



FEDERAL ELECTION COMMISSION
Washington, DC

1 **MEMORANDUM**

2 **TO:** The Commission

3 **FROM:** Lisa J. Stevenson
4 Acting General Counsel

5 Charles Kitcher
6 Associate General Counsel for Enforcement

7 Claudio J. Pavia
8 Deputy Associate General Counsel for Enforcement

9 **BY:** Mark Allen *MA*
10 Assistant General Counsel

11 Christine C. Gallagher *Cg*
12 Attorney

13 **SUBJECT:** MUR 7615 (Ryan Phillips, *et al.*)
14 Close the File

15
16 This matter involves allegations that Ryan Phillips, while providing administrative
17 recordkeeping and compliance consulting services as a partner at In Compliance, Inc., converted
18 campaign funds from Heller for Senate to personal use and commingled his personal funds with
19 funds from Heller Highwater PAC. The Commission previously found knowing and willful
20 probable cause to believe as to Phillips and referred the matter to the Department of Justice
21 (“DOJ”). In addition, the Commission voted to take no action as to In Compliance. For the
22 reasons set forth below, we recommend that the Commission: (1) take no further action as to
23 Phillips; (2) dismiss the allegations as to In Compliance, Inc.; and (3) close the file.

24 **I. RYAN PHILLIPS**

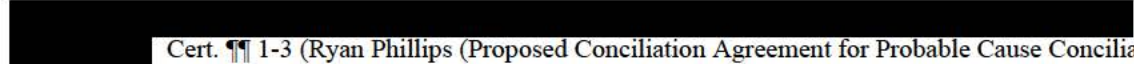
25 On June 21, 2023, the Commission found probable cause to believe that Ryan Phillips
26 knowingly and willfully violated 52 U.S.C. §§ 30114(b) and 30102(b)(3) by converting principal
27 campaign committee funds of Heller for Senate to personal use and by commingling leadership
28 PAC funds of HellerHighWater PAC with his personal funds.¹ The Commission also voted to
29 refer this matter to DOJ pursuant to 52 U.S.C. § 30109(a)(5)(C).² In the subsequent criminal

¹ Cert. ¶ 1 (Ryan Phillips: Office of General Counsel’s Notice to the Commission Following the Submission of Probable Cause Brief) (June 22, 2023).

² *Id.* ¶ 2. In addition, the Commission voted to approve a proposed conciliation agreement [REDACTED], and instructed the Office of the General Counsel (“OGC”) to convey to DOJ the Commission’s intention to consider civil enforcement no later than 75 days after the conveyance of the referral [REDACTED].

1 proceeding in the United States District Court for the District of Nevada, on December 19, 2023,
 2 Phillips waived indictment and entered a guilty plea to a criminal information charging him with
 3 one count of making false statements to a federal agency under 18 U.S.C. § 1001(a)(2) and
 4 18 U.S.C. § 2, by helping prepare, through his work at In Compliance, the two committees'
 5 disclosure reports and, in particular, Heller for Senate's 2018 Year-End Report, with the
 6 Commission which were substantially inaccurate due to Phillips' misstatements which covered
 7 up the unauthorized transactions Phillips made with the committees' funds.³ On April 8, 2024,
 8 Phillips was sentenced to three years' probation, including 240 days of home confinement with
 9 location monitoring, 100 hours of community service upon completed of home detention, and
 10 fined \$100.⁴

11 Phillips pleaded guilty to making false statements to the Commission by filing, or causing
 12 to be filed, fraudulent disclosure reports in an effort to conceal his misappropriation of campaign
 13 and PAC funds converted to his personal use or commingled with his personal funds, which
 14 encompasses the same facts as the enforcement matter.⁵ Specifically, in his plea agreement,
 15 Phillips admits that beginning September 2018 through February 2019, while he was a partner at
 16 In Compliance, he was assigned to manage the accounts for the Heller Committee and
 17 HellerHighWater PAC, and was entrusted with access to their bank accounts for the sole purpose
 18 of making payments to vendors and preparing reports of contributions and expenditures to the
 19 Commission.⁶ He admits to misappropriating \$46,226.66 from the Heller Committee and
 20 \$139,051.38 from HellerHighWater PAC, through 234 unauthorized transactions, including
 21 electronic transfers, checks written to himself, cash withdrawals and debit card purchases for his
 22 own private purposes, including gambling at casinos and paying his personal cable and energy
 23 bills.⁷ Phillips also admits to his scheme to defraud and conceal his conversion of committee
 24 funds by misreporting many of his unauthorized transactions as being for legitimate campaign
 25 purposes, such as "Travel" or "Office Supplies," and in other instances, he grouped the

