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JAN 27 2012

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PETER J. VROOM)
 611 Oakley Place)
 Alexandria, Virginia 22302)
 (703) 548-4502)
 Plaintiff,)
)
 v.)
)
 FEDERAL ELECTION COMMISSION)
 999 E Street, NW)
 Washington, DC 20463)
)
 Defendant)
)

Case: 1:12-cv-00143
 Assigned To : Collyer, Rosemary M.
 Assign. Date : 1/27/2012
 Description: Pro Se Gen. Civil

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. Introduction and Summary

1. This complaint is a petition for review under 2 U.S.C. § 437g (a)(8) of a November 29, 2011 order of the Federal Election Commission (the FEC or the Commission) dismissing an administrative complaint (MUR-6455) filed with the Commission by plaintiff Peter Vroom. Mr. Vroom's administrative complaint sought action by the Commission against the General Electric Company and Penske Truck Leasing, LP, for their June 2009 filing with the Commission of false and misleading information in order to obtain an Advisory Opinion (AO 2009-18) from the FEC

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permitting the disaffiliation of the Penske PAC from the General Electric Company Political Action Committee (GEPAC). The FEC's consideration of a disaffiliation request of previously affiliated political action committees is a very significant step because disaffiliation allows the two entities to cease the aggregation of their political contributions for purposes of their sharing of a single contribution limit.¹ In evaluating disaffiliation requests, the FEC uses a series of ten different factors to determine whether the entities are independent, with the factor relating to any ongoing financial support between the entities being particularly critical in the assessment of independence.²

2. Mr. Vroom's FEC complaint contained detailed documentation showing that Penske remains completely dependent upon GE for its financial survival and that the actual financial investment by GE in the Penske Truck Leasing joint venture approaches 85 percent. The bulk of the supporting documentation provided to the FEC consisted of Mr. Vroom's November 1, 2010 complaint to the Securities and Exchange Commission (SEC), in which he alleged that GE's March 28, 2009 deconsolidation of Penske from its balance sheet, which allowed GE to remove \$7.5 billion in debt (GE's line of credit to Penske) from its SEC filings viewed by shareholders, was illegally accomplished through

¹ The Act and Commission regulations provide that committees established, financed, maintained or controlled by the same corporation, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated. 2 U.S.C. 441a(a)(5); 11 CFR 100.5(g)(2) and 110.3(a)(1)(ii). Contributions made to or by affiliated committees shall be considered to have been made to or by a single committee, and thus such committees share contribution limits. 11 CFR 110.3(a)(1).

² (ii) In determining whether committees not described in paragraphs (g)(3) (i)-(iv) of this section are affiliated, the Commission will consider the circumstantial factors described in paragraphs (g)(4)(ii) (A) through (J) of this section. The Commission will examine these factors in the context of the overall relationship between committees or sponsoring organizations to determine whether the presence of any factor or factors is evidence of one committee or organization having been established, financed, maintained or controlled by another committee or sponsoring organization.

a series of prior loans from GE to Penske. Accordingly, GE remains the control party in the Penske Truck Leasing Joint Venture and the FEC should have denied disaffiliation of their respective Political Action Committees.

3. Upon Mr. Vroom's review of the FEC's dismissal letter issued on December 2, 2011, (Ex. 1) it was immediately apparent that the FEC had not considered any of the critical supporting documentation that Mr. Vroom had provided with his complaint.

When the FEC posted the documents relating to Mr. Vroom's complaint, along with the GE and Penske responses, on its website 30 days after the issuance of its dismissal, none of the extensive supporting documents Mr. Vroom had provided with his complaint filing were included.

