

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 **MUR 7975**

6 DATE COMPLAINT FILED: April 6, 2022

7 DATE OF NOTIFICATIONS: April 13, 2022

8 DATE OF LAST RESPONSE: May 26, 2022

9 DATE OF ACTIVATION: August 30, 2022

10
11 ELECTION CYCLES: 2020 and 2022

12 SOL EXPIRATION: June 18, 2024 to
13 October 29, 2026

14
15 **COMPLAINANT:**

Culinary Workers Union Local 226

16
17 **RESPONDENTS:**

18 Frank Fertitta, III

19 Lorenzo Fertitta

20 Red Rock Resorts, Inc. PAC and Steven S. Lucas in
his official capacity as treasurer

21 McConnell Senate Committee and Larry J.

22 Steinberg in his official capacity as treasurer

23 McConnell Victory Committee and Lisa Lisker in
her official capacity as treasurer

24 Joni For Iowa and Cabell Hobbs in his official
capacity as treasurer

25 Steve Daines for Montana and Lorna Kuney in her
official capacity as treasurer

26 Cotton for Senate, Inc. and Theodore Koch in his
official capacity as treasurer

27 Thom Tillis Committee and Collin McMichael in
his official capacity as treasurer

28 Cindy Hyde-Smith for US Senate and William K.
Ozanus in his official capacity as treasurer

29 Cory Gardner for Senate and Lisa Lisker in her
official capacity as treasurer

30 Senate Georgia Battleground Fund and Les

31 Williamson in his official capacity as treasurer

32 Trump Victory and Bradley T. Crate in his official
capacity as treasurer

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42 **RELEVANT STATUTES AND**
43 **REGULATIONS:**

44 52 U.S.C. § 30102(i)

45 52 U.S.C. § 30104(a)(1), (b)(3)(A)

46 11 C.F.R. § 104.3(a)(4)

11 C.F.R. § 104.7(a), (b)(1)

1 11 C.F.R. § 104.8(a)

2
 3 **INTERNAL REPORTS CHECKED:** Disclosure Reports

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 5 **FEDERAL AGENCIES CHECKED:** None

6 **I. INTRODUCTION**

7 The Complaint alleges that 11 political committees¹ reported during the 2020 and 2022
 8 election cycles 25 contributions from Frank and Lorenzo Fertitta totaling \$756,300, in which the
 9 two contributors' employer and occupation information was inaccurate because it was outdated,
 10 in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). The
 11 political committee Respondents deny violating the Act, asserting that they exercised their best
 12 efforts to obtain, maintain, and submit employer and occupation information for Frank and
 13 Lorenzo Fertitta, who they contend are prominent persons who have not attempted to hide their
 14 identities or mislead the public.

15 As explained below, we recommend that the Commission: (1) find no reason to believe
 16 that Frank and Lorenzo Fertitta violated 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 104.3
 17 because they are contributors — not committees that have duties to file reports; and (2) dismiss
 18 as a matter of prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985) the
 19 allegations against the 11 political committee Respondents who are alleged to have violated

¹ Nine committees are jointly represented and filed a joint Response (McConnell Senate Committee and Larry J. Steinberg in his official capacity as treasurer; McConnell Victory Committee and Lisa Lisker in her official capacity as treasurer; Joni For Iowa and Cabell Hobbs in his official capacity as treasurer; Steve Daines for Montana and Lorna Kuney in her official capacity as treasurer; Cotton for Senate, Inc. and Theodore Koch in his official capacity as treasurer; Thom Tillis Committee and Collin McMichael in his official capacity as treasurer; Cindy Hyde-Smith for US Senate and William K. Ozanus in his official capacity as treasurer; Cory Gardner for Senate and Lisa Lisker in her official capacity as treasurer; Senate Georgia Battleground Fund and Les Williamson in his official capacity as treasurer). Joint Resp. at 1 (May 26, 2022). The other two committees, which submitted separate Responses, are Red Rock Resorts, Inc. PAC and Steven S. Lucas in his official capacity as treasurer, Red Rock Resorts Resp. at 1 (Apr. 28, 2022), and Trump Victory and Bradley T. Crate in his official capacity as treasurer, Trump Victory Resp. at 1 (May 31, 2022). Frank and Lorenzo Fertitta did not submit a response.

