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BEFORE THE FEDERAL ELECTION COMMISSION

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FEDERAL ELECTION
COMMISSION

2011 FEB 14 PM 4:08

In the Matter of

2011 FEB 15 A 9:09

MUR 6353

JIM RENACCI FOR CONGRESS AND

LISA EVANGELISTA, AS TREASURER

STEEL EQUIPMENT SPECIALISTS

MORGAN ENGINEERING, INC.

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CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY SYTEM

CELA

SENSITIVE

GENERAL COUNSEL'S REPORT

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

13 and are deemed inappropriate for review by the Alternative Dispute Resolution Office are

14 forwarded to the Commission with a recommendation for dismissal. The Commission has

15 determined that pursuing low-rated matters, compared to other higher-rated matters on the

16 Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss these cases.

17 The Office of General Counsel scored MUR 6353 as a low-rated matter.

18 In this matter, complainant Steve Okey alleges that Jim Renacci for Congress¹ and Lisa

19 Evangelista, in her official capacity as treasurer ("the Committee"), accepted in-kind

20 contributions from "two corporations," Steel Equipment Specialists ("SES") and Morgan

21 Engineering, Inc. ("Morgan Engineering") (collectively, "respondents"), in violation of 2 U.S.C.

22 § 441b(a). Specifically, the complainant asserts that SES and Morgan Engineering, which are

23 allegedly identified on their respective websites as "corporations," distributed invitations to an

24 August 12, 2010 breakfast fundraiser for then-candidate Jim Renacci. The invitations are

25 alleged to have identified SES and Morgan Engineering as sponsors of the event and displayed

26 their corporate logos. In addition, the complainant states that the invitations included SES's

27 "corporate email address," as a point of contact and informed invitees that they could send their

28 contributions to SES prior to the event. Finally, the complainant asserts that the invitations

29 failed to include a disclaimer stating who had paid for them, as required by 2 U.S.C. § 441d(a).

¹ Mr. Renacci represents Ohio's 16th Congressional District.

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1 A copy of the invitation, which is attached to the complaint, lists "SES & Morgan Engineering"
2 as event sponsors, and states that contribution checks may be mailed to "SES, LLC."

3 Responses were filed by the Committee, SES and Morgan. First, on behalf of the
4 Committee, campaign manager James Slepian asserts that the Committee was not involved in
5 authorizing, creating, or reviewing the invitation to the August 12th campaign event. Further,
6 Mr. Slepian maintains that Morgan Engineering "had no involvement in the crafting or
7 distribution of the invitation." Rather, according to Mr. Slepian, Brooke McCarty, an SES
8 employee who is listed as a contact person on the invitation, created and distributed it.

9 Attached to the Committee's response as Exhibit A is what appears to be a notarized
10 letter from Ms. McCarty on SES letterhead. In the letter, Ms. McCarty, who is identified as
11 SES's Office Manager, Sales and Marketing, states that "the ownership of SES LLC," whom
12 she does not identify, "planned and organized" the fundraiser independently of the Renacci
13 campaign. As for the invitations, Ms. McCarty estimates that SES sent between 95 and 100 of
14 them and asserts that SES paid for all associated costs, including postage, paper, printing, and
15 staff time. She also states that SES did not receive any contributions designated for the Renacci
16 campaign, either before or after the event.² Finally, with respect to the SES logo on the
17 invitation, Ms. McCarty asserts that it is SES's practice to use its logo "on any activity
18 authorized by the management of the company." She does not address the inclusion of what
19 appears to be Morgan Engineering's logo on the invitation.

20 In their respective letters, both Ms. McCarty and Mr. Slepian allude to SES's status as a
21 "limited liability company," not a corporation. Attached to their responses as Exhibit B are

² We were unable to determine from the Committee's 2010 October Quarterly Report the total amount of funds that might have been raised in connection with the August 12th breakfast event. However, an Internet news story about this controversy reports that the Renacci campaign changed the event from being a "fundraiser" to being a "business roundtable," at which contributions were not accepted. See <http://www.cantonrep.com/news/x297208584/Renacci-changes-event-but-FEC-complaint-will-be-pursued>

1 copies of what appear to be SES's Articles of Organization, which describe SES as a "limited
2 liability company."

