

NIELSEN MERKSAMER

NIELSEN MERKSAMER PARRINELLO GROSS & LEONI LLP

**POLITICAL &
GOVERNMENT**LAW
ADVOCACY
LITIGATION

April 26, 2022

Mr. Charles Kitcher, Assistant General Counsel
Christal Dennis, Paralegal
Federal Election Commission
Enforcement Division
1050 First Street, NE
Washington, DC 20463
Email: CELA@fec.gov

Re: MUR 7975

Dear Mr. Kitcher:

We write as counsel to Red Rock Resorts, Inc. PAC (the “*Committee*”), and Steven S. Lucas in his official capacity as Treasurer of the Committee, (collectively, “*Respondents*”), regarding the complaint filed by the Culinary Workers Union Local 226 dated April 5, 2022 (the “*Complaint*”).

The Complaint alleges that the Committee made a hyper-technical reporting error on two of its periodic campaign finance reports by disclosing slightly outdated employer and occupation information for two contributors, thus resulting in a violation of 52 U.S.C. §§ 30102(c)(3) and 30103(13) of the Federal Election Campaign Act of 1971, as amended (the “*Act*”) and Federal Election Commission (“*FEC*” or “*Commission*”) regulations. Given the public stature of the two contributors and their history of making contributions to the Committee, there could have been no confusion as to the identities of the donors, and thus no information was withheld from the public. Further, immediately upon receiving information regarding the reporting issue, the Committee rapidly amended the reports in question. Accordingly, nothing remains for the Commission to do or resolve, except find no reason to believe that a violation has occurred and close the file.

I. Factual Background

Red Rock Resorts, Inc. (the “*Company*”) is a leading gaming, development and management company that operates a number of casino and entertainment properties. It is a publicly traded company on the NASDAQ exchange and serves as the connected organization for Red Rock Resorts, Inc. PAC. The Committee is registered with the Commission as a multicandidate separate segregated fund.

Red Rock Resorts, Inc. is a holding company and successor to several gaming and entertainment entities, including Fertitta Entertainment, LLC and its consolidated subsidiaries and Station

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Casinos, Inc.¹ The predecessor entities were under the control of Frank J. Fertitta III and Lorenzo J. Fertitta, as is Red Rock Resorts, Inc. Frank J. Fertitta is the Company's Chairman of the Board and Chief Executive Officer, and Lorenzo J. Fertitta is the Company's Vice Chairman of the Board and a vice president of the Company. Fertitta Entertainment LLC is a subsidiary of the Company.²

Consistent with the Company's evolving structure and name, the Committee has changed its name through amendments to its Statement of Organization filed with the Commission. For instance, in August 2011, the Committee changed its name from Station Casinos, Inc. PAC to Fertitta Entertainment PAC.³ In February 2017, through another amended Statement of Organization, Fertitta Entertainment PAC became Red Rock Resorts, Inc. PAC.⁴

The Committee consistently engages in relatively modest activity. During the 2011-2012 election cycle, the Committee (named Fertitta Entertainment PAC at the time) raised \$98,154.08. During the 2013-2014 cycle, the Committee raised \$101,328.12. During the 2015-2016 election cycle, the Committee raised \$74,878.62. During the 2017-2018 election cycle, the Committee raised \$88,254.68. During the 2019-2020 election cycle, the Committee raised \$88,254.68. Finally, during the current cycle, the Committee has reported \$26,560 in receipts. As of March 30, 2022, the Committee reported \$81,636.26 of cash on hand.

The largest contributors to the Committee are members of the Fertitta family that have very senior management positions with the Company. In 2011, 2013, 2014, 2018, 2019, and 2021, Frank J. Fertitta III and Lorenzo J. Fertitta each contributed \$5,000 to the Committee. The two Fertitta siblings made leading contributions to the Committee when it was called Station Casinos, Inc. PAC and Fertitta Entertainment PAC, as well as now that it is called Red Rock Resorts, Inc. PAC.⁵ There has never been any effort to disguise contributions from the Fertitta siblings, nor has there ever been any confusion about the identity of these donors.

