

NEWS

From the County of San Bernardino
www.sbcounty.gov



SAN BERNARDINO COUNTY
AT YOUR SERVICE

FOR IMMEDIATE RELEASE

September 14, 2010

For more information, contact
David Wert, Public Information Officer
(909) 387-4717
dwert@sbcounty.gov

County reaches settlement with ex-Assessor consultant

Former Assessor consultant Michael Richman will repay everything that was paid to him by the county and cooperate with the county in its litigation against five remaining defendants according to the terms of a settlement he has reached with the county.

On May 12, 2009, the county filed suit against Richman, his consulting company, former Assessor Bill Postmus, and four of Postmus' ex-employees in connection with findings from an investigative report that they were paid for time they did not work and used county resources to conduct political work.

Richman has agreed to repay \$47,910, which is the full amount he received from the county under a purchase order secured by Postmus. The county, which has received the first of three installment payments pursuant to the settlement agreement, has agreed to dismiss the case against Richman and his company, MPR Strategies LLC, once final payment has been received on December 29, 2010.

"The county is pleased that Mr. Richman has agreed to repay the contract money paid to him and to cooperate in the civil case against the remaining defendants," said Board of Supervisors Chairman Gary Ovitt. "The county filed this case to make it clear that politicians and appointees who use taxpayer money for personal projects unconnected to the business of the county will be forced to repay. This settlement is an important milestone towards the goal of restitution by all involved."

The county is continuing to seek damages against Postmus, former assistant assessors Adam Aleman and Jim Erwin, and former Assessor employees Greg Eyler and Rex Gutierrez. The investigative report that led to the lawsuit concluded that Postmus sought the position of Assessor with the intention of operating a political operation from within the office, and did so at taxpayer expense.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement (the "Agreement") is entered into in Newport Beach, California on this 26th day of August, 2010, by and between the County of San Bernardino, a charter county in the State of California (the "County"); Michael Richman, an individual ("Richman"); and MPR Strategies, a California Limited Liability Company ("MPR") (all three collectively, the "Parties"; individually, a "Party"). Reference is made to the following recitals:

A. On or about May 12, 2009, the County filed a lawsuit captioned County of San Bernardino v. William Postmus, et al., in the Superior Court of the State of California, County of San Bernardino, Case No. CIV-DS-906-909, seeking compensatory, statutory and punitive damages in connection with alleged fraud against the County (the "Lawsuit").

B. Richman and MPR (collectively, the "Richman Parties") are among the named defendants in the Lawsuit.

C. The County and the Richman Parties hereto seek to resolve all outstanding claims arising from the transactions that gave rise to the Lawsuit. The Parties deem it to be in their best interests and to their mutual advantage to resolve these issues on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the County and the Richman Parties agree as follows:

1. Settlement Payments by the Richman Parties to the County

1.1 **Amount Due:** For and in consideration of the terms and provisions of this Agreement, the Richman Parties will be liable to the County for the sum of \$47,910, payable as follows:

1.1.1 **Initial Installment Payment:** Concurrently with the execution of this Agreement, the County shall be paid \$15,000;

1.1.2 **Subsequent Installment Payments:** The County shall be paid \$15,000 on October 29, 2010, and \$17,910 on December 29, 2010. These payments shall be made by cashier's check payable and delivered to the County.

2. Procedural Posture

2.1 **Dismissal of the Richman Parties:** Once all payment obligations provided for herein in Section 1.1 have been fulfilled by the Richman Parties, the County shall present, lodge, and file an executed Request for Dismissal with Prejudice of the Richman Parties as defendants in the Lawsuit. Nothing in this paragraph, nor in this Agreement, shall confer or be construed as conferring any right or benefit upon, or release from liability to, any individual or entity who is not a party to this Agreement, including, but not limited to, the remaining defendants in the Lawsuit.

