

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2 In the Matter of )  
 3 )  
 4 Society of Young Women ) MUR 7690  
 5 Scientists and Engineers LLC )  
 6 )

7 **THIRD GENERAL COUNSEL’S REPORT**

8 **I. ACTIONS RECOMMENDED**

9 The Office of General Counsel (“OGC”) recommends that the Commission: (1) take no  
 10 further action against the Society of Young Women Scientists and Engineers LLC (the  
 11 “Society”) and close the file as to it and (2) send the appropriate letter.<sup>1</sup>

12 **II. BACKGROUND**

13 On January 14, 2021, the Commission found reason to believe that the Society violated  
 14 52 U.S.C. § 30122 of the Federal Election Campaign Act of 1971, as amended (the “Act”), by  
 15 knowingly permitting its name to be used to effect a \$150,000 contribution in the name of  
 16 another to 1820 PAC, an independent expenditure-only political committee that made  
 17 independent expenditures in support of then-U.S. Senate candidate Susan Collins and against her  
 18 opponent, Sara Gideon.<sup>2</sup> The subsequent investigation determined that funds from Navatek LLC  
 19 (“Navatek”), now known as PacMar Technologies, LLC (“PacMar”), were used to make the  
 20 contribution and that Navatek was therefore the true contributor.<sup>3</sup> Martin Kao, who was  
 21 President and CEO of Navatek, created the Society, along with Controller Lawrence Lum Kee

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<sup>1</sup> The statute of limitations expires as to the Society on December 31, 2024.

<sup>2</sup> Certification (“Cert.”) ¶ 1 (Jan. 14, 2021); see *1820 PAC, Spending 2019-2020*, FEC.GOV, <https://www.fec.gov/data/committee/C00698126/?tab=spending&cycle=2020> (last visited Oct. 23, 2024) (reflecting \$7.68 million in independent expenditures opposing Gideon and \$2.71 million in independent expenditures supporting Collins).

<sup>3</sup> Martin Kao Guilty Plea Transcript at 14-15, *United States v. Kao*, No. 1:22-cr-00048 (D.D.C. Sept. 27, 2022).

and Chief Financial Officer Clifford Chen.<sup>4</sup> Kao admitted in federal court to conspiring with Lum Kee and Chen to create the Society as a sham philanthropic organization for the purpose of funneling \$150,000 in Navatek funds to 1820 PAC.<sup>5</sup> Kao is currently awaiting sentencing for his role in forming the Society; Lum Kee and Chen were sentenced for violations of 52 U.S.C. § 30122 regarding another, related scheme involving the use of Navatek funds; [REDACTED]

On September 16, 2024, the Commission found that there is probable cause to believe that the Society knowingly and willfully violated 52 U.S.C. § 30122.<sup>6</sup> The Commission authorized conciliation [REDACTED].<sup>7</sup> OGC provided Respondent with written notice of the probable-cause-to-believe finding and the proposed conciliation agreement by letter dated September 17, 2024.<sup>8</sup>

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<sup>4</sup> *Id.* at 14.

<sup>6</sup> Cert. (Sept. 16, 2024); *see* OGC's Notice to the Commission Following the Submission of Probable Cause Brief (Sept. 12, 2024) (recommending finding probable cause). The finding was based on the General Counsel's Brief, dated August 26, 2024, which was sent to Martin Kao, who is the Registered Agent for the Society, in care of his criminal defense counsel in the parallel criminal matter, *United States v. Martin Kao*, No. 22-cr-48 (D.D.C.). Letter from Lisa Stevenson, Acting Gen. Couns., FEC, to Martin Kao, Registered Agent for the Society (Aug. 26, 2024) (attaching Probable Cause Brief). The Society did not submit a reply brief. Criminal defense counsel consented to send Kao, as Registered Agent for the Society, Commission documents that OGC sent to Kao in her care. Email from Kenneth Sealls, Att'y, FEC, to Michelle Peterson, Crim. Couns. for Martin Kao, Registered Agent for the Society (Aug. 26, 2024, 17:06 EDT); Email from Michelle Peterson, Crim. Couns. for Martin Kao, Registered Agent for the Society, to Kenneth Sealls, Att'y, FEC (July 31, 2024, 15:23 EDT). We had initially sent the reason-to-believe notification to the Society's Manager, Jennifer Lam, but switched to notifying Kao as its Registered Agent at the probable cause stage after Lam failed to respond to the reason-to-believe letter. *See* RTB Notif. Letter (July 5, 2024).

