

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
Zekelman Industries, Inc.)	MUR 7613
Wheatland Tube, LLC)	
Barry Zekelman)	
Roger B. Schagrin)	
America First Action, Inc., and)	
Jon Proch in his official capacity)	
as treasurer)	
)	

SECOND GENERAL COUNSEL'S REPORT

I. ACTIONS RECOMMENDED

17 Authorize the Office of General Counsel to enter into pre-probable cause conciliation
18 with Zekelman Industries, Inc., Wheatland Tube, LLC, and Barry Zekelman (collectively, the
19 “Zekelman Respondents”); approve the attached proposed conciliation agreement with the
20 Zekelman Respondents.

21 II. INTRODUCTION

22 The Commission previously found reason to believe that Wheatland Tube, LLC,
23 Zekelman Industries, Inc., and Barry Zekelman made \$1.75 million in prohibited foreign national
24 contributions to America First Action, Inc., and Jon Proch in his official capacity as Treasurer
25 (“AFA”) in violation of 52 U.S.C. § 30121(a)(1)(A).¹ The Commission took no action at the
26 time as to Roger Schagrin and split as to whether to find reason to believe that AFA knowingly
27 solicited and accepted contributions from a foreign national in violation of 52 U.S.C.
28 § 30121(a)(2).² After we notified the Zekelman Respondents of the Commission’s findings, they

1 Factual & Legal Analysis (“F&LA”) (July 29, 2021).

² Certification (“Cert.”) ¶ 2 (July 29, 2021); Cert. ¶¶ 1.b, 2.b (July 15, 2021).

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1 responded to request that the Commission enter into pre-probable cause conciliation to resolve
 2 this matter.³

3 In light of the Zekelman Respondents' request to settle this matter expeditiously, the fact
 4 that the matter is not imperiled by the statute of limitations, and the current factual record —
 5 which includes the sworn declarations of Zekelman and Mickey McNamara, Wheatland Tube's
 6 President — we recommend that the Commission authorize pre-probable cause conciliation with
 7 the Zekelman Respondents and approve the attached proposed conciliation agreement.

8 **III. DISCUSSION**

9 The Commission previously found reason to believe that the Zekelman Respondents
 10 made \$1.75 million in prohibited foreign national contributions to AFA based on information
 11 provided by the Zekelman Respondents.⁴ Specifically, in the declaration provided by Barry
 12 Zekelman — who is the CEO, Chairman, and partial owner of Zekelman Industries⁵ — in
 13 response to the Complaint, he acknowledges that he is a Canadian citizen.⁶ He states and that he
 14 communicated with Schagrin, who was counsel for Zekelman Industries, regarding contributing
 15 to AFA through “a U.S.-based company with which [Barry Zekelman was] affiliated.”⁷ He
 16 acknowledges that he “shared what [he] had learned from Mr. Schagrin with Mickey McNamara

³ See Letter from Thomas J. Spulak, counsel for Zekelman Respondents, to Aaron Rabinowitz, Attorney, FEC (Aug. 25, 2021).

⁴ F&LA at 2.

⁵ *Id.*

⁶ Zekelman Decl. ¶ 2 (July 5, 2019); F&LA at 2.

⁷ Zekelman Decl. ¶ 3; F&LA at 3-4.

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1 . . . and discussed Wheatland Tube's potential contributions to America First.”⁸ Zekelman also
2 states that he had believed, based on his conversations with Schagrin, that his involvement in
3 discussions regarding the contributions would not violate U.S. campaign finance law if the
4 contribution came from a “United States-based company[y]” rather than from him personally.⁹
5 McNamara also submitted a declaration stating that he “discussed Wheatland Tube’s
6 contributions with Mr. Zekelman” and that he was “unaware . . . that Mr. Zekelman having any
7 communications related to the contributions could have any legal implications under election
8 law.”¹⁰ Subsequent to these communications, Wheatland Tube, which is a wholly-owned
9 subsidiary of Zekelman Industries,¹¹ made three contributions to AFA in the following amounts:
10 \$1 million on April 5, 2018; \$250,000 on June 4, 2018; and \$500,000 on October 17, 2018.¹²
11 The information provided by the Zekelman Respondents in response to the Complaint is also

⁸ Zekelman Decl. ¶ 4; F&LA at 3.

