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7 Petitioner

8 **BEFORE THE CITY OF SAN DIEGO**
9 **ETHICS COMMISSION**

10 In re the Matter of:) Case No.: 2010-87
11)
12 WORKING SAN DIEGANS PAC,) **STIPULATION, DECISION, AND**
13 SUPPORTING HOWARD WAYNE 2010,) **ORDER**
14 WITH MAJOR FUNDING FROM AFSCME,)
15 Respondent.)
16)
17)
18)

19 **STIPULATION**

20 **THE PARTIES STIPULATE AS FOLLOWS:**

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

26 2. At all times mentioned herein, Working San Diegans PAC, supporting Howard
27 Wayne 2010, with major funding from AFSCME [WSD] was a City committee sponsored by the
28 American Federation of State, County, and Municipal Employees Local 127 [AFSCME Local
127] registered with the State of California (Identification No. 1331116). WSD is referred to
herein as "Respondent."

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1 3. This Stipulation will be submitted for consideration by the Ethics Commission at its
2 next scheduled meeting, and the agreements contained herein are contingent upon the approval
3 of the Stipulation and the accompanying Decision and Order by the Ethics Commission.

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

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

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

22 7. The parties agree that in the event the Ethics Commission refuses to accept this
23 Stipulation, it shall become null and void. Respondent further agrees that in the event the Ethics
24 Commission rejects the Stipulation and a full evidentiary hearing before the Ethics Commission
25 becomes necessary, no member of the Ethics Commission or its staff shall be disqualified
26 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 that a Statement of
10 Organization [Form 410] be filed within 10 days of qualifying as a committee. Government
11 Code section 84102 requires that an amended Form 410 be filed within 10 days of any change in
12 information contained therein. The Form 410 must be filed with the Secretary of State and the
13 City Clerk.

14 11. City committees are generally required to file campaign disclosure statements
15 [Forms 460] with the City Clerk in accordance with the deadlines established by state law. With
16 respect to the November 2010 general election, City committees were required to file their first
17 pre-election Forms 460 on or before October 5, 2010, covering the period through September 30,
18 2010. Cal. Gov’t Code §§ 84200.5, 84200.7, 84215.

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

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1 13. Regulation 18419 requires a committee that is sponsored by another entity to
2 include the name of the sponsor in the name of the committee, and to identify the sponsor and
3 the sponsor's industry group or affiliation on the committee's Form 410. In addition, whenever a
4 committee files a campaign disclosure statement, it is required to identify itself using the
5 committee's "full name." Cal. Gov't Code § 84211(o).

6 14. In addition to the above filing requirements, ECCO mandates that all committees
7 that pay for mass campaign literature (200 substantially similar pieces of campaign literature) for
8 the purpose of supporting or opposing a City candidate include the words "paid for by" followed
9 by the name and address of the committee. SDMC § 27.2970. This disclosure must be made in
10 a typeface that is easily legible and contrasts with the background. *Id.*

11 15. The Commission's investigation reveals that, from the time WSD was established,
12 AFSCME Local 127 has been the committee's sponsor because it meets one or more of the
13 sponsorship criteria delineated above in Paragraph 12. Accordingly, Respondent was required to
14 include AFSCME in its committee name, and to identify AFSCME as the committee's sponsor
15 on its Form 410. Respondent was also required to include AFSCME in its name on all of its
16 campaign statements, as well as its "paid for by" disclosures on mass campaign literature.

17 16. On September 3, 2010, Respondent filed a Form 410 with the San Diego City Clerk
18 that did not include the name AFSCME in the committee name and did not identify AFSCME as
19 the sponsor of WSD.

20 17. On October 5, 2010, Respondent filed a Form 460 with the San Diego City Clerk
21 covering the period through September 30, 2010, that did not include the name AFSCME as the
22 committee's sponsor.

23 18. On October 7, 2010, Ethics Commission staff contacted Respondent's treasurer as
24 well as Eleazar Elizondo, the consultant retained by AFSCME Local 127 (and the principal
25 officer of WSD) and advised them that WSD should be registered as a committee sponsored by
26 AFSCME. During this communication, Ethics Commission staff reminded Mr. Elizondo that
27 any mass campaign literature distributed by WSD must contain a "paid for by" disclosure with
28 the full name of the committee, including the name AFSCME as the committee's sponsor.

1 as the committee’s sponsor. Despite this warning, Respondent continued to disseminate
2 campaign literature after October 7, 2010, that did not include the requisite information
3 concerning the identity of the committee’s sponsor.

4 25. The “paid for by” disclosure included on two of the campaign mailers distributed by
5 Respondent was not printed in a contrasting color and was not easily legible, as required by
6 SDMC section 27.2970.

7 **Factors in Mitigation**

8 26. AFSCME Local 127 has limited prior experience participating in City of San Diego
9 elections and reasonably relied on Eleazar Elizondo as the campaign consultant to ensure the
10 committee’s compliance with all relevant provisions of the City’s campaign laws. Mr. Elizondo
11 has therefore taken full responsibility for the violations described herein as well as the monetary
12 penalty referenced below.

13 27. Respondent has cooperated fully with the Ethics Commission investigation.

14 **Conclusion**

15 28. Respondent agrees to take necessary and prudent precautions to ensure compliance
16 with all provisions of ECCO in the future.

17 29. Respondent acknowledges that the Ethics Commission may impose increased fines
18 in connection with any future violations of the City’s campaign laws.

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