

October 17, 2012

Anthony Herman, Esquire
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

MUR # 6668

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FEDERAL ELECTION
COMMISSION

Re: Jay Chen, Jay Chen for Congress, America Shining, and Mailing Pros Inc.

Dear Mr. Herman:

Pursuant to 2 USC § 437g(a)(1) and 11 CFR § 111.4, please accept this letter as a Complaint against Jay Chen ("Chen"), Jay Chen for Congress ("Committee"), America Shining ("Shining") and Mailing Pros Inc. ("MPI") for operating in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Federal Election Commission ("FEC" or "Commission") regulations, more specifically, for violation of the prohibition on coordination set forth in 11 CFR § 109.21.

Facts

Jay Chen for Congress is the authorized principal campaign committee for Jay Chen, a candidate for California's 39th Congressional District. Chen filed an amended FEC Form 2 Statement of Candidacy on February 6, 2012.¹ The Committee filed an amended FEC Form 1 Statement of Organization on March 13, 2012.²

Shining is an Independent Expenditure Only Committee that makes independent expenditures on behalf of Federal candidates. Shining filed an amended FEC Form 1 Statement of Organization on August 29, 2012.³ According to an article on The Orange County Register website, all contributions to Shining have come from Shaw Chen, the brother of Jay Chen.⁴

MPI is a business, incorporated and filed with the California Secretary of State as of March 6, 2010.⁵ MPI provides mail shop services, including running mailing campaigns.

¹ FEC Candidate Database, <http://images.nictusa.com/pdf/166/12030732166/12030732166.pdf>, Accessed 10/17/2012

² FEC Committee Database, <http://images.nictusa.com/pdf/668/12030753668/12030753668.pdf>, Accessed 10/17/2012

³ FEC Committee Database, <http://images.nictusa.com/pdf/689/12952853689/12952853689.pdf#navpanes=0>, Accessed 10/17/2012

⁴ Mysterious congressional donor revealed, <http://totalbuzz.ocregister.com/2012/10/16/mysterious-congressional-donor-unveiled/89125/>, accessed 10/17/2012

⁵ Business Entity Detail, California Secretary of State, Entity Name: Mailing Pros, Inc., Entity Number: C2221527, <http://kepler.sos.ca.gov/cbs.aspx>, Accessed 10/17/2012

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In the last month, voters in California's 39th District received a number of direct mail pieces regarding the district's congressional election paid for by Shining. Appendix 1 and 2. The direct mail piece in Appendix 1 included the following language over a photo of an elderly couple, "It's their Medicare. They paid for it. But Ed Royce was the voice for ending it and raising taxes on the middle class. Ed Royce. The Wrong Voice. The Wrong Choice." The mail piece in Appendix 2 included the following language over a photo of the candidate mentioned "Small Businessman Jay Chen, a New Leader for a Brighter Future, Vote Jay Chen for Congress on Tues., Nov. 6." Both of these mail pieces included the following disclaimer "Paid for by America Shining and not authorized by any candidate or Candidates Committee. 1592 Union Street # 320, San Francisco, CA 94123" and stated "US postage paid Mailing Pros Inc."

Over the same period, voters in California's 39th district received a positive direct mail piece paid for by the Committee. Appendix 3. The mail included the following language over a photo of the candidate mentioned, "Jay Chen for Congress ChanForCongress.com New Leadership. New Ideas." The mail piece included the following disclaimer, "Paid for by Jay Chen for Congress." The mail piece stated "US postage paid Mailing Pros Inc."

Relevant Law

When an individual or political committee pays for a communication that is coordinated with a candidate, the communication is considered an in-kind contribution to that candidate and is subject to the limits, prohibitions and reporting requirements of the federal campaign finance law.

A coordinated communication is a communication that satisfies a three pronged test. This test considers (1) the source of payment ("the payment prong"), (2) the subject matter of the communication ("the content prong") and (3) the interaction between the person paying for the communication and the candidate or political party committee ("the conduct prong"). 11 CFR § 109.21(a).

The payment prong is satisfied when the coordinated communication is paid for in whole or in part, by a person other than the candidate, an authorized committee or a political party committee with whom the communication is coordinated. 11 CFR § 109.21(a)(1). The content prong is satisfied, among other instances, when a public communication that expressly advocates the election or defeat of a clearly identified candidate for federal office. 11 CFR § 109.21(c)(3). The conduct prong is satisfied, among other instances, where the person paying for the communication employs a common vendor to create, produce or distribute the communication, and that vendor:

- Is currently providing services or provided services within the previous 120 days with the candidate or party committee that puts the vendor in a position to acquire information about the campaign plans, projects, activities or needs of the candidate or political party committee; and

- Uses or conveys information about the plans or needs of the candidate or political party, or information previously used by the vendor in serving the candidate or party, and that information is material to the creation, production or distribution of the communication. 11 CFR 109.21(d)(4).

In *Speech Now v. FEC*, the Supreme Court held that while Independent Expenditure Only Committees could raise unlimited funds, its holding did not affect limits on direct contributions to candidates or political party committees, including in-kind contributions in the form of coordinated communications. *Speech Now v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010). The FEC requires committees wishing to register as Independent Expenditure Only Committees to include the language below with their Statement of Organization, to clarify their intention to function as a committee consistent with *Speech Now v. FEC*:

This committee intends to make unlimited independent expenditures, and consistent with the U.S. Court of Appeals for the District of Columbia Circuit decision in *SpeechNow v. FEC*, it therefore intends to raise funds in unlimited amounts. This committee will not use those funds to make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates or committees.⁶

Legal Analysis

The direct mail pieces received by California 39th District voters in early September and mid-October are coordinated communications between the Committee and Shining. First, the mail pieces clearly state that they were paid for by Shining (Appendix 1 and 2) and the Committee (Appendix 3), respectively. This satisfies the payment prong of the coordinated communications test.

