



City Attorney Dennis Herrera News Release

For Immediate Release:
February 20, 2014
Contact: Matt Dorsey
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Herrera, Yaki reach \$75K settlement accord over violations of city's lobbyist ordinance

If approved, settlement with former S.F. Supervisor could be California's largest payment to settle allegations of unreported lobbying activity

SAN FRANCISCO (Feb. 20, 2013)—City Attorney Dennis Herrera today announced that he has reached a settlement agreement in his litigation against former Supervisor Michael Yaki for violating the city's lobbyist ordinance. Herrera's lawsuit, filed last December, alleged no fewer than 70 legal violations during the time Yaki was paid to advocate for a firefighter air replenishment system vendor in the legislative process that revised San Francisco's Fire Code last year.

Under terms of the proposed agreement, which will not become final unless approved by the Ethics Commission and Board of Supervisors, Yaki will pay a total of \$75,000 to the city over a period of nine years; register as a lobbyist and file all disclosures as required by law; and complete a lobbyist training session offered by the Ethics Commission. The item is expected to be calendared for the Ethics Commission's consideration at its Feb. 24 regular meeting. A separate settlement with former retired state fire marshal Ruben Grijalva, which also involves lobbying on behalf of the air system vendor, will also be presented to the Ethics Commission. That pre-litigation agreement requires Grijalva to register as a lobbyist retroactively; file monthly disclosures; pay the required \$500 registration fee; and complete a lobbyist training session offered by the Ethics Commission.

"These proposed settlements should send a strong message that the San Francisco Lobbyist Ordinance has teeth, and that we city officials take seriously our duty to protect transparency in our legislative process," said Herrera. "I'm grateful to both Mr. Yaki and Mr. Grijalva for engaging in settlement negotiations amicably, and for agreeing to fair resolutions that will avoid further litigation costs. I'm also thankful to members of the Board of Supervisors, their aides and other city officials who cooperated with us in our investigation."

[MORE]

The settlement agreement with Yaki, which includes no admission of liability, is believed to represent the largest payment to resolve alleged violations for unreported lobbying activity in California history if approved. (A recent high profile case against Sacramento lobbyist Kevin Sloat by the state's Fair Political Practices Commission, which settled for a record fine of \$133,500 earlier this month, involved Sloat's violations of gift and contribution limits for lobbyists—and not unreported lobbying.)

According to the complaint Herrera filed against Yaki in San Francisco Superior Court on Dec. 4 2013, the former supervisor “flouted the lobbyist ordinance in every way” by failing to register as a lobbyist, failing to disclose the amounts and sources of payments for lobbying, and failing to report his lobbying contacts. The complaint, which was filed with 15 accompanying declarations from Board members, legislative aides, fire commissioners and S.F. Fire Department Chief Joanne Hayes-White, alleges that Yaki misrepresented his identity as a paid lobbyist when trying to set up meetings with five Supervisors. Yaki himself voted for the ordinance in 2000 while a member of the Board of Supervisors.

Yaki's client, San Carlos, Calif.-based Rescue Air Systems, Inc., manufactures a patented “firefighter air replenishment system,” or FARS, which San Francisco's Fire Code has required since 2004 for new buildings with a height of 75 feet or more. When city policymakers undertook their periodic revision to the local Fire Code beginning in 2012, Fire Chief Hayes-White was among numerous city officials to oppose extending the FARS requirement because the San Francisco Fire Department had never used or trained on the system, and because firefighters “do not have confidence that the air coming from the FARS pipes is safe and breathable, or that the system has been checked and maintained on regular basis,” according to Hayes-White's declaration.

Yaki engaged in extensive lobbying efforts for more than a year on Rescue Air Systems' behalf to retain the FARS requirement. According to the city's complaint and supporting declarations, the former supervisor lobbied fire commissioners, S.F. Fire Department officials, staff in the Mayor's Office, and members of the Board of Supervisors and legislative aides to extend the legal requirement for an air replenishment system that only one company—Yaki's client—manufactured. The City Attorney's Office's investigation secured evidence of at least 70 lobbying contacts, including more than 10 lobbying meetings with Supervisors and their legislative aides and more than 50 emails to city officials on behalf of Rescue Air Systems' interests in the Fire Code revision process.

