APPROVED AS TO FORM AND LEGALITY

2022 OCT 13 PM 5:28

FILED
OFFICE OF THE CITY CLERK
OAKLAND

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. 89447 C.M.S.

RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO COMPROMISE AND SETTLE ADDITIONAL COSTS AND ATTORNEYS' FEES IN THE CASE OF DARWIN BONDGRAHAM AND ALI WINSTON V. CITY OF OAKLAND, OAKLAND POLICE DEPARTMENT AND SUSAN MANHEIMER, ALAMEDA COUNTY SUPERIOR COURT CASE NO. RG20071657, CITY ATTORNEY'S FILE NO. X05171, IN THE AMOUNT OF ONE HUNDRED FIVE THOUSAND DOLLARS AND ZERO CENTS ($105,000.00) AS A RESULT OF ALLEGED PUBLIC RECORDS ACT VIOLATIONS (POLICE DEPARTMENT-PUBLIC RECORDS ACT)

WHEREAS, Petitioners in this matter filed a Petition for Writ of Mandate ("Petition") alleging that the City of Oakland and Oakland Police Department violated the Public Records Act, Government Code section 6250 et seq., and Oakland Sunshine Ordinance, Municipal Code sections 2.20.010 et seq., with respect to requests for Oakland Police Department personnel records by failing to timely respond to public records requests for police records, and further alleged that the City and the Oakland Police Department improperly redacted certain information on records that were released pursuant to their requests; and

WHEREAS, the court issued an order, on April 7, 2021 ("April 7, 2021 Order"), and a writ of mandate, on April 13, 2021 ("April 13, 2021 Write of Mandate"), granting the Petition and commanding the City and Police Department to produce all records responsive to Petitioners' requests within six months; and

WHEREAS, on June 15, 2021 the City Council passed Resolution 88700 C.M.S. authorizing and directing the City Attorney to compromise and settle Petitioners' attorneys' fees and costs for services provided up to the date of the court's entry of the April 13, 2021 Writ of Mandate for the sum of $125,204.50; and

WHERAS, the Court did not rule on the substance of Petitioners' redaction challenges in the April 7, 2021 Order or April 13, 2021 Writ of Mandate, but rather set forth a process by which the parties and Court would address disputed redactions in the documents already produced and any disputed redactions in documents produced going forward; and

WHEREAS, following extensive communications between the parties and several appearances before the Court pursuant to the redaction-challenge procedure, the City and Police Department have agreed to or been ordered to lift certain redactions and have been permitted to retain others; and

WHEREAS, the City wishes to compromise and settle Petitioners' attorneys' fees and costs for services provided after the April 13, 2021 Writ of Mandate in the amount of One Hundred Five Thousand Dollars ($105,000.00), and to compromise and settle other non-monetary redaction issues, including by securing a waiver from Petitioners of claims for further relief in the action except for a currently pending appeal, *BondGraham v. Superior Court of Alameda*, First District Court of Appeal Case No. A165187, as set out in the attached settlement agreement; now, therefore, be it

RESOLVED: That the City Attorney is authorized and directed to compromise and settle the case of Darwin BondGraham and Ali Winston v. City of Oakland, Oakland Police Department and Susan Manheimer, Alameda County Superior Court Case No. RG20071657, City Attorney File No. X05171, as provided for in the attached settlement agreement, which includes payment for attorneys' fees and costs in the amount of $105,00.00 payable to Ferguson Law PC; and be it

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

IN COUNCIL, OAKLAND, CALIFORNIA, OCT 18 2022

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND PRESIDENT FORTUNATO BAS – 7

NOES – Fife

ABSENT – 0

ABSTENTION – 0

ATTEST: _____
ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

3212318

ATTORNEY FEES AND COSTS SETTLEMENT AGREEMENT

Darwin BondGraham, et al. v. City of Oakland, et al.
Case No. RG20071657
Superior Court of California, County of Alameda

This Document is subject to Public Disclosure

This settlement agreement ("Agreement") is entered into between Respondents CITY OF OAKLAND, OAKLAND POLICE DEPARTMENT and SUSAN MANHEIMER, in her official capacity ("Respondents"), Petitioners DARWIN BONDGRAHAM and ALI WINSTON, and counsel for Petitioners THE MEADE FIRM, REISER LAW, FERGUSON LAW and the LAW OFFICE OF MICHAEL T. RISHER (collectively the "Parties," or each singularly a "Party").

