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FIRST GENERAL COUNSEL'S REPORT

MUR:

CELA 7072

DATE COMPLAINT FILED: May 23, 2016

DATE OF NOTIFICATION: May 26, 2016

DATE OF LAST RESPONSE: July 6, 2016

DATE ACTIVATED: July 28, 2016

ELECTION CYCLE: 2010-2012

EARLIEST SOL: May 11, 2014

LATEST SOL: June 9, 2017¹

COMPLAINANT: Lori Van Hamersveld

RESPONDENTS: Babulal Bera

Kanta Bera

Amerish "Ami" Bera

Ami Bera for Congress and Jennifer May in her
official capacity as treasurer

RELEVANT STATUTES 52 U.S.C. § 30116(a), (f)

AND REGULATIONS: 52 U.S.C. § 30122

11 C.F.R. § 103.3(b)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

In May 2016, Babulal Bera, father of U.S. Representative Amerish "Ami" Bera, pleaded guilty in Federal District Court to making approximately \$270,000 in contributions in the names of about 90 other individuals to Ami Bera for Congress (the "Committee") during the 2010 and

¹ These SOL dates do not include Rep. Bera and the Committee tolling the SOL for 40 days in exchange for an extension of time to respond to the Complaint.

1 2012 election cycles.² Based on this plea, the Complaint alleges that Ami Bera and the
2 Committee knowingly accepted illegal contributions by failing to timely refund the contributions
3 to their original source.³ Rep. Bera and the Committee state that they had no knowledge of
4 Babulal Bera's illegal contributions at the time they were made and assert that the Committee
5 properly disgorged the total amount on the same day as his guilty plea.⁴ Babulal and Kanta Bera
6 acknowledge Babulal's guilty plea, but request that the Commission dismiss the matter as a
7 matter of prosecutorial discretion.⁵

8 As discussed below, the criminal plea demonstrates that Babulal Bera knowingly and
9 willfully violated 52 U.S.C. §§ 30116(a) and 30122. We therefore recommend that the
10 Commission find reason to believe that Babulal Bera knowingly and willfully violated the Act by
11 reimbursing contributions to his son's congressional campaign. We note, however, that the
12 present record does not include the precise dates and amounts of the illegal contributions and
13 reimbursements. Likewise, it does not identify Babulal's conduits or the extent to which others
14 may have helped or assisted him. To ascertain this information, we also recommend that the
15 Commission authorize an investigation.

16 In addition, the information currently available is insufficient to determine whether
17 Respondents Kanta Bera, Rep. Bera, or the Committee knew of, or participated in, Babulal
18 Bera's reimbursement scheme. The present record is also insufficient to determine whether the
19 Committee's disgorgement of the unlawful contributions was timely. We therefore recommend

² Compl. at 1, Ex. A (May 23, 2016). Ami Bera for Congress is Ami Bera's principal campaign committee.

³ *Id.* at 1.

⁴ Ami Bera and Ami Bera for Congress Joint Resp. at 1 (July 6, 2016) ("Committee Resp."). Rep. Bera and the Committee further assert that they still do not know the identities of Babulal Bera's conduits or the amounts or dates of their contributions. *Id.*

⁵ Babulal and Kanta Bera Supp. Resp. at 1 (June 30, 2016) ("Bera Supp. Resp."). Kanta Bera is Babulal Bera's wife and Rep. Bera's mother.

1 that the Commission take no action at this time with regard to Kanta Bera, Ami Bera, and Ami
2 Bera for Congress and Jennifer May in her official capacity as treasurer.

3 **II. FACTUAL BACKGROUND**

4 Representative Ami Bera (CA-7) ran unsuccessfully for Congress in 2010, won his seat
5 in 2012, and was re-elected in 2014. On May 10, 2016, Babulal Bera pleaded guilty to violating
6 52 U.S.C. §§ 30116(a)(1)(A) and 30122 by making contributions in the names of others and
7 making excessive contributions during the 2010 and 2012 election cycles.⁶ According to the
8 Factual Basis for Pleas, Babulal Bera reimbursed approximately 90 contributors who made more
9 than 130 contributions to the Committee.⁷

10 The Factual Basis for Pleas states that, during the 2010 election cycle, Babulal and Kanta
11 Bera each made the maximum allowable contribution to the Committee for the primary and
12 general elections — then a total of \$4,800 — between April 4, 2009, and May 4, 2009.⁸ Babulal
13 Bera then “directly and indirectly solicited relatives, friends and acquaintances to make the
14 maximum allowable federal campaign contribution [to the Committee], with the understanding
15 that he would reimburse them in whole or in part.”⁹ From approximately May 11, 2009, through
16 at least August 20, 2010, these individuals contributed a total of approximately \$225,326 to the

⁶ Plea Agreement, *United States v. Bera*, No. 2:16-cr-00097 (E.D. Cal. May 10, 2016) (“Plea Agmt.”). Babulal Bera is scheduled to be sentenced on August 18, 2016. See Memorandum from Lynda M. Moore, U.S. Probation Office to Michele Krueger, Courtroom Deputy Clerk of the Hon. Tory L. Nunley (July 5, 2016) (stating that sentencing had been rescheduled from Aug. 4, 2016 to Aug. 18, 2016).

⁷ Plea Agmt. Ex. A (Factual Basis for Pleas).

