FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA EMAIL AND FIRST CLASS MAIL

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AUG 0 1 2019

RE: MUR 7624
Imperial Pacific International Holdings

Dear Mr. Bell:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that your client, Imperial Pacific International Holdings, may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). The Commission, on July 25, 2019, found reason to believe that Imperial Pacific International Holdings violated 52 U.S.C. § 30121(a)(1)(A) by making foreign national contributions. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your client as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your client violated the law. Enclosed is a conciliation agreement for your consideration [redacted]

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If your client is interested in engaging in pre-probable cause conciliation, please contact Elena Paoli, the attorney assigned to this matter, at (202) 694-1548 or (800) 424-9530, or epaoli@fec.gov, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a); 11 C.F.R. Part 111 (Subpart A). Conversely, if your client is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/respondent.guide.pdf.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.[1]

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act.

We look forward to your response.

On behalf of the Commission,

Ellen L. Weintraub

Ellen L. Weintraub
Chair

Enclosures
Factual and Legal Analysis
[redacted]

[1] The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Imperial Pacific International Holdings MUR 7624

I. INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission ("Commission") in the normal course of carrying out its supervisory responsibilities. *See* 52 U.S.C. § 30109(a)(2).

II. FACTS

The Commonwealth of the Northern Mariana Islands is a commonwealth government comprised of 14 islands in the West Pacific. Following World War II, the United Nations established the "Trust Territory of the Pacific Islands," which included the CNMI, the Republic of Palau, the Marshall Islands, and the Federated States of Micronesia. The United States initially functioned as a trustee over the Trust Territory, with the CNMI eventually seeking to form its own relationship with the United States, apart from the other islands. Negotiations between U.S. and CNMI representatives resulted in the creation of a governing document, the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (the "Covenant"), which, *inter alia*, sets forth the applicability of U.S. laws to the CNMI. CNMI voters adopted the Covenant in 1975, and it was signed into law on March 24, 1976.[1]

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[1] *See* Covenant, 48 U.S.C. § 1801 et seq.

The Covenant establishes that "[T]he CNMI is under the sovereignty of the United States but retains 'the right of local self-government.'"[2] In relevant part, section 502(a) provides that "laws of the United States in existence on the effective date of this Section and subsequent amendments to such laws will apply to the Northern Mariana Islands, except as otherwise provided in this Covenant."[3] The Covenant does not exclude the Federal Election Campaign Act of 1971, as amended ("Act"), and states that the CNMI will be subject to U.S. laws "which are applicable to Guam and which are of general application to the several States as they are applicable to the several states."[4]

The Commonwealth Election Commission is the government agency in charge of election and voting matters in the CNMI, including collecting candidate financial statements and processing voter registrations.[5] It appears that the CNMI imposes no limitations on campaign contributions, whether contribution amounts or particular sources.[6]

Imperial Pacific International Holdings ("Imperial Pacific") is a Hong Kong-based, Chinese-owned company that is building at least two casino resorts on the island of Saipan, CNMI.[7] In 2014, Imperial Pacific established a wholly owned U.S. subsidiary, IPIH (CNMI)

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2 *CNMI v. United States*, 399 F.3d 1057, 1058 (9th Cir. 2005) (explaining that the United States has paramount interest in submerged lands adjacent to CNMI) (citations omitted).

3 Covenant, § 502.

4 *Id.* § 502(a)(2).

5 *See* COMMONWEALTH ELECTION COMMISSION, https://www.votecnmi.gov.mp/ (last visited May 17, 2019).

6 *See generally* Commonwealth Election Commission Regulations, Part 700 *et seq.*

7 *See Overview*, IMPERIAL PACIFIC, http://www.imperialpacific.com/en/overview (last visited May 17, 2019).

LLC.[8] Construction on the casinos started in 2015, and by November 2015, Imperial Pacific began operating a successful temporary casino.

Imperial Pacific responded to the Commission's notice by denying that it had made a foreign national contribution. Imperial Pacific states that its wholly owned subsidiary, IPIH (CNMI) LLC, was established on April 24, 2014, in the CNMI, and derives its revenue in the United States through its casino operations on Saipan.[9] Imperial Pacific asserts that a U.S. citizen, the former IPIH (CNMI) LLC CFO, approved the $10,500 contribution from IPIH (CNMI) LLC to the Ralph Torres Campaign on January 8, 2015.[10] Other available information indicates that in 2016, IPIH (CNMI) LLC created a committee of U.S. citizens to make decisions about their political contributions.

III. LEGAL ANALYSIS

The Act and Commission regulations prohibit any "foreign national" from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, independent expenditure, or disbursement, in connection with a federal, state, or local election.[11] 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, as well as a

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8 *See* Imperial Pacific Resp. at 1 (Sept. 16, 2018).

9 *Id.*

10 *Id.* at 2.

