



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

SEP 5 - 2017

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RE: MUR 7270  
Comite Pierluisi, Inc.  
Hector Del Rio Jimenez, Treasurer

Dear Mr. Guillemard-Noble:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting your clients, Comite Pierluisi, Inc. and Hector Del Rio Jimenez in his official capacity as treasurer (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On August 17, 2017, the Commission found reason to believe that the Committee and Hector Del Rio Jimenez in his official capacity as treasurer violated 52 U.S.C. § 30116(f), a provision of the Act. The Factual and Legal Analysis, which formed the basis for the Commission's finding, is enclosed for your information.

Enclosed is a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you and your clients have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified in writing that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering as a way to resolve

<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).


this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your clients violated the law.

If you are interested in engaging in pre-probable cause conciliation, please contact Kamau Philbert, the attorney assigned to this matter, at (202) 694-1650, (800) 424-9530, or [KPhilbert@fec.gov](mailto:KPhilbert@fec.gov) within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, the Commission may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at [http://www.fec.gov/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf).

We look forward to your response.

On behalf of the Commission,

  
Steven T. Walther  
Chairman

Enclosures

Factual and Legal Analysis

cc: Pedro Pierluisi  
C/o Andrés Guillemard-Noble, Esq.  
Nachman & Guillemard, PSC  
P.O. Box 9949  
San Juan, Puerto Rico 00908

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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6 **RESPONDENTS:** Comite Pierluisi, Inc.  
7 and Hector Del Rio Jimenez  
8 in his official capacity as treasurer

MUR 7270

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10 **I. INTRODUCTION**

11 The Commission's Reports Analysis Division ("RAD") referred Comite Pierluisi, Inc.  
12 and Hector Del Rio Jimenez in his official capacity as treasurer ("the Committee") for failing to  
13 refund \$13,000 in excessive 2016 primary election contributions and \$75,823.21 in 2016 general  
14 election contributions. The Committee's response did not challenge the statements in the  
15 referral.

16 As discussed below, the Commission finds reason to believe that the Committee violated  
17 52 U.S.C. § 30116(f).

18 **II. FACTS**

19 The Committee is the principal campaign committee for Pedro Pierluisi, who was seeking  
20 re-election in 2016 for a second four-year term as Puerto Rico's Resident Commissioner, a non-  
21 voting member of the U.S. House of Representatives. Pierluisi filed his Statement of Candidacy  
22 with the Commission on August 15, 2013.<sup>1</sup> Pierluisi, however, declared his candidacy for  
23 Governor on November 15, 2015, and was not a candidate for Resident Commissioner in the  
24 general election.<sup>2</sup> The Committee received its last contributions for Pierluisi's re-election as  
25 Resident Commissioner on November 24, 2015.<sup>3</sup>

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<sup>1</sup> <http://docquery.fec.gov/pdf/620/13941450620/13941450620.pdf>. Puerto Rico's primary election was scheduled for June 5, 2016. [http://www.fec.gov/info/charts\\_primary\\_dates\\_2016.shtml](http://www.fec.gov/info/charts_primary_dates_2016.shtml).

<sup>2</sup> See <http://www.rollcall.com/news/home/puerto-rican-delegate-taking-fight-statehood-back-home>. According to the news article, a candidate for Puerto Rico's Governor may not seek re-election to Congress. *Id.*

1 As detailed in the Referral, the Committee received \$13,000 in excessive 2016 primary  
2 election contributions from three multicandidate committees that it has not refunded.

PRIMARY ELECTION EXCESSIVE CONTRIBUTIONS		
Contributor	Aggregate Contribution	Excessive Amount Not Refunded
Amgen Inc. PAC	\$9,500	\$4,500
Honeywell International PAC	\$11,000	\$6,000
New Democrat Coalition PAC	\$7,500	\$2,500

3  
4 On December 9, 2015, and September 8, 2016, RAD sent the Committee Requests for  
5 Additional Information ("RFAs") regarding the 2015 October Quarterly Report, and it sent  
6 another RFAI on September 8, 2016, regarding the 2015 Year-End Report. The RFAs noted the  
7 Committee's receipt of excessive contributions and requested that the Committee take corrective  
8 action.

9 The Committee also received \$75,823.21 in 2016 general election contributions from  
10 32 individuals and 4 multicandidate committees that it has not refunded. The Committee  
11 received the contributions between February 2, 2013, and September 24, 2015, and disclosed  
12 them in reports beginning with the 2013 April Quarterly Report and ending with the 2015  
13 October Quarterly Report.

14 On April 24, 2016, RAD sent the Committee a RFAI regarding the 2015 Year-End  
15 Report that informed the Committee that it should refund or redesignate any general election  
16 contributions it received after Pierluisi was no longer a candidate in the general election.<sup>4</sup> On

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<sup>3</sup> <http://docquery.fec.gov/pdf/214/201601319005214214/201601319005214214.pdf>. It does not appear that Pierluisi withdrew his federal candidacy registration.

<sup>4</sup> <http://docquery.fec.gov/pdf/191/201604240300042191/201604240300042191.pdf>.