⁸ *Id.*

⁹ *Id.*

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1 Committee.¹⁰ Babulal Bera provided full or partial refunds to these individuals totaling more
2 than \$220,000.¹¹

3 According to the Factual Basis for Pleas, Babulal Bera conducted a similar scheme
4 during the 2012 election cycle.¹² On approximately January 5, 2011, Babulal and Kanta Bera
5 each contributed the maximum allowable amount for the primary and general elections — then
6 \$5,000 — to the Committee. Babulal Bera again solicited family, friends, and acquaintances to
7 make the maximum allowable contribution to the Committee with the understanding that he
8 would reimburse the conduits for their donations.¹³ The plea agreement indicates that from at
9 least January 31, 2011, through at least December 5, 2011, these individuals contributed a total
10 of approximately \$43,400 to the Committee.¹⁴ Between April 26, 2011, and at least June 9,
11 2012, these individuals received full reimbursements for their contributions from Babulal Bera,
12 which were delivered either by Babulal Bera himself or through third parties working at his
13 behest.¹⁵ The Factual Basis for Pleas indicates that at least some of the reimbursement checks
14 were drawn on Babulal Bera's business accounts.¹⁶ According to two media reports cited in the
15 Complaint, court documents indicated that Kanta Bera also solicited conduits to contribute to the

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Information ¶13, *United States v. Babulal Bera*, No. 2:16-cr-00097 (E.D. Cal. May 9, 2016) ("Information").

¹⁶ Plea Agmt. Ex. A.

1 Committee;¹⁷ the plea agreement states that the Department of Justice ("DOJ") does not intend to
2 prosecute Kanta Bera for the activity described in the Factual Basis for Pleas.¹⁸

3 On May 10, 2016, the same day as Babulal Bera's guilty plea, the Committee paid
4 \$268,726 to the United States Treasury to disgorge the illegal contributions.¹⁹ The same day,
5 Rep. Bera issued a statement through the Committee, asserting that "[n]either I, nor anyone
6 involved with my campaign, was aware of my father's activities until we learned about them
7 from the U.S. Attorney's Office."²⁰ U.S. Attorney Phillip Talbert reportedly stated that his
8 investigation was ongoing but noted that in the nearly 18 months of the probe, no evidence
9 turned up "indicating that Congressman Bera nor any of his staff" were aware of Babulal Bera's
10 illegal campaign contributions.²¹

11 The Complaint contends that Rep. Bera became aware of the investigation in October
12 2015 when DOJ interviewed him about his father's fundraising activities.²² Complainant asserts
13 that Rep. Bera and his Committee had an obligation under the Act to refund the illegal
14 contributions to the original source of the funds as soon as they learned of the investigation
15 against Rep. Bera's parents.²³

¹⁷ See Compl. at nn.5, 12 (citing Denny Walsh, *Rep. Ami Bera's Father Pleads Guilty to Election Fraud*, SACRAMENTO BEE (May 10, 2016 12:49 PM), <http://www.sacbee.com/news/politics-government/capitol-alert/article76780417.html> ("Walsh, Bera's Father Pleads Guilty"); John Meyers, "I Have in Fact, Done the Crime": Rep. Ami Bera's Father Admits Illegal Campaign Contributions, L.A. TIMES (May 10, 2016 5:30 PM), <http://www.latimes.com/politics/la-pol-sac-ami-bera-father-campaign-money-20160510-story.html>).

¹⁸ Plea Agmt. at Pt. III.C ("the government previously informed [Mr. Bera] that it did not intend to prosecute the defendant's wife, Kanta Bera").

¹⁹ See 2016 Pre-Primary Report at 432, Ami Bera for Congress (June 7, 2016).

²⁰ Press Release by Ami Bera for Congress, *Rep. Bera Statement on Campaign Finance Violation* (May 10, 2016), <http://www.beraforcongress.com/press/rep-bera-statement-campaign-finance-violation>.

²¹ Walsh, *Bera's Father Pleads Guilty*.

²² Compl. at 1-2.

²³ *Id.* at 1.

1 In a joint response, Rep. Bera and the Committee assert that they were unaware of the
2 illegal conduct at the time it occurred and “only learned of the specific violations when the
3 Information was issued” on May 9, 2016.²⁴ Rep. Bera and the Committee acknowledge that DOJ
4 interviewed Rep. Bera in October 2015, but state that during the interview, DOJ asked only
5 about Babulal Bera’s fundraising activities for the campaign and “as is typically the case with
6 criminal investigations, the Department of Justice did not disclose the full details of its
7 investigation.”²⁵ The Response also asserts that DOJ did not provide Rep. Bera or the
8 Committee with “any actionable information about Babulal Bera’s activities that would have
9 allowed them to immediately disgorge the illicit contributions” and that Rep. Bera has not been
10 given a list of specific contributors whose contributions were allegedly reimbursed or the
11 amounts or dates of those contributions.²⁶

12 In their own Response, Babulal and Kanta Bera acknowledge Babulal’s plea agreement,
13 but argue that in light of his taking “full responsibility for his conduct,” the Commission should
14 dismiss the Complaint as a matter of prosecutorial discretion.²⁷ They contend that “Mr. Bera’s
15 acceptance of responsibility, remorse, age, and health issues, along with his lack of prior
16 experience making political contributions” support dismissal.²⁸ They ask that the Complaint’s
17 allegations against Kanta Bera also be dismissed on the grounds that the cited news articles
18 suggesting her involvement in the scheme are “devoid of any facts that suggest Mrs. Bera
19 violated the Act.”²⁹

²⁴ Committee Resp. at 2.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Bera Supp. Resp. at 1.

