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June 8, 2023

VIA E-MAIL TO CELA@FEC.GOV

Federal Election Commission
Office of Complaints Examination
and Legal Administration
1050 First Street, NE
Washington, DC 20463

Attn: Kathryn Ross, Paralegal

MUR 8129: Response of Marcus Molinaro, Marc for US Inc. and Lisa Lisker in her official capacity as Treasurer, and Molinaro for Dutchess

To Whom It May Concern:

On behalf of U.S. Representative Marcus Molinaro, Marc for US Inc. and Lisa Lisker in her official capacity as Treasurer, and Molinaro for Dutchess, I submit this response to the complaint in MUR 8129.

The complaint alleges that Mr. Molinaro's authorized campaign committee, Marc for US Inc., received impermissible transfers from Molinaro for Dutchess, a state committee he maintained in connection with his candidacy for and service as the County Executive for Dutchess County, New York. The complaint further alleges that Mr. Molinaro used nonfederal funds from Molinaro for Dutchess to pay expenses associated with his candidacy for Congress, resulting in excessive and impermissible in-kind contributions from his state committee to his federal committee.

Because the amount of nonfederal funds Molinaro for Dutchess transferred to Marc for US was de minimis and has been refunded, and also because the complaint offers no evidence that the other expenditures at issue were in-kind contributions from Molinaro for Dutchess to Marc for US, we urge the Commission to dismiss the complaint and close its file in this matter.

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CAMPAIGN FINANCE

ELECTION LAW

LOBBYIST REGULATION

GOVERNMENT ETHICS



MUR 8129: Response of Marcus Molinaro, Marc for US Inc., and
Molinaro for Dutchess
June 8, 2023
Page 2 of 5

Facts

Mr. Molinaro was, at all times relevant to the complaint, the County Executive for Dutchess County, New York with an active state campaign committee, Molinaro for Dutchess, registered with and reporting to the N.Y. State Board of Elections. On September 17, 2021, Mr. Molinaro became a candidate for U.S. Representative from New York's Nineteenth Congressional District.

On September 30, 2021, and again on March 4, 2022, Molinaro for Dutchess transferred \$1,000.00 to Marc for US. Following receipt of the complaint, Respondents conducted an internal review of the transfers. As for the first transfer, Respondents determined that Mr. Molinaro intended to contribute his personal funds, and believed at the time that he had done so, but now believes that the webpage through which he attempted to donate was autofilled with Molinaro for Dutchess's debit card information rather than his own personal card information. Exhibit A, Declaration of Rep. Marcus Molinaro, at ¶ 3. As for the second transfer, Respondents determined that Marc for US accepted it in error. Accordingly, on June 8, 2023, Marc for US refunded \$2,000.00 to Molinaro for Dutchess.¹

1. The Commission should dismiss the complaint in the exercise of prosecutorial discretion because the transfers at issue were *de minimis* and have been refunded.

The transfers at issue in this complaint both resulted from minor mistakes. The funds transferred by Molinaro for Dutchess—\$2,000.00 in total— were of a *de minimis* amount that cannot reasonably be believed to have materially impacted Mr. Molinaro's federal election.²

In prior matters, the Commission has dismissed similar cases. For instance, in MUR 7367 (Brindisi), a federal candidate's state committee made two \$1,000.00 contributions to his federal committee. The Commission found the amount at issue to be *de minimis*, advised the federal committee to return it to the state committee, and exercised its prosecutorial discretion to dismiss the complaint as to all respondents. MUR 7367, Factual & Legal Analysis, at p. 2 (citing Heckler v. Chaney, 470 U.S. 821, 831-32 (1985)).

In another similar matter, a federal candidate's state committee made approximately \$1,940 in direct and in-kind contributions to his federal committee. Once again, the Commission exercised its prosecutorial discretion and dismissed the complaint based on the "relatively

¹ Additionally, Marc for US has amended its October 2021 Quarterly Report to disclose that Molinaro for Dutchess was the source of the \$1,000.00 in funds it received on September 30, 2021.

² The Commission promulgated 11 CFR 110.3(d) to prevent "the indirect use of impermissible funds in federal elections," and in so doing was particularly concerned about the use of a nonfederal committee's residual funds to establish a federal committee. Explanation and Justification for "Transfers of Funds from State to Federal Campaigns", 58 Fed. Reg. 3474 (Jan. 8, 1993). Clearly, that is not what transpired in this case.



