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CITY OF HALLANDALE BEACH, FLORIDA
MEMORANDUM

TO: Honorable Mayor and City Commission
FROM: V. Lynn Whitfield, City Attorney *VW*
DATE: July 22, 2014
SUBJECT: Status Report of Pending Litigation

This report lists the pending litigation cases involving the City, with the exception of worker's compensation claims, which are handled by risk management; municipal information; and uniform traffic citations issued for red light camera violations enforced by the Hallandale Beach Police Department.

Federal Court Cases

(Outside counsel has been retained to represent the individual officer Edward McGovern while the city is being represented by in-house counsel)

1. Gregory Ehlers as personal representative of the Estate of Gregory Ehlers, Jr.

On November 14, 2013, Officer Edward McGovern individually and in his capacity as a Police Officer, and Dwayne Flournoy in his official capacity as Chief of Police of the Hallandale Beach Police Department were served with Plaintiffs' complaint alleging a civil right claims violation under 42 U.S.C. § 1983 – wrongful death, vicarious liability. Outside Counsel representing Chief Flournoy and Officer Edward McGovern filed a Motion to Dismiss the Complaint. Chief Flournoy was dismissed from the complaint, and Plaintiff filed an amended completed, adding the City of Hallandale Beach as a defendant. The City filed its answer and affirmative defenses to the Complaint. Discovery and depositions continue. Mediation is being set for this matter in the upcoming month of September.

(These cases below are being handled by in-house counsel)

State Court Cases

2. Valeriy Bogatov as father and Representative of Alex Bogatov v. City of Hallandale Beach (Judge Carol Lisa Phillips)

On June 29, 2012, Plaintiff filed its action alleging negligence on part of the City as a result of his son Alex Bogatov allegedly having fallen from the play structure at South Beach Park. The City filed a Motion to Dismiss the complaint and a Motion for Protective order as to video depositions of the Mayor and Vice Mayor. On September 11, 2012, the Court denied the motion to dismiss without prejudice and granted the protective order. The City filed its answer and affirmative defenses. Discovery and depositions are in progress.

3. Miguel Charun v. City of Hallandale Beach (Judge Marina Garcia-Wood) – DOI – 5/30/12

On September 24, 2013, Plaintiff filed suit against the City alleging that on May 30, 2012, that City employee Kevin Herbert, negligently operated a City vehicle to cause a collision with Plaintiff's vehicle causing bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, hospital expenses, and loss of earning. The City filed its answer and affirmative defenses to the complaint. Discovery is pending.

4. Jossica Devis v. City of Hallandale Beach – (Judge Dale Ross)

On April 24, 2012, Plaintiff filed suit against the City alleging that on February 2, 2011, at the intersection of NW 2nd Avenue and NW 2nd Street, Officer Frederick Allen Sanks carelessly and negligently operated a City vehicle so to cause a collision with the Plaintiff's vehicle causing serious and permanent bodily injuries and resulting pain and suffering disability and disfigurement, mental anguish, hospital expenses, and loss of the ability to earn money. The City filed its answer and affirmative defenses to the complaint. Discovery and depositions continue.

5. Golden Horn Condominium Association, Inc. v. City of Hallandale Beach – (Appellate Division)

This appeal stems from a violation of the Florida Fire Prevention Code. The violation occurred at the Golden Horn Condominium located at 437 Golden Isles Drive, Hallandale Beach. The source of the violation is the condominium's fire alarm panel. Specifically,

work was conducted on the fire alarm panel without securing the proper City permits.

6. Madelyne Lazarus v. City of Hallandale Beach, American Traffic Solutions, LLC, and ATS American Traffic Solutions, Inc. (Judge John Murphy III) DOI – 12/6/09

On August 10, 2010, the City was served with Plaintiffs uncertified class action complaint for damages, declaratory, and injunctive relief against the City of Hallandale Beach and American Traffic Solutions (ATS). Plaintiff's complaint arises out of the City's Ordinance base red light program. The complaint alleges that the City's program is an invalid exercise of municipal power and that the City is otherwise preempted by the State legislature in this area of law. Although, the City Commission approved Plaintiff's settlement offer of up to thirty (30%) percent of the funds received from ordinance base program. . The Florida Supreme Court has recently stricken the ordinance in Aventura and Orlando as unconstitutional. Counsel for the City of Aventura has requested a rehearing for clarification. It is unclear whether or not everyone who received a red light ticket is required to be refunded or just those that contested the ticket and were required to pay. We are waiting for the court's decision.