The mail pieces expressly advocated the election or defeat of a clearly identified candidate. The Shining mail piece in Appendix 1 expressly advocated the defeat of a Chen's opponent: "Ed Royce. The Wrong Voice. The Wrong Choice." The Shining mail piece in Appendix 2 expressly advocated for Chen's election "Vote Jay Chen for Congress." The Committee mail piece in Appendix 3 expressly advocated for the election of Chen: "Jay Chen for Congress. New Leaders. New Ideas." These statements satisfy the content prong of the test.

The Shining and Committee mailings, as evidenced by the postage information included on the mailings, employed a common vendor, Mailing Pros Inc., to distribute the communication. The vendor provided services to the Committee and Shining within 120 days of each other, which put the vendor in a position to acquire information about the campaign plans, projects, activities or needs of the candidate or political party committee. It follows that the vendor used or conveyed information about the plans or needs of the candidate or political party, or information previously used by the vendor in serving the

⁶ FEC FAQs on Political Action Committees, <http://www.fec.gov/rad/pacs/FederalElectionCommission/RAD-PACs.shtml#iec1>, accessed: 10/17/2012

candidate or party, and that information is material to the creation, production or distribution of the communication.

Having filed with the FEC as an Independent Expenditure Only Committee, America Shining expressly stated it would not use funds to make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates or committees.

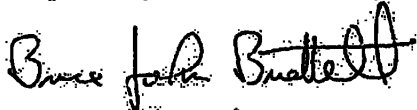
Independent Expenditure Only Committees are expressly prohibited from paying for coordinated communications. Shining and the Committee violated FEC regulations when they hired the same vendor within 120 days of one another and ran mailing campaigns that benefited from the vendor's knowledge of the plans and needs of the Committee.

Conclusion

Upon information and belief, and based upon the facts relayed herein, Jay Chen, Jay Chen for Congress, America Shining, and Mailing Pros Inc. have violated the Federal Election Campaign Act of 1971, as amended, and Federal Election Commission Regulations. Accordingly, we respectfully request that the Commission conduct an immediate investigation into the violations outlined above and impose the maximum penalty under law.

The foregoing is correct and accurate to the best of my knowledge, information and belief.

Respectfully submitted,




Bruce John Buettell

Fullerton, CA 92835

Sworn to and subscribed before me this 19th day of October, 2012.





Notary Public
My Commission Expires: Dec. 13, 2013

**PRINTED
US POSTAGE
PAID
MAILING PERMIT NO.**

APPENDIX

OR CURRENT RESIDENT:

FULLERTON CA 92831-1255



JAY CHEN SMALL BUSINESSMAN FOR CONGRESS



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SMALL BUSINESS A NEW LEADER. A



Meet small businessman Jay Chen. He's spent his life giving back to the community that's given him so much. He's a first generation American and a Hacienda Heights success story - he attended local public schools and earned a



scholarship to Harvard. He knows what it takes to create jobs and balance a budget. As a two-term Hacienda-La Puente School Board Member and former Board President, he led the district to higher test scores and student performance, and balanced the budget without laying off a single teacher. And Jay volunteers to help local students get into college, while also protecting America as an Intelligence Officer in the Naval Reserve.



We need more jobs and a strong economy. And Congress isn't getting it done. It's time for a businessman's real-world experience and common sense. Vote small businessman Jay Chen for Congress.

VOTE JAY CHEN FOR CO

IAN JAY CHEN FOR CONGRESS BRIGHTER FUTURE.

Jay Chen: A Businessman Who Will Get the Job Done

- ☒ **USE REAL WORLD BUSINESS EXPERIENCE TO BRING JOBS HOME TO OUR COMMUNITIES** and provide tax credits to companies who hire new workers.
- ☒ **PREPARE OUR KIDS FOR A GLOBAL ECONOMY** by hiring the best teachers and making computer science and foreign languages part of the standard curriculum.
- ☒ **SEND MORE STUDENTS TO COLLEGE** by investing in higher education and putting students in service oriented careers as a way of reducing their college debt.
- ☒ **STAND UP FOR SENIORS** and oppose any effort to privatize Social Security or end the Medicare program that seniors have paid into their whole lives.
- ☒ **SUPPORT OUR VETERANS** and ensure that they have quality health care and good job opportunities when they come home.



GRESS ON TUES., NOV. 6

Paid for by America Shining and not authorized
by any candidate or candidate's committee.
1592 Union Street #320, San Francisco, CA 94123

PERMIT 870
US POSTAGE
PAID
MAILING PROS INC.

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*****ECRLOT**C009

OR CURRENT RESIDENT

LA HABRA CA 90631-2749

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**SMALL BUSINESSMAN
JAY CHEN
A NEW LEADER
A BRIGHTER FUTURE**

S26 P4

VOTE JAY CHEN FOR CONGRESS ON TUES., NOV. 6

13044350486

Field for Jay Chen for Congress
15902A Haddonfield Rd, #210
Hacienda Heights, CA 91745

S90 P1

S90 P1 ECRWSH C013

OR CURRENT RESIDENT
PLACENTIA CA 92870-2604

APPENDIX 3

JAY*CHEN

FOR CONGRESS

 [ChenForCongress.com](https://www.facebook.com/ChenForCongress)

NEW LEADERSHIP NEW IDEAS

E-mail: info@chenforcongress.com Phone: (951) 519-2100