

File No. 160187 Committee Item No. 13
Board Item No. 19

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight Date June 16, 2016

Board of Supervisors Meeting Date June 28, 2016

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Completed by: Erica Major Date June 10, 2016
Completed by: [Signature] Date 6/21/2016

1 [Settlement of Lawsuit - David Zeller - \$900,000]

2
3 **Ordinance authorizing settlement of the lawsuit filed by David Zeller against the City**
4 **and County of San Francisco for \$900,000; the lawsuit was filed on March 14, 2013, in**
5 **San Francisco Superior Court, Case No. CGC-13-529554; entitled David Zeller v. San**
6 **Francisco General Hospital, et al.; the lawsuit involves alleged medical malpractice.**

7
8 Be it ordained by the People of the City and County of San Francisco:

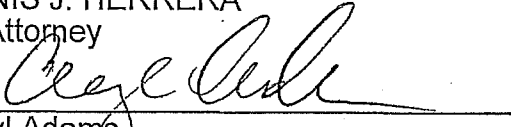
9 Section 1. Pursuant to Charter, Section 6.102(5), the Board of Supervisors hereby
10 authorizes the City Attorney to settle the action entitled David Zeller v. San Francisco General
11 Hospital, et al., San Francisco Superior, Case No. CGC-13-529554 by the payment of
12 \$900,000. The lawsuit involves alleged medical malpractice.

13 Section 2. The above-named action was filed in San Francisco Superior Court on
14 March 14, 2013, and the following parties were named in the lawsuit: Plaintiff: David Zeller;
15 Defendants: City and County of San Francisco and Regents of the University of California.

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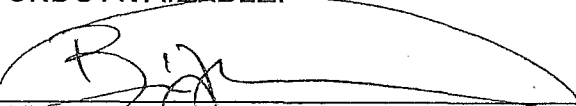
APPROVED AS TO FORM AND
RECOMMENDED:

DENNIS J. HERRERA
City Attorney



Cheryl Adams
Chief Trial Attorney

FUNDS AVAILABLE:



BEN ROSENFELD
Controller

RECOMMENDED:

DEPARTMENT OF PUBLIC HEALTH



BARBARA A. GARCIA
Director

APPROVED:



MARK MOREWITZ
Secretary, Health Commission

n:\it\2015\130977\01064895.doc

160187

From: Judy Singer <judysingerdesign@gmail.com>
Sent: Thursday, June 16, 2016 8:44 AM
To: Major, Erica (BOS)
Subject: Hearing of government audit and oversight committee regarding David Zeller's settlement

Dear Supervisors Peskin, Breed, and Yee,

My first cousin David Zeller was born and educated in Indiana. I greatly admired his fortitude as a human being and talent as a writer, photographer and artist. After he graduated from Indiana University he was drawn to the San Francisco art community and decided to make this liberal, loving, vibrant city his home. He was well regarded by his colleagues and peers as an exceptional individual. He was the most gentle person I have ever met. I loved him and will grieve him for many years. His death was causally related to the negligible act that occurred at the San Francisco general hospital. To rescind the money awarded to his heir, Michael McGowan, at this point would be unconscionable, unfair and immoral.

Sincerely,
Judy Singer

Sent from my iPad

160187

From: Thomas Broening <tbroening@yahoo.com>
Sent: Wednesday, June 15, 2016 6:48 PM
To: Major, Erica (BOS)
Subject: David Zeller's settlement

Ms. Major,

I have known Dave Zeller for 30 years. We met in college , worked at the newspaper together , and moved to San Francisco from Indiana together in 1990. He was intelligent, kind and honest. His word was his bond.

He loved living in San Francisco and was saddened by how the city had changed in the last few years. We lived together in Dubuce Triangle and used to go mountain biking in the Marin Headlands. I got married and moved to the East Bay and he moved to North Beach and found his tribe there in the cafes.

When he called me after his accident he was devastated. He went from being someone who was completely self sufficient to someone who was incontinent, impotent and paralyzed. I can not imagine going through what he went through.

I feel like the city failed him. He walked into General Hospital able bodied and came out in a wheel chair for life. He was able to negotiate a settlement with the city but in no way could this make up for what was done to him. In my conversations with him after the accident I think he took pride in the hard work he did on his case. He had to pull together documents, read case files and prepare for depositions. This occupied two years of his life and think it gave him some purpose.

