FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 25, 1999

Abbe David Lowell, Esq.
Brand, Lowell & Ryan
923 15th Street, N.W.
Washington, D.C. 20005

RE: MUR 4884
Mark Jimenez

Dear Mr. Lowell:

On Mrach 16, 1999, the Federal Election Commission found that there is reason to believe your client, Mark Jimenez, violated 2 U.S.C. § 441e and knowingly and willfully violated 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(3), 441b(a) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If your client is interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Jose M. Rodriguez, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Scott E. Thomas
Chairman

Enclosures
Factual and Legal Analysis
Procedures

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Mark B. Jimenez MUR: 4884

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission') in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). On December 1, 1997, the Commission received a *sua sponte* submission filed by counsel for Mark Jimenez, Chief Executive Officer ("CEO") of Future Tech International, Inc. ("Future Tech"), disclosing that the corporation, at the instruction of Mr. Jimenez, reimbursed various employees via company bonuses for contributions to federal candidate committees totaling approximately $40,000 made between February 1994 and September 1996. In response to requests from the Commission, on March 23, 1998, counsel filed a supplement to the *sua sponte* disclosing that Future Tech and Mr. Jimenez made approximately $110,000 in contributions to the Democratic National Committee's ("DNC's") non-federal account between May 1993 and March 1994, at a time when Mr. Jimenez was a foreign national.[1]

Subsequent to the *sua sponte* submission, on approximately December 17, 1998, Future Tech and its Chief Financial Officer ("CFO") entered into separate plea agreements with the

[1] Based on the supplemental submission and other information within the Commission's possession, it also appears that Mr. Jimenez further reimbursed employees for between $20,500 and $21,500 in contributions to the campaigns of two Dade County Mayoral candidates. These transactions concerning local candidates do not raise any FECA implications and are therefore not at issue in this matter.

Department of Justice ("DOJ") concerning criminal violations arising from the same activity as that at issue in this matter. In its plea agreement, Future Tech pleads guilty to two counts of evading corporate income taxes for the years 1994 and 1995, by reporting false salaries, wages and deductions associated with the contributions at issue in this matter. *See* Plea Agreement Between Future Tech International, Inc. and the United States of America dated December 17, 1998 ("Future Tech Plea Agreement"), at ¶ I.A. In his separate plea agreement, Future Tech's CFO pleads guilty to one count of knowingly and willfully allowing his name to be used to make a $1,000 corporate contribution to the Clinton/Gore campaign in 1996. *See* Plea Agreement Between Juan M. Ortiz and the United States of America dated December 17 ,1998 ("Ortiz Plea Agreement"), at ¶ I.A. The plea agreements impose maximum fines of approximately $1M and $25,000 dollars, respectively. *See* Future Tech Plea Agreement at ¶ I.G; Ortiz Plea Agreement at ¶ I.F. Pursuant to the plea agreements, Respondents produced Factual Resumes detailing the transactions at issue. *See* Future Tech International, Inc. Factual Resume dated October 5, 1998 ("Future Tech Factual Resume"); Juan M. Ortiz Factual Resume dated October 2, 1998 ("Ortiz Factual Resume").

Based on information disclosed by Future Tech and its CFO in their plea agreements and accompanying Factual Resumes, which substantially supplant the original *sua sponte* submission in this matter and provide a credible record of the FECA violations by Mr. Jimenez, the Commission found that there is reason to believe that Mr. Jimenez violated 2 U.S.C. § 441e in connection with Future Tech's combined $110,000 in contributions to the DNC during the years 1993 and 1994. The Commission further found that there is reason to believe that Mr. Jimenez knowingly and willfully violated 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(3), 441b(a) and 441f.

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), sets forth limitations and prohibitions on the type of funds which may be used in elections. Section 441a(a)(1)(A) limits the amount an individual may contribute to a federal candidate committee to $1,000 per election. Additionally, Section 441a(a)(3) limits an individual's aggregate yearly federal contributions to a maximum of $25,000. For purposes of this provision, contributions made to a candidate committee in years other than when the election is held with respect to that candidate count towards the aggregate total for the year when such election is in fact held. *See* 2 U.S.C. § 441a(a)(3) and 11 C.F.R. § 110.5(c)(2).

