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January 24, 2018

**VIA EMAIL**

Shawn D. Smith, Esq.  
CITY OF KEY WEST  
3128 Flagler Ave.  
Key West, Florida 33040

Re: Brad Buehrle vs. City of Key West, Florida  
Our File No: 01112/ 33-191

Dear Shawn:

The City's insurer has authorized the payment of \$425,000, and the Plaintiff Brad Buehrle and his attorneys have agreed to accept this payment in full and complete settlement of all claims, damages, costs, attorneys fees and equitable relief in the above referenced matter. The following will provide you with a summary of the litigation and my recommendations concerning the proposed settlement.

The pending federal litigation arises from the enforcement of a City ordinance which precluded Plaintiff from opening a tattoo establishment in the City's historic district in 2012. The lawsuit asserted that enforcement of the ordinance deprived Plaintiff of his First Amendment right to freedom of speech, and his Fourteenth Amendment right to due process and equal protection of the law. The lawsuit sought compensatory damages, costs and attorneys fees, as well as injunctive relief to compel approval of the proposed tattoo establishment.

Buehrle and the City filed cross motions for summary judgment regarding the constitutionality of the City ordinance which limited new tattoo establishments to the City's general commercial zoning district. The district judge granted the City's motion and denied Buehrle's motion. On appeal the U.S. Court of Appeals for the Eleventh Circuit affirmed the district court's finding that tattooing is artistic expression protected by the First Amendment, but reversed the district court's holding that the City ordinance constituted a reasonable time, place and manner restriction on where a tattoo establishment could locate. The Eleventh Circuit rejected evidence provided by the City's director

of planning that allowing tattoo establishments to operate in the historic district would impact the district's character and fabric and would adversely impact tourism. On remand, the district court entered judgment in favor of Plaintiff Buehrle based on the opinion of the Eleventh Circuit Court of Appeals and scheduled a trial on the amount of any compensatory damages, costs and attorneys fees as well as other relief that should be awarded to Plaintiff Buehrle.

Since Plaintiff Buehrle is the prevailing party in the case he is entitled to recover reasonable attorneys fees and costs expended both in the district court and the court of appeals. Plaintiff would be entitled to recover fees and costs even if he received a nominal or minimal award of compensatory damages. Ultimately the amount of the award would be up to the district court judge, but I estimate that the award would be somewhere between \$150,000 and \$250,000. In addition, Buehrle would be entitled to recover costs (filing fees, court reporter and transcript fees, expert witness fees, etc.) which could be expected to total an additional \$15,000 to \$25,000. With regard to compensatory damages, Buehrle sought economic and non-economic damages. These related to his attempt to open a tattoo establishment in the City, as well as wages and anticipated profits which may have been generated by the business. Buehrle was prepared to present evidence from a business valuation expert that he sustained approximately \$700,000 in economic damages and was also seeking an unspecified amount for intangible damages such as mental distress, etc.

Plaintiff Buehrle's claim is covered under the City's insurance policy which has \$1,000,000 liability limits in excess of the City's \$100,000 self insured retention. During the almost five years of litigation, the City's fees and costs in defending the case total approximately \$100,000, and as a result the City's self insured retention has been satisfied. If the case had been tried, the City's position was that Buehrle's claimed economic damages were speculative and that Buehrle had not acted reasonably to mitigate any loss by opening a tattoo establishment in the general commercial zoning district or other unincorporated area of the lower Keys, or by working as a tattoo artist at an existing establishment.

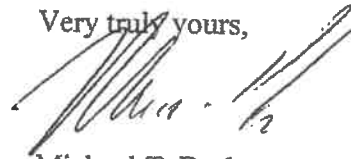
As the trial date approached, Plaintiff Buehrle and the City's insurer engaged in negotiations which culminated in Plaintiff Buehrle's agreement to accept and the insurer's agreement to authorize the total sum of \$425,000 in full and complete settlement of all claims for damages, costs and attorneys fees in the above matter.

Since the City has exhausted its self insured retention, all of the \$425,000 will ultimately be paid by the City's insurer. The insurance policy requires that the City consent to the settlement and if a settlement authorized by the insurer is not consented to by the City, the matter will not be settled but the City will forfeit its insurance coverage for any amounts recovered by the Plaintiff in excess of the \$425,000 proposed settlement.

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In my opinion, approval of the proposed settlement is in the best interest of the City of Key West. The City will not ultimately be paying any of the settlement proceeds. Moreover, a refusal to consent would result in a forfeiture of insurance coverage which could expose the City to future monetary loss if the case were tried and the damages, fees and costs awarded exceed \$425,000. It is my opinion that the proposed settlement should be approved.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael T. Burke", written over a horizontal line.

Michael T. Burke  
For the Firm