

11044290269

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matters of)	
)	
MUR 6287)	CASE CLOSURES UNDER THE
LIBERATORE FOR CONGRESS COMMITTEE)	ENFORCEMENT PRIORITY
AND LOUIS G. BAGLIETTO, JR.,)	SYSTEM
AS TREASURER)	
PHILIP L. LIBERATORE)	
IRS PROBLEM SOLVERS, INC.)	
CERENZIA FOODS, INC.)	
NAMEPLATE, INC.)	
RTS LOGISTICS, INC.)	
)	
MUR 6288)	
LIBERATORE FOR CONGRESS COMMITTEE)	
AND LOUIS G. BAGLIETTO, JR.,)	
AS TREASURER)	
PHILIP L. LIBERATORE)	
IRS PROBLEM SOLVERS, INC.)	
)	
MEJR 6297)	
LIBERATORE FOR CONGRESS COMMITTEE)	
AND LOUIS G. BAGLIETTO, JR.,)	
AS TREASURER)	
PHILIP L. LIBERATORE)	
PHILIP L. LIBERATORE, CPA,)	
A PROFESSIONAL CORPORATION)	

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated _____

_____ are forwarded to

the Commission with a recommendation for dismissal. The Commission has determined that

pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket,

warrants the exercise of its prosecutorial discretion to dismiss these cases. The Office of General

Counsel scored MURs 6287, 6288 and 6297 as low-rated matters. These matters involve some of

1 the same complainants and respondents and allege similar violations. Thus, we have consolidated
2 the three matters into one General Counsel's Report.

3 **I. MUR 6287**

4 In this matter, Kerry Wilson filed a complaint against the Liberatore for Congress
5 Committee and Louis G. Baglietto, Jr., in his official capacity as treasurer [in all three MURs]
6 (collectively "the Committee"), Philip L. Liberatore¹, IRS Problem Solvers, Inc., Cerenzia Foods,
7 Inc., Nameplate, Inc., and RTS Logistics, Inc. Specifically, the complainant alleges that the
8 Committee: (1) filed its April 2010 Quarterly Report four days late; (2) accepted contributions from
9 three corporations totaling \$750; (3) received an in-kind contribution relating to a campaign bus or
10 made an expenditure for a bus, but failed to report the in-kind contribution or expenditure; and (4)
11 failed to report an in-kind corporate contribution from IRS Problem Solvers, Inc. relating to the use
12 of the corporation's stationery for a letter advocating Liberatore's election, which was mailed to
13 members of a local chamber of commerce.

14 In response to the complaint, the Committee explains that the April 2010 Quarterly Report
15 was late due to problems with filing the report electronically. Thus, the Committee filed the report
16 using an alternative method developed by the Commission. The method entailed mailing a compact
17 disk via United States Postal Service Express Mail to the Commission on April 15, 2010.
18 Subsequently, after communication with Commission staff, the Committee asserts that it filed the
19 April 2010 Quarterly Report electronically on April 19, 2010. In regard to the alleged corporate
20 contributions, the Committee acknowledges that the contributions were made by friends of the
21 candidate who were unaware of the prohibition on corporate contributions. The Committee also
22 notes that it complied with the Commission's regulations regarding possible corporate contributions

¹ Philip Liberatore was an unsuccessful Congressional candidate from California's 42nd Congressional District.

1 by depositing the contributions into its account, determining the legality of the contributions,
2 refusing to spend the funds, and ultimately returning the corporate contributions to the contributors.
3 The Committee points out that it reported (*i.e.*, through memo entries) each of the corporate
4 contributions as a “possible illegal source,” on its April 2010 Quarterly Report, and stated on the
5 report that the refunds for these contributions would be reported on its 2010 Pre-Primary Report,
6 due on May 27, 2010.²

7 With respect to the alleged contribution relating to the use of the campaign bus, the
8 Committee responds that the expenditure occurred on April 6, 2010, and would be reported on its
9 2010 Pre-Primary Report due on May 27, 2010. In regard to the alleged contribution from IRS
10 Problem Solvers, Inc., in connection with the Committee’s use of the corporation’s stationery, the
11 Committee states that IRS Problem Solvers, Inc. made no cash or in-kind contributions to the
12 Committee and the letter did not use the corporation’s logo or trademark to solicit funds. The
13 Committee also adds that the letter was sent to the restricted class of the Brea Chamber of
14 Commerce and is permissible under 11 C.F.R. § 114.3.