7. Phillip Mcenany, et al v. Ronald Beukers – (Judge Milly Rodriguez-Powell) DOI – 7/7/11

On October 6, 2011, Officer Beukers was served with Plaintiff's complaint for negligence. Plaintiff alleges Sgt. Beukers negligently struck Plaintiff causing personal injuries. At the time of the accident, Sgt. Beukers was driving a city owned take home vehicle. Sgt. Beukers is represented by counsel provided by his rider insurance carrier. On April 10, 2012, the City was served with Plaintiff's amended complaint. The City has filed its answer and affirmative defenses, a Motion to strike Count II of Plaintiffs' amended Complaint, and Motion to Dismiss Count IV of Plaintiffs' amended complaint. The City's Motion to Dismiss Count IV of the amended complaint was granted on July 23, 2012. On November 25, 2013, Plaintiff filed a motion for leave to amend to file a 3rd amended complaint, which the City opposed. On December 17, 2013, the Court granted the Plaintiff's motion to file a 3rd amended complaint. The City has filed its answer and affirmative defenses. Discovery and depositions continue.

8. John Motes and Shirley Motes v. City of Hallandale Beach (Judge John J. Murphy III)

On June 26, 2012, Plaintiffs filed its action alleging negligence on the part of the City as a result of a car accident involving Police Officer Anthony Distefano. Plaintiffs claim to have suffered personal injuries and a loss of consortium as a result of the accident. The City filed an answer and affirmative defenses denying negligence. The City also filed a Motion to Dismiss Plaintiff's consortium claim. On August 22, 2012, Plaintiffs filed a Voluntary Dismissal as to the consortium claim. Discovery continues and Plaintiff's

deposition and IME is scheduled.

9. Mr. Tax 1111, LLC v. Sauternes V, LLC, City of Hallandale Beach (Quiet Title Action)

On June 2, 2014, Plaintiff filed its action against the City and Sauternes V, LLC seeking to quiet the title of the property located at 417 N.W. 1st Avenue, Hallandale Beach. This parcel is a part of the lots that the City is seeking to acquire for the construction of the new main fire station. Simultaneously, the City has filed for an Order of taking on the same property. Hearing is set for August 15, 2014

10. Parker Plaza Condominium v. City of Hallandale Beach

On May 7, 2014, the Plaintiff filed its complaint for Declaratory and Injunctive Relief against the City to challenge the City Commission's approval of an Order Approving Variance. They seek to void the development order on state law grounds through Florida's Growth Management Act and because it is inconsistent with the City's Comprehensive Plan (CP). The key issue involves the Florida created coastal construction line control line program that is designed to protect the coastal system from improper design structures and requires state-approved development permits for construction seaward of the CCL. The City adopted section 8-75(b) (3) a of the city code, which is the City's regulation and approval process (separate from state regulations), and states that all buildings shall be constructed *landward* of the CCL. The City Code lists three (3) factors in determining whether a variance shall be issued. This development requires a variance from the above section. The plaintiffs allege that through the City Commission's approval of the variance allowed 37% of the project's gross floor area (the tower, which is to be built at the easternmost point) to be built seaward of the CCL, where the above section, as the plaintiff states, prohibits this type of development. In addition to this argument, the also allege the development will allow construction that is inconsistent with the City's CP and LDR. The Plaintiff and developer, D&H Fort Lauderdale Beach, LLC on behalf of the City were able to settle this case. On July 8, 2014, Plaintiff filed its Notice of Voluntary Dismissal with Prejudice.

