



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

JUN 19 2006

Brian M. Heberlig, Esq.  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20036

RE: MUR 5666  
MZM, Inc.

Dear Mr. Heberlig:

On July 1, 2005, the Federal Election Commission notified your client, MZM, Inc., of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, the Commission, on May 24, 2006, found that there is reason to believe MZM, Inc. knowingly and willfully violated 2 U.S.C. §§ 441b, 441c, and 441f, provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath.

In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Lynn Tran, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Michael E. Toner  
Chairman

Enclosures

Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** MZM, Inc. and  
Mitchell Wade

**MUR: 5666**

**I. INTRODUCTION**

This matter originated with a complaint filed with the Federal Election Commission by Citizens for Responsibility and Ethics in Washington and information ascertained by the Commission in the ordinary course of its supervisory responsibilities. *See* 2 U.S.C. § 437g(a). Based on the complaint and other information, there is reason to believe MZM, Inc. (“MZM”) and Mitchell Wade knowingly and willfully violated the Federal Election Campaign Act of 1971, as amended (“the Act”), by making unlawful corporate contributions or consenting to prohibited corporate contributions, making unlawful contributions as a government contractor or consenting to unlawful contributions by a government contractor, improperly soliciting contributions to a separate segregated fund and making prohibited contributions in the name of another person.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Facts**

MZM, a defense contractor based in Washington, D.C., is registered as a Nevada corporation. Mitchell Wade founded MZM in 1993 and served as president of MZM until June 2005 when he stepped down amid reports of a criminal investigation into MZM and Wade’s relationship with California Representative Randy “Duke” Cunningham.<sup>1</sup> *See* Renae Merle and

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<sup>1</sup> On November 28, 2005, Representative Cunningham pled guilty to taking \$2.4 million in bribes to steer business to unnamed defense contractors. Although MZM is not named in Cunningham’s plea agreement, Justice Department officials acknowledged that Mitchell Wade is one of the unnamed co-conspirators referred to in the plea agreement. *See* Onell R. Soto, *Bribe Probe Likely Will Snare Others, Experts Say*, San Diego Union-Tribune, Dec. 2, 2005. According to the Cunningham plea agreement, Wade bought Cunningham’s Del Mar, California home for \$1.675 million in 2003, sold it for a \$700,000 loss, and paid Cunningham more than \$1.1 million in bribes. *See id.*

R. Jeffrey Smith, *Agents Search Homes, Yacht of Contractor, Congressman*, Wash. Post, July 2, 2005, at A01. A private equity group, Veritas Capital, entered into an agreement to purchase MZM on August 17, 2005. See Dean Calbreath, *Embattled MZM Sold to Investment Company*, San Diego Union-Tribune, Aug. 18, 2005.

MZM PAC, a separate segregated fund connected to MZM, filed its initial Statement of Organization with the Commission on October 24, 2001. The current treasurer of MZM PAC is Jeanne O'Neil. Since its inception, MZM PAC has disclosed \$153,955 in contributions from MZM employees. MZM PAC disclosed \$19,605 in contributions from MZM employees for the 2002 election cycle, \$73,350 in the 2004 election cycle, and \$67,000 through the end of 2005. As of January 1, 2006, MZM PAC had cash on hand in the amount of \$70,892.71. MZM PAC made a donation in this amount to the Intrepid Fallen Heroes Fund on February 13, 2006 and filed a termination report with the Commission that same day. MZM PAC has received notice that its termination request cannot be granted due to its status as a Respondent in this MUR.

