

1 STACEY FULHORST, Executive Director  
City of San Diego Ethics Commission  
2 1010 Second Avenue, Suite 1530  
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3 Telephone: (619) 533-3476  
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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.: No. 2008-54  
11 )  
12 ) **PETITIONER'S BRIEF IN RESPONSE**  
NANCY GRAHAM, ) **TO PRESIDING AUTHORITY'S**  
13 ) **RECOMMENDATION**  
Respondent. )  
14 ) **Date:** August 12, 2010  
15 ) **Time:** 5:00 p.m.  
16 ) **Location:** 202 C Street, 12th Floor  
San Diego, CA 92101  
17 )  
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19 )

20 **I**  
21 **INTRODUCTION**

22 The City of San Diego Ethics Commission [Commission] is charged with the duty to  
23 administer, implement, and enforce local governmental ethics laws contained in the San Diego  
24 Municipal Code [SDMC], including the City's Ethics Ordinance. The Commission held an  
25 Administrative Hearing in this matter on May 20, 2010. Pursuant to SDMC section  
26 26.0435(b)(2), the Commission appointed an ad hoc subcommittee comprised of Commissioners  
27 Lee Biddle, Clyde Fuller, and Larry Westfall, to serve as the Presiding Authority and conduct the  
28 hearing. On July 20, 2010, the Presiding Authority issued its Recommendation in accordance  
with SDMC section 26.0437. Petitioner submits this brief in response to the Presiding  
Authority's Recommendation [Recommendation] pursuant to SDMC section 26.0437(e).

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1 II

2 **THE PROPOSED FINE IS NOT COMMENSURATE**  
3 **WITH THE ESTABLISHED FACTORS IN AGGRAVATION**

4 *A. Summary of Argument*

5 According to its Recommendation, the Presiding Authority has concluded that the  
6 Respondent was a sophisticated, experienced government official who committed numerous  
7 violations of the City's conflict of interest laws by actively and substantially participating in key  
8 decisions concerning the Ballpark Village project when one of the co-developers of this project  
9 had recently provided Respondent with millions of dollars in income. The Presiding Authority  
10 has recommended that the Commission impose a fine of \$25,000 in connection with these  
11 violations. Petitioner submits that the proposed fine is not commensurate with the factors in  
12 aggravation because it does not take into account Respondent's intent to deceive and mislead,  
13 her failure to cooperate with the staff investigation, her pattern of conduct, and the overall  
14 seriousness of her violations.

15 *B. Attempts to Conceal, Deceive, or Mislead*

16 According to the SDMC, one of the key criteria the Commission must consider in  
17 determining the amount of a fine is "the presence or absence of any intention to conceal, deceive,  
18 or mislead." SDMC section 26.0438(f)(2). Inexplicably, the Recommendation does not mention  
19 the evidence presented by Petitioner at the hearing establishing that Respondent attempted to  
20 deceive the Centre City Development Corporation [CCDC] board and the public, that she lied to  
21 the Chair of the CCDC board, and that she misled the Presiding Authority during her testimony  
22 at the hearing.

23 First, when Petitioner was asked about her relationship with Related (one of the  
24 developers of the Moorings Project in Lantana, Florida) at a CCDC meeting on October 11,  
25 2006, Respondent publicly disclosed that she had worked with Related, in her capacity as the  
26 Mayor of West Palm Beach, on a project called City Place in West Palm Beach. She stated,  
27 however, that she did not have a business relationship with Related when in fact she did have a  
28 business relationship with this entity (as well as with Lennar) to develop the Lantana project. In

1 addition to mischaracterizing her relationship with Related, Respondent failed to disclose that  
2 she had received over \$2 million in profit distributions from the Lantana project within the seven  
3 month period prior to the CCDC meeting, and she expected to receive future disbursements from  
4 the Lantana project. (Petitioner's Exhibits 56 at page 3, and testimony of Respondent at hearing  
5 transcript pages 64 – 65.) Respondent's failure to make an accurate and complete disclosure at  
6 this CCDC meeting clearly constituted an attempt to deceive CCDC and the public, and to  
7 conceal the substantial income she was receiving from Related and Lennar.

8 Second, at another CCDC meeting on April 23, 2008, Respondent addressed allegations  
9 regarding her relationship with Related and stated publicly that she had not held a business  
10 interest in Florida for "a while." Respondent failed to disclose that she had received substantial  
11 income from the Lantana project from March of 2006 through October of 2007. (Petitioner's  
12 Exhibits 57 and 58, and testimony of Respondent at hearing transcript at pages 65 – 67.) Once  
13 again, Respondent's failure to make a full disclosure at this CCDC meeting clearly constituted an  
14 attempt to deceive CCDC and the public.

15 Third, Fred Maas, the volunteer Chair of the CCDC board, testified at the hearing in this  
16 matter that Respondent was not truthful when he asked her, "Nancy, when you were receiving  
17 money from N-K Ventures, did you know where that money came from?" and she replied  
18 "Absolutely not." (Hearing transcript at pages 207, 215, and 245 – 247.) As established by  
19 Petitioner's evidence, Respondent was well aware that the funds she received from N-K  
20 Ventures represented profit distributions from the Lantana project. Thus, Mr. Maas' uncontested  
21 testimony establishes conclusively that Respondent lied to the Chair of the CCDC board about a  
22 material fact related to her economic interests.

