

2.7 23-1639 Settlement of Andrea Ortega, et al v. City of San José, et al.

Legislation Text

File #: 23-1639, Version: 1

Settlement of Andrea Ortega, et al v. City of San José, et al.

Approve the settlement of a lawsuit brought by Plaintiff Andrea Ortega, et al in the total amount of \$337,500 and authorize the City Attorney to execute a settlement agreement.

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

[Deferred from 11/7/2023 - Item 2.7 (23-1503) and 11/14/2023 - Item 2.7 (23-1537)]



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann,
City Attorney

SUBJECT: SETTLEMENT OF LAWSUIT
FILED BY ANDREA ORTEGA

DATE: November 17, 2023

RECOMMENDATION

Approve the settlement of a lawsuit brought by Plaintiff Andrea Ortega in the total amount of \$337,500 and authorize the City Attorney to execute a settlement agreement.

OUTCOME

Settlement of the personal injury lawsuit brought by Plaintiff Andrea Ortega in the total amount of \$337,500 with Bird Rides Inc. contributing \$125,000 towards the settlement. Each side will bear its own costs and attorney fees.

BACKGROUND

This lawsuit arises from a Bird electric scooter accident in which the plaintiff, a 32-year-old attorney riding a scooter with her boyfriend across San Fernando Plaza, sustained significant and permanent facial and dental injuries when they were thrown from scooter after hitting the base of a light that remained unprotected after the light pole was removed. Plaintiff's medical expenses for her injuries are approximately \$113,000. The settlement will resolve all of Plaintiff's claims for damages, including any future damages.

ANALYSIS

This is a negotiated settlement between the parties to avoid the risks inherent in litigation. The City will pay plaintiff the total sum of \$337,500 in full satisfaction and settlement of all claims, and plaintiff will dismiss her entire lawsuit with prejudice. Bird Rides Inc. will contribute \$125,000 toward that settlement amount. 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 November 28, 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.

Nora Frimann
By Nora Frimann (Nov 17, 2023 11:30 PST)
NORA FRIMANN
City Attorney

cc: Jennifer Maguire, City Manager

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

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is made by and between Andrea Ortega (“Plaintiff”), Nicholas Bergam (“Cross-Defendant”) and the City of San José (“Defendant”), collectively referred to as the “Parties.”

WHEREAS, Plaintiff filed an action against the Defendant on or about January 7, 2021 in the Superior Court of California, County of Santa Clara, case number 21CV375939 entitled Andrea Ortega v. City of San Jose (“Action”) for alleged personal injuries sustained while operating a Bird Scooter;

WHEREAS, the City filed a Cross Complaint against Cross-Defendant in the Action;

AND WHEREAS, the Parties now undertake to settle this Action as to the City of San Jose, and Plaintiff, Cross-Defendant and Defendant City of San Jose now undertake to release and extinguish on a final basis any and all claims against the Defendant City of San Jose, arising out of, or in any way connected with, the incident which is the subject of the Action, which occurred on or about December 17, 2019 in San Jose, California, as more fully described in the Complaint filed in this Action (“Incident”);

AND WHEREAS Plaintiff desires to dismiss the Action with prejudice.

NOW THEREFORE, the Parties agree as follows:

1. Conditioned upon San Jose City Council approval, for consideration of a payment of \$337,500 to plaintiff, Plaintiff and her past and present assigns, heirs, executors, and administrators, hereby release and forever discharge the Defendant, City of San Jose and it’s past and present employees, partners, agents, predecessors, successors, consultants, attorneys, and assigns, all of whom

expressly deny any liability, from any and all claims, demands, damages, actions, or suits, known and unknown, relating to, arising out of, or in any way connected with the Incident. In consideration for the above-referenced payment, Plaintiff shall dismiss the entire Action with prejudice as to the City of San Jose within five days of the receipt of the payment of \$337,500. Furthermore, upon plaintiff's filing of a dismissal with prejudice the City shall file a dismissal with prejudice of the cross-complaint against cross-defendant Nicholas Bergam.

2. The Parties shall cooperate in executing all documents necessary to effectuate this Settlement Agreement and to effectuate the dismissal with prejudice of the Action.

3. Section 1542 of the Civil Code of the State of California provides as follows:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

Plaintiff represents that Civil Code Section 1542 has been read and reviewed with counsel and understood, and that she hereby waives any and all present and future rights and benefits under Section 1542 to the extent it would permit claims relating to, arising out of, or any way connected to the Incident based on facts found to be different from the facts believed to be true at the time this Settlement Agreement was executed.

4. The Parties understand and acknowledge that this Settlement Agreement constitutes a compromise and settlement of disputed claims relating to, arising out of or any way connected with the Incident. No act taken by the Parties,

either previously or in connection with this Settlement Agreement, shall be deemed or construed to be an admission of the truth or falsity of any claims heretofore made or an acknowledgment or admission by any party of any fault or liability whatsoever to the other party.

5. The Parties shall bear their own costs, including attorneys' fees, and any other fees incurred in connection with this Action, the Settlement Agreement and the events underlying this Settlement Agreement.

6. The Parties represent that they have had the opportunity to consult with legal counsel and have carefully read and understand the terms of this Settlement Agreement. The terms of this Settlement Agreement are voluntarily accepted for the express purpose of making a full and final compromise and settlement of the Action.

7. This Settlement Agreement represents the entire agreement and understanding between the Parties regarding settlement of the Action and supersedes any and all prior and contemporaneous agreements, representations, and negotiations. This Settlement Agreement may be modified or amended only by a written instrument signed by all Parties hereto.

8. Each person executing this Settlement Agreement on behalf of any other person or persons hereby warrants that they have full authority to do so.

9. Plaintiff agrees to hold the Defendant harmless with regard to any liens or claims for medical treatment and/or expenses she may have incurred as a result of the Incident.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement effective as of the date last set forth below.

Dated: 10/18/2023

DocuSigned by:
Andrea Ortega
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Andrea Ortega
Plaintiff

Law Office of Casey Kauffman

Dated: 10/18/2023

By: *Casey Kauff*
Casey Kauffman
Attorney for Plaintiff

Dated: 10/20/2023

DocuSigned by:
Nicholas Bergam
7511B3FB20194ED...
Nicholas Bergam
Cross-Defendant

Law Office of Richard H. Poulson

Dated: 10/20/2023

DocuSigned by:
Richard Poulson
A28DE1FDA03E411...
Richard Poulson
Attorney for Cross-Defendant

CITY OF SAN JOSE

Dated: _____

By: _____
ARDELL JOHNSON
Assistant City Attorney as
Authorized Agent for the
CITY OF SAN JOSE

APPROVED AS TO FORM:

Dated: _____

By: _____
Brian S. Kreger
Sr. Deputy City Attorney
Attorney for Defendant