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.: 2014-43
NATHAN FLETCHER, SCOTT & CRONIN ) STIPULATION, DECISION, AND
LLP, and FERNANDO AGUERRE ) ORDER
) Respondents.
)

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 City’s Election Campaign Control Ordinance [ECCO].

2. At all times mentioned herein, Nathan Fletcher [Fletcher] was a candidate for Mayor in the special election held on November 17, 2013. The Fletcher for Mayor 2013 committee [Committee] was a campaign committee registered with the State of California (Identification No. 1359831) established to support Fletcher’s mayoral candidacy. At all relevant times herein, the Committee was controlled by Fletcher within the meaning of the California Political Reform Act, California Government Code section 82016.

3. At all times mentioned herein, Scott & Cronin LLP was the Committee treasurer.

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STIPULATION, DECISION, AND ORDER
4. At all times mentioned herein, Fernando Aguerre [Aguerre] was the Chief Executive Officer of Liquid Tribe, LLC, and the President of the International Surfing Association.

5. Fletcher, Scott & Cronin LLP, and Aguerre are collectively referred to herein as “Respondents.”

6. 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.

7. 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 Respondents’ liability.

8. Respondents understand and knowingly and voluntarily waive 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. Respondents agree 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. Respondents further agree that the terms of this Stipulation constitute compliance with the provisions of SDMC section 26.045 in that the Stipulation includes a recitation of facts, a reference to each violation, and an order.

9. Respondents acknowledge 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.

10. The parties agree that in the event the Ethics Commission refuses to accept this Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics Commission refuses to accept this Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics Commission refuses to accept this Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics Commission refuses to accept this Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics Commission refuses to accept this Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics Commission refuses to accept this Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics Commission refuses to accept this Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics Commission refuses to accept this Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics Commission refuses to accept this Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics Commission refuses to accept this Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics Commission refuses to accept this Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics Commission refuses to accept this Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics Commission refuses to accept this Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics Commission refuses to accept this Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics Commission refuses to accept this
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**

11. SDMC section 27.2935 limits contributions from individuals to City candidates. With respect to the special mayoral election on November 17, 2013, the contribution limit was $1,000 per election.

12. SDMC section 27.2930 requires candidates and committees to file campaign statements in the time and manner required by state law. California Government Code section 84211 requires candidates and committees to itemize on their campaign statements all contributions totaling $100 or more received from the same individual.

13. Candidates and their treasurers are required to verify that, to the best of their knowledge, their campaign statements are true and complete, and must use all reasonable diligence in the preparation of these statements. Fair Political Practices Commission Regulation 18427(a), (c).

14. On August 22, 2013, Aguerre made a $1,000 contribution to the Committee for the special mayoral election.

15. On October 5, 2013, Aguerre made three additional contributions of $1,000 each to the Committee for the same election. Pursuant to Aguerre’s instructions, his assistant made the contributions electronically using Aguerre’s personal credit card but identified the contributors as Respondent’s three children who were 16 years old (triplets) at the time. The Committee’s credit card processing vendor subsequently transmitted information to the Committee identifying Aguerre as the cardholder and his three children as the contributors. Notwithstanding any plan that may have existed for Aguerre’s children to reimburse Aguerre for these contributions, and despite the fact that the children had access to funds in a family trust, the children ultimately never used their funds to reimburse Aguerre or otherwise make any contributions to the Fletcher Committee.

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16. On October 10, 2013, the Committee filed a campaign statement covering the period from January 1, 2013, through October 5, 2013, and erroneously reported the receipt of three contributions of $1,000 each from Mr. Aguerre’s children.

Counts

Count 1 – Violation of SDMC section 27.2930

17. Respondents Fletcher and Scott & Cronin LLP violated SDMC section 27.2930 by filing a campaign statement that erroneously disclosed receipt of three contributions of $1,000 each from Aguerre’s children, when in fact these contributions were made with funds belonging to Aguerre.

Count 2 – Violation of SDMC section 27.2935

18. Respondents Fletcher and Scott & Cronin LLP violated SDMC section 27.2935 by accepting four contributions totaling $4,000 from Aguerre. Respondent Aguerre violated SDMC section 27.2935 by making four contributions totaling $4,000 to the Committee.

Factors in Mitigation

19. Respondents have fully cooperated with the Ethics Commission’s investigation.

Conclusion

20. Respondents agree to take necessary and prudent precautions to comply with all provisions of the Election Campaign Control Ordinance in the future.

21. Respondents acknowledge that the Ethics Commission may impose increased fines in connection with any future violations of the City’s campaign laws.
22. Respondent Fletcher agrees to pay a fine in the amount of $3,000 in connection with the violations of SDMC sections 27.2930 and 27.2935 described above. This amount must be paid by check or money order made payable to the City Treasurer no later than April 3, 2015. 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]

NATHAN FLETCHER, Respondent

DATED:______________

[REDACTED]

SCOTT & CRONIN LLP, Respondent
By: F. Laurence Scott, Jr.

DATED:______________

[REDACTED]

FERNANDO AGUERRE, Respondent

DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on April 9, 2015. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondents pay a fine in the amount of $3,000.

DATED:______________

[REDACTED]

JOHN C. O’NEILL, Chair
SAN DIEGO ETHICS COMMISSION