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FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6572
DATE COMPLAINT FILED: May 7, 2012
DATE OF NOTIFICATIONS: May 14, 2012
LAST RESPONSE RECEIVED: July 17, 2012
DATE ACTIVATED: August 19, 2013

EXPIRATION OF SOL: February 1, 2017 (Earliest)
April 16, 2017 (Latest)
ELECTION CYCLE: 2012

MUR: 6606
DATE COMPLAINT FILED: July 11, 2012
DATE OF NOTIFICATIONS: July 18, 2012
LAST RESPONSE RECEIVED: August 15, 2012
DATE ACTIVATED: August 19, 2013

EXPIRATION OF SOL: February 20, 2017 (Earliest)
April 16, 2017 (Latest)
ELECTION CYCLE: 2012

MUR: 6676
DATE COMPLAINT FILED: October 31, 2012
DATE OF NOTIFICATIONS: February 28, 2013
LAST RESPONSE RECEIVED: November 11, 2013
DATE ACTIVATED: August 19, 2013

EXPIRATION OF SOL: July 16, 2017 (Earliest)
October 16, 2017 (Latest)
ELECTION CYCLE: 2012

COMPLAINANT: Nevada State Democratic Party

RESPONDENTS: Tarkanian for Congress (f/k/a Danny Tarkanian for Congress) and Chrissie Hastie in her official capacity as treasurer (6572, 6606, and 6676)
DeWayne Zinkin (6572 and 6606)
Zinkin Entertainment LLC (6572 and 6606)
Haig's Quality Printing (6572 and 6606)
B.I. Porter Commercial & Residential Properties (6572)
Mason Contractors Association of America (6572)

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	Nostrebor Music & Visual Arts (6572)
	TLC, a California Partnership (6572)
	AM Power Systems (6606)
	Cholakian Investments, Inc. (6606)
	Attorneys' Investigative Consultants (6606)
	The Rogich Communications Group (6606)
	Bill E. Carlson (6676)
	Fine Properties, LLC (6676)
	Herbert's Refrigeration Company (6676)
	Prem Investments, LLC[1] (6676)
RELEVANT STATUTES AND REGULATIONS:	2 U.S.C. § 431(26)(A)
	2 U.S.C. § 434(b)(2)(G)
	2 U.S.C. § 434(b)(3)(A)
	2 U.S.C. § 434(b)(4)(A)
	2 U.S.C. § 434(b)(8)
	2 U.S.C. § 441a(a)
	2 U.S.C. § 441a(f)
	2 U.S.C. § 441b(a)
	11 C.F.R. § 100.33
	11 C.F.R. § 103.3(b)(1)-(2)
	11 C.F.R. § 104.3(a)(3)
	11 C.F.R. § 104.3(b)(2)(i)
	11 C.F.R. § 104.3(b)(4)(A)
	11 C.F.R. § 104.3(d)
	11 C.F.R. § 104.7(a)-(b)
	11 C.F.R. § 104.11
	11 C.F.R. § 110.1(b), (c), (g)
INTERNAL REPORTS CHECKED:	Disclosure reports
FEDERAL AGENCIES CHECKED:	None

I. INTRODUCTION

These matters involve alleged reporting and other violations of the Federal Election Campaign Act of 1971, as amended, (the "Act") by Tarkanian for Congress and Chrissie Hastie in

[1] The Complaint in MUR 6676, the Response submitted by the candidate on behalf of Tarkanian for Congress, and the original 2012 October Quarterly Report all refer to Primm Investments LLC, but the name "Primm" appears to be in error. The name of this entity is correctly spelled Prem Investments, LLC, as indicated in the Committee's Second Amended 2012 October Quarterly Report (June 3, 2013). For the sake of clarity, we refer to this entity as Prem throughout this report.

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her official capacity as treasurer[2] (the "Committee"), Danny Tarkanian's designated principal campaign committee in the 2012 election in Nevada's Fourth Congressional District. Tarkanian won the Republican primary on June 12, 2012, but lost the general election on November 6, 2012. On July 15, 2013, October 15, 2013, January 31, 2014, and April 14, 2014, the Committee filed Termination Reports.[3]

The Nevada State Democratic Party filed three Complaints during the 2012 election cycle alleging that the Committee: (1) failed to report or misreported an outstanding loan from the candidate, alleging further that those funds may not have been eligible to be loaned; (2) failed to properly report approximately $250,000 in operating expenditures; (3) failed to report accurately the attributions for permissible contributions from limited liability companies ("LLCs"); (4) accepted impermissible corporate contributions and failed to timely refund such contributions; (5) accepted excessive contributions; and (6) misreported various other contributions.

Although a number of allegations present an apparent violation of the Act, we recommend that the Commission exercise its prosecutorial discretion to dismiss those allegations due to the modest amounts in violation and the Committee's remedial efforts. *See Heckler v. Chaney*, 470 U.S. 821 (1985). With respect to the remaining allegations, we recommend that the Commission find no reason to believe that there was a violation of the Act for the reasons provided below.

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[2] Chrissie Hastie was identified as treasurer in the Committee's most recent Statement of Organization, filed with the Commission on June 7, 2013, although Judith Flynn served as treasurer when the violations alleged in MURs 6576 and 6606 occurred. Robert T. Beers succeeded Flynn as treasurer and served as treasurer when the violations alleged in MUR 6676 occurred. Tarkanian himself has signed all of the disclosure reports submitted by the Committee since April 2013.

[3] The Office of General Counsel notified the Committee via letters dated August 14, 2013 and February 12, 2014, that it was not eligible for termination because of the ongoing enforcement matters. Except for the resolution of these matters, the Committee meets the requirements for termination in the 2013-2014 Reports Analysis Division ("RAD") Review and Referral Procedures.

