UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

FEDERAL ELECTION COMMISSION, Plaintiff, v. JODY L. NOVACEK, et al., Defendants.	Civ. No. 09-CV-00444 REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

PLAINTIFF FEDERAL ELECTION COMMISSION'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT SUBMITTED IN RESPONSE TO DEFENDANT'S AMENDED RESPONSE

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February 12, 2010

Table of Contents

Page

Table of Authorities

Cases

Statutes and Regulations

Miscellaneous

The Federal Election Commission ("FEC" or "Commission") has moved this Court for summary judgment pursuant to Fed. R. Civ. P. 56 and has shown that Novacek orchestrated fundraising solicitations by phone and in mailers that purported to be on behalf of the Republican Party and/or the Republican National Committee ("RNC"). Novacek's amended response makes key admissions showing that she did in fact engage in these unlawful activities and that there are no disputed material facts that preclude summary judgment. "Summary judgment is warranted when the facts as shown in the pleadings, affidavits, and other summary judgment evidence show that no reasonable trier of fact could find for the nonmoving party as to any material fact." *Sturdivant v. Target Corp.*, 464 F. Supp. 2d 596, 600-601 (N.D. Tex. 2006) (citing *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888 (1990)); *accord Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-25 (1986). The Fifth Circuit has explained that factual controversies are resolved in favor of the nonmoving party "only when there is an actual controversy, that is, when both parties have submitted evidence of contradictory facts." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994). In this case there is no actual controversy over the material facts that entitle the Commission to summary judgment on all counts in the complaint.

I. Novacek's Amended Response Admits or Fails to Dispute Sufficient Facts to Justify Summary Judgment in the Commission's Favor

A. Novacek Fails to Raise a Genuine Issue of Material Fact

Despite being given two chances, Novacek has failed to rebut the Commission's showing that she engaged in fraudulent misrepresentation in the course of her purported fundraising

activities in the first half of 2004.[1] *See* FEC's Mem. in Support of Mot. for Summ. J., Nov. 30, 2009 ("FEC SJ Mem.") at 3-10. The Commission's showing combined with significant admissions from Novacek establishes that summary judgment is warranted in the Commission's favor.

Novacek admits that the solicitations she oversaw claimed to be on behalf of the Republican Party. *See id.*; Defs.' First Am. Summ. J. Resp., Jan. 18, 2010 ("Def. Am. SJ Resp.") at 7.

Novacek concedes that the RNC had turned down her proposals to engage in fundraising on their behalf on three occasions. Affidavit of Jody Novacek, filed Jan. 18, 2010 ("Novacek Aff.") ¶ 3. On the first two occasions, the proposals were rejected because they were to use a foreign or "offshore" calling center; on the last occasion, a contract to place the fundraising calls from North Carolina was rejected, Novacek states, because the RNC "was afraid" that Novacek may place the calls through the foreign call center with which she was affiliated rather than through the domestic one as she had proposed. *Id.*

Novacek admits that she drafted the call script that was used in the solicitations (Appx. 339-40) and that the call script was revised so that callers stated that they were calling from the "Republican Party" rather than the RVC. Novacek Aff. ¶ 4. The call scripts also did not include the required disclaimer. *See* Appx. 339-40. Novacek Aff. ¶ 14.

Novacek agrees with the Commission that she monitored the calling program to ensure that the call scripts were followed. FEC SJ Mem. at 5; A.R. 103 (Novacek stating she monitored

[1] For the convenience of the Court, the portions of the Commission's original reply brief in support of its motion for summary judgment that have the most continuing pertinence in light of Novacek's amended response are reiterated herein.

the calls on a daily basis); Novacek Aff. ¶ 6 (Novacek stating she monitored "thousands of telephone calls").

Novacek admits that she drafted the form mail solicitation — which included a number of explicit references to the Republican Party — that was used in the course of soliciting every individual who ultimately contributed to Novacek's ostensible Republican Party arm. Appx. 344, 578, Def. Am. Resp. at 7; *see also* FEC SJ Mem. at 7-8.

Novacek does not dispute that the Statement of Work between Apex and the BPO entities that was signed by Novacek described the program as "Outbound Telemarketing Fundraising for the Republican Party" and discussed the revenue split that will go to the "GOP." FEC SJ Mem. 6; Appx. 592-94, 596.

