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[redacted]

February 16, 2016

VIA UPS OVERNIGHT MAIL

[redacted]
U.S. Department of Labor
Employee Benefits Security Administration
Los Angeles Regional Office
1055 East Colorado Boulevard, Suite 200
Pasadena, California 91106-2357

Re: Case Nos. 72-0333089 (48) and 72-033090 (48)

Dear [redacted]

We are writing to supplement the March 30, 2015 response of the Board of Trustees (the "Trustees") for the Screen Actors Guild-Producers Pension Plan (the "Pension Plan") and the Screen Actors Guild-Producers Health Plan (the "Health Plan") (the Pension Plan and the Health Plan are referred to collectively herein as the "Plans") concerning the findings as outlined in the October 28, 2015 correspondence from the U.S. Department of Labor (the "Department"). We appreciate the opportunity to further address the Department's continued concerns regarding certain Pension Plan and Health Plan expenditures, and respectfully request an in-person meeting after the Department completes its review of this letter.

This letter specifically addresses the Department's findings in its October 28, 2015 letter (the "Department's Letter"). We note that the Department acknowledges receiving satisfactory responses to a number of its original findings, contingent upon the Trustees furnishing the Department with proof of reimbursement in these instances. Copies of the documents requested by the Department are enclosed herein.

For your convenience, we address each of the few remaining open issues in the order set forth by the Department in the Department's Letter.

1) **Trustee Meetings**

The Department asked for further detail concerning the identity of staff attendees and their role in the Trustee meetings. We previously provided copies of meeting minutes that detail all meeting attendees, their titles and their roles at the meetings. Attached hereto as Exhibit A are yearly organizational charts for the periods under review which identify the staff members present at the Trustee meetings, their titles and functions. While we believe this information satisfies your request, should the Department continue to harbor any doubt as to why any particular employee(s) attended any of the meetings, please let us know the identity of that individual and we will be happy to provide the Department with further explanation.

As a general matter, to the extent that any staff person was in attendance at a meeting, it was because that individual worked on one or more matters that were being discussed or considered at the meeting by the Trustees, and the staff person's presence was necessary in order to answer questions or take directives from the Trustees related to the matter under discussion. It is entirely reasonable for the Trustees to request the presence of certain staff at Trustee meetings to the extent that it is necessary for that staff person to be present in order to field any questions raised by the Trustees.

Failure to include these individuals in the Trustee meetings would have led to delays insomuch as these individuals would have had to have been located and brought into the meeting with each question posed. This would have also led to the meetings running longer and likely would have required additional expenditures of plan assets for another partial day of meetings. That type of inefficiency is inconsistent with the prudence standard required under ERISA. Accordingly, we continue to maintain the position that the Trustees were acting in compliance with ERISA Section 404(a)(1)(A) and (B), 406(a)(1)(D) and 406(b)(1) and (2).

2) **2007 Executive Committee Planning Meetings**

Ten (10) senior staff members attended the 2007 executive committee planning meetings in Palm Springs (the "Executive Meeting"). The Trustees maintain that this was a reasonably priced location and accommodation, rented in the off-season at reduced rates, for important strategic planning and education meetings. As demonstrated by the declaration of two of the attendees, [redacted], (attached hereto as Exhibit B), the Executive Meeting was a productive and efficient use of time and allowed the Executive Committee to focus on the future of the Plans without the interference and distraction that would have occurred had the Executive Meeting taken place in the Plans' office.

As explained in our March 30, 2015 letter, offsite meetings are conducted by all types of non-profit organizations, including charities, fraternities, benefit plans, endowments, hospital and health care organizations and governmental entities. The Plans, in particular, are large, complex organizations and it is reasonable for the Trustees to approve expenditures related to these types of meetings. We urge the Department to consider the size and complexity of the Plans and not blend together benefit plans of different sizes and complexity when forming its conclusions regarding the prudence of these expenditures.

It is important to note that the Executive Meeting was deliberately scheduled over a weekend and not during the work week. Plan staff worked over the weekend at the Executive Meeting, but did not receive any additional compensation, thus saving the Plans a considerable amount in both employee time and expense, and leaving the normal business week for the day-to-day operation of providing benefits to participants. In addition, to keep Plan expenditures to a minimum, Plan staff required that third-party presenters pay for their own accommodations and meals.

