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OFFICE OF
 GENERAL COUNSEL

2019 JUL -5 AM 11:23

July 5, 2019

VIA EMAIL AND HAND DELIVERY

Mr. Jeff Johnson
 Complaints Examination & Legal Administration
 Federal Election Commission
 1050 First Street NE
 Washington, DC 20463

Re: MUR 7613

Dear Mr. Johnson:

As counsel for Wheatland Tube, LLC, Barry Zekelman, and Zekelman Industries, and pursuant to 52 U.S.C § 30109(a)(1) and 11 C.F.R. § 111.6, I write to you regarding the complaint (MUR 7613) filed on May 21, 2019 by the Campaign Legal Center and Margaret Christ. We respectfully request that the Commission find that there is no reason to believe that a legal violation has occurred and dismiss this matter for the reasons stated below. We also would welcome the opportunity to discuss this matter further with the Commission.

Factual and Procedural Summary

Wheatland Tube LLC ("Wheatland Tube") is a steel pipe and tube manufacturer that is incorporated in Pennsylvania. Mickey McNamara, a United States citizen, serves as the President of Wheatland Tube. Mr. McNamara and Mike Graham, also a United States citizen, serve as Wheatland Tube's directors. Wheatland Tube is owned by Zekelman Industries, Inc. ("Zekelman Industries"), a company that is incorporated in Delaware and headquartered in Chicago, Illinois. Barry Zekelman ("Mr. Zekelman") serves as the Chairman and Chief Executive Officer of Zekelman Industries, and is a partial owner of the company. Mr. Zekelman is a Canadian citizen. In addition to their roles at Wheatland Tube, Mr. McNamara serves as Zekelman Industries' General Counsel, and Mr. Graham serves as Zekelman Industries' Chief Financial Officer. (McNamara Declaration ¶ 3.)

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In 2018, Wheatland Tube, LLC made three contributions to America First Action, Inc. (“America First”), a Super PAC that, among other things, supports President Trump’s policy positions on trade issues. Specifically, Wheatland Tube contributed \$1,000,000 to America First on or about April 4, 2018; \$250,000 on or about June 4, 2018, and \$500,000 on or about October 17, 2018. (McNamara Declaration, ¶ 4.)

On May 20, 2019, the *New York Times* published an article describing these contributions to America First, noting Mr. Zekelman’s Canadian citizenship and surmising about his possible role in the making of those contributions.¹ On May 21, the Campaign Legal Center and Margaret Christ filed a complaint before the Commission against Zekelman Industries, Wheatland Tube, and Mr. Zekelman. The complaint alleges: (1) that Mr. Zekelman and Wheatland Tube violated 52 U.S.C. § 30121(a)(1) and 11 C.F.R. ¶ 110.20(i), which prohibit foreign nationals from directly or indirectly making contributions in connection with a federal election, and (2) that Zekelman Industries violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g), which prohibit anyone from soliciting contributions from a foreign national, as well as 11 C.F.R. § 110.20(h)(1), which prohibits anyone from knowingly providing substantial assistance in the making of a foreign national contribution. (Complaint ¶¶ 22, 31).

Response to Allegations in Count I

Count I of the complaint alleges that Mr. 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). (Complaint ¶¶ 22–30.)

The Federal Election Campaign Act and Federal Election Commission regulations prohibit foreign nationals from “directly or indirectly . . . [making] a contribution or donation of money or other thing of value . . . in connection with a Federal, State, or local election.” 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b). Commission regulations further establish that:

“[F]oreign national[s] 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, donations, expenditures, or disbursements in connection with elections for any Federal, State, or local office or decisions concerning the administration of a political committee.”

11 C.F.R. § 110.20(i).

¹ Eric Lipton, *He’s One of the Biggest Backers of Trump’s Push to Protect American Steel. And He’s Canadian*, NEW YORK 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?action=click&module=Top%20Stories&pgtype=Homepage>

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Wheatland Tube is a U.S. limited-liability company that is incorporated in Pennsylvania. Mickey McNamara and Mike Graham, who serve as officers and directors of the Wheatland Tube, are both United States citizens. As the President of Wheatland Tube and in consultation with and concurrence by Mr. Graham, the other U.S. director of Wheatland Tube, Mr. McNamara exercised his authority to approve these contributions by Wheatland Tube.

