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April 8, 2019

BY EMAIL AND FIRST CLASS MAIL

Adrienne K. Walker, Esq.
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C
One Financial Center
Boston, MA 02111

Re: City of Central Falls/Central Falls Detention Facility Corporation

Attorney Walker,

Please be advised, this office has been retained by the City of Central Falls (“City”) with regard to issues and potential actions related to the City and the Central Falls Detention Facility Corporation (“Wyatt”). I have reviewed your correspondence related to this matter, in particular your letter dated April 2, 2019, in which the Trustee attempts to suppress the advocacy of the elected leaders of the City with threats of litigation. Please accept this correspondence as the City’s response to your correspondence, with a full reservation of rights, and notice of some of the potential claims to be brought by the City against both the Corporation and the Trustee in the event that an amicable resolution cannot be achieved.

As is plainly obvious, the Mayor of Central Falls, James Diossa (“Mayor Diossa”), and members of the City Council have been outspoken about the imprisonment of asylum seekers at the Wyatt. This change in prisoner composition at the Wyatt was not approved by the Board of the Corporation and was communicated to the Board and the City in false light. The detention of these recent arrivals at the Wyatt beginning in March, 2019 is abhorrent to the ethos of the City, a predominantly immigrant and first generation American city. This is apparently yet another desperate attempt by the administration of the Corporation and the other special interests associated with the Wyatt designed to put money in the pockets of bondholders. This municipal detention center was meant to be an asset to the people of the City, not a source of fear, distress, and panic to city residents. It is clear in the mind of the community and the leaders it elected, the City no longer receives a benefit from the presence of the Wyatt.

Contrary to your allegations contained in your letters to the City, Mayor Diossa has gone above and beyond in an attempt to stabilize and strengthen the Wyatt for the benefit of the Corporation, the City, and even the bondholders. The City has spent over six years working fastidiously to clean up the mess that was handed to the Diossa administration upon his inauguration. Since becoming Mayor of a city emerging from federal bankruptcy and state receivership in 2012, Mayor Diossa’s administration has worked tirelessly to restore financial

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vitality to Wyatt. He has appointed experts to chair its board. First, he appointed Brendan Doherty, the former Colonel of the Rhode Island State Police. Then, he appointed R. Kelly Sheridan, a prominent corporate attorney. Then, he appointed Luke Gallant, a law enforcement and corrections professional. Each of them independently reached the same conclusion: the Wyatt is suffering from crushing debt that it will never be able to solve and it will never live up to its mission of being the economic engine and source of revenue for its host city of Central Falls as originally envisioned. Rather, it now seems that the Wyatt purely exists only for the purposes of maintaining the hope that the bondholders will one day be repaid on what perhaps was a poor investment, at all costs necessary without regard to the impact on the host community. It is also important to keep in mind that this is an entity that was insolvent in 2014 and has only borrowed more money and furthered that situation since it emerged from receivership. These loans were incurred by the bondholders despite their presumed knowledge of the financial situation at the Wyatt.

City officials have also pursued other avenues to assist the Wyatt and its bondholders. The Mayor and his administration lobbied state and federal officials. They recommended alternative uses such as behavioral health and substance abuse. They talked with probation and parole. They advocated for the trimming of administrative staff, the removal of expensive contractors, and additional ways to make cost-effective savings. They agreed to drop litigation and voluntarily agreed to have a hands-off approach to the management of the facility. And, they spent year after year in conversations with the bondholders and the Corporation about how to deal with each and every setback that confronted the facility.

The recent attempts by the bondholders to back-door a pathway to privatization and the Wyatt's implementation of the "Southwest Border Zero Tolerance Initiative" authorized by President Trump and then Attorney General Jefferson B. Sessions, without any discussions or conversations was the last straw and inspired legitimate community outrage and public outcry. This was a decision that was not vetted by the Board of the Corporation nor voted on. Nor were there "good faith" conversations between the parties of the Forbearance Agreement, as had been standard practice. This was a decision made with regard only to income, not with regard to whether these people could be properly or safely housed in the prison with their constitutional due process rights being upheld.

