



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

November 28, 2022

**Via Electronic Mail**

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RE: MUR 8092  
Bashar Wali

Dear Mr. Levin:

On October 13, 2020, your client, Bashar Wali, notified the Federal Election Commission (the "Commission"), of his intent to join in on a *sua sponte* submission indicating potential violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act").

After reviewing the submission, the Commission found reason to believe, on November 15, 2022, that Bashar Wali violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(ii) by knowingly permitting his name to be used to make contributions in the name of another. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

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

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your clients as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your clients violated the law. Enclosed is a conciliation agreement for your consideration

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If your client, Bashar Wali, is interested in engaging in pre-probable cause conciliation, please contact Kimberly Hart, the attorney assigned to this matter, at (202) 694-1618 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your client is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup> This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act.

We look forward to your response.

On behalf of the Commission,



Allen Dickerson  
Chairman

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

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**MUR 8092**

**RESPONDENT:** Bashar Wali

**I. INTRODUCTION**

This matter arises from a *sua sponte* submission<sup>1</sup> from Provenance and its former President, Bashar Wali, disclosing that in 2018 and 2019, Provenance unlawfully reimbursed Wali for contributions totaling \$106,038 made in the names of Wali; his wife, Eileen Wali; and Provenance's former Vice President of Revenue, Leslie Lew. Provenance made the reimbursements via three \$50,000 bonus payments paid to Wali, in 2019.<sup>2</sup>

Respondents do not deny that the reimbursement of the political contributions was improper. However, Wali, in his sworn declaration, states that he did not realize that it was unlawful to receive a contribution reimbursement at the time that he received the reimbursements, and was acting under the directions previously given to him by Gordon

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<sup>1</sup> Provenance, *Sua Sponte* Submission ("Submission"), Pre-MUR 640 (Provenance) (Sept. 14, 2020).

<sup>2</sup> Respondents provided numerous supplemental submissions to complete the record. *See* Provenance and Bashar Wali Joint Suppl. Submission ("Joint Suppl. Submission") (Oct. 13, 2020), Pre-MUR 640 (Provenance); Provenance Suppl. Submission ("Suppl. Submission #2") (Mar. 25, 2021), Pre-MUR 640 (Provenance) (copy of Wali repayment check); Provenance Suppl. Submission (Suppl. Submission #3") (May 3, 2021), Pre-MUR 640 (Provenance) (declarations from Bashar and Eileen Wali); Provenance Suppl. Submission ("Suppl. Submission #4") (May 11, 2021), Pre-MUR 640 (Provenance) (declaration from Holly Landry); Provenance Suppl. Submission ("Suppl. Submission #5") (May 11, 2021), Pre-MUR 640 (Provenance) (declarations from Charlene Wright and Leslie Lew); Provenance Suppl. Submission ("Suppl. Submission #6") (June 23, 2021), Pre-MUR 640 (Provenance) (declarations #2 from Bashar Wali and Charlene Wright); Provenance Suppl. Submission ("Suppl. Submission #7") (July 9, 2021), attaching *Internal Investigation Concerning Actions of Bashar Wali* ("Investigation Report") (Aug. 25, 2020), Pre-MUR 640 (Provenance); Provenance Suppl. Submission ("Suppl. Submission #8" or "Sondland Decl.") (Sept. 15, 2021), Pre-MUR 640 (Provenance); Provenance Suppl. Submission ("Suppl. Submission #9") (Oct. 12, 2021), Pre-MUR 640 (Provenance) (remedial measures taken by Provenance); Provenance Suppl. Submission ("Suppl. Submission #10") (Mar. 17, 2022), Pre-MUR 640 (Provenance) (email detailing the members of the limited liability company); Provenance Suppl. Submission #11 ("Suppl. Submission #11") (July 8, 2022), Pre-MUR 640 (Provenance) (email re: lack of donor solicitation/fundraising materials from Provenance); Provenance Suppl. Submission ("Suppl. Submission #12") (Aug. 24, 2022), Pre-MUR 640 (Provenance) (email: re lack of donor solicitation/fundraising materials from Wali).

Sondland, Provenance's Founder and former CEO, in seeking reimbursement from the Company. Wali and Charlene Wright, Wali's Executive Assistant, provided sworn declarations that appear to support Wali's contention that he was unaware that the reimbursements were illegal and that Sondland had given an instruction that they interpreted as authorizing reimbursement. Sondland, however, submitted a sworn declaration disputing Wali's and Wright's statements regarding his alleged instructions to Wali to seek and receive contribution reimbursements from the Provenance. Provenance, in the Submission, adopts the conclusions of the Investigation Report regarding Wali's actions but does not specifically take a position as to whether Wali had prior knowledge that his contribution reimbursements were unlawful.