²⁸ *Id.* The Response notes that Babulal and Kanta Bera are 83 and 82 years old, respectively. *Id.*

²⁹ *Id.* at 8.

1 **III. LEGAL ANALYSIS**

2 **A. Babulal Bera Knowingly and Willfully Made Contributions in the Names of**
3 **Others**

4 In the 2010 election cycle, the Act prohibited an individual from making contributions to
5 a candidate which, in the aggregate, exceeded \$2,400 per election.³⁰ In the 2012 cycle, the
6 contribution limit was \$2,500 per election.³¹ The Act further provides that no person shall make
7 a contribution in the name of another or knowingly permit his name to be used to effect such a
8 contribution, and that no person shall knowingly accept a contribution in the name of another.³²
9 This provision proscribes both "false name" contributions and "straw donor" or "conduit"
10 contributions.³³

11 Babulal Bera admits in his plea agreement that he knowingly and willfully engaged in a
12 scheme to make excessive contributions in the names of others to his son's campaign committee
13 during two successive election cycles.³⁴ Specifically, he admits that after he and his wife
14 reached their individual contribution limits to the Committee for the 2010 and 2012 election
15 cycles, he "directly and indirectly" solicited approximately 90 other individuals to make
16 contributions to the Committee in their own names, with the promise that he would reimburse
17 them for their donations.³⁵ Babulal Bera also admits that he reimbursed his conduits, in whole or
18 in part. In total, Babulal Bera reimbursed more than \$220,000 in contributions to the Committee
19 during the 2010 election cycle and \$43,400 in contributions to the Committee during the 2012

30 52 U.S.C. § 30116(a)(1)(A).

31 *Id.* See 11 C.F.R. § 110.1(b)(1).

32 52 U.S.C. § 30122.

33 11 C.F.R. § 110.4(b); *United States v. O'Donnell*, 608 F.3d 546, 549, 553 (9th Cir. 2010).

34 See generally Information; Plea Agmt. Ex. A.

35 *Id.*

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1 election cycle. Accordingly, Babulal Bera knowingly and willfully violated 52 U.S.C.
2 §§ 30116(a)(1)(A) and 30122 by making excessive contributions in the names of others.

3 Although Babulal Bera acknowledges his guilt, he argues that the Commission should
4 dismiss these allegations as a matter of prosecutorial discretion, on the grounds of his age and
5 that he has "taken full responsibility for his conduct" and his contributions "were made out of a
6 desire to support his son's congressional campaign, rather than with the corrupt purpose of
7 obtaining a quid pro quo benefit."³⁶

8 We recognize that Babulal Bera has pleaded guilty to the same violation of the Act for
9 which we now consider civil enforcement and that he will likely face some criminal penalty at
10 his sentencing scheduled for August 18, 2016. And while the Commission has at times
11 dismissed matters against respondents who have already been found criminally liable for the

³⁶ Bera Supp. Resp. at 1. The Beras also assert that they were deprived of the required 15-day period to respond to a "legally sufficient complaint," because the Complainant's address was not shown on the Complaint, and they did not initially receive a copy of the envelope used to transmit the Complaint, which did show that address. Babulal and Kanta Bera Resp. at 1-2 (June 24, 2016) ("Bera Resp."); Bera Supp. Resp. at 2-5; *see also* 11 C.F.R. § 111.4-111.5.

Contrary to the Beras' assertion, they had a fair opportunity to respond to a complaint that was at least substantially compliant, and they did so. A complaint must, at minimum, provide the full name and address of the complainant, be sworn and notarized, clearly identify respondents, and provide a clear statement of the facts, a basis for its assertions, and any accompanying documentation. 11 C.F.R. § 111.4. Upon receipt of a complaint, OGC "shall review the complaint for substantial compliance with the technical requirements of 11 CFR 111.4, and, if it complies with those requirements shall within five (5) days after receipt notify each respondent." *Id.* at § 111.5. OGC correctly determined that the Complaint, plus the address shown on the transmittal envelope, at least substantially met the regulatory requirements, and OGC's notification to the Beras reflected that correct determination. OGC's initial omission of a copy of the Complaint's envelope did not undermine the effect of that notice.

In any event, the Beras suffered no harm by not immediately receiving a copy of the transmittal envelope with the Complainant's address. OGC provided a copy of the envelope to the Beras' counsel on June 27, 2016, and the Beras filed a lengthy response three days later. We have considered that response in making our recommendations here.

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1 same conduct,³⁷ it has also at times elected to exercise its parallel jurisdiction.³⁸ The Beras
2 acknowledge as much, but contend that the Commission has only exercised its parallel
3 jurisdiction in cases in which FECA liability was not completely resolved in the respondent's
4 criminal plea.³⁹ To the contrary, the Commission has found reason to believe as to, and reached
5 conciliation agreements with, respondents on the same FECA violations to which they also
6 pleaded guilty.⁴⁰

³⁷ See Bera Supp. Resp. at 5-6 (citing MUR 6233 (Hsu); MUR 6232 (Gill); MUR 6231 (Marshall)). In its dismissal of these matters, the Commission highlighted mitigating factors that weighed against further enforcement, almost none of which are present here, *see* Factual & Legal Analysis at 6, MUR 6233 (noting Hsu's indigence, that DOJ was seeking forfeiture of all property obtained as a result of Hsu's offenses, his 24-year prison term, and the existence of numerous other civil judgments against him); MUR 6231 (Marshall) (noting respondent's indigence, 41-month prison sentence, and criminal restitution order of \$467,000, which Marshall was unlikely to be able to pay); MUR 6322 (noting Gill's sentence of 12 months imprisonment, plus and home confinement, and a substantial fine). Babulal Bera will be sentenced on August 18, 2016; however, there is no indication that he is indigent, and he does not appear to be facing any other civil judgments for his conduct.