 Cert. ¶¶ 1-3 (Ryan Phillips (Proposed Conciliation Agreement for Probable Cause Conciliation))
 (June 22, 2023).

³ *Phillips*, No. 2:23-cr-00217 (D. Nev. filed Dec. 19, 2023) Criminal Information at 2-4. ("Criminal Information"). See also *US v. Ryan Mark Phillips*, No. 2:23-cr-00217 (D. Nev. filed Nov. 14, 2023), Plea Agreement ¶ 10a.-g. ("Plea Agreement") (containing the factual basis for Phillips' guilty plea.). See also General Counsel's Brief at 3-5, 7-8 (Jan. 6, 2023) ("Brief") (discussing false information on the disclosure reports caused by Phillips' misappropriations).

⁴ *Phillips*, No. 2:23-cr-00217 (D. Nev. filed Apr 8, 2024), Judgment in a Criminal Case at 2, 4-5 ("Judgment") (other conditions of his probation include, to participate in outpatient substance abuse and mental health treatment programs, and not to engage in any form of gambling). *Id.* at 4.

⁵ Plea Agreement ¶ 10a-g; Judgment at 1.

⁶ Plea Agreement ¶ 10a.-b., f. See also Brief at 2-3 (discussing Phillips' assigned duties and misappropriation of committee funds; Phillips Resp. at 1 (June 21, 2019) (admitting to the allegations).

⁷ Plea Agreement ¶ 10b. See also Brief at 2-3; 5 (discussing assigned duties and amount of misappropriations); Pre-MUR 625 *Sua Sponte* Supplement at Attach (Jan. 15, 2020) (itemization of misappropriated funds and misreported transactions); Phillips Resp. at 1 (admitting to the allegations).

1 transactions together, falsely misreported the recipient of the disbursements, or simply failed to
 2 report the transactions at all.⁸ Phillips further admits to helping prepare disclosure reports for the
 3 Committees, knowingly misreporting many of his unauthorized transactions to the committees,
 4 and knowingly causing the committees to subsequently falsely report the transactions on their
 5 disclosure reports, as well as in drafts of the disclosure reports that he prepared for the
 6 committees to file, including Heller for Senate's 2018 Year-End Report filed January 31, 2019.⁹

7
 8 Here, Phillips's sentence includes home confinement, but does not include a prison term,
 9 and he was ordered to a small \$100 fine.¹⁰ As noted above, given the amount in violation, the
 10 Commission approved an out-the-door conciliation agreement [REDACTED].¹¹
 11 Thus, Phillips has not received a substantial criminal punishment that would counsel in favor of
 12 the Commission not pursuing Phillips. However, the statute of limitations for seeking a
 13 monetary civil penalty on the latest activity in this matter expired on February 20, 2024.¹² In
 14 December 2023, after DOJ informed us of Phillips' plea,¹³ despite our efforts, we were unable to
 15 obtain a tolling agreement.¹⁴ Given that the statute of limitations circumstances, we do not
 16 recommend further pursuing Phillips.

17
 18 Accordingly, we recommend that the Commission take no further action as to Ryan
 19 Phillips.

⁸ Plea Agreement ¶ 10d. *See also* Brief at 3-4 (discussing how Phillips concealed and omitted his misappropriations); Phillips Resp. at 1 (admitting to the allegations).