23 Fourth, at the hearing, Respondent testified that she participated in decisions concerning  
24 the Ballpark Village project because she believed the applicant for entitlements was Marriott (not  
25 one of her economic interests), and she had no idea that the developers of Ballpark Village  
26 (including Lennar) would financially benefit from the sale of the property to Marriott, or that the  
27 decisions she influenced would have a financial impact on the developers of Ballpark Village.  
28 (Hearing transcript at pages 35 – 38.) Respondent's testimony was directly contradicted by the

1 testimony of John Kratzer (Petitioner's Exhibit 55 at page 53), Fred Maas (hearing transcript at  
2 page 201), Jeff Graham (hearing transcript at page 118, 120 – 121, 180 - 182), and Brad Richter  
3 (hearing transcript at page 257), all of whom testified that the developers of Ballpark Village  
4 sought and negotiated the additional entitlements to enable them to sell one of one of the parcels  
5 at the site to Marriott. Moreover, at the hearing, Respondent established no reasonable basis for  
6 her purported belief that Marriott was the sole party involved in the requested entitlements.  
7 In other words, the evidence overwhelmingly demonstrates that Respondent tried to mislead the  
8 Ethics Commission during the hearing in an attempt to mitigate her conflict of interest violations.

9 *C. Failure to Cooperate*

10 Another important factor in aggravation is absent from the Recommendation:  
11 Respondent's failure to cooperate with the Commission staff during the investigation. As with  
12 the attempts to deceive, Respondent's failure to cooperate is a factor that the Commission is  
13 obligated to consider in accordance with SDMC section 26.0438(f)(7). During the hearing in  
14 this mater, Respondent's counsel maintained that Respondent did not comply with the  
15 Commission's investigative subpoena because he advised her that the materials sought were  
16 protected under the Fifth Amendment of the United States Constitution. Petitioner recognizes  
17 Respondent's right to avail herself of applicable legal remedies, including protections afforded  
18 by the Fifth Amendment. However, once the Court ruled that the records sought by the  
19 Commission staff were not protected by the Fifth Amendment, Respondent had an obligation to  
20 comply with the Court Order and produce the documents. The Court's Orders issued on August  
21 4, 2009, and September 22, 2009<sup>1</sup>, establish the following chronology of events:

- 22 • On August 4, 2009, the Court ruled that the subpoena did not violate Respondent's  
23 privilege under the Fifth Amendment and ordered her to produce documents as well  
24 as an accompanying declaration on or before August 14, 2009.

25  
26  
27 <sup>1</sup> The Presiding Authority took judicial notice of the San Diego Superior Court Orders dated August 4, 2009, and  
28 September 22, 2009, at the Administrative Hearing on May 20, 2010.

- 1           • On September 22, 2009, the Court ruled that: (1) the subpoena demand for checks  
2 included records reflecting electronic transfers of funds; (2) there were sufficient  
3 grounds to initiate contempt proceedings against Respondent for failing to comply  
4 with the Court’s August 4, 2009, Order; and (3) Respondent was obligated under the  
5 August 4, 2009, Order to deliver a declaration (attesting to the authenticity and  
6 completeness of the records produced), and she was directed to do so on or before  
7 October 5, 2009.

8           As reflected in Petitioner’s Exhibit No. 14, Respondent did not produce the documents  
9 and the accompanying declaration until October 30, 2009, eleven weeks after the first deadline  
10 imposed by the Court, and four weeks after the second deadline. In other words, Respondent  
11 chose to delay the production of records reflecting payments of millions of dollars from the  
12 Lantana project while she was working at CCDC. There is no reasonable excuse for  
13 Respondent’s failure to produce the records by August 14, 2009; the Court had already ruled that  
14 the documents sought were not protected by the Fifth Amendment. Her conduct unequivocally  
15 constitutes a failure to cooperate with staff’s investigation. A failure to hold her accountable for  
16 this conduct will send a message to all future Respondents that they can simply hide behind  
17 “advice of counsel” and repeatedly assert failed objections without incurring any penalty for  
18 failing to cooperate.

19           *D. Pattern of Conduct*

20           The Recommendation states that Respondent violated the Ethics Ordinance by attending  
21 ten meetings concerning the Ballpark Village project on the basis that Petitioner presented  
22 documentary evidence substantiating that Respondent materially participated in and influenced  
23 decisions at these meetings. The Recommendation does not mention, however, that several  
24 witnesses testified that the Respondent attended many more meetings over a two year period  
25 during which she influenced key decisions concerning the Ballpark Village project – a fact that  
26 Respondent did not deny. (See testimony of Jeff Graham at hearing transcript page 124, and  
27 testimony of Brad Richter at hearing transcript page 260.) Although there are no notes from  
28 many of these meetings to corroborate the witnesses’ testimony, at a minimum Respondent’s





1 decision-makers to approve or deny the entitlements requested for Ballpark Village,  
2 Respondent's direct efforts to directly influence their decision-making process constitute the  
3 most severe violations in this case.

4 With respect to Count 32, the detailed information provided in the nine-page staff report  
5 dated July 3, 2007, and signed by Respondent was clearly intended to influence the decisions  
6 that the CCDC board would ultimately have to make concerning the key deal points related to  
7 the addition of the proposed Marriott hotel. Petitioner submits that this attempt to directly  
8 influence the decision-makers is the most serious type of conflict of interest violation. When this  
9 serious violation is considered in light of the substantial factors in aggravation described above,  
10 it merits the maximum penalty of \$5,000.

