

RESOLUTION NUMBER **306054**
DATE OF FINAL PASSAGE ~~AUG 08 2010~~

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE ALLOCATION OF SETTLEMENT FUNDS IN *MICHAEL T. UBERUAGA V. CITY OF SAN DIEGO*, U.S. DISCTRICT COURT CASE NO. 08CV1960 MMA (BLM) AND *PATRICIA FRAZIER, ET AL. V. CITY OF SAN DIEGO*, SAN DIEGO SUPERIOR COURT CASE NO. 37-2008-0091840-CU-MC-CTL

WHEREAS the Securities and Exchange Commission (SEC) filed a civil complaint against Michael T. Uberuaga, Patricia Frazier, Ed Ryan, Teresa Webster and Mary Vattimo on April 7, 2008, alleging these individuals violated federal securities law in connection with the City's 2002 and 2003 securities offering;

WHEREAS each of these former City officials subsequently requested that the City provide them with a defense to the SEC action pursuant to California Government Code section 995, and continue to pay for outside counsel previously retained by the City to assist and advise these individuals during the course and scope of various investigations;

WHEREAS the City Council passed Resolution No. R-303689 on May 13, 2008, declining to provide a defense to Ms. Frazier, Mr. Ryan, Ms. Webster and Ms. Vattimo;

WHEREAS the City Council failed to adopt a resolution on July 29, 2008, authorizing a defense for Mr. Uberuaga;

WHEREAS on September 16, 2008, Ms. Frazier, Mr. Ryan, Ms. Webster and Ms. Vattimo filed a civil lawsuit against the City entitled *Patricia Frazier, et al. v. City of San Diego*,

San Diego Superior Court Case No. 37-2008-00091840-CU-MC-CTL, seeking a City-provided defense to the SEC action;

WHEREAS on October 23, 2008, Mr. Uberuaga filed a civil lawsuit against the City entitled *Michael T. Uberuaga v. City of San Diego*, United States District Court Case No. 08CV1960 MMA (BLM), seeking, among other things, a City-provided defense to the SEC action;

WHEREAS on July 1, 2009, the San Diego Superior Court granted Ms. Frazier's motion for summary adjudication; finding that Resolution No. R-303689 was insufficient to deny the former City officials' defense requests to the SEC action;

WHEREAS the United States District Court in the SEC action has ruled there is no evidence to support any fraud allegations against the former City officials, and that the allegations against them are predicated solely on alleged misrepresentations; and

WHEREAS, settlement of both *Michael T. Uberuaga v. City of San Diego*, United States District Court Case No. 08CV1960 MMA (BLM), and *Patricia Frazier, et al. v. City of San Diego*, San Diego Superior Court Case No. 37-2008-00091840-CU-MC-CTL, was authorized by the City Council on May 18, 2010, with the motion passing with a vote of 6 to 2;

WHEREAS the settlement of both *Michael T. Uberuaga v. City of San Diego*, United States District Court Case No. 08CV1960 MMA (BLM), and *Patricia Frazier, et al. v. City of San Diego*, San Diego Superior Court Case No. 37-2008-00091840-CU-MC-CTL, is expressly conditioned on Mr. Uberuaga, Ms. Frazier, Mr. Ryan and Ms. Vattimo entering into consent decrees resulting in final judgments with the SEC in *Securities and Exchange Commission v. Uberuaga, et al.*, United States District Court Case No. 08CV0625 DMS (WVG), for these individuals; THEREFORE

BE IT RESOLVED, that the Chief Financial Officer be and is hereby authorized to issue a check in the amount of \$295,812.00 made payable to McKenna Long & Aldridge, LLP, in full and final settlement of all claims for attorney's fees incurred by Michael T. Uberuaga in *Securities and Exchange Commission v. Uberuaga, et al.*, United States District Court Case No. 08CV0625 DMS (WVG), and *Michael T. Uberuaga v. City of San Diego*, United States District Court Case No. 08CV1960 MMA (BLM), upon notification that Mr. Uberuaga, Ms. Frazier, Mr. Ryan and Ms. Vattimo have entered into consent decrees resulting in final judgments with the SEC;

BE IT RESOLVED, that the Chief Financial Officer be and is hereby authorized to issue a check in the amount of \$32,868.00 made payable to the Casas Law Group, P.C., in full and final settlement of all claims for attorney's fees incurred by Michael T. Uberuaga in *Michael T. Uberuaga v. City of San Diego*, United States District Court Case No. 08CV1960 MMA (BLM), upon notification that Mr. Uberuaga, Ms. Frazier, Mr. Ryan and Ms. Vattimo have entered into consent decrees resulting in final judgments with the SEC;