15 In addressing the issue of the late filing of the April 2010 Quarterly Report, this Office notes
16 that the Federal Election Campaign Act of 1971, as amended (the “Act”), states that each treasurer
17 of a committee must file a report of contributions and disbursements in accordance with
18 2 U.S.C. § 434. If a Committee files a quarterly report, it shall be filed no later than the 15th day
19 after the last day of each calendar quarter. 2 U.S.C. § 434(a)(2)(ii). Reports must be filed
20 electronically if a committee receives more than \$50,000 in contributions or makes expenditures of
21 this amount. 11 C.F.R. §§ 104.18(a)(i) and (ii). The Committee claims that it had problems filing

² Cerenzia Foods, Inc., one of the corporate respondents, stated that it was unaware that corporations were prohibited from making contributions to federal candidates, and noted that the Committee had promptly refunded the contribution. The other corporate respondents, Nameplate, Inc. and RTS Logistics, Inc., did not respond to the complaint.

1 its report electronically and, therefore, filed it by express mail. Subsequently, the Committee, after
2 communicating with Commission staff, resolved their technical problems and filed the report
3 electronically, on April 19, 2010. Thus, it appears that the Committee took the necessary steps to
4 ensure their report was timely posted to the public record. We note that the public record was
5 updated on October 5, 2010 in order to reflect that the report was technically received on April 15,
6 2010.

7 In regard to the corporate contributions received by the Committee, the Act provides that
8 corporations and labor unions are prohibited from making contributions in connection with a federal
9 election. *See* 2 U.S.C. § 441b. Contributions that “present genuine questions” as to whether they
10 were made by corporations may, within ten days of receipt, be deposited into the Committee’s
11 account or returned to the contributor. *See* 11 C.F.R. § 103.3(b)(1). If the contributions cannot be
12 determined to be legal, the treasurer shall refund the contributions within thirty days of receipt. *Id.*
13 Conversely, contributions that do not “present genuine questions” as to whether they were made by
14 corporations or other prohibited sources and, thus, prohibited on their face, should be refunded
15 within ten days of receipt. *Id.* The Committee determined that the contributions were prohibited, so
16 it refunded the three corporate contributions and disclosed the refunds on its 2010 Pre-Primary
17 Report.³ The Committee received the contributions from Cerenzia Foods, Inc., Nameplate, Inc.,
18 and RTS Logistics, Inc., on February 15, 2010, February 24, 2010, and February 21, 2010,
19 respectively, and refunded the three contributions on April 13, 2010. It is noted, however, that the

³ On July 27, 2010, the Reports Analysis Division (“RAD”) sent a Request for Additional Information (“RFAI”) to the Committee concerning its 2010 Pre-Primary Report because the Committee failed to include a purpose for each of the disbursements shown on its report. The report includes disbursements to Cerenzia Foods, Inc., Nameplate, Inc., and RTS Logistics, Inc., for \$250 each, which presumably represent refunds of their contributions. The RFAI requests the Committee to file an amended report to include the purpose of the disbursements by August 30, 2010. The Committee responded with an amended report dated August 31, 2010.

11044290272

1 Committee did not refund the corporate contributions within either the 10 day or 30 day time frame,
2 as required under 11 C.F.R. § 103.3(b)(1).⁴

3 In addressing the Committee's reporting of the expenditure concerning the campaign bus, it
4 appears that the expenditure occurred on April 6, 2010 and, therefore, should have been reported on
5 the Committee's 2010 Pre-Primary Report, which was filed on May 26, 2010 (and subsequently
6 amended on August 31, 2010). In the Committee's response, it stated that it intended to list the
7 expenditure on its 2010 Pre-Primary Report. We cannot determine from that report whether the
8 Committee disclosed this expenditure because the Committee failed to include sufficient details of
9 its disbursements on either its amended or original reports. See footnote 2.

10 Finally, in regard to the alleged corporate contribution by IRS Problem Solvers, Inc.,
11 relating to the letter to members of the local chamber of commerce, the Committee noted that it paid
12 the entire costs of the communication. Thus, the only issue is whether the Committee's use of the
13 IRS Problem Solvers, Inc. logo on the letterhead it used in the communication was permissible
14 under the Act and Commission regulations. Although it is possible that the presence of the
15 letterhead provided some tangible benefit to the Committee, the actual cost or intrinsic value of the
16 letterhead is unknown, but is likely insubstantial. Therefore, we believe that the use of Commission
17 resources are not further warranted in this case in light of the apparent *de minimis* benefit, if any,
18 received by the Committee through the placement of the corporation's letterhead on its mailer.

