



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 3, 2021

BY ELECTRONIC MAIL ONLY

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Jason Torchinsky, Esq.
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45 North Hill Drive
Suite 100
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RE: MUR 7407
Real Estate Attorneys Group

Dear Mr. Torchinsky:

On June 12, 2018, the Federal Election Commission notified your client, Real Estate Attorneys Group, of a complaint alleging that it had violated certain sections of the Federal Election Campaign Act of 1971, as amended. On August 6, 2018, the Commission notified your client of a supplement to the complaint.

Upon further review of the allegations contained in the complaint, and information provided by Real Estate Attorneys Group, the Commission, on February 9, 2021, voted to dismiss the allegation that Real Estate Attorneys Group violated 52 U.S.C. § 30122 by making a contribution in the name of another. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in blue ink, appearing to read "Roy Q. Luckett".

Roy Q. Luckett
Attorney

Enclosure

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Donald J. Trump for President, Inc., and Bradley T. MUR 7407
 Crate in his official capacity as treasurer
 Elliott Broidy
 Michael D. Cohen
 Donald J. Trump
 Essential Consultants, LLC
 Real Estate Attorneys Group
 A360 Media, LLC f/k/a American Media, Inc.

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission (the “Commission”) by Free Speech for People and Shanna M. Cleveland.¹ The Complaint in this matter alleges that Elliott Broidy, a former deputy finance chair of the Republican National Committee, acting at the direction of Michael D. Cohen and through Real Estate Attorneys Group and Essential Consultants, LLC, made, and Donald J. Trump for President, Inc., (the “Trump Committee”) received, an unreported \$1.6 million excessive in-kind contribution in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).² The Complaint alleges that the excessive contribution arose from a non-disclosure agreement reached in late 2017 and executed by Broidy and former Playboy model Shera Bechard, ostensibly arising from Broidy’s sexual relationship with her.

The Complaint cites and relies upon similarities between the Broidy-Bechard agreement, on the one hand, and non-disclosure agreements involving Stephanie Clifford a/k/a Stormy

¹ See 52 U.S.C. § 30109(a)(1).

² Compl. at 2 (June 5, 2018).

Daniels and Karen McDougal relating to their alleged sexual relationships with Donald Trump, on the other hand.

Based on the similarities with the Trump agreements and other factors, the Complaint alleges that Trump, not Broidy, had the relationship with Bechard and that Broidy's payments to Bechard regarding that alleged Trump-Bechard relationship constitute an excessive unreported contribution to the Trump Committee in connection with the 2020 election.³ The Complaint further alleges that this activity constituted the making and receiving of a contribution in the name of another, also in violation of the Act.⁴

As discussed in further detail below, because the available information, which includes Bechard's declarations contrary to the allegations in the Complaint in another legal proceeding, does not indicate that Broidy's payments to Bechard pursuant to the non-disclosure agreement constituted a contribution to Trump or the Trump Committee, the Commission dismisses the allegations outlined in the Complaint.

II. FACTUAL BACKGROUND

The Trump Committee is the authorized committee of Donald J. Trump's 2016 and 2020 presidential campaigns.⁵ Michael D. Cohen served as Trump's personal attorney.⁶ On April 3,

³ *Id.* at 9-11.

⁴ *Id.* at 17-18.

⁵ See Amended Statement of Organization, Trump Committee (June 3, 2016); Amended Statement of Organization, Trump Committee (Jan. 20, 2017).

⁶ See Government's Sentencing Memorandum at 11, *United States v. Cohen*, No. 1:18-cr-00602-WHP (S.D.N.Y. Dec. 7, 2018); *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).

2017, Cohen was appointed by the Republican National Committee (“RNC”) as one of its deputy finance chairs.⁷ More than a year later, on April 9, 2018, the Federal Bureau of Investigation (“FBI”) conducted a search at Cohen’s office, apartment, and hotel room⁸ and reportedly seized, among other items, an audio file that recorded a conversation between Cohen and Trump regarding a payment from American Media, Inc., which is now A360 Media, LLC (“AMI”),⁹ to Karen McDougal, a former Playboy model.¹⁰

Shortly thereafter, on June 20, 2018, Cohen, citing the “ongoing Mueller and SDNY investigations,” reportedly resigned from his post as deputy finance chair.¹¹ On August 21, 2018, Cohen pleaded guilty, *inter alia*, to criminal violations of the Act in connection with his and AMI’s payments to two women, admitting that the payments were made for the “principal

⁷ Compl. at 4 (citing Matea Gold, *Top GOP Financiers Coalescing Around Trump-RNC Fundraising Effort*, WASHINGTON POST (May 24, 2018)).