Soon after the settlement was decided his doctor took him off sleeping medication and he took a turn for the worse. He became despondent and paranoid. He was convinced that he would be evicted and homeless and knew he couldn't survive in the condition he was in. He had poor credit and was told no one would rent to him. I told him we would figure it out and I would cosign a lease for him . I told him to not worry about his housing for a few days and concentrate on just getting a couple hours of sleep. He took his life the following week.

Because he is no longer here to express himself I feel like I need to speak for him. He was my friend and I cared about him and he cared about me. We had been through a lot together and he helped me when I most needed it. I can't speak about the legal aspects but it seems like the right thing to do to follow through with the settlement. The city was responsible for destroying a man's life and this goes a small way in making it right.

Please do not hesitate to contact me.

Thomas Broening
415-595-8698

160187

From: Carter Zinn <carter@zinn-law.com>
Sent: Wednesday, June 15, 2016 6:52 PM
To: Major, Erica (BOS)
Subject: FW: Dave Photo
Attachments: DaveZeller.jpg

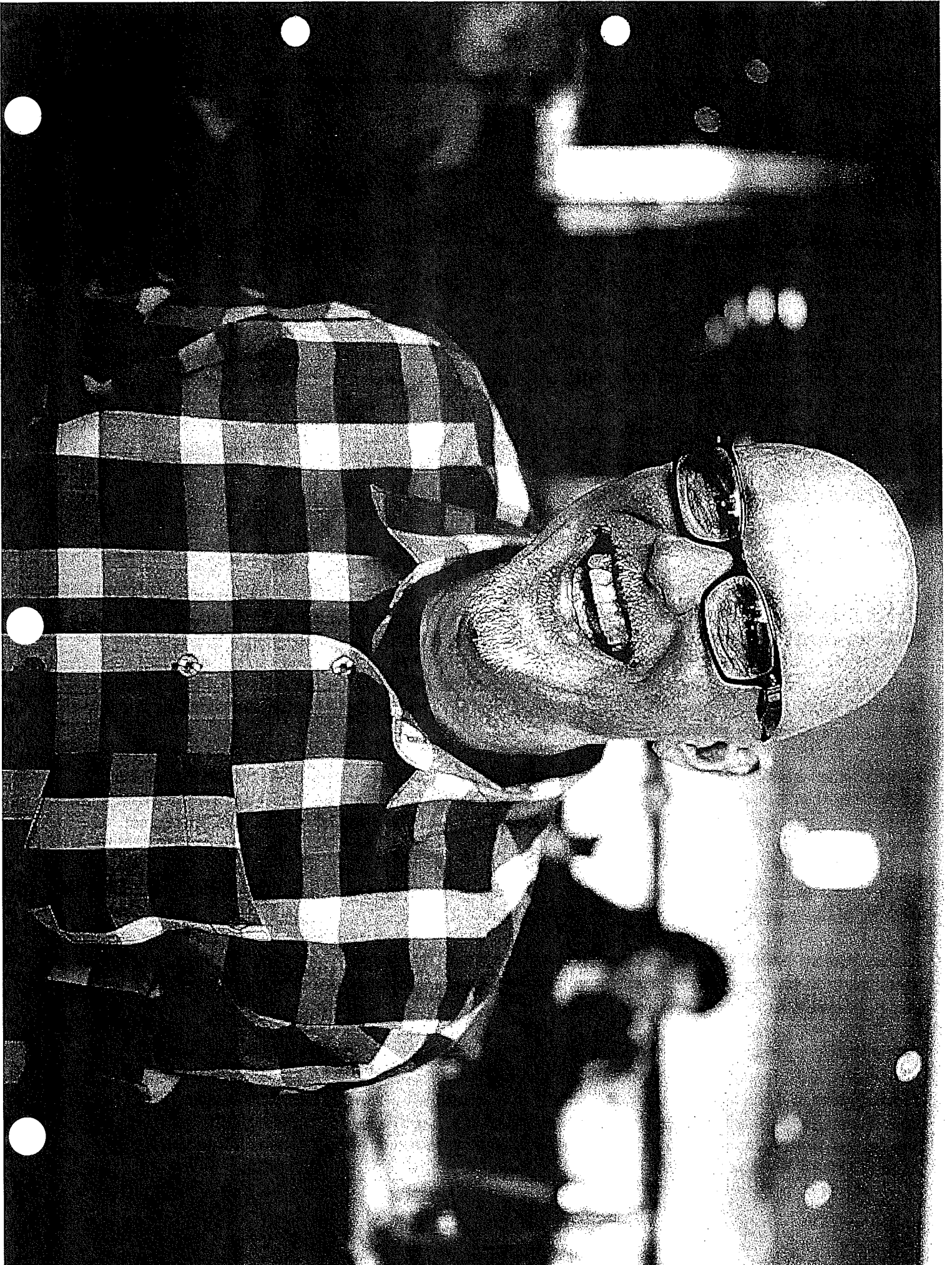
Erica,

Here is a wonderful picture of David. I hope you will share this with the Committee members and include it in the file materials as well.