11 The Recommendation states that Counts 32 and 33 should be combined into a single  
12 violation. No explanation for this suggestion is provided. Petitioner submits that there is no  
13 reasonable basis for collapsing these two counts into one; each is egregious enough to merit a  
14 separate and substantial fine. As reflected in the CCDC meeting minutes and partial transcript  
15 (Petitioner's Exhibit Nos. 46 and 47), the substance of Respondent's participation at the CCDC  
16 meeting on July 11, 2007, was not a mere recitation of the staff report (which could arguably be  
17 seen as duplicative). Instead, she routinely interjected during the discussion to provide  
18 information, not included in the staff report, to the CCDC board members who would serve as  
19 the ultimate decision-makers. Accordingly, Petitioner submits that Respondent's verbal  
20 participation at this CCDC meeting is separate and distinct from the staff report. Because  
21 Respondent's comments were not as extensive as the information provided in the staff report,  
22 however, Petitioner submits that \$2,500 is an appropriate fine for this violation.

23 With respect to Count 34, the Recommendation contains a factual error in that it refers to  
24 the preparation of a staff report submitted after Respondent departed to Tennessee to care for  
25 family. In fact, as reflected in the Final Administrative Complaint, Count 34 pertains to  
26 Respondent's documented participation in the discussion concerning Ballpark Village at the  
27 CCDC meeting on May 14, 2008. Respondent was present at this meeting, not absent as the  
28 Recommendation indicates. As with Counts 32 and 33, Petitioner submits that Respondent's

1 direct participation in the discussions concerning Ballpark Village with the CCDC Board  
2 constitutes a serious violation of the City's ethics laws. In fact, Respondent's comments at this  
3 meeting go well beyond merely providing information (which would also be a violation) and  
4 extend into outright advocacy for the addition of the hotel at the site: "the hotel is a great thing  
5 for this City" and "we have been working very closely with the applicant, I think from the staff's  
6 perspective we wholeheartedly support a hotel here." (Petitioner's Exhibit 50 at pages 3 and 5.)  
7 Petitioner submits that this unvarnished effort to influence the ultimate decisions of the CCDC  
8 board members on a project that involved a developer who was a substantial source of income to  
9 Respondent merits the imposition of the maximum penalty of \$5,000.

10 **V**

11 **THE PROPOSED FINE IS NOT COMMENSURATE**  
12 **WITH FINES LEVIED IN OTHER MATTERS**

13 Conflicts of interest are unquestionably the most serious violations of the City's Ethics  
14 Ordinance. In the Ethics Commission's eight-year enforcement history, it has levied only one  
15 fine for violations of SDMC section 27.3561. This matter involved the former Chair of the  
16 CCDC board who voted to approve the annual CCDC budget as well as the issuance of  
17 redevelopment bonds, both of which provided funding for a downtown library when it was  
18 public knowledge that his architectural firm had contracted to provide architectural services for  
19 the library project. (Petitioner asks that the Ethics Commission take judicial notice of this  
20 Stipulation, Decision, and Order, which is attached as Exhibit A.) The underlying facts in this  
21 former case are far less egregious than those in the present matter. The Respondent in the former  
22 case acknowledged his mistakes, undertook efforts to remedy the situation, and cooperated with  
23 the staff investigation. Nevertheless, the Presiding Authority in this matter has recommended  
24 that the Commission impose the exact same fine as was levied in the previous case: \$1,500 per  
25 count. If the Commission agrees with the Recommendation, it will essentially be disregarding  
26 all the significant factors in aggravation present in this case and will instead be sending a  
27 message to other City Officials that there are no consequences for failing to accept responsibility  
28 for their actions or for failing to cooperate with staff investigations.

1           Although the Commission has only levied one other fine for conflict of interest violations  
2 in its enforcement history, there are two other matters that merit comparison to the current case.  
3 Both involved violations of the City's campaign laws, and both involved administrative hearings  
4 rather than stipulated settlements. In the first matter, the Commission levied a fine of \$68,243 in  
5 connection with a respondent's repeated failure to pay and disclose ten vendor debts totaling  
6 \$14,000. (Petitioner asks that the Ethics Commission take judicial notice of this Administrative  
7 Enforcement Order, which is attached as Exhibit B.) Although the respondent was a losing City  
8 candidate with a questionable ability to pay the fine, the Commission determined that his  
9 repeated violations, coupled with evidence suggesting an intent to conceal his debts, merited the  
10 imposition of a substantial fine. It would therefore be inconsistent and inequitable for the  
11 Commission to consider fining the Respondent in this matter only \$25,000 (approximately one-  
12 third of the amount paid by a losing City candidate who failed to disclose and pay his vendor  
13 debts) in light of her continuous participation as the President and Chief Operating Officer of  
14 CCDC in decisions concerning a \$1.5 billion project while receiving millions of dollars from one  
15 of the project's developers, especially when considering the efforts she made to conceal her  
16 violations.

17           The second matter that serves as a legitimate basis for comparison is the recent  
18 administrative hearing involving an elected City Councilmember's admitted failure to disclose  
19 two post-election campaign debts. As you will recall, in that matter the respondent admitted her  
20 mistakes and fully cooperated with the Commission's investigation, and the Commission  
21 imposed a fine of \$1,500 per count. (Petitioner asks that the Ethics Commission take judicial  
22 notice of this Administrative Enforcement Order, which is attached as Exhibit C.) Petitioner  
23 submits that, in light of the seriousness of the violations in the current case, coupled with  
24 substantial factors in aggravation, it is illogical and incongruous for the Commission to consider  
25 imposing the same fine (\$1,500 per count) as that paid by the Councilmember in the former  
26 action.

