

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 7528

DATE COMPLAINT FILED: October 29, 2018

DATE OF NOTIFICATION: October 31, 2018¹

LAST RESPONSE RECEIVED: June 26, 2019

DATE ACTIVATED: May 3, 2019

EXPIRATION OF SOL: 8/6/2023 – 9/6/2023

ELECTION CYCLE: 2018

COMPLAINANT:

Raymond Brake

RESPONDENT:

Yukon Kusko Political Action Committee Inc. and
 Margaret Pohjola, in her official capacity as
 treasurer
 Calista Corporation
 Yulista Holding, LLC
 Jennine Jordan
 Andrew Guy
 Josh Herren

**RELEVANT STATUTES AND
REGULATIONS:**

52 U.S.C. § 30101(7)
 52 U.S.C. § 30102(e)(5)
 52 U.S.C. § 30103(b)
 52 U.S.C. § 30118
 11 C.F.R. § 100.6
 11 C.F.R. § 102.14(c)
 11 C.F.R. § 114.1(a)(2)(iii), (j).
 11 C.F.R. § 114.2
 11 C.F.R. § 114.5
 11 C.F.R. § 114.6 (a), (c)
 11 C.F.R. § 114.7(a)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

¹ Due to administrative oversight, a late notification was sent to Yulista Holding, LLC on February 21, 2019 and to Calista Corporation on June 11, 2019.

I. INTRODUCTION

On September 6, 2018, Complainant, an employee of Yulista Holding, LLC (“Yulista”), received an email solicitation sent on behalf of Yulista’s CEO/President Josh Herren requesting contributions for the Yukon Kusko Political Action Committee, Inc. (“Yukon Kusko PAC” or “Committee”).² Attached to the email solicitation was a letter from Andrew Guy, the CEO of Yulista’s parent company Calista Corporation (“Calista”), and a contribution form. The Complaint alleges that Respondents violated the Federal Election Campaign Act of 1971, as amended (“the Act”), and Commission regulations because the email solicitation did not include a statement about the right to refuse to contribute to the PAC without reprisal.³

Respondents explain that Yukon Kusko PAC is registered with the Commission as a non-connected PAC and assert that the email solicitation received by Complainant was a result of a “general fundraising request” sent to “permissible donors within the general public.”⁴ The Committee denies that it was obligated to include a statement about the right to refuse to contribute in its solicitations because it does not operate as a separate segregated fund (“SSF”) of any connected organization.⁵

The available information shows that Yukon Kusko PAC is managed by individuals employed by Calista or its subsidiaries, including Yulista, or those otherwise connected to Calista, that it utilized the resources of Calista and Yulista in its solicitation efforts, and that it was largely funded by individuals employed by Calista or its subsidiaries. Therefore, Yukon

² Compl. at 1 (Oct. 29, 2018).

³ *Id.* at 1, Ex. 4.

⁴ Yukon Kusko PAC Resp. at 2 (Dec. 20, 2018); Calista Resp. at 4 (June 26, 2019); Yulista Resp. at 2 (Apr. 29, 2019).

⁵ *Id.*

Kusko PAC appears to qualify as an SSF but has failed to register and operate as such. We recommend that the Commission find reason to believe that Yukon Kusko PAC and Margaret Pohjola in her official capacity as treasurer violated 52 U.S.C. § 30103(b) by failing to list Calista as a connected organization on its Statement of Organization and violated 52 U.S.C. § 30102(e)(5) and 11 C.F.R. § 102.14(c) by failing to include the full name of its connected organization in its official name. Because the available information indicates that Respondents solicited contributions for Yukon Kusko PAC from employees outside of Calista and Yulista's restricted classes, we recommend that the Commission find reason to believe that Yukon Kusko PAC and Margaret Pohjola in her official capacity as treasurer, Calista, and Yulista violated 52 U.S.C. § 30118(b)(4) and 11 C.F.R. § 114.5(g)(1). In addition, because the solicitations failed to include a written notice stating that employees may refuse to contribute without reprisal, we recommend that the Commission find reason to believe that Yukon Kusko PAC and Margaret Pohjola in her official capacity as treasurer, Calista, Yulista, corporate officers Andrew Guy and Josh Herren, and Yukon Kusko PAC's assistant treasurer Jennine Jordan violated 52 U.S.C. § 30118(b)(3)(c) and 11 C.F.R. § 114.5(a)(4).

II. FACTUAL BACKGROUND

A. Corporate Structure of Calista

Calista is the parent company of more than 30 subsidiaries in the military defense contracting, construction, real estate, environmental and natural resource development, and oil field services industries.⁶ Andrew Guy is the President/CEO of Calista.⁷ Margaret Pohjola is the

⁶ Calista Corporation: Business Overview, available at <https://www.calistacorp.com/business/business-overview/mission-vision/>.

⁷ Calista Corporation: Executives, available at <https://www.calistacorp.com/business/leadership/executives/>.

Vice Chair of the Calista Board of Directors.⁸ Jennine Jordan is a government relations employee at Calista.⁹

Calista is comprised of five subsidiary holding companies, one of which is Yulista.¹⁰ Yulista, in turn, has nine subsidiaries.¹¹ Josh Herren is the CEO/President of Yulista and Paul May is the COO/Vice President of Yulista.¹² Calista's other holding companies are Bektuq Holding, LLC, Bilista Holding, LLC, Ena Holding, LLC, and Niici Holding, LLC.¹³

B. Establishment of Yukon Kusko PAC

On August 6, 2018, Yukon Kusko PAC registered with the Commission as a nonconnected political committee.¹⁴ Its treasurer is Margaret Pohjola.¹⁵ A number of Calista's corporate officers sit on the board of Yukon Kusko PAC, including Andrew Guy, who is the Chairman of the PAC; Josh Herren; and Jennine Jordan, who serves as the PAC's assistant treasurer.¹⁶ The other member of the PAC, Andy Cole, is the President of Donlin Gold, which

⁸ Calista Corporation: 2018-2019 Board of Directors, available at <http://www.calistacorp.com/wp-content/uploads/2018/09/2018-2019-Board-of-Directors-FINAL.jpeg.jpg>.

⁹ Compl. at Ex. 1.

¹⁰ Calista Corporation: Holding Companies, available at <https://www.calistacorp.com/business/calista-companies-overview/holding-companies/>.

¹¹ Yulista About: Subsidiaries, available at <https://yulista.com/about-us/subsidiaries/>.

¹² Yulista About: Leadership, available at <https://yulista.com/about-us/leadership/>.

¹³ Calista Corporation: Holding Companies, available at <https://www.calistacorp.com/business/calista-companies-overview/holding-companies/>.

¹⁴ *See* Yukon Kusko PAC, Statement of Organization (Aug. 6, 2018).

¹⁵ *See* Yukon Kusko PAC, Am. Statement of Organization (Nov. 9, 2018).

¹⁶ *See* Compl. at Ex. 1 (Oct. 29, 2018); Yukon Kusko PAC, Am. Statement of Organization (Nov. 9, 2018); *see also* Calista Corporation: Executives, available at <https://www.calistacorp.com/business/leadership/executives/>; Calista Corporation: Board of Directors, available at <https://www.calistacorp.com/business/leadership/board-directors/>; Calista Corporation: Subsidiary Companies, available at <https://www.calistacorp.com/business/calista-companies-overview/subsidiary-companies/>.

operates a mining lease with Calista.¹⁷ Based on the members of the PAC identified in the solicitation sent to Yulista employees,¹⁸ there are no individuals involved with the management of the PAC who are not associated with Calista.

Between August 2018 and December 2018, Yukon Kusko PAC reported raising \$17,368. Of that, \$1,365 was in unitemized contributions and \$3 was in other federal receipts (dividends, interest, etc.).¹⁹ The remaining receipts reported on Yukon Kusko PAC's disclosure reports were itemized contributions received from 9 individuals with the following reported employers:²⁰

Name	Employer	Occupation	Aggregate 2018 Contribution
Brice, Sam Robert	Bilista Holding, LLC	President	\$1,000
Cole, Andy	Donlin Gold, LLC	General Manager	\$500
Featherly, Walter T.	Holland & Knight	Attorney	\$500
Guy, Andrew	Calista Corporation	CEO	\$2,500
Herren, Joshua	Yulista ²¹	President/CEO	\$500
Jansen, Jim	Lynden Incorporated	CEO	\$5,000
Lechner, Sharon	Calista Corporation	CFO	\$5,000
May, Paul L.	YHL	EVP/COO Yulista	\$500
Porter, Robert O.	Capitol Hill Policy Group	Managing Principal	\$500

¹⁷ See Compl. at Ex. 1 (Oct. 29, 2018); Calista Corporation, Record of Decision and Major Federal Permits Issued to Donlin Gold, available at <https://www.calistacorp.com/news/record-decision-major-federal-permits-issued-donlin-gold/>.

¹⁸ Compl. at Ex. 1.

¹⁹ See Yukon Kusko PAC Fourth Am. 2018 October Quarter Report at 3 (filed Jan. 23, 2019); Yukon Kusko PAC 2018 Year-End Report at 3 (filed Jan. 24, 2019).

²⁰ See Yukon Kusko PAC Fourth Am. 2018 October Quarter Report (filed Jan. 23, 2019); Yukon Kusko PAC 2018 Year-End Report (filed Jan. 24, 2019).

²¹ The disclosure reports identify Joshua Herren's employer as Yulista. However, publically available information confirm that he is employed by Yulista. See, e.g., Yulista: Leadership, available at <https://yulista.com/about-us/leadership/>.

Of these nine individuals, five, including Sam Brice, Andrew Guy, Joshua Herren, Sharon Lechner, and Paul May, are employed by Calista or one of its subsidiaries.²²

Between August 2018 and December 2018, Yukon Kusko PAC reported disbursements totaling \$10,860.26. Of that amount, \$4,457 was paid to Dentons US for legal services and \$1,800 was paid to Advanced Design for “website creation.”²³ The PAC made contributions in the following amounts: a \$1,000 contribution to Midnight Sun PAC, a \$1,000 contribution to Alaskans for Don Young, and a \$2,500 contribution to Denali Leadership PAC.²⁴ The remaining disbursement was in unidentified other federal operating expenditures totaling \$103.26.²⁵

In calendar year 2019, to date, Yukon Kusko PAC reported receiving \$25 in unitemized contributions and made \$3,564.25 in disbursements.²⁶ The disbursement schedule disclosed a \$500 payment to Dentons US, LLP for “attorney fees,” and the PAC contributed \$1,500 to Deb Haaland for Congress and \$1,500 to Sharice for Congress.²⁷ Significantly, Yukon Kusko PAC has reported no fundraising or marketing expenses since its formation.

