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2003 SEP 17 P 1:19

KENDALL COFFEY
MARK JOURNEY

TELEPHONE: 305/857-9797
TELECOPIER: 305/859-9919

September 16, 2003

Confidential and Privileged Information

VIA Federal Express and facsimile

Lawrence Norton, Esq.
General Counsel
Federal Election Commission
999 E. Street, NW
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2003 SEP 17 P 1:50

**RE: Response to Complaint by Peter Deutsch for Senate
MUR 5379 "the Complaint"**

Dear Mr. Norton:

Despite the aggressive use of the Complaint by candidate Peter Deutsch for political purposes,¹ it contains no facts that could establish any wrongdoing on the part of the U.S. Senate campaign of Miami-Dade County Mayor Alex Penelas ("Penelas Campaign"). In a submission centered upon "information and belief" allegations rather than any competent evidence, Deutsch presents three supporting documents: a newspaper column, a roster of contributions duly and timely submitted by the Penelas Campaign and a legal opinion by Deutsch's own counsel that directs no conclusions concerning Mayor Penelas and is even inconclusive concerning the fund-raiser Michael Fernandez. As is summarized in the

¹Rather than respecting confidentiality principles, candidate Deutsch provided copies to reporters at or immediately prior to the time his Complaint was filed with the FEC. "Deutsch files FEC Complaint over Penelas fund-raising." *Naples Daily News*, July 24, 2003. Thereafter, candidate Deutsch has used the filing of his Complaint as a principal theme in an unrelenting wave of vitriolic attacks upon Mayor Penelas *Miami Herald*, August 25, 2003.

paragraphs that follow, this bare, politically-motivated submission warrants no further action by the FEC and should be summarily dismissed.

As the undisputed facts will show, even hypothesizing that there were mistakes by Michael Fernandez - and the Penelas Campaign affirmatively states that, to its knowledge, all of the contributions made by individuals associated with Mr. Fernandez were legal and voluntary - the Complaint offers no support for candidate Deutsch's thesis that the Penelas Campaign knowingly accepted any allegedly illegal contributions pursuant to 2 U.S.C. § 441a(f). The core facts established by the attached supporting affidavits (Exhibits "A" and "B") cannot be credibly controverted: (a) the Penelas Campaign had no involvement in the e-mail allegedly sent by a subordinate of Mr. Fernandez in late March; (b) the Penelas Campaign was not even aware of any allegations concerning fund-raising efforts by Mr. Fernandez until a newspaper column was being written at the end of March; and (c) the Penelas Campaign did not receive any contributions from Mr. Fernandez until a fund-raising event was lawfully conducted by Mr. Fernandez some six weeks later on May 8, 2003.²

Very clearly, the Penelas Campaign reasonably believed that the contributions collected at this lawful fund-raising event were proper and proceeded with steps to timely and properly report all such donations. After the checks were received at that event by campaign volunteers, they were turned over to Fred Menachem, the finance director for the Penelas Campaign. Immediately following the event, Mr. Menachem gave the checks to Nelson Hincapie, his assistant. Thereafter, Mr. Hincapie, as was his custom, ascertained the names, employers and occupations of the contributors giving checks. As would be the ordinary practice, Mr. Hincapie reasonably assumed that all of the checks had been collected or contributed by supporters attending the event hosted by Mr. Fernandez and did not examine the checks to determine when they had been dated.

²After the column appeared on March 30, 2003, the Penelas Campaign did become aware of compliance and education efforts by Mr. Fernandez that included a presentation by election law experts to Mr. Fernandez's staff.

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Months later, in August 2003, after a phone call from one of the Penelas Campaign's attorneys, Mr. Hincapie reviewed for a second time the checks received in connection with Mr. Fernandez's fund-raiser. During that review, Mr. Hincapie was instructed to examine the dates of the checks, and he discovered that 11 of the checks turned over to the Penelas Campaign in conjunction with the May 8, 2003 fund-raising event were dated from April 2, 2003 to April 7, 2003. Those checks totaled \$2,100 and represented a fraction of the \$75,000 collected at the event hosted by Mr. Fernandez. Of the remaining checks, only three were written in late April, while the vast majority were dated in May, 2003.

