UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FEDERAL ELECTION COMMISSION, Plaintiff, v. LATPAC, and CHALIN M. ASKEW, in his official capacity as treasurer of LATPAC, Defendants.	Civ. No. 21-6095 MEMORANDUM IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT

MEMORANDUM IN SUPPORT OF THE FEDERAL ELECTION COMMISSION'S MOTION FOR DEFAULT JUDGMENT

Lisa J. Stevenson
Acting General Counsel
lstevenson@fec.gov

Kevin Deeley
Associate General Counsel
kdeeley@fec.gov

Harry J. Summers
Assistant General Counsel
hsummers@fec.gov

Haven Ward
Attorney
hward@fec.gov

Counsel for Plaintiff
Federal Election commission
1050 First Street, NE
Washington, DC 20463
(202) 694-1650

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Regulations

Miscellaneous

INTRODUCTION

Default judgment is warranted against defendants LatPAC, a political committee, and Chalin M. Askew, in his official capacity as treasurer of LatPAC, under Federal Rule of Civil Procedure 55(b)(2). On January 7, 2022, the Court directed the Clerk of Court to issue a certificate of default against both defendants, which she did on January 12, 2022. With its well-pleaded allegations thus admitted, the Federal Election Commission ("FEC" or "Commission") has established that, beginning in 2016 and continuing through today, defendants have violated and continue to violate the Federal Election Campaign Act ("FECA" or "the Act") by failing to file more than sixteen statutorily-required disclosure reports. *See* 52 U.S.C. § 30104(a), (b). And defendants have done so despite repeated notices from the Commission regarding their legal obligations. This failure to file reports contravenes FECA's important disclosure requirements by depriving the public of required information and frustrates the Commission's ability to enforce FECA, so the Court should order appropriate remedies, including a substantial civil penalty. Although the statute authorizes a penalty for defendants' violations of up to $328,448, the Commission requests that, in view of all relevant factors, the Court impose a penalty of at least $56,400. The Commission also requests that the Court enter declaratory and injunctive relief against defendants LatPAC and Askew, in his official capacity as treasurer, so as to further vindicate the important public interests FECA serves.

BACKGROUND

I. RELEVANT STATUTORY AND REGULATORY PROVISIONS

FECA establishes a system to make public the financing and spending of money in federal election campaigns. 52 U.S.C. §§ 30101-30146. Under FECA, groups that fall within the definition of a "political committee" are required to register with the Commission by filing a

statement of organization, and any change to the information therein must be reported no later than 10 days after the date of the change.[1] *Id.* § 30103(a)-(c); 11 C.F.R. §§ 102.1-102.2. In addition to other organizational requirements, FECA requires a political committee to appoint a treasurer and makes him or her responsible for the political committee's compliance with certain reporting and recordkeeping requirements of the Act.[2] 52 U.S.C. §§ 30102(a)-(d), 30104(a)(1); 11 C.F.R. §§ 102.7(a), 102.9, 104.1(a), 104.14(d).

Political committees and their treasurers must file reports of receipts and disbursements with the FEC according to the schedules prescribed in FECA. 52 U.S.C. § 30104(a)-(b); 11 C.F.R. §§ 104.1, 104.3, 104.5. The required reports must include, *inter alia*, the total amount of all receipts, including but not limited to contributions; the total amount of all disbursements, including but not limited to expenditures; the amount of cash on hand at the beginning and end of a reporting period; and debts. 52 U.S.C. § 30104(b); 11 C.F.R. §§ 104.3(a)(1), (a)(2), (b)(1), (b)(3), and (d), 104.11. Debts and obligations must be continuously reported until they are extinguished. 52 U.S.C. § 30104(b)(8); 11 C.F.R. § 104.11(a).

A political committee's disclosure reports must also itemize certain receipts, including, *inter alia*, contributions aggregating more than $200 from a contributor during a calendar year. 52 U.S.C. § 30104(b)(3); 11 C.F.R. §§ 104.3(a)(4), 104.8. For itemized contributions, reports must identify the person who makes the contributions, along with the name, address, occupation,

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[1] A "political committee" is "any committee, club, association, or other group of persons which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures aggregating in excess of $1,000 during a calendar year," 52 U.S.C. § 30101(4)(A), and has "the major purpose of . . . the nomination or election of a candidate" for federal office, *Buckley v. Valeo*, 424 U.S. 1, 79 (1976) (per curiam).

