

BEFORE THE FEDERAL ELECTION COMMISSION

CAMPAIGN LEGAL CENTER
1101 14th Street, NW, Suite 400
Washington, DC 20005
(202) 736-2200

v.

MUR No. **7886**

ASTELLA PHARMA US, INC.
1 Astellas Way
Northbrook, IL 60062

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that Astellas Pharma US, Inc. has violated FECA's prohibition on federal contractors making contributions to political committees while negotiating or performing federal contracts, 52 U.S.C. § 30119(a)(1), by contributing \$10,000 to Senate Leadership Fund (ID: C00571703).
2. "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

3. Senate Leadership Fund is an independent expenditure-only political action committee (*i.e.*, a "super PAC").¹

¹ Senate Leadership Fund, Statement of Organization, FEC Form 1 at 1 (filed Jan. 20, 2015), <https://docquery.fec.gov/pdf/437/15031374437/15031374437.pdf>.

4. The “Donate” page on Senate Leadership Fund’s website redirects to a third-party contribution platform that contains a disclaimer requiring contributors to affirm that they are “not . . . a federal government contractor.”²
5. In the 2020 election cycle, Senate Leadership Fund reported over \$293.7 million in independent expenditures supporting or opposing federal candidates in U.S. Senate races across the country.³
6. Astellas Pharma US, Inc. “is a U.S. affiliate of Tokyo-based Astellas Pharma Inc., with its headquarters located in Northbrook, Illinois,” according to its website.⁴ According to USAspending.gov, “the official source for spending data for the U.S. Government,”⁵ Astellas Pharma US, Inc., located at 1 Astellas Way, Northbrook, IL, 60062, is the recipient of an eight-year federal supply schedule with the Department of Veterans Affairs that began on October 15, 2013, and an associated blanket purchase agreement with the Department of

² See *Donate*, SENATELEADERSHIPFUND.ORG, <https://senate-leadership-fund.revv.co/donate> (last visited Mar. 16, 2021).

³ See Senate Leadership Fund, Independent Expenditures, 2019–20, FEC.GOV, <https://www.fec.gov/data/committee/C00571703/?tab=spending&cycle=2020#independent-expenditures> (last visited Mar. 16, 2021).

⁴ *U.S. Corporate Profile*, ASTELLAS, <https://www.astellas.com/us/about/corporate-information> (last visited Mar. 16, 2021).

⁵ USAspending.gov, *Mission*, <https://www.usaspending.gov/#/about> (last visited Mar. 16, 2021).

Veterans Affairs that began on July 20, 2019.⁶ Both the federal supply schedule and the blanket purchase agreement were active throughout the 2020 calendar year.⁷

7. On November 30, 2020, Senate Leadership Fund received a \$50,000 contribution from “Astellas Pharma US, Inc.,” 1 Astellas Way, Northbrook, IL, 60062, according to the committee’s 2020 Year-End Report filed with the Commission.⁸
8. Senate Leadership Fund has received at least six contributions from federal contractors in the 2020 cycle, including the contribution at issue in this complaint. According to Senate Leadership Fund’s September monthly report, it received \$500,000 from federal contractor Marathon Petroleum in August 2020,⁹ and following a Campaign Legal Center (“CLC”) complaint, refunded the contribution in November 2020.¹⁰ On Senate Leadership Fund’s