1 reporting requirements, because the apparently outdated information with respect to Frank and
2 Lorenzo Fertitta represents a small percentage of the overall number of contributions on the
3 affected reports. More specifically, the apparently outdated information falls below the Reports
4 Analysis Division's ("RAD") Review and Referral Procedures threshold for requesting
5 additional information ("RFAI"), as well as below the threshold for referral to the Office of
6 General Counsel, and accordingly does not warrant further use of the Commission's resources.

7 **II. FACTUAL BACKGROUND**

8 Frank and Lorenzo Fertitta are prolific contributors to many federal political committees.
9 In 2019, Frank Fertitta made 105 contributions totaling more than \$1.9 million.² In 2020, he
10 made 92 contributions totaling more than \$2.5 million.³ In 2021, he made 108 contributions
11 totaling more than \$673,000,⁴ and in 2022, made nine contributions totaling \$601,400.⁵ His
12 brother, Lorenzo Fertitta, in 2019, made 105 contributions totaling more than \$1.8 million;⁶ in

² *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/individual-contributions/?contributor_name=frank+fertitta&min_date=01%2F01%2F2019&max_date=12%2F31%2F2019 (last visited Feb. 9, 2023) (reflecting contributions by Frank Fertitta, January 1 through December 31, 2019).

³ *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/individual-contributions/?contributor_name=frank+fertitta&min_date=01%2F01%2F2020&max_date=12%2F31%2F2020 (last visited Feb. 9, 2023) (reflecting contributions by Frank Fertitta, January 1 through December 31, 2020).

⁴ *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/individual-contributions/?contributor_name=frank+fertitta&min_date=01%2F01%2F2021&max_date=12%2F31%2F2021 (last visited Feb. 9, 2023) (reflecting contributions by Frank Fertitta, January 1 through December 31, 2021).

⁵ *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/individual-contributions/?contributor_name=frank+fertitta&min_date=01%2F01%2F2022&max_date=12%2F31%2F2022 (last visited Feb. 9, 2023) (reflecting contributions by Frank Fertitta, January 1 through December 31, 2022).

⁶ *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/individual-contributions/?contributor_name=lorenzo+fertitta&min_date=01%2F12%2F2019&max_date=12%2F31%2F2019 (last visited Feb. 9, 2023) (reflecting contributions by Lorenzo Fertitta, January 1 through December 31, 2019).

1 2020, made 62 contributions totaling more than \$2.6 million;⁷ in 2021, made 148 contributions
2 totaling more than \$950,000;⁸ and in 2022, made nine contributions totaling \$595,600.⁹

3 Frank and Lorenzo Fertitta were co-owners of a casino business—Fertitta Entertainment
4 LLC — until selling it to Station Casinos LLC (“Station Casinos”) in May 2016, and were co-
5 owners of Zuffa LLC, doing business as the Ultimate Fighting Championship (“UFC”), a mixed
6 martial arts promotion company, until selling their interest to talent agency and entertainment
7 conglomerate WME-IMG in August 2017.¹⁰ Red Rock Resorts, Inc. is a holding company and
8 the parent corporation to, among more than three dozen subsidiaries, Fertitta Entertainment, and
9 Station Casinos.¹¹ Red Rock Resorts owns an indirect equity interest in Station Casinos, through
10 which Red Rock Resorts conducts all of its operations.¹² Frank Fertitta has been Chairman and

⁷ *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/individual-contributions/?contributor_name=lorenzo+fertitta&min_date=01%2F01%2F2020&max_date=12%2F31%2F2020 (last visited Feb. 9, 2023) (reflecting contributions by Lorenzo Fertitta, January 1 through December 31, 2020).

⁸ *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/individual-contributions/?contributor_name=lorenzo+fertitta&min_date=01%2F01%2F2021&max_date=12%2F31%2F2021 (last visited Feb. 9, 2023) (reflecting contributions by Lorenzo Fertitta, January 1 through December 31, 2021).

⁹ *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/individual-contributions/?contributor_name=lorenzo+fertitta&min_date=01%2F01%2F2022&max_date=12%2F31%2F2022 (last visited Feb. 9, 2023) (reflecting contributions by Lorenzo Fertitta, January 1 through December 31, 2022).