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II. FACTUAL AND LEGAL ANALYSIS

A. Reporting Errors Related to Tarkanian's Loans to the Committee

The Complaint in MUR 6572 alleges that the Committee misreported a loan that Tarkanian made to his Committee in violation of 2 U.S.C. § 434(b)(8) because the Committee's Amended 2012 April Quarterly report, filed on April 16, 2012 ("First Amended 2012 April Quarterly Report"), shows only $1,902.10 in loans from the candidate even though Tarkanian had loaned over $260,000 to the Committee and had publicly stated that most of the loan remained outstanding. Compl. at 2-3, MUR 6572 (May 7, 2012). The MUR 6572 Complaint also notes that the Committee's 2011 Year-End Report states that $219,304.38 in loans from the candidate were forgiven, which was inconsistent with those public statements. *Id.* at 2. Additionally, a related allegation in the MUR 6606 Complaint alleges that the Committee violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(b)(4)(A) by underreporting its total election cycle to-date operating expenditures and disbursements in the Second Amended 2012 April Quarterly Report, filed on May 31, 2012 ("Second Amended 2012 April Quarterly Report"). Compl. at 2, MUR 6606 (July 11, 2012). Finally, in MUR 6676, the Complaint alleges that the Committee failed to disclose loans on Schedule C of its reports in violation of 11 C.F.R. § 104.11. Comp. at 2, MUR 6676 (Oct. 31, 2012).

In response, the Committee admits that its 2011 Year-End Report erroneously reported that the loans made by the candidate in the previous reporting periods had been forgiven. Comm. Resp. at 4, MUR 6572 (June 29, 2012). Flynn, who became the Committee's treasurer after the 2011 Year-End Report was filed, erroneously assumed that the 2011 Year-End Report accurately disclosed that the candidate's loans to the Committee had been forgiven, and therefore included in the 2012 April Quarterly Report only the loans from the candidate that the Committee incurred

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1 during the reporting period. *Id.* at 4-5; Decl. of Danny Tarkanian ¶ 8 (June 27, 2012) (attached to
2 Comm. Resp., MUR 6572) ("Tarkanian Decl."); Decl. of Judith Flynn ¶ 6 (June 27, 2012)
3 (attached to Comm. Resp., MUR 6572) ("Flynn Decl."). The Committee did not report any of the
4 previously outstanding loans from the candidate in the First Amended 2012 April Quarterly
5 Report, but subsequently filed amended reports to reflect them.[4] *See* Comm. Resp. at 5, MUR
6 6572; Flynn Decl. ¶¶ 6-7. In the Committee's Second Amended 2012 April Quarterly Report,
7 however, the amount of the previously incurred candidate loan ($250,000) was erroneously
8 included in the Column B (Election Cycle-to-Date) total of operating expenditures. *See* Comm.
9 Resp. at 2, MUR 6606 (Aug. 7, 2012). The Committee asserts that this error was caused by a
10 glitch in the reporting software, and that the Committee did not incur any expenditures that were
11 not "fully and timely disclosed." *Id.*

12 The candidate subsequently forgave $250,000 of the loans, as reflected in Schedule B of
13 the 2012 July Quarterly Report, filed on July 15, 2012. However, the Complaint in MUR 6676,
14 filed on October 31, 2012, alleges that the Committee violated 11 C.F.R. § 104.11 when it failed to
15 report in Schedule C both the candidate's $250,000 loan to the Committee before he forgave it,
16 and that the loan was forgiven. Compl. at 2, MUR 6676. In addition, the Complaint alleges that
17 the Committee failed to report in Schedule C that on July 11, 2012, the Committee repaid the
18 candidate's loan of $53,755.83. *Id.*

[4] In the Second Amended 2012 April Quarterly Report, the Committee reported the total amount of the candidate's loans to the Committee of $262,662.87, including $1,902.10 that the candidate loaned during the reporting period, and $260,760.77 (with immaterial discrepancies) that the candidate had loaned to the Committee between June 30, 2010 and December 1, 2011. Second Amended 2012 April Quarterly Report at 131-161 (May 31, 2012). All of those loans appear to have been previously disclosed on the Committee's prior reports covering the periods in which they were incurred.

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The Committee disputes that a Schedule C was required for the $250,000 loan because the candidate made the loan two years before the 2012 July Quarter and the debt was forgiven during that reporting period, such that no debt was owed at the end of the reporting period. Comm. Resp. at 2, MUR 6676 (Feb. 7, 2013). And although the candidate's $53,755.83 loan to the Committee and the Committee's subsequent repayment of this loan were disclosed in the Committee's 2012 July Quarterly and First Amended 2012 October Quarterly[5] reports, respectively, the Committee admits that due to a software error, it was not reported in Schedule C. *Id.* This omission was rectified on June 3, 2013, when the Committee filed with the Commission an Amended 2012 July Quarterly Report and a Second Amended 2012 October Quarterly Report in response to a May 7, 2013 Request for Additional Information from RAD.

Under the Act and Commission regulations, a political committee is required to report debts continuously, including loans from the candidate, until they are extinguished. *See* 2 U.S.C. §§ 434(b)(2)(G), 434(b)(8); 11 C.F.R. §§ 104.3(a)(3)(vii)(B), 104.3(d), 104.11(a). A political committee is also required to report all operating expenses in the reporting period in which they were incurred and during the election cycle. *See* 2 U.S.C. § 434(b)(4)(A); 11 C.F.R. § 104.3(b)(2)(i).