RECITALS

This Agreement is made with reference to the following facts:

A. On August 17, 2020 Petitioners filed a Petition for Writ of Mandate in the Superior Court of California, County of Alameda, Case No. RG20071657, under the Public Records Act, Government Code section 6250 *et seq.*, and the Oakland Sunshine Ordinance, Municipal Code sections 2.20.010 *et seq*, (the "Action"). Petitioners sought to compel production of records from the Oakland Police Department under Senate Bill 1421 related to instances of police misconduct. Petitioners alleged that Respondents had failed to meet the Public Records Act requirement that documents be made "promptly available." Gov. Code § 6253(b). Petitioners further alleged that certain redactions Respondents placed on records that had been released pursuant to their requests were improper.

B. The Court held a hearing on the Petition on April 2, 2021, after which it issued an Order, on April 7, 2021, and Writ of Mandate, on April 13, 2021, granting the Petition and commanding Respondents to produce all responsive records at two-week intervals within six months. The Court did not rule on the substance of Petitioners' redaction challenges but set forth a process by which the Parties and Court would address disputed redactions in the documents already produced and any disputed redactions in documents produced going forward.

C. Over the succeeding months after issuance of the Writ, the parties exchanged numerous letters and engaged in extensive meet and confer pursuant to the Court's redaction-challenge procedure specified in its Order of April 7, 2021. These letters include correspondence (1) from Petitioners to Respondents on May 5, 2021; May 26, 2021; June 2, 2021; June 23, 2021; July 9, 2021; July 22, 2021; July 23, 2021; July 30, 2021; August 17, 2021; September 13, 2021; January 10, 2022; and April 5, 2022; and (2) from Respondents to Petitioners on May 19, 2021; June 9, 2021; July 22, 2021; August 17, 2021; January 26, 2022; February 12, 2022 and May 5, 2022. The parties also exchanged dozens of emails over a similar period.

D. The Court held three in-chambers sealed conferences on August 24, 2021, September 14, 2021 and May 10, 2022. The Court also issued two rulings on the redaction disputes, on March 17, 2022 and [ ].

E. As a result of the Parties' meet and confer efforts regarding redactions as well as the three Court hearings and two Court Orders, Respondents have agreed to lift certain redactions and have been permitted to retain others.

F. Petitioners filed a petition for a writ of mandate in the Court of Appeals challenging portions of the March 17, 2022 Order (the "Appeal"), which is currently pending (*BondGraham v. Superior Court of Alameda*, First District Court of Appeal Case No. A165187).

G. Petitioners have not filed a writ with the Court of Appeals related to the [ ] Order and have not filed a motion with the Court related to production deficiencies.

H. The Parties desire to settle all aspects of this dispute except for the Appeal and any issues that may arise in the future in the Superior Court as a result of the Appeal as further clarified below. This Agreement is not an admission of liability by Respondents nor an admission by any Party as to who is the prevailing party in the litigation.

NOW THEREFORE, in consideration of the covenants and promises herein set forth, the Parties hereto agree as follows:

TERMS

1. **Incorporation of Recitals.** Paragraphs A through [ ] of the Recitals are incorporated as though fully set forth herein.

2. **Oakland to lift redactions.** By December 15, 2022, Oakland shall lift all redactions it has agreed to or been ordered to lift, except that redactions to the "Celeste Guap" documents will be made after a meet and confer following the Court of Appeals' disposition of Petitioners' writ in *BondGraham v. Superior Court of Alameda*, First District Court of Appeal Case No. A165187. The Parties shall jointly confirm and agree to a list of such redactions that Oakland has agreed to or been ordered to lift by October 19, 2022. Productions shall be made on a rolling basis every two weeks prior to final production. For purposes of clarity, Petitioners will not require Oakland to lift headers to criminal history information.

