

1 Our investigation into the scope of the violations has confirmed that all of the expenses
2 initially identified in the Complaint were paid by PUSA or the Wisconsin Prosperity Network, a
3 related nonprofit organization, on behalf of the Cain Committee and constituted prohibited
4 corporate contributions. Accordingly, we recommend that the Commission enter into pre-
5 probable cause conciliation with the Cain Committee and PUSA.

6 **III. RESULTS OF INVESTIGATION**

7 **A. Background**

8 Premised on purported internal PUSA ledgers made public in the *Milwaukee Journal*
9 *Sentinel*, the Complaint alleged that the Respondents violated the Act when PUSA allegedly paid
10 \$41,113.65 in testing-the-waters expenses of the Cain Committee in the months before Cain
11 officially declared his candidacy for the Republican nomination for President on May 3, 2011.³
12 The ledger reportedly identified four expenses as "Due From FOH" as of February 10, 2011:

13 PUSA Ledger Entries Reflecting Debts Owed by the Cain Committee⁴

Description	Amount
Atlanta Invoice 002	\$14,779.25
Hill Aircraft Invoice 002	\$16,669.94
Travel & Meetings IA, LA, Las Vegas, Houston-Dallas Invoice #001	\$5,900.32
1/4/2011 Invoice for Ipads	\$3,764.14
TOTAL	\$41,113.65

14 this entity. Response of Mark J. Block to Questions and Document Requests (July 18, 2013) ("Block Subpoena Resp."), Ex. 6, Block Aff. ¶¶ 3, 4, 8, 12 (Jun. 24, 2013).

³ Compl. at 3-5. Cain declared his candidacy for President on May 3, 2011, and filed a statement of organization for the Cain Committee on the same day. According to press reports, Cain announced the suspension of his candidacy for the Republican presidential nomination on December 3, 2011.

⁴ Compl., Ex. 4.

1 Based on these facts, the Complaint alleged that PUSA knowingly and willfully made prohibited
2 corporate contributions on behalf of the Cain Committee, which the Cain Committee accepted
3 and failed to report as in-kind contributions or debts.⁵

4 With respect to the "Atlanta Invoice," the Cain Committee's Response conceded that it
5 "might be considered a 'testing-the-waters' event."⁶ The Committee subsequently reported a
6 disbursement to PUSA for \$14,779.25 for "Lodging/Transportation/Meals" made on January 20,
7 2012, in its 2012 April Quarterly disclosure report.⁷ Similarly, with respect to the "1/4/2011
8 Invoice for iPads," the Response acknowledged that the iPads constituted "expenses of the
9 campaign" because individuals brought iPads purchased by PUSA with them when they left
10 PUSA to work for the Cain Committee.⁸ The Cain Committee subsequently reported a
11 disbursement to Wisconsin Prosperity Network ("WPN") for \$3,764.14 for "Office Equipment"
12 made on January 20, 2012 in its 2012 April Quarterly disclosure report.⁹ With respect to the
13 "Hill Aircraft Invoice" and invoice for "Travel & Meetings IA, LA, Las Vegas, Houston-
14 Dallas," the Response maintained that these expenses were not prohibited contributions from
15 PUSA because they "appear to be trips made solely for purposes unrelated to either Mr. Cain's

⁵ *Id.* at 4-5.

⁶ Cain Committee Resp. at 3-4 (Jan. 12, 2012).

⁷ First Gen. Counsel's Rpt. at 5.

⁸ Cain Committee Resp. at 3.

⁹ First Gen. Counsel's Rpt. at 6-7. Although not identified in the Complaint, the Response explained that furniture purchased by PUSA was passed through common employees to the Cain Committee. The Cain Committee reported a \$300 disbursement to Wisconsin Prosperity Network made on January 29, 2012, for "office furniture" in its April 2012 Quarterly disclosure report. *Id.* at 7 n.6.

1 exploratory committee or his candidacy for president.”¹⁰ No response was submitted on behalf
2 of PUSA.

