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STATE OF CONNECTICUT ENFORCEMENT COMMISSION
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Indra K. Nooyi (Self-Report),
Greenwich

File No. 2018-057

AGREEMENT CONTAINING CONSENT ORDER

This agreement by and between Indra K. Nooyi of the Town of Greenwich, County of Fairfield, State of Connecticut (hereinafter "Respondent") and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with § 9-7b-54 of the Regulations of Connecticut State Agencies and § 4-177(c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. The Complaint was self-reported by Attorney James A. Kahl on behalf of Respondent and PepsiCo, Inc. (hereinafter the "Company").
2. Respondent, at all times relevant to this complaint, was Chairman and CEO of PepsiCo, Inc. The Respondent described her self-reported potential violation as follows:
[Respondent] is a resident of Greenwich, Connecticut ... On March 9, 2018, [Respondent] made a \$100.00 political contribution to Ned for CT, the gubernatorial candidate of Ned Lamont. At the time, she also completed and returned to the committee a Contribution Certification Form, indicating that she was not the principal of a state contactor or prospective contractor, a lobbyist, or the spouse of a lobbyist. Approximately one month after making this contribution, [Respondent] met with senior PepsiCo legal and government relations staff ... After this discussion, [Respondent] recalled contributing to the Lamont campaign, and asked the PepsiCo legal and government affairs staff to determine whether her contribution was consistent with [Connecticut] law.
3. By way of background, Respondent has no prior history with the Commission. Further, it is not disputed that the Company, and its subsidiaries Pepsi Beverages Company ("PBC") and Frito-Lay, are state contractors for purposes of General Statutes § 9-612; which hold various contacts and agreements with such entities as Western Connecticut State University, Central Connecticut State University and Connecticut Department of Economic and Community Development.

4. General Statutes § 9-612 provides, in pertinent part:

(f)(1)(F) ***“Principal of a state contractor or prospective state contractor” means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, ...***

...

(2)(A) ***No state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to, or solicit contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee;***

(C) ***If a state contractor or principal of a state contractor makes or solicits a contribution prohibited under subparagraph (A) or (B) of this subdivision, as determined by the State Elections Enforcement Commission, the contracting state agency or quasi-public agency may, ... and no state agency or quasi-public agency shall award the state contractor a state contract or an extension or an amendment to a state contract for one year after the election for which such contribution is made or solicited unless the commission determines that mitigating circumstances exist concerning such violation. ...***

[Emphasis added.]

5. Upon investigation, it was determined that the Company and its subsidiaries PBC and Frito-Lay were *not* included on the *Prohibited State Contractors and Prospective State Contractors Lists* maintained on the website of the Commission. Furthermore, it was confirmed that Respondent made a single contribution to *Ned for CT*, as represented in this self-reported complaint.
6. Because Respondent is the Chairman of the Company she is subject to the restrictions contained in General Statutes § 9-612(f) (l) (F) (i). The Commission concludes therefore that as a result of Respondent's position, the \$100.00 contribution to the candidate committee *Ned for CT* that is subject of this self-reported Complaint was a prohibited contribution in violation of § 9-612 (f) (2) (A).
7. The Commission finds that pursuant to General Statutes § 9-612 (f), a mitigating circumstances analysis is not reached unless the Commission determines that a violation has occurred. It follows that the violation by Respondent of the state contractor contribution prohibition, as detailed above, allows the Commission to determine whether "mitigating circumstances" exist concerning such violations pursuant to General Statutes § 9-612(f)(2)(C).
8. General Statutes § 9-612 (f) (2) (C) provides possible relief from the mandatory contract penalty, and allows the Commission to determine whether "mitigating circumstances" exist concerning the violation. If mitigating circumstances are found by the Commission, the contractual penalty is not automatic, but the awarding agency of the state retains discretion to amend a contract or award a new contract. The state agency may still void a contract at its discretion if a violation of § 9-612 (f) (2) (C) occurs, even if mitigating circumstances are found pursuant to that section.
9. In determining whether circumstances are "mitigating," the Commission deems it necessary to consider any circumstances pertaining to the contribution by Respondent and the recipient candidate, the committee and its agents, as well as the contracts and agreements between the Company and the State, that would, although not excusing the conduct, tend to reduce the harm the state contractor contribution ban is designed to prevent.

