

1 STACEY FULHORST, Executive Director
City of San Diego Ethics Commission
2 450 B Street, Suite 780
San Diego, CA 92101
3 Telephone: (619) 533-3476
4

5 Petitioner

6
7 **BEFORE THE CITY OF SAN DIEGO**
8 **ETHICS COMMISSION**
9

10 In re the Matter of:) Case No.: 2020-05
11)
ROSS NAISMITH,) **STIPULATION, DECISION, AND**
12) **ORDER**
Respondent.)
13)
_____)

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 Election Campaign Control
20 Ordinance [ECCO], SDMC section 27.2901, *et seq.*

21 2. Ross Naismith was, during all times mentioned herein, a candidate for City Council
22 District 9 in the March 2020 primary election. The Ross Naismith for City Council 2020
23 committee (Identification No. 1423972) [Committee] is a campaign committee registered with
24 the State of California established to support Mr. Naismith’s candidacy. At all relevant times
25 herein, the Committee was controlled Mr. Naismith within the meaning of the California
26 Political Reform Act, California Government Code section 82016. Mr. Naismith 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
2 its next scheduled meeting, and the agreements contained herein are contingent upon the
3 approval of the Stipulation and the accompanying Decision and Order by the Ethics
4 Commission.

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

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

17 6. Respondent agrees to hold the City of San Diego and the Ethics Commission
18 harmless from any and all claims or damages resulting from the Commission's investigation, this
19 stipulated agreement, or any matter reasonably related thereto.

20 7. Respondent acknowledges 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 8. The parties agree that in the event the Ethics Commission refuses to accept this
25 Stipulation, it shall become null and void. Respondent further agrees 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 9. Because Respondent's Committee was formed to support a City of San Diego
3 candidate, Respondent was required to comply with ECCO's advertising disclosure provisions.
4 In this regard, the Committee was required to clearly identify to the public that it was paying for
5 the campaign advertisements it disseminated. SDMC § 27.2970.

6 10. ECCO requires all candidates who print and distribute campaign literature in
7 support of their candidacies to include the words "Ad paid for by" followed by the name of the
8 candidate's committee. This disclosure must be printed in a typeface at least 10 points in size
9 that contrasts with the background. The type size requirement ensures that the disclosure is
10 clearly visible and readily apparent to members of the public. SDMC § 27.2970.

11 11. On October 10, 2019, Respondent sought and received advice from the
12 Commission's Education Program Manager, who informed Respondent that campaign business
13 cards must include an "Ad paid for by" disclosure in 10-point type.

14 12. On October 15, 2019, Respondent paid for 250 business cards that were
15 subsequently distributed in support of his candidacy. Although the business cards included the
16 requisite disclosure, it was printed in a 4.5-point typeface.

17 13. On November 17, 2019, Respondent paid for an additional 2,000 business cards that
18 were subsequently distributed in support of his candidacy. These business cards included an "Ad
19 paid for by disclosure" printed in a 4.5-point typeface.

20 14. On November 19, 2019, Respondent paid for an additional 2,500 business cards that
21 were subsequently distributed in support of his candidacy. These business cards included an "Ad
22 paid for by disclosure" printed in a 4.5-point typeface.

23 **Counts**

24 **Count 1 - Violations of SDMC section 27.2970**

25 15. Respondent violated SDMC section 27.2970 by producing and disseminating
26 4,750 business cards that did not comply with the City's advertising disclosure laws as described
27 above in paragraphs 12 through 14.

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1 **Factors in Mitigation**

2 16. Respondent cooperated with the Ethics Commission investigation.

3 **Conclusion**

4 17. Respondent agrees to take necessary and prudent precautions to ensure compliance
5 with all provisions of ECCO in the future.

6 18. Respondent acknowledges that the Ethics Commission may impose increased fines
7 in connection with any future violations of the City’s campaign laws.

8 19. Respondent agrees to pay a fine in the amount of \$250 for violating SDMC section
9 27.2970. This amount must be paid no later than June 26, 2020, by check or money order
10 payable to the City Treasurer. The submitted payment will be held pending Commission
11 approval of this Stipulation and execution of the Decision and Order portion set forth below.

12 DATED: _____ [REDACTED]
13 _____
14 Stacey Fulhorst, Petitioner
SAN DIEGO ETHICS COMMISSION

15 DATED: _____ [REDACTED]
16 _____
ROSS NAISMITH, Respondent

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18
19 **DECISION AND ORDER**

20 The Ethics Commission considered the above Stipulation at its meeting on July 9, 2020.
21 The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the
22 Stipulation, Respondent pay a fine in the amount of \$250.

23
24 DATED: _____ [REDACTED]
25 _____
26 Sid Voorakkara, Chair
SAN DIEGO ETHICS COMMISSION