EXHIBIT D

City of Detroit

CITY COUNCIL

MONICA CONYERS
PRESIDENT PRO-TEM

MEMORANDUM

TO: Honorable Jennifer Granholm
Governor, State of Michigan

FROM: President Pro Tempore Monica Conyers

DATE: May 27, 2008

SUBJECT: A Petition by Detroit City Council Members, Opposing Removal

I hope that this correspondence find you and your family in good health and good spirits.

Enclosed please find a Memorandum executed by several members of the Detroit City Council objecting to removal proceedings being initiated against Mayor Kwame Kilpatrick.

The Memorandum outlines the reasons why we voted NO on this resolution when it was presented to City Council, and more accurately summarizes the facts elucidated during the Hearings by those witnesses involved in the negotiation of the Brown/Nelthrope/Harris settlement.

We would request that you review this Memorandum thoroughly and at your earliest convenience, as this matter is critically important to our city and our state.

If you have any questions please do not hesitate to contact me at (313) 224-4530.

Coleman A. Young Municipal Center 2 Woodward Ave., Suite 1340 Detroit, Michigan 48226
(313) 224-4530 Fax (313) 224-2011

STATE OF MICHIGAN
OFFICE OF GOVERNOR JENNIFER GRANHOLM

Now Comes the Undersigned:

DETROIT CITY COUNCIL MEMBERS WHO STATE AS FOLLOWS:

REMOVAL AND FORFEITURE RESOLUTIONS LACK MERIT (REV.)

I. PRELIMINARY STATEMENT

Eight months ago, City Council overwhelmingly approved (8-1) a settlement of the Brown/ Nelthrope /Harris cases. City Council's action was based on the unanimous recommendation of the Internal Operations Committee, which is the City Council Committee charged with the responsibility for reviewing and approving the settlement of all litigation instituted against the city. Council Member Kwame Kenyatta chairs the Internal Operations Committee.

The same legal counsel, Atty. Stefani, represented all the plaintiffs, Brown, Nelthrope and Harris. Although all three cases were filed in 2003, in fall 2007, the Brown and Nelthrope cases went to trial prior to the Harris case. Harris' lawsuit was seeking $4M.

The petition before the Governor and the issues examined by City Council revolve around the circumstances surrounding the authorization by City Council of a settlement in the amount of $7.9M dollars to Brown and Nelthrope, and $400,000 dollars to Harris.

On the date City Council approved the settlements, the city *owed* Brown/Nelthrope $9.4M, which included the judgment of $6.5M, plus attorney's fees and litigation costs. Harris' lawsuit for $4M was scheduled for trial. Plaintiff's counsel had requested $1.9M to settle Harris, and the Brown/Nelthrope judgment was accumulating interest at $1,000 per day.

On the afternoon of October 17, 2007, a court ordered facilitation was conducted regarding Plaintiff's legal counsel's request for $1M in statutory attorneys fees under the Whistle Blowers Act with respect to the Brown/Nelthrope jury verdict. At the facilitation, plaintiff's counsel stated that if the City would immediately settle Brown/Nelthrope for $7.9M (which included the requested attorneys fee), he would "throw in Harris" for $400,000. Plaintiff's counsel also stated that he was prepared to file a motion to compel payment of the requested attorney's fee, which contained references

to the text messages. The text messages had been subpoenaed during trial, but were unavailable and had not been turned over to the court or the parties.

In response to plaintiff counsel's offer, of a "global settlement" of all three cases, the city attorneys appropriately and immediately obtained authority to settle Brown for $7.9M and Harris for $400,000, which amounted to ten cents on the dollar.

City Council Internal Operations Committee Chairman, Council Member Kenyatta stated during the Hearings that he was advised of a tentative settlement by the Corporation Counsel at approximately 5:00 PM on October 17, 2007 during the facilitation. Council Member Kenyatta directed the Corporation Counsel to prepare the settlement memorandum *immediately*, and present it to him by 9:00 AM the following morning. **Furthermore, Council Member Kenyatta also stated to the Corporation Counsel, "that City Council would not even consider an appeal, so do not ask".** (Apparently, this statement was in response to the Mayor's "puffing" statement to the media, post judgment, that he was going to appeal the jury verdict.)

