ALISON ADEMA, General Counsel
City of San Diego Ethics Commission
1010 Second Avenue, Suite 1530
San Diego, CA 92101
Telephone: (619) 533-3476
Facsimile: (619) 533-3448

Petitioner

**BEFORE THE CITY OF SAN DIEGO**

**ETHICS COMMISSION**

| | |
|---|---|
| In re the Matter of: | Case No.: 2007-93 |
| MICHAEL AGUIRRE, | **STIPULATION, DECISION, AND ORDER** |
| Respondent. | |

**STIPULATION**

**THE PARTIES STIPULATE AS FOLLOWS:**

1. Petitioner Alison Adema is the General Counsel of the City of San Diego Ethics Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer, implement, and enforce local governmental ethics laws contained in the San Diego Municipal Code [SDMC] relating to, among other things, the provisions of the City's Ethics Ordinance.

2. At all times mentioned herein, Michael Aguirre [Aguirre] was a candidate for City Attorney for the City of San Diego in the June 2008 primary election. Aguirre is referred to herein as "Respondent."

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

4. This Stipulation resolves all factual and legal issues within the investigative and enforcement authority of the Ethics Commission without the necessity of holding an administrative hearing to determine Respondent's liability in this matter.

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

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

**Summary of Law and Facts**

7. Respondent was a candidate for City elective office in the June 2008 primary election. SDMC section 27.3571 prohibits City candidates from directly or indirectly soliciting campaign contributions from persons they know to be City employees.

8. Between March 8 and 10, 2008, one of Respondent's campaign consultants sent several different e-mails from Respondent's campaign e-mail account to approximately 3,000 individuals contained in a personal e-mail distribution list belonging to the consultant that inadvertently included 133 City employees. These e-mails included solicitations for campaign contributions. The e-mails were sent by the campaign consultant without the knowledge or authorization of Respondent.

/ / /

/ / /

9. The terms and representations contained in this Stipulation are limited to this proceeding only, and are not intended as, and do not constitute, admissions relating to any provisions of law other than with respect to SDMC section 27.3571.

**Counts**

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

10. Respondent violated SDMC section 27.3571 when his campaign consultant sent e-mails to 133 City employees that included solicitations for campaign contributions.

**Factors in Mitigation**

11. Respondent had no prior knowledge that his campaign consultant would send e-mail solicitations to any City employees. Although the campaign consultant knew that his personal e-mail list included City employees, he thought he had extracted the City employees from the list before sending the subject e-mails. The contention that the inclusion of City employees was inadvertent is supported by the fact that two of the City employees who received the e-mail communications were Council President Scott Peters and Councilmember Brian Maienschein, both of whom were running against Respondent in the June 2008 primary election for City Attorney.

12. Respondent has represented that he has not and will not accept campaign contributions from any City employee who received one of the improper e-mail communications, with the exception of City employees who had already made contributions to his campaign prior to the e-mail solicitation. In so doing, Respondent has ensured that his campaign committee will not obtain any financial benefit from the improper e-mail communications.

**Conclusion**

13. Respondent agrees to implement appropriate controls and adequate supervisory measures to prevent future similar violations of the Ethics Ordinance.

/ / /

/ / /

/ / /

/ / /

14. Respondent agrees to pay a fine in the amount of $1,500 for violating SDMC section 27.3571. This amount must be paid no later than September 10, 2008, by check or money order made payable to the City Treasurer. The submitted payment will be held pending Commission approval of this Stipulation and execution of the Decision and Order portion set forth below.

DATED:_____ _____
ALISON ADEMA, General Counsel
ETHICS COMMISSION, Petitioner

DATED:_____ _____
MICHAEL AGUIRRE, Respondent

**DECISION AND ORDER**

The Ethics Commission considered the above Stipulation at its meeting on September 11, 2008. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of $1,500.

DATED:_____ _____
Guillermo Cabrera, Chair
SAN DIEGO ETHICS COMMISSION