

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR 8131

DATE COMPLAINT FILED: April 28, 2023

DATE OF NOTIFICATION: May 3, 2023

DATE OF LAST RESPONSE: June 16, 2023

DATE ACTIVATED: October 13, 2023

**EXPIRATION OF SOL: April 15-August 2, 2026
ELECTION CYCLE: 2022**

COMPLAINANTS: Salazar for Congress
Freedom Force PAC
Salazar Victory Committee

RESPONDENT: Nancy Marks

RELEVANT STATUTES AND REGULATIONS:	52 U.S.C. § 30102(h)(1) 52 U.S.C. § 30104(b) 11 C.F.R. § 103.3(a) 11 C.F.R. § 104.3
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INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

1. INTRODUCTION

30 This matter arises from a Complaint filed by Salazar for Congress, Freedom Force PAC,
31 and Salazar Victory Committee (the “Committees”) alleging that their former treasurer, Nancy
32 Marks, should be held personally liable for reporting violations and failing to correctly deposit
33 contributions in depository accounts while Marks served as treasurer. The same violations were
34 the subject of MUR 8176 (Salazar for Congress, *et al.*) in which the Committees filed a *sua
35 sponte* submission acknowledging the violations and agreed to pay a combined \$22,800 civil
36 penalty to settle the violations. As part of the *sua sponte* process, the Committees filed this

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1 Complaint against Marks. The Committees argue that Marks should be held personally liable for
2 the violations in MUR 8176 because she recklessly failed to fulfill her duties under the Federal
3 Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations.
4 Specifically, they contend that the errors and omissions in her reports far exceed any level of
5 acceptable mistake.

6 In her Response, Marks argues that no items were intentionally incorrectly reported or
7 omitted. She states that the pandemic caused a labor shortage and that her company was forced
8 to hire from a small, underqualified pool of available people. And she acknowledges hiring an
9 inexperienced employee who was tasked with obtaining information and preparing reports. Also,
10 during the pandemic, Marks states that several of her competitors were unable to operate and, as
11 a result, her company took on their work which was overwhelming. Marks provides other
12 explanations for the errors in the reports, including that: (1) the Committees' staff was difficult to
13 work with and withheld documents; (2) the staff refused to keep the Committees' activities
14 separate; (3) vendors, operating under the stresses of the pandemic, did not timely provide her
15 with documents; and (4) that the Committees did not disclose all relevant accounts to Marks.
16 Finally, Marks provides some brief explanations for the various issues that appear on the reports
17 for each of the Committees, such as mistakes made by an inexperienced employee and Marks
18 choosing to report receipts based on when a check is dated rather than deposited.

19 As explained below, the available information suggests that the Commission should find
20 Marks personally liable for the reporting errors and failures to deposit. Marks was responsible
21 for filing the Committee's reports during the six-month period she was treasurer but filed reports
22 with a wide variety of errors. The errors amount to \$2,132,976.06 in misreported activity out of
23 the \$3,077,234.91 in total transactions for the Committees during the six-month period during

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1 which Marks was treasurer. The reporting errors can be found on every report filed by Marks for
2 the Committees. Marks additionally deposited contributions into the wrong depository account
3 for two of the Committees. Significantly, Marks acknowledges that she took on what she
4 describes as an overwhelming amount of work obtained from competitors while assigning
5 important tasks to inexperienced staff. The other explanations in her Response, such as the
6 Committee's staff being difficult to work with or withholding documents, is belied by the
7 succeeding treasurer almost immediately discovering the errors in reports filed by Marks and
8 quickly filing accurate amendments. The pervasive and egregious nature of these violations,
9 coupled with the Response's description of a pattern of knowingly relying on inexperienced and
10 overworked staff, demonstrates that Marks, an experienced treasurer, acted recklessly in
11 performing her duties as treasurer of the Committees.

12 Therefore, we recommend that the Commission find reason to believe that Marks in her
13 personal capacity violated 52 U.S.C. §§ 30102(h)(1) and 30104(b) and 11 C.F.R. §§ 103.3(a) and
14 104.3 by filing inaccurate reports with the Commission and failing to deposit contributions into
15 the correct depository accounts. We recommend that the Commission enter into pre-probable
16 cause conciliation with Marks to resolve these violations.

17 **II. FACTUAL BACKGROUND**

18 Salazar for Congress is the principal campaign committee for Representative Maria
19 Salazar who, during the relevant time, was a 2022 candidate for Florida's 27th Congressional
20 District.¹ Salazar for Congress hired Nancy Marks to be treasurer of the committee in January
21 2021 and reported the change in treasurer to the Commission on January 25, 2021.² Freedom

¹ Compl. at 2 (Apr. 28, 2023); Maria Elvira Salazar, Statement of Candidacy at 1 (Jan. 19, 2021).

² Compl. at 2; Salazar for Congress, Amended Statement of Organization at 1 (Jan. 25, 2021).

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1 Force PAC is Salazar's leadership PAC and Salazar Victory Committee is a joint fundraising
 2 committee consisting of Salazar for Congress, Freedom Force PAC, and NRCC, which is a
 3 national party committee.³ Freedom Force PAC and Salazar Victory Committee hired Marks to
 4 be their treasurer in February 2021 and both reported her as treasurer to the Commission on
 5 February 17, 2021.⁴ Based on political committees reporting disbursements to Marks and her
 6 company, Campaigns Unlimited, the following chart shows the number of committees who
 7 reported disbursements to Marks and her company, Campaigns Unlimited,⁵ on a yearly basis:⁶

Time Period	Number of Committees Reporting Operating Expenses to Nancy Marks or Campaigns Unlimited
1/1/19 – 12/31/19	6
1/1/20 – 12/31/20	10
1/1/21 – 12/31/21	21
1/1/22 – 12/31/22	26

³ Compl. at 2; Freedom Force PAC, Statement of Organization at 1 (Feb. 17, 2021); Salazar Victory Committee, Statement of Organization at 1 (Feb. 17, 2021).

⁴ Compl. at 2; Freedom Force PAC, Statement of Organization at 1 (Feb. 17, 2021); Salazar Victory Committee, Statement of Organization at 1 (Feb. 17, 2021)..

