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March 12, 2003

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**BY HAND DELIVERY**

Lawrence Norton, Esq.  
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Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
2003 MAR 12 P 4: 24

Re: MUR 5181 (Precision List, Inc.)

Dear Mr. Norton:

This office represents Precision List, Inc. ("Precision"), which has received a Factual and Legal Analysis ("Analysis") in connection with Matter Under Review ("MUR") 5181. The Federal Election Commission ("FEC" or "Commission") also issued an Order to Submit Written Answers and Subpoena to Produce Documents on February 12, 2003. That subpoena has been modified by agreement as documented in Mark Allen and Mary Taksar's letter dated March 6, 2003. The response to the Subpoena is attached at Exhibit 2.

In addition, Precision List herein responds to the Factual and Legal Analysis issued by the Commission in order to correct the apparent misunderstanding that the Commission has with respect to the business relationship between Precision List and Ashcroft 2000. As will be shown below, the factual predicates, which were the basis of the Commission's finding, were in error.

**THE FACTUAL AND LEGAL ANALYSIS**

**The Facts as Stated by the Commission**

The Factual and Legal Analysis in this matter states that:

it appears that Ashcroft 2000 may have rented, licensed or sublicensed the list to Precision List, Inc. ("PLI"). PLI was incorporated in Virginia in 1997 and apparently acts as a list manager and is involved in transactions related to the rental, licensing or sublicensing of mailing lists. PLI appears to work

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closely with Precision Marketing, Inc. ("PMI") and apparently is a wholly-owned subsidiary of PMI.

Analysis at 3.

The Analysis goes on to say that "document's in the Commission's possession suggest a close nexus between PLI and PMI in the area of financial transactions, including the possible commingling of funds between PLI and PMI. For example, two checks drawn on an operating account of vendor Omega List Company made payable to "Precision List Co." in the amounts of \$18,539.38 and \$10,000, which apparently were related to list royalties, were deposited into an account belonging to PMI on April 3, 2000, rather than being deposited into a PLI account." Analysis at 4-5.

Finally, the Commission deduces that certain payments reported by Ashcroft 2000 as having been from Precision Marketing, Inc. "may actually reflect payments from PLI. If the mailing list was not developed by Ashcroft 2000 for its own use, any rental, licensing or sub-licensing of the list by Ashcroft 2000 to PLI may have resulted in the making of a corporate contribution." Analysis at 5.

#### The Actual Facts

First, the most important fact that the Commission needs to understand is that Precision List, Inc. did not rent, license or sublicense any list from Ashcroft 2000. Affidavit of Rosann Garber at ¶ 2, attached at Exhibit 1. Further, Precision List made no payments to Ashcroft 2000 to rent a list from that entity. *Id.* Rather, Precision List acted in the capacity as a List Manager for Ashcroft 2000. *Id.*<sup>1</sup> In other words, Precision List was an Ashcroft 2000 vendor, not a purchaser or renter of a list from Ashcroft 2000.

Specifically, Ashcroft 2000 presented a list to Precision List and requested Precision List to manage the rental of that list on behalf of Ashcroft 2000. In presenting the list to a list manager, Ashcroft 2000 warrants that it has the right to rent that list. *Id.* at ¶ 5. In return for managing the list, Precision List received a 20% standard industry commission on all rentals of the Ashcroft 2000 list. *Id.* at ¶ 7. The process works as follows: 1) Precision List, as list manager markets the list for rental. 2)

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<sup>1</sup> As seen in the attached Affidavit and in documents responsive to the Subpoena, Precision List also acted as a list broker for Ashcroft 2000 in connection with two prospecting mailings. Garber Affidavit at ¶¶ 3 & 4.

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Precision List receives requests/orders from list brokers to rent the list. 3) Precision List processes the order. In so doing, Precision List accepts or denies the order to rent the list, either on behalf of the client or with approval from the client (Ashcroft 2000). 4) If approval is granted, the list broker pays Precision List the agreed upon rental price for the list. Finally, 5) After receiving payment, Precision List deducts its 20% Commission on the rental, the broker's Commission on the rental, as well as any additional costs associated with the rental which, in the case of Ashcroft 2000 was a fee to the company that houses the list, and cuts a check to Ashcroft 2000 for the rental of the list. This is Ashcroft 2000 list rental income. Id. at ¶ 5. These are the only checks cut to Ashcroft 2000 from Precision List. Id. at ¶ 6. This is not rent paid to Ashcroft 2000 to rent a list. See id. at ¶ 2.