4. On January 3, 2012, Mr. Vroom made an inquiry with the FEC about the missing documentation and he received a phone call on January 6, 2012 from FEC counsel who informed him that the documents (which had been notarized by Vroom and sent both hard copy and electronically to the FEC by Mr. Vroom and his attorney no fewer than three times), had been separated from his complaint and had not been considered by the FEC or answered to by the Respondents. Given that the Securities and Exchange Commission, as part of its own separate investigation of the GE/Penske financial deconsolidation, had independently contacted the FEC to also provide them with Mr. Vroom's documents the omission by the FEC to consider the documents appears inexplicable.³ Significantly, a supplemental document Mr. Vroom provided to the FEC

³ The cover letter to Vroom's complaint specifically noted the importance of the FEC's review of the SEC Complaint documentation he included with the Complaint: "You are receiving this complaint in conjunction with a complaint filed November 1, 2010 by Mr. Vroom with the Securities and Exchange Commission (SEC)...A copy of the complaint

on March 16, 2011 as part of its Complaint, receipt of which FEC's counsel confirmed on March 17, 2010, was also excluded from the record of documents the FEC considered.

(See, electronic postings for MUR-6455). (Ex. 2)

5. Mr. Vroom wrote to FEC counsel on January 6, 2012 providing documentation of his FEC submissions (Ex. 3) and expressing his deep concern with the failure of the FEC to consider any of the key supporting documents relating to his complaint. Mr. Vroom asked if the FEC had a process available for reconsideration of his complaint short of his filing a petition for review with the District Court. Having received no response from the FEC, Mr. Vroom wrote again on January 10, 2012, urging that an early response be provided as he had only 60 days to file a petition with the Court. Again, the FEC provided no response forcing Mr. Vroom to file this action.

6. As more fully discussed in the Background Section of this complaint, the FEC's numerous and repeated failures in the handling of Mr. Vroom's complaint raise serious questions relating to FEC's review process. The concern is supported by the fact that the FEC first initially disapproved and then subsequently sustained its July 28, 2009 decision to approve the GE/Penske AO request for disaffiliation of their respective political action committees.

7. In the Commission's July 28, 2009 approval of GE/Penske's AO Request for Disaffiliation, the Commission took the highly unusual action of going against the

to the SEC is provided herewith that fully documents the false, misleading and incomplete statements made by GE/Penske in their FEC advisory opinion request relating to disaffiliation. Much of the SEC complaint focuses on GE's illegal deconsolidation of Penske, which is directly related to the criteria utilized by the FEC for purposes of PAC disaffiliation. On pages 74-79 of the complaint you will find discussion specific to GE/Penske's fraudulent representations to the FEC."

recommendation of its own General Counsel, who after completion of a careful six week review of the Request, recommended that the Commission deny disaffiliation of the GE and Penske PACs.

8. Furthermore, the FEC's decision to grant disaffiliation to GE and Penske, where there exists a razor thin 50.1% to 49.9% joint venture ownership interest ratio was unprecedented in the FEC's history. No organization having more than a 40% outside interest has ever previously been granted disaffiliation by the FEC. (Ex. 4)

9. FEC records also show that less than 24 hours before the Commission met on July 28, 2009 to consider the GE/Penske AO Request, the FEC General Counsel's Office was instructed by parties unknown within the Commission to provide the Commission with a second opinion (Draft Opinion B) approving the GE/Penske AO Request.

10. The July 28, 2009 FEC hearing record during which Draft B, AO 2009-18 was approved makes it evident that the GE/Penske disaffiliation decision was seen as controversial by the Commission members and its approval appears to have been negotiated and determined prior to the actual hearing. As shown from a transcript of the audio recording of the Commission's consideration of AO 2009-18, Commissioner Weintraub specifically referenced "*all the work that went on behind the scenes for folks to get to the place where I think we will have votes to approve it.*" (Ex. 6)

11. The hearing record also shows the recusal of two FEC attorneys, Rosemary Smith, the FEC Associate General Counsel, whose division is responsible for considering AO Requests and issuing advisory opinions, and Kevin Plummer, Executive Assistant to FEC Vice Chairman Petersen. Although the reason for the recusals is unknown, Mr. Plummer

was a former associate with the Wiley Rein Law Firm and had worked with Ms. Carol Laham, the Wiley Rein partner and former FEC General Counsel staff member, who represented Penske in the AO Request.

12. FEC Commissioner and Vice Chairman Petersen, also a former partner at the Wiley Rein Law Firm, and Mr. Plummer's direct report, did not recuse himself from consideration of the GE/Penske AO and in fact, spoke in favor of Draft B approving the GE and Penske PAC disaffiliation and then made the motion and voted for its approval. (See Ex. 5).