<sup>7</sup> Cert. (Sept. 16, 2024) (approving conciliation agreement).

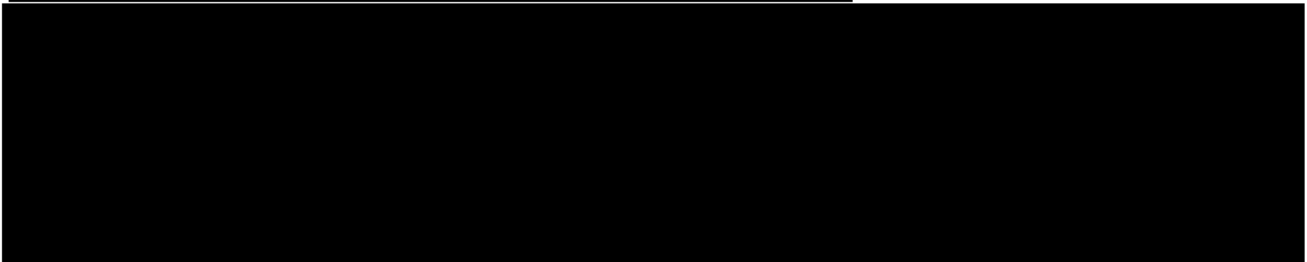
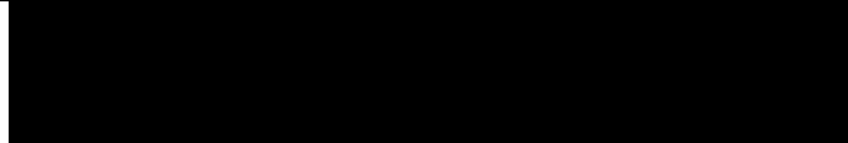
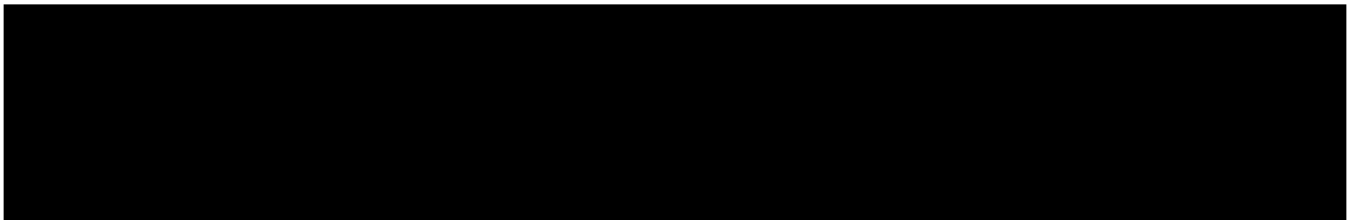
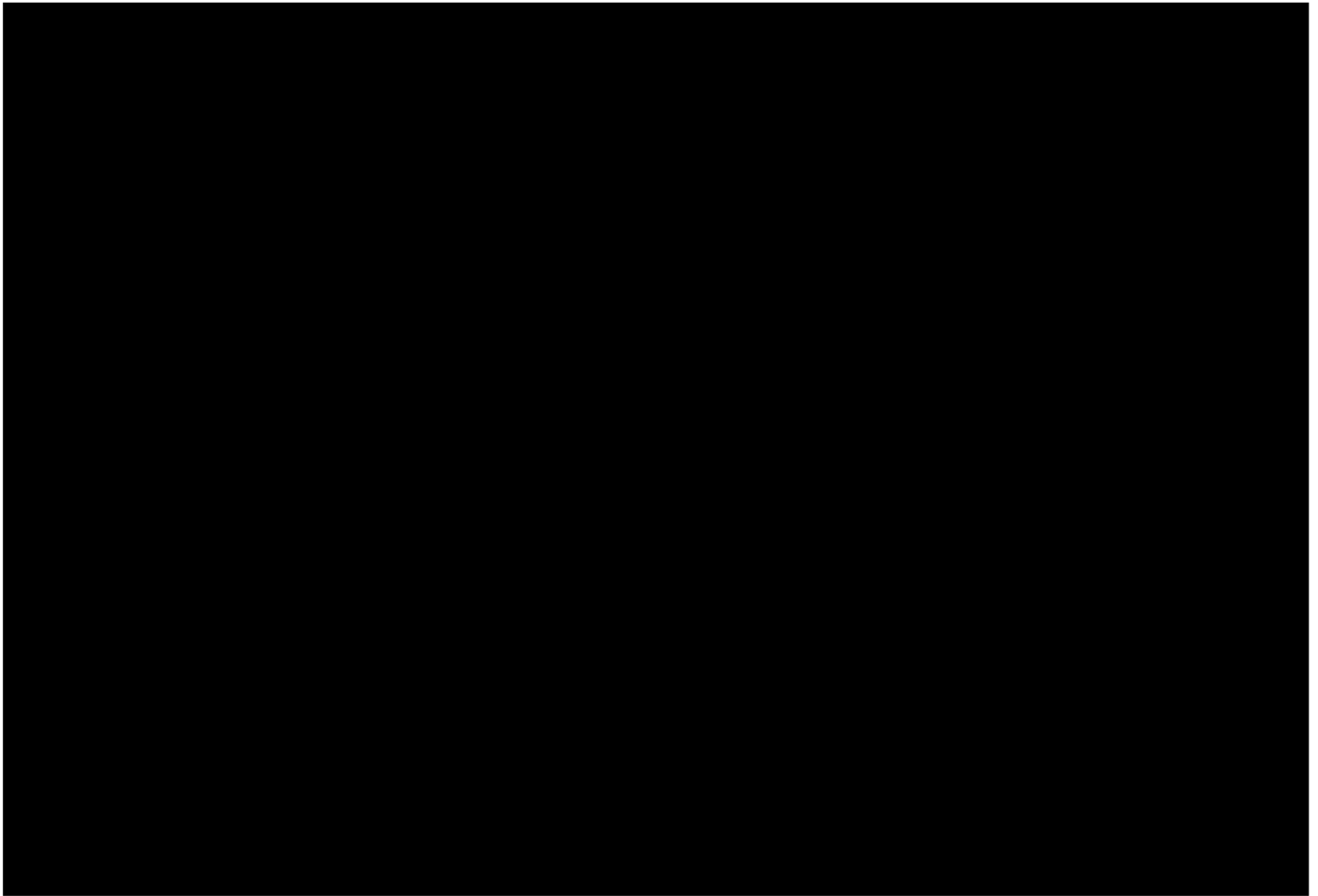
<sup>8</sup> *See* PC Notif. Letter (Sept. 17, 2024). The notification letter specified that the Commission must attempt to negotiate a settlement of this matter for at least 30 days, and if the parties were unable to reach an agreement, the Commission could file a civil suit. *Id.*