Best,

Carter Zinn

From: Thomas Broening [mailto:tbroening@yahoo.com]
Sent: Wednesday, June 15, 2016 6:49 PM
To: Carter Zinn
Subject: Dave Photo



160187

From: Andrew Carson <acarson333@yahoo.com>
Sent: Wednesday, June 15, 2016 5:46 PM
To: Major, Erica (BOS)
Cc: carter@zinn-law.com
Subject: Re: David Zeller's Hearing

Dear Ms. Major,

My name is Andy Carson, and I was a close friend of David Zeller's.

I will try to appear at the hearing of the Government Audit and Oversight Committee to speak about David's settlement during public open comment period. But I also wish to provide this written statement about David and the settlement that I would like to be made part of the record of the Committee's proceedings.

Thank you so much for your time.

Here is my statement below:

"David Zeller was an intelligent, sensitive, funny and fantastic person who was failed by the system in every way that could possibly matter.

I knew this remarkable man for over 10 years professionally, and then much more closely after his hospital incident during the past several years. I feel very fortunate to have known him, and will feel his absence in my life for many years to come.

In spite of an unfair, traumatic and frankly horrifying circumstance brought on by the Healthcare system here in San Francisco which compromised his back, his health, and his ability to live his life productively, he was overcoming his setbacks and achieving a state of mental and emotional balance, well-being and empowerment.

His strength of character was inspiring, and I looked forward to continuing my friendship with him well after all of the weight of this settlement had passed.

In a very short period of time, the work he had achieved in last few years of his life was undone, and his demeanor changed drastically from one of hope and empowerment to one of despondency. He also noticeably lost weight.

I know that his prescriptions changed significantly in the final months of his life, and personally believe that that the changes his doctors made in his care during the last few months had a profound and negative impact on him. I am particularly concerned with how his doctors handled removing him from Ativan, a medication they had prescribed. I worry that this had something to do with his sudden turn for the worse, his inability to sleep, which led to a sense of hopelessness in the weeks and months before he took his own life.

It is a gross injustice and a tragedy that his life ended when he had actually won this settlement, and I feel it would be a morally correct thing to pay this now-disputed settlement out to his family relations and to pay for his legal fees. I say this without any vested interest. I have nothing personally to gain, other than a desire to see something positive come from an otherwise painful circumstance.

It is truly the least this city could do.

It doesn't change how badly the city failed him in the first place; it doesn't change the needless, pointless horror of the circumstance it left him with, or the poor and disconnected care he received from the Healthcare system all the way until the end of his life.

But paying the settlement out would be the right thing to do.

Sincerely,

Andrew D. Carson

Andrew D. Carson
Illustration
1(415) 305-2312

www.andrewcarsonillustration.com

RECEIVED VIA EMAIL
6/15/2016
FILE NO. 16018

FULL AND FINAL RELEASE

Case Name: *David Zeller v. City and County of San Francisco, et al.*

Case No.: **CGC-13-529554**

FOR GOOD AND VALUABLE CONSIDERATION, which will cost \$900,000 (nine hundred thousand and 00/100) Dollars (the "SETTLEMENT AMOUNT") as set forth below, the sufficiency of which is hereby admitted and acknowledged, DAVID ZELLER, individually and on behalf of his heirs, domestic partners, executors, administrators, and assigns, if any (hereinafter referred to individually and collectively as "RELEASOR"), hereby agrees to fully and forever release and discharge the City and County of San Francisco, together with its elective and/or appointive boards, agents, servants, employees, consultants, departments, commissioners, and officers (hereinafter referred to individually and collectively as "SAN FRANCISCO"), from any and all claims, actions, causes of action, liabilities, damages, demands, attorneys' fees, expenses and costs (including without limitation court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter shall or may exist, and which (1) are alleged or set forth or attempted to be set forth in the pleadings on file in that certain action entitled "David Zeller vs. San Francisco General Hospital, et al." being Action No. CGC-13-529554 on the records of the Superior Court for the City and County of San Francisco (hereinafter referred to as the "ACTION"), or (2) arise out of or are in any way related to any of the transactions, occurrences, acts or omissions set forth or alleged in any of the pleadings in the Action (hereinafter referred to collectively as the "CLAIMS").

