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BEFORE THE FEDERAL ELECTION COMMISSION

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v.

MUR No. 7613

WHEATLAND TUBE, LLC
227 W. Monroe St., Suite 2600
Chicago, IL 60606

BARRY ZEKELMAN
c/o Zekelman Industries
2600 Airport Road
Suite 101
Windsor ON N8V 1A1
Canada

ZEKELMAN INDUSTRIES
227 W. Monroe St., Suite 2600
Chicago, IL 60606

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that Barry Zekelman, Wheatland Tube, LLC (“Wheatland Tube”), and Zekelman Industries violated the prohibition on foreign nationals making contributions in connection with a federal election, in violation of the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101, *et seq.*

2. Zekelman, a Canadian national, violated federal law's ban on any foreign national directly or indirectly making contributions in connection with a federal election, 52 U.S.C. § 30121(a)(1)(A), by participating in the decision to direct \$1.75 million in contributions from Zekelman Industries subsidiary Wheatland Tube to America First Action, Inc. (ID: C00637512), a super PAC supporting the candidacy of President Donald J. Trump. Zekelman Industries additionally violated the prohibition on soliciting and providing substantial assistance in making such contributions, 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(h).
3. As a foreign-owned U.S. corporation, Wheatland Tube is permitted to make contributions only if the company's decision-making process is restricted exclusively to U.S. nationals. Accordingly, America First Action's reports disclosing \$1.75 million in contributions from Wheatland Tube caused complainants and the public to believe that no foreign national participated directly or indirectly in the making of the contributions. By allowing a foreign national to participate in Wheatland Tube's contributions to America First Action, Wheatland Tube deprived the public and complainants of the facts necessary to give proper weight to America First Action's messages, to evaluate those federal candidates it supported, and to cast informed votes.
4. "If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [the FECA] . . . [t]he Commission *shall* make an investigation of such alleged violation" 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).

FACTS

5. Wheatland Tube is a steel pipe and tube manufacturer and a subsidiary of Zekelman Industries.¹ Zekelman's Executive Chairman and Chief Executive Officer is Barry Zekelman, a Canadian national.² In 2018, Zekelman owned over 47% of Zekelman Industries' shares and held over 47% of its voting power.³ Zekelman owns Zekelman Industries with his two brothers, who are also on its Board of Directors, and each of the three brothers has the right to nominate one additional director (besides himself) to the board.⁴
6. On April 5, 2018, Wheatland Tube made a \$1,000,000 contribution to America First Action.⁵
7. On June 4, 2018, Wheatland Tube made a \$250,000 contribution to America First Action.⁶
8. On October 17, 2018, Wheatland Tube made a \$500,000 contribution to America First Action.⁷

¹ WHEATLAND TUBE, <https://www.wheatland.com/> (last visited May 20, 2019); *see also* Zekelman Industries, Inc., Securities and Exchange Commission Form S-1, Exh. 10.6, Schedule 4.11 (June 8, 2018), <https://www.sec.gov/Archives/edgar/data/1742916/000119312518251560/d592991dex106.htm>.

² Eric Lipton, *He's One of the Biggest Backers of Trump's Push to Protect American Steel. And He's Canadian.*, N.Y. TIMES (May 20, 2019), <https://www.nytimes.com/2019/05/20/us/politics/hes-one-of-the-biggest-backers-of-trumps-push-to-protect-american-steel-and-hes-canadian.html>; *see also* Management Team, WHEATLAND TUBE, <https://www.zekelman.com/company/management-team/barry-zekelman/> (last visited May 20, 2019).

³ Zekelman Industries, Inc., Securities and Exchange Commission Form S-1 Registration Statement, Amendment No. 1 (Sept. 7, 2018), <https://www.sec.gov/Archives/edgar/data/1742916/000119312518268609/d592991ds1a.htm>.

⁴ *Id.*

⁵ America First Action, 2018 Pre-Primary Report, FEC Form 3X, at 23 (amended Aug. 22, 2018), <http://docquery.fec.gov/cgi-bin/fecimg/?201808229121509054>.

⁶ America First Action, July 2018 Quarterly Report, FEC Form 3X, at 34 (filed July 15, 2018), <http://docquery.fec.gov/cgi-bin/fecimg/?201807159115673146>.

⁷ America First Action, 2018 Pre-General Report, FEC Form 3X, at 43 (amended Jan. 25, 2019), <http://docquery.fec.gov/cgi-bin/fecimg/?201901259143982785>.

9. On May 20, 2019, the *New York Times* reported that Zekelman had participated in the decision to contribute to America First Action.⁸ The *Times* reported that Zekelman “said in an interview that he did not play a role in the decision to donate,” but acknowledged that “he did discuss the matter with other company executives, after a representative from America First Action approached one of Zekelman Industries’ lawyers and asked for a contribution”:

“They contacted our people, our people brought it to me,” Mr. Zekelman said. “I said, Great, I would love to find a way to support him.”