Based on the record here, the Committee did not comply with 2 U.S.C. §§ 434(b)(2)(G), 434(b)(8), and 11 C.F.R. §§ 104.3(a)(3)(vii)(B), 104.3(d), and 104.11 because it failed to report accurately and timely its outstanding debt to the candidate, and it also did not comply with 2 U.S.C. § 434(b)(4)(A) and 11 C.F.R. § 104.3(b)(2)(i) because it failed to report accurately its operating expenditures. Nonetheless, because the Committee actually disclosed the amounts of the

[5] The Committee filed an Amended 2012 October Quarterly Report on October 29, 2012, fourteen days after it filed the original report.

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loans during the periods in which they were originally incurred, amended its reports[6] to correct its errors, and misreported the loan as an operating expenditure due to an inadvertent error, the pursuit of these violations does not merit further use of Commission resources. *See* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,545-46 (Mar. 16, 2007). Accordingly, we recommend that the Commission exercise its prosecutorial discretion to dismiss these allegations, and caution the Committee for its failure to disclose accurately candidate loans to the Committee. *See Heckler*, 470 U.S. at 831.

B. Tarkanian Forgave Loans of $250,000 and $40,000

The Complaint in MUR 6676 questions whether Tarkanian was permitted under the Act to loan an additional $40,000 to the Committee, and to forgive his $250,000.07 loan to the Committee in June 2012. Compl. at 3, MUR 6676. The Complaint alleges that both the additional loan and forgiveness of the $250,000 loan were impermissible because "[o]n May 22, 2012, before Mr. Tarkanian forgave the $250,000.07 loan and made the additional $40,000 loan, the FDIC obtained a judgment against Mr. Tarkanian in the United States District Court for the Southern District of California in the amount of $16,995,005.17." *Id.* The Complaint reasons that if Tarkanian "did not have sufficient funds to pay the FDIC judgment, then it is by no means clear

[6] The Committee filed a Second Amended 2012 April Quarterly Report on May 31, 2012 following receipt of the Complaint in MUR 6572. On June 3, 2013, the Committee filed an Amended 2012 July Quarterly Report, and a Second Amended 2012 October Quarterly Report to address the errors relating to the candidate's loans.

that Mr. Tarkanian had title or an equitable interest in the funds at issue under Nevada law."[7] *Id.* If Tarkanian did not have title to the funds, the Complaint alleges, "then federal law would have barred him from forgiving the $250,000.07 loan or making the additional $40,000 loan." *Id.* The Complaint identifies no provision of the Act that it alleges that Tarkanian or the Committee violated. Nonetheless, if the FDIC had title to the funds when the candidate forgave his loans to the Committee, the Committee arguably may have violated 2 U.S.C. §§ 441a and 441b(a) by accepting an excessive contribution from the FDIC, a corporation organized by authority of a law of Congress.

The Committee responds that Tarkanian loaned his U.S. Senate campaign $250,000 before any lawsuit was ever filed, and at the time of the forgiveness the lawsuit was still in progress. Comm. Resp. at 2, MUR 6676. The Committee's disclosure reports corroborate that assertion. *See, e.g.*, 2010 July Quarterly Report at 3 (July 15, 2010) (disclosing loan from the candidate of $66,127.12 during the period covered by the report and a total of $283,547.89 of loans from the candidate during the election cycle to-date).

The Act permits candidates to loan personal funds to their campaigns and to forgive those loans. *See, e.g.*, 2 U.S.C. § 434(b)(2)(G) (requiring disclosure of loans made by a candidate); 11 C.F.R. § 116.8 (regulations applicable to forgiving debts). The Act and Commission regulations define a candidate's "personal funds" to include "any asset that, under applicable State

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[7] The Complaint cites Nev. Rev. Stat. 112.190(1), which provides that:

> A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

Compl. at 3, MUR 6676.

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law . . . the candidate had legal right of access to or control over, and with respect to which the candidate had . . . legal and rightful title[.]" 2 U.S.C. § 431(26)(A); 11 C.F.R. § 100.33(a).

The record establishes that Tarkanian permissibly loaned his personal funds to the Committee and forgave that debt. Under Federal Rule of Civil Procedure 62(a), a judgment of the District Court becomes final and enforceable ten days after judgment is entered. Fed. R. Civ. P. 62(a). Pending an appeal, however, the judgment is enforceable in another judicial district only if the court that issued the judgment issues an order for good cause and the judgment is "registered" in the other district. 28 U.S.C. § 1963.

To be sure, the May 22, 2012 judgment in the Southern District of California was entered against Tarkanian before he forgave the $250,000.07 loan on June 13, 2012 and made the additional loan of $40,000 to the Committee on June 29, 2012. Regardless, Tarkanian had timely filed his Notice of Appeal on June 21, 2012, so the judgment by the Southern District of California was immediately enforceable only in that district. Because Tarkanian's assets were not located in the Southern District of California, the judgment was not enforceable against Tarkanian until November 26, 2012, when the court registered the judgment in the districts where Tarkanian's assets are located, the District of Nevada and the Eastern District of California. *See* Registration Order, *FDIC v. Tarkanian*, 3:10-cv-00980 (Nov. 26, 2012); Order, *FDIC v. Tarkanian*, 3:10-cv-00980 (Nov. 26, 2012).

Therefore, in June 2012, the funds whose repayment Tarkanian forgave and the additional loan he made to the Committee were Tarkanian's "personal funds," as defined by the Act and Commission regulations. Tarkanian could thereby forgive in June 2012 the repayment of the $250,000.07 loan, and the Committee could accept the $40,000 additional loan from the candidate. Accordingly, we recommend that the Commission find no reason to believe that the Committee

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accepted a prohibited or excessive contribution in violation of 2 U.S.C. §§ 441a(f) or 441b(a) with respect to these two transactions.

