ANDREWS
ATTORNEYS KURTH LLP

600 Travis, Suite 4200
Houston, Texas 77002
713.220.4200 Phone
713.220.4285 Fax
andrewskurth.com

Joe Holzer
713.220.4172 Phone
713.238.7278 Fax
joeholzer@andrewskurth.com

1933 Act/§2(a)(1)
1934 Act/§3(a)(10)

November 20, 2006

By Federal Express

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Erica Enders Racing, LLC

Ladies and Gentlemen:

This firm is counsel to Erica Enders Racing, LLC ("Erica Enders Racing"), a Texas Limited Liability Company. This letter amends and is submitted in replacement of our prior submissions dated June 2, 2006, August 4, 2006, August 21, 2006, September 28, 2006 and October 23, 2006. On behalf of our client we request that the Division of Corporation Finance ("Division") advise us that it will not recommend to the Securities and Exchange Commission (the "Commission") that it take any enforcement action against Erica Enders Racing with respect to: (1) the offer and sale of non-voting, non-transferable, no-dividend, Membership Interests ("Memberships") in Erica Enders Racing, LLC, evidenced by Class A Stock certificates without registration under § 5 of the Securities Act of 1933 (the "Securities Act") and (2) the nonregistration by the Company of the Memberships under § 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") (the Securities Act and the Exchange Act are collectively referred to herein as the "Acts"). Erica Enders Racing will also issue Memberships evidenced by Class B voting stock which will be closely held and will not be offered to the public--we are not asking for a no action letter on the Class B Memberships evidenced by voting stock.

FACTUAL BACKGROUND

Erica Enders is a professional race car driver in NHRA Pro Stock. She has been to the final round and qualified Number 1. Her career highlights as noted by NHRA are:

2005: Became first woman to compete in NHRA's Pro Stock Category since 1993; first woman in NHRA history to qualify in the top-half of a Pro Stock field; became first woman to reach a final round in Pro Stock (Chicago 2); nominee for "Road to the Future" Award for the season's top rookie.

2004: Became the 35th woman in NHRA history to earn a national event victory (Super Gas, Houston).

2003: Had her life story made into the Disney Original Movie *Right On Track.*

2000: Sportsman Rookie of the Year; advanced to first National Event Final at age 16 (Houston).

1995: Jr. Dragster Driver of the Year.

1993: Division 4 Jr. Dragster champion (8 to 9 year old class).

1992: Began drag racing at the age of 8; Original Jr. Dragster car is on display at the Wally Parks NHRA Motorsports Museum; earned 37 career Jr. Dragster wins in eight years of competition.[1]

In September 2006, Erica Enders Racing purchased assets from Don Schumacher Racing including a Dodge Stratus Pro Stock racecar, engines, transmissions and other parts as well as the race trailer used to transport the car and equipment to each race. David Nickens has agreed to continue to be the crew chief and engine builder for Erica Enders Racing.

NONVOTING, NONTRANSFERABLE MEMBERSHIPS

[1] http://www.nhra.com/drivers/driver.asp?driverid=88

Erica Enders Racing proposes to sell to her public fans Memberships which includes the following described consumables at a price of $49.95:

(a) A non-voting, non-transferable, no-dividend Membership in Erica Enders Racing, L.L.C., evidenced by a framed, sealed, blind embossed, silver foil, signed (autographed) "Stock" certificate, representing one Class A nonvoting Membership in Erica Enders Racing. The Stock certificate will be delivered framed and sealed in plastic with the owner's name printed on the certificate. Because of the plastic seal, it will not be possible to remove the original owner's name from a Stock certificate or endorse the Stock certificate. The certificate will lack the usual blank spaces allowing for endorsement. The articles of formation, Regulations, each Stock certificate and any sales materials will state that: the Membership is sold not for investment purposes; the Membership is nonvoting, nontransferable, nonredeemable, cannot be sold, assigned, pledged or hypothecated; the Membership will not be paid any dividends or otherwise share in the profits or losses or distribution of assets of Erica Enders Racing; the Membership will not appreciate in value and will receive nothing upon the dissolution of the company; and each person named on the certificate is entitled to own only one Membership (the Articles and Regulations are attached hereto);

