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OAKLAND

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APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. 89382 C.M.S.

RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO COMPROMISE AND SETTLE THE CASE OF ANITA MIRALLE, JODII LE'GRAND EVERETT, I, TINA SCOTT, AIYAHNNA JOHNSON; IRVIN JOSUE HERNANDEZ ORTEGA; AND AYAT JALAL V. CITY OF OAKLAND; LIBBY SCHAAF; JOE DEVRIES; ANNE KIRKPATRICK; AND SABRINA LANDRETH, UNITED STATES DISTRICT COURT CASE NO. C18-06823-HSG, (CITY ATTORNEY'S FILE NO. X04613) IN THE AMOUNT OF TWO HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$250,000.00) AND SUBSTANTIVE INJUNCTIVE RELIEF (CITY ADMINISTRATOR'S OFFICE – CIVIL RIGHTS VIOLATIONS UNDER THE FIRST, FOURTH, EIGHTH, FOURTEENTH CONSTITUTIONAL AMENDMENTS)

WHEREAS, Plaintiffs Anita Miralle, Jodii Le'Grand Everett, I, Tina Scott, Aiyahnna Johnson, Irvin Josue Hernandez Ortega, and Ayat Jalal (collectively, "Plaintiffs") allege that the City of Oakland violated their constitutional rights when the City closed the homeless encampment in which they were living and subsequently collected and/or stored and/or destroyed their personal belongings during the closure; and

WHEREAS, On November 9, 2018, Plaintiffs filed an application for temporary restraining order, request for preliminary injunction, and complaint in federal court for damages and injunctive relief against the City, Joe DeVries, Mayor Libby SchAAF, (former) City Administrator Sabrina Landreth, and (former) Oakland Police Chief Anne Kirkpatrick alleging violations of their rights under the First, Fourth, Eighth, and Fourteenth Amendments to the United States Constitution; 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 and individual defendants for the sum of Two Hundred and Fifty Thousand Dollars and Zero Cents (\$250,000.00) and substantive injunctive relief related to the City's Encampment Management Policy which the Oakland City Council passed on October 20, 2020, as set forth in the Injunctive and Monetary Relief Agreement, attached to this Resolution as Exhibit A; now, therefore, be it

RESOLVED: That the Council hereby authorizes and directs the City Attorney hereby to compromise and settle the case of Anita Miralle, Jodii Le'Grand Everett, I, Tina Scott, Aiyahna Johnson; Irvin Josue Hernandez Ortega; and Ayat Jalal v. City of Oakland; Libby Schaaf; Joe DeVries; Anne Kirkpatrick; and Sabrina Landreth, United States District Court Case No. C18-06823-HSG, City Attorney's File No. X04613, for a sum not to exceed Two Hundred and Fifty Thousand Dollars and Zero Cents (\$250,000.00) payable by the City of Oakland; 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; and be it

FURTHER RESOLVED: That the sum of Two Hundred and Fifty Thousand Dollars and Zero Cents (\$250,000.00) shall be made payable to Siegel, Yee, Brunner, and Mehta Client Trust Account.

IN COUNCIL, OAKLAND, CALIFORNIA,

AUG 09 2022

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, KALB, KAPLAN, ~~ARMSTRONG~~ THAO AND
PRESIDENT FORTUNATO BAS - 6

NOES - 0

ABSENT - 0

ABSTENTION - 0

2 Excused - Reed & Taylor

ATTEST:



ASHA REED

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

3117530v1

EXHIBIT A

EXHIBIT A

Dan Siegel, Esq. [S.B. #56400]
EmilyRose Johns, Esq. [S.B. #294319]
SIEGEL YEE BRUNNER & MEHTA
475 14th Street, Suite 500
Oakland, CA 94612
Telephone: (510) 839-1200
Facsimile: (510) 444-6698
Email: danmsiegel@gmail.com
emilyrose@siegelyee.com

