

1 STACEY FULHORST, Executive Director
City of San Diego Ethics Commission
2 1010 Second Avenue, Suite 1530
San Diego, CA 92101
3 Telephone: (619) 533-3476
4 Facsimile: (619) 533-3448

5 Petitioner

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

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10 In re the Matter of:) Case No.: 2013-13
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COMMUNITY COALITION FOR MYRTLE)
COLE FOR CITY COUNCIL 2013; and)
AMERICAN FEDERATION OF STATE,)
COUNTY AND MUNICIPAL EMPLOYEES)
DISTRICT 36,)
Respondents.)

18 **STIPULATION**

19 **THE PARTIES STIPULATE AS FOLLOWS:**

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

25 2. At all times mentioned herein, American Federation of State, County, and
26 Municipal Employees District Council 36 [AFSCME 36] represented the interests of various
27 local affiliated unions, including Local 127 in San Diego, and was the sponsor of Community
28 Coalition for Myrtle Cole for City Council 2013 [CCMC] (registered with the State of

1 California, Identification No. 1356242). CCMC was formed to support the candidacy of Myrtle
2 Cole in the special election on March 26, 2013. AFSCME 36 and CCMC are collectively
3 referred to herein as “Respondents.”

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

7 4. This Stipulation resolves all factual and legal issues raised in this matter by the
8 Ethics Commission without the necessity of holding an administrative hearing to determine
9 Respondents’ liability.

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

21 6. Respondents acknowledge that this Stipulation is not binding upon any other law
22 enforcement or government agency and does not preclude the Ethics Commission from referring
23 this matter to, cooperating with, or assisting any other law enforcement or government agency
24 with regard to this or any other related matter.

25 7. The parties agree that in the event the Ethics Commission refuses to accept this
26 Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics
27 Commission rejects the Stipulation and a full evidentiary hearing before the Ethics Commission

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1 becomes necessary, no member of the Ethics Commission or its staff shall be disqualified
2 because of prior consideration of this Stipulation.

3 **Summary of Law and Facts**

4 8. Because CCMC was formed for the purpose of supporting a City candidate,
5 Respondents are required to comply with the provisions in ECCO.

6 9. ECCO requires committees to file campaign statements in the time and manner
7 required by California Government Code section 81000, *et seq.* and the regulations adopted by
8 the Fair Political Practices Commission [FPPC]. It is unlawful under ECCO to fail to comply
9 with the disclosure requirements of ECCO and state law. SDMC § 27.2930(j).

10 10. California Government Code section 84101 requires the filing of a Statement of
11 Organization [Form 410] within 10 days after qualification as a committee, and Government
12 Code section 84102 requires the filing of an amended Form 410 within 10 days of any change in
13 information contained therein. The Form 410 must be filed with the Secretary of State and with
14 the local filing officer where the committee will be required to file campaign statements.

15 11. According to SDMC section 27.2903, a committee is “sponsored” by another entity
16 if any of the following criteria apply: the committee receives 80% or more of its contributions
17 either from the entity or from the entity’s members; the entity collects contributions for the
18 committee by use of dues from its members; the entity (alone or with other entities) provides
19 administrative services for the committee; or the entity (alone or with other entities) sets the
20 committee’s policies for soliciting contributions or making expenditures. ECCO requires
21 sponsored committees participating in City elections to adhere to the reporting obligations set
22 forth in FPPC Regulation 18419. SDMC § 27.2930(i). Regulation 18419 requires a committee
23 that is sponsored by another entity to include the name of the sponsor in the name of the
24 committee, and to identify the sponsor and the sponsor’s industry group or affiliation on the
25 committee’s Form 410.

26 12. Any committee that made independent expenditures totaling \$1,000 or more to
27 support or oppose a City candidate in the 90 day period preceding the special election on March

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1 26, 2013, was required to file a Late Independent Expenditure Report [Form 496] within 24
2 hours with the City Clerk. Cal. Gov't Code §§ 82036.5, 84204.

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

9 14. A summary of the campaign activities of the Respondents and their vendors is as
10 follows:

11 (a) Adam Acosta, Assistant Executive Director of AFSCME 36, retained John
12 Piotrowski, principal of New Nations Strategies, to establish and operate an independent
13 expenditure committee to support Myrtle Cole's candidacy in the March 26, 2013, special
14 election.

15 (b) John Piotrowski served as the treasurer for CCMC and prepared and filed the
16 committee's campaign statements. New Nations Strategies was paid \$1,500 by AFSCME 36 for
17 work provided to CCMC, including voter data analysis, accounting, filing paperwork, filing
18 costs, and travel.

19 (c) Marcos Cardenas, the Business Representative for AFSCME 36, worked with
20 Mr. Acosta on the fundraising and political strategy for CCMC.

21 (d) Chris Wilson, the principal of CRW Enterprises, served as a consultant to
22 CCMC. He was paid \$3,612.51 by AFSCME Local 127 for labor consulting and field
23 coordination. Mr. Acosta represented that Wilson's invoice was an unanticipated overcharge;
24 however this information could not be corroborated. Mr. Wilson retained fifteen individuals to
25 serve as canvassers in Council District 4 for CCMC. He prepared a walk script and campaign
26 literature in support of Myrtle Cole's candidacy and provided these materials to the canvassers.

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1 (e) Between March 22 and March 26, 2013, the canvassers walked “door to door”
2 in Council District 4, reciting the walk script and distributing the campaign literature prepared by
3 Mr. Wilson. The canvassers were paid a total of \$8,889.38 by CCMC.

4 (f) Funding for CCMC to pay the canvassers came from two sources: a
5 contribution from AFSCME 36 in the amount of \$6,500 and a contribution from PowerPAC.org
6 Voter Fund in the amount of \$2,500.

7 15. The Commission’s investigation reveals that Respondent CCMC is sponsored by
8 Respondent AFSCME 36. AFSCME 36 and its employees and agents were responsible for
9 establishing CCMC and directing its activities, including setting its policies for soliciting
10 contributions and making expenditures. Consequently, Respondent CCMC was required to
11 include AFSCME 36 in its committee name, and to identify the name, address, and industry of
12 AFSCME 36 on its Form 410.

13 16. On March 15, 2013, Respondents filed a Form 410 with the Secretary of State.
14 Although Respondents were also required to promptly file this Form 410 with the City of San
15 Diego, they delayed this filing until April 18, 2013, after they had received a committee
16 identification number from the Secretary of State. Respondents failed to identify AFSCME 36
17 as the sponsor of CCMC on this Form 410, as well as on all subsequent campaign disclosure
18 statements filed with the City Clerk.

19 17. On March 29, 2013, three days after the special election, Respondents filed a Form
20 496 with the City Clerk disclosing the \$8,889.38 paid to canvassers. Respondents incorrectly
21 disclosed the date of the expenditure as March 26, 2013, when in fact Respondents had reached
22 the \$1,000 filing threshold on March 23, 2013, necessitating the filing of an initial Form 496 on
23 March 24, 2013, and subsequent Forms 496 on March 25 and 26, 2013.

24 18. As discussed above in Paragraphs 14(b) and (d), AFSCME 36 and AFSCME Local
25 127 made payments directly to CCMC vendors. These in-kind contributions to CCMC were
26 never disclosed on campaign statements filed by CCMC with the City Clerk (although the
27 payment by AFSCME 36 in the amount of \$1,500 to New Nation Strategies was disclosed on a
28 campaign statement filed by AFSCME 36 with the Secretary of State).

