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**Robert Lenhard**

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**By Electronic Mail**

June 7, 2021

Mr. Jeff S. Jordan  
Assistant General Counsel  
Federal Election Commission  
Office of Complaints Examination  
& Legal Administration  
1050 First Street N.E.  
Washington, D.C. 20463

**Re: MUR 7886 (Astellas Pharma US, Inc.)**

Dear Mr. Jordan:

We write on behalf of Astellas Pharma US, Inc. ("Astellas"), in response to a complaint filed by Campaign Legal Center in the above-referenced matter. The complaint alleges that Astellas violated 52 U.S.C. § 30119(a)(1) by making a \$50,000 contribution to an independent expenditure-only committee, the Senate Leadership Fund ("SLF"), while performing a federal contract.

As outlined below, the Commission should dismiss this matter pursuant to its prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985), for reasons that include:

- The contribution could not have influenced Astellas' government contracts;
- The Astellas Policy & Government Affairs Department relied upon the erroneous advice of its trusted outside counsel and compliance vendor;
- Astellas has meaningful controls to prevent this type of contribution;
- Astellas received a full refund of the \$50,000 contribution; and
- Astellas has taken prompt mitigation measures.

Moreover, in the wake of *Citizens United v. Federal Election Commission* and *SpeechNow.org v. Federal Election Commission*, the First Amendment to the United States Constitution prohibits the Commission from enforcing 52 U.S.C. § 30119(a)(1) as applied to the contribution to SLF, a federal independent expenditure-only committee. Thus, if the Commission does not dismiss the matter pursuant to its prosecutorial discretion, it should find no reason to believe a violation occurred.

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**FACTUAL BACKGROUND**

Headquartered in Northbrook, Illinois, Astellas is a biopharmaceutical company dedicated to improving the health of people around the world through the provision of innovative and reliable pharmaceutical products.

On November 23, 2020, following the receipt of legal advice from a respected international law firm with a long-standing campaign finance practice and an additional review by a third-party compliance vendor, the Astellas Policy & Government Affairs Department made a one-time \$50,000 contribution to SLF, a federal Super PAC.<sup>1</sup> The contribution to SLF was Astellas' first and only corporate donation to a Super PAC. This contribution was only a very small fraction (.01%) of SLF's receipts, which exceeded \$475,000,000 during the 2019-2020 election cycle.<sup>2</sup>

Astellas has a written policy prohibiting this type of federal contribution. Employees of the Astellas Policy & Government Affairs Department, however, failed to adhere to the written policy and instead relied upon the advice of Astellas' long-time outside counsel to determine whether Astellas could make the requested contribution.<sup>3</sup> Outside counsel advised that Astellas could make the contribution.<sup>4</sup> When Astellas' political compliance vendor also told Astellas that it could use corporate funds to donate to the Super PAC<sup>5</sup>, the employees made the contribution. The contribution was later refunded to Astellas in full.<sup>6</sup>

In short, notwithstanding Astellas' multi-layered written and procedural controls, Astellas' contribution to SLF resulted from three key failures: (1) the failure of Astellas Policy & Government Affairs employees to consult and follow Astellas' written policy; (2) the failure by Astellas' long-time external campaign finance counsel to advise the employees appropriately; and (3) the failure of Astellas' political compliance vendor to raise the federal government contractor issue.<sup>7</sup> For all of these controls to fail reflects a highly unusual set of circumstances.

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<sup>1</sup> See Devaney Decl. at ¶ 5; Spinello Decl. at ¶ 5; Rollins Decl. at ¶ 5.

<sup>2</sup> See <https://www.fec.gov/data/committee/CO0571703/?cycle=2020> (noting \$475,353,506.74 in receipts in 2020 election cycle).

<sup>3</sup> See Devaney Decl. at ¶ 6; Spinello Decl. at ¶ 6; Rollins Decl. at ¶ 6.

<sup>4</sup> See Spinello Decl. at ¶ 7.

<sup>5</sup> See Spinello Decl. at ¶ 10.

<sup>6</sup> Astellas received a full refund from SLF on April 15, 2020. See Devaney Decl. at ¶ 10; Spinello Decl. at ¶ 13; Rollins Decl. at ¶ 9.

<sup>7</sup> See Devaney Decl. at ¶ 9; Spinello Decl. at ¶ 12.