³⁸ See, e.g., Conciliation Agreement, MUR 6465 (Junker); Conciliation Agreement, MUR 6162 (Sohn); Conciliation Agreement, MUR 6143 (Danielczyk); Conciliation Agreement, MUR 5758 (O'Donnell); Joint Conciliation Agreement, MUR 5666 (Wade).

³⁹ Bera Supp. Resp. at 5-6 (citing MUR 6528 (Grimm); MUR 6526 (Carper); MUR 5666 (MZM)). Respondents offer MUR 5666 for the premise that the Commission's conciliation agreement with Mitchell Wade in that matter reflected multiple FECA violations, not only that to which Wade pleaded guilty. We note, however, that the Commission found reason to believe as to Wade for precisely the same violation — 2 U.S.C. § 441f, now 52 U.S.C. § 30122 — to which Wade had already pleaded guilty and that the conciliation agreement with Wade was in fact a joint conciliation agreement with both Wade and his company. The additional violations listed in the conciliation agreement reflect the violations by Wade's company. Thus, MUR 5666 in fact represents the Commission's pursuit of civil liability against a respondent who had pleaded guilty to the same FECA violation in a criminal case. See Factual and Legal Analysis for Mitchell Wade, MUR 5666 (June 19, 2006); Factual and Legal Analysis for MZM, Inc., MUR 5666 (June 19, 2006); Joint Conciliation Agreement for Mitchell Wade, MZM, Inc., MUR 5666 (Oct. 31, 2007).

Further, in MUR 6526, the Commission did not pursue respondent Carper in a *separate* enforcement proceeding, but instead entered into a *global* settlement with the respondent and DOJ, after having approved an addendum to the respondent's criminal plea agreement. Addendum/Conciliation Agreement, MUR 6526 (July 2, 2013). The addendum included respondent's agreement not to volunteer or engage in work for any federal political committee or campaign in a capacity involving finances or disclosure reports for five years.

Respondents offer all of these matters for the premise that Babulal Bera was not on "fair and adequate notice" that despite the guilty plea, he might still face civil liability with the Commission. Bera Supp. Resp. at 5-6. We note, however, that the Commission's decision to exercise its prosecutorial discretion to dismiss certain matters does not affect its ability to later pursue enforcement under other circumstances. Indeed, as noted *infra*, additional precedent exists in which the Commission elected to pursue enforcement against respondents who had already pleaded guilty to FECA violations.

⁴⁰ See MUR 6162 (Sohn) (personal use of campaign funds); MUR 5758 (O'Donnell) (contributions in the name of another); MUR 5666 (Wade) (same).

1 In further support of proceeding in this matter, we note the extensive scope of Babulal
2 Bera's scheme and his own significant contribution history. Specifically, Babulal Bera used
3 approximately 90 conduits from all over the country who made roughly 130 contributions
4 totaling more than a quarter of a million dollars to one political committee. This scheme lasted
5 three years, spanning two separate election cycles. Furthermore, Babulal Bera's overall record
6 of contributions belies the Response's characterization of him as a "political novice."⁴¹ Since
7 2009, Babulal Bera has contributed \$106,300 to candidate committees (excluding the
8 contributions made through conduits), \$50,400 to joint fundraising committees, and \$70,000 to
9 independent expenditure-only committees.⁴² Finally, as to Respondents' assertion that Babulal
10 Bera's conduct had no corrupting effect, the U.S. Supreme Court concluded in *Buckley v. Valeo*
11 that large contributions from family members are not without risk.⁴³

12 Although much of the described conduct has expired under the statute of limitations, we
13 believe a reason to believe finding is appropriate in this matter given the overall scope of Babulal
14 Bera's scheme. Currently, the illegal contributions made to the Committee during the 2010
15 election cycle appear to be beyond the statute of limitations. We do not know the extent to
16 which the \$43,400 in illegal contributions made during the 2012 election cycle remain, but given
17 that Babulal Bera's reimbursements continued until June 2012, we believe there may still be a
18 significant amount. In any event, because all of the conduct was part of the same scheme, we

⁴¹ See Bera Supp. Resp. at 7.

⁴² Search results for Babulal Bera's Individual Contributions, FEC, <http://docquery.fec.gov/cgi-bin/qind/>. We further note that Babulal's \$70,000 in contributions to super PACs — including \$50,000 to a super PAC in June 2012 — undermines Respondents' assertion that Babulal was unsophisticated and uninformed about "alternative, lawful vehicles for providing unlimited support for his son's campaign." Bera Supp. Resp. at 7.

⁴³ Bera Supp. Resp. at 7-8. See *Buckley v. Valeo*, 424 U.S. 1, 51 n.59 (1976) ("Although the risk of improper influence is somewhat diminished in the case of large contribution from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as nonfamily contributors.").

