

OFFICE OF  
GENERAL COUNSEL

FEDERAL ELECTION COMMISSION

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<p>TYLER ERDMAN,  Petitioner,  -v-  ADAM H. VICTOR, TRANSGAS DEVELOPMENT SYSTEMS, LLC, GARRY COULTER, NANA YOSHIOKA, MARTA DANI, RANDALL HARRIS, NOEL DALEY, MICHAEL C.J. VANDERKEMP, JOSHUA KRAKOWSKY, and GLEN WILLARD,  Respondents.</p>	<p>MUR # <u>7308</u>  MUR No. _____</p>
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TYLER ERDMAN ("Mr. Erdman" or "Petitioner"), a private citizen, for his administrative complaint against Adam H. Victor ("Mr. Victor"), TransGas Development Systems, LLC ("TGDS"), Garry Coulter, Nana Yoshioka, Marta Dani, Randall Harris, Noel Daley, Michael C.J. Vanderkemp, Joshua Krakowsky, and Glen Willard (collectively, "Respondents") states as follows:

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**<http://bit.ly/dfwavlol>**

## **THE PARTIES**

1. Mr. Erdman is a resident of the State of Connecticut, living at Weston, Connecticut 06883.
2. Mr. Victor is a resident of the State of New York, living and working at 630 1<sup>st</sup> Avenue, New York, New York 10016.
3. TGDS is a limited liability company organized pursuant to the laws of the State of New York, with its principal place of business located at 630 1<sup>st</sup> Avenue, New York, New York 10016.
4. Mr. Willard is an attorney whose principal place of business is 2550 M Street, N.W., Washington, D.C. 20037.
5. Mr. Krakowsky is an attorney whose principal place of business is 605 Third Avenue, New York, New York 10158.
6. Mr. Coulter is a resident of the State of South Carolina who can be contacted at Preferred Reinsurance Intermediaries, 14 Monckton Blvd., Columbia, South Carolina 29206.
5. Nana Yoshioka is a resident of the State of New York, upon information and belief resides at \_\_\_\_\_, Brooklyn, New York 11217.
6. Marta Dani is a resident of the State of New Jersey, upon information and belief resides at \_\_\_\_\_, Hoboken, New Jersey 07030.
7. Randall Harris is a resident of the State of West Virginia, P.O. Box 347 Mt. Gay, WV 25637
8. Noel Daley is a resident of the State of New Jersey, his current address is known to the FEC from prior proceedings.
9. Michael C.J. Vanderkemp is a resident of the State of New Jersey, his current address is known to the FEC from prior proceedings.

Garry Coulter, Nana Yoshioka, Marta Dani, Randall Harris, Noel Daley and Michael C.J. Vanderkemp are all conduit contributors, who acted as straw donors for Adam Victor to assist him in making campaign contributions to Senator Joseph Manchin and/or presidential candidate Herman Cain.

### THE COMMISSION'S JURISDICTION

10. The Commission previously determined that it had jurisdiction over the Mr. Victor and TGDS and the subject matter of MUR Nos. 7005 and 7056. *See* Conciliation Agreement ("CA") MUR Nos. 7005 & 7056, August 11, 2017, §1.

11. As a result of that determination, the Commission has jurisdiction over the instant administrative complaint, whether it is considered as a new petition or a reconsideration of MUR Nos. 7005 & 7056.

12. The basis for the instant proceeding is that Respondents formed a conspiracy to coordinate the Respondents' submissions to the Commission in MUR Nos. 7005 & 7056 in order to offer perjured or misleading testimony to the Commission. That conspiracy (the "Victor conspiracy") was orchestrated by Adam Victor and carried out by various overt acts of witness intimidation and evidence tampering, including:

- Adam Victor threatened the various straw donor witnesses, including his own daughters, with financial retribution, baseless litigation, and even physical violence if they refused to sign the witness statements he put in front of them, warning if they don't sign, "we'll go to jail." Mr. Victor's conspiracy of witness intimidation is evidenced by several texts Alia Victor, one of Adam Victor's daughters, sent to Tyler Erdman. These texts show that Mr. Victor threatened to sue Jo-Alya Victor if she did not knuckle under to his demand, and threatened physical retribution against Alexia Victor, his youngest daughter, should she defy him. Ms. Victor's texts set forth the various threats Mr. Victor used with respect to certain of the witnesses. On information and belief, Adam

Victor also advised various straw donors that they should just let him and his attorneys handle their response to the FEC Complaint;

- Two of Adam Victor's lawyers, Joshua Krakowsky and Glenn Willard, participated in this conspiracy. On information and belief, Mr. Krakowsky assisted Mr. Victor by preparing initial drafts of fraudulent witness statements and meeting various witnesses and repeating to them Mr. Victor's threat that they would "go to jail" if they did not sign the statements. Indeed, on information and belief, Mr. Krakowsky drafted the perjurious declarations that Mr. Victor's daughters refused to sign, despite his efforts to intimidate them. This was not Mr. Krakowsky's first attempt at witness tampering;
- Mr. Krakowsky *pro hac vice* permission to practice in front of a California court was terminated as a result of a prior attempt to bribe a witness on behalf of Mr. Victor.
- Mr. Krakowsky further aided the Victor conspiracy by submitting a declaration falsely stating that Mr. Erdman's testimony indicated that he did not have "personal knowledge" of the allegations of his complaint;
- Mr. Willard assisted this conspiracy, ceding to Mr. Victor's demand that he represent several of the conduit contributors despite the clear conflict between their penal interests and Mr. Victor's. By disregarding his ethical obligation not to accept conflicting representations, Mr. Willard was able to act as a clearinghouse for the conspiracy, drafting false declarations for the conduit contributors to sign, and assuring Mr. Victor that all of the witnesses were telling the same story. In

doing so, Mr. Willard alleviated the “prisoners’ dilemma” the witnesses otherwise faced. Unless Mr. Victor and the conduit contributors could be sure that all of the witnesses would provide consistent false testimony to the Commission, each of the witnesses had reason to fear that his or her perjury would be revealed by one of the co-conspirators. By representing all of the straw donors and drafting their declarations, Mr. Willard could assure that all of the conspirators would tell the same story.

- Mr. Willard also aided the conspiracy by altering a transcript of Mr. Erdman’s deposition testimony, surreptitiously deleting a portion of Mr. Erdman’s deposition testimony, in a desperate attempt to bolster Mr. Krakowsky’s false representation that Mr. Erdman’s FEC complaint was not based on personal knowledge;
- Nana Yoshioka, Marta Dani, and Randall Harris aided the conspiracy by submitting false declarations, denying that the checks reimbursing them for their conduit contributions actually did so and falsely declaring that they received the payments for other purposes. Ultimately, Mr. Harris recanted a portion of his false testimony. Thereafter, Mr. Victor admitted that testimony submitted by Ms. Yoshioka and Ms. Dani was false;
- Mr. Coulter, Mr. Daley, and Mr. Vanderkemp aided the conspiracy by submitting false declarations denying they were reimbursed by Mr. Victor for their conduit contributions;
- Alia Victor, Adam E. Victor, Alexia Victor, Jo-Ayla Victor, and Jo-Ann Bruggemann aided the conspiracy by submitting misleading declarations,

drafted by Mr. Willard, averring that they were not reimbursed for political contributions. None of these declarations revealed that Adam Victor had fraudulently made the referenced political contributions himself in the declarants' names;

- Mr. Victor orchestrated the conspiracy and supported it by his own false sworn testimony and by coercing his co-conspirators to sign the various false declarations he had his counsel prepare for them. Ultimately, Mr. Victor pled guilty to a felony for making illegal campaign contributions and is due to be sentenced on March 6, 2018;
- On March 30, 2016, Mr. Victor, aided by Mr. Krakowsky, attempted to collaterally attack the Commission's authority, by commencing contempt proceedings against Mr. Erdman and his counsel, in three separate actions pending in the Supreme Court Of New York, New York County (collectively, the "New York Actions"). Mr. Victor and Mr. Krakowsky sought to prospectively nullify any Commission ruling by requiring Mr. Erdman and his counsel to reimburse any fines the Commission might impose and any legal fees and costs Mr. Victor might incur in responding to Mr. Erdman's complaint. The contempt motion was an obvious attempt to coerce Mr. Erdman to abandon his private citizen complaints against Adam Victor and his conduit contributors. The New York court denied Mr. Victor's motion in its entirety;

13. It is axiomatic that an administrative agency has the inherent power "to protect the integrity of its own proceedings from fraud." *Tokyo Kikai Seisakusho, Ltd. v. United States*, 529 F.3d 1352, 1360-61 (Fed. Cir. 2008) (quoting *Alberta Gas Chemicals, Ltd. v.*

*Celanese Corp.*, 650 F.2d 9, 12-13 (2<sup>nd</sup> Cir. 1981) (upholding “the inherent power of any administrative agency to protect the integrity of its own proceedings”). Indeed, “[i]t is hard to imagine a clearer case for exercising this inherent power than when a fraud has been perpetrated on the tribunal in its initial proceeding.” *Id.*

14. The Victor conspiracy was only partially successful. On April 19, 2017, Adam Victor pled guilty to using Randy Harris, Nana Yoshioka, and Marta Dani as conduit contributors. See Exh. 1 Plea Agreement. Mr. Victor also pled guilty to fraudulently representing that certain of his own illegal donations were actually made by his wife and children. However, the Victor conspiracy did successfully insulate Mr. Victor from having to bear responsibility for the illegal campaign contributions he made in the name of Mr. Coulter, Mr. Daley, Mr. Vanderkemp, and various other conduit contributors, including certain of the contributions he made in the names of Ms. Yoshioka, Ms. Dani, and Mr. Victor’s wife and children.