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**ARGUMENT****I. The Facts and Circumstances of Astellas' Contribution Warrant Dismissal as a Matter of Prosecutorial Discretion.**

Under *Heckler*, there is “no doubt” that the Commission has authority to dismiss complaints as a matter of prosecutorial discretion. *Citizens for Responsibility and Ethics in Washington v. Fed. Election Comm’n*, 892 F.3d 434, 438 (D.C. Cir. 2018) (citing *Heckler*, 470 U.S. at 831 and *Fed. Election Comm’n v. Akins*, 524 U.S. 11, 25 (1998)). The Commission has repeatedly dismissed matters pursuant to its inherent prosecutorial discretion at the reason to believe stage, including in cases involving alleged violations of the federal contractor contribution ban. *See* MUR 6403 (Arctic Slope, et al.).

When determining whether the exercise of prosecutorial discretion is appropriate, the Commission has considered, among other factors, “the gravity of the alleged violation, taking into account both the type of activity and the amount in violation” and “the complexity of the legal issues raised in the matter.” *See, e.g.,* MUR 7356 (Manhattan Neighborhood Network) (exercising prosecutorial discretion to dismiss claims involving alleged broadcasting of a 12-hour get-out-the-vote marathon in support of Presidential candidate). The Commission has also considered the nature of the remedial action taken by the respondent. *See* MUR 7394 (O'Donnell for Congress, et. al.), Factual and Legal Analysis to O'Donnell at 2, 4 (July 30, 2018) (exercising prosecutorial discretion, in part, because of the “remedial actions taken,” which included a refund); MUR 7338 (Rick for Congress, et. al.), Factual and Legal Analysis to Rick for Congress at 2-3 (July 6, 2018) (same).

Astellas respectfully asserts that the factors below support the Commission's exercise of prosecutorial discretion.

**A. The Contribution Could Not Have Influenced Astellas' Government Contracts.**

There is no connection between the SLF contribution and Astellas' government contracts and, in fact, Astellas does not have the type of government contracts that could be influenced by a political contribution. As such, the gravity of the alleged violation supports the exercise of prosecutorial discretion to dismiss this matter.

In considering whether to exercise prosecutorial discretion in a case involving the government contractor contribution ban, the Commission has considered whether there is a connection between the alleged violation and the policy concerns that underlie the statute—preventing corruption and the appearance thereof. In MUR 6403 (Alaskans Standing Together et al.), a government contractor case, the Commission exercised its prosecutorial discretion to dismiss a complaint in part because the contractor was approached by the government to enter into the government contract at issue which, the Commission determined, “primarily benefits the public.” Factual and Legal Analysis to Arctic Slope Regional Corp. at 8 (Nov. 10, 2011). In other words, the government contract that triggered the ban in that case was not the type of competitively bid procurement contract that could reasonably be perceived as having been influenced by a political contribution. Similarly, Astellas' government contracts cannot be

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influenced by political contributions and, as such, the exercise of prosecutorial discretion would be appropriate under these circumstances.

In this case, Astellas does not have government contracts that were or could be subject to influence from the contribution at issue. As is the case with all manufacturers of branded pharmaceuticals, Astellas offers its commercial products for sale to the U.S. federal government on its Federal Supply Schedule (“FSS”) contract, which is administered by the U.S. Department of Veterans Affairs (“VA”). Astellas also holds two related Blank Purchase Agreements (“BPAs”), which provide even lower pricing under the FSS to specific government entities.<sup>8</sup> These contracts are the only U.S. government contracts held by Astellas; Astellas does not seek or participate in federal government grants or contracts for research and development or production of specialized products. An FSS contract is not the type of agreement that would provide an opportunity for influence or corruption from elected officials, for the reasons discussed below.

First, Astellas is required by federal law to hold an FSS contract. Under Section 603 of the Veterans Health Care Act of 1992, all brand-name and authorized generic products must be offered for sale under a specific FSS program as a condition of participation in government reimbursement programs such as Medicare and Medicaid. FSS contracts are awarded to all drug manufacturers that offer single or multiple source innovator products and function as an easy purchasing mechanism if individual government purchasers, such as a VA hospital, decide to acquire the listed products. FSS contracts are available to all willing offerors, and they have 5-year terms before renewal. The initial award and renewal are administrative procedures not subject to discretion by elected officials; indeed, barring disqualification based on debarment or other factors, an FSS contract is always granted for innovator drug products like those offered by Astellas.

