



WEST PALM BEACH

City Commission Agenda Cover Memorandum

Originating Department:

City Attorney (CA)

Meeting Type:

Regular

Advertised:

Required?: Yes No

ACM#:

21610

Agenda Date:

10/10/2017

Subject:

Resolution No. 312-17 authorizing approval of settlement (\$125,000.00) in the matter of Ira Green v. City of West Palm Beach, filed in the Fifteenth Judicial Circuit, Palm Beach County, Florida, Case No. 502014 CA010500 XXXXMBAO.

Ordinance/Resolution:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AUTHORIZING APPROVAL OF A PROPOSED SETTLEMENT IN THE MATTER OF IRA GREEN v. CITY OF WEST PALM BEACH; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Staff Recommended Motion:

Approve Resolution No. 312-17.

Background:

Ira Green is a former Waste Water Plant Operator employee who filed an employment discrimination lawsuit against the City of West Palm Beach in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, in Case No. 502014 CA010500 XXXXMBAO, asserting in two (2) counts alleged violations of the Florida Civil Rights Act. The City of West Palm Beach denies the allegations in their entirety but reached a proposed settlement with Ira Green for all claims against the City of West Palm Beach in the amount of \$125,000.00 as shown in the attached proposed agreement.

Fiscal Note

Current Year: Annualized: Budgeted: Unbudgeted: Funding Source:

Comment:

Electronic Attachments: [Click here for assistance with naming convention.](#)

Is this ACM related to a **Grant**? Yes No

Is this ACM related to **Housing**? Yes No

Originating Department - Approved by: Kimberly Rothenburg on 09/27/2017



09/28/2017 Finance Department



09/28/2017 City Attorney's Department



09/28/2017 City Administrator



[Return to Agenda](#)

RESOLUTION NO. 312-17

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AUTHORIZING APPROVAL OF A PROPOSED SETTLEMENT IN THE MATTER OF IRA GREEN v. CITY OF WEST PALM BEACH, PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, Section 2-268(g)(4) of the Code of Ordinances of the City of West Palm Beach, Florida, provides that the authority for settlement of claims in excess of \$30,000.00 shall require approval of the City Commission by formal resolution; and

WHEREAS, IRA GREEN filed a multi-count lawsuit against the City of West Palm Beach under the Florida Civil Rights Act; and

WHEREAS, the City reached a proposed settlement with IRA GREEN for all claims against the City in the amount of \$125,000.00; and

WHEREAS, IRA GREEN has executed a Settlement and General Release Agreement (“Agreement”) for all claims against the City and its employees, wherein City does not admit any liability for the claims, the parties seek to resolve their dispute and any all and all future claims relating to the Plaintiff’s former employment, fully and finally, without the uncertainty of litigation, and which Agreement will be effective only upon authorization and approval of the proposed settlement by the City Commission;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, that:

SECTION 1: The City Commission of the City of West Palm Beach hereby approves the proposed settlement with IRA GREEN in the amount of \$125,000.00 in exchange for a complete general release of all potential claims, and authorizes the appropriate officials to execute the necessary settlement documentation.

SECTION 2: This resolution shall take effect in accordance with law.

SETTLEMENT AND GENERAL RELEASE AGREEMENT

SUBJECT TO CITY COMMISSION APPROVAL, THIS SETTLEMENT AND GENERAL RELEASE AGREEMENT ("Agreement") is made and entered into by and between IRA HAROLD GREEN ("Plaintiff"), and THE CITY OF WEST PALM BEACH ("Defendant").

WITNESSETH:

WHEREAS, Plaintiff filed a civil action against Defendant in the 15th Judicial Circuit Court in and for Palm Beach County, Florida, styled *Ira Green v. City of West Palm Beach*, Case No. 50 2014 CA 010500 XXXX MB AO; and a charge of discrimination styled as EEOC Charge No. 510-2013-01264 (collectively referred to as "claims").

