

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA**

FEDERAL ELECTION COMMISSION,

Plaintiff,

v.

SAM KAZRAN a/k/a Sam Khazrawan, et al.,

Defendants.

No. 3:10-cv-1155-J-RBD-JRK

**PLAINTIFF FEDERAL ELECTION  
COMMISSION'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

**PLAINTIFF FEDERAL ELECTION COMMISSION'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

The Federal Election Commission respectfully moves this Court for partial summary judgment pursuant to Federal Rule of Civil Procedure 56, on the liability of defendant Sam Kazran for the single claim asserted against him in the Commission's complaint. A brief in support of this motion and a proposed order are submitted herewith.

Respectfully submitted,

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**PLAINTIFF FEDERAL ELECTION COMMISSION'S MEMORANDUM IN SUPPORT  
OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT**

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## INTRODUCTION

Plaintiff Federal Election Commission (“Commission” or “FEC”) is entitled to summary judgment in its favor on the question of defendant Sam Kazran’s liability for the single claim asserted against him in the Commission’s complaint: that Kazran violated 2 U.S.C. § 441f by using funds from his car dealership to reimburse employees for federal campaign contributions to Kazran’s then-business partner.

The material facts in this case are undisputed. After instructing his employees to make contributions to the political campaign of his then-business partner, Florida Congressman Vernon Buchanan, Kazran personally requested and authorized the disbursement of nearly \$68,000 from his car dealership, Hyundai of North Jacksonville (“HNJ”), to reimburse those employees and their family members for their contributions to Buchanan’s campaign committee. Indeed, in his answer to the Commission’s complaint in this case, Kazran admits the Commission’s allegation that “[i]n total, defendants used HNJ funds to reimburse \$67,900 in purported individual contributions to [Buchanan’s campaign committee] during Buchanan’s 2006 and 2008 congressional campaigns.” (Compl. ¶ 21; Answer ¶ 21.)

The Federal Election Campaign Act, 2 U.S.C. §§ 431-457 (the “Act”), prohibits these concealed conduit contributions, achieved by “a defendant who solicits others to donate to a candidate for federal office in their own names and either advances the money or promises to — and does — reimburse them for the gifts.” *United States v. O’Donnell*, 608 F.3d 546, 555 (9th Cir. 2010); *see* 2 U.S.C. § 441f (“No person shall make a contribution in the name of another person . . . .”); 11 C.F.R. § 110.4(b)(iii) (prohibiting “[k]nowingly help[ing] or assist[ing] any person in making a contribution in the name of another”). The Commission is thus entitled to judgment as a matter of law on the question of Kazran’s liability for violating section 441f.

Should the Court grant this motion for partial summary judgment, the only question left to be decided regarding the Commission's claims against Kazran would be the appropriate remedies for his violations.

## **BACKGROUND**

### **I. The Commission's Statutory Enforcement Procedures**

The Commission is the independent agency of the United States government with exclusive jurisdiction over the administration, interpretation, and civil enforcement of the Act. *See generally* 2 U.S.C. §§ 437c(b)(1), 437d(a), and 437g. Under the Act, any person may file an administrative complaint with the Commission, alleging a violation of the Act. 2 U.S.C. § 437g(a)(1). After a person alleged to have committed a violation is notified of the complaint and has an opportunity to respond, or on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities, the Commission may determine, by an affirmative vote of four of its members, that it has "reason to believe" that a violation of the Act has occurred, thereby authorizing an administrative investigation. 2 U.S.C. § 437g(a)(2).

After an investigation, if at least four Commissioners vote to find "probable cause to believe" that a violation has occurred, the Commission must attempt to correct or prevent the violation by engaging in conciliation with the respondent for at least 30 days. 2 U.S.C. § 437g(a)(4)(A)(i). If conciliation fails, the Commission may bring a *de novo* suit against the respondent. 2 U.S.C. § 437g(a)(6).