⁸ Agent Affidavit in Support of Application for Search and Seizure Warrant Before the United States District Court for the Southern District of New York, ¶ 30.a (Apr. 8, 2018) (“Warrant Affidavit”). 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.

⁹ In 2016, one of AMI’s publications was the *National Enquirer*, which is a weekly print and online tabloid. Compl. at 12 (citing Compl. for Declaratory Relief, *McDougal v. American Media, Inc.*, No. BC698956 (Cal. Super. Ct. Los Angeles Cnty. Mar. 20, 2018)). AMI was a publishing company headquartered in New York, New York. See AMI, *About Us*, <https://web.archive.org/web/20200721110029/https://www.americanmediainc.com/about-us/overview> (last visited Nov. 6, 2020); AMI, *Contact Us*, <https://web.archive.org/web/20200830111333/https://www.americanmediainc.com/contact-us> (last visited Nov. 6, 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 Dec. 1, 2020). In August 2020, AMI reportedly was renamed and started doing business as A360 Media LLC and plans were announced to merge it with Accelerate 360, a logistics firm. Ben Smith, *National Enquirer Chief David Pecker Loses Top Job in Company Merger*, THE NEW YORK TIMES (Aug. 21, 2020), available at <https://www.nytimes.com/2020/08/21/business/media/david-pecker-ami-ceo.html>. Both A360Media and Accelerate 360 are reportedly controlled by Chatham Asset Management, a New York 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 Dec. 1, 2020).

¹⁰ Suppl. Compl. at 2 (Aug. 6, 2018) (citing Matt Apuzzo *et al.*, *Michael Cohen Secretly Taped Trump Discussing Payment to Playboy Model*, THE NEW YORK TIMES (July 20, 2018)).

¹¹ Eliana Larramendia and Zunaira Zaki, *Michael Cohen Resigns from RNC Committee Post, Sources Say*, ABC NEWS (June 20, 2018).

1 purpose of influencing the [2016 presidential] election”¹² and at Trump’s direction.¹³
 2 Specifically, Cohen pleaded guilty to knowingly and willfully violating 52 U.S.C. § 30118(a) by
 3 causing AMI to make a payment totaling \$150,000 in 2016 to McDougal, and to knowingly and
 4 willfully violating 52 U.S.C. § 30116(a)(1)(A) by making an excessive contribution in the form
 5 of a payment totaling \$130,000 to a second woman, Stephanie Clifford, a well-known adult-film
 6 actress and director who used the professional name Stormy Daniels, to ensure that both women
 7 “did not publicize damaging allegations before the 2016 presidential election and thereby
 8 influence that election.”¹⁴ Cohen is currently serving a three-year prison sentence¹⁵ under home
 9 confinement in connection with that plea.¹⁶

¹² Tr. of Proceedings before Hon. William H. Pauley III at 23-24, 27-28, *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”); *see also* Information at 18-19, *United States v. Cohen*, No. 1:18-cr-00602-WHP (S.D.N.Y. Aug. 21, 2018), ECF No. 2, <https://www.justice.gov/usao-sdny/press-release/file/1088966/download> (“SDNY Information”). On November 29, 2018, Cohen also pleaded guilty to making false statements to Congress in violation of 18 U.S.C. § 1001(a)(2) in connection with a letter dated August 28, 2017 and testimony on October 25, 2017. Information, *United States v. Cohen*, No. 1:18-cr-00850-WHP (S.D.N.Y. Nov. 29, 2018), ECF No. 2; Hr’g Tr., *United States v. Cohen*, No. 1:18-cr-00850-WHP (S.D.N.Y. Nov. 29, 2018), ECF No. 13.

¹³ Cohen Plea Hearing at 23. Cohen’s testimony and news reports have identified Trump as the person referenced as “Individual-1” in Cohen prosecution documents, including the SDNY Information and Warrant Affidavit. *See* SDNY Information at 18-19; House Oversight Testimony at 11, 13, 14, 30, 34, 100, 120 (specifically identifying Trump as “Individual-1,” and detailing the events surrounding the payments to McDougal and Clifford); Compl. at 11 (citing Joe Palazzolo, Michael Rothfeld, and Lukas I. Alpert, *National Enquirer Shielded Donald Trump From Playboy Model’s Affair Allegation*, THE WALL STREET JOURNAL (Nov. 4, 2016) (describing the circumstances of AMI’s payment to McDougal and identifying the parties involved)).

