



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

VIA FIRST CLASS MAIL

Chrissie Hastie  
Tarkanian for Congress  
3008 Campbell Circle  
Las Vegas, NV 89107

JUN 30 2014

RE: MURs 6606 & 6676  
Tarkanian for Congress and Chrissie  
Hastie in her official capacity as  
treasurer  
Danny Tarkanian

Dear Ms. Hastie:

On July 18, 2012 and January 16, 2013, the Federal Election Commission (the "Commission") notified Tarkanian for Congress and you in your official capacity as treasurer (the "Committee") and Danny Tarkanian of complaints alleging violations of the Federal Election Campaign Act of 1971, as amended. On June 24, 2014, based upon the information in the complaints and information that the Committee provided, the Commission found no reason to believe that the Committee violated 2 U.S.C. §§ 441a, 441a(f), and 441b(a). The Commission dismissed a separate allegation that the Committee violated 2 U.S.C. § 441b(a) and the remaining allegations in the complaints. The Commission closed its files in these matters on June 24, 2014.

The Commission encourages the Committee and Mr. Tarkanian to review the enclosed Factual and Legal Analysis, which sets forth the statutory and regulatory provisions considered by the Commission in this matter. The Commission reminds the Committee that:

1. Under 2 U.S.C. § 441b(a), it is unlawful for the Committee to accept or receive any prohibited contribution, including contributions from corporations;
2. Under 11 C.F.R. § 103.3(b)(1), that the Committee's treasurer is responsible for examining all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contributions limitations;

- 1-800-424-6474
3. Under 2 U.S.C. § 434(b)(4)(A) and 11 C.F.R. § 104.3(b)(2)(i), that for the reporting period and election cycle, the Committee must report the total amount of all disbursements, including expenditures made to meet candidate or committee operating expenses;
  4. Under 11 C.F.R. § 104.3(a)(3), the Committee must report the total amount of receipts received during the reporting period and during the election cycle; and
  5. Under 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.3(d), 104.11(a), the Committee must report the amount and nature of outstanding debts and obligations owed by or to the Committee, and continuously report those debts until extinguished.

For further information on the Act, please refer to the Commission's website at [www.fec.gov](http://www.fec.gov) or contact the Commission's Public Information Division at (202) 694-1100.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

If you have any questions, please contact Emily M. Meyers, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



William A. Powers  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

cc: Danny Tarkanian  
7220 S. Cimarron Road Suite 100  
Las Vegas, NV 89113

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

4  
5 **RESPONDENTS:** Tarkanian for Congress (f/k/a Danny Tarkanian for  
6 Congress) and Chrissie Hastie in her official  
7 capacity as treasurer (MURs 6572, 6606, and 6676)  
8 DeWayne Zinkin (MURs 6572 and 6606)  
9 Zinkin Entertainment LLC (MURs 6572 and 6606)  
10 Haig's Quality Printing (MURs 6572 and 6606)  
11 B.I. Porter Commercial & Residential Properties (MUR 6572)  
12 Mason Contractors Association of America (MUR 6572)  
13 Nostrebor Music & Visual Arts (MUR 6572)  
14 TLC, a California Partnership (MUR 6572)  
15 AM Power Systems (MUR 6606)  
16 Cholakian Investments, Inc. (MUR 6606)  
17 Attorneys' Investigative Consultants (MUR 6606)  
18 The Rogich Communications Group (MUR 6606)  
19 Bill E. Carlson (MUR 6676)  
20 Fine Properties, LLC (MUR 6676)  
21 Herbert's Refrigeration Company (MUR 6676)  
22 Prem Investments, LLC<sup>1</sup> (MUR 6676)  
23

24 **I. INTRODUCTION**

25 These matters were generated by three separate Complaints filed during the 2012 election  
26 cycle with the Federal Election Commission by the Nevada State Democratic Party, alleging  
27 various reporting and other violations of the Federal Election Campaign Act of 1971, as  
28 amended, (the "Act") by Tarkanian for Congress and Chrissie Hastie in her official capacity as  
29 treasurer<sup>2</sup> (the "Committee"), Danny Tarkanian's designated principal campaign committee in  
30 the 2012 election in Nevada's Fourth Congressional District. Tarkanian won the Republican

<sup>1</sup> The Complaint in MUR 6676, the Response submitted by the candidate on behalf of Tarkanian for Congress, and the original 2012 October Quarterly Report all refer to Primm Investments LLC, but the name "Primm" appears to be in error. The name of this entity is correctly spelled Prem Investments, LLC, as indicated in the Committee's Second Amended 2012 October Quarterly Report (June 3, 2013). For the sake of clarity, the Commission refers to this entity as Prem.

<sup>2</sup> Chrissie Hastie was identified as treasurer in the Committee's most recent Statement of Organization, filed with the Commission on June 7, 2013, although Judith Flynn served as treasurer when the violations alleged in MURs 6576 and 6606 occurred. Robert T. Beers succeeded Flynn as treasurer and served as treasurer when the violations alleged in MUR 6676 occurred. Tarkanian himself has signed all of the disclosure reports submitted by the Committee since April 2013.

1 primary on June 12, 2012, but lost the general election on November 6, 2012. On July 15, 2013,  
2 October 15, 2013, January 31, 2014, and April 14, 2014, the Committee filed Termination  
3 Reports.

