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**999 E Street, N.W.
Washington, D.C. 20463**

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 7011

DATE COMPLAINT FILED: Feb. 12, 2016

DATE OF LAST NOTIFICATION: Feb 23, 2016

DATE OF LAST RESPONSE: March 30, 2016

DATE ACTIVATED: Nov. 25, 2016

ELECTION CYCLE: 2016

EARLIEST SOL: Feb. 4, 2021

LATEST SOL: ongoing

COMPLAINANTS:

Marc E. Elias and Ezra W. Reese,
as counsel for Hillary for America, Inc.

RESPONDENTS:

HC4President and Kyle Prall in his official capacity
as treasurer
Socially Responsible Government (f/k/a Feel
B.E.R.N.) and Grace Rogers in her official
capacity as treasurer

MUR: 7092

DATE COMPLAINT FILED: June 24, 2016

DATE OF LAST NOTIFICATION: July 15, 2016

DATE OF LAST RESPONSE: Aug. 19, 2016

DATE ACTIVATED: Nov. 25, 2016

ELECTION CYCLE: 2016

EARLIEST SOL: Feb. 4, 2021

LATEST SOL: ongoing

COMPLAINANT:

Seth Ryan Gunning

RESPONDENTS:

Socially Responsible Government (f/k/a Feel
B.E.R.N.) and Grace Rogers in her official
capacity as treasurer
Kyle Prall
Joseph F. Centrich, Esq.
Johan Garcia
DMF Marketing Solutions, LLC
LCGM, LLC
NHT Productions, LLC

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Upwork Global Inc.

**RELEVANT STATUTES
 AND REGULATIONS:**

52 U.S.C. § 30102(e)(4)
 52 U.S.C. § 30114(b)(1)
 52 U.S.C. § 30124(b)
 11 C.F.R. § 102.14(a)
 11 C.F.R. § 113.1(g)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaints in these matters allege that two unauthorized political committees fraudulently misrepresented that they acted for, or on behalf of, federal candidates Hillary Clinton and Bernie Sanders for the purpose of soliciting contributions.¹ The Complaint in MUR 7011, which was filed by Clinton's principal campaign committee, Hillary for America, Inc. ("HFA"), alleges that HC4President and Kyle Prall in his official capacity as treasurer ("HC4P") fraudulently misrepresented itself as acting on behalf of the HFA or Clinton for the purpose of soliciting contributions through its website, hc4president.org. In MUR 7092, the Complaint alleges that Socially Responsible Government (f/k/a Feel B.E.R.N.) and Grace Rogers in her official capacity as treasurer ("SRG") fraudulently misrepresented itself as acting on behalf of Sanders for the purpose of soliciting contributions through its website, www.feelbern.org.

HC4P and SRG deny that they falsely claimed to act on behalf of Clinton or Sanders. They contend that because they complied with the relevant registration, reporting, and disclaimer requirements of the Federal Election Campaign Act of 1971, as amended ("Act"), they took the proper measures to inform the public that HC4P and SRG were unauthorized committees.

¹ See 52 U.S.C. § 30124(b).

1 Viewed as a whole, the available record indicates that both committees' websites were
2 designed to mislead viewers of ordinary prudence and comprehension into believing that HC4P
3 and SRG represented Clinton and Sanders, respectively. HC4P's website used specific phrases
4 and images, including official HFA campaign materials, intended to convey the misimpression
5 that HC4P was part of Clinton's campaign or authorized by Clinton, and that contributions made
6 through HC4P's website would flow directly to Clinton's campaign. Similarly, SRG's website
7 used phrases and images that either alluded to, or were directly appropriated from, Sanders's
8 authorized campaign website, and were intended to mislead viewers into thinking SRG and
9 FeelBern.org were part of Sanders's official campaign, Bernie 2016, Inc. ("Bernie 2016"). The
10 facts also indicate that the same person, Kyle Prall, was responsible for both websites. Under the
11 circumstances, we recommend that the Commission find reason to believe that HC4P, SRG, and
12 Kyle Prall violated 52 U.S.C. § 30124(b) and authorize an investigation to determine the full
13 scope of the violations.

14 In addition, the Complaint in MUR 7092 alleges that Prall, as "PAC CEO," as well as
15 numerous vendors who received disbursements from SRG, violated the Act by converting
16 committee funds to personal use.² Because SRG is not an authorized committee, we recommend
17 that the Commission find no reason to believe that Prall, Upwork Global, Inc., Joseph Centrich,
18 Johan Garcia, LCGM, LLC, NHT Productions, LLC, and DMF Marketing Solutions, LLC
19 violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g).

² Compl., MUR 7092 at 5–8 (June 24, 2016) ("MUR 7092 Compl.").

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Fraudulent Misrepresentation**

3 1. Legal Standard

4 The Act provides that no person shall fraudulently misrepresent the person as speaking,
5 writing, or otherwise acting for, or on behalf of, any candidate or agent thereof for the purpose of
6 soliciting contributions or donations.³ Further, the Act provides that no person shall willfully
7 and knowingly participate in or conspire to participate in any plan or scheme to engage in such
8 behavior.⁴ Although the Act requires that the violator have the intent to deceive, it does not
9 require proof of the common law fraud elements of justifiable reliance and damages.⁵ Absent an
10 express misrepresentation, a representation is considered fraudulent “if it was reasonably
11 calculated to deceive persons of ordinary prudence and comprehension.”⁶

12 To determine whether a person has engaged in fraudulent misrepresentation, the
13 Commission has previously considered such factors as: (1) whether the respondent political

³ 52 U.S.C. § 30124(b)(1); *see also* 11 C.F.R. § 110.16(b)(1).

⁴ 52 U.S.C. § 30124(b)(2); *see also* 11 C.F.R. § 110.16(b)(2).

