

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.: 2013-01
11 BRIAN POLLARD,)
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, Brian “Barry” Pollard was a candidate for City
22 Council District 4 in the June 8, 2010, primary election. The Brian “Barry” Pollard committee
23 (Identification # 1330949) [Committee] was a campaign committee registered with the State of
24 California established to support Mr. Pollard’s candidacy for Council District 4. At all relevant
25 times herein, the Committee was controlled by Mr. Pollard within the meaning of the California
26 Political Reform Act, California Government Code section 82016. Mr. Pollard is referred to
27 herein as “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 by the Ethics
5 Commission without the necessity of holding an administrative hearing to determine
6 Respondent's liability.

7 5. Respondent understands and knowingly and voluntarily waives any and all procedural
8 rights under the SDMC, including, but not limited to, a determination of probable cause, the
9 issuance and receipt of an administrative complaint, the right to appear personally in any
10 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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1 **Summary of Law and Facts**

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

4 9. The Committee was selected for audit by a designee of the City Clerk in a random
5 drawing conducted at a public meeting of the Ethics Commission held on September 26, 2011.
6 An audit was performed for the period from September 30, 2009, through June 30, 2011. The
7 Final Audit Report was presented to the Commission on January 20, 2013, at which time the
8 Commission authorized an investigation into the material findings identified during the audit.
9 The information set forth in this Stipulation was obtained during the course of audit and
10 investigation.

11 9. SDMC section 27.2919 prohibits candidates from making expenditures of \$100 or
12 more with cash. Respondent negotiated a check payable to cash in the amount of \$1,400 on May
13 21, 2010, and reportedly used this cash to purchase stamps from the U.S. Post Office. Although
14 Respondent did not maintain a receipt for this purchase, his representation is supported by other
15 committee records which indicate that he paid a vendor to prepare two different postcard
16 campaign mailers in quantities of 5,000 each.

17 10. SDMC section 27.2925 requires candidates and committees to maintain detailed
18 records necessary to prepare campaign disclosure statements, including copies of documents
19 reflecting contributions received and invoices or receipts for expenditures made by the
20 Committee. Respondent failed to maintain documents reflecting contributions made by 14
21 contributors totaling \$770 and invoices or receipts for 8 expenditures totaling \$1,984. (Although
22 the Commission's Final Audit Report referenced additional missing documents, Respondent was
23 able to locate more records after the conclusion of the audit.)

24 11. SDMC section 27.2930 requires candidates and committees to file campaign
25 statements in the time and manner required by state law. California Government Code section
26 84211 requires candidates and committees to itemize contributions from a single source that total
27 \$100 or more on campaign statements. Respondent failed to disclose the receipt of 14 such
28 contributions totaling \$2,180 on various campaign statements.

1 12. SDMC section 27.2950 prohibits contributions from any person other than an
2 individual or political party to City candidates. Respondent accepted and deposited 2
3 contributions from business entities totaling \$150 on April 8, 2010, and January 18, 2011.

4 **Counts**

5 **Count 1 – Violation of SDMC section 27.2919**

6 13. Respondent violated SDMC section 27.2919 by making an expenditure of more than
7 \$99 with cash.

8 **Count 2 – Violation of SDMC section 27.2925**

9 14. Respondent violated SDMC section 27.2925 by failing to maintain records reflecting
10 contributions from 14 individuals totaling \$770, and receipts or invoices for 9 expenditures
11 totaling \$1,984.

12 **Count 3 – Violation of SDMC section 27.2930**

13 15. Respondent violated SDMC section 27.2930 by failing to disclose the receipt of 14
14 contributions totaling \$2,180.

15 **Count 4 – Violation of SDMC section 27.2950**

16 16. Respondent violated SDMC section 27.2950 by accepting two contributions totaling
17 \$150 drawn from business checking accounts.

18 **Factors in Mitigation**

19 17. Respondent has fully cooperated with the Ethics Commission's investigation.

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.

23 19. Respondents acknowledge that the Ethics Commission may impose increased fines
24 in connection with any future violations of the City's campaign laws.

25 20. Respondent agrees to pay a fine in the amount of \$3,500 for violating SDMC
26 sections 27.2919, 27.2925, 27.2930 and 27.2950. This amount must be paid by check or money
27 order made payable to the City Treasurer no later than June 30, 2013. Respondent acknowledges
28 that if the fine is not timely paid in full, the Commission may refer the collection of the fine to

1 the City Treasurer's Collection Division, which may pursue any or all available legal remedies to
2 recover late penalties, interest, and costs, in addition to seeking the outstanding balance owed.

3 [REDACTED]

4 DATED: _____

STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

5 [REDACTED]

6 DATED: _____

BRIAN POLLARD, Respondent

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8 **DECISION AND ORDER**

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10 The Ethics Commission considered the above Stipulation at its meeting on _____,
11 2013. The Ethics Commission hereby approves the Stipulation and orders that, in accordance
12 with the Stipulation, Respondent pay a fine in the amount of \$3,500.

13 [REDACTED]

14 DATED: _____

CLYDE FULLER, Chair
SAN DIEGO ETHICS COMMISSION