11. Parker Plaza Condominium v. City of Hallandale Beach

On May 15, 2014, Plaintiff filed its complaint for Declaratory and Injunctive Relief against the City to challenge the approval of a Major Development Plan (MDP), a development order and the related development agreement submitted by GPH Regency, LLC. The orders will allow construction of a 38 story residential condominium development. The complaint states the development orders will allow the proposed tower to intrude seaward of the coastal construction line (CCL). They allege that the orders allow for a project that is inconsistent with the City's Comprehensive Plan (CP), as implemented by the City's Land Development Regulations (LDR), which in turn violates

Florida's Growth Management Act. The FGMA requires all development orders be strictly consistent with a local government's comprehensive plan. Additionally, they allege the orders allow for a development that will materially alter the density and intensity of the subject property, which would increase noise, odor, dust, glare and traffic in the area and negatively impact the coastal environment and natural resources in the immediate area. In short, they state the City Commission completely ignored the city's CP to protect the coast line environment, the LDR to protect the sensitive area seaward of the coastal construction line, and they are an adversely affected party because the project will impact public health and safety, as well as degrade the environment. The Plaintiff and developer, D&H Fort Lauderdale Beach, LLC on behalf of the City were able to settle this case. On July 8, 2014, Plaintiff filed its Notice of Voluntary Dismissal with Prejudice.

12. Parker Plaza Condominium v. City of Hallandale Beach and D&H Fort Lauderdale Beach, LLC

On May 7, 2014, the Plaintiff filed its Writ of Certiorari against the City and D&H Fort Lauderdale Beach, LLC to quash the City Commission's approved variance of the City's flood damage prevention provisions for the development of a residential condo. Generally, plaintiffs allege the City Commission failed to properly apply the plain language of the City Code in determining whether a property owner seeking a variance from regulations prohibiting construction of buildings seaward of the coastal construction line (CCL) met each variance condition in the city code. Specifically, they allege the City Code's requirement that a property owner must show an "exceptional hardship" for variance approval of the above prohibition was absent in the City Commission's decision. The court's standard of review requires a determination of whether the city commission departed from the essential requirements of the law and the city commission's decision was supported by competent substantial evidence. The Plaintiff and developer, D&H Fort Lauderdale Beach, LLC and City were able to settle this case. On July 8, 2014, Plaintiff filed its Notice of Voluntary Dismissal with Prejudice.

13. Gabriel Tamarez v. City of Hallandale Beach and the School Board of Broward County (Judge Marina Garcia-Wood)

On September 26, 2012, Plaintiff filed its action against the City and the Broward County School Board alleging negligence as a result of personal injuries sustained during a football practice at Peter Bluestein Park. It is alleged that Plaintiff ran into bleachers that were in the middle of the field. On September 25, 2012, the City filed an answer and affirmative defense denying negligence. Plaintiff has since been deposed. Discovery and depositions continue.

14. Rod Tony v. City of Hallandale Beach – (Judge John Bowman) – DOI 2/3/2012

On August 5, 2013, Plaintiff filed its suit against the City alleging that on February 3, 2012, that City employee Juan Lewis, negligently operated a City vehicle to cause a collision with Plaintiff's vehicle causing bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, hospital expenses, and loss of earning. The City filed its answer and affirmative defenses to the complaint. Discovery is pending, we are still waiting to receive all of the Plaintiff's medical records.

Mortgage Foreclosures¹

The following are foreclosure cases in which the City has been named as a defendant as a result of code enforcement liens or liens associated with affordable housing loans. In all cases the City has asked the Court to award any surplus funds to satisfy the City's lien.