Dan Stormer, Esq. [S.B. #101967]
Hanna Chandoo, Esq. [S.B. #306973]
HADSELL STORMER RENICK & DAI LLP
128 North Fair Oaks Ave.
Pasadena, CA 91103
Telephone: (626) 585-9600
Facsimile: (626) 577-7079
Emails: dstormer@hadsellstormer.com
hchandoo@hadsellstormer.com

Barbara J. Parker, City Attorney, SBN
069722
Maria Bee, Chief Assistant City Attorney, SBN
167716
Jamilah A. Jefferson, Supervising Deputy
City Attorney, SBN 219027
One Frank H. Ogawa Plaza, 6th Floor
Oakland, California 94612
Telephone: (510) 238-7686;
Fax: (510) 238-6500
Email: jjefferson@oaklandcityattorney.org

Attorneys for Defendants

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ANITA MIRALLE, JODII LE'GRAND
EVERETT, I, TINA SCOTT, AIYAHNNA
JOHNSON; IRVIN JOSUE HERNANDEZ
ORTEGA; and AYAT JALAL,

Plaintiff,

vs.

CITY OF OAKLAND, a subdivision of the State
of California; LIBBY SCHAAF; JOE DEVRIES;
ANNE KIRKPATRICK; and SABRINA
LANDRETH,

Defendants.

) Case No. 4:18-cv-06823-HSG
)
) [Assigned to the Honorable Haywood S.
) Gilliam, Jr. - Courtroom 2]
)
) **INJUNCTIVE & MONETARY RELIEF**
) **AGREEMENT**
)
) Date:
) Time:
) Case Filed: November 9, 2018
)
)
)

1 The parties agree to the following explicit terms:

2 **A. Definitions**

- 3 1. The Encampment Management Team (“EMT”) is an interdepartmental working
4 group tasked with implementing and administering the Encampment Management
5 Policy (“EMP”). It consists of representatives from the City’s Public Works
6 Department, Human Services Department, Oakland Police Department, Oakland
7 Fire Department, the City Administrator’s Office, and other consulted departments
8 as necessary. The EMT is facilitated by the City Administrator’s Office through the
9 Homelessness Administrator. The terms of this Injunctive & Monetary Relief
10 Agreement are applicable to City action taken through or at the initiation of the City
11 Administrator’s Office through the Homelessness Administrator and/or the EMT.
12
- 13 2. For purposes of this agreement, “emergency” is defined as a situation in which
14 advance notice is essentially impossible, serious injury or death is imminent, an
15 immediate response is required by the Oakland Fire Department or the Oakland
16 Police Department or another City department, a state code, statute, or ordinance
17 mandates immediate abatement, and/or there is a public health crisis where health
18 is impacted to the point of imminent serious injury or death. Examples can include,
19 but are not limited to, a fire, a red-tagged building, as defined in section 130025 of
20 the California Health and Safety Code or the Fire Code, contamination by dumping
21 of hazardous materials, as defined by the California Department of Toxic Substances
22 Control or by the federal Environmental Protection Agency, and/or dumping waste
23 or debris into the sewer system or waterway such that immediate access is required
24 for repair or abatement.
25
- 26 3. For purposes of this agreement, “urgent health and safety concern” is defined as
27 either (a) a situation in which closure is necessary due to risk of serious injury or
28 death or (b) a situation in which 72-hour notice is inadvisable, impractical, or

impossible due to public health or safety concerns. Examples can include a vermin infestation or the obstruction of a waterway. Where there is an outbreak of a contagious disease, such as COVID-19, the City will determine, in its discretion, the applicable health mandates that it must follow from the Governor and State of California, Centers for Disease Control and Prevention, Health Officer of the County of Alameda, and health measures ordered by local emergency orders and/or local ordinances. After determining which mandates it must follow, the City shall follow those mandates during operations initiated by the City Administrator's Office through the Homelessness Administrator and/or the EMT.

