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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FEDERAL ELECTION COMMISSION, Plaintiff, v. JEREMY JOHNSON, Defendant.	Case No. 2:15-cv-00439-DB **PLAINTIFF FEDERAL ELECTION COMMISSION'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT** District Judge Dee Benson Magistrate Judge Dustin B. Pead

PLAINTIFF FEDERAL ELECTION COMMISSION'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT

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INTRODUCTION AND RELIEF SOUGHT

Plaintiff Federal Election Commission ("Commission" or "FEC") hereby moves for summary judgment, pursuant to Federal Rule of Civil Procedure 56 and District of Utah Civil Rule 56-1. During the 2009-2010 federal election cycle, defendant Jeremy Johnson knowingly and willfully violated the Federal Election Campaign Act ("FECA") by using the names of other persons to make contributions far in excess of FECA's then-applicable $2,400 per-election limit to the United States Senate campaigns of Mike Lee and Harry Reid. In total, Johnson contributed about $50,000 to Mike Lee's Senate campaign and about $20,000 to Harry Reid's Senate campaign by routing the money through third-party conduits.

Johnson was aware of FECA's contribution limit and its ban on contributions in the name of another because of discussions with former Utah Attorney General John Swallow, but Johnson chose to violate the law in the hope of receiving political favors from elected officials. Specifically, during the relevant time period, Johnson's internet marketing business iWorks was under investigation by the Federal Trade Commission ("FTC"). Johnson also owned companies that were involved with the processing of online poker transactions, at a time when other such entities were being investigated and shut down by federal authorities, with their assets seized. Due to discussions with Swallow and individuals involved in the online poker industry, Johnson believed that political donations could influence federal candidates and office holders to help stave off these legal threats to Johnson's business activities.

This Court should grant summary judgment in favor of the Commission and impose appropriate remedies on Johnson. FECA authorizes a penalty of up to $840,000 for the violations at issue. The Commission respectfully requests that this Court order Johnson to pay a civil penalty of $280,000, because his violations were knowing and willful, and a substantial penalty would vindicate the Commission's authority and strengthen its ability to enforce FECA

in the future. The Commission's requested penalty is also appropriate because Johnson's violations of FECA harmed the public by depriving the electorate of accurate information regarding the true source of campaign contributions and increased the risk and appearance of corruption of elected officials. The Commission further requests that this Court declare that Johnson knowingly and willfully violated 52 U.S.C. §§ 30116(a)(1)(A) and 30122, and issue a permanent injunction to prevent future similar violations.

STATEMENT OF UNDISPUTED MATERIAL FACTS

I. The Parties

1. The FEC is an independent agency of the United States with exclusive jurisdiction over the administration, interpretation, and civil enforcement of the Federal Election Campaign Act ("FECA"), 52 U.S.C. §§ 30101-46. FECA empowers the Commission to formulate policy (*id.* § 30106(b)(1)); to make necessary rules and regulations (*id.* §§ 30107(a)(8), 30111(a)(8), 30111(d)); and to civilly enforce the Act and the Commission's implementing regulations (*id.* §§ 30106(b)(1), 30109).[1]

2. FECA sets dollar limits on the amount any individual may contribute to a candidate for federal office or a candidate's authorized political committee per election. *See generally* 52 U.S.C. § 30116(a)(1)(A). A candidate's "principal campaign committee" is a type of authorized political committee to which individual contributions are limited. 52 U.S.C. § 30101(5); *id.* § 30102(e)(1). During the 2009-2010 election cycle, the maximum amount an individual could contribute to a candidate or authorized political committee was $2,400 per election. *Price Index Increases for Contribution and Expenditure Limitations and Lobbyist*

[1] Effective September 1, 2014, the provisions of FECA that were codified in Title 2 of the United States Code were recodified in a new title, Title 52. *See* Editorial Reclassification Table, http://uscode.house.gov/editorialreclassification/t52/Reclassifications_Title_52.html.

Bundling Disclosure Threshold, 74 Fed. Reg. 7435, 7437 (Feb. 17, 2009).

3. FECA also requires federal campaigns to identify publicly each person who contributes in excess of $200 in any two-year election cycle. 52 U.S.C. § 30104(b)(3)(A).

4. To enforce FECA's disclosure requirements and to prevent circumvention of the source and amount limits on contributions, FECA further prohibits contributions made in the name of another person. 52 U.S.C. § 30122. Under that provision, "[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution and no person shall knowingly accept a contribution made by one person in the name of another person." *Id.*

5. Johnson is currently incarcerated in a federal prison after being convicted of violating 18 U.S.C. § 1014 by knowingly providing a material false statement to a bank for the purpose of influencing the bank's action. *United States v. Johnson*, 732 F. App'x 638, 642 (10th Cir. 2018) (unpublished); *see* Exh. 1, Johnson Dep. (Vol. 1) Tr. at 12:4-7.

6. Friends of Mike Lee, Inc., was the principal campaign committee of Mike Lee during his candidacy to represent Utah in the U.S. Senate during the 2010 election cycle. *See* 52 U.S.C. § 30101(5); Exh. 2, Johnson Dep. Exh. 7, at 1.

7. Friends for Harry Reid was the principal campaign committee of Harry Reid during his candidacy to represent Nevada in the U.S. Senate during the 2010 election cycle. *See* 52 U.S.C. § 30101(5); Exh. 3, Johnson Dep. Exh. 10, at 1.

8. Prior to his incarceration, Johnson was a wealthy businessman operating in southwest Utah. Johnson owned "[a]t least a dozen" businesses in various sectors, including manufacturing, retail, and service. (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 15:8-14.) At their peak Johnson's businesses had an income of approximately $20 million per year and employed over

one thousand workers. (*Id.* at 15:15-16:6.)

II. Federal Investigations into Johnson's Businesses

9. In late 2009 and early 2010, two of Johnson's businesses came to the attention of federal authorities: Johnson's poker transaction processing business and iWorks. iWorks was a software-based marketing company that relied on so-called negative options to offer various software and information products to customers. (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 16:15-18:4.) Under that strategy, iWorks offered customers access to information about government grants and other money-making opportunities in exchange for an upfront nominal shipping fee, but then charged recurring monthly fees until the customer affirmatively canceled the service. (*See id.* at 16:20-17:4.)

10. In early 2010, Johnson became aware that the FTC was investigating whether iWorks's use of negative options violated the Federal Trade Commission Act. (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 170:21-171:17; Exh. 4, Johnson Dep. Exh. 11.) Over the course of 2010, Johnson and iWorks participated in the FTC's investigation into the company by producing documents. (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 173:17-174:3.)

11. The FTC ultimately filed a civil enforcement lawsuit in Nevada District Court against Johnson, iWorks, and other affiliated individuals and companies for violating the Federal Trade Commission Act by making various misrepresentations about iWorks products and failing to disclose adequately that customers would incur monthly charges unless they affirmatively canceled their service. Exh. 5, Compl. ¶¶ 4-10 (Docket No. 1), *FTC v. Johnson, et al.*, 10-cv-2203 (D. Nev. Dec. 21, 2010); *see* Exh, 1, Johnson Dep. (Vol. 1) Tr. at 171:6-14.

12. Several other businesses Johnson owned or controlled were also under federal scrutiny between 2009 and 2010 in connection with investigations into the legality of online poker transaction processing in the United States. At that time, several international companies

permitted customers in the United States to play online poker for real money, although it was at best uncertain whether that activity would be considered illegal gambling under federal law. *See* Exh. 1, Johnson Dep. (Vol. 1) Tr. at 191:19-192:7; *see generally* 31 U.S.C. § 5361 *et seq.* The online poker companies offering this service made money by charging a "rake," or fee, for hosting poker games and tournaments. *See generally* Exh. 6, Nathan Vardi, *PokerStars: Online Gambling's Quiet Giant*, Forbes, Feb. 10, 2010, https://www.forbes.com/2010/02/10/internet-gambling-pokerstars-business-beltway-pokerstars.html. Because of the legal risk involved, U.S. credit card companies refused to process credit card transactions related to online poker. (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 193:8-20.) To get around this problem, online poker companies needed to affiliate with domestic payment companies to process financial transactions from customers' bank accounts directly. (*Id.*)

13. Johnson owned or was affiliated with numerous companies that offered this transaction processing service to two of the most prominent international poker sites: PokerStars and Full Tilt Poker ("Full Tilt"). (Exh, 1, Johnson Dep. (Vol. 1) Tr. at 192:8-17; *see id.* at 201:1-5 (explaining that PokerStars and Full Tilt were "the only two companies that we ever dealt with for poker").) PokerStars was founded by Isai Scheinberg, and Full Tilt Poker was founded by Raymond Bitar and others. (*See id.* at 82:10-19.)

14. Johnson owned a company called "Elite Debit" which began processing online poker transactions in 2009 for PokerStars and Full Tilt after other processing entities had been shut down by federal authorities. Exh. 1, Johnson Dep. (Vol. 1) Tr. at 48:8-49:17; *see generally* Exh. 7, Superseding Indictment, 21-24 (Docket No. 20), *United States v. Scheinberg, et al.*, 10-cr-336 (S.D.N.Y. filed April 14, 2011); Exh. 8, "Group Says Poker Winnings are Frozen," Las Vegas Sun (June 12, 2009), https://lasvegassun.com/news/2009/jun/12/group-says-poker-

winnings-are-frozen/.

15. Elite Debit's role was to collect online poker players' banking account information so that the amount of funds the players wished to use for play could be deposited in the players' online playing account. Elite Debit would then compare that information to a database of known bad check writers, and assuming the customer did not appear on that list, the poker company would give an instant credit so that the customer could begin playing poker immediately. (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 210:6-211:8.)

16. Elite Debit would then send the transaction information to SunFirst Bank, a regional bank headquartered in St. George, Utah, and in which Johnson also held an ownership interest. (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 16:12-14; *id.* at 211:12-18.) SunFirst would then transmit the transaction information to the Federal Reserve, which would debit the customer's banking account by the specified amount and transfer the funds to a bank account at SunFirst. (*Id.* at 211:12-18.)

17. One of the SunFirst bank accounts that received money in this fashion was owned by a company Johnson controlled called Triple Seven. Elite Debit would then recoup its fees from the funds deposited in Triple Seven's account. (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 211:12-212:21.)

18. Because neither PokerStars nor Full Tilt were U.S. companies, Johnson's processing entities had difficulties transferring online poker proceeds back to those entities. Johnson's solution to this problem was to recruit two brothers, Jason and Todd Vowell, to assist in transferring money overseas through the creation of Triple Seven. Todd Vowell was an accountant who had previously worked with Jason Vowell and Johnson on other business deals. Johnson worked with the Vowells and SunFirst bank to set up Triple Seven. (Exh. 1, Johnson

Dep. (Vol. 1) Tr. at 200:19-204:15; Exh. 9, Johnson Dep. (Vol. 2) Tr. at 22:9-14, 25:16-22.)

19. Like the prior processing entities that had been shut down, Johnson's poker processing operation quickly came under scrutiny by federal prosecutors. In March and April of 2010, SunFirst Bank received subpoenas related to its poker processing from the United States Attorneys of Maryland and New York. Exh. 10, Utah House of Representatives, Report of the Special Investigative Committee 51 (Mar. 11, 2014).

20. In November 2010, the Federal Deposit Insurance Corporation ordered SunFirst Bank to stop all third-party payment processing transactions with Johnson-related poker processing entities. Exh. 11, Decl. of Todd Vowell ¶ 15; Exh. 12, Consent Order, *In re Sunfirst Bank St. George, Utah*, FDIC-10-845b (Nov. 9, 2010), https://www.fdic.gov/bank/individual/enforcement/2010-11-23.pdf. That action ended Johnson's poker processing business. (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 196:3-14.)