Given the absence of information that contradicts Wali's claim that he lacked knowledge that contribution reimbursements were unlawful, and inconclusive information regarding Sondland's purported statements that Wali was authorized to receive contribution reimbursements, the Commission does not make a knowing and willful finding in this matter.

Accordingly, the Commission opens a Matter Under Review, and finds reason to believe that Bashar Wali violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(ii) by knowingly permitting his name to be used to make of contributions in the name of another.

## **II. FACTUAL BACKGROUND**

### **A. Submission**

#### **1. Organizational Structure of Provenance**

Provenance is a Portland, Oregon based hotel management group. Gordon Sondland founded the Company in 2001 and served as its CEO until June 2018, when he resigned to serve as the U.S. Ambassador to the European Union.<sup>3</sup> During his tenure as ambassador, Sondland

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<sup>3</sup> See <https://www.provenancehotels.com/development/gordon-sondland>; see also Sondland Decl. ¶ 2.

continued to be a shareholder but was not an officer, director, or employee of Provenance.<sup>4</sup> In February 2020, Sondland returned to the Company as its Chairman.<sup>5</sup>

Bashar Wali became Provenance's President in June 2010 and reported to Sondland until his departure, and then directly to the Board of Directors.<sup>6</sup> On February 25, 2020, Wali submitted his resignation from the Company that was effective on May 30, 2020.<sup>7</sup> Holly Landry was Corporate Controller from June 2014 until August 2020. Charlene Wright was Wali's Executive Assistant from September 2014 until June 2019.<sup>8</sup> Leslie Lew was the Vice-President of Revenue for the Company between June 2013 and March 2020.<sup>9</sup>

## 2. Reimbursement of Political Contributions

According to the Submission, Wali, Mrs. Wali, and Lew made federal contributions, totaling \$119,308, between April 24, 2018, and October 21, 2019.<sup>10</sup> Between April and October 2019, Wali sought reimbursement from Provenance for \$106,038 of the total contribution

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<sup>4</sup> Sondland Decl. ¶¶ 2-3.

<sup>5</sup> *Id.* ¶ 2.

<sup>6</sup> Wali Decl. ¶ 3 (May 3, 2021). Prior to the contributions at issue, Wali had made a total of \$33,500 in contributions to federal candidates in 2015-2016. *See* May 2016 Monthly Report, Republican Party of Kentucky (May 20, 2016) (\$10,000 contribution); 2016 April Quarterly Report, Rand Paul Victory Kentucky (Apr. 15, 2016) (\$15,400 contribution); 2016 April Quarterly Report, Rand Paul for U.S. Senate (Apr. 15, 2016) (\$2,700 transfer from Rand Paul Victory Kentucky for general election); 2016 April Quarterly Report, Rand Paul for U.S. Senate (Apr. 15, 2016) (\$2,700 transfer from Rand Paul Victory Kentucky for primary election); 2015 July Quarterly Report, Jeb 2016, Inc. (Jan. 31, 2016) (\$2,700 primary contribution).

<sup>7</sup> Investigation Report at 7-8.

<sup>8</sup> Wright Decl. ¶ 3 (May 11, 2021).

<sup>9</sup> Lew Decl. ¶ 3 (May 11, 2021). The Commission's contribution database does not indicate any contributions made by Lew prior to the ones in 2018.

<sup>10</sup> Submission at 1.

amount in the form of three \$50,000 bonus payments that he received in May, July, and October 2019.<sup>11</sup>

The following is a chart reflecting the 2018-2019 reimbursed contributions made by the Bashar Wali, Eileen Wali and Leslie Lew:

<b>Date</b>	<b>Conduit</b>	<b>Recipient</b>	<b>Amount</b>
4/24/18	Bashar Wali	NRSC	\$33,900
4/30/18	Bashar Wali	Tillis Majority Committee (primary)	\$10,400
9/18/18	Bashar Wali	American Hotel & Lodging Assoc. PAC (AHLA PAC)	\$5,000
3/28/19	Bashar Wali	Thom Tillis Committee (primary)	\$100
3/29/19	Bashar Wali	Thom Tillis Committee (primary)	\$5,400 <sup>12</sup>
3/28/19	Bashar Wali	Thom Tillis Committee (general)	\$100
4/17/19	Bashar Wali	Wyden for Senate (primary) <sup>13</sup>	\$2,800
4/17/19	Bashar Wali	Wyden for Senate (general) <sup>14</sup>	\$2,800
4/17/19	Bashar Wali	Hoops PAC	\$5,000
6/11/19	Bashar Wali	AHLA PAC	\$5,000
10/21/19 <sup>15</sup>	Bashar Wali	AHLA PAC	\$10,000
<b>Total Bashar Wali Reimbursed Contributions for 2018-2019</b>			<b>\$80,500<sup>16</sup></b>
9/18/18	Eileen Wali	AHLA PAC	\$5,000
3/29/19	Eileen Wali	Thom Tillis Committee (primary)	\$2,800

<sup>11</sup> See *id.* Although the Submission states that the latest date for the reimbursed contributions was December 1, 2019, the latest date was, in fact, October 27, 2019, according to the Commission's contribution database and other information provided in the Submission. On October 21, 2019, the American Hotel & Lodging Association PAC received a \$10,000 contribution from Wali that was reimbursed by Provenance. Submission at 2; see also *id.*, Ex. 12. However, the PAC, on November 22, 2019, refunded the contribution to Wali because the amount exceeded the contribution limits. See 2019 Year-End Report at 165, Provenance (Jan. 31, 2020).

<sup>12</sup> Although Wali received reimbursement for this contribution, the Committee refunded the entire \$5,400 to Wali on April 10, 2019. See Thom Tillis Committee, 2019 July Quarterly Report (July 15, 2019).

<sup>13</sup> The Commission's disclosure database notes that this contribution was a transfer from Wyden for Oregon as of June 30, 2019. See Wyden for Senate, 2019 July Quarterly Report (July 15, 2019).

<sup>14</sup> The Commission's disclosure database notes that this contribution was a transfer from Wyden for Oregon as of June 30, 2019. See *id.*

<sup>15</sup> It appears that Wali made this contribution on or around October 18, 2019, and the Committee received the contribution on October 21, 2019, as indicated by the contribution database. The \$50,000 bonus that Wali received from Provenance on October 18, 2019, as reimbursement for some of his contributions would have covered the \$10,000 contribution made to AHLA PAC. As stated previously in note 11, this contribution, although reimbursed by Provenance, was later refunded to Wali by the PAC on November 22, 2019, because he had already met his contribution limit. Submission at 2.

<sup>16</sup> This amount only includes the contributions for which Wali sought and received reimbursement from Provenance. Submission at 2. Wali made a \$10,600 contribution to Wyden for Senate and a \$2,500 contribution to Human Rights Equality Votes but did not seek reimbursement for those two contributions. *Id.*

<b>Date</b>	<b>Conduit</b>	<b>Recipient</b>	<b>Amount</b>
3/29/19	Eileen Wali	Thom Tillis Committee (general)	\$2,800
4/17/19	Eileen Wali	Hoops PAC	\$5,000
6/11/19	Eileen Wali	AHLA PAC	\$5,000
<b>Total Eileen Wali Reimbursed Contributions for 2018-2019</b>			<b>\$20,600</b>
9/18/18	Leslie Lew	AHLA PAC	\$5,000
<b>Total Leslie Lew Reimbursed Contributions for 2018-2019</b>			<b>\$5,000</b>
<b>TOTAL REIMBURSED CONTRIBUTIONS</b>			<b>\$106,038<sup>17</sup></b>

### 3. Discovery of the Violations and Internal Investigation

After Wali announced his resignation from the Company in February 2020, which coincided with Sondland's return to the Company, some employees raised concerns to current management, among other things, that Wali might have made unauthorized use of the Provenance's funds for personal political contributions.<sup>18</sup> The Board of Directors retained an outside law firm, K&L Gates, to independently investigate the claims regarding alleged misdeeds, including Wali's alleged use of Company funds for personal political contributions.<sup>19</sup> The investigation began in May 2020 and concluded in August 2020.<sup>20</sup>