C. The Committee's Attributions for LLC and Partnership Contributions

The Complaint in MUR 6572 alleges that the Committee failed to include the necessary attributions for contributions from a number of LLCs and TLC, a California partnership. Compl. at 2, MUR 6572.

Under Commission regulations, LLCs are treated consistently with their tax treatment, and therefore if the LLC elects to be treated for federal tax purposes as a partnership rather than as a corporation, it may make contributions to political committees within the limits of the Act. *See* 11 C.F.R. §§ 110.1(e), (g). When a partnership or a multi-member LLC that elects to be taxed as a partnership (or makes no election) contributes to a federal committee, it must provide the committee with information about how the contribution should be attributed to its partners or members, and affirm that it is eligible to make the contribution. 11 C.F.R. §§ 110.1(e), (g)(5). Further, the treasurer of an authorized committee such as Tarkanian for Congress must file reports of receipts that include, *inter alia*, "the identification of each person (other than a political committee) who makes a contribution . . . , whose contribution or contributions have an aggregate amount or value in excess of $200 within the . . . election cycle . . . together with the date and amount of any such contribution." 2 U.S.C. § 434(b)(3)(A). Where a treasurer does not have the requisite information, the reporting requirements will be deemed to have been met when the treasurer shows that "best efforts" have been used to obtain, maintain and submit the required information. 11 C.F.R. § 104.7(a). Best efforts for contributor identification require at least one attempt by the treasurer, either in writing or orally but documented in writing, to obtain the missing information within 30 days of the receipt of the contribution. *Id.* § 104.7(b)(2).

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1 Here, the Committee allegedly failed to report the attribution for 14 LLC and partnership
2 contributions totaling $17,950, and also failed to show that its treasurer made best efforts to obtain
3 the required attribution information for those contributions. Compl. at 2, MUR 6572. The
4 Committee explained in its Response that in the First Amended 2012 April Quarterly Report — the
5 report at issue in MUR 6572 — the Committee included the appropriate attributions for two of the
6 LLCs, and that the Committee's filing software failed to generate the proper attributions for the
7 other LLCs and partnership, even though the Committee entered the member attributions into the
8 software. Comm. Resp. at 3, MUR 6572; Flynn Decl. ¶¶ 15-17. The Committee later included in
9 its Second Amended 2012 April Quarterly Report and Third Amended 2012 April Quarterly
10 Report, filed with the Commission on June 3, 2013, the appropriate attributions for all of the LLCs
11 and the partnership at issue in MUR 6572. *See* Flynn Decl. ¶¶ 16-17; Comm. Resp. at 3, MUR
12 6572. The Committee also stated in its Response that all of the contributions at issue complied
13 with the Act's limits and requirement that each contributing LLC is taxed as a partnership.[8]
14 Comm. Resp. at 3-4, MUR 6572. In addition, TLC verified in its Response that the contribution
15 was permissibly made by the partnership through its managing partner. TLC Resp., MUR 6572
16 (May 18, 2012).

17 Because the Committee timely reported the contributions, and amended its reports to
18 include the appropriate attributions for the contributions from LLCs and partnerships, we conclude
19 that the scope of this violation would not merit the further use of Commission resources. *See* 72

[8] As a result of the Complaint's allegations in MUR 6572, the Committee adopted policies and procedures to prevent future violations, including procedures for vetting all contributions from businesses or organizations and reviewing draft disclosure reports. Comm. Resp. at 7-8 (MUR 6572); Tarkanian Decl. Ex. A (revised contribution form, which includes statement that contributions by corporations are prohibited and requests occupation and employer information), Ex. B (first page of new contribution screening policy), and Ex. C (report completion checklist).

Fed. Reg. at 12,545-46. Accordingly, we recommend that the Commission exercise its prosecutorial discretion to dismiss these allegations with respect to the Committee, but include a cautionary notification in the closing letter to the Committee regarding the Act's reporting requirements for LLC and partnership contributions. *See Heckler*, 470 U.S. at 831. Also, because TLC's contribution appears to have been permissibly made through a partnership, we recommend that the Commission find no reason to believe that TLC violated 11 C.F.R. § 110.1(e).

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D. The Committee Erroneously Reported Contributions from Political Committees and Persons Other than Political Committees

The Complaint in MUR 6676 alleges that the Committee violated 11 C.F.R. § 104.3(a)(3)(i), (iv)[9] when, in its 2012 October Quarterly Report, it reported contributions from political committees on Line 11(a) (the line reserved for contributions from persons other than political committees), and reported contributions from persons other than political committees on Line 11(c) (the line reserved for contributions from political committees). Compl. at 3-4, MUR 6676. The Complaint alleges six such contributions in each group, totaling $7,500 of contributions from political committees and $5,500 of contributions from persons other than political committees, or 12 contributions in all, totaling $13,000. *Id.* at 4.

In its Response, the Committee admits these violations, but claims that this mistake "has since been corrected." Comm. Resp. at 2, MUR 6676 (Feb. 7, 2013) (specifically referring to "Amendment 2 to the October 15, 2012 Quarterly Report."). But in fact, the Committee did not correct these reporting discrepancies until four months *after* filing its Response. *See* Second Amended 2012 October Quarterly Report (June 3, 2013).