⁵ See Salazar for Congress, 2021July Quarterly Report at 145 (July 16, 2021), <https://docquery.fec.gov/cgi-bin/fecimg/?202107169451662295> (disclosing a payment for "ACCOUNTING SERVICES/RETAINER" to Campaigns Unlimited at 47 Flintlock Drive in Shirley, NY); Salazar for Congress, Statement of Organization at 3 (Jan. 25, 2021) (disclosing Nancy Marks as treasurer at 47 Flintlock Drive in Shirley, NY).

⁶ FEC Disbursements: Filtered Results, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=Campaigns+Unlimited&recipient_name=Nancy+Marks&two_year_transaction_period=2020&min_date=01%2F01%2F2019&max_date=12%2F31%2F2019 (last visited Feb. 5, 2024) (showing 6 different committees made disbursements to Nancy Marks or Campaigns Unlimited in 2019); FEC Disbursements: Filtered Results, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=Campaigns+Unlimited&recipient_name=Nancy+Marks&two_year_transaction_period=2020&min_date=01%2F01%2F2020&max_date=12%2F31%2F2020 (last visited Feb. 5, 2024) (showing 10 different committees made disbursements to Nancy Marks or Campaigns Unlimited in 2020); FEC Disbursements: Filtered Results, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=Campaigns+Unlimited&recipient_name=Nancy+Marks&two_year_transaction_period=2021&min_date=01%2F01%2F2021&max_date=12%2F31%2F2021 (last visited Feb. 5, 2024) (showing 21 different committees made disbursements to Nancy Marks or Campaigns Unlimited in 2021); FEC Disbursements: Filtered Results, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=Campaigns+Unlimited&recipient_name=Nancy+Marks&two_year_transaction_period=2022&min_date=01%2F01%2F2022&max_date=12%2F31%2F2022 (last visited Feb. 5, 2024) (showing 26 different committees made disbursements to Nancy Marks or Campaigns Unlimited in 2022).

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1 These figures do not reflect any work for state committees that Marks might have
 2 undertaken.⁷ In addition, based on a review of Statements of Organization, Marks currently
 3 serves as treasurer for over 40 political committees.⁸

4 Marks filed the 2021 April Quarterly Report covering January 1, 2021, to March 31,
 5 2021, and 2021 July Quarterly Reports covering April 1, 2021, to June 30, 2021, for the
 6 Committees.⁹ The reports filed by Nancy Marks disclosed receiving \$1,454,194.46 in receipts
 7 and \$709,743.78 in disbursements for the six-month period with a specific breakdown of Salazar
 8 for Congress reporting \$1,180,594.46 in receipts and \$517,437.32 in disbursements, Freedom
 9 Force PAC reporting \$49,200 in receipts and \$40,806.46, and Salazar Victory Committee
 10 reporting \$224,400 in receipts and \$151,500 in disbursements.¹⁰ The new treasurer hired by the
 11 Committees conducted a review of the 2021 April and July Quarterly Reports for the Committees
 12 and filed amended reports that disclosed the Committees receiving \$1,346,620.50 in receipts and
 13 \$751,867.19 in disbursements for the six-month period Marks served as treasurer with the

⁷ Jennifer McLogan, *Rep. George Santos' former campaign treasurer Nancy Marks pleads guilty to felony*, CBS NEWS NEW YORK (Oct. 5, 2023), <https://www.cbsnews.com/newyork/news/prosecutors-say-former-george-santos-campaign-treasurer-will-plead-guilty-to-unspecified-charge-3/> (“Marks served on more than 150 Republican campaigns over her career. Her firm, Campaigns Unlimited, which is registered out of her Shirley home, collected more than \$2 million from past state, local and congressional races.”).

⁸ FEC Committees: Filtered Results, FEC.GOV, https://www.fec.gov/data/committees/?treasurer_name=Nancy+Marks (last visited Nov. 15, 2023) (48 committees disclose Nancy Marks as their treasurer on their most recent Statements of Organization).

⁹ See e.g., Salazar for Congress, Amended 2021 April Quarterly Report (Apr. 15, 2021); Freedom Force PAC, 2021 April Quarterly Report (Apr. 15, 2021); Salazar Victory Committee, 2021 April Quarterly Report (Apr. 15, 2021).

¹⁰ Salazar for Congress, Amended 2021 April Quarterly Report at 4 (Apr. 15, 2021), <https://docquery.fec.gov/cgi-bin/fecimg/?202104159443765614>; Salazar for Congress, 2021 July Quarterly Report at 4 (July 17, 2021), <https://docquery.fec.gov/cgi-bin/fecimg/?202107179451679037>; Freedom Force PAC, 2021 April Quarterly Report at 2 (Apr. 15, 2021), <https://docquery.fec.gov/cgi-bin/fecimg/?202104159443589566>; Freedom Force PAC, Amended 2021 July Quarterly Report at 2 (July 17, 2021), <https://docquery.fec.gov/cgi-bin/fecimg/?202107179451678906>; Salazar Victory Committee, 2021 April Quarterly Report at 4 (Apr. 15, 2021), <https://docquery.fec.gov/cgi-bin/fecimg/?202104159443590134>; Salazar Victory Committee, Amended 2021 July Quarterly Report at 4 (Aug. 2 2021), <https://docquery.fec.gov/cgi-bin/fecimg/?202108029465821526>.

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1 specific breakdown of Salazar for Congress reporting \$1,094,949 in receipts and \$584,871.43 in
 2 disbursements, Freedom Force PAC reporting \$49,400 in receipts and \$29,965.25 in
 3 disbursements, and Salazar Victory Committee reporting \$202,271 in receipts and \$137,030.51
 4 in disbursements.¹¹

5 According to the Complaint, the Committees' staff found Marks unresponsive to their
 6 requests and decided to replace her in June 2021.¹² Specifically, the Committees contend that
 7 Marks failed to show drafts of reports and filed reports without internal approval from other
 8 committee staff.¹³ Additionally, the Complaint states that the Committees' fundraisers noticed
 9 reports were missing transactions.¹⁴ The Committees hired a new treasurer, Les Williamson, to
 10 replace Marks in late July 2021.¹⁵ The Committees contend that Marks delayed the transfer of
 11 records, causing counsel for the Committees to send a demand letter requesting the transfer of all
 12 records.¹⁶ On August 11, 2021, Marks transferred the records to the new treasurer.¹⁷

¹¹ Salazar for Congress, Amended 2021 April Quarterly Report at 4 (Sept. 7, 2021), <https://docquery.fec.gov/cgi-bin/fecimg/?20210907946623168>; Salazar for Congress, Amended 2021 July Quarterly Report at 4 (July 7, 2021), <https://docquery.fec.gov/cgi-bin/fecimg/?20210907946623404>; Freedom Force PAC, Amended 2021 Mid-Year Report at 2 (Sept. 28, 2021), <https://docquery.fec.gov/cgi-bin/fecimg/?202109289467145380>; Salazar Victory Committee, Amended 2021 Mid-Year Report at 2 (Sept. 28, 2021), <https://docquery.fec.gov/cgi-bin/fecimg/?202109289467145398>.