On October 18, 2007, the Committee unanimously approved the Settlement Memorandum and made no comments and asked no questions of Assistant Corporation Counsel Valerie Osumaunde, lead attorney and head of the Law Department Employment Litigation Department who was in attendance for that purpose. The full City Council approved the settlement at the Formal Session on October 23, 2007, (8-1), with only one nay vote, also without comment or any questions to corporation counsel.

Based on the facts, the global settlement of the three high profile cases was undisputedly in the best interests of the city financially. Brown/Nelthrope were settled for $1.5M *less than* what was owed. Harris was settled for $3.6M *less than* the Law Department's projected liability, and $1.5M *less than* plaintiff's settlement demand.

According to all the witnesses, neither the final drafts of the confidentiality agreement nor the settlement agreement had been prepared on October 18, 2008, the day Council Member Kenyatta and the Internal Operations Committee approved the settlement. Nor were these documents prepared on October 23, 2007, the day that City Council passed resolutions authorizing the settlements and the drawing of checks.

So how could you "intentionally deceive" the City Council about a settlement agreement and confidentiality agreement which were being negotiated and didn't exist in final form when City Council voted its approval?

Keep in mind that these cases had received extensive media coverage and the text message questions had been argued in court. The press reports at the time reflect the sentiments expressed by various City Council Members to the media regarding the case. Council wanted the matter over! This was the driving force for City Council's approval of the settlement and the confidentiality agreement had no impact on this sentiment, or on the amount of the case settlement. The settlement was a good settlement.

All the witnesses testified that their reasons for approving the settlement were motivated by the same factors, and that they viewed the text messages, (revealed after the judgment was entered and final payment negotiations commenced), *embarrassing*, but not a reason to settle or pay the plaintiffs more money. This is verified by the fact that the negotiations resulted in less money being paid to the plaintiffs than what was owed. In this regard, Mr. Goodman's conclusions and interpretations, have no basis in any of the testimony or the facts.

II. CITY COUNCIL CASE SETTLEMENT PROTOCOL

The settlement of these three cases was handled in accordance with all of the city's existing case settlement protocols. City Council authorizes the settlement of litigation by a memorandum setting forth the legal grounds for settlement and the proposed settlement figure. If requested, a closed session can be called by City council for "clarification of any legal issues or questions". *No closed session was called by City Council and despite the presence of trial counsel, no questions were asked or comments made by any member of Council.*

In point of fact, City Council authorizes the settlement of hundreds of lawsuits annually, for millions of dollars, pursuant to settlement memoranda presented to the Internal Operations Committee. The Settlement Memorandum in the Brown/Nelthrope/Harris case is attached. (See Attachment 1). Once approved by the committee, a simple resolution approving the settlement is forwarded to the full Council. (See Attachment 2). This is City Council's case settlement protocol, currently and at the time these settlements were approved.

City Council never approves the *actual* settlement documents signed by the parties, which include releases, payment terms, confidentiality agreements, etc. The actual settlement documents are always prepared days and even weeks after Council *authorizes* the case to be settled for the *dollar figure* stated in the Settlement Memorandum. That is what happened in this case. The actual settlement documents, including the confidentiality agreement, were dated November 1, 2007 and actually signed in December by the parties and their counsel, six weeks after City Council's authorization of the settlement.

Contrary to the removal and forfeiture resolutions, stating that City Council did *not* give "informed consent", City Council gave the same "informed consent" to this settlement that it gives in the hundreds of case settlements it approves annually.

In our opinion, there has been no violation of the Charter, and an examination of the record of our hearings did *not* establish the elements of the charges set forth in the Resolutions.

III. NO INTENTIONAL DECEPTION OF CITY COUNCIL

In our Hearings, not a single witness testified that *they* had any intent, or that there was any *intent* by the Mayor or anyone in the Administration, or any intent by any attorney to deceive City Council. This is a "fiction", which is self-serving for some, and that is incorporated into the report, with no factual basis whatsoever.
Nor was there any meeting, correspondence, conversation etc. disclosed during the hearings from which this could be reasonably inferred.