Mr. Zekelman said the donation was legal because the final decision was made by members of his board who are American citizens or legal residents of the United States, and the money was donated through Wheatland Tube, a United States-based subsidiary of Zekelman Industries, which he owns with his two brothers.⁹

11. The *Times* reported that Zekelman Industries “stands out as the biggest steel industry donor to Mr. Trump’s affiliated political committees,” and the company’s influence efforts have “proved highly successful in encouraging actions that have benefited Mr. Zekelman’s company’s bottom line and his American employees”:

The most important step the administration has taken to help the industry is a 25 percent tariff on imports, which resulted in a surge in sales from Zekelman’s United States plants. This came in March 2018, weeks before Zekelman Industries wrote its first check to America First Action, for \$1 million.

The tariff was followed by a cap on steel imports from three countries, including South Korea, which had been a major competitor for Mr. Zekelman.¹⁰

SUMMARY OF THE LAW

12. Federal law prohibits a foreign national from directly or indirectly making a contribution in connection with a Federal, State, or local election, 52 U.S.C. § 30121(a)(1), and

⁸ Lipton, *supra* note 2.

⁹ *Id.*

¹⁰ *Id.*

prohibits any other person from soliciting a foreign national to make such a contribution, *id.* § 30121(a)(2), or from knowingly providing substantial assistance in the solicitation, making, acceptance or receipt of such a contribution, 11 C.F.R. § 110.20(h)(1).

13. A “contribution” includes “any gift . . . of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i).
14. Federal law defines a “foreign national” as (1) a “foreign principal,” such as a foreign corporation, and (2) “an individual who is not a citizen of the United States or a national of the United States.” 52 U.S.C. § 30121(b)(1)-(2) (incorporating by reference 22 U.S.C. § 611(b)).
15. Commission regulations provide that “a foreign national shall not, directly or indirectly, make a contribution or a donation of money or other thing of value, or expressly or impliedly promise to make a contribution or a donation, in connection with any Federal, State, or local election,” 11 C.F.R. § 110.20(b), and that “a foreign national shall not, directly or indirectly, make any expenditure, independent expenditure, or disbursement in connection with any Federal, State, or local election,” *id.* § 110.20(f).
16. Commission regulations additionally provide that:

A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, . . . with regard to such person’s Federal or non-Federal election-related activities, such as decisions concerning the making of contributions . . . in connection with elections for any Federal, State, or local office

Id. § 110.20(i).
17. A corporation owned by foreign nationals or that is a subsidiary of a foreign corporation is not itself a foreign national if it is organized under the laws of a U.S. state and has its

principal place of business in the United States. 52 U.S.C. § 30121(b)(1); 22 U.S.C. § 611(b)(2). However, the Commission has advised that such a corporation may make contributions, expenditures, or disbursements in connection with federal elections only if the decision-making process is entirely controlled by U.S. nationals. Advisory Opinion 2000-17 (Extendicare Health Services, Inc.); Advisory Opinion 2006-15 (TransCanada); Advisory Opinion 1989-20 (Kuilima) at 2 (“[N]o director or officer of the company or its parent who is a foreign national may participate *in any way* in the decision-making process with regard to making . . . proposed contributions.” (emphasis added)).

18. In Advisory Opinion 2000-17, the Commission advised that, when a subsidiary’s board includes foreign nationals, the subsidiary must establish a Special Committee or “some other corporate personnel group comprised exclusively of United States [nationals]” if it wishes to make contributions in connection with elections. Advisory Opinion 2000-17 at 2-6.¹¹ The foreign national board members must not determine who will exercise decision-making authority. *Id.*; *see also* Advisory Opinion 1990-8 (CIT Group Holdings, Inc.). Additionally, the Commission has advised that any contributions made by a subsidiary under these conditions must be wholly derived from earnings generated by the subsidiary’s U.S. operations and not be subsidized by the foreign parent corporation. Advisory Opinion 1992-16 (Nansay); Advisory Opinion 2006-15 (TransCanada).
19. The Commission has found reason to believe that 52 U.S.C. § 30121 was violated when a corporation’s foreign national executives participated in any way in the decision-making process with regard to the corporation’s contributions. In MUR 6184 (Skyway

¹¹ A board that includes foreign nationals may make a general decision to create a separate segregated fund or PAC and set a “not to exceed” budget, but all further decisions must be made by the Special Committee comprised of U.S. nationals. AO 2000-17. In any event, the activity at issue here was not conducted through a PAC.