15. La Salle v. Marcia Carvalho – (Judge Sandra Perlman) Property Address 641 S.W. 3 Street, Hallandale Beach, Florida 33009

16. U.S. Bank v. Hector Vidaurre – (Judge Sandra Perlman) Property Address 724 Moffet Street, Hallandale Beach, Florida 33009

17. Aurora Loan v. Sampson Ward, (Judge Sandra Perlman) Property Address 646 N.W. 4th Court, Hallandale Beach, Florida 33009

18. U.S. Bank v. Nasai Enterprises, (Judge Sandra Perlman) Property Address 114 N.W. 9th Street, Hallandale Beach, Florida 33009

19. JP Morgan Chase Bank v. Clifton Hart – (Judge Sandra Perlman) Property Address 825 S.W. 10th Street, Hallandale Beach, Florida 33009

20. Deutsche Bank National Trust Company v. Emmanuel Duperme, et al – (Judge Sandra Perlman) Property Address 638 N.W. 4th Court, Hallandale Beach, Florida 33009

¹ Chapter 162 of the Florida Statutes code enforcement liens attach to all of a Respondent's property throughout the State.

21. Bank of America v. Marcio M. De Souza – (Judge Sandra Perlman) Property Address 1301 Northeast 7 Street, Unit 311 Hallandale Beach, Florida 33009
22. Bac Home Loans v. Janice Kasper – (Judge Sandra Perlman) Property Address 213 S.W. 2nd Street, Hallandale Beach, Florida 33009
23. Bac Home Loans v. Gloria Gamboa – (Judge Sandra Perlman) Property Address 620 N.W. 8th Avenue, Hallandale Beach, Florida 33009
24. American Home Mortgage v. Marcos Gabriel – (Judge Sandra Perlman) Property Address 12178 St Andrew Place, 109, Miramar, Florida
25. LaSalle Bank v. Maria Rodriguez – (Judge Sandra Perlman) Property Address 9723 NW 37th Street, Sunrise, Florida
26. Bank Atlantic v. Daniel Oberti – (Judge Sandra Perlman) Property Address 112 Holiday Drive, Hallandale Beach, Florida 33009
27. CitiMortgage, Inc. v. Jesse Cuerto – (Judge Sandra Perlman) Property Address 1024 NE 4th Court, Hallandale Beach, Florida 33009
28. Deutsche Bank v. Orestes Cardoso et al. – (Judge Sandra Perlman) Property Address 1250 Atlantic Shores Blvd., #120, Hallandale Beach, Florida 33009
29. Suntrust Mortgage v. Dana Morris – (Judge Sandra Perlman) Property Address 1029 NW 8th Street, Hallandale Beach, Florida 33009
30. Wells Fargo Bank v. Yosef Kalfa – (Judge Sandra Perlman) Property Address 180 NE 12th Avenue, #15A, Hallandale Beach, Florida 33009
31. Deutsche Bank v. Gerald Dean – (Judge Sandra Perlman) Property Address 726 NW 1st Court, Hallandale Beach, Florida 33009
32. Wells Fargo Bank v. Jose Ortiz – (Judge Sandra Perlman) Property Address 906 NE 4th Court, Hallandale Beach, Florida 33009

33. Bank of America v. Oscar Sanchez – (Judge Sandra Perlman) Property Address 1800 S. Ocean Drive, #4207, Hallandale Beach, Florida 33009
34. Duetsche Bank v. Yoli Contreras, - (Judge Sandra Perlman) Property Address 22 S.W. 7th Street, Hallandale Beach, Florida 33009
35. Wells Fargo Bank v. Vasile Jelescu – (Judge Sandra Perlman) Property Address 1000 N.E. 7th Street, Hallandale Beach, Florida 33009
36. Saxon Mortgage Services v. Peter Gordon – (Judge Sandra Perlman) Property Address 204 S.E. 3rd Street, Hallandale Beach, Florida 33009
37. CitiMortgage v. German Arbelaez – (Judge Sandra Perlman) Property Address 110 SE 2nd Street, Hallandale Beach, Florida 33009
38. Bac Home Loans v. Irene Jurberg – (Judge Sandra Perlman) Property Address 1008 NE 3rd Street, Hallandale Beach, Florida 33009
39. CitiMortgage Inc. v. Freddy Leroy – (Judge Sandra Perlman) Property Address 709 SW 6th Terrace, Hallandale Beach, Florida 33009
40. CitiMortgage Inc. v. Kevin McNair – (Judge Sandra Perlman) Property Address 22-24 SW 10th Street, Hallandale Beach, Florida 33009
41. U.S. Bank v. Fredesvinda Diaz, et al – (Judge Sandra Perlman) Property Address 27 SW 7th Street, Hallandale Beach, Florida 33009
42. HSBC Mortgage v. Lenidalva DeSilva – (Judge Sandra Perlman) Property Address 1000 NE 12th Avenue, #304, Hallandale Beach, Florida 33009
43. New York Community Bank v. Juan Santurian, et al. - (Judge Sandra Perlman) Property Address 1945 S. Ocean Drive, #1506, Hallandale Beach, Florida 33009