SAN FRANCISCO will pay the SETTLEMENT AMOUNT by 1) a check to RELEASOR'S counsel made payable to "David Zeller and his attorney, Carter M. Zinn" for the sum of \$509,754.42; and 2) periodic payments to The David Zeller Special Needs Trust ("Payee") according to the schedule as follows (the "Periodic Payments"): \$2,607.49 per Month for the lifetime of David Zeller beginning on May 15, 2016.

If the annuity to fund the periodic payments is not funded on or before April 15, 2016 the dates or amounts of the periodic payments may be modified to coincide with the funding date and the final periodic payments shall be the one listed in the issued Qualified Assignment, Release and Pledge Agreement.

All sums set forth herein constitute damages on account of personal injuries or sickness, within the meaning of Section 104(a) (2) of the Internal Revenue Code of 1986, as amended.

RELEASOR acknowledges that the Periodic Payments cannot be accelerated, deferred, increased or decreased by the RELEASOR or any payee; nor shall the RELEASOR or any Payee have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.

Guaranteed payments (if any) to be made after the death of David Zeller pursuant to the terms of this Settlement Agreement shall be made to such person or entity as shall be designated in writing by Payee to the Defendant or its Assignee. If no person or entity is so designated by Payee, or if the person designated is not living at the time of the Payee's death, such payments shall be made to the estate of the Payee. No such designation, nor any revocation thereof, shall be effective unless it is in writing and delivered to the Defendant or its Assignee. The designation must be in a form acceptable to the Defendant or its Assignee before such payments are made.

RELEASOR acknowledges and agrees that SAN FRANCISCO may make a "qualified assignment", within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, of the Defendant's liability to make the Periodic Payments to Pacific Life and Annuity Services, Inc. ("the Assignee"). The Assignee's obligation for payment of the Periodic Payments shall be no greater than that of SAN FRANCISCO (whether by judgment or agreement) immediately preceding the assignment of the Periodic Payments obligation.

Any such assignment, if made, shall be accepted by the RELEASOR without right of rejection and shall completely release and discharge SAN FRANCISCO from the Periodic Payments obligation assigned to the Assignee. The RELEASOR recognizes that, in the event of such an assignment, the Assignee shall be the sole obligor with respect to the Periodic Payments obligation, and that all other releases with respect to the Periodic Payments obligation that pertain to the liability of SAN FRANCISCO shall thereupon become final, irrevocable and absolute.

SAN FRANCISCO, itself or through its Assignee, reserves the right to fund the liability to make the Periodic Payments through the purchase of an annuity policy from Pacific Life Insurance Company. SAN FRANCISCO or the Assignee shall be the sole owner of the annuity policy and shall have all rights of ownership. SAN FRANCISCO or the Assignee may have Pacific Life Insurance Company mail payments directly to the Payee(s). The RELEASOR shall be responsible for maintaining a current mailing address for Payee(s) with Pacific Life Insurance Company.

The obligation of SAN FRANCISCO or Assignee to make each Periodic Payment shall be discharged upon the mailing of a valid check in the amount of such payment to the designated address of the Payee(s), which is David Zeller, 350 Golden Gate Avenue, #404, San Francisco, CA 94102.

RELEASOR represents and warrants that he has not assigned or transferred, or agreed to assign or transfer, or attempted to assign or transfer, to any third party or entity (including without limitation any insurer) any interest in any of the CLAIMS. RELEASOR agrees to defend, indemnify and hold harmless SAN FRANCISCO against any loss, expense or liability, including without limitation reasonable attorneys' fees, arising from any breach of the foregoing. Furthermore, in the event that SAN FRANCISCO learns that RELEASOR has breached this warranty, SAN FRANCISCO may, at its sole option, elect to rescind this Full and Final Release, in which case RELEASOR shall immediately remit to SAN FRANCISCO the SETTLEMENT AMOUNT, plus interest accruing thereon at a rate of ten percent per year, compounded monthly, from the date of payment thereof.

