

# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

MEMO #

## COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Rafael A. Paz, Acting City Attorney 

DATE: March 17, 2021

SUBJECT: **City Attorney's Status Report**

LAWSUITS FILED BY OR AGAINST THE CITY OF MIAMI BEACH SINCE THE LAST REPORT:

1. **ANTHONY DAVID WHITE AND CHRISTINA MARIE WHITE V. LEXUS JADE GOODWIN, individually, HOLIDAY LIGHTING DESIGNS, INC. a Florida Corporation, THE CHRISTMAS KINGS, INC., a Foreign Corporation, ARTISTIC HOLIDAY DESIGNS, LLC, CITY OF MIAMI BEACH, AND LABOR RESOURCE MANAGEMENT, INC.** Case No. 2021-0003247 (Circuit Court of the 11<sup>th</sup> Judicial Circuit in and for Miami Dade County, Florida)

The City was served with this complaint on February 19, 2021. The complaint alleges that the City entered into a Professional Services Agreement with Defendant, Artistic Holiday Designs, LLC and that, on August 16, 2019, Mr. Anthony David White (Plaintiff), an employee of Artistic Holiday Designs, had completed the installation of lighting on the palm trees located along W 41st Street in Miami Beach, when he was struck by Defendant, Lexus Jade Goodwin, who was driving her vehicle under the influence of alcohol and crashed into Plaintiff, resulting in his right leg being amputated upon impact. Plaintiffs allege negligence and seek monetary damages from all Defendants. The City is in the process of answering the complaint and propounding discovery.

2. **MR JONES MANAGEMENT, LLC, d/b/a MR JONES MIAMI, a Florida limited liability v. CITY OF MIAMI BEACH, a political subdivision of the State of Florida, COUNTY OF MIAMI-DADE, a political subdivision of the State of Florida, DANIELLA LEVINE CAVA, as Mayor of Miami-Dade County in her official capacity, and RAUL AGUILA, as Interim City Manager of City of Miami Beach in his official capacity.** Case No. 21-CV-20834 (United States District Court for the Southern District of Florida).

On March 2, 2021, the Plaintiff filed the above-subject lawsuit against the City of Miami Beach; Miami-Dade County; Miami-Dade County Mayor Daniella Levine Cava; and Interim City Manager Raul Aguila. The Plaintiff is seeking to declare the City's and County's Emergency orders imposing a midnight curfew due to the on-going COVID-19 pandemic as unlawful under the Governor's Executive Order 20-244, and unconstitutional under both the U.S. and Florida Constitutions.

The Plaintiff is asserting five causes of action against all Defendants and five causes of action against the City and the Interim City Manager Aguila. The Plaintiff's causes of action against all Defendants are as follows: (1) express preemption; (2) implied preemption; (3) conflict of law; (4) ultra vires; and (5) preliminary and permanent injunctive relief.

The Plaintiff's causes of action against the City and the Interim City Manager Aguila are as follows: (1) violation of the right to free speech under the First Amendment; (2) violation of procedural Due Process; (3) violation of Equal Protection clause; (4) violation of right of privacy/right of free association under the Florida Constitution; and (5) violation of the right to assembly under the First Amendment.

Importantly, both the Third District Court of Appeals and the United States District Court for the Southern District of Florida have concluded that Miami-Dade County's curfew order is lawful and is not preempted by Executive Order 20-244. Most recently, on February 10, 2021, the U.S. District Court for the Southern District of Florida dismissed nearly identical claims in *7020 Entertainment, LLC. et al v. Miami-Dade County*, Case No. 20-25138-CIV-Scola. Accordingly, the City Attorney's Office is currently preparing to file a Motion to Dismiss and will otherwise defend the matter to the fullest extent of the law.

RAP/lr