13. The November 29, 2009 vote certification provided from the FEC's Commissioners consideration and dismissal of Mr. Vroom's complaint against GE/Penske, shows that Commissioner Petersen was present for the meeting but that he was the only Commissioner that did not vote. No information is provided by the FEC as to why Commissioner Petersen abstained from voting.

II. Jurisdiction

14. The Commission voted to dismiss Peter Vroom's complaint on November 29, 2011. This action was filed within 60 days of the Commission's vote, as required by 2 U.S.C. § 437g(a)(8) (B). See *Jordan v. FEC*, 68 F.3d 518 (D.C. Cir. 1995). This Court has jurisdiction over this action seeking review of the FEC's dismissal of Peter Vroom's complaint under 2 U.S.C. § 437g(a)(8)(A) and 28 U.S.C. § 1331.

III. Parties and Standing

15. Plaintiff Peter Vroom is the former President and CEO of the Truck Renting and Leasing Association (TRALA). The GE/Penske joint venture is TRALA's largest and most influential member and Penske's CEO, Brian Hard, was and remains a TRALA Board member and officer. On July 8, 2009, Vroom's employment at TRALA was terminated "without cause" after Vroom and TRALA counsel sought an investigation of conflicts of interest and tax fraud among members of TRALA's governance. At the time Mr. Vroom sought the investigation in March 2009, Mr. Hard and GE/Penske were engaged in GE's illegal deconsolidation of Penske Truck Leasing and maintained substantial undisclosed business relationships with the primary target of the investigation. Mr. Hard and GE/Penske then acted directly to derail the investigation after it had been approved by TRALA's governance and to end Vroom's employment.⁴

16. These actions by Mr. Hard and GE/Penske were directly linked to GE's simultaneous illegal deconsolidation of Penske from its balance sheet and its subsequent ability to conceal billions of dollars of debt from GE stockholders and investors. The factors utilized by the Commission in evaluating disaffiliation requests largely corresponds with the criteria for deconsolidation of corporate subsidiaries and the

⁴ Prior to GE/Penske's actions to suddenly terminate Vroom's employment "without cause," Vroom had been universally praised by TRALA's governance for his leadership of TRALA and consistently received outstanding performance evaluations as TRALA's CEO. Penske's V.P. and General Counsel, Michael Duff, represented Mr. Hard as one of the 5 members of TRALA's Executive Compensation Subcommittee and was responsible for evaluating Vroom's performance. Just weeks prior to GE/Penske's actions to end the investigation and terminate Vroom's employment, Duff, on behalf of GE/Penske and Mr. Hard, had provided Mr. Vroom with an outstanding annual performance evaluation.

determination of the “controlling party” required under FASB FIN-46.⁵ The FEC’s failure to adequately investigate and pursue Vroom’s complaint and to cooperate fully with the SEC investigation has allowed GE/Penske to continue to operate in violation of the law and denied Mr. Vroom the benefits of the FEC’s findings on the merits of his complaint.

IV. Background

A. Penske’s June 17, 2009 Request for an FEC Advisory Opinion Permitting Disaffiliation of the Penske PAC from GEPAC

17. On June 17, 2009, counsel for Penske Truck Leasing, Carol A. Laham, a former FEC staff attorney and now a partner at the Wiley Rein law firm, filed GE/Penske’s AO Request with the FEC. The thirteen page AO petition and one hundred pages of attachments provided to the FEC contained so little information about the nature and magnitude of the financial support provided by GE to Penske that the FEC’s attorney’s were compelled to request additional information from GE/Penske.