III. Johnson's Efforts to Influence Elected Officials to Help His Businesses

21. John Swallow was the Utah Attorney General from January 2013 through December 2013, when he resigned. *See* Exh. 13, History of the Utah Attorney General's Office, Utah Office of the Attorney General (Nov. 19, 2018), https://attorneygeneral.utah.gov/about/history/. Johnson's relationship with Swallow dates back to the 2000s, after Johnson had made a sizeable donation to Mark Shurtleff's 2008 reelection campaign for Utah Attorney General. (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 88:20-89:6.) Swallow at that time served as Chief Deputy Attorney General and as a fundraiser for that campaign. (FEC's Am. Compl. ¶ 12 (Docket No. 36); Def. John Swallow's Answer to Am. Compl. ("Answer") ¶ 12 (Docket No. 45).)

22. In the midst of the federal investigations into Johnson's business interests with iWorks and poker processing, Johnson conferred with John Swallow about how to seek the assistance of federal elected officials. In August 2010, Johnson spoke with Swallow about

having then-U.S. Senator Orrin Hatch offer help with the FTC's investigation into iWorks. (Exh. 14, Johnson Dep. Exh. 12; Exh. 1, Johnson Dep. (Vol. 1) Tr. at 177:11-22.) Johnson eventually met with Senator Hatch about that matter. (*Id.* at 178:1-22.)

23. In September 2010, Swallow also connected Johnson to Richard Rawle, through whom Johnson sought to have then-U.S. Senator Harry Reid assist iWorks with the FTC's investigation. (*See* Exh. 1, Johnson Dep. (Vol. 1) Tr. at 179:7-180:5; Exh. 15, Johnson Dep. Exh. 13.) Johnson and another iWorks employee eventually paid Rawle's company $250,000 for assistance in lobbying for Senator Reid's assistance with the FTC. (*See* Exh. 1, Johnson Dep. (Vol. 1) Tr. at 174:16-175:19; 181:1-183:8.) In a follow-up communication, Johnson explained to Rawle that iWorks would "do whatever it take [*sic*] to get Senator Reid on our side" regarding the FTC. (Exh. 16, Johnson Dep. Exh. 14; Exh. 1, Johnson Dep. (Vol. 1) Tr. at 183:12-22.)

IV. Johnson's Contributions to the Federal Campaigns of Mark Shurtleff, Mike Lee, and Harry Reid

24. In addition to securing meetings with elected officials, Johnson also made campaign contributions to federal candidates in the 2009-2010 election cycle as part of a strategy to protect his business interests.

25. The first federal campaign to receive a contribution from Johnson was Shurtleff's campaign for U.S. Senate.[2] In 2009, Johnson was responsible for approximately $100,000 in contributions to Shurtleff's campaign. (Exh. 17, Johnson Interview Tr. at 42:8-19 (Jan 9, 2014); *see* Exh. 18, Johnson Interview Tr. at 5:9-8:11 (Aug. 14, 2013).) Johnson initially attempted to write a $100,000 check to Shurtleff's campaign, but he was told that it "has to come from . . .

[2] Johnson's contributions to Shurtleff are outside the statute of limitations. Even so, these facts are relevant to the Commission's claims because they establish Johnson's knowledge of the relevant contribution limits and ability to evade those limits using conduit contributions, *see* Fed. R. Evid. 404(b)(2), and because they support issuance of the requested equitable relief.

different people" because a single person could give only $2,400 per election. (Exh. 19, Johnson Interview Tr. at 38:10-20 (Feb. 3, 2014); Exh. 1, Johnson Dep. (Vol. 1) Tr. at 61:5-21.) This was a problem for Johnson because he did not "know that many people who can write . . . checks" in that amount. (Exh. 19, Johnson Interview Tr. at 38:16-17 (Feb. 3, 2014).) In response, Swallow told him that Johnson could "give them a gift, and they could donate that if they want." (*Id.* at 38:18-20; *see* Exh. 1, Johnson Dep. (Vol. 1) Tr. at 61:18-21.)

26. On June 18, 2009, Johnson emailed Swallow to tell him that he had "commitments for $113,600" in contributions to Mark Shurtleff "with no 1 person donating more than $7200." (Exh. 20, Johnson Dep. Exh. 3.) Johnson was aware at that time that there was a limit on the amount any one person could contribute to a federal candidate. (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 97:5-19.) The $7,200 figure reflected the potential for one individual to contribute to a single federal candidate in Utah in three elections during a two-year election cycle. *See* infra p. 21.

27. After Shurtleff exited the race in late 2009, Johnson then decided to make contributions to Mike Lee's campaign. (*See* Exh. 17, Johnson Interview Transcript at 24:20-25:13 (Jan. 9, 2014); Exh. 1, Johnson Dep. (Vol. 1) Tr. at 45:10-47:2.) Johnson did so to "make Mike Lee our guy" who could "help make it so that" Johnson didn't "have problems with [his] business." (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 46:7-19.) Johnson's strategy, developed in conversations with Swallow, was that if Lee was elected to the U.S. Senate, Lee would be involved in selecting the next U.S. Attorney in Utah. (Exh. 17, Johnson Interview Transcript at 25:3-13, 34:6-18 (Jan. 9, 2014); *see* Exh. 1, Johnson Dep. (Vol. 1) Tr. at 47:15-48:12.) Having influence with the Utah U.S. Attorney, in Johnson's view, would have made it more difficult for the U.S. Attorneys in other districts to "come in and cause mischief" with his poker processing.

(Exh. 17, Johnson Interview Transcript at 34:6-18 (Jan. 9, 2014); *see also* Exh. 1, Johnson Dep. (Vol. 1) Tr. at 46:16-19 (stating that Lee could "help make it so that" Johnson wouldn't "have problems with [his] business"); Exh. 19, Johnson Interview Transcript at 37:10-38:5 (Feb. 3, 2014).)

28. Because Johnson had previously contributed to Mark Shurtleff's Senate campaign in 2009, he was aware in 2010 that there were limits on the amount of money any one person could give to a federal campaign. (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 96:14-97:19; *see* Exh, 20, Johnson Dep. Exh. 3.) Johnson confirmed with Swallow that those same limits applied to contributions to Mike Lee's campaign. (Exh. 17, Johnson Interview Tr. at 37:6-38:6 (Jan. 9, 2014); Exh. 19, Johnson Interview Tr. at 46:22-47:8 (Feb. 3, 2014).) Johnson, however, wanted to contribute money in excess of those limits. (Exh. 18, Johnson Interview Transcript at 6:16-7:22 (Aug. 14, 2013).)

29. Johnson gave money to third parties to enable them to donate to Mike Lee's U.S. Senate campaign in 2010. (Exh. 17, Johnson Interview Transcript at 35:11-16 (Jan. 9, 2014) ("So I got people to give [the Lee campaign] money and most of them I had to end up giving them money to give the money; *id.* at 39:2-11 ("Yeah, I just said, hey, will you donate to Mike Lee? I'll get you the money.").) Johnson would "give someone a gift" and "they can donate it to the campaign," (*id.* at 37:6-38:13), but he understood that "[i]t was [Johnson's] money" and these third parties "didn't actually donate any money." *See id* at 39:2-11; Exh. 21, Johnson Dep. Exh. 33 ("[Swallow] told me that I can just give money to people and they can make the donation. It was an enormous pain in the ass to raise the amounts of money they wanted with the limits etc. Sometimes people's checks would bounce and John would let me know."); Exh. 9, Johnson Dep. (Vol. 2) Tr. at 70:14-72:2 (authenticating Exhibit 33).)

30. Johnson contributed at least $50,000 to Friends of Mike Lee, Inc. in 2010 using conduit contributions. (Exh. 17, Johnson Interview Tr. at 22:10-17 (Jan. 9, 2014); *id.* at 42:15-44:19; Exh. 1, Johnson Dep. (Vol. 1) Tr. at 39:9-20.) The people Johnson donated "through" were his "family, . . . some employees, associates," and "friends." (Exh. 19, Johnson Interview Tr. at 40:14-41:1 (Feb. 3, 2014); Exh. 1, Johnson Dep. (Vol. 1) Tr. at 54:4-19.) Johnson financed these contributions in a variety of ways, but "mostly [he] gave them cash" as an advance on the contribution. (Exh. 19, Johnson Interview Tr. at 54:15-19 (Feb. 3, 2014).)

31. Johnson used Triple Seven to finance conduit contributions. Triple Seven was controlled by Johnson and was funded, in substantial part, by Johnson's money. (Exh. 22, Corrected Order Granting Mot. for Order Clarifying Prelim. Inj. Order and for Further Instrs. Regarding Scope of Receivership Defs' Under Prelim. Inj. Order and Report of Receiver's Financial Reconstruction ("Receiver Order") at 3 and Exh. A (Docket No. 900), *FTC v. Johnson, et al.*, No. 10-cv-2203 (D. Nev. Mar. 25 2013); Exh. 23, Arvin Lee Black II ("Lee Black") Dep. Tr. at 47:21-48:19, 60:6-16, 161:18-162:9; Exh. 24, Lee Black Dep. Exh. 1, at 3; Exh. 25, Def. Jeremy Johnson's Answers to FEC's First Set of Discovery Reqs., Resp. to Req. for Admis. No. 36; Exh. 1, Johnson Dep. (Vol. 1) Tr. at 212:17-21; Exh. 9, Johnson Dep. (Vol. 2) Tr. at 23:4-13, 30:22-31:7; Exh. 26, Jason Vowell Dep. Tr. at 47:5-9.)

32. In the civil action that the FTC brought arising out of Johnson's operation of iWorks ("iWorks litigation"), the United States District Court for the District of Nevada authorized a court-appointed receiver to seize Triple Seven's assets, because the Court determined that those assets were really Johnson's property. Exh. 22, Receiver Order at 3 and Exh. A (Docket No. 900), *FTC v. Johnson, et al.*, 10-cv-2203; Exh. 11, Decl. of Todd Vowell ¶ 16; Exh. 1, Johnson Dep. (Vol. 1) Tr. at 238:15-239:4.

33. Johnson could direct Triple Seven to issue checks, and he directed Triple Seven to pay at least several hundred thousand dollars of his personal expenses, including his credit card balance, his casino account, and payments due to his attorneys. (Exh. 11, Decl. of Todd Vowell ¶ 7; Exh. 25, Def. Jeremy Johnson's Answers to FEC's First Set of Disc. Reqs., Resp. to Req. for Admis. No. 36.)

34. On May 17, 2010, Triple Seven issued a check in the amount of $9,600 to "cash." (Exh. 27, Receiver Decl. ¶ 14 & Exh. J.) The purpose of this check was to fund "Cashier's Checks for Mike Lee." (Exh. 27, Receiver Decl. ¶ 16 & Exh. L.)

35. Friends of Mike Lee received a $2,400 contribution from Jeremy Johnson himself on June 21, 2010. (Exh. 2, Johnson Dep. Exh. 7, at 8.)

36. Johnson also gave his business partner C.J. Wade money to contribute to Mike Lee's campaign. (Exh. 19, Johnson Interview Tr. at 48:2-7 (Feb. 3, 2014) ("[L]ike C.J. Wade . . . I gave him the money. He wrote a check."); Exh. 1, Johnson Dep. (Vol. 1) Tr. at 66:14-19.) Wade "wouldn't have been interested in donating to Mike Lee, but [Johnson] talked him into it" by giving Wade money or allowing him to use cash from a car wash they co-owned. (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 150:19-151:4.) Friends of Mike Lee received a $2,400 contribution, purportedly from Christopher Wade, on June 21, 2010, the same day as Johnson's personal contribution. (Exh. 2, Johnson Dep. Exh. 7, at 14; *see* Exh. 1, Johnson Dep. (Vol. 1) Tr. at 150:3-9 (acknowledging that this is C.J. Wade).)