[2] *See also generally FEC v. Toledano*, 317 F.3d 939, 947 (9th Cir. 2002) (discussing the unique statutory role of political committee treasurers and their resulting potential liability for FECA violations); FEC, *Statement of Policy Regarding Treasurers Subject to Enf't Proc.*, 70 Fed. Reg. 3 (Jan. 3, 2005) (discussing political committee treasurers' potential liability in their official and/or personal capacities).

and name of employer of the contributor, and the date and amount of receipt of the contribution. 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. §§ 104.3(a)(4), 104.8. Similarly, reports must itemize certain disbursements. 52 U.S.C. § 30104(b)(5); 11 C.F.R. §§ 104.3(b)(3), 104.9. For itemized disbursements, reports must reflect the name and address of the payee and the purpose, date, and amount of the disbursement. 52 U.S.C. § 30104(b)(5)(A); 11 C.F.R. §§ 104.3(b)(3), 104.9.

Unauthorized political committees that elect to file on a quarterly, as opposed to monthly, basis are required, during an election year, to file quarterly and post-general election reports and, during a non-election year, to file mid-year and year-end reports.[3] 52 U.S.C. § 30104(a); 11 C.F.R. § 104.5(c). The reporting of amounts of receipts and disbursements is generally required for the current reporting period and cumulatively for the related calendar year. 52 U.S.C. § 30104(a)(7); 11 C.F.R. § 104.3. However, the first report filed by a newly-registered political committee must include the total of all amounts received and disbursed, even if such amounts were not received or disbursed during the first-applicable reporting period. 11 C.F.R. § 104.3(a)-(b).

An unauthorized political committee cannot unilaterally terminate itself. To be eligible to terminate, the committee must (a) "no longer receive any contributions or make any disbursements," and (b) have "no outstanding debts and obligations." 11 C.F.R. § 102.3(a)(1); *see also* 52 U.S.C. § 30103(d). And to effectuate termination, the committee must file the required termination report with the FEC. 52 U.S.C. § 30103(d); 11 C.F.R. § 102.3(a)(1).

[3] "A political committee is either an authorized committee or an unauthorized committee." 11 C.F.R. § 100.5(f). An "unauthorized committee" is "a political committee which has not been authorized . . . by a candidate to solicit or receive contributions or make expenditures on [their] behalf." *Id.* § 100.5(f)(2).

II. PROCEDURAL HISTORY

After satisfying FECA's jurisdictional prerequisites (Compl. ¶¶ 31-42), the Commission filed a complaint in this Court on July 15, 2021, alleging that LatPAC and Askew, in his official capacity as treasurer, had violated 52 U.S.C. § 30104(a) and (b) by failing to file LatPAC's statutorily-required disclosure reports and failing to disclose LatPAC's receipts, disbursements, cash on hand, and debts (Compl. ¶ 45). On August 13, 2021, Askew executed waivers of service on behalf of LatPAC and himself. (LatPAC Waiver of Serv. of Summons, Docket No. 14; Askew Waiver of Serv. of Summons, Docket No. 15.)

On November 2, 2021, Askew filed a purported answer on behalf of himself and LatPAC. (*See generally* Answer, Docket No. 18.) That same day, he also filed a notice of *pro se* appearance and consent to electronic service. (Notice of Appearance, Docket No. 16; Consent to Elec. Serv., Docket No. 17.)

On November 5, 2021, the Court ordered the parties to appear for a telephone conference, which was held on November 12, 2021. (Nov. 5, 2021 Minute Order, Docket No. 20; Nov. 12, 2021 Order, Docket No. 21.) Despite attempts to contact Askew at the time of the conference, no one appeared on behalf of defendants. (*See* Nov. 12, 2021 Order at 1.)

