



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Kenneth Grason v. City of San
Jose Settlement Agreement

DATE: March 26, 2009

RECOMMENDATION

Approve settlement and authorize payment to Kenneth Grason and his attorney in the amount of \$360,000 pursuant to a Settlement Agreement and Release, as considered by the City Council during Closed Session held on March 17, 2009.

OUTCOME

To resolve a lawsuit brought by Kenneth Grason against the City of San Jose alleging excessive force.

BACKGROUND

This lawsuit arises out of an incident that occurred during the evening of July 14, 2006. At that time, Plaintiff Kenneth Grason was wandering in traffic in and about the Mineta San José International Airport. When Officers were dispatched to make contact with Mr. Grason, he was disheveled and rambling. Officers attempted to get him out of traffic lanes for his safety and the safety of others, however he walked away.

Ultimately, two officers were attempting to get Mr. Grason under control for the purposes of taking him into protective custody, pursuant to the provisions of California Welfare and Institutions Code Section 5150. Mr. Grason was struggling and resisting the efforts by the Officers to handcuff him and was swinging his elbows back and forth and squirming about.

The initial two officers who were attempting to take Mr. Grason into custody called for backup. A third officer arrived and during the continuing struggle to get Mr. Grason under control, Mr. Grason grabbed the third officer's leg. At that point, in an effort to get free, the officer kicked Mr. Grason, landing a blow to his ribs which caused a significant chest injury. Also, in an effort to get Mr. Grason under control, the third officer struck Mr. Grason on one of his legs three or four times which caused a seriously broken fibula and tibia.

Mr. Grason underwent surgery on his leg and was ultimately hospitalized for twelve days.

ANALYSIS

Mr. Grason incurred medical bills of approximately \$120,000. In addition, the estimated cost for additional surgery to remove a rod which was inserted in his leg during the initial surgery is between \$15,000 and \$25,000.

In light of the risks and costs inherent in litigation, including exposure to substantial attorney's fees should Plaintiff prevail in this lawsuit, following extensive mediation with Federal Magistrate Judge Richard Seeborg, the City Attorney's Office has negotiated a settlement for a payment to Mr. Grason and his attorney in the amount of \$360,000.

PUBLIC OUTREACH/INTEREST

This memorandum and settlement agreement have been posted on the City's website for the April 7, 2009 agenda.

COORDINATION

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

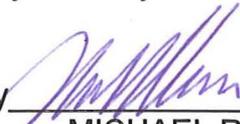
COST SUMMARY/IMPLICATIONS

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

CEQA

Not a project.

RICHARD DOYLE
City Attorney

By 
MICHAEL R. GROVES
Sr. Deputy City Attorney

cc: Debra Figone, City Manager

For questions please contact RICHARD DOYLE, City Attorney, at (408) 535-1900.