UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

FEDERAL ELECTION COMMISSION, Plaintiff, v. SAM KAZRAN a/k/a Sam Khazrawan, et al., Defendants.	Civ. No. 3:10-1155-RBD-JRK **MOTION FOR DEFAULT JUDGMENT**

PLAINTIFF FEDERAL ELECTION COMMISSION'S MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANT 11-2001 LLC d/b/a HYUNDAI OF NORTH JACKSONVILLE

Plaintiff Federal Election Commission respectfully moves the Court to enter default judgment against defendant 11-2001 LLC d/b/a Hyundai of North Jacksonville ("HNJ") pursuant to Fed. R. Civ. P. 55(b)(2) and Local Rule 1.07(b).

The Commission commenced this action on December 17, 2010. (Docket No. 1.) The Commission's complaint alleged, *inter alia*, that HNJ had violated the Federal Election Campaign Act ("FECA") by reimbursing HNJ's employees' and other individuals' contributions to a congressional campaign, *see* 2 U.S.C. § 441f, and by making campaign contributions in excess of legal limits, *see* 2 U.S.C. § 441a(a); 11 C.F.R. § 110.1. The Commission served the complaint and summons on HNJ's registered agent on February 16, 2011. (Docket No. 4.) HNJ failed to timely appear and to date has not entered any appearance in this case or otherwise responded to the complaint. The Clerk entered HNJ's default on April 8, 2011. (Docket No. 8.)

ARGUMENT

I. STANDARD OF REVIEW

On a motion for default judgment under Rule 55(b)(2) of the Federal Rules of Civil Procedure, the Court accepts as true the facts alleged in the complaint: "[B]y defaulting, the [defendant is] deemed to have 'admit[ted] the plaintiff's well-pleaded allegations of fact' for purposes of liability." *Coton v. Televised Visual X-Ography, Inc.*, 740 F. Supp. 2d 1299, 1307 (M.D. Fla. 2010) (quoting *Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987)); *Tyco Fire & Sec., LLC v. Alcocer*, 218 Fed. App'x 860, 863 (11th Cir. 2007); *Shandong Airlines Co. v. CAPT, LLC*, 650 F. Supp. 2d 1202, 1206 (M.D. Fla. 2009) (citing *Buchanan*). If the admitted facts establish the defaulting defendant's liability, the plaintiff is entitled to relief against that defendant. *See Shandong Airlines*, 650 F. Supp. 2d at 1206; *United States v. Henley*, Civ. No. 8:10-2208-T-24-TGW, 2011 WL 1103894, at *2 (M.D. Fla. Mar. 25, 2011) (citing *Tyco Fire*). Pursuant to Fed. R. Civ. P. 54(c), the relief awarded "must not differ in kind from, or exceed in amount, what is demanded in the [complaint]." *See Rasmussen v. Cent. Fla. Council Boy Scouts of Am., Inc.*, No. 10-12238, 2011 WL 311680, at *2 (11th Cir. 2011); *Magee v. Maesbury Homes, Inc.*, Civ. No. 6:11-209-Orl-19DAB, 2011 WL 1457173, at *2 (M.D. Fla. Apr. 15, 2011); *Enpat, Inc. v. Budnic*, Civ. No. 6:11-86-PCF-KRS, 2011 WL 1196420, at *1 (M.D. Fla. Mar. 29, 2011).[1]

[1] The Servicemembers Civil Relief Act ("SCRA") requires a plaintiff seeking a default judgment to submit an affidavit "stating whether or not the defendant is in military service." 50 U.S.C. App. § 521(b)(1). Although HNJ is a corporation and cannot be "in military service" within the meaning of the SCRA, an affidavit fulfilling the SCRA's requirement is attached to this memorandum.

II. STATUTORY AND REGULATORY PROVISIONS

FECA provides that any "deposit of money or anything of value made by any person for the purpose of influencing a campaign for federal office" is a "contribution." *See* 2 U.S.C. § 431(8)(A)(i). Under 2 U.S.C. § 441f, "[n]o person shall make a contribution in the name of another person." This provision prohibits undisclosed conduit contributions, in which a donor conceals a contribution by funneling it through an intermediary. *See generally United States v. O'Donnell*, 608 F.3d 546 (9th Cir. 2010) (examining purpose and history of § 441f).