3 **B. The Investigation**

4 After receiving notice of the Commission's reason to believe finding and decision to
5 investigate the apparent violations, the Cain Committee requested pre-probable cause
6 conciliation. Because the evidentiary record concerning the scope of the alleged violations and
7 role of the Respondents remained incomplete, we noted that we would not be in a position to
8 recommend conciliation without obtaining certain information regarding the alleged
9 expenditures.¹¹ The Cain Committee initially represented that it was “in the process of collecting
10 the requested information.”¹² The Cain Committee failed to provide any documents or
11 substantive information in response to our initial request, however, and counsel subsequently
12 withdrew.¹³ Following several unsuccessful attempts to seek information directly from Block in
13 his capacity as treasurer of the Cain Committee and president of PUSA, the Commission issued
14 compulsory process.¹⁴ Block responded to the Commission's subpoena.¹⁵ We then conducted
15 informal interviews of several witnesses identified in Block's answers to questions and document
16 production, and also conducted voluntary depositions of Block and the former Executive
17 Director of the Cain Committee, Scott Toomey.

¹⁰ *Id.* at 5; Cain Committee Resp. at 4.

¹¹ Letter to Sarah E. Troupis, Esq., Troupis Law Office LLC (Oct. 26, 2012).

¹² Letter from Sarah E. Troupis, Esq., Troupis Law Office LLC (Nov. 15, 2012).

¹³ Letter from Sarah E. Troupis, Esq., Troupis Law Office LLC (Dec. 4, 2012).

¹⁴ Order to Submit Answers to Questions and Subpoena to Produce Documents to Friends of Herman Cain, Inc. and Mark J. Block in his official capacity as treasurer, Prosperity USA, Inc., a/k/a America's Prosperity Network, Inc., and Mark J. Block, President of Prosperity, Inc. (June 18, 2013).

¹⁵ Block Subpoena Resp.

1 1. PUSA, Wisconsin Prosperity Network, the Hermanator PAC, and the Cain
2 Committee
3

4 Although PUSA and the Cain Committee were the parties to the transactions at issue
5 here, both WPN and the Hermanator PAC were also involved. PUSA is a Wisconsin not-for-
6 profit corporation that is organized under section 501(c)(3) of the Internal Revenue Code.¹⁶
7 Block founded the organization on April 10, 2010 and served as its president.¹⁷ According to
8 Block, the purpose of PUSA was “to raise funds for other 501(c)(3) organizations and to support
9 Tea Parties throughout the United States.”¹⁸ He stated that his role with PUSA involved raising
10 funds, generally directing the organization, deciding where to spend funds, and approving all of
11 PUSA’s expenses.¹⁹

12 Block described WPN as an entity that supported the same objectives as PUSA
13 specifically within the state of Wisconsin.²⁰ WPN was founded as a section 501(c)(3)
14 organization on April 12, 2010.²¹ Block served as WPN’s president and Linda Hansen was the
15 organization’s executive director.²² Block also served on the board of directors for both PUSA
16 and WPN until December 31, 2010, when he resigned.²³ Although Block asserted that no
17 partnership or agreements existed between PUSA and WPN and the groups did not share office

¹⁶ See Compl., Ex. 1.

¹⁷ *Id.*, Exs. 1, 2; Block Subpoena Resp. at BLOC41, BLOC43. During his deposition, Block asserted that he was “just a board member” of PUSA. Mark Block Dep. at 11-12 (Oct. 1, 2014) (“Block Dep.”).

¹⁸ Block Subpoena Resp. at 6.

¹⁹ Block Dep. at 12-15.

²⁰ Block Subpoena Resp. at 6. WPN has not been named as a separate respondent in this matter.

²¹ *Id.* at 7.

²² *Id.* at BLOC37, BLOC38, BLOC45.

²³ Block Subpoena Resp., Ex. 6, Block Aff. ¶¶ 3, 4, 8, 12 (Jun. 24, 2013).

1 space or resources, the groups had overlapping leadership and staff. Along with Block, Brian
2 Pitlik and David Fettig served on the board of directors for both organizations.²⁴ Cindy Haeger
3 served as the bookkeeper for both organizations from approximately September 2010 to
4 February 2011.²⁵