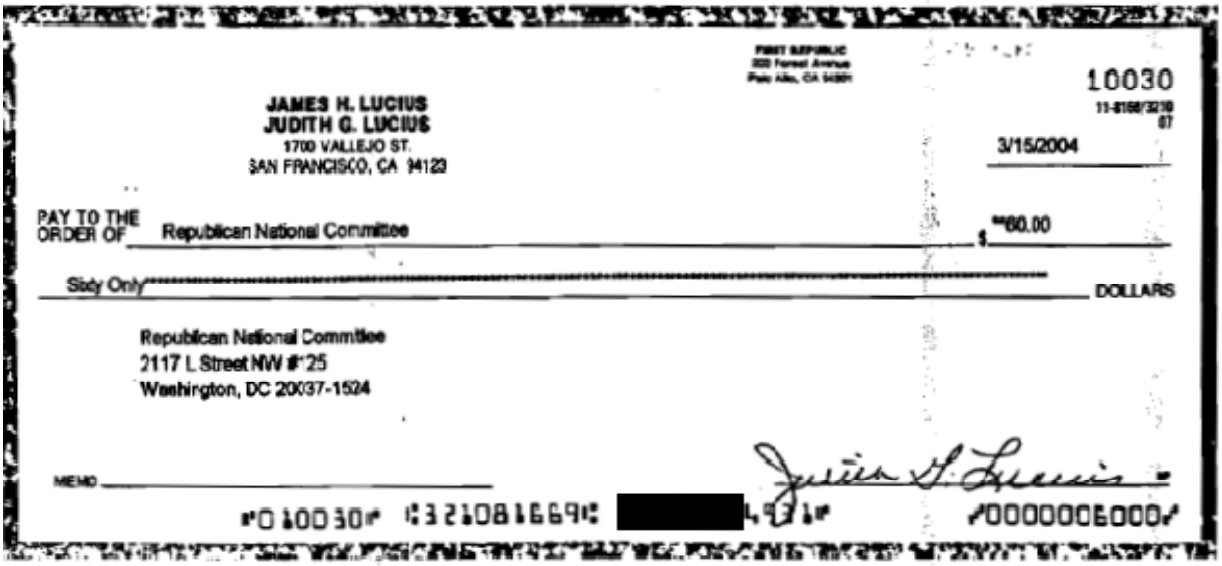
Novacek admits that the Republican Victory Committee ("RVC") raised at least $65,000 as a result of Novacek's solicitations. *See infra* at 14 n.6.

The second set of solicitations through the vendor Advantage occurred as the Commission has established: After Novacek had received a cease-and-desist letter from the RNC, she again solicited people who had received earlier solicitations made through Apex and who had given money in response. FEC SJ Mem. at 9-10. Novacek does not dispute the material facts of these transactions, but rather only asserts she believed it was lawful for her to solicit on behalf of the Republican Party. Def. Am. SJ Resp. at 8-9.

Novacek's enterprise yielded nearly 100 checks payable to, or with a notation referring to, the RNC, the Republican Party, or the Bush-Cheney campaign, and she deposited them into her corporate bank accounts for her own use. Appx. 441-472, 639-759; FEC SJ Mem. at 8. Novacek does not dispute that these checks are the result of her enterprise. She concedes that she solicited and deposited eight checks payable to the RNC and two checks referencing the

Bush/Cheney campaign. Def. Am. SJ Resp. at 9. Novacek does not dispute that she deposited numerous checks payable to "The Republican Party." *Id.*; Appx. 448, 641, 646-47, 651-52, 656, 660, 664, 667-68, 678-79, 681, 696. Although Novacek argues that the checks made payable to the Republican Party, or those with memo lines referencing the Republican Party, should be disregarded, Def. Am. SJ Resp. at 9-10, such evidence clearly helps establish that she deceived contributors into believing they were giving to the RNC or the Republican Party. *See, e.g.*, Appx. 648 ("Republican party donation"); Appx. 657 ("Bush campaign donation"); Appx. 659 ("Republican Party Donation").

