



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** November 21, 2019

Staff Contact: Nancy Paulson, City Manager

Agenda Title: For Possible Action: Discussion and possible action regarding a proposed settlement agreement in the amount of \$57,500 and Plaintiff's one-half share of mediator fees in the amount of \$637.50, for a total settlement amount of \$58,137.50 with Plaintiff Perla Garcia as guardian of Karen Mariscal, payable by Carson City, in a matter involving a personal injury claim made against Carson City. (Nancy Paulson, npaulson@carson.org)

Staff Summary: This agenda item is for the Board of Supervisors to consider entering into a settlement agreement with Plaintiff Perla Garcia, whose counsel brought a lawsuit against the City on behalf of Ms. Garcia as guardian of Karen Mariscal, for certain injuries sustained by the minor as the result of a dog bite from a police canine unit during a "Citizens' Academy" sponsored by the Carson City Sheriff's Office (CCSO) on March 22, 2017. The proposed settlement, if entered into, releases the City from any further obligations in this matter.

Agenda Action: Formal Action / Motion **Time Requested:** 15 minutes

Proposed Motion

I move to authorize the City Manager to enter into the settlement agreement on behalf of the City as proposed and authorize counsel to proceed with all necessary action to finalize the settlement.

Board's Strategic Goal

Efficient Government

Previous Action

NA

Background/Issues & Analysis

The CCSO held a "Citizens' Academy" on March 22, 2017 where members of the public were invited to watch demonstrations of police canine capabilities and to interact with canines during a "petting" session. During one of these "petting" sessions, the minor Plaintiff sustained certain bodily injuries as the result of a bite from a CCSO police canine, or K-9 unit. While those injuries were not life threatening, the minor Plaintiff required medical treatment with substantial medical costs accrued. A notice of claim was made against the City on April 6, 2017. A Complaint was filed in the First Judicial District Court on March 19, 2019 and this matter proceeded to discovery. The Plaintiff's last settlement demand to the City was in the amount of \$70,000. The City's last settlement offer was in the amount of \$31,500. This case is subject to the \$100,000 statutory cap on damages recoverable against a governmental entity pursuant to NRS 41.035.

On Tuesday, November 5, 2019, a settlement mediation was held with a neutral mediator. Plaintiff's counsel, the City's outside tort counsel, the Carson City Risk Management Coordinator and a representative of the Carson City District Attorney's Office were in attendance, as well as the Plaintiff and Plaintiff's counsel. At the

conclusion of the mediation, the parties tentatively agreed to a settlement payable by the City in the amount of \$57,500 and plaintiff's one-half share of mediator fees in the amount of \$637.50, for a total settlement amount of \$58,137.50, in exchange for a release of all claims and the filing of a stipulation for dismissal with prejudice, with each party to bear their own attorney's fees and costs, subject to this Board's approval and the approval of the court of a compromise of minor's claim under NRS 41.200 (the settlement of a disputed claim for money by or on behalf of an unemancipated minor under the age of 18, pursuant to which the proceeds of the settlement must be deposited into a blocked trust for the benefit of the minor). Because the City's self-insured retention (the dollar amount specified in its liability insurance policy that must be paid by the City before the insurance policy will respond to a loss) is \$100,000 and the proposed settlement amount is lower than the self-insured retention, the full amount of the settlement is payable by the City.

Based on a review of the merits of the case, the associated fees and costs to date and such fees and costs that will likely accrue if the matter does not settle, it is the recommendation of the City's tort counsel, the Risk Management Coordinator, the City Manager and the District Attorney's Office that the Board approve the proposed settlement.

Applicable Statute, Code, Policy, Rule or Regulation

NA

Financial Information

Is there a fiscal impact? Yes

If yes, account name/number: Insurance Fund / Claims Expense 5900745-500413

Is it currently budgeted? Yes

Explanation of Fiscal Impact: The City budgeted \$500,000 in FY20 for potential claims. Current remaining balance for FY2020 is \$365,557. To date we have spent \$134,443; and will assess the need for a budget augmentations as we get closer to year end (May 2020) and adjust Claims Expense as necessary.

Alternatives

Do not authorize settlement as proposed and provide alternative direction to staff.

Attachments:

[Complaint.pdf](#)

[Draft settlement 11-05-2019.pdf](#)

[Invoice 10301.pdf](#)

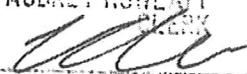
Board Action Taken:

Motion: _____	1) _____	Aye/Nay
	2) _____	_____

(Vote Recorded By)

KILPATRICK, ADLER & BULLENTINI, Attorneys at Law, 412 North Division St., Carson City, Nevada 89703-4168, (775) 882-6112, 883-5149

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2 ANGELA D. BULLENTINI, ESQ.
Nevada State Bar No. 10524
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Attorneys for Plaintiff

REC'D & FILED
2019 MAR 19 PM 1:20
AUBREY ROWLAND
BY  CLERK
COUNTY

8 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9
10 IN AND FOR CARSON CITY

11 PERLA GARCIA, as ,
natural mother of KAREN
12 MARISCAL, a minor,

Case No. 19 TRT 00021 B
Dept. No. II

13 Plaintiffs,

14 vs.