1. Allegations in the Complaint

Complainant's allegations are based primarily on a newspaper article in which three unnamed former senior MZM employees stated that MZM and Mitchell Wade routinely forced employees to give political donations. Marcus Stern, *Contractor Who Bought Cunningham's House Made Employees Give Political Contributions*, San Diego Union-Tribune, June 20, 2005. The article quoted a senior former MZM employee as stating, "By the spring of '02, Mitch [Wade] was twisting employees' arms to donate to his MZM PAC. We were called in and told basically either donate to the MZM PAC or we would be fired." *Id.* The employees also reportedly stated that MZM paid employees substantially more than they could make elsewhere, making the contributions a cost of doing business, and that Wade reminded employees before

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their anniversary with MZM to give a designated amount to MZM PAC. *See id.* The specific amounts were based on seniority within the company and ranged from \$1,000 for senior officials to \$500 for less senior employees. *See id.* In addition to the allegation that Wade coerced contributions to MZM PAC, the article also suggests that MZM and Wade facilitated contributions to federal candidates. One of the former MZM employees described a gathering in MZM's Washington, D.C. offices where employees were required to write a check with the unidentified political recipient standing by. *See id.*

The article further noted that in addition to contributions by MZM officials to Cunningham, two other lawmakers, Representatives Katherine Harris and Virgil Goode, also received substantial aggregate amounts of contributions from MZM PAC and individual contributions from MZM employees and their families. *See id.* Of the committees that received contributions from both MZM PAC and individual MZM employees in the 2002, 2004 and 2006 election cycles, the authorized committees for Goode, Harris and Cunningham received the highest amounts. Goode received \$16,000 from MZM PAC and an additional \$58,426 from MZM employees during that period. Harris received \$10,000 from MZM PAC and \$32,000 from MZM employees. Cunningham received \$12,000 from MZM PAC and an additional \$8,000 from MZM employees. Cunningham's leadership PAC, American Prosperity PAC, also received \$10,000 from MZM PAC. Over the course of the last three election cycles, no other candidate received more than \$5,000 from MZM PAC or more than \$4,000 from MZM employees.

Despite earlier requests from the MZM Respondents for an extension of time to respond to the allegations detailed in the complaint, MZM, MZM PAC and Mitchell Wade subsequently indicated they would not submit any response to the complaint.

## 2. Mitchell Wade Plea Agreement

On February 24, 2006, Mitchell Wade entered a guilty plea to multiple felony counts, including paying over \$1 million in bribes to then-Representative Duke Cunningham, providing illegal benefits to Defense Department officials, and “attempting to curry favor with two other members of Congress by making illegal campaign contributions.” Press Release, U.S.

Department of Justice, *Defense Contractor Mitchell Wade Pleads Guilty to Bribing former Congressman “Duke” Cunningham, Corrupting Department of Defense Officials, and Election Fraud* (Feb. 24, 2006). On the issue of illegal campaign contributions, Wade pled to one count of election fraud by unlawfully making campaign contributions in the name of another in violation of 2 U.S.C. §§ 441f and 437g(d)(1)(D). See Statement of Offenses, *United States v. Mitchell J. Wade* (D.D.C. Feb. 24, 2006)(Attachment 1).

The plea agreement details a scheme by Wade in effect from 2003 through 2005 to funnel \$78,000 in illegal campaign contributions to the campaigns of two members of the House of Representatives. See Statement of Offenses at 11-16. Although the two lawmakers are not named in the plea agreement, and instead are identified as Representatives A and B, a review of the disclosure reports along with press accounts indicate that Representative Virgil Goode is “Representative A” and Representative Katherine Harris is “Representative B.”<sup>2</sup> See John Bresnahan, “Straw” Donors Fueled Wade, Roll Call, Feb. 27, 2006.

The plea agreement states that Wade “devised and engaged in a scheme to knowingly and willfully violate the Act by reimbursing MZM employees and their spouses for contributions to campaigns for the United States Congress, including to Representative A’s Campaign and

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<sup>2</sup> A spokesperson for Representative Katherine Harris has stated that Harris acknowledges being “Representative B” in the Wade plea agreement. See Charles R. Babcock, *Contractor Pleads Guilty to Corruption*, Wash. Post, Feb. 25, 2006, at A01.

Representative B's Campaign." Statement of Offenses at 12. Wade directed a total of \$46,000 in straw contributions to Representative Goode and an additional \$32,000 in straw contributions to Representative Harris. The Statement of Offenses states that "[a]t the time of the contributions listed in the Statement of Offenses, Wade knew that it was unlawful to make contributions in the name of another person to a congressional campaign and that his actions were, therefore, unlawful." *Id* at 15.