Indeed, Novacek does not dispute any of the information on the face of the checks themselves. *See* Appx. 441-472, 639-759. The undisputed evidence thus establishes the details of an operation that fraudulently misrepresented itself as raising money on behalf of a political party. The nearly 100 checks with incorrect payee information that Novacek has admitted to depositing illustrate at a glance the fraudulent nature of the scheme, as can be seen from a few examples from the Appendix:


JAMES H. LUCIUS
JUDITH G. LUCIUS
1700 VALLEJO ST.
SAN FRANCISCO, CA 94123

10030

3/15/2004

PAY TO THE ORDER OF Republican National Committee $60.00

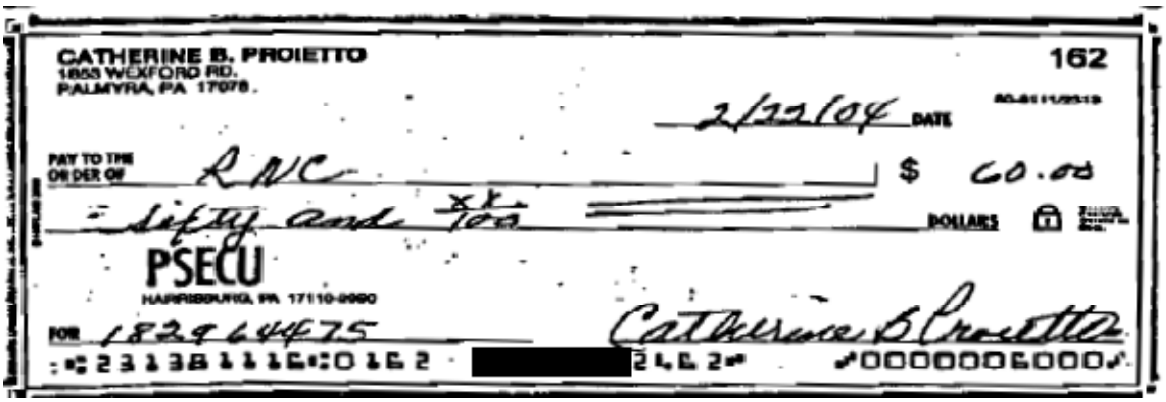
Sixty Only DOLLARS

Republican National Committee
2117 L Street NW #125
Washington, DC 20037-1524

MEMO

Judith G. Lucius

Appx. 709.


CATHERINE B. PROIETTO
1855 WEXFORD RD.
PALMYRA, PA 17078

162

2/22/04 DATE

PAY TO THE ORDER OF RNC $ 60.00

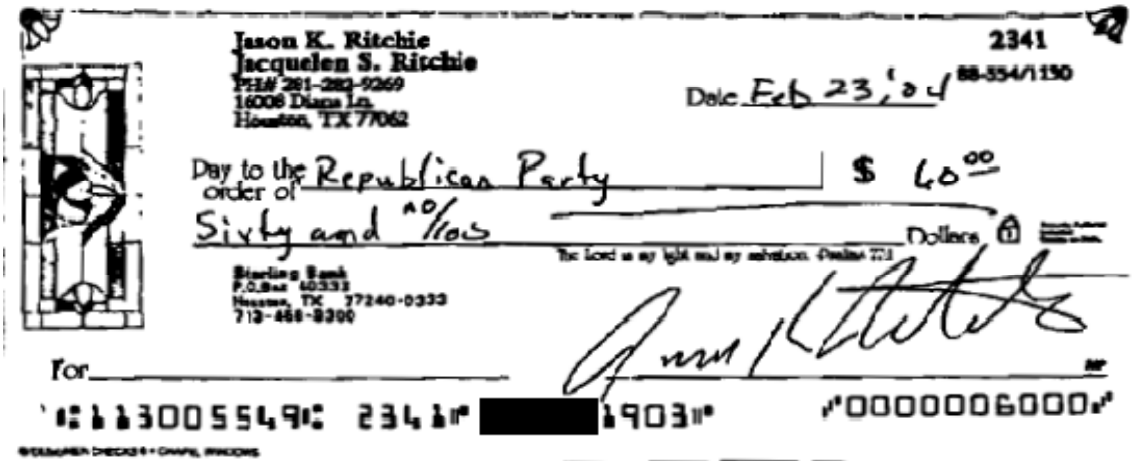
Sixty and 00/100 DOLLARS

PSECU
HARRISBURG, PA 17110-9990

FOR 1829644675 Catherine B Proietto

⑆231381116⑆0162 [redacted] 248 2⑈ ⑈0000006000⑈

Appx. 469.