37. Johnson attempted to make another $14,400, and successfully made $9,600, in contributions to Mike Lee's Senate campaign through conduits recruited by his business associate at the time, Lee Black, and with money routed through Triple Seven. (Exh. 23, Lee Black Dep. Tr. at 48:24-51:17, 84:18-87:7, 87:22-88:5, 95:25-96:8; 97:2-20; 98:9-99:12, 108:8-

109:14, 110:10-112:2, 113:11-114:3, 115:9-116:11, 117:13-118:2, 120:15-121:16, 127:13-129:07, 130:5-131:8; Exh. 24, Lee Black Dep. Exh. 1; Exh. 28, Lee Black Dep. Exh. 2; Exh, 29, Lee Black Dep. Exh. 4; Exh. 30, Lee Black Dep. Exh. 5; Exh. 31, Kyle Boyer Dep. Tr. at 21:1-23:10, 24:13-21; Exh. 32, Kyle Boyer Dep. Exh. 1; Exh. 33, Tiffany Boyer Dep. Tr. at 19:1-23; Exh. 34, Tiffany Boyer Dep. Exh. 1; Exh. 35, Decl. of Thomas Datwyler ¶¶ 5-10 and Exhs. A-I; Exh. 36, Decl. of Savannah Jones Carter ¶¶ 6-16 and Exhs. A-H; Exh. 37, Decl. of Atia Black ¶¶ 5-8 and Exhs. C, D; Exh. 11, Decl. of Todd Vowell ¶¶ 11-12 and Exh. C; Exh. 27, Receiver Decl. ¶ 16 and Exh. L.)

38. Jason Vowell was responsible for "networking" for Triple Seven. (Exh. 26, Jason Vowell Dep. Tr. at 23:3-8.) He was also nominally the manager of Triple Seven, and was authorized to sign checks on Triple Seven's behalf. (Exh. 26, Jason Vowell Dep. Tr. at 22:11-23:2, 39:11-23; Exh. 38, Jason Vowell Dep. Exh. 2, at 2, 12, 14; Exh. 23, Lee Black Dep. Tr. at 30:6-31:9; Exh. 9, Johnson Dep. (Vol. 2) Tr. at 34:9-11.)

39. Johnson could have cut the Vowells off from Triple Seven any time that he wanted. (Exh. 9, Johnson Dep. (Vol. 2) Tr. at 23:4-13.)

40. From approximately 2007 to 2012, Lee Black owned an investment company called Sole Group, LLC ("Sole Group"). (Exh. 39, Statement by Def. in Advance of Plea of Guilty Pursuant to Fed. R. Crim. P. 11(c)(1)(C) at 4 (Docket No. 16), *United States of America v. Arvin Lee Black II*, 13-cr-836 (D. Utah Jan. 10, 2014); Exh. 11, Decl. of Todd Vowell ¶ 14.) In 2014, Lee Black pled guilty to and was convicted of wire fraud and money laundering arising out of his operation of Sole Group. Exh. 40, J. in a Criminal Case (Docket No. 35), *United States of America v. Arvin Lee Black II*, 13-cr-836 (D. Utah May 27, 2014).

41. Jason Vowell first introduced Lee Black to Johnson. (Exh. 23, Lee Black Dep.

Tr. at 42:22-25.) By 2010, Lee Black and Sole Group were investing the money of online poker businesses and entities nominally owned or managed by the Vowells, but actually owned and controlled by Johnson, including Triple Seven. (Exh. 22, Receiver Order at 3 and Exh. A (Docket No. 900), *FTC v. Johnson, et al.*, 10-cv-2203; Exh. 23, Lee Black Dep. Tr. at 27:19-29:7, 37:21-25, 46:21-48:21, 62:2-64:12; Exh. 24, Lee Black Dep. Exh. 1, at 3; Exh. 11, Decl. of Todd Vowell ¶ 144; Exh. 1, Johnson Dep. Tr. (Vol. 1) at 237:3-21; Exh. 41, Johnson Dep. Exh. 18.)

42. Johnson and others involved in the online poker industry asked Lee Black to invest their money because SunFirst Bank was concerned that its auditors would become suspicious if the bank held too much money from online poker businesses. (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 220:11-222:5, 224:21-225:18, 237:17-21.)

43. Millions of dollars of money that originated with Johnson passed through Lee Black and Sole Group. Exh. 42, Report of Receiver's Financial Reconstruction at 15, 52-54 (Docket No. 464), *FTC v. Johnson, et al.*, 10-cv-2203 (D. Nev. Feb. 3, 2012); Exh. 24, Lee Black Dep. Exh. 1 at 3.

44. Johnson usually conducted business with Lee Black through the Vowells, rather than directly with Lee Black. (Exh. 23, Lee Black Dep. Tr. at 46:21-48:22.)

45. In 2010, Johnson had discussions with the Vowells about the need to get as many contributions as possible for Mike Lee's Senate campaign. (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 52:14-53:3, 132:21-133:4; Exh. 11, Decl. of Todd Vowell ¶ 8; Exh. 23, Lee Black Dep. Tr. at 50:19-51:1.)

46. In 2010, Jason Vowell told Lee Black that Johnson needed him to find conduits to make $2,400 contributions to Mike Lee's campaign, which would be reimbursed with Johnson's

money.[3] (Exh. 23, Lee Black Dep. Tr. at 48:24-51:17.)

47. Lee Black wanted to continue doing business with Johnson through the Vowells, and therefore, he recruited relatives, employees, and friends to make conduit contributions to Mike Lee's Senate campaign. (Exh. 23, Lee Black Dep. Tr. at 48:24-51:2, 76:20-77:25, 95:25-96:8, 108:8-109:11, 110:10-13, 117:13-118:2, 127:13-129:7; Exh. 24, Lee Black Dep. Exh. 1, at 3.)

48. The following individuals issued $2,400 contribution checks to Mike Lee's Senate campaign: (1) Lee Black, by check dated June 11, 2010; (2) Lee Black's wife at the time, Atia Black, by check dated June 10, 2010; (3) Lee Black's friend Kyle Boyer, who worked for a homebuilding company that Lee Black owned, by check dated June 11, 2010; (4) Kyle Boyer's wife, Tiffany Boyer, by check dated June 11, 2010; (5) Lee Black's younger brother, Matthew Black, by check dated June 11, 2010; and (6) Savannah Jones, who was employed by Sole Group as a secretary, by check dated June 14, 2010. (Exh. 37, Decl. of Atia Black ¶ 6 and Exh. A; Exh. 35, Decl. of Thomas Datwyler ¶¶ 5-10 and Exhs. A, C, E, G, H, I; Exh. 36, Decl. of Savannah Jones Carter ¶ 7 and Exh. A; Exh. 23, Lee Black Dep. Tr. at 17:25-18:9, 50:9-13, 54:11-17, 84:17-85:4, 105:2-23, 106:9-20, 108:8-109:14; 124:20-22; Exh. 30, Lee Black Dep. Exh. 5; Exh. 31, Kyle Boyer Dep. Tr. at 9:23-10:5, 21:1-25, 32:5-22; Exh. 32, Kyle Boyer Dep. Exh. 1; Exh. 33, Tiffany Boyer Dep. Tr. at 19:1-23; Exh. 34, Tiffany Boyer Dep. Exh. 1.)

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[3] During his deposition in this matter, Jason Vowell testified that he did not remember whether he had conversations with Lee Black about contributions to candidates for political office in 2010. (Exh. 26, Jason Vowell Dep. Tr. at 101:12-102:1.) As a result of his testimony that he cannot remember, Jason Vowell is unavailable as a witness pursuant to Federal Rule of Evidence 804(a)(3). Accordingly, his statements to Lee Black are excepted from the rule against hearsay under Federal Rule of Evidence 804(b)(3)(A) because they exposed him to criminal liability. Jason Vowell's statements indicate that he aided and abetted Johnson's knowing and willful financing of the contributions of others, which could have been criminally prosecuted under 18 U.S.C. § 2. *See FEC v. Swallow*, 304 F. Supp. 3d 1113, 1117 n.1 (D. Utah 2018).

49. All of these individuals understood that their contribution checks would be reimbursed at the time that they issued them. (Exh. 37, Decl. of Atia Black ¶ 7 and Exhs. C and D; Exh. 36, Decl. of Savannah Jones Carter ¶¶ 6-7; Exh. 23, Lee Black Dep. Tr. at 50:7-13; 97:16-20; 108:11-109:3; 110:19-111:1; Exh. 31, Kyle Boyer Dep. Tr. at 21:1-23:10, 24:13-21, Exh. 33, Tiffany Boyer Dep. Tr. at 20:13- 25, 25:11-17.)

50. None of these individuals were interested in Mike Lee or his policies, and they would not have made or attempted to make $2,400 contributions to Mike Lee's Senate campaign if they had not anticipated being reimbursed. (Exh. 31, Kyle Boyer Dep. Tr. at 28:21-23; Exh. 33, Tiffany Boyer Dep. Tr. at 19:1-23 , 20:13-21:9, 25:11-17; Exh. 23, Lee Black Dep. Tr. at 88:22-89:1, 89:4-7, 99:13-100:2, 112:3-12, 116:12-21, 121:17-122:1, 131:9-22.)

51. On June 14, 2010, Triple Seven made a payment of $14,400 to Sole Group, either by check number 5075 or by cashier's check number 039770, which indicated that it "Replace[d] Check 5075." (Exh. 23, Lee Black Dep. Tr. at 79:4-18, 81:11-82:23, 84:3-5; Exhs. 28, 29, Lee Black Dep. Exhs. 2, 4; Exh. 43, Lee Black Dep. Exh. 3.)

52. The purpose of that $14,400 payment by Triple Seven was to reimburse conduit contributions to Mike Lee's Senate campaign. (Exh. 23, Lee Black Dep. Tr. at 79:2-80:10; Exh. 11, Decl. of Todd Vowell ¶¶ 11-12, 14 and Exh. C; Exh. 27, Receiver Decl. ¶ 16 & Exh. L.)

53. On the same day that Triple Seven paid $14,400 to Sole Group, Sole Group in turn issued $2,400 checks to Savannah Jones, Lee Black, Atia Black, Kyle Boyer, Tiffany Boyer, and Matthew Black. These checks were prepared by Savannah Jones at Lee Black's direction, and they were issued to reimburse contributions to Mike Lee's campaign. (Exh. 36, Decl. of Savannah Jones Carter ¶¶ 8, 11-16 and Exhs. B, D-H; Exh. 37, Decl. of Atia Black ¶ 7 and Exhs. B-D; Exh. 23, Lee Black Dep. Tr. at 54:11-55:6, 85:23-87:7, 98:11-99:6, 111:3-21, 115:9-116:5,

120:15-121:10, 130:5-131:2; Exh. 31, Kyle Boyer Dep. Tr. at 25:21-26:2, 27:6-11, 33:12-34:18.)

54. Although Kyle and Tiffany Boyer's two $2,400 checks each cleared, the remaining four $2,400 conduit contribution checks to Mike Lee's Senate campaign bounced. (Exh. 35, Decl. of Thomas Datwyler ¶¶ 5-10 and Exhs. A, C, E, G, H, I; Exh. 36, Decl. of Savannah Jones Carter ¶ 9; Exh. 37, Decl. of Atia Black ¶ 6; Exh. 2, Johnson Dep. Exh. 7, at 17, 121-23; Exh. 23, Lee Black Dep. Tr. at 132:10-133:4.)

55. Mike Lee's Senate campaign reported receiving contribution checks that were returned for insufficient funds from only five individuals in June of 2010. (*See* Exh. 2, Johnson Dep. Exh. 7, at 121-23 (reporting bounced checks as disbursements to five individuals for the purpose of "NSF").) Four of those individuals were Lee Black, Atia Black, Matthew Black, and Savannah Jones. (*Id.*)

56. Johnson explained that because he was under pressure to get contributions quickly, the contribution checks that his conduits issued would sometimes bounce because the campaign would deposit the checks before the conduits received or deposited their reimbursements. (Exh. 17, Johnson Interview Tr. at 41:16-42:7 (Jan. 9, 2014); Exh. 19, Johnson Interview Tr. at 41:4-20, 55:18-56:5 (Feb. 3, 2014).)

57. On June 21, 2010, the day before the 2010 Republican primary in Utah, Swallow and Johnson engaged in an email exchange regarding four bounced contribution checks to Mike Lee's campaign. (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 152:8 –154:18; Exh. 44, Johnson Dep. Exh. 9.) Johnson promised to get the issue "fixed." (Exh. 44, Johnson Dep. Exh. 9.)

