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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

PRE-MUR 583
FIRST SUBMISSION: 1/29/2015
LAST SUBMISSION: 2/24/2016
DATE ACTIVATED: 1/19/2016

CELA

EXPIRATION OF SOL: 12/27/2006 to 4/25/2020¹
ELECTION CYCLES: 2002 to 2014

SOURCE: *Sua Sponte* Submission
RESPONDENT: Michigan Democratic State Central Committee and
Ramesh Verma in his official capacity as treasurer

RELEVANT STATUTES: 52 U.S.C. § 30102(c)
52 U.S.C. § 30102(h)(1)
52 U.S.C. § 30103(c)
52 U.S.C. § 30104(b)
52 U.S.C. § 30107(a)(9)
11 C.F.R. § 102.2(a)(2)
11 C.F.R. § 102.9
11 C.F.R. § 102.10
11 C.F.R. § 103.3
11 C.F.R. § 104.3
11 C.F.R. § 110.4(c)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Michigan Democratic State Central Committee ("MDP") filed a *sua sponte* submission ("Submission") to notify the Commission of potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act") arising out of daily bingo games that MDP operated for more than a decade to raise money for its federal account. The materials

¹ The last violation occurred on or about May 1, 2014, and the first occurred over a decade prior. On July 20, 2015, MDP executed the first of three successive 120-day tolling agreements.

1 provided indicate that MDP accepted excessive cash contributions, failed to record contributions
2 and disbursements, failed to deposit cash contributions, made prohibited cash disbursements, and
3 understated total receipts and disbursements in violation of the Act. MDP also reported falsified
4 contributions and fabricated refunds to conceal its failure to record the bingo-related
5 contributions correctly. MDP further improperly identified as Treasurer a person to whom it had
6 not assigned the duties and responsibilities of that office and who did not in fact sign or review
7 disclosure reports filed in his name.

8 Within the statute of limitations period, it appears that MDP falsely reported more than
9 12,000 contributions totaling over \$4.6 million. MDP has indicated that full knowledge and
10 coordination of the improper activity was limited to two longtime party leaders with expertise in
11 campaign finance who occupied senior management and compliance positions. When they left
12 the committee, the violations came to light. MDP's succeeding party leadership promptly
13 conducted an internal investigation and discontinued the committee's bingo fundraising
14 operations.

15 We recommend that the Commission find reason to believe that MDP violated the Act in
16 connection with its recordkeeping and reporting obligations, its handling of cash transactions,
17 and its failure to identify the Treasurer accurately. In addition, we recommend that the
18 Commission find reason to believe that MDP knowingly and willfully violated the Act when it
19 reported false contributions and refunds to conceal inadequate recordkeeping. We also
20 recommend that the Commission authorize pre-probable cause conciliation.

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II. FACTUAL SUMMARY

A. Procedural Background

On January 29, 2015, MDP notified the Commission of potential violations relating to MDP's bingo fundraising operations.² Although the initial submission generally described the committee's bingo procedures and attached records from a representative game, it did not fully explain the conduct and potential violations. MDP tolled the statute of limitations and indicated that it would provide additional documents and information. In January 2016, MDP made certain 2012 bingo records available for review and arranged teleconferences with members of its compliance staff. Despite those steps, we have been unable to obtain a comprehensive record of all transactions involved — both because of the volume of activity and the inadequate recordkeeping practices at issue. We nonetheless obtained sufficient information to proceed, and we recommend that the Commission make findings concerning the violations apparent on the present record within the limitations period without engaging in additional time-consuming investigative activity.

² See Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), 72 Fed. Reg. 16,695 (Apr. 5, 2007) ("*Sua Sponte* Policy").

1 The present record amply demonstrates reason to believe that the violations occurred and
2 provides a sound basis for understanding their scope. And unlike some complaint-generated
3 matters under review, the *sua sponte* submission involves admitted conduct and reflects the
4 submitter's desire to resolve this proceeding without undue delay.

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11 **B. MDP's Bingo Fundraising Operations**

12 **1. The Bingo Games**

13 For approximately 14 years, until May 2014, MDP operated nine weekly bingo games to
14 raise money for its federal account.³ A bingo "game" consisted of two activities: traditional
15 bingo and instant winner lottery.⁴ Traditional bingo included a progressive jackpot that
16 continued to grow until won.⁵ Approximately 120 players attended each game, and many
17 players attended multiple games a week and dozens throughout the year.⁶ The average player
18 spent approximately \$100, and prizes ranged from one dollar to over \$1,000.⁷ MDP held

³ The games began "[m]ore than 10 years ago" and were terminated in May 2014. Submission at 2, 8 (Jan. 29, 2015). It appears that MDP operated federal bingo games since at least 2001. See MDP Amended 2001 Mid-Year Rpt. at 133-316 (May 8, 2002) (reporting disbursements for "Bingo Winnings").

⁴ Submission at 2.

⁵ *Id.*

⁶ *Id.* ("[E]ach bingo game generally ranged from 80 to 160 players."); *id.* at 7.

⁷ *Id.* at 2-3 ("[A]n individual player spent approximately \$77 to \$123 per bingo . . ."); *id.* at 2, 8.

1 individual state licenses for the nine weekly games, and maintained separate bank accounts to
2 deposit receipts and pay certain administrative costs such as the purchase of bingo supplies.⁸ A
3 chairperson managed each game and oversaw a staff of about a dozen workers.⁹

4 All transactions at the games were in cash. Players paid cash to purchase bingo cards and
5 lottery tickets, and bingo workers paid prizes using the cash receipts.¹⁰ MDP also used cash to
6 pay staff and to make deposits in an account designated for the progressive jackpot, both of
7 which were omitted from the committee's ultimate accounting of its bingo activity.¹¹ The
8 chairpersons deposited the remaining cash receipts in the corresponding bingo license account —
9 that is, what remained after paying out prizes, paying the staff, and making deposits to the
10 progressive jackpot account.¹²

11 MDP did not record players' identifying information at the time of purchase.¹³ It appears
12 this omission was intentional; senior MDP staff perceived such recordkeeping as a risk to

⁸ Submission at 2-3; e.g., Dec. 2012 Packet for License #21112 at 8 (deposit ticket). MDP asserts that it treated the bingo license accounts as federal accounts. Summary of January 5, 2016 Meeting with James C. Lamb, Counsel for MDP at 2 (Jan. 12, 2016) ("Summary of Meeting with Counsel").

⁹ See, e.g., Dec. 2012 Packet for License #21112 at 89 (Workers Service Record).

¹⁰ Submission at 3, 6.

¹¹ Summary of Meeting with Counsel at 2; Summary of January 13, 2016 Teleconference with Alaina Pemberton, Compliance Director, MDP at 4 (Jan. 15, 2016) ("Summary of Pemberton Telecon."); e.g., Dec. 2012 Packet for License #21112 at 65 (\$653 deposit to progressive jackpot account); *id.* at 9, 15 (\$350 payment for worker compensation).

Pemberton was the Compliance Director at the time of the Submission and provided information about MDP's accounting and reporting. Although Pemberton recently departed from MDP, we refer to her as the "current" Compliance Director to distinguish her from former Compliance Director Jody Weissler Defoe.

¹² See, e.g., Dec. 2012 Packet for License #21112 at 8 (\$5,618 deposit following game held on December 29, 2012).

¹³ Submission at 7.

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1 attendance and revenue.¹⁴ In contrast, MDP kept many other records that were required or
2 recommended by the Michigan Lottery Charitable Gaming Division, including state gambling
3 forms, prize vouchers, point-of-sale receipts, canceled checks for administrative costs, deposit
4 slips, employee food orders, and other items.¹⁵ The prize vouchers recorded the date and amount
5 of prizes \$60 and above, along with those prize winners' name and address.¹⁶

6 In both the Submission and relevant disclosure reports, MDP understated its total bingo-
7 related disbursements and receipts in several ways.¹⁷ First, MDP used the prize vouchers to
8 account for cash prize disbursements and to determine corresponding bingo receipts.¹⁸ But
9 because those vouchers recorded winnings only \$60 and above, MDP omitted about one-third of
10 all prizes awarded. Second, MDP did not include in its totals any of the cash receipts that were
11 diverted to the progressive jackpot account.¹⁹ Third, MDP also omitted the cash paid directly to
12 bingo staff from its totals of receipts and disbursements.²⁰ Figure 1 therefore estimates MDP's
13 bingo activity during the statute of limitations period based on figures presented in the

¹⁴ Summary of Pemberton Telecon. at 5 (explaining that the Manager of Bingo Halls informed her that bingo players were hesitant to give out their information and, if required to do so, would likely play somewhere else).

¹⁵ See Mich. Admin. Code R. 432.21328 (game records); *id.* R. 432.21334 (financial records); *see, e.g.*, Dec. 2012 Packet for License #21112; Nov. 2012 Voucher Packet for License #21274. The point-of-sale system enabled a complete, digitalized accounting of all transactions involving bingo cards including the time and specific item(s) purchased. *See, e.g.*, Dec. 2012 Packet for License #21112 at 11-12 (Door Sales Summary). The available records do not indicate a similar point-of-sale system for instant winner lottery.

¹⁶ Submission at 3 (describing procedures for recording "large prizes"). MDP's disclosure reports indicate that a large prize was \$60 and above. The Submission claims that the vouchers also collected players' occupation and employer name, but that is contradicted by the available vouchers. *Id.*; *see, e.g.*, Nov. 2012 Voucher Packet for License #21274.

¹⁷ See Submission at 3 (incorrect summary of total receipts and expenses for 2011 through 2014); MDP *Sua Sponte* Submission Supplement (Mar. 4, 2015) (same for 2010).

¹⁸ Summary of Pemberton Telecon. at 3.

¹⁹ *Id.* at 4.

²⁰ Summary of Meeting with Counsel at 2.

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Submission, correcting for those omissions.²¹ Within the limitations period, MDP understated contributions by approximately \$4,475,990 and disbursements by approximately \$4,032,013.