Second, Astellas’ FSS contract does not guarantee Astellas any sales. Instead, the contracts are indefinite delivery, indefinite quantity contracts, meaning that the contract itself has value only if a purchaser, such as a VA hospital, makes an independent decision to purchase Astellas products under the FSS. Essentially, the FSS contract is an agreement to list Astellas’ products for sale at a statutorily defined price. According to the VA, there are more than a million catalog items available for purchase through the FSS program, and a purchaser can choose any one of those products to meet its needs.<sup>9</sup> The fact that Astellas offers its commercial

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<sup>8</sup> Astellas holds BPAs to sell certain products to VA pharmacies in Puerto Rico and through TRICARE—the health care program for uniformed service members, retirees, and their families. Holding an FSS contract enables Astellas to negotiate these BPAs for the sale of specific products to specific government entities at prices below the prices offered on the FSS.

<sup>9</sup> VA, *National Acquisition Center (CCST)*, <https://www.vendorportal.ecms.va.gov/nac/>.

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products via an FSS contract does not prevent other manufacturers from holding FSS contracts and simultaneously offering competing products.

Third, pricing on the FSS for drugs is controlled by a statutorily defined formula. Drug manufacturers must provide the VA information regarding all commercial customer prices and terms, and for innovator products like those offered by Astellas, pricing is capped at a statutorily determined federal ceiling price, which represents a significant discount off the average price to wholesalers and is often one of the lowest prices offered in the marketplace. Price increases over the life of the FSS contract are determined by statutory calculations and severely limited by inflationary penalties.

To summarize, Astellas is required by federal law to offer its pharmaceutical products on the FSS, the FSS contract does not prevent any other pharmaceutical company from signing the same agreement and offering competing products, Astellas is not guaranteed any sales under its government contracts, and the pricing for the products offered under the FSS contract is tightly controlled. Because FSS contracts are specifically structured to be insulated from outside influence, there is no circumstance in which the one-time contribution to SLF, an independent Super PAC, could reasonably be deemed to influence either the government's decision to enter into the statutorily-required agreement with Astellas or the pricing of products under that agreement, since the prices are determined by statutory calculations.

**B. The Astellas Policy & Government Affairs Department Relied Upon the Erroneous Advice of its Trusted Outside Counsel & Compliance Vendor.**

Astellas sought outside advice before making the SLF contribution and was told that the contribution raised no legal concerns. Prior to the contribution at issue, Astellas had never contributed to a federal Super PAC. Because the team lacked experience with this type of donation, the Astellas Policy & Government Affairs employees involved in reviewing this contribution contacted experienced campaign finance counsel at a large, international law firm with a well-known, long-standing campaign finance practice to verify the legality of the contribution. The law firm had been advising Astellas regarding federal and state campaign contribution compliance for more than seven years, and had previously provided careful and proper guidance and training for employees, which led the employees to comfortably rely upon the law firm's advice regarding whether Astellas could make the requested contribution.<sup>10</sup> Upon review, outside counsel advised that Astellas could make the contribution.<sup>11</sup>

The Policy & Government Affairs employees also processed this contribution through the Company's campaign finance compliance and reporting firm. The compliance and reporting

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<sup>10</sup> See Devaney Decl. at ¶ 6; Spinello Decl. at ¶ 6; Rollins Decl. at ¶ 6.

<sup>11</sup> See Devaney Decl. at ¶ 7; Spinello Decl. at ¶¶ 7-8; Rollins Decl. at ¶¶ 7-8.