¹⁰ See Red Rock Reports Investor Relations, Leadership, <https://redrockresorts.investorroom.com/leadership> (last visited Feb. 9, 2023) (profile of Frank Fertitta under Leadership, noting sale of Fertitta Entertainment and Zuffa LLC); see also Noah Kirsch, *Billionaire Fertitta Brothers Sell Remaining UFC Stakes at \$5 Billion Valuation*, FORBES (Sept. 7, 2017), <https://www.forbes.com/sites/noahkirsch/2017/09/07/exclusive-billionaire-fertitta-brothers-sell-remaining-ufc-stakes-at-5-billion-valuation/?sh=29435d934d69> (reporting Fertitta brothers' sale of their remaining interest in UFC at \$5 billion valuation).

¹¹ See SEC Form 10-k end of FY 2021 filing for Red Rock Resort, Inc. at Ex. 21.1 on pdf page 123, <https://app.quotemedia.com/data/downloadFiling?webmasterId=101533&ref=116494734&type=PDF&symbol=RRR&companyName=Red+Rock+Resorts+Inc.&formType=10-K&dateFiled=2022-02-25&CK=1653653> (listing Fertitta Entertainment and Station Casinos among Red Rock Resorts' subsidiaries).

¹² See SEC Form 10-k end of FY 2021 filing for Red Rock Resorts, Inc., at 3 (“Red Rock Resorts, Inc. . . . is a holding company that owns an indirect equity interest in and manages Station Casinos LLC (“Station LLC”), through which we conduct all of our operations”). <https://app.quotemedia.com/data/downloadFiling?webmasterId=101533&ref=116494734&type=PDF&symbol=RRR&companyName=Red+Rock+Resorts+Inc.&formType=10-K&dateFiled=2022-02-25&CK=1653653> .

1 CEO of Red Rock Resorts since September 2015.¹³ In mid-2016, Lorenzo Fertitta became a
2 Vice President of Red Rock Resorts.¹⁴ Zuffa and the Ultimate Fighting Championship appear to
3 no longer have a connection to the Fertittas.

4 The Complaint alleges that the 11 political committee Respondents reported contributions
5 from Frank and Lorenzo Fertitta with outdated employer and occupation information.¹⁵
6 According to the Complaint, seven of the 11 political committees incorrectly disclosed Lorenzo
7 Fertitta's employer as the UFC and his occupation as Chairman of the Board or CEO, and one
8 political committee incorrectly disclosed his employer as Fertitta Entertainment LLC and
9 occupation as Chairman and CEO.¹⁶ Further, according to the Complaint, one of the 11 political
10 committees incorrectly disclosed Frank Fertitta's employer as Zuffa LLC, the UFC parent
11 company, and his occupation as CEO or Owner,¹⁷ and 8 of the political committees incorrectly
12 listed his employer as Fertitta Entertainment LLC and occupation as Chairman and CEO.¹⁸
13 Although the Complaint acknowledges that “[b]y March 2017, Fertitta Entertainment was listed

¹³ See Red Rock Resorts Investor Relations, <https://redrockresorts.investorroom.com/leadership> (providing profile of Frank Fertitta, under Leadership).

¹⁴ See June 22, 2016 Press Release, <https://stockhouse.com/news/press-releases/2016/06/22/ceo-of-zuffa-llc-dba-ufc-has-taken-a-new-job-with-red-rock-resorts-inc> (last visited Jan. 13, 2023) (reporting that Lorenzo Fertitta signed a five-year employment contract with Red Rock Resorts).

¹⁵ Compl. at 1-2 (Apr. 6, 2022).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* Commission records show that Frank and Lorenzo Fertitta had previously made contributions to seven of the 11 respondent committees, all of whom reported the same employer and occupation information for the Fertitta brothers in 2019 and 2021 as they had in previous reports between 2016 and 2018.. See *FEC Receipts: Filtered Results*, FEC.GOV https://www.fec.gov/data/receipts/individual-contributions/?contributor_name=fertitta%2C+frank&contributor_name=fertitta%2C+lorenzo. These seven committee Respondents account for 16 of the 25 alleged improperly-reported contributions in this matter. Compl. at 1-2. The other four recipient committees—McConnell Victory Committee, Joni For Iowa, Cindy Hyde-Smith for US Senate, and Senate Georgia Battleground Fund—were first-time recipients of contributions from the Fertittas and account for nine of the 25 alleged improperly-reported contributions.