Figure 1. — Estimated Bingo Fundraising Activity Within SOL

Calendar Year	Bingo Receipts	Prize Disbursements	Admin. Costs & Unreported Progressive Jackpot Deposits	Net Proceeds
2010 within SOL	\$2,085,024	\$1,259,104	\$641,601	\$184,319
2011	\$4,210,703	\$2,874,946	\$940,095	\$395,661
2012	\$4,423,896	\$3,047,896	\$955,513	\$420,488
2013	\$4,299,119	\$3,034,750	\$929,868	\$334,501
2014	\$1,424,876	\$978,756	\$351,312	\$94,808
Total	\$16,443,618	\$11,195,451	\$3,818,389	\$1,429,777

2. False Contributor Lists

The submitted materials also reflect that MDP's bingo staff created a series of false contributor lists that were used to generate its disclosure reports to the Commission. After each game, the chairpersons created lists of the names and addresses of a small subset of players and attributed fictitious contribution amounts to each that were unconnected to the players' actual contributions, if any, at the game.²² Whereas the average player contributed around \$100, the

²¹ The totals in Figure 1 reflect our best estimates for each item and, as noted, adjust the totals provided in the Submission to account for the three accounting issues addressed above. To determine "Bingo Receipts," we added to the figures in the Submission the amounts for prizes below \$60, deposits in the progressive jackpot account, and staff payments. To "Prize Disbursements," we added prizes below \$60. To "Administrative Costs," we added payments to the bingo staff and deposits in the progressive jackpot account. We presently lack comprehensive data for some of those additional amounts. As such, we derived amounts for prizes below \$60 as 30.5% of total prizes, deposits in the progressive bingo jackpot account as 2.7% of total receipts, and payments to the bingo staff as \$360 per game, all based on consistent per-game averages reflected across the selection of game records in our possession.

²² Submission at 4-6. In light of how the games operated — without recording individual purchases for what was often more than a hundred players in attendance — as well as the large size of the attributed amounts compared to average contributions, it appears highly unlikely that the chairpersons recorded correct contribution amounts for any of the individuals included on these lists. *See id.* at 4 ("The practices followed by MDP resulted in some individuals who made contributions in excess of \$200 during a calendar year not being reported and other individuals were reported as making contributions they did not make.").

1 most common contribution amounts attributed to the few players identified on the lists in our
2 possession were \$300 and \$400, with none below \$150 and some as high as \$750. The
3 chairpersons provided the false lists to the Compliance Director as part of monthly
4 documentation packages for each bingo license.²³ Compliance staff then entered that
5 information in databases used to prepare MDP's disclosure reports.²⁴ At least one such staffer
6 was evidently unaware that the information sent by the chairpersons was false.²⁵

7 The Submission illustrates how one chairperson made the contributor list in connection
8 with a representative game held on September 1, 2012. The list consisted of sixteen players
9 (about 10% of the 155 actually in attendance) who were assigned fictitious contribution amounts
10 totaling \$5,750 (slightly less than half of the \$13,554 in actual receipts).²⁶ The chairperson
11 recorded amounts of \$400 for 12 players, \$300 for two players, \$200 for one player, and \$150
12 for one player.²⁷ Half of the listed players completed a prize voucher for receiving a prize
13 disbursement at that particular game.²⁸ The other half completed prize vouchers for games on
14 other dates in September 2012.²⁹ Based on the contributor lists in our possession, it appears that
15 multiple chairpersons followed these general procedures.

²³ *Id.* at 4-5.

²⁴ *Id.* at 6. Contributions were recorded in the databases as being paid by check or credit card when in fact all transactions were made in cash. *See, e.g.*, June 2012 Daily Cash Journal for License #21502.

²⁵ *See* Summary of January 19, 2016 Teleconference with Megan Lizotte, Data Director, MDP at 3-4 (Jan. 25, 2016) ("Summary of Lizotte Telecon.").

²⁶ Submission at 4; Bingo Weekly Cash Accountability for License #21112 (Sept. 1, 2012) (Attached here as Attachment 1); Contributor List for License #21112 (Sept. 1, 2012) (Attached here as Attachment 2).

²⁷ Attach. 2.

²⁸ MDP 2012 Amended Oct. Monthly Rpt. at 267-85 (Mar. 27, 2013). Based on contributor lists in our possession, it appears that the chairpersons commonly included names of players who completed a prize voucher at the corresponding game. We have no information to suggest that the chairpersons used names other than those of bingo players.

²⁹ *Id.* at 265-653 (reporting September 2012 bingo prize disbursements).

MDP apparently recognized that it risked falsely reporting aggregate contributions over the annual \$10,000 individual limit by assigning large contributions to a small proportion of players.³⁰ Accordingly, a "compliance staff person" would revise the contributor lists before they were entered into MDP's databases to remove those individuals with reported contributions at or near the limit.³¹ For example, the contributor list made in connection with the September 1, 2012, game originally identified 16 individuals, but three were subsequently crossed out.³² MDP had already reported in 2012 aggregate contributions of \$9,500, \$9,750, and \$10,000 in the names of those players.³³ The 13 remaining contributions were itemized, and the balance of cash receipts was moved to the unitemized contributions line of the relevant report.³⁴ We have identified nine other instances in which particular individuals were stricken from the 25 additional contributor lists in our possession.³⁵ Although the falsified lists suggest the possibility that MDP may have accepted excessive contributions from some of the identified players, it is unclear if any player actually made a \$10,000 aggregate contribution.³⁶ It appears that MDP's

³⁰ See 52 U.S.C. § 30116(a)(1)(D).

³¹ Submission at 5.

³² *Id.*; see Attach. 2.

³³ Submission, Ex. 4.

³⁴ Submission at 5.

³⁵ See Nov. 2012 Handwritten Lists for License #21274 at 17 (Karen White on November 9, 2012); Dec. 2012 Handwritten Lists for License #21112 at 12, 17-18, 21-22, 24 (Connie Schmidt on December 1, 15, 22, & 29, 2012; Karen White on December 1, 2012; and Sandy Sputa on December 15 & 29, 2012); Dec. 2012 Handwritten Lists for License #21502 at 16 (Audrey Dillon on December 30, 2012). Moreover, MDP's disclosure reports reveal hundreds of instances when a player who reportedly reached the \$10,000 limit nonetheless attended a game and therefore made an unreported contribution. It is likely that some of those players were similarly removed from contributor lists.

³⁶ MDP's disclosure reports indicate that some of the most frequent players might have exceeded the \$10,000 limit assuming they spent the average of \$100 per game. However, we cannot conclude that any player reached \$10,000 because we have no information regarding their unique spending habits.

1 former Compliance Director, Jody Weissler Defoe, was responsible for revising the contributor
2 lists and, therefore, likely understood that the lists were false.³⁷

3 MDP did not calculate the number or amount of falsified contributions. In our review of
4 MDP's disclosure reports, we found 12,805 potentially falsified contributions totaling
5 \$4,623,250 within the statute of limitations, although we believe that understates the true totals.³⁸

6 3. False Contribution Refunds

7 To further conceal its failure to record accurate player contributions, MDP also reported
8 contribution refunds that were in fact never made. The false refunds were reported to remedy the
9 apparent excessive contributions of certain players at or near the individual limit who were not
10 removed from the lists, we presume inadvertently. For instance, MDP reported that Connie
11 Schmidt made \$12,400 in aggregate contributions by July 30, 2012, and received a \$2,400 refund
12 on August 1, 2012.³⁹ However, there is no record of an actual \$2,400 refund payment.⁴⁰ Since
13 2008, MDP reported seven other contribution refunds totaling \$9,910 to players who purportedly
14 exceeded the limit.⁴¹ MDP's records, including its check registers which were reconciled with

³⁷ The compliance staff person who entered contributions into MDP's databases stated that Weissler Defoe occasionally gave her contributor lists with crossed-out names and instructed her to omit those names from entry. Summary of Lizotte Telecon. at 3; see also Summary of Meeting with Counsel at 2 (indicating that Weissler Defoe was responsible for crossing out the names from the lists). She reported that Weissler Defoe told her those players had reached their contribution limits for bingo, but claimed that she was unaware of the significance of Weissler Defoe's deletions, because of her inexperience with campaign finance and contribution limits generally. *Id.*

³⁸ To calculate these numbers, we identified contributions of \$150, \$200, \$300, or \$400 — the particular fictitious amounts cited in the Submission — reported in the names of bingo players on bingo days. The chairpersons used other fictitious amounts beside the four mentioned in the Submission, however, and MDP's reporting contains typos and other inconsistencies that may have hindered our ability to obtain comprehensive search results.

³⁹ Submission at 5 n.6; see MDP Amended 2012 Aug. Monthly Rpt. at 62 (Nov. 30, 2012); MDP Amended 2012 Sept. Monthly Rpt. at 7 (Apr. 8, 2012).

⁴⁰ Submission at 5 n.6.

⁴¹ MDP Amended 2012 Year-End Rpt. at 93 (Apr. 25, 2013) (\$235 refund to Evelyn Schales); MDP Amended 2012 Sept. Monthly Rpt. at 7 (Apr. 8, 2013) (\$2,400 refund to Connie Schmidt and \$675 refund to Litissha Faithful); MDP Amended 2011 Dec. Monthly Rpt. at 7 (Mar. 30, 2012) (\$3,500 refund to Connie Schmidt,

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1 its bank statements, do not reflect that those refunds actually occurred.⁴² The available
2 information suggests that Weissler Defoe again was responsible for reporting the false refunds.⁴³

3 **C. MDP's Discovery of the Violations**

4 MDP has indicated, without providing specific information, that former Party Chairman
5 Mark Brewer and former Compliance Director Jody Weissler Defoe — both of whom left MDP
6 in 2013 — were responsible for implementing the problematic bingo procedures.⁴⁴ Mark Brewer
7 served as Party Chairman for 18 years from 1995 to 2013, and was involved in efforts to legalize
8 political bingo fundraising in Michigan.⁴⁵ Weissler Defoe was MDP's Compliance Director and
9 served from 1999 to 2013.⁴⁶ As Compliance Director, she was apparently responsible for
10 keeping an account of receipts and disbursements, preparing the committee's disclosure reports,

\$2,600 refund to Sandra Sputa, and \$800 refund to Lo Wanda Booth); MDP Amended 2008 Oct. Monthly Rpt. at 7 (Apr. 7, 2009) (\$1,700 refund to Karen White and \$400 refund to Rose Banas). Each refund was reported as a negative contribution and no amount was reported on Line 28(a). The contributions on the 2008 Oct. Monthly Report listed "Contribution Refunded" as the memo item.

⁴² Summary of Pemberton Telecon. at 4.

⁴³ See Summary of Meeting with Counsel at 2 (indicating that Weissler Defoe reported the contribution refunds). Furthermore, the timing of Weissler Defoe's departure from MDP in 2013 coincided with a dramatic increase in reported excessive contributions (*i.e.*, the person who deleted purported contributors likely stopped doing so), coupled with a cessation of reported refunds to those players (*i.e.*, the person who previously reported false refunds stopped doing so).

