BEFORE THE CITY OF SAN DIEGO
ETHICS COMMISSION

In re the Matter of:
SAN DIEGANS FOR RETIREMENT SECURITY – OPPOSE DEMAIO FOR MAYOR 2012; SAN DIEGO CAN DO BETTER, NO ON MEASURE B FOR RETIREMENT FAIRNESS; AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES AFL-CIO; AFSCME CALIFORNIA PEOPLE; and AFSCME LOCAL 127, 
Respondents.

STIPULATION

THE PARTIES STIPULATE AS FOLLOWS:

1. Petitioner Stacey Fulhorst is the Executive Director 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. At all times mentioned herein, American Federation of State, County, and Municipal Employees [AFSCME], AFSCME California People, and AFSCME Local 127 were the sponsors of San Diegans for Retirement Security – Oppose DeMaio for Mayor 2012 [SDRS] (registered with the State of California, Identification No. 1346793), and San Diego Can Do
Better, No on Measure B for Retirement Fairness [SDCDB] (registered with the State of California, Identification No. 1346628). SDRS, SDCDB, AFSCME, AFSCME California People, and AFSCME Local 127 are collectively referred to herein as “Respondents.”

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 Respondents’ liability.

5. 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.

6. 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.

7. 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

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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. Because SDRS and SDCDB were formed for the purpose of opposing a City candidate and ballot measure respectively, Respondents are required to comply with the provisions in ECCO.

9. 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 [FPPC]. It is unlawful under ECCO to fail to comply with the disclosure requirements of ECCO and state law. SDMC § 27.2930(j).

10. Committees are required to file campaign disclosure statements with the City Clerk in accordance with the deadlines established by state law. With respect to the June 2012 primary election, any committee that made independent expenditures to support or oppose a City candidate in the 16 days before the election (May 20, 2012, through June 4, 2012) was required to file a Late Independent Expenditure Report [Form 496] within 24 hours with the City Clerk. Cal. Gov’t Code §§ 82036.5, 84204.

11. In addition to the above filing requirements, ECCO mandates that all committees that pay for mass campaign literature (200 substantially similar pieces of campaign literature) for the purpose of supporting or opposing a City candidate or measure include the words “paid for by” followed by the name and address of the committee. SDMC § 27.2970. This disclosure must be made in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size. *Id.*

12. SDRS made an independent expenditure on May 22, 2012, in the amount of $21,742.94 to support the mayoral candidacy of Bob Filner. Respondents filed a Form 496 with the City Clerk to disclose this independent expenditure on May 29, 2012, six days late.

13. Respondents produced and distributed mass campaign literature in the form of five mailers, two door hangers, and two handouts in connection with the June 2012 primary election;
four of these mailers, one door hanger, and one handout did not comply with the “paid for by” disclosure requirements in the City’s campaign laws:

(a) SDRS produced a mailer on approximately May 4, 2012, that was distributed to 73,674 City residents. This mailer included a “paid for by” disclosure printed in 8-point type.

(b) SDRS and SDCDB jointly produced 20,000 copies of a door hanger on approximately May 4, 2012. This door hanger included a “paid for by” disclosure printed in 8-point type.

(c) SDRS and SDCDB jointly produced 20,000 copies of a handout on approximately May 14, 2012. This handout included the names of the committees in 12-point type but did not include the phrase “paid for by” before the committee names.

(d) SDRS produced a mailer on approximately May 25, 2012, that was distributed to 41,367 City residents. This mailer included the name of the committee in 12-point type but did not include the phrase “paid for by” before the committee name.

(e) SDRS produced a mailer on approximately May 25, 2012, that was distributed to 47,802 City residents. This mailer included the name of the committee in 12-point type but did not include the phrase “paid for by” before the committee name.

(f) SDCDB produced a mailer on approximately May 30, 2012, that was distributed to 62,817 City residents. This mailer included the name of the committee in 12-point type but did not include the phrase “paid for by” before the committee name.

Counts

Count 1 - Violation of SDMC section 27.2930

14. Respondents violated SDMC section 27.2930 by failing to timely file a Form 496 with the City Clerk disclosing an independent expenditure made on May 22, 2012. Respondents filed the Form 496 on May 29, 2012, six days late.

Counts 2 through 7 - Violations of SDMC section 27.2970

15. Respondents violated SDMC section 27.2970 by producing and distributing mass campaign literature in the form of four mailers, one door hanger, and one handout that did not comply with the “paid for by” disclosure requirements. As discussed above in Paragraph 13, one
mailer and one door hanger included the disclosure in 8-point type instead of the requisite 12-point type size, and one handout and three mailers did not include the phrase “paid for by” before the names of the committees.

**Factors in Mitigation**

16. Respondents have cooperated fully with the Ethics Commission investigation.

**Conclusion**

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

18. Respondents acknowledge that the Ethics Commission may impose increased fines in connection with any future violations of the City’s campaign laws.

19. Respondents agree to pay a fine in the amount of $4,000 for violating SDMC sections 27.2930 and 27.2970. This amount must be paid no later than October 5, 2012, by check or money order 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.

[REDACTED]

DATED:_________________  
STACEY FULHORST, Executive Director  
ETHICS COMMISSION, Petitioner

[REDACTED]

DATED:_________________  
WILLIE PELOTE, SR., on behalf of Respondents SAN DIEGANS FOR RETIREMENT SECURITY – OPPOSE DEMAIO FOR MAYOR 2012; SAN DIEGO CAN DO BETTER, NO ON MEASURE B FOR RETIREMENT FAIRNESS; AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES AFL-CIO; AFSCME CALIFORNIA PEOPLE; and AFSCME LOCAL 127
DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on ________, 2012. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of $4,000.

[REDACTED]

DATED:___________________

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CLYDE FULLER, Chair
SAN DIEGO ETHICS COMMISSION