THE CITY OF SAN DIEGO

November 9, 2007

Ben Hueso
1976 Harrison Avenue
San Diego, CA 92113

Beth Reno
2915 Laurel Street
San Diego, CA 92104

James R. Sutton
The Sutton Law Firm
150 Post Street, Suite 405
San Francisco, Ca 94108

Re: Ethics Commission Case No. 2006-16

Dear Councilmember Hueso, Ms. Reno, and Mr. Sutton:

Enclosed please find a copy of the fully-executed Stipulation in the above-referenced matter, which was approved by the Ethics Commission on November 8, 2007. In addition, I have enclosed copies of the Final Audit Reports for the Friends of Ben Hueso Committee and the Committee to Re-Elect Ben Hueso, which were accepted by the Commission on November 8, 2007. If you have any questions, please contact me at your convenience. Thank you for your courtesy and cooperation during the course of the Commission's investigation.

Sincerely,

Stacey Fulhorst
Executive Director

THE CITY OF SAN DIEGO

# FINAL AUDIT REPORT

November 5, 2007

Councilmember Ben Hueso
Committee to Re-elect Ben Hueso
c/o Beth Reno, Treasurer
2915 Laurel Street
San Diego, CA 92104

**SAN DIEGO ETHICS COMMISSION AUDIT REPORT:**
Committee to Re-elect Ben Hueso

## I. Introduction

This report contains information pertaining to the audit of the Committee to Re-elect Ben Hueso [Committee], identification number 1285407. This audit covers the period beginning January 27, 2006, and ending June 30, 2007. The Committee was selected for audit during a random drawing conducted at the Ethics Commission meeting held on September 13, 2007. At the time the Committee was selected, it was the subject of an Ethics Commission investigative audit. Therefore, when the Committee was selected, the scope of the investigative audit was expanded to that of a compliance audit, as outlined in the Ethics Commission audit manual.

The audit was conducted to determine whether the Committee materially complied with the requirements and prohibitions imposed by the City of San Diego's Election Campaign Control Ordinance [ECCO] (San Diego Municipal Code [SDMC] Chapter 2, Article 7, Division 29).

During the period covered by the audit, the Committee reported total contributions of $103,828.00 from 471 contributors, miscellaneous increases to cash of $1,714.88, and total expenditures of $104,678.70. The difference, $864.18, represents the remaining cash balance in the Committee's bank account at the end of the audit period. The audit revealed 246 material findings with regard to the Committee: (1) the Committee violated SDMC section 27.2930(f) when it improperly coded 201 contributions for a non-existent general election; (2) the Committee violated SDMC section 27.2935 when it accepted and deposited forty-four

contributions in excess of the limit set forth by this section; and (3) the Committee violated SDMC section 27.2950 when it accepted one contribution from an organization.

## II. Committee information

The Committee was formed to support the re-election of Ben Hueso for Council District 8 in the June 6, 2006, primary election. The candidate won outright in the primary election. Accordingly, the City did not hold a general election for City Council District 8 in November of 2006. On January 27, 2006, Councilmember Hueso filed a Candidate Intention Statement (Form 501) and a Statement of Organization (Form 410) with the City Clerk. Although the Committee did not file a subsequent Form 410 to indicate when it qualified as a committee, the audit revealed that it qualified on January 31, 2006. The Committee's treasurer is Beth Reno. The Committee remained open as of the end of the audit period.

## III. Audit authority

The Commission is mandated by San Diego Municipal Code section 26.0414 to audit campaign statements and other relevant documents to determine whether campaign committees comply with applicable requirements and prohibitions imposed by local law.

## IV. Audit scope and procedures

This audit was performed in accordance with generally accepted auditing standards and the guidelines set forth in the Ethics Commission Audit Manual. The audit involved a thorough review of the Committee's records for the time period covered by the audit. This review was conducted to determine:

1. Compliance with all disclosure requirements pertaining to contributions, expenditures, accrued expenditures, and loans, including itemization when required;
2. Compliance with restrictions on contributions, loans, and expenditures;
3. Accuracy of total reported receipts, disbursements, and cash balances as compared to bank records; and
4. Compliance with all record-keeping requirements.