⁴⁴ Summary of Meeting with Counsel at 1, 3. Both Brewer and Weissler Defoe have expertise in campaign finance, *see* Summary of Pemberton Telecon. at 2, 5, and apparently used that expertise to evade the regulatory requirements while concealing the resulting violations for over a decade. Although they no longer work for a political committee, Brewer and Weissler Defoe have held at least one training program on campaign finance and compliance, budgeting and fundraising, and best practices with local Democratic party organizations throughout Michigan. See Local Democratic Party Training — Mt. Pleasant Tickets, <https://www.eventbrite.com/e/local-democratic-party-training-mt-pleasant-tickets-16044465428#> (last visited Mar. 18, 2016).

⁴⁵ Summary of Meeting with Counsel at 3; Public Sector Consultants, Inc., *Public Sector Reports: Political News*, Feb. 16, 1995; Jerry Eisinger, *Capital News Briefs: Bingo Law*, LOWELL LEDGER, Mar. 1, 1995, at 20. On February 23, 2013, MDP elected Lon Johnson to replace Mark Brewer. Chris Gautz, *Longtime Chair Mark Brewer is Out; State Dems Elect Lon Johnson*, CRAIN'S DETROIT BUSINESS, Feb. 23, 2013. Brewer has since entered private practice as an attorney and currently represents the Oakland County Democratic Party before the Commission in connection with its bingo fundraising operations. Statement of Designation of Counsel, MUR 6978 (Oakland County Democratic Party) (July 24, 2015).

⁴⁶ Summary of Meeting with Counsel at 1, 3; Letter from Jody Weissler to FEC (July 18, 2000) (attaching MDP Amended Statement of Organization).

1 and signing those reports using the named Treasurer's electronic signature (without his review or
2 involvement).⁴⁷ MDP has indicated that Ramesh Verma, the committee's named Treasurer, was
3 intended from the start to serve merely as a "figurehead" to satisfy the Commission's obligation
4 that a treasurer be identified, and in fact had no involvement with the committee's accounting or
5 reporting.⁴⁸ MDP never designated an Assistant Treasurer.

6 In 2013, the succeeding party administration assumed the veracity of the contributor lists
7 and unwittingly reported dozens of excessive contributions totaling over \$75,000. This caused
8 the Commission's Reports and Analysis Division ("RAD") to issue a Request for Additional
9 Information ("RFAI") on April 2, 2014.⁴⁹ Upon receiving the RFAI, the new Compliance
10 Director alerted MDP's counsel and Party Chairman Lon Johnson.⁵⁰ Johnson promptly ordered
11 an internal investigation by the compliance staff and MDP's counsel, and apparently also
12 organized a review of MDP's bingo operations by an outside committee.⁵¹ On or about May 5,
13 2014, Johnson directed that MDP no longer use bingo to raise money for its federal account and,
14 on June 5, 2014, he terminated bingo fundraising altogether.⁵² MDP has partially amended
15 several disclosure reports from 2013 and 2014, but has yet to amend other affected reports.⁵³

⁴⁷ Summary of Pemberton Telecon. at 1, 4. The current Compliance Director, Alaina Pemberton — who was trained by Weissler Defoe — generally described the responsibilities of the position. *Id.* She also stated that Weissler Defoe, not Verma, instructed her to sign disclosure reports using Verma's electronic signature. *Id.* at 4.

⁴⁸ See *id.* at 4; Meeting with Counsel at 3.

⁴⁹ Summary of Pemberton Telecon. at 4; see Letter from Campaign Finance Analyst, RAD to Ramesh Verma, Treasurer, MDP (Apr. 2, 2014).

⁵⁰ Summary of Pemberton Telecon. at 4.

⁵¹ Submission at 8; Summary of Meeting with Counsel at 3.

⁵² Submission at 8.

⁵³ *Id.* The Submission represents that MDP "amended the 2014 first quarter FEC report and all of the 2013, 2012, and 2011 FEC reports by moving the misallocated-contributions from the itemized contribution line 11(a)(i) to the unitemized line 11(a)(ii)." *Id.* MDP in fact only amended its 2014 election cycle reports. MDP has not

1 **III. LEGAL ANALYSIS**

2 **A. Recordkeeping**

3 1. Failure to Record Contributions Received at the Games

4 The treasurer shall keep an account of all contributions received by or on behalf of a
5 political committee.⁵⁴ For any person who makes a contribution in excess of \$50, such account
6 shall include the person's name and address together with the date and amount of the
7 contribution.⁵⁵ For any person who makes a contribution or contributions aggregating more than
8 \$200 in a calendar year, such account shall include the person's name, address, occupation, and
9 employer together with the date and amount of any such contribution.⁵⁶ For all other
10 contributions — that is, small contributions below \$50 — such account shall be kept by "any
11 reasonable accounting procedure."⁵⁷ At fundraising events with many small contributions and a
12 minimal likelihood of repeat contributions, the treasurer may record the event's name, dates on
13 which contributions were received, and total contributions received on each day (the "alternative
14 accounting method").⁵⁸ Otherwise, the treasurer shall keep an itemized account.⁵⁹

addressed the falsified contributions in reports dating back to 2001 or made other efforts to determine the full scale of the misstatements.

⁵⁴ 52 U.S.C. § 30102(c)(1); 11 C.F.R. § 102.9(a). The Commission's regulations provide that "the entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution." 11 C.F.R. § 100.53.

⁵⁵ 52 U.S.C. § 30102(c)(2); 11 C.F.R. § 102.9(a)(1).

⁵⁶ 52 U.S.C. § 30102(c)(3); 11 C.F.R. § 102.9(a)(2); *see also* 52 U.S.C. § 30101(13)(A); 11 C.F.R. § 100.12 (defining "identification" of an individual).

⁵⁷ 11 C.F.R. § 102.9(a).

⁵⁸ *See* Advisory Op. 1980-99 at 1-2 (N. Cal. Republican Roundup) (advising that a committee could utilize the alternative accounting method in the context of events costing five dollars to \$25 for admission with hundreds expected to attend but few expected to attend more than once); *but cf.* Advisory Op. 1981-48 at 1-2 (Muskegon Cty. Republican Party) (approving the alternative accounting method in the context of bingo games where the average player spent about \$12).

MDP did not record individual contributions made by bingo players, only aggregate game receipts. The average contribution was approximately \$100 and the typical player made aggregate contributions well in excess of \$200.⁶⁰ MDP should have kept an itemized record of those contributions. Moreover, because there was a significant likelihood of repeat contributions — players “commonly play[ed] bingo more than once per week and dozens of times over the course of a year” — MDP should have also kept an itemized record of small contributions.⁶¹

Therefore, we recommend that the Commission find reason to believe that MDP violated 52 U.S.C. § 30102(c)(1)-(3) and 11 C.F.R. § 102.9(a). During the period still within the statute of limitations, we estimate that MDP failed to keep an itemized record of contributions totaling approximately \$16,443,618 — all receipts generated at the games.⁶²

2. Failure to Record Disbursements for Small Prizes

The treasurer shall keep an account of all disbursements, along with the date, amount, and purpose.⁶³ MDP did not keep itemized records of prize disbursements below \$60.

Therefore, we recommend that the Commission find reason to believe that MDP violated

⁵⁹ See Advisory Op. 1991-20 at 8 (Call Interactive) (explaining the “heightened” interest in recording names and addresses of individuals who make small contributions when a fundraising method permits repeat contributions); Advisory Op. 1990-1 at 5, 5 n.7 (Digital Corrections) (stating that, when there is a possibility of repeat contributions, it is necessary to record identifying information from individuals who make small contributions to ensure the timely return of prohibited or excessive contributions).

⁶⁰ Submission at 7.

⁶¹ *Id.* The issue of repeat contributions notwithstanding, MDP did not keep an unitemized record in accordance with the alternative accounting method. The bingo chairperson completed a form that listed the license number, date, and total receipts. See, e.g., Attach. 1. However, total receipts consisted of *all* contributions, only a portion of which were small contributions. The purpose of the alternative accounting method is to alleviate the administrative burden of recording small contributions while still accounting for the aggregate amount. The commingling of small contributions within a pool of larger contributions defeats that purpose. This is especially true where, as here, a committee does not keep itemized records, therefore making it impossible to disaggregate the amount of small contributions and calculate the number of people who made them.

⁶² See *supra* note 21 (explaining basis for this estimate).

⁶³ 52 U.S.C. § 30102(c)(5); 11 C.F.R. § 102.9(b)(1).

52 U.S.C. § 30102(c)(5) and 11 C.F.R. § 102.9(b)(1). During the period still within the statute of limitations, we estimate that MDP failed to keep an itemized record of disbursements totaling approximately \$3,414,613 — the total of prizes below \$60 not recorded on the vouchers.⁶⁴

B. MDP Engaged in Prohibited and Excessive Cash Transactions

No person shall make cash contributions to a political committee that in the aggregate exceed \$100.⁶⁵ A committee receiving a cash contribution in excess of \$100 must promptly return the excessive amount.⁶⁶ Moreover, a committee receiving an anonymous cash contribution in excess of \$50 shall promptly dispose of the excessive amount.⁶⁷ Furthermore, a committee must deposit all receipts in an account at a depository designated by the committee.⁶⁸ In addition, a committee shall make no disbursements other than petty cash disbursements except by check or similar draft drawn on such account.⁶⁹ A committee is permitted to maintain a petty cash fund for disbursements not in excess of \$100 per single transaction, but shall keep and maintain a written journal of all disbursements made from that fund.⁷⁰

MDP received all contributions from bingo players in cash.⁷¹ Because MDP did not record the identity of individuals making contributions, those contributions were anonymous and

⁶⁴ See *supra* note 21 (explaining that prizes below \$60 comprised approximately one-third of total prizes).

⁶⁵ 52 U.S.C. § 30123; 11 C.F.R. § 110.4(c)(1).

⁶⁶ 11 C.F.R. § 110.4(c)(2).

⁶⁷ *Id.* § 110.4(c)(3).

⁶⁸ 52 U.S.C. § 30102(h)(1); 11 C.F.R. § 103.3(a).

⁶⁹ 52 U.S.C. § 30102(h)(1)-(2); 11 C.F.R. §§ 102.10, 102.11.

⁷⁰ 52 U.S.C. § 30102(h)(2); 11 C.F.R. § 102.11.

⁷¹ Submission at 6.