San Francisco's Fire Commission passed a motion recommending that the FARS requirement be altered to offer developers a choice of whether to install FARS or a firefighter service elevator to facilitate oxygen delivery. That recommendation was adopted as part of the San Francisco Fire Code amendments unanimously approved by the Board of Supervisors in September, which Mayor Ed Lee approved on Oct. 3, 2013.

The case is: *Dennis Herrera in his Official Capacity as San Francisco City Attorney v. Michael Yaki*, San Francisco Superior Court, filed Dec. 4, 2013. Documentation from the case is available on the City Attorney's website at: <http://www.sfcityattorney.org/index.aspx?page=570>.

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Plaintiff Dennis J. Herrera in his official capacity as San Francisco City Attorney ("Plaintiff") and Defendant Michael Yaki ("Defendant"). Plaintiff and Defendant are referred to collectively herein as the "Parties."

DEFINITIONS

1. The "Action" refers to Dennis J. Herrera, in his Official Capacity as San Francisco City Attorney v. Michael Yaki, Case No. CGC-13-535880, filed in the Superior Court of the State of California, City and County of San Francisco, on or about December 4, 2013.
2. "Court" means the Superior Court of the State of California, City and County of San Francisco.
3. The "Complaint" refers to the complaint filed by Plaintiff in Dennis J. Herrera, in his Official Capacity as San Francisco City Attorney v. Michael Yaki, Case No. CGC-13-535880, filed in the Superior Court of the State of California, City and County of San Francisco, on or about December 4, 2013.

RECITALS

- A. Defendant is an attorney and political consultant who has worked in the field of government relations within the City and County of San Francisco.
- B. The Action alleges that Defendant violated various provisions of the San Francisco Campaign and Governmental Conduct Code, Article II, Chapter I ("Regulation of Lobbyists").
- C. Defendant denies any liability for all allegations described in the Action.
- D. The Parties wish to end and resolve any and all pending or potential disputes, known or unknown, related to the Action.
- E. In consideration of the promises, covenants, warranties, representations and agreements set forth herein, and each of them, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

F. EFFECTIVE DATE

This Agreement shall become effective on the last date of the fulfillment of all Conditions Precedent described in Paragraph I.

G. NON-ADMISSION OF LIABILITY

The Parties acknowledge and agree in good faith that this Agreement is the result of a compromise. This Settlement Agreement is not an admission of liability. Defendant denies any liability for all allegations described in the Action.

H. CONSIDERATION

1. Nature of Consideration. The consideration for this agreement is a function of the remedies available under Campaign and Governmental Conduct Code section 2.145(c), the late fees available under Campaign and Governmental Conduct Code section 2.145(a), the lobbyist registration fees required by Campaign and Governmental Conduct Code section 2.110(e)(1), and the financial condition of Defendant and his wife.

2. Economic Consideration. Defendant agrees to pay Plaintiff an amount of \$75,000. Payment shall be made according to the following timeline:

(a) \$74,000, paid in installments of \$8,222.22, on or before each of the following dates: February 28, 2015; February 28, 2016; February 28, 2017; February 28, 2018; February 28, 2019; February 28, 2020; February 28, 2021; February 28, 2022; and February 28, 2023.

(b) On or before February 28, 2015, Defendant shall deliver a check for \$1,000 to the San Francisco Ethics Commission. This sum is equivalent to the cost of retroactive registration as a lobbyist for the years of 2012 and 2013, as referenced in section H.5.(a) of this Agreement.

(c) Of the economic consideration set forth in sections H.2.(a), \$6,000 of it is attributable as an equivalent to late fees for Defendant's alleged failure to register as a lobbyist.

3. Real Estate Lien. The installment payments described in Paragraph H.2.(a) shall be documented in a promissory note secured by a lien on the real estate located at [REDACTED]. The settlement is contingent on Plaintiff obtaining the real estate lien. The lien shall be recorded in [REDACTED].

(a) If any installment payment is not paid by the specified date, the entire remaining amount shall accelerate and become due immediately, plus 10% annual interest that would begin to accrue as of the date of this agreement.