MUR 8129: Response of Marcus Molinaro, Marc for US Inc., and
Molinaro for Dutchess
June 8, 2023
Page 3 of 5

modest amounts at issue,” an amount remarkably similar to the amount at issue here. MUR 7338 (Rick for Congress) Factual & Legal Analysis, at p.3 (citing Heckler).

Consistent with its approach in these and other prior similar matters, and given the fact that Marc for US has refunded in full the transfers at issue, we urge the Commission to exercise its prosecutorial discretion under Heckler to dismiss the complaint.

2. The Commission should dismiss the complaint because it fails to present evidence that Molinaro for Dutchess made excessive and impermissible in-kind contributions to Marc for US Inc.

The complaint in this matter also alleges that Molinaro for Dutchess used nonfederal funds to pay some expenses of Mr. Molinaro’s congressional campaign, but fails to offer any evidence to support this claim. Nor could it do so, as these allegations are devoid of any basis in fact. Rather, the complaint claims that it is unable to conjure a “logical reason” that an active state candidate committee would continue to expend funds during its authorizing candidate’s federal campaign, and conjectures instead that “it seems more likely that Mr. Molinaro made these payments in connection with his federal campaign.”

To begin, the Commission does not “launch investigations into Americans’ political activities based on speculation or official curiosity, or shift the burden to respondents to prove their innocence.” MUR 6747 (Santorum), Statement of Reasons of Vice Chair Caroline Hunter and Commissioners Lee Goodman & Matthew Petersen, at p. 2 (Feb. 15, 2017). Yet that is precisely what the complaint in this matter requests.

Second, as a matter of law, federal law permitted Molinaro for Dutchess to solicit, receive, and spend funds from sources and in amounts prohibited by the Act during the term of Mr. Molinaro’s federal candidacy, as long as such spending was consistent with state law requirements and prohibitions, and referred only to Mr. Molinaro in his capacity as a state candidate, or to any other candidate for State or local office, or both. 52 U.S.C. § 30125(e)(2). And, New York law provided that Molinaro for Dutchess funds “may be expended for any lawful purpose” related to a political campaign or related to the holding of a public office. NYS Election Law § 14-130.

Third, and relatedly, as a matter of fact, at all times relevant to the complaint, Mr. Molinaro was both the incumbent Dutchess County Executive and a candidate for re-election to that office. Exhibit B (New York State Board of Elections record reflecting that Mr. Molinaro was a candidate for local office until October 5, 2022). Molinaro for Dutchess was his state campaign committee. The team of staff and key vendors who ran Marc for US Inc. did not have or exercise any authority over or have other involvement in the use of Molinaro for Dutchess funds, and neither committee operated at the control or request of the other. Exhibit C, Declaration of Nick Joseph, at ¶ 2.

At bottom, each expenditure the complaint cites as “more likely” an in-kind contribution from Molinaro for Dutchess to Marc for US was, in fact, a legitimate and verifiable use of Molinaro for Dutchess’ funds for purposes related to either Mr. Molinaro’s holding of the public office of



MUR 8129: Response of Marcus Molinaro, Marc for US Inc., and
Molinaro for Dutchess
June 8, 2023
Page 4 of 5

Dutchess County Executive, or to its own ongoing operations and administration. The only exception are the expenditures for Mail Chimp, which Marc for US used, and for which use Marc for US reimbursed Molinaro for Dutchess in full, in real time, during the course of the campaign.

Addressing each challenged expenditure in turn:

