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FIRST GENERAL COUNSEL'S REPORT

MUR: 6828
DATE COMPLAINT FILED: May 21, 2014
DATE OF NOTIFICATION: May 23, 2014
LAST RESPONSE RECEIVED: June 13, 2014
DATE ACTIVATED: October 7, 2014

ELECTION CYCLE: 2014
EXPIRATION OF SOL: April 15, 2019 (earliest)

COMPLAINANT: George Alfaro

RESPONDENTS: Cal Voters for Honest Government and
Johnny Diaz Jr. in his official capacity as treasurer
Joe Baca
Friends of Joe Baca 2014 and Joe Baca in his
official capacity as treasurer

**RELEVANT STATUTES AND
REGULATIONS:**

52 U.S.C. § 30102(e)(4)¹
52 U.S.C. § 30104(a), (b), (g)
52 U.S.C. § 30116
52 U.S.C. § 30120
52 U.S.C. § 30124(b)(1)
11 C.F.R. § 102.14
11 C.F.R. § 109.21
11 C.F.R. § 109.23
11 C.F.R. § 110.11
11 C.F.R. § 110.16

INTERNAL REPORTS CHECKED: FEC Disclosure Reports

FEDERAL AGENCIES CHECKED: None

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended, (the "Act") was transferred from Title 2 to new Title 52 of the United States Code.

1 **I. INTRODUCTION**

2 This matter concerns whether a series of mailers, a website with the internet address
3 www.veteranjoebaca.com, and a billboard, each supporting congressional candidate Joe Baca,
4 may have violated certain provisions of the Act and Commission regulations. The Complaint
5 asserts that these communications were apparently funded by Cal Voters for Honest Government
6 ("Cal Voters"), an independent expenditure-only committee, and that each of them either lacked
7 or contained inadequate disclaimers. It also asserts that the website may have misled potential
8 contributors and fraudulently solicited funds in Baca's name without his authorization. The
9 Complaint further contends that Cal Voters and Baca satisfy the Commission's coordination
10 regulations by having republished in one of the mailers what appears to be a campaign-related
11 letter bearing Baca's signature.

12 The current record indicates that Cal Voters funded the mailers at issue. Cal Voters
13 disavows any involvement with the website, however, and is silent concerning the billboard. Joe
14 Baca and his campaign committee, Friends of Joe Baca (the "Committee"), deny that any
15 coordination took place and represent that the letter that appears to be reproduced in one of the
16 mailers was not created by the campaign.

17 As explained below, we recommend that the Commission find reason to believe that Cal
18 Voters violated the disclaimer provisions of the Act with regard to the mailers. It appears that
19 the billboard and website also do not satisfy the Commission's disclaimer requirements, and
20 further that the website improperly contains a candidate name in its title and may have
21 fraudulently solicited funds. Certain information suggests that Cal Voters may have arranged
22 those communications as well. Nonetheless, given Cal Voters' denial and the preliminary nature
23 of the current record, we recommend that the Commission find reason to believe that Unknown

1 Respondents violated those provisions of the Act and conduct further fact finding to develop the
2 record concerning the source of those communications. As to the other Respondents and the
3 coordination allegations, we recommend that the Commission take no action at this time pending
4 the completion of our investigation.

5 **II. FACTUAL AND LEGAL ANALYSIS**

6 **A. Factual Background**

7 Joe Baca was a candidate for the U.S. House of Representatives in the 2014 primary
8 election for California's 31st Congressional District. The Committee appears to maintain a
9 website at the address, <http://www.workingjoebaca.com>.² The campaign website displays the
10 phrase "Working Joe Baca" in all capital letters at the top left corner of each page of the website,
11 along with the text "Candidate for Congress. California's 31st Congressional District." In each
12 instance, the caption includes an image of a mechanical gear as the letter "o" in the name "Joe."

13 Cal Voters filed its Statement of Organization with the Commission on February 19,
14 2014, and on March 25, 2014 submitted a notice to the Commission that it intended to make
15 independent expenditures only and would not contribute to federal candidates or political
16 committees.³

17 The Complaint alleges that Cal Voters failed to include disclaimers on the billboards and
18 a website supporting Joe Baca and that it included incomplete disclaimers on the mailers.

