

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 Jack Wu) MUR 7225
6)
7

8 **SECOND GENERAL COUNSEL'S REPORT**

9
10 **I. ACTIONS RECOMMENDED**

11 We recommend the Commission: (1) enter into pre-probable cause conciliation with Jack
12 Wu; (2) approve the attached proposed conciliation agreement; and (3) approve the appropriate
13 letters.

14 **II. BACKGROUND**

15 The Commission previously found reason to believe that Jack Wu, the former treasurer of
16 Rohrabacher for Congress (the "Committee"), knowingly and willfully violated 52 U.S.C.
17 §§ 30102(b)(3) and (c), 30104(b), and 30114(b)(1) and 11 C.F.R. §§ 102.9, 102.15, and 104.3
18 when he embezzled Committee funds.¹ The subsequent investigation sought to determine the
19 amount of money Wu embezzled from the Committee, how he carried out his scheme, and the
20 results of Wu's parallel criminal proceedings in the Superior Court of Orange County, California
21 (the "Court" or "California court").²

22 Although Wu did not respond to the Commission's reason to believe findings, we were
23 able to obtain the information necessary to complete the investigation from the Office of the

¹ Certification, MUR 7225 (Wu) (Mar. 21, 2017). The Commission also referred the Committee to the Alternative Dispute Resolution Office ("ADR"). *Id.* On October 12, 2017, we circulated an informational memorandum to the Commission stating that we had completed our investigation of Wu. Six-Month Post Reason to Believe Status Report, MUR 7225 (Oct. 12, 2017). ADR then initiated communication with the Committee, and the Committee is currently engaged in the negotiation process. See Informational Memo on Assignment, ADR 846 (Rohrabacher for Congress) (Oct. 18, 2017); E-Mail from Krista Roche, Acting Director ADR, FEC, to Shanna Reulbach, Attorney, FEC (Nov. 28, 2017 11:29 AM).

² See First Gen. Counsel's Rpt. at 13-14, RR 16L-06 (Rohrabacher for Congress) (Feb. 3, 2017).

1 Orange County District Attorney ("DA's Office") and the California court. Accordingly, we
2 recommend that the Commission enter into pre-probable cause conciliation with Wu and approve
3 the proposed conciliation agreement.

4 **III. RESULTS OF INVESTIGATION**

5 The State of California charged Wu with 3 counts of felony grand theft by embezzlement
6 and 21 counts of felony forgery for his financial activities involving the Committee and another
7 of Wu's former employers, Russell Fischer, Inc. ("Russell Fischer").³ During our investigation,
8 we gathered information from the California court and DA's Office involved in this criminal
9 prosecution.

10 The Court provided us with Wu's indictment and plea agreement, transcripts from his
11 sentencing hearings, and copies of the docket from Wu's case.⁴ The DA's Office provided us
12 with over 400 pages of investigative documents, including interview notes from conversations
13 with Congressman Dana Rohrabacher, his wife Rhonda, who serves as his campaign manager,
14 and the Committee's new treasurer, Jeneve Slater; bank records or financial summaries for the
15 Committee, Wu, and Wu's businesses, the Jane Company and WuBell Services; and indexes of
16 additional records law enforcement gathered from the Committee.⁵ We attempted to obtain
17 some of the additional documents listed in the indexes, but the DA's Office would not release

³ Felony Complaint Warrant, *California v. Wu*, No. 16CF0269 (Orange Cnty. Super. Ct. Feb. 1, 2016) ("Criminal Complaint").