#### **BACKGROUND ON MUR NOS. 7005 & 7056<sup>1</sup>**

15. Mr. Erdman filed MUR No. 7005 with the Commission on or about January 29, 2016.

16. The complaint in MUR No. 7005, alleged that Mr. Victor, TGDS and others had violated the federal election laws by, among other things, making contributions to federal election campaigns (specifically, Sen. Joe Manchin’s campaign for re-election as a Senator for West Virginia and Herman Cain’s aborted campaign to become President of the United States) in excess of the maximum amounts permitted by law and in the name of people other than those actually making the contributions.

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<sup>1</sup> The Commission can take administrative notice of all proceedings, submissions and documents in MUR Nos. 7005 & 7056. *Enriquez-Gutierrez v. Holder*, No. 08-60769, Slip Op. at 15-17 (5<sup>th</sup> Cir. 2010) (administrative tribunal properly took administrative notice of prior proceedings before it).



17. The complaint in MUR No. 7056, filed on or about April 20, 2016, alleged that Mr. Victor, TGDS and others had violated the federal election laws by, among other things, making illegal in-kind contributions to Herman Cain's campaign to become President of the United States by providing a plane for the campaign's use at discounted prices.

18. Mr. Victor and TGDS ultimately entered into a conciliation agreement (the "CA") with the Commission on August 11, 2017, in which the Commission, Mr. Victor and TGDS settled certain charges leveled against Mr. Victor and TGDS. *See generally* CA. The CA, narrowly, settled charges that Mr. Victor had violated the law by making campaign contributions in excess of those permitted by 52 U.S.C. §30116(a) and that Mr. Victor and TGDS had violated the law by making campaign contributions in the name of another person, in violation of 52 U.S.C. §30122. CA, §VI. The resolution of these violations was based on Mr. Victor's admissions regarding the pertinent violations. *Id.*

**THE CA AROSE, IN PART, FROM THE VICTOR CONSPIRACY'S FRAUD**

19. Mr. Erdman contends that the CA arose, in part, from the Victor conspiracy's fraud.

20. First, Mr. Victor orchestrated a conspiracy aimed at perverting and undermining the Commission's adjudicatory process by threatening conduit contributors, coercing them to provide testimony that would exonerate him. That conspiracy was partially successful.

21. Second, Mr. Erdman contends that the Commission erred in its evaluation of the denials of Mr. Daley and Mr. Vanderkemp that they had been reimbursed for their contributions to Senator Manchin. Mr. Erdman respectfully submits that in light of Mr. Harris' recantation of his declaration of being a conduit contributor and Mr. Victor's subsequent guilty plea, all of Mr. Victor's employees' contributions to Senator Manchin and presidential candidate Cain should be presumed to be conduit contributions, absent evidence to the contrary.

22. Third, Mr. Erdman contends that the Commission incorrectly evaluated the contributions ostensibly made by Mr. Coulter; evidence not available to the Commission establishes that Mr. Coulter, contrary to the Commission's findings, was another of Mr. Victor's straw donors.

23. Mr. Erdman contends that Mr. Victor attempted to sway the Commission with false evidence submitted by him and others. Mr. Erdman respectfully submits that Mr. Victor's efforts to pervert the Commission's fact-finding process fully justifies applying a rebuttable inference that all political contributions made by Mr. Victor's employees to Senator Manchin and presidential candidate Cain are conduit contributions for Mr. Victor.

**THE COMMISSION DID NOT PROPERLY ASSESS THE SCOPE OF  
MR. VICTOR'S LIES OR HIS EFFORTS TO GET OTHERS TO LIE FOR HIM**

**Mr. Victor's Perjured Declaration**

24. In his first substantive submission to the Commission, Mr. Victor lied. His initial declaration, filed on June 8, 2016 was rife with falsehoods and intentionally misleading omissions.

25. For example, Mr. Victor declared, under penalty of perjury, that the payments he made to Marta Dani and Nana Yoshioka, coincidental with their contributions to the Cain and Manchin campaigns, were not reimbursements for their contributions to the campaigns, but, rather, were paid to them for an IRA contribution and for personal reasons. *See* Exh. 2 Victor Declaration, June 7, 2016 at ¶ 7.<sup>2</sup>

26. Mr. Victor also failed to explain how it was that the payments to Ms. Dani and Ms. Yoshioka equaled the campaign contributions that they had made to the penny or why

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<sup>2</sup> The exhibits cited in this complaint are available at the following link:  
<http://bit.ly/dfwavlol>

these residents of New York and New Jersey, respectively, would be willing to part with a substantial portion of their annual income to support a West Virginia Senate candidate and a, by then, failing Presidential candidate. *Id.*

27. Mr. Victor's declaration includes several lies on the topic of his relationship with Mr. Erdman. Mr. Victor swore that: (1) he "treated [Tyler Erdman] like a son," but that all that changed when Mr. Victor refused him permission to date his daughter (*see* Exh. 2 at ¶ 4.) None of that is true.

28. Mr. Erdman never sought Mr. Victor's permission to date any of his daughters; never dated any of Mr. Victor's daughters; never broke into Mr. Victor's apartment; never hacked his computer; and never copied documents or computer files without permission.

29. Instead, Mr. Erdman assisted two of Mr. Victor's other former employees, Yevgeniya Khatskevich and Nazym Toktassynova thwart Mr. Victor's human-trafficking and sexual harassment scheme and helped them vindicate their rights under the New York City Human Rights Law (the "NYCHRL").

30. Mr. Victor's violations of the NYCHRL have spawned three actions in New York and one in Delaware. Ms. Khatskevich and Ms. Toktassynova each sued Mr. Victor in New York. Separately, Mr. Victor was sued in California for repeatedly harassing various employees of Pegasus Elite Aviation, Inc. ("Pegasus").

31. In retaliation, Mr. Victor brought an action against Ms. Khatskevich and Mr. Erdman in New York. Mr. Victor asserted six causes of action against Mr. Erdman: (1) unfair competition; (2) aiding and abetting breach of fiduciary duty; (3) conversion of an iPhone; (4) conversion of a laptop computer; (5) conversion of documents; and (6) replevin of documents. The court dismissed the first five causes of action and denied Mr. Victor's motion for relief on the sixth cause of action. Mr. Erdman brought counterclaims against Mr. Victor for retaliation.

32. After Mr. Victor's claims against Mr. Erdman were largely dismissed by the New York Court, Mr. Victor commenced an action in Delaware against Mr. Erdman for

defamation. When Mr. Erdman moved to dismiss that action, Mr. Victor voluntarily dismissed his action.

33. Separately, Mr. Victor was also sued in California for repeatedly harassing various employees of Pegasus Elite Aviation, Inc. ("Pegasus").

34. Mr. Victor's claim that "treated [Tyler Erdman] like a son," is likewise false. Mr. Erdman further submits that, in light of the texts quoted below and authored by Mr. Victor's daughter Alia, being treated like one of Mr. Victor's children, would be an emotionally scarring experience.

#### **Ms. Yoshioka, Ms. Dani, and Mr. Harris's Perjured Declarations**

35. Worse than his own lies to the Commission is the fact that Mr. Victor recruited others to lie for him. The most obvious examples are the declarations of Mr. Harris, Ms. Dani and Ms. Yoshioka. Mr. Victor manipulated these three former employees to lie for him – stating falsely that they were not reimbursed by Mr. Victor for their contributions to the Manchin and Cain campaigns – in an effort to save himself.<sup>3</sup> Their conduct constitutes a conspiracy to perpetrate a fraud on the Commission.

36. Mr. Victor's solicitation of perjurious declarations from Ms. Yoshioka, Ms. Dani, and Mr. Harris put them at risk for prosecution for violations of, among other statutes,

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<sup>3</sup> The TGDS check register contains critical evidence relating to the initial declarations submitted by Mr. Victor, Ms. Dani, Ms. Yoshioka and Mr. Harris. The check register, which was maintained by Ms. Grabowska and Ms. Yoshioka, plainly shows that these witnesses knew that their initial submissions to the Commission were blatant lies. Check Nos. 1216 and 1217, written out, respectively, to Ms. Dani and Ms. Yoshioka, on November 8 and 9, 2011, have memo references indicating that they were for "Herman Cain contribution[s]." Likewise, check number 1256, written out to Mr. Harris for \$2,500.00 on December 29, 2011 on December 29, 2016 (one day before his contribution to Manchin for West Virginia) has a memo line stating "reimbursement". It's one thing to deny that you made illegal campaign contributions. It's quite another – much more serious – thing to deny it while withholding your own check register from the Commission, which contains admissions establishing your crime.

