

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **MUR 7573**

4 DATE COMPLAINT FILED: Feb. 28, 2019

5 DATE OF LAST NOTIFICATION: Mar. 6, 2019

6 DATE OF LAST RESPONSE: Mar. 20, 2019

7 DATE ACTIVATED: Aug. 14, 2019

8 ELECTION CYCLE: 2018

9 EXPIRATION OF SOL: Aug. 9-Oct. 15, 2022

10 **COMPLAINANT:**

Coolidge-Reagan Foundation

11 **RESPONDENTS:**

Alexandria Ocasio-Cortez for Congress and Frank

Llewellyn in his official capacity as treasurer

Alexandria Ocasio-Cortez

Brand New Congress and Hosseh Enad in his
official capacity as treasurer

Brand New Congress, LLC

Riley Roberts

Saikat Chakrabarti

12 **RELEVANT STATUTES**
13 **AND REGULATION:**

14 52 U.S.C. § 30104(b)(6)

15 52 U.S.C. § 30114(b)(1)

16 11 C.F.R. § 113.1(g)(1)

17 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

18 **FEDERAL AGENCIES CHECKED:**

None

19 **STATE AGENCIES CHECKED:**

Delaware Division of Corporations

20 **I. INTRODUCTION**

21 The Complaint alleges that Alexandria Ocasio-Cortez and Alexandria Ocasio-Cortez for
22 Congress and Frank Llewellyn in his official capacity as treasurer (“Ocasio-Cortez for
23 Congress”) funneled approximately \$6,000 through Brand New Congress and Hosseh Enad in
24 his official capacity as treasurer (“BNC”) and Brand New Congress, LLC (the “LLC”), to Riley
25 Roberts, whom the Complaint characterizes as Ocasio-Cortez’s boyfriend, in violation of the
26 Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations.
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1 Specifically, the Complaint alleges that Ocasio-Cortez for Congress converted campaign funds to
2 personal use by making a \$6,191.32 disbursement to the LLC, which funded \$6,000 in
3 disbursements by BNC to Roberts made around the same time. Additionally, the Complaint
4 alleges that Ocasio-Cortez for Congress and Ocasio-Cortez violated the Act's reporting
5 requirements by incorrectly reporting a \$6,191.32 disbursement to the LLC as "strategic
6 consulting," when it actually was a payment made through the LLC and BNC to Roberts for his
7 personal benefit.

8 As discussed below, it appears that Roberts provided *bona fide* services to BNC, and the
9 available information does not indicate that he was paid more than the fair market value for those
10 services. Therefore, we recommend that the Commission find no reason to believe that:

11 (1) Ocasio-Cortez, Ocasio-Cortez for Congress, BNC, the LLC, Saikat Chakrabarti, and Roberts
12 converted campaign funds to personal use, and (2) Ocasio-Cortez and Ocasio-Cortez for
13 Congress misreported a disbursement to the LLC.

14 II. FACTUAL BACKGROUND

15 Alexandria Ocasio-Cortez is the U.S. Representative from New York's 14th
16 Congressional District who was first elected in 2018 and Alexandria Ocasio-Cortez for Congress
17 is her principal campaign committee.¹ BNC is a non-multicandidate committee that registered
18 with the Commission on April 5, 2016.² The LLC was a limited liability company organized in

¹ Alexandria Ocasio-Cortez, Amended Statement of Candidacy (May 15, 2017), <https://docquery.fec.gov/pdf/545/201705159053754545/201705159053754545.pdf>; Alexandria Ocasio-Cortez, Amended Statement of Organization (May 15, 2017), <https://docquery.fec.gov/pdf/438/201705159053754438/201705159053754438.pdf>; Compl. ¶¶ 2-3 (Feb. 28, 2019). This Report refers to Ocasio-Cortez for Congress and the other Respondents by their current committee names and current treasurers. Where relevant, citations to Statements of Organization, disclosure reports, and other Commission filings reflect the name and treasurer listed on the report or filing cited.

² Brand New Congress, Statement of Organization (Apr. 5, 2016), <https://docquery.fec.gov/pdf/244/201604059012223244/201604059012223244.pdf>.