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### III. DISCUSSION

Pursuant to 52 U.S.C. § 30109(a)(4)(A)(i), “if the Commission determines . . . [that] there is probable cause to believe that any person has committed, or is about to commit, a violation of this Act . . . the Commission shall attempt, for a period of at least 30 days, to correct or prevent such violation by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement with any person involved.”<sup>17</sup> The Commission’s regulations further specify that the 30-day conciliation period begins to run on the date of the Commission’s probable cause finding.<sup>18</sup> If the Commission cannot “correct or prevent any violation of the Act” during such conciliation period, the Commission “may institute a civil action for relief . . . in the district court of the United States.”<sup>19</sup>

More than 30 days have passed since the Commission found probable cause to believe that Respondent knowingly and willfully violated the Act and OGC attempted to engage in conciliation negotiations with Respondent during that time period.<sup>20</sup> Given that Kao does not believe he can act on behalf of the Society and we are aware of no other person who would represent the Society, we believe that attempting to continue conciliation discussions would be fruitless. Further, for the reasons stated below, including the Society’s likely lack of funds and

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<sup>17</sup> 52 U.S.C. § 30109(a)(4)(A)(i).

<sup>18</sup> 11 C.F.R. § 111.18(c).

<sup>19</sup> 52 U.S.C. § 30109(a)(6)(A).

<sup>20</sup> *Supra* at 2-3.

the potential litigation risks, we do not believe that the Commission should file a civil action against it as doing so would not be a prudent use of the Commission's limited resources.

First, a lawsuit would likely be unfruitful: the Society is a shell entity that does not appear to have assets, nor any current purpose other than to disguise Navatek as the true contributor of the \$150,000 to 1820 PAC. Further, the Society is defunct and likely lacks funds even to pay counsel, as evidenced by former counsel's withdrawal from representing it in this matter.<sup>21</sup> Second, the Commission's interests are at least partially vindicated in this matter, as the Society co-conspirators, Kao, Lum Kee, and Chen, have been criminally prosecuted under FECA for their actions on behalf of the Society and related schemes and have been or will be punished; the Commission is also in ongoing conciliation with PacMar, the true contributor of the \$150,000 and on whose behalf the Society was formed, for its knowing and willful violations of the Act.<sup>22</sup> Third, the only individual with the apparent authority to speak on the Society's

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<sup>21</sup> See Email from William B. Canfield III, Fmr. Couns. for the Society, to Kenneth Sealls, Att'y, FEC, (July 3, 2024, 09:20 EDT) (disavowing any further representation of the Society and indicating that he has "not been in contact with these folks for several years" and "would surmise that [the Society] is probably defunct and has been for some time").

<sup>22</sup> Kao, Kum Kee, and Chen have already been punished or will be punished for the Society and related scheme. Kao pleaded guilty in the parallel criminal case involving the Society scheme to *inter alia*, making conduit contributions and aiding and abetting, in violation of 52 U.S.C. §§ 30122, 30109(d)(1)(a)(i) and 18 U.S.C. § 2; see also Statement of Offense in Support of Guilty Plea ¶¶ 38-51, *United States v. Kao*, 1:22-cr-00048-CJN (D.D.C. Sept. 27, 2022). He was due to be sentenced in two Hawaii federal criminal cases on October 29, 2024, but those sentencings have been continued to February 13, 2025. See *United States v. Kao*, 1:21-cr-00061-LEK-1 (D. Haw.), Dkt. No. 142 (Oct. 10, 2024); *United States v. Kao*, 1:23-cr-00003-LEK-1 (D. Haw.), Dkt. No. 35 (Oct. 10, 2024). His sentencing in the parallel matter is due to follow his sentencings in the Hawaii matters. See *United States v. Kao*, No. 1:22-cr-00048 (D.D.C.), Dkt. No. 91 (Aug. 26, 2024). Lum Kee and Chen, who each pleaded guilty only to the related conduit contribution scheme of making contributions in the name of another to Collins for Senator, the principal campaign committee of Senator Susan Collins, in a scheme that pre-dated the Society scheme, see Statement of Offense in Support of Guilty Plea ¶¶ 7-10, Dkt. No. 52, *United States v. Lum Kee*, No. 1:22-cr-00048 (D.D.C. Apr. 24, 2023); Statement of Offense in Support of Guilty Plea ¶¶ 4-7, Dkt. No. 55, *United States v. Chen*, No. 1:22-cr-00048 (D.D.C. Apr. 24, 2023), were each sentenced to 12 months of probation and fined \$5,000. Lum Kee Judgment, Dkt. No. 78, *United States v. Lum Kee*, No. 1:22-cr-00048 (D.D.C. Aug. 29, 2023) ("Lum Kee Judgment"); Chen Judgment, Dkt. No. 80, *United States v. Chen*, No. 1:22-cr-00048 (D.D.C. Aug. 29, 2023) ("Chen Judgment").

behalf is unwilling to do so: Kao claims that PacMar owns the Society, [REDACTED]

While the Commission could potentially authorize suit not only against the Society but also its legal and beneficial owners (*i.e.*, Lam and Kao)<sup>24</sup> and those who operated and controlled the Society to perpetrate the scheme (*i.e.*, Kao, Lum Kee, and Chen), we do not believe that this would be a good use of the Commission's limited resources. Pursuing the individuals behind the Society would be challenging and require reliance on a novel legal theory of liability. Information derived from the investigation indicates that Kao generally made operational decisions for the organization and wrote the check for the Society's \$150,000 contribution to