44. Bayview Loan Servicing, LLC v. Nelly Heffez, et al. – (Judge Sandra Perlman) Property Address 620 NE 4th Court, Hallandale Beach, Florida 33009
45. Federal National Mortgage Association v. Gabriel Lung, et al. – (Judge Sandra Perlman) Property Address 219 – 221 NE 11th Avenue, Hallandale Beach, Florida 33009
46. US Bank v. Denyse Badall, et al. – (Judge Sandra Perlman) Property Address 110 SE 2nd Street, #105, Hallandale Beach, Florida 33009
47. Bayview Loan Servicing, LLC v. Besanell, Inc., et al – (Judge Sandra Perlman) Property Address 620 NE 4th Court, Hallandale Beach, Florida 33009 (Receiver appointed by the Court)
48. Deutsche Bank v. Gary Banks, et al. – (Judge Sandra Perlman) Property Address 132 NW 6th Avenue, Hallandale Beach, Florida 33009
49. Federal National Mortgage v. Jessica Llorens, et al. – (Judge Sandra Perlman) Property Address 701 SW 1st Street, Hallandale Beach, Florida 33009
50. Branch Banking v. Moises Shames, et al. – (Judge Sandra Perlman) Property Address 800 SW 10th Avenue, Hallandale Beach, Florida 33009
51. Wells Fargo Bank v. Jaimie Paul, et al – (Judge Sandra Perlman) Property Address 940 SW 9th Street, Hallandale Beach, Florida 33009
52. Wells Fargo Bank v. Enrique Betancourt, et al – (Judge Sandra Perlman) Property Address 401 SW 4th Avenue, Hallandale Beach, Florida 33009
53. Bank of America v. Cesar Yataco, et al – (Judge Sandra Perlman) Property Address 501 NE 14th Avenue, #702, Hallandale Beach, Florida 33009
54. Frederick Burton v. Angel Cachinero, et al – (Judge Sandra Perlman) Property Address 836 & 840 NW 10th Street, Hallandale Beach, Florida 33009
55. CitiMortgage, Inc. v. Gregory Pizzano, et al, - (Judge Sandra Perlman) Property

Address 728 SW 5th Court, Hallandale Beach, Florida 33009

56. Bank of America v. Cenker Ozkurt, et al – (Judge Sandra Perlman) Property Address 812 NE 6th Street, Hallandale Beach, Florida 33009
57. Fannie Mae v. Osmond Knight, et al – (Judge Sandra Perlman) Property Address 324 NW 3rd Street, Hallandale Beach, Florida 33009
58. Bac Home Loan v. Christine Dittrich, et al – (Judge Sandra Perlman) Property Address 110 SE 2nd Street, #205, Hallandale Beach, Florida 33009
59. Bayview Loan Servicing v. Besanell, Inc., et al – (Judge Sandra Perlman) Property Address 620 NE 4th Court, Hallandale Beach, Florida 33009
60. Wells Fargo Bank v. Noemi Aquiriano, et al – (Judge Sandra Perlman) Property Address 213 SE 4th Street, Hallandale Beach, Florida 33009
61. Aventin Capital Fund v. Vivien McDonald, et al – (Judge Sandra Perlman) Property Address 744 NW 6th Street, Hallandale Beach, Florida 33009
62. JLLR Mortgage Acquisitions v. Rodney Robinson, et al – (Judge Sandra Perlman) Property Address 700 NW 1st Court, Hallandale Beach, Florida 33009
63. Green Tree Services, LLC v. Eduardo Gonzalez, et al – (Judge Sandra Perlman) Property Address 13500 SW 17th Court, Miramar, Florida 33027
64. Wells Fargo v. Allen Caplan, et al – (Judge Sandra Perlman) Property Address 1980 S. Ocean Drive, 15E, Hallandale Beach, Florida 33009
65. Flagstar Bank v. Loretta Lewis, et al – (Judge Sandra Perlman) Property Address 705 NW 10th Court, Hallandale Beach, Florida 33009
66. OneWest Bank v. Oscar Sanchez, et al – (Judge Cynthia Imperato) Property Address 500 SW 11th Avenue, Hallandale Beach, Florida 33009
67. Rose Acceptance, Inc. v. Amer Abdelquader, et al – (Judge Cynthia Imperato) Property Address 700 SW 6th Street, Hallandale Beach, Florida 33009