¹² Compl. at 3-4.

¹³ *Id.* at 3-4.

¹⁴ *Id.*

¹⁵ *Id.* at 3; Salazar for Congress, Amended Statement of Organization at 1 (July 30, 2021); Freedom Force PAC, Amended Statement of Organization at 1 (Aug. 11, 2021); Salazar Victory Committee, Amended Statement of Organization at 1 (Aug. 11, 2021).

¹⁶ Compl. at 3-4. The Response disputes that Marks failed to timely turn over the records to the new treasurer on the basis that she and her company were responsible for filing the July Quarterly Reports, and it asserts that she was in contact with the Committees' staff from late July until August 11, when she turned the records over to the new treasurer. *See* Resp. at 2 (June 16, 2023).

¹⁷ Compl. at 3.

1 The Complaint states that the new treasurer began reviewing the Committees' bank
2 statements and disclosure reports and discovered reporting and deposit violations for all the
3 Committees while Marks was treasurer.¹⁸ The Committees reported these errors by filing
4 amended reports, a *sua sponte* submission, and this Complaint which reflect \$2,030,026.06 of
5 reporting errors on transactions including memo entries (the total activity for the affected reports
6 are \$3,077,234.91).¹⁹

7 Salazar for Congress disclosed the following errors:

8 • Contributions not reported, contributions reported with the wrong date, and duplicate
9 transactions;
10 • Failure to properly report joint fundraising contributions causing the appearance of
11 excessive contributions;
12 • Failure to properly designate contributions to specific elections causing the
13 appearance of excessive contributions;
14 • Unreported operating expenditures; and
15 • Reporting expenditures that did not occur.²⁰

16 Freedom Force PAC disclosed the following errors:

17 • A transfer from a joint fundraising committee was reported incorrectly as a
18 contribution from a political committee;
19 • Unreported operating expenditures;
20 • Reporting of expenses that were expenses for a different committee;
21 • Reporting of contributions on incorrect reporting lines; and
22 • Use of incorrect dates for when transactions occurred.²¹

23 Salazar Victory Committee disclosed the following errors:

24 • Contributions reported failed to disclose they were earmarked through a conduit;
25 • Unreported operating expenditures; and

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 1, 4.

²⁰ *Id.* at 4-8.

²¹ *Id.* at 9.

1 • Misreporting of transfers to participants of the committee.²²

2 These individual errors also caused the Committees to misreport their cash on hand in the
 3 relevant reports.²³ In addition to these reporting errors, the Committees reported that Marks
 4 failed to correctly deposit contributions in the campaign depositories.²⁴ Marks allegedly
 5 incorrectly deposited 38 contributions totaling \$92,500 for Salazar Victory Committee into the
 6 depository account of Salazar for Congress.²⁵ Additionally, Marks deposited two contributions
 7 totaling \$10,000 for Freedom Force PAC into the depository account of Salazar for Congress.²⁶

8 In connection with these same reporting and depositing errors outlined above, the
 9 Committees filed a *sua sponte* to the Commission once their new treasurer conducted a review of
 10 their financial activity for the period Marks was the treasurer.²⁷ The Committees admitted to
 11 filing reports with errors and depositing contributions in the incorrect depository account.²⁸ The
 12 Commission found reason to believe as to the Committees for filing inaccurate reports with the
 13 Commission and failing to deposit contributions into its depository accounts.²⁹ The Committees

22 *Id.* at 10.

23 Compare Salazar for Congress Original 2021 April Quarterly Report (Apr. 15, 2021), with Salazar for Congress Second Amended 2021 April Quarterly Report (Sept. 7, 2021) (reflecting a closing cash on hand disparity of \$3,816.08); compare Salazar for Congress Original 2021 July Quarterly Report (July 16, 2021), with Salazar for Congress Second Amended 2021 July Quarterly Report (Sept. 7, 2021) (reflecting a closing cash on hand disparity of \$143,155.12); compare Freedom Force PAC Amended 2021 July Quarterly Report (July 17, 2021), with Freedom Force PAC, 2021 Mid-Year Report (Sept. 28, 2021) (reflecting a closing cash on hand disparity of \$11,041.21); compare Salazar Victory Committee Original 2021 July Quarterly Report (July 16, 2021), with Salazar Victory Committee, 2021 Mid-Year Report (Sept. 29, 2021) (reflecting a closing cash on hand disparity of \$37,540.49). Salazar for Congress received Request for Additional Information (“RFAI”) letters for its original and amended April and July 2021 filings, which regarded the large increase and decreases in activity, transfers, reattributions, and other issues. RFAI (Oct. 14, 2021); RFAI (Oct. 11, 2021); RFAI (Aug. 3, 2021); RFAI (June 30, 2021).

24 Compl. at 8-9.

25 *Id.*

26 *Id.*

27 *Id.*

28 Conciliation Agreement (“CA”) ¶ V, MUR 8176 (Salazar for Congress, *et al*).

29 Factual and Legal Analysis (“F&LA”) at 2, MUR 8176 (Salazar for Congress, *et al*).

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1 agreed to cease and desist from committing further violations and pay a civil penalty of \$22,800
 2 to be paid for in the following amounts: \$10,450 by Salazar for Congress; \$4,750 by Freedom
 3 Force PAC; and \$7,600 by Salazar Victory Committee.³⁰

4 The Committees filed the Complaint pursuant to Footnote 1 of the Commission's Policy
 5 Regarding Self-Reporting of Campaign Violation (*Sua Sponte* Submissions), Notice 2007-8.³¹
 6 The Complaint cites the Commission's Policy Regarding Treasurers Subject to Enforcement
 7 Proceedings which provides that a treasurer can be personally liable for reporting duties;
 8 specifically, the Complaint alleges that Marks acted recklessly.³² The Complaint argues that
 9 “[t]he errors and omissions contained in the reports far exceed any level of acceptable mistake
 10 and constitute a failure to fulfill the treasurer's duties pursuant to FECA and Commission
 11 regulations.”³³

12 The Response states that “[n]o items were intentionally incorrectly reported or omitted”
 13 and claims that “Marks did her best to work through the difficulties imposed by the pandemic
 14 that is labor shortages and an overwhelming amount of work.”³⁴ Specifically, she states that
 15 during the pandemic it was very difficult to secure qualified employees and “the office was
 16 overwhelmed with work from competitors who were not able to work, at the same time had to

³⁰ CA ¶ VI., MUR 8176 (Salazar for Congress, *et al*).