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<sup>24</sup> [REDACTED] Kao was listed as the Society's Registered Agent in the Society's formation documents, while his spouse, Jennifer Lam, is listed as its Manager and single Member with 100% ownership of the LLC. *See Society of Young Women Scientists and Engineers LLC*, HAW. BUS. EXPRESS, <https://hbe.chawaii.gov/documents/business.html?fileNumber=228680C5> (last visited Oct. 23, 2024) (indicating the Society has been delinquent with its annual filings since 2021 and has been administratively terminated); *see also* Letter from William B. Canfield III, Couns. for the Society, to Saurav Ghosh, Att'y, FEC at 1 (May 26, 2021) (confirming that Lam is the Society's sole member and 100% beneficial owner). It is unclear to what extent Kao, Lam, or both owned and operated the Society. In the ongoing civil racketeering lawsuit by PacMar and Navatek Holdings LLC against Kao, Lam, the Society, and others, the Complaint alleges that "a gang of conspirators engaged in a complex racketeering scheme aimed to loot the resources of a venerable engineering firm." 2d Am. Compl., *PacMar v. Kao*, No. 1:22-cv-00283 (D. Haw.), Dkt. No. 97 at 1 ¶ 2 (Apr. 21, 2023). In that suit, PacMar seeks an Order establishing that the Society is an alter ego of Kao and Lam based "on the admission that all three (3) share and own the same documents and operate interchangeably." Plaintiff's Second Mtn. for Sanctions and to Compel, *PacMar v. Kao*, No. 1:22-cv-00283 (D. Haw.), Dkt. No. 164 at 2-3 (Oct. 16, 2024).

1 1820 PAC.<sup>25</sup> Therefore, an argument could be made that Kao, and perhaps Lam, created a sham  
 2 organization for which Kao acted as an alter ego, which, under both D.C. Circuit and Ninth  
 3 Circuit law, would lead to a conclusion that Kao controlled the Society.<sup>26</sup> But, because the  
 4 Commission did not issue findings as to either Lam or Kao in connection with the Society, it  
 5 would be difficult to pursue a case as to them individually without sufficient administrative  
 6 notice.<sup>27</sup> Here, as noted above, those responsible for creating and misusing the Society have  
 7 been criminally prosecuted for the Society scheme and a related scheme and have been sentenced  
 8 (Lum Kee and Chen) or are awaiting sentencing (Kao).<sup>28</sup> Additionally, because the Commission  
 9 dismissed the 52 U.S.C. § 30122 allegations against Lam based on a lack of information  
 10 indicating that she was responsible for or aware of the Society scheme, suing Lam would not

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<sup>25</sup> Statement of Offense in Support of Guilty Plea ¶ 46, *United States v. Kao*, No. 1:22-cr-00048 (D.D.C. Sept. 27, 2022); GC Br. at 5-6 (Society of Young Women Scientists and Engineers LLC).

<sup>26</sup> See, e.g., *United States v. Dynamic Visions, Inc.*, 220 F.Supp.3d 16, 25 (D.D.C. 2016) (piercing the corporate veil in False Claims Act suit by United States and stating “[t]he D.C. Circuit has found it appropriate to pierce the veil when the corporation, rather than being a distinct, responsible entity, is in fact the alter ego or business conduit of the person in control ” (citations omitted)); see also *Lewis v. Lewis Electric LLC*, 2021 WL 328914 at \*4 (D. Haw. Feb.1, 2021) (finding no alter ego liability and denying summary judgment in breach of contract suit, and stating “[t]o determine alter ego liability, the Court applies the law of the forum state . . . [and] the alter ego doctrine allows courts to look past a corporation’s formal existence to hold controlling individuals liable for corporate obligations when the corporation is the mere instrumentality or business conduit of another corporation or person” (internal citations omitted)); *Calipjo v. Purdy*, 439 P.3d 218-19 (Haw. 2019) (affirming breach of contract and unfair and deceptive acts or practices jury verdict against the single member and manager of a Hawaii LLC, who was also the sole shareholder, director, and officer of corporation, on the grounds he was the alter ego of each entity); *S.E.C. v. Elmas Trading Corp.*, 620 F. Supp. 231, 235 (D. Nev. 1985) (holding under “federal law, a corporate entity may be disregarded in the interests of public convenience, fairness, and equity, and in applying this rule the federal courts will look closely at the purpose of the federal statute involved to determine whether it places importance on the corporate form”) (citations omitted); *SEC v. Cooper*, 142 F.Supp.3d 302, 316-18 (D.N.J. 2015) (piercing the corporate veil when individual engaged in sham transactions that were nonexistent and misappropriated investor assets, and finding that the individual acted as the alter ego of his companies).