1 Delaware whose sole member was Saikat Chakrabarti.³ The LLC represents that it was a for-
 2 profit vendor that provided campaign services to Ocasio-Cortez for Congress, BNC, and other
 3 candidates and committees.⁴

4 According to the Complaint, Chakrabarti founded and operated BNC through
 5 approximately August 2017.⁵ Chakrabarti also served as the custodian of records for Ocasio-
 6 Cortez for Congress from May through July 2017, and subsequently served as its treasurer in
 7 February and March 2018.⁶ Additionally, according to the Complaint, Chakrabarti later served
 8 as chief of staff in Ocasio-Cortez's congressional office and Roberts is characterized as Ocasio-
 9 Cortez's boyfriend.⁷

10 BNC reported two disbursements to Roberts in the 2018 cycle with a described purpose
 11 of "marketing consultant": \$3,000 on August 9, 2017, and another \$3,000 on September 29,
 12 2017.⁸ Ocasio-Cortez for Congress reported making a \$6,191.32 disbursement to the LLC on

³ Resp. at 1 (Mar. 20, 2019); *see also* Compl. at 1-2 (describing the LLC as "a limited liability corporation" and Chakrabarti as a founder of BNC and the LLC). All the Respondents filed a joint Response to the Complaint. According to that Response, the LLC was previously known as "Brand New Campaign LLC." Resp. at 1. The Delaware Division of Corporations Entity Search database does not return results for "Brand New Congress," but reflects that "Brand New Campaign LLC" was incorporated on May 11, 2016. *Entity Search*, STATE OF DEL. DIV. OF CORPS., <https://icis.corp.delaware.gov/ecorp/entitysearch/namesearch.aspx> (search Entity Name field for "Brand New Congress") (last visited Jan. 13, 2022); *id.* (search Entity Name field for "Brand New Campaign LLC" or File Number field for "6039258").

⁴ Resp. at 1, 3-4.

⁵ Compl. ¶ 8.

⁶ Alexandria Ocasio-Cortez, Amended Statement of Organization at 3 (May 15, 2017), <https://docquery.fec.gov/pdf/438/201705159053754438/201705159053754438.pdf> (listing Chakrabarti as custodian of records); Alexandria Ocasio-Cortez, Amended Statement of Organization at 3 (July 5, 2017), <https://docquery.fec.gov/pdf/650/201707059066469650/201707059066469650.pdf> (listing Ocasio-Cortez as custodian of records and treasurer); Alexandria Ocasio-Cortez, Amended Statement of Organization at 3 (Feb. 6, 2018), <https://docquery.fec.gov/pdf/460/201802069094263460/201802069094263460.pdf> (listing Chakrabarti as treasurer); Alexandria Ocasio-Cortez 2018, Amended Statement of Organization at 3 (Mar. 23, 2018), <https://docquery.fec.gov/pdf/829/201803239097926829/201803239097926829.pdf> (listing Frank Llewellyn as custodian of records and treasurer).

⁷ Compl. ¶¶ 7-9, 12, 14-15, 18-21; *see also* Resp. at 2 (characterizing Roberts as Ocasio-Cortez's partner).

⁸ Brand New Congress, 2017 Year-End Report at 1211 (Jan. 31, 2018), <https://docquery.fec.gov/pdf/370/201801319091223370/201801319091223370.pdf>; Compl. ¶¶ 9, 12-13.

1 August 27, 2017, with a described purpose of “strategic consulting” and a memo item of
2 “July 2017.”⁹ In the 2017-2018 cycle, BNC made \$261,165.18 and Ocasio-Cortez for Congress
3 made \$21,580.14 in disbursements to the LLC.¹⁰

4 The Complaint alleges that Ocasio-Cortez and Ocasio-Cortez for Congress converted
5 campaign funds to personal use by disbursing \$6,191.32 to the LLC, an entity affiliated with
6 BNC, which funded or reimbursed BNC’s \$6,000 in disbursements Roberts.¹¹ Specifically, the
7 Complaint asserts that BNC’s \$6,000 in disbursements to Roberts either were not provided in
8 consideration for *bona fide* services or exceeded the fair market value of any services rendered.¹²
9 The Complaint further alleges that Ocasio-Cortez and Ocasio-Cortez for Congress incorrectly
10 reported the \$6,191.32 disbursement to the LLC for “strategic consulting” rather than as a
11 payment to Roberts via the LLC and BNC.¹³