18. In Penske’s July 2, 2009 response to FEC Counsels Rothstein and Gallagher, Ms. Laham, the author of the AO request for GE/Penske’s PAC disaffiliation, expressed her apparent “surprise” to learn that GE provides Penske Truck Leasing with its primary

⁵ In 2004, following the implementation of FASB FIN 46 in 2003, GE began consolidating Penske Truck Leasing in their financial reports. At the time, GE/Penske Truck Leasing Joint Venture was 79% owned by GE. FIN 46 was adopted in response to Enron and other increasingly widespread abuses of limited partnerships and “off balance sheet” treatments of Variable Interest Entities (VIE’s) such as the PTL Joint Venture. For the first time, FIN 46 required that ownership be determined on the basis of factors indicating actual control of the entity, rather than the technical percentage of ownership.

source of funding, stating *“In response to your inquiry, we have learned that this credit facility is currently the Joint Venture's primary source of financing.” (emphasis added)*

19. However, Ms. Laham did not take the opportunity of the FEC's request for additional information on GE's ongoing financial support to Penske to share other pertinent information with the FEC General Counsel's Office that had direct bearing on the disaffiliation request. As detailed and documented in Vroom's complaint, the information not provided to the FEC by GE/Penske included: 1) the magnitude of the funding extended by GE to Penske (\$7.5 billion); 2) the duration of the funding commitment between GE and Penske Truck Leasing (extending until 2018); 3) the value of the discount in the interest rates extended by GE to Penske (approx. \$75 million annually); 4) the value of Penske Truck Leasing preferred stock held by GE (approx. \$300 million), and 5) numerous other funding arrangements totaling hundreds of millions of dollars existing between GE, Roger Penske and Penske Corporation, the owner of the Penske Truck leasing Joint Venture with GE. (Ex. 6)

20. Instead, Ms. Laham's brief response to the FEC emphasized that changes had been made in the terms of the credit line between GE and Penske that took place upon GE becoming a 49.9% minority partner and Ms. Laham stressed that *“they [GE/ Penske] anticipate that GE Capital Corporation will exercise its rights in the future to refinance Penske Truck Leasing's debt at “market rates.”*

**B. The FEC Office of General Counsel Recommends that the Commission Deny
GE/Penske's Disaffiliation Request**

21. Six days prior to the Commission's July 28th Meeting to consider the GE/Penske AO Request, the FEC General Counsel's Office issued its draft opinion, AO 2009-18, strongly recommending that the Commission deny the disaffiliation of the GE and Penske PACs on the basis of the substantial ongoing financial relationship between GE and Penske. The July 22, 2009 Draft AO Opinion highlighted the fact that the discounted rates extended by GE on its line of credit to Penske (the same rate GE extends to its wholly owned subsidiaries) had continued after GE's March 2009 deconsolidation of Penske as a subsidiary.

22. In responding to Penske counsel Laham's representation to the FEC that an adjustment to market rates in GE's highly favorable discounted interest rate to Penske "was anticipated," the FEC counsel's office stated unequivocally: the fact remains that the favorable rates on the line of credit have not changed. (Draft AO 2009-18, Page 13).

Although the Commission has concluded in prior advisory opinions that disaffiliated companies may maintain some customer-supplier relationships, in all of these situations the provision of funding or goods and services between the companies was either not in significant amounts or represented arm's-length transactions at commercially reasonable rates...
"Here, by contrast, the line of credit from GE Capital Corporation (an affiliate of the GE limited partners) constitutes the Joint Venture's primary source of funding and is provided at rates no less favorable than GE Capital Corporation would provide to a wholly owned subsidiary. Thus, this factor strongly indicates that the Joint Venture and

the GE companies remain affiliated. AO 2009-18, Draft Page
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23. In recommending that the FCC Commissioner's deny the disaffiliation request, FEC counsel cited previous AO decisions showing that the only prior AO Requests where disaffiliation had been approved despite ongoing financial relationships, all involved short-term *de minimis* financing at market rates.

C. Less Than 24 Hours Prior to Consideration of the AO by the Commission, the FEC General Counsel was Instructed to Issue Advisory Opinion Draft B

24. On July 27, 2009, one day prior to the Commission's July 28, 2009 Meeting to consider the GE/Penske AO Request, Penske counsel, Carol Laham, filed comments with the Commission appealing the draft opinion. Despite the overwhelming evidence presented by FEC General Counsel's Office in its draft opinion that disaffiliation should be denied premised upon the significant financial support GE continued to provide to Penske on discounted terms, in the ensuing 24 hour period the FEC General Counsel's Office issued "Advisory Opinion B" for the Commission's consideration at the July 28, 2009 hearing.