### **II. The Act Prohibits the Undisclosed Reimbursement of Federal Campaign Contributions**

Under the Act, any "deposit of money or anything of value made by any person for the purpose of influencing a campaign for federal office" is a "contribution." 2 U.S.C. § 431(8)(A)(i). The Act provides that "[n]o person shall make a contribution in the name of

another person.” 2 U.S.C. § 441f. Section 110.4 of the Commission’s regulations elaborates that the prohibition encompasses “[k]nowingly help[ing] or assist[ing] any person in making a contribution in the name of another,” 11 C.F.R. § 110.4(b)(iii), as well as the undisclosed reimbursement of another person for his purported contribution.

Examples of *contributions in the name of another* include—  
(i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; or (ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.”

*Id.* § 110.4(b)(iv)(2) (citing 11 C.F.R. § 110.6); *see also O’Donnell*, 608 F.3d at 551 (“§ 441f . . . encompasses straw donor contributions, whether accomplished through the advancement or reimbursement of funds”).

### **III. Procedural History**

On June 23, 2009, the Commission, by a vote of five-to-zero, determined that there was reason to believe (“RTB”) that Kazran violated 2 U.S.C. § 441f by using HNJ funds to make contributions in the names of others to Vern Buchanan for Congress (the “Buchanan Campaign”), Buchanan’s principal campaign committee during his 2006 and 2008 congressional campaigns. Decl. of Mark R. Allen ¶ 6; Compl. ¶ 17; Answer ¶ 17; *see* 2 U.S.C. § 437g(a)(2).

On or about August 19, 2009, the Commission informed Kazran of its RTB findings and provided him with copies of the Factual and Legal Analysis that formed the basis of the Commission’s findings. Allen Decl. ¶ 7; *see* 2 U.S.C. § 437g(a)(2). The Commission also invited Kazran to submit any factual or legal materials that he believed to be relevant to the Commission’s consideration of the matter. (Allen Decl. ¶ 7.)

During the course of its investigation, the Commission deposed Kazran and other witnesses; received written responses from Kazran to Commission interrogatories, as well as testimony in the form of affidavits from other witnesses; and obtained documentary evidence including copies of checks evidencing the concealed conduit contributions to the Buchanan Campaign by HNJ employees and their family members and HNJ's reimbursement of those contributions. (*See, e.g.*, Allen Decl. ¶¶ 4-5, 8, 12-13.)

On July 16, 2010, the Commission's Office of General Counsel informed Kazran that the Commission had conducted an investigation in connection with its RTB findings and that, after considering all the evidence available, the General Counsel was prepared to recommend that the Commission find "probable cause" to believe that Kazran violated 2 U.S.C. § 441f by using HNJ funds to make contributions to the Buchanan Campaign in the names of others. Allen Decl. ¶ 9; *see* 2 U.S.C. § 437g(a)(3). The July 16 notice attached the General Counsel's Brief stating the position of the General Counsel on the factual and legal issues raised by the matter, and invited Kazran to submit a responsive brief to the Secretary of the Commission stating his position on such issues. (Allen Decl. ¶ 9.) The July 16 notice explained that any brief submitted by Kazran would be considered by the Commission, along with the General Counsel's Brief, before the Commission proceeded to a vote on whether probable cause existed to find a violation. (*Id.*) Kazran did not submit a response to the General Counsel's Brief. (*Id.*)

On September 21, 2010, the Commission, by a vote of five-to-zero, found probable cause to believe that Kazran violated 2 U.S.C. § 441f by using HNJ funds to make contributions to the Buchanan Campaign in the names of others. Allen Decl. ¶ 10; *see* 2 U.S.C. § 437g(a)(4). The Office of General Counsel notified Kazran of the Commission's probable cause findings in a September 28, 2010 letter. (Allen Decl. ¶ 11.) Although the Commission thereafter endeavored

for over two months to correct the violations by informal methods of conference, conciliation, and persuasion, the Commission was unable through such informal methods to secure an acceptable conciliation agreement with Kazran, and, on December 1, 2010, it authorized the initiation of this civil enforcement action. *Id.*; Compl. ¶ 27; Answer ¶ 27; *see* 2 U.S.C. § 437g(a)(4)(A)(i).

