

1 STACEY FULHORST, Executive Director  
City of San Diego Ethics Commission  
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5 Petitioner

6  
7 **BEFORE THE CITY OF SAN DIEGO**  
8 **ETHICS COMMISSION**

9  
10 In re the Matter of: ) Case No.: 2004-57  
11 MT. SOLEDAD MEMORIAL )  
ASSOCIATION, INC., ) **STIPULATION, DECISION, AND**  
12 ) **ORDER**  
Respondent. )  
13 )

14 **STIPULATION**

15 **THE PARTIES STIPULATE AS FOLLOWS:**

16 1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego Ethics  
17 Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer,  
18 implement, and enforce local governmental ethics laws contained in the San Diego Municipal  
19 Code [SDMC] relating to, among other things, the provisions of the City's Election Campaign  
20 Control Ordinance [ECCO].

21 2. At all times mentioned herein, the Mt. Soledad Memorial Association [Association]  
22 was a California non-profit 501(c)(3) corporation. As discussed in greater detail below, the  
23 Association spent approximately \$25,000 in opposition to a City of San Diego ballot measure in  
24 the November 2004 general election and, in connection with these expenditures, became a  
25 committee required to comply with the provisions of ECCO. The Association is referred to  
26 herein as "Respondent."

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1           9.       SDMC section 27.2903 and California Government Code section 82013 set forth  
2 a definition of “committee” that includes any person that makes independent expenditures  
3 totaling \$1,000 or more in a calendar year.

4           10.       SDMC section 27.2903 and California Government Code section 82013 set forth  
5 a definition of “independent expenditure” that includes any expenditure made in connection with  
6 a communication which expressly supports or opposes the adoption or defeat of a clearly  
7 identified ballot measure.

8           11.       The Respondent’s first independent expenditure, in the amount of \$4,575, took  
9 place on August 10, 2004, and was a payment associated with the preparation of a ballot  
10 argument opposing Proposition K. Consequently, according to local and state law, Respondent  
11 became a committee on August 10, 2004.

12           12.       SDMC section 27.2930 (formerly section 27.2931) requires candidates and  
13 committees participating in City of San Diego elections to file campaign statements in the time  
14 and manner required by California Government Code sections 81000 *et seq.*

15           13.       California Government Code sections 84200.8 and 84203.5 require committees that  
16 make independent expenditures of \$1,000 or more within the time period leading up to forty-five  
17 days before an election to file a Supplemental Independent Expenditure Report [Form 465] forty  
18 days before the election. With respect to the November 2, 2004, general election, committees  
19 that made independent expenditures from July 1, 2004, through September 30, 2004, were  
20 required to file a Form 465 on or before October 5, 2004. In addition, these Government Code  
21 sections require committees that make independent expenditures of \$1,000 or more during the  
22 time period leading up to seventeen days before an election to file a Form 465 twelve days  
23 before the election. With respect to the November 2, 2004, general election, committees that  
24 made independent expenditures from October 1, 2004, through October 16, 2004, were required  
25 to file a Form 465 on or before October 21, 2004.

26           14.       As discussed above, on August 10, 2004, the Respondent spent \$4,575 on an  
27 independent expenditure opposing Proposition K. On September 30, 2004, and October 5, 2004,  
28 the Respondent spent an additional \$2,945.75 and \$1,122.12 respectively on independent  
expenditures opposing Proposition K. Respondent failed to file a Form 465 on October 5, 2004,

1 disclosing the independent expenditures it made on August 10, 2004, and September 30, 2004.  
2 In addition, Respondent failed to file a Form 465 on October 21, 2004, disclosing the  
3 independent expenditure it made on October 5, 2004.

4 15. According to Government Code section 82036.5, a late independent expenditure is  
5 any independent expenditure made during the sixteen days prior to an election in the aggregate  
6 amount of \$1,000 or more in support of, or opposition to, a candidate or ballot measure. With  
7 respect to the November 2, 2004, general election, the sixteen day period began on October 17,  
8 2004, and continued through November 1, 2004.

9 16. Government Code section 84204 requires committees that make a late independent  
10 expenditure to file a Late Independent Expenditure Report [Form 496] within twenty-four hours  
11 of making the expenditure.

12 17. On October 27, 2004, and October 29, 2004, the Respondent made late independent  
13 expenditures in opposition to Proposition K in the respective amounts of \$2,500.65 and  
14 \$13,555.94. Respondent failed to file a Form 496 on October 28, 2004, reflecting the  
15 independent expenditure made on October 27, 2004. In addition, Respondent failed to file a  
16 Form 496 on October 30, 2004, reflecting the independent expenditure made on October 29,  
17 2004.