⁹ Zekelman Decl. ¶ 5; F&LA at 4.

¹⁰ McNamara Decl. ¶¶ 6, 8 (July 5, 2019); F&LA at 4. He also represented that he exercised “independent judgment and determined that the contributions were an appropriate and beneficial corporate expenditure,” of Wheatland Tube. McNamara Decl. ¶ 6; F&LA at 4.

¹¹ F&LA at 1.

¹² AFA, Amended 12-Day Pre-Election Report for the Primary at 23 (Aug. 22, 2018); AFA, June 2018 Quarterly Report at 34 (July 15, 2018); AFA, Amended 12-Day Report for the General Election, at 43 (Jan. 25, 2019); McNamara Decl. ¶ 4.

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1 corroborated by statements made by Zekelman that are quoted in a *New York Times* article cited
 2 by the Complaint, the veracity of which the Zekelman Respondents do not dispute.¹³

3 The Act and Commission regulations prohibit any “foreign national” from directly or
 4 indirectly making a contribution or donation of money or other thing of value, or an expenditure,
 5 independent expenditure, or disbursement, in connection with a federal, state, or local election.¹⁴
 6 Commission regulations implementing the Act’s foreign national prohibition provide that “a
 7 foreign national shall not direct, dictate, control, or directly or indirectly participate in the
 8 decision-making process of any person, such as a corporation . . . with regard to such person’s . . .
 9 . election-related activities, such as decisions concerning the making of contributions.”¹⁵

10 Moreover, the “the Commission has consistently found a violation of the foreign national
 11 prohibition where foreign national officers or directors of a U.S. company participated in the
 12 company’s decisions to make contributions,”¹⁶ and it has conciliated in such matters where the
 13 available information indicated that the respondents believed based on advice of counsel that the
 14 contributions were permissible and where the respondents regarded a U.S. citizen corporate
 15 officer as the “sole decision-maker.”¹⁷

¹³ See Compl. ¶ 9 (citing 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-protectamerican-steel-and-hes-canadian.html>).

¹⁴ 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f). The Act’s definition of “foreign national” includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence. 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

¹⁵ 11 C.F.R. § 110.20(i).

¹⁶ F&LA at 6 (citing among others Conciliation Agreement, MUR 6093 (Transurban Grp.); Conciliation Agreement, MUR 6184 (Skyway Concession Company, LLC)).

¹⁷ Conciliation Agreement ¶ 10, MUR 7122 (American Pacific International, Inc., *et al.*).

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1 The record thus demonstrates that Zekelman learned of interest in the Zekelman
2 Respondents contributing to AFA, passed that information to McNamara, and participated in
3 discussions with McNamara about a U.S.-based subsidiary of Zekelman Industries making a
4 contribution to AFA prior to Wheatland Tube's contributions. Though an investigation would
5 help provide additional information regarding the precise nature and content of these
6 conversations and others — and may provide additional information regarding the other
7 respondents as to whom the Commission had not found reason to believe — the record at present
8 is sufficient to establish that the Zekelman Respondents violated 52 U.S.C. § 30121(a)(1)(A)
9 under clearly established Commission precedent without further investigation. Accordingly, we
10 recommend that the Commission authorize pre-probable cause conciliation as requested by the
11 Zekelman Respondents.

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7 **V. RECOMMENDATIONS**

8 1. Enter into pre-probable cause conciliation with Zekelman Industries, Inc.,
9 Wheatland Tube, LLC, and Barry Zekelman prior to a finding of probable cause
10 to believe;

11 2. Approve the attached proposed conciliation agreement; and

12 3. Approve the appropriate letters.

13 Lisa J. Stevenson
14 Acting General Counsel

15
16 Date: September 22, 2021

Charles Kitcher
Charles Kitcher
Associate General Counsel for
Enforcement

Aaron Rabinowitz
Aaron Rabinowitz
Attorney

28 Attachment:

29 1) Proposed Conciliation Agreement

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See MUR 7122 (Am. Pacific International Capital, Inc.); MUR 6129 (ARDA-ROC PAC).