18 U.S.C. §§ 371 (conspiracy), 1001 (false statements), 1505 (obstructing proceedings before a governmental agency) and 1621 (perjury).

37. Worse still, Mr. Victor did not merely attempt to *persuade* witnesses to lie, the evidence clearly indicates that he set out to *coerce* them to do so.

### **The Victor Family's Misleading Declarations**

38. Text messages passed between Mr. Erdman and Ms. Alia Victor ("Ms. Victor"), Mr. Victor's, at the time, 25-year-old daughter, show the various tools Mr. Victor used to keep his various co-conspirators in line and impel them to submit false testimony to the Commission.

39. In February 2016, after Ms. Victor became aware of MUR No. 7005, she contacted Mr. Erdman by text, describing Mr. Victor's efforts to pressure various of the "straw donors," including her and her siblings, to lie for him:

*Ms. Victor: Just heard from Alexia [another of Mr. Victor's daughters]. So basically you put us in a position where he's gonna force us to lie for him about Manchin or he'll punish us financially (or in Alexia's case physically when she gets home). That right?*

*Mr. Erdman: I didn't put you there, Adam did. He wanted to buy a politician, he sent the checks, he broke the law. None of you did.*

*See Exh. 3.*

40. Ms. Victor explained that she was trying to resist Mr. Victor's efforts to suborn perjury from her and hoping to help her siblings and mother do the same:

*I haven't seen any documents, I'm just hearing about this through Nana [straw donor, Nana Yoshioka] and fuck face [i.e., Mr. Victor] so I need some gaps filled in. Were our names put on ANY of these documents in ANY context?*

*Savannah's [Ms. Victor's friend] parents are lawyers so I just need to know exactly what I'm dealing with so I can try and figure out a way for my sisters and I to not have to get involved.*

+ + +

*More power to you for going after him, but I don't want my mom or sisters involved. Especially since he'll succeed in bullying them into committing perjury.*

+ + +

*That's not the point, the point is he's now put a gun to our heads to lie for him. Is there anyway his case DOESN'T hinge on my sisters and I saying anything one way or another?*

See Exh. 3.

41. Later that month, Ms. Victor elaborated on the severity of the coercion that Mr. Victor was exerting on his straw donors, including his own family:

*Dunno. She [Ms. Yoshioka] never liked him [Mr. Victor] obviously but I dunno how gullible she is. JoJo [Ms. Victor's sister, Jo-Ayla] is pressuring me to sign and says fuck face [i.e., Mr. Victor] will stop paying half my rent if I don't – I still refuse to sign, but I really don't know what I'm gonna do if he cuts me off. Any legal maneuvers you can think of?*

+ + +

*He just told JoJo if she doesn't sign she better get a lawyer 'cause he and his lawyers will come after her, and of course the same applied to me (and he'll [I] REALLY come for me). I need help.*

+ + +

*Last I heard he told Alexia if she and I don't sign we'll "go to jail" (LOL!). But I haven't heard any updates in the past like two days so I honestly don't know what's happening. JoJo either signed already or will sign soon, he made her talk to his lawyer who spun shit around and convinced her to sign. 😏*

+ + +

*JoJo did say when she was at dinner with him on Monday or Tuesday when all this went down, he said, "I wonder if Alia knows Tyler hates me. If she knew she should have come to me and told me he wants to take me down." LOOOOOOOOL! 🤔🤔🤔*

*First off, you'd have to be brain dead to not think someone would hate your guts after you treated them the way he treated you, and secondly you couldn't PAY me to help shit head [i.e., Mr. Victor] in any way whatsoever. Hell naw, bitch plz.*

See Exh. 3.

42. In March 2016, Ms. Victor explained to Mr. Erdman how her father was using his attorneys to further the conspiracy:

*He wants us to sign a statement of designation of council [sic], directing all questions on the matter to him (Glen Willard). I'm refusing to do it unless he gives me a joint representation agreement and engagement letter specifying he can't say a word on my behalf without my consent and no documents pertaining to me in a material way will go forward until I review and approve it.*

+ + +

*Basically Tubby's [i.e., Mr. Victor] plan was to make this guy our mouthpiece so he can lie on our behalf[ ]. 😊 I ain't failing [sic, falling] for that shit, but I assume he won't agree to my terms since it stops him from lying for me which defeats the whole point. So I've been encourage[d] to get my own attorney.*

See Exh. 4.

43. Ms. Victor's texts are chilling: they show that Mr. Victor was threatening financial retributions, lawsuits, and even physical abuse against straw donors who refused to yield to his demand that they perjure themselves and accept Glen Willard as their attorney.

44. Ultimately, in May and June of 2016, Mr. Victor's wife and four children signed declarations, which Mr. Victor submitted to the Commission. On information and belief these declarations differed from the original declarations Mr. Victor importuned them to sign in that they did not include outright lies. Nonetheless, all five declarations were misleading in that they failed to disclose the fact that they did not make the contributions that Mr. Victor had fraudulently attributed to them. See Exh. 5 (Ms. Victor's declaration). Ms. Victor's declaration is substantially identical to those submitted by her sisters, brother and mother, but for the name of the declarant. In his own initial declaration, Mr. Victor also failed to address salient point that he had contributed to the Manchin and Cain campaigns in their names. See generally Exh. 2.

#### **Mr. Coulter's False Declaration**

45. Mr. Erdman respectfully submits that the Commission erred in its August 3, 2017 determination that there was no reason to believe that Mr. Coulter had violated 52 U.S.C. §30122. There is substantial evidence Mr. Coulter knowingly acted as a conduit contributor for Mr. Victor in making his December 30, 2011 contribution to Manchin for West Virginia, the principal campaign committee for Senator Joseph Manchin.

46. Mr. Coulter and Mr. Victor had close business relationship at the time they made the suspect contributions. Mr. Coulter is in the insurance and reinsurance businesses in



some respect and had been doing work on and off for Mr. Victor and his entities since at least 2009.

47. Indeed, at or around the time Mr. Coulter ostensibly made the \$2,500.00 contribution to Manchin for West Virginia, Mr. Coulter was in possession of business cards identifying him as the Financial Director of Respondent TGDS, one of Mr. Victor's companies. *See* Exh. 6 (A true and correct copy of Mr. Coulter's TGDS business card). Mr. Erdman notes that the form for the card is dated December 29, 2011, the day before the Manchin contribution. *Id.* Accordingly, when he made the contribution, there is, at a minimum, evidence that Messrs. Victor and Coulter were holding Mr. Coulter out as being Mr. Victor's employee.

48. Mr. Coulter also had an email address using the company's "TGDS.com" domain name, created by Mr. Erdman at Mr. Victor's instruction. Mr. Coulter did not explain to the Commission how, if he was not Mr. Victor's employee, he came to possess the business cards or email, which plainly are indicia of employment.

49. This is significant because, as the Commission is aware, Mr. Victor has a documented and admitted history of using his employees as straw donors. Ms. Marta Dani, Ms. Nana Yokiosha and Mr. Randall Harris, who all initially denied being straw donors, were all Mr. Victor's employees<sup>4</sup> and Mr. Victor ultimately admitted that they all acted as straw donors for him.

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<sup>4</sup> Mr. Harris initially denied that he was an employee of Mr. Victor or his companies. However, Mr. Harris also had business cards issued by one or more of Mr. Victor's entities, describing him variously as the "Technical Director" for TGDS or providing no specific job description. *See* Exh. 7. Mr. Harris also describes himself as TransGas' "Technical Director" on his LinkedIn page. *See* Exh. 8. Mr. Harris, again, like Mr. Coulter, also had an email address using the "TGDS.com" domain name. In his previous submissions to the Commission, Mr. Harris, like Mr. Coulter, failed to explain how it is that he possessed these accoutrements of employment with Mr. Victor's company.

50. The timing of Mr. Coulter's contribution to Manchin for West Virginia also raises legitimate suspicions. It was made on the same date Mr. Harris was reimbursed for his illegal contribution to the same candidate committee, *i.e.*, December 30, 2017.

