

File No. 160739

Committee Item No. 8

Board Item No. 2

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight

Date September 15, 2016

Board of Supervisors Meeting

Date 10/4/16

Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Resolution                                   |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form                            |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Public Correspondence                        |

**OTHER** (Use back side if additional space is needed)

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Completed by: Erica Major Date September 9, 2016

Completed By: [Signature] DATE: 9/19/2016

1 [Settlement of Lawsuit - Jack K. Frazier - \$4,990,000]

2  
3 **Ordinance authorizing settlement of the lawsuit filed by Jack K. Frazier against the City**  
4 **and County of San Francisco for \$4,990,000; the lawsuit was filed on October 28, 2013,**  
5 **in San Francisco Superior Court, Case No. CGC-13-535089; entitled Jack K. Frazier v.**  
6 **City and County of San Francisco, et al.; the lawsuit involves personal injury due to**  
7 **collision with fire truck; other material terms of the settlement are that defendant**  
8 **Michael Quinn pay plaintiff \$10,000.**

9  
10 Be it ordained by the People of the City and County of San Francisco:

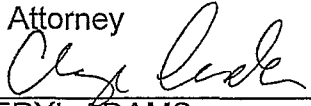
11 Section 1. Pursuant to Charter, Section 6.102(5), the Board of Supervisors hereby  
12 authorizes the City Attorney to settle the action entitled Jack K. Frazier v. City and County of  
13 San Francisco, San Francisco Superior Court, Case No. CGC-13-535089 by the payment of  
14 \$4,990,000 and defendant Michael Quinn to pay plaintiff \$10,000. The lawsuit involves  
15 personal injury due to collision with fire truck.

16 Section 2. The above-named action was filed in San Francisco Superior Court on  
17 October 28, 2013, and the following parties were named in the lawsuit: Plaintiff Jack K.  
18 Frazier and Defendants City and County of San Francisco and Michael Quinn.

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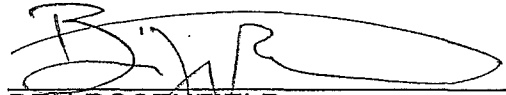
APPROVED AS TO FORM AND  
RECOMMENDED:

DENNIS J. HERRERA  
City Attorney



CHERYL ADAMS  
Chief Trial Deputy

FUNDS AVAILABLE:



BEN ROSENFELD  
Controller

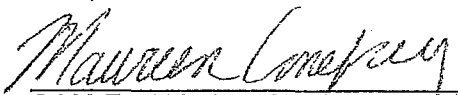
RECOMMENDED:

SAN FRANCISCO FIRE DEPARTMENT



JOANNE HAYES-WHITE  
Chief

APPROVED:



SAN FRANCISCO FIRE COMMISSION  
Secretary, Maureen Conefrey

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FILE. 160739  
SUBMITTED + PRESENTED  
9/15/2016

Estimate of Settlement Computations

Case No. CGC-13-535089 / Plaintiff's Name: Jack K. Frazier

GROSS settlement amount offered: \$5,000,000.00

Deduct attorney's fee: \$2,000,000.00 (40%)

Deduct legal costs and expenses: \$183,147.74

Deduct future cost of medical: \$2,000,000.00

Deduct medical liens: \$85,378.04

Deduct past wages lost: \$156,000.00

52 weeks a year x 40 hours week = 2,080 hour @ \$25 per hour = \$52,000

\$52,000 x 3 years = \$156,000

Deduct future earning capacity lost: \$754,000.00

Based on Social Security Age Chart, I am eligible to retire with full benefits at age 67.5.

I will be 53 next month. 67.5 - 53 = 14.5 more working years until retirement age

\$52,000 annual salary (see above) x 14.5 = \$754,000.00 (not adjusted for inflation)

Deduct Loss of Property \$225,089.00

Based on loss of \$199 per day x 1,111 days = \$221,089

Loss of motorcycle, helmet and gloves = \$4,000

Which leaves check for Client of about: -\$403,614.74

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Based on my calculations above, I have used my independent judgment regarding whether to settle my case based on the \$5,000,000 offered. As you can see, I don't feel that justice has been served after I was slammed into by a San Francisco Fire Truck over three years ago, due to the negligence

of a City employee, who should be held to a higher standard than a regular citizen when operating a City vehicle in the line of duty. Due to the accident, I incurred a [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] problems. My physical body

will never be the same as it was before it took that impact on June 23, 2013. Yet, you want me to walk away with nothing. I believe that it would not be in my best interest to settle my case for the gross settlement offered.

