

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2 In the Matter of)
 3)
 4 Progressive Priorities PAC)
 5 and Matthew Tunstall in his official) MUR 7468
 6 capacity as treasurer¹)
 7 Matthew Tunstall)
 8)
 9)

10 **SECOND GENERAL COUNSEL'S REPORT**

11 **I. ACTIONS RECOMMENDED**

12 We recommend that the Commission: (1) find reason to believe that Matthew Tunstall
 13 knowingly and willfully violated 52 U.S.C. § 30103(b), (c) and 11 C.F.R. § 102.2(a)(1);
 14 (2) authorize pre-probable cause conciliation and approve the attached conciliation agreement
 15 with Progressive Priority PAC (“PPP”) and Matthew Tunstall in his official capacity as treasurer,
 16 as well as in his individual capacity; (3) approve the attached Factual and Legal Analysis and the
 17 appropriate letter; (4) take no further action regarding the allegation that PPP and Matthew
 18 Tunstall in his official capacity as treasurer violated 52 U.S.C. § 30124 by fraudulently
 19 misrepresenting that PPP was acting for, or on behalf of, a federal candidate; and (5) take no
 20 further action regarding the allegation that PPP and Matthew Tunstall in his official capacity as
 21 treasurer violated 52 U.S.C. § 30104(b) by failing to itemize receipts and disbursements.

¹ Tunstall was first reported as treasurer on August 15, 2019. Progressive Priorities PAC (“PPP”), Amended Statement of Organization (Aug. 15, 2019). Prior to that, as discussed further below, other individuals were reported as treasurer, at least one of whom did not know she had been named treasurer and one of whom never agreed to fulfill the statutory duties of a treasurer. *See* PPP, Amended Statement of Organization (Dec. 1, 2016) (listing Michelle Sotelo as treasurer); PPP, Amended Statement of Organization (Sept. 23, 2016) (listing Alex/Alexa Roth as treasurer); PPP, Original Statement of Organization (May 11, 2016) (listing Henok Tedla as treasurer). The record indicates that Tunstall was the true treasurer of PPP throughout its operation.

1 II. BACKGROUND

2 Following a referral from the Reports Analysis Division,² the Commission found reason
3 to believe that PPP violated 52 U.S.C. § 30104(b), a provision of the Federal Election Campaign
4 Act of 1971, as amended (the “Act”), and 11 C.F.R. § 104.3 of the Commission’s regulations by
5 failing to itemize its receipts and disbursements.³ The Commission also found reason to believe
6 that PPP violated 52 U.S.C. § 30103(b), (c) and 11 C.F.R. § 102.2(a)(1), (2) by failing to
7 accurately identify its treasurer.⁴ Pursuant to the Commission’s findings, the Office of the
8 General Counsel (“OGC”) commenced an investigation to determine further details regarding
9 PPP’s spending and the full extent of its operations.

10 Over the course of the investigation, OGC interviewed a number of individuals
11 associated with PPP, including Matthew Tunstall,⁵ Kyle Davies,⁶ Robert Reyes,⁷ Josiah
12 Cammer,⁸ and Henok Tedla;⁹ received a sworn declaration from Henok Tedla;¹⁰ subpoenaed
13 records from two banks associated with PPP, JP Morgan and Wells Fargo;¹¹ subpoenaed and

² The Reports Analysis Division originally referred this matter to the Audit Division, but the Commission subsequently transferred it to the Office of General Counsel. Certification (“Cert.”), 2015-2016 RAD Audit Referrals — Unauthorized Committees (Nov. 9, 2017).

³ Cert. ¶ 3 (Aug. 8, 2018).

⁴ *Id.* ¶ 4.

⁵ Report of Investigation (“ROI”) of Matthew Tunstall (July 30, 2019).

⁶ ROI of Kyle Davies (Aug. 27, 2019) (“Davies ROI”).

⁷ ROI of Robert Reyes (July 31, 2019).

⁸ ROI of Josiah Cammer (Aug. 22, 2019).

⁹ ROI of Henok Tedla (Nov. 28, 2018).

¹⁰ Henok Tedla Decl. (Mar. 18, 2019).

¹¹ JP Morgan Chase Subpoena (Apr. 23, 2019); JP Morgan Chase Subpoena Resp. (May 23, 2019); Wells Fargo Subpoena (Apr. 23, 2019); Wells Fargo Subpoena Resp. (June 17, 2019).

1 reviewed documents from Matthew Tunstall and Kyle Davies;¹² and deposed Matthew
2 Tunstall.

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10 The evidence we gathered indicates that Tunstall was the principal individual involved in
11 the formation and control of PPP. As such, we notified Tunstall that he may have knowingly and
12 willfully violated the Act's requirement to identify himself as treasurer of PPP.¹⁷ Tunstall did
13 not submit a response.

¹² Kyle Davies Subpoena (Sept. 11, 2019); Kyle Davies Subpoena Resp. (Jan. 22, 2020); Matthew Tunstall Subpoena (Sept. 11, 2019); Matthew Tunstall Subpoena Resps. (Oct. 16, 2019).

¹⁷ Notif. Letter (July 21, 2022) (Matthew Tunstall). Under the Commission's Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, a treasurer may be named as a respondent in an individual capacity "when information indicates that a treasurer has knowingly and willfully violated a provision of the Act or regulations, or has recklessly failed to fulfill duties specifically imposed on treasurers by the Act, or has intentionally deprived himself or herself of the operative facts giving rise to the violation." Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 3 (Jan. 3, 2005).

1 solicitations, drafting and reviewing solicitations for the PAC, and recruiting others to work for
 2 PPP.²²

3 Tunstall is a media consultant who formed a number of political committees beginning in
 4 2016, including PPP, Liberty Action Group, Support American Leaders, and Justice for All.²³
 5 Tunstall testified that he was “really big” among individuals working with clients interested in
 6 direct political advertising following the 2010 Supreme Court decision in *Citizens United v.*
 7 *FEC*.²⁴ He also operates a number of entities including Supreme Dream Media LLC and Matte
 8 Media Creations Inc.; it is unclear from the record whether these entities performed any services
 9 other than to serve as vehicles through which Tunstall received payment.²⁵ Davies is Tunstall’s
 10 cousin.²⁶ Reyes is a media consultant and business associate of Tunstall.²⁷ Reyes operated
 11 Modern Media Group LLC; as with Tunstall’s businesses, it is unclear whether Modern Media
 12 Group had any corporate activity separate from receiving payment on Reyes’s behalf.²⁸

13 **B. PPP’s Previous Treasurers**

14 At the time it initially registered with the Commission, PPP listed Henok Tedla as its
 15 treasurer and Alexa Roth as its custodian of records.²⁹ Henok Tedla submitted a sworn
 16 declaration attesting that he “never signed any documents submitted to the Federal Election

²² Davies Guilty Plea ¶ 11.

²³ *Id.* at 23:16-25:23, 32:24-33:12, 37:24-38:20, 40:9-25, 41:17-42:2.

²⁴ *Id.* at 34:12-35:7.

²⁵ Indictment ¶ 1, *U.S. v. Tunstall*, No. 1:21-CR-00223-LY (W.D. Tex. Nov. 2, 2021) [hereinafter Indictment]; Tunstall Dep. at 29:25-30:6 (recording Tunstall identifying Supreme Dream Media and Matte Media Creations as his companies).

