STACEY FULHORST, Executive Director
City of San Diego Ethics Commission
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Petitioner

BEFORE THE CITY OF SAN DIEGO
ETHICS COMMISSION

In re the Matter of: ) Case No.: 2005-24
) )
CONTINUING THE REPUBLICAN ) STIPULATION, DECISION, AND
REVOLUTION, ) ORDER
) )
Respondent. ) )

STIPULATION

THE PARTIES STIPULATE AS FOLLOWS:

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

2. At all times mentioned herein, Continuing the Republican Revolution was registered with the State of California (Identification No. 598041) as a slate mailer committee. The committee is referred to herein as “Respondent.”

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

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STIPULATION, DECISION, AND ORDER
4. This Stipulation resolves all factual and legal issues raised in this matter by the Ethics Commission without the necessity of holding an administrative hearing to determine the Respondent’s liability.

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

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

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

**Summary of Law and Facts**

8. On or about July 22, 2005, the Respondent sent a mailer to approximately 39,000 residents of the City of San Diego. The mailer urged the recipients to vote for Jerry Sanders in the July 26, 2005, special mayoral election. The mailer also urged recipients to vote in favor of / / /
Proposition A (a local ballot measure concerning the Mount Soledad Veteran’s Memorial) and to sign a petition in support of a California Border Police initiative.

9. The mailer identified above was not a slate mailer. According to California Government Code section 82048.3, a slate mailer is a mass mailing that supports or opposes a total of four or more candidates or ballot measures. As discussed above, the mailer sent by Respondent supported only one candidate and two ballot measures. Rather than being a slate mailer, the mailer was instead an independent expenditure, as defined by SDMC section 27.2903.

10. Because Respondent made an independent expenditure supporting a City of San Diego candidate and a City of San Diego ballot measure, Respondent is subject to the provisions of ECCO that require the disclosure of such expenditures. Respondent is also subject to the provisions in ECCO that limit the source and amount of contributions used to support candidates in a City of San Diego election.

11. On July 20, 2005, Respondent received a $5,000 contribution from Access Nurses, Inc. for the purpose of supporting mayoral candidate Jerry Sanders in the subject mailer.

12. On July 20, 2005, Respondent received a $1,000 contribution from Richard Gulley for the purpose of supporting mayoral candidate Jerry Sanders in the subject mailer.

13. On July 20, 2005, Respondent received a $1,000 contribution from Horton Fourth Avenue Ltd. for the purpose of supporting mayoral candidate Jerry Sanders in the subject mailer.

14. On July 20, 2005, Respondent received a $3,000 contribution from Mesa Distributing Co., Inc. for the purpose of supporting mayoral candidate Jerry Sanders in the subject mailer.

15. On July 20, 2005, Respondent received a $1,000 contribution from OliverMcMillan Bernardo Industrial for the purpose of supporting mayoral candidate Jerry Sanders in the subject mailer.

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STIPULATION, DECISION, AND ORDER
16. On July 20, 2005, Respondent received a $1,000 contribution from OliverMcMillan, LLC for the purpose of supporting mayoral candidate Jerry Sanders in the subject mailer.

17. On July 20, 2005, Respondent received a $1,000 contribution from Jeffrey Silberman for the purpose of supporting mayoral candidate Jerry Sanders in the subject mailer.

18. On July 20, 2005, Respondent received a $1,000 contribution from Withers, Mann & Lamanna, LLP for the purpose of supporting mayoral candidate Jerry Sanders in the subject mailer.

19. On July 21, 2005, Respondent received a $1,000 contribution from OliverMcMillan Gaslamp Theaters, LLC for the purpose of supporting mayoral candidate Jerry Sanders in the subject mailer.

20. On July 21, 2005, Respondent received a $1,000 contribution from OliverMcMillan Market Street LP for the purpose of supporting mayoral candidate Jerry Sanders in the subject mailer.

21. On July 22, 2005, Respondent received a $1,000 contribution from Morgan Dene Oliver for the purpose of supporting mayoral candidate Jerry Sanders in the subject mailer.

22. On July 22, 2005, Respondent received a $1,000 contribution from Dick Parrent for the purpose of supporting mayoral candidate Jerry Sanders in the subject mailer.

23. SDMC section 27.2930 requires committees participating in City of San Diego elections to file campaign statements in the time and manner required by California Government Code sections 81000 et seq.

24. Government Code section 84204 requires committees that make a late independent expenditure to file a Late Independent Expenditure Report [Form 496] within twenty-four hours of making the expenditure. The Form 496 must include information regarding contributions received since the closing date of the last campaign report filed. According to Government Code section 82036.5, a late independent expenditure is any independent expenditure made during the sixteen days prior to an election in the aggregate amount of $1,000 or more in support of, or opposition to, a candidate or ballot measure.
25. As discussed above, Respondent received a total of $18,000 in contributions from July 20 through July 22, 2005, in support of Sanders’ inclusion in the mailer. On or about July 22, 2005, Respondent distributed a mailer that supported the mayoral candidacy of Jerry Sanders. Expenditures associated with this mailer totaled $15,765.07. Respondent did not file a Late Independent Expenditure Report within twenty-four hours disclosing the contributions received or expenditures made in support of a City candidate.