¹⁴ SDNY Information at 18-19.

¹⁵ Judgment in a Criminal Case, *United States v. Cohen*, 1:18-cr-00602 (S.D.N.Y. Dec. 12, 2018).

¹⁶ Cohen Plea Hearing at 23-24, 27); 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).

Elliott Broidy is the Chief Executive Officer and Chairman at Broidy Capital Management, an investment firm based in Los Angeles, California.¹⁷ Broidy also owns Circinus LLC, a private security company that provides services to the United States and foreign governments.¹⁸ Broidy, like Cohen, was appointed by the RNC as a deputy finance chair on April 3, 2017. On April 13, 2018, four days after the FBI raid on Cohen’s office, the *Wall Street Journal* reported that Broidy had previously entered into a non-disclosure agreement with Shera Bechard, a model and former Playboy Playmate.¹⁹ Broidy issued a statement on the same day stating that he “had a consensual relationship with a Playboy Playmate.”²⁰ Further, on the same day that the story broke, Broidy reportedly resigned from his RNC deputy finance chair post.²¹ Broidy’s Response to the Complaint asserts that he is a party to the non-disclosure agreement with Bechard.²²

The non-disclosure agreement in question, executed on December 1, 2017, obligated Broidy to pay \$1.6 million to Bechard in eight quarterly payments of \$200,000, starting on December 5, 2017.²³ The Complaint states that the parties to this agreement used pseudonyms

¹⁷ <http://www.broidycapital.com/> (last visited Nov. 18, 2020).

¹⁸ Compl. at 9 (citing Paul Campos, *Hey, Look: More Evidence That Broidy May Have Been Covering for Trump in That Playmate Affair*, NEW YORK MAGAZINE (May 22, 2018) (“Campos May 22 Article”).

¹⁹ *Id.* at 7 (citing Joe Palazzolo and Michael Rothfeld, *Trump Lawyer Michael Cohen Negotiated \$1.6 Million Settlement for Top Republican Fundraiser*, WALL STREET JOURNAL (Apr. 13, 2018)).

²⁰ *Id.* at 9 (citing Desmond Butler and Tom LoBianco, *The Princes, the President and the Fortune Seekers*, AP (May 22, 2018) (“AP Article”).

²¹ *Id.* at 4 (citing Rebecca Balhaus and Julie Bykowicz, *Elliott Broidy Quits RNC Post After Report on Payment to Ex-Model*, WALL STREET JOURNAL (Apr. 18, 2018)).

²² Broidy Resp. at 1 (Aug. 20, 2018).

²³ Verified Compl. for Damages and Other Relief at 8, *Bechard v. Broidy*, Case No. BC712913 (Cal. Super. Ct. Los Angeles Cnty. July 06, 2018) (“Bechard Compl.”). Both parties continue to litigate this matter. Most recently, on June 24, 2020, the Court of Appeal affirmed a lower court’s denial of Broidy’s motion to compel arbitration of Bechard’s breach of contract claim. *Bechard v. Broidy*, Case No. B293997 (Cal. Ct. App. 2 Dist., June 24, 2020).

— Peggy Peterson and David Dennison.²⁴ It identifies Bechard as “Peggy Peterson” and states that Broidy “claims that he is the ‘David Dennison’ referenced in the agreement and paid Ms. Bechard as a result of his *own* extramarital affair with her.”²⁵ One of the *Wall Street Journal* articles cited in the Complaint reports that the agreement stipulated that Bechard reserved the right to seek child support in the future, but that Bechard informed associates of Broidy that she terminated the pregnancy resulting from the affair.²⁶

The Complaint asserts that the Broidy-Bechard agreement is similar to agreements involving Trump. It relies on the non-disclosure agreement between Trump and Clifford to suppress Clifford’s story concerning her alleged sexual relationship with Trump while he was married.²⁷ Like the agreement between Bechard and Broidy, the Trump-Clifford agreement used the pseudonyms “David Dennison” and “Peggy Peterson”; and, like the Broidy-Bechard agreement, Cohen negotiated the terms of the agreement on behalf of the “Dennison” party and

²⁴ Compl. at 7.

²⁵ *Id.* at 8 (citing Zachary Mider, *Trump Lawyer Arranged GOP Fundraiser’s Payment to Playboy Model*, BLOOMBERG (Apr. 13, 2018)) (emphasis in original).

²⁶ Joe Palazzolo and Michael Rothfeld, *Trump Lawyer Michael Cohen Negotiated \$1.6 Million Settlement for Top Republican Fundraiser*, WALL STREET JOURNAL (Apr. 13, 2018) (cited in Compl. at 7).

