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July 1, 2016

Honorable Common Council
City Hall, Room 205

Re: Proposed settlement of adversary proceeding entitled
Essie M. Phifer v. City of Milwaukee, U.S.D.C.
Adversary No. 15-02554.

Dear Honorable Council Members:

Enclosed please find a proposed resolution for authority to settle an adversary proceeding entitled *Essie M. Phifer v. City of Milwaukee*, U.S.D.C., Adversary No. 15-02554. We ask that it be introduced and referred to the Committee on Judiciary and Legislation and scheduled for closed and open sessions to discuss same.

The above-referenced lawsuit was commenced by a debtor in a Chapter 13 bankruptcy, *Essie Phifer*. Ms. Phifer filed for Chapter 13 bankruptcy with the United States Bankruptcy Court for the Eastern District of Wisconsin in 2009 with a plan filed on October 8, 2009 claiming the full \$39,332.92 in outstanding property taxes (with 12% interest for a total of \$53,103.78) as a secured debt. The City Treasurer filed a Proof of Claim on November 19, 2009 that states a secured claim of \$23,500 and an unsecured claim of \$15,832.92. On December 16, 2009, Ms. Phifer filed an Amended Chapter 13 plan that included only the \$23,500 (plus interest) as secured and the balance as unsecured subject to full discharge upon payment of all of her plan payments. This plan was approved by the bankruptcy court.

Upon completion of her plan requirements, the bankruptcy court provided a Discharge of Debtor After Completion of Chapter 13 Plan to the City on June 25, 2015. The discharge letter states, "A creditor who violates this order can be required to pay damages and attorney's fees to the debtor." On September 9, 2015,

the Treasurer's Office proceeded with noticing Ms. Phifer that her property was included in an *in rem* foreclosure batch file.

On December 4, 2015, Ms. Phifer filed an adversary proceeding within her bankruptcy case, including a claim for attorney's fees and for punitive damages for emotional distress, as well an injunction to cease the foreclosure process alleging that the *in rem* foreclosure was unlawfully based on discharged property taxes. The City responded with a motion to dismiss. In an order dated March 11, 2016, the bankruptcy court denied the motion to dismiss and found the filing of an *in rem* foreclosure violated the court's discharge order.

Because settlement in this matter is deemed appropriate, we recommend a payment in the proposed amount of \$7,133.00 for attorney's fees and \$500.00 to Ms. Phifer for her alleged damages for a total of \$7,633.00 in exchange for a dismissal with prejudice of the adversary proceeding. Because Ms. Phifer has an outstanding balance of property taxes owed, the parties have agreed that the \$500.00 will be payable to the City of Milwaukee and applied as an offset of her past due real estate taxes to be applied to her oldest delinquent balance.

Very truly yours,

GRANT F. LANGLEY
City Attorney



NICHOLAS P. DESIATO
Assistant City Attorney

Enclosures
229953/1060-2015-2722