merged in relevant part into MUR 7324).

[101] MUR 7332 Compl. at 8.

form of a coordinated expenditure.[102] Pecker is named in the Complaints in his capacity as an officer of AMI at the time of the payments.

All but one of the Responses filed in this matter pre-date AMI and Cohen's subsequent public admissions and clarifications made in connection with their respective non-prosecution agreements, plea agreements, and congressional testimony.[103] Generally, AMI's Responses to the Complaints in these matters assert that the payment to McDougal was exempt from regulation under the press exemption.[104] Alternatively, AMI argues that the payment to McDougal "was compensation for *bona fide* content for AMI's publications, to license her name and image, and for a limited life story right, not 'for the purpose of influencing an election.'"[105] In addition, AMI argues that payments for silence are not contributions or expenditures because silence is not a "thing of value" under the Act, the payment was for a legitimate business

[102] MUR 7364 Compl. at 11-12; MUR 7366 Compl. at 9.

[103] 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.

[104] 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).

[105] 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").

purpose,[106] and the MUR 7324 and 7332 Complaints fail to show how the McDougal payment was coordinated with an agent of the Trump Committee.[107]

Similarly, in its Response to MURs 7364 and 7366, which predates the AMI Non-Prosecution Agreement, AMI asserts that the Sajudin payment was exempt from regulation under the press exemption.[108] AMI contends that it investigated Sajudin's allegations regarding Trump and determined that, although Sajudin may have heard rumors regarding his allegation that Trump had fathered a child with a former employee, "AMI could not confirm the veracity of the underlying allegation" and ultimately determined that Sajudin's story regarding Trump was untrue.[109] AMI further contends that the Sajudin payment was not for the purpose of influencing a federal election and that the MUR 7364 Complaint is based on speculation.[110]

Both Trump and Giuliani, as counsel for Trump, have addressed publicly on Twitter the allegations regarding the payment to McDougal, arguing that the payment did not violate the law. For example, soon after Cohen's guilty plea, Trump and Giuliani both alleged that the payments to McDougal and Clifford were not unlawful.[111] Trump and Giuliani also tweeted

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[106] 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. McDougal also appeared on a 2017 cover of AMI magazine *Muscle and Fitness Hers*, which, according to AMI, was the highest selling issue of the magazine for that year. *Id.*

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

[108] MURs 7364/7366 AMI Resp. at 1-2.

[109] *Id.* at 2, 9.

[110] *Id.* at 2-3.

[111] Donald J. Trump (@realDonaldTrump), TWITTER (Aug. 22, 2018, 9:37 AM), https://twitter.com/realDonaldTrump/status/1032260490439864320 ("Michael Cohen plead [sic] guilty to two counts of campaign finance violations that are not a crime."); Rudy Giuliani (@RudyGiuliani), TWITTER (Aug. 23, 2018, 4:11 AM), https://twitter.com/RudyGiuliani/status/1032540830794428416, (Aug. 23, 2018, 5:50 AM), https://twitter.com/RudyGiuliani/status/1032565618204004353 (stating that the "payments, as determined by the Edwards FEC ruling, are NOT ILLEGAL" and directing followers to an opinion piece in *The Hill* by Mark Penn, "demonstrating [that] Cohen pled guilty to two payments that are not violations of the law").

about the payments in December 2018, around the time of Cohen's sentencing, again tweeting that the payments were not violations of the Act.[112] Trump also tweeted that he "never directed Michael Cohen to break the law."[113]

III. LEGAL ANALYSIS

The available information indicates that AMI paid $150,000 to McDougal for the purpose of influencing the 2016 presidential election by preventing a potentially damaging story about Trump from becoming public before the election. Based upon the available information, it appears that the payment to McDougal was made with Trump's knowledge, at the urging of and with the promise of repayment by Cohen, acting as an agent of Trump, and as part of an agreement between Trump and AMI to catch and kill any potentially damaging stories about Trump's relationships with women so that such stories would not become public during the 2016 campaign. Likewise, the available record indicates that AMI's payment of $30,000 to Sajudin was made as part of this same catch and kill agreement. Although AMI contends that its payments to McDougal and Sajudin concern the business and editorial decisions of a press entity

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[112] Rudy Giuliani (@RudyGiuliani), TWITTER (Dec. 8, 2018, 1:20 PM), https://twitter.com/RudyGiuliani/status/1071469692882182144 ("The President is not implicated in campaign finance violations because based on Edwards case and others the payments are not campaign contributions."), (Dec. 9, 2018, 10:54 AM), https://twitter.com/RudyGiuliani/status/1071795258177019905 ("No collusion, no obstruction now [sic] campaign finance but payments to settle lawsuits are not clearly a proper campaign contribution or expenditure. No responsible lawyer would charge a debatable campaign finance violation as a crime . . . ."), (Dec. 13, 2018, 9:49 AM), https://twitter.com/RudyGiuliani/status/1073228301332869120 (sharing link to an opinion piece in *The Daily Signal* by Hans von Spakovsky, which argued that Cohen arranging payment to McDougal did not violate the law), (Dec. 14, 2018, 11:53 AM), https://twitter.com/RudyGiuliani/status/1073622122235355136 ("CORRECTION: I didn't say payments were not a big crime. I have said consistently that the Daniels and McDougall [sic] payments are not crimes and tweeted a great article yesterday making that point. If it isn't a witch-hunt why are they pursuing a non-crime."), (Dec. 19, 2018, 10:04 PM), https://twitter.com/RudyGiuliani/status/1075587822449500161 ("The payments to Daniels and McDougall [sic] do not violate the law. Congress has spent millions settling sexual harassment claims against members which are not reported as campaign contributions. Why aren't those Congressmen under investigation."); Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 13, 2018, 8:25 AM), https://twitter.com/realDonaldTrump/status/1073207272069890049 ("Cohen was guilty on many charges unrelated to me, but he plead [sic] to two campaign charges which were not criminal. . . .").

[113] Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 13, 2018, 8:17 AM), https://twitter.com/realDonaldTrump/status/1073205176872435713 ("He was a lawyer and he is supposed to know the law.").

and thus are not subject to Commission regulation, the available information indicates that AMI's payments to McDougal and Sajudin were not made in connection with AMI's business or editorial functions. Instead, the available information indicates that AMI's payments were made to benefit Trump's campaign, were made at Trump's direction, and, for the reasons explained below, were not covered by the press exemption. Thus, the available information supports the conclusion that the AMI's payments were expenditures coordinated with Trump and thus constituted in-kind contributions to Trump and the Trump Committee.

As such, AMI and Pecker appear to have violated the Act by making and consenting to the making corporate contributions in the form of payments from AMI to McDougal and Sajudin. As explained below, the record indicates that there is reason to believe that these violations were knowing and willful.

A. Press Exemption

Under 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,"[114] 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."[115] Under Commission regulations, the phrase "anything of value" includes all in-kind contributions.[116] In-kind contributions include, among other things, coordinated expenditures.[117]

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114 52 U.S.C. § 30101(8)(A).

115 52 U.S.C. § 30101(9)(A).

116 11 C.F.R. § 100.52(d)(1).

117 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,

Under the Act, the 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."[118] This exemption is called the "press exemption" or "media exemption."[119] Costs covered by the exemption are also exempt from the Act's disclosure and reporting requirements.[120] If the press exemption applies to AMI's payments to McDougal and Sajudin, then those payments would not be contributions or expenditures under the Act.

To assess whether the press exemption applies, the Commission uses a two-part test.[121] The first inquiry is whether the entity engaging in the activity is a "press entity."[122] Second, the Commission determines the scope of the exemption by applying the two-part analysis presented in *Reader's Digest Association v. FEC*: (1) whether the entity is owned or controlled by a political party, political committee, or candidate; and (2) whether the entity is acting within its "legitimate press function" in conducting the activity.[123]

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or their agents); *see* 11 C.F.R. § 109.20 (defining "coordination"); *see also Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

[118] 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.

[119] Advisory Op. 2011-11 (Colbert) at 6 ("AO 2011-11"); Advisory Op. 2008-14 (Melothé) at 3 ("AO 2008-14").

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

[121] Advisory Op. 2005-16 (Fired Up!) at 4 ("AO 2005-16").

[122] *Id.*

[123] *See Reader's Digest Ass'n v. FEC*, 509 F. Supp. 1210, 1214-15 (S.D.N.Y. 1981); AO 2011-11 at 6-7. When determining whether the entity was acting within the scope of a legitimate press function at the time of the alleged violation, the Commission considers two factors: (1) whether the entity's materials are available to the

The Commission has long recognized that an entity otherwise eligible for the press exemption "would not lose its eligibility merely because of a lack of objectivity in a news story, commentary, or editorial, even if the news story, commentary, or editorial expressly advocates the election or defeat of a clearly identified candidate for Federal office."[124] Nonetheless, "the Commission is also mindful that a press entity's press function is 'distinguishable from active participation in core campaign or electioneering functions.'"[125] In other words, "the press exemption covers press activity, not campaign activity by a press entity."[126]

Although the Commission considers "legitimate press function" broadly, not all actions taken by press entities are considered legitimate press functions for purposes of the media exemption.[127] The court in *Reader's Digest Association* reasoned that:

> [T]he statute would seem to exempt only those kinds of distribution that fall broadly within the press entity's legitimate press function. It would not seem to exempt any dissemination or distribution using the press entity's personnel or equipment, no matter how unrelated to its press function. If, for example, on Election Day a partisan newspaper hired an army of incognito propaganda distributors to stand on street corners denouncing allegedly illegal acts of a candidate and sent sound trucks through the streets blaring the same denunciations, all in a manner unrelated to the sale of its newspapers, this activity would not come within the press exemption.[128]

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general public; and (2) whether they are comparable in form to those ordinarily issued by the entity. *See Reader's Digest Ass'n,* 509 F. Supp. at 1215; Factual & Legal Analysis at 4, MUR 7231 (CNN); Advisory Op. 2016-01 (Ethiq) at 3. However, because the activity here does not include the publication of any materials, this second factor is not relevant to the analysis.

[124] Factual & Legal Analysis at 5, MUR 7206 (Bonneville International Corp.) (quotation marks omitted) (quoting AO 2005-16 at 6); Factual & Legal Analysis at 3, MUR 6579 (ABC News, Inc.).

[125] AO 2011-11 at 8 (quoting AO 2008-14).

[126] *Id.*

[127] *See McConnell v. FEC*, 540 U.S. 93, 208 (2003) (commenting that the press exemption "does not afford *carte blanche* to media companies generally to ignore FECA's provisions").

[128] *Reader's Digest*, 509 F. Supp. at 1214; *see also McConnell,* 540 U.S. at 208 (noting that the press exemption "does not afford *carte blanche* to media companies generally to ignore FECA's provisions"); AO 2011-

When analyzing a press entity's activities outside of the distribution of news stories, commentary, and editorials through media facilities, a court has found the press exemption applicable when the actions in question pertain to seeking subscribers or promoting the publication.[129] A district court has also observed that the Commission has a limited ability to investigate activities that potentially may be normal press functions but are nevertheless unusual; such activities may be subject to additional scrutiny only to determine if they are, indeed, within the press exemption.[130]

When distinguishing between an entity's legitimate press functions and its participation in campaign functions, the Commission has applied the Supreme Court's "considerations of form" analysis as set forth in the U.S. Supreme Court's *FEC v. Massachusetts Citizens for Life* decision ("*MCFL*"), which examined whether the activity in question is comparable in form to the press entity's regular activities, considering whether the complained-of activities and content are produced in the same manner, using the same people, and subject to the same review and distribution as the press entity's general activities.[131]

In an Advisory Opinion analyzing the formation of a political committee by television personality and talk show host Stephen Colbert, the Commission concluded that certain activities undertaken by the press entity (Viacom) would be covered by the press exemption but that other activities would not. Coverage of the political committee created for Colbert's television show

11 at 8 ("While the press exemption covers press activity, it does not cover campaign activity, even if the campaign activity is conducted by a press entity").

129 *FEC v. Phillips Publishing Inc.,* 517 F. Supp. 1308, 1313 (D.D.C. 1981) (applying the press exemption to a letter soliciting new subscribers).

130 *Phillips* at 1313-14.

131 AO 2011-11 at 8 (citing *FEC v. Mass. Citizens for Life ("MCFL")*, 479 U.S. 238, 251 (1986)).

would be covered by the press exemption; however, Viacom could not create content for Colbert's committee for distribution outside of his television show, or administer the political committee, because such activities would amount to "active participation [by Viacom] in core campaign or electioneering functions."[132] In reaching this conclusion, the Commission explained that to allow Viacom to produce content for the Colbert committee to distribute beyond the show under these circumstances "would stretch the boundaries of the press exemption far beyond those contemplated by Congress and the Supreme Court."[133]

Consistent with this analysis, the Commission has found that a press entity's sale or purchase of airtime would not fall within the press exemption.[134] Similarly, the Commission has explained when analyzing "legitimate press functions" that "the provision of personnel to benefit a political campaign is not a legitimate press function."[135]

Here, the available information indicates that the press exemption does not cover AMI's payments to McDougal or Sajudin. AMI appears to be a press entity that has produced news stories on a regular basis through a variety of periodical publications,[136] and AMI represents that it is not owned or controlled by a political party, political committee, or federal candidate.[137]

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132 *Id.* at 9.

133 *Id.* (citing *MCFL*, 479 U.S. at 251; *Reader's Digest Ass'n,* 509 F. Supp. at 1214; *McConnell,* 540 U.S. at 208).

134 Factual & Legal Analysis at 8-9, MUR 7073 (Meluskey for U.S. Senate, Inc.) (finding that the press exemption did not cover a candidate's radio show when the candidate or a business entity affiliated with the candidate paid radio stations to air his radio show); *see also* Factual & Legal Analysis at 6, MUR 6089 (People with Hart) (finding that a station does not act as a press entity when it sells airtime to another party and cedes editorial control).

135 AO 2008-14 at 6.

136 AMI Non-Prosecution Agreement, Ex. A ¶ 1; MURs 7324/7332 AMI Resp., Howard Aff. ¶¶ 5-11.

137 MURs 7324/7332 AMI Resp. at 12; *see also id.*, Howard Aff. ¶ 3.

Although AMI appears to argue that the First Amendment in general protects it from mere inquiry into why it chooses not to run stories, such inquiry is unnecessary in this matter because AMI, after submitting its Response, admitted in its Non-Prosecution Agreement with DOJ that its actions were not undertaken in connection with any press function but were rather to benefit Trump, a personal friend of Pecker, and his campaign.[138] Similarly, AMI's assertion in its Response that it developed renewed interest in McDougal's story because she had "elevated her profile" by launching her own beauty and fragrance line[139] is directly refuted by AMI's subsequent admission in its Non-Prosecution Agreement 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."[140] As a result, AMI's editorial judgment is not at issue in these matters, because AMI has already acknowledged that it made or facilitated the payments to McDougal and Clifford for an electoral, as opposed to editorial, purpose.[141]

In addition to this admission, AMI's payment to McDougal would not meet the standard set forth in *MCFL* as applied by the Commission for determining whether its payment was a legitimate press function. According to AMI, the payment was for an amount more than AMI

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138 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).

139 MURs 7324/7332 AMI Resp. at 6.

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

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

would typically pay for stories because AMI expected to be reimbursed by Trump.[142] This acknowledgement, along with information indicating that AMI valued McDougal's contributions to its publications at significantly less than the $150,000 it paid to her, strongly indicates that the payment to McDougal is inconsistent with AMI's regular treatment of other sources, that the payment was not made to secure material to be used in producing and distributing content, and that the payment was not made in the same manner as, or even in connection with, AMI's general activities as a press entity.[143] Consistent with the Commission's analysis in AO 2011-11, allowing AMI to assert the press exemption here despite its admissions that its activity was undertaken for political purposes "would stretch the boundaries of the press exemption far beyond those contemplated by Congress and the Supreme Court."[144]

AMI's involvement in both the payment to McDougal and the payment Cohen made to Clifford on behalf of Trump, along with the overlap of individuals involved in the discussion and negotiation of both payments, as well as AMI's admitted involvement in an effort to identify and purchase stories damaging to Trump's campaign, suggest an ongoing pattern of using AMI resources to make payments for the purpose of benefitting Trump's campaign.[145] In October 2016, Davidson, the same attorney who had represented McDougal in her negotiations with AMI, reportedly contacted Pecker and Howard at AMI and offered to confirm Clifford's story on

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[142] *Id.*, Ex. A ¶ 5; *see also* McDougal 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.").

[143] *See* WSJ Nov. 9 Article (reporting that, in Pecker and Cohen's contemplated agreement to transfer the rights to McDougal's story to Trump for $125,000, "the magazine covers and fitness columns, the rights to which the publisher would retain" were valued at $25,000).

[144] AO 2011-11 at 9.

[145] *See* SDNY Information ¶¶ 24-44; WSJ Jan. 12 Article (outlining details of the payment to Clifford); Farrow, Catch and Kill at 345 (noting AMI's involvement in the payments to McDougal, Sajudin, and Clifford).

the record.[146] According to press reports, AMI, unwilling to make an additional payment to benefit Trump's campaign, nevertheless served as an intermediary to facilitate Clifford's silence[147] and put Davidson in touch with Michael Cohen, who then negotiated a $130,000 agreement to purchase Clifford's silence.[148] Davidson's reported multiple negotiations with AMI, each of which ultimately resulted in a payment to prevent the publication of a story that might damage the Trump campaign, indicate his awareness of AMI's general willingness to purchase stories in order to benefit Trump's campaign, and not for legitimate press activity.[149] Finally, AMI's own admissions to DOJ that it had "offered to help with negative stories about [a] presidential candidate's relationships with women by, among other things, assisting the campaign in identifying such stories so they could be purchased and their publication avoided,"[150] indicate an ongoing pattern of using AMI resources to make payments for the

[146] *See* SDNY Information ¶ 32.

[147] *See supra* Section II.C.2; Farrow, Catch and Kill at 345 ("[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."); The Fixers at 176-78 (reporting Howard's initial interest in and Pecker's reluctance to purchasing the rights to Clifford's story and Howard's involvement in the negotiations); *see also* WSJ Nov. 9 Article ("Mr. Cohen asked American Media to buy Ms. Clifford's story. Mr. Pecker refused on the grounds that he didn't want his company to pay a porn star.").

[148] 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* McDougal New Yorker Article; SDNY Information ¶ 32; The Fixers at 178; WSJ Nov. 9 Article.

[149] *See* McDougal Complaint ¶ 47 (alleging that Davidson told McDougal that AMI "would buy the story *not* to publish it, because Mr. Pecker (AMI's CEO) was a close friend of Mr. Trump" (emphasis in original)); *see also* The Fixers at 164-65; WSJ Nov. 9 Article.

[150] AMI Non-Prosecution Agreement, Ex. A ¶ 3.

purpose of benefitting a candidate, admittedly without regard to its editorial decisions or press-related activity such as disseminating news and increasing readership.[151]

AMI's payment to Sajudin fits this pattern as well. Experienced *Enquirer* staffers reportedly identified "the abrupt end to reporting combined with a binding, seven-figure penalty to stop the tipster from talking to anyone" as hallmarks of a catch and kill operation.[152] Further, sources who purportedly were involved with the investigation of Sajudin's tip reportedly stated that the decision to stop investigating was not an editorial decision but one made by Pecker personally.[153] One of those sources added, "There's no question it was done as a favor to continue to protect Trump from these potential secrets. That's black-and-white."[154] Finally, former AMI employees stated to *The New Yorker* that Cohen was kept apprised of the investigation of Sajudin's story, indicating that the decision to purchase and silence Sajudin's story was made for political, rather than editorial, purposes.[155] These statements, which detail

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[151] *See* MURs 7324/7332 AMI Resp. at 5. AMI appears to argue that the First Amendment in general protects it from inquiry into why it chooses not to run stories and asserts that any inquiry would be chilling on the press. *Id.* at 20-21. However, no such inquiry is necessary in this matter because AMI, after submission of its Response, admitted that its actions were not undertaken in connection with AMI's work as a conglomerate of press entities but rather to benefit a personal friend of Pecker. Specifically, AMI admits that Pecker "offered to help with negative stories about [a] presidential candidate's relationships with women by, among other things, assisting the campaign in identifying such stories so they could be purchased and their publication avoided." AMI Non-Prosecution Agreement, Ex. A ¶ 3. To support its argument, AMI cites to cases that address situations not present in the instant matters. *Miami Herald* addresses a situation where a right of reply statute requiring a publication to provide equal space was struck down, affirming the rights of a publication to select its content. *Miami Herald Publishing Co. v. Tornillo,* 418 U.S. 241, 254-57 (1974). Similarly, the decision in *Clifton* centered around the authority to regulate a publication's decisions on what content to include in a voter guide. *Clifton v. FEC,* 114 F.3d 1309, 1310-1311 (1st Cir. 1997). AMI's editorial judgment is not at issue in these matters, because AMI has already acknowledged that it made or facilitated the payments to McDougal and Clifford for an electoral, as opposed to editorial, purpose.

[152] MUR 7364 Compl. at 5 (quoting Sajudin AP Article).

[153] Sajudin New Yorker Article; *see also* The Fixers at 148-49.

[154] Sajudin New Yorker Article.

[155] *See id.* Other sources indicate that Cohen learned of the story when a reporter, unbeknownst to her editors, contacted Rhona Graff. After learning of this call, Cohen reportedly contacted Howard and "pleaded with him not to publish the story." The Fixers at 147.

the ways in which the payment was not comparable to AMI's regular activities in form, scale, personnel, or process, indicate that the decisions surrounding AMI's decision to pay Sajudin amounted to "active participation in core campaigning functions," and were not the sort of activity intended to be protected under the press exemption.[156]

Available information suggests that Sajudin possessed information, which, like Clifford's and McDougal's information, could have harmed Trump's chances of winning the 2016 presidential primary and general elections.[157] Like Clifford and McDougal, Sajudin was reportedly paid for that information, in his case by AMI, and faced significant financial consequences were he to discuss that information publicly.[158] Given AMI's admissions that its payments to McDougal were part of an overall scheme to benefit Trump in the election by identifying and purchasing stories that could damage Trump, the available information supports the reasonable inference that AMI's purchase of Sajudin's story was part of that same scheme to benefit a candidate and was undertaken without regard for editorial or other legitimate press function-related considerations.

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156 *See* AO 2011-11 at 8 (quotation marks omitted).

157 *Compare* AMI Non-Prosecution Agreement, Ex. A ¶ 3 (outlining the overall agreement to "help deal with negative stories about that presidential candidate's relationships with women by, among other things, assisting the campaign in identifying such stories so they could be purchased and their publication avoided"), *with* MURs 7324/7332 AMI Resp., Howard Aff., Ex. A ¶ 7 (requiring McDougal to maintain her silence about her relationship with "any then-married man" and providing that AMI would be entitled to $150,000 in damages for any breach), *and* Sajudin Agreement at 4 (outlining an extension of the exclusivity period contained in the agreement to extend "in perpetuity" and its violation to carry a $1 million penalty). *See also* Sajudin AP Article ("The company only released Sajudin from his contract after the 2016 election amid inquiries from the Journal about the payment.").

158 *See supra* Section II.C.1; The Fixers at 148; Sajudin Agreement at 4; *see also* House Oversight Testimony at 128, 132 (Cohen discusses Pecker's actions to protect Trump and appears to refer to the payment to Sajudin).

In light of all of these circumstances, which include AMI's express admissions that it used a press entity's resources to provide benefits to a candidate, which were unrelated to its legitimate press function, the press exemption does not apply to the payments at issue.

B. The Commission Finds Reason to Believe that AMI's Payments to McDougal and Sajudin Were Prohibited Corporate Contributions

1. The Commission Finds Reason to Believe that AMI's Payments to McDougal and Sajudin Were Coordinated Expenditures

a. Coordination

The Act and Commission regulations prohibit corporations from making contributions to candidate committees in connection with a federal election.[159] Likewise, it is unlawful for any candidate, candidate committee, or other person to knowingly accept or receive such a prohibited contribution, and for any officer or director of a corporation to consent to any such contribution.[160] The Commission has consistently found that payments by a third party that are intended to influence an election and are "coordinated" with a candidate, authorized committee, or agent thereof are "coordinated expenditures" that result in a contribution by the person making the expenditure to the candidate or political committee with whom the expenditure was coordinated.[161]

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159 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

160 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d)-(e).

161 *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).

The available information indicates that AMI's payments to McDougal and Sajudin were "coordinated" with Trump and his agent Cohen because they were made "in cooperation, consultation or concert with, or at the request or suggestion" of Trump, personally, and Cohen in his capacity as an agent for Trump.[162]

Trump reportedly held the August 2015 meeting with Pecker and Cohen, in which Pecker agreed to purchase negative stories on behalf of Trump and his campaign, in his office at Trump Tower, suggesting that he was aware of, and agreed to, the plan to have AMI make payments to individuals in possession of stories damaging to the Trump campaign in order to help his campaign.[163] Further, Trump appears to have maintained an ongoing role in and awareness of AMI's negotiations with individuals possessing potentially damaging stories by contacting AMI directly, and by receiving updates concerning AMI's negotiations from Cohen.[164] For example, according to press reports and Cohen himself, on June 27, 2016, after Cohen notified Trump that AMI was in contact with McDougal, Trump telephoned Pecker and asked Pecker to make McDougal's story go away.[165] Press reports also indicate that later, when AMI informed Cohen that McDougal was fielding an offer from ABC for her story, Cohen updated Trump; Cohen also subsequently notified Trump once McDougal signed the agreement with AMI.[166] The available

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162 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(a)-(b).

163 *See* WSJ Nov. 9 Article; AMI Non-Prosecution Agreement, Ex. A ¶ 3.

164 The Fixers at 166-68 (detailing Trump's awareness of AMI's negotiations with McDougal); Cohen Book at 285 (stating that, after receiving an update from Cohen about McDougal's story, Trump "immediately called Pecker"); *see also* WSJ Nov. 9 Article.

165 *See* The Fixers at 166; Cohen Book at 285.

166 *See* The Fixers at 168-69; *see also* House Oversight Testimony at 29-30 ("[Question:] Mr. Cohen, in your 10 years of working for Donald Trump[,] did he control everything that went on in the Trump Organization? And did you have to get his permission in advance and report back after every meeting of any importance. [Answer:] Yes. There was nothing that happened at The Trump Organization . . . that did not go through Mr. Trump with his approval and sign-off, as in the case of the payments.").

information also indicates that AMI reportedly initially placed a low value on McDougal's story but was nevertheless directed by Trump to purchase her story.[167] Thus, the record indicates that AMI acted in consultation with and at the request or suggestion of Trump.

In addition, AMI has admitted in its Non-Prosecution Agreement with DOJ that it made its payment to McDougal "in cooperation, consultation, and concert with, and at the request and suggestion of one or more members or agents of a candidate's 2016 presidential campaign, to ensure that a woman did not publicize damaging allegations about that candidate before the 2016 presidential election and thereby influence that election," and the available information makes clear that Cohen served as an agent of Trump in his discussions with AMI.[168]

As relevant here, the Commission has defined an "agent" of a federal candidate as "any person who has actual authority, either express or implied," to engage in certain activities with respect to the creation, production, or distribution of communications.[169] That definition applies in the contexts of coordinated communications and non-communication coordinated expenditures.[170] The Commission has explained that "[t]he grant and scope of the actual authority, whether the person is acting within the scope of his or her actual authority, and

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167 *See supra* Section II.B.

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

169 11 C.F.R. § 109.3.

170 *Id.*; *see also id.* § 109.21(a) (addressing actions of "an agent" with respect to coordinated communications); *id.* § 109.20(a) (addressing non-communication activities of "an agent" with respect to coordinated expenditures); Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 425 (Jan. 3, 2003) ("Coordination E&J") (explaining that section 109.20(b) applies to "expenditures that are not made for communications but that are coordinated with a candidate, authorized committee, or political party committee"); Advisory Op. 2011-14 (Utah Bankers Association); 11 C.F.R. § 300.2(b)(3) (defining "agent" of a federal candidate or officeholder as "any person who has actual authority, either express or implied . . . to solicit, receive, direct, transfer, or spend funds in connection with any election"); Definitions of "Agent" for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4975 (Jan. 31, 2006) ("Agency E&J") ("[Agent means] 'any person who has actual authority, either express or implied' to perform certain actions."); Coordination E&J, 68 Fed. Reg. at 423 (explaining that "agent" definition at section 109.3 is modeled on the definition set forth in section 300.2(b)).

whether he or she is acting on behalf of the principal or a different person, are factual determinations that are necessarily evaluated on a case-by-case basis in accordance with traditional agency principles."[171] It has also explained that "[a]n agent's actual authority is created by manifestations of consent (express or implied) by the principal to the agent about the agent's authority to act on the principal's behalf."[172] Further, the regulatory definitions of "agent" "cover the wide range of activities prohibited by [the Bipartisan Campaign Reform Act of 2002] and the Act, thereby providing incentives for compliance, while protecting core political activity."[173] Finally, the Commission has explained that the definitions of "agent" are broad enough to capture actions of individuals with certain titles or positions, actions by individuals where the candidate privately instructed the individual to avoid raising non-Federal funds, actions by individuals acting under indirect signals from a candidate, and actions by individuals who willfully keep a candidate, political party committee, or other political committee ignorant of their prohibited activity.[174] Thus, the Commission has concluded that an individual is an agent of the candidate when the candidate "provides [that individual] with actual authority."[175]

The available information in this matter indicates that Trump provided Cohen with actual authority to engage with AMI in the catch and kill scheme. With respect to the McDougal

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171 Coordination E&J, 68 Fed. Reg. at 425.

172 Advisory Op. 2007-05 (Iverson) at 3-4 ("AO 2007-05") (citing Agency E&J, 71 Fed. Reg. at 4976 and stating that if a candidate or federal officeholder provides an individual "with actual authority to solicit and receive contributions, then [that individual] would be an agent of a [f]ederal candidate or officeholder") (internal citations omitted).

173 Agency E&J, 71 Fed. Reg. at 4976-77.

174 *Id.* at 4978-79.

175 AO 2007-05 at 4.

payment scheme, it appears that Cohen played a crucial role in identifying to AMI Trump's interest in suppressing the story, negotiating, on Trump's behalf, the terms of AMI's payment, and negotiating (even if unsuccessfully) the terms of Trump's repayment of those funds, acting at Trump's direction and with his approval to proceed.[176] The guilty plea from Cohen, the admissions from AMI, and information in press reports about Cohen's actions taken on Trump's authority and Trump's manifestations of assent for those actions, all support the conclusion that Cohen was acting as an agent of Trump when he facilitated the payment from AMI to McDougal.[177]

Finally, the available information supports the inference that AMI's payment to Sajudin was also made in accordance with the catch and kill agreement between Trump and AMI. The payment to Sajudin was made in late 2015, subsequent to Trump's August 2015 meeting and agreement with Cohen and Pecker.[178] The amount of the payment was also unusual when compared to AMI's payments to legitimate sources, because it was paid prior to publication or investigation, was for a substantial sum, and carried an even more substantial penalty for disclosure. The circumstances and timing of the payment support a conclusion that the payment was part of AMI's catch and kill agreement with Trump because AMI paid Sajudin after

[176] AMI Non-Prosecution Agreement, Ex. A ¶¶ 4-6 (stating that AMI began negotiations with Davidson and McDougal "[a]t Cohen's urging and subject to Cohen's promise that AMI would be reimbursed"); The Fixers at 147-48, 166-68 (detailing Cohen's involvement in the McDougal payment scheme); Cohen Book at 284-89 (same).