<sup>17</sup> Although the three individuals (Bashar Wali, Eileen Wali and Leslie Lew) collectively made a total of \$119,308 in federal contributions, Wali did not seek reimbursement for his \$10,600 contribution to Wyden for Oregon or his \$2,500 contribution to Human Rights Equality Votes. Submission at 2. Further, Lew was not reimbursed for the \$108 in earmarked contributions to Warren for President despite the \$108 being included in the reimbursed contribution amount provided by the Submission. *Id.*, Ex. 12. Therefore, the resulting total reimbursed amount was \$106,038 (\$119,308 - \$106,038 = \$13,270 (\$10,600 (unreimbursed Wyden for Senate contribution) + \$2,500 (unreimbursed Human Rights Equality Votes contribution) + \$108 unreimbursed Lew contributions) + \$62 (amount that could not be reconciled through the investigation but contained in Wali's spreadsheet). See Submission at 2. Counsel for Provenance, in a telephone call with OGC staff, explained that the \$62.00 discrepancy could not be reconciled during the investigation, however, they attribute that to Wali's "sometimes erratic bookkeeping methods." At the time of Sondland's departure in 2018, Wali had only made two of the contributions at issue. See Submission, Ex. 12. The remaining contributions were made after Sondland left the Company, and all the reimbursements took place during Sondland's absence from the Company. *Id.*

<sup>18</sup> Submission at 1.

<sup>19</sup> *Id.* The scope of the investigation was broader than just Wali's reimbursed contributions but appears to have centered around alleged misdeeds in other unrelated areas. Because of this, Provenance only provided a heavily redacted version of the Investigation Report that deals only with the reimbursed contributions. See Suppl. Submission #7.

<sup>20</sup> Submission at 1.

The investigation revealed that Holly Landry, Provenance’s Corporate Controller from 2013 until August 2020, acting on the email instructions of Wali, processed and issued the contribution reimbursements totaling \$106,038 in the form of three \$50,000 bonus payments as described above.<sup>21</sup> Wali sent three separate emails to Landry on April 25, 2019, July 12, 2019, and October 14, 2019, respectively, with similar instructions on the processing of the bonus payments as reimbursements.<sup>22</sup> Wali, in the April 25, 2019, email to Landry, for example, instructed Landry to “please process \$50,000 for Q1 2019.”<sup>23</sup> Landry thereafter processed the bonus payments on May 8, 2019, July 19, 2019, and October 18, 2019.<sup>24</sup>

The Submission provides that these bonus payments were in addition to Wali’s annual performance bonus approved by the Board of Directors.<sup>25</sup> Although Wali received explicit approval from the Board of Directors for payment of his annual performance bonus, he never received similar approval for the separate bonuses that covered the reimbursements for contributions.<sup>26</sup> The Investigation Report further concludes that Landry never confirmed or otherwise discussed Mr. Wali’s request with any other Company executives, Provenance’s Board

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<sup>21</sup> *Id.*, Attachs. 1-3.

<sup>22</sup> *See* Submission, Attachs. 4-6.

<sup>23</sup> *Id.*, Attach. 4.

<sup>24</sup> *Id.*

<sup>25</sup> Submission. at 1.

<sup>26</sup> *Id.* Further, the investigation revealed that the Board of Directors decided in early 2020 that Provenance needed a Chief Financial Officer (“CFO”) to balance the power dynamic of the company. Investigation Report at 7. Up until that point, Wali had consistently resisted the idea of hiring a CFO, instead arguing that the controller Landry could sufficiently perform those duties. *Id.* Despite Wali’s resistance to the idea, the Board hired a CFO. *Id.* The Investigation Report states that the newly hired CFO, Glidden, raised the issue of the reimbursements with Sondland, Wali and Landry in April 2020 (before the investigation was initiated). *Id.* at 11.



of Directors, or the Company's counsel.<sup>27</sup> As a result of the investigation, Provenance requested that Wali repay the after-tax amount of the reimbursed contributions, totaling \$96,308,<sup>28</sup> which he did on October 9, 2020.<sup>29</sup>

Relying on the independent investigation, Provenance states that Wali was responsible for the unlawful contribution reimbursements and "was at the helm and had complete profit and loss responsibility' over the Company."<sup>30</sup> Provenance asserts that no other employees, including Sondland and Katy Durant, the current President of Provenance, ever sought reimbursement for their political contributions.<sup>31</sup> According to Sondland's statements, although he encouraged Wali to make political contributions, he never had any communications or intended to communicate to any of the individuals involved (*e.g.*, the Walis, Lew, Landry, Wright) that they should seek reimbursement from Provenance.<sup>32</sup> Indeed, the independent investigation did not find any email communications reflecting the reimbursements to Wali, other than Wali's request to Landry requesting payment and transmissions of Excel spreadsheets, described above.<sup>33</sup>

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<sup>27</sup> *Id.* at 2.