11 52 U.S.C.§ 30121(a)(1); 11 C.F.R.§ 110.20(b), (c), (e), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff'd* 132 S. Ct. 1087 (2012); *United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019).

"foreign principal" as defined at 22 U.S.C. § 611(b), which, in turn, includes a "partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country."[12]

In the Bipartisan Campaign Reform Act of 2002 ("BCRA"),[13] Congress expanded the Act's foreign national prohibition to expressly prohibit "donations" in addition to contributions. It also codified the Commission's longstanding interpretation of the prohibition, expressly applying it to state and local elections as well as to federal elections.[14]

Commission regulations implementing the Act's foreign national prohibition provide:

> 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, donations, expenditures, or disbursements . . . . or decisions concerning the administration of a political committee.[15]

The regulations also provide that no person shall "knowingly provide substantial assistance" in the solicitation, making, acceptance, or receipt of a prohibited foreign national

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12 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

13 Pub. Law 107-155, 116 Stat. 81 (Mar. 27, 2002).

14 *See* 52 U.S.C. § 30121(a); Contribution Limits and Prohibitions, 67 Fed. Reg. 69,928, 69,940 (Nov. 19, 2002) ("Prohibitions E&J"); *see also* Advisory Op. 1999-28 (Bacardi-Martini USA) at 2 (quoting *United States v. Kanchanalak*, 192 F.3d 1037 (D.C. Cir. 1999) (recognizing that the Commission had "consistently interpreted . . . since 1976" the foreign national prohibition to extend to state and local elections)).

15 11 C.F.R. § 110.20(i). The Commission has explained that this provision also bars foreign nationals from "involvement in the management of a political committee." Prohibitions E&J, 67 Fed. Reg. at 69946; *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while a foreign national fiancé of the candidate could participate in committees' activities as a volunteer without making a prohibited contribution, she "must not participate in [the candidate's] decisions regarding his campaign activities" and "must refrain from managing or participating in the decisions of the Committees.").

contribution or donation, or the making of a prohibited foreign national expenditure, independent expenditure, or disbursement.[16]

The Commission has found that not all participation by foreign nationals in the election-related activities of others will violate the Act. In MUR 6959, for example, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing clerical duties, such as online research and translations, during a one month-long internship with a party committee.[17] Similarly, in MURs 5987, 5995, and 6015, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by volunteering his services to perform at a campaign fundraiser and agreeing to let the political committee use his name and likeness in its emails promoting the concert and soliciting support, where the record did not indicate that the foreign national had been involved in the committee's decision-making process in connection with the making of contributions, donations, expenditures, or disbursements.[18] By contrast, the Commission has consistently found a violation of the foreign national prohibition where foreign national officers or directors of a U.S. company participated in the company's

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[16] 11 C.F.R. § 110.20(h). The Commission has explained that substantial assistance "means active involvement in the solicitation, making, receipt or acceptance of a foreign national contribution or donation with an intent to facilitate successful completion of the transaction." Assisting Foreign National Contributions or Donations, 67 Fed. Reg. 66928, 66945 (Nov. 19, 2002). Moreover, substantial assistance "covers, but is not limited to, those persons who act as conduits or intermediaries for foreign national contributions or donations." *Id.* at 66945.

[17] Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national's activities, did not indicate that the foreign national participated in any political committee's decision-making process). The Commission also found that a $3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer's services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

[18] Factual and Legal Analysis at 6-9, MURs 5987, 5995, and 6015 (Sir Elton John); *see also* Factual and Legal Analysis at 5, MUR 5998 (Lord Jacob Rothschild); Advisory Op. 2004-26 (Weller).

decisions to make contributions or in the management of its separate segregated fund,[19] or where foreign funds were used by a U.S. subsidiary of a foreign corporation to make contributions or donations in connection with U.S. elections.[20]

A. Jurisdiction

Section 502 of the Covenant provides that the CNMI is subject to laws "in existence on the effective date of this Section and subsequent amendments to such laws . . . which are applicable to Guam and which are of general application the several States as they are applicable to the several States."[21] The Act, including the provision containing the prohibition on foreign national contributions in local elections, applies to "the several states," was enacted prior to the March 24, 1976 effective date of the Covenant, and was not specifically excluded in the Covenant.[22] The Covenant also applies to "subsequent amendments to such laws."[23] Furthermore, the Commission has previously applied the Act's foreign national prohibition to

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19 *See, e.g.*, Conciliation Agreement, MUR 6093 (Transurban Grp.) (U.S. subsidiary violated Act by making contributions after its foreign parent company's board of directors directly participated in determining whether to continue political contributions policy of its U.S. subsidiaries); Conciliation Agreement, MUR 6184 (Skyway Concession Company, LLC) (U.S. company violated Act by making contributions after its foreign national CEO participated in company's election-related activities by vetting campaign solicitations or deciding which nonfederal committees would receive company contributions, authorizing release of company funds to make contributions, and signing contribution checks); Conciliation Agreement, MUR 7122 (American Pacific International Capital, Inc. ("APIC")) (U.S. corporation owned by foreign company violated Act by making contribution after its board of directors, which included foreign nationals, approved proposal by U.S. citizen corporate officer to contribute). The Commission has specifically determined that "no 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." Advisory Op. 1989-20 (Kuilima) at 2.