(b) Upon request by Defendant, Plaintiff shall record a satisfaction of the lien within 30 days from the date the Defendant has completed all payments due under this Settlement Agreement.

(c) The address, city, state, county, and zip code of the real estate referenced in paragraph H.3. above shall be redacted from any public copies of this Settlement Agreement. This redaction shall include the county of the listed Assessor's Office.

4. Prepayment Option. Defendant may, at any time, prepay any portion of the economic consideration described in Paragraphs H.2.(a) and H.2.(b).

5. Other Consideration.

(a) Defendant shall, without admitting liability, within ninety days of the date he signs this Agreement, register as a lobbyist with the Ethics Commission for the years of 2012 and 2013 in a manner that complies with Campaign and Governmental Conduct Code sections 2.110(a) and (b). As described in Paragraph H.2.(b), the registration fees shall not be due until February 28, 2015.

(b) Defendant shall, without admitting liability, within ninety days of the date he signs this Agreement, file monthly lobbyist disclosures that comply with the requirements set forth in Campaign and Governmental Conduct Code section 2.110(e) for each month from July 2012 up to and including August 2013 and for any subsequent month in which he engaged in any lobbying. The Defendant shall, in good faith, include in these disclosures, at a minimum, each of the contacts with City officials specifically identified in the Complaint and all exhibits thereto.

(c) Defendant shall, without admitting liability, complete a lobbyist training session offered by the Ethics Commission within one year from the date of registration described in Paragraph H.5.(a) above.

6. Stipulated Judgment. Within ten business days of the Effective Date of this Agreement, the Parties shall file a stipulation for entry of judgment and proposed judgment in this Action.

7. Future compliance. Defendant agrees to comply with the Campaign and Governmental Conduct Code at all times in the future when he is engaging in activities regulated by that Code.

8. Releases.

(a) General Release. Plaintiff releases Defendant as well as Michael Yaki Consulting from any and all claims, causes of action, liabilities, and damages, that Plaintiff now has or may in the future have against Defendant arising from or related to any act, event, or occurrence related to the Action (but excluding each Defendant's obligations under this Agreement, which are not released), and this General Release includes without limitation any claim that has been or could have been asserted in the Action.

(b) Release of Unknown Claims. The Parties understand that the facts in respect of which release is made in this Agreement may hereafter turn out to be other than, or different from, the facts now known or believed by them to be true, and hereby accept and assume the risk of the facts turning out to be different, and agree that this instrument shall be and remain in all respects effective and not subject to termination or rescission by virtue of any such difference in facts. The Parties acknowledge that they have been advised by legal counsel and are familiar with the provisions of California Civil Code section 1542, which provides:

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

The Parties, being aware of said code section, expressly agree to waive any right they may have thereunder, as well as under any other statute or common law principle of similar effect.

I. CONDITIONS PRECEDENT

The Parties each understand and agree that this Agreement and all terms herein are contingent upon approval of the Agreement by the San Francisco Board of Supervisors and the San Francisco Ethics Commission, each in their own discretion.

J. BINDING EFFECT; MODIFICATION; ATTORNEYS' FEES

This Agreement is an integrated, binding, and enforceable agreement, represents the entire agreement between the Parties, and supersedes any prior oral or written agreement between the Parties, to the extent any exist. In entering into this Agreement, the Parties represent and warrant that they have not relied on any oral or written statements of the other Party not expressly enumerated in writing in this Agreement. This Agreement may be modified only in a writing signed by the Parties. In the event of litigation to enforce the terms of this Agreement or to recover damages for breach of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs of suit.

K. VENUE, ENFORCEMENT, AND CHOICE OF LAW

This Agreement is being executed in the State of California, and it shall be deemed to be made under, and shall be interpreted in accordance with, the internal laws of the State of California. The Parties agree that, in the event of any dispute concerning this Agreement, suit may be brought only in the Superior Court of California for the County of San Francisco. To the extent possible, the Parties agree that the Superior Court for the County of San Francisco shall have continuing jurisdiction to enforce this Agreement pursuant to California Code of Civil Procedure § 664.6. The Parties agree, as part of the motion for a stipulated judgment, to request that the Court retain jurisdiction to enforce this Agreement pursuant to Code of Procedure § 664.6.

