



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Regina Rodriguez and Justin
Cruz v. City of San Jose
Settlement Agreement

DATE: February 26, 2009

RECOMMENDATION

Approve settlement and authorize payment to Regina Rodriguez and Justin Cruz in the amount of \$87,000 pursuant to a Settlement Agreement and Release, as considered by the City Council during the Closed Session held on February 9, 2009.

OUTCOME

To resolve a lawsuit brought by Regina Rodriguez and Justin Cruz against the City of San Jose and Officer Nick Byrd for vehicular negligence.

BACKGROUND

This lawsuit arises out of an automobile accident that occurred on February 12, 2006 at approximately 2:30 a.m. at the intersection of E. Santa Clara and 19th Street. Officer Nick Byrd, #3847, was in a marked patrol car when he was flagged down by a witness reporting that a maroon Chevy had just rammed another vehicle off the road and that the Chevy was E/B on E. Santa Clara Street and was exceeding 25mph. Officer Byrd stopped for a light east bound on E. Santa Clara at 17th St. He continued and had accelerated to about 40mph in order to make a car stop on the Chevy. The posted speed limit in this area is 25mph. The vehicle containing the two plaintiffs was west bound Santa Clara and made a left turn in front of Officer Byrd's vehicle. Officer Byrd was unable to evade the oncoming vehicle and did not have time to brake prior to the collision." He did not use his red lights and siren because he was too far away from the suspect vehicle and he believed his speed was safe under the circumstances. There was major damage to both vehicles (totaled) and all four occupants of the other vehicle were taken to the hospital by ambulance. Officer Byrd did not receive any injuries as a result of the accident.

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ANALYSIS

Rodriguez incurred special damages of \$82,000 and Cruz has special damages of \$47,500. Rodriguez sustained a fracture to her collarbone and pelvic bone. Cruz's injuries were soft tissue in nature.

In light of the risks and costs inherent in litigation, following extensive mediation, the City Attorney's Office has negotiated a settlement calling for total payment to both Rodriguez and Cruz of \$87,000.

PUBLIC OUTREACH/INTEREST

This memorandum and settlement agreement have been posted on the City's website for the March 10, 2009 agenda.

COORDINATION

The Police Chief, involved officers, and the City Manager were all advised of the proposed settlement.

COST SUMMARY/IMPLICATIONS

The settlement will be paid out of the City's claims reserve fund.

CEQA

Not a Project.

RICHARD DOYLE

City Attorney

By 

Robert Burchfiel Esq.

Sr. Deputy City Attorney

cc: Debra Figone

For questions please contact RICHARD DOYLE, City Attorney at
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