1   **BEFORE THE FEDERAL ELECTION COMMISSION**
2
3   In the Matter of   )
4   )
5   Numero, Inc.   )
6   Ro for Congress and Linda Sell   )   MUR 7062
7   in her official capacity as treasurer   )
8   Ro Khanna   )
9   RevUp Software, Inc.   )

10   **SECOND GENERAL COUNSEL'S REPORT**

11   **I.   ACTIONS RECOMMENDED**

12   (1) Take no further action with respect to the allegation that RevUp Software, Inc.,

13   violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a) by selling commercial fundraising

14   software that incorporates FEC data for the purpose of soliciting contributions; (2) Find reason to

15   believe that Numero, Inc., violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a) by selling

16   commercial fundraising software that incorporates FEC data for the purpose of soliciting

17   contributions; (3) Enter into pre-probable cause conciliation with Ro for Congress and Linda Sell

18   in her official capacity as treasurer and Numero, Inc.; and (4) Take no action at this time with

19   respect to the allegation that Ro Khanna violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R.

20   § 104.15(a) by using FEC data for the purpose of soliciting contributions.

21   **II.   BACKGROUND**

22   The Commission previously found reason to believe that RevUp Software, Inc.,

23   ("RevUp") violated 52 U.S.C. § 30111(a)(4) of the Federal Election Campaign Act of 1971, as

24   amended (the "Act"), and 11 C.F.R. § 104.15(a) of the Commission's regulations (the "sale and

25   use provision") by selling commercial fundraising software that incorporates information taken

26   from the Commission's database of reports filed by political committees ("FEC data") for the

1   purpose of soliciting contributions.[1] The Commission determined that it was "clear that the

2   RevUp software uses FEC data in a manner that directly implicates the privacy concerns that

3   Congress sought to mitigate."[2] In addition, the Commission found reason to believe that Ro

4   Khanna and his authorized committee, Ro for Congress and Linda Sell in her official capacity as

5   treasurer (the "Committee"), violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a) by

6   using the RevUp software, and thus FEC data, for the purpose of soliciting contributions.[3] The

7   Commission found that the Committee was not an ordinary RevUp customer because Steve

8   Spinner, founder and CEO of RevUp, simultaneously served as the Committee's Chair.[4]

9   The Office of General Counsel ("OGC") commenced an investigation to ascertain the

10   amounts in violation and uncover additional facts regarding how Khanna and the Committee

11   used the software.[5] During the investigation, RevUp dissolved and transferred all of its assets to

12   an assignee, which liquidated the assets.[6] Prior to its dissolution, OGC obtained information

13   from RevUp about the function of its software and its revenues, which is detailed below.

14   In January 2020, Numero, Inc., ("Numero") purchased RevUp's brand name and

15   technology — including its algorithm, which uses FEC data to score and rank contacts based on

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[1]   52 U.S.C. § 30111(a)(4); *see* Factual & Legal Analysis ("F&LA") at 6-8 (RevUp); Certification ¶ 3(a) (Apr. 11, 2019).

[2]   F&LA at 8 (RevUp).

[3]   F&LA at 7 (Ro for Congress); F&LA at 7 (Khanna); Certification ¶ 3(a) (Apr. 11, 2019).

[4]   F&LA at 7 (Ro for Congress); F&LA at 7 (Khanna). The Commission split on whether to find reason to believe that Spinner had personally violated the sale and use provision and voted to close the file with respect to him. Certification ¶ 3(b) (Apr. 11, 2019).

[5]   *See* First Gen. Counsel's Rpt. at 12.

[6]   RevUp, State of Delaware Certificate of Dissolution (Dec. 20, 2019).

1   their likelihood of making a contribution.[7] In February 2020, Numero added RevUp's scoring

2   and ranking technology as a feature within its own fundraising software product.[8] Accordingly,

3   OGC notified Numero as a respondent in this matter.[9] Numero acknowledges using FEC data

4   but argues that it does not constitute a violation, presenting similar arguments to those advanced

5   by RevUp at the reason-to-believe stage, which the Commission rejected.[10]

6   **III.   RESULTS OF THE INVESTIGATION**

7   During the investigation, we reviewed internal RevUp emails, RevUp's correspondence

8   with prospective and active clients, training presentations and instructional materials describing

9   how to use the RevUp product, financial documents, and other records pertaining to the RevUp

10   software. In addition, we received answers from Khanna and the Committee in response to our

11   questions regarding the Khanna campaign's use of the RevUp product. We also interviewed the

12   Committee's former Campaign Manager and one of the Committee's fundraisers who used the

13   RevUp software to solicit contributions, and we received declarations from the former Campaign

14   Manager and from Khanna describing his personal use of the RevUp software.

15   **A.   The RevUp Software**

16   RevUp was a Silicon Valley-based technology company founded by its CEO, Steve

17   Spinner, which between 2014 and 2019 sold web-based fundraising software primarily to

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[7]   Numero Resp. at 1-2 (Dec. 22, 2020).

[8]   *Id.*

[9]   Letter from Claudio J. Pavia, Acting Ass't Gen. Couns., FEC, to Numero (Oct. 1, 2020) (notification letter); Memo. to the Commission Regarding Intent to Name and Notify Additional Respondent (Sept. 24, 2020).

[10]   Numero Resp. at 1-2.

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1   political organizations, but also to non-profit and academic institutions.[11] As noted above, in

2   December 2019, RevUp dissolved and is no longer in operation.[12] Its brand and technology

3   were purchased by Numero, described further below.

4   The RevUp software uses FEC data as part of a proprietary algorithm that scores and

5   ranks contacts based on their likelihood of making a contribution. The software also uses FEC

6   data to display contacts' contribution histories and identify all contacts who made contributions

7   to similar or "correlated" campaigns. Each type of use of FEC data is described in further detail

8   below.

9   Between 2014 and 2019, 177 federal committees reported $1,966,313 in disbursements to

10   RevUp on their FEC disclosure reports.[13] These figures do not include RevUp's business with

11   non-profit organizations and academic institutions. Between the second quarter of 2014 and the

12   second quarter of 2019, internal documents show $3,391,000 in total revenue.[14] With respect to

13   RevUp's profitability for campaigns, internal and public documents claim that return on

14   investment ranged from five to greater than 100 times the cost of the service[15] with the "high

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[11]   *See* REV_00002504, REVUP, BOARD MEETING PRESENTATION SLIDES at 12 (Mar. 28, 2019); Press Release, RevUp, RevUp Announces Major Financing Update (Mar. 24, 2016), https://www.businesswire.com/news/home/20160324005965/en/RevUp-Announces-Major-Financing-Update.

[12]   REVUP, STATE OF DELAWARE CERTIFICATE OF DISSOLUTION (Dec. 20, 2019).

[13]   *See FEC Disbursements: Filtered Results,* FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=RevUp&min_date=01%2F01%2F2013 (last visited May 6, 2021) (showing all disbursements made to RevUp since 2013). Customers paid $1,500 up front and $1,000 a month to use the RevUp software. REV_00002929-30, Email from John Plishka, Dir., Bus. Dev., RevUp, to potential clients (Aug. 9, 2016, 1:18 PM PDT) (attaching blank service agreement).

[14]   REV_00000105, RevUp, Sales Chart (undated).

[15]   REV_00001177, Email from Steve Spinner, CEO, RevUp, to potential client (Aug. 2, 2017, 10:09 PM PDT); *see also* REV_00001114, Email from Steve Spinner, CEO, RevUp, to potential client (July 16, 2017, 10:29 AM PDT) ("The ROI is extremely positive. (Much higher than 5-6x!).").

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1   end" demonstrating a return of $100,000 or more per month and the "low end" $18,000 to

2     $22,000 per month.[16]

3   1.   RevUp Algorithm

4   To use the RevUp software, clients upload lists of their own contacts from sources such

5   as Gmail, LinkedIn, or a spreadsheet.[17] The software "ranks everyone . . . from 0-100 based on

6   their likelihood to donate to [the user's] particular candidate."[18] The algorithm uses

7   "contribution histories" — *i.e.*, the fact that a contact has previously made contributions, the

8   recipients of those contributions, and the amounts of those contributions — as one of the factors

9   to determine the likelihood that a given person will make a contribution to a client's campaign.[19]

10   RevUp obtains the information about past contributions from the FEC's website.[20]

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[16]   REV_00002905, Email from John Plishka, Dir., Bus. Dev., RevUp, to potential client (Apr. 12, 2016, 1:45 PM PDT).

[17]   *See* RevUp Resp. (June 28, 2016), Attach. ¶ 9 (Affidavit of Steve Spinner); *see also* Report of Investigation, Interview of Mordecai "Max" Schireson at 2 (Apr. 13, 2020) [hereinafter Schireson Interview].

[18]   REV_00000731, Email from Kristin Fine, RevUp, to prospective clients (Aug. 15, 2019, 2:43 PM PDT). *See* RevUp, *Fundraising Methodology — RevUp Software*, REVUP, https://www.revup.com/our-methodology [https://web.archive.org/web/20190318015641/http://www.revup.com/our-methodology/] (archived Mar. 18, 2019); RevUp, *Political Fundraising—RevUp Software*, REVUP, https://www.revup.com/political [https://web.archive.org/web/20190318063903/http://www.revup.com/political/] (archived Mar. 18, 2019); *see also* Schireson Interview at 2 (describing how he used the RevUp software to solicit contributions).

[19]   REV_00000080, Email from Steve Spinner, CEO, RevUp, to prospective client (Sept. 7, 2017, 7:17 AM PDT) ("Past contribution info is a factor . . . in our algorithm used to analyze a user's list."); RevUp RTB Resp. at 2-3 (June 7, 2019) ("The algorithm gives each contact a score . . . which corresponds with his or her predicted affinity for the client."); REV_00000746, Email from Rob Battaglia, RevUp, to himself (Aug. 16, 2018, 12:57 PM PDT) ("[E]very contact is given a numerical score from 100 - 0, with those closes to 100 and the top being those most likely to donate to your campaign."); REV_00003058, Email from Kristin Fine, RevUp, to Va. Democrats (Mar. 13, 2019, 1:08 PM PDT) (describing RevUp as "an additional tool that will . . . [u]se an algorithm . . . to tell you which of your past donors are MOST likely to donate to you if you contact them NOW").

