

FEDERAL ELECTION COMMISSION**FIRST GENERAL COUNSEL'S REPORT**

MUR 7755

COMPLAINT DATE: June 29, 2020

NOTIFICATION DATE: June 30, 2020

LAST RESPONSE RECEIVED: August 20, 2020

ACTIVATION DATE: October 2, 2020

EXPIRATION OF SOL: March 15, 2025

ELECTION CYCLE: 2020

COMPLAINANT: Tom Sullivan**RESPONDENTS:** Cory Gardner
Cory Gardner for Senate and Lisa Lisker in her official
capacity as treasurer
Moët Hennessy USA, Inc., in lieu of Krug
Champagne (Maison Krug), LVMH Moët Hennessy
Louis Vuitton, Inc.
LaForce Company**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30104(b)

52 U.S.C. § 30114

52 U.S.C. § 30118

52 U.S.C. § 30121

11 C.F.R. § 113.1(g)

INTERNAL REPORTS CHECKED: Disclosure Reports**AGENCIES CHECKED:** None**I. INTRODUCTION**

The Complaint alleges that Senator Cory Gardner and Cory Gardner for Senate and Lisa Lisker in her official capacity as treasurer (“Gardner Committee”) violated the Federal Election Campaign Act of 1971, as amended (the “Act”) and Commission regulations in connection with Gardner’s attendance at a “lavish” “invitation-only” event on February 26, 2020, which was

1 hosted by Krug Champagne, a French company, at a Palm Beach, Florida mansion.¹ The
2 Complaint asserts that the event does not appear to be campaign-related, and thus the Gardner
3 Committee's reported expense of \$350 for Gardner's attendance constituted *per se* personal use
4 of campaign funds.² Alternatively, the Complaint contends that that if the event was campaign-
5 related, the Gardner Committee would have violated the Act by accepting a corporate and
6 possibly foreign national contribution from Krug Champagne, and Krug Champagne violated the
7 Act by making contributions to the campaign.³ Finally, the Complaint alleges that in an apparent
8 attempt to disguise the payment, the Gardner Committee reported the \$350 campaign
9 expenditure to LaForce Company ("LaForce"), a public relations firm, rather than to Krug
10 Champagne, the ultimate recipient, in violation of the Act's reporting requirements.⁴

11 According to the joint response of Gardner and the Gardner Committee ("Gardner
12 Respondents"), Gardner's attendance at the event reflected *bona fide* campaign activity that the
13 Gardner Committee could fund. Moët Hennessy USA, Inc. ("MH USA"), which responded to
14 the Complaint "in lieu of" Krug Champagne, states that it made no contribution because the
15 event in question was intended to promote brand awareness of Krug Champagne in the United
16 States, and was not related to Gardner's campaign.⁵ MH USA and LaForce, the entities that
17 planned and managed the event, also assert that no contributions were made because the event

¹ Compl. at 1, 6-8 (June 29, 2020).

² *Id.* at 2.

³ *Id.*

⁴ *Id.* at 7.

⁵ Response of MH USA ("MH USA Resp.") at 1-2 (Aug. 20, 2020). The MH USA Response states that "[a]lthough the complaint made allegations as to Krug Champagne, MH USA was the organizer and financial sponsor of the event and therefore, is responding in lieu of Krug Champagne." *Id.* at 1.

1 was not a fundraising event for Gardner and that Gardner did not make any formal statement or
2 remarks at the event.

3 Based on the allegations of the Complaint, the Responses, and the other available
4 information, we recommend that the Commission: (1) dismiss the allegation that MH USA
5 violated 52 U.S.C. §§ 30118(a) or 30121(a)(1) by making a prohibited in-kind contribution to
6 Gardner and the Gardner Committee; (2) dismiss the allegation that Gardner and the Gardner
7 Committee violated 52 U.S.C. §§ 30118(a) or 30121(a)(2) by accepting a prohibited in-kind
8 contribution from MH USA; (3) dismiss the Complaint as to LaForce Company; (4) dismiss the
9 allegation that Gardner and the Gardner Committee violated 52 U.S.C. § 30114(b) by converting
10 campaign funds to personal use pursuant to the Commission's prosecutorial discretion under
11 *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985); (5) dismiss the allegation that the Gardner
12 Committee violated 52 U.S.C. § 30104(b) by failing to adequately disclose the payee of certain
13 disbursements; and (6) close the file in this matter.

14 **II. FACTUAL BACKGROUND**

15 Cory Gardner served as a U.S. Senator for Colorado and was a candidate for reelection in
16 2020.⁶ The Gardner Committee is Gardner's principal campaign committee.⁷

17 According to the Gardner Respondents, Gardner traveled to Palm Beach, Florida on
18 February 26, 2020, for meetings with campaign and party committee donors and supporters.⁸

19 The Gardner Respondents state that at the conclusion of one of the campaign meetings, "a donor

⁶ Gardner lost the 2020 general election on November 3, 2020.

⁷ Cory Gardner for Senate Amended Statement of Organization (Dec. 3, 2020).

⁸ Joint Response of Gardner and the Gardner Committee ("Gardner Resp.") at 1 (Aug. 13, 2020).

1 and political supporter invited Senator Gardner to attend the event in question as his guest.”⁹
2 The Gardner Response notes that this event was not part of Gardner’s itinerary for travel to
3 Florida, describing the candidate’s attendance as “spontaneous.”¹⁰ Further, the Response asserts
4 that Gardner did not solicit funds for his campaign at the event and the event was not structured
5 by its hosts as a fundraising event for the candidate.¹¹ Nevertheless, the Gardner Respondents
6 maintain that Gardner’s attendance at the event reflected *bona fide* campaign activity, as the
7 candidate’s “decision to attend the event was based on his desire to continue his campaign-
8 related discussions with the individual extending the invitation, and to continue meeting with
9 other supporters and potential supporters of his campaign at the event itself.”¹²

10 MH USA describes itself as an independently operated U.S.-based subsidiary of LVMH
11 Moët Hennessy Louis Vuitton SE.¹³ MH USA asserts that it purchases Krug Champagne from
12 MHCS, a French-based Krug affiliate, and then distributes the champagne to local distributors or
13 state run alcohol beverage control boards in the United States for profit.¹⁴ MH USA describes
14 the event in question as one in a series of “brand awareness events to promote the Krug
15 champagnes it sells in the United States.”¹⁵ LaForce’s Response to the Complaint states that it
16 acted as “Krug’s public relations firm” and notes that it “handles logistics for periodic events

⁹ *Id.*

¹⁰ Gardner Resp. at 2.

