



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** *Phuong Quang Ho v. CSJ, et al.*, **DATE:** May 26, 2011  
**Settlement Agreement**

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## **RECOMMENDATION**

Approve settlement in the case of *Phuong Quang Ho v. City of San Jose, et al.*, and authorize the City Attorney to execute a Settlement Agreement and Release with Phuong Quang Ho in the amount of \$225,000.

## **OUTCOME**

Approve settlement to resolve a lawsuit brought by Phuong Quang Ho against the City of San José alleging excessive force, false arrest, violation of civil rights, etc.

## **BACKGROUND**

On September 3, 2009, San José police officers were dispatched to 9 S. 23rd Street in response to a 911 call reporting that roommates were involved in a physical confrontation in which one of the residents had pulled a knife. Upon arrival, the officers were informed that Plaintiff Ho had made threats against another roommate while holding a knife. The police were also informed Plaintiff no longer had the knife and was in his bedroom.

When the officers encountered Mr. Ho in a hallway, they directed him to stay in a particular location while they investigated what had happened. According to the officers, Mr. Ho refused to comply with their command and followed one of the officers into Mr. Ho's bedroom. Another officer again commanded Mr. Ho to stop, but Mr. Ho refused. At that point, the second officer attempted to grab Mr. Ho's arm, but Mr. Ho pulled away, resisting the officer's attempt to control him. The first officer also attempted to control Mr. Ho, who continued to struggle and resist. The first officer took Mr. Ho to the ground, in order to handcuff him.

Once on the floor, Plaintiff resisted, continued to refuse compliance with all verbal commands, and was kicking at the officers. In order to control Mr. Ho and gain his compliance, one officer struck Mr. Ho with a baton approximately 13 times. Repeated commands to turn over and put his hands behind his back were ignored. During this confrontation, the second officer used a Taser on one occasion, in the "drive stun" mode. Plaintiff eventually complied with commands to lie on his stomach and put his

hands behind his back for handcuffing. He was then taken to the hospital, where he was treated for minor contusions, including two cuts on his leg that required several stitches.

Mr. Ho was charged with two misdemeanor violations.

Plaintiff has a different version of the events. He contends he complied with the police demand from the very beginning and any apparent resistance was simply the result of his attempts to locate his glasses which fell on the floor when he was taken down.

One of Plaintiff's roommates captured a portion of this encounter on his cell phone video camera. Approximately two months later, the video became public and was widely disseminated through media and internet outlets. Following the publication of the video, the Santa Clara County District Attorney's Office conducted an investigation. On March 3, 2010 the District Attorney's Report was issued. The District Attorney concluded that there was insufficient evidence to charge Mr. Ho with a crime and dismissed the charges against him. The Report also engaged in a lengthy and detailed analysis of the officers' conduct. The District Attorney hired three experts in the use of force by police. Two of the experts determined that the force used by the officers was reasonable, while one concluded that the force used was excessive.

## **ANALYSIS**

The videotaped incident underlying this case has received widespread attention in the media and in the local community. Although the amount of force used by the Defendant officers can be justified, the video, as noted in the District Attorney's Report, depicts graphic violence that is troubling. It is difficult to predict how a civil jury would react to the video and to the allegations of excessive force.

The parties to this lawsuit recognized that their interests were best served by attempting to negotiate a resolution of this lawsuit. Accordingly, the parties entered into mediation with an experienced attorney-mediator, and were able to agree, tentatively, on a fair monetary settlement of this case in the amount of \$225,000.00. The settlement also includes a commitment by the San José Police Department to engage in 80 hours of community outreach, over two years. This outreach is intended to provide public education on policing practices and policies, to mutually improve communications between the public and the Police Department, and to mutually increase levels of trust and respect.

In light of the risks and costs inherent in litigation, including exposure to substantial attorneys' fees should Plaintiff prevail in this lawsuit, the City Attorney's Office recommends settlement of this lawsuit for a total payment of \$225,000.00 to Plaintiff and his attorneys, and the aforementioned community outreach commitment.

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### **PUBLIC OUTREACH/INTEREST**

This memorandum and settlement agreement have been posted on the City's website for the June 7, 2011 City Council agenda.

### **COORDINATION**

The City Attorney's Office has discussed the terms of the proposed settlement with the Police Chief, involved officers, and the City Manager.

### **COST SUMMARY/IMPLICATIONS**

The settlement will be paid out of the City's General Liability Claims reserve fund, Appropriation 0018.

### **CEQA**

CEQA: Not a Project; File No. PP10-066h, Settlement Agreements.

RICHARD DOYLE, City Attorney

By

  
CLIFFORD S. GREENBERG  
Sr. Deputy City Attorney

cc: Debra Figone, City Manager

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