According to the Statement of Offenses, Wade targeted Representative Goode because MZM wanted to open a second facility in Representative Goode's district and Wade thought Representative Goode could request appropriations funding for this facility and would advocate funding for MZM. *See* Statement of Offenses at 12. On March 26, 2003 and March 4, 2005, Wade met with MZM employees in his Washington, D.C. office and gave them cash or otherwise reimbursed the employees, and in some cases the employee's spouse, for contributions to Representative Goode's campaign. The employees used the money received from Wade to write checks to Representative Goode's campaign and delivered the checks to Wade. Wade, in turn, handed the checks to Representative Goode. The plea agreement states that Wade did not inform Representative Goode or his staff "that the contributions were unlawful." *Id*. The employees or their spouses made 19 straw contributions to Representative Goode using funds received from Wade. *See id.* at 12-13.

Additionally, prior to March 4, 2005, Wade met with an MZM supervisor in his Washington, D.C. office and provided cash to the supervisor to fund contributions to Representative Goode's campaign in the name of the supervisor, the supervisor's wife and other MZM employees. The supervisor used the cash from Wade to make contributions to Representative Goode's campaign in his own name, his wife's name and reimbursed

contributions made in the name of two other MZM employees. The supervisor delivered the four checks to Wade who handed them to Representative Goode. *See* Statement of Offenses at 13.

Disclosure reports filed with the Commission show that the description of straw contributions to Representative A outlined in the Wade plea agreement match contributions made by MZM employees and their spouses to Representative Virgil Goode. The following MZM employees and spouses of MZM employees made contributions to Representative Goode that correspond to contributions made by the straw contributors described in the Wade plea agreement:

Date of Contribution	MZM employee or spouse	Amount of Contribution
3/26/03	James C. King	\$2,000
3/26/03	James C. King	\$2,000
3/26/03	Jeneane C. King	\$2,000
3/26/03	Jeneane C. King	\$2,000
3/26/03	Christopher F. Rosche	\$2,000
3/26/03	Frank B. Bragg, Jr.	\$2,000
3/26/03	Cynthia S. Bragg	\$2,000
3/4/05	Lt. James C. King	\$2,000
3/4/05	Jeneane C. King	\$2,000
3/2/05	Frank B. Bragg, Jr.	\$2,000
3/4/05	Cynthia S. Bragg	\$2,000
3/2/05	Richard A. Berglund	\$2,000
3/4/05	Robin Berglund	\$2,000
3/2/05	Anthony Capra	\$2,000
3/4/05	Sharon Capra	\$2,000
3/5/05	Roger A. Swinford	\$2,000
3/2/05	Amy Cain	\$2,000
3/2/05	Robert A. Harrell	\$2,000
3/2/05	Donna J. Harrell	\$2,000
3/4/05	Jonathan D. Flowers	\$2,000
3/4/05	Jane T. Flowers	\$2,000
3/2/05	Ralph P. Ganis	\$2,000
3/4/05	Joseph R. James, Jr.	\$2,000
3/4/05	May I. James	\$2,000
3/4/05	Matthew B. Schaffer	\$2,000
3/4/05	Christiane Wade	\$2,000
3/4/05	Gregory V. Wade	\$2,000

In addition to contributions to Representative Goode, the Wade plea agreement also describes \$32,000 in straw contributions to "Representative B," who has since been identified as



Rep. Katherine Harris. Wade purportedly targeted Representative Harris because MZM had a facility in her district, and Wade thought Rep. Harris could request appropriations funding that would benefit MZM and would be an advocate for MZM and its existing facilities. *See* Statement of Offenses at 14. In March 2004, Wade met with certain MZM employees and gave the employees cash or otherwise reimbursed them and, in some cases, their spouses, for contributions to Rep. Harris' campaign. The employees used the money received from Wade to write checks to Rep. Harris' campaign and delivered the checks to Wade. Wade, in turn, handed the checks to Representative Harris. The plea agreement states that Wade did not inform Representative Harris or her staff "that the contributions were unlawful." *Id.* The employees or their spouses made 16 straw contributions to Representative Harris using funds received from Wade. Statement of Offenses at 15.

