

BEFORE THE FEDERAL ELECTION COMMISSION

POLITICAL.LAW PLLC
441 North Lee Street, Suite 300
Alexandria, VA 22314

Complainant,

v.

CHRISTINE O'DONNELL
FEC Candidate ID S6DE00131
P.O. Box 3987
Wilmington, DE 19807

FRIENDS OF CHRISTINE O'DONNELL
FEC Committee ID C00449595
P.O. Box 3987
Wilmington, DE 19807

Respondents.

MUR No. 7640

2019 AUG 30 11:19:07

OFFICE OF
GENERAL COUNSEL

VERIFIED COMPLAINT

1. political.law PLLC brings this complaint before the Federal Election Commission ("FEC" or "Commission") seeking an investigation and enforcement action against Christine O'Donnell and Friends of Christine O'Donnell for violations of the Federal Election Campaign Act ("FECA" or "Act").
2. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information providing reason to believe that:
3. Christine O'Donnell and Friends of Christine O'Donnell are attempting to convert campaign committee assets, in the form of mail and email lists developed by her

committee with campaign funds, to personal use as evidenced by representations made in a Virginia court by Ms. O'Donnell that the mail and email lists belong to "*her*."¹

RELEVANT CAMPAIGN FINANCE LAWS

4. FECA prohibits a candidate and a candidate's authorized committee from converting contributions accepted by the candidate to the personal use of the candidate or any other person.²
5. The Act specifies conversion to personal use occurs when a "contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office."³
6. The Act and Commission regulations provide a non-exhaustive list of items that would constitute personal use.⁴ For items not listed in 30114(b)(2)(A)-(I), the Commission makes a determination, on a case-by-case basis, whether an expense would fall within the definition of "personal use."⁵
7. FEC regulations provide "the transfer of a campaign committee asset is not personal use so long as the transfer is for fair market value."⁶
8. The Commission has long recognized that a political committee's mailing lists are assets that have value and are frequently sold, rented, or exchanged in a market.⁷

¹ Throughout the "Petition for Accounting" filed by Ms. O'Donnell, an italicized and/or underlined emphasis was used with the pronoun (her or hers) in nearly every instance where the list was discussed to demonstrate implied ownership, so as not to be confused as property of any other entity, including her campaign committee, independent expenditure committee, or the list vendor.

² 52 U.S.C. § 30114(b); 11 C.F.R. §§ 113.1(g), 113.2(e)(5).

³ 52 U.S.C. § 30114(b)(2).

⁴ 52 U.S.C. § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g)(1)(i).

⁵ 11 C.F.R. § 113.1(g)(1)(ii).

⁶ *Id.* § 113.1(g)(3).

⁷ *See, e.g.,* Advisory Opinion 2011-02 (Brown) at 7-8; 2002-14 (Libertarian National Committee) at 4-5; 1982-41 (Dellums) at 2; 1981-46 (Dellums) at 2.

9. The Commission has also acknowledged the use of a political committee’s mail and email lists may be subject to the prohibition on personal use, finding that where a candidate “did not stand to personally gain from the use of their committee’s funds or assets,” the use of that list “did not constitute a prohibited personal use of campaign funds.”⁸ Conversely, if the candidate were in a position to personally benefit from the use of their committee’s mail and email lists, the use of those lists would violate the personal use regulations, unless the candidate would reimburse their committee or rent the committee lists at fair market value.⁹
10. In MUR 5572 (David Rogers), the Commission found reason to believe that a candidate converted committee assets—contributor mailing lists developed by his campaign committees with campaign funds—to personal use by selling or renting the lists and retaining the proceeds from the sale for personal use.¹⁰
11. On April 19, 2017, the United States District Court for the District of Delaware entered a permanent injunction prohibiting Christine O’Donnell and Friends of Christine O’Donnell from converting campaign contributions to personal use.¹¹
12. “If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [the FECA] . . . [t]he Commission shall make an investigation of such alleged violation”¹²

⁸ Advisory Opinion 2006-18 (Granger) at 3-4, 7-8.

⁹ See, e.g., Advisory Opinion 2011-02 (Scott Brown) at 8; 2014-06 (Paul Ryan).

¹⁰ *In the Matter of David W. Rogers*, General Counsel’s Brief at 1, MUR 5572, (Dec. 27, 2007), <https://www.fec.gov/files/legal/murs/5572/29044230798.pdf>.

