1	STACEY FULHORST, Executive Director City of San Diego Ethics Commission 1010 Second Avenue, Suite 1530		
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3	San Diego, CA 92101 Telephone: (619) 533-3476		
4	Facsimile: (619) 533-3448		
5	Petitioner		
6			
7	BEFORE THE CITY OF SAN DIEGO		
8	ETHICS COMMISSION		
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10	In re the Matter of:) Case No.: 2009-37	
11	ROBERT LEHMAN,) STIPULATION, DECISION, AND) ORDER	
12	Respondent.		
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16	STIPULATION		
17	THE PARTIES STIPULATE AS FOI	LLOWS:	
18	1. Petitioner Stacey Fulhorst is the Ex	xecutive Director of the City of San Diego Ethics	
19	Commission [Ethics Commission]. The Ethics (Commission is charged with a duty to administer,	
20	implement, and enforce local governmental ethi	ics laws contained in the San Diego Municipal	
21	Code [SDMC] relating to, among other things, t	the filing of campaign statements as required by	
22	the City's Election Campaign Control Ordinanc	e [ECCO].	
23	2. At all times mentioned herein, Rob	pert Lehman was a person who made an	
24	independent expenditure in support of a City of	San Diego candidate in the November 2008	
25	general election. Lehman is referred to herein as "Respondent."		
26	3. This Stipulation will be submitted	for consideration by the Ethics Commission at its	
27	next scheduled meeting, and the agreements contained herein are contingent upon the approval		
28	of the Stipulation and the accompanying Decision and Order by the Ethics Commission.		
	-1- 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
 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 the hearing, the right to subpoen a witnesses to testify at the hearing, and the right to
have the Ethics Commission or an impartial hearing officer hear this matter.

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.

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Summary of Law and Facts

8. SDMC section 27.2930 requires candidates and 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.

9. According to SDMC section 27.2903, an "independent expenditure" means any
expenditure made by any person in connection with a communication that expressly advocates
the election or defeat of a clearly identified candidate or measure, but that is not made in
cooperation or coordination with the affected candidate or committee. An "independent
expenditure committee" means any person who makes independent expenditures totaling \$1,000
or more within a single calendar year.

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STIPULATION, DECISION, AND ORDER

1 10. On October 16, 2008, Respondent made an independent expenditure in the amount
 of \$5,000 in support of Todd Gloria, a candidate for City Council District 3 in the November
 2008 general election. In making this independent expenditure, Respondent qualified as an
 independent expenditure committee under ECCO.

- 11. Respondent's independent expenditure was made through a payment to the San
 Diego Voter Education Project [SDVEP], an organization that on October 17, 2008, registered
 with the California Secretary of State as a slate mailer organization active in the County of San
 Diego (Identification No. 1312663). Paola Avila was the principal of SDVEP.
- 9 12. Respondent's payment to SDVEP supported Todd Gloria through two different 10 slate mailers distributed by SDVEP. According to California Government Code section 82048.3, 11 a slate mailer is a mass mailing that supports or opposes a total of four or more candidates or 12 ballot measures. The mailers distributed by SDVEP qualified as slate mailers because they 13 supported Todd Gloria as well as five City and County ballot measures. The portion of the 14 mailers dedicated to supporting Todd Gloria constituted 75% of the space on each mailer, while 15 the portion of the mailers dedicated to supporting the five ballot measures constituted 25% of the 16 space. Both slate mailers were sent to approximately 31,000 registered voters in City Council 17 District 3, the first on October 27, 2008, and the second on October 30, 2008.

18 13. According to Government Code section 84203.5, any committee that has made 19 independent expenditures totaling \$1,000 or more in a calendar year to support or oppose a 20candidate or ballot measure is required to file independent expenditure reports in the same time 21 and manner as the candidate or committee would be required to file campaign statements if it 22 were primarily formed to support the candidate or ballot measure. For the November 4, 2008, 23 general election, a committee that made independent expenditures of \$1,000 or more by October 24 18, 2008, was required to file a Supplemental Independent Expenditure Report [Form 465] with 25 the City Clerk on or before October 23, 2008. Cal. Gov't Code § 84200.7.