[9] The Complaint cites to 11 C.F.R. § 104.3(a)(2)(i), (ii), but this provision applies to "[c]ategories of receipts for all political committees other than authorized committees." Because the Committee is Tarkanian's principal campaign committee, the operative provision is 11 C.F.R. § 104.3(a)(3), which applies to "[c]ategories of receipts for authorized committees."

Commission regulations require authorized committees to disclose in their reports the total amount of receipts received during the reporting period and during the election cycle in each of various categories, including contributions from persons other than any committees and contributions from political party committees and other committees. 11 C.F.R. § 104.3(a)(3)(i), (iv). Although the Committee did not amend its 2012 October Quarterly Report to correct these errors until June 3, 2013, we recommend that the Commission exercise its prosecutorial discretion to dismiss with caution the Committee's violation of 11 C.F.R. § 104.3(a)(3) because the contributions themselves were timely reported and were relatively small in number and amount. *See Heckler*, 470 U.S. at 831.

E. The Committee's Alleged Prohibited Corporate Contributions

The Complaints in MURs 6572 and 6676 allege that the Committee violated 2 U.S.C. § 441b(a) by accepting a total of $6,000 in prohibited corporate contributions. Compl. at 1-3, MUR 6572; Compl. at 6, MUR 6676. The Complaint in MUR 6572 alleges that the Committee accepted a $500 contribution from Haig's Quality Printing ("Haig's"), a corporation, and a total of $3,000 in contributions from three other business entities that "may" be corporations: a $500 contribution from B.I. Porter Commercial & Residential Properties ("BI Porter"); a $1,500 contribution from Mason Contractors Association of America ("Contractors"); and a $1,000 contribution from Nostrebor Music & Visual Arts ("Nostrebor"). *See* Compl. at 1, MUR 6572. According to the Complaint in MUR 6676, the Committee also accepted a $250 contribution from Herbert's Refrigeration Company ("Herbert's"), a $250 contribution from Fine Properties LLC ("Fine Properties"), and a $2,000 contribution from Prem Investments, LLC ("Prem"), which "may" have violated 2 U.S.C. § 441b *if* these entities were LLCs that elected to be taxed as corporations. *See* Compl. at 6, MUR 6676.

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1 Political committees may not knowingly accept or receive contributions made by
2 corporations. 2 U.S.C. § 441b. As previously discussed, political committees may accept
3 contributions from partnerships and certain LLCs. *See* 11 C.F.R. §§ 110.1(e) (partnership
4 contributions), 110.1(g) (LLC contributions). Political committees may also accept contributions
5 from sole proprietorships, so long as the sole proprietor is permitted to make a contribution under
6 the Act. *See* Advisory Op. 1980-89 (Coelho) at 2 (a contribution by a sole proprietorship is treated
7 as a contribution by the individual who is the sole proprietor of the business); Advisory Op.
8 1989-21 (Create-a-Craft) at 2 (sole proprietors are subject to the limitations of 2 U.S.C. § 441a,
9 rather than the prohibition set out at 2 U.S.C § 441b).

10 Based on the record here, it appears that the Committee did not accept or receive prohibited
11 corporate contributions with respect to BI Porter, Contractors, Nostrebor, Fine Properties, or
12 Herbert's because they are not corporations or LLCs taxed as corporations. *See* BI Porter Resp.,
13 MUR 6572 (June 13, 2012) (though account bears the name "B.I. Porter Commercial and
14 Residential Properties," it is a personal account containing personal funds for personal use, not the
15 funds of a corporation, LLC, or partnership); Contractors Resp., MUR 6572 (June 4, 2012)
16 (donation lawfully made by corporation's PAC); Nostrebor Resp., MUR 6572 (June 1, 2012)
17 (contribution from sole proprietorship); Fine Properties Resp., MUR 6676 (Mar. 7, 2013) (entity is
18 treated as a partnership for federal tax purposes); Herbert's Resp., MUR 6676 (Nov. 11, 2013)
19 (entity is a sole proprietorship, not a corporation); Comm. Resp. at 5-6, MUR 6572 (Contractors'
20 donation was from its PAC, not the corporation; Committee report noted that BI Porter was not a
21 corporation; Nostrebor is a sole proprietorship); Flynn Decl. ¶ 12; Comm. Resp. at 3-4, MUR 6676
22 (Fine and Prem are LLCs that elected to be taxed as partnerships; Herbert's is a sole
23 proprietorship). In addition, the record includes no information to corroborate the allegation that

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Prem may be an LLC taxed as a corporation.[10] Lastly, although the Committee initially accepted a prohibited corporate contribution of $500 from Haig's, it subsequently refunded the contribution. Comm. Resp. at 5, MUR 6572; Haig's Resp., MUR 6572 (May 29, 2012).

Based on the information from the Responses and the Committee's amendments, we recommend that the Commission find no reason to believe that BI Porter, Contractors, Nostrebor, Fine Properties, Herbert's, or Prem violated 2 U.S.C. § 441b(a). In addition, although it appears that Haig's made, and the Committee accepted a prohibited corporate contribution of $500 in violation of 2 U.S.C. §§ 441b(a) and 441a(f), respectively, due to the amount in violation, pursuit of these violations does not merit the further use of Commission resources. *See* 72 Fed. Reg. at 12,545-46. Accordingly, we recommend that the Commission exercise its prosecutorial discretion to dismiss these allegations, and include a cautionary notification in the closing letters to the Committee and Haig's regarding the Act's prohibition on accepting or receiving and making corporate contributions. *See Heckler*, 470 U.S. at 831.[11]

F. The Committee Failed to Timely Refund Prohibited Corporate Contributions Totaling $1,700

The Complaint in MUR 6606 alleges that the Committee failed to refund within the 30 day period permitted by 11 C.F.R. § 103.3(b)(1) five corporate contributions totaling $1,710 from Haig's ($500), AM Power Systems ("AM Power") ($100), Cholakian Investments, Inc. ("Cholakian") ($100), Attorneys' Investigative Consultants ("Investigative Consultants") ($10),

[10] Because Prem did not submit a Response, we were unable to verify the Committee's claim in its Response that Prem elected to be treated as a partnership for federal tax purposes. *See* Comm. Resp. at 3-4, MUR 6676. But no conflicting information is available on the public record. Although Prem is listed in the Nevada Secretary of State's business registry (https://nvsos.gov/sosentitysearch/) as a domestic limited liability company incorporated in 2009, no documents are available regarding its tax treatment.