Every witness testified that no one wanted the text messages to be made public, because they involved the executive deliberative process, labor negotiations and embarrassing personal comments about various persons, and personal communications from the Mayor. The fact of the matter is that the parties did not want the text messages to become public or to be provided to anyone because of the privacy issues. Steps were taken to keep the information confidential from the universe, i.e., safe deposit boxes etc.

There was no conspiracy to keep the information from City Council. There was simply no need in the view of the persons directly involved, to disclose embarrassing information, which was discovered *after* the trial and *after* the jury verdict. Nor was there any duty to do so, in light of the City Council's established past practice. Only if additional compensation was to be paid the plaintiffs in any form and it was not reported to City Council, would this allegation have merit.

City Council was not even mentioned by any of the witnesses, except with respect to obtaining the customary approval referenced above, and the necessity of obtaining new approvals if the authorized dollar figure changed. City Council is never provided the final settlement or case file documentation or information regarding the releases, confidentiality provisions, payment terms or other language. That was the case with respect to this settlement and that is the case today.

IV. SEPARATE CONFIDENTIALITY AGREEMENT

What was disclosed by the *testimony of all the witnesses* was that there were four principal reasons that the Confidentiality Agreement was executed separately from the actual lawsuit settlement agreement.

First, plaintiff's counsel testified that he did not want to be sued for revealing information confidential to Ms. Beatty. Secondly, there was an FOIA request from the newspapers, which would make the confidentiality agreement public if it were not a document separate from the settlement agreement setting forth the financial terms of the settlement. Thirdly, because Ms. Beatty was not a party to the Brown/Nelthrope/Harris litigation, she could not be a signatory to that document; a separate document would be necessary. Fourthly, private information concerning Brown and Nelthrope revealed through the discovery process would be maintained confidentially. **For all these reasons, it was necessary to have a separate agreement.**

Also the city attorneys testified that there had been at least one previous occasion where the settlement agreement and the confidentiality agreement were separated. They also stated that confidentiality agreements were very common in employment litigation and in litigation involving the City Council members. Furthermore, there is no requirement that the confidentiality provisions be included in the settlement agreement.

V. THE FINDINGS AND PETITION REFLECT BIAS AND SELF-INTEREST

The conclusions reached in Mr. Goodman's report and in the Petition filed with the Governor's Office, are the same ones he articulated on March 14, 2007 during a Council meeting and again in a March 25, 2008 Memorandum to Council, *before* the hearings were even held! The "facts" reflected in the Report were the forgone conclusions of Special Counsel. As a result, the Report reflects a highly selective, pre-determined and biased point of view and omits all material facts revealed during the hearings, which do not substantiate the conclusions reached.

Mr. Goodman's report also fails to disclose the fact that he recently settled a case *against* the city requiring the payment of **$2.5M** in public funds. The current settlement protocol referenced above which he now says, "deceives City Counsel", is precisely the one from which he and his client benefited.

Mr. Goodman, as special counsel, together with President Cockrel, the person that becomes Mayor in the Mayor's absence, jointly orchestrated every aspect of the hearings. Now Mr. Goodman wants to change all the rules regarding settlements, as he currently anticipates upwards of **$500,000 dollars** of public funds for this assignment ($200,000+ is payable currently), and he has generated, through staging and otherwise, millions in free publicity for himself and his firm. More than **$1M** in City Council Member and staff time has been spent essentially addressing the "text messages" which are the subject of criminal proceedings.

VI. THERE ARE NO CHARTER VIOLATIONS

Section 2-106, Prohibiting the Use of Public Office for Private Gain, is not applicable to this situation. This provision requires actual private gain. There is no question that the Mayor received no private financial gain as a result of the settlement of a lawsuit against the city and him, in his official capacity. **This is particularly true when the settlement was insisted upon by City Council, both pre and post judgment and was approved by City Council. Clearly, there was no tangible gain to the Mayor, nor has any been alleged.** Assuming he benefited from keeping his personal information private, that is not the legal standard to establish "private gain" under the Charter. Furthermore, all litigation settlements provide the benefit of confidentiality to the litigants.