²⁶ Indictment ¶ 3; Tunstall Dep. at 28:8-9.

²⁷ Indictment ¶ 2; Tunstall Dep. at 24:4-10, 29:7-15; Reyes Guilty Plea ¶¶ 26-27, 31, 33.

²⁸ Indictment ¶ 2; Tunstall Dep. at 29:16-21; Reyes Guilty Plea ¶¶ 1, 26, 31-32, 40.

²⁹ PPP, Original Statement of Organization (May 11, 2016).

1 Commission on behalf of . . . Progressive Priorities PAC. I did not sign either the original
2 Statement[] of Organization or any of the quarterly reports that were purportedly submitted with
3 my signature.”³⁰ Instead, Tedla declared that he was engaged by Reyes as a bookkeeper for both
4 PPP and another of Tunstall’s political committees, Liberty Action Group, via an advertisement
5 on Craigslist and for which he was paid \$40 per hour.³¹ Tedla stated that, upon “reviewing the
6 Federal Election Commission’s description of a PAC treasurer’s responsibilities, I did not think
7 my contract with [Reyes] fit the description,” and he informed Reyes of his concern on
8 September 18, 2016.³²

9 The Committee filed an amended Statement of Organization five days later listing Alexa
10 Roth as treasurer.³³ Notwithstanding this change, none of the Committee’s reports were ever
11 reportedly signed by Roth — all were signed under Tedla’s name.³⁴ Though repeated attempts
12 by OGC to interview Roth were ultimately unsuccessful, news reports state that Roth also “had
13 no idea her information was being used on FEC records for a progressive PAC and was
14 considering taking legal action to get her information removed.”³⁵ Further:

³⁰ Tedla Decl. ¶ 19. However, both Reyes and Davies state in the factual bases for their guilty pleas that Tedla filed PPP’s FEC reports under Reyes’s supervision. Reyes Guilty Plea ¶ 3 (“[Henok Tedla’s] responsibilities included . . . obtaining REYES’[S] approval before filing the monthly reports for Liberty Action Group and Progressive Priorities with the FEC.”); Davies Guilty Plea ¶ 3 (“[Henok Tedla’s] responsibilities included . . . obtaining Reyes’[s] final approval before filing the monthly reports for Liberty Action Group and Progressive Priorities with the FEC.”).

³¹ Tedla Decl. ¶¶ 8-9.

³² *Id.* ¶ 15.

³³ PPP, Amended Statement of Organization at 3 (Sept. 23, 2016). The filing appears to include a typo, naming Roth as “Alex” Roth rather than “Alexa.”

³⁴ See, e.g., PPP, 2016 30-Day Post-General Report at 1 (Feb. 3, 2017) (showing “Tedla, Henok” on the “Signature of Treasurer” line).

³⁵ Andrew Kaczynski, *Why Does This Democratic Progressive Group Have Close Ties to a Pro-Trump PAC?*, BUZZFEED NEWS (Sept. 6, 2016), <https://www.buzzfeednews.com/article/andrewkaczynski/why-does-this-democratic-progressive-group-have-close-ties-t>.

1 Roth, according to [an unnamed] source, was approached in the
2 spring by her then-boyfriend Kyle Davies about having her name
3 on records about a PAC raising money for Republicans. Roth, the
4 source alleged, was led to believe she'd receive a monthly stipend
5 as part of business venture working to elect Republicans. The
6 source said [Roth] was paid several hundred[] dollars to have her
7 name on records but had no contact with the PAC[] after it was
8 started and received no payment afterward.³⁶

9 When asked, Davies confirmed that he had approached Roth at Tunstall's direction to
10 lead the PAC, but stated that, once he and Roth ended their relationship, she no longer
11 wished to be involved in PPP.³⁷

12 PPP filed a further amended Statement of Organization removing Roth and naming
13 Michelle Sotelo as treasurer on December 1, 2016,³⁸ but the Committee's reports continued to be
14 signed under Tedla's name.³⁹ On February 17, 2018, after the Commission notified Sotelo that
15 PPP had been referred to OGC for possible enforcement action,⁴⁰ Sotelo filed a Response
16 denying any knowledge of or involvement with the Committee and asserting that PPP identified
17 her as a treasurer without her consent.⁴¹ Sotelo, going by her married name, Michelle Pautin,
18 claimed that Davies, a family friend, asked her to invest \$100 in a business opportunity, for
19 which he also requested and received her Social Security number.⁴² Davies allegedly convinced
20 Pautin to open a bank account, but then took it over and denied her access to it.⁴³ She said that

³⁶ *Id.*

³⁷ Davies ROI at 2; Davies Guilty Plea ¶ 20.

³⁸ PPP, Amended Statement of Organization at 3 (Dec. 1, 2016).

³⁹ *See, e.g.*, PPP, 2017 Mid-Year Report at 1 (July 31, 2017) (showing "Tedla, Henok" on the "Signature of Treasurer" line).

⁴⁰ Referral Notif. Letter (Nov. 17, 2017).

⁴¹ Pautin Resp. (Feb. 17, 2018).

⁴² *Id.* at 1.

⁴³ *Id.*

1 she fought with Davies for months to regain access to her account, and that Davies claimed that
2 his business partners objected.⁴⁴ Pautin stated that she did not realize that she had been
3 designated as a treasurer for the Committee until she received a call from OGC in February 2018
4 because the Committee had not responded to the Referral.⁴⁵ According to Pautin, she
5 immediately contacted Davies, who told her that PPP was run by his former business partner,
6 Matthew Tunstall, and that Davies was just a recruiter and had no idea what the business was.⁴⁶
7 Pautin said she has been unable to contact Tunstall and filed a police report.⁴⁷

8 Nearly 18 months after Pautin filed her Response, PPP filed an additional amended
9 Statement of Organization naming Tunstall as PPP's treasurer on August 15, 2019.⁴⁸ In total,
10 PPP filed eight disclosure reports and four Statements of Organization bearing the name of a
11 treasurer other than Tunstall.⁴⁹ Tunstall remains PPP's current treasurer.⁵⁰

12 In connection with DOJ's criminal case, Reyes and Davies submitted factual bases for
13 their guilty pleas that discussed PPP's series of treasurers. Consistent with OGC's findings,
14 Reyes and Davies represented that Tunstall and Reyes were responsible for all decisions relating
15 to the PAC and retained supervisory control of PPP's activities.⁵¹

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⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 1-2.

⁴⁷ *Id.*

⁴⁸ PPP, Amended Statement of Organization (Aug. 15, 2019).

⁴⁹ PPP also failed to file seven disclosure reports during this timeframe which presumably would not have listed Tunstall as treasurer.

⁵⁰ PPP, Amended Statement of Organization (Oct. 22, 2019) (current version).

⁵¹ Reyes Guilty Plea ¶¶ 20-22; Davies Guilty Plea ¶¶ 20-21.

