File No. 140371 Committee Item No. 8
Board Item No. 3

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Rules **Date** May 15, 2014

Board of Supervisors Meeting **Date** 7/15/14

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Completed by: Alisa Miller Date May 9, 2014
Completed by: Alisa Miller Date May 20, 2014

FILE NO. 140371 ORDINANCE NO.

[Settlement of Lawsuit - Contest Promotions, LLC - City to Receive $375,000]

Ordinance authorizing settlement of the lawsuit filed by Contest Promotions, LLC, against the City and County of San Francisco for $375,000; the lawsuit was filed on September 22, 2009, in the United States District Court for the Northern District of California, Case No. CV-09-4434 SI (MEJ); entitled Contest Promotions, LLC, v. City of San Francisco, et al.; other material terms of said settlement include resolution of Notices of Violation for unpermitted general advertising signs.

Be it ordained by the People of the City and County of San Francisco:.

Section 1. The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 140371 and is incorporated herein by reference.

Section 2. Pursuant to Charter section 6.102(5), the Board of Supervisors hereby authorizes the City Attorney to settle the action entitled Contest Promotions, LLC v. City of San Francisco, et al.; United States District Court for the Northern District of California, Case No. CV-09-4434 SI (MEJ) by the payment of $375,000 by Contest Promotions, LLC and execution of a Settlement Agreement in substantially the form contained in Board of Supervisors in File No. 140371. In addition to the monetary payment, the Settlement Agreement requires Contest Promotions, LLC to apply for new permits for its entire inventory of signs in San Francisco, ensuring that all its signs comply with San Francisco law.

Section 3. The above-named action was filed in the United States District Court for the Northern District of California, on September 22, 2009, and the following parties were named

in the lawsuit: Contest Promotions, LLC as Plaintiff, and City of San Francisco, County of San Francisco, and City and County of San Francisco as Defendants.

APPROVED AS TO FORM AND RECOMMENDED:

DENNIS J. HERRERA
City Attorney

JAMES M. EMERY
Deputy City Attorney

RECOMMENDED:

PLANNING DEPARTMENT

JOHN S. RAHAIM
Director

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SAN FRANCISCO BEAUTIFUL

June 2, 2014

B.O.S. FILES 140667 + 140371

Board President David Chiu
Board of Supervisors
City of San Francisco
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

URGENT – Request for Continuance of BOS Agenda Item 10 - Tuesday, June 3; Proposed Settlement of Contest Promotions Lawsuit (File 140371)

Dear Supervisor:

Please postpone Agenda Item 10 (File 140371), what we believe would be an illegal settlement with Contest Promotions, a scofflaw billboard operator with many illegal signs throughout our City.

A continuance will enable the Supervisors as well as the City Attorney and Planning Department to consider the attached opinion letter recently rendered by Randal Morrison -- California's leading authority on billboard enforcement. Most of his clients are municipalities fending off lawsuits from the billboard industry, including scofflaw firms like Contest Promotions.

Mr. Morrison is available to you, the City Attorney, and Planning Department, and he may be contacted as noted below:

RANDAL R. MORRISON
Attorney and Consultant on Sign Regulation and Public Forum
Sabine & Morrison, P.O. Box 531518, San Diego CA 92153-1518
Tel.: 619.234.2864; email: rrmsignlaw@gmail.com
website: www.signlaw.com
Newsletter: *Sign Regulation / Public Forum Bulletin*

From our research and understanding of the facts, the proposed Contest Promotions settlement agreement would exceed the Board of Supervisors' authority for reasons outlined in Mr. Morrison's letter.

This settlement would legalize new billboards in San Francisco in violation of Prop. G, the "No New Billboards" referendum passed with 79.1% voter approval in 2002. The settlement terms would reclassify certain billboards as onsite ads through a flimsy pretense of conducting a sweepstakes for movie tickets and such. Imitators would compound the

damage to our visual environment, and, in fact, another billboard company has notified the City Attorney it will demand the same privileged treatment proposed for Contest Promotions.

In 2012, San Francisco Beautiful filed a lawsuit to halt a settlement agreement with Metro Fuel, another scofflaw operator. The settlement was later abandoned, and thus our City has been spared the introduction of 120 illegal panel-size billboards. (The lawsuit was supported in the attached *Chronicle* editorial.)

Please grant us a continuance so we may finally be consulted after, in effect, having been ignored. Today we make this informed, good faith request to avoid undue opposition to or protest of the proposed Contest Promotions settlement, and instead are here to conserve our City's code enforcement resources while protecting the integrity of Proposition G.

Sincerely,

Milo F. Hanke,
Past President, SAN FRANCISCO BEAUTIFUL
Board Member, SCENIC AMERICA

Personal office: 100 Bush Street, Suite 1675, San Francisco, CA 94104-3943
(415) 781-6300 | FAX: (415) 781-6301 | milohanke@aol.com

websites: scenic.org & sfbeautiful.org

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E: rmsignlaw@gmail.com
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May 29, 2014

Milo Hanke
100 Bush Street, Suite 1675
San Francisco, CA 94104

Proposed settlement of Contest Promotions v. City of San Francisco
U.S. District Court, Northern District of California, Case No. C 09–04434 SI (Illston)
Contest Promotions v. San Francisco, 2010 WL 1998780 (N.D.Cal.)
Original filing date: September 22, 2009
Certificate of Non Settlement filed: April 30, 2013
SF Supervisors hearing: June 3, 2014

Mr. Hanke:

You have requested my professional opinion on the legality of the proposed settlement referenced above. After reviewing the relevant documents and applicable law (detailed below), I conclude that approval of the proposed settlement by the San Francisco Supervisors would be an *ultra vires* act, that is, an act beyond their legal power. The Supervisors cannot overrule or undermine the will of the people as expressed in a series of voter-approved propositions, all of which ban new or additional billboards / general advertising signs in the City. The transparent purpose of the proposed settlement agreement is to evade the city laws banning new billboards, laws that were created through direct democracy.

Relevant Propositions

* Proposition G – March 5, 2002 Election – "Shall the City prohibit new outdoor commercial advertising signs and regulate relocation of existing outdoor commercial advertising signs?" Voters' Answer: YES – 77.46% of valid votes.
* Proposition K – November 6, 2007 – adopting a City policy to prohibit any increase the amount of general advertising signs on street furniture and City-owned buildings. Voters' Answer: YES – 61.85% of valid votes.
* Proposition E – November 3, 2009 Election – "Shall the City prohibit an increase in the number of general advertising signs on street furniture and specifically prohibit new general advertising signs on City-owned buildings?" Voters' Answer: YES -- 57.28%.
* Proposition D – November 3, 2009 Election – A proposal to change the San Francisco Planning Code to create a Mid-Market Arts Revitalization and Tourism Special Sign District on Market Street between 5th Street and 7th Street to "allow new general advertising signs that reflect the arts and entertainment character of the district;" [etc.] Voters Answer: NO – 54% of valid votes.

By these votes the people of San Francisco have exercised their inherent lawmaking power and sent a clear signal to the world: no more billboards in this city, no more billboards on City property, and no conversion of the Mid Market area to Las Vegas Strip style signage.

There is no doubt that billboards: 1) can be completely banned, *Metromedia v. San Diego*, 453 U.S. 490, 512 (1981) ["[O]ffsite commercial billboards may be prohibited while onsite commercial billboards are permitted"] or 2) limited to existing stock, *Maldonado v. Morales*, 556 F.3d 1037, 1048 (9th Cir. 2009) ["banning new offsite billboards but allowing legal nonconforming billboards to remain 'furthers the State's significant interest in reducing blight and increasing traffic safety,"], or 3) restricted to certain zones or areas, *City and County of San Francisco v. Eller Outdoor*, 192 Cal.App.3d 643, 659 ["[B]ecause the [billboard] prohibition is restricted to only certain sections of town deemed to be of special cultural, historic or scenic importance, the City's interests clearly outweigh any incidental infringement on First Amendment rights"].