12 The Response states that BNC hired Roberts to perform *bona fide* services as a marketing
13 consultant.¹⁴ It further states that Roberts performed these services and attaches as substantiation
14 the written subcontractor agreement between BNC and Roberts and a sworn declaration under
15 penalty of perjury from BNC’s then-Chairperson Cory Archibald describing the services
16 provided by Roberts to BNC.¹⁵ The Response contends that the Complaint conflates BNC and

⁹ Alexandria Ocasio-Cortez for Congress, Amended 2017 October Quarterly Report at 21 (Apr. 19, 2019), <https://docquery.fec.gov/pdf/217/201904199149553217/201904199149553217.pdf>; see Compl. ¶¶ 10-11.

¹⁰ See *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00613810&committee_id=C00639591&recipient_name=brand+new+congress&two_year_transaction_period=2018 (last visited Jan. 13, 2022) (reflecting 13 disbursements by BNC to the LLC and four disbursements by Ocasio-Cortez for Congress to the LLC in the 2017-2018 cycle).

¹¹ Compl. ¶¶ 14, 16-19.

¹² *Id.* ¶ 19.

¹³ *Id.* ¶¶ 20-22.

¹⁴ Resp. at 2-4.

¹⁵ *Id.* at 2-3, Exs. A, B.

1 the LLC and asserts that the two are not the same entity, that no funds passed from the LLC to
2 BNC, and rather that BNC made disbursements to the LLC to pay for campaign services.¹⁶

3 **III. ANALYSIS**

4 **A. Personal Use**

5 The Act and Commission regulations prohibit any person from converting campaign
6 funds to personal use.¹⁷ Personal use is defined as “any use of funds in a campaign account of a
7 present or former candidate to fulfill a commitment, obligation or expense of any person that
8 would exist irrespective of the candidate’s campaign or duties as a Federal officeholder.”¹⁸
9 Commission regulations list the uses of campaign funds that are considered *per se* personal use,
10 including “[s]alary payments to a member of the candidate’s family, unless the family member is
11 providing *bona fide* services to the campaign.”¹⁹ If a member of the candidate’s family is
12 providing *bona fide* services to a political committee, he or she must be paid the fair market
13 value for such services at the time, as any payment in excess of the fair market value is personal
14 use.²⁰ The regulation defines a “member of the candidate’s family” for purposes of the *per se*
15 prohibition as including the candidate’s spouse or any “person who shares a residence with the
16 candidate,” among other relations.²¹

¹⁶ *Id.* at 3.

¹⁷ 52 U.S.C. § 30114(b); 11 C.F.R. § 113.2(e).

¹⁸ 11 C.F.R. § 113.1(g); *see* 52 U.S.C. § 30114(b)(2).

¹⁹ 11 C.F.R. § 113.1(g)(1)(i)(H).

²⁰ *Id.* § 113.1(g)(1)(i)(H).

²¹ *Id.* § 113.1(g)(7)(iv). The Commission chose to use a settled standard such as “residence or domicile” — not a standard that evaluated the closeness or intimacy of a relationship — to define “family member” for purposes of personal use. *See* Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,974 (Dec. 13, 2002).

1 The Complaint's allegations that Roberts did not provide *bona fide* services or the
2 amount paid to Roberts exceeded the fair market value of such services rest primarily on the
3 timing of payments made by Ocasio-Cortez for Congress to the LLC and by BNC to Roberts as
4 well as the alleged romantic relationship between Ocasio-Cortez and Roberts.²² Without more,
5 these assertions do not provide reason to believe Ocasio-Cortez for Congress's disbursement to
6 the LLC constituted personal use by funding or reimbursing BNC's disbursements for Roberts's
7 services.²³

8 To the contrary, the Response attaches a sworn declaration under penalty of perjury from
9 BNC's then-Chairperson, Cory Archibald, and a copy of the written subcontractor agreement
10 between BNC and Roberts.²⁴ The Archibald declaration broadly describes Roberts's functions
11 under his subcontract with BNC as "assist[ing] with [BNC's] advertising and social media
12 campaigns" and "in the expansion of its online audiences," and states that Roberts performed the

