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VIA HAND DELIVERY

Christopher Hughey, Esq.
Acting General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Matter Under Review 6455 (Penske Truck Leasing Co., L.P. Political Action Committee et al.)

Dear Mr. Hughey:

This office represents Penske Truck Leasing Co., L.P. ("Penske JV"); its separate segregated fund, Penske Truck Leasing Co., L.P. Political Action Committee ("Penske PAC"); Penske PAC's Treasurer, Michael A. Duff; and Penske JV's President and CEO, Brian Hard (collectively referred to as "Respondents"). On their behalf, we hereby respond to the complaint (the "Complaint") the Federal Election Commission ("FEC" or "Commission") has designated Matter Under Review ("MUR") 6455.

In short, the Complaint alleges that Penske PAC made excessive 2010 primary and general election contribution to the campaign of James Gerlach by virtue of contributions made by General Electric Company PAC ("GEPAC"), the separate segregated fund of the General Electric Company ("GE"), subsequent to the Commission's determination that Penske PAC and GEPAC were no longer affiliated. Specifically, the Complaint objects to FEC Advisory Opinion 2009-18 (July 29, 2009), in which the Commission found Penske PAC and GEPAC to be disaffiliated.

There is no basis in law or in fact to the Complaint. As recognized by the Commission in FEC Advisory Opinion 2009-18, Penske PAC and GEPAC are disaffiliated as a matter of law, and, thus, their contributions are not, subsequent to their disaffiliation, aggregated for contribution limit purposes. Therefore, Penske PAC made no excessive contributions. Accordingly, the Commission should find no reason to believe Respondents violated the Federal Election Campaign Act, as amended ("the Act"), and should dismiss the Complaint.

THE COMPLAINT

Peter J. Vroom, a disaffected former head of the Truck Renting and Leasing Association ("TRALA") and serial litigant against TRALA, Penske JV, Brian Hard, GE, and others, filed the Complaint on February 11, 2011. The Complaint specifically alleges that Penske PAC made an excessive contribution by virtue of the contributions also made by GEPAC subsequent to the disaffiliation of the two PACs.

The Complaint essentially attempts to reopen through the enforcement process the unanimous advisory opinion issued by the Commission in 2009 in which the Commission found Penske PAC and GEPAC to be disaffiliated. In doing so, the Complaint focuses almost exclusively on the factors of the revolving credit arrangement between GE and Penske JV and ignores all other factors weighed by the Commission in determining that the two PACs could disaffiliate. The Commission, in its deliberations on Advisory Opinion 2009-18, already has thoroughly examined this issue and determined that the overall disaffiliated relationship was not negatively impacted by the existence of the significant, but renegotiated and circumscribed, revolving credit arrangement.

DISCUSSION

Penske PAC did not violate the Act by virtue of an excessive contribution to the Gerlach campaign. Penske PAC and GEPAC are not affiliated and thus their post-disaffiliation contributions may not be aggregated for contribution limit purposes - the accusations of the complainant notwithstanding. Indeed, many of the accusations are simply inaccurate. Moreover, the Commission made its determination based on a full and robust analysis of the affiliation issue and found the two entities to be disaffiliated based on their overall relationship. Nothing found in the Complaint changes this finding.

A. Complainant Is A Serial Litigant Whose Complaints Have No Merit

To provide context, Peter J. Vroom is a serial litigant who has a record of frivolously using the courts and regulatory agencies to harass Penske JV, Brian Hard, and GE, among others. This is another of those complaints.