FECA also limits the size of contributions to federal candidates' campaign committees. 2 U.S.C. § 441a(a); *see also* 2 U.S.C. § 441a(c) (providing that limits are indexed for inflation); 11 C.F.R. § 110.1(b)(1) (same). In the 2006 election cycle, the maximum individual contribution to a congressional campaign was $2,100 for the primary election and $2,100 for the general election, for a total limit of $4,200 per contributor. *Price Index Increases for Expenditures and Contribution Limitations*, 70 Fed. Reg. 11658 (Mar. 9, 2005). In the 2008 election cycle, the limit was $2,300 for the primary election and $2,300 for the general election, for a total limit of $4,600 per contributor. *Price Index Increases for Expenditures and Contribution Limitations*, 72 Fed. Reg. 5295 (Feb. 5, 2007). These limits apply to contributions made by partnerships. *See* 11 C.F.R. § 110.1(e).

III. THE FACTS ALLEGED IN THE COMPLAINT ESTABLISH HNJ'S LIABILITY

At all relevant times, HNJ was a Jacksonville car dealership that was organized as a partnership and registered in Florida as a limited liability company. (Compl. ¶ 15.) From 2004 to 2008, HNJ was partially owned by Vern Buchanan, who was elected to the United States Congress in 2006 and re-elected in 2008. (*See id.* ¶¶ 16-17.) From 2005 to 2007, certain HNJ employees and their family members made what purported to be individual contributions to

Buchanan's campaign. (*See id.* ¶¶ 18-20.) In reality, these contributions were made by HNJ, which reimbursed each individual for the funds s/he provided to the campaign. (*Id.*)

Specifically, in 2005 and 2006, HNJ made twenty-four contributions totaling $49,500 to Buchanan's campaign in the names of the following HNJ employees and business partners and their family members:

Purported Contributor	Date of Contribution	Amount of Contribution
Lephart, Ernest C.	11/29/2005	$2,100.00
Lephart, Ernest C.	11/29/2005	$2,100.00
Lephart, Gayle	11/29/2005	$2,100.00
Lephart, Gayle	11/29/2005	$2,100.00
Smith, Diana M.	11/29/2005	$2,100.00
Smith, Diana M.	11/29/2005	$2,100.00
Smith, Gary W.	11/29/2005	$2,100.00
Smith, Gary W.	11/29/2005	$2,100.00
Sams, Vincent G.	1/02/2006	$2,100.00
Sams, Vincent G.	1/02/2006	$2,100.00
Sams, Patricia G.	1/02/2006	$2,100.00
Sams, Patricia G.	1/02/2006	$1,200.00
Farid, Atefah K.	3/31/2006	$2,100.00
Farid, Atefah K.	3/31/2006	$2,100.00
Farid, Joshua	3/31/2006	$2,100.00
Farid, Joshua	3/31/2006	$2,100.00
Cutaia, Doreen A.	6/28/2006	$2,100.00
Cutaia, Doreen A.	6/28/2006	$2,100.00
Cutaia, Joseph P.	6/28/2006	$2,100.00
Cutaia, Joseph P.	6/28/2006	$2,100.00
Khazravan, Eric	6/28/2006	$2,100.00
Khazravan, Eric	6/28/2006	$2,100.00
Khazravan, Heidi	6/28/2006	$2,100.00
Khazravan, Heidi	6/28/2006	$2,100.00

(Compl. ¶¶ 18-19.) And in 2007, HNJ made eight contributions totaling $18,400 to the Buchanan campaign in the names of the following HNJ employees and their family members:

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

(*Id*. ¶ 20.) In total, therefore, HNJ violated 2 U.S.C. § 441f by making thirty-two contributions totaling $67,900 in the names of other people to the Buchanan campaign from 2005-2007.[2]

In addition to being illegal conduit contributions, HNJ's contributions also exceeded the relevant contribution limits. As a partnership, HNJ was legally permitted to contribute $4,200 to the Buchanan campaign for the 2006 election and $4,600 for the 2008 election. *See supra* p. 3. Using individuals as conduits, as listed above, HNJ actually contributed $49,500 for the 2006 election and $18,400 for the 2008 election. (Compl. ¶¶ 18-20.) HNJ therefore violated 2 U.S.C. § 441a(a) by making eleven excessive contributions totaling $45,300 and three excessive contributions totaling $13,800 for the 2006 and 2008 elections, respectively.[3]

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[2] Although HNJ's default renders further corroboration of liability unnecessary, Defendant Sam Kazran, a part-owner of HNJ, also "admit[s] that HNJ reimbursed various employees for their contribution[s]" to the Buchanan campaign (Answer ¶¶ 18-20 (Docket No. 10)), and that the amount of these reimbursements was at least $67,900. (*Id*. ¶ 21; *but see id*. ¶ 31 (denying that HNJ violated § 441f).)

