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7 Petitioner

8 **BEFORE THE CITY OF SAN DIEGO**  
9 **ETHICS COMMISSION**

10 In re the Matter of: ) Case No.: 2004-49  
11 )  
12 DICK MURPHY and C. APRIL BOLING, ) **STIPULATION, DECISION, AND**  
13 ) **ORDER**  
14 Respondents. )  
15 )  
16 )

17 **STIPULATION**

18 **THE PARTIES STIPULATE AS FOLLOWS:**

19 1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego Ethics  
20 Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer,  
21 implement, and enforce local governmental ethics laws contained in the San Diego Municipal  
22 Code [SDMC] relating to, among other things, the provisions of the City's Election Campaign  
23 Control Ordinance [ECCO].

24 2. At all times mentioned herein, Dick Murphy [Murphy] was the Mayor of the City of  
25 San Diego. The Friends of Mayor Dick Murphy committee [Committee] is a campaign  
26 committee registered with the State of California (Identification No. 990466) established to  
27 support Mayor Murphy's bid for re-election in the 2004 election. At all relevant times herein, the  
28 committee was controlled by Mayor Murphy within the meaning of the California Political  
Reform Act, California Government Code section 82016.

3. At all times mentioned herein, C. April Boling [Boling] was the treasurer for the  
Friends of Mayor Dick Murphy committee.

1 4. Murphy and Boling are referred to herein collectively as “Respondents.”

2 5. This Stipulation will be submitted for consideration by the Ethics Commission at its  
3 next scheduled meeting, and the agreements contained herein are contingent upon the approval  
4 of the Stipulation and the accompanying Decision and Order by the Ethics Commission.

5 6. This Stipulation resolves all factual and legal issues raised in this matter by the  
6 Ethics Commission without the necessity of holding an administrative hearing to determine  
7 Respondents’ liability.

8 7. Respondents understand and knowingly and voluntarily waive any and all  
9 procedural rights under the SDMC, including, but not limited to, a determination of probable  
10 cause, the issuance and receipt of an administrative complaint, the right to appear personally in  
11 any administrative hearing held in this matter, the right to confront and cross-examine witnesses  
12 testifying at the hearing, the right to subpoena witnesses to testify at the hearing, and the right to  
13 have the Ethics Commission or an impartial hearing officer hear this matter.

14 8. Respondents acknowledge that this Stipulation is not binding upon any other law  
15 enforcement or government agency and does not preclude the Ethics Commission from referring  
16 this matter to, cooperating with, or assisting any other law enforcement or government agency  
17 with regard to this or any other related matter.

18 9. The parties agree that in the event the Ethics Commission refuses to accept this  
19 Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics  
20 Commission rejects the Stipulation and a full evidentiary hearing before the Ethics Commission  
21 becomes necessary, no member of the Ethics Commission or its staff shall be disqualified  
22 because of prior consideration of this Stipulation.

23 **Summary of Law and Facts**

24 10. Because the Friends of Mayor Dick Murphy committee is a committee formed for  
25 the purpose of supporting a candidate in a City of San Diego election, Respondents are required  
26 to comply with the provisions of ECCO.

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1 *Vendor Debt*

2 11. SDMC section 27.2945 requires candidates and committees to pay for goods and  
3 services in full no later than ninety calendar days after receipt of a bill or invoice, and in no event  
4 later than ninety calendar days after the last calendar day of the month in which the goods were  
5 delivered or the services were rendered.

6 12. Respondents received an invoice from Michael's Printing Company dated  
7 December 12, 2003. Respondents did not pay this bill within ninety calendar days as required by  
8 ECCO. Instead, Respondents paid this bill on July 28, 2004.

9 13. Respondents received an invoice from the Sierra Club dated February 8, 2004.  
10 Respondents did not pay this bill within ninety calendar days as required by ECCO. Instead,  
11 Respondents paid this bill on July 14, 2004.

12 *Non-deposit of Contributions Requiring Additional Information*

13 14. SDMC section 27.2921(e) requires candidates and committees to deposit all  
14 contributions into a campaign checking account within 20 business days of receipt, and to return  
15 contributions not deposited to contributors within 25 business days.