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1 In addition to considering the fines levied by the Commission in previous enforcement  
2 matters, it is relevant for the Commission to consider the fact that every fine imposed by the  
3 Commission establishes a precedent for future cases. If the Commission chooses to impose a  
4 fine of \$25,000 in this case, it will essentially be determining that violations of the City's conflict  
5 of interest laws merit a fine of no more than \$1,500 per count, even when the violations are part  
6 of an ongoing pattern, are accompanied by an intent to deceive, and involve a failure to  
7 cooperate with staff's investigation. In other words, respondents who commit an isolated  
8 violation, admit their mistakes, and cooperate, will justifiably contend that they should pay a fine  
9 closer to \$500 per count. Because respondents who commit relatively routine violations (such as  
10 the first-time late filing of a disclosure form) typically pay fines amounting to \$500 per count,  
11 Petitioner submits that imposing a fine lower than \$1,500 per count for conflict of interest  
12 violations would be disproportionate and inadequate – even when there are no factors in  
13 aggravation. On this basis, Petitioner urges the Commission to refrain from setting a precedent  
14 in this case suggesting that a violation of the City's conflict of interest laws could merit a fine of  
15 only \$500.

## 16 VI

### 17 CONCLUSION

18  
19 The evidence presented by Petitioner at the hearing establishes conclusively that every  
20 one of the factors in aggravation delineated in SDMC section 26.0438 is present in this case.  
21 The proposed \$25,000 fine is not sufficient in light of these factors in aggravation, nor is it  
22 proportionate to the fines imposed by the Commission in other matters. Petitioner therefore  
23 requests that the Commission impose a fine that is commensurate with the seriousness of  
24 Respondents violations, and that demonstrates that there will be serious consequences for City  
25 Officials who violate the City's ethics laws, attempt to conceal their violations, and fail to  
26 cooperate with the staff investigation. In this regard, Petitioner asks that the Commission levy a  
27 fine in the amount of \$60,500, broken down as follows:

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# **EXHIBIT A**

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

7 Petitioner

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

10 In re the Matter of: ) Case No.: 2004-41  
11 HAROLD SADLER, )  
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 filing of Statements of Economic Interests  
20 [SEIs] and the disqualification from municipal decisions that affect a City Official's economic  
21 interests, as required by the City's Ethics Ordinance.

22 2. Respondent Harold Sadler [Respondent] is the Chair of the Board of Directors of the  
23 Centre City Development Corporation [CCDC]. He became a member of the CCDC Board on  
24 March 27, 2001, and was elected Chair on September 18, 2002. In addition, Respondent is the  
25 Chairman of the Board of Tucker, Sadler, Noble, Castro [TSNC], an architectural firm located in  
26 the City of San Diego.

27 3. This Stipulation, Decision and Order [Stipulation] will be submitted for consideration  
28 by the Ethics Commission at its next scheduled meeting, and the agreements contained herein are

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

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

6 5. Respondent understands and knowingly and voluntarily waives any and all procedural  
7 rights under the SDMC, including, but not limited to, a determination of probable cause, the  
8 issuance and receipt of an administrative complaint, the right to appear personally in any  
9 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.

12 6. The 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 City Ethics  
19 Commission becomes necessary, no member of the Ethics Commission or its staff shall be  
20 disqualified because of prior consideration of this Stipulation.

21 **Summary of Law and Facts**

22 *Disclosure of Economic Interests*

23 8. As a member of the CCDC Board, Respondent is a "Local Code Filer" as that term is  
24 defined by SDMC section 27.3503, and is required to file SEIs in the time and manner set forth  
25 in SDMC section 27.3510.

26 9. SDMC section 27.3510 requires all Local Code Filers to file an annual SEI on or  
27 before April 1 of each year, covering the period from January 1 through December 31 of the

28 ///

1 previous calendar year, pursuant to the applicable Conflict of Interest Code adopted by the City  
2 Council.

3 10. Respondent filed an SEI for the 2003 calendar year on March 30, 2004. In  
4 accordance with the Conflict of Interest Code for CCDC adopted by the City Council on  
5 November 18, 2002, Respondent was required to report business positions in, and income from,  
6 various types of entities, including architectural firms located or doing business within the Centre  
7 City and Horton Plaza Redevelopment Project Areas. Respondent did not report any income  
8 received from TSNC during 2003 despite the fact that, as discussed in greater detail below,  
9 TSNC conducted business within these redevelopment project areas during the 2003 calendar  
10 year.

11 *Disqualification from Municipal Decisions Affecting Economic Interests*

12 11. As a member of the CCDC Board, Respondent is also a City Official as that term is  
13 defined by SDMC section 27.3503, and is required to abide by the disqualification requirements  
14 set forth in SDMC section 27.3561:

15 It is unlawful for any City Official to knowingly influence a municipal decision if  
16 it is reasonably foreseeable that the municipal decision will have a material  
financial effect on:

17 (a) the City Official or a member of his or her immediate family, if the material  
18 financial effect is distinguishable from its effect on the public generally; or

19 (b) any of the following economic interests:

20 ...