RELEASOR represents and warrants that he has simultaneously entered into a settlement agreement with all other remaining defendants in the ACTION, including but not limited to The Regents of the University of California. RELEASOR represents and warrants that he will dismiss with prejudice the ACTION against all defendants, including but not limited to SAN FRANCISCO and The Regents of the University of California, within one week after The Regents of the University of California tenders its lump sum payment of \$140,245.58 to Medi-Cal and \$459,754.42 to Pacific Life and Annuity Services, Inc.; and SAN FRANCISCO tenders its lump sum payment of \$509,754.42 to David Zeller and his attorney, Carter M. Zinn, and \$390,245.58 to Pacific Life and Annuity Services, Inc. RELEASOR agrees to defend, indemnify and hold harmless SAN FRANCISCO against any loss, expense or liability, including without limitation reasonable attorneys' fees, arising from any breach of the foregoing warranties. Furthermore, in the event that SAN FRANCISCO learns that RELEASOR has breached these warranties, SAN FRANCISCO may, at its sole option, elect to rescind this Full and Final Release, in which case RELEASOR shall immediately remit to SAN FRANCISCO the SETTLEMENT AMOUNT, plus interest accruing thereon at a rate of ten percent per year, compounded monthly, from the date of payment thereof.

RELEASOR represents and warrants that either (a) there are no liens, including without limitation any medical reimbursement, unemployment or disability compensation liens, in existence which may attach to the SETTLEMENT AMOUNT or to any recovery paid to RELEASOR pursuant to the ACTION, or (b) to the extent there are any such liens, RELEASOR will pay and retire all such liens out of the SETTLEMENT AMOUNT. RELEASOR agrees to defend, indemnify and hold harmless SAN FRANCISCO against any and all claims by any person or entity purporting to hold any lien, interest, or other claim, whether for medical care, unemployment and/or disability compensation, attorneys' fees, or otherwise, involving RELEASOR and arising in connection with any of the CLAIMS.

In reaching a settlement of the CLAIMS resulting in the execution of this RELEASE, RELEASOR and SAN FRANCISCO have considered and sought to protect the interests of the Centers for Medicare and Medicaid Services ("CMS"), the federal agency that runs Medicare. The parties in good faith have attempted to compromise and resolve this disputed matter in compliance with both state and federal law and with consideration for the nature and extent of DAVID ZELLER'S injuries and future needs, his possible future eligibility for medical benefits from Medicare, and other sources of benefits and payments he or other RELEASORS will receive or be entitled to receive. This settlement is based upon a good faith determination of the parties to resolve a disputed claim. The parties have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. Sec. 1395y (b). RELEASOR will protect Medicare's future interests for any future medical treatment related to his claims that he may require and agrees to hold harmless, defend and indemnify SAN FRANCISCO, including but not limited to the payment of reasonable attorneys' fees, against any and all claims arising out of or related to the terms of this paragraph, including without limitation, any claims by CMS.

///

RELEASOR certifies that he has read Section 1542 of the California Civil Code, which provides:

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 SETTLEMENT WITH THE DEBTOR.

RELEASOR hereby waives application of Section 1542 of the Civil Code. RELEASOR understands and acknowledges that, as a consequence of this waiver of Section 1542, even if RELEASOR should eventually suffer additional or further loss, damages or injury arising out of or in any way related to any of the events which gave rise to the CLAIMS, or any of them, RELEASOR will not be permitted to make any further claims against SAN FRANCISCO to recover for such loss, damages or injury. RELEASOR acknowledges that he intends these consequences even as to claims for personal injury or property damage that may exist as of the date of this Full and Final Release but which RELEASOR does not know exist, and which, if known, would materially affect RELEASOR'S decision to execute this Full and Final Release, regardless of whether RELEASOR'S lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

RELEASOR acknowledges that, in executing this Full and Final Release, he is acting on his own, independent judgment informed by his legal counsel. RELEASOR acknowledges having read this Full and Final Release and having been advised by his attorney as to its meaning and effect. RELEASOR acknowledges and warrants that his execution of this Full and Final Release is free and voluntary. RELEASOR further represents and warrants that, at the time he executed this Full and Final Release, he was not in the period of first physical confinement, whether as an inpatient or outpatient, in a clinic or health facility (as defined in Sections 1203 and 1250 of the Health and Safety Code) as a result of the injury alleged to have given rise to any of the CLAIMS, and that as a result Business and Professions Code section 6152(b) cannot be used to invalidate this Full and Final Release.