5 The Hermantor PAC registered with the Commission on May 5, 2010 and identified Scott
6 Toomey as its treasurer.²⁶ Toomey stated that Block and Herman Cain hired him to serve as the
7 Hermanator PAC's executive director after he had done work with Block for PUSA and WPN.²⁷
8 He described the purpose of the Hermanator PAC as "to support conservative candidates and
9 causes," and he stated that he traveled with Cain and raised money to support these objectives.²⁸
10 Toomey testified that representatives of PUSA, WPN, the Hermanator PAC, and later, the Cain
11 Committee — including Block and Hansen — would communicate about travel and attend the
12 same events, with the PAC covering the expenses for "political" travel.²⁹ Similarly, Block
13 testified that while he was at PUSA, he spoke to Toomey about travel with the Hermanator PAC
14 and that the groups travelled together to events, but that costs were allocated between the groups
15 based on "legal advice."³⁰

16 Toomey stated that in January or February 2011, Cain made the decision to form an
17 exploratory committee to run for President and the Hermanator PAC transitioned to the Cain

²⁴ Block Subpoena Resp. at 7; Block Dep. at 15.

²⁵ Block Subpoena Resp. at 7; Decl. of Cynthia J. Haeger ¶ 4 (Feb. 4, 2014).

²⁶ Statement of Organization of the Hermanator PAC (May 1, 2010).

²⁷ Scott Toomey Dep. at 11-12, 14 (July 9, 2014) ("Toomey Dep.").

²⁸ *Id.* at 15-16.

²⁹ *Id.* at 38-41.

³⁰ Block Dep. at 38-39, 41-42.

1 Committee.³¹ Cain declared his candidacy on May 2, 2011 and the Cain Committee filed its
2 Statement of Organization on the same day, designating Block as treasurer. Block explained that
3 Cain asked him to be his chief of staff and that he resigned from his board positions at PUSA on
4 the advice of legal counsel to assume the Cain Committee role.³² Toomey became the Cain
5 Committee's executive director and Linda Hansen became deputy chief of staff.³³ In its first
6 quarterly disclosure report filed on July 20, 2011, the Cain Committee reported that it engaged in
7 testing the waters activity beginning on December 29, 2010.

8 2. PUSA and WPN Invoices to Hermanator PAC and the Cain Committee
9

10 PUSA and WPN bookkeeper Cindy Haeger provided the most coherent explanation of
11 how PUSA and WPN identified and invoiced costs that those organizations incurred on behalf of
12 the Cain Committee. According to Haeger, in December 2010 she attended a meeting called by
13 Block, her direct supervisor at PUSA and WPN, and Toomey.³⁴ The purpose of the meeting was
14 "to discuss various expenses that had been incurred by Prosperity USA and whether Friends of
15 Herman Cain should be billed for those expenses."³⁵ Haeger stated that Block and Toomey
16 discussed and agreed that certain expenses were owed by the Cain Committee and should be
17 reimbursed to PUSA.³⁶ Block directed Haeger to prepare invoices from PUSA to the Cain

³¹ Toomey Dep. at 17-18.

³² Block Dep. at 22-23.

³³ Toomey Dep. at 22; Block Dep. at 26. Toomey left his position at the Cain Committee in May 2011 and worked as an off-site consultant for the Cain Committee until August 2011. Toomey Dep. at 30.

³⁴ Haeger Decl. ¶¶ 4, 7.

³⁵ *Id.* ¶ 7.

³⁶ *Id.*

1 Committee based on the agreement at the meeting.³⁷ According to Haeger, Block approved the
2 invoices and she sent them to Toomey at the Cain Committee.³⁸ In February 2011, Haeger
3 prepared an invoice from WPN to the Cain Committee to obtain payment from the Cain
4 Committee for the value of seven iPads.³⁹ She explained that she prepared this invoice without
5 authorization because she was angry that people had left WPN to work for the Cain Committee
6 and had taken the WPN iPads with them.⁴⁰ Haeger also confirmed that the PUSA balance sheet
7 that served as the basis for the Complaint was an accurate copy of a document she created in the
8 ordinary course of business to track PUSA's finances, including amounts owed to it by others.⁴¹

9 Unlike Haeger, who offered a detailed account of the meeting, during their depositions
10 neither Toomey nor Block could offer a clear recollection of it — although Toomey
11 acknowledged that it did occur, while Block conceded that it might have. Specifically, Toomey
12 represented that he attended a meeting to discuss expenses paid by PUSA in December 2010.⁴²
13 He did not remember many details about the meeting, but opined that the attendees most likely
14 divided the costs between the groups based on whether an expense was “political versus
15 nonpolitical.”⁴³ Throughout his deposition, Toomey used the term “political” to refer to
16 activities related to Cain's potential candidacy and activities in support of other federal

³⁷ *Id.*; *see id.*, Exs. B, C, D. These invoices correspond to the “Atlanta Invoice,” the “Hill Aircraft Invoice,” and the invoice for “Travel & Meetings IA, LA, Las Vegas, Houston-Dallas.”