1 as a subsidiary of Red Rocks Resorts, a Fertitta-controlled company that owns and operated
 2 Station Casinos,”¹⁹ it alleges that the 12 contributions that identify Fertitta Entertainment as the
 3 employer of Frank and Lorenzo Fertitta are incorrect.²⁰ The table below identifies the employer
 4 and occupation information for Frank and Lorenzo Fertitta that are the subject of the Complaint's
 5 allegations.²¹

Name	Employer	Occupation	Committee	Receipt Date/Amount
Frank Fertitta	Fertitta Entertainment LLC	Chairman and CEO	Red Rock Resorts	6/18/2019 \$5,000.00
Frank Fertitta	Fertitta Entertainment LLC	Chairman	Joni for Iowa	6/25/2019 \$2,800.00
Frank Fertitta	Fertitta Entertainment LLC	Chairman & CEO	McConnell Senate	6/27/2019 \$2,800.00
Frank Fertitta	Fertitta Entertainment LLC	Chairman & CEO	McConnell Senate	6/27/2019 \$2,800.00
Frank Fertitta	Zuffa LLC	Owner	Cory Gardner for Senate	6/27/2019 \$100.00
Frank Fertitta	Zuffa LLC	Owner	Cory Gardner for Senate	6/27/2019 \$100.00
Frank Fertitta	Fertitta Entertainment LLC	Chairman	Trump Victory	10/2/2019 \$360,600.00
Frank Fertitta	Fertitta Entertainment LLC	Chairman/CEO	McConnell Victory	12/27/2019 \$147,000.00
Frank Fertitta	Fertitta Entertainment	Owner	Steve Daines for Montana	8/18/2020 \$2,800.00
Frank Fertitta	Fertitta Entertainment LLC	Chairman	Joni for Iowa	8/24/2020 \$2,800.00
Frank Fertitta	Fertitta Entertainment LLC	Chairman/CEO	Senate Georgia Battleground	11/16/2020 \$41,100.00
Frank Fertitta	Fertitta Entertainment LLC	Chairman and CEO	Red Rock Resorts	10/26/2021 \$5,000.00
Frank Fertitta	Fertitta Entertainment LLC	Chairman & CEO	Cotton for Senate	10/29/2021 \$5,800
Lorenzo Fertitta	Zuffa LLC	Chairman and CEO	Red Rock Resorts	6/18/2019 \$5,000.00

¹⁹ Compl. at 2.

²⁰ *Id.* at 1.

²¹ Frank Fertitta's 13 contributions total \$578,700; Lorenzo Fertitta's 12 contributions total \$177,600.

Lorenzo Fertitta	Fertitta Entertainment LLC	Chairman and CEO	Thom Tillis	6/26/2019 \$2,800.00
Lorenzo Fertitta	UFC	CEO	McConnell Senate	6/27/2019 \$2,800.00
Lorenzo Fertitta	UFC	CEO	McConnell Senate	6/27/2019 \$2,800.00
Lorenzo Fertitta	Zuffa LLC	CEO	Cory Gardner for Senate	6/27/2019 \$100.00
Lorenzo Fertitta	Zuffa LLC	CEO	Cory Gardner for Senate	6/27/2019 \$100.00
Lorenzo Fertitta	Ultimate Fighting Championship	CEO	Cindy Hyde-Smith for US Senate	6/30/2019 \$2,800.00
Lorenzo Fertitta	UFC	CEO	McConnell Victory	12/27/2019 \$147,000.00
Lorenzo Fertitta	Zuffa LLC	Owner	Steve Daines for Montana	12/31/2019 \$2,800.00
Lorenzo Fertitta	Zuffa LLC	Owner	Steve Daines for Montana	12/31/2019 \$2,800.00
Lorenzo Fertitta	Ultimate Fighting Championship	CEO	Cindy Hyde-Smith for US Senate	8/28/2020 \$2,800.00
Lorenzo Fertitta	UFC	Chairman of the Board/CEO	Cotton for Senate	10/29/2021 \$5,800.00