⁵ *See FEC v. Novacek*, 739 F. Supp. 2d 957, 961 (N.D. Tex. 2010) (finding that defendants knowingly and willfully violated 2 U.S.C. § 441h(b) (now 52 U.S.C. § 30124(b))); Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,969 (Dec. 13, 2002) (“Explanation and Justification”) (citing *Neder v. United States*, 527 U.S. 1, 24-25 (1999)) (distinguishing fraud in federal campaign finance abuses from common law tort action on the basis of Congress intending to penalize schemes as well as actions taken to defraud and the damaging effect of misrepresentation); Factual and Legal Analysis (“F&LA”) at 4, MUR 5472 (Jody Novacek).

⁶ *Novacek*, 739 F. Supp. 2d at 961; *see also United States v. Thomas*, 377 F.3d 232, 242 (2d Cir. 2004) (citing, *inter alia*, *Silverman v. United States*, 213 F.2d 405 (5th Cir. 1954) (holding that, if the mails are used in a scheme devised with the intent to defraud, the fact that there is no misrepresentation of a single existing fact makes no difference in the fraudulent nature of the scheme); F&LA at 9, MUR 5951 (Californians for Change f/k/a Californians for Obama).

1 committee was registered and reporting to the Commission, if required;⁷ (2) the presence of
 2 adequate disclaimers;⁸ (3) inclusion of statements implying that the respondents acted with the
 3 authority of the represented candidate;⁹ (4) inclusion of statements implying that contributions to
 4 the respondent would go directly to the represented candidate;¹⁰ (5) mimicry of the candidate's
 5 website¹¹ or use of the candidate's official logo;¹² (6) whether any individuals were actually
 6 misled by the website;¹³ (7) and whether the respondent used a misleading name.¹⁴

⁷ F&LA at 10, MUR 6633 (Republican Majority Campaign) (“[w]eighing against a finding of reason to believe that the Respondent violated [52 U.S.C. § 30124(b)] is the fact that [the Respondent] is registered with the Commission and complies with its reporting requirements”); *see also* First Gen. Counsel's Report at 12, MUR 5472 (Republican Victory 2004 Committee) (“failure to file reports with the Commission indicating on what, if anything, money raised has been spent may be probative of the Committee's intent to misrepresent itself to the public.”).

⁸ F&LA at 10, MUR 6641 (CAPE PAC) ([t]he Commission has previously held that the presence of an adequate disclaimer identifying the person or entity that paid for and authorized a communication can defeat an inference that a respondent maintained the requisite intent to deceive for purposes of a section [30124] violation.”).

⁹ Gen. Counsel's Brief at 14–16, MUR 5951 (Californians for Change) (recommending probable cause to believe Californians for Obama violated [section 30124] by, *inter alia*, approving a telemarketing solicitation script that stated “We are Senator Obama's California organization to help put the face-of-change in the White House” and where an officer went by the title “State Chairman,” thereby giving “the impression that the organization was the official representative of the national Obama campaign in the State of California.”); Certification, MUR 5951 (Aug. 3, 2011); *see also* First Gen. Counsel's Report at 3, MURs 5443, 5495, 5505 (johnfkerry-2004.com) (recommending reason to believe a respondent engaged in express misrepresentation through a website that stated it was “paid for and authorized by John Kerry for President, Inc. 2004”).

¹⁰ *Compare, e.g.*, Gen. Counsel's Brief at 8, MUR 5472 (recommending probable cause in part on the basis of the statement “Contributions or gifts to the *Republican Party* are not deductible as charitable contributions”) (emphasis in original) *with* F&LA at 10, MUR 6641 (finding no reason to believe statements such as “Help CAPE PAC re-elect Allen West to Congress” led to fraudulent misrepresentation).

¹¹ First Gen. Counsel's Report at 3, MURs 5443, 5495, 5505 (johnfkerry-2004.com) (recommending reason to believe respondents violated the Act by copying several pages from the candidate's legitimate website).

¹² F&LA, MUR 6531 (Obama-Biden 2012) (finding reason to believe a respondent violated the Act in part by placing the Obama for America logo on its website and merchandise).

¹³ Gen. Counsel's Brief at 14–16, MUR 5951 (Californians for Change) (recommending probable cause to believe Californians for Obama violated [section 30124] by, in part on the basis that multiple members of the public were in fact misled and contributed money to the respondents under the belief it would be contributed to then-Senator Barack Obama).

¹⁴ *Id.*

2. The Available Record Indicates that HC4P Fraudulently Misrepresented Itself as Acting for or on behalf of Clinton for the Purpose of Soliciting Contributions

a. Factual Background

HC4P registered with the Commission in January 2016 as an unauthorized political committee supporting a single federal candidate, Hillary Clinton, who was a candidate for U.S. President in 2016.¹⁵ Kyle Prall is HC4P's treasurer.¹⁶

HC4P operated a website at the URL¹⁷ www.hc4president.org, which is no longer functional.¹⁸ The title of the website — as displayed in the browser tab — was “Hillary Clinton for President – Committee to Elect Hillary Clinton.”¹⁹ A static header at the top of each page of the website displayed the following logo:²⁰



¹⁵ Statement of Org., HC4President (Jan. 19, 2016).

¹⁶ *Id.*

¹⁷ “URL” stands for uniform resource locator, which is commonly referred to informally as a web address. The URL provides a means to access a specific web resource on a computer network, *e.g.*, a website on the Internet. In HC4P's web address, the segment “www.hc4president.org” is specifically referred to as the hostname, which is a label that can be used to identify the IP address of the website.

¹⁸ HC4PRESIDENT.ORG, <http://hc4president.org> (last visited May 20, 2016); Compl. MUR 7011, Attach. A (“MUR 7011 Compl.”).

Screenshots from this site were also attached to the Complaints filed for both MURs 7011 and 7092. Based on a comparison of the various screenshots available it appears that at times the committee listed its website address as “hcforpresident.org,” using the word “for” in place of the number “4.”