L. LEGAL REPRESENTATION

The Parties acknowledge that they each have had the benefit and advice of independent legal counsel in connection with the Agreement and understand its terms and consequences. The Parties further acknowledge that they have carefully read the foregoing Agreement and the contents thereof, and are duly authorized to execute it. For purposes of interpretation, the Agreement shall be deemed to be jointly drafted by the Parties hereto.

M. SEVERABILITY

If any provision of this Agreement or the application thereof to any Party or circumstance is held invalid or unenforceable, the remaining provisions of the Agreement and the application of such provisions to other parties or circumstances shall not be affected thereby, and to the extent possible shall remain in full force and effect, the provisions of this Settlement Agreement being severable in any such instance.

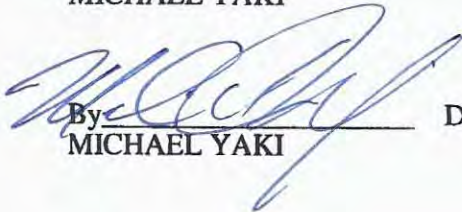
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N. COUNTERPARTS

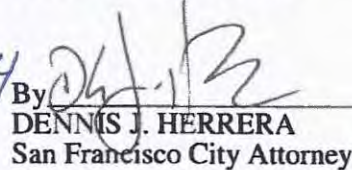
This Agreement may be executed in counterparts, each of which is, and when so executed and delivered shall be, an original, such counterparts together constituting one and the same instrument. Facsimile signatures or signatures contained in electronic copies of this Agreement may be used with the same force and effect as original signatures.

MICHAEL YAKI

DENNIS J. HERRERA

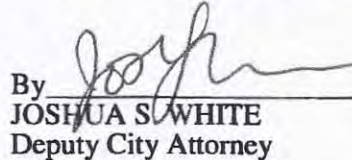

By _____
MICHAEL YAKI

Date: 2/12/14


By _____
DENNIS J. HERRERA
San Francisco City Attorney

Date: 2/12/14

APPROVED AS TO FORM


By _____
JOSHUA S. WHITE
Deputy City Attorney

Date: 2/12/14

Attorney for Plaintiff Dennis J. Herrera in his capacity as San Francisco City Attorney

ADDENDUM

Based on the consideration set forth in Paragraph H of this Settlement Agreement, the San Francisco Ethics Commission agrees to release Defendant and Michael Yaki Consulting, from any and all claims, causes of action, liabilities, and damages arising from or related to any act, event, or occurrence related to the Action (but excluding Defendant's obligations under this Agreement, which are not released), and includes without limitation any claim that has been or could have been asserted based on any act, event, or occurrence related to the Action.

JOHN ST. CROIX

By _____ Date: _____
JOHN ST. CROIX
Executive Director, San Francisco Ethics
Commission

SETTLEMENT AGREEMENT

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DEFINITION

A. The "Action" refers to Dennis J. Herrera, in his Official Capacity as San Francisco City Attorney v. Michael Yaki, Case No. CGC-13-535880, filed in the Superior Court of the State of California, City and County of San Francisco, on or about December 4, 2013.

RECITALS

B. Grijalva was employed by Rescue Air Systems. Some of Grijalva's work on behalf of Rescue Air Systems is described in the Complaint filed in the Action.

C. During the pendency of the Action, Grijalva agreed to serve as a witness to some of Yaki's conduct described in the Action.

D. The Parties wish to end and resolve any and all pending or potential disputes, known or unknown, related to the Action.

E. In consideration of the promises, covenants, warranties, representations and agreements set forth herein, and each of them, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

F. EFFECTIVE DATE

This Agreement shall become effective on the date that the San Francisco Ethics Commission approves this Agreement.

G. CONSIDERATION

1. Within ten days of the Effective Date of this Agreement, Grijalva shall deliver a check for \$500 to the San Francisco Ethics Commission. This sum is for retroactive registration as a lobbyist for the year of 2013.