The Proposed Settlement

The billboard business can be extremely lucrative. But a majority of people resent the visual and physical intrusions caused by billboards, sometimes called "visual clutter." "It is not speculative to recognize that billboards by their very nature, wherever located and however constructed, can be perceived as an "esthetic harm." *Metromedia v. San Diego*, 453 U.S. 490, 510 (1981). These factors create a strong incentive for billboard companies to create artificial grounds for claiming that their general advertising signs somehow qualify as onsite. The proposed settlement is a clear example.

The new definition for "Category B" Business sign requires only that some "related prize" be offered on the same premises as the sign. Thus, according to the chart, an advertisement for a first run movie qualifies for onsite simply by offering passes to see the movie, even though the movie will never play at that location, and even if movie passes are not regularly offered at that location. It is a kind of legerdemain – substituting the promo item for the real thing.

Incidentally If At All

As recited by Judge Illston in *Contest Promotions v. San Francisco*, 2010 WL 1998780 (N.D.Cal.):

> Defendant City and County of San Francisco ("the City") maintains a municipal code which permits "on-site" advertisements called "Business Signs," but prohibits "off-site" advertisements known as "General Advertising Signs." Id. ¶ 8. A "Business Sign" is defined by San Francisco Planning Code section 602.3 as "[a] sign which directs attention to a business, commodity, service, industry, or other activity which is sold, offered, or conducted, ***other than incidentally***, on the premises upon which such sign is located, or to which it is affixed." . . . A "General Advertising Sign" is defined by section 602.7 as a sign "which directs attention to a business, commodity, industry or other activity which is sold, offered or conducted elsewhere than on the premises upon which the sign is located, or to which it is affixed, and which is sold offered or conducted on such premises only ***incidentally if at all.***" . . . The chief distinction between the two for purposes of this case is whether the sign directs patrons to products or services available in the business which is posting plaintiff's signs.

Judge Illston found the "incidentally" language troublesome, because the term was not defined, and in her view, caused the off-site sign vs. business sign distinction to be void for vagueness. The however,

the meaning is clear enough in context of the intent and purpose of the voter-adopted laws: the city won't accept tricks and shams calculated to give the illusion of "onsite" when in fact the sign is to be used for general advertising for hire.

The language about "other than incidentally" and "incidentally if at all" is common in sign ordinances that isolate billboards as a distinct class. Examples: *Eller Outdoor v. Baltimore*, 784 A.2d 614, 619 (2001), *National Advertising v. City of Orange*, 861 F.2d 246, 247 (1988) (onsite status was determined by activity on the site related to the message on the sign, whether the message was commercial or noncommercial). The "incidentally" phrases are inserted to prevent exactly the sort of fuse now proposed in the settlement: illusory on-site status.

Scams and Shams

Several courts, including U.S. Supreme, have pierced through clever shams that were intended to give a sign the appearance of "onsite" or other legal category when in fact it was to be used for a prohibited purposes, often "general advertising" / billboard use.

Valentine v. Chrestensen, 316 U.S. 52 (1942) was decided in a time when commercial advertising did not have First Amendment protection. The operator of a tourist submarine distributed handbills urging people to buy a ticket and tour the sub. He was told by city officials that the flyers were illegal, but that "he might freely distribute handbills solely devoted to 'information or a public protest.'" He then had the handbills reprinted with a protest message on one side, and the sub promo on the other side, and then resumed distributing them. When this trick reached the U.S. Supreme Court, the first Justice Roberts stated:

> [T]he affixing of the protest against official conduct to the advertising circular was with the intent, and for the purpose, of evading the prohibition of the ordinance. If that evasion were successful, every merchant who desires to broadcast advertising leaflets in the streets need only append a civic appeal, or a moral platitude, to achieve immunity from the law's command. [316 US at 921.]

Adapting that statement to the proposed settlement, the passage would read "Every advertiser who desires to broadcast their promotional message all over the city need only to offer some promotional token at the sign site to achieve immunity from the people's command for no new billboards."

In *Onsite Advertising v. Seattle*, 134 F.Supp.2d 1210 (2001), Miller Brewing Company wanted to place a large picture of their product on the side of a high visibility building in an area where billboards were not allowed. On the advice of "Onsite Advertising", the beer company leased a small office "for $325 a month in the Squire building . . . use of the office is limited to one employee who works in the area of marketing." City officials did not fall for the trick. Because the company "was neither selling nor producing beer on the premises where the sign would be located, therefore, the sign did not meet the SMC § 23.84.036 definition of on-premises sign." The Ninth Circuit upheld the city's interpretation. 36 Fed.Appx. 332 (9th Cir. 2002).

In *Herson v. San Carlos*, 714 FS2d 1018 (2010) applicants for a "pole sign" permit submitted an application with a drawing of the sign displaying the message "Sara Palin For President 2012." Since the dimensions were in standard billboard size (14x48) and facing a major freeway, city officials

concluded that the application was in fact for a billboard, a prohibited sign type, and denied the application. Applicant then sued claiming that the city had denied political speech. The denial of permit was upheld because the proposed sign–in billboard size–violated the size rule for pole signs. The Ninth Circuit affirmed, 433 F3d 569 (2011).

These cases illustrate that billboard companies, ever in search of profitable new inventory, will concoct any sort of ruse to qualify for a legal category even when their business is clearly "general advertising for hire" and prohibited for that reason.

All Political Power Is Inherent In the People

The most fundamental principle of democratic government is clearly stated in the California Constitution at Article 2, section one:

> All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require.

Article II, section 8, provides the means by which the people may exercise their political power on their own initiative to amend the state constitution:

> (a) The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them.

Elections Code 9200 extends this power of the people to city ordinances, and Elections Code 9217 forbids legislators from repealing or amending an voter-approved initiative, unless the original proposal allows for such revision:

> If a majority of the voters voting on a proposed ordinance vote in its favor, the ordinance shall become a valid and binding ordinance of the city. The ordinance shall be considered as adopted upon the date that the vote is declared by the legislative body, and shall go into effect 10 days after that date. ***No ordinance*** that is either proposed by initiative petition and adopted by the vote of the legislative body of the city without submission to the voters, or ***adopted by the voters, shall be repealed or amended except by a vote of the people,*** unless provision is otherwise made in the original ordinance.

Elections Code 310 provides: "'County' and 'city' both include 'city and county.'" Thus, as California's only "city and county," San Francisco is subject to the state constitution and all state statutes relating to elections, initiatives, referendums, and propositions.

Opinion

In my professional opinion, the proposed settlement is an attempt to repeal or amend the billboard laws created by the people of the city. For that reason, I believe that if the settlement is adopted as proposed, and if that adoption were to be reviewed by a court, there is a substantial chance that the settlement would be invalidated as *ultra vires* – beyond the power of the Supervisors.

Very truly yours,

Randal R Morrison

RRM:ms

DIVERSE MEDIA DISPLAYS, LLC

December 16, 2013

Via US Mail and Fax: 415 554 4754

To: Dennis Herrera, San Francisco City Attorney
Office of the City Attorney
City Hall, Room 234
San Francisco, CA 94102

Re: Conversion of On-Site Sign Permits to General Advertising Permits.

Dear Mr. Herrera:

I understand that the City is considering, via settlement with National Promotions & Advertising (NPA), parent of Contest Promotions, to allow the use of, "on-site" sign permits as general advertising permits. Many of these on-site permits were approved and issued after the passage of Proposition G, in 2002, which prohibited the issuance of any new general advertising permits.

