SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 07/20/2016   TIME: 01:30:00 PM   DEPT: C33

JUDICIAL OFFICER PRESIDING: James Crandall
CLERK: Nga Quach
REPORTER/ERM: ACRPT Karen A. Hutchison CSR# 6664
BAILIFF/COURT ATTENDANT: None/Jose Boc

CASE NO: **30-2014-00737578-CU-CR-CJC** CASE INIT.DATE: 07/31/2014
CASE TITLE: **Jaramillo vs. City of Fullerton, California**
CASE CATEGORY: Civil - Unlimited   CASE TYPE: Civil Rights

EVENT ID/DOCUMENT ID: 72412952

EVENT TYPE: Motion to Enforce Settlement
MOVING PARTY: Vivian Kitty Jaramillo
CAUSAL DOCUMENT/DATE FILED: Motion - Other enforce settlement, 06/27/2016

APPEARANCES
Marguerite Mary Leoni, from Nielsen Merksamerparrinello Gross & Leoni LLP, present for Defendant(s).
Kimberly Hall Barlow, from Jones & Mayer, present for Defendant(s).
 Kevin I. Shenkman, from Shenkman & Hughes, present for Plaintiff.
Robert Rubin, from Law Offices of Robert Rubin, and Deanna Kitamura, from Asian American's
Advancing Justice, present for Plaintiff in Related Case.

Jan Flory, City Counsel, present for Defendant City of Fullerton.
Jennifer Fitzgerald, Mayor, present for Defendant City of Fullerton.

Parties decline to stipulate to the Temporary Judge, plaintiff's Motion to Enforce Settlement Agreement is referred from Department C31 to this department.

Tentative ruling given to counsel this date.

The court hears oral arguments and confirms the tentative ruling as follows:

Plaintiffs', Vivian "Kitty" Jaramillo and Jonathan Paik, Motion to enforce the Settlement Agreement entered into between them and defendant City of Fullerton is GRANTED.

Code of Civil Procedure §664.6 states:

"If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement."

The settlement must be signed by both the party seeking to enforce the agreement under §664.6 and the party against whom it is to be enforced. *Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 305. The term "parties" as used in CCP § 664.6 means the litigants themselves, not their attorneys of record or other agents. *Levy v. Sup.Ct.* (1995) 10 Cal.4th 578, 585. Because the Settlement Agreement attached to the Declaration of Attorney Shenkman does not contain the signature of plaintiff Jonathan Paik, the court cannot enforce the agreement as to him. However, the copy of the Settlement Agreement does include the signatures of both plaintiff Jaramillo and the City Manager of defendant City of Fullerton, Joseph Felz.

The Settlement Agreement is enforceable under CCP 664.6. (Shenkman Decl., Ex. 1, ¶16.)

"Although a judge hearing a section 664.6 motion may receive evidence, determine disputed facts, and enter the terms of a settlement agreement as a judgment [citations], nothing in section 664.6 authorizes a judge to *create* the material terms of a settlement, as opposed to deciding what terms *the parties themselves* have previously agreed upon." *Osumi v. Sutton*, 151 Cal.App.4th 1355, 1360 (2007).

The parties' Settlement Agreement required the following to take place:

First, on or before 04/07/16, the Fullerton City Council was to announce its intention to place on its agenda a resolution calling an election on a ballot measure for the November 2016 statewide general election, which would allow the voters to change the City's system for electing City Council members from "at-large" to any allowable form of "district-based" elections, as the terms are defined in California Elections Code §14026. It was also to direct staff to being the process of preparing for adoption of the resolution by agendizing for discussion and action a process by which public meetings and hearings would be held for purposes of establishing district boundary maps to be submitted as part of the ordinance being considered in the ballot measure. All actions contemplated were to be performed in a timely manner so as to allow the ballot measure to go before the voters in November 2016. (Shenkman Decl., Ex. 1, ¶1.)

If the resolution was adopted and the ballot measure approved, plaintiffs would dismiss their lawsuits with prejudice, to be filed within 5 business days after certification of the election results. (Shenkman Decl., Ex. 1, ¶3.)

The resolution was to contain informational language concerning the electoral district map and the proposed ordinance was to include a copy of the map with the proposed electoral districts. That informational language was to be agreed upon by the parties prior to adoption of the resolution. (Shenkman Decl., Ex. 1, ¶4.)

Within 45 days of executing the Agreement, the City was to "initiate the process of designing electoral districts for the ordinance" by adopting a resolution or taking other appropriate actions, "consistent with this Agreement." (Id., ¶6.) Importantly for purposes of this motion, "[t]he electoral district map required to be included as part of the ordinance" was required to "be designed in accordance with applicable federal and State law, including, without limitation, the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973, et seq., and the criteria set forth in Elections Code section 21601." (Ibid.) Furthermore, "[t]he process for the design of the electoral district map" was to "comply with California Elections Code section 10010 (AB 1440)." (Ibid.) David Ely, was to be used "to assist the parties in the process of community meetings and public hearings to develop one or more district boundary maps for inclusion in the ordinance." (Ibid.) Mr. Ely was to facilitate two meetings in each of the four geographic quadrants of the city, and this was to be in addition to the three public hearings required by Elections Code §10010. The City was to contract with

Mr. Ely's firm, Compass Demographics, "to develop one or more district boundary maps, solicit public input" and educate the voters about district-based elections. (Ibid.)