²² Compl. ¶ 16. Although the Complaint repeatedly references the alleged romantic relationship between Roberts and Ocasio-Cortez, it does not specifically allege that the payments to Roberts were *per se* personal use because Roberts qualifies as Ocasio-Cortez's "family member" under 11 C.F.R. § 113.1(g)(7)(iv). *See generally id.* Because we recommend the Commission find there is no reason to believe and the available information indicates that Roberts provided *bona fide* services to BNC and does not indicate Roberts was paid in excess of the fair market value for those services, the Commission need not reach this issue. *Cf.* Factual & Legal Analysis ("F&LA") at 9 & n.5, MUR 6510 (Kirk for Senate, *et al.*) (declining to reach issue of whether candidate's girlfriend qualified as a "family member" despite complaint raising the issue).

²³ *See* F&LA at 9, MUR 6510 (Kirk for Senate, *et al.*) (finding no reason to believe candidate committee converted funds to personal use by making payments to candidate's alleged girlfriend based on unsupported assertions in light of information girlfriend provided *bona fide* services at fair market value). In prior enforcement matters, the Commission has declined to find reason to believe that campaign payments to a family member resulted in personal use where the allegations relied on unsubstantiated assumptions regarding the services that the family member provided. *See, e.g.,* F&LA at 15-19, MUR 7639 (Ilhan for Congress, *et al.*) (finding no reason to believe payments to future husband were personal use where respondents provided services contract, declaration indicating campaign purposes for travel, and detailed expense information); F&LA at 2, 5, MUR 6864 (Ruiz III for Congress, *et al.*) (finding no reason to believe payments to candidate's wife were personal use despite allegation that committee was "virtually nonexistent"); F&LA at 8-9, MUR 6631 (Berman for Congress, *et al.*) (dismissing allegations that payments to candidate's brother were personal use).

²⁴ Resp. at 2-4, Exs., A, B.

1 contracted-for services for BNC.²⁵ The subcontractor agreement further details the scope of
2 services Roberts performed for BNC: launch of social media campaign; social media campaign
3 strategy; development of target audiences; and social media campaign performance metrics.²⁶
4 The Response and these documents credibly reflect that Roberts charged BNC \$3,000 per month
5 for his services to BNC for two months and that Roberts actually provided those services.²⁷

6 The available information does not indicate that Roberts was paid in excess of the fair
7 market value of the services he provided to BNC. Although neither the Complaint nor the
8 Response include information to establish the market rates of “marketing consultant” services,
9 reported disbursements by all committees from the 2018 election cycle indicate a wide range of
10 rates paid for similar services, including the rates paid by BNC to Roberts.²⁸

11 Therefore, we recommend that the Commission find no reason to believe that Ocasio-
12 Cortez, Ocasio-Cortez for Congress, BNC, the LLC, Roberts, and Chakrabarti violated 52 U.S.C.
13 § 30114(b)(1) by converting funds to personal use.

14 **B. Disbursement Reporting**

15 The Act and Commission regulations require authorized committees to report the name
16 and address of each person to whom they make expenditures or other disbursements that
17 aggregate more than \$200 per election cycle, as well as the date, amount, and purpose of each

²⁵ *Id.*, Ex. B ¶¶ 3, 6.

²⁶ *Id.*, Ex. A at 1.

²⁷ *Cf.* F&LA at 15-19, MUR 7639 (Ilhan for Congress, *et al.*) (finding no reason to believe payments to future husband were personal use where respondents provided services contract, declaration indicating campaign purposes for travel, and detailed expense information).

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1 disbursement.²⁹ As described above,³⁰ the Complaint offers only speculation that Ocasio-Cortez
 2 for Congress's \$6,191.32 disbursement to the LLC funded or reimbursed BNC's \$6,000 in
 3 aggregate disbursements to Roberts with the reported purpose of "marketing consultant." The
 4 available information indicates that Roberts provided *bona fide* services to BNC for which he
 5 was compensated. There is no information to indicate that the \$6,000 BNC paid Roberts was
 6 funded or reimbursed by the LLC.