²⁷ Compl. at 5-9. The Complaint refers to numerous press articles in which Trump admitted to reimbursing Cohen for paying \$130,000 to Clifford in exchange for her silence about the affair during the final weeks of the 2016 presidential election campaign. *Id.* at 5 (citing Eric Levitz, *Trump Admits He Reimbursed Michael Cohen for 2016 ‘Expenses’ in Financial Form*, NEW YORK MAGAZINE (May 16, 2018); Phillip Ewing, *Trump Acknowledges Michael Cohen Represented Him in Stormy Daniels Payment*, NPR (Apr. 26, 2018); Devlin Barret, *et al.*, *Guiliani: Trump Repaid Attorney Cohen for Stormy Daniels Settlement*, WASHINGTON POST (May 2, 2018)). The Complaint also attaches a copy of the Trump-Clifford non-disclosure agreement and an accompanying document (“Side Letter Agreement”) where “Peggy Peterson” is identified as Stephanie Clifford but the identity of “David Dennison” is redacted. *Id.*, Ex. 1. It also attaches a copy of the 2018 civil complaint by Clifford against Trump *et al.*, alleging that Dennison is Trump. *Id.*; see also Cohen Plea Hearing at 23 (“[O]n or about October of 2016, in coordination with, and at the direction of, [a federal] candidate, I arranged to make a payment to a second individual with information that would be harmful to the candidate and to the campaign to keep the individual from disclosing the information. To accomplish this, I used a company that was under my control to make a payment in the sum of \$130,000. The monies I advanced through my company were later repaid to me by the candidate. I participated in this conduct, which on my part took place in Manhattan, for the principal purpose of influencing the election.”).

Keith Davidson negotiated on behalf of the “Peterson” party.²⁸ Cohen used the same limited liability company, Essential Consultants, LLC, to facilitate the \$130,000 payment to Clifford and to pay Bechard under the terms of the Broidy-Bechard agreement.²⁹

The Complaint and Supplement to the Complaint also compare the Broidy-Bechard agreement to another confidentiality agreement involving Trump, in which Cohen and Davidson once again negotiated the terms. In August 2016, Karen McDougal entered into a non-disclosure agreement with AMI for the exclusive rights to her story, which included details of an alleged affair with Trump.³⁰ The agreement included a \$150,000 payment to McDougal.³¹ The Complaint further relies on press accounts reporting that the McDougal-AMI agreement reflected an effort to “catch and kill” the story to prevent the alleged affair from being made public during the presidential campaign.³²

²⁸ Compl. at 8-9. Neither the Complaint nor Responses provide details regarding how Broidy retained Cohen as his counsel. The available information includes one account detailing the origins of this relationship. See Joe Palazzolo & Michael Rothfeld, *THE FIXERS* (2020). That book reports that Bechard approached Davidson through a mutual acquaintance. *Id.* at 227. Bechard reportedly stated that she had been in a nearly two-year paid sexual relationship with Broidy, who was married. *Id.* Noting that Bechard wanted to cut a deal with Broidy to keep their relationship secret, the book states that Davidson, researching Broidy on the internet, called lawyers he thought might know him, finally reaching Cohen. *Id.* The book reports that Cohen, describing his relationship with Broidy as “besties,” subsequently contacted Broidy by phone and told him that “[i]t’s your lucky day, because you have a big problem, and I can help you solve it.” *Id.*

²⁹ Compl. at 4. Cohen created Essential Consultants, LLC, on October 17, 2016. State of Delaware, Division of Corporations Entity Search, *available at* <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx> (Search: Essential Consultants LLC) (last visited Dec. 1, 2020).

³⁰ Compl. at 11.

³¹ *Id.* McDougal subsequently initiated litigation against AMI in March 2018, alleging, *inter alia*, that Davidson — the attorney representing her in the negotiation of the agreement — had been coordinating with Cohen during the negotiations in summer 2016. *Id.* at 11-12.

³² *Id.* at 11. The Supplement to the MUR 7407 Complaint asserts that the audio files reportedly retrieved from Cohen’s office by the FBI may “include recordings of conversations between Mr. Cohen and [other] respondents regarding the payments that form the basis of the allegations in this complaint.” Suppl. Compl. at 3. The Supplement urges the Commission to use its investigative resources to obtain the audio files and documents relevant to this matter, and to depose Cohen. *Id.* at 4.

