

IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

JAY R. CHERNOFF, an individual and in  
his capacity as City Commissioner,

CASE NO.: 2023-2633-CA-01

Plaintiff,

v.

CITY OF NORTH MIAMI BEACH;  
COMMISSIONER MICHAEL JOSEPH; and  
COMMISSIONER MCKENZIE  
FLEURIMOND

Defendants.

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**COMMISSIONER MICHAEL JOSEPH AND COMMISSIONER MCKENZIE  
FLEURIMOND'S COUNTER-CLAIM FOR DECLARATORY RELIEF**

Pursuant to Florida Rule of Civil Procedure 1.170(g), Commissioner Michael Joseph (“Commissioner Joseph”) and Commissioner McKenzie Fleurimond (“Commissioner Fleurimond”) in their official capacities (together, “Counter-Plaintiffs”), hereby file this Counter-Claim against Plaintiff, Jay R. Chernoff (“Chernoff”) and Defendant City of North Miami (the “City”) for Declaratory Relief.

**JURISDICTION**

1. Defendant and Counter-Plaintiff, Commissioner Joseph is a resident of the City of North Miami Beach where he currently serves as a City Commissioner and Vice Mayor.
2. Defendant and Counter-Plaintiff, Commissioner Fleurimond is a resident of the City of North Miami Beach where he currently serves as a City Commissioner.

3. Plaintiff and Counter-Defendant, Chernoff is a resident of the City of North Miami Beach where he currently serves as a City Commissioner.

### **FACTUAL AND PROCEDURAL BACKGROUND**

4. In the underlying action, Chernoff has sued Commissioner Joseph, Commissioner McKenzie Fleurimond, and the City seeking declaratory and injunctive relief from the Court. Through this action, Chernoff seeks to invoke the Court's authority to remove Counter-Plaintiffs from their duly elected office based on a provision of the City Charter that creates a vacancy in the seat of any commissioner who fails to attend a meeting of the City Commission for 120 days.

5. The backdrop of Chernoff's action is a recently-resolved dispute between the City and Anthony F. DeFillipo, whose qualification to serve as mayor of the City was challenged due to his lack of residency. Commissioner Joseph and Commissioner Fleurimond had not been attending commission meetings until the issue of DeFillipo's residency status—and therefore his right to serve as mayor and preside over commission meetings—was resolved.

6. Commissioner Joseph was elected to the City Commission in 2018. Following his election, Commissioner Joseph regularly attended City Commission meetings, including a meeting held on October 18, 2022. No City Commission meeting was held in November 2022 due to the election that month.

7. The issue of DeFillipo's failure to reside in the City—and consequent disqualification from public office in the City—was publicly raised for the first time at a City Commission meeting held on December 20, 2022. Commissioner Joseph did not attend this meeting because he was sick with strep throat that he had contracted through his young son.

8. A complaint with the Miami-Dade Commission on Ethics & Public Trust had been filed against DeFillipo and, consistent with City precedent, the City Attorney then procured a legal

memorandum on the residency issue. The memorandum concluded that DeFillipo's failure to continuously remain a resident of the City created an automatic vacancy pursuant to the City Charter. After DeFillipo's non-residency was exposed at the December meeting, in an act of self-preservation, he moved the commission to terminate the City Attorney. Commissioner Fleurimond, concerned both about DeFillipo's qualifications to preside over Commission meetings and his conflict of interest in the termination of the City Attorney, left the dais before the vote was held.

9. On January 17, 2023, DeFillipo filed suit against the City for declaratory judgment and injunctive relief seeking the court's permission to call an emergency meeting without quorum so that he could fire the City Attorney and avoid disqualification. *See DeFillipo Complaint*, attached as **Exhibit A**. On January 20, 2023, the City filed a counterclaim against DeFillipo seeking a declaration that DeFillipo forfeited the office of mayor and enjoining him from exercising any mayoral authority. *See City Counterclaim*, attached as **Exhibit B**.