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C. PPP's Operations

Between April and December 2016, PPP raised \$389,539.89 and spent \$375,605.39.⁵⁴ Of this amount, none was spent on independent expenditures, and none was contributed to any candidate or political committee.⁵⁵ Instead, and as discussed further below, the majority of the funds were used to personally enrich Tunstall, Reyes, and Davies, with the remainder going to fund PPP's operations for that same purpose. Since December 2016, PPP has raised no additional funds and reported no disbursements, and sometime between June 30, 2017, and April 1, 2019, the \$13,934.50 remaining cash on hand PPP had reported after the 2016 election cycle was removed from PPP's reports.⁵⁶ While Tunstall did not testify regarding why PPP ceased operations after the 2016 election, in September 2016, an article appeared in BuzzFeed News questioning the connections between PPP and Liberty Action Group, as well as PPP's spending.⁵⁷ Subsequently, once Tunstall and Reyes had extracted the funds raised via PPP, it

⁵⁴ *Progressive Priorities PAC: Financial Summary*, FEC.GOV, <https://www.fec.gov/data/committee/C00616987/?cycle=2016> (last visited July 1, 2022) (showing PPP's financial information for 2016 election cycle).

⁵⁵ *Id.*

⁵⁶ *Progressive Priorities PAC: Financial Summary*, FEC.GOV, <https://www.fec.gov/data/committee/C00616987/?cycle=2018> (last visited July 1, 2022) (showing PPP's financial information for 2018 election cycle); *Progressive Priorities PAC: Financial Summary*, FEC.GOV, <https://www.fec.gov/data/committee/C00616987/?cycle=2020> (last visited July 1, 2022) (showing PPP's financial information for 2020 election cycle).

⁵⁷ Andrew Kaczynski, *Why Does This Democratic Progressive Group Have Close Ties to a Pro-Trump PAC?* BUZZFEED NEWS (Sept. 6, 2016), <https://www.buzzfeednews.com/article/andrewkaczynski/why-does-this-democratic-progressive-group-have-close-ties-t>.

1 appears that he subsequently founded and used other political committees to effectuate similar
 2 practices.⁵⁸

3 PPP raised the majority of its funds via robocalls.⁵⁹ Tunstall produced the audio of one
 4 of these calls, which he testified he made,⁶⁰ which was as follows:⁶¹

Speaker	Content	Time Stamp
Hillary Clinton	Together, I do believe that it is part of the American mission to ensure that people everywhere, women and men alike, finally have the opportunity to live up to their own, God-given potential. So let's go forth and make it happen.	0:00-0:13
Unidentified female voice	Join Hillary Clinton in making it happen today. If we can count on you to contribute to elect Hillary Clinton for President, press 1 to donate now. Again, please press 1 now to donate to elect Hillary Clinton for President. Press 8 to unsubscribe or call 1 (866) 988-5643. Paid for by Progressive Priorities PAC. Not authorized by any candidate or candidate committee.	0:14-0:36

5 When individuals pressed 1, they were transferred to a live call center that used scripts provided
 6 by Tunstall, Reyes, and Davies to solicit funds for PPP.⁶² Tunstall testified that PPP placed
 7 “over a million” robocalls during 2016.⁶³ In July 2016, Clinton’s authorized campaign
 8 committee, Hillary for America, sent PPP a letter referring to its use of Clinton’s voice in its
 9 robocalls as “a massive, nationwide fraud to collect money for itself while claiming to raise
 10 money for Secretary Clinton’s campaign” and demanding that PPP:

⁵⁸ Reyes Guilty Plea ¶¶ 34-40 (discussing Tunstall’s subsequent activities involving Support American Leaders PAC (C00688069) and Campaign to Support the President (C00697862), both of which are still listed as “Active” on the Commission’s website and have received funds during the 2022 election cycle).

⁵⁹ Tunstall Dep. 126:13-127:6 (recording Tunstall as testifying that PPP may have also sent mailers, but that he could not recall); Davies Subpoena Resp. at 8-9 (Jan. 22, 2022) (producing follow-up mailers sent to individuals who pledged to contribute when solicited by phone).

⁶⁰ Tunstall Dep. at 169:23-170:1 (“Q[:] How did you get that file, . . . the robocall? A[:] I had, I had it, because I made those myself.”).

⁶¹ Undated audio file titled “hc-hardask-0608-0-t8 (1),” produced Oct. 16, 2019.

⁶² Reyes Guilty Plea ¶ 24; Tunstall Dep. at 102:6-25.

⁶³ Tunstall Dep. at 170:20-24.

1 immediately cease and desist from making any solicitation that
2 states or implies that any funds that [PPP] raises will go to or
3 otherwise benefit Secretary Clinton or the Committee, that there is
4 any relationship between [PPP] and Secretary Clinton or the
5 Committee, or that the Committee has in any way authorized or
6 endorsed [PPP's] activities that in any way use Secretary Clinton's
7 voice, name, or likeness.⁶⁴

8 When asked what PPP did in response to receiving this letter, Tunstall testified "nothing was
9 done" and that he was advised by unnamed counsel that "these type of letters most of the times
10 were kind of like scare tactics."⁶⁵

11 PPP's bank records also indicate that PPP misled its contributors. For instance, bank
12 records subpoenaed by OGC produced over 100 checks deposited to PPP's account written out
13 either to 2016 presidential candidate Hillary Clinton directly or with her name written on the
14 memo line.⁶⁶ Though Tunstall testified that he was unaware prior to the deposition that PPP had
15 received any checks made out to Clinton or her campaign, as he had delegated the task of
16 depositing PPP's checks to Davies, he also testified that PPP did not use any contributions it
17 received to support her election.⁶⁷

18 The investigation also established that most of the Committee receipts were diverted to
19 the PPP control group. Tunstall testified that he was compensated via "kickbacks" received
20 through a third-party vendor, SmartCall Media, and that, between his different political
21 committees, including PPP, he individually received "[\\$]300,000 to, like, a million" during the
22 2016 election cycle.⁶⁸ During its nine months of activity, PPP's disclosure reports indicate that,

⁶⁴ Letter from Marc Elias & Graham Wilson, Counsel, Hillary for America, to Henok Tedla, Treasurer, PPP (July 14, 2016).

⁶⁵ Tunstall Dep. at 88:11-89:1.

⁶⁶ *See, e.g.*, JP Morgan Chase Subpoena Resp. at 22, 45, 58, 61, 72, 117, 195 (May 23, 2019).

⁶⁷ Tunstall Dep. at 195:15-196:17; *id.* at 183:16-184:20.

⁶⁸ Tunstall Dep. at 180:5-181-17.

1 of the \$375,242.11 that PPP spent, \$260,501.00 was paid to SmartCall Media.⁶⁹ Tunstall further
2 testified that Reyes was paid in the same fashion.⁷⁰

3 Evidence gathered during the investigation indicates that PPP was closely connected to
4 one of Tunstall's other political committees, Liberty Action Group, which also appears to have
5 been used primarily to enrich Tunstall, Reyes, and Davies.⁷¹ While PPP represented that it
6 supported the election of Hillary Clinton, Liberty Action Group promoted the election of her
7 opponent, Donald J. Trump.⁷² Tunstall testified that "it wasn't out of the realm, to, you know,
8 have both clients, like Democrat and Republican . . . for me at least, like, being a media buyer,
9 there really wasn't like a conflict of interest, because I was just basically providing, you know,
10 services, so."⁷³ Both PPP and Liberty Action Group used Tedla as their bookkeeper, had nearly
11 identical websites, and made significant disbursements to Smartcall Media, which in addition to
12 the \$270,501.00 it received from PPP, received \$967,300.00 from Liberty Action Group in
13 2016.⁷⁴ The Commission has no record of Smartcall Media receiving disbursements from any
14 other political committee during the 2016 election cycle.⁷⁵ In the factual basis for his plea of
15 guilt, Reyes states that he and Tunstall:

⁶⁹ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00616987 (last visited July 1, 2022) (showing 73 disbursements by PPP).