1 The Complaint also cites a press article stating that Broidy was Cohen’s only client other
2 than Trump and Sean Hannity.³³ Further, Cohen reportedly represented Broidy in only one area
3 — the non-disclosure agreement with Bechard.³⁴

4 The Complaint further cites another press account postulating that Cohen, who took out a
5 home equity line of credit on his personal residence to pay Clifford \$130,000 before later being
6 reimbursed by Trump,³⁵ needed another funding source to pay the larger \$1.6 million amount to
7 Bechard.³⁶ It further posits that Cohen reached out to Broidy, a wealthy Republican fundraiser
8 who allegedly had “pending lucrative business deals with foreign governments; deals that hinged
9 on whether Broidy could convince the U.S. government to take various actions.”³⁷ And it
10 suggests that Broidy may have been financially motivated to assume the “Dennison” role in
11 Trump’s stead, stating that “[b]y stepping up to take responsibility for the affair and to fund the
12 seven-figure settlement, Broidy was ensuring that he could continue to peddle his influence with
13 Trump to governments around the world.”³⁸

14 Against this backdrop, the Complaint alleges there is reason to believe that Broidy and
15 Cohen worked together to reach an agreement with Bechard “to protect Trump’s bid for re-
16 election in 2020 because the alleged extramarital affair . . . actually involved Mr. Trump rather

³³ Compl. at 8 (citing Kevin Drum, *Who Did Playboy Model Shera Bechard Really Have An Affair With?*, MOTHER JONES (May 22, 2018)) (“Drum Article”).

³⁴ *Id.*

³⁵ See Cohen Plea Hearing at 23; House Oversight Testimony at 135-36, Ex. 4 (explaining some aspects of the reimbursement and documenting withdrawal from home equity line of credit).

³⁶ Compl. at 7 (citing Paul Campos, *Here’s a Theory About That \$1.6 Million Payout From a GOP Official to a Playboy Model*, NEW YORK MAGAZINE (May 8, 2018) (“Campos May 8 Article”).

³⁷ *Id.*; see *infra* note 68 and associated text (discussing Broidy’s October 2020 guilty plea).

³⁸ *Id.*

1 than Mr. Broidy.”³⁹ It argues that this scenario is consistent with Broidy’s “prior history of
2 arranging payments” to and on behalf of third parties.⁴⁰ As an example, the Complaint refers to
3 Broidy’s “Plea and Cooperation Agreement” with the New York Attorney General in 2009, in
4 which Broidy agreed to plead guilty to a felony charge of rewarding official misconduct and pay
5 back the \$18 million in management fees that he had received from New York State.⁴¹ There,
6 Broidy served as a financial advisor to a New York state pension fund with assets totaling \$250
7 million.⁴² State investigators found that Broidy had provided state officials with nearly \$1
8 million in illegal gifts while collecting management fees.⁴³ Broidy’s guilty plea included, *inter*
9 *alia*, an admission that he paid over \$90,000 to the girlfriend of a high-ranking official at the
10 Comptroller’s office, concealing these payments through “sham loan” agreements.⁴⁴

11 The Complaint refers to two meetings between Broidy and Trump during the timeframe
12 of the Broidy-Bechard non-disclosure agreement negotiations. On October 6, 2017, Broidy
13 reportedly met with Trump in the Oval Office to advocate that the President refrain from
14 intervening in the ongoing Saudi Arabia and United Arab Emirates (“U.A.E.”) dispute with
15 Qatar, and to discuss Circinus LLC’s plan to build a Muslim fighting force.⁴⁵ Later that month,

³⁹ *Id.* at 8, 15-16.

⁴⁰ *Id.* at 8, 10.

⁴¹ *Id.* at 10.

⁴² *Id.* at 9 (citing AP Article).

⁴³ *Id.*

⁴⁴ *Id.* at 10-11. Three years later, Broidy’s conviction was reduced to a misdemeanor in consideration of his cooperation with prosecutors in criminal proceedings against pension authorities. *Id.* at 9 (citing AP Article); see also *id.*, Ex. 4 (press release announcing Broidy’s guilty plea in a continuing investigation of a “pay-to-play” kickback scheme at New York State pension fund).