Following this conference, the Court entered an order finding that defendants' answer was "defective, as it [did] not respond to the allegations in the Complaint," and directed Askew to file a new responsive pleading by December 15, 2021. (Nov. 12, 2021 Order at 2 (*comparing* Compl. ("containing 46 numbered paragraphs"), *with* Answer ("responding to 24 numbered paragraphs")).) The Court warned that failure to comply with its orders, "including by failing to appear at future conferences," might result in default judgment being entered. (*Id.*) The Court also found that, because "an artificial entity cannot appear *pro se* in court," Askew could not

represent LatPAC in these proceedings, and it ordered LatPAC to appear by counsel by no later than December 15, 2021. (*Id.* at 1 & n.1 (collecting cases).) The Court warned that, "if LatPAC does not appear by counsel, a default may be entered against it." (*Id.* at 1-2.)

Finally, the Court ordered the parties to appear for another telephone conference, which was subsequently held on January 4, 2022. (Nov. 12, 2021 Order at 2; Jan. 7, 2022 Op. & Order ("Default Op.") at 1, Docket No. 23.) Again, no one appeared on behalf of defendants. (Default Op. at 3.)

On January 7, 2022, the Court directed the Clerk of Court to enter default against defendants under Federal Rule of Civil Procedure 55(a). (Default Op. at 5; *see also id.* at 3 (holding that "a magistrate judge. . . may direct the Clerk of Court to enter a default pursuant to the referral for general pretrial management"); Jan. 6, 2022 Am. Referral Order, Docket No. 23.) First, the Court found that a default should be entered against LatPAC because, as an artificial entity, it could only appear by counsel and, despite the Court's warning regarding the risk of default judgment for failing to do so, LatPAC did not appear by counsel by the deadline set by the Court. (Default Op. at 4 (collecting cases where artificial entity defaulted due to failure to appear by counsel); *see also id.* at 3.)

Second, the Court found that a default should be entered against Askew because he had "failed to 'otherwise defend' this action." (*Id.* at 5 (quoting Fed. R. Civ. P. 55(a)).) The Court reasoned that Askew had filed a defective answer; did not appear at the November 12, 2021 conference as ordered; did not file an appropriate answer as ordered; and did not appear at the January 4, 2022 conference as ordered, despite the Court's warning regarding the risk of default judgment for failing to do so. (*Id.* at 4-5.)

For these reasons, the Clerk of Court issued a certificate of default against defendants on January 12, 2022. (Default, Docket No. 24.)

ARGUMENT

I. LATPAC AND ASKEW VIOLATED FECA

A. Standard of Review

On a motion for default judgment under Federal Rule of Civil Procedure 55(b)(2), "a party's default is deemed to constitute a concession of all well pleaded allegations of liability[.]" *Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty Corp.*, 973 F.2d 155, 158 (2d Cir. 1992). Accordingly, when determining whether a plaintiff's allegations establish a defendant's liability as a matter of law, "a court is required to accept all of the [plaintiff's] factual allegations as true and draw all reasonable inferences in its favor." *Finkel v. Romanowicz*, 577 F.3d 79, 84 (2d Cir. 2009).

B. The Facts Alleged in the Complaint Establish Liability

On June 29, 2016, LatPAC registered with the FEC as an unauthorized political committee that supports or opposes more than one federal candidate. (Compl. ¶ 23; *see also id.* ¶ 21 (LatPAC's bylaws stated that it is "a political committee organized to raise funds to contribute to candidates, ballot measures, and political committees that support core Latino issues" (internal quotation marks omitted)); *id.* ¶ 26 (LatPAC filed an effectively identical statement of organization on March 16, 2017).) LatPAC designated Askew as its treasurer.[4] (*Id.* ¶ 23; *see also id.* ¶ 26.) Accordingly, thereafter, FECA required LatPAC and Askew, as its treasurer, to regularly file disclosure reports with the Commission. *See* 52 U.S.C. § 30104(a); 11 C.F.R. §§ 104.1(a), 104.5(c).

[4] Askew is also LatPAC's Executive Director. (Compl. ¶ 22.)

