

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.: 2004-69
11)
12 ROBERT CHUBINSKY and BOB GLASER,) **STIPULATION, DECISION AND**
13) **ORDER**
Respondents.)
_____)

14 **STIPULATION**

15 **THE PARTIES STIPULATE AS FOLLOWS:**

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

21 2. At all times mentioned herein, Respondent Robert Chubinsky [Chubinsky] was
22 the treasurer of record for San Diegans for the Protection of Responsible Beach Rights
23 [Committee], a committee registered with the State of California (Identification No. 1235129)
24 primarily formed for the purpose of opposing Proposition G (Mission Beach alcohol ban) in the
25 March 2002 primary election.

26 3. At all times mentioned herein, Respondent Bob Glaser [Glaser] was the principal
27 of The La Jolla Group and the political consultant paid by the Committee for printing initiative
28 petitions, gathering signatures, and placing media advertisements. In addition, Glaser was

1 primarily responsible for the preparation of campaign statements and the disclosure of campaign
2 activity, the filing of campaign statements, and the maintenance of all records associated with the
3 committee's activities.

4 4. Chubinsky and Glaser are referred to herein collectively as "Respondents."

5 5. This Stipulation, Decision and Order [Stipulation] will be submitted for
6 consideration by the Ethics Commission at its next scheduled meeting, and the agreements
7 contained herein are contingent upon the approval of the Stipulation and the accompanying
8 Decision and Order by the Ethics Commission.

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

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

23 8. The Respondents acknowledge that this Stipulation is not binding upon any other
24 law enforcement or government agency and does not preclude the Ethics Commission from
25 referring this matter to, cooperating with, or assisting any other law enforcement or government
26 agency with regard to this or any other related matter.

27 9. The parties agree that in the event the Ethics Commission refuses to accept this
28 Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics

1 Commission rejects the Stipulation and a full evidentiary hearing before the City Ethics
2 Commission becomes necessary, no member of the Ethics Commission or its staff shall be
3 disqualified because of prior consideration of this Stipulation.

4 **Summary of Law and Facts**

5 10. On May 15, 2001, the Committee filed a Statement of Organization with the San
6 Diego City Clerk indicating that it was a general purpose committee formed for the “referendum
7 on alcohol ban”. Subsequent campaign statements indicate the Committee was a ballot measure
8 committee primarily formed to oppose Proposition G (Mission Beach alcohol ban) in the March
9 2002 primary election. These Statements identify Chubinsky as the Committee’s treasurer.

10 11. The Committee was selected for audit by the Ethics Commission at a random
11 drawing conducted on October 9, 2003. An audit was performed for the period from July 1,
12 2001, through June 30, 2004 (the Commission’s Audit Manual prohibits the audit of any activity
13 prior to July 1, 2001). The Final Audit Report was issued on December 28, 2004, at which time
14 the Commission authorized an investigation into the material findings noted during the course of
15 the audit. The majority of the Committee’s activity took place prior to the audit period and
16 therefore was not the subject of the audit or the subsequent investigation.

17 12. During the course of the audit, Respondents acknowledged that Chubinsky served
18 as the Committee treasurer in name only, and that Glaser was responsible for all duties
19 traditionally performed by the treasurer, including the preparation of campaign statements and
20 the disclosure of campaign activity, the filing of campaign statements, and the maintenance of all
21 records associated with the Committee’s activities.

22 13. SDMC section 27.2925 requires committees to maintain a record of any
23 contribution received and any disbursement made from the committee’s checking account. In
24 particular, SDMC section 27.2925 indicates that records maintained by a committee shall
25 include, but are not limited to, all of the following:

26 (1) the name and address of the contributor; and

27 (2) the amount of the contribution, and the date on which it was received or offered;
28 and

- 1 (3) if the contribution is made by check, a legible photocopy of the check; and
- 2 (4) if the contribution offered or received consists of cash, an indication that cash
- 3 was offered or received, and a legible photocopy of the bank deposit slip indicating
- 4 that the cash contribution was deposited into the campaign contribution checking
- 5 account; and
- 6 (5) legible photocopies or originals of all bank records pertaining to the campaign
- 7 contribution checking account; and
- 8 (6) if a contribution is made by the candidate to his or her own campaign, a statement
- 9 disclosing the source of the funds; and
- 10 (7) if a contribution is of something other than money, a description of what was
- 11 contributed, a reasonable good faith estimate of the monetary value of the
- 12 contribution, and the basis for the estimate; and
- 13 (8) for each disbursement made from or check drawn on the campaign contribution
- 14 checking account, the canceled check (if requested), the bank statement showing the
- 15 disbursement, the name of the payee of each check, an itemized record of the goods
- 16 or services for which each check is issued or disbursement made, and legible
- 17 photocopies or originals of any invoices, bills, or other supporting documents for
- 18 which funds were disbursed.

14 14. The Commission's audit and subsequent investigation revealed that the
15 Respondents did not comply with the requirements of SDMC section 27.2925. In particular,
16 Respondents did not retain copies of eleven contributor checks or any deposit slips. In addition,
17 the check register was incomplete and Respondents did not maintain all original vendor and
18 subvendor invoices or a complete set of original bank statements.

19 15. SDMC section 27.2930 (formerly section 27.2931) requires committees to file
20 campaign statements in the time and manner required by state law. California Government Code
21 section 84211 requires that campaign statements include the following information:

22 (a) The total amount of contributions received during the period covered by the
23 campaign statement and the total cumulative amount of contributions received.

24 (b) The total amount of expenditures made during the period covered by the
25 campaign statement and the total cumulative amount of expenditures made.

26 . . .