1 recommend that the Commission consider its full scope in assessing whether to dismiss this
2 matter at this initial stage. The scale of Babulal Bera's conduct sets his actions apart from
3 previous matters in which the Commission dismissed allegations to which respondents were
4 criminally prosecuted. Notably, the amount in violation in this matter, over \$260,000, far
5 exceeds those dismissed matters cited by the Respondents.⁴⁴ Indeed, Babulal Bera's conduit
6 contribution scheme appears to be among the largest considered by the Commission.⁴⁵ The
7 Commission pursued and conciliated violations of a similar scope in MUR 6143 (Danielczyk),
8 which involved \$198,691 in contributions in the name of another.⁴⁶ In that matter, the
9 Commission accepted a
10 \$50,000 conciliated penalty, ⁴⁷ Thus, we believe civil
11 enforcement is appropriate in this matter, and the circumstances enumerated by the Respondents
12 are more appropriately considered during conciliation.

13 Accordingly, for the conduct that remains within the statute of limitations, we
14 recommend that the Commission find that Babulal Bera knowingly and willfully violated
15 52 U.S.C. §§ 30116(a) and 30122. This finding will allow the gathering of additional
16 information with which we can assess the appropriateness of a civil sanction of Bera.

17 As to Kanta Bera, Rep. Bera, and the Committee, we recommend that the Commission
18 take no action at this time, given the lack of information about the extent of their knowledge of
19 or involvement in Babulal Bera's conduit scheme. We note that Babulal Bera's plea agreement

⁴⁴ See MUR 6233 (Hsu) (contributions in the name of another totaling \$140,000); MUR 6232 (Gill) (same totaling \$66,700); MUR 6231 (Marshall) (same totaling \$50,000).

⁴⁵ Lower dollar matters in which the Commission pursued respondents who had been criminally prosecuted include MUR 5758 (O'Donnell) (\$32,000) and MUR 5666 (Wade) (\$78,000).

⁴⁶ Factual & Legal Analysis, MUR 6143.

⁴⁷ Conciliation Agreement ¶VII, MUR 6143.

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1 states that he solicited conduits "directly and indirectly," suggesting that, in addition to the
2 conduits themselves,⁴⁸ others may have helped or assisted in his scheme.⁴⁹ In that agreement,
3 DOJ stated that it would not prosecute Kanta Bera, but that statement could imply that she had
4 some involvement. To better ascertain whether and to what extent others knew of or were
5 involved in Babulal Bera's scheme, we believe an investigation is merited.

6 **B. Allegation Regarding the Committee's Disgorgement of Illegal Contributions**

7 The Complaint alleges that Rep. Bera and the Committee violated the Act by failing to
8 timely refund the illegal contributions to their original source, resulting in the receipt of an
9 excessive contribution.⁵⁰ In light of the proposed investigation into the Committee's potential
10 knowledge of the contributions in the name of another at the time of their receipt, we make no
11 recommendation at this time as to the appropriateness of the Committee's disgorgement
12 following Babulal Bera's guilty plea.

13 **IV. PROPOSED INVESTIGATION**

14 We intend to seek further information concerning Babulal Bera's conduit reimbursement
15 scheme, including an accounting of the illegal contributions and reimbursements. This
16 information will allow us to ascertain the precise statute of limitation dates and the remaining

⁴⁸ The U.S. Attorney reportedly stated that a decision has not been made whether to charge any of the straw donors, who "obviously knew what was going on." See Walsh, *Bera's Father Pleads Guilty*.

⁴⁹ See 11 C.F.R. § 110.4(b)(1)(iii) (prohibiting any person from knowingly helping or assisting a person in making a contribution in the name of another).

⁵⁰ Compl. at 1. Commission regulations provide that if a political committee accepts contributions, which at the time did not appear to be made in the name of another, but which it later discovers are illegal based on new evidence not available to the committee at the time of receipt and deposit, the committee shall refund the contribution to the contributor within thirty days of the date on which the illegality is discovered. 11 C.F.R. § 103.3(b)(2).

1 amounts in violation and to assess the level of knowledge and involvement of the other
2 respondents in order to make the appropriate substantive recommendations to the Commission.⁵¹
3 We will begin our investigation by contacting the U.S. Attorney's Office for the Eastern
4 District of California, which prosecuted the criminal case against Babulal Bera. In the event
5 further investigation is necessary, we recommend that the Commission authorize the use of
6 compulsory process as necessary. In light of the expiring statute of limitations, we will conduct
7 our investigation as expeditiously as possible.

⁵¹ According to Babulal Bera's plea agreement, conduits made contributions to the Committee between January 31, 2011 and at least December 5, 2011, during the 2012 election cycle. Plea Agmt. Ex. A. However, Babulal Bera's reimbursements for these contributions occurred between April 26, 2011 and at least June 9, 2012. *Id.* The apparent lag time in Babulal's reimbursements may extend the statute of limitations on the conduit contributions.

V. RECOMMENDATIONS

1. Find reason to believe Babulal Bera knowingly and willfully violated 52 U.S.C. §§ 30116(a) and 30122;
2. Take no action at this time as to Kanta Bera;
3. Take no action at this time as to Amerish "Ami" Bera and Ami Bera for Congress and Jennifer May in her official capacity as treasurer;
4. Approve the attached Factual and Legal Analysis;
5. Approve compulsory process; and
6. Approve the appropriate letter.

