



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Jesus and Cristela Gomez v.
CSJ, et al., Settlement
Agreement

DATE: October 20 , 2011

RECOMMENDATION

Approve settlement in the case of *Jesus and Cristela Gomez v. City of San José, et al.*, and authorize the City Attorney to execute a Settlement Agreement and Release with Jesus and Cristela Gomez, and their attorney, in the amount of \$100,000.

OUTCOME

Approve settlement to resolve a lawsuit brought by Jesus and Cristela Gomez against the City of San José alleging unlawful arrest and excessive force.

BACKGROUND

Plaintiffs are siblings Cristela Gomez (age 23) and Jesus Gomez (age 24).

At about 3:45 a.m. on October 25, 2008, a San Jose police officer made a vehicle stop at White and Mabury Roads. The car had been weaving and failed to make a complete stop at the limit line. As the officer approached the vehicle on the passenger side and made contact with the driver and passenger, he observed objective symptoms of alcohol intoxication on the part of both.

The officer had the driver, Jesus Gomez, exit the vehicle to perform field sobriety tests. Mr. Gomez had difficulty following the officer's directions. As the officer attempted to place handcuffs on him, Mr. Gomez leaned forward, flexed his body, took a step forward, and pulled his arms out in an attempt to break free of the officer's grasp.

A struggle ensued and the officer took Mr. Gomez to the ground. While on the ground, Mr. Gomez continued to resist and the officer put his knee on the right side of Plaintiff's head in order to attempt to control him. The officer was finally able to secure the handcuffs. As the suspect was being handcuffed, a second officer arrived at the scene. Both officers escorted Mr. Gomez over to a patrol vehicle. As the officers attempted to put Mr. Gomez into the vehicle, he continued to struggle and would not remain leaning against the patrol car. When Mr. Gomez pushed back against the officer a third time, the officer took him down to the ground. While both officers were struggling to control

Mr. Gomez, a third officer arrived and observed him resisting. The third officer struck Mr. Gomez in order to stop him from fighting with the other two officers. At that point, the officers were able to control Mr. Gomez, and placed him in the police vehicle.

After Mr. Gomez was placed in the police vehicle, Cristela Gomez was also arrested for violation of Penal Code Section 647(f) – drunk in public. The parents of the Gomez siblings allege that they arrived at the scene and offered to take Cristela home. They claim that the officers stated that she was going to jail. The officers dispute that Plaintiffs' parents arrived before Plaintiffs were transported from the scene.

Mr. Gomez suffered a fractured orbital bone (lower eye socket) and was treated at Regional Medical Center before being transported to the jail. Mr. Gomez ultimately pleaded guilty to driving under the influence. All charges against Cristela Gomez were dropped.

ANALYSIS

Jesus Gomez alleges a wrongful arrest and the use of excessive force in taking him into custody. Cristela Gomez alleges that she was wrongfully arrested.

Since Mr. Gomez pleaded guilty to driving under the influence, he may not now maintain a claim for wrongful arrest. With respect to his claim for excessive force, the fact that he was handcuffed when taken to the ground the second time and struck by an officer creates the possibility that a jury would find that the amount of force used in this arrest was unreasonable. He incurred medical expenses of over \$22,000 for the treatment of his injuries. He also claims emotional distress damages and that his personality and behavior have been affected by the incident.

Cristela Gomez was arrested for a violation of Penal Code Section 647(f), the elements of which require a person to be under the influence of alcohol and as a result, to be unable to exercise care for his or her own safety. In this case, there is a risk that a jury could determine that Cristela Gomez's conduct did not satisfy the elements of the crime for which she was arrested. Ms. Gomez did not suffer any economic damages but did spend a night in jail and claims some level of emotional distress as a result.

Under these circumstances, because of the risks involved in litigation, and the obligation of an entity to pay for the attorney's fees of a prevailing civil rights plaintiff, this Office recommends settlement of this entire case in the amount of \$100,000.00. This amount was reached at a mediation after a full day of negotiations.

October 20, 2011

Subject: Gomez v. CSJ, et al.,

Page 3

PUBLIC OUTREACH/INTEREST

This memorandum and settlement agreement have been posted on the City's website for the November 1, 2011 City Council agenda.

COORDINATION

The City Attorney's Office has discussed the terms of the proposed settlement with the Police Department and the City Manager.

COST SUMMARY/IMPLICATIONS

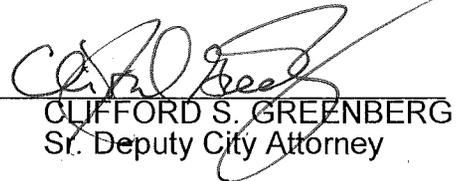
The settlement will be paid out of the City's General Liability Claims reserve fund, Appropriation 0018.

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.