WHEREAS, Defendant denies Plaintiff's claims;

WHEREAS, Plaintiff and Defendant desire to avoid incurring further costs of litigation, and seek to resolve all matters in controversy, claims, disputes, and causes of action between them in an amicable fashion;

WHEREAS, Plaintiff and Defendant have reached a full and final compromise and settlement of all matters, causes of action, claims, and contentions between them, including, without limitation, the civil action; and

WHEREAS, Plaintiff acknowledges that any payment received pursuant to this Agreement constitutes consideration which he would not otherwise be entitled to receive from Defendant.

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, and to avoid unnecessary litigation, it is hereby agreed by and between the parties as follows:

1. This Agreement, and compliance with this Agreement, shall not be construed as an admission by Defendant of any liability whatsoever, or as an admission by Defendant of any violation of the rights of Plaintiff or any other person, or of any violation of any order, law, statute, regulation, duty, or contract, or any act of discrimination whatsoever against Plaintiff or any other person, and Defendant specifically disclaims any liability to, or discrimination against Plaintiff or any other person, and any alleged violation of any rights of Plaintiff or any other person, or of any order, law, statute, regulation, duty or contract.

2. Plaintiff agrees that he shall take all necessary actions to execute, serve and file the attached Joint Stipulation of Dismissal with Prejudice with the Court.

IGH
CWPB



3. In full settlement and release of all claims including attorney's fees and costs, Defendant agrees to pay the total sum of \$125,000.00 as follows:

(a) a check in the amount of \$125,000.00 (One Hundred and Twenty Five Thousand Dollars and Zero Cents) will be made payable to GLF Trust Account, Tax I.D. 20-1519391. This sum is allocated as payment for Plaintiff's claims, and Plaintiff's claims for attorney's fees and costs. Plaintiff's counsel will be solely responsible for disbursing all sums to his client, Plaintiff herein.

(b) Defendant makes no representations or warranties, express or implied, concerning tax implications of any payments made pursuant to this Agreement. Any tax obligation of Plaintiff arising from the foregoing payments from which no deductions or withholdings are made will be Plaintiff's sole responsibility. Plaintiff agrees to indemnify and to hold Defendant harmless for any tax liability, penalties, fees or costs imposed upon or assessed against him or Defendant by any taxing authority arising from such payments. It is expressly agreed that if Defendant is required to provide payments for taxes or interest or penalties to any taxing authority, Plaintiff shall promptly reimburse Defendant for such payments. Plaintiff agrees that all the payments referenced above constitute separate consideration to which Plaintiff is not otherwise entitled and are in full and complete settlement of Plaintiff's claims.

(c) Within five (5) work days after City Commission approval of settlement and release, the parties shall exchange the sums in paragraphs (a) above and Defendant shall file the executed Joint Stipulation of Dismissal with Prejudice. The parties agree that it is the responsibility of Plaintiff's counsel to remit and disburse all sums owed to Plaintiff under the terms of this Agreement.

(d) Defendant shall pay for the mediation held in this matter on September 25, 2017.

4. It is expressly understood by Plaintiff and his attorney that the obligations of Defendant contained in Paragraph 3 of this Agreement shall be in lieu of any and all amounts to which Plaintiff, his heirs and assigns or his attorney are now, or may become, entitled to, based upon any claim whatsoever arising out of his employment with Defendant or otherwise (including special, general or exemplary damages, attorney's fees, interest, expenses, and costs actually incurred).

5. City agrees that all inquiries about Plaintiff's employment will be referred to TALX Corporation, at 800-367-2884, 800-367-5690, or by the inquirer visiting www.theworknumber.com.