25. In issuing Advisory Opinion Draft B, the FEC General Counsel's Office made no recommendation and remarked: "We have been asked to circulate the attached alternative draft of the subject advisory opinion. Please place this draft on the agenda for July 28, 2009." Based upon the firm position of the General Counsel's Office against disaffiliation just hours prior, it is obvious that last minute intervention by undisclosed persons within the FEC were responsible for directing the General Counsel's Office to

produce Draft B; and enable a white-washed Opinion that approved the disaffiliation request. Significantly, Advisory Opinion B provided no new evidence but reached a diametrically opposite result permitting disaffiliation

26. In AO Draft B, the General Counsel's Office simply deleted all references to the substantial evidence that supported disapproval of the disaffiliation request, including any discussion about the magnitude of the ongoing financial support that GE continued to provide to Penske. A review of the changes made by the FEC General Counsel's Office between its original AO Draft A and Draft B, (Ex. 7) shows that the FEC's attorneys did not even remove the citations provided in Draft A to previous AO's that substantiated its view at the time that the approval of the GE/Penske AO Request was unprecedented.

27. The FEC General Counsel's Office completely reversed its prior decision/recommendation to disapprove the disaffiliation request in only a few short hours. This contrasts with the period of six weeks of careful consideration and research into the GE/Penske relationship that FEC Counsel spent before determining that the disaffiliation request should be disapproved.

28. In Draft B, the FEC totally disregarded any consideration of the enormity of the direct financial support and subsidized interest rate terms GE provides to Penske to support its conclusion that the ongoing post-deconsolidation financial transactions between GE and Penske now [conveniently] fit into the examples where disaffiliation was approved. The last minute editing done by the FEC General Counsel's Office to Draft A in order to quickly produce Draft B, because this was the result an unidentified

FEC Committee person apparently dictated, not only taints the integrity of the FEC's review process; but also the integrity of our nation's political process. As shown below and in Ex. 8, the hurried cut and paste approach the FEC applied to justify a result that favors the two corporate giants, suggests that the FEC applies different standards when it acts to protect the integrity of our electoral process; one that applies to corporate giants with substantial political and economic clout; and another that it applies to everyone else.

D. The FEC's Analysis of Mr. Vroom's Complaint Demonstrates that it Failed to Consider any of his Supporting Documentation

29. The Commission's December 2, 2011 letter dismissing Vroom's complaint referenced its reliance upon the Legal and Factual Analysis provided by the FEC General Counsel's Office. However, the FEC General Counsel did not consider substantial evidence that Vroom provided with his complaint when it determined to dismiss his claim. The FEC has confirmed that it omitted to review or consider extensive amounts of documentation that Mr. Vroom and the SEC provided. Instead it relied solely on the two page cover letter that transmitted Vroom's complaint. To demonstrate the resulting prejudice, when the FEC addressed the most critical issue in Vroom's complaint – the ongoing financial relationship between GE and Penske – it stated: "*the complaint provides no information to support this claim.*"

The complaint further alleges that "GE/Penske failed to inform the Commission that GE loaned the majority of the funds to Penske in order for Penske to make the additional ownership purchases from GE," Complaint, p. 3. However, the complaint provides no information to support this claim, and the Penske PAC Respondents assert, in contrast, that "GE did not loan the funds necessary for Penske Corp and

related entities to make the additional ownership purchase in March 2009 that reduced GE's ownership below 50%." Response of Penske PAC Respondents, p. 7; Duff Aff. □ 4.

Contrary to the FEC's statement, Vroom's complaint included substantial evidence of the GE/Penske financial relationship that the FEC should have considered but determined not to consider.

30. The FEC also failed to consider Vroom's supplemental information filing electronically filed on March 16, 2011. In the Supplemental filing Vroom disclosed a series of re-purchase transactions of the joint venture by Penske with money borrowed from GE during the period from June 2006 through March 2009.

