

SETTLEMENT AGREEMENT

between

THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA

and

THE SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY (“SCRRA”)

RECITALS

- A. Parties. The parties to this Settlement Agreement (“Agreement”) are the Attorney General of the State of California (“Attorney General”), on behalf of the People of the State of California, and the Southern California Regional Rail Authority (“SCRRA”) (hereafter collectively the “Parties” or singularly the “Party”).
- B. The SCRRA is headquartered at 700 South Flower Street, 26th Floor, Los Angeles, California 90017-4101. Established under Public Utilities Code section 130255, SCRRA is an existing joint powers authority entity made up of the transportation commissions of the Counties of Los Angeles, Orange, Riverside, San Bernardino, and Ventura, and set up to operate the commuter rail network known as Metrolink in those counties. (Gov. Code, § 14072.) The purpose of the SCRRA is to plan, design, construct, and administer the operation of Metrolink serving the counties of Los Angeles, Orange, Riverside, San Bernardino, and Ventura. As a public entity providing public transportation, the SCRRA is subject to Civil Code sections 54 and 54.1, Government Code sections 4450-4460, 4500, 7250-7252, and Part 2, Title 24 of the California Code of Regulations.
- C. The SCRRA owns and operates 103 Metrolink ticket vending machines (hereafter “TVMs”) in 51 stations throughout Southern California.
- D. The Attorney General enters into this Agreement pursuant to his constitutional status as chief law enforcement officer of the State, and pursuant to California Civil Code sections 52 and 55.1, and Government Code section 4458.
- E. In an effort to resolve their differences expeditiously and without the burden, expense, and delay of litigation, the Attorney General and the SCRRA have engaged in negotiations. As a result of those negotiations, the Attorney General and the SCRRA have agreed to enter into this Agreement. This Agreement is intended to and does resolve the matters in dispute between the Attorney General and the SCRRA as provided for in this Agreement.

BACKGROUND

1. This matter was initiated by a disabled access complaint regarding the Metrolink at Los Angeles Union Station that was lodged with the Office of the Attorney General (hereafter “Complaint”). In that Complaint, it was alleged that the East Portal of Union Station lacked an accessible path of travel for connecting Metrolink passengers to local transportation. Subsequently, a series of meetings led to an accommodation designed for the complainant. However, the individual accommodation did not resolve the underlying disabled access issues for the general public in using Metrolink TVMs which are currently not accessible to and independently usable by persons with vision impairments.
2. The Attorney General continued to investigate the disabled access issues for the general public in the use of Metrolink TVMs. In the course of this investigation, the Attorney General determined that the lack of Braille, raised lettering or graphics and/or audio assistance at the Metrolink TVMs violate Civil Code sections 54 and 54.1, Government Code sections 4450-4453, 4500, and Part 2, Title 24 of the California Code of Regulations sections 1117B.5.2-5.6 and 1117B.7.6.
3. The SCRRA denies that it has violated Civil Code sections 54 and 54.1, Government Code sections 4450-4460, 4500, and Part 2, Title 24 of the California Code of Regulations sections 1117B.5.2-5.6 and 1117B.7.6.
4. No Admission. This Agreement, entered into by the Parties, shall not be construed as an admission by the SCRRA of any violation of Civil Code sections 54 and 54.1, Government Code sections 4450-4460, 4500, and Part 2, Title 24 of the California Code of Regulations sections 1117B.5.2-5.6 and 1117B.7.6., title II of the Americans with Disabilities Act of 1990 (“ADA”) (42 U.S.C.S. §§ 12131-12165; 28 C.F.R. §§ 35.101-35.190, pt. 36, appen. A, 4.34.5 (2001)), or of any other law, rule, or regulation dealing with disabled persons or the rights of disabled persons. Further, nothing in this Agreement shall be construed as an admission against the interest of the SCRRA relating to any other property owned, leased, leased to, or operated by the SCRRA.
5. The SCRRA acknowledges that the Attorney General is authorized to bring a civil action to enjoin any violation of Civil Code sections 54 and 54.1, Government Code sections 4450-4460, 4500, and Part 2, Title 24 of the California Code of Regulations sections 1117B.5.2-5.6 and 1117B.7.6. In consideration of the SCRRA’s implementation of the terms of this Agreement, the Attorney General agrees to refrain from filing a civil suit against the SCRRA regarding the Complaint.

TERMS, IMPLEMENTATION, AND ENFORCEMENT OF THIS AGREEMENT

6. Metrolink TVMs: Subject to the approval of the Attorney General, the SCRRA shall develop and install on all of its Metrolink TVMs usage instructions which are accessible to and independently usable by persons with visual impairments pursuant to the specifications

and graphical plans in Exhibit A attached hereto. Such instructions, as described below, shall be installed by SCRRA according to the following schedule and scheme.