[177] The available information indicates that Trump, directly and through his counsel, Giuliani, has not denied that Cohen's actions in connection with the McDougal and Clifford payments were undertaken as Trump's agent. *See supra* Section II.D. The lawfulness of the activity is not, however, relevant to the agency determination; the Commission has explained that it "rejects . . . the argument that a person who has authority to engage in certain activities should be considered to be acting outside the scope of his or her authority any time the person undertakes unlawful conduct. It is a settled matter of agency law that liability may exist 'for unlawful acts of [] agents, provided that the conduct is within the scope of the agent's authority, whether actual or apparent.'" Coordination E&J, 68 Fed. Reg. at 424 (quoting *U.S. v. Investment Enterprises, Inc.*, 10 F.3d 263, 266 (5th Cir. 1993)).

[178] *See* AMI Non-Prosecution Agreement, Ex. A ¶ 3.

agreeing to catch and kill such stories on behalf of Trump. Additionally, Cohen has appeared to testify to his awareness of the payment to Sajudin.[179] A payment made by AMI pursuant to the catch and kill agreement between Pecker, Trump, and Cohen is a payment made by AMI in consultation with and at the request or suggestion of Trump and Cohen, as an agent of Trump.

Accordingly, the AMI payments to McDougal and Sajudin meet the definition of "coordinated" in 11 C.F.R. § 109.20(a) in that they were made in cooperation, consultation or concert with, or at the request or suggestion of Trump or Trump's agent Cohen. The coordinated payments would constitute in-kind contributions from AMI to Trump and the Trump Committee if they were "expenditures," that is, made for the purpose of influencing Trump's election.

b. For the Purpose of Influencing an Election

The "purpose" of influencing a federal election is a necessary element in defining whether a payment is a "contribution" or "expenditure" under the Act and Commission regulations.[180] In analyzing whether a payment made by a third party is a "contribution" or "expenditure,"[181] the Commission has concluded that "the question under the Act is whether" the donation, payment, or service was "provided for the purpose of influencing a federal election [and] not whether [it] provided a benefit to [a federal candidate's] campaign."[182] The electoral purpose of a payment may be clear on its face, as in payments to solicit contributions or for

179 *See* House Oversight Testimony at 128, 132 (discussing Pecker's actions to protect Trump and appearing to refer to the payment to Sajudin, as well as Cohen and Trump's attempt to purchase the rights to stories silenced by AMI and the "treasure trove of documents" related to those stories).

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

181 52 U.S.C. § 30101(8)(A)(i), (9)(A)(i).

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

communications that expressly advocate for the election or defeat of a specific candidate, or inferred from the surrounding circumstances.[183]

When electoral purpose is not apparent on its face, the Commission has previously concluded that payments would result in a contribution or expenditure if they were made to potentially advance a candidacy, if they were made because of the beneficiary's status as a federal candidate, or if the payment was coordinated with the candidate or his campaign.

For example, in Advisory Opinion 1990-05, the Commission concluded that the publication expenses of a newsletter by a candidate-owned company would be expenditures if the newsletter referred to the candidate's campaign or qualifications for office, referred to issues or policy positions raised in the campaign (by the candidate or her opponents), or if the distribution of the newsletter significantly expanded or otherwise indicated that it was being used as a campaign communication.[184] The Commission indicated that any discussion of issues or policies "closely associated" with the candidate's federal campaign "would be inevitably

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[183] *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). 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 the *only* purpose — acknowledging that "[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).

[184] AO 1990-5 at 4.

perceived by readers as promoting your candidacy," and the newsletter would therefore be "viewed by the Commission as election-related and subject to the Act."[185]

Similarly, in Advisory Opinion 2000-08, the Commission concluded that a donor's provision of a monetary "gift" to a federal candidate to express "gratitude" and "deep appreciation" to him for running for office would be made to influence a federal election — notwithstanding the donor's statements that he intended that the gift be used solely for personal expenses and did not "wish to directly support [the candidate's] campaign" — because "the proposed gift would not be made but for the recipient's status as a Federal candidate; it is, therefore, linked to the Federal election" and "would be considered a contribution."[186]

Conversely, the Commission has previously found that activity by or in connection with a federal candidate that is undertaken for any number of non-electoral purposes — including, *e.g.*, activity to advance a commercial interest,[187] fulfill the obligations of holding federal office,[188] or

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185 *Id.* at 2, 4.

186 AO 2000-08 at 2-3.

187 *E.g.*, Advisory Op. 2012-31 (AT&T) at 4 (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 Rpt. at 13-17, MURs 5474 and 5539 (Dog Eat Dog Films) (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 (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").

188 *E.g.*, Advisory Op. 1981-37 at 2 (Gephardt) (concluding that 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).

engage in non-candidate oriented election litigation [189] — does not necessarily result in a "contribution" or "expenditure," even if such activity confers a benefit on a federal candidate or otherwise impacts a federal election.

With respect to the McDougal payment, it is unnecessary to infer the circumstances behind the payment; both AMI and Cohen have already acknowledged, in a sworn plea, agreement, and testimony, that the purpose of paying McDougal was to prevent her story from influencing the election. In the AMI Non-Prosecution Agreement, AMI explicitly admits that its "principal purpose in entering into the agreement [with McDougal] was to suppress the model's story" and "to ensure that [she] did not publicize damaging allegations about [Trump] before the 2016 presidential election and thereby influence that election."[190] Further, AMI admits that the payment to McDougal was part of an overarching scheme in "assisting [the] campaign" in identifying and purchasing "negative stories about [his] relationships with women" to prevent their publication.[191] Cohen admits that he worked with AMI, the *Enquirer*, Pecker, and Howard to catch and kill McDougal's story and that his work with AMI in connection with the $150,000 payment was done "at the request of the candidate."[192]

Even absent AMI and Cohen's explicit admissions, consistent with prior matters in which the Commission found the payment resulted in a contribution or expenditure, the overall record

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[189] *E.g.*, Factual & Legal Analysis at 8, MUR 7024 (Van Hollen for Senate) (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").

[190] AMI Non-Prosecution Agreement, Ex. A ¶¶ 2, 5.

[191] *Id.* ¶ 3.

[192] House Oversight Testimony at 30, 99-100 (noting that Pecker had paid hush money to other individuals in addition to McDougal); Cohen Plea Hearing at 23; *see supra* note 18.

in these matters — including the timing of the negotiations and payments to McDougal and Sajudin, the terms of the agreements relative to AMI's usual practices, the release from the non-disclosure provisions shortly after the election, and the coordination between AMI, Trump, and Cohen[193] — indicates that the payments would not have been made absent Trump's status as a candidate. As with the facts the Commission considered in Advisory Opinions 1990-05 and 2000-08, the available information in this matter supports the conclusion that the purpose of the McDougal and Sajudin payments *was* to influence the 2016 election, irrespective of any incidental effects they may have had on Trump personally.[194] Although McDougal and Sajudin's stories involved years- and decades-old allegations, respectively, and Pecker and Trump reportedly have a longstanding friendship such that "critical coverage of Trump vanished" once Pecker "took over" AMI,[195] AMI's specific catch and kill effort to obtain and

[193] *See supra* Sections II.A, B, C.1 (discussing McDougal and Sajudin's negotiations with AMI after the August 2015 meeting between Pecker, Cohen, and Trump, during which they agreed that Pecker would catch and kill negative stories about Trump's relationships with women so that they were not published before the election); AMI Non-Prosecution Agreement, Ex. A ¶ 5 (acknowledging that $150,000 payment to McDougal was substantially higher that AMI would normally pay); Sajudin AP Article (reporting that the amount and circumstances of the Sajudin payment — $30,000 for secondhand information regarding a story that was abandoned mid-investigation and that was never published — were inconsistent with AMI's standard practices, indicating to the *Enquirer* staffers who spoke on the subject that it was part of a catch and kill operation). Sajudin's story was decades old, second-hand, and like McDougal and Clifford's stories, was not purchased until Trump's campaign was underway, indicating that, given the timing and agreement between AMI, Trump, and Cohen, the purchase of the stories was aimed at improving Trump's chances of winning the presidency.

[194] *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." AO 2000-08 at 3; *see also* 52 U.S.C. § 30114(b) (prohibiting use of campaign funds "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 (Feb. 9, 1995) ("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."). .

[195] 2017 New Yorker Article.

prevent the publication of damaging stories, including McDougal's and Sajudin's, began only after Trump became a candidate for president in June 2015.[196]

Thus, the available information supports the conclusion that AMI's payments to McDougal and Sajudin were coordinated with Trump and were made for the purpose of influencing Trump's election, resulting in AMI making "coordinated expenditures" under the Act.[197]

2. The Commission Finds Reason to Believe that AMI's Payments to McDougal and Sajudin Were Prohibited Corporate In-Kind Contributions to the Trump Committee

Because the available information indicates that AMI's payments to McDougal and Sajudin were coordinated expenditures made for the purpose of influencing the 2016 election, the record supports a reason to believe finding that the payments constituted in-kind contributions from AMI to Trump and the Trump Committee.[198] Further, because the payments were in-kind contributions to the Trump Committee, they were subject to the contribution limits and prohibitions set forth in the Act and Commission regulations.[199] The Act and Commission

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[196] *See* Donald J. Trump, Statement of Candidacy (June 22, 2015); AMI Non-Prosecution Agreement, Ex. A ¶ 3 (admitting that "Pecker offered to help deal with negative stories about [Trump's] relationships with women by, among other things, assisting the campaign in identifying such stories so they could be purchased and their publication avoided"); 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) (recapping Trump's 2015 campaign launch). Although the Trump Committee asserts that AMI's payment to McDougal was a "private" and commercial transaction, the Trump Committee relies on arguments that AMI has disavowed in its later admissions to DOJ, which also contradict AMI's Responses and affidavit that it submitted to the Commission; thus, the Trump Committee's arguments are not credibly supported by the record. *Compare* MURs 7324/7332 AMI Resp. at 29-30, *with* AMI Non-Prosecution Agreement, Ex. A ¶¶ 2-9.

[197] In addition, the payments to public relations firms by AMI under the Amendment to the McDougal agreement, which were used to allow AMI to control the narrative surrounding McDougal's story and further prevent McDougal from speaking about her relationship with Trump, likely were made for the purpose of influencing the 2020 presidential election and likely were coordinated expenditures resulting in in-kind contributions from AMI to Trump and Trump Committee.

[198] *See* 11 C.F.R. § 109.20(b).

[199] 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.

regulations prohibit corporations from making contributions to candidate committees.[200] 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 corporation to consent to making any such contribution.[201]

The Commission has previously found violations of the Act by a corporation and its officers in connection with similar payments to third parties. In MUR 7248, the Commission found reason to believe that Cancer Treatment Centers of America and several of its corporate officers violated 52 U.S.C. § 30118 by making and consenting to prohibited corporate contributions where the corporate officers engaged in a reimbursement scheme whereby executives were reimbursed via bonuses for their political contributions.[202]

While corporate contributions to candidate committees are *per se* prohibited and do not require proof of the contributor's knowledge of the violation, AMI has admitted to DOJ that it knew that corporations are prohibited from contributing to candidate committees like the Trump Committee.[203] The AMI Non-Prosecution Agreement states:

§ 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.

200 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

201 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d)-(e).

202 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).

203 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. At no time did AMI report to the Federal Election Commission that it had made the $150,000 payment to [McDougal].[204]

Thus, AMI has admitted that it made the payment to McDougal while knowing that it was unlawful.[205] It is reasonable to infer, further, that AMI also knew its payment to Sajudin was unlawful when it made that payment in December 2015.

The available information also indicates that Pecker, as an officer of AMI,[206] did not merely consent to the McDougal and Sajudin corporate in-kind contributions, but also actively participated in the decision to make the contributions by negotiating, in consultation with Trump and Cohen, the amounts that would be paid and the terms of the agreements.[207] As in MUR 7248, Pecker violated the Act by consenting to the payments to McDougal and Sajudin.[208]

Thus, the Commission finds reason to believe that AMI and Pecker violated 52 U.S.C. § 30118(a) by making and consenting to prohibited corporate in-kind contributions.

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204 *Id.*

205 *See infra* Section III.C; *see also* 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.").

206 Pecker, as the President and CEO, and Howard, as Vice President and Chief Content Officer, were officers of AMI and their ability to act on the corporation's behalf can be reasonably inferred from their actions in the negotiations with McDougal and Sajudin, from Howard's signature on AMI's agreement with McDougal, and Howard's discussion and approval of the Sajudin negotiations, as evidenced in his statements in the AMI-published Radar Online Article.

207 *See supra* Section II.B.

208 *See supra* note 202 and accompanying text.

C. The Commission Finds Reason to Believe that the Violations Set Forth Above Were Knowing and Willful

The Act prescribes additional penalties for "knowing and willful" violations,[209] which are defined as "acts [that] were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law."[210] This standard does not require knowledge of the specific statute or regulation that the respondent allegedly violated; it is sufficient to demonstrate that a respondent "acted voluntarily and was aware that his conduct was unlawful."[211] Such awareness may be shown through circumstantial evidence from which the respondent's unlawful intent may be reasonably inferred,[212] including, for example, an "elaborate scheme for disguising" unlawful acts.[213]

The available information supports a reason to believe finding that AMI and Pecker's foregoing violations were knowing and willful. AMI, through its Non-Prosecution Agreement, admitted that it knew its actions were unlawful.[214] Furthermore, Pecker's overt agreement with

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

210 122 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).

211 *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)).

212 *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.

213 *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)).

214 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").

Trump and Cohen and Howard's direct involvement in the negotiations indicate that Pecker was a party in a scheme to both hide the stories and the payments.[215] Pecker's reported actions to destroy the contents of a safe containing stories purchased by AMI also suggest awareness of the illegality of his actions.[216] Further, Pecker's reported reluctance to proceed with the assignment agreement after consulting with AMI counsel Stracher indicates that Pecker understood the potentially negative optics of AMI's payment to McDougal becoming public.[217] Although Pecker reportedly consulted with a campaign finance expert before sanctioning AMI's payment to McDougal, the McDougal agreement itself was structured in such a way as to hide the appearance of impropriety or illegality — by paying McDougal not just for her story but also, pretextually, for future work; AMI reportedly did not seek such work from McDougal until after AMI's payment to McDougal was publicly reported in the press.[218] Thus, the available information indicates that the unlawful actions that served as the basis of AMI's Non-Prosecution Agreement were undertaken by Pecker in his capacity as an officer and agent of AMI.[219] As such, the information indicates that AMI and Pecker knew that AMI's payments to McDougal and Sajudin violated the Act, and they acted voluntarily and with awareness of

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

216 Farrow, Catch and Kill at 16-17.

217 *See supra* note 65 and accompanying text; The Fixers at 170-71 (reporting that Pecker discussed the rights transfer with Stracher, "who told the media executive that he'd be crazy to sell McDougal's story to Trump. The optics would be terrible if it ever came out"); WSJ Nov. 9 Article.

218 *See* The Fixers at 169; *see also* WSJ Nov. 9 Article.

219 *See supra* Section III.B.2; *see also supra* note 20 (citing articles reporting that Pecker was reportedly granted immunity in exchange for his cooperation).

unlawfulness when they negotiated the agreements with McDougal and Sajudin and made the corresponding payments.

As to the Sajudin payment, although the current record is less fulsome, the available information provides a basis to conclude that the Sajudin payment is consistent with the catch and kill agreement between Pecker, Trump, and Cohen, an agreement which AMI has acknowledged in the context of the McDougal payment it knew was unlawful.

Accordingly, the Commission finds reason to believe that the violations of the Act by AMI and Pecker, as set forth above, were knowing and willful.

ELW 2/22/2021

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS:	Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer Donald J. Trump	MURs 7324, 7332, 7364, and 7366

I. INTRODUCTION

The Complaints in these four matters allege that Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer (the "Trump Committee") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), in connection with payments American Media, Inc., which is now A360 Media, LLC[1] ("AMI") made to two individuals in advance of the 2016 presidential election to suppress negative stories about then-presidential candidate Donald J. Trump's relationships with several women.[2] Specifically, the Complaints allege that then-AMI corporate officers David J. Pecker and Dylan Howard worked with Michael D. Cohen, who served as Trump's personal attorney, to negotiate a payment of $150,000 to Karen McDougal in August 2016 for the purpose of influencing Trump's election by suppressing her story of an alleged personal relationship with Trump.[3] The Complaints in MURs 7364 and 7366 further allege that AMI also negotiated a $30,000 payment to Dino Sajudin in December 2015 to prevent publication of a rumor Sajudin had heard that Trump had fathered a child with an employee at Trump World Tower.[4]

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1 *See infra* note 13 and accompanying text.

2 The Trump Committee's treasurer during the 2016 election cycle was Timothy Jost; its current treasurer is Bradley T. Crate.

3 MUR 7324 Compl. at 2 (Feb. 20, 2018); MUR 7332 Compl. at 1-2 (Feb. 27, 2018); MUR 7364 Compl. at 4 (Apr. 12, 2018); MUR 7366 Compl. at 2 (Apr. 17, 2018).

4 MUR 7364 Compl. at 4; MUR 7366 Compl. at 2, 5-6.

The Trump Committee asserts that the Complaints fail to establish any nexus between the Trump Committee and the transactions between AMI, McDougal, and Sajudin.[5] Trump did not respond in his personal capacity. After the Trump Committee's Responses were filed, Cohen pleaded guilty to willfully causing an unlawful corporate contribution concerning the payment to McDougal and is currently serving the remainder of his sentence under home confinement in connection with that plea.[6] AMI entered into a non-prosecution agreement with the Department of Justice ("DOJ") regarding the payment to McDougal.[7]

As discussed below, the available information indicates that Trump, Cohen, and Pecker agreed in August 2015 that Pecker, as President and CEO of AMI, would catch and kill stories that could be damaging to Trump's prospects in the 2016 presidential election, and that in August 2016 — at the direction of Trump and as part of that agreement — Pecker, Howard, and AMI paid McDougal $150,000 to suppress her story of a sexual relationship with Trump, which allegedly occurred while he was married, from becoming public before the 2016 presidential election. Based on the available information, it also appears that Pecker, Howard, and AMI paid Sajudin $30,000 in December 2015 to prevent Sajudin from publicizing his story that Trump had

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[5] MURs 7324/7332 Trump Committee Resp. (Apr. 17, 2018); MUR 7364 Trump Committee Resp. (June 8, 2018); MUR 7366 Trump Committee Resp. (June 8, 2018); MUR 7637 Trump Committee Resp. (Sept. 13, 2019).

[6] *See* Tr. of Proceedings before Hon. William H. Pauley III at 23-24, 27, *United States v. Cohen*, No. 1:18-cr-00602-WHP (S.D.N.Y. Aug. 21, 2018), https://assets.documentcloud.org/documents/4780185/Cohen-Court-Proceeding-Transcript.pdf ("Cohen Plea Hearing"); Tom McParland, *Michael Cohen Released to Home Confinement Because of COVID-19 Concerns,* NEW YORK LAW JOURNAL (May 21, 2020), https://www.law.com/newyorklawjournal/2020/05/21/michael-cohen-released-to-home-confinement-because-of-covid-19-concerns (reporting Cohen's initial release); Mem. of Law in Supp. of Pet'r's Emergency Mot. for a TRO at 4-9, 12-23, *Cohen v. Barr, et al.*, No. 1:20-cv-5614-AKH (S.D.N.Y. July 20, 2020), ECF No. 5 (summarizing Cohen's initial release to home confinement, his return to prison, and his petition to be returned to home confinement); Order Granting Prelim. Inj., *Cohen v. Barr*, *et al.*, No. 1:20-cv-5614-AKH (S.D.N.Y. July 23, 2020), ECF No. 30 (granting Cohen's request to be returned to home confinement).

[7] 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").

fathered a child with an employee of Trump World Tower. Accordingly, the Commission finds reason to believe that: (1) Trump knowingly and willfully violated 52 U.S.C. § 30118(a) by knowingly accepting prohibited contributions; (2) the Trump Committee knowingly and willfully violated 52 U.S.C. § 30118(a) by knowingly accepting prohibited contributions; and (3) the Trump Committee knowingly and willfully violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) and (b) by failing to report the contributions.

II. FACTUAL BACKGROUND

Trump declared his presidential candidacy on June 16, 2015, and registered the Trump Committee, his principal campaign committee, with the Commission on June 29, 2015.[8] Michael D. Cohen was an attorney for the Trump Organization,[9] worked as special counsel to Trump, and served as a Trump Committee surrogate in the media.[10] AMI was a publishing

[8] 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).

[9] Trump Organization, LLC is a limited liability company ("LLC") organized under the laws of New York on August 4, 1999 and its registered agent is National Registered Agents, Inc. The available information does not indicate its tax election status for federal tax purposes. *See* N. Y. Dept. of State, Div. of Corps., *Search Our Corporation and Business Entity Database*, https://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_SEARCH_ENTRY (search entity name: "Trump Organization LLC") (last visited Sept. 30, 2020).

[10] Government's Sentencing Mem. at 11, *United States v. Cohen*, No. 1:18-cr-00602-WHP (S.D.N.Y. Dec. 7, 2018) ("SDNY Cohen Sentencing Memorandum"); *Report on the Investigation into Russian Interference in the 2016 Presidential Election*, U.S. Dep't of Justice, Vol. 1 at 53 (March 2019) (identifying Cohen as a former executive vice president at the Trump Organization and "special counsel to Donald J. Trump"); *Hearing with Michael Cohen, Former Attorney to President Donald Trump before the H. Comm. on Oversight and Reform*, 116th Cong. at 11 (Feb. 27, 2019), https://docs house.gov/meetings/GO/GO00/20190227/108969/HHRG-116-GO00-20190227-SD003.pdf ("House Oversight Testimony") (stating that for more than 10 years, Cohen served as executive vice president and special counsel at the Trump Organization and then worked as Trump's personal attorney when he became President); MUR 7324 Compl. at 8 (referring to Cohen as a "top attorney" at the Trump Organization and as Trump's "fix-it guy"); *see also* 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") (cited by MUR 7324 Compl. at 8, MUR 7332 Second Amend. Compl. at 2 (Aug. 6, 2018), MUR 7364 Compl. at 3, and MUR 7366 Compl. at 5) (referring to Cohen "as a top attorney at the Trump Organization").

company headquartered in New York, New York.[11] In 2016, one of AMI's publications was the *National Enquirer* (the "*Enquirer*"), which is a weekly print and online tabloid publication.[12] In August 2020, AMI reportedly was renamed A360 Media, LLC and plans were announced to merge it with Accelerate 360, a logistics firm.[13] Pecker was the President and Chief Executive Officer of AMI until the merger and reportedly became an executive advisor to the new company.[14] Howard was AMI's Vice President and Chief Content Officer and reportedly left the company on March 31, 2020.[15] The Commission possesses information that from 2013 to

[11] *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).

[12] 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.

[13] 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"). Both A360Media and Accelerate 360 are reportedly controlled by Chatham Asset Management, a New Jersey hedge fund. *Id.* A360 Media, LLC and another entity named A360 Media Holdings, LLC are registered in Delaware. Del. Dept. of State, Div. of Corps., *General Information Name Search*, https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx (search entity name: A360 Media) (last visited Sept. 30, 2020). AMI appears to be doing business as A360 Media, LLC per recent media reports. *See, e.g.*, NY Times Aug. 21 Article.

[14] NY Times Aug. 21 Article.

[15] 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.

2017, Howard was the Editor in Chief of the *Enquirer*. Karen McDougal is a model and actress.[16] Dino Sajudin is a former doorman for Trump World Tower in New York City.[17]

The available information indicates that during Trump's 2016 presidential campaign, AMI and its executives, Pecker and Howard, after discussions with Trump and Cohen, acting as an agent of Trump, paid $150,000 to Karen McDougal to purchase the rights to her claim that she engaged in a relationship with Trump beginning in 2006, while he was married.[18] Cohen

[16] 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")).

[17] Joe Palazzolo & Michael Rothfeld, THE FIXERS at 146 (2020) ("The Fixers") (Palazzolo and Rothfeld are two of the authors of *The Wall Street Journal*'s 2016 reporting as described *infra* at note 18; The Fixers expands upon the reporting in that article); *see also* MUR 7364 Compl. at 4 (citing Jake Pearson and Jeff Horwitz, *$30,000 Rumor? Tabloid Paid for, Spiked, Salacious Trump Tip*, ASSOCIATED PRESS (Apr. 12, 2018), https://www.apnews.com/f37ecfc4710b468db6a103a245146172 ("Sajudin AP Article")).

[18] News reports and Cohen's testimony have identified Trump, AMI, Pecker, Howard, Keith Davidson, McDougal, and Stephanie Clifford as the persons anonymously referenced in documents — including the SDNY Information and Warrant Affidavit — pertaining to DOJ's investigation and prosecution of Cohen, as follows: Trump is "Individual-1"; the Trump Organization is the "Company"; AMI is "Corporation-1"; Pecker is "Chairman-1"; Howard is "Editor-1"; Davidson is "Attorney-1"; McDougal is "Woman-1"; and Clifford is "Woman-2." *See, e.g.*, Information at 11-19, *United States v. Cohen*, No. 1:18-cr-00602-WHP (S.D.N.Y Aug. 21, 2018), ECF No. 2 ("SDNY Information"); Agent Aff. in Supp. of Appl. for Search and Seizure Warrant, *United States v. Cohen*, No. 1:18-cr-00602-WHP (S.D.N.Y. Apr. 8, 2018), ECF No. 48-1 ("Warrant Affidavit"); Joe Palazzolo, Michael Rothfeld, and Lukas I. Alpert, National Enquirer *Shielded Donald Trump from Playboy Model's Affair Allegation*, WALL ST. J. (Nov. 4, 2016), https://www.wsj.com/articles/national-enquirer-shielded-donald-trump-from-playboy-models-affair-allegation-1478309380 ("WSJ 2016 Article") (cited by MUR 7324 Compl. at 4, MUR 7332 First Amend. Compl. at 5 (May 9, 2018), MUR 7332 Compl. at 3, and MUR 7364 Compl. at 4) (describing the circumstances of AMI's payment to McDougal and identifying the parties involved); Ronan Farrow, *Donald Trump, a Playboy Model, and a System for Concealing Infidelity*, THE NEW YORKER (Feb. 16, 2018), https://www newyorker.com/news/news-desk/donald-trump-a-playboy-model-and-a-system-for-concealing-infidelity-national-enquirer-karen-mcdougal ("McDougal New Yorker Article") (cited by MUR 7324 Compl. at 6, MUR 7332 First Amend. Compl. at 5, MUR 7332 Compl. at 3); Jim Rutenberg, Megan Twohey, Rebecca R. Ruiz, Mike McIntire & Maggie Haberman, *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") (cited by MUR 7324 Compl. at 8 and MUR 7332 First Amend. Compl. at 4) (describing the circumstances of AMI's payment to McDougal and Cohen's payment to Clifford, and identifying the parties involved); House Oversight Testimony at 11, 30, 100, 132 (specifically identifying Trump as "Individual-1"; detailing the events surrounding AMI's payment to McDougal; naming AMI, the *Enquirer*, Pecker, Howard as participants in catch and kill; and identifying Pecker as having "expended" funds to pay McDougal on Trump's behalf); Joe Palazzolo, Nicole Hong, Michael Rothfeld and Rebecca Davis O'Brien, *Donald Trump Played Central Role in Hush Payoffs to Stormy Daniels and Karen McDougal*, WALL ST. J. (Nov. 9, 2018), https://www.wsj.com/articles/donald-trump-played-central-role-in-hush-payoffs-to-stormy-daniels-and-karen-mcdougal-1541786601 ("WSJ Nov. 9 Article") (expanding on the reporting conducted for the WSJ 2016 Article, which is cited by the Complaints in MURs 7324, 7332, and 7364); The Fixers at 313, 317.

pleaded guilty to criminal violations of the Act in connection with AMI's payment to McDougal and his own payment to adult film actress and director Stephanie Clifford, who also alleged an affair with Trump while he was married; Cohen's sworn allocution and testimony indicate that his participation in the payments to both McDougal and Clifford was for the "principal purpose of influencing the [2016 presidential] election."[19]

AMI entered into a Non-Prosecution Agreement with DOJ on September 21, 2018.[20] In that Non-Prosecution Agreement, AMI admitted that it made the payments to McDougal to

[19] *See* Cohen Plea Hearing at 23, 27-28 (pleading guilty to knowingly and willfully violating 52 U.S.C. § 30118(a) by "causing" AMI to make a payment totaling $150,000 in 2016 to McDougal, and to knowingly and willfully violating 52 U.S.C. § 30116(a)(1)(A) by making an excessive contribution in the form of a payment totaling $130,000 to Clifford, to ensure that both women did not publicize damaging allegations before the 2016 presidential election and thereby influence that election); *see also* SDNY Information ¶ 41-44. 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. *See* 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), ECF No. 2, 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 and McDougal payments 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.

[20] AMI Non-Prosecution Agreement at 3. Pecker and Howard were reportedly granted immunity in exchange for their cooperation. Gabriel Sherman, *"Holy Shit, I Thought Pecker Would Be the Last One to Turn": Trump's* National Enquirer *Allies Are the Latest to Defect*, THE HIVE-VANITY FAIR (Aug. 23, 2018), https://www.vanity fair.com/news/2018/08/donald-trump-national-enquirer-allies-defect-david-pecker-michael-cohen; WSJ Nov. 9 Article; Jim Rutenberg, Rebecca R. Ruiz & Ben Protess, *David Pecker, Chief of* National Enquirer*'s Publisher, Is Said to Get Immunity in Trump Inquiry*, N.Y. TIMES (Aug. 23, 2018), https://www.nytimes.com/2018/08/23/us/ politics/david-pecker-immunity-trump html.

ensure that she did not publicize her allegations and "thereby influence [the 2016 presidential] election."[21]

A. Pecker, Trump, and Cohen Enter into a Catch and Kill Agreement for Trump's Campaign

In August 2015, Trump reportedly met with Cohen and Pecker in his Trump Tower office and asked Pecker what Pecker could do to help his campaign.[22] AMI admitted that, at that meeting, "Pecker offered to help deal with negative stories about [Trump's] relationships with women by, among other things, assisting the campaign in identifying such stories so they could be purchased and their publication avoided."[23] Trump reportedly directed Pecker to work with Cohen, who would inform Trump,[24] and "Pecker agreed to keep Cohen apprised of any such negative stories."[25] Cohen, in his sworn testimony, confirms that there was an agreement that AMI would catch and kill negative stories involving Trump to avoid publication of those stories,

[21] *See* AMI Non-Prosecution Agreement, Ex. A ¶ 3.

[22] WSJ Nov. 9 Article (citing "people familiar with the meeting" and noting that the article is based on "interviews with three dozen people who have direct knowledge of the events or who have been briefed on them, as well as court papers, corporate records and other documents"); AMI Non-Prosecution Agreement, Ex. A ¶ 3 ("In or about August 2015, David Pecker, the Chairman and Chief Executive Officer of AMI, met with Michael Cohen, an attorney for a presidential candidate, and at least one other member of the campaign."); The Fixers at ix-xi, 313-14, 381 (describing the August 2015 meeting, stating that Pecker told DOJ about that meeting, and explaining authors' reporting and research process that included interviews with many sources, public documents, and media accounts); *cf.* House Oversight Testimony at 30 ("[T]hese catch and kill scenarios existed between David Pecker and Mr. Trump long before I started working for [Trump] in 2007.").