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is made and entered into this 15<sup>th</sup> day of September 2016, by and between:

"Plaintiff":               **JACK K. FRAZIER**

"Defendants":               **MICHAEL QUINN; CITY AND COUNTY OF SAN FRANCISCO; and  
DOES 1 through 100, Inclusive**

### **Recitals**

A.       On or about June 29, 2013, Plaintiff Jack K. Frazier, was injured in an accident occurring on Howard Street in San Francisco, California. Plaintiff alleges the accident and resulting physical and personal injuries arose out of certain alleged negligent acts or omissions of Defendants, and filed a Civil Action seeking monetary damages on account of those injuries. This Civil Action is entitled **Jack K. Frazier v. Michael Quinn, City and County of San Francisco; and Does 1 through 100 inclusive**, brought in the Superior Court of the State of California, County of San Francisco, Case No. CGC-13-535089 ("Complaint").

B.       Defendants, MICHAEL QUINN; CITY AND COUNTY OF SAN FRANCISCO; and DOES 1 through 100, Inclusive, would be obligated to pay any claim made or judgment obtained against Defendants MICHAEL QUINN; CITY AND COUNTY OF SAN FRANCISCO; and DOES 1 through 100, Inclusive.

C.       The parties desire to enter into this Settlement Agreement in order to provide for certain payments in full and final settlement and discharge of all claims which Plaintiff now has, or might be made, by reason of the incident and Complaint described in Recital A above, upon the terms and conditions set forth below.

### **Agreement**

The parties agree as follows:

#### **1.0 Release and Discharge**

1.1       In consideration of the payment set forth in Section 2, Claimant hereby completely releases and forever discharges Defendants, MICHAEL QUINN; CITY AND COUNTY OF SAN FRANCISCO; and DOES 1 through 100, Inclusive, from any and all past, present or future claims, demands, obligations, actions, causes of action, wrongful death claims, rights, damages, costs, losses or services, expenses and compensation of any nature, whatsoever, whether based on tort, contract or other theory of recovery, which Plaintiff now has, or which may hereafter accrue, or otherwise be acquired on account of, or may in any way grow out of, the incident and Complaint described in Recital A above, including without limitation, and all claims, demands, damages, actions, and causes of action, known or unknown, including bodily and personal injuries, and emotional distress,

to Plaintiff, or any future wrongful death claims made by Plaintiff's representatives or heirs, which have resulted, or may result, from the alleged acts, or omissions of the Defendants.

1.2 This release and discharge shall also apply to Defendants and Releasees' present and future directors, officers, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns, and all other persons, firms, or corporations, with whom any of the former have been, are now, or may hereafter be, affiliated.

1.3 This release, on the part of the Plaintiff, shall be a fully binding and complete settlement among the Plaintiff, the Defendants and Releasees', and their agents, representatives, heirs, assigns and successors.

1.4 The Plaintiff acknowledges and agrees that the release and discharge set forth in this Settlement Agreement is a General Release, as set forth in California Civil Code § 1542 which reads as follows:

"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 to him, must have materially affected his settlement with the debtor."

Plaintiff expressly waives and assumes the risk of any and all claims for damages which exist as of this date, including those which the Plaintiff does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect Plaintiff's decision to enter in to this Settlement Agreement. Plaintiff further agrees that Plaintiff has accepted payment of the sum specified herein as a complete compromise of matters involving disputed issues of law and fact. Plaintiff assumes the risk that the facts or law may be other than Plaintiff believes. It is understood and agreed by the Parties that the payment is not to be construed as an admission of liability on the part of the Defendants or Releasees, by whom liability is expressly denied.

## **2.0 Payment**

In consideration of the release set forth above, the Defendants and Releasees agree to pay to the individuals named below ("Payees") the sums outlined in this Section 2 below.