10. While that dispute was being litigated, in retaliation against Counter-Plaintiffs for supporting the City's position against DeFillipo, Chernoff filed the underlying action. He alleges that from October 18, 2022 to February 15, 2023, a period of 120 days, Commissioner Joseph did not attend a meeting of the City Commission. The complaint cites to Section 2.5 of the Charter of the City of North Miami Beach ("Charter"), which provides, in pertinent part, that "[i]f any Commissioner has failed to attend a meeting of the City Commission for a period of one hundred and twenty (120) days, the seat of such Commissioner shall automatically become vacant."

11. Commissioner Joseph, however, did not fail to attend *any* meeting of the City Commission until December 20, 2022. Since there was no meeting of the City Commission from October 19, 2022 (the first day after a meeting he attended) to December 19, 2022 (the day before

the first meeting he failed to attend), Commissioner Joseph had not “failed to attend” any meetings of the Commission in any sense. It is plainly illogical to contend that one can fail to attend an event that has not occurred. Chernoff’s politically motivated misinterpretation and misapplication of the Charter has no basis in reason, in law, or in precedent of the Commission.

12. In an amended complaint filed on March 13, 2023, Chernoff added Commissioner Fleurimond to the action and sought his removal based on the same section of the Charter. Chernoff claims that, despite Commissioner Fleurimond’s attendance at the Commission meeting on December 20, 2022, this attendance should not count because he left the meeting before a final vote on the City Attorney’s termination. Therefore, using the same flawed application of the Charter provision, he seeks summary removal of Commissioner Fleurimond for failure to attend a meeting from October 18, 2022 to the March 13, 2023.

13. Both Counter-Plaintiffs attended a City Commission workshop meeting on February 15, 2023, 119 days after their attendance at the October 18, 2022 meeting.

14. Both Counter-Plaintiffs also attended the regular City Commission meetings on March 21, 2023 and April 18, 2023.

15. Counter-Plaintiffs have since learned of Chernoff and DeFillipo’s intent to hold a vote at an upcoming City Commission meeting to vacate Counter-Plaintiffs’ respective seats on the Commission before this Court can adjudicate the issue. Presumably, Chernoff recognizes that the flawed argument underlying his declaratory action is unlikely to prevail before the Court, so he seeks to preempt the Court’s action and undermine its authority through the City Commission.

16. Counter-Plaintiffs have therefore been compelled to bring this Counter-Claim against Chernoff and the City to preserve their—and, indeed, the public’s—right to have this controversy fairly adjudicated by the Court.

**DECLARATORY RELIEF AGAINST JAY R. CHERNOFF AND THE CITY**

17. Counter-Plaintiffs reallege and incorporate paragraphs 1 through 16 above as if fully set forth herein.

18. This is an action for declaratory judgment filed pursuant to Fla. Stat. § 86.011 seeking a declaration of the rights of the parties under the City Charter.

19. The City Charter provides, in pertinent part, that “[i]f any Commissioner has failed to attend a meeting of the City Commission for a period of one hundred and twenty (120) days, the seat of such Commissioner shall automatically become vacant.”

20. Commissioner Joseph attended the City Commission meeting on October 18, 2022. There was no meeting held in November of 2022. Then, he did not attend a City Commission meeting on December 20, 2022 due to illness. In 2023, he did not attend the regular City Commission meetings on January 17th and February 21st due to a position *then taken by the City itself* that “DeFillipo does not currently hold the office of mayor but is actively holding himself out as mayor and purporting to conduct City business in that capacity.” *See* Ex. B, at ¶ 63. According to the City, DeFillipo did not have the right to preside over such meetings. Irrespective of Commissioner Joseph’s justifiable actions over this time, the undeniable truth of the matter is that he did not “fail to attend a meeting of the City Commission” until December 20, 2022, and then attended a City Commission workshop meeting on February 15, 2023 and a regular meeting on March 21, 2023. Therefore, the period in which he failed to attend a meeting was either 57 or 91 days depending on whether the term “meeting” in the Charter includes the workshop. By any calculation, the period is less than 120 days.

