

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made this ___ day of June, 2020 by and between Howard Jarvis Taxpayers Association, and John Suttie (hereafter referred to jointly as “Plaintiffs”) and the County of Los Angeles (hereafter “Defendant”).

RECITALS

1. WHEREAS, Defendant placed Measure H, a proposed countywide sales tax increase, on the March 7, 2017 Special Election ballot held throughout the County.

2. WHEREAS, Defendant entered into an agreement (the “contract”) with Public Finance Strategies, LLC dba TBWB Strategies (“TBWB”) on January 20, 2017, to conduct a public education campaign to support Measure H. The contract called for TBWB to provide the following services: Information and Education Program (\$50,000), Opinion Research (\$60,000), Ethnic News Media (radio) (\$50,000), Digital/On-line Communication (\$330,000), and Miscellaneous expenses (\$10,000) for total of \$500,000. The contract provided for the following additional items at the County’s option: Ethnic News Media (radio) (\$30,000), Digital On-line Communication (\$120,000), and Broadcast Communication (T.V.) (\$350,000) for a total of an additional \$500,000. On February 14, 2017, all five Board members voted in favor of allocating an additional \$500,000 for the optional items making the contract value \$1,000,000.

3. WHEREAS, along with other activity, TBWB arranged for television commercials to run on cable news stations regarding the Homeless Initiative. The television commercials on cable news stations began running on February 14, 2017, and ran up until the election on March 7, and on a limited basis through the end of March. The commercials included the words: “The Los Angeles County Homeless Initiative” with the Homeless Initiative logo, as well as the slogan “Real help. Lasting Change.” The television commercials that ran before the election also included the words: “Measure H on the March 7 Ballot” and “Are you Ready? Vote March 7.”

4. WHEREAS, in addition to running such commercials on cable television, similar video communications ran digitally online. These communications began running in early February and ran up through the election. In addition to the videos, the County also paid for online banners regarding Measure H.

5. WHEREAS, TBWB also arranged for radio commercials to run on Spanish-language radio stations in the Los Angeles area. The commercials discussed the Homeless Initiative and encouraged listeners to visit www.homeless.lacounty.gov to obtain more information.

6. WHEREAS, other expenses incurred by the County included the cost of TBWB's services and reimbursement for travel, and printing costs for various written materials concerning Measure H and/or the Homeless Initiative. In total, TBWB billed the County \$999,993.23 for the Measure H materials it produced and the media it placed.

7. WHEREAS, Measure H required two-thirds voter approval to pass. It received 69.34% of the vote, passing by approximately 2.68%. Measure H is projected to produce \$3.55 billion in tax revenue over its 10-year term.

8. WHEREAS, on March 1, 2017, Plaintiffs filed a formal complaint with the California Fair Political Practices Commission ("FPPC") and the County of Los Angeles alleging that Defendant's expenditure of taxpayer funds was unlawful and that Defendant also violated provisions of the Political Reform Act by failing to file campaign disclosure reports and failing to include a legal disclaimer on Defendant's Measure H communications. The FPPC opened an administrative investigation on March 8, 2017. The County of Los Angeles' District Attorney's Office, the civil prosecutor designated by the Political Reform Act, opted not to pursue a civil enforcement action. Thus, Plaintiffs were then authorized to bring a civil action under Government Code section 91007.

9. WHEREAS, on July 17, 2018, Plaintiffs filed their civil complaint against Defendant alleging numerous violations of the law. A true and correct copy of that complaint is attached hereto and incorporated herein as Exhibit A.

10. WHEREAS, in the Fair Political Practices Commission administrative investigation of Defendant's conduct, it issued a Probable Cause Report on March 21, 2018 and thereafter, on September 21, 2018, it received a finding of probable cause for believing that the Political Reform Act had been violated.

11. WHEREAS, Defendant believes that it complied with the law and denies that it violated the law in any respect.

12. WHEREAS, Defendant filed a special motion to strike Plaintiff's complaint and following the denial of its special motion with respect to four of the five causes of action, Defendant filed a Notice of Appeal. Plaintiffs also filed a Notice of Appeal resulting from the trial court's order granting Defendant's special motion to strike one of its five causes of action.