Please accept this letter as notice to the City that, should it allow NPA to use its on-site permits for general advertising purposes, I will seek equal treatment under the law and expect that I will be allowed to convert my on-site permits to general advertising use.

Sincerely,

Kevin Hicks
Cc: San Francisco Beautiful

P.O. BOX 1223, BURLINGAME, CA 94011 – (415) 264 2848
KEVINHICKS60@GMAIL.COM

San Francisco Chronicle
THE VOICE OF THE WEST
Founded in 1865 by Charles and M.H. de Young
A HEARST NEWSPAPER

EDITORIAL

City should stand up for law on billboards

Voters must wonder when there's a Muni breakdown, a potholed street or a homeless guy sprawled on a sidewalk: Didn't we vote to fix this problem?

Add City Hall's indifference to billboards to this list. In 2002, voters overwhelmingly backed a measure to ban new billboards. But that emphatic statement is being watered down by timid lawyering at City Hall.

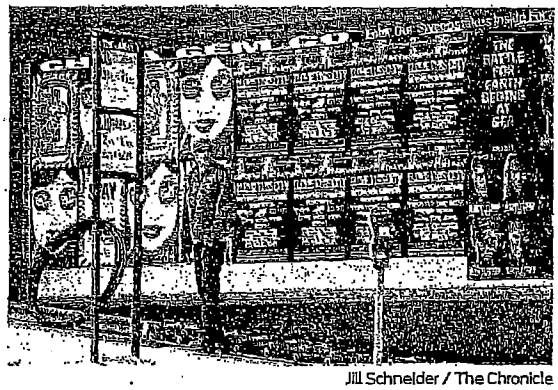
The wrong-way direction springs from a worthy city effort to police the billboard business. In 2010, the City Planning Department conducted an inventory of outdoor signs and found nearly half of the 1,702 in the city were illegal. As of last week, 781 nonpermitted ads had been taken down, and another 61 were to be removed.

It's a commercial cat-and-mouse game. Put a billboard, often a small one on the side of a building at eye-level, and wait for the city to notice and complain. Meanwhile, lawsuits from the billboard firms claim that the advertising is protected by free speech, a path that has led to appeals and uncertainty.

To settle the conflict, a solution is emerging after legal combat between one sign company and the city. But it's a settlement that should anger city voters who wanted a cleaned-up city landscape promised by the ballot measure a decade ago. The agreement involves billboard firm Metro Fuel, which cut a deal with City Attorney Dennis Herrera this year. Mayor Ed Lee signed off on the agreement.

The billboard company was facing $7 million in fines for illegal signs. But the suggestion of prolonged legal foot-dragging produced a settlement. The company will pay $1.75 million in fines and take down 48 illegal signs. In exchange, Metro will be allowed to replace larger, legal signs with smaller signs in new locations. In this mix, critics say, is the opportunity to put up new billboards, a violation of the spirit and specifics of the 2002 ban on new signs.

Dan Siders, assistant zoning administrator with the city Planning Department, says the settlement makes sense. Endless legal fighting is averted and illegal signs are gone. Also, the flock of disputed new signs can't be erected without one-by-one city approval, he adds.



Jill Schneider / The Chronicle

An effort by S.F. voters to stop the proliferation of billboards has become snarled in legal wrangling.

But the results are still a win for legal bullying by billboard interests. Statewide, it's an industry that's earned a reputation for ingenuity — such as giant illuminated signs at the Bay Bridge toll plaza, the Oakland Coliseum complex and other freeway spots — and tough behavior. In Los Angeles, for example, a state assemblyman who opposed billboards towed by vehicles woke up one morning to find a trailer-size sign outside his home.

Locally, the San Francisco Beautiful citizens group is battling the city's wrong turn. The organization, which has long sought to curb billboards, has gone to court to stop the Metro settlement. Their action is a firm reminder of what city voters wanted — and what they aren't getting in a decision that's an advertisement for the power of the billboard industry.

Bay Area

AN FRANCISCO CHRONICLE AND SFGATE.COM | Wednesday, August 31, 2011 | Section C

PROP 9+
RE: CONTEST PROMOTIONS

S.F. POLITICS

Ad push may be awkward for Lee

By John Coté
CHRONICLE STAFF WRITER

San Francisco Mayor Ed Lee has been lauded for his open-door policy. A recent meeting in particular, though, provides a glimpse into the ramifications of that approach, raising questions about how Lee runs the city, who he conducts business with and whether he is beholden to powerbrokers who helped him land his job as mayor.

Lee met July 6 with Gary Shafner, a co-owner of Los Angeles-based National Promotions and Advertising, about "re-piloting" a version of an advertising program that was scuttled in 2007 because it violated a voter-approved ban on new billboards and other ads, The Chronicle has learned.

The meeting in Lee's office included Alex Tourk, Shafner's lobbyist, and Rose Pak, the Chinese Chamber of Commerce consultant and close friend of the mayor's.

Shafner's company ran the discontinued program, where ads were allowed on construction sites and vacant buildings in exchange for the company painting over graffiti and maintaining the area. He also co-owns an affiliated ad company that is suing to have San Francisco's sign ordinance declared unconstitutional. Lee described the session as "an introductory meeting," but it represents a crucible of contentious issues.

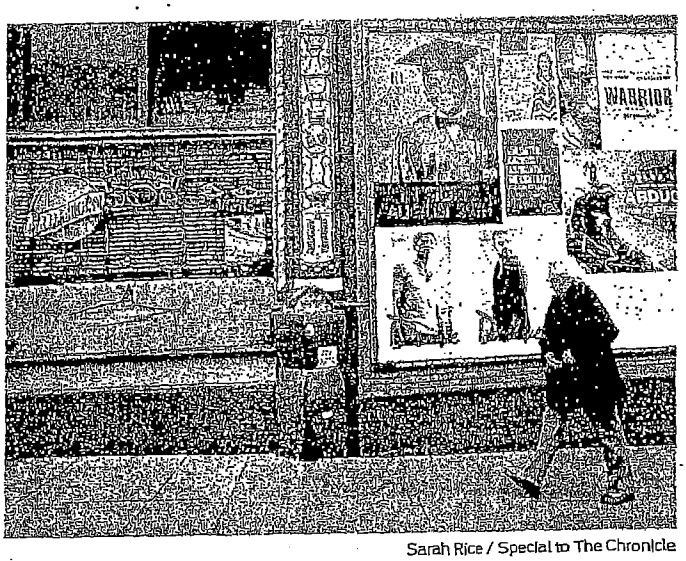
Rival mayoral candidates are criticizing Lee for being too cozy with powerbrokers like Pak, who helped convince Lee to accept an appointment in January to serve the final year of Mayor Gavin Newsom's term.

Pak's influence

Pak also strongly advocated for Lee to abandon his pledge not to run for a full term. The meeting highlights whether advertising signs are a legal and responsible way for a cash-strapped municipality to combat graffiti, and whether the mayor should be considering partnering with someone suing his city.

Lee said he agreed to meet Shafner at Tourk's request and didn't know about the ongoing lawsuit that another Shafner company, Contest Promotions LLC, filed in U.S. District Court in 2009.

"Oh gee, I wasn't aware of that," Lee said. "He didn't mention any lawsuit. The city attorney has not mentioned any lawsuit."



Sarah Rice / Special to The Chronicle

The city of San Francisco cited Contest Promotions LLC for posting ads near Mission and 29th streets. The company responded by filing suit in U.S. District Court in 2009.

All lawsuits filed against the city are first served on the mayor's office. This suit was brought while Lee was still the city administrator.

"I don't know what their record-keeping is like, but there's no reason for the mayor to be unaware of any plaintiff suing the city," said Matt Dorsey, a spokesman for City Attorney Dennis Herrera.