<sup>27</sup> See FEC’s Opp’n to Def.’s Mot. to Dismiss for Lack of Subject Matter Jurisdiction, *FEC v. Rivera*, No. 1:17-cv-22643 (S.D. Fla.), Dkt. No. 172 at 9-10 (Apr. 14, 2021) (asserting that “[f]or a matter like Rivera’s that the FEC generates, the agency is required to notify alleged violators when the Commission has found reason to believe they committed violations” and “when the General Counsel is recommending probable cause to believe they committed violations,” and citing 52 U.S.C. §§ 30109(a)(2) & (a)(3)).

<sup>28</sup> *Supra* note 22. Although Lum Kee and Chen each were sentenced only to 12-months of probation and fined just \$5,000, Lum Kee Judgment, Dkt. No. 78; Chen Judgment, Dkt. No. 80, they were nevertheless punished for their contributions in the name of another to Collins for Senator, a factor that we believe supports our recommendation that the Commission forgo the litigation risk of suing them.

1 vindicate the Commission's interests.<sup>29</sup> Under these unique circumstances, we do not believe it  
 2 would be prudent to expose the Commission to potential litigation risk associated with a novel  
 3 theory of pursuing individuals for the violation of a defunct LLC, especially where the  
 4 individuals themselves bear no personal liability under the Act for their conduct.

5 OGC is mindful that Respondent's violation is serious. According to Andy Winer, who  
 6 Kao retained in July 2019 as a lobbyist for Navatek, ■ Kao viewed Senator Collins as a "long-  
 7 term investment" who "would be — she could be really helpful to him if she moved up the ranks  
 8 in the Appropriations Committee." ■ Kao admitted in federal court that he acted with full  
 9 knowledge that making a contribution through a conduit is prohibited and later took steps to  
 10 conceal the violations of the Act in response to the publicized Complaint and the resulting  
 11 negative news coverage.<sup>32</sup> Nevertheless, we believe that prudential reasons, including the  
 12 Society's likely lack of assets, the criminal cases that have already held some of the individuals  
 13 behind the Society accountable, and the administrative challenges in connection with pursuing  
 14 Lam or Kao as legal and beneficial owners, dictate closing the case against Society. For the  
 15 aforementioned reasons, we recommend that the Commission take no further action against the  
 16 Society.<sup>33</sup>

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<sup>29</sup> Cert. ¶ 3.d (June 28, 2024); see GC Br. at 4-5 (detailing available information on Lam's role with the Society).

<sup>32</sup> See GC Br. at 10-12.

<sup>33</sup> Because of the nationwide injunction striking the Commission's help or assist regulation at 11 C.F.R. § 110.1(g)(2) governing contributions in the name of another, see *Fed. Election Comm'n v. Swallow*, 304 F. Supp. 3d 1113, 1118-19 (D. Utah 2018), we did not have opportunity to pursue Kao, Lum Kee, or Chen for their aiding and abetting PacMar in the making of the \$150,000 contribution in the name of the Society. We are hopeful that Congress will adopt the Commission's legislative recommendation that would allow us to pursue those who aid and abet the making of contributions in the name of another in future matters. See FEC Legislative Recommendations 2023 at 16 (Dec. 14, 2023).



**IV. RECOMMENDATIONS**

1. Take no further action against the Society of Young Women Scientists and Engineers LLC and close the file as to them; and
2. Approve the appropriate letter.

October 24, 2024

Date

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