

1 STACEY FULHORST, Executive Director
City of San Diego Ethics Commission
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3 Telephone: (619) 533-3476
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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.: 2012-20
11)
SAN DIEGO CITY FIRE FIGHTERS,) **STIPULATION, DECISION, AND**
LOCAL 145 PAC,) **ORDER**
12)
Respondent.)
13)
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 San Diego City Fire Fighters, Local 145 PAC
23 was a committee registered with the State of California (Identification No. 761453) and is
24 referred to herein as "Respondent."

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

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

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

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

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

24 **Summary of Law and Facts**

25 8. ECCO defines “committee” as any person or combination of persons who raise
26 \$1,000 or more for the purpose of supporting or opposing a candidate or ballot measure, or make
27 independent expenditures of \$1,000 or more, within a single calendar year. SDMC § 27.2903.

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1 9. ECCO mandates that all committees that pay for mass campaign literature (200
2 substantially similar pieces of campaign literature) for the purpose of supporting or opposing a
3 City candidate or measure include the words “paid for by” followed by the name and address of
4 the committee. SDMC § 27.2970. This disclosure must be made in a typeface that is easily
5 legible, contrasts with the background, and is no less than 12 points in size. *Id.*

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

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

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

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

21 **Counts**

22 **Counts 1 through 3 - Violations of SDMC section 27.2970**

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

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1 **Factors in Mitigation**

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

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

11 **Conclusion**

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

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

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

20 [REDACTED]

21 DATED: _____

STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

23 [REDACTED]

24 DATED: _____

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

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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: _____

CLYDE FULLER, Chair
SAN DIEGO ETHICS COMMISSION