## V. Applicable law

### SDMC §27.2930(f) – Base Level of Campaign Statements and Disclosures

(f) When reporting *contributions* for regularly scheduled *City candidate elections*, *candidates* and *committees* shall include the notation "(P)" for all *contributions* that the

contributor has designated for a primary *election*, and shall include the notation "(G)" for all *contributions* that the contributor has designated for a general *election*. In instances where the contributor has not designated his or her *contribution* for a particular *election*, the *candidate* or *committee* shall include the notation "(P)" for all *contributions* the *candidate* or *committee* has allocated for the primary *election*, and shall include the notation "(G)" for all *contributions* the *candidate* or *committee* has allocated for the general *election*.

**SDMC §27.2935(a) – Contribution Limitations**

(a) It is unlawful for an individual to make to any *candidate* or *committee* supporting or opposing a *candidate,* or for any *candidate* or *committee* supporting or opposing a *candidate* to solicit or accept, a *contribution* that would cause the total amount contributed by that individual to support or oppose the *candidate* to exceed $250 for any single *election* if the *candidate* is seeking *City Council* district office, or to exceed $300 for any single *election* if the *candidate* is seeking the office of the Mayor or City Attorney.

**SDMC §27.2950(a) – Prohibitions and Limits on Contributions from Organizations**

(a) It is unlawful for a *candidate* or *controlled committee,* or *any treasurer* thereof, or any other *person* acting on behalf of any *candidate* or *controlled committee*, to solicit or accept a *contribution* from any *person* other than an individual for the purpose of supporting or opposing a *candidate* for *elective City office*.

## VI. Material findings

### A. Violations of SDMC section 27.2930(f) – Base Level of Campaign Statements and Disclosures

The candidate won outright in the June 6, 2006, primary election. Accordingly, the City did not hold a general election for City Council District 8 in November of 2006. The Committee accepted 201 contributions following the primary election. The Committee's fundraising materials advised contributors that post-election contributions were being solicited to retire debts incurred in connection with the primary election. The Committee, however, subsequently coded these 201 contributions with a "G" on the campaign disclosure statement covering the period from July 1, 2006, through December 31, 2006, indicating that they had been attributed to the non-existent general election.

During the course of the Commission audit and investigation, the Committee representatives explained that the coding mistakes resulted from the treasurer's inadvertent failure to properly configure the campaign software, which automatically coded contributions received after the date of the primary election for the general election.

**B. Violations of SDMC section 27.2935 – Contribution Limitations**

As discussed above, the Committee solicited contributions following the June 2006 primary election to retire debts associated with the primary election, but improperly coded the contributions for the general election. Notwithstanding this improper coding, the contributions were solicited for, intended for, and ultimately used to pay expenses associated with the primary election. Accordingly, for purposes of the City's $250 per election contribution limit, these contributions must be aggregated with the contributions made for the primary election. As a result of this aggregation, the 2006 Committee accepted contributions from forty-three contributors that exceeded the $250 limit for the primary election.

In addition, the Committee accepted a contribution from Wendy Ledford but incorrectly reported that the contribution was made by her spouse, Richard Ledford. Because the contribution was drawn against a bank account belonging to Wendy Ledford, it must be aggregated with other contributions made by Wendy Ledford for purposes of the City's $250 per election contribution limit. In total, the 2006 Committee solicited and accepted contributions from forty-four contributors that violated the City's $250 per election contribution limits. Details concerning these impermissible contributions are as follows:

| Contributor | Date; Amount | Excess contribution |
|---|---|---|
| George H. Adams | 03/15/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| Clyde Ahrens | 05/31/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| Francisco Anzar | 01/31/06; $250.00<br>12/15/06; $250.00 | $250.00 |
| Alfred Baldwin | 03/30/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| Deanne Baldwin | 03/30/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| Paul Chacon | 05/31/06; $250.00<br>11/20/06; $250.00 | $250.00 |
| Dick Chase, Jr. | 03/17/06; $200.00<br>12/14/06; $125.00 | $75.00 |
| James Dawe | 05/16/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| Wayne Deitz | 03/09/06; $250.00<br>12/15/06; $250.00 | $250.00 |
| William Dick | 02/10/06; $100.00<br>11/28/06; $250.00 | $100.00 |
| Samuel Duran | 01/27/06; $250.00<br>12/14/06; $250.00 | $250.00 |