[23] AMI Non-Prosecution Agreement, Ex. A ¶ 3. Pecker reportedly also suggested that "[h]e could use the *Enquirer* to slime Trump's political opponents, both Republican and Democrat." The Fixers at x; *see also id.* at 158-61, 166-67 (detailing the *Enquirer*'s negative coverage of Trump's opponent Ted Cruz during the Republican primary as it coincided with Trump's attacks on Cruz, the *Enquirer*'s persistent attacks on Trump's other opponents, including, *inter alia*, Hillary Clinton, Marco Rubio, and Bernie Sanders, and noting that the *Enquirer* published over 60 negative stories about Trump's opponents prior to Trump becoming the Republican nominee while also publishing stores that praised Trump).

[24] The Fixers at xi.

[25] AMI Non-Prosecution Agreement, Ex. A ¶ 3.

describing catch and kill as working with news outlets to identify and purchase the rights to news stories of interest and avoid their publication.[26]

It is not publicly known whether AMI either purchased directly or steered to Cohen and the Trump Committee other Trump-related stories. In June 2016, Howard had reportedly "compiled a list of the dirt about Trump accumulated in AMI's archives, dating back decades."[27] After Trump won the 2016 presidential election, Cohen reportedly requested everything the *Enquirer* had regarding Trump, leading Howard and others to order the consolidation of Trump-related materials in a safe at AMI offices in New York.[28] Press reports indicate that during the first week of November 2016 Howard ordered his staff at the *Enquirer* to destroy documents held in an office safe, including documents that were related to Trump.[29]

[26] House Oversight Testimony at 30 (Cohen testified that "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."); *see also* Michael Cohen, DISLOYAL: A MEMOIR 81-90 (2020) ("Cohen Book") (detailing a 2007 example of catch and kill efforts by Cohen, Pecker, and Trump, and stating that Trump instructed Cohen at that time to work with Pecker to catch and kill a negative story about Trump's alleged actions involving a woman).

[27] Ronan Farrow, CATCH AND KILL: LIES, SPIES, AND A CONSPIRACY TO PROTECT PREDATORS 17 (2019) ("Farrow, Catch and Kill"). The list reportedly included approximately 60 items and was titled "Donald Trump Killed" in reference to stories about Trump that had been "killed." *See* Politics & Prose Interview by Sunny Hostin with Ronan Farrow in Washington, D.C. (Oct. 21, 2019), https://www.youtube.com/watch?v=FaTi090FVAA (45:38-47:39).

[28] Farrow, Catch and Kill at 17.

[29] Farrow, Catch and Kill at 16-17; *see also* Daniel Lippman, *Ronan Farrow:* National Enquirer *Shredded Secret Trump Documents,* POLITICO (Oct. 14, 2019), https://www.politico.com/news/2019/10/14/ronan-farrow-national-enquirer-shredded-trump-documents-046711; House Oversight Testimony at 128, 160 (Cohen confirming that he asked Pecker for the "treasure trove" of stories purchased by Pecker).

B. AMI Payment to Karen McDougal

1. AMI's Agreement with McDougal

On June 15, 2016, Keith Davidson, an attorney representing former Playboy model Karen McDougal, reportedly contacted Howard about the potential sale of the rights to McDougal's story about her alleged affair with Trump while he was married.[30] Pecker and Howard then informed Cohen about the McDougal story and AMI began negotiations to obtain the rights to her story "[a]t Cohen's urging and subject to Cohen's promise that AMI would be reimbursed."[31] Howard reportedly interviewed McDougal on June 20, 2016, and following the interview, indicated to McDougal that her story was worth a limited sum without "stronger documentation" of the relationship.[32] Howard, Pecker, and Cohen reportedly discussed the situation via conference call that day, and the three men agreed that AMI would not make an immediate offer.[33] On June 27, 2016, Cohen purportedly informed Trump about McDougal's story; Trump reportedly then telephoned Pecker and asked him to make the McDougal story go away.[34]

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[30] AMI Non-Prosecution Agreement, Ex. A ¶ 4; The Fixers at 164; WSJ Nov. 9 Article. In March 2018, after filing a lawsuit against AMI challenging her contract, McDougal stated in a CNN interview that her relationship with Trump began in June 2006 and ended in 2007, while Trump was married to his current wife, Melania Trump. Jim Rutenberg, *Ex-Playboy Model Karen McDougal Details 10-Month Affair with Donald Trump*, N.Y. TIMES (Mar. 22, 2018), https://www nytimes.com/2018/03/22/us/politics/karen-mcdougal-interview html ("NY Times Mar. 22 Article") (cited by MUR 7366 Compl. at 3).

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

[32] The Fixers at 164-65; AMI Non-Prosecution Agreement, Ex. A ¶ 4; MUR 7366 Compl. at 5; *compare* McDougal New Yorker Article (stating that Howard initially valued McDougal's story at $10,000), *with* The Fixers at 164-65 (stating that Howard initially valued McDougal's story at $15,000).

[33] The Fixers at 165; *see* WSJ Nov. 9 Article.

[34] The Fixers at 166; Cohen Book at 285 (stating that Trump "immediately called Pecker"); *see* WSJ Nov. 9 Article.

McDougal, under the impression that AMI was not interested in purchasing her story, began discussions with another media entity, ABC, in an effort to "get in front of the story."[35]

On July 19, 2016, Trump became the Republican presidential nominee.[36] In July 2016, Davidson reportedly informed Howard that he was fielding an offer from ABC but that McDougal wanted to receive a payment and assistance with her career.[37] Howard and Pecker updated Cohen, who in turn reportedly informed Trump of the situation, and they decided to move forward with an offer to McDougal.[38] Howard and Davidson reportedly then negotiated a contract between AMI and McDougal.[39]

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[35] McDougal Interview with Anderson Cooper, CNN (Mar. 22, 2018), http://edition.cnn.com/TRANSCRIPTS/1803/22/acd.02 html (video available at: https://www.cnn.com/videos/us/2018/03/23/karen-mcdougal-full-interview-ac.cnn) ("CNN McDougal Interview") ("[AMI] had a 12-hour window to accept whether they wanted the story or not. They didn't want the story . . . . I still have to get in front of the story because it's still getting put out there. So, we went to ABC. They were very interested in the story."); *see* McDougal New Yorker Article (indicating that AMI had "little interest" in McDougal's story); McDougal Complaint ¶¶ 12-13 (indicating that McDougal was informed that AMI had "no interest" in purchasing her story); MUR 7324 Compl. at 7 (quoting McDougal New Yorker Article); MUR 7332 Compl. at 3 (citing same); Cohen Book at 285 ("By late July, Davidson was pitting ABC News and American Media against each other. McDougal was trying to parlay her affair with Trump into a way to revive her career, or what tiny bit of it might be left, an understandable ambition, but the last thing on anyone else's mind. When I heard about the ABC initiative, I knew it was time to act."). ABC reportedly agreed to a confidentiality agreement that prevented the network from publishing McDougal's story without her consent. The Fixers at 166; *see* McDougal Complaint ¶ 13 (indicating that McDougal was in negotiations with ABC and confirming that ABC signed a confidentiality agreement).

[36] The Fixers at 166; 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.

[37] The Fixers at 166-68; *see* WSJ Nov. 9 Article.

[38] AMI Non-Prosecution Agreement, Ex. A ¶ 4 (stating that "AMI communicated to Cohen that it would acquire the story to prevent its publication"); The Fixers at 168; *see also* WSJ Nov. 9 Article; McDougal New Yorker Article; MUR 7366 Compl. at 5 (citing McDougal Complaint).

[39] The Fixers at 168-69; *see also* WSJ Nov. 9 Article; McDougal New Yorker Article; McDougal Complaint ¶¶ 14, 42, 46-47 (stating that AMI showed renewed interest in purchasing the rights to McDougal's story after she shared with Davidson her concerns about publicly telling her story).

AMI and McDougal entered into a contract on August 6, 2016,[40] whereby, according to information possessed by the Commission, AMI purchased the "Limited Life Story Rights" to the story of McDougal's relationship with "any then-married man" — Trump — in exchange for the payment of $150,000.[41] The Commission possesses information that, in addition, 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.[42] Davidson allegedly told McDougal that AMI would purchase her story with the purpose of not publishing it because of Pecker's friendship with Trump.[43] On August 10, 2016, AMI sent a $150,000 payment to Davidson for the rights to McDougal's story.[44] McDougal alleges that as early as October 2016, AMI staff appeared to lack interest in the columns that McDougal agreed to have published in her name.[45]

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

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[40] The contract was allegedly sent to McDougal on August 5, 2016, and she signed the contract the next morning. McDougal Complaint ¶¶ 48-55. Davidson reportedly sent the signed contract to Howard and AMI's in-house counsel, Cameron Stracher. The Fixers at 168-69 (noting that Davidson informed ABC that McDougal would not proceed with the network and stating that Davidson notified Cohen of the signed contract).

[41] *See* McDougal New Yorker Article; MUR 7324 Compl. at 8 (quoting McDougal New Yorker Article); MUR 7332 Compl. at 4 (citing WSJ 2016 Article). On March 22, 2018, McDougal was interviewed by CNN and discussed her relationship with Trump at length, as well as how it led to her negotiations with AMI. *See* NY Times Mar. 22 Article (summarizing details of the interview where McDougal discussed her relationship with Trump); CNN McDougal Interview at 37:20-40:30 (discussing McDougal's negotiations with AMI).

[42] *See* MUR 7332 Compl. at 3 (citing McDougal New Yorker Article); *see also* MUR 7332 First Amend. Compl. at 6 (citing McDougal Complaint ¶ 59).

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

[44] *See* AMI Non-Prosecution Agreement, Ex. A ¶ 5; *see also* Cohen Book at 286 (alleging that Pecker asked a former employee named Daniel Rotstein to use his Florida consulting company as a pass-through for AMI's payment to Davidson).

[45] McDougal Complaint ¶¶ 57-60. However, the Commission possesses information indicating that AMI ultimately published several columns under McDougal's name.

upon Cohen's commitment that AMI would be reimbursed.[46] Further, AMI acknowledges that its "principal purpose in entering into the agreement was to suppress the model'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."[47] AMI has 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."[48]

2. Role of Cohen, Trump, and the Trump Committee

During the negotiations concerning McDougal's story, AMI and McDougal's lawyer, Davidson, reportedly kept Cohen informed as to the status of the discussions; Cohen in turn updated Trump.[49] AMI reportedly notified Cohen on multiple occasions: upon the initial outreach from Davidson, after its interview with McDougal, when Davidson warned Howard that ABC was interested in McDougal's story, and when AMI was in the process of finalizing the

[46] 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.").

[47] *See id.*

[48] *Id.*, Ex. A ¶ 8; *cf.* The Fixers at 169 (noting that Pecker consulted with a campaign finance "expert" before signing off on the McDougal transaction and "believe[ed] the contract with McDougal was legally sound" because AMI agreed to pay her for future work in addition to purchasing her story rights); WSJ Nov. 9 Article ("Mr. Pecker researched campaign-finance laws before entering into the McDougal deal . . . . After speaking with an election-law specialist, Mr. Pecker concluded the company's payment to Ms. McDougal wouldn't violate the law, because the magazine covers and health columns gave him a business justification for the deal.").

[49] The Fixers at 166, 168-69; WSJ Nov. 9 Article; *cf.* House Oversight Testimony at 29-30 (Question: "Mr. Cohen, in your 10 years of working for Donald Trump[,] did he control everything that went on in the Trump Organization? And did you have to get his permission in advance and report back after every meeting of any importance." Answer: "Yes. There was nothing that happened at The Trump Organization . . . that did not go through Mr. Trump with his approval and sign-off, as in the case of the payments.").

agreement with McDougal.[50] Shortly after McDougal signed the agreement with AMI, Davidson reportedly contacted Cohen and informed him that the McDougal transaction had been completed.[51] Cohen testified that he worked with AMI to keep McDougal's story from becoming public and that AMI's payment to McDougal "was done at the direction of Mr. Trump and in accordance with his instructions."[52] Cohen's role in the transaction allegedly came as a surprise to McDougal, who stated that Davidson and AMI staff failed to tell her that they were coordinating with Trump "representatives" during the negotiation of her original agreement with AMI.[53]

In late August and September 2016, Cohen requested to Pecker that AMI assign Cohen the "limited life rights portion" of AMI's agreement with McDougal, which "included the requirement that the model not otherwise disclose her story."[54] Trump and Cohen reportedly also wanted Pecker to turn over AMI's Trump-related materials because of the concern that

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[50] The Fixers at 164-166, 168-69 ("Cohen soon learned of the ABC talks from the American Media executives and alerted Trump. They decided now was the time to buy."); *see also* Cohen Book at 284-89 (describing Cohen and Trump's involvement with AMI's payment to McDougal and stating "[w]hen I heard about the ABC initiative, I knew it was time to act").

[51] MUR 7324 Compl. at 10 (quoting NYT Feb. 18 Article); The Fixers at 169 (noting that, when Davidson advised Cohen that the contract was fully executed, Cohen already knew and Trump knew too and was "grateful"). Cohen reportedly denied recalling these communications with Davidson when contacted by *New York Times* reporters prior to his plea agreement. *See* NYT Feb. 18 Article.

[52] U.S. House of Representatives Permanent Select Committee on Intelligence, Executive Session, Michael Cohen Dep. at 117, 119 (Feb. 28, 2019), https://docs.house.gov/meetings/IG/IG00/20190520/109549/HMTG-116-IG00-20190520-SD002.pdf ("House Intelligence Deposition"); *see* Cohen Plea Hearing at 23 ("[O]n or about the summer of 2016, in coordination with, and at the direction of, a candidate for federal office, I and the CEO of a media company at the request of the candidate worked together to keep an individual with information that would be harmful to the candidate and to the campaign from publicly disclosing this information. After a number of discussions, we eventually accomplished the goal by the media company entering into a contract with the individual under which she received compensation of $150,000.").

[53] McDougal Complaint ¶ 20.

[54] *See* AMI Non-Prosecution Agreement, Ex. A ¶ 6.

Pecker might leave AMI.[55] Pecker agreed to assign the life rights to an entity Cohen created for a payment of $125,000.[56] The assignment agreement was drawn up, and on September 30, 2016, Pecker signed the agreement, which transferred the limited life rights to McDougal's story to an entity set up by Cohen.[57]

In a tape recording made by Cohen during a September 2016 meeting with Trump, Trump and Cohen appear to discuss the circumstances surrounding the assignment agreement between AMI and Cohen and how Trump would buy the rights to McDougal's story from AMI.[58] In an interview that aired on the evening the tape recording was made public, Rudy

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[55] The Fixers at 169 ("Cohen was pushing American Media to turn over all its archival material on Trump, in case Pecker left the company. Cohen and Trump didn't want a new chief executive with no loyalty to Trump to have control over it."); WSJ Nov. 9 Article ("Concerned Mr. Pecker might leave American Media, Mr. Cohen wanted to buy other materials the company had gathered on Mr. Trump over the years, including source files and tips. In a meeting at the Trump Organization offices in early September, Mr. Cohen told Mr. Trump of his plan.").

[56] AMI Non-Prosecution Agreement, Ex. A ¶ 6; The Fixers at 169-71 (identifying the Cohen-created entity as Resolution Consultants, LLC, and explaining that the $25,000 difference between the amount paid to McDougal and the amount to be paid for the assignment accounted for McDougal's future AMI work); *see also* WSJ Nov. 9 Article. Because AMI purchased the rights to feature McDougal on two magazine covers and publish columns attributed to her, "Cohen and Pecker said that Trump would be liable for only a hundred and twenty-five thousand dollars of the company's payment to her." Jeffrey Toobin, *Michael Cohen's Last Days of Freedom*, THE NEW YORKER (Apr. 29, 2019), https://www newyorker.com/magazine/2019/05/06/michael-cohens-last-days-of-freedom ("2019 New Yorker Article"); *see* Cohen Book at 285-86 ("The deal included $150,000, with $25,000 allocated for payment for her appearance on the cover of two magazines owned by American Media. That meant Trump was on the hook for $125,000 to be repaid to Pecker's company.").

[57] AMI Non-Prosecution Agreement, Ex. A ¶ 6; *see* SDNY Cohen Sentencing Memorandum at 12.

[58] Chris Cuomo, Kara Scannell & Eli Watkins, *CNN Obtains Secret Trump-Cohen Tape*, CNN (July 25, 2018), https://www.cnn.com/2018/07/24/politics/michael-cohen-donald-trump-tape/index.html ("CNN Article") (cited by MUR 7332 Second Amend. Compl. at 3); *see also* Cohen Book at 287 ("I decided I needed to record a conversation with Trump about the payment for two reasons. First, to show Pecker that I was asking Trump to repay the obligation, and second, to have a record of his participation if the conspiracy ever came out. . . . I could sense the stakes were getting higher and higher as I explained the details of the transaction with McDougal to Trump. As a precaution, my iPhone was digitally memorializing our exchange."). The recording was reportedly seized by the Federal Bureau of Investigation ("FBI") when it raided Cohen's office. *See* Matt Apuzzo, Maggie Haberman & Michael S. Schmidt, *Michael Cohen Secretly Taped Trump Discussing Payment to Playboy Model*, N.Y. TIMES (July 20, 2018), https://www.nytimes.com/2018/07/20/us/politics/michael-cohen-trump-tape.html (cited by MUR 7332 Second Amend. Compl. at 3). The recording was one of twelve audio recordings seized by the FBI during its raids of Cohen's homes and office later released to DOJ. *See* MUR 7332 Second Amend. Compl., 3-4, Ex. 1 (showing that, on July 23, 2018, the Special Master who reviewed legal privilege claims in connection with these search warrants filed a Special Master Report, reporting that the parties had withdrawn claims of privilege in

Giuliani, counsel for Trump, acknowledged that the tape recording reflects a conversation between Trump and Cohen about "how they're going to buy the rights" to McDougal's story from AMI but argued that there is "[n]o indication of any crime being committed on this tape."[59] At one point in the recording, Cohen says, in an apparent reference to the entity he would later create for the purchase, "I need to open up a company for the transfer of all of that info regarding our friend, David," which is reportedly a reference to Pecker.[60] According to Cohen, Trump asks "So what do we got to pay for this? One-fifty?"[61] Later, Trump asks "What financing?" and Cohen tells Trump, "We'll have to pay."[62] Cohen also states: "I've spoken with [Trump Organization Chief Financial Officer] Allen Weisselberg about how to set the whole thing up with funding."[63]

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connection with these materials). Lanny Davis, counsel for Cohen, released the recording to CNN, which aired it on July 25, 2018. *See* CNN Article.

[59] *See* The Ingraham Angle, *Giuliani Responds to Release of Secret Trump-Cohen Recording*, FOX NEWS CHANNEL 3:05-3:10 (July 24, 2018), https://www foxnews.com/transcript/giuliani-responds-to-release-of-secret-trump-cohen-recording (introducing Giuliani as "personal attorney for President Trump"); CNN Article (citing same).

[60] *See* CNN Article; Cohen Book at 287 ("That was how we talked: euphemistically, circling a subject carefully, choosing words that might allow for some ambiguity."). On September 30, 2016, Cohen registered Resolution Consultants LLC in Delaware; he dissolved it on October 17, 2016, the day he registered another entity, Essential Consultants LLC in Delaware. *See* Warrant Aff. ¶ 35.b, c; Cohen Book at 288.

[61] Cohen Book at 287 (recalling "I told Trump that the amount we're paying should include all the 'stuff' that Pecker had on him. By 'stuff' I meant any and all other salacious Trump stories we believed he possessed" and indicating that Trump responded "Yeah, I was thinking about that. . . . Maybe he gets hit by a truck."); *see* CNN Article.

[62] *See* CNN Article. Trump then says "pay with cash," but it is unclear whether he is instructing Cohen to pay with cash. *See id*. Cohen then says "no, no," however the context is unclear. *See id.* During the CNN segment addressed in the CNN article, it is reported that Trump's team argued that Trump said "don't pay with cash . . . check." *Cuomo Prime Time* (CNN television broadcast July 24, 2018).

[63] CNN Article. In speaking with CNN, Alan Futerfas, a Trump Organization lawyer, rejected the notion that the reference to "cash" in the tape recording "refers to green currency" because Trump and the Trump Organization would not in the ordinary course make such a payment using actual cash. *Id.* Similarly, Giuliani denied that Trump would "set[] up a corporation and then us[e] cash." *Id.* CNN further reported that Futerfas would not speculate as to whether the payment referenced in the conversation would have come from the Trump Organization or Trump's personal finances. *Id.*

According to Cohen, Trump was supposed to make the payment to AMI but "elected not to pay it."[64] In October 2016, after Cohen signed the assignment agreement but before Pecker was paid the $125,000, Pecker notified Cohen that he was cancelling the agreement and requested that Cohen tear up the agreement signed by Pecker.[65] AMI never received any reimbursement or payment from Cohen, Trump, or anyone else for its payment to McDougal; however, Trump reportedly thanked Pecker for purchasing McDougal's story.[66]

Even after discussions about the assignment agreement ended, Cohen and AMI continued to discuss how to deal with the McDougal story, exchanging multiple calls and texts on November 4, 2016, when AMI's payment to McDougal was reported in *The Wall Street Journal*.[67] These communications between Cohen, Pecker, and Howard were focused on strategizing about how to handle McDougal, providing comments to *The Wall Street Journal* in connection with the story, and discussing the implications of the article, which appeared four

[64] House Oversight Testimony at 100 (noting that "Pecker was very angry because there was also other moneys that David had expended on [Trump's] behalf" for which Pecker also was not reimbursed); *see also* 2019 New Yorker Article ("According to Cohen, McDougal's appearance on the cover of one of [AMI's] magazines, *Muscle & Fitness Hers*, led to a sizable increase in sales, and Trump decided that A.M.I. had received its money's worth in the deal" because, as Cohen said, "'[i]t sold over two hundred and fifty thousand dollars' worth of print, which was the highest for the whole year. So you invest a hundred and fifty, you make two hundred and fifty, you still have her for another cover, and for two years on the blog. It was a good deal.'"). Pecker reportedly "used to yell at Cohen about" the fact that Trump did not repay AMI, to which Cohen responded, "'David, why are you yelling at me? Go yell at Trump.'" 2019 New Yorker Article (noting that sources indicated "that A.M.I. stopped asking for reimbursement on the advice of its lawyers"); *see also* The Fixers at 170-71 ("Cohen told Pecker that Trump was dragging his feet because he was cheap and no longer wanted to pay"); WSJ Nov. 9 Article.

[65] AMI Non-Prosecution Agreement, Ex. A ¶ 6; The Fixers at 170-71 (reporting that Pecker asked Cohen to tear up the assignment agreement after Pecker consulted with Stracher, AMI's in-house counsel); WSJ Nov. 9 Article.

[66] AMI Non-Prosecution Agreement, Ex. A ¶ 6; The Fixers at 198, 314 (stating that Trump thanked Pecker in January 2017 at Trump Tower and that Pecker told DOJ that Trump thanked him); *see also* WSJ Nov. 9 Article.

[67] Warrant Affidavit ¶ 40. 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.

days before the election.[68] Cohen allegedly noted to Howard that an unnamed individual, believed to be Trump, was "pissed" about the publication of the story, and Howard told Cohen that AMI's payment to McDougal "looks suspicious at best."[69]

In addition to Cohen's alleged reference to Trump's knowledge about the McDougal story breaking, the available information also indicates that Trump spoke directly to Pecker around that time.[70] The *Wall Street Journal* article was published online the evening of November 4th, and Pecker allegedly spoke to Trump on the telephone the following morning.[71]

Despite Cohen and Trump's knowledge of the AMI payments, the campaign, through Trump Committee spokeswoman Hope Hicks, publicly denied any knowledge of the payments and asserted that McDougal's story about a relationship with Trump was "'totally untrue.'"[72] AMI asserted to *The Wall Street Journal* that "it wasn't buying Ms. McDougal's story for $150,000, but rather two years' worth of her fitness columns and magazine covers as well as

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[68] *See* Warrant Affidavit ¶ 40.a-e (recounting Howard's text message to Cohen that stated, "Let's let the dust settle. We don't want to push her over the edge. She's on side at present and we have a solid position and a plausible position that she is rightfully employed as a columnist"). As the story was breaking, Cohen and Howard discussed McDougal's reluctance to provide a statement to Davidson and strategized about how best to handle McDougal; Cohen also allegedly forwarded Howard an image of an email from a reporter at *The Wall Street Journal* asking for comment on the story. *Id.* ¶ 40.a-b.

[69] *Id.* ¶ 40.c (stating the FBI agent's belief that "Cohen was referring to Trump when he stated 'he's pissed.'" and recounting that Cohen asked Howard "how the *Wall Street Journal* could publish its article if 'everyone denies,'" with Howard responding, "'Because there is the payment from AMI. It looks suspicious at best'").

[70] *Id.* ¶ 40.d (Cohen texted Pecker late that evening: "The boss just tried calling you. Are you free?" and then texted Howard: "Is there a way to find David quickly?").

[71] *Id.* ¶ 40.e.

[72] WSJ 2016 Article; *see* The Fixers at 194 (reporting that Trump dictated Hicks's response to *The Wall Street Journal*); WSJ Nov. 9 Article. Additionally, Hicks reportedly told DOJ officials that Pecker informed her of the substance of his response before he sent it to the *Journal*. The Fixers at 314.

exclusive life rights to any relationship she has had with a then-married man" and said that it "'has not paid people to kill damaging stories about Mr. Trump.'"[73]

After the November 4, 2016, article in *The Wall Street Journal* was published, McDougal retained new counsel and negotiated an amendment to her original agreement with AMI ("Amendment"), which allowed her to "respond to legitimate press inquiries regarding the facts of her alleged relationship with Donald Trump."[74] In the Amendment, AMI agreed to "retain the services" of two public relations professionals for a total of six months to provide public relations and reputation management services and coordinate responses to the press with AMI.[75] However, for more than a year after that, AMI instructed McDougal to say nothing about her alleged relationship with Trump and ghostwrote email responses for McDougal to send to inquiring reporters.[76] AMI also allegedly provided the reporters with "false and misleading information" and later threatened McDougal with litigation if she told her story to reporters.[77]

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[73] WSJ 2016 Article. In a June 2017 article, however, Pecker admitted to *The New Yorker* that AMI's payment to McDougal contained elements relating to his personal friendship with Trump and was predicated on her not "bashing Trump and American Media." Jeffrey Toobin, The National Enquirer's *Fervor for Trump*, THE NEW YORKER (June 26, 2017), https://www newyorker.com/magazine/2017/07/03/the-national-enquirers-fervor-for-trump ("2017 New Yorker Article") (cited by MUR 7332 First Amend. Compl. at 6 and MUR 7332 Compl. at 3).

[74] McDougal Complaint, Ex. B (Amendment to Name and Rights License Agreement signed by McDougal on November 29, 2016, and by AMI on December 7, 2016).

[75] *Id.*

[76] McDougal Complaint ¶¶ 19, 66-73.

[77] McDougal Complaint ¶¶ 19, 21, 74, 84-87; MUR 7332 First Amend. Compl. at 7 (citing McDougal Complaint ¶ 84). On March 20, 2018, McDougal filed a Complaint for Declaratory Relief that asked the court to declare her contract with AMI void because the contract was allegedly fraudulent and illegal. McDougal Complaint ¶ 5. In April 2018, AMI and McDougal reached a settlement agreement ending her lawsuit against the company and executed a new agreement, in which McDougal received the life rights to her story back from AMI and retained the $150,000 payment. Jim Rutenberg, *Ex-Playboy Model, Freed from Contract, Can Discuss Alleged Trump Affair*, N.Y. TIMES (Apr. 18, 2018), https://www.nytimes.com/2018/04/18/us/politics/karen-mcdougal-american-media-settlement.html (cited by MUR 7332 First Amend. Compl. at 8). AMI obtained the right to receive "up to $75,000 of the profits from any deal" McDougal made regarding her story during the subsequent twelve-month period. *See id.*

C. AMI's Involvement in Payments to Other Individuals

1. Dino Sajudin

In November 2015, AMI reportedly entered into an agreement, which was subsequently amended in December 2015, with Sajudin, a former doorman at Trump World Tower in New York City, in connection with information he claimed to have about an alleged Trump "love child."[78] Sajudin reportedly "first approached the *Enquirer* in the early stages of the 2016 campaign" by calling the publication's tip line with a rumor he had heard about Trump having fathered an illegitimate child in the late 1980s with a former employee of the Trump Organization.[79] According to press reports, Sajudin initially signed a standard "boilerplate contract" with the *Enquirer*, agreeing to be an anonymous source who would be "paid upon publication."[80] Reportedly, after Sajudin entered into an agreement to serve as a source, the *Enquirer* initially investigated the story, dispatching reporters and sending "a polygraph expert to administer a lie detection test to Sajudin in a hotel near his Pennsylvania home."[81] According to press reports, although the *Enquirer* initially avoided reaching out to Trump Organization employees, after the Trump Organization learned of the investigation when a reporter contacted Trump's assistant, Rhona Graff, Cohen contacted Howard and "pleaded with him not to publish

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[78] Sajudin AP Article; The Fixers at 146. CNN published Sajudin's original agreement with AMI and its subsequent amendment. Source Agreement and Amendment, CNN (Aug. 24, 2018), https://cdn.cnn.com/cnn/2018/images/08/24/sajudin.ami.pdf ("Sajudin Agreement").

[79] *Prez Love Child Shocker! Ex-Trump Worker Peddling Rumor Donald Has Illegitimate Child*, RADAR ONLINE (Apr. 11, 2018), https://radaronline.com/exclusives/2018/04/donald-trump-love-child-rumor-scandal/ ("Radar Online Article"); Sajudin AP Article ("After initially calling the Enquirer's tip line, Sajudin signed a boilerplate contract with the Enquirer, agreeing to be an anonymous source and be paid upon publication.").

[80] Sajudin AP Article; *see also* Radar Online Article; The Fixers at 146.

[81] Sajudin AP Article; *see also* The Fixers at 146-47 (noting that the investigators refrained from contacting Trump Organization employees).

the story."[82] On December 9, 2015, Sajudin reportedly took and passed a polygraph test testing how he learned of the rumor.[83] After passing the polygraph test, Sajudin reportedly "pressed the tabloid to pay him immediately, threatening to walk otherwise."[84]

On December 17, 2015, AMI reportedly agreed to make an "up front" $30,000 payment to Sajudin to prevent him from discussing the rumor about Trump fathering a child.[85] That agreement stated that Sajudin would be subject to a $1 million penalty "if he shopped around his information."[86] Immediately after Sajudin signed the agreement, the *Enquirer* reportedly stopped investigating the story.[87] In the summer of 2017, Howard reportedly claimed that the investigation was terminated on its merits because Sajudin "lacked any credibility,"[88] however, four longtime *Enquirer* staffers reportedly challenged this interpretation, claiming that they "were ordered by top editors to stop pursuing the story before completing potentially promising

82 The Fixers at 147-48.

83 Radar Online Article.

84 The Fixers at 148.

85 MUR 7364 Compl. at 4, 7 (citing Sajudin AP Article); Ronan Farrow, The National Enquirer*, A Trump Rumor, and Another Secret Payment to Buy Silence*, THE NEW YORKER (Apr. 12, 2018), https://www newyorker.com/news/news-desk/the-national-enquirer-a-donald-trump-rumor-and-another-secret-payment-to-buy-silence-dino-sajudin-david-pecker ("Sajudin New Yorker Article"); MUR 7366 Compl. at 2 (citing Sajudin AP Article).