³⁸ *Id.* ¶ 7.

³⁹ *Id.* ¶; *see id.*, Ex. E. This invoice corresponds to the “1/4/2011 Invoice for Ipads,” although the invoice is dated February 4, 2011.

⁴⁰ Report of Investigation of Cindy Haeger at 30 (Mar. 14, 2014) (“Haeger ROI”).

⁴¹ Haeger Decl. ¶ 5.

⁴² Toomey Dep. at 42-43.

⁴³ *Id.* at 44.

1 candidates.⁴⁴ Toomey testified that he believed that “political” expenses should be paid by the
2 Cain Committee or PAC rather than PUSA, but stated that Block had the authority to make that
3 decision.⁴⁵ As to Block, he did not recall a meeting where he, Toomey, and Haeger allocated
4 expenses between PUSA and the Cain Committee or the Hermanator PAC but acknowledged, “it
5 could have happened.”⁴⁶ He testified that he “would have had input” into the allocation of
6 expenses as a board member of PUSA, but did not recall how the expenses were divided.⁴⁷
7 Nonetheless, neither he nor Toomey contested Haeger’s recollection of the meeting.

8 We also asked Toomey and Block about their recollections of each invoice, as well as
9 certain background documentation we obtained from Block and John Marek, a PUSA donor who
10 took possession of PUSA’s records after Block resigned in 2011.⁴⁸ Despite the fact that Block
11 produced copies of every invoice in response to the Commission’s subpoena, he claimed to not
12 recall the invoices or the expenses they reflected. Similarly, although three of the invoices were
13 addressed to Scott Toomey when he served as executive director of the Cain Committee,
14 Toomey also did not remember receiving them and claimed he had never seen them before the
15 deposition.

16 With respect to the invoice for “Travel & Meetings IA, LA, Las Vegas, Houston-Dallas,”
17 Block’s subpoena response identified the expenses as “for travel and accommodations for
18 various Tea Party rallies, speeches and events” attended by Block, Hansen, Toomey, and Cain.⁴⁹

⁴⁴ *Id.* at 18, 41, 55, 65-66.

⁴⁵ *Id.* at 45.

⁴⁶ Block Dep. at 43-44.

⁴⁷ *Id.* at 44-47.

⁴⁸ Report of Investigation of John Marek at 2-3 (Mar. 12, 2014) (“Marek ROI”).

⁴⁹ Block Subpoena Resp. at 4.

1 Although Block conceded that he participated in the events, he did not remember any details
2 about them, other than that they may have been Tea Party events.⁵⁰ Block testified that it was
3 possible he agreed that the expenses were incurred on behalf of the Hermanator PAC at a
4 meeting with Toomey and Haeger, but asserted that Toomey would have made the decision.⁵¹
5 Toomey testified that he did not remember any of the travel referenced in the invoice aside from
6 a trip to California he may have attended with Block, but he "assum[ed] that Mark and company
7 decided that this was political travel."⁵²

8 Regarding the "Atlanta Invoice," Block's subpoena response identified the transactions
9 as "for a Tea Party event in Atlanta, Georgia" hosted by PUSA and attended by Block, Hansen,
10 Toomey, and Cain.⁵³ Block testified that the Atlanta meeting was a "policy discussion" where
11 Cain's candidacy was also discussed.⁵⁴ He believed that the expenses for the Atlanta meeting
12 were incurred by PUSA, but he concurred with the decision, based on legal advice, that the Cain
13 Committee should disclose and reimburse the expenses.⁵⁵ Toomey testified that this invoice
14 related to a meeting in Atlanta where Cain pulled people together to discuss whether he should
15 from a Presidential exploratory committee.⁵⁶ Toomey believed that Cain or his exploratory

⁵⁰ Block Dep. at 53-57.

⁵¹ *Id.* at 58-59.

⁵² Toomey Dep. at 47-48.

⁵³ Block Subpoena Resp. at 3.