Sec.6-403 Civil Litigation. This provision is a **directive to the Law Department**, not to settle a lawsuit without Council approval. It is not a standard for City Council review of settlement memorandums. The protocol established by City Council for case settlement was strictly adhered to in this case. City Council gave the same consent in this case that it gives in all cases. In point of fact, because of the daily media coverage, City Council had greater knowledge of this case than for example, of the case settled by Mr. Goodman for $2.5M.

Section 8-303 Penalties for Violation. This is a **budgetary provision**, establishing the fact that city employees cannot authorize the payment of city funds except as their job duties allow. This provision was designed to thwart **embezzlement** and make it clear that the employee would have to pay back funds expended on an unauthorized basis. No city funds were paid out or any obligation incurred except by the city directly to the plaintiffs in a lawsuit. The Mayor did not authorize the payment of the city funds; City Council and the Finance Department authorized the payment.

In conclusion, because there is an on-going criminal process, there is no need for the Office of the Governor to get involved at this time. It prejudices the criminal proceedings and the city of Detroit is best served by City Council taking care of city business. **For this reason and those stated above, we voted no on the Resolutions.**

Members of City Council and department heads have been indicted in the past and were presumed innocent until proven guilty. Neither City Council nor the sitting mayor ever asked that they resign or hired special counsel to "investigate the investigation", or alleged violations of the Charter, or requested that the Office of the Governor intervene.

City Council has established a dangerous precedent. A simple majority, not even a super majority, is all that is necessary to initiate removal and forfeiture of office proceedings against an elected official in Detroit.

Hearings, which presented only one side of the issue, with no cross-examination, no opposing experts, etc., and a report and factual conclusions that reflect bias, *rejects* sound legal case settlement strategies that *save* money, and that represents half-truths, lack an appearance of fairness and do not constitute sufficient grounds for action by the your Honorable Office.

Due process is important to all of us. On a point of personal privilege, even though **President Pro-Tempore Monica Conyers** would gain politically and become President of City Council if the Mayor stepped down, she does <u>not</u> support the proselytizing of the City Charter for headlines or for personal gain.

Council Members Alberta Tinsley Talabi, Council Member Barbara Rose Collins and Council Member Martha Reeves join in this Petition.

We the Undersigned members of the Detroit City Council respectfully request that the Governor of the State of Michigan not remove the Honorable Kwame Malik Kilpatrick from his office as the mayor of the City of Detroit.

Dated May 23, 2008

Monica Conyers Council President Pro-Tempore Monica Conyers

Barbara-Rose Collins Council Member Barbara Rose Collins

Martha Reeves Council Member Martha Reeves

_____ Council Member Alberta Tinsley Talabi

MATERIAL FACTS (NOT OPINIONS) REVEALED AT THE HEARING

PART ONE: Case Facts (Brown /Nelthrope/Harris)

The Testimony at the Hearings revealed the following Facts:

1. Employment-labor cases were filed by Brown (wrongful termination) and Nelthrope (demotion) under the Whistle Blower Act in 2003.
2. The City sought to have the case *dismissed* and alleged that the Whistleblower Act did not apply to their employment situation. The issue was appealed to the Court of Appeals. The court determined that the Whistle Blowers Act *did* apply to plaintiff's claims and the case was scheduled for trial.
3. Harris files a wrongful termination lawsuit alleging many of the same facts in 2003.
4. A jury trial in Brown and Nelthrope was held in fall 2007, four years after the case was filed.
5. After a 10-day trial, the jury returned a Verdict for the Plaintiffs of $6.5 M.
6. **The value of the verdict on 10/17/08 (the date the facilitation was conducted on the issue of plaintiffs counsel's request for $1M in attorneys fees) was approximately $9.4M (judgment, attorneys fees, costs, etc). *This is what the city owed*. This judgment was accumulating interest @ $1,000/day!**

7. At the facilitation:
   a.) In support of his $1M attorney fee demand, Plaintiff's counsel said: he had text messages allegedly refuting sworn testimony; that he was going to file a *Supplemental Motion for Attorneys Fees* opposing any reduction in the $1M attorney's fee demand; and that he would "throw in the Harris case", and agree to a "global settlement of all three cases *including Harris*", which all defense counsel agreed was highly desirable.
   b.) The settlement for all three cases was $7.9 M dollars for Brown and Nelthrope, and $400,000 dollars for Harris.
   c.) If Brown/Nelthrope was appealed, the verdict would be worth $12M.
   d.) No meritorious appeal able issues were identified by the defense (after the jury tampering allegation was not substantiated).

