

2024 MAY -2 PM 1:30

FILED
OFFICE OF THE CITY CLERK
OAKLAND

Barbara J. Parker

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. 902070 C.M.S.

RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO SETTLE THE CASE OF TYFAHRA MILELE, DAVID JORDAN, AND GINALE HARRIS V. JAMES B. CHANIN, CITY OF OAKLAND, OAKLAND POLICE COMMISSION SELECTION PANEL, AND NIKKI FORTUNATO BAS, ALAMEDA SUPERIOR COURT CASE NO. 23CV038479 (CITY ATTORNEY'S FILE NO. X05510) FOR NO MONETARY RELIEF AND AN AGREEMENT TO MAKE CERTAIN REVISIONS TO THE OAKLAND POLICE COMMISSION SELECTION PANEL'S POLICIES AND PROCEDURES (POLICE COMMISSION SELECTION PANEL; CITY COUNCIL – WRIT OF MANDATE, AND DECLARATORY RELIEF)

WHEREAS, Plaintiffs Tyfahra Milele, David Jordan, and Ginale Harris (“collectively, Plaintiffs”) filed a Petition for Writ of Mandate and a Complaint for Declaratory and Injunctive Relief asserting claims related to the conduct of the Oakland Police Commission Selection Panel (“Selection Panel”) and James Chanin’s (“Chanin”) appointment to and service on the Selection Panel; and

WHEREAS, Plaintiffs alleged that Chanin had a conflict that precluded Chanin’s service on the Selection Panel because Chanin is one of plaintiffs’ counsel in *Delphine Allen, et al. v. City of Oakland*, United States District Court Case No. 00-cv-04599-WHO, an ongoing federal civil rights case alleging police misconduct; and

WHEREAS, Plaintiffs also contended that the Selection Panel acted arbitrarily and capriciously in conducting its selection process for the 2023 term; and

WHEREAS, the trial court and court of appeal rejected Plaintiffs’ request for preliminary injunctive relief to halt the process of choosing new police commissioners; and

WHEREAS, the City has considered all evidence, litigation costs, and risk; and

WHEREAS, without admitting any fault or wrongdoing, the City has determined to compromise and settle Plaintiffs’ claims against the City Council, Selection Panel, and the individual defendants for no monetary relief and an agreement that the Selection Panel will make certain revisions to its policies and procedure, as set forth in the Settlement Agreement, attached to this Resolution as Exhibit A; now, therefore, be it

RESOLVED: That the City Council hereby authorizes and directs the City Attorney to compromise and settle the case of Tyfahra Milele, David Jordan, and Ginale Harris v. James B. Chanin, City of Oakland, Oakland Police Commission Selection Panel, and Nikki Fortunato Bas, Alameda Superior Court Case No. 23CV28479, City Attorney's File No. C05510, by agreeing to amend the Selection Panel's policies and procedures; 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: **MAY 07 2024**

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:



ASHA REED

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

EXHIBIT A

SETTLEMENT AGREEMENT AND GENERAL RELEASE

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE (“Settlement Agreement”) is made by and between Plaintiffs and Petitioners Tyfahra Milele, David Jordan, and Ginale Harris (“Plaintiffs”) and Defendants and Respondents James B. Chanin, the City of Oakland, the Oakland Police Commission Selection Panel, and Nikki Fortunato Bas (“Defendants” and collectively with Plaintiffs, the “Parties”).

I. WHEREAS, Plaintiffs filed a Petition for Writ of Mandate and a Complaint for Declaratory and Injunctive Relief on July 12, 2023, entitled *Tyfahra Milele, et al. v. James B. Chanin, et al.*, in the Alameda County Superior Court Case No. 23CV038479 (the “Lawsuit”), asserting claims related to the conduct of the Oakland Police Commission Selection Panel (“Selection Panel”) and James Chanin’s appointment to and service on the Selection Panel (“Claims”);

II. WHEREAS, Plaintiffs have indicated that if the Lawsuit continues, they intend to add claims relating to the appointment process for the Selection Panel, the proper length of service on the Selection Panel, how vacancies on the Selection Panel should be filled, and whether certain appointments to the Selection Panel were properly made (“Contemplated Claims”);

III. WHEREAS, Defendants deny the allegations of the Lawsuit and assert that they have appropriate defenses to the Claims and Contemplated Claims made by Plaintiffs therein; and

IV. WHEREAS, the Parties desire to settle and discontinue the Lawsuit and all ancillary and potential Claims, Contemplated Claims, and potential Cross-Claims between and among the Parties hereto and their respective agents, successors, assigns, and any of their respective legal representatives and insurers.

NOW THEREFORE, intending to be legally bound, and in consideration of the mutual promises and covenants set forth herein, the Parties hereby consent and agree as follows:

1. Representations.

(a) Representations of Plaintiffs. Plaintiffs represent that they (i) have full legal right, power and authority to enter into and perform this Settlement Agreement, (ii) the execution and delivery of this Settlement Agreement by Plaintiffs and the consummation by Plaintiffs of the transactions contemplated by this Settlement Agreement have been duly authorized by Plaintiffs, (iii) this Settlement Agreement constitutes a valid, binding and enforceable agreement of Plaintiffs, and (iv) Plaintiffs have not assigned any of the Claims referred to in Paragraphs I-IV above to any person or entity and no consent or approval of any person or entity is necessary for Plaintiffs to enter into this Settlement Agreement.

