

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.: 2012-49
11 CALIFORNIA FOR SMALL BUSINESS)
SPONSORED BY NEIGHBORHOOD) **STIPULATION, DECISION, AND**
12 MARKET ASSOCIATION, and) **ORDER**
NEIGHBORHOOD MARKET)
13 ASSOCIATION,)
14 Respondents.)
15 _____)

16 **STIPULATION**

17 **THE PARTIES STIPULATE AS FOLLOWS:**

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

23 2. At all times mentioned herein, the Neighborhood Market Association [NMA] was
24 the sponsor of California for Small Business [the Committee], a state general purpose committee
25 registered with the State of California (Identification No. 1325311). NMA is an organization
26 comprised of independent retailers in the food and alcohol beverage industry. NMA and the
27 Committee are collectively referred to herein as “Respondents.”

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

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

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

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

22 7. The parties agree that in the event the Ethics Commission refuses to accept this
23 Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics
24 Commission rejects the Stipulation and a full evidentiary hearing before the Ethics Commission
25 becomes necessary, no member of the Ethics Commission or its staff shall be disqualified
26 because of prior consideration of this Stipulation.

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1 **Summary of Law and Facts**

2 8. ECCO defines “committee” as any person or combination of persons who raise
3 \$1,000 or more for the purpose of supporting or opposing a candidate or ballot measure, or make
4 independent expenditures of \$1,000 or more, within a single calendar year. SDMC § 27.2903.

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

9 10. According to Government Code sections 82036.5 and 84204, any committee that
10 makes independent expenditures totaling \$1,000 or more to support or oppose a candidate or
11 measure in the sixteen day period preceding an election is required to file a Late Independent
12 Expenditure Report [Form 496] within twenty-four hours with the City Clerk. For the primary
13 election on June 5, 2012, this sixteen day period commenced on May 20, 2012.

14 11. On May 27, 2012, Respondents made independent expenditures to oppose the
15 mayoral candidacy of Bob Filner in the form of “direct mail design and concepts, web design,
16 consulting, and online advertising” totaling \$18,000. Although Respondents were required to
17 file a Form 496 with the City Clerk disclosing these independent expenditures on May 28, 2012,
18 Respondents did not do so until June 7, 2012, at which time they incorrectly reported that the
19 expenditures were made on June 5, 2012. At the request of the Ethics Commission, Respondents
20 filed an amended Form 496 with the City Clerk on October 25, 2012, correcting the date of the
21 expenditures to May 27, 2012.

22 12. On May 29, 2012, Respondents made additional independent expenditures to
23 oppose the mayoral candidacy of Bob Filner in the form of “robo canvass, email blast, robocalls”
24 totaling \$10,000. Although Respondents were required to file a Form 496 with the City Clerk
25 disclosing these independent expenditures on May 30, 2012, Respondents did not do so until
26 June 6, 2012, at which time they incorrectly reported that the expenditures were made on June 4,
27 2012. Respondents have not yet filed an amended Form 496 with the City Clerk to correct the
28 date of these expenditures.

1 13. In addition to the above filing requirements, ECCO mandates that all committees
2 that pay for mass telephone communications (live or recorded calls to 500 or more individuals or
3 households) for the purpose of supporting or opposing a City candidate include the words “paid
4 for by” followed by the name of the committee. SDMC § 27.2971.

5 14. As discussed above in Paragraph 12, Respondents paid for recorded telephone
6 calls disseminated in May of 2012 to oppose the mayoral candidacy of Bob Filner. Respondents
7 were required to provide the following disclosure during the recorded call: “paid for by
8 California for Small Business sponsored by Neighborhood Market Association.” The
9 Commission’s investigation reveals that the “paid for by” disclosure provided during the
10 recorded call did not include the full name of the Committee as required by ECCO. In particular,
11 the disclosure indicated that the call was paid for California for Small Business but did not
12 identify NMA as the Committee’s sponsor.

Counts

Counts 1 and 2 - Violations of SDMC section 27.2930

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15 15. Respondents violated SDMC section 27.2930 by failing to timely file Forms 496
16 with the City Clerk disclosing independent expenditures made to oppose a City candidate. As
17 discussed above in Paragraph 11, Respondents made independent expenditures on May 27, 2012,
18 but did not file a corresponding Form 496 to disclose these expenditures until June 7, 2012, 11
19 days late and after the primary election on June 5, 2012. In addition, as discussed above in
20 Paragraph 12, Respondents made independent expenditures on May 29, 2012, but did not file a
21 corresponding Form 496 to disclose these expenditures until June 6, 2012, 7 days late and after
22 the primary election on June 5, 2012.

Count 3 – Violations of SDMC section 27.2971

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24 16. Respondents violated SDMC section 27.2971 by failing to provide a complete
25 “paid for by” disclosure during recorded calls made for the purpose of opposing a City candidate.
26 As discussed above in Paragraph 14, Respondents paid \$10,000 for recorded calls stating that the
27 call was “paid for by California for Small Business” but failing to identify NMA as the
28 Committee’s sponsor.

1 **Factors in Aggravation**

2 17. Respondents' failure to timely file campaign statements with the City Clerk
3 deprived the public of important information regarding the source and amount of expenditures
4 made to oppose a City candidate before the June 2012 primary election.

5 18. Respondent NMA was the subject of two previous Ethics Commission
6 enforcement actions and paid monetary fines totaling \$14,000 for failing to timely file campaign
7 disclosure statements and failing to identify NMA as the committee sponsor in campaign
8 advertisements.

9 **Factors in Mitigation**

10 19. Respondent cooperated with the Ethics Commission investigation.

11 **Conclusion**

12 20. Respondents agree to take necessary and prudent precautions to ensure
13 compliance with all provisions of ECCO in the future.

14 21. Respondents acknowledge that the Ethics Commission may impose increased fines
15 in connection with any future violations of the City's campaign laws.

16 22. Respondents agree to file the amended Form 496 described above in Paragraph 12
17 with the City Clerk on or before March 20, 2013.

18 23. Respondents agree to pay a fine in the amount of \$6,000 for violating SDMC
19 section 27.2930. This amount must be paid no later than March 20, 2013, by check or money
20 order payable to the City Treasurer. The submitted payment will be held pending Commission
21 approval of this Stipulation and execution of the Decision and Order portion set forth below.

22 [REDACTED]

23 DATED: _____

24 STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

25 [REDACTED]

26 DATED: _____

27 MARK ARABO, on behalf of Respondents, CALIFORNIA
FOR SMALL BUSINESS and NEIGHBORHOOD
28 MARKET ASSOCIATION

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DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on _____, 2013. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondents pay a fine in the amount of \$6,000.

[REDACTED]

DATED: _____

CLYDE FULLER, Chair
SAN DIEGO ETHICS COMMISSION