



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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**MAY - 7 2018**

RE: MURs 7058, 7228, & 7233  
Rep. Duncan D. Hunter

Dear Mr. Berke:

On May 5, 2016, May 18, 2016, June 27, 2016, and April 3, 6, 7, 11, & 13, 2017, the Federal Election Commission notified your client, Rep. Duncan D. Hunter, of complaints alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). Copies of the complaints were forwarded to your client at those times.

Upon review of the allegations contained in the complaints, and information supplied by your client, the Commission, on April 24, 2018, found that there is reason to believe your client violated 52 U.S.C. § 30114(b), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel within 15 days of receipt of this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 U.S.C. § 30109(a)(4).

Please note that your client has a legal obligation to preserve all documents, records, and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If your client is interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel

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may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondent. Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at [http://www.fec.gov/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf).

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that your client wishes the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Claudio J. Pavia, the attorney assigned to this matter, at (202) 694-1597 or [cpavia@fec.gov](mailto:cpavia@fec.gov).

We look forward to your response.

On behalf of the Commission,



Caroline C. Hunter  
 Chair

Enclosures  
 Factual and Legal Analysis

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<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

# FEDERAL ELECTION COMMISSION FACTUAL AND LEGAL ANALYSIS

Respondent: Rep. Duncan D. Hunter MURs 7058, 7228, & 7233

## I. INTRODUCTION

9        These matters were generated by complaints filed with the Federal Election Commission  
10      by Citizens for Responsibility and Ethics in Washington and 54 individual complainants alleging  
11      that Rep. Duncan D. Hunter violated the Federal Election Campaign Act of 1971, as amended  
12      (the “Act”) by converting campaign funds to personal use. For the reasons stated below, the  
13      Commission finds reason to believe that Rep. Hunter violated 52 U.S.C. § 30114(b).

## 14 II. FACTUAL BACKGROUND

15 Rep. Duncan D. Hunter has been the congressman from California's 50th congressional  
16 district since 2013, and previous to that he represented California's 52nd congressional district  
17 since 2009. Duncan D. Hunter for Congress and Chris Marston in his official capacity as  
18 treasurer (the "Committee" or "DDHC") is his principal campaign committee. Margaret Hunter,  
19 his wife, receives a salary from DDHC for "campaign consulting" and "campaign management  
20 services."<sup>1</sup> Rep. Hunter has publicly stated that he and Margaret Hunter were the sole holders of  
21 the only two credit cards issued by DDHC during the relevant period.<sup>2</sup> Almost all of the alleged  
22 personal spending was apparently made using the two campaign credit cards.<sup>3</sup>

<sup>1</sup> See, e.g., DDHC 2017 Apr. Quarterly Rpt. at 53 (Apr. 15, 2017).

<sup>2</sup> Morgan Cook, *Hunter Repaid Funds Spent on Surf Shop, Garage Door*, SAN DIEGO UNION-TRIBUNE, Apr. 19, 2016 (cited by MUR 7058 Compl. at 3 (Apr. 29, 2016)); Olivia Nuzzi, *Trump's Guy, Rep. Duncan Hunter, Spent Campaign \$\$\$ at Disney*, DAILY BEAST, Apr. 10, 2016 (cited by MUR 7058 First Supp. Compl. at 1 (May 11, 2016)); Morgan Cook, *Did Hunter Campaign Pay for his Kids' School Lunches?*, SAN DIEGO UNION-TRIBUNE, June 15, 2016 (attached to MUR 7058 Second Supp. Compl. (July 21, 2016)).

<sup>3</sup> This is based on statements in the Responses and notations in the Committee's disclosure reports. See, e.g., MUR 7058 Second Supp. Resp. (Nov. 21, 2016), Attach. at 1 (DDHC Misc. Report to FEC) (Nov. 16, 2016).