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1	14. Respondent failed to timely file a disclosure report with the City Clerk. Instead of	
2	filing a Form 465, Respondent filed a Late Independent Expenditure Report [Form 496] with the	
3	City Clerk on November 13, 2008, disclosing the \$5,000 expenditure in support of Todd Gloria.	
4	15. Respondent filed Forms 496 on November 3, 2008, with the California Secretary of	
5	State, and the San Diego, Los Angeles, and San Francisco Registrar of Voters.	
6	<u>Count</u>	
7	Count 1 - Violation of SDMC section 27.2930	
8	16. Respondent violated SDMC section 27.2930 by failing to file a Form 465 with the	
9	City Clerk on or before October 23, 2008. Respondent filed a Form 496 with the City Clerk on	
10	November 13, 2008, well after the November 4, 2008, general election, and 21 days after the	
11	Form 465 was due.	
12	Factors in Aggravation	
13	17. The timely disclosure of campaign contributions and expenditures is the	
14	foundation of the City's campaign laws. In particular, the pre-election filing requirement for	
15	independent expenditures made in the final weeks before an election is extremely important	
16	because it ensures that the public receives time-sensitive information regarding the sources and	
17	amounts of expenditures made in support of local candidates before they cast their votes. In this	
18	case, the public was deprived of this information because Respondent's independent	
19	expenditures were not disclosed with the City Clerk until well after the November 4, 2008,	
20	general election.	
21	Factors in Mitigation	
22	18. Respondent has cooperated fully with the Ethics Commission investigation.	
23	19. Respondent has experience making campaign contributions but does not have	
24	experience making independent expenditures. Accordingly, Respondent was not aware of the	
25	filing requirement associated with his independent expenditure. The Commission's investigation	
26	revealed that none of SDVEP's representatives advised Respondent of his filing requirement in a	
27	timely manner. In particular, SDVEP representatives did not notify Respondent when they	
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1	solicited or accepted his \$5,000 payment, nor did they notify him before the October 23, 2008,		
2	filing deadline.		
3	20. On about October 31, 2008, Respondent's attorney, Pam Wilson, learned through		
4	the media of Respondent's payment to SDVEP and notified him that he had a reporting		
5	obligation. Respondent instructed his attorney on October 31, 2008, to file the requisite		
6	disclosure form. On November 3, 2008, one day prior to the election, Forms 496 were filed in		
7	four other filing offices in California. However, the Form 496 was not filed with the City Clerk		
8	until November 13, 2008.		
9	Conclusion		
10	21. Respondent agrees to take necessary and prudent precautions to ensure timely		
11	disclosure of independent expenditures in the future, and to comply with all of the provisions of		
12	the City's Election Campaign Control Ordinance.		
13	22. Respondent agrees to pay a fine in the amount of \$2,500 for violating SDMC		
14	section 27.2930. This amount must be paid no later than October 7, 2009, by check or money		
15	order made payable to the City Treasurer. The submitted payment will be held pending		
16	Commission approval of this Stipulation and execution of the Decision and Order portion set		
17	forth below.		
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19	DATED: STACEY FULHORST, Executive Director		
20	ETHICS COMMISSION, Petitioner		
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22	DATED: ROBERT LEHMAN, Respondent		
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	-5- STIPULATION, DECISION, AND ORDER		

1	DECISION AND ORDER
2	The Ethics Commission considered the above Stipulation at its meeting on November 12,
3	2009. The Ethics Commission hereby approves the Stipulation and orders that, in accordance
4	with the Stipulation, Respondent pay a fine in the amount of \$2,500.
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6	DATED:
7	Richard Valdez, Chair CITY OF SAN DIEGO ETHICS COMMISSION
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	STIPULATION, DECISION, AND ORDER