¹⁹ *See also* Video of HC4President Home page

²⁰ *Id.*

1 On the “About Us” page of the website, HC4P described itself as “[f]irst and foremost, [] a group
 2 of huge Hillary Clinton supporters” whose “hope is to raise enough money to make a significant
 3 positive impact on Hillary’s campaign and to get the word out about her campaign platform and
 4 initiatives.”²¹ The website provided information about Clinton, including her stances on various
 5 issues and recent news about the candidate.²² The website also linked to various pages on HFA’s
 6 official candidate website.²³

7 The website’s home page included an embedded video — produced by HFA and
 8 featuring HFA’s logo — of Clinton’s official campaign launch.²⁴ It also featured several
 9 “Donate Now” buttons that link to the website’s donation page.²⁵ The following slogans
 10 accompanied the donation buttons:

- 11 • “Support Hillary Clinton”
 12 • “Stand with Hillary”
 13 • “Support Hillary Today [a]nd Stand With [t]he Middle Class. Donate [T]oday
 14 and Become an Official Supporter”

²¹ *About Us*, HCFORPRESIDENT.ORG, <http://hcforphresident.org/about-us/> (last visited May 20, 2016). The website further stated that HC4P’s “ultimate goal is to help Hillary Clinton become the 45th President and first woman elected to the office” and that it will accomplish this goal by raising awareness of Clinton’s policy positions, through get-out-the-vote activities, and “donat[ing] directly to other volunteer groups that support Hillary in battleground and other areas.” *Id.*

²² *About Us*, HCFORPRESIDENT.ORG, <http://hcforphresident.org/about-us/>; *Contact Us*, HCFORPRESIDENT.ORG, <http://hcforphresident.org/contact-us/>; *Issues*, HCFORPRESIDENT.ORG, <http://hcforphresident.org/issues/>.

²³ HCFORPRESIDENT.ORG (linking to *Sign up to Volunteer*, HILLARYCLINTON.COM, <https://www.hillaryclinton.com/volunteer/>; *Events*, HILLARYCLINTON.COM; <https://www.hillaryclinton.com/events/>; *Commit*, HILLARYCLINTON.COM, <https://www.hillaryclinton.com/commit/>).

²⁴ *Id.* The embedded video was posted to Clinton’s official YouTube channel and features a disclaimer at its conclusion that states “Paid for by Hillary for America.” Hillary for America, *Hillary Clinton’s Official Campaign Launch Video*, YOUTUBE (June 13, 2016), <https://www.youtube.com/watch?v=-i8vdM15K6c>.

²⁵ *Id.*

1 • “Support Hillary Today and Stand [w]ith the Middle Class. Donate today to help
2 Hillary Clinton become our nation’s 45th President.”²⁶

3 A copy of the donation page, attached to the Complaint,²⁷ featured the words “Donation to
4 Hillary Clinton Campaign” at the top, followed by fields requesting the donor’s personal and
5 billing information.²⁸

6 A blue footer at the bottom of the website featured the following disclaimer, in small
7 white font:

8 Paid for by the hc4president Committee (hc4president.org) and not
9 authorized by any candidate or candidate’s committee. –
10 hc4president.org © 2016 All Rights Reserved.²⁹

11 Another page solicited contributions by stating the following:

12 Your contribution goes directly toward paying for training
13 volunteers to knock on doors, make phone calls and spread the
14 word about Hillary’s movement. It also helps pay for our
15 initiatives to help voters obtain the appropriate ID and
16 transportation to voting facilities. With your help we can take back
17 our country.³⁰

18 The Complaint describes the experience of one Clinton supporter who, in attempting to
19 donate to Clinton, “was directed to the website of HC4P,” where she made a contribution to
20 HC4P.³¹ According to the Complaint, at the time the supporter made her contribution to HC4P,
21 a Google search for the terms “donate Hillary Clinton for President” or “donate to Hillary

²⁶ *Id.*

²⁷ MUR 7011 Compl., Attach. C (displaying a PayPal donation page). At the time we viewed the site, the website’s donation page was powered by QGiv, a different online donation platform.

²⁸ *Id.*

²⁹ *Id.*, Attach. A.

³⁰ *Id.*, Attach. B.

³¹ *Id.* at 1.

1 Clinton” generated links to HC4P’s website as the first or second result.³² Exhibits attached to
2 the Complaint show that these search results were a Google Adwords advertisement for
3 HC4President.org, which featured the words “Donate to Hillary Clinton – hc4president.org” and
4 “Make History – Support Hillary for President by donating today.”³³ The Complaint states that
5 after the supporter made her contribution to HC4P she received a reply email from
6 “info@feelbern.org” thanking her for her donation to “Feel the Bern.”³⁴ Feelbern.org is the URL
7 for a website operated by SRG.³⁵ SRG was reportedly founded by HC4P’s treasurer, Prall, as
8 discussed below.³⁶

9 In its response, HC4P acknowledges that for a short period of time, donations to HC4P
10 generated response emails from info@feelbern.org.³⁷ However, the committee states that the
11 emails were the result of a “technological issue” that has since been resolved.³⁸ HC4P asserts
12 that the same consultant designed HC4P’s and SRG’s websites and that the response emails were
13 the result of “email coding which was improperly copied from the consultant’s earlier project.”³⁹
14 HC4P states that no funds donated to HC4P were ever misapplied to another committee.⁴⁰

³² *Id.* at 2 & Attach. F, G.

³³ *Id.*, Attach. F, G.

³⁴ *Id.* at 1–2.

³⁵ FEELBERN.ORG, www.feelbern.org.

³⁶ See Megan R. Wilson, “Feel Bern” PAC Comes Under Scrutiny, THE HILL (June 30, 2016), <http://thehill.com/homenews/campaign/286051-feel-bern-pac-comes-under-scrutiny> (reporting that Prall established both HC4P and SRG); see also Statement of Org., SRG (Mar. 7, 2016).