2.1 Total payment due at the time of settlement in the sum of SEVEN MILLION, ONE HUNDRED EIGHTY THREE THOUSAND, ONE HUNDRED FORTY SEVEN DOLLARS AND SEVENTY FOUR CENTS (\$7,183,147.74) to be paid as follows:

The sum of FIVE MILLION DOLLARS AND NO CENTS (\$5,000,000.00) to be paid at the time of settlement. Plaintiff does hereby authorize and direct that payment of the aforesaid sum be paid by check or draft as follows:

**JACK K. FRAZIER**

The sum of TWO MILLION DOLLARS AND NO CENTS (\$2,000,000.00) to be paid at the time of settlement. Plaintiff does hereby authorize and direct that payment of the aforesaid sum to be paid by check or draft for attorney fees incurred to date as follows:

**BROWN, KORO & ROMAG, LLP and PANISH, SHEA & BOYLE, LLP<sup>1</sup>**

The sum of ONE HUNDRED EIGHTY THREE THOUSAND, ONE HUNDRED FORTY SEVEN DOLLARS AND SEVENTY FOUR CENTS (\$183,147.74) to be paid at the time of settlement. Plaintiff does hereby authorize and direct that payment of the aforesaid sum to be paid by check or draft for attorney's costs incurred to date to include filing fees, expert witness fees, deposition fees, etc., as follows:

**BROWN, KORO & ROMAG, LLP and PANISH, SHEA & BOYLE, LLP<sup>2</sup>**

Payment of the stated settlement amount(s) shall be made within (30) days of the approval.

2.2 Except as to Plaintiff's attorneys rights to attorneys fees and costs from Plaintiff's recovery, as to which full payment has been negotiated in Section 2.1 above, each attorney and law firm hereby waives and disclaims any and all ownership interest or liens they may have in the settlement proceeds by reason of any applicable state statute, common law Decision, or ruling.

2.3 All sums set forth directly to Plaintiff herein constitute damages on account of personal injuries and sickness in a case involving physical injury or physical sickness within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

**3.0 Other terms and conditions:**

Defendant, Michael Quinn, shall never be permitted to be employed by the City and County of San Francisco.

**4.0 Representation of Comprehension of Document**

In entering into this Settlement Agreement, the Plaintiff represents that Plaintiff understands the legal and income tax consequences of this Settlement Agreement; that the terms of this Settlement Agreement are fully understood and voluntarily accepted by Plaintiff.

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<sup>1</sup> Distribution split of the \$2,000,000 settlement for attorney fees incurred to-date is to be determined.

<sup>2</sup> Distribution split of the \$183,147.74 settlement for attorney costs incurred to-date is also to be determined.



## **5.0 Warranty of Capacity to Execute Agreement**

Plaintiff represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein; that Plaintiff has the sole right and exclusive authority to execute this Settlement Agreement and receive the sums specified in it; and that Plaintiff has not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement.

## **6.0 Confidentiality**

Plaintiff agrees to keep the amount of the settlement confidential up until the time he receives the settlement payment.

## **7.0 Governing Law**

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of California.

## **8.0 Additional Documents**

All parties agree to cooperate fully, execute any and all supplementary documents, and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

## **9.0 Entire Agreement and Successors in Interest**

This Settlement Agreement contains the entire agreement between the Plaintiff, the Defendants, and the Releasees with regard to the matters set forth in it and shall be binding upon, and inure to the benefit of, the executors, administrators, personal representatives, heirs, successors and assigns of each.

## **10.0 Dismissal of Entire Action**

Plaintiff authorizes dismissal, with prejudice, and without further costs to Plaintiff, the entire action brought by Plaintiff against Defendants.

**11.0 Effectiveness**

The Settlement Agreement shall become effective immediately following execution by all Parties.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jack K. Frazier, Plaintiff

Dated: \_\_\_\_\_

\_\_\_\_\_  
Karen E. Kirby  
Attorney for Defendant, City and  
County of San Francisco

Dated: \_\_\_\_\_

\_\_\_\_\_  
Michael Quinn

Dated: \_\_\_\_\_

\_\_\_\_\_  
Geoffrey Gordon-Creed  
Attorney for Defendant, Michael Quinn

LEGISLATION RECEIVED CHECKLIST

Date

6/23/16

File Number (if applicable)

20739

- 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

RECEIVED  
 BOARD OF SUPERVISORS  
 SAN FRANCISCO  
 JUN 23 AM 11:11  
 AK

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  
 Name and Telephone Number

City Attorney  
 Department