²² See Calista Corporation: Holding Companies, available at <https://www.calistacorp.com/business/calista-companies-overview/holding-companies/>. Yulista Holding, LLC and Bilista Holding, LLC are subsidiaries of Calista Corporation.

Based on publically available information, it appears that at least two more of these individuals are employed by companies that conduct business with Calista — Donlin Gold operates a mining lease with Calista, and Calista is a client of Holland & Knight attorney Walter Featherly. See Calista Corporation, Record of Decision and Major Federal Permits Issued to Donlin Gold, available at <https://www.calistacorp.com/news/record-decision-major-federal-permits-issued-donlin-gold/>; KYUK, Wayne Don and Andrew Guy to Testify at Calista's Monday Hearing, available at <https://www.kyuk.org/post/wayne-don-and-andrew-guy-testify-calistas-monday-hearing>.

²³ See Yukon Kusko PAC, Second Am. 2018 Post-General Election Report (filed Jan. 23, 2019); Yukon Kusko PAC 2018 Year-End Report (filed Jan. 24, 2019).

²⁴ See Yukon Kusko PAC Fourth Am. 2018 October Quarter Report (filed Jan. 23, 2019); Yukon Kusko PAC Second Am. 2018 Pre-General Election Report (filed Jan. 23, 2019).

²⁵ See Yukon Kusko PAC Fourth Am. 2018 October Quarter Report (filed Jan. 23, 2019).

²⁶ See Yukon Kusko PAC, Second Am. 2019 Mid-Year Report (filed Jul. 17, 2019).

²⁷ *Id.* at 6-7.

C. Solicitations for Contributions to Yukon Kusko PAC

On August 21, 2018, Jennine Jordan sent an email to an undisclosed number of recipients soliciting contributions for the Committee.²⁸ The email, which was addressed “Dear Calista employees,” explained that Yukon Kusko PAC was a newly created PAC that would “be supporting candidates that understand the YK region and Calista business’s unique needs.”²⁹ Attached to the email were a letter from Andrew Guy, Chairman of Calista and the Yukon Kusko PAC, and a contribution form.³⁰ The letter from Guy was addressed “Dear Employees” and explained that the Yukon Kusko PAC was formed “as a vehicle for voluntary participation in the political process on behalf of the Calista region.”³¹ Guy then solicits contributions of up to \$5,000 for the calendar year and tells Calista employees, “I hope you will consider making a contribution today by completing the attached form.”³²

On September 6, 2018, Whitney Dorning, an employee of Yulista, sent an email to all Yulista employees on behalf of Josh Herren, CEO/President of Yulista.³³ In the email, Herren begins by addressing “Team Yulista” and states:

Over the years, many of our competitors have been active in the political environment that affects and impacts our business. From government spending, programs, and more the companies in our market are constantly applying political pressure to advance their position in the marketplace. In fact, our largest competitor on the PIF contract has offices in DC and maintains a strong political influence. . . . The time is now for Calista/Yulista to generate more political influence. And more importantly we have a collective voice that matters and

²⁸ Compl. at 1, Ex. 1 (Oct. 29, 2018).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at Ex. 2.

³² *Id.*

³³ *Id.* at 1, Ex. 1.

should be heard. The concept of the PAC is to position ourselves to get our voices heard and influence the political process.³⁴

Herren then noted that he was attaching the August 21, 2018 email from Jordan, the letter from Guy, and the contribution form.³⁵

After receiving the September email from Herren, Complainant, an employee of Yulista Aviation, a subsidiary of Yulista, sent an email to Dorning expressing his concern that the email pressured employees to donate and providing a link to the Commission's website that contained information about the requirement that solicitations for an SSF include a statement about the right to refuse to contribute without reprisal.³⁶ Complainant alleges that Herren called his "leadership" at Yulista Aviation and "took them to task over [Complainant's] email" to Dorning.³⁷ The "leadership" then contacted Complainant's direct boss to pass on the displeasure.³⁸

III. LEGAL ANALYSIS

A. **There is Reason to Believe that Yukon Kusko PAC Failed to Identify Calista as a Connected Organization and Include Calista in its Official Name and Respondents Solicited Contributions from Employees Outside the Restricted Class**

Under the Act and Commission regulations, corporations are prohibited from making contributions to federal candidates and political committees, with the exception of contributions to independent expenditure only political committees, and officers and directors of corporations

³⁴ *Id.* at Ex. 1.

³⁵ *Id.* at Exs. 1, 6.

³⁶ *Id.* at 1, Ex. 4.

³⁷ *Id.* at 1.

³⁸ *Id.*

are prohibited from consenting to any such contributions by the corporation.³⁹ Corporations are also prohibited from facilitating the making of a contribution to a candidate or political committee, other than to their SSF.⁴⁰ Facilitating means “using corporate ... resources or facilities to engage in fundraising activities.”⁴¹

Corporations, however, may make payments to establish, administer, or solicit contributions to a separate segregated fund to be utilized for political purposes without a resulting contribution or expenditure.⁴² A corporation that directly or indirectly establishes, administers, or financially supports a political committee is the connected organization of that committee.⁴³ The connected organization (*i.e.* the corporation) and SSF may only solicit contributions to the SSF from the corporation's restricted class.⁴⁴ The restricted class of a corporation consists of the corporation's executive and administrative personnel, the stockholders, and the families of those two groups, and the executive and administrative

³⁹ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

⁴⁰ 11 C.F.R. § 114.2(f)(1).

⁴¹ *Id.* Examples of facilitating the making of contributions include, but are not limited to, the corporations' officers or employees ordering or directing subordinates to plan, organize, or carry out a fundraising project as part of their work responsibilities using corporate resources, unless the corporation receives advance payment for the fair market value of such services, or using a corporate list of customers, clients, vendors, or others who are not in the corporation's restricted class to solicit contributions or distribute invitations to a fundraiser, unless the corporation receives advance payment for the fair market value of the list. *Id.* § 114.2(f)(2)(i)(A), (C)

⁴² 52 U.S.C. § 30118(b)(2)(C); 11 C.F.R. § 114.1(a)(2)(iii); Advisory Op. 2000-20 (Committee for Quality Cancer Care) at 3.

⁴³ 52 U.S.C. § 30101(7); 11 C.F.R. § 100.6. In this context, the term financially supports does not include contributions to the political committee, but does include the payment of establishment, administration and solicitation costs of such committee. 11 C.F.R. § 100.6.

⁴⁴ 52 U.S.C. § 30118(b)(4)(A); 11 C.F.R. §§ 114.5(g)(1), 114.7(a). An SSF may accept an unsolicited contribution that is otherwise lawful, but the committee may not inform individuals outside the restricted class that unsolicited contributions are acceptable. 11 C.F.R. § 114.5(j).

1 personnel of its subsidiaries, branches, divisions, and departments and their families.⁴⁵ The Act
 2 requires political committees to identify any connected organization in its Statement of
 3 Organization.⁴⁶ The official name of an SSF must include the full name of the connected
 4 organization.⁴⁷

5 In contrast, a political committee without a connected organization (*i.e.*, a nonconnected
 6 PAC) may solicit any individual or person for otherwise lawful contributions. Unlike an SFF, all
 7 payments to a nonconnected political committee or on its behalf for establishment,
 8 administration, and solicitation costs are contributions subject to the limits of the Act unless
 9 another exception applies.⁴⁸

10 Mere association with another entity does not necessarily prohibit individuals from
 11 forming a nonconnected political committee.⁴⁹ The Commission has permitted the formation of
 12 a nonconnected political committee that is organized by individuals associated with another
 13 entity when two conditions are met: (1) the committee does not receive financial support from
 14 any other incorporated entity; and (2) the committee maintains organizational independence from
 15 any other incorporated entity.⁵⁰

⁴⁵ 11 C.F.R. § 114.1(j). The restricted class of a corporation without capital stock is its members and executive or administrative personnel, and their families.

⁴⁶ 52 U.S.C. § 30103(b).

⁴⁷ 52 U.S.C. § 30102(e)(5); 11 C.F.R. § 102.14(c); *see, e.g.*, Factual and Legal Analysis at 1-2, MUR 2635 (CarePAC).

⁴⁸ *See* Advisory Opinion 1997-15 at 4 (Better Government Bureau, Inc.).

⁴⁹ *See, e.g.*, Factual and Legal Analysis at 4, MUR 6746 (AICPAC); Factual and Legal Analysis at 3, MUR 5830 (U.S.-Cuba Democracy PAC) (“the Commission has permitted the formation of a nonconnected political committee that is organized by individuals associated with another entity under certain circumstances.”).

⁵⁰ *See, e.g.*, Factual and Legal Analysis at 6, MUR 6746 (Americans in Contact PAC); Factual and Legal Analysis at 3-4, MUR 5830 (Leopoldo Fernandez Pujals); Advisory Opinion 2000-20 at 4-5 (Committee for Quality Cancer Care) (Commission found that proposed nonconnected PAC was financially and organizationally independent from professional or trade associations based because costs of the committee were paid solely from contributions received, the Committee would pay for the cost of all rent and other administrative expenses provided

Here, the facts indicate that Yukon Kusko PAC should have registered as a separate segregated fund of Calista, rather than a nonconnected committee. First, the PAC appears to have received financial support from Calista and Yulista by utilizing their employee mailing list and by using company resources. Despite the fact that the September 6, 2018, solicitation was sent to all employees, Yukon Kusko PAC did not report any disbursement to Calista or Yulista in its disclosure reports for the use of the mailing lists or any other administrative services. Further, both solicitations were sent during normal business hours,⁵¹ and it is possible that Josh Herren and Jennine Jordan prepared the solicitations during their workday instead of during personal time. In addition, it appears that Josh Herren utilized corporate resources by directing a Yulista employee, Whitney Dorning, to send the solicitation on his behalf.