³⁷ HC4P Resp. at 1 (Mar. 15, 2016).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

1 *b. Legal Analysis*

2 Several aspects of HC4P's website, HC4President.org, appear designed to deceive a
3 person of ordinary comprehension into believing that HC4P is acting for or on behalf of Hillary
4 Clinton. *First*, the committee solicits contributions through a website that uses a stylized "HC"
5 logo and the title "Hillary Clinton for President – Committee to Elect Hillary Clinton," which
6 sounds akin to an authorized committee. Further, the website repeatedly informs viewers about
7 its efforts to support Clinton's "campaign"⁴¹ and embeds video produced by Clinton's authorized
8 committee along with the official HFA logo. These features appear to be designed to convey the
9 impression that HC4P was Clinton's authorized representative.⁴²

10 *Second*, statements on HC4P's website suggest that contributions directly benefit Clinton
11 or HFA, rather than HC4P.⁴³ The site solicits contributions by stating: "Donate today and
12 Become an *Official* Supporter" and entreats viewers to "Support Hillary Clinton," "Stand with
13 Hillary," and "Donate today to help Hillary Clinton become our nation's 45th President," which
14 suggests that a contribution to HC4P is essentially a donation to Clinton's campaign.⁴⁴ Indeed,
15 HC4P's PayPal donation page featured the statement "Donation to Hillary Clinton Campaign" at

⁴¹ In the "About Us" section of the website, HC4P informs viewers that its goal is to help elect Clinton as President. "To accomplish that goal," HC4P outlines specific action items "that can most help her campaign," including: "Raise awareness on Hillary Clinton's platform on issues, how to vote for Hillary Clinton, and other opportunities to assist the campaign effort." *See* MUR 7011 Compl., Attach. A.

⁴² *See* F&LA at 2–3, MUR 6531 (Obama-Biden 2012) (finding reason to believe that respondents violated 52 U.S.C. § 30124(b) where unauthorized entity used official campaign logo on website that solicited contributions); F&LA at 8, MUR 5951 (Californians for Change) (finding reason to believe respondents violated [section 30124(b)] where respondents solicited contributions referencing candidate's "campaign," described activities that suggested an official campaign, and used campaign slogan, "Obama 08").

⁴³ *See* Gen. Counsel's Brief at 8, MUR 5472 (Republican Victory 2004 Committee); Certification, MUR 5472 (Republican Victory 2004 Committee) (Oct. 21, 2008) (Commission found probable cause to believe that Respondents violated the Act by implying in its solicitations that contributions would benefit the Republican Party rather than to the Republican Victory Committee); *see also* *FEC v. Novacek*, 739 F. Supp. 2d 957, 961–62 (N.D. Tex. 2010).

⁴⁴ *See* MUR 7011 Compl., Attach. A, B.

1 the top. Further, HC4P's Google advertisement contains the banner slogan "Donate to Hillary
2 Clinton," explicitly suggesting that contributions to HC4P will flow directly to the candidate.⁴⁵

3 *Third*, according to the Complaint, at least one person was actually misled by HC4P's
4 website and contributed to HC4P intending to make a contribution to Clinton's campaign.⁴⁶
5 Actual confusion is not necessary to prove a violation of the Act.⁴⁷ However, it supports the
6 inference that "persons of ordinary prudence and comprehension" would be misled by the
7 website,⁴⁸ and the Commission has found such information persuasive in prior matters.⁴⁹

8 HC4P denies that its website makes any fraudulent misrepresentations.⁵⁰ To the contrary,
9 it claims that HC4P is clearly registered with the Commission as an unauthorized committee and
10 has included appropriate disclaimers on all of its webpages, which state that the website was paid
11 for by HC4P and not authorized by any candidate or candidate's committee.⁵¹

12 Although HC4P complied with the Act's baseline requirements of registering with the
13 Commission as an unauthorized committee and providing disclaimers on its web pages, that
14 conduct by itself does not cure HC4P's otherwise deceptive activity, which appears intended to

⁴⁵ See *id.*, Attach. F, G. By contrast, a permissible solicitation statement by an unauthorized committee would explicitly indicate that contributions will benefit the sponsor, rather than a candidate, *e.g.*, "Help CAPE PAC re-elect Allen West to Congress!" F&LA at 11, MUR 6641 (CAPE PAC) (Mar. 7, 2014).

⁴⁶ MUR 7011 Compl. at 1–2.

⁴⁷ See 67 Fed. Reg. at 76,969 (citing *Neder v. United States*, 527 U.S. 1, 24–25 (1999)).

⁴⁸ See *Thomas*, 377 F.3d at 242; *Novacek*, 739 F. Supp. 2d at 961; see also Gen. Counsel's Brief at 18, MUR 5472 ("[E]very individual with whom [we] spoke . . . believed that the [Republican Victory 2004 Committee] was representing and/or working on behalf of the Republican Party or the RNC" and that "many contributors wrote checks payable to the Republican Party.").

⁴⁹ See F&LA at 4–5, MUR 6531 (Obama-Biden 2012).

⁵⁰ HC4P Resp. at 1.

⁵¹ *Id.*

1 mislead the reasonably competent viewer of its website.⁵² As an initial matter, the mere presence
2 of disclaimers is not dispositive here, since the disclaimers were less effective because the
3 committee's name — "HC4President" — specifically invokes the candidate. Indeed, in recent
4 cases where the Commission has found disclaimers persuasive, the sponsor committee's name
5 unambiguously differed from the candidate it supported; thus, the disclaimer provided immediate
6 clarity to the viewer as to who their contributions would directly benefit.⁵³ Here, by contrast,
7 both the committee name and its eponymous web address incorporate Hillary Clinton's initials
8 and thereby prevent the public from learning "by a glance at the title" that HC4P is not
9 authorized by the candidate.⁵⁴