At the time of Mr. Hincapie's research, even Carlos Trueba, the Penelas Campaign treasurer, was unaware that a fraction of the checks bore dates in early April 2003. Like Mr. Hincapie, Mr. Trueba also reasonably understood that all of the checks collected at the May 8, 2003 fund-raiser were contributed in relation to that event. In fact, because Mr. Trueba only reviewed computer printouts showing the information needed for reporting purposes, such as the amounts of the checks, donor identity and the like, he did not review the dates of issuance, which are not required for reporting.

Thus, it is plain that members of the Penelas Campaign reasonably believed that the contributions they received from supporters associated with Mr. Fernandez had made their donations in conjunction with the May 8, 2003 fund-raiser. Equally clear is the fact that nothing in candidate Deutsch's submission can rebut these undisputed facts. Under the circumstances, there is no basis for an allegation that anyone in the Penelas Campaign knowingly accepted any contributions that were allegedly illegal.

We respectfully submit that because the basic facts with respect to Mayor Penelas are free from any genuine dispute, it is manifest that there is no probable cause to pursue an investigation. Rather than allow candidate Deutsch to misuse further the processes and resources of the FEC, we believe that the matter should be dismissed. Indeed, when a candidate files a complaint to leverage paltry speculations into strident personal attacks, the misuse of FEC processes could have potential ramifications even beyond any impact on the Penelas Campaign.

COFFEY & WRIGHT, L.L.P.

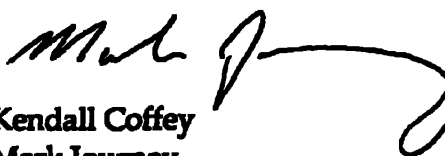
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Page 4

Thank you for your consideration of this matter.

Respectfully submitted,


Kendall Coffey
Mark Journey

MAJ:jc

COFFEY & WRIGHT, LLP.

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IN RE: Alex Penelas US Senate Campaign

MUR 5379

AFFIDAVIT OF NELSON HINCAPIE

STATE OF FLORIDA)
)SS
COUNTY OF MIAMI-DADE)

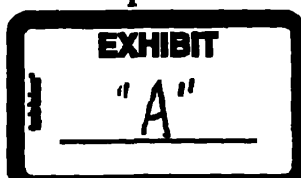
BEFORE ME, the undersigned authority, personally appeared NELSON HINCAPIE, who is known to me, and who swears and affirms as follows:

1. My name is Nelson Hincapie. I am the assistant to the finance director for the Alex Penelas U.S. Senate Campaign ("Penelas Campaign"). I have personal knowledge of the following events.

2. My duties include collecting the checks from campaign contributors. Subsequently, I verify the names, employers and occupations of the contributors. Ordinarily, I do not examine the dates of the checks as they are generally collected and turned over to me in one package in conjunction with a fund raising event.

3. I was involved with a fund raiser for the benefit of the Penelas Campaign held on May 8, 2003 by Mr. Michael Fernandez, the owner and chief executive officer of the South Florida health care company, CarePlus Medical Centers. The checks from that event were delivered to me by Fred Menachem, the campaign's finance director. As usual, I examined the

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checks to verify the names, employers and occupations of the contributors. I did not examine the dates on the checks.

4. To my knowledge, the only checks that the campaign ever received from Mr. Fernandez' efforts were generated by that fund raiser and were given to me following the May 8, 2003 event hosted by Mr. Fernandez. When I received checks, I assumed that they had been collected in connection with Mr. Fernandez' fund raising event and I had no reason to assume that any were generated from any earlier fund raising activities. As noted earlier, I did not examine the checks to determine when they had been dated.