3 Second, SES filed a separate response in which it asserts that it has been registered with
4 the state of Ohio as a "limited liability company" since 1999, and emphasizes that the invitation
5 appended to the complaint refers to "SES, LLC." In addition, as noted in an accompanying
6 affidavit by its Chief Financial Officer, Scott Stedman, SES states that it has elected to be taxed
7 as a partnership, rather than as a corporation, for federal income tax purposes; therefore, SES
8 asserts that, pursuant to 11 C.F.R. § 110.1(g)(2), it is eligible to make federal contributions.
9 Finally, according to SES, the amount expended by SES on the fundraising event was
10 "relatively minor in nature." Attached to the response and affidavit, and labeled as "Exhibit A,"
11 is a list of what are described as "SES, LLC Roundtable Expenses" for the August 12th event,
12 including the cost of paper, postage, and staff time, for a total of \$719.94. A contribution for
13 this amount is reflected on the Committee's 2010 October Quarterly Report and is attributed to
14 Mr. Stedman.

15 Third, Morgan Engineering filed a response in which it asserts that it "made no
16 expenditures of corporate funds or allocation of corporate resources" in connection with the
17 August 12th fundraiser. Morgan Engineering further states that its "logo was added to the
18 announcement of the event without our prior knowledge or consent."

19 The Commission's disclaimer requirements apply, *inter alia*, to public communications
20 that solicit contributions, *see* 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a)(3). With respect to
21 mailings, "public communications" are defined as "more than 500 pieces" of identical or
22 substantially similar mail distributed within a 30-day period, *see* 11 C.F.R. §§ 100.26 and 27.
23 As it appears that no more than 100 invitations to the August 12th event were mailed, the
24 invitations did not constitute "public communications" and did not require a disclaimer

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1 identifying who had paid for them. With respect to the allegations pertaining to corporate
2 contributions, Morgan Engineering states that its logo, which is displayed on the invitation in
3 potential violation of 2 U.S.C. § 441b(a), appeared without its authorization.

4 In addition, SES, a limited liability company that is taxed as a partnership for federal
5 income tax purposes, is permitted to make contributions to political committees, *see* 11 C.F.R.
6 § 110.1(g), assuming that SES informed the Committee that it was eligible to make the
7 contribution at issue, as required by 11 C.F.R. § 110.1(g)(5). However, we note that, according
8 to Commission regulations, contributions by LLCs that are taxed as partnerships are to be
9 attributed to the partnership and to each partner either in direct proportion to his or her profits,
10 or by agreement of the partners, as set forth in 11 C.F.R. §§ 110.1(e) and 110.1(g)(2). The
11 Committee's 2010 Quarterly Report reported that the entire \$719.54 contribution was attributed
12 to Mr. Stedman. After a review of the available information, even assuming that Mr. Stedman
13 is a member of SES, we are unable to ascertain from the public record, whether the
14 requirements of 11 C.F.R. §§ 110.1(e) and 110.1(g)(2) were fulfilled, including whether there
15 are other members among whom the contribution should have been allocated, or whether an
16 agreement existed whereby the contribution was attributed solely to Mr. Stedman. Thus, it is
17 possible that the contribution was properly attributed to Mr. Stedman.


18 Accordingly, in light of the low dollar amount associated with the contribution, and in
19 furtherance of the Commission's priorities and resources relative to other matters pending on the
20 Enforcement docket, the Office of General Counsel believes that the Commission should
21 exercise its prosecutorial discretion and dismiss this matter. *See Heckler v. Chaney*, 470 U.S.
22 850 (1985).

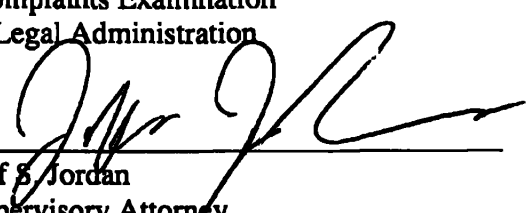
RECOMMENDATIONS

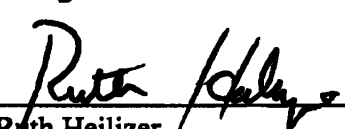
The Office of General Counsel recommends that the Commission dismiss MUR 6353,
close the file, and approve the appropriate letters.

Christopher Hughey
Acting General Counsel

2/4/11
Date

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