The Department has suggested that it would have been more appropriate to conduct the Executive Meeting in the Plans' Offices. While this might have been possible, it was the view of those planning the Executive Meeting that (1) this would result in having to pay some plan staff overtime, the cost of which, together with the costs of air conditioning and other miscellaneous expenses, would exceed the cost of the off-site meeting; (2) the Executive Meeting participants would be subject to interruption by other employees working in the Plan Offices; and (3) the level of camaraderie and esprit de corps which is achieved when executive employees and vendors (who often do not get the chance to interact with one another extensively during the work week) is far greater in an informal setting such as a retreat.

With regard to the issue of whether the Plans would have been better served by having their employees drive back and forth to the Executive Meeting each day, we believe that, in fact, it would have been more costly to reimburse employees at the standard mileage rate for a four (4) hour round-trip drive each day. Additionally, the Department's findings overlook the educational value of the Executive Meeting, as well as ignore the necessary preparation time, "team building" activities, sidebars and post-meeting follow-up. As demonstrated by the attached declarations, the Plans believe that senior staff benefited from these continuing education sessions and that the Executive Meeting was an appropriate expense.

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3) Automobile Expenses

[redacted] employment contract afforded [redacted] reimbursement for all reasonable business expenses, including all automobile expenses. During the audit period, [redacted] leased an automobile. [redacted] submitted collateral or incidental automobile-related expenses to the Plans for reimbursement, including insurance and registration costs; however, [redacted] did not submit any of [redacted] car lease expenses to the Plans for reimbursement, even though [redacted] employment agreement unambiguously supported the reimbursement of such expenses.[1]

[redacted] actual monthly automobile lease expense was a bit more than [redacted] [redacted] would never have expected the Plans to reimburse [redacted] for his full lease amount, but lease reimbursement in the range of [redacted] a month (or [redacted] annualized) would certainly have been reasonable for a [redacted] responsible for employee benefit plans whose assets at that time exceeded two and a half billion dollars.

The Department claims that the Plans failed to maintain a complex mechanism designed to track the percentage of [redacted] automobile expenses that were business-related. The Department appears to be concerned, specifically, that absent this mechanism, it is unable to ascertain what percentage of [redacted] registration and insurance fees are attributable to reimbursable business use. There are at least three compelling reasons why the Trustees' automobile reimbursement practices did not imprudently cause or allow Plan assets to be used for the benefit of any parties in interest under ERISA §§ 404(a)(1)(A) or 406(a)(1)(D), and did not result in unreasonable or excessive expenditures.

[redacted] *Was Reimbursed For Less Than* [redacted] *Work-Related Car Expenses*

The Plans reimbursed [redacted] for less, not more, than [redacted] was entitled to receive under [redacted] employment contract. The Department's analysis overlooks the important fact that the Plans did not reimburse [redacted] for [redacted] automobile lease expenses. [redacted] estimated that reimbursement for the work-related portion of [redacted] automobile lease, at a reasonable rate, would far exceed the incidental, non-work portion of such expenses as insurance and registration. Thus, in receiving 100% of his incidental automobile expenses such as registration and insurance expenses, but refraining from seeking reimbursement (at a reasonable rate) for [redacted] automobile

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[redacted]

lease, the Plans paid [redacted] considerably less than the amount to which he was contractually entitled.

If the Department seeks to recalculate an alleged overpayment of insurance and registration fees to [redacted] it also will need to account for the Plans' total non-reimbursement of lease expenses. That is the only way to reach a fair and reasonable determination as to whether the Trustees breached any fiduciary duty by allegedly paying [redacted] for non-work related expenses. If this accounting is made, we have no doubt the balance would show that the Plans are indebted to [redacted] (and not vice versa). Accordingly, there is no money owing the Plans on either the part of [redacted] or the Trustees.

