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CITY OF OAKLAND



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July 10, 2018

HONORABLE CITY COUNCIL
Oakland, California

**Subject: Elaine Brown v. Desley Brooks and City of Oakland
Alameda County Superior Court No. RG16811619
City Attorney File No. 30904
(City Council – Negligence, Intentional Infliction
of Emotional Distress, Battery, Elder Abuse)**

President Reid and Members of the City Council:

Pursuant to Section 401(6) of the Oakland City Charter, the City Attorney has prepared for your approval a resolution authorizing compromise and settlement of the above-entitled lawsuit on behalf of Defendant, City of Oakland for the sum of Two Million Two Hundred Thousand One Hundred Eight Dollars and Twenty One Cents (\$2,200,108.21). Defendant Councilmember Desley Brooks has filed an appeal of the judgments which include the following for which she is personally responsible: \$75,000 in punitive damages and \$47,190.64 in attorneys' fees and costs for punitive damages trial and post-trial motions related to the punitive damages award.

This action arose out of an October 30, 2015 altercation between Plaintiff Elaine Brown and Defendant Councilmember Desley Brooks. Plaintiff Elaine Brown alleged that Councilmember Brooks pushed her, causing her to fall over a chair and sustain injury to her shoulder, which ultimately required rotator cuff repair surgery. Plaintiff Brown alleged substantial pain and suffering, including emotional distress and humiliation as a result of the incident and subsequent surgery.

On December 21, 2017, after trial, a jury awarded Plaintiff Elaine Brown \$3.75 million in compensatory damages against the City of Oakland and Councilmember Brooks for past and future non-economic loss, including physical pain/mental suffering for negligence, battery, intentional infliction of emotional distress and Elder Abuse. The jury also found that Councilmember Brooks acted with malice or oppression thus entitling Plaintiff to punitive damages. On January 8, 2018, after a trial to determine the amount of punitive damages, the jury awarded \$550,000.00 in punitive damages against Councilmember Brooks.

On March 23, 2018, the Court awarded Plaintiff Elaine Brown attorneys' fees in the amount of \$979,542.85 and costs in the amount of \$34,981.00. These amounts reflect reductions the court granted as a result of the City's successful challenges to the attorneys' fees and costs Plaintiff originally sought.

President Reid and Members of the City Council

July 10, 2018

Subject: *Elaine Brown v. Desley Brooks and City of Oakland*
Alameda County Superior Court No. RG16811619

Page 2

The City of Oakland filed a post-trial motion for a new trial on the ground of excessive compensatory damages and Councilmember Brooks, through her personal counsel and at her own expense, filed a post-trial motion for a new trial, among other things, asking the trial court to reduce the punitive damages award against her.

The court agreed that the compensatory damages and the punitive damages awards were excessive and issued an order advising the Plaintiff that the court would order a new trial on compensatory damages unless the Plaintiff accepted \$1.2 million in compensatory damages, a 68% reduction in the \$3.75 million jury award. The court also advised Plaintiff that it would order a new trial on punitive damages if she did not accept \$75,000 in punitive damages against Defendant Councilmember Brooks.

On April 30, 2018, Plaintiff Brown agreed to accept compensatory damages in the amount of \$1.2 million and punitive damages in the amount of \$75,000.00. The Court subsequently awarded an additional \$32,775.00 in attorneys' fees to Plaintiff Brown for her attorneys' work on the new trial motions.

On May 23, 2018, the Court entered a final judgment with the following total awards: \$1.2 million in compensatory damages, \$75,000.00 in punitive damages, and \$1,047,298.85 in attorneys' fees and costs.

On May 25, 2018, Councilmember Brooks filed a notice of appeal to all judgments against her. On May 29, 2018, Plaintiff Brown filed an appeal to the Court's new trial order. The City filed protective cross-appeals on June 15, 2018.

The Council authorized settlement of this case in Closed Session on Tuesday, June 19, 2018 (moved by Councilmember Kalb and seconded by Councilmember Campbell Washington - 4 Ayes (Kalb, Campbell Washington, Kaplan, Guillen), 2 Noes (Gibson McElhane, Gallo), 2 Absent – Councilmembers Reid and Brooks, 0 Abstentions). President Reid was excused and Councilmember Brooks did not attend the closed session because the Council was discussing settlement of the lawsuit. The motion authorized settlement of the lawsuit against the City in exchange for the Plaintiff's waiver of post judgment interest accruing at the rate of approximately \$660 per day (\$32,831.21 as of June 19, 2018), dismissal of the Plaintiff's appeal and Plaintiff's acceptance of \$1.2 million in compensatory damages and \$1,000,108.21 in attorneys' fees.

