



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 27, 2021

Kyle J. Gilster, Esq.
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RE: MUR 7454
Blue Magnolia Investments, LLC

Dear Mr. Gilster:

On August 8, 2018, the Federal Election Commission (the “Commission”) notified your client, Blue Magnolia Investments, LLC (“Blue Magnolia”), of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the “Act”), and the Commission’s regulations. A copy of the complaint was provided to your client at that time. After reviewing the allegations contained in the complaint, your client’s response, and publicly available information, the Commission, on May 20, 2021, found reason to believe that Blue Magnolia violated 11 C.F.R. § 110.1(g)(5). The Factual and Legal Analysis, which formed a basis for the Commission’s finding and was approved on July 26, 2021, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission’s regulations, but is a voluntary step in the enforcement process that the Commission is offering as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your client violated the law.

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Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If your client is interested in engaging in pre-probable cause conciliation, please contact Saurav Ghosh, the attorney assigned to this matter, at (202) 694-1643, or by email at sghosh@fec.gov, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your client is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

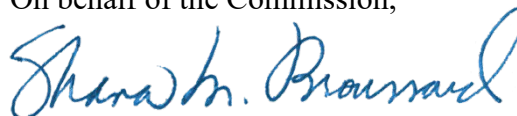
Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

We look forward to your response.

On behalf of the Commission,



Shana M. Broussard
Chair

Enclosures
Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Blue Magnolia Investments, LLC

MUR 7454

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission (“Commission”) by the Campaign Legal Center. *See* 52 U.S.C. § 30109(a)(1). The Complaint alleges that Blue Magnolia Investments, LLC (“Blue Magnolia”), violated the Federal Election Campaign Act of 1971, as amended (the “Act”), in connection with a \$100,000 contribution to an independent expenditure-only political committee (“IEOPC”), DefendArizona and Benjamin Ottenhoff in his official capacity as treasurer (“DefendArizona”). The Complaint alleges that the LLC served as a conduit for unknown persons to make contributions in the name of another to DefendArizona, and that Blue Magnolia failed to register and report as a political committee after making the reported contribution to DefendArizona.

Blue Magnolia denies these allegations but acknowledges that the contribution should have been attributed differently: Blue Magnolia states that the incorrect reporting of the contribution was an error, and it asserts that after receiving the Complaint, it requested that DefendArizona amend its disclosure report to attribute the contribution to its single member. Blue Magnolia’s contribution was eventually attributed to its single member in an amended disclosure report.

For the reasons explained below, the Commission finds reason to believe that Blue Magnolia violated 11 C.F.R. § 110.1(g)(5) by failing to provide required attribution information

1 when making its contribution to DefendArizona. The Commission exercises its prosecutorial
2 discretion to dismiss the remaining allegations.¹

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. Background**

5 DefendArizona is an IEOPC that registered with the Commission on February 1, 2018.²
6 DefendArizona made \$1.9 million in independent expenditures supporting Martha McSally, a
7 2018 candidate for the U.S. Senate in Arizona, and made just over \$20 million in independent
8 expenditures opposing McSally’s primary and general election opponents.³ DefendArizona
9 reported receiving a \$100,000 contribution from Blue Magnolia on May 30, 2018.⁴ Following
10 the receipt of the Complaint in this matter, DefendArizona amended its July 2018 Quarterly
11 Report to attribute the \$100,000 contribution from Blue Magnolia to Larry Van Tuyl.⁵

12 Blue Magnolia was organized as an LLC in Delaware on April 24, 2018, and its
13 registered agent is the Corporation Trust Company, located at 1209 Orange Street, Wilmington,
14 DE.⁶ Blue Magnolia states that it has a single natural person member, Larry Van Tuyl, and that
15 all “income from this entity flows directly” to Van Tuyl.⁷ Blue Magnolia made a \$100,000

¹ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

² DefendArizona Statement of Org. (Feb. 1, 2018).

³ DefendArizona, Spending, 2017-2018, available at <https://www.fec.gov/data/committee/C00668301/?tab=spending&cycle=2018>.

⁴ DefendArizona July 2018 Quarterly Report at 6, 7 (July 15, 2018).

⁵ DefendArizona Amend. July 2018 Quarterly Report at 6 (Sept. 11, 2018).

⁶ Delaware Div. of Corps. Entity Search, “Blue Magnolia Investments, LLC.”