18 18. On January 31, 2005, the Respondent filed a Major Donor and Independent  
19 Expenditure Committee campaign statement [Form 461] covering the period from January 1,  
20 2004, through December 31, 2004, and reflecting the independent expenditures made in  
21 opposition to Proposition K from August 10, 2004, through October 29, 2004. In addition, on  
22 March 18, 2005, Respondents filed the requisite Forms 465 and Forms 496 reflecting the  
23 independent expenditures made in opposition to Proposition K.

24 19. SDMC section 27.2970 (formerly SDMC section 27.2955) requires candidates and  
25 committees who send "mass mailings" to include a disclosure identifying the party who paid for  
26 the mailing. (ECCO defines "mass mailing" as 200 or more substantially similar pieces of  
27 campaign literature sent within a single calendar month. SDMC section 27.2903.) The

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1 disclosure must be in typeface that is easily legible, in a color that contrasts with the background,  
2 and in a font no less than 12 points in size.

3 20. After the requirements set forth in SDMC section 27.2970 (formerly SDMC section  
4 27.2955) took effect on October 7, 2004, and prior to the November 2, 2004, general election,  
5 Respondent sent out one mass mailing opposing Proposition K. The mailing did not include the  
6 “paid for by” disclosure required by SDMC section 27.2970.

7 **Counts 1 through 5**

8 **Violations of SDMC section 27.2930**

9 21. On March 18, 2005, Respondent filed a Form 465 in connection with the  
10 independent expenditure it made on August 10, 2004. The Form 465 was due on October 5,  
11 2004. Respondent did not disclose this independent expenditure until it filed a Form 461 on  
12 January 31, 2005, almost four months after the original disclosure was due on a Form 465.

13 22. On March 18, 2005, Respondent filed a Form 465 in connection with the  
14 independent expenditure it made on September 30, 2004. The Form 465 was due on October 5,  
15 2004. Respondent did not disclose this independent expenditure until it filed a Form 461 on  
16 January 31, 2005, almost four months after the original disclosure was due on a Form 465.

17 23. On March 18, 2005, Respondent filed a Form 465 in connection with the  
18 independent expenditure it made on October 5, 2004. The Form 465 was due on October 21,  
19 2004. Respondent did not disclose this independent expenditure until it filed a Form 461 on  
20 January 31, 2005, more than three months after the original disclosure was due on a Form 465.

21 24. On March 18, 2005, Respondent filed a Form 496 in connection with the late  
22 independent expenditure it made on October 27, 2004, five days before the November 2, 2004,  
23 general election. The Form 496 disclosing this expenditure was due on October 28, 2004.  
24 Respondent did not disclose this independent expenditure until it filed a Form 461 on January 31,  
25 2005, more than three months after the original disclosure was due on a Form 496.

26 25. On March 18, 2005, Respondent filed a Form 496 in connection with the late  
27 independent expenditure it made on October 29, 2004, three days before the November 2, 2004,  
28 general election. The Form 496 disclosing this expenditure was due on October 30, 2004.

1 Respondent did not disclose this independent expenditure until it filed a Form 461 on January 31,  
2 2005, more than three months after the original disclosure was due on a Form 496.

3 **Count 6**

4 **Violation of SDMC section 27.2970**

5 26. Respondent disseminated a mass mailing on approximately October 27, 2004.  
6 Respondent failed to include the requisite "paid for by" disclosure on this mailing.

7 **Factors in Mitigation**

8 27. The Commission's investigation reveals that the Respondent has no history of  
9 participating in City elections and no prior experience filing campaign statements.

10 28. Respondent has cooperated fully with the Ethics Commission investigation.

11 **Conclusion**

12 29. Respondent agrees to take necessary and prudent precautions to ensure timely  
13 disclosure of independent expenditures in the future, and to comply with all of the provisions of  
14 the City's Election Campaign Control Ordinance.

15 30. Respondent agrees to pay a fine in the amount of \$1,500 for violating the above-  
16 referenced provisions of ECCO. Respondent submitted a check payable to the City Treasurer in  
17 the amount of \$1,500 on March 16, 2005.

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19 DATED: \_\_\_\_\_

\_\_\_\_\_  
20 STACEY FULHORST, Executive Director  
ETHICS COMMISSION, Petitioner

21  
22 DATED: \_\_\_\_\_

\_\_\_\_\_  
23 WILLIAM KELLOG, President  
MT. SOLEDAD MEMORIAL ASSOCIATION,  
24 Respondent

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**DECISION AND ORDER**

The Ethics Commission considered the above Stipulation at its meeting on August 1, 2005. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of \$1,500.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Dorothy Leonard, Chair  
SAN DIEGO ETHICS COMMISSION