Second, Yukon Kusko PAC does not appear to be independent of Calista. Of the five individuals publically identified as involved with Yukon Kusko PAC, four have an official position with Calista or one of its subsidiary companies. Three of those individuals clearly have a leadership role in the Calista organization: Andrew Guy, Yukon Kusko PAC Chairman, is the President/CEO of Calista; Margaret Pohjola, Yukon Kusko PAC treasurer, is Vice Chair of the Calista Board of Directors; and Josh Herren, Yukon Kusko PAC Board Member, is President of

by the trade organizations, and that “individuals affiliated with a particular organization will not ... form the majority of the Committee’s Board”); Advisory Opinion 1997-15 at 5-7 (Nickalo) (Commission found that a proposed nonconnected PAC formed by a membership organization’s CEO was permissible if the PAC paid the usual and normal charge for services provided by the membership organization, individuals not associated with the membership organization would serve on the PAC’s board, and the PAC’s board would not be dominated by individuals associated with the membership organization); Advisory Opinion 1991-37 at 3 (Democratic Election Reporting Education Fund) (Commission found that a proposed nonconnected PAC formed by several individuals, including the President of a corporation, was permissible when the PAC would pay its own operating expenses and four of the five PAC’s founders were not associated with the corporation).

⁵¹ Compl. at Ex. 1.

Calista's subsidiary Yulista.⁵² The remaining individual is an employee of Donlin Gold, who operates a mining lease with Calista. There does not appear to be a single individual involved in the management of Yukon Kusko PAC who is not associated with Calista.

In their responses, Respondents deny that Yukon Kusko PAC is a SSF and assert that the August 21, 2018 letter from Chairman Andrew Guy was a general fundraising request letter. However, Respondents provide no information regarding the organizational independence of the PAC. Further, Yukon Kusko PAC's apparent argument that the solicitation was forwarded to Yulista employees without its involvement completely ignores the fact that it was sent on behalf of Josh Herren, who is a member of the PAC's board.⁵³ Contrary to Respondents' assertion,⁵⁴ the August letter from Andrew Guy was not a general fundraising request letter. The letter was addressed "Dear Employees," the cover email was addressed "Dear Calista employees," and there is no information to suggest that the letter addressed to employees was sent to anyone beyond the employees of Calista and its subsidiaries.⁵⁵ In addition, the August email notes that the PAC "will be supporting candidates that understand ... Calista business's unique needs" and the September email notes that "[t]he time is now for Calista/Yulista to generate more political influence."⁵⁶ Each of these documents appealed to the employees of Calista and its subsidiaries, not the general public. Moreover, Calista directed Yulista to share the solicitation with its

⁵² The remaining member employed by Calista is Jennine Jordan, who is the Yukon Kusko PAC Assistant Treasurer and a government relations employee at Calista. The available information does not reveal her seniority at Calista.

⁵³ Yukon Kusko PAC Resp. at 1, 4, n.2.

⁵⁴ Yukon Kusko PAC Resp. at 2; Calista Resp. at 2; Yulista Resp. at 2.

⁵⁵ Compl. at Ex. 1.

⁵⁶ *Id.*

employees,⁵⁷ further suggesting that when he prepared the letter, Andrew Guy was acting in his capacity as President of Calista, not as a PAC representative soliciting the general public. Finally, the PAC has reported no disbursements for fundraising or marketing, which contradicts Respondents claim that the PAC “endeavored to solicit a diverse segment of the Alaska general population.”⁵⁸

Since Yukon Kusko PAC is organizationally and financially controlled by Calista, the PAC is an SSF with Calista as its connected organization.⁵⁹ Therefore, we recommend that the Commission find reason to believe that Yukon Kusko PAC and Margaret Pohjola in her official capacity as treasurer violated 52 U.S.C. § 30103(b) by failing to report Calista as a connected organization on its Statement of Organization. We also recommend that the Commission find reason to believe that Yukon Kusko PAC and Margaret Pohjola in her official capacity as treasurer violated 52 U.S.C. § 30102(e)(5) and 11 C.F.R. § 102.14(c) because the Yukon Kusko PAC’s name does not contain the full name of Calista.⁶⁰

Finally, the facts show that respondents solicited contributions for Yukon Kusko PAC from employees outside their restricted classes.⁶¹ Calista’s August 21, 2018 solicitation email

⁵⁷ *Id.* at Ex. 5.

⁵⁸ Yukon Kusko PAC Resp. at 2; Calista Resp. at 2; Yulista Resp. at 2.

⁵⁹ Alternatively, if the Commission does not find that Yukon Kusko PAC is a SSF, Yukon Kusko PAC has violated the Act and Commission regulations by accepting corporate contributions in the form of in-kind solicitation services from Calista and Yulista in violation of 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2, and Calista and Yulista have violated the act by making in-kind contributions in violation of 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2.

⁶⁰ *See* 52 U.S.C. § 30102(e)(5); 11 C.F.R. § 102.14(c).

⁶¹ *See* 11 C.F.R. § 114.5(g); 11 C.F.R. § 114.1(j). Twice a year, an SSF or its connected corporation may solicit employees who are not executive and administrative personnel or stockholders and their families. 11 C.F.R. § 114.6(a). However, such solicitations to employees who are not in the restricted class must, among other things, be made in writing and mailed to the employees’ residences. 11 C.F.R. § 114.6(c). Both of the solicitations at issue here were sent to employees outside of the restricted class by email.

appears to have been sent to all Calista employees, which includes employees outside of its restricted class.⁶² Similarly, Complainant asserts, and Respondents do not deny, that Yulista's September 6, 2018 solicitation email was sent to all employees,⁶³ which also include employees outside of its restricted class. Accordingly, we recommend that the Commission find reason to believe that Yukon Kusko PAC and Margaret Pohjola in her official capacity as treasurer, Calista and Yulista violated 52 U.S.C. § 30118(b)(4)(A) and 11 C.F.R. § 114.5(g)(1).⁶⁴

B. There is Reason to Believe Respondents Failed to Include a Notice about the Right to Refuse in its Solicitations

The Act and Commission regulations require that any person soliciting an employee for a contribution to a SSF must inform such employee at the time of the solicitation of his or her right to refuse to so contribute without reprisal.⁶⁵ A written solicitation for contributions to a SSF that is addressed to an employee must contain a statement that complies with this requirement.⁶⁶

The August email, the September email, and the letter from Andrew Guy all failed to contain the required notice stating that an employee could refuse to contribute to Yukon Kusko PAC without reprisal.⁶⁷ Although the solicitation form included a statement that the contributor “confirm[s] that my contribution to the committee is completely voluntary,” it does not provide

⁶² Compl. at Ex. 1.

⁶³ *Id.* at 1.

⁶⁴ Alternatively, if the Commission does not find that Yukon Kusko PAC is a SSF, Calista, Yulista, and their agents Andrew Guy, Jennine Jordan, and Josh Herren violated 52 U.S.C. § 30118 and 11 C.F.R. § 114.2(f) by facilitating the making of contributions. As discussed above, the facts indicate that respondents used corporate resources by sending company-wide email solicitations to employees, including those outside of their restricted classes.

⁶⁵ 52 U.S.C. § 30118(b)(3)(c); 11 C.F.R. § 114.5(a)(4).

⁶⁶ *See, e.g.*, Advisory Opinion 2006-17 at 5 (Berkeley Electric Cooperative) (approving a sample check-off card that asked members to affirm that they “voluntarily donate” and stated “I am also fully aware that should I elect not to participate I may do so without any concern of retaliation”).

⁶⁷ Compl. at Ex. 1.

1 an employee with notice that he or she has the right to refuse to make a contribution.⁶⁸ As the
2 Commission has previously held, a statement that a contribution is voluntary is insufficient to
3 satisfy the requirement that any individual soliciting contributions for an SSF inform employees
4 at the time of solicitation of his or her right to refuse to contribute without reprisal.⁶⁹

5 Therefore, we recommend that the Commission find reason to believe that Yukon Kusko
6 PAC and Margaret Pohjola in her official capacity as treasurer, Calista, Yulista, Jennine Jordan,
7 Andrew Guy, and Josh Herren violated 52 U.S.C. § 30118(b)(3)(c) and 11 C.F.R. § 114.5(a)(4)
8 by failing to include a written statement on its solicitations that employees may refuse to
9 contribute without reprisal.

⁶⁸ *Id.*

⁶⁹ *See, e.g.*, Factual and Legal Analysis at 10-11, 14, MUR 7041 (United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local 479).

MUR 7528 (Yukon Kusko Political Action Committee Inc., *et al.*)
First General Counsel's Report
Page 16 of 18

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

V. RECOMMENDATIONS

1. Find reason to believe that Yukon Kusko Political Action Committee, Inc. and Margaret Pohjola in her official capacity as treasurer violated 52 U.S.C. § 30103(b) by failing to list Calista Corporation as a connected organization on its Statement of Organization;
2. Find reason to believe that Yukon Kusko Political Action Committee, Inc. and Margaret Pohjola in her official capacity as treasurer violated 52 U.S.C. § 30102(e)(5) and 11 C.F.R. § 102.14(c) because it does not contain the full name of its connected organization in its official name;
3. Find reason to believe that Yukon Kusko Political Action Committee, Inc. and Margaret Pohjola in her official capacity as treasurer, Calista Corporation, and Yulista Holdings, LLC violated 52 U.S.C. § 30118(b)(4) and 11 C.F.R. § 114.5(g)(1) by soliciting employees outside their restricted classes;
4. Find reason to believe that Yukon Kusko Political Action Committee, Inc. and Margaret Pohjola in her official capacity as treasurer, Jennine Jordan, Calista Corporation, Yulista Holdings, LLC, Andrew Guy, and Josh Herren violated 52 U.S.C. § 30118(b)(3)(c) and 11 C.F.R. § 114.5(a)(4) by failing to include a written statement that employees may refuse to contribute without reprisal on its solicitations;
5. Approve the attached Factual and Legal Analysis;
6. Enter into pre-probable cause conciliation with Yukon Kusko Political Action Committee, Inc. and Margaret Pohjola in her official capacity as treasurer, Jennine Jordan, Calista Corporation, Yulista Holding, LLC, Andrew Guy, and Josh Herren;
7. Approve the attached Conciliation Agreements; and
8. Approve the appropriate letters.