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vendor reviews each federal and state contribution made by Astellas, serving as another backstop to prevent potential violations of campaign finance laws. The Astellas Policy & Government Affairs employees believed that if there were potential compliance issues with the proposed contribution, the vendor would have flagged such considerations. However, the vendor not only failed to raise any concerns about the contribution, but also informed the employees that Astellas could make corporate contributions to SLF because SLF is a Super PAC.<sup>12</sup>

**C. Astellas Has Meaningful Controls to Prevent This Type of Contribution.**

To ensure compliance with applicable federal, state, and local campaign finance rules, the Astellas Policy & Government Affairs staff are required to follow robust processes and controls prior to making corporate and PAC contributions. At all relevant times, Astellas has maintained a written policy that expressly prohibits Astellas personnel from using Astellas corporate funds to influence a federal election. Specifically, Astellas' written policy entitled "Federal, State, and Local Political Activity and Lobbying" addresses, among other things, the circumstances in which Astellas may use corporate funds to make political contributions. Although the policy allows state and local political contributions when they are "consistent with state and local laws," it expressly prohibits Astellas from making *any* federal contributions related to elections from corporate funds. It states "Astellas is prohibited by U.S. federal law from making Federal Political Contributions," which are defined as "a payment, service, or anything of value given to influence a federal election." In addition, Astellas provides training to its Policy & Government Affairs employees regarding federal, state, and local campaign finance rules.

Thus, the contribution at issue resulted not from a failure of controls, but from human error; Astellas' Policy & Government Affairs Department failed to consult and follow the governing internal policy. If Astellas' Policy & Government Affairs employees had done so, the contribution would not have been made. Astellas takes non-compliance with its policies very seriously and is taking all appropriate corrective actions and enhancements in response to this incident, reaffirming its commitment to prevent this type of conduct from occurring in the future.

**D. Astellas Received a Full Refund of the \$50,000 Contribution.**

Astellas' receipt of a refund also counsels in favor of the exercise of prosecutorial discretion to dismiss the complaint. *See* MUR 7394 (O'Donnell for Congress, et. al.), Factual and Legal Analysis to O'Donnell at 2, 4 (July 30, 2018) (exercising prosecutorial discretion, in part, because of the "remedial actions taken" with an issued refund cited earlier in the analysis as relevant fact). *See also* MUR 7338 (Rick for Congress, et. al.), Factual and Legal Analysis to Rick for Congress at 2-3 (July 6, 2018) (exercising prosecutorial discretion, in part, because of

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<sup>12</sup> *See* Spinello Decl. at ¶ 9-10.

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“remedial actions taken” which included a refund). In this case, after the issue was identified, Astellas received a full refund of the \$50,000 contribution.<sup>13</sup>

**E. Astellas Has Taken Prompt Mitigation Measures.**

Since learning of this incident, Astellas has taken meaningful steps to enhance its internal controls to avoid similar situations in the future. Specifically, the following steps have been completed or are in process:

- *Investigation and Remedial Measures:* Astellas has conducted an internal investigation to determine when and how mistakes were made, and is taking all necessary and appropriate remedial measures to prevent this type of mistake in the future.
- *Policies and Procedures:* Astellas is augmenting its Federal, State, and Local Political Activity and Lobbying Policy to add additional controls, such as additional layers of internal approvals for federal contributions and electronic internal certifications for all political contributions.
- *Supplemental Training Programs:* Astellas Policy & Government Affairs employees receive live annual training from outside counsel on federal and state campaign finance law. Astellas is developing a supplemental training that will focus on the federal contractor ban, which it intends to deliver to all Astellas Policy & Government Affairs employees within the next 90 days.
- *Additional Internal Legal Review for Political Contributions:* Astellas is implementing a process that increases the level of oversight and review by the Astellas Legal Department with respect to Astellas political activities and contributions.

**II. The Federal Contractor Contribution Prohibition is Unconstitutional as Applied to Astellas’ Contribution to Senate Leadership Fund.**

The First Amendment protects Astellas’ right to make contributions to Super PACs. If the Commission does not dismiss this matter pursuant to its prosecutorial discretion, it should find no reason to believe that a violation occurred because the federal contractor contribution ban is unconstitutional as applied to Astellas’ contribution to an independent expenditure-only committee.

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<sup>13</sup> See Devaney Decl. at ¶ 10; Spinello Decl. at ¶ 13; Rollins Decl. at ¶ 9.

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**A. The First Amendment Prohibits Restrictions on Contributions to Independent Expenditure-Only Committees.**

The First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech.” U.S. Const. amend. I. The First Amendment’s speech protections allow for an “open marketplace of ideas,” with political speech at the core of this protection. *See Citizens United*, 558 U.S. at 354 (citations and quotation omitted). Given its conclusion that political speech is entitled to special protections, the United States Supreme Court has held that the only legitimate state interest in restricting political contributions is the prevention of *quid pro quo* corruption or the appearance thereof. *See McCutcheon v. Fed. Election Comm’n*, 572 U.S. 185, 206-07 (2014).