The Act also prohibits certain contributions. Section 441b(a) states that it shall be unlawful for a corporation to make a contribution or expenditure in connection with any election to any federal political office, and for any officer or director of any corporation to consent to any contribution or expenditure by the corporation. This provision also makes it unlawful for any candidate, political committee, or other person knowingly to accept or receive a contribution prohibited by section 441b(a). For purposes of section 441b(a) a contribution includes any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value made to any candidate for federal office. *See* 2 U.S.C. § 441b(b)(2).

Section 441e states that it shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value in connection with an election to any political office; or for any person -- including any political committee -- to solicit, accept, or receive any such contribution from a foreign national. 2 U.S.C. § 441e(a);

11 C.F.R. § 110.4(a). The Commission has consistently applied this prohibition to both federal and non-federal elections. *See* MURs 2892, 3460, 4398 and 4638.[2]

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, *inter alia*, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under Section 611(b), a "foreign principal" includes a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States. The Act further provides that resident aliens are excluded from the definition of "foreign national." *See* 2 U.S.C. § 441e(b)(2). The prohibition is further detailed in the Commission's Regulations at 11 C.F.R. § 110.4(a)(3). This provision states that a foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, including a corporation, with regard to that person's federal or non-federal election-related activities, such as decisions concerning the making of contributions or expenditures in connection with elections for any local, state, or federal office or decisions concerning the administration of a political committee.

In addressing the issue of whether a domestic subsidiary of a foreign national parent may make contributions in connection with local, State or Federal campaigns for political office, the Commission has looked to two factors: the source of the funds used to make the contributions

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[2] One district court recently held the foreign national prohibition at Section 441e applicable only to "contributions" for federal elections. *See* U.S. v. Trie, Crim. No. 98-0029-1 (PLF) (D.D.C. Oct.9, 1998). However, this lower court opinion failed to consider either the legislative history establishing the provision's broad scope or the Commission's consistent application of the prohibition to non-federal elections.

and the nationality status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic corporation where the source of funds is a foreign national, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. *See, e.g.*, A.O.s 1989-20, 2 Fed. Election Camp. Guide (CCH) ¶ 5970 (Oct. 27, 1989); 1985-3, 2 Fed. Election Camp. Guide (CCH) ¶ 5809 (March 4, 1989); and 1981-36, 2 Fed. Election Camp. Guide (CCH) ¶ 5632 (Dec. 9, 1981). *See also*, A.O. 1992-16, 2 Fed. Election Camp. Guide (CCH) ¶ 6059 (June 26, 1992).

Even if the funds in question are from a domestic corporation, the Commission also looks at the nationality status of the decision makers. *See* A.O.s 1985-3 and 1982-10, 2 Fed. Election Camp. Guide (CCH) ¶ 5651 (March 29, 1982). The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent, or any other person who is a foreign national, participate in any way in the decision-making process regarding the contributions. This prohibition has been codified at 11 C.F.R. § 110.4(a)(3), as noted above.

Accordingly, it is clear that the Act prohibits contributions from foreign nationals, as well as contributions from domestic corporations where either the funds originate from a foreign national source or a foreign national is involved in the decision concerning the making of the contribution.

The Act further prohibits any person from making a contribution in the name of another person, knowingly permitting their name to be used to effect such a contribution, or knowingly accepting a contribution made by one person in the name of another person. 2 U.S.C. § 441f. The Act defines person to include a corporation. 2 U.S.C. § 431(11).