7 Therefore, we recommend that the Commission find no reason to believe that Ocasio-
 8 Cortez and Ocasio-Cortez for Congress violated 52 U.S.C. § 30104(b)(6) by misreporting a
 9 disbursement to the LLC.³¹

10 **IV. RECOMMENDATIONS**

- 11 1. Find no reason to believe that Alexandria Ocasio-Cortez; Alexandria Ocasio-
 12 Cortez for Congress and Frank Llewellyn in his official capacity as treasurer;
 13 Brand New Congress and Hosseh Enad in his official capacity as treasurer; Brand
 14 New Congress, LLC; Riley Roberts; and Saikat Chakrabarti violated 52 U.S.C.
 15 § 30114(b)(1) by converting campaign funds to personal use;
- 16 2. Find no reason to believe that Alexandria Ocasio-Cortez and Alexandria Ocasio-
 17 Cortez for Congress and Frank Llewellyn in his official capacity as treasurer
 18 violated 52 U.S.C. § 30104(b)(6) by misreporting a disbursement to Brand New
 19 Congress, LLC;
- 20 3. Approve the attached Factual and Legal Analysis;
- 21 4. Close the file; and

²⁹ 52 U.S.C. § 30104(b)(5)(A), (6)(A); 11 C.F.R. §§ 104.3(b)(4)(i), (vi), 104.9(a), (b).

³⁰ *See supra* Section III.A.

³¹ The First General Counsel's Report for MURs 7575, 7580, and 7592 addresses distinct allegations that Ocasio-Cortez for Congress misreported disbursements to the LLC unrelated to alleged personal use. *See* First Gen. Counsel's Rpt. at 34-43, MURs 7575, 7580, 7592, & 7626 (Brand New Congress, *et al.*) This Office's recommendation in this matter is independent of the recommendations in the First General Counsel's Report addressing MURs 7575, 7580, and 7592.

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: Alexandria Ocasio-Cortez for Congress and MUR 7573
4 Frank Llewellyn in his official capacity
5 as treasurer
6 Alexandria Ocasio-Cortez
7 Brand New Congress and Hosseh Enad
8 in his official capacity as treasurer
9 Brand New Congress, LLC
10 Riley Roberts
11 Saikat Chakrabarti

12 **I. INTRODUCTION**

13 The Complaint alleges that Alexandria Ocasio-Cortez and Alexandria Ocasio-Cortez for
14 Congress and Frank Llewellyn in his official capacity as treasurer (“Ocasio-Cortez for
15 Congress”) funneled approximately \$6,000 through Brand New Congress and Hosseh Enad in
16 his official capacity as treasurer (“BNC”) and Brand New Congress, LLC (the “LLC”), to Riley
17 Roberts, whom the Complaint characterizes as Ocasio-Cortez’s boyfriend, in violation of the
18 Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations.
19 Specifically, the Complaint alleges that Ocasio-Cortez for Congress converted campaign funds to
20 personal use by making a \$6,191.32 disbursement to the LLC, which funded \$6,000 in
21 disbursements by BNC to Roberts made around the same time. Additionally, the Complaint
22 alleges that Ocasio-Cortez for Congress and Ocasio-Cortez violated the Act’s reporting
23 requirements by incorrectly reporting a \$6,191.32 disbursement to the LLC as “strategic
24 consulting,” when it actually was a payment made through the LLC and BNC to Roberts for his
25 personal benefit.

26 As discussed below, it appears that Roberts provided *bona fide* services to BNC, and the
27 available information does not indicate that he was paid more than the fair market value for those
28 services. Therefore, the Commission finds no reason to believe that: (1) Ocasio-Cortez, Ocasio-

1 Cortez for Congress, BNC, the LLC, Saikat Chakrabarti, and Roberts converted campaign funds
2 to personal use, and (2) Ocasio-Cortez and Ocasio-Cortez for Congress misreported a
3 disbursement to the LLC.