¹¹ *FEC v. O’Donnell*, No. 15-17-LPS, 2017 U.S. Dist. LEXIS 59524 (D. Del. Apr. 19, 2017), https://transition.fec.gov/law/litigation/odonnell_dc_order2.pdf.

¹² 52 U.S.C. § 30109(a)(2); 11 C.F.R. § 111.4(a).

**CHRISTINE O'DONNELL IS ATTEMPTING TO CONVERT CAMPAIGN
COMMITTEE ASSETS TO PERSONAL USE**

13. On July 9, 2019, Christine O'Donnell, through her attorney Jonathon Moseley, filed a petition for accounting in the Loudoun County Circuit Court (the "Petition") against a list brokerage company she claims had at some prior point used and generated profit from a list that belongs to *her* without her authorization. A copy of the Petition has been included as Exhibit 1 to this Complaint.
14. The Petition was filed by Ms. O'Donnell, as a "natural person who has been a political activist, political strategist, commentator, columnist, and public relations consultant since 1993."¹³ The Petition was not filed by her authorized campaign committee, Friends of Christine O'Donnell, or her independent expenditure only committee, ChristinePAC.
15. Ms. O'Donnell alleges the vendor is in possession of "her list of supporters, contacts, and donors to organizations" which is being "advertised as *her* list" and ultimately the vendor is generating a profit from renting "*her* list."¹⁴ (*Emph.* in original)
16. According to her Petition, "Christine O'Donnell was surprised to learn that [the vendor] was without Christine O'Donnell's authorization advertising Christine O'Donnell's list for rental to political clients without her knowledge or consent".¹⁵
17. Ms. O'Donnell claims she "does not have actual, first-hand knowledge how [the vendor] claims to have been authorized to rent out her list . . . ,"¹⁶ and the vendor failed to provide her information "as to who supposedly authorized the rental of *her* list"¹⁷

¹³ *O'Donnell v. Allegiance List Marketing, LLC et al.*, Case No. CL19001561-00, ¶ 21.

¹⁴ Pet. ¶ 41.

¹⁵ Pet. ¶ 25.

¹⁶ Pet. ¶ 41.

¹⁷ Pet. ¶ 48.

18. The Petition was filed because Ms. O’Donnell “seeks an accounting and information not only as to the rental income from the use of *her* list but also the uses of *her* list and the revenue obtained from the use of *her* list.”¹⁸ (*Emph. added*)
19. Ms. O’Donnell claims she may be entitled to payment of any fees related to the use of this list. The petition asks the court “enter judgment in favor of [O’Donnell] to order recovery or restitution of any rental income from the use of Christine O’Donnell’s list owed to Ms. O’Donnell”¹⁹
20. On information and belief, substantial activities were undertaken by Friends of Christine O’Donnell for the purpose of investing in and developing committee assets, including one or more contributor lists, and recruiting and soliciting supporters.
21. According to publicly available FEC records, Friends of Christine O’Donnell reported the following transactions and totals for campaign activity:
- a. During the 2009–2010 election cycle, receiving contributions from individuals totaling \$7,227,915.00.²⁰
 - b. Between June and September 2010, making disbursements to list vendors for transactions such as “Direct Mail Expense” and “Direct Mail Consulting” totaling \$204,777.10.²¹
 - c. Between February and September 2010, making disbursements for “Fundraising Consulting” and “Fundraising Services” totaling \$35,787.99.²²

¹⁸ Pet. ¶ 86.

¹⁹ Pet. Section V, ¶ B.

²⁰ Federal Election Commission, Friends of Christine O’Donnell [Financial Summary](#) 2009-2010 (last visited Aug. 19, 2019).

²¹ Federal Election Commission, Friends of Christine O’Donnell [Disbursements](#) (last visited Aug. 19, 2019).

²² Federal Election Commission, Friends of Christine O’Donnell [Disbursements](#) (last visited Aug. 19, 2019).

- d. Between October and December 2010, making disbursements for “Fundraising Phone Calls” totaling \$378,139.70.²³
- e. Between July and September 2010, making disbursements to list vendors for transactions such as “List Rental Expense” and “Mailing List Service” totaling \$32,313.50.²⁴

22. In *FEC v. O’Donnell*, the district court found Ms. O’Donnell and her campaign committee were converting campaign funds to personal use by making rent payments for Ms. O’Donnell’s townhouse that was her campaign headquarters and personal dwelling. The court issued a permanent injunction against Ms. O’Donnell and her authorized committee to prohibit future personal use-violations. The court found the injunction warranted because Ms. O’Donnell did not indicate “that she [would] not run for federal office again,” and she demonstrated an interest to remain active in federal election activity by “operat[ing] ChristinePAC,” which also “paid for her residence in the [t]ownhouse” for a relevant period of time.²⁵

COUNT I

Attempted Conversion of Campaign Funds to Personal Use in Violation of 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g).

