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.: 2012-20
SAN DIEGO CITY FIRE FIGHTERS, ) STIPULATION, DECISION, AND
LOCAL 145 PAC, ) 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 Election Campaign Control
Ordinance [ECCO], SDMC section 27.2901, et seq.

2. At all times mentioned herein, the San Diego City Fire Fighters, Local 145 PAC
was a committee registered with the State of California (Identification No. 761453) and 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 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 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, 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. ECCO defines “committee” as any person or combination of persons who raise $1,000 or more for the purpose of supporting or opposing a candidate or ballot measure, or make independent expenditures of $1,000 or more, within a single calendar year. SDMC § 27.2903.
9. ECCO mandates that all committees that pay for mass campaign literature (200 substantially similar pieces of campaign literature) for the purpose of supporting or opposing a City candidate or measure include the words “paid for by” followed by the name and address of the committee. SDMC § 27.2970. This disclosure must be made in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size. Id.

10. Respondent produced and distributed mass campaign literature in the form of seven mailers to support and oppose City candidates in the June 2012 primary election; three of these mailers did not comply with the “paid for by” disclosure requirements in the City’s campaign laws:

   (a) Respondent produced a mailer supporting Sherri Lightner for City Council District 1 on approximately April 30, 2012, that was distributed to approximately 25,000 residents of Council District 1. This mailer included a “paid for by” disclosure printed in 8-point type.

   (b) Respondent produced another mailer supporting Sherri Lightner for City Council District 1 on approximately April 30, 2012, that was distributed to approximately 25,000 residents of Council District 1. This mailer included a “paid for by” disclosure printed in 8-point type.

   (c) Respondent produced a mailer opposing Carl DeMaio for Mayor on approximately May 4, 2012, that was distributed to 107,835 City residents. This mailer included a “paid for by” disclosure printed in 8-point type.

Counts

Counts 1 through 3 - Violations of SDMC section 27.2970

11. Respondent violated SDMC section 27.2970 by producing and distributing mass campaign literature in the form of three mailers that did not comply with the “paid for by” disclosure requirements in that the disclosures were printed in 8-point type instead of the requisite 12-point type size.

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Factors in Mitigation

12. The Commission’s investigation revealed that Respondent reasonably relied on campaign consultant Elevate, LLC to comply with ECCO, and that Elevate gave express instructions to the creative designer to include a “paid for by” disclosure in 12-point type on all campaign literature. Moreover, when Elevate’s representative reviewed a proof of the campaign mailers prior to printing and mailing, he could not detect any problems with the “paid for by” disclosure because the proof he received was in an electronic format that did not match the actual print size. Elevate has acknowledged its mistake and has agreed to pay the fine referenced below in Paragraph 16.

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

Conclusion

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

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

16. Respondent agrees to pay a fine in the amount of $1,500 for violating SDMC section 27.2970. This amount must be paid no later than October 5, 2012, by check or money order payable to the City Treasurer. The submitted payment will be held pending Commission approval of this Stipulation and execution of the Decision and Order portion set forth below.

DATED:________________________

[REDACTED]

STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

DATED:________________________

[REDACTED]

FRANK DE CLERQ, on behalf of Respondent SAN DIEGO CITY FIRE FIGHTERS, LOCAL 145 PAC

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STIPULATION, DECISION, AND ORDER
DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on ________, 2012. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of $1,500.

[REDACTED]

DATED:_____________  

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CLYDE FULLER, Chair  
SAN DIEGO ETHICS COMMISSION