4 The three Complaints allege that the Committee: (1) failed to report or misreported an  
5 outstanding loan from the candidate, alleging further that those funds may not have been eligible  
6 to be loaned; (2) failed to properly report approximately \$250,000 in operating expenditures;  
7 (3) failed to report accurately the attributions for permissible contributions from limited liability  
8 companies ("LLCs"); (4) accepted impermissible corporate contributions and failed to timely  
9 refund such contributions; (5) accepted excessive contributions; and (6) misreported various  
10 other contributions.

11 Although the Committee made a number of reporting errors in violation of the Act and  
12 appears to have accepted a \$500 prohibited contribution, the Commission exercises its  
13 prosecutorial discretion to dismiss those allegations due to the modest amounts in violation and  
14 the Committee's remedial efforts. *See Heckler v. Chaney*, 470 U.S. 821 (1985). With respect to  
15 the remaining allegations, the Commission finds no reason to believe that there was a violation  
16 of the Act for the reasons provided below.

## 17 II. FACTUAL AND LEGAL ANALYSIS

### 18 A. Reporting Errors Related to Tarkanian's Loans to the Committee

19 The Complaint in MUR 6572 alleges that the Committee misreported a loan that  
20 Tarkanian made to his Committee in violation of 2 U.S.C. § 434(b)(8) because the Committee's  
21 Amended 2012 April Quarterly report, filed on April 16, 2012 ("First Amended 2012 April  
22 Quarterly Report"), shows only \$1,902.10 in loans from the candidate even though Tarkanian  
23 had loaned over \$260,000 to the Committee and had publicly stated that most of the loan  
24

1 remained outstanding. Compl. at 2-3, MUR 6572 (May 7, 2012). The MUR 6572 Complaint  
2 also notes that the Committee's 2011 Year-End Report states that \$219,304.38 in loans from the  
3 candidate were forgiven, which was inconsistent with those public statements. *Id.* at 2.  
4 Additionally, a related allegation in the MUR 6606 Complaint alleges that the Committee  
5 violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(b)(4)(A) by underreporting its total election  
6 cycle to-date operating expenditures and disbursements in the Second Amended 2012 April  
7 Quarterly Report, filed on May 31, 2012 ("Second Amended 2012 April Quarterly Report").  
8 Compl. at 2, MUR 6606 (July 11, 2012). Finally, in MUR 6676, the Complaint alleges that the  
9 Committee failed to disclose loans on Schedule C of its reports in violation of 11 C.F.R.  
10 § 104.11. Comp. at 2, MUR 6676 (Oct. 31, 2012).

11 In response, the Committee admits that its 2011 Year-End Report erroneously reported  
12 that the loans made by the candidate in the previous reporting periods had been forgiven.  
13 Comm. Resp. at 4, MUR 6572 (June 29, 2012). The Committee asserts that Flynn, who became  
14 the Committee's treasurer after the 2011 Year-End Report was filed, erroneously assumed that  
15 the 2011 Year-End Report accurately disclosed that the candidate's loans to the Committee had  
16 been forgiven, and therefore included in the 2012 April Quarterly Report only the loans from the  
17 candidate that the Committee incurred during that reporting period. *Id.* at 4-5; Decl. of Danny  
18 Tarkanian ¶ 8 (June 27, 2012) (attached to Comm. Resp., MUR 6572) ("Tarkanian Decl."); Decl.  
19 of Judith Flynn ¶ 6 (June 27, 2012) (attached to Comm. Resp., MUR 6572) ("Flynn Decl."). The  
20 Committee did not report any of the previously outstanding loans from the candidate in the First  
21 Amended 2012 April Quarterly Report, filed on April 16, 2012, but subsequently filed amended

1 reports to reflect them.<sup>3</sup> See Comm. Resp. at 5, MUR 6572; Flynn Decl. ¶¶ 6-7. In the  
2 Committee's Second Amended 2012 April Quarterly Report, filed on May 31, 2012, however,  
3 the amount of the previously incurred candidate loan (\$250,000) was erroneously included in the  
4 Column B (Election Cycle-to-Date) total of operating expenditures, rather than being reported as  
5 a loan on the Summary Page. See Comm. Resp. at 2, MUR 6606 (Aug. 7, 2012). The  
6 Committee asserts that this error was caused by a glitch in the reporting software, and that the  
7 Committee did not incur any expenditures that were not "fully and timely disclosed." *Id.*

8 Following receipt of the Complaint in MUR 6572, the Committee filed the Second  
9 Amended 2012 April Quarterly Report on May 31, 2012. On this amended report, the  
10 Committee reported the total amount of the candidate's loans to the Committee of \$262,662.87,  
11 including \$1,902.10 that the candidate loaned during the reporting period, and \$260,760.77 (with  
12 immaterial discrepancies) that the candidate had loaned to the Committee prior to December 1,  
13 2011 on Schedule C.<sup>4</sup> Second Amended 2012 April Quarterly Report at 131-161 (May 31,  
14 2012). While the loans were not reflected on the Summary Page of the Second Amended 2012  
15 April Quarterly Report, the Committee did report the loan on Schedule C of its Second Amended  
16 2012 April Quarterly Report, filed prior to the June 2012 primary election.

17 The candidate subsequently forgave \$250,000 of the loans, as reflected in Schedule B of  
18 the 2012 July Quarterly Report, filed on July 15, 2012. However, the Complaint in MUR 6676,  
19 filed on October 31, 2012, alleges that the Committee violated 11 C.F.R. § 104.11 when it failed  
20 to report in Schedule C both the candidate's \$250,000 loan to the Committee before he forgave  
21 it, and that the loan was forgiven. Compl. at 2, MUR 6676. In addition, the Complaint alleges

<sup>3</sup> See Second Amended 2012 April Quarterly Report (May 31, 2012).

<sup>4</sup> All of those loans appear to have been previously disclosed on the Committee's prior reports covering the periods in which they were incurred.

1 that the Committee failed to report in Schedule C that on July 11, 2012, the Committee repaid  
2 the candidate's loan of \$53,755.83. *Id.*

3 The Committee disputes that a Schedule C was required for the \$250,000 loan because  
4 the candidate originally made the loan two years before the 2012 July Quarter and the debt was  
5 forgiven during the 2012 July Quarterly reporting period, such that no debt was owed at the end  
6 of that reporting period. Comm. Resp. at 2, MUR 6676 (Feb. 7, 2013). And although the  
7 candidate's \$53,755.83 loan to the Committee and the Committee's subsequent repayment of this  
8 loan were disclosed in the Committee's 2012 July Quarterly and First Amended 2012 October  
9 Quarterly<sup>5</sup> reports, respectively, the Committee admits that it was not reported in Schedule C, but  
10 asserts that this was caused by a reporting software error. *Id.* This omission was rectified on  
11 June 3, 2013, when the Committee filed with the Commission an Amended 2012 July Quarterly  
12 Report and a Second Amended 2012 October Quarterly Report in response to a May 7, 2013  
13 Request for Additional Information from the Reports Analysis Division.

14 Under the Act and Commission regulations, a political committee is required to report  
15 debts continuously, including loans from the candidate, until they are extinguished. *See* 2 U.S.C.  
16 §§ 434(b)(2)(G), 434(b)(8); 11 C.F.R. §§ 104.3(a)(3)(vii)(B), 104.3(d), 104.11(a). A political  
17 committee is also required to report all operating expenses in the reporting period in which they  
18 were incurred and during the election cycle. *See* 2 U.S.C. § 434(b)(4)(A); 11 C.F.R.  
19 § 104.3(b)(2)(i).

20 Based on the record here, the Committee did not comply with 2 U.S.C. §§ 434(b)(2)(G),  
21 434(b)(8), and 11 C.F.R. §§ 104.3(a)(3)(vii)(B), 104.3(d), and 104.11 because it failed to report

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<sup>5</sup> The Committee filed an Amended 2012 October Quarterly Report on October 29, 2012, fourteen days after it filed the original report.

1 accurately and timely its outstanding debt to the candidate, and it also did not comply with  
2 2 U.S.C. § 434(b)(4)(A) and 11 C.F.R. § 104.3(b)(2)(i) because it failed to report accurately its  
3 operating expenditures. Nonetheless, the original loan was properly reported from the July 2010  
4 Quarterly reporting period through the 2011 Year End reporting period and the public record was  
5 corrected as to the loan itself before the June 2012 primary election.<sup>6</sup> Accordingly, because the  
6 Committee accurately disclosed the amounts of the loans during the periods in which they were  
7 originally incurred, misreported the loan as an operating expenditure due to an inadvertent error,  
8 and amended its reports to correct its errors, the pursuit of these violations does not merit further  
9 use of Commission resources. See Statement of Policy Regarding Commission Action in  
10 Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,545-46 (Mar.  
11 16, 2007). Accordingly, the Commission exercises its prosecutorial discretion to dismiss these  
12 allegations, and reminds the Committee to disclose accurately to the Commission candidate  
13 loans made to the Committee. See *Heckler*, 470 U.S. at 831.

14 **B. Tarkanian Forgave \$250,000 Loan and Made Additional \$40,000 Loan**

15  
16 The Complaint in MUR 6676 questions whether Tarkanian was permitted under Section  
17 441a of the Act to loan an additional \$40,000 to the Committee, and to forgive his \$250,000.07  
18 loan to the Committee in June 2012. Compl. at 3, MUR 6676. Specifically, the Complaint  
19 alleges that both the additional loan and forgiveness of the \$250,000 loan were impermissible  
20 because “[o]n May 22, 2012, before Mr. Tarkanian forgave the \$250,000.07 loan and made the  
21 additional \$40,000 loan, the FDIC obtained a judgment against Mr. Tarkanian in the United  
22 States District Court for the Southern District of California in the amount of \$16,995,005.17.”

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<sup>6</sup> On June 3, 2013, the Committee also filed an Amended 2012 July Quarterly Report, and a Second Amended 2012 October Quarterly Report to address the errors relating to the overreporting of operating expenditures.



1 *Id.* The Complaint reasons that if Tarkanian “did not have sufficient funds to pay the FDIC  
2 judgment, then it is by no means clear that Mr. Tarkanian had title or an equitable interest in the  
3 funds at issue under Nevada law.”<sup>7</sup> *Id.* If Tarkanian did not have title to the funds, the  
4 Complaint alleges, “then federal law would have barred him from forgiving the \$250,000.07 loan  
5 or making the additional \$40,000 loan.” *Id.*

6 The Committee responds that Tarkanian loaned his U.S. Senate campaign \$250,000  
7 before any lawsuit was ever filed, and at the time of the forgiveness the lawsuit was still in  
8 progress. Comm. Resp. at 2, MUR 6676. The Committee’s disclosure reports corroborate that  
9 assertion. *See, e.g.*, 2010 July Quarterly Report at 3 (July 15, 2010) (disclosing loan from the  
10 candidate of \$66,127.12 during the period covered by the report and a total of \$283,547.89 of  
11 loans from the candidate during the election cycle to-date).

12 The Act permits candidates to loan personal funds to their campaigns and to forgive those  
13 loans. *See, e.g.*, 2 U.S.C. § 434(b)(2)(G) (requiring disclosure of loans made by a candidate);  
14 11 C.F.R. § 116.8 (regulations applicable to forgiving debts). The Act and Commission  
15 regulations define a candidate’s “personal funds” to include “any asset that, under applicable  
16 State law . . . the candidate had legal right of access to or control over, and with respect to which  
17 the candidate had . . . legal and rightful title[.]” 2 U.S.C. § 431(26)(A); 11 C.F.R. § 100.33(a).

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<sup>7</sup> The Complaint cites Nev. Rev. Stat. 112.190(1), which provides that:

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

1 The record establishes that Tarkanian permissibly loaned personal funds from his  
2 account, under his control, to the Committee and forgave that debt. In June 2012, the funds  
3 whose repayment Tarkanian forgave and the additional loan he made to the Committee were  
4 Tarkanian's "personal funds," as defined by the Act and Commission regulations. At the time  
5 that Tarkanian forgave the original loan and made the additional loan, the May 22, 2012  
6 judgment issued by the U.S. District Court for the Southern District of California in favor of the  
7 FDIC against Tarkanian did not vitiate Tarkanian's title and control over the personal funds that  
8 he contributed to his campaign. Tarkanian could thereby forgive in June 2012 the repayment of  
9 the \$250,000.07 loan, and the Committee could accept the \$40,000 additional loan from the  
10 candidate without violating the Act.<sup>8</sup> Accordingly, the Commission finds no reason to believe  
11 that the Committee accepted a prohibited or excessive contribution in violation of 2 U.S.C.  
12 §§ 441a(f) or 441b(a) with respect to these two transactions.

13 **C. The Committee's Attributions for LLC and Partnership Contributions**  
14

15 The Complaint in MUR 6572 alleges that the Committee failed to include the necessary  
16 attributions for contributions from a number of LLCs and TLC, a California partnership. Compl.  
17 at 2, MUR 6572.

18 Under Commission regulations, LLCs are treated consistently with their tax treatment,  
19 and therefore if the LLC elects to be treated for federal tax purposes as a partnership rather than  
20 as a corporation, it may make contributions to political committees within the limits of the Act.  
21 See 11 C.F.R. §§ 110.1(e), (g). When a partnership or a multi-member LLC that elects to be  
22 taxed as a partnership (or makes no election) contributes to a federal committee, it must provide

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<sup>8</sup> The Commission opines only on the legality of Tarkanian's actions as they relate to the Act. The Commission takes no position on bankruptcy law or any other body of law.

1 the committee with information about how the contribution should be attributed to its partners or  
2 members, and affirm that it is eligible to make the contribution. 11 C.F.R. §§ 110.1(e), (g)(5).  
3 Further, the treasurer of an authorized committee such as Tarkanian for Congress must file  
4 reports of receipts that include, *inter alia*, “the identification of each person (other than a  
5 political committee) who makes a contribution . . . , whose contribution or contributions have an  
6 aggregate amount or value in excess of \$200 within the . . . election cycle . . . together with the  
7 date and amount of any such contribution.” 2 U.S.C. § 434(b)(3)(A). Where a treasurer does not  
8 have the requisite information, the reporting requirements will be deemed to have been met when  
9 the treasurer shows that “best efforts” have been used to obtain, maintain and submit the required  
10 information. 11 C.F.R. § 104.7(a). Best efforts for contributor identification require at least one  
11 attempt by the treasurer, either in writing or orally but documented in writing, to obtain the  
12 missing information within 30 days of the receipt of the contribution. *Id.* § 104.7(b)(2).

13 Here, the Committee allegedly failed to report the attribution for 14 LLC and partnership  
14 contributions totaling \$17,950, and also failed to show that its treasurer made best efforts to  
15 obtain the required attribution information for those contributions. Compl. at 2, MUR 6572.  
16 The Committee explained in its Response that in the First Amended 2012 April Quarterly Report  
17 — the report at issue in MUR 6572 — the Committee included the appropriate attributions for  
18 two of the LLCs, and that the Committee’s filing software failed to generate the proper  
19 attributions for the other LLCs and partnership, even though the Committee entered the member  
20 attributions into the software. Comm. Resp. at 3, MUR 6572; Flynn Decl. ¶¶ 15-17. The  
21 Committee later included in its Second Amended 2012 April Quarterly Report and Third  
22 Amended 2012 April Quarterly Report, filed with the Commission on June 3, 2013, the  
23 appropriate attributions for all of the LLCs and the partnership at issue in MUR 6572. *See* Flynn

Decl. ¶¶ 16-17; Comm. Resp. at 3, MUR 6572. The Committee also stated in its Response that all of the contributions at issue complied with the Act's limits and requirement that each contributing LLC is taxed as a partnership.<sup>9</sup> Comm. Resp. at 3-4, MUR 6572. In addition, TLC verified in its Response that its contribution was permissibly made by the partnership through its managing partner. TLC Resp., MUR 6572 (May 18, 2012).

Because the Committee timely reported the contributions, and amended its reports to include the appropriate attributions for the contributions from LLCs and partnerships, the Commission concludes that the scope of this violation would not merit the further use of Commission resources. *See* 72 Fed. Reg. at 12,545-46. Accordingly, the Commission exercises its prosecutorial discretion to dismiss these allegations with respect to the Committee, but reminds the Committee about the Act's reporting requirements for LLC and partnership contributions. *See Heckler*, 470 U.S. at 831. Also, because TLC's contribution appears to have been permissibly made through a partnership, the Commission finds no reason to believe that TLC violated 11 C.F.R. § 110.1(e).

**D. The Committee Erroneously Reported Contributions from Political Committees and Persons Other than Political Committees**

The Complaint in MUR 6676 alleges that the Committee violated 11 C.F.R. § 104.3(a)(3)(i), (iv)<sup>10</sup> when, in its 2012 October Quarterly Report, it reported contributions from

<sup>9</sup> As a result of the Complaint's allegations in MUR 6572, the Committee adopted policies and procedures to prevent future violations, including procedures for vetting all contributions from businesses or organizations and reviewing draft disclosure reports. Comm. Resp. at 7-8 (MUR 6572); Tarkanian Decl. Ex. A (revised contribution form, which includes statement that contributions by corporations are prohibited and requests occupation and employer information), Ex. B (first page of new contribution screening policy), and Ex. C (report completion checklist).

<sup>10</sup> The Complaint cites to 11 C.F.R. § 104.3(a)(2)(i), (ii), but this provision applies to "[c]ategories of receipts for all political committees other than authorized committees." Because the Committee is Tarkanian's principal campaign committee, the operative provision is 11 C.F.R. § 104.3(a)(3), which applies to "[c]ategories of receipts for authorized committees."

1 political committees on Line 11(a) (the line reserved for contributions from persons other than  
2 political committees), and reported contributions from persons other than political committees on  
3 Line 11(c) (the line reserved for contributions from political committees). Compl. at 3-4, MUR  
4 6676. The Complaint alleges six such contributions in each group, totaling \$7,500 of  
5 contributions from political committees and \$5,500 of contributions from persons other than  
6 political committees, or 12 contributions in all, totaling \$13,000. *Id.* at 4.

7 In its Response, the Committee admits these violations, but claims that this mistake “has  
8 since been corrected.” Comm. Resp. at 2, MUR 6676 (Feb. 7, 2013) (specifically referring to  
9 “Amendment 2 to the October 15, 2012 Quarterly Report”). But the Committee did not correct  
10 these reporting discrepancies until four months *after* filing its Response. *See* Second Amended  
11 2012 October Quarterly Report (June 3, 2013).

12 Commission regulations require authorized committees to disclose in their reports the  
13 total amount of receipts received during the reporting period and during the election cycle in  
14 each of various categories, including contributions from persons other than any committees and  
15 contributions from political party committees and other committees. 11 C.F.R. § 104.3(a)(3)(i),  
16 (iv). Although the Committee did not amend its 2012 October Quarterly Report to correct these  
17 errors until June 3, 2013, the Commission exercises its prosecutorial discretion to dismiss the  
18 Committee’s violation of 11 C.F.R. § 104.3(a)(3) because the contributions themselves were  
19 timely reported and were relatively small in number and amount, and reminds the Committee  
20 regarding the Act’s requirements for reporting contributions. *See Heckler*, 470 U.S. at 831.

21 **E. The Committee’s Alleged Prohibited Corporate Contributions**

22 The Complaints in MURs 6572 and 6676 allege that the Committee violated 2 U.S.C.  
23 § 441b(a) by accepting a total of \$6,000 in prohibited corporate contributions. Compl. at 1-3,  
24

1 MUR 6572; Compl. at 6, MUR 6676. The Complaint in MUR 6572 alleges that the Committee  
2 accepted a \$500 contribution from Haig's Quality Printing ("Haig's"), a corporation, and a total  
3 of \$3,000 in contributions from three other business entities that "may" be corporations: a \$500  
4 contribution from B.I. Porter Commercial & Residential Properties ("BI Porter"); a \$1,500  
5 contribution from Mason Contractors Association of America ("Contractors"); and a \$1,000  
6 contribution from Nostrebor Music & Visual Arts ("Nostrebor"). *See* Compl. at 1, MUR 6572.  
7 According to the Complaint in MUR 6676, the Committee also accepted a \$250 contribution  
8 from Herbert's Refrigeration Company ("Herbert's"), a \$250 contribution from Fine Properties  
9 LLC ("Fine Properties"), and a \$2,000 contribution from Prem Investments, LLC ("Prem"),  
10 which "may" have violated 2 U.S.C. § 441b if these entities were LLCs that elected to be taxed  
11 as corporations. *See* Compl. at 6, MUR 6676.

12 Political committees may not knowingly accept or receive contributions made by  
13 corporations. 2 U.S.C. § 441b. As previously discussed, political committees may accept  
14 contributions from partnerships and certain LLCs. *See* 11 C.F.R. §§ 110.1(e) (partnership  
15 contributions), 110.1(g) (LLC contributions). Political committees may also accept contributions  
16 from sole proprietorships, so long as the sole proprietor is permitted to make a contribution under  
17 the Act. *See* Advisory Op. 1980-89 (Coelho) at 2 (a contribution by a sole proprietorship is  
18 treated as a contribution by the individual who is the sole proprietor of the business); Advisory  
19 Op. 1989-21 (Create-a-Craft) at 2 (sole proprietors are subject to the limitations of 2 U.S.C.  
20 § 441a, rather than the prohibition set out at 2 U.S.C § 441b).

21 Based on the record here, it appears that the Committee did not accept or receive  
22 prohibited corporate contributions with respect to BI Porter, Contractors, Nostrebor, Fine  
23 Properties, or Herbert's because they are not corporations or LLCs taxed as corporations. *See* BI

1 Porter Resp., MUR 6572 (June 13, 2012) (though account bears the name "B.I. Porter  
2 Commercial and Residential Properties," it is a personal account containing personal funds for  
3 personal use, not the funds of a corporation, LLC, or partnership); Contractors Resp., MUR 6572  
4 (June 4, 2012) (donation lawfully made by corporation's PAC); Nostrebor Resp., MUR 6572  
5 (June 1, 2012) (contribution from sole proprietorship ); Fine Properties Resp., MUR 6676 (Mar.  
6 7, 2013) (entity is treated as a partnership for federal tax purposes); Herbert's Resp., MUR 6676  
7 (Nov. 11, 2013) (entity is a sole proprietorship, not a corporation); Comm. Resp. at 5-6, MUR  
8 6572 (Contractors' donation was from its PAC, not the corporation; Committee report noted that  
9 BI Porter was not a corporation; Nostrebor is a sole proprietorship); Flynn Decl. ¶ 12; Comm.  
10 Resp. at 3-4, MUR 6676 (Fine and Prem are LLCs that elected to be taxed as partnerships;  
11 Herbert's is a sole proprietorship). In addition, the record includes no information to corroborate  
12 the allegation that Prem may be an LLC taxed as a corporation.<sup>11</sup> Lastly, although the  
13 Committee initially accepted a prohibited corporate contribution of \$500 from Haig's, it  
14 subsequently refunded the contribution. Comm. Resp. at 5, MUR 6572; Haig's Resp., MUR  
15 6572 (May 29, 2012).

16 Based on the information from the Responses and the Committee's amendments, the  
17 Commission finds no reason to believe that BI Porter, Contractors, Nostrebor, Fine Properties,  
18 Herbert's, or Prem violated 2 U.S.C. § 441b(a). In addition, although it appears that Haig's  
19 made, and the Committee accepted a prohibited corporate contribution of \$500 in violation of  
20 2 U.S.C. §§ 441b(a) and 441a(f), respectively, due to the amount in violation, pursuit of these

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<sup>11</sup> Because Prem did not submit a Response, the Committee's claim in its Response that Prem elected to be treated as a partnership for federal tax purposes was unable to be verified. See Comm. Resp. at 3-4, MUR 6676. But the Commission is not aware of any conflicting information. Although Prem is listed in the Nevada Secretary of State's business registry (<https://nvsos.gov/sosentitysearch/>) as a domestic limited liability company incorporated in 2009, no documents are available regarding its tax treatment.

violations does not merit the further use of Commission resources. *See* 72 Fed. Reg. at 12,545-46. Accordingly, the Commission exercises its prosecutorial discretion to dismiss these allegations, and reminds the Committee and Haig's regarding the Act's prohibition on accepting or receiving and making corporate contributions. *See Heckler*, 470 U.S. at 831.<sup>12</sup>

**F. The Committee Failed to Timely Refund Prohibited Corporate Contributions Totaling \$1,700**

The Complaint in MUR 6606 alleges that the Committee failed to refund within the 30 day period permitted by 11 C.F.R. § 103.3(b)(1) five corporate contributions totaling \$1,710 from Haig's (\$500), AM Power Systems ("AM Power") (\$100), Cholakian Investments, Inc. ("Cholakian") (\$100), Attorneys' Investigative Consultants ("Investigative Consultants") (\$10), and The Rogich Communications Group ("Rogich") (\$1,000). Compl. at 1-2, MUR 6606; Second Amended 2012 April Quarterly Report at 43, 89, 130 (May 31, 2012); 2012 Pre-Primary Report at 46-47 (May 31, 2012).

Each of these five contributors responded to the Complaint in MUR 6606. Cholakian's Response, submitted by Kingdom Consulting Inc., asserts that Cholakian's registered agent and principal, Edward Cholakian, accidentally used a corporate credit card to make a \$200 contribution but that it "was never charged" and the Committee "refused the charge." Cholakian Resp. at 1, MUR 6606 (July 27, 2012). Investigative Consultants responds that its owner made the \$10 contribution and that the funds for the contribution appear to have been deducted from Investigative Consultants' bank account, but that Investigative Consultants is a sole proprietorship, not a corporation, and therefore its contribution to the Committee was legal. Investigative Consultants Resp. at 2-3, MUR 6606 (July 31, 2012). (Nonetheless, Investigative

<sup>12</sup> The analysis regarding the related reporting violations for the Committee's failure to report the appropriate attributions for the contributions from Fine Properties and Prem, both LLCs, is *supra*, Section C.



1 Consultants received a contribution refund from the Committee. *Id.* at 2.) Rogich admits that it  
2 inadvertently issued a corporate check for a contribution rather than drawing the contribution  
3 from Mr. Rogich's personal account, as he requested. Rogich Resp. at 1, MUR 6606 (July 31,  
4 2012). Haig's acknowledges that it used a corporate check to effect a personal contribution from  
5 its owner, but notes that the funds had been treated as the owner's draw and not a corporate  
6 expense. Haig's Supp. Resp. at 1, MUR 6606 (July 25, 2012). Without acknowledging that AM  
7 Power was incorporated, AM Power responds that a personal contribution was made using the  
8 business account in ignorance that the transaction was prohibited. AM Power Resp., MUR 6606  
9 (Aug. 10, 2012).

10 The Committee refunded all of these contributions between 31 and 49 days after it  
11 received them. The Committee asserts in its Response in MUR 6572 that these contributions  
12 were timely refunded because they were refunded within 30 days of the Committee's initiation of  
13 its review process. *See* Comm. Resp. at 7, MUR 6572; Tarkanian Decl. ¶ 12; Flynn Decl. ¶ 10;  
14 Comm. Resp. at 1, MUR 6606.

15 Under 11 C.F.R. § 103.3(b)(2), which applies to contributions that "did not appear to be  
16 made by a corporation . . . , but [are] later discover[ed] [to be] illegal based on new evidence not  
17 available at the time of receipt," the Committee would have timely made its refunds. Section  
18 103.3(b)(2) may not be applicable here. Rather, 11 C.F.R. § 103.3(b)(1) likely applies because  
19 the contributions were made in the names of businesses or through checks bearing business  
20 names and thereby raised a genuine issue as to whether they were prohibited corporate  
21 contributions.<sup>13</sup> Assuming this was the case, the Committee had ten days to make a refund, or

<sup>13</sup> The Committee asserts that the contributions from AM Power Systems, Cholakian Investments, Inc., and The Rogich Communications Group bore no indicia of corporate status, and the \$10 contribution from Investigative

1 thirty days to ascertain the legality of the contribution, from the date of the treasurer's receipt.  
2 11 C.F.R. § 103.3(b)(1). Thus, the Committee's refunds to Haig's, AM Power, Cholakian, and  
3 Rogich made between 31 and 49 days of receipt may have been untimely.

4 Because of the small amounts of the contributions and the fact that the Committee has  
5 refunded those contributions, the further use of Commission resources is not warranted here. *See*  
6 72 Fed. Reg. at 12,545-46. Accordingly, the Commission exercises its prosecutorial discretion to  
7 dismiss this allegation, and reminds the Committee and Haig's, AM Power, Cholakian, and  
8 Rogich regarding the Act's prohibition on accepting or receiving and making corporate  
9 contributions. *See Heckler*, 470 U.S. at 831.

10 The Commission also finds no reason to believe that Investigative Consultants made or  
11 the Committee accepted or received from Investigative Consultants a prohibited corporate  
12 contribution of \$10 in violation of 2 U.S.C. § 441b(a) because Investigative Consultants is not a  
13 corporation and therefore its contribution to the Committee was permissible under the Act.

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Consultants fell below the itemization threshold, and therefore none of the contributions was subject to review. Comm. Resp. at 7, MUR 6572. (The Committee does not claim that Haig's Quality Printing bore no indicium of corporate status.) The Committee's assertion that the legality of these contributions came into question only based on the facts presented in the complaint in MUR 6572 is at odds with the record. Cholakian is incorporated, and AM Power, Haig's and Rogich each are clearly business names, which should have triggered the Committee's treasurer to request confirmation that the contributors are not corporations, which would render the contributions illegal. Yet the Committee makes no claim that its treasurer discharged her responsibility to use best efforts to confirm that each contribution was legal. The Committee's assertion that it failed to investigate these contributions because they did not meet the \$200 itemization threshold is unavailing; the regulations do not exempt from the legality determination contributions that fall below the \$200 itemization threshold. *See* 11 C.F.R. § 103.3(b).

"To avoid accepting corporate contributions," the Committee implemented new procedures to screen all contributions. Comm. Resp. at 7-8, MUR 6572; Tarkanian Decl. ¶ 14, Ex. B. The Committee also reported that its review yielded four additional corporate contributions, totaling \$2,350, from Primary Care, Inc. (\$500), Rick Schneider Insurance (\$750), Howard K. Ekerling, Inc. (\$100), and The Rogich Communications Group (\$1,000), which the Committee refunded. Comm. Resp. at 6-7, MUR 6572.

**G. The Committee Did Not Accept Excessive Contributions**

The Complaints identify three transactions that may have constituted excessive contributions and, as a consequence, the donors may have violated 2 U.S.C. § 441a(a) and the Committee may have violated 2 U.S.C. § 441a(f).

First, the Complaints in MURs 6572 and 6606 allege that the Committee accepted an excessive contribution from a member of Zinkin Entertainment LLC. Compl. at 2, MUR 6572; Compl. at 1, MUR 6606. The Complaints allege that a \$2,500 primary contribution from DeWayne Zinkin, Jr. was an excessive contribution because Zinkin Entertainment had previously contributed \$2,500 for the primary election and \$2,500 for the general election that were attributed to him. Compl. at 2, MUR 6572; Compl. at 1, MUR 6606. Moreover, the First Amended 2012 April Quarterly Report did not include any partner attribution for the contributions from Zinkin Entertainment. Compl. at 2, MUR 6572; Compl. at 1, MUR 6606.

The Response of DeWayne Zinkin and his son, DeWayne S. Zinkin explain that the elder Zinkin, who made a \$2,500 primary contribution, is an attorney and not a member of Zinkin Entertainment, LLC, while the younger Zinkin, DeWayne S. Zinkin, is the sole member of Zinkin Entertainment, LLC, which made \$2,500 contributions to the Committee for the primary and general elections. Zinkin Resp., MUR 6572 (July 25, 2012) (the Zinkins also note that the younger Zinkin is sometimes inaccurately identified as DeWayne Zinkin, Jr., when in fact he does not share his father's middle name); *see also* Zinkin Supp. Resp., MUR 6606 (Aug. 7, 2012).<sup>14</sup>

<sup>14</sup> The Committee asserts that it clarified the sources of these contributions in its Second Amended 2012 April Quarterly Report. Comm. Resp. at 4, MUR 6572. That Report identifies "Dewayne" Zinkin as a member of Zinkin Entertainment LLC to whom two \$2,500 contributions are attributed. Second Amended 2012 April Quarterly Report at 97-98 (May 31, 2012). It separately identifies the elder DeWayne Zinkin as an attorney at Zinkin Offices and the maker of a \$2,500 primary contribution. *Id.* at 96. This report is sufficiently clear.

1 Based on the record here, the alleged excessive contribution of DeWayne S. Zinkin was  
2 not excessive because the third contribution that allegedly rendered his contributions excessive  
3 was in fact made by another person, his father, DeWayne Zinkin. The Commission therefore  
4 finds no reason to believe that DeWayne Zinkin and Zinkin Entertainment made excessive  
5 contributions in violation of 2 U.S.C. § 441a(a) or that the Committee accepted an excessive  
6 contribution in violation of 2 U.S.C. § 441a(f).

7 Second, the Complaint in MUR 6676 alleges that the Committee accepted an excessive  
8 contribution of \$25,000 from Bill Carlson on September 5, 2012. Compl. at 4-5, MUR 6676.  
9 The Committee's Response states that due to a typographical error in the Committee's original  
10 2012 October Quarterly Report, Carlson's contribution of \$2,500 was erroneously reported as  
11 \$25,000. Comm. Resp. at 3, MUR 6676. According to Carlson, however, his contribution was  
12 actually \$250. See Carlson Resp., MUR 6676 (Mar. 11, 2013). The alleged excessive  
13 contribution from Carlson was within the contribution limit, but due to a typographical error, the  
14 Committee misreported the contribution as 100 times greater than the amount actually  
15 contributed. The Commission therefore finds no reason to believe that Carlson made an  
16 excessive contribution in violation of 2 U.S.C. § 441a(a), or that the Committee accepted an  
17 excessive contribution in violation of 2 U.S.C. § 441a(f).

18 Third, the Complaint in MUR 6676 alleges that the Committee accepted \$8,050 in  
19 primary-after-primary impermissible contributions from four individuals. Compl. at 5, MUR  
20 6676. According to the Complaint, the contributions were excessive — and therefore the  
21 Committee's receipt of them violated 2 U.S.C. § 441a(f) — because the Committee received the  
22 contributions well after the Nevada primary election occurred on June 12, 2012, and the  
23 contributions specifically designated for the primary exceeded the Committee's net debts

1 outstanding from that election. *Id.* at 5-6; 11 C.F.R. § 110.1(b)(3). The Complaint avers that the  
2 “only primary election debts that the committee reported were the \$53,755.83 loan from Mr.  
3 Tarkanian that the committee repaid on July 11, 2012 and a \$900 debt to JAMD that remains  
4 unpaid.” Compl. at 5, MUR 6676 (citing 2012 July Quarterly Report).

5 The Committee contends that it had primary debt in excess of the contributions received  
6 to retire that debt, but the Committee’s bookkeeper during the primary inadvertently omitted this  
7 debt from the 2012 July Quarterly Report. Comm. Resp. at 3, MUR 6676. Specifically, the  
8 Committee’s primary debt totaled \$10,948, all owed to one debtor. The Committee included this  
9 debt in its Amended 2012 July Quarterly Report, filed with the Commission on June 3, 2013.  
10 Amended 2012 July Quarterly Report at 25 (June 3, 2013). The Committee also asserts that the  
11 four contributions for the primary election identified in the Complaint were appropriately  
12 designated as contributions for the primary election, and that the memo descriptions included in  
13 the Amended 2012 July Quarterly Report indicate that they were to retire primary debt. Comm.  
14 Resp. at 3, MUR 6676.

15 While committees are permitted to receive contributions designated for a particular  
16 election after that election, the contribution must not exceed the net debts outstanding from that  
17 election. 11 C.F.R. § 110.1(b)(3)(i). A review of the record here reveals that these contributions  
18 relating to the Committee’s primary debt did not exceed the Committee’s net debts outstanding  
19 from the primary. Because the Committee received no excessive contributions, the Commission  
20 finds no reason to believe that the Committee violated 2 U.S.C. § 441a(f) in relation to these  
21 allegations. Also, the Committee acknowledges in its Response that it initially failed to report  
22 accurately its debt from the primary election, which violates 2 U.S.C. § 434(b)(8) and 11 C.F.R.  
23 §§ 104.3(d), 104.11(a). *See* Comm. Resp. at 3, MUR 6676. Yet, the relatively low amounts of

- 1 primary debt do not merit further use of Commission resources, *see* 72 Fed. Reg. at 12,545-46,
- 2 and the Commission therefore exercises its prosecutorial discretion to dismiss this violation
- 3 under *Heckler*, 470 U.S. 831, and reminds the Committee regarding the Act's requirements for
- 4 disclosing its primary debt.

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