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REPORT NO. **R21-0228**

July 14, 2021

REPORT RE:

**REQUEST FOR WAIVER OF CONFLICT OF INTEREST
FOR BURKE, WILLIAMS & SORENSON, LLP
IN ITS REPRESENTATION OF CITY OF BEVERLY HILLS IN THE MATTER OF
AMY ALEXANDER v. CITY OF BEVERLY HILLS, ET AL.,
LASC CASE NO. 20STCV49604**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, CA 90012

Honorable Members:

Burke, Williams and Sorenson (“BWS”) is seeking a waiver in the matter of *Alexander v. City of Beverly Hills, et al.* LASC 20STCV49604, due to a potential conflict of interest. BWS represents the City of Beverly Hills in tort defense matters. BWS also represents the City of Los Angeles and/or City employees in tort defense matters, including police defense, employment, eminent domain, CEQA, and affordable housing matters. This Office concludes that while a potential conflict of interest may exist, waiver does not prejudice the City at this point and is appropriate to allow BWS to continue to represent the City of Beverly Hills in the *Alexander* case.

In the *Alexander* case, both the City of Los Angeles and the City of Beverly Hills are named defendants. However, the lawsuit alleges two separate trip and fall incidents on two separate dates; one in the City of Los Angeles on September 29, 2019 (“LA Incident”), and one in Beverly Hills on June 23, 2020 (“BH Incident”). This Office has reviewed the allegations in the Complaint and BWS’s attached letter, and concludes, as BWS did, that Plaintiff has alleged two separate and distinct torts that would not normally create an actual or potential conflict of interest, but for their misjoinder in the same case.

However, a potential conflict could develop if the case proceeds in its current form because either city could argue that the incident in the other jurisdiction is the primary cause of Plaintiff’s damages. The City of Los Angeles could claim that its liability to Plaintiff for damages caused by the LA Incident, if any, are “cut off” by injuries Plaintiff suffered in the later BH Incident. Similarly the City of Beverly Hills may argue that Plaintiff’s damages are largely caused by the pre-existing injuries from the LA Incident. If BWS asserts this position on behalf of the City of Beverly Hills, this will put BWS in direct conflict with the City of Los Angeles; if BWS does not assert these positions (due to its representation of, or sense of duty to, the City of Los Angeles in other matters), BWS will be materially limiting their representation of the City of Beverly Hills.¹ This potential conflict, in this one matter, is waivable with minimal prejudice to the City.

In fact, waiving the potential conflict will benefit the City by allowing it to benefit from a shared defense with the City of Beverly Hills. Both cities will share the costs of litigation and will have built-in character evidence that the plaintiff is accident prone.

The California Rules of Professional Conduct preclude a potentially adverse representation without a waiver. Burke, Williams & Sorenson has requested such a waiver by means of the attached letter dated May 25, 2021. At this time, the City has two options: 1) waive the potential conflict involving damages, or 2) attempt to disjoin or bifurcate the City and the City of Beverly Hills in this lawsuit, thus removing the potential conflict and eliminating the need for a waiver.

This Office recommends granting the waiver. This will allow us the benefit of working with the City of Beverly Hills to reduce costs and exploit the underlying facts to the City’s advantage. If future issues present themselves regarding the joint defense of this matter, the City can seek to disjoin at a later date.

¹ It is also possible Plaintiff suffered distinct injuries in each Incident (*i.e.* a back injury as a result of the LA Incident and an ankle injury in the BH Incident), which would factually eliminate the conflict over damages (except for pain and suffering, arguably). However, there is not enough information at this time to determine this.

If you have any questions regarding this matter, please contact Assistant City Attorney Dikran Sassounian at (818) 469-9948. He or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By *Anne Haley*
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