RELEASOR acknowledges that this Full and Final Release, along with the Qualified Assignment, Release and Pledge Agreement and Addendum No. 1 Description of Periodic Payments ("Benefit(s): \$2,607.49 per Month, for the lifetime of David Zeller, beginning on May 15, 2016.") specific to the Periodic Payments agreed to herein, together contain and constitute the entire agreement between RELEASOR and SAN FRANCISCO with respect to the CLAIMS. The terms of this Full and Final Release are contractual and not a mere recital. RELEASOR acknowledges that SAN FRANCISCO has made no representations, express or implied, to induce RELEASOR to enter into this Full and Final Release, other than as expressly set forth herein.

No aspect of this Full and Final Release or the settlement which led to it is intended to be nor at any time shall be construed, deemed, or treated in any respect as an admission by SAN FRANCISCO of liability for any purpose. It is expressly understood by RELEASOR that this Full and Final Release does not constitute an admission of the truth or accuracy of any of the allegations made in the complaint on file in the ACTION

or of liability for any of the CLAIMS, and that SAN FRANCISCO expressly denies the allegations made in the complaint, as more fully set forth in the answer or other responsive pleadings on file in the ACTION.

If any of the provisions of this Full and Final Release or the application thereof is held to be invalid, its invalidity shall not affect any other provision or application of this Full and Final Release to the extent that such other provision or application can be given effect without the invalid provision or application, and to this end, the provisions of this Full and Final Release are declared and understood to be severable; provided, however, that should a court of competent jurisdiction hold that RELEASOR is entitled to sue SAN FRANCISCO upon any of the CLAIMS, and should RELEASOR bring or join in such a suit, then RELEASOR shall immediately remit to SAN FRANCISCO the SETTLEMENT AMOUNT, plus interest thereon accruing at a rate of ten percent per year, compounded monthly, from the date of payment thereof.

RELEASOR understands and acknowledges that both RELEASOR and SAN FRANCISCO shall bear their own legal expenses and costs incurred in connection with prosecuting or defending against the ACTION and any of the CLAIMS.

This Full and Final Release and the settlement which led to it have been fully negotiated with the assistance of counsel and should not be construed more strictly against one party than another.

This Full and Final Release may be executed in two or more counterparts, all of which counterparts shall be deemed originals.

Dated: 2-17-16




David Zeller

APPROVED AS TO FORM:


The Zinn Law Firm

Dated: 2/18/16



Carter Zinn
Attorney for Releasor

Dated: 2-23-16



Mark D. Lipton
Deputy City Attorney

From: Carter Zinn <carter@zinn-law.com>
Sent: Wednesday, June 15, 2016 12:18 PM
To: Major, Erica (BOS)
Subject: Please Help with City Attorney Trying to Pull Out of Settlement Agreement in Zeller v. CCSF, On Your Committee Agenda Thursday
Attachments: 152. Fully executed CCSF release 2.23.16.pdf; Agenda.pdf; Comm Pkt 061616.pdf

Erica,

Thanks so much for your time on the phone today. Here is the message I would appreciate you forwarding to the Committee members and their staff, and making part of the file:

Dear Supervisors Peskin, Yee and Breed:

I am reaching out to you regarding the potential settlement of Zeller v. CCSF et al. We just learned that this matter is on the agenda for the Government Audit and Oversight Committee for your 9:30 a.m. meeting tomorrow, June 16. My client, David Zeller, became paralyzed and then recently, took his own life, both due to the negligence of physicians and staff at San Francisco General Hospital. I am hoping you can help me help David's family and legacy and that you will vote today to approve the proposed \$900,000 settlement of this case. Although we just learned about the Committee meeting, several of his friends and family will try to attend and speak during the public comment period tomorrow.

Here are the important facts: On September 30, 2015, my office settled a medical malpractice case on behalf of our client, David Zeller, for \$1.5 million. The case is entitled Zeller v. CCSF et al., Case No. CTGC-13-529544. The lawsuit alleged that on March 14, 2012, physicians employed by the UC Regents and an MRI tech employed by CCSF caused Mr. Zeller to become paralyzed from the waist down (a paraplegic) due to missing a spinal diagnosis and moving him too roughly in the hospital back in 2012. The Regents agreed to pay \$600,000 and CCSF agreed to pay \$900,000 to compensate David for his injuries. (Of course his pain and suffering claim was limited to \$250,000 under California's horrible MICRA law.) However, due to inexcusable delays on the part of Deputy City Attorney Mark Lipton, four months went by before the case was finally presented to the SF Health Commission on February 2, 2016 for approval. On that date, the Health Commission approved the City Attorney's recommendation to settle the case for \$900,000.