¹¹ *Id.* at 3.

¹² *Id.* at 2.

¹³ MH USA Resp. at 1.

¹⁴ *Id.* at 1-2.

¹⁵ *Id.* at 2.

1 intended to promote Krug's products."¹⁶ LaForce maintains that the event at issue was planned
2 and executed consistent with other Krug promotional events.¹⁷ For these events, LaForce asserts
3 that it typically identifies a host and arranges the activities therein, which includes food,
4 entertainment and press coverage.¹⁸ LaForce "advances the event costs, which are then billed to
5 Krug following the event."¹⁹ LaForce further states that the host of the event has exclusive
6 control over the guests invited to the event and provides the guest list to LaForce to help
7 "facilitate event logistics, such as seating arrangements and place cards."²⁰ On the day of the
8 event at issue, the update of the guest list included Senator Gardner as an attendee.²¹ Both the
9 LaForce Response and sworn affidavit of Brittney Marian, Vice President of LaForce, assert that
10 LaForce made no special arrangement for the Senator's attendance, there was no announcement
11 at the event regarding the Senator's attendance, and Gardner had no speaking role at the event.²²
12 Marian, who was among the LaForce representatives at the event at issue, attests in her sworn
13 affidavit that she "was not aware of any campaign activity at the event, including any fundraising
14 requests made by or on behalf of Senator Gardner, or anyone advocating the election or defeat of
15 Senator Gardner or any candidate running against him."²³

¹⁶ Response of LaForce ("LaForce Resp.") at 1 (Aug. 17, 2020).

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 1.

¹⁹ *Id.*

²⁰ *Id.* at 1-2.

²¹ LaForce Resp. at 2, Brittney Marian Aff. ¶ 4.

²² LaForce Resp. at 2, Brittney Marian Aff. ¶¶ 4-5.

²³ LaForce Resp., Brittney Marian Aff. ¶ 5.

1 MH USA's Response to the Complaint similarly states that the event at issue was not a
2 fundraising event for Gardner. It states that Jamie Soriano, Brand Director at MH USA for Krug
3 Champagne products, "made opening remarks but did not mention Gardner's presence, nor his
4 campaign or opponent."²⁴ Soriano's sworn affidavit, which is attached to MH USA's Response,
5 is consistent with MH USA's representations, stating that neither he nor any other MH USA
6 employee solicited, received, or transmitted any political contribution at the event, and that
7 Gardner did not make any formal statement or remarks at the event.²⁵ He also states that to his
8 knowledge, no other person made remarks regarding Senator Gardner or his campaign.²⁶
9 Further, he notes that no campaign literature was passed out, no campaign staff members were
10 present, and no posters or other campaign material were available or on display.²⁷

11 The Gardner Committee disclosed paying LaForce \$350 for "food/beverage" on
12 March 15, 2020.²⁸ Brittney Marian's affidavit states that a representative of the Gardner
13 Committee contacted LaForce after the February 26, 2020, event, "seeking to reimburse the cost
14 per plate attributable to [Gardner's] attendance, which LaForce advised was \$350."²⁹ She further
15 states the Gardner Committee "subsequently sent a check in the amount of \$350 to LaForce,
16 which LaForce applied as a credit in billing Krug for the cost [of] the event."³⁰

²⁴ MH USA Resp. at 2.

²⁵ MH USA Resp., Jamie Soriano Aff. ¶¶ 8-9.

²⁶ *Id.*; ¶ 7.

²⁷ *Id.*; ¶ 9.

²⁸ Gardner Committee 2020 April Quarterly Report at 4320 (Apr. 15, 2020).

²⁹ Brittney Marian Aff. ¶ 6. The available information does not indicate that any of the attendees paid to participate in the event.

³⁰ *Id.*

1 **III. FACTUAL AND LEGAL ANALYSIS**

2 **A. The Commission Should Dismiss the Allegation that MH USA Made a**
3 **Prohibited Contribution to the Gardner Committee**

4
5 The Complaint contends that if the event was campaign-related, the Gardner Committee
6 may have violated the Act by accepting a corporate and possibly foreign-national contribution
7 from Krug Champagne and Krug Champagne violated the Act by making contributions to the
8 campaign.³¹ The Act prohibits corporations from making contributions to federal candidates.³²
9 Further, no candidate or political committee may knowingly accept a corporate contribution.³³
10 The Act also prohibits foreign nationals from making, directly or indirectly, a contribution or
11 donation, or an express or implied promise to make a contribution or donation, in connection
12 with a federal, state, or local election.³⁴ And it prohibits any person from soliciting, accepting, or
13 receiving a contribution from a foreign national.³⁵ The Act provides that a “contribution”
14 includes “any gift, subscription, loan, advance, or deposit of money or anything of value made
15 by any person for the purpose of influencing any election for Federal office.”³⁶ “Anything of
16 value” includes all in-kind contributions.³⁷ An in-kind contribution includes the provision
17 without charge (or at less than the usual and normal charge) of any goods or services, including,

³¹ Compl. at 2, 6.

³² 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

³³ *Id.*

³⁴ 52 U.S.C. § 30121(a)(1)(A).

³⁵ 52 U.S.C. § 30121(a)(2).

³⁶ 52 U.S.C. § 30101(8)(A)(i).

³⁷ 11 C.F.R. § 100.52(d)(1).