51. Mr. Coulter's contribution to Manchin for West Virginia must also be considered in the context of other payments made to Mr. Coulter by Mr. Victor throughout 2011. Specifically, Mr. Coulter received the following amounts from TransGas:

Payee	Date	Check No.	Memo	Amount
Garry W. Coulter	7/14/11	1175	GWC Consulting Agreement	\$5,000.00
Garry W. Coulter	9/16/11	1196	Consulting	5,000.00
Garry W. Coulter	10/5/11	1200	Milliman study #2	5,000.00
Garry W. Coulter	10/14/11	1207	Invoice # Oct 24 2011	5,000.00
Garry W. goulter [sic]	11/3/11	1214		10,000.00
Garry W. Coulter	11/23/11	1226	closing	50,000.00
Garry Coulter	12/13/11	1245	reimbursement	3,007.69
Garry W. Coulter	12/21/11	1250	Billing 12/21/11	7,500.00
<b>Total</b>				<b>\$90,507.69</b>

52. The information in the chart above is drawn from an Excel spreadsheet (the "TGDS 2011 check ledger") showing all checks drawn on one TGDS checking account during 2011. The original of the TGDS 2011 check ledger is in Adam Victor's possession.

53. Mr. Erdman submits, upon information and belief, that in or around June 2011, Mr. Coulter entered into a consulting agreement with TransGas pursuant to which he was paid \$5,000.00 per month. Check numbers 1175, 1196, 1200, 1207 and 1214, upon information and belief, each constitute a payment of \$5,000.00 by TransGas to Mr. Coulter for the months of June-November 2011, pursuant to that agreement.

54. Check number 1250, drawn on December 21, 2011, was written in the amount of \$7,500.00. Part of that payment, \$5,000.00, upon information and belief, was for Mr. Coulter's services pursuant to the consulting agreement for the month of December 2011. Upon information and belief, the remaining \$2,500.00 from the check number 1250 was paid to Mr. Coulter to cover his anticipated contribution to Manchin for West Virginia, which was recorded by the candidate committee nine days later.<sup>5</sup>

55. The TGDS 2011 check register was not available to the Commission when it determined that there was an insufficient basis for finding that Mr. Coulter had violated 50 U.S.C. §30122. Rather than produce that document and other similarly incriminating documents Victor entered into the CA. Mr. Erdman submits that this evidence supports such a finding and should be considered by the Commission.

56. Mr. Coulter's contribution to Manchin for West Virginia should also be analyzed in light of Mr. Coulter's prior and subsequent political contributions. Below is a chart summarizing Mr. Coulter's federal campaign contributions from 2003 through 2012:

<b>Date</b>	<b>Recipient/Affiliation/Race</b>	<b>Amount</b>
07/16/2003	Inglis for Congress/ Republican/Congress, South Carolina	\$500.00
12/22/2003	Bush-Cheney '04 (Primary), Inc./Republican/President	2,000.00

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<sup>5</sup> As to the other two checks paid by TGDS to Mr. Coulter during 2011, check number 1245, for \$3,007.69, was reimbursement to Mr. Coulter for some out of pocket expenses that he incurred in working for TGDS. Mr. Victor is in possession of a document detailing those expenses. Check number 1226 is, upon information and belief, a success fee paid to Mr. Coulter in connection with a loan that TransGas obtained from a Potomac Energy Fund TG Investors, Inc. ("Potomac"). The "success fee" was 1% of the \$5 million loan that TGDS obtained. The loan was supposed to fund TGDS's erection of a coal-gasification plant in West Virginia. Mr. Victor explained the loan was funded by a "Union" pension fund, in exchange for agreeing to use union labor in the plants construction. Unfortunately, Mr. Victor spent all of the proceeds of the loan without ever constructing the coal-gasification plant. On information and belief, Potomac was left holding the bag, and has since gone defunct.

01/21/2004	Henry E. Brown, Jr. For Congress/Republican/Congress, South Carolina	500.00
01/21/2004	Henry E. Brown, Jr. For Congress/Republican/Congress, South Carolina	500.00
06/30/2004	John Thune for U.S. Senate/Republican/ Senate, South Dakota	250.00
07/29/2005	Help America's Leaders PAC/ Republican Leadership Political Action Committee	250.00
09/06/2007	Fred Thompson PAC/Republican/President	250.00
09/23/2009	David Thomas for Congress/Republican/Congress, South Carolina	500.00
12/30/2011	Manchin for West Virginia/Democrat/Senate, West Virginia	2,500.00
01/17/2012	Friends of Herman Cain/Republican/President	500.00
<b>Total</b>		<b>\$7,750.00</b>

57. Of the ten contributions noted, nine went to candidate committees for Republican candidates or a Republican controlled leadership PAC. Only one contribution, the December 30, 2011 contribution to Manchin for West Virginia, went to a Democratic candidate.

58. Further, the contribution to Manchin for West Virginia was the largest of Mr. Coulter's contributions and the only one that equaled the statutory maximum.

59. Mr. Erdman submits that the evidence discussed above in reference to Mr. Coulter's contribution to Manchin for West Virginia on December 30, 2011, much of which was not before the Commission during its investigation of and deliberations on MUR Nos. 7005 & 7056, strongly implies and provides a basis for finding that Mr. Victor used Mr. Coulter as a straw donor.

**The Noel Daley And Michael C.J. Vanderkemp Declarations Are Not Credible**

60. Both the Daley and the Vanderkemp declarations are devoid of any exculpatory detail. Mr. Daley's declaration merely states:

*NOEL DALEY states under the penalties of perjury, pursuant to 28 U.S.C. § 1746, as true and correct, the following:*

*I am one of the individual persons identified in the complaint in this matter and I make this declaration upon personal knowledge.*

*At the time of the contributions identified in paragraph 50 of the complaint, I was a harness racing horse trainer for Adam Victor's horses, who paid me for stable training fees, and reimbursements and commissions for horse sales and purchases.*

*The unidentified payments and/or checks referenced in paragraphs 52 and 54 were not paid to me.*

*I declare under penalty of perjury that the foregoing is true and correct.*

See Exh. 9. Mr. Vanderkemp's declaration is nearly identical (see Exh. 10), changing merely the name of the declarant, the description of his work for Mr. Victor, and the paragraphs referenced.

61. Mr. Daley and Mr. Vanderkemp worked for Adam Victor & Son Stables ("AVSS") and were paid through a Signature Bank checking account maintained by AVSS. It is probable that Adam Victor reimbursed Mr. Daley and Mr. Vanderkemp by checks drawn on that account in March 2011 at or about the time of their March 29, 2011 "contributions" to the Manchin campaign.

62. Neither Mr. Daley nor Mr. Vanderkemp has made any political contributions other than to Senator Manchin. Their political contributions occur at the same time as the admitted conduit contributions of Mr. Harris, Ms. Dani, and Ms. Yoshioka. The

declarations submitted by Mr. Daley and Mr. Vanderkemp are nearly identical to each other and to the declarations submitted by Mr. Harris, Ms. Dani, and Ms. Yoshioka. They have no indicia of reliability.

63. In assessing the truthfulness of Mr. Daley's declaration, the Commission should be aware that Mr. Victor and Mr. Daley have participated in other illegal conduct together. For example, Adam Victor and Noel Daley sued the Executive Director of the Indiana Horse Racing Commission, when he refused to allow Mr. Victor's horse to participate in a race due to Mr. Daley's reputation for drugging horses:

*The ARCI report revealed that Daley had been suspended from racing in New Jersey for 270 days, fined \$20,000 and forced to reimburse the New Jersey Racing Commission related to the discovery of 'drugs and drug instruments' confiscated from his barn and stable area. Gorajec also contacted the New Jersey Racing Commission and obtained a copy of Daley's settlement agreement with the Commission. In it, Daley admitted violating the racing rules of New Jersey by possessing numerous controlled, dangerous substances. According to Gorajec, he had never seen a violation of this magnitude in his career.*

*Given Daley's history, Gorajec made a determination that if Daley were to apply for a license, Gorajec would refuse to issue a license. Gorajec instructed the Commission's offices at Indiana Downs to deny any application made by Daley. Daley applied for his license on August 18, 2006, the same day that he had a horse scheduled to race. The Commission refused to issue the license.*

*See Daley v. Gorajec*, 2007 WL 2286132 at \* 2 (S.D. Ind. Aug. 7, 2007). *See also* Exh. 11 (John Brennan's December 16, 2106 Affirmation) at ¶¶ 49-52 and the exhibits cited therein.

64. Indeed, it appears that Mr. Daley's reputation for drugging horses was the reason that Mr. Victor hired him. In a March 27, 2006 email, Adam E. Victor bragged that they had hired "the best juice man" for their horses. *See* Exh. 12.

65. In addition, Adam Victor secured an E-3 visa for Mr. Daley's relative, Aaron Daley. Mr. Victor secured the visa on false premises, reporting to federal authorities a much larger salary than he was actually going to pay Mr. Daley. As a result, Mr. Victor had to periodically "pay" Mr. Daley amounts in accordance with the visa, which Mr. Daley would "kick-back" to Mr. Victor. Adam Victor's accountant, Lenny Abruzzo,<sup>6</sup> facilitated these illegal transactions. In a June 26, 2008 email to Mr. Victor, Aaron Daley referenced the visa scheme:

*Adam, I spoke with Lenny and he said we need to cut a \$20,000 check from POA for my payroll/visa requirements. Can you please send me an email confirming that is okay and maybe even send a note to Marta and/or Nana asking to draft that. Lenny wants it done by 30th June. See Exh. 13.*<sup>7</sup>

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<sup>6</sup> Mr. Abruzzo can be reached at (973) 966-5500 or [info@abruzzoaccounting.com](mailto:info@abruzzoaccounting.com).