10 Moreover, HC4P's apparent lack of disbursements in support of Clinton's candidacy
11 further demonstrates HC4P's fraudulent intent.⁵⁵ Despite HC4P's statements that it would assist
12 Clinton's election efforts, HC4P's disclosure reports show only one \$750 contribution to HFA,
13 out of the \$61,157 in disbursements that the committee made during the 2016 election cycle.⁵⁶
14 HC4P specifically represented that it would use contributions to train volunteers and conduct
15 get-out-the-vote efforts, but it appears to have made *no* disbursements for such activities, and

⁵² See F&LA at 7, MUR 6893 (Winning the Senate) (open matter) (finding that the effectiveness of a disclaimer in the body of a solicitation e-mail was negated where other features of the communication was "written in a voice designed to perpetuate the belief that [the candidates] personally supported its message"); F&LA at 4 n.2, MUR 5472 (Republican Victory 2004 Committee); Statement of Reasons of Vice Chair Weintraub and Commissioners McDonald, Thomas, and Toner at 2, MUR 5089 (Matta Tuchman for Congress) (finding reason to believe as to fraudulent misrepresentation allegation where disclaimer was obscure).

⁵³ See, e.g., MUR 6633 (Republican Majority Campaign PAC) (Respondent committee supported candidate Allen West); MUR 6641 (Coalition of Americans for Political Equality PAC) (same); MUR 6643 (Patriot Super PAC) (same); MUR 6645 (Conservative Strikeforce) (same).

⁵⁴ *Common Cause v. FEC*, 842 F.2d 436, 442 (D.C. Cir. 1988).

⁵⁵ *Cf. Novacek*, 739 F. Supp. 2d at 965 (finding defendant's actions constituted fraudulent misrepresentation where none of the funds she collected were ever contributed to any political candidate or committee, among other factors); F&LA at 4, MUR 5495 (finding reason to believe that respondents fraudulently misrepresented themselves where no funds received allegedly benefited the candidate).

⁵⁶ 2016 July Quarterly Report at 34, HC4P (July 15, 2016).

1 many of its expenses appear to have been related to internet advertising for its website, via
2 Google Adwords and other online marketing services, *i.e.*, the funds were spent to bring more
3 viewers and potentially more contributions to HC4P.⁵⁷

4 Viewed as a whole, the available record raises a reasonable inference that HC4P designed
5 its website with the intent to mislead reasonably prudent people into thinking that HC4P is
6 Clinton's authorized representative and that funds contributed to HC4P would directly benefit
7 Clinton's campaign, and at least one viewer was actually misled. We therefore recommend that
8 the Commission find reason to believe that HC4P violated 52 U.S.C. § 30124(b)(1).

9 3. There is Reason to Believe that SRG Fraudulently Misrepresented Itself as
10 Acting for or on Behalf of Bernie Sanders for the Purpose of Soliciting
11 Contributions

12 a. *Factual Background*

13 SRG is an unauthorized political committee supporting a single federal candidate, Bernie
14 Sanders, who was also a candidate for U.S. President in 2016. When SRG first registered with
15 the Commission in December 2015, it registered under the name "FEEL B.E.R.N."⁵⁸ After the
16 Commission's Reports Analysis Division ("RAD") instructed the committee to change its name
17 so that it did not include the name of a federal candidate,⁵⁹ FEEL B.E.R.N. changed its name to
18 SRG on March 7, 2016.⁶⁰

⁵⁷ See 2016 April, July, October, Pre-General and Post-General Reports, HC4P.

⁵⁸ Statement of Org., FEEL B.E.R.N. (Dec. 28, 2015).

⁵⁹ Request for Additional Info. at 1, Feel B.E.R.N. (Jan. 31, 2016) ("Feel B.E.R.N. RFAI").

⁶⁰ Amended Statement of Org., SRG (Mar. 7, 2016).

1 SRG operated a website at the URL www.feelbern.org, which is no longer available.⁶¹
 2 The title of SRG's website — as displayed in the browser tab — was “Feelbern – Change We
 3 Need.”⁶² On the “About Us” page of the website, SRG described itself as “[f]irst and foremost,
 4 [] a group of big Bernie Sanders fans” whose “ultimate goal is to make a meaningful positive
 5 impact on Bernie Sanders’ [sic] campaign for President.”⁶³ This language on the feelbern.org
 6 website was nearly identical to the language on the HC4P site.⁶⁴

7 The website's header featured the following logo, which appears on every page of the
 8 website:



9
 10 SRG solicited contributions throughout the various pages on its website to purportedly
 11 support Sanders's election. Two “Donate Now” buttons appeared on the homepage along with
 12 the statement “Stand with Bernie and Donate to our Campaign.”⁶⁵ The website informed
 13 viewers that it would use contributions for “training volunteers to knock on doors, make phone
 14 calls and spread the word about Bernie's movement” and to pay for get-out-the-vote activities.⁶⁶

⁶¹ Screenshots from this site were also attached to the Complaints filed for both MURs 7011 and 7092.

⁶² See Video of “Feelbern” Home page

⁶³ MUR 7011 Compl., Attach E (including “About Us” page from the feelbern.org site). SRG states that it will accomplish this goal by “rais[ing] awareness of Sanders’ [sic] stance on the issues,” through get-out-the-vote activities, and by “donat[ing] directly to other volunteer groups that support Bernie in battleground areas.” *Id.*

⁶⁴ See *id.*, Attach. B.

⁶⁵ See Screenshots

⁶⁶ MUR 7092 Compl., App. B.