23. There is reason to believe, through publicly available records filed by Christine O’Donnell in her personal capacity, that Ms. O’Donnell and Friends of Christine O’Donnell are attempting to convert campaign assets to personal use in violation of 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) and the permanent injunction issued against

²³ Federal Election Commission, Friends of Christine O’Donnell [Disbursements](#) (last visited Aug. 19, 2019).

²⁴ Federal Election Commission, Friends of Christine O’Donnell [Disbursements](#) (last visited Aug. 20, 2019).

²⁵ *FEC v. O’Donnell*, No. 15-17-LPS, 2017 U.S. Dist. LEXIS 59524, *14-15 (D. Del. Apr. 19, 2017).

the respondents by the United States District Court for the District of Delaware in *FEC v. O'Donnell*.

CONCLUSION

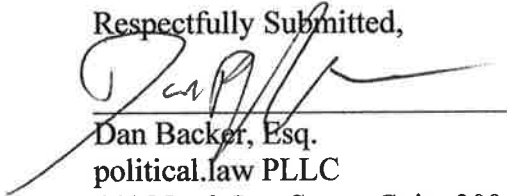
24. The Commission should find reason to believe Christine O'Donnell and Friends of Christine O'Donnell are attempting to violate 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2). The Commission should determine and impose any necessary and appropriate sanctions for any and all violations.

VERIFICATION

I declare under penalty of perjury the foregoing is true and correct to the best of my personal knowledge.

Dated August 28, 2019

Respectfully Submitted,



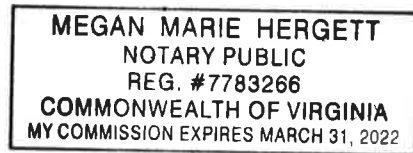
Dan Backer, Esq.
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Alexandria, VA 22314
202-210-5431
dan@political.law

COMPLETED BEFORE A NOTARY PUBLIC

State of Virginia

City of Alexandria

County of _____



Subscribed and sworn to before me on this 28 day of August, 2019.

My Commission expires on 3.31.2022.

VIRGINIA :

IN THE CIRCUIT COURT FOR LOUDOUN COUNTY

CHRISTINE O'DONNELL

Petitioner

vs.

ALLEGIANCE LIST MARKETING, LLC
15 North King Street, Suite 205
Leesburg, Virginia 20175

Serve: Megan O'Brien, Manager
Serve: Registered Agent
Old Dominion Filings, LLC
7400 Beaufort Springs Drive, Suite 300
Richmond, Virginia 23225

Case Number: _____

SCOTT FAIRCLOTH

Purcellville, Virginia 20132

MEGAN O'BRIEN

Purcellville, Virginia 20132

ALLEGIANCE DIRECT, LLC

421 East E Street
Purcellville, Virginia 20132

Serve: Registered Agent,
Mr. Jeffrey Scott Faircloth

Ashburn, Virginia 20148

Respondents

PETITION FOR ACCOUNTING

COMES NOW the Petitioner Christine O'Donnell and requests an accounting from those having a fiduciary duty owed to her, without prejudice to further claims arising from the results of the accounting, and as a possible preliminary step to further action based upon the information

received, and for her grounds states as follows:

I. JURISDICTION AND VENUE

- 1) Jurisdiction is proper in the Circuit Court because the case invokes the equitable powers of the Court, with the Court sitting in chancery.
- 2) The value of the dispute at issue exceeds the maximum jurisdictional limit of the General District Court of \$25,000. Therefore, the Circuit Court is the proper tribunal in Virginia.
- 3) This Court has jurisdiction because the Respondents operated a company located, operating, and maintaining its principal offices in Leesburg, Virginia, within the County of Loudoun.
- 4) Venue is proper in the County of Loudoun because the Respondents operated a company located, operating, and maintaining its principal offices in Leesburg, Virginia, within the County of Loudoun.