### STATEMENT OF THE CASE

Kazran is the owner and president of HNJ, a currently inoperative car dealership located in Jacksonville, Florida, organized as a partnership, and registered in Florida as a limited liability company. (Compl. ¶¶ 15, 16; Answer ¶¶ 15, 16; *see* 2010 Limited Liability Company Annual Report for 11-2001 LLC, Decl. of Jayci A. Sadio Exh. 1.) In 2004, Kazran acquired a 49 percent interest in HNJ from Representative Buchanan, who maintained a 51 percent interest in the dealership at that time. (Compl. ¶ 16; Answer ¶ 16; Excerpts of Deposition of Sam Kazran at 6 (Nov. 6, 2009), attached hereto as Exhibit A.) Kazran later became the dealership's sole owner, and finished making the payments for Buchanan's interest by 2008. (Compl. ¶ 16; Answer ¶ 16; *see* Kazran Dep. at 68:17-19.)

In 2005, Buchanan began his campaign for the 2006 election to Congress in Florida's 13th Congressional District. (Compl. ¶ 17; Answer ¶ 17.) Between 2005 and 2007, Kazran solicited various HNJ employees and others to contribute to the Buchanan Campaign for the 2006 and 2008 election cycles, and authorized the reimbursement of such contributions with HNJ funds. (*See* Letter from Sam Kazran, President, 11-2001 LLC d/b/a Hyundai of North Jacksonville, to Jack Gould, Attorney, FEC (Feb. 13, 2009), Allen Decl. Exh. 1 ("Kazran Letter") ("My name is Sam Kazran, I am the President of 11-2001 LLC, d/b/a Hyundai of North Jacksonville. I instructed the employees to make these contributions."); Kazran's October 2,

2009, Response to the Commission’s Order to Submit Written Answers, Allen Decl. Exh. 3 at FEC00006 – FEC00010 (“Kazran Response”) (identifying Kazran as “the person who requested” and “authorized or approved the disbursement” of funds from HNJ’s business operating account to reimburse campaign contributions by HNJ employees and spouses.) To maximize his employees’ contributions to Buchanan’s campaign, Kazran specifically instructed that employees write their contribution checks from their joint checking accounts with their spouses.<sup>1</sup> (Kazran Dep. at 28:18-23; Kazran Response at FEC00006 – FEC00010 (identifying authorized reimbursements of campaign contributions by spouses of HNJ employees).)

In total, Kazran used HNJ funds to reimburse \$67,900 in purported individual contributions to the Buchanan Campaign during the 2006 and 2008 election cycles. (Compl. ¶ 21; Answer ¶ 21; *see* Kazran Dep. at 27:21 – 28:1 (acknowledging that HNJ employees who contributed to Buchanan’s campaign, other than Kazran himself, “were all reimbursed [by HNJ] the same day,” because “these are ordinary folks that make 2-\$3,000 a month. They would not be in a position to write that.”).)

#### **I. HNJ’s Reimbursement of Contributions in 2005**

Beginning in 2005, Kazran solicited HNJ employees to contribute to the Buchanan Campaign and requested and authorized the reimbursement of such contributions with HNJ funds. (*See* Aff. of Gayle Lynn Lephart at 1, attached hereto as Exhibit B; Kazran Response at FEC00006 – FEC00010.) In total, HNJ funds were used to reimburse \$16,800 in contributions

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<sup>1</sup> Commission regulations permit a single individual to write a check for a joint contribution above a single individual’s limit if the contribution is from a joint account that bears the two or more account holders’ names. *See* 11 CFR 110.1(k)(3)(ii)(B) (“[A]ny excessive portion of a contribution described . . . [in] this section that was made by a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed . . . , provided that such contribution would not cause any contributor to exceed any of the limitations on contributions set forth in paragraph (b)(1) of this section”).

