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Superior Court of California
County of Los Angeles

MAY 14 2018

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, SPRING STREET**

HOWARD JARVIS TAXPAYERS ASSN.;
LINNEA WARREN; THOMAS WOLFE;
EDWARD HENRY; AND ALL OTHERS
SIMILARLY STITUTED,

Plaintiffs,

v.

CITY OF PASADENA,

Defendant.

CASE NO. BC550394
Unlimited Jurisdiction

(Case assigned to Hon. Elihu M. Berle)

CLASS ACTION

**SECOND JOINT SUPPLEMENTAL BRIEF
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT**

Complaint Filed: July 21, 2014

Hearing Date: May 22, 2018

Time: 8:30 a.m.

Dept.: SSC 6

FILED

1 **I. Introduction**

2 At the hearing on May 3, 2018, the Court requested further briefing on whether the proposed
3 settlement amounts to an unlawful payment for legislation. It does not. First, case law is clear that
4 the propriety of legislation cannot be evaluated on the motivation behind its adoption absent
5 corruption, fraud or an unconstitutional purpose, none of which are present here. And the settlement
6 preserves the City’s police powers. Second, the settlement advances strong public policy that favors
7 compromising disputed claims. If agreements that required public agencies to take specific
8 legislative steps were per se unlawful, then settlement would be impossible for many legal disputes
9 involving public agencies, a result not supported in law or policy.
10

11 **II. The Proposed Settlement is Lawful and Enforceable**

12 The parties’ have found no case in which a court determined legislation was void simply
13 because such legislation was a settlement term to compromise a disputed legal claim. Rather,
14 California follows the long-established rule that the validity of legislation is measured by the
15 legislation itself and not the motives of or influences on those who enacted the law. (See, e.g., *City*
16 *and County of San Francisco v. Cooper* (“*Cooper*”) (1975) 13 Cal.3d 898, 912-916.) In *Cooper*,
17 municipal and school district employees conducted an allegedly illegal strike to protest salaries and
18 benefits then under consideration. The city and school district met and conferred with the striking
19 employees and ultimately adopted salary schedules. A taxpayer sued to invalidate the legislation
20 adopting the salary schedules because the city and school district adopted them under the “coercive”
21 influence of an illegal public employment strike. (*Id.* at p. 904.)

22 The Supreme Court rejected the petitioner’s argument to invalidate the legislation:

23 [I]t does not follow that legislative enactments which ‘result from’
24 such illegal strikes are therefore invalid. On the contrary, as we discuss
25 below, a firmly established judicial principle decrees that ‘a legislative
act cannot be (nullified) because, in the opinion of a court, it was or
might have been the result of improper considerations.’

26 (*City and County of San Francisco v. Cooper* (1975) 13 Cal.3d 898, 912, quoting *People v.*
27 *County of Glenn* (1893) 100 Cal. 419, 423.) The Court affirmed the rule that “the validity of
28 legislative acts must be measured by the terms of the legislation itself, and not by the motives of, or

1 influences upon, the legislators who enacted the measure.” (*Id.* at p. 913.) Absent fraud, corruption
2 or unconstitutionality, courts cannot withhold the power from local legislators to adopt legislation.
3 (*Id.* at p. 914.) This principle is firmly rooted in the doctrine of separation of powers. (See, *Board*
4 *of Supervisors v. Superior Court* (1995) 32 Cal.App.4th 1616, 1623 *as modified* (Mar. 9, 1995)
5 [Based on separation of powers doctrine, “[t]he judiciary confines evaluation of a statute to the terms
6 of the legislation itself and will eschew inquiry into what motivated or influenced those who voted
7 on the legislation.”].)

8 Here, there is no evidence or allegation that the proposed settlement, including the City’s
9 agreement to consider revised water rates, involves fraud, corruption or an unconstitutional purpose.
10 Indeed, the City’s consideration of such rates must take place at a public meeting, following at least
11 45 days’ notice to the public, and with the public afforded the opportunity to protest such rates as
12 required by Proposition 218. The process belies any suggestion of fraud or corruption. And though
13 the City disputes its existing rates are unconstitutional, the settlement resolves Plaintiffs’ claims
14 otherwise. The anticipated legislation is intended to result in rates that comply with Proposition 218,
15 plainly a constitutional purpose. Under *Cooper*, therefore, the City’s anticipated legislation on water
16 rates must be evaluated on its own terms and a court cannot substitute its opinion for the City’s on
17 whether the legislation results from improper considerations—of which there are none here.

18 Though courts will not examine motivations behind legislation, they will examine whether
19 settlement agreements unlawfully abdicate a city’s police powers, which is against public policy.
20 (*108 Holdings, Ltd. v. City of Rohnert Park* (“*108 Holdings*”) (2006) 136 Cal.App.4th 186.) The
21 “controlling consideration” is whether a contract surrenders, abnegates, divests, abridges or bargains
22 away a city’s control of a police power or municipal function such that the “crucial control element
23 has been lost.” (*County Mobilehome Positive Action Committee, Inc. v. County of San Diego* (1998)
24 62 Cal.App.4th 727, 738.)