² The website displays the phrases "Working Joe Baca" and "US Congress 2014" at the bottom of the page and identifies a mailing address, phone numbers, and e-mail address as points of contact for "Friends of Joe Baca." See <http://www.workingjoebaca.com/contact-us.html>. That mailing address is the same address that Baca provided the Commission in his Statement of Candidacy for the 2014 election cycle. Other social media accounts associated with Baca's campaign also link to the "Working Joe Baca" website as the official campaign website for Baca. See <https://twitter.com/workingjoebaca>.

³ See Cal Voters, Statement of Organization (Feb. 19, 2014), available at <http://docquery.fec.gov/pdf/487/14031184487/14031184487.pdf>; Letter from Johnny Diaz, Treasurer, Cal Voters, to FEC (Mar. 18, 2014), available at <http://docquery.fec.gov/pdf/246/14031201246/14031201246.pdf>.

1 Specifically, the mailers failed to state that they were “not authorized by any candidate or
2 candidate’s committee” and to include the required “paid for” information in a printed box.⁴ The
3 Complaint concludes that Cal Voters funded the billboard, website, and mailers because the
4 billboard featured in Attachment A appears to display the same banner used on the “Veteran Joe
5 Baca” website⁵ and one of the mailers attached to the Complaint references the
6 “www.veteranjoebaca.com” website address.⁶

7 In addition to the disclaimer violations, the Complaint alleges that Cal Voters, an
8 unauthorized committee, improperly used the name of a candidate in its special project, the
9 www.veteranjoebaca.com website.⁷ The Complaint further argues that that website’s donation
10 page was misleading and “could trick Joe Baca supporters into donating to the PAC, thinking
11 that they were donating to Baca,” a potential violation of the prohibition against fraudulently
12 speaking on behalf of a candidate to solicit contributions.⁸ Finally, the Complaint also alleges
13 that one of the mail pieces⁹ republished a campaign-related letter that Baca purportedly signed,
14 resulting in an excessive in-kind contribution to Baca.¹⁰

4 Compl. at 4, Attach. B - E.

5 Compl. at 2, Attach. A.

6 Compl., Attach. C.

7 52 U.S.C. § 30102(e)(4) (formerly 2 U.S.C. § 432(e)(4)); *see* Compl. at 4.

8 52 U.S.C. § 30124(b)(1) (formerly 2 U.S.C. § 441h(b)(1)); *see* Compl. at 4.

9 Compl., Attach. D.

10 52 U.S.C. § 30116 (formerly 2 U.S.C. § 441a). The Complaint also alleges that Cal Voters violated the reporting provisions of the Act by failing to file independent expenditure reports with the Commission. Compl. at 3. However, Cal Voters began filing reports with the Commission on May 20, 2014, one day before we received the Complaint in this matter. It appears that Cal Voters filed its reports in response to an RFAI sent on May 2, 2014. We therefore recommend that the Commission exercise its prosecutorial discretion and dismiss the allegation that Cal Voters violated 52 U.S.C. § 30104(a)(4), (g) (formerly 2 U.S.C. § 434(a)(4), (g)).

1 Cal Voters submitted a Response stating that the allegations were “unfounded” and
2 “based on certain assumptions” that are “false and incorrect.”¹¹ It acknowledges making
3 independent expenditures in support of Baca and represents that the cost of its mailers did not
4 exceed \$10,000 and contained the required “legal disclosure,”¹² but does not concede that Cal
5 Voters prepared or paid for the particular mailers attached to the Complaint. The Response
6 denies that Cal Voters was involved with the website, www.veteranjoebaca.com, and does not
7 address the billboards at issue in any way.¹³

8 Baca and the Committee submitted a Response seeking dismissal and asserting that there
9 is “no factual or legal basis to conclude that [they] violated the law.”¹⁴ Their Response denies
10 the republication allegation, explaining that the letter pictured in one of the mailings was not
11 “written by Mr. Baca and was not part of any campaign material disseminated by his campaign”
12 and that Baca and his committee were not involved with that mailer.¹⁵ The Response does not
13 address the website or the billboards at issue.¹⁶

11 Cal Voters Resp. at 1.

12 *Id.* at 1.