Between October 2016 and December 2020, LatPAC and Askew failed to file sixteen statutorily-required disclosure reports. (Compl. ¶¶ 1, 28.) Specifically, they were required to — but failed to file — a 2016 October Quarterly Report, 2016 Post-General Election Report, 2016 Year-End Report, 2017 Mid-Year Report, 2017 Year-End Report, 2018 April Quarterly Report, 2018 July Quarterly Report, 2018 October Quarterly Report, 2018 Post-General Election Report, 2018 Year-End Report, 2019 Mid-Year Report, 2019 Year-End Report, 2020 April Quarterly Report, 2020 July Quarterly Report, 2020 October Quarterly Report, and 2020 Post-General Election Report. (*Id.* ¶ 28.)

FECA required LatPAC and Askew to disclose in those reports, as well as in the first and only report they did file, information regarding *all* of LatPAC's receipts and disbursements, including itemization above the applicable thresholds.[5] *See* 52 U.S.C. § 30104(a)-(b); 11 C.F.R. § 104.3(a)-(b). LatPAC and Askew, however, failed to report *any* receipts or disbursements by LatPAC at any time whatsoever. (Compl. ¶¶ 24, 33.) Yet LatPAC accepted — but failed to disclose — more than $92,000 in receipts, including more than 225 separate contributions. (*Id.* ¶ 36; *cf.* ¶ 31.) LatPAC also made — but failed to disclose — more than $92,000 in disbursements. (*Id.* ¶ 36.)

In addition, FECA required LatPAC and Askew to disclose LatPAC's debts and obligations in the above reports. *See* 52 U.S.C. § 30104(b)(8); 11 C.F.R. § 104.11. LatPAC and Askew, however, failed to disclose any of LatPAC's debts or obligations at any time, including a debt of $4,000 incurred in late 2017 and which was still outstanding as of September 2020. (Compl. ¶ 36.)

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[5] LatPAC's 2016 July Quarterly Report disclosed no activity. (Compl. ¶ 24.)

In sum, the Commission has established that LatPAC and Askew, in his official capacity as treasurer, are liable as a matter of law for violating FECA, 52 U.S.C. § 30104(a) and (b), by failing to file LatPAC's statutorily-required disclosure reports and failing to disclose LatPAC's receipts, disbursements, and debts.

II. THE COURT SHOULD ISSUE A FINAL JUDGMENT THAT INCLUDES A CIVIL PENALTY AS WELL AS DECLARATORY AND INJUNCTIVE RELIEF

With defendants' liability thus established, the Court should impose appropriate remedies against defendants. Courts may remedy FECA violations by "grant[ing] a permanent or temporary injunction, restraining order, or other order, including a civil penalty[.]" 52 U.S.C. § 30109(a)(6)(B). Here, for the reasons explained below, the Commission respectfully requests that the Court order defendants to pay a $56,400 civil penalty (Compl., Prayer for Relief (D)); issue a declaration that LatPAC and Askew, as treasurer, violated the Act (*id.*, Prayer for Relief (A)); order defendants to file all statutorily-required disclosure reports that are past due (*id.*, Prayer for Relief (B)); and permanently enjoin defendants from failing to file LatPAC's future statutorily-required disclosure reports (*id.*, Prayer for Relief (A)).

A. The Court Should Impose a Substantial Civil Penalty to Punish Defendants' Violations, Deter Future Violations, and Promote Public Confidence in Government and the Federal Campaign Finance System

1. Applicable Standard

The Court's inquiry here "involves two tasks: determining the proper rule for calculating damages on [the relevant] claim, and assessing plaintiff's evidence supporting the damages to be determined under this rule." *Credit Lyonnais Sec. (USA), Inc. v. Alcantara*, 183 F.3d 151, 155 (2d Cir. 1999). Damages must be ascertained "with reasonable certainty," *id.*, "based on admissible evidence," *House v. Kent Worldwide Mach. Works, Inc.*, 359 F. App'x 206, 207 (2d Cir. 2010).