Jason K. Ritchie
Jacquelen S. Ritchie
PH# 281-282-9269
16006 Diana Ln.
Houston, TX 77062

2341

88-554/1150

Date Feb 23, '04

Pay to the order of Republican Party $ 60.00

Sixty and 00/100 Dollars

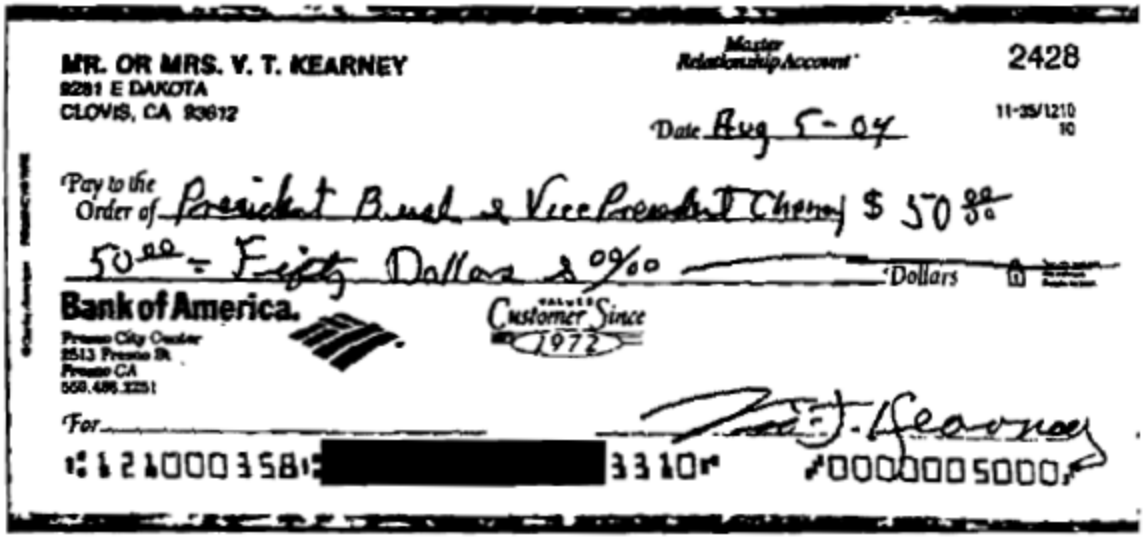
The Lord is my light and my salvation. Psalm 27:1

Sterling Bank
P.O. Box 40333
Houston, TX 77240-0333
713-466-8300

For

⑆113005549⑆ 2341⑈ [redacted] 1903⑈ ⑈0000006000⑈

Appx. 470.


MR. OR MRS. V. T. KEARNEY
8281 E DAKOTA
CLOVIS, CA 93612

Master Relationship Account

2428

11-35/1210
10

Date Aug 5-04

Pay to the Order of President Bush & Vice President Cheney $ 50.00

50.00 - Fifty Dollars & 0/00 Dollars

Bank of America.
Fresno City Center
2513 Fresno St
Fresno CA
559.486.3251

Customer Since 1972

For

⑆121000358⑆ [redacted] 3310⑈ ⑈0000005000⑈

Appx. 738.

B. Novacek's Reliance on a Purported Distinction Between the Republican Party and the Republican National Committee Must Fail as a Matter of Law

Novacek attempts to draw a distinction between the RNC and the Republican Party, claiming that she believed that it was lawful for her to fundraise on behalf of the Republican Party, but not on behalf of the RNC. Def. Am. SJ Resp. at 8. However, for purposes of determining a violation of 2 U.S.C. § 441h, there is no such distinction. The Republican Party is an unincorporated association that is under the general management of the Republican National Committee. *See* Republican Party, *The Rules of the Republican Party*, at 1 Sept. 1, 2008, http://gop.com/images/legal/2008_RULES_Adopted.pdf. In essence, she argues that she can impersonate an arm of a political party, just not the national governing body of a political party, and retain the proceeds. Under the statutory fraudulent misrepresentation provision, however, it makes no difference which party entity she falsely purported to represent: It is unlawful to "fraudulently misrepresent the person as speaking, writing, or otherwise acting for or on behalf of any . . . political party . . . for the purpose of soliciting contributions or donations." 2 U.S.C. § 441h(b)(1). She was manifestly not "within the Party" as she contends (Novacek Aff. ¶ 13), in the way, for example, that a subordinate party committee like the Texas Republican Party is officially recognized. Section 441h was designed to prevent misrepresentations precisely like the ones Novacek made. Novacek's response does not present any argument in response to the Commission's showing that the plain language of section 441h makes her conduct unlawful. Indeed, section 441h is not cited or mentioned in her twelve-page response.