13 *Id.* at 2.

14 Baca Resp. at 1.

15 *Id.*

16 Baca has denied responsibility for the billboards in question in press statements, however, asserting that he has “an angel out there” but that he does not know who it is. *See* Jean Merl and Richard Simon, *Secretive Group Spending Money on Former Rep. Joe Baca's Campaign*, L.A. TIMES (May 19, 2014), <http://www.latimes.com/local/politics/la-me-joe-baca-20140520-story.html>.

1 **B. Legal Analysis**

2
3 1. Disclaimer Requirements and the Use of Candidate Names in Special
4 Projects and Solicitations

5
6 The Act requires that any public communications that expressly advocate the election or
7 defeat of a clearly identified candidate or that solicit contributions through certain types of media
8 must include disclaimers.¹⁷ If the communication is not authorized by a candidate or candidate
9 committee, the disclaimer must say so, must further indicate who paid for the communication,
10 and must provide a physical address, phone number, or website address for that source.¹⁸ These
11 disclaimer requirements also apply to websites.¹⁹ In its implementing regulations, the
12 Commission provided guidelines for disclaimers in printed materials, including the required size
13 of text and the need to frame the statement within a printed box.²⁰

14 The Act also expressly prohibits an unauthorized committee from including the name of
15 any candidate in its name.²¹ The Commission's regulations explain that a committee's "'name'
16 includes any name under which a committee conducts activities, such as solicitations or other
17 communications, including a special project name or other designation."²² The Commission has
18 stated that the purpose of the prohibition is to "minimiz[e] the possibility of fraud and abuse"
19 that may occur when an unauthorized committee raises funds through such activities, including

17 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d).

18 *Id.*

19 *See* Explanation and Justification for Internet Communications, 71 Fed. Reg. 18,589, 18,600 (Apr. 12,
2006).

20 11 C.F.R. § 110.11(c)(2).

21 52 U.S.C. § 30102(e)(4) (formerly 2 U.S.C. § 432(e)(4)); *see also Common Cause v. FEC*, 842 F.2d 436
(D.C. Cir. 1988) (upholding Commission's construction of statutory prohibition as applying only to the name under
which a committee registers with the Commission).

22 11 C.F.R. § 102.14(a); Advisory Op. 1995-09 (NewtWatch) at 6 (stating that operation of a website is a
special project of a committee).

1 special project names, on behalf of itself rather than the named candidate.”²³ Nonetheless, the
 2 Commission has indicated that unauthorized committees may use a candidate’s name in the title
 3 of a special project name or other communication so long as “the title clearly and unambiguously
 4 shows opposition to the named candidate.”²⁴ The Commission reasoned that the risk that a
 5 donor might mistakenly believe that a contribution supports the named candidate is “significantly
 6 reduced” where the project title clearly and unambiguously opposes that candidate.²⁵

7 Finally, the Act also prohibits any person from fraudulently misrepresenting themselves
 8 as speaking, writing, or otherwise acting for or on behalf of any candidate for the purpose of
 9 soliciting contributions or donations.²⁶

10 a. There is Reason to Believe Cal Voters Violated the Disclaimer
 11 Requirements with Respect to the Mailers
 12

13 The mailers provided with the Complaint contain inadequate disclaimers.²⁷ Although the
 14 mailers state that Cal Voters paid for them and supply the committee’s address, they fail to state
 15 that they were not authorized by any candidate or candidate’s committee.²⁸ Additionally, none
 16 of the disclaimers were contained in a printed box.²⁹ We therefore recommend that the

²³ Explanation and Justification for Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees, 57 Fed. Reg. 31,424, 31,425 (July 15, 1992).

²⁴ 11 C.F.R. § 102.14(b)(3).

²⁵ Explanation and Justification for Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees, 59 Fed. Reg. 17267, 17269 (Apr. 12, 1994) (“1994 E&J”).

²⁶ 52 U.S.C. § 30124(b)(1) (formerly 2 U.S.C. § 441h(b)(1)); 11 C.F.R. § 110.16(b)(1).

²⁷ Compl., Attach. B-E; 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d); 11 C.F.R. § 110.11.