[20]   RevUp RTB Resp. at 3; *see also* REV_00000249, Email from Andrew Marshall, RevUp, to Maura Sullivan for Congress (Apr. 16, 2018, 2:50 PM PDT).

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1   Although FEC data is one of many data points used by the algorithm, the investigation

2   confirmed that it is a major component.[21] RevUp argued that FEC data was "one out of literally

3   tens of thousands" of data points in the algorithm,[22] but the information provided by RevUp

4   makes clear that FEC data was a significant factor: RevUp incorporated FEC data into the

5   product as early as its "alpha" phase in 2014,[23] and internal emails discussing the development of

6   the algorithm show that FEC data was core to its design.[24] Further emphasizing the importance

7   of FEC data, Spinner told a potential client that the software would "work less well for someone

8   . . . with no record of political or non-profit giving" and that such persons "are not good targeted

9   users for the software."[25] And a product demonstration script states: "Laura is ranked higher

10   than Sean . . . . [I]t's because she writes more congressional checks than Sean, she writes more

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[21]   RevUp did not provide granular details about its algorithm, despite multiple requests from OGC during the investigation. *See, e.g.*, Letter from Claudio J. Pavia, Att'y, FEC, to Marc E. Elias & Tyler J. Hagenbuch, Couns. for RevUp, Attach. at 1 (July 18, 2019). Before we considered taking action to compel RevUp, as noted above, the company experienced financial difficulties and dissolved. *See* Letter from Marc E. Elias & Tyler J. Hagenbuch, Couns. for RevUp, to Claudio Pavia, Acting Ass't Gen. Couns., FEC at 1 (Apr. 23, 2020).

[22]   RevUp RTB Resp. at 3 (emphasis removed).

[23]   *See* REV_00006923, Email from Ted Burns, RevUp, to Aaron Redalen, RevUp (Mar. 18, 2014, 11:13 AM PDT) (noting that "1.0 April 4 – Prototype" would "analyze contacts against FEC database").

[24]   In fact, contribution histories appear to have been the first data point incorporated into the algorithm, and the initial development focused on matching uploaded contacts to those histories (including FEC, state, and local). REV_00001702-03, Email from Ted Burns, RevUp, to Steve Spinner, CEO, RevUp, & Aaron Redalen, RevUp (Feb. 22, 2014, 1:12 PM PST) (indicating that the "alpha" version of RevUp simply matched contacts against FEC and state political contribution data); REV_00001702-03, REV_00006912, Email from Ted Burns, RevUp, to Steve Spinner, CEO, RevUp, & Aaron Redalen, RevUp (Feb. 28, 2014, 11:37 AM PST) (discussing early key functions of the software, including "Ingest Contribution Data"). From there, other data points were apparently added. REV_00006912, Email from Ted Burns, RevUp, to Steve Spinner, CEO, RevUp, & Aaron Redalen, RevUp (Feb. 28, 2014, 11:37 AM PST).

[25]   *See* REV_00009899, Email from Steve Spinner, CEO, RevUp, to Missourians for Kander (July 29, 2015, 11:55 AM PDT); *see also* REV_00000074, RevUp, RevUp Training at 19:00 (Jan. 2019) (indicating that contribution histories have a direct impact on the scores provided); REV_00007588, ANDREW MARSHALL, REVUP, TESTING OF NEW DATA MATCHING CAPABILITIES (undated) (report indicating that matching contacts with the FEC database can have a significant effect on the scores produced by the algorithm).

1   checks to challengers than Sean, she lives closer, she writes only hard money, and that's why the

2   algorithm puts her higher . . . ."[26]

3   Figure 1, below, shows an image of the RevUp "Ranking" page. From left to right, the

4   table shows the contact's "ranking" (their numeric score from 0-100), their name, whether they

5   have given to the chosen candidate or her opponents, and their overall history of giving.[27]

6   **Figure 1. Example of RevUp's "Score and Ranking" Screen[28]**

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[26]   REV_00000107, RevUp Product Demonstration Script (undated). This aligns with statements made by list brokers and marketers in prior Commission matters, who have explained that "politically active people are most likely to be responsive," and that one of the "largest indications" that a person has a "propensity to donate" "is if they have donated in the past." Advisory Op. 2003-24 at 4 (NCTFK); *see* Second Gen. Counsel's Rpt. at 4, MURs 6960 & 6991 (SW Technologies, LLC, *et al.*).

[27]   RevUp did not provide explanation for what "2+ Years Of Giving" represents, but it appears to show an aggregate total of the individual's contributions to all causes.

[28]   REV_00000122, RevUp, Ranking Screenshot (undated).

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1   2.   <u>Display of Contribution Histories</u>

2   The RevUp software also allows users to view their contacts' contribution histories by

3 selecting or clicking on a name, again using information copied from the FEC's website, to

4 "quickly know who . . . to call first . . . and how much is appropriate to ask for."[29] Users may

5 view only one individual's contribution history at a time and cannot export the information; the

6 product contains a generic disclaimer on improper use of FEC data.[30] An internal RevUp

7 document states that contribution histories allow users to "dive deeper into any profile to view all

8 past giving, and remaining dollars available to give to your campaign."[31] Figure 2 shows an

9 example of how a given contact's contribution history appears.

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[29]   REV_00001160, Email from Toby Quaranta, Dir. of Sales, RevUp, to Steve Spinner, CEO, RevUp (July 19, 2017, 2:28 PM PDT); *see also* Schireson Interview at 2 (recording statement from campaign fundraiser describing how it was "helpful to see which of my contacts had been making political contributions. . . . If I saw that someone had contributed [] $1,000 before, maybe I could ask them to make a max-out contribution, versus someone who had given a $100").

[30]   RevUp Resp. at 3; Committee RTB Resp. at 3; Letter from Tyler Hagenbuch & Marc E. Elias, Couns. for RevUp, to Claudio J. Pavia, Att'y, FEC (July 3, 2019). The disclaimer states: "Notice: Federal law prohibits using contributor contact information that is obtained from FEC reports for the purpose of soliciting contributions or for any commercial purpose. However, analysis of data obtained from FEC reports is permitted. RevUp does not display individual contributor contact information obtained from reports filed with the FEC." REV_000000053, Email from Steve Spinner, CEO, RevUp, to prospective clients (Jan. 28, 2015, 4:07 PM PST).

[31]   REV_00001533, RevUp, Andrew Romanoff Campaign: Donor Research and Fundraising Analytics Proposal at 2 (undated).

1   **Figure 2. Example of "Contribution History" Display[32]**

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3   3.   Correlated Campaigns

4   The RevUp software also uses FEC data as part a feature called "correlated campaigns,"

5   which allows the user to select "similar" candidates to identify contacts of the user who have

6   donated to those chosen campaigns.[33] A RevUp product demonstration transcript offers an

7   illustration of how to use the correlated campaign feature: "Naomi . . . contributed to Kamala

8   Harris, one of the correlated campaigns. I should reach out and say 'Naomi, if you like Kamala,

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32   REV_00000122, REVUP, RANKING SCREENSHOT (undated).

33   *See* REV_00000107, REVUP PRODUCT DEMONSTRATION SCRIPT (undated); REV_00000384, Email from
Ashling Pearson, RevUp, to new clients (Nov. 22, 2016, 1:32 PM PST).

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1   you're gonna love Ro.' Go get her!"[34] An example of the correlated campaigns feature can be

2   seen above in Figure 2.

3   **B.   Sale of the RevUp Product to Numero**

4   RevUp dissolved on December 20, 2019.[35] At that time, RevUp transferred all of its

5   assets, including its intellectual property, to a bankruptcy assignee for liquidation.[36] Numero

6   subsequently purchased RevUp's brand name and intellectual property.[37] Numero is a political

7   software company based in Irvine, California, that sells a fundraising product called the

8   Customer Relationship Management tool.[38] On its website, Numero states that: "Before you

9   call a potential supporter of your campaign, you should know some basic facts about them to

10   help you guide the call to a successful ask. That's where donor research comes in."[39]

11   In February 2020, Numero added a feature called "Donor History by RevUp" to its

12   fundraising product.[40] An example image of the feature on Numero's website shows that it is

13   substantively identical to the software previously marketed by RevUp. It scores and ranks

14   contacts based on their likelihood of making a donation to the user's campaign, displays each

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34   REV_00000107, REVUP PRODUCT DEMONSTRATION SCRIPT (undated).

35   REVUP, STATE OF DELAWARE CERTIFICATE OF DISSOLUTION (Dec. 20, 2019); Letter from Marc E. Elias &
Tyler J. Hagenbuch, Perkins Coie LLP, Couns. for RevUp, to Claudio J. Pavia, Acting Ass't Gen. Couns., FEC at 1
(Apr. 23, 2020) ("RevUp has gone out of business and no longer exists as a company. It has no assets, nor does it
have any remaining officers, directors, or employees.").

36   REVUP, NOTICE OF ASSIGNMENT FOR THE BENEFIT OF CREDITORS AND DEADLINE FOR SUBMITTING CLAIMS
(Dec. 20, 2019).

37   *See* NUMERO, https://www.numero.ai (last visited May 6, 2021). RevUp's former website redirected to that
of Numero as of July 29, 2020.

38   *Id.*; Numero Resp. at 1-2 (describing the Customer Relationship Management tool as "designed to help
candidate build out their call lists and manage their database of donors").

39   Brian Forde, *The Complete Political Fundraising 2021 Guide [with Ideas]*, NUMERO BLOG (Jan. 6, 2021),
https://numero.ai/blog/how-to-run-for-office/political-fundraising.