21 (2) any business entity for which the City Official or a member of the City  
22 Official's immediate family is a director, officer, partner, trustee,  
employee, or holds any position of management; and

23 ...

24 (4) any person from whom a City Official or a member of the City Official's  
25 immediate family has received (or by whom you have been promised)  
26 \$500 or more in income within twelve months prior to the municipal  
27 decision;

28 ...



1 million in bonds, the proceeds of which included additional unspecified funding for the Main  
2 Library.

3 **Factors in Mitigation**

4 19. Respondent cooperated fully with the Ethics Commission investigation.

5 20. Once the foregoing circumstances were brought to the Respondent's attention, he  
6 took immediate action to ensure that the CCDC Board promptly re-voted (without his  
7 participation) on the three municipal decisions discussed above. In addition, the Respondent  
8 worked with the CCDC Board to initiate new procedures designed to encourage compliance with  
9 the disqualification provisions in the Ethics Ordinance.

10 **Conclusion**

11 21. Respondent agrees to file an amended 2003 SEI and properly disclose the income  
12 received from TSNC during this time period on or before December 15, 2004.

13 22. Respondent agrees to take necessary and prudent precautions to comply with all  
14 provisions of the Ethics Ordinance in the future. In particular, Respondent agrees to fully and  
15 completely disclose his economic interests, and to abstain from participating in any municipal  
16 decisions that materially affect his economic interests.

17 23. Respondent shall pay a fine in the amount of \$6,000 for violations of SDMC  
18 sections 27.3510 and 27.3561. This amount must be paid no later than December 15, 2004.

19 24. This Stipulation shall not become effective until Respondent has provided to the  
20 Ethics Commission the amount set forth in paragraph 23, by check or money order made payable  
21 to the City Treasurer.

22 DATED: \_\_\_\_\_

23 \_\_\_\_\_  
24 STACEY FULHORST, Executive Director  
ETHICS COMMISSION, Petitioner

25 DATED: \_\_\_\_\_

26 \_\_\_\_\_  
27 HAROLD SADLER, Respondent  
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**DECISION AND ORDER**

The Ethics Commission has considered the above Stipulation at its meeting on December 16, 2004. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of \$6,000.

DATED: \_\_\_\_\_

\_\_\_\_\_  
DOROTHY L.W. SMITH, Chair  
SAN DIEGO ETHICS COMMISSION

# **EXHIBIT B**

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

In re the Matter of: ) Case No.: 2006-59  
)  
) **ADMINISTRATIVE ENFORCEMENT**  
LUIS ACLE, ) **ORDER**  
)  
Respondent. ) [SDMC § 26.0439]  
)  
) **Date:** July 11, 2008  
) **Time:** 9:00 a.m.  
) **Location:** 202 C Street, 12th Floor  
) San Diego, CA 92101

Pursuant to San Diego Municipal Code section 26.0436 *et seq.*, the City of San Diego Ethics Commission (composed of Commissioners Lee Biddle, Guillermo Cabrera, Clyde Fuller, Krishna Haney, Dorothy Leonard, Richard Valdez, and Larry Westfall), sitting as the Presiding Authority at a public Administrative Hearing held on the 11th day of July, 2008, heard testimony and reviewed evidence relating to the allegations in the First Amended Final Administrative Complaint [Administrative Complaint] brought by Petitioner Stacey Fulhorst against Respondent Luis Acle [Respondent].

The Administrative Complaint alleges that Respondent violated the Election Campaign Control Ordinance [ECCO] of the San Diego Municipal Code [SDMC] (SDMC 27.2901 *et seq.*) in connection with Respondent's candidacy for the Eighth District City Council seat in the City of San Diego in the November 2005 special election and the January 2006 special run-off election. After deliberating pursuant to SDMC section 26.0438 with regard to each violation

1  
2 alleged by Petitioner in the Administrative Complaint, and based on findings of fact, conclusions  
3 of law, and the entire record of the proceedings, the Ethics Commission found by the concurring  
4 votes of at least four Commissioners as set forth in the Ethics Commission Resolution dated July  
5 16, 2008, that Petitioner established by a preponderance of the evidence that Respondent violated  
6 ECCO as set forth below.

7 Further, for each finding of a violation of ECCO, the Ethics Commission voted on the  
8 penalty to be imposed in consideration of all of the relevant circumstances, including, but not  
9 limited to: (1) the severity of the violation; and (2) the presence or absence of any intention to  
10 conceal, deceive, or mislead; and (3) whether the violation was deliberate, negligent, or  
11 inadvertent; and (4) whether the Respondent demonstrated good faith by consulting the  
12 Commission staff for written advice that does not constitute a complete defense; and (5) whether  
13 the violation was an isolated incident or part of a pattern, and (6) whether the violator has a prior  
14 record of violations of Governmental Ethics Laws; and (7) the existence of any Mitigating  
15 Information; and (8) the degree to which the Respondent cooperated with Commission staff by  
16 providing full disclosure, remedying a violation, or assisting with the investigation. SDMC  
17 §26.0438(f). Based on the concurring votes of at least five Commissioners as set forth in the  
18 Ethics Commission Resolution dated July 16, 2008, the Ethics Commission imposed the  
19 penalties on Respondent set forth below for his violations of ECCO.