MUR 7528 (Yukon Kusko Political Action Committee Inc., *et al.*)

First General Counsel's Report

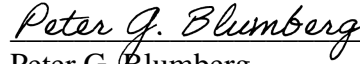
Page 18 of 18


Lisa J. Stevenson
Acting General Counsel


Charles Kitcher
Acting Associate General Counsel for Enforcement

August 30, 2019

Date


Peter G. Blumberg
Acting Deputy Associate General Counsel for
Enforcement


Jin Lee
Acting Assistant General Counsel


Kristina M. Portner
Attorney

Attachments:

1. Yukon Kusko PAC Factual and Legal Analysis
2. Calista Corporation Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Yukon Kusko Political Action Committee Inc. and Margaret Pohjola, in her official capacity as treasurer
Jennine Jordan

MUR 7528

I. INTRODUCTION

This matter was generated by a Complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (“the Act”) and Commission regulations by Raymond Brake. On September 6, 2018, Complainant, an employee of Yulista Holding, LLC (“Yulista”), received an email solicitation sent on behalf of Yulista’s CEO/President Josh Herren requesting contributions for the Yukon Kusko Political Action Committee, Inc. (“Yukon Kusko PAC” or “Committee”).¹ Attached to the email solicitation was a letter from Andrew Guy, the CEO of Yulista’s parent company Calista Corporation (“Calista”), and a contribution form. The Complaint alleges that Respondents violated the Act and Commission regulations because the email solicitation did not include a statement about the right to refuse to contribute to the PAC without reprisal.²

Respondents explain that Yukon Kusko PAC is registered with the Commission as a non-connected PAC and assert that the email solicitation received by Complainant was a result of a “general fundraising request” sent to “permissible donors within the general public.”³ The Committee denies that it was obligated to include a statement about the right to refuse to

¹ Compl. at 1 (Oct. 29, 2018).

² *Id.* at 1, Ex. 4.

³ Yukon Kusko PAC Resp. at 2 (Dec. 20, 2018).

1 contribute in its solicitations because it does not operate as a separate segregated fund (“SSF”) of
2 any connected organization.⁴

3 The available information shows that Yukon Kusko PAC is managed by individuals
4 employed by Calista or its subsidiaries, including Yulista, or those otherwise connected to
5 Calista, that it utilized the resources of Calista and Yulista in its solicitation efforts, and that it
6 was largely funded by individuals employed by Calista or its subsidiaries. Therefore, Yukon
7 Kusko PAC qualifies as an SSF but has failed to register and operate as such. The Commission
8 finds reason to believe that Yukon Kusko PAC and Margaret Pohjola in her official capacity as
9 treasurer violated 52 U.S.C. § 30103(b) by failing to list Calista as a connected organization on
10 its Statement of Organization and violated 52 U.S.C. § 30102(e)(5) and 11 C.F.R. § 102.14(c) by
11 failing to include the full name of its connected organization in its official name. Because the
12 available information indicates that Respondents solicited contributions for Yukon Kusko PAC
13 from employees outside of Calista and Yulista’s restricted classes, the Commission finds reason
14 to believe that Yukon Kusko PAC and Margaret Pohjola in her official capacity as treasurer
15 violated 52 U.S.C. § 30118(b)(4) and 11 C.F.R. § 114.5(g)(1). In addition, because the
16 solicitations failed to include a written notice stating that employees may refuse to contribute
17 without reprisal, the Commission finds reason to believe that Yukon Kusko PAC and Margaret
18 Pohjola in her official capacity as treasurer and Jennine Jordan violated 52 U.S.C. §
19 30118(b)(3)(c) and 11 C.F.R. § 114.5(a)(4).

⁴ *Id.*

II. FACTUAL BACKGROUND

A. Corporate Structure of Calista

Calista is the parent company of more than 30 subsidiaries in the military defense contracting, construction, real estate, environmental and natural resource development, and oil field services industries.⁵ Andrew Guy is the President/CEO of Calista.⁶ Margaret Pohjola is the Vice Chair of the Calista Board of Directors.⁷ Jennine Jordan is a government relations employee at Calista.⁸

Calista is comprised of five subsidiary holding companies, one of which is Yulista.⁹ Yulista, in turn, has nine subsidiaries.¹⁰ Josh Herren is the CEO/President of Yulista and Paul May is the COO/Vice President of Yulista.¹¹ Calista's other holding companies are Bektuq Holding, LLC, Bilista Holding, LLC, Ena Holding, LLC, and Niici Holding, LLC.¹²

⁵ Calista Corporation: Business Overview, available at <https://www.calistacorp.com/business/business-overview/mission-vision/>.

⁶ Calista Corporation: Executives, available at <https://www.calistacorp.com/business/leadership/executives/>.

⁷ Calista Corporation: 2018-2019 Board of Directors, available at <http://www.calistacorp.com/wp-content/uploads/2018/09/2018-2019-Board-of-Directors-FINAL.jpeg.jpg>.

⁸ Compl. at Ex. 1.

⁹ Calista Corporation: Holding Companies, available at <https://www.calistacorp.com/business/calista-companies-overview/holding-companies/>.

¹⁰ Yulista About: Subsidiaries, available at <https://yulista.com/about-us/subsidiaries/>.

¹¹ Yulista About: Leadership, available at <https://yulista.com/about-us/leadership/>.

¹² Calista Corporation: Holding Companies, available at <https://www.calistacorp.com/business/calista-companies-overview/holding-companies/>.

B. Establishment of Yukon Kusko PAC

On August 6, 2018, Yukon Kusko PAC registered with the Commission as a nonconnected political committee.¹³ Its treasurer is Margaret Pohjola.¹⁴ A number of Calista's corporate officers sit on the board of Yukon Kusko PAC, including Andrew Guy, who is the Chairman of the PAC; Josh Herren; and Jennine Jordan, who serves as the PAC's assistant treasurer.¹⁵ The other member of the PAC, Andy Cole, is the President of Donlin Gold, which operates a mining lease with Calista.¹⁶ Based on the members of the PAC identified in the solicitation sent to Yulista employees,¹⁷ there are no individuals involved with the management of the PAC who are not associated with Calista.

Between August 2018 and December 2018, Yukon Kusko PAC reported raising \$17,368. Of that, \$1,365 was in unitemized contributions and \$3 was in other federal receipts (dividends, interest, etc.).¹⁸ The remaining receipts reported on Yukon Kusko PAC's disclosure reports were itemized contributions received from 9 individuals with the following reported employers:¹⁹

¹³ See Yukon Kusko PAC, Statement of Organization (Aug. 6, 2018).

¹⁴ See Yukon Kusko PAC, Am. Statement of Organization (Nov. 9, 2018).

¹⁵ See Compl. at Ex. 1 (Oct. 29, 2018); Yukon Kusko PAC, Am. Statement of Organization (Nov. 9, 2018); see also Calista Corporation: Executives, available at <https://www.calistacorp.com/business/leadership/executives/>; Calista Corporation: Board of Directors, available at <https://www.calistacorp.com/business/leadership/board-directors/>; Calista Corporation: Subsidiary Companies, available at <https://www.calistacorp.com/business/calista-companies-overview/subsidiary-companies/>.

¹⁶ See Compl. at Ex. 1 (Oct. 29, 2018); Calista Corporation, Record of Decision and Major Federal Permits Issued to Donlin Gold, available at <https://www.calistacorp.com/news/record-decision-major-federal-permits-issued-donlin-gold/>.

¹⁷ Compl. at Ex. 1.

¹⁸ See Yukon Kusko PAC Fourth Am. 2018 October Quarter Report at 3 (filed Jan. 23, 2019); Yukon Kusko PAC 2018 Year-End Report at 3 (filed Jan. 24, 2019).

¹⁹ See Yukon Kusko PAC Fourth Am. 2018 October Quarter Report (filed Jan. 23, 2019); Yukon Kusko PAC 2018 Year-End Report (filed Jan. 24, 2019).

MUR 7528 (Yukon Kusko Political Action Committee Inc., *et al.*)

Factual and Legal Analysis

Page 5 of 14

Name	Employer	Occupation	Aggregate 2018 Contribution
Brice, Sam Robert	Bilista Holding, LLC	President	\$1,000
Cole, Andy	Donlin Gold, LLC	General Manager	\$500
Featherly, Walter T.	Holland & Knight	Attorney	\$500
Guy, Andrew	Calista Corporation	CEO	\$2,500
Herren, Joshua	Yulista ²⁰	President/CEO	\$500
Jansen, Jim	Lynden Incorporated	CEO	\$5,000
Lechner, Sharon	Calista Corporation	CFO	\$5,000
May, Paul L.	YHL	EVP/COO Yulista	\$500
Porter, Robert O.	Capitol Hill Policy Group	Managing Principal	\$500

1 Of these nine individuals, five, including Sam Brice, Andrew Guy, Joshua Herren, Sharon

2 Lechner, and Paul May, are employed by Calista or one of its subsidiaries.²¹

3 Between August 2018 and December 2018, Yukon Kusko PAC reported disbursements

4 totaling \$10,860.26. Of that amount, \$4,457 was paid to Dentons US for legal services and

5 \$1,800 was paid to Advanced Design for “website creation.”²² The PAC made contributions in

6 the following amounts: a \$1,000 contribution to Midnight Sun PAC, a \$1,000 contribution to

²⁰ The disclosure reports identify Joshua Herren’s employer as Yulista. However, publically available information confirm that he is employed by Yulista. *See, e.g.*, Yulista: Leadership, available at <https://yulista.com/about-us/leadership/>.

²¹ *See* Calista Corporation: Holding Companies, available at <https://www.calistacorp.com/business/calista-companies-overview/holding-companies/>. Yulista Holding, LLC and Bilista Holding, LLC are subsidiaries of Calista Corporation.

Based on publically available information, it appears that at least two more of these individuals are employed by companies that conduct business with Calista — Donlin Gold operates a mining lease with Calista, and Calista is a client of Holland & Knight attorney Walter Featherly. *See* Calista Corporation, Record of Decision and Major Federal Permits Issued to Donlin Gold, available at <https://www.calistacorp.com/news/record-decision-major-federal-permits-issued-donlin-gold/>; KYUK, Wayne Don and Andrew Guy to Testify at Calista’s Monday Hearing, available at <https://www.kyuk.org/post/wayne-don-and-andrew-guy-testify-calistas-monday-hearing>.

²² *See* Yukon Kusko PAC, Second Am. 2018 Post-General Election Report (filed Jan. 23, 2019); Yukon Kusko PAC 2018 Year-End Report (filed Jan. 24, 2019).