In any event, her claim that she believes she can fundraise on behalf of the Republican Party would nevertheless fail to create a triable issue of fact in light of other admissions and her decision to knowingly deposit checks made payable to the RNC and the Republican Party:

Novacek does not fundamentally contradict her lengthy explanation made in her administrative deposition of her political experience with the Republican Party beginning in the early 1980s. Appx. 21-58.[2] Novacek also admits awareness that the RNC did not wish to be associated with "offshore" call centers. Def. Am. SJ Resp. at 3. Novacek failed to forward any money to the Republican Party or candidates and received and deposited checks payable to the RNC and Republican Party. FEC SJ Mem. at 3-8. Novacek admits that she deposited checks payable to other entities into accounts she solely controlled. Def. Am. SJ Resp. 9-10. And she does not even claim that she believed it was lawful for her to deposit checks that were made out to the "RNC," "Republican Party," and in at least one instance to President Bush & Vice President Cheney. *Id;* Appx. 738. All reasonable juries would conclude that Novacek had intentionally misrepresented that her fundraising was on behalf of the Republican Party.

C. Novacek Admits to the Material Facts Concerning the Disclaimer Violation

Additionally, Novacek does not meaningfully contest the Commission's showing that she violated 2 U.S.C. § 441d(a),(c), by failing to include some of the required disclaimer information in the solicitations. FEC SJ Mem. at 14-15. Novacek's response is that this failure was not

[2] While it would have been obvious to the average person that they should not pretend to be operating on behalf of the Republican Party, it would have been particularly obvious to Novacek given her experience. She testified during her administrative deposition regarding her extensive experience in political fundraising. *See* Appx. 21 (explaining familiarity with "the National Republican Committee" and "National Republican Senatorial Committee … because [she] did campaigns for both of those"); Appx. 21-22 (referencing her "involve[ment] in campaigns for Repubican candidates over the years"); Appx. 23 ("[O]ne year [Novacek] did over a hundred campaigns."); Appx. 42 (Novacek did consulting work in which she set up a "whole RNC program for Mr. Butzke."); Appx. 43-44 (RNC work in 2003); Appx. 52 (explaining that she "did huge campaigns for Bush when he was reelected governor, huge campaigns"); Appx. 54 (explaining her "contacts at the RNC" for business development); Appx. 56 (explaining with respect to her work for state affiliated Republican parties that "we did work for Michigan, big work for Michigan"). Novacek's response displays a detailed knowledge of the RNC's telephone fundraising practices when, for example, she explains that "[t]he RNC does not require outsourced call centers running its program to record anything and they don't require verification of pledges, nor archiving these for quality assurance." Def. Am. SJ Resp. at 6.

intentional (Def. Am Resp. at 10-11), but for this violation her state of mind is irrelevant, because the Commission is not alleging a "knowing and willful" intent that would provide the Court with the discretion to impose higher civil penalties for the disclaimer violations. FEC SJ Mem. at 14-15.

Novacek does not dispute that the phone calls entirely failed to include the required disclaimer. Regarding the mailers, Novacek suggests that inclusion of *some* of the required information was close enough. But Novacek's failure to include the committee's permanent address, telephone number, or internet address, and to set off the disclaimer information in a box is undisputed. FEC SJ Mem. at 14. Novacek squarely admits this violation when she states "[t]oday I know [the letters] did not include everything required by law." Novacek Aff. ¶ 14. The disclaimer information would have made clear that the calls were not authorized by a candidate or a candidate committee, and could have provided the recipient of the calls or the mailer with other specific identifying information. The disclaimer information would have lessened the likelihood that the recipients of the calls and mailers would have been deceived by, for example, alerting them that defendants were located in Dallas rather than Washington, D.C., or that the website address was not that of the RNC. Accordingly, this Court should enter summary judgment in the Commission's favor on this count as well.