20 **Counts 1 through 10 - Violations of SDMC section 27.2960(b)**

21 SDMC section 27.2960(b) requires a candidate or committee that accepts goods or  
22 services for political purposes to pay for those goods or services in full no later than 180 calendar  
23 days after the receipt of a bill or invoice and in no event later than 180 calendar days after the  
24 last calendar day of the month in which the goods were delivered or the services rendered, unless  
25 it is clear from the circumstances that the failure to pay is reasonably based on a good faith  
26 dispute.

27 The Ethics Commission finds that Respondent committed 10 violations of SDMC section  
28 27.2960(b) by failing to pay 10 campaign debts within 180 days. Further, for each and every  
violation of section 27.2960(b), the Ethics Commission imposes on Respondent a penalty in the

1  
2 amount of the debt that Respondent either untimely paid to a vendor or failed to pay a vendor for  
3 a total penalty for Counts 1 through 10 of \$13,993.00. The Ethics Commission's specific  
4 findings and imposition of penalties on Counts 1 through 10 are as follows:

5 **Count 1** - Respondent failed to timely pay Marketing Support Systems on its invoice for  
6 \$2,500.00 dated November 8, 2005, until April 5, 2007, and is ordered to pay a penalty in the  
7 amount of \$2,500.00 for Count 1.

8 **Count 2** - Respondent failed to timely pay Marketing Support Systems on its invoice for  
9 \$1,342.00 submitted in November of 2005, until June 30, 2006, and is ordered to pay a penalty in  
10 the amount of \$1,342.00 for Count 2.

11 **Count 3** - Respondent failed to timely pay Marketing Support Systems on its invoice for  
12 \$5,000.00 dated December 15, 2005, until April 5, 2007, and is ordered to pay a penalty in the  
13 amount of \$5,000.00 for Count 3.

14 **Count 4** - Respondent failed to timely pay Marketing Support Services the amount of  
15 \$2,500.00 accrued at the time of contract termination in approximately December of 2005,  
16 pursuant to the termination provision of the contract between Marketing Support Services and  
17 Respondent, and is ordered to pay a penalty in the amount of \$2,500.00 for Count 4.

18 **Count 5** - Respondent failed to timely pay PAC Management & Consulting, Inc. the  
19 amount of \$1,000.00 on its invoice dated December 28, 2005, and is ordered to pay a penalty in  
20 the amount of \$1,000.00 for Count 5.

21 **Count 6** - Respondent failed to timely pay PAC Management & Consulting, Inc. the  
22 amount of \$1,000.00 due on January 4, 2006, and is ordered to pay a penalty in the amount of  
23 \$1,000.00 for Count 6.

24 **Count 7** - Respondent failed to timely pay Ann Kelsey the amount of \$250.00 due on her  
25 invoice of January 10, 2006, and is ordered to pay a penalty in the amount of \$250.00 for Count  
26 7.

27 **Count 8** - Respondent failed to timely pay Rusanne Anthony the amount of \$87.47 due  
28 on her invoice of March 31, 2006, until March 13, 2007, and is ordered to pay a penalty in the  
amount of \$87.47 for Count 8.

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2           **Count 9** - Respondent failed to timely pay Rusanne Anthony the amount of \$45.55 due  
3 on her invoice of June 30, 2006, until March 13, 2007, and is ordered to pay a penalty in the  
4 amount of \$45.55 for Count 9.

5           **Count 10** - Respondent failed to timely pay Rusanne Anthony the amount of \$267.98 due  
6 on her invoice of July 31, 2006, until March 13, 2007, and is ordered to pay a penalty in the  
7 amount of \$267.98 for Count 10.

8                           **Counts 11 through 35 –Violations of SDMC section 27.2930**

9           SDMC section 27.2930 requires candidates and committees to file campaign statements  
10 in the time and manner required by state law. California Government Code section 84211  
11 requires the itemized disclosure of all contributions and expenditures over \$100.00, including  
12 accrued expenses.

13           The Ethics Commission finds that Respondent committed 22 violations of SDMC section  
14 27.2930 by not properly disclosing campaign expenditures. In particular, Respondent failed to  
15 disclose 10 accrued expenses, most of them on multiple occasions. The Ethics Commission  
16 notes that as to Counts 11, 12, 13, 14, 18, 19, and 20, Respondent had previously reported the  
17 expenditures and subsequently removed the expenditures from later-filed statements. The Ethics  
18 Commission's specific findings and imposition of penalties on Counts 11 through 35 are as  
19 follows:

20           **Counts 11 & 12** - Respondent failed to disclose the November 8, 2005 invoice of  
21 Marketing Support Systems in the amount of \$2,500.00 as an accrued expense on two campaign  
22 statements covering the periods ending on June 30, 2006, and December 31, 2006, and is ordered  
23 to pay a penalty in the amount of \$3,500.00 per each count for a total penalty of \$7,000.00 for  
24 Counts 11 and 12.

25           **Counts 13 & 14** - Respondent failed to disclose the December 15, 2005 invoice of  
26 Marketing Support Systems in the amount of \$5,000.00 as an accrued expense on two campaign  
27 statements covering the periods ending on June 30, 2006, and December 31, 2006, and is ordered  
28 to pay a penalty in the amount of \$3,500.00 per each count for a total penalty of \$7,000.00 for  
Counts 13 and 14.