<sup>28</sup> Wali received contribution reimbursements totaling \$106,038. As a result of the investigation, Wali was required to repay Provenance in the after-tax amount of \$96,038. Joint Suppl. Submission at 2. Wali repaid Provenance \$96,308 rather than \$96,038.

<sup>29</sup> *Id.*

<sup>30</sup> Submission at 1-2.

<sup>31</sup> Suppl. Submission #7 at 2.

<sup>32</sup> Sondland Decl. ¶ 12. Sondland states that Wali, after leaving Provenance, started his own company and currently employs Landry, Lew, and Wright. *Id.* ¶ 6.

<sup>33</sup> Investigation Report at 11 ("Landry confirmed that she never discussed the reimbursements with Durant or Sondland. Landry also confirmed that the reimbursements were not discussed at any Provenance Board of Directors meetings, which is supported by the unofficial Board of Directors meeting notes taken by Tim Parks.") (citations omitted).

#### 4. Wali's Knowledge Regarding the Illegality of the Reimbursements

Wali states that he had no knowledge that the contribution reimbursements were unlawful and that Sondland, specifically requested that he make all but one of the contributions at issue and led him to believe that he could seek reimbursement from Provenance.<sup>34</sup> In particular, Wali states that Sondland contacted him by telephone between mid-January and February 2019 (after Sondland had departed from Provenance) to ask that Wali and his wife make the maximum contributions to the Thom Tillis Committee (“Tillis Committee”) and the Wyden Committee.<sup>35</sup> According to Wali, he had no connection to the Tillis Committee and therefore would have had no reason to make the contribution, if not for Sondland’s request.<sup>36</sup> He further states that he informed Sondland by telephone in February 2019 that the Wyden Committee had contacted him about fundraising.<sup>37</sup> Sondland allegedly responded by telling Wali that he and his wife should contribute the maximum amount and “just get it back” when Wali expressed reluctance about making such a large contribution.<sup>38</sup>

Wali states that Sondland, in discussing the contributions, used words such as “take it from the company.”<sup>39</sup> Wali states that, given the context, he interpreted that phrase to mean that he could receive reimbursement for the contributions Sondland requested that he make in his role

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<sup>34</sup> Joint Suppl. Submission at 1; Wali Decl. ¶¶ 4-9, 12.

<sup>35</sup> Wali Decl. ¶ 7-9.

<sup>36</sup> *Id.* ¶ 7. Wali also made a \$10,400 contribution to the Thom Tillis Majority Committee on April 30, 2018 (prior to Sondland’s departure from Provenance). *See supra* at 5-6 (chart reflecting reimbursed contributions).

<sup>37</sup> Wali Decl. ¶ 8.

<sup>38</sup> *Id.* ¶ 8.

<sup>39</sup> Wali Decl. #2 at ¶ 5 (June 23, 2021).

as an officer of Provenance.<sup>40</sup> Wali further explains that, “because he was being reimbursed for the contributions as taxable bonuses, rather than as business-related expenses, the timing of the reimbursements was spread out over multiple quarters.”<sup>41</sup> According to Wali, he made no attempt to conceal the receipt of the bonuses as reimbursement for the contributions, and, in fact, both he and Wright tracked the amount of the contributions on a spreadsheet so that the reimbursements would be accurate.<sup>42</sup>

In support of Wali’s assertion that he was acting under the direction of Sondland, Wright, Wali’s Executive Assistant, provided sworn declarations stating that she was present during multiple conversations between Wali and Sondland about contribution reimbursements.<sup>43</sup> Her initial declaration states that, based on conversations between the two parties, she understood that Provenance would reimburse certain political contributions.<sup>44</sup> She further states that she assisted Wali in tracking the political contributions and was unaware that contribution reimbursements were unlawful.<sup>45</sup>

Wright, in a second declaration, states that she was privy to several conversations between Sondland and Wali regarding contribution reimbursements in 2019 where she heard Sondland specifically instruct Wali to “take it from the company” with respect to contributions

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.* ¶ 11.

<sup>42</sup> *Id.* OGC inquired about whether Provenance and/or Wali were in possession of any donor forms in connection with the contributions made, however, both respondents replied that they could not locate any donor forms. *See* Suppl. Submission #11; Suppl. Submission #12.