(b) Merchandise consisting of a limited edition "Erica Enders Team Owner" racing hat (retail sales price $24), T-shirt (retail sales price $24), I.D. Card or arm band, "Owner access only" lanyard and credential holder (retail sales price $10), and pin (retail sales price $6);

(c) One Full Event NHRA National Event ticket (retail sales price $85) for the race of choice with the purchase of a full price ticket good for 12 months;

(d) A $300 Cash Rebate Certificate from Dodge good towards the purchase of any new Dodge vehicle when presented prior to purchase good for 12 months;

(e) A 20 percent Team Owner Discount on Erica Enders Merchandise purchased through the members only website or at the Erica

Enders/MainGate Merchandise Trailers at NHRA Events good for five years;

(f) One time access good for five years to the team hospitality tent including beverages and a meal (retail sales price $125) and access to "Team Owner Meeting" to be held during an NHRA National Event where the "owners" will have the opportunity to spend 75 minutes meeting Erica Enders personally for autographs, photos, refreshments and a team update on racing, business and charitable activities;

(g) Snap On Tools will offer 50 percent off of an Erica Enders Starter Tool Set from Snap-On good for 12 months; and

(h) A 20 percent discount ($18 value) on the purchase price of a 1:24 scale collectible die cast replica of Erica's Pro Stock Dodge Stratus from Racing Champions good for 12 months.

No additional or future benefits or privileges will be promised or offered in connection with the purchase of the Memberships.

USE OF PROCEEDS, NUMBER OF MEMBERSHIPS AND MARKETING

There will be no limit on the number of Memberships that will be sold. The Articles of Formation will authorize issuance of 10 million Class A nonvoting Memberships. In the unlikely event that 10 million Memberships are sold, the articles will be amended to increase the number of authorized Class A Memberships so that more Memberships can be sold.

The proceeds will be used to fund the operations of Erica Enders Racing. The cost of campaigning one race car in Pro Stock today is approximately $3,000,000 per year. Some of this amount will be funded with corporate sponsorships. Erica Enders Racing hopes to raise the balance with the sale of Memberships. Most teams campaign two cars to collect twice the data and improve the chances of winning. The cost has doubled in the last four years and the cost is expected to continue to escalate. Only the very well funded teams will have a realistic opportunity to qualify in the 16 car field at the 23 races per year from across the entire nation much less win the championship. Pro Stock is intensely competitive. Generally, the number one and number sixteen qualified drivers are separated by just five hundredths of a second. Many of the non-qualifiers miss the field by just thousandths of a second. The goal of Erica Enders Racing is to be competitive on a championship level.

The proceeds received from the sale of Memberships will be used to fund the operating expenses and capital requirements of Erica Enders Racing, which is now owned by Erica Enders and her father, Gregg Enders.

The Memberships will be sold over the internet at www.ericaendersracing.com, by Jeg's, a high performance mail order parts seller at www.jegs.com, by advertising in the NHRA's weekly publication, National Dragster, direct mail targeted to Erica Enders fans and potentially limited, targeted television advertising on ESPN2 which airs the NHRA races and A&E which airs *Driving Force*, a reality show about the John Force racing family.

STATEMENT OF ISSUE

Whether the Erica Enders Racing Memberships constitutes a "security" within the scope of the definition of that term in § 2(a)(1) of the Securities Act and § 3(a)(10) of the Exchange Act in the context where the Proposed Articles, Regulations, Memberships evidenced by a stock certificate and any advertising and promotional material state (a) the Membership is sold not for investment purposes; (b) the Membership is nonvoting, nontransferable, nonredeemable, cannot be sold, assigned, pledged or hypothecated; (c) the Membership will not be paid any dividends or otherwise share in the profits or losses or distribution of assets of Erica Enders Racing; (d) the Membership will not appreciate in value and will receive nothing upon the dissolution of the company; (e) the number of Memberships is unlimited preventing appreciation due to demand exceeding supply; and (f) each person named on the certificate is entitled to own only one Membership. In addition, the other items included in the Membership are consumables and should not cause the Membership to constitute securities. Under these conditions the Memberships cannot appreciate in value because (a) there will be no distributions to holders of the Memberships; (b) upon liquidation or dissolution of the Company a holder of the Membership is entitled to receive nothing; (c) there is no prospect for profit on resale or transfer of the Membership in light of the sale and transfer restrictions; and (d) the number of Memberships is unlimited preventing appreciation due to demand exceeding supply.

