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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.: 2008-71  
11 YOU EMPOWER OUR COMMUNITY and ) **STIPULATION, DECISION, AND**  
12 NEIGHBORHOOD MARKET ) **ORDER**  
ASSOCIATION, )  
13 Respondents. )

14  
15 **STIPULATION**

16 **THE PARTIES STIPULATE AS FOLLOWS:**

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

22 2. At all times mentioned herein, the Neighborhood Market Association [NMA] was  
23 responsible for the activities of You Empower Our Community [YEOC], a committee registered  
24 with the State of California (Identification No. 1309024). NMA is an organization comprised of  
25 independent retailers in the food and alcohol beverage industry. NMA and YEOC are  
26 collectively referred to herein as “Respondents.”

27 3. This Stipulation will be submitted for consideration by the Ethics Commission at  
28 its next scheduled meeting, and the agreements contained herein are contingent upon the

1 approval of the Stipulation and the accompanying Decision and Order by the Ethics  
2 Commission.

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

6 5. Respondents understand and knowingly and voluntarily waive any and all  
7 procedural rights under the SDMC, including, but not limited to, a determination of probable  
8 cause, the issuance and receipt of an administrative complaint, the right to appear personally in  
9 any administrative hearing held in this matter, the right to confront and cross-examine witnesses  
10 testifying at the hearing, the right to subpoena witnesses to testify at the hearing, and the right to  
11 have the Ethics Commission or an impartial hearing officer hear this matter. Respondents agree  
12 to hold the City of San Diego harmless from any and all claims or damages resulting from the  
13 Commission's investigation, this stipulated agreement, or any matter reasonably related thereto.  
14 Respondents further agree that the terms of this Stipulation constitute compliance with the  
15 provisions of SDMC section 26.0450 in that the Stipulation includes a recitation of facts, a  
16 reference to each violation, and an order.

17 6. Respondents acknowledge that this Stipulation is not binding upon any other law  
18 enforcement or government agency and does not preclude the Ethics Commission from referring  
19 this matter to, cooperating with, or assisting any other law enforcement or government agency  
20 with regard to this or any other related matter.

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

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1 **Summary of Law and Facts**

2 8. 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 9. ECCO requires committees to file campaign statements in the time and manner  
6 required by California Government Code section 81000, *et seq.* and the regulations adopted by  
7 the Fair Political Practices Commission [FPPC]. It is unlawful under ECCO to fail to comply  
8 with the disclosure requirements of ECCO and state law. SDMC § 27.2930(j).

9 10. California Government Code section 84101 requires the filing of a Statement of  
10 Organization [Form 410] within 10 days after qualification as a committee, and Government  
11 Code section 84102 requires the filing of an amended Form 410 within 10 days of any change in  
12 information contained therein. The Form 410 must be filed with the Secretary of State and with  
13 the local filing officer where the committee will be required to file campaign statements.

14 11. According to California Government Code section 82047.5, a “primarily formed  
15 committee” is a committee that is formed or exists primarily to support or oppose a single  
16 candidate or single measure (or a group of candidates or measures being voted upon in the same  
17 jurisdiction). Government Code section 84102(d) requires primarily formed committees to  
18 include in their Form 410 the title and ballot number, if any, of any measure that the committee  
19 supports or opposes as its primary activity.

20 12. According to SDMC section 27.2903, a committee is “sponsored” by another  
21 entity if any of the following criteria apply: the committee receives 80% or more of its  
22 contributions either from the entity or from the entity’s members; the entity collects  
23 contributions for the committee by use of dues from its members; the entity (alone or with other  
24 entities) provides administrative services for the committee; or the entity (alone or with other  
25 entities) sets the committee’s policies for soliciting contributions or making expenditures.  
26 ECCO requires sponsored committees participating in City elections to adhere to the reporting  
27 obligations set forth in FPPC Regulation 18419. SDMC § 27.2930(i). Regulation 18419  
28 requires a committee that is sponsored by another entity to include the name of the sponsor in the

1 name of the committee, and to identify the sponsor and the sponsor's industry group or affiliation  
2 on the committee's Form 410.

3 13. In addition to filing a Form 410, a committee formed primarily for the purpose of  
4 supporting or opposing a ballot measure to be voted upon in one city must file campaign  
5 disclosure statements [Forms 460] with the clerk of that city. Cal. Gov't Code § 84215(e).  
6 According to the deadlines established by state law, a committee primarily formed to oppose a  
7 City ballot measure being voted on in the November 4, 2008, general election was required to  
8 file its Forms 460 as follows:

<u>Period Covered</u>	<u>Filing Deadline</u>
07/01/08 – 09/30/08	10/06/08
10/01/08 – 10/18/08	10/23/08
10/19/08 – 12/31/08	02/02/09 <sup>1</sup>
01/01/09 – 06/30/09	07/31/09

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12  
13  
14 Cal. Gov't Code § 84200, *et seq.*

15 14. SDMC section 27.2931 requires candidates and committees to file Forms 460  
16 electronically if they have received contributions or made expenditures of \$10,000 or more in  
17 connection with a City election.

