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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.: 2009-38
11 SHERMAN MENDOZA,)
12 Respondent.) **STIPULATION, DECISION, AND**
13) **ORDER**
14)
_____)

15
16 **STIPULATION**

17 **THE PARTIES STIPULATE AS FOLLOWS:**

18 1. Petitioner Stacey Fulhorst is the Executive 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 ethics laws contained in the San Diego Municipal
21 Code [SDMC] relating to, among other things, the filing of campaign statements as required by
22 the City’s Election Campaign Control Ordinance [ECCO].

23 2. At all times mentioned herein, Sherman Mendoza 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. Mendoza is referred to herein as “Respondent.”

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1 cooperation or coordination with the affected candidate or committee. An “independent
2 expenditure committee” means any person who makes independent expenditures totaling \$1,000
3 or more within a single calendar year.

4 10. On October 19, 2008, Respondent made an independent expenditure in the amount
5 of \$1,000 in support of Todd Gloria, a candidate for City Council District 3 in the November
6 2008 general election. In making this independent expenditure, Respondent qualified as an
7 independent expenditure committee under ECCO.

8 11. Respondent’s independent expenditure was made through a payment to the San
9 Diego Voter Education Project [SDVEP], an organization that on October 17, 2008, registered
10 with the California Secretary of State as a slate mailer organization active in the County of San
11 Diego (Identification No. 1312663). Paola Avila was the principal of SDVEP.

12 12. Respondent’s payment to SDVEP supported Todd Gloria through two different
13 slate mailers distributed by SDVEP. According to California Government Code section 82048.3,
14 a slate mailer is a mass mailing that supports or opposes a total of four or more candidates or
15 ballot measures. The mailers distributed by SDVEP qualified as slate mailers because they
16 supported Todd Gloria as well as five City and County ballot measures. The portion of the
17 mailers dedicated to supporting Todd Gloria constituted 75% of the space on each mailer, while
18 the portion of the mailers dedicated to supporting the five ballot measures constituted 25% of the
19 space. Both slate mailers were sent to approximately 31,000 registered voters in City Council
20 District 3, the first on October 27, 2008, and the second on October 30, 2008.

21 13. According to Government Code section 82036.5, a “late independent expenditure”
22 is any independent expenditure that totals in the aggregate \$1,000 or more and is made before the
23 date of the election, but after the closing date of the last campaign statement required to be filed
24 prior to the election by a candidate or committee participating in the election. For the November
25 4, 2008, general election, an independent expenditure made between October 19, 2008, and
26 November 3, 2008, constituted a late independent expenditure.

27 14. Government Code section 84204 requires a committee that makes a late
28 independent expenditure in connection with a City of San Diego election to file a Late

1 Independent Expenditure Report [Form 496] with the San Diego City Clerk within 24 hours of
2 the time the late independent expenditure is made.

3 15. Respondent failed to file a Form 496 with the City Clerk within 24 hours of making
4 a late independent expenditure in support of Todd Gloria on October 19, 2008. Respondent did
5 not file a Form 496 with the City Clerk disclosing the late independent expenditure until June 8,
6 2009, almost eight months past the filing deadline.

7 **Count**

8 **Count 1 - Violation of SDMC section 27.2930**

9 16. Respondent violated SDMC section 27.2930 by failing to file a Form 496 with the
10 City Clerk on or before October 20, 2008. Respondent filed a Form 496 with the City Clerk on
11 June 8, 2009, well after the November 4, 2008, general election, and almost eight months after
12 the filing deadline.

13 **Factors in Aggravation**

14 17. The timely disclosure of campaign contributions and expenditures is the
15 foundation of the City's campaign laws. In particular, the pre-election filing requirement for
16 independent expenditures made in the final weeks before an election is extremely important
17 because it ensures that the public receives time-sensitive information regarding the sources and
18 amounts of expenditures made in support of local candidates before they cast their votes. In this
19 case, the public was deprived of this information because Respondent's independent
20 expenditures were not disclosed with the City Clerk until months after the November 4, 2008,
21 general election.

22 **Factors in Mitigation**

23 18. Respondent has cooperated fully with the Ethics Commission investigation.

24 19. Respondent has experience making campaign contributions but does not have
25 experience making independent expenditures. Accordingly, Respondent was not aware of the
26 filing requirement associated with his independent expenditure. The Commission's investigation
27 revealed that none of SDVEP's representatives advised Respondent of his filing requirement in a
28 timely manner. In particular, SDVEP representatives did not notify Respondent when they

1 solicited or accepted his \$1,000 payment, nor did they notify him before the October 20, 2008,
2 filing deadline.

3 **Conclusion**

4 20. Respondent agrees to take necessary and prudent precautions to ensure timely
5 disclosure of independent expenditures in the future, and to comply with all of the provisions of
6 the City's Election Campaign Control Ordinance.

7 21. Respondent agrees to pay a fine in the amount of \$500 for violating SDMC
8 section 27.2930. This amount must be paid no later than November 6, 2009, by check or money
9 order made payable to the City Treasurer. The submitted payment will be held pending
10 Commission approval of this Stipulation and execution of the Decision and Order portion set
11 forth below.

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13 DATED: _____

STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

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16 DATED: _____

SHERMAN MENDOZA, Respondent

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19 **DECISION AND ORDER**

20 The Ethics Commission considered the above Stipulation at its meeting on November 12,
21 2009. The Ethics Commission hereby approves the Stipulation and orders that, in accordance
22 with the Stipulation, Respondent pay a fine in the amount of \$500.

23
24 DATED: _____

Richard Valdez, Chair
CITY OF SAN DIEGO ETHICS COMMISSION