

1 STACEY FULHORST, Executive Director
City of San Diego Ethics Commission
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5 Petitioner

6
7 **BEFORE THE CITY OF SAN DIEGO**
8 **ETHICS COMMISSION**

9
10 In re the Matter of:) Case No.: 2006-42
11 JIM MADAFFER,)
12 Respondent.) **STIPULATION, DECISION, AND**
13) **ORDER**
_____)

14 **STIPULATION**

15 **THE PARTIES STIPULATE AS FOLLOWS:**

16 1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego Ethics
17 Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer,
18 implement, and enforce local governmental ethics laws contained in the San Diego Municipal
19 Code [SDMC] relating to, among other things, the provisions of the City’s Ethics Ordinance.

20 2. At all times mentioned herein, Jim Madaffer [Madaffer] was the Councilmember
21 for District 7 in the City of San Diego. Madaffer is referred to herein as “Respondent.”

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

25 4. This Stipulation resolves all factual and legal issues raised in this matter and arising
26 out of the audit of the Committee by the Ethics Commission without the necessity of holding an
27 administrative hearing to determine Respondent’s liability.

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1 5. Respondent understands and knowingly and voluntarily waives any and all
2 procedural rights under the SDMC, including, but not limited to, a determination of probable
3 cause, the issuance and receipt of an administrative complaint, the right to appear personally in
4 any administrative hearing held in this matter, the right to confront and cross-examine witnesses
5 testifying at the hearing, the right to subpoena witnesses to testify at the hearing, and the right to
6 have the Ethics Commission or an impartial hearing officer hear this matter. Respondent agrees
7 to hold the City of San Diego harmless from any and all claims or damages resulting from the
8 Commission’s investigation or this stipulated agreement, or any matter reasonably related
9 thereto. Respondent further agrees that the terms of this Stipulation constitute compliance with
10 the provisions of SDMC section 26.0450 in that the Stipulation includes a recitation of facts, a
11 reference to each violation, and an order.

12 6. Respondent acknowledges that this Stipulation is not binding upon any other law
13 enforcement or government agency and does not preclude the Ethics Commission from referring
14 this matter to, cooperating with, or assisting any other law enforcement or government agency
15 with regard to this or any other related matter.

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

21 **Summary of Law and Facts**

22 8. As a City Councilmember, Respondent is a “High Level Filer” as that term is
23 defined by SDMC section 27.3503, and is required to file Statements of Economic Interests
24 [SEI] in the time and manner set forth in SDMC section 27.3510.

25 9. SDMC section 27.3510 requires all High Level Filers to file an annual SEI on or
26 before April 1 of each year, covering the period from January 1 through December 31 of the
27 previous calendar year, pursuant to the disclosure guidelines set forth in the California Political
28 Reform Act.

1 10. In accordance with the California Political Reform Act, Respondent is required to
2 report investments interests, including ownership of common stock, in companies that conduct
3 business in the City of San Diego if the investment interest is valued at \$2,000 or more at any
4 time during the reporting period.

5 11. Respondent filed an SEI for the 2002 calendar year on March 21, 2003. On this
6 SEI, Respondent did not report his stock ownership interests in the following companies:
7 Applied Micro Circuits Corporation, USANA Health Sciences, and Leap Wireless. On January
8 10, 2007, Respondent filed an amendment to his 2002 SEI, reporting his ownership of common
9 stock issued by these three companies, each with a reported value between \$2,000 and \$10,000.
10 This amendment also references Respondent's disposal of the USANA Health Sciences stock on
11 April 9, 2002.

12 12. Respondent filed an SEI for the 2003 calendar year on March 30, 2004. On this
13 SEI, Respondent did not report his stock ownership interests in the following companies:
14 Applied Micro Circuits Corporation, and Leap Wireless. On January 10, 2007, Respondent filed
15 an amendment to his 2003 SEI, reporting his ownership of common stock issued by these two
16 companies, each with a reported value between \$2,000 and \$10,000.

17 13. Respondent filed an SEI for the 2004 calendar year on March 30, 2005. On this
18 SEI, Respondent did not report his stock ownership interests in Leap Wireless. (Respondent did
19 report his stock ownership interest in Applied Micro Circuits Corporation on this 2004 SEI.) On
20 January 10, 2007, Respondent filed an amendment to his 2004 SEI, reporting his ownership of
21 common stock issued by Leap Wireless, with a reported value between \$2,000 and \$10,000.
22 This amendment also reported Respondent's disposal of the Leap Wireless stock on January 29,
23 2004.

Counts

Counts 1 through 3 - Violations of SDMC section 27.3510

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26 14. Respondent failed to timely disclose investments in common stock in companies
27 that conduct business in the City of San Diego on his SEIs for the 2002, 2003, and 2004 calendar
28 years. In particular, Respondent failed to timely disclose his ownership of stock issued by

1 Applied Micro Circuits Corporation, USANA Health Sciences, and Leap Wireless on his 2002
2 SEI. In addition, Respondent failed to timely disclose his ownership of stock issued by Applied
3 Micro Circuits Corporation and Leap Wireless on his 2003 SEI. Finally, Respondent failed to
4 timely disclose his ownership of stock issued by Leap Wireless on his 2004 SEI. Respondent
5 filed amendments to his 2002, 2003, and 2004 SEIs on January 10, 2007, which reflect his
6 investment interests in these companies.

7 **Factors in Mitigation**

8 15. Respondent timely disclosed his ownership of stock issued by Applied Micro
9 Circuits Corporation, USANA Health Sciences, and Leap Wireless when he initially purchased
10 the respective stocks in 2000 and 2001. Respondent's violations stem from failing to carry these
11 investments forward on subsequent SEIs.

12 16. During the course of a related Ethics Commission investigation, Respondent
13 independently identified the need to amend his SEIs for 2002, 2003, and 2004 to disclose these
14 investment interests.

15 17. Respondent cooperated fully with the Ethics Commission investigation.

16 **Conclusion**

17 18. Respondent agrees to take necessary and prudent precautions to comply with all
18 provisions of the Ethics Ordinance in the future.

19 19. Respondent agrees to pay a fine in the amount of \$500 for violating SDMC
20 section 27.3510. This amount must be paid no later than March 2, 2007, by check or money
21 order made payable to the City Treasurer. The submitted payment will be held pending
22 Commission approval of this Stipulation and execution of the Decision and Order set forth
23 below.

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25 DATED: _____

STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

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27 DATED: _____

JIM MADAFFER, Respondent

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DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on _____, 2007. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of \$500.

DATED: _____

Gil Cabrera, Vice-Chair
SAN DIEGO ETHICS COMMISSION