10. The Commission has consistently determined that pursuant to General Statutes § 9-612 (f) the state contractor prohibition is designed to eliminate the undue influence over the awarding of contracts that principals of state contractors who make contributions to candidate committees and exploratory committees for statewide office could wield over those state actors awarding such contracts and prevent awarding of contracts in exchange for campaign contributions. *See In the Matter of a Complaint by Carla Squatrito, et al.*, File No. 2010-112; *In the Matter of a Complaint by Gerald T Weiner, et al.*, File No. 2010-099; *In Re David Baxter, et al.*, File No. 2009-080; *In Re Charles Shivery*, File No. 2007-381; *In the Matter of Ronald Nault and Luchs Consulting Engineers, LLC*, File No. 2007-353; *In Re JCJ Architecture*, File 2008-120; *In Re Antinozzi Associates*, File No. 2014-009, *In the Matter of a Complaint by Curtis Robinson*, Plainville, File No. 2014-169; and, *In the Matter of a Complaint by Raymond Baldwin*, Trumbull, File No. 2015-009; *Complaint by John Traynor*, Bridgeport, File No. 2018-002; and *Complaint by Shawn T. Wooden*, Hartford, File No. 2018-024.

11. The purpose, according to Respondent’s counsel, of this self-reported potential violation of the state contractor contribution prohibition, was so that the Commission may determine and conclude, if violations have occurred based on its review and investigation, whether *mitigating circumstances* concerning such violations existed.

12. The Commission determines in this instance that the following mitigating circumstances exist:
 1. Respondent self-reported this matter;
 2. Respondent was not involved in any manner in the bidding for or negotiations concerning any agreements between the Company, and its subsidiaries, and the State of Connecticut, or state entities;
 3. Respondent does not have any role in the implementation and administration of the contracts between the Company, and its subsidiaries, and the State of Connecticut, or state entities;
 4. There was lack of evidence that an agreement by or between the Company and its subsidiaries or Respondent and the potential candidate, representatives of the agencies with which the Company may have a contract, or the State of Connecticut that the Company or its subsidiaries may

receive some favored treatment in exchange for the contribution that Respondent made to Ned for CT;

5. There was a lack of evidence that there was any expectation that the gubernatorial candidate would provide assistance to the Company and its subsidiaries in its efforts to compete for awards of State of Connecticut contracts; and,
 6. The gubernatorial candidate for statewide office was not involved with awarding contracts between the Company and its subsidiaries and the state at the time."
13. The Commission concludes pursuant to General Statutes § 9-612 (f) (2) (C) that mitigating circumstances existed pertaining to the violation found in connection with the contribution by Respondent to the committee named herein, such that the Company is not statutorily barred from continuing its negotiations to effectuate or implement any amendments to existing contracts between it and Western Connecticut State University, Central Connecticut State University and Connecticut Department of Economic, Community Development and/or other state entities as delineated within the prohibitions of § 9-612.
 14. The Commission determines after investigation that the policy behind General Statutes § 9-612 (f) to address "pay-to-play" schemes relating to campaign contributions and the awarding of state contracts was not circumvented under these narrow facts and circumstances, and therefore, allowing the Company to continue its contractual relationships, obligations or bid proposals with the State does not compromise the state's interests to insure integrity in its campaign financing system.
 15. Accordingly, the Commission concludes that these mitigating circumstances concerning the violation by Respondent do not bar Western Connecticut State University, Central Connecticut State University and Connecticut Department of Economic, Community Development pursuant to General Statutes § 9-612 (f) (2) (C) from negotiating contracts or continuing their existing contract obligations with the Company and that the aforementioned state entities may exercise their discretion consistent with their authority under that section.

16. Respondent admits all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. Respondent shall receive a copy hereof as provided in § 9-7b-56 of the Regulations of Connecticut State Agencies.
17. It is understood and agreed that this agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondent and may not be used by either party as an admission in any subsequent hearing or against the Company in any proceeding, if the same becomes necessary.
18. Respondent waives:
 - a. any further procedural steps;
 - b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
 - c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this agreement.
19. Upon Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against Respondent or proceedings against the Company pertaining to this matter, and this agreement and order does not serve as a prospective ban on future contracts between the Company, its subsidiaries and state actors and/or entities.

ORDER

IT IS HEREBY ORDERED THAT the Respondent shall henceforth strictly comply with the requirements of General Statutes § 9-612 (f); and,
IT IS HEREBY FURTHER ORDERED THAT the Respondent shall make a remittance in the amount of three hundred dollars (\$300.00) to the Commission, in full and final resolution of this matter.

The Respondent:

BY:



Indra K. Nooyi
c/o James A. Kahl
Whiteford, Taylor & Preston
1800 M Street, NW Suite 450N
Washington, D.C.

Dated: 11/8/2018

For the State of Connecticut:

BY:



Michael J. Brandi
Executive Director and General Counsel
And Authorized Representative of the
State Elections Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

Dated: 11/13/18

Adopted this 14th day of November, 2018 at Hartford, Connecticut



Anthony J. Castagno, Chairman
By Order of the Commission