[3] Pursuant to the Commission's regulations, when a donor makes a lump-sum contribution above the primary election limit before the primary election, the campaign generally designates the portion of the donation above the primary election limit as a contribution for the general election, and then reports the primary and general election amounts as two separate contributions. *See* 11 C.F.R. § 110.1(b)(5)(ii)(B). Because each of HNJ's conduit donors made this type of lump-sum donation, which the campaign properly reported as two contributions (as reflected in the tables above), each primary and each general election contribution constitutes a distinct contribution in the name of another in violation of 441f. But because this reporting procedure does not affect the aggregate limit on contributions under section 441a, *see* 11 C.F.R. § 110.1(b)(5)(ii)(B)(4), each lump-sum donation beyond HNJ's limit of $4,200 or $4,600 per election cycle constitutes a single violation of section 441a.

IV. THE FACTS ALLEGED IN THE COMPLAINT ESTABLISH THAT THE COMMISSION IS ENTITLED TO THE RELIEF REQUESTED

A. The Appropriate Monetary Remedy for HNJ's Violations of FECA Is a Civil Penalty of $67,900

At the time of HNJ's illegal activity, the relevant civil penalty for making an illegal campaign contribution was up to the greater of (a) $6,500 or (b) the amount of the contribution involved in the violation. *See* 2 U.S.C. § 437g(a)(6)(B); 11 C.F.R. § 111.24 (2006); *Inflation Adjustments for Civil Monetary Penalties*, 70 Fed. Reg. 34633 (June 15, 2005).[4] Thus, calculating HNJ's civil penalty based on the maximum of $6,500 per violation, the penalty for HNJ's 32 contributions that violated section 441f would be up to $208,000, and the penalty for HNJ's 14 contributions in excess of section 441a's contribution limits would be up to $91,000, for a maximum penalty of $299,000.

Under the alternate statutory method of calculating the penalty based on the amount of the contributions involved in HNJ's violations of section 441f, the maximum penalty would be $67,900, which is the sum of HNJ's illegal conduit contributions. While the Court could impose an additional penalty of $59,100 based on the amount of the contributions involved in HNJ's violations of section 441a (for a total penalty of $127,000), the Commission does not request that the Court do so. Rather, the Commission respectfully asks the Court to award a civil penalty of $67,900, which is the amount that HNJ unlawfully contributed and less than the maximum amount the Court would award based on the amount in violation, as indicated in the Commission's complaint. *See* Fed. R. Civ. P. 54(c); Compl., Request for Relief (F).

To adequately punish illegal activity and to provide a disincentive for others to engage in similar conduct, a civil penalty must be sufficiently large that potential violators will regard it as

[4] The $6,500 figure was in effect from June 15, 2005, through June 30, 2009. *See Civil Monetary Penalties Inflation Adjustments*, 74 Fed. Reg. 31345, 31346 (July 1, 2009).

"'a deterrence to violation'" rather than "'an acceptable cost of violation.'" *United States v. Reader's Digest Ass'n*, 662 F.2d 955, 966-67 (3d Cir. 1981) (quoting *United States v. ITT Continental Baking Corp.*, 420 U.S. 223, 231-32 (1975)); *see also United States v. St. Michael's Credit Union*, 880 F.2d 579, 588 (1st Cir. 1989) ("To have any real deterrent effect, the potential fine must be large enough to have some real economic impact on potential violators.") (internal quotation marks omitted). Particularly in the context of the FECA provisions that HNJ violated, the penalty must be large enough to deter the temptation to corrupt elections and elected officials. *See, e.g.*, *McConnell v. FEC*, 540 U.S. 93, 136 (2003) (finding that contribution limits "directly implicate the integrity of our electoral process") (internal quotation marks omitted); *Buckley v. Valeo*, 424 U.S. 1, 26-27 (1976) (discussing potential for excessive contributions to undermine "the integrity of our system of representative democracy"). Here, HNJ illegally spent $67,900 in an attempt to influence an election for Congress, presumably believing this to be a worthwhile investment; meaningful deterrence therefore requires the assessment of a penalty at least as great as the amount that HNJ intended to "invest" in the first place. The $67,900 civil penalty that the Commission seeks — as authorized by statute — meets this criterion and thus fairly reflects the size and seriousness of HNJ's violations.