Alaskans for Don Young, and a \$2,500 contribution to Denali Leadership PAC.²³ The remaining disbursement was in unidentified other federal operating expenditures totaling \$103.26.²⁴

In calendar year 2019, to date, Yukon Kusko PAC reported receiving \$25 in unitemized contributions and made \$3,564.25 in disbursements.²⁵ The disbursement schedule disclosed a \$500 payment to Dentons US, LLP for “attorney fees,” and the PAC contributed \$1,500 to Deb Haaland for Congress and \$1,500 to Sharice for Congress.²⁶ Significantly, Yukon Kusko PAC has reported no fundraising or marketing expenses since its formation.

C. Solicitations for Contributions to Yukon Kusko PAC

On August 21, 2018, Jennine Jordan sent an email to an undisclosed number of recipients soliciting contributions for the Committee.²⁷ The email, which was addressed “Dear Calista employees,” explained that Yukon Kusko PAC was a newly created PAC that would “be supporting candidates that understand the YK region and Calista business’s unique needs.”²⁸ Attached to the email were a letter from Andrew Guy, Chairman of Calista and the Yukon Kusko PAC, and a contribution form.²⁹ The letter from Guy was addressed “Dear Employees” and explained that the Yukon Kusko PAC was formed “as a vehicle for voluntary participation in the

²³ See Yukon Kusko PAC Fourth Am. 2018 October Quarter Report (filed Jan. 23, 2019); Yukon Kusko PAC Second Am. 2018 Pre-General Election Report (filed Jan. 23, 2019).

²⁴ See Yukon Kusko PAC Fourth Am. 2018 October Quarter Report (filed Jan. 23, 2019).

²⁵ See Yukon Kusko PAC, Second Am. 2019 Mid-Year Report (filed Jul. 17, 2019).

²⁶ *Id.* at 6-7.

²⁷ Compl. at 1, Ex. 1 (Oct. 29, 2018).

²⁸ *Id.*

²⁹ *Id.*

political process on behalf of the Calista region.”³⁰ Guy then solicits contributions of up to \$5,000 for the calendar year and tells Calista employees, “I hope you will consider making a contribution today by completing the attached form.”³¹

On September 6, 2018, Whitney Dorning, an employee of Yulista, sent an email to all Yulista employees on behalf of Josh Herren, CEO/President of Yulista.³² In the email, Herren begins by addressing “Team Yulista” and states:

Over the years, many of our competitors have been active in the political environment that affects and impacts our business. From government spending, programs, and more the companies in our market are constantly applying political pressure to advance their position in the marketplace. In fact, our largest competitor on the PIF contract has offices in DC and maintains a strong political influence. . . . The time is now for Calista/Yulista to generate more political influence. And more importantly we have a collective voice that matters and should be heard. The concept of the PAC is to position ourselves to get our voices heard and influence the political process.³³

Herren then noted that he was attaching the August 21, 2018 email from Jordan, the letter from Guy, and the contribution form.³⁴

After receiving the September email from Herren, Complainant, an employee of Yulista Aviation, a subsidiary of Yulista, sent an email to Dorning expressing his concern that the email pressured employees to donate and providing a link to the Commission’s website that contained information about the requirement that solicitations for an SSF include a statement about the

³⁰ *Id.* at Ex. 2.

³¹ *Id.*

³² *Id.* at 1, Ex. 1.

³³ *Id.* at Ex. 1.

³⁴ *Id.* at Exs. 1, 6.

right to refuse to contribute without reprisal.³⁵ Complainant alleges that Herren called his “leadership” at Yulista Aviation and “took them to task over [Complainant’s] email” to Dorning.³⁶ The “leadership” then contacted Complainant’s direct boss to pass on the displeasure.³⁷

III. LEGAL ANALYSIS

A. There is Reason to Believe that Yukon Kusko PAC Failed to Identify Calista as a Connected Organization and Include Calista in its Official Name and Solicited Contributions from Employees Outside the Restricted Class

Under the Act and Commission regulations, corporations are prohibited from making contributions to federal candidates and political committees, with the exception of contributions to independent expenditure only political committees, and officers and directors of corporations are prohibited from consenting to any such contributions by the corporation.³⁸ Corporations are also prohibited from facilitating the making of a contribution to a candidate or political committee, other than to their SSF.³⁹ Facilitating means “using corporate ... resources or facilities to engage in fundraising activities.”⁴⁰

³⁵ *Id.* at 1, Ex. 4.

³⁶ *Id.* at 1.

³⁷ *Id.*

³⁸ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

³⁹ 11 C.F.R. § 114.2(f)(1).

⁴⁰ *Id.* Examples of facilitating the making of contributions include, but are not limited to, the corporations’ officers or employees ordering or directing subordinates to plan, organize, or carry out a fundraising project as part of their work responsibilities using corporate resources, unless the corporation receives advance payment for the fair market value of such services, or using a corporate list of customers, clients, vendors, or others who are not in the corporation’s restricted class to solicit contributions or distribute invitations to a fundraiser, unless the corporation receives advance payment for the fair market value of the list. *Id.* § 114.2(f)(2)(i)(A), (C)

Corporations, however, may make payments to establish, administer, or solicit contributions to a separate segregated fund to be utilized for political purposes without a resulting contribution or expenditure.⁴¹ A corporation that directly or indirectly establishes, administers, or financially supports a political committee is the connected organization of that committee.⁴² The connected organization (*i.e.* the corporation) and SSF may only solicit contributions to the SSF from the corporation's restricted class.⁴³ The restricted class of a corporation consists of the corporation's executive and administrative personnel, the stockholders, and the families of those two groups, and the executive and administrative personnel of its subsidiaries, branches, divisions, and departments and their families.⁴⁴ The Act requires political committees to identify any connected organization in its Statement of Organization.⁴⁵

In contrast, a political committee without a connected organization (*i.e.*, a nonconnected PAC) may solicit any individual or person for otherwise lawful contributions. Unlike an SFF, all payments to a nonconnected political committee or on its behalf for establishment,

⁴¹ 52 U.S.C. § 30118(b)(2)(C); 11 C.F.R. § 114.1(a)(2)(iii); Advisory Op. 2000-20 (Committee for Quality Cancer Care) at 3.

⁴² 52 U.S.C. § 30101(7); 11 C.F.R. § 100.6. In this context, the term financially supports does not include contributions to the political committee, but does include the payment of establishment, administration and solicitation costs of such committee. 11 C.F.R. § 100.6.

⁴³ 52 U.S.C. § 30118(b)(4)(A); 11 C.F.R. §§ 114.5(g)(1), 114.7(a). An SSF may accept an unsolicited contribution that is otherwise lawful, but the committee may not inform individuals outside the restricted class that unsolicited contributions are acceptable. 11 C.F.R. § 114.5(j).

⁴⁴ 11 C.F.R. § 114.1(j). The restricted class of a corporation without capital stock is its members and executive or administrative personnel, and their families.

⁴⁵ 52 U.S.C. § 30103(b).

1 administration, and solicitation costs are contributions subject to the limits of the Act unless
 2 another exception applies.⁴⁶

3 Mere association with another entity does not necessarily prohibit individuals from
 4 forming a nonconnected political committee.⁴⁷ The Commission has permitted the formation of
 5 a nonconnected political committee that is organized by individuals associated with another
 6 entity when two conditions are met: (1) the committee does not receive financial support from
 7 any other incorporated entity; and (2) the committee maintains organizational independence from
 8 any other incorporated entity.⁴⁸

9 Here, the facts indicate that Yukon Kusko PAC should have registered as a separate
 10 segregated fund of Calista, rather than a nonconnected committee. First, the PAC appears to
 11 have received financial support from Calista and Yulista by utilizing their employee mailing list
 12 and by using company resources. Despite the fact that the September 6, 2018, solicitation was
 13 sent to all employees, Yukon Kusko PAC did not report any disbursement to Calista or Yulista in
 14 its disclosure reports for the use of the mailing lists or any other administrative services. Further,

⁴⁶ See Advisory Opinion 1997-15 at 4 (Better Government Bureau, Inc.).

⁴⁷ See, e.g., Factual and Legal Analysis at 4, MUR 6746 (AICPAC); Factual and Legal Analysis at 3, MUR 5830 (U.S.-Cuba Democracy PAC) (“the Commission has permitted the formation of a nonconnected political committee that is organized by individuals associated with another entity under certain circumstances.”).

⁴⁸ See, e.g., Factual and Legal Analysis at 6, MUR 6746 (Americans in Contact PAC); Factual and Legal Analysis at 3-4, MUR 5830 (Leopoldo Fernandez Pujals); Advisory Opinion 2000-20 at 4-5 (Committee for Quality Cancer Care) (Commission found that proposed nonconnected PAC was financially and organizationally independent from professional or trade associations based because costs of the committee were paid solely from contributions received, the Committee would pay for the cost of all rent and other administrative expenses provided by the trade organizations, and that “individuals affiliated with a particular organization will not ... form the majority of the Committee’s Board”); Advisory Opinion 1997-15 at 5-7 (Nickalo) (Commission found that a proposed nonconnected PAC formed by a membership organization’s CEO was permissible if the PAC paid the usual and normal charge for services provided by the membership organization, individuals not associated with the membership organization would serve on the PAC’s board, and the PAC’s board would not be dominated by individuals associated with the membership organization); Advisory Opinion 1991-37 at 3 (Democratic Election Reporting Education Fund) (Commission found that a proposed nonconnected PAC formed by several individuals, including the President of a corporation, was permissible when the PAC would pay its own operating expenses and four of the five PAC’s founders were not associated with the corporation).

1 both solicitations were sent during normal business hours,⁴⁹ and it is possible that Josh Herren
2 and Jennine Jordan prepared the solicitations during their workday instead of during personal
3 time. In addition, it appears that Josh Herren utilized corporate resources by directing a Yulista
4 employee, Whitney Dorning, to send the solicitation on his behalf.

5 Second, Yukon Kusko PAC does not appear to be independent of Calista. Of the five
6 individuals publically identified as involved with Yukon Kusko PAC, four have an official
7 position with Calista or one of its subsidiary companies. Three of those individuals clearly have
8 a leadership role in the Calista organization: Andrew Guy, Yukon Kusko PAC Chairman, is the
9 President/CEO of Calista; Margaret Pohjola, Yukon Kusko PAC treasurer, is Vice Chair of the
10 Calista Board of Directors; and Josh Herren, Yukon Kusko PAC Board Member, is President of
11 Calista's subsidiary Yulista.⁵⁰ The remaining individual is an employee of Donlin Gold, who
12 operates a mining lease with Calista. There does not appear to be a single individual involved in
13 the management of Yukon Kusko PAC who is not associated with Calista.

