

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.: 2005-76
11)
12 PETER Q. DAVIS,) **STIPULATION, DECISION, AND**
13) **ORDER**
Respondent.)
_____)

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, Peter Q. Davis [Davis] was a candidate for Mayor in
22 the City of San Diego. The Peter Q. Davis for Mayor committee [Committee] was a campaign
23 committee registered with the State of California (Identification No. 1259838) established to
24 support Davis' candidacy in the 2004 election cycle. At all relevant times herein, the committee
25 was controlled by Davis within the meaning of the California Political Reform Act, California
26 Government Code section 82016. Davis is referred to herein as "Respondent."

27 3. This Stipulation will be submitted for consideration by the Ethics Commission at
28 its next scheduled meeting, and the agreements contained herein are contingent upon the

1 approval of the Stipulation and the accompanying Decision and Order by the Ethics
2 Commission.

3 4. This Stipulation resolves all factual and legal issues raised in this matter and arising
4 out of the audit of the Committee by the Ethics Commission without the necessity of holding an
5 administrative hearing to determine Respondent's liability.

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

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

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

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Summary of Law and Facts

8. Although ECCO was amended and renumbered in early 2005, this Stipulation refers to the applicable provisions of the SDMC by the section number and language in force and effect at the time of the actions that are the subject of this Stipulation.

9. Because the Committee was formed for the purpose of supporting a candidate in a City of San Diego election, Respondent is required to comply with the provisions of ECCO.

10. The Committee was selected for audit by the Ethics Commission at a random drawing conducted on April 25, 2005. An audit was performed for the period from January 1, 2003, through September 29, 2004 (the date the committee was terminated).

11. Former SDMC section 27.2931 required committees to file campaign statements in the time and manner required by state law. California Government Code section 84303 requires Committees to report any payments of \$500 or more made by an agent to a subvendor.

12. The Commission's audit reveals that the Committee did not fully comply with the subvendor disclosure requirements in local and state law. In particular, the Committee failed to timely disclose nine payments made by agents totaling \$82,993.80, as follows:

| Period Ending | Name of Agent | Amount | Subvendor |
|---------------|-----------------|-------------|----------------------------------|
| 1 12/31/03 | Scott Barnett | \$600.00 | Lincoln Club |
| 2 12/31/03 | Jennifer Bowden | \$555.00 | U.S. Postmaster |
| 3 02/14/04 | Scott Barnett | \$12,500.00 | WCM QSub-26 Inc. |
| 4 02/14/04 | PRB Associates | \$2,826.62 | Creative Services of New England |
| 5 02/14/04 | JCA Com, Inc. | \$766.13 | U.S. Postmaster |
| 6 06/30/04 | Scott Barnett | \$2,850.00 | WCM QSub-26 Inc. |
| 7 06/30/04 | Scott Barnett | \$37,500.00 | WCM QSub-26 Inc. |
| 8 06/30/04 | JCA Com, Inc. | \$24,682.85 | U.S. Postmaster |
| 9 06/30/04 | PRB Associates | \$713.20 | Creative Services of New England |
| Total | | \$82,993.80 | |

1 **Factors in Mitigation**

2 17. The Commission's investigation indicates that Respondent relied on his treasurer
3 to properly disclose subvendors and accrued expenses. In addition, the Commission's
4 investigation did not reveal any evidence indicating that the Committee intended to conceal
5 information or deceive the public. Through the examination of the Committee's records and
6 campaign disclosure statements, the Ethics Commission's auditor verified that the Committee
7 timely filed all campaign statements. The Committee reported payments made to consultants
8 with codes that explained that the payments were for television and print advertisements, but
9 failed to report the actual payments by the consultants to subvendors. In addition, the Committee
10 reported campaign expenditures at the time they were paid, but failed to report accrued
11 expenditures that were incurred but not paid by the close of a reporting period.

12 **Conclusion**

13 18. Respondent agrees to take necessary and prudent precautions to comply with all
14 provisions of the Election Campaign Control Ordinance in the future.

15 19. Respondents agree to file all necessary amendments to correct the deficiencies
16 described above in paragraphs 12 and 14. The amendments must be filed on or before February
17 28, 2006.

18 20. Respondent agrees to pay a fine in the amount of \$2,500 for violating SDMC
19 sections 27.2931 and 27.2944. This amount must be paid no later than February 3, 2006, by
20 check or money order made payable to the City Treasurer. The submitted payment will be held
21 pending Commission approval of this Stipulation and execution of the Decision and Order
22 portion set forth below.

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24 DATED: _____

STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

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27 DATED: _____

PETER Q. DAVIS, Respondent

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DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on _____,
2006. The Ethics Commission hereby approves the Stipulation and orders that, in accordance
with the Stipulation, Respondent pay a fine in the amount of \$2,500.

DATED: _____

Dorothy Leonard, Chair
SAN DIEGO ETHICS COMMISSION