II. Novacek Disputes Only Immaterial Facts

"Disputes about material facts are genuine 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Cantu v. Jackson Nat'l Life Ins. Co.*, 579 F.3d 434, 438 (5th Cir. 2009) (quoting *Anderson*, 477 U.S. at 248). Moreover, only disputes over facts that might affect the outcome of the suit could properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not defeat such judgment.

Anderson, 477 U.S. at 248. Here, Novacek has not disputed any facts that would necessitate a trial, but instead quarrels about details that are immaterial to her culpability.

Novacek argues that Tom Maddux, her primary contact at Apex, knew Novacek was not working on behalf of the RNC. Def. Am. SJ Resp. at 3. But the admitted facts show that the solicitations overseen by Novacek unlawfully misrepresented the recipient of the funds to be the Republican Party.[3] Novacek's representations to Apex are thus primarily relevant to whether *Apex* (which is not a defendant here) was also complicit in the scheme, not whether the solicitations themselves were fraudulent; regardless of the state of mind of Apex's personnel, Novacek violated 2 U.S.C. § 441h. While Maddux's testimony indeed provides compelling additional evidence of Novacek's violation (and Novacek appears to no longer be contesting the authenticity or bulk of Maddux's declaration (Appx. 550-55)), summary judgment is appropriate even if the Court were to credit Novacek's testimony regarding Maddux and draw inferences in her favor. In other words, even if Novacek had not represented to Apex personnel that the funds were being raised for the RNC, the undisputed, material facts demonstrate that the fundraising calls and letters Apex sent out at her direction fraudulently misrepresented that they were on behalf of the Republican Party.

[3] The great weight of the evidence supports the conclusion that Novacek held her operations out as explicitly on behalf of the RNC. For example, Novacek described the RVC program as fundraising on behalf of a"GOP committee" in a memorandum to the Apex employee responsible for training call center employees, Memo from Novacek to Booth, Jan. 14, 2004, (Appx. 372), and RVC training materials referred to the program as "Republican National Committee Fundraising" and the materials solicitors needed as "RNC Script" and "RNC Program Guide." Appx. 411, 415. *See also* Appx. at 198 (Novacek's admission that if someone referred to the program as the GOP she may not have corrected them); Appx. at 199-200 (Novacek's admission that if she received an email stating that the RVC program was part of the RNC, she may not have corrected it).

Novacek argues in her brief that the calls in the program stated they were made on behalf of the Republican Victory Committee and the recorded callers in the record must have been working from a "pirate script." Def. Am. SJ Resp. at 4. In her declaration, however, she acknowledges that she authorized "[t]he opening statement [of the call script being] changed from 'Republican Victory Committee' to 'Republican Party' at the call center's request." Novacek Aff. ¶ 4. The arguments in Novacek's brief are thus at odds with her own sworn testimony and do not foreclose summary judgment.

Novacek speculates that the recorded phone calls the Commission has supplied in support of its summary judgment motion may have been fabricated. She speculates, "[r]e-creating 20 phone calls years after the program ended would be easy." Def. Am. SJ Resp. at 7. Novacek's bald speculation warrants no weight. *Tyler v. Runyon*, 70 F.3d 458, 469 (7th Cir. 1995) ("Speculation does not create a genuine issue of fact; instead, it creates a false issue, the demolition of which is a primary goal of summary judgment.") (citations and internal quotation marks omitted). Such speculation does not meaningfully controvert record testimony based on personal knowledge. Apex's Chief Commercial Officer swears under oath that the twenty recordings the Commission submitted are true and accurate recordings of phone solicitations Apex made on behalf of Novacek's "Republican Victory Committee" in the first half of 2004. Vasan Decl. ¶ 5 (Appx. 602-03).

There is no disputed material fact regarding the content of the phone solicitations. Furthermore, Novacek does not dispute the evidence showing that the mailers she sent also purported to be on behalf of the Republican Party. Def. Am. SJ Resp. at 7.