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1 a \$50 limit applied. The average contribution at each game was approximately \$100.⁷² There is
2 no information that MDP returned or disposed of the excessive amounts.

3 MDP made disbursements to bingo players for prizes and to bingo staff for wages using
4 the cash receipts generated at each such game.⁷³ As a result, those cash receipts were never
5 deposited in MDP's federal account. Moreover, there is no indication that MDP maintained an
6 adequate petty cash fund that would have permitted cash disbursements below \$100. Not only
7 did MDP fail to keep a comprehensive record of all cash disbursements, the funds used to pay
8 the disbursements were not first drawn from an account at a designated depository.⁷⁴
9 Consequently, MDP was prohibited from making cash disbursements of any amount.

10 Therefore, we recommend that the Commission find reason to believe that MDP violated
11 11 C.F.R. § 110.4(c)(3) by accepting anonymous cash contributions in excess of \$50 without
12 disposing of the excessive amounts; that MDP violated 52 U.S.C. § 30102(h)(1) and 11 C.F.R.
13 § 103.3 by failing to deposit receipts in an account at a designated depository; and that MDP
14 violated 52 U.S.C. § 30102(h)(1) and 11 C.F.R. § 102.10 by making prohibited cash
15 disbursements. Within the statute of limitations, we estimate that MDP failed to deposit cash
16 contributions totaling \$11,812,851 and made prohibited cash disbursements in the same amount
17 — total disbursements for prizes and staff wages.⁷⁵ Due to the lack of non-fabricated
18 contribution records, which would indicate the total number of players who attended the games
19 and, therefore, also the number of permissible \$50 contributions, we could not reliably estimate

⁷² *Id.*

⁷³ *Id.* at 3; Summary of Meeting with Counsel at 2.

⁷⁴ Submission at 3. The same provision that defines a petty cash fund also provides that a committee shall deposit all receipts in an account at a designated depository. 52 U.S.C. § 30102(h)(1)-(2).

⁷⁵ See *supra* note 21 (explaining the basis for this estimate).

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1 the amount that MDP accepted in excessive anonymous cash contributions; however, it is
2 certainly also in the millions of dollars.

3 **C. Reporting**

4 The treasurer shall accurately report total receipts, disbursements, and contribution
5 refunds.⁷⁶ In addition, the treasurer shall accurately report the identification of each person who
6 makes an aggregate contribution in excess of \$200 within a calendar year along with the date and
7 amount of any such contribution; the name and address of each person who receives an
8 aggregate disbursement in excess of \$200 within a calendar year along with the date, amount,
9 and purpose of the disbursement; and the name and address of each person who receives a
10 contribution refund or other offset to contributions along with the date and amount of such
11 repayment.⁷⁷

12 The Act prescribes additional monetary penalties for violations that are knowing and
13 willful.⁷⁸ A violation of the Act is knowing and willful if the "acts were committed with full
14 knowledge of all the relevant facts and a recognition that the action is prohibited by law."⁷⁹ This
15 does not require proving knowledge of the specific statute or regulation the respondent allegedly
16 violated.⁸⁰ Instead, it is sufficient to demonstrate that a respondent "acted voluntarily and was

⁷⁶ 52 U.S.C. § 30104(b)(2), (b)(4); 11 C.F.R. § 104.3(a)(2), (b)(1).

⁷⁷ 52 U.S.C. § 30104(b)(3)(A), (b)(6)(B)(v), (b)(5)(E); 11 § C.F.R. 104.3(a)(4)(i), (b)(3)(ix), (b)(3)(iv). In the case of an individual, the term "identification" means name, address, occupation, and employer. 52 U.S.C. § 30101(13)(A); 11 C.F.R. § 100.12.

⁷⁸ 52 U.S.C. § 30109(a)(5)(B), (d).

⁷⁹ 122 Cong. Rec. 12,197, 12,199 (1976).

⁸⁰ *United States v. Danielczyk*, 917 F. Supp. 2d 573, 575, 579 (E.D. Va. 2013) (citing *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not with knowledge of the specific statutory provision violated)).

1 aware that his conduct was unlawful.”⁸¹ This may be shown by circumstantial evidence from
2 which unlawful intent reasonably may be inferred.⁸² For example, a person’s awareness that
3 certain conduct is prohibited may be inferred from the “elaborate scheme for disguising” it.⁸³

4 1. MDP Knowingly and Willfully Reported False Contributions and Refunds

5 MDP generated contributor lists with the names and addresses of a few players and
6 attributed to them fictitious contribution amounts that far exceeded the apparent amount of their
7 actual contributions.⁸⁴ The knowing and willful nature of this conduct is evidenced by the efforts
8 to conceal the fraudulent contributions. An MDP employee revised the contributor lists to avoid
9 the reporting of excessive contributions which occasionally resulted from the inflated
10 contribution amounts.⁸⁵ In addition, MDP attempted to conceal inadvertently reported excessive
11 contributions by reporting fabricated contribution refunds that never occurred.⁸⁶

12 Therefore, we recommend that the Commission find reason to believe that MDP
13 knowingly and willfully violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by falsely

⁸¹ *Id.* at 579 (citations omitted).

⁸² *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

⁸³ *Id.* at 214-15. As the *Hopkins* court noted, “[i]t has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

⁸⁴ MDP may have also falsified players’ occupation and employer name listed on the itemized contributions. There is nothing in the factual record that explains how MDP acquired that information. Moreover, we found that generic occupations such as “Homemaker,” “Housewife,” “Retired,” and “Sales” account for over 96% of the thousands of apparently falsified contributions we identified.

⁸⁵ Submission at 6.

⁸⁶ *Id.* at 5 n.6; Pemberton Telecon. at 4.

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1 reporting itemized contributions and contribution refunds.⁸⁷ Within the statute of limitations
2 period, we identified \$4,623,250 in likely falsified contributions and \$10,210 in fabricated
3 contribution refunds.⁸⁸

4 2. MDP Misreported Bingo Disbursements and Contributions

5 MDP understated total disbursements and contributions related to bingo. First, as to
6 disbursements, MDP omitted prizes below \$60 because it relied on "large prize" vouchers and
7 also failed to include the cash it paid the bingo staff.⁸⁹ Second, as to contributions, MDP
8 determined the total by adding net receipts deposited after each game to the sum of all prize
9 vouchers.⁹⁰ But that omitted cash receipts used to pay prizes below \$60, to pay staff wages, and
10 to fund the progressive jackpot account.⁹¹

11 Therefore, we recommend that the Commission find reason to believe that MDP violated
12 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a), (b) by understating total disbursements and
13 contributions. Within the statute of limitations we estimate that MDP failed to report
14 approximately \$4,032,013 in disbursements and \$4,475,990 in contributions.⁹²

⁸⁷ MDP also reported contributions on the unitemized line that it knew should have been itemized. Submission at 4. However, we do not make any recommendations with respect to this activity given the limited record evidence with which to establish the number of players who made aggregate contributions in excess of \$200, thus requiring itemized reporting, and in light of the extensive number and more egregious nature of the fabricated itemized contributions.

⁸⁸ See *supra* Part II.B.2-3.

⁸⁹ Summary of Pemberton Telecon. at 3; Summary of Meeting with Counsel at 2.

⁹⁰ Summary of Pemberton Telecon. at 3.

⁹¹ *Id.* at 3-4; Summary of Meeting with Counsel at 2.

⁹² See *supra* note 21 (explaining the basis for these estimates).

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D. MDP's Failure to Accurately Report a Treasurer and the Liability of Other Individuals Involved in Fraudulent Reporting Activity

Every political committee shall have a treasurer.⁹³ The duties of the treasurer include keeping an account of receipts and disbursements, preserving all records of receipts and disbursements, filing reports of receipts and disbursements with the Commission, and signing each report.⁹⁴ Every political committee shall file a Statement of Organization listing the name and address of its treasurer — that is, the person to whom the committee assigns those duties — and must report any change in treasurer within ten days.⁹⁵ The Commission's regulations require that treasurers "examin[e] all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the [Act's] contribution limitations."⁹⁶ "Due to their 'pivotal role,' treasurers may be held personally liable for failing to fulfill their responsibilities under the Act and the Commission's regulations."⁹⁷ The Commission has determined as a matter of policy that it will proceed against a treasurer in his or her personal capacity "where the treasurer recklessly failed to fulfill the duties imposed by law, or where the treasurer has intentionally deprived himself or herself of the operative facts giving rise to the violation."⁹⁸

⁹³ 52 U.S.C. § 30102(a); 11 C.F.R. § 102.7(a).

⁹⁴ 52 U.S.C. §§ 30102(c)-(d), 30104(a).

⁹⁵ *Id.* § 30103(a)-(c); 11 C.F.R. §§ 102.1(d), 102.2(a)(1)-(2).

⁹⁶ 11 C.F.R. § 103.3(b).

⁹⁷ Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 5 (Jan. 3, 2005) (quoting *FEC v. Toledano*, 317 F.3d 939, 947 (9th Cir. 2003), *reh'g denied*). Treasurers are personally responsible for the timeliness, completeness, and accuracy of a committee's reports. 11 C.F.R. § 104.14(d).

⁹⁸ Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. at 3-4.

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MDP has indicated that Ramesh Verma, the committee's named Treasurer, did not actually perform the statutory duties of treasurer at any point during the relevant period.⁹⁹ Verma was described as entirely a "figurehead" whom MDP understood had no involvement in accounting or reporting, and in fact he did not prepare, review, or sign MDP's disclosure reports.¹⁰⁰ Rather, MDP assigned to the Compliance Director many if not all of the statutory duties of the treasurer position. The Compliance Director was ultimately responsible for accounting and reporting, and also signed disclosure reports (albeit using Verma's electronic signature).¹⁰¹ Moreover, there is no indication that Verma duly delegated his responsibilities. Therefore, because MDP continued to list Verma as its Treasurer despite his nominal status, we recommend that the Commission find reason to believe that MDP violated 52 U.S.C. § 30103(c) and 11 C.F.R. § 102.2(a)(2) by failing to accurately identify as Treasurer the person to whom it had actually assigned the statutory duties of that position.¹⁰²

Furthermore, the record evidence suggests that former Compliance Director Jody Weissler Defoe and perhaps former Party Chairman Mark Brewer initiated and coordinated the

⁹⁹ Verma has served since 2009. See MDP Amended Statement of Org. at 1 (Mar. 16, 2009). There have been at least four other treasurers during the period when MDP operated the bingo games.

¹⁰⁰ Summary of Pemberton Telecon. at 4; Summary of Meeting with Counsel at 3. There is nothing to suggest that Verma had any knowledge of the problematic bingo procedures or fraudulent reporting.