31. FEC also failed to consider the evidence contained in Mr. Vroom's November 1, 2011 complaint to the Securities and Exchange Commission (SEC), which was filed in conjunction with the FEC complaint as a primary supporting document.

D. The FEC Analysis Demonstrated its Bias towards Obtaining a Finding to Benefit GE/Penkse

32. Even without the FEC's consideration of the extensive supporting documentation that Mr. Vroom provided with his complaint, the FEC General Counsel's Legal Analysis demonstrates that it simply accepted all statements made by GE/Penske at face value and failed to make even the most basic inquiries with respect to the answers provided by the Respondents. The Respondent's answers to Vroom's FEC allegations are incredibly vague, bereft of any detail and non-responsive to the specific allegations put forth. The FEC made no effort to follow up with the respondents to seek answers responsive to the

allegations. Also, not once during the course of the year-long investigation did the FEC contact Vroom with respect to any aspect of the investigation.

1. Penske's Series of Re-Purchase Transactions of GE's Ownership in the Joint Venture

33. Mr. Vroom's complaint described a series of four "Re-Purchase Transactions" made by Penske that reduced GE's ownership ratio of the Penske Truck Leasing Joint Venture from 79% to 49.9%. The final and smallest transaction leading up to GE's March 28, 2009 deconsolidation of Penske from its balance sheet was a 1% purchase by Penske on March 28, 2009 for \$22.8 million. The excerpt shown from the FEC Legal Analysis demonstrates that: 1) The FEC did not consider Mr. Vroom's extensive documentation on the series of Penske re-purchases using GE's money; and 2) Penske's statement by affidavit completely failed to address the series of re-purchase transactions that Vroom described but spoke to only the smallest 1% transaction claiming that it did not use money borrowed from GE.

The complaint further alleges that "GE/Penske failed to inform the Commission that GE loaned the majority of the funds to Penske in order for Penske to make the additional ownership purchases from GE," Complaint, p. 3. However, the complaint provides no information to support this claim, and the Penske PAC Respondents assert, in contrast, that "GE did not loan the funds necessary for Penske Corp and related entities to make the additional ownership purchase in March 2009 that reduced GE's ownership below 50%." Response of Penske PAC Respondents, p. 7; Duff Aff. 4.

34. As should have been obvious to the FEC, Penske intentionally avoided speaking to the series of much larger purchase transactions that Vroom described in his complaint because the Respondent could not truthfully make the same assertion.

2. The FEC raises no Questions Concerning the Continuation of GE's Extension of Billions of Dollars in Discounted Loans to Penske until the Year 2018

35. The pattern of the FEC's willingness to accept Penske's brazenly incomplete and evasive responses in answering Mr. Vroom's complaint allegations continues throughout its Legal Analysis with respect to the other responses provided in the Penske affidavit. Mr. Vroom provided the FEC with documentation showing that the loan agreement and the discounted loan rates extended by GE to Penske were not scheduled to end until the Year 2018, a key concern identified by the FEC General Counsel itself in its original Advisory Opinion denying disaffiliation.

GE 2011 Proxy Statement

Related Person Transactions.

GE Capital and its subsidiaries extend working capital, equipment and acquisition loans and guarantees to Truck Leasing, L.P. and its subsidiaries, and those totaled approximately \$5.4 billion as of December 31, 2010. The largest aggregate principal amount outstanding during 2010 did not exceed \$5.6 billion. Interest rates, which are based on loan duration and currency, ranged from 0.19% to 6.32% in 2010. GE Capital and its subsidiaries provide this funding under facilities which mature by 2018 under terms and conditions which are the same as or no less favorable than those extended to GE Capital's wholly owned operating subsidiaries.

In response, Penske's affidavit asserts only that "*the changes to the revolving credit agreement are not delayed until 2018.*"

Finally, the complaint alleges that "GE/Penske failed to inform the Commission that the changes they refer to in [Advisory Opinion 2009-18] for ending the loan agreement between GE and Penske are not scheduled to take place until the year 2018." Complaint, p. 3. However, the Penske PAC Respondents assert that this allegation is simply incorrect, i.e., the respondents assert that the changes to the revolving credit agreement are not delayed until 2018. Response of Penske PAC Respondents dated April 4, 2011, p. 7; Duff Aff. 6.