Independent political speech does not raise the *quid pro quo* corruption concerns that justify restrictions on direct contributions to candidates. As the Supreme Court has explained, independent expenditures lack the “prearrangement and coordination” of direct contributions. *Citizens United*, 558 U.S. at 355-359 (quoting *Buckley v. Valeo*, 424 U.S. 1, 47 (1976)). Restrictions on independent expenditures, therefore, do not satisfy the anticorruption interest, the only state interest the courts recognize that can justify restrictions on political expenditures. *Id.* The Court has explicitly held that the anticorruption interest does not justify restrictions on independent expenditures by corporations. *Id.* at 357 (“[I]ndependent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.”).

In *SpeechNow.org*, the U.S. Court of Appeals for the District of Columbia Circuit held that the logic of *Citizens United* also invalidates laws that limit *contributions* to an organization that makes only independent expenditures:

[B]ecause *Citizens United* holds that independent expenditures do not corrupt or give the appearance of corruption as a matter of law, then the government can have no anti-corruption interest in limiting contributions to independent expenditure-only organizations.

*SpeechNow.org*, 599 F.3d at 696.

After *SpeechNow.org*, the Commission itself recognized that, because independent expenditures do not give rise to *quid pro quo* corruption, “there is no basis to limit the amount of contributions to [an independent expenditure-only] Committee from individuals, political committees, corporations, and labor organizations.” FEC AO 2010-11 (Commonsense Ten) at 3.

**B. The Federal Contractor Prohibition as Applied to Astellas’ Contributions to a Super PAC is Unconstitutional.**

The fact that Astellas entered into government contracts that are required in order to participate in certain government programs does not mean that Astellas has forfeited the First Amendment rights protected by *Citizens United* and its progeny. As the D.C. Circuit explained, “*Citizens United* holds that independent expenditures do not corrupt or give the appearance of corruption as a matter of law.” *SpeechNow.org*, 599 F.3d at 696. Restrictions on contributions can be justified only on the basis of anticorruption interests; in addition, the D.C. Circuit has



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held that contributions to independent expenditure-only committees do not corrupt or give the appearance of corruption “as a matter of law.” Therefore, a prohibition on contractor contributions to Super PACs cannot be justified under the First Amendment. *Id.*

Indeed, the only court that has addressed the federal contractor prohibition as applied to independent expenditure-only committees in the *Citizens United* era cast doubt on the statute’s constitutionality in this context. In 2013, albeit in *dicta*, the U.S. District Court for the District of Columbia explained:

The en banc D.C. Circuit recently struck down a cap on contributions to Super PACs because, after *Citizens United*, “the government has no anti-corruption interest in limiting contributions to an independent expenditure group.” *SpeechNow.org v. FEC*, 599 F.3d 686, 695 (D.C. Cir. 2010) (en banc). *SpeechNow* creates substantial doubt about the constitutionality of any limits on Super PAC contributions—including [FECA’s] ban on contributions by federal contractors.

*Wagner v. Fed. Election Comm’n*, 901 F. Supp. 2d 101, 107 (D.D.C. 2012), *vacated on other grounds*, 717 F.3d 1007 (D.C. Cir. 2013).

Accordingly, if the Commission does not dismiss this matter pursuant to its prosecutorial discretion, it should find no reason to believe that a violation occurred because any application of the government contractor prohibition as applied to Astellas’ contribution to SLF would violate the First Amendment to the U.S. Constitution.

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**III. Conclusion**

Astellas strongly believes that the facts of this incident justify the Commission's exercise of prosecutorial discretion. As such, it respectfully requests the Commission to dismiss this matter. Moreover, Astellas asserts that any enforcement action would be unconstitutional under *Citizens United* and its progeny.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Robert D. Lenhard", with a stylized flourish at the end.

Robert D. Lenhard  
Zachary G. Parks  
Audrey Pence  
Covington & Burling LLP  
One CityCenter  
850 10th Street N.W.  
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Encl.

