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-J-RBD-JRK **OPPOSITION**

PLAINTIFF FEDERAL ELECTION COMMISSION'S OPPOSITION TO DEFENDANT SAM KAZRAN'S REQUEST FOR LEAVE TO JOIN ADDITIONAL PARTIES

Defendant Sam Kazran has filed a document styled "Defendants Response to Plaintiffs Complaint and Request for Leave to Join the Proper Parties in this Action." (Dkt. No. 16.) Plaintiff Federal Election Commission construes Kazran's filing as a motion to join United States Representative Vernon Buchanan as a defendant in this action pursuant to Rule 19 or Rule 20 of the Federal Rules of Civil Procedure. The Commission respectfully requests that the Court deny Kazran's untimely motion.

I. KAZRAN'S UNTIMELY FILING VIOLATES THE COURT'S CASE MANAGEMENT AND SCHEDULING ORDER

The Court should deny Kazran's motion because it is procedurally improper and Kazran's delay is prejudicial to the Commission.

On May 2, 2011, the Commission and Kazran jointly filed a Case Management Report in which they proposed, *inter alia*, June 1, 2011, as the deadline to file any motions to add parties or amend pleadings. (Dkt. No. 11 at 1.) This jointly proposed deadline was the product of negotiations between the Commission and Kazran. The Court adopted the June 1 deadline for

"motions to add parties or to amend pleadings" in its May 19, 2011, Case Management and Scheduling Order. (Dkt. No. 13 at 1.)

In total disregard of the parties' negotiated agreement and the Court's Order, Kazran seeks to join additional parties *now*, more than six weeks after the deadline, two weeks after the Commission served its initial discovery requests on Kazran, and days before the Commission filed its now-pending Motion for Partial Summary Judgment on the question of Kazran's liability for violating 2 U.S.C. § 441f (Dkt. No. 18).[1] Permitting Kazran to ignore agreed-upon, Court-imposed deadlines and litigate this case on a schedule he unilaterally decides is unjust and prejudicial to the Commission.[2] *See Jones v. Taylor*, No. 5:09-CV-391 (MTT), 2010 WL 5638567, at *5 (M.D. Ga. Dec. 10, 2010) (rejecting request to join additional parties where, *inter alia*, joinder would cause undue delay prejudicial to parties who have motion for summary judgment pending).

"The timetable established by the Case Management and Scheduling Order is binding upon the parties." *Payne v. Ryder Sys., Inc. Long Term Disability Plan*, 173 F.R.D. 537, 540 (M.D. Fla. 1997). "'The scheduling order is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without peril.'" *Id.* (quoting *Forstmann v. Culp*, 114 F.R.D. 83, 85 (M.D.N.C. 1987)). The Federal Rules of Civil Procedure permit modification of a

[1] To the extent Kazran intends his filing to be a motion to amend his Answer to Plaintiff[']s Complaint, filed April 25, 2011 (Dkt. No. 10), it is equally untimely under the same agreed-upon and Court-ordered June 1 deadline (Case Management and Scheduling Order at 1) (Dkt. No. 13), and it should be denied for all the reasons set forth in Part I of this Memorandum.

[2] This is not the first time Kazran has disregarded a deadline in this case. Despite being served with the Commission's complaint on March 11, 2011 (Dkt. No. 4), and after obtaining an extension until April 18, 2011, to respond to the complaint (Dkt. No. 9), Kazran did not file his answer until April 25, 2011 (Dkt. No. 10). The Commission has yet to receive Kazran's mandatory initial disclosures in accordance with Fed. R. Civ. P. 26(a)(1), despite the Court's Case Management Order requiring such disclosures no later than May 26, 2011 (Dkt. No. 13 at 1), and Kazran's agreement in the joint Case Management Report to serve such disclosures no later than May 18, 2011 (Dkt. No. 11 at 1).