¹ U.S. Securities and Exchange Commission, *Red Rock Resorts, Inc.* 10-Q (Q1 2016), <https://www.sec.gov/Archives/edgar/data/1653653/000165365316000008/R7.htm>.

² U.S. Securities and Exchange Commission, *Red Rock Resorts, Inc.* 10-K (2021), <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>.

³ Statement of Organization, *Fertitta Entertainment PAC* (Aug. 24, 2011), <https://docquery.fec.gov/pdf/485/11932303485/11932303485.pdf>.

⁴ Statement of Organization, *Red Rock Resorts, Inc. PAC* (Feb. 21, 2017), <https://docquery.fec.gov/pdf/407/201702219050474407/201702219050474407.pdf>.

⁵ See, e.g., Contribution Report, *Station Casinos Inc. Political Action Committee* (1995-1996), <https://www.fec.gov/data/committee/C00263731/?tab=raising&cycle=1996>; Form 3X, *Fertitta Entertainment PAC* (July 2014), <https://docquery.fec.gov/pdf/713/14961644713/14961644713.pdf>.

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For each contribution from Frank J. Fertitta III and Lorenzo J. Fertitta, the Committee has disclosed all identifying information required by the Act and Commission regulations. To provide several examples, with respect to the contributors' occupation and employer information, the Committee has previously reported the following information on periodic FEC filings:

- On its January 31, 2014 year-end report, the Committee (then named Fertitta Entertainment PAC) reported contributions from Frank J. Fertitta (Chairman & CEO of Fertitta Entertainment) and Lorenzo J. Fertitta (Chairman and CEO of Zuffa LLC).
- On its July 2015 monthly report, the Committee (then named Fertitta Entertainment PAC) reported contributions from Frank J. Fertitta (Chairman & CEO of Fertitta Entertainment LLC) and Lorenzo J. Fertitta (Chairman and CEO of Zuffa LLC).

Frank J. Fertitta III and Lorenzo J. Fertitta are successful entrepreneurs and philanthropists, and they have occupied numerous leadership positions in a wide range of organizations. For instance, for approximately 15 years, the Fertitta siblings owned and served as senior officers of Zuffa, LLC, the entity that owned the assets of the Ultimate Fighting Championship, or UFC. The siblings' ownership of UFC was widely reported in publicly available sources.

On April 6, 2022, the Committee received correspondence indicating that some of the information contained on its previous FEC reports might have reflected previously held titles of Frank J. Fertitta III and Lorenzo J. Fertitta. Several days later, the Committee filed amendments to its 2019 Mid-Year Report and 2021 Year-End Report, fully resolving the alleged discrepancy in the Complaint.⁶

II. The Committee Complied With Its Disclosure Obligations

The Act and its implementing regulations require registered political committees to file reports disclosing and itemizing contributions and expenditures, so that the public can ascertain the sources of activity sponsored by political committees.⁷ Specifically, committees must uniformly disclose the "identification" of each individual who contributes more than \$200 to the committee's federal account.⁸ Such identification must include the contributor's name, mailing address,

⁶ 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>.

⁷ *See, e.g.*, 122 Cong. Rec. 6963 (March 17, 1976) (statement of Sen. Clark) ("disclosure of a contributor's occupation and place of business, including the name of the firm where the person is employed, is vitally important if the public is to know and understand the source of a candidate's campaign funds").

⁸ 11 C.F.R. § 104.8(a).

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occupation, employer name, if any, and the date of receipt and amount of any such contribution.⁹ These disclosure obligations are designed to ensure that contributions are appropriately attributed to the correct source and that a source may not make contributions that exceed the contribution limits or violate the source restrictions in the Act and Commission regulations.

There is no question that the Committee complied with its disclosure obligations, as it has during its nearly three decades of existence. The Committee timely files periodic reports with the Commission and discloses the identities and required identifying information of its donors, including their names, mailing addresses, titles, and employers. Reflecting the thoroughness of the Committee's reports, over nearly three decades of existence, the Committee has never received a single Request for Additional Information from the Commission.