⁷⁰ Tunstall Dep. at 181:21-182:3.

⁷¹ Activity conducted through Liberty Action Group is part of the criminal action against Tunstall, Reyes, and Davies. Indictment ¶¶ 20-62.

⁷² *See Kaczynski, supra* note 35; Indictment ¶¶ 35-36.

⁷³ Tunstall Dep. at 33:8-13.

⁷⁴ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00603563&recipient_name=smartcall&two_year_transaction_period=2016 (last visited July 1, 2022) (showing 236 disbursements from Liberty Action Group to Smartcall Media during the 2016 election cycle).

⁷⁵ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=smartcall&two_year_transaction_period=2016 (last visited July 1, 2022) (showing 287 disbursements to Smartcall Media during the 2016 election cycle).

1 knowingly and intentionally overpaid and relied on refunds from
 2 these payments to Company A to launder the proceeds from their
 3 fraudulent activities in order to disguise and conceal from the FEC,
 4 the public, and donors the nature, source, and ownership of the
 5 proceeds of the money they made from contributions to Liberty
 6 Action Group and [PPP] that they took for personal gain.⁷⁶

7 Information obtained through the investigation indicates that “Company A” is Smartcall
 8 Media.⁷⁷ PPP also reported a disbursement to Liberty Action Group’s treasurer and director,
 9 Josiah Cammer,⁷⁸ and Liberty Action Group made disbursements to individuals intimately
 10 associated with PPP: \$13,586.10 to Kyle Davies and \$484,414.70 to Matt Tunstall,⁷⁹ as well as
 11 \$452,349.31 to Modern Media Group LLC, the company owned by Robert Reyes.⁸⁰ Indeed,
 12 though it does not specify which funds were provided via PPP or via Liberty Action Group, the
 13 factual basis for Reyes’s guilty plea states:

14 Of the approximately \$3.5 million raised by Liberty Action Group
 15 and Progressive Priorities, the two PACs distributed a total of
 16 approximately \$19 to any candidate’s authorized campaign
 17 committee or to any political cause. Meanwhile, the PACs
 18 transferred approximately \$1.5 million in political contributions to
 19 accounts held by TUNSTALL, approximately \$714,000 in political

⁷⁶ Reyes Guilty Plea ¶ 14.

⁷⁷ “Company A” is described as “a communications company that provided a platform for Liberty Action Group and [PPP] to disseminate . . . robocalls.” *Id.* ¶ 5. In his deposition, when asked about robocalls disseminated by PPP, Tunstall identified Smartcall as “the service I used to send out these political advertisements.” Tunstall Dep. at 101:12-20.

⁷⁸ See PPP, 2016 October Quarterly Report at 42 (Oct. 13, 2016) (reporting \$500 disbursement to Josiah Cammer); Liberty Action Group, Amended Statement of Organization at 1, 3, 4 (Sept. 23, 2016) (listing Cammer as treasurer, “PAC Director,” custodian of records, and designated agent for Liberty Action Group).

⁷⁹ See Liberty Action Group, Amended Termination Report (June 27, 2017) (\$1,956.30 to Kyle Davies in four disbursements, \$11,629.80 to “Kayle Davies” in 10 disbursements, and \$17,000 to Tunstall in two disbursements); Liberty Action Group, Amended 2016 July Quarterly Report (June 26, 2017) (\$202,414.70 to Tunstall in 14 disbursements); Amended 2016 October Quarterly Report (June 26, 2017) (\$187,500 to Tunstall in nine disbursements); Liberty Action Group, Amended 2016 Post-General Report (June 26, 2017) (\$14,500 to Tunstall in two disbursements); Liberty Action Group, Amended 2016 Year-End Report (June 26, 2017) (\$63,000 to Tunstall in two disbursements).

⁸⁰ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00603563&recipient_name=modern+media&two_year_transaction_period=2016 (last visited July 1, 2022) (showing \$452,349.31 in 33 disbursements from Liberty Action Group to Modern Media Group LLC during the 2016 election cycle).

1 contributions to accounts held by REYES, and approximately
2 \$84,385 in political contributions to accounts held by DAVIES.⁸¹

3 Of the nearly \$390,000 PPP raised, it itemized only \$170,866.76.⁸² Further, of this
4 amount, \$30,995.00 is attributed only to “Paypal.”⁸³ The contributions PPP received and
5 itemized ranged from as little as \$1.00 to as much as \$10,000.00 across 588 separate
6 transactions.⁸⁴ The available evidence also indicates that PPP’s disclosure reports are not fully
7 reflective of PPP’s financial activity: For instance, PPP’s disclosure reports disclose no
8 disbursements to Kyle Davies, but bank records subpoenaed by OGC indicate that Davies
9 received \$12,084.00 directly from PPP.⁸⁵

10 **D. PPP’s Counsel and Representations**

11 Throughout OGC’s investigation, the status of PPP’s representation by counsel has been
12 unclear. After receiving the Commission’s reason-to-believe finding, in August 2019, PPP
13 submitted a Statement of Designation of Counsel naming Carl J. Lawyer of the Drake Law Firm
14 as its attorney.⁸⁶ However, subsequent attempts to contact Lawyer revealed that, while the firm
15 listed on the Designation of Counsel exists, it is not located at the address provided on the
16 Designation, and Lawyer is not listed on the firm’s website.⁸⁷ Further, attempts to verify

⁸¹ Reyes Guilty Plea ¶ 12.

⁸² *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00616987 (last visited July 1, 2022) (showing all itemized receipts received by PPP).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Wells Fargo Subpoena Resp. at 56-64 (June 14, 2019).

⁸⁶ PPP, Statement of Designation of Counsel (“DOC”) (Aug. 23, 2019).

⁸⁷ *Compare id.* (providing address of 700 N. Washington Street, Alexandria, VA) *with Contact*, DRAKE IMMIGRATION LAW, PLLC, <http://drakeimmigration.com/contact/> (last visited July 5, 2022) (providing address of 724 N. Washington Street, Alexandria, VA). *See also* Email from UPS Quantum View to Erik Morrison, Paralegal, FEC (Sept. 19, 2019, 8:02 PM EST) (noting that a package shipped to Lawyer’s attention was not deliverable as addressed).