³¹ Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions) (“*Sua Sponte* Policy”), Notice 2007-8, 72 Fed. Reg. 16,695, 16,696 n.1 (Apr. 5, 2007). Footnote 1 of the *Sua Sponte* Policy provides if a person reporting a violation of the Act also makes specific allegations to someone not joining the submission then the Commission, acting through the Office of General Counsel, may advise the self-reporting person to resubmit a complaint against the other persons.

³² Compl. at 1. (citing Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 3-4 (Jan. 3, 2005)) (“Treasurer Policy”).

³³ Compl. at 11.

³⁴ Resp. at 4.

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1 recruit employees from a very small, and underqualified, pool of available people.”³⁵ Further,
 2 she contends that the Committees’ staff was difficult to work with and withheld documents; that
 3 the staff refused to keep the Committees’ activities separate; that vendors operating under the
 4 stresses of the pandemic did not timely provide her with documents; that Salazar had a credit
 5 card account that was not disclosed to Marks; and that the campaign manager had a bank account
 6 that was not disclosed to Marks.³⁶ She clarifies that the omitted transactions occurred because
 7 the inexperienced employee was not forceful with the Committees’ staff in obtaining all the
 8 necessary records.³⁷ Additionally, according to the Response, this inexperienced employee made
 9 clerical errors on the reports “such as reporting items on the wrong line.”³⁸ The Response also
 10 claims that the reporting errors detailed in the Complaint are from reporting styles differing
 11 between Marks and the new treasurer.³⁹ The Response describes how she usually uses the date a
 12 contribution is deposited as the date used on the reports, but if a contribution is received near the
 13 end of the reporting period, then she uses the date on the contribution.⁴⁰

14 Marks does not dispute that she deposited contributions into the wrong depository
 15 account, but argues that the Committee staff did not provide correct guidance to contributors.⁴¹
 16 Marks deposited contributions for Salazar Victory Committee into the depository account for

³⁵ *Id.* at 2.

³⁶ *Id.* at 3

³⁷ *Id.* at 2.

³⁸ *Id.*

³⁹ *Id.* at 4.

⁴⁰ *Id.* at 2; *see* 11 C.F.R. § 102.8(a) (“Date of receipt shall be the date such person obtains possession of the contribution”); *see also* FEDERAL ELECTION COMM’N, CAMPAIGN GUIDE: CONGRESSIONAL CANDIDATES AND COMMITTEES at 25-26 (2021), <https://www.fec.gov/resources/cms-content/documents/policy-guidance/candgui.pdf> (reporting clarification in guide by the Commission to use the date of receipt by campaign committee or representative when completing reports and not to use date of deposit, which is not how Marks reported contributions).

⁴¹ Resp. at 1-3.

1 Salazar for Congress, but claims that, based on the joint fundraising agreement, these
2 contributions were to be transferred to Salazar for Congress.⁴² She explains that correcting this
3 error would have created confusion.⁴³ Additionally, Marks states that contributions for Freedom
4 Force PAC were deposited into the wrong account, but were ultimately fixed by transferring the
5 funds.⁴⁴

6 In her Response, Marks argues that various reporting errors for the Committees were
7 unintentional or minor.⁴⁵ In one example, she states that “[w]e will not waste the committee’s
8 time by addressing some of the *de minimis* mistakes Mr. Williamson cites, such as the \$15 bank
9 supply charge or the paperwork mistake by AMEX that caused three payments of \$6,400 to be
10 made automatically and which were promptly reversed.”⁴⁶

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 2.

[REDACTED]

1 **III. LEGAL ANALYSIS**

2 **A. Relevant Law**

3 The Act and Commission regulations require that each treasurer of a political committee
 4 file regular reports with the Commission and sign each report.⁵⁰ Reports for political committees
 5 must disclose, among other things: (1) the amount of cash on hand at the beginning of the
 6 reporting period; (2) the total amount of receipts per reporting period; (3) itemized contributions
 7 from individuals; (4) contributions from other political committees; (5) transfers from affiliated
 8 political committees; (6) operating expenditures; (7) transfers to affiliated political committees;
 9 and (8) contributions to other political committees.⁵¹ The Act and Commission regulations
 10 require each political committee to maintain at least one campaign depository and require that
 11 the treasurer deposit all contributions into that account within 10 days of receipt.⁵² Each political
 12 committee registered with the Commission must have a treasurer.⁵³ The treasurer of a political
 13 committee is required to file reports of receipts and disbursements.⁵⁴

14 The Commission may find a current or former treasurer personally liable when “the
 15 treasurer knowingly and willfully violated an obligation that the Act or regulations specifically
 16 impose on treasurers or where the treasurer recklessly failed to fulfill the duties imposed by law,
 17 or where the treasurer has intentionally deprived himself or herself of the operative facts giving
 18 rise to the violation.”⁵⁵ The Commission has “held a treasurer personally liable for recklessly

⁵⁰ 52 U.S.C. § 30104(a)(1), (b); 11 C.F.R. §§ 104.1(a), 104.3(a), (b).

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

⁵² 52 U.S.C. § 30102(h)(1); 11 C.F.R. § 103.3.

⁵³ 52 U.S.C. § 30102(a); 11 C.F.R. § 102.7(a).

⁵⁴ 52 U.S.C. § 30104(a)(1); 11 C.F.R. §§ 104.1(a), 104.3(a), (b).

⁵⁵ Treasurer Policy, 70 Fed. Reg. at 3-4.