Despite the protestations in the Complaint, no information has been withheld from the Commission or the public. Each contribution by Lorenzo J. Fertitta and Frank J. Fertitta III was disclosed by the Committee and contained the requisite identifying information—names, mailing addresses, employers, occupations, and dates and amounts of contributions—as required by Section 104.8 of the Commission's regulations. There is no conceivable way that any person reviewing the Committee's reports could have been left with a misunderstanding or misapprehension as to the identities of these donors, particularly given the recurring nature of the contributions, the magnitude of the contributions, and the donors' public statures and roles in the Company.

Further underscoring its commitment to compliance, the Committee rapidly amended its reports following receipt of the information in the Complaint. On April 7, 2022, the Committee received copies of correspondence indicating that a party engaged in longtime harassment of the Company and its principals was alleging that political committees had been misreporting employer and occupation information for contributions by the Fertitta siblings. Within days, the Committee amended reports from 2019 to the present to update the occupation and employer information for these contributions.

III. The Committee Satisfied Its “Best Efforts” Requirements

The Committee satisfied its obligation to pursue “best efforts” in obtaining and disclosing the information necessary to identify contributors on its periodic reports when it reasonably relied on contributor information in its records of past contributions and filings.

The Commission's regulations provide that separate segregated funds and their connected organizations satisfy the “best efforts” rules in 52 U.S.C. § 30102(i) and Section 104.7 of the regulations when employer and occupation information is based on information “in the political committee's possession, or in its connected organization's possession, regarding contributor identifications, including information in contributor records, fundraising records and previously

⁹ *Id.*; *see also id.* § 100.12.

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filed reports.”¹⁰ The Committee squarely satisfied this element by disclosing the employer and occupation information it had in its files based on previous contributor records, fundraising records, and previously filed reports. Specifically, in 2013 and 2014, the Committee disclosed the occupation and employer of Frank J. Fertitta III as Chairman & CEO of Fertitta Entertainment LLC and the occupation and employer of Lorenzo J. Fertitta as Chairman and CEO of Zuffa LLC. Unsurprisingly, based on its historical records and past reports, the Committee used similar occupations and employers on the reports alleged to be deficient in the Complaint.¹¹

Further, in addition to relying on information in the Committee’s records, agents working on behalf of the Committee regularly communicate with contributors to ensure that the Committee files accurate and comprehensive reports.¹² The Committee will continue to review and update its procedures to ensure the accurate reporting of contributor information moving forward.

The theory in the Complaint that political committees have an obligation to exercise investigative efforts to ensure that titles and employers of recurring donors have not changed from month to month or year to year has been specifically rejected by the Commission for sound policy reasons. In an Explanation & Justification issued in 1993, the Commission announced that it was extending its then-current policy that “committees are expected to review *their own records, including* contributor records, fundraising records and previously-filed FEC reports, so that they can report information known to them . . . To prevent reporting of outdated information, political committees *need only check their records and reports.* . . .”¹³ The Commission specifically rejected the theory on which the Complaint relies, stating that it had “decided not to add new language requiring a committee treasurer to report all contributor information which is not provided by the contributor, but which is in fact known by the committee treasurer or the treasurer’s agents.”¹⁴ The Commission declined the invitation to modify the rules on grounds that are relevant here – it would be challenging to keep track of employer and occupation information “*when contributors are prominent individuals*” and furthermore the Commission found it unsuitable for treasurers to be “encouraged to guess at contributor information.”¹⁵

¹⁰ 11 C.F.R § 104.7(b)(3).

¹¹ Further, even leaving aside these legal arguments, the Committee did not use outdated employer or occupation information corresponding to the contribution by Frank J. Fertitta III on June 18, 2019 and October 26, 2021, since Fertitta Entertainment remains a subsidiary of Red Rock Resorts, Inc. and since Frank J. Fertitta III has long been publicly associated with Fertitta Entertainment.

¹² The key to complying with the Commission’s best efforts requirement is to have in place “a systematized method for complying with the Act’s disclosure requirements.” Explanation & Justification, 45 Fed. Reg. 15080, 15086 (Mar. 7, 1980).

¹³ Explanation & Justification, 58 Fed. Reg. 57725, 57728 (Oct. 27, 1993).