⁹ Plea Agreement ¶ 10.e-g; *see also* Brief at 4 (discussing false entries in reporting and helping prepare knowingly false disclosure reports); Phillips Resp. at 1 (admitting to the allegations).

¹⁰ Judgment ¶¶ 2-5.

¹¹ *Supra* note 2.

¹² *See* Memorandum to the Commission of Intent to Withdraw from Pre-Probable Cause Conciliation (Sept. 21, 2022) (setting forth that we withdrew from pre-probable cause conciliation because Phillips evaded all our attempts to contact him and he did not respond to the Commission's reason-to-believe notification letter and proposed conciliation agreement). We took extraordinary efforts, including hiring a process server [REDACTED] to hand-deliver the probable cause brief to Phillips, and afford him the opportunity to respond as required by 52 U.S.C. § 30109(a)(3), however, Phillips continued to evade service in this matter, and on May 16, 2023, we served the Brief to the two best addresses we have for Phillips via UPS, which we believe he received. *See* Memorandum to the Commission Recommending Proposed Conciliation Agreement for Probable Cause at n. 1 (June 6, 2023); Office of General Counsel's Notice to the Commission Following the Submission of Probable Cause Brief (June 6, 2023) (we simultaneously mailed the OGC Notice via UPS to Phillips of our intent to recommend probable cause and circulated our recommendation to the Commission).

¹³ *See* Email from Mark Allen, Assistant Gen. Counsel, OGC, to Commission, FEC (Dec. 21, 2023 14:04 EST) (forwarding DOJ's December 19, 2023, status letter enclosing Phillips' Plea Agreement and Criminal Information).

¹⁴ *See* Email from Christine C. Gallagher, Attorney, OGC, FEC, to Rebecca Levy, Assistant Federal Public Defender, Office of the Federal Public Defender (Jan. 9, 12:40 EST) (requesting tolling); Email from Rebecca Levy, Assistant Federal Public Defender, Office of the Federal Public Defender (Feb. 12, 2024, 17:04 PT) (indicating that her office is unable to agree to tolling or request Phillips to do so); Email from Mark Allen, Assistant Gen. Counsel, OGC, to Commission, FEC (Feb. 15, 2024, 09:45 EST) (summarizing communications with public defender).

1 II. IN COMPLIANCE, INC.

2 The remaining respondent in this matter is In Compliance, Inc., the committees’
 3 recordkeeping and reporting vendor where Phillips was a partner. The Commission previously
 4 voted to take no action at the reason-to-believe stage as to In Compliance at a time when the
 5 available information indicated that other partners and employees of In Compliance did not
 6 know of Phillips’ misappropriations until they conducted an annual internal review, at which
 7 time In Compliance reported the illegal transactions to the committees.¹⁵ Further, Phillips
 8 maintains that he acted independently, without the knowledge of anyone else at In Compliance.¹⁶
 9 The Factual Basis for Phillips’ Plea Agreement does not provide any information which would
 10 indicate anything other than Phillips acting alone and independently of anyone else at In
 11 Compliance in connection with the unauthorized transactions and filing of false disclosure
 12 reports.¹⁷
 13

14 A principal is liable vicariously for the acts of its agent committed within the scope of
 15 agency.¹⁸ In *Sun-Diamond Growers*, the court held a corporation criminally liable for the
 16 actions of its vice president who used corporate funds to reimburse campaign contributions in
 17 violation of the Act, even though the vice president actually hid the reimbursement scheme from
 18 others, holding that the corporation was liable because the vice president acted within the scope
 19 of his employment, which was to promote the corporation’s interests before the federal
 20 government, and undertook the scheme to benefit the corporation.¹⁹
 21

22 Here, Phillips was neither acting within the scope of his employment at In Compliance,
 23 nor did his actions benefit the company. As set forth above, Phillips was entrusted with access to
 24 the committees’ bank accounts solely for the sole purpose of making payments to vendors and
 25 preparing reports of contributions and expenditures to the Commission, not to misappropriate
 26 committee funds for his own personal benefit.²⁰ Further, the available information also shows
 27 that his unauthorized and hidden misappropriations were to the detriment of the company. As set
 28 forth in the sentencing memorandum, In Compliance “bore much of the financial burden for
 29 Phillips’ crime, taking on the responsibility to pay some or all of the restitution to the
 30 committees.”²¹ In addition to financial harm, Phillips’ actions jeopardized the company’s
 31 reputation by carrying “the potential to make prospective clients not want to work” with the

¹⁵ First Gen. Counsel’s Rpt. at 13; In Compliance Resp. at 1-3 (June 27, 2019); Cert. ¶ 2.f (Oct. 13, 2021).