to the Buchanan Campaign in 2005. (Compl. ¶18; Answer ¶ 18.) Specifically, HNJ funds were used to reimburse the following individual contributions to the Buchanan Campaign, which were made on the following dates in the following amounts:

Purported Contributor	Date of Contribution	Amount of Contribution
Lephart, Ernest C.	11/29/2005	\$2,100.00
Lephart, Ernest C.	11/29/2005	\$2,100.00
Lephart, Gayle	11/29/2005	\$2,100.00
Lephart, Gayle	11/29/2005	\$2,100.00
Smith, Diana M.	11/29/2005	\$2,100.00
Smith, Diana M.	11/29/2005	\$2,100.00
Smith, Gary W.	11/29/2005	\$2,100.00
Smith, Gary W.	11/29/2005	\$2,100.00

(Compl. ¶18; Answer ¶ 18; *see* Excerpts of Original and Amended Year-End Reports of Receipts and Disbursements Filed by Vern Buchanan for Congress with the Commission for the Period October 1, 2005 through December 31, 2005, Sadio Decl. Exh. 2; Copies of Contribution and Reimbursement Checks, Allen Decl. Exh. 4 at FEC00177, FEC00181, FEC000189 – FEC00190.)

Gayle Lephart, HNJ's Controller both before and after Kazran assumed control over the dealership in 2004, testified that in November 2005,

Mr. Kazran said that he needed me to make a contribution to [the Buchanan Campaign]. Mr. Kazran stated the amount he wanted me to contribute and further told me that I had to write a personal check for this contribution. Mr. Kazran further instructed me that I should reimburse myself the full amount of the contribution with funds from HNJ. Mr. Kazran also instructed me to find other HNJ employees to make similar contributions to [the Buchanan Campaign]. Mr. Kazran instructed me to reimburse these contributions through HNJ's payroll account.

I later created entries in the HNJ payroll account, listing the reimbursements as salary, which included withholding for income tax. Mr. Kazran went on to instruct me to "overnight" these contributions to Diane Mitchell, at [the Buchanan Campaign].

(Lephart Aff. at 1.)

Kazran corroborated Lephart's testimony. In the Kazran Response, Kazran confirmed that during the period of October 1, 2005 through December 31, 2005, \$8,400 was disbursed to Gayle Lephart and her husband Ernest Lephart from HNJ's business operating account to reimburse their campaign contributions. (Kazran Response at FEC00008 – FEC00009.) Kazran further identified himself as "the person who requested the disbursement" and "the person who authorized or approved the disbursement." (*Id.*) Kazran similarly confirmed that during the same period, \$8,400 of HNJ funds were disbursed to Diana Smith and her husband Gary Smith from HNJ's business operating account to reimburse campaign contributions. (*Id.* at FEC00009.) Kazran again identified himself as "the person who requested the disbursement" and "the person who authorized or approved the disbursement." (*Id.* at FEC00009.)

Kazran likewise testified during his deposition that he solicited the campaign contributions and approved the reimbursements:

Q. The records show that Gail Lephart, Ernest Lephart, Gary Smith and Diana Smith contributed a total of \$16,800 to Mr. Buchanan's campaign for Congress. Did you ask any of these individuals to make a contribution to Mr. Buchanan's campaign?

A. Yes, I did.

Q. Why did you do that?

A. I instructed them to write a check and reimburse themselves for — because Mr. Buchanan had asked me to get money.

(Kazran Dep. at 21:4-14.) Kazran further elaborated:

I asked several key employees that I had trusted, had been with us for a long time, to write the check [to the Buchanan Campaign]. They all told me that they don't have money, but I said, Go ahead and reimburse yourself.

So that's what we did. They wrote a personal check, but at the same time — in fact, before they — the personal check went out, we issued a check from the company to them. We were not in a position to write \$9,000 checks and then get reimbursed later, so we had to get the money up-front.

(*Id.* at 14:1-12.)