LEGAL OPINION

It is our opinion that the Memberships, in the context and under the facts and circumstances set forth in *Factual Background*, *Nonvoting, Nontransferable Memberships* and *Use of Proceeds, Number of Memberships and Marketing* above, do not constitute a "securities" within the meaning of that term as defined in § 2(a)(1) of the Securities Act and § 3(a)(10) of the Exchange Act. Accordingly, in our opinion,

registration of the Memberships evidenced by Stock certificates is not required under § 5 of the Securities Act or § 12(g) of the Exchange Act.

LEGAL DISCUSSION AND BASIS FOR OPINION

A. Recreational Memberships are not Securities.

Section 2(a)(1) of the Securities Act (15 U.S.C. § 77b(a)(1)) provides that, unless the context otherwise requires:

> The term "security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group of index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

Although memberships in a race team are not literally set forth in the foregoing definition of a "security," we have nonetheless considered whether the Erica Enders Racing Memberships evidenced by a stock certificate may be regarded as the equivalent of "stock" or another form of "securities."

We believe that the Erica Enders Racing Memberships to be offered and sold by the Erica Enders Racing should not be treated as the equivalent of "stock" for the purpose of applying Section 2(a)(1) of the Securities Act. In *Tcherepnin v. Knight*, 389 U.S. 332, 339 (1967), the Court identified the right to receive "dividends contingent upon an apportionment of profits" as the most common feature of stock. In *Landreth Timber Company v. Landreth*, 471 U.S. 681 (1985), the Court identified several other characteristics traditionally associated with stock: (i) negotiability, (ii) the ability to be pledged or hypothecated, (iii) voting rights in proportion to the number of shares owned, and (iv) the ability to appreciate in value. 471 U.S. at 686 (*citing United Housing Foundation, Inc. v. Forman,* 421 U.S. 837 (1975)).

The Memberships bear no resemblance to stock as characterized by the *Tcherepnin* and *Landreth* Courts. The Memberships do not provide for the payment of dividends, but instead provide only for included consumables and a one-time access to the team hospitality tent and a "Team Owner Meeting." The Memberships may not be pledged or hypothecated or transferred. The Memberships do not entitle a Member to any voting rights or any equity or ownership interest in the Erica Enders Racing or its assets, and Members are not permitted to participate in the management or operation of the Erica Enders Racing. The other consumable items--hats, shirts, pins, a 2 for 1 NHRA ticket, Dodge rebate, discounts off merchandise purchases and access to the hospitality tent--should not turn the Membership into a security because the purchaser is motivated by a desire to consume the items. *Forman* held "when a purchaser is motivated by a desire to use or consume the item purchased . . . . the securities laws do not apply." Additionally, none of those items fit the definition of a security which requires an investment in a common enterprise with the expectation of profits arising from the efforts of others.

We also believe that the Memberships do not constitute a "note," "bond," "debenture," or other "evidence of indebtedness" as such terms are used in Section 2(a)(1) of the Securities Act, since they will bear a strong resemblance to those instruments traditionally excluded from the registration requirements of the Securities Act.

