

2021-FOIA-00432/1:21-cv-1246
Responsive records, as redacted

KING & SPALDING

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February 21, 2018

VIA HAND & ELECTRONIC DELIVERY

Davin Blackborow
Assistant Director for Licensing
Office of Foreign Assets Control
U.S. Department of the Treasury
Treasury Annex
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

**Confidential Information –
Withhold from Disclosure
Under FOIA**

**Re: Request to release certain blocked funds to King & Spalding to pay for
certain legal services authorized by a Specific License issued by OFAC**

Dear Mr. Blackborow:

King & Spalding LLP (“**King & Spalding**”) respectfully submits this request to the Office of Foreign Assets Control (“**OFAC**”), Department of Treasury, pursuant to 31 C.F.R. §501.801, to release certain funds that King & Spalding instructed its financial institution to block (“**Blocked Funds**”), because such funds were prematurely sent to King & Spalding as it was confirming whether it could accept payment to represent Mr. Dan Gertler, a Specially Designated National (“**SDN**”) designated under Executive Order 13818 (“**E.O. 13818**”). If released by OFAC, the Blocked Funds subject to this request would be used as payment for the provision of legal services authorized by a specific license issued by OFAC (License Number: GLOMAG-2018-350802) on February 15, 2018 (“**Specific License**”).¹

This letter contains commercial information regarding King & Spalding that is confidential, proprietary and contains trade secrets and, therefore, exempt from the public disclosure provisions of the Freedom of Information Act (“**FOIA**”). Consequently, we request that this letter be withheld in the event of a demand for disclosure under FOIA. We understand that in accordance with 31 C.F.R. §1.6, if such a demand is received, OFAC will give us prompt notice of the demand and an opportunity to be heard before any action is taken.

¹ The Specific License is provided as **Attachment A**.

Mr. Davin Blackborow
Office of Foreign Assets Control
February 21, 2018

I. BACKGROUND

King & Spalding (*Taxpayer Identification Number: 58-0520153*) is an international law firm with 20 offices worldwide. Please see our website at <https://www.kslaw.com/> for more information. King & Spalding provides its clients with legal services in a variety of practice areas, including sanctions and export controls.

On January 26, 2018, King & Spalding filed a license application requesting that OFAC authorize King & Spalding to provide certain legal services to Mr. Gertler ("**Original License Application**"). The Original License Application included a request that OFAC authorize King & Spalding to receive payment for the provision of legal services from two sources: (i) the Blocked Funds and (ii) funds originating from outside the United States that are not blocked or within the possession or control of a U.S. person. As a result of subsequent communications with OFAC and in order to simplify OFAC's review of the Original License Application, King & Spalding decided to withdraw the portion of its license application requesting that OFAC authorize King & Spalding to receive payment for the provision of legal services from the Blocked Funds. It was understood that King & Spalding could then submit a separate request that the Blocked Funds be unblocked, so that the funds could be used as payment for the provision of those legal services authorized under the Specific License.

II. DESCRIPTION OF THE BLOCKED FUNDS

King & Spalding was contacted to represent Mr. Gertler (b)(4). As King & Spalding was confirming how it could lawfully accept fees from Mr. Gertler, it prematurely received a wire transfer of a retainer for legal services (b)(4).

(b)(4)
(b)(4) We understand that the funds (b)(4)

(b)(4)

(b)(4) Once King & Spalding concluded that it was in possession of a blockable property interest, because it would have needed a specific license to provide legal services and be paid for such services, (b)(4)

(b)(4)
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(b)(4)

(b)(4)

Mr. Davin Blackborow
Office of Foreign Assets Control
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(b)(4)

(b)(4)

III. AUTHORIZING THE RELEASE OF THE CERTAIN BLOCKED FUNDS IS NOT INCONSISTENT WITH THE GLOBAL MAGNITSKY SANCTIONS

The issuance of the Specific License, as well as various general licenses issued under other sanctions programs,³ indicates that it is not inconsistent with OFAC's policy to authorize the receipt of payment for professional fees and expenses related to the provision of authorized legal services to sanctioned individuals. Indeed, OFAC has stated that it routinely provides such authorizations *via* general licenses in many sanctions programs and specific licenses in others⁴ and has issued the Specific License with respect to King & Spalding's representation of Mr. Gertler. General and specific licenses issued by OFAC for payment of authorized legal services typically require that payment be made from funds other than the following:

- (i) funds originating from a source within the United States,
- (ii) funds within the possession or control of a U.S. person,
- (iii) funds from another blocked person (*i.e.*, a blocked person other than the person receiving legal representation), or
- (iv) funds that are otherwise blocked.⁵

Sections 2 and 3 of the Specific License contain restrictions consistent with OFAC's typical practice.