AS OF THE DATE OF SETTLEMENT, THE CITY OWED APPROXIMATELY $9.4 M TO BROWN AND NELTHROPE AND THEIR COUNSEL, AND HAD BEEN PRESENTED WITH A SETTLEMENT OFFER FOR HARRIS IN THE AMOUNT OF $1.9 M. (The City projected the Harris verdict to be approx. $4M).

Conclusion - the settlement was a good deal for the City according to all the attorneys, saving the city 1M + on Brown and Nelthrope, and 1.5M on Harris. Total Savings on 10/17/07 = 2.5M minimally, 5M if Harris went to trial, 10M if the city appealed!

PART TWO: Approval of Settlement Agreement

1. The Brown /Nelthrope/ Harris Settlement Agreement executed by the parties was the standard form, with the exception of the confidentiality agreement being a separate agreement and the manner in which the confidential information was to be handled (safe deposit box).
2. This information was handled this way because the text messages in addition to containing information which involvede the executive deliberative process, also contained personal comments made by the Mayor. No witness testified that it was anyone's intent to deceive City Council.
3. The rationale for the separate confidentiality agreement regarding the private information of Brown/ Nelthrope/ Kwame Kilpatrick & Beatty was that Atty. Stefani did not want to be sued by Beatty.
   - In order to allay Atty. Stefani's concerns, the confidentiality agreement was *separated* so that Beatty could sign it. She could not sign the settlement agreement because she was not a party to that litigation.
   - The confidentiality agreement did reflect the terms of the settlement agreement and provided reimbursement to the city (liquidated damages) payable to the city if the confidentiality terms were breached. This is a standard provision in confidentiality agreements.
   - John Johnson, Corporation Counsel, said he was principally motivated to sign the confidentiality agreement because "the text messages would be embarrassing to the city although he never saw them".
   - **Valerie Colbert-Osumuede Esq.,** (Chief Litigator for 19 years in the city's Law Department, head of the Employment Litigation Section, and lead counsel for the City), **Wilson Copeland Esq.** (Counsel to Mayor Kilpatrick), and **Samuel McCargo Esq.** (Counsel to Mayor Kilpatrick), all testified at the hearings they were motivated to approve the settlement because:
     1. The judgment was earning $1, 000/day in interest, and already exceeded $9.4M dollars.
     2. It was a "good deal". The City's legal exposure if there was an appeal could be $12 million dollars for Brown/Nelthrope, and $4 million dollars for Harris; *$16 million dollars in total outside exposure.*
     3. There were no readily appealable issues identified, and that Atty. Stefani's claim for $1M in attorney fees was justified, based on the records he submitted.
     4. Pressure by Council Member Kenyatta and others to settle now.
     5. Council Member Kenyatta had told John Johnson that he was not going to authorize payment for an appeal.
     6. The proposed resolution would result in a "global settlement of three high profile cases".

PART THREE: No Intent to Deceive City Council

There was no witness testimony that there was any intent to deceive City Council. This claim was baseless and unsubstantiated, despite the fact that each witness was asked the question at least 10 times by Mr. Goodman. All the witnesses testified that because the dollar amount was negotiated and less than the city's exposure, there was no need to bring the settlement agreement back when the confidentiality agreement was signed, because the **material terms of the settlement (the dollar figure)** did not change.

Although the question was asked repeatedly, it is questionable whether the *factors*, which motivated each defendant or each Defendant's counsel to sign off, were even relevant, provided the deal was a good one for the city.There were multiple defendants in this case. It is not necessary when entering into a settlement for all parties to be *motivated* by the same factors in order to reach an agreement or even that they all agree to the settlement at the same time.