Mr. Vroom worked as President and Chief Executive Officer of TRALA, a non-profit organization that serves as a voice for more than 400 companies in the truck

renting and leasing industry, until July 9, 2009, when TRALA's 17 member Board of Directors voted to terminate his employment. Mr. Vroom's employment contract requires arbitration of all claims arising out of his employment; consequently, in November 2009 Mr. Vroom commenced an arbitration proceeding against TRALA challenging his termination. Not satisfied with that, Mr. Vroom has instituted the following multiple actions against TRALA and its officers, directors, and members:

- In October 2009, Mr. Vroom filed a complaint under the Sarbanes-Oxley Act of 2002 ("SOX"), 18 U.S.C. § 1514A, against the GE, Brian Hard, Tom Thayer (President and CEO of TRALA member International Truck Sales of Richmond/Idealease of Richmond and TRALA's Chairman at the time Vroom's employment was terminated), and Navistar International Corporation. Mr. Vroom filed this complaint even though he was not employed by a company covered by SOX. In June 2010, Administrative Law Judge Linda S. Chapman dismissed the complaint.
- In 2009, Mr. Vroom filed a state law complaint in the Circuit Court for the City of Alexandria against Mr. Thayer; Tom Brown, Doug Clark, and Bill Ford, all current or former officers or directors of TRALA and TRALA member National Truck Leasing Association ("NTLS"); and TRALA member NTLS. In July 2010, the Circuit Court dismissed this case "because the claims . . . arise in connection with or fall within the arbitration clause in Plaintiff's Employment Agreement with . . . TRALA."

- In December 2010, Mr. Vroom filed a complaint with the Internal Revenue Service against TRALA and about thirty individuals who were either directors or officers of TRALA, chairs of TRALA committees, executives with TRALA member companies, or TRALA's accountant. The complaint purports to challenge TRALA's tax-exempt status.
- In November 2010, Mr. Vroom filed a complaint in the US District Court for the Eastern District of Virginia against GE, Mr. Hard, and TRALA seeking damages for wrongful termination of Mr. Vroom's employment, retaliatory conduct in violation of SOX, and breach of Mr. Vroom's employment agreement. TRALA, GE, and Mr. Hard filed motions to dismiss the complaint, and TRALA filed a motion for sanctions against Mr. Vroom and his counsel. The Court granted the defendants' motions to dismiss Mr. Vroom's complaint, without prejudice, and gave Mr. Vroom thirty days to re-file his complaint if he could assert claims for which there is Federal jurisdiction. This dismissal took place on January 28, 2011, days before this Complaint was filed. Interestingly, the Court also held TRALA's motion for sanctions in abeyance to see if Mr. Vroom re-filed his Federal complaint. Mr. Vroom did not re-file his Federal complaint.

The following comments of Judge Liam O'Grady directed at Mr. Vroom's counsel Kenneth Martin at the hearing at which he dismissed Mr. Vroom's Federal complaint in the Eastern District of Virginia capture Mr. Vroom's desperation in filing all these actions:

> **THE COURT:** All right, I have heard enough.
>
> **MR. MARTIN:** Okay.
>
> **THE COURT:** And I am astonished at what I have heard. I mean, there isn't a basis supplied for this chain of circumstances that you have identified. This is one of the most extraordinary cases of taking leaps and bounds from A to B to C to D to E without a bit of support other than your own conjecture. . . . The argument about the protected activity, the shareholder arguments, all those arguments are so far out there that they deserve absolutely no, they can't be weighed as anything other than pure conjecture. The case is

> clearly one which is required to be arbitrated against TRALA. You got in the middle of arbitration, you terminated it because you thought it was going to be too expensive. You didn't even go through the cost sharing analysis to determine whether there would be cost sharing or not. You wouldn't provide the financial documents necessary.
>
> Instead you went into the Circuit Court of Alexandria. You had a full hearing and a full reconsideration on the Dodd-Frank Reform Protection Act before Judge Kemler. In your motion to reconsider you briefed it, she considered it. She did not find it retroactive. She properly ruled on that.
>
> You then bring that back in here knowing that the Rooker-Feldman doctrine requires you to appeal that through the Virginia state system if you don't like the ruling and you believe it's incorrect, and asked instead that I consider it. Which I am not empowered to do.
>
> I am going to dismiss the complaint in its entirety.
>
> . . . .
>
> . . . All I see right now is a borderline bad faith attempt to use what Mr. Vroom believes to have been an employment action which was not correct.
>
> And the suits with the IRS and the other suits are evidence of that. . . . .
>
> But be mindful that what you do in the future is going to be a consideration as to whether a motion for sanctions is considered and ordered.