⁵⁴ Block Dep. at 68-69.

⁵⁵ *Id.* at 70-72.

⁵⁶ Toomey Dep. at 54-55.

1 committee should have paid the cost of the Atlanta meeting because it “was clearly political in
2 nature” and “pertain[ed] to Mr. Cain and his potential endeavors.”⁵⁷

3 With respect to the “Hill Aircraft Invoice,” Block’s subpoena response described the
4 payments in this invoice as related to air travel to “various Tea Party rallies, speeches and
5 events,” attended by Block and Toomey.⁵⁸ Block stated that, to the extent he could remember,
6 all of the travel listed on the invoice related to Tea Party events where Cain was a speaker, but he
7 denied that Cain’s appearances related to his candidacy.⁵⁹ Toomey testified, however, that the
8 purpose of the charter aircraft travel listed on the invoice was for “Tea Party events, coalition
9 building, [and] get-out-the-vote efforts.”⁶⁰ Although Toomey testified that there was no
10 discussion of Cain’s candidacy during the travel referenced on the invoice, he thought that the
11 travel was invoiced to the Cain Committee because “some of it looked to be political” and that
12 Cain was involved in “stumping with a candidate for elective office.”⁶¹

13 Finally, regarding the “1/4/2011 Invoice for Ipads,” Block’s subpoena response described
14 this invoice as “for iPads . . . sold to Wisconsin Prosperity Network, who then invoiced Friends
15 of Herman Cain for the purchase of the iPads.”⁶² Block testified that he did not believe that the
16 expenses for the iPads were incurred on behalf of the Cain Committee because the iPads were
17 “actually given to individuals,” but he explained that the Cain Committee reimbursed WPN and

⁵⁷ *Id.* at 55, 59.

⁵⁸ Block Subpoena Resp. at 4.

⁵⁹ Block Dep. at 81-84.

⁶⁰ Toomey Dep. at 64.

⁶¹ *Id.* at 65-67.

⁶² Block Subpoena Resp. at 4.

1 disclosed the expenses because of legal advice.⁶³ Toomey testified that he had no knowledge of
2 the invoice or the expenses it referenced.⁶⁴

3 3. PUSA and WPN's Contemporaneous Effort to Collect from the Cain
4 Committee

5 On February 11, 2011, following the issuance of the invoices, Haeger sent an e-mail to
6 Toomey and Block, with a copy to Marek, "to remind Scott Toomey of the amounts previously
7 invoiced to Friends of Herman Cain and attempt to obtain payment."⁶⁵ The e-mail listed the
8 amounts of the four invoices plus several small charges made by Block and stated "Scott – A
9 summary of amount owed to PUSA follows. You have invoices for everything except amounts
10 the [sic] Mark may repay & submit to you directly for reimbursement. Repayment will reduce
11 risk for all parties involved."⁶⁶ Haeger stated that she sent the e-mail as a "last ditch effort to get
12 the money back," but that she never received a response from Block or Toomey.⁶⁷

13 After Block left PUSA and WPN at the end of 2010, Marek, a PUSA donor, took
14 possession of PUSA and WPN's records and was added to the groups' checking accounts.⁶⁸
15 Upon Marek's review of PUSA's records and in speaking with Haeger, Marek became
16 concerned that PUSA and WPN "fronted money to Herman Cain."⁶⁹ On February 14, 2011,
17 Marek responded to Haeger's e-mail and wrote, "Cindy, what do you mean by 'Repayment will

⁶³ Block Dep. at 94-95.

⁶⁴ Toomey Dep. at 71-72.

⁶⁵ Haeger Decl. ¶ 9.

⁶⁶ *Id.* Ex. F.

⁶⁷ Haeger ROI at 37.

⁶⁸ Marek ROI at 3, 14.

⁶⁹ *Id.* at 3.

