BEFORE THE CITY OF SAN DIEGO
ETHICS COMMISSION

In re the Matter of: CARL DEMAIO, Respondent.

STIPULATION

THE PARTIES STIPULATE AS FOLLOWS:

1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego 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, Carl DeMaio [DeMaio] was candidate for City Council District 5 in the June 2008 primary election. DeMaio 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 raised in this matter by the Ethics Commission without the necessity of holding an administrative hearing to determine Respondent’s liability.
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. Respondent acknowledges that this Stipulation is not binding upon any other law enforcement or government agency and does not preclude the Ethics Commission from referring this matter to, cooperating with, or assisting any other law enforcement or government agency with regard to this or any other related matter.

7. 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

8. Respondent was a candidate for elective office in the City of San Diego. He prevailed in the June 3, 2008, election and will assume office as the Councilmember for District 5 in December of 2008.

9. SDMC section 27.3571 prohibits City Officials and candidates for elective City office from directly or indirectly soliciting a campaign contribution from a City employee with the knowledge that the person solicited is a City employee. SDMC section 27.3571(c) sets forth an exemption to this prohibition for solicitations “made to a significant segment of the public
which may include City employees,” and the Frequently Asked Questions [FAQs] that appear on
the Ethics Commission’s website indicate that the exemption applies to solicitation mailings sent
to 5,000 people as long as the mailing does not specifically target City employees. Although the
“significant segment” exemption and the FAQ are not intended to apply to situations where a
candidate is aware that City Officials are receiving solicitations, Respondent believed that the
exemption applied to all large-scale solicitations.

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

Counts

Count 1 - Violation of SDMC section 27.3571

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

Factors in Mitigation

12. Respondent did not receive any campaign contributions from any City employee
who was sent one of the improper e-mail solicitations. (Because Respondent finished the
election with more cash on hand than outstanding debts, Respondent will not be accepting any
additional campaign contributions for the 2008 election cycle.) Consequently, Respondent’s campaign did not obtain any financial benefit from the improper solicitations.

**Conclusion**

13. 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 August 8, 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:__________________

STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

DATED:__________________

CARL DEMAIO, Respondent

**DECISION AND ORDER**

The Ethics Commission considered the above Stipulation at its meeting on August 14, 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