Herrera, a mayoral candidate who has criticized Lee as being too deferential to Pak, said his office has been in weekly contact with the Planning Department about the lawsuit.

But no one from that department, which is responsible for enforcing the city's outdoor advertising rules, was in the meeting. It was listed on the mayor's public calendar as "graffiti abatement" with no mention of attendees.

Lee said he invited Pak because Shafner had expressed interest in piloting a program in Chinatown.

"I said, 'Well, you better meet Rose Pak,' because she has a lot of connections to the merchants in Chinatown," Lee recalled.

He downplayed the significance of the meeting, saying: "We're not so sure it's going to go anywhere because we still have to go through city planning. ... They just wanted to meet and talk about the challenges in Chinatown."

But the mayor seemed more supportive in an e-mail from Crezia Tano, a project manager on his economic development team, to planning officials after the meeting.

"The mayor stated that we would look into repiloting this program in Chinatown," she wrote, "but said that we should check in with planning."

'Inappropriate'

Former Supervisor Jake McGoldrick, who challenged the earlier sign program, called it "entirely inappropriate" for Lee to meet with Shafner.

"You should slam the door and say goodbye," McGoldrick said. " 'Repiloting' just means opening the door, and the door will never close again. ... These guys want to buy their way into overriding the will of the voters."

Lee, in an interview, said there is no concrete proposal and that he made it clear that city regulations must be followed.

"We did talk about the problems they had in the past," Lee said, "and we didn't want those repeated."

Few are more familiar with those than Lee, who introduced the earlier program in 2005 when he led the Department of Public Works. The city partnered with National Promotions and Advertising, also known as NPA, headed by Shafner and Peter Zackery.

The two are players in the lucrative game of "wild posting" outdoor advertising in Los Angeles and other cities.

Both are partners in Contest Promotions and NPA, companies that put up multiple poster-sized signs for things like concerts and movies.

San Francisco's sign ordinance bars new general advertising signs for products not sold on the premises. Contest Promotions' signs offer people the chance to enter a raffle inside the store for small prizes.

"Their business model is to put up posters advertising Virgin America or the latest Beyoncé album — none of which to advertise," Hinks said.

Lee initially lauded the earlier program as a creative way to tackle blight at minimal cost to taxpayers. It was halted in 2007 after the civic group San Francisco Beautiful complained that it was "merely replacing one form of blight with another" while violating 2002's voter-approved Proposition G, which banned new billboards and general advertising signs.

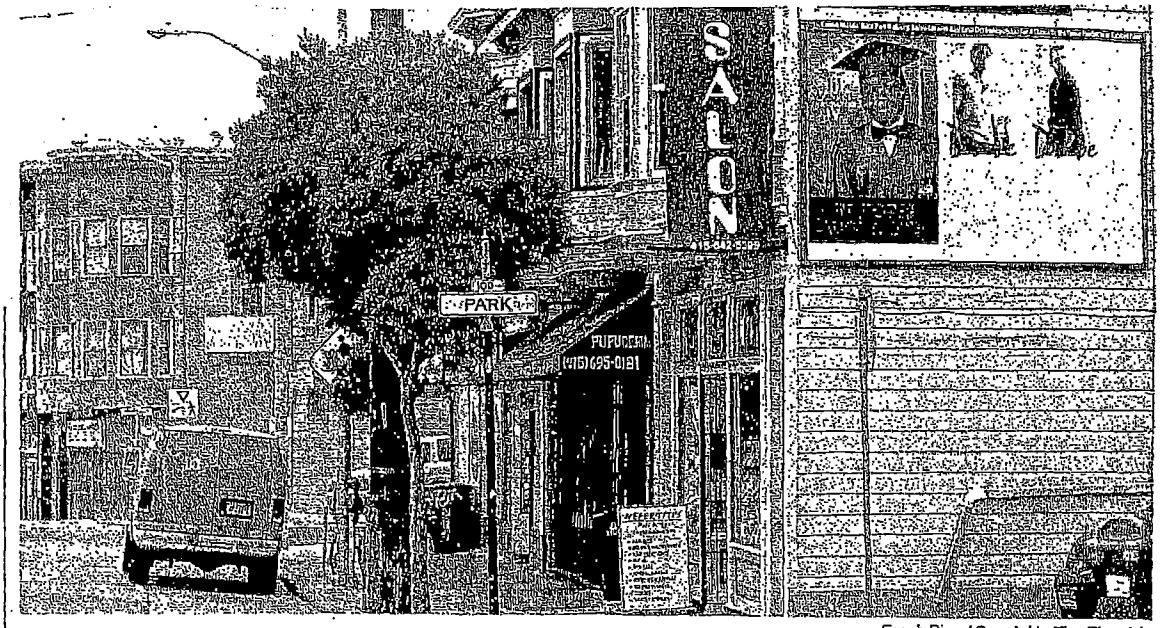
Milo Hanke, past president of San Francisco Beautiful, said his group would "strenuously object" to any similar partnering.

"It was plainly an illegal enterprise done in collaboration with city officials, which was the most dispiriting thing," Hanke said.

Lee's spokeswoman, Christine Falvey, said the meeting was simply to hear a new idea.

"When someone comes in with an innovative idea to address graffiti, Mayor Lee is going to listen to it," Falvey said. "It doesn't mean he's going to do it. He's always going do his due diligence."

E-mail John Coté at jcote@sfchronicle.com.



Sarah Rice / Special to The Chronicle

San Francisco's sign ordinance bars signs for products not sold on the premises. Contest Promotions, which posted these signs at Mission and Park streets, is challenging the city in court.

San Francisco Chronicle
1865 The Voice of the West
Founded in 1865 by Charles and M.H. de Young
A Hearst Newspaper

PROP 6 + METRO FUEL SETTLEMENT & AGREEMENT

EDITORIAL

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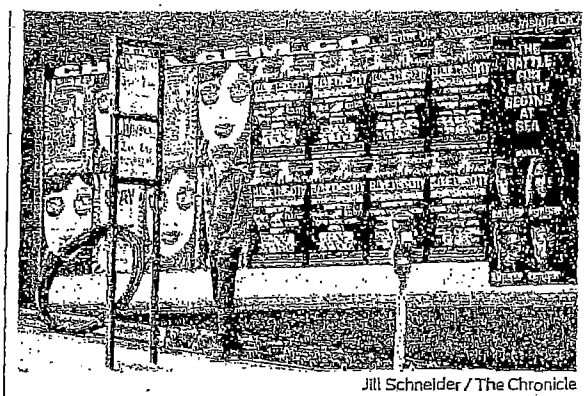

Jill Schneider / The Chronicle

An effort by S.F. voters to stop the proliferation of billboards has become snarled in legal wrangling.

But the results are still a win for legal bullying by billboard interests. Statewide, it's an industry that's earned a reputation for ingenuity — such as giant illuminated signs at the Bay Bridge toll plaza, the Oakland Coliseum complex and other freeway spots — and tough behavior. In Los Angeles, for example, a state assemblyman who opposed billboards towed by vehicles woke up one morning to find a trailer-size sign outside his home.

Locally, the San Francisco Beautiful citizens group is battling the city's wrong turn. The organization, which has long sought to curb billboards, has gone to court to stop the Metro settlement. Their action is a firm reminder of what city voters wanted — and what they aren't getting in a decision that's an advertisement for the power of the billboard industry.

DIVERSE MEDIA DISPLAYS, LLC

December 16, 2013

Via US Mail and Fax: 415 554 4754

To: Dennis Herrera, San Francisco City Attorney
Office of the City Attorney
City Hall, Room 234
San Francisco, CA 94102

Re: Conversion of On-Site Sign Permits to General Advertising Permits.

