

1 STACEY FULHORST, Executive Director
City of San Diego Ethics Commission
2 1010 Second Avenue, Suite 1530
San Diego, CA 92101
3 Telephone: (619) 533-3476
4 Facsimile: (619) 533-3448

5 Petitioner

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

9
10 In re the Matter of:) Case No.: 2010-39
11)
12 SAN DIEGANS FOR ACCOUNTABILITY) **STIPULATION, DECISION, AND**
AT CITY HALL, YES ON D, and TOM) **ORDER**
SHEPARD,)
13 Respondents.)

14
15 **STIPULATION**

16 **THE PARTIES STIPULATE AS FOLLOWS:**

17 1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego Ethics
18 Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer,
19 implement, and enforce local governmental ethics laws contained in the San Diego Municipal
20 Code [SDMC] relating to, among other things, the provisions of the Election Campaign Control
21 Ordinance [ECCO], SDMC section 27.2901, *et seq.*

22 2. Tom Shepard [Shepard] is a principal of San Diegans for Accountability at City
23 Hall, Yes on D [Yes on D Committee], a committee registered with the State of California
24 (Identification No. 1322855). Shepard and the Yes on D Committee are collectively referred to
25 herein as “Respondents.”

26 3. This Stipulation will be submitted for consideration by the Ethics Commission at
27 its next scheduled meeting, and the agreements contained herein are contingent upon the

28 ///

1 approval of the Stipulation and the accompanying Decision and Order by the Ethics
2 Commission.

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

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

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

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

26 ///

27 ///

28 ///

1 **Summary of Law and Facts**

2 8. ECCO defines “committee” as any person or combination of persons who raise
3 \$1,000 or more for the purpose of supporting or opposing a candidate or ballot measure, or make
4 independent expenditures of \$1,000 or more, within a single calendar year. SDMC § 27.2903.

5 9. ECCO mandates that all committees that pay for mass campaign literature (200
6 substantially similar pieces of campaign literature) for the purpose of supporting or opposing a
7 City measure include the words “paid for by” followed by the name and address of the
8 committee, in 12 point legible type in a color that contrasts with the background. SDMC §
9 27.2970.

10 10. Respondent Yes on D Committee was established in November of 2009 for the
11 purpose of supporting the “strong mayor” measure on the June 8, 2010, ballot.

12 11. Beginning in early May 2010, Respondents distributed mass campaign literature
13 in the form of approximately 170,000 mailers for the purpose of supporting Proposition D in the
14 June 2010 primary election. Respondents included the name and address of the committee on
15 this campaign literature, but failed to include the phrase “paid for by” as required by SDMC
16 section 27.2970.

17 **Counts**

18 **Count 1 – Violation of SDMC section 27.2970**

19 12. Respondents violated SDMC section 27.2970 by failing to include the phrase
20 “paid for by” on mass produced campaign literature in the form of approximately 170,000
21 mailers distributed for the purpose of supporting Proposition D.

22 **Factors in Mitigation**

23 13. Respondents self-reported the violation to the Commission after realizing the
24 error made by the vendor that printed the subject mailers.

25 14. Respondents have cooperated fully with the Ethics Commission’s investigation.

26 **Conclusion**

27 15. Respondents agree to take necessary and prudent precautions to ensure
28 compliance with all provisions of ECCO in the future.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

16. Respondents agree to pay a fine in the amount of \$500 for violating SDMC section 27.2970. This amount must be paid no later than July 30, 2010, by check or money order payable to the City Treasurer. The submitted payment will be held pending Commission approval of this Stipulation and execution of the Decision and Order portion set forth below.

DATED: _____
STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

DATED: _____
TOM SHEPARD, individually, and on behalf of
Respondent, SAN DIEGANS FOR ACCOUNTABILITY
AT CITY HALL, YES ON D.

DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on _____, 2010. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondents pay a fine in the amount of \$500.

DATED: _____
LARRY WESTFALL , Chair
SAN DIEGO ETHICS COMMISSION