58. By June 22, 2010, the day of the Republican primary, Atia Black, Savannah Jones, and Matthew Black, three of the four conduits whose contribution checks had bounced, issued new $2,400 contribution checks to Mike Lee's Senate campaign. (Exh. 35, Decl. of

Thomas Datwyler ¶¶ 5-7 and Exhs. B, D, F; Exh. 36, Decl. of Savannah Jones Carter ¶ 10 and Exh. C; Exh. 37, Decl. of Atia Black ¶ 8 and Exh. E.)

59. The new contribution check that Matthew Black issued bounced, but the new contribution checks that Atia Black and Savannah Jones issued to Mike Lee's Senate campaign cleared. (Exh. 35, Decl. of Thomas Datwyler ¶¶ 5-7 and Exhs. B, D, F; Exh. 2, Johnson Dep. Exh. 7, at 15, 61, 122; Exh. 23, Lee Black Dep. Tr. at 132:10-133:4.)

60. Johnson also contributed at least $20,000 to Friends for Harry Reid in 2010 using conduit contributions. (Exh. 18, Johnson Interview Tr. at 6:4-22 (Aug. 14, 2013); Exh. 19, Johnson Interview Tr. at 52:12-55:5 (Feb. 3, 2014).) Friends for Harry Reid received a $2,400 contribution from Johnson on July 14, 2010. (Exh. 3, Johnson Dep. Exh. 10, at 2.) In addition to his own contribution, Johnson worked to "round up some more donations for Harry Reid" with others in the online poker business. (Exh. 1, Johnson Dep. (Vol. 1) at 168:1-16.)

61. Johnson did not support Harry Reid politically, so he "wouldn't have normally" contributed to Reid. (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 74:20-22; *see id.* at 164:8-14; Exh. 19, Johnson Interview Tr. at 52:12-13 (Feb. 3, 2014).) Johnson did so, however, as "part of a large strategy" with Bitar and other poker businesspeople to "make it so [he didn't] have problems with processing poker." (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 75:3-11.) Johnson also believed that Bitar and others had separately given money to Reid to entice Reid to support legislation that would be favorable to the online poker industry. (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 76:19-78:4.)

V. The FEC's Administrative Enforcement Proceedings against Johnson

62. On June 30, 2014, the Alliance for a Better Utah and Maryann Martindale filed an administrative complaint with the FEC, alleging that in 2010, Johnson made approximately $50,000 in contributions in the name of others to Mike Lee's Senate campaign. (FEC's Am.

Compl. ¶ 50; Answer ¶ 8.)

63. Prior to filing the complaint in this lawsuit, the Commission satisfied all of FECA's statutory prerequisites that must be met before initiating a civil action. 52 U.S.C. § 30109(a)(1)-(6); FEC's Am. Compl. ¶¶ 50-58; Answer ¶¶ 8-16.

ARGUMENT

I. SUMMARY JUDGMENT STANDARD

A court "shall grant summary judgment if the movant shows that 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). "The moving party has the initial burden to show 'that there is an absence of evidence to support the nonmoving party's case.'" *Bacchus Indus., Inc. v. Arvin Indus., Inc.*, 939 F.2d 887, 891 (10th Cir. 1991) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)). "Once the moving party has met its burden, the burden shifts to the nonmoving party to show that there is a genuine issue of material fact." *Id.* In doing so, the nonmoving party "may not rest upon the mere allegations or denials of his pleadings" to avoid summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "A fact is material if, under the governing law, it could affect the outcome of the lawsuit." *Cillo v. City of Greenwood Vill.*, 739 F.3d 451, 461 (10th Cir. 2013) (internal quotation marks omitted) (alteration omitted).

II. JOHNSON VIOLATED FECA BY MAKING EXCESSIVE CONTRIBUTIONS AND CONTRIBUTIONS IN THE NAMES OF OTHERS

Johnson's own admissions and considerable other evidence establish beyond genuine dispute that he violated FECA's bans on excessive contributions and on making contributions in the names of others in connection with campaigns for U.S. Senate in 2010.

A. FECA's Prohibition on Making an Excessive Contribution and on Making a Contribution in the Name of Another

Congress enacted FECA and its subsequent amendments in significant part to "limit the

actuality and appearance of corruption resulting from large individual financial contributions." *Buckley v. Valeo*, 424 U.S. 1, 26 (1976) (*per curiam*). This case involves two important pillars of FECA that Congress enacted to pursue that goal: the limit on the dollar amounts any one individual can contribute to a candidate for federal office and the requirement that individuals whose contributions exceed a certain threshold disclose those contributions publicly. *See id.* at 7; *see generally* 52 U.S.C. §§ 30104, 30116(a).

1. Section 30116(a)(1)(A)'s Contribution Limit

"The integrity of our system of representative democracy is undermined" when "large contributions are given to secure a political quid pro quo from current and potential office holders." *Buckley*, 424 U.S. at 26-27. To that end, FECA imposes limits on the amount that individuals or entities may contribute to federal candidates and other defined political groups. 52 U.S.C. § 30116(a). The precise limitation depends on the type of entity making and receiving the contribution. *Id.* This limit applies on a per-election basis, and therefore a donor may give up to the maximum in both a primary and a general election. 52 U.S.C. § 30116(a)(1)(A); *id.* § 30101(1); *see Holmes v. FEC*, 875 F.3d 1153, 1155 (D.C. Cir. 2017).

The Supreme Court has upheld these contribution limits as a permissible means of pursuing the government's "strong interest . . . in combatting corruption and its appearance," an interest the Court has long recognized is "critical to our democratic system." *McCutcheon v. FEC*, 572 U.S. 185, 227 (2014) (plurality op.). "Under a system of private financing of elections," candidates "must depend on financial contributions from others to provide the resources necessary to conduct a successful campaign." *Buckley*, 424 U.S. at 26. By requiring that all contributions be made within a set of defined limits, FECA's contribution limits reduce the "opportunity for abuse inherent in the process of raising large monetary contributions." *Id.* at 30. These limits are "preventative," because the "pernicious practices" related to direct

contributions to candidates "can never be reliably ascertained." *Citizens United v. FEC*, 558 U.S. 310, 356-57 (2010) (internal quotation marks omitted).

As relevant here, during the 2009-2010 election cycle FECA prohibited any person from contributing in excess of $2,400 per election to any candidate for federal office and his or her authorized political committee. *See* Price Index Increases for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 74 Fed. Reg. 7435-02, 7437 (Feb. 17, 2009). Utah law in certain circumstances contemplates that a single candidate may participate in a party's nominating convention, a primary election, and a general election all within the same two-year election cycle. *See* UT Code § 20A-9-403; 406. This occurred in the Republican Party nomination process in 2010, and therefore the maximum any person could give to a federal candidate in that year was $7,200, divided between three elections.

2. Section 30122's Prohibition of Contributions in the Name of Another

FECA also requires that the authorized campaign committees of federal candidates identify their large contributors. *See* 52 U.S.C. § 30104(b)(3)(A) (requiring campaigns to identify each person contributing "in excess of $200" in an election cycle). To make this disclosure provision effective, FECA provides that "[n]o person shall make a contribution in the name of another person," 52 U.S.C. § 30122, thereby ensuring that the "true source[s] of contributions [are] disclosed." *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000).

The prohibition on making a contribution in the name of another is crucial to FECA's anticorruption goals. Without the prohibition, individuals or campaigns could "thwart disclosure requirements and contribution limits" by attributing contributions to false name or straw donors. *United States v. O'Donnell*, 608 F.3d 546, 549 (9th Cir. 2010). False attributions of that type undermine the government's interests in providing the electorate with "information as to where political campaign money comes from and how it is spent by the candidate." *Buckley*, 424 U.S.

at 66-67. The prohibition on contributions in the name of another also prevents circumvention of FECA's contribution limits. *O'Donnell*, 608 F.3d at 549. In particular, the ban ensures that corporations, unions, and foreign nationals — all of whom are prohibited from contributing to federal candidates — do not evade FECA's restrictions by contributing in the names of those who are permitted to contribute. *FEC v. Rivera*, 333 F.R.D. 282, 286 (S.D. Fla. 2019). And it prevents donors who have contributed the maximum to a candidate from evading those limits by financing the contributions of others. *See id.*

Violations of section 30122 are some of the most significant offenses under FECA. Reflecting the importance of the provision, Congress expanded the potential penalties for knowing and willful violations of the prohibition on conduit contributions in 2002. *See* Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, § 315, 116 Stat. 81, 108 (2002). Even with these increased penalties, contributing in the name of another remains a common way for individuals to conceal illicit contributions, making section 30122 one of FECA's "most frequently violated prohibitions." Department of Justice, Federal Prosecution of Election Offenses 141 (8th ed. Dec. 2017).

As this Court recognized in its prior opinion in this matter, section 30122 reaches so-called "conduit contribution[s]," which occur "when a person provides funds to another person (the conduit) who contributes the funds to the candidate." *FEC v. Swallow*, 304 F. Supp. 3d 1113, 1115 (D. Utah 2018). Concealed conduit contributions remain prohibited regardless of whether the true source of the donation provides the funds to the conduit in advance of the contribution or as a reimbursement after the fact. *O'Donnell*, 608 F.3d at 550-51.

B. Johnson's Unrecanted Admissions and Other Evidence Clearly Establishes That in 2010 He Made Approximately $70,000 in Conduit Contributions, in Violation of Sections 30116(a)(1)(A) and 30122

There is no genuine dispute of fact that Johnson reimbursed or advanced at least $70,000

to third parties so that they could contribute to the 2010 Senate campaigns of Mike Lee and Harry Reid. Rather, the undisputed evidence — which includes Johnson's own statements and contemporaneous documentary evidence — establishes that Johnson violated both sections 30116(a)(1)(A) and 30122 by making excessive contributions through conduits.

1. Johnson Admitted Making the Unlawful Contributions at Issue

During interviews with law enforcement officials in 2013 and 2014, Johnson repeatedly admitted all the facts necessary to establish liability. In these interviews, Johnson explained that he recruited associates to donate money to the Lee and Reid campaigns "as though it was coming from them" even though Johnson was "going to pay the money." (Exh. 18, Johnson Interview Tr. at 8:1-11 (Aug. 14, 2013); *see also* Exh. 17, Johnson Interview Tr. at 35:12-16 (Jan. 9, 2014) ("So I got people to give [the Lee campaign] money and most of them I had to end up giving them money to give the money."); *id.* at 39:4-6 ("Yeah, I just said, hey, will you donate to Mike Lee? I'll get you the money."); Exh. 19, Johnson Interview Tr. at 52:12-56:5 (Feb. 3, 2014) (same for the Reid campaign).) Johnson did this despite knowing that there were limits on how much he could donate to a federal candidate and that making these conduit contributions would be in excess of those limits. (Exh. 18, Johnson Interview Tr. at 6:16-7:22 (Aug. 14, 2013); *see also* Exh. 1, Johnson Dep. (Vol. 1) Tr. at 97:13-19.)

In total, Johnson admitted to contributing $50,000 to Mike Lee's 2010 campaign through conduits. (Exh. 17, Johnson Interview Tr. at 22:10-17 (Jan. 9, 2014).) And he admitted to contributing another $20,000 through conduits to Harry Reid's 2010 reelection campaign. (Exh. 19, Johnson Interview Tr. at 52:20-54:14 (Feb. 3, 2014).) Johnson executed this scheme by giving "cash" to friends and business partners for them to donate. (*See, e.g.*, Exh. 19, Johnson Interview Tr. at 47:16-48:7 (Feb. 3, 2014).) In other instances, Johnson recruited intermediaries to find others to contribute with money Johnson controlled. (*See id.* at 54:22-55:5 ("[I]n some

instances, like I would just instruct other people to go get the money.").)

