BEFORE THE CITY OF SAN DIEGO
ETHICS COMMISSION

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. All SDMC references in this Stipulation relate to provisions of ECCO that were in effect at the time of the actions described.

2. At all times mentioned herein, Ricardo Flores was a candidate for City Council District 9 in the 2016 election cycle. The Flores for City Council 2016 committee (Identification No. 1377572) [Committee] was a campaign committee registered with the State of California established to support Mr. Flores’ candidacy. The Committee was controlled by Mr. Flores within the meaning of the California Political Reform Act, California Government Code section 82016. Mr. Flores is referred to herein as “Respondent.”
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 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 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. Respondent 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. Respondent agrees to hold the City of San Diego and the Ethics Commission harmless from any and all claims or damages resulting from the Commission’s investigation, this stipulated agreement, or any matter reasonably related thereto.

7. 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.

8. 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 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

9. The Committee was selected for audit by a designee of the City Clerk in a random
drawing conducted at a public meeting of the Ethics Commission held on September 14, 2017.
An audit was conducted covering the period from May 5, 2015, through December 31, 2016. The
information set forth in this Stipulation was obtained during the course of the audit.

10. ECCO requires that candidates and committees using paid staff to make campaign
telephone calls include the words “paid for by” immediately followed by the name of the
committee. In addition, ECCO requires that candidates and committees using volunteers to make
telephone calls include the words “on behalf of” immediately followed by the name of the
committee. SDMC section 27.2925 requires that candidates and committees maintain an accurate
transcript of each telephone communication; this transcript serves as evidence that a committee
has complied with the disclosure requirements.

11. The Committee retained campaign consultants to provide a variety of campaign
services, including phone banking. These consultants prepared eleven different scripts that were
used by volunteers when making campaign telephone calls. Only one of the eleven scripts
included an “on behalf of” disclosure; the remaining ten scripts identified the callers as
volunteers without also disclosing that they were volunteering for the Committee.

12. ECCO requires that candidates and committees paying for mass media
advertisements include the words “paid for by” immediately followed by the name of the
committee.

13. The campaign services provided by the consultants included the design and
preparation of a campaign advertisement that appeared in two separate publications of the Tieng
Viet – San Diego News (a Vietnamese language newspaper). Although the consultants expressly
instructed the translator to include the requisite “paid for by” disclosure in the advertisement, the
disclosure was not included.

///
///
///
Counts

Counts 1 through 10 - Violations of SDMC Section 27.2971

14. Respondent violated SDMC section 27.2971 by failing to include an “on behalf of” disclosure in ten scripts used by volunteers to make campaign telephone calls.

Counts 11 and 12 - Violations of SDMC Section 27.2974

15. Respondent violated SDMC section 27.2974 by failing to include a “paid for by” disclosure in two mass media advertisements.

Factors in Aggravation

16. The records produced by the Committee’s consultants include ten transcripts used for phone banking conducted by paid staff. These transcripts indicate that the callers were to identify themselves as volunteers during the introduction, but do not include a “paid for by” disclosure in the introduction or anywhere else within the body of the transcript. According to the Committee’s consultants, the callers were verbally instructed not to identify themselves as volunteers, and to read the “paid for by” disclosure that appeared in a footer at the bottom of the page when reaching the end of each call. The failure to maintain complete and accurate transcripts for the paid phone banking efforts prevented the Ethics Commission from determining whether the paid callers included the “paid for by” disclosure required by ECCO.

Factors in Mitigation

17. The Commission’s investigation revealed that Respondent reasonably relied on the Committee’s consultants to ensure that all campaign communications included the proper disclosures.

18. Respondent fully cooperated with the Ethics Commission investigation.

Conclusion

19. Respondent agrees to take necessary and prudent precautions to ensure compliance with all provisions of ECCO in the future.

20. Respondent acknowledges that the Ethics Commission may impose increased fines in connection with any future violations of the City’s campaign laws.

///
21. Respondent agrees to pay a fine in the amount of $6,000 for violating SDMC sections 27.2971 and 27.2974. This amount must be paid no later than August 2, 2019, 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.

DATED: __________________  [REDACTED]

Stacey Fulhorst, Petitioner
SAN DIEGO ETHICS COMMISSION

DATED: __________________  [REDACTED]

Ricardo Flores, Respondent

DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on August 8, 2019. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of $6,000.

DATED: __________________  [REDACTED]

Sid Voorakkara, Chair
SAN DIEGO ETHICS COMMISSION