<sup>7</sup> Adam Victor used a similar fraudulent visa scheme for a subsequent employee, Ms. Khatskevich, certifying to immigration authorities that TransGas Energy Systems, LLC would employ her as an "organizational psychologist" at a salary \$79,914 annually. *See* Exh. 14 at ¶¶ 102-106. Mr. Victor told her, however, that she would only receive approximately 60% of that salary, with the remainder being kicked back to him. *Id.*

### **Victor's Counsel Facilitated The Victor Conspiracy**

66. Between Mr. Erdman's initiation of MUR No. 7005 on January 29, 2016 and Mr. Victor's submission of his June 8, 2016 declaration, Mr. Victor took further steps to solidify his conspiracy to undermine the Commission's investigation and deliberations. He arranged for his various straw donors to retain Glenn Willard, of the law firm Squire Patton Boggs (US) LLP,<sup>8</sup> as their counsel. Mr. Willard, apparently blinking past the potential for conflicts of interest – such as those exposed in Ms. Victor's text messages, quoted above – was also serving as Mr. Victor's counsel.

67. Mr. Erdman submits that this situation – Mr. Willard representing multiple co-conspirators, each with a varying degree of culpability – is blatantly improper. It clearly benefited Mr. Victor to the detriment of the straw donor co-conspirators, *See, e.g., People v. Chew*, 830 P.2d 488, 489 (Col. 1992) (imposing discipline upon a lawyer, court found that lawyer could not adequately represent the interests of clients, a father and son, because of their different degrees of culpability: the lawyer's duty of loyalty to the son required him to advise the son to testify against the father and the lawyer's duty of loyalty to the father required him to resist such efforts). Plainly, Mr. Victor was attempting to control the content of the testimony his employees and family members submitted to the Commission by controlling their attorney. In doing so, Mr. Victor exposed them to criminal liability in order to try to save himself.<sup>9</sup>

68. Mr. Victor's use of counsel to present the Commission with misinformation continued in his supplemental submissions. On July 25, 2016, Mr. Willard filed a document entitled Respondents' Response to Complainant's Additional Information with the

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<sup>8</sup> The firm is actually misidentified as "Squire Patton *Boogs* (US) LLP" in some of Mr. Willard's submissions to the Commission.

<sup>9</sup> Indeed, ultimately, Mr. Victor threw Ms. Yoshioka and Ms. Dani under the bus, admitting that they were straw donors in an effort, again, to minimize his own liability before the Commission.



Commission. Based on the declaration of Mr. Victor's long-time New York lawyer, Mr. Krakowsky of Davidoff, Hutcher & Citron LLP, Mr. Willard argued that the Commission should dismiss Mr. Erdman's complaints because they were based neither on personal information nor information and belief.

69. In fact, Mr. Krakowsky's declaration was based on his distorted recollection of Mr. Erdman's deposition testimony in *Transnational Management Systems, LLC, et al. v. Pegasus Elite Aviation, Inc., et al.* – Case No. LC 100724 (Sup. Ct. Los Angeles Co.) (the "TNMS LA litigation"), a litigation in which an entity owned and controlled by Mr. Victor was suing another company over the manner in which defendant supposedly mismanaged one of his airplanes. Pegasus countersued for Mr. Victor's lurid sexual harassment of its employees.

70. Mr. Krakowsky submitted a declaration to the Commission in which he swore that Mr. Erdman testified that he did not have "personal knowledge" of Mr. Victor's bank account information – having obtained the bank account information from an attorney affirmation in one of the sexual harassment lawsuits lodged against Mr. Victor – which formed part of the basis for his complaints to the Commission.

71. Mr. Krakowsky, however did not have Mr. Erdman's actual transcript and was only relying on his memory of Mr. Erdman's testimony. Nonetheless, Mr. Willard felt free to argue that that Mr. Erdman's complaint was based neither on information and belief nor actual knowledge. On this basis, Mr. Willard contended that MUR Nos. 7005 & 7056 should be dismissed.

72. Two days later, on July 27, 2017, Respondents submitted a selection of pages from Mr. Erdman's deposition in the *TNMS* LA litigation, apparently in support of the previous arguments and statements of Messrs. Willard and Krakowsky.<sup>10</sup>

73. On its face, the deposition excerpt emphatically does *not* support the argument that Mr. Erdman lacked personal knowledge of Mr. Victor's illegal campaign contributions. Indeed, in the testimony that Respondents submitted, Mr. Erdman quite clearly stated that he had been solicited as a straw donor by Mr. Victor:

*Q. Where did you get this information from?*

*A. Mr. Victor had solicited me to make similar contributions in both of those instances so I was well aware of where it is and it was also mentioned in the record of, I believe, Yevgeniya's sexual harassment case.*

Exhibit 15 at 140:9-13.<sup>11</sup> In short, contrary to Mr. Willard's argument and Mr. Krakowsky's declaration, in his deposition – even the misleadingly truncated excerpt of that deposition that Respondents submitted to the Commission – Mr. Erdman explicitly testified to his personal knowledge of Mr. Victor's efforts to skirt the campaign finance laws.

74. The deposition excerpts also do not support the argument that Mr. Erdman lacked information and belief to support his complaints against Mr. Victor. On the narrow issue of Mr. Erdman's knowledge of Mr. Victor's banking information and the checks Mr. Victor wrote to reimburse certain employees' contributions, Mr. Erdman testified that obtained this

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<sup>10</sup> A true and correct copy of the portion of Mr. Erdman's deposition, as submitted to the Commission by Respondents is included as Exh. 15. The documents released by the Commission in MRU Nos. 7005 & 7056 include *only* the pages from Mr. Erdman's deposition, without any declaration or cover letter explaining and/or authenticating them. If such additional documents exist, Mr. Erdman requests that they be released to the public.

<sup>11</sup> A true and correct copy of Mr. Erdman's entire deposition is included as Exh. 16.

information from an affirmation submitted by Mr. Andrew Costigan in one of the sexual harassment litigations brought against Mr. Victor. Certainly, this level of specificity, which more than allows for an inference of culpability, meets the standard for pleading upon “information and belief.” *Arista Records, LLC v. Doe*, 604 F.3d 110, 120 (2d Cir. 2010) (pleading can be made “upon information and belief where the facts are peculiarly within the possession and control of the defendant . . . or where the belief is based on factual information that makes the inference of culpability plausible”).

75. Not content to merely mischaracterize Mr. Erdman’s testimony and the standard required of complaints filed with the Commission, Respondents took their misdeeds a step further by doctoring evidence they placed before the Commission.

76. As noted, Respondents filed seven pages of Mr. Erdman’s deposition in the *TNMS LA* litigation, five of which were introductory and foundational and two of which contained substantive testimony, pages 139-140. *See* Exhibit 15. While Respondents contended that Mr. Erdman’s testimony on those pages supported the proposition that he had no personal knowledge about the allegations he made, Respondents also severely truncated their presentation of Mr. Erdman’s testimony.

77. From the end of page 140 through the middle of page 142 of his deposition, Mr. Erdman discussed how his personal knowledge, discussions with others and general awareness of what was going on around the office informed the allegations contained in his complaints to the Commission. Respondents, of course, failed to provide pages 141-142 of the deposition to the Commission. However, they also failed to provide the Commission with a complete copy of page 140.

78. Comparing deposition page 140 that Respondents submitted to the Commission with page 140 of the deposition contained within the copy of the entire deposition (*see* Exhibit 15 at 140 and Exhibit 16 at 140), it is apparent that Respondents were not trying to present reasoned argument based on the facts and the law. They falsified evidence before submitting it to the Commission.

79. Page 140 in Exhibit 15 has line numbers from 1-25 going down the left side of the page, as do the other page in the deposition transcript. However, in the version that Respondents submitted to the Commission, there is no text corresponding to lines 20-25; Respondents' submission makes it look like the court reporter cut off page 140 at line 19.<sup>12</sup>

80. Reference to the real copy of page 140 of Mr. Erdman's deposition (*i.e.*, Exhibit 16) plainly reveals that lines 19-25 contained the following question and answer, which directly addressed Mr. Erdman's personal knowledge of Mr. Victor's illegal activities:

*Q. Okay. Tell me about the situation when Mr. Victor personally solicited you.*

*A. Yeah. Mr. Victor was approaching people in the office offering to reimburse them for contributions. He offered to write a check for the amount of the contribution if he'd give in exchange for giving him a [break between page 140 and 141] check for Senator Manchin or Herman Cain.*

Exhibit 16 at 140:20 – 141:1.

