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.:  2016-41
SAN DIEGANS FOR FULL VOTER )  STIPULATION, DECISION, AND
PARTICIPATION, YES ON K AND L, )  ORDER
SPONSORED BY COMMUNITY AND )
VOTER RIGHTS ORGANIZATIONS, and )
SCOTT & CRONIN, LLP, )
)  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 Election Campaign Control Ordinance [ECCO], SDMC section 27.2901, et seq.

2. At all times mentioned herein, San Diegans for Full Voter Participation, Yes on K and L, Sponsored by Community and Voter Rights Organizations [Committee] was a City committee primarily formed to support two ballot measures in the November 2016 general election. The Committee was registered with the State of California (Identification No. 1389015). Scott & Cronin, LLP [Treasurer] was, at all relevant times, the Committee’s
campaign treasurer. The Committee and Treasurer are referred to herein as “Respondents.”

3. 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.

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 Respondents’ liability.

5. 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 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. Respondents agree to hold the City of San Diego harmless from any and all claims or damages resulting from the Commission’s investigation, this stipulated agreement, or any matter reasonably related thereto.

7. 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.

8. 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 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.
9. Because the Committee was formed for the purpose of supporting two City of San Diego ballot measures, Respondents were required to comply with the provisions in ECCO.

10. Under ECCO, when a committee pays for an advertisement supporting a City measure it must include a disclosure statement on the advertisement identifying the top two donors from which it has received contributions of $10,000 or more. A donor's contribution is deemed “received” when any agent of the committee obtains possession or control of the payment. FPPC Regulation 18421.1(c). The disclosure statement must reflect information that is accurate as of the date the committee places the order to purchase the advertisement. SDMC § 27.2975.

11. On September 22, 2016, the Committee ordered 2,500 campaign signs and 500 yard signs prepared by the Committee’s consultant, Tom Shephard & Associates, Inc. [Consultant], that included a disclosure statement identifying Lawrence Hess as the only major donor of $10,000 or more. The campaign and yard signs were subsequently distributed. These signs did not identify the San Diego County Building Trades Council Family Housing Corporation dba National City Park Apartments [Building Trades] as the second major donor despite the fact that: the Committee had received a $75,000 contribution from Building Trades on September 19, 2016, making it one of the top two donors of $10,000 or more; the Treasurer had electronically filed a campaign statement on September 19, 2016, disclosing this contribution; and the Treasurer had alerted the Consultant that there was another top contributor before the signs were ordered.

12. On October 4, 2016, the Committee ordered 249,000 campaign mailers that included a disclosure statement identifying Lawrence Hess and Protect Neighborhood Services Now as its top two donors of $10,000 or more, and subsequently distributed these mailers. The mailers did not include the full committee name of the second major donor, which is Protect Neighborhood Services Now, Sponsored by Municipal Employees Association, because the Consultant relied on information contained within the Committee’s campaign statements electronically filed by the Treasurer which did not include the full committee name.
13. On October 6, 2016, the Committee disseminated a television advertisement that included a disclosure statement identifying Lawrence Hess and Protect Neighborhood Services Now as its top two donors of $10,000 or more. The television advertisements did not include the full committee name of the second major donor, which is Protect Neighborhood Services Now, Sponsored by Municipal Employees Association, because the Consultant relied on information contained within the Committee’s campaign statements electronically filed by the Treasurer which did not include the full committee name.

14. On October 10, 2016, the Committee ordered 15,000 door hangers that included a disclosure statement identifying Lawrence Hess and Protect Neighborhood Services Now as its top two donors of $10,000 or more, and subsequently distributed these door hangers. The door hangers did not include the full committee name of the second major donor, which is Protect Neighborhood Services Now, Sponsored by Municipal Employees Association, because the Consultant relied on information contained within the Committee’s campaign statements electronically filed by the Treasurer which did not include the full committee name.