While the Board of the Corporation may have a duty to continue to plug along at the behest of the bondholders, Mayor Diossa and the members of the City Council have a higher duty – one that is owed to the community that elected them. Mayor Diossa and the Councilmembers have a duty to advocate for the best interests of their constituents. No higher duty exists in our society. Your correspondence is particularly troubling due to the apparent effort of the Trustee to crush the First Amendment rights of City officials and residents speaking out against the continued downward spiral of the Wyatt. As you can see, the City will not be intimidated by these threats intended to impinge the First Amendment rights of its leaders and citizens.

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In your letter of April 2, 2019, you threatened several potential “legal claims” that the Trustee was poised to make. While we will address those claims in detail in the event you choose to commence litigation against the City, its people and its leaders, I will address some aspects of your letter here. It is very clear that these “legal claims” serve only one purpose – to silence the City from speaking out against the unjust treatment of people within the municipal detention facility. If this somehow negatively impacts the bondholders or the market, I suggest that speaks volumes about the nature of the actions of the Wyatt, not the City. The City is within its right to speak out on matters at the Wyatt which, as an “instrumentality and agency of the municipality” directly reflects and negatively impacts the City and its people.

First, the claims of tortious interference with contractual relationships, aiding and abetting a breach of fiduciary duty, and the hypothetical claims under the Contracts Clause and Takings Clause are baseless and without support in fact or law as applied to this situation. There has been no interference by the City or its officials with the contract between the Wyatt and ICE. As you have noted, the City is not in a position to approve, deny, or invalidate contracts between the Wyatt and any federal agency. Any attempt to characterize the advocacy of Mayor Diossa and the Council as tortious interference is nothing more than an attempt by the Trustee to impinge their First Amendment rights to conceal the trouble at the Wyatt from Wall Street. This is precisely the type of conduct that the Anti-SLAPP laws of the State of Rhode Island are intended to protect parties speaking out against matters of public concern from. Accordingly, any suit brought against the Mayor, Council, or any other City official or resident in connection with protesting these recent actions of the Wyatt will be met with the appropriate counterclaims and motions under the Anti-SLAPP laws in which the City will seek damages, including attorneys’ fees and punitive damages to the fullest extent of the law.

While the City may not have a role in the day to day business operations of the Wyatt, it does have a statutory role relative to the purpose of the Wyatt within the City. In order for the Wyatt to exist, the City had to approve a resolution stating that the creation of the Wyatt and the Corporation address a “need for the corporation to function in the city or town.” *See* R.I.G.L. § 45-54-1. In 1991, when the Council approved the resolution stating a need for the Wyatt, the hope was that it would serve the need of bringing “direct and indirect economic benefits to the City.” Just as it was within the legislative purview of the Council to declare the need for the Wyatt, it is equally within its legislative authority to declare that the need no longer exists as the harm to the City outweighs the benefits. This decision by the Council, and any legislative body, is afforded the highest protection by the law.

Contrary to your assertions, beyond their First Amendment expression of displeasure with the Wyatt, the City has taken no action to close the Wyatt and thus has not interfered with the operation of the Corporation. While the City Council did approve resolutions rescinding their predecessors’ approval of a statement of “need” required to recreate the Corporation and the Wyatt, this Council’s actions have had no practical or legal impact on the operation of the Wyatt or the Corporation. Despite the passing of the resolutions last week, the Wyatt and Corporation are still in operation without need of injunctive relief. There is no provision in statute or ordinance that

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empowers the Council to close the Wyatt or the Corporation by resolution. There is no legal effect of the resolutions, rather they are merely non-binding statements of political expression taken by the legislative body of the City to express their displeasure and disapproval of the Wyatt. This is not interference with contractual relations; it is constitutional protected legislative expression.

