

RESOLUTION NUMBER R- 312916

DATE OF FINAL PASSAGE APR 09 2020

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING THE SETTLEMENT OF THE
MITCHELL, KRIES, AND ARELLANO COLLECTIVE
ACTION LAWSUITS AGAINST THE CITY OF SAN DIEGO

WHEREAS, on July 19, 2017, David Kries and others, on behalf of themselves and similarly situated former and current employees filed a collective action suit against the City of San Diego [City] alleging overtime wages were due to them under the Fair Labor Standards Act. Plaintiffs brought suit in the United States District Court for the Southern District of California. The suit is titled *David Kries, et al. v. City of San Diego*, Case No. 17cv1464 GPC-BGS [Lawsuit]; and

WHEREAS, on September 29, 2017, Candace Mitchell and others, on behalf of themselves and similarly situated former and current employees filed a collective action suit against the City alleging overtime wages were due to them under the Fair Labor Standards Act. Plaintiffs brought suit in the United States District Court for the Southern District of California. The suit is titled *Candace Mitchell, et al. v. City of San Diego*, Case No. 17cv2014-GPC-BGS [Lawsuit]; and

WHEREAS, on January 31, 2018, Alberto Arellano and others, on behalf of themselves and similarly situated former and current employees filed a collective action suit against the City alleging overtime wages were due to them under the Fair Labor Standards Act. Plaintiffs brought suit in the United States District Court for the Southern District of California. The suit is titled *Alberto Arellano, et al. v. City of San Diego*, Case No, 18cv0229 GPC (BGS) [Lawsuit]; and

WHEREAS, in Closed Session on December 17, 2019, the City Council by the following votes: Yes, Districts 1, 2, 3, 4, 5, 6, 7, 9; Nays, None; and Absent, 8, approved the settlement of the *Kries, Mitchell and Arellano* Lawsuits for an amount consistent with the amounts set forth below;

NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Council authorizes:

1. A resolution authorizing the Mayor or his designee to pay the total sum of no more than \$6,200,000 plus a fringe amount attributable to backpay not to exceed an estimated \$200,000, contingent upon the Federal District Court of the Southern District of California issuing an Order approving the settlement reached by the parties of each and every claim for unpaid overtime compensation, liquidated damages, and interest against City of San Diego, its agents and employees, arising from the *Kries, Mitchell and Arellano* Lawsuits for overtime compensation. Plaintiffs' attorneys' fees and costs will be determined separately by the court.

2. Authorizes the Chief Financial Officer to appropriate and expend no more than a total of \$3,100,000 in settlement of Plaintiffs' claims for liquidated damages from the Public Liability Fund No. 720045; Muni Sewer Revenue Fund No. 700000; Metro Sewer Utility Fund No. 700001; Water Utility Operating Fund No. 700011; Airports Enterprise Fund No. 700033; Planning & Development Revenue Enterprise Fund No. 700036; Refuse Disposal Enterprise Fund No. 700039; Golf Course Enterprise Fund No. 700043; Recycling Enterprise Fund No. 700048; based on the attached allocation schedule contingent upon the Chief Financial Officer

first furnishing one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

3. Authorizes the Department of Finance to issue a check made payable to Simpluris, a third-party administrator, in a total amount not to exceed \$3,100,000 to issue and distribute to each Plaintiff a check in the amount of their liquidated damages.

4. Authorizes the Chief Financial Officer to appropriate and expend no more than a total of \$3,100,000 in settlement of Plaintiffs' claims for overtime backpay from the Public Liability Fund No. 720045; Muni Sewer Revenue Fund No. 700000; Metro Sewer Utility Fund No. 700001; Water Utility Operating Fund No. 700011; Airports Enterprise Fund No. 700033; Planning & Development Revenue Enterprise Fund No. 700036; Refuse Disposal Enterprise Fund No. 700039; Golf Course Enterprise Fund No. 700043; Recycling Enterprise Fund No. 700048; based on the attached allocation schedule contingent upon the Chief Financial Officer first furnishing one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

5. Authorizes the Department of Finance to issue payments via payroll to each Plaintiff individually, based on the amount of each Plaintiff's overtime backpay portion of the settlement, in a total amount not to exceed \$3,100,000 plus an estimated fringe amount attributable to backpay not to exceed an estimated \$200,000, following the Plaintiff's execution and return of a release of claims against the City.

All the above payroll payments shall be subject to the normal federal and state payroll tax withholdings and the City's normal contributions on Fair Labor Standards Act overtime wages to SPSP, SPSP-H, the City's 401(a) plan and Retiree Medical Trust.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Alison P. Adema
Alison P. Adema
Deputy City Attorney

APA:tr
February 28, 2020
Or.Dept: City Attorney
CC No. 3000013068
Doc. No.: 2340609

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of 04/07/2020.

ELIZABETH S. MALAND
City Clerk

By /s/ Gil Sanchez
Deputy City Clerk

Approved: 4/9/2020
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

The City of San Diego
COMPTROLLER'S CERTIFICATE

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING DEPT. NO. 1515 3000013068

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: Not to Exceed \$6,400,000

Purpose: Settlement of complaints entitled: David Kries et al v City of San Diego (Claim No. 17154), Candace Mitchell et al v City of San Diego (Claim No. 17154), Alberto Arellano et al v City of San Diego (Claim No. 18653)

Date: March 3, 2020 By: Virgilio Afan Jr.

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
001	720045			OTHR-00000000-GG	512007	1515	1515000011		4,154,401.00
002	700000			OTHR-00000000-SU	512066	2000	2000000001		555,381.00
003	700001			OTHR-00000000-SU	512066	2000	2000000001		392,633.00
004	700011			OTHR-00000000-WL	512066	2000	2000000001		780,104.00
005	700033			OTHR-00000000-AP	512066	2111	2111000001		68.00
006	700036			OTHR-00000000-DS	512066	1611	1611000012		195,291.00
007	700039			OTHR-00000000-ES	512066	2115	2115120001		212,163.00
008	700043			OTHR-00000000-GG	512066	1714	1714161118		31,846.00
009	700048			OTHR-00000000-RC	512066	2115	2115131112		48,386.00
010									
011									
012									
013									
014									
015									
016									
017									
018									
019									
020									
021									
022									
023									
TOTAL AMOUNT									\$6,370,273.00

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: _____

Vendor: _____

Purpose: _____

Date: _____ By: _____

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
TOTAL AMOUNT									

Passed by the Council of The City of San Diego on APR 07 2020, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage APR 09 2020.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Connie Petterson, Deputy
for Stacy Ready

Office of the City Clerk, San Diego, California
Resolution Number R- 312916