15 CARSON CITY, a consolidated
municipality; CARSON CITY SHERIFF'S
16 OFFICE; and DOES I-V,

17 Defendants.
18 _____ /

19 COMPLAINT

20 COMES NOW Plaintiffs, PERLA GARCIA as natural mother of KAREN MARISCAL, a
21 minor, by and through undersigned counsel, the law firm of KILPATRICK, ADLER &
22 BULLENTINI, and for cause of action against Defendants above-named, hereby alleges and states
23 as follows:

24 I

25 That the true names or capacities, whether individual, corporate, or associates, agents or
26 employees of the Defendants, and all of them named herein as DOES I-V, are unknown to the
27 Plaintiff who therefore sues said Defendants by such fictitious names. The Plaintiff prays leave to

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///

1 amend this Complaint to show the true names and capacities when the same have been fully
2 determined.

3 II

4 That at all times relevant to these proceedings, the Plaintiffs were and remain residents of
5 Carson City, State of Nevada.

6 III

7 That all times relevant to these proceedings, upon information and belief, Defendant
8 CARSON CITY was a consolidated municipality operating as Carson City, State of Nevada.

9 IV

10 That all times relevant to these proceedings, upon information and belief, Defendant
11 CARSON CITY SHERIFF'S OFFICE was an agency operating under the direction of Carson City,
12 State of Nevada.

13 V

14 That on or about March 22, 2017, Plaintiff KAREN MARISCAL was attending the "Citizens
15 Academy" with other school aged children at the Carson City Sheriff's Department. Part of this
16 demonstration was an opportunity to meet with and pet the K-9's. Plaintiff was toward the end of
17 the line of children. When she went to pet the K-9, the dog bit her on her left forearm. Defendants,
18 and each of them, negligently failed to adequately train, supervise and restrain the dog question,
19 which then bit Plaintiff causing bodily injuries.

20 VI

21 That the negligence of Defendant CARSON CITY and the CARSON CITY SHERIFF'S
22 OFFICE, as owner of the K-9 in question, is that Defendant negligently failed to take reasonable
23 measures to ensure that the dog in question did not harm or otherwise injure others.

24 VII

25 That as a direct and proximate result of the negligent conduct of the Defendants, and each
26 of them, Plaintiff sustained certain injuries requiring scar revision surgery. The Plaintiff has
27 incurred medical expenses in excess of \$43,000, out-of-pocket expenses, and she is entitled to an
28 award of damages to reasonably compensate her for those medical expenses, general damages, and
appropriate damages for any residual impairment and future medical expenses as are recoverable
consistent with Nevada law, all in excess of \$43,000.

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VIII

That Plaintiff has been required to retain the services of counsel and is entitled to a reasonable attorneys fee together with cost of suit and interest as provided by statute.

IX


Plaintiff is not a debtor in bankruptcy.

WHEREFORE, Plaintiff prays for judgment against Defendants and each of them, as follows:

1. For money damages in excess of \$43,000 in an amount to be determined at the time of trial or hearing.
2. For a reasonable attorney's fee together with costs of suit and interest as provided by statute.
3. For such other and further relief as may be deemed proper by this court.

DATED this 18 day of March, 2019.

KILPATRICK, ADLER & BULLENTINI




CHARLES M. KILPATRICK, ESQ.
ADAM L. WOODRUM, ESQ.
Attorneys for Plaintiff

In consideration for payment by Carson
Garcia
City to Ti Paula MAMISCAL, as guardian; ~~for~~
for Karen MAMISCAL, of the sum of \$57,500;
(Fifty Seven thousand five hundred dollars)
with approval of the Carson City Board of
Supervisors, and with approval of the Court
of a compromise of minor's claim, Plaintiff
agrees to execute a Release of All Claims
in favor of Carson City and authorize their
her attorney to execute a stipulation for
dismissal with prejudice, with each party
make to pay their own attorney's fees and
costs, other than the costs of the mediator's
fees, which will be paid by Carson City.

Ti Paula Garcia

Paula MAMISCAL
GARCIA


Dan Yu

11/5/2019

Law Office of Robert F. Enzenberger
1885 South Arlington Avenue, Suite 205
Reno, NV 89509
Phone: 775-786-7000
Tax ID #88-0512806

Invoice submitted to:

Invoice # 10301

Katherine F. Parks, Esq.
THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER

Invoice Date: 11/05/19
Terms: COD
Services Through: 11/05/19

Date	By	Type	Service Summary	Hours/Qty	Rate	Amount
In Reference To: Garcia vs Carson City Sheriff's Office ((Professional Service))						
11/04/19	RE	Preparation	Preparation for mediation including review of confidential mediation statements and exhibits submitted by the parties.	1.00	425.00	\$425.00
11/05/19	RE	Conduct	Conduct mediation for parties and counsel and confirm successful resolution of case contingent on approval of Board of County Supervisors.	2.00	425.00	\$850.00
Total Hours:				3.00		
Total Invoice Amount:						\$1,275.00

TOTAL AMOUNT DUE FROM DEFENDANT CARSON CITY: \$1,275.00