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1        The improper spending can be divided into the following four categories, which are  
 2        discussed in further detail in Sections II.A-D below: (1) 112 disbursements totaling at least  
 3        \$18,939 reported on the Committee's original reports with the word "personal" or "mistaken";  
 4        (2) several hundred disbursements totaling at least \$48,642 initially reported with campaign-  
 5        related purposes, but later disclosed as personal in a Miscellaneous Report; (3) over 100  
 6        additional disbursements totaling approximately \$32,000 reported with campaign-related  
 7        purposes, but that may have been personal use based on the available information; and (4) salary  
 8        payments (\$3,000 per-month) and reimbursements totaling \$15,619 from the Committee to  
 9        Margaret Hunter that are alleged to have not been for *bona fide* campaign work.

10        **A. Disbursements Reported on Original Disclosure Reports With the Word  
 11        "Personal" or "Mistaken" Listed as the Purpose**

12        Between March 31, 2015 and March 29, 2016, DDHC made 112 disbursements totaling  
 13        at least \$18,939 that, with few exceptions, were reported with the word "personal" or "mistaken"  
 14        on the Purpose of Disbursement line on the original disclosure reports.<sup>4</sup> They were apparently  
 15        related to the Hunters' personal lives. For instance, the disbursements included payments to the  
 16        private school attended by their children, allegedly for tuition, and payments to fix the garage  
 17        door of their residence.<sup>5</sup> In addition, a series of "mistaken" cash withdrawals were made directly  
 18        to Margaret Hunter.

19        The Hunters reimbursed some disbursements while the spending was in progress, Rep.

20        Hunter reimbursed others after the Committee's spending issues were reported in the media, and

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<sup>4</sup>        E.g., "Personal Expense – To Be Paid Back" and "Mistaken Charge – To Be Reimbursed." A handful were unitemized but identified as "Mistaken Charges" on miscellaneous text forms attached to disclosure reports.

<sup>5</sup>        MUR 7058 Compl. at 4-5.

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1 additional disbursements have yet to be reimbursed.<sup>6</sup> The initial reimbursement payments were  
 2 made in June 2015 (Rep. Hunter) and October 2015 (Mrs. Hunter).<sup>7</sup> Afterwards, the Hunters  
 3 apparently continued to make “personal” and “mistaken” disbursements. However, on April 4,  
 4 2016, the Commission’s Reports Analysis Division (“RAD”) issued a Request for Additional  
 5 Information (“RFAI”)<sup>8</sup> regarding “personal” disbursements that resulted in widespread media  
 6 coverage.<sup>9</sup> Rep. Hunter almost immediately made reimbursements totaling \$11,896 — no  
 7 “personal” or “mistaken” disbursements have been reported since then.<sup>10</sup> Despite the Hunters’  
 8 aggregate \$17,311 reimbursement payments, it appears that at least \$1,302 in disbursements to  
 9 Legoland and Steam Games have not yet been reimbursed.<sup>11</sup>

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<sup>6</sup> After each of the reimbursements, DDHC amended the relevant reports to reflect that the disbursements had been repaid. *E.g.*, “Mistaken Transaction – Refunded 4/5/2016.”

<sup>7</sup> DDHC Amended 2015 July Quarterly Rpt. at 66 (Apr. 15, 2016) (reimbursement of \$5,245.71 from Rep. Hunter on June 20, 2015); DDHC Amended 2015 Year-End Rpt. at 29 (Apr. 15, 2016) (reimbursement of \$169.21 from Margaret Hunter on October 21, 2015).

<sup>8</sup> See Letter from Bradley Matheson, Sr. Campaign Finance & Reviewing Analyst, RAD to Chris Marston, Treasurer, DDHC (Apr. 4, 2016) (requesting additional information regarding one disbursement to Christian Unified Schools reported as “Personal Expense – To Be Paid Back” and 67 disbursements to Steam Games also reported as “Personal Expense – To Be Paid Back”).