40   Numero Resp. at 1-2.

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1   contact's giving history, and shows their contributions to correlated campaigns.[41] Numero

2   markets the product using the "RevUp" name and logo.[42] The Numero website advises

3   candidates to:

4   figure out if anyone in your network has a history of giving to Democratic
5   candidates. If someone has given money in the past and is in your extended
6   network, there's a very high likelihood that they will give to you. Keep in mind
7   that looking up donor history can be very time-consuming to complete. However,
8   there are a couple of powerful tools that look up giving history for any of your
9   contacts by searching all publicly available contributions (federal, state, and
10   local), like RevUp. These tools can be beneficial for [campaign fundraisers] as
11   they can upload their contacts and immediately see who in their extended network
12   has given to a campaign.[43]

13   Figure 3 on the following page shows the "Donor History by RevUp" feature, according to an
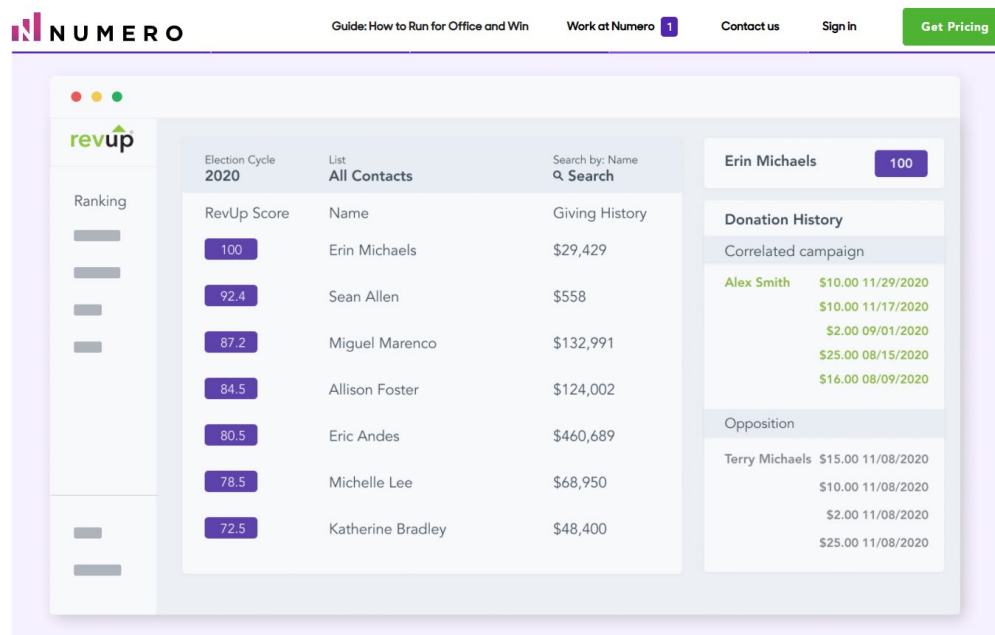
14   image available on Numero's website.

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41   NUMERO, https://www.numero.ai (last visited May 6, 2021); *see* Figure 3, *infra*.

42   *See* NUMERO, https://www.numero.ai (last visited May 6, 2021).

43   *Id.*

1   **Figure 3. Numero's "Donor History by RevUp"[44]**

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3   Numero does not contend that its version of the RevUp product in any way materially

4 differs from that previously sold by RevUp.[45] Numero also acknowledges using FEC data, but

5 presents the same arguments previously advanced by RevUp at the reason-to-believe stage, and

6 rejected by the Commission.[46] Specifically, Numero argues that contribution histories are not

7 protected by the sale and use provision and that its use of FEC data does not implicate the

8 privacy interests underlying the sale and use provision.[47]

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[44]   *Id.* (click "Donor History by RevUp" in the purple bar near the top of the screen).

[45]   *See* Numero Resp. at 2-3. In the Notification Letter, OGC explained, *inter alia*, that "a feature titled RevUp appears to return a numerical score and ranking for a user's contacts based on their likelihood of making a donation to the user's chosen cause," and "that FEC data is used within the algorithm that generates the ranking and scores." Letter from Claudio J. Pavia, Acting Ass't Gen. Couns., FEC, to Numero (Oct. 1, 2020) (notification letter).

[46]   *See* Numero Resp. at 2-3.

[47]   *Id.*

1   **C.   Use of the RevUp Software by the Khanna Campaign**

2   Ro Khanna is the U.S. Representative from California's 17th Congressional District; he

3   unsuccessfully ran for Congress in 2014, was elected in 2016, and reelected in 2018 and 2020.[48]

4   Ro for Congress is Khanna's authorized committee.[49] During the 2014 and 2016 election cycles,

5   Steve Spinner simultaneously served as CEO of RevUp and the Committee's Chair.[50] He was

6   also a "volunteer fundraiser."[51] Spinner described the Khanna campaign's use of the RevUp

7   software in interviews, product demos, and in correspondence with prospective clients.[52] The

8   Committee was the first political committee to report disbursements to RevUp.[53] During the

9   2014 election cycle, the Committee used a prototype of the RevUp software not available to the

10   general public.[54] Between June 2014 and March 2015, the Khanna campaign continued to

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[48]   FEC, *Khanna, Rohit — About this Candidate*, FEC.GOV, https://www.fec.gov/data/candidate/H4CA 12055/?tab=about-candidate (last visited May 6, 2021). Khanna also unsuccessfully ran for California's 12th District in 2004 and 2012. *Id.*

[49]   FEC, *Ro for Congress, Inc. — About this Committee*, FEC.GOV, https://www.fec.gov/data/committee/ C00503185/? tab=about-committee (last visited May 6, 2021).

[50]   Email from Neil P. Reiff, Couns. for RevUp, to Justine A. di Giovanni, Att'y, FEC (Jan. 27, 2020, 4:10 PM EST); Khanna Decl. ¶ 6 (Apr. 28, 2020).

[51]   Khanna Decl. ¶ 6; Committee Resp. to FEC Questions at 1 (Jan. 27, 2020).

[52]   *See, e.g.*, REV_00010459, Email from Ted Burns, RevUp, to Cassandra McGraw, RevUp (Mar. 6, 2014, 9:14 PM PST); REV_00001048, Email from Steve Spinner, CEO, RevUp, to potential client (Apr. 7, 2017, 2:15 PM PDT) ("If Keith is interested, just have him chat with Ro Khanna directly about the software. He'll tell him personally his thoughts."); REV_00000107, REVUP PRODUCT DEMONSTRATION SCRIPT (undated) (using the Khanna campaign for demonstration of the RevUp product throughout); Joshua Green, *Steve Spinner Just Fixed the Worst Thing About Being a Politician*, BLOOMBERG, Mar. 23, 2016, https://www.bloomberg.com/news/features/2016-03-23/steve-spinner-s-software-revup-could-transform-fundraising-for-politics-and-beyond ("By identifying people who share an affinity — say, a South Asian background — the software has turned up hundreds of new donors. 'For Ro, only 30 percent of his supporters were previous donors,' says Spinner, 'while 70 percent are first-timers.'").

[53]   *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?recipient_%E2 %80%8Cname=RevUp&data_type=processed&recipient_name=RevUp&two_year_transaction_period=2014&two_ year_transaction_period=2016&two_year_transaction_period=2018&two_year_transaction_period=2020 (last visited May 6, 2021) (showing all disbursements by political committees to RevUp).

[54]   Khanna Decl. ¶¶ 6-7 (Apr. 28, 2020); Committee Resp. to FEC Questions at 1; *see* REV_00004063, Email from Steve Spinner, CEO, RevUp, to potential clients (Mar. 18, 2015, 10:31 AM PDT) (stating that RevUp was software that "we've been using for Ro for the last year"); REV_00001702-03, Email from Ted Burns, RevUp, to

1   participate in product testing ahead of the software's official launch in March 2015.[55] The

2   Committee continued to use the software until RevUp's dissolution in December 2019 and,

3   during the entire period from 2014-2019, reported disbursements of $61,000 to RevUp, the most

4   of any federal political committee.[56]

5   Khanna and the Committee acknowledge that, while using the RevUp software, they

6   were aware it incorporated FEC data.[57] Moreover, Spinner, who managed volunteer fundraising

7   for the Khanna campaign would have also known the product relied extensively on FEC data to

8   rank and sort contacts for solicitation. However, Khanna and the Committee maintain that

9   Spinner assured them that the RevUp software's use of FEC data was permissible, and that

10   RevUp had obtained legal advice to assure compliance.[58]

Steve Spinner, CEO, RevUp, & Aaron Redalen, RevUp (Feb. 22, 2014, 1:12 PM PST) (noting that RevUp was
using or about to use data from the "RK campaign" as part of its prototype testing); Khanna Decl. ¶ 7 ("In 2015,
specifically, Committee volunteers, staff, and I used an 'alpha' version of the RevUp software."); Committee Resp.
to FEC Questions at 1 ("In 2015, the Committee used an alpha version of the product.").

[55]   *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?recipient_%E2
%80%8Cname=RevUp&data_type=processed&recipient_name=RevUp&two_year_transaction_period=2016&two_
year_transaction_period=2014 (last visited May 6, 2021) (showing all disbursements to RevUp in the 2014 and 2016
election cycles). The first reported use of the RevUp software by another political committee was on March 31,
2015. *Id.*

[56]   *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=
processed&committee_id=C00503185&recipient_name=revup&two_year_transaction_period=2014&two_year_tran
saction_period=2016&two_year_transaction_period=2018&two_year_transaction_period=2020 (last visited May 6,
2021) (showing all disbursements by the Committee to RevUp). The Committee does not appear to have purchased
the version of the product marketed by Numero after RevUp's dissolution. *FEC Disbursements: Filtered Results*,
FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00503185&recipient
_name=Numero&recipient_name=RevUp&two_year_transaction_period=2020 (last visited May 6, 2021) (showing
no payments by the Committee made to RevUp after January 2, 2020, and no payments to Numero).

[57]   Khanna Decl. ¶ 10; Committee Resp. to FEC Questions at 2.

[58]   Khanna Decl. ¶ 11; Committee Resp. to FEC Questions at 2; Email from Ro Khanna to Claudio J. Pavia,
Att'y, FEC (May 8, 2019, 7:55 PM PST) ("RevUp represented to us that they were fully compliant with all FEC
laws when we signed a contract as they have to 300 other campaigns."). Although Respondents did not provide any
documents to substantiate this representation, our interview with a prominent Khanna fundraiser corroborates this
claim, and RevUp's contemporary emails with prospective clients show that it was making the same representation
to other customers. *See* Schireson Interview at 2; *see also supra* note **Error! Bookmark not defined.**.

1   Khanna denies using the product for the purpose of soliciting contributions.[59] He attests

2   that "at no time and in no way have I . . . used the RevUp software's scoring and ranking

3   information or contribution history display for the purpose of identifying or prioritizing

4   solicitation targets."[60] Khanna states that he "primarily used the RevUp software as a data

5   management tool to keep track of contact information for Committee supporters."[61] The

6   Committee, however, acknowledges that the software "was used by a small number of campaign

7   volunteers to identify potential donors," but that the volunteers "used the software sparingly

8   because of its limited utility."[62]

9   We interviewed one such volunteer, Mordecai "Max" Schireson, who helped with the

10   Committee's fundraising during the 2016 election cycle. He stated that he used the RevUp

11   software, at Spinner's direction, to prioritize which of his contacts to solicit for contributions for

12   the Committee, noting that it was "helpful to see which of my contacts had been making political

13   contributions in general."[63] Schireson stated that the contribution histories displayed in RevUp

14   "did influence how much [he] asked for."[64] He estimated that, of the approximately $50,000 he

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[59]   Khanna Decl. ¶ 12.