Novacek argues that the eight transcribed calls, highlighted as examples by the Commission in its opening brief, FEC SJ Mem. at 6-7, were not written, authorized, or

monitored by her. *Id.* at 4. However, they track the amended script that she admits to authorizing almost verbatim (compare Appx. 439-41 (script) with Appx. 623-24 (transcript of recorded call)), and the variations are not material.[4] It is undisputed that Novacek "was monitoring and working with [the call center's] quality people for two to four hours every day while this program was running," Appx. 103, and it is therefore not surprising that the calls are generally consistent with the script she authorized.

Novacek argues that additional evidence from the call centers could provide a more complete picture of the operations. Def. Am. SJ Resp. at 6, 10. Even if the Court were to construe Novacek's Amended Response liberally as a motion for more discovery under Federal Rule of Civil Procedure 56(f), that motion would fail. "A non-movant seeking relief under Rule 56(f) must show: (1) why he needs additional discovery and (2) how that discovery will create a genuine issue of material fact." *Adams v. Travelers Indem. Co. of Conn.*, 465 F.3d 156, 162 (5th Cir. 2006) (footnotes omitted). A party "cannot evade summary judgment simply by arguing that additional discovery is needed," and may not "simply rely on vague assertions that additional discovery will produce needed, but unspecified, facts." *Id.* (citations omitted). Here, Novacek does not dispute that the calls and mailers were made claiming to be on behalf of the Republican Party. Thus, when Novacek states that "[e]very call, whether it was a pledge or not, was supposed to be recorded automatically by the calling system," and that such evidence should be presented in this case, she fails to meet her burden under Rule 56(f) because that evidence, even if available, would only be cumulative and in any case would not create an issue of material fact. Def. Am. SJ Resp. at 6. Likewise, when Novacek complains that the FEC "does not

[4] Novacek states that she did not receive copies of the twenty recorded solicitations the Commission filed with the Court on CD. Def. Am. SJ Resp. at 7. The Commission re-served copies of those data files on February 1, 2010, by email. A review of the twelve untranscribed calls shows that the eight transcribed calls are, in fact, representative.

provide" such evidence (*id.* at 10), she fails to demonstrate under Rule 56(f) exactly how the evidence would controvert the Commission's evidence in a material way. As the Supreme Court has explained, Rule 56(f) only "provides for comparatively limited discovery for the purpose of showing facts sufficient to withstand a summary judgment motion, rather than Rule 26, which provides for broad pretrial discovery." *First Nat'l Bank of Ariz. v. Cities Service Co.*, 391 U.S. 253, 265 (1968). Novacek does not point to any evidence that is "essential to justify [the] opposition to summary judgment." *Novecon Ltd. v. Bulgarian-American Enter. Fund*, 190 F.3d 556, 570 (D.C. Cir. 1999) (internal quotation marks omitted). Novacek's requested discovery is not "narrowly tailored"; broad requests such as those that seek "all information relevant to the disposition of [the] case on its merits" are denied. *Harbert Int'l, Inc. v. James*, 157 F.3d 1271, 1280 & n.6 (11th Cir. 1998). For all of these reasons, summary judgment — rather than discovery — is appropriate here.

Finally, the Commission is entitled to summary judgment against corporate defendants RVC; BPO, Inc; or BPO Advantage LP for the additional reason that an attorney has not entered an appearance on their behalf. Novacek contends (at 11) that she may represent them because they are her corporate alter egos, but there is no such exception to the requirement that non-natural persons be represented by counsel. *See* FEC SJ Mem. at 16.

III. The Court Should Issue a Declaratory Judgment, Impose a Substantial Civil Penalty, and Enter an Injunction

As the Commission has explained (*see* FEC SJ Mem. at 17-20), the Court should enter a declaratory judgment, a substantial civil penalty, and an injunction to remedy Novacek's violation of a statute "enacted to safeguard the integrity of the electoral process." *FEC v. Odzer*, Civ. No. 05-3101, 2006 WL 898049, at *4 (E.D.N.Y. 2006) (imposing a $12,000 civil penalty as part of a default judgment for $6,000 in unlawful contributions made in the name of another in a

knowing and willful violation of the Act). The *Odzer* court imposed a penalty that represented 200% of the total amount of illegal funds at issue, which at that time was the maximum amount for the provision of FECA at issue in that case. *See* 2 U.S.C. § 437g(a)(6) (2000). Two hundred percent of the amount in violation continues to be the maximum amount that the Court can impose if calculating the civil penalty through the amount in violation. *See* 2 U.S.C. § 437g(a)(6) (2009); FEC SJ Mem. at 19 & n.6. Such a penalty is "necessary to deter future violations and to vindicate the Commission's authority." *Odzer,* 2006 WL 898049, at *4 (citing *FEC v. Committee of 100 Democrats,* 844 F. Supp. 1, 7 (D.D.C.1993)).