In *Reves v. Ernst & Young,* 494 U.S. 56 (1990), the Supreme Court held that the term "note" as used in Section 2(a)(1) of the Securities Act "should not be interpreted to mean literally 'any note,' but must be understood against the backdrop of what Congress was attempting to accomplish in enacting the Securities Acts." 494 U.S. at 58. In so doing, the Court adopted the "family resemblance test." Further, in *Reves v. Ernst & Young,* the Supreme Court emphasized that: (i) the purpose of the Acts is to regulate investments; (ii) legal formalisms are not binding, but courts should consider the economics of the transaction; (iii) form should be disregarded for substance; and (iv) the proper focus is on economic reality. 494 U.S. 56 (1990). Accordingly, "the task has fallen to the Securities and Exchange Commission, the body charged with administering the Securities Acts, and ultimately to the federal courts to decide which of the myriad financial transactions in our society come within the coverage of these statutes." *Forman,* 421 U.S. at 848. In interpreting the term "security," "form should be disregarded for substance and the emphasis should be on economic reality." *Tcherepnin v. Knight,* 389 U.S. 332, 336 (1967).

Finally, the Supreme Court has consistently held that the definition of a security in § 3(a)(10) of the Exchange Act "is virtually identical [to the definition in the Securities Act]." *Reves*, 494 U.S. at 61 n. 1. Accordingly, our discussion of the issue and our

opinion applies equally to § 3(a)(10) of the Exchange Act as it does to § 2(a)(1) of the Securities Act.

Under the "family resemblance test," a note with a term of more than nine months is not a security if the issuer can demonstrate, by applying the four factors enumerated by the Court, (1) that the note bears a strong family resemblance to one of the categories of notes traditionally excluded from the definition of a security, or (2) that, by examination of the same factors, another category should be added to the list. *Reves,* 494 U.S. at 67. These categories broadly include notes delivered in consumer financing, notes secured by a mortgage on a home, notes secured by a lien on a small business or its assets, character loans to bank customers, short-term notes secured by an assignment of accounts receivable, and notes formalizing open-accounts. *See Id.* at 65.

The four factors enumerated by the *Reves* Court include:

The Motivations of the Seller and Buyer. If the seller's purpose is to raise money for general business use or to finance substantial investments and the buyer is interested primarily in profit to be generated by the note, the instrument is likely a "security." If, however, the note is to facilitate the purchase and sale of a minor asset or consumer good, to correct for the seller's cash-flow difficulties, or is to advance some other commercial or consumer purpose, the note is less sensibly described as a "security." *Id*. at 66.

The Plan of Distribution. If there is "common trading for speculation or investment" in the note, and if the note is offered and sold to a broad segment of the public, the note is likely a "security." *Id.* If, however, the note is sold to a limited group of persons and there are substantial restrictions on the transferability of the note, the note is less likely to constitute a "security."

The Reasonable Expectations of the Investing Public. If the public reasonably perceives the notes as investment securities, then the notes are likely to be considered to be "securities." *Id.* at 66-67.

The Need for Protection. If there is some factor that significantly reduces the risk of the instrument, such as the existence of another regulatory scheme or collateralization, then the instrument is less likely to be considered a "security." *Id.*

Applying the "family resemblance" test to the Memberships in Erica Enders Racing, we submit (a) that the motive of the Erica Enders Racing (seller) is to sell consumer-related memberships in a racing team, and the motive of the Member (buyer) is to obtain a recreational opportunity and to purchase a membership which will entitle the

buyer to merchandise, use the Erica Enders Racing Hospitality tent, attend a "Team Owners Meeting" and not to earn a profit (there is no opportunity to earn a profit); (b) there will be no common trading of the Memberships (they are non-transferable); and (c) there are no reasonable expectations of economic profit or gain either by the payment of any interest or income on the Memberships (there is none) or by the sale of the Memberships (sale is prohibited). Under this analysis, the Memberships should not be considered to be "securities" under *Reves*.