81. Quite obviously, this question and answer did not fit into Respondents' theme that Mr. Erdman had no personal knowledge of the allegations he made, so Respondents just deleted it from the deposition pages they submitted. If there is any doubt that Respondents

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<sup>12</sup> The Commission should take note that the line numbers going down the left-hand side of deposition page 140 in the pages Respondents submitted to the Commission on July 27, 2017, do not have uniform fonts or sizes and do not go in order from 1-25. The numbers marking line numbers 2, 4 and 5 are plainly smaller than the other line numbers, while the numbers noting lines 1 and 3 are considerably larger. Moreover, on the "copy" of page 140 that Respondents submitted, there is no line 14 – in order, the line numbers run 13, 19, 15. In comparison, in the copy of the deposition included by Mr. Erdman with this submission, the line numbers on page 140 are uniform as to size and font and run consecutively from 1 to 25. Mr. Erdman submits that these differences constitute additional evidence of doctoring documents at the Squire Patton Boggs firm. *Compare* Exhibit 15 at 140 *with* Exhibit 16 at 140.

orchestrated this fraud-by-erasure, the Commission should note that the pages of the complete Erdman deposition transcript do not have a footer at the bottom.

82. The pages submitted by Respondents have the following footer:

*C:\Users\gwillard\Documents\FEC Matters\Adam Victor - MUR 7056\Erdman  
Depo Pages.docx*

*See Exhibit 16 at 140; see generally Exhibit 15 at 140.* This footer, which contains the identifier “gwillard,” which stands for “Glenn Willard,” conclusively indicates that the deposition pages submitted to the Commission by Respondents were prepared – or more correctly, doctored – at Mr. Willard’s firm, Squire Patton Boggs (US) LLP.

83. Clearly, Mr. Willard falsified Mr. Erdman’s transcript in a desperate attempt to make it appear to corroborate Mr. Krakowsky’s absurd claim that Mr. Erdman’s FEC complaint was not based on personal knowledge. Mr. Krakowsky certainly knew better. In fact, shortly after Mr. Erdman’s deposition concluded Mr. Krakowsky sent an email to Ms. Khatskevich’s counsel complaining about how devastating Mr. Erdman’s testimony was to Adam Victor’s case:

*“Pegasus lawyer went over 5 hours and isn’t even finished yet. I had to buy a sandwich at a break and eat it while Tyler was shitting all over Adam.” See Exh. 17.*

84. Mr. Krakowsky’s declaration is impossible to square with his representations to the New York court hearing the sexual harassment claims against Mr. Victor. There, Mr. Krakowsky, on behalf of Mr. Victor brought a motion for contempt against Mr. Erdman and his attorney for filing the FEC Complaint. *See Exh. 18.* In that motion, far from questioning whether the FEC Complaint was based on personal knowledge, Mr. Krakowsky implicitly conceded the truth of Mr. Erdman’s allegations and asserted that they had to have been derived from a personal inspection of Mr. Victor’s books and records. *Id.* at 6-7 (“[I]n January 2016, Erdman and Brennan filed a complaint with the FEC that specifically utilized certain

Confidential Documents ... [and] identified specific checks that Erdman and Brennan allege were checks made to evade campaign finance rules.")

85. On February 25, 2016, Mr. Krakowsky wrote to Mr. Brennan, complaining that "[t]he FEC Complaint identifies certain employees of Mr. Victor and identifies specific check numbers which neither you nor Mr. Erdman could be aware of outside of the documents stolen from Mr. Victor by Mr. Erdman and his girlfriend, Yevgeniya Khatskevich." See Exh. 19. That is to say, Mr. Krakowsky was complaining about Mr. Erdman's FEC allegations, not because they were untrue, but because Mr. Erdman was not supposed to know the details of Mr. Victor's illegal contributions.

86. In fact, Mr. Erdman had access to the check numbers for the checks Mr. Victor used to reimburse conduit contributors because they were identified in a February 3, 2015 affidavit filed by counsel in Adam Victor's suit against Ms. Khatskevich and Mr. Erdman. See Exh. 20 (Andrew Costigan's February 3, 2015 Affirmation) at ¶¶ 23-25.

87. On June 27, 2016, New York Supreme Court Justice Shlomo Hagler heard argument on Mr. Victor's contempt motion. In arguing on Mr. Victor's behalf, Mr. Krakowsky referred to the checks reimbursing Mr. Victor's conduit contributors as "checks that Mr. Victor made to certain political candidates." See Exh. 21 (6/27/16 Tr.) at 11. That is to say, in June 2016, the same month that Mr. Victor submitted false declarations denying the contributions, Mr. Krakowsky was arguing to the court in New York that Mr. Erdman should be held in contempt for blowing the whistle on Mr. Victor's illegal contributions.

88. Ultimately, the New York court ruled that it never intended to shield the incriminating documents from the FEC and that Mr. Erdman and his counsel could not be held in contempt for providing information to the Commission:

*THE COURT: ... I don't think the Court has the power or authority to insulate Mr. Victor from liability before the FEC.*

*If there is a violation, the Commission investigates and they will say yes or no. It's not my problem. It's not my authority. It was never my intention that the information could not be used as part of an investigation, as part of a review by a governmental agency. Otherwise, all you have to do is put up before the Court and insulate liability from another case or possible criminal liability. That cannot be the law that would be unjust and certainly never the intent of this Court to do.*

*Id.* at 12.

89. Thus, Mr. Krakowsky was well aware that the checks cited in the FEC Complaint revealed Mr. Victor's guilt at the time he offered his declaration to the Commission.

90. Messrs. Willard and Krakowsky have put a new twist on the old law aphorism. It used to be: Weak on the law, argue the facts; weak on the facts, argue the law. Mr. Victor's attorneys "flipped the script," adding: Weak on both, grab the White-Out and erase the evidence. There can be no mistake: In an attempt to make Mr. Krakowsky's July 25, 2016 declaration to the Commission appear true, Respondents presented truncated, false and misleading evidence to the Commission. Worse still, this was all in service of the completely false initial submissions made by Mr. Victor. The Commission should be concerned about falsified evidence submitted to prop up perjury.

#### **Mr. Krakowsky's Bribe Attempt**

91. Two weeks after Mr. Erdman's deposition in the *Pegasus* action referenced above, the California court presiding over it revoked Mr. Krakowsky's admission to practice before it due to "improper" conduct with a witness, Tony Carcione. The improper conduct in question was Mr. Krakowsky's offering Mr. Carcione a success fee of up to \$250,000 in return for his "useful" testimony.

92. Mr. Krakowsky apparently first made this bribe attempt during a settlement discussion with Mr. Carcione's counsel, Brendan Collins. On April 29, 2015, Mr.

Collins requested: "Josh, can you send me your proposal in writing. I want to make sure I accurately convey it to my client." See Exh. 22.

93. Mr. Krakowsky responded, setting forth the terms of the deal (the "Victor Payoff") he had in mind:

*For settlement purposes only: inadmissible pursuant to FRE 408*

*Carcione to agree to fully cooperate with Adam Victor's lawsuits against Tim Prero and Pegasus, including the lawsuit in California, the one in SDNY and the anticipated lawsuit to recover the money Prero earned on the sale of the 772 Plane. Carcione was the person who alerted Adam to all of the issues with Prero and Pegasus, including Prero charging Victor for gas he never used and failing to make the appropriate fixes, and the resulting decrease in the value of the planes. We want Carcione to essentially act as our expert in the case in California – walking us and the Court through exactly what Prero did and how he ripped Victor off. We want him to be truthful and helpful.*

*In exchange, we will agree to settle this lawsuit for a provisional payment of \$250,000, which is not to be paid until all litigation against Prero is resolved.*

*If there is any settlement with Prero/Pegasus, then Carcione's provisional payment gets wiped out. If there are judgments against Prero/Pegasus that exceed \$500K, for every dollar over \$500K, Carcione's provisional settlement amount will be reduced by that figure. Thus, if total judgment against Prero/Pegasus are \$700K, then Carcione's final payment would be \$50K. If total judgments against Prero/Pegasus are \$750K or more, Carcione pays nothing. Thus, Carcione's only risk would be if we take Prero/Pegasus to judgment in all cases and recover less than \$750K.*



*Essentially, we want a way to let Carcione off, but make sure he cooperates  
against Prero.*

See Exh. 22.

94. On July 5, 2016, Pegasus filed a motion to disqualify Mr. Krakowsky for offering the Victor Payoff to Mr. Carcione. Pegasus' attorney, David Olson, submitted a July 5, 2016 declaration (the "Olson Dec.") in support of the motion:

*Notwithstanding Victor's testimony that Carcione is a crook and a fraud, plaintiffs' counsel tried to bribe Carcione and tamper with Carcione's anticipated testimony in this case. In an email dated April 29, 2015 (attached as Ex. 540), plaintiffs' counsel confirmed to Carcione's lawyer an offer to settle the \$3 million New York action pending against Carcione. Specifically, counsel suggested ways in which Carcione could testify and stated that Victor wanted Carcione to serve as his "expert" in this case. In exchange, Victor would "agree to settle this [the New York] lawsuit [against Carcione] for a provisional payment of \$250K, which is not to be paid until all litigation against Prero is resolved.*

See Exh. 23.