These facts establish that Johnson is liable for the two FECA violations alleged here. Giving money to friends and business partners so that they may contribute to a federal candidate is a straightforward violation of section 30122. *See Swallow*, 304 F. Supp. 3d at 1115. And because Johnson contributed the per-election maximum of $2,400 to both Senate campaigns in his own name, his contributions through conduits are excessive contributions under section 30116(a)(1)(A). *See, e.g., United States v. Whittemore*, 776 F.3d 1074, 1076 (9th Cir. 2015).

It does not matter that Johnson purportedly structured some of the transactions to his conduits as gifts or bonuses that they could choose to use to contribute to a campaign. (*See* Exh. 17, Johnson Interview Tr. at 37:11-38:19 (Jan. 9, 2014); Exh. 9, Johnson Dep. (Vol. 2) Tr. at 76:16-77:15; Exh. 21, Johnson Dep. Exh. 33, at 2.) The maker of an illegal conduit contribution is not immune from liability merely because the true source gives the conduit money as a gift or bonus and asks the conduit to contribute using those funds. *Whittemore*, 776 F.3d at 1078. In *Whittemore*, the court affirmed the conviction of a true source who had characterized his transfers to his conduits as "bonuses" or "gifts," holding that the defendant's "theory that unconditional gifts . . . cannot be conduit contributions in violation of federal law is not supported by law." *Id.* at 1077, 1078. Similarly here, the mere fact that Johnson may claim now that he gave third parties a gift and asked them to contribute it does not create a factual dispute that prevents summary judgment.

Johnson has not recanted any of his prior admissions to law enforcement. In fact, during his deposition Johnson denied saying anything in the interviews that was "not the truth." (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 29:12-16 (explaining that "that's not how it was").) Instead, Johnson vaguely asserted in his deposition that his criminal attorney, Ronald Yengich, instructed

him to be "misleading" and to tell a "version of the truth" that was how "the government want[ed] the information to be," because it would be "good for [Johnson's] case" in some unspecified way. (*Id.* at 23:5-10, 24:8-25:6.)[4]

This "conclusory and self-serving" testimony is insufficient to create a genuine dispute of material fact in light of Johnson's specific admissions. *See Murphy v. Facet 58, Inc.*, 329 F. Supp. 2d 1260, 1268 (D. Utah 2004) (internal quotation marks omitted). Johnson's recorded statements to investigators in 2013 and 2014 lay out with specificity violations of FECA. In those statements, Johnson specifically acknowledges that third parties used his money to donate to Mike Lee and Harry Reid. For example, Johnson confirmed that those third parties "didn't actually donate any money" and that he would "get [them] the money" if they would "donate to Mike Lee." (Exh. 17, Johnson Interview Tr. at 39:2-6 (Jan. 9, 2014).) In light of Johnson's deposition testimony in this case that he did not say things that were totally false, but only misleading, there is no dispute that Johnson violated FECA.

Johnson's other explanations regarding his admissions to law enforcement officials in 2013 and 2014 similarly fail to create a genuine dispute of material fact. Specifically, Johnson attempted to explain his admission of funding the contributions of others by suggesting that they were entitled to the money in any event. (*See, e.g.*, Exh. 1, Johnson Dep. (Vol. 1) Tr. at 68:5-8.) The only donor to Mike Lee or Harry Reid in 2010 that Johnson could identify as falling into this group was C.J. Wade, with whom Johnson co-owned a car wash. (*Id.* at 67:14-70:10.) Johnson testified that Wade "wouldn't have been interested in donating to Mike Lee" and so Johnson either "gave him money or told him he could use money from the car wash" to finance the

[4] Yengich provided a sworn affidavit in this case stating that "[n]one of the investigators present at the interview induced or otherwise encouraged Mr. Johnson to provide false information." (Exh. 45, Yengich Decl. ¶ 3.)

contribution. (*Id.* at 150:21-151:2.) Under Johnson's theory, Wade owned part of the car wash and was entitled to some of the money. (*See id.* at 67:13-18.)

But even assuming the accuracy of Johnson's testimony, accelerating the payment of money to a business partner in exchange for their contribution to a federal candidate would still be a violation of section 30122. That is because an "*advance*" of money "to another person for the purpose of causing that other person to make a contribution in that other person's name" is an illegal conduit contribution. *Whittemore*, 776 F.3d at 1080. Johnson's explanations, therefore, do not create a genuine dispute of material fact.[5]

Finally, the interviews with law enforcement were not the only times Johnson has admitted making the unlawful contributions at issue. During a March 2014 ABC News interview, Johnson represented that, at the direction of online poker figures, he had recruited straw donors to make contributions to Mike Lee and Harry Reid. (Exh. 9, Johnson Dep. (Vol. 2) Tr. at 66:3-68:7; Exh. 46, Johnson Dep. Exh. 32 at 3.) He has likewise failed to recant those statements. (Exh. 9, Johnson Dep. (Vol. 2) Tr. at 66:3-68:7.)

2. Substantial Other Evidence Shows That Johnson Made Excessive Conduit Contributions

A great deal of undisputed other evidence corroborates Johnson's admissions that he made excessive contributions in the names of others. For example, on May 17, 2010, the Johnson-controlled company Triple Seven issued a $9,600 check to "cash" that was used to finance contributions to Mike Lee's U.S. Senate campaign. (Exh. 27, Receiver Decl. ¶ 14, 16 & Exhs. J, L.) Moreover, with regard to the conduit contribution made through Johnson's business

[5] Johnson also identified Terrason Spinks as someone to whom Johnson had accelerated payments in exchange for a contribution to a federal candidate. (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 123:21-124:14.) There are no records, however, indicating that Spinks contributed to either Harry Reid or Mike Lee during the relevant time period.

partner C.J. Wade, discussed above, records show that the Lee campaign received a $2,400 contribution apparently from Wade on June 21, 2010, the same day as Johnson's own contribution. (Exh. 2, Johnson Dep. Exh. 7, at 14; *see* Exh. 1, Johnson Dep. (Vol. 1) Tr. at 150:3-9.)

In addition, considerable documentary and testimonial evidence shows that at least $9,600 of Johnson's conduit contributions to Mike Lee's campaign went through Triple Seven and Sole Group. As an initial matter, it is undisputed that, in 2010, Lee Black and his company Sole Group conducted substantial business for Johnson through Triple Seven and other entities nominally owned or managed by the Vowells. (Exh. 42, Report of Receiver's Financial Reconstruction at 15, 52-54 (Docket No. 464), *FTC v. Johnson, et al.*, No. 10-CV-02203; Exh. 11, Decl. of Todd Vowell ¶ 14; Exh. 23, Lee Black Dep. Tr. at 27:19-29:7, 37:21-25, 46:21-48:21, 62:2-64:11; Exh. 24, Lee Black Dep. Exh. 1 at 3; Exh. 1, Johnson Dep. Tr. (Vol. 1) at 237:3-21; Exh. 41, Johnson Dep. Exh. 18.) Johnson also does not dispute that he discussed with the Vowells the need to generate large numbers of contributions to the Lee campaign. (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 52:14-53:3, 132:21-133:4; Exh. 11, Decl. of Todd Vowell ¶ 8; Exh. 23, Lee Black Dep. Tr. at 50:19-51:1.) And after Jason Vowell told Lee Black that Johnson needed his help finding conduits, Black recruited his relatives, friends, and employees to make conduit contributions to the Lee campaign, in the interest of maintaining his business relationship with Johnson. (Exh. 23, Lee Black Dep. Tr. at 48:24-51:17, 95:25-96:8; 97:2-20; 98:9-99:12, 108:8-109:14, 110:10-112:2, 113:11-114:3, 115:9-116:11, 117:13-118:2, 120:15-121:16, 127:13-129:07, 130:5-131:8; Exh. 24, Lee Black Dep. Exh. 1, at 3; *see also* Exh. 31, Kyle Boyer Dep. Tr. at 21:1-23:10, 24:13-21; Exh. 36, Decl. of Savannah Jones Carter ¶¶ 6-7 and Exhs. A-B, D-H; Exh. 37, Decl. of Atia Black ¶¶ 5-7 and Exhs. C, D.)

The result was that on or before June 14, 2010, six conduits each issued $2,400 contribution checks to Mike Lee's campaign: Lee Black, Atia Black, Matthew Black, Kyle Boyer, Tiffany Boyer, and Savannah Jones. (Exh. 37, Decl. of Atia Black ¶ 6 and Exh. A; Exh. 35, Decl. of Thomas Datwyler ¶¶ 5-10 and Exhs. A, C, E, G, H, I; Exh. 36, Decl. of Savannah Jones Carter ¶ 7 and Exh. A; Exh. 23, Lee Black Dep. Tr. at 84:17-85:4; Exh. 30, Lee Black Dep. Exh. 5; Exh. 31, Kyle Boyer Dep. Tr. at 21:1-25, 32:5-22; Exh. 32, Kyle Boyer Dep. Exh. 1; Exh. 33, Tiffany Boyer Dep. Tr. at 19:1-23; Exh. 34, Tiffany Boyer Dep. Exh. 1.) None of these individuals was interested in Mike Lee, and if they had not been reimbursed, none of them would have attempted to contribute $2,400 to Mike Lee's campaign. (Exh. 31, Kyle Boyer Dep. Tr. at 28:21-23; Exh. 33, Tiffany Boyer Dep. Tr. at 19:1-23 , 20:13-21:9, 25:11-17; Exh. 23, Lee Black Dep. Tr. at 88:22-89:1, 89:4-7, 99:13-100:2, 112:3-12, 116:12-21, 121:17-122:1, 131:9-22.) In fact, Tiffany Boyer was not even aware that Mike Lee was a candidate for Senate at the time that she issued her contribution check; instead, she was under the impression that he was someone connected with her husband's work for Lee Black. (Exh. 33, Tiffany Boyer Dep. Tr. at 19:1-23 , 20:13-21:9, 21:24-22:8.)

On June 14, 2010, Triple Seven, a company controlled by Johnson and funded in substantial part with Johnson's money, made a $14,400 payment to Sole Group. (Exh. 22, Receiver Order at 3 and Exh. A (Docket No. 900), *FTC v. Johnson et al.*, No. 10-CV-02203); Exh. 11, Decl. of Todd Vowell ¶¶ 14, 16; Exh. 23, Lee Black Dep. Tr. at 60:6-16, 79:4-18, 81:11-82:23, 84:3-5, 161:18-162:9; Exh. 24, Lee Black Dep. Exh. 1 at 3; Exh. 28, Lee Black Dep. Exh. 2; Exh. 29, Lee Black Dep. Exh. 4; Exh. 43, Lee Black Dep. Exh. 3; Exh. 26, Jason Vowell Dep. Tr. at 47:5-9; Exh. 1, Johnson Dep. (Vol. 1). Tr. at 212:17-21; Exh. 9, Johnson Dep. (Vol. 2) Tr. at 23:4-13, 30:22-31:7; Exh. 25, Johnson Dep. Exh. 1, at 7.) The $14,400 payment

from Triple Seven to Sole Group is the precise amount necessary to reimburse six $2,400 contributions to Mike Lee's campaign, and the purpose of that payment was to reimburse the contributions to Mike Lee's campaign made by the Lee Black group. (Exh. 23, Lee Black Dep. Tr. at 79:2-80:10; Exh. 11, Decl. of Todd Vowell ¶¶ 11-12, 14 and Exh. C; Exh. 27, Receiver Decl. ¶ 16 & Exh. L.) Triple Seven's own accounting records reflect that check 5075, which was either used to make the payment or replaced by a cashier's check, was issued for "Cashier's Checks for Mike Lee." (Exh. 11, Decl. of Todd Vowell ¶¶ 11-12 and Exh. C; Exh. 27, Receiver Decl. ¶ 16 & Exh. L; Exh. 23, Lee Black Dep. Tr. at 79:4-18, 81:11-82:23, 84:3-5; Exhs. 28-29, Lee Black Dep. Exhs. 2, 4.)

