

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.: 2005-24
11 CONTINUING THE REPUBLICAN)
REVOLUTION,) **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 City's Election Campaign
20 Control Ordinance [ECCO].

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

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

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1 Proposition A (a local ballot measure concerning the Mount Soledad Veteran's Memorial) and to
2 sign a petition in support of a California Border Police initiative.

3 9. The mailer identified above was not a slate mailer. According to California
4 Government Code section 82048.3, a slate mailer is a mass mailing that supports or opposes a
5 total of four or more candidates or ballot measures. As discussed above, the mailer sent by
6 Respondent supported only one candidate and two ballot measures. Rather than being a slate
7 mailer, the mailer was instead an independent expenditure, as defined by SDMC section
8 27.2903.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 24. Government Code section 84204 requires committees that make a late independent
23 expenditure to file a Late Independent Expenditure Report [Form 496] within twenty-four hours
24 of making the expenditure. The Form 496 must include information regarding contributions
25 received since the closing date of the last campaign report filed. According to Government
26 Code section 82036.5, a late independent expenditure is any independent expenditure made
27 during the sixteen days prior to an election in the aggregate amount of \$1,000 or more in
28 support of, or opposition to, a candidate or ballot measure.

1 25. As discussed above, Respondent received a total of \$18,000 in contributions from
2 July 20 through July 22, 2005, in support of Sanders' inclusion in the mailer. On or about July
3 22, 2005, Respondent distributed a mailer that supported the mayoral candidacy of Jerry
4 Sanders. Expenditures associated with this mailer totaled \$15,765.07. Respondent did not file a
5 Late Independent Expenditure Report within twenty-four hours disclosing the contributions
6 received or expenditures made in support of a City candidate.

7 26. As discussed above, the mailer distributed by Respondent on or about July 22,
8 2005, also urged support for Proposition A. Payments for this portion of the mailer were
9 approximately \$2,000. Respondent did not file a Late Independent Expenditure Report within
10 twenty-four hours disclosing the expenditures made in support of a City measure.

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

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

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

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

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

26 32. As discussed above, the Respondent distributed a campaign mailer to approximately
27 39,000 residents of the City of San Diego. The mailing did not include the "paid for by"
28 disclosure required by SDMC section 27.2970.

1 Counts

2 **Counts 1 and 2 – Violations of SDMC section 27.2930**

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

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

13 **Counts 3 through 14 - Violations of SDMC section 27.2936**

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

16 **Counts 15 through 22 - Violations of SDMC section 27.2950**

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

19 **Count 23 - Violation of SDMC section 27.2970**

20 37. Respondent disseminated a mass mailing in support of mayoral candidate Jerry
21 Sanders and Proposition A, a City ballot measure, on July 22, 2005. Respondent failed to
22 include the requisite “paid for by” disclosure on this mailing in violation of SDMC section
23 27.2970.

24 Factors in Mitigation

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

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

4 **Factors in Aggravation**

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

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

11 **Conclusion**

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

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

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22 DATED: _____

STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

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25 DATED: _____

SCOTT HART, Principal of CONTINUING THE
REPUBLICAN REVOLUTION, Respondent

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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