II. PARTIES AND PERSONS INVOLVED

- 5) The Respondent ALLEGIANCE LIST MARKETING, LLC ("ALM") is a political consulting company which is engaged, among other things, in the brokerage and rental of lists of politically interested people and donors for fund-raising or organizing purposes. See their website at: <http://allegiancelistmarketing.com/about.html> or <https://web.archive.org/web/20190511020422/http://www.allegiancelistmarketing.com/>
- 6) ALM has its principal offices in Leesburg, Virginia, in Loudoun County, Virginia.
- 7) The Respondent MEGAN O'BRIEN is the executive head of ALM, as admitted by ALM's website, presumably as Managing Member within the terminology of limited liability companies.
- 8) On information and belief MEGAN O'BRIEN actually, personally conducted all

activities at issue in this matter.

9) Respondent Megan O'Brien apparently resides in Leesburg, Virginia, having published Email: megan@allegiancedc.com. Telephone ()

10) According to ALM's promotional statements on its website, Megan O'Brien has extensive experience in politics and fund-raising, so that she has actual knowledge of the conventions, practices, sensitivities, and proper conduct in the list marketing and fund-raising industries.

11) The Respondent SCOTT FAIRCLOTH -- according to ALM's promotional material including on its website -- directly ran or runs ALM including in undertaking all actions concerned in this matter and in this petition for an accounting.

12) Scott Faircloth resides in Ashburn, Virginia, and has published Email: scott@allegiancedc.com. Telephone

13) According to ALM's promotional statements on its website, Scott Faircloth has extensive experience in politics and fund-raising, so that he has actual knowledge of the conventions, practices, sensitivities, and proper conduct in the list marketing and fund-raising industries.

14) The Respondent RYAN TAIT -- according to ALM's promotional material including on its website -- directly ran or runs ALM including in undertaking all actions concerned in this matter and in this petition for an accounting.

15) The Respondent ALLEGIANCE DIRECT, LLC ("Allegiance Direct") is an affiliated company in the same family of companies as ALM.

16) Respondent Allegiance Direct shares the same leadership and ownership as ALM.

17) In the fund-raising industry, it is common practice (which is known to the leaders

O'Brien and Faircloth) for each fund-raising company to operate a family of related companies which all work together.

18) Therefore when a client uses a fund-raising company, they are required or very strongly urged to use the services of the fund-raising company's related companies.

19) On information and belief, Allegiance List Marketing, LLC, is the affiliated company of Allegiance Direct, LLC.

20) On information and belief, the same leaders who run Allegiance Direct, LLC also work on the same projects as the same leaders who run Allegiance Direct, LLC.

21) The Petitioner CHRISTINE O'DONNELL is a natural person who has been a political activist, political strategist, commentator, columnist, and public relations consultant since 1993.

22) O'Donnell has developed public support through a couple of decades of work in issues of public policy.

23) By the time Christine O'Donnell ran for election to the United States Senate from Delaware as the Republican nominee in 2006, O'Donnell already had an extensive personal record of public political work separate and independent from her campaign.

24) In 2006, 2008, and 2010, O'Donnell was a candidate for United States Senate from Delaware. In both 2008 and 2010, O'Donnell won the official nomination of the Republican Party for United States Senate from the State of Delaware.

III. GENERAL FACTS AND CIRCUMSTANCES COMMON TO ALL COUNTS

25) Christine O'Donnell was surprised to learn that ALM was without Christine O'Donnell's authorization advertising Christine O'Donnell's list for rental to political clients without her knowledge or consent.

26) ALM posted its "rate card" advertising its rentals of Christine O'Donnell's list of

supporters and donors on its website and on information and belief circulated it generally to the political world. See, Exhibit A, attached.

27) In their public advertisements and public communications, the Respondents referred to and advertised the list as the "Christine O'Donnell Masterfile."

28) On information and belief, ALM is in the business of (perhaps alongside other activities) earning a broker's commission for renting lists on behalf of the list's owners to renters of those lists, who use those lists for sending fund-raising appeals, attempting to sell products, recruiting and organizing members of organizations or projects.

29) Christine O'Donnell had and has no knowledge of how or why ALM had any involvement, right, or role in renting Christine O'Donnell's list.

30) ALM advertised this list as being "Christine O'Donnell's" list. See Exhibit A, attached hereto.

31) On information and belief, the "rate card" advertisement in Exhibit A was only one of ALM's advertisements or promotional communications for offering Christine O'Donnell's list for rental and there were other advertisements, rate cards, and/or communications made by ALM.

32) By its own confession in public advertisement(s), ALM admits to being an agent acting on behalf of Christine O'Donnell.

33) ALM publicly claimed and admitted to owing a fiduciary duty as agent to Christine O'Donnell as the principal.