1 reduce risk for all parties involved.”⁷⁰ He explained that he thought that the Cain Committee
2 was using PUSA and WPN funds for campaign activities, and although he did not know details
3 about the invoices, he thought that there were risks involved.⁷¹ On February 15, 2011, Haeger
4 responded to Marek, “It’s the risk of the Campaign being involved at all with a 501(c)(3) org.
5 We wanted to keep the two separate. Even though the Dec. meeting in Atlanta was partially not
6 related to any discussions related to an exploratory committee, some of it was. Mark decided to
7 bill all costs to Friends of HC.”⁷² Haeger explained that the purpose of her February 15, 2011
8 response to Marek was to “explain why the amounts were billed to Friends of Herman Cain by
9 Prosperity USA.”⁷³

10 Toomey testified that he did not remember receiving Haeger’s February 11, 2011 e-mail,
11 but that he may have looked at it and mentioned it to Block, who said he would “take care of
12 it.”⁷⁴ Toomey stated that he believed there was a “very, very large gray area” with PUSA paying
13 expenses on behalf of the Cain Committee because of his understanding of what type of
14 organizations can permissibly donate to a political entity, but that Block was ultimately
15 responsible for deciding what expenses would be reimbursed.⁷⁵ Block also testified that he did
16 not remember receiving Haeger’s e-mail regarding the outstanding invoices, but it was possible
17 that he had seen it before.⁷⁶ He testified that he did not believe that there was a risk involved in

⁷⁰ Haeger Decl., Ex. F.

⁷¹ Marek ROI at 14.

⁷² Haeger Decl., Ex. F.

⁷³ *Id.* ¶ 9.

⁷⁴ Toomey Dep. at 73, 86.

⁷⁵ *Id.* at 74-75.

⁷⁶ Block Dep. at 96-97.

1 PUSA paying the invoiced expenses because the travel was for Tea Party events and “not
2 political” and the iPads were “gifts.”⁷⁷ Block stated that the Cain Committee reimbursed PUSA
3 and WPN for the invoices for the iPads, the Atlanta trip, and the additional \$300 in office
4 furniture due to advice from legal counsel, but that it was not his belief that any of the expenses
5 required reimbursement.⁷⁸

6 IV. ANALYSIS

7 A. Applicable Law

8 The Act prohibits any corporation from making a contribution to a political committee
9 and similarly prohibits political committees from accepting or receiving such contributions.⁷⁹ A
10 “contribution” includes “any gift, subscription, loan, advance, or deposit of money or anything of
11 value made by any person for the purpose of influencing any election for federal office.”⁸⁰ The
12 Commission’s regulations provide that “anything of value” includes all in-kind contributions,
13 including the provision of goods or services without charge or at a charge which is less than the
14 usual and normal charge for such goods or services.⁸¹

15 PUSA allegedly made prohibited in-kind contributions to the Cain Committee by
16 advancing the costs of travel and iPads while Cain was “testing the waters” before he announced
17 his candidacy and designated his authorized committee. Under the Commission’s regulations, an
18 individual who has not decided to run for office may “test the waters” by raising and spending

⁷⁷ *Id.* at 99.

⁷⁸ *Id.* at 100-105, 123-125.

⁷⁹ 52 U.S.C. § 30118(a).

⁸⁰ *Id.* § 30101(8)(A)(i).

⁸¹ 11 C.F.R. § 100.52(d)(1).

1 funds while he or she is making that decision.⁸² These funds may be raised and used for the
2 limited purpose of determining whether an individual should become a candidate.⁸³ Only funds
3 permissible under the Act may be used for such activities.⁸⁴

4 Section 30104(b)(8) of the Act requires committees to disclose the nature and amount of
5 outstanding debts and obligations in their reports. These debts and obligations must be
6 continuously reported until they are extinguished.⁸⁵ Debts of \$500 or less must be reported no
7 later than 60 days after the obligation is incurred, while debts exceeding \$500 must be reported
8 when incurred.⁸⁶ All political committees are required to file reports of their receipts and
9 disbursements.⁸⁷ These reports must itemize all contributions received from contributors that
10 aggregate in excess of \$200 per election cycle.⁸⁸ Any in-kind contribution must also be reported
11 as an expenditure on the same report.⁸⁹

12 **B. PUSA and WPN Made Corporate Contributions to the Cain Committee that**
13 **It Accepted and Failed to Report**
14

15 The evidence obtained during the course of our investigation reflects that the expenses
16 identified in the PUSA ledger and invoiced to the Cain Committee constitute corporate
17 contributions. At the reason-to-believe stage, the Cain Committee essentially conceded that the

⁸² *Id.* §§ 100.72, 100.131.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ 11 C.F.R. § 104.11(a).