26. As discussed above, the mailer distributed by Respondent on or about July 22, 2005, also urged support for Proposition A. Payments for this portion of the mailer were approximately $2,000. Respondent did not file a Late Independent Expenditure Report within twenty-four hours disclosing the expenditures made in support of a City measure.

27. SDMC section 27.2936 limits the use of contributions by recipient committees that make independent expenditures to support of City candidates. In particular, it is unlawful for recipient committees to use more than $300 in contributions from each individual contributor to support a citywide candidate.

28. As discussed above, Respondent accepted and used twelve contributions in excess of $300 in support of mayoral candidate Jerry Sanders on the subject mailer.

29. SDMC section 27.2950 prohibits the acceptance of contributions from organizations for the purpose of supporting City candidates.

30. As discussed above, Respondent accepted and used eight contributions from organizations in support of mayoral candidate Jerry Sanders on the subject mailer.

31. SDMC section 27.2970 requires committees that send “mass mailings” to include a disclosure identifying the party who paid for the mailing. (ECCO defines “mass mailing” as 200 or more substantially similar pieces of campaign literature sent within a single calendar month. SDMC § 27.2903.) The disclosure must be in a typeface that is easily legible, in a color that contrasts with the background, and in a font no less than 12 points in size.

32. As discussed above, the Respondent distributed a campaign mailer to approximately 39,000 residents of the City of San Diego. The mailing did not include the “paid for by” disclosure required by SDMC section 27.2970.
Counts

Counts 1 and 2 – Violations of SDMC section 27.2930

33. Respondent received contributions totaling $18,000 from July 20 through 22, 2005, and made an independent expenditure totaling approximately $15,765 in support of the mayoral candidacy of Jerry Sanders on or about July 22, 2005. Respondent failed to file a Late Independent Expenditure Report within twenty-four hours disclosing the contributions received and expenditures made in connection with this independent expenditure, in violation of SDMC section 27.2930.

34. Respondent also made an independent expenditure totaling approximately $2,000 in support of Proposition A on or about July 22, 2005. Respondent failed to file a Late Independent Expenditure Report within twenty-four hours disclosing the expenditures made in connection with this independent expenditure, in violation of SDMC section 27.2930.

Counts 3 through 14 - Violations of SDMC section 27.2936

35. Respondent accepted and used twelve contributions in excess of $300 in support of mayoral candidate Jerry Sanders, in violation of SDMC section 27.2936.

Counts 15 through 22 - Violations of SDMC section 27.2950

36. Respondent accepted and used eight contributions from organizations in support of mayoral candidate Jerry Sanders, in violation of SDMC section 29.2950.

Count 23 - Violation of SDMC section 27.2970

37. Respondent disseminated a mass mailing in support of mayoral candidate Jerry Sanders and Proposition A, a City ballot measure, on July 22, 2005. Respondent failed to include the requisite “paid for by” disclosure on this mailing in violation of SDMC section 27.2970.

Factors in Mitigation

38. Respondent asserts that he mistakenly believed that the appearance of President George W. Bush on the subject mailer constituted a fourth candidate, and that the mailer therefore qualified as a slate mailer. Because he thought that the mailer was a slate mailer

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subject only to the laws that regulate slate mailers, he did not believe that the contributions or expenditures associated with the mailer were subject to laws regulating independent expenditures, including applicable laws in ECCO.

**Factors in Aggravation**

39. Respondent has an extensive history participating in local and state elections as a slate mailer organization. Respondent therefore should have known that the subject mailer did not qualify as a slate mailer because it did not support or oppose a total of four candidates and/or measures.

40. The Commission’s investigation reveals that Respondent led the contributors identified above to believe that their respective contributions were lawful under ECCO.

**Conclusion**

41. Respondent agrees to file the Late Independent Expenditure Reports referenced above in paragraphs 25 and 26 on or before September 30, 2006.

42. Respondent agrees to pay a fine in the amount of $17,000 for violating SDMC sections 27.2930, 27.2936, 29.2950, and 27.2970. This amount must be paid no later than March 31, 2007, by check or money order made payable to the City Treasurer. Respondent acknowledges that if the fine is not timely paid in full, the Commission may refer the collection of the fine to the City Treasurer’s Collection Division, which may pursue any or all available legal remedies to recover late penalties, interest, and costs, in addition to seeking the outstanding balance owed.

DATED: ____________________

STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

DATED: ____________________

SCOTT HART, Principal of CONTINUING THE REPUBLICAN REVOLUTION, Respondent
DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on __________, 2006. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of $17,000.

DATED: ______________________  ______________________________

Dorothy Leonard, Chair
SAN DIEGO ETHICS COMMISSION