I would also like to take a minute to address your attempts to silence the City officials and impinge their First Amendment rights by invoking the provisions of R.I.G.L. § 45-54-21. As you note, this statute clearly states that the “state” agrees not to take action that limits or alters the vested rights in the Corporation to fulfill its agreements with the bondholders. However, your attempt to label the City as an “instrumentality” of the state is misplaced as applied in these circumstances. While the municipalities may be creatures of statute or creations of the state, by the plain and ordinary language of § 45-54 of the Rhode Island General Laws, this particular section only applies to the state and state agencies, not municipalities. Municipality is distinctly defined in § 45-54-3 from the state. Section 45-54-3(15) defined the “state” as the “State of Rhode Island, and any office, department, board, commission, bureau, division, authority, public corporation, agency, or instrumentality of the state.” The same section of the law goes on to separately define “municipality” in § 45-54-3(10) as “any city or town within the state now existing or hereafter created.”

A plain reading of these definition makes it clear that the provision you seek to stifle debate in the City with only apply to actions of the state which is distinctly defined separately from municipalities. The City has its own powers and obligations under § 45-54 and is not limited from acting within its powers under § 45-54 by § 45-54-21. Further, even if the law was applied as you state, the City has not taken any action which has altered the vested rights of the Corporation.

Any issues or claims raised by the Trustee through your correspondence are properly raised with the Corporation’s Board, not the City of Central Falls or its elected leaders. If there has been an alleged “breach of fiduciary duty” those issues should be addressed with the fiduciary, which is not the City. There have been no actions taken by the City which have impacted the “contract” with any legal effect. There have been no actions taken by the City to take the property or impinge the contractual relationships by the Corporation in any manner. There has only been free expression and democratic action all of which enjoy the protections of the First Amendment and any effort to silence these expression will expose the Trustee to damages.

Prior to concluding, I do want to provide notice of potential claims that the City may bring against the Corporation and/or Trustee in connection with the operation of the Wyatt. The City has reason to believe that the Corporation is in breach of the Forbearance Agreement which brought the Corporation’s petition for receivership, based on insolvency, and the first “Fink Litigation” to a conclusion. Upon information and belief, and contrary to the statements contained in the letters from your office, the Corporation currently has sufficient funds to meet its operating and maintenance expenses. While the City agreed to subordinate the payments called for in Section 2.1(b) of the Forbearance Agreement to operating and maintenance expenses, it did not agree to the subordinate those payments to any other expense. Absent actual evidence of the

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inability to meet its operational and maintenance expenses as defined in the Indenture Agreement, the City will pursue claims of breach on this basis and seek payment of the payments called for in 2.1(b).

Additionally, the Corporation and Trustee breached the terms of the Forbearance Agreement by extending it without the agreement of the City, as a party in writing. Section 6.3 of the Forbearance Agreement make it clear that the document may only be modified in writing by agreement of the parties. As is reflected in the fact that the City was not listed as a signatory to the modified agreement approved by the Board of the Corporation and signed by the Corporation and Trustee after an unlawfully held meeting, the City did not agree to modify the termination date of the Forbearance Agreement.

Further, the City has also been damaged by the Trustee's failure to terminate the Forbearance Agreement after the escape of an inmate of the prison on December 31, 2016. As you noted in your letter dated March 1, 2019, this escape constituted a termination event under the terms of the Forbearance Agreement. Had the Trustee taken action to terminate the agreement upon that event, the City would have retained all its rights relative to the Fink litigation under the terms of Section 3.5(iv). The Trustee did not terminate the Forbearance Agreement despite the fact that a termination event occurred only in an effort to deprive the City of its rights to pursue litigation and advocate for the financial interests of the residents of the City.

Absent a resolution of these matters, the City will pursue all remedies available to it with regard to claims against both the Corporation and the Trustee. I do share your desire to resolve these matters short of costly litigation to our clients and the Corporation but my client will not cease advocating for the people of the City of Central Falls. Please contact me if you wish to discuss potential resolutions to this matter.

Sincerely,



Nicholas J. Hemond, Esq.

Cc: Matthew Jerzyk, Esq.
Mayor James Diossa
L. Maria Rivera, Council President
Matthew Lopes, Esq.
J. Molina Flynn, Esq.

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Gina M. Raimondo, Governor
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