



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Sutter's Place Inc., dba Bay 101
Settlement Agreement

DATE: November 6, 2008

RECOMMENDATION

Adopt a resolution authorizing the City Attorney to execute a settlement agreement with Sutter's Place, Inc. dba Bay 101 providing for payment to the City of \$275,000. The City Council discussed this settlement during the Closed Session held on October 7, 2008.

OUTCOME

To settle a dispute between the City of San Jose and Sutter's Place Inc. dba Bay 101, which will result in the City receiving the sum of \$275,000.

BACKGROUND

Bay 101 filed for Chapter 11 Bankruptcy in early August 2002. At the time that it filed, Bay 101 owed the City the sum of \$461,948 representing unpaid cardroom taxes for July and August 2002. That amount remained unpaid until Bay 101 voluntarily dismissed its bankruptcy in July 2006. Upon dismissal of its bankruptcy, Bay 101 promptly paid the cardroom taxes.

Thereafter, the City sought payment of interest and penalties that had accrued on the unpaid amounts during the four years that Bay 101 was in bankruptcy. Bay 101 filed suit against the City seeking an injunction and declaratory relief, requesting that the Court enter an order that it was not legally obligated to pay the penalties and interest. The City filed a Cross-Complaint against Bay 101 for the unpaid penalties and interest. As of November 18, 2008, the total unpaid amount including all penalties and interest is \$498,497.80.

The City Attorney's Office has negotiated a settlement agreement calling for Bay 101 to immediately pay the City the sum of \$275,000 and in exchange, Bay 101 will dismiss its Complaint, the City will dismiss its Cross-Complaint, each party to bear its own attorneys' fees and costs.

ANALYSIS

In this litigation, the City has asserted that following the voluntary dismissal of a bankruptcy petition, a debtor is obligated to pay penalties and interest that accrued on any unpaid amounts during the pendency of the bankruptcy. Bay 101 has argued that it was prevented from paying the cardroom taxes while it was in bankruptcy, that it promptly paid those amounts following the dismissal of the bankruptcy, and that it is not legally obligated to pay interest and penalties.

In order to avoid further protracted litigation staff recommends that the City Council approve payment by Bay 101 to the City in the amount of \$275,000 to resolve this lawsuit. A copy of a letter agreement from counsel for Bay 101 is attached.

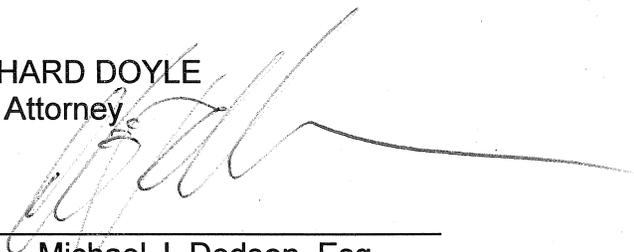
COORDINATION

This memo has been coordinated with the City's Finance Department.

CEQA

Not a Project.

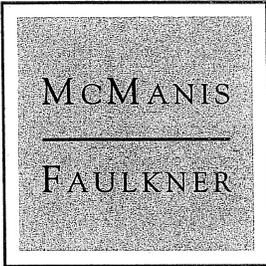
RICHARD DOYLE
City Attorney

By 

Michael J. Dodson, Esq.
Sr. Deputy City Attorney

cc: Debra Figone

For questions please contact MICHAEL DODSON, Sr. Deputy City Attorney at (408)
535-1902



October 23, 2008

VIA EMAIL & U.S. MAIL

Michael Dodson, Esq.
Office of the City Attorney
200 E. Santa Clara Street
San Jose, California 95113-1905

Re: Penalties and Interest on Table Tax – Sutter's Place dba Bay 101
Santa Clara County Superior Court Case No. 1-07-CV-086614

Dear Mr. Dodson:

This letter confirms that Bay 101 agrees to accept the City of San Jose's October 14, 2008 offer to settle this action on the following terms: (1) Bay 101 shall pay \$275,000 to the City of San Jose; (2) Bay 101 shall file a dismissal with prejudice of its Complaint in this action; (3) the City of San Jose shall file a dismissal with prejudice of its Cross-Complaint in this action; and (4) each party shall bear its own attorney's fees and costs.

You have advised that the City Council must approve the settlement at a public session. Because the agreement is not final until the City of San Jose approves it, the \$275,000 payment will not be sent until after the Council grants it approval.

We should prepare a Request for Dismissal that can be filed after the settlement is approved. We also should prepare a letter to advise Judge Murphy about the settlement and ask that the December 18, 2008 summary judgment hearing be taken off-calendar.

Thank you for able assistance in settling this matter. Let me know if you have any questions.

Very truly yours,

McMANIS FAULKNER


MICHAEL REEDY

MR:ms

A PROFESSIONAL CORPORATION

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50 WEST SAN FERNANDO STREET

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DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.