<sup>43</sup> *See* Wright Decl. ¶ 4; Wright Decl. #2, ¶ 5-6 (June 23, 2021).

<sup>44</sup> Wright Decl. ¶ 4.

<sup>45</sup> *Id.* ¶ 5.

made to “Senator Thom Tillis, or a committee he supported, or fundraising hosted by Tillis.”<sup>46</sup>

Wright states that Sondland instructed her on one occasion to take the reimbursement amount for a Tillis contribution from Provenance rather than a separate fund being managed by Provenance for a different entity.<sup>47</sup>

On the other hand, Sondland submitted a sworn declaration, stating that he encouraged Wali, as a “highly compensated President” of Provenance, to make voluntary contributions over the years.<sup>48</sup> In his statement, Sondland denies that he ever requested that Wali make the contributions identified in this submission or that he intended to lead Wali to believe that he could seek any reimbursement for his contributions from Provenance funds.<sup>49</sup> Sondland states while he was the CEO of Provenance, Wali made \$70,000 in contributions between 2012 and 2017, and Eileen Wali made \$20,000 contributions during that time;<sup>50</sup> however, none of those contributions were ever reimbursed by Provenance.<sup>51</sup> Sondland also states that he himself made

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<sup>46</sup> *Id.* The contributions made by Bashar and Eileen Wali to the Tillis committees (Tillis Majority Committee and Thom Tillis Committee) occurred on April 30, 2018, and March 28, 2019. *See supra* at 5-6 (chart reflecting reimbursed contributions). Wright does not specifically state when the Tillis Committee conversations took place between Sondland and Wali, only that they were prior to the contributions made to the Tillis Committee in 2019. Wright Decl. ¶ 6. Wright’s declaration is unclear as to whether the alleged in-person conversations between Wali and Sondland took place prior to or after Sondland left the Company in June 2018. *Id.*

<sup>47</sup> Wright Decl. ¶ 6.

<sup>48</sup> Sondland Decl. ¶ 14.

<sup>49</sup> *Id.* ¶ 12.

<sup>50</sup> *Id.*, Exs. 1-2.

<sup>51</sup> *Id.* ¶ 14.

numerous contributions over years to various political committees and candidates and contributed over \$200,000 in 2015<sup>52</sup> but never received reimbursement for his contributions.<sup>53</sup>

Landry, the former Corporate Controller, states that per Wali's instructions, she ensured that the Company reimbursed Wali and Lew for the political contributions they made and which treated the reimbursements as bonuses so that taxes would be paid on those amounts.<sup>54</sup> Landry further states that she was unaware that such reimbursements were unlawful.<sup>55</sup>

The remaining conduits, Leslie Lew and Eileen Wali, also submitted declarations regarding the contributions and reimbursements. Mrs. Wali states that she approved the contributions made in her name but had no knowledge of any of "the subjects of the contributions or any reimbursement arrangement with Provenance."<sup>56</sup> She further states that she was unaware of the Act's prohibition on reimbursed contributions.<sup>57</sup> Lew states that he accepted a \$5,000 contribution reimbursement from Wali without having any knowledge that it was unlawful to do so.<sup>58</sup>

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<sup>52</sup> *Id.* ¶ 13. The Commission's contribution database reflects a total of \$70,000 in federal contributions made by Sondland between 2015 and 2021 rather than the \$200,000 he refers to in the declaration. However, it is possible that Sondland made non-federal contributions during this timeframe.

<sup>53</sup> *Id.* ¶ 15.

<sup>54</sup> Landry Decl. ¶ 5-6 (May 11, 2021).

<sup>55</sup> *Id.*

<sup>56</sup> Eileen Wali Decl. ¶¶ 5-6 (May 3, 2021).

<sup>57</sup> *Id.*

<sup>58</sup> Lew Decl. ¶¶ 4-6.