Second,

while Precision List and Precision Marketing do have a few common clients, the Commission apparently misunderstands the business relationship between the two entities. Precision List and Precision Marketing perform two very different functions for clients. When dealing with a common client, Precision Marketing develops a direct mail piece for prospecting and once approved by the client, Precision List recommends a set of lists for the client to rent for prospecting purposes. The client, not Precision Marketing, approves this list. Thus, while there may be communication between the two companies, it is merely a function of having a common client and each performing services for that client. The two companies have no contact with one another with respect to their remaining clients. Indeed, Precision Marketing clients only constitute 20-25 % of Precision List clients.

Id. at ¶ 10.

Third, Precision Marketing is not wholly owned by Precision Marketing, and Precision Marketing has no role in the day-to-day operations of Precision List. Id. at ¶ 9.

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Finally, there is no commingling of funds between Precision List and Precision Marketing. "Precision List has never deposited any funds belonging to Precision Marketing." Id. at ¶ 11. Further, "Precision Marketing has never deposited any funds belonging to Precision List." Id. With respect to the two checks referenced in the Factual and Legal Analysis, upon receipt of those checks Precision List called Omega List, which is the company that had written the checks, and asked to whom the checks belonged because they did not belong to Precision List. Id. at ¶ 12. Precision List was told that the checks were meant to be cut to Precision Marketing. Id. As a result, to assist Omega, Precision List delivered the checks to Precision Marketing. Id. Had Precision List deposited those checks it would have resulted in inadvertent commingling. However, this is the inverse of commingling. Precision List is aware of no other instance since its creation in 1997 that a check meant for Precision Marketing was cut to Precision List and is aware of no instance in which a check cut to Precision Marketing was meant for Precision List. Id.

#### THE LEGAL ANALYSIS

The FEC's discussion of the law as it relates to Precision List is inapt. Specifically, the legal analysis was premised on the mistaken assumption that Precision List rented a list from Ashcroft 2000 and therefore may have made a corporate contribution. Quite simply, as underscored by the facts above, this did not happen. Precision List did not rent, license, or sublicense a list from Ashcroft 2000 and made no payments to Ashcroft 2000 to rent a list from that entity. Precision List could not have made a corporate contribution on this basis.

Further, to the extent that Precision List acted as a vendor to Ashcroft 2000, all transactions were arms length and standard in the industry. See Garber Affidavit at ¶¶ 5, 7, & 8. Thus, Precision List is able to state with certainty that, to the extent it acted as a list manager, the list was rented to other entities at the fair market value of the list. Id. at ¶ 8. The rental price of the list was determined by the price of other similarly situated lists on the rental market. Id. All such transactions were arm's-length transactions. Id. at ¶ 5. Further, Precision List can state that the terms of the list rental agreements were consistent with standard list rental agreements. That is, the list was rented for a one-time usage. Id.<sup>2</sup>

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<sup>2</sup> To the extent any list exchange agreements were approved by the client, they would have been for lists of equal value.

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Finally, Precision List is unable to explain why Ashcroft 2000 mistakenly reported its list rental income as having come from Precision Marketing, as suggested in the Factual and Legal Analysis. However, Precision List cannot be held accountable for this mistake, and, in the end, this mistake is irrelevant to the appropriateness of the Precision List transactions. Precision List made no corporate contribution to Ashcroft 2000.

#### CONCLUSION

The Commission took a guess as to the relationship between Precision List and Ashcroft 2000. The guess was wrong. The Commission could easily have discovered the facts without making an ill-advised reason to believe finding against Precision List. Thus, Precision List requests that the Commission take no further action against Precision List prior to reaching the probable cause stage since the reason to believe finding was so clearly premised on incorrect facts.