By analogy, a husband may be motivated to buy a house because of the land, the wife by the kitchen. It does not obfuscate the sale because the parties have different, personal motivations. The question is whether it was a good deal.

Similarly, in this circumstance assuming arguendo, that Mayor Kilpatrick was motivated by the text messages. Does it matter that City Council's *motivation* to approve the settlement was different? City Council was not deceived. Deception requires actual intent. As was pointed out, there were no facts presented from which the "intent" to deceive could be surmised. City Council was motivated to get the matter behind them. The jury verdict had been an undesirable result.

There were two alternatives for the City's lawyers, settle for *less than* what was owed or *appeal*. The city appropriately and rightly settled for far less than what was owed.

PART FOUR: Witnesses

- Each witness's testimony will be succinctly summarized, as it relates to the principal facts only and provided under separate cover.

PART FIVE: Weaknesses and Internal Controls in the Law Department

- Weaknesses in internal controls re:
    1. Potential Conflicts of Interest
    2. Possibly, retention of outside counsel

These recommendations and the discussion of the "experts" on legal ethics identified by Mr. Goodman, who supported his thesis, are not relevant to this inquiry.

ATTACHMENT #1

LAWSUIT SETTLEMENT MEMORANDUM

PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

GARY BROWN and HAROLD NELTHROPE v CITY OF DETROIT and MAYOR KWAME KILPATRICK

WAYNE COUNTY CIRCUIT COURT CASE NUMBER: 03-317557-NZ

PLAINTIFF'S COUNSEL: MICHAEL STEFANI

DEFENDANTS' COUNSEL: VALERIE A. COLBERT-OSAMUEDE
SAMUEL MCARGO: LEWIS & MUNDAY, P.C.
WILSON COPELAND: GRIER & COPELAND, P.C.

WALTER HARRIS v JERRY OLIVER, MAYOR KWAME KILPATRICK and THE CITY OF DETROIT

WAYNE COUNTY CIRCUIT COURT CASE NUMBER: 03-337670-NZ

PLAINTIFF'S COUNSEL: MICHAEL STEFANI

DEFENDANTS' COUNSEL: VALERIE A. COLBERT-OSAMUEDE

CLAIMANTS' NAME: GARY BROWN AND HAROLD NELTHROPE
WALTER HARRIS

Plaintiffs Brown and Neltthrope alleged a violation of the Whistle Blower Protection Act (WPA). Briefly, Brown was Deputy Chief of the Professional Accountability Bureau (PAB).In May of 2003, Brown was removed from his appointment as Deputy Chief by Mayor Kwame Kilpatrick. Brown later alleged that he was removed because he was investigating allegations of wrongdoing by the members of the Executive Protection Unit (EPU) as well as a rumored party at the Manoogian Mansion. After removal from appointment, Brown resigned from the Detroit Police Department after twenty-five years of service and filed this lawsuit.

Nelthrope was a police officer and former member of the EPU. It was Nelthrope who took the allegations of wrongdoing by EPU members to Internal Affairs. After Brown was removed from appointment, a memorandum was released to the public, by the City of Detroit, which named Nelthrope as the officer who had gone to Internal Affairs. Nelthrope alleged that after his name was released, he no longer felt safe working for the Detroit Police Department (DPD). He claimed severe emotional distress. Harris was granted a Duty Disability Pension in 2004.

This matter went to trial on August 20, 2007 and concluded on September 11, 2007. The Jury returned an award to the Plaintiffs of $ 6.5 million dollars. As of September 11, 2007 with interest this amount was approximately $7.5 million dollars. Plaintiffs have requested approximately $1 million dollars in attorney fees and costs. Additionally, the Plaintiffs seek mediation sanctions.

On October 17, 2007, the parties were ordered to Facilitation to determine attorney fees. At that time, the Plaintiffs expressed an interest to resolve the entire matter. After hours of negotiations, the Plaintiffs are willing to settle this matter in the amount of $8 million dollars subject to City Council approval.