95. Later, Mr. Olson described the Victor Payoff as "a sliding scale sweetheart settlement of that other case contingent on the recovery in this case if he would agree to testify. Not only is all of this conduct by plaintiffs' counsel downright sleazy, unethical, and appalling, but it should, under California law (and any sense of fair play), lead to disqualification of counsel, as shown." Exhibit 23 at 12.

96. In their opposition to the motion, the Victor Affiliates offered no justification for the Victor Payoff at all, saying merely that Mr. Krakowsky was solely at fault:

*The Tony Carcione part of the motion involves actions of a lawyer in New York who represents Transnational in a New York case against Tony Carcione and Pegasus in New York. Apparently, that lawyer was pro hac vice in this case until his local counsel was replaced. But he is no longer pro hac vice because of the substitution of local counsel. One cannot be pro hac vice without local counsel.*

See Exh. 24 at 1. That is the only reference to the Victor Payoff in the Victor affiliates' opposition. It is apparent that the Mr. Victor's lawyers could not think of any way to plausibly defend Mr. Krakowsky's conduct. The best they could do, without naming Mr. Krakowsky, was to simply suggest that he was no longer actively involved in the case.

97. When Mr. Victor was deposed in the Pegasus case he denied ever offering the Victor Payoff, claiming that his attorney was acting entirely on his own:

*Q. You were willing to dismiss the case that you – the fraud case in New York against Mr. Carcione, he pays you a provisional \$250,000, which he can buy down, by the more you tag Pegasus, the you're going to request from*

*A. I wasn't prepared to do that.*

*Q. Oh, you are prepared to do that?*

**MR. SAWKIW:** *Objection. Misstates testimony.*

**THE WITNESS:** *No, I was not prepared to do that.*

**BY MR. OLSON:**

*Q. Okay. So, Mr. Krakowsky was acting on his own when he did that?*

*A. Absolutely.*

See Exh. 25 at 333-34.

On July 28, 2016, Judge Lawrence Riff of the California Superior Court revoked Mr. Krakowsky's right to appear before the court, based upon a finding that Mr. Krakowsky had engaged in "improper" conduct with Mr. Carcione:

*I am going to order the pro hac vice of attorney Krakowsky ... vacated. His pro hac vice permission to participate in this litigation is hereby vacated and withdrawn. I do so on the grounds that I find his communications and his conduct relative to witness Carcione, C-A-R-C-I-O-N-E, was improper ....*

See Exh. 26 at 22:16-25. Following his disqualification, Mr. Krakowsky withdrew from representing Mr. Victor in the New York litigations relating to his harassment of various employment. See Exh. 27.

#### **Mr. Victor Pleads The Fifth In Deposition, But Lies To The Commission**

98. There are additional, outside and contemporaneous sources of information, not available to the Commission during its evaluation of Mr. Victor's initial submissions, confirming, not only that Mr. Victor was attempting to perpetrate a fraud on the Commission, but that his false testimony was submitted willfully.

99. For example, on July 11, 2016, Mr. Victor was deposed in the Pegasus litigation.<sup>13</sup> In that deposition, Mr. Victor invoked his Fifth Amendment right not to incriminate himself over a dozen times in response to questions regarding contributions to the Manchin and Cain campaigns. See Exh. 25. Mr. Erdman directs the Commission's attention to pages 688:7-691:23 of the exhibit.

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<sup>13</sup> The Commission can take administrative notice of all proceedings, submissions and documents in litigations involving Mr. Victor. *Yang v. Gonzales*, 478 F.3d 133, 143 (2<sup>nd</sup> Cir. 2007) (administrative tribunal properly took administrative notice of decision in state court proceedings).

100. It is hornbook law that a person can only invoke the Fifth Amendment and refuse to testify if he has a reasonable belief that truthful testimony would incriminate him. *See e.g., United States v. Gecas*, 120 F. 3d 1419, 1424 (11th Cir. 1997) (in order to invoke Fifth Amendment privilege not to testify, witness must have a “reasonable, real and appreciable” concern that truthful testimony could lead to his prosecution).

101. Accordingly, in June 2016, Mr. Victor declared to the Commission, under penalty of perjury, that he had not reimbursed Ms. Dani, Ms. Grabowska and Mr. Harris for the campaign contributions they nominally made to Manchin and Cain. Then, barely a month later, he was invoking his Fifth Amendment right not to incriminate himself when asked questions about these very contributions and reimbursements. It is readily apparent that Mr. Victor’s invocation of the Fifth Amendment is evidence of his guilty knowledge at the time he submitted his first declaration to the Commission. Plainly, Mr. Victor knew that he had lied to the Commission.

102. This is part of a pattern. Mr. Victor has made a habit of lying to and attempting to undermine the authority and integrity of courts spanning the country from New York, New York to Los Angeles, California. For example:

a. On September 21, 2016, Mr. Victor filed an Amended Verified Answer and Affirmative Defenses in a sexual harassment case that had been filed against him, styled *Khatskevich v. Victor, et al.* – Index No. 151658/2014 (Sup. Ct. N.Y. Co.) (Hagler, J.) (“the *Khatskevich* litigation”). *See* Exh. 14 and 28 (True and correct copies of the Verified Complaint and Mr. Victor’s Verified Answer in the *Khatskevich* litigation). In his verified answer, which was filed roughly two months after Mr. Victor invoked the Fifth Amendment during his deposition in the *Pegasus* action, Mr. Victor denied making campaign contributions to Friends of Herman Cain using the names of his wife and four children and reimbursing at least two employees for contributions they had made. *Cf.* Exhibit 14, ¶¶128, 130-36, and Exhibit 28, ¶¶128, 130-36.

Indeed, Mr. Victor went so far as to affirmatively state that his children had made their own campaign contributions to Friends of Herman Cain, a lie that the Victor children carefully avoided making in the declarations they submitted to the Commission. See Exhibit 28, ¶136. Significantly, under New York law, a verified answer is the equivalent of an affidavit, sworn to under penalty of perjury, see *Wells Fargo Bank, N.A. v. Marchione*, 69 A.D.3d 204, 210 (2<sup>nd</sup> Dep't 2009) ("Since the verification makes the pleading, or those parts of the pleading that are verified, sworn data, a verified pleading is the equivalent of an affidavit");

b. Mr. Victor owned two Gulfstream G-IV airplanes, which have been the object of much litigation, all of it brought by Mr. Victor and all of it frivolous. The penultimate courtroom battle over one of his planes is styled *Transnational Management Systems, LLC v. Prero, et al.*, Index No. 653543/2016 (Sup. Ct. N.Y. Co.) (Crane, J.) ("the *Pegasus* New York litigation"). A true and correct copy of Mr. Victor's complaint in the *Pegasus* New York litigation is included at Exh. 29. One of the central themes of the *Pegasus* New York litigation is that Mr. Victor supposedly was defrauded when he purchased one of his planes because he was not informed that there had been a fire in the landing gear of the plane some years prior to his purchase. Exhibit 29, ¶¶ 56-84. Mr. Victor repeated these allegations, at some length, in his affidavit opposing Defendants' motion to dismiss the *Pegasus* New York litigation. A true and correct copy of Mr. Victor's affidavit is included at Exh. 30. Mr. Erdman directs the Commission's attention to ¶¶46-48 of that exhibit. On reply, Defendants pointed out that prior to closing on the airplane in question, Mr. Victor had emailed one of his bankers, acknowledging that he knew about the fire and considered the plane to be better than new because all new parts had been used to fix the problem. A true and

correct copy of Defendants' reply affirmation is included at Exh. 31. In short, Mr. Victor's fraud claim in the *Pegasus* New York litigation is itself a fraud; and

c. Mr. Victor lies under oath frivolously. For example, in the *Khatskevich* litigation, plaintiff alleged and Mr. Victor admitted that he was the trustee of the Adam Victor Grantor Trust ("AVGT") and that he controlled its operations. Cf. Exh. 14 at ¶ 14, and Exh. 28 at ¶14. About a year later, in his deposition in the *Pegasus* litigation on July 12, 2017, Mr. Victor repeatedly denied knowing the identity of the trustee of his own grantor trust. See Exh. 32 at pps 812-20.

#### THE CONSPIRACY FALTERS

103. Starting in late August 2016, agents for the Federal Bureau of Investigation ("FBI") conducted interviews with various straw donors. Upon information and belief, Mr. Victor, his wife, his daughters, Randall Harris, and Noel Daley, as well as others, gave statements to the FBI and/or gave testimony before a grand jury empaneled in the Southern District of West Virginia to investigate Mr. Victor's illegal campaign contributions.

104. When Ms. Victor and her sister were approached at their workplace by the FBI, Ms. Victor contacted Mr. Erdman, leading to the following text exchange:

**Alia:** Ruh-oh. FBI's apparently here to see me and Jojo. They're talking to Jojo now (I got her a job 2 floors above me), but I'm not talking to them without a lawyer. Anything to worry about?