15. On October 14, 2016, the Committee conducted robo-calls to 23,000 households that included a disclosure statement identifying Open Society Policy and Lawrence Hess as its top two donors of $10,000 or more, despite the fact that the Committee had previously received a $100,000 contribution from United Food & Commercial Workers Union Local 135 [UFCW], and had disclosed this contribution on a campaign statement filed with the City Clerk on October 13, 2016. With this contribution, UFCW displaced Hess as one of the top two donors of $10,000 or more.

Counts

Counts 1 through 5 - Violations of SDMC section 27.2975

16. Respondent Committee violated SDMC section 27.2975 by failing to identify Building Trades as one of its top two major donors on 2,500 campaign signs and 500 yard signs.

17. Respondents violated SDMC section 27.2975 by failing to include the full name of Protect Neighborhood Services Now, Sponsored by Municipal Employees Association, as one of its top two major donors on 249,000 campaign mailers.
18. Respondents violated SDMC section 27.2975 by failing to include the full name of Protect Neighborhood Services Now, Sponsored by Municipal Employees Association, as one of its top two major donors on a television advertisement.

19. Respondents violated SDMC section 27.2975 by failing to include the full name of Protect Neighborhood Services Now, Sponsored by Municipal Employees Association as one of its top two major donors on 15,000 door hangers.

20. Respondent Committee violated SDMC section 27.2975 by failing to identify UFCW as one of its top two major donors on a robo-call disseminated to 23,000 households.

**Factors in Mitigation**

21. The Committee’s principal officers reasonably relied on the Consultant and Treasurer to ensure that the disclosure statements included in campaign advertisements accurately identified the top two donors of $10,000 or more. The Consultant and Treasurer cooperated during the course of the Commission’s investigation and have taken responsibility for the violations described herein.

**Factors in Aggravation**

22. There was no reasonable excuse for the failure to correctly identify the top two major donors on the advertisements discussed above in paragraphs 11 and 15 because contributions from the major donors had been received, deposited, and disclosed on electronically-filed campaign statements before the orders for the subject advertisements were placed and because the Consultant is an experienced campaign professional who is familiar with City and state campaign disclaimer rules.

23. The violations described herein deprived the voters of important information regarding the significant contributions made by Building Trades, Municipal Employees Association, and UFCW to fund Respondents’ activities in support of two ballot measures in the November 2016 general election.

**Conclusion**

24. Respondents agree to take necessary and prudent precautions to ensure compliance with all provisions of ECCO in the future.
25. Respondents acknowledge that the Ethics Commission may impose increased fines in connection with any future violations of the City’s campaign laws.

26. Respondents agree to pay a fine in the amount of $16,000 for violating SDMC section 27.2975. This amount must be paid no later than August 4, 2017, by check or money order payable to the City Treasurer. The submitted payment will be held pending Commission approval of this Stipulation and execution of the Decision and Order portion set forth below.

[REDACTED]

DATED: _________________  _______________________________________________
Stacey Fulhorst, Petitioner
SAN DIEGO ETHICS COMMISSION

[REDACTED]

DATED: _________________  _______________________________________________
David Miles, Principal Officer
SAN DIEGANS FOR FULL VOTER PARTICIPATION, YES ON K AND L, SPONSORED BY COMMUNITY AND VOTER RIGHTS ORGANIZATIONS, Respondent

[REDACTED]

DATED: _________________  _______________________________________________
Andrea Guerrero, Principal Officer
SAN DIEGANS FOR FULL VOTER PARTICIPATION, YES ON K AND L, SPONSORED BY COMMUNITY AND VOTER RIGHTS ORGANIZATIONS, Respondent

[REDACTED]

DATED: _________________  _______________________________________________
Rev. J. Lee Hill, Jr., Principal Officer
SAN DIEGANS FOR FULL VOTER PARTICIPATION, YES ON K AND L, SPONSORED BY COMMUNITY AND VOTER RIGHTS ORGANIZATIONS, Respondent

[REDACTED]

DATED: _________________  _______________________________________________
Nancy Haley, Political Finance Director
SCOTT & CRONIN, LLP, Respondent
DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on August 11, 2017. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondents pay a fine in the amount of $16,000.

DATED: __________________ [REDACTED]

Deborah Cochran, Chair
SAN DIEGO ETHICS COMMISSION