5. Months later, in August, 2003, after a phone call from one of the campaign's attorneys, I reviewed for a second time all of the checks associated with Mr. Fernandez. Of the checks I collected after the May 8, 2003 fund raising event, 11 checks totaling \$2,100 were dated from April 2, 2003 to April 7, 2003. The 11 checks were all from sales representatives of Mr. Fernandez. These checks represent a fraction of the more than \$75,000 that was raised at the fund raiser. Of the remaining checks, only three others were written late in April, 2003; the rest were dated in May, 2003. Clearly, all of these checks were contributed in conjunction with the May 8, 2003 fund raising event and were not in response to the March 2003 email sent out by Mr. Fernandez' colleague.

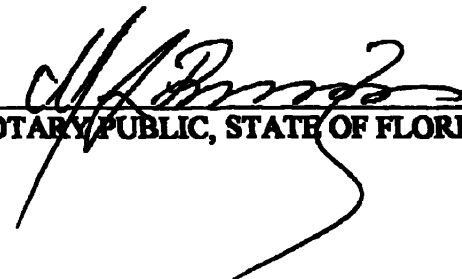
6. Carlos Trueba, the treasurer of the campaign, was not aware of the 11 checks because he only reviews a printout of funds raised. The printout contains the name of the contributors, the name of their employers, their occupations, addresses and the amount of the checks. The printout does not include the actual date on the check.

Under penalties of perjury, I declare that I have read the foregoing affidavit and the facts stated in it are true.

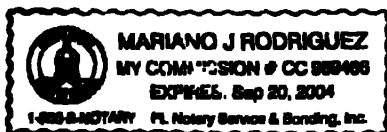

NELSON HINCAPIE

SWORN TO AND SUBSCRIBED before me on this 15 day of September, 2003.

☒ Personally known, or ☐ produced identification, type of identification produced:


NOTARY PUBLIC, STATE OF FLORIDA

My Commissions Expires:



28044210268

IN RE: Alex Penelas US Senate Campaign

MUR 5379

AFFIDAVIT OF CARLOS M. TRUEBA

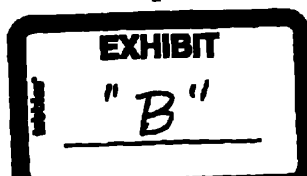
STATE OF FLORIDA)
)SS
COUNTY OF MIAMI-DADE)

BEFORE ME, the undersigned authority, personally appeared CARLOS M. TRUEBA, who is known to me, and who swears and affirms as follows:

1. My name is Carlos M. Trueba. I am the treasurer for the Alex Penelas US Senate Campaign. I have personal knowledge of the following events.

2. Until an article in the Miami Herald was published at the end of March 2003, I was unaware of any controversy surrounding contributions solicited by Michael Fernandez, the owner and chief executive officer of a South Florida health care company. As a result of the Miami Herald article, I learned of the allegation that a colleague of Mr. Fernandez' had sent out an email to employees of CarePlus Medical Centers, Inc. in March 2003 soliciting contributions for Mayor Alex Penelas.

3. Following a fund raiser on May 8, 2003 hosted by Mr. Fernandez, we received a number of checks and promptly collected the information needed for filing campaign reports, principally through the efforts of Nelson Hincapie. Until a recent review of all of the checks by Nelson Hincapie, the assistant to the campaign's finance director, I was not aware that we had



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received any checks bearing dates early in April, 2003 as the printout I receive of the contributions does not include the date of the checks.

4. I have assumed that all of the checks we received were contributed in conjunction with a May 8, 2003 fund raising event hosted by Mr. Fernandez at his house. As it turns out, the vast majority of the contributions were, in fact, dated around the time of the fund raising event, and all were collected by the Penelas Campaign in connection with that event. As far as I know, we accepted no contributions in connection to the March email.

Under penalties of perjury, I declare that I have read the foregoing affidavit and the facts stated in it are true.



CARLOS M. TRUEBA

SWORN TO AND SUBSCRIBED before me on this 15 day of September, 2003.

☒ Personally known, or ☐ produced identification, type of identification produced:

