



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: **Greg Elliott v. CSJ
Settlement Agreement**

DATE: November 14, 2011

RECOMMENDATION

Approve settlement in the case of *Greg Elliott v. City of San José*, and authorize the City Attorney to execute a Settlement Agreement and Release with Mr. Elliott and his attorneys in the amount of \$127,500.

OUTCOME

Approve settlement to resolve a lawsuit brought by Mr. Elliott against the City of San José alleging employment discrimination, harassment/hostile work environment, retaliation, wrongful termination, and intentional infliction of emotional distress.

BACKGROUND

Mr. Elliott began working for the City Auditor in 1991 as an intern. Approximately two years later, he was formally hired as a Program Auditor I. He was promoted several times, including in 2001, when he became a Senior Program Performance Auditor.

In March 2007, a number of issues were raised in connection with Mr. Elliott's work on an audit. Within a week of that audit exit conference, Mr. Elliott complained to the City's Office of Employee Relations about alleged sexual harassment and discrimination he claimed to have observed in the Auditor's Office since the mid-1990's. While the claims raised by Mr. Elliott were being investigated, the City granted him fully-paid leave from his duties from March 2007 to July 2007. When Mr. Elliott returned to work in July 2007, he had a new supervisor.

Performance issues were raised again a year later in a July 2008 evaluation by Interim City Auditor Steve Hendrickson and City Auditor Sharon Erickson. Mr. Elliott contended that the criticisms were untrue and were made in retaliation for his complaints raised in March 2007. Mr. Hendrickson and Ms. Erickson were not the subject of those complaints. Mr. Elliott received temporary disability benefits from August 2008 to May 2009 and separated from the City in July 2009.

Mr. Elliott filed the subject lawsuit on May 24, 2010, alleging various causes of action, including but not limited to perceived sexual orientation discrimination, sexual

harassment, failure to prevent discrimination and sexual harassment, retaliation, and intentional infliction of emotional distress.

ANALYSIS

Many of the claims made by Mr. Elliott were remote in time and there were a number of legal defenses to his claims; however, a trial of this case would be time-consuming and disruptive to the Auditor's office because of the nature of this particular lawsuit. In light of the risks and costs inherent in litigation, including exposure to attorneys' fees, the City Attorney's Office recommends settlement of this lawsuit for \$74,990.79 to Mr. Elliott and \$52,509.21 to his attorneys, totaling \$127,500.00.

PUBLIC OUTREACH/INTEREST

This memorandum and the settlement agreement have been posted on the City's website for the November 29, 2011 City Council agenda.

COORDINATION

The City Attorney's Office has discussed the terms of the proposed settlement with the City Auditor.

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 
SHANNON SMYTH-MENDOZA
Sr. Deputy City Attorney

cc: Sharon Erickson, City Auditor
Debra Figone, City Manager

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