The Amount of Reimbursement Was Not Excessive or Unreasonable

The Department failed altogether to establish that the level of automobile reimbursement was "excessive and unreasonable," as stated in its January 13, 2015 letter. The total amount of actual reimbursement paid to [redacted] was far less than the applicable market rate for a reasonable car allowance under a typical executive employment contract during the audit period, even for executives of other large, billion-dollar non-profit organizations.

Although the Plans have not had the opportunity to conduct a comprehensive investigation into prevailing automobile allowance levels for executives during the 2006-2011 period, two studies released in that time offer valuable guidance. In 2011, World at Work, a non-profit research organization, issued its "Vehicle Related Benefits Program" study, comparing automobile allowances in 2008 and 2011. It concluded that: "Although there are a wide range of car allowances provided based on employee level, the most prevalent for all levels of employees is [redacted][2] The Hay Group's 2011 Employee Benefits Survey found that the average [redacted] annual automobile allowance was [redacted] (or just under [redacted] per month).[3]

[redacted] effective monthly reimbursement was far less than the mid-range of automobile allowances and, in fact, at or below the low end of the spectrum for automobile allowances during the relevant period. The ineluctable conclusion is that the Plans did not pay imprudent or unreasonable compensation in [redacted] car allowance. *See* 29 C.F.R. § 2550.408c-2(b)(5).

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[2] https://www.worldatwork.org/waw/adimLink?id=53652

[3] http://www.haygroup.com/downloads/us/2011_Hay_Group Executive_Benefits_Survey_Findings_with_brand_cover_(2).pdf

[redacted] Car Expenses Were Work-Related under [redacted] Employment Contract

All of the expenses submitted by [redacted] were work-related within the meaning of [redacted] employment contract. As a prefatory matter, we are concerned that, in revisiting [redacted] reimbursements, the Department is seeking retroactively to amend a fully integrated employment agreement that was negotiated in good faith and at arms' length. Employment contract negotiations, like collective bargaining and commercial negotiations, are complex affairs that involve a multi-tiered exchange of different types of consideration. A party may relinquish a demand for one type of consideration if he or she obtains more of another. It would not have been unreasonable, for example, for [redacted] to withdraw a negotiation demand for car expense reimbursement in exchange for a higher base salary. The Department's after-the-fact interference with the structure of his employment contract fails to account for this complex process; it is one-sided. Taking away part of [redacted] compensation deprives him of the benefit of the bargain that he struck with the Plans at the time he entered into his employment agreement.

We disagree with the Department's contention that the Trustees automatically violated ERISA by failing to establish a complex mechanism for tracking the percentage of business and personal use for executives entitled to automobile expense reimbursement. Our research did not uncover any authority holding that, as a matter of law, such complex mechanisms are required of self-funded ERISA plans.

The Plans maintained adequate controls. The Plans conducted periodic reviews to ensure that executive compensation at the Plans was commensurate with compensation paid to executives at similar non-profit organizations. [redacted] submitted expense reimbursement expense records that were honored by the Plans' accounting department charged with applying [redacted] employment contract. The Plans' accounting office operated in accordance with guidelines approved by the Trustees. The Plans' external auditor, [redacted] reviewed both these guidelines and the reimbursement receipts submitted by Plan executives and did not report anything amiss. Certainly, the Trustees would have taken appropriate corrective action had any compliance problem been reported.

With respect to automobile expenses incurred by [redacted], enclosed herein, as Exhibit C, is a copy of a canceled check in the amount of [redacted]

4) [redacted]

Enclosed, herewith, as Exhibit D, are copies of the requested canceled checks from [redacted] and the [redacted] in the amount of [redacted] including interest) and [redacted] respectively.

5) **Moving expense**

Enclosed herewith as Exhibit E is a copy of the requested canceled check, totaling [redacted] including interest.