[60]   *Id*. ¶ 9; *see* Committee Resp. to FEC Questions at 3-6.

[61]   Khanna Decl. ¶ 8; Committee Resp. to FEC Questions at 5-6 (noting that, "[b]ecause RevUp had a mobile version, it was a quick way to look up an existing supporter and find their contact information and was a much cheaper alternative to other database management tools available").

[62]   Ro for Congress & Khanna RTB Resp. at 2 (June 28, 2019).

[63]   Schireson Interview at 2-3.

[64]   *Id.* Schireson explained that RevUp primarily served as a time-saver, noting that, "had I been willing to spend another hour or two, I think I would have identified the same people, and it would have made no difference to the amount of money I raised, but [RevUp] let me do it in an hour less. Would I have actually spent that [extra] hour? I don't know." *Id.* at 3. In an email Schireson sent introducing Spinner to a potential RevUp client, he wrote that he found RevUp "*hugely* beneficial as I was trying to raise money for Ro Khanna." REV_00001354, Email from Max Schireson to Steve Spinner, CEO, RevUp, & potential client (Nov. 15, 2017, 9:22 PM PST).

1   raised, $5,000 or $10,000 could be attributed to RevUp, *i.e.*, via individuals he might not have

2   solicited but for seeing their names ranked highly by the software.[65]

3   　　　We also interviewed Brian Parvizshahi, the Committee's Campaign Manager from

4   January 2015 to September 2016, who generally confirmed that fundraising volunteers used the

5   RevUp software to identify and contact targets. He explained that the volunteers input lists of

6   contacts into the RevUp software to "help prioritization so that they could do outreach for the

7   campaign" and that those who were contacted "would have been asked to provide financial

8   contributions to the campaign, as well as participate as a volunteer in the campaign."[66] He also

9   noted that RevUp helped "prioritize which individuals should be contacted."[67] He could not

10   recall "data management" use of the RevUp software.[68] Parvizshahi described the Committee's

11   use of the software as "rarified" and "minor."[69] He stated that press reporting on the campaign's

12   use of the product was "exaggerated."[70] However, these statements conflict with how Spinner

13   described the campaign's use of RevUp: Spinner wrote to investors that RevUp had been a

14   "game changer for [the Khanna campaign], from whom RevUp will receive a very strong

15   testimonial."[71]

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[65]   Schireson Interview at 2.

[66]   Parvizshahi Decl. ¶ 3 (June 26, 2019); *accord.* Report of Investigation, Interview of Brian Parvizshahi at 3 (Apr. 7, 2020) [hereinafter Parvizshahi Interview].

[67]   Parvizshahi Decl. ¶ 4.

[68]   Parvizshahi Interview at 3. *But see* Khanna Decl. ¶ 8 (attesting that he primarily used the RevUp software as a "data management tool").

[69]   Parvizshahi Interview at 3.

[70]   *Id.* at 4; Parvizshahi Decl. ¶¶ 5-6.

[71]   REV_00003861, Email from Steve Spinner, CEO, RevUp, to RevUp Software Convertible Noteholders (Sept. 15, 2014, 4:24 PM PDT). Spinner does not mention Khanna or the Committee by name, but instead refers to RevUp's first paying customer, which was the Committee. *See supra* note 53 and accompanying text.

1   In addition, there are internal RevUp documents that describe the campaign's success

2   using the product. According to a RevUp product demo, "most" of the Khanna campaign's 164

3   fundraising volunteers used the software: "Ro would say 'we'll . . . give you a tool that you and

4   your assistant can use to identify 50 or 100 people who you know that I don't know, who might

5   find meeting me just as interesting as you do."[72] Draft applications for technology prizes quote

6   Ro Khanna as stating, "RevUp . . . completely changed the game for me in the 2016 election."[73]

7   Further, a RevUp sales presentation states that, when the Committee increased its number of

8   RevUp licenses from eight to twenty, it was able to raise in six weeks what it had previously

9   taken it almost seven months to raise.[74]

10   **IV.   LEGAL ANALYSIS**

11   **A.   Relevant Law**

12   The Act requires political committees to report to the Commission the identification of

13   each person whose aggregate contributions exceed $200 within the calendar year (or election

14   cycle, in the case of an authorized committee), along with the date and amount of any such

15   contribution.[75] Correspondingly, the Act requires the Commission to make all statements and

16   reports available for public inspection and copying.[76] Information copied from those statements

17   and reports, however, "may not be sold or used by any person for the purpose of soliciting

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[72]   REV_00000107, REVUP PRODUCT DEMONSTRATION SCRIPT (undated).

[73]   *E.g.,* REV_00001360, -1385, REVUP, NOMINATION FOR BEST USE OF DATA ANALYTICS (3) Attributed to Ro Khanna (attached to email dated Dec. 3, 2017).

[74]   REV_00006335, REVUP, INTRODUCING REVUP at 18 (attached to email dated March 20, 2017).

[75]   52 U.S.C. § 30104(b)(3)(A). The term "identification," in the case of an individual, is defined as the contributor's name, mailing address, occupation, and employer. *Id.* § 30101(13)(A).

[76]   *Id.* § 30111(a)(4).

1   contributions or for commercial purposes, other than using the name and address of any political

2   committee to solicit contributions from such committee."[77] Congress enacted the sale and use

3   provision "to protect the privacy of the generally very public-spirited citizens who may make a

4   contribution to a political campaign or a political party."[78]

5   "The statute not only places restrictions on the sale and use of names and addresses

6   obtained from the Commission's database, but also restricts the sale and use of contribution

7   histories, including by matching a pre-existing list of names with FEC disclosure reports for the

8   purpose of identifying known political contribution in order to assist with potentially soliciting

9   those individuals."[79] Based on the legislative history, and the Congressional objective of

10   protecting the privacy of individual contributors, the Commission has approved the sale and use

11   of individual contribution information only in "narrow circumstances" where the principal

12   purpose was informational, and there was no indication that the entity published the FEC data for

13   the purpose of soliciting contributions.[80] The Commission's interpretation of the sale and use

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[77]   *Id.*; *see also* 11 C.F.R. § 104.15. The Commission's implementing regulation provides that "*soliciting contributions* includes soliciting any type of contribution or donation, such as political or charitable contributions." 11 C.F.R. § 104.15(b) (emphasis in original).

[78]   117 Cong. Rec. 30,057 (Aug. 5, 1971) (statement of Sen. Henry Bellmon) ("These names would certainly be prime prospects for all kinds of solicitations, and I am of the opinion that unless this amendment is adopted, we will open up the citizens who are generous and public spirited enough to support our political activities to all kinds of harassment, and in that way tend to discourage them from helping out as we need to have them do.").

[79]   Conciliation Agreement ¶ IV.7 MURs 6960 & 6991 (SW Technologies, LLC); *see, e.g.*, Advisory Op. 2004-24 (NGP) (denying request to incorporate contribution histories into a fundraising software program); [hereinafter AO 2004-24]; Advisory Op. 1985-16 (Weiss) (denying request to match names on a pre-existing list with the FEC database to identify solicitation targets) [hereinafter AO 1985-16].

[80]   Advisory Op. 1988-02 at 2 (Chi. Bd. of Options Exch. II); *see, e.g.*, Advisory Op. 2017-08 (Point Bridge Capital) (using aggregate contribution data to develop an index of publicly traded equity securities); Advisory Op. 2015-12 (Ethiq) (using aggregate contribution data to assist contributors with identifying candidates and corporations that align with their views) [hereinafter AO 2015-12]; Advisory Op. 2014-07 (Crowdpac) (using aggregate contribution data to assist users with identifying like-minded candidates) [hereinafter AO 2014-07]; Advisory Op. 2013-16 (PoliticalRefund.org) (informing contributors of their right to seek a refund); Advisory Op. 2009-19 (Club for Growth) (informing contributors that a candidate changed party affiliation); Advisory Op. 1995-09 (NewtWatch) (publishing information on Internet forum about select public officials); Advisory Op. 1984-02

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1   provision is guided by "competing policy objectives," which include, on the one hand, promoting

2   disclosure of information to inform the electorate where campaign money comes from (to deter

3   corruption and enforce the Act's limitations and prohibitions), and, on the other, protecting the

4   privacy of individual contributors (such that they will not become solicitation prospects).[81]

5   **B.   The Commission Should Take No Further Action with Respect to RevUp**

6   Between 2014 and 2019, RevUp marketed a commercial fundraising software product

7   that incorporated individual contribution histories obtained from the FEC database to enhance its

8   clients' solicitation efforts. The RevUp software uses FEC data in three ways: (1) as a factor in

9   calculating the propensity of a given person to make a contribution to the client's organization;

10   (2) by displaying contribution histories to assist clients when reviewing solicitation prospects,

11   namely, to help calculate the amount for which to ask; and (3) by enabling the client to identify

12   contacts that have previously made contributions to similar campaigns, and thus to target those

13   most likely to given the client's organization.[82] Each of these uses of contributor data is for the

14   purpose of soliciting contributions because the information identifies whom from the clients' list

15   of contacts should be targeted or prioritized for solicitations and helps calculate the amount for

16   which to ask.[83]

(Gramm) (informing contributors that a committee with a misleading name was not connected to the authorized committee); Advisory Op. 1981-05 (Findley) (informing contributors about allegedly defamatory statements).

[81]   *FEC v. Legi-Tech, Inc.*, 967 F. Supp. 523, 529-30 (D.D.C. 1997); *see FEC v. Pol. Contributions Data, Inc.*, 943 F.2d 190, 191 (2d Cir. 1991) (citing *Buckley v. Valeo*, 424 U.S. 1, 66-68 (1974)); 117 Cong. Rec. 30,057 (Aug. 5, 1971) (statement of Sen. Henry Bellmon).

[82]   At the reason-to-believe stage, the Commission concluded that "it is clear that the RevUp software uses FEC data in a manner that directly implicates the privacy concerns that Congress sought to mitigate." F&LA at 8 (RevUp).

[83]   *See* AO 1985-16 at 2 (denying request to compare names on a pre-existing list, which the requestor intended to market for solicitation purposes, with the names of individual contributors contained in the Commission's database); AO 2004-24 at 2-3 (denying requestor to add feature to political and reporting software that would have enabled the requestor's clients to view the contribution histories of individuals in their own database

1   The RevUp software directly implicates the privacy concerns that Congress sought to

2   mitigate because contacts flagged by the RevUp software, through the use of FEC data, were

3   more likely to be solicited. The information obtained during the investigation thus confirms the

4   Commission's reason-to-believe finding that "it is clear that the RevUp software uses FEC data

5   in a manner that directly implicates the privacy concerns that Congress sought to mitigate."[84]

6   For instance, an email from a RevUp representative to a prospective client described RevUp as a

7   tool that will "tell you which of your past donors are MOST likely to donate to you if you

8   contact them NOW."[85] An email between RevUp's Director of Sales and Spinner, the CEO,

9   specifically describes the product as allowing users to "quickly know who . . . to call first . . . and

10   how much is appropriate to ask for."[86] And one of RevUp's most important clients, Ro for

11   Congress, which tested the software and then used the product over multiple election cycles,

12   acknowledged that it helped "prioritize which individuals should be contacted."[87] Information

13   obtained during the investigation also showed that FEC data was a major component in the

14   RevUp algorithm.[88]

15   Even though the investigation confirmed the Commission's reason-to-believe finding that

16   RevUp violated the sale and use provision, we recommend that the Commission take no further

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to "allow [NGP's client] to conduct fundraising more efficiently, and to resolicit existing donors who may have given more to other committees").

[84]   F&LA at 8 (RevUp).

[85]   REV_00003058, Email from Kristin Fine, RevUp, to Va. Democrats (Mar. 13, 2019, 1:08 PM PDT). The RevUp product demonstration script, describing the correlated campaign feature, stated: "Naomi . . . contributed to Kamala Harris, one of the correlated campaigns. I should reach out and say 'Naomi, if you like Kamala, you're gonna love Ro.' Go get her!" REV_00000107, REVUP PRODUCT DEMONSTRATION SCRIPT (undated).

[86]   REV_00001160, Email from Toby Quaranta, Dir. of Sales, RevUp, to Steve Spinner, CEO, RevUp (July 19, 2017, 2:28 PM PDT).

[87]   Parvizshahi Decl. ¶ 4.

[88]   *See supra* Part III.A.1.

1   action as to RevUp. In December 2019, RevUp dissolved.[89] RevUp's former counsel stated that

2   the company has no assets, nor does it have current officers, directors, or employees.[90] There is

3   no indication that a successor company was formed.[91] Therefore, we conclude there is no risk

4   that the defunct company will commit further violations of the Act, and it appears to have no

5   capacity to pay a civil penalty. Moreover, as explained below, we recommend that the

6   Commission pursue the apparent, ongoing violations by Numero, the company that purchased

7   RevUp's brand name and technology. Given these unique circumstances, we recommend that

8   the Commission take no further action as to RevUp.

9   **C.   The Commission Should Find Reason to Believe that Numero Violated the**
10   **Sale and Use Provision**

11   Because Numero is marketing the same product formerly offered by RevUp, and because

12 Numero introduces no new legal arguments in its Response beyond those already rejected by the

13 Commission, the same analysis that led the Commission to find reason to believe that RevUp had

14 violated the sale and use provision of the Act applies to Numero.[92]

15   As discussed above, in January 2020, Numero purchased RevUp's brand name and its

16 intellectual property, including its algorithm that incorporates FEC data in order to rank and

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[89]   REVUP, STATE OF DELAWARE CERTIFICATE OF DISSOLUTION (Dec. 20, 2019).

[90]   Letter from Marc E. Elias & Tyler J. Hagenbuch, Perkins Coie LLP, Couns. for RevUp, to Claudio J. Pavia, Acting Ass't Gen. Couns., FEC (Apr. 23, 2020); GENERAL ASSIGNMENT OF PROPERTY OF REVUP SOFTWARE, INC. TO REVUP SOFTWARE (ABC) LLC (Dec. 20, 2019).

[91]   When a corporation sells or transfers all of its assets, the transferee corporation generally does not assume the liabilities of the transferor. *See Golden State Bottling Co. v. NLRB*, 414 U.S. 168, 182 n.5 (1973). An exception to the general rule of non-liability occurs when the successor corporation is a "mere continuation" or a "substantial continuation" of the predecessor corporation. *Holland v. Williams Mountain Coal Co.*, 256 F.3d 819, 824 (D.C. Cir. 2001). As Numero simply purchased RevUp's assets and incorporated them into its own product, it does not appear to be a continuation of RevUp's corporate activities and as such does not assume RevUp's liabilities. *See* Memorandum to the Commission Regarding Intent to Name and Notify Additional Respondent (Sept. 24, 2020).

[92]   *See* F&LA at 4-8 (RevUp Software).

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1   score contacts based on their likelihood of making a contribution.[93] In February 2020, Numero

2   added a feature titled "Donor History by RevUp" to its own fundraising product.[94] The feature

3   scores and ranks contacts, displays their contribution histories, and identifies their giving history

4   to so-called "correlated campaigns."[95] In its Response, Numero does not contend that its version

5   of the RevUp software differs in any material way from the version previously marketed by

6   RevUp, and acknowledges that its product uses FEC data.[96] Therefore, the available information

7   supports the conclusion that Numero impermissibly sells and uses FEC data because its

8   commercial fundraising software incorporates individual contribution histories obtained from the

9   Commission's database for the purpose of soliciting contributions.

10   Numero argues that its product does not violate the sale and use provision because it

11   analyzes pre-existing contacts uploaded by its clients and does not copy new names or addresses

12   from the FEC database.[97] In prior matters involving the commercial use of FEC data, the

13   Commission has prohibited the sale of individual contribution histories where, as here, that data

14   was displayed within fundraising-related software, and has prohibited the use of such data where,

15   as here, the purpose was to enhance a pre-existing list of names by determining who among the

16   listed individuals was a political contributor.[98] In MURs 6960 & 6991 (SW Technologies,

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[93]   *See* Numero Resp. at 1 (stating that Numero acquired, *inter alia*, RevUp's "technology and corresponding source code"); REVUP, NOTICE OF ASSIGNMENT FOR THE BENEFIT OF CREDITORS AND DEADLINE FOR SUBMITTING CLAIMS (Dec. 20, 2019); NUMERO, https://www.numero.ai (last visited May 6, 2021).

[94]   Numero Resp. at 1-2.

[95]   *See* Fig. 3, *supra*; NUMERO, https://www.numero.ai (last visited May 6, 2021).

[96]   Numero states, without any conditions, that it provides customers with "access to the . . . RevUp Software assets" and does not dispute the factual statements in the Notification Letter. Numero Resp. at 2; *see* Letter from Claudio J. Pavia, Acting Ass't Gen. Couns., FEC, to Numero (Oct. 1, 2020) (notification letter).

[97]   Numero Resp. at 2.

[98]   RevUp F&LA at 6-7. In Advisory Opinion 1985-16 (Weiss), the Commission concluded it was impermissible to compare the names on a pre-existing list, which the requestor intended to market for solicitation purposes, with the names of individual contributors contained in the Commission's database. AO 1985-16 at 2.

1   LLC), the Commission conciliated with a respondent that violated the sale and use provision "by

2   matching a pre-existing list of names with FEC disclosure reports for the purpose of identifying

3   known political contributors in order to assist with potentially soliciting those individuals."[99]

4   That activity precisely describes Numero's apparent use of FEC data.

5   Numero also appears to claim that, because it "is not a list broker," the sale and use

6   provision is not applicable.[100] However, the status of the person misusing FEC data and the

7   specific form in which the information is misused are immaterial under the statute. Rather, it

8   plainly prohibits the sale and use of FEC data "by *any person* for the purpose of soliciting

9   contributions or for commercial purposes."[101] In addition, Numero argues that "[t]he RevUp

10   Software assets do not implicate privacy concerns because it does not provide clients with any

11   contact information that they don't already have."[102] First, this argument conflicts with the

12   finding in MURs 6960 & 6991 that the statute not only "places restrictions on the sale and use of

13   names and addresses . . . but also restricts the sale and use of contribution histories."[103] And

14   Numero's argument ignores the most fundamental purpose of the scoring and ranking algorithm,

15   which is to identify those most likely to make a contribution and flag them as prime solicitation

16   prospects because of their high score and ranking.[104] Finally, Numero argues that its product is

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This prohibited matching technique is a rudimentary example of the RevUp scoring and ranking algorithm. In Advisory Opinion 2004-24 (NGP), the Commission concluded it was impermissible to add a feature to political and reporting software that would have enabled the requestor's clients to view the contribution histories of individuals in their own database for the purpose of soliciting contributions. AO 2004-24 at 2-3.

[99]   Conciliation Agreement ¶ IV.7 MURs 6960 & 6991 (SW Technologies, LLC).

[100]   Numero Resp. at 2.

[101]   52 U.S.C. § 30111(a)(4) (emphasis added).

[102]   Numero Resp. at 2.

[103]   Conciliation Agreement ¶ IV.7 MURs 6960 & 6991 (SW Technologies, LLC).

[104]   RevUp marketed its product as having this explicit purpose for years. *See, e.g.,* RevUp, http://www.revup. com [https://web.archive.org/web/20150502160807/http://www.revup.com/] (archived May 2, 2015) ("We help fundraisers, while working with existing software, create new ways to identify, target, and engage their networks.").

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1   "indistinguishable from the use of contribution history in platforms previously approved by the

2   Commission."[105] The matters cited by Numero involve aggregate uses of FEC data, thus

3   anonymizing individual contributions, or else had other protocols that prevented the misuse of

4   FEC data to solicit contributions.[106]

5   Therefore, we recommend the Commission find reason to believe that Numero violated

6   52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a) by selling a commercial fundraising software

7   product that uses FEC data for the purpose of soliciting contributions.