[11] Our recommendation regarding the related reporting violations for the Committee's failure to report the appropriate attributions for the contributions from Fine Properties and Prem, both LLCs, is *supra*, Section C.

and The Rogich Communications Group ("Rogich") ($1,000). Compl. at 1-2, MUR 6606; Second Amended 2012 April Quarterly Report at 43, 89, 130 (May 31, 2012); 2012 Pre-Primary Report at 46-47 (May 31, 2012).

Each of these five contributors responded to the Complaint in MUR 6606. Cholakian's Response, submitted by Kingdom Consulting Inc., asserts that Cholakian's registered agent and principal, Edward Cholakian, accidentally used a corporate credit card to make a $200 contribution but that it "was never charged" and the Committee "refused the charge." Cholakian Resp. at 1, MUR 6606 (July 27, 2012). Investigative Consultants responds that its owner made the $10 contribution and that the funds for the contribution appear to have been deducted from Investigative Consultants' bank account, but that Investigative Consultants is a sole proprietorship, not a corporation, and therefore its contribution to the Committee was legal. Investigative Consultants Resp. at 2-3, MUR 6606 (July 31, 2012). (Nonetheless, Investigative Consultants received a contribution refund from the Committee. *Id.* at 2.) Rogich admits that it inadvertently issued a corporate check for a contribution rather than drawing the contribution from Mr. Rogich's personal account, as he requested. Rogich Resp. at 1, MUR 6606 (July 31, 2012). Haig's acknowledges that it used a corporate check to effect a personal contribution from its owner, but notes that the funds had been treated as the owner's draw and not a corporate expense. Haig's Supp. Resp. at 1, MUR 6606 (July 25, 2012). Without acknowledging that AM Power was incorporated, AM Power responds that a personal contribution was made using the business account in ignorance that the transaction was prohibited. AM Power Resp., MUR 6606 (Aug. 10, 2012).

The Committee refunded all of these contributions between 31 and 49 days after it received them. The Committee asserts in its Response in MUR 6572 that these contributions were timely

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1 refunded because they were refunded within 30 days of the Committee's initiation of its review
2 process. *See* Comm. Resp. at 7, MUR 6572; Tarkanian Decl. ¶ 12; Flynn Decl. ¶ 10; Comm. Resp.
3 at 1, MUR 6606.

4 Under 11 C.F.R. § 103.3(b)(2), which applies to contributions that "did not appear to be
5 made by a corporation . . . , but [are] later discover[ed] [to be] illegal based on new evidence not
6 available at the time of receipt," the Committee would have timely made its refunds. Section
7 103.3(b)(2), however, is not applicable here. Rather, 11 C.F.R. § 103.3(b)(1) applies because the
8 contributions were made in the names of businesses or through checks bearing business names
9 and thereby raised a genuine issue as to whether they were prohibited corporate contributions.[12]
10 The Committee therefore had ten days to make a refund, or thirty days to ascertain the legality of
11 the contribution, from the date of the treasurer's receipt. 11 C.F.R. § 103.3(b)(1). Thus, the
12 Committee's refunds to Haig's, AM Power, Cholakian, and Rogich made between 31 and 49 days
13 of receipt were untimely.

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[12] The Committee asserts that the contributions from AM Power Systems, Cholakian Investments, Inc., and The Rogich Communications Group bore no indicia of corporate status, and the $10 contribution from Investigative Consultants fell below the itemization threshold, and therefore none of the contributions was subject to review. Comm. Resp. at 7, MUR 6572. (The Committee does not claim that Haig's Quality Printing bore no indicium of corporate status.) The Committee's assertion that the legality of these contributions came into question only based on the facts presented in the complaint in MUR 6572 is at odds with the record. Cholakian is incorporated, and AM Power, Haig's and Rogich each are clearly business names, which should have triggered the Committee's treasurer to request confirmation that the contributors are not corporations, which would render the contributions illegal. Yet the Committee makes no claim that its treasurer discharged her responsibility to use best efforts to confirm that each contribution was legal. The Committee's assertion that it failed to investigate these contributions because they did not meet the $200 itemization threshold is unavailing; the regulations do not exempt from the legality determination contributions that fall below the $200 itemization threshold. *See* 11 C.F.R. § 103.3(b).

"To avoid accepting corporate contributions," the Committee implemented new procedures to screen all contributions. Comm. Resp. at 7-8, MUR 6572; Tarkanian Decl. ¶ 14, Ex. B. The Committee also reported that its review yielded four additional corporate contributions, totaling $2,350, from Primary Care, Inc. ($500), Rick Schneider Insurance ($750), Howard K. Ekerling, Inc. ($100), and The Rogich Communications Group ($1,000), which the Committee refunded. Comm. Resp. at 6-7, MUR 6572.