86 MUR 7364 Compl. at 6 (quoting Sajudin AP Article); Sajudin Agreement.

87 Sajudin AP Article; The Fixers at 148-49.

88 Sajudin AP Article.

reporting threads" and further claimed that the "publication didn't pursue standard *Enquirer* reporting practices."[89]

Reportedly, current and former AMI employees had noticed several aspects of the payment to Sajudin that caused it to differ from other payments to sources. A former AMI reporter and editor noted that it was unusual for the company to pay for a tip when it did not publish an article, reportedly stating "AMI doesn't go around cutting checks for $30,000 and then not using the information."[90] Similarly, according to *The New Yorker*, a source stated: "It's unheard of to give a guy who calls A.M.I.'s tip line big bucks for information he is passing on secondhand. We didn't pay thousands of dollars for non-stories, let alone tens of thousands. It was a highly curious and questionable situation."[91] Other staffers reportedly concluded that the $1 million penalty to stop the tipster from talking about the tip indicated that the payment was part of a catch and kill.[92]

Although the Sajudin payment is not addressed in the AMI Non-Prosecution Agreement or Cohen's plea, the payment to Sajudin was made after the purported August 2015 agreement between Pecker, Trump, and Cohen that AMI would catch and kill stories that could reflect

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89 *Id.*

90 *Id.* According to the *Associated Press*, "AMI threatened legal action over reporters' efforts to interview current and former employees and hired the New York law firm Boies Schiller Flexner, which challenged the accuracy of the AP's reporting." *Id.* (noting that *RadarOnline*, also owned by AMI, "published details of the payment and the rumor that Sajudin was peddling" on the same day that the AP Article was published, stating "that the *Enquirer* spent four weeks reporting the story but ultimately decided it wasn't true"); *see also* The Fixers at 148 (noting that the payment, while not unheard of, "was a break with the tabloid's typical policy of paying for stories upon their publication, and a large sum relative to most source payments").

91 Sajudin New Yorker Article.

92 Sajudin AP Article; s*ee also* The Fixers at 148 (noting that the $1 million penalty, while likely unenforceable in court, ensured that a source "wouldn't take the tabloid's money and disappear or blab to another publication. It was meant to scare them.").

negatively on Trump during the campaign.[93] Furthermore, press reports suggest that the decision to pay Sajudin, outside AMI's normal investigation practices, resulted from Pecker or another high level AMI official directing that payment.[94] Cohen, meanwhile, told the *Associated Press* "that he had discussed Sajudin's story with the magazine when the tabloid was working on it" but said that "he was acting as a Trump spokesman when he did so and denied knowing anything beforehand about the *Enquirer* payment to the ex-doorman."[95] AMI reportedly released Sajudin from the contract at some point after the 2016 presidential election.[96]

2. Stephanie Clifford

As discussed above, Cohen paid $130,000 to Stephanie Clifford, a well-known adult-film actress and director who used the professional name Stormy Daniels, to prevent the publication of her story concerning her 2006 alleged relationship with Trump. Shortly after *The Washington Post* published a video recording of Trump appearing on the television show *Access Hollywood* in 2005, in which Trump "bragged in vulgar terms about kissing, groping and trying to have sex with women,"[97] Davidson, the same attorney who had represented McDougal in her negotiations with AMI, reportedly contacted Howard at AMI and offered to confirm Clifford's story on the

93 *See* WSJ Nov. 9 Article.

94 Sajudin New Yorker Article; *see also* The Fixers at 148 (claiming that "[t]he reporters suspected interference from Pecker").

95 Sajudin AP Article (noting that the "parent" of the *Enquirer* made the payment to Sajudin). According to Cohen, after AMI made the payment to McDougal, "Pecker was very angry because there was also other moneys that David [Pecker] had expended on [Trump's] behalf," and Trump declined to reimburse AMI for the other funds as well. House Oversight Testimony at 100.

96 *See, e.g.* Sajudin AP Article.

97 David A. Fahrenthold, *Trump Recorded Having Extremely Lewd Conversation About Women in 2005*, THE WASHINGTON POST (Oct. 7, 2016), https://www.washingtonpost.com/politics/trump-recorded-having-extremely-lewd-conversation-about-women-in-2005/2016/10/07/3b9ce776-8cb4-11e6-bf8a-3d26847eeed4_story html ("Fahrenthold Article"); *see* Warrant Affidavit ¶ 32.

record.[98] AMI, reportedly because it had already invested significant sums in paying to silence negative stories and was growing uncomfortable, did not purchase Clifford's story.[99] Instead, it appears that AMI directed the Clifford story to Cohen.

D. The Complaints and Responses

The Complaints in MURs 7324, 7332, and 7366 allege that there is reason to believe that the Trump Committee accepted a prohibited corporate contribution in connection with AMI's $150,000 payment to McDougal because the payment was not included within the scope of the press exemption and was an expenditure made for the purpose of influencing the 2016 presidential election that was coordinated with Cohen, an agent of Trump.[100] All three Complaints also allege that the Trump Committee failed to report receipt of the in-kind contribution and failed to report the making of an expenditure.[101] The MUR 7332 Complaint further alleges that AMI's payment to McDougal was an excessive contribution to the Trump Committee.[102]

The Complaints in MURs 7364 and 7366 allege that the Trump Committee accepted a prohibited corporate contribution in the form of a coordinated expenditure in connection with

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98 Farrow, Catch and Kill at 345 ("[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* SDNY Information ¶ 32.

99 *See* Farrow, Catch and Kill at 345.

100 MUR 7324 Compl. at 14-15; MUR 7332 Compl. at 8; MUR 7366 Compl. at 7-9; *see also* MUR 7637 Compl. at 1 (merged in relevant part into MUR 7324).

101 MUR 7324 Compl. at 15-17; MUR 7332 Compl. at 7-8; MUR 7366 at 10.

102 MUR 7332 Compl. at 8. In addition, the MUR 7366 Complaint alleges that Trump, the Trump Committee, Cohen, AMI, Pecker, and former Trump Committee treasurer Timothy Jost engaged in a conspiracy to violate 52 U.S.C. §§ 30104, 30118, and 30125(e). MUR 7366 Compl. at 10-12. The Complaint's conspiracy allegations are not within the Commission's jurisdiction.

AMI's $30,000 payment to Sajudin.[103] The Complaints in MURs 7364 and 7366 further allege that the Trump Committee failed to report the receipt of the $30,000 in-kind contribution from AMI and the $30,000 expenditure to Sajudin.[104]

All but one of the Responses filed in this matter pre-date AMI and Cohen's subsequent public admissions and clarifications made in connection with their respective non-prosecution agreements, plea agreements, and congressional testimony.[105] In its Responses to the Complaints in MURs 7324, 7332, and 7366, the Trump Committee argues that the "private transaction" between AMI and McDougal was "a media entity's editorial and business decision not to publish information it received from a private arm's-length, bargained-for exchange between two represented parties neither involving nor having any connection to the [Trump] Committee."[106] The Trump Committee further asserts that the payment to McDougal could not be a contribution or expenditure because it was not for the purpose of influencing a federal election because the record did not include information establishing a nexus between the Trump Committee and AMI's payment to McDougal.[107] The Trump Committee also asserts that AMI reportedly contacted Cohen only to "corroborate" McDougal's story "and proved unable to do so."[108] The Trump Committee further asserts that no nexus exists between the Trump

[103] MUR 7364 Compl. at 11-12; MUR 7366 Compl. at 9.

[104] MUR 7364 Compl. at 12-13; MUR 7366 Compl. at 10.

[105] The Trump Committee's Response in MUR 7637 stated that it has already addressed all allegations in its previous responses filed with the Commission. MUR 7637 Trump Committee Resp. at 1.

[106] MURs 7324/7332 Trump Committee Resp. at 1; *see also* MUR 7366 Trump Committee Resp.; MUR 7637 Trump Committee Resp. at 1 (referencing response in MURs 7324/7332).

[107] MURs 7324/7332 Trump Committee Resp. at 2; *see* MUR 7366 Trump Committee Resp. at 2.

[108] MURs 7324/7332 Trump Committee Resp. at 3.

Committee and the transaction between AMI and Sajudin and cites to articles concerning other press outlets' decisions to not publish Sajudin's story.[109]

Trump did not file a response to any of the Complaints in this matter. Nonetheless, both Trump and Giuliani, as counsel for Trump, have addressed publicly on Twitter the allegations regarding the payment to McDougal, arguing that the payment did not violate the law. For example, soon after Cohen's guilty plea, Trump and Giuliani both alleged that the payments to McDougal and Clifford were not unlawful.[110] Trump and Giuliani also tweeted about the payments in December 2018, around the time of Cohen's sentencing, again tweeting that the

[109] MUR 7364 Trump Committee Resp. at 2-3; MUR 7366 Trump Committee Resp. at 2; *see also* Radar Online Article (claiming that "Many organizations have since tried [to verify and publish Sajudin's claims]. . . including *The Wall Street Journal, The New York Times*, and *The Associated Press*.").

[110] Donald J. Trump (@realDonaldTrump), TWITTER (Aug. 22, 2018, 9:37 AM), https://twitter.com/realDonaldTrump/status/1032260490439864320 ("Michael Cohen plead [sic] guilty to two counts of campaign finance violations that are not a crime."); Rudy Giuliani (@RudyGiuliani), TWITTER (Aug. 23, 2018, 4:11 AM), https://twitter.com/RudyGiuliani/status/1032540830794428416, (Aug. 23, 2018, 5:50 AM), https://twitter.com/RudyGiuliani/status/1032565618204004353 (stating that the "payments, as determined by the Edwards FEC ruling, are NOT ILLEGAL" and directing followers to an opinion piece in *The Hill* by Mark Penn, "demonstrating [that] Cohen pled guilty to two payments that are not violations of the law").

payments were not violations of the Act.[111] Trump also tweeted that he "never directed Michael Cohen to break the law."[112]

III. LEGAL ANALYSIS

The available information indicates that AMI paid $150,000 to McDougal for the purpose of influencing the 2016 presidential election by preventing a potentially damaging story about Trump from becoming public before the election. Based upon the available information, it appears that the payment to McDougal was made with Trump's knowledge, at the urging of and with the promise of repayment by Cohen, acting as an agent of Trump, and as part of an agreement between Trump and AMI to catch and kill any potentially damaging stories about Trump's relationships with women so that such stories would not become public during the 2016 campaign. Likewise, the available record indicates that AMI's payment of $30,000 to Sajudin was made as part of this same catch and kill agreement. The available information indicates that AMI's payments to McDougal and Sajudin were not made in connection with AMI's business or editorial functions as a press entity. Instead, the available information indicates that AMI's

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[111] Rudy Giuliani (@RudyGiuliani), TWITTER (Dec. 8, 2018, 1:20 PM), https://twitter.com/RudyGiuliani/status/1071469692882182144 ("The President is not implicated in campaign finance violations because based on Edwards case and others the payments are not campaign contributions."), (Dec. 9, 2018, 10:54 AM), https://twitter.com/RudyGiuliani/status/1071795258177019905 ("No collusion, no obstruction now [sic] campaign finance but payments to settle lawsuits are not clearly a proper campaign contribution or expenditure. No responsible lawyer would charge a debatable campaign finance violation as a crime . . . ."), (Dec. 13, 2018, 9:49 AM), https://twitter.com/RudyGiuliani/status/1073228301332869120 (sharing link to an opinion piece in *The Daily Signal* by Hans von Spakovsky, which argued that Cohen arranging payment to McDougal did not violate the law), (Dec. 14, 2018, 11:53 AM), https://twitter.com/RudyGiuliani/status/1073622122235355136 ("CORRECTION: I didn't say payments were not a big crime. I have said consistently that the Daniels and McDougall [sic] payments are not crimes and tweeted a great article yesterday making that point. If it isn't a witch-hunt why are they pursuing a non-crime."), (Dec. 19, 2018, 10:04 PM), https://twitter.com/RudyGiuliani/status/1075587822449500161 ("The payments to Daniels and McDougall [sic] do not violate the law. Congress has spent millions settling sexual harassment claims against members which are not reported as campaign contributions. Why aren't those Congressmen under investigation."); Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 13, 2018, 8:25 AM), https://twitter.com/realDonaldTrump/status/1073207272069890049 ("Cohen was guilty on many charges unrelated to me, but he plead [sic] to two campaign charges which were not criminal. . . .").

[112] Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 13, 2018, 8:17 AM), https://twitter.com/realDonaldTrump/status/1073205176872435713 ("He was a lawyer and he is supposed to know the law.").

payments were made to benefit Trump's campaign, were made at Trump's direction, and, for the reasons explained below, were not covered by the press exemption. Thus, the available information supports the conclusion that the AMI's payments were expenditures coordinated with Trump and thus constituted in-kind contributions to Trump and the Trump Committee.

As such, Trump and the Trump Committee appear to have violated the Act by knowingly accepting corporate contributions in the form of payments from AMI to McDougal and Sajudin. Moreover, the Trump Committee failed to publicly disclose the resulting contributions, as required under the Act. Finally, as explained below, the record indicates that there is reason to believe that all of these violations were knowing and willful.

A. Press Exemption

Under 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,"[113] 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."[114] Under Commission regulations, the phrase "anything of value" includes all in-kind contributions.[115] In-kind contributions include, among other things, coordinated expenditures.[116]

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113 52 U.S.C. § 30101(8)(A).

114 52 U.S.C. § 30101(9)(A).

115 11 C.F.R. § 100.52(d)(1).

116 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).

Under the Act, the 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."[117] This exemption is called the "press exemption" or "media exemption."[118] Costs covered by the exemption are also exempt from the Act's disclosure and reporting requirements.[119] If the press exemption applies to AMI's payments to McDougal and Sajudin, then those payments would not be contributions or expenditures under the Act.

To assess whether the press exemption applies, the Commission uses a two-part test.[120] The first inquiry is whether the entity engaging in the activity is a "press entity."[121] Second, the Commission determines the scope of the exemption by applying the two-part analysis presented in *Reader's Digest Association v. FEC*: (1) whether the entity is owned or controlled by a political party, political committee, or candidate; and (2) whether the entity is acting within its "legitimate press function" in conducting the activity.[122]

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117 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.

118 Advisory Op. 2011-11 (Colbert) at 6 ("AO 2011-11"); Advisory Op. 2008-14 (Melothé) at 3 ("AO 2008-14").

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

120 Advisory Op. 2005-16 (Fired Up!) at 4 ("AO 2005-16").

121 *Id.*

122 *See Reader's Digest Ass'n v. FEC*, 509 F. Supp. 1210, 1214-15 (S.D.N.Y. 1981); AO 2011-11 at 6-7. When determining whether the entity was acting within the scope of a legitimate press function at the time of the alleged violation, the Commission considers two factors: (1) whether the entity's materials are available to the general public; and (2) whether they are comparable in form to those ordinarily issued by the entity. *See Reader's Digest Ass'n,* 509 F. Supp. at 1215; Factual & Legal Analysis at 4, MUR 7231 (CNN); Advisory Op. 2016-01

The Commission has long recognized that an entity otherwise eligible for the press exemption "would not lose its eligibility merely because of a lack of objectivity in a news story, commentary, or editorial, even if the news story, commentary, or editorial expressly advocates the election or defeat of a clearly identified candidate for Federal office."[123] Nonetheless, "the Commission is also mindful that a press entity's press function is 'distinguishable from active participation in core campaign or electioneering functions.'"[124] In other words, "the press exemption covers press activity, not campaign activity by a press entity."[125]

Although the Commission considers "legitimate press function" broadly, not all actions taken by press entities are considered legitimate press functions for purposes of the media exemption.[126] The court in *Reader's Digest Association* reasoned that:

> [T]he statute would seem to exempt only those kinds of distribution that fall broadly within the press entity's legitimate press function. It would not seem to exempt any dissemination or distribution using the press entity's personnel or equipment, no matter how unrelated to its press function. If, for example, on Election Day a partisan newspaper hired an army of incognito propaganda distributors to stand on street corners denouncing allegedly illegal acts of a candidate and sent sound trucks through the streets blaring the same denunciations, all in a manner unrelated to the sale of its newspapers, this activity would not come within the press exemption.[127]

(Ethiq) at 3. However, because the activity here does not include the publication of any materials, this second factor is not relevant to the analysis.

[123] Factual & Legal Analysis at 5, MUR 7206 (Bonneville International Corp.) (quotation marks omitted) (quoting AO 2005-16 at 6); Factual & Legal Analysis at 3, MUR 6579 (ABC News, Inc.).

[124] AO 2011-11 at 8 (quoting AO 2008-14).

[125] *Id.*

[126] *See McConnell v. FEC*, 540 U.S. 93, 208 (2003) (commenting that the press exemption "does not afford *carte blanche* to media companies generally to ignore FECA's provisions").

[127] *Reader's Digest*, 509 F. Supp. at 1214; *see also McConnell,* 540 U.S. at 208 (noting that the press exemption "does not afford *carte blanche* to media companies generally to ignore FECA's provisions"); AO 2011-11 at 8 ("While the press exemption covers press activity, it does not cover campaign activity, even if the campaign activity is conducted by a press entity").

When analyzing a press entity's activities outside of the distribution of news stories, commentary, and editorials through media facilities, a court has found the press exemption applicable when the actions in question pertain to seeking subscribers or promoting the publication.[128] A district court has also observed that the Commission has a limited ability to investigate activities that potentially may be normal press functions but are nevertheless unusual; such activities may be subject to additional scrutiny only to determine if they are, indeed, within the press exemption.[129]

When distinguishing between an entity's legitimate press functions and its participation in campaign functions, the Commission has applied the Supreme Court's "considerations of form" analysis as set forth in the U.S. Supreme Court's *FEC v. Massachusetts Citizens for Life* decision ("*MCFL*"), which examined whether the activity in question is comparable in form to the press entity's regular activities, considering whether the complained-of activities and content are produced in the same manner, using the same people, and subject to the same review and distribution as the press entity's general activities.[130]

In an Advisory Opinion analyzing the formation of a political committee by television personality and talk show host Stephen Colbert, the Commission concluded that certain activities undertaken by the press entity (Viacom) would be covered by the press exemption but that other activities would not. Coverage of the political committee created for Colbert's television show would be covered by the press exemption; however, Viacom could not create content for

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128 *FEC v. Phillips Publishing Inc.,* 517 F. Supp. 1308, 1313 (D.D.C. 1981) (applying the press exemption to a letter soliciting new subscribers).

129 *Phillips* at 1313-14.

130 AO 2011-11 at 8 (citing *FEC v. Mass. Citizens for Life ("MCFL")*, 479 U.S. 238, 251 (1986)).

Colbert's committee for distribution outside of his television show, or administer the political committee, because such activities would amount to "active participation [by Viacom] in core campaign or electioneering functions."[131] In reaching this conclusion, the Commission explained that to allow Viacom to produce content for the Colbert committee to distribute beyond the show under these circumstances "would stretch the boundaries of the press exemption far beyond those contemplated by Congress and the Supreme Court."[132]

Consistent with this analysis, the Commission has found that a press entity's sale or purchase of airtime would not fall within the press exemption.[133] Similarly, the Commission has explained when analyzing "legitimate press functions" that "the provision of personnel to benefit a political campaign is not a legitimate press function."[134]

Here, the available information indicates that the press exemption does not cover AMI's payments to McDougal or Sajudin. AMI appears to be a press entity that has produced news stories on a regular basis through a variety of periodical publications,[135] and the Commission possesses information that it is not owned or controlled by a political party, political committee, or federal candidate.

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131 *Id.* at 9.

132 *Id.* (citing *MCFL*, 479 U.S. at 251; *Reader's Digest Ass'n,* 509 F. Supp. at 1214; *McConnell,* 540 U.S. at 208).

133 Factual & Legal Analysis at 8-9, MUR 7073 (Meluskey for U.S. Senate, Inc.) (finding that the press exemption did not cover a candidate's radio show when the candidate or a business entity affiliated with the candidate paid radio stations to air his radio show); *see also* Factual & Legal Analysis at 6, MUR 6089 (People with Hart) (finding that a station does not act as a press entity when it sells airtime to another party and cedes editorial control).

134 AO 2008-14 at 6.

135 AMI Non-Prosecution Agreement, Ex. A ¶ 1.

AMI admitted in its Non-Prosecution Agreement with DOJ that its actions were not undertaken in connection with any press function but were rather to benefit Trump, a personal friend of Pecker, and his campaign.[136] Similarly, AMI admitted in its Non-Prosecution Agreement 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."[137] As a result, AMI's editorial judgment is not at issue in these matters, because AMI has already acknowledged that it made or facilitated the payments to McDougal and Clifford for an electoral, as opposed to editorial, purpose.[138]

In addition to this admission, AMI's payment to McDougal would not meet the standard set forth in *MCFL* as applied by the Commission for determining whether its payment was a legitimate press function. According to AMI, the payment was for an amount more than AMI would typically pay for stories because AMI expected to be reimbursed by Trump.[139] This acknowledgement, along with information indicating that AMI valued McDougal's contributions to its publications at significantly less than the $150,000 it paid to her, strongly indicates that the payment to McDougal is inconsistent with AMI's regular treatment of other sources, that the

[136] 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.").

[137] AMI Non-Prosecution Agreement, Ex. A ¶ 5.

[138] AMI Non-Prosecution Agreement at 1-3 (stating that "AMI accepts and acknowledges as true the facts" contained in Exhibit A).

[139] *Id.*, Ex. A ¶ 5; *see also* McDougal 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.").

payment was not made to secure material to be used in producing and distributing content, and that the payment was not made in the same manner as, or even in connection with, AMI's general activities as a press entity.[140] Consistent with the Commission's analysis in AO 2011-11, allowing AMI to assert the press exemption here despite its admissions that its activity was undertaken for political purposes "would stretch the boundaries of the press exemption far beyond those contemplated by Congress and the Supreme Court."[141]

AMI's involvement in both the payment to McDougal and the payment Cohen made to Clifford on behalf of Trump, along with the overlap of individuals involved in the discussion and negotiation of both payments, as well as AMI's admitted involvement in an effort to identify and purchase stories damaging to Trump's campaign, suggest an ongoing pattern of using AMI resources to make payments for the purpose of benefitting Trump's campaign.[142] In October 2016, Davidson, the same attorney who had represented McDougal in her negotiations with AMI, reportedly contacted Pecker and Howard at AMI and offered to confirm Clifford's story on the record.[143] According to press reports, AMI, unwilling to make an additional payment to benefit Trump's campaign, nevertheless served as an intermediary to facilitate Clifford's silence[144] and put Davidson in touch with Michael Cohen, who then negotiated a $130,000

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[140] *See* WSJ Nov. 9 Article (reporting that, in Pecker and Cohen's contemplated agreement to transfer the rights to McDougal's story to Trump for $125,000, "the magazine covers and fitness columns, the rights to which the publisher would retain" were valued at $25,000).

[141] AO 2011-11 at 9.

[142] *See* SDNY Information ¶¶ 24-44; WSJ Jan. 12 Article (outlining details of the payment to Clifford); Farrow, Catch and Kill at 345 (noting AMI's involvement in the payments to McDougal, Sajudin, and Clifford).

[143] *See* SDNY Information ¶ 32.

[144] *See supra* Section II.C.2; Farrow, Catch and Kill at 345 ("[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."); The Fixers at 176-78 (reporting Howard's initial interest in and Pecker's reluctance to purchasing the rights to Clifford's story and Howard's involvement in the negotiations); *see also* WSJ

agreement to purchase Clifford's silence.[145] Davidson's reported multiple negotiations with AMI, each of which ultimately resulted in a payment to prevent the publication of a story that might damage the Trump campaign, indicate his awareness of AMI's general willingness to purchase stories in order to benefit Trump's campaign, and not for legitimate press activity.[146] Finally, AMI's own admissions to DOJ that it had "offered to help with negative stories about [a] presidential candidate's relationships with women by, among other things, assisting the campaign in identifying such stories so they could be purchased and their publication avoided,"[147] indicate an ongoing pattern of using AMI resources to make payments for the purpose of benefitting a candidate, admittedly without regard to its editorial decisions or press-related activity such as disseminating news and increasing readership.

AMI's payment to Sajudin fits this pattern as well. Experienced *Enquirer* staffers reportedly identified "the abrupt end to reporting combined with a binding, seven-figure penalty to stop the tipster from talking to anyone" as hallmarks of a catch and kill operation.[148] Further, sources who purportedly were involved with the investigation of Sajudin's tip reportedly stated that the decision to stop investigating was not an editorial decision but one made by Pecker

Nov. 9 Article ("Mr. Cohen asked American Media to buy Ms. Clifford's story. Mr. Pecker refused on the grounds that he didn't want his company to pay a porn star.").

[145] 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* McDougal New Yorker Article; SDNY Information ¶ 32; The Fixers at 178; WSJ Nov. 9 Article.

[146] *See* McDougal Complaint ¶ 47 (alleging that Davidson told McDougal that AMI "would buy the story *not* to publish it, because Mr. Pecker (AMI's CEO) was a close friend of Mr. Trump" (emphasis in original)); *see also* The Fixers at 164-65; WSJ Nov. 9 Article.

[147] AMI Non-Prosecution Agreement, Ex. A ¶ 3.

[148] MUR 7364 Compl. at 5 (quoting Sajudin AP Article).

personally.[149] One of those sources added, "There's no question it was done as a favor to continue to protect Trump from these potential secrets. That's black-and-white."[150] Finally, former AMI employees stated to *The New Yorker* that Cohen was kept apprised of the investigation of Sajudin's story, indicating that the decision to purchase and silence Sajudin's story was made for political, rather than editorial, purposes.[151] These statements, which detail the ways in which the payment was not comparable to AMI's regular activities in form, scale, personnel, or process, indicate that the decisions surrounding AMI's decision to pay Sajudin amounted to "active participation in core campaigning functions," and were not the sort of activity intended to be protected under the press exemption.[152]

Available information suggests that Sajudin possessed information, which, like Clifford's and McDougal's information, could have harmed Trump's chances of winning the 2016 presidential primary and general elections.[153] Like Clifford and McDougal, Sajudin was reportedly paid for that information, in his case by AMI, and faced significant financial consequences were he to discuss that information publicly.[154] Given AMI's admissions that its

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149 Sajudin New Yorker Article; *see also* The Fixers at 148-49.

150 Sajudin New Yorker Article.

151 *See id.* Other sources indicate that Cohen learned of the story when a reporter, unbeknownst to her editors, contacted Rhona Graff. After learning of this call, Cohen reportedly contacted Howard and "pleaded with him not to publish the story." The Fixers at 147.

152 *See* AO 2011-11 at 8 (quotation marks omitted).

153 *Compare* AMI Non-Prosecution Agreement, Ex. A ¶ 3 (outlining the overall agreement to "help deal with negative stories about that presidential candidate's relationships with women by, among other things, assisting the campaign in identifying such stories so they could be purchased and their publication avoided"), *with* Sajudin Agreement at 4 (outlining an extension of the exclusivity period contained in the agreement to extend "in perpetuity" and its violation to carry a $1 million penalty). *See also* Sajudin AP Article ("The company only released Sajudin from his contract after the 2016 election amid inquiries from the Journal about the payment.").

154 *See supra* Section II.C.1; The Fixers at 148; Sajudin Agreement at 4; *see also* House Oversight Testimony at 128, 132 (Cohen discusses Pecker's actions to protect Trump and appears to refer to the payment to Sajudin).

payments to McDougal were part of an overall scheme to benefit Trump in the election by identifying and purchasing stories that could damage Trump, the available information supports the reasonable inference that AMI's purchase of Sajudin's story was part of that same scheme to benefit a candidate and was undertaken without regard for editorial or other legitimate press function-related considerations.

In light of all of these circumstances, which include AMI's express admissions that it used a press entity's resources to provide benefits to a candidate, which were unrelated to its legitimate press function, the press exemption does not apply to the payments at issue.

B. The Commission Finds Reason to Believe that AMI's Payments to McDougal and Sajudin Were Prohibited Corporate Contributions

1. The Commission Finds Reason to Believe that AMI's Payments to McDougal and Sajudin Were Coordinated Expenditures

a. Coordination

The Act and Commission regulations prohibit corporations from making contributions to candidate committees in connection with a federal election.[155] Likewise, it is unlawful for any candidate, candidate committee, or other person to knowingly accept or receive such a prohibited contribution, and for any officer or director of a corporation to consent to any such contribution.[156] The Commission has consistently found that payments by a third party that are intended to influence an election and are "coordinated" with a candidate, authorized committee, or agent thereof are "coordinated expenditures" that result in a contribution by the person making

[155] 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

[156] 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d)-(e).

the expenditure to the candidate or political committee with whom the expenditure was coordinated.[157]

The available information indicates that AMI's payments to McDougal and Sajudin were "coordinated" with Trump and his agent Cohen because they were made "in cooperation, consultation or concert with, or at the request or suggestion" of Trump, personally, and Cohen in his capacity as an agent for Trump.[158]

Trump reportedly held the August 2015 meeting with Pecker and Cohen, in which Pecker agreed to purchase negative stories on behalf of Trump and his campaign, in his office at Trump Tower, suggesting that he was aware of, and agreed to, the plan to have AMI make payments to individuals in possession of stories damaging to the Trump campaign in order to help his campaign.[159] Further, Trump appears to have maintained an ongoing role in and awareness of AMI's negotiations with individuals possessing potentially damaging stories by contacting AMI directly, and by receiving updates concerning AMI's negotiations from Cohen.[160] For example, according to press reports and Cohen himself, on June 27, 2016, after Cohen notified Trump that AMI was in contact with McDougal, Trump telephoned Pecker and asked Pecker to make

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157 *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).

158 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(a)-(b).

159 *See* WSJ Nov. 9 Article; AMI Non-Prosecution Agreement, Ex. A ¶ 3.

160 The Fixers at 166-68 (detailing Trump's awareness of AMI's negotiations with McDougal); Cohen Book at 285 (stating that, after receiving an update from Cohen about McDougal's story, Trump "immediately called Pecker"); *see also* WSJ Nov. 9 Article.

McDougal's story go away.[161] Press reports also indicate that later, when AMI informed Cohen that McDougal was fielding an offer from ABC for her story, Cohen updated Trump; Cohen also subsequently notified Trump once McDougal signed the agreement with AMI.[162] The available information also indicates that AMI reportedly initially placed a low value on McDougal's story but was nevertheless directed by Trump to purchase her story.[163] Thus, the record indicates that AMI acted in consultation with and at the request or suggestion of Trump.

In addition, AMI has admitted in its Non-Prosecution Agreement with DOJ that it made its payment to McDougal "in cooperation, consultation, and concert with, and at the request and suggestion of one or more members or agents of a candidate's 2016 presidential campaign, to ensure that a woman did not publicize damaging allegations about that candidate before the 2016 presidential election and thereby influence that election," and the available information makes clear that Cohen served as an agent of Trump in his discussions with AMI.[164]

As relevant here, the Commission has defined an "agent" of a federal candidate as "any person who has actual authority, either express or implied," to engage in certain activities with respect to the creation, production, or distribution of communications.[165] That definition applies in the contexts of coordinated communications and non-communication coordinated

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161 *See* The Fixers at 166; Cohen Book at 285.

162 *See* The Fixers at 168-69; *see also* House Oversight Testimony at 29-30 ("[Question:] Mr. Cohen, in your 10 years of working for Donald Trump[,] did he control everything that went on in the Trump Organization? And did you have to get his permission in advance and report back after every meeting of any importance. [Answer:] Yes. There was nothing that happened at The Trump Organization . . . that did not go through Mr. Trump with his approval and sign-off, as in the case of the payments.").

163 *See supra* Section II.B.