21. Commissioner Fleurimond attended both the City Commission meeting on October 18, 2022 and December 20, 2022. The first meeting he failed to attend was January 17, 2023. He

did not attend this meeting or the February 21, 2023 meeting for the same reasons as Commissioner Joseph. Commissioner Fleurimond then attended the City Commission workshop meeting on February 15, 2023, and a regular meeting on March 21, 2023. Therefore, the period in which he failed to attend a meeting was either 29 or 63 days depending on whether the term “meeting” in the Charter includes the workshop. By any calculation, the period is less than 120 days.

22. With respect to Commissioner Fleurimond’s attendance at the December 20, 2022 meeting, Chernoff claims that this should not count because, in his view, Fleurimond violated Chapter II, Art. I, § 2-1.1(a) of the City’s Code of Ordinances requiring commissioners to remain at meetings barring an emergency. Yet, nowhere in this ordinance nor in the Charter nor elsewhere does it provide that leaving a meeting early constitutes a failure to attend or an absence by the commissioner. The ordinance instead bestows the full authority to enforce the provision on the Miami-Dade County Commission on Ethics and Public Trust. There is no legal basis or City precedent to support Chernoff’s application of § 2-1.1(a) this way. Nonetheless he seeks to substitute phantom provisions into the City’s laws to dispose of his political adversaries.

23. Through his underlying lawsuit, and now through proposed action of the City Commission, Chernoff has called Counter-Plaintiffs’ rights to serve their duly elected terms as Commissioners into doubt based on his spurious interpretation and application of the City’s Charter and ordinances.

24. The Charter does not give the City Commission the power to vote to remove a fellow commissioner. It does not state the manner in which § 2.5 is to be enforced nor the procedure by which it is to be effected. This is precisely why Chernoff brought the underlying action requesting the Court’s interpretation of “the Mayor and Commission’s rights and duties attendant to the Charter”, which he agrees “are dependent upon the facts and the law applicable to the

City...in these circumstances.” *Am. Compl.*, at ¶¶ 24-25. It is clear that all parties in this dispute agree at least on one thing: the Court’s interpretation of the relevant provisions and their application to the respective parties is necessary.

25. As a result of the actions of Chernoff, Counter-Plaintiffs are in doubt as to the existence or nonexistence of their rights to complete their elected terms as commissioners and their present status as commissioners. Counter-Plaintiffs, Chernoff, and the City are also in doubt as to how § 2.5 of the Charter is to properly be interpreted and applied under these circumstances. Commissioner Fleurimond, Chernoff, and the City, are also in doubt as to the application of § 2-1.1(a) of the City’s Code of Ordinances.

26. Accordingly, there now exists a *bona fide*, actual, and present need for a declaration of Commissioner Joseph and Commissioner Fleurimond’s rights to complete their elected terms, their present statuses as commissioners, and the proper manner of interpreting and applying the pertinent sections of the Charter and City Ordinance under the circumstances. Otherwise, Chernoff intends to unilaterally usurp the Counter-Plaintiffs’ elected offices as soon as May 2023.

27. The declaration deals with a present controversy as to an ascertained or ascertainable state of facts.

28. The powers, privileges, statuses, and rights that are the subject of the declaration depend on the facts or the law applicable to the facts.

29. Commissioner Joseph respectfully requests that this Court enter a declaratory judgment adjudicating and determining the following:

- a. Commissioner Joseph did not fail to attend a meeting of the City Commission for a period of 120 days and, therefore, his seat was not vacated under § 2.5 of the Charter;

- b. The City Commission does not have the right to vote to remove Commissioner Joseph from elected office under these circumstances; and
  - c. Commissioner Joseph's entitlement to the costs and expenses incurred in prosecuting and/or defending this action.
30. Commissioner Fleurimond respectfully requests that this Court enter a declaratory judgment adjudicating and determining the following:
- a. Commissioner Fleurimond did not fail to attend a meeting of the City Commission for a period of 120 days and, therefore, his seat was not vacated under § 2.5 of the Charter;
  - b. The City Commission does not have the right to vote to remove Commissioner Fleurimond from elected office under these circumstances; and
  - c. Commissioner Fleurimond's entitlement to the costs and expenses incurred in prosecuting and/or defending this action.
31. Counter-Plaintiffs further requests that this Court enjoin Chernoff and the City Commission from holding a vote to remove either Counter-Plaintiff from their respective seat on the City Commission or to fill any alleged vacancy of any such seat until this controversy is resolved.

