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CITY OF OAKLAND



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November 5, 2019

HONORABLE CITY COUNCIL
Oakland, California

Subject: *Lamesha Smith, et al. v. City of Oakland, et al.*
Case No. 18-cv-06224 EDL
City Attorney File No. 32640
(Oakland Police Department – Excessive Force/Failure to Train)

President Kaplan and Members of the City Council:

Pursuant to Section 401 of the Charter, the City Attorney has prepared and requests your approval of a resolution authorizing compromise and settlement of the above-entitled claim for the sum of Two Hundred and Fifty Thousand Dollars and No Cents (\$250,000.00), payable to Plaintiffs Lamesha Smith, Chardonnay Crane, Gavonyah Warren, and Tyrone Smith, through their attorneys, the law firm of Siegel, Yee, Brunner & Mehta.

This action arises out of the in-custody death of Marcellus Toney on September 28, 2017, that occurred after Oakland Police Department officers attempted to detain Mr. Toney after he caused a traffic accident. Mr. Toney was in restraints: he resisted Oakland Police Department officers' attempts to place him in the back of a squad car. One of the officers deployed her Taser. Mr. Toney was placed in an ambulance, but died in route to the hospital. Plaintiffs allege civil rights claims against the police officer and the City.

The Council authorized settlement of this case in Closed Session on Tuesday, September 17, 2019 (moved by Councilmember Noel Gallo and seconded by Council President Rebecca Kaplan - 6 Ayes, 1 No – Vice Mayor Larry Reid, 1 Absent – Councilmember Sheng Thao).

Respectfully submitted,


BARBARA J. PARKER
City Attorney

Assigned Attorney:
Ben Patterson

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City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO COMPROMISE AND SETTLE THE CASE OF *LAMESHA SMITH, ET AL., V. CITY OF OAKLAND, ET AL*, UNITED STATES DISTRICT COURT CASE NO. 18-CV-06224 EDL, CITY ATTORNEY'S FILE NO. 32640, IN THE AMOUNT OF TWO HUNDRED AND FIFTY THOUSAND DOLLARS AND NO CENTS (\$250,000.00) (OAKLAND POLICE DEPARTMENT – EXCESSIVE FORCE/FAILURE TO TRAIN)

WHEREAS, Plaintiffs allege that Oakland Police Department Officers violated their constitutional rights related to the in-custody death of Marcellus Toney on September 28, 2017; and

WHEREAS, Plaintiffs allege that after Mr. Toney caused a serious traffic accident while driving under the influence, resisted arrest, was handcuffed, and he should not have been tased because he was already in handcuffs, and was exhibiting Excited Delirium symptoms; and

WHEREAS, United States District Court Case No. 18-CV-06224 EDL was filed against the City of Oakland and Oakland Police Department its officer alleging constitutional violations; and

WHEREAS, the City has considered all the evidence, litigation costs, and litigation risks in this case; and

WHEREAS, the City admits no wrongdoing or liability; now, therefore be it

RESOLVED: That the City Attorney is authorized and directed to compromise and settle the case of *Lamesha Smith, et al. v. City of Oakland, et al*, United States District Court Case No. 18-CV-06224 EDL, City Attorney File No. 32640, for the sum of Two Hundred and Fifty Thousand Dollars and No Cents (\$250,000.00); and be it

FURTHER RESOLVED: That the City Attorney is further authorized and directed to take whatever steps may be necessary to effect said settlement.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council of the City of
Oakland, California