1 but not limited to, “facilities, equipment, supplies, personnel, advertising services, membership
2 lists, and mailing lists.”³⁸

3 The Commission has long recognized that the payment of costs to sponsor public
4 appearances by candidates for Federal office that are “campaign-related” is considered made “for
5 the purpose of influencing Federal elections” and constitutes a “contribution on behalf
6 of such candidates, unless such payment is specifically exempted by the Act or regulation.”³⁹ To
7 determine whether the event is campaign-related, the Commission considers factors “including
8 the setting, timing, and statements or expressions of the purpose of an event and the substance of
9 the remarks or speech made.”⁴⁰ In particular, if an event included express advocacy on behalf of
10 a candidate or against the candidate’s opponent, or if the candidate is soliciting contributions at
11 the event, the Commission may conclude the event is campaign-related.⁴¹ The provision of costs

³⁸ *Id.*

³⁹ See Advisory Op. 1988-22 (San Joaquin Valley Republican Associates) at 6 (a corporation’s payment of costs for a candidate’s public appearance was “campaign related” and, thus, presumptively constituted a “contribution” subject to corporate prohibition on contributions in connection with federal elections); *see also* Advisory Op. 1996-11 (National Right to Life Committee) at 4 (Commission public funding regulations consider other factors, including the “setting, timing and expressions of the purpose of an event, and the substance of the remarks or speech made . . . in determining whether a stop is campaign-related.”).

⁴⁰ Advisory Op. 1996-11 (National Right to Life Committee) at 4.

⁴¹ See Advisory Op. 1986-37 (National Conservative Foundation) at 4 (public appearances by candidates at sponsored events will be campaign-related if such events include any express advocacy of the election or defeat of any candidate or the solicitation of contributions to any candidate or political committee, and that the absence of express advocacy or solicitations will not preclude a determination that public appearances by candidates are campaign-related); Advisory Op. 1994-15 (Byrne) at 2 (the Commission has determined that financing particular activities involving the participation of a Federal candidate will result in a contribution to or expenditure on behalf of a candidate if the activities involve (i) the solicitation, making or acceptance of contributions to the candidate’s campaign, or (ii) communications expressly advocating the nomination, election or defeat of any candidate, and that the absence of those factors will not preclude a determination that an activity is “campaign-related”).

1 for campaign events or rallies for a federal candidate constitutes in-kind contributions.⁴²

2 Here, the available information does not indicate that the event in question was
3 campaign-related. The event represented one in a series of promotional events that was not
4 focused on Gardner's candidacy. Indeed, Brittney Marian of LaForce provided a sworn
5 statement averring that there was no announcement at the event regarding the Senator's
6 attendance and Gardner had no speaking role at the event.⁴³ Similarly, Jamie Soriano of MH
7 USA states in his affidavit that his opening remarks at the event did not mention Gardner.⁴⁴
8 Further, there is no information that any fundraising activity on behalf of Gardner occurred. The
9 Gardner Response maintains that the candidate did not solicit funds for his campaign at the event
10 and the event was not structured by its hosts as a fundraising event for the candidate.⁴⁵ As the
11 available information does not suggest that the event was campaign-related, no reasonable
12 inference can be drawn to conclude that any contribution was made. Accordingly, we
13 recommend that the Commission dismiss the allegation that MH USA violated 52 U.S.C.
14 §§ 30118(a) or 30121(a)(1) by making a prohibited in-kind contribution to Gardner and the
15 Gardner Committee. Likewise, we recommend that the Commission dismiss the allegation that

⁴² See Factual & Legal Analysis ("F&LA") at 4, MUR 6857 (Jerry Gappens) (finding reason to believe that prohibited corporate resources were used to make an in-kind contribution in the form of payments of certain campaign event costs to Marilinda Garcia for Congress); F&LA at 2, 4, MUR 6447 (Steele for Maryland, Inc.) (finding reason to believe committee had accepted excessive in-kind contributions in the form of payments of certain campaign fundraising expenses); *accord Buckley v. Valeo*, 424 U.S. 1, 19 (1976) (per curiam) (noting that "Speeches and rallies generally necessitate hiring a hall and publicizing the event.").

⁴³ LaForce Resp., Brittney Marian Aff. ¶¶ 4-5.

⁴⁴ MH USA Resp.; Jamie Soriano Aff. ¶ 7.

⁴⁵ Gardner Response at 3. To the extent that the Gardner Response asserts that Gardner's "decision to attend the event was based on his desire to continue his campaign-related discussions [from earlier meetings with campaign and party committee donors and supporters] with the individual extending the invitation, and to continue meeting with other supporters and potential supporters of his campaign," *see id.* at 2, it appears that such conversations are too attenuated to conclude that the Krug Champagne event was campaign-related.

1 Cory Gardner and the Gardner Committee violated 52 U.S.C. §§ 30118(a) or 30121(a)(2) by
2 accepting a prohibited in-kind contribution from MH USA. For the same reasons, we also
3 recommend that the Commission dismiss the Complaint as to LaForce Company.

4 **B. The Commission Should Dismiss the Allegation that Gardner Converted**
5 **Campaign Funds to Personal Use**
6

7 The Complaint alleges, as an alternative argument, that the \$350 payment for Gardner's
8 attendance at the event was personal use. Under the Act, a contribution accepted by a candidate
9 may be used for, *inter alia*, "otherwise authorized expenditures in connection with the campaign
10 for Federal office of the candidate."⁴⁶ However, a contribution to a candidate shall not be
11 converted by any person to "personal use."⁴⁷ "Personal use" means any use of funds in a
12 campaign account of a present or former candidate to fulfill a commitment, obligation, or
13 expense of any person that would exist irrespective of the candidate's campaign or duties as a
14 Federal officeholder.⁴⁸ The Commission evaluates certain expenses, such as travel, meal, and
15 legal expenses, on a case-by-case basis by applying the "irrespective test" to determine whether a
16 personal use violation has occurred.⁴⁹

17 In addition, the Commission's regulations include a list of permissible non-campaign
18 related expenses that can be incurred by candidates and paid by their committees, including
19 ordinary and necessary expenses incurred in connection with the recipient's duties as a federal

⁴⁶ 52 U.S.C. § 30114(a).

⁴⁷ *Id.* § 30114(b)(1).

