



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: NORA FRIMANN,
City Attorney

SUBJECT: SETTLEMENT OF CHO. v. CITY
OF SAN JOSE, ET AL.

DATE: February 24, 2023

RECOMMENDATION

Approve a settlement in the case of *Cho v. City of San José, et al.* in the amount of \$200,000.00, and authorize the City Attorney to execute a Settlement Agreement.

OUTCOME

The City will pay the sum of \$200,000.00 to settle the lawsuit filed on July 16, 2021 entitled *Anthony Sung Cho v. City of San José, et al.* in the United States District Court for the Northern District of California, case number 5:21-cv-05503.

BACKGROUND

On July 18, 2020, four SJPD officers observed and responded to a stolen BMW located at a gas station at the intersection of Story Road and King Road. Plaintiff, who was in the driver's seat, fled on foot when he saw the officers. After a foot and car pursuit across six lanes of traffic, the plaintiff tripped and fell in a shopping center parking lot, where he was subdued and taken into custody by the officers. Plaintiff alleged the officers' use of baton strikes, body weight, and a distraction kick to his head constituted excessive force because he had raised both hands to signal his surrender while in a seated position before force was used. Body worn camera video confirmed that, after the Plaintiff fell, he briefly raised his hands before the officers used force.

ANALYSIS

This is a negotiated settlement between the parties to avoid the risks inherent in litigation. The City will pay the Plaintiff the sum of \$200,000.00 in full satisfaction and settlement of all claims and the Plaintiff will dismiss the entire lawsuit against the City and all City employees. The proposed agreement will conclude the litigation without further cost, expense or risk of loss to the City and City employees. The parties will bear their own respective attorneys' fees and litigation costs.

PUBLIC OUTREACH/INTEREST

This memorandum and the Settlement Agreement have been posted on the City's website for the March 7, 2023 agenda.

COST SUMMARY/IMPLICATIONS

The settlement will be paid from the City's claims reserve fund.

CEQA

Not a Project; File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/ Nora Frimann

NORA FRIMANN

City Attorney

cc: Jennifer Maguire, City Manager

For questions, please contact NORA FRIMANN, City Attorney, at (408) 535-1900