With respect to the Blocked Funds, however, (b)(4)

(b)(4)

(b)(4)

As a result, and in order to comply with E.O. 13818 and 31 C.F.R. §501.603, King & Spalding (b)(4)

³ See *e.g.*, Burundi Sanctions Regulations (31 C.F.R. §554.507), Iranian Transactions and Sanctions Regulations (31 C.F.R. §560.525), and the Magnitsky Act Sanctions Regulations (31 C.F.R. §584.508).

⁴ See <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/petitions.aspx>. (stating "[r]eceipt of payment for such services from sources outside of the United States is also authorized by GL in many programs, and is routinely authorized by specific license in others.")

⁵ See *e.g.*, Burundi Sanctions Regulations (31 C.F.R. §554.507), Iranian Transactions and Sanctions Regulations (31 C.F.R. §560.525), and the Magnitsky Act Sanctions Regulations (31 C.F.R. §584.508).

Mr. Davin Blackborow
Office of Foreign Assets Control
February 21, 2018

(b)(4) the date the Specific License was issued, the funds could have been used as payment for professional fees and expenses for legal services authorized under the Specific License. Thus, we respectfully submit that the use of these funds for payment for King & Spalding's above referenced legal services is consistent with U.S. sanctions policy (b)(4)

(b)(4)

IV. AUTHORIZATION REQUESTED

For the reasons described above, we respectfully request that OFAC authorize the release of the Blocked Funds to be used as payment for professional fees and expenses associated with the provision of legal services to Mr. Gertler pursuant to the Specific License. If authorized by OFAC, King & Spalding will include in the recordkeeping and reporting requirements specified in Section 4 (a) and (b) of the Specific License a showing of the application of the Blocked Funds to the amounts owed us for legal services provided to Mr. Gertler.

We are happy to provide additional information as necessary, including through a telephone conference or an in person meeting, should it be helpful. If you have any questions or need additional information, please do not hesitate to contact the undersigned. We thank you for your attention to this matter.

Respectfully submitted,

(b) (6)

Christine E. Savage
Betre M. Gizaw
King & Spalding LLP
1700 Pennsylvania Ave. NW
Suite 200
Washington, DC 20006

Enclosures

Attachment A
Specific License



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

LICENSE No. GLOMAG-2018-350802-1

**Executive Order 13818 of December 20, 2017,
“Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption”**

LICENSE

(Issued under the authority of one or more of 50 U.S.C. §§ 1601-51, 1701-06, Pub. L. 114-328, Executive Order 13818, and 31 C.F.R. Part 501.)

**To: King & Spalding LLP
1700 Pennsylvania Ave NW, Ste. 200
Washington, DC 20006
ATTN: Christine E. Savage, Partner**

1. Based upon the request dated January 26, 2018, and additional correspondence dated January 31, 2018, February 2, 2018, and February 9, 2018, to the Office of Foreign Assets Control (the “Application”), the transactions described herein are hereby authorized.
2. This License is subject to the condition, among others, that the Licensee(s) comply with its terms and with all regulations, rulings, orders, and instructions issued under any of the authorities cited above.
3. This License **expires on February 29, 2020** and is not transferable. The transactions described in this License are subject to the authorities cited above and any regulations and rulings issued pursuant thereto. This License may be revoked or modified at any time. If this License was issued as a result of willful misrepresentation it may be declared void from the date of its issuance or from any other date.
4. This License does not authorize transactions prohibited by any law or regulation administered by the Office of Foreign Assets Control other than those listed above.
5. This License does not excuse the Licensee(s) from the need to comply with any law or regulation (including reporting requirements) administered by any other agency or the need to obtain any required authorization(s) from any other agency.

OFFICE OF FOREIGN ASSETS CONTROL

(b)(6)

02/15/2018

By

**Jeanette A. Miller
Deputy Assistant Director for Licensing**

Date

Attention is directed to, *inter alia*, 18 U.S.C. § 1001 and 50 U.S.C § 1705 for provisions relating to penalties.

