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

BEFORE THE CITY OF SAN DIEGO

ETHICS COMMISSION

In re the Matter of:	)	Case No.: 2009-48
	)	
OUR CITY OUR RESPONSIBILITY, and NEIGHBORHOOD MARKET ASSOCIATION,	)	**STIPULATION, DECISION, AND ORDER**
	)	
Respondents.	)	

STIPULATION

THE PARTIES STIPULATE AS FOLLOWS:

1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego Ethics Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer, implement, and enforce local governmental ethics laws contained in the San Diego Municipal Code [SDMC] relating to, among other things, the provisions of the Election Campaign Control Ordinance [ECCO], SDMC section 27.2901, *et seq*.

2. At all times mentioned herein, the Neighborhood Market Association [NMA] was responsible for the activities of Our City Our Responsibility [Our City Committee], a committee registered with the State of California (Identification No. 1302689). NMA is an organization comprised of independent retailers in the food and alcohol beverage industry. NMA and the Our City Committee are collectively referred to herein as "Respondents."

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

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

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

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

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

Summary of Law and Facts

8. ECCO defines "committee" as any person or combination of persons who raise $1,000 or more for the purpose of supporting or opposing a candidate or ballot measure, or make independent expenditures of $1,000 or more, within a single calendar year. SDMC § 27.2903.

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9. ECCO requires committees to file campaign statements in the time and manner required by California Government Code section 81000, *et seq.* and the regulations adopted by the Fair Political Practices Commission [FPPC]. It is unlawful under ECCO to fail to comply with the disclosure requirements of ECCO and state law. SDMC § 27.2930(j).

10. California Government Code section 84101 requires the filing of a Statement of Organization [Form 410] within 10 days after qualification as a committee, and section 84102 requires the filing of an amended Form 410 within 10 day of any change in information contained therein. The Form 410 must be filed with the Secretary of State and with the local filing officer where the committee will be required to file campaign statements.

11. According to California Government Code section 82047.5, a "primarily formed committee" is a committee that is formed or exists primarily to support or oppose a single candidate or single measure (or a group of candidates or measures being voted upon in the same jurisdiction). Government Code section 84102(d) requires primarily formed committees to include in their Form 410 the title and ballot number, if any, of any measure, which the committee supports or opposes as its primary activity. According to ECCO, a City "measure" includes an amendment or proposition that is submitted or intended to be submitted to a popular vote at a City election by the procedure of initiative or referendum whether or not it qualifies for the ballot." SDMC §27.2903.

12. According to SDMC section 27.2903, a committee is "sponsored" by another entity if any of the following criteria apply: the committee receives 80% or more of its contributions either from the entity or from the entity's members; the entity collects contributions for the committee by use of dues from its members; the entity (alone or with other entities) provides administrative services for the committee; or the entity (alone or with other entities) sets the committee's policies for soliciting contributions or making expenditures. ECCO requires sponsored committees participating in City elections to adhere to the reporting obligations set forth in FPPC Regulation 18419. SDMC § 27.2930(i). Regulation 18419 requires a committee that is sponsored by another entity to include the name of the sponsor in the

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name of the committee, and to identify the sponsor and the sponsor's industry group or affiliation on the committee's Form 410.

13. In addition to filing a Form 410, a committee formed primarily for the purpose of supporting or opposing the qualification, passage, or defeat of a ballot measure to be voted upon in one city must file campaign disclosure statements [Forms 460] with the clerk of that city. Cal. Gov't Code § 84215(e). According to the deadlines established by state law, a committee primarily formed to support or oppose the qualification, passage, or defeat of a measure on the City ballot in the June 3, 2008, primary election was required to file a semi-annual campaign disclosure statement by January 31, 2008, covering the period between July 1, 2007, and December 31, 2007. When a committee is supporting or opposing the qualification of a ballot measure, and the qualification effort fails, that committee is required to file quarterly campaign disclosure statements until the committee is terminated.

14. SDMC section 27.2931 requires candidates and committees to file Forms 460 electronically if they have received contributions or made expenditures of $10,000 or more in connection with a City election.

15. On December 20, 2007, the Our City Committee filed a Form 410 with the County Registrar of Voters, and indicated on the form that it was a City general purpose committee formed in order to "inform voters of safety issues [in] San Diego." On December 31, 2007, the Our City Committee filed an Amended Form 410 with the County Registrar of Voters in order to change its designation to a County general purpose committee, and to change its purpose to "inform voters of civic issues in San Diego County." Respondents filed a Form 460 with the County Registrar of Voters on January 25, 2008, covering the period from its inception through December 31, 2007. Respondents filed another Form 460 with the County Registrar of Voters on April 16, 2008, covering the period from January 1, 2008, through April 11, 2008. On April 28, 2008, Respondents filed a Form 410 with the County Registrar of Voters indicating that the Our City Committee was terminated as of April 10, 2008. Respondents disclosed that the Our City Committee received contributions and made expenditures totaling $84,940, from the time of its inception to the time it terminated on April 10, 2008.