19

⁴ Based on the Committee's identification of the corporate contributors in its disclosure report, it appears that contributions were prohibited on their face. Therefore, the Committee should have refunded the contributions within ten days, as provided for in 11 C.F.R. §103.3(b)(1).

11044290273

II. MUR 6288

This matter is based on a complaint filed by Michael Cargile alleging that the Committee and Philip Liberatore used the campaign and campaign contributions for the purpose of promoting Liberatore's business, IRS Problem Solvers, Inc. in violation of the personal use provisions under 2 U.S.C. § 439a. Specifically, the complainant alleges that he received a letter from Philip Liberatore, President of IRS Problem Solvers, Inc. on the corporation's letterhead, dated February 24, 2010, which was mailed to 700 members of the local chamber of commerce. The letter states that Liberatore is running for Congress, describes his experience as a business owner, identifies the issues that comprise Liberatore's campaign platform, states that Liberatore hopes he receives their vote on June 8, 2010, and contains a disclaimer that the communication is paid for by the Committee.⁵ Accordingly, the complainant concludes that Liberatore may have used the letter to promote his business, because the California Secretary of State had denied Liberatore's request to be identified on the voting ballot for the congressional primary election as "IRS Problem Solver," instead of by his legal name.

In MUR 6287, the Committee responded that it paid for the entire cost of the mailer. In responding to the present complaint, the Committee maintains that the letter was a lawful attempt to gain the support of members of the Brea Chamber of Commerce for the candidate's candidacy for Congress, and not to solicit support for Liberatore's business, IRS Problem Solvers, Inc. Additionally, according to the Committee, the only purpose in identifying the company was to communicate empathy with other business owners. Furthermore, the Committee notes that the letter did not solicit funds for the Committee. Additionally, the Committee argues that numerous

⁵ In MUR 6287, this same letter was alleged to have been a corporate contribution to the Liberatore Committee.

1 federal candidates have used their professional occupations to express their qualifications for office,
2 and the Act does not prohibit the identification of an individual's business or occupation when
3 advocating for his election.

4 The letter does not seem to be for the purpose of promoting IRS Problem Solvers, Inc., the
5 business owned by Philip Liberatore, but rather to promote Liberatore's candidacy for Congress.
6 Specifically, the letter promotes his candidacy because it includes his campaign platform and asks
7 for the reader's vote on June 8, 2010. As noted in our analysis in MUR 6287, the actual cost or
8 intrinsic value of the letterhead is unknown, but is likely *de minimis*. Thus, any potential violation
9 arising from the inclusion of the corporate letterhead on the mailer, in this case, does not appear to
10 warrant the further use of Commission resources.

11 **III. MUR 6297**

12 This matter is based on a second complaint filed by Kerry Wilson (*see* MUR 6287) against
13 the Committee, Philip Liberatore and Philip L. Liberatore, CPA, a professional corporation. The
14 complaint alleges that the Committee accepted an impermissible in-kind corporate contribution
15 from Liberatore's corporation and the corporation made an impermissible in-kind contribution to
16 the Committee, in violation of 11 C.F.R. § 114.2(a). Furthermore, the complaint alleges that the
17 Committee failed to disclose this contribution on its April 2010 Quarterly Report. The complaint
18 also alleges that Philip Liberatore, CPA, a professional corporation, used its corporate resources to
19 facilitate contributions to the Committee. Specifically, the complaint alleges that the Committee
20 sent a campaign mailer to an unknown group of individuals on or about March 22, 2010, which
21 included a solicitation for campaign funds, and notes that the envelope that contained the mailer
22 identifies the Committee as the sender and includes a stamp mail permit number for postage that is

11044290275

1 the same mail permit number used by Liberatore's accounting firm.⁶ Furthermore, the complaint
2 alleges that the Committee's April 2010 Quarterly Report does not include any disbursement
3 concerning reimbursing Philip Liberatore, CPA for use of the mail permit.

4 In response to the complaint, the Committee states that corporate entities controlled by
5 Philip Liberatore, such as Philip Liberatore, CPA, and IRS Problem Solvers, Inc., have never made
6 contributions to the Committee. The Committee notes that it has reimbursed the two corporate
7 entities, as of June 4, 2010, for the fair market value of all the resources used by the Committee
8 during the course of the campaign, including postage and the use of the mail permit, in the amount
9 of \$1,320. Furthermore, the Committee points out that the payment was made within a reasonable
10 time and concurrent with the payment made to the postal vendor. Additionally, the Committee
11 states that the disbursements for the postage and mail permit were reported on its July 2010
12 Quarterly Report.