13. WHEREAS, the parties desire to resolve this dispute and avoid further litigation.

14. THEREFORE, the parties agree to fully and finally settle all claims resulting from the aforementioned conduct, including a claim for attorneys' fees by Plaintiffs under the terms described below.

AGREEMENT AND RELEASE

In consideration of the covenants undertaken and the releases herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Plaintiffs agree to dismiss, with prejudice Superior Court Case No. BC714579 and both Plaintiffs' and Defendant agree to dismiss, with prejudice, Appellate Court Case No. 8302793, pursuant to the California Rules of Court, within 5 days of receipt of settlement proceeds.

2. Defendant agrees that the list of expenditures, by payee, date, and amount, itemized on the FPPC Form 496 attached hereto as Exhibit B, is a complete record of the expenditures that are the subject of Plaintiffs' complaint, which would have been required to be disclosed on various campaign reports if Defendant qualified as a campaign committee at the time. Defendant disputes that it qualified as a committee with respect to Measure H, but is providing this list for purposes of settlement.

3. Defendant expressly denies any liability arising from its conduct with respect to Measure H, and this settlement shall not be considered an admission of liability by Defendant in connection with this matter, any pending or future administrative enforcement matter by the Fair Political Practices Commission, any pending or future civil or criminal matter, or in the matter captioned *California State Association of Counties, et al. v. Fair Political Practices Commission*, Superior Court Case No. B5174653 (the "CSAC Case").

4. Defendant agrees that, to the extent applicable, it will comply with the Government Code, the Political Reform Act (Gov. Code §§ 81000 et. seq), and the California Constitution. Defendant disputes any claim that it violated these laws, and Defendant believes that it complied with these laws in all respects.

5. In the CSAC Case, plaintiffs are challenging the validity of FPPC Regulation 18420.1. To the extent applicable, Defendant agrees to comply with subsections (b)(2), (c), (d), (e) and (f) of regulation 18420.1 pending a final decision, including exhaustion of all appeals, in the CSAC case. Defendant agrees that it will comply with regulation 18420.1(b)(1) upon a final decision, including exhaustion of all appeals, in the CSAC Case, should the California courts uphold that provision.

6. Defendant agrees that it will provide all public records in response to any written request for such records, made pursuant to the California Public Records Act (Gov. Code §§ 6250 et. seq.) by Plaintiffs or the Fair Political Practices Commission concerning contracts, payments, and any public communications, made in connection with any public education campaign concerning a County measure, to the extent required by the California Public Records Act.

7. Defendant will pay Plaintiffs the total sum of one million, three hundred fifty thousand dollars (\$1,350,000), which shall include a settlement amount of one million two hundred thousand dollars (\$1,200,000), and one hundred and fifty thousand dollars (\$150,000) for legal expenses. Defendant shall issue a check made payable for the full settlement amount to: Bell, McAndrews & Hiltachk Client Trust Account, 455 Capitol Mall, Suite 600, Sacramento, CA. 95814, within 30 days of the Fair Political Practices Commission's approval of an Order accepting the terms of this settlement.

8. Bell, McAndrews & Hiltachk Client Trust Account will transmit six hundred thousand dollars (\$600,000) to the General Fund of the State of California pursuant to Government Code section 91009, and six hundred thousand dollars (\$600,000) to Howard Jarvis Taxpayers Foundation, within 15 days of receipt of settlement proceeds.

9. Plaintiffs, on behalf of themselves and each of their respective predecessors, successors, assigns, parents, subsidiaries, related entities, affiliates, agents, managers, representatives, current and former officers, directors, executives, investors, financiers, owners, shareholders, members, partners, employees, attorneys, grantees, transferees, administrators, principals, heirs, trustees, executors, insurers, if any, past and present, and any other person or entity claiming by or through them (collectively, "Plaintiff Releasers"), hereby absolutely and

forever release and discharge Defendant and its respective predecessors, successors, assigns, parents, subsidiaries, related entities, affiliates, agents, managers, representatives, consultants (including TBWB), current and former officers, directors, executives, investors, financiers, owners, shareholders, members, partners, employees, Supervisors, attorneys, grantees, transferees, administrators, principals, heirs, trustees, executors, insurers, if any, past and present, and any other person or entity claiming by or through them (collectively, "Defendant Releasees"), of and from any and all claims, demands, damages, debts, liabilities, interest, accounts, costs, expenses, liens, lawsuits and causes of action of every kind and nature whatsoever whether now known or unknown, suspected or unsuspected, which Plaintiff Releasees now have, own or hold, or at any time heretofore ever had, owned or held, or could, shall or may hereafter have, own or hold against the Defendant Releasees, based upon, related to or by reason of any act or omission whatsoever in any way relating or pertaining to Defendant's ballot measure communications made prior to the date of this Agreement.