1 failing to fulfill his or her duties as treasurer where the available information indicated a
 2 systemic lack of diligence.”⁵⁶

3 **B. The Commission Should Find Reason to Believe that Marks in her Personal**
 4 **Capacity Violated 52 U.S.C. §§ 30102(h)(1) and 30104(b) and 11 C.F.R.**
 5 **§§ 103.3(a) and 104.3 by Recklessly Filing Inaccurate Reports with the**
 6 **Commission and Failing to Deposit Contributions into the Correct**
 7 **Depository Accounts**

8 Marks, when serving as treasurer of the Committees, violated the reporting requirements
 9 of the Act governing, among other things the reporting of receipts, disbursements, cash on hand,
 10 and transfers.⁵⁷ Marks signed every report as treasurer of the three Committees for the six-month
 11 period that included the 2021 April Quarterly Reports covering January 1, 2021, to March 31,
 12 2021, and the 2021 July Quarterly Reports covering April 1, 2021, to June 30, 2021.⁵⁸ The
 13 available information shows that Marks filed reports containing hundreds of errors totaling
 14 \$2,030,026.06 (out of \$3,077,234.91 in total activity), including incorrect dates for contributions,
 15 failing to report operating expenditures, incorrectly reporting joint fundraising activity, and
 16 reporting expenses that did not occur.⁵⁹ A review of the reports filed by Marks compared to the
 17 amendments filed by the new treasurer establishes these reporting violations.⁶⁰ The Commission
 18 has also made findings that these reporting errors occurred in MUR 8176.⁶¹ Marks's Response
 19 appears to not dispute that the amendments are correct and appears to acknowledge reporting

⁵⁶ F&LA at 5, MUR 7223 (Applegate for Congress).

⁵⁷ See 52 U.S.C. § 30104(a)(1); 11 C.F.R. §§ 104.1(a), 104.3(a), (b).

⁵⁸ See, e.g., Salazar for Congress, Amended 2021 April Quarterly Report (Apr. 15, 2021); Freedom Force PAC, 2021 April Quarterly Report (Apr. 15, 2021); Salazar Victory Committee, 2021 April Quarterly Report (Apr. 15, 2021).

⁵⁹ F&LA at 6, MUR 8176 (Salazar for Congress, *et al.*); *see supra* note 20 and accompanying text.

⁶⁰ *See supra* note 20 and accompanying text.

⁶¹ F&LA at 6, MUR 8176 (Salazar for Congress, *et al.*).

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1 violations did occur with the exception of the dispute over reporting the date of receipt of
 2 checks.⁶² By way of example, Marks failed to report over \$52,000 in contributions to Salazar for
 3 Congress on its 2021 April Quarterly Report.⁶³ Marks also incorrectly reported transfers from
 4 Salazar Victory Committee to Salazar for Congress and Freedom Force PAC on their reports by
 5 failing to provide memo entries to support the transfers, duplicating memo entries that had
 6 already been provided, and reporting the transactions as receipts from a political action
 7 committee rather than a joint fundraising representative.⁶⁴ Additionally, Marks incorrectly
 8 reported Salazar Victory Committee expenses on Freedom Force PAC's reports.⁶⁵ The reporting
 9 errors also resulted in the Committees misreporting their cash on hand in their relevant reports.⁶⁶

10 Marks provides some explanations in her Response for several of the reporting violations,
 11 but nothing that she provides undermines the conclusion that these violations occurred. The
 12 Response's most significant explanation for misreporting is that Marks's reporting style "may be
 13 different" than the Committees' new treasurer, which resulted in transactions being reported
 14 differently on the Committees' original and amended reports.⁶⁷ However, Marks's style for
 15 reporting contributions as outlined in the Response is incorrect; whereas Marks would use the
 16 date on the check, Commission regulations provide that the date of receipt for reporting purposes
 17 is not the date on the donor's check or when a check is deposited but is instead the date the check

⁶² Resp. at 3-4.

⁶³ Compl. at 4; F&LA at 8, MUR 8176 (Salazar for Congress, *et al.*); *see supra* note 20 and accompanying text.

⁶⁴ Compl. at 4-10; F&LA at 8, MUR 8176 (Salazar for Congress, *et al.*); *see supra* note 20 and accompanying text.

⁶⁵ Compl. at 10; F&LA at 8, MUR 8176 (Salazar for Congress, *et al.*); *see supra* note 20 and accompanying text.

⁶⁶ F&LA at 6, MUR 8176 (Salazar for Congress, *et al.*); *see supra* note 20 and accompanying text.

⁶⁷ Resp. at 2.

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1 is actually received by the Committee.⁶⁸ The Response asserts that Marks correctly reported
 2 Take Back the House and GOP Winning Women receipts on Line 12 on the July Quarterly
 3 Report, however a review of the last July Quarterly Report disclosed the transactions on an
 4 incorrect line number.⁶⁹ Additionally, the Response asserts that “Mr. Williamson criticizes Ms.
 5 Marks both for reporting donations ‘early’ by basing them on the donor’s check date, and
 6 reporting expenditures ‘late,’ when she had not received the documents necessary to report
 7 them,” but it was Marks’s responsibility to report the transactions correctly even if documents
 8 came late from the Committees.⁷⁰ Even if Marks received necessary documents late, as asserted
 9 by Marks, that does not justify her from disclosing the transactions on incorrect reports or using
 10 incorrect dates. It was Marks responsibility to file amendments when she received late
 11 documents from the Committees or vendors and provide the correct information on the correct
 12 report.⁷¹

13 Marks also violated the requirement that a treasurer deposit receipts into a committee’s
 14 depository account within 10 days of receipt.⁷² The available information, including the

⁶⁸ See 11 C.F.R. § 102.8(a) (“Date of receipt shall be the date such person obtains possession of the contribution”); *see also* FEDERAL ELECTION COMM’N, CAMPAIGN GUIDE: CONGRESSIONAL CANDIDATES AND COMMITTEES at 25-26 (2021), <https://www.fec.gov/resources/cms-content/documents/policy-guidance/candgui.pdf> (reporting clarification in guide by the Commission to use the date of receipt by campaign committee or representative when completing reports and not to use date of deposit, which is not how Marks reported contributions).

⁶⁹ Resp. at 2; Salazar for Congress, Amended 2021 July Quarterly Report at 15, 19, 38, and 44 (July 17, 2021) (disclosing Take Back the House and GOP Winning Women on Line 11(a) rather than Line 12 on last July Quarterly Report filed by Marks.).