⁴ These materials are titled "Court Docs Consolidated"

⁵ These materials are titled "OC DA Docs Consolidated"

1 additional information without the Commission first obtaining permission from the Committee.⁶
2 Ultimately, we did not seek the Committee's permission to view the evidence because we
3 determined that the records already in our possession were sufficient to assess the scope of Wu's
4 embezzlement and make appropriate recommendations to the Commission.⁷

5 The new information we gathered confirms that Wu made unauthorized withdrawals
6 totaling \$238,347.15 from the Committee's account from February 18, 2009, to May 18, 2015.⁸
7 Bank records for the Committee, Wu, and the Jane Company show that Wu deposited the money
8 from the Committee into his personal checking account and into the Jane Company's and
9 WuBell Services' accounts.⁹ Wu then used at least \$69,450 of the funds from the Committee to
10 pay back his embezzlements from Russell Fischer.¹⁰ He also deposited \$35,995.79 worth of
11 checks drawn from his personal account and the Jane Company into the Committee's account to
12 prevent the Committee's account balance from dropping so low that it could not pay its
13 vendors.¹¹

⁶ See E-mail from Marc Labreche, Senior Deputy District Attorney, Office of the Orange County District Attorney, to Shanna Reulbach, Attorney, FEC (June 14, 2017 07:14 PM). We also communicated with Mr. Labreche via telephone about this issue.

⁷ When the Commission referred the Committee to ADR, it instructed ADR not to process the case until the investigation of Wu was complete. Certification, MUR 7225. Therefore, ADR refrained from beginning its process, and the Committee was unaware of its status before the Commission during the investigation.

⁸ Orange County District Attorney Documents ("OCDA") at 074656-59.

⁹ *Id.* at 074599, 074656-59 (providing summaries of Wu's unauthorized disbursements from the Committee); *see also id.* at 074610-55, 074661-997 (providing the Committee's, Wu's, and the Jane Company's bank records).

¹⁰ *Id.* at 074600.

¹¹ *Id.* at 074660; *see also* Factual & Legal Analysis ("F&LA") at 2, MUR 7225.

As to Wu's criminal case, we learned that Wu pleaded guilty to all of the charges listed in his indictment on January 17, 2017.¹² On April 15, 2017, the Court sentenced him to five years' probation, of which one year would be served in custody.¹³ The Court also ordered Wu to pay \$202,351.36 in restitution to the Committee and \$32,656.47 to Russell Fischer.¹⁴ Wu was able to transfer \$82,000 of his restitution payments to the Committee on the day of sentencing and then planned to pay the remainder in monthly installments.¹⁵

IV. LEGAL ANALYSIS

The Commission found reason to believe that Wu knowingly and willfully violated the Federal Election Campaign Act of 1971, as amended (the "Act" or "FECA"), in four distinct ways: converting Committee funds to personal use, commingling Committee funds with his own, failing to keep complete financial records, and failing to file accurate disclosure reports.¹⁶

In relevant part, the Act provides that committees, through their treasurers, must record the name and address of every person to whom a disbursement is made, and the date, amount, and purpose of the disbursement, and retain records related to each disbursement in excess of

¹² Advisement & Waiver of Rights for a Felony Guilty Plea, *California v. Wu*, No. 16CF0269 (Orange Cnty. Super. Ct. Jan. 17, 2017) ("Plea Agreement"); see also Docket, *California v. Wu*, No. 16CF0269 (Orange Cnty. Super. Ct.).

¹³ Transcript of Proceedings at 5, *California v. Wu*, No. 16CF0269 (Orange Cnty. Super. Ct. Apr. 15, 2017) ("Sentencing Transcript"). However, the Court approved Wu's application to serve his one year of custody under house arrest, subject to the county correctional administrator's final approval. *Id.*; see also CAL. PENAL CODE § 1203.016 (governing home detention). We were unable to obtain information indicating whether the correctional administrator gave the final approval.

¹⁴ Sentencing Transcript, *supra* note 13, at 7.

¹⁵ See *id.* at 3-4.

¹⁶ See Certification, MUR 7225. A violation of the Act is knowing and willful when the "acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976). When Wu pleaded guilty to the California charges, he admitted that he acted "with intent to defraud," "intentionally" took property, and knew that the checks he passed were false. See Criminal Complaint, *supra* note 3; Plea Agreement, Attach. A, *supra* note 12. These admissions strongly support the Commission's knowing-and-willful findings.