1

2 Respondent Red Rock Resorts, Inc. PAC (“Red Rock PAC”) denies violating the Act

3 and contends that the “Complaint identifies nothing more than a hyper-technical reporting issue

4 that did not withhold a single iota of information from the public regarding the sources of the

5 Committee’s funds or result in a violation of any provision of FECA or the Commission’s

6 regulations.”²² It adds: “Given the public stature of the [Fertitta brothers] and their history of

7 making contributions to the Committee, there could have been no confusion as to the identities of

8 the donors, and thus no information was withheld from the public.”²³ Red Rock PAC further

9 asserts that several days after receiving the Complaint, it filed amendments to the committee’s

²² Red Rock PAC Resp. at 6.

²³ *Id.* at 1.

1 “2019 Mid-Year Report and 2021 Year-End Report, fully resolving the alleged discrepancy in
2 the Complaint.”²⁴

3 Moreover, Red Rock PAC denies that it used outdated employer or occupation
4 information, instead contending that Frank Fertitta’s contributions of June 18, 2019, and October
5 26, 2021, contained current information because Fertitta Entertainment “remains a subsidiary of
6 Red Rock Resorts, Inc. and . . . [he] has long been publicly associated with Fertitta
7 Entertainment.”²⁵ It argues that, in any event, the committee satisfied the best efforts
8 requirements of “52 U.S.C. § 30102(i) and Section 104 of the regulations . . . by disclosing the
9 employer and occupation information [the committee] had in its files based on previous
10 contributor records, fundraising records, and previously filed reports.”²⁶

11 Nine committee Respondents contend in their joint Response that they reported “the
12 employer and occupation information for the two contributors at issue as that information was
13 known to the Committees at the time[,]”²⁷ and which they had either received from Frank and
14 Lorenzo Fertitta or drawn from information in the committees’ records and previously filed
15 reports.²⁸ They contend that they therefore satisfied the best efforts requirement which does not

²⁴ *Id.* at 3. The amendments changed Frank Fertitta’s employer and occupation information from Fertitta Entertainment LLC to Red Rock Resorts, Inc., Chairman and CEO, and for Lorenzo Fertitta from Zuffa LLC to Red Rock Resorts, Inc., Vice President and Vice Chairman of the Board. Form 3X, Amended, Red Rock Resorts, Inc. PAC (Apr. 11, 2022), <https://docquery.fec.gov/pdf/140/202204119496041140/202204119496041140.pdf>; Form 3X Amended, Red Rock Resorts, Inc. PAC (Apr. 11, 2022), <https://docquery.fec.gov/pdf/004/202204119496041004/202204119496041004.pdf>.

²⁵ Red Rock PAC Resp. at 5 n.11.

²⁶ *Id.* at 4-5.

²⁷ Joint Resp. at 3.

²⁸ *Id.* at 3.

1 “impose any obligation on committees to independently verify the identification information that
2 donors provide.”²⁹

3 In its Response, Trump Victory argues that the committee “satisfied its disclosure
4 obligations . . . by reporting [Frank Fertitta’s] information known to it.”³⁰ In that regard, Trump
5 Victory asserts that it relied on its “existing contributor records in reporting the contribution, as
6 the contributor had given to the Committee and its participants previously.”³¹ Trump Victory
7 further asserts that it “included appropriate ‘best efforts’ notices on its written solicitations . . .
8 and ultimately relied on its existing contributor records” in reporting Frank Fertitta’s
9 contribution.³² Contending that out of 678 pages of itemized contributions on the committee’s
10 2019 Year-End Report, there may be only one “stale name-of-employer and occupation
11 information” contribution, Trump Victory argues for the Commission to find no reason to
12 believe, or for an Enforcement Priority System (“EPS”) Dismissal.³³

13 Frank and Lorenzo Fertitta did not respond to the Complaint.

14 **III. LEGAL ANALYSIS**

15 The treasurer of a political committee shall accurately report the identification of each
16 person who makes an aggregate contribution in excess of \$200 within a calendar year (or
17 election cycle, in the case of an authorized committee) along with the date and amount of any

²⁹ *Id.*

³⁰ Trump Victory Resp. at 2. Trump Victory also cites to a news article, as it contends that the Complaint “apparently aris[es] as part of a local business dispute.” *Id.* at 1.