1 In addition, the website indicated that its fundraising would go to a “three pronged media blitz”
 2 that would consist of: (1) online media advertising because “it is absolutely essential that the
 3 Bernie Sanders campaign reach” young people; (2) TV and radio advertising “to target
 4 battleground states where Bernie Sanders has limited exposure”; and (3) word-of mouth, such as
 5 grassroots voter drives, where “funds raised [would] be used to pay for informational pamphlets,
 6 buttons, bumper stickers, t-shirts, and other campaign swag.”⁶⁷ Further, the e-mail that the
 7 contributor in MUR 7011 received in response to her contribution to HC4P was signed by “Team
 8 Bern” and stated that the contribution would go to the “campaign to elect Bernie Sanders.”⁶⁸

9 SRG’s website also featured content from Sanders’s official campaign, including a five-
 10 minute video entitled “Progress,” embedded in the “About Us” page that displayed the official
 11 Bernie 2016 logo, the Bernie 2016 website URL, and a disclaimer indicating that it was “Paid for
 12 by Bernie 2016.”⁶⁹

13 Before changing its name to SRG, the website contained the following disclaimer at the
 14 bottom of each page:

15 Paid for by Feel the Bern Committee (www.feelbern.org) and not
 16 authorized by any candidate or candidate’s committee –
 17 feelbern.org© 2015 All Rights Reserved.⁷⁰

⁶⁷ *Id.* at App. E.

⁶⁸ MUR 7011 Compl.. Attach. D.

⁶⁹ . The embedded video originally appeared on Sanders’s official YouTube Channel and features a disclaimer that it was “Paid for by Bernie 2016.” Bernie 2016, *Progress*, YOUTUBE (July 25, 2015), https://www.youtube.com/watch?v=qyee_sxJpXc.

⁷⁰ MUR 7011 Compl. Attach. E; MUR 7092 Supp. Compl. (July 15, 2016). Once SRG changed its name from Feel B.E.R.N. to SRG, it also changed the disclaimer to read the following:

Paid for by the Socially Responsible Government (formerly the Feel the Bern Committee) (www.feelbern.org) and not authorized by any candidate or candidate’s committee. – feelbern.org© 2015 All Rights Reserved. This private political organization is not to be confused with Bernie Sander’s [sic] Official campaign. FEELBERN.ORG, www.feelbern.org.

1 In a supplement, the Complainant in MUR 7092 submitted a copy of a cease-and-desist
2 letter that Bernie 2016 sent to the FEELBERN.ORG.⁷¹ The letter stated that SRG's website
3 "without authorization, uses close variations of the official trademarks and logos of Bernie 2016,
4 embeds content copied from the Bernie 2016 official website . . . and mimics look-and-feel
5 aspects from the Bernie 2016 website." The letter states that the website "creates supporter
6 confusion" and was intercepting donations that were intended for the official campaign.⁷²
7 Attached to the letter are numerous pages from SRG's site, including an e-mail subscription page
8 that uses the official Bernie 2016 campaign logo.⁷³

9 *b. Legal Analysis*

10
11 Based on the available information, SRG appears to have fraudulently misrepresented
12 that it was acting on behalf of Sanders's official campaign for the purpose of soliciting
13 contributions. Much like HC4P's website, SRG's feelbern.org website appears designed to
14 mislead persons of ordinary comprehension into believing that they were visiting a Sanders-
15 sponsored site and that contributions made through that site would benefit Sanders directly.

16 *First*, the SRG site solicited contributions using a website that uses official Sanders
17 campaign materials as its own.⁷⁴ The SRG site prominently displays its own logo at the top of

It is unclear when SRG changed its disclaimer and how long it contained the last line concerning Sanders's official campaign.

⁷¹ MUR 7092 Supp. Compl.

⁷² MUR 7092 Compl.

⁷³ MUR 7092 Supp. Compl.

⁷⁴ See F&LA at 2–3, MUR 6531 (Obama-Biden 2012) (finding reason to believe that respondents violated 52 U.S.C. § 30124(b) where unauthorized entity used official campaign logo in website that solicited contributions); F&LA at 8, MUR 5951 (Californians for Change) (finding reason to believe respondents violated section 30124(b) where respondents solicited contributions referencing candidate's "campaign," described activities that suggested an official campaign, and used campaign slogan, "Obama 08").

1 each page that copies the wording of an official Sanders campaign slogan, “Feel the Bern.”⁷⁵
2 The SRG website also embeds content from the official Sanders campaign site, such as official
3 campaign videos, which makes it confusing and difficult for viewers to discern whether they are
4 visiting an official campaign website or an unauthorized committee website.

5 *Second*, SRG’s own statements throughout the site cause further confusion. SRG
6 identifies itself as the “Committee to Elect Bernie Sanders” in its logo.⁷⁶ In addition, donation
7 banners on the home page ask visitors to “Stand with Bernie and Donate to *our* Campaign,”
8 creating the impression that the SRG site spoke on behalf of the Sanders campaign and that
9 contributions to SRG would directly benefit Sanders. Taken together, all of these elements
10 imply that SRG is a representative of Sanders or Bernie 2016.⁷⁷

11 *Third*, although actual confusion is not necessary to establish a violation of the Act, it is
12 persuasive in establishing that fraudulent misrepresentation occurred.⁷⁸ Here, Bernie 2016’s
13 cease and desist letter is evidence that SRG’s website caused confusion among Sanders’s

⁷⁵ See *supra* n. 11 (First Gen. Counsel’s Report at 3, MURs 5443, 5495, 5505 (johnfkerry-2004.com) (recommending reason to believe Respondents violated the Act by copying several pages from the candidate’s authorized website)).

⁷⁶ *Id.* at 14.

⁷⁷ See *supra* MUR 5951 (Californians for Change). SRG’s use of the phrase “our Campaign” is very similar to references to “our Party” found to be misleading in MUR 5472. See Certification, MUR 5472 (Republican Victory 2004 Committee) (Oct. 21, 2008); Gen. Counsel’s Brief at 8, 18, MUR 5472 (June 19, 2007) (“I’m grateful *our Party* can count on your help to support Republicans across the country win elections” and “The Republican Party can count on my support to help candidates at the state and local level. I’m proud to help *our Party* prepare for the November elections.”) (emphasis in original).