<sup>9</sup> See *e.g.*, Brendan O’Connor, *The Vaping Congressman Spent \$1,302 of His Campaign Funds Last Year on Video Games*, GAWKER, Apr. 5, 2016.

<sup>10</sup> DDHC Pre-Primary Rpt. at 27 (May 26, 2016) (reimbursements of \$6,150 on April 5, 2016, and \$5,746 on April 8, 2016, from Rep. Hunter).

<sup>11</sup> The disbursement to Legoland was unitemized and DDHC has not disclosed the amount. Based on our calculations, Rep. Hunter repaid only \$0.50, but the true amount is likely to have been larger. The disbursements to Steam Games were amended to “Fraudulent Charge[s] – Refunded 4/5/16,” but DDHC has not reported the receipt of any refunds, and there is information suggesting the charges were not actually fraudulent. See Morgan Cook, *Rep. Hunter’s Probe Covers Possible Fraud Involving Video Game Charges*, SAN DIEGO UNION-TRIBUNE, Aug. 9, 2017 (citing a search warrant for the offices of the DDHC’s treasurer which describes an alleged “scheme to defraud First National Bank by making false statements related to video game charges which resulted in the refunding or crediting of charges not properly due”).

1 **Figure 1. “Personal” and “Mistaken” Disbursements**

Category	Amount	Reimbursed	Outstanding Balance
Hawaii Trip	\$6,289	\$6,289	\$0
Online Video Games	\$1,556	\$254	\$1,302
Oral Surgery Clinic	\$1,137	\$1,137 <sup>12</sup>	\$0
Private School	\$6,150	\$6,150	\$0
Payments to Margaret Hunter	\$2,023	\$2,023	\$0
Garage Door Repair	\$1,200	\$1,200	\$0
Retail Stores	\$583	\$583	\$0
Theme Parks	<i>Unknown</i>	\$0.50	<i>Unknown</i>
<b>Total</b>	<b>\$18,939+</b>	<b>\$17,311</b>	<b>\$1,302+</b>

2 There is no information regarding what (or who) caused this spending or why it  
 3 continued for so long. Rep. Hunter, mostly through his spokesperson, has offered various  
 4 explanations to the news media suggesting it was a series of mix-ups, but information contained  
 5 in the MUR 7058 Complaint and public record suggests that some of those explanations may not  
 6 be accurate.<sup>13</sup>

7 **B. Disbursements Initially Reported With Campaign-Related Purposes but  
 8 Later Identified as “Personal Expenditures” on a Miscellaneous Report**

9 After the April 4, 2016 RFAI was issued and the MUR 7058 Complaint was filed, DDHC  
 10 completed an “independent financial review” of its 2016 election cycle activity and filed a  
 11 November 16, 2016 Miscellaneous Report listing numerous additional “personal expenditures.”  
 12 Respondent also filed a supplement in MUR 7058, attaching the Miscellaneous Report.<sup>14</sup> The  
 13 Miscellaneous Report does not identify who or what caused the spending, but makes vague

<sup>12</sup> Includes a \$326 refund from the Center for Oral & Facial Surgery.

<sup>13</sup> See MUR 7058 Compl. at 4-5.

<sup>14</sup> MUR 7058 Second Supp. Resp., Attach. (DDHC Misc. Report to the FEC) (Nov. 16, 2016). The report also states that, “out of an abundance of caution, the campaign has deemed any expense without adequate support as necessary for reimbursement.” *Id.* at 1. Because lack of documentation has no bearing on whether a disbursement was made irrespective of a campaign, the Commission considers any such item to be a personal disbursement, especially given that the subject line is “Duncan D. Hunter repayment of personal expenditures.” *Id.*

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1 assertions that the disbursements were “unauthorized” or “inadvertently charged.”<sup>15</sup> As  
 2 discussed further below, each of the disbursements was initially reported with an apparent  
 3 campaign-related purpose. Despite admitting that the disbursements were personal, DDHC has  
 4 not amended the relevant disclosure reports.