6. Plaintiff hereby unconditionally and irrevocably fully releases and forever discharges the City of West Palm Beach, together with its elected officials and employees, both past and present, of and from, and agrees not to sue and not to assert

any causes of action, claims and demands whatsoever, known or unknown, at law, in equity, or before any agency or commission of local, state and federal governments, arising, alleged to have arisen, or which might have been alleged to have arisen, or which may arise, concerning Plaintiff's employment with the City under any law including, but not limited to federal, state, or municipal anti-discrimination laws, anti-harassment and anti-retaliation laws; the Age Discrimination in Employment Act; Title VII of the Civil Rights Act of 1964, as amended; the Americans with Disabilities Act; the Fair Labor Standards Act; the Employee Retirement Income Security Act; the Consolidated Omnibus Budget Reconciliation Act; the Family and Medical Leave Act; the Florida Whistleblowers' Act; the Florida Civil Rights Act; the Florida and U.S. Constitutions (including, but not limited to, actions under 42 U.S.C §1983); including all amendments to any of the aforementioned acts; any state or common law tort or contract theories under which this or any other action was brought or could be brought; emotional, and/or pecuniary injuries, losses and damages of every kind, further including, but not limited to, employee benefits that Employee on behalf of himself and on behalf of persons similarly situated, ever had, now has or which his heirs, executors, administrators, or assigns, or any of them, hereafter can, shall or may have for or by reason of any cause whatsoever.

7. Plaintiff waives the rights and claims set forth above, and agrees not to institute, or have instituted, any lawsuit based on any such claims or rights. Plaintiff further acknowledges and agrees that, with respect to the rights and claims he is waiving, he is waiving not only his right to recover in any action any legal, monetary or equitable relief he might commence, but also his right to recover any legal, monetary or equitable relief in any action brought on his behalf by any other party, including, but not limited to, the U.S. Equal Employment Opportunity Commission, the Florida Commission on Human Relations or any other federal, state, or local governmental agency or department.

8. The parties represent and agree that they have thoroughly discussed all aspects of this Agreement with their respective attorneys and have carefully read and fully understand all of the provisions of this Agreement, and that they are voluntarily entering into this Agreement.

9. The parties represent and acknowledge that in executing this Agreement, they do not rely and have not relied on any representation or statement made by any of the parties or by any of the parties' agents, representatives, or attorneys with regard to the subject matter, basis, or effect of this Agreement or otherwise other than those specifically stated in this written Agreement.

10. Plaintiff agrees that he is ineligible for and will not re-apply for paid or unpaid employment, nor work as a volunteer, nor accept appointment to any position with or for the City of West Palm Beach, Florida, now or at any time in the future. This agreement not to seek re-employment, volunteer, work, or serve in an appointed



capacity with or for the City of West Palm Beach is not being entered due to any protected status Plaintiff may allege and is not the sole consideration for settlement of the claims referenced herein.

11. EMPLOYEE has been advised to consult with an attorney of his/her choice prior to executing this Agreement. EMPLOYEE has been informed that s/he has the right to consider this Agreement for a period of 21 days prior to executing the same. To the extent that EMPLOYEE takes fewer than 21 days to consider this Agreement, EMPLOYEE acknowledges that s/he has had sufficient time to consider the Agreement and to consult with counsel and that s/he does not desire or need additional time. EMPLOYEE also understands that s/he has the right to revoke this release for a period of seven (7) days following his execution of same by sending written notice by facsimile, at facsimile number 561-822-1373 to: City Attorney Kimberly Rothenburg, Counsel for the Employer, City of West Palm Beach. If EMPLOYEE revokes or breaches this Agreement, he agrees to return any and all consideration provided to him that he would not have received absent entering into this Agreement.

12. Any breach of any term, provision, or obligation of this Agreement by any party, shall entitle the other to seek enforcement of such term, provision or obligation in a court of law of competent jurisdiction, and shall entitle the prevailing party to an award of the reasonable attorney's fees and costs incurred in such proceeding. The proper and only venue for any action, based upon any alleged breach of any term, provision or obligation of this Agreement, shall be in the Circuit Court in and for Palm Beach County, Florida.

13. This Agreement constitutes the final and binding Agreement among the parties and may not be supplemented or changed without the written consent of both parties. All prior representations regarding this Agreement are hereby expressly disclaimed by both parties.

14. Should any provision of this Agreement be declared or determined by any Court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be part of this Agreement.


15. The parties to this Agreement may execute their signatures in counterpart, each document of which may be considered as an original when executed. A facsimile signature shall be deemed to be an original.