Daniel A. Petalas
Acting General Counsel

Kathleen Guith
Acting Associate General Counsel for
Enforcement

August 10, 2016
Date

Stephen Gura by MA
Stephen Gura
Deputy Associate General Counsel for
Enforcement

Mark Allen
Mark Allen
Assistant General Counsel

Meredith McCoy
Meredith McCoy
Attorney

Attachment:
Factual and Legal Analysis for Babulal Bera

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: Babulal Bera

MUR: 7072

4 **I. INTRODUCTION**

5 The Complaint in this matter is based on a guilty plea filed in Federal District Court by
6 Babulal Bera, father of U.S. Representative Amerish "Ami" Bera, in which Babulal Bera
7 admitted making approximately \$270,000 in contributions in the names of about 90 other
8 individuals to Ami Bera for Congress (the "Committee") during the 2010 and 2012 election
9 cycles.¹ Babulal Bera acknowledges his guilty plea, but requests that the Commission dismiss
10 the matter as a matter of prosecutorial discretion.²

11 As discussed below, the criminal plea demonstrates that Babulal Bera knowingly and
12 willfully violated 52 U.S.C. §§ 30116(a) and 30122. The Commission therefore finds reason to
13 believe Babulal Bera knowingly and willfully violated the Act by reimbursing contributions to
14 his son's congressional campaign.

15 **II. FACTUAL BACKGROUND**

16 Representative Ami Bera (CA-7) ran unsuccessfully for Congress in 2010, won his seat
17 in 2012, and was re-elected in 2014. On May 10, 2016, Babulal Bera pleaded guilty to violating
18 52 U.S.C. §§ 30116(a)(1)(A) and 30122 by making contributions in the names of others and
19 making excessive contributions during the 2010 and 2012 election cycles.³ According to the

¹ Compl. at 1, Ex. A (May 23, 2016). Ami Bera for Congress is Ami Bera's principal campaign committee.

² Babulal Bera Supp. Resp. at 1 (June 30, 2016) ("Bera Supp. Resp.").

³ Plea Agreement, *United States v. Bera*, No. 2:16-cr-00097 (E.D. Cal. May 10, 2016) ("Plea Agmt."). Babulal Bera is scheduled to be sentenced on August 18, 2016. See Memorandum from Lynda M. Moore, U.S. Probation Office to Michele Krueger, Courtroom Deputy Clerk of the Hon. Tory L. Nunley (July 5, 2016) (stating that sentencing had been rescheduled from Aug. 4, 2016 to Aug. 18, 2016).

1 Factual Basis for Pleas, Babulal Bera reimbursed approximately 90 contributors who made more
2 than 130 contributions to the Committee.⁴

3 The Factual Basis for Pleas states that, during the 2010 election cycle, Babulal Bera made
4 the maximum allowable contribution to the Committee for the primary and general elections —
5 then a total of \$4,800 — between April 4, 2009, and May 4, 2009.⁵ He then “directly and
6 indirectly solicited relatives, friends and acquaintances to make the maximum allowable federal
7 campaign contribution [to the Committee], with the understanding that he would reimburse them
8 in whole or in part.”⁶ From approximately May 11, 2009, through at least August 20, 2010,
9 these individuals contributed a total of approximately \$225,326 to the Committee.⁷ Babulal Bera
10 provided full or partial refunds to these individuals totaling more than \$220,000.⁸

11 According to the Factual Basis for Pleas, Babulal Bera conducted a similar scheme
12 during the 2012 election cycle.⁹ On approximately January 5, 2011, Babulal Bera contributed
13 the maximum allowable amount for the primary and general elections — then \$5,000 — to the
14 Committee. Babulal Bera again solicited family, friends, and acquaintances to make the
15 maximum allowable contribution to the Committee with the understanding that he would
16 reimburse the conduits for their donations.¹⁰ The plea agreement indicates that from at least
17 January 31, 2011, through at least December 5, 2011, these individuals contributed a total of

⁴ Plea Agmt. Ex. A (Factual Basis for Pleas).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

1 approximately \$43,400 to the Committee.¹¹ Between April 26, 2011, and at least June 9, 2012,
2 these individuals received full reimbursements for their contributions from Babulal Bera, which
3 were delivered either by Babulal Bera himself or through third parties working at his behest.¹²
4 The Factual Basis for Pleas indicates that at least some of the reimbursement checks were drawn
5 on Bera's business accounts.¹³

6 In his Response, Babulal Bera acknowledges his plea agreement, but argues that in light
7 of his taking "full responsibility for his conduct," the Commission should dismiss the Complaint
8 as a matter of prosecutorial discretion.¹⁴ He contends that his "acceptance of responsibility,
9 remorse, age, and health issues, along with his lack of prior experience making political
10 contributions" support dismissal.¹⁵

11 III. LEGAL ANALYSIS

12 A. Babulal Bera Knowingly and Willfully Made Contributions in the Names of 13 Others

14 In the 2010 election cycle, the Act prohibited an individual from making contributions to
15 a candidate which, in the aggregate, exceeded \$2,400 per election.¹⁶ In the 2012 cycle, the
16 contribution limit was \$2,500 per election.¹⁷ The Act further provides that no person shall make
17 a contribution in the name of another or knowingly permit his name to be used to effect such a

¹¹ *Id.*

¹² Information ¶13, *United States v. Babulal Bera*, No. 2:16-cr-00097 (E.D. Cal. May 9, 2016) ("Information").

