

1 STACEY FULHORST, Executive Director  
City of San Diego Ethics Commission  
2 450 B Street, Suite 780  
San Diego, CA 92101  
3 Telephone: (619) 533-3476  
4

5 Petitioner  
6

7 **BEFORE THE CITY OF SAN DIEGO**  
8 **ETHICS COMMISSION**  
9

10 In re the Matter of: ) Case No.: 2019-06  
11 RICARDO FLORES, ) )  
12 Respondent. ) **STIPULATION, DECISION, AND**  
13 ) **ORDER**  
14 )

15 **STIPULATION**

16 **THE PARTIES STIPULATE AS FOLLOWS:**

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

23 2. At all times mentioned herein, Ricardo Flores was a candidate for City Council  
24 District 9 in the 2016 election cycle. The Flores for City Council 2016 committee (Identification  
25 No. 1377572) [Committee] was a campaign committee registered with the State of California  
26 established to support Mr. Flores' candidacy. The Committee was controlled by Mr. Flores  
27 within the meaning of the California Political Reform Act, California Government Code section  
28 82016. Mr. Flores is referred to herein as "Respondent."

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 Respondent's liability.

7           5.     Respondent understands and knowingly and voluntarily waives 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. Respondent agrees  
13 that the terms of this Stipulation constitute compliance with the provisions of SDMC section  
14 26.0450 in that the Stipulation includes a recitation of facts, a reference to each violation, and an  
15 order.

16           6.     Respondent agrees to hold the City of San Diego and the Ethics Commission  
17 harmless from any and all claims or damages resulting from the Commission's investigation, this  
18 stipulated agreement, or any matter reasonably related thereto.

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

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

28     ///

1 **Summary of Law and Facts**

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

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

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

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

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

26 ///

27 ///

28 ///

1 Counts

2 **Counts 1 through 10 - Violations of SDMC Section 27.2971**

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

5 **Counts 11 and 12 - Violations of SDMC Section 27.2974**

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

8 Factors in Aggravation

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

18 Factors in Mitigation

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

22 18. Respondent fully cooperated with the Ethics Commission investigation.

23 Conclusion

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

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

28 ///