SECTION 1 - AUTHORIZATION: Subject to the limitations and conditions herein, King & Spalding LLP (the “Licensee”) is hereby authorized to engage in all activities necessary and ordinarily incident to the provision of the following legal services to or on behalf of Dan Gertler (the “Client”), a person whose property and interests in property are blocked pursuant to Executive Order (E.O.) 13818 of December 20, 2017, “Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption,” and receipt of payment for such services, (b)(4) :

(b)(4)

SECTION 2 - CONDITION: Payments to the Licensee for professional fees and expenses authorized by this License must not originate from a source within the United States, or from any source outside the United States within the possession or control of a U.S. person, or from any entity or individual, other than the Client, whose property or interests in property are blocked pursuant to any statute, Executive order, or Chapter V of Title 31 of the C.F.R.

SECTION 3 - WARNINGS: (a) This License does not authorize the transfer of any blocked property, the debiting of any blocked account, the entry of any judgment or order that effects a transfer of blocked property, or the execution of any judgment against property blocked pursuant to any Executive order, statute, or 31 C.F.R. Chapter V.

(b) Except as authorized by **SECTION 1** hereof, this License does not authorize transactions prohibited by any Executive order or by any other laws and regulations administered by the Office of Foreign Assets Control, including E.O. 13818.

(c) The authorization set forth in this License applies only to laws and regulations administered by the Office of Foreign Assets Control, and should not be interpreted to excuse the Licensee from compliance with other laws, regulations, orders, or rulings to which it may be subject.

(d) Any transfer of funds through the U.S. financial system pursuant to the authority set forth in **SECTION 1** hereof should reference the number of this License to avoid the blocking or rejection of the transfer.

(e) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to E.O. 13818, is prohibited unless separately licensed or otherwise authorized by the Office of Foreign Assets Control.

SECTION 4 - RECORDKEEPING AND REPORTING REQUIREMENTS: (a) The Licensee is subject to the recordkeeping and reporting requirements of, *inter alia*, 31 C.F.R. §§ 501.601 and 501.602, including the requirement to maintain full and accurate records concerning the activities undertaken pursuant to this License for a period of five years from the date of each transaction.

(b) The Licensee shall submit annual reports no later than thirty days following the end of each calendar year during the term of this license providing information on the funds received pursuant hereto. Such reports shall specify (i) the individual or entity from which the funds originated and the amount of funds received; and (ii) if applicable, the names of any individuals or entities, such as private investigators or expert witnesses, providing related services to the U.S. person receiving payment in connection with the authorization in **SECTION 1** above and a general description of the services provided, as well as the amount of funds paid in connection with such services. In the event that no transactions occur or no funds are received during the reporting period, a statement is to be filed to that effect. Reports are to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Freedman's Bank Building, Washington, D.C. 20220, and are to refer to this **License No. GLOMAG-2018-350802-1**.

(c) See 31 C.F.R. § 501.605 for additional requirements regarding reports to OFAC, courts, and other adjudicators on litigation, arbitrations, and dispute resolution proceedings.

SECTION 5 – PRECEDENTIAL EFFECT: The authorization contained in this License is limited to the facts and circumstances specified in the Application.

Attachment B
Payment Instructions

Bates No. 2021-1246-0000006163 from submitter,
King & Spalding LLP, is withheld in full under
FOIA Exemption (b)(4)

Attachment C
Blocked Transaction Report

KING & SPALDING

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January 30, 2018

VIA Email at ofacreport@treasury.gov

Department of the Treasury
Office of Foreign Assets Control, Compliance Division
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Re: King & Spalding LLP Report of Blocked Transaction

Dear Compliance Division:

Enclosed with this letter please find a Report of a Blocked Transaction submitted by King & Spalding LLP.

Very truly yours,

(b) (6)

Betre M. Gizaw

Enclosures

Bates Nos. 2021-1246_0000006166-0000006167
from submitter, King & Spalding LLP,
withheld in Full under FOIA Exemption (b)(4)

Attachment Payment Instructions

Bates No. 2021-1246_0000006169 from submitter,
King & Spalding, LLP, is withheld in full under
FOIA Exemption (b)(4)

Bates Nos. 2021-1246_0000005806-0000005808 from
submitter, SunTrust Bank (Truist), are withheld in full under
FOIA Exemptions (b)(3), (b)(4), and (b)(6)

FINCH McCRANIE, LLP

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OF COUNSEL
LARRY D. THOMPSON

April 12, 2021

VIA U.S. MAIL and E-MAIL (Nikole.Thomas@treasury.gov)