B. Notice

1. All postings will:
 - a. State the date of the intervention;
 - b. State the date of the posting;
 - c. Identify whether the intervention will take place over multiple days by stating the days on which the intervention will occur;
 - d. Be reposted if the intervention does not occur on the day (or time) as posted;
 - e. Include a 4-hour window for the intervention start time; and
 - f. Include contact information for homelessness services outreach.
2. Notices of closures will:
 - a. Be posted 7 days prior to an encampment closure (with exceptions for emergencies/urgent health and safety concerns – where less than 7-day notice, but as much notice as reasonably possible, will be given); unless the closure is a re-closure, defined as a subsequent closures of the same site that occur within 60 days of the initial 7-day notice of closure.
3. Notices of re-closures will:

- 1 a. Be posted 72-hours prior to an encampment re-closure, defined as
2 subsequent closures of the same site that occur within 60 days of the initial 7-
3 day notice of closure.

4
5 4. Notices of all other interventions (e.g., deep cleanings) will:

- 6 a. Be posted 72-hours prior to the intervention (with exceptions for
7 emergencies/urgent health and safety concerns – where less than 72-hour
8 notice, but as much notice as reasonably possible, will be given).

9
10 **C. Property Retrieval**

11 1. If the City collects property at a closure or intervention, the City will do the
12 following:

- 13 a. Post a notice of collected property at the closure/intervention site. The notice
14 of collected property must:
- 15 i. State the address where the collected property will be stored,
 - 16 ii. Direct individuals to call 311 to retrieve vital property, which is defined
17 as identification (including social security cards) or medication, and
 - 18 iii. State the hours of operation of the location where the collected
19 property will be stored.
 - 20 iv. When storing collected property, the City must inventory and label
21 collected property at the storage site, which includes labeling all stored
22 property from a particular intervention site using the notice of
23 intervention or notice of collected property that was posted at the
24 intervention site at the time of collection.
- 25 b. The City will make reasonable efforts to store collected property pursuant to
26 the guidelines in the City's Standard Operating Procedures and maintain
27 property in the condition it was in when it was collected with one exception:
28 where practical, City employees who collect property will disassemble items

1 prior to storing them where the items would be damaged if stored in an
2 assembled state and make reasonable efforts to ensure that, when collected,
3 usable property continues to be usable after retrieval.

4 2. The City must record collected or discarded property during or immediately after an
5 intervention in the "Homeless Encampment Clean-up Checklist," created by the
6 Public Works Department or any subsequent version of this log for collected and
7 discarded property.

8
9 3. The City will make all property collected and/or stored from an intervention
10 available for retrieval:

- 11 a. Within 48 hours from the end time of the intervention where it was collected;
12 b. At one of two locations in the City that will be identified on the notice of
13 collected property;
14 c. In-person, with general information available by contacting the telephone
15 number on the notice of collected property;
16 d. In-person without appointment, during a TO BE DETERMINED set of
17 business hours and a TO BE DETERMINED set of after business hours and
18 weekend hours. The City will identify the locations of storage and both sets of
19 "TO BE DETERMINED" hours within 90 days of execution of this settlement
20 agreement. The enforcement period for this provision begins the day after the
21 City identifies both sets of "TO BE DETERMINED" hours; and
22 e. Within 24 hours if an individual indicates by contacting 311 that their vital
23 property, as defined above, was inadvertently collected.
24

25 **D. Weather**

26 1. City will make reasonable efforts to:
27
28

- a. Avoid closures in rain – if the rainfall will be 1.0. inches or more on the day of the intervention (with exceptions for emergencies/urgent health and safety concerns);
 - b. Avoid closures in extreme heat or extreme cold – between 8 a.m. and 8 p.m. on the day of the intervention, if the high temperature is at or exceeds 90 degrees or the low temperature is at or below 42 degrees as determined by the National Weather Service (with exceptions for emergencies/urgent health and safety concerns);
 - c. Avoid closures with poor air quality – if the air quality index on the day of the intervention is 201 or higher [“very unhealthy”] as determined by the official U.S. Air Quality Index, reported on www.airnow.gov (with exceptions for emergencies/urgent health and safety concerns).
2. The decision about whether an intervention will proceed based on the forecasted weather conditions will be made:
 - a. 48 hours prior to the start time of a closure on a Wednesday, Thursday, or Friday; and
 - b. 96 hours prior to the start time of a closure on a Monday or a Tuesday.
 3. If a closure is canceled because of a weather-related decision, the City will inform impacted individuals of the cancelation with verbal or written notice.
 4. If the City commences a closure, it will continue to perform the closure despite changes in weather conditions that would have prevented the initial commencement of the intervention, unless weather and working conditions are deemed unsafe for staff by the City Administrator’s Office or the person(s) with designated authority.