(b) Representations of the Defendants. Defendants represent to Plaintiffs that (i) Defendants have the full legal right, power and authority to enter into and perform this

Settlement Agreement, (ii) the execution and delivery of this Settlement Agreement by Defendants and the consummation by Defendants of the transactions contemplated by this Settlement Agreement have been duly authorized by Defendants, (iii) this Settlement Agreement constitutes a valid, binding and enforceable agreement of Defendants, and (iv) no consent or approval of any other person or entity is necessary for Defendants to enter into this Settlement Agreement.

2. Consideration. Without admitting any liability for the Claims or Contemplated Claims set forth in the Lawsuit, as further set forth in the release below, Defendants will agree that the Selection Panel will add the following to its written policies within three months following the date of the finalization of the settlement:

1. That no member of the Selection Panel may serve more than 5 years, or such shorter term as specified in an amended Oakland City Charter (City Charter). Once a member of the Selection Panel has served for a period of five years or shorter authorized term, their term expires and their seat becomes vacant. Such a member may not continue to serve as a holdover panelist beyond the end of their five-year term or shorter maximum term specified in the City Charter.
2. That in the event that the Appointing Authority—as defined in the City Charter—for a seat on the Selection Panel fails to fill a vacant seat within their 120-day period to do so, the Selection Panel shall fill the vacancy. Absent exigent circumstances, the Selection Panel should endeavor to fill the vacancy within 120 days after the Appointing Authority's 120-day period to make an appointment has run. In the absence of an amendment to the City Charter expressly to provide to the contrary, the power to fill a vacancy shall remain with the Selection Panel once the Appointing Authority's 120-day period to make an appointment has run. The Selection Panel's appointment must be confirmed by the City Council.
3. A description of the process that the Selection Panel will use to fill vacancies on the Selection Panel.

This agreement does not preclude the Selection Panel from later further amending their policies and procedures in a manner that accords with the City Charter, including in response to amendments to the City Charter.

3. Discontinuance of Lawsuit. Counsel for Plaintiffs shall, within ten (10) business days of being informed that the revisions identified above have been completed and provided with a copy of the revised policies, file a Request for Dismissal with Prejudice of this Lawsuit as to Defendants and all causes of action set forth therein against the Defendants.

4. Plaintiffs' Release to the Defendants. Effective upon execution of this Settlement Agreement and in consideration of the mutual covenants contained herein, Plaintiffs, and their agents, successors, assigns, and any of their respective legal representatives do remise, release, quitclaim and forever discharge Defendants and their present and former agents, successors, assigns, members, managers, employees, and any of their respective legal

representatives and insurers, of and from all and any manner of claims, actions, causes of action, liability, judgments, lawsuits, debts, dues, accounts, agreements, claims for monetary damages and demands whatsoever, whether in law or in equity, whether known or unknown, whether asserted directly or indirectly, derivatively or otherwise, for, upon, or by reason of any matter, cause or thing whatsoever arising from or related to (1) the Lawsuit, including the claims made or that could have been made in the Lawsuit; (2) the Claims, and (3) the Contemplated Claims.

5. Defendants' Release to the Plaintiffs. Effective upon execution of this Settlement Agreement and in consideration of the mutual covenants contained herein, Defendants, and their agents, successors, assigns, and any of their respective legal representatives do remise, release, quitclaim and forever discharge Plaintiffs and their present and former agents, successors, assigns, members, managers, employees, and any of their respective legal representatives and insurers, of and from all and any manner of claims, actions, causes of action, liability, judgments, lawsuits, debts, dues, accounts, agreements, claims for monetary damages and demands whatsoever, whether in law or in equity, whether known or unknown, whether asserted directly or indirectly, derivatively or otherwise, for, upon, or by reason of any matter, cause or thing whatsoever arising from or related to (1) the Lawsuit, including the claims made or that could have been made in the Lawsuit; (2) the Claims, and (3) the Contemplated Claims.

6. Successors and Assigns. This Settlement Agreement shall be binding upon and inure to the benefit of the officers, directors, managers, employees, agents, attorneys, insurers, consultants, parties, affiliates, related entities, representatives, beneficiaries, successors and assigns of the Settling Parties.

7. Advice of Counsel. Each party to this Settlement Agreement represents and warrants to the other Parties hereto that the party has had an opportunity to be advised by counsel as to the legal effect of the Settlement Agreement and Release including, but not limited to, paragraphs 4, 5, 6, and 14.

8. Compromise of Disputed Matter. The Parties each acknowledge that this Settlement Agreement is and represents the compromise of disputed claims, and that execution of this Settlement Agreement and performance of the acts required herein shall not and does not constitute an admission by any of them of any liability to any other party.