³¹ *Id.* at 1.

³² *Id.*

³³ *Id.* at 1-2.

1 such contribution.³⁴ The term “identification,” in the case of an individual, refers to that
2 person’s name, address, occupation, and employer.”³⁵

3 The relevant reporting requirements under the Act and Commission regulations are
4 intended to ensure public disclosure of “where political campaign money comes from and how it
5 is spent.”³⁶ Disclosure requirements also “deter[] and help[] expose violations” of the Act and
6 Commission regulations.³⁷

7 When the treasurer of a political committee shows that best efforts have been used to
8 obtain, maintain, and submit the information required by the Act for the political committee, any
9 report of such committee shall be considered in compliance with the Act.³⁸ With regard to
10 reporting the identifying information for individuals whose aggregate contributions exceed the
11 \$200 threshold, the treasurer will only be deemed to have exercised best efforts if:

12 (1) All written solicitations for contributions include a clear request for the contributor’s
13 full name, mailing address, occupation and name of employer, and include an accurate
14 statement of Federal law regarding the collection and reporting of individual contributor
15 identifications;

16
17 (2) For each contribution received aggregating in excess of \$200 per calendar year (or

³⁴ 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4)(i).

³⁵ 52 U.S.C. § 30101(13)(A); 11 C.F.R. § 100.12.

³⁶ *Buckley v. Valeo*, 424 U.S. 1, 66 (1976); *see also Citizens United v. FEC*, 558 U.S. 310, 369-71 (2010) (describing importance of disclosure requirements to serve informational interest, because “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages”).

³⁷ *SpeechNow.org v. FEC*, 599 F.3d 686, 698 (D.C. Cir. 2010) (en banc); *see also Buckley*, 424 U.S. at 67-68 (explaining that disclosure requirements “deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light” and that “recordkeeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations” of the Act); *McConnell v. FEC*, 540 U.S. 93, 196 (2003) (concurring with the stated government interests in disclosure requirements described in *Buckley* — “providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce” the Act and Commission regulations).

³⁸ 52 U.S.C. § 30102(i); 11 C.F.R. § 104.7(a).

1 per election cycle, in the case of an authorized committee) which lacks required
 2 contributor information . . . the treasurer makes at least one effort after the receipt of the
 3 contribution to obtain the missing information. Such effort shall consist of either a
 4 written request sent to the contributor or an oral request to the contributor documented in
 5 writing . . . made no later than thirty (30) days after receipt of the contribution;

6
 7 (3) The treasurer reports all contributor information not provided by the contributor, but
 8 in the political committee's possession . . . ; and
 9

10 (4) If any of the contributor information is received after the contribution has been
 11 disclosed on a regularly scheduled report, the political committee shall either . . . [f]ile
 12 with its next regularly scheduled report, an amended memo Schedule A . . . or [f]ile on or
 13 before its next regularly scheduled reporting date, amendments to the report(s) originally
 14 disclosing the contribution(s). . .³⁹
 15

16 The best efforts standard is an affirmative defense; the burden rests with the political
 17 committee and its treasurer to present evidence sufficient to demonstrate that best efforts were
 18 exercised to obtain, maintain, and submit the required information.⁴⁰

19 **A. The Commission Should Find No Reason to Believe that Frank and Lorenzo**
 20 **Fertitta Committed Reporting Violations**

21 The Act places reporting requirements on “[e]ach *treasurer* of a political committee,”⁴¹
 22 whereas Frank and Lorenzo Fertitta are contributors to the Respondent committees but are not
 23 their treasurers. Therefore, we recommend that the Commission find no reason to believe that
 24 they violated 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 104.3.

³⁹ 11 C.F.R. § 104.7(b)(1)-(4).

⁴⁰ Statement of Policy Regarding Treasurers' Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act, 72 Fed. Reg. 31438, 31440 (June 7, 2007).

⁴¹ 52 U.S.C. § 30104(a)(1).