Educational information was to be provided to the public about the ballot measure and the electoral district map beginning 06/01/16. (Id., ¶7.) The information was to, at a minimum, be displayed on the City's website and included in a mailing to residents. (Ibid.)

If the City failed to adopt the resolution provided in paragraph 1(a), failed to place the ballot measure on the November 2016 ballot, or missed the deadline to do so, or if the ballot measure failed, the Agreement would no longer be in effect. (Id., ¶10.)

To start, it is unclear whether the process for choosing Map 8A was compliant. Under Elections Code §10010, "[a] political subdivision that changes from an at-large method of election to a district-based election shall hold at least two public hearings on a proposal to establish the district boundaries of the political subdivision prior to a public hearing at which the governing body of the political subdivision votes to approve or defeat the proposal." *Id.* at subd.(a). It is unclear to the court whether the electoral district map approved by the City Council, Map 8A, was subject to two public hearings. According to the parties' submissions, it appears that Map 8A is derived from a predecessor Map 8. Map 8 was discussed at the Council's 5-17-16 meeting, and then a change was made to it in order to "include the Maple Community in a Latino plurality district," resulting in Map 8A, which was discussed at the Council's 6-7-16 meeting. (Barlow Decl., ¶5.) It is not entirely clear how significant this change was, and the parties have not submitted a copy of the predecessor Map 8 so that the court can compare the difference.

In addition, the court's review of the transcripts of the 5-17-16 and 6-7-16 Council meetings indicates that Map 8A was not developed in accordance with the procedure provided in paragraph 6 of the parties' Settlement Agreement. Defendant was to contract with Mr. Ely and Compass Demographics to assist in the process of developing one or more maps for inclusion in the ordinance. Mr. Ely apparently did so assist, and Map 2B was the result of that process. Map 8A, on the other hand, was submitted by a downtown business owner after the community input process had concluded, although ostensibly before the last deadline for submission of proposed maps. Importantly, there is no evidence that the proponent of Map 8 and Map 8A ever participated in the community deliberative process that apparently produced Map 2B. To the extent that Map 8A was not the result of the design procedures provided in paragraph 6 of the parties' agreement, adoption of that map arguably constitutes a breach of the settlement.

The main issue in this motion, however, is whether Map 8A is "designed in accordance with applicable federal and State law, including, without limitation, the Voting Rights Act of 1965...and the criteria set forth in Elections Code section 21601." (Shenkman Decl., Ex. 1, ¶6.) Plaintiff argues that the map was not so designed, because it (1) inappropriately considers the residences of incumbent councilmembers to avoid their having to run against one another, (2) inappropriately splits the downtown region into multiple districts, thus violating community of interests principles, and (3) fails to create any majority-minority districts, even where such districts arise naturally. The first two arguments are based on Elections Code §21601, and the third argument is based on Section 2 of the federal Voting Rights Act.

Elections Code §21601 requires a city council, after each census, "to adjust the boundaries of any or all of the council districts of the city so that the council districts shall be as nearly equal in population as may be." The statute goes on to state that, "[i]n establishing the boundaries of the council districts the council may give consideration to the following factors: (a) topography, (b) geography, (c) cohesiveness,

contiguity, integrity, and compactness of territory, and (d) community of interests of the council districts." The adjustment of district boundaries must also comply with 52 U.S.C. §10301, which prohibits any procedure or qualification that abridges or denies the right to vote on account of race or color.

Regarding plaintiff's first argument, that Map 8A inappropriately considers incumbent residences, the court would agree that consideration of such a factor would not be in keeping with the spirit of the Settlement Agreement or the factors under Section 21601. However, in accordance with California Rule of Court 8.1113, the court will not consider the unpublished trial court authority submitted by plaintiff. And furthermore, the court is not satisfied that such a consideration factored into the council's ultimate adoption of Map 8A. Indeed, the only evidence to which plaintiff points for this argument is the fact that one council member's residence appears to have been gerrymandered away from the district holding two other councilmembers' residences. This in and of itself does not show a desire to protect the incumbent, given that Map 8A also shows two incumbent councilmembers within one proposed district.

The court finds that plaintiff's second argument has some merit, however. According to Article 21, section 2 of the California Constitution, a community of interest "is a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Examples of such shared interests are those common to an urban area, a rural area, an industrial area, or an agricultural area, and those common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process." *Id.* at subd.(d)(4). It is unclear how the division of the downtown area of the city gives appropriate consideration to this principle. If anything, division of the downtown area among the five districts in Map 8A does not honor the contiguity of the population living there, and their shared interests in that area. While supporters of Map 8 and Map 8A at the Council meetings expressed the idea that all Fullerton residents should have an interest in the downtown area, it is unclear how many of these supporters actually reside in the downtown area, as opposed to simply owning businesses there. Indeed, the only person clearly identified as a downtown resident in the meeting transcripts was vehemently opposed to the idea of dividing the downtown area amongst the districts. (See 6-7-16 Tr. at 33-36.)

The City contends that Section 21601's factors are permissive, and not mandatory. While this might ordinarily be true, the parties' Settlement Agreement requires that the electoral district map be drawn in accordance with those criteria. Map 8A would seem to run afoul of at least one of those factors, in addition to being adopted through a process completely antithetical to that contemplated by the Agreement.

As such, the court GRANTS plaintiff's motion. The defendant is ORDERED to conduct further hearings within 10 days to adopt a map that complies with the procedure and requirements of the Settlement Agreement.

The court further sets a Status Conference on 08/08/2016 at 09:00 AM in Department C31 for parties to give the court status of the ballot resolution.