5 Rep. Hunter repaid \$48,651 to the Committee,<sup>16</sup> which is *slightly more* than the total of  
 6 the amounts listed on the Miscellaneous Report (\$48,642). However, the Commission calculates  
 7 that the “personal expenditures” add to \$51,788 (and include 348 individual disbursements)  
 8 based on the actual amounts disclosed in the Committee’s reports.

9 ***Figure 2. “Personal Expenditures” on Nov. 16, 2016 Miscellaneous Report***

Category	Amount Listed on Misc. Report	Amount on DDHC Disclosure Reports	Difference
Travel	\$14,913	\$14,913	\$0
Utilities	\$2,743	\$4,473	\$1,730
Food	\$7,089	\$7,029	(\$60)
Retail Stores	\$14,628	\$16,182	\$1,554
Gasoline	\$6,036	\$5,957	(\$78)
Theme Parks	\$1,249	\$1,249	\$0
Miscellaneous	\$1,984	\$1,984	\$0
<b>Total</b>	<b>\$48,642</b>	<b>\$51,788</b>	<b>\$3,145</b>

10 There are multiple examples of personal disbursements that, based on the available  
 11 information, were clearly related to the Hunters’ personal lives. First, there were payments to  
 12 Ki’s Restaurant, which delivered school lunches to Christian Unified Schools, attended by the  
 13 Hunters’ children.<sup>17</sup> The disbursements were made during the school year, and the restaurant’s

<sup>15</sup> *Id.*

<sup>16</sup> DDHC 2016 Post-General Election Rpt. at 18 (Dec. 8, 2016).

<sup>17</sup> MUR 7058 Second Supp. Compl. at 2-3.

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1 website allows parents to add value to their children's account using a credit card.<sup>18</sup> Second,  
 2 there was a purchase at Educational Outfitters, which supplied uniforms for Christian Unified  
 3 Schools.<sup>19</sup> Third, there were payments to FEIS Productions, the children's traditional Irish dance  
 4 competition at which the Hunters' daughter competed.<sup>20</sup> Fourth, there were payments in Italy at  
 5 the same time as when Rep. Hunter posted a photograph on his personal social media account of  
 6 him and his wife enjoying what appears to be the Amalfi coastline.<sup>21</sup> The disbursements  
 7 occurred in multiple Italian cities and coincided with Thanksgiving. One disbursement was to a  
 8 Florentine jewelry store disclosed with "Food/Beverages" as the purpose.<sup>22</sup>

9 Fifth, there were disbursements in Boise, Idaho for travel, accommodations, and  
 10 recreation at the same time as when Rep. Hunter posted photographs to his personal social media  
 11 account of his family floating down and fishing the Boise River.<sup>23</sup> There were also payments at  
 12 rest areas in California and Nevada, along the route from Southern California, suggesting that the  
 13 Hunters were on a road trip. Sixth, there were payments at a Disneyland gift shop and restaurant  
 14 at the same time as when Rep. Hunter posted a photograph to his personal social media account  
 15 of his family riding Space Mountain.<sup>24</sup> Seventh, there were disbursements for water, electricity,

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<sup>18</sup> *Id.* at 3.

<sup>19</sup> MUR 7058 Compl. at 6.

<sup>20</sup> *Results: - Feis Productions*, <http://www.feisinfo.com/results/schooldetails.php?feisid=78&school=Rose-Ritchie+Academy+of+Irish+Dance> (Results of Hidden Valley Feis 2015).

<sup>21</sup> MUR 7058 Compl. at 5-6.

<sup>22</sup> *Id.* at 5.

<sup>23</sup> *Duncan Duane on Instagram: Boise River Float*, <https://www.instagram.com/p/42vMAsk6kS> (uploaded July 7, 2015). Included among the Boise-related disbursements is a payment to Epleys Boise River Rental.