13 Corporations are prohibited from making a contribution in connection with any election to
14 political office, and a candidate or political committee is prohibited from knowingly accepting or
15 receiving any prohibited contribution. *See* 2 U.S.C. § 441b and 11 C.F.R. §§ 114.2(a) and (d).
16 Corporations are also prohibited from facilitating the making of contributions to a candidate, other
17 than to the separate segregated fund of the corporation. *See* 11 C.F.R. § 114.2(f). A corporation
18 does not facilitate the making of a contribution to a candidate if it provides goods or services in the
19 ordinary course of business as a commercial vendor.⁷ *Id.* An example of facilitating the making of
20 contributions is providing materials for the purpose of transmitting or delivering contributions, such

⁶ The complaint also provides a copy of an envelope mailed by Philip Liberatore, CPA in April 2010, with the contents of the envelope being unknown, which has the same mail permit number that the Committee used on the envelope containing the campaign mailer.

⁷ "Commercial vendor" is defined as "any persons providing goods and services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods and services." 11 C.F.R. § 116.1(c).

11044290276

1 as stamps and envelopes addressed to a candidate. *See* 11 C.F.R. § 114.2(f)(2)(ii). The use of the
2 mail permit, which allowed the Committee to mail the letter that solicited funds, is analogous to the
3 use of stamps as described in 11 C.F.R. § 114.2(f)(2)(ii). We note that the Committee responded to
4 this allegation by claiming that that use of the mail permit was permissible, since the cost was
5 reimbursed within a commercially reasonable time.⁸ *See* 11 C.F.R. § 114.2(f)(2)(i)(B) and
6 11 C.F.R. § 114.9(d). In this matter, it appears that Philip Liberatore, CPA, a professional
7 corporation, is an accounting firm, not a commercial vendor that provides stamps or a bulk mail
8 permit in the ordinary course of its business. However, because the Committee has reimbursed the
9 corporation for the use of its resources and the amount at issue is relatively small, we do not believe
10 further use of Commission resources is warranted in this matter.

11 **RECOMMENDATIONS**

12 1. In MUR 6287, the Office of General Counsel recommends that in furtherance of the
13 Commission's priorities and resources, relative to other matters pending on the Enforcement docket,
14 the Commission exercise its prosecutorial discretion and dismiss this matter, *see Heckler v. Chaney*,
15 470 U.S. 821 (1985), close the file and send the appropriate letters. Additionally, this Office
16 recommends that the Commission remind Cerenzia Foods, Inc., Nameplate, Inc., and RTS
17 Logistics, Inc., regarding the prohibition on making corporate contributions under 2 U.S.C. § 441b.
18 Also, this Office recommends reminding the Liberatore for Congress Committee and Louis G.
19

⁸ While the mailer is dated March 22, 2010, the Committee did not reimburse Philip Liberatore, CPA, a professional corporation, until June 4, 2010. Thereafter, the Committee reported the reimbursement on its July 2010 Quarterly Report.

1 Baglietto, Jr., in his official capacity as treasurer, about the prompt refund requirements under
2 11 C.F.R. § 103.3(b)(1).

3 2. In MUR 6288, the Office of General Counsel recommends that in furtherance of the
4 Commission's priorities and resources, relative to other matters pending on the Enforcement docket,
5 the Commission exercise its prosecutorial discretion and dismiss this matter, *see Heckler v. Chaney*,
6 470 U.S. 821 (1985), close the file and send the appropriate letters.

7 3. In MUR 6297, the Office of General Counsel recommends that in furtherance of the
8 Commission's priorities and resources, relative to other matters pending on the Enforcement docket,
9 the Commission exercise its prosecutorial discretion and dismiss this matter, *see Heckler v. Chaney*,
10 470 U.S. 821 (1985), close the file and send the appropriate letters.

11
12
13
14
15 Christopher Hughey
16 Acting General Counsel
17

18
19 11/30/10
20 Date

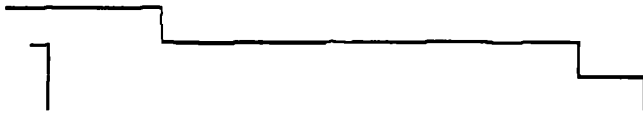
21 BY: _____

22 Gregory R. Baker
23 Special Counsel
24 Complaints Examination
25 & Legal Administration

26
27
28 Jeff S. Jordan
29 Supervisory Attorney
30 Complaints Examination
31 & Legal Administration
32
33

Case Closures Under EPS - MURs 6287, 6288 and 6297
EPS Closing Report
Page 11

1
2
3
4
5



11044290279