⁴⁸ *Id.* § 30114(b)(2); 11 C.F.R. § 113.1(g); Explanation and Justification for Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,863 (Feb. 9, 1995).

⁴⁹ *See* 11 C.F.R. § 113.1(g)(1)(ii).

1 officeholder, travel costs associated with *bona fide* official duties such as speaking engagements,
2 unless such use is “personal use.”⁵⁰

3 Gardner’s attendance at the event, which purportedly was not part of his itinerary, does
4 not appear to be associated with *bona fide* campaign duties, as he had no role or made any
5 speeches, and there is no suggestion that he was more than merely an attendee to the promotional
6 event. And the event appears to be akin to some “form of entertainment not associated with an
7 election campaign” that would constitute a conversion to personal use.⁵¹ Nevertheless, given the
8 small amount at issue — \$350 — we do not believe that it would be a prudent use of the
9 Commission’s limited resources to pursue this matter further. Accordingly, we recommend that
10 the Commission exercise its prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821
11 (1985) and dismiss the allegation that Cory Gardner and the Gardner Committee violated
12 52 U.S.C. § 30114(b) by converting campaign funds to personal use.⁵²

13 **C. The Commission Should Dismiss the Allegation that the Gardner Committee**
14 **Misreported the Ultimate Payee of the LaForce Disbursement**
15

16 The Complaint also alleges that the Gardner Committee has concealed the identity of the
17 ultimate recipient of the \$350 payment it made to LaForce, arguing that LaForce acted as a
18 conduit for the actual recipient of the funds, Krug Champagne.⁵³ The Act and Commission
19 regulations require political committees to report the name and address of each person to whom

⁵⁰ See 11 C.F.R. § 113.2(a)-(e); Explanation and Justification for Final Rules on Use of Campaign Funds for Donations to Non-Federal Candidates and Any Other Lawful Purpose Other than Personal Use, 72 Fed. Reg. 56,245, 56,246 (Oct. 3, 2007).

⁵¹ See 52 U.S.C. § 30114(b)(H).

⁵² See *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

⁵³ Compl. at 7.

1 they make expenditures or other disbursements aggregating more than \$200 per calendar year, or
 2 per election cycle for authorized committees, as well as the date, amount, and purpose of such
 3 payments.⁵⁴ The relevant reporting requirements under the Act and Commission regulations are
 4 intended to ensure public disclosure of “where political campaign money comes from and how it
 5 is spent.”⁵⁵

6 Neither the Act nor Commission regulations address the concepts of ultimate payees,
 7 vendors, agents, contractors, or subcontractors in this context.⁵⁶ The Commission has, however,
 8 found reason to believe that political committees violated the Act’s reporting requirements in
 9 circumstances where the factual record suggests that a committee reported a vendor that served
 10 merely as a stand-in for payments to another particular recipient the committee avoided
 11 disclosing.⁵⁷

12 It does not appear that the Gardner Committee failed to disclose the appropriate payee.
 13 While MH USA is the entity that held the event, LaForce organized the logistics of the event,

⁵⁴ 52 U.S.C. § 30104(b)(5), (6); 11 C.F.R. § 104.3(b)(3)(i), (ix) (political committees other than authorized committees); *id.* § 104.3(b)(4)(i), (vi) (authorized committees); *id.* § 104.9(a), (b) (all political committees).

⁵⁵ *Buckley v. Valeo*, 424 U.S. 1, 66 (1976); *see also Citizens United v. FEC*, 558 U.S. 310, 369-71 (2010) (describing importance of disclosure requirements to serve informational interest, because “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages”).

⁵⁶ Advisory Op. 1983-25 (Mondale) at 2. The Commission has since addressed the requirements of section 30104(b)(5) in certain situations not applicable to these facts. *See* Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40,625, 40,626-27 (July 8, 2013) (“Ultimate Payee Interpretive Rule”) (clarifying committees’ obligation to report “ultimate payees” in three specific scenarios that are not vendor specific).

⁵⁷

F&LA at 2-3, MUR 6724 (Bachmann for President) (Bachmann’s committee and Iowa state senator Kent Sorenson agreed that he would be paid by the committee in that matter through an intermediary—C&M—then simply added Sorenson’s monthly payments to the monthly fees it was already collecting from the committee); *see* Conciliation Agreement at 2, MUR 6724 (Bachmann for President); Conciliation Agreement at 2-4, MUR 4872 (Jenkins) (respondents violated the Act by concealing its relationship with the actual vendor by routing payments to another vendor that had no involvement with the services provided by the actual payee).

1 incurred initial expenses, and was reimbursed for its payment of the costs involved. Before MH
 2 USA reimbursed LaForce for advancing the costs of the event, the Gardner Committee sent a
 3 check in the amount of \$350 to LaForce. Hence, the Gardner Committee's disclosure of the
 4 payment to LaForce appears facially accurate. The payment to LaForce also was reasonable
 5 since it did not bill MH USA for Gardner's participation, instead deducting that amount from the
 6 total bill that it ultimately charged MH USA for the cost of the event.⁵⁸ And the available
 7 information does not suggest that the Gardner Committee's payment to LaForce constituted a
 8 reported payment to a vendor that served as a stand-in for payments to another particular
 9 recipient the committee avoided disclosing. Accordingly, we recommend that the Commission
 10 dismiss the allegation that the Gardner Committee violated 52 U.S.C. § 30104(b) by failing to
 11 adequately disclose the payee of its \$350 disbursement. Finally, we recommend that the
 12 Commission close the file in this matter.