<sup>24</sup> *Duncan Duane on Instagram: SpaceX Mountain*, [https://www.instagram.com/p/8XF\\_yek6uU](https://www.instagram.com/p/8XF_yek6uU) (uploaded on Oct. 2, 2015). The payments to Disneyland were made on September 28, 2015.

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1 and Internet at the same time as when Rep. Hunter was apparently using his personal residence  
 2 as campaign headquarters.<sup>25</sup>

3 These disbursements were reported with descriptions that implied a campaign-related or  
 4 charitable purpose. For example, there are payments to: (1) Hotel L'Ancora, a hotel in Positano,  
 5 Italy, described as "Catering & Venue;" (2) FEIS Productions, the children's dance competition,  
 6 described as "Event Entertainment;" (3) the North Face, at which a purchase was made during  
 7 the Boise trip, described as "Fundraiser for Local Groups;" and (4) Educational Outfitters, the  
 8 uniform outfitter for Christian Unified Schools, described as "Gift Certificate for Donation to  
 9 Local Organization Event." It is unknown who produced or verified these descriptions.

10 **C. Additional Disbursements That May Have Been Personal Use**

11 The available information indicates that there may be other disbursements, totaling over  
 12 \$32,000 (\$21,600 within the statute of limitations period), that may have been personal use but  
 13 have yet to be reimbursed or acknowledged by the Hunters. First, although the November 16,  
 14 2016 Miscellaneous Report acknowledges many of the personal use allegations in the MUR  
 15 7058 Complaint, there are still remaining allegations (disbursements totaling \$2,045). For  
 16 instance, there are \$315 in payments to Hotel San Gallo Palace in Florence during the Italy trip,  
 17 and \$1,326 in payments to Haggen grocery store (DDHC admitted that payments to other  
 18 grocery stores were personal).<sup>26</sup> Second, DDHC's disclosure reports include approximately  
 19 \$30,000 in disbursements that are substantially similar or apparently connected to the admitted  
 20 personal disbursements, raising questions of personal use. Specifically, they include

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<sup>25</sup> MUR 7058 Compl. at 6; MUR 7058 First Supp. Compl. at 2.

<sup>26</sup> See MUR 7058 Compl. at 5; MUR 7058 First Supp. Compl. at 2.

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1 disbursements made for groceries, an oil change, gasoline, travel, retail store purchases, and  
 2 dining at a fast food restaurant.

3 **D. Salary and Reimbursement Payments to Margaret Hunter**

4 The MUR 7058 Complaint alleges that Margaret Hunter may not have performed *bona*  
 5 *fide* work in exchange for her \$3,000 (formerly \$2,000) per-month salary and, further, that  
 6 reimbursement payments she received from DDHC (totaling \$15,619) may have been for  
 7 personal expenses.<sup>27</sup> The allegations are based mostly on the fact that she was an apparent  
 8 beneficiary of the personal spending described above. Respondent has neither denied the  
 9 allegations nor explained Margaret Hunter's duties and responsibilities for the campaign.

10 **III. LEGAL ANALYSIS**

11 The Act provides that campaign funds "shall not be converted by any person to personal  
 12 use," and defines personal use as using funds "to fulfill any commitment, obligation, or expense  
 13 of a person that would exist irrespective of the candidate's election campaign or individual's  
 14 duties as holder of Federal office."<sup>28</sup> Examples of personal use, as outlined in the statute, include  
 15 utility payments, non-campaign related automobile expenses, vacations or other non-campaign  
 16 related trips, household food items, and tuition payments.<sup>29</sup>

17 The Commission's implementing regulation enumerates types of disbursements that are  
 18 *per se* personal use.<sup>30</sup> These include household food items or supplies, tuition payments other  
 19 than those associated with training campaign staff, utility payments for any part of any personal

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<sup>27</sup> MUR 7058 Compl. at 7. From September 2011 through December 2012 and January 2014 through February 2017, Margaret Hunter received a monthly salary from DDHC of \$2,000 and \$3,000, respectively.