Finally, the Act addresses knowing and willful violations. 2 U.S.C. §§ 437g(a)(5)(C), (6)(C), and 437g(d). "Knowing and willful" actions are those that were "taken with full knowledge of all the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976). The knowing and willful standard requires knowledge that one is violating the law. FEC v. John A. Dramesi for Congress., 640 F.Supp. 985 (D.N.J. 1986). A knowing and willful violation may be established by "proof that the defendant acted deliberately and with knowledge that the representation was false." U.S. v. Hopkins, 916 F.2d 207, 214-15 (5th Cir. 1990). An inference of a knowing and willful violation may be drawn "from the defendants' elaborate scheme for disguising" their actions and their "deliberate convey[ance of] information they knew to be false to the Federal Election Commission." *Id.*

B. Background

Future Tech is a Florida corporation founded by Mr. Leonard Keller on approximately August 17, 1988. *See* Dun & Bradstreet Database. According to the *sua sponte*, in 1989 Mr. Jimenez, at the time a national of the Republic of the Philippines, purchased a controlling 80% interest in the then bankrupt Future Tech for approximately $30,000, eventually becoming Chairman of the Board and CEO of the corporation. *See Sua Sponte* at 1; Dun & Bradstreet Database. Future Tech's principal business is the wholesale exportation of computer hardware, including products manufactured by related corporations under the trade name MarkVision, to Central American, South American and Caribbean markets. The two related MarkVision corporations at issue in this matter are MarkVision Computers, Inc. and MarkVision Holdings, Inc. During the period at issue, Mr. Jimenez exercised direct control over these MarkVision entities. *See* Future Tech Factual Resume at ¶ 1.9-10. Under Mr. Jimenez's control, Future Tech has grown to approximately $251,261,000 in annual sales. See Dun and Bradstreet Database.

Based on the available information, it appears that in approximately July 1994 Mr. Jimenez obtained permanent resident alien status.

C. Corporate and Foreign National Contributions

1. DNC Contributions

During the 1994 and 1996 election cycles, Future Tech, at Mr. Jimenez's direction, made a total of $385,500 in contributions to the DNC's non-federal account. Mr. Jimenez made an additional $50,000 contribution to the party's non-federal account in his own name. While all these contributions appear to have been made under Mr. Jimenez's direction, only a portion were made prior to July 1994, when Mr. Jimenez obtained permanent resident alien status in the United States. Accordingly, consistent with the *sua sponte* submissions and all facts presently known to the Commission, as the following chart demonstrates only the $110,000 contributed prior to July 1994 is in violation of 2 U.S.C. § 441e.[3]

Contributor	Date	Amount	
Future Tech Inc.	May 10, 1993	$ 5,000	
Future Tech Inc.	May 10, 1993	5,000	
Future Tech Internat'l Inc.	March 24, 1994	50,000	
Future Tech Internat'l Inc.	March 24, 1994	50,000	Total $110,000
Future Tech Internat'l Inc.	February 15, 1995	100,000	
Mark Jimenez	February 15, 1996	50,000	
Future Tech Internat'l Inc.	March 27, 1996	500	
Future Tech Internat'l Inc.	April 22, 1996	100,000	
Future Tech Internat'l Inc.	September 30, 1996	75,000	
	Total	$435,500	

[3] Because Future Tech's 1993 DNC contributions are not at issue in the criminal matter, the corporation's plea agreement addresses only the combined $100,000 DNC contributions made in 1994, and not the combined $10,000 DNC contributions made in 1993.

Foreign nationals are prohibited from making political contributions to both the federal and non-federal accounts of party committees. *See* 2 U.S.C. § 441e; MURs 2892, 3460, 4398 and 4638. Even where the contribution funds originate from a domestic source, a contribution is deemed a foreign national contribution if a foreign national directed the making of the contribution. *See* 11 C.F.R. § 110.4(a)(3). As noted, the contributions at issue were made with Future Tech funds at Mr. Jimenez's direction while he was still a foreign national. Accordingly, there is reason to believe that Mr. Jimenez violated 2 U.S.C. § 441e by making foreign national contributions.

