

1 STACEY FULHORST, Executive Director  
City of San Diego Ethics Commission  
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3 Telephone: (619) 533-3476  
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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.: 2008-10  
11 )  
CARL DEMAIO, ) **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 Ethics Ordinance.

20 2. At all times mentioned herein, Carl DeMaio [DeMaio] was candidate for City  
21 Council District 5 in the June 2008 primary election. DeMaio is referred to herein as  
22 "Respondent."

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

26 4. This Stipulation resolves all factual and legal issues raised in this matter by the  
27 Ethics Commission without the necessity of holding an administrative hearing to determine  
28 Respondent's liability.



1 which may include City employees,” and the Frequently Asked Questions [FAQs] that appear on  
2 the Ethics Commission’s website indicate that the exemption applies to solicitation mailings sent  
3 to 5,000 people as long as the mailing does not specifically target City employees. Although the  
4 “significant segment” exemption and the FAQ are not intended to apply to situations where a  
5 candidate is aware that City Officials are receiving solicitations, Respondent believed that the  
6 exemption applied to all large-scale solicitations.

7 10. On April 9, 2008, at Respondent’s direction, an employee of Respondent’s  
8 campaign committee began sending e-mails from the Respondent inviting recipients to a  
9 “fundraising reception” at Respondent’s home. The employee planned to send the e-mail to a list  
10 of recipients Respondent had compiled over a period of several years for purposes unrelated to  
11 Respondent’s candidacy for City office. The list contained approximately 7,200 e-mail  
12 addresses, including the e-mail addresses of many City employees. The campaign employee  
13 “queued up” the 7,200 e-mail addresses for distribution; however, in order to successfully  
14 transmit the solicitation e-mail to all intended recipients, the e-mail system would have required  
15 several “send” attempts. After the first “send” attempt, but before the second, Respondent was  
16 alerted to the fact that a City employee had received the solicitation via his City e-mail account.  
17 At that time, Respondent directed his campaign staff to cease sending the e-mail to the remaining  
18 recipients in the queue. A total of ninety current City employees received the subject e-mail  
19 before the process was halted.

### 20 Counts

#### 21 **Count 1 - Violation of SDMC section 27.3571**

22 11. Respondent indirectly solicited campaign contributions from City employees in  
23 violation of SDMC section 27.3571 when an employee of his campaign committee sent an e-  
24 mail message to ninety City employees that included a solicitation for campaign contributions.

### 25 Factors in Mitigation

26 12. Respondent did not receive any campaign contributions from any City employee  
27 who was sent one of the improper e-mail solicitations. (Because Respondent finished the  
28 election with more cash on hand than outstanding debts, Respondent will not be accepting any

1 additional campaign contributions for the 2008 election cycle.) Consequently, Respondent's  
2 campaign did not obtain any financial benefit from the improper solicitations.

3 **Conclusion**

4 13. Respondent agrees to pay a fine in the amount of \$1,500 for violating SDMC  
5 section 27.3571. This amount must be paid no later than August 8, 2008, by check or money  
6 order made payable to the City Treasurer. The submitted payment will be held pending  
7 Commission approval of this Stipulation and execution of the Decision and Order portion set  
8 forth below.

9  
10 DATED: \_\_\_\_\_

\_\_\_\_\_  
11 STACEY FULHORST, Executive Director  
12 ETHICS COMMISSION, Petitioner

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

\_\_\_\_\_  
14 CARL DEMAIO, Respondent

15  
16 **DECISION AND ORDER**

17 The Ethics Commission considered the above Stipulation at its meeting on August 14,  
18 2008. The Ethics Commission hereby approves the Stipulation and orders that, in accordance  
19 with the Stipulation, Respondent pay a fine in the amount of \$1,500.

20  
21 DATED: \_\_\_\_\_

\_\_\_\_\_  
22 Guillermo Cabrera, Chair  
23 SAN DIEGO ETHICS COMMISSION