<sup>28</sup> 52 U.S.C. § 30114(b). Permitted uses of campaign funds include, among other things, charitable donations and any other lawful purpose that is not personal use. *Id.* § 30114(a)(1)-(6); see 11 C.F.R. § 113.2.

<sup>29</sup> *Id.* § 30114(b)(2).

<sup>30</sup> 11 C.F.R. § 113.1(g)(1)(i).

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1 residence of the candidate, salary payments to a member of the candidate's family unless the  
2 family member is providing *bona fide* services and the payments are not in excess of the fair  
3 market value, and vacations.<sup>31</sup> For all other disbursements, the regulation provides that the  
4 Commission shall determine on a case-by-case basis whether a given disbursement is personal  
5 use by applying the "irrespective test" formulated in the statute.<sup>32</sup> Meal, travel, and vehicle  
6 expenses are examples of disbursements that may be personal use.<sup>33</sup>

7 The available information indicates that Rep. Hunter violated the Act by converting  
8 campaign funds to personal use. DDHC admits that it used \$65,962 in campaign funds for  
9 personal disbursements, which the Commission calculates to be \$70,726. Although Respondent  
10 does not provide any details explaining the circumstances surrounding the disbursements, it  
11 appears that the Hunters were directly responsible. First, it was the Hunters who reimbursed the  
12 Committee for the admitted personal disbursements. Second, the Hunters were in control of the  
13 campaign credit cards during the relevant period. Third, it appears that numerous admitted  
14 personal disbursements were connected to the Hunters' personal lives.

15 There is no basis to support DDHC's vague assertions that disbursements were  
16 "inadvertent" or "unauthorized."<sup>34</sup> Given Rep. Hunter's years of experience as a candidate and  
17 congressman and Margaret Hunter's years of experience as a salaried campaign official, it is  
18 questionable that they were capable of making hundreds of inadvertent purchases with the wrong  
19 credit card over multiple reporting periods and failed to notice that their personal funds were not

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<sup>31</sup> *Id.* § 113.1(g)(1)(i)(A), (D), (E)(1), (F), (H), (J).

<sup>32</sup> *Id.* § 113.1(g)(1)(ii).

<sup>33</sup> *Id.*

<sup>34</sup> See Misc. Rpt. at 1. It is unclear what DDHC means by "unauthorized." The Committee does not contend that anyone other than the Hunters were responsible for making the disbursements.

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1 used to pay for significant life expenses. Moreover, it appears that the Hunters were aware that  
2 spending campaign funds on personal items was impermissible. They made reimbursements in  
3 June and October 2015 for “personal” and “mistaken” spending, but apparently continued to use  
4 campaign funds for personal spending until shortly before the April 4, 2016 RFAI.

5 Respondent’s argument that there was no violation because Rep. Hunter reimbursed  
6 DDHC which amended its disclosure reports is erroneous. Although reimbursements may  
7 mitigate a violation, they do not absolve Respondent of liability. Indeed, Rep. Hunter did not  
8 reimburse the Committee for over \$48,000 in personal disbursements until after the MUR 7058  
9 Complaint was filed. In addition, many of the other reimbursements were made in response to  
10 the RFAI and subsequent widespread news coverage months after the original disbursements  
11 were made. Furthermore, it appears that the Hunters have not fully reimbursed the Committee  
12 for the disbursements which Respondent has admitted were personal in nature (the Commission  
13 calculates that \$4,764 likely remains outstanding). And, as described above, there may \$32,000  
14 of more in personal disbursements that have neither been admitted nor reimbursed.

15 In conclusion, based on the available information, it appears that Rep. Hunter converted  
16 campaign funds to personal use. Therefore, the Commission finds reason to believe that Rep.  
17 Hunter violated 52 U.S.C. § 30114(b).