⁶ USAspending.gov, Indefinite Delivery Vehicle summary, PIID V797D30296, https://www.usaspending.gov/award/CONT_IDV_V797D30296_3600 (last visited Mar. 16, 2021) (showing an open Federal Supply Schedule contract with the Department of Veterans Affairs with a start date of October 15, 2013, an end date of August 31, 2021, 35 associated child award orders, 1 associated grandchild award order, and a current total value of \$3.1 million, and showing the recipient as Astellas Pharma US, Inc., 1 Astellas Way, Northbrook, IL 60062); USAspending.gov, Indefinite Delivery Vehicle Summary, PIID 36E79719A0025, https://www.usaspending.gov/award/CONT_IDV_36E79719A0025_3600 (last visited Mar. 16, 2021) (showing an open Blanket Purchase Agreement with the Department of Veterans Affairs with a start date of July 20, 2019, an end date of July 19, 2021, a potential total value of \$1,094,225, and an associated parent award PIID V797D30296, and showing the recipient as Astellas Pharma US, Inc., 1 Astellas Way, Northbrook, IL, 60062). A Federal Supply Schedule is a type of indefinite delivery vehicle and, specifically, is “a listing of contractors that have been awarded a contract by GSA that can be used by all federal agencies,” according to the USAspending.gov glossary. *Indefinite Delivery Vehicle (IDV)*, USAspending.gov, <https://www.usaspending.gov/?glossary=indefinite-delivery-vehicle-idv> (last visited Mar. 9, 2021); *Federal Supply Schedule (FSS)*, USASPENDING.GOV, *Indefinite Delivery Vehicle (IDV)*, USASPENDING.GOV, <https://www.usaspending.gov/?glossary=indefinite-delivery-vehicle-idv> (last visited Mar. 9, 2021). According to the GSA, “GSA Schedules (also referred to as Multiple Award Schedules (MAS) and **Federal Supply Schedules**) are long-term governmentwide contracts with commercial firms providing federal, state, and local government buyers access to more than 11 million commercial supplies (products) and services at volume discount pricing.” GSA Schedules, GSA.GOV, <https://www.gsa.gov/buying-selling/purchasing-programs/gsa-schedules> (last visited Oct. 26, 2020) (emphasis added); *see also* 48 C.F.R. § 38.101(a)-(b). According to the Department of Veterans Affairs, “Like GSA Schedule contracts, the VA Schedules are indefinite delivery/indefinite quantity type contracts awarded to pre-approved vendors using full and open competition.” *VA Federal Supply Schedule Service*, FSS.VA.GOV, <https://www.fss.va.gov/> (last visited Mar. XX, 2021); *see also* 48 C.F.R. § 38.101(d).

⁷ *See* sources cited *supra* note 6.

⁸ Senate Leadership Fund, 2020 Year-End Report, FEC Form 3X at 43 (filed Jan. 31, 2021), <https://docquery.fec.gov/pdf/297/202101319423702297/202101319423702297.pdf-navpanes=0>.

⁹ Senate Leadership Fund, 2020 September Monthly Report, FEC Form 3X at 10 (filed Sept. 20, 2020), <https://docquery.fec.gov/pdf/071/202009209275581071/202009209275581071.pdf>.

¹⁰ Senate Leadership Fund, 2020 Post General Report, FEC Form 3X at 284 (filed Dec. 03, 2020), <https://docquery.fec.gov/pdf/420/202012039340447420/202012039340447420.pdf>.

October monthly report, it received \$25,000 from federal contractor Amedisys, Inc. in September 2020,¹¹ and following a CLC complaint, filed an amended report in December 2020 reattributing the contribution to Amedisys Inc.’s parent company.¹² Senate Leadership Fund reported receiving a \$50,000 contribution on November 20, 2020 from federal contractor Service Tire Truck Center on its 2020 Post-General report,¹³ and received three contributions from federal contractors on its 2020 Year-End report: besides the contribution from Astellas Pharma US Inc., it received \$10,000 from Martin Marietta Materials, Inc. on December 21, 2020¹⁴ and \$10,000 from American College of Radiology on December 21, 2020.¹⁵

SUMMARY OF THE LAW

9. “Contribution” is defined as “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).
10. Federal law prohibits a federal contractor from making any “contribution to any political party, committee, or candidate for public office” at any time between the commencement of negotiations for a federal contract and the completion of performance or termination of negotiations for the contract. 52 U.S.C. § 30119(a)(1).
11. Federal law additionally prohibits any person from knowingly soliciting such a contribution from a federal contractor. 52 U.S.C. § 30119(a)(2).