10. Plaintiffs and Defendant acknowledge the risk that subsequent to the execution of this Agreement, they may discover facts or may incur, suffer or discover losses, damages or injuries which are unknown and unanticipated at the time this Agreement is signed, which if known on the date of this Agreement, may have materially affected their decision to give the release contained in this Agreement. Despite this knowledge and understanding, Plaintiffs and Defendant hereby assume the risk of such unknown and unanticipated facts and claims, and, except as otherwise provided in this Agreement, hereby waive any alleged right to set aside or rescind this Agreement and any and all rights under California Civil Code Section 1542 which section has been duly explained to and is understood by Plaintiffs and Defendant, and which reads as follows:

" A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

11. Both parties agree and acknowledge that this Settlement Agreement is contingent on the Fair Political Practices Commission's approval of an Order accepting the terms of this settlement and dismissing its enforcement proceedings against Defendant in FPPC Enforcement Matter No. 17/00150 and No. 18/01258, and that this Settlement Agreement will be attached to and made part of the Commission's Order.

12. This instrument constitutes and contains the entire agreement and understanding between the parties and supersedes and replaces all prior negotiations and all agreements proposed or otherwise, whether written or oral, concerning the subject matter hereof.

13. Each individual signing this Agreement warrants and represents that he or she has the right, power, and full authority to execute this Agreement on behalf of his or her client. Each individual represents and warrants that he or she has given any and all notices, and obtained any and all consents, powers, and authorizations necessary to allow the individuals executing this Agreement to enter into this Agreement on behalf of his or her client.

AGREED TO AND EXECUTED on the dates set forth below.

Dated: June 30, 2020

Howard Jarvis Taxpayers Association

By: 

Dated: June 30, 2020

John Suttie

By: 

Dated: June __, 2020

County of Los Angeles

By: _____

APPROVED AS FORM:

Dated: June 30, 2020

Bell, McAndrews & Hiltachk, LLP

By: 

Thomas W. Hiltachk
Brian T. Hildreth
Counsel for Howard Jarvis Taxpayers
Association and John Suttie

Dated: June __, 2020

Kaufman Legal Group, APC

By: _____

Stephen J. Kaufman
Gary S. Winuk
Counsel for County of Los Angeles

Dated: June __, 2020

Miller Barondess, LLP

By: _____

Louis R. Miller
Amnon Z. Siegel
Counsel for County of Los Angeles

Dated: June __, 2020

John Suttie

By: _____

Dated: July 30, 2020

County of Los Angeles

By: 
Mary Wickham

APPROVED AS FORM:


Dated: June __, 2020

Bell, McAndrews & Hiltachk, LLP

By: _____
Thomas W. Hiltachk
Brian T. Hildreth
Counsel for Howard Jarvis Taxpayers
Association and John Suttie

July
Dated: ~~June~~ 30, 2020

Kaufman Legal Group, APC

By: 
Stephen J. Kaufman
Gary S. Winuk
Counsel for County of Los Angeles

July
Dated: ~~June~~ __, 2020

Miller Barondess, LLP

By: _____
Louis R. Miller
Amnon Z. Siegel
Counsel for County of Los Angeles

Dated: June ____, 2020

John Suttie

By: _____

July
Dated: ~~June~~ ____, 2020

County of Los Angeles

By: _____
Mary Wickham

APPROVED AS FORM:

Dated: June ____, 2020

Bell, McAndrews & Hiltachk, LLP

By: _____
Thomas W. Hiltachk
Brian T. Hildreth
Counsel for Howard Jarvis Taxpayers
Association and John Suttie

July
Dated: ~~June~~ ____, 2020

Kaufman Legal Group, APC

By: _____
Stephen J. Kaufman
Gary S. Winuk
Counsel for County of Los Angeles

July
Dated: ~~June~~ ____, 2020

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Louis R. Miller
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Counsel for County of Los Angeles