Now Mr. Vroom has filed this Complaint with the Commission claiming that the disaffiliation of Penske PAC from GEPAC was improper in yet another attempt to somehow gain an advantage in his employment action against TRALA. As will be shown below, Mr. Vroom's allegations are utterly without merit.

B. Penske PAC Made No Excessive Contribution

Penske PAC made no excessive contribution to the Gerlach campaign or any other campaign because it is not affiliated with GEPAC. The Commission found the two PACs to be disaffiliated in 2009 when, among other things, GE's ownership in Penske JV fell below 50%, GE's representation on the governing body of Penske JV fell to two seats out of five, and the revolving credit agreement between Penske JV and GE was renegotiated to (among other things) include covenants and restrictions that would be common in a credit facility between unaffiliated parties. FEC Advisory Opinion 2009-18.

Through the 2009 advisory opinion process, the Commission engaged in a wholesale evaluation of the relationship between Penske JV and GE. It analyzed the overall relationship based on all of the affiliation factors found in 11 C.F.R. §§ 100.5(g)(4) and 110.3(a)(3) and found a lack of affiliation. Among other areas of inquiry and analysis, the Commission took into consideration GE's reduced and now minority ownership stake in Penske JV and GE's minority position on the joint venture's governing body, the Advisory Committee. The Commission analyzed Penske Corp.'s day-to-day control over the operations as general partner of Penske JV and noted that the few areas requiring a supermajority of the Advisory Committee did not, per FEC precedent, point toward continued affiliation – especially when GE had no control over the officers and employees of Penske JV. The Commission also noted the lack of overlapping decisionmakers except one – Roger Penske. In addition, the Commission examined the revolving line of credit, Penske JV's "primary source of financing," and determined that this factor did not outweigh the many other factors of non-affiliation, particularly given the renegotiated and circumscribed nature of the facility after GE fell to a minority position in the joint venture.

This Complaint provides no basis for the Commission to revisit its unanimous decision in that advisory opinion. Instead, the Complaint identifies what it believes to be pertinent facts not considered by the Commission. These "facts" were either a mater of public record at the time of the Commission's deliberations or are simply incorrect. The Commission in 2009 had all of the facts necessary for a full affiliation analysis, including Roger Penske's overlapping directorship and the substantial size of the revolving credit facility. The Complaint provides no information that changes the facts submitted or analyzed in the advisory opinion process, and no facts submitted or analyzed have changed in the interim.

As noted above, several of the factual allegations in the Complaint are simply incorrect. First, 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%. Affidavit of Michael A. Duff ¶ 4 (April 1, 2011), attached hereto at Appendix A (hereinafter "Duff Aff."). Second, the changes to the revolving credit agreement between Penske JV and GE are not delayed until 2018. Duff Aff. ¶ 6. Finally, Penske JV is not wholly dependent upon GE for financing and could obtain financing from sources other than GE. Duff Aff. ¶ 5.

Given the lack of materiality and accuracy in the information put forward in the Complaint, the Complaint provides no basis to re-evaluate the determination that GE and Penske JV became disaffiliated in 2009. As a result, the Complaint provides no basis for finding that Penske PAC made an excessive contribution in 2010.

CONCLUSION

The Commission correctly found Penske PAC and GEPAC disaffiliated in Advisory Opinion 2009-18. Nothing in the Complainant's litigation strategy, much less the Complaint, raises any doubts about the soundness of this decision. As a result, contributions from the PACs are not aggregated for contribution limit purposes, and Penske PAC made no excessive contribution. Accordingly, the Commission should find that there is no reason to believe that Penske PAC or the other Respondents violated the Act and, thus, dismiss the Complaint.

Sincerely,

Carol A. Laham

Carol A. Laham
D. Mark Renaud