⁷ Blue Magnolia Resp. at 1 (Sept. 17, 2018). On October 30, 2018, Van Tuyl made a \$36,600 contribution to the Win Arizona Fund, a joint fundraising committee between McSally’s authorized committee, McSally for Senate, Inc., the Arizona Republican Party, and the National Republican Senate Committee, of which \$2,700 went to McSally for Senate. Win Arizona Fund Termination Report at 21 (Dec. 10, 2018); see McSally for Senate, Inc. Amend. 30-Day Post-Gen. Election Report at 4940 (Jan. 23, 2019).

1 contribution to DefendArizona on May 30, 2018, approximately five weeks after its formation.⁸
2 Blue Magnolia provides no specific information regarding the source of these funds or any of its
3 activities other than making this contribution. Upon receiving notice of the Complaint in this
4 matter, Blue Magnolia asked DefendArizona to amend its disclosure reports to reflect that Blue
5 Magnolia’s \$100,000 contribution must be attributed to Van Tuyl.⁹ Blue Magnolia asserts that
6 when DefendArizona initially attributed the contribution solely to Blue Magnolia, “[t]his
7 disclosure was done in error.”¹⁰

8 The Complaint alleges that “the only information available” about Blue Magnolia “is that
9 [it] was incorporated in Delaware and made a \$100,000 contribution to DefendArizona
10 approximately five weeks after being created[,]” and that the public record thus “provide[s] no
11 indication that Blue Magnolia . . . had accrued sufficient assets, investment earnings, business
12 revenues, or bona fide capital investments to make [a] contribution[] without an infusion of
13 funds provided to [it] for that purpose.”¹¹ On this basis, the Complaint alleges that the funds
14 used to make the contribution attributed to Blue Magnolia came from other unknown persons,
15 and that the contribution was, in fact, a contribution in the name of another.

16 The Complaint also alleges that “[t]here is no public record” of Blue Magnolia
17 “conducting any significant activities other than making contributions since [its] formation.”¹²

⁸ Blue Magnolia Resp. at 1. It is unclear why Blue Magnolia asserts that it made the contribution on May 7, 2018, since DefendArizona’s disclosure reports indicate that the contribution was received on May 30, 2018.

⁹ *Id.*, Attach. C.

¹⁰ *Id.* at 1.

¹¹ Compl. at 6 (Aug. 3, 2018).

¹² *Id.* at 9.

1 As such, the Complaint alleges that Blue Magnolia met the legal standard for political committee
2 status, and therefore violated the Act by failing to register and report as a political committee.

3 **B. Legal Analysis**

4 1. Attribution of LLC Contributions

5 i. LLCs Must Provide Accurate Attribution Information for 6 Contributions, and Political Committees Must Accurately Disclose 7 LLC Contributions

8 Under the Act, all political committees, including IEOPCs, are required to file periodic
9 disclosure reports with the Commission which accurately report all contributions received and
10 disbursements made.¹³ Contributions by an LLC that has a single natural-person member and is
11 not taxed as a corporation, *i.e.*, a tax-disregarded entity, must be attributed only to the LLC's
12 single natural-person member.¹⁴ Furthermore, when such an LLC makes a contribution, it must
13 affirm to the recipient, at the time it makes the contribution, that it is eligible to make a
14 contribution and indicate how the contribution is to be attributed.¹⁵

15 The Commission's regulations concerning the attribution of LLC contributions apply on
16 their face to all LLC contributions irrespective of recipient.¹⁶ These regulations uphold the Act's

¹³ 52 U.S.C. § 30104(a), (b); 11 C.F.R. § 104.3(a), (b).

¹⁴ 11 C.F.R. § 110.1(g)(4).

¹⁵ 11 C.F.R. § 110.1(g)(5).

¹⁶ See Statement of Reasons of Chair Caroline C. Hunter and Comm'r Matthew S. Petersen, MUR 6969 (MMWP12, LLC, *et al.*) and MURs 7031 and 7034 (Children of Israel, LLC, *et al.*) (Sept. 13, 2018) at 2, 5 (stating that "the Commission's existing attribution regulations at 11 C.F.R. § 110.1(g) apply to the reporting" of contributions by LLCs that are not taxed as corporations and that, "[b]y operation of the Commission's attribution rules, MMWP12's contributions should have been attributed to K2M and each of its owners, Mark and Megan Kvamme. Similarly, Children of Israel's contributions should have been attributed to Saul Fox."); Statement of Reasons of Vice Chair Ellen L. Weintraub, MUR 6969 (MMWP12, LLC, *et al.*) and MURs 7031 and 7034 (Children of Israel, LLC, *et al.*) (July 13, 2018) at 2 ("Under Commission regulations, contributions from LLCs that are disregarded entities are not considered corporate contributions, but partnership contributions.") (citing 11 C.F.R. §§ 110.1(g)(2) and (4)).