36. It is astounding that the FEC, upon receiving GE/Penske's evasive response to Mr. Vroom's allegation failed to even consider that GE's financial support to Penske continues through 2018. GE extends billions of dollars of financial support to Penske on discounted credit terms pursuant to their ongoing financial arrangement.

37. The FEC's treatment of the information contained in Vroom's complaint relating to the \$7.5 billion credit line that GE provides to Penske, that it is ongoing until 2018 is inexplicable. As shown from the legal analysis FEC provided, the FEC simply ignores the fact that two and a half years after it overruled the recommendation of its General Counsel to deny the GE/Penske PAC disaffiliation, and two and a half years after it took the unprecedented step of approving disaffiliation of the two PACs despite their ongoing financial relationships, nothing has changed and GE/Penske does not even offer the FEC a date in the future when the discounted funds it continues to provide to Penske, approaching \$100 million each year, will end.

38. The FEC General Counsel, in attempting to rationalize its position that the ongoing flow of billions of dollars of discounted funds from GE to Penske is not a concern with respect to disaffiliation, can only fall back upon the convoluted language that it utilized in its last minute construction of the alternative "Draft B" AO that it was

instructed to provide to the Commission just hours before the Commission's July 28, 2009 hearing in which it approved the disaffiliation. The FEC General Counsel fails to explain, because it cannot explain with a straight face, why GE/Penske is allowed to continue to operate separate PACs and enjoy the benefit of two separate contribution limits, when two and a half years after the disaffiliation, it is still wholly reliant upon GE for its financial survival.

In addition, the complaint alleges that "GE/Penske failed to inform the Commission of the magnitude of the revolving line of credit - \$7.5 billion." Complaint, p. 3. However, in Advisory Opinion 2009-18, the Commission determined that the newly-renegotiated terms of the line of credit between GE Capital Corporation and the Joint Venture may be seen as part of the process by which the Joint Venture was separating from the GE companies 4 Advisory Opinion 2009-18, p. 9. This conclusion was not affected by the specific amount of the line of credit. Indeed, the Commission did not question the actual size of the credit line, but was fully aware of its significance, noting that the Joint Venture's primary source of financing was the revolving line of credit held by GE Capital Corporation. Advisory Opinion 2009-18, p. 9.

39. Although as shown above, the Legal Analysis makes no reference to it in dismissing Mr. Vroom's complaint, certainly the FEC General Counsel cannot have forgotten its own principal reason for strongly recommending that the Commission vote against the GE/Penske PAC disaffiliation. It was not fact that a line of credit continues to exist between GE and Penske but the tens of millions of dollars in discounted funds that GE continues to provide to Penske through the line of credit that establishes the control element that GE continues to maintain over Penske.

E. GEPAC's Status as one of the Nation's Largest PAC's and Campaign Contributors Demanded that the FEC Closely Adhere to Federal Campaign Laws and Regulations involving Disaffiliation Requests

40. The General Electric Political Action Committee is among the country's largest contributors of federal campaign donations and the FEC should have been particularly mindful here of the importance of applying its standards for disaffiliation evenly and equally. In 2009-2010, GEPAC made \$2.03 million in campaign contributions to U.S. policy makers in Congress that averaged over \$4,000 per member of the House and over \$7,000 per member of the Senate. Over the past ten years, the company's PAC and employees have given \$13 million in federal contributions, with \$1.6 million of it going to members of the House Ways and Means and Senate Finance Committees.

41. GE also has one of Capitol Hill's busiest lobbying operations, spending \$205 million over the past ten years to influence lawmakers and regulators. *The New York Times* reported that the corporate giant paid no taxes in 2011 while receiving a \$3.2 billion tax benefit. *The Times* article noted that GE achieved these results not only through creative accounting, but also by lobbying Congress for less stringent tax laws. Since 2006, the company has earned \$26 billion in profits has not paid any income tax and received a refund of \$4.1 billion for that time period.