⁸⁶ *Id.* § 104.11(b).

⁸⁷ 52 U.S.C. § 30104(a).

⁸⁸ *Id.* § 30104(b); 11 C.F.R. § 104.3(a)(4).

⁸⁹ 11 C.F.R. §§ 104.3(b), 104.13(a)(2).

1 expenses in the "Atlanta Invoice" and the "1/4/2011 Invoice for Ipads" constituted prohibited
2 corporate contributions and refunded those amounts and an additional \$300 in office furniture to
3 PUSA and WPN in January 2012.⁹⁰ The remaining question is therefore whether the "Hill
4 Aircraft Invoice" expense and the costs PUSA and WPN covered for "Travel & Meetings IA,
5 LA, Las Vegas, Houston-Dallas" similarly constitute unreported prohibited corporate
6 contributions.⁹¹ For the following reasons, we conclude that the weight of the available credible
7 evidence supports this conclusion.

8 First, our investigation confirmed the authenticity of the ledger reflecting amounts due to
9 PUSA and further uncovered invoices and other financial documentation that support the
10 expenses contained in the ledger. While the Cain Committee's initial Response challenged the
11 authenticity and specificity of the ledger, the testimony of PUSA's bookkeeper Haeger
12 established that it was an accurate copy of a ledger that she prepared in the ordinary course of her
13 business as bookkeeper for that entity.⁹² Moreover, records obtained during the investigation
14 confirm that the collectibles identified on the ledger were in fact supported by actual invoices,
15 and that those invoices were in turn supported by additional documentation. Specifically, Block,
16 who was president of PUSA and WPN at the time the expenses were incurred and became
17 treasurer and chief of staff for the Cain Committee, produced four invoices and related
18 documentation substantiating the allegation that PUSA and WPN paid expenses on behalf of the
19 Cain Committee.⁹³ Although Block and Toomey testified that they had very limited memory of

⁹⁰ First Gen. Counsel's Rpt. at 12.

⁹¹ See 52 U.S.C. §§ 30104(b) and 30118(a).

⁹² Haeger Decl. ¶ 5.

⁹³ Block Subpoena Resp., Exs. 2, 3, 4, 5.

1 the decision making process that led PUSA and WPN to invoice the Cain Committee for the
2 expenses, Haeger was able to provide a detailed account of the December 2010 meeting that she
3 attended in her capacity as PUSA and WPN's bookkeeper, which caused the organizations to
4 issue the invoices.⁹⁴

5 Second, the investigation also uncovered contemporaneous efforts of PUSA and WPN to
6 collect the amounts that they had determined were owed by the Cain Committee. In addition to
7 the invoices themselves, several months later — prior to the publication of the ledger in press
8 reports or the filing of the Complaint in this matter — Haeger sent an e-mail to Block, Toomey,
9 and Marek seeking to obtain payment from the Cain Committee, a fact that tends to corroborate
10 her testimony that Block and Toomey, the relevant decision-makers, had concluded that the Cain
11 Committee should pay for the expenses identified in the ledgers.⁹⁵ Although Block and Toomey
12 testified that they did not remember receiving this e-mail, Marek explained that he understood at
13 the time that PUSA and WPN had paid for Cain Committee campaign activities.⁹⁶ Indeed,
14 Haeger sent a follow-up e-mail to Marek, who had control of the PUSA and WPN finances at the
15 time, explaining why the Cain Committee was responsible for the expenses that PUSA and WPN
16 had covered on its behalf.⁹⁷

17 Third, the investigation confirmed that the relevant officers of PUSA, WPN, and the Cain
18 Committee — Block and Toomey — determined that the expenses for events and activities
19 related to Cain's testing the waters activities. Haeger's testimony, which was the most consistent

⁹⁴ See, *supra*, section III.B.2.

⁹⁵ See, *supra*, section III.B.3.

