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VIA FACSIMILE

Karin E. Winner
Editor-in-Chief
San Diego Union-Tribune
P.O. Box 120191
San Diego, CA 94112-0191

Re: *Demand for Retraction Made on Behalf of Karen Heumann*

Dear Ms. Winner:

On behalf of San Diego resident and Assistant City Attorney Karen Heumann, I write to demand an immediate retraction of the editorial published in the San Diego Union-Tribune on October 10, 2007 entitled "Ethical Breach." That editorial, a copy of which is attached to this letter, defames Ms. Heumann by misstating the law, misrepresenting the facts, and falsely and unfairly impugning her integrity.

The editorial makes two defamatory accusations. First, it falsely accuses Ms. Heumann of making a campaign contribution to the City Attorney in violation of the San Diego City Charter. The charter section on which your editorial relies, section 218, is entitled "No Contributions *for* Employment." It is part of the original 1931 charter. Coming right after another original 1931 section entitled "No Payment *for* Office," the logical reading of those sections is that they were intended to prohibit bribery and gratuities in connection with city employment. Section 217 prohibits giving or promising something of value; section 218 prohibits soliciting or accepting something of value. Neither section prohibits the voluntary making of a campaign contribution by a city employee.

The topic of political activities by city workers is addressed in three other sections of the charter: section 31, which is entitled "Political Activities" and is found in article V on Executive and Administrative Service, and section 134, entitled "Political Influence Prohibited," and section 135, entitled "Certain Political Practices Forbidden," both of which are found in article VIII on the Civil Service.

As the history of those latter sections makes clear, even if section 218 could be construed to prohibit making or accepting a voluntary campaign contribution, such a construction would be unconstitutional. Even the most cursory attempt to research the law in this area would have uncovered a 2002 Opinion Letter from then-City Attorney Casey Gwinn which exhaustively describes the history of San Diego's attempts to regulate the political activities of city employees and the preemption of most such attempts by state legislation. A copy of that letter, which is readily available on the San Diego city website, is attached. Briefly, as the letter explains:

1. Charter sections 31 and 134 in an earlier iteration prohibited city employees from being actively involved in city campaigns or soliciting or making campaign contributions to city officials.

2. A series of California Supreme Court decisions in the 1960's clarified that only the most narrowly tailored restrictions could be placed on the political activities of public employees. Such employees cannot be compelled to relinquish all their First Amendment rights in order to gain public employment.

3. In response, the California Legislature in 1976 enacted a series of statutes which made regulation of the political activities of public employees a matter of statewide concern and specifically superseded "all provisions on this subject in . . . any city, county, or city and county charter. . . ." (Gov. Code, § 3201.) The legislation declared that, except as specifically provided by the Government Code, "no restriction shall be placed on the political activities of any officer or employee of a state or local agency." (*Id.*, § 3203.) The only restriction allowed was a ban on an officer, employee or candidate knowingly soliciting a political contribution from an officer or employee of that agency except as part of a general solicitation made to a significant segment of the public. (*Id.*, § 3205.)

4. San Diego in turn sponsored a ballot measure in 1979 to amend city charter sections 31 and 134. Those sections now prohibit political activities, including the making of campaign contributions, "during regular hours of employment" or in city offices (section 31) and they prohibit the granting of a city job in exchange for "partisan political service" (section 134). Section 135 prohibits retaliation against city employees "for withholding or neglecting to make any contribution . . ." Nothing in those charter provisions prohibits a city employee from voluntarily making a campaign contribution to an elected city official.

5. Similarly, the San Diego Ethics Code prohibits only the solicitation of contributions from subordinates, consistent with state law, and explicitly "does not prevent City employees from making contributions to City candidates." (City of San Diego Ethics Comm., 2008 Candidate Manual at 9-1 (May 2007).)

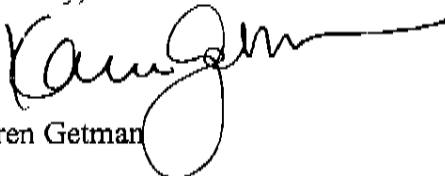
It is extraordinarily reckless to accuse Ms. Heumann, who as you know is a top-level city attorney, of violating city law without bothering to check whether your legal analysis is correct. The false accusation that Ms. Heumann was engaged in dishonest or illegal conduct constitutes libel per se.

That is true also of the reckless and false accusation that Ms. Heumann's annual merit raise is in any way connected to her campaign contribution. Again, had you bothered to do any research, you would have discovered that approximately 72% of the attorneys in the City Attorney's office received raises at about the same time as Ms. Heumann, including many who have never contributed to the City Attorney's campaigns. If you had contacted Ms. Heumann, you also would have learned that her contribution was not solicited by the City Attorney and that the timing of the contribution was dictated by the start of the fundraising period, and not by any employment decision. Your suggestion of a quid pro quo impugns the integrity of a dedicated public servant and is libelous per se.

Unfortunately, even after Ms. Heumann and others called a press conference on October 10, 2007 to set the facts straight, the Union-Tribune again repeated its defamatory accusations. An article in the October 11, 2007 paper entitled "Aguirre Says Campaign Cash Not Solicited" states: "Robert Kittle, editor of the Union-Tribune's editorial page, said: "The charter is very clear in black and white. It prohibits city officials from accepting contributions of any kind from their subordinates. The city attorney has patently violated this provision.'" The only conclusion one can draw from that quote is that Mr. Kittle and the Union-Tribune, even in the face of evidence to the contrary, are deliberately disseminating a false statement of the law in order to impugn the integrity of the City Attorney and his employees, including Ms. Heumann.

For these reasons, Ms. Heumann demands an immediate, prominently placed, retraction of these false and libelous accusations. Please contact me promptly with your response.

Sincerely,


Karen Getman