2.2 Stipulation for Entry of Judgment: Concurrently with the execution of this Agreement, the Parties (or their counsel) shall execute a Stipulation for Entry of Judgment in the form attached hereto as Exhibit A. Upon the occurrence of a default by the Richman Parties, the County shall be authorized to present, lodge, and file the Stipulation for Entry of Judgment and the Proposed Judgment (attached hereto as Exhibit B). A default shall occur if any payment required by Section 1.1 of this Agreement is not received on or before its due date, and remains unpaid for ten (10) days following written notice by the County of such delinquency.

3. Releases

3.1 Release by the County of the Richman Parties: For and in consideration of the terms and provisions of this Agreement, and effective upon the execution of this Agreement, the County, on behalf of itself and any other affiliated public entities, does hereby now and forever release and discharge Richman, on behalf of himself and his heirs and assigns, and MPR, on behalf of itself and its parents, subsidiaries, other affiliated or related corporations or entities, and each of its respective current and former officers, directors, agents, representatives, officials, employees, and attorneys, from any and all claims, actions, causes of action, obligations, liabilities, damages, demands, and charges of whatever nature that are based upon, arise out of, or relate to any act or omission as alleged against the Richman Parties in the Lawsuit, except for the executory obligations of the Richman Parties under this Agreement.

3.1.1 Status of Installment Payments: Notwithstanding the foregoing, nothing in this Agreement shall release, or be construed as releasing, the Richman Parties of the executory obligations pursuant to Section 1.1 of this Agreement.

3.2 Release by the Richman Parties of the County: For and in consideration of the terms and provisions of this Agreement, and effective upon the execution of this Agreement, Richman, on behalf of himself and his heirs and assigns, and MPR, on behalf of itself and its parents, subsidiaries, and other affiliated or related corporations or entities, and each of its respective current and former officers, directors, agents, representatives, officials, employees and attorneys, does hereby now and forever release and discharge the County, on behalf of itself and any other affiliated public entities, and each of their respective current and former officers, directors, agents, representatives, officials, employees and attorneys, from any and all claims, actions, causes of action, obligations, liabilities, damages, demands, and charges of whatever nature that are based upon, arise out of, or relate to the Lawsuit or to the Richman Parties' relationship, contractual or otherwise, with the County.

3.3 Covenant Not to Sue. The Parties shall not now nor at any time in the future file in any court, administrative proceeding, or other tribunal any claim released pursuant to this Agreement. Any Party that breaches its obligations under this Section shall indemnify all other Parties, and hold them harmless, from and against any liability, loss, cost, or expense (including, but not limited to, reasonable attorney's fees) arising out of, related to, or connected with such breach.

4. Duty to Cooperate: The Richman Parties shall maintain and provide information to, and cooperate fully with, the County in connection with the Lawsuit. The Richman

Parties' agreement to cooperate, however, shall not obligate them to take any particular position in or with respect to any claim brought by another party. In the event that Richman may be requested to testify in connection with the Lawsuit, Richman's only obligation under this Agreement shall be to testify honestly and truthfully. The Richman Parties' obligations pursuant to this duty to cooperate shall include, but are not limited to (1) immediately providing the County with copies of any demands, notices, summonses or legal papers received in connection with the Lawsuit or related civil and/or criminal actions; (2) reporting the existence and content of any communication or attempted communication, whether informal or not and whether in writing or not, with other defendants in the Lawsuit and/or their agents, attorneys or representatives in connection with any issue related to the Lawsuit; (3) attending depositions, trials or hearings on 10 days notice, without the necessity of a subpoena or personal service and without objection; (4) providing any documents and other tangible things requested by the County on 20 days notice, without the necessity of a subpoena or personal service and without objection; (5) not objecting to efforts by the County to obtain documents or other information from any other defendant in the Lawsuit or any third party; (6) protecting, preserving and maintaining all records and correspondences that are now in or later come into the Richman Parties' possession, custody or control, that were sent to, received from or known to be seen by, other defendants in the Lawsuit or any of their representatives; (7) cooperating with the County in its investigation of conduct related to and alleged in the Lawsuit, and in pursuing its legal rights through the Lawsuit (including all appeals, up to and including enforcement of final judgment); and (8) assisting the County, upon reasonable request, in the enforcement of any right against any person or organization that may be liable to the County in connection with any allegation in the Lawsuit. Each Party represents, warrants and agrees that the Richman Parties' duty to cooperate as specified herein is a material term of this Agreement, without which no Party would have entered into this Agreement.