6) **Holiday and Commemorative Staff Expenses**

As set forth in our March 30, 2015 letter, the Trustees maintain that it is an accepted practice for non-profit institutions to incur costs related to holiday parties and commemorative events for purposes of bolstering employee morale, team building, recruitment and retention. This practice is not unique to for-profit institutions. Indeed, we appreciate your acknowledgment (October 28 letter, page 4) that such events may be valuable in promoting these important goals. It is obviously in the interest of the participants to have a strong plan staff and, therefore, these reasonable steps to achieve those goals cannot reasonably, and in good faith, be questioned. We fail to understand the basis upon which the Department can reach the conclusion that reasonable actions taken to improve the Plans' staff cannot be paid for out of the Plans' assets. Accordingly, we respectfully request that the Department provide either case law or regulatory guidance that substantiates its position.

We recognize that the Department does not view the practices of for-profit organizations as being necessarily meaningful. Clearly, ERISA funds are held to a higher standard. What cannot be ignored, however, is the competition that all non-profit organizations have for talent. The employment landscape is very challenging and the Trustees, understandably, and in the best interest of participants, want the most skilled available employees working at, and for, the Plans. We would expect the Department to share this view. This Plan competes against for-profit corporations, third-party administrators, insurance companies and many other types of organizations in recruiting and retaining trained employees to provide the best service to their participants.

Further, the Plans disagree that Field Assistance Bulletin 2012-01, cited in the Department's Letter, is applicable. This FAB is further inapposite as it applies to apprentice training trusts, rather than to pension or health trusts, and reflects the Department's widely publicized views of problems in the administration of apprenticeship trusts. Apprenticeship funds were targeted by the Department specifically because they tend to lack the sort of oversight and administrative controls of larger, more stable pension and health plans. Notwithstanding the Department's concerns, the FAB expressly recognizes that reasonable expenses for commemorative events (such as graduation ceremonies) are an appropriate use of trust assets. The same morale and productivity goals advanced by graduation events serve to promote healthy, well-administered, trust funds.

Based on everything set forth herein, there is simply no basis to conclude that treating the Plans' employees civilly is not good trust employment policy, particularly for plans of this size and complexity. Should the Department still have concerns about these and other operational expenditures, we suggest that the Department look at the expenses in a different light. ERISA requires that the compensation of a plan employee be reasonable. Thus, ERISA Section 408(b)(2) exempts from the prohibition of Section 406(a) "reasonable compensation." Employee compensation is clearly covered by this exemption or a plan would be unable to pay salaries or provide any benefits to its own employees. The Trustees determined that such expenses benefit participants and beneficiaries and were consistent with the Plans' policies in effect at the time. There is a long history of case law that the Internal Revenue Service (the "IRS") utilizes to determine the reasonableness of compensation, and our understanding is that the Department would utilize the IRS approach if the issue of reasonableness of compensation should arise.

As an alternative position, we would be prepared to treat the expenses as additional compensation to the employees involved and to prove, through the use of an unrelated third party expert, that even with this additional compensation, the executives' compensation at issue here was reasonable. We believe that the expenses in question would be considered reasonable compensation under the IRS guidelines if allocated *pro-rata* to each attendee as additional compensation.

7) [redacted]

With regard to [redacted] usage by the Trustees, we believe that the Department mischaracterizes the vehicles as [redacted] when the facts demonstrate that the predominant usage was of [redacted] and that the cost of that transportation method was comparable to the cost of a taxi cab service. It is both unrealistic and not legally required that busy volunteer executives use the same mode of transportation in all cases. Transport by [redacted] enables the Trustees to reduce their waiting times at [redacted] and [redacted] as there is frequently a line for cabs. Clearly, efficiency is a relevant consideration for busy executives serving as Trustees. [redacted] are not [redacted] and are simply a safer and more practical mode of transportation. What's more, [redacted] charge a flat fee, thereby saving the Plans of having to pay the cost of taxi cabs to idle in [redacted] or [redacted] traffic. The Trustees maintain their position that reimbursement for the use of [redacted] represents a modest expense under the Plans' reimbursement policy and in many, if not most instances, is a more practical and less expensive mode of transportation.

Even if the Department's view is correct and the use of [redacted] was an unjustified expense, the Department bears the burden of quantifying the amount that the Plans overpaid as a result of Trustees' occasional use of a [redacted] The Department has never (and, we suggest, should not) begin to analyze whether a taxi cab is less expensive on a particular day and on a particular route as opposed to the use of a [redacted] for that same ride. There is, therefore, no basis for the Department to reasonably contend that the use by a Trustee of a [redacted] on a particular day and on a particular route, may have minimally exceeded the cost of a taxi cab.