As Wheatland Tube's President, Mr. McNamara determined that the America First contributions served Wheatland Tube's best interests and believed that they were an appropriate and beneficial expenditure of corporate resources, primarily because President Trump's trade policies were well aligned with Wheatland Tube's interests. (McNamara Declaration ¶ 6.) He discussed the America First contributions with Mike Graham, Wheatland Tube's other director, who agreed that the contributions were an appropriate and beneficial corporate expenditure. (*Id.* ¶ 7.) The funds that were contributed to America First came from Wheatland Tube's bank accounts, and the contributions were not reimbursed by Zekelman Industries, Mr. Zekelman, or any other entity or individual.

It is our understanding that Roger Schagrin, an outside lawyer for Zekelman Industries for many years, suggested to Mr. Zekelman that one of the U.S. companies with which he was affiliated should consider contributing to America First. (Zekelman Declaration ¶ 3.) Mr. Zekelman subsequently shared Schagrin's recommendation with Mr. McNamara and discussed the potential contributions with him. (*Id.* ¶ 4.) Mr. McNamara, as President of Wheatland Tube then made the decision, in consultation with Mr. Graham, and authorized the contributions.

The facts do not support a finding that Mr. Zekelman or Wheatland Tube made a prohibited contribution in violation of 52 U.S.C. § 30121(a). Instead, Wheatland Tube, a U.S.-based company, contributed to America First after Mr. McNamara, a U.S. citizen, consulted with Mr. Graham (also a U.S. citizen), determined that the contributions were a beneficial corporate expenditure, and decided to make them. Mr. Zekelman did not make a contribution or reimburse Wheatland Tube's contributions.

Neither Mr. Zekelman nor Mr. McNamara was well-versed in the intricacies of federal campaign finance regulation. Neither of them had any understanding that Mr. Zekelman having any communications with Mr. McNamara on the subject could even implicate any legal risk. (Zekelman Declaration ¶ 5, McNamara Declaration ¶ 8.) At the time that Wheatland Tube contributed to America First, both Mr. McNamara and Mr. Zekelman had a general understanding that foreign nationals like Mr. Zekelman were not supposed to make political contributions in the United States. (*Id.*) They also understood that political contributions must come from a United States national or United States company (*Id.*) They did not know that having Mr. Zekelman participate in communications about a contribution, when the contribution would be made by a U.S. company with the approval of its U.S. officers and directors, could have any legal implications. Their lack of any understanding in this regard was reinforced by the fact that Mr. Schagrin discussed the issue with Mr. Zekelman and suggested that a U.S.-based company with which he was affiliated could contribute to America First.

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Response to Allegations in Count II

Count II of the complaint alleges that a Zekelman Industries' lawyer "brought [an] America First contribution request to [Mr.] Zekelman," and therefore alleges that Zekelman Industries solicited an unlawful contribution from Mr. Zekelman, a Canadian national, in violation of 52 U.S.C. § 30121(a)(2). (Complaint ¶¶ 36–38).

The facts as we understand them do not support this allegation. Roger Schagrin, an outside attorney, suggested to Mr. Zekelman that a U.S.-based company could donate to America First Action. No lawyer at Zekelman Industries solicited Mr. Zekelman for a contribution to America First.

Furthermore, the complaint alleges that Zekelman Industries "knowingly provid[ed] substantial assistance to a foreign national" in making unlawful contributions, in violation of 11 C.F.R. § 110.209(h)(1). (Complaint ¶¶ 31–40). Although it is not perfectly clear, the Campaign Legal Center's theory appears to be that Mr. McNamara serves simultaneously as the President of Wheatland Tube and as Zekelman Industries's General Counsel, and thus his role in approving and authorizing the contributions can be attributed to both Wheatland Tube and Zekelman Industries. (*See id.* ¶¶ 37, 40). However, Mr. McNamara approved and authorized the contributions to America First in his capacity as a director and President of Wheatland Tube. His separate role and responsibilities as Zekelman Industries' General Counsel are irrelevant here, and the complainants' allegations lack merit.

Conclusion

Wheatland Tube's 2018 contributions came from a U.S.-based company and U.S.-based bank accounts and were expressly authorized and approved by U.S. citizens who possessed the authority to make those contributions. At the time of the contributions, both Mr. Zekelman and Mr. McNamara were unaware that Mr. Zekelman having communications about the contributions could even implicate any campaign regulation.

Zekelman Industries, Wheatland Tube, and Mr. Zekelman are anxious to ensure that they remain compliant with both the spirit and letter of federal law. With our assistance, they will implement additional policies, procedures, and training materials to ensure that all decision-makers at both companies are fully aware of the requirements and regulations governing U.S. political contributions. Additionally, they will regularly consult with us before making campaign contributions.

By providing this response, Wheatland Tube, Zekelman Industries, and Mr. Zekelman do not waive the right to advance any other legal or factual arguments that are not raised here, and they reserve the right to advance additional arguments with the Commission as necessary.