schedule "only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). A showing of "good cause" under Rule 16(b) requires that the party seeking modification of the court-imposed deadline establish that the deadline "could not be met despite [the] party's diligent efforts." *Deaguila v. Bright House Networks, LLC*, No. 8:10-cv-1058-T-30EAJ, 2011 WL 1466055, at *1 (M.D. Fla. Apr. 18, 2011); *see U.S. Bank Nat'l Ass'n v. Turquoise Props. Gulf, Inc.*, Civ. No. 10-204-WS-N, 2011 WL 1302951, at *1 (S.D. Ala. Apr. 5, 2011) (Rule 16(b) "'good cause standard precludes modification [of a scheduling order] unless the schedule could not be met despite the diligence of the party seeking the extension.'") (quoting *Sosa v. Airprint Sys., Inc.*, 133 F.3d 1417, 1418 (11th Cir. 1998)).

Kazran has never sought an extension of the June 1 deadline that he and the Commission jointly proposed. And far from establishing that he made "diligent efforts" to meet that deadline, Kazran does not even acknowledge, let alone attempt to explain, his delay. Courts in this district "take[] adherence to the scheduling order seriously and follow[] the Eleventh Circuit guidelines that 'motions filed after a deadline imposed by a court should be denied as untimely.'" *Deaguila*, 2011 WL 1466055, at *1 (quoting *Payne*, 173 F.R.D. at 540); *see, e.g., Henderson v. FedEx Express*, No. 5:09-CV-85 (CAR), 2009 WL 1951059, at *7 (M.D. Ga. July 6, 2009) (denying motion to join parties where motion, *inter alia*, "is simply untimely, and Counsel has not offered any explanation as to why he did not bring this motion before now"). And where, as here, a party's "motion is clearly untimely, and does not even attempt to demonstrate there is some 'good cause' why the court should modify the scheduling order . . . the court need not address the merits of the motion." *Payne*, 173 F.R.D. at 540; *see U.S. Bank Nat. Ass'n*, 2011 WL 1302951, at *2 & n.5 (declining to modify scheduling order where party failed to show good cause for six-week delay in moving to join additional parties).

Kazran's status as a *pro se* litigant does not absolve him of the obligation to abide by the Court's scheduling order. Indeed, the Eleventh Circuit and courts in this district have made clear that although "[*p*]*ro se* pleadings are held to a less stringent standard than pleadings drafted by attorneys . . . , a defendant's *pro se* status in civil litigation generally will not excuse mistakes he makes regarding procedural rules," including the failure to request an extension of time or to explain why "good cause" excused that failure. *Anderson v. Osh Kosh B'Gosh*, 255 Fed. App'x 345, 348 & n.4 (11th Cir. 2006) (internal quotation marks omitted) (affirming district court's *sua sponte* dismissal of *pro se* complaint where *pro se* plaintiff "neither requested an extension of time to complete service, nor explained why 'good cause' excused her failure"); *Pridemore v. Regis Corp.*, No. 3:10-cv-605-J-99MMH-JBT, 2011 WL 9120, at *2 (M.D. Fla. Jan. 3, 2011) (*pro se* status is no excuse for procedural errors) (citing *Anderson*). The Supreme Court agrees. *See McNeil v. United States*, 508 U.S. 106, 113 (1993) ("[W]e have never suggested that procedural rules in ordinary civil litigation shall be interpreted so as to excuse mistakes by those who proceed without counsel."). As summed up by the Eleventh Circuit, "[l]iberal construction . . . does not mean liberal deadlines." *Robinson v. Schafer*, 305 Fed. App'x 629, 630 (11th Cir. 2008) (internal quotation marks omitted).

For these reasons, Kazran's motion should be denied as untimely.