¹⁴ *Id.*

¹⁵ *Id.*

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IV. The Complaint Does Not Identify Anything Beyond a Hyper-Technical Reporting Issue That Has Already Been Corrected

Further warranting dismissal and closure of the file, the Complaint identifies nothing more than a hyper-technical reporting issue that did not withhold a single iota of information from the public regarding the sources of the Committee's funds or result in a violation of any provision of FECA or the Commission's regulations. As discussed above, no person reviewing the Committee's reports could have been under any misapprehension as to the identities of longtime contributors and Company executives Frank J. Fertitta III and Lorenzo J. Fertitta.

The Complaint does not allege any basis to believe that the Committee sought to undermine the disclosure requirements in the Act, nor is it conceivable that any underlying violation of the law could have resulted from the Committee's disclosures. The disclosures had no bearing on whether the Committee properly accepted the contributions, complied with contribution limits, or satisfied any other requirement. Thus, the allegations in the Complaint could not have caused any harm to the public, the integrity of elections, or the requirements in the Commission's regulations.

V. The Commission Has Never Taken a Highly Restrictive Interpretation of the Employer and Occupation Requirement, and the Commission's Enforcement Priority System Strongly Favor Dismissal

The Commission has repeatedly dismissed recent cases involving the reporting of occupation and employer information, including many with facts that are far more egregious than what is alleged in the Complaint. Many of these complaints have been dismissed under the Commission's Enforcement Priority System, given that technical aspects of contributor disclosure do not constitute grave violations or cause harm to the public or the integrity of elections. These dispositions are in keeping with the stated view of multiple Commissioners that, in enforcing technical reporting requirements, we do not "use a sledgehammer to crack a walnut."¹⁶

Each of the following cases constituted far more significant departures from the regulations than the allegation in the Complaint and each was dismissed by the Commission:

- *Matter Under Review 7814*. The Commission dismissed an allegation that an authorized candidate committee failed to disclose employer and occupation information for each individual who contributed \$200 or more.

¹⁶ Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn II, Matters Under Review 5957 & 6031, at 16 n.68 (June 24, 2009).

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- *Matter Under Review 7785*. The Commission dismissed an allegation that an authorized candidate committee failed to disclose employer and occupation information for contributors, even when the Committee did not respond to the Complaint.
- *Matter Under Review 7665*. The Commission dismissed an allegation that an authorized candidate committee failed to disclose employer and occupation information for at least 627 contributors on the Committee's 2019 October Quarterly Report.
- *Matter Under Review 7608*. The Commission dismissed an allegation that an authorized candidate committee failed to disclose address information for in-kind contributions and failed to disclose in-kind contributions and disbursements for things like voter file access, campaign materials, supplies, office space, and staff. The Commission based its decision on the remedial actions already taken by the Committee regarding previously unreported transactions.
- *Matter Under Review 7131*. The Commission dismissed an allegation regarding omitted occupation and employer information, where the contributor was a congressional staff member to the House Member that received the contribution.
- *Matter Under Review 6953*. The Commission dismissed an allegation that an authorized candidate committee failed to include employer and occupation information for over 70.5 percent of its donors in its April and July Quarterly reports, 189 of 269 donors that contributed to the Committee during the first quarter of 2015, and 675 of 956 donors that contributed to the Committee during the second quarter of 2015.

There would be no rational basis for the Commission to handle the current Complaint differently or more strictly than the enforcement actions listed above.

VI. Conclusion

For the reasons stated above, the Commission should dismiss the Complaint and close the file.

Sincerely,



David J. Lazarus
Counsel to Respondents



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STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

EMAIL cela@fec.gov

AR/MUR/RR/P-MUR# 7975

Name of Counsel: David J. Lazarus

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The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

4/26/2022

Date

(Signature - Respondent/Agent/Treasurer)

Treasurer

Title

Steven S. Lucas

(Name - Please Print)

RESPONDENT: Red Rock Resorts, Inc. PAC and Steven S. Lucas, in his official capacity as Treasurer

(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: 2350 Kerner Boulevard, Suite 250
(Please Print)

San Rafael, CA 94901

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This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.