Concession Company, LLC), the Commission found reason to believe that the FECA had been violated, and entered into a conciliation agreement, where a foreign national CEO participated in a subsidiary's election-related activities by vetting the campaign solicitations forwarded to him by the company's consultant or deciding which nonfederal committees would receive contributions from the company. Factual & Legal Analysis at 4, MUR 6184 (Skyway Concession Company, LLC) (June 5, 2009), <https://www.fec.gov/files/legal/murs/6184/29044252711.pdf>. In MUR 7122 (American Pacific International Capital, Inc., et al.), the Commission similarly found reason to believe and entered into a conciliation agreement when presented with evidence that foreign national board members participated in the decision to make contributions to a super PAC. First General Counsel's Report, at 4-6, MUR 7122 (American Pacific International Capital, Inc., et al.) (Dec. 21, 2016), <https://www.fec.gov/files/legal/murs/7122/19044461544.pdf>; Conciliation Agreement, MUR 7122 (American Pacific International Capital, Inc., et al.) (Dec. 18, 2018), <https://www.fec.gov/files/legal/murs/7122/19044461675.pdf>.

20. Commission regulations also provide that “[n]o person shall knowingly provide substantial assistance in the solicitation, making, acceptance or receipt of a contribution or donation” prohibited under this section. *Id.* § 110.20(h)(1). “Substantial assistance” refers to “active involvement” in the solicitation, making, receipt or acceptance of a foreign national contribution “with an intent to facilitate successful completion of the transaction.” 67 Fed. Reg. 69945-6 (Nov. 19, 2002).
21. A solicitation or the provision of substantial assistance under 11 C.F.R. § 110.20 is made “knowingly” if a person “has actual knowledge that the source of the funds solicited,

accepted, or received is a foreign national,” *id.* § 110.20(a)(4)(i), or is “aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of the funds solicited, accepted or received is a foreign national,” *id.*

§ 110.20(a)(4)(ii).

CAUSES OF ACTION

I. BARRY ZEKELMAN AND WHEATLAND TUBE VIOLATED THE BAN ON FOREIGN NATIONALS MAKING CONTRIBUTIONS IN U.S. ELECTIONS

22. Based on published reports, there is reason to believe that Zekelman and Wheatland Tube violated the ban on foreign nationals directly or indirectly making contributions in connection with a federal election. 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(i).
23. Zekelman is a foreign national as that term is defined in 52 U.S.C. § 30121(b) and 11 C.F.R. § 110.20(a)(3).
24. Wheatland Tube is a subsidiary of Zekelman Industries, of which Zekelman is CEO and the board’s Executive Chair and controls a plurality of voting shares.¹²
25. Wheatland Tube made \$1.75 million in contributions to the federal political committee America First Action in 2018.¹³
26. The *Times* reported that “after a representative from America First Action approached one of Zekelman Industries’ lawyers and asked for a contribution,” Zekelman “discuss[ed] the matter with other company executives.”¹⁴ “They contacted our people, our people brought it to me,” Zekelman told the *Times*.¹⁵ “I said, ‘Great, I would love to find a way to support him.’”¹⁶

¹² See sources cited *supra* ¶5.

¹³ See sources cited *supra* ¶¶6-8.

¹⁴ Lipton, *supra* note 2.

¹⁵ *Id.*

¹⁶ *Id.*

27. A U.S. corporation violates the foreign national contribution ban if a foreign national executive or board member directly or indirectly participates in decisions concerning the corporation's contributions. 11 C.F.R. § 110.20(i); *see also* Advisory Opinion 2000-17 (Extendicare Health Services, Inc.); Advisory Opinion 2006-15 (TransCanada); Advisory Opinion 1989-20 (Kuilima) at 2.
28. As a result, there is reason to believe that Zekelman participated in and directed Wheatland Tube's contributions to America First Action. One of Zekelman's subordinates brought the America First Action solicitation to Zekelman; Zekelman responded affirmatively, stated his desire to "find a way to support [President Trump]," and discussed that desire with Zekelman Industries executives, all of whom report to him in his role as CEO. After Zekelman thus made clear his view that Zekelman Industries should make the requested contribution to America First Action, a Zekelman Industries subsidiary whose president is Zekelman Industries' general counsel then effectuated the transaction.
29. Zekelman receiving a solicitation for a contribution, responding favorably, and discussing the matter with other company executives is similar to the participation of the foreign national CEO in MUR 6184 (Skyway Concession Company, LLC), where the Commission found reason to believe that a corporation had violated 52 U.S.C. § 30121 because its foreign national CEO had vetted campaign solicitations. Zekelman's participation is also analogous to MUR 7122 (American Pacific International Capital, Inc., et al.), where the Commission found reason to believe that a corporation violated the FECA after a foreign national board member acknowledged in an interview that another person "said to donate, so I did, I don't really mind." And despite the Commission

repeatedly advising that a foreign national may not participate “in any way” in contribution decisions, Zekelman fielded a solicitation, responded favorably to it, and discussed the matter with other company executives, after which Wheatland Tube made \$1.75 million in contributions.