1 Lawyer's address and firm affiliation revealed no attorney by that name barred in Virginia,
2 Maryland, or the District of Columbia.⁸⁸ Nonetheless, Lawyer confirmed to OGC that he
3 represented PPP as its attorney.⁸⁹ While represented by Lawyer, PPP did produce a number of
4 documents relevant to the investigation, but these were emailed by Tunstall directly to OGC.⁹⁰
5 Lawyer also appeared at Tunstall's deposition on October 21, 2019, and represented him as
6 counsel.⁹¹

7 On October 22, 2019, the day after his deposition, Tunstall forwarded PPP's Reports
8 Analysis Division ("RAD") Analyst a falsified letter he claimed to have received from the
9 Commission. The letter, which purports to be from "Kyle Frenette" of the "FEC Compliance
10 Division," states that "[t]his letter is to confirm that we have completed our financial

⁸⁸ See *Virginia Lawyer Directory*, VA. STATE BAR, <https://member.vsb.org/attsearch/search.aspx> (last visited July 6, 2022) (searching Last Name: Lawyer returns no results); *Maryland Attorney Listing*, MD. COURTS, <https://mdcourts.gov/attysearch> (last visited July 6, 2022) (searching Last Name: Lawyer returns two attorneys, neither of whom is named Carl or Carlton); *Searchable Member Directory*, DC BAR, <https://my.dcbbar.org/MemberDirectoryPage> (last visited July 6, 2022) (searching Last Name: Lawyer returns three attorneys, none of whom is named Carl or variations thereof). A search of the West Legal Directory also returned no results for any attorneys in the United States named Carl Lawyer. Thomson Reuters, *West Legal Directory*, WESTLAW EDGE, [https://1.next.westlaw.com/Browse/Home/Directories/WestLegalDirectory?transitionType=Default&contextData=\(s.c.Default\)](https://1.next.westlaw.com/Browse/Home/Directories/WestLegalDirectory?transitionType=Default&contextData=(s.c.Default)) (last visited July 6, 2022) (requires paid subscription) (searching names beginning with "Carl" and Lawyer returns no exact results).

⁸⁹ Email from Carl J. Lawyer, Couns., PPP, to Justine A. di Giovanni, Att'y, FEC (Aug. 20, 2019, 11:55 AM EST) (replying, when asked whether he was PPP's attorney or if he served in some other capacity, "Hello yes his lawyer thanks").

⁹⁰ See Email from Matthew Tunstall, PPP, to Justine A. di Giovanni, Att'y, FEC (Oct. 16, 2019, 4:07 PM EST) (email 1 of 2 with this time stamp); Email from Matthew Tunstall, PPP, to Justine A. di Giovanni, Att'y, FEC (Oct. 16, 2019, 4:07 PM EST) (email 2 of 2 with this time stamp); Email from Matthew Tunstall, PPP, to Justine A. di Giovanni, Att'y, FEC (Oct. 16, 2019, 4:10 PM EST); Email from Matthew Tunstall, PPP, to Justine A. di Giovanni, Att'y, FEC (Oct. 16, 2019, 4:11 PM EST); Email from Matthew Tunstall, PPP, to Justine A. di Giovanni, Att'y, FEC (Oct. 16, 2019, 4:14 PM EST); Email from Matthew Tunstall, PPP, to Justine A. di Giovanni, Att'y, FEC (Oct. 16, 2019, 4:26 PM EST); Email from Matthew Tunstall, PPP, to Justine A. di Giovanni, Att'y, FEC (Oct. 16, 2019, 4:29 PM EST); Email from Matthew Tunstall, PPP, to Justine A. di Giovanni, Att'y, FEC (Oct. 16, 2019, 4:32 PM EST); Email from Matthew Tunstall, PPP, to Justine A. di Giovanni, Att'y, FEC (Oct. 16, 2019, 8:01 PM EST); Email from Matthew Tunstall, PPP, to Justine A. di Giovanni, Att'y, FEC (Oct. 16, 2019, 8:04 PM EST); Email from Matthew Tunstall, PPP, to Justine A. di Giovanni, Att'y, FEC (Oct. 16, 2019, 8:09 PM EST); Email from Matthew Tunstall, PPP, to Justine A. di Giovanni, Att'y, FEC (Oct. 16, 2019, 8:21 PM EST).

⁹¹ Tunstall Dep. at 1 (listing Carl J. Lawyer as appearing on behalf of the deponent).

1 investigation of the Progressive Priorities PAC. The committee is hereby closed but is in GOOD
2 STANDING.” No Kyle Frenette works at the Commission, nor does the Commission have a
3 Compliance Division.⁹³ The letter also bore the FEC’s prior address of 999 E Street NW, from
4 which the Commission moved in 2018. RAD’s Assistant Staff Director confirmed that the
5 letter did not originate with RAD and noted that it appeared to be fake

6 Four days after Tunstall’s deposition, OGC received an email indicating that PPP had
7 engaged Ron Jacobs of Venable LLP as its attorney,⁹⁶ and PPP submitted a new Statement of
8 Designation of Counsel on November 5, 2019.⁹⁷ Jacobs originally represented PPP, Tunstall,
9 and Davies, but on January 15, 2020, Davies called OGC and expressed that he no longer wished
10 to associate with Tunstall or PPP, and that he wished to cooperate with the investigation
11 independently.⁹⁸ Davies confirmed that he was no longer represented by Venable LLP via
12 written letter on January 22, 2020,⁹⁹ and produced documents directly to OGC via email.¹⁰⁰

⁹³ The only Kyle Frenette of which OGC is aware is a former music industry manager and one-time political candidate. See Colin Stutz, *Bon Iver’s Manager Kyle Frenette Withdraws from Congressional Race*, BILLBOARD (May 25, 2018), <https://www.billboard.com/music/music-news/bon-iver-manager-kyle-frenette-withdraws-congress-race-8457990/>. He has never worked for the Commission.

⁹⁶ Email from Ronald M. Jacobs, Couns., PPP, to Justine A. di Giovanni, Att’y, FEC (Oct. 25, 2019, 2:46 PM EST) (“I’ve just been retained by Progressive Priorities PAC to assist with the MUR.”).

⁹⁷ PPP DOC (Nov. 5, 2019). Matthew Tunstall and Kyle Davies also each submitted a Statement of Designation of Counsel naming Jacobs their counsel. Matthew Tunstall DOC (Nov. 5, 2019); Kyle Davies DOC (Nov. 5, 2019).

⁹⁸ Email from Justine A. di Giovanni, Att’y, FEC, to Kyle Davies (Jan. 15, 2020, 2:26 PM EST) (memorializing call between Davies and di Giovanni).

⁹⁹ Letter from Kyle Davies to Justine A. di Giovanni, Att’y, FEC (Jan. 22, 2020) (“I am no longer represented by Venable LLP.”).

¹⁰⁰ Email from Kyle Davies to Justine A. di Giovanni, Att’y, FEC (Jan. 22, 2020, 1:59 PM EST); Email from Kyle Davies to Justine A. di Giovanni, Att’y, FEC (Jan. 22, 2020, 2:31 PM EST).