⁷⁰ Resp. at 4.

⁷¹ See 52 U.S.C. § 30104(b); *see also* FEDERAL ELECTION COMM’N, CAMPAIGN GUIDE: CONGRESSIONAL CANDIDATES AND COMMITTEES at 135 (2021), <https://www.fec.gov/resources/cms-content/documents/policy-guidance/candgui.pdf> (reporting clarification in guide by Commission that a political committee must file an amended report if it does not obtain all the required information about a particular itemized receipt or disbursement in time to include it in the appropriate report).

⁷² See 52 U.S.C. § 30102(h)(1); 11 C.F.R. § 103.3.

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1 amendments to the Committee's reports, demonstrates that Marks failed to deposit 38
 2 contributions totaling \$92,500 for Salazar Victory Committee in their depository within 10 days
 3 that accounted for 46% of the contributions from individuals received during the time period.⁷³
 4 Additionally, Marks failed to deposit two contributions totaling \$10,000 for Freedom Force PAC
 5 in their depository account within 10 days, accounting for 69% of the contributions from
 6 individuals received during the time period.⁷⁴ Marks does not dispute that she deposited some of
 7 the contributions alleged by the Complainant in the wrong campaign depository account, but
 8 blames the Committees' staff for giving confusing instructions to donors.⁷⁵ Marks also claims
 9 that although many were deposited incorrectly, "they were ultimately going to be deposited in
 10 the account through transfer, at any rate" and thus "it would have been pointless and confusing to
 11 withdraw, redeposit[], and transfer[] back into the original . . . account."⁷⁶

12 The Complaint alleges that Marks should be held liable in her personal capacity for the
 13 reporting and depository violations described above because she acted recklessly, specifically on
 14 the grounds that the error and omissions in her reports far exceed any level of acceptable
 15 mistake.⁷⁷ The Commission has not specifically defined the meaning of reckless in the context
 16 of treasurer liability, but it has held treasurers personally liable where the available information

⁷³ Compl. at 8-9; Salazar Victory Committee, Amended 2021 Mid-Year Report at 3 (Sept. 29, 2021), <https://docquery.fec.gov/cgi-bin/fecimg/?202109299467146259> (disclosing \$200,050 in contributions from individuals from January 1, 2021, to June 30, 2021).

⁷⁴ Compl. at 8-9; Freedom Force PAC, Amended 2021 Mid-Year Report at 3 (Sept. 28, 2021), <https://docquery.fec.gov/cgi-bin/fecimg/?202109289467145381> (disclosing \$14,400 contributions from individuals from January 1, 2021, to June 30, 2021).

⁷⁵ Resp. at 1, 3 ("Some of the issues Marks dealt with was the staff's totally unreasonable refusal to keep the separate committees separate and use them for their respective purposes. They ran events under the name of one committee and yet instructed the donors to make checks out to other committees, or carelessly did not properly instruct them.").

⁷⁶ *Id.* at 3.

⁷⁷ Compl. at 11.

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1 indicated “a systemic lack of diligence.”⁷⁸ In MUR 5652, the Commission found reason to
 2 believe that a treasurer recklessly violated the Act in her individual capacity when the political
 3 committee she served violated the Act by accepting 65 corporate contributions totaling \$64,600,
 4 541 excessive contributions totaling \$552,576, and \$100,000 from the proceeds of an unsecured
 5 bank loan; understating total receipts by \$693,576 and total disbursements by \$960,876;
 6 overstating cash on hand by \$281,800; failing to itemize contributions from individuals and
 7 political committees, as well as \$302,000 in joint fundraising proceeds; and failing to file 48-
 8 hour notices for 77 contributions totaling \$106,100.⁷⁹ In MUR 7905, the Commission found
 9 reason to believe that a treasurer recklessly violated the Act in his individual capacity by
 10 understating total receipts by \$248,162 and total disbursements by \$259,018, which was
 11 “materially deficient in terms of accurately disclosing financial activity.”⁸⁰ Additionally, in
 12 MUR 7796, the Commission found reason to believe that a treasurer in his personal capacity
 13 recklessly failed to fulfill his duties with not filing reports for approximately \$233,093.69 in
 14 contributions and approximately \$233,086.26 in disbursements.⁸¹

15 In contrast, in MUR 8066, the Commission did not find that a treasurer was personally
 16 liable for accepting excessive contributions where the amount at issue was a small percentage of
 17 the committee’s overall transactions, approximately 5%, and the treasurer plausibly explained
 18 that there was a delay in approval of a new software by the Committee, which contributed to a
 19 delay in remedying the excessive contributions.⁸²

⁷⁸ F&LA at 5, MUR 7223 (Applegate for Congress).

⁷⁹ F&LA at 2-4, MUR 5652 (Susan Arceneaux).

⁸⁰ F&LA at 10-11, 13, MUR 7905 (Robert George Lucero, Jr.).

⁸¹ F&LA at 6, MUR 7796 (Louis G. Baglietto).

⁸² F&LA at 7, MUR 8066 (Mike McCaulley).

1 The available information indicates that Marks acted with a systemic lack of diligence
2 causing \$2,132,976.06 in reporting errors and depositing violations over a six-month period.
3 The reporting errors were on all the reports filed by Marks for the Committees.⁸³ Marks's
4 recklessness is apparent from the sheer volume and comprehensiveness of the reporting errors,
5 relative to the overall amounts that were reported, as well as the breadth of different types of
6 violations, all of which spanned multiple reports, and depositing violations. As described above,
7 the violations included: contributions reported with the incorrect dates, failure to properly report
8 join fundraising transactions, transactions entered on the wrong line, and contributions omitted.
9 The errors were so pervasive that the Committees' reports for the period during which Marks
10 acted as treasurer contained \$2,132,976.06 in errors out of \$3,077,234.91 in total activity (thus,
11 approximately two-thirds of the overall reporting in those reports was inaccurate).⁸⁴

12 The Response states that "the office was overwhelmed with work" but it appears that this
13 was a circumstance that occurred by choice, as the work came "from competitors who were not
14 able to work [during the pandemic]."⁸⁵ Although Marks was within her right to increase revenue
15 by obtaining available new work, such a decision would only be reasonable if the company was
16 able to take on the increased responsibility. Marks also states in her Response that, due to the
17 pandemic, she was forced to "recruit employees from a very small, and underqualified, pool of
18 available people."⁸⁶ Marks describes in her Response how "an inexperienced employee" tasked
19 with obtaining information from the Committees and preparing their reports made errors such as

⁸³ Compl at 4-10.