²⁸ 11 C.F.R. § 110.11(b).

²⁹ *Id.* § 110.11(b), (c). It is difficult to determine with reasonable certainty from the available photocopies of the mailers whether the disclaimer information appears in 12-point font as the Commission’s regulations require.

1 Commission find reason to believe that Cal Voters violated 52 U.S.C. § 30120 (formerly
2 2 U.S.C. § 441d) by failing to use proper disclaimers on the mailers at issue.

3 b. There Is Reason to Believe that Unknown Respondents Violated
4 the Disclaimer Requirements with Respect to the Billboards and
5 Website

6 Neither the challenged website nor the billboards contain any disclaimer at all. Because
7 each of them expressly advocates the election of Baca, a federal candidate, and the website
8 solicits funds for his candidacy, the failure to include disclaimers violates the relevant provisions
9 of the Act and Commission regulations.³⁰

10 Concerning the challenged website, www.veteranjoebaca.com, Cal Voters specifically
11 denies any involvement in its creation. Nonetheless, certain record evidence tends to suggest
12 otherwise. For example, a mailer attached to the complaint identifies Cal Voters as having paid
13 for that mailer while displaying the URL address of the website at the bottom.³¹ Further, the
14 website includes a copyright notice for Cal Voters at its foot. Moreover, a YouTube Channel
15 associated with Cal Voters contains a link to what it describes as the “Official Veteran Joe Baca
16 site,” but which is in fact a link to a mirror-image of the same challenged website with the same
17 donation link.³² Nonetheless, Cal Voters denies any such connection, and additional fact finding
18 is required to resolve the question definitively. As to the billboard, we lack information

19

³⁰ *Id.* § 110.11(a)(2)-(3); see *Explanation and Justification for Internet Communications*, 71 Fed. Reg. 18,589, 18,600 (Apr. 12, 2006).

³¹ Compl., Attach. C.

³² See https://www.youtube.com/channel/UCwupP3Oe2LVMz_qmab4sU5A.

1 sufficient to determine who funded it at this preliminary stage of the enforcement process.³³ We
2 therefore recommend that the Commission find reason to believe that Unknown Respondents
3 violated 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d) by failing to include the necessary
4 disclaimers on the website and billboards.³⁴

5 c. There Is Reason to Believe that Unknown Respondents Improperly
6 Used a Candidate's Name and Fraudulently Misrepresented the
7 Authority to Solicit Funds with Respect to the Website

8 Because the challenged website uses a candidate's name in its title and solicits funds on
9 that candidate's behalf apparently without authorization, the website may violate additional
10 provisions of the Act.

11 First, the name or title of the website, which is a special project of an unauthorized
12 committee, includes the name Joe Baca, a federal candidate. The website address itself,
13 "www.veteranjoebaca.com," contains Baca's name. Moreover, the message displayed at the top
14 of the relevant webpage states "Join the Campaign for Congressional Veteran Joe Baca" —
15 adopting the same characteristic gear logo "o" in the name "Joe" that appears in the official
16 campaign materials of the candidate. And because the website expressly advocates Baca's
17 election and claims to solicit contributions supporting his candidacy, the project does not qualify
18 for the regulatory exception for communications that clearly oppose a named candidate.³⁵

³³ The evidence suggesting Cal Voters' potential involvement is the fact that it reported disbursements to the same vendor (Lamar Outdoor Advertising) displayed on the photo of the billboard provided with the Complaint. *See Cal Voters 2014 July Quarterly Report*, available at <http://docquery.fec.gov/pdf/709/14031271709/14031271709.pdf>; *Cal Voters 48-hour Independent Expenditure Report (May 20, 2014)*, available at <http://docquery.fec.gov/pdf/928/14031242928/14031242928.pdf#navpanes=0>; Compl., Attach. A.

³⁴ If it is true that Cal Voters and the Baca Committee were not involved with the billboards and the website, then it appears that unknown respondents may have paid for communications in support of Baca's campaign and failed to disclose those expenditures in reports with the Commission. 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)). Depending on the result of our investigation we will make appropriate recommendations at that time.

³⁵ 11 C.F.R. § 110.14(b)(3).