EVALUATION/LIABILITY

The Plaintiffs already have a Judgment against the Defendants in the amount of 6.5 million dollars. Interest on this Judgment accrues back to the date of the filing of the lawsuit in 2003 and continues until the Judgment is satisfied. While the Defendants believe that there are viable issues that may be appealed in this case, however should Defendants lose on appeal the City would face payment of a Judgment of over $12 million dollars. To avoid the uncertainty of appeal, it is recommended that the Brown/Nelthrope litigation settle in the amount of $ 8 million dollars.

WALTER HARRIS V CITY OF DETROIT ET.AL.

Harris is a former police officer and member of the EPU. On May 5, 2003, Plaintiff transferred from the EPU to the 7th Precinct. After his transfer, Plaintiff was summoned by the Michigan State Police to answer questions regarding the allegations made by Nelthrope. Plaintiff appeared and responded to the questions.

Plaintiff continued to work at the 7th Precinct for approximately five months until he went out on medical leave on October 10, 2003 and later resigned his employment with the DPD on December 16, 2003.

Harris alleges that the Mayor engaged in philandering activities. Harris claims to have been a witness to the Mayor's infidelity and that he was used to facilitate such activities. Plaintiff claims that after he gave testimony to the Michigan State Police, that he was targeted by both the Mayor and the Chief of Police. Specifically he alleges that he was falsely accused by citizens and made to endure unnecessary investigations into these false allegations. Plaintiff claims that these "complaints" were orchestrated by the Mayor and the Jerry Oliver in retaliation for him giving a statement to the Michigan State Police. Harris was exonerated on each of the citizen complaints.

Harris claims that he feared for his safety s well as for the safety of his family. Upon resigning from the DPD, Harris moved his family out of state. Harris filed his lawsuit in November 2003, alleging violation of the Whistle Blower Protection Act and Wrong Discharge.

This case has received significant media attention. In fact, Harris testified in the Brown/Nelthrope trial. Harris' allegations are inflammatory and salacious and will no doubt be highly prejudicial against the Defendants should this matter proceed to trial. Given the verdict in the Brown/Nelthrope matter, as well as the fact that Harris' complaints flow from some of the same facts and circumstances, it is recommended that this matter be settled.

EVALUATION AND LIABILITY

On October 5, 2007, Plaintiff demanded $ 1.9 million dollars to settle this matter. After further discussions, Plaintiff demanded $ 600,000 dollars as a bottom line settlement figure. During the facilitation of the Brown/Nelthrope matter, Plaintiff expressed a desire to settle the Harris litigation in the amount of $ 400,000 dollars.

Defendants have a Motion for Summary Disposition pending. While it is likely that the Wrongful Discharge Claim will be dismissed it is highly unlikely that the entire lawsuit will be dismissed. It is also likely, that Jerry Oliver will be dismissed as a defendant. But, it is unlikely that the Mayor and/ or the City of Detroit will be dismissed.

RECOMMENDED SETTLEMENT

This case mediated against the Defendants for $100,000 dollars. The Defendants rejected mediation. Ultimately, the evidence in this case presents questions of fact for a jury. The Defendants had difficulty in seating an impartial jury in the Brown/Nelthrope litigation. It is unlikely that this fact will change in the Harris litigation. It is time for all of these cases to be concluded. It is the Law Department's considered opinion that it is in the best interest of the City for the Harris matter to be resolved in the amount of Four Hundred Thousand Dollars ($400,000.00)

TOTAL SETTLEMENT

$8,000,000. (Brown/Nelthrope)

$ 400, 000. (Harris)

$8,400,000.00

CITY OF DETROIT
LAW DEPARTMENT

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October 18, 2007

HONORABLE CITY COUNCIL

RE: WALTER HARRIS v CITY OF DETROIT, et al.
CASE NO. 03-337670 NZ

We have reviewed the above-captioned lawsuit, the facts and particulars of which are set forth in a confidential attorney-client privileged memorandum that is being separately hand-delivered to each member of your Honorable Body. From this review, it is our considered opinion that a settlement in the amount of FOUR HUNDRED THOUSAND DOLLARS AND 00/100 ($400,000.00) is in the best interests of the City of Detroit.

