

1 STACEY FULHORST, Executive Director  
City of San Diego Ethics Commission  
2 1010 Second Avenue, Suite 1530  
San Diego, CA 92101  
3 Telephone: (619) 533-3476  
4 Facsimile: (619) 533-3448

5 Petitioner

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

9  
10 In re the Matter of: ) Case No.: 2010-91  
11 )  
12 SAN DIEGANS FOR HEALTHY ) **STIPULATION, DECISION, AND**  
13 NEIGHBORHOODS AND A STRONG ) **ORDER**  
14 ECONOMY TO SUPPORT FELIPE HUESO )  
15 FOR CITY COUNCIL – 2010 SPONSORED )  
16 BY SAN DIEGO-IMPERIAL COUNTIES )  
LABOR COUNCIL AFL-CIO, SAN DIEGO- )  
IMPERIAL COUNTIES LABOR COUNCIL )  
AFL-CIO, and XAVIER MARTINEZ, )  
Respondents. )

17  
18 **STIPULATION**

19 **THE PARTIES STIPULATE AS FOLLOWS:**

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

25 2. At all times mentioned herein, the San Diego-Imperial Counties Labor Council  
26 AFL-CIO [Labor Council] was the sponsor of, and was responsible for the activities of, San  
27 Diegans for Healthy Neighborhoods and a Strong Economy to Support Felipe Hueso for City

28 ///

1 Council – 2010 Sponsored by San Diego-Imperial Counties Labor Council AFL-CIO [SDHN], a  
2 committee registered with the State of California (Identification No. 1326995).

3 3. At all times mentioned herein, Xavier Martinez [Martinez] was the treasurer for  
4 SDHN.

5 4. Labor Council, SDHN, and Martinez are collectively referred to herein as  
6 “Respondents.”

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

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

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

24 8. Respondents acknowledge that this Stipulation is not binding upon any other law  
25 enforcement or government agency and does not preclude the Ethics Commission from referring  
26 this matter to, cooperating with, or assisting any other law enforcement or government agency  
27 with regard to this or any other related matter.

28 ///

1           9.    The parties agree that in the event the Ethics Commission refuses to accept this  
2 Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics  
3 Commission rejects the Stipulation and a full evidentiary hearing before the Ethics Commission  
4 becomes necessary, no member of the Ethics Commission or its staff shall be disqualified  
5 because of prior consideration of this Stipulation.

### 6   Summary of Law and Facts

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

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

14          12.    California Government Code section 84101 requires that a Statement of  
15 Organization [Form 410] be filed within 10 days of qualifying as a committee. Government  
16 Code section 84102 requires that an amended Form 410 be filed within 10 days of any change in  
17 information contained therein. The Form 410 must be filed with the Secretary of State and the  
18 City Clerk.

19          13.    A committee primarily formed to support a City candidate must file pre-election  
20 and semi-annual campaign disclosure statements [Forms 460] with the City Clerk pursuant to a  
21 schedule established by state and local law. SDMC § 27.2930, Cal. Gov’t Code § 84215(e).

22          14.    According to SDMC section 27.2903, a committee is “sponsored” by another entity  
23 if any of the following criteria apply: the committee receives 80% or more of its contributions  
24 either from the entity or from the entity’s members; the entity collects contributions for the  
25 committee by use of dues from its members; the entity (alone or with other entities) provides  
26 administrative services for the committee; or the entity (alone or with other entities) sets the  
27 committee’s policies for soliciting contributions or making expenditures. ECCO requires

28    ///

1 sponsored committees participating in City elections to adhere to the reporting obligations set  
2 forth in FPPC Regulation 18419. SDMC § 27.2930(i).

3 15. Regulation 18419 requires a committee that is sponsored by another entity to  
4 include the name of the sponsor in the name of the committee, and to identify the sponsor and  
5 the sponsor's industry group or affiliation on the committee's Form 410. In addition, whenever a  
6 committee files a campaign disclosure statement, it is required to identify itself using the  
7 committee's "full name." Cal. Gov't Code §§ 84204, 84203, and 84211(o).

8 16. In addition to the above filing requirements, ECCO contains disclosure  
9 requirements for committees that engage in mass telephone communications (live or recorded  
10 telephone calls to 500 or more individuals or households) for the purpose of supporting or  
11 opposing a City candidate. Individuals paid by a committee to make such calls must state that  
12 the calls are "paid for by" followed by the name of the committee. On the other hand, volunteers  
13 who make telephone calls at the direction of a committee must state that the calls are being made  
14 "on behalf of" the committee. SDMC § 27.2971.