1 Second, the website also may violate the Act's prohibition against misrepresenting that a
2 person is acting for or on behalf of a candidate for the purpose of soliciting contributions or
3 donations. The website expressly solicits funds to "Send Joe Baca to the Top 100 of Congress,"
4 with the hyperlink button "Donate Now." When selected, that button opens a donation page on a
5 website associated with ActBlue, which states that "Your generosity is greatly needed to support
6 the Cal Voters for Honest Government PAC who's[] goal is to send a ranking member to
7 Congress in 2015."³⁶ Although that secondary message may clarify to some extent that Cal
8 Voters would receive the requested contributions, the originating page nonetheless tends to
9 suggest that Baca or his campaign committee will receive them. Moreover, as the Complaint
10 notes, the ActBlue page also prominently states "Veteran Joe Baca for Congress — Donations,"
11 which further tends to suggest the candidate as the recipient of the donations.³⁷ It is also not
12 clear on the present record whether the ActBlue contribution page in fact contained the same
13 textual language at the time that the conduct challenged in the Complaint took place.³⁸ And
14 unlike other recent matters addressing similar misrepresentation allegations,³⁹ the challenged
15 website here lacked disclaimers altogether, which otherwise might have clarified the identity of
16 the intended recipient of the solicited funds. Thus, given this lack of clarity and the preliminary
17 nature of the record in this matter, we conclude that the challenged website may have violated
18 the fraudulent misrepresentation provisions of the Act as well, pending additional fact finding.

³⁶ See <https://secure.actblue.com/contribute/page/vetjoe31>.

³⁷ Compl. at 2.

³⁸ Moreover, the language that currently appears on the ActBlue page further suggests that Cal Voters in fact was responsible for the challenged website, despite the denial in the Response that Cal Voters submitted to the Commission. See *supra* Part II.B.1.b.

³⁹ See, e.g., F&LA at 10-12, MUR 6633 (Republican Majority Campaign PAC) ((finding no reason to believe on a fraudulent misrepresentation allegation because, *inter alia*, partial disclaimer sufficiently identified the source of the solicitation).

1 We therefore recommend that the Commission find reason to believe that Unknown
2 Respondents violated 52 U.S.C. § 30124(b)(1) (formerly 2 U.S.C. § 441h(b)(1)) by including a
3 candidate name in the title or name of a special project and violated 52 U.S.C. §§ 30102(e)(4)
4 (formerly 2 U.S.C. §§ 432(e)(4)) by fraudulent misrepresenting campaign authority to solicit
5 funds. Given these recommendations, we also recommend that the Commission take no action at
6 this time as to Cal Voters concerning the billboards and website pending further Commission
7 fact finding.

8 2. There Is Insufficient Information to Determine Whether Cal Voters
9 Republished Campaign Materials of the Committee as Alleged

10
11 Under the Act, “the financing by any person of the dissemination, distribution, or
12 republication, in whole or in part, of any broadcast or any written, graphic, or other form of
13 campaign materials prepared by the candidate, his campaign committees, or their authorized
14 agents shall be considered to be an expenditure.”⁴⁰ The republication of campaign materials
15 prepared by a candidate’s authorized committee is also “considered a[n in-kind] contribution for
16 the purposes of contribution limitations and reporting responsibilities of the person making the
17 expenditure.”⁴¹ The Commission treats expenditures for republished campaign materials as in-
18 kind contributions because the person financing the republication “has provided something of

⁴⁰ 52 U.S.C. § 30116 (formerly 2 U.S.C. § 441a(a)(7)(B)(iii)). For republication, the Commission has concluded that “campaign materials” include any material belonging to or emanating from a campaign. *See, e.g.*, MUR 5743 (Betty Sutton) (candidate photo obtained from campaign website); MUR 5672 (Save American Jobs) (video produced and used by candidate’s campaign subsequently hosted on association’s website).

⁴¹ 11 C.F.R. § 109.23 (a).