2. Reimbursed Federal Candidate Contributions

According to the Factual Resumes accompanying the plea agreements, Future Tech, again at Mr. Jimenez's direction, also reimbursed various employees of Future Tech, MarkVision Holdings, Inc. and MarkVision Computers, Inc. from 1993 through 1996 for approximately $39,500 in federal contributions as follows:

Year	Amount	Recipient
1994	6,000	Ted Kennedy for Senate
1995	23,000	Clinton/Gore 96 Primary Committee
1996	2,000	Anne Henry for Congress (Arkansas)
1996	4,000	Roger H. Bedford for U.S. Senate (Alabama)
1996	2,000	Friends of Tom Strickland (Colorado)
1996	2,500	Torricelli for U.S. Senate
Total	$39,500[4]	

The Factual Resumes explain the various methods used in reimbursing these employee contributions. According to Future Tech's Factual Resume, Mr. Jimenez would identify candidates for Future Tech's support and subsequently solicit, either directly or indirectly,

[4] The amount at issue has been adjusted from the $40,000 aggregate contribution amount disclosed in the *sua sponte*.

employees of Future Tech and the two related MarkVision corporations, MarkVision Holdings, Inc. and MarkVision Computers, Inc., for political contributions with the clear understanding that the contributions would be reimbursed. *See* Future Tech Factual Resume at ¶ II.26. During the years 1994 through 1995, on Mr. Jimenez's explicit instructions, the employee contributions were reimbursed via bonuses, payments or other payroll deductions from the payroll accounts of both Future Tech and MarkVision Computers, Inc. *See id.* at ¶ II.26-27. However, beginning in approximately May 1996, following press scrutiny of the employee contributions to the Clinton/Gore campaign, Mr. Jimenez installed a cash reimbursements method. *See id.* at ¶ II.28. Under this method, Mr. Jimenez instructed Future Tech's treasurer, who maintained control of Mr. Jimenez's personal checking account, to exchange checks provided from Mr. Jimenez's personal account for cash that was available at Future Tech. *See id.* Consistent with Mr. Jimenez's instructions, the cash was then distributed by the treasurer to the conduit employees for the full amount of their contributions. *See id.* at ¶ II.56 and ¶ II.56; *see also*, Ortiz Factual Resume at ¶ II.33. Mr. Jimenez's actions in orchestrating the conduit scheme, demonstrate that he acted with the knowledge that he was violating the Act. *See* Future Tech Factual Resume at ¶ II.28, ¶ II.39 and ¶ II.52, *see also*, Ortiz Factual Resume at ¶ II.20 and ¶ II.22.

The Act prohibits a corporation from making contributions in connection with a federal election, and prohibits any officer or director from consenting to any such contributions. 2 U.S.C. §441b(a). The Act further prohibits any person, including a corporation, from making a contribution in the name of another person. 2 U.S.C. §§ 441f, 431(11). Knowing and willful actions are taken with full knowledge of all the facts and with a recognition that the action is

prohibited by law. 122 Cong. Rec. H3778 (daily ed. May 3, 1976). Accordingly, there is reason to believe Mark Jimenez knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f by his participation in disguising corporate contributions to federal campaign committees through the straw transactions involving Future Tech employees and certain employees of the related MarkVision corporations.

Concerning an individual's contributions, the Act prohibits contributions in excess of $1,000 to any candidate committee per election, as well as aggregate yearly contributions in excess of $25,000. 2 U.S.C. § 441a(a)(1)(A), (a)(3), *see also,* 11 C.F.R. § 110.5(c)(2). Mr. Jimenez appears to have reimbursed the federal contributions at issue made after May 1996 with personal funds totaling $10,500. When aggregated with his direct contributions, Mr. Jimenez appears to have exceeded the $1,000 candidate limit in 1996 with regard to Friends of Tom Strickland, Roger Bedford for U.S. Senate, Anne Henry for Congress, and Torricelli for U.S. Senate.

Accordingly, there is reason to believe Mr. Jimenez as an individual knowingly and willfully violated 2 U.S.C. § 441a(a)(1)(A). Moreover, when these contributions reimbursed by Mr. Jimenez with his personal funds are added to his direct contributions in 1996, it appears that Mr. Jimenez exceeded the annual twenty-five thousand dollar limit by $500.[5] Therefore, there is reason to believe Mark Jimenez knowingly and willfully violated 2 U.S.C. § 441a(a)(3) for 1996.

[5] In 1996, Mr. Jimenez made a total $15,000 in federal contributions in his own name. When aggregated to the $10,500 in conduit contributions reimbursed with personal funds, Respondent's 1996 contributions total $25,500.