13 **IV. RECOMMENDATIONS**

- 14 1. Dismiss the allegation that Moët Hennessy USA, Inc. in lieu of Krug Champagne
 15 (Maison Krug) violated 52 U.S.C. §§ 30118(a) or 30121(a)(1) by making a
 16 prohibited in-kind contribution to Cory Gardner and Cory Gardner for Senate and
 17 Lisa Lisker in her official capacity as treasurer;
- 18 2. Dismiss the allegation that Cory Gardner and Cory Gardner for Senate and Lisa
 19 Lisker in her official capacity as treasurer violated 52 U.S.C. §§ 30118(a) or
 20 30121(a)(2) by accepting a prohibited in-kind contribution from Moët Hennessy
 21 USA, Inc. in lieu of Krug Champagne (Maison Krug);
- 22 3. Dismiss the Complaint as to LaForce Company;
- 23 4. Dismiss the allegation that Cory Gardner and Cory Gardner for Senate and Lisa
 24 Lisker in her official capacity as treasurer violated 52 U.S.C. § 30114(b) by
 25 converting campaign funds to personal use pursuant to the Commission's
 26 prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985);
 27
 28
 29
 30

⁵⁸ See LaForce Resp., Brittney Marian Aff. ¶ 6.

- 1 5. Dismiss the allegation that Cory Gardner for Senate and Lisa Lisker in her official
- 2 capacity as treasurer violated 52 U.S.C. § 30104(b) by failing to adequately
- 3 disclose the payee of certain disbursements;
- 4
- 5 6. Approve the Factual and Legal Analysis;
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- 7 7. Approve the appropriate letters; and
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- 8 8. Close the file.

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Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel for Enforcement

Jan. 29, 2021
Date

Peter G. Blumberg by MA
Peter G. Blumberg
Acting Deputy Associate General Counsel

Mark Allen
Mark Allen
Assistant General Counsel

Roy Q. Lockett
Roy Q. Lockett
Attorney

Attachment:
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Cory Gardner MUR 7755
Cory Gardner for Senate and Lisa Lisker
in her official capacity as treasurer
Moët Hennessy USA, Inc., in lieu of Krug
Champagne (Maison Krug), LVMH
Moët Hennessy Louis Vuitton, Inc.
LaForce Company

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission (the “Commission”) by Tom Sullivan.¹ The Complaint alleges that Senator Cory Gardner and Cory Gardner for Senate and Lisa Lisker in her official capacity as treasurer (“Gardner Committee”) violated the Federal Election Campaign Act of 1971, as amended (the “Act”) and Commission regulations in connection with Gardner’s attendance at a “lavish” “invitation-only” event on February 26, 2020, which was hosted by Krug Champagne, a French company, at a Palm Beach, Florida mansion.² The Complaint asserts that the event does not appear to be campaign-related, and thus the Gardner Committee’s reported expense of \$350 for Gardner’s attendance constituted *per se* personal use of campaign funds.³ Alternatively, the Complaint contends that that if the event was campaign-related, the Gardner Committee would have violated the Act by accepting a corporate and possibly foreign national contribution from Krug Champagne, and Krug Champagne violated the Act by making contributions to the campaign.⁴

¹ See 52 U.S.C. § 30109(a)(1).

² Compl. at 1, 6-8 (June 29, 2020).

³ *Id.* at 2.

⁴ *Id.*

1 Finally, the Complaint alleges that in an apparent attempt to disguise the payment, the Gardner
2 Committee reported the \$350 campaign expenditure to LaForce Company (“LaForce”), a public
3 relations firm, rather than to Krug Champagne, the ultimate recipient, in violation of the Act’s
4 reporting requirements.⁵

5 According to the joint response of Gardner and the Gardner Committee (“Gardner
6 Respondents”), Gardner’s attendance at the event reflected *bona fide* campaign activity that the
7 Committee could fund. Moët Hennessy USA, Inc. (“MH USA”), which responded to the
8 Complaint “in lieu of” Krug Champagne, states that it made no contribution because the event in
9 question was intended to promote brand awareness of Krug Champagne in the United States, and
10 was not related to Gardner’s campaign.⁶ MH USA and LaForce, the entities that planned and
11 managed the event, also assert that no contributions were made because the event was not a
12 fundraising event for Gardner and that Gardner did not make any formal statement or remarks at
13 the event.

14 Based on the allegations of the Complaint, the Responses, and the other available
15 information, the Commission: (1) dismisses the allegation that MH USA violated 52 U.S.C.
16 §§ 30118(a) or 30121(a)(1) by making a prohibited in-kind contribution to Cory Gardner and the
17 Gardner Committee; (2) dismisses the allegation that Gardner and the Gardner Committee
18 violated 52 U.S.C. §§ 30118(a) or 30121(a)(2) by accepting a prohibited in-kind contribution
19 from MH USA; (3) dismisses the Complaint as to LaForce Company; (4) dismisses the
20 allegation that Gardner and the Gardner Committee violated 52 U.S.C. § 30114(b) by converting

⁵ *Id.* at 7.

⁶ Response of MH USA (“MH USA Resp.”) at 1-2 (Aug. 20, 2020). The MH USA Response states that “[a]lthough the complaint made allegations as to Krug Champagne, MH USA was the organizer and financial sponsor of the event and therefore, is responding in lieu of Krug Champagne.” *Id.* at 1.

1 campaign funds to personal use pursuant to the Commission’s prosecutorial discretion under
2 *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985); and (5) dismisses the allegation that the
3 Gardner Committee violated 52 U.S.C. § 30104(b) by failing to adequately disclose the payee of
4 certain disbursements.

5 **II. FACTUAL AND LEGAL ANALYSIS**

6 **A. Factual Background**

7 Cory Gardner served as a U.S. Senator for Colorado and was a candidate for reelection in
8 2020.⁷ The Gardner Committee is Gardner’s principal campaign committee.⁸

9 According to the Gardner Respondents, Gardner traveled to Palm Beach, Florida on
10 February 26, 2020, for meetings with campaign and party committee donors and supporters.⁹
11 The Gardner Respondents state that at the conclusion of one of the campaign meetings, “a donor
12 and political supporter invited Senator Gardner to attend the event in question as his guest.”¹⁰
13 The Gardner Response notes that this event was not part of Gardner’s itinerary for travel to
14 Florida, describing the candidate’s attendance as “spontaneous.”¹¹ Further, the Response asserts
15 that Gardner did not solicit funds for his campaign at the event and the event was not structured
16 by its hosts as a fundraising event for the candidate.¹² Nevertheless, the Gardner Respondents
17 maintain that Gardner’s attendance at the event reflected *bona fide* campaign activity, as the

⁷ Gardner lost the 2020 general election on November 3, 2020.