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

165 11 C.F.R. § 109.3.

expenditures.[166] The Commission has explained that "[t]he grant and scope of the actual authority, whether the person is acting within the scope of his or her actual authority, and whether he or she is acting on behalf of the principal or a different person, are factual determinations that are necessarily evaluated on a case-by-case basis in accordance with traditional agency principles."[167] It has also explained that "[a]n agent's actual authority is created by manifestations of consent (express or implied) by the principal to the agent about the agent's authority to act on the principal's behalf."[168] Further, the regulatory definitions of "agent" "cover the wide range of activities prohibited by [the Bipartisan Campaign Reform Act of 2002] and the Act, thereby providing incentives for compliance, while protecting core political activity."[169] Finally, the Commission has explained that the definitions of "agent" are broad enough to capture actions of individuals with certain titles or positions, actions by individuals where the candidate privately instructed the individual to avoid raising non-Federal funds, actions by individuals acting under indirect signals from a candidate, and actions by individuals who willfully keep a candidate, political party committee, or other political

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166 *Id.*; *see also id.* § 109.21(a) (addressing actions of "an agent" with respect to coordinated communications); *id.* § 109.20(a) (addressing non-communication activities of "an agent" with respect to coordinated expenditures); Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 425 (Jan. 3, 2003) ("Coordination E&J") (explaining that section 109.20(b) applies to "expenditures that are not made for communications but that are coordinated with a candidate, authorized committee, or political party committee"); Advisory Op. 2011-14 (Utah Bankers Association); 11 C.F.R. § 300.2(b)(3) (defining "agent" of a federal candidate or officeholder as "any person who has actual authority, either express or implied . . . to solicit, receive, direct, transfer, or spend funds in connection with any election"); Definitions of "Agent" for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4975 (Jan. 31, 2006) ("Agency E&J") ("[Agent means] 'any person who has actual authority, either express or implied' to perform certain actions."); Coordination E&J, 68 Fed. Reg. at 423 (explaining that "agent" definition at section 109.3 is modeled on the definition set forth in section 300.2(b)).

167 Coordination E&J, 68 Fed. Reg. at 425.

168 Advisory Op. 2007-05 (Iverson) at 3-4 ("AO 2007-05") (citing Agency E&J, 71 Fed. Reg. at 4976 and stating that if a candidate or federal officeholder provides an individual "with actual authority to solicit and receive contributions, then [that individual] would be an agent of a [f]ederal candidate or officeholder") (internal citations omitted).

169 Agency E&J, 71 Fed. Reg. at 4976-77.

committee ignorant of their prohibited activity.[170] Thus, the Commission has concluded that an individual is an agent of the candidate when the candidate "provides [that individual] with actual authority."[171]

The available information in this matter indicates that Trump provided Cohen with actual authority to engage with AMI in the catch and kill scheme. With respect to the McDougal payment scheme, it appears that Cohen played a crucial role in identifying to AMI Trump's interest in suppressing the story, negotiating, on Trump's behalf, the terms of AMI's payment, and negotiating (even if unsuccessfully) the terms of Trump's repayment of those funds, acting at Trump's direction and with his approval to proceed.[172] The guilty plea from Cohen, the admissions from AMI, and information in press reports about Cohen's actions taken on Trump's authority and Trump's manifestations of assent for those actions, all support the conclusion that Cohen was acting as an agent of Trump when he facilitated the payment from AMI to McDougal.[173]

Finally, the available information supports the inference that AMI's payment to Sajudin was also made in accordance with the catch and kill agreement between Trump and AMI. The

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170 *Id.* at 4978-79.

171 AO 2007-05 at 4.

172 AMI Non-Prosecution Agreement, Ex. A ¶¶ 4-6 (stating that AMI began negotiations with Davidson and McDougal "[a]t Cohen's urging and subject to Cohen's promise that AMI would be reimbursed"); The Fixers at 147-48, 166-68 (detailing Cohen's involvement in the McDougal payment scheme); Cohen Book at 284-89 (same).

173 The available information indicates that Trump, directly and through his counsel, Giuliani, has not denied that Cohen's actions in connection with the McDougal and Clifford payments were undertaken as Trump's agent. *See supra* Section II.D. The lawfulness of the activity is not, however, relevant to the agency determination; the Commission has explained that it "rejects . . . the argument that a person who has authority to engage in certain activities should be considered to be acting outside the scope of his or her authority any time the person undertakes unlawful conduct. It is a settled matter of agency law that liability may exist 'for unlawful acts of [] agents, provided that the conduct is within the scope of the agent's authority, whether actual or apparent.'" Coordination E&J, 68 Fed. Reg. at 424 (quoting *U.S. v. Investment Enterprises, Inc.*, 10 F.3d 263, 266 (5th Cir. 1993)).

payment to Sajudin was made in late 2015, subsequent to Trump's August 2015 meeting and agreement with Cohen and Pecker.[174] The amount of the payment was also unusual when compared to AMI's payments to legitimate sources, because it was paid prior to publication or investigation, was for a substantial sum, and carried an even more substantial penalty for disclosure. The circumstances and timing of the payment support a conclusion that the payment was part of AMI's catch and kill agreement with Trump, because AMI paid Sajudin after agreeing to catch and kill such stories on behalf of Trump. Additionally, Cohen has appeared to testify to his awareness of the payment to Sajudin.[175] A payment made by AMI pursuant to the catch and kill agreement between Pecker, Trump, and Cohen is a payment made by AMI in consultation with and at the request or suggestion of Trump and Cohen, as an agent of Trump.

Accordingly, the AMI payments to McDougal and Sajudin meet the definition of "coordinated" in 11 C.F.R. § 109.20(a) in that they were made in cooperation, consultation or concert with, or at the request or suggestion of Trump or Trump's agent Cohen. The coordinated payments would constitute in-kind contributions from AMI to Trump and the Trump Committee if they were "expenditures," that is, made for the purpose of influencing Trump's election.

b. For the Purpose of Influencing an Election

The "purpose" of influencing a federal election is a necessary element in defining whether a payment is a "contribution" or "expenditure" under the Act and Commission regulations.[176] In analyzing whether a payment made by a third party is a "contribution" or

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

175 *See* House Oversight Testimony at 128, 132 (discussing Pecker's actions to protect Trump and appearing to refer to the payment to Sajudin, as well as Cohen and Trump's attempt to purchase the rights to stories silenced by AMI and the "treasure trove of documents" related to those stories).

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

"expenditure,"[177] the Commission has concluded that "the question under the Act is whether" the donation, payment, or service was "provided for the purpose of influencing a federal election [and] not whether [it] provided a benefit to [a federal candidate's] campaign."[178] The electoral purpose of a payment may be clear on its face, as in payments to solicit contributions or for communications that expressly advocate for the election or defeat of a specific candidate, or inferred from the surrounding circumstances.[179]

When electoral purpose is not apparent on its face, the Commission has previously concluded that payments would result in a contribution or expenditure if they were made to potentially advance a candidacy, if they were made because of the beneficiary's status as a federal candidate, or if the payment was coordinated with the candidate or his campaign.

For example, in Advisory Opinion 1990-05, the Commission concluded that the publication expenses of a newsletter by a candidate-owned company would be expenditures if the newsletter referred to the candidate's campaign or qualifications for office, referred to issues

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177 52 U.S.C. § 30101(8)(A)(i), (9)(A)(i).

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

179 *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). 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 the *only* purpose — acknowledging that "[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).

or policy positions raised in the campaign (by the candidate or her opponents), or if the distribution of the newsletter significantly expanded or otherwise indicated that it was being used as a campaign communication.[180] The Commission indicated that any discussion of issues or policies "closely associated" with the candidate's federal campaign "would be inevitably perceived by readers as promoting your candidacy," and the newsletter would therefore be "viewed by the Commission as election-related and subject to the Act."[181]

Similarly, in Advisory Opinion 2000-08, the Commission concluded that a donor's provision of a monetary "gift" to a federal candidate to express "gratitude" and "deep appreciation" to him for running for office would be made to influence a federal election — notwithstanding the donor's statements that he intended that the gift be used solely for personal expenses and did not "wish to directly support [the candidate's] campaign" — because "the proposed gift would not be made but for the recipient's status as a Federal candidate; it is, therefore, linked to the Federal election" and "would be considered a contribution."[182]

Conversely, the Commission has previously found that activity by or in connection with a federal candidate that is undertaken for any number of non-electoral purposes — including, *e.g.*,

180 AO 1990-5 at 4.

181 *Id.* at 2, 4.

182 AO 2000-08 at 2-3.

activity to advance a commercial interest,[183] fulfill the obligations of holding federal office,[184] or engage in non-candidate oriented election litigation [185] — does not necessarily result in a "contribution" or "expenditure," even if such activity confers a benefit on a federal candidate or otherwise impacts a federal election.

With respect to the McDougal payment, it is unnecessary to infer the circumstances behind the payment; both AMI and Cohen have already acknowledged, in a sworn plea, agreement, and testimony, that the purpose of paying McDougal was to prevent her story from influencing the election. In the AMI Non-Prosecution Agreement, AMI explicitly admits that its "principal purpose in entering into the agreement [with McDougal] was to suppress the model's story" and "to ensure that [she] did not publicize damaging allegations about [Trump] before the

[183] *E.g.*, Advisory Op. 2012-31 (AT&T) at 4 (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 Rpt. at 13-17, MURs 5474 and 5539 (Dog Eat Dog Films) (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 (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").

[184] *E.g.*, Advisory Op. 1981-37 at 2 (Gephardt) (concluding that 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).

[185] *E.g.*, Factual & Legal Analysis at 8, MUR 7024 (Van Hollen for Senate) (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").

2016 presidential election and thereby influence that election."[186] Further, AMI admits that the payment to McDougal was part of an overarching scheme in "assisting [the] campaign" in identifying and purchasing "negative stories about [his] relationships with women" to prevent their publication.[187] Cohen admits that he worked with AMI, the *Enquirer*, Pecker, and Howard to catch and kill McDougal's story and that his work with AMI in connection with the $150,000 payment was done "at the request of the candidate."[188]

Even absent AMI and Cohen's explicit admissions, consistent with prior matters in which the Commission found the payment resulted in a contribution or expenditure, the overall record in these matters — including the timing of the negotiations and payments to McDougal and Sajudin, the terms of the agreements relative to AMI's usual practices, the release from the non-disclosure provisions shortly after the election, and the coordination between AMI, Trump, and Cohen[189] — indicates that the payments would not have been made absent Trump's status as a candidate. As with the facts the Commission considered in Advisory Opinions 1990-05 and 2000-08, the available information in this matter supports the conclusion that the purpose of the

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

187 *Id.* ¶ 3.

188 House Oversight Testimony at 30, 99-100 (noting that Pecker had paid hush money to other individuals in addition to McDougal); Cohen Plea Hearing at 23; *see supra* note 18.

189 *See supra* Sections II.A, B, C.1 (discussing McDougal and Sajudin's negotiations with AMI after the August 2015 meeting between Pecker, Cohen, and Trump, during which they agreed that Pecker would catch and kill negative stories about Trump's relationships with women so that they were not published before the election); AMI Non-Prosecution Agreement, Ex. A ¶ 5 (acknowledging that $150,000 payment to McDougal was substantially higher that AMI would normally pay); Sajudin AP Article (reporting that the amount and circumstances of the Sajudin payment — $30,000 for secondhand information regarding a story that was abandoned mid-investigation and that was never published — were inconsistent with AMI's standard practices, indicating to the *Enquirer* staffers who spoke on the subject that it was part of a catch and kill operation). Sajudin's story was decades old, second-hand, and like McDougal and Clifford's stories, was not purchased until Trump's campaign was underway, indicating that, given the timing and agreement between AMI, Trump, and Cohen, the purchase of the stories was aimed at improving Trump's chances of winning the presidency.

McDougal and Sajudin payments *was* to influence the 2016 election, irrespective of any incidental effects they may have had on Trump personally.[190] Although McDougal and Sajudin's stories involved years- and decades-old allegations, respectively, and Pecker and Trump reportedly have a longstanding friendship such that "critical coverage of Trump vanished" once Pecker "took over" AMI,[191] AMI's specific catch and kill effort to obtain and prevent the publication of damaging stories, including McDougal's and Sajudin's, began only after Trump became a candidate for president in June 2015.[192]

Thus, the available information supports the conclusion that AMI's payments to McDougal and Sajudin were coordinated with Trump and were made for the purpose of

[190] *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." AO 2000-08 at 3; *see also* 52 U.S.C. § 30114(b) (prohibiting use of campaign funds "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 (Feb. 9, 1995) ("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."). .

[191] 2017 New Yorker Article.

[192] *See* Donald J. Trump, Statement of Candidacy (June 22, 2015); AMI Non-Prosecution Agreement, Ex. A ¶ 3 (admitting that "Pecker offered to help deal with negative stories about [Trump's] relationships with women by, among other things, assisting the campaign in identifying such stories so they could be purchased and their publication avoided"); 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) (recapping Trump's 2015 campaign launch). Although the Trump Committee asserts that AMI's payment to McDougal was a "private" and commercial transaction, the Trump Committee relies on arguments that AMI has disavowed in its later admissions to DOJ; thus, the Trump Committee's arguments are not credibly supported by the record. *Compare* MURs 7324/7332 Trump Committee Resp. at 1, MURs 7366 Trump Committee Resp. at 2 (citing three AMI press releases issued prior to the execution of the AMI Non-Prosecution Agreement), *with* AMI Non-Prosecution Agreement, Ex. A ¶¶ 2-9.

influencing Trump's election, resulting in AMI making "coordinated expenditures" under the Act.[193]

2. The Commission Finds Reason to Believe that AMI's Payments to McDougal and Sajudin Were Prohibited Corporate In-Kind Contributions to the Trump Committee

Because the available information indicates that AMI's payments to McDougal and Sajudin were coordinated expenditures made for the purpose of influencing the 2016 election, the record supports a reason to believe finding that the payments constituted in-kind contributions from AMI to Trump and the Trump Committee that must have been reported by the Trump Committee as both contributions from AMI to the Trump Committee and expenditures by the Trump Committee to McDougal and Sajudin.[194] Further, because the payments were in-kind contributions to the Trump Committee, they were subject to the contribution limits and prohibitions set forth in the Act and Commission regulations.[195] The Act and Commission regulations prohibit corporations from making contributions to candidate committees.[196] The Act and Commission regulations also prohibit candidates, candidate committees, or other persons from knowingly accepting or receiving such a prohibited

[193] In addition, the payments to public relations firms by AMI under the Amendment to the McDougal agreement, which were used to allow AMI to control the narrative surrounding McDougal's story and further prevent McDougal from speaking about her relationship with Trump, likely were made for the purpose of influencing the 2020 presidential election and likely were coordinated expenditures resulting in in-kind contributions from AMI to Trump and Trump Committee.

[194] *See* 11 C.F.R. § 109.20(b).

[195] 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.

[196] 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

contribution, and for any officer or director of a corporation to consent to making any such contribution.[197]

The Commission has previously found violations of the Act by a corporation and its officers in connection with similar payments to third parties. In MUR 7248, the Commission found reason to believe that Cancer Treatment Centers of America and several of its corporate officers violated 52 U.S.C. § 30118 by making and consenting to prohibited corporate contributions where the corporate officers engaged in a reimbursement scheme whereby executives were reimbursed via bonuses for their political contributions. [198]

While corporate contributions to candidate committees are *per se* prohibited and do not require proof of the contributor's knowledge of the violation, AMI has admitted to DOJ that it knew that corporations are prohibited from contributing to candidate committees like the Trump Committee.[199] The AMI Non-Prosecution Agreement states:

> 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. At no time did AMI report to the Federal Election Commission that it had made the $150,000 payment to [McDougal].[200]

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197 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d)-(e).

198 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).

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

200 *Id.*

Thus, AMI has admitted that it made the payment to McDougal while knowing that it was unlawful.[201] It is reasonable to infer, further, that AMI also knew its payment to Sajudin was unlawful when it made that payment in December 2015.

The available information indicates that the Trump Committee and Trump knowingly accepted the in-kind corporate contributions from AMI. Trump's acceptance of AMI's prohibited contributions can be reasonably inferred from Trump's instrumental involvement in the agreement that AMI would catch and kill stories damaging to the Trump campaign. The available information indicates that Trump was directly involved in the catch and kill scheme generally, and specifically with respect to AMI's decision to purchase McDougal's story.[202] Trump reportedly participated in the August 2015 meeting with Pecker and Cohen, during which the catch and kill plan was agreed upon; Trump reportedly communicated with Cohen and Pecker about the prospect of AMI acquiring the McDougal story throughout the process, including by asking Pecker to make the story go away even though Pecker, Howard, and Cohen had earlier decided not to do so; and Trump thanked Pecker for suppressing the story after the election after Trump failed to reimburse AMI as originally planned.[203]

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[201] *See infra* Section III.D; *see also* 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.").

[202] House Intelligence Deposition at 117, 119; *see also* The Fixers at 164-71, 198 (reporting that Trump was involved in the decision for AMI to purchase McDougal's story and that Cohen notified Trump after the agreement with McDougal was executed).

[203] WSJ Nov. 9 Article; The Fixers at 164-69, 198.

The September 2016 tape recording of the meeting between Trump and Cohen further indicates Trump's direct knowledge of AMI's payment to McDougal.[204] The tape recording Cohen made during a September 2016 meeting with Trump supports Cohen's testimony that Trump had direct knowledge of the assignment agreement just weeks after the underlying agreement with McDougal had been executed.[205] Although it is not publicly known at this time whether Trump's payment for the assignment was to have come from Trump personally or the Trump Organization, the information indicates that Trump had knowledge of AMI's payments and was involved in decisions concerning the contemplated repayment to AMI, including a reported conversation with Pecker soon after publication of the *Wall Street Journal* article regarding AMI's payment to McDougal.[206] Additionally, Trump's counsel, Giuliani, publicly acknowledged that the Trump-Cohen recording related to "buying the story rights," which lends further credence to the conclusion that Trump knew, at the time of that recording, that AMI had made payments in cooperation, consultation or concert with, or at the request or suggestion of Trump himself.[207] Despite the Trump Committee's public denial,[208] Trump's direct knowledge

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204 *See* House Oversight Testimony at 100 (testifying that Cohen, Pecker, and Trump planned to transfer the rights to McDougal's story to an entity owned by Cohen, in exchange for Trump's payment of $125,000 to AMI); CNN Article; WSJ Nov. 9 Article.

205 CNN Article. During the meeting, Cohen appears to tell Trump that he "need[s] to open up a company for the transfer of all of that info regarding our friend David," referring to David Pecker. *Id.* During one exchange, Trump appears to ask "What financing?" and Cohen says "We'll have to pay." *Id.* Trump then appears to say "pay with cash," however the recording is unclear as to whether Trump is telling Cohen to pay with cash. Cohen then appears to state "I've spoken with [Trump Organization Chief Financial Officer] Allen Weisselberg about how to set the whole thing up with funding." *Id.*

206 Warrant Affidavit ¶ 40.e.

207 CNN Article.

208 *See* WSJ 2016 Article.

of the AMI payment can be imputed to the campaign,[209] and the available information indicates that both Trump and the Trump Committee knew about AMI's payment to McDougal and knowingly accepted the resulting prohibited corporate in-kind contribution.

Additionally, Trump appears to have also gained knowledge of AMI's expenditures via Cohen. As explained above, Cohen acted as an agent of Trump in his interactions with AMI concerning AMI's payment to McDougal to influence the 2016 presidential election.[210] Cohen has testified that the payment to McDougal "was done at the direction of Mr. Trump and in accordance with his instructions" and was premised on AMI's understanding that Trump would reimburse AMI for its payment to McDougal as evidenced by the negotiations between AMI and Cohen for assignment rights to the story.[211] Thus, Cohen indicates that, not only was he acting as an agent of Trump, but that, in that capacity, he kept Trump apprised of AMI's payment to McDougal.

In addition, given the August 2015 catch and kill agreement between Trump, Pecker and Cohen, Cohen's reported communications with Howard concerning the *Enquirer*'s investigation of Sajudin's story, and the numerous factors suggesting that negotiations with Sajudin deviated from the standard investigatory practices at the *Enquirer* but were consistent with the catch and kill agreement, a reasonable inference can be made that Pecker likely informed both Cohen and Trump about the Sajudin payment while Cohen was acting as an agent of Trump such that it

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209 *See* 52 U.S.C. § 30102(e)(2); 11 C.F.R. § 101.2; Factual & Legal Analysis at 6, MUR 6566 (Lisa Wilson-Foley for Congress) ("[A]ny candidate who receives a contribution does so as an agent of the candidate's authorized committee").

210 *See supra* Section III.B.1.

211 House Intelligence Deposition at 117, 119; *see also* AMI Non-Prosecution Agreement, Ex. A ¶¶ 5-6; The Fixers at 168-69 (reporting that Trump was involved in the decision for AMI to purchase McDougal's story and that Cohen notified Trump after the agreement with McDougal was executed).

appears that Trump and the Trump Committee knowingly accepted the in-kind contribution from AMI in the form of AMI's payment to Sajudin.[212]

Thus, the Commission finds reason to believe that Trump and the Trump Committee violated 52 U.S.C. § 30118(a) by knowingly accepting prohibited corporate contributions.

C. The Commission Finds Reason to Believe that the Trump Committee Failed to Disclose the AMI Payments to McDougal and Sajudin

The Act and Commission regulations require political committees to file periodic reports accurately disclosing all of their receipts, disbursements, and debts and obligations, including coordinated expenditures.[213] These disclosure requirements serve important transparency and anticorruption interests, as they "provide the electorate with information as to where political campaign money comes from and how it is spent[,] . . . [and] deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity."[214] Political committees must report the total amount of all receipts and disbursements for the reporting period and, for a committee authorized by a candidate, the election cycle;[215] itemize the name and address of each person from whom the committee received contributions aggregating in excess of $200 in an election cycle, along with the dates and amounts of the contributions;[216] and itemize the name and address of each person to whom the committee made

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212 *See* House Oversight Testimony at 128, 132 (appearing to discuss AMI's payment to Sajudin); The Fixers at 147-48.

213 52 U.S.C. § 30104; 11 C.F.R. § 104.3.

214 *Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976); *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").

215 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a)(3), (b)(2).

216 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4)(i).

expenditures exceeding, in aggregate amount or value, $200 per election cycle, as well as the date, amount, and purpose of the expenditures.[217]

The available information indicates that the Trump Committee violated its disclosure obligations under the Act when it failed to provide required contribution information in connection with AMI's payments to McDougal and Sajudin, which were not disclosed on any Trump Committee reports filed with the Commission.[218] A coordinated expenditure must be reported as both a contribution received by, and an expenditure made by, the authorized committee of the candidate with whom the expenditure was coordinated.[219] Thus, the Trump Committee should have reported receipts from AMI and offsetting disbursements to McDougal and Sajudin,[220] including the dates, amounts, and purposes of the in-kind contributions.[221]

The Trump Committee did not disclose the McDougal and Sajudin payments because the available information indicates that Trump, Cohen, Pecker, Howard, and AMI intended for the payments to be concealed from public view, thereby insulating Trump and the Trump Committee and depriving the public of information about Trump before the election.[222] Accordingly, the Commission finds reason to believe that the Trump Committee violated 52 U.S.C. § 30104(b)

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217 52 U.S.C. § 30104(b)(5)(A); 11 C.F.R. § 104.3(b)(4)(i).

218 *See generally* Trump Committee 2015-2016 Disclosure Reports.

219 11 C.F.R. § 104.13(a)(3); *see also* 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).

220 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) (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).

221 52 U.S.C. § 30104(b)(3)(A), (b)(5)(A); 11 C.F.R. § 104.3(a)(4)(i), (b)(4)(i).

222 AMI Non-Prosecution Agreement, Ex. A ¶¶ 5-6, 8.

and 11 C.F.R. § 104.3(a) and (b) by failing to report required information in its Commission filings.

D. The Commission Finds Reason to Believe that the Violations Set Forth Above Were Knowing and Willful

The Act prescribes additional penalties for "knowing and willful" violations,[223] which are defined as "acts [that] were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law."[224] This standard does not require knowledge of the specific statute or regulation that the respondent allegedly violated; it is sufficient to demonstrate that a respondent "acted voluntarily and was aware that his conduct was unlawful."[225] Such awareness may be shown through circumstantial evidence from which the respondent's unlawful intent may be reasonably inferred,[226] including, for example, an "elaborate scheme for disguising" unlawful acts.[227]

The available information indicates that there is reason believe that Trump, and the Trump Committee, acting through Trump as its agent,[228] acted knowingly and willfully.

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

224 122 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).

225 *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)).

226 *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.

227 *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)).

228 *See* 52 U.S.C. § 30102(e)(2); 11 C.F.R. § 101.2.

According to press reports, Trump participated in AMI's decision to purchase McDougal's story, and at the August 2015 meeting, he instructed Pecker to work with Cohen to prevent any potentially damaging stories from becoming public in an effort to help Trump's campaign.[229] Consistent with the available information regarding Trump's involvement, Cohen asserts that he worked with AMI on the purchase of McDougal's story at the direction of Trump and that he negotiated and executed the assignment of rights to McDougal's story with AMI with the understanding that Trump would ultimately pay for the rights.[230] Further, the available information indicates that Trump and Cohen also wished to purchase AMI's trove of documents regarding Trump due to a concern about what might happen to the documents if Pecker left AMI.[231] The available information also indicates that Cohen kept Trump apprised of the status of AMI's efforts.[232] The recording of Trump and Cohen's conversation, which Trump's personal counsel, Giuliani, has confirmed, dealt with Cohen's efforts to purchase the limited life rights to McDougal's story from AMI, and indicates Trump's knowledge of the payment and awareness that such payments were unlawful.[233]

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229 WSJ Nov. 9 Article; The Fixers at ix-xi; *see also* Cohen Plea Hearing at 23 ("[O]n or about the summer of 2016, in coordination with, and at the direction of, a candidate for federal office, I and the CEO of a media company at the request of the candidate worked together to keep an individual with information that would be harmful to the candidate and to the campaign from publicly disclosing this information. After a number of discussions, we eventually accomplished the goal by the media company entering into a contract with the individual under which she received compensation of $150,000.").

230 *See* House Intelligence Deposition at 117, 119; House Oversight Testimony at 100; 2019 New Yorker Article.

231 The Fixers at 169; *see also* WSJ Nov. 9 Article.

232 *See, e.g.*, The Fixers at 168-71; WSJ Nov. 9 Article.

233 Trump has also publicly stated that he is an expert on campaign finance. *See Larry King Live: Interview with Donald Trump*, CNN 25:13-25:19 (Oct. 8, 1999), https://www.youtube.com/watch?v=gEVzCtcT-Mo ("I think nobody knows more about campaign finance than I do because I'm the biggest contributor."); *see also* The Fixers at 341.

As to the Sajudin payment, although the current record is less fulsome, the available information provides a basis to conclude that the Sajudin payment is consistent with the catch and kill agreement between Pecker, Trump, and Cohen, an agreement which AMI has acknowledged in the context of the McDougal payment it knew was unlawful.

Accordingly, the Commission finds reason to believe that the violations of the Act by Trump and the Trump Committee, as set forth above, were knowing and willful.

ELW 2/22/2021

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Dylan Howard MURs 7332 and 7364

I. INTRODUCTION

The Complaints in these two matters allege that Dylan Howard, at the time a corporate officer of American Media, Inc., which is now A360 Media, LLC[1] ("AMI") facilitated payments AMI made to two individuals in advance of the 2016 presidential election to suppress negative stories about then-presidential candidate Donald J. Trump's relationships with several women. Specifically, the Complaints allege that Howard worked with Michael D. Cohen, who served as Trump's personal attorney, to negotiate AMI's payment of $150,000 to Karen McDougal in August 2016 for the purpose of influencing Trump's election by suppressing her story of an alleged personal relationship with Trump.[2] The Complaint in MUR 7364 further alleges that Howard played a role in AMI's $30,000 payment to Dino Sajudin in December 2015 to prevent publication of a rumor Sajudin had heard that Trump had fathered a child with an employee at Trump World Tower.[3]

In its Responses, which include an affidavit from Howard, AMI asserts that the press exemption and the First Amendment preclude investigation of the allegations and further contends that the payments to McDougal and Sajudin were *bona fide* payments.[4] After AMI's

[1] *See infra* note 12 and accompanying text.

[2] MUR 7332 Compl. at 1-2 (Feb. 27, 2018); MUR 7364 Compl. at 4 (Apr. 12, 2018).

[3] MUR 7364 Compl. at 4.

[4] MUR 7332 AMI Resp. (Apr. 13, 2018) (including an affidavit from Howard); MUR 7364 AMI Resp. (June 8, 2018) (same); MUR 7332 AMI Supp. Resp. (June 8, 2018); *see also* MUR 7332 AMI Resp. at 1-2, nn.1-2 (noting that Howard chose not to file a separate response and that AMI's Response addresses his potential liability as an officer of AMI).

Responses were filed, Cohen pleaded guilty to willfully causing an unlawful corporate contribution concerning the payment to McDougal and is currently serving the remainder of his sentence under home confinement in connection with that plea.[5] AMI entered into a non-prosecution agreement with the Department of Justice ("DOJ") regarding the payment to McDougal.[6]

As discussed below, the available information indicates that Trump, Cohen, and Pecker agreed in August 2015 that Pecker, as President and CEO of AMI, would catch and kill stories that could be damaging to Trump's prospects in the 2016 presidential election, and that in August 2016 — at the direction of Trump and as part of that agreement — Pecker, Howard, and AMI paid McDougal $150,000 to suppress her story of a sexual relationship with Trump, which allegedly occurred while he was married, from becoming public before the 2016 presidential election. Based on the available information, it also appears that Pecker, Howard, and AMI paid Sajudin $30,000 in December 2015 to prevent Sajudin from publicizing his story that Trump had fathered a child with an employee of Trump World Tower. Accordingly, the Commission finds reason to believe that Howard knowingly and willfully violated 52 U.S.C. § 30118(a) by consenting to make prohibited corporate in-kind contributions.

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[5] *See* Tr. of Proceedings before Hon. William H. Pauley III at 23-24, 27, *United States v. Cohen*, No. 1:18-cr-00602-WHP (S.D.N.Y. Aug. 21, 2018), https://assets.documentcloud.org/documents/4780185/Cohen-Court-Proceeding-Transcript.pdf ("Cohen Plea Hearing"); Tom McParland, *Michael Cohen Released to Home Confinement Because of COVID-19 Concerns,* NEW YORK LAW JOURNAL (May 21, 2020), https://www.law.com/newyorklawjournal/2020/05/21/michael-cohen-released-to-home-confinement-because-of-covid-19-concerns (reporting Cohen's initial release); Mem. of Law in Supp. of Pet'r's Emergency Mot. for a TRO at 4-9, 12-23, *Cohen v. Barr, et al.*, No. 1:20-cv-5614-AKH (S.D.N.Y. July 20, 2020), ECF No. 5 (summarizing Cohen's initial release to home confinement, his return to prison, and his petition to be returned to home confinement); Order Granting Prelim. Inj., *Cohen v. Barr*, *et al.*, No. 1:20-cv-5614-AKH (S.D.N.Y. July 23, 2020), ECF No. 30 (granting Cohen's request to be returned to home confinement).

[6] 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").

II. FACTUAL BACKGROUND

Trump declared his presidential candidacy on June 16, 2015, and registered Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer (the "Trump Committee"), his principal campaign committee, with the Commission on June 29, 2015.[7] Michael D. Cohen was an attorney for the Trump Organization,[8] worked as special counsel to Trump, and served as a Trump Committee surrogate in the media.[9] AMI was a publishing company headquartered in New York, New York.[10] In 2016, one of AMI's publications was the *National Enquirer* (the "*Enquirer*"), which is a weekly print and online tabloid publication.[11] In

[7] 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 Committee, Statement of Organization, FEC Form 1 (June 29, 2015).