1. \$223.82 expenditure to MailChimp dated October 18, 2021: According to New York State Board Of Elections records, Molinaro for Dutchess actually made three expenditures totaling \$721.20 to MailChimp as follows: \$248.69 on August 17, 2021; \$148.69 on September 16, 2021; and \$223.82 on October 18, 2021. Molinaro for Dutchess made these expenditures to pay for an email distribution service which Marc for US subsequently used to send email messages in connection with Mr. Molinaro's federal campaign. As such, Molinaro for Dutchess requested reimbursement for these expenses, and Marc for US made full reimbursement in the amount of \$721.20 on November 19, 2021. Exhibit D, Reimbursement Request (Nov. 18, 2021) and Exhibit C, Declaration of Nick Joseph, at ¶ 6. Marc for US's reimbursement to Molinaro for Dutchess is itemized on its January 2021 Year End FEC Report.
2. \$130.16 expenditure to Branding Pros dated December 9, 2021: Molinaro for Dutchess made this expenditure for printing in support of Mr. Molinaro's "ThinkDIFFERENTLY" initiative, a call to action in support of Dutchess County residents with special needs. This initiative was a prominent subject for both the ongoing Molinaro for Dutchess local campaign as well as to Mr. Molinaro's service as County Executive. Exhibit E, Invoice (December 6, 2021).
3. \$1,109.43 expenditure to Constant Contact dated December 21, 2021: This was a recurring Molinaro for Dutchess expenditure for an email distribution service used to send nonfederal campaign content. Exhibit F, Sample Email Message. Marc for US Inc. did not utilize the Constant Contact email distribution service, and Molinaro for Dutchess did not engage this service on Marc for US's behalf. Exhibit C, Declaration of Nick Joseph, at ¶ 3.
4. \$350.00 expenditure to Hudson Valley Press dated March 4, 2022: Molinaro for Dutchess made this expenditure for an advertisement in a regional newspaper in recognition of Martin Luther King, Jr. Day. The advertisement had nothing to do with Mr. Molinaro's congressional campaign and, indeed, only made reference to him in his capacity as County Executive. Exhibit G, Advertisement.³

³ In the past, the Commission has found no reason to believe a newspaper ad paid for by a state committee was placed in connection with an election to federal office, and, in fact, rather was "akin to the type of communications commonly produced by state officeholders" when it: (1) did not constitute federal election activity because it did not promote, attack, support or oppose a federal candidate; (2) "did not solicit money, gather information about potential voters, or expressly advocate the election or defeat of any candidate;" and (3) "was directed to the constituents of the state candidate's district. MUR 7106 (Citizens for Maria Chappelle-Nadal), Factual and Legal Analysis at p.9. The newspaper ad at issue in this MUR did not constitute federal election activity, did not solicit money, gather information about potential voters or expressly advocate the election or defeat of any candidate, and was directed to Dutchess County constituents.



MUR 8129: Response of Marcus Molinaro, Marc for US Inc., and
Molinaro for Dutchess
June 8, 2023
Page 5 of 5

5. \$779.29 expenditure to Horizon Messaging Group dated March 24, 2022: Molinaro for Dutchess made this expenditure for text messages sent in support of local Republican candidates for a November 2, 2021 election in Dutchess County in which neither Mr. Molinaro nor any other federal candidate appeared on the ballot. Exhibit H, Sample Ballot; Exhibit I, Text Message Copy. Exhibit C, Declaration of Nick Joseph, at ¶ 4.

6. \$12.00 expenditure to Facebook dated April 1, 2022: This Facebook charge was connected to a Molinaro for Dutchess advertising account. Marc for US did not use this account, and Molinaro for Dutchess did not use it on behalf of Marc for US. Exhibit C, Declaration of Nick Joseph, at ¶ 5.

Holding aside the fact that the complaint offers no basis other than the complainant's suspicion for the alleged in-kind contributions it identifies, we trust that this information conclusively demonstrates that none of the expenditures at issue were in-kind contributions to Marc for US, and urge the Commission to dismiss the complaint accordingly.

Conclusion

For all these reasons, I respectfully request the Commission to dismiss the complaint and close the file in this MUR.

Sincerely,

Kate Teasdale

EXHIBIT A

DECLARATION OF U.S. REPRESENTATIVE MARCUS MOLINARO

Pursuant to 28 U.S.C. § 1746, U.S. Representative Marcus Molinaro states as follows:

1. At the time of the events at issue in Federal Election Commission Matter Under Review 8129, I was the County Executive for Dutchess County, New York and a candidate for re-election to that same office with a campaign committee. My authorized campaign committee for that election was Molinaro for Dutchess, a state candidate committee registered with and reporting to the New York State Board of Elections.
2. Also at the time of the events at issue in MUR 8129, I was a candidate for United States Representative from the Nineteenth Congressional District of New York. My authorized campaign committee was Marc for US Inc., a federal candidate committee registered with and reporting to the Federal Election Commission.
3. On or about September 30, 2021, I initiated a \$1,000.00 contribution to my authorized federal committee, Marc for US Inc., through an online donation page. I intended to contribute my personal funds using a personal credit card, and believed at the time that I had done so. I now believe that the donation page auto-filled payment information associated with a card belonging to Molinaro for Dutchess, and that I did not recognize, at the time, that it had done so.
4. I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 8, 2023.

MARCUS MOLINARO



EXHIBIT B

Filer Type	Compliance Type	Committee Type	Filer ID	Name	County	Municipality	Address	Registration Date	Status	Candidate Name	Election Year	Candidate Office	Candidate Registration Date	Candidate Termination Date
County	COMMITTEE	Authorized Single Candidate Committee	8618	Molinaro For Dutchess	Dutchess	Dutchess, County	35309 Otto Way Poughkeepsie NY 12603	3/21/2011	ACTIVE	Marcus J. Molinaro	2019	County Executive	7/19/2018	10/5/2022

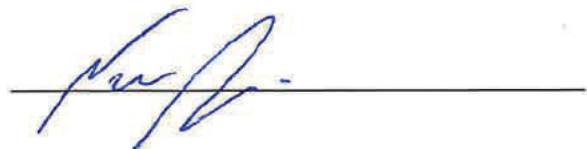
DECLARATION OF NICK JOSEPH

Pursuant to 28 U.S.C. § 1746, Nick Joseph states as follows:

1. At the time of the events at issue in Federal Election Commission Matter Under Review 8129, I was the Treasurer for Marc for US Inc., which was the authorized campaign committee of Marcus Molinaro in connection with his candidacy for United States Representative from the Nineteenth Congressional District of New York. I also served as the Treasurer of Molinaro for Dutchess, which was Mr. Molinaro's state candidate committee in connection with his campaign for re-election as the County Executive for Dutchess County, New York.
2. Mr. Molinaro's federal and state campaign committees operated independently of each other. In particular, the team of staff and key vendors who ran Marc for US Inc. did not have or exercise any authority over or have other involvement in the use of Molinaro for Dutchess' funds.
3. Marc for US Inc. did not have a Constant Contact account, did not use Constant Contact to send email messages, and did not direct or control Molinaro for Dutchess to do so on its behalf. In fact, I am not aware that Molinaro for Dutchess ever used Constant Contact to send emails concerning Mr. Molinaro's congressional candidacy.
4. On or about March 24, 2022, Molinaro for Dutchess made an expenditure to Horizon Messaging Group to pay for text messages. Those text messages did not support Mr. Molinaro or any other federal candidate. Rather, they supported local candidates in the November 2021 General Election in the State of New York.
5. Marc for US Inc. maintained its own Facebook account, through which it engaged with Mr. Molinaro's supporters and the voters of the Nineteenth Congressional District, including by paid advertising. Marc for US Inc. conducted all of its Facebook advertising through its own Facebook account and did not utilize any Facebook account of Molinaro for Dutchess. I am not aware that Molinaro for Dutchess ever paid for Facebook ads supporting Mr. Molinaro's congressional candidacy.
6. Marc for US Inc., did make limited use of a MailChimp account belonging to Molinaro for Dutchess, and fully reimbursed Molinaro for Dutchess for the use in real time during the course of the campaign.
7. I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 8, 2023.

NICK JOSEPH



TO: Lisa Lisker, Marc for US. Inc

FROM: Chris Baiano, Molinaro for Dutchess

RE: Mailchimp reimbursement

DATE: November 18, 2021

Below is a request for reimbursement by the Marc Molinaro for Dutchess County Executive campaign from the Marc for US. Inc federal campaign for expenses related to Mailchimp, an email software used to send mass communications to subscribers of the campaign.

Addressee and address to send payment to:

Molinaro for Dutchess

PO Box 1111

Poughkeepsie, NY 12602

The total amount due is \$721.20.

Receipts attached.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

----- Forwarded message -----

From: Marc Molinaro <marcus@molinarofordutchess.com>

Date: Tue, Feb 8, 2022 at 9:33 AM

Subject: Sign & Share: Keep Imperati

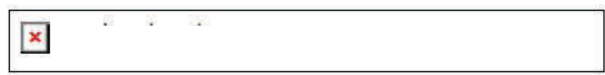
To:



Keep the momentum going!

Sign & Share:

www.KeepImperati.com



We received an overwhelming response - NEARLY 2,000 SIGNATURES IN JUST ONE DAY!

People don't want Gov. Hochul to meddle in local politics and put our public safety at risk.

Don't let her undermine law enforcement and dismiss Sheriff Butch Anderson's legacy.

We need to keep Kirk Imperati as Sheriff.

Sign the petition today:

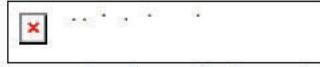
www.KeepImperati.com

Molinaro for Dutchess | PO Box 1111, Poughkeepsie, NY 12602

[Unsubscribe {recipient's email}](#)

[Update Profile](#) | [Constant Contact Data Notice](#)

Sent by marcus@molinarofordutchess.com powered by



Try email marketing for free today!

If you believe you have received the message in error, please contact the author by replying to this message. Constant Contact takes reports of abuse very seriously. If

we call back for overtime," he said.
 If the plan doesn't work, "we can always change it back," Venning said.
 He said additional firefighters does not necessarily mean less overtime, which was borne out in 2019 when the

said.
 city had 15 more staff and OT was still high.
 The city manager implemented the new plan on Saturday, January 15.

Venning said Newburgh has the only career fire department immediate area. That is not accurate – the Air National Guard at Stewart Airport and the

U.S. Military Academy at West Point both have full-time career fire departments, which are often called upon to assist Newburgh with major fires.



MARC ***
 MOLINARO**
 DUTCHESS COUNTY EXECUTIVE



*"I have decided to stick with love.
 Hate is too great a burden to bear."
 Dr. Martin Luther King, Jr.*

Courtesy of Marc Molinaro, Dutchess County Executive
 Paid for by Molinaro for Dutchess



Connor Smith <connor@themavericks.com>

Fw: Invoice - Horizon Messaging

2 messages

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On Wed, Mar 16, 2022 at 2:27 PM David Schaefer <david@skylinepolitical.com> wrote:
Below are the four text message broadcasts that were sent. on Oct 30 through November 2

ATTACHED: Oct 30, 2021 - Horizon Messaging Invoice #79 for \$779.29

Texting Four broadcasts
1706 targets / broadcast

=====

#1
Saugerties 20211030
Total Contacts: 1706

Message: "Please get out and vote! Early Voting this Sat/Sun at the SENIOR CENTER located at 207 Market Street from 10AM TO 3PM if you can't vote on Election Day. Our Republican Candidates are counting on you to STOP the increase in taxes, STOP radical left Democrats and regain control of our town. STOP to Opt Out"
Add Tags: Saug 1

By Existing Channel: Yes
By Area Code: Yes
Processing Type: Require manual confirmation of each message (P2P)
Scheduled: Oct 30th 2021, 9:30 am
Message Time Restrictions: 9:00 am - 8:30 pm
=====

#2

Saugerties 20211031
Total Contacts: 1706

Message: "Please get out and vote! Early Voting ends today at the SENIOR CENTER located at 207 Market Street from 10AM TO 3PM if you can't vote on Election Day. Our Republican Candidates are counting on you to STOP the increase in taxes, STOP radical left Democrats and regain control of our town. STOP to Opt Out"
Add Tags: Saug 2

By Existing Channel: Yes
By Area Code: Yes
Processing Type: Require manual confirmation of each message (P2P)
Scheduled: Oct 31st 2021, 10:00 am
Message Time Restrictions: 9:00 am - 8:30 pm
=====

#3

Saugerties 20211101
Total Contacts: 1706

Message: "Please get out and vote! Polls open tomorrow at 6AM and close at 9PM. Our Republican Candidates are counting on you to STOP the increase in taxes, STOP radical left Democrats and regain control of our town. STOP to Opt Out"
Add Tags: Saug 3

By Existing Channel: Yes
By Area Code: Yes
Processing Type: Require manual confirmation of each message (P2P)
Scheduled: Nov 1st 2021, 10:30 am
Message Time Restrictions: 9:00 am - 5:00 pm
=====

#4

Saugerties 20211102
Total Contacts: 1706

Message: "Today is Election Day! Please get out and vote! Polls are open at 6AM and close at 9PM. Our Republican Candidates are counting on you to STOP the increase in taxes, STOP radical left Democrats and regain control of our town. STOP to Opt Out"
Add Tags: Saug 4

By Existing Channel: Yes
By Area Code: Yes
Processing Type: Require manual confirmation of each message (P2P)
Scheduled: Nov 2nd 2021, 9:29 am
Message Time Restrictions: 9:00 am - 5:00 pm
=====

 **MolinaroForDutchess_Saugerties_Inv79.pdf**
187K