⁴⁵ *Id.* at 9 (citing AP Article).

on October 25, 2017, Broidy co-hosted a fundraiser for Trump and the RNC.⁴⁶ Broidy subsequently contributed \$189,000 to the RNC on November 30, 2017.⁴⁷ On that same day, Broidy reportedly wired \$200,000 from his Bank of America account to the Real Estate Attorneys Group (“REAG”), a Professional Law Corporation that represented Broidy as legal counsel with respect to the Broidy-Bechard agreement, and the next day Broidy executed the Broidy-Bechard non-disclosure agreement.⁴⁸ The following day, December 2, 2017, Broidy reportedly met with Trump again in the Oval Office, again reportedly discussing U.A.E. and Saudi Arabia.⁴⁹ On December 5, REAG reportedly transferred the funds that it received from Broidy to Keith Davidson, who was at the time representing Bechard.⁵⁰

Within days of Broidy’s December 2, 2017 Oval Office meeting, and contemporaneous with the December 5, 2017, \$200,000 transfer of funds from REAG to Davidson, the U.A.E. reportedly awarded Broidy the intelligence contract that he sought for Circinus — a five year deal worth \$600 million.⁵¹ Broidy reportedly received the first installment payment of this contract in the amount of \$36 million on January 17, 2018.⁵²

⁴⁶ *Id.*

⁴⁷ Republican National Committee 2017 December Monthly Report at 20444-20445 (Dec. 20, 2017). In 2017-2018, Broidy made a total 73 contributions totaling \$621,500. During the 2015-2016 cycle, Broidy made five contributions totaling \$13,500.

⁴⁸ See Compl. at 4; Real Estate Attorneys Group Resp. at 1 (Aug. 20, 2018) (“REAG Resp.”); Compl. at 9 (citing Campos May 22 Article); Bechard Compl. ¶ 30.

⁴⁹ Compl. at 9 (citing Campos May 22 Article).

⁵⁰ *Id.*

⁵¹ *Id.* at 9 (citing AP Article).

⁵² *Id.*

On July 6, 2018, Bechard filed a lawsuit against Broidy and other persons alleging, *inter alia*, that Broidy breached the terms of their contract.⁵³ Broidy’s Response to the MUR 7407 Complaint acknowledges that he is the subject of Bechard’s ongoing litigation.⁵⁴ According to the state court complaint, which was verified by Bechard, Bechard had been in a “lengthy relationship” with Broidy, retained Davidson to “assert her rights against Mr. Broidy,” and had received two payments from Broidy before Broidy stopped making payments after the second installment on April 1, 2018, breaching the contract by failing to make a third payment due on July 1, 2018.⁵⁵

Broidy’s Response to the Complaint in this matter asserts that the allegations at issue are not cognizable under the Act, given “[t]hat the affair giving rise to the Agreement was, in fact, between Ms. Bechard and Mr. Broidy.”⁵⁶ Broidy did not include his own sworn statement in response to this matter. Instead, the Response includes an affidavit from Broidy’s attorney, Christopher Clark, who is also representing him in Bechard’s breach of contract lawsuit.⁵⁷ In that affidavit, Clark states that “Ms. Bechard’s counsel has communicated to [him] that [Bechard] alleges that the relationship giving rise to the current litigation was between [Bechard] and Broidy, and no other party,” and that “Ms. Bechard’s counsel has made clear to [Clark] in

⁵³ Bechard Compl. Included among her causes of action is the claim that Davidson had breached his fiduciary duty to her in negotiating the Broidy–Bechard agreement, due to his conflicts because of his relationship with Cohen. *Id.* ¶ 86.

⁵⁴ Broidy Resp. at 2.

⁵⁵ Bechard Compl. ¶¶ 2, 4, 32-33, 58-59. Bechard also disputes Broidy’s claim that she violated the terms of the agreement by revealing confidential information, thereby nullifying his obligation to continue making payments. *Id.* ¶ 60.

⁵⁶ Broidy Resp. at 2 (citing attached Christopher Clark Affidavit).

⁵⁷ *Id.*, Clark Aff.

conversation that [Bechard] had no relationship with Donald J. Trump.”⁵⁸ The REAG Response, which also attaches Clark’s affidavit, asserts that the “Complaint fails to allege facts that, even if proven to be true, would constitute a violation of the Act.”⁵⁹ AMI, for its part, argues that “there is no assertion in the Complaint that AMI violated the Act.”⁶⁰

The Trump Committee and Cohen submitted brief responses to the Complaint.⁶¹ The Trump Committee describes the Complaint as one “trafficking in unsubstantiated prurient gossip,” and it argues that the Complaint does not meet the Commission’s standard requiring that complaints present a clear and concise recitation of facts that describe a violation of the Act subject to the Commission’s jurisdiction.⁶² Cohen’s Response states that “[t]he allegations in the Complaint are based on speculation from news stories and are not supported by the facts or the law” and “[t]he allegations raised in the Complaint do not constitute violations of the Federal Election Campaign Act by Mr. Cohen.”⁶³ Cohen subsequently pleaded guilty to criminal violations of the Act in connection with the payments to Clifford and McDougal on August 21, 2018, and, in open court, renounced his previous statements that Trump had no knowledge of

⁵⁸ *Id.* ¶¶ 5-6.

