

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

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

FEDERAL ELECTION COMMISSION,  
999 E ST. N.W. WASHINGTON D.C 20463  
Plaintiff,

vs.

11-2001 LLC d/b/a Hyundai of North  
Jacksonville, Sam Kazran, individual,  
Defendants.

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**DEFENDANT'S VERIFIED OPPOSITION TO PLAINTIFFS**  
**MOTION FOR SUMMARY JUDGMENT**

Now Comes Defendant Sam Kazran, by and through this Verified Opposition, to state that there exist numerous genuine issues of material facts in this litigation which preclude the granting of FEC's motion for summary judgment and requests a jury trial on the merits of each and every genuine issue of material fact in this matter. The government's motion is not supported by evidence. Rather it makes conclusions based on the government's interpretation of the "evidence" proffered in its motion.

Defendant Sam Kazran hereby verifies the following list of genuine issues of material facts:

1. Vernon Buchanan was "president and managing member" of defendant 11-2001 LLC, had majority ownership and controlled the entity;
2. Congressman Vernon Buchanan had a commanding knowledge of election laws superior to that of minority owner – Sam Kazran.
3. Sam Kazran denies the "facts" alleged in the government's motion for summary judgment. The evidence has not been properly tested and is unreliable.
4. Sam Kazran hereby verifies that he was tricked into making statements which appear to be self-incriminating by the government.

5. Sam Kazran was not the party responsible for instructing the employees of Mr. Buchanan to make contributions to Vern Buchanan For Congress (VBFC) and then authorize reimbursement because the Vern Buchanan was the majority owner of the subject defendant company.
6. Plaintiff (Federal Election Commission)'s "proofs" are gross mischaracterizations of statements by Sam Kazran and other witnesses.
7. Plaintiff's "proofs" are facts taken out of context and also are wormed with numerous omissions of genuine issues of material facts.
8. Kazran denies and controverts Plaintiff's assertion that it is "undisputed" that Kazran's "voluntary statements" can be grounds to argue that, the Court should grant its motion for summary judgment. Specifically, Kazran denies and controverts the allegation that he has already admitted to arranging for Mr. Buchanan's employees to contribute to VBFC thus violating campaign laws. To support its position, the Plaintiff sights 11 C.F.R. § 110.4(b)(iii) (prohibiting "[k]nowingly help[ing] or assist[ing] any person in making a contribution in the name of another") (Sum. Jud. Mot. Pg. 1). Kazran denies and disputes that he possessed the requisite mental state or intent pursuant to 11 C.F.R. 110.4.
9. Defendant Kazran further raises the genuine issue of material fact that, the government's motion omits what its own investigation discovered – that, similar to countless other individuals employed by Mr. Buchanan he himself was directed to direct employees to contribute to VBFC.
10. Yet another genuine issue of material fact which Sam Kazran must be allowed to litigate on the merits is the fact that its investigation revealed the Defendant was unaware that a law even existed thus, the Plaintiffs reference to 11 C.F.R § 110.4(b) (iii) and reliance on the phrase "**KNOWINGLY**" is unsubstantiated and without merit.
11. A final genuine issue of material fact is the meaning and intent of Sam Kazran's testimony which is twisted by the government and taken out of context. In short he did not say what the government says he said. Rather the government grossly mischaracterizes Kazran's deposition testimony by referring to selective parts while omitting the parts that contradict its own case.

The foregoing list sets forth the existence of multiple genuine issues of material facts in dispute that as a matter of law must be decided on the merits.

While it is difficult to understand exactly why the undersigned Defendant is the only individual targeted by the FEC in this matter, what is clear is that the Plaintiff has ignored much of its own investigation and has, for some mysterious reason has refused to assent to or join in pursuit of the Majority Owner, President and Managing Member of Defendant 11-2001, LLC, Congressman Vernon Buchanan.

### Law

Summary judgment are disfavored and are only appropriate “if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” *See Fed. R. Civ. P.56(c); Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

All reasonable inferences are to be “viewed in the light most favorable to the party opposing the motion.” *Matsushita Elec. Ind. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

“The Court must draw all justifiable inferences in favor of the nonmoving party, including questions of credibility and of the weight to be accorded to particular evidence.” *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520 (1991) (citing *Anderson v. Liberty, Inc.*, 477 U.S. 242, 255 (1986)).

“The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.”

According to Fed. Rules Civ. P. and the State court rule which holds that all pleadings shall be construed to do substantial justice. *Conley v. Gibson*, 355 U.S. 41 at 48 (1957).