**RECEIVED**

By OGC/CELA at 4:09 pm, Jun 07, 2021

**BEFORE THE FEDERAL ELECTION COMMISSION**

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**In re MUR 7886**

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**DECLARATION OF JOSEPH DEVANEY**

1. My name is Joseph Devaney. This declaration is made upon my personal knowledge and belief to the best of my recollection.
2. I am employed by Astellas Pharma US, Inc. ("Astellas") as Vice President for Policy and Government Affairs.
3. I understand that the Campaign Legal Center recently filed a complaint with the Federal Election Commission alleging that Astellas made contributions to Senate Leadership Fund ("SLF") after having entered into contracts with the federal government.
4. As part of my role with Astellas, I am involved in reviewing political contributions to be made by Astellas.
5. In November 2020, John Spinello (the Astellas Senior Director for State Government Affairs), James Rollins (the Astellas Senior Director for Federal Affairs), and I considered whether Astellas should make a one-time \$50,000 contribution to Senate Leadership Fund ("SLF").
6. I asked Mr. Spinello and Mr. Rollins to consult with Astellas' long-time outside counsel, Thomas Spulak, a campaign finance lawyer at the international law firm King & Spalding LLP, to determine whether Astellas could make the requested contribution.

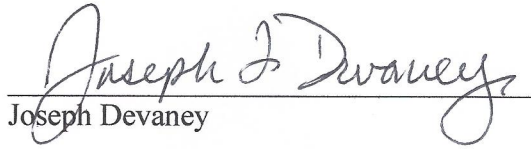
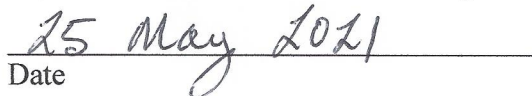
7. Mr. Spinello later advised me that he consulted with Mr. Spulak about the contribution and that Mr. Spulak raised no concerns. I understood from this conversation that Astellas could lawfully make the requested contribution.

8. The contribution check of \$50,000 was processed and delivered to SLF on or about November 23, 2020.

9. If Astellas' outside counsel had informed Astellas that there were legal concerns with Astellas making a contribution to SLF, I would not have approved the contribution.

10. Astellas later received a full refund of the contribution from SLF.

I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Joseph Devaney  
  
\_\_\_\_\_  
Date

**BEFORE THE FEDERAL ELECTION COMMISSION**

\_\_\_\_\_  
**In re MUR 7886**  
 \_\_\_\_\_

**DECLARATION OF JOHN SPINELLO**

1. My name is John Spinello. This declaration is made upon my personal knowledge and belief to the best of my recollection.
2. I am employed by Astellas Pharma US, Inc. ("Astellas") as Senior Director for State Government Affairs.
3. I understand that the Campaign Legal Center recently filed a complaint with the Federal Election Commission alleging that Astellas made contributions to Senate Leadership Fund ("SLF") after having entered into contracts with the federal government.
4. As part of my role with Astellas, I am involved in proposing political contributions to be made by Astellas.
5. In November 2020, James Rollins (the Astellas Senior Director for Federal Affairs), Joseph Devaney (the Astellas Vice President for Policy and Government Affairs), and I considered whether Astellas should make a one-time \$50,000 contribution to Senate Leadership Fund ("SLF").
6. Mr. Devaney asked Mr. Rollins and me to consult Astellas' long-time outside counsel, Thomas Spulak, a campaign finance lawyer at the international law firm King & Spalding LLP, to determine whether Astellas could make the contribution.

7. I then emailed Mr. Spulak to tell him that Astellas was planning to make the contribution to SLF and asked: "Please let us know if we need to do anything at this point or in the future in connection with this contribution to comply with applicable law." Mr. Spulak responded: "There is nothing that you need to do." He then explained that the contribution would not be reportable on Astellas' federal lobbying reports but would be reported by the committee to the FEC. *See Exhibit A.*

8. I understood from the legal advice provided by Mr. Spulak that Astellas could lawfully make the contribution.

9. I also contacted Astellas' campaign finance compliance and reporting vendor, PASS, to request that the vendor process the contribution. PASS serves as a final backstop to prevent potential violations of campaign finance laws and I expected that, if there were legal problems with a proposed contribution, PASS would flag those concerns.

