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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.: 2009-26
11)
12 PUBLIC SOLUTIONS,) **STIPULATION, DECISION AND**
13) **ORDER**
Respondent.)
_____)

14
15 **STIPULATION**

16 **THE PARTIES STIPULATE AS FOLLOWS:**

17 1. Petitioner Alison Adema is the General Counsel of the City of San Diego
18 Ethics Commission [Ethics Commission]. The Ethics Commission is charged with a duty to
19 administer, implement, and enforce local governmental ethics laws contained in the San Diego
20 Municipal Code [SDMC] relating to, among other things, the provisions of the City's Municipal
21 Lobbying Ordinance.

22 2. At all material times mentioned herein, Respondent Public Solutions [Respondent]
23 was a lobbying firm registered with the Office of the City Clerk. Mitchell Berner, the firm's
24 principal, has been a registered lobbyist in the City since 2001.

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

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

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

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

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

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1 **Summary of Law and Facts**

2 8. As a lobbying firm, Respondent is required to abide by the provisions of the
3 City's Municipal Lobbying Ordinance.

4 9. The Lobbying Ordinance requires lobbying firms to file quarterly disclosure
5 reports with the City Clerk no later than the last day of the months of April, July, October, and
6 January, covering the preceding calendar quarter. SDMC §§ 27.4015, 27.4016.

7 10. Respondent registered as a lobbying firm for the 2008 calendar year on January
8 10, 2008, and filed quarterly disclosure reports for the first three quarters of 2008.

9 11. Respondent's fourth quarter disclosure report for 2008 was due on January 31,
10 2009, but Respondent failed to file this report until November 5, 2009, approximately nine
11 months late.

12 12. Respondent registered as a lobbying firm for the 2009 calendar year on February
13 18, 2009.

14 13. Respondent's first quarter disclosure report for 2009 was due on April 30, 2009,
15 but Respondent failed to file this report until November 5, 2009, approximately six months late.

16 14. Respondent's second quarter disclosure report for 2009 was due on July 31, 2009,
17 but Respondent failed to file this report until November 5, 2009, approximately three months
18 late.

19 15. Respondent terminated its status as a lobbying firm on November 5, 2009.

20 **Counts**

21 **Counts 1 through 3 – Violations of SDMC sections 27.4015 and 27.4016**

22 16. Respondent failed to timely file three quarterly disclosure reports as required by
23 SDMC sections 27.4015 and 27.4016. Respondent's disclosure report for the fourth quarter of
24 2008 was due on January 31, 2008, but Respondent did not file it until November 5, 2009,
25 approximately nine months late. Respondent's disclosure report for the first quarter of 2009 was
26 due on April 30, 2009, but Respondent did not file it until November 5, 2009, approximately six
27 months late. Respondent's disclosure report for the second quarter of 2009 was due on July 31,
28 2009, but Respondent did not file it until November 5, 2009, approximately three months late.

1 **Factors in Aggravation**

2 17. Respondent is an experienced lobbying firm in the City of San Diego and was
3 aware of the quarterly filing requirements in the Lobbying Ordinance. Moreover, the City Clerk
4 staff sent numerous reminder letters to Respondent concerning its quarterly filing obligations.

5 18. Respondent failed to cooperate with the Commission’s investigation. In
6 particular, Respondent failed to respond to telephone calls and letters from the Commission staff
7 from April through July of 2009. On August 19, 2009, Respondent was served with notice that a
8 Probable Cause Hearing would be conducted in this case on November 6, 2009, regarding
9 alleged violations of the Lobbying Ordinance. On November 4, 2009, two days before the
10 Probable Cause Hearing, Respondent sent the Commission staff the late quarterly disclosure
11 reports described above in paragraph 16. (Commission staff filed the reports with the City Clerk
12 on November 5, 2009, on Respondent’s behalf).

13 **Conclusion**

14 19. Respondent agrees to take necessary and prudent precautions to comply with all
15 provisions of the City's Municipal Lobbying Ordinance in the future.

16 20. Respondent agrees to pay a fine in the amount of \$4,500. This amount must be
17 paid to the City Treasurer no later than June 30, 2010, by check, money order, or credit card.
18 Respondent acknowledges that if the fine is not timely paid in full, the Commission may refer
19 the collection of the fine to the City Treasurer’s Collection Division, which may pursue any or
20 all available legal remedies to recover late penalties, interest, and costs, in addition to seeking the
21 outstanding balance owed.

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23 DATED: _____

ALISON ADEMA, Petitioner
City of San Diego Ethics Commission

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26 DATED: _____

PUBLIC SOLUTIONS
By: Mitchell Berner, Principal

1 **DECISION AND ORDER**

2 The Ethics Commission has considered the above Stipulation at its meeting on
3 _____, 2009. The Ethics Commission hereby approves the Stipulation and orders that,
4 in accordance with the Stipulation, Respondent pay a fine in the amount of \$4,500.
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6 DATED: _____
7 Richard Valdez, Chair
8 SAN DIEGO ETHICS COMMISSION
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