¹⁰¹ Summary of Pemberton Telecon. at 1, 4 (explaining that, with respect to at least one Compliance Director, someone other than Verma provided Verma's credentials and instructions to use his electronic signature when signing MDP's disclosure reports).

¹⁰² In prior matters, the Commission has held committees accountable under Section 30103(c) for inaccurately reporting as treasurer an individual who does not actually perform the duties of treasurer prescribed by the Act. See MUR 5276 (Friends of Jack Machek); MUR 3921 (Ken Bell for Cong.); MUR 3790 (Comm. to Elect Tony Valencia for Cong.); MUR 2539 (Almquist for Cong.); MUR 2211 (Populist Party); MUR 2083 (Bob Richards for President); MUR 2002 (Comm. to Elect Bennie O. Batts); MUR 1927 (Comm. to Elect Charles Connor); see also Memo. in Support of Plaintiff's Summary Judgment Motion at 9-13, *FEC v. Comm. to Elect Bennie O. Batts*, No. 87-cv-5789 (S.D.N.Y. Dec. 16, 1988) (indicating that the Commission has interpreted its enforcement responsibilities to include, as circumstances warrant, an evaluation of whether the treasurer of a political committee has actually fulfilled the statutorily prescribed roles of that position); Judgment at 1, *FEC v. Comm. to Elect Bennie O. Batts*, No. 87-cv-5789 (Feb. 24, 1989) (ruling that defendant committee violated 2 U.S.C. § 433(c) (now 52 U.S.C. § 30103(c)) by failing to amend its Statement of Organization to reflect the identity of its actual treasurer).

1 scheme to deceive the Commission that the committee's bingo operations complied with the Act.
2 Specifically, Weissler Defoe apparently signed and filed disclosure reports knowing they
3 contained falsified contributions and sought to conceal those misstatements by revising
4 contributor lists and reporting fabricated contribution refunds as needed.¹⁰³ And according to
5 MDP's representations made following its internal investigation, Brewer may have originated the
6 bingo scheme and possibly the methods used to conceal it.¹⁰⁴ There is, however, no apparent
7 basis under the Act to hold Brewer personally liable for his role in causing or concealing the
8 false statements to the Commission. For instance, unlike Weissler Defoe, it does not appear that
9 Brewer undertook any of the functions of treasurer on behalf of MDP, nor did he sign the
10 committee's disclosure reports.
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¹⁰³ Although we do not have a comprehensive factual record of her activities, it appears that Weissler Defoe assumed many of the statutory duties and responsibilities of the treasurer position and engaged in some of those activities specifically to advance the scheme. Arguably she therefore acted as treasurer in doing so, notwithstanding MDP's failure to identify her as such in its filings with the Commission. The Commission has previously held "de facto" treasurers personally liable for reporting violations under Section 30104(b). See, e.g., MUR 5646 (Burchfield); MUR 5610 (Haywood); MUR 5453 (Ariola); MUR 5358 (Morgan). Moreover, Weissler Defoe apparently signed disclosure reports which provide that "[s]ubmission of false, erroneous, or incomplete information may subject *the person signing this Report* to penalties of [52 U.S.C. § 30109]." (emphasis added). Thus, there may be a basis to pursue Weissler Defoe herself under the Act for violating the reporting provision.

¹⁰⁴ See Meeting with Counsel at 1, 3 (claiming that Brewer devised the problematic bingo procedures and explaining that he recently spoke with Brewer about the bingo games and related violations).

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We recommend that the Commission enter into pre-probable cause conciliation with
MDP.

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Pre-MUR 583 (Michigan Democratic State Central Committee)
First General Counsel's Report
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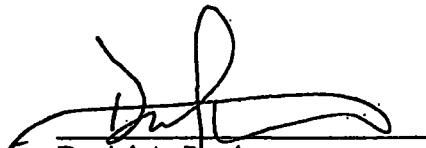
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V. RECOMMENDATIONS

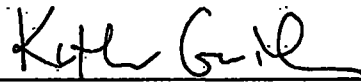
1. Open a MUR;
2. Find reason to believe that the Michigan Democratic State Central Committee and Ramesh Verma in his official capacity as treasurer violated 52 U.S.C. § 30102(c)(1)-(3) and 11 C.F.R. § 102.9(a) by failing to keep an itemized record of contributions;
3. Find reason to believe that the Michigan Democratic State Central Committee and Ramesh Verma in his official capacity as treasurer violated 52 U.S.C. § 30102(c)(5) and 11 C.F.R. § 102.9(b)(1) by failing to keep an itemized record of disbursements;
4. Find reason to believe that the Michigan Democratic State Central Committee and Ramesh Verma in his official capacity as treasurer violated 11 C.F.R. § 110.4(c)(3) by accepting anonymous cash contributions;
5. Find reason to believe that the Michigan Democratic State Central Committee and Ramesh Verma in his official capacity as treasurer violated 52 U.S.C. § 30102(h)(1) and 11 C.F.R. § 103.3 by failing to deposit receipts in an account at a designated depository;
6. Find reason to believe that the Michigan Democratic State Central Committee and Ramesh Verma in his official capacity as treasurer violated 52 U.S.C. § 30102(h)(1) and 11 C.F.R. § 102.10 by making prohibited cash disbursements;
7. Find reason to believe that the Michigan Democratic State Central Committee and Ramesh Verma in his official capacity as treasurer violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by understating total contributions and disbursements;
8. Find reason to believe that the Michigan Democratic State Central Committee and Ramesh Verma in his official capacity as treasurer knowingly and willfully violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by reporting false contributions and refunds;
9. Find reason to believe that MDP violated 52 U.S.C. § 30103(c) and 11 C.F.R. § 102.2(a)(2) by failing to accurately identify the Treasurer;

10. Authorize conciliation with the Michigan Democratic State Central Committee and Ramesh Verma in his official capacity as treasurer prior to a finding of probable cause to believe;
- 11.
12. Approve the attached Conciliation Agreement;
13. Approve the attached Factual and Legal Analysis; and
14. Approve the appropriate letters.

Date: 5/26/16



Daniel A. Petalas
Acting General Counsel



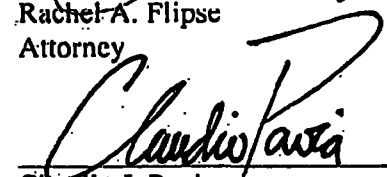
Kathleen Guith
Acting Associate General Counsel for
Enforcement



Peter G. Blumberg
Assistant General Counsel



Rachel A. Flipse
Attorney



Claudio J. Pavia
Attorney

Attachments:

1. Bingo Weekly Cash Accountability for License #21112 (Sept. 1, 2012)
2. Contributor List for License #21112 (Sept. 1, 2012)

BINGO WEEKLY CASH ACCOUNTABILITY

Organization Name <u>Michigan Democratic Party</u>	License Number <u>A21112</u>	Event Date <u>9-1-12</u>
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Verification Slip Beginning # _____ Ending # _____ Attendance 155

Bingo Revenue:

1. Admission / Bingo Card Sales:

Master Control add 404 + Disposable Bingo Card Acct. 913 + Electronic 4547 = 5864

2. Michigan Progressive Jackpot Card Sales 530

3. Other Revenue (sale of supplies) _____

4. Total Revenue (add lines 1 - 3) 6394

Bingo Cash Expenses:

5. Michigan Progressive Jackpot Consolation Prize (cash) 100 + 265

6. Other Cash Prizes 3500

7. Worker Compensation 365 + 5 + 55

8. Total Bingo Cash Expenses (add lines 5 - 7) 4290

9. Bingo Cash Proceeds (subtract line 8 from line 4) 2104

Charity Game Tickets:

10. Ticket Sales 7160

11. Prizes 5295

12. Charity Game Ticket Gross Profit (subtract line 11 from line 10) 1865

Reconcile Cash:

13. Net Proceeds (add lines 9 & 12) 3969

14. Start Cash (if deposited weekly) 1500

15. Calculated Deposit (add lines 13 & 14) 5469

16. Actual Deposit 5459

17. Discrepancy (subtract line 16 from line 15) 10 short

Signature of Recorder <u>Barbara Smith</u>	Signature of Chairperson <u>Barbara Smith</u>
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COMPLETION REQUIRED:
PENALTY: Failure to complete this form
may result in administrative action.
BSL-CG-1785(R4/08)

Authority: Act 382 of the Public Acts of 1972, as amended.

Saturday 6:30 #A21112

Barbara Smith

9-1-12

- Debra Wheeler

400.00

Det 48234

- Lesli Shivers

400.00

Det 48234

- Sandy Spetus

400.00

Det 48212

- Cheryl Parmantier

400.00

Clinton Twp 48036

- Rachel Killebrew

400.00

Ferndale 48220

- Thelma Rines

400.00

2000

Det 48234

- Karen White

400.00

Harold Park 48030

9-1-12

Kimberly Herman

400.00

St. Hts 48312

Elaine Johnson

400.00

Det 48234

Harriet Housel

400.00

Wm 48092

Amy Zarnia

400.00

Blomfield 48322

Rose Gorski

400.00

St. Hts 48310

Suzanne Vanderlinden

300.00

2500

Wm 48092

Connie Schmitt

300.00

Mid Hts 48071

9-1-12

Sheila Critchfield

200.00

Det 48228

Pam Porters

150.00

Det 48218

9-8-12

Linda Hizon

400.00

St. Hts 48310

Hattie Spencer

400.00

Md Hts 48071

Mary Daniel

400.00

Hantranch 48212

Twyla Jenkins

400.00

Hantranch 48212

Anna Hansen

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St Clair Shores 48081

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

Respondent: Michigan Democratic State Central Committee
and Ramesh Verma in his official capacity as treasurer

PMUR.583

I. INTRODUCTION

This matter arises out of a *sua sponte* submission ("Submission") filed by the Michigan Democratic State Central Committee ("MDP") to notify the Commission of potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act") arising out of daily bingo games that MDP operated to raise money for its federal account.