27 (g) If the cumulative amount of loans received from or made to a person is one
28 hundred dollars (\$100) or more, and a loan has been received from or made to a
person during the period covered by the campaign statement, or is outstanding
during the period covered by the campaign statement, all of the following:

- 1 (1) His or her full name.
- 2 (2) His or her street address.
- 3 (3) His or her occupation.
- 4 (4) The name of his or her employer, or if self-employed, the name of the
5 business.
- 6 (5) The original date and amount of each loan.
- 7 (6) The due date and interest rate of the loan.
- 8 (7) The cumulative payment made or received to date at the end of the reporting
9 period.
- 10 (8) The balance outstanding at the end of the reporting period.

11 16. The Commission's audit and subsequent investigation revealed that the
12 Respondents did not comply with the disclosure requirements in local and state law. In
13 particular:

14 - Respondents did not disclose two payments made by check: one on
15 September 6, 2001, in the amount of \$250 to Suha Hurmiz, and another on February 26,
16 2002, in the amount of \$1,131.38 to The Sign Mobile.

17 - Respondents did not disclose the correct amount of bank fees on any of
18 the nine campaign statements filed during the audit period.

19 - Respondents incorrectly reported an expenditure of \$897.58 to The La
20 Jolla Group on the campaign statement covering the period from February 17, 2002,
21 through June 30, 2002 (there is no evidence of this payment in any bank records).

22 - Respondents failed to properly carry over and report nine outstanding
23 loans to the Committee totaling \$23,500 on three campaign statements filed during the
24 audit period (these loans were originally disclosed on a prior campaign statement).

25 - Respondents made mathematical errors on all nine campaign statements
26 filed during the audit period which resulted in the incorrect reporting of cash balances.

27 17. As discussed above, ECCO requires candidates and committees to file
28 campaign statements in the time and manner required by state law. California
Government Code section 84303 requires Committees to report any payments of \$500 or
more made by an agent to a subvendor.

18 18. The Commission's audit and subsequent investigation revealed that the
19 Respondents did not comply with the reporting requirements in local and state law. In

1 particular, Respondents failed to report the following payments made by The La Jolla
2 Group to subvendors (although Respondents did report a payment to The La Jolla Group
3 in the amount of \$20,000 with a code for “radio airtime and production costs,” and two
4 additional payments to The La Jolla Group in the amounts of \$1,500 and \$897.58 with a
5 code for “print ads”):

<u>Invoice Date</u>	<u>Amount</u>	<u>Subvendor</u>
02/21/02	\$3,622.50	Sets 102.1 FM
02/21/02	\$3,560.00	KFMB
02/27/02	\$800.00	SLAMM Music Magazine
03/10/02	\$3,280.00	KIFM
03/10/02	\$3,075.00	Clear Channel 91X
03/10/02	\$2,900.00	Clear Channel KGB
03/03/02	\$2,650.00	KYXY
03/11/02	\$4,350.00	KPOP

15 19. As discussed above, ECCO requires candidates and committees to file
16 campaign statements in the time and manner required by state law. California
17 Government Code section 84200 requires candidates and committees to file semiannual
18 campaign statements for each year no later than July 31 for the period ending June 30,
19 and no later than January 31 for the period ending December 31.

20 20. Respondents filed a campaign statement covering the period from July 1,
21 2003, to December 31, 2003, on February 9, 2004, seven days late (the original due date
22 of January 31, 2004, fell on a Saturday so the actual due date was February 2, 2004). In
23 addition, Respondents filed a campaign statement covering the period from January 1,
24 2004, to June 30, 2004, on August 3, 2004, one day late (the original due date of July 31,
25 2004 fell on a Saturday so the actual due date was August 2, 2004).

26 21. SDMC section 27.2991 indicates that any person who counsels, aids,
27 abets, advises, or participates with another to commit any violation of ECCO, has also
28 committed a violation of local law.

1 **Factors in Mitigation**

2 29. Respondents cooperated fully with the Ethics Commission investigation.

3 30. The Commission's investigation indicates that the violations discussed herein are
4 the result of disorganization and poor recordkeeping, and not an intent to conceal information or
5 deceive the public. For example, Respondents did originally report loans to the Committee, but
6 failed to re-list these loans on subsequent campaign statements. In addition, Respondents did
7 report payments made to the La Jolla Group with codes that explained the payments were for
8 radio and print advertisements; however, Respondents failed to report the specific payments by
9 The La Jolla Group to individual subvendors.

10 **Conclusion**

11 31. Respondents agree to take necessary and prudent precautions to comply with all
12 provisions of the Election Campaign Control Ordinance in the future.

13 32. Respondents agree to file all necessary amendments to correct the deficiencies
14 described above in paragraphs 16 and 18. The amendments must be filed on or before July 8,
15 2005.

16 33. Respondent Glaser agrees to pay a fine in the amount of \$3,500 for violations of
17 SDMC sections 27.2925, 27.2930 (formerly section 27.2931), and 27.2991. This amount must
18 be paid no later than July 8, 2005, by check or money order made payable to the City Treasurer.
19 The submitted payment will be held pending Commission approval of this Stipulation and
20 execution of the Decision and Order portion set forth below.

21
22 DATED: _____
23 STACEY FULHORST, Executive Director
24 ETHICS COMMISSION, Petitioner

25 DATED: _____
26 ROBERT CHUBINSKY, Respondent

27 DATED: _____
28 BOB GLASER, Respondent

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DECISION AND ORDER

The Ethics Commission has considered the above Stipulation at its meeting on August 1, 2005. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent Glaser pay a fine in the amount of \$3,500.

DATED: _____

DOROTHY LEONARD, Chair
SAN DIEGO ETHICS COMMISSION