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:)
STIPULATION, DECISION, AND ORDER

SAN DIEGANS FOR THE MT. SOLEDAD)
NATIONAL WAR MEMORIAL,)
Respondent.

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 City’s Election Campaign Control Ordinance [ECCO].

2. At all times mentioned herein, San Diegans for the Mt. Soledad National War Memorial Committee [Committee] was committee registered with the State of California (Identification No. 1275513) primarily formed for the purpose of supporting Proposition A in the July 26, 2005, special election. The Committee is referred to herein as “Respondent.”

3. This Stipulation, Decision and Order [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 the 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 a hearing, the right to subpoena witnesses to testify at a hearing, and the right to have the Ethics Commission or a 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 or 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. The 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 City 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. Because the Committee was formed for the purpose of supporting a ballot measure in a City of San Diego election, Respondent is required to comply with the provisions of ECCO.
9. ECCO, at SDMC section 27.2903, defines “mass mailing” as 200 or more substantially similar pieces of campaign literature sent within a single calendar month. SDMC section 27.2970 states in part:

(a) It is unlawful for any candidate or committee to send a mass mailing for the purpose of supporting or opposing a City candidate or City measure unless:

. . .

(2) each mailing includes the words “paid for by” immediately followed by the name, street address, and city of that candidate or committee in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size.

10. Approximately one month prior to the special election, the Committee sent out a mass mailing in support of Proposition A. The mailer included the requisite "paid for by" disclosure. Although the disclosure appeared in an easily legible typeface and in a color that contrasts with the background, it appeared in 9-point type size instead of the mandatory 12-point type size.

Count 1

Violations of SDMC section 27.2970

10. Respondent failed to include a “paid for by” disclosure in 12-point type size on a mass mailing supporting a City ballot measure, as required by SDMC section 27.2970. Instead, the “paid for by” disclosure appeared in 9-point type.

Factors in Mitigation

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

12. Respondent sent four additional mass mailings in support of Proposition A prior to the July 26, 2005, special election. Each of these mailers included a “paid for by” disclosure that complied with the type size requirements in ECCO.
Conclusion

14. Respondent agrees to pay a fine in the amount of $1,000 for violating SDMC section 27.2970. This amount must be paid no later than November 4, 2005. The submitted payment will be held pending Commission approval of this Stipulation and execution of the Decision and Order set forth below.

DATED: ___________________  

STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

DATED: ___________________  

T.J. ZANE, duly designated representative for SAN DIEGANS FOR THE MT. SOLEDAD NATIONAL WAR MEMORIAL, Respondent

DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on __________, 2005. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of $1,000.

DATED: ___________________  

Dorothy Leonard, Chair
SAN DIEGO ETHICS COMMISSION