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In light of the foregoing, we request that the Commission find that there is no reason to believe that a legal violation has occurred and dismiss the matter. Please do not hesitate to contact me if you have any questions, as we would welcome the opportunity to discuss this matter with the Commission in greater detail.

Sincerely,

A handwritten signature in black ink, appearing to be 'T. Spulak', with a horizontal line extending to the right.

Thomas J. Spulak

BEFORE THE FEDERAL ELECTION COMMISSION

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|-----------------------|---|--------------|
| CAMPAIGN LEGAL CENTER |) | |
| and |) | |
| MARGARET CHRIST, |) | |
| |) | |
| vs. |) | MUR No. 7613 |
| |) | |
| WHEATLAND TUBE, LLC, |) | |
| BARRY ZEKELMAN, |) | |
| and |) | |
| ZEKELMAN INDUSTRIES |) | |
| _____ |) | |

DECLARATION OF BARRY ZEKELMAN

1. I make this declaration freely and voluntarily and based on my personal knowledge.
2. I am a Canadian citizen.
3. In 2018, Wheatland Tube, LLC (“Wheatland Tube”) contributed to America First Action, Inc. (“America First”), a Super PAC that supports President Trump’s policy agenda, including his position on trade issues. Prior to Wheatland Tube’s contributions, I communicated with Roger Schagrin, an outside attorney who has advised Zekelman Industries, Inc. (“Zekelman Industries”) on trade-related issues for many years. Mr. Schagrin suggested to me that a U.S.-based company with which I am affiliated should consider contributing to America First. My communications with Mr. Schagrin led me to believe that I could communicate with others about potential contributions.
4. I shared what I had learned from Mr. Schagrin with Mickey McNamara, who serves as President of Wheatland Tube and as General Counsel to Zekelman

Industries, and discussed Wheatland Tube's potential contributions to America First with him.

5. Based in part on my communications with Mr. Schagrin, I understood generally at the time that I could not personally contribute to a political campaign or committee in the United States, and I also understood that corporate political contributions had to come from United States nationals or United States-based companies. I was unaware, however, that having any communications related to the contributions could have any legal implications under election law.

6. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 5, 2019.



Barry Zekelman

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|-----------------------|---|--------------|
| CAMPAIGN LEGAL CENTER |) | |
| and |) | |
| MARGARET CHRIST, |) | |
| |) | |
| vs. |) | MUR No. 7613 |
| |) | |
| WHEATLAND TUBE, LLC, |) | |
| BARRY ZEKELMAN, |) | |
| and |) | |
| ZEKELMAN INDUSTRIES |) | |
| _____ |) | |

DECLARATION OF MICKEY MCNAMARA

1. I make this declaration freely and voluntarily and based on my personal knowledge.
2. I am a United States citizen.
3. I serve as the President of Wheatland Tube, LLC, (“Wheatland Tube”) and as the General Counsel of Zekelman Industries, Inc (“Zekelman Industries”). Along with Michael Graham, I also serve as a director of Wheatland Tube. Mr. Graham is a United States citizen, and he also serves as the Chief Financial Officer of Zekelman Industries.
4. In 2018, Wheatland Tube contributed \$1,750,000 to America First Action, Inc. (“America First”), a Super PAC that supports, among other things, President Trump’s policy positions on trade issues. Specifically, Wheatland Tube contributed \$1,000,000 on or about April 4, 2018; \$250,000 on or about June 4, 2018; and \$500,000 on or about October 17, 2018.

2019.07.05

5. In my role as President of Wheatland Tube, LLC, I authorized and approved all three contributions to America First.

6. Although I discussed Wheatland Tube's contributions with Mr. Zekelman, I exercised my independent judgment and determined that the contributions were an appropriate and beneficial corporate expenditure, primarily because I believed that President Trump's trade policies were well-aligned with Wheatland Tube's corporate interests.

7. I also discussed Wheatland Tube's potential contributions with Mike Graham, who agreed that the contributions were an appropriate and beneficial corporate expenditure.

8. At the time that Wheatland Tube, LLC contributed to America First, I understood that Mr. Zekelman could not personally contribute to a political campaign or committee in the United States, and I also understood that all corporate political contributions had to come from United States-based companies and had to be authorized by United States nationals. I was unaware, however, that Mr. Zekelman having any communications related to the contributions could have any legal implications under election law.

2019.07.05

9. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 5, 2019.

A handwritten signature in black ink, appearing to read 'MPM4' followed by a long horizontal stroke that ends in a small hook or arrowhead pointing to the right.

Mickey McNamara