- a. Raised Lettering/Graphics or Braille/Graphics: Consistent with Part 2, Title 24 of the California Code of Regulations sections 1117B.5.2-5.6 and 1117B.7.6, the front panels of all existing TVMs in the 51 Metrolink stations shall be retrofitted with raised lettering, Braille, tactile graphics and/or tactile trails. The side panels of all existing TVMs in all 51 Metrolink stations shall be retrofitted with additional raised lettering, tactile graphics and tactile trails on instructions for using the TVMs. The time frame for implementation of this installation project shall be as follows:
 - 1) Develop TVM prototype for the Los Angeles Union Station facility within 60 days from the effective date of the Agreement.
 - 2) Field test TVM prototype at the Los Angeles Union Station facility within 90 days from the effective date of the Agreement.
 - 3) Revise TVM prototype at the Los Angeles Union Station facility within 120 days from the effective date of the Agreement.
 - 4) Retrofit all existing TVMs in each and every Metrolink station within 240 days from the effective date of the Agreement.
 - 5) Cooperate with monitoring by the Office of the Attorney General within one year from the effective date of the Agreement.
 - b. Audio Assisted Devices: In addition to the specifications referenced above, SCRRA agrees that when the current TVMs are improved or replaced to include video instructions, audio instructions will also be installed so that the visually-impaired may follow the visual prompts.
 - c. Maintenance: SCRRA shall maintain the Metrolink TVMs in a usable condition for persons with visual impairments.
7. Approval of Specifications and Plans. The Attorney General has approved the SCRRA's specifications for the retrofit, design, installation and purchase/lease of the Metrolink TVMs in Attachment A.

8. Provision of Evidence of the SCRRA's Compliance with Agreement. Within ninety (90) days of the signing of this agreement, the SCRRA shall submit a letter to the Attorney General with copies of its completed work orders pursuant to the retrofit, design, installation and purchase/lease of the Metrolink TVMs as described in paragraph 6.
9. Inspection and Monitoring. Ninety (90) days after the signing of the Agreement, the Attorney General shall conduct a site inspection of the Metrolink TVMs. If implementation is satisfactory, the Attorney General shall continue to monitor the implementation of this Agreement for twelve (12) months after its signing, after which monitoring by the Attorney General shall terminate.
10. Release of Claim. The Attorney General hereby releases and discharges the SCRRA, and any and all of the SCRRA's agents, employees, servants, attorneys, successors, assigns, and assignors (collectively the "Releasees"), jointly and severally, from any and all claims, demands, and/or causes of action, known or unknown, suspected or unsuspected, which the Attorney General has against the Releasees for the SCRRA's alleged violations of Civil Code sections 54 and 54.1, Government Code sections 4450-4460, 4500, and Part 2, Title 24 of the California Code of Regulations sections 1117B.5.2-5.6 and 1117B.7.6., as described in paragraph 2.
11. General Release. The Attorney General acknowledges that he is familiar with section 1542 of the California Civil Code, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

The Attorney General hereby expressly waives and relinquishes all rights and benefits which he may have under Civil Code section 1542 to the same or similar effect, to the full extent that he may lawfully waive and relinquish all such rights and benefits pertaining to the SCRRA's alleged violations of Civil Code sections 54 and 54.1, Government Code sections 4450-4460, 4500, and Part 2, Title 24 of the California Code of Regulations sections 1117B.5.2-5.6 and 1117B.7.6. respecting the TVMs, as described in paragraph 2. The Attorney General acknowledges that the foregoing waiver under the provisions of section 1542 was separately bargained for and is an essential and material term of this Agreement.
12. This Agreement is limited to the SCRRA's alleged violations of Civil Code sections 54 and 54.1, Government Code sections 4450-4460, 4500, and Part 2, Title 24 of the California Code of Regulations that are related to its TVMs, as described in paragraph 2. This Agreement does not remedy and should not be construed to remedy any other potential violations of Civil Code sections 54 and 54.1, Government Code sections 4450-4460, 4500, and Part 2, Title 24 of the California Code of Regulations sections 1117B.5.2-5.6 and 1117B.7.6., title II of the Americans with Disabilities Act of 1990

(“ADA”) (42 U.S.C.S. §§ 12131-12165; 28 C.F.R. §§ 35.101-35.190, pt. 36, appen. A, 4.34.5 (2001)), or any other state or federal law.

