



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Tiffany Muller
End Citizens United
100 M Street SE
Washington, DC 20003

March 7, 2024

RE: MUR 8129

Dear Ms. Muller:

On March 6, 2024, the Federal Election Commission reviewed the allegations in your Complaint received April 18, 2023, and on the basis of the information provided in the Complaint and information provided by the respondent, determined to exercise its prosecutorial discretion to dismiss the allegations contained in the Complaint. Accordingly, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). A copy of the General Counsel's Report, which more fully explains the Commission's finding, is enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8). If you have any questions, please contact Justine A. di Giovanni, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Lisa J. Stevenson
Acting General Counsel

Wanda D. Brown

BY: Wanda D. Brown
Assistant General Counsel

Enclosure: General Counsel's Report

BEFORE THE FEDERAL ELECTION COMMISSION

ENFORCEMENT PRIORITY SYSTEM

DISMISSAL REPORT

MUR 8129

Respondents: Marc for US Inc. and Lisa Lisker in her
official capacity as treasurer¹
Molinaro for Dutchess
Marcus J. Molinaro

Complaint Receipt Date: Apr. 18, 2023

Response Date: June 8, 2023

EPS Rating:

**Alleged Statutory and
Regulatory Violations:**

52 U.S.C. § 30104(b)(3)
52 U.S.C. § 30125(e)(1)-(2)
11 C.F.R. § 104.3(a)(4)
11 C.F.R. § 110.3(d)
11 C.F.R. § 300.61
11 C.F.R. § 300.62

The Complaint alleges that Marcus J. Molinaro, former County Executive for Dutchess County, New York, and 2022 candidate for the U.S. House of Representatives in New York’s Nineteenth District, as well as Marc for US Inc. and Lisa Lisker in her official capacity as treasurer (the “Federal Committee”), Molinaro’s principal campaign committee, and Molinaro for Dutchess (the “State Committee”), Molinaro’s committee for election as county executive, violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by making and accepting prohibited transfers from the State Committee to the Federal Committee totaling \$2,000, which the Federal Committee partially misreported, and by making, accepting, and failing to report prohibited in-kind contributions totaling \$2,604.70 from the State Committee to the Federal Committee.² According to the Complaint, the State Committee made two prohibited \$1,000 transfers to the

¹ At the time of the events at issue here, Nicolas W. Joseph was the treasurer of Marc for US Inc. See Marc for US Inc., Statement of Organization at 1 (Sept. 17, 2021), <https://docquery.fec.gov/pdf/449/202109179466713449/202109179466713449.pdf>. Lisa Lisker became treasurer on March 9, 2023. Marc for US Inc., Amended Statement of Organization at 1 (Mar. 9, 2023), <https://docquery.fec.gov/pdf/749/202303099578979749/202303099578979749.pdf>.

² Compl. at 1 (Apr. 18, 2023).

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1 Federal Committee on October 1, 2021, and March 4, 2022.³ While the State Committee disclosed
2 both transfers on its disclosure reports filed with the New York Board of Elections,⁴ the Federal
3 Committee reported only a \$1,000 contribution from Molinaro individually dated September 30,
4 2021, and reported the second transfer from the State Committee with a date of March 31, 2022,
5 and a memo entry stating “nonfederal — permissible funds.”⁵ In addition, the Complaint alleges
6 that the State Committee made impermissible in-kind contributions to the Federal Committee in the
7 form of \$2,604.70 in various expenditures made for the Federal Committee’s benefit, including
8 disbursements to MailChimp, Branding Pros, Constant Contact, Horizon Messaging Group, and
9 Facebook for “Campaign Literature,” and to Hudson Valley Press for “Print Ads.”⁶ The Complaint
10 alleges that, because the next election for county executive was over two years away, “there is no
11 logical reason” for the State Committee to have made these payments for its own benefit and that it
12 is “more likely” that the payments were made to benefit the Federal Committee.⁷

13 Molinaro, the Federal Committee, and the State Committee submitted a joint Response,
14 supported by the sworn statements of Molinaro and the Federal Committee’s former treasurer,

³ *Id.* at 2-3.

⁴ *Id.*; see *Candidate/Committee Disclosures Search*, N.Y. STATE BD. OF ELECTIONS, <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure> (search by committee for “Molinaro for Dutchess,” then navigate to the 2022 January Periodic Itemized Amended State/Local report; search “Marc for US”) (last visited Feb. 12, 2024) (reflecting \$1,000 expenditure to Marc for US dated October 1, 2021); *Candidate/Committee Disclosures Search*, N.Y. STATE BD. OF ELECTIONS, <https://publicreporting.elections.ny.gov/CandidateCommitteeDisclosure/CandidateCommitteeDisclosure> (search by committee for “Molinaro for Dutchess,” then navigate to the 2022 July Periodic Itemized State/Local report; search “Marc for US”) (last visited Feb. 12, 2024) (reflecting \$1,000 expenditure to Marc for US dated March 4, 2022).