### III. LEGAL ANALYSIS

#### A. The Commission Finds Reason to Believe that Bashar Wali Violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(ii) by Knowingly Permitting His Name to be Used in Making Contributions in the Name of Another

Under 52 U.S.C. § 30122, “[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution.”<sup>59</sup> The term “person” for purposes of the Act and Commission regulations includes partnerships, corporations, and other organizations, including LLCs.<sup>60</sup>

A principal is liable vicariously for the acts of its agent committed within the scope of agency.<sup>61</sup> In prior enforcement actions, the Commission has on that basis found reason to believe that legal entities such as Provenance violated the Act as a result of the conduct of their officers or employees.<sup>62</sup>

Here, Provenance appears to be liable under section 30122 given that the Respondents all acknowledge that Provenance funds were used to reimburse the political contributions of Wali, Mrs. Wali, and Leslie Lew. Further, Provenance’s internal investigation concluded that Wali, as

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<sup>59</sup> 52 U.S.C. § 30122; *see also United States v. O’Donnell*, 608 F.3d546, 550 (9th Cir. 2010) (concluding that the plain language of section 30122 [formerly section 441f] encompasses straw donor contributions whether accomplished through the advancement or reimbursement of funds).

<sup>60</sup> *See* 52 U.S.C. § 30101(11) (formerly 2 U.S.C. § 431(11)); 11 C.F.R. § 100.10; Advisory Op. 2009-02 at 3 (True Patriot Network).

<sup>61</sup> RESTATEMENT (THIRD) OF AGENCY § 7.07; *see also United States v. Sun-Diamond Growers of Cal.*, 138 F.3d 961 (D.C. Cir. 1998) (affirming criminal convictions against Sun-Diamond in connection with a corporate contribution reimbursement scheme where officer hid the scheme from others in corporation but acted to benefit the corporation).

<sup>62</sup> *See, e.g.*, Factual and Legal Analysis (“F&LA”) at 17-19, MUR 6922 (ACPAC) (formerly Pre-MUR 628) (finding reason to believe that ACA, a corporate entity, violated 52 U.S.C. §§ 30118 and 30122 based on the actions of its vice president and assistant treasurer of its PAC); F&LA at 7, MUR 6515 (PFFW) (finding reason to believe that a labor union knowingly and willfully violated 52 U.S.C. §§ 30118 and 30122 based on the activities of its executive board members); F&LA, MUR 6143 (Galen Capital) (finding reason to believe that Galen Capital, a corporate entity, knowingly and willfully violated 52 U.S.C. §§ 30118 and 30122 based on the activities of its Chair and CEO).

President of Provenance, caused Provenance to use its funds to reimburse \$106,038 in federal contributions by authorizing Landry, the Company's former Corporate Controller, to issue three \$50,000 bonuses to him as reimbursement for contributions made by and attributed to himself, Mrs. Wali and Lew.<sup>63</sup> And by accepting the reimbursements for the political contributions, Wali knowingly permitted his name to effect contributions in the name of another.

Wali states that Sondland requested that he make the contributions and instructed him to seek reimbursement from Provenance prior to his departure in 2018 and during his absence in 2019.<sup>64</sup> However, the emails cited in the Investigation Report confirm that it was Wali who instructed Landry to issue the reimbursements without the approval or knowledge of any other company executive or the Board of Directors.<sup>65</sup> There is no similar contemporaneous information in the record reflecting any directions or instructions from Sondland for Wali to seek reimbursement of the contributions from Company funds. Finally, Holly Landry, in her sworn declaration, states it was Wali who instructed her to reimburse him for contributions made by him and Lew.<sup>66</sup>

Accordingly, the Commission finds reason to believe that Bashar Wali violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(ii) by allowing his name to be used to make contributions in the name of another.

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<sup>63</sup> Investigation Report at 8-12.

<sup>64</sup> Wali Decl. at ¶¶ 4-9.

<sup>65</sup> Investigation Report at 8-12.

<sup>66</sup> Landry Decl. ¶ 4. ("Sometime in 2018, Mr. Wali instructed me to reimburse him for some political contributions he and Provenance employee Leslie Lew had made."). Lew, in his sworn declaration, states that he was unaware at the time that Wali's reimbursement of his \$5,000 contribution was unlawful. *See* Lew Decl. ¶ 4-6.

**B. The Commission Declines to Make a Non-Knowing and Willful Finding in This Matter**

The Act prescribes additional monetary penalties for violations that are knowing and willful.<sup>67</sup> A violation of the Act is knowing and willful if the “acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law.”<sup>68</sup> Such a finding does not require proving knowledge of the specific statute or regulation the respondent allegedly violated.<sup>69</sup> Instead, it is sufficient to demonstrate that a respondent “acted voluntarily and was aware that his conduct was unlawful.”<sup>70</sup> The Commission has found reason to believe that violations involving reimbursement schemes were knowing and willful when respondents falsified documents, took active steps to conceal illegal activities, kept multiple sets of financial records, or were deemed to be in possession of information warning that their conduct was illegal.<sup>71</sup>

In this case, Wali denies knowing that the reimbursements were unlawful at the time they were made. He states in his declaration that he relied on statements purportedly made by

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<sup>67</sup> 52 U.S.C. § 30109(a)(5)(B), (d).