5. General Provisions

5.1 Incorporation of Recitals: All of the recitals set forth in paragraphs A, B and C, inclusive, are incorporated herein by this reference as though set forth in full at this place.

5.2 Final and Binding Agreement: This Agreement is intended to be, and is, final and binding on all Parties.

5.3 Warranty of No Assignment of Claims: Each Party warrants and represents that such Party has not sold, assigned, conveyed, pledged, encumbered, or otherwise in any way transferred to any person or entity any Claim released by such Party pursuant to this Agreement.

5.4 Warranty of Independent Advice: Each Party warrants and represents that it has received independent legal advice from such Party's attorney with respect to the rights and obligations arising from, and the advisability of executing, this Agreement.

5.5 Warranty of Due Authorization: Each Party warrants and represents that such Party is fully entitled and duly authorized to enter into and deliver this Agreement. In particular, and without limiting the generality of the foregoing, each Party warrants and

represents that it is fully entitled to grant the releases, enter into the covenants, and undertake the obligations set forth herein.

5.6 Warranty of Power: MPR warrants and represents that it is duly organized and validly existing under the laws of the state or nation of its incorporation or formation, and that it has full power and authority to enter into this agreement and carry out the provisions hereof.

5.7 No Third Party Beneficiaries: No person or entity shall be considered a third party beneficiary of, or be otherwise entitled to any rights or remedies under, this Agreement, except with respect to the releases and covenants not to sue provided for herein.

5.8 Survival of Warranties: All warranties and representations set forth in this Agreement shall survive the execution and delivery of this Agreement.

5.9 Choice of Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California.

5.10 No Oral Modification: No provision of this Agreement can be waived, modified, amended, or supplemented except in a writing signed by an authorized representative of each Party to be bound.

5.11 Integrated Agreement: This Agreement constitutes the entire understanding and contract between the Parties with respect to the subject matter referred to herein. Any and all other representations, understandings, or agreements, whether oral, written, or implied, are merged into and superseded by the terms of this Agreement.

5.12 Reformation and Severability: If any provision of this Agreement (other than any provision of Sections 1, 2 or 4) is declared invalid by any tribunal, then such provision shall be deemed automatically adjusted to the minimum extent necessary to conform to the requirements for validity as declared at such time and, as so adjusted, shall be deemed a provision of this Agreement as though originally included herein. In the event that the provision invalidated (other than any provision of Sections 1, 2 or 4) is of such a nature that it cannot be so adjusted, the provision shall be deemed deleted from this Agreement as though such provision had never been included herein. In either case, the remaining provisions of this Agreement shall remain in full force and effect.

5.13 Compromise Agreement: This Agreement is a compromise and settlement of disputed claims and rights and is not intended to be, nor shall be construed as, any admission of liability or wrongdoing by any Party or any other person or entity.

5.14 Headings: The subject headings used in this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any provisions of this Agreement.

5.15 Attorney's Fees: In the event of any dispute among the Parties arising out of, related to, or connected with this Agreement, the prevailing Party shall be entitled to recover from all non-prevailing Parties the actual expenses of the prevailing Party, including, but not limited to, reasonable attorney's fees. In addition, each Party shall hold

harmless and indemnify all other Parties from and against any liability, loss, cost, or expense (including, but not limited to, reasonable attorney's fees) incurred as a direct or indirect result of such Party's breach of any representation or warranty in this Agreement.

5.16 Indemnity: Each Party, to the extent such Party breaches any representation and warranty contained herein, agrees to indemnify and hold harmless any non-breaching Party to the Agreement from and against any and all claims, allegations, demands, liabilities, losses, obligations, promises, damages, costs, expenses (including, without limitation, attorney's fees), lawsuits, actions (in law, equity or otherwise), causes of action, rights and privileges actually incurred as a result of such breach.