4 **II. FACTUAL BACKGROUND**

5 Alexandria Ocasio-Cortez is the U.S. Representative from New York's 14th
6 Congressional District who was first elected in 2018 and Alexandria Ocasio-Cortez for Congress
7 is her principal campaign committee.¹ BNC is a non-multicandidate committee that registered
8 with the Commission on April 5, 2016.² The LLC was a limited liability company organized in
9 Delaware whose sole member was Saikat Chakrabarti.³ The LLC represents that it was a for-
10 profit vendor that provided campaign services to Ocasio-Cortez for Congress, BNC, and other
11 candidates and committees.⁴

12 According to the Complaint, Chakrabarti founded and operated BNC through
13 approximately August 2017.⁵ Chakrabarti also served as the custodian of records for Ocasio-
14 Cortez for Congress from May through July 2017, and subsequently served as its treasurer in

¹ Alexandria Ocasio-Cortez, Amended Statement of Candidacy (May 15, 2017), <https://docquery.fec.gov/pdf/545/201705159053754545/201705159053754545.pdf>; Alexandria Ocasio-Cortez, Amended Statement of Organization (May 15, 2017), <https://docquery.fec.gov/pdf/438/201705159053754438/201705159053754438.pdf>; Compl. ¶¶ 2-3 (Feb. 28, 2019). This Report refers to Ocasio-Cortez for Congress and the other Respondents by their current committee names and current treasurers. Where relevant, citations to Statements of Organization, disclosure reports, and other Commission filings reflect the name and treasurer listed on the report or filing cited.

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³ Resp. at 1 (Mar. 20, 2019); *see also* Compl. at 1-2 (describing the LLC as “a limited liability corporation” and Chakrabarti as a founder of BNC and the LLC). All the Respondents filed a joint Response to the Complaint. According to that Response, the LLC was previously known as “Brand New Campaign LLC.” Resp. at 1. The Delaware Division of Corporations Entity Search database does not return results for “Brand New Congress,” but reflects that “Brand New Campaign LLC” was incorporated on May 11, 2016. *Entity Search*, STATE OF DEL. DIV. OF CORPS., <https://icis.corp.delaware.gov/ecorp/entitysearch/namesearch.aspx> (search Entity Name field for “Brand New Congress”) (last visited Jan. 13, 2022); *id.* (search Entity Name field for “Brand New Campaign LLC” or File Number field for “6039258”).

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1 February and March 2018.⁶ Additionally, according to the Complaint, Chakrabarti later served
 2 as chief of staff in Ocasio-Cortez’s congressional office and Roberts is characterized as Ocasio-
 3 Cortez’s boyfriend.⁷

4 BNC reported two disbursements to Roberts in the 2018 cycle with a described purpose
 5 of “marketing consultant”: \$3,000 on August 9, 2017, and another \$3,000 on September 29,
 6 2017.⁸ Ocasio-Cortez for Congress reported making a \$6,191.32 disbursement to the LLC on
 7 August 27, 2017, with a described purpose of “strategic consulting” and a memo item of
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⁶ Alexandria Ocasio-Cortez, Amended Statement of Organization at 3 (May 15, 2017), <https://docquery.fec.gov/pdf/438/201705159053754438/201705159053754438.pdf> (listing Chakrabarti as custodian of records); Alexandria Ocasio-Cortez, Amended Statement of Organization at 3 (July 5, 2017), <https://docquery.fec.gov/pdf/650/201707059066469650/201707059066469650.pdf> (listing Ocasio-Cortez as custodian of records and treasurer); Alexandria Ocasio-Cortez, Amended Statement of Organization at 3 (Feb. 6, 2018), <https://docquery.fec.gov/pdf/460/201802069094263460/201802069094263460.pdf> (listing Chakrabarti as treasurer); Alexandria Ocasio-Cortez 2018, Amended Statement of Organization at 3 (Mar. 23, 2018), <https://docquery.fec.gov/pdf/829/201803239097926829/201803239097926829.pdf> (listing Frank Llewellyn as custodian of records and treasurer).

⁷ Compl. ¶¶ 7-9, 12, 14-15, 18-21; *see also* Resp. at 2 (characterizing Roberts as Ocasio-Cortez’s partner).

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⁹ Alexandria Ocasio-Cortez for Congress, Amended 2017 October Quarterly Report at 21 (Apr. 19, 2019), <https://docquery.fec.gov/pdf/217/201904199149553217/201904199149553217.pdf>; *see* Compl. ¶¶ 10-11.

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¹¹ Compl. ¶¶ 14, 16-19.