## II. HNJ's Reimbursement of Contributions in 2006

In 2006, Kazran again solicited HNJ employees to contribute to the Buchanan Campaign and requested and authorized the reimbursement of such contributions with HNJ funds. (*See* Kazran Response at FEC00006 – FEC000010.) In total, HNJ reimbursed \$32,700 in contributions to the Buchanan Campaign in 2006. (Compl. ¶ 19; Answer ¶ 19.) Specifically, HNJ funds were used to reimburse the following individual contributions to the Buchanan Campaign, which were made on the following dates in the following amounts:

Purported Contributor	Date of Contribution	Amount of Contribution
Sams, Vincent G.	1/02/2006	\$2,100.00
Sams, Vincent G.	1/02/2006	\$2,100.00
Sams, Patricia G.	1/02/2006	\$2,100.00
Sams, Patricia G.	1/02/2006	\$1,200.00
Farid, Atefah K.,	3/31/2006	\$2,100.00
Farid, Atefah K.	3/31/2006	\$2,100.00
Farid, Joshua	3/31/2006	\$2,100.00
Farid, Joshua	3/31/2006	\$2,100.00
Cutaia, Doreen A.	6/28/2006	\$2,100.00
Cutaia, Doreen A.	6/28/2006	\$2,100.00
Cutaia, Joseph P.	6/28/2006	\$2,100.00
Cutaia, Joseph P.	6/28/2006	\$2,100.00
Khazravan, Eric	6/28/2006	\$2,100.00
Khazravan, Eric	6/28/2006	\$2,100.00
Khazravan, Heidi	6/28/2006	\$2,100.00
Khazravan, Heidi	6/28/2006	\$2,100.00

(Compl. ¶ 19; Answer ¶ 19; *see* Excerpts of April and July Quarterly Reports of Receipts and Disbursements Filed by Vern Buchanan for Congress with the Commission for the Periods

January 1, 2006 through March 31, 2006, and April 1, 2006 through June 30, 2006, Sadio Decl. Exhs. 3-4; Copies of Contribution and Reimbursement Checks, Allen Decl. Exh. 4 at FEC00183 – FEC00184, FEC00187 – FEC00188.)

Kazran specifically admitted that during the period of May 1, 2006 through July 31, 2006, he personally requested and “authorized or approved the disbursement” of the reimbursements to Joseph and Doreen Cutaia, as well as to Eric and Heidi Khazravan, for their respective joint contributions to the Buchanan Campaign. (Kazran Response at FEC00007 – FEC00008.)

Kazran testified at his deposition that his former business partner, Vincent Sams, contributed to the Buchanan Campaign on behalf of Sams and his wife in January 2006, and that Sams’ contribution was similarly reimbursed with HNJ funds. (Kazran Dep. at 26:22 – 28:23.) Kazran also confirmed in his deposition testimony that he “spoke freely” with Vincent Sams both in soliciting his contribution to the Buchanan Campaign and in informing Sams that he would be reimbursed for the contribution with HNJ funds. (*Id.* at 27-28.)

### **III. HNJ’s Reimbursement of Contributions in 2007**

Kazran solicited still further contributions to the Buchanan Campaign in 2007, once again authorizing the reimbursement of such contributions with HNJ funds. In total, HNJ reimbursed \$18,400 in contributions to the Buchanan Campaign in 2007. (Compl. ¶ 20; Answer ¶ 20.) Specifically, HNJ funds were used to reimburse the following individual contributions to the Buchanan Campaign, which were made on the following dates in the following amounts:

Purported Contributor	Date of Contribution	Amount of Contribution
Cutaia, Doreen A.	12/31/2007	\$2,300.00
Cutaia, Doreen A.	12/31/2007	\$2,300.00
Champ, Stephanie K.	12/31/2007	\$2,300.00
Champ, Stephanie K.	12/31/2007	\$2,300.00
Lephart, Ernest C.	12/31/2007	\$2,300.00

Lephart, Ernest C.	12/31/2007	\$2,300.00
Lephart, Gayle	12/31/2007	\$2,300.00
Lephart, Gayle	12/31/2007	\$2,300.00

(Compl. ¶ 20; Answer ¶ 20; *see* Excerpts of Year-End Report of Receipts and Disbursements Filed by Vern Buchanan for Congress with the Commission for the period October 1, 2007 through December 31, 2007, Sadio Decl. Exh. 5; Copies of Contribution and Reimbursement Checks, Allen Decl. Exh. 4 at FEC00178 – FEC00180, FEC00182, FEC00185 – FEC00186.)