**Erdman:** I would make sure to try and tell the truth

**Alia:** Oh yeah def. Honestly I'm more concerned about if they ask me if I've been in contact with you, my family would KILL me 😞

Luckily I just happened to be having dinner with Sav's mom (a lawyer) tomorrow so I'm hoping she can give me an out like pleading the 5<sup>th</sup> or something 🙄

**Erdman:** I'm really can't stress enough that telling the truth is the most important thing, Ultimately you didn't commit a crime, Adam did.

I would talk with Sav's mom and follow her advise. I don't see any reason the FBI would going after you

**Alia:** Oh yeah I mean if they ask and I can't go for a (legal) out like pleading the 5<sup>th</sup> I would def tell the truth, I just reeeaaaally hope I don't have to answer.

Pretty sure they'll ask 'cause the FBI asked jojo today. 🙄🙄🙄

*See Exh. 33.*

105. The FBI interviews put pressure on the conspiracy Mr. Victor orchestrated to lie to the Commission. On information and belief, Alia Victor, Noel Daley, and Randall Harris were called before the grand jury in the West Virginia proceedings. On information and belief, all three witnesses testified truthfully about Mr. Victor's efforts to use them to thwart federal campaign finance laws.

106. The dam concealing Mr. Victor's lies to the Commission cracked sometime on or about December 16, 2016, when one of his employees, Mr. Randall Harris admitted to the Commission that he had acted as a conduit contributor for Mr. Victor, despite his prior testimony to the contrary. See Exh. 34, General Counsel's Report No. 2, MUR Nos. 7005 & 7056, April 5, 2017 at 2, n. 5.

107. After Mr. Harris recanted, Mr. Victor, partially relented, and admitted that he had lied. However, he did not admit the entire scope of his false testimony. He merely confessed that he had made the contributions that were ostensibly made in the names of three of his employees and five family members. See *Id.* He did not admit to soliciting conduit

contributions from Mr. Coulter, Mr. Daley, or Mr. Vanderkemp. Moreover, he continued to conceal from the Commission his role in suborning perjury from the conduit contributors.

108. By that time, the Commission was also aware that Mr. Victor was the target of a criminal investigation undertaken by the Public Integrity Section of the U.S. Department of Justice. See *id.* at 2, n. 5. On April 19, 2017, Mr. Victor pled guilty to a felony count in connection with the contributions that he had made to the Cain and Manchin campaigns in the names of other people. He is scheduled to be sentenced on December 21, 2017.<sup>14</sup>

**FIRST ADMINISTRATIVE CLAIM CONSPIRACY AGAINST THE UNITED STATES (AGAINST MR. VICTOR, TRANSGAS, MR. COULTER, MR. DALEY, MR. VANDERKEMP, MR. HARRIS, MS. YOSHIOKA, MS. DANIEL, MR. WILLARD & MR. KRAKOWSKY)**

109. Mr. Erdman incorporates by reference the allegations stated in ¶¶ 1-108 as if set forth fully at this point.

110. From in or about and between February 2016 and March 2017, both dates being approximate and inclusive, in the District of Columbia, New York, New York and elsewhere, Mr. Victor, TransGas, Mr. Coulter, Mr. Daley, Mr. Vanderkemp, Mr. Willard and Mr. Krakowsky, together with others, knowingly and intentionally conspired to perpetrate a fraud on the United States by impeding, impairing, obstructing, and defeating the lawful investigative and adjudicatory functions of a government agency, namely the Commission, and to commit offenses against the United States, to wit, violations of the federal election laws and regulations promulgated thereto.

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<sup>14</sup> The criminal case against Mr. Victor is styled *United States v. Victor*, Case No. 1:17-cr-00053 (KBJ-1) (D.D.C.) (Jackson, J.) (filed March 8, 2017) and details regarding it are available through PACER. Plea agreement is Exh. 1



111. In furtherance of the conspiracy and to effect its illegal object, Respondents committed the overt acts noted in the Second and Third Administrative Claims and the overt acts, among others, in the District of Columbia, New York, New York and elsewhere as set forth in this Complaint.

**SECOND ADMINISTRATIVE CLAIM VIOLATION OF 50 U.S.C. §30122 (AGAINST MR. VICTOR, MR. COULTER, MR. DALEY, AND MR. VANDERKEMP)**

112. Mr. Erdman incorporates by reference the allegations stated in ¶¶1-108 as if set forth fully at this point.

113. In accepting payment from Mr. Victor and or TransGas and then transferring part of that payment to the Manchin for West Virginia committee, Mr. Coulter, Mr. Daley and Mr. Vanderkemp each knowingly permitted his name to be used to effect a contribution to the Manchin for West Virginia committee that was funded by Mr. Victor and/or TransGas.

114. In paying Mr. Coulter, Mr. Daley, and Mr. Vanderkemp and simultaneously directing each of them to contribute those funds to the Manchin for West Virginia committee, Mr. Victor made a contribution in the name of another.

115. The actions of Messrs. Victor, Coulter, Daley, and Vanderkemp constituted violations of 52 U.S.C. § 30122.

**THIRD ADMINISTRATIVE CLAIM VIOLATION OF 50 U.S.C. §30116(A) & (C)  
(AGAINST MR. VICTOR)**

116. Mr. Erdman incorporates by reference the allegations stated in ¶¶ 1-108 as if set forth fully at this point.

117. In funding Mr. Coulter's, Mr. Daley's and Mr. Vanderkemp's contributions to the Manchin for West Virginia committee, Mr. Victor exceeded the contribution limits applicable to him for such contributions in that, prior to the date of Mr. Coulter's, Mr. Daley's and Mr. Vanderkemp's ostensible contributions, Mr. Victor had already contributed the maximum amount permitted to the Manchin for West Virginia Committee for the applicable campaign cycle.

118. Mr. Victor's actions as noted in ¶ 75 constituted a violation of 52 U.S.C. §30116(a) & (c).

**FOURTH ADMINISTRATIVE CLAIM CONSPIRACY TO VIOLATE 52 U.S.C. §  
30122 (AGAINST MR. VICTOR, MR. COULTER, MR. DALEY, AND MR.  
VANDERKEMP)**

119. Mr. Erdman incorporates by reference the allegations stated in ¶¶ 1-108 as if set forth fully at this point.

120. Upon information and belief, by agreeing to have Mr. Victor fund Mr. Coulter's, Mr. Daley's, and Mr. Vanderkemp's contributions to the Manchin for West Virginia committee, Mr. Victor, Mr. Coulter, Mr. Daley, and Mr. Vanderkemp knew that they were undertaking to violate the federal election laws.

121. Overt acts taken by them in furtherance of this conspiracy include, without limitation, Mr. Victor, directly or indirectly, reimbursing Mr. Coulter, Mr. Daley, and Mr. Vanderkemp for their contributions, the contributions themselves, and, on information and belief, communications among them and/or their agents regarding the scheme.

122. These acts and agreements, knowingly undertaken by Mr. Victor, Mr. Coulter, Mr. Daley, and Mr. Vanderkemp constituted a conspiracy to violate 52 U.S.C. §30122.

**WHEREFORE**, in light of Mr. Victor's history of purposeful dishonesty before the Commission and courts, Mr. Coulter's participation in Mr. Victor's schemes and his knowing deception of the and, in particular, their efforts, with others, to perpetrate an elaborate fraud on the Commission, Mr. Erdman respectfully submits that the Commission should:

A. Reopen MUR Nos. 7005 & 7056 for the purpose of re-evaluating the propriety of the Conciliation Agreement and considering harsher penalties against Mr. Victor; or, in the alternative,

B. Open a new MUR for the purpose of investigating Mr. Victor's criminality and implementing harsher sanctions against Mr. Victor; and, in any event,

C. Release the entire record, including all outside submissions, in MUR Nos. 7005 & 7056 to the public, including, without limitation, Mr. Randall Harris' December 16, 2016 submission to the Commission and Mr. Victor's March 23, 2017 declaration to the Commission;

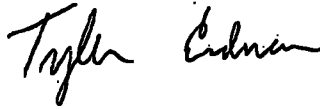
D. Allow for an adverse inference against Respondents – effectively reversing the burden of proof in this matter, such that it rests with Respondents – due to their perjury, submission of false evidence and conspiracy; and

E. Allow such further relief as the Commission may deem just and proper.

Dated: Weston, Conn.

January 3, 2018

Respectfully submitted,



Tyler Erdman

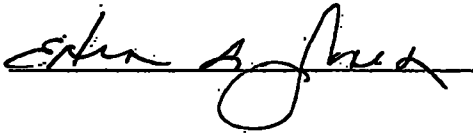
Weston, CT 06883

Subscribed and sworn to before me this the  
3rd day of January 2018.

My commission expires \_\_\_\_\_.

**ELLEN L. JONES**  
**NOTARY PUBLIC**  
**STATE OF CT**

My Commission Expires January 31, 2018



Notary Public

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