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.: 2006-42
JIM MADAFFER, ) STIPULATION, DECISION, AND
) 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 Ethics Ordinance.

2. At all times mentioned herein, Jim Madaffer [Madaffer] was the Councilmember for District 7 in the City of San Diego. Madaffer is referred to herein as “Respondent.”

3. This 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.

4. This Stipulation resolves all factual and legal issues raised in this matter and arising out of the audit of the Committee by the Ethics Commission without the necessity of holding an administrative hearing to determine Respondent’s liability.

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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 the hearing, the right to subpoena witnesses to testify at the hearing, and the right to have the Ethics Commission or an impartial 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. 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 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. As a City Councilmember, Respondent is a “High Level Filer” as that term is defined by SDMC section 27.3503, and is required to file Statements of Economic Interests [SEI] in the time and manner set forth in SDMC section 27.3510.

9. SDMC section 27.3510 requires all High Level Filers to file an annual SEI on or before April 1 of each year, covering the period from January 1 through December 31 of the previous calendar year, pursuant to the disclosure guidelines set forth in the California Political Reform Act.
10. In accordance with the California Political Reform Act, Respondent is required to report investments interests, including ownership of common stock, in companies that conduct business in the City of San Diego if the investment interest is valued at $2,000 or more at any time during the reporting period.

11. Respondent filed an SEI for the 2002 calendar year on March 21, 2003. On this SEI, Respondent did not report his stock ownership interests in the following companies: Applied Micro Circuits Corporation, USANA Health Sciences, and Leap Wireless. On January 10, 2007, Respondent filed an amendment to his 2002 SEI, reporting his ownership of common stock issued by these three companies, each with a reported value between $2,000 and $10,000. This amendment also references Respondent’s disposal of the USANA Health Sciences stock on April 9, 2002.

12. Respondent filed an SEI for the 2003 calendar year on March 30, 2004. On this SEI, Respondent did not report his stock ownership interests in the following companies: Applied Micro Circuits Corporation, and Leap Wireless. On January 10, 2007, Respondent filed an amendment to his 2003 SEI, reporting his ownership of common stock issued by these two companies, each with a reported value between $2,000 and $10,000.


Counts

Counts 1 through 3 - Violations of SDMC section 27.3510

14. Respondent failed to timely disclose investments in common stock in companies that conduct business in the City of San Diego on his SEIs for the 2002, 2003, and 2004 calendar years. In particular, Respondent failed to timely disclose his ownership of stock issued by

**Factors in Mitigation**

15. Respondent timely disclosed his ownership of stock issued by Applied Micro Circuits Corporation, USANA Health Sciences, and Leap Wireless when he initially purchased the respective stocks in 2000 and 2001. Respondent’s violations stem from failing to carry these investments forward on subsequent SEIs.

16. During the course of a related Ethics Commission investigation, Respondent independently identified the need to amend his SEIs for 2002, 2003, and 2004 to disclose these investment interests.

17. Respondent cooperated fully with the Ethics Commission investigation.

**Conclusion**

18. Respondent agrees to take necessary and prudent precautions to comply with all provisions of the Ethics Ordinance in the future.

19. Respondent agrees to pay a fine in the amount of $500 for violating SDMC section 27.3510. This amount must be paid no later than March 2, 2007, by check or money order made payable to the City Treasurer. The submitted payment will be held pending Commission approval of this Stipulation and execution of the Decision and Order set forth below.

DATED:__________________________

STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

DATED:__________________________

JIM MADAFFER, Respondent
DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on _________, 2007. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of $500.

DATED:__________________

Gil Cabrera, Vice-Chair
SAN DIEGO ETHICS COMMISSION