¹¹ Senate Leadership Fund, 2020 October Monthly Report, FEC Form 3X at 36 (filed Oct. 20, 2020), <https://docquery.fec.gov/pdf/808/202010209297963808/202010209297963808.pdf>.

¹² Senate Leadership Fund, 2020 October Monthly at 36 (amended December 1, 2020), <https://docquery.fec.gov/pdf/626/202012019337371626/202012019337371626.pdf> (reattributing contribution to Amedisys Holding, Inc., Amedisys Inc.’s parent company.)

¹³ Senate Leadership Fund, 2020 Post-General Election Report, FEC Form 3X at 191 (amended Jan. 14, 2021), <https://docquery.fec.gov/pdf/244/202101149404569244/202101149404569244.pdf#navpanes=0>.

¹⁴ Senate Leadership Fund, 2020 Year-End Report, FEC Form 3X at 117 (filed Jan. 31, 2021), <https://docquery.fec.gov/pdf/297/202101319423702297/202101319423702297.pdf>.

¹⁵ *Id.* at 116.

12. The contractor contribution ban applies to any person “who enters into any contract with the United States or any department or agency thereof” for “the rendition of personal services” or for “furnishing any material, supplies, or equipment,” or for “selling any land or building,” if “payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress.” 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.1(a).
13. The ban applies from when a request for proposals is sent out (or when contractual negotiations commence) until the completion of performance of the contract or the termination of negotiations. 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.1(b).
14. Since 2011, the Commission has made clear that the government contractor prohibition applies to contributions to independent expenditure-only political committees (i.e., “super PACs”) following the U.S. Supreme Court’s decision in *Citizens United v. FEC*¹⁶ and the D.C. Circuit decision in *SpeechNow.org v. FEC*.¹⁷ See, e.g., Advisory Opinion 2011-11 (Colbert) at 4-5, 10 (June 30, 2011); see also Press Release, FEC, FEC statement on Carey v. FEC reporting guidance for political committees that maintain a non-contribution account, n.1 (Oct. 5, 2011), <https://www.fec.gov/updates/fec-statement-on-carey-fec/>. In MUR 6403, the Commission emphasized that a contractor making a contribution to a political committee to fund independent expenditures is not itself making an expenditure; therefore, a contribution to such a committee falls “squarely within the statute’s prohibitions.” MUR 6403 (Alaskans Standing Together), Notification with Factual and Legal Analysis to Ahtna, Inc. and NANA Regional Corporation, Inc. at 5, 9 (Nov. 10, 2011).

¹⁶ 130 S. Ct. 876 (2010).

¹⁷ 599 F.3d 686 (D.C. Cir. 2010).

15. In 2017, the Commission found reason to believe that federal contractor Suffolk Construction Company, Inc. had violated 52 U.S.C. § 30119(a)(1) by contributing \$200,000 to Priorities USA Action, a super PAC supporting then-presidential candidate Hillary Clinton. *See* MUR 7099 (Suffolk Construction Company, Inc.), Notification to Campaign Legal Center at 1 (Sep. 25, 2017). The Commission emphasized that there is no *de minimis* exception to section 30119(a)(1), finding that even if a contributor’s federal contract work is only a “small fraction” of its overall business, this “does not negate the company’s status as a federal contractor.” MUR 7099, Factual and Legal Analysis at 4-5.
16. In 2019, the Commission found reason to believe that federal contractor Ring Power Corporation violated 52 U.S.C. § 30119(a)(1) when it contributed \$50,000 to the super PAC New Republican PAC while holding active federal contracts. MUR 7451 (Ring Power Corporation), Notification to Campaign Legal Center at 1 (June 19, 2019). The Commission found reason to believe, and entered into pre-probable cause conciliation, even though the super PAC ultimately refunded the illegal contribution. MUR 7451, Conciliation Agreement at 2-3 (June 4, 2019). In recommending a reason-to-believe finding, the Commission’s Office of General Counsel emphasized that Ring Power Corporation’s assertion that the active contract constituted only a small proportion of the company’s overall revenue “does not negate the company’s status as a federal contractor under the Act, or obviate the violation.” MUR 7451, First General Counsel’s Report at 6 (Apr. 8, 2019). “Similarly,” OGC proceeded, “Ring Power’s remedial measures—obtaining a refund and other steps taken to ensure it would no longer make prohibited contributions—do not excuse the violation.” *Id.* Pursuant to the conciliation agreement, Ring Power Corporation agreed to pay the Commission a \$9,500 penalty. MUR 7451, Conciliation Agreement at 2-3.