We then had to wait until late February 2016 for CCSF to prepare and sign the Full and Final Release finalizing the parties' agreement. The agreement called for CCSF to pay \$509,754.42 in a lump sum to my office and Mr. Zeller, and the balance in another lump sum to fund part of the structured settlement payments. The lump sum payment for the annuity was supposed to be made to the annuity company, Pacific Life, by April 15, 2016 and David was to receive his first monthly annuity check from Pacific Life a month later. Notably, nowhere in this agreement did CCSF mention that payment of the \$900,000 was conditioned on BOS approval of the

settlement. Nevertheless, on February 24, 2016 the clerk of the Board received the matter from the Health Commission, and on March 8 the BOS met and authored a resolution to authorize payment. During this period CCSF's Controller certified that funds were available to pay the settlement. The matter was next due to be heard by the BOS Government Audit and Oversight Committee. (I have attached some of the key Board documents for your review.)

Sadly, however, on March 14, 2016, two months before his life-long periodic settlement payments that CCSF and the Regents agreed to were to begin, Mr. Zeller took his own life. We believe there were multiple factors that caused him to do this, including his ongoing challenges with his paralysis. However, another important factor was that his nurse practitioner at the Thomas Waddell Clinic (whom I also believe is employed by CCSF but this will be confirmed) insisted that Mr. Zeller stop taking Ativan, which he had been given by his CCSF providers for more than three years since he became paralyzed to help him relax and sleep. In the last weeks of his life, Mr. Zeller complained frequently to me, his CCSF health care providers, and anyone else that would listen, that he could not sleep and that he felt he was being withdrawn from the Ativan too quickly. Letting someone stay on Ativan for more than a few weeks, and failure to properly manage and titrate Ativan during withdrawal, have both been closely connected to patient suicide and death.

Further, in February 2016, Mr. Zeller attempted to kill himself by taking a bottle full of prescription medication. He was admitted to SF General and put on a 5150 psychiatric hold. There Mr. Zeller lay in his own feces when SF General nurses failed to provide any facilities for his bowel program required by his paralysis. After only a few days at SFGH, and before any in our opinion appropriate psychiatric evaluation or treatment was provided, SF General physicians made the tragic decision to discharge Mr. Zeller back into the community without any (in our opinion) meaningful treatment or treatment plan. A month later, my client and dear friend hung himself in his apartment, unable to find hope for a better future in the face of being let down so many different times by CCSF's healthcare system. His nurse practitioner at CCSF's Thomas Waddell Clinic only that week finally arranged for him to see a psychiatrist for the first time in well over a year. It was way too little, too late.

Rather than hide David's tragic death in the hope that CCSF's approval process would move forward without CCSF being aware of David's demise, I immediately informed Deputy City Attorney Mark Lipton of David's passing. Much to my shock, a week later, Mr. Lipton sent me an e-mail stating that the Board of Supervisors would not be approving the settlement after all. Mr. Lipton has expressed that the Full and Final Release he signed on behalf of CCSF promising payment to Mr. Zeller is not binding on CCSF because the settlement never received final approval from the BOS.

First, as mentioned, the Full and Final Release drafted by CCSF that CCSF refused to make any changes to never mentioned Board approval as a condition of settlement. However, even if the Court were to read such a requirement into the agreement, the fact, is, the only thing that changed between the City Attorney recommending CCSF settle the matter for \$900,000, the

Health Commission approving this settlement, and now, is that Mr. Zeller died, due to CCSF's own wrongful conduct.

However, even if CCSF can prove that Board approval was required, well-settled CA law provides that that CCSF was bound by Mr. Lipton signing the settlement agreement to move forward with its settlement approval process in good faith and to not withhold approval unreasonably. See, e.g., Frankle v. Board of Dental Examiners (1996) 46 Cal.ap.4th 534, 548; Jacobs v. Friedman (1980) 104 Cal.app.3d 177, 190; Guntert v. City of Stockton (1974) 43 Cal.app.3d 203,209; Mattei v. Hopper (1958) 51 Cal.2d 119. We will argue that both the delay in beginning the approval process, and then the apparent failure of the Board to approve the settlement based solely on the fact that Mr. Zeller has now passed away, both blatantly violate the legal requirement that CCSF's approval process be conducted in a good faith and reasonable manner. For these reasons, on behalf of Mr. Zeller's surviving nephew, Michael McCowan, the Administrator of Mr. Zeller's Estate, my office intends to file an action for breach of contract, along with wrongful and a claim for Elder and Dependant Adult Abuse against CCSF if in fact Mr. Lipton is correct, and the Board of Supervisors fails to approve and pay the full amount of the settlement agreed to back in September 2015.