[8] Trump Organization, LLC is a limited liability company ("LLC") organized under the laws of New York on August 4, 1999 and its registered agent is National Registered Agents, Inc. The available information does not indicate its tax election status for federal tax purposes. *See* N. Y. Dept. of State, Div. of Corps., *Search Our Corporation and Business Entity Database*, https://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_SEARCH_ENTRY (search entity name: "Trump Organization LLC") (last visited Sept. 30, 2020).

[9] Government's Sentencing Mem. at 11, *United States v. Cohen*, No. 1:18-cr-00602-WHP (S.D.N.Y. Dec. 7, 2018) ("SDNY Cohen Sentencing Memorandum"); *Report on the Investigation into Russian Interference in the 2016 Presidential Election*, U.S. Dep't of Justice, Vol. 1 at 53 (March 2019) (identifying Cohen as a former executive vice president at the Trump Organization and "special counsel to Donald J. Trump"); *Hearing with Michael Cohen, Former Attorney to President Donald Trump before the H. Comm. on Oversight and Reform*, 116th Cong. at 11 (Feb. 27, 2019), https://docs house.gov/meetings/GO/GO00/20190227/108969/HHRG-116-GO00-20190227-SD003.pdf ("House Oversight Testimony") (stating that for more than 10 years, Cohen served as executive vice president and special counsel at the Trump Organization and then worked as Trump's personal attorney when he became President); *see also* 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") (cited by MUR 7332 Second Amend. Compl. at 2 (Aug. 6, 2018) and MUR 7364 Compl. at 3) (referring to Cohen "as a top attorney at the Trump Organization").

[10] *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).

[11] MUR 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

August 2020, AMI reportedly was renamed A360 Media, LLC and plans were announced to merge it with Accelerate 360, a logistics firm.[12] Pecker was the President and Chief Executive Officer of AMI until the merger and reportedly became an executive advisor to the new company.[13] Howard was AMI's Vice President and Chief Content Officer and reportedly left the company on March 31, 2020.[14] From 2013 to 2017, Howard was the Editor in Chief of the *Enquirer*.[15] Karen McDougal is a model and actress.[16] Dino Sajudin is a former doorman for Trump World Tower in New York City.[17]

The available information indicates that during Trump's 2016 presidential campaign, AMI and its executives, Pecker and Howard, after discussions with Trump and Cohen, acting as an agent of Trump, paid $150,000 to Karen McDougal to purchase the rights to her claim that

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.

[12] 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"). Both A360Media and Accelerate 360 are reportedly controlled by Chatham Asset Management, a New Jersey hedge fund. *Id.* A360 Media, LLC and another entity named A360 Media Holdings, LLC are registered in Delaware. Del. Dept. of State, Div. of Corps., *General Information Name Search*, https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx (search entity name: A360 Media) (last visited Sept. 30, 2020). AMI appears to be doing business as A360 Media, LLC per recent media reports. *See, e.g.*, NY Times Aug. 21 Article.

[13] MUR 7332 AMI Resp. at 1, n.1; NY Times Aug. 21 Article.

[14] MUR 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.

[15] MUR 7332 AMI Resp., Aff. of Dylan Howard ¶ 2.

[16] Compl. for Declaratory Relief, *McDougal v. American Media, Inc.*, No. BC698956 (Cal. Super. Ct. Los Angeles Cnty. Mar. 20, 2018 ("McDougal Complaint").

[17] Joe Palazzolo & Michael Rothfeld, THE FIXERS at 146 (2020) ("The Fixers") (Palazzolo and Rothfeld are two of the authors of *The Wall Street Journal*'s 2016 reporting as described *infra* at note 18; The Fixers expands upon the reporting in that article); *see also* MUR 7364 Compl. at 4 (citing Jake Pearson and Jeff Horwitz, *$30,000 Rumor? Tabloid Paid for, Spiked, Salacious Trump Tip*, ASSOCIATED PRESS (Apr. 12, 2018), https://www.apnews.com/f37ecfc4710b468db6a103a245146172 ("Sajudin AP Article")).

she engaged in a relationship with Trump beginning in 2006, while he was married.[18] Cohen pleaded guilty to criminal violations of the Act in connection with AMI's payment to McDougal and his own payment to adult film actress and director Stephanie Clifford, who also alleged an affair with Trump while he was married; Cohen's sworn allocution and testimony indicate that his participation in the payments to both McDougal and Clifford was for the "principal purpose of influencing the [2016 presidential] election."[19]

[18] News reports and Cohen's testimony have identified Trump, AMI, Pecker, Howard, Keith Davidson, McDougal, and Stephanie Clifford as the persons anonymously referenced in documents — including the SDNY Information and Warrant Affidavit — pertaining to DOJ's investigation and prosecution of Cohen, as follows: Trump is "Individual-1"; the Trump Organization is the "Company"; AMI is "Corporation-1"; Pecker is "Chairman-1"; Howard is "Editor-1"; Davidson is "Attorney-1"; McDougal is "Woman-1"; and Clifford is "Woman-2." *See, e.g.*, Information at 11-19, *United States v. Cohen*, No. 1:18-cr-00602-WHP (S.D.N.Y Aug. 21, 2018), ECF No. 2 ("SDNY Information"); Agent Aff. in Supp. of Appl. for Search and Seizure Warrant, *United States v. Cohen*, No. 1:18-cr-00602-WHP (S.D.N.Y. Apr. 8, 2018), ECF No. 48-1 ("Warrant Affidavit"); Joe Palazzolo, Michael Rothfeld, and Lukas I. Alpert, National Enquirer *Shielded Donald Trump from Playboy Model's Affair Allegation*, WALL ST. J. (Nov. 4, 2016), https://www.wsj.com/articles/national-enquirer-shielded-donald-trump-from-playboy-models-affair-allegation-1478309380 ("WSJ 2016 Article") (cited by MUR 7332 First Amend. Compl. at 5 (May 9, 2018), MUR 7332 Compl. at 3, and MUR 7364 Compl. at 4) (describing the circumstances of AMI's payment to McDougal and identifying the parties involved); Ronan Farrow, *Donald Trump, a Playboy Model, and a System for Concealing Infidelity*, THE NEW YORKER (Feb. 16, 2018), https://www newyorker.com/news/news-desk/donald-trump-a-playboy-model-and-a-system-for-concealing-infidelity-national-enquirer-karen-mcdougal ("McDougal New Yorker Article") (cited by MUR 7332 First Amend. Compl. at 5 and MUR 7332 Compl. at 3); Jim Rutenberg, Megan Twohey, Rebecca R. Ruiz, Mike McIntire & Maggie Haberman, *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") (cited by MUR 7332 First Amend. Compl. at 4) (describing the circumstances of AMI's payment to McDougal and Cohen's payment to Clifford, and identifying the parties involved); House Oversight Testimony at 11, 30, 100, 132 (specifically identifying Trump as "Individual-1"; detailing the events surrounding AMI's payment to McDougal; naming AMI, the *Enquirer*, Pecker, Howard as participants in catch and kill; and identifying Pecker as having "expended" funds to pay McDougal on Trump's behalf); Joe Palazzolo, Nicole Hong, Michael Rothfeld and Rebecca Davis O'Brien, *Donald Trump Played Central Role in Hush Payoffs to Stormy Daniels and Karen McDougal*, WALL ST. J. (Nov. 9, 2018), https://www.wsj.com/articles/donald-trump-played-central-role-in-hush-payoffs-to-stormy-daniels-and-karen-mcdougal-1541786601 ("WSJ Nov. 9 Article") (expanding on the reporting conducted for the WSJ 2016 Article, which is cited by the Complaints in MURs 7332 and 7364); The Fixers at 313, 317.

[19] *See* Cohen Plea Hearing at 23, 27-28 (pleading guilty to knowingly and willfully violating 52 U.S.C. § 30118(a) by "causing" AMI to make a payment totaling $150,000 in 2016 to McDougal, and to knowingly and willfully violating 52 U.S.C. § 30116(a)(1)(A) by making an excessive contribution in the form of a payment totaling $130,000 to Clifford, to ensure that both women did not publicize damaging allegations before the 2016 presidential election and thereby influence that election); *see also* SDNY Information ¶ 41-44. 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. *See* 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), ECF No. 2, 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 and McDougal payments in a sworn

AMI entered into a Non-Prosecution Agreement with DOJ on September 21, 2018.[20] In that Non-Prosecution Agreement, AMI admitted that it made the payments to McDougal to ensure that she did not publicize her allegations and "thereby influence [the 2016 presidential] election."[21]

A. Pecker, Trump, and Cohen Enter into a Catch and Kill Agreement for Trump's Campaign

In August 2015, Trump reportedly met with Cohen and Pecker in his Trump Tower office and asked Pecker what Pecker could do to help his campaign.[22] AMI admitted that, at that meeting, "Pecker offered to help deal with negative stories about [Trump's] relationships with women by, among other things, assisting the campaign in identifying such stories so they could be purchased and their publication avoided."[23] Trump reportedly directed Pecker to work with

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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.

[20] AMI Non-Prosecution Agreement at 3. Pecker and Howard were reportedly granted immunity in exchange for their cooperation. Gabriel Sherman, *"Holy Shit, I Thought Pecker Would Be the Last One to Turn": Trump's* National Enquirer *Allies Are the Latest to Defect*, THE HIVE-VANITY FAIR (Aug. 23, 2018), https://www.vanity fair.com/news/2018/08/donald-trump-national-enquirer-allies-defect-david-pecker-michael-cohen; WSJ Nov. 9 Article; Jim Rutenberg, Rebecca R. Ruiz & Ben Protess, *David Pecker, Chief of* National Enquirer*'s Publisher, Is Said to Get Immunity in Trump Inquiry*, N.Y. TIMES (Aug. 23, 2018), https://www.nytimes.com/2018/08/23/us/ politics/david-pecker-immunity-trump html.

[21] *See* AMI Non-Prosecution Agreement, Ex. A ¶ 3.

[22] WSJ Nov. 9 Article (citing "people familiar with the meeting" and noting that the article is based on "interviews with three dozen people who have direct knowledge of the events or who have been briefed on them, as well as court papers, corporate records and other documents"); AMI Non-Prosecution Agreement, Ex. A ¶ 3 ("In or about August 2015, David Pecker, the Chairman and Chief Executive Officer of AMI, met with Michael Cohen, an attorney for a presidential candidate, and at least one other member of the campaign."); The Fixers at ix-xi, 313-14, 381 (describing the August 2015 meeting, stating that Pecker told DOJ about that meeting, and explaining authors' reporting and research process that included interviews with many sources, public documents, and media accounts); *cf.* House Oversight Testimony at 30 ("[T]hese catch and kill scenarios existed between David Pecker and Mr. Trump long before I started working for [Trump] in 2007.").

[23] AMI Non-Prosecution Agreement, Ex. A ¶ 3. Pecker reportedly also suggested that "[h]e could use the *Enquirer* to slime Trump's political opponents, both Republican and Democrat." The Fixers at x; *see also id.* at 158-61, 166-67 (detailing the *Enquirer*'s negative coverage of Trump's opponent Ted Cruz during the Republican primary as it coincided with Trump's attacks on Cruz, the *Enquirer*'s persistent attacks on Trump's other opponents, including, *inter alia*, Hillary Clinton, Marco Rubio, and Bernie Sanders, and noting that the *Enquirer* published over

Cohen, who would inform Trump,[24] and "Pecker agreed to keep Cohen apprised of any such negative stories."[25] Cohen, in his sworn testimony, confirms that there was an agreement that AMI would catch and kill negative stories involving Trump to avoid publication of those stories, describing catch and kill as working with news outlets to identify and purchase the rights to news stories of interest and avoid their publication.[26]

It is not publicly known whether AMI either purchased directly or steered to Cohen and the Trump Committee other Trump-related stories. In June 2016, Howard had reportedly "compiled a list of the dirt about Trump accumulated in AMI's archives, dating back decades."[27] After Trump won the 2016 presidential election, Cohen reportedly requested everything the *Enquirer* had regarding Trump, leading Howard and others to order the consolidation of Trump-related materials in a safe at AMI offices in New York.[28] Press reports indicate that during the

60 negative stories about Trump's opponents prior to Trump becoming the Republican nominee while also publishing stores that praised Trump).

[24] The Fixers at xi.

[25] AMI Non-Prosecution Agreement, Ex. A ¶ 3.

[26] House Oversight Testimony at 30 (Cohen testified that "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."); *see also* Michael Cohen, DISLOYAL: A MEMOIR 81-90 (2020) ("Cohen Book") (detailing a 2007 example of catch and kill efforts by Cohen, Pecker, and Trump, and stating that Trump instructed Cohen at that time to work with Pecker to catch and kill a negative story about Trump's alleged actions involving a woman).

[27] Ronan Farrow, CATCH AND KILL: LIES, SPIES, AND A CONSPIRACY TO PROTECT PREDATORS 17 (2019) ("Farrow, Catch and Kill"). The list reportedly included approximately 60 items and was titled "Donald Trump Killed" in reference to stories about Trump that had been "killed." *See* Politics & Prose Interview by Sunny Hostin with Ronan Farrow in Washington, D.C. (Oct. 21, 2019), https://www.youtube.com/watch?v=FaTi090FVAA (45:38-47:39).

[28] Farrow, Catch and Kill at 17.

first week of November 2016 Howard ordered his staff at the *Enquirer* to destroy documents held in an office safe, including documents that were related to Trump.[29]

B. AMI Payment to Karen McDougal

1. AMI's Agreement with McDougal

On June 15, 2016, Keith Davidson, an attorney representing former Playboy model Karen McDougal, reportedly contacted Howard about the potential sale of the rights to McDougal's story about her alleged affair with Trump while he was married.[30] Pecker and Howard then informed Cohen about the McDougal story and AMI began negotiations to obtain the rights to her story "[a]t Cohen's urging and subject to Cohen's promise that AMI would be reimbursed."[31] Howard reportedly interviewed McDougal on June 20, 2016, and following the interview, indicated to McDougal that her story was worth a limited sum without "stronger documentation" of the relationship.[32] Howard, Pecker, and Cohen reportedly discussed the situation via conference call that day, and the three men agreed that AMI would not make an immediate offer.[33] On June 27, 2016, Cohen purportedly informed Trump about McDougal's story; Trump

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[29] Farrow, Catch and Kill at 16-17; *see also* Daniel Lippman, *Ronan Farrow:* National Enquirer *Shredded Secret Trump Documents,* POLITICO (Oct. 14, 2019), https://www.politico.com/news/2019/10/14/ronan-farrow-national-enquirer-shredded-trump-documents-046711; House Oversight Testimony at 128, 160 (Cohen confirming that he asked Pecker for the "treasure trove" of stories purchased by Pecker).

[30] AMI Non-Prosecution Agreement, Ex. A ¶ 4; The Fixers at 164; WSJ Nov. 9 Article. In March 2018, after filing a lawsuit against AMI challenging her contract, McDougal stated in a CNN interview that her relationship with Trump began in June 2006 and ended in 2007, while Trump was married to his current wife, Melania Trump. Jim Rutenberg, *Ex-Playboy Model Karen McDougal Details 10-Month Affair with Donald Trump*, N.Y. TIMES (Mar. 22, 2018), https://www nytimes.com/2018/03/22/us/politics/karen-mcdougal-interview html ("NY Times Mar. 22 Article").

[31] AMI Non-Prosecution Agreement, Ex. A ¶ 4; MUR 7332 Compl. at 3-4.

[32] The Fixers at 164-65; AMI Non-Prosecution Agreement, Ex. A ¶ 4; *compare* McDougal New Yorker Article (stating that Howard initially valued McDougal's story at $10,000), *with* The Fixers at 164-65 (stating that Howard initially valued McDougal's story at $15,000).

[33] The Fixers at 165; *see* WSJ Nov. 9 Article.

reportedly then telephoned Pecker and asked him to make the McDougal story go away.[34] McDougal, under the impression that AMI was not interested in purchasing her story, began discussions with another media entity, ABC, in an effort to "get in front of the story."[35]

On July 19, 2016, Trump became the Republican presidential nominee.[36] In July 2016, Davidson reportedly informed Howard that he was fielding an offer from ABC but that McDougal wanted to receive a payment and assistance with her career.[37] Howard and Pecker updated Cohen, who in turn reportedly informed Trump of the situation, and they decided to move forward with an offer to McDougal.[38] Howard and Davidson reportedly then negotiated a contract between AMI and McDougal.[39]

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[34] The Fixers at 166; Cohen Book at 285 (stating that Trump "immediately called Pecker"); *see* WSJ Nov. 9 Article.

[35] McDougal Interview with Anderson Cooper, CNN (Mar. 22, 2018), http://edition.cnn.com/TRANSCRIPTS /1803/22/acd.02 html ("CNN McDougal Interview") ("[AMI] had a 12-hour window to accept whether they wanted the story or not. They didn't want the story . . . . I still have to get in front of the story because it's still getting put out there. So, we went to ABC. They were very interested in the story."); *see* McDougal New Yorker Article (indicating that AMI had "little interest" in McDougal's story); McDougal Complaint ¶¶ 12-13 (indicating that McDougal was informed that AMI had "no interest" in purchasing her story); MUR 7332 Compl. at 3 (citing McDougal New Yorker Article); Cohen Book at 285 ("By late July, Davidson was pitting ABC News and American Media against each other. McDougal was trying to parlay her affair with Trump into a way to revive her career, or what tiny bit of it might be left, an understandable ambition, but the last thing on anyone else's mind. When I heard about the ABC initiative, I knew it was time to act."). ABC reportedly agreed to a confidentiality agreement that prevented the network from publishing McDougal's story without her consent. The Fixers at 166; *see* McDougal Complaint ¶ 13 (indicating that McDougal was in negotiations with ABC and confirming that ABC signed a confidentiality agreement).

[36] The Fixers at 166; 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.

[37] The Fixers at 166-68; *see* WSJ Nov. 9 Article.

[38] AMI Non-Prosecution Agreement, Ex. A ¶ 4 (stating that "AMI communicated to Cohen that it would acquire the story to prevent its publication"); The Fixers at 168; *see also* WSJ Nov. 9 Article; McDougal New Yorker Article; McDougal Complaint.

[39] The Fixers at 168-69; *see also* WSJ Nov. 9 Article; McDougal New Yorker Article; McDougal Complaint ¶¶ 14, 42, 46-47 (stating that AMI showed renewed interest in purchasing the rights to McDougal's story after she shared with Davidson her concerns about publicly telling her story).

AMI and McDougal entered into a contract on August 6, 2016,[40] whereby AMI purchased the "Limited Life Story Rights" to the story of McDougal's relationship with "any then-married man" — Trump — in exchange for the payment of $150,000.[41] In addition, 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.[42] Davidson allegedly told McDougal that AMI would purchase her story with the purpose of not publishing it because of Pecker's friendship with Trump.[43] On August 10, 2016, AMI sent a $150,000 payment to Davidson for the rights to McDougal's story.[44] McDougal alleges that as early as October 2016, AMI staff appeared to lack interest in the columns that McDougal agreed to have published in her name.[45]

[40] The contract was allegedly sent to McDougal on August 5, 2016, and she signed the contract the next morning. McDougal Complaint ¶¶ 48-55. Davidson reportedly sent the signed contract to Howard and AMI's in-house counsel, Cameron Stracher. The Fixers at 168-69 (noting that Davidson informed ABC that McDougal would not proceed with the network and stating that Davidson notified Cohen of the signed contract).

[41] MUR 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"); McDougal New Yorker Article; MUR 7332 Compl. at 4 (citing WSJ 2016 Article). On March 22, 2018, McDougal was interviewed by CNN and discussed her relationship with Trump at length, as well as how it led to her negotiations with AMI. *See* NY Times Mar. 22 Article (summarizing details of the interview where McDougal discussed her relationship with Trump); CNN McDougal Interview at 37:20-40:30 (discussing McDougal's negotiations with AMI).

[42] MUR 7332 AMI Resp., Aff. of Dylan Howard, Ex. A at 1; *see* MUR 7332 Compl. at 3 (citing McDougal New Yorker Article); *see also* MUR 7332 First Amend. Compl. at 6 (citing McDougal Complaint ¶ 59).

[43] MUR 7332 First Amend. Compl. at 5 (citing McDougal Complaint ¶ 47).

[44] *See* AMI Non-Prosecution Agreement, Ex. A ¶ 5; *see also* Cohen Book at 286 (alleging that Pecker asked a former employee named Daniel Rotstein to use his Florida consulting company as a pass-through for AMI's payment to Davidson).

[45] McDougal Complaint ¶¶ 57-60. However, it does appear that AMI ultimately published several columns under McDougal's name. MUR 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.").

AMI acknowledges in the DOJ Non-Prosecution Agreement that the payment of $150,000 was substantially more than AMI would normally have agreed to pay because it relied upon Cohen's commitment that AMI would be reimbursed.[46] Further, AMI acknowledges that its "principal purpose in entering into the agreement was to suppress the model'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."[47] AMI has 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."[48]

2. Role of Cohen, Trump, and the Trump Committee

During the negotiations concerning McDougal's story, AMI and McDougal's lawyer, Davidson, reportedly kept Cohen informed as to the status of the discussions; Cohen in turn updated Trump.[49] AMI reportedly notified Cohen on multiple occasions: upon the initial

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[46] 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.").

[47] *See id.*

[48] *Id.*, Ex. A ¶ 8; *cf.* The Fixers at 169 (noting that Pecker consulted with a campaign finance "expert" before signing off on the McDougal transaction and "believe[ed] the contract with McDougal was legally sound" because AMI agreed to pay her for future work in addition to purchasing her story rights); WSJ Nov. 9 Article ("Mr. Pecker researched campaign-finance laws before entering into the McDougal deal . . . . After speaking with an election-law specialist, Mr. Pecker concluded the company's payment to Ms. McDougal wouldn't violate the law, because the magazine covers and health columns gave him a business justification for the deal.").

[49] The Fixers at 166, 168-69; WSJ Nov. 9 Article; *cf.* House Oversight Testimony at 29-30 (Question: "Mr. Cohen, in your 10 years of working for Donald Trump[,] did he control everything that went on in the Trump Organization? And did you have to get his permission in advance and report back after every meeting of any importance." Answer: "Yes. There was nothing that happened at The Trump Organization . . . that did not go through Mr. Trump with his approval and sign-off, as in the case of the payments.").

outreach from Davidson, after its interview with McDougal, when Davidson warned Howard that ABC was interested in McDougal's story, and when AMI was in the process of finalizing the agreement with McDougal.[50] Shortly after McDougal signed the agreement with AMI, Davidson reportedly contacted Cohen and informed him that the McDougal transaction had been completed.[51] Cohen testified that he worked with AMI to keep McDougal's story from becoming public and that AMI's payment to McDougal "was done at the direction of Mr. Trump and in accordance with his instructions."[52] Cohen's role in the transaction allegedly came as a surprise to McDougal, who stated that Davidson and AMI staff failed to tell her that they were coordinating with Trump "representatives" during the negotiation of her original agreement with AMI.[53]

In late August and September 2016, Cohen requested to Pecker that AMI assign Cohen the "limited life rights portion" of AMI's agreement with McDougal, which "included the requirement that the model not otherwise disclose her story."[54] Trump and Cohen reportedly

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[50] The Fixers at 164-166, 168-69 ("Cohen soon learned of the ABC talks from the American Media executives and alerted Trump. They decided now was the time to buy."); *see also* Cohen Book at 284-89 (describing Cohen and Trump's involvement with AMI's payment to McDougal and stating "[w]hen I heard about the ABC initiative, I knew it was time to act").

[51] NYT Feb. 18 Article; The Fixers at 169 (noting that, when Davidson advised Cohen that the contract was fully executed, Cohen already knew and Trump knew too and was "grateful"). Cohen reportedly denied recalling these communications with Davidson when contacted by *New York Times* reporters prior to his plea agreement. *See* NYT Feb. 18 Article.

[52] U.S. House of Representatives Permanent Select Committee on Intelligence, Executive Session, Michael Cohen Dep. at 117, 119 (Feb. 28, 2019), https://docs.house.gov/meetings/IG/IG00/20190520/109549/HMTG-116-IG00-20190520-SD002.pdf ("House Intelligence Deposition"); *see* Cohen Plea Hearing at 23 ("[O]n or about the summer of 2016, in coordination with, and at the direction of, a candidate for federal office, I and the CEO of a media company at the request of the candidate worked together to keep an individual with information that would be harmful to the candidate and to the campaign from publicly disclosing this information. After a number of discussions, we eventually accomplished the goal by the media company entering into a contract with the individual under which she received compensation of $150,000.").

[53] McDougal Complaint ¶ 20.

[54] *See* AMI Non-Prosecution Agreement, Ex. A ¶ 6.

also wanted Pecker to turn over AMI's Trump-related materials because of the concern that Pecker might leave AMI.[55] Pecker agreed to assign the life rights to an entity Cohen created for a payment of $125,000.[56] The assignment agreement was drawn up, and on September 30, 2016, Pecker signed the agreement, which transferred the limited life rights to McDougal's story to an entity set up by Cohen.[57]

In a tape recording made by Cohen during a September 2016 meeting with Trump, Trump and Cohen appear to discuss the circumstances surrounding the assignment agreement between AMI and Cohen and how Trump would buy the rights to McDougal's story from AMI.[58] In an interview that aired on the evening the tape recording was made public, Rudy

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[55] The Fixers at 169 ("Cohen was pushing American Media to turn over all its archival material on Trump, in case Pecker left the company. Cohen and Trump didn't want a new chief executive with no loyalty to Trump to have control over it."); WSJ Nov. 9 Article ("Concerned Mr. Pecker might leave American Media, Mr. Cohen wanted to buy other materials the company had gathered on Mr. Trump over the years, including source files and tips. In a meeting at the Trump Organization offices in early September, Mr. Cohen told Mr. Trump of his plan.").

[56] AMI Non-Prosecution Agreement, Ex. A ¶ 6; The Fixers at 169-71 (identifying the Cohen-created entity as Resolution Consultants, LLC, and explaining that the $25,000 difference between the amount paid to McDougal and the amount to be paid for the assignment accounted for McDougal's future AMI work); *see also* WSJ Nov. 9 Article. Because AMI purchased the rights to feature McDougal on two magazine covers and publish columns attributed to her, "Cohen and Pecker said that Trump would be liable for only a hundred and twenty-five thousand dollars of the company's payment to her." Jeffrey Toobin, *Michael Cohen's Last Days of Freedom*, THE NEW YORKER (Apr. 29, 2019), https://www newyorker.com/magazine/2019/05/06/michael-cohens-last-days-of-freedom ("2019 New Yorker Article"); *see* Cohen Book at 285-86 ("The deal included $150,000, with $25,000 allocated for payment for her appearance on the cover of two magazines owned by American Media. That meant Trump was on the hook for $125,000 to be repaid to Pecker's company.").

[57] AMI Non-Prosecution Agreement, Ex. A ¶ 6; *see* SDNY Cohen Sentencing Memorandum at 12.

[58] Chris Cuomo, Kara Scannell & Eli Watkins, *CNN Obtains Secret Trump-Cohen Tape*, CNN (July 25, 2018), https://www.cnn.com/2018/07/24/politics/michael-cohen-donald-trump-tape/index.html ("CNN Article") (cited by MUR 7332 Second Amend. Compl. at 3); *see also* Cohen Book at 287 ("I decided I needed to record a conversation with Trump about the payment for two reasons. First, to show Pecker that I was asking Trump to repay the obligation, and second, to have a record of his participation if the conspiracy ever came out. . . . I could sense the stakes were getting higher and higher as I explained the details of the transaction with McDougal to Trump. As a precaution, my iPhone was digitally memorializing our exchange."). The recording was reportedly seized by the Federal Bureau of Investigation ("FBI") when it raided Cohen's office. *See* Matt Apuzzo, Maggie Haberman & Michael S. Schmidt, *Michael Cohen Secretly Taped Trump Discussing Payment to Playboy Model*, N.Y. TIMES (July 20, 2018), https://www.nytimes.com/2018/07/20/us/politics/michael-cohen-trump-tape.html (cited by MUR 7332 Second Amend. Compl. at 3). The recording was one of twelve audio recordings seized by the FBI during its raids of Cohen's homes and office later released to DOJ. *See* MUR 7332 Second Amend. Compl., 3-4, Ex. 1 (showing that, on July 23, 2018, the Special Master who reviewed legal privilege claims in connection with these search warrants filed a Special Master Report, reporting that the parties had withdrawn claims of privilege in

Giuliani, counsel for Trump, acknowledged that the tape recording reflects a conversation between Trump and Cohen about "how they're going to buy the rights" to McDougal's story from AMI but argued that there is "[n]o indication of any crime being committed on this tape."[59] At one point in the recording, Cohen says, in an apparent reference to the entity he would later create for the purchase, "I need to open up a company for the transfer of all of that info regarding our friend, David," which is reportedly a reference to Pecker.[60] According to Cohen, Trump asks "So what do we got to pay for this? One-fifty?"[61] Later, Trump asks "What financing?" and Cohen tells Trump, "We'll have to pay."[62] Cohen also states: "I've spoken with [Trump Organization Chief Financial Officer] Allen Weisselberg about how to set the whole thing up with funding."[63]

connection with these materials). Lanny Davis, counsel for Cohen, released the recording to CNN, which aired it on July 25, 2018. *See* CNN Article.

[59] *See* The Ingraham Angle, *Giuliani Responds to Release of Secret Trump-Cohen Recording*, FOX NEWS CHANNEL 3:05-3:10 (July 24, 2018), https://www foxnews.com/transcript/giuliani-responds-to-release-of-secret-trump-cohen-recording (introducing Giuliani as "personal attorney for President Trump"); CNN Article (citing same).

[60] *See* CNN Article; Cohen Book at 287 ("That was how we talked: euphemistically, circling a subject carefully, choosing words that might allow for some ambiguity."). On September 30, 2016, Cohen registered Resolution Consultants LLC in Delaware; he dissolved it on October 17, 2016, the day he registered another entity, Essential Consultants LLC in Delaware. *See* Warrant Aff. ¶ 35.b, c; Cohen Book at 288.

[61] Cohen Book at 287 (recalling "I told Trump that the amount we're paying should include all the 'stuff' that Pecker had on him. By 'stuff' I meant any and all other salacious Trump stories we believed he possessed" and indicating that Trump responded "Yeah, I was thinking about that. . . . Maybe he gets hit by a truck."); *see* CNN Article.

[62] *See* CNN Article. Trump then says "pay with cash," but it is unclear whether he is instructing Cohen to pay with cash. *See id.* Cohen then says "no, no," however the context is unclear. *See id.* During the CNN segment addressed in the CNN article, it is reported that Trump's team argued that Trump said "don't pay with cash . . . check." *Cuomo Prime Time* (CNN television broadcast July 24, 2018).