II. FACTUAL SUMMARY

For approximately 14 years, until May 2014, MDP operated nine weekly bingo games to raise money for its federal account.¹ A bingo "game" consisted of two activities: traditional bingo and instant winner lottery.² Traditional bingo also included a progressive jackpot that continued to grow until won.³ Approximately 120 players attended each game, and many players attended multiple games a week and dozens throughout the year.⁴ The average player spent approximately \$100, and prizes ranged from one dollar to over \$1,000.⁵ MDP held individual state licenses for the nine weekly games, and maintained separate bank accounts which it treated as federal accounts to deposit receipts and pay certain administrative costs such

¹ The games began "[m]ore than 10 years ago" and were terminated in May 2014. Submission at 2, 8 (Jan. 29, 2015). It appears that MDP operated federal bingo games since at least 2001. See MDP Amended 2001 Mid-Year Rpt. at 133-316 (May 8, 2002) (first reported disbursements for "Bingo Winnings").

² Submission at 2.

³ *Id.*

⁴ *Id.* ("[E]ach bingo game generally ranged from 80 to 160 players."); *id.* at 7.

⁵ *Id.* at 2-3 ("[A]n individual player spent approximately \$77 to \$123 per bingo . . ."); *id.* at 2, 8.

1 as the purchase of bingo supplies.⁶ A chairperson managed each game and oversaw a staff of
2 about a dozen workers.⁷

3 All transactions at the games were in cash. Players paid cash to purchase bingo cards and
4 lottery tickets, and bingo workers paid prizes using the cash receipts.⁸ MDP also used cash to
5 pay staff and to make deposits in an account designated for the progressive jackpot, both of
6 which were omitted from the committee's ultimate accounting of its bingo activity.⁹ The
7 chairpersons deposited the remaining cash receipts in the corresponding bingo license account —
8 that is, what remained after paying out prizes, paying the staff, and making deposits to the
9 progressive jackpot account.¹⁰

10 MDP did not record players' identifying information at the time of purchase.¹¹ It appears
11 this omission was intentional; a committee representative informed the Office of the General
12 Counsel ("OGC") that senior MDP staff perceived such recordkeeping as a risk to attendance
13 and revenue. In contrast, MDP kept many other records that were required or recommended by
14 the Michigan Lottery Charitable Gaming Division. The committee has provided the
15 Commission with a variety of example bingo records from 2012. In addition, MDP issued prize

6 Submission at 2-3.

7 See *id.*, Ex. 2 (Bingo Weekly Cash Accountability).

8 Submission at 3, 6.

9 See *id.*, Ex. 2 (Bingo Weekly Cash Accountability).

10 *Id.*

11 Submission at 7.

1 vouchers which recorded the date and amount of prizes \$60 and above, along with those prize
2 winners' name and address.¹²

3 In both the Submission and relevant disclosure reports, MDP understated its total bingo-
4 related disbursements and receipts in several ways.¹³ First, MDP used the prize vouchers to
5 account for cash prize disbursements and to determine corresponding bingo receipts. But
6 because those vouchers recorded winnings only \$60 and above, MDP omitted about one-third of
7 all prizes awarded. Second, MDP did not include in its totals any of the cash receipts that were
8 diverted to the progressive jackpot account. Third, MDP also omitted the cash paid directly to
9 bingo staff from its totals of receipts and disbursements. Figure 1 estimates MDP's bingo
10 activity during the statute of limitations period based on figures presented in the Submission,
11 correcting for those omissions.¹⁴ Within the limitations period, MDP understated contributions
12 by approximately \$4,475,990 and disbursements by approximately \$4,032,013.

¹² *Id.* at 3 (describing procedures for recording "large prizes"). MDP's disclosure reports indicate that a large prize was \$60 and above. The Submission claims that the vouchers also collected players' occupation and employer name, but that is contradicted by example vouchers in the Commission's possession.

¹³ The accounting issues are evident when comparing MDP's bingo records to corresponding disclosure reports. Moreover, a committee representative explained MDP's accounting procedures to OGC. See Submission at 3 (incorrect summary of total receipts and expenses for 2011 through 2014); MDP *Sua Sponte* Submission Supplement (Mar. 4, 2015) (same for 2010).

¹⁴ The totals in Figure 1 reflect estimates for each item and, as noted, adjust the totals provided in the Submission to account for the three accounting issues addressed above. "Bingo Receipts" was calculated by adding to the figures in the Submission the amounts for prizes below \$60, deposits in the progressive jackpot account, and staff payments. "Prize Disbursements" was calculated by adding prizes below \$60. "Administrative Costs" was calculated by adding payments to the bingo staff and deposits in the progressive jackpot account. Prizes below \$60 amount to approximately 30.5% of total prizes, deposits in the progressive bingo jackpot account are approximately 2.7% of total receipts, and payments to the bingo staff are approximately \$360 per game, all based on consistent per-game averages reflected across the selection of game records in the Commission's possession.

Figure 1. — Estimated Bingo Fundraising Activity Within SOL

Calendar Year	Bingo Receipts	Prize Disbursements	Admin. Costs & Unreported Progressive Jackpot Deposits	Net Proceeds
2010 within SOL	\$2,085,024	\$1,259,104	\$641,601	\$184,319
2011	\$4,210,703	\$2,874,946	\$940,095	\$395,661
2012	\$4,423,896	\$3,047,896	\$955,513	\$420,488
2013	\$4,299,119	\$3,034,750	\$929,868	\$334,501
2014	\$1,424,876	\$978,756	\$351,312	\$94,808
Total	\$16,443,618	\$11,195,451	\$3,818,389	\$1,429,777

The submitted materials also reflect that MDP's bingo staff created a series of false contributor lists that were used to generate its disclosure reports to the Commission. After each game, the chairpersons created lists of the names and addresses of a small subset of players and attributed fictitious contribution amounts to each that were unconnected to the players' actual contributions, if any, at the game.¹⁵ Whereas the average player contributed around \$100, the most common contribution amounts attributed to the few players identified on the lists in the Commission's possession were \$300 and \$400, with none below \$150 and some as high as \$750. The chairpersons provided the false lists to the Compliance Director as part of monthly

¹⁵ Submission at 4-6. In light of how the games operated — without recording individual purchases for what was often more than a hundred players in attendance — as well as the large size of the attributed amounts compared to average contributions, it appears highly unlikely that the chairpersons recorded correct contribution amounts for any of the individuals included on these lists. *See id.* at 4 ("The practices followed by MDP resulted in some individuals who made contributions in excess of \$200 during a calendar year not being reported and other individuals were reported as making contributions they did not make.").

1 documentation packages for each bingo license.¹⁶ Compliance staff then entered that
2 information in databases used to prepare MDP's disclosure reports.¹⁷

3 The Submission illustrates how one chairperson made the contributor list in connection
4 with a representative game held on September 1, 2012. The list consisted of sixteen players
5 (about 10% of the 155 actually in attendance) who were assigned fictitious contribution amounts
6 totaling \$5,750 (slightly less than half of the \$13,554 in actual receipts).¹⁸ The chairperson
7 recorded amounts of \$400 for 12 players, \$300 for two players, \$200 for one player, and \$150
8 for one player.¹⁹ Half of the listed players completed a prize voucher for receiving a prize
9 disbursement at that particular game.²⁰ The other half completed prize vouchers for games on
10 other dates in September 2012.²¹ Based on the contributor lists in the Commission's possession,
11 it appears that multiple chairpersons followed these general procedures.

12 MDP apparently recognized that it risked falsely reporting aggregate contributions over
13 the annual \$10,000 individual limit by assigning large contributions to a small proportion of
14 players.²² Accordingly, a "compliance staff person" would revise the contributor lists before
15 they were entered into MDP's databases to remove those individuals with reported contributions

¹⁶ *Id.* at 4-5.

¹⁷ *Id.* at 6.

¹⁸ Submission at 4; *id.* Ex. 2 (Bingo Weekly Cash Accountability for bingo game held on September 1, 2012); *id.* Ex. 3 (contributor list made in connection with bingo game held on September 1, 2012).

¹⁹ Submission, Ex. 3.

²⁰ MDP 2012 Amended Oct. Monthly Rpt. at 267-85 (Mar. 27, 2013). Based on contributor lists in the Commission's possession, it appears that the chairpersons commonly included names of players who completed a prize voucher at the corresponding game. We have no information to suggest that the chairpersons used names other than those of bingo players.

²¹ *See id.* at 265-653 (reporting September 2012 bingo prize disbursements).

²² *See* 52 U.S.C. § 30116(a)(1)(D).

1 at or near the limit.²³ For example, the contributor list made in connection with the September 1,
2 2012, game originally identified 16 individuals, but three were subsequently crossed out.²⁴ MDP
3 had already reported in 2012 aggregate contributions of \$9,500, \$9,750, and \$10,000 in the
4 names of those players.²⁵ The 13 remaining contributions were itemized, and the balance of cash
5 receipts was moved to the unitemized contributions line of the relevant report.²⁶ The 25
6 additional contributor lists in the Commission's possession reveal nine other instances in which
7 particular individuals were removed from the lists in a similar manner.²⁷ Although the falsified
8 lists suggest the possibility that MDP may have accepted excessive contributions from some of
9 the identified players, it is unclear if any player actually made a \$10,000 aggregate contribution.

10 MDP did not calculate the number or amount of falsified contributions. Based on a
11 review of MDP's disclosure reports, the Commission has found 12,805 potentially falsified
12 contributions totaling \$4,623,250 within the statute of limitations, although these amounts likely
13 understate the true totals.²⁸

14 To further conceal its failure to record accurate player contributions, MDP also reported
15 contribution refunds that were in fact never made. The false refunds were reported to remedy the

²³ Submission at 5.

²⁴ *Id.*; see Submission, Ex. 3.

²⁵ Submission, Ex. 4.

²⁶ Submission at 5.

²⁷ In addition, MDP's disclosure reports reveal hundreds of instances when a player who reportedly reached the \$10,000 limit nonetheless attended a game and therefore made an unreported contribution. It is likely that some of those players were similarly removed from contributor lists.

²⁸ The Commission identified contributions of \$150, \$200, \$300, or \$400 — the particular fictitious amounts cited in the Submission — reported in the names of bingo players on bingo days. The chairpersons used other fictitious amounts beside the four mentioned in the Submission, however, and MDP's reporting contains typos and other inconsistencies that may have hindered the ability to obtain comprehensive search results.

1 apparent excessive contributions of certain players at or near the individual limit who were not
2 removed from the lists. For instance, MDP reported that Connie Schmidt made \$12,400 in
3 aggregate contributions by July 30, 2012, and received a \$2,400 refund on August 1, 2012.²⁹
4 However, there is no record of an actual \$2,400 refund payment.³⁰ Since 2008, MDP reported
5 seven other contribution refunds totaling \$9,910 to players who purportedly exceeded the limit.³¹
6 An MDP representative stated to OGC that MDP's records, including check registers which were
7 reconciled with its bank statements, do not reflect that those refunds actually occurred.