18 15. In addition to the above filing requirements, ECCO mandates that all committees  
19 that pay for mass campaign literature (200 substantially similar pieces of campaign literature) for  
20 the purpose of supporting or opposing a City measure include the words "paid for by" followed  
21 by the name and address of the committee. SDMC § 27.2970. In addition, ECCO requires all  
22 committees that pay for billboard advertising for the purpose of supporting or opposing a City  
23 measure to include the words "paid for by" followed by the name of the committee. The  
24 disclosure must constitute at least 5% of the height of the advertisement and be printed in a  
25 contrasting color. SDMC § 27.2972.

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28 <sup>1</sup> Because January 31, 2009, fell on a Saturday, the deadline was extended to February 2, 2009.

1           16.     Within 30 days of the assignation of a ballot measure’s letter designation, any  
2 committee that is primarily formed to oppose the ballot measure must include the statement “a  
3 committee against Proposition \_\_,” in its name and in any other reference to the committee  
4 required by law. SDMC § 27.2976(e); Cal. Gov’t Code § 84107.

5           17.     On July 29, 2008, the San Diego City Council voted to place on the November 4,  
6 2008, general election ballot a measure to make permanent the temporary ban on alcohol  
7 consumption at City beaches and coastal parks. On August 11, 2008, this measure was  
8 designated by the County Registrar of Voters as “Proposition D.”

9           18.     On August 1, 2008, Respondents filed a Form 410 with the California Secretary  
10 of State, and indicated on the form that YEOC was a State general purpose committee  
11 established for the purpose of “working with communities to increase their political awareness.”  
12 Respondents filed Forms 460 with the Secretary of State in accordance with the schedule set  
13 forth above in Paragraph 13.

14           19.     The Commission’s investigation reveals that Respondent YEOC was established  
15 and controlled by Respondent NMA and its agents. NMA and its agents were responsible for  
16 establishing YEOC, hiring consultants and vendors, fundraising, making decisions about and  
17 directing the committee’s activities, and approving the committee’s expenditures.

18           20.     The Commission’s investigation reveals that Respondent YEOC was formed and  
19 has existed primarily for the purpose of opposing Proposition D on the November 4, 2008, ballot.  
20 Since its inception in August of 2008, Respondent YEOC has spent a total of \$73,155 on  
21 political activities: \$63,655 to oppose Proposition D and \$9,500 to support Pamela Bensoussan,  
22 a candidate for City Council in the City of Chula Vista. Respondent YEOC has not engaged in  
23 any activities to support or oppose any other candidates or measures in the City of San Diego or  
24 in any other jurisdiction. Thus, 87% of the expenditures made by YEOC for political purposes  
25 were directly related to efforts to oppose Proposition D. Accordingly, Respondent YEOC was  
26 not a State general purpose committee, but was instead a committee primarily formed to oppose  
27 a City ballot measure. As a result, it was required to file its Form 410 and Forms 460 with the  
28 San Diego City Clerk, not the Secretary of State.

1           21.     In addition to being required to file its campaign statements with the City Clerk,  
2 Respondent YEOC was required to amend its Form 410 on or before September 10, 2008, to  
3 indicate somewhere in its name that it was “a committee against Proposition D.”

4           22.     Because it was a committee primarily formed to oppose a City ballot measure,  
5 and because it received more than \$10,000 in contributions before September 30, 2009,  
6 Respondent YEOC was required to electronically file all four of its Forms 460 with the City  
7 Clerk.

8           23.     The Commission’s investigation also reveals that Respondent YEOC is sponsored  
9 by NMA. In particular, Respondent YEOC received more than 80% of its funding  
10 from NMA and its members. Moreover NMA and its principals collected contributions for  
11 YEOC through dues from its members, provided administrative services to YEOC, and set  
12 YEOC’s policies for soliciting contributions and making expenditures. Consequently,  
13 Respondent YEOC was required to include NMA in its committee name, and to identify the  
14 name, address, and industry of NMA on its Form 410.

15           24.     In September of 2008, Respondents commissioned 28 billboard advertisements  
16 for the purpose of opposing Proposition D. Respondents were required to include a disclosure on  
17 each billboard that read substantially as follows: “paid for by You Empower Our Community, a  
18 committee against Proposition D and sponsored by the Neighborhood Market Association.” The  
19 Commission’s investigation reveals that the “paid for by” disclosure included on YEOC’s  
20 billboard advertisements did not indicate that the committee was against Proposition D or that  
21 the committee was sponsored by NMA.