¹⁶ Phillips Resp. at 1.

¹⁷ Plea Agreement ¶ 10a.-g.

¹⁸ RESTATEMENT (THIRD) OF AGENCY § 7.07; *see also United States v. Sun-Diamond Growers of Cal.*, 138 F.3d 961 (D.C. Cir. 1998) (affirming criminal convictions against Sun-Diamond in connection with a corporate contribution reimbursement scheme where officer hid the scheme from others in corporation but acted to benefit the corporation); *see also* Third Gen. Counsel’s Rpt. at 15-17 (Mar. 5, 2019), MUR 7221 (Mepco Holdings, LLC, *et al.*) (recommending pursuing company to pre-probable cause conciliation where company’s officer executed illegal reimbursement of political contributions scheme using company funds, and officer’s actions were intended to benefit the company); Cert. ¶ 3.b (Mar. 21, 2019), MUR 7221 (authorizing pre-probable cause conciliation with company-employer).

¹⁹ *Sun-Diamond Growers*, 138 F.3d at 970.

²⁰ *Supra* note 6.

²¹ *Phillips*, No. 2:23-cr-00217 (D. Nev. filed Apr. 1, 2024), Government’s Sentencing Memorandum at 7.

1 company.²² After learning of the embezzlement, In Compliance immediately terminated
2 Phillips' employment and revised its internal controls to prevent future misappropriations.²³ In
3 similar situations, the Commission has not pursued the employer for violations of the Act based
4 on the actions of its employee.²⁴

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6 Accordingly, we recommend that the Commission dismiss the allegations that In
7 Compliance, Inc. violated 52 U.S.C. §§ 30114(b) and 30102(b)(3) and close the file.

8 **III. RECOMMENDATIONS**

- 9
- 10 1. Take no further action as to Ryan Phillips;
 - 11
 - 12 2. Dismiss the allegations that In Compliance, Inc. violated of 52 U.S.C. §§ 30114(b)
13 and 30102(b)(3);
 - 14
 - 15 3. Approve the appropriate letters; and
 - 16
 - 17 4. Close the file effective 30 days from the date of certification of this vote (or on the
18 next business day after the 30th day, if the 30th day falls on a weekend or holiday).

²² *Id.*

²³ FGCR at 6, 13; In Compliance Resp. at 1-3.

²⁴ *See, e.g.*, Second Gen. Counsel's Rpt. at 28-31, MUR 6454 (Anchin, Block & Anchin, *et al.*) (recommending taking no action as to employer of wrongdoer where employer's funds not used in the conduit scheme, employee acted independently and without employer's knowledge, employer curtailed employee's duties and closely supervised him, promptly reported wrongdoing, cooperated with the Commission, and implemented internal controls); Cert. at 1, MUR 6454 (Cornwell, *et al.*) (Apr. 26, 2012) (Commission approved recommendation to take no action as to employer Anchin, Block & Anchin LLP); F&LA at 1, MUR 5652 (Terrell for Senate, *et al.*) (Commission found reason to believe former assistant treasurer, Susan Arceneaux, an employee of a professional compliance firm, violated the Act in her personal capacity when the political committee she served accepted prohibited corporate and excessive contributions and proceeds of an unsecured bank loan and committed various reporting violations; the committee paid the professional compliance firm for her services and the Commission took no actions as to the firm); Certification, MUR 5652 (formerly AR 04-06) at 6 (Apr. 6, 2005) (Commission approved recommendation to find reason-to-believe as to Arceneaux in her personal capacity).