The disclosure reports show that the following MZM employees and spouses of MZM employees made contributions to Representative Harris that correspond to contributions made by the straw contributors described in the Wade plea agreement:

Date of Contribution	MZM employee or spouse	Amount of Contribution
3/23/04	James C. King	\$2,000
3/23/04	James C. King	\$2,000
3/23/04	Jeneane C. King	\$2,000
3/23/04	Jeneane C. King	\$2,000
3/23/04	Frank B. Bragg, Jr.	\$2,000
3/23/04	Frank B. Bragg, Jr.	\$2,000
3/23/04	Cynthia S. Bragg	\$2,000
3/23/04	Cynthia S. Bragg	\$2,000
3/23/04	Roger A. Swinford	\$2,000
3/23/04	Roger A. Swinford	\$2,000
3/23/04	Gregory V. Wade	\$2,000
3/23/04	Gregory V. Wade	\$2,000
3/23/04	Jonathan D. Flowers	\$2,000
3/23/04	Jonathan D. Flowers	\$2,000
3/23/04	Jane T. Flowers	\$2,000
3/23/04	Jane T. Flowers	\$2,000

**A. Analysis**

**1. Coerced and Facilitated Contributions**

Corporations are prohibited from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for federal office. 2 U.S.C. § 441b(a). It is also unlawful for an officer or director of a corporation to consent to any contribution or expenditure by the corporation that is prohibited by the Act. *See id.* The prohibition against corporate contributions embodied in 2 U.S.C. § 441b(a) extends to the facilitation of contributions to candidates or political committees, other than to the corporation's separate segregated fund, by a corporation and its officers, directors or agents. *See* 11 C.F.R. § 114.2(f)(1). Facilitation includes using coercion, such as the threat of detrimental job action, the threat of any other financial reprisal, or the threat of force, to urge individuals to make contributions. *See* 11 C.F.R. § 114.2(f)(2)(iv).

Corporations are also prohibited from soliciting contributions to a separate segregated fund without informing employees that such a contribution is voluntary and that failure to contribute will not subject the employee to job reprisals. *See* 2 U.S.C. § 441b(b)(3)(C). It is unlawful for a separate segregated fund to make a contribution or expenditure with money or anything of value obtained by physical force, job discrimination or financial reprisals or the threat of physical force, job discrimination or financial reprisals. *See* 2 U.S.C. § 441b(b)(3)(A).

Government contractors are prohibited from directly or indirectly making "any contribution of money or other things of value, or to promise expressly or impliedly to make any such contribution to any political party, committee, or candidate for public office or to any person for any political purpose." 2 U.S.C. § 441c(a)(1). Government contractors are subject to the

same “specific prohibition, allowance and duty applicable to a corporation, labor organization or separate segregated fund” under 2 U.S.C. § 441b. *See* 2 U.S.C. § 441c(b).

The complaint cites an article in which multiple unidentified former MZM employees state that MZM and Mitchell Wade coerced employees to make contributions to MZM PAC and authorized committees of candidates supported by MZM and Wade. The complaint charges that MZM, MZM PAC and Mitchell Wade violated the Act by using coercion to force employees to particular candidates and political committee. See Complaint at 2-3. The MZM Respondents have not responded to the allegations. While Respondents are not required to respond to a complaint, and speculative allegations alone will not be sufficient to support a reason to believe finding even where there is no response or there is only a cursory response, the allegations here, while anonymously sourced, are quite specific as to the degree of coercion and the amounts expected to be given by the MZM employees. Moreover, in assessing the allegations in this matter, the Commission takes into consideration the fact that the article and complaint allege a scheme by MZM, MZM PAC and Wade to direct coerced contributions to favored candidates or committees that is substantially similar to the scheme Wade engaged in to direct straw contributions to particular Representatives, as admitted to in the plea agreement.

