

RESOLUTION NUMBER R- 313251

DATE OF FINAL PASSAGE OCT 19 2020

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING SETTLEMENT OF THE KELLEY
OVERTIME COLLECTIVE ACTION LAWSUIT

WHEREAS, on April 2, 2019, Eric Kelley and others, on behalf of themselves and similarly situated former and current firefighters 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 [FLSA]. Plaintiffs' suit was filed in the United States District Court for the Southern District of California and is titled *Kelley, et al. v. City of San Diego*, Case No. 19cv0622 GPC (BGS) [Lawsuit]; and

WHEREAS, in Closed Session on June 16, 2020, the City Council by the following votes: Yes, Districts 1, 2, 3, 4, 5, 6, 7, 8, 9; Nays, None; and Absent, None, approved the settlement of Plaintiffs' overtime claims 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 \$3,400,000 plus a fringe amount attributable to backpay not to exceed an estimated \$80,000, 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 by Plaintiffs for unpaid overtime compensation, liquidated damages, interest, attorneys' fees and costs against City of San Diego, its agents and employees, arising from the Lawsuit.

2. Authorizes the Chief Financial Officer to appropriate and expend no more than a total of \$1,575,000 in settlement of Plaintiffs' claims for liquidated damages from the Public Liability Fund, Fund No. 720045, 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 City Comptroller to issue a check made payable to Simpluris, a third-party class action administrator, in a total amount not to exceed \$1,575,000, for Simpluris to issue payments to each Plaintiff individually in the amount of their portion of liquidated damages, and to Plaintiffs' attorneys for fees and costs ordered by the court as payable from liquidated damages pursuant to Plaintiffs' retainer agreement with their attorneys.

4. Authorizes the Chief Financial Officer to appropriate and expend \$250,000 in settlement of Plaintiffs' claims for statutory attorneys' fees under the FLSA from the Public Liability Fund, Fund No. 720045, 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 City Comptroller to issue a check made payable to "Public Safety Labor Group LLC Lawyers Trust Account (IOLTA)" in the amount of \$250,000 for statutory attorneys' fees under the FLSA.

6. Authorizes the Chief Financial Officer to appropriate and expend no more than a total of \$1,575,000 in settlement of Plaintiffs' claims for overtime backpay from the Public Liability Fund, Fund No. 720045, 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.

7. Authorizes the City Comptroller 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 \$1,575,000, plus an estimated fringe amount attributable to backpay not to exceed an estimated \$80,000, following each 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 FLSA overtime wages to SPSP, SPSP-H, the City's 401(a) plan and Retiree Medical Trust.

APPROVED: MARA W. ELLIOTT, City Attorney

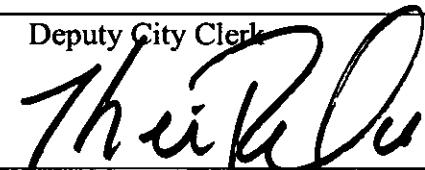
By /S/ Alison P. Adema
Alison P. Adema
Deputy City Attorney

APA:tr
September 21, 2020
CC No. 3000013500
Doc. No.: 2481503

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of 10/13/2020.

ELIZABETH S. MALAND
City Clerk

By /s/Stacy D. Ready

Deputy City Clerk

KEVIN L. FAULCONER, Mayor

Approved: 10/14/20
(date)

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

**The City of San Diego
COMPTROLLER'S CERTIFICATE**

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING DEPT. NO: 3000013500
1515

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: _____ Fund: _____

Purpose: _____

Date: _____ By: _____
COMPTROLLER'S DEPARTMENT

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

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: \$3,400,000.00

Vendor: (1) \$1,575,000.00 to Simpluris; (2) \$250,000.00 to Public Safety Labor Group LLC Lawyers Trust Account; (3) \$1,575,000.00 via payroll

Purpose: Settlement of Eric Kelley, et al. v. City of San Diego

Date: September 16, 2020 By: Justin Byko
COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
1	720045			OTHR-00000000-GG	500124	1515	1515000011		\$1,575,000.00
2	720045			OTHR-00000000-GG	512007	1515	1515000011		\$250,000.00
2	720045			OTHR-00000000-GG	512007	1515	1515000011		\$1,575,000.00
TOTAL AMOUNT									\$3,400,000.00

Passed by the Council of The City of San Diego on OCT 13 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input 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 OCT 19 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 *W. J. Reed*, Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- 313251