BE IT RESOLVED, that the Chief Financial Officer be and is hereby authorized to issue a check in the amount of \$143,082.50 made payable to La Bella & McNamara, LLP, in full and final settlement of all claims for attorney's fees incurred by Patricia Frazier in *Securities and Exchange Commission v. Uberuaga, et al.*, United States District Court Case No. 08CV0625 DMS (WVG), and *Patricia Frazier, et al. v. City of San Diego*, San Diego Superior Court Case No. 37-2008-00091840-CU-MC-CTL, upon notification that Mr. Uberuaga, Ms. Frazier, Mr. Ryan and Ms. Vattimo have entered into consent decrees resulting in final judgments with the SEC;

BE IT RESOLVED, that the Chief Financial Officer be and is hereby authorized to issue a check in the amount of \$139,892.50 made payable to David Hahn, P.C., in full and final settlement of all claims for attorney's fees incurred by Mary Vattimo in *Securities and Exchange Commission v. Uberuaga, et al.*, United States District Court Case No. 08CV0625 DMS (WVG), and *Patricia Frazier, et al. v. City of San Diego*, San Diego Superior Court Case No. 37-2008-00091840-CU-MC-CTL, upon notification that Mr. Uberuaga, Ms. Frazier, Mr. Ryan and Ms. Vattimo have entered into consent decrees resulting in final judgments with the SEC;

BE IT RESOLVED, that the Chief Financial Officer be and is hereby authorized to issue a check in the amount of \$116,490.00 made payable to Frank J. Ragen, in full and final settlement of all claims for attorney's fees incurred by Ed Ryan in *Securities and Exchange Commission v. Uberuaga, et al.*, United States District Court Case No. 08CV0625 DMS (WVG), and *Patricia Frazier, et al. v. City of San Diego*, San Diego Superior Court Case No. 37-2008-00091840-CU-MC-CTL, upon notification that Mr. Uberuaga, Ms. Frazier, Mr. Ryan and Ms. Vattimo have entered into consent decrees resulting in final judgments with the SEC;

BE IT RESOLVED, that the Chief Financial Officer be and is hereby authorized to issue a check in the amount of \$254,242.50 made payable to Frank T. Vecchione, in full and final settlement of all claims for attorney's fees incurred by Teresa Webster in *Securities and Exchange Commission v. Uberuaga, et al.*, United States District Court Case No. 08CV0625 DMS (WVG), and *Patricia Frazier, et al. v. City of San Diego*, San Diego Superior Court Case No. 37-2008-00091840-CU-MC-CTL, upon notification that Mr. Uberuaga, Ms. Frazier, Mr. Ryan and Ms. Vattimo have entered into consent decrees resulting in final judgments with the SEC;

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to appropriate and expend \$982,387.50 for payment of the settlement applying the Modified FY2010 FTE allocation.

APPROVED AS TO FORM: JAN I. GOLDSMITH, City Attorney

By David J. Karlin
David J. Karlin
Deputy City Attorney

DJK/lla
07/12/10
Or.Dept: City Attorney
R-2011-63

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUL 27 2010.

ELIZABETH S. MALAND
City Clerk

By Elizabeth S. Maland
Deputy City Clerk

Approved: 8.3.10
(date)

Jerry Sanders
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

The City of San Diego
COMPTROLLER'S CERTIFICATE

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING CC 3000003422
 DEPT. NO.: 1211

HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____
 COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Funcional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
TOTAL AMOUNT									

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$982,387.50

Vendor: Six vendors-(McKenna Long & Aldridge, LLP), (Casas Law Group, PC), (La Bella & McNamara,LLP),(David A Hahn PC),(Frank J Ragen), (Frank T. Vecchione)

Purpose: Authorize the CFO to pay attorney's fees in settlement and full satisfaction of any and all claims raised in the matters of Michael Uberuaga v City of SD and Patricia Frazier v City of SD upon notification that the SEC, M. Uberuaga, P. Frazier, M. Vattimo & E. Ryan have entered into a consent decree resulting in final judgements with the SEC in the SEC v Uberuaga case. Six checks will be issued as outlined per Council Action Request and will be funded via the 2010 FTE allocation.

Date: July 13, 2010 By: *Pam Hallbut*
 COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Funcional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
		SEE	ATTACHED	FTE	SCHEDULE				\$982,387.50
TOTAL AMOUNT									\$982,387.50

FUND OVERRIDE

CC 3000003422

✓ - 306054 JUL 22 2010