

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.: 2005-67  
11 MICHAEL AGUIRRE, )  
12 Respondent. ) **STIPULATION, DECISION, AND**  
13 ) **ORDER**

14 **STIPULATION**

15 **THE PARTIES STIPULATE AS FOLLOWS:**

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

21 2. At all times mentioned herein, Michael Aguirre [Aguirre] was a candidate for City  
22 Attorney for the City of San Diego. The Mike Aguirre for City Attorney committee [Committee]  
23 is a campaign committee registered with the State of California (Identification No. 1254870)  
24 established to support Aguirre's candidacy in the 2004 election cycle. At all relevant times  
25 herein, the committee was controlled by Aguirre within the meaning of the California Political  
26 Reform Act, California Government Code section 82016. Aguirre is referred to herein as  
27 "Respondent."

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

4           4.    This Stipulation resolves all factual and legal issues raised in this matter and arising  
5 out of the audit of the Committee by the Ethics Commission without the necessity of holding an  
6 administrative hearing to determine Respondent's liability.

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

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

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

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**Summary of Law and Facts**

8. Although ECCO was amended and renumbered in early 2005, this Stipulation refers to the applicable provisions of the SDMC by the section number and language in force and effect at the time of the actions that are the subject of this Stipulation.

9. Because the Committee was formed for the purpose of supporting a candidate in a City of San Diego election, Respondent is required to comply with the provisions of ECCO.

10. The Committee was selected for audit by the Ethics Commission at a random drawing conducted on April 25, 2005. An audit was performed for the period from January 1, 2003, through March 31, 2005.

11. SDMC section 27.2931 required committees to file 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.

12. The Commission's audit reveals that the Committee did not comply with the subvendor disclosure requirements in local and state law. In particular, the Committee failed to timely disclose 37 payments made by agents totaling \$316,306.24, as follows:

Period Ending	Name of Agent	Amount	Subvendor
1   09/30/03	Kennedy Communications	\$ 3,213.00	Vanard Lithographers
2   02/14/04	Poste Haste	\$ 11,419.13	USPS
3   02/14/04	The Campaign Group	\$ 13,578.75	KFMB
4   02/14/04	The Campaign Group	\$ 9,987.50	KGTV
5   02/14/04	The Campaign Group	\$ 14,700.75	KNSD
6   02/14/04	The Campaign Group	\$ 850.00	KSWB
7   02/14/04	The Campaign Group	\$ 3,400.00	KUSI
8   02/14/04	John Kennedy	\$ 13,903.25	American Printing & Mailing
9   02/14/04	Christopher Ward	\$ 2,517.08	America's Campaign Store
10   02/14/04	Christopher Ward	\$ 2,369.86	America's Campaign Store

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Period Ending	Name of Agent	Amount	Subvendor
11 06/30/04	Poste Haste	\$ 939.26	USPS
12 06/30/04	The Campaign Group	\$ 41,395.00	KFMB
13 06/30/04	The Campaign Group	\$ 25,725.00	KGTV
14 06/30/04	The Campaign Group	\$ 17,850.00	KNSD
15 06/30/04	The Campaign Group	\$ 1,742.50	KSWB
16 06/30/04	The Campaign Group	\$ 6,757.50	KUSI
17 06/30/04	John Kennedy	\$ 4,079.85	American Printing & Mailing
18 06/30/04	Jeff Van Deerlin	\$ 740.00	USPS
19 06/30/04	Christopher Ward	\$ 1,257.00	USPS
20 09/30/04	Kennedy Communications	\$ 6,950.00	Vanard Lithographers
21 09/30/04	Kennedy Communications	\$ 9,270.00	Vanard Lithographers
22 09/30/04	Poste Haste	\$ 542.50	USPS
23 09/30/04	Jeff Van Deerlin	\$ 527.54	Kinkos
24 09/30/04	Jeff Van Deerlin	\$ 524.81	Post Haste
25 09/30/04	Jeff Van Deerlin	\$ 1,124.18	Post Haste
26 09/30/04	Jeff Van Deerlin	\$ 589.84	Post Haste
27 09/30/04	Jeff Van Deerlin	\$ 740.00	USPS
28 09/30/04	Jeff Van Deerlin	\$ 740.00	USPS
29 10/16/04	Poste Haste	\$ 7,237.47	USPS
30 10/16/04	The Campaign Group	\$ 25,602.00	KFMB
31 10/16/04	The Campaign Group	\$ 19,358.75	KGTV
32 10/16/04	The Campaign Group	\$ 35,806.25	KNSD
33 10/16/04	The Campaign Group	\$ 2,720.00	KSWB
34 10/16/04	The Campaign Group	\$ 10,390.00	KUSI
35 10/16/04	Jeff Van Deerlin	\$ 6,481.51	Post Haste
36 10/16/04	Jeff Van Deerlin	\$ 6,201.81	Post Haste
37 12/31/04	Capital One	\$ 5,074.15	Marketouch Media
Total		\$316,306.24	

1 The Committee ultimately disclosed these subvendor payments on July 1, 2005, on amended  
2 campaign statements filed for each of the above-referenced periods.

3 13. In addition, SDMC section 27.2944(b) requires candidates and committees to  
4 disclose expenditures in the same time and manner required by California Government Code  
5 section 84211, and further requires expenditures that have been incurred but not paid during a  
6 reporting period to be disclosed as an accrued expense. California Government Code section  
7 84211 requires the disclosure of all expenditures over \$100, and specifically includes accrued  
8 expenses.