8   **D.   The Commission Should Enter into Pre-Probable Cause Conciliation with**
9   **the Committee**

10   The Committee acknowledges that the campaign used the RevUp software for soliciting

11   contributions.[107] Its former Campaign Manager confirmed that RevUp was used to "prioritize

12   which individuals should be contacted" for contributions to the Committee.[108] And a volunteer

13   fundraiser stated that he used RevUp "mostly for contributions."[109] Although we did not obtain

14   a statement from Spinner,[110] RevUp's CEO, who simultaneously served as the Committee's

When Numero purchased the algorithm from RevUp, it apparently made no changes to its design and used the RevUp brand name. Moreover, Numero added the feature to a software product with the self-described purpose of allowing clients to "build out their call lists and manage their database of donors." Numero Resp. at 2. On its website, Numero explicitly names its RevUp product as a beneficial tool for fundraisers "as they can upload their contacts and immediately see who in their extended network has given to a campaign." Forde, *supra* note 39.

[105]   Numero Resp. at 2.

[106]   *See id.* at 2 & n.8 (citing AO 2015-12 and AO 2014-07); *see* AO 2015-12 (Ethiq) (permitting use of FEC data to analyze contributions made by corporate executives to determine whether the user's ideology is consistent with a given corporation as represented by its leadership; the purpose was not to solicit the executives); AO 2014-07 (Crowdpac) (permitting use of FEC data to glean insights about candidates and corporations to help users obtain information about like-minded entities; the information was presented in an aggregate form).

[107]   Ro for Congress RTB Resp. at 2 ("RevUp was used by a small number of campaign volunteers to identify potential donors, volunteers, and supporters.").

[108]   Parvizshahi Decl. ¶ 4; *see* Parvizshahi Interview at 3.

[109]   Schireson Interview at 2-3.

[110]   RevUp's counsel declined to make Spinner available for an interview and informed this office via telephone that Spinner had recently experienced health issues. Letter from Tyler Hagenbuch & Marc Elias, Couns.

1   Chair and as a volunteer fundraiser, Spinner made multiple public statements and representations

2   to prospective clients about how RevUp software was crucial to the Committee's fundraising.[111]

3   Therefore, the evidence obtained during the investigation confirms that the Committee used the

4   RevUp software, and thereby FEC data, for the purpose of soliciting contributions.

5   At the reason-to-believe stage, the Commission concluded that "the Committee appears

6   to have had in-depth knowledge about the software, which, based on the current record,

7   distinguishes it from other committees who are customers of the company."[112] The investigation

8   confirmed this assessment. The Committee was RevUp's first customer; it participated in early

9   testing of the RevUp software before it was publicly available; and Spinner, RevUp's founder,

10 simultaneously served during the 2014 and 2016 election cycles as RevUp's CEO, as the Chair

11 of the Committee, and as a "volunteer fundraiser," and he recruited others to fundraise for the

12 Committee using the RevUp software.[113] Moreover, the Committee acknowledged knowing that

13 the RevUp software incorporated FEC data as part of the scoring and ranking algorithm,

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for RevUp, to Claudio Pavia, Acting Ass't Gen. Couns., FEC (Apr. 23, 2020); Report of Investigation, Telecon. with Tyler Hagenbuch at 1 (April 14, 2020).

[111]   *See, e.g.*, REV_00001048, Email from Steve Spinner, CEO, RevUp, to potential client (Apr. 7, 2017, 2:15 PM PDT) ("If Keith is interested, just have him chat with Ro Khanna directly about the software. He'll tell him personally his thoughts."); REV_00000107, RevUp Product Demonstration Script (undated) (using the Khanna campaign for demonstration of the RevUp product throughout); Joshua Green, *Steve Spinner Just Fixed the Worst Thing About Being a Politician*, BLOOMBERG, Mar. 23, 2016, https://www.bloomberg.com/news/ features/2016-03-23/steve-spinner-s-software-revup-could-transform-fundraising-for-politics-and-beyond.

[112]   F&LA at 7 (Ro for Congress).

[113]   Committee Resp. to FEC Questions at 2; *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?recipient_%E2%80%8Cname=RevUp&data_type=processed&recipient_name=RevUp&two_year_transaction_period=2014&two_year_transaction_period=2016&two_year_transaction_period=2018&two_year_transaction_period=2020 (last visited Mar. 16, 2021) (showing all disbursements by political committees to RevUp); Email from Neil P. Reiff, Couns. for RevUp, to Justine A. di Giovanni, Att'y, FEC (Jan. 27, 2020, 4:10 PM EST); Schireson Interview at 1, 3.

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1   although it contends that RevUp and Spinner assured the Committee that such use of FEC data

2   was permissible upon the advice of counsel.[114]

3   In prior instances of prohibited commercial sale and use of FEC data, the Commission

4   has not pursued the customers who purchased a product that impermissibly incorporated FEC

5   data and potentially used the product to solicit contributions.[115] Nonetheless, given the unique

6   circumstances outlined above, which confirmed the Commission's assessments that justified the

7   Committee's liability at the reason-to-believe stage, we recommend that the Commission enter

8   into pre-probable cause conciliation with the Committee to resolve the apparent violation.

9   **E.   The Commission Should Take No Action at this Time Regarding the**
10   **Allegation that Ro Khanna Personally Violated the Sale and Use Provision**

11   The Commission found reason to believe as to Khanna, in his personal capacity, in light

12   of the available information suggesting that Khanna "used the RevUp software in connection

13   with his fundraising activities."[116] During the investigation, we obtained information showing

14   that Khanna used the RevUp software but could not establish that he used it for the purpose of

15   soliciting contributions. In his sworn declaration, Khanna acknowledged that he used the RevUp

16   software and was aware that it incorporated and displayed FEC data.[117] However, he attested

17   that he used the software "as a data management tool to keep track of contact information for

18   Committee supporters," and that "at no time and in no way have I . . . used the RevUp software's

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[114]   Committee Resp. to FEC Questions at 2.

[115]   *See, e.g.,* First Gen. Counsel's Rpt., MUR 5625 (Aristotle Int'l, Inc.) (naming a software company as a respondent and not its clients); First Gen. Counsel's Rpt., MUR 6334 (Aristotle Int'l, Inc.) (same); First Gen. Counsel's Rpt., MUR 6960, 6991 (SW Technologies, LLC, *et al.*) (same).

[116]   F&LA at 6 (Khanna).

[117]   Khanna Decl. ¶ 7.

1   scoring and ranking information or contribution history display for the purpose of identifying or

2   prioritizing targets."[118]

3   Khanna's statements are questionable given the express, and indeed narrow, purpose for

4   which the product was designed.[119] Khanna acknowledges using the RevUp software, there is

5   information that he uploaded his contacts into the product, and he would have clearly seen the

6   scores and rankings next to the names of his contacts and their contribution histories.[120] The

7   Campaign Manager could not recall any "data management" use of the RevUp software, and

8   there is information that Committee fundraisers used the software to solicit contributions.[121]

9   Moreover, the Committee was RevUp's flagship customer, and Spinner repeatedly cited the

10   Committee as an example of how the RevUp software can be used by a campaign to successfully

11   fundraise.[122] Yet, because Khanna submitted a sworn declaration denying that he used the

12   RevUp software to solicit contributions, and given the lack of direct evidence showing that he

13   used it for this purpose, the available evidence does not establish that Khanna personally violated

14   the sale and use provision. For that reason, we recommend the Commission take no action at

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[118]   *Id.* ¶¶ 8-9. Further, he maintains that RevUp provided assurances that it had obtained legal advice confirming that its use of FEC data was in compliance with the Act. *Id.* ¶ 11.

[119]   *See* REV_00003058, Email from Kristin Fine, RevUp, to Va. Democrats (Mar. 13, 2019, 1:08 PM PDT) (describing RevUp as "an additional tool that will . . . [u]se an algorithm (customized specifically for the VA Dems) to tell you which of your past donors are MOST likely to donate to you if you contact them NOW"); REV_00001160, Email from Toby Quaranta, Dir. of Sales, RevUp, to Steve Spinner, CEO, RevUp (July 19, 2017, 2:28 PM PDT) (noting that the RevUp product allows users to "quickly know who . . . to call first . . . and how much is appropriate to ask for"); see RevUp RTB Resp. at 3 ("The purpose of the algorithm is to create a ranked list of the client's pre-existing contacts ordered from the most likely to least likely to identify with or support that organization.").

[120]   Khanna Decl. ¶¶ 7, 10 (acknowledging that he used the RevUp software and that he was aware that the software ranked and scored uploaded contacts).

[121]   Parvizshahi Interview at 3-4; Schireson Interview at 2.

[122]   *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?recipient_%E2%80%8Cname=RevUp&data_type=processed&recipient_name=RevUp&two_year_transaction_period=2014&two_year_transaction_period=2016&two_year_transaction_period=2018&two_year_transaction_period=2020 (last visited May 6, 2021) (showing all disbursements to RevUp); *supra* notes 52, 111.

1   this time against Khanna pending the outcome of the proposed conciliation with the Committee,

2   in the event that additional information comes to light regarding Khanna.

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MUR 7062 (Numero, Inc., *et al.*)
Second General Counsel's Report
Page 31 of 33

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4 **VI.   RECOMMENDATIONS**

5   1.   Take no further action with respect to the apparent violation by RevUp Software,
6   Inc., of 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a) by selling fundraising
7   software that incorporates information taken from the Commission's database of
8   reports filed by political committees;

9   2.   Take no action at this time with respect to the allegation that Ro Khanna violated
10   52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15(a) by using information taken
11   from the Commission's database of reports filed by political committees for the
12   purpose of soliciting contributions;

13   3.   Find reason to believe that Numero, Inc. violated 52 U.S.C. § 30111(a)(4) and
14   11 C.F.R. § 104.15(a) by selling fundraising software that incorporates
15   information taken from the Commission's database of reports filed by political
16   committees;

17   4.   Approve the attached Factual and Legal Analysis for Numero, Inc.;

18   5.   Authorize pre-probable cause conciliation with Ro for Congress and Linda Sell in
19   her official capacity as treasurer;

20   6.   Authorize pre-probable cause conciliation with Numero, Inc.;

21   7.   Approve the attached Conciliation Agreements;

22   8.   Approve the appropriate letters; and

1   9.   Close the file with respect to RevUp Software, Inc.