1 May 2, 2016, the Committee called RAD to acknowledge receipt of the RFAI, and on May 31,

2 2016, the Committee filed a Form 99 stating, in part:

3 [W]e will promptly provide the requested information in full compliance  
4 with all applicable laws and regulations. Moreover, should any corrective  
5 action be required, any such action will be taken immediately, and any and  
6 all information related thereto will be provided to the Federal Election  
7 Commission in a timely manner.  
8

9 On July 7, 2016, the Committee filed another Form 99 stating, in part:

10 This letter is to inform you (A) that we are in the process of  
11 exploring all possible means, and take all necessary steps, to  
12 comply with applicable laws and regulations, (B) that any and all  
13 information related thereto will be provided to the Federal Election  
14 Commission in a timely manner and (C) that we will not attempt to  
15 terminate the Committee until all such matters have been properly  
16 resolved.<sup>5</sup>  
17

18 On July 19, 2016, the Committee filed several amendments to its reports to disclose  
19 redesignations of general election contributions to the primary election.<sup>6</sup>

20 RAD spoke with Committee representatives many times between April and September  
21 2016 about the excessive primary and unrefunded general election contributions. The  
22 Committee explained that it had tried to raise money to make refunds, but it could not, nor could  
23 Pierluisi loan the Committee money to make refunds. The Committee stated that it would  
24 continue to disclose the delinquent refunds as debts and asked to resolve the refund issues  
25 outside of the administrative enforcement process. RAD informed the Committee that since it  
26 had not refunded or remedied the contributions, the matter would be referred to another

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<sup>5</sup> See Miscellaneous Report to FEC (July 7, 2016), *available at*  
<http://docquery.fec.gov/pdf/274/201607140300083274/201607140300083274.pdf>.

<sup>6</sup> The Committee also previously filed amendments to several of the reports that did not materially affect the general election contributions at issue.

1 Commission office. The Commission notified Respondents of the Referral. The Committee  
2 does not contest the allegations in the Referral.<sup>7</sup>

3 **III. LEGAL ANALYSIS.**

4 During the 2016 election cycle, an authorized committee was limited to accepting a total  
5 of \$2,700 per election from any individual and \$5,000 from a multicandidate committee.<sup>8</sup> A  
6 primary election and a general election are each considered a separate “election,” and the  
7 individual contribution limits are applied separately with respect to each election.<sup>9</sup> Candidates  
8 and political committees are prohibited from knowingly accepting excessive contributions.<sup>10</sup>

9 The Commission’s regulations permit a candidate or his authorized committee to receive  
10 contributions for the general election prior to the primary election.<sup>11</sup> If, however, the candidate  
11 does not become a candidate in the general election, the committee must: (1) refund the  
12 contributions designated for the general election; (2) redesignate such contributions in  
13 accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in  
14 accordance with 11 C.F.R. § 110.1(k)(3).<sup>12</sup> The committee must do so within 60 days of the date

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<sup>7</sup> Resp. at 1..

<sup>8</sup> 52 U.S.C. § 30116(a)(1)(A), (a)(2)(A); 11 CFR §§ 110.1(a)-(b), 110.2(b)(1).

<sup>9</sup> 52 U.S.C. §§ 30101(l)(A), 30116(a)(6); 11 C.F.R. §§ 100.2, 110.1, 110.2.

<sup>10</sup> 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

<sup>11</sup> See 11 C.F.R. § 102.9(e)(1). The committee must use an acceptable accounting method to distinguish between primary and general election contributions. *Id.*

<sup>12</sup> See 11 C.F.R. § 102.9(e)(3). See also Advisory Op. 1992-15 (Russo for Congress Committee) at 2 (“Nonetheless, the Commission concludes that for losing primary candidates, like Mr. Russo, who receive contributions before the primary election that are designated for the general election, redesignations within 60 days of the primary election date would be permissible.”); Advisory Op. 2007-03 (Obama for America) at 3 (“If a candidate fails to qualify for the general election, any contributions designated for the general election that have been received from contributors who have already reached their contribution limit for the primary election would exceed FECA’s contribution limits.”).

1 that the committee has actual notice of the need to redesignate, reattribute, or refund the  
2 contributions, such as the date the candidate loses the primary or withdraws from the campaign.<sup>13</sup>

3 In this matter, the Committee accepted \$13,000 in excessive primary election  
4 contributions and failed to refund \$75,823.21 in general election contributions after Pierluisi was  
5 no longer a candidate in the general election. The Committee does not dispute its failure to make  
6 the appropriate refunds.

7 Based on the foregoing, the Commission finds reason to believe that Comite Pierluisi,  
8 Inc. and Hector Del Rio Jimenez in his official capacity as treasurer violated 52 U.S.C.  
9 § 30116(f).

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<sup>13</sup> Advisory Op. 2008-04 (Dodd); Advisory Op. 1992-15 (Russo). The Commissions' regulations include procedures for reattributing or redesignating a contribution. *See generally* 11 CFR § 110.1(b), (k). For example, a joint contribution may be attributed equally to each person on the negotiable instrument, and a portion of a joint contribution may be reattributed to another person on the negotiable instrument to avoid being excessive. 11 C.F.R. § 110.1(k)(2), (3). Similarly, a contribution may be designated to a particular election, but it may be redesignated to another election to avoid being excessive. 11 C.F.R. § 110.1(b)(2), (3), (5). The committee must notify contributors of the proposed reattribution or redesignation in writing and inform them that they may request a refund of the excessive portion of the contribution instead. 11 C.F.R. §§ 110.1(b)(5), 110.1(k)(3).