Rather than holding a hearing, the court "may determine there is sufficient evidence . . . [based] upon a review of detailed affidavits and documentary evidence." *Cement & Concrete Workers Dist. Council Welfare Fund v. Metro Found. Contractors Inc.*, 699 F.3d 230, 234 (2d Cir. 2012); *see also id.* (holding that courts have "much discretion" regarding whether to conduct a damages hearing (citation omitted)); Jan. 13, 2022 Order at 2, Docket No. 25. This is particularly appropriate when, as here, a plaintiff seeks statutory damages. *See Hirsch v. Sell It Soc., LLC*, No. 20 CV 153-LTS-BCM, 2020 WL 5898816, at *4 (S.D.N.Y. Oct. 5, 2020) ("Because Plaintiff seeks statutory damages, no hearing is necessary."); *Bass v. Diversity Inc. Media*, No. 19-CV-2261 (AJN), 2020 WL 2765093, at *3 (S.D.N.Y. May 28, 2020) (finding no hearing necessary "[p]articularly since plaintiff seeks statutory damages" (internal quotation marks omitted)).

2. The Appropriate Monetary Remedy for LatPAC and Askew's FECA Violations Is a Civil Penalty of $56,400

FECA authorizes the Court to order a defendant who has violated FECA to pay a civil penalty and provides a statutory basis for calculating the amount of such a penalty. 52 U.S.C. § 30109(a)(6)(B). For each of LatPAC and Askew's FECA violations, the Court may impose a civil penalty up to the greater of $20,528 or the amount of any contribution or expenditure involved in the violation. *See id.*; 11 C.F.R. § 111.24(a)(1) (Jan. 2021); FEC, *Civil Monetary Penalties Ann. Inflation Adjustments*, 86 Fed. Reg. 1737-02 (Jan. 11, 2021); Compl., Prayer for Relief (F).

Under the first method, the civil penalty for defendants' failure to file sixteen statutorily-required disclosure reports in violation of 52 U.S.C. § 30104(a) and (b) may be up to $328,448. Specifically, sixteen violations at $20,528 per violation equals a $328,448 total penalty. (Decl. of Kristin D. Roser ("Roser Decl.") ¶¶ 5-6; *see also* Compl. ¶¶ 1, 19, 29.) Under the latter

method, the civil penalty may be up to $188,000. Specifically, defendants failed to disclose more than $92,000 in receipts, plus more than $92,000 in disbursements, and $4,000 in debt, for a total amount in violation of at least $188,000. Decl. of Dominique Dillenseger ("Dillenseger Decl.") ¶¶ 14-15; *see also* 52 U.S.C. § 30101(9)(A)(ii) (including debts in the definition of "expenditure"); Compl. ¶ 36.

While the Court thus has the discretion to impose a penalty up to the greater amount of $328,448, in view of the relevant factors, the Commission requests a more modest penalty of $56,400, or 30% of $188,000. The purpose of a civil penalty is "to punish culpable individuals, deter future violations, and prevent the conduct's recurrence." *New York v. United Parcel Serv., Inc.*, 942 F.3d 554, 599 (2d Cir. 2019). When determining the appropriate civil penalty in FECA cases, courts generally consider: "(1) the good or bad faith of the defendants; (2) the injury to the public; (3) the defendant's ability to pay; and (4) the necessity of vindicating the authority of the responsible federal agency." *FEC v. Odzer*, No. 05 CV 3101 NG RML, 2006 WL 898049, at *4 (E.D.N.Y. Apr. 3, 2006) (adopting R&R) (quoting *FEC v. Furgatch*, 869 F.2d 1256, 1258 (9th Cir. 1989)); *see also, e.g.*, *FEC v. Craig for U.S. Senate*, 70 F. Supp. 3d 82, 97 (D.D.C. 2014), *aff'd*, 816 F.3d 829 (D.C. Cir. 2016).

In this case the first factor, the good or bad faith of the defendants, weighs in favor of a significant penalty. As LatPAC's bylaws underscore, the committee and Askew, its founder and treasurer, have long been aware that federal law imposes recordkeeping and reporting obligations on political committees and their treasurers. (Dillenseger Decl., Exh. B (LatPAC's bylaws) at 3; *see also* Compl. ¶ 21.) Between October 31, 2016 and December 18, 2020, the Commission's Reports Analysis Division sent LatPAC and Askew sixteen letters regarding their failure to file LatPAC's statutorily-required disclosure reports. (Roser Decl. ¶ 6 & Exh. A; *see also* Compl.