⁸ Cory Gardner for Senate Amended Statement of Organization (Dec. 3, 2020).

⁹ Joint Response of Gardner and the Gardner Committee (“Gardner Resp.”) at 1 (Aug. 13, 2020).

¹⁰ *Id.*

¹¹ Gardner Resp. at 2.

¹² *Id.* at 3.

1 candidate’s “decision to attend the event was based on his desire to continue his campaign-
2 related discussions with the individual extending the invitation, and to continue meeting with
3 other supporters and potential supporters of his campaign at the event itself.”¹³

4 MH USA describes itself as an independently operated U.S.-based subsidiary of LVMH
5 Moët Hennessy Louis Vuitton SE.¹⁴ MH USA asserts that it purchases Krug Champagne from
6 MHCS, a French-based Krug affiliate, and then distributes the champagne to local distributors or
7 state run alcohol beverage control boards in the United States for profit.¹⁵ MH USA describes
8 the event in question as one in a series of “brand awareness events to promote the Krug
9 champagnes it sells in the United States.”¹⁶ LaForce’s Response to the Complaint states that it
10 acted as “Krug’s public relations firm” and notes that it “handles logistics for periodic events
11 intended to promote Krug’s products.”¹⁷ LaForce maintains that the event at issue was planned
12 and executed consistent with other Krug promotional events.¹⁸ For these events, LaForce asserts
13 that it typically identifies a host and arranges the activities therein, which includes food,
14 entertainment and press coverage.¹⁹ LaForce “advances the event costs, which are then billed to
15 Krug following the event.”²⁰ LaForce further states that the host of the event has exclusive
16 control over the guests invited to the event and provides the guest list to LaForce to help

¹³ *Id.* at 2.

¹⁴ MH USA Resp. at 1.

¹⁵ *Id.* at 1-2.

¹⁶ *Id.* at 2.

¹⁷ Response of LaForce (“LaForce Resp.”) at 1 (Aug. 17, 2020).

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 1.

²⁰ *Id.*

1 “facilitate event logistics, such as seating arrangements and place cards.”²¹ On the day of the
2 event at issue, the update of the guest list included Senator Gardner as an attendee.²² Both the
3 LaForce Response and sworn affidavit of Brittney Marian, Vice President of LaForce, assert that
4 LaForce made no special arrangement for the Senator’s attendance, there was no announcement
5 at the event regarding the Senator’s attendance, and Gardner had no speaking role at the event.²³
6 Marian, who was among the LaForce representatives at the event at issue, attests in her sworn
7 affidavit that she “was not aware of any campaign activity at the event, including any fundraising
8 requests made by or on behalf of Senator Gardner, or anyone advocating the election or defeat of
9 Senator Gardner or any candidate running against him.”²⁴

10 MH USA’s Response to the Complaint similarly states that the event at issue was not a
11 fundraising event for Gardner. It states that Jamie Soriano, Brand Director at MH USA for Krug
12 Champagne products, “made opening remarks but did not mention Gardner’s presence, nor his
13 campaign or opponent.”²⁵ Soriano’s sworn affidavit, which is attached to MH USA’s Response,
14 is consistent with MH USA’s representations, stating that neither he nor any other MH USA
15 employee solicited, received, or transmitted any political contribution at the event, and that
16 Gardner did not make any formal statement or remarks at the event.²⁶ He also states that to his
17 knowledge, no other person made remarks regarding Senator Gardner or his campaign.²⁷

²¹ *Id.* at 1-2.

²² LaForce Resp. at 2, Brittney Marian Aff. ¶ 4.

²³ LaForce Resp. at 2, Brittney Marian Aff. ¶¶ 4-5.

²⁴ LaForce Resp., Brittney Marian Aff. ¶ 5.

²⁵ MH USA Resp. at 2.

²⁶ MH USA Resp., Jamie Soriano Aff. ¶¶ 8-9.

²⁷ *Id.*; ¶ 7.

1 Further, he notes that no campaign literature was passed out, no campaign staff members were
2 present, and no posters or other campaign material were available or on display.²⁸

3 The Gardner Committee disclosed paying LaForce \$350 for “food/beverage” on
4 March 15, 2020.²⁹ Brittney Marian’s affidavit states that a representative of the Gardner
5 Committee contacted LaForce after the February 26, 2020, event, “seeking to reimburse the cost
6 per plate attributable to [Gardner’s] attendance, which LaForce advised was \$350.”³⁰ She further
7 states the Gardner Committee “subsequently sent a check in the amount of \$350 to LaForce,
8 which LaForce applied as a credit in billing Krug for the cost [of] the event.”³¹

9 **B. Legal Analysis**

10 1. Allegation that MH USA Made a Prohibited Contribution to the 11 Gardner Committee

12 The Complaint contends that if the event was campaign-related, the Gardner Committee
13 may have violated the Act by accepting a corporate and possibly foreign national contribution
14 from Krug Champagne and Krug Champagne violated the Act by making contributions to the
15 campaign.³² The Act prohibits corporations from making contributions to federal candidates.³³
16 Further, no candidate or political committee may knowingly accept a corporate contribution.³⁴
17 The Act also prohibits foreign nationals from making, directly or indirectly, a contribution or

28 *Id.*; ¶ 9.

29 Gardner Committee 2020 April Quarterly Report at 4320 (Apr. 15, 2020).

30 Brittney Marian Aff. ¶ 6. The available information does not indicate that any of the attendees paid to participate in the event.