⁸⁴ *Supra* notes 18-22 and accompanying text.

⁸⁵ Resp. at 2.

⁸⁶ *Id.*

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1 reporting items on the wrong line.⁸⁷ Given her overwhelming workload, and the inability to hire
 2 competent staff, Marks should not have taken on a significant amount of new work, let alone an
 3 overwhelming amount of new work. The Response presents these explanations as mitigating
 4 circumstances, but in fact they support a finding of recklessness because she proceeded to act as
 5 the treasurer for multiple committees while her business could not handle the workload. Based
 6 on political committees reporting disbursements to Marks and her company, Campaigns
 7 Unlimited, she served as treasurer for at least 6 committees in 2019, which increased steadily to
 8 at least 10 committees in 2020, and 21 in 2021.⁸⁸ This does not include possible work for state
 9 committees.

10 The Response provides additional explanations for the errors, none of which undermine
 11 the conclusion that Marks was reckless. The Response argues that factors outside of Marks's
 12 control contributed to the reporting violations, including that the staff of the Committees were
 13 hard to work with in getting the necessary information to complete the reports.⁸⁹ Additionally,
 14 the Response states that, due to the pandemic, "vendors . . . were not as responsive and prompt as
 15 they otherwise would have been in providing information." The Committees, by contrast,
 16 contend it was Marks that was unresponsive and failed to show them reports before they were

87 *Id.*

88 *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=Campaigns+Unlimited&recipient_name=Nancy+Marks&two_year_transaction_period=2020&two_year_transaction_period=2022&two_year_transaction_period=2024&min_date=01%2F01%2F2020&max_date=07%2F31%2F2020 (last visited Feb. 2, 2024) (showing 6 different committees made disbursements to Nancy Marks or Campaigns Unlimited from January 1, 2020 to July 31, 2020); *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=Campaigns+Unlimited&recipient_name=Nancy+Marks&two_year_transaction_period=2020&two_year_transaction_period=2022&two_year_transaction_period=2024&min_date=01%2F01%2F2021&max_date=07%2F31%2F2021 (last visited Feb. 2, 2024) (showing 13 different committees made disbursements to Nancy Marks or Campaigns Unlimited from January 1, 2021, to July 31, 2021 while she was treasurer of the Committees).

89 Resp. at 2.

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1 filed.⁹⁰ But even if Committee staff were difficult to work with and withheld information, this
 2 would not excuse Marks from signing and submitting error-ridden reports. Missing information
 3 also does not explain why transactions would be reported on the wrong line or reported on an
 4 incorrect report. Further, Marks's contentions here are belied by the actions of the new treasurer
 5 who quickly reviewed the reports submitted by Marks and was able to obtain the necessary
 6 information (presumably from the staff and vendors) to show that Marks's reports were grossly
 7 inaccurate. The new treasurer was able to provide amended reports for Salazar for Congress and
 8 file a *sua sponte* submission detailing the reporting errors for the Committee to when they
 9 became treasurer.⁹¹ Williamson became the treasurer of Salazar for Congress on July 30, 2021,
 10 and the treasurer of Freedom Force PAC and Salazar Victory Committee on August 11, 2021, and
 11 in about a month, on September 7, 2021, was able to review Marks's reports, compare them with
 12 any information he had gathered from the Committees and vendors, and file amended reports
 13 with the accurate information.⁹²

14 The Response asserts that the Chief of Staff tried to have Salazar for Congress repay
 15 credit card statements for a personal jet from the candidate, but Marks does not explain how
 16 these allegations, if true, impacted the reporting mistakes she made as detailed above.⁹³ Aside
 17 from inuendo, Marks does not provide support for the suggestion that expenses were not related
 18 to the campaign. Even if individuals associated with the Committees asked to be reimbursed for

⁹⁰ Compl. at 2-3.

⁹¹ *Id.* at 3; [REDACTED] Pre-MUR652 (Salazar for Congress, *et al.* Salazar for Congress, Amended 2021 April Quarterly Report (Sept 7, 2021); Salazar for Congress, Amended 2021 July Quarterly Report (Sept. 7, 2021)).

⁹² Compl. at 3; [REDACTED] Pre-MUR652 (Salazar for Congress, *et al.* Salazar for Congress, Amended 2021 April Quarterly Report (Sept 7, 2021); Salazar for Congress, Amended 2021 July Quarterly Report (Sept. 7, 2021)).

⁹³ Resp. at 3.