⁵ Compl. at 2-3; see Marc for US Inc., 2021 October Quarterly Report, sched. A at 113 (Oct. 15, 2021), <https://docquery.fec.gov/pdf/784/202110159467779784/202110159467779784.pdf> (reporting \$1,000 contribution from “Molinaro, Marcus J.” dated September 30, 2021); Marc for US Inc., 2022 April Quarterly Report, sched. A at 204 (Apr. 15, 2022), <https://docquery.fec.gov/pdf/122/202204159496519122/202204159496519122.pdf> (reflecting \$1,000 contribution from Molinaro for Dutchess dated March 31, 2022). The Complaint surmises that the September 30, 2021 contribution from Molinaro of \$1,000 is likely a misreporting of the October 1, 2021 transfer from the State Committee to the Federal Committee of \$1,000, rather than a separate contribution from Molinaro individually. Compl. at 4 (“The close proximity of the State Committee’s \$1,000 contribution and the \$1,000 contribution that the Federal Committee reports as coming from Mr. Molinaro’s personal funds suggests that the Federal Committee misreported the contribution on its FEC reports.”).

⁶ Compl. at 3, 4-5; *id.*, Ex. A.

⁷ Compl. at 5.

1 which addresses each of the allegations in the Complaint.⁸ First, with respect to the initial \$1,000
2 transfer from the State Committee to the Federal Committee, the Response states and Molinaro
3 attests that he intended to make an individual contribution to the Federal Committee with his own
4 funds, but that the online contribution form automatically populated with the information associated
5 with the State Committee’s debit card, and that the Federal Committee mistakenly accepted the
6 transfer from the State Committee believing that it had come from Molinaro individually.⁹ Second,
7 regarding the subsequent transfer of \$1,000 from the State Committee to the Federal Committee, the
8 Response states only that the Federal Committee “accepted it in error.”¹⁰ On June 8, 2023, the
9 Federal Committee refunded \$2,000 to the State Committee.¹¹ The Federal Committee has not
10 amended its disclosure reports filed with the Commission regarding the source of the initial \$1,000
11 contribution or the date¹² and memo entry associated with the second \$1,000 contribution.

12 Third, regarding the alleged in-kind contributions by the State Committee to the Federal
13 Committee, the Federal Committee states and the former treasurer attests that, with the exception of
14 the total \$721.20 paid to MailChimp (of which \$223.82 was referenced in the Complaint), each of
15 the disbursements enumerated in the Complaint were for *bona fide* state expenses associated with
16 Molinaro’s role as a state officeholder and his active committee for reelection to that office.¹³ With
17 respect to the MailChimp expenditures initially paid by the State Committee, the former treasurer
18 avers that the Federal Committee “did make limited use of a MailChimp account belonging to [the

⁸ Resp. (June 8, 2023); *id.*, Exs. A [hereinafter Molinaro Decl.], C [hereinafter Joseph Decl.].

⁹ Resp. at 2; Molinaro Decl. ¶ 3.

¹⁰ Resp. at 2.

¹¹ *Id.*; Marc for US Inc., 2023 July Quarterly Report, sched. B at 205 (July 15, 2023), <https://docquery.fec.gov/pdf/366/202307159583523366/202307159583523366.pdf>.

¹² The Response does not address why the March 4, 2022 transfer was reported by the Federal Committee as occurring on March 31, 2022.

¹³ Resp. at 3-5; Joseph Decl. ¶¶ 3-6.

1 State Committee], and fully reimbursed [the State Committee] for the use in real time during the
2 course of the campaign.”¹⁴

3 Based on its experience and expertise, the Commission has established an Enforcement
4 Priority System using formal, pre-determined scoring criteria to allocate agency resources and
5 assess whether particular matters warrant further administrative enforcement proceedings. These
6 criteria include (1) the gravity of the alleged violation, taking into account both the type of activity
7 and the amount in violation; (2) the apparent impact the alleged violation may have had on the
8 electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in
9 potential violations and other developments in the law. This matter is rated as low priority for
10 Commission action after application of these pre-established criteria. Given that low rating, and the
11 apparent low dollar amount involved, we recommend that the Commission dismiss the Complaint
12 consistent with the Commission’s prosecutorial discretion to determine the proper ordering of its

¹⁴ Joseph Decl. ¶ 6; *see also* Resp. at 4; Marc for US Inc., 2021 Year-End Report, sched. B at 122 (Jan. 31, 2022), <https://docquery.fec.gov/pdf/071/202201319485882071/202201319485882071.pdf>.

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1 priorities and use of agency resources.¹⁵ We also recommend that the Commission close the file as
 2 to all Respondents and send the appropriate letters.

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Lisa J. Stevenson
 Acting General Counsel

Charles Kitcher
 Associate General Counsel

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February 26, 2024

BY:



Claudio J. Pavia
 Deputy Associate General Counsel

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Date

Wanda D. Brown

Wanda Brown
 Assistant General Counsel

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Justine A. di Giovanni
 Justine A. di Giovanni
 Attorney

¹⁵ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).