1 \$200.¹⁷ Committee reports filed by treasurers must accurately disclose: (1) the amount of cash-
2 on-hand at the start of the reporting period; (2) the total amount of receipts; (3) the identity of
3 any person who contributes more than \$200 in the election cycle, and the date and amount of the
4 contribution(s); (4) the total amount of disbursements; (5) the identity of any person to whom the
5 committee disburses over \$200 during the election cycle, together with the date, amount, and
6 purpose of the expenditure(s); and (6) the amount of cash-on-hand at the close of the reporting
7 period.¹⁸

8 The Act also states that a committee's funds "shall be segregated from, and may not be
9 commingled with, the personal funds of any individual."¹⁹ Relatedly, the Act prohibits
10 individuals from converting contributions to a candidate committee to personal use.²⁰ "Personal
11 use" means any use of funds in a campaign account of a federal candidate to fulfill a
12 commitment, obligation, or expense of any person that would exist irrespective of the
13 candidate's campaign.²¹

14 The evidence obtained during the investigation confirms that Wu converted campaign
15 funds to personal use. Wu pleaded guilty to embezzling \$238,347.15 from the Committee and
16 depositing it in his personal bank account and the accounts of his businesses.²² Further, the
17 Commission was already in possession of information establishing that Wu owed Russell Fisher

¹⁷ 52 U.S.C. § 30102(c)(5); 11 C.F.R. § 102.9(b)(1)-(2).

¹⁸ 52 U.S.C. § 30104(b)(1)-(6); 11 C.F.R. § 104.3(a)-(b); *see also* Fed. Election Comm'n, Form 3 Report of Receipts and Disbursements for an Authorized Committee (May 2016).

¹⁹ 52 U.S.C. § 30102(b)(3); 11 C.F.R. § 102.15.

²⁰ 52 U.S.C. § 30114(b)(1).

²¹ *Id.* § 30114(b)(2).

²² *See* Criminal Complaint, *supra* note 3; Plea Agreement, *supra* note 12; *see also* OCDA at 074599, 074610-997.

1 a debt as the result of another embezzlement,²³ and the bank records obtained during the
2 investigation show that Wu used funds from the Committee to fulfill that obligation.²⁴ The
3 evidence also demonstrates that Wu commingled the Committee's funds with his personal funds
4 by depositing Committee funds into his bank accounts, and depositing his personal funds into the
5 Committee's account.²⁵ In addition, none of the evidence from the investigation rebuts the
6 Commission's previous findings regarding Wu's reporting and recordkeeping violations. We
7 therefore recommend that the Commission enter into pre-probable cause conciliation with Wu on
8 all four of its reason-to-believe findings — that Wu knowingly and willfully violated 52 U.S.C.
9 §§ 30102(b)(3) and (c), 30104(b), and 30114(b)(1) and 11 C.F.R. §§ 102.9, 102.15, and 104.3 by
10 converting Committee funds to personal use, commingling Committee funds with his personal
11 funds, failing to keep complete Committee financial records, and failing to file accurate
12 disclosure reports.

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²³ See F&LA at 2, MUR 7225.

²⁴ OCDA at 074600. The Vice President of Russell Fischer told the D.A.'s Office that Wu had agreed to pay back \$71,893 at a rate of \$6,000 per month. *Id.* at 000013, 000016. Wu made those repayments with checks drawn from the Jane Company's and WuBell Services' accounts. *Id.* at 000018.

²⁵ *Id.* at 074599, 074660.

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VI. RECOMMENDATIONS

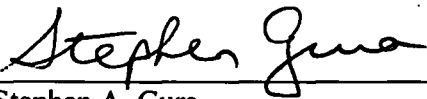
1. Enter into pre-probable cause conciliation with Jack Wu;
2. Approve the attached proposed conciliation agreement; and
3. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel


Kathleen M. Guith
Associate General Counsel for Enforcement

1.10.18


Date



Stephen A. Gura
Deputy Associate General Counsel for Enforcement



Lynn Y. Tran
Assistant General Counsel



Shanna M. Reulbach
Attorney