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5 Petitioner

6
7 **BEFORE THE CITY OF SAN DIEGO**
8 **ETHICS COMMISSION**

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10 In re the Matter of:) Case No.: 2011-60
11 YES ON PROPOSITIONS A, B & C)
COMMITTEE, and WILLIAM BABER) **STIPULATION, DECISION, AND**
12 Respondents.) **ORDER**
13)

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15 **STIPULATION**

16 **THE PARTIES STIPULATE AS FOLLOWS:**

17 1. Petitioner, Christina M. Cameron, is the General Counsel of the City of San Diego
18 Ethics Commission [Ethics Commission]. The Ethics Commission is charged with a duty to
19 administer, implement, and enforce local governmental ethics laws contained in the San Diego
20 Municipal Code [SDMC] relating to, among other things, the provisions of the Election
21 Campaign Control Ordinance [ECCO], SDMC section 27.2901, *et seq.*

22 2. William Baber [Baber] is the treasurer of the Yes on Propositions A, B & C
23 Committee [Committee]. The Committee was primarily formed to support three City of San
24 Diego ballot measures in the June 2008 primary election, and is registered with the State of
25 California (Identification No. 1305653). Baber and the Committee are referred to herein as
26 “Respondents.”

27 3. Bob Nelson [Nelson] was the campaign consultant and responsible officer of the
28 Committee.

1 4. 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 5. This Stipulation resolves all factual and legal issues raised in this matter, including
5 any material findings contained in the forthcoming Final Audit Report by the Ethics Commission
6 without the necessity of holding an administrative hearing to determine Respondents' liability.

7 6. Respondents understand and knowingly and voluntarily waive 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. Respondents agree
13 to hold the City of San Diego harmless from any and all claims or damages resulting from the
14 Commission's investigation, this stipulated agreement, or any matter reasonably related thereto.
15 Respondents further agree that the terms of this Stipulation constitute compliance with the
16 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 7. Respondents acknowledge 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 8. The parties agree that in the event the Ethics Commission refuses to accept this
23 Stipulation, it shall become null and void. Respondents further agree 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 9. 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 10. On April 10, 2008, the Committee filed an amended Form 410 indicating that the
6 Committee, formed earlier for the purpose of supporting Propositions A, B, and C on the June 3,
7 2008, ballot, had qualified as a committee as defined by ECCO.

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

12 12. According to Government Code sections 82036 and 84203.3, any City ballot
13 measure committee that received nonmonetary contributions totaling \$1,000 from a single source
14 between May 18, 2008, and the primary election on June 3, 2008, was required to file a Late
15 Contribution Report [Form 497] with the City Clerk within forty-eight (48) hours.

16 13. On May 22, 2008, the Committee received a nonmonetary contribution from the
17 Sycuan Band of the Kumeyaay Nation [Sycuan] in the form of a \$25,000 payment to the Lincoln
18 Club of San Diego Voter Guide [LCVG], a slate mailer organization, for the inclusion of
19 Propositions A, B, and C in LCVG slate mailers.

20 14. On May 23, 2008, LCVG, pursuant to the requirements of California Government
21 Code section 84203.3, sent the Committee a letter via fax transmission notifying the Committee
22 that the Committee had received a nonmonetary contribution from Sycuan in the amount of
23 \$25,000. Because LCVG sent this fax to a fax number of a client of Respondent Baber rather
24 than the Committee’s primary fax number, Respondent Baber did not retrieve this notification
25 until May 27, 2008.

26 15. On May 27, 2008, the Committee filed a Form 497 and inaccurately disclosed that
27 it received the nonmonetary contribution from Sycuan on May 27, 2008, rather than on May 22,
28 2008.

1 **Factors in Aggravation**

2 22. On May 23, 2008, Respondent Baber received timely written notice from LCVG
3 stating that Sycuan made a nonmonetary contribution in the amount of \$25,000 to the
4 Committee. Respondent Baber disregarded this information and filed a Form 497 on May 27,
5 2008, inaccurately disclosing that the Sycuan contribution was received on May 27, 2008. In so
6 doing, Respondent Baber concealed the fact that the contribution was not timely reported within
7 48 hours, disregarding his obligation as a campaign treasurer to accurately and timely report the
8 Committee's nonmonetary contributions. As a result, approximately 33,000 pre-recorded
9 campaign phone calls were produced and disseminated for the Committee that did not identify
10 Sycuan as a contributor of \$50,000 or more.

11 **Factors in Mitigation**

12 23. The Committee, through its responsible officer, Bob Nelson, fully cooperated in the
13 investigation by voluntarily and timely producing needed documents and information pertinent
14 to the investigation.

15 **Conclusion**

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

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

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