If true, the factual circumstances described by the MZM employees in the article would appear to establish multiple violations of 2 U.S.C. § 441b by MZM and Mitchell Wade, in his capacity as an officer of MZM. First, Wade is alleged to have coerced contributions to MZM PAC, a separate segregated fund, there is reason to investigate whether MZM and Wade, as a corporate officer, violated 2 U.S.C. § 441b(b)(3)(C). Second, MZM and Wade are alleged to have solicited contributions from MZM employees to the authorized committees of federal candidates supported by MZM and Wade using the threat of detrimental job action. Based on the

unrebutted allegations, there is reason to investigate whether MZM and Wade, as a corporate officer, used corporate resources to facilitate the making of contributions, 11 C.F.R.

§ 114.2(f)(2)(iv), and thereby violated 2 U.S.C. § 441b(a) by making prohibited corporate contributions. Because MZM was a government contractor, violations of 2 U.S.C. § 441b would also result in violations of 2 U.S.C. § 441c. Based on the unrebutted allegations, there is reason to investigate whether MZM, Mitchell Wade, as an officer of MZM, also violated 2 U.S.C. § 441c.

Moreover, the particularly egregious nature of the alleged conduct, when combined with the fact that Wade has admitted to engaging in complex schemes to corrupt at least one Member of Congress and to influence two other Members, provide a basis for investigating whether these violations were knowing and willful.<sup>3</sup> Accordingly, the Commission finds that there is reason to believe that MZM and Wade knowingly and willfully violated 2 U.S.C. §§ 441b(b)(3)(C), 441b(a) and 441c.

## 2. Contributions in the Name of Another

The Act provides that no person shall make a contribution in the name of another person or knowingly permit his or her name to be used to effect such a contribution, and that no person shall knowingly accept a contribution made by one person in the name of another person. *See* 2 U.S.C. § 441f. The Act also provides that no person shall make contributions “to any candidate and his authorized committees with respect to any election for Federal office which, in the aggregate, exceed \$2,000.” 2 U.S.C. § 441a(a)(1)(A).

<sup>3</sup> To establish a knowing and willful violation, there must be knowledge that one is violating the law. *See FEC v. John A. Dramesi for Congress Comm.*, 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be established “by proof that the defendant acted deliberately and with knowledge that the representation was false.” *US v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). An inference of a knowing and willful act may be drawn “from the defendant’s elaborate scheme for disguising” his or her actions. *Id.* at 214-15.

In addition to the allegations of coercion, another unrefuted allegation in the complaint is that MZM employees served as conduits for contributions to specific candidates supported by MZM and Mitchell Wade in violation of 2 U.S.C. § 441f. Mitchell Wade has since pleaded guilty to knowingly and willfully making unlawful campaign contributions in the name of another in violation of 2 U.S.C. § 441f.

Wade's plea agreement described a scheme to influence two Members of Congress, believed to be Representatives Virgil Goode and Katherine Harris, by funneling contributions through MZM employees and their spouses. Wade made 39 different straw contributions through 19 different MZM employees or their spouses and personally handed the campaign contributions, in the form of personal checks from the MZM employees and their spouses, to the representatives. The plea agreement states that Wade did not inform the Representatives "that the contributions were unlawful." Statement of Offenses at 12, 14. Indeed, it appears that Wade and the other participants in the scheme attempted to conceal the source of the contributions. Given the scheme to disguise the true source of the contributions being made in the name of another person outlined by the Department of Justice as part of Wade's guilty plea, the Commission finds that there is reason to believe MZM and Mitchell Wade knowingly and willfully violated 2 U.S.C. §§ 441b, 441c and 441f. Because Mitchell Wade may have used personal funds to reimburse contributions from MZM employees and their spouses, resulting in excessive contributions from Wade, the Commission also finds that there is reason to believe Mitchell Wade violated 2 U.S.C. § 441a.