Dear Mr. Herrera:

I understand that the City is considering, via settlement with National Promotions & Advertising (NPA), parent of Contest Promotions, to allow the use of, "on-site" sign permits as general advertising permits. Many of these on-site permits were approved and issued after the passage of Proposition G, in 2002, which prohibited the issuance of any new general advertising permits.

Please accept this letter as notice to the City that, should it allow NPA to use its on-site permits for general advertising purposes, I will seek equal treatment under the law and expect that I will be allowed to convert my on-site permits to general advertising use.

Sincerely,

Kevin Hicks
Cc: San Francisco Beautiful

P.O. BOX 1223, BURLINGAME, CA 94011 - (415) 264 2848
KEVINHICKS60@GMAIL.COM

San Francisco Beautiful

Protecting and enhancing our City's unique beauty and livability

Four times San Francisco voters say

"No New Billboards!"

			Yes	No
March 2002	Prop G	No new billboards on private property.	79.14%	
Nov. 2007	Prop K	Prohibits more advertising on street furniture and public buildings. Policy statement, not an ordinance. Clear Channel spent more than $100,000 to defeat. Advocates spent nothing.	62.25%	
Nov. 2009	Prop D	This failed privately funded initiative would have created a Mid-Market Sign District, a West Coast version of Times Square. Proponent outspent San Francisco Beautiful 20-to-1 and still lost.		54.00%
Nov. 2009	Prop E	Prohibits more advertising on street furniture and public buildings. Puts into force as an ordinance the Nov. 2007 Prop E policy statement. At the depth of the Great Recession, voters knowingly say "no" to additional ad revenues to City's general fund.	57.28%	

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

May 9, 2014

File No. 140371

Sarah Jones
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Ms. Jones:

On April 22, 2014, the City Attorney's Office will introduced the following proposed legislation:

File No. 140371

Ordinance authorizing settlement of the lawsuit filed by Contest Promotions, LLC, against the City and County of San Francisco for $375,000; the lawsuit was filed on September 22, 2009, in the United States District Court for the Northern District of California, Case No. CV-09-4434 SI (MEJ); entitled Contest Promotions, LLC, v. City of San Francisco, et al.; other material terms of said settlement include resolution of Notices of Violation for unpermitted general advertising signs.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board
By: Alisa Miller, Committee Clerk
Rules Committee

Attachment

c: Jeanie Poling, Environmental Planning
Nannie Turrell, Environmental Planning

N/A a project under CEQA Guidelines Section 15060(c) and 15378 because there is no direct or indirect physical change in the environment.
Nannie L. Turrell
May 9, 2014

SETTLEMENT AGREEMENT

This Settlement Agreement and Mutual General Release (the "Settlement Agreement") is made and entered into as of the Operative Date by and between Contest Promotions, LLC, a California limited liability company ("Contest Promotions") and the City and County of San Francisco, a chartered city and county of the State of California (the "City").

Contest Promotions and the City are sometimes collectively referred to as "Parties," and each is sometimes individually referred to as a "Party." This Settlement Agreement is intended by the Parties hereto to settle and extinguish the obligations, disputes and differences as hereinafter set forth.

RECITALS

WHEREAS Contest Promotions promotes and operates contests in which prospective contest participants are invited to enter various businesses to complete application materials for promotional sweepstakes. Contest Promotions places signs on the exterior wall of a building located at these businesses. Such signs typically consist of a series of posters and a small placard stating that the businesses, commodities, services, industries or other activities which are depicted on these posters, as well as related prizes, are being sold, offered, or conducted on the businesses upon which the signs are located, or to which they are affixed. The placard also directs people to enter the building for additional information;

WHEREAS Contest Promotions has previously obtained permits under the City Planning and Building Codes for some of the signs it has erected in the City;

WHEREAS the City has issued various Notices of Violation for signs purportedly owned or erected by Contest Promotions, including signs erected at the following locations within the City: 1350 Howard Street; 5050 Mission Street; 2146 Mission Street; 1270 Mission Street; 1124 Harrison Street; 353 Kearny Street; 322 Eddy Street; 6583 6th Street; 1745 Market Street; 1101 Oak Street; 500 Grant Avenue; 2081 Mission Street; 2011 Folsom Street/1799 16th Street 2801 Folsom Street/3085 24th Street; 2801 22nd Street; 2950 23rd Street; 2944 24th Street; 4701 Mission Street; 3727/3729 Mission Street; 360 Hyde Street; 172 Golden Gate Avenue; 6199 3rd Street; 689/699 3rd Street; 1900 Hayes Street; 900 Columbus Avenue; 716 Columbus Avenue; 2200 Lane Street; 915 Folsom Street; 250 Divisadero Street; 376 Castro Street; 3300 Mission Street / 3308 Mission Street; 300 Sanchez Street / 3506 16th Street; 2847 24th Street; 237 Eddy Street; 2601 Folsom Street; 3084 24th Street; 1850 Cesar Chavez Street; 160 Pierce Street; 685 Geary Street; and 2332 Lombard Street (collectively, the "NOVs");

WHEREAS the NOVs state that the signs located at the identified locations were erected in violation of Article 6 of the Planning Code;

WHEREAS on October 31, 2008, the City and Contest Promotions entered into a stay agreement (the "Stay Agreement"), effective October 21, 2008, staying the enforcement of certain NOVs;

WHEREAS Contest Promotions filed a Request for Reconsideration of the Notice of Violation issued in respect to the sign erected by Contest Promotions at 1350 Howard Street,

which Request was denied in a written decision by the Administrative Law Judge dated February 12, 2010 (the "**ALJ Proceedings**"). On February 12, 2010, the ALJ issued his decision finding that Contest Promotions' sign was an illegal off-site advertising sign. Contest Promotions did not seek judicial review of the ALJ's decision;

WHEREAS on September 2, 2009, Contest Promotions filed a lawsuit against the City in the Federal District Court for the Northern District of California entitled, *Contest Promotions, LLC v. City and County of San Francisco*, Case No. CV 09-4434 SI (the "**Lawsuit**");

WHEREAS on November 12, 2010, the Court in the above-entitled action issued an Order in connection with Contest Promotions' Motion for Temporary Restraining Order and Order to Show Cause re Preliminary Injunction requiring the Parties to continue to abide by the Stay Agreement until the Lawsuit is resolved (the "**Order**"), which Order was affirmed by the United States Court of Appeals for the Ninth Circuit on appeal on April 27, 2011;

WHEREAS the Parties now desire to settle their issues related to the NOVs, the Lawsuit and the Order, and thereby extinguish their differences, disputes and claims and exchange mutual releases as set forth herein.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

DEFINITIONS

The following definitions shall apply to the following terms when used in this Settlement Agreement:

Business Sign: A sign that meets the definition of a Business Sign as set forth in Section 602.3 of the City's Planning Code.

Category A Sign: A Business Sign that directs attention to the businesses, commodities, services, industries or other activities which are sold, offered or conducted on the premises upon which such sign is located, or to which it is affixed. If multiple businesses, commodities, services, industries or other activities are depicted on such Business Sign, to be deemed a Category A Sign, each such activity must be offered on the premises upon which the Business Sign is located, or to which it is affixed.

Category B Sign: A Business Sign that directs attention to businesses, commodities, services, industries or other activities for each of which one or more Related Prizes are offered in a Sweepstakes conducted on the premises. If multiple businesses, commodities, services, industries or other activities are depicted on such Business Sign, to be deemed a Category B Sign, each such activity must have a Related Prize in the Sweepstakes conducted on the premises.