1 **B. The Commission Should Dismiss the Allegations as to the 11 Political**
2 **Committee Respondents Because the 25 Alleged Outdated Employer and**
3 **Occupation Disclosures Fall Far Below the Reports Analysis Division's**
4 **Referral Thresholds**

5 As a threshold matter, with respect to the 12 contributions listing Fertitta Entertainment
6 as the Fertittas' employer,⁴² which the Complaint alleges was outdated and incorrect, we do not
7 have sufficient information to address Red Rock PAC's assertion that it — and by extension,
8 other political committee Respondents — used current employer and occupation information
9 because Fertitta Entertainment “remains a subsidiary of Red Rock Resorts, Inc. and . . . [Frank
10 Fertitta] has long been publicly associated with Fertitta Entertainment.”⁴³ Neither publicly
11 available information nor the Responses in this matter shed light on how, if at all, the Fertitta
12 brothers' employment and occupation relationship with Fertitta Entertainment changed when
13 Station Casinos LLC acquired Fertitta Entertainment. Although a public Securities and
14 Exchange Commission filing indicates that Fertitta Entertainment continues to exist as a wholly-
15 owned subsidiary of Red Rock Resorts, and has been since May 2016,⁴⁴ we lack information on
16 the roles that Frank and Lorenzo Fertitta currently have with respect to Fertitta Entertainment
17 and we are therefore unable to determine whether Fertitta Entertainment can be considered their
18 employer for reporting purposes.⁴⁵

⁴² Compl. at 2-3.

⁴³ Red Rock PAC Resp. at 5 n.11.

⁴⁴ See Red Rock Reports Investor Relations, Leadership, <https://redrockresorts.investorroom.com/leadership> (profile of Frank Fertitta under Leadership, noting sale of Fertitta Entertainment).

⁴⁵ As reported by political committee Respondent Red Rock, Frank Fertitta is Chairman and CEO of Red Rock Resorts, Inc., and Lorenzo Fertitta is the Vice President and Vice Chairman of the Board. See *supra* note 24. However, political committee Respondent Red Rock does not explain the Fertittas' current roles with respect to Fertitta Entertainment.

1 Moreover, it appears that many of the 11 political committee Respondents reported
2 Fertitta Entertainment as the Fertittas' employer because they relied on information from their
3 donor files from previous election cycles, but did not necessarily obtain current information from
4 the contributors.⁴⁶ If the committees merely checked their old donor files for the information,
5 this would not appear to qualify as best efforts.⁴⁷ Commission regulations acknowledge that
6 contributor information does not need to be sought with every contribution and may be "in the
7 political committee's possession . . . including information in contributor records and previously
8 filed reports" but only within "the same two-year election cycle."⁴⁸ Thus, relying on information
9 from previous election cycles would not appear to be in compliance.⁴⁹

10 In any event, we recommend that the Commission exercise its prosecutorial discretion
11 and dismiss the allegations here, because the apparently outdated information with respect to
12 Frank and Lorenzo Fertitta represents a small percentage of the overall number of contributions
13 on the affected reports. More specifically, the apparently outdated information falls below the
14 Reports Analysis Division's ("RAD") Review and Referral Procedures threshold for requesting
15 additional information ("RFAI"), as well as below the threshold for referral to the Office of
16 General Counsel, and accordingly does not warrant further use of the Commission's resources.

⁴⁶ *See* Red Rock PAC Resp. at 4-5; Joint Resp. at 3; Trump Victory Resp. at 1.

⁴⁷ We cannot discern from the best efforts arguments of the 11 political committee Respondents, whether they in fact used best efforts in reporting employer and occupation for Frank and Lorenzo Fertitta, because none of the 11 political committees has detailed how they have complied with the four-part best efforts criteria. *See* 11 C.F.R. § 104.7(b)(1)-(4).

⁴⁸ 11 C.F.R. § 104.7(b)(3).

⁴⁹ Respondent Red Rock PAC amended its 2019 Mid-Year Report, and 2021 Year-End Report, to list Red Rock Resorts as the Fertittas' employer, and no longer references Fertitta Entertainment as the employer. Red Rock PAC Resp. at 3; Red Rock PAC, Amended 2019 Mid-Year Report at 43-44 (Apr. 11, 2022), <https://docquery.fec.gov/pdf/004/202204119496041004/202204119496041004.pdf>; Red Rock PAC, Amended 2021 Year-End Report at 28 (Apr. 11, 2022), <https://docquery.fec.gov/pdf/140/202204119496041140/202204119496041140.pdf>.