14 In their response, Respondents deny that Yukon Kusko PAC is a SSF and assert that the
15 August 21, 2018 letter from Chairman Andrew Guy was a general fundraising request letter.
16 However, Respondents provide no information regarding the organizational independence of the
17 PAC. Further, Yukon Kusko PAC's apparent argument that the solicitation was forwarded to
18 Yulista employees without its involvement completely ignores the fact that it was sent on behalf

⁴⁹ Compl. at Ex. 1.

⁵⁰ The remaining member employed by Calista is Jennine Jordan, who is the Yukon Kusko PAC Assistant Treasurer and a government relations employee at Calista. The available information does not reveal her seniority at Calista.

1 of Josh Herren, who is a member of the PAC's board.⁵¹ Contrary to Respondents' assertion,⁵²
 2 the August letter from Andrew Guy was not a general fundraising request letter. The letter was
 3 addressed "Dear Employees," the cover email was addressed "Dear Calista employees," and
 4 there is no information to suggest that the letter addressed to employees was sent to anyone
 5 beyond the employees of Calista and its subsidiaries.⁵³ In addition, the August email notes that
 6 the PAC "will be supporting candidates that understand ... Calista business's unique needs" and
 7 the September email notes that "[t]he time is now for Calista/Yulista to generate more political
 8 influence."⁵⁴ Each of these documents appealed to the employees of Calista and its subsidiaries,
 9 not the general public. Moreover, Calista directed Yulista to share the solicitation with its
 10 employees,⁵⁵ further suggesting that when he prepared the letter, Andrew Guy was acting in his
 11 capacity as President of Calista, not as a PAC representative soliciting the general public.
 12 Finally, the PAC has reported no disbursements for fundraising or marketing, which contradicts
 13 Respondents claim that the PAC "endeavored to solicit a diverse segment of the Alaska general
 14 population."⁵⁶

15 Since Yukon Kusko PAC is organizationally and financially controlled by Calista, the
 16 PAC is an SSF with Calista as its connected organization. Therefore, the Commission finds
 17 reason to believe that Yukon Kusko PAC and Margaret Pohjola in her official capacity as

⁵¹ Yukon Kusko PAC Resp. at 1, 4, n.2.

⁵² *Id.* at 2.

⁵³ Compl. at Ex. 1.

⁵⁴ *Id.*

⁵⁵ *Id.* at Ex. 5.

⁵⁶ Yukon Kusko PAC Resp. at 2.

treasurer violated 52 U.S.C. § 30103(b) by failing to report Calista as a connected organization on its Statement of Organization. In addition, the Commission finds reason to believe that Yukon Kusko PAC and Margaret Pohjola in her official capacity as treasurer violated 52 U.S.C. § 30102(e)(5) and 11 C.F.R. § 102.14(c) because the Yukon Kusko PAC's name does not contain the full name of Calista.⁵⁷

Finally, the facts show that respondents solicited contributions for Yukon Kusko PAC from employees outside the restricted class.⁵⁸ Calista's August 21, 2018 solicitation email appears to have been sent to all Calista employees, which includes employees outside of the restricted class.⁵⁹ Similarly, Complainant asserts, and Respondents do not deny, that Yulista's September 6, 2018 solicitation email was sent to all employees,⁶⁰ which also include employees outside of the restricted class. Accordingly, the Commission finds reason to believe that Yukon Kusko PAC and Margaret Pohjola in her official capacity as treasurer violated 52 U.S.C. § 30118(b)(4)(A) and 11 C.F.R. § 114.5(g)(1).

B. There is Reason to Believe Respondents Failed to Include a Notice about the Right to Refuse in its Solicitations

The Act and Commission regulations require that any person soliciting an employee for a contribution to a SSF must inform such employee at the time of the solicitation of his or her right

⁵⁷ The official name of an SSF must include the full name of the connected organization. 52 U.S.C. § 30102(e)(5); 11 C.F.R. § 102.14(c).

⁵⁸ See 11 C.F.R. § 114.5(g); 11 C.F.R. § 114.1(j). Twice a year, an SSF or its connected corporation may solicit employees who are not executive and administrative personnel or stockholders and their families. 11 C.F.R. § 114.6(a). However, such solicitations to employees who are not in the restricted class must, among other things, be made in writing and mailed to the employees' residences. 11 C.F.R. § 114.6(c). Both of the solicitations at issue here were sent to employees outside of the restricted class by email.

⁵⁹ Compl. at Ex. 1.

⁶⁰ *Id.* at 1.

1 to refuse to so contribute without reprisal.⁶¹ A written solicitation for contributions to a SSF that
 2 is addressed to an employee must contain a statement that complies with this requirement.⁶²

3 The August email, the September email, and the letter from Andrew Guy all failed to
 4 contain the required notice stating that an employee could refuse to contribute to Yukon Kusko
 5 PAC without reprisal.⁶³ Although the solicitation form included a statement that the contributor
 6 “confirm[s] that my contribution to the committee is completely voluntary,” it does not provide
 7 an employee with notice that he or she has the right to refuse to make a contribution.⁶⁴ As the
 8 Commission has previously held, a statement that a contribution is voluntary is insufficient to
 9 satisfy the requirement that any individual soliciting contributions for an SSF inform employees
 10 at the time of solicitation of his or her right to refuse to contribute without reprisal.⁶⁵

11 Therefore, the Commission finds reason to believe that Yukon Kusko PAC and Margaret
 12 Pohjola in her official capacity as treasurer and Jennine Jordan violated 52 U.S.C.
 13 § 30118(b)(3)(c) and 11 C.F.R. § 114.5(a)(4) by failing to include a written statement on its
 14 solicitations that employees may refuse to contribute without reprisal.

⁶¹ 52 U.S.C. § 30118(b)(3)(c); 11 C.F.R. § 114.5(a)(4).

⁶² *See, e.g.*, Advisory Opinion 2006-17 at 5 (Berkeley Electric Cooperative) (approving a sample check-off card that asked members to affirm that they “voluntarily donate” and stated “I am also fully aware that should I elect not to participate I may do so without any concern of retaliation”).

⁶³ Compl. at Ex. 1.

⁶⁴ *Id.*

⁶⁵ *See, e.g.*, Factual and Legal Analysis at 10-11, 14, MUR 7041 (United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local 479).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Calista Corporation
Yulista Holding, LLC
Andrew Guy
Josh Herren

MUR 7528

I. INTRODUCTION

This matter was generated by a Complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (“the Act”) and Commission regulations by Raymond Brake. On September 6, 2018, Complainant, an employee of Yulista Holding, LLC (“Yulista”), received an email solicitation sent on behalf of Yulista’s CEO/President Josh Herren requesting contributions for the Yukon Kusko Political Action Committee, Inc. (“Yukon Kusko PAC” or “Committee”).¹ Attached to the email solicitation was a letter from Andrew Guy, the CEO of Yulista’s parent company Calista Corporation (“Calista”), and a contribution form. The Complaint alleges that Respondents violated the Federal Election Campaign Act of 1971, as amended (“the Act”), and Commission regulations because the email solicitation did not include a statement about the right to refuse to contribute to the PAC without reprisal.²

Respondents explain that Yukon Kusko PAC is registered with the Commission as a non-connected PAC and assert that the email solicitation received by Complainant was a result of a “general fundraising request” sent to “permissible donors within the general public.”³

The available information shows that Yukon Kusko PAC is managed by individuals employed by Calista or its subsidiaries, including Yulista, or those otherwise connected to

¹ Compl. at 1 (Oct. 29, 2018).

² *Id.* at 1, Ex. 4.

³ Calista Resp. at 4 (June 26, 2019); Yulista Resp. at 2 (Apr. 29, 2019).

Calista, that it utilized the resources of Calista and Yulista in its solicitation efforts, and that it was largely funded by individuals employed by Calista or its subsidiaries. Therefore, Yukon Kusko PAC qualifies as an SSF but has failed to register and operate as such. Because the available information indicates that Respondents solicited contributions for Yukon Kusko PAC from employees outside of Calista and Yulista's restricted classes, the Commission finds reason to believe that Calista and Yulista violated 52 U.S.C. § 30118(b)(4) and 11 C.F.R. § 114.5(g)(1). In addition, because the solicitations failed to include a written notice stating that employees may refuse to contribute without reprisal, the Commission finds reason to believe that Calista, Yulista, Andrew Guy, and Josh Herren violated 52 U.S.C. § 30118(b)(3)(c) and 11 C.F.R. § 114.5(a)(4).

II. FACTUAL BACKGROUND

A. Corporate Structure of Calista

Calista is the parent company of more than 30 subsidiaries in the military defense contracting, construction, real estate, environmental and natural resource development, and oil field services industries.⁴ Andrew Guy is the President/CEO of Calista.⁵ Margaret Pohjola is the Vice Chair of the Calista Board of Directors.⁶ Jennine Jordan is a government relations employee at Calista.⁷

⁴ Calista Corporation: Business Overview, available at <https://www.calistacorp.com/business/business-overview/mission-vision/>.

⁵ Calista Corporation: Executives, available at <https://www.calistacorp.com/business/leadership/executives/>.

⁶ Calista Corporation: 2018-2019 Board of Directors, available at <http://www.calistacorp.com/wp-content/uploads/2018/09/2018-2019-Board-of-Directors-FINAL.jpeg>.

⁷ Compl. at Ex. 1.

Calista is comprised of five subsidiary holding companies, one of which is Yulista.⁸ Yulista, in turn, has nine subsidiaries.⁹ Josh Herren is the CEO/President of Yulista and Paul May is the COO/Vice President of Yulista.¹⁰ Calista's other holding companies are Bektuq Holding, LLC, Bilista Holding, LLC, Ena Holding, LLC, and Niici Holding, LLC.¹¹

B. Establishment of Yukon Kusko PAC

On August 6, 2018, Yukon Kusko PAC registered with the Commission as a nonconnected political committee.¹² Its treasurer is Margaret Pohjola.¹³ A number of Calista's corporate officers sit on the board of Yukon Kusko PAC, including Andrew Guy, who is the Chairman of the PAC; Josh Herren; and Jennine Jordan, who serves as the PAC's assistant treasurer.¹⁴ The other member of the PAC, Andy Cole, is the President of Donlin Gold, which operates a mining lease with Calista.¹⁵ Based on the members of the PAC identified in the

⁸ Calista Corporation: Holding Companies, available at <https://www.calistacorp.com/business/calista-companies-overview/holding-companies/>.