Without limiting the foregoing, this definition includes the following: if the awarded prize in each Sweepstakes taking place at a particular sign location corresponds to the posted sign at each premises:

Entertainment	First-run movies	Movie passes capable of being redeemed to see the movie depicted on the sign.
Entertainment	Movies available on DVD or other electronic format	DVD or other electronic format of the movie depicted on the sign.
Entertainment	Television	DVD or other electronic format containing episodes of the television series depicted on the sign.
Entertainment	Recorded music	CD or other electronic format of the recorded music depicted on the sign.
Entertainment	Live music	Tickets to the live event.
Entertainment	Theater/Events	Tickets to the event.
Entertainment	Video games	The video game depicted on the sign.
Consumer goods	Tangible good intended for consumption by the mass market. To the extent an item depicted on the sign can be classified into another category in addition to the Consumer Goods category, the intent is that the sign shall be categorized into the more specific category, and only into the Consumer Goods category where no more specific category applies	The item depicted on the sign.
Electronics	Electronic devices.	The item depicted on the sign, or an item incorporating the item depicted on the sign.

[illegible]	[illegible]	[illegible]
Internet	Internet websites. Signs in which the main message is to direct the viewer to an Internet website; distinguished from a sign that directs attention to a website, but only secondarily to the main message of the sign.	Gift certificate redeemable on the website depicted on the sign
Apparel/Clothing	Apparel/Clothing	The item(s) depicted on the sign or a gift certificate capable of being redeemed for the item depicted on the sign.
Food and Beverage	Food and Beverage	The item depicted on the sign or a gift certificate capable of being redeemed for the item depicted on the sign.
Automotive	Automotive-related products and services.	The product depicted on the sign or, if a service, a gift certificate redeemable for the services depicted on the sign.
Health and Healthcare	Healthcare-related products	The item depicted on the sign, a gift card redeemable at a major retailer where such items can be purchased, or a gift card from the retailer depicted on the sign.
Travel and hospitality	Travel-related products and services	Gift certificate redeemable for products or services from the provider depicted on the sign.
Restaurants	Restaurant	Gift certificate redeemable at the restaurant depicted on the sign.

Erect, to: To construct, erect, install, locate, or place.

Existing Inventory: Signs erected by Contest Promotions within the City prior to the execution of this Settlement Agreement as follows:

Street Address	Block/Lot
3rd Street, 6199	4940/023
3rd Street, 699	3788/014
6th Street, 65	3704/026
8th Street, 397	3755/137
16th Street, 2799	3572/019
22nd Street, 2801	4149/001
23rd Street, 2950	4148/013A
24th Street, 2847	4267/030
24th Street, 2948	4207/020
24th Street, 3085	6521/040
Balboa Street, 447-449	1639/046
Castro Street, 376	2623/006
Columbus Avenue, 716	0090/027
Columbus Avenue, 900	0065/013
Columbus Avenue, 930	0065/012
Divisadero Street, 250	1238/021
Eddy Street, 326	0333/007
Ellis Street, 595	0334/021
Folsom Street, 2801	6521/040
Folsom Street, 917	3753/145
Golden Gate Avenue, 172	0344/005
Grant Street, 500	0258/012
Haight Street, 901	1240/001
Harrison Street, 1122	3755/021
Hayes Street, 1900	1195/002D
Hayes Street, 698	0806/018
Kearny Street, 359	0270/001
Lane Street, 2200	5414/028
Market Street, 1745-1755	3503/003
Mission Street, 1270	3701/021
Mission Street, 2097	3570/020
Mission Street, 3300	6635/001
Mission Street, 3729	5719/002
Mission Street, 4701	6034/033
Mission Street, 5050	6969/011
Oak Street, 1101	1218/001
Sanchez Street, 300	3564/107

General Advertising Sign: A sign that meets the definition of a General Advertising Sign as set forth in Section 602.7 of the Planning Code.

Operative Date: The date on which the Mayor approves the ordinance authorizing the settlement of this litigation. If the Mayor fails to approve or to disapprove the ordinance authorizing the settlement of this litigation, then this Agreement will become operative at the expiration of the tenth day after such ordinance is delivered to the Mayor's Office for consideration. If, however, the Mayor disapproves the ordinance authorizing the settlement of

this litigation, then this Settlement Agreement will not become operative unless, within 30 days after the Mayor's disapproval, not less than two-thirds of the Board of Supervisors shall vote in favor of such ordinance.

Planning Code: The City's Planning Code, which is a portion of the San Francisco Municipal Code.

Planning Department: The City's Planning Department, as identified under the Charter of the City and County of San Francisco.

Sweepstakes: A sweepstakes run by Contest Promotions in which both (1) an entrant may enter a business at the premises on which a Contest Promotions sign is erected, or affixed to, and (2) the drawing or selection of sweepstakes winners is held at the same business.

AGREEMENT

1. **Classification of Signs**

The Parties agree and acknowledge that Category A Signs and Category B Signs erected by Contest Promotions within the City are and shall be deemed Business Signs for all purposes of the Planning Code, including but not limited to the filing, processing and approval of permits by and with the Planning Department, so long as they are consistent with the dimensional, locational, and other requirements applicable to Business Signs under Article 6 of the Planning Code.

2. **Permit Requirements and Limitations**

(a) Permitting of Existing Inventory. Within two-hundred-and-seventy (270) days of the Operative Date, for each sign within the Existing Inventory, Contest Promotions shall (i) submit all documents and other materials with the Planning Department and any other departments of the City necessary to erect a Business Sign in compliance with the City's laws, (ii) pay all applicable permit application fees, and (iii) thereafter diligently seek the approval of such permit applications by the Planning Department.

(b) For each permit application Contest Promotions shall submit all information required by Article 6 of the Planning Code, including but not limited to the following materials:

i. a scaled drawing of the proposed sign, including the location and dimensions of the proposed sign and any existing sign or signs on any building or other structure located at the relevant lot;

ii. color photographs of the façade or any building or other structure located on the relevant lot to which is affixed a sign;

iii. the proposed devices and/or inscriptions for the proposed sign, sufficient to demonstrate that the sign qualifies as a Business Sign; and

iv. the fee for a sign permit application published on the most recent Planning Department's Schedule of Application Fees, per Section 355(e) of the Planning Code, plus the then-applicable Board of Appeal surcharge.

(c) The Planning Department shall not withhold the issuance of any sign permits sought by Contest Promotions so long as the Planning Department reasonably determines that the permit application and the sign to which it relates meet and satisfy the requirements of the Planning Code and this Settlement Agreement.

(d) In the event that the Business where are sold, offered or conducted the businesses, commodities, services, industries or other activities which are depicted by a Category A Sign ceases operation permanently at the premises, Contest Promotions shall remove such Category A Sign within five (5) business days of such cessation.

(e) In the event that the Business to which a Category B Sign directs the public ceases operation permanently at the premises, Contest Promotions shall remove such Category B Sign within five (5) business days of such cessation.

(f) The Parties agree and acknowledge that the customary use of signs erected by Contest Promotions may involve frequent and periodic changes of copy within the meaning of Section 604(f) of the Planning Code. If Contest Promotions proposes to erect signs that will have such frequent and periodic changes of copy, then each permit application for such signs shall indicate that the copy will change on frequent and periodic basis.

3. **Compliance with Applicable Codes**

For each sign erected by Contest Promotions within the City, Contest Promotions shall comply with all applicable provisions of the city's Charter, ordinances, administrative bulletins, and other written regulations in effect at the time the permit for the subject sign is issued ("**Applicable Local Laws**") including, without limitation, applicable provisions of the Planning Code, the Building Code, the Electrical Code and the Public Works Code.

4. **Placard Requirements for Category B Signs**

(a) All Category B Signs erected by Contest Promotions in the City shall include a placard with a device or inscription directing members of the public to the Business where they may enter the Sweepstakes. Such placards shall comply with the following requirements:

i. the placard shall be at least six-inches (6") high and run the width of the entire sign;

ii. the placard shall include only the name, address, and hours of operation of the Business where members of the public may enter the Sweepstakes, as well as arrows or other suitable devices indicating the location of the entrance to such Business; and

(b) Notwithstanding the previous subsection (a), nor any other provision of this Settlement Agreement, Contest Promotions may include on any Category B

Sign an inscription of the applicable rules and regulations for the Sweepstakes, as deemed necessary by Contest Promotions and its counsel to comply with all applicable laws.

