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7 Petitioner

8 **BEFORE THE CITY OF SAN DIEGO**
9 **ETHICS COMMISSION**

10 In re the Matter of:) Case No.: 2012-58
11)
12 CONSERVATIVES FOR GAY RIGHTS) **STIPULATION, DECISION, AND**
13 SUPPORTING CARL DEMAIIO FOR) **ORDER**
14 MAYOR 2012 WITH MAJOR FUNDING)
15 PROVIDED BY THE CHARLES)
16 MCHAFFIE TRUST, JUAN BOYCE, JESUS)
17 CARDENAS, and CYNARA VELAZQUEZ,)
18 Respondents.)
19)
20)
21)

22 **STIPULATION**

23 **THE PARTIES STIPULATE AS FOLLOWS:**

24 1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego Ethics
25 Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer,
26 implement, and enforce local governmental ethics laws contained in the San Diego Municipal
27 Code [SDMC] relating to, among other things, the provisions of the Election Campaign Control
28 Ordinance [ECCO], SDMC section 27.2901, et seq.

29 2. At all times mentioned herein, Juan Boyce [Boyce], Jesus Cardenas [Cardenas], and
30 Cynara Velazquez [Velazquez] were the principal officers of Conservatives for Gay Rights
31 Supporting Carl DeMaio for Mayor 2012 with Major Funding Provided by the Charles McHaffie
32 Trust [CGR], a City committee registered with the State of California

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1 (Identification No. 1352465). CGR, Boyce, Cardenas, and Velazquez are collectively referred
2 to herein as “Respondents.”

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

6 4. This Stipulation resolves all factual and legal issues raised in this matter by the
7 Ethics Commission without the necessity of holding an administrative hearing to determine
8 Respondents’ liability.

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

20 6. Respondents acknowledge that this Stipulation is not binding upon any other law
21 enforcement or government agency and does not preclude the Ethics Commission from referring
22 this matter to, cooperating with, or assisting any other law enforcement or government agency
23 with regard to this or any other related matter.

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

1 **Summary of Law and Facts**

2 8. ECCO defines “committee” as any person or combination of persons who raise
3 \$1,000 or more for the purpose of supporting or opposing a candidate or ballot measure, or make
4 independent expenditures of \$1,000 or more, within a single calendar year. SDMC § 27.2903.

5 9. ECCO requires committees to file campaign statements in the time and manner
6 required by California Government Code sections 81000, *et seq.* and the regulations adopted by
7 the Fair Political Practices Commission [FPPC]. It is unlawful under ECCO to fail to comply
8 with the disclosure requirements of ECCO and state law. SDMC § 27.2930(g).

9 10. According to FPPC Regulation 18402.1, committees must disclose the names of
10 their principal officers on their Statements of Organization [Forms 410]. The term “principal
11 officer” is defined as the “individual primarily responsible for approving the political activity of
12 the committee including, but not limited to, the following activities:

- 13 (1) Authorizing the content of the communications made by the committee.
14 (2) Authorizing expenditures, including contributions, on behalf of the committee.
15 (3) Determining the committee's campaign strategy.”

16 11. The Commission’s investigation revealed that Respondent Cardenas was
17 responsible for authorizing the content of CGR’s communications and determining its campaign
18 strategy, Respondents Boyce and Cardenas were responsible for authorizing CGR’s
19 expenditures, and Respondent Velazquez helped organize the committee and was responsible for
20 establishing an email account for CGR and preparing its campaign disclosure statements.

21 12. On October 4, 2012, Respondents filed a Form 410 that identified Juan Boyce as
22 the only principal officer of CGR. The Form 410 failed to also identify Respondents Cardenas
23 and Velazquez as principal officers. Evidence obtained during the course of the Commission’s
24 investigation reveals that Respondents had no basis for failing to identify Cardenas and
25 Velazquez as principal officers of CGR.

26 13. When filing a Form 410, a committee must disclose its street address. SDMC §
27 27.2930, Cal. Gov’t Code § 84102. Identifying a post office box is not legally sufficient, nor is
28 identifying the street address of an entity that provides mail receiving and forwarding services.

1 14. The Form 410 filed by Respondents on October 4, 2012, includes an address for a
2 “virtual office” (i.e., mailbox service) leased by Respondents for the period from October 1
3 through 31, 2012. Respondents failed to provide an actual street address for CGR.

4 15. ECCO requires committees to maintain records in accordance with the guidelines
5 set forth in FPPC Regulation 18401 for a period of four years. SDMC § 27.2925. With respect
6 to expenditures, committees are required to maintain detailed records reflecting the goods or
7 services provided as well as the person or vendor who provided them. FPPC Regulation
8 18401(a)(4). In addition, if a committee pays for live or recorded telephone calls to 500 or more
9 individuals or households that mention a City candidate, ECCO requires the committee to
10 maintain a record of the number of calls made. SDMC § 27.2971(e).

11 16. CGR paid Asher Burke dba San Diego Research Group \$7,000 to disseminate a
12 robo-call on approximately October 31, 2012, using the script attached hereto at Exhibit 1.
13 Neither the Respondents nor Mr. Burke maintained any records reflecting the number of robo-
14 calls made.