8 MDP has indicated, without providing specific information, that full knowledge and
9 coordination of the improper activity outlined above was limited to only a few people, including
10 two longtime party leaders with expertise in campaign finance who occupied senior management
11 and compliance positions. One of those individuals is MDP's former Compliance Director.
12 According to statements made by an MDP representative to OGC, she was apparently
13 responsible for keeping an account of receipts and disbursements, preparing the committee's
14 disclosure reports, and signing those reports using the named Treasurer's electronic signature
15 (without his review or involvement). MDP has also indicated that Ramesh Verma, the
16 committee's named Treasurer, was merely a "figurehead" installed to satisfy the Commission's

²⁹ Submission at 5 n.6; see MDP Amended 2012 Aug. Monthly Rpt. at 62 (Nov. 30, 2012); MDP Amended 2012 Sept. Monthly Rpt. at 7 (Apr. 8, 2012).

³⁰ Submission at 5 n.6.

³¹ MDP Amended 2012 Year-End Rpt. at 93 (Apr. 25, 2013) (\$235 refund to Evelyn Schales); MDP Amended 2012 Sept. Monthly Rpt. at 7 (Apr. 8, 2013) (\$2,400 refund to Connie Schmidt and \$675 refund to Litisha Faithful); MDP Amended 2011 Dec. Monthly Rpt. at 7 (Mar. 30, 2012) (\$3,500 refund to Connie Schmidt, \$2,600 refund to Sandra Sputa, and \$800 refund to Lo Wanda Booth); MDP Amended 2008 Oct. Monthly Rpt. at 7 (Apr. 7, 2009) (\$1,700 refund to Karen White and \$400 refund to Rose Banas). Each refund was reported as a negative contribution and no amount was reported on Line 28(a). The contributions on the 2008 Oct. Monthly Report listed "Contribution Refunded" as the memo item.

1 obligation that a treasurer be identified, and in fact had no involvement with the committee's
2 accounting or reporting. MDP never designated an Assistant Treasurer.

3 In 2013, a new party administration assumed the veracity of the contributor lists and
4 unwittingly reported dozens of excessive contributions totaling over \$75,000. This caused the
5 Commission's Reports and Analysis Division ("RAD") to issue a Request for Additional
6 Information ("RFAI") on April 2, 2014.³² Upon receiving the RFAI, the new Compliance
7 Director alerted MDP's counsel and the Party Chairman. The Chairman promptly ordered an
8 internal investigation by the compliance staff and MDP's counsel, and apparently also organized
9 a review of MDP's bingo operations by an outside committee.³³ On or about May 5, 2014, he
10 directed that MDP no longer use bingo to raise money for its federal account and, on June 5,
11 2014, he terminated bingo fundraising altogether.³⁴ MDP has partially amended several
12 disclosure reports from 2013 and 2014, but has yet to amend other affected reports.³⁵

³² See Letter from Campaign Finance Analyst, RAD to Ramesh Verma, Treasurer, MDP (Apr. 2, 2014).

³³ Submission at 8.

³⁴ *Id.*

³⁵ *Id.* The Submission represents that MDP "amended the 2014 first quarter FEC report and all of the 2013, 2012, and 2011 FEC reports by moving the misallocated-contributions from the itemized contribution line 11(a)(i) to the unitemized line 11(a)(ii)." *Id.* MDP in fact only amended its 2014 election cycle reports. MDP has not addressed the falsified contributions in reports dating back to 2001 or made other efforts to determine the full scale of the misstatements.

1 **III. LEGAL ANALYSIS**

2 **A. Recordkeeping**

3 1. Failure to Record Contributions Received at the Games

4 The treasurer shall keep an account of all contributions received by or on behalf of a
5 political committee.³⁶ For any person who makes a contribution in excess of \$50, such account
6 shall include the person's name and address together with the date and amount of the
7 contribution.³⁷ For any person who makes a contribution or contributions aggregating more than
8 \$200 in a calendar year, such account shall include the person's name, address, occupation, and
9 employer together with the date and amount of any such contribution.³⁸ For all other
10 contributions — that is, small contributions below \$50 — such account shall be kept by "any
11 reasonable accounting procedure."³⁹ At fundraising events with many small contributions and a
12 minimal likelihood of repeat contributions, the treasurer may record the event's name, dates on
13 which contributions were received, and total contributions received on each day (the "alternative
14 accounting method").⁴⁰ Otherwise, the treasurer shall keep an itemized account.⁴¹

³⁶ 52 U.S.C. § 30102(c)(1); 11 C.F.R. § 102.9(a). The Commission's regulations provide that "the entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution." 11 C.F.R. § 100.53.

³⁷ 52 U.S.C. § 30102(c)(2); 11 C.F.R. § 102.9(a)(1).

³⁸ 52 U.S.C. § 30102(c)(3); 11 C.F.R. § 102.9(a)(2); *see also* 52 U.S.C. § 30101(13)(A); 11 C.F.R. § 100.12 (defining "identification" of an individual).

³⁹ 11 C.F.R. § 102.9(a).

⁴⁰ *See* Advisory Op. 1980-99 at 1-2 (N. Cal. Republican Roundup) (advising that a committee could utilize the alternative accounting method in the context of events costing five dollars to \$25 for admission with hundreds expected to attend but few expected to attend more than once); *but cf.* Advisory Op. 1981-48 at 1-2 (Muskegon Cty. Republican Party) (approving the alternative accounting method in the context of bingo games where the average player spent about \$12).

⁴¹ *See* Advisory Op. 1991-20 at 8 (Call Interactive) (explaining the "heightened" interest in recording names and addresses of individuals who make small contributions when a fundraising method permits repeat

1 MDP did not record individual contributions made by bingo players, only aggregate
2 game receipts. The average contribution was approximately \$100 and the typical player made
3 aggregate contributions well in excess of \$200.⁴² MDP should have kept an itemized record of
4 those contributions. Moreover, because there was a significant likelihood of repeat contributions
5 — players “commonly play[ed] bingo more than once per week and dozens of times over the
6 course of a year” — MDP should have also kept an itemized record of small contributions.⁴³

7 Therefore, the Commission finds reason to believe that MDP violated 52 U.S.C.
8 § 30102(c)(1)-(3) and 11 C.F.R. § 102.9(a). During the period still within the statute of
9 limitations, the Commission estimates that MDP failed to keep an itemized record of
10 contributions totaling approximately \$16,443,618 — all receipts generated at the games.⁴⁴

11 2. Failure to Record Disbursements for Small Prizes

12 The treasurer shall keep an account of all disbursements, along with the date, amount,
13 and purpose.⁴⁵ MDP did not keep itemized records of prize disbursements below \$60.
14 Therefore, the Commission finds reason to believe that MDP violated 52 U.S.C. § 30102(c)(5)

contributions); Advisory Op. 1990-1 at 5, 5 n.7 (Digital Corrections) (stating that, when there is a possibility of repeat contributions, it is necessary to record identifying information from individuals who make small contributions to ensure the timely return of prohibited or excessive contributions).

⁴² Submission at 7.

⁴³ *Id.* The issue of repeat contributions notwithstanding, MDP did not keep an unitemized record in accordance with the alternative accounting method. The bingo chairperson completed a form that listed the license number, date, and total receipts. *See, e.g.,* Submission, Ex. 2. However, total receipts consisted of *all* contributions, only a portion of which were small contributions. The purpose of the alternative accounting method is to alleviate the administrative burden of recording small contributions while still accounting for the aggregate amount. The commingling of small contributions within a pool of larger contributions defeats that purpose. This is especially true where, as here, a committee does not keep itemized records, therefore making it impossible to disaggregate the amount of small contributions and calculate the number of people who made them.

⁴⁴ *See supra* note 14 (explaining basis for this estimate).

⁴⁵ 52 U.S.C. § 30102(c)(5); 11 C.F.R. § 102.9(b)(1).

1 and 11 C.F.R. § 102.9(b)(1). During the period still within the statute of limitations, the
2 Commission estimates that MDP failed to keep an itemized record of disbursements totaling
3 approximately \$3,414,613 — the total of prizes below \$60 not recorded on the vouchers.⁴⁶

4 **B. MDP Engaged in Prohibited and Excessive Cash Transactions**

5 No person shall make cash contributions to a political committee that in the aggregate
6 exceed \$100.⁴⁷ A committee receiving a cash contribution in excess of \$100 must promptly
7 return the excessive amount.⁴⁸ Moreover, a committee receiving an anonymous cash
8 contribution in excess of \$50 shall promptly dispose of the excessive amount.⁴⁹ Furthermore, a
9 committee must deposit all receipts in an account at a depository designated by the committee.⁵⁰
10 In addition, a committee shall make no disbursements other than petty cash disbursements except
11 by check or similar draft drawn on such account.⁵¹ A committee is permitted to maintain a petty
12 cash fund for disbursements not in excess of \$100 per single transaction, but shall keep and
13 maintain a written journal of all disbursements made from that fund.⁵²

14 MDP received all contributions from bingo players in cash.⁵³ Because MDP did not
15 record the identity of individuals making contributions, those contributions were anonymous and

⁴⁶ See *supra* note 14 (explaining that prizes below \$60 comprised approximately one-third of total prizes).

⁴⁷ 52 U.S.C. § 30123; 11 C.F.R. § 110.4(c)(1).

⁴⁸ 11 C.F.R. § 110.4(c)(2).

⁴⁹ *Id.* § 110.4(c)(3).

⁵⁰ 52 U.S.C. § 30102(h)(1); 11 C.F.R. § 103.3(a).

⁵¹ 52 U.S.C. § 30102(h)(1)-(2); 11 C.F.R. §§ 102.10, 102.11.

⁵² 52 U.S.C. § 30102(h)(2); 11 C.F.R. § 102.11.

⁵³ Submission at 6.

1 a \$50 limit applied. The average contribution at each game was approximately \$100.⁵⁴ There is
2 no information that MDP returned or disposed of the excessive amounts.

3 MDP made disbursements to bingo players for prizes and to bingo staff for wages using
4 the cash receipts generated at each such game.⁵⁵ As a result, those cash receipts were never
5 deposited in MDP's federal account. Moreover, there is no indication that MDP maintained an
6 adequate petty cash fund that would have permitted cash disbursements below \$100. Not only
7 did MDP fail to keep a comprehensive record of all cash disbursements, the funds used to pay
8 the disbursements were not first drawn from an account at a designated depository.⁵⁶
9 Consequently, MDP was prohibited from making cash disbursements of any amount.