5. **Contest Requirements for Category B Signs**

(a) All Category B Business Signs erected by Contest Promotions in the City shall comply with the following requirements:

i. Contest Promotions shall award related prizes at the premises on which such Category B Sign is erected, or affixed to, no less frequently than once per calendar month ("**Sweepstakes Period**").

ii. Contest Promotions shall award at least one (1) related prize corresponding to each advertising campaign posted on such Category B Sign within the Sweepstakes Period. For purposes of this provision, an advertising campaign related to a single business, commodity, service, industry or other activity shall be deemed to be a single advertising campaign regardless of the number of Category B signs posted at the premises where such signs are erected, or affixed.

iii. The total retail value of a related prize awarded in each Sweepstakes Period shall be no less than fifty dollars ($50).

6. **Verification of Compliance of Category B Signs**

(a) Within ninety (90) days of the Operative Date, Contest Promotions shall create and establish a dedicated, private website (the "**Verification Website**") to be used exclusively by Contest Promotions and the Planning Department. The website shall contain essential information concerning the Contests related to all Category B Signs erected by Contest Promotions within the City. Such information shall comprise: (1) the name and address of each Business associated with the Sweepstakes; (2) the location of each sign at the relevant premises; (3) the dimensions of the sign; (4) a photograph of the copy of the sign, or in the case of signs that will have frequent and periodic changes of copy, of representative copy; (5) the date when the Sweepstakes began; (6) the category of the businesses, commodities, services, industries or other activities for which Related Prizes are offered in the Sweepstakes; (7) an identification of the Related Prize(s) to be awarded in connection with the Sweepstakes; and (8) the authorizing permit number for the particular sign. The parties may meet and confer to modify the categories of information that Contest Promotions will provide in the Verification Website. The City shall not require additional categories of information more frequently than once annually.

(b) Planning Department staff shall have constant access to the Verification Website, subject to routine downtimes due to technical outages and/or scheduled maintenance.

(c) Contest Promotions shall post to the Verification Website new photographs of sign copy (except in the case of signs that will have frequent and periodic change of copy) and update relevant Sweepstakes information within seventy-two (72) hours of a copy change.

(d) The Verification Website shall be available at a specified web address accessible only by Contest Promotions and Planning Department staff. The home page shall list each location, the name of the store and its address. Each location shall include a link to individual location pages. Location pages shall include additional detail not provided on the home page.

(e) The City agrees to use best efforts to notify Contest Promotions promptly upon receipt of a Public Records Act Request or a Sunshine Request that calls for aggregate information contained in the Verification Website. For purposes of this subsection 6(e), aggregate information means information relating to two or more signs. This notice provision shall not apply if the City's response to a Public Records Act request or a Sunshine Request includes only information derived from separate public records independent of information contained in the Verification Website.

(f) Contest Promotions shall pay an annual fee to the City of one hundred dollars ($100) per sign for each Category B Sign included in the Verification Website. This annual fee shall be due on July 1 each year. A late payment fee of 1% shall apply if the payment is not delivered by July 15, and an additional 1% late payment fee shall apply for any additional month or partial month that the annual payment is delinquent. This annual payment is intended to compensate the City for its costs to verify compliance of Contest Promotions' Category B signs, and is in lieu of a one-time payment for existing signs under Planning Code section 355(a)(1). The parties agree that the annual fee reasonably approximates the City's verification costs.

7. **Dismissal of Lawsuit and Requests for Reconsideration.**

The Parties shall file a stipulation for dismissal of the Lawsuit in its entirety with prejudice, and Contest Promotions shall submit all documents necessary to withdraw any pending requests for reconsideration, within ten (10) days after Contest Promotions has delivered the payment set forth in Section 9 of this Settlement Agreement.

8. **Mutual Releases.** Effective upon the Operative Date, other than the rights and obligations of the Parties under this Settlement Agreement, Contest Promotions on the one hand and the City on the other hand, on behalf of themselves and their respective present and future affiliates, related entities, partners, employees, agents, representatives, attorneys, predecessors, successors and assigns (collectively, "Related Persons"), hereby irrevocably, unconditionally and fully release, forever discharge and covenant not to sue, each other and each other's respective Related Persons from and on account of any and all claims, demands, causes of action or charges of any nature whatsoever, known or unknown, suspected or unsuspected, including without limitation costs and fees of attorneys and experts, arising directly or indirectly from or related in any way to the Lawsuit, the NOVs, the ALJ Proceedings and the Order (collectively, "Claims").

9. **Costs and Fees.** Subject to Paragraph 13 below, the Parties shall bear their own costs and attorneys' fees incurred prosecuting the Lawsuit or the preparation of this Settlement Agreement. Within five (5) days of the Operative Date, Contest Promotions shall pay the City $150,000. Starting thirty (30) days after the Operative Date, Contest Promotions shall

begin making twenty-four (24) monthly payments of $9,375 to the City. Each monthly payment will be due on the last business day of each month.

All payments pursuant to this Settlement Agreement, including payments under this section 9 and section 6(f) of this Settlement Agreement, shall be made to the San Francisco Planning Department, 1650 Mission Street, 4th floor, San Francisco CA 94103-2479 Attn: Finance Division, Keith DeMartini.

10. **Breach and Cure.** In the event the City contends that Contest Promotions is in breach of any of its obligations under this Settlement Agreement, or that any sign erected by Contest Promotions is not in compliance with the terms of this Settlement Agreement or any applicable code, then the City shall give written notice (the "**Notice**") specifying in reasonable detail the alleged breach or lack of compliance. Contest Promotions shall be given a thirty (30) day period (the "**Cure Period**") from the date of receipt of the Notice in which to correct or cure the breach or lack of compliance. The City hereby agrees and acknowledges that with respect to violations of the Planning Code no Notices of Violation shall be issued and no action, lawsuit or administrative proceeding shall be commenced within the Cure Period.

11. **Notices.** Any notice, request, consent, waiver or other communication required or permitted hereunder shall be effective only if it is in writing and personally delivered or sent by certified or registered mail, postage prepaid, by nationally recognized overnight courier or by telecopier (with confirmation of delivery of telecopy), addressed as set forth below:

If to Contest Promotions:

Contest Promotions, LLC
c/o Saul Janson, Esq.
213 Rose Avenue, Suite B
Venice, CA 90291
Telecopy: (310) 452-7978
E-Mail: sacoja@aol.com

With copies to:

Reuben, Junius & Rose, LLP
One Bush Street, Suite 600
San Francisco, CA 94104
Attention: James A. Reuben, Esq.
Telecopy: (415) 567-9000
E-Mail: jreuben@reubenlaw.com

If to the City:

San Francisco Planning Department
c/o Daniel Sider
1650 Mission Street, Suite 400
San Francisco, CA 94103-2479
Fax: (415) 558-6409
E-Mail: dan.sider@sfgov.org

With copies to:

San Francisco City Attorney's Office
City Hall, Room 234
San Francisco, CA 94102
Attention: James M. Emery
Telecopy: (415) 554-4757
E-Mail: jim.emery@sfgov.org

or such other person or address as the addressee may have specified in a notice duly given to the sender as provided herein. Such notice or communication shall be deemed to have been given as of the date received by the recipient thereof or the date of rejection of attempted delivery. All notices given hereunder shall also be given by electronic mail at the electronic mail addresses set forth above.