10. In response to the email alerting PASS to the planned contribution, PASS explained, by email, that Astellas could make corporate contributions to Senate Leadership Fund because it is a Super PAC. PASS did not raise concerns about the contribution. *See Exhibit B.*

11. The contribution check of \$50,000 was processed and delivered to SLF on or about November 23, 2020.

12. If either Mr. Spulak or PASS had informed me that there were legal or compliance concerns with Astellas making a contribution to SLF, I would not have pursued making the contribution on Astellas' behalf.

13. Astellas received a full refund of the contribution from SLF on April 15, 2020.

I declare under penalty of perjury that the foregoing is true and correct.

John Spinello  
John Spinello  
5/25/21  
Date

# EXHIBIT A



**From:** Spinello, John  
**Sent:** Tuesday, November 17, 2020 6:29 PM  
**To:** Spulak, Thomas  
**Cc:** Rollins, James  
**Subject:** Re: Senate Leadership Fund- Section 527 - Privileged and Confidential

Terrific, thank you, Tom.

John Spinello

> On Nov 17, 2020, at 7:19 PM, Spulak, Thomas <TSpulak@kslaw.com> wrote:

>

> John

>

> There is nothing that you need to do. Contributions to IE committees are not reported on the LD-203 or anywhere else by the donor. The contribution will be reported to the FEC by the committee and will be available to the public when the committee's FEC report is filed.

>

> Please let me know if you need further information.

>

> Tom

>

> Thomas J Spulak

> King & Spalding LLP

> 1700 Pennsylvania Ave, NW

> Washington, DC 20006

> (202) 661-7948 (o)

>

>

>

> On Nov 17, 2020, at 3:46 PM, Spinello, John <john.spinello@astellas.com> wrote:

>

> \*\*External Sender\*\*

> Good afternoon, Tom.

>

> We are planning to make a corporate contribution (\$50,000) on Monday to an independent expenditure committee, the Senate Leadership Fund. Please let us know if we need to do anything at this point or in the future in connection with this contribution to comply with applicable law. For example, wondering whether this contribution is required to be reported on a future LD-2 or other filing. Happy to discuss if you think warranted. Thank you very much, Tom.

>

> John

>

>

>

>

> <Senate Leadership Fund (SLF) Memo.pdf> <Senate Leadership Fund (SLF)

> Response Form.pdf>

>  
> \_\_\_\_\_  
>  
>  
> King & Spalding Confidentiality Notice:  
>  
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> sender immediately by e-mail and delete all copies of the message.  
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## **EXHIBIT B**

**From:** Mindy Anderson <MAnderson@pass1.com>  
**Sent:** Tuesday, November 17, 2020 2:30 PM  
**To:** Spinello, John; Steve Hinton  
**Subject:** RE: Senate Leadership Fund - Planned Contribution

Perfect! Just wanted to be sure we're on the same page.

**From:** Spinello, John <john.spinello@astellas.com>  
**Sent:** Tuesday, November 17, 2020 3:29 PM  
**To:** Mindy Anderson <MAnderson@pass1.com>; Steve Hinton <shinton@pass1.com>  
**Subject:** RE: Senate Leadership Fund - Planned Contribution

Right, thanks for the clarity. Best. Js

**From:** Mindy Anderson <MAnderson@pass1.com>  
**Sent:** Tuesday, November 17, 2020 2:57 PM  
**To:** Spinello, John <john.spinello@astellas.com>; Steve Hinton <shinton@pass1.com>  
**Subject:** RE: Senate Leadership Fund - Planned Contribution

Hi John,

The Senate Leadership Fund is a Super PAC (Independent Expenditure committee), it is not McConnell's leadership PAC. That's why you can make corporate contributions.

Let me know if you have any questions.

Have a great day!

Mindy

**From:** Spinello, John <john.spinello@astellas.com>  
**Sent:** Tuesday, November 17, 2020 2:08 PM  
**To:** Mindy Anderson <MAnderson@pass1.com>; Steve Hinton <shinton@pass1.com>  
**Subject:** Senate Leadership Fund - Planned Contribution

Good afternoon, Mindy and Steve.