⁹ Yulista About: Subsidiaries, available at <https://yulista.com/about-us/subsidiaries/>.

¹⁰ Yulista About: Leadership, available at <https://yulista.com/about-us/leadership/>.

¹¹ Calista Corporation: Holding Companies, available at <https://www.calistacorp.com/business/calista-companies-overview/holding-companies/>.

¹² *See* Yukon Kusko PAC, Statement of Organization (Aug. 6, 2018).

¹³ *See* Yukon Kusko PAC, Am. Statement of Organization (Nov. 9, 2018).

¹⁴ *See* Compl. at Ex. 1 (Oct. 29, 2018); Yukon Kusko PAC, Am. Statement of Organization (Nov. 9, 2018); *see also* Calista Corporation: Executives, available at <https://www.calistacorp.com/business/leadership/executives/>; Calista Corporation: Board of Directors, available at <https://www.calistacorp.com/business/leadership/board-directors/>; Calista Corporation: Subsidiary Companies, available at <https://www.calistacorp.com/business/calista-companies-overview/subsidiary-companies/>.

¹⁵ *See* Compl. at Ex. 1 (Oct. 29, 2018); Calista Corporation, Record of Decision and Major Federal Permits Issued to Donlin Gold, available at <https://www.calistacorp.com/news/record-decision-major-federal-permits-issued-donlin-gold/>.

solicitation sent to Yulista employees,¹⁶ there are no individuals involved with the management of the PAC who are not associated with Calista.

Between August 2018 and December 2018, Yukon Kusko PAC reported raising \$17,368. Of that, \$1,365 was in unitemized contributions and \$3 was in other federal receipts (dividends, interest, etc.).¹⁷ The remaining receipts reported on Yukon Kusko PAC's disclosure reports were itemized contributions received from 9 individuals with the following reported employers:¹⁸

Name	Employer	Occupation	Aggregate 2018 Contribution
Brice, Sam Robert	Bilista Holding, LLC	President	\$1,000
Cole, Andy	Donlin Gold, LLC	General Manager	\$500
Featherly, Walter T.	Holland & Knight	Attorney	\$500
Guy, Andrew	Calista Corporation	CEO	\$2,500
Herren, Joshua	Yulista ¹⁹	President/CEO	\$500
Jansen, Jim	Lynden Incorporated	CEO	\$5,000
Lechner, Sharon	Calista Corporation	CFO	\$5,000
May, Paul L.	YHL	EVP/COO Yulista	\$500
Porter, Robert O.	Capitol Hill Policy Group	Managing Principal	\$500

Of these nine individuals, five, including Sam Brice, Andrew Guy, Joshua Herren, Sharon Lechner, and Paul May, are employed by Calista or one of its subsidiaries.²⁰

¹⁶ Compl. at Ex. 1.

¹⁷ See Yukon Kusko PAC Fourth Am. 2018 October Quarter Report at 3 (filed Jan. 23, 2019); Yukon Kusko PAC 2018 Year-End Report at 3 (filed Jan. 24, 2019).

¹⁸ See Yukon Kusko PAC Fourth Am. 2018 October Quarter Report (filed Jan. 23, 2019); Yukon Kusko PAC 2018 Year-End Report (filed Jan. 24, 2019).

¹⁹ The disclosure reports identify Joshua Herren's employer as Yulista. However, publically available information confirm that he is employed by Yulista. See, e.g., Yulista: Leadership, available at <https://yulista.com/about-us/leadership/>.

²⁰ See Calista Corporation: Holding Companies, available at <https://www.calistacorp.com/business/calista-companies-overview/holding-companies/>. Yulista Holding, LLC and Bilista Holding, LLC are subsidiaries of Calista Corporation.

Based on publically available information, it appears that at least two more of these individuals are employed by companies that conduct business with Calista — Donlin Gold operates a mining lease with Calista, and Calista is a client of Holland & Knight attorney Walter Featherly. See Calista Corporation, Record of Decision and

Between August 2018 and December 2018, Yukon Kusko PAC reported disbursements totaling \$10,860.26. Of that amount, \$4,457 was paid to Dentons US for legal services and \$1,800 was paid to Advanced Design for “website creation.”²¹ The PAC made contributions in the following amounts: a \$1,000 contribution to Midnight Sun PAC, a \$1,000 contribution to Alaskans for Don Young, and a \$2,500 contribution to Denali Leadership PAC.²² The remaining disbursement was in unidentified other federal operating expenditures totaling \$103.26.²³

In calendar year 2019, to date, Yukon Kusko PAC reported receiving \$25 in unitemized contributions and made \$3,564.25 in disbursements.²⁴ The disbursement schedule disclosed a \$500 payment to Dentons US, LLP for “attorney fees,” and the PAC contributed \$1,500 to Deb Haaland for Congress and \$1,500 to Sharice for Congress.²⁵ Significantly, Yukon Kusko PAC has reported no fundraising or marketing expenses since its formation.

C. Solicitations for Contributions to Yukon Kusko PAC

On August 21, 2018, Jennine Jordan sent an email to an undisclosed number of recipients soliciting contributions for the Committee.²⁶ The email, which was addressed “Dear Calista employees,” explained that Yukon Kusko PAC was a newly created PAC that would “be

Major Federal Permits Issued to Donlin Gold, available at <https://www.calistacorp.com/news/record-decision-major-federal-permits-issued-donlin-gold/>; KYUK, Wayne Don and Andrew Guy to Testify at Calista’s Monday Hearing, available at <https://www.kyuk.org/post/wayne-don-and-andrew-guy-testify-calistas-monday-hearing>.

²¹ See Yukon Kusko PAC, Second Am. 2018 Post-General Election Report (filed Jan. 23, 2019); Yukon Kusko PAC 2018 Year-End Report (filed Jan. 24, 2019).

²² See Yukon Kusko PAC Fourth Am. 2018 October Quarter Report (filed Jan. 23, 2019); Yukon Kusko PAC Second Am. 2018 Pre-General Election Report (filed Jan. 23, 2019).

²³ See Yukon Kusko PAC Fourth Am. 2018 October Quarter Report (filed Jan. 23, 2019).

²⁴ See Yukon Kusko PAC, Second Am. 2019 Mid-Year Report (filed Jul. 17, 2019).

²⁵ *Id.* at 6-7.

²⁶ Compl. at 1, Ex. 1 (Oct. 29, 2018).

supporting candidates that understand the YK region and Calista business's unique needs.”²⁷
 Attached to the email were a letter from Andrew Guy, Chairman of Calista and the Yukon Kusko
 PAC, and a contribution form.²⁸ The letter from Guy was addressed “Dear Employees” and
 explained that the Yukon Kusko PAC was formed “as a vehicle for voluntary participation in the
 political process on behalf of the Calista region.”²⁹ Guy then solicits contributions of up to
 \$5,000 for the calendar year and tells Calista employees, “I hope you will consider making a
 contribution today by completing the attached form.”³⁰

On September 6, 2018, Whitney Dorning, an employee of Yulista, sent an email to all
 Yulista employees on behalf of Josh Herren, CEO/President of Yulista.³¹ In the email, Herren
 begins by addressing “Team Yulista” and states:

Over the years, many of our competitors have been active in the political
 environment that affects and impacts our business. From government spending,
 programs, and more the companies in our market are constantly applying political
 pressure to advance their position in the marketplace. In fact, our largest
 competitor on the PIF contract has offices in DC and maintains a strong political
 influence. . . . The time is now for Calista/Yulista to generate more political
 influence. And more importantly we have a collective voice that matters and
 should be heard. The concept of the PAC is to position ourselves to get our
 voices heard and influence the political process.³²

Herren then noted that he was attaching the August 21, 2018 email from Jordan, the letter from
 Guy, and the contribution form.³³

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at Ex. 2.

³⁰ *Id.*

³¹ *Id.* at 1, Ex. 1.

³² *Id.* at Ex. 1.

³³ *Id.* at Exs. 1, 6.

After receiving the September email from Herren, Complainant, an employee of Yulista Aviation, a subsidiary of Yulista, sent an email to Dorning expressing his concern that the email pressured employees to donate and providing a link to the Commission’s website that contained information about the requirement that solicitations for an SSF include a statement about the right to refuse to contribute without reprisal.³⁴ Complainant alleges that Herren called his “leadership” at Yulista Aviation and “took them to task over [Complainant’s] email” to Dorning.³⁵ The “leadership” then contacted Complainant’s direct boss to pass on the displeasure.³⁶

III. LEGAL ANALYSIS

A. There is Reason to Believe that Respondents Solicited Contributions from Employees Outside the Restricted Class

Under the Act and Commission regulations, corporations are prohibited from making contributions to federal candidates and political committees, with the exception of contributions to independent expenditure only political committees, and officers and directors of corporations are prohibited from consenting to any such contributions by the corporation.³⁷ Corporations are also prohibited from facilitating the making of a contribution to a candidate or political committee, other than to their SSF.³⁸ Facilitating means “using corporate ... resources or facilities to engage in fundraising activities.”³⁹

³⁴ *Id.* at 1, Ex. 4.

³⁵ *Id.* at 1.

³⁶ *Id.*

³⁷ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

³⁸ 11 C.F.R. § 114.2(f)(1).