8) Improper Use of Conference Room

The Department has decided to take no further action with respect to the issue of use of the Plans' facilities.

9) [redacted] Insurance Broker

The Department has indicated that if the Plans are able to furnish the Department with demonstrable evidence that [redacted] had no responsibility or involvement with the Plans' relationship with [redacted] during the audit period, it will withdraw its contention that [redacted] was dealing with Plan assets in his own interest or for his own account within the meaning of ERISA § 406(b)(3). We also understand that the Department is seeking confirmation of [redacted] non-involvement from [redacted].

[redacted]. Because of the circumstances surrounding [redacted] termination, the Plans' ability to obtain reliable and unbiased information from [redacted] concerning [redacted] non-involvement in insurance matters is problematic. We submit with this letter, however, the sworn Declarations of [redacted] and [redacted] which establish [redacted] non-involvement with [redacted] and its brokerage services (attached hereto as Exhibit F).

These declarations demonstrate, in greater detail, the following basic facts:

(i) [redacted]

(ii) thereafter [redacted] withdrew from active involvement in Plan-related brokerage and insurance activities;

(iii) by 1999, when [redacted] acquired [redacted] former company, [redacted] had long extricated [redacted] from any active involvement with brokerage services or insurance;

(iv) in 2006, [redacted] assumed responsibility for [redacted] work on behalf of the Plans;

(v) [redacted] received no help from, and had no communication with, [redacted] in connection with [redacted] activities on behalf of the Plans;

(vi) [redacted] dealt solely with [redacted] and [redacted] subordinates, and had no interface with [redacted] in connection with any Plan activities;

(vii) in 2009, [redacted] decided to transfer the brokerage work to [redacted] when [redacted] left [redacted] for [redacted] Insurance; and

(viii) [redacted] made all [redacted] insurance and brokerage decisions without [redacted] involvement; for example, [redacted] terminated [redacted] which had furnished important brokerage services to the Plans for 20 years, and [redacted] did not learn of this decision until after it was made.

There is absolutely no evidence, that [redacted] or [redacted] had responsibility or active involvement in the Plans' relationship with [redacted] during the audit period. If the Department believes it can sustain its burden of producing evidence of such involvement, we would appreciate an opportunity to review it, but at this time it appears that the Department is relying solely on speculation that such involvement took place. For this reason, we ask the Department to withdraw its assertion that [redacted] and the Trustees violated ERISA's fiduciary duty requirements with respect to [redacted]

9) [redacted]

[redacted]

10) [redacted]

With respect to the issue of the [redacted] fees, we understand that the Department continues to assert that the Trustees hired [redacted] simply to limit their own liability for the benefit of the Trustees, personally, and not for the benefit of participants and their beneficiaries. We continue to adamantly maintain that the Department's assertion is inaccurate and that the decision of the Trustees in hiring [redacted] was an appropriate and reasonable exercise of their fiduciary duties.

As we indicated in our March 30, 2015 letter, the agreement with [redacted] provides explicitly that their function was to regularly monitor and evaluate the [redacted] All Asset Fund (the "Fund") and to decide whether the Plan should continue to be invested in the Fund. Pursuant to the terms of [redacted] agreement with the Plans, [redacted] had the contractual authority to manage the assets and could decide to increase or decrease the Plans' investment in the Fund or completely eliminate such investment.[4] Clearly, those are the types of actions and responsibilities of an investment manager fiduciary and not of an investment consultant.

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[4] See Section III (A) of the Investment [redacted] Investment Agreement in which it states that: "The Bank is hereby appointed investment manager of the Assets in accordance with the provisions of ERISA Section 3(38). The Bank hereby accepts this appointment and agrees to perform its duties in accordance with and subject to this Agreement, the Plan's Trust Agreement, the requirements of ERISA and other applicable law."