We, therefore, request authorization to settle this matter in the amount of FOUR HUNDRED THOUSAND DOLLARS AND 00/100 ($400,000.00) and that your Honorable Body authorize and direct the Finance Director to issue a draft in that amount payable to WALTER HARRIS AND MICHAEL STEFANI, his attorney, to be delivered upon receipt of properly executed releases and stipulations and orders of dismissal in Wayne County Circuit Court Case No. 03-337670 NZ as approved by the Law Department.

Respectfully submitted,

VALERIE A. COLBERT-OSAMUEDE
Chief Assistant Corporation Counsel

/mr

cc: Budget Department

APPROVED:

JOHN E. JOHNSON, JR.
CORPORATION COUNSEL

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RESOLUTION

BY COUNCIL MEMBER _____

RESOLVED, that a settlement of the above matter be and is hereby authorized in the amount of FOUR HUNDRED THOUSAND DOLLARS AND 00/100 ($400,000.00); and be it further

RESOLVED, that the Finance Director be and is hereby authorized and directed to draw a warrant upon the proper account in favor of WALTER HARRIS AND MICHAEL STEFANI, his attorney, in the amount of FOUR HUNDRED THOUSAND DOLLARS AND 00/100 ($400,000.00) in full payment of any and all claims which Plaintiffs may have by reason of alleged damages or injuries sustained as a result of all of the complaints contained in the Plaintiffs' Complaint in this matter, and that said amount be paid upon receipt of the properly executed Release and Settlement Agreement entered in Wayne County Circuit Court Case No. 03-337670 NZ as approved by the City Law Department.

APPROVED:

JOHN E. JOHNSON, JR.
CORPORATION COUNSEL

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ATTACHMENT # 2

Law Department

October 18, 2007

Honorable City Council:

Re: Gary A. Brown and Harold C. Nelthrope vs. City of Detroit, et al. Case No. 03-317557 NZ.

We have reviewed the above-captioned lawsuit, the facts and particulars of which are set forth in a confidential attorney-client privileged memorandum that is being separately hand-delivered to each member of your Honorable Body. From this review, it is our considered opinion that a settlement in the amount of Eight Million Dollars and 00/100 ($8,000,000.00) is in the best interest of the City of Detroit.

We, therefore, request authorization to settle this matter in the amount of Eight Million Dollars and 00/100 ($8,000,000.00) and that your Honorable Body authorize and direct the Finance Director to issue a draft in that amount payable to Gary A. Brown and Harold C. Nelthrope and Michael Stefani, their attorney, to be delivered upon receipt of properly executed releases and stipulations and orders of dismissal in Wayne County Circuit Court Case No. 03-317557 NZ as approved by the Law Department.

Respectfully submitted,

VALERIE A. COLBERT-OSAMUEDE
Chief Assistant
Corporation Counsel

Approved:

JOHN E. JOHNSON, JR.
Corporation Counsel

By Council Member Kenyatta:

Resolved, That settlement of the above matter be and is hereby authorized in the amount of Eight Million Dollars and 00/100 ($8,000,000.00); and be it further

Resolved, That the Finance Director be and is hereby authorized and directed to draw a warrant upon the proper account in favor of Gary A. Brown and Harold C. Nelthrope and Michael Stefani, their attorney, in the amount of Eight Million Dollars and 00/100 ($8,000,000.00) in full payment of any and all claims which Plaintiffs may have by reason of alleged damages or injuries sustained as a result of all of the complaints contained in the Plaintiffs' Complaint in this matter, and that said amount be paid upon receipt of properly executed Release and Settlement Agreement entered in Wayne County Circuit Court Case No. 03-317557 NZ as approved by the City Law Department.

Approved:

JOHN E. JOHNSON, JR.
Corporation Counsel

Adopted as follows:

Yeas — Council Members S. Cockrel, Collins, Jones, Kenyatta, Reeves, Tinsley-Talabi, Conyers, and President K. Cockrel, Jr. — 8.

Nays — Council Member Watson — 1.

*WAIVER OF RECONSIDERATION (No. 1) per motions before adjournment.