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2           **Counts 15, 16 & 17** - Respondent failed to disclose an expense accruing in or about  
3 December of 2005, in the amount of \$2,500.00 for Marketing Support Services on three  
4 campaign statements covering the periods ending on June 30, 2006, December 31, 2006, and  
5 June 30, 2007, and is ordered to pay a penalty in the amount of \$1,000.00 per count for a total  
6 penalty of \$3,000.00 for Counts 15, 16 and 17.

7           **Counts 18, 19 & 20** - Respondent failed to disclose the December 28, 2005, invoice of  
8 PAC Management & Consulting, Inc. in the amount of \$1,000.00 as an accrued expense on three  
9 campaign statements covering the periods ending on June 30, 2006, December 31, 2006, and  
10 June 30, 2007, and is ordered to pay a penalty in the amount of \$3,500.00 per count for a total  
11 penalty of \$10,500.00 for Counts 18, 19 and 20.

12           **Counts 21, 22, & 23** - Respondent failed to disclose an expense accruing on January 4,  
13 2006, in the amount of \$1,000.00 for PAC Management & Consulting, Inc. on three campaign  
14 statements covering the periods ending on June 30, 2006, December 31, 2006, and June 30,  
15 2007, and is ordered to pay a penalty in the amount of \$1,000.00 per count for a total penalty of  
16 \$3,000.00 for Counts 21, 22 and 23.

17           **Counts 24, 25 & 26** - Respondent failed to disclose the January 10, 2006, invoice of Ann  
18 Kelsey in the amount of \$250.00 as an accrued expense on three campaign statements covering  
19 the periods ending on June 30, 2006, December 31, 2006, and June 30, 2007, and is ordered to  
20 pay a penalty in the amount of \$1,000.00 per count for a total penalty of \$3,000.00 for Counts  
21 24, 25 and 26.

22           **Counts 27 & 28** - Respondent failed to disclose the March 31, 2006, and June 30, 2006,  
23 invoices of Rusanne Anthony totaling \$133.02 as an aggregated accrued expense on the  
24 campaign statement covering the period ending on June 30, 2006, and is ordered to pay a penalty  
25 in the amount of \$1,000.00 per count for a total penalty of \$2,000.00 for Counts 27 and 28.

26           **Counts 29, 30, 31 & 32** - Respondent failed to disclose the March 31, 2006, June 30,  
27 2006, July 31, 2006, and October 31, 2006, invoices of Rusanne Anthony totaling \$467.50 as an  
28 aggregated accrued expense on the campaign statement covering the period ending on December

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2 31, 2006, and is ordered to pay a penalty in the amount of \$1,000.00 per count for a total penalty  
3 of \$4,000.00 for Counts 29, 30, 31 and 32.

4 The Ethics Commission further finds that Respondent committed 3 violations of SDMC  
5 section 27.2930 by not disclosing campaign contributions, as follows:

6 **Count 33** - Respondent failed to disclose the contribution received from Kenneth  
7 Williams on or about January 5, 2006, in the amount of \$250.00, and is ordered to pay a penalty  
8 in the amount of \$250.00 for Count 33.

9 **Count 34** - Respondent failed to disclose the contribution received from Doreen  
10 Williams on or about January 5, 2006, in the amount of \$250.00, and is ordered to pay a penalty  
11 in the amount of \$250.00 for Count 34.

12 **Count 35** - Respondent failed to disclose the non-monetary contribution received from  
13 John Gordon in June of 2006, in the amount of \$146.00, and is ordered to pay a penalty in the  
14 amount of \$250.00 for Count 35.

15 **Violations of SDMC sections 27.2930 and 27.2931**

16 SDMC section 27.2930 requires candidates and committees to file campaign statements  
17 in the time and manner required by state law. California Government Code section 84200(a)  
18 provides that candidates and committees shall file semiannual statements no later than July 31  
19 for the period ending June 30, and no later than January 31 for the period ending December 31.  
20 In addition, SDMC section 27.2931 requires candidates and committees to file campaign  
21 statements electronically if they have received contributions or made expenditures of \$10,000.00  
22 or more in connection with a City election.

23 The Ethics Commission finds that Respondent committed 4 violations of SDMC sections  
24 27.2930 and 27.2931 by not properly filing campaign statements, and imposes penalties for the  
25 violations of Counts 36 through 39, as follows:

26 **Count 36** - Respondent failed to timely electronically file a campaign statement for the  
27 period ending December 31, 2006, and is ordered to pay a penalty in the amount of \$500.00 for  
28 Count 36.

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# **EXHIBIT C**

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BEFORE THE CITY OF SAN DIEGO  
ETHICS COMMISSION

In re the Matter of: ) Case No.: 2008-73  
)  
) ADMINISTRATIVE ENFORCEMENT  
12 MARTI EMERALD, ) ORDER  
)  
13 Respondent. ) [SDMC § 26.0439]  
)  
) Date: April 8 and 29, 2010  
15 ) Time: 9:00 a.m.  
) Location: 202 C Street, 12th Floor  
16 ) San Diego, CA 92101

Pursuant to San Diego Municipal Code section 26.0436 *et seq.*, the City of San Diego Ethics Commission (composed of Commissioners Lee Biddle, Clyde Fuller, Dorothy Leonard, Richard Valdez, and Larry Westfall), sitting as the Presiding Authority at a public Administrative Hearing held on the 8th and 29th day of April, 2010, heard testimony and reviewed evidence relating to the allegations in the Final Administrative Complaint [Administrative Complaint] brought by Petitioner Alison Adema against Respondent Marti Emerald [Respondent].