22           25.     In late October 2008, Respondents distributed mass campaign literature in the  
23 form of a mailer sent to 65,000 City residents for the purpose of opposing Proposition D.  
24 Respondents were required to include a disclosure on each piece of campaign literature that read  
25 substantially as follows: “paid for by You Empower Our Community, a committee against  
26 Proposition D and sponsored by the Neighborhood Market Association.” The Commission’s  
27 investigation reveals that this mailer did not include any “paid for by” or “sponsored by”  
28 information or as required by local law.

1 Counts

2 **Counts 1 and 2 - Violations of SDMC sections 27.2930 and 27.2976**

3 26. Respondents violated SDMC section 27.2930 by failing to properly file a Form  
4 410 on or about August 1, 2008, with the San Diego City Clerk disclosing that YEOC was  
5 primarily formed for the purpose of opposing the permanent beach alcohol ban and that it is  
6 sponsored by NMA.

7 27. Respondents violated SDMC sections 27.2930 and 27.2976(e) by failing to file an  
8 amended Form 410 on or before September 10, 2008, to include the disclosure “a committee  
9 against Proposition D” in the committee’s name.

10 **Counts 3 thru 10 - Violations of SDMC sections 27.2930 and 27.2931**

11 28. Respondents violated SDMC section 27.2930 by failing to file a Form 460 in both  
12 paper and electronic format with the San Diego City Clerk on or before October 6, 2008,  
13 covering the period from the committee’s inception on August 1, 2008, through September 30,  
14 2008.

15 29. Respondents violated SDMC section 27.2930 by failing to file a Form 460 in both  
16 paper and electronic format with the San Diego City Clerk on or before October 23, 2008,  
17 covering the period from October 1, 2008, through October 18, 2008.

18 30. Respondents violated SDMC section 27.2930 by failing to file a Form 460 in both  
19 paper and electronic format with the San Diego City Clerk on or before January 31, 2009,  
20 covering the period from October 19, 2008, through December 31, 2008.

21 31. Respondents violated SDMC section 27.2930 by failing to file a Form 460 in both  
22 paper and electronic format with the San Diego City Clerk on or before July 31, 2009, covering  
23 the period from January 1, 2009, through June 30, 2009.

24 **Counts 11 and 12 – Violations of SDMC sections 27.2970 and 27.2972**

25 32. Respondents violated SDMC section 27.2972 by failing to include a complete  
26 “paid for by” disclosure on billboard advertisements commissioned for the purpose of opposing  
27 Proposition D. Specifically, in September of 2008, Respondents paid for 28 billboard  
28 advertisements that included a disclosure indicating they were “paid for by You Empower Our

1 Community,” but that failed to disclose that the committee was “against Proposition D” or that  
2 the committee was “sponsored by the Neighborhood Market Association.”

3 33. Respondents violated SDMC section 27.2970 by failing to include any “paid for  
4 by” or “sponsored by” information on a mass mailing distributed to 65,000 residents in late  
5 October 2008 for the purpose of opposing Proposition D.

6 **Factors in Aggravation**

7 34. One of the primary purposes of the City’s campaign laws is to ensure that  
8 information regarding a committee’s sponsorship, funding, and expenditures is timely disclosed  
9 to the public. In particular, the pre-election filing requirements for committees primarily formed  
10 to support or oppose City candidates or measures are extremely important because they ensure  
11 that the public receives time-sensitive information in the jurisdiction regarding the sources of  
12 funding for expenditures before they cast their votes. In this case, the voters in the City of San  
13 Diego did not receive this essential information because campaign statements were not filed with  
14 the City Clerk (in either paper or electronic format) as required by local and state law.

15 35. Because Respondents failed to file a Form 410 with the City Clerk for YEOC, the  
16 committee was not included in the Ethics Commission’s random audit drawing conducted on  
17 September 10, 2009. If it had been included and selected, the audit would have entailed an  
18 examination of the committee’s records to ensure that the information disclosed on its campaign  
19 statements was complete and accurate.

20 **Factors in Mitigation**

21 36. YEOC filed three Independent Expenditure Reports [Forms 465 and Forms 496]  
22 with the City Clerk in October of 2008 and disclosed making independent expenditures in the  
23 amount of \$63,655 in opposition to Proposition D. Consequently, some information regarding  
24 the expenditures made by the committee to oppose Proposition D was provided to the public  
25 before the November 4, 2008, general election.

26 **Conclusion**

27 37. Respondents agree to take necessary and prudent precautions to ensure  
28 compliance with all provisions of ECCO in the future.