9 14. The Commission's audit reveals that the Committee did not fully comply with  
10 local and state law pertaining to the disclosure of accrued expenses. The Commission's audit  
11 reveals that the Committee failed to timely disclose 34 accrued expenses totaling \$55,583.36, as  
12 follows:

Period Ending		Payee	Amount	Check #
1	09/30/03	Lauri Keller	\$3,547.11	147
2	12/31/03	Pomerado Publishing	\$474.18	198
3	12/31/03	Tierra Times	\$275.00	197
4	12/31/03	Lauri Keller	\$2,590.83	200
5	12/31/03	Chris Ward	\$2,089.75	183
6	12/31/03	Hi Sierra	\$365.00	211
7	12/31/03	Kathleen Blavatt	\$120.00	215
8	12/31/03	DeFrance Printing	\$107.75	259
9	01/17/04	Hi Sierra	\$365.00	211
10	01/17/04	Lauri Keller	\$2,590.83	200
11	01/17/04	Kathleen Blavatt	\$120.00	215
12	01/17/04	Chris Ward	\$3,734.58	199
13	01/17/04	DeFrance Printing	\$107.75	259
14	02/14/04	John Kennedy	\$2,000.00	246
15	02/14/04	John Kennedy	\$13,903.25	247
16	02/14/04	DeFrance Printing	\$107.75	259

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Period Ending		Payee	Amount	Check #
17	06/30/04	Marketouch Media	\$100.70	296
18	06/30/04	Penn, Schoen & Berland	\$1,007.45	343
19	06/30/04	Karen Goyette	\$260.59	290
20	09/30/04	Elegent Events	\$1,064.84	408
21	09/30/04	Hi Sierra	\$365.00	393
22	09/30/04	Law Offices of Aguirre & Meyer	\$498.86	340
23	09/30/04	Sullivan Wertz McDade & Wallace	\$2,134.03	361
24	09/30/04	Karen Goyette	\$4,000.00	400
25	09/30/04	Karen Goyette	\$198.41	355
26	09/30/04	Gloria Johnson	\$750.00	341
27	09/30/04	Jeff Van Deerlin	\$2,184.11	339
28	10/16/04	Rancho Bernardo Sun	\$381.48	398
29	10/16/04	SBC	\$189.43	363
30	10/16/04	Jeff Van Deerlin	\$1,047.63	391
31	10/16/04	Jeff Van Deerlin	\$6,201.81	402
32	12/31/04	Planned Parenthood	\$138.18	414
33	12/31/04	Voter Education Group	\$1,500.00	343
34	12/31/04	Jeff Van Deerlin	\$1,062.06	1001
Total			\$55,583.36	

The Committee ultimately disclosed these accrued expenses on July 1, 2005, and September 1, 2005, on amended campaign statements filed for each of the above-referenced periods.

**Counts**

**Counts 1 through 37 - Violations of SDMC section 27.2931**

15. The Committee did not properly disclose campaign expenditures, in violation of SDMC section 27.2931. In particular, the Committee failed to timely disclose 37 payments by agents totaling \$316,306.24, as described above in paragraph 12.

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1 **Counts 38 through 71 – Violations of SDMC section 27.2944**

2 16. The Committee did not properly disclose campaign expenditures, in violation of  
3 SDMC section 27.2944. In particular, the Committee failed to timely disclose 34 accrued  
4 expenses totaling \$55,583.36, as described above in paragraph 14.

5 **Factors in Mitigation**

6 17. The Commission’s investigation indicates that Respondent Aguirre relied on his  
7 treasurer to properly disclose subvendors and accrued expenses. In addition, the Commission’s  
8 investigation does not suggest that the Committee intended to conceal information or deceive the  
9 public. Through the examination of the Committee’s records and campaign disclosure  
10 statements, the Ethics Commission’s auditor verified that the Committee timely filed all  
11 campaign statements, and disclosed all contributions and loans received. The Committee  
12 reported payments to vendors with accurate explanations of the reasons for the payments, but  
13 failed to report specific payments by agents to individual subvendors. For example, the  
14 Committee timely reported payments identified as “television ads” to campaign consultants, but  
15 failed to timely report actual payments by the consultant to the television stations. In addition,  
16 the Committee reported campaign expenditures at the time they were paid, but failed to report  
17 accrued expenditures that were incurred but not paid by the close of a reporting period. After  
18 discovering these errors, the Committee filed amendments properly disclosing all expenditures  
19 made by the Committee and its agents.

20 **Conclusion**

21 18. Respondent agrees to take necessary and prudent precautions to comply with all  
22 provisions of the Election Campaign Control Ordinance in the future.

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1           19.     Respondent agrees to pay a fine in the amount of \$9,000 for violating SDMC  
2 sections 27.2931 and 27.2944. This amount must be paid no later than December 9, 2005, by  
3 check or money order made payable to the City Treasurer. The submitted payment will be held  
4 pending Commission approval of this Stipulation and execution of the Decision and Order  
5 portion set forth below.

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7 DATED: \_\_\_\_\_                    \_\_\_\_\_  
8    STACEY FULHORST, Executive Director  
9    ETHICS COMMISSION, Petitioner

10 DATED: \_\_\_\_\_                    \_\_\_\_\_  
11   MICHAEL AGUIRRE, Respondent

12  
13   **DECISION AND ORDER**

14           The Ethics Commission considered the above Stipulation at its meeting on \_\_\_\_\_,  
15 2005. The Ethics Commission hereby approves the Stipulation and orders that, in accordance  
16 with the Stipulation, Respondent pay a fine in the amount of \$9,000.

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18 DATED: \_\_\_\_\_                    \_\_\_\_\_  
19   Dorothy Leonard, Chair  
20   SAN DIEGO ETHICS COMMISSION