⁵⁹ REAG Resp. at 2.

⁶⁰ AMI Resp. at 1 (July 3, 2018).

⁶¹ Trump did not submit a response to the Complaint.

⁶² Trump Committee Resp. at 1 (July 20, 2018).

⁶³ Cohen Resp. at 1 (June 26, 2018).

those payments.⁶⁴ Cohen later provided sworn congressional testimony regarding the Clifford payment, which he contends he made at Trump’s direction.⁶⁵

On October 6, 2020, the U.S. Department of Justice Public Integrity Section charged Broidy with conspiracy to violate the Foreign Agents Registration Act by failing to register with the Attorney General in connection with lobbying on behalf of foreign principals.⁶⁶ Subsequently, on October 20, 2020, Broidy pleaded guilty to one count of conspiracy to serve as an unregistered agent of a foreign principal in violation of 18 U.S.C. § 371.⁶⁷

III. LEGAL ANALYSIS

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”⁶⁸ 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.”⁶⁹ Under Commission regulations, the phrase “anything of value” includes all in-kind contributions.⁷⁰ In-kind contributions include, among

⁶⁴ Cohen Guilty Plea at 23; *see also* SDNY Information at 18-19; *supra* note 12 (discussing Cohen’s guilty pleas for violations of the Act and making false statements to Congress).

⁶⁵ House Oversight Testimony at 11, 13, 14, 34, 120; *Deposition of Michael Cohen before the H. Permanent Select Comm. on Intelligence* (Feb. 28, 2019), <https://docs.house.gov/meetings/IG/IG00/20190520/109549/HMTG-116-IG00-20190520-SD002.pdf>.

⁶⁶ Information at 2, *United States v. Broidy*, 1:20-cr-00210-CKK, (D.D.C. Oct. 6, 2020). Specifically, the Department of Justice accused Broidy of accepting millions of dollars to persuade the Trump administration to abandon or reduce its criminal investigation into a foreign national who was accused of looting the 1Malaysia Development Berhad Fund, a strategic investment and development company wholly owned by the Government of Malaysia. *Id.* at 7. The court filing also accused Broidy of seeking the extradition of a Chinese citizen from the United States. *Id.* at 20.

⁶⁷ Plea Agreement, *United States v. Broidy*, 1:20-cr-00210-CKK (D.D.C. Oct. 20, 2020), ECF No. 8.

⁶⁸ 52 U.S.C. § 30101(8)(A).

⁶⁹ 52 U.S.C. § 30101(9)(A).

⁷⁰ 11 C.F.R. § 100.52(d).

1 other things, coordinated expenditures, which are expenditures made “in cooperation,
2 consultation, or concert, with, or at the request or suggestion of, a candidate,” the candidate’s
3 authorized committee, or their agents.”⁷¹

4 The Act and Commission regulations prohibit any person from making aggregate
5 contributions to a candidate’s authorized committee in excess of a specified amount — which,
6 during the 2020 election cycle, is \$2,800 per election — and prohibit candidates and authorized
7 committees from knowingly accepting contributions in excess of this amount.⁷² The Act
8 prohibits a person from making a contribution in the name of another person, knowingly
9 permitting his or her name to be used to effect such a contribution, or knowingly accepting such
10 a contribution.⁷³

11 The Act and Commission regulations require that political committees file periodic
12 disclosure reports with the Commission that disclose, among other things, the total amount of all
13 receipts and disbursements for the reporting period and (for a committee authorized by a
14 candidate) the election cycle⁷⁴ and the name and address of each person to whom the committee
15 made disbursements exceeding, in aggregate amount or value, \$200 per election cycle, with the
16 date, amount, and purpose of such disbursements.⁷⁵

17 Here, the Complaint and cited materials allege that the Broidy-Bechard non-disclosure
18 agreement “was made for the purpose of influencing the 2020 presidential election by buying

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

⁷² 52 U.S.C. § 30116(a)(1)(A), 30116(f); *see* Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 84 Fed. Reg. 2504, 2506 (Feb. 7, 2019).