15 17. CGR also paid Asher Burke dba San Diego Research Group \$5,000 for printing and
16 canvassing. The literature printed by CGR and disseminated by canvassers in the weeks leading
17 up to the November 2012 general election is attached as Exhibit 2. On November 3, 2012,
18 Respondents filed a Late Independent Expenditure Report [Form 496] stating that they paid
19 \$2,000 for “campaign literature and mailing” and \$3,000 for “canvassers” on November 2, 2012.
20 (Respondents subsequently filed an amended Form 496 to change the descriptions to “printing
21 expenses” and “field team.”) During the course of the Commission’s investigation, witnesses
22 asserted that the initial plan to mail the literature was changed and that the literature was
23 distributed by canvassers; however, this information could not be corroborated because Mr.
24 Burke did not maintain or provide records to Respondents reflecting the identity of the printer
25 who produced the literature, the number of pieces produced, or the identity of canvassers
26 reportedly paid to distribute the literature.

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1 Counts

2 **Count 1 - Violations of SDMC section 27.2930**

3 18. Respondents violated SDMC section 27.2930 by failing to identify all of CGR's
4 principal officers and failing to provide an actual street address for CGR on the Form 410 filed
5 on October 4, 2012.

6 **Count 2 – Violations of SDMC section 27.2925**

7 19. Respondents violated SDMC section 27.2925 by failing to maintain records
8 reflecting the number of robo-calls made, and by failing to maintain adequate records relating to
9 the production and distribution of campaign literature.

10 Conclusion

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

13 21. Respondents acknowledge that the Ethics Commission may impose increased fines
14 in connection with any future violations of the City's campaign laws.

15 22. Respondents agree to file an amended Form 410 to properly identify CGR's
16 principal officers and street address within seven (7) days following approval of the Stipulation
17 and execution of the accompanying Decision and Order by the Ethics Commission.

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EXHIBIT 1

(1) {NEW RECORDING}

Hello, I'm calling to conduct a brief survey regarding the upcoming race for the City of San Diego Mayoral race.

(2) {NEW RECORDING}

In the mayoral race for the City of San Diego, the candidates are:

Bob Filner, Congressman
or
Carl DeMaio, San Diego Councilman.

If you intend to vote for Bob Filner, Congressman, please press 1.

If you intend to vote for Carl DeMaio, San Diego Councilman, please press 2.

If you are undecided, please press 3.

(3) {NEW RECORDING}

[If they press 1]

Thank you for supporting Bob Filner. Conservatives for Gay Rights
In support of Carl DeMaio for Mayor 2012
With major funding provided by the Charles McHaffie Trust

(4) {NEW RECORDING}

[If they press 2]

You have selected Carl DeMaio. I would like to ask you a few more brief questions regarding your decision of who to vote for in this election.

I'm going to read you a few facts about Carl DeMaio and would like to find out if they make you more likely, or less likely, to support Carl DeMaio.

If you knew that Carl DeMaio wants require city employees to pay their full and fair share of the cost of their pension benefits, would you be more likely or less likely to vote for Carl DeMaio, or does this fact make no difference?

If you'd be more likely to vote for Carl DeMaio, please press 1.

If you'd be less likely to vote for Carl DeMaio, please press 2.

If this fact makes no difference, please press 3.

(5) {NEW RECORDING}

Thank you. If you knew that Carl DeMaio, If you knew Carl DeMaio was the first openly gay man to be elected to our San Diego Council, would you be more likely or less likely to vote for Carl DeMaio, or does this fact make no difference?

If you'd be more likely to vote for Carl DeMaio, please press 1.
If you'd be less likely to vote for Carl DeMaio, please press 2.
If this fact makes no difference, please press 3.

(6) {NEW RECORDING}

Thank you. If you knew Carl DeMaio was the leading advocate of creating a message of hope to small business growth, would you be more likely or less likely to vote for Carl DeMaio, or does this fact make no difference?

If you'd be more likely to vote for Carl DeMaio, please press 1.
If you'd be less likely to vote for Carl DeMaio, please press 2.
If this fact makes no difference, please press 3.

(7) {NEW RECORDING}

Thank you. If you knew Carl DeMaio has the full support of Defense Industry Business Leaders and the Port of San Diego Ship Repair Association, would you be more likely or less likely to vote for Carl DeMaio, or does this fact make no difference?

If you'd be more likely to vote for Carl DeMaio, please press 1.
If you'd be less likely to vote for Carl DeMaio, please press 2.
If this fact makes no difference, please press 3.

(8) {NEW RECORDING}

Thank you. Just one final question. If you knew that Carl DeMaio would be the first openly gay mayor of a big city, would you be more likely or less likely to vote for Carl DeMaio, or does this fact make no difference?

If you'd be more likely to vote for Carl DeMaio, please press 1.
If you'd be less likely to vote for Carl DeMaio, please press 2.
If this fact makes no difference, please press 3.

(9) {NEW RECORDING}

Thank you for your time. Have a nice day!

This call was paid for by
Conservatives for Gay Rights
In support of Carl DeMaio for Mayor 2012

With major funding provided by the Charles McHaffie Trust

EXHIBIT 2



**Conservatives for Gay Rights endorses:
Carl DeMaio for Mayor**

We conservatives know that liberty means that someone can pick a partner of their choice.

We commend Carl on his conservative policies and excercising his liberties.

Stand up for Liberty.

Stand up for Carl DeMaio for Mayor!



CARL DEMALIO for Mayor



Liberty [Lib-er-tee]

- freedom from control, interference, obligation, restriction, hampering conditions, etc.; power of right of doing, thinking, speaking, etc., according to choice.

Conservatives for Gay Rights in support of Carl DeMaio for Mayor 2012 with major funding provided by the Charles McHaffie Trust ID #1352465
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