1 value to the candidate [or] authorized committee.”⁴² The candidate who prepared the campaign
2 materials does not receive or accept an in-kind contribution, however, and is not required to
3 report an expenditure unless the dissemination, distribution, or republication of campaign
4 materials also satisfies the Commission’s definition of coordinated communications.⁴³

5 The Complaint alleges that Cal Voters distributed a mailer that republished Baca’s
6 campaign materials. Specifically, the mailer at issue includes what purports to be a copy of a
7 letter to Baca’s constituents as part of his campaign activities with what appears to be an
8 electronic version of Baca’s signature.⁴⁴ In their Response, Baca and the Baca Committee state
9 that “the letter depicted in the mail piece was not written by Mr. Baca and was not part of any
10 campaign material disseminated by his campaign.”⁴⁵ The Response further states that neither
11 Baca nor his Committee were involved with the mailer.⁴⁶ The language of those denials —
12 which are themselves unsworn — leaves open the possibility that an agent of the campaign may
13 have drafted the Baca letter featured in the mailer. Given that gap and the likelihood that the
14 proposed investigation may yield additional information concerning these allegations, we
15 recommend that the Commission take no action at this time as to Cal Voters, Baca, and the Baca
16 Committee as to the alleged republication violation.

⁴² See Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 442 (Jan. 3, 2003) (explanation and justification). As the Commission there explained, “Congress has addressed republication of campaign material through 2 U.S.C. § 441a(a)(7)(B)(iii) in a context where the candidate/author generally views the republication of his or her campaign materials, *even in part*, as a benefit” and “can be reasonably construed only as for the purpose of influencing an election.” *Id.* at 443(emphasis added); see also Coordinated Communications, 71 Fed. Reg. 33,190, 33,191 (Jun. 8, 2006) (explanation and justification) (communications “that disseminate, distribute, or republish campaign materials, no matter when such communications are made, can be reasonably construed only as for the purpose of influencing an election.”).

⁴³ 11 C.F.R. §§ 109.21, 109.23.

⁴⁴ Compl., Attach. D.

⁴⁵ Baca Response at 1.

⁴⁶ *Id.*

1 **III. INVESTIGATION**

2 We propose to investigate the mailers, the billboards, and the www.veteranjoebaca.com
3 website to gather more information concerning their source, the possible fraudulent solicitation
4 of funds, and the putative campaign material that allegedly was republished, and to determine the
5 costs involved in the various communications for which there is reason to believe a violation
6 may have occurred. Although we intend to seek information from the Respondents and other
7 witnesses voluntarily, we recommend that the Commission approve the use of compulsory
8 process as necessary.

9 **IV. RECOMMENDATIONS**

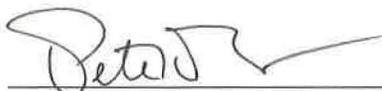
- 10 1. Find reason to believe that Cal Voters for Honest Government and
11 Johnny Diaz Jr. in his official capacity as treasurer violated 52 U.S.C. § 30120
12 (formerly 2 U.S.C. § 441d) with regard to the mailers.
- 13 2. Find reason to believe that Unknown Respondents failed to include proper
14 disclaimers on public communications, improperly used a candidate name on a
15 website, and fraudulently solicited funds in violation of 52 U.S.C. §§ 30102(e)(4),
16 30120, 30124(b) (formerly 2 U.S.C. §§ 432(e)(4), 441d, 441h(b)).
- 17 3. Take no action at this time as to Cal Voters for Honest Government and
18 Johnny Diaz Jr. in his official capacity as treasurer in connection with allegations
19 pertaining to the billboards, website, and the republication allegation.
- 20 4. Take no action at this time as to Joe Baca, Friends of Joe Baca 2014 and Joe Baca
21 in his official capacity as treasurer.
- 22 5. Exercise prosecutorial discretion to dismiss violations of 52 U.S.C. § 30104(a)(4),
23 (g) (formerly 2 U.S.C. § 434(a)(4), (g)) by Cal Voters for Honest Government and
24 Johnny Diaz Jr. in his official capacity as treasurer.
- 25 6. Approve the attached Factual and Legal Analysis.
- 26 7. Authorize the use of compulsory process.
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8. Approve the appropriate letters.

2/4/15
Date

BY: 
Daniel A. Petalas
Associate General Counsel for Enforcement


Peter G. Blumberg
Assistant General Counsel


Ana J. Peña-Wallace
Attorney