3. **Data Room.** Within two weeks of lifting all redactions pursuant to Paragraph 2, Respondents may remove all information currently hosted in the data room set up for Counsel to review unredacted documents on an attorneys-eyes-only basis. After Oakland communicates to Petitioners that it has completed the redaction lifts outlined in Paragraph 2, Petitioners will communicate any perceived errors or deficiencies within 2 weeks.

4. **Release and waiver of rights.** Except as agreed in Paragraph 2, and as limited by Paragraphs 5 and 6, Petitioners will waive all claims for further relief in this Action, including, but not limited to, (1) any right to appeal or file a writ with the Court of Appeal relating to the [ ] Order, (2) any right to request further relief from the Superior Court for production deficiencies; (3) any further claim that any redactions to documents released as a result of the April 13, 2021 Writ are improper or should be lifted, including to audio and video files; and (4) any further claim for attorneys fees and costs.

5. **Reservation of Rights.** Notwithstanding anything in Paragraph 4, Petitioners do not waive or release any claims in connection with the Appeal and any post-Appeal proceedings that may be necessary in Superior Court. If remand is ordered after Appeal, Petitioners will limit any post-Appeal proceedings to documents produced related to the Celeste Guap sexual assault investigation; redactions under 832.7(b)(4) and (b)(5) (formerly (b)(3) and (b)(4)) to the Search Warrant case records; and redactions under 6254(f) to the document "01-03095 Misc" in the Willie Wilkins documents produced on November 16, 2021.

6. **Attorney fees and costs to be paid.** The City of Oakland agrees to pay the sum of $105,000.00 to counsel for Petitioners, Ferguson Law PC, within thirty (30) calendar days of the full execution of this Agreement. The check shall be made payable to "Ferguson Law PC." This amount shall cover all attorney fees and costs incurred after service of the April 13, 2021 Writ of Mandate in this case, and any future attorney fees and costs incurred related to reviewing and conferring over Respondents' revised redactions as described in Section 2 above, but shall exclude any and all fees incurred related to the Appeal and any post-Appeal proceedings that are necessary as a result of the Appeal (if any). For purposes of clarity, Petitioners shall not seek

further attorney fees from Respondents for work performed in the Superior Court in this Action prior to execution of this agreement, or for any costs and fees incurred after the date of the Agreement related to reviewing and meeting and conferring, if necessary, over revisions to redactions provided pursuant to Section 2 of this Agreement, even if Petitioners prevail in the Appeal. The amount shall cover fees incurred by THE MEADE FIRM, REISER LAW, FERGUSON LAW PC and the LAW OFFICE OF MICHAEL T. RISHER in Superior Court up to the date of execution of this Agreement.

7. **Release of all fees and costs to date.** Petitioners and their counsel acknowledge that with the payment outlined in Paragraph 6, all fees and any other costs shall be satisfied and that no fees or costs will be due and owing for the period between April 14, 2021 and the date of execution of this Agreement, or for services performed in connection with reviewing and meeting and conferring, if necessary, over revisions to redactions provided pursuant to Section 2 of this Agreement. With the exception of work performed in connection with Section 2 above, this Agreement does not release any Party from liability, if any, for future costs and fees incurred to the extent permissible by law, including for fees and costs associated with the Appeal and post-Appeal proceedings.

8. **No admission of liability.** Neither this Agreement nor any part of this Agreement shall be construed to be an admission of by any Party of any violation of law, nor shall this Agreement nor any part of it, nor any settlement negotiations or earlier drafts of this Agreement, be admissible in any proceeding as evidence of such an admission.

9. **No waiver as to prevailing party status.** Nothing in this agreement is an admission by the Respondents that Petitioners are the prevailing party within the meaning of Gov. Code § 6259(d) or any other applicable law or that any fees, costs and expenses, whether or not settled or waived by this agreement, are or would be compensable by Respondents. Nothing in this agreement is an admission by Petitioners or their counsel that they are not the prevailing party within the meaning of Gov. Code § 6259(d) or any other applicable law or that any fees, costs and expenses, except as settled by this agreement, are not or would not be compensable under applicable law. Neither Party waives any future argument as to who is the prevailing party for purposes of future attorney fee obligations or for any other reason.