Despite these apparent violations, the small amounts of the contributions and the fact that the Committee has refunded those contributions suggests that the further use of Commission resources is not warranted here. *See* 72 Fed. Reg. at 12,545-46. Accordingly, we recommend that the Commission exercise its prosecutorial discretion to dismiss this allegation, and include a cautionary notification in the closing letters to the Committee and Haig's, AM Power, Cholakian, and Rogich regarding the Act's prohibition on accepting or receiving and making corporate contributions. *See Heckler*, 470 U.S. at 831.

We also recommend that the Commission find no reason to believe that Investigative Consultants made or the Committee accepted or received from Investigative Consultants a prohibited corporate contribution of $10 in violation of 2 U.S.C. § 441b(a) because Investigative Consultants is not a corporation and therefore its contribution to the Committee was permissible under the Act.

G. The Committee Did Not Accept Excessive Contributions

The Complaints identify three transactions that may have constituted excessive contributions and, as a consequence, the donors may have violated 2 U.S.C. § 441a(a) and the Committee may have violated 2 U.S.C. § 441a(f).

First, the Complaints in MURs 6572 and 6606 allege that the Committee accepted an excessive contribution from a member of Zinkin Entertainment LLC. Compl. at 2, MUR 6572; Compl. at 1, MUR 6606. The Complaints allege that a $2,500 primary contribution from DeWayne Zinkin, Jr. was an excessive contribution because Zinkin Entertainment had previously contributed $2,500 for the primary election and $2,500 for the general election that were attributed to him. Compl. at 2, MUR 6572; Compl. at 1, MUR 6606. Moreover, the First Amended 2012

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April Quarterly Report did not include any partner attribution for the contributions from Zinkin Entertainment. Compl. at 2, MUR 6572; Compl. at 1, MUR 6606.

The Response of DeWayne Zinkin and his son, DeWayne S. Zinkin explain that the elder Zinkin, who made a $2,500 primary contribution, is an attorney and not a member of Zinkin Entertainment, LLC, while the younger Zinkin, DeWayne S. Zinkin, is the sole member of Zinkin Entertainment, LLC, which made $2,500 contributions to the Committee for the primary and general elections. Zinkin Resp., MUR 6572 (July 25, 2012) (the Zinkins also note that the younger Zinkin is sometimes inaccurately identified as DeWayne Zinkin, Jr., when in fact he does not share his father's middle name); *see also* Zinkin Supp. Resp., MUR 6606 (Aug. 7, 2012).[13]

Based on the record here, the alleged excessive contribution of DeWayne S. Zinkin was not excessive because the third contribution that allegedly rendered his contributions excessive was in fact made by another person, his father, DeWayne Zinkin. We therefore recommend that the Commission find no reason to believe that DeWayne Zinkin and Zinkin Entertainment made excessive contributions in violation of 2 U.S.C. § 441a(a), or that the Committee accepted an excessive contribution in violation of 2 U.S.C. § 441a(f).

Second, the Complaint in MUR 6676 alleges that the Committee accepted an excessive contribution of $25,000 from Bill Carlson on September 5, 2012. Compl. at 4-5, MUR 6676. The Committee's Response states that due to a typographical error in the Committee's original 2012 October Quarterly Report, Carlson's contribution of $2,500 was erroneously reported as $25,000.

[13] The Committee asserts that it clarified the sources of these contributions in its Second Amended 2012 April Quarterly Report. Comm. Resp. at 4, MUR 6572. That Report identifies "Dewayne" Zinkin as a member of Zinkin Entertainment LLC to whom two $2,500 contributions are attributed. Second Amended 2012 April Quarterly Report at 97-98 (May 31, 2012). It separately identifies the elder DeWayne Zinkin as an attorney at Zinkin Offices and the maker of a $2,500 primary contribution. *Id.* at 96. This report is sufficiently clear.

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Comm. Resp. at 3, MUR 6676. According to Carlson, however, his contribution was actually $250. *See* Carlson Resp., MUR 6676 (Mar. 11, 2013). The alleged excessive contribution from Carlson was within the contribution limit, but due to a typographical error, the Committee misreported the contribution as 100 times greater than the amount actually contributed. We therefore recommend that the Commission find no reason to believe that Carlson made an excessive contribution in violation of 2 U.S.C. § 441a(a), or that the Committee accepted an excessive contribution in violation of 2 U.S.C. § 441a(f).

Third, the Complaint in MUR 6676 alleges that the Committee accepted $8,050 in primary-after-primary impermissible contributions from four individuals. Compl. at 5, MUR 6676. According to the Complaint, the contributions were excessive — and therefore the Committee's receipt of them violated 2 U.S.C. § 441a(f) — because the Committee received the contributions well after the Nevada primary election occurred on June 12, 2012, and the contributions specifically designated for the primary exceeded the Committee's net debts outstanding from that election. *Id.* at 5-6; 11 C.F.R. § 110.1(b)(3). The Complaint avers that the "only primary election debts that the committee reported were the $53,755.83 loan from Mr. Tarkanian that the committee repaid on July 11, 2012 and a $900 debt to JAMD that remains unpaid." Compl. at 5, MUR 6676 (citing 2012 July Quarterly Report).

The Committee contends that it had primary debt in excess of the contributions received to retire that debt, but the Committee's bookkeeper during the primary inadvertently omitted this debt from the 2012 July Quarterly Report. Comm. Resp. at 3, MUR 6676. The Committee included this debt in its Amended 2012 July Quarterly Report, filed with the Commission on June 3, 2013. Amended 2012 July Quarterly Report at 25 (June 3, 2013). The Committee also asserts that the four contributions for the primary election identified in the Complaint were appropriately

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designated as contributions for the primary election, and that the memo descriptions included in the Amended 2012 July Quarterly Report indicate that they were to retire primary debt. Comm. Resp. at 3, MUR 6676.