The Administrative Complaint alleges that Respondent violated the Election Campaign Control Ordinance [ECCO] of the San Diego Municipal Code [SDMC] (SDMC 27.2901 *et seq.*) in connection with Respondent's candidacy for the Seventh District City Council seat in the City of San Diego in the 2008 election cycle. Specifically, the Administrative Complaint alleges two counts against Respondent for the failure to timely disclose accrued expenses.

1 (SDMC 27.2930) Respondent stipulated to both counts and the Presiding Authority accepted  
2 such stipulation, thereby establishing the violations of ECCO alleged in the Administrative  
3 Complaint against Respondent at the Administrative Hearing.

4 As a violation of ECCO had been established by way of stipulation, the Ethics  
5 Commission voted on the penalty to be imposed against the Respondent, if any, in consideration  
6 of all of the relevant circumstances, including, but not limited to: (1) the severity of the  
7 violation; and (2) the presence or absence of any intention to conceal, deceive, or mislead; and  
8 (3) whether the violation was deliberate, negligent, or inadvertent; and (4) whether the  
9 Respondent demonstrated good faith by consulting the Commission staff for written advice that  
10 does not constitute a complete defense; and (5) whether the violation was an isolated incident or  
11 part of a pattern, and (6) whether the violator has a prior record of violations of Governmental  
12 Ethics Laws; and (7) the existence of any Mitigating Information; and (8) the degree to which  
13 the Respondent cooperated with Commission staff by providing full disclosure, remedying a  
14 violation, or assisting with the investigation. SDMC §26.0438(f). Based on the concurring  
15 votes of at least five Commissioners, as set forth in the Ethics Commission Resolution dated  
16 May 3, 2010, the Ethics Commission imposed the penalties on Respondent set forth below for  
17 her violations of ECCO.

18 **Counts 1 and 2 – Violations of SDMC section 27.2930**

19 SDMC section 27.2930 requires candidates and committees to file campaign statements  
20 in the time and manner required by state law. California Government Code section 84211  
21 requires the itemized disclosure of all contributions and expenditures over \$100.00, including  
22 accrued expenses.

23 Based upon the stipulation of the parties, the Ethics Commission finds that Respondent  
24 committed two violations of SDMC section 27.2930 by failing to timely disclose two accrued  
25 expenses. The Ethics Commission's specific findings and imposition of penalties on Counts 1  
26 and 2 are as follows:

27 **Count 1** - Respondent failed to timely disclose the win bonus owed to KM Strategies in  
28 the amount of \$10,000 as an accrued expense on the campaign statement covering the period

1 ending December 31, 2008, and is ordered to pay a penalty in the amount of \$1,500.00 for  
2 Count 1.

3 Count 2 - Respondent failed to timely disclose the win bonus owed to Ross  
4 Communications in the amount of \$40,000 as an accrued expense on the campaign statement  
5 covering the period ending December 31, 2008, and is ordered to pay a penalty in the amount of  
6 \$1,500.00 for Count 2.

7 Based upon the stipulation of the parties, the findings set forth above, and pursuant to  
8 SDMC section 26.0438, the Ethics Commission orders that Respondent pay a monetary penalty  
9 in the amount of \$3,000 to the General Fund of the City of San Diego in accordance with the  
10 provisions of SDMC sections 26.0439(b)(3) and 26.0440, within 90 days of the date this Order  
11 is served on Respondent.

12 **IT IS SO ORDERED,**

13 Dated: May 3, 2010

CITY OF SAN DIEGO ETHICS COMMISSION

14  
15 By \_\_\_\_\_  
Richard Valdez, Chair

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BEFORE THE CITY OF SAN DIEGO  
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2 such stipulation, thereby establishing the violations of ECCO alleged in the Administrative  
3 Complaint against Respondent at the Administrative Hearing.

4 As a violation of ECCO had been established by way of stipulation, the Ethics  
5 Commission voted on the penalty to be imposed against the Respondent, if any, in consideration  
6 of all of the relevant circumstances, including, but not limited to: (1) the severity of the  
7 violation; and (2) the presence or absence of any intention to conceal, deceive, or mislead; and  
8 (3) whether the violation was deliberate, negligent, or inadvertent; and (4) whether the  
9 Respondent demonstrated good faith by consulting the Commission staff for written advice that  
10 does not constitute a complete defense; and (5) whether the violation was an isolated incident or  
11 part of a pattern, and (6) whether the violator has a prior record of violations of Governmental  
12 Ethics Laws; and (7) the existence of any Mitigating Information; and (8) the degree to which  
13 the Respondent cooperated with Commission staff by providing full disclosure, remedying a  
14 violation, or assisting with the investigation. SDMC §26.0438(f). Based on the concurring  
15 votes of at least five Commissioners, as set forth in the Ethics Commission Resolution dated  
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7 Based upon the stipulation of the parties, the findings set forth above, and pursuant to  
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9 in the amount of \$3,000 to the General Fund of the City of San Diego in accordance with the  
10 provisions of SDMC sections 26.0439(b)(3) and 26.0440, within 90 days of the date this Order  
11 is served on Respondent.

12 **IT IS SO ORDERED,**

13 Dated: May 3, 2010

CITY OF SAN DIEGO ETHICS COMMISSION

14  
15 By \_\_\_\_\_  
Richard Valdez, Chair

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