“If the record reflects even the possibility of a material issue of fact, or if different inferences can be drawn reasonably from the facts, that doubt must be resolved against the moving party and summary judgment must be denied. Hervey v. Alfonso, 650 So. 2d 644, 646 (Fla. 2d DCA 1995). See also Besco USA Int’l Corp. v. Home Savings of Am. FSB, 675 So. 2d 687,688 (Fla. 5th DCA 1996).

“The question [when ruling on a motion for summary judgment] is whether a jury could reasonably find *either* that the plaintiff proved his case by the quality and quantity of evidence required by the governing law *or* that he did not.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 254 (1986) (emphasis in original). “[E]vidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.” *Id.* at 255.

“Disposition by summary judgment is appropriate, only, where the record as a whole could not lead a rational trier of fact to find for the non-movant.” Williams v. Griffin, 952 F.2d 820, 823 (4th Cir. 1991); See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

### ARGUMENT

The FEC asserts, without factual support, it has reason to believe that Defendant knowingly violated campaign laws. FEC draws a conclusion of fact that directly contradicts the overwhelming evidence reviewed and confirmed by its own investigators. In so doing, FEC ignores/overlooks the clear conflict between its conclusion and the evidence.

To begin, the Plaintiff relies on Defendants voluntary statements as grounds to argue that, the Court should grant its motion for summary judgment because the Defendant has already admitted to arranging for Mr. Buchanan’s

employees to contribute to VBFC thus violating campaign laws. To support its position, the Plaintiff sights 11 C.F.R. § 110.4(b)(iii) (prohibiting “[k]nowingly help[ing] or assist[ing] any person in making a contribution in the name of another”) (Sum. Jud. Mot. Pg. 1).

In reaching its erroneous conclusion, the Plaintiff omits the highly material fact that, similar to countless other individuals employed by Mr. Buchanan, the Defendant was directed to direct employees to contribute to VBFC. The Plaintiff omits that its investigation revealed the Defendant was unaware that a law even existed thus, the Plaintiffs reference to 11 C.F.R § 110.4(b) (iii) and reliance on the phrase “**KNOWINGLY**” is unsubstantiated and without merit. The Plaintiff goes on to grossly mischaracterize the Defendants deposition by referring to selective parts while omitting the prejudicial parts that contradict its argument.

For example, Plaintiff omits/ignores the fact that *inter alia*; (a) the Defendants deposition, and the agency’s entire focus, interest and line of questioning was directed at Mr. Buchanan and VBFC; (b) Defendant was carrying out specific instructions of the managing member and Sr. partner Mr. Buchanan; (c) that Defendant was unaware of the agencies policies, did not have any knowledge of campaign laws, and did not “**knowingly and willfully**” take any action that suggests intent to violate or ignore the law and; (d) Defendants testimony was backed by substantial “clear and convincing” evidence in which the FEC received, reviewed, examined, researched and unequivocally confirmed.

Plaintiffs complaint asserts that, “On August 19, 2009, the Commission... informed defendants of its RTB findings ..Provided them with copies of the Factual and Legal Analysis... invited defendants to submit any factual or legal

materials...relevant to the Commission's consideration of the matter. (Comp. Para 23). Plaintiff next alleges that, On July 16, 2010, the Commission... Quote "after considering all the evidence available"...was prepared to recommend that the Commission find "probable cause"... that HNJ and Kazran violated 2 U.S.C. § 441... and that, HNJ violated 2 U.S.C. § 441(a)... (Comp. Para 24). *Id.*

Plaintiff goes on to argue that, the July 16 notice... invited defendants to submit a brief to the Secretary of the Commission stating their positions on such issues...that any brief submitted by Defendants would be considered ...before the Commission proceeded to a vote on whether probable cause existed. *id* (Comp. Para. 24), Finally Plaintiff concludes that, "Defendants did not submit a response to the General Counsel's brief" (Comp. Para 25), therefore, on September 21, 2010, the commission found. . that HNJ and Kazran violated 2 U.S.C. § 441 a. *Id.*

Defendant respectfully submits that such distortion of facts, if not deliberate, is inexplicable. That is, Plaintiffs complaint set out to create the illusion that, Defendants failed to respond to commissions' multiple invitations and that, the commissions' conclusions were "after considering all the evidence available." Here, the Plaintiff overlooks/ignore the fact that the so-called "August 19" notice was prompted based on Defendants E-mail to the agency, which was pursuant to FEC's specific instructions after the Defendants initial contact. In other words, to find probable cause and/or to initiate its investigation, FEC asked the undersigned to write an email that stated, "I instructed the employees to make these contributions". Absent of Defendants E-mail, the FEC would