31 *Id.*

32 Compl. at 2, 6.

33 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

34 *Id.*

1 donation, or an express or implied promise to make a contribution or donation, in connection
2 with a federal, state, or local election.³⁵ And it prohibits any person from soliciting, accepting, or
3 receiving a contribution from a foreign national.³⁶ The Act provides that a “contribution”
4 includes “any gift, subscription, loan, advance, or deposit of money or anything of value made
5 by any person for the purpose of influencing any election for Federal office.”³⁷ “Anything of
6 value” includes all in-kind contributions.³⁸ An in-kind contribution includes the provision
7 without charge (or at less than the usual and normal charge) of any goods or services, including,
8 but not limited to, “facilities, equipment, supplies, personnel, advertising services, membership
9 lists, and mailing lists.”³⁹

10 The Commission has long recognized that the payment of costs to sponsor public
11 appearances by candidates for Federal office that are “campaign-related” is considered made “for
12 the purpose of influencing Federal elections” and constitutes a “contribution on behalf
13 of such candidates, unless such payment is specifically exempted by the Act or regulation.”⁴⁰ To
14 determine whether the event is campaign-related, the Commission considers factors “including
15 the setting, timing, and statements or expressions of the purpose of an event and the substance of

³⁵ 52 U.S.C. § 30121(a)(1)(A).

³⁶ 52 U.S.C. § 30121(a)(2).

³⁷ 52 U.S.C. § 30101(8)(A)(i).

³⁸ 11 C.F.R. § 100.52(d)(1).

³⁹ *Id.*

⁴⁰ See Advisory Op. 1988-22 (San Joaquin Valley Republican Associates) at 6 (a corporation’s payment of costs for a candidate’s public appearance was “campaign related” and, thus, presumptively constituted a “contribution” subject to corporate prohibition on contributions in connection with federal elections); see also Advisory Op. 1996-11 (National Right to Life Committee) at 4 (Commission public funding regulations consider other factors, including the “setting, timing and expressions of the purpose of an event, and the substance of the remarks or speech made . . . in determining whether a stop is campaign-related.”).

1 the remarks or speech made.”⁴¹ In particular, if an event included express advocacy on behalf of
2 a candidate or against the candidate’s opponent, or if the candidate is soliciting contributions at
3 the event, the Commission may conclude the event is campaign-related.⁴² The provision of costs
4 for campaign events or rallies for a federal candidate constitutes in-kind contributions.⁴³

5 Here, the available information does not indicate that the event in question was
6 campaign-related. The event represented one in a series of promotional events that was not
7 focused on Gardner’s candidacy. Indeed, Brittney Marian of LaForce provided a sworn
8 statement averring that there was no announcement at the event regarding the Senator’s
9 attendance and Gardner had no speaking role at the event.⁴⁴ Similarly, Jamie Soriano of MH
10 USA states in his affidavit that his opening remarks at the event did not mention Gardner.⁴⁵
11 Further, there is no information that any fundraising activity on behalf of Gardner occurred. The
12 Gardner Response maintains that the candidate did not solicit funds for his campaign at the event

⁴¹ Advisory Op. 1996-11 (National Right to Life Committee) at 4.

⁴² See Advisory Op. 1986-37 (National Conservative Foundation) at 4 (public appearances by candidates at sponsored events will be campaign-related if such events include any express advocacy of the election or defeat of any candidate or the solicitation of contributions to any candidate or political committee, and that the absence of express advocacy or solicitations will not preclude a determination that public appearances by candidates are campaign-related); Advisory Op. 1994-15 (Byrne) at 2 (the Commission has determined that financing particular activities involving the participation of a Federal candidate will result in a contribution to or expenditure on behalf of a candidate if the activities involve (i) the solicitation, making or acceptance of contributions to the candidate’s campaign, or (ii) communications expressly advocating the nomination, election or defeat of any candidate, and that the absence of those factors will not preclude a determination that an activity is “campaign-related”).

⁴³ See Factual & Legal Analysis (“F&LA”) at 4, MUR 6857 (Jerry Gappens) (finding reason to believe that prohibited corporate resources were used to make an in-kind contribution in the form of payments of certain campaign event costs to Marilinda Garcia for Congress); F&LA at 2, 4, MUR 6447 (Steele for Maryland, Inc.) (finding reason to believe committee had accepted excessive in-kind contributions in the form of payments of certain campaign fundraising expenses); *accord Buckley v. Valeo*, 424 U.S. 1, 19 (1976) (per curiam) (noting that “Speeches and rallies generally necessitate hiring a hall and publicizing the event.”).

⁴⁴ LaForce Resp., Brittney Marian Aff. ¶¶ 4-5.

⁴⁵ MH USA Resp.; Jamie Soriano Aff. ¶ 7.

1 and the event was not structured by its hosts as a fundraising event for the candidate.⁴⁶ As the
2 available information does not suggest that the event was campaign-related, no reasonable
3 inference can be drawn to conclude that any contribution was made. Accordingly, the
4 Commission dismisses the allegation that Moët Hennessy USA, Inc. in lieu of Krug Champagne
5 (Maison Krug) violated 52 U.S.C. §§ 30118(a) or 30121(a)(1) by making a prohibited in-kind
6 contribution to Gardner and the Gardner Committee. Likewise, the Commission dismisses the
7 allegation that Cory Gardner and the Gardner Committee violated 52 U.S.C. §§ 30118(a) or
8 30121(a)(2) by accepting a prohibited in-kind contribution from Moët Hennessy USA, Inc. in
9 lieu of Krug Champagne (Maison Krug). For these same reasons, the Commission also
10 dismisses the Complaint as to LaForce Company.

11 2. Allegation that Gardner Converted Campaign Funds to Personal Use

12 The Complaint alleges, as an alternative argument, that the \$350 payment for Gardner's
13 attendance at the event was personal use. Under the Act, a contribution accepted by a candidate
14 may be used for, *inter alia*, "otherwise authorized expenditures in connection with the campaign
15 for Federal office of the candidate."⁴⁷ However, a contribution to a candidate shall not be
16 converted by any person to "personal use."⁴⁸ "Personal use" means any use of funds in a
17 campaign account of a present or former candidate to fulfill a commitment, obligation, or
18 expense of any person that would exist irrespective of the candidate's campaign or duties as a

⁴⁶ Gardner Response at 3. To the extent that the Gardner Response asserts that Gardner's "decision to attend the event was based on his desire to continue his campaign-related discussions [from earlier meetings with campaign and party committee donors and supporters] with the individual extending the invitation, and to continue meeting with other supporters and potential supporters of his campaign," *see id.* at 2, it appears that such conversations are too attenuated to conclude that the Krug Champagne event was campaign-related.

