STIPULATION

THE PARTIES STIPULATE AS FOLLOWS:

1. Petitioner, Christina M. Cameron, 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 Election Campaign Control Ordinance [ECCO], SDMC section 27.2901, et seq.

2. William Baber [Baber] is the treasurer of the Yes on Propositions A, B & C Committee [Committee]. The Committee was primarily formed to support three City of San Diego ballot measures in the June 2008 primary election, and is registered with the State of California (Identification No. 1305653). Baber and the Committee are referred to herein as “Respondents.”

3. Bob Nelson [Nelson] was the campaign consultant and responsible officer of the Committee.
4. 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.

5. This Stipulation resolves all factual and legal issues raised in this matter, including any material findings contained in the forthcoming Final Audit Report by the Ethics Commission without the necessity of holding an administrative hearing to determine Respondents’ liability.

6. Respondents understand and knowingly and voluntarily waive 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. Respondents agree to hold the City of San Diego harmless from any and all claims or damages resulting from the Commission’s investigation, this stipulated agreement, or any matter reasonably related thereto. Respondents further agree 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.

7. Respondents acknowledge 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.

8. The parties agree that in the event the Ethics Commission refuses to accept this Stipulation, it shall become null and void. Respondents further agree 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

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

10. On April 10, 2008, the Committee filed an amended Form 410 indicating that the Committee, formed earlier for the purpose of supporting Propositions A, B, and C on the June 3, 2008, ballot, had qualified as a committee as defined by ECCO.

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

12. According to Government Code sections 82036 and 84203.3, any City ballot measure committee that received nonmonetary contributions totaling $1,000 from a single source between May 18, 2008, and the primary election on June 3, 2008, was required to file a Late Contribution Report [Form 497] with the City Clerk within forty-eight (48) hours.

13. On May 22, 2008, the Committee received a nonmonetary contribution from the Sycuan Band of the Kumeyaay Nation [Sycuan] in the form of a $25,000 payment to the Lincoln Club of San Diego Voter Guide [LCVG], a slate mailer organization, for the inclusion of Propositions A, B, and C in LCVG slate mailers.

14. On May 23, 2008, LCVG, pursuant to the requirements of California Government Code section 84203.3, sent the Committee a letter via fax transmission notifying the Committee that the Committee had received a nonmonetary contribution from Sycuan in the amount of $25,000. Because LCVG sent this fax to a fax number of a client of Respondent Baber rather than the Committee’s primary fax number, Respondent Baber did not retrieve this notification until May 27, 2008.

15. On May 27, 2008, the Committee filed a Form 497 and inaccurately disclosed that it received the nonmonetary contribution from Sycuan on May 27, 2008, rather than on May 22, 2008.
16. To ensure that the identity of persons spending significant sums of money to support or oppose particular ballot measures is readily available to the public, ECCO requires each committee that places an advertisement supporting or opposing a ballot measure to include a disclosure statement identifying any person whose cumulative contributions are $50,000 or more. SDMC § 27.2975.

17. On May 13, 2008, the Committee received a monetary contribution from Sycuan in the amount of $45,000. As discussed above in Paragraph 13, the Committee also received a nonmonetary contribution from Sycuan on May 22, 2008, in the amount of $25,000. Therefore, as of May 22, 2008, the Committee had received contributions from Sycuan totaling $70,000.

18. Respondent Baber did not inform Nelson, who was responsible for producing the Committee’s communications, that Sycuan had crossed the $50,000 disclosure statement threshold.

19. On May 31, 2008, the Committee distributed a pre-recorded telephone message to approximately 33,000 individuals and households for the purpose of supporting Propositions A, B, and C. Because Respondent Baber did not inform Nelson of the contribution, the pre-recorded telephone message did not include the identity of Sycuan as a contributor of $50,000 or more.

Counts

Count 1 – Violation of SDMC section 27.2930

20. Respondents violated SDMC section 27.2930 by failing to accurately and timely disclose the $25,000 nonmonetary contribution from Sycuan. In particular, Respondents inaccurately disclosed that the contribution was received on May 27, 2008, when in fact it was received on May 22, 2008. In addition, although the Committee should have filed the Form 497 on or before May 24, 2008, Respondents did not file it until May 27, 2008.

Count 2 – Violation of SDMC section 27.2975

21. Respondents violated SDMC section 27.2975 by distributing a pre-recorded telephone message on May 31, 2008, for the purpose of supporting Propositions A, B, and C that did not identify Sycuan as a contributor of $50,000 or more.
Factors in Aggravation

22. On May 23, 2008, Respondent Baber received timely written notice from LCVG stating that Sycuan made a nonmonetary contribution in the amount of $25,000 to the Committee. Respondent Baber disregarded this information and filed a Form 497 on May 27, 2008, inaccurately disclosing that the Sycuan contribution was received on May 27, 2008. In so doing, Respondent Baber concealed the fact that the contribution was not timely reported within 48 hours, disregarding his obligation as a campaign treasurer to accurately and timely report the Committee’s nonmonetary contributions. As a result, approximately 33,000 pre-recorded campaign phone calls were produced and disseminated for the Committee that did not identify Sycuan as a contributor of $50,000 or more.

Factors in Mitigation

23. The Committee, through its responsible officer, Bob Nelson, fully cooperated in the investigation by voluntarily and timely producing needed documents and information pertinent to the investigation.

Conclusion

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

25. Respondents acknowledge that the Ethics Commission may impose increased fines in connection with any future violations of the City’s campaign laws.
26. Respondent Baber has accepted responsibility for the violations discussed herein and therefore agrees to pay a fine in the amount of $10,000 for violating SDMC sections 27.2930 and 27.2975. This amount must be paid by check or money order made payable to the City Treasurer no later than June 30, 2012. Respondent Baber acknowledges that if the fine is not timely paid in full, the Commission may refer the collection of the fine to the City Treasurer’s Collection Division, which may pursue any or all available legal remedies to recover late penalties, interest, and costs, in addition to seeking the outstanding balance owed.

DATED: __________________________
CHRISTINA M. CAMERON, General Counsel
ETHICS COMMISSION, Petitioner

DATED: __________________________
BOB NELSON, on behalf of Respondent, YES ON PROPOSITIONS A, B & C COMMITTEE

DATED: __________________________
WILLIAM BABER, Respondent

DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on December 15, 2011. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondents pay a fine in the amount of $10,000.

DATED: __________________________
CLYDE FULLER, Chair
SAN DIEGO ETHICS COMMISSION