16. Plaintiff acknowledges that he is executing this Agreement subject to the review and approval of its various terms by Defendant's City Commission which will be sought at the next reasonably available opportunity and that Defendant will make best efforts to seek such approval by October 10, 2017 but shall do so no later than October 23, 2017. Plaintiff further acknowledges that while Defendant's representatives will

recommend approval of this Agreement to the Defendant's City Commission, approval may or may not be given. Accordingly, Plaintiff's execution of this Agreement shall be construed as an offer of settlement pursuant to the terms of the Agreement which shall remain in place until such time as Defendant's City Commission may consider the Agreement and approve or reject it.

WHEREAS, THE FOLLOWING PARTIES HEREBY DECLARE THAT THE TERMS OF THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE HAVE BEEN COMPLETELY READ AND ARE FULLY UNDERSTOOD AND VOLUNTARILY ACCEPTED FOR THE PURPOSE OF MAKING A FULL AND FINAL COMPROMISE ADJUSTMENT AND SETTLEMENT OF ANY AND ALL CLAIMS, DISPUTED OR OTHERWISE, PERTAINING TO ANY AND ALL DAMAGES WHATSOEVER, AND FOR THE EXPRESS PURPOSE OF PRECLUDING FOREVER FURTHER OR ADDITIONAL CLAIMS.

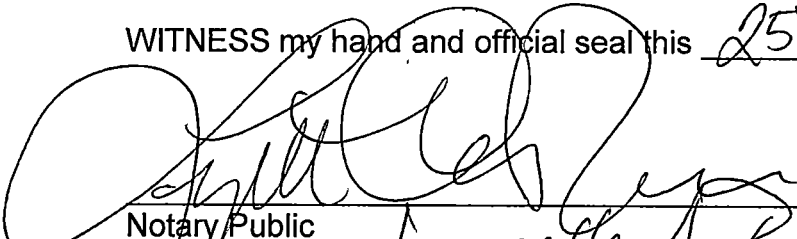
City of West Palm Beach
BY: _____
Date: _____


IRA HAROLD GREEN
Date: Sept. 25, 2017

STATE OF FLORIDA)
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me, the undersigned authority, by person on behalf of the Plaintiff, who is personally known to me or has produced Driver License as identification, 6650-408-63-125-0

WITNESS my hand and official seal this 25th day of September, 2017.



Notary Public
Print Name: Lynnette A. Romano
Commission No.: 4120/2018
My Commission Expires: 11/4/882



IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH
COUNTY, FLORIDA

CIVIL DIVISION

IRA GREEN,

Plaintiff,

v.

CASE NO.

502014 CA010500 XXXXMBAO

CITY OF WEST PALM BEACH,

Defendant.


JOINT STIPULATION OF VOLUNTARY DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, IRA HAROLD GREEN, and Defendant, CITY OF WEST PALM BEACH, by and through undersigned counsel, pursuant to Fla. R.Civ.P. 1.420(a)(1)(B) and hereby stipulate to a voluntary dismissal of this matter with prejudice.

Respectfully submitted,

By: s/Isidro M. Garcia
ISIDRO M. GARCIA, ESQ.
Attorney for Plaintiff
Florida Bar No. 437883
GARCIA LAW FIRM, P.A.
The Guaranty Building
120 South Olive Avenue, Suite 401
West Palm Beach, FL 33407
Tele: (561) 832-7732
Fax: (561) 832-7137
isidrogarcia@garcialaborlaw.com
eservice@garcialaborlaw.com

By: s/Zoë Panarites
ZOË PANARITES, ESQ.
Attorney for Defendant
Florida Bar No. 012078
OFFICE OF THE CITY ATTORNEY
CITY OF WEST PALM BEACH
401 Clematis St., 5th FL
P.O. BOX 3366
West Palm Beach, FL 33402
(561) 882-1361 Office
(561) 882-1373 Facsimile
panaritesz@wpb.org
tenoree@wpb.org


9/25/2014