16 15. From December 2003 through May 2004, Respondents received contributions from  
17 92 contributors totaling \$26,395.

18 16. The 92 contributions identified in paragraph 15 were not deposited into the  
19 campaign checking account because Respondents needed to obtain additional information from  
20 the contributors, such as occupation and employer information required by SDMC section  
21 27.2921(d).

22 17. Respondents did not deposit the 92 contributions within 20 business days of receipt,  
23 and did not return the contributions to the contributors within 25 business days as required by  
24 SDMC section 27.2921. Instead, Respondents returned the contributions to the contributors in  
25 June 2004.

26 *Non-deposit of Improper Contributions*

27 18. SDMC section 27.2948 states that if a candidate or committee receives a monetary  
28 contribution the acceptance of which would constitute a violation of ECCO, the candidate or

1 committee must refrain from depositing the contribution, and must return the contribution to the  
2 contributor within 20 business days of receipt.

3 19. From January 2004 through May 2004, Respondents received contributions from 33  
4 contributors totaling \$8,875.

5 20. The 33 contributions identified in paragraph 19 were not deposited into the  
6 campaign checking account because they were drawn on business or trust accounts and could not  
7 lawfully be used in a candidate election, or because the contributions would cause the total  
8 amount contributed by a particular contributor to exceed the \$250 per election contribution limit  
9 set forth in SDMC section 27.2941.

10 21. Although Respondents appropriately did not deposit the 33 contributions into their  
11 campaign checking account, they did not return the contributions to the contributors within 20  
12 business days as required by SDMC section 27.2948. Instead, Respondents returned the  
13 contributions to the contributors in June 2004.

#### 14 Counts

##### 15 **Count 1 - Violations of SDMC section 27.2945**

16 22. Respondents failed to pay two vendors within 90 days as required by SDMC section  
17 27.2945. Respondents received an invoice from Michael's Printing Company dated December  
18 12, 2003, but did not pay this bill until July 28, 2004, 229 days after it was received.  
19 Respondents received an invoice from the Sierra Club dated February 8, 2004, but did not pay  
20 this bill until July 14, 2004, 157 days after it was received.

##### 21 **Count 2 - Violations of SDMC sections 27.2921 and 27.2948**

22 24. Respondents did not timely return improper contributions and contributions  
23 requiring additional information to 125 contributors as required by SDMC sections 27.2921 and  
24 27.2948. Respondents received contributions from these contributors from December 2003  
25 through May 2004, but did not return these contributions to the contributors until June 2004, in  
26 some cases nearly six months after the contributions were originally received.

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1 **Factors in Mitigation**

2 26. The Commission's investigation revealed that Respondent Murphy was not  
3 personally aware that vendor invoices were not being timely paid, or that non-deposited  
4 contributions were not being returned to contributors in a timely manner. Respondent Murphy  
5 reasonably relied on Respondent Boling to process vendor invoices for payment and to deposit or  
6 return contributions as appropriate and as required by local law. Respondent Boling has  
7 therefore taken full responsibility for the violations described herein as well as the monetary  
8 penalty referenced below.

9 27. Upon discovery of the oversights and prior to the filing of any complaint,  
10 Respondents self-reported the violations to the Ethics Commission by letter dated June 29, 2004.

11 28. The Commission's investigation revealed that the failures to timely pay vendors  
12 and timely return contributions resulted from negligence and were not intentional.

13 29. Although Respondents failed to timely return contributions to contributors, they  
14 did not unlawfully deposit those contributions or use them in any regard. The contributions were  
15 returned to the contributors prior to the Ethics Commission's initiation of an enforcement action.

16 30. Respondents have cooperated fully with the Ethics Commission investigation.

17 **Conclusion**

18 31. Respondent Boling agrees to implement appropriate controls and adequate  
19 supervisory measures to prevent future similar violations of ECCO.

20 32. Respondent Boling agrees to pay a fine in the amount of \$500 for violating  
21 SDMC sections 27.2945 and 27.2948. Respondent agrees to pay this amount no later than  
22 November 12, 2004.

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