While committees are permitted to receive contributions designated for a particular election after that election, the contribution must not exceed the net debts outstanding from that election. 11 C.F.R. § 110.1(b)(3)(i). A review of the record here reveals that these contributions relating to the Committee's primary debt did not exceed the Committee's net debts outstanding from the primary. Because the Committee received no excessive contributions, we recommend that the Commission find no reason to believe that the Committee violated 2 U.S.C. § 441a(f) in relation to these allegations. Also, the Committee acknowledges in its Response that it initially failed to report accurately its debt from the primary election, which violates 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.3(d), 104.11(a). *See* Comm. Resp. at 3, MUR 6676. Yet, the relatively low amounts of primary debt do not merit further use of Commission resources, *see* 72 Fed. Reg. at 12,545-46, and we therefore recommend that the Commission exercise its prosecutorial discretion to dismiss this violation under *Heckler*, 470 U.S. 831, but include a cautionary notification in the closing letter to the Committee regarding the Act's requirements for disclosing its primary debt.

III. RECOMMENDATIONS

MUR 6572

1. Dismiss with caution the allegation that Tarkanian for Congress and Chrissie Hastie in her official capacity as treasurer violated 2 U.S.C. §§ 434(b)(2)(G), 434(b)(8) and 11 C.F.R. §§ 104.3(a)(3)(vii)(B), 104.3(d), 104.11.

2. Dismiss with caution the allegation that Tarkanian for Congress and Chrissie Hastie in her official capacity as treasurer violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. §§ 110.1(e), (g), 104.7(a), (b)(2).

3. Find no reason to believe that TLC, a California Partnership violated 11 C.F.R. § 110.1(e).

4. Find no reason to believe that B.I. Porter Commercial & Residential Properties violated 2 U.S.C. § 441b(a).

5. Find no reason to believe that Mason Contractors Association of America violated 2 U.S.C. § 441b(a).

6. Find no reason to believe that Nostrebor Music & Visual Arts violated 2 U.S.C. § 441b(a).

MUR 6606

7. Dismiss with caution the allegation that Tarkanian for Congress and Chrissie Hastie in her official capacity as treasurer violated 2 U.S.C. § 434(b)(4)(A) and 11 C.F.R. § 104.3(b)(2)(i).

8. Dismiss with caution the allegation that Cholakian Investments, Inc. violated 2 U.S.C. § 441b(a) in an exercise of prosecutorial discretion as outlined in *Heckler v. Chaney*, 470 U.S. 8221 (1985).

9. Dismiss with caution the allegation that The Rogich Communications Group violated 2 U.S.C. § 441b(a) in an exercise of prosecutorial discretion as outlined in *Hecker v. Chaney*, 470 U.S. 8221 (1985).

10. Dismiss with caution the allegation that AM Power Systems violated 2 U.S.C. § 441b(a) in an exercise of prosecutorial discretion as outlined in *Heckler v. Chaney*, 470 U.S. 8221 (1985).

11. Find no reason to believe that Attorneys' Investigative Consultants violated 2 U.S.C. § 441b(a).

MURs 6572 and 6606

12. Dismiss with caution allegation that Haig's Quality Printing violated 2 U.S.C. § 441b(a) in an exercise of prosecutorial discretion as outlined in *Heckler v. Chaney*, 470 U.S. 8221 (1985).

13. Dismiss with caution the allegation that Tarkanian for Congress and Chrissie Hastie in her official capacity as treasurer violated 2 U.S.C. § 441b(a) in an exercise of prosecutorial discretion as outlined in *Heckler v. Chaney*, 470 U.S. 8221 (1985).

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14. Dismiss with caution the allegation that Tarkanian for Congress and Chrissie Hastie in her official capacity as treasurer violated 11 C.F.R. § 103.3(b)(1) in an exercise of prosecutorial discretion as outlined in *Heckler v. Chaney*, 470 U.S. 8221 (1985).

15. Find no reason to believe that DeWayne Zinkin and Zinkin Entertainment LLC violated 2 U.S.C. § 441a(a).

MUR 6676

16. Dismiss with caution the allegation that Tarkanian for Congress and Chrissie Hastie in her official capacity as treasurer violated 11 C.F.R. § 104.3(a)(3) in an exercise of prosecutorial discretion as outlined in *Heckler v. Chaney*, 470 U.S. 8221 (1985).

17. Dismiss with caution the allegation that Tarkanian for Congress and Chrissie Hastie in her official capacity as treasurer violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.3(d), 104.11(a) in an exercise of prosecutorial discretion as outlined in *Heckler v. Chaney*, 470 U.S. 8221 (1985).

18. Find no reason to believe that Tarkanian for Congress and Chrissie Hastie in her official capacity as treasurer violated 2 U.S.C. §§ 441a or 441b(a).

19. Find no reason to believe that Bill E. Carlson violated 2 U.S.C. § 441a(a).

20. Find no reason to believe that Fine Properties, LLC violated 2 U.S.C. § 441b(a).

21. Find no reason to believe that Herbert's Refrigeration Company violated 2 U.S.C. § 441b(a).

22. Find no reason to believe that Prem Investments, LLC violated 2 U.S.C. § 441b(a).

MURs 6572, 6606 and 6676

23. Find no reason to believe that Tarkanian for Congress and Chrissie Hastie in her official capacity as treasurer violated 2 U.S.C. § 441a(f).

24. Approve the attached Factual and Legal Analysis.

25. Approve the appropriate letters.

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26. Close the files.

5/2/14
Date

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