34) ALM further identified and advertised the list in its ALM rate card attached as Exhibit A by announcing Christine O'Donnell's role by stating that "Christine O'Donnell ... has experience as a recognized political commentator, marketing consultant, speaker and author."

35) ALM advertised the rental of Christine O'Donnell's list among three categories at different prices: (a) charitable (meaning within the industry on behalf of an IRS 501(c)(3) tax deductible organization), (b) telemarketing, and (c) "Opt-in email addresses."

36) Within the industry and its trade usages and customs, the designation of the "opt-in email addresses" category for list rental means that the fund-raising appeals sent out as emails would include Christine O'Donnell's personal name, signature, and public persona as sender.

37) That is, within the industry's conventions, customs, and trade usages, ALM's advertisement of the rental of "opt-in email addresses" means owners of email addresses who have explicitly "opted in" to receive emails from Christine O'Donnell by name under the federal CAN-SPAM Act.

38) That is, because the owners of email addresses opted-in to receive emails from Christine O'Donnell, any activism, informational, or fund-raising emails would have to come explicitly from Christine O'Donnell as the sender of the email to be "opt-in email addresses."

39) Therefore, unbeknownst to Christine O'Donnell that her persona was being used in this way, ALM was advertising that it would use not only the email addresses from the list, but also Christine O'Donnell's name, persona, public image, and notoriety in sending the messages to email recipients on the "Christine O'Donnell Masterfile."

40) Such a process would require coordination with Christine O'Donnell, which never happened, and no such communication, notification, discussion, or other interactions about the use of her list took place.

41) Christine O'Donnell does not have actual, first-hand knowledge how ALM claims to have been authorized to rent out her list of supporters, contacts, and donors to organizations unknown to O'Donnell and she seeks an accounting to determine why and how ALM came into

possession of a list that ALM advertised as being her list and rented for ALM's profit as being her list.

42) Therefore, ALM publicly admitted to having acquired Christine O'Donnell's list of her supporters, contacts, and donors, but Christine O'Donnell did not give ALM her consent nor did she have knowledge of it.

43) When Christine discovered ALM's unauthorized use of her list, ALM refused to provide the information that O'Donnell requested about how ALM used her list and how ALM got the list, offering only dismissive and superficial diversionary replies.

44) ALM did send a draft, unsigned, purported contract for the rental of O'Donnell's list.

45) However, the draft purported contract is in conflict with the public advertisement commingling O'Donnell's personal activism not as a candidate, a political action committee ChristinePAC, and mention of her campaign. Therefore, it is unclear what relationship this purported contract may or may not have with the published rate card which is inconsistent.

46) Furthermore, the draft purported contract does not identify -- even in unsigned form -- who it is a contract with.

47) Furthermore, the draft purported contract is not signed by either side identified in the draft contract.

48) Therefore, nothing provided by ALM informs Ms. O'Donnell as to who supposedly authorized the rental of her list or any other detail of these transactions.

49) Ms. O'Donnell might be inclined to trust that there was an innocent series of events that caused these events, except for ALM's refusal to provide her with an explanation.

50) Ms. O'Donnell's inquiries did produce the identification of ALM's attorney Dan Backer as advising ALM as ALM directed future inquires to Mr. Backer.

51) Subsequently, at Ms. O'Donnell's request, the undersigned attorney made further demand upon ALM through ALM's attorney Dan Backer on March 30, 2017.

52) ALM, by its attorney Dan Backer, flatly refused to provide any information.

53) ALM refused to provide Ms. O'Donnell with information about the rental of her list explicitly on the grounds that Ms. O'Donnell did not have any contract with ALM.

54) In other words, ALM by its attorney Dan Backer confessed that ALM was acting on someone else's authorization or without anyone's authorization, acting neither on Christine O'Donnell's authority nor on the authority of any entity controlled by Christine O'Donnell as such entity's executive head.

55) Even if someone in an organization headed by Ms. O'Donnell made an agreement, ALM would still owe a response to Christine O'Donnell. But ALM refused to disclose any details on the grounds that ALM has no contract with Christine O'Donnell.

56) Christine O'Donnell, including by counsel, has served demand for information as to how ALM came into possession of a list which ALM advertised as being her list, what happened during ALM's rental of her list, what funds were received and what happened to those funds received.