10. **Warranty of non-assignment.** The Parties warrant that they have not assigned any of the outstanding fees or costs that are the subject of this Agreement.

11. **Bills, liens & other interests.** Counsel for Petitioners agree that the satisfaction of any of Petitioners' or their counsel's outstanding bills, including bills for transcripts, printing, and legal services performed by other firms, and existing or future liens or reimbursement or subrogation interests (whether statutory, equitable, or contractual), shall be their sole responsibility.

12. **No unwritten representations.** Each Party represents that in executing this Agreement, the Party does not rely upon and has not relied upon any representation, promise, or statement not expressly contained herein.

13. **Complete agreement.** This Agreement is the complete agreement between the Parties with respect to the matters governed by this Agreement and supersedes any prior agreements or discussions between the Parties on such matters.

14. **California law.** This Agreement is executed and delivered in the State of California, and the rights and obligations of the Parties hereunder shall be construed and enforced in accordance with the laws of the State of California.

15. **Interpretation and construction.** Any ambiguities or uncertainties herein shall be equally and fairly interpreted and construed without reference to the identity of the Party or Parties preparing this document or the documents referred to herein, on the understanding that the Parties participated equally in the negotiation and preparation of the Agreement and the documents referred to herein or have had equal opportunity to do so. This Agreement has been arrived at through negotiation and none of the Parties is to be deemed the party which prepared this Agreement or caused any uncertainty to exist within the meaning of Civil Code section 1654. The headings used herein are for reference only and shall not affect the construction of the Agreement.

16. **Breach, waiver and amendment.** No breach of this Agreement or of any provision herein can be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or any other provision of this Agreement. This Agreement may be amended, altered, modified or otherwise changed in any respect or particular only by a writing duly executed by the Parties hereto or their authorized representatives.

17. **Authority to execute.** Each party hereto warrants to the other Parties that he/she has the full power and authority to execute, deliver and perform under this Agreement and all documents referred to herein, and that any needed consent or approval from any other person has been obtained. Respondents warrant that they have obtained authorization from City Council to enter into this agreement.

18. **Counterparts.** This Agreement may be executed by the Parties in any number of counterparts, all of which taken together shall be construed as one document. Any facsimile signature shall be valid and acceptable for all purposes as if it were an original.

19. **Effective date.** The effective date of this Agreement shall be the date the last signatory hereto signs the Agreement.

20. **Duty to act in good faith.** The Parties shall act in good faith and use their reasonable good faith efforts after the execution of this Agreement to ensure that their respective obligations hereunder are fully and punctually performed. The Parties shall promptly perform any further acts and execute and deliver any other documents or instruments that may be reasonably necessary to carry out the provisions of this Agreement.

21. **No third-party beneficiaries.** Except as expressly provided herein, this Agreement is not for the benefit of any person not a party hereto or any person or entity not specifically identified as a beneficiary herein or specifically identified herein as a person or entity released hereby. The Agreement is not intended to constitute a third-party beneficiary contract.

22. **Savings clause.** If any term, condition, provision or part of this Agreement is determined to be invalid, void or unenforceable for any reason, the remainder of this Agreement will continue in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement and Release:

Dated: _____ _____

DARWIN BONDGRAHAM, Petitioner

Dated: _____ _____

ALI WINSTON, Petitioner

Dated: _____

_____
SAM FERGUSON
FERGUSON LAW PC
Counsel for Petitioners

Dated: _____

_____
TYLER MEADE
MEADE FIRM p.c.
Counsel for Petitioners

Dated: _____

_____
MICHAEL REISER
REISER LAW
Counsel for Petitioners

Dated: _____

_____
MICHAEL RISHER
THE LAW OFFICE OF MICHAEL T. RISHER
Counsel for Petitioners

Dated: _____

_____
MICHAEL QUIRK
OFFICE OF THE OAKLAND CITY ATTORNEY
Attorneys for Respondents City of Oakland, Oakland Police Department and Susan Manheimer