II. EVEN IF THE MOTION WERE TIMELY, THERE IS NO LEGAL BASIS FOR JOINING BUCHANAN AS A DEFENDANT IN THIS CASE

A. Buchanan Is Not a Necessary Party

Rule 19(a)(1)(A) of the Federal Rules of Civil Procedure provides that a person "must be joined as a party if . . . in that person's absence, the court cannot accord complete relief among

existing parties."[3] In determining whether this criterion is met, "'pragmatic concerns, especially the effect on the parties and the litigation,' control." *Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1279-80 (11th Cir. 2003) (quoting *Challenge Homes, Inc. v. Greater Naples Care Ctr., Inc.*, 669 F.2d 667, 669 (11th Cir. 1982)).

Kazran's motion does not satisfy the plain text of Rule 19(a)(1)(A) because there is no reason that "the court cannot accord complete relief among existing parties" in the absence of Buchanan as a defendant. The only plaintiff here is the Commission, and the "complete relief" it seeks is declarative, monetary, and injunctive penalties against defendants Sam Kazran and his car dealership, Hyundai of North Jacksonville ("HNJ"), for violations of the Federal Election Campaign Act ("FECA").[4] (*See* Compl. at 9-10 (Request for Relief).) The Court can award or deny that relief without joining Buchanan as a party to this action: "Either Plaintiff will prove [its] case and recover . . . , or, if Defendants' assertions are correct, [Plaintiff] will not prove [its] case and will not recover." *Pujals ex rel. El Rey De Los Habanos, Inc. v. Garcia*, --- F. Supp. 2d ---, Civ. No. 10-22990, 2011 WL 1134989, at *5 (S.D. Fla. Mar. 28, 2011) (denying Rule 19 motion because relief could be accorded among existing parties); *see also Comprehensive Care Corp. v. Katzman*, Civ. No. 8:10-942-T-27TGW, 2011 WL 166330, at *6 (M.D. Fla. Jan. 19, 2011) (rejecting defendant's argument that additional parties had to be joined to resolve related disputes between those entities and defendant, and noting that defendant's argument "disregards the Rule's focus on 'complete relief among *existing* parties'"); *Solis v. Seibert*, Civ. No. 8:09-1726-T-33AEP, 2010 WL 3123091, at *2 (M.D. Fla. Aug. 9, 2010) (in civil suit brought by

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[3] Joinder under Rule 19(a)(1)(B) is not applicable here because Buchanan does not "claim[ ] an interest relating to the subject of the action." Fed. R. Civ. P. 19(a)(1)(B).

[4] Although the motion raises several assertions that appear to be on behalf of multiple "defendants" (*e.g.*, Mot. to Join at 3, 5), the motion is made by Kazran alone, as he does not represent HNJ in this action.

federal agency against *pro se* defendant, rejecting defendant's motion to join other parties "because Defendant can bring an action against the [other parties] . . . independent of the present suit brought by the [government]"). Nowhere in his motion does Kazran demonstrate (or even argue) that Buchanan must be a party for relief to be accorded among the Commission, Kazran, and HNJ.

The factual basis for Kazran's motion appears to be his assertion that he "was instructed by Mr. Buchanan to make the alleged campaign contributions." (Mot. to Join at 4.) But even if it were true that Kazran broke the law at Buchanan's direction, this would not have any effect on Kazran's liability for violating FECA. *See FEC v. Novacek*, 739 F. Supp. 2d 957, 963 (N.D. Tex. 2010) (holding that evidence regarding non-parties' involvement in defendant's FECA violations was not relevant to defendant's liability but "relevant only as to whether those non-parties were also complicit" in such violations); *cf. Temple v. Synthes Corp.*, 498 U.S. 5, 7 (1990) (holding that joint tortfeasors are not subject to mandatory joinder as defendants). Indeed, in cases such as this where the Commission chooses not to seek penalties under 2 U.S.C. § 437g(a)(6)(C) for "knowing and willful" FECA violations, the defendant's "state of mind is irrelevant . . . because intent is not an element of the offense." *Novacek*, 739 F. Supp. 2d at 966; *see also FEC v. Cal. Democratic Party*, No. Civ. S-97-0891GEBPAN, 1999 WL 33633264, at *6 n.9 (E.D. Cal. Oct. 14, 1999) ("While section 437g(a)(6)(C) allows harsher penalties where the violator's conduct has been 'knowing and willful,' the FEC herein seeks penalties only under section 437g(a)(6)(B), which contains no *scienter* requirement." (internal citation omitted)). In any event, if Kazran were to devise a legal theory under which Buchanan's alleged conduct were relevant to Kazran's own liability, he could seek to introduce that evidence of Buchanan's conduct in the normal manner; Buchanan would not need to be joined as a party for Kazran to