¹³ Plea Agmt. Ex. A.

¹⁴ Bera Supp. Resp. at 1.

¹⁵ *Id.* The Response notes that Babulal Bera is 83 years old. *Id.*

¹⁶ 52 U.S.C. § 30116(a)(1)(A).

¹⁷ *Id.* See 11 C.F.R. § 110.1(b)(1).

1 contribution, and that no person shall knowingly accept a contribution in the name of another.¹⁸

2 This provision proscribes both "false name" contributions and "straw donor" or "conduit"
3 contributions.¹⁹

4 Babulal Bera admits in his plea agreement that he knowingly and willfully engaged in a
5 scheme to make excessive contributions in the names of others to his son's campaign committee
6 during two successive election cycles.²⁰ Specifically, he admits that after he reached his
7 individual contribution limit to the Committee for the 2010 and 2012 election cycles, he "directly
8 and indirectly" solicited approximately 90 other individuals to make contributions to the
9 Committee in their own names, with the promise that he would reimburse them for their
10 donations.²¹ Bera also admits that he reimbursed his conduits, in whole or in part. In total, he
11 reimbursed more than \$220,000 in contributions to the Committee during the 2010 election cycle
12 and \$43,400 in contributions to the Committee during the 2012 election cycle. Accordingly,
13 Babulal Bera knowingly and willfully violated 52 U.S.C. §§ 30116(a)(1)(A) and 30122 by
14 making excessive contributions in the names of others.

15 Although Bera acknowledges his guilt, he argues that the Commission should dismiss
16 these allegations as a matter of prosecutorial discretion, on the grounds of his age and that he has
17 "taken full responsibility for his conduct" and his contributions "were made out of a desire to
18 support his son's congressional campaign, rather than with the corrupt purpose of obtaining a
19 quid pro quo benefit."²²

¹⁸ 52 U.S.C. § 30122.

¹⁹ 11 C.F.R. § 110.4(b); *United States v. O'Donnell*, 608 F.3d 546, 549, 553 (9th Cir. 2010).

²⁰ See generally Information; Plea Agmt. Ex. A.

²¹ *Id.*

²² Bera Supp. Resp. at 1. Babulal Bera also asserts that he was deprived of the required 15-day period to respond to a "legally sufficient complaint," because the Complainant's address was not shown on the Complaint,

1 The Commission recognizes that Babulal Bera has pleaded guilty to the same violation of
2 the Act for which it now considers civil enforcement and that he will likely face some criminal
3 penalty at his sentencing scheduled for August 18, 2016. And while the Commission has at
4 times dismissed matters against respondents who have already been found criminally liable for
5 the same conduct,²³ it has also at times elected to exercise its parallel jurisdiction.²⁴ Bera
6 acknowledges as much, but contends that the Commission has only exercised its parallel
7 jurisdiction in cases in which FECA liability was not completely resolved in the respondent's
8 criminal plea.²⁵ To the contrary, the Commission has found reason to believe as to, and reached

and he did not initially receive a copy of the envelope used to transmit the Complaint, which did show that address. Babulal Bera Resp. at 1-2 (June 24, 2016) ("Bera Resp."); Bera Supp. Resp. at 2-5; *see also* 11 C.F.R. § 111.4-111.5.

Contrary to Bera's assertion, he had a fair opportunity to respond to a complaint that was at least substantially compliant, and he did so. A complaint must, at minimum, provide the full name and address of the complainant, be sworn and notarized, clearly identify respondents, and provide a clear statement of the facts, a basis for its assertions, and any accompanying documentation. 11 C.F.R. § 111.4. Upon receipt of a complaint, OGC "shall review the complaint for substantial compliance with the technical requirements of 11 CFR 111.4, and, if it complies with those requirements shall within five (5) days after receipt notify each respondent." *Id.* at § 111.5. OGC correctly determined that the Complaint, plus the address shown on the transmittal envelope, at least substantially met the regulatory requirements, and OGC's notification to Babulal Bera reflected that correct determination. OGC's initial omission of a copy of the Complaint's envelope did not undermine the effect of that notice.

In any event, Babulal Bera suffered no harm by not immediately receiving a copy of the transmittal envelope with the Complainant's address. OGC provided a copy of the envelope to Bera's counsel on June 27, 2016, and he filed a lengthy response three days later. We have considered that response in making our recommendations here.

²³ *See* Bera Supp. Resp. at 5-6 (citing MUR 6233 (Hsu); MUR 6232 (Gill); MUR 6231 (Marshall)). In its dismissal of these matters, the Commission highlighted mitigating factors that weighed against further enforcement, almost none of which are present here, *see* Factual & Legal Analysis at 6, MUR 6233 (noting Hsu's indigence, that DOJ was seeking forfeiture of all property obtained as a result of Hsu's offenses, his 24-year prison term, and the existence of numerous other civil judgments against him); MUR 6231 (Marshall) (noting respondent's indigence, 41-month prison sentence, and criminal restitution order of \$467,000, which Marshall was unlikely to be able to pay); MUR 6322 (noting Gill's sentence of 12 months imprisonment, plus and home confinement, and a substantial fine). Babulal Bera will be sentenced on August 18, 2016; however, there is no indication that he is indigent, and he does not appear to be facing any other civil judgments for his conduct.