2

3   Lisa J. Stevenson
4   Acting General Counsel
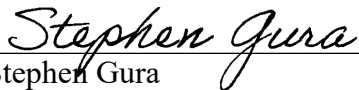
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7   Charles Kitcher
8   Acting Associate General Counsel
9   for Enforcement

10

11

12   Date: 05.14.21   *Stephen Gura*
13   Stephen Gura
14   Deputy Associate General Counsel

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18   Claudio J. Pavia
19   Acting Assistant General Counsel

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23   Justine A. di Giovanni
24   Attorney

25

26   Attachments:
27   Factual and Legal Analysis for Numero, Inc.

28

29

1   **FEDERAL ELECTION COMMISSION**

2   **FACTUAL AND LEGAL ANALYSIS**

3   **Respondent:** Numero, Inc.   **MUR:** 7062

4   **I.   INTRODUCTION**

5   The Federal Election Commission ascertained information in the normal course of

6   carrying out its supervisory responsibilities indicating that Numero, Inc. ("Numero") may have

7   violated the Federal Election Campaign Act of 1971, as amended (the "Act") or Commission

8   regulations by selling fundraising software that incorporates information taken from the

9   Commission's database of reports and statements filed by political committees ("FEC data"), in

10   violation of the "sale and use provision"[1] of the Act, and provided Numero with notice of the

11   potential violation and an opportunity to respond. Numero acknowledges using FEC data but

12   argues that it does not copy or obtain individual contributor names and addresses from FEC

13   reports and limits its sale and use of FEC data to individual contribution histories.[2] For the

14   reasons stated below, the Commission finds reason to believe that Numero violated 52 U.S.C.

15   § 30111(a)(4) and 11 C.F.R. § 104.15(a).

16   **II.   FACTUAL BACKGROUND**

17   Numero is a political software company based in Irvine, California, that sells a

18   fundraising product called the Customer Relationship Management tool.[3] On its website,

19   Numero states that: "Before you call a potential supporter of your campaign, you should know

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[1]   52 U.S.C. § 30111(a)(4) (in relevant part); *see also* 11 C.F.R. § 104.15.

[2]   Numero Resp. at 1-2 (Dec. 22, 2020).

[3]   *Id.*; Numero Resp. at 1-2 (describing the Customer Relationship Management tool as "designed to help candidates build out their call lists and manage their database of donors").

1   some basic facts about them to help you guide the call to a successful ask. That's where donor

2   research comes in."[4]

3   RevUp Software, Inc. ("RevUp") was a technology company which between 2014 and

4   2019 sold web-based fundraising software primarily to political organizations. In December

5   2019, RevUp dissolved and transferred all of its assets to an assignee, which liquidated the

6   assets.[5] In January 2020, Numero purchased RevUp's brand name and technology — including

7   its algorithm, which uses FEC data to score and rank contacts based on their likelihood of

8   making a contribution.[6] In February 2020, Numero added RevUp's scoring and ranking

9   technology as a feature within its own fundraising software product.[7]

10   **A.   The RevUp Software**

11   The Commission possesses information regarding RevUp's software as it was sold and

12   marketed prior to its acquisition by Numero. The RevUp software uses FEC data as part of a

13   proprietary algorithm that scores and ranks contacts based on their likelihood of making a

14   contribution. The software also uses FEC data to display contacts' contribution histories and

15   identify all contacts who made contributions to similar campaigns.

16   1.   <u>RevUp Algorithm</u>

17   To use the RevUp software, clients upload lists of their own contacts from sources such

18   as Gmail, LinkedIn, or a spreadsheet. The software scores a user's contacts from zero to 100

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[4]   Brian Forde, *The Complete Political Fundraising 2021 Guide [with Ideas]*, NUMERO BLOG (Jan. 6, 2021), https://numero.ai/blog/how-to-run-for-office/political-fundraising.

[5]   REVUP, STATE OF DELAWARE CERTIFICATE OF DISSOLUTION (Dec. 20, 2019).

[6]   Numero Resp. at 1-2.

[7]   *Id.*

MUR 7062 (Numero, Inc.)
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1   based on their likelihood to donate to the user's particular candidate. The algorithm uses

2   contribution histories — *i.e.*, the fact that a contact has previously made contributions, the

3   recipients of those contributions, and the amounts of those contributions — as one of the factors

4   to determine the likelihood that a given person will make a contribution to a client's campaign.

5   Although FEC data is one of many data points used by the algorithm, it is a major component.

6   The algorithm obtains the information about past contributions from the FEC's website.

7   2.   Display of Contribution Histories

8   Numero's description of the RevUp product's utility indicates that users can view their

9   contacts' contribution histories when using the product: when referring to fundraising tools "like

10   RevUp," Numero states that campaign fundraisers "can upload their contacts and immediately

11   see who in their extended network has given to a campaign."[8]

12   3.   Correlated Campaigns

13   The RevUp software also uses FEC data as part a feature called "correlated campaigns,"

14   which allows the user to select similar candidates to identify contacts of the user who have

15   donated to those chosen campaigns.

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[8]   NUMERO, https://www.numero.ai (last visited May 6, 2021).

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1   **B.   Sale of the RevUp Product to Numero**

2   RevUp dissolved on December 20, 2019.[9] At that time, RevUp transferred all of its

3   assets, including its intellectual property, to a bankruptcy assignee for liquidation.[10] Numero

4   subsequently purchased RevUp's brand name and intellectual property.[11]

5   In February 2020, Numero added a feature called "Donor History by RevUp" to its

6   fundraising product.[12] An example image of the feature on Numero's website shows that it is

7   substantively identical to the software previously marketed by RevUp. It scores and ranks

8   contacts based on their likelihood of making a donation to the user's campaign, displays each

9   contact's giving history, and shows their contributions to correlated campaigns.[13] Numero

10   markets the product using the "RevUp" name and logo.[14] The Numero website advises

11   candidates to:

12   figure out if anyone in your network has a history of giving to Democratic
13   candidates. If someone has given money in the past and is in your extended
14   network, there's a very high likelihood that they will give to you. Keep in mind
15   that looking up donor history can be very time-consuming to complete. However,
16   there are a couple of powerful tools that look up giving history for any of your
17   contacts by searching all publicly available contributions (federal, state, and
18   local), like RevUp. These tools can be beneficial for [campaign fundraisers] as

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[9]   REVUP, STATE OF DELAWARE CERTIFICATE OF DISSOLUTION (Dec. 20, 2019).

[10]   REVUP, NOTICE OF ASSIGNMENT FOR THE BENEFIT OF CREDITORS AND DEADLINE FOR SUBMITTING CLAIMS (Dec. 20, 2019).

[11]   *See* NUMERO, https://www.numero.ai (last visited May 6, 2021). RevUp's former website redirected to that of Numero as of July 29, 2020.

[12]   Numero Resp. at 1-2.

[13]   NUMERO, https://www.numero.ai (last visited May 6, 2021); *see* Figure 3, *infra*.

[14]   *See* NUMERO, https://www.numero.ai (last visited May 6, 2021).

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1   they can upload their contacts and immediately see who in their extended network

2   has given to a campaign.[15]

3   Figure 1 shows the "Donor History by RevUp" feature, according to an image available on

4   Numero's website.

5   **Figure 1. Numero's "Donor History by RevUp"[16]**
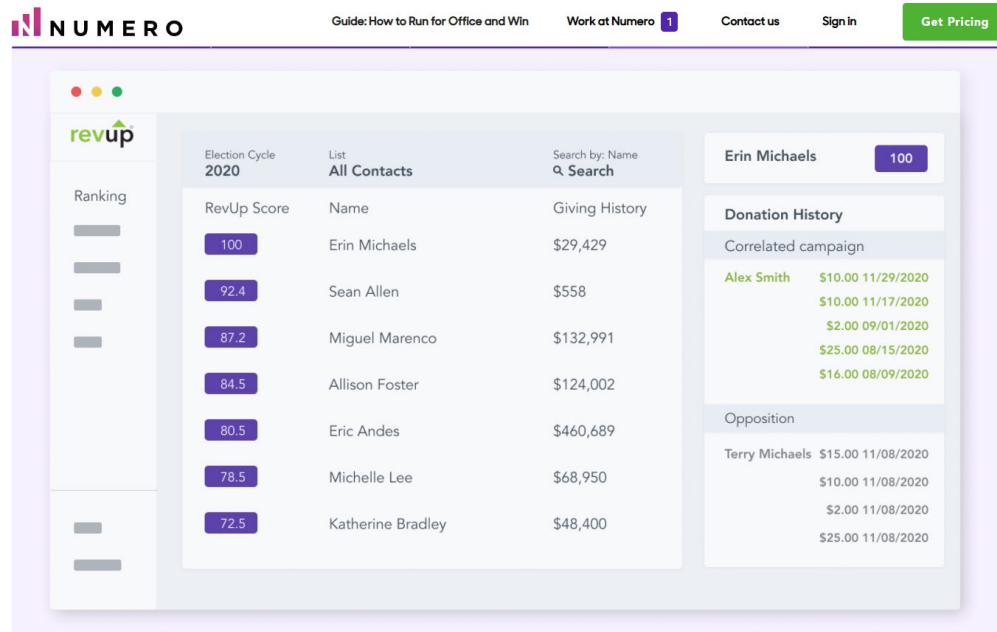
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7   Numero does not contend that its version of the RevUp product in any way materially

8   differs from that previously sold by RevUp.[17] Numero also acknowledges using FEC data, but

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[15]   *Id.*

[16]   *Id.* (image displayed after clicking "Donor History by RevUp" in the purple bar near the top of the screen).

[17]   *See* Numero Resp. at 2-3. In the Notification Letter, OGC explained, *inter alia*, that "a feature titled RevUp appears to return a numerical score and ranking for a user's contacts based on their likelihood of making a donation to the user's chosen cause," and "that FEC data is used within the algorithm that generates the ranking and scores." Letter from Claudio J. Pavia, Acting Ass't Gen. Couns., FEC, to Numero (Oct. 1, 2020) (notification letter).

1   argues that contribution histories are not protected by the sale and use provision and that its use

2   of FEC data does not implicate the privacy interests underlying the sale and use provision.[18]

3   **III.   LEGAL ANALYSIS**

4   The Act requires political committees to report to the Commission the identification of

5   each person whose aggregate contributions exceed $200 within the calendar year (or election

6   cycle, in the case of an authorized committee), along with the date and amount of any such

7   contribution.[19] Correspondingly, the Act requires the Commission to make all statements and

8   reports available for public inspection and copying.[20] Information copied from those statements

9   and reports, however, "may not be sold or used by any person for the purpose of soliciting

10   contributions or for commercial purposes, other than using the name and address of any political

11   committee to solicit contributions from such committee."[21] Congress enacted the sale and use

12   provision "to protect the privacy of the generally very public-spirited citizens who may make a

13   contribution to a political campaign or a political party."[22]

14   "The statute not only places restrictions on the sale and use of names and addresses

15   obtained from the Commission's database, but also restricts the sale and use of contribution

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[18]   *See* Numero Resp. at 2-3.