No part of me wants it to come to this. David Zeller was one of San Francisco's own. He lived here for more than 20 years, and he deserved better than to be let down so many different times by the health care system run by the city that he, you and I love(d). I am reaching out to you because I know you believe that our City is better than how it has treated Mr. Zeller. The last thing David had before he chose to end his life was some vindication that CCSF and the Regents admitted they let him down. Backing out of this settlement robs his legacy of even that. David's nephew Mike and David were very close as children (they were only about five years apart in age). Mike wants to set up a scholarship or some other endowment in David's name at his alma mater, Indiana University. Mike also is entitled to the proceeds of this settlement for his own needs and support.

We just learned yesterday that after disappearing from the BOS agendas, the Zeller Case is now set to be heard by the Government Audit and Oversight Committee on this Thursday, June 16 at 9:30 a.m. We do not know what the purpose of this meeting is, and whether the Deputy City Attorney intends on following through on his apparent intentions to reverse his recommendation to approve this settlement and urge the BOS to not honor the deal reached with Mr. Zeller. **I am hoping you can give me a call to discuss this further, and that you can reach out to your colleagues on the Committee prior to tomorrow morning's meeting and encourage them to approve the \$900,000 settlement that has already been approved by the Deputy City Attorney prior to Mr. Zeller's tragic death.** I want to give every member of the Board of Supervisors the chance to the right thing here, legally, morally and ethically. I am hoping you can lead that charge and encourage the City Attorney, and your colleagues, to turn this story around and make San Franciscans proud of the City taking accountability to what happened to David.

Thank you for hearing me out, and any help you can provide. You can reach me at my office number, 415 292-4100, or if you miss me there, my cell, anytime, at 415 577-9466.

Best Regards,

Carter Zinn

CARTER M. ZINN

Principal Attorney

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LEGISLATION RECEIVED CHECKLIST

Date 2/24/16 File Number (if applicable) 160187

- Legislation for Introduction (NEW) ▶▶▶ Legislative Clerk
- Legislation Pending in Committee (AMENDED) ▶▶▶ Committee Clerk
- Legislation for Board Agenda (AMENDED) ▶▶▶ Deputy Clerk

Supervisor, Mayor, and Departmental Submittals

Grant Ordinance

- Legislation: Original, 1 hard copy, and 1 electronic copy in Word format
- Signature: Department Head, Mayor or the Mayor's designee, plus the Controller
- Supporting documents: 1 full set, and separate pdf copies of each in email
 - Cover letter (original)
 - Grant budget/application
 - Grant information form, including signed disability checklist
 - Letter of Intent or grant award letter from funding agency
 - Contract, Leases/Agreements (if applicable)
 - Ethics Form 126 (if applicable) in Word format
 - Other support documents as identified in the cover letter and legislation
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org

Ordinance

- Legislation: Original, 1 hard copy, and 1 electronic copy in Word format
- Signature: City Attorney (For Settlement of Lawsuits - City Attorney, Department Head, Controller, Commission Secretary)
- Supporting documents: 1 full set, and separate pdf copies of each in email
 - Cover letter (original)
 - Settlement Report/Agreement (for settlements)
 - Other support documents as identified in the cover letter and legislation
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org

Grant Resolution

- Legislation: Original, 1 hard copy, and 1 electronic copy in Word format
- Signature: Department Head, Mayor or the Mayor's designee, plus the Controller
- Supporting documents: 1 full set, and separate pdf copies of each in email
 - Cover letter (original)
 - Grant budget/application
 - Grant information form, including signed disability checklist
 - Letter of Intent or grant award letter from funding agency
 - Contract, Leases/Agreements (if applicable)
 - Ethics Form 126 (if applicable) in Word format
 - Other support documents as identified in the cover letter and legislation
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org

Resolution

- Legislation: Original, 1 hard copy, and 1 electronic copy in Word format
- Signature: None (Note: Required for Settlement of Claims - City Attorney, Department Head, Controller, Commission Secretary)
- Supporting documents: 1 full set, and separate pdf copies of each in email
 - Cover letter (original)
 - Settlement Report/Agreement (for settlements)
 - Other support documents as identified in the cover letter and legislation
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org

Joy Perez 554-3869 City Attorney
Name and Telephone Number Department

Clerk's Office/Forms/Legislation Received Checklist (1/2015) for more help go to: sfbos.org/about the board/general/legislative process handbook