5.17 Notices: Any notice required or desired to be given hereunder shall be in writing and shall be served by United States Mail, overnight air courier service (such as Federal Express), facsimile, or personal delivery as provided herein. Service of any notice upon a Party hereto shall be deemed complete on the day such notice is served by personal delivery or sent by facsimile transmission during regular business hours (and shall be deemed complete on the following day if personally delivered or sent by facsimile transmission after regular business hours), on the day following delivery of the notice to an overnight air courier delivery service with all costs fully prepaid, and on the third day following deposit of the notice in the United States Mail with postage thereon fully prepaid (unless sent by Express Mail overnight delivery, in which case service shall be complete on the day following deposit). In order to be effective, any notice must be served upon both the Party and the persons designated to receive a copy thereof at the addresses or facsimile numbers set forth below:

If to the County:

Ruth Stringer
County Counsel
County of San Bernardino
385 North Arrowhead Avenue, Fourth Floor
San Bernardino, CA 92415
Facsimile No.: (909) 387-5462

With a copy to:

John C. Hueston
Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Facsimile No: (310) 203-7199

If to either of the Richman Parties:

Steven D. Baric
Baric Minesinger

2603 Main Street # 1050
Irvine, CA 92614
Facsimile No: (800) 455-8217

5.18 Execution in Counterparts: This Agreement may be executed and delivered in any number of original or facsimile counterparts. When each Party has signed and delivered at least one counterpart to all other Parties, each counterpart shall be deemed an original and all counterparts, taken together, shall constitute one and the same agreement, which shall be binding and effective on the Parties hereto.

5.19 Confidentiality: The Parties agree that all information marked as confidential and disclosed or provided to it by another Party or any affiliate, shall be kept confidential, except to the extent required by law, regulation or court order (and in such case, only upon prior written notice to the disclosing party). The Parties agree that neither the Richman Parties nor any agent or representative of the Richman Parties is permitted to discuss the Lawsuit with any individual, entity, or agency, unless expressly permitted to do so in writing by the County. Notwithstanding the foregoing, the Richman Parties may comply with requests or demands for information by any governmental agency or court, but only as required by law, and so long as the Party of whom such disclosure requirement is made provides each other Party written notice of such requirement not later than two business days after first learning of such requirement.

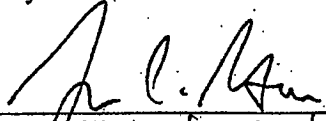
5.20 No Presumption From Drafting: Each Party has reviewed and had an opportunity to draft, review, and edit the language of this Agreement with the assistance or advice of counsel, so no presumption for or against any Party arising out of drafting all or any part of this Agreement will be applied in any action relating to, connected to, or involving this Agreement. Accordingly, the Parties hereby waive the benefit of California Civil Code Section 1654 and any successor or amended statute, providing that in cases of uncertainty, language of a contract should be interpreted most strongly against the Party who caused the uncertainty to exist.

5.21 Arbitration: All disputes, controversies, or claims arising out of, related to, or connected with this Agreement shall be resolved by final and binding arbitration in accordance with the applicable rules of the American Arbitration Association then in effect.

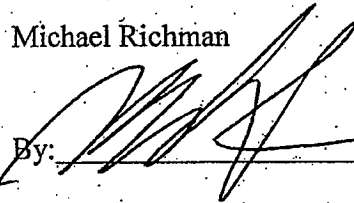
5.22 The Richman Parties: As used in this agreement, the Richman Parties refers to MPR and Richman. Nothing in this Agreement shall be construed as releasing or waiving the obligations of either MPR or Richman vis-à-vis the other. Where the term "Richman Parties" is used, it shall be construed as fully obligating MPR and Richman, jointly and severally. How and to what extent the obligations are distributed amongst the Richman Parties is within the discretion of the Richman Parties, but under no circumstances shall impact the rights of the County pursuant to this Agreement.

IN WITNESS WHEREOF, the Parties have approved and executed this Agreement as of the Effective Date.

County of San Bernardino

By: 
Attorney for County of San Bernardino

Michael Richman

By: 

MPR Strategies, LLC

By: 