

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**

9  
10 In re the Matter of: ) Case No.: 2010-86  
11 )  
12 SAN DIEGO WORKS! SPONSORED BY ) **STIPULATION, DECISION, AND**  
13 SAN DIEGO-IMPERIAL COUNTIES ) **ORDER**  
14 LABOR COUNCIL AFL-CIO, SAN DIEGO- )  
15 IMPERIAL COUNTIES LABOR COUNCIL )  
16 AFL-CIO, and XAVIER MARTINEZ, )  
17 )  
18 Respondents. )  
19 )

20 **STIPULATION**

21 **THE PARTIES STIPULATE AS FOLLOWS:**

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

27 2. At all times mentioned herein, the San Diego-Imperial Counties Labor Council  
28 AFL-CIO [Labor Council] was the sponsor of, and was responsible for the activities of, San  
Diego Works! Sponsored by San Diego-Imperial Counties Labor Council AFL-CIO [SDW], a  
committee registered with the State of California (Identification No. 744131).

3. At all times mentioned herein, Xavier Martinez [Martinez] was the treasurer for  
SDW.

1           4.     Labor Council, SDW, and Martinez are collectively referred to herein as  
2 “Respondents.”

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

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

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

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

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

1 **Summary of Law and Facts**

2 10. ECCO defines “committee” as any person or combination of persons who raise  
3 \$1,000 or more for the purpose of supporting or opposing a candidate or ballot measure, or make  
4 independent expenditures of \$1,000 or more, within a single calendar year. SDMC § 27.2903.

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

9 12. According to Government Code section 84203.5, any committee that has made  
10 independent expenditures totaling \$1,000 or more in a calendar year to support or oppose a City  
11 candidate or ballot measure is required to file independent expenditure reports in accordance  
12 with the pre-election filing schedule set forth in state law. For the November 2, 2010, general  
13 election, a committee that made independent expenditures of \$1,000 or more between July 1,  
14 2010, and September 30, 2010, was required to file a Supplemental Independent Expenditure  
15 Report [Form 465] with the City Clerk on or before October 5, 2010. Cal. Gov’t Code § 84200.7.

16 13. During the month of September 2010, Respondent SDW made three independent  
17 expenditures totaling \$74,013.43 to oppose Lorie Zapf, a candidate for City Council District 6 in  
18 the November 2, 2010, general election.

19 14. Respondents did not file the requisite Form 465 with the City Clerk on October 5,  
20 2010, disclosing the independent expenditures made during September of 2010 to oppose a City  
21 candidate. Ethics Commission staff contacted Respondent Martinez on October 7, 2010, to  
22 inquire about the failure to timely file a Form 465. Respondents subsequently filed a Form 465  
23 with the City Clerk that same day; however, Respondents disclosed only one independent  
24 expenditure in the amount of \$14,700.00. Ethics Commission staff re-contacted Respondent  
25 Martinez on October 7, 2010, and advised him that the information disclosed on the Form 465  
26 was inaccurate and incomplete. Respondents filed an amended Form 465 later that day, and  
27 disclosed the full amount of independent expenditures made to oppose Lorie Zapf during the  
28 reporting period.

1 **Counts**

2 **Counts 1 and 2 - Violations of SDMC section 27.2930**

3 15. Respondents violated SDMC section 27.2930 by failing to timely file a Form 465  
4 with the City Clerk disclosing independent expenditures made in September of 2010 to oppose a  
5 City candidate. Although the Form 465 was due on October 5, 2010, Respondents did not file it  
6 until October 7, 2010, after they were reminded to do so by the Ethics Commission staff.

7 16. Respondents violated SDMC section 27.2930 by filing a Form 465 on October 7,  
8 2010, that contained incomplete and inaccurate information in that it referenced only one  
9 independent expenditure in the amount of \$14,700.00, when in fact Respondent SDW had made  
10 three independent expenditures totaling \$74,013.43 during the reporting period. Respondents  
11 filed an amended Form 465 on October 7, 2010, after they were asked to do so by Ethics  
12 Commission staff.

13 **Factors in Aggravation**

14 17. The timely disclosure of campaign contributions and expenditures is the foundation  
15 of the City's campaign laws. In particular, the pre-election filing requirement for independent  
16 expenditures made in the weeks leading up to an election is extremely important because it  
17 ensures that the public receives time-sensitive information regarding the sources and amounts of  
18 expenditures made to support and oppose local candidates before they cast their votes. In this  
19 case, were it not for the repeated efforts of Commission staff, Respondents may never have filed  
20 a Form 465 disclosing all of the independent expenditures made by Respondents SDW and  
21 Labor Council for the purpose of influencing the outcome of a City election.

22 18. Although Respondent Martinez is a professional campaign treasurer with extensive  
23 experience, the Commission's investigation revealed that he did not have sufficient controls in  
24 place to ensure the timely filing of Forms 465.

25 **Factors in Mitigation**

26 19. Respondents SDW and Labor Council reasonably relied on Respondent Martinez as  
27 a professional campaign treasurer to timely file campaign disclosure statements as required by

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1 local law. Respondent Martinez has therefore taken full responsibility for the violations  
2 described herein as well as the monetary penalty referenced below

3 20. Respondents have cooperated fully with the Ethics Commission investigation.

4 **Conclusion**

5 21. Respondents agree to take necessary and prudent precautions to ensure compliance  
6 with all provisions of ECCO in the future. In particular, Respondent Martinez agrees to  
7 implement improved controls and adequate supervisory measures to prevent future similar  
8 violations of ECCO.

9 22. Respondents agree to pay a fine in the amount of \$2,000 for violating SDMC  
10 section 27.2930. This amount must be paid no later than May 6, 2011, by check or money order  
11 payable to the City Treasurer. The submitted payment will be held pending Commission  
12 approval of this Stipulation and execution of the Decision and Order portion set forth below.

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14 DATED: \_\_\_\_\_

\_\_\_\_\_  
STACEY FULHORST, Executive Director  
ETHICS COMMISSION, Petitioner

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16  
17 DATED: \_\_\_\_\_

\_\_\_\_\_  
EVAN MCLAUGHLIN, on behalf of Respondents, SAN  
DIEGO WORKS! SPONSORED BY SAN DIEGO-  
IMPERIAL COUNTIES LABOR COUNCIL AFL-CIO  
and SAN DIEGO-IMPERIAL COUNTIES LABOR  
COUNCIL AFL-CIO

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21 DATED: \_\_\_\_\_

\_\_\_\_\_  
XAVIER MARTINEZ, Respondent

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**DECISION AND ORDER**

The Ethics Commission considered the above Stipulation at its meeting on \_\_\_\_\_,  
2011. 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: \_\_\_\_\_

\_\_\_\_\_  
LARRY WESTFALL, Chair  
SAN DIEGO ETHICS COMMISSION