

SETTLEMENT AGREEMENT AND RELEASE

(*CUT2 v. City of Long Beach, et al.*, Los Angeles Superior Ct. Case No. BC 238,933)

This settlement agreement and release (the "Agreement") is made and entered into as of _____, between plaintiffs Citizens United to Cut the Utility Tax ("CUT2") and Norm Ryan (collectively "CUT2") and defendants City of Long Beach and City Manager Henry Taboada (collectively, the "City defendants");

RECITALS

A. On October 23, 2000, CUT2 filed an action entitled *CUT2 v. City of Long Beach, et al.*, Los Angeles Superior Ct. Case No. BC 238,933 the "Action"), in the Central District of the Superior Court of Los Angeles County. In the action, CUT2 sought restitution, injunctive and declaratory relief arising from certain acts which were committed by one or more employees of the City in connection with Measure J, a ballot initiative to reduce the City's Utility Users Tax (UUT), that was approved by the voters on November 7, 2000.

B. In October, 2000, the City of Long Beach caused to be produced at public expense, 171,000 copies of a publication entitled the Long Beach Wave ("Wave") for mailing to utility customers in the City of Long Beach with the September utility bills in advance of the November 7, 2000 election. The City initially mailed the Long Beach Wave to 47,000 households in the City of Long Beach. The Wave purported to be "dedicated to providing factual information regarding the General Fund, the UUT and the management of the City of Long Beach." Plaintiff alleged that "a review of the Wave in the context of Measure J [was intended to] influence the electorate to vote against Measure J which would cut Long Beach utility taxes by 50% over the next five years." Defendant City denied that allegation.

C. On October 13, 2000, plaintiffs' counsel wrote a letter to the City Attorney and City Clerk for the City of Long Beach objecting to the mailing of the Wave and requesting that the City "cease and desist" from further mailings. On October 19, 2000, the City Attorneys' office informed plaintiffs' counsel that the City intended to revise the Wave and mail that revision along with the full text of Measures I and J with the City Attorney Analysis and all ballot arguments (as they appeared in the ballot pamphlet) to all utility users in the City.

D. CUT2 alleged that the City's actions with respect to the UUT were partisan efforts to impermissibly advocate a "no" vote on Measure J. CUT2 further alleged that the actions of the City defendants constituted an illegal expenditure of public funds in violation of the First Amendment to the United States Constitution and *Stanson v. Mott*, 17 Cal. 3d 206 (1976). Defendant City denied these allegations.

E. On October 24, 2000, Superior Court Judge Dzintra Janavs issued a Temporary Restraining Order ("TRO") and Order to Show Cause ("OSC") re preliminary injunction. The TRO enjoined the City defendants from, inter alia, "using City

facilities, equipment, labor, postage, printing services, mail services, and/or other resources of the City for any publications, including but not limited to the 'Long Beach Wave' or any similar publication that is not a fair and balanced presentation of the principal consequences, good and bad of Measure J and/or the UUT."

F. The City defendants are fully cognizant of their legal responsibilities, and with respect to the settlement of this action, agree to comply with the following legal principles:

1. "A fundamental precept of this nation's democratic electoral process is that the government may not 'take sides' in election contests or bestow an unfair advantage on one of several competing factions." *Stanson v. Mott*, 17 Cal. 3d 206, 217 (1976).

2. "A fundamental goal of a democratic society is to attain the free and pure expression of the voters' choice of candidates. To that end our state and federal Constitutions mandate that the government must, if possible, avoid any feature that might adulterate or, indeed, frustrate, that free and pure choice" *Gould v. Grubb*, 14 Cal. 3d 661, 667 (1975).

G. In order to ensure that the purposes of *Stanson v. Mott* are fulfilled, and to avoid the burdens and costs of further litigation, CUT2 and the City defendants have agreed to reach a full and conclusive settlement of all allegations and issues that were raised or could have been raised in the Action.

NOW THEREFORE, in consideration of the foregoing recitals and of the mutual promises and covenants herein contained, including the release and payment of attorneys' fees contained herein, CUT2 and the City defendants agree as follows:

1. All claims, contentions, allegations and causes of action contained or alleged in the Action, are compromised and settled. It is conclusively established that the previously referred to editions of the Wave failed to set forth a fair and balanced presentation of the principal consequences, good and bad, of Measure J and the UUT.

2. The City defendants will bear their own costs with respect to the Action, including without limitation, attorneys' fees and court costs.

3. The City agrees to pay CUT2's attorneys' fees and costs incurred in the Action in the amount of \$34,644.51 within 10 days after execution of this Agreement. The payment shall be made directly to CUT2's attorneys, Manuel S. Klausner, P.C. and Patrick J. Manshardt.