1 reporting framework and inhibit attempts to circumvent the Act’s contribution source
2 prohibitions and amount limitations, including prohibitions applicable to IEOPCs.¹⁷ The
3 Commission has recognized that LLCs must affirmatively provide attribution information when
4 making political contributions so that the recipient committees can accurately disclose those
5 contributions.¹⁸

6 ii. Blue Magnolia Did Not Provide Required Attribution Information

7 Blue Magnolia did not provide the required attribution information when it made a
8 contribution to DefendArizona. As an LLC that has not elected corporate federal tax treatment
9 and has a single natural person member, Blue Magnolia’s \$100,000 contribution to
10 DefendArizona must be attributed only to its single member, Van Tuyl.¹⁹ However,
11 DefendArizona attributed the contribution only to Blue Magnolia, and did not identify Van Tuyl
12 in its disclosure report.²⁰ Only after receiving notice of the Complaint did Blue Magnolia ask
13 DefendArizona to amend its disclosure report to accurately attribute the contribution to Van
14 Tuyl. Blue Magnolia acknowledges that the initial disclosure “was done in error,” and does not
15 claim that it provided the required attribution information when it made the contribution.²¹

¹⁷ See 52 U.S.C. §§ 30116(a)(1), 30118(a); Treatment of Limited Liability Companies Under the Federal Election Campaign Act, 64 Fed. Reg. 37,397, 37,398 – 37,399 (July 12, 1999) (“LLC E&J”) (discussing role of LLC attribution rules in identifying prohibited contributions from foreign national or government contractor sources, concerns that apply to all LLC contributions, including contributions to IEOPCs).

¹⁸ LLC E&J at 37,399 (“The Commission further notes that the recipient committee would have no way of knowing how to attribute a contribution made by an eligible multi-member or single member LLC, unless that information was provided.”).

¹⁹ Blue Magnolia Resp. at 2 (citing 11 C.F.R. § 110.1(g)(4)).

²⁰ See 11 C.F.R. §§ 104.3(a)(4), 110.1(g)(4).

²¹ Blue Magnolia Resp. at 2.

1 Based on the available information, it appears that Blue Magnolia did not fulfill its
 2 affirmative obligation to provide attribution information to DefendArizona at the time it made
 3 the contribution, as required under 11 C.F.R. § 110.1(g)(5). The Commission therefore finds
 4 reason to believe Blue Magnolia violated 11 C.F.R. § 110.1(g)(5).

5 2. Contributions in the Name of Another

6 i. No Person May Furnish Another With Funds to Make a
 7 Contribution

8 The Act provides that a contribution includes “any gift, subscription, loan, advance, or
 9 deposit of money or anything of value made by any person for the purpose of influencing any
 10 election for Federal office.”²² The term “person” for purposes of the Act and Commission
 11 regulations includes partnerships, corporations, and “any other organization or group of
 12 persons.”²³ The Act prohibits a person from making a contribution in the name of another
 13 person, knowingly permitting his or her name to be used to effect such a contribution, or
 14 knowingly accepting such a contribution.²⁴ The Commission has included in its regulations
 15 illustrations of activities that constitute making a contribution in the name of another:

- 16 (i) Giving money or anything of value, all or part of which was provided to
 17 the contributor by another person (the true contributor) without disclosing
 18 the source of money or the thing of value to the recipient candidate or
 19 committee at the time the contribution is made; or
- 20 (ii) Making a contribution of money or anything of value and attributing as the
 21 source of the money or thing of value another person when in fact the
 22 contributor is the source.²⁵

²² 52 U.S.C. § 30101(8)(A).

²³ *Id.* § 30101(11); 11 C.F.R. § 100.10.

²⁴ 52 U.S.C. § 30122.