12. **Representations and Warranties.**

a. Each Party represents and warrants to the other that neither he or she, nor any of his or her respective agents, representatives or attorneys nor any other person or entity, in order to induce any of the Parties to enter into this Settlement Agreement, have made any promise, assurance, representation, inducement or warranty whatsoever, whether express or implied or statutory, which is not specifically set forth in writing in this Settlement Agreement and further acknowledge that this Settlement Agreement has not been entered into in reliance upon any promise, assurance, representation, inducement or warranty not expressly set forth in writing in this Settlement Agreement.

b. Each Party represents and warrants to the other that he or she has read and understands this Settlement Agreement, and that this Settlement Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the other Party hereto. The Parties hereby acknowledge that they have been represented or have had the opportunity to be represented in the negotiations and preparation of this Settlement Agreement by counsel of their own choice and that they are fully aware of the contents of this Settlement Agreement and of the legal effect of each and every provision herein.

c. Each Party represents and warrants to the other that the individual executing this Settlement Agreement on behalf of any Party has the authority to execute and thereby bind the Party for whom he/she executes this Settlement Agreement to the terms of this Settlement Agreement, and agrees to indemnify and hold harmless each other Party from any claim that such authority did not exist.

13. **Enforcement of Settlement Agreement.** If either Party to this Settlement Agreement brings an action or motion to enforce its rights hereunder, the prevailing Party shall be entitled to recover all costs and expenses, including all costs or expenses not otherwise recoverable under the Federal Rules of Civil Procedure or California Code of Civil Procedure and all attorneys' fees, incurred in connection with such action or motion.

14. **Further Assurances.** The Parties shall each execute any and all other documents and take any and all further steps which may be necessary or appropriate to further implement the terms of this Settlement Agreement.

15. **Construction of Settlement Agreement.** This Settlement Agreement shall be construed as a whole in accordance with its fair meaning and in accordance with the laws of the State of California. The Parties stipulate and agree that this Settlement Agreement and the language used herein is the product of all Parties' efforts in consultation with their attorneys and other consultants, and each Party hereby irrevocably waives the benefit of any rule of contract construction which disfavors the drafter of an agreement. The language of this Settlement Agreement shall not be construed for or against any particular Party. The headings used herein are for reference only and shall not affect the construction of this Settlement Agreement.

16. **Sole Agreement.** Except as otherwise stated in this Settlement Agreement, this Settlement Agreement represents the sole and entire agreement between the Parties with respect to the subject matters covered hereby and supersedes all prior agreements, negotiations and discussions between the Parties hereto and/or their respective counsel with respect to the subject matters covered hereby.

17. **Amendment to Settlement Agreement.** Any amendment to this Settlement Agreement must be in a writing signed by duly authorized representatives of the Parties hereto and stating the intent of the Parties to amend this Settlement Agreement.

18. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, each of which shall be an original but all of which, together, shall be deemed to constitute a single document. Facsimile and electronically scanned signatures shall be deemed to constitute original signatures.

(The remainder of this page is left blank intentionally.
Signatures appear on the following page.)

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the date(s) set forth hereinafter.

For Contest Promotions:

CONTEST PROMOTIONS, LLC, a California limited liability company

Date: January 7, 2014

By:
Its: VP

For the City:

CITY AND COUNTY OF SAN FRANCISCO, a chartered city and county of the State of California

Date: _____, 2013

By: John Rahaim
Its: Planning Director

APPROVED AS TO FORM:
REUBEN, JUNIUS & ROSE

Date: January 13, 2014

By: James A. Reuben
Counsel for Contest Promotions, LLC

APPROVED AS TO FORM:
DENNIS J. HERRERA
SAN FRANCISCO CITY ATTORNEY

Date: _____, 2013

By: Thomas S. Lakritz
Deputy City Attorney

GISLATION RECEIVED CHECKL T

Date 4/10/14 File Number (if applicable) 140371

[✓] Legislation for Introduction (NEW) ▶▶▶ Legislation Clerk
[ ] Legislation Pending in Committee (AMENDED) ▶▶▶ Committee Clerk
[ ] Legislation for Board Agenda (AMENDED) ▶▶▶ Dep Clerk, Legislative Div

Supervisor, Mayor, and Departmental Submittals

Grant Ordinance

- [ ] **Legislation:** Original and 2 hard copies and 1 electronic copy in word format
- [ ] **Signature:** Department Head, Mayor or the Mayor's designee, plus the Controller
- [ ] **Back-up materials:** 2 full sets (see below) and 1 electronic copy in pdf format*
  - [ ] Cover letter (original and 1 hard copy)
  - [ ] Grant budget/application
  - [ ] Grant information form, including disability checklist
  - [ ] Letter of Intent or grant award letter from funding agency
  - [ ] Contract, Leases/Agreements (if applicable)
  - [ ] Ethics Form 126 *(if applicable)*Word format*
- [ ] **E-Copy of legislation/back-up materials:** Sent to BOS.Legislation@sfgov.org

Ordinance

- [✓] **Legislation:** Original and 2 hard copies and 1 electronic copy in word format
- [✓] **Signature:** City Attorney (For Settlement of Lawsuits - City Attorney, Department Head, Controller, Commission Secretary)
- [✓] **Back-up materials:** 2 hard copies (see below) and 1 electronic copy in pdf format
  - [✓] Cover letter (original and 1 hard copy)
  - [✓] Settlement Report/Agreement (for settlements)
  - [ ] Other (Explain)
- [✓] **E-Copy of legislation/back-up materials:** Sent to BOS.Legislation@sfgov.org

Grant Resolution

- [ ] **Legislation:** Original and 2 hard copies and 1 electronic copy in word format
- [ ] **Signature:** Department Head, Mayor or the Mayor's designee, plus the Controller
- [ ] **Back-up materials:** 2 hard copies (see below) and 1 electronic copy in pdf format*
  - [ ] Cover letter (original and 1 hard copy)
  - [ ] Grant budget/application
  - [ ] Grant information form, including disability checklist
  - [ ] Letter of Intent or grant award letter from funding agency
  - [ ] Contract, Leases/Agreements (if applicable)
  - [ ] Ethics Form 126 *(if applicable)*Word format*
- [ ] **E-Copy of legislation/back-up materials:** Sent to BOS.Legislation@sfgov.org

Resolution

- [ ] **Legislation:** Original and 2 hard copies and 1 electronic copy in word format
- [ ] **Signature:** None (Required for Settlement of Claims - City Attorney, Department Head, Controller, Commission Secretary)
- [ ] **Back-up materials:** 2 full sets *(see below)* and 1 electronic copy in pdf format
  - [ ] Cover letter (original and 1 hard copy)
  - [ ] Settlement Report/Agreement (for settlements)
  - [ ] Other (Explain)
- [ ] **E-Copy of legislation/back-up materials:** Sent to BOS.Legislation@sfgov.org

Shona Navare 554-3889 — Name and Telephone Number

CITY ATTORNEY — Department

Clerk's Office/Forms/Legislation Received Checklist (6/2013) for more help go to: sfbos.org/about the board/general/legislative process handbook

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the date(s) set forth hereinafter.

For Contest Promotions:

CONTEST PROMOTIONS, LLC, a California limited liability company

Date: _____, 2013

By:
Its:

For the City:

CITY AND COUNTY OF SAN FRANCISCO, a chartered city and county of the State of California

Date: 4-4, 2013

By: John Rahaim
Its: Planning Director

APPROVED AS TO FORM:
REUBEN, JUNIUS & ROSE

Date: _____, 2013

By: James A. Reuben
Counsel for Contest Promotions, LLC

APPROVED AS TO FORM:
DENNIS J. HERRERA
SAN FRANCISCO CITY ATTORNEY

Date: _____, 2013

By: Thomas S. Lakritz
Deputy City Attorney