4. CUT2 and Norm Ryan, on behalf of themselves and the taxpayers of the City of Long Beach and the general public, their attorneys, agents, representatives, successors, and assigns, administrators, heirs, beneficiaries, and successors in interest, do hereby fully release and forever discharge and acquit the City, its City Council, its managers, officers, employees, agents, representatives, volunteers, attorneys, beneficiaries, affiliates, successors and assigns, and Henry Taboada, and his administrators, heirs, beneficiaries, trustees, and successors and assigns

(collectively the "City Releasees") of and from any and all claims, cause or causes of action, including those for damages, injunctive and declaratory relief, or relief by writ of mandate, debts, liens, contracts, agreements, promises, liabilities, demands, damages, losses, costs and attorneys' fees, expenses, liabilities, accounts, obligations, liens, and suits of whatever kind of nature, at law or equity, that arise out of or relate to any actions taken or omitted relating to, arising out of, or in reference to Measure J and/or the UUT or any other political activity of any kind of nature, including but not limited to all claims and causes of action asserted in the Action or that could have been asserted in the Action. This release includes, but is not limited to, any challenge that any action or failure to act by any City Releasee in connection with Measure J violated any constitutional right, law, rule, or regulation.

5. Without limiting this Agreement, CUT2, on behalf of themselves and the taxpayers of the City of Long Beach, and the general public, together with their respective heirs, beneficiaries, trustees, successors in interest, agree, understand, and represent that they understand, that, by executing this Agreement, they relinquish and waive any rights, statutory or otherwise to any claims that are not known or suspected to exist in their favor relating to, arising out of, in connection with, or in reference to, Measure J for any political activity undertaken by any City Releasee, and they hereby expressly waive the provisions of Section 1542 of the California Civil Code which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

6. CUT2 represents and warrants that no portion of any claim or cause of action released herein, or that might have been asserted in the Action, nor any portion of any recovery or settlement to which the party might be entitled, has been assigned or transferred to any other person, entity, firm or corporation not a party to this Agreement, in any claim, demand, suit, including expenses of investigation, attorneys' fees and costs.

7. CUT2 will dismiss this action with prejudice as to all City defendants and all City Releasees upon receipt of the executed Agreement and payment by the City of CUT2's attorneys' fees and costs stated above.

8. CUT2 and the City defendants acknowledge that in connection with the negotiation, drafting and execution of this Agreement, they have each been represented by attorneys of their own choosing, that the parties have jointly prepared this Agreement and that each party has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of this Agreement.

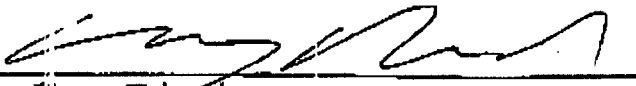
9. This Agreement contains all the terms and conditions agreed upon by the parties. No other agreements, oral or otherwise, will be deemed to exist or to bind any party to this Agreement. No representative of any party had or has any authority to make any representation or promise not reflected or contained in this Agreement, and each of the parties acknowledges that he, she or it has not executed this agreement on any such promise.

This Agreement cannot be modified or changed except by written instrument signed by all the parties.

10. If any action is brought to enforce or interpret any provision of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, cost and disbursements, in addition to any other relief to which that party may be entitled.

11. This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which together will be deemed to constitute one and the same document.

CITY OF LONG BEACH

By 
Henry Taboada
City Manager

HENRY TABOADA

By 
Henry Taboada

CITIZENS TO CUT THE UTILITY TAX ("CUT2")

By 
Norm Ryan
Chairman

NORM RYAN

By 
Norm Ryan

APPROVED AS TO FORM:

PATRICK J. MANSHARDT

By


Patrick J. Manshardt

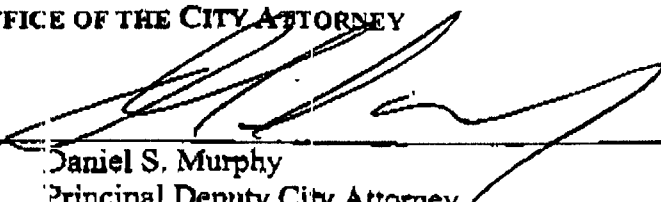
LAW OFFICES OF MANUEL S. KLAUSNER, P.C.

By


Manuel S. Klausner

CITY OF LONG BEACH
OFFICE OF THE CITY ATTORNEY

By


Daniel S. Murphy
Principal Deputy City Attorney