2. Grijalva shall, within ten days of the Effective Date of this Agreement, register as a lobbyist with the Ethics Commission for the year of 2013 in a manner that complies with Campaign and Governmental Conduct Code sections 2.110(a) and (b).

3. Grijalva shall, within ten days of the Effective Date of this Agreement, file monthly lobbyist disclosures that comply with the requirements set forth in Campaign and Governmental Conduct Code section 2.110(e) for April 2013, May 2013, and June 2013, and for any subsequent month in which he engaged in any lobbying.

4. Grijalva shall complete a lobbyist training session offered by the Ethics Commission within one year of the Effective Date of this Agreement.

5. Future compliance. Grijalva agrees to comply with the Campaign and Governmental Conduct Code at all times in the future when he is engaging in activities regulated by that Code.

H. RELEASE

Herrera releases Grijalva from any and all claims, causes of action, liabilities, and damages, that Herrera now has or may in the future have against Grijalva arising from or related to any act, event, or occurrence related to the Action (but excluding Grijalva's obligations under this Agreement, which are not released), and this Release includes without limitation any claim that has been or could have been asserted in the Action.

I. CONDITIONS PRECEDENT

The Parties each understand and agree that this Agreement and all terms herein are contingent upon approval of the Agreement by the San Francisco Ethics Commission.

J. BINDING EFFECT; MODIFICATION; ATTORNEYS' FEES

This Agreement is an integrated, binding, and enforceable agreement, represents the entire agreement between the Parties, and supersedes any prior oral or written agreement between the Parties, to the extent any exist. In entering into this Agreement, the Parties represent and warrant that they have not relied on any oral or written statements of the other Party not expressly enumerated in writing in this Agreement. This Agreement may be modified only in a writing signed by the Parties. In the event of litigation to enforce the terms of this Agreement or to recover damages for breach of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs of suit.

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L. SEVERABILITY

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M. COUNTERPARTS

This Agreement may be executed in counterparts, each of which is, and when so executed and delivered shall be, an original, such counterparts together constituting one and the same instrument. Facsimile signatures or signatures contained in electronic copies of this Agreement may be used with the same force and effect as original signatures.

RUBEN GRIJALVA



Date: 2/19/2014

RUBEN GRIJALVA

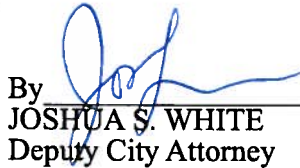
DENNIS J. HERRERA



By _____
DENNIS J. HERRERA
San Francisco City Attorney

Date: 2/19/14

APPROVED AS TO FORM



By _____
JOSHUA S. WHITE
Deputy City Attorney

Date: 2/19/14

Attorney for Plaintiff Dennis J. Herrera in his
capacity as San Francisco City Attorney

ADDENDUM

Based on the consideration set forth in this Settlement Agreement, the San Francisco Ethics Commission agrees to release Ruben Grijalva, from any and all claims, causes of action, liabilities, and damages arising from or related to any act, event, or occurrence related to the Action (but excluding Grijalva's obligations under this Agreement, which are not released), and includes without limitation any claim that has been or could have been asserted based on any act, event, or occurrence related to the Action.

JOHN ST. CROIX

By _____ Date: _____
JOHN ST. CROIX
Executive Director, San Francisco Ethics
Commission

RUBEN GRIJALVA



Date: 2/19/2014

RUBEN GRIJALVA

DENNIS J. HERRERA

By _____
DENNIS J. HERRERA
San Francisco City Attorney

Date: _____

APPROVED AS TO FORM

By _____
JOSHUA S. WHITE
Deputy City Attorney

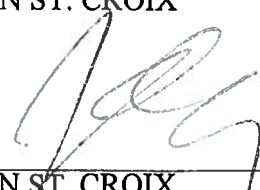
Date: _____

Attorney for Plaintiff Dennis J. Herrera in his
capacity as San Francisco City Attorney

ADDENDUM

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JOHN ST. CROIX

By  _____
JOHN ST. CROIX
Executive Director, San Francisco Ethics
Commission

Date: 2/19/14