<sup>68</sup> 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

<sup>69</sup> *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

<sup>70</sup> *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 108-36 (D.P.R. 2009), *United States v. Feiger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

<sup>71</sup> See F&LA at 3, MUR 7027 (MV Transportation, Inc., *et al.*) (finding that the violation was willful and knowing where the reimbursements were coded as bonuses that were hidden from the company’s board); F&LA at 9, MUR 6465 (The Fiesta Bowl, Inc.) (finding that the violation was willful and knowing where key witnesses were purposefully excluded from an internal investigation into reimbursement practices); F&LA at 9, MUR 6234 (Cenac) (finding that the violation was willful and knowing where cashier’s checks were used to hide identity of contributor).



Sondland regarding the contribution reimbursements. Wali has provided some corroborating information through Wright who has provided sworn testimony that she was privy to conversations between Wali and Sondland regarding reimbursements for contributions to Senator Thom Tillis. Wright also states that Sondland instructed that reimbursement funds for the Tillis contributions should be taken from Provenance funds rather than another entity whose funds were being managed by Provenance. Finally, the spreadsheets maintained by Wright to track the reimbursements were maintained as ordinary business records, suggesting that Wali did not seek to conceal the reimbursements from the rest of the Company.

However, there is information that also undercuts Wali's contention that he did not conceal the reimbursements and that he relied on Sondland's direction. First, Wali failed to notify the Board of the contribution reimbursements via bonuses, and resisted the idea of hiring a CFO who would report directly to the Board. Second, Sondland states in his declaration that he does not recall having any conversations with Wali, Landry, or Wright where he either suggested that Provenance reimburse Wali for contributions or intended to convey any such instructions to those individuals. Sondland's statement notes that he made substantial contributions over the years to federal candidates and never sought reimbursement for any of his contributions or ever authorized had Wali or any other employee to be reimbursed for contributions prior to his departure in 2018. Indeed, we have identified no documentation indicating that Sondland authorized the reimbursements.

Under our *Sua Sponte* Policy, even if the facts might support an investigation into whether the violations were knowing and willful, the Commission may nonetheless "[r]efrain

from making a formal finding that a violation was knowing and willful” as a matter of policy,<sup>72</sup> particularly when a *sua sponte* respondent has cooperated extensively, brought substantial information to the attention of the Commission, and voluntarily incorporated remedial and compliance measures.<sup>73</sup>

Here, the Commission makes a non-knowing and willful reason-to-believe finding as to Wali because while the factual record is inconclusive as to whether Sondland made statements to Wali and in the presence of Wright that could have led Wali to believe that he was entitled to seek the contribution reimbursements, and whether Wali sought to conceal the reimbursements from the Board, there is no information that contradicts Wali’s assertion that he did not know the reimbursements were unlawful.<sup>74</sup> Further, in contrast to previous *sua sponte* matters where the Commission found reason to believe that respondents acted knowingly and willfully or approved an investigation to determine respondents’ knowledge, there is no information directly challenging Wali’s assertion that he did not know it was illegal to receive the contribution reimbursements.

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<sup>72</sup> *Policy Regarding Self-Reporting of Campaign Finance Violations*, 72 Fed. Reg. 16695, 16,696 (Apr. 5, 2007) (“*Sua Sponte Policy*”).

<sup>73</sup> *See* F&LA at 9, MUR 7878 (Crystal Run Healthcare) (declining to make knowing and willful findings where there was voluntary disclosure of the violations, cooperation in completing the *sua sponte* submission with a significant and complete documentary record, and implementation of the necessary remedial and compliance measures); F&LA at 13-14, MUR 6889 (Nat’l Air Transp. Ass’n) (declining to make a knowing and willful finding for corporation and PAC where respondents made full *sua sponte* submission, cooperated extensively, brought substantial information to the attention of the Commission and voluntarily incorporated significant remedial and compliance measures).

<sup>74</sup> *See* F&LA at 10, MUR 7949 (Crown Products, *et al.*) (declining to make knowing and willful findings where the individual respondents claim to have had no knowledge beforehand that contribution reimbursements were unlawful and there was no attempt to conceal the reimbursements).