⁹⁶ *Id.*

⁹⁷ *Id.*

1 and credible of the witnesses we spoke to, supports the conclusion that both Block and Toomey
2 determined shortly after the events in question occurred that PUSA incurred the expenses on
3 behalf of the Cain Committee.⁹⁸ Neither Block nor Toomey had a clear memory of the travel
4 and events referenced in the "Hill Aircraft Invoice" and the invoice for "Travel & Meetings IA,
5 LA, Las Vegas, Houston-Dallas," aside from the fact that the travel was for Tea Party events.
6 Although Block now testifies that these expenses were not related to Cain's candidacy, he admits
7 that he has little recollection of the meeting at which the allocation issue was discussed or of the
8 events themselves. And Toomey testified that the expenses were invoiced because the travel
9 appeared to be "political," a term that Toomey used to refer generally to activities related to
10 Cain's potential candidacy.⁹⁹

11 Fourth, the available information fails to demonstrate any credible distinction between
12 the invoices the Cain Committee reimbursed in 2012 and the invoices that have not been
13 reimbursed. According to Haeger, Block and Toomey addressed all of those expenses at the
14 same meeting and concluded that all of them related to expenses on behalf of the Cain
15 Committee.¹⁰⁰ The expenses on the unreimbursed invoices were incurred during the same
16 general period that Cain was testing the waters in late 2010. Block also characterized the
17 unreimbursed invoices as for "Tea Party events," which is the same manner that he described the
18 Atlanta meeting for which the Cain Committee reimbursed PUSA and WPN's expenses.¹⁰¹

⁹⁸ Haeger Decl. ¶ 7.

⁹⁹ See, *supra*, section III.B.2. Further, Block's *post-hoc* position on the unreimbursed invoices is the same as his current view that *none* of the invoiced expenses were incurred on behalf of the Cain Committee, a position undermined by the Cain Committee's decision to reimburse the "Atlanta Invoice" and the "1/4/2011 Invoice for I pads."

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

1 Finally, although we have been unable to obtain substantial information concerning what
2 occurred during these events, none of the records produced by any witness, including the Cain
3 Committee, tends to suggest that Cain's travel and attendance at the events were unrelated to his
4 contemporaneous efforts to assess the viability of a potential candidacy. Accordingly, we find
5 unpersuasive the argument that the "Hill Aircraft Invoice" and the invoice for "Travel &
6 Meetings IA, LA, Las Vegas, Houston-Dallas" constituted expenses unrelated to Cain's potential
7 candidacy.

8 * * *

9 For the reasons stated above, we conclude that the substantial weight of credible evidence
10 supports the Commission's finding at the reason-to-believe stage that the expenses described in
11 the ledgers that form the basis of the Complaint reflect that PUSA and WPN made prohibited
12 corporate contributions to the Cain Committee that it accepted and did not disclose.¹⁰² We
13 therefore recommend that the Commission enter into pre-probable cause conciliation with the
14 Cain Committee and PUSA.¹⁰³

¹⁰² The Complaint also alleged that that PUSA made corporate contributions to the Cain Committee through corporate facilitation. First Gen. Counsel's Rpt. at 12, n. 10. The investigation did not reveal that PUSA used additional corporate resources or facilities to engage in fundraising for Cain. See 11 C.F.R. § 114.2(f). Thus, we do not recommend that the Commission proceed on this theory of violation.

¹⁰³ We do not recommend that the Commission separately enter into pre-probable cause conciliation with WPN, which has not been notified as a respondent in this matter. Given the low dollar amount of WPN's prohibited contributions for the "1/4/2011 Invoice for Ipads" (\$3764.14) and additional office furniture (\$300), both of which were refunded to WPN by the Cain Committee, we do not believe these violations warrant further pursuit.

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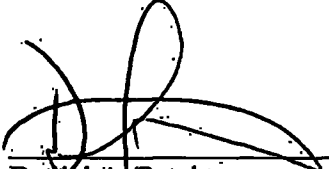
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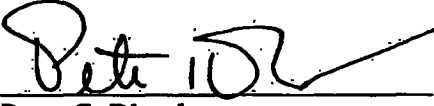
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1 **VI. RECOMMENDATIONS**

- 2 1. Enter into pre-probable cause conciliation with Friends of Herman Cain, Inc. and
3 Mark J. Block in his official capacity as treasurer;
4
5 2. Enter into pre-probable cause conciliation with Prosperity USA, Inc.;;
6
7 3.
8
9 4. Approve the appropriate letters.

10
11
12 7/20/15
13
14 Date


15 Daniel A. Petalas
16 Associate General Counsel
17 for Enforcement


18 Peter G. Blumberg
19 Assistant General Counsel


20 Kasey S. Morgenheim
21 Attorney
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