13. If the Attorney General believes that the SCRRA has failed to comply with any provision of this Agreement, the Attorney General shall provide the SCRRA with written notification of its alleged breach of this Agreement (“written notification”). The Attorney General shall mail this written notification to the SCRRA’s attorney, David Michaelson, Deputy County Counsel, Office of the County Counsel, County of Los Angeles, 500 W. Temple Street, Room 648, Los Angeles, California, 90012-2700. The Parties then shall attempt to resolve the issue or issues in good faith. If the Attorney General and the SCRRA are unable to reach a satisfactory resolution of the issue or issues raised within sixty (60) days of the Attorney General’s written notification to the SCRRA or within some other period of time mutually agreed upon by the Parties, the Attorney General may institute a civil action in the Los Angeles County Superior Court in which venue lies to enforce the terms of the Agreement.
14. Amendment or Modification. This Agreement may be amended or modified only by an instrument in writing signed by a representative of the SCRRA and the Attorney General.
15. Any failure of the Attorney General to enforce any provision of this Agreement shall not be construed as a waiver of his right to enforce other deadlines and provisions of this Agreement.
16. This Agreement is a public document pursuant to Government Code section 6250 et seq. A copy of this Agreement, or any information contained in it, may be made available to any person.
17. Successors and Assigns. All of the terms of this Agreement shall be binding upon and inure to the benefit of the SCRRA and its successors in interest and assigns. The SCRRA has a duty to so notify all such successors in interest and assigns of this Agreement.
18. Effective Date. This Agreement shall become effective only when each named Party has executed it. This Agreement shall be effective as of the date the last Party signs it, whether that signature shall be affixed to an original or to a counterpart of the Agreement.
19. Knowing and Voluntary. The Parties to this Agreement, and each of them, acknowledge, declare, and represent that they have carefully read this Agreement and know the contents of it, and fully understand all of the terms and conditions set forth in it. The Parties further acknowledge, declare, and represent that they entered into this Agreement freely, knowingly, voluntarily, and without coercion. In executing this Agreement, The SCRRA acknowledges, declares, and represents that it relies solely on its own judgment, belief, and knowledge, and, if desired, on the advice and recommendations of its own independently selected counsel. In executing this Agreement, the Attorney General acknowledges, declares, and represents that he relies solely on his own judgment, belief, and knowledge.

20. Complete and Integrated Agreement. This instrument, with attached Exhibit A, reflects the entire Agreement and understanding between the Parties regarding the Complaint. This Agreement supersedes and replaces all prior agreements, negotiations and/or proposed, but unexecuted agreements, whether written and/or oral. Neither any Party nor any attorney for any Party has made any promise, representation, or warranty whatsoever, express or implied, concerning the Complaint or the Agreement to induce any Party to execute this Agreement. Each Party acknowledges that he/it has not executed this Agreement in reliance on any such promise, representation, or warranty not covered in the Agreement. No other statement, promise, or agreement, either written or oral, made by either Party or agents of either Party, that is not contained in this written Agreement, shall be enforceable regarding the accessibility of SCRRA's TVMs. This Agreement finally resolves and disposes of all issues, claims, and remedies between the Parties regarding or relating to the Complaint.
21. Governing Law. The Parties agree that this Agreement shall in all respects be interpreted, enforced, and governed under and pursuant to the laws of the State of California, without giving effect to its conflict of laws provisions.
22. Counterparts. This Agreement may be executed in counterparts, and all such counterparts so executed shall constitute one Agreement, which shall be binding on all the Parties, notwithstanding that all the Parties are not signators to the original, or the same counterparts. Facsimile copies of this Agreement, or counterparts showing execution of the Agreement by all Parties, shall be of the same validity, force and effect as the original or originals.
23. Neutral Construction. This Agreement shall be deemed for all purposes to have been drafted equally by all Parties and no presumption shall apply as against the drafter of this Agreement or in favor of the non-drafting Party.
24. Use of Captions. The captions of titles of the various articles of this Agreement are used for convenience purposes only, and are not intended to, and shall not in any way, enlarge or diminish the obligations of the Parties, or affect the meaning or construction of this Agreement.
25. Severability. In the event any term, particular provision, or portion of a provision is found to be invalid or unenforceable by a court of competent jurisdiction, that invalidity shall not affect the validity of the remaining terms and provisions of this Agreement. This Agreement shall be valid and enforceable to the maximum extent permitted by law and shall continue to have full force and effect.
26. Warranty of Authority. Each signer of this Agreement signing on behalf of the Parties expressly represents and warrants that s/he has authority to execute and bind the Party or Parties on behalf of which s/he executes this Agreement.

EXECUTION OF SETTLEMENT AGREEMENT

AGREED AND CONSENTED TO:

For The People of the State of California:

Dated: _____

BILL LOCKYER
Attorney General of the State of California

BY: _____
PHYLLIS W. CHENG
Deputy Attorney General

For the Southern California Regional Rail Authority:

Dated: _____

BY: _____
ITS: _____

APPROVED AS TO FORM AND CONTENT:

Dated: _____

LLOYD W. PELLMAN
County Counsel of the County of Los Angeles

BY: _____
DAVID MICHAELSON
Senior Deputy County Counsel
Attorneys for the
SOUTHERN CALIFORNIA REGIONAL
RAIL AUTHORITY