offer such evidence. Thus, Kazran's factual allegations provide no reason — much less any requirement — for Buchanan to be joined as a party to this action.

Finally, Congress has established that the Commission's statutory authority under section 437g(a)(6) to seek civil penalties for violations of FECA is the "*exclusive* civil remedy for the enforcement of the provisions of [the] Act." 2 U.S.C. § 437d(e) (emphasis added). Filing a lawsuit pursuant to that authority is the final step in a statutorily defined process that requires affirmative votes at multiple stages from at least four of the FEC's six Commissioners. (*See generally* Pl. FEC's Mem. in Support of Mot. for Partial Summ. J. at 2, 3-5 (Dkt. No. 18) (describing Commission's enforcement procedures and their application in this case).) Joining Buchanan as a defendant on the basis of alleged FECA violations would thus circumvent the enforcement process created by Congress — a "pragmatic concern[ ]" that weighs heavily against any attempt by Kazran to invoke mandatory joinder here. *See FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 486-87 (1985) ("*NCPAC*") ("The plain language of . . . FECA suggests quite emphatically that [private plaintiffs] do not have standing to bring a private action against another private party. . . . [P]rivate suits of this kind are inappropriate interference with the FEC's responsibilities."); *Nat'l Comm. of Reform Party of U.S. v. Democratic Nat'l Comm.*, 168 F.3d 360, 364 (9th Cir. 1999) (citing *NCPAC*).

B. Permissive Joinder Would Not Promote Efficient Resolution of this Case

Rule 20(a)(2) of the Federal Rules of Civil Procedure provides that multiple persons "may be joined in one action as defendants if (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action." If these criteria are met, the decision of whether to

permit joinder is committed to the district court's discretion. *See Swan v. Ray*, 293 F.3d 1252, 1253 (11th Cir. 2002) (affirming district court's denial of permissive joinder).

As a preliminary matter, the purpose of Rule 20(a)(2) is to promote judicial efficiency by allowing a *plaintiff* to sue multiple defendants in one case regarding a single transaction or occurrence. *See* 7 Charles A. Wright et al., *Fed. Prac. & Proc.* § 1651 (3d ed. 2001) (discussing history of Rule 20 and noting that it codified common-law rule that defendants "could be sued jointly or severally, *at plaintiff's option*" (emphasis added)). The Commission is not aware of any precedent for a *defendant* invoking Rule 20 to bring into the case as another defendant a person whom the plaintiff has opted not to sue. *Cf. id*. § 1657 (noting that "plaintiff generally has the prerogative of joining multiple defendants or bringing separate actions"). Accordingly, the fact that no "right to relief is asserted" against Buchanan by the Commission as the plaintiff, Fed. R. Civ. P. 20(a)(2)(A), should foreclose the invocation of Rule 20 here.