25 In *108 Holdings*, Rohnert Park settled a landowner’s challenge to the city’s general plan
26 amendment. Among other terms, the settlement agreement required the city to apply to LAFCO to
27 amend the city’s sphere of influence and to adopt a specific interpretation of its general plan. *108*
28 *Holdings* sued to void the agreement, claiming it amended the city’s general plan by private contract,

1 amounting to an unlawful surrender of the city’s police power. (*108 Holdings, supra*, 136
2 Cal.App.4th at p. 194.) The Court of Appeal disagreed. “Nowhere in the Stipulated Judgment does
3 the City agree to refrain from legislating in the future on the matters that are the subject of the
4 Stipulated Judgment. Nothing in the Stipulated Judgment suggests that the City has given up its
5 authority to alter or amend its General Plan as future circumstances may dictate.” (*Id.* at p. 195.)
6 Furthermore, the City followed the proper procedure to apply to LAFCO. (*Id.* at p. 199.) “108
7 Holdings concedes that the appropriate public process was followed, and in such a case the City’s
8 action is reviewable only by the electorate, not the courts.” (*Ibid.*) And the settlement gave no one
9 veto power over future general plan amendments. The city, thus, maintained control over its general
10 plan and the agreement did not unlawfully contract away Rohnert Park’s police power.

11 Similarly here, the proposed settlement agreement does not divest the City of its power to set
12 water rates. Indeed, the City, as operator of the water utility, is the only entity vested with the power
13 to set water rates. The settlement does not grant rate-setting power to the plaintiff class or to any
14 other entity, nor could it. It does not grant the class veto power over future rates; the existing
15 Proposition 218 protest procedure provides the sole mechanism to protest future water rates. The
16 agreement does not obligate the City to eliminate the water rate differential between Area A and
17 Area B in the Commodity rates and Distribution and Customer (“D&C”) charges, but provides that if
18 rates adopted within the next year do not, the settlement is void.

19 Further, though the settlement sets criteria for the potential elimination of the differential, the
20 agreement places no restrictions on the City’s power to set rates otherwise. For example, the
21 agreement does not prescribe what future water rates should be, how often rates may be adjusted or
22 what general rate design structure to use. It does not mandate or otherwise restrict which user
23 classes, or how many, the City may adopt. Nor does it mandate or prohibit water consumption tiers.
24 It contains no terms limiting capital improvement projects the utility may undertake. It has no
25 restriction on the City’s rights under the Raymond Basin groundwater adjudication. The City even
26 retains the power to refuse to eliminate the differential and return to litigating the underlying dispute.
27 In short, the City retains the crucial control element over future water rates and the settlement is
28 enforceable. The agreement’s express terms do not abdicate the City’s core municipal powers and

1 the Court should not imply such divestiture to determine the agreement unenforceable.

2
3 **III. The Proposed Agreement Advances the Public Policy Favoring**
4 **Settlement of Disputed Claims**

5 Over 125 years ago, our Supreme Court declared that settlement agreements “are highly
6 favored as productive of peace and good will in the community and reducing the expense and
7 persistency of litigation.” (*McClure v. McClure* (1893) 100 Cal. 339, 343; see also *Stambaugh v.*
8 *Superior Court* (1976) 62 Cal.App.3d 231, 236.) “[I]t is the policy of the law to discourage litigation
9 and to favor compromises of doubtful rights and controversies, made either in or out of court.”
10 (*Hamilton v. Oakland School Dist. of Alameda County* (1933) 219 Cal. 322, 329.)

11 The proposed settlement here advances that policy. It is a compromise of disputed claims
12 structured as required by law to provide a public hearing on any future water rates adopted,
13 including the notice and protest procedure required by Proposition 218. It is the result of extensive
14 arms-length negotiations by counsel with particular skill in Proposition 218 and water rates. And it
15 is common for settlements that challenge water rates to result in a new round of rate-setting as one of
16 the key terms. Finding such settlements, on their face, are unlawful would make it impossible for
17 public agencies to settle similar disputes and redirect their limited financial resources from litigation
18 to providing core municipal services. That result would thwart the public policy that favors and
19 encourages settlement. (Cf. *City of Orange v. San Diego County Employees Retirement Assn.* (2002)
20 103 Cal.App.4th 45, 55 (Oral settlement contract with city enforceable consistent with public policy
21 favoring settlement).) For all of these reasons, as well as those briefed earlier, the Court should
22 grant preliminary approval to the settlement agreement.

1 DATED: May 12, 2018

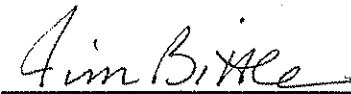
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PROOF OF SERVICE
Howard Jarvis Taxpayers Assn., et al. v. City of Pasadena
Case No. BC550394

I, Angelo McCabe, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 790 E. Colorado Boulevard, Suite 850, Pasadena, California 91109.

Pursuant to the Court's Order Authorizing Electronic Service of Documents dated **May 14, 2018**, I instituted service of the attached document described as follows:

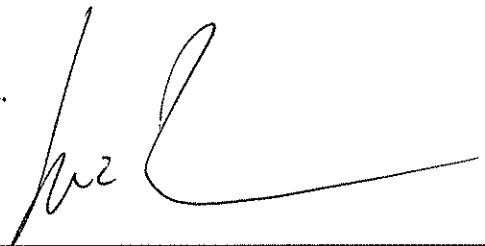
**SECOND JOINT SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF SETTLEMENT**

on the interested parties in this action (**See Attached Service List**) as follows:

BY ELECTRONIC MAIL: I electronically transmitted a copy of the within document in a PDF or word processing format to those persons noted on the attached list at their respective electronic mailbox addresses **using CaseHomePage** in accordance with the Cal. Rules of Court rule 2.251(g) on the date set forth above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **May 14, 2018**, at Pasadena, California.



ANGELO MCCABE

SERVICE LIST

Howard Jarvis Taxpayers Association, et al. v. City of Pasadena
Los Angeles County Superior Court Case No. BC550394 - Hon. Elihu M. Berle, Dept. 323

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