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Committee	Election Cycle	Total Number of Individual Contribution Entries	Number of Frank and Lorenzo Fertitta Contribution Entries
Trump Victory	2020	Year-End 2019 1,959	Year-End 2019 1
Senate Georgia Battleground	2020	Post-General 2020 4,380	Post-General 2020 1
McConnell Senate	2020	July Quarterly 2019 2,300	July Quarterly 2019 4
McConnell Victory	2020	Year-End 2019 14	Year-End 2019 2

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Joni for Iowa	2020	July Quarterly 2019 1,319	July Quarterly 2019 1
Joni for Iowa	2020	Oct. Quarterly 2020 37,866	Oct. Quarterly 2020 1
Steve Daines for Montana	2020	Year-End 2019, Amendment 3 1,058	Year-End 2019, Amendment 3 2
Steve Daines for Montana	2020	Oct. Quarterly 2020 33,120	Oct. Quarterly 2020 1
Cotton for Senate	2020	Year-End 2021 2,490	Year-End 2021 2
Thom Tillis Committee	2020	July Quarterly 2019 907	July Quarterly 2019 1
Cindy Hyde-Smith for US Senate	2020	July Quarterly 2019 241	July Quarterly 2019 1
Cindy Hyde-Smith for US Senate	2020	Oct. Quarterly 2019 307	Oct. Quarterly 2019 1
Cory Gardner for Senate	2020	July Quarterly 2019 1,277	July Quarterly 2019 4
Red Rock Resorts	2020	Mid-Year 2019, Amendment 2 123	Mid-Year 2019, Amendment 2 2
Red Rock Resorts	2022	Year-End 2021, Amendment 2 102	Year-End 2021, Amendment 2 1

1 In conclusion, the Fertittas' 25 contributions to the 11 political committee Respondents,
2 even if the information about their employer and occupation were incorrect, represent a small
3 percentage of the overall number of contributions on the affected reports. That small percentage
4 is not significant enough to trigger an RFAI, let alone a referral to the Office of General Counsel.
5 We therefore recommend that the Commission not expend further resources on this matter and
6 that it exercise its prosecutorial discretion and dismiss the allegations.

7 **IV. RECOMMENDATIONS**

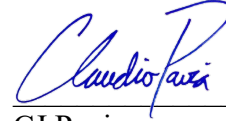
- 8 1. Find no reason to believe that Frank or Lorenzo Fertitta violated the filing and
9 reporting requirements under 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 104.3;
10
11 2. Dismiss as a matter of prosecutorial discretion the allegations that: Red Rock
12 Resorts, Inc. PAC and Steven S. Lucas in his official capacity as treasurer;
13 McConnell Senate Committee and Larry J. Steinberg in his official capacity as
14 treasurer; McConnell Victory Committee and Lisa Lisker in her official capacity
15 as treasurer; Joni For Iowa and Cabell Hobbs in his official capacity as treasurer;
16 Steve Daines for Montana and Lorna Kuney in her official capacity as treasurer;
17 Cotton for Senate, Inc. and Theodore Koch in his official capacity as treasurer;
18 Thom Tillis Committee and Collin McMichael in his official capacity as
19 treasurer; Cindy Hyde-Smith for US Senate and William K. Ozanus in his official
20 capacity as treasurer; Cory Gardner for Senate and Lisa Lisker in her official
21 capacity as treasurer; Senate Battleground Fund and Les Williamson in his
22 official capacity as treasurer; and Trump Victory and Bradley T. Crate in his
23 official capacity as treasurer violated the filing and reporting requirements under
24 52 U.S.C. § 30104(b)(3)(A), and 11 C.F.R. § 104.3;
25
26 3. Approve the attached Factual and Legal Analysis; and

1 4. Close the file.

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Lisa J. Stevenson
Acting General Counsel

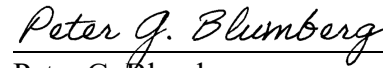
Charles Kitcher
Associate General Counsel for
Enforcement



March 14, 2023

Date

CJ Pavia
Deputy Associate General Counsel for
Enforcement



Peter G. Blumberg
Assistant General Counsel



Kenneth E. Sealls
Attorney