| Contributor | Date; Amount | Excess contribution |
|---|---|---|
| Aaron Feldman | 04/14/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| Dan Feldman | 04/25/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| Uri Feldman | 04/11/06; $250.00 (non-monetary)<br>12/14/06; $250.00 | $250.00 |
| Richard Geisler | 05/23/06; $224.00 (non-monetary)<br>12/14/06; $200.00 | $174.00 |
| Susan Han | 02/15/06; $250.00<br>12/15/06; $250.00 | $250.00 |
| Magdy Hanna | 03/09/06; $250.00<br>12/15/06; $250.00 | $250.00 |
| Bill Hoffenberg | 04/11/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| Ranie Hunter | 03/30/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| Janay Kruger | 01/27/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| Wendy Ledford | 07/31/06; $250.00<br>12/12/06; $250.00 | $250.00 |
| Bruce Leidenberger | 02/01/06; $250.00<br>11/20/06; $250.00 | $250.00 |
| Michael McPhee | 02/02/06; $250.00<br>11/20/06; $250.00 | $250.00 |
| Wayne Meyerowitz | 04/11/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| Edward Mracek | 02/17/06; $99.00<br>05/26/06; $151.00<br>12/14/06; $250.00 | $250.00 |
| R. Michael Murphy | 02/22/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| Robert Nelson | 05/31/06; $34.28 (non-monetary)<br>05/31/06; $250.00<br>12/14/06; $250.00 | $284.28 |
| Rachael Ortiz | 01/27/06; $250.00<br>12/03/06; $250.00 | $250.00 |

| Contributor | Date; Amount | Excess contribution |
|---|---|---|
| Dennis Otsuji | 05/26/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| David Poole | 05/30/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| John Rivera | 05/15/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| Marco Sessa | 03/13/06; $250.00<br>12/20/06; $250.00 | $250.00 |
| D. Barry Simons | 05/27/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| Genevieve Simons | 05/19/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| Robbi Simons | 05/19/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| Stacy Simons | 05/19/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| Thomas Story | 02/22/06; $125.00<br>04/25/06; $125.00<br>12/14/06; $250.00 | $250.00 |
| Thomas Sudberry | 03/13/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| Colton Sudberry | 03/13/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| Richard Vann | 02/20/06; $125.00<br>12/14/06; $250.00 | $125.00 |
| Carlos Vasquez | 05/19/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| Stephen Whitburn | 01/27/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| Alan Ziegaus | 02/09/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| Constance Ziegaus | 02/28/06; $250.00<br>12/14/06; $250.00 | $250.00 |
| | Total | $10,508.28 |

During the course of the Commission's audit and investigation, the Committee representatives explained that the treasurer inadvertently failed to configure the campaign software after the primary election. As a result, the software automatically coded contributions received after the primary election for the general election. Because these contributions were not aggregated with previous primary election contributions, the software did not reveal the fact that excess contributions had been accepted. In addition, Committee representatives explained that they

relied on a professional fundraiser to solicit contributions after the primary election to retire debts associated with the primary, but that this fundraiser mistakenly solicited contributions from contributors who had already given the maximum amount to the primary election, and in so doing caused the contributors to exceed the contribution limit when they made additional contributions to the Committee.

**C. Violation of SDMC section 27.2950 – Prohibitions and Limits on Contributions from Organizations**

On May 18, 2006, the Committee accepted and subsequently deposited a contribution from the Charles V. Pipitone Family Limited Partnership in violation of the ban on contributions from organizations. The Committee incorrectly reported on the relevant campaign statement that the contribution was made by Mr. Charles Pipitone.

## VII. Conclusion

Through the examination of the Committee's records and campaign disclosure statements, the Auditor verified that the Committee timely disclosed all contributions received and all expenditures made, and that the Committee maintained all necessary documentation regarding contributions and expenditures in accordance with disclosure and record-keeping provisions of ECCO, with the following exceptions:

The audit revealed 246 material findings with regard to the Committee: (1) the Committee violated SDMC section 27.2930(f) when it improperly coded 201 contributions for a non-existent general election; (2) the Committee violated SDMC section 27.2935 when it accepted and deposited forty-four contributions in excess of the limit set forth by this section; and (3) the Committee violated SDMC section 27.2950 when it accepted one contribution from an organization.

_____ _____

Francisco Murillo, CPA
Auditor

Date

_____ _____

Lauri Davis
Senior Investigator

Date