1	STACEY FULHORST, Executive Director	
2	City of San Diego Ethics Commission 1010 Second Avenue, Suite 1530	
3	San Diego, CA 92101	
4	Telephone: (619) 533-3476 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.: 2008-10
11	CARL DEMAIO,	) STIPULATION, DECISION, AND ) ORDER
12	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, Car	l 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 con	ntained herein are contingent upon the approval
25	of the Stipulation and the accompanying Decisi	on and Order by the Ethics Commission.
26	4. This Stipulation resolves all factua	l 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.	
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1	5. Respondent understands and knowingly and voluntarily waives any and all
2	procedural rights under the SDMC, including, but not limited to, a determination of probable
3	cause, the issuance and receipt of an administrative complaint, the right to appear personally in
4	any administrative hearing held in this matter, the right to confront and cross-examine witnesses
5	testifying at the hearing, the right to subpoen a witnesses to testify at the hearing, and the right to
6	have the Ethics Commission or an impartial hearing officer hear this matter. Respondent agrees
7	to hold the City of San Diego harmless from any and all claims or damages resulting from the
8	Commission's investigation or this stipulated agreement, or any matter reasonably related
9	thereto. Respondent further agrees that the terms of this Stipulation constitute compliance with
10	the provisions of SDMC section 26.0450 in that the Stipulation includes a recitation of facts, a
11	reference to each violation, and an order.
12	6. Respondent acknowledges that this Stipulation is not binding upon any other law
13	enforcement or government agency and does not preclude the Ethics Commission from referring
14	this matter to, cooperating with, or assisting any other law enforcement or government agency
15	with regard to this or any other related matter.
16	7. The parties agree that in the event the Ethics Commission refuses to accept this
17	Stipulation, it shall become null and void. Respondent further agrees that in the event the Ethics
18	Commission rejects the Stipulation and a full evidentiary hearing before the Ethics Commission
19	becomes necessary, no member of the Ethics Commission or its staff shall be disqualified
20	because of prior consideration of this Stipulation.
21	Summary of Law and Facts
22	8. Respondent was a candidate for elective office in the City of San Diego. He
23	prevailed in the June 3, 2008, election and will assume office as the Councilmember for District
24	5 in December of 2008.
25	9. SDMC section 27.3571 prohibits City Officials and candidates for elective City
26	office from directly or indirectly soliciting a campaign contribution from a City employee with
27	the knowledge that the person solicited is a City employee. SDMC section 27.3571(c) sets forth
28	an exemption to this prohibition for solicitations "made to a significant segment of the public
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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.

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

## **Counts**

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## 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.
 <u>Factors in Mitigation</u>

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

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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 ETHICS COMMISSION, Petitioner	
12		
13	DATED: CARL DEMAIO, Respondent	
14		
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.	
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21	DATED: Guillermo Cabrera, Chair	
22	SAN DIEGO ETHICS COMMISSION	
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