See also Section III (B) of the [redacted] Investment Agreement in which it states that: Bank is hereby authorized and empowered to manage, supervise, and administer the Assets held in the Account in such manner as Bank, ***in its absolute discretion,*** deems advisable, provided that all investments made by the Bank shall be in accordance with the Investment Policy Statement attached hereto as Exhibit A. For this purpose, Bank is authorized and empowered to deal with the Assets in the same manner and as freely as an owner could do and with all the powers which an owner could exercise. Without limitation of any general powers granted it, Bank is specifically authorized to:

1. Sell, exchange or otherwise dispose of the Assets, including the Fund shares, and reinvest the proceeds of such sale, exchange or disposition in accordance with the Investment Policy Statement.

2. Vote shares of the Fund on behalf of the Plan in accordance with the Bank's written voting policies, a copy of which has been provided to the Plan, and execute proxies for such purposes.

3. Collect interest, dividends and other forms of income from the Assets, to be deposited into an account with the Bank to be held for the benefit of the Plan.

4. Execute all declarations, affidavits, and certificates of ownership, now or hereafter required, with respect to all dividends or other income on any securities, payments of principal, redemption of any of the Assets, or otherwise required in exercising rights incidental to the ownership of any of the Assets, inserting thereon Plan's name as the owner of the Asset.

(emphasis added)

Although, it is clear from the [redacted] Investment Agreement (attached hereto as Exhibit G) that the Department's position on this issue is completely inaccurate, we would also like to point out that the Department's Letter fails to reference any case law, ruling, regulation or other guidance to support the position that hiring an investment manager to shield trustees from liability constitutes a breach of fiduciary duty. The fact is that Trustees take actions to protect themselves from liability as a matter of course. Thus, for example, trustees commonly obtain fiduciary insurance and that insurance is paid for out of plan assets. Similarly, trustees frequently retain investment managers with respect to some or all of the plan's assets and those managers are paid for out of plan assets, despite the fact that an obvious motivation for retaining such managers is to protect the trustees themselves. Failure to purchase this insurance or to retain said investment managers would constitute gross misconduct on the part of any trustee because if the plan at issue were sued due to an alleged fiduciary breach or because an investment failed, it would not just be the trustees that could potentially be liable, it would be the plan itself. Thus, the Trustees were not in breach of their fiduciary duty because they hired [redacted] rather, they would have been in breach of their fiduciary responsibilities had they not done so.

We also note that in the Department's Letter, the Department chose not to respond to our lengthy discussion of the EBSA Advisory Council's report on "Hedge Funds and Private Equity Investments." We remind the Department that the Council concluded its thorough analysis of the issue by stating that when plans invest directly in such funds, "plan sponsors cannot blindly rely on their professionals' opinions and advice, given that plan sponsors are obligated under the prudent investor requirement of ERISA to retain independent professionals who have the requisite knowledge to assist the plan sponsors in understanding the nature of these investments and how they may affect the plan's overall investment performance, and must have an understanding of what the professional is doing and recommending." The position taken in the Department's Letter seems to directly contradict its own advisory council.

The Plans did precisely what the Council recommended and yet the Department is taking the position that such prudent actions were improper. We respectfully suggest that the Department should at least address the reasoning of the Council's recommendation and explain why the Trustees should have departed from the approach suggested by the Council in its published guidance.

With regard to the issue of whether the Trustees paid fair market value to [redacted] for the services they received and whether the services were helpful to the Trustees in the administration of the Plans, it is our view that the Trustees paid [redacted] a reasonable fee for its services given that: (1) [redacted] had complete authority to determine whether the Plans should dispose of part or all of their investment position in the Fund, (2) [redacted] monitored the trades within each of the underlying funds as well as the trades between funds, and (3) [redacted] provided quarterly reports to the Trustees on these issues.[5]

[redacted] was paid [redacted] for these services, renegotiated to lower rates in 2006 and still lower rates in 2009. These charges were reasonable on their own. In fact, when the Fund fees [redacted] are added to the effective [redacted] rates, the Plans paid an effective total fee/consultant rate of less than [redacted] which is remarkably good for this investment type. Thus, we continue to maintain that the [redacted] charge, together with the Fund charges, are entirely reasonable (and, in fact, significantly below market rates in the aggregate). Further, we continue to maintain that the fee paid to [redacted] would have been reasonable even if [redacted] was serving as a consultant or advisor with respect to the Fund investment, rather than as a fiduciary or an investment manager.