30. Therefore, based on published reports, there is reason to believe that Zekelman, a foreign national, directed, dictated, controlled, and/or directly or indirectly participated in the decision-making process of Wheatland Tube making contributions to America First Action, in violation of the prohibition on a foreign national directly or indirectly making a contribution in connection with an election, 52 U.S.C. § 30121(a)(1).

II. ZEKELMAN INDUSTRIES KNOWINGLY AND ILLEGALLY SOLICITED, AND PROVIDED SUBSTANTIAL ASSISTANCE IN THE MAKING OF, CONTRIBUTIONS FROM FOREIGN NATIONALS

31. Federal law and Commission regulations prohibit a person from soliciting contributions from a foreign national, 52 U.S.C. § 30121(a)(2), 11 C.F.R. § 110.20(g), and from knowingly providing substantial assistance in the making of a foreign national contribution, donation, expenditure or disbursement, 11 C.F.R. § 110.20(h)(1).
32. The U.S. subsidiary of a corporation whose board of directors includes foreign nationals must take affirmative steps to guarantee that those foreign nationals cannot directly or indirectly participate in the decision-making process concerning the subsidiary’s contributions. Specifically, when a subsidiary’s board includes foreign nationals, it must establish a Special Committee or “some other corporate personnel group comprised exclusively of United States [nationals]” to control all decisions related to the subsidiary making contributions in connection with federal elections. Advisory Opinion 2000-17.

33. Commission regulations define a “solicitation” as “asking, requesting, or recommending that another person make a contribution.” 11 C.F.R. § 300.2(m).
34. “Substantial assistance” refers to “active involvement...with an intent to facilitate successful completion of the transaction.” 67 Fed. Reg. 69945-6.
35. A solicitation or the provision of substantial assistance is made “knowingly” if a person “has actual knowledge that the source of the funds solicited, accepted, or received is a foreign national.” *Id.* § 110.20(a)(4)(i).
36. Based on published reports, there is reason to believe that Zekelman Industries violated the prohibition on soliciting contributions from foreign nationals and the prohibition on knowingly providing substantial assistance in the making of foreign national contributions.
37. The *Times* reported that an America First Action representative “approached one of Zekelman Industries’ lawyers and asked for a contribution,” and the lawyer then brought the solicitation to Zekelman, who “discuss[ed] the matter with other company executives.”¹⁷ The president of Wheatland Tube, Mickey McNamara, who is also general counsel at Zekelman Industries, then effectuated Zekelman’s desire to support the super PAC by causing Wheatland Tube to make the three contributions totaling \$1.75 million.
38. The Zekelman Industries lawyer had actual knowledge that Zekelman, the company’s CEO, is a foreign national. The lawyer solicited a contribution from Zekelman by bringing the America First Action contribution request to Zekelman, who responded favorably and participated in the decision to make contributions through Wheatland Tube.

¹⁷ Lipton, *supra* note 2.

39. Other Zekelman Industries executives similarly had actual knowledge that the company's CEO and Executive Chair is a foreign national, and despite the requirement that only U.S. nationals make decisions concerning corporate contributions through a Special Committee, discussed the contribution with Zekelman and facilitated those contributions through a subsidiary.
40. Therefore, by soliciting Zekelman Industries' foreign national CEO for corporate contributions to a super PAC, Zekelman Industries violated the ban on soliciting contributions from a foreign national, 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g), and by effectuating those contributions, Zekelman Industries was actively involved in the making of foreign national contributions, in violation of the ban on knowingly providing substantial assistance to a foreign national in making contributions in connection with a federal election, 11 C.F.R. § 110.20(h)(1).

PRAYER FOR RELIEF

41. Wherefore, the Commission should find reason to believe that Barry Zekelman, Wheatland Tube, and Zekelman Industries have violated 52 U.S.C. § 30101, *et seq.*, including 52 U.S.C. § 30121, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2). Further, the Commission should determine and impose appropriate sanctions for any and all violations, should enjoin the respondents from any and all violations in the future, and should impose such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

Respectfully submitted,



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May 21, 2019

VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.



For Complainant Margaret Christ

Margaret Christ

Sworn to and subscribed before me this 21 day of May 2019.

Notary Public



For Complainant Campaign Legal Center

Brendan M. Fischer

Sworn to and subscribed before me this 21 day of May 2019.

Notary Public