1 Jacobs continued to represent Tunstall and PPP through at least February 2020, but subsequent
2 attempts to obtain additional tolling revealed that Tunstall was no longer corresponding with
3 Jacobs, and on December 15, 2020, Jacobs wrote that “I think it is safe to say that we do not
4 represent him at this point in time.”¹⁰¹

5 On January 21, 2021, PPP submitted another Statement of Designation of Counsel
6 naming Dr. Nick Oberheiden of Oberheiden P.C. as its counsel.¹⁰² However, when OGC
7 reached out to Oberheiden to obtain further tolling in this matter, Oberheiden informed OGC that
8 “Mr. Tunstall named me as his attorney in your investigation without my firm being asked,
9 informed, engaged, or funded. Today, I am informing you that my firm respectfully declines to
10 represent Mr. Tunstall in the FEC matter. We do not assume any responsibility in this
11 matter.”¹⁰³ At the time of this report, the Commission possesses no valid Statement of
12 Designation of Counsel for Tunstall or PPP, and has been unable to obtain additional tolling
13 from PPP since February 2020.

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¹⁰¹ Email from Ronald M. Jacobs, Couns., PPP, to Justine A. di Giovanni, Att’y, FEC (Dec. 15, 2020, 4:18 PM EST).

¹⁰² PPP DOC (Jan. 21, 2021).

¹⁰³ Email from Nick Oberheiden to Justine A. di Giovanni, Att’y, FEC (Mar. 2, 2021, 2:42 PM EST).

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On November 2, 2021, DOJ indicted Tunstall and Reyes with conspiracy to commit wire fraud and to make a false statement to the Commission, multiple counts of wire fraud, and multiple counts of money laundering in connection with their roles in PPP and Liberty Action Group.¹⁰⁸ DOJ also indicted Davies on conspiracy to commit wire fraud and to make a false statement to the Commission, and multiple counts of wire fraud.¹⁰⁹ Davies entered a guilty plea, which the court accepted on May 4, 2022;¹¹⁰ Reyes subsequently also entered a guilty plea, which the court accepted on August 8, 2022.¹¹¹ As part of his plea, Reyes agreed to forfeit \$809,920.40 that he received via his activities involving PPP and Liberty Action Group.¹¹²

¹⁰⁸ Indictment ¶¶ 20-62.

¹⁰⁹ *Id.* ¶¶ 20-58.

¹¹⁰ Order, United States v. Davies, No. 21-CR-223-3 (W.D. Tex. May 4, 2022).

¹¹¹ Minute Entry, United States v. Reyes, No. 21-CR-223-2 (W.D. Tex. Aug. 8, 2022).

¹¹² Press Release, DOJ, California Man Pleads Guilty to \$3.5 Million Scam-PAC Fraud (Aug. 9, 2022) [hereinafter Reyes Press Release], <https://www.justice.gov/opa/pr/california-man-pleads-guilty-35-million-scam-pac-fraud>.

1 Reyes is scheduled to be sentenced on October 24, 2022, and faces up to 20 years in prison;¹¹³
2 Davies is scheduled to be sentenced on November 4, 2022.¹¹⁴ Tunstall's trial is currently
3 scheduled for October 3, 2022.¹¹⁵ Should he be convicted of all charges, he faces a maximum of
4 125 years in prison.¹¹⁶ The Commission has no further information regarding the status of the
5 actions against Tunstall, Reyes, and Davies at this time.

6 **IV. LEGAL ANALYSIS**

7 **A. The Commission Should Find Reason to Believe That Tunstall Knowingly** 8 **and Willfully Misreported PPP's Treasurer**

9 Under the Act, every political committee must have a treasurer.¹¹⁷ The duties of the
10 treasurer include keeping an account of receipts and disbursements, preserving all records of
11 receipts and disbursements, filing reports of receipts and disbursements with the Commission,
12 and signing each report.¹¹⁸ It is the responsibility of a committee to report the name and address
13 of its treasurer to the Commission, and any change in treasurer must be reported to the
14 Commission within ten days.¹¹⁹

15 The Commission has consistently held *de facto* treasurers personally liable for reporting
16 violations under 52 U.S.C. § 30104(b). In MUR 5646 (Burchfield), for instance, the
17 Commission held a campaign manager personally liable as *de facto* treasurer where he had

¹¹³ Order, *United States v. Reyes*, No. 21-CR-223-2 (W.D. Tex. Aug. 8, 2022); Reyes Press Release.

¹¹⁴ Order, *United States v. Davies*, No. 21-CR-223-3 (W.D. Tex. May 10, 2022).

¹¹⁵ Order, *United States v. Tunstall, et al.*, No. 21-CR-223 (W.D. Tex. May 9, 2022).

¹¹⁶ Press Release, DOJ, Three Individuals Charged with \$3.5 Million Scheme to Collect Contributions for Fraudulent Political Action Committees (Nov. 10, 2021), <https://www.justice.gov/opa/pr/three-individuals-charged-35-million-scheme-collect-contributions-fraudulent-political-action>.

¹¹⁷ 52 U.S.C. § 30102(a); *see also* 11 C.F.R. § 102.7(a).

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

¹¹⁹ *Id.* § 30103(a)-(c); 11 C.F.R. §§ 102.1(d), 102.2(a)(1), (2).

1 prepared the committee's reports, performed finance-related duties, deposited contributions, and
 2 prepared checks to pay the campaign's expenses.¹²⁰ In MUR 5610 (Haywood), the Commission
 3 found that an assistant treasurer was liable for violations of the Act as an "acting treasurer" who
 4 "performed the duties of the Committees' treasurers by depositing funds received into
 5 Committee bank accounts, completing disclosure forms, signing reports and filing them with the
 6 Commission."¹²¹

7 Our investigation confirmed that at all times that PPP was operating, Matthew Tunstall
 8 performed the duties of a treasurer and had exclusive access to the financial records required to
 9 act as treasurer, and should have been reported as such. Tunstall testified that he founded
 10 multiple PACs, including PPP, and sought out individuals to be their public faces while
 11 maintaining control of their operations and spending decisions.¹²² Davies's and Reyes's
 12 submissions to law enforcement are consistent with this testimony.¹²³ When PPP came under

¹²⁰ Factual & Legal Analysis ("F&LA") at 7, MUR 5646.

¹²¹ F&LA at 3, MUR 5610; *see also* F&LA at 5, MUR 5453 (Thomas M. Ariola) (finding a deputy treasurer who signed disclosure reports "[i]n place of a treasurer" "was responsible for detecting the apparent illegalities contained" in those reports); Conciliation Agreement at 5-6, MUR 5358 (Jamie Morgan) (holding candidate personally liable where treasurer of record ceased performing his duties, but the candidate subsequently signed and filed nine disclosure reports).

¹²² Tunstall Dep. at 49:21-50:17 (testifying that he and Davies brought Alexa Roth the idea for a PAC and she agreed to do it); *id.* at 52:1-9 (testifying that Roth didn't have day-to-day responsibilities); *id.* at 54:4-18 (testifying that he and Davies sought out Michelle Sotelo/Pautin and that she did not have day-to-day responsibilities); *id.* at 65:23-25 ("I was an agent [for PPP], in, an agent before, I, I guess I was doing consulting and political advertising, media buying . . ."); *id.* at 93:9-11, 18-21, 93:1-3 (testifying that Henok Tedla "wasn't in charge of making sure the deposits were received within ten days of receipt," that "it wasn't his daily duty to go in the bank account and make sure that, like the deposits came from the merchant account, you know," and that "he wouldn't have been responsible for [PPP's Statement of Organization or] any, any, like company documents pertaining to that").