15 17. Respondent SDHN was established and controlled by Respondent Labor Council.  
16 Respondent Labor Council was responsible for establishing SDHN, hiring consultants and  
17 vendors, fundraising, making decisions about and directing the committee's activities, and  
18 approving the committee's expenditures. In addition, Respondent SDHN received more than  
19 80% of its funding from San Diego Works!, a state general purpose recipient committee  
20 sponsored by Respondent Labor Council. Moreover, Respondent Labor Council provided  
21 administrative services to SDHN, and set SDHN's policies for soliciting contributions and  
22 making expenditures. Based on these facts, Respondent Labor Council is the "sponsor" of  
23 SDHN. Consequently, Respondents were required to include the Labor Council as part of  
24 SDHN's committee name, and were also required to identify the Labor Council as the sponsor of  
25 SDHN on its Form 410 and subsequent campaign statements.

26 18. On April 30, 2010, Respondents filed a Form 410 with the City Clerk and indicated  
27 on the form that SDHN was a City general purpose committee established to "provide and  
28 support initiatives for neighborhoods." On September 27, 2010, Respondents filed an amended

1 Form 410 stating that SDHN was primarily formed to support Felipe Hueso’s candidacy for City  
2 Council District 8, but failed to disclose that Labor Council was the sponsor of SDHN. As a  
3 result, the identity of SDHN’s sponsor was not included on the campaign statements (Forms 460,  
4 496, and 497) subsequently filed by Respondents with the City Clerk.

5 19. Respondents paid a vendor to make a total of 14,317 telephone calls using two  
6 different scripts to residents of Council District 8 from October 20, 2010, to October 27, 2010,  
7 for the purpose of supporting City candidate Felipe Hueso. The individuals paid to make the  
8 telephone calls did not include the requisite statement that the calls were “paid for by”  
9 Respondent SDHN. Instead, the callers erroneously stated that they were volunteers and that the  
10 calls were “made on behalf of” Respondent SDHN.

### 11 Counts

#### 12 **Count 1 - Violation of SDMC section 27.2930**

13 20. Respondents violated SDMC section 27.2930 by failing to disclose on the Form 410  
14 filed on September 27, 2010, that Respondent SDHN was sponsored by Respondent Labor  
15 Council.

#### 16 **Counts 2 and 3 - Violation of SDMC section 27.2971**

17 21. Respondents violated SDMC section 27.2971 by paying for two mass telephone  
18 communications and failing to include the requisite statement that the communications were  
19 “paid for by” Respondent SDHN.

### 20 Factors in Mitigation

21 22. The Commission’s investigation revealed that all the campaign materials printed  
22 and distributed by Respondent SDHN, as well as the phone banks conducted on behalf of  
23 Respondent SDHN, included a disclosure with the full committee name: San Diegans for  
24 Healthy Neighborhoods and a Strong Economy to Support Felipe Hueso for City Council – 2010  
25 sponsored by San Diego-Imperial Counties Labor Council AFL-CIO. Therefore, members of the  
26 public who received campaign literature or phone calls from Respondent SDHN were informed  
27 that the committee was sponsored by Respondent Labor Council.

28 ///

1 23. The Commission’s investigation revealed that the failure to include the phrase “paid  
2 for by” in the telephone communications described above was an inadvertent error that resulted  
3 from Respondent Labor Council’s development of standardized scripts used on many prior  
4 occasions by volunteers.

5 24. Respondents SDHN and Labor Council reasonably relied on Respondent Martinez  
6 as a professional campaign treasurer to file campaign disclosure statements as required by local  
7 law. Respondent Martinez has, therefore, taken full responsibility for the violation described in  
8 Count 1 as well as a portion of the monetary penalty referenced below

9 25. Respondents have cooperated fully with the Ethics Commission investigation.

10 **Conclusion**

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

13 27. Respondents agree to pay a fine in the amount of \$3,000 for violating SDMC  
14 sections 27.2930 and 27.2971. This amount must be paid no later than May 6, 2011, by check or  
15 money order payable to the City Treasurer. The submitted payment will be held pending  
16 Commission approval of this Stipulation and execution of the Decision and Order portion set  
17 forth below.

18  
19 DATED: \_\_\_\_\_ STACEY FULHORST, Executive Director  
20 ETHICS COMMISSION, Petitioner

21  
22 DATED: \_\_\_\_\_ EVAN MCLAUGHLIN, on behalf of Respondents, SAN  
23 DIEGANS FOR HEALTHY NEIGHBORHOODS AND A  
24 STRONG ECONOMY TO SUPPORT FEILPE HUESO  
25 FOR CITY COUNCIL - 2010 SPONSORED BY SAN  
26 DIEGO-IMPERIAL COUNTIES LABOR COUNCIL  
27 AFL-CIO and SAN DIEGO-IMPERIAL COUNTIES  
28 LABOR COUNCIL AFL-CIO

DATED: \_\_\_\_\_ XAVIER MARTINEZ, Respondent

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DECISION AND ORDER**

The Ethics Commission considered the above Stipulation at its meeting on \_\_\_\_\_,  
2011. The Ethics Commission hereby approves the Stipulation and orders that, in accordance  
with the Stipulation, Respondents pay a fine in the amount of \$3,000.

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

\_\_\_\_\_  
LARRY WESTFALL , Chair  
SAN DIEGO ETHICS COMMISSION