¶ 29.) In addition, after numerous attempts by the FEC's Office of the General Counsel to contact them during the administrative enforcement process, in November 2019, LatPAC and Askew acknowledged their reporting "errors" and promised to take corrective action by, *inter alia*, filing all past due reports by January 1, 2020 and timely filing all required reports going forward. (Dillenseger Decl. ¶¶ 5-8 & Exh. A at 3; *see also* Compl. ¶¶ 32, 35, 37.) Yet to date, LatPAC and Askew have not filed a 2016 October Quarterly Report or any of the other required disclosure reports, including reports due for 2021 activity. (Roser Decl. ¶¶ 5-8 & Exhs. A-B.) In addition, defendants' failures to comply with this Court's orders or to participate meaningfully in this litigation (*see* Default Op. at 2-5) — despite their awareness of the case, as shown by the initial filings they did make (*see* Docket Nos. 14-18) — evidence a lack of good faith, at a minimum.

The second factor, injury to the public from the FECA violations shown here, likewise favors a substantial penalty. As the Ninth Circuit held in *Furgatch*, "[t]he importance of the [Act's] reporting and disclosure provisions, and the difficulty of proving that violations of them actually deprived the public of information, justify a rule allowing a district court to presume harm to the public from the magnitude or seriousness of the violations of these provisions." 869 F.2d at 1259 (footnote omitted); *see also FEC v. O'Donnell*, C.A. No. 15-17-LPS, 2017 WL 1404387, at *3 (D. Del. Apr. 19, 2017) (same (quoting *FEC v. Am. Fed'n of State, Cnty. & Mun. Emps.—P.E.O.P.L.E. Qualified*, Civ. A. No. 88-3208 (RCL), 1991 WL 241892, at *2 (D.D.C. Oct. 31, 1991))); *FEC v. Comm. of 100 Democrats*, 844 F. Supp. 1, 8 (D.D.C. 1993) (quoting *Furgatch*). As the Supreme Court has repeatedly recognized, FECA's disclosure requirements serve several important interests by "providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the

data necessary to enforce more substantive electioneering restrictions." *McConnell v. FEC*, 540 U.S. 93, 196 (2003); *see also Buckley*, 424 U.S. at 66-68. By failing to file the required disclosure reports, LatPAC and Askew have thwarted these important public interests.

The third factor, ability or inability to pay, does not appear to weigh significantly one way or the other. Defendants have not participated in the Commission's administrative enforcement process or this litigation sufficiently for their ability to pay to be determined with precision, and of course the lack of complete information about LatPAC's financial status and activity is the central issue in the case. But the Commission's investigation did reveal that, as of July 6, 2018, LatPAC had received more than $92,000 in deposits. (Dillenseger Decl. ¶ 14; *see also* Compl. ¶ 36; *cf. id.* ¶ 31.) And LatPAC, which is also doing business as Democratic Voter Project, has continued to seek contributions. (Decl. of Haven G. Ward ¶¶ 9-11 & Exhs.C-G; *see also* Compl. ¶ 6.) In addition, in their November 2019 letter to the Commission, LatPAC and Askew stated that another part of the "corrective action" that they would take to remedy their violations was to refund certain contributions totaling $31,388 by June 29, 2020 and satisfy an outstanding debt to an independent contractor, which was $4,000, for a total of $35,388. (Dillenseger Decl., Exh. A at 3.) Thus, defendants appear to have the ability to pay a substantial civil penalty.

The fourth and final factor, the necessity of vindicating the Commission's authority, again weighs in favor of a significant penalty. Courts determining penalties for FECA violations should consider the penalty's deterrent effect. *See O'Donnell*, 2017 WL 1404387, at *2; *Craig for U.S. Senate*, 70 F. Supp. 3d at 99-100. "[T]he efficacy of any regulatory program depends on the sanctions imposed in individual cases"; "[i]f these sanctions are set too low, potential violators may be insufficiently motivated to minimize the social harm resulting from their

behavior, or society may be under compensated for the harm that does occur." *United States v. Reader's Digest Ass'n*, 662 F.2d 955, 967 n.16 (3d Cir.1981) (internal quotation marks omitted); *cf. Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 185-87 (2000) ("[I]t is reasonable for Congress to conclude that an actual award of civil penalties does in fact bring with it a significant quantum of deterrence over and above what is achieved by the mere prospect of such penalties."); *United States v. ITT Cont'l Baking Co.*, 420 U.S. 223, 231 (1975) (recognizing that, to be an effective deterrent, a civil penalty must be large enough so that potential violators will not regard it as "nothing more than an acceptable cost of violation"). It is, therefore, critical that the civil penalty imposed here be substantial enough to create a real financial disincentive for political committees and their treasurers to violate FECA's disclosure requirements.