9. Dispute Resolution, Governing Law, and Venue. This Settlement Agreement shall be governed by the laws of the State of California without giving effect to conflicts of laws thereof. The state court in Alameda County, California shall have exclusive jurisdiction over any lawsuits arising out of or relating to this Settlement Agreement and Release. Each party hereto submits to the jurisdiction of this court and venue therein.

10. Attorney's Fees and Costs. Each Party to this Settlement Agreement agrees to release and discharge each other from any and all claims for attorneys' fees and costs associated with the Lawsuit, the Claims, the Contemplated Claims, or any related internal grievance, asserted therein.

11. Liens and Rights of Reimbursement. To the extent that any government agency, private person, or entity, including but not limited to insurance companies, attorneys, health care providers, has any right of reimbursement for any funds which may have been paid to or on behalf of the Plaintiff's legal services, litigation costs, or for other payment in any way related to the Complaint or Lawsuit, or who has presented or may present any lien on any recovery by Plaintiffs, Plaintiffs and their legal representatives agree to defend, indemnify, and hold harmless Defendants against efforts by any person, entity, or governmental agency to recover reimbursement of funds paid on behalf of Plaintiffs. Plaintiffs further agree that, should reimbursement be required to any person, entity, or government agency of funds paid on behalf of Plaintiffs, Plaintiffs shall make such reimbursement. Defendants are not responsible for and has not assumed any liability for any liens that have been, or may be, asserted in this matter or with regard to this matter, and it is expressly understood and agreed that all such liens are the express and sole responsibility of Plaintiffs. Plaintiffs further agree to satisfy and discharge all outstanding liens, including government, insurance, attorney's fees, and worker's compensation liens, and shall hold harmless and indemnify Defendants from such liens.

12. No Other Representations. Each party to this Settlement Agreement acknowledges that no other party or agent or attorney of any other party, or any other person has made any promise, representation, or warranty whatsoever, expressed, implied, or statutory, not contained herein, concerning the subject matter hereof, to induce the execution of this instrument, and each party hereby acknowledges that it has not executed this instrument in reliance on any promise, representation, or warranty not contained herein.

13. Waiver of Breach. The waiver of any breach of this Settlement Agreement by any party shall not be a waiver of any other subsequent or prior breach. The failure of a party to act immediately on a breach by any other party shall not affect the rights of any non-breaching party to so act at a later date.

14. Civil Code Section 1542. It is understood and agreed as between the Parties hereto that all rights under Section 1542 of the California Civil Code are hereby expressly waived as to the claims released in this Settlement Agreement. Said section reads as follows:

"1542. [Certain claims not affected by general release].

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his agreement with the debtor."

15. Not Construed Against Any Party. This Settlement Agreement shall be construed without regard to the party or the parties responsible for its preparation. Any ambiguity or uncertainty existing herein shall not be interpreted or construed against any party based upon the party having drafted the provision at issue.

16. Entire Agreement. This Settlement Agreement constitutes the entire Settlement Agreement of the Parties and may not be amended, modified, or extended without a writing signed by all parties and specifically amending this Settlement Agreement, and supersedes all

prior or contemporaneous agreements, discussions, or representations, oral or written, with respect to the subject matter of this Settlement Agreement. Each of the Parties hereto state that it has read each of the paragraphs of this Settlement Agreement and that it understands the same and understands the legal obligations created thereby and has authority to execute this Settlement Agreement on behalf of the party indicated.

17. Headings. The headings in this Settlement Agreement are intended for the convenience of the Parties and shall not affect the interpretation of any portion of this Settlement Agreement.

18. Counterpart Originals. This Settlement Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which counterparts taken together shall constitute one and the same instrument.

19. Facsimile/Scanner Signatures. This Settlement Agreement and any counterpart original thereof may be executed and transmitted by facsimile or scanner followed by mailing the original. The facsimile or scanned signature shall be valid and acceptable for all purposes as if it were an original.

20. Effective Date. This Settlement Agreement is made between the Parties, and is effective as of the date the last of the Parties executes it and forwards it by facsimile to the other parties.

IN WITNESS WHEREOF, this Settlement Agreement and General Release has been duly executed by the parties hereto.

PLAINTIFFS

Dated: _____, 2024

By: _____
Tyfarah Milele

Dated: _____, 2024

By: _____
David Jordan

Dated: _____, 2024

By: _____
Ginale Harris

DEFENDANTS

Dated: _____, 2024

By: _____
James B. Chanin

Dated: _____, 2024

By: _____

H. Luke Edwards
Attorneys for Defendant
*City of Oakland, Oakland Police Commission
Selection Pannel*

Dated: _____, 2024

By: _____

Nikki Fortunato Bas

APPROVED AS TO FORM ONLY:

Dated: _____, 2024

Law Offices of Ann M. Kariuki
Law Office of Brenda F. Harbin-Forte

By: _____

Brenda F. Harbin-Forte, Esq.
Attorneys for All Plaintiffs

OAKLAND CITY ATTORNEY'S OFFICE

Dated: _____, 2024

By: _____

H. Luke Edwards, Esq.
Attorneys for All Defendants