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

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

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

Ms. Bechard’s silence about an alleged extramarital affair with Donald J. Trump,” relying on similarities with other non-disclosure agreements involving Cohen and Trump and arguing that Broidy had the necessary business and financial incentives to agree to pay Bechard \$1.6 million to protect Trump from negative publicity that could harm his bid for re-election in 2020.⁷⁶

The Complaint identifies similarities between the Broidy-Bechard agreement and instances in which Trump, with Cohen as his counsel, entered into non-disclosure agreements to conceal Trump’s sexual relationships.⁷⁷ For instance, the same pseudonyms “David Dennison” and “Peggy Peterson” in the agreement at issue in this matter were used in Trump’s prior agreement with Stephanie Clifford to conceal their relationship.⁷⁸ Further, all three of the non-disclosure agreements mentioned in the Complaint (Trump-Clifford, Trump-McDougal, and Broidy-Bechard) involved Cohen and Keith Davidson as the attorneys representing the parties.⁷⁹

Notwithstanding these similarities, however, the available information does not sufficiently indicate that Broidy made an in-kind contribution to Trump or the Trump Committee by falsely accepting responsibility for the relationship with Bechard, executing the agreement with her, and making payment. It has been more than two years since the Complaint in this matter was filed. In that time, in addition to the reporting relied on by the Complaint,⁸⁰ Bechard filed her lawsuit against Broidy and others — alleging that she had been in a “lengthy relationship” with Broidy, retained Davidson to “assert her rights against Mr. Broidy,” and

⁷⁶ Compl. at 2, 8.

⁷⁷ Compl. at 8-9.

⁷⁸ Warrant Affidavit ¶ 34.g.

⁷⁹ Compl. at 8.

⁸⁰ See Compl. at 8-9 (citing Drum Article, Will Bunch, *Is this Playboy Model Keeping the Biggest Secret of the Trump Presidency*, THE PHILADELPHIA INQUIRER (May 22, 2018), and Campos May 22 Article).

1 entered the agreement with Broidy — while verifying under penalty of perjury that the
2 statements in that state court complaint were true.⁸¹ Her declarations with respect to her lawsuit
3 also provide an explanation for why the payment amount in her non-disclosure agreement was
4 greater than the Clifford and McDougal agreements with Trump. Specifically, Bechard states
5 that the \$1.6 million agreement “represented the net present value of child-support payments Mr.
6 Broidy would be expected to make over the 18-year support term of their [expected] child,” as
7 she was pregnant at the time of the Broidy-Bechard agreement.⁸² The lawsuit is pending and
8 Bechard has not made any public statements suggesting that her non-disclosure agreement with
9 Broidy covered up for Trump. Broidy has likewise not made any statements since the filing of
10 the Complaint renouncing his assertions that he is the “Dennison” in the Broidy-Bechard
11 agreement.

12 In light of the overall dearth of factual support in the Complaint or other available
13 information, and in light of the assertions in Bechard’s verified state complaint that conflict with
14 the Complaint in this matter, there does not appear to be sufficient information that the payments
15 to Bechard made pursuant to the agreement at issue were made on behalf of Trump. For the
16 same reasons that the available information does not appear to sufficiently support the
17 Complaint’s allegation that the payments to Bechard were made on behalf of Trump, it
18 consequently also does not sufficiently support the allegation that the payments were made for
19 the purpose of influencing Trump’s election, such that they constitute contributions or
20 expenditures. Thus, the available information does not sufficiently indicate that the payments to

⁸¹ Bechard Compl. ¶¶ 2, 4, verification.

⁸² *Id.* ¶¶ 18, 25.

1 Bechard were contributions that were excessive, unreported, or made in the name of another such
2 that the Commission should proceed to an investigation.

3 Accordingly, the Commission dismisses: the allegation that Elliott Broidy violated
4 52 U.S.C. §§ 30116(a) and 30122 by making an excessive contribution in the name of another;
5 the allegations that Michael Cohen, Real Estate Attorneys Group, and Essential Consultants,
6 LLC violated 52 U.S.C. § 30122 by making a contribution in the name of another; the allegation
7 that Donald Trump and Donald J. Trump for President, Inc. and Bradley T. Crate in his official
8 capacity as treasurer violated 52 U.S.C. §§ 30116(f) and 30122 by knowingly accepting an
9 excessive contribution made in the name of another; the allegation that Donald J. Trump for
10 President, Inc. and Bradley T. Crate in his official capacity as treasurer violated 52 U.S.C.
11 § 30104(b) by failing to report an excessive contribution made in the name of another; and the
12 Complaint as to American Media, Inc.