²⁴ *See, e.g.*, Conciliation Agreement, MUR 6465 (Junker); Conciliation Agreement, MUR 6162 (Sohn); Conciliation Agreement, MUR 6143 (Danielczyk); Conciliation Agreement, MUR 5758 (O'Donnell); Joint Conciliation Agreement, MUR 5666 (Wade).

²⁵ Bera Supp. Resp. at 5-6 (citing MUR 6528 (Grimm); MUR 6526 (Carper); MUR 5666 (MZM)). Respondents offer MUR 5666 for the premise that the Commission's conciliation agreement with Mitchell Wade in that matter reflected multiple FECA violations, not only that to which Wade pleaded guilty. We note, however, that

1 conciliation agreements with, respondents on the same FECA violations to which they also
2 pleaded guilty.²⁶

3 In further support of proceeding in this matter, the Commission notes the extensive scope
4 of Babulal Bera's scheme and his own significant contribution history. Specifically, Bera used
5 approximately 90 conduits from all over the country who made roughly 130 contributions
6 totaling more than a quarter of a million dollars to one political committee. This scheme lasted
7 three years, spanning two separate election cycles. Furthermore, Bera's overall record of
8 contributions belies the Response's characterization of him as a "political novice."²⁷ Since 2009,
9 Babulal Bera has contributed \$106,300 to candidate committees (excluding the contributions
10 made through conduits), \$50,400 to joint fundraising committees, and \$70,000 to independent
11 expenditure-only committees.²⁸ Moreover, the scale of Babulal Bera's conduct sets his actions

the Commission found reason to believe as to Wade for precisely the same violation — 2 U.S.C. § 441f, now 52 U.S.C. § 30122 — to which Wade had already pleaded guilty and that the conciliation agreement with Wade was in fact a joint conciliation agreement with both Wade and his company. The additional violations listed in the conciliation agreement reflect the violations by Wade's company. Thus, MUR 5666 in fact represents the Commission's pursuit of civil liability against a respondent who had pleaded guilty to the same FECA violation in a criminal case. See Factual and Legal Analysis for Mitchell Wade, MUR 5666 (June 19, 2006); Factual and Legal Analysis for MZM, Inc., MUR 5666 (June 19, 2006); Joint Conciliation Agreement for Mitchell Wade, MZM, Inc., MUR 5666 (Oct. 31, 2007).

Further, in MUR 6526, the Commission did not pursue respondent Carper in a *separate* enforcement proceeding, but instead entered into a *global* settlement with the respondent and DOJ, after having approved an addendum to the respondent's criminal plea agreement. Addendum/Conciliation Agreement, MUR 6526 (July 2, 2013). The addendum included respondent's agreement not to volunteer or engage in work for any federal political committee or campaign in a capacity involving finances or disclosure reports for five years.

Respondent offers all of these matters for the premise that Babulal Bera was not on "fair and adequate notice" that despite the guilty plea, he might still face civil liability with the Commission. Bera Supp. Resp. at 5-6. The Commission's decision to exercise its prosecutorial discretion to dismiss certain matters, however, does not affect its ability to later pursue enforcement under other circumstances. Indeed, as noted *infra*, additional precedent exists in which the Commission elected to pursue enforcement against respondents who had already pleaded guilty to FECA violations.

²⁶ See MUR 6162 (Sohn) (personal use of campaign funds); MUR 5758 (O'Donnell) (contributions in the name of another); MUR 5666 (Wade) (same).

²⁷ See Bera Supp. Resp. at 7.

²⁸ Search results for Babulal Bera's Individual Contributions, FEC, <http://docquery.fec.gov/cgi-bin/qind/>. Further, Bera's \$70,000 in contributions to super PACs — including \$50,000 to a super PAC in June 2012 —

1 apart from previous matters in which the Commission dismissed allegations to which
2 respondents were criminally prosecuted. Notably, the amount in violation in this matter, over
3 \$260,000, far exceeds those dismissed matters cited by the Respondents.²⁹ Indeed, Babulal
4 Bera's conduit contribution scheme appears to be among the largest considered by the
5 Commission.³⁰ The Commission pursued and conciliated violations of a similar scope in MUR
6 6143 (Danielczyk), which involved \$198,691 in contributions in the name of another.³¹ Finally,
7 as to Bera's assertion that his conduct had no corrupting effect, the U.S. Supreme Court
8 concluded in *Buckley v. Valeo* that large contributions from family members are not without
9 risk.³² Accordingly, the Commission finds reason to believe Babulal Bera knowingly and
10 willfully violated 52 U.S.C. §§ 30116(a) and 30122.

undermines his assertion that he was unsophisticated and uninformed about "alternative, lawful vehicles for providing unlimited support for his son's campaign." Bera Supp. Resp. at 7.

²⁹ See MUR 6233 (Hsu) (contributions in the name of another totaling \$140,000); MUR 6232 (Gill) (same totaling \$66,700); MUR 6231 (Marshall) (same totaling \$50,000).

³⁰ Lower dollar matters in which the Commission pursued respondents who had been criminally prosecuted include MUR 5758 (O'Donnell) (\$32,000) and MUR 5666 (Wade) (\$78,000).

³¹ Factual & Legal Analysis, MUR 6143.

³² Bera Supp. Resp. at 7-8. See *Buckley v. Valeo*, 424 U.S. 1, 51 n.59 (1976) ("Although the risk of improper influence is somewhat diminished in the case of large contribution from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as nonfamily contributors.").