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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.: 2012-23
)
11 TOO EXTREME FOR SAN DIEGO – TO) **STIPULATION, DECISION, AND**
OPPOSE CARL DEMAIIO FOR MAYOR) **ORDER**
12 2012, SPONSORED BY THE SAN DIEGO)
AND IMPERIAL COUNTIES LABOR)
13 COUNCIL AFL-CIO and SAN DIEGO AND)
IMPERIAL COUNTIES LABOR COUNCIL)
14 AFL-CIO,)
)
15 Respondents.)
)

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17 **STIPULATION**

18 **THE PARTIES STIPULATE AS FOLLOWS:**

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

24 2. At all times mentioned herein, the San Diego and Imperial Counties Labor Council
25 AFL-CIO [Labor Council] was the sponsor of Too Extreme for San Diego – To Oppose Carl
26 DeMaio for Mayor 2012 [Too Extreme], a committee registered with the State of California
27 (Identification No. 1338945). Too Extreme and Labor Council are collectively referred to herein
28 as “Respondents.”

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 Respondents' liability.

7 5. Respondents understand and knowingly and voluntarily waive 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. Respondents agree
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 Respondents further agree 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. Respondents acknowledge 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. Respondents further agree 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. Because Too Extreme was formed for the purpose of opposing a City candidate,
3 Respondents are required to comply with the provisions in ECCO.

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

9 10. Respondents produced and distributed mass campaign literature in the form of one
10 walk card and four mailers in connection with the June 2012 primary election; the walk card and
11 three of the mailers did not comply with the “paid for by” disclosure requirements in the City’s
12 campaign laws:

13 (a) Too Extreme produced 2,500 copies of a walk card on approximately
14 February 10, 2012. This walk card included a “paid for by” disclosure printed in 9-point type.

15 (b) Too Extreme produced three separate mailers in May of 2012 that were each
16 distributed to 19,604 City residents. These mailers included a “paid for by” disclosure printed in
17 8-point type.

18 **Counts**

19 **Counts 1 through 4 - Violations of SDMC section 27.2970**

20 11. Respondents violated SDMC section 27.2970 by producing and distributing mass
21 campaign literature in the form of one walk card and three mailers that did not comply with the
22 “paid for by” disclosure requirements in that the disclosure was not printed in the requisite 12-
23 point type size. As discussed above in Paragraph 10, the walk card included the disclosure in 9-
24 point type, and the three mailers included the disclosure in 8-point type.

25 **Factors in Aggravation**

26 12. The Labor Council was the subject of a previous Ethics Commission enforcement
27 action that resulted in a fine of \$3,000 in connection with several violations of the City’s

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1 campaign laws, including the failure to provide a “paid for by” disclosure on mass telephone
2 communications.

3 **Factors in Mitigation**

4 13. The Commission’s investigation revealed that Respondents’ representative gave
5 express instructions to campaign consultant Ross Communications to include a “paid for by”
6 disclosure in 12-point type on all campaign literature. Moreover, when Respondents’
7 representative reviewed a proof of the three campaign mailers prior to printing and mailing, he
8 could not detect any problems with the “paid for by” disclosure because the proof he received
9 was in an electronic format that did not match the actual print size. Ross Communications has
10 acknowledged its mistake and has agreed to pay the relevant portion of the fine referenced below
11 in Paragraph 17. With respect to the walk card, the Commission’s investigation revealed that
12 Respondents’ representatives gave express instructions to Storefront Political Media to include
13 the requisite disclosure in 12-point type; however, the first proof of the walk card did not include
14 the disclosure in the correct font size. Although Respondents’ representatives identified the error
15 and directed the consultant to produce a corrected proof, Respondents’ representatives
16 inadvertently sent the wrong version to the printer.

17 14. Respondents have cooperated fully with the Ethics Commission investigation.

18 **Conclusion**

19 15. Respondents agree to take necessary and prudent precautions to ensure compliance
20 with all provisions of ECCO in the future.

21 16. Respondents acknowledge that the Ethics Commission may impose increased fines
22 in connection with any future violations of the City’s campaign laws.

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