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ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

June 21, 2023

GLENN A. DIEGEL
OF COUNSEL

VIA E-MAIL (vcardenas@cityofnovi.org)

Mr. Victor Cardenas
City of Novi
45175 Ten Mile Road
Novi, MI 48375

Mayor and Council –

Please see the following privileged correspondence regarding ongoing litigation with a former employee. Ms. Belisle from our Insurance Carrier's law firm will be present during executive session on Monday. Please let me know if you have any questions.

- Victor

Re: Gerald Orchard v City of Novi

Dear Mr. Cardenas:

I am writing regarding the status of this lawsuit. In this lawsuit, the plaintiff, Gerald Orchard, is a former long term employee of the City and was employed as a sign technician. In 2017, Mr. Orchard suffered an on the job injury to his shoulder. After several years of treatment for the injury and performing light duty, Mr. Orchard wanted to return to work on a full-time basis with a lifting restriction. The City determined that it could not accommodate this restriction and terminated his employment. He filed a lawsuit in federal court in March 2021, asserting that the termination of his employment was discriminatory in violation of the Americans with Disabilities Act ("ADA"). Mr. Orchard also asserted claims regarding the City's alleged failure to reasonably accommodate him and retaliation for having filed a prior charge of discrimination with the Equal Employment Opportunity Commission ("EEOC").

Following depositions and written discovery in this matter, we filed a motion for summary judgment. After extensive oral argument, Judge Stephen Murphy denied the motion, except for the retaliation claim, which he dismissed. In denying the motion, Judge Murphy determined that there were questions of fact as to whether the City engaged in an interactive process with Mr. Orchard, which would have enabled him to return to his job. He also determined that the City could not require Mr. Orchard to return to work with no restrictions and that there were questions of fact regarding Mr. Orchard's actual job duties relative to his lifting restriction.

Following his decision on the motion, Judge Murphy ordered the parties to engage in mediation. The parties ultimately participated in three mediations, none of which were successful. During the first mediation, the plaintiff's opening demand was \$1.75 million. The mediation ended soon thereafter. In making the demand, the plaintiff asserted that he was entitled

to extensive lost wages, lost pension benefits and emotional distress. Several months later, the court ordered the parties to participate in a second mediation. The plaintiff eventually lowered his demand to below \$1 million, but ultimately walked out of the mediation after several hours. The court ordered us to a third mediation. This was the most successful of the three mediations, with the plaintiff finally reducing his demand to the \$630,000 range. The mediation concluded without a resolution.

In the meantime, the court set a hard trial date of July 11, 2023, noting that the date would not be changed for any reason. Several weeks ago, the plaintiff's attorneys reached out to me directly to engage in further negotiations. After several phone conversations, we both agreed to resolve the matter for \$475,000. The City's insurance carrier has agreed to fully fund this settlement amount. In exchange for the settlement amount, the plaintiff will dismiss the instant lawsuit and release the City from any and all claims he has or could have against it arising out of his employment, except for a separate workers' compensation claim also pending against the City relative to his 2017 injury. It is my understanding that the workers' compensation carrier may be attempting to resolve that matter as well. Although we initially tried to put together a global settlement for the instant lawsuit and the workers' compensation matter, the workers' compensation carrier was not in a position to immediately resolve the matter. Therefore, in order to resolve this lawsuit before trial, we engaged in negotiations with the plaintiff's attorneys that did not include the workers' compensation claim.

We recommend entering into this resolution with Mr. Orchard for \$475,000. Although the trial court itself recently adjourned the July 11, 2023 trial date, we anticipate that it will reschedule the trial in the next several weeks or months. In proceeding to trial, we feel that there are several evidentiary issues that weigh in favor of the plaintiff, including conflicting testimony by his supervisors as to the accommodations the plaintiff sought and the actual requirements of his sign technician job. In addition, should a jury find in the plaintiff's favor, jury verdicts have substantially increased in the last two to three years, with verdicts and attorney fee awards in employment lawsuits regularly exceeding \$1.5 million. Based on these issues, we recommend the City Council authorizing the City's insurance carrier to resolve this matter for \$475,000 and further authorizing the City Manager to execute a settlement agreement on the City's behalf.

I understand that the City Council's next meeting is June 26, 2023. I request that you add me to the agenda for this meeting so that I can present this information to the City Council in a closed session and seek the above referenced authorization. Should you have questions regarding this matter, please do not hesitate to contact me.

Very truly yours,

MCGRAW MORRIS P.C.



Stacy J. Belisle

SJB/kl

cc: Tia Gronlund-Fox (via email)