1 consideration for *bona fide* services or exceeded the fair market value of any services rendered.¹²
2 The Complaint further alleges that Ocasio-Cortez and Ocasio-Cortez for Congress incorrectly
3 reported the \$6,191.32 disbursement to the LLC for “strategic consulting” rather than as a
4 payment to Roberts via the LLC and BNC.¹³

5 The Response states that BNC hired Roberts to perform *bona fide* services as a marketing
6 consultant.¹⁴ It further states that Roberts performed these services and attaches as substantiation
7 the written subcontractor agreement between BNC and Roberts and a sworn declaration under
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9 provided by Roberts to BNC.¹⁵ The Response contends that the Complaint conflates BNC and
10 the LLC and asserts that the two are not the same entity, that no funds passed from the LLC to
11 BNC, and rather that BNC made disbursements to the LLC to pay for campaign services.¹⁶

12 **III. ANALYSIS**

13 **A. Personal Use**

14 The Act and Commission regulations prohibit any person from converting campaign
15 funds to personal use.¹⁷ Personal use is defined as “any use of funds in a campaign account of a
16 present or former candidate to fulfill a commitment, obligation or expense of any person that
17 would exist irrespective of the candidate’s campaign or duties as a Federal officeholder.”¹⁸
18 Commission regulations list the uses of campaign funds that are considered *per se* personal use,

12 *Id.* ¶ 19.

13 *Id.* ¶¶ 20-22.

14 Resp. at 2-4.

15 *Id.* at 2-3, Exs. A, B.

16 *Id.* at 3.

17 52 U.S.C. § 30114(b); 11 C.F.R. § 113.2(e).

18 11 C.F.R. § 113.1(g); *see* 52 U.S.C. § 30114(b)(2).

1 including “[s]alary payments to a member of the candidate’s family, unless the family member is
2 providing *bona fide* services to the campaign.”¹⁹ If a member of the candidate’s family is
3 providing *bona fide* services to a political committee, he or she must be paid the fair market
4 value for such services at the time, as any payment in excess of the fair market value is personal
5 use.²⁰ The regulation defines a “member of the candidate’s family” for purposes of the *per se*
6 prohibition as including the candidate’s spouse or any “person who shares a residence with the
7 candidate,” among other relations.²¹

8 The Complaint’s allegations that Roberts did not provide *bona fide* services or the
9 amount paid to Roberts exceeded the fair market value of such services rest primarily on the
10 timing of payments made by Ocasio-Cortez for Congress to the LLC and by BNC to Roberts as
11 well as the alleged romantic relationship between Ocasio-Cortez and Roberts.²² Without more,
12 these assertions do not provide reason to believe Ocasio-Cortez for Congress’s disbursement to

¹⁹ 11 C.F.R. § 113.1(g)(1)(i)(H).

²⁰ *Id.* § 113.1(g)(1)(i)(H).

²¹ *Id.* § 113.1(g)(7)(iv). The Commission chose to use a settled standard such as “residence or domicile” — not a standard that evaluated the closeness or intimacy of a relationship — to define “family member” for purposes of personal use. *See* Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,974 (Dec. 13, 2002).

²² Compl. ¶ 16. Although the Complaint repeatedly references the alleged romantic relationship between Roberts and Ocasio-Cortez, it does not specifically allege that the payments to Roberts were *per se* personal use because Roberts qualifies as Ocasio-Cortez’s “family member” under 11 C.F.R. § 113.1(g)(7)(iv). *See generally id.* Because the Commission finds there is no reason to believe and the available information indicates that Roberts provided *bona fide* services to BNC and does not indicate Roberts was paid in excess of the fair market value for those services, the Commission need not reach this issue. *Cf.* Factual & Legal Analysis (“F&LA”) at 9 & n.5, MUR 6510 (Kirk for Senate, *et al.*) (declining to reach issue of whether candidate’s girlfriend qualified as a “family member” despite complaint raising the issue).