⁷⁸ See *Thomas*, 377 F.3d at 242 (rejecting argument that without misrepresentation defendant could not be convicted of mail fraud, and stating that the ordinary prudence standard can be used to “gauge the defendant’s intent where the intent to deceive is unclear.”); *Novacek*, 739 F. Supp. 2d at 961 (finding that “[e]ven absent express misrepresentation, a representation is fraudulent if it was reasonably calculated to deceive persons of ordinary prudence and comprehension.”); F&LA at 4–5, MUR 6531 (Obama-Biden 2012) (noting that express misrepresentation was not required but finding reason to believe where at least one visitor to the website was misled); Gen. Counsel’s Brief at 18, MUR 5472 (Republican Victory 2004 Committee) (“[E]very individual with whom [we] spoke . . . believed that the [Republican Victory 2004 Committee] was representing and/or working on behalf of the Republican Party or the RNC” and that “many contributors wrote checks payable to the Republican Party.”).

1 supporters and may have misled some into making contributions to SRG intended for Sanders's
2 official campaign.

3 SRG argues that it did not violate the Act because it properly registered with the
4 Commission as an unauthorized political committee and has filed all required disclosure reports
5 to date. However, neither SRG's apparent compliance with Act's registration and reporting
6 requirements nor the disclaimer on SRG's website cures SRG's otherwise fraudulent activities.⁷⁹

7 SRG's apparent dearth of disbursements supporting Sanders's candidacy is further
8 evidence of the committee's fraudulent intent.⁸⁰ During the 2016 election cycle, SRG received a
9 total of \$393,984; it also made \$413,100 in disbursements, all of which were categorized as
10 operating expenditures. Many of the expenditures were for "advertising & promotions,"
11 "marketing/advertising," and "online advertising" payments made to Google, Facebook, LGCN,
12 LLC, NHT Productions LLC, and DMF Marketing Solutions LLC, among others. The
13 Committee made one donation to the Sanders campaign, through ActBlue, in the amount of
14 \$500.⁸¹ SRG's disclosure reports indicate that most of its expenditures were used not to aid
15 Sanders's candidacy, but to facilitate further efforts to market its own website and thereby draw
16 more viewers and potential contributors.

⁷⁹ See F&LA at 7, MUR 6893 (Winning the Senate) (open matter) (finding that the effectiveness of a disclaimer in the body of a solicitation e-mail was negated where other features of the communication was "written in a voice designed to perpetuate the belief that [the candidates] personally supported its message"); F&LA at 4 n.2, MUR 5472 (Jody Novacek); Statement of Reasons of Vice Chair Weintraub and Commissioners McDonald, Thomas, and Toner at 2, MUR 5089 (Apr. 2, 2004) (Matta Tuchman for Congress) (finding reason to believe as to fraudulent misrepresentation allegation where disclaimer was obscure).

⁸⁰ *Cf. Novacek*, 739 F. Supp. 2d at 965 (finding defendant's actions constituted fraudulent misrepresentation where none of the funds she collected were ever contributed to any political candidate or committee, among other factors); F&LA at 4, MUR 5495 (finding reason to believe that respondents fraudulently misrepresented themselves where no funds received allegedly benefited the candidate).

⁸¹ See 2016 July Quarterly Report, SRG (July 15, 2016) at 36.

1 Despite the presence of disclaimers on SRG's website, www.feelbern.org used a variation
2 of Sanders's name in the website title, which was obviously derived from one of the official
3 campaign's common slogans, "Feel the Bern." Further, the disclaimer is not featured in a
4 prominent manner and does not appear until a viewer scrolls to the very bottom of a webpage on
5 the site. SRG's website also utilized official campaign logos, slogans, and materials in various
6 parts of the site, causing viewer confusion and diminishing the effectiveness of the disclaimers.

7 Because the available information, viewed as a whole, raises a reasonable inference that
8 SRG intentionally misled viewers and fraudulently misrepresented itself as acting on behalf of
9 Sanders, for the purpose of soliciting contributions, we recommend that the Commission find
10 reason to believe that SRG violated 52 U.S.C. § 30124(b)(1).

11 4. There is Reason to Believe that Kyle Prall Violated Section 30124(b)

12 The Act imposes liability for any "person" who fraudulently solicits contributions.⁸²
13 Thus, the Commission has pursued not just the committee or entity for violations of Section
14 30124(b), but also the individual who is responsible for such a committee or entity.⁸³

15 The factual record indicates that Prall, who is the treasurer of HC4P and designated agent
16 for SRG, was responsible for the websites of both committees.⁸⁴ As the apparent founder of
17 these entities, he likely directed the content, organization, and purpose of the websites at issue,
18 and his involvement with both committees may help explain why the websites were so similar
19 and contained almost identical language. Indeed, Prall had the authority to designate an attorney

⁸² 52 U.S.C. § 30124(b).

⁸³ See F&LA, MUR 6531 (Obama-Biden 2012); F&LA, MUR 5472 (Jody Novacek).

⁸⁴ See Wilson, *supra* note 36.

1 to represent SRG in MUR 7092.⁸⁵ Further, the fact that he directed such similar operations
2 concerning two competing candidates also tends to show that his intent was not to support the
3 election of a particular candidate, but rather to lead a venture designed to mislead individuals
4 into donating funds. The Complaint in MUR 7092 also raises questions concerning Prall's
5 potential ties to the companies SRG paid during the election cycle and whether Prall received
6 any benefit from any of those payments.⁸⁶ Accordingly, we recommend that the Commission
7 find reason to believe that Prall violated 52 U.S.C. § 30124(b)(2).

8 **B. Personal Use**

9
10 The Complaint in MUR 7092 identifies payments made by SRG to Prall, Prall's attorney,
11 Joseph Centrich, as well as to a number of contractors and vendors, including Johan Garcia,
12 LCGM LLC, NHT Productions, DMF Marketing Solutions, and Upwork Global, Inc.⁸⁷ The
13 Complaint alleges that SRG skirted the law by funneling expenditures through "recently created
14 shell corporations" to personally benefit Prall,⁸⁸ and concludes that Prall and the vendors
15 misused committee funds in violation of the Act's prohibition against the personal use of
16 campaign funds.⁸⁹

⁸⁵ See Designation of Counsel Form, MUR 7092 (Aug. 25, 2016).