Respectfully submitted,



BARBARA J. PARKER
City Attorney

Assigned Attorney:
Selia M. Warren

2458930v1

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Approved as to Form and Legality


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 *ELAINE BROWN V. DESLEY BROOKS AND CITY OF OAKLAND*, ALAMEDA COUNTY SUPERIOR COURT CASE NO. RG16811619, CITY ATTORNEY'S FILE NO. 30904, IN THE AMOUNT OF TWO MILLION TWO HUNDRED THOUSAND ONE HUNDRED EIGHT DOLLARS AND TWENTY ONE CENTS (\$2,200,108.21) ON BEHALF OF DEFENDANT CITY OF OAKLAND. (CITY COUNCIL – NEGLIGENCE, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, BATTERY, ELDER ABUSE)

WHEREAS, this action arises out of an October 30, 2015 altercation between Plaintiff Elaine Brown and Defendant Councilmember Desley Brooks; and

WHEREAS, Plaintiff Elaine Brown alleged that Defendant Councilmember Brooks pushed her, causing her to fall over a chair and sustain injury to her shoulder, which ultimately required rotator cuff repair surgery and Plaintiff Brown alleged substantial pain and suffering, including emotional distress and humiliation as a result of the incident and subsequent surgery; and

WHEREAS, Plaintiff filed the above-referenced action against the City of Oakland and Councilmember Desley Brooks to recover monetary damages and the matter proceeded to a jury trial; and

WHEREAS, on December 21, 2017, the jury awarded Plaintiff Elaine Brown \$3.75 million in compensatory damages against the City of Oakland and Councilmember Brooks for past and future non-economic loss, including physical pain/mental suffering for negligence, battery, intentional infliction of emotional distress and Elder Abuse; and

WHEREAS, the jury also found that Councilmember Brooks acted with malice or oppression thus entitling Plaintiff to punitive damages, and on January 8, 2018, after a trial to determine the amount of punitive damages, the jury awarded \$550,000 in punitive damages against Defendant Councilmember Brooks; and

WHEREAS, on March 23, 2018, the Court awarded Plaintiff Elaine Brown attorneys' fees in the amount of \$979,542.85 and costs in the amount of \$34,981, which amounts reflect reductions granted by the court that the City successfully sought; and

WHEREAS, the City of Oakland filed a post-trial motion for a new trial on the ground of excessive compensatory damages and Councilmember Brooks through her personal counsel and at her own expense filed a post-trial motion for a new trial, among other things, asking the trial court to reduce the punitive damages award against her; and

WHEREAS, the court, after considering the new trial motions and oral argument, agreed that the jury's compensatory damages and punitive damages awards were excessive and issued an order advising the Plaintiff that the court would order a new trial on compensatory damages unless the Plaintiff accepted \$1.2 million in compensatory damages, a 68% reduction in the \$3.75 million jury award; and the court advised Plaintiff that it would order a new trial on punitive damages if she did not accept \$75,000 in punitive damages against Defendant Councilmember Brooks; and

WHEREAS, on April 30, 2018, Plaintiff Elaine Brown agreed to accept reduced compensatory damages in the amount of \$1.2 million and punitive damages in the amount of \$75,000 as a result of new trial motions filed by the City and Councilmember Brooks' personal counsel, respectively; and the court subsequently awarded an additional \$32,775 in attorneys' fees to Plaintiff for her attorneys' work on the new trial motions; and

WHEREAS, on May 23, 2018, the Court entered a final judgment with the following total awards: \$1.2 million in compensatory damages, \$75,000 in punitive damages, and \$1,047,298.85 in attorneys' fees and costs; and

WHEREAS, on May 25, 2018, Councilmember Brooks filed a notice of appeal to all judgments against her; on May 29, 2018, Plaintiff Brown filed an appeal to the court's new trial order; and on June 15, 2018 the City filed protective cross-appeals; and

WHEREAS, without admitting fault or wrongdoing, the City has decided to compromise and settle Plaintiff's claims against the City for the sum of Two Million Two Hundred Thousand One Hundred Eight Dollars and Twenty One Cents (\$2,200,108.21); and Plaintiff has agreed to accept such amount, to dismiss her appeal and to waive post judgment interest that has accrued; now, therefore, be it

RESOLVED: That the City Attorney is authorized and directed to compromise and settle the case of *Elaine Brown v. Desley Brooks and City of Oakland*, Alameda County Superior Court Case No. RG16811619, City Attorney's File No. 30904, on behalf of the Defendant City of Oakland for a sum not to exceed Two Million Two Hundred Thousand One Hundred Eight Dollars and Twenty One Cents (\$2,200,108.21) payable by the City of Oakland; and be it

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

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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