10 Therefore, the Commission finds reason to believe that MDP violated 11 C.F.R.
11 § 110.4(c)(3) by accepting anonymous cash contributions in excess of \$50 without disposing of
12 the excessive amounts; that MDP violated 52 U.S.C. § 30102(h)(1) and 11 C.F.R. § 103.3 by
13 failing to deposit receipts in an account at a designated depository; and that MDP violated 52
14 U.S.C. § 30102(h)(1) and 11 C.F.R. § 102.10 by making prohibited cash disbursements. Within
15 the statute of limitations, the Commission estimates that MDP failed to deposit cash
16 contributions totaling \$11,812,851 and made prohibited cash disbursements in the same amount
17 — total disbursements for prizes and staff wages.⁵⁷ Due to the lack of non-fabricated
18 contribution records, which would indicate the total number of players who attended the games

⁵⁴ *Id.*

⁵⁵ *See, e.g., id.*, Ex. 2.

⁵⁶ Submission at 3. The same provision that defines a petty cash fund also provides that a committee shall deposit all receipts in an account at a designated depository. 52 U.S.C. § 30102(h)(1)-(2).

⁵⁷ *See supra* note 14 (explaining the basis for this estimate).

1 and, therefore, also the number of permissible \$50 contributions, the Commission could not
2 reliably estimate the amount that MDP accepted in excessive anonymous cash contributions;
3 however, it is certainly also in the millions of dollars.

4 C. Reporting

5 The treasurer shall accurately report total receipts, disbursements, and contribution
6 refunds.⁵⁸ In addition, the treasurer shall accurately report the identification of each person who
7 makes an aggregate contribution in excess of \$200 within a calendar year along with the date and
8 amount of any such contribution; the name and address of each person who receives an
9 aggregate disbursement in excess of \$200 within a calendar year along with the date, amount,
10 and purpose of the disbursement; and the name and address of each person who receives a
11 contribution refund or other offset to contributions along with the date and amount of such
12 repayment.⁵⁹

13 The Act prescribes additional monetary penalties for violations that are knowing and
14 willful.⁶⁰ A violation of the Act is knowing and willful if the "acts were committed with full
15 knowledge of all the relevant facts and a recognition that the action is prohibited by law."⁶¹ This
16 does not require proving knowledge of the specific statute or regulation the respondent allegedly
17 violated.⁶² Instead, it is sufficient to demonstrate that a respondent "acted voluntarily and was

⁵⁸ 52 U.S.C. § 30104(b)(2), (b)(4); 11 C.F.R. § 104.3(a)(2), (b)(1).

⁵⁹ 52 U.S.C. § 30104(b)(3)(A), (b)(6)(B)(v), (b)(5)(E); 11 § C.F.R. 104.3(a)(4)(i), (b)(3)(ix), (b)(3)(iv). In the case of an individual, the term "identification" means name, address, occupation, and employer. 52 U.S.C. § 30101(13)(A); 11 C.F.R. § 100.12.

⁶⁰ 52 U.S.C. § 30109(a)(5)(B), (d).

⁶¹ 122 Cong. Rec. 12,197, 12,199 (1976).

⁶² *United States v. Danielczyk*, 917 F. Supp. 2d 573, 575, 579 (E.D. Va. 2013) (citing *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998)) (holding that, to establish a violation is willful, government needs to show only

1 aware that his conduct was unlawful."⁶³ This may be shown by circumstantial evidence from
2 which unlawful intent reasonably may be inferred.⁶⁴ For example, a person's awareness that
3 certain conduct is prohibited may be inferred from the "elaborate scheme for disguising" it.⁶⁵

4 1. MDP Knowingly and Willfully Reported False Contributions and Refunds

5 MDP generated contributor lists with the names and addresses of a few players and
6 attributed to them fictitious contribution amounts that far exceeded the apparent amount of their
7 actual contributions. The knowing and willful nature of this conduct is evidenced by the efforts
8 to conceal the fraudulent contributions. An MDP employee revised the contributor lists to avoid
9 the reporting of excessive contributions which occasionally resulted from the inflated
10 contribution amounts.⁶⁶ In addition, MDP attempted to conceal inadvertently reported excessive
11 contributions by reporting fabricated contribution refunds that never occurred.⁶⁷

12 Therefore, the Commission finds reason to believe that MDP knowingly and willfully
13 violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by falsely reporting itemized contributions

that defendant acted with knowledge that conduct was unlawful, not with knowledge of the specific statutory provision violated)).

⁶³ *Id.* at 579 (citations omitted).

⁶⁴ *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants' convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

⁶⁵ *Id.* at 214-15. As the *Hopkins* court noted, "[i]t has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

⁶⁶ Submission at 6.

⁶⁷ *Id.* at 5 n.6.

1 and contribution refunds. Within the statute of limitations period, the Commission identified
2 \$4,623,250 in likely falsified contributions and \$10,210 in fabricated contribution refunds.⁶⁸

3 2. MDP Misreported Bingo Disbursements and Contributions

4 MDP understated total disbursements and contributions related to bingo. First, as to
5 disbursements, MDP omitted prizes below \$60 because it relied on "large prize" vouchers and
6 also failed to include the cash it paid the bingo staff. Second, as to contributions, MDP
7 determined the total by adding net receipts deposited after each game to the sum of all prize
8 vouchers. But that omitted cash receipts used to pay prizes below \$60, to pay staff wages, and to
9 fund the progressive jackpot account.

10 Therefore, the Commission finds reason to believe that MDP violated 52 U.S.C.
11 § 30104(b) and 11 C.F.R. § 104.3(a), (b) by understating total disbursements and contributions.
12 Within the statute of limitations the Commission estimates that MDP failed to report
13 approximately \$4,032,013 in disbursements and \$4,475,990 in contributions.⁶⁹

14 D. **MDP's Failure to Accurately Report a Treasurer**

15 Every political committee shall have a treasurer.⁷⁰ The duties of the treasurer include
16 keeping an account of receipts and disbursements, preserving all records of receipts and
17 disbursements, filing reports of receipts and disbursements with the Commission, and signing
18 each report.⁷¹ Every political committee shall file a Statement of Organization listing the name
19 and address of its treasurer — that is, the person to whom the committee assigns those duties —

⁶⁸ See *supra* Part II.

⁶⁹ See *supra* note 14 (explaining the basis for these estimates).

⁷⁰ 52 U.S.C. § 30102(a); 11 C.F.R. § 102.7(a).

⁷¹ 52 U.S.C. §§ 30102(c)-(d), 30104(a).

1 and must report any change in treasurer within ten days.⁷² The Commission's regulations require
2 that treasurers "examin[e] all contributions received for evidence of illegality and for
3 ascertaining whether contributions received, when aggregated with other contributions from the
4 same contributor, exceed the [Act's] contribution limitations."⁷³ "Due to their 'pivotal role,'
5 treasurers may be held personally liable for failing to fulfill their responsibilities under the Act
6 and the Commission's regulations."⁷⁴ The Commission has determined as a matter of policy that
7 it will proceed against a treasurer in his or her personal capacity "where the treasurer recklessly
8 failed to fulfill the duties imposed by law, or where the treasurer has intentionally deprived
9 himself or herself of the operative facts giving rise to the violation."⁷⁵

10 MDP has indicated that Ramesh Verma, the committee's named Treasurer, did not
11 actually perform the statutory duties of treasurer at any point during the relevant period.⁷⁶ MDP
12 representatives described Verma as entirely a "figurehead" whom MDP understood had no
13 involvement in accounting or reporting, and in fact he did not prepare, review, or sign MDP's
14 disclosure reports. Rather, MDP assigned to the Compliance Director many if not all of the
15 statutory duties of the treasurer position. An MDP representative stated that the Compliance
16 Director was ultimately responsible for accounting and reporting, and also signed disclosure

⁷² *Id.* § 30103(a)-(c); 11 C.F.R. §§ 102.1(d), 102.2(a)(1)-(2).

⁷³ 11 C.F.R. § 103.3(b).

⁷⁴ Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 5 (Jan. 3, 2005) (quoting *FEC v. Toledano*, 317 F.3d 939, 947 (9th Cir. 2003), *reh'g denied*). Treasurers are personally responsible for the timeliness, completeness, and accuracy of a committee's reports. 11 C.F.R. § 104.14(d).

⁷⁵ Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. at 3-4.

⁷⁶ Verma has served since 2009. See MDP Amended Statement of Org. at 1 (Mar. 16, 2009).

1 reports (albeit using Verma's electronic signature).⁷⁷ Moreover, there is no indication that
2 Verma duly delegated his responsibilities. Therefore, because MDP continued to list Verma as
3 its Treasurer despite his nominal status, the Commission finds reason to believe that MDP
4 violated 52 U.S.C. § 30103(c) and 11 C.F.R. § 102.2(a)(2) by failing to accurately identify as
5 Treasurer the person to whom it had actually assigned the statutory duties of that position.⁷⁸

⁷⁷ There is information that, with respect to at least one Compliance Director, someone other than Verma provided Verma's credentials and instructions to use his electronic signature when signing MDP's disclosure reports.

⁷⁸ In prior matters, the Commission has held committees accountable under Section 30103(c) for inaccurately reporting as treasurer an individual who does not actually perform the duties of treasurer prescribed by the Act. *See* MUR 5276 (Friends of Jack Machek); MUR 3921 (Ken Bell for Cong.); MUR 3790 (Comm. to Elect Tony Valencia for Cong.); MUR 2539 (Almquist for Cong.); MUR 2211 (Populist Party); MUR 2083 (Bob Richards for President); MUR 2002 (Comm. to Elect Bennie O. Batts); MUR 1927 (Comm. to Elect Charles Connor); *see also* Memo. in Support of Plaintiff's Summary Judgment Motion at 9-13, *FEC v. Comm. to Elect Bennie O. Batts*, No. 87-cv-5789 (S.D.N.Y. Dec. 16, 1988) (indicating that the Commission has interpreted its enforcement responsibilities to include, as circumstances warrant, an evaluation of whether the treasurer of a political committee has actually fulfilled the statutorily prescribed roles of that position); *see also* Judgment at 1, *FEC v. Comm. to Elect Bennie O. Batts*, No. 87-cv-5789 (Feb. 24, 1989) (ruling that defendant committee violated then 2 U.S.C. § 433(c) (now 52 U.S.C. § 30103(c)) by failing to amend its Statement of Organization to reflect the identity of its actual treasurer).