⁸⁶ See, e.g., F&LA at 9–11, MUR 5472 (Jody Novacek) (making knowing and willful reason to believe findings as to the treasurer in her personal capacity in part because of her ties with businesses doing work for the committee).

⁸⁷ MUR 7092 Compl. at 5–8.

⁸⁸ *Id.* at App. I–J.

⁸⁹ *Id.* at 8. Upwork Global Inc. ("Upwork") and attorney Joseph Centrich submitted responses denying the allegations. Upwork explains that it serves as platform through which organizations can hire freelance professionals. Upwork Resp. at 1. It asserts that receiving payment from SRG for work it did for the committee does not constitute a violation of the Act and that as a vendor, it has no obligations regarding the manner by which SRG reported the payments. *Id.* at 1–2. Centrich likewise denies violating the Act. See Centrich Resp. Centrich asserts that he was hired to set up the LLCs mentioned in the Complaint in MUR 7092, but that he was not involved in their management, and that he has only received payment for his representation of SRG in connection with MUR 7011. *Id.* We did not receive responses from any of the remaining Respondents.

1 The Act prohibits the conversion of “contributions accepted by a candidate” to personal
2 use.⁹⁰ Because SRG is an unauthorized committee, the Act’s personal use provisions are not
3 applicable here. Therefore, we recommend that the Commission find no reason to believe that
4 Prall, Upwork Global Inc., Joseph Centrich, Johan Garcia, LCGM, LLC, NHT Productions,
5 LLC, and DMF Marketing Solutions, LLC violated 52 U.S.C. § 30114(b)(1).

6 **C. Use of a Candidate’s Name in a Special Project**

7 The Act and Commission regulations provide that the name of each authorized committee
8 shall include the name of the candidate who authorized the committee, and that the name of each
9 unauthorized committee shall not include the name of any candidate.⁹¹ The Commission has
10 interpreted “name” for the purposes of this section of the Act to include “any name under which
11 a committee conducts activities, such as solicitations or other communications, including a
12 special project name or other designation.”⁹² An unauthorized committee may only include the
13 name of a candidate in the title of a special project name or other communication if the title
14 clearly and unambiguously shows opposition to the named candidate.⁹³ This restriction applies
15 to the use of a candidate’s first name “where the first name clearly conveys the identity of the

⁹⁰ See 52 U.S.C. § 30114(a), (b).

⁹¹ 52 U.S.C. § 30102(e)(4); 11 C.F.R. § 102.14(a).

⁹² *Id.*

⁹³ 11 C.F.R. § 102.14(b)(3).

1 candidate.”⁹⁴ The Commission has previously determined that the operation of a website by a
2 committee qualifies as a “special project or other communication.”⁹⁵

3 By operating a website called “www.feelbern.org,” SRG appears to have violated section
4 102.14(a). However, in August 2016, a panel of the U.S. Court of Appeals for the D.C. Circuit
5 ruled that an unauthorized committee was entitled to a preliminary injunction enjoining the
6 application of section 102.14(a) against its website and social media pages as a possible content-
7 based ban on speech.⁹⁶ In light of this ongoing litigation, we do not make any recommendation
8 as to SRG’s possible violation of 11 C.F.R. § 102.14(a) at this time.

9 III. INVESTIGATION

10 The proposed investigation would focus on obtaining further facts to determine whether
11 HC4P and SRG intended to fraudulently misrepresent themselves as acting on behalf of Clinton
12 and Sanders, respectively. In addition, we would investigate the amount of contributions that
13 HC4P and SRG each accepted through their respective websites, and whether HC4P or SRG
14 conducted any legitimate activities in support of Clinton’s or Sanders’s candidacies. Further, we
15 plan to examine the role that Prall played with respect to these committees. We will attempt to
16 obtain information voluntarily, but we recommend that the Commission approve the use of
17 compulsory process as necessary.

⁹⁴ Advisory Op. 1995-09 at 5–6 (NewtWatch PAC) (finding that the title “NewtWatch” obviously referred to then Speaker of the House Newt Gingrich); *see* Advisory Op. 2015-04 at 3 (Collective Actions PAC); F&LA, MUR 6775 (Ready for Hillary PAC, *et al.*); *cf. Buckley v. Valeo*, 424 U.S. 1, 43 n.51 (1976) (interpreting the term “clearly identified” to include a candidate’s name, nickname, initials, photograph, or other unambiguous reference as part of a communication).

⁹⁵ Advisory Op. 1995-9 (NewtWatch PAC) (“The operation of a World Wide Web site would be considered a project of the Committee”); Advisory Op. 2015-04 at 3–4 (Collective Actions PAC) (determining that a committee’s “online activities are ‘projects’ that fall within the scope of 11 C.F.R. § 102.14”).

⁹⁶ *Pursuing America’s Greatness v. FEC*, No. 15-5264 (D.C. Cir. Aug. 2, 2016).

1 **IV. RECOMMENDATIONS**

- 2 1. Find reason to believe that HC4President and Kyle Prall in his official capacity as
3 treasurer violated 52 U.S.C. § 30124(b)(1);
- 4 2. Find reason to believe that Kyle Prall violated 52 U.S.C. § 30124(b)(2);
- 5 3. Find reason to believe that Socially Responsible Government and Grace Rogers in
6 her official capacity as treasurer violated 52 U.S.C. § 30124(b)(1);
- 7 4. Find no reason to believe that Kyle Prall, Joseph Centrich, Johan Garcia, DMF
8 Marketing Solutions, LLC, LCGM, LLC, NHT Productions, LLC, and Upwork
9 Global Inc. violated 52 U.S.C. § 30114(b)(1);
- 10 5. Authorize the use of compulsory process;
- 11 6. Approve the attached Factual and Legal Analyses; and

1 7. Approve the appropriate letters.

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