The vast majority of FECA reporting violations are resolved through the statutorily mandated conciliation process, 52 U.S.C. § 30109(a)(4)(A). If FECA penalties imposed after litigation are not generally higher than those arrived at through the statutory procedure of voluntary conciliation, the Commission's ability to administer and enforce the statute through the conciliation process — which is the "preferred method of dispute resolution under FECA," *FEC v. NRA*, 553 F. Supp. 1331, 1338 (D.D.C. 1983) — will be undermined. *See O'Donnell*, 2017 WL 1404387, at *3 ("[T]he Commission's authority is best vindicated by a civil penalty that is higher than what could have been obtained during conciliation."). Otherwise, a perverse incentive could be created for parties to forego meaningful efforts at conciliation in favor of litigation to delay liability and achieve a lesser civil penalty. *Cf. Comm. of 100 Democrats*, 844 F. Supp. at 7. Such an outcome would also increase the workload of courts, which benefit from FECA's policy of encouraging pre-litigation settlement. Although the FEC cannot disclose

any penalty amount discussed in conciliation, *see* 52 U.S.C. § 30109(a)(4)(B)(1), a substantial civil penalty for defendants' violations here is warranted to deter future FECA violations.

Accordingly, a civil penalty of $56,400 is appropriate. While it is only a portion of the potential maximum penalties of $328,448 or $188,00, it is still substantial enough to punish defendants, vindicate the public's and the Commission's important interests, and deter future violations by defendants and others.

B. In Light of Defendants' FECA Violations, as Well as Their Persistent Recalcitrance, the Court Should Award Declaratory and Injunctive Relief

1. Standard for Issuance

"A court may issue an injunction on a motion for default judgment provided that the moving party shows that (1) it is entitled to injunctive relief under the applicable statute and (2) it meets the prerequisites for the issuance of an injunction." *Gucci Am., Inc. v. Tyrrell-Miller*, 678 F. Supp. 2d 117, 120 (S.D.N.Y. 2008) (internal quotation marks omitted). The same is true for declaratory relief. *See Am. Fruit & Vegetable Co. v. Ithaca Produce, Inc.*, 848 F. Supp. 2d 375, 377 (W.D.N.Y. 2011) (entering default judgment after finding declaratory relief to be appropriate).

2. Defendants' Conduct Warrants a Declaration That They Violated FECA, an Order Directing Them to File All Past-Due Disclosure Reports, and a Permanent Injunction Against Future Violations of FECA

At the outset, LatPAC and Askew are subject to injunctive and declaratory relief because, as established above (*supra* pp. 6-8), they have violated FECA. FECA explicitly authorizes the Court to grant a permanent injunction and "other orders" to remedy violations of the Act. 52 U.S.C. § 30109(a)(6)(B). The Commission seeks a declaration that defendants LatPAC and Askew violated the Act's disclosure requirements; an order requiring defendants to file all statutorily-required disclosure reports that are past due; and a permanent injunction precluding

defendants from committing future FECA disclosure violations, *i.e.*, requiring defendants to file all future statutorily-required disclosure reports. Each of these remedies is warranted here.

Because their liability has been established, the Court should enter an order declaring that LatPAC and Askew, in his official capacity as LatPAC's treasurer, violated 52 U.S.C. § 30104(a) and (b) by failing to file LatPAC's statutorily-required disclosure reports and failing to disclose LatPAC's receipts, disbursements, and debts. *See Craig for U.S. Senate*, 70 F. Supp. 3d at 101 (holding that court will issue a declaration that defendants violated FECA where "the Court has already determined that defendants [violated it]"); *Odzer*, 2006 WL 898049, at *1 (granting motion for default judgment including a declaration that defendant violated FECA).