Because the Memberships do not fall plainly within the usual concept or definition of "stock," "note," "bond," "debenture," or other "evidence of indebtedness" as set forth in Section 2(a)(1) of the Securities Act, consideration must be given to whether the Memberships would otherwise be deemed "securities" by reason of being "investment contracts" or "instruments commonly known as securities" for purposes of Section 2(a)(1) of the Securities Act. In *Landreth*, 471 U.S. at 689, the Court suggested that the proper test for determining whether a particular instrument which is not clearly within the definition of "stock" as set forth in Section 2(a)(1), or which otherwise is of an unusual nature, is an "investment contract" or an "instrument commonly known as a security," is the economic realities test set forth in *SEC v. W.J. Howey Company,* 328 U.S. 293 (1946). In evaluating the economic realities of a transaction, "[t]he test is whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others." *Howey,* 328 U.S. at 301. The *Howey,* test, as explained by the Court in *Forman,* 421 U.S. at 852, "embodies the essential attributes that run through all of the Court's decisions defining a security."

Applying the *Howey* test to the characteristics of the Memberships to be offered and sold by the Erica Enders Racing, a Membership would not be an "investment" contract or other "instrument commonly known as a security" as those terms are used in Section 2(a)(1) of the Securities Act. There will be no vertical or horizontal dependency--the items being sold will be delivered up receipt of the $49.95 sale price and Erica Enders Racing will continue racing no matter how many or few Memberships are sold. As noted under the section entitled *Factual Background, Nonvoting, Nontransferable Memberships* above, the Memberships: (1) cannot pay dividends under the Proposed Articles and Regulations; (2) is not negotiable or transferable under the Proposed Articles and Regulations; (3) it cannot be redeemed; (4) cannot be pledged or hypothecated under the Proposed Articles and Regulations; (5) does not confer voting rights; (6) cannot appreciate in value (either through resale or transfer, or through liquidation or dissolution of the Company); (7) does not receive dividends or a share of the sale of company assets; and (8) does not vote. Accordingly, the Memberships lack any of the significant characteristics of stock identified by the Supreme Court as being typically associated with a security.

Additionally, the consumable items included with the Membership--merchandise, discounts and the Dodge rebate--are not future profits to be distributed, these items are not the type collateral accepted by lenders, no voting rights have been conferred, and they are not going to appreciate in value. These items are akin to patronage rebates or membership benefits or privileges. The Staff has issued no-action letters involving patronage rebates. Handy Hardware Wholesale, Inc. (June 28, 2006); Feltus Hardware Inc. (Nov. 9 1988); Hardware Wholesalers, Inc. (May 26, 1987). Memberships are discussed below.

In *Forman*, the United States Supreme Court elaborated on the "profits" aspect of the *Howey* test:

> By profits, the Court has meant either capital appreciation resulting from the development of the initial investment, as in *Joiner, supra* (sale of oil leases conditioned on promoters' agreement to drill exploratory well), or a participation in earnings resulting from the use of investors' funds, as in *Tcherepnin v. Knight, supra* (dividends on the investment based on savings and loan association's profits). In such cases the investor is "attracted solely by the prospects of a return" on his investment. *Howey supra*, at 300. By contrast, when a purchaser is motivated by a desire to use or consume the item purchased, "to occupy the land or to develop it themselves," as the *Howey* Court put it, the securities laws do not apply. *See also Joiner, supra.*

Forman, 421 U.S. at 852-53.

In the present situation, Memberships will be obtained purely for the purpose of obtaining merchandise and obtaining the benefits of being a "Team Owner" without any reasonable expectation of profit. Members will not be entitled to share in any income generated by the operation of the team and the team will not pay any income, dividends or other distributions to the Members from the operation of the Team. The Team will make no distribution of any kind to any Members.

All prospective Members will be informed of the absolute limitations upon the transferability of the Memberships and the lack of an opportunity to profit therefrom and will be informed of the unsuitability of such Memberships as investments and advised that they should not acquire Memberships as an investment. Accordingly, purchasers of Memberships will not be promised, and reasonable purchasers should not expect, any "profits" from such Memberships.