[63] CNN Article. In speaking with CNN, Alan Futerfas, a Trump Organization lawyer, rejected the notion that the reference to "cash" in the tape recording "refers to green currency" because Trump and the Trump Organization would not in the ordinary course make such a payment using actual cash. *Id.* Similarly, Giuliani denied that Trump would "set[] up a corporation and then us[e] cash." *Id.* CNN further reported that Futerfas would not speculate as to whether the payment referenced in the conversation would have come from the Trump Organization or Trump's personal finances. *Id.*

According to Cohen, Trump was supposed to make the payment to AMI but "elected not to pay it."[64] In October 2016, after Cohen signed the assignment agreement but before Pecker was paid the $125,000, Pecker notified Cohen that he was cancelling the agreement and requested that Cohen tear up the agreement signed by Pecker.[65] AMI never received any reimbursement or payment from Cohen, Trump, or anyone else for its payment to McDougal; however, Trump reportedly thanked Pecker for purchasing McDougal's story.[66]

Even after discussions about the assignment agreement ended, Cohen and AMI continued to discuss how to deal with the McDougal story, exchanging multiple calls and texts on November 4, 2016, when AMI's payment to McDougal was reported in *The Wall Street Journal*.[67] These communications between Cohen, Pecker, and Howard were focused on strategizing about how to handle McDougal, providing comments to *The Wall Street Journal* in connection with the story, and discussing the implications of the article, which appeared four

[64] House Oversight Testimony at 100 (noting that "Pecker was very angry because there was also other moneys that David had expended on [Trump's] behalf" for which Pecker also was not reimbursed); *see also* 2019 New Yorker Article ("According to Cohen, McDougal's appearance on the cover of one of [AMI's] magazines, *Muscle & Fitness Hers*, led to a sizable increase in sales, and Trump decided that A.M.I. had received its money's worth in the deal" because, as Cohen said, "'[i]t sold over two hundred and fifty thousand dollars' worth of print, which was the highest for the whole year. So you invest a hundred and fifty, you make two hundred and fifty, you still have her for another cover, and for two years on the blog. It was a good deal.'"). Pecker reportedly "used to yell at Cohen about" the fact that Trump did not repay AMI, to which Cohen responded, "'David, why are you yelling at me? Go yell at Trump.'" 2019 New Yorker Article (noting that sources indicated "that A.M.I. stopped asking for reimbursement on the advice of its lawyers"); *see also* The Fixers at 170-71 ("Cohen told Pecker that Trump was dragging his feet because he was cheap and no longer wanted to pay"); WSJ Nov. 9 Article.

[65] AMI Non-Prosecution Agreement, Ex. A ¶ 6; The Fixers at 170-71 (reporting that Pecker asked Cohen to tear up the assignment agreement after Pecker consulted with Stracher, AMI's in-house counsel); WSJ Nov. 9 Article.

[66] AMI Non-Prosecution Agreement, Ex. A ¶ 6; The Fixers at 198, 314 (stating that Trump thanked Pecker in January 2017 at Trump Tower and that Pecker told DOJ that Trump thanked him); *see also* WSJ Nov. 9 Article.

[67] Warrant Affidavit ¶ 40. 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.

days before the election.[68] Cohen allegedly noted to Howard that an unnamed individual, believed to be Trump, was "pissed" about the publication of the story, and Howard told Cohen that AMI's payment to McDougal "looks suspicious at best."[69]

In addition to Cohen's alleged reference to Trump's knowledge about the McDougal story breaking, the available information also indicates that Trump spoke directly to Pecker around that time.[70] The *Wall Street Journal* article was published online the evening of November 4th, and Pecker allegedly spoke to Trump on the telephone the following morning.[71]

Despite Cohen and Trump's knowledge of the AMI payments, the campaign, through Trump Committee spokeswoman Hope Hicks, publicly denied any knowledge of the payments and asserted that McDougal's story about a relationship with Trump was "'totally untrue.'"[72] AMI asserted to *The Wall Street Journal* that "it wasn't buying Ms. McDougal's story for $150,000, but rather two years' worth of her fitness columns and magazine covers as well as

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[68] *See* Warrant Affidavit ¶ 40.a-e (recounting Howard's text message to Cohen that stated, "Let's let the dust settle. We don't want to push her over the edge. She's on side at present and we have a solid position and a plausible position that she is rightfully employed as a columnist"). As the story was breaking, Cohen and Howard discussed McDougal's reluctance to provide a statement to Davidson and strategized about how best to handle McDougal; Cohen also allegedly forwarded Howard an image of an email from a reporter at *The Wall Street Journal* asking for comment on the story. *Id.* ¶ 40.a-b.

[69] *Id.* ¶ 40.c (stating the FBI agent's belief that "Cohen was referring to Trump when he stated 'he's pissed.'" and recounting that Cohen asked Howard "how the *Wall Street Journal* could publish its article if 'everyone denies,'" with Howard responding, "'Because there is the payment from AMI. It looks suspicious at best'").

[70] *Id.* ¶ 40.d (Cohen texted Pecker late that evening: "The boss just tried calling you. Are you free?" and then texted Howard: "Is there a way to find David quickly?").

[71] *Id.* ¶ 40.e.

[72] WSJ 2016 Article; *see* The Fixers at 194 (reporting that Trump dictated Hicks's response to *The Wall Street Journal*); WSJ Nov. 9 Article. Additionally, Hicks reportedly told DOJ officials that Pecker informed her of the substance of his response before he sent it to the *Journal*. The Fixers at 314.

exclusive life rights to any relationship she has had with a then-married man" and said that it "'has not paid people to kill damaging stories about Mr. Trump.'"[73]

After the November 4, 2016, article in *The Wall Street Journal* was published, McDougal retained new counsel and negotiated an amendment to her original agreement with AMI ("Amendment"), which allowed her to "respond to legitimate press inquiries regarding the facts of her alleged relationship with Donald Trump."[74] In the Amendment, AMI agreed to "retain the services" of two public relations professionals for a total of six months to provide public relations and reputation management services and coordinate responses to the press with AMI.[75] However, for more than a year after that, AMI instructed McDougal to say nothing about her alleged relationship with Trump and ghostwrote email responses for McDougal to send to inquiring reporters.[76] AMI also allegedly provided the reporters with "false and misleading information" and later threatened McDougal with litigation if she told her story to reporters.[77]

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[73] WSJ 2016 Article. In a June 2017 article, however, Pecker admitted to *The New Yorker* that AMI's payment to McDougal contained elements relating to his personal friendship with Trump and was predicated on her not "bashing Trump and American Media." Jeffrey Toobin, The National Enquirer's *Fervor for Trump*, THE NEW YORKER (June 26, 2017), https://www newyorker.com/magazine/2017/07/03/the-national-enquirers-fervor-for-trump ("2017 New Yorker Article") (cited by MUR 7332 First Amend. Compl. at 6 and MUR 7332 Compl. at 3).

[74] MUR 7332 AMI Resp., Ex. B (Amendment to Name and Rights License Agreement signed by McDougal on November 29, 2016, and by AMI on December 7, 2016); McDougal Complaint, Ex. B (same).

[75] MUR 7332 AMI Resp., Ex. B; McDougal Complaint, Ex. B.

[76] McDougal Complaint ¶¶ 19, 66-73.

[77] McDougal Complaint ¶¶ 19, 21, 74, 84-87; MUR 7332 First Amend. Compl. at 7 (citing McDougal Complaint ¶ 84). On March 20, 2018, McDougal filed a Complaint for Declaratory Relief that asked the court to declare her contract with AMI void because the contract was allegedly fraudulent and illegal. McDougal Complaint ¶ 5. In April 2018, AMI and McDougal reached a settlement agreement ending her lawsuit against the company and executed a new agreement, in which McDougal received the life rights to her story back from AMI and retained the $150,000 payment. Jim Rutenberg, *Ex-Playboy Model, Freed from Contract, Can Discuss Alleged Trump Affair*, N.Y. TIMES (Apr. 18, 2018), https://www.nytimes.com/2018/04/18/us/politics/karen-mcdougal-american-media-settlement.html ("McDougal Settlement New York Times Article") (cited by MUR 7332 First Amend. Compl. at 8); MUR 7332 AMI Supp. Resp. at 10-12, Ex. A. AMI obtained the right to receive "up to $75,000 of the profits from any deal" McDougal made regarding her story during the subsequent twelve-month period. *See* McDougal Settlement New York Times Article; MUR 7332 AMI Supp. Resp. at 11, Ex. A.

C. AMI's Involvement in Payments to Other Individuals

1. Dino Sajudin

In November 2015, AMI reportedly entered into an agreement, which was subsequently amended in December 2015, with Sajudin, a former doorman at Trump World Tower in New York City, in connection with information he claimed to have about an alleged Trump "love child."[78] Sajudin reportedly "first approached the *Enquirer* in the early stages of the 2016 campaign" by calling the publication's tip line with a rumor he had heard about Trump having fathered an illegitimate child in the late 1980s with a former employee of the Trump Organization.[79] According to press reports, Sajudin initially signed a standard "boilerplate contract" with the *Enquirer*, agreeing to be an anonymous source who would be "paid upon publication."[80] Reportedly, after Sajudin entered into an agreement to serve as a source, the *Enquirer* initially investigated the story, dispatching reporters and sending "a polygraph expert to administer a lie detection test to Sajudin in a hotel near his Pennsylvania home."[81] According to press reports, although the *Enquirer* initially avoided reaching out to Trump Organization employees, after the Trump Organization learned of the investigation when a reporter contacted Trump's assistant, Rhona Graff, Cohen contacted Howard and "pleaded with him not to publish

[78] Sajudin AP Article; The Fixers at 146. CNN published Sajudin's original agreement with AMI and its subsequent amendment. Source Agreement and Amendment, CNN (Aug. 24, 2018), https://cdn.cnn.com/cnn/2018/images/08/24/sajudin.ami.pdf ("Sajudin Agreement").

[79] *Prez Love Child Shocker! Ex-Trump Worker Peddling Rumor Donald Has Illegitimate Child*, RADAR ONLINE (Apr. 11, 2018), https://radaronline.com/exclusives/2018/04/donald-trump-love-child-rumor-scandal/ ("Radar Online Article") (cited by MUR 7364 AMI Resp. at 7, 10); Sajudin AP Article ("After initially calling the Enquirer's tip line, Sajudin signed a boilerplate contract with the Enquirer, agreeing to be an anonymous source and be paid upon publication.").

[80] Sajudin AP Article; *see also* Radar Online Article; The Fixers at 146.

[81] Sajudin AP Article; *see also* The Fixers at 146-47 (noting that the investigators refrained from contacting Trump Organization employees).

the story."[82] On December 9, 2015, Sajudin reportedly took and passed a polygraph test testing how he learned of the rumor.[83] After passing the polygraph test, Sajudin reportedly "pressed the tabloid to pay him immediately, threatening to walk otherwise."[84]

On December 17, 2015, AMI reportedly agreed to make an "up front" $30,000 payment to Sajudin to prevent him from discussing the rumor about Trump fathering a child.[85] That agreement stated that Sajudin would be subject to a $1 million penalty "if he shopped around his information."[86] Immediately after Sajudin signed the agreement, the *Enquirer* reportedly stopped investigating the story.[87] In the summer of 2017, Howard reportedly claimed that the investigation was terminated on its merits because Sajudin "lacked any credibility,"[88] however, four longtime *Enquirer* staffers reportedly challenged this interpretation, claiming that they "were ordered by top editors to stop pursuing the story before completing potentially promising reporting threads" and further claimed that the "publication didn't pursue standard *Enquirer* reporting practices."[89]

Reportedly, current and former AMI employees had noticed several aspects of the payment to Sajudin that caused it to differ from other payments to sources. A former AMI

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82 The Fixers at 147-48.

83 Radar Online Article.

84 The Fixers at 148.

85 MUR 7364 AMI Resp. at 8; MUR 7364 Compl. at 4, 7 (citing Sajudin AP Article); Ronan Farrow, The National Enquirer*, A Trump Rumor, and Another Secret Payment to Buy Silence*, THE NEW YORKER (Apr. 12, 2018), https://www newyorker.com/news/news-desk/the-national-enquirer-a-donald-trump-rumor-and-another-secret-payment-to-buy-silence-dino-sajudin-david-pecker ("Sajudin New Yorker Article").

86 MUR 7364 Compl. at 6 (quoting Sajudin AP Article); Sajudin Agreement.

87 Sajudin AP Article; The Fixers at 148-49.

88 Sajudin AP Article.

89 *Id.*

reporter and editor noted that it was unusual for the company to pay for a tip when it did not publish an article, reportedly stating "AMI doesn't go around cutting checks for $30,000 and then not using the information."[90] Similarly, according to *The New Yorker*, a source stated: "It's unheard of to give a guy who calls A.M.I.'s tip line big bucks for information he is passing on secondhand. We didn't pay thousands of dollars for non-stories, let alone tens of thousands. It was a highly curious and questionable situation."[91] Other staffers reportedly concluded that the $1 million penalty to stop the tipster from talking about the tip indicated that the payment was part of a catch and kill.[92]

Although the Sajudin payment is not addressed in the AMI Non-Prosecution Agreement or Cohen's plea, the payment to Sajudin was made after the purported August 2015 agreement between Pecker, Trump, and Cohen that AMI would catch and kill stories that could reflect negatively on Trump during the campaign.[93] Furthermore, press reports suggest that the decision to pay Sajudin, outside AMI's normal investigation practices, resulted from Pecker or another high level AMI official directing that payment.[94] Cohen, meanwhile, told the *Associated Press*

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[90] *Id.* According to the *Associated Press*, "AMI threatened legal action over reporters' efforts to interview current and former employees and hired the New York law firm Boies Schiller Flexner, which challenged the accuracy of the AP's reporting." *Id.* (noting that *RadarOnline*, also owned by AMI, "published details of the payment and the rumor that Sajudin was peddling" on the same day that the AP Article was published, stating "that the *Enquirer* spent four weeks reporting the story but ultimately decided it wasn't true"); *see also* The Fixers at 148 (noting that the payment, while not unheard of, "was a break with the tabloid's typical policy of paying for stories upon their publication, and a large sum relative to most source payments").

[91] Sajudin New Yorker Article.

[92] Sajudin AP Article; s*ee also* The Fixers at 148 (noting that the $1 million penalty, while likely unenforceable in court, ensured that a source "wouldn't take the tabloid's money and disappear or blab to another publication. It was meant to scare them.").

[93] *See* WSJ Nov. 9 Article.

[94] Sajudin New Yorker Article; *see also* The Fixers at 148 (claiming that "[t]he reporters suspected interference from Pecker").

"that he had discussed Sajudin's story with the magazine when the tabloid was working on it" but said that "he was acting as a Trump spokesman when he did so and denied knowing anything beforehand about the *Enquirer* payment to the ex-doorman."[95] AMI reportedly released Sajudin from the contract at some point after the 2016 presidential election.[96]

2. Stephanie Clifford

As discussed above, Cohen paid $130,000 to Stephanie Clifford, a well-known adult-film actress and director who used the professional name Stormy Daniels, to prevent the publication of her story concerning her 2006 alleged relationship with Trump. Shortly after *The Washington Post* published a video recording of Trump appearing on the television show *Access Hollywood* in 2005, in which Trump "bragged in vulgar terms about kissing, groping and trying to have sex with women,"[97] Davidson, the same attorney who had represented McDougal in her negotiations with AMI, reportedly contacted Howard at AMI and offered to confirm Clifford's story on the record.[98] AMI, reportedly because it had already invested significant sums in paying to silence

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[95] Sajudin AP Article (noting that the "parent" of the *Enquirer* made the payment to Sajudin). According to Cohen, after AMI made the payment to McDougal, "Pecker was very angry because there was also other moneys that David [Pecker] had expended on [Trump's] behalf," and Trump declined to reimburse AMI for the other funds as well. House Oversight Testimony at 100.

[96] *See, e.g.* Sajudin AP Article.

[97] David A. Fahrenthold, *Trump Recorded Having Extremely Lewd Conversation About Women in 2005*, THE WASHINGTON POST (Oct. 7, 2016), https://www.washingtonpost.com/politics/trump-recorded-having-extremely-lewd-conversation-about-women-in-2005/2016/10/07/3b9ce776-8cb4-11e6-bf8a-3d26847eeed4_story html ("Fahrenthold Article"); *see* Warrant Affidavit ¶ 32.

[98] Farrow, Catch and Kill at 345 ("[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* SDNY Information ¶ 32.

negative stories and was growing uncomfortable, did not purchase Clifford's story.[99] Instead, it appears that AMI directed the Clifford story to Cohen.

D. The Complaints and Responses

The Complaint in MUR 7332 alleges that there is reason to believe that, by paying McDougal $150,000, AMI made a prohibited corporate contribution because the payment was not included within the scope of the press exemption and was an expenditure made for the purpose of influencing the 2016 presidential election that was coordinated with Cohen, an agent of Trump.[100] The MUR 7332 Complaint further alleges that AMI's payment to McDougal was an excessive contribution to the Trump Committee.[101]

The Complaint in MUR 7364 alleges that by paying Sajudin $30,000, AMI made a prohibited corporate contribution in the form of a coordinated expenditure.[102] Howard is named in both Complaints in his capacity as an officer of AMI at the time of the payments.

The Responses filed in this matter pre-date AMI and Cohen's subsequent public admissions and clarifications made in connection with their respective non-prosecution agreements, plea agreements, and congressional testimony. Generally, AMI's Responses to the Complaints in these matters, which incorporate an affidavit from Howard, assert that the payment to McDougal was exempt from regulation under the press exemption.[103] Alternatively,

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99 *See* Farrow, Catch and Kill at 345.

100 MUR 7332 Compl. at 8.

101 MUR 7332 Compl. at 8.

102 MUR 7364 Compl. at 11-12.

103 MUR 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.'" MUR 7332 AMI Resp. at 16-17 (quoting 2017 New Yorker Article).

AMI argues that the payment to McDougal "was compensation for *bona fide* content for AMI's publications, to license her name and image, and for a limited life story right, not 'for the purpose of influencing an election.'"[104] In addition, AMI argues that payments for silence are not contributions or expenditures because silence is not a "thing of value" under the Act, the payment was for a legitimate business purpose,[105] and the MUR 7332 Complaint fails to show how the McDougal payment was coordinated with an agent of the Trump Committee.[106]

Similarly, in its Response to MUR 7364, which predates the AMI Non-Prosecution Agreement, AMI asserts that the Sajudin payment was exempt from regulation under the press exemption.[107] AMI contends that it investigated Sajudin's allegations regarding Trump and determined that, although Sajudin may have heard rumors regarding his allegation that Trump had fathered a child with a former employee, "AMI could not confirm the veracity of the underlying allegation" and ultimately determined that Sajudin's story regarding Trump was untrue.[108] AMI further contends that the Sajudin payment was not for the purpose of influencing a federal election and that the MUR 7364 Complaint is based on speculation.[109]

Both Trump and Giuliani, as counsel for Trump, have addressed publicly on Twitter the allegations regarding the payment to McDougal, arguing that the payment did not violate the

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104 MUR 7332 AMI Resp. at 2.

105 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. MUR 7332 AMI Resp. at 8. McDougal also appeared on a 2017 cover of AMI magazine *Muscle and Fitness Hers*, which, according to AMI, was the highest selling issue of the magazine for that year. *Id.*

106 MUR 7332 AMI Supp. Resp. at 7-9; MUR 7332 AMI Resp. at 31-32.

107 MUR 7364 AMI Resp. at 1-2.

108 MUR 7364 AMI Resp. at 2, 9.

109 MUR 7364 AMI Resp. at 2-3.

law. For example, soon after Cohen's guilty plea, Trump and Giuliani both alleged that the payments to McDougal and Clifford were not unlawful.[110] Trump and Giuliani also tweeted about the payments in December 2018, around the time of Cohen's sentencing, again tweeting that the payments were not violations of the Act.[111] Trump also tweeted that he "never directed Michael Cohen to break the law."[112]

III. LEGAL ANALYSIS

The available information indicates that AMI paid $150,000 to McDougal for the purpose of influencing the 2016 presidential election by preventing a potentially damaging story about Trump from becoming public before the election. Based upon the available information, it appears that the payment to McDougal was made with Trump's knowledge, at the urging of and

[110] Donald J. Trump (@realDonaldTrump), TWITTER (Aug. 22, 2018, 9:37 AM), https://twitter.com/realDonaldTrump/status/1032260490439864320 ("Michael Cohen plead [sic] guilty to two counts of campaign finance violations that are not a crime."); Rudy Giuliani (@RudyGiuliani), TWITTER (Aug. 23, 2018, 4:11 AM), https://twitter.com/RudyGiuliani/status/1032540830794428416, (Aug. 23, 2018, 5:50 AM), https://twitter.com/RudyGiuliani/status/1032565618204004353 (stating that the "payments, as determined by the Edwards FEC ruling, are NOT ILLEGAL" and directing followers to an opinion piece in *The Hill* by Mark Penn, "demonstrating [that] Cohen pled guilty to two payments that are not violations of the law").

[111] Rudy Giuliani (@RudyGiuliani), TWITTER (Dec. 8, 2018, 1:20 PM), https://twitter.com/RudyGiuliani/status/1071469692882182144 ("The President is not implicated in campaign finance violations because based on Edwards case and others the payments are not campaign contributions."), (Dec. 9, 2018, 10:54 AM), https://twitter.com/RudyGiuliani/status/1071795258177019905 ("No collusion, no obstruction now [sic] campaign finance but payments to settle lawsuits are not clearly a proper campaign contribution or expenditure. No responsible lawyer would charge a debatable campaign finance violation as a crime . . . ."), (Dec. 13, 2018, 9:49 AM), https://twitter.com/RudyGiuliani/status/1073228301332869120 (sharing link to an opinion piece in *The Daily Signal* by Hans von Spakovsky, which argued that Cohen arranging payment to McDougal did not violate the law), (Dec. 14, 2018, 11:53 AM), https://twitter.com/RudyGiuliani/status/1073622122235355136 ("CORRECTION: I didn't say payments were not a big crime. I have said consistently that the Daniels and McDougall [sic] payments are not crimes and tweeted a great article yesterday making that point. If it isn't a witch-hunt why are they pursuing a non-crime."), (Dec. 19, 2018, 10:04 PM), https://twitter.com/RudyGiuliani/status/1075587822449500161 ("The payments to Daniels and McDougall [sic] do not violate the law. Congress has spent millions settling sexual harassment claims against members which are not reported as campaign contributions. Why aren't those Congressmen under investigation."); Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 13, 2018, 8:25 AM), https://twitter.com/realDonaldTrump/status/1073207272069890049 ("Cohen was guilty on many charges unrelated to me, but he plead [sic] to two campaign charges which were not criminal. . . .").

[112] Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 13, 2018, 8:17 AM), https://twitter.com/realDonaldTrump/status/1073205176872435713 ("He was a lawyer and he is supposed to know the law.").

with the promise of repayment by Cohen, acting as an agent of Trump, and as part of an agreement between Trump and AMI to catch and kill any potentially damaging stories about Trump's relationships with women so that such stories would not become public during the 2016 campaign. Likewise, the available record indicates that AMI's payment of $30,000 to Sajudin was made as part of this same catch and kill agreement. Although AMI contends that its payments to McDougal and Sajudin concern the business and editorial decisions of a press entity and thus are not subject to Commission regulation, the available information indicates that AMI's payments to McDougal and Sajudin were not made in connection with AMI's business or editorial functions. Instead, the available information indicates that AMI's payments were made to benefit Trump's campaign, were made at Trump's direction, and, for the reasons explained below, were not covered by the press exemption. Thus, the available information supports the conclusion that the AMI's payments were expenditures coordinated with Trump and thus constituted in-kind contributions to Trump and the Trump Committee.

As such, Howard appears to have violated the Act by consenting to the making corporate contributions in the form of payments from AMI to McDougal and Sajudin. As explained below, the record indicates that there is reason to believe that these violations were knowing and willful.

A. Press Exemption

Under 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,"[113] and an "expenditure" includes "any purchase, payment, distribution, loan,

[113] 52 U.S.C. § 30101(8)(A).

advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office."[114] Under Commission regulations, the phrase "anything of value" includes all in-kind contributions.[115] In-kind contributions include, among other things, coordinated expenditures.[116]

Under the Act, the 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."[117] This exemption is called the "press exemption" or "media exemption."[118] Costs covered by the exemption are also exempt from the Act's disclosure and reporting requirements.[119] If the press exemption applies to AMI's payments to McDougal and Sajudin, then those payments would not be contributions or expenditures under the Act.

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114 52 U.S.C. § 30101(9)(A).

115 11 C.F.R. § 100.52(d)(1).

116 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).

117 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.

118 Advisory Op. 2011-11 (Colbert) at 6 ("AO 2011-11"); Advisory Op. 2008-14 (Melothé) at 3 ("AO 2008-14").

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

To assess whether the press exemption applies, the Commission uses a two-part test.[120] The first inquiry is whether the entity engaging in the activity is a "press entity."[121] Second, the Commission determines the scope of the exemption by applying the two-part analysis presented in *Reader's Digest Association v. FEC*: (1) whether the entity is owned or controlled by a political party, political committee, or candidate; and (2) whether the entity is acting within its "legitimate press function" in conducting the activity.[122]

The Commission has long recognized that an entity otherwise eligible for the press exemption "would not lose its eligibility merely because of a lack of objectivity in a news story, commentary, or editorial, even if the news story, commentary, or editorial expressly advocates the election or defeat of a clearly identified candidate for Federal office."[123] Nonetheless, "the Commission is also mindful that a press entity's press function is 'distinguishable from active participation in core campaign or electioneering functions.'"[124] In other words, "the press exemption covers press activity, not campaign activity by a press entity."[125]

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120 Advisory Op. 2005-16 (Fired Up!) at 4 ("AO 2005-16").

121 *Id.*

122 *See Reader's Digest Ass'n v. FEC*, 509 F. Supp. 1210, 1214-15 (S.D.N.Y. 1981); AO 2011-11 at 6-7. When determining whether the entity was acting within the scope of a legitimate press function at the time of the alleged violation, the Commission considers two factors: (1) whether the entity's materials are available to the general public; and (2) whether they are comparable in form to those ordinarily issued by the entity. *See Reader's Digest Ass'n,* 509 F. Supp. at 1215; Factual & Legal Analysis at 4, MUR 7231 (CNN); Advisory Op. 2016-01 (Ethiq) at 3. However, because the activity here does not include the publication of any materials, this second factor is not relevant to the analysis.

123 Factual & Legal Analysis at 5, MUR 7206 (Bonneville International Corp.) (quotation marks omitted) (quoting AO 2005-16 at 6); Factual & Legal Analysis at 3, MUR 6579 (ABC News, Inc.).

124 AO 2011-11 at 8 (quoting AO 2008-14).

125 *Id.*

Although the Commission considers "legitimate press function" broadly, not all actions taken by press entities are considered legitimate press functions for purposes of the media exemption.[126] The court in *Reader's Digest Association* reasoned that:

> [T]he statute would seem to exempt only those kinds of distribution that fall broadly within the press entity's legitimate press function. It would not seem to exempt any dissemination or distribution using the press entity's personnel or equipment, no matter how unrelated to its press function. If, for example, on Election Day a partisan newspaper hired an army of incognito propaganda distributors to stand on street corners denouncing allegedly illegal acts of a candidate and sent sound trucks through the streets blaring the same denunciations, all in a manner unrelated to the sale of its newspapers, this activity would not come within the press exemption.[127]

When analyzing a press entity's activities outside of the distribution of news stories, commentary, and editorials through media facilities, a court has found the press exemption applicable when the actions in question pertain to seeking subscribers or promoting the publication.[128] A district court has also observed that the Commission has a limited ability to investigate activities that potentially may be normal press functions but are nevertheless unusual; such activities may be subject to additional scrutiny only to determine if they are, indeed, within the press exemption.[129]

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[126] *See McConnell v. FEC*, 540 U.S. 93, 208 (2003) (commenting that the press exemption "does not afford *carte blanche* to media companies generally to ignore FECA's provisions").

[127] *Reader's Digest*, 509 F. Supp. at 1214; *see also McConnell,* 540 U.S. at 208 (noting that the press exemption "does not afford *carte blanche* to media companies generally to ignore FECA's provisions"); AO 2011-11 at 8 ("While the press exemption covers press activity, it does not cover campaign activity, even if the campaign activity is conducted by a press entity").

[128] *FEC v. Phillips Publishing Inc.,* 517 F. Supp. 1308, 1313 (D.D.C. 1981) (applying the press exemption to a letter soliciting new subscribers).

[129] *Phillips* at 1313-14.

When distinguishing between an entity's legitimate press functions and its participation in campaign functions, the Commission has applied the Supreme Court's "considerations of form" analysis as set forth in the U.S. Supreme Court's *FEC v. Massachusetts Citizens for Life* decision ("*MCFL*"), which examined whether the activity in question is comparable in form to the press entity's regular activities, considering whether the complained-of activities and content are produced in the same manner, using the same people, and subject to the same review and distribution as the press entity's general activities.[130]

In an Advisory Opinion analyzing the formation of a political committee by television personality and talk show host Stephen Colbert, the Commission concluded that certain activities undertaken by the press entity (Viacom) would be covered by the press exemption but that other activities would not. Coverage of the political committee created for Colbert's television show would be covered by the press exemption; however, Viacom could not create content for Colbert's committee for distribution outside of his television show, or administer the political committee, because such activities would amount to "active participation [by Viacom] in core campaign or electioneering functions."[131] In reaching this conclusion, the Commission explained that to allow Viacom to produce content for the Colbert committee to distribute beyond the show under these circumstances "would stretch the boundaries of the press exemption far beyond those contemplated by Congress and the Supreme Court."[132]

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130 AO 2011-11 at 8 (citing *FEC v. Mass. Citizens for Life ("MCFL")*, 479 U.S. 238, 251 (1986)).

131 *Id.* at 9.

132 *Id.* (citing *MCFL*, 479 U.S. at 251; *Reader's Digest Ass'n,* 509 F. Supp. at 1214; *McConnell,* 540 U.S. at 208).

Consistent with this analysis, the Commission has found that a press entity's sale or purchase of airtime would not fall within the press exemption.[133] Similarly, the Commission has explained when analyzing "legitimate press functions" that "the provision of personnel to benefit a political campaign is not a legitimate press function."[134]

Here, the available information indicates that the press exemption does not cover AMI's payments to McDougal or Sajudin. AMI appears to be a press entity that has produced news stories on a regular basis through a variety of periodical publications,[135] and AMI represents that it is not owned or controlled by a political party, political committee, or federal candidate.[136]

Although AMI appears to argue that the First Amendment in general protects it from mere inquiry into why it chooses not to run stories, such inquiry is unnecessary in this matter because AMI, after submitting its Response, admitted in its Non-Prosecution Agreement with DOJ that its actions were not undertaken in connection with any press function but were rather to benefit Trump, a personal friend of Pecker, and his campaign.[137] Similarly, AMI's assertion in its Response that it developed renewed interest in McDougal's story because she had "elevated

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[133] Factual & Legal Analysis at 8-9, MUR 7073 (Meluskey for U.S. Senate, Inc.) (finding that the press exemption did not cover a candidate's radio show when the candidate or a business entity affiliated with the candidate paid radio stations to air his radio show); *see also* Factual & Legal Analysis at 6, MUR 6089 (People with Hart) (finding that a station does not act as a press entity when it sells airtime to another party and cedes editorial control).

[134] AO 2008-14 at 6.

[135] AMI Non-Prosecution Agreement, Ex. A ¶ 1; MUR 7332 AMI Resp., Howard Aff. ¶¶ 5-11.

[136] MUR 7332 AMI Resp. at 12; *see also id.*, Howard Aff. ¶ 3.

[137] 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* MUR 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).

her profile" by launching her own beauty and fragrance line[138] is directly refuted by AMI's subsequent admission in its Non-Prosecution Agreement 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."[139] As a result, AMI's editorial judgment is not at issue in these matters, because AMI has already acknowledged that it made or facilitated the payments to McDougal and Clifford for an electoral, as opposed to editorial, purpose.[140]

In addition to this admission, AMI's payment to McDougal would not meet the standard set forth in *MCFL* as applied by the Commission for determining whether its payment was a legitimate press function. According to AMI, the payment was for an amount more than AMI would typically pay for stories because AMI expected to be reimbursed by Trump.[141] This acknowledgement, along with information indicating that AMI valued McDougal's contributions to its publications at significantly less than the $150,000 it paid to her, strongly indicates that the payment to McDougal is inconsistent with AMI's regular treatment of other sources, that the payment was not made to secure material to be used in producing and distributing content, and that the payment was not made in the same manner as, or even in connection with, AMI's

[138] MUR 7332 AMI Resp. at 6.