The Court should also order defendants to file all overdue reports and disclose all information to the Commission as required by FECA and Commission regulations. *See Comm. of 100 Democrats*, 844 F. Supp. at 8 (ordering defendants to file required disclosure reports within 10 days). As discussed above, the information these reports would provide furthers important public interests, *supra* pp. 11-12, to which the public is legally entitled. Defendants have failed to correct their disclosure violations despite the FEC's repeated attempts to resolve the issues informally and through conciliation, and despite their promise that they would do so. (Dillenseger Decl. ¶¶ 5-7, 9-10, 12-13 & Exh. A at 3; Roser Decl. ¶¶ 5-8 & Exhs. A-B; *see also* Compl. ¶¶ 25, 27-29, 32, 35, 37-38, 40-41.) Thus, the FEC's only recourse to obtain the required filings and information and to protect the public interest in campaign finance transparency is through a Court order.

Finally, the Court should permanently enjoin LatPAC and Askew, in his official capacity as LatPAC's treasurer, from future violations of 52 U.S.C. § 30104(a) and (b). "An injunction prohibiting a party from violating statutory provisions is appropriate where there is a likelihood

that, unless enjoined, the violations will continue." *SEC v. Suman*, 684 F. Supp. 2d 378, 391 (S.D.N.Y. 2010), *aff'd*, 421 F. App'x 86 (2d Cir. 2011) (quoting *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1477 (2d Cir.1996)).

Defendants' conduct demonstrates that, without such an order, there is a substantial likelihood that their failures to comply with LatPAC's statutory reporting obligations — obligations which persist since LatPAC remains a registered political committee (Roser Decl. ¶ 9) — will continue in the future. Defendants' lawbreaking was not an isolated incident: It began in 2016 and, despite numerous attempts by the FEC over several years to remedy their disclosure violations, continues today. (Dillenseger Decl. ¶¶ 5-7, 9-10, 12-13; Roser Decl. ¶¶ 5-8 & Exhs. A-B; *see also* Compl. ¶¶ 1, 24-25, 27-29, 32-41.) Indeed, even after the filing of the FEC's complaint, LatPAC and Askew have failed to file LatPAC's statutorily-required 2020 Year-End Report, 2021 Mid-Year Report, and 2021 Year-End Report. (Roser Decl. ¶¶ 5, 7-8 & Exh. B.) In addition, LatPAC and Askew's "failure to participate [before the FEC] and in this litigation are further indications that an injunction is necessary to ensure that [they] will not continue to violate the Act in the future." *Odzer*, 2006 WL 898049, at *5; *see also* Default Op. at 2-5; Dillenseger Decl. ¶¶ 5-7, 9-13; Compl. ¶¶ 32, 37-38, 41. These circumstances are more than sufficient to demonstrate the need for an injunction to ensure that defendants' disclosure violations do not continue. *See Comm. of 100 Democrats*, 844 F. Supp. at 8 ("Given that the defendants have failed to act diligently in the past, do not face a complex obligation, and present the possibility that they may commit further violations, injunctions against such future [disclosure] violations are warranted."). The public is entitled to the reassurance that an injunction, backed by the civil contempt power, would provide against any repetition by defendants of the campaign finance violations shown in this case.

CONCLUSION

For the foregoing reasons, the Commission's motion for default judgment should be granted and the following relief awarded: imposition of a civil penalty on defendants of $56,400; a declaration that LatPAC and Askew, in his official capacity as LatPAC's treasurer, violated 52 U.S.C. § 30104(a) and (b); an order directing defendants to file all past-due disclosure reports; and a permanent injunction prohibiting defendants from failing to file any of LatPAC's statutorily-required disclosure reports in the future.

Respectfully submitted,

Lisa J. Stevenson
Acting General Counsel
lstevenson@fec.gov

Kevin Deeley
Associate General Counsel
kdeeley@fec.gov

Harry J. Summers
Assistant General Counsel
hsummers@fec.gov

/s/ *Haven G. Ward*
Haven Ward
Attorney
hward@fec.gov

COUNSEL FOR PLAINTIFF
FEDERAL ELECTION COMMISSION
1050 First Street, NE
Washington, DC 20463
(202) 694-1650

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