Sincerely,



Carol A. Laham

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**BEFORE THE FEDERAL ELECTION COMMISSION**

City of Washington )

)

MUR 5181

District of Columbia )

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**AFFIDAVIT OF ROSANN GARBER**

1. I am the President of Precision List, Inc. I have read the Factual and Legal Analysis prepared by the Federal Election Commission ("FEC" or "Commission"). It is clear from the Factual and Legal Analysis that the FEC misunderstands the function of Precision List in relation to Ashcroft 2000 and thus, this affidavit is designed to correct those misunderstandings.
2. Precision List did not rent, license or sublicense any list from Ashcroft 2000 and made no payments to Ashcroft 2000 to rent any list from that entity.
3. Precision List was a vendor to Ashcroft 2000 and functioned in two capacities: a list broker and a list manager.
4. As a list broker, Precision List recommended various lists to Ashcroft 2000 for use in connection with two prospecting letters to be sent by Ashcroft 2000 in early 1999. As a list broker, Precision List orders the list to be delivered to the client after obtaining client approval. Precision List receives an industry standard 20% commission for acting as a list broker. Once the list has been delivered to the client, Precision List has no further role in the transaction. For instance, Precision List does not confirm that a draft mailing has, in fact, been mailed and, if mailed, Precision List would have no way of knowing how many documents were distributed.
5. With respect to the list management business, a client presents a list to Precision List to be managed. When the client presents the list to Precision List the client warrants that it has the right to rent the list. Then, as a list manager, Precision List performs the following functions: 1) Precision List markets the list for rental. 2) Precision List receives requests/orders from list brokers to rent the list. 3) Precision List processes the order. In so doing, Precision List accepts or denies the order to rent the list, either on behalf of the client or with approval from the client. 4) If approval is granted, the list broker pays Precision List the agreed upon rental price for the list. Finally, 5) After receiving payment, Precision List deducts its 20% Commission on the rental, the broker's Commission on the rental, as well as any additional costs associated with the rental which, in the case of Ashcroft 2000 was a fee to the company that houses the list, and cuts a check to the client for the rental of the list. This is list rental income. Further, all transactions are arm's-length transactions and all rentals are for a one time usage of the list.
6. Precision List issued no other checks to Ashcroft 2000 other than the checks issued for list rental income as described in paragraph 5 above.
7. As a list manager, Precision List receives an industry standard 20% commission on the rental of the list.

8. The list was rented at the usual and normal value of the list in the market at that time. This rental price is determined by the going rate of similar lists on the market.

9. Precision List is not a wholly owned subsidiary of Precision Marketing. Precision List is a separate company from Precision Marketing and is not a subsidiary of Precision Marketing. Further, Precision Marketing has no role in the day-to-day operations of Precision List. Finally, I am a part owner of Precision List.

10. While Precision List and Precision Marketing do have a few common clients, the Commission apparently misunderstands the business relationship between the two entities. Precision List and Precision Marketing perform two very different functions for clients. When dealing with a common client, Precision Marketing develops a direct mail piece for prospecting and once approved by the client, Precision List recommends a set of lists for the client to rent for prospecting purposes. The client, not Precision Marketing, approves this list. Thus, while there may be communication between the two companies, it is merely a function of having a common client and each performing services for that client. The two companies have no contact with one another with respect to their remaining clients. Indeed, Precision Marketing clients constitute only 20 -25 % of Precision List clients.

11. Precision Marketing and Precision List do not commingle funds. To my knowledge, Precision List has never deposited any funds belonging to Precision Marketing, and Precision Marketing has never deposited any funds belonging to Precision List.

12. Precision List did receive two checks from Omega List which, upon review, I was able to establish did not belong to Precision List. Thus, I called Omega List and asked to whom these checks should have been issued. I was told that Omega had written the checks to Precision List in error and that the checks belonged to Precision Marketing. To assist Omega, I delivered these checks to Precision Marketing. I can think of no other time in the existence of Precision List that a check belonging to Precision Marketing was issued to Precision List. Further, I cannot think of a single instance in which a check belonging to Precision List was cut to Precision Marketing.

13. Finally, as a list broker or a list manager, Precision List is not involved in the client's use of the list for its own mailings. This is not the function of a list broker or a list manager.

Rosann Garber

Rosann Garber

March 12, 2003

Date

Sworn and subscribed to  
before me this 12th day of March, 2003.

Jim M. Dow

Notary Public

My Commission expires: 6-14-05

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