57) Eventually, ALM provided some minimal, incomplete information about a few disbursements from the rental of the lists, but has still not explained how ALM got involved, how ALM was authorized to rent Ms. O'Donnell's list, all of the transactions of list rentals, organizations who used the list, what did they use it for (including what issues were supported, whether the list was used for an activism project like a petition or attendance at a political event or convention, for information or education, organizing for a candidate, or for fund-raising for charity, for a political cause, for a political organization, or for a candidate.

58) Ms. O'Donnell is entitled to know both in ALM's fiduciary role and in the conventions, trade usages, and customs of the list brokerage industry to know if her list was inappropriately used to support an organization or issue that she or her supporters might fundamentally oppose.

59) As is common practice if not universal practice with political leaders, political organizations and campaigns, Christine O'Donnell's list of supporters and donors was "seeded" with certain names, meaning that a handful of fictitious names were included to be able to monitor the usage of the list by receiving copies of any communications sent to the list.

60) Although not originally planned as such, and rather accidental, one of those names on the list was Peter Fescue, a non-existent person, at the email address Rent@EnjoyAbaco.com, used by the undersigned counsel.

61) This unique combination of a pseudonym and email address exists nowhere else.

62) This seeded name of Peter Fescue at the email address Rent@EnjoyAbaco.com received many dozens of fund-raising appeals (in the neighborhood of 50-60) from a variety of candidates and political organizations during the 2014 election cycle which could only come from the use of Christine O'Donnell's list. (At the time, the undersigned counsel receiving the emails was not in communication with Ms. O'Donnell about these matters, and did not know there was an issue about authorization of the use of the list.)

63) The email address Rent@EnjoyAbaco.com was discontinued in 2015 (for unrelated reasons) and therefore did not track activity after the 2014 election cycle.

64) Thus, on information and belief, ALM rented Ms. O'Donnell's list many more dozens of times than the few transactions ALM eventually reported to Ms. O'Donnell.

65) On information and belief, some of Scott Faircloth's past employment in organizations such as the National Republican Campaign Committee with extremely strong allegiance to Ms.

O'Donnell's primary opponent in her 2010 campaign, may have brought to ALM a hostility toward Christine O'Donnell, which could have led to ALM renting out or misusing Ms. O'Donnell's lists without Ms. O'Donnell's authorization.

66) According to ALM's promotional statements on its website "Prior to joining Allegiance, Ryan [Tait] served as Development Manager for American Majority, overseeing all aspects of the development program, including direct mail and email fundraising."

67) American Majority was launched after the 2010 election by a huge publicity campaign, including many appearances on national television, explicitly attacking Christine O'Donnell, Sarah Palin, and Michelle Bachman, by name, all female conservative candidates, and by American Majority pledging to block candidates specifically like Christine O'Donnell from participating in the Republican Party.

68) American Majority promised to spend \$1 million that it did not actually have to spend to block tea party candidates from running in the Republican Party.

69) Therefore, Ryan Tait on information and belief was involved in fund-raising for American Majority by targeting and attacking Christine O'Donnell specifically, by name.

70) Therefore, on information and belief, Ryan Tait brought to ALM a hostility toward Christine O'Donnell specifically, which may have led to ALM taking unfair advantage of by renting out or misusing Ms. O'Donnell's lists without Ms. O'Donnell's authorization.

IV. COUNT I: PETITION FOR COMPULSORY ACCOUNTING

71) The Petitioner respectfully requests that ALM prepare an accounting of all activity, income, and transactions to be provided to Christine O'Donnell and any other principal. *See, generally, Hooper v. Musolino*, 234 Va. 558, 364 S.E.2d 207 (Va. 1988); *Swetnam v. Antonsanti*, 150 Va. 534, 143 S.E. 716 (Va. 1928); *Thrasher v. Thrasher*, 210 Va. 624, 172

S.E.2d 771 (Va., 1970).

72) After accepting the role of a fiduciary, a fiduciary has a duty to take and keep control of the trust property. See, e.g., Kline's Estate, 124 A. 280 (Pa. 1924).

73) The burden should be on the fiduciary to show the proprietary of an act or transaction set forth in the accounting. Baker v. Lake Lorraine, Inc., 562 S.W.2d 374 (Mo. App. 1978).

74) In Detroit Bank and Trust Company v. Trust Company of Virgin Islands, Ltd., 644 F.Supp. 444 (D.P.R. 1985), the fiduciary was held liable for breach of fiduciary duty for refusing to account for any of the managed assets, for failing to keep proper records, to render statements of receipts and disbursements upon request and for failing to allow the successor trustee to have access to the trust books and records.