On the same day that Triple Seven paid $14,400 to Sole Group, at Lee Black's direction Sole Group issued $2,400 checks to Lee Black, Atia Black, Kyle Boyer, Tiffany Boyer, Savannah Jones, and Matthew Black. (Exh. 36, Decl. of Savannah Jones Carter ¶¶ 8, 11-16 and Exhs. B, D-H; Exh. 37, Decl. of Atia Black ¶ 7 and Exhs. B-D; Exh. 23, Lee Black Dep. Tr. at 54:11-55:6, 85:23-87:7, 98:11-99:6, 111:3-21, 115:9-116:5, 120:15-121:10, 130:5-131:2; Exh. 31, Kyle Boyer Dep. Tr. at 25:21-26:2, 27:6-11, 33:12-34:18.) The ultimate source of funds for those reimbursements, however, was the $14,400 payment that Sole Group received from Triple Seven. (Exh. 23, Lee Black Dep. Tr. at 87:22-88:5, 99:7-12, 111:22-25, 116:6-11, 121:11-16, 131:3-8.)

The fact that Johnson used Lee Black and Sole Group to distribute reimbursement money does not affect his own liability for conduit contributions. *See United States v. Boender*, 649 F.3d 650, 659-61 (7th Cir. 2011) (upholding a defendant's conviction for making contributions in the name of another where the defendant asked two business associates to donate $2,000 each to a campaign, and wrote one conduit a check for $4,000 to reimburse himself and the other

conduit). Johnson remains the true source liable for the entire scheme. *See Swallow*, 304 F. Supp. 3d at 1116 (stating that the "prohibited 'person'" under section 30122 "is the actual contributor, that is, the source of the monetary donation").

Similarly, Johnson is responsible for Triple Seven's role in the financing of conduit contributions as a matter of law. In the iWorks FTC action, the Nevada District Court twice ruled that Triple Seven was part of Johnson's assets subject to the receivership. Exh. 22, Receiver Order at 3 and Exh. A; *see also* Exh. 47, Order at 4 (Docket No. 1070), *FTC v. Johnson, et al.*, 10-cv-2203 (D. Nev. June 6, 2013) (denying motion to segregate Triple Seven assets because "the Court has already determined that various funds these entities claim an interest in are actually properly part of the receivership estate"). Those rulings reflected the Nevada court's acceptance of the position of the receiver appointed to manage iWorks' assets that Triple Seven, though nominally owned by the Vowells, was actually operated "for Jeremy Johnson's benefit" and controlled by Johnson. Exh. 42, Report of Receiver's Financial Reconstruction at 4, 28 (Docket No. 464), *FTC v. Johnson, et al.*, 10-cv-2203.

The Nevada court's ruling in the FTC action establishing Johnson's control of Triple Seven precludes him from arguing otherwise here. Issue preclusion applies when (1) the issues in the prior and present action are "identical"; (2) the "prior action has been finally adjudicated on the merits"; (3) "the party against whom issue preclusion is invoked was a party, or in privity with a party, to the prior adjudication"; and (4) that party "had a full and fair opportunity to litigate the issue in the prior action." *Park Lake Res. Ltd. Liab. v. U.S. Dep't of Agr.*, 378 F.3d 1132, 1136 (10th Cir. 2004) (internal quotation marks omitted). There is no question that the Nevada court decided that Triple Seven was controlled by Johnson such that its assets should become part of the receivership estate. Similarly, Johnson was a party to that action and opposed

the ruling, showing that he had a full and fair opportunity to litigate the issue. (*See* Exh. 48, Johnson Dep. Exh. 19.)

Finally, the Nevada court's ruling clearly meets the requirement of finality because it was "sufficiently firm to be accorded preclusive effect." Restatement of Judgments (Second) § 13 (1982). The Nevada court definitively ruled that Triple Seven was part of the iWorks receivership and later denied a motion to reconsider that ruling. The decision was sufficiently firm for Todd Vowell to take an appeal from that ruling. *See FTC v. Alpha Yankee, LLC*, 13-15822 (9th Cir. Docketed Apr. 4, 2013). That appeal was ultimately settled before the Ninth Circuit decided the case. *See* Exh. 49, Order (Docket No. 47), *FTC v. Alpha Yankee, LLC*, 13-15822 (9th Cir. Jan. 21, 2014) (granting parties to voluntarily dismiss appeal with prejudice). And Johnson himself settled the FTC action in the district court. *See* Exh. 50, Stipulated Order (Docket No. 1932-1), *FTC v. Johnson, et al.*, 10-cv-2203 (D. Nev. Aug. 1, 2016). These circumstances are similar to others in which courts in this circuit have concluded that an interlocutory ruling was sufficiently final to support issue preclusion, even though the parties ultimately settled. *See Siemens Med. Sys., Inc. v. Nuclear Cardiology Sys., Inc.*, 945 F. Supp. 1421, 1433-37 (D. Colo. 1996). Johnson is therefore precluded from arguing that he did not control Triple Seven.

Although all six of the Sole Group conduits issued contribution checks and received reimbursement checks, only four of them ultimately successfully contributed to Mike Lee, for a total of $9,600. The Boyers' original contribution checks to Mike Lee's campaign cleared, resulting in $4,800 in immediately successful conduit contributions, but the remaining four initial conduit contribution checks bounced. (Exh. 35, Decl. of Thomas Datwyler ¶¶ 5-10 and Exhs. A, C, E, G, H, I; Exh. 35, Decl. of Savannah Jones Carter ¶ 9; Decl. of Atia Black ¶ 6; Exh. 2,

Johnson Dep. Exh. 7 at 17, 121-23; Exh. 23, Lee Black Dep. Tr. at 132:10-133:4.) This would sometimes happen when campaigns deposited conduit contribution checks before Johnson's reimbursements went through. (Exh. 17, Johnson Interview Tr. at 41:16-42:7 (Jan. 9, 2014); Exh. 19, Johnson Interview Tr. at 41:4-20, 55:15-56:5 (Feb. 3, 2014).)

Events subsequent to those four bounced Sole Group conduit checks further confirm Johnson's involvement in the reimbursement scheme. On June 21, 2010, the day before the Republican primary in Utah, Swallow sent Johnson an e-mail stating that four contribution checks to Mike Lee's campaign had bounced. (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 152:8-154:17; Exh. 44, Johnson Dep. Exh. 9.) Johnson responded, "I am really sorry about the checks. I will get it fixed ASAP! Let me know whos [*sic*] bounced. I was in a mad rush to get those so maybe I pushed a few people too hard." (Exh. 44, Johnson Dep. Exh. 9.) This exchange is consistent with Johnson's statement to law enforcement officials that, when conduit contribution checks bounced, Swallow would notify him by e-mail, and Johnson would take steps to remedy the problem. (Exh. 19, Johnson Interview Tr. at 41:4-20, 55:15-56:5 (Feb. 3, 2014).)

By the day of the Republican primary on June 22, 2010, the bounced checks were "fixed" in part — three of the four conduits whose contribution checks had bounced issued new contribution checks to Mike Lee's campaign. (Exh. 35, Decl. of Thomas Datwyler ¶¶ 5-7 and Exhs. B, D, F; Exh. 36, Decl. of Savannah Jones Carter ¶ 10 and Exh. C; Exh. 37, Decl. of Atia Black ¶ 8 and Exh. E.) Atia Black and Savannah Jones' new contribution checks cleared, resulting in another $4,800 in successful conduit contributions, but Matthew Black's bounced a second time. (Exh. 35, Decl. of Thomas Datwyler ¶¶ 5-7 and Exhs. B, D, F; Exh. 2, Johnson Dep. Exh. 7, at 15, 61, 122; Exh. 23, Lee Black Dep. Tr. at 132:10-133:4.)

These four bounced checks link Johnson directly to Lee Black and the reimbursed

contributions. The Lee campaign reported receiving bounced checks from only five individuals during the relevant reporting period.[6] (*See* Exh. 2, Johnson Dep. Exh. 7, at 121-23.) Four of those individuals correspond to the associates of Lee Black who attempted to resubmit contribution checks after Swallow informed Johnson that four checks had bounced. (*See id.*) The Lee campaign's disclosure reports thus confirm that Johnson was connected to the Sole Group contributions.

In addition to documentary evidence and Lee Black's testimony regarding the reimbursement scheme, all four Sole Group conduits who successfully contributed provided testimony or sworn statements that their contributions were reimbursed. (Exh. 37, Decl. of Atia Black and ¶¶ 5-7 and Exhs. C and D; Exh. 36, Decl. of Savannah Jones Carter ¶¶ 6-8; Exh. 31, Kyle Boyer Dep. Tr. at 21:1-23:10, 25:21-26:2, 27:6-11; Exh. 33, Tiffany Boyer Dep. Tr. at 20:13- 25, 25:11-17; Exh. 23, Lee Black Dep. Tr. at 48:24-51:17.) In light of this considerable evidence, Johnson's mere denial that he reimbursed contributions to Mike Lee is insufficient to create a genuine issue of material fact. *See Anderson*, 477 U.S. at 248; *FEC v. Toledano*, 317 F.3d 939, 949-53 (9th Cir. 2002); *Clifton v. Craig*, 924 F.2d 182, 183 (10th Cir. 1991); *Murphy*, 329 F. Supp. 2d at 1268. Notably, none of the four successful conduits would fit within Johnson's current explanation that he merely advanced money to people he did business with who were otherwise entitled to it. It is undisputed that he did not know or do business with Kyle Boyer, Tiffany Boyer, Savannah Jones, or Atia Black. (Exh. 25, Johnson Dep. Exh. 1, at 12-13; Exh. 1, Johnson Dep. (Vol. 1) Tr. at 134:4-13, 146:3-11; Exh. 31, Kyle Boyer Dep. Tr. at 15:11-

[6] The Lee campaign reported making disbursements to five individuals and listed the purpose of the distribution as "NSF." (Exh. 2, Johnson Dep. Exh. 7, at 121-23.) That notation reflects that a contribution check was returned for insufficient funds, *i.e.*, that it bounced. (*See* Exh. 1, Johnson Dep. (Vol. 1) Tr. at 155:3-11.)

17, 16:7-8; Exh. 33, Tiffany Boyer Dep. Tr. at 15:21-16:2.)

In sum, both Johnson's admissions and extensive other evidence shows that there is no genuine dispute he made excessive conduit contributions to U.S. Senate campaigns in 2010.

III. THIS COURT SHOULD ORDER A CIVIL PENALTY AS WELL AS DECLARATORY AND INJUNCTIVE RELIEF

A. This Court Should Order Johnson to Pay a Substantial Civil Penalty

When FECA is violated, the statute authorizes this Court to award a "civil penalty which does not exceed the greater of $[7,500] or an amount equal to any contribution or expenditure involved in such violation." 52 U.S.C. § 30109(a)(6)(B); 11 C.F.R. § 111.24(a)(1) (2010). But Congress provided for enhanced civil penalties for "knowing and willful" violations. *See* 52 U.S.C. § 30109(a)(6)(C). For any "knowing and willful" violation, including a violation of FECA's contribution limits, the statute provides for civil penalties of up to the greater of $16,000 or 200% of the contributions involved in the violation. 52 U.S.C. § 30109(a)(6)(C); 11 C.F.R. § 111.24(a)(2)(i) (2010). Civil penalties for "knowing and willful" violations of the prohibition on making contributions in the name of another are enhanced even further. For such violations, the Court is authorized to award a penalty of no less than 300% of the amount involved in the violation, and the Court may award a penalty of up to the greater of $60,000 or 1000% of the contributions involved in the violation. 52 U.S.C. § 30109(a)(6)(C); 11 C.F.R. § 111.24(a)(2)(i) (2010).

Johnson knowingly and willfully made approximately $70,000 in conduit contributions, and therefore FECA authorizes this Court to impose a maximum penalty of $840,000, consisting of $700,000 for knowing and willful violations of the prohibition on contributions in the name of another, and $140,000 for knowing and willful violations of FECA's contribution limits. *See* 52 U.S.C. § 30109(a)(6)(C); 11 C.F.R. § 111.24(a)(2)(i) (2010). If the Court finds that Johnson

knowingly and willfully violated the prohibition on contributions in the name of another, the Court is authorized to award a penalty of no less than 300% of the amount in violation, or $210,000. *See* 52 U.S.C. § 30109(a)(6)(C); 11 C.F.R. § 111.24(a)(2)(i) (2010).

