

To: Humboldt County Board of Supervisors
From: Elan Firpo
Re: Hamer v. City of Eureka, et al., Case No. C-12-6077-JSW
Date: April 1, 2017, Closed Session

A Settlement Conference in this matter is scheduled for April 25, 2017. The purpose of this memo is to update the Board of Supervisors on the progress made at the Settlement Conference on March 17, 2017, and to provide for the Board's consideration an analysis of options for resolution of the case.

I. Synopsis of Incident

Plaintiff Andrew Hamer sued the City of Eureka, County of Humboldt and other parties in the Northern District of the US District Court in 2012, claiming he sustained injuries in a November 2011 incident as a result of the dismantling of an ongoing protest encampment in front of the Humboldt County Courthouse ("Eureka Occupy protest.") While trying to arrest Hamer in a crowd of protestors, Humboldt County deputies and Eureka Police Department officers administered lower level force to gain compliance, namely baton blows to his legs while maneuvering him to the ground and handcuffing him. The incident was videotaped and the videotape has been jointly presented by the City and County to the Court in Summary Judgment Motions.

II. Settlement Discussions between the Parties

Prior to the March 17, 2017 Settlement Conference, the parties had not engaged in settlement discussions. At the Settlement Conference between the parties with Judge Vadas on March 17, 2017, the initial demand by the plaintiff was \$500,000.00. The County of Humboldt's offer was \$25,000.00, and the City of Eureka's offer was \$0.

After discussion, the City of Eureka agreed that it would match the County offer of \$25,000.00, but declined to negotiate further.

Plaintiff's attorney, Judge Vadas, and the undersigned met without the City of Eureka attorney present and discussed settlement with just the County.

Eventually, after much discussion, Plaintiff's attorney offered to release the County Defendants for \$250,000.00. The undersigned agreed to bring this offer to the County in good faith.

III. Issues Related to Settlement

A. Fee Shifting:

Fee shifting requires that the unsuccessful party pay the fees and costs incurred by the prevailing party. In the event that Plaintiff prevails in this matter, the County of Humboldt and City of Eureka will be required to reimburse Plaintiff's attorney fees and case costs. If the jury awards even a token amount to Plaintiff, for example \$500.00, the County of Humboldt and City of Eureka will be required to pay fees which could amount to more than the Plaintiff's verdict. Estimated costs after trial are as follows:

Plaintiff's estimated costs after trial:

Plaintiff case costs to date.....	\$50,000.00
Plaintiff case costs associated with trial.....	\$50,000.00
Plaintiff's attorney fees (estimated).....	<u>\$75,000.00</u>
	\$125,000.00

County of Humboldt's estimated costs after trial:

County case costs to date.....	\$25,000.00
County case costs associated with trial.....	\$40,000.00
County attorney fees (estimated).....	<u>\$25,000.00</u>
	\$90,000.00

Therefore, if the County prevails at trial, the County's cost to defend the case at trial will be approximately \$90,000.00. If the Plaintiff prevails at trial, fee shifting will require the City and the County to cover Plaintiff's attorneys fees and costs. The City and County will incur joint and several liability (share in the cost of the verdict and fee shifting). Assuming the County is responsible for 50% of Plaintiff's fees and costs, a Plaintiff win at trial will cost the County \$152,500.00. The Plaintiff's verdict would likely cost the City approximately the same amount, for a total cost to the government agencies of \$305,000.00 just for fee shifting.

Any award to the plaintiff would be in ADDITION to \$305,000.00.

B. Reasons Not to Settle:

1. County officers are not responsible for Plaintiff's claimed injuries:

The plaintiff is claiming traumatic brain injury due to excessive force by law enforcement. The video of the incident clearly depicts an EPD officer chasing plaintiff and taking him to the ground. County deputies delivered distraction blows to plaintiff's legs. Plaintiff never complained of injury to his legs. Further, HCSO deputies were on site to assist, as and soon as EPD ran into the crowd, it was the HCSO deputy's affirmative duty to follow EPD into the crowd for officer and civilian safety purposes. If plaintiff was injured during the arrest, it was at the hands of EPD, not the HCSO defendants.

2. Costs/Appeal:

A best-case defense verdict after trial will cost the County of Humboldt approximately \$90,000.00. However, plaintiff may then appeal, incurring additional costs to the County.

C. Reasons to Settle:

1. Public Relations:

The video at issue can be discussed by law enforcement experts at trial, and they will say that and the use of force was not excessive in light of the circumstances. That said, civilian perception in our current cultural climate and attitude toward law enforcement is not likely to be positive. If this case can be resolved short of trial, there is a possibility that the video will not become a public relations issue.

2. The video depicts plaintiff attempting to pull someone else back, and then he retreated:

The video clearly shows plaintiff attempting to pull the camera man back from the police, and then plaintiff himself turned and attempted to flee to the other side of the street, as he was initially instructed to do.

3. The video is graphic and reflects poorly on County defendants:

The video appears to depict Deputy Mowry making full-arm stroke blows to plaintiff after plaintiff is on the ground and, plaintiff will say, attempting to comply. The nature of the lighting and the lighter color of the HCSO deputy uniforms compared to EPD uniforms naturally brings the deputies to the forefront of the video. The 9th Circuit, on reviewing the video, stated that "even one blow can kill a man" and they felt the video showed officers repeatedly striking a man that was already on the ground.

4. Costs:

A plaintiff's verdict after trial will cost the County a minimum of \$152,500.00, even if the plaintiff is awarded only \$1.00 by the jury. Any award to plaintiff is in addition to case costs and attorney fees of \$152,500.00. Settlement will resolve the matter without risk of appeal.

5. Liability of the individual Deputies:

A plaintiff's verdict may leave Deputy Mowry and Deputy Crosswhite vulnerable to individual lawsuits.

IV. UNKNOWNNS:

A. Oakland Jury:

This case will be tried in Oakland, and there is a difference of opinion as to how our rural County and the video will be perceived by a jury pool from Oakland.

B. Plaintiff's demeanor:

Plaintiff is unpredictable at best in his behavior to date. He usually does not present well and if he presents evidence that he was a fully functional adult prior to the incident, he will open to the door for defense to provide evidence that he was low functioning and erratic in his behavior before the incident. However, if Plaintiff is well groomed, maintains his composure and is well coached, he may appear a sympathetic protestor who was attempting to comply with law enforcement's orders to return to the other side of the street.

V. CONCLUSION

The Court required a Settlement Conference prior the setting of a trial date. Plaintiff's attorney met with the undersigned to discuss potential resolution of the County Defendants. The attorney for the City of Eureka was disinclined to discuss potential resolution. The undersigned felt it prudent to at least enter into settlement discussions so that the County Board of Supervisors can be informed as to the potential pros and cons of settlement and can make the decision of whether or not the County is willing to accept the risks associated with going to trial in this matter.

The County Board of Supervisors may settle this matter for the suggested \$250,000.00, make a counter offer, or decline to make any offer more than \$25,000.00. The undersigned will appear in court on April 25, 2017 in Federal Court in McKinleyville to provide the County response to Plaintiff's attorney and Judge Vadas.

Dated: _____

Elan Firpo
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