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

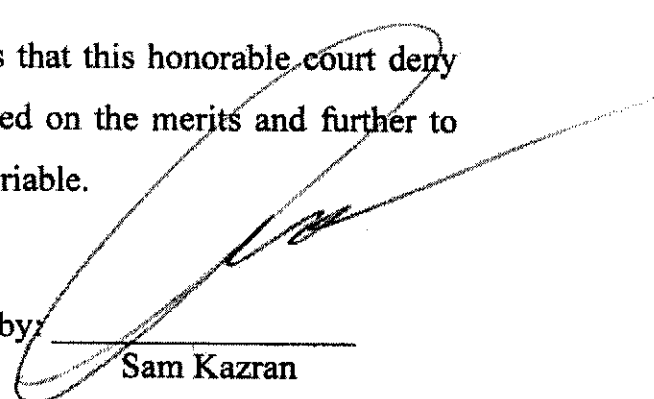
The Plaintiff again omit the previous paragraphs of the same affidavit, which provides in pertinent part: (Affidavit of Gayle Lephart is attached as **EXHIBIT 1**).

Just before making my November 29, 2005 contributions to Vern Buchanan for Congress (VBFC). Mr. Kazran walked into my office at HNJ while talking on his cellular phone. I recall Mr. Kazran stating something close to "Vern, I 'll handle it now" to the person he was talking to I assumed that Mr. Kazran was talking to Vern Buchanan, since Mr. Kazran was frequently on the phone with Mr. Buchanan.

Immediately after ending the call, Mr. Kazran said that he needed me to make contribution to VBFC. Mr. Kazran stated the amount he wanted me to contribute... Mr. Kazran further instructed me that I should reimburse myself the full amount of the contribution with funds from HNJ. Mr. Kazran also instructed me to find other HNJ employees to make similar contributions to VBFC....

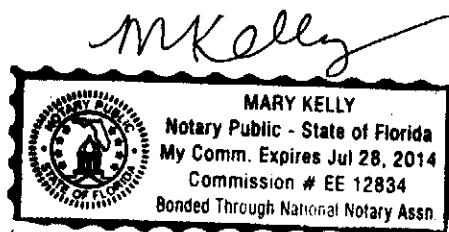
Wherefore, Sam Kazran respectfully requests that this honorable court deny Plaintiffs motion and to allow this matter to be tried on the merits and further to allow such trial to be before a jury on any issues so triable.

Sworn and verified this 27<sup>th</sup> day of September 2011 by



Sam Kazran

Respectfully Submitted  
/Lee Levenson/  
Attorney for Sam Kazran



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FEDERAL ELECTION  
COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION 2010 OCT 14 AM 9:43

IN THE MATTER OF

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MUR 6054

OFFICE OF GENERAL  
COUNSEL

AFFIDAVIT

I, Gayle Lynn Lephart, being first duly sworn, depose and say as follows:

I worked at "Buchanan/Jenkins Hyundai" before Sam Kazran bought into the dealership. I was the Controller at this dealership. I continued to work for Mr. Kazran as the Controller when he took over in April, 2004 and the company became Hyundai of North Jacksonville (HNJ).

Just before making my November 29, 2005 contribution to Vern Buchanan for Congress (VBFC), Mr. Kazran walked into my office at HNJ while talking on his cellular phone. I recall Mr. Kazran stating something close to "Vern, I'll handle it now" to the person he was talking to. I assumed that Mr. Kazran was talking to Vern Buchanan, since Mr. Kazran was frequently on the phone with Mr. Buchanan.

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

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

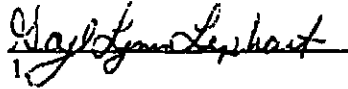
Sometime in 2007 I was again approached by Mr. Kazran. He told me that HNJ employees once again needed to contribute to VBFC and be reimbursed through the company. I was upset at the fact that company money was again going to be used to reimburse these contributions. I expressed this to Mr. Kazran, who only responded with a shrug.



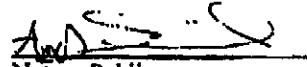
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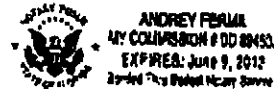
I agreed to participate in the reimbursed contributions because I was asked to by Mr. Kazran, who was my boss. I did not know that I was doing anything wrong at the time.

Further the affiant sayeth not.



Subscribed and sworn to before me, on this 14 day  
of OCT, 2010.

  
Notary Public



# **EXHIBIT 1**