¹²³

Davies Guilty Plea ¶¶ 10, 20-21 (stating that Tunstall was the "mastermind" behind PPP who directed Davies to recruit "Individual 2" (Alexa Roth) and "Individual 3" (Michelle Pautin) to be the nominal heads of PPP); *see also* Reyes Guilty Plea ¶ 10 (stating that Reyes started an additional political committee, American Priority, "under Tunstall's guidance" to further fraudulently enrich himself); *id.* ¶ 37 (stating that Tunstall continued

1 Commission scrutiny, Tunstall named himself treasurer after he “reached out to other people. . . .
 2 Nobody wanted anything to do with it. So morally, I felt obligated to . . . do these FEC filings.
 3 So that’s why I listed myself as the treasurer, yes.”¹²⁴

4 A violation of the Act is knowing and willful when the respondent acts “with full
 5 knowledge of all the relevant facts and a recognition that the action is prohibited by law.”¹²⁵
 6 This standard does not require proving knowledge of the specific statute or regulation the
 7 respondent allegedly violated.¹²⁶ Rather, it is sufficient to demonstrate that a respondent “acted
 8 voluntarily and was aware that his conduct was unlawful.”¹²⁷ This awareness may be shown
 9 through circumstantial evidence, such as a “defendant’s elaborate scheme for disguising” her
 10 actions, or other “facts and circumstances from which the jury reasonably could infer [the
 11 defendant] knew her conduct was unauthorized and illegal.”¹²⁸

12 The record supports finding reason to believe that Tunstall knew or reasonably should
 13 have known that he was the true treasurer for PPP. As early as September 2016, Tedla sent an

his pattern of forming political committees to enrich himself: “From approximately 2018 through approximately 2021, . . . TUNSTALL and others created Support American Leaders Political Action Committee . . . and Campaign to Support the President Political Action Committee . . . , and TUNSTALL, REYES, and others used these PACs to obtain approximately \$3,690,249.05 million from unwitting donors based on false and misleading representations.”).

¹²⁴ Tunstall Dep. at 65:17-22.

¹²⁵ 122 Cong. Rec. 12,197, 12,199 (daily ed. May 3, 1976) (defining phrase “knowing and willful”); *see also* *FEC v. Novacek*, 739 F. Supp. 2d 957, 961 (N.D. Tex. 2010) (granting Commission’s motion for summary judgment where there were no genuine issues of material fact as to the knowing and willful allegations).

¹²⁶ *See United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (citing *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish that a violation is willful, the government needs to show only that the defendant acted with knowledge that her conduct was unlawful, not knowledge of the specific statutory provision violated)).

¹²⁷ *Id.* (internal quotation marks omitted).

¹²⁸ *United States v. Hopkins*, 916 F.2d 207, 213-15 (5th Cir. 1990) (internal quotation marks omitted). As the *Hopkins* court observed, “[i]t has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

1 email to Tunstall, among others, citing to the Commission's website definition of a treasurer.¹²⁹
2 That definition describes a treasurer in terms of the duties they are expected to perform, and the
3 record indicates that Tunstall would have known that he, not Tedla or any other individual, was
4 the one fulfilling those duties. Moreover, it appears that Tunstall engaged in brazen and repeated
5 obfuscations to conceal his role in PPP, including naming individuals treasurer without their
6 consent, producing falsified documents, and funneling money to himself through shell
7 companies and kickbacks.¹³⁰

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10 The factual basis for Reyes's guilty plea further supports that

11 Tunstall intentionally disguised his connections to PPP:

12 TUNSTALL and REYES knowingly and intentionally overpaid and relied
13 on refunds from these payments to Smartcall Media to launder the
14 proceeds from their fraudulent activities in order to disguise and conceal
15 from the FEC, the public, and donors the nature, source, and ownership of
16 the proceeds of the money they made from contributions to Liberty Action
17 Group and Progressive Priorities that they took for personal gain.¹³³

¹²⁹ Tedla Resp. (Oct. 9, 2018); *id.*, Attach. (Email from Henok Tedla, Access CPA, to Robert Reyes (Sept. 18, 2016, 4:10 PM)) (writing "After carefully reviewing the PAC Treasurer responsibilities I don't think my contract fits into performing the responsibility of the Treasurer. I am hired to maintain the books of the PAC and that [is] all I do. I have no control on the rest of the PAC activities. Please submit an amendment and remove my name as a Treasurer of the PAC").

¹³⁰ See Reyes Guilty Plea ¶¶ 13-14 ("During the operation of Liberty Action Group and Progressive Priorities, TUNSTALL, REYES, and DAVIES used the names of others without their knowledge or permission and forged names on filings to the FEC and on other documents relating to the PACs to conceal and disguise their role in the fraudulent scheme.").

¹³³ Reyes Guilty Plea ¶ 14.

1 Considering this evidence, we recommend that the Commission find reason to believe that
2 Tunstall knowingly and willfully violated 52 U.S.C. § 30103(b), (c) and 11 C.F.R. § 102.2(a)(1),
3 (2) by misrepresenting the actual treasurer of PPP.

4 **B. The Commission Should Take No Further Action Against Progressive**
5 **Priorities PAC and Matthew Tunstall in His Official Capacity as Treasurer**
6 **Regarding Any Allegation That They Fraudulently Misrepresented**
7 **Campaign Authority**

8 The Act and Commission regulations prohibit persons from “fraudulently
9 misrepresent[ing] the person as speaking, writing, or otherwise acting for or on behalf of any
10 candidate or political party or employee or agent thereof for the purpose of soliciting
11 contributions or donations.”¹³⁴ Even absent an express misrepresentation, a representation is
12 fraudulent if it was reasonably calculated to deceive persons of ordinary prudence and
13 comprehension.¹³⁵ The Act requires that the violator have the intent to deceive, but does not
14 require proof of the common law fraud elements of justifiable reliance and damages.¹³⁶

15 The record indicates that PPP solicited funds via robocalls using Clinton’s voice without
16 her knowledge or consent and which stated that contributions would be used to advance her
17 campaign.¹³⁷ As discussed above, PPP was not associated with Clinton’s campaign, and did not
18 make a single expenditure in support of her election.¹³⁸ It also continued placing the robocalls
19 after receiving a cease-and-desist letter from Clinton’s counsel in July 2016 enumerating PPP’s

¹³⁴ 52 U.S.C. § 30124(b)(1); 11 C.F.R. § 110.16(b)(1).

¹³⁵ *FEC v. Novacek*, 739 F. Supp.2d 957, 961 (N.D. Tex. 2010); *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) (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)).

¹³⁶ *See Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds*, 67 Fed. Reg. 76,962, 76,969 (Dec. 13, 2002) (citing *Neder v. United States*, 527 U.S. 1, 24-25 (1999)).

¹³⁷ *Supra* notes 59-63 and accompanying text.

¹³⁸ *Supra* note 55 and accompanying text.

1 violation of the Act and Commission regulations regarding fraudulent misrepresentation.¹³⁹
2 Though the robocalls stated that they were “[n]ot authorized by any candidate or candidate
3 committee,” the Commission has previously found such disclaimers to be inadequate when a
4 communication is otherwise “designed to mislead [recipients] of ordinary prudence and
5 comprehension into believing that” the organization making the communication represents a
6 particular candidate.¹⁴⁰ Accordingly, there is reason to believe that PPP violated 52 U.S.C.
7 § 30124(b)(1) by making fraudulent misrepresentations in its solicitations to contributors.