Finally, in *Reves,* the Supreme Court suggested that the risk capital test for determining the existence of a security, as first articulated in *Silver Hills Country Club v.*

Sobieski, 55 Cal.2d 811, 361 P.2d 906 (Cal. 1961), is an "approach that is virtually identical to the *Howey* test." *Reves,* 494 U.S. at 64. The *Reves* Court cited *Underhill v. Royal*, 769 F.2d 1426, 1431 (9th Cir. 1981) as the source of the risk capital test "identical to the *Howey* test." *Reves,* 494 U.S. at 64. *Underhill,* in turn, cited *California Bank v. THC Financial Corporation,* 557 F.2d 1351, 1358 (9th Cir. 1977), which in turn cited *Silver Hills.* Thus, the *Silver Hills* analysis is the same risk capital test that the *Reves* Court found "virtually identical" to the *Howey* test.

Nonetheless, to the extent that the risk capital test for determining the existence of a security may influence the Division's evaluation of this request, we believe that the Memberships would not be deemed to be securities under such test. In *Silver Hills*, the developer used the proceeds from the sale of memberships as the primary means of financing the construction of the facilities. The Court in *Silver Hills* noted that the sale of memberships by the promoters was motivated by their need to organize and finance the club and stated that "Petitioners are soliciting the risk capital with which to develop a business for profit . . . . Only because [the purchaser of a membership] risks his capital along with other purchasers can there be any chance that the benefits of club membership will materialize." Purchasers of memberships in the Silver Hills Country Club were exposed to the risk that the team facilities would never be completed. In the instant case, no such risk exists. The Erica Enders Racing is not dependent upon the proceeds from the sale of Memberships to race. The race car, engines and related equipment as well as a transporter have been purchased.

The Division has previously issued no-action letters where non-equity memberships were being offered without registration under facts similar to those described herein. *See, e.g.,* Liberty National Golf Club, March 29, 2004; Las Sendas Golf Club, Inc., March 2, 2004; Olohana Golf Club, Inc., July 31, 2003; Hayfield Country Club (June 25, 1998); Big Island Country Club, L.P. (March 30, 1998); The Mar-a-Lago Club, Inc. (November 23, 1993); Bent Creek Country Club (September 23, 1993); Lake Forest Country Club, Inc. (August 3, 1992); Ivy Hills Country Club (May 23, 1991); The Dominion Club, Incorporated (August 20, 1990); Grasslands Golf and Country Club, Inc. (April 13, 1990). The Staff has issued no-action letters involving instruments that were essentially Memberships represented or evidenced by a stock certificate. *See* NBF Acquisition, Inc. (April 1, 1997); Professional Veterinary Products, Ltd. (July 12, 1996); Cap Rock Telephone Company, Inc. (November 4, 1994); Service Centers Corporation (May 21, 1993); Peer Marketing Associates (February 3, 1993); Community Mercantile, Inc. (April 21, 1992); Marine Preservation Association (September 16, 1991); Producers Feed Company (July 30, 1990); Certified Physicians of Indiana, P.C. (June 4, 1990); Associated Grocers of New England, Inc. (October 5, 1989); NSD/BASIC, Inc. (June 30, 1988); Natural Gas Insurance Trust (April 7, 1988).

Conclusion

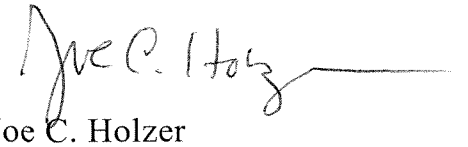
In view of the foregoing, we respectfully request your confirmation that the Division will not recommend any enforcement action to the Commission if the Erica Enders Racing Memberships are offered and sold in the manner described herein without registration under the Securities Act and the Exchange Act.

Erica Enders Racing plans to commence offering Memberships promptly upon receipt of a response from the Division, in the event the Division grants this request. If for any reason you conclude that you cannot respond affirmatively to our request, we would appreciate the opportunity to discuss the matter with you prior to the preparation of your response and ask that you call the undersigned at (713) 220-4172 or Spencer Barasch (214) 659-4685.

In compliance with the Commission's procedures, seven (7) copies of this letter are submitted herewith, along with an additional file copy.

Please call if you have any questions or need any additional information. Thank you for your assistance.

Very truly yours,



Joe C. Holzer

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