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2 City of San Diego Ethics Commission
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7 Petitioner

8 **BEFORE THE CITY OF SAN DIEGO**
9 **ETHICS COMMISSION**

10 In re the Matter of:) Case No.: 2008-75
11)
12 LORENA GONZALEZ and XAVIER) **STIPULATION, DECISION, AND**
13 MARTINEZ,) **ORDER**
14 Respondents.)

15 **STIPULATION**

16 **THE PARTIES STIPULATE AS FOLLOWS:**

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

22 2. At all times mentioned herein, Lorena Gonzalez [Gonzalez] was a candidate for
23 City Council District 2 in the November 8, 2005, special election and the January 10, 2006,
24 special run-off election. The Lorena Gonzalez for City Council committee [Gonzalez
25 Committee] was a campaign committee registered with the State of California (Identification No.
26 1278735) established to support Ms. Gonzalez's candidacy for City Council District 2. At all
27 relevant times herein, the Gonzalez Committee was controlled by Ms. Gonzalez within the
28 meaning of the California Political Reform Act, California Government Code section 82016.

1 3. At all times mentioned herein, Xavier Martinez [Martinez] was the treasurer for the
2 Gonzalez Committee.

3 4. Gonzalez and Martinez are referred to herein collectively as “Respondents.”

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

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

10 7. Respondents understand and knowingly and voluntarily waive any and all
11 procedural rights under the SDMC, including, but not limited to, a determination of probable
12 cause, the issuance and receipt of an administrative complaint, the right to appear personally in
13 any administrative hearing held in this matter, the right to confront and cross-examine witnesses
14 testifying at the hearing, the right to subpoena witnesses to testify at the hearing, and the right to
15 have the Ethics Commission or an impartial hearing officer hear this matter.

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

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

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1 **Summary of Law and Facts**

2 10. On September 13, 2007, the Gonzalez Committee was selected for audit at a
3 random drawing in accordance with the provisions in the Ethics Commission Audit Manual.
4 Accordingly, an audit of the Gonzalez Committee was performed for the period August 2, 2005,
5 through June 30, 2006 (the date the committee was terminated).

6 11. Because the Gonzalez Committee was formed for the purpose of supporting a
7 candidate in a City of San Diego election, Respondents are required to comply with the
8 provisions of ECCO.

9 12. SDMC section 27.2930 requires candidates and committees to file campaign
10 statements in the time and manner required by California Government Code sections 81000 et
11 seq. California Government Code section 84211 requires that campaign statements include the
12 following information:

13 (k) For each person to whom an expenditure of one hundred dollars (\$100) or
14 more has been made during the period covered by the campaign statement, all of
15 the following:

- 16 (1) His or her full name.
17 (2) His or her street address.
18 (3) The amount of each expenditure.
19 (4) A brief description of the consideration for which each expenditure was made.

20 13. The Commission's audit revealed that the Gonzalez Committee did not comply with
21 the requirements of SDMC section 27.2930. In particular, Respondents did not disclose
22 expenditures to four campaign vendors as follows:

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Vendor	Amount
CompleteCampaigns.com	\$ 150.00
Karen Goyette	\$3,000.00
Commerce Printing Service	\$ 700.00
Political Data Inc.	\$ 527.87
	<hr/>
	\$4,377.87

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1 **Counts**

2 **Count 1 - Violations of SDMC section 27.2930**

3 14. Respondents failed to report campaign expenditures to four vendors totaling
4 \$4,377.87 as required by SDMC section 27.2930.

5 **Factors in Aggravation**

6 15. The Commission's audit reveals that Respondent Martinez made several additional
7 mistakes in preparing campaign statements for the Gonzalez Committee. Specifically, he
8 reported that the Gonzalez Committee made a payment in the amount of \$3,657.48 to Mailrite
9 Print & Mail Inc., although this expenditure was actually made by the San Diego County
10 Democratic Party, for whom Respondent Martinez also serves as the treasurer. In addition,
11 Respondent Martinez failed to disclose two contributions made to the Gonzalez Committee in
12 the amounts of \$100 and \$150. Finally, the information provided on the summary pages of
13 various campaign statements included inaccurate information regarding total campaign
14 contributions and expenditures. Although Respondent Martinez maintains that he prepared
15 amended campaign statements in order to correct some of these mistakes, he failed to file these
16 amendments with the City Clerk.

17 **Factors in Mitigation**

18 16. The Commission's audit revealed that Respondent Gonzalez reasonably relied on
19 Respondent Martinez as a professional campaign treasurer to report campaign expenditures and
20 contributions as required by local law. Respondent Martinez has therefore taken full
21 responsibility for the violations described herein as well as the monetary penalty referenced
22 below.

23 17. Respondents have cooperated fully with the Ethics Commission investigation.

24 **Conclusion**

25 18. Respondent Martinez agrees to implement appropriate controls and procedures to
26 prevent future similar violations of ECCO.

27 19. Respondent Martinez agrees to pay a fine in the amount of \$500 for violating
28 SDMC section 27.2930. This amount must be paid no later than June 19, 2009, by check

1 payable to the City Treasurer. The submitted payment will be held pending Commission
2 approval of this Stipulation and execution of the Decision and Order portion set forth below.

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4 DATED: _____
5 STACEY FULHORST, Executive Director
6 ETHICS COMMISSION, Petitioner

7 DATED: _____
8 LORENA GONZALEZ, Respondent

9 DATED: _____
10 XAVIER MARTINEZ, Respondent

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12 **DECISION AND ORDER**

13 The Ethics Commission considered the above Stipulation at its meeting on _____,
14 2009. The Ethics Commission hereby approves the Stipulation and orders that, in accordance
15 with the Stipulation, Respondent Martinez pay a fine in the amount of \$500.

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17 DATED: _____
18 Richard Valdez, Chair
19 SAN DIEGO ETHICS COMMISSION
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