8 However, the pending criminal cases against Tunstall, Reyes, and Davies involve charges
9 of fraud that substantially overlap with the factual basis for any violation of 52 U.S.C.
10 § 30124(b)(1).¹⁴¹ Further, the statute of limitations for these violations began to run in February
11 2022 and completely expired on July 10, 2022. In light of both the expired statute of limitations
12 for any fraudulent misrepresentation and the ongoing criminal case, we recommend that the
13 Commission take no further action with regard to this apparent violation.

14 **C. The Commission Should Take No Further Action Against Progressive**
15 **Priorities PAC and Matthew Tunstall in His Official Capacity as Treasurer**
16 **Regarding Failure to Itemize Receipts and Disbursements**

17 Under the Act, a political committee must identify each person who makes a contribution
18 having an aggregate amount in excess of \$200 within the calendar year, together with the date
19 and amount of such contribution.¹⁴² Identification for an individual is defined as the full first

¹³⁹ *Supra* notes 64-65 and accompanying text.

¹⁴⁰ F&LA at 3, MURs 7011, 7092 (HC4President, *et al.*).

¹⁴¹ *See* Indictment ¶¶ 20-55 (laying out facts associated with count 1: conspiracy to commit wire fraud); *id.* ¶¶ 56-58 (counts 2-4: wire fraud); *id.* ¶¶ 59-60 (counts 5-6: money laundering under 18 U.S.C. § 1956(a)(1)(B)(i)); *id.* ¶¶ 61-62 (counts 7-8: money laundering under 18 U.S.C. § 1957).

¹⁴² 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4).

1 and last names, complete mailing address, occupation, and name of employer.¹⁴³ If a committee
2 is not able to obtain all of this information for a contributor, but the treasurer can demonstrate
3 that he or she exercised “best efforts” to obtain, maintain, and submit this identifying
4 information, the committee would nonetheless be considered in compliance with this
5 requirement.¹⁴⁴ Similarly, political committees must also report the name and address of each
6 person to whom an expenditure is made having an aggregate amount in excess of \$200 within the
7 calendar year, together with the date, amount, and purpose of the expenditure.¹⁴⁵

8 PPP failed to include occupation or employer information for all of the 332 contributors
9 for whom that information was required in its 2016 July and October Quarterly Reports;¹⁴⁶ as
10 PPP did not report receiving contributions on any other Report, PPP has therefore failed to
11 properly itemize a single contribution. There is no evidence in the record that PPP at any time
12 exercised its “best efforts” to collect this information. And in PPP’s 2016 July Quarterly Report,
13 the Committee reported 256 receipts totaling \$30,995 identified only as “PayPal.”¹⁴⁷

14 PPP also failed to provide all necessary information for 68 disbursements totaling
15 \$372,922.11 in its 2016 July and October Quarterly Reports.¹⁴⁸ All of the disbursements
16 reported in the Committee’s 2016 July Quarterly Report (totaling \$211,621.11) were missing

¹⁴³ 11 C.F.R. § 100.12.

¹⁴⁴ 52 U.S.C. § 30102(i); 11 C.F.R. § 104.7(a).

¹⁴⁵ 52 U.S.C. § 30104(b)(5)(A); 11 C.F.R. § 104.3(b)(3).

¹⁴⁶ PPP, 2016 July Quarterly Report, Sched. A (July 11, 2016) [hereinafter July Quarterly Report], <https://docquery.fec.gov/pdf/429/201607119020403429/201607119020403429.pdf>; PPP, 2016 October Quarterly Report, Sched. A (Sept. 30, 2016) [hereinafter October Quarterly Report], <https://docquery.fec.gov/pdf/143/201610139032434143/201610139032434143.pdf>.

¹⁴⁷ July Quarterly Report, Sched. A.

¹⁴⁸ *Id.*, Sched. B; October Quarterly Report, Sched. B.

1 both an address and the purpose of the expenditure.¹⁴⁹ In the 2016 October Quarterly Report, an
2 address was missing for \$161,301 out of \$163,621 in disbursements.¹⁵⁰ The record further
3 indicates PPP did not report all of its disbursements, as bank records show, for instance, that
4 Kyle Davies received at least \$12,084 from PPP that it did not report.¹⁵¹ And the factual bases
5 for pleas of guilt submitted by Davies and Reyes in the concurrent DOJ criminal action establish
6 that a large proportion of the disbursements reported as made to SmartCall Media were actually
7 funneled to Tunstall and Reyes, indicating that some proportion of the \$270,501 PPP disbursed
8 to that entity was also misreported.¹⁵²

9 Accordingly, PPP failed to itemize its receipts and disbursements in violation of
10 52 U.S.C. § 30104(b)(3)(A), (b)(5)(A) and 11 C.F.R. § 104.3(a)(4), (b)(3).¹⁵³ Nonetheless, the
11 statute of limitations for these violations began to run in February 2022 and completely expired
12 on July 10, 2022. Accordingly, we recommend that the Commission take no further action with
13 regard to PPP's apparent failure to properly itemize its receipts and disbursements.

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¹⁴⁹ July Quarterly Report, Sched. B.

¹⁵⁰ October Quarterly Report, Sched. B.

¹⁵¹ Wells Fargo Subpoena Resp. at 56-64 (June 14, 2019).

¹⁵² *See supra* notes 74-77 and accompanying text.

¹⁵³ *See* F&LA at 5-6 (Progressive Priorities PAC).

MUR 7468 (Progressive Priorities PAC, *et al.*)

Second General Counsel's Report

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VI. RECOMMENDATIONS

1. Find reason to believe that Matthew Tunstall knowingly and willfully violated 52 U.S.C. § 30103(b), (c) and 11 C.F.R. § 102.2(a)(1), (2) by misrepresenting the actual treasurer of Progressive Priorities PAC;
2. Take no further action regarding the allegation that Progressive Priorities PAC and Matthew Tunstall in his official capacity as treasurer violated 52 U.S.C. § 30124 by fraudulently misrepresenting that Progressive Priorities PAC was acting for or on behalf of a federal candidate;
3. Take no further action regarding the allegation that Progressive Priorities PAC and Matthew Tunstall in his official capacity as treasurer violated 52 U.S.C. § 30104(b) by failing to itemize receipts and disbursements;
4. Authorize pre-probable cause conciliation with Progressive Priorities PAC and Matthew Tunstall in his official capacity as treasurer regarding its knowing and willful failure to accurately identify its treasurer in violation of 52 U.S.C. § 30103(b), (c) and 11 C.F.R. § 102.2(a)(1), (2);
5. Approve the attached Factual and Legal Analysis;
6. Authorize pre-probable cause conciliation with Matthew Tunstall and Progressive Priorities PAC and Mathew Tunstall in his official capacity as treasurer;
7. Approve the attached Conciliation Agreement; and

1 8. Approve the appropriate letter.


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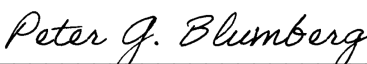
Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel for
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Date: October 20, 2022



Jin Lee
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Justine A. di Giovanni
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