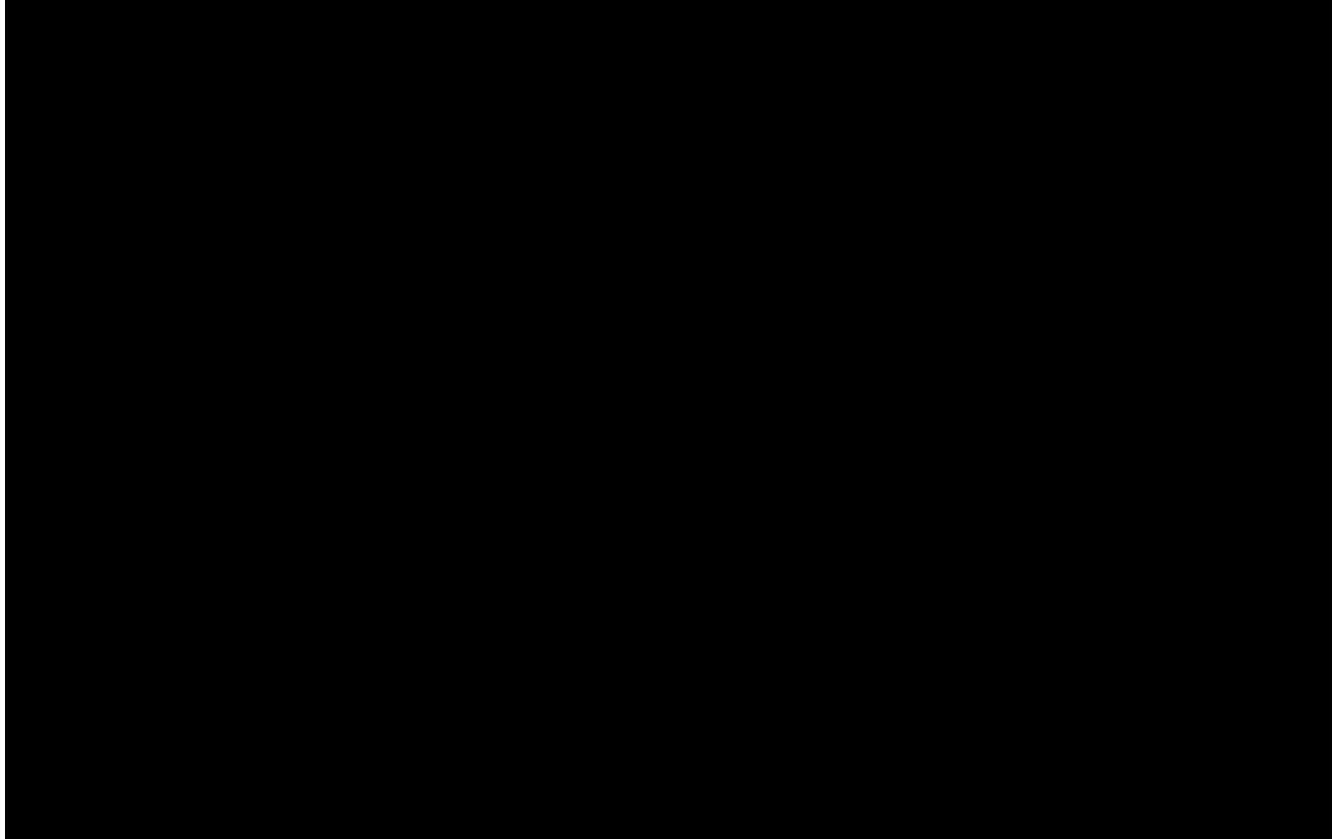
1 expenses improperly, this would not explain why Marks filed reports with such systemic errors.
2 Additionally, the Response asserts the Chief of Staff kept hidden a bank depository in Florida,
3 but does not provide any clarification on what transactions occurred in this account that impacted
4 her reporting responsibilities.⁹⁴ But regardless of the veracity of these allegations, they do not
5 alter Marks's own culpability in causing the reporting and depositing errors at issue. And even if
6 there was some information Marks should have received regarding an additional bank depository
7 in Florida, this would not explain for the huge number of errors in the reports she filed.

8 In sum, Marks acted recklessly in her role as treasurer of the Committees, causing over
9 \$2,030,026.06 in reporting errors (out of \$3,077,234.91 in total activity) and the misdepositing of
10 contributions totaling \$102,500 into incorrect accounts. These errors were pervasive and
11 egregious, spanning multiple reports, and none of the responses provided by Marks adequately
12 justify or explain the errors that occurred. To the contrary, Mark acknowledges that she took on
13 an "overwhelming" amount of work from her competitors and that she proceeded to maintain
14 that work even though she was unable to hire qualified staff. We therefore recommend that the
15 Commission find reason to believe that Nancy Marks, in her personal capacity, violated
16 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to correctly report cash on hand, receipts,
17 and disbursements in the reports she filed on behalf of Salazar for Congress, Salazar Victory
18 Committee, and Freedom Force PAC. Additionally, we recommend the Commission find reason
19 to believe that Nancy Marks, in her personal capacity, violated 52 U.S.C. § 30102(h)(1) and
20 11 C.F.R. § 103.3(a) by failing to deposit contributions made payable to Salazar Victory
21 Committee and Freedom Force PAC into the depository accounts of those Committees.

⁹⁴

Id. at 3.

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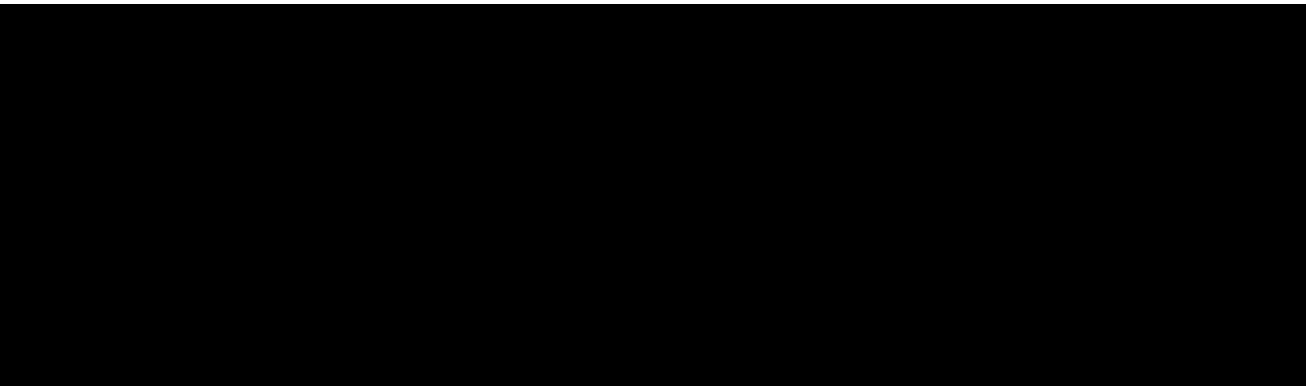


13 **V. RECOMMENDATIONS**

14 1. Find reason to believe that Nancy Marks violated 52 U.S.C. §§ 30102(h)(1) and
15 30104(b) and 11 C.F.R. §§ 103.3(a) and 104.3 by failing to deposit receipts into a
16 campaign depository account and by failing to report and incorrectly reporting
17 information regarding receipts, disbursements, and cash on hand;

18 2. Enter into pre-probable cause conciliation with Nancy Marks prior to a finding of
19 reason to believe;

20 3. Approve the attached Factual and Legal Analysis;



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4. Approve the attached Conciliation Agreement; and
5. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel for
Enforcement

February 9, 2024

BY:

Date

Claudio J. Pavia
Deputy Associate General Counsel
for Enforcement

Aaron Rabinowitz
Assistant General Counsel

Aaron Rabinowitz
Assistant General Counsel

Kevin Fortkiewicz
Kevin Fortkiewicz
Attorney