This Court has wide discretion to determine an appropriate civil penalty. *FEC v. Furgatch*, 869 F.2d 1256, 1258 (9th Cir. 1989); *FEC v. Craig for U.S. Senate*, 70 F. Supp. 3d 82, 96 (D.D.C. 2014), *aff'd*, 816 F.3d 829 (D.C. Cir. 2016). In exercising its discretion, the Court should consider: (1) the good or bad faith of the defendant; (2) the injury to the public; (3) the defendant's ability to pay; and (4) the necessity of vindicating the authority of the FEC and the penalty's deterrent effect. *Furgatch*, 869 F.2d at 1258; *FEC v. O'Donnell*, 15-cv-17, 2017 WL 1404387, at *2 (D. Del. Apr. 19, 2017) (unpublished); *Craig*, 70 F. Supp. 3d at 100; *FEC v. Comm. of 100 Democrats*, 844 F. Supp. 1, 7 (D.D.C. 1993). For the reasons set forth below, in this case these factors weigh in favor of awarding the Commission's requested penalty of $280,000, which is comprised of 300% of the approximately $70,000 at issue in Johnson's violation of the ban on contributions in the name of another and 100% of the same amount at issue in his violation of FECA's contribution limit.

1. Johnson's Violations Were Knowing and Willful

An important factor in determining an appropriate penalty is whether Johnson acted in good or bad faith. *See Furgatch*, 869 F.2d at 1258; *see also FEC v. Friends of Jane Harman*, 59 F. Supp. 2d 1046, 1058 (C.D. Cal. 1999) ("Defendants' state of mind is clearly relevant in assessing the amount of a penalty"). Johnson's knowing and willful violations reflect his bad faith, and they authorize this Court to assess the enhanced penalties provided for under FECA. *See* 52 U.S.C. § 30109(a)(6)(C); *see also Furgatch*, 869 F.2d at 1259 (considering a defendant's lack of good faith as "indicative of the need for a large penalty to deter future wrongdoing.").

A violation of FECA is knowing and willful if the "acts were committed with full

knowledge of all the relevant facts and a recognition that the action is prohibited by law." 122 Cong. Rec. 12,197, 12,199 (May 3, 1976). This does not require the Commission to prove that Johnson was aware of the specific statutory provisions that he violated. *United States v. Whittemore*, 944 F. Supp. 2d 1003, 1007 (D. Nev. 2013), *aff'd*, 776 F.3d 1074 (9th Cir. 2015); *United States v. Danielczyk*, 788 F. Supp. 2d 472, 491 (E.D. Va. 2011), *rev'd in part on other grounds*, 683 F.3d 611 (4th Cir. 2012). Instead, it is sufficient for the Commission to establish that Johnson "[did] not act through ignorance, mistake, or accident," and that he "acted with knowledge that some part of his course of conduct was unlawful and with the intent to do something the law forbids." *Whittemore*, 776 F.3d at 1080-81; *see also Danielczyk*, 788 F. Supp. 2d at 491 (finding that the Government must prove that defendants "intended to violate the law" but did not need to prove their "awareness of the specific law's commands.").

There is no genuine dispute that the knowing and willful standard is satisfied here. Johnson admits that, due to several discussions with Swallow and others, he was aware in 2010 that there were limits on the amount of money that he could contribute to a candidate for federal office. (Exh. 1, Johnson Dep. (Vol. 1) Tr. at 96:14-97:19; Exh. 18, Johnson Interview Tr. at 6:16-7:22 (Aug. 14, 2013); Exh. 17, Johnson Interview Tr. at 37:6-38:6 (Jan. 9, 2014); Exh. 19, Johnson Interview Tr. at 38:6-20, 46:22-47:10 (Feb. 3, 2014); Exh. 25, Johnson Dep. Exh. 1, at 10.) During three separate interviews with law enforcement agents, Johnson admitted that, to circumvent those contribution limits and elect candidates that he believed would protect his business interests, he recruited conduits to make contributions that would be reimbursed with his money. (Exh. 18, Johnson Interview Tr. at 5:9-10:16 (Aug. 14, 2013); Exh. 17, Johnson Interview Tr. at 34:6-35:16, 37:6-39:8, 41:16-42:7 (Jan. 9, 2014); Exh. 19, Johnson Interview Tr. at 37:10-41:20, 44:20-48:11, 52:12-56:5 (Feb. 3, 2014).) Similarly, during the March 2014

ABC News interview, Johnson represented that he had recruited straw donors to make contributions to Mike Lee and Harry Reid. (Exh. 9, Johnson Dep. (Vol. 2) Tr. at 66:3-68:7; Exh. 46, Johnson Dep. Exh. 32, at 3.) During discovery in this matter, Johnson admitted that he was aware that it was illegal to use his own funds to pay another person to contribute to a candidate for federal office. (Exh. 25, Johnson Exh. 1, at 11.) Finally, during the ABC News interview, Johnson also told a reporter that online poker figures instructed him to "hide illegal contributions" by using conduits, reflecting that, at the time that he violated FECA in 2010, he was aware that his actions were against the law. (Exh. 9, Johnson Dep. (Vol. 2) Tr. at 66:3-68:7; Exh. 46, Johnson Dep. Exh. 32, at 3.)

In addition to Johnson's direct admissions, this Court can also infer that he was aware that his actions were unlawful from his elaborate scheme to conceal reimbursements to his conduits. *See United States v. Hopkins*, 916 F.2d 207, 214-15 (5th Cir. 1990). For example, for the $9,600 in conduit contributions to Mike Lee through conduits recruited by Lee Black, Johnson concealed his reimbursements by transferring funds from Triple Seven to Sole Group, and Sole Group then issued reimbursement checks to each individual conduit. (Exh. 23, Lee Black Dep. Tr. at 79:4-80:10, 81:11-82:23, 87:22-88:5; Exhs. 28-29, Lee Black Dep. Exhs. 2, 4; Exh. 36, Decl. of Savannah Jones Carter ¶¶ 6-10, 12-15 and Exhs. A-C, E-G.) For other conduit reimbursements, Johnson's use of cash to reimburse $2,400 contributions reflects his desire to avoid generating a paper trail. (*See* Exh. 19, Johnson Interview Tr. at 41:4-20; 47:4-48:1; 54:4-56:5 (Feb. 3, 2014); Exh. 27, Receiver Decl. ¶ 14 & Exhs. J, L.) In sum, there is no evidence that Johnson acted in good faith, and abundant evidence that he acted in bad faith.

2. Johnson's Violations Injured the Public

In determining an appropriate penalty, this Court should also consider the injury to the public as a result of Johnson's violations of FECA. *Furgatch*, 869 F.2d at 1258. "'[T]here is

always harm to the public when FECA is violated.'" *Craig*, 70 F. Supp. 3d at 99 (quoting *FEC v. Am. Fed'n of State, Cnty. and Mun. Emps. - P.E.O.P.L.E. Qualified*, 88-cv-3208, 1991 WL 241892, at *2 (D.D.C. Oct. 31, 1991) (unpublished). Here, Johnson's conduit contributions harmed the public because the electorate was deprived of accurate information regarding the true source of contributions to the 2010 Senate campaigns of Mike Lee and Harry Reid, and the interests to which those candidates would potentially be responsive if elected. *See Buckley*, 424 U.S. at 67; *O'Donnell*, 608 F.3d at 553-54.

Johnson's excessive contributions also increased the appearance and risk of corruption of elected officials. *See Buckley*, 424 U.S at 66-67; *Mariani*, 212 F.3d at 775. Although Mike Lee and Harry Reid may have been unaware of Johnson's actions, the very reason that Johnson took those actions was to elect officials that he believed would protect his interests. (Exh. 18, Johnson Interview Tr. at 10:17-11:10 (Aug. 14, 2013); Exh. 17, Johnson Interview Tr. at 24:15-25:13, 81:11-82:1, 94:19-95:6 (Jan. 9, 2014); Exh. 19, Johnson Interview Tr. at 37:10-41:20, 102:9-104:10 (Feb. 3, 2014).) As the Supreme Court has recognized, avoiding even the appearance of corruption is "critical" to prevent erosion of the public's "confidence in the system of representative Government." *Buckley*, 424 U.S at 27; *see also McCutcheon*, 572 U.S. at 199 (recognizing a compelling interest in preventing quid pro quo corruption or its appearance).

3. The Necessity of Vindicating the FEC's Authority and the Deterrent Effect of a Penalty

In determining the penalty amount, this Court should also consider the necessity of vindicating the FEC's authority. *Furgatch*, 869 F.2d at 1258; *Comm. of 100 Democrats*, 844 F. Supp. at 7. A substantial civil penalty here serves that goal by deterring Johnson and others from committing similar violations in the future. *See United States v. ITT Cont'l Baking Co.*, 420 U.S. 223, 231-32 (1975); *O'Donnell*, 15-cv-17, 2017 WL 1404387, at *2 (unpublished); *Craig*, 70 F.

Supp. 3d at 100. For a penalty to have a deterrent effect, it must be large enough that potential violators will consider it "more than an acceptable cost of violation." *ITT Cont'l Baking Co.*, 420 U.S. at 231. If FECA penalties imposed after litigation are not higher than those arrived at through the statutory procedure of voluntary conciliation, it undermines the Commission's ability to enforce FECA through the conciliation process, which is the "preferred method of dispute resolution under FECA." *FEC v. Nat'l Rifle Ass'n of Am.*, 553 F. Supp. 1331, 1338 (D.D.C. 1983); *see also O'Donnell*, 15-cv-17, 2017 WL 1404387, at *3 (unpublished).

4. Johnson's Ability to Pay

In determining the amount of the penalty, this Court should also consider Johnson's ability to pay. *Furgatch*, 869 F.2d at 1258. To date, Johnson has not presented any evidence demonstrating that he is unable to pay. However, the Commission recognizes that, as a result of Johnson's unfair and deceptive trade practices in connection with his operation of iWorks, a court-appointed receiver seized many of his assets. (*See* Exh. 11, Decl. of Todd Vowell ¶ 16; Exh. 1, Johnson Dep. (Vol. 1) Tr. at 238:15-239:4.) The Commission also recognizes that Johnson is presently incarcerated due to his conviction for providing false information to a bank. *See Johnson*, 732 F. App'x at 642 (unpublished). The Commission has requested a penalty that is far less than the maximum authorized by FECA — indeed, the $280,000 the FEC has proposed is only moderately higher than the $210,000 (or 300%) minimum penalty that Congress authorizes for the knowing and willful violations of the ban on contributions in the name of another in this case. But if Johnson provides evidence that he is unable to pay, the Commission would not object to appropriate adjustments in the penalty amount and the timing of payment.

B. This Court Should Declare That Johnson Violated 52 U.S.C. §§ 30116(a)(1)(A) and 30122, and Enjoin Johnson from Committing Future Violations of These Provisions

The Commission also respectfully requests that the Court declare that Johnson violated

52 U.S.C. §§ 30116(a)(1)(A) and 30122, and permanently enjoin Johnson from violating these provisions again. *See* 52 U.S.C. § 30109(a)(6)(B). An injunction is appropriate where, as here, there is a likelihood of future violations. *Furgatch*, 869 F.2d at 1262. The fact that Johnson used conduits to make excessive contributions to three candidates for federal office — Mark Shurtleff, Mike Lee, and Harry Reid — with awareness that his conduct was unlawful, suggests that there is danger that his conduct will recur. (*See* Exh. 17, Johnson Interview Tr. at 37:6-42:19 (Jan. 9, 2014); Exh. 19, Johnson Interview Tr. at 37:10-41:20, 52:12-56:5 (Feb. 3, 2014).) Johnson's subsequent refusal to take responsibility for his actions also indicates that he is likely to commit future violations. *See Furgatch*, 869 F.2d at 1262 ("[a] defendant's persistence in claiming that (and acting as if) his conduct is blameless is an important factor in deciding whether future violations are sufficiently likely to warrant an injunction."); *see also O'Donnell*, 15-cv-17, 2017 WL 1404387, at *5 (imposing a permanent injunction to prevent future violations) (unpublished); *Comm. of 100 Democrats*, 844 F. Supp. at 8 (same).