²⁵ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

1 Both the Act and the Commission’s implementing regulations provide that a person who
2 furnishes another person with funds for the purpose of contributing to a candidate or committee
3 “makes” the resulting contribution.²⁶ This is true whether funds are advanced to another person
4 to make a contribution in that person’s name or promised as reimbursement of a solicited
5 contribution.²⁷ Because the concern of the law is the true source from which a contribution to a
6 candidate or committee originates, we look to the structure of the transaction itself and the
7 arrangement between the parties to determine who, in fact, “made” a given contribution.

8 ii. Blue Magnolia

9 The Complaint alleges that Blue Magnolia was used to make a contribution in the name
10 of another based on the fact that it purported to make a \$100,000 contribution in its own name
11 approximately five weeks after being formed, and on the lack of public information regarding
12 Blue Magnolia’s activities or evidence indicating that Blue Magnolia could make such a
13 contribution without an infusion of funds provided to it for that purpose.

14 After receiving the Complaint, however, and well before the 2018 general election, Blue
15 Magnolia requested that DefendArizona amend its disclosure report to attribute the LLC’s
16 contribution to Van Tuyl, which the committee did on September 11, 2018.²⁸ Van Tuyl also
17 contributed in his own name to the authorized committee of McSally, the only candidate that

²⁶ See *Boender*, 649 F.3d at 660 (holding that to determine who made a contribution “we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee.” (emphasis added)); *O’Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) (“The Act prohibits the use of ‘conduits’ to circumvent . . . [the Act’s reporting] restrictions.” (quoting then-Section 441f)).

²⁷ *O’Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the *source* of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

²⁸ Blue Magnolia Resp., Attach. C; DefendArizona Amend. July 2018 Quarterly Report at 6 (Sept. 11, 2018).

1 DefendArizona supported, which suggests that Van Tuyl did not attempt to avoid the Act’s
2 disclosure requirements.

3 In light of Blue Magnolia’s acknowledgement that the contribution was improperly
4 reported, the amendment of DefendArizona’s report—after the primary, but before the general
5 election—to reflect the reattribution of the contribution, and the Commission’s reason to believe
6 finding regarding Blue Magnolia’s violation of the LLC attribution requirements, the
7 Commission exercises its prosecutorial discretion to dismiss the allegation that Blue Magnolia
8 violated 52 U.S.C. § 30122.²⁹

9 3. Political Committee Status

10 The Act defines a political committee as “any committee, club, association, or other
11 group of persons” that receives aggregate contributions or makes aggregate expenditures in
12 excess of \$1,000 during a calendar year.³⁰ Notwithstanding the threshold for contributions and
13 expenditures, an organization will be considered a political committee only if its “major purpose
14 is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).”³¹ Political
15 committees are required to register with the Commission, meet organizational and recordkeeping
16 requirements, and file periodic disclosure reports.³²

17 The Complaint alleges that Blue Magnolia was required to register and report as a
18 political committee. However, the available information regarding its “major purpose” is unclear

²⁹ *Heckler*, 470 U.S. 821.

³⁰ 52 U.S.C. § 30101(4)(A).

³¹ Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007); see *Buckley v. Valeo*, 424 U.S. 1, 79 (1976) (*per curiam*); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986).

³² See 52 U.S.C. §§ 30102, 30103, 30104.

1 because the record does not reflect how its federal campaign activity — making a \$100,000
2 contribution — compares to its other activity, if any.

3 With respect to its past activity, Blue Magnolia acknowledges that it is a single-member
4 LLC and its owner, Van Tuyl, now has been publicly identified in DefendArizona’s disclosure
5 reports. As for its future activity, the Commission’s reason to believe finding regarding Blue
6 Magnolia’s affirmative obligations under 11 C.F.R. § 110.1(g)(5) provides for the disclosure of
7 any future political contributions, since under that rule, Blue Magnolia must provide the
8 appropriate attribution information to the recipients of any future contributions it makes, as
9 outlined above.³³ In consideration of the foregoing, the Commission exercises its prosecutorial
10 discretion to dismiss the allegation that Blue Magnolia violated the Act’s registration and
11 reporting requirements for political committees.³⁴

³³ See *supra* Section II.B.1; see also Advisory Op. 2009-02 at 3 (True Patriot Network, LLC) (Apr. 17, 2009) (concluding that “expenditures by a single member LLC, like contributions, are attributable solely to the LLC’s single member”).

³⁴ *Heckler*, 470 U.S. at 838.