As with most violations of FECA, violations similar to Novacek's have typically been resolved through conciliation agreements under 2 U.S.C. § 437g(a)(4) before matters reach litigation. *See FEC v. National Rifle Ass'n*, 553 F. Supp. 1331, 1338 (D.D.C. 1983) ("conciliation is the preferred method of dispute resolution under FECA"). Violators in such cases have paid substantial civil penalties in conciliation agreements with the Commission.[5] For example, in the *Matter of Adrian Plesha*, the Commission and Plesha entered into a conciliation agreement for a knowing and willful violation of the fraudulent misrepresentation provision in 2 U.S.C. § 441h. This conciliation agreement provided for, *inter alia,* a civil penalty payment by Plesha of $60,000 which constituted 156% of the amount of the violation (the total cost of the mailing and phone calls that were the basis of the violation was $38,500). *See* FEC, Conciliation Agreement, *Matter of Adrian Plesha*, Matter Under Review ("MUR") 4919 at 4 (Mar. 20, 2004) http://eqs.nictusa.com/eqsdocsMUR/000012C1.pdf; FEC, General Counsel's Rept. No. 11, *Matter of Adrian Plesha*, MUR 4919, at 31 n.29 (June 10, 2002),

[5] The Act requires that the Commission attempt for at least thirty but not more than ninety days to enter into a conciliation agreement with respondents in order to correct violations of the Act. 2 U.S.C. § 437g(a)(4)(A). All conciliation agreements must be approved by at least four members of the Commission. *Id.*

http://eqs.nictusa.com/eqsdocsMUR/00001172.pdf . A penalty of similar proportion to the amount in violation is appropriate here, if not a higher proportion in order to encourage settlement in advance of litigation.[6]

Novacek conclusorily argues (at 12) that the Court should not impose a civil penalty because she cannot afford to pay one. The Court should grant no such leniency based on an undocumented statement. The civil penalty amount should fit the serious nature of Novacek's violations because she has not demonstrated a long-term inability to satisfy a judgment through the filing of several years of tax returns, a complete accounting of her income and assets, and documents from the foreclosure process she references, in a manner akin to a bankruptcy proceeding.[7]

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[6] The Commission has demonstrated that the amount in violation includes $50,292 she received as a result of the solicitations made by vendor Apex CoVantage, L.L.C. ("Apex"), an additional $14,869 Apex raised for the RVC that is still in Apex's possession, and $10,063 in credit card transactions as a result of the calls made by Advantage LP ("Advantage"). FEC SJ Mem. at 19. In her response, Novacek speculates that it is possible that the $10,063 in credit card transactions "should be inclusive in the $50,292" or that some portion of the $10,063 in credit card deposits into her account did not ultimately clear into her account. Novacek Aff. ¶ 8. Such speculation fails to controvert the Commission's showing — based on bank deposit slips signed by Novacek — that she deposited more than $50,000 dollars of checks from donors into the RVC account, Appx. 748-755, *see also* Appx. 207-08 (Novacek admitting to raising "in the ballpark of 50,000" from checks mailed in response to her solicitations), and that more than $10,000 were separately deposited into her account from processed credit cards. Appx 756-59.

[7] Novacek also contends that she suffered from an unlawful leak by the Commission of the allegations against her, Novacek Aff. ¶ 17, but Novacek fails to account for the fact that the provision regarding confidentiality of Commission investigations would not have foreclosed the RNC, the administrative complainant, from publicizing the fact that it had filed an administrative complaint. *See* 2 U.S.C. § 437g(a)(12).

CONCLUSION

For the foregoing reasons, and the reasons stated in the Commission's opening brief, the Court should grant the Commission's motion for summary judgment and the requested relief.

Respectfully submitted,

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