[19]   52 U.S.C. § 30104(b)(3)(A). The term "identification," in the case of an individual, is defined as the contributor's name, mailing address, occupation, and employer. *Id.* § 30101(13)(A).

[20]   *Id.* § 30111(a)(4).

[21]   *Id.*; *see also* 11 C.F.R. § 104.15. The Commission's implementing regulation provides that "*soliciting contributions* includes soliciting any type of contribution or donation, such as political or charitable contributions." 11 C.F.R. § 104.15(b) (emphasis in original).

[22]   117 Cong. Rec. 30,057 (Aug. 5, 1971) (statement of Sen. Henry Bellmon) ("These names would certainly be prime prospects for all kinds of solicitations, and I am of the opinion that unless this amendment is adopted, we will open up the citizens who are generous and public spirited enough to support our political activities to all kinds of harassment, and in that way tend to discourage them from helping out as we need to have them do.").

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1   histories, including by matching a pre-existing list of names with FEC disclosure reports for the

2   purpose of identifying known political contribution in order to assist with potentially soliciting

3   those individuals."[23] Based on the legislative history, and the Congressional objective of

4   protecting the privacy of individual contributors, the Commission has approved the sale and use

5   of individual contribution information only in "narrow circumstances" where the principal

6   purpose was informational, and there was no indication that the entity published the FEC data for

7   the purpose of soliciting contributions.[24] The Commission's interpretation of the sale and use

8   provision is guided by "competing policy objectives," which include, on the one hand, promoting

9   disclosure of information to inform the electorate where campaign money comes from (to deter

10   corruption and enforce the Act's limitations and prohibitions), and, on the other, protecting the

11   privacy of individual contributors (such that they will not become solicitation prospects).[25]

12   The available information indicates that Numero impermissibly sells and uses FEC data

13   because its commercial fundraising software incorporates individual contribution histories

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[23]   Conciliation Agreement ¶ IV.7 MURs 6960 & 6991 (SW Technologies, LLC); *see, e.g.*, Advisory Op. 2004-24 (NGP) (denying request to incorporate contribution histories into a fundraising software program); [hereinafter AO 2004-24]; Advisory Op. 1985-16 (Weiss) (denying request to match names on a pre-existing list with the FEC database to identify solicitation targets) [hereinafter AO 1985-16].

[24]   Advisory Op. 1988-02 at 2 (Chi. Bd. of Options Exch. II); *see, e.g.*, Advisory Op. 2017-08 (Point Bridge Capital) (using aggregate contribution data to develop an index of publicly traded equity securities); Advisory Op. 2015-12 (Ethiq) (using aggregate contribution data to assist contributors with identifying candidates and corporations that align with their views) [hereinafter AO 2015-12]; Advisory Op. 2014-07 (Crowdpac) (using aggregate contribution data to assist users with identifying like-minded candidates) [hereinafter AO 2014-07]; Advisory Op. 2013-16 (PoliticalRefund.org) (informing contributors of their right to seek a refund); Advisory Op. 2009-19 (Club for Growth) (informing contributors that a candidate changed party affiliation); Advisory Op. 1995-09 (NewtWatch) (publishing information on Internet forum about select public officials); Advisory Op. 1984-02 (Gramm) (informing contributors that a committee with a misleading name was not connected to the authorized committee); Advisory Op. 1981-05 (Findley) (informing contributors about allegedly defamatory statements).

[25]   *FEC v. Legi-Tech, Inc.*, 967 F. Supp. 523, 529-30 (D.D.C. 1997); *see FEC v. Pol. Contributions Data, Inc.*, 943 F.2d 190, 191 (2d Cir. 1991) (citing *Buckley v. Valeo*, 424 U.S. 1, 66-68 (1974)); 117 Cong. Rec. 30,057 (Aug. 5, 1971) (statement of Sen. Henry Bellmon).

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1   obtained from the Commission's database to enhance its clients' solicitation efforts. It is clear

2   that Numero uses FEC data in a manner that directly implicates the privacy concerns that

3   Congress sought to mitigate.

4   As discussed above, in January 2020, Numero purchased RevUp's brand name and its

5   intellectual property, including its algorithm that incorporates FEC data in order to rank and

6   score contacts based on their likelihood of making a contribution.[26] In February 2020, Numero

7   added a feature titled "Donor History by RevUp" to its own fundraising product.[27] The feature

8   scores and ranks contacts, displays their contribution histories, and identifies their giving history

9   to so-called "correlated campaigns."[28] In its Response, Numero does not contend that its version

10   of the RevUp software differs in any material way from the version previously marketed by

11   RevUp, and acknowledges that its product uses FEC data.[29]

12   Numero argues that its product does not violate the sale and use provision because it

13   analyzes pre-existing contacts uploaded by its clients and does not copy new names or addresses

14   from the FEC database.[30] In prior matters involving the commercial use of FEC data, the

15   Commission has prohibited the sale of individual contribution histories where, as here, that data

16   was displayed within fundraising-related software, and has prohibited the use of such data where,

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[26]   *See* Numero Resp. at 1 (stating that Numero acquired, *inter alia*, RevUp's "technology and corresponding source code"); REVUP, NOTICE OF ASSIGNMENT FOR THE BENEFIT OF CREDITORS AND DEADLINE FOR SUBMITTING CLAIMS (Dec. 20, 2019); NUMERO, https://www.numero.ai (last visited May 6, 2021).

[27]   Numero Resp. at 1-2.

[28]   *See* Fig. 1, *supra*; NUMERO, https://www.numero.ai (last visited May 6, 2021).

[29]   Numero states, without any conditions, that it provides customers with "access to the . . . RevUp Software assets" and does not dispute the factual statements in the Notification Letter. Numero Resp. at 2; *see* Letter from Claudio J. Pavia, Acting Ass't Gen. Couns., FEC, to Numero (Oct. 1, 2020) (notification letter).

[30]   Numero Resp. at 2.

MUR 7062 (Numero, Inc.)
Factual and Legal Analysis
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1   as here, the purpose was to enhance a pre-existing list of names by determining who among the

2   listed individuals was a political contributor.[31] In MURs 6960 & 6991 (SW Technologies,

3   LLC), the Commission conciliated with a respondent that violated the sale and use provision "by

4   matching a pre-existing list of names with FEC disclosure reports for the purpose of identifying

5   known political contributors in order to assist with potentially soliciting those individuals."[32]

6   That activity precisely describes Numero's apparent use of FEC data.

7   Numero also appears to claim that, because it "is not a list broker," the sale and use

8   provision is not applicable.[33] However, the status of the person misusing FEC data and the

9   specific form in which the information is misused are immaterial under the statute. Rather, it

10   plainly prohibits the sale and use of FEC data "by *any person* for the purpose of soliciting

11   contributions or for commercial purposes."[34] In addition, Numero argues that "[t]he RevUp

12   Software assets do not implicate privacy concerns because it does not provide clients with any

13   contact information that they don't already have."[35] First, this argument conflicts with the

14   finding in MURs 6960 & 6991 that the statute not only "places restrictions on the sale and use of

15   names and addresses . . . but also restricts the sale and use of contribution histories."[36] And

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[31]   RevUp F&LA at 6-7. In Advisory Opinion 1985-16 (Weiss), the Commission concluded it was impermissible to compare the names on a pre-existing list, which the requestor intended to market for solicitation purposes, with the names of individual contributors contained in the Commission's database. AO 1985-16 at 2. This prohibited matching technique is a rudimentary example of the RevUp scoring and ranking algorithm. In Advisory Opinion 2004-24 (NGP), the Commission concluded it was impermissible to add a feature to political and reporting software that would have enabled the requestor's clients to view the contribution histories of individuals in their own database for the purpose of soliciting contributions. AO 2004-24 at 2-3.

[32]   Conciliation Agreement ¶ IV.7, MURs 6960 & 6991 (SW Technologies, LLC).

[33]   Numero Resp. at 2.

[34]   52 U.S.C. § 30111(a)(4) (emphasis added).

[35]   Numero Resp. at 2.

[36]   Conciliation Agreement ¶ IV.7 MURs 6960 & 6991 (SW Technologies, LLC).

1   Numero's argument ignores the most fundamental purpose of the scoring and ranking algorithm,

2   which is to identify those most likely to make a contribution and flag them as prime solicitation

3   prospects because of their high score and ranking.[37] Finally, Numero argues that its product is

4   "indistinguishable from the use of contribution history in platforms previously approved by the

5   Commission."[38] The matters cited by Numero involve aggregate uses of FEC data, thus

6   anonymizing individual contributions, or else had other protocols that prevented the misuse of

7   FEC data to solicit contributions.[39]

8   Therefore, the Commission finds reason to believe that Numero violated 52 U.S.C.

9   § 30111(a)(4) and 11 C.F.R. § 104.15(a) by selling a commercial fundraising software product

10   that uses FEC data for the purpose of soliciting contributions.

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[37]   RevUp marketed its product as having this explicit purpose for years. *See, e.g.,* RevUp, http://www.revup.com [https://web.archive.org/web/20150502160807/http://www.revup.com/] (archived May 2, 2015) ("We help fundraisers, while working with existing software, create new ways to identify, target, and engage their networks."). When Numero purchased the algorithm from RevUp, it apparently made no changes to its design and used the RevUp brand name. Moreover, Numero added the feature to a software product with the self-described purpose of allowing clients to "build out their call lists and manage their database of donors." Numero Resp. at 2. On its website, Numero explicitly names its RevUp product as a beneficial tool for fundraisers "as they can upload their contacts and immediately see who in their extended network has given to a campaign." Forde, *supra* note 4.

[38]   Numero Resp. at 2.

[39]   *See id.* at 2 & n.8 (citing AO 2015-12 and AO 2014-07); *see* AO 2015-12 (Ethiq) (permitting use of FEC data to analyze contributions made by corporate executives to determine whether the user's ideology is consistent with a given corporation as represented by its leadership; the purpose was not to solicit the executives); AO 2014-07 (Crowdpac) (permitting use of FEC data to glean insights about candidates and corporations to help users obtain information about like-minded entities; the information was presented in an aggregate form).