

1 STACEY FULHORST, Executive Director
City of San Diego Ethics Commission
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5 Petitioner

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

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10 In re the Matter of:) Case No.: 2009-36
11 EUGENE HEYTOW,)
12 Respondent.) **STIPULATION, DECISION, AND**
13) **ORDER**
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16 **STIPULATION**

17 **THE PARTIES STIPULATE AS FOLLOWS:**

18 1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego Ethics
19 Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer,
20 implement, and enforce local governmental ethics laws contained in the San Diego Municipal
21 Code [SDMC] relating to, among other things, the filing of campaign statements as required by
22 the City’s Election Campaign Control Ordinance [ECCO].

23 2. At all times mentioned herein, Eugene Heytow was a person who made an
24 independent expenditure in support of a City of San Diego candidate in the November 2008
25 general election. Heytow is referred to herein as “Respondent.”

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

1 10. On October 17, 2008, Respondent made an independent expenditure in the amount
2 of \$5,000 in support of Todd Gloria, a candidate for City Council District 3 in the November
3 2008 general election. In making this independent expenditure, Respondent qualified as an
4 independent expenditure committee under ECCO.

5 11. Respondent's independent expenditure was made through a payment to the San
6 Diego Voter Education Project [SDVEP], an organization that on October 17, 2008, registered
7 with the California Secretary of State as a slate mailer organization active in the County of San
8 Diego (Identification No. 1312663). Paola Avila was the principal of SDVEP.

9 12. Respondent's payment to SDVEP supported Todd Gloria through two different
10 slate mailers distributed by SDVEP. According to California Government Code section 82048.3,
11 a slate mailer is a mass mailing that supports or opposes a total of four or more candidates or
12 ballot measures. The mailers distributed by SDVEP qualified as slate mailers because they
13 supported Todd Gloria as well as five City and County ballot measures. The portion of the
14 mailers dedicated to supporting Todd Gloria constituted 75% of the space on each mailer, while
15 the portion of the mailers dedicated to supporting the five ballot measures constituted 25% of the
16 space. Both slate mailers were sent to approximately 31,000 registered voters in City Council
17 District 3, the first on October 27, 2008, and the second on October 30, 2008.

18 13. According to Government Code section 84203.5, any committee that has made
19 independent expenditures totaling \$1,000 or more in a calendar year to support or oppose a
20 candidate or ballot measure is required to file independent expenditure reports in the same time
21 and manner as the candidate or committee would be required to file campaign statements if it
22 were primarily formed to support the candidate or ballot measure. For the November 4, 2008,
23 general election, a committee that made independent expenditures of \$1,000 or more by October
24 18, 2008, was required to file a Supplemental Independent Expenditure Report [Form 465] with
25 the City Clerk on or before October 23, 2008. Cal. Gov't Code § 84200.7.

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1 solicited or accepted his \$5,000 payment, nor did they notify him before the October 23, 2008,
2 filing deadline.

3 20. On about October 31, 2008, Respondent's attorney, Pam Wilson, learned through
4 the media of Respondent's payment to SDVEP and notified him that he had a reporting
5 obligation. Respondent instructed his attorney on October 31, 2008, to file the requisite
6 disclosure form. On November 3, 2008, one day prior to the election, Forms 496 were filed in
7 four other filing offices in California. However, the Form 496 was not filed with the City Clerk
8 until November 13, 2008.

9 **Conclusion**

10 21. Respondent agrees to take necessary and prudent precautions to ensure timely
11 disclosure of independent expenditures in the future, and to comply with all of the provisions of
12 the City's Election Campaign Control Ordinance.

13 22. Respondent agrees to pay a fine in the amount of \$2,500 for violating SDMC
14 section 27.2930. This amount must be paid no later than October 7, 2009, by check or money
15 order made payable to the City Treasurer. The submitted payment will be held pending
16 Commission approval of this Stipulation and execution of the Decision and Order portion set
17 forth below.

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19 DATED: _____

STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

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22 DATED: _____

EUGENE HEYTOW, Respondent

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DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on November 12, 2009. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of \$2,500.

DATED: _____

Richard Valdez, Chair
CITY OF SAN DIEGO ETHICS COMMISSION