75) In Virginia, the Supreme Court has counseled:

We are not unmindful of the sound and salutary rule, and of the obvious reasons and logic therefor, that a trustee who keeps trust assets in his individual name and without any trust earmarks, bears the risk of any loss of such property. Mitchell v. Moore, 95 U.S. 587, 590, 24 L.Ed. 492; Amnion's Adm'r. v. Wolfe et al., 26 Grat. 621, 67 Va. 621; 3 Bogert, Trusts and Trustees, § 596.

Buckle v. Marshall, 176 Va. 139, 10 S.E.2d 506, 513 (Va., 1940)

76) In Wood v. Honeyman, 169 P.2d 131 (Or. 1946), the appeals court stated:

It must be apparent that when one becomes a trustee and thus undertakes to administer an estate for the benefit of another, he must maintain records of his transactions so complete and accurate that he can show by them his faithfulness to his trust. It is not enough for him to know that he is honestly performing his duty. Since, generally, the burden of proof rests upon him to prove his fidelity; he must be able to sustain his position by honest records.

Id.; See also, Van Dusen v. Southeast First National Bank of Miami, 478 So.2d 82 (Fla. 3d DCA 1985); Beck v. Beck, 383 So. 2d 268 (Fla. 3d DCA 1980).

77) The fiduciary has a duty to keep clear, distinct, and accurate records. If the fiduciary

fails to keep accurate records and accounts, all presumptions are against the trustee. Traub v.

Traub, 135 So.2d 243 (Fla. 2 nd DCA 1961).

78) The Virginia Supreme Court has further explained:

But it does not follow that the defendant should be absolved of all duty to account for his transactions. The general duty of an agent who is required to handle money is thus laid down in Restatement of the Law of Agency, 2d, Vol. 2, § 382, p. 185: 'Unless otherwise agreed, an agent is subject to a duty to keep, and render to his principal, an account of money or other things which he has received or paid out on behalf of the principal.' See also, Pomeroy's Equity Jurisprudence, 5th Ed., Vol. 4, § 1421, p. 1078; 2 Am. Jur., Agency, § 293, p. 231; 1 Mich. Jur., Agency, § 67, p. 324, and cases there cited.

Id.

'In an action for an accounting, the agent has the burden of proving that he paid to the principal or otherwise properly disposed of the money or other thing which he is proved to have received from the principal.' Restatement of the Law of Agency, 2d Vol. 2, § 399, p. 233. See also, 3 C.J.S., Agency, § 320(a), p. 268.

Id.

79) ALM as an agent was required to keep good financial records.

80) ALM as an agent is required to provide those financial reports to the principal(s).

81) The nature of ALM's business is to be the representative -- or broker -- on behalf of list owners, serving as their agents.

82) Being an agent is the gravamen of ALM's business and role for its clients.

83) Christine O'Donnell seeks a copy of any and all contracts that ALM entered into, all advertisements, lead generation efforts, and message content in relation to the list rental or other use, and ALM's solicitation of brokers and renters.

84) Indeed, ALM refused to identify who it had a contract with or on whose behalf it was acting as an agent for that principal.

85) Christine O'Donnell seeks a copy of any and all contracts that ALM entered into in

relation to the list.

86) Christine O'Donnell seeks an accounting and information not only as to the rental income from the use of her list but also the uses of her list and the revenue obtained from the use of her list.

87) ALM has refused to provide any of the information requested, with the small exception noted above about a few disbursements.

V. **COUNT II: RECOVERY OR RESTORATION OF WASTE
DISSIPATION OF TRUST ASSETS**

88) On information and belief, ALM rented the "Christine O'Donnell Masterfile" to many clients but did not pay the rental fees, minus ALM's brokerage fees to whatever person, entity, or organization it should have been paid to.

89) The accounting and record of any contracts are needed to determine to whom, if anyone, rental fees are now due.

90) The Petitioner may be entitled to payment of any fees received less broker's fees for the rental of the "Christine O'Donnell Masterfile" that have not been paid.

WHEREFORE, the Petitioners hereby respectfully requests that the Court

A. Order an accounting provided to the Petitioner, to include:

- 1) Any and all signed contracts authorizing Allegiance List Marketing, LLC to offer Christine O'Donnell's list for rental.
- 2) Any and all emails, faxes, letters, text messages, notes, other correspondence, documents, records, memoranda, hand-written notes, computer files, reports, spreadsheets or the like concerning Allegiance List Marketing, LLC being engaged and/or given authorization by anyone on Christine O'Donnell's behalf to offer her list for rental.
- 3) An accounting, whether as a single report or reports for various time periods as the records might be organized, of all rentals of the list by Allegiance List Marketing including the receipt of all payments made to Allegiance List Marketing.