CONCLUSION

For the foregoing reasons, this Court should (1) grant summary judgment in favor of the Commission; (2) declare that Johnson violated 52 U.S.C. §§ 30116(a)(1)(A) and 30122; (3) award a penalty of $280,000; and (4) issue a permanent injunction.

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FEDERAL ELECTION COMMISSION, Plaintiff, v. JEREMY JOHNSON, Defendant.	Case No. 2:15-cv-00439-DB **APPENDIX TO PLAINTIFF FEDERAL ELECTION COMMISSION'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT** District Judge Dee Benson Magistrate Judge Dustin B. Pead

INDEX TO APPENDIX

Exhibit	Title	Source
1.	Transcript of deposition of Jeremy Johnson (Volume 1) (Nov. 16, 2019)	Discovery in *Federal Election Commission ("FEC") v. Johnson*, 15-cv-439 (D. Utah)
2.	Friends of Mike Lee, Inc., Reports of Receipts and Disbursements for an Authorized Committee (FEC Form 3) Amended July 15, 2010 Quarterly Report (Excerpts)	Publicly filed document on FEC's campaign finance disclosure database

Exhibit	Title	Source
3.	Friends for Harry Reid, Reports of Receipts and Disbursements for an Authorized Committee (FEC Form 3) October 15, 2010 Quarterly Report (Excerpts)	Publicly filed document on FEC's campaign finance disclosure database
4.	Letter from Ronald Brooke, Jr., Attorney, Federal Trade Commission ("FTC"), to Jeremy Johnson (Feb. 19, 2010)	Filed in *FTC v. Johnson, et al.*, 10-cv-2203 (D. Nev.)
5.	Complaint (Docket No. 1), *FTC v. Johnson, et al.*, 10-cv-2203 (D. Nev. Dec. 21, 2010)	Filed in *FTC v. Johnson, et al.*, 10-cv-2203 (D. Nev.)
6.	Nathan Vardi, *PokerStars: Online Gambling's Quiet Giant*, Forbes, Feb. 10, 2010	https://www.forbes.com/2010/02/10/internet-gambling-pokerstars-business-beltway-pokerstars.html.
7.	Superseding Indictment (Docket No. 20) *United States v. Scheinberg, et al.*, 10-cr-336 (S.D.N.Y. April 14, 2011)	Filed in *United States v. Scheinberg, et al.*, 10-cr-336 (S.D.N.Y.)
8.	*Group Says Poker Winnings are Frozen*, Las Vegas Sun (June 12, 2009)	https://lasvegassun.com/news/2009/jun/12/group-says-poker-winnings-are-frozen/
9.	Transcript of deposition of Jeremy Johnson (Volume 2) (Nov. 17, 2019) (Excerpts)	Discovery in *FEC v. Johnson*, 15-cv-439 (D. Utah)
10.	Utah House of Representatives, Report of the Special Investigative Committee (Mar. 11, 2014)	Publicly available legislative material
11.	Declaration of Todd Vowell (executed Nov. 5, 2019)	Obtained in connection with discovery in *FEC v. Johnson*, 15-cv-439 (D. Utah)
12.	Consent Order, *In re Sunfirst Bank*, FDIC-10-845b (Nov. 9, 2010)	https://www.fdic.gov/bank/individual/enforcement/2010-11-23.pdf
13.	History of the Utah Attorney General's Office, Utah Office of the Attorney General (Nov. 19, 2018)	https://attorneygeneral.utah.gov/about/history/

Exhibit	Title	Source
14.	Emails between Jeremy Johnson and John Swallow (Aug. 25, 2010)	Exhibit to Utah House of Representatives, Report of the Special Investigative Committee (Mar. 11, 2014)
15.	Email from Jeremy Johnson to Richard Rawle (Oct. 7, 2010)	Exhibit to Utah House of Representatives, Report of the Special Investigative Committee (Mar. 11, 2014)
16.	Email from Jeremy Johnson to Richard Rawle (Oct. 7, 2010)	Exhibit to Utah House of Representatives, Report of the Special Investigative Committee (Mar. 11, 2014)
17.	Transcript of interview of Jeremy Johnson (Jan. 9, 2014) (Excerpts)	Transcript of audio recording obtained from Agent Scott Nesbitt of the Utah Department of Public Safety State Bureau of Investigation
18.	Transcript of interview of Jeremy Johnson (Aug. 14, 2013) (Excerpts)	Transcript of audio recording obtained from Agent Scott Nesbitt of the Utah Department of Public Safety State Bureau of Investigation
19.	Transcript of interview of Jeremy Johnson (Feb. 3, 2014) (Excerpts)	Transcript of audio recording obtained from Agent Scott Nesbitt of the Utah Department of Public Safety State Bureau of Investigation
20.	Emails between Jeremy Johnson and John Swallow (June 17 & 18, 2009)	Obtained from Agent Scott Nesbitt of the Utah Department of Public Safety State Bureau of Investigation
21.	Timeline of events (undated)	Obtained from Agent Scott Nesbitt of the Utah Department of Public Safety State Bureau of Investigation
22.	Corrected Order Granting Motion for Order Clarifying Preliminary Injunction Order and for Further Instructions Regarding Scope of Receivership Defendants Under Preliminary Injunction Order and Report of Receiver's Financial Reconstruction ("Receiver Order") (Docket No. 900), *FTC v. Johnson, et al.*, 10-cv-2203 (D. Nev. Mar. 25 2013)	Filed in *FTC v. Johnson, et al.*, 10-cv-2203 (D. Nev.)

Exhibit	Title	Source
23.	Transcript of deposition of Arvin Lee Black II (Nov. 12, 2019)	Discovery in *FEC v. Johnson*, 15-cv-00439 (D. Utah)
24.	Conciliation agreement of Arvin Lee Black II in FEC Matter Under Review 6850 (fully executed on July 16, 2015)	FEC Matter Under Review 6850
25.	Jeremy Johnson's Response to the FEC's First Set of Discovery Requests (executed Nov. 16, 2019)	Discovery in *FEC v. Johnson*, 15-cv-439 (D. Utah)
26.	Transcript of deposition of Jason Vowell (Nov. 14, 2019) (Excerpts)	Discovery in *FEC v. Johnson*, 15-cv-439 (D. Utah)
27.	Declaration of FTC Receiver Brick Kane (executed Oct. 31, 2019)	Obtained in connection with discovery in *FEC v. Johnson*, 15-cv-439 (D. Utah)
28.	SunFirst Bank check 5075 issued by Triple Seven, LP, to Sole Group, LLC (June 14, 2010)	Obtained from Robb Evans & Associates LLC, the appointed receiver in *FTC v. Johnson, et al.*, 10-cv-2203 (D. Nev.)
29.	SunFirst Bank cashier's check 039770 purchased by Triple Seven, LP, and payable to the order of Sole Group, LLC (June 14, 2010)	Obtained from Robb Evans & Associates LLC, the appointed receiver in *FTC v. Johnson, et al.*, 10-cv-2203 (D. Nev.)
30.	Zions Bank check 105 issued by Arvin Lee Black II to Mike Lee (June 11, 2010)	Obtained from Friends of Mike Lee, Inc.
31.	Transcript of deposition of Kyle Boyer (Oct. 16, 2019) (Excerpts)	Discovery in *FEC v. Johnson*, 15-cv-00439 (D. Utah)
32.	America First Credit Union check 207 issued by Kyle Boyer to Mike Lee (June 11, 2010)	Obtained from Friends of Mike Lee, Inc.
33.	Transcript of deposition of Tiffany Boyer (Oct. 16, 2019) (Excerpts)	Discovery in *FEC v. Johnson*, 15-cv-439 (D. Utah)
34.	America First Credit Union check 837 issued by Tiffany Boyer to Mike Lee (June 11, 2010)	Obtained from Friends of Mike Lee, Inc.

Exhibit	Title	Source
35.	Declaration of Thomas Datwyler, Treasurer of Friends of Mike Lee, Inc. (executed Nov. 4, 2010)	Obtained in connection with discovery in *FEC v. Johnson*, 15-cv-439 (D. Utah)
36.	Declaration of Savannah Jones Carter (executed Oct. 10, 2019)	Obtained in connection with discovery in *FEC v. Johnson*, 15-cv-439 (D. Utah)
37.	Declaration of Atia Black (executed Oct. 4, 2019)	Obtained in connection with discovery in *FEC v. Johnson*, 15-cv-439 (D. Utah)
38.	Agreement of Limited Liability Company of Triple Seven, LP with Katts, LLC, and Spyglass Enterprises, LLC, as the initial members with Jason Vowell as General Manager (filed with the Utah Department of Commerce Aug. 19, 2010)	Obtained from Robb Evans & Associates LLC, the appointed receiver in *FTC v. Johnson, et al.*, 10-cv-2203 (D. Nev.)
39.	Statement of Defendant in Advance of Plea of Guilty at 4 (Docket No. 16), *United States v. Arvin Lee Black II*, 13-cr-836 (D. Utah Jan. 10, 2014)	Filed in *United States v. Arvin Lee Black II*, 13-cr-836 (D. Utah)
40.	Judgment (Docket No. 35), *United States of America v. Arvin Lee Black II*, 13-cr-836 (D. Utah May 27, 2014)	Filed in *United States v. Arvin Lee Black II*, 13-cr-836 (D. Utah)
41.	List of Triple Seven, LLC payments to Johnson and Johnson entities from January 1, 2010 to December 31, 2010	Obtained from Robb Evans & Associates LLC, the appointed receiver in *FTC v. Johnson, et al.*, 10-cv-2203 (D. Nev.)
42.	Report of Receiver's Financial Reconstruction (Jan. 31, 2012) (Docket No. 464) *FTC v. Johnson, et al.*, 10-cv-2203 (D. Nev. Feb. 3, 2012)	Filed in *FTC v. Johnson, et al.*, 10-cv-2203 (D. Nev.)
43.	Zions Bank business checking account statement for Sole Group, LLC for June 1, 2010 through June 30, 2010	Obtained from Robb Evans & Associates LLC, the appointed receiver in *FTC v. Johnson, et al.*, 10-cv-2203 (D. Nev.)
44.	Emails between Jeremy Johnson and John Swallow (June 21, 2010)	Obtained from Agent Scott Nesbitt of the Utah Department of Public Safety State Bureau of Investigation

Exhibit	Title	Source
45.	Affidavit of Ronald James Yengich (executed Oct. 9, 2019)	Obtained in connection with discovery in *FEC v. Johnson*, 15-cv-439 (D. Utah)
46.	Matthew Mosk et al., *Utah Officials Call on Feds to Investigate Senators Reid, Lee*, ABC News (Mar. 13, 2014)	https://abcnews.go.com/Blotter/utah-officials-call-feds-investigate-senators-reid-lee/story?id=22905068
47.	Order at 4 (Docket No. 1070), *FTC v. Johnson, et al.*, 10-cv-2203 (D. Nev. June 6, 2013)	Filed in *FTC v. Johnson, et al.*, 10-cv-2203 (D. Nev.)
48.	Order (Docket No. 1070), *FTC v. Johnson, et al.*, 10-cv-2203 (D. Nev. June 6, 2013)	Filed in *FTC v. Johnson, et al.*, 10-cv-2203 (D. Nev.)
49.	Order (Docket No. 47), *FTC v. Alpha Yankee, LLC*, 13-15822 (9th Cir. Jan. 21, 2014)	Filed in *FTC v. Alpha Yankee, LLC*, 13-15822 (9th Cir.)
50.	Stipulated Order (Docket No. 1932-1), *FTC v. Johnson, et al.*, 10-cv-2203 (D. Nev. Aug. 1, 2016)	Filed in *FTC v. Johnson et al.*, 10-cv-2203 (D. Nev.)

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