⁴⁷ 52 U.S.C. § 30114(a).

⁴⁸ *Id.* § 30114(b)(1).

1 Federal officeholder.⁴⁹ The Commission evaluates certain expenses, such as travel, meal, and
2 legal expenses, on a case-by-case basis by applying the “irrespective test” to determine whether a
3 personal use violation has occurred.⁵⁰

4 In addition, the Commission’s regulations include a list of permissible non-campaign
5 related expenses that can be incurred by candidates and paid by their committees, including
6 ordinary and necessary expenses incurred in connection with the recipient’s duties as a federal
7 officeholder, travel costs associated with *bona fide* official duties such as speaking engagements,
8 unless such use is “personal use.”⁵¹

9 Gardner’s attendance at the event, which purportedly was not part of his itinerary, does
10 not appear to be associated with *bona fide* campaign duties, as he had no role or made any
11 speeches, and there is no suggestion that he was more than merely an attendee to the promotional
12 event. And the event appears to be akin to some “form of entertainment not associated with an
13 election campaign” that would constitute a conversion to personal use.⁵² Nevertheless, given the
14 small amount at issue — \$350 — the use of Commission’s limited resources to pursue this
15 matter further is not warranted. Accordingly, the Commission exercises its prosecutorial
16 discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985) and dismisses the allegation that Cory

⁴⁹ *Id.* § 30114(b)(2); 11 C.F.R. § 113.1(g); Explanation and Justification for Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,863 (Feb. 9, 1995).

⁵⁰ *See* 11 C.F.R. § 113.1(g)(1)(ii).

⁵¹ *See* 11 C.F.R. § 113.2(a)-(e); Explanation and Justification for Final Rules on Use of Campaign Funds for Donations to Non-Federal Candidates and Any Other Lawful Purpose Other than Personal Use, 72 Fed. Reg. 56,245, 56,246 (Oct. 3, 2007).

⁵² *See* 52 U.S.C. § 30114(b)(H).

1 Gardner and the Gardner Committee violated 52 U.S.C. § 30114(b) by converting campaign
2 funds to personal use.⁵³

3 3. Allegation that the Gardner Committee Misreported the Ultimate Payee of
4 the LaForce Disbursement

5
6 The Complaint also alleges that the Gardner Committee has concealed the identity of the
7 ultimate recipient of the \$350 payment it made to LaForce, arguing that LaForce acted as a
8 conduit for the actual recipient of the funds, Krug Champagne.⁵⁴ The Act and Commission
9 regulations require political committees to report the name and address of each person to whom
10 they make expenditures or other disbursements aggregating more than \$200 per calendar year, or
11 per election cycle for authorized committees, as well as the date, amount, and purpose of such
12 payments.⁵⁵ The relevant reporting requirements under the Act and Commission regulations are
13 intended to ensure public disclosure of “where political campaign money comes from and how it
14 is spent.”⁵⁶

15 Neither the Act nor Commission regulations address the concepts of ultimate payees,
16 vendors, agents, contractors, or subcontractors in this context.⁵⁷ The Commission has, however,
17 found reason to believe that political committees violated the Act’s reporting requirements in

⁵³ See *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

⁵⁴ Compl. at 7.

⁵⁵ 52 U.S.C. § 30104(b)(5), (6); 11 C.F.R. § 104.3(b)(3)(i), (ix) (political committees other than authorized committees); *id.* § 104.3(b)(4)(i), (vi) (authorized committees); *id.* § 104.9(a), (b) (all political committees).

⁵⁶ *Buckley v. Valeo*, 424 U.S. 1, 66 (1976); see also *Citizens United v. FEC*, 558 U.S. 310, 369-71 (2010) (describing importance of disclosure requirements to serve informational interest, because “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages”).

⁵⁷ Advisory Op. 1983-25 (Mondale) at 2. The Commission has since addressed the requirements of section 30104(b)(5) in certain situations not applicable to these facts. See Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40,625, 40,626-27 (July 8, 2013) (“Ultimate Payee Interpretive Rule”) (clarifying committees’ obligation to report “ultimate payees” in three specific scenarios that are not vendor specific).

1 circumstances where the factual record suggests that a committee reported a vendor that served
2 merely as a stand-in for payments to another particular recipient the committee avoided
3 disclosing.⁵⁸

4 It does not appear that the Gardner Committee failed to disclose the appropriate payee.
5 While MH USA is the entity that held the event, LaForce organized the logistics of the event,
6 incurred initial expenses, and was reimbursed for its payment of the costs involved. Before MH
7 USA reimbursed LaForce for advancing the costs of the event, the Gardner Committee sent a
8 check in the amount of \$350 to LaForce. Hence, the Gardner Committee's disclosure of the
9 payment to LaForce appears facially accurate. The payment to LaForce also was reasonable
10 since it did not bill MH USA for Gardner's participation, instead deducting that amount from the
11 total bill that it ultimately charged MH USA for the cost of the event.⁵⁹ And the available
12 information does not suggest that the Gardner Committee's payment to LaForce constituted a
13 reported payment to a vendor that served as a stand-in for payments to another particular
14 recipient the committee avoided disclosing. Accordingly, the Commission dismisses the
15 allegation that the Gardner Committee violated 52 U.S.C. § 30104(b) by failing to adequately
16 disclose the payee of its \$350 disbursement.

⁵⁸ See F&LA at 2-3, MUR 6724 (Bachmann for President) (Bachmann's committee and Iowa state senator Kent Sorenson agreed that he would be paid by the committee in that matter through an intermediary —C&M— then simply added Sorenson's monthly payments to the monthly fees it was already collecting from the committee); Conciliation Agreement at 2, MUR 6724 (Bachmann for President); Conciliation Agreement at 2-4, MUR 4872 (Jenkins) (respondents violated the Act by concealing its relationship with the actual vendor by routing payments to another vendor that had no involvement with the services provided by the actual payee).

⁵⁹ See LaForce Resp., Brittney Marian Aff. ¶ 6.