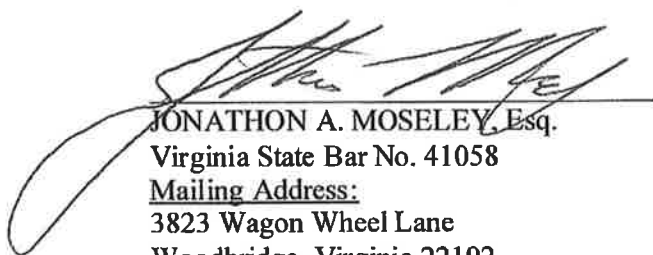
- 4) An explanation of what happened to the payments received by Allegiance List Marketing, LLC, including where ALM sent the money.
- 5) Any and all emails, faxes, letters, text messages, notes, other correspondence, documents, records, memoranda, hand-written notes, computer files, reports, spreadsheets or the like directing ALM in the handling of Christine O'Donnell's list.
- 6) A list of all clients to whom Christine O'Donnell's list was rented.
- 7) An exact and complete accounting of all income and disbursements.
- 8) Copies of all emails or hard copy messages or fund-raising appeals that went out to Christine O'Donnell's list.
- 9) Any and all reports of performance or results from fund-raising efforts to Christine O'Donnell's list, including the so-called "blue book" spreadsheets to the extent they were shared with ALM.
- 10) Any and all emails, faxes, or other correspondence about the procedures used by Allegiance List Marketing to provide use of or access to Christine O'Donnell's list to its clients, such as using a computer vendor or mail house, including to determine what computer processing companies or vendors may have had a copy of the list.
- 11) Any and all emails, faxes, letters, text messages, notes, other correspondence, documents, records, memoranda, hand-written notes, computer files, reports, spreadsheets or the like concerning whether ALM provided an actual copy of Christine O'Donnell's list to anyone.
- 12) Any and all emails, faxes, letters, text messages, notes, other correspondence, documents, records, memoranda, hand-written notes, computer files, reports, spreadsheets or the like concerning whether additional copies of Christine O'Donnell's list have been released to anyone (that is not for one-time use but in actual possession of anyone).
- 13) Any and all emails, faxes, letters, text messages, notes, other correspondence, documents, records, memoranda, hand-written notes, computer files, reports, spreadsheets or the like concerning what company or companies or vendor(s) were used to receive donations or other responses to any organization from the use of the "Christine O'Donnell Masterfile."

B. Enter judgment in favor of the Petitioner to order recovery or restitution to the Petitioner of any rental income from the use of Christine O'Donnell's list owed to Ms. O'Donnell or

any other entity which has not yet been paid to the extent revealed by the accounting.

- C. Order the return of any and all copies of Christine O'Donnell's list.
- D. Enter an injunction against ALM and/or its principals from renting, sharing, copying, or distributing a copy of Ms. O'Donnell's list.
- E. Award the Petitioners her costs and expenses and, if mismanagement is revealed, her attorney's fees and expenses.
- F. Order whatever further relief the Court may find proper and just under the circumstances.

RESPECTFULLY SUBMITTED
CHRISTINE O'DONNELL, *By Counsel*



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Christine O'Donnell Masterfile

Cont

Target these highly-responsive donors for your charitable, veteran or health or issue mailing today!

Thank
base.

Christine O'Donnell was a candidate for U.S. Senate from Delaware and has experience as a recognized political commentator, marketing consultant, speaker, and author. The ChristinePAC mission is to empower Americans to become involved in the voting process and commit these voters to conservative values that strengthen our nation.

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Studies of donor behavior show that the individuals on the O'Donnell Masterfile make solid prospects for charitable and non-profit appeals. These donors have a variety of interests including humanitarianism, Christian missions, supporting our troops, and healthcare.

****This file is available for charitable and telemarketing offers only.****

****20% commission to all recognized brokers****

Universes

Total file: 106,394

\$5+, L24 mos: 69,905

Donors with phone numbers: 76,091

Donors with email address: 34,976

Fees/Selects

Charitable @ \$85/M

Telemarketing Base @ \$135/M

Opt In Email addresses @ \$95/M

Dollar, Geo @ \$5/M

Phones @ \$15/M

Telemarketing surcharge @ \$25/M