In addition to the important interests served by providing incentives to comply with section 441a's contribution limits, encouraging compliance with section 441f is essential to ensure accurate financial disclosure by political candidates. The Supreme Court has found that FECA's disclosure requirements "aid the voters in evaluating those who seek federal office," "deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity," and provide the "essential means of gathering the data necessary to detect violations of the contribution limitations." *Buckley*, 424 U.S. at 66-68; *see*

also Citizens United v. FEC, 130 S. Ct. 876, 914 (2010) (quoting *Buckley*). But when contributions are made in the names of others, the true source of the contributions is intentionally concealed from the public, thereby thwarting the public's informational and anti-corruption interests. Public confidence in the integrity of the election process thus depends on the imposition of penalties sufficient to deter violations of these anti-secrecy protections.[5] Accordingly, a civil penalty of $67,900 would be sufficient to punish HNJ, vindicate the public's and the Commission's important statutory interests, and deter future violations by HNJ and others.

B. HNJ's Conduct Warrants a Permanent Injunction Against Future Violations of FECA

The Commission's complaint sought to permanently enjoin HNJ from engaging in further violations of the Act "similar to those found by the Court." (Compl., Request for Relief (E).) This Court should now impose such an injunction and prohibit HNJ from engaging in future violations of 2 U.S.C. §§ 441a and 441f.

FECA explicitly authorizes the Court to grant a permanent injunction upon a showing that a defendant has violated the Act. 2 U.S.C. 437g(a)(6)(B). An injunction should generally issue if the defendant is otherwise likely to continue to violate the law. *See FEC v. Furgatch*, 869 F.2d 1256, 1262-64 (9th Cir. 1989) (discussing criteria relevant to issuance of permanent injunction and remanding to district court for determination of whether criteria were met); *FEC v. Odzer*, Civ. No. 05-3101, 2006 WL 898049, at *5 (E.D.N.Y. Apr. 3, 2006) (applying *Furgatch* in context of defaulting defendant and granting permanent injunction against further violations of §§ 441a and 441f); *see also United States v. Kahn*, 164 Fed. App'x 855, 858-59 (11th Cir. 2006)

[5] Indeed, criminal violations of section 441f are subject to the highest penalties FECA imposes: The *minimum* such fine is 300% of the amount involved in the violation, and the maximum fine is 1000% of the amount involved. *See* 2 U.S.C. § 437g(d)(1)(D).

(affirming grant of permanent injunction to government against defaulting defendants where district court found, *inter alia*, that "absent the permanent injunction, Defendants would continue to violate" same statutes).

HNJ's conduct demonstrates a substantial likelihood that its illegal activities would be repeated in the future. HNJ's lawbreaking was not a mere error or lapse in judgment: It was an extensive and ongoing scheme that spanned two election cycles, three calendar years, and dozens of secret, illegal contributions. Despite the duration and breadth of these violations, HNJ has never acknowledged *any* wrongdoing. To the contrary, HNJ's refusal even to appear before this Court manifests a complete absence of a commitment not to violate the same legal provisions in the future. *See Odzer*, 2006 WL 898049, at *5 ("[Defendant's] failure to participate [before the FEC] and in this litigation are further indications that an injunction is necessary to ensure that [he] will not continue to violate the Act . . . .").[6] The absence of such a commitment means that only an injunction, backed by the Court's contempt power, can reassure the public and the Commission that any repetition of HNJ's unlawful activity in connection with future elections would be subject to the strictest possible sanctions.

[6] Although public sources indicate that HNJ is not currently operating its car dealership in Jacksonville, HNJ remains active as a Florida corporation and may return to its business activities in the future.

V. CONCLUSION

For the foregoing reasons, the Commission moves the Court to enter final judgment against HNJ: (1) assessing a civil penalty of $67,900; and (2) permanently enjoining HNJ from engaging in future violations of 2 U.S.C. § 441a or 2 U.S.C. § 441f. A proposed judgment is attached to this motion.

Respectfully submitted,

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