This is just a heads up – we are planning to make a \$50,000 contribution on Monday to the Senate Leadership Fund (McConnel). This will come from our corporate account. I will put the details in the system in the next day or so. We'd like a check sent on Monday for delivery on Tuesday to the Senate Leadership Fund, C/O: David Gershanik, 526 Daroco Avenue, Coral Gables, FL 33146. Since this contribution is a bit larger than usual, I just wanted to give you a quick heads up. Let me know if you have any questions.

Thank you. John

**John Spinello**  
 Sr. Director, State Government Affairs  
 ASTELLAS PHARMA US

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**BEFORE THE FEDERAL ELECTION COMMISSION**

**In re MUR 7886**

**DECLARATION OF JAMES ROLLINS**

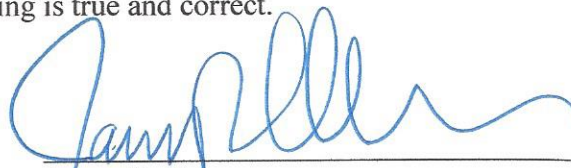
1. My name is James Rollins. This declaration is made upon my personal knowledge and belief to the best of my recollection.
2. I am employed by Astellas Pharma US, Inc. ("Astellas") as Senior Director of Federal Affairs.
3. I understand that the Campaign Legal Center recently filed a complaint with the Federal Election Commission alleging that Astellas made contributions to Senate Leadership Fund ("SLF") after having entered into contracts with the federal government.
4. As part of my role with Astellas, I am involved in proposing political contributions to be made by Astellas.
5. In November 2020, John Spinello (the Astellas Senior Director for State Government Affairs), Joseph Devaney (the Astellas Vice President for Policy and Government Affairs), and I considered whether Astellas should make a one-time \$50,000 contribution to Senate Leadership Fund ("SLF").
6. Mr. Devaney asked Mr. Spinello and me to consult with Astellas' long-time outside counsel Thomas Spulak, a campaign finance lawyer at the international law firm King & Spalding LLP, to determine whether Astellas could make the contribution.
7. Mr. Spinello then emailed Mr. Spulak, cc'ing me, to tell him that Astellas was planning to make the contribution to SLF and asked: "Please let us know if we need to do

anything at this point or in the future in connection with this contribution to comply with applicable law.” Astellas’ outside counsel responded: “There is nothing that you need to do.” He then explained that the contribution would not be reportable on Astellas’ federal lobbying reports but would be reported by the committee to the FEC. *See Exhibit A.*

8. I understood from the legal advice provided by Mr. Spulak that Astellas could lawfully make the contribution.

9. Astellas later received a full refund of the contribution from SLF.

I declare under penalty of perjury that the foregoing is true and correct.

  
James Rollins  
5/26/2021  
Date

# EXHIBIT A



**From:** Spinello, John  
**Sent:** Tuesday, November 17, 2020 6:29 PM  
**To:** Spulak, Thomas  
**Cc:** Rollins, James  
**Subject:** Re: Senate Leadership Fund- Section 527 - Privileged and Confidential

Terrific, thank you, Tom.

John Spinello

> On Nov 17, 2020, at 7:19 PM, Spulak, Thomas <TSpulak@kslaw.com> wrote:

>

> John

>

> There is nothing that you need to do. Contributions to IE committees are not reported on the LD-203 or anywhere else by the donor. The contribution will be reported to the FEC by the committee and will be available to the public when the committee's FEC report is filed.

>

> Please let me know if you need further information.

>

> Tom

>

> Thomas J Spulak

> King & Spalding LLP

> 1700 Pennsylvania Ave, NW

> Washington, DC 20006

> (202) 661-7948 (o)

>

>

>

> On Nov 17, 2020, at 3:46 PM, Spinello, John <john.spinello@astellas.com> wrote:

>

> \*\*External Sender\*\*

> Good afternoon, Tom.

>

> We are planning to make a corporate contribution (\$50,000) on Monday to an independent expenditure committee, the Senate Leadership Fund. Please let us know if we need to do anything at this point or in the future in connection with this contribution to comply with applicable law. For example, wondering whether this contribution is required to be reported on a future LD-2 or other filing. Happy to discuss if you think warranted. Thank you very much, Tom.

>

> John

>

>

>

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> <Senate Leadership Fund (SLF) Memo.pdf> <Senate Leadership Fund (SLF)

> Response Form.pdf>

>  
> \_\_\_\_\_  
>  
>

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