In a February 13, 2009 letter to Commission attorneys, former HNJ employee Stephanie Champ wrote that “[a]round December 28, 2007, I was asked by Sam [Kazran] to make a contribution to Vern Buchanan's campaign for \$9,200.” (Letter from Stephanie Champ, Employee, Hyundai of North Jacksonville, to Jack Gould, Attorney, FEC (Feb. 13, 2009), Allen Decl. Exh. 2 (“Champ Letter”). She further explained: “I received a check from Hyundai of North Jacksonville for 9,200.00 and deposited into my account on December 28, 2007. I then wrote a personal check to Vern Buchanan Campaign for 9,200.00, once the deposit had cleared.” (*Id.*) Champ clarified that her \$9,200 check was returned because the check listed only her name rather than the names of herself and her husband. Since she had already received the reimbursement from HNJ, Champ issued a new check “for 4,600.00 on December 31, 2007 to Vern Buchanan Campaign. [She] also wrote check number 258 for 4,600 on December 31, 2007 to Joe Cutaia, another [HNJ] employee, who had made a contribution, to pay him back, since the excess money that [Champ] had received could not be submitted to the campaign by [her].” (*Id.*; *see also* Copies of Contribution and Reimbursement Checks, Allen Decl. Exh. 4 at FEC00179 – FEC00180, FEC00182, FEC00185.)

Gayle Lephart likewise testified in her affidavit:

Sometime in 2007 I was again approached by Mr. Kazran. He told me that HNJ employees once again needed to contribute to [the

Buchanan Campaign] and be reimbursed through the company. I was upset at the fact that the company money was again going to be used to reimburse these contributions. I expressed this to Mr. Kazran, who only responded with a shrug.

(Lephart Aff. at 1.)

Both Lephart and Champ explained that they participated in the contribution-reimbursement scheme at Kazran's request. (*See id.* at 2 (“I agreed to participate in the reimbursed contributions because I was asked to by Mr. Kazran, who was my boss.”); Champ Letter (“I was asked by Sam to make a contribution to Vern Buchanan's campaign for \$9,200. . . . I was just doing what was asked of my supervisors. I had never before contributed to a political campaign, and have not since done so.”).)

Kazran corroborated Lephart's and Champ's accounts of the facts in the Kazran Response. Specifically, Kazran confirmed that during the period of October 1, 2007 through December 31, 2007, \$9,200 of HNJ funds were disbursed to Gayle Lephart and her husband Ernest Lephart, that the same amount was disbursed to Stephanie Champ, and that he personally requested and “authorized or approved” such disbursements from HNJ's business operating account. (Kazran Response at FEC00008 – FEC00009.)

In total, Kazran admits using HNJ funds to reimburse \$67,900 in purported individual contributions to the Buchanan Campaign during Buchanan's 2006 and 2008 congressional campaigns. (Compl. ¶ 21; Answer ¶ 21.)

## **ARGUMENT**

Summary judgment is appropriate if “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986); *Beach Cmty. Bank v. St. Paul Mercury Ins. Co.*, 635 F.3d 1190, 1194 (11th Cir. 2011). As demonstrated below and in the

supporting declarations and exhibits, the Commission is entitled to summary judgment on the question of Kazran's liability for violating 2 U.S.C. § 441f, as there is no genuine dispute of material fact regarding his role in HNJ's concealed conduit contribution-reimbursement scheme.