68. JP Morgan Chase Bank v. Reginald Legros, et al – (Judge Cynthia Imperato) Property Address 707 NW 10th Court, Hallandale Beach, Florida 33009
69. Diplomat Golf & Racquet Club c. Anne-Katrin Spiess, et al – (Judge Cynthia Imperato) Property Address 26 Diplomat Parkway, #2266, Hallandale Beach, Florida 33009
70. Wells Fargo v. Eduardo Gonzalez, et al – (Judge Cynthia Imperato) Property Address 722 SW 8th Street, Hallandale Beach, Florida 33009
71. Deutsche Bank National Trust v. Charles Conley, et al – (Judge Cynthia Imperato) Property Address 228 S.W. 3rd Avenue, Hallandale Beach, Florida 33009
72. Deutsche Bank v. Cesar Encarnacion, et al – (Judge Cynthia Imperato) Property Address 1073 SW 3rd Street, Hallandale Beach, Florida 33009
73. One West Bank v. Linda Cox, et al – (Judge Cynthia Imperato) Property Address 23 N.W. 10th Street, Hallandale Beach, Florida 33009
74. Wells Fargo Bank v. Meghan Tallon, et al – (Judge Cynthia Imperato) Property Address 111 NW 2nd Avenue, #3, Hallandale Beach, Florida 33009
75. Bank of America v. Noel Torres, et al – (Judge Cynthia Imperato) Property Address 627 Southwest 9th Street, Hallandale Beach, Florida 33009
76. B & Z Asset Management Corp. v. Jean Victor, et al – (Judge Cynthia Imperato) Property Address 520 NW 2nd Avenue, Hallandale Beach, Florida 33009
77. GMAC Mortgage, LLC v. Gloria Gamboa, et al – (Judge Cynthia Imperato) Property Address 1118 NE 8th Street, Hallandale Beach, Florida 33009
78. Resurgent Capital Services v. Estate of Concetta T. Wolter, et al – (Judge Cynthia Imperato) Property Address 601 SW 6th Avenue, Hallandale Beach, Florida 33009
79. US Bank v. Patricia Bingue, et al – (Judge Cynthia Imperato) Property Address 26 Diplomat Parkway, #2338, Hallandale Beach, Florida 33009
80. Wells Fargo Bank v. Carole R. Trepanier, et al – (Judge Cynthia Imperato) Property Address 732 SW 9th Street, Hallandale Beach, Florida 33009

81. **City of Hallandale Beach v. North Florida Financial Corp – (Judge Cynthia Imperato)
Property Address 715 Foster Road, Hallandale Beach, Florida 33009**

82. **JP Morgan Chase Bank v. Valerie R. Galsky, et al – (Judge Cynthia Imperato) Property
Address 313 Holiday Drive, Hallandale Beach, Florida 33009**

83. **Beneficial Florida, Inc. v. Delcie R. King, et al – (Judge Cynthia Imperato) Property
Address 700 N.W. 9th Court, Hallandale Beach, Florida 33009**

cc: Renee C. Miller, City Manager
Andre Mckenney, Assistant City Attorney
Jim Buschman, Risk Manager