20 *See* MUR 6203 (Itinere North America).

21 Covenant § 502(a)(2).

22 *See also* FEC Act Amendments of 1974, Pub. L. No. 93-443, § 101(d), 88 Stat. 1263, 1267.

23 Covenant § 502(a)(2).

corporate contributions of a respondent in Guam.[24]

As the court in *Bluman v. FEC* explained:

> [P]olitical contributions . . . are an integral aspect of the process by which Americans elect officials to federal, state, and local government offices. . . . [Section 30121] serves the compelling interest of limiting the participation of *non-Americans* in the activities of democratic self-government. A statute that excludes foreign nationals from political spending is therefore tailored to achieve that compelling interest.[25]

Here, not only has CNMI accepted the application of the Act through the Covenant, but the Act's purposes are furthered by such application. Just like in the 50 states, the CNMI holds elections for governor and lieutenant governor every four years and for representatives to its lower house every two years, and the CNMI and the states administer their elections as they desire, limited by Constitutional considerations.[26] But Congress's interest in in protecting the political process from foreign influence is as important to democratic self-governance in the CNMI, as it is everywhere else in the United States. Like the District of Columbia, the CNMI elects a non-voting Member of the U.S. House of Representatives. Thus, the Act, its amendments, and corresponding Commission regulations are applicable to the financing of local elections in the CNMI, including the prohibition regarding foreign national contributions.

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[24] *See* MUR 3437 (The Guam Tribune) (Commission found reason to believe that respondent violated prohibition on corporate contributions; closed after investigation).

[25] 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff'd* 132 S. Ct. 1087 (2012) (emphasis added); *see also Singh*, 924 F.3d 1030 (upholding constitutionality of section 30121(a)(1) as to state and local elections based on Congress's broad powers over foreign affairs and immigration and citing *Bluman* as precluding appellant's First Amendment challenge).

[26] *See, e.g.*, *Bush v. Gore*, 531 U.S. 98 (2000) (holding, in part, that Florida's method of selecting electors violated the Constitution).

B. Contributions

CNMI campaign finance reports indicate that on or about January 11, 2015, Imperial Pacific contributed $10,000 to the campaign of CNMI Governor Ralph G. Torres. On or about August 22, 2016, Imperial Pacific contributed $1,000 to the campaign of CNMI Representative Angel Demapan. On or about August 4, 2017, Imperial Pacific contributed $10,000 to Torres. These contributions or donations made by Imperial Pacific appear to have been made by a foreign national.

Imperial Pacific states that a U.S. citizen approved the January 2015 $10,000 contribution to Torres from its U.S. subsidiary corporation. However, it is unclear how Imperial Pacific (or IPIH (CNMI) LLC) had U.S.-generated revenues in 2014 sufficient to make the early 2015 contribution when its first casino in the CNMI opened months later, in late November 2015.[27] To the extent that one or more of the contributions and donations reported as made by Imperial Pacific were made by Imperial Pacific's subsidiary IPIH (CNMI) LLC, the key issue is not whether a U.S. citizen or national had final decision-making authority or final say regarding the making of the contribution or donation, but whether any foreign national participated, directly or indirectly, in a decision-making process in connection with election-related spending. The Response leaves open the possibility that non-U.S. citizens directly or indirectly participated in the decision-making process with regard to the making of the 2015 contribution and does not address the role of foreign nationals in the decision-making process in connection with Imperial Pacific's other election-related spending, such as its 2016 and 2017 contributions and donations. Furthermore, mere approval of a contribution by a U.S. citizen does not exclude the possibility

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[27] *See Best Sunshine Live Grand Opening*, SAIPAN TRIBUNE (Nov. 30, 2015), https://www.saipantribune.com/index.php/best-sunshine-live-grand-opening/.

that foreign nationals, including Imperial Pacific or IPIH (CNMI) LLC corporate board members, participated, either directly or indirectly, in a decision-making process in connection with the making of the contributions or donations.[28] Information regarding Imperial Pacific contributions does not make clear that only U.S. citizens would be participating in the decision-making process in connection with Imperial Pacific's election-related spending, and in fact, the nationalities of IPIH (CNMI) LLC Board of Directors are unknown.

Therefore, the Commission finds reason to believe that Imperial Pacific International Holdings violated 52 U.S.C. § 30121(a)(1)(A).

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28 *See* AO 2000-17; AO 1990-8; F&LA at 11, MUR 3460.