But even if Kazran, as a defendant, could invoke Rule 20(a) to join another defendant, there would be no basis for doing so in this case. All of the reasons discussed above in the context of mandatory joinder apply to permissive joinder with equal force: (1) The current parties are sufficient to litigate this case and determine the appropriate relief; (2) permitting joinder would circumvent FECA's enforcement procedures and undermine the Commission's sole authority to bring civil actions for violations of the Act; and (3) to the extent any evidence regarding Buchanan's alleged conduct is relevant, Kazran can seek to introduce such evidence regardless of whether Buchanan is joined as a defendant. In sum, adding another defendant to this relatively streamlined case — in which one defendant has admitted his illegal conduct and the other has defaulted — would not promote judicial efficiency, conserve governmental

resources, or have any other benefits sufficient to justify joinder under Rule 20.[5] *See Jones v. Taylor*, 2010 WL 5638567, at *4-*5 ("Requiring [movant] to file a separate lawsuit regarding this claim would enable the present case to proceed in a more efficient manner, and the [separate] claim . . . to proceed more efficiently as well.").

III. CONCLUSION

For the foregoing reasons, the Commission respectfully requests that the Court deny defendant Sam Kazran's motion to join additional parties to this action.

Respectfully submitted,

Christopher Hughey
Acting General Counsel
chughey@fec.gov

David Kolker
Associate General Counsel
dkolker@fec.gov

[5] No statute or rule authorizes Kazran's request (Mot. to Join at 6) to "transfer" to this Court certain state-court litigation regarding his business disputes with Buchanan, *see* 28 U.S.C. § 1441 (requirements for removal), and that request is untimely regardless, 28 U.S.C. § 1446(b) (thirty-day deadline for removal). To the extent Kazran can be construed as seeking leave to file a third-party complaint against Buchanan under Rule 14, the motion should be denied because neither the state-court actions nor Kazran's assertions that Buchanan violated FECA appear to present any legal or factual basis under which Buchanan could be "liable to [Kazran] for all or part of the [Commission's] claim against [Kazran]." Fed. R. Civ. P. 14(a); *see United States v. Olavarrieta*, 812 F.2d 640, 643 (11th Cir. 1987) (denying defendant's motion to join third-party defendant in civil case brought by federal government where third-party's liability was "independent of [defendant's] liability to the government"); *see also U.S. Distribs., Inc. v. Block*, Civ. No. 09-21635, 2010 WL 337669 (S.D. Fla. Jan. 22, 2010) (granting motion to strike third-party complaint where defendant in contract suit alleged that third-party defendant had fraudulently induced existing defendant to enter into contract; complaint was improper under Rule 14(a) because it did not state claim for indemnification); *Vision Bank v. Swindall*, Civ. No. 09-442-CG-M, 2009 WL 3158194 (S.D. Ala. Sept. 28, 2009) (denying leave to file third-party complaint where defendant in real estate contract case asserted claims against third party who had stake in same underlying property; Rule 14(a) was not applicable because third-party defendant's liability to defendant was not contingent on defendant's liability to plaintiff).

Kevin Deeley
Assistant General Counsel
kdeeley@fec.gov

/s/ Adav Noti
Erin Chlopak
Adav Noti
echlopak@fec.gov
anoti@fec.gov
Attorneys

Federal Election Commission
999 E Street NW
Washington, DC 20463
(202) 694-1650

July 29, 2011

UNITED STATES DISTRICT COURT
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FEDERAL ELECTION COMMISSION, Plaintiff, v. SAM KAZRAN a/k/a Sam Khazrawan, et al., Defendants.	Civ. No. 3:10-1155-J-RBD-JRK

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 2011, I caused Plaintiff Federal Election Commission's Opposition to Defendant Sam Kazran's Request for Leave to Join Additional Parties to be served on Defendant 11-2001 LLC's registered agent by first class mail, and on Defendant Sam Kazran by email pursuant to Fed. R. Civ. P. 5(b)(2)(E), at the addresses listed below:

Joelle Fisher
Registered Agent for 11-2001 LLC
Law Office of Robert Eckard
3110 Alternate U.S. 19 North
Palm Harbor, FL 34682

Sam Kazran
Kazran52@aol.com

/s/ Adav Noti
Adav Noti
Attorney
Federal Election Commission
999 E Street NW
Washington, DC 20463
(202) 694-1650