17. Similarly, in 2020, the Commission found reason to believe that Alpha Marine Services violated 52 U.S.C. § 30119(a)(1) by contributing \$100,000 to the super PAC Congressional Leadership Fund while holding active federal contracts, notwithstanding the fact that Alpha Marine sought and obtained a refund upon learning of the complaint. MUR 7458 (Alpha Marine Services), Notification to Campaign Legal Center at 1 (July 22, 2020); MUR 7458, Conciliation Agreement at 3-4. Alpha Marine Services agreed to pay the Commission a \$17,000 penalty. MUR 7458, Conciliation Agreement at 4.
18. The federal contractor ban was upheld unanimously by the *en banc* D.C. Circuit in *Wagner v. Fed. Election Comm’n*, 793 F.3d 1 (D.C. Cir. 2015) (*en banc*). The *en banc* court stressed that “the record offers every reason to believe that, if the dam barring contributions were broken, more money in exchange for contracts would flow through the same channels already on display.” *Id.* at 18.

CAUSE OF ACTION

I. ASTELLAS PHARMA US, INC. VIOLATED THE CONTRACTOR CONTRIBUTION BAN

19. Federal law and Commission regulations prohibit a federal contractor from making any contribution to any political committee during the period in which a federal contract is being negotiated or performed. 52 U.S.C. § 30119(a)(1); 11 C.F.R. Part 115.
20. According to USAspending.gov, “the official source for spending data for the U.S. Government,” Astellas Pharma US, Inc. is a federal contractor and was a federal contractor when it made the \$50,000 contribution to Senate Leadership Fund on November 30, 2020.¹⁸
21. Consequently, there is reason to believe that Astellas Pharma US, Inc., as a federal contractor, violated the federal contractor contribution ban by making a “contribution to any

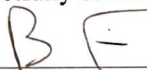
¹⁸ See *supra* ¶¶ 5-6.

political . . . committee,” namely Senate Leadership Fund, during the period its federal contracts were being negotiated and/or performed. 52 U.S.C. § 30119(a)(1).

PRAYER FOR RELIEF

22. Wherefore, the Commission should find reason to believe that Astellas Pharma US, Inc. violated 52 U.S.C. § 30101 *et seq.*, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).
23. The Commission should seek appropriate sanctions for any and all violations, including civil penalties sufficient to deter future violations and an injunction prohibiting the respondents from any and all violations in the future, and should seek such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

Respectfully submitted,



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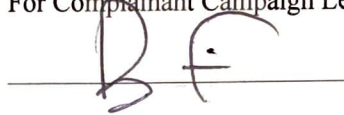
March 17, 2021

VERIFICATION

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

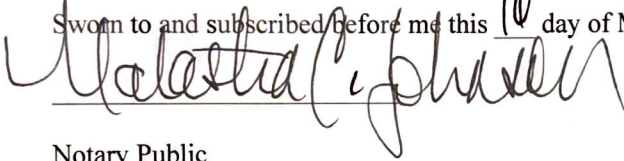
Sworn pursuant to 18 U.S.C. § 1001.

For Complainant Campaign Legal Center



Brendan M. Fischer

Sworn to and subscribed before me this 16th day of March 2021.



Notary Public

My Commission Expires
January 14, 2024