Ms. Nikole Thomas
Assistant Director
Licensing Division
Office of Foreign Assets Control
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
The Freedman's Bank Building
Washington, D.C. 20220

Re: License No. GLOMAG-2020-368297-2 90-Day Report

Dear Ms. Thomas:

I write as counsel to Larry D. Thompson and Larry D. Thompson, LLC (collectively "Mr. Thompson"). On November 6, 2020, OFAC issued a license (License No. GLOMAG-2020-368297-1) that authorized Mr. Thompson to perform certain monitoring activities in connection with anticipated donations by Mr. Dan Gertler "to support the provision of humanitarian relief in the Democratic Republic of the Congo" (the "DRC") by specified Candidate Charities. The license was superseded by an amended license issued on January 12, 2021 (License No. GLOMAG-2020-368297-2), to allow SofiBanque S.A. to receive and disburse funds from a blocked account to support the provision of humanitarian relief in the DRC. On January 13, 2021, I understand that Mr. Gertler's team submitted requests for additional amendments to the license (including a number at Mr. Thompson's request) and that those requests remain pending. I was also told that Mr. Gertler's team planned to submit a suggested Monitorship Agreement for explicit approval by OFAC (a step also requested by Mr. Thompson).

We learned from news reports that a separate specific license was granted to Mr. Gertler on January 15, 2021, which was later revoked. We were not involved in any requests related to this separate January 15 license and have no knowledge of any activities that may have been undertaken by Mr. Gertler pursuant to it. We have been told by counsel for Mr. Gertler at Arnold & Porter that the reported revocation of the January 15 specific license did not reference or, to their understanding, impact the license granted to Mr. Thompson.

Ms. Nikole Thomas
April 12, 2021
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Thus, relying on this representation, we are proceeding with the assumption that OFAC may still consider License No. GLOMAG-2020-368297-2, naming Mr. Thompson as a Licensee, as continuing in effect (albeit with further amendments needed prior to any activity taken pursuant to the license). In this regard, and as further explained below, we want to ensure that OFAC understands Mr. Thompson to date has not been retained as a Monitor by Mr. Gertler, as we await further decision by OFAC. Nonetheless, as Mr. Thompson is a named Licensee, OFAC may expect that he will file reports as specified under the relevant License. Please let us know if OFAC has a different view.

Section 4(b) of License No. GLOMAG-2020-368297-2 requires the Licensees to submit a detailed report to OFAC every 90 days providing information on activities undertaken pursuant to the license. If no activities have occurred or no money has been disbursed during the reporting period, a statement is to be filed to that effect. For the reasons stated below, we wish to inform you that Mr. Thompson has not undertaken any activities or disbursed any funds during the reporting period (January 12, 2021 - April 12, 2021).

By way of further explanation, Mr. Thompson was asked to serve as an independent Monitor of charitable activities by Mr. Gertler in the DRC. Mr. Thompson was willing to do so, on the condition that OFAC approved all aspects of the proposed independent Monitorship and agreed that it was consistent with OFAC's mission and the best interests of the United States, including humanitarian relief efforts.

To date, Mr. Thompson has not been retained to perform these services as an independent monitor, or any other services relating to Mr. Gertler's proposed charitable contributions, or any services relating to any other activities or matter concerning Mr. Gertler or any of his businesses or entities. Mr. Thompson has not received any payment from Mr. Gertler or any of his businesses or entities. To Mr. Thompson's knowledge, no activities pursuant to License No. GLOMAG-2020-368297-2 (January 12, 2021) have taken place. Again, Mr. Thompson has no knowledge of any activities that may have been undertaken by Mr. Gertler pursuant to the separate January 15, 2021 specific license.

Mr. Thompson intends to proceed with activities under the License No. GLOMAG-2020-368297-2 only if retention terms are agreed upon by relevant parties and if OFAC (1) further amends the license, as previously requested by Mr. Gertler's team, and (2) explicitly approves of the proposed independent Monitorship and Monitorship Agreement proposed by Mr. Thompson that would serve to protect his independence and the Monitorship process.

Please let me know if you have any questions or would like to discuss these issues. We also respectfully request that OFAC clarify whether Mr. Thompson is required to file additional reports pursuant to License No. GLOMAG-2020-368297-2 going forward.

Ms. Nikole Thomas
April 12, 2021
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Sincerely,

(b)(6)

(b)(6)

Michael Sullivan