³⁹ *Id.* Examples of facilitating the making of contributions include, but are not limited to, the corporations’ officers or employees ordering or directing subordinates to plan, organize, or carry out a fundraising project as part of their work responsibilities using corporate resources, unless the corporation receives advance payment for the fair

Corporations, however, may make payments to establish, administer, or solicit contributions to a separate segregated fund to be utilized for political purposes without a resulting contribution or expenditure.⁴⁰ A corporation that directly or indirectly establishes, administers, or financially supports a political committee is the connected organization of that committee.⁴¹ The connected organization (*i.e.* the corporation) and SSF may only solicit contributions to the SSF from the corporation's restricted class.⁴² The restricted class of a corporation consists of the corporation's executive and administrative personnel, the stockholders, and the families of those two groups, and the executive and administrative personnel of its subsidiaries, branches, divisions, and departments and their families.⁴³ The Act requires political committees to identify any connected organization in its Statement of Organization.⁴⁴

In contrast, a political committee without a connected organization (*i.e.*, a nonconnected PAC) may solicit any individual or person for otherwise lawful contributions. Unlike an SFF, all payments to a nonconnected political committee or on its behalf for establishment,

market value of such services, or using a corporate list of customers, clients, vendors, or others who are not in the corporation's restricted class to solicit contributions or distribute invitations to a fundraiser, unless the corporation receives advance payment for the fair market value of the list. *Id.* § 114.2(f)(2)(i)(A), (C)

⁴⁰ 52 U.S.C. § 30118(b)(2)(C); 11 C.F.R. § 114.1(a)(2)(iii); Advisory Op. 2000-20 (Committee for Quality Cancer Care) at 3.

⁴¹ 52 U.S.C. § 30101(7); 11 C.F.R. § 100.6. In this context, the term financially supports does not include contributions to the political committee, but does include the payment of establishment, administration and solicitation costs of such committee. 11 C.F.R. § 100.6.

⁴² 52 U.S.C. § 30118(b)(4)(A); 11 C.F.R. §§ 114.5(g)(1), 114.7(a). An SSF may accept an unsolicited contribution that is otherwise lawful, but the committee may not inform individuals outside the restricted class that unsolicited contributions are acceptable. 11 C.F.R. § 114.5(j).

⁴³ 11 C.F.R. § 114.1(j). The restricted class of a corporation without capital stock is its members and executive or administrative personnel, and their families.

⁴⁴ 52 U.S.C. § 30103(b).

administration, and solicitation costs are contributions subject to the limits of the Act unless another exception applies.⁴⁵

Mere association with another entity does not necessarily prohibit individuals from forming a nonconnected political committee.⁴⁶ The Commission has permitted the formation of a nonconnected political committee that is organized by individuals associated with another entity when two conditions are met: (1) the committee does not receive financial support from any other incorporated entity; and (2) the committee maintains organizational independence from any other incorporated entity.⁴⁷

Here, the facts indicate that Yukon Kusko PAC should have registered as a separate segregated fund of Calista, rather than a nonconnected committee. First, the PAC appears to have received financial support from Calista and Yulista by utilizing their employee mailing list and by using company resources. Despite the fact that the September 6, 2018, solicitation was sent to all employees, Yukon Kusko PAC did not report any disbursement to Calista or Yulista in its disclosure reports for the use of the mailing lists or any other administrative services. Further,

⁴⁵ See Advisory Opinion 1997-15 at 4 (Better Government Bureau, Inc.).

⁴⁶ See, e.g., Factual and Legal Analysis at 4, MUR 6746 (AICPAC); Factual and Legal Analysis at 3, MUR 5830 (U.S.-Cuba Democracy PAC) (“the Commission has permitted the formation of a nonconnected political committee that is organized by individuals associated with another entity under certain circumstances.”).

⁴⁷ See, e.g., Factual and Legal Analysis at 6, MUR 6746 (Americans in Contact PAC); Factual and Legal Analysis at 3-4, MUR 5830 (Leopoldo Fernandez Pujals); Advisory Opinion 2000-20 at 4-5 (Committee for Quality Cancer Care) (Commission found that proposed nonconnected PAC was financially and organizationally independent from professional or trade associations based because costs of the committee were paid solely from contributions received, the Committee would pay for the cost of all rent and other administrative expenses provided by the trade organizations, and that “individuals affiliated with a particular organization will not ... form the majority of the Committee’s Board”); Advisory Opinion 1997-15 at 5-7 (Nickalo) (Commission found that a proposed nonconnected PAC formed by a membership organization’s CEO was permissible if the PAC paid the usual and normal charge for services provided by the membership organization, individuals not associated with the membership organization would serve on the PAC’s board, and the PAC’s board would not be dominated by individuals associated with the membership organization); Advisory Opinion 1991-37 at 3 (Democratic Election Reporting Education Fund) (Commission found that a proposed nonconnected PAC formed by several individuals, including the President of a corporation, was permissible when the PAC would pay its own operating expenses and four of the five PAC’s founders were not associated with the corporation).

1 both solicitations were sent during normal business hours,⁴⁸ and it is possible that Josh Herren
2 and Jennine Jordan prepared the solicitations during their workday instead of during personal
3 time. In addition, it appears that Josh Herren utilized corporate resources by directing a Yulista
4 employee, Whitney Dorning, to send the solicitation on his behalf.

5 Second, Yukon Kusko PAC does not appear to be independent of Calista. Of the five
6 individuals publically identified as involved with Yukon Kusko PAC, four have an official
7 position with Calista or one of its subsidiary companies. Three of those individuals clearly have
8 a leadership role in the Calista organization: Andrew Guy, Yukon Kusko PAC Chairman, is the
9 President/CEO of Calista; Margaret Pohjola, Yukon Kusko PAC treasurer, is Vice Chair of the
10 Calista Board of Directors; and Josh Herren, Yukon Kusko PAC Board Member, is President of
11 Calista's subsidiary Yulista.⁴⁹ The remaining individual is an employee of Donlin Gold, who
12 operates a mining lease with Calista. There does not appear to be a single individual involved in
13 the management of Yukon Kusko PAC who is not associated with Calista.

14 In their responses, Respondents deny that Yukon Kusko PAC is a SSF and assert that the
15 August 21, 2018 letter from Chairman Andrew Guy was a general fundraising request letter.
16 However, Respondents provide no information regarding the organizational independence of the
17 PAC. Further, the August letter from Andrew Guy was not a general fundraising request letter.
18 The letter was addressed "Dear Employees," the cover email was addressed "Dear Calista
19 employees," and there is no information to suggest that the letter addressed to employees was

⁴⁸ Compl. at Ex. 1.

⁴⁹ The remaining member employed by Calista is Jennine Jordan, who is the Yukon Kusko PAC Assistant Treasurer and a government relations employee at Calista. The available information does not reveal her seniority at Calista.

1 sent to anyone beyond the employees of Calista and its subsidiaries.⁵⁰ In addition, the August
 2 email notes that the PAC “will be supporting candidates that understand ... Calista business’s
 3 unique needs” and the September email notes that “[t]he time is now for Calista/Yulista to
 4 generate more political influence.”⁵¹ Each of these documents appealed to the employees of
 5 Calista and its subsidiaries, not the general public. Moreover, Calista directed Yulista to share
 6 the solicitation with its employees,⁵² further suggesting that when he prepared the letter, Andrew
 7 Guy was acting in his capacity as President of Calista, not as a PAC representative soliciting the
 8 general public. Finally, the PAC has reported no disbursements for fundraising or marketing,
 9 which contradicts Respondents claim that the PAC “endeavored to solicit a diverse segment of
 10 the Alaska general population.”⁵³

11 Since Yukon Kusko PAC is organizationally and financially controlled by Calista, the
 12 PAC is an SSF with Calista as its connected organization. The facts show that respondents
 13 solicited contributions for Yukon Kusko PAC from employees outside their restricted classes.⁵⁴
 14 Calista’s August 21, 2018 solicitation email appears to have been sent to all Calista employees,
 15 which includes employees outside of its restricted class.⁵⁵ Similarly, Complainant asserts, and
 16 Respondents do not deny, that Yulista’s September 6, 2018 solicitation email was sent to all

⁵⁰ Compl. at Ex. 1.

⁵¹ *Id.*

⁵² *Id.* at Ex. 5.

⁵³ Calista Resp. at 2; Yulista Resp. at 2.

⁵⁴ See 11 C.F.R. § 114.5(g); 11 C.F.R. § 114.1(j). Twice a year, an SSF or its connected corporation may solicit employees who are not executive and administrative personnel or stockholders and their families. 11 C.F.R. § 114.6(a). However, such solicitations to employees who are not in the restricted class must, among other things, be made in writing and mailed to the employees’ residences. 11 C.F.R. § 114.6(c). Both of the solicitations at issue here were sent to employees outside of the restricted class by email.

⁵⁵ Compl. at Ex. 1.

employees,⁵⁶ which also includes employees outside of its restricted class. Accordingly, the Commission finds reason to believe that Calista and Yulista violated 52 U.S.C. § 30118(b)(4)(A) and 11 C.F.R. § 114.5(g)(1).

B. There is Reason to Believe Respondents Failed to Include a Notice about the Right to Refuse in its Solicitations

The Act and Commission regulations require that any person soliciting an employee for a contribution to a SSF must inform such employee at the time of the solicitation of his or her right to refuse to so contribute without reprisal.⁵⁷ A written solicitation for contributions to a SSF that is addressed to an employee must contain a statement that complies with this requirement.⁵⁸

The August email, the September email, and the letter from Andrew Guy all failed to contain the required notice stating that an employee could refuse to contribute to Yukon Kusko PAC without reprisal.⁵⁹ Although the solicitation form included a statement that the contributor “confirm[s] that my contribution to the committee is completely voluntary,” it does not provide an employee with notice that he or she has the right to refuse to make a contribution.⁶⁰ As the Commission has previously held, a statement that a contribution is voluntary is insufficient to satisfy the requirement that any individual soliciting contributions for an SSF inform employees at the time of solicitation of his or her right to refuse to contribute without reprisal.⁶¹

⁵⁶ *Id.* at 1.

⁵⁷ 52 U.S.C. § 30118(b)(3)(c); 11 C.F.R. § 114.5(a)(4).

⁵⁸ *See, e.g.*, Advisory Opinion 2006-17 at 5 (Berkeley Electric Cooperative) (approving a sample check-off card that asked members to affirm that they “voluntarily donate” and stated “I am also fully aware that should I elect not to participate I may do so without any concern of retaliation”).

⁵⁹ Compl. at Ex. 1.

⁶⁰ *Id.*

⁶¹ *See, e.g.*, Factual and Legal Analysis at 10-11, 14, MUR 7041 (United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local 479).

MUR 7528 (Calista Corporation, *et al.*)

Factual and Legal Analysis

Page 13 of 13

1 Therefore, the Commission finds reason to believe that Calista, Yulista, Andrew Guy,
2 and Josh Herren violated 52 U.S.C. § 30118(b)(3)(c) and 11 C.F.R. § 114.5(a)(4) by failing to
3 include a written statement on its solicitations that employees may refuse to contribute without
4 reprisal.