**I. The Evidence Demonstrates That Kazran Violated Section 441f**

Substantial, undisputed evidence confirms the facts alleged here, and that evidence includes Kazran's own admissions that he instructed his employees to make federal campaign contributions to his then-business partner and requested and authorized the disbursement of \$67,900 from his business's operating account to reimburse such contributions. (*See, e.g.*, Kazran Letter ("I instructed the employees to make these contributions."); Kazran Response at FEC00006 – FEC00010 (identifying Kazran as "the person who requested" and "authorized or approved the disbursement" of funds from HNJ's business operating account to reimburse campaign contributions); Kazran Dep. at 14, 21-22, 28 (testifying about his instructions to his employees regarding campaign contributions and reimbursements); Compl. ¶ 21; Answer ¶ 21.)

These admitted facts, which corroborate the additional evidence the Commission has obtained and cited above, *supra* pp. 5-12, establish that Kazran violated section 441f. Specifically, the evidence demonstrates that Kazran "solicit[ed] others to donate to a candidate for federal office in their own names and either advance[d] the money or promise[d] to — and d[id] — reimburse them for the gifts." *O'Donnell*, 608 F.3d at 555.

**II. Kazran's Purported Ignorance of the Commission's "Rules" Is Irrelevant**

Kazran's claimed ignorance of "the Federal Election Commission Rules" (Answer ¶¶ 1-2, 4, 6, 9-14, 34-35) has no bearing on the question of his liability. Where, as here, the Commission does not seek the harsher penalties permitted under section 437g(a)(6)(C) for conduct alleged to have been "knowing and willful," but instead it "seeks penalties only under

section 437g(a)(6)(B), . . . [there is] no *scienter* requirement.” *FEC v. Cal. Democratic Party*, No. Civ. S-97-0891GEBPAN, 1999 WL 33633264, at \*6 n.9 (E.D. Cal. Oct. 14, 1999) (citation omitted); *see also, e.g., FEC v. Novacek*, 739 F. Supp. 2d 957, 966 (N.D. Tex. 2010) (defendant’s “state of mind is irrelevant here, because intent is not an element of the offense, and the Commission is not requesting the higher civil penalties that would become available if [defendant] acted with ‘knowing and willful’ intent”) (footnote omitted).<sup>2</sup>

The evidence detailed above establishes that Kazran caused HNJ to make concealed conduit contributions by soliciting his employees to make purported contributions in their own names, while reimbursing them with HNJ funds. Even assuming, *arguendo*, Kazran was unaware of the illegality of such conduct, his actions nevertheless violated section 441f.

Lastly, to the extent Kazran contends that he acted at the instruction of others, such an assertion, even if true, does not diminish Kazran’s own liability for his illegal conduct. *See Novacek*, 739 F. Supp. 2d at 963 (evidence that other non-parties were aware of defendant’s violations is “relevant only as to whether those non-parties were also complicit” in such violations).

The Commission is thus entitled to judgment as a matter of law on the question of Kazran’s liability for violating section 441f. Should the Court grant this motion for partial summary judgment, the only question left to be decided regarding the Commission’s claims

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<sup>2</sup> Indeed, even if the Commission’s complaint had alleged that Kazran’s violations were “knowing and willful”— the complaint contains no such allegation — the Commission would not be required to demonstrate Kazran’s knowledge of any specific legal provision, but rather that Kazran’s “actions [were] taken with full knowledge of all the facts and a recognition that the action[s are] prohibited by law.” *Novacek*, 739 F. Supp. 2d at 961 n.21 (quoting 122 Cong. Rec. 12197, 12199 (Mar. 17, 1976)); *see also United States v. Trie*, 21 F. Supp. 2d 7, 16 (D.D.C. 1998) (quoting same definition of “knowing and willful” from Congressional Record) (citation omitted).

against Kazran would be the appropriate remedies for his violations and the Commission will seek such remedies following discovery.

**CONCLUSION**

For the foregoing reasons, the Commission requests that this Court grant the Commission's motion for partial summary judgment and find that Kazran violated section 2 U.S.C. § 441f.

Respectfully submitted,

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