1 the LLC constituted personal use by funding or reimbursing BNC’s disbursements for Roberts’s
2 services.²³

3 To the contrary, the Response attaches a sworn declaration under penalty of perjury from
4 BNC’s then-Chairperson, Cory Archibald, and a copy of the written subcontractor agreement
5 between BNC and Roberts.²⁴ The Archibald declaration broadly describes Roberts’s functions
6 under his subcontract with BNC as “assist[ing] with [BNC’s] advertising and social media
7 campaigns” and “in the expansion of its online audiences,” and states that Roberts performed the
8 contracted-for services for BNC.²⁵ The subcontractor agreement further details the scope of
9 services Roberts performed for BNC: launch of social media campaign; social media campaign
10 strategy; development of target audiences; and social media campaign performance metrics.²⁶
11 The Response and these documents credibly reflect that Roberts charged BNC \$3,000 per month
12 for his services to BNC for two months and that Roberts actually provided those services.²⁷

13 The available information does not indicate that Roberts was paid in excess of the fair
14 market value of the services he provided to BNC. Although neither the Complaint nor the

²³ See F&LA at 9, MUR 6510 (Kirk for Senate, *et al.*) (finding no reason to believe candidate committee converted funds to personal use by making payments to candidate’s alleged girlfriend based on unsupported assertions in light of information girlfriend provided *bona fide* services at fair market value). In prior enforcement matters, the Commission has declined to find reason to believe that campaign payments to a family member resulted in personal use where the allegations relied on unsubstantiated assumptions regarding the services that the family member provided. See, e.g., F&LA at 15-19, MUR 7639 (Ilhan for Congress, *et al.*) (finding no reason to believe payments to future husband were personal use where respondents provided services contract, declaration indicating campaign purposes for travel, and detailed expense information); F&LA at 2, 5, MUR 6864 (Ruiz III for Congress, *et al.*) (finding no reason to believe payments to candidate’s wife were personal use despite allegation that committee was “virtually nonexistent”); F&LA at 8-9, MUR 6631 (Berman for Congress, *et al.*) (dismissing allegations that payments to candidate’s brother were personal use).

²⁴ Resp. at 2-4, Exs., A, B.

²⁵ *Id.*, Ex. B ¶¶ 3, 6.

²⁶ *Id.*, Ex. A at 1.

²⁷ Cf. F&LA at 15-19, MUR 7639 (Ilhan for Congress, *et al.*) (finding no reason to believe payments to future husband were personal use where respondents provided services contract, declaration indicating campaign purposes for travel, and detailed expense information).

1 Response include information to establish the market rates of “marketing consultant” services,
2 reported disbursements by all committees from the 2018 election cycle indicate a wide range of
3 rates paid for similar services, including the rates paid by BNC to Roberts.²⁸

4 Therefore, the Commission finds no reason to believe that Ocasio-Cortez, Ocasio-Cortez
5 for Congress, BNC, the LLC, Roberts, and Chakrabarti violated 52 U.S.C. § 30114(b)(1) by
6 converting funds to personal use.

7 **B. Disbursement Reporting**

8 The Act and Commission regulations require authorized committees to report the name
9 and address of each person to whom they make expenditures or other disbursements that
10 aggregate more than \$200 per election cycle, as well as the date, amount, and purpose of each
11 disbursement.²⁹ As described above,³⁰ the Complaint offers only speculation that Ocasio-Cortez
12 for Congress’s \$6,191.32 disbursement to the LLC funded or reimbursed BNC’s \$6,000 in
13 aggregate disbursements to Roberts with the reported purpose of “marketing consultant.” The
14 available information indicates that Roberts provided *bona fide* services to BNC for which he
15 was compensated. There is no information to indicate that the \$6,000 BNC paid Roberts was
16 funded or reimbursed by the LLC.

17 Therefore, the Commission finds no reason to believe that Ocasio-Cortez and Ocasio-
18 Cortez for Congress violated 52 U.S.C. § 30104(b)(6) by misreporting a disbursement to the
19 LLC.

²⁸ See, e.g., *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&two_year_transaction_period=2018&disbursement_description=marketing+consultant&disbursement_description=marketing+consulting (last visited Jan. 13, 2022) (reflecting 279 disbursements from 2017-18 for “marketing consultant” and “marketing consulting” ranging from \$20 to \$74,490.50).

²⁹ 52 U.S.C. § 30104(b)(5)(A), (6)(A); 11 C.F.R. §§ 104.3(b)(4)(i), (vi), 104.9(a), (b).

³⁰ See *supra* Section III.A.