1 **E. Mitigation**

- 2 1. The City will continue to mitigate conditions in encampments – e.g. provide garbage
3 run, porta-potties, hygiene stations, deep cleanings, outreach, etc. – to address
4 health/safety concerns. The City will make reasonable efforts to provide mitigations
5 that it deems beneficial for an encampment. The City’s mitigation efforts may be
6 limited by financial and personnel resources, or policy considerations.

7
8 **F. Oakland Police Department (“OPD”) Involvement**

- 9 1. OPD officers will use a Portable Digital Recording Device (“PDRD”) at interventions
10 per their current OPD policy.

11
12 **G. Monetary Terms**

- 13 1. City will pay Plaintiffs through their attorney’s the total sum of \$250,000.
14

15 **H. Continuing Court Jurisdiction**

- 16 1. This Injunctive & Monetary Relief Agreement is effective for four (4) years from the
17 date of execution (the “Effective Period”). During the Effective Period, either party
18 may seek judicial assistance to enforce the terms of the agreement.
- 19 2. The Court will retain jurisdiction for a period of one (1) year to enforce the terms of
20 the Injunctive & Monetary Relief Agreement (the “Enforcement Period”). Pursuant
21 to 28 U.S.C. § 636(c), the parties agree that Chief Magistrate Judge Joseph C. Spero
22 will serve as the enforcement judge.
- 23 3. At any point during the Effective Period, the party seeking to enforce a term in the
24 underlying Injunctive & Monetary Relief Agreement will meet and confer by phone
25 or in person with the opposing party to meaningfully and in good faith attempt to
26 resolve the dispute in writing at least 30 days prior to seeking judicial assistance.
- 27 4. During the Enforcement Period, if meet and confer efforts are unsuccessful, the
28 party seeking to enforce a term in the underlying Injunctive & Monetary Relief

1 Agreement will request an informal "conference" before a Magistrate Judge assigned
2 by Judge Spero to meaningfully and in good faith further attempt to resolve the
3 dispute.

4 5. If meet and confer efforts and the informal "conference" are unsuccessful, the party
5 seeking to enforce a term in the underlying Injunctive & Monetary Relief Agreement
6 will file and serve a noticed motion, with a briefing schedule and hearing date
7 stipulated by the parties.

8 6. If the City breaches the Injunctive & Monetary Relief Agreement and the Court must
9 force compliance, Plaintiffs will be entitled to reasonable attorneys' fees in an
10 amount to be decided by the Court.

11 7. If Plaintiffs bring a frivolous challenge or continue to pursue a challenge after it
12 becomes clear the challenge is frivolous, the City will be entitled to reasonable
13 attorneys' fees in an amount to be decided by the Court.

14 8. Neither party will be entitled to seek attorney's fees for enforcement of the Injunctive
15 & Monetary Relief Agreement after the conclusion of the Enforcement Period.

16 9. After the Enforcement Period and during the remainder of the Effective Period, if
17 meet-and-confer efforts are unsuccessful, the party seeking to enforce a term in the
18 underlying Injunctive & Monetary Relief Agreement may bring a civil action to
19 enforce the terms of the agreement.
20

21 Dated: July ____, 2022

SIEGEL, YEE, BRUNNER & MEHTA

22
23 By /s/ EmilyRose Johns

24 EmilyRose Johns

25 Attorneys for Plaintiff

26 Dated: July ____, 2022

HADSELL STORMER RENICK & DAI LLP

27
28 By /s/ Hanna Chandoo

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Hanna Chandoo
Attorneys for Plaintiff

Dated: July ____, 2022

OAKLAND CITY ATTORNEY'S OFFICE

By: /s/Jamilah Jefferson
Jamilah Jefferson

Attorneys for Defendants