WHEREFORE Commissioner Joseph and Commissioner Fleurimond respectfully request that this Court adjudicate the powers, privileges, statuses, and rights of the parties under the Charter and enter an Order (i) enjoining Chernoff and the City Commission from holding a vote to remove either Counter-Plaintiff from their respective seat on the City Commission or to fill any alleged vacancy of any such seat until this controversy is resolved; (ii) declaring that Commissioner Joseph and Commissioner Fleurimond have not vacated their seats on the City Commission; (ii)



declaring that the City Commission does not have the right to vote to remove either Commissioner Joseph or Commissioner Fleurimond from the City Commission; (iii) declaring that Commissioner Joseph and Commissioner Fleurimond are entitled to the costs and expenses incurred in prosecuting and/or defending this action; and (iv) granting such other and further relief as this Court deems just and proper.

Respectfully submitted,

By: /s/ Benjamin H. Brodsky  
Benjamin Brodsky, Esq.  
Florida Bar No.: 73748  
Max A. Eichenblatt, Esq.  
Florida Bar No.: 1025141  
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**CERTIFICATE OF SERVICE**

I certify that the foregoing document has been furnished by the Florida Courts e-filing Portal pursuant to Fla. R. Jud. Admin. 2.516(b)(1), this **24th day of April, 2023**, on all counsel of record.

By: /s/ Benjamin H. Brodsky  
Benjamin H. Brodsky, Esq.

# **EXHIBIT A**

**IN THE CIRCUIT COURT OF THE ELEVENTH  
JUDICIAL CIRUIT OF FLORIDA, IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA  
CIVIL DIVISION  
CASE NO. \_\_\_\_\_**

**ANTHONY F. DEFILLIPO,  
In his Official Capacity as Mayor,  
North Miami Beach, Florida,  
Plaintiff,**

**vs.**

**CITY OF NORTH MIAMI BEACH,  
Defendants.**

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**VERIFIED EMERGENCY COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE RELIEF REQUIRING  
ATTENDANCE FOR QUORUM AT DULY CALLED COMMISSION  
MEETING**

Plaintiff ANTHONY F. DEFILLIPO (“Mayor DeFillipo”), in his official capacity as Mayor, North Miami Beach, Florida, files this Verified Emergency Complaint for Declaratory Judgment and Injunctive Relief against defendant CITY OF NORTH MIAMI BEACH (“City”) seeking to compel the attendance of a quorum at the duly called Commission meeting on January 17, 2023, and thereafter for the transaction of official City business.

**JURISDICTION AND VENUE**

1. This is an action for declaratory judgment filed pursuant

to Section 86.011, Florida Statutes, and for injunctive relief in accordance with Florida law authorizing the issuance of injunctive writs.

2. This action is brought by Mayor DeFillipo in his capacity as North Miami Mayor to require the attendance of a quorum at the duly called Commission meeting on January 17, 2023, and thereafter as needed for the transaction of official City business.

3. This action is brought to declare the rights of the Mayor and the citizens and electors of North Miami Beach pursuant to the North Miami Beach Charter (“Charter”) for the conduct of official City business..

4. Plaintiff is the Mayor of the City of North Miami Beach, in which capacity he is entrusted to preside over City Commission meetings and call and preside over Special Call Meetings.

5. All at all times material to this action, the City is and has been a municipal corporation authorized pursuant to the laws of the State of Florida, located in Miami-Dade County, Florida.

### **FACTS COMMON TO ALL COUNTS**

#### **A. The Charter.**

6. The City is required by law to operate in accordance with

its Charter.

7. Section 2.5 of the Charter, titled “Quorum and Attendance of the City Commission” states:

Sec. 2.5 - Quorum and Attendance of the City Commission.

A quorum of the City Commission at any regular or special meeting shall consist of five members. Except as otherwise provided herein, the affirmative vote of a majority of the quorum present shall be required upon any matter submitted for consideration of the Commission. If any Commissioner has failed to attend a meeting of the City Commission for a period