16. The Commission's investigation reveals that Respondent Our City Committee was established and controlled by Respondent NMA and its agents. NMA and its agents were responsible for establishing the Our City Committee, hiring consultants and vendors, fundraising, making decisions about and directing the committee's activities, and approving the committee's expenditures.

17. The Commission's investigation reveals that Respondent Our City Committee was formed and existed primarily for the purpose qualifying a referendum for the ballot in the June 3, 2008, primarily election, in order to repeal an ordinance adopted by the San Diego City Council on November 5, 2007, establishing a one-year temporary alcohol ban on City beaches. On approximately January 14, 2008, the San Diego City Clerk determined that the petition signatures were insufficient to qualify the referendum for the ballot in the June 3, 2008, primary election. The Our City Committee did not engage in any activities to support or oppose any other candidates or measures in the City of San Diego or in any other jurisdiction. Other than administrative expenses, all of the expenditures made by Respondent Our City Committee were directly related to the referendum intended to repeal the beach alcohol ordinance. Accordingly, Respondent Our City Committee was not a County general purpose committee, but was instead a committee primarily formed to oppose a single City ballot measure. As a result, it was required to file its Form 410 and Forms 460 with the San Diego City Clerk, not the County Registrar.

18. Because it was a committee primarily formed to oppose a City ballot measure, and because it received more than $10,000 in contributions before December 31, 2007, Respondent Our City Committee was required to electronically file its Forms 460 with the City Clerk.

19. The Commission's investigation also reveals that Respondent Our City Committee is sponsored by the NMA. In particular, Respondent Our City Committee received more than 80% of its funding from the members of NMA. Moreover, NMA and its agents provided administrative services to the Our City Committee, and set the Our City Committee's policies for soliciting contributions and making expenditures. Consequently, Respondent Our

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City Committee was required to include the NMA in its committee name, and it was required to identify the name, address, and industry of the NMA on its Form 410.

Counts

Count 1 - Violation of SDMC section 27.2930

20. Respondents violated SDMC section 27.2930 by failing to properly file a Form 410 on or about December 20, 2007, with the San Diego City Clerk disclosing that the Our City Committee was primarily formed for the purpose of opposing the temporary beach alcohol ban. It also violated SDMC section 27.2930 by failing to disclose on its Form 410 the fact that it was sponsored by the NMA and by failing to describe on the Form 410 the industry group or affiliation of its sponsor.

Counts 2 thru 5 - Violations of SDMC sections 27.2930 and 27.2931

21. Respondents violated SDMC section 27.2930 by failing to file a semi-annual Form 460 in both paper and electronic format with the San Diego City Clerk on or before January 31, 2008, covering the period from the committee's inception through December 31, 2007.

22. Respondents violated SDMC section 27.2930 by failing to file a quarterly Form 460 in both paper and electronic format with the San Diego City Clerk on or before April 30, 2008, covering the period from January 1, 2008, through the date of its termination on April 10, 2008.

Factors in Aggravation

23. The timely disclosure of contributions received and expenditures made for the purpose of supporting or opposing City candidates or ballot measures is the foundation of the City's campaign laws. In this case, the citizens of the City of San Diego did not receive this information because relevant campaign statements were not filed with the City Clerk (in either paper or electronic format) as required by local and state law.

24. During the course of the Commission's investigation, NMA representatives expressly denied that NMA had any involvement in or responsibility for the activities of the Our

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City Committee. Their assertions were directly contradicted by witness testimony and documentary evidence.

25. Because Respondents failed to file a Form 410 with the City Clerk for the Our City Committee, the committee was not included in the Ethics Commission's random audit drawing conducted on September 10, 2009. If it had been included and selected, the audit would have entailed an examination of the committee's records to ensure that the information disclosed on its campaign statements was complete and accurate.

Conclusion

26. Respondents agree to take necessary and prudent precautions to ensure compliance with all provisions of ECCO in the future.

27. Respondents agree to file the campaign statements described above in Paragraphs 20 through 22 with the City Clerk on or before January 15, 2010.

28. Respondents agree to pay a fine in the amount of $2,000 for violating SDMC sections 27.2930 and 27.2931. This amount must be paid no later than February 5, 2010, by check or money order payable to the City Treasurer. The submitted payment will be held pending Commission approval of this Stipulation and execution of the Decision and Order portion set forth below.

DATED:_____ _____
STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

DATED:_____ _____
RAMZI MURAD, on behalf of Respondents, OUR CITY OUR RESPONSIBILITY and NEIGHBORHOOD MARKET ASSOCIATION

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DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on _____, 2010. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondents pay a fine in the amount of $2,000.

DATED:_____ _____

RICHARD VALDEZ , Chair
SAN DIEGO ETHICS COMMISSION