In this regard, we continue to believe that a good measure of the reasonableness of the fees paid to [redacted] is the additional cost of a Fund that was formed in 2012 to specifically address these concerns. As we pointed out in our March 30, 2015 letter, the additional cost of that fund was [redacted]

We would also like to point out that the [redacted] that the Plans were paying with respect to the Fund investment was a negotiated rate given to the Plans. What's more, the [redacted] that the Plans were paying on the Fund investment is far lower than the fees paid on other investments at that time (for example, the Plans were paying over [redacted] on the [redacted]

What's more, we feel that the Department has completely overlooked the complexity and unique nature of the Fund investment. This is relevant for two reasons. First, to the extent that the Fund investment was more costly, this may have been due to the complexity of the Fund and its retention of [redacted] a world-famous asset allocator. This also explains the necessity for the Plans hiring [redacted] The [redacted] was less than five (5) years old when the Plans first invested. Even though the Trustees believed, and continue to believe, that the Fund was a prudent investment, the immaturity of the Fund warranted extra prudence by way of hiring a Plan fiduciary like [redacted] to handle decision-making with respect to the investment.[6]

The Department also mischaracterizes the Plans' investment in the [redacted] While the Department correctly points out that this investment was made

[5] See [redacted] Investment Agreement (attached hereto as Exhibit G)

[6] The assertions regarding the [redacted] fees, as set forth herein, are supported by the Declaration of [redacted] the Plans' existing investment advisor (attached hereto as Exhibit H).

through the [redacted], it fails to realize that [redacted] was structured as a venture capital operating company ("VCOC") under ERISA's plan asset regulations. If a plan invests funds in a VCOC, the assets invested are not considered plan assets; only the shares of stock in the VCOC are considered to be plan assets. As a result, there was no need for an investment manager with respect to this investment, while there was a need for an investment manager in the Fund.

CONCLUSION

We would ask the Department to note that in an environment spanning from 2010 through 2014, where the general cost of living increased by [redacted] the Pension Plan reduced administrative costs by [redacted] Pension Plan administrative costs on a per participant basis decreased from [redacted] between [redacted] with reductions shown each year.[7]

With respect to the Health Plan, from 2010 through 2014, in an environment in which general inflation rose by [redacted] and the Health Plan's benefit payments increased by [redacted] administrative costs were only up slightly, at [redacted] This increase includes mandatory Patient Protection and Affordable Care Act (the "ACA") fees of [redacted] And yet, on a per participant basis, administrative costs for the Health Plan decreased by [redacted] over this period. If you remove the ACA fees paid for 2014, administrative costs would have decreased by [redacted] over the period from 2010 through 2014. Removing the ACA fees, the cost per Health Plan participant decreased by [redacted] from 2010 through 2014 and administrative costs, based on the percentage of benefits paid and the percentage of contributions received, fell steadily over this period.

In conclusion, we ask that the Department reconsider its findings in light of the fact that the Trustees have maintained the Plans' administrative costs at very low levels during the entire review period and that these administrative costs compare very favorably when compared to those of other multiemployer plans. Furthermore, as we explained, the Trustees continued to take responsible actions to place even greater controls on expenses during the review period, and took swift, appropriate, corrective action when needed. We believe that this track record reflects that the Trustees at all times acted reasonably and appropriately with regard to expenditures and

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[7] Administrative costs, as measured by cost per contributing employer, percent of benefits paid, percent of contributions received, and percentage of net assets, all fell steadily over this time.

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[redacted] (b) (6), (b) (7)(C)

that none of the actions described in the Department's tentative findings constitutes a breach of fiduciary duty or a violation of the law or applicable regulations.

We look forward to continuing this constructive dialogue, and request the opportunity to meet in person to address any further concerns or findings which the Department may have after consideration of the foregoing.

Very truly yours,

[redacted] (b) (6)

MHH:MM
Enclosures