[139] AMI Non-Prosecution Agreement, Ex. A ¶ 5.

[140] AMI Non-Prosecution Agreement at 1-3 (stating that "AMI accepts and acknowledges as true the facts" contained in Exhibit A).

[141] *Id.*, Ex. A ¶ 5; *see also* McDougal 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.").

general activities as a press entity.[142] Consistent with the Commission's analysis in AO 2011-11, allowing AMI to assert the press exemption here despite its admissions that its activity was undertaken for political purposes "would stretch the boundaries of the press exemption far beyond those contemplated by Congress and the Supreme Court."[143]

AMI's involvement in both the payment to McDougal and the payment Cohen made to Clifford on behalf of Trump, along with the overlap of individuals involved in the discussion and negotiation of both payments, as well as AMI's admitted involvement in an effort to identify and purchase stories damaging to Trump's campaign, suggest an ongoing pattern of using AMI resources to make payments for the purpose of benefitting Trump's campaign.[144] In October 2016, Davidson, the same attorney who had represented McDougal in her negotiations with AMI, reportedly contacted Pecker and Howard at AMI and offered to confirm Clifford's story on the record.[145] According to press reports, AMI, unwilling to make an additional payment to benefit Trump's campaign, nevertheless served as an intermediary to facilitate Clifford's silence[146] and put Davidson in touch with Michael Cohen, who then negotiated a $130,000

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142 *See* WSJ Nov. 9 Article (reporting that, in Pecker and Cohen's contemplated agreement to transfer the rights to McDougal's story to Trump for $125,000, "the magazine covers and fitness columns, the rights to which the publisher would retain" were valued at $25,000).

143 AO 2011-11 at 9.

144 *See* SDNY Information ¶¶ 24-44; WSJ Jan. 12 Article (outlining details of the payment to Clifford); Farrow, Catch and Kill at 345 (noting AMI's involvement in the payments to McDougal, Sajudin, and Clifford).

145 *See* SDNY Information ¶ 32.

146 *See supra* Section II.C.2; Farrow, Catch and Kill at 345 ("[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."); The Fixers at 176-78 (reporting Howard's initial interest in and Pecker's reluctance to purchasing the rights to Clifford's story and Howard's involvement in the negotiations); *see also* WSJ Nov. 9 Article ("Mr. Cohen asked American Media to buy Ms. Clifford's story. Mr. Pecker refused on the grounds that he didn't want his company to pay a porn star.").

agreement to purchase Clifford's silence.[147] Davidson's reported multiple negotiations with AMI, each of which ultimately resulted in a payment to prevent the publication of a story that might damage the Trump campaign, indicate his awareness of AMI's general willingness to purchase stories in order to benefit Trump's campaign, and not for legitimate press activity.[148] Finally, AMI's own admissions to DOJ that it had "offered to help with negative stories about [a] presidential candidate's relationships with women by, among other things, assisting the campaign in identifying such stories so they could be purchased and their publication avoided,"[149] indicate an ongoing pattern of using AMI resources to make payments for the purpose of benefitting a candidate, admittedly without regard to its editorial decisions or press-related activity such as disseminating news and increasing readership.[150]

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147 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* McDougal New Yorker Article; SDNY Information ¶ 32; The Fixers at 178; WSJ Nov. 9 Article.

148 *See* McDougal Complaint ¶ 47 (alleging that Davidson told McDougal that AMI "would buy the story *not* to publish it, because Mr. Pecker (AMI's CEO) was a close friend of Mr. Trump" (emphasis in original)); *see also* The Fixers at 164-65; WSJ Nov. 9 Article.

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

150 *See* MUR 7332 AMI Resp. at 5. AMI appears to argue that the First Amendment in general protects it from inquiry into why it chooses not to run stories and asserts that any inquiry would be chilling on the press. *Id.* at 20-21. However, no such inquiry is necessary in this matter because AMI, after submission of its Response, admitted that its actions were not undertaken in connection with AMI's work as a conglomerate of press entities but rather to benefit a personal friend of Pecker. Specifically, AMI admits that Pecker "offered to help with negative stories about [a] presidential candidate's relationships with women by, among other things, assisting the campaign in identifying such stories so they could be purchased and their publication avoided." AMI Non-Prosecution Agreement, Ex. A ¶ 3. To support its argument, AMI cites to cases that address situations not present in the instant matters. *Miami Herald* addresses a situation where a right of reply statute requiring a publication to provide equal space was struck down, affirming the rights of a publication to select its content. *Miami Herald Publishing Co. v. Tornillo,* 418 U.S. 241, 254-57 (1974). Similarly, the decision in *Clifton* centered around the authority to regulate a publication's decisions on what content to include in a voter guide. *Clifton v. FEC,* 114 F.3d 1309, 1310-1311 (1st Cir. 1997). AMI's editorial judgment is not at issue in these matters, because AMI has already acknowledged that it made or facilitated the payments to McDougal and Clifford for an electoral, as opposed to editorial, purpose.

AMI's payment to Sajudin fits this pattern as well. Experienced *Enquirer* staffers reportedly identified "the abrupt end to reporting combined with a binding, seven-figure penalty to stop the tipster from talking to anyone" as hallmarks of a catch and kill operation.[151] Further, sources who purportedly were involved with the investigation of Sajudin's tip reportedly stated that the decision to stop investigating was not an editorial decision but one made by Pecker personally.[152] One of those sources added, "There's no question it was done as a favor to continue to protect Trump from these potential secrets. That's black-and-white."[153] Finally, former AMI employees stated to *The New Yorker* that Cohen was kept apprised of the investigation of Sajudin's story, indicating that the decision to purchase and silence Sajudin's story was made for political, rather than editorial, purposes.[154] These statements, which detail the ways in which the payment was not comparable to AMI's regular activities in form, scale, personnel, or process, indicate that the decisions surrounding AMI's decision to pay Sajudin amounted to "active participation in core campaigning functions," and were not the sort of activity intended to be protected under the press exemption.[155]

Available information suggests that Sajudin possessed information, which, like Clifford's and McDougal's information, could have harmed Trump's chances of winning the 2016 presidential primary and general elections.[156] Like Clifford and McDougal, Sajudin was

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151 MUR 7364 Compl. at 5 (quoting Sajudin AP Article).

152 Sajudin New Yorker Article; *see also* The Fixers at 148-49.

153 Sajudin New Yorker Article.

154 *See id.* Other sources indicate that Cohen learned of the story when a reporter, unbeknownst to her editors, contacted Rhona Graff. After learning of this call, Cohen reportedly contacted Howard and "pleaded with him not to publish the story." The Fixers at 147.

155 *See* AO 2011-11 at 8 (quotation marks omitted).

156 *Compare* AMI Non-Prosecution Agreement, Ex. A ¶ 3 (outlining the overall agreement to "help deal with negative stories about that presidential candidate's relationships with women by, among other things, assisting the

reportedly paid for that information, in his case by AMI, and faced significant financial consequences were he to discuss that information publicly.[157] Given AMI's admissions that its payments to McDougal were part of an overall scheme to benefit Trump in the election by identifying and purchasing stories that could damage Trump, the available information supports the reasonable inference that AMI's purchase of Sajudin's story was part of that same scheme to benefit a candidate and was undertaken without regard for editorial or other legitimate press function-related considerations.

In light of all of these circumstances, which include AMI's express admissions that it used a press entity's resources to provide benefits to a candidate, which were unrelated to its legitimate press function, the press exemption does not apply to the payments at issue.

B. The Commission Finds Reason to Believe that Howard Consented to AMI's Payments to McDougal and Sajudin

1. AMI's Payments to McDougal and Sajudin Were Coordinated Expenditures

a. Coordination

The Act and Commission regulations prohibit corporations from making contributions to candidate committees in connection with a federal election.[158] Likewise, it is unlawful for any candidate, candidate committee, or other person to knowingly accept or receive such a prohibited

campaign in identifying such stories so they could be purchased and their publication avoided"), *with* MUR 7332 AMI Resp., Howard Aff., Ex. A ¶ 7 (requiring McDougal to maintain her silence about her relationship with "any then-married man" and providing that AMI would be entitled to $150,000 in damages for any breach), *and* Sajudin Agreement at 4 (outlining an extension of the exclusivity period contained in the agreement to extend "in perpetuity" and its violation to carry a $1 million penalty). *See also* Sajudin AP Article ("The company only released Sajudin from his contract after the 2016 election amid inquiries from the Journal about the payment.").

[157] *See supra* Section II.C.1; The Fixers at 148; Sajudin Agreement at 4; *see also* House Oversight Testimony at 128, 132 (Cohen discusses Pecker's actions to protect Trump and appears to refer to the payment to Sajudin).

[158] 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

contribution, and for any officer or director of a corporation to consent to any such contribution.[159] The Commission has consistently found that payments by a third party that are intended to influence an election and are "coordinated" with a candidate, authorized committee, or agent thereof are "coordinated expenditures" that result in a contribution by the person making the expenditure to the candidate or political committee with whom the expenditure was coordinated.[160]

The available information indicates that AMI's payments to McDougal and Sajudin were "coordinated" with Trump and his agent Cohen because they were made "in cooperation, consultation or concert with, or at the request or suggestion" of Trump, personally, and Cohen in his capacity as an agent for Trump.[161]

Trump reportedly held the August 2015 meeting with Pecker and Cohen, in which Pecker agreed to purchase negative stories on behalf of Trump and his campaign, in his office at Trump Tower, suggesting that he was aware of, and agreed to, the plan to have AMI make payments to individuals in possession of stories damaging to the Trump campaign in order to help his campaign.[162] Further, Trump appears to have maintained an ongoing role in and awareness of AMI's negotiations with individuals possessing potentially damaging stories by contacting AMI

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159 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d)-(e).

160 *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).

161 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(a)-(b).

162 *See* WSJ Nov. 9 Article; AMI Non-Prosecution Agreement, Ex. A ¶ 3.

directly, and by receiving updates concerning AMI's negotiations from Cohen.[163] For example, according to press reports and Cohen himself, on June 27, 2016, after Cohen notified Trump that AMI was in contact with McDougal, Trump telephoned Pecker and asked Pecker to make McDougal's story go away.[164] Press reports also indicate that later, when AMI informed Cohen that McDougal was fielding an offer from ABC for her story, Cohen updated Trump; Cohen also subsequently notified Trump once McDougal signed the agreement with AMI.[165] The available information also indicates that AMI reportedly initially placed a low value on McDougal's story but was nevertheless directed by Trump to purchase her story.[166] Thus, the record indicates that AMI acted in consultation with and at the request or suggestion of Trump.

In addition, AMI has admitted in its Non-Prosecution Agreement with DOJ that it made its payment to McDougal "in cooperation, consultation, and concert with, and at the request and suggestion of one or more members or agents of a candidate's 2016 presidential campaign, to ensure that a woman did not publicize damaging allegations about that candidate before the 2016 presidential election and thereby influence that election," and the available information makes clear that Cohen served as an agent of Trump in his discussions with AMI.[167]

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163 The Fixers at 166-68 (detailing Trump's awareness of AMI's negotiations with McDougal); Cohen Book at 285 (stating that, after receiving an update from Cohen about McDougal's story, Trump "immediately called Pecker"); *see also* WSJ Nov. 9 Article.

164 *See* The Fixers at 166; Cohen Book at 285.

165 *See* The Fixers at 168-69; *see also* House Oversight Testimony at 29-30 ("[Question:] Mr. Cohen, in your 10 years of working for Donald Trump[,] did he control everything that went on in the Trump Organization? And did you have to get his permission in advance and report back after every meeting of any importance. [Answer:] Yes. There was nothing that happened at The Trump Organization . . . that did not go through Mr. Trump with his approval and sign-off, as in the case of the payments.").

166 *See supra* Section II.B.

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

As relevant here, the Commission has defined an "agent" of a federal candidate as "any person who has actual authority, either express or implied," to engage in certain activities with respect to the creation, production, or distribution of communications.[168] That definition applies in the contexts of coordinated communications and non-communication coordinated expenditures.[169] The Commission has explained that "[t]he grant and scope of the actual authority, whether the person is acting within the scope of his or her actual authority, and whether he or she is acting on behalf of the principal or a different person, are factual determinations that are necessarily evaluated on a case-by-case basis in accordance with traditional agency principles."[170] It has also explained that "[a]n agent's actual authority is created by manifestations of consent (express or implied) by the principal to the agent about the agent's authority to act on the principal's behalf."[171] Further, the regulatory definitions of "agent" "cover the wide range of activities prohibited by [the Bipartisan Campaign Reform Act of 2002] and the Act, thereby providing incentives for compliance, while protecting core

168 11 C.F.R. § 109.3.

169 *Id.*; *see also id.* § 109.21(a) (addressing actions of "an agent" with respect to coordinated communications); *id.* § 109.20(a) (addressing non-communication activities of "an agent" with respect to coordinated expenditures); Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 425 (Jan. 3, 2003) ("Coordination E&J") (explaining that section 109.20(b) applies to "expenditures that are not made for communications but that are coordinated with a candidate, authorized committee, or political party committee"); Advisory Op. 2011-14 (Utah Bankers Association); 11 C.F.R. § 300.2(b)(3) (defining "agent" of a federal candidate or officeholder as "any person who has actual authority, either express or implied . . . to solicit, receive, direct, transfer, or spend funds in connection with any election"); Definitions of "Agent" for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4975 (Jan. 31, 2006) ("Agency E&J") ("[Agent means] 'any person who has actual authority, either express or implied' to perform certain actions."); Coordination E&J, 68 Fed. Reg. at 423 (explaining that "agent" definition at section 109.3 is modeled on the definition set forth in section 300.2(b)).

170 Coordination E&J, 68 Fed. Reg. at 425.

171 Advisory Op. 2007-05 (Iverson) at 3-4 ("AO 2007-05") (citing Agency E&J, 71 Fed. Reg. at 4976 and stating that if a candidate or federal officeholder provides an individual "with actual authority to solicit and receive contributions, then [that individual] would be an agent of a [f]ederal candidate or officeholder") (internal citations omitted).

political activity."[172] Finally, the Commission has explained that the definitions of "agent" are broad enough to capture actions of individuals with certain titles or positions, actions by individuals where the candidate privately instructed the individual to avoid raising non-Federal funds, actions by individuals acting under indirect signals from a candidate, and actions by individuals who willfully keep a candidate, political party committee, or other political committee ignorant of their prohibited activity.[173] Thus, the Commission has concluded that an individual is an agent of the candidate when the candidate "provides [that individual] with actual authority."[174]

The available information in this matter indicates that Trump provided Cohen with actual authority to engage with AMI in the catch and kill scheme. With respect to the McDougal payment scheme, it appears that Cohen played a crucial role in identifying to AMI Trump's interest in suppressing the story, negotiating, on Trump's behalf, the terms of AMI's payment, and negotiating (even if unsuccessfully) the terms of Trump's repayment of those funds, acting at Trump's direction and with his approval to proceed.[175] The guilty plea from Cohen, the admissions from AMI, and information in press reports about Cohen's actions taken on Trump's authority and Trump's manifestations of assent for those actions, all support the conclusion that

172 Agency E&J, 71 Fed. Reg. at 4976-77.

173 *Id.* at 4978-79.

174 AO 2007-05 at 4.

175 AMI Non-Prosecution Agreement, Ex. A ¶¶ 4-6 (stating that AMI began negotiations with Davidson and McDougal "[a]t Cohen's urging and subject to Cohen's promise that AMI would be reimbursed"); The Fixers at 147-48, 166-68 (detailing Cohen's involvement in the McDougal payment scheme); Cohen Book at 284-89 (same).

Cohen was acting as an agent of Trump when he facilitated the payment from AMI to McDougal.[176]

Finally, the available information supports the inference that AMI's payment to Sajudin was also made in accordance with the catch and kill agreement between Trump and AMI. The payment to Sajudin was made in late 2015, subsequent to Trump's August 2015 meeting and agreement with Cohen and Pecker.[177] The amount of the payment was also unusual when compared to AMI's payments to legitimate sources, because it was paid prior to publication or investigation, was for a substantial sum, and carried an even more substantial penalty for disclosure. The circumstances and timing of the payment support a conclusion that the payment was part of AMI's catch and kill agreement with Trump, because AMI paid Sajudin after agreeing to catch and kill such stories on behalf of Trump. Additionally, Cohen has appeared to testify to his awareness of the payment to Sajudin.[178] A payment made by AMI pursuant to the catch and kill agreement between Pecker, Trump, and Cohen is a payment made by AMI in consultation with and at the request or suggestion of Trump and Cohen, as an agent of Trump.

Accordingly, the AMI payments to McDougal and Sajudin meet the definition of "coordinated" in 11 C.F.R. § 109.20(a) in that they were made in cooperation, consultation or

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[176] The available information indicates that Trump, directly and through his counsel, Giuliani, has not denied that Cohen's actions in connection with the McDougal and Clifford payments were undertaken as Trump's agent. *See supra* Section II.D. The lawfulness of the activity is not, however, relevant to the agency determination; the Commission has explained that it "rejects . . . the argument that a person who has authority to engage in certain activities should be considered to be acting outside the scope of his or her authority any time the person undertakes unlawful conduct. It is a settled matter of agency law that liability may exist 'for unlawful acts of [] agents, provided that the conduct is within the scope of the agent's authority, whether actual or apparent.'" Coordination E&J, 68 Fed. Reg. at 424 (quoting *U.S. v. Investment Enterprises, Inc.*, 10 F.3d 263, 266 (5th Cir. 1993)).

[177] *See* AMI Non-Prosecution Agreement, Ex. A ¶ 3.

[178] *See* House Oversight Testimony at 128, 132 (discussing Pecker's actions to protect Trump and appearing to refer to the payment to Sajudin, as well as Cohen and Trump's attempt to purchase the rights to stories silenced by AMI and the "treasure trove of documents" related to those stories).

concert with, or at the request or suggestion of Trump or Trump's agent Cohen. The coordinated payments would constitute in-kind contributions from AMI to Trump and the Trump Committee if they were "expenditures," that is, made for the purpose of influencing Trump's election.

b. For the Purpose of Influencing an Election

The "purpose" of influencing a federal election is a necessary element in defining whether a payment is a "contribution" or "expenditure" under the Act and Commission regulations.[179] In analyzing whether a payment made by a third party is a "contribution" or "expenditure,"[180] the Commission has concluded that "the question under the Act is whether" the donation, payment, or service was "provided for the purpose of influencing a federal election [and] not whether [it] provided a benefit to [a federal candidate's] campaign."[181] The electoral purpose of a payment may be clear on its face, as in payments to solicit contributions or for communications that expressly advocate for the election or defeat of a specific candidate, or inferred from the surrounding circumstances.[182]

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

180 52 U.S.C. § 30101(8)(A)(i), (9)(A)(i).

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

182 *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). 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 the *only* purpose — acknowledging

When electoral purpose is not apparent on its face, the Commission has previously concluded that payments would result in a contribution or expenditure if they were made to potentially advance a candidacy, if they were made because of the beneficiary's status as a federal candidate, or if the payment was coordinated with the candidate or his campaign.

For example, in Advisory Opinion 1990-05, the Commission concluded that the publication expenses of a newsletter by a candidate-owned company would be expenditures if the newsletter referred to the candidate's campaign or qualifications for office, referred to issues or policy positions raised in the campaign (by the candidate or her opponents), or if the distribution of the newsletter significantly expanded or otherwise indicated that it was being used as a campaign communication.[183] The Commission indicated that any discussion of issues or policies "closely associated" with the candidate's federal campaign "would be inevitably perceived by readers as promoting your candidacy," and the newsletter would therefore be "viewed by the Commission as election-related and subject to the Act."[184]

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

that "[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).

183 AO 1990-5 at 4.

184 *Id.* at 2, 4.

therefore, linked to the Federal election" and "would be considered a contribution."[185]

Conversely, the Commission has previously found that activity by or in connection with a federal candidate that is undertaken for any number of non-electoral purposes — including, *e.g.*, activity to advance a commercial interest,[186] fulfill the obligations of holding federal office,[187] or engage in non-candidate oriented election litigation [188] — does not necessarily result in a "contribution" or "expenditure," even if such activity confers a benefit on a federal candidate or otherwise impacts a federal election.

With respect to the McDougal payment, it is unnecessary to infer the circumstances behind the payment; both AMI and Cohen have already acknowledged, in a sworn plea, agreement, and testimony, that the purpose of paying McDougal was to prevent her story from

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185 AO 2000-08 at 2-3.

186 *E.g.*, Advisory Op. 2012-31 (AT&T) at 4 (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 Rpt. at 13-17, MURs 5474 and 5539 (Dog Eat Dog Films) (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 (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").

187 *E.g.*, Advisory Op. 1981-37 at 2 (Gephardt) (concluding that 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).

188 *E.g.*, Factual & Legal Analysis at 8, MUR 7024 (Van Hollen for Senate) (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").

influencing the election. In the AMI Non-Prosecution Agreement, AMI explicitly admits that its "principal purpose in entering into the agreement [with McDougal] was to suppress the model's story" and "to ensure that [she] did not publicize damaging allegations about [Trump] before the 2016 presidential election and thereby influence that election."[189] Further, AMI admits that the payment to McDougal was part of an overarching scheme in "assisting [the] campaign" in identifying and purchasing "negative stories about [his] relationships with women" to prevent their publication.[190] Cohen admits that he worked with AMI, the *Enquirer*, Pecker, and Howard to catch and kill McDougal's story and that his work with AMI in connection with the $150,000 payment was done "at the request of the candidate."[191]

Even absent AMI and Cohen's explicit admissions, consistent with prior matters in which the Commission found the payment resulted in a contribution or expenditure, the overall record in these matters — including the timing of the negotiations and payments to McDougal and Sajudin, the terms of the agreements relative to AMI's usual practices, the release from the non-disclosure provisions shortly after the election, and the coordination between AMI, Trump, and Cohen[192] — indicates that the payments would not have been made absent Trump's status as a

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

190 *Id.* ¶ 3.

191 House Oversight Testimony at 30, 99-100 (noting that Pecker had paid hush money to other individuals in addition to McDougal); Cohen Plea Hearing at 23; *see supra* note 18.

192 *See supra* Sections II.A, B, C.1 (discussing McDougal and Sajudin's negotiations with AMI after the August 2015 meeting between Pecker, Cohen, and Trump, during which they agreed that Pecker would catch and kill negative stories about Trump's relationships with women so that they were not published before the election); AMI Non-Prosecution Agreement, Ex. A ¶ 5 (acknowledging that $150,000 payment to McDougal was substantially higher that AMI would normally pay); Sajudin AP Article (reporting that the amount and circumstances of the Sajudin payment — $30,000 for secondhand information regarding a story that was abandoned mid-investigation and that was never published — were inconsistent with AMI's standard practices, indicating to the *Enquirer* staffers who spoke on the subject that it was part of a catch and kill operation). Sajudin's story was decades old, second-hand, and like McDougal and Clifford's stories, was not purchased until Trump's campaign was underway,

candidate. As with the facts the Commission considered in Advisory Opinions 1990-05 and 2000-08, the available information in this matter supports the conclusion that the purpose of the McDougal and Sajudin payments *was* to influence the 2016 election, irrespective of any incidental effects they may have had on Trump personally.[193] Although McDougal and Sajudin's stories involved years- and decades-old allegations, respectively, and Pecker and Trump reportedly have a longstanding friendship such that "critical coverage of Trump vanished" once Pecker "took over" AMI,[194] AMI's specific catch and kill effort to obtain and prevent the publication of damaging stories, including McDougal's and Sajudin's, began only after Trump became a candidate for president in June 2015.[195]

indicating that, given the timing and agreement between AMI, Trump, and Cohen, the purchase of the stories was aimed at improving Trump's chances of winning the presidency.

[193] *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." AO 2000-08 at 3; *see also* 52 U.S.C. § 30114(b) (prohibiting use of campaign funds "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 (Feb. 9, 1995) ("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."). .

[194] 2017 New Yorker Article.

[195] *See* Donald J. Trump, Statement of Candidacy (June 22, 2015); AMI Non-Prosecution Agreement, Ex. A ¶ 3 (admitting that "Pecker offered to help deal with negative stories about [Trump's] relationships with women by, among other things, assisting the campaign in identifying such stories so they could be purchased and their publication avoided"); Alex Altman and Charlotte Alter, *Trump Launches Presidential Campaign with Empty Flair*, TIME (June 16, 2015), https://time.com/3922770/donald-trump-campaign-launch/ (recapping Trump's 2015 campaign launch). Although the Trump Committee asserts that AMI's payment to McDougal was a "private" and commercial transaction, the Trump Committee relies on arguments that AMI has disavowed in its later admissions to DOJ, which also contradict AMI's Responses and affidavit that it submitted to the Commission; thus, the Trump Committee's arguments are not credibly supported by the record. *Compare* MUR 7332 AMI Resp. at 29-30, *with* AMI Non-Prosecution Agreement, Ex. A ¶¶ 2-9.

Thus, the available information supports the conclusion that AMI's payments to McDougal and Sajudin were coordinated with Trump and were made for the purpose of influencing Trump's election, resulting in AMI making "coordinated expenditures" under the Act.[196]

2. AMI's Payments to McDougal and Sajudin Were Prohibited Corporate In-Kind Contributions to the Trump Committee

Because the available information indicates that AMI's payments to McDougal and Sajudin were coordinated expenditures made for the purpose of influencing the 2016 election, the record supports a reason to believe finding that the payments constituted in-kind contributions from AMI to Trump and the Trump Committee.[197] Further, because the payments were in-kind contributions to the Trump Committee, they were subject to the contribution limits and prohibitions set forth in the Act and Commission regulations.[198] The Act and Commission regulations prohibit corporations from making contributions to candidate committees.[199] The Act and Commission regulations also prohibit candidates, candidate committees, or other

[196] In addition, the payments to public relations firms by AMI under the Amendment to the McDougal agreement, which were used to allow AMI to control the narrative surrounding McDougal's story and further prevent McDougal from speaking about her relationship with Trump, likely were made for the purpose of influencing the 2020 presidential election and likely were coordinated expenditures resulting in in-kind contributions from AMI to Trump and Trump Committee.

[197] *See* 11 C.F.R. § 109.20(b).

[198] 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.

[199] 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

persons from knowingly accepting or receiving such a prohibited contribution, and for any officer or director of a corporation to consent to making any such contribution.[200]

The Commission has previously found violations of the Act by a corporation and its officers in connection with similar payments to third parties. In MUR 7248, the Commission found reason to believe that Cancer Treatment Centers of America and several of its corporate officers violated 52 U.S.C. § 30118 by making and consenting to prohibited corporate contributions where the corporate officers engaged in a reimbursement scheme whereby executives were reimbursed via bonuses for their political contributions.[201]

While corporate contributions to candidate committees are *per se* prohibited and do not require proof of the contributor's knowledge of the violation, AMI has admitted to DOJ that it knew that corporations are prohibited from contributing to candidate committees like the Trump Committee.[202] The AMI Non-Prosecution Agreement states:

> 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. At no time did AMI report to the Federal Election Commission that it had made the $150,000 payment to [McDougal].[203]

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200 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d)-(e).

201 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).

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

203 *Id.*

Thus, AMI has admitted that it made the payment to McDougal while knowing that it was unlawful.[204] It is reasonable to infer, further, that AMI also knew its payment to Sajudin was unlawful when it made that payment in December 2015.

The available information also indicates that Howard, an officer of AMI,[205] did not merely consent to the McDougal and Sajudin corporate in-kind contributions, but also actively participated in the decision to make the contributions by negotiating, in consultation with Trump and Cohen, the amounts that would be paid and the terms of the agreements.[206] Howard is the signatory on AMI's agreement with McDougal.[207] As in MUR 7248, Howard violated the Act by consenting to the payments to McDougal and Sajudin.[208]

Thus, the Commission finds reason to believe that Howard violated 52 U.S.C. § 30118(a) by consenting to prohibited corporate in-kind contributions.

C. The Commission Finds Reason to Believe that the Violations Set Forth Above Were Knowing and Willful

The Act prescribes additional penalties for "knowing and willful" violations,[209] which are defined as "acts [that] were committed with full knowledge of all the relevant facts and a

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204 *See infra* Section III.C; *see also* 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.").

205 Howard, as Vice President and Chief Content Officer, was an officer of AMI and his ability to act on the corporation's behalf can be reasonably inferred from his actions in the negotiations with McDougal and Sajudin, from his signature on AMI's agreement with McDougal, and his discussion and approval of the Sajudin negotiations, as evidenced in his statements in the AMI-published Radar Online Article.

206 *See supra* Section II.B.

207 *See* MUR 7332 AMI Resp., Aff. of Dylan Howard, Ex. A.

208 *See supra* note 201 and accompanying text.

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

recognition that the action is prohibited by law."[210] This standard does not require knowledge of the specific statute or regulation that the respondent allegedly violated; it is sufficient to demonstrate that a respondent "acted voluntarily and was aware that his conduct was unlawful."[211] Such awareness may be shown through circumstantial evidence from which the respondent's unlawful intent may be reasonably inferred,[212] including, for example, an "elaborate scheme for disguising" unlawful acts.[213]

The available information supports a reason to believe finding that Howard's foregoing violations were knowing and willful. AMI, through its Non-Prosecution Agreement, admitted that it knew its actions were unlawful.[214] Furthermore, Howard's direct involvement in the negotiations indicate that Howard was a party in a scheme to both hide the stories and the payments.[215] Howard's reported actions to destroy the contents of a safe containing stories purchased by AMI also suggest awareness of the illegality of his actions.[216] The McDougal

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[210] 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).

[211] *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)).

[212] *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.

[213] *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)).

[214] 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").

[215] AMI Non-Prosecution Agreement, Ex. A ¶ 3.

[216] Farrow, Catch and Kill at 16-17.

agreement itself was structured in such a way as to hide the appearance of impropriety or illegality — by paying McDougal not just for her story but also, pretextually, for future work; AMI reportedly did not seek such work from McDougal until after AMI's payment to McDougal was publicly reported in the press.[217] Howard also texted Cohen that AMI's payment to McDougal "looks suspicious at best."[218] Further, Howard reportedly exchanged text messages with a relative the night of the general election in 2016, in which he wrote that Trump would pardon him for his actions related to "electoral fraud."[219] Thus, the available information indicates that the unlawful actions that served as the basis of AMI's Non-Prosecution Agreement were undertaken by Howard in his capacity as an officer and agent of AMI.[220] As such, the information indicates that Howard knew that AMI's payments to McDougal and Sajudin violated the Act, and he acted voluntarily and with awareness of unlawfulness when he negotiated the agreements with McDougal and Sajudin and made the corresponding payments.

Accordingly, the Commission finds reason to believe that the violations of the Act by Howard, as set forth above, were knowing and willful.

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217 *See* The Fixers at 169; *see also* WSJ Nov. 9 Article.

218 Warrant Aff. ¶ 40.c (recounting that Cohen asked Howard "how the *Wall Street Journal* could publish its article if 'everyone denies,'" with Howard responding, "'Because there is the payment from AMI. It looks suspicious at best'").

219 The Fixers at 196-97 (quoting Howard's text messages, including "At least if [Trump] wins, I'll be pardoned for electoral fraud" and "At least now we get pardoned").

220 *See supra* Section III.B.2; *see also supra* note 20 (citing articles reporting that Howard was reportedly granted immunity in exchange for his cooperation).