F. GE/Penske's Hiring of Former FEC Insiders to Plead their Case Raises Concerns about Improper Influence

42. The numerous relationships existing between FEC Commissioners, FEC staff and counsel for both GE and Penske, when viewed together with the unusual circumstances

of GE/Penske's 2009 AO approval and the FEC's subsequent mishandling of Mr. Vroom's complaint, inevitably raises concerns about the extent of influence involved in the FEC's 2009 approval of GE/Penske's AO Request and its more recent dismissal of Mr. Vroom's complaint.

43. Beyond the previously described relationships existing between members of the Commission, Commission staff and Penske's counsel at Wiley Reins, GE also hired Lawrence Noble, the FEC's former General Counsel, and currently a partner with the law firm of Skadden, Arps, to represent them in defending against Mr. Vroom's complaint. Consequently, the ability of Mr. Vroom, an individual having no previous relationships with the FEC, to receive fair handling of his complaint against one of the largest corporations in the World and its legions of lawyers formerly employed in key positions within the FEC, required that the FEC and its staff treat his complaint with complete objectivity. Instead, just the opposite occurred. The FEC jumped through hoops in yielding to GE/Penske's influence by ignoring its own factors for disaffiliation and going completely beyond any previous precedent for the approval of related entity PAC disaffiliations. Then when faced with Mr. Vroom's complaint providing the FEC with extensive documentation definitively showing that GE remained the control party in the Penske Truck Leasing Joint Venture, the supporting documents mysteriously disappeared, thereby allowing the FEC to issue a dismissal of Vroom's complaint without addressing any of the direct evidence he provided. Had Mr. Vroom not carefully reviewed the documents and raised his suspicions with the FEC, he would have never

known that the critical supporting documents from his complaint had not been considered by the FEC.

G. The FEC Must Immediately be Required to Reconsider its Disaffiliation Decision to Protect the Integrity of the Federal Campaign Finance Laws

44. If the FEC is allowed to so capriciously interpret and apply its own regulations in this area, what would prevent controlled entities similar to Penske Truck Leasing in its relationship to GE, from simply making empty promises to the FEC about their plans to end the financial support and then continue to operate just as they had before but with double the political contribution limits available to them? It is precisely to avoid questions of preference and favoritism that the Commission must faithfully and evenly apply federal campaign finance law and its own regulations. This is all the more true when dealing with multi-billion dollar corporations like GE and Penske, who wield enormous influence. Perceptions of favoritism can be erosive and the FEC's granting of disaffiliation to the GE and Penske PACs in the absence of any precedent in FEC history, should concern all Americans.

45. These are not esoteric issues but go directly to the equal application of campaign laws in the United States to ensure that no individual or entity is allowed to circumvent laws affecting the election process. If the FEC decision is allowed to stand, companies like GE, having involvement in dozens of partnerships and joint ventures, could control and/or influence the distribution of campaign contributions far beyond its own PAC, thereby circumventing the campaign contribution limits imposed upon GEPAC. As the result of the FEC's decision, GE now has the ability, through its control of Penske Truck

Leasing, to direct contributions not only for its own PAC but for Penske PAC as well. Mr. Vroom has already shown that in the 2008-10 election cycle, shortly after receiving its disaffiliation approval from the FEC, GE and Penske together exceeded the legal campaign contribution limits to Representative Gerlach (R-PA), the congressman representing the district containing Penske's corporate headquarters. Had Mr. Vroom not filed his complaints against GE/Penske with the FEC and SEC, it is likely that these excess contributions by GE/Penske to congressional candidates would have continued and grown in the current 2011-12 election cycle.

WHEREFORE: for the reasons stated Mr. Vroom requests that this Court instruct the FEC to consider Vroom's complete complaint and to evenly apply its own precedence from previous FEC AO rulings and the ten factors of affiliation to determine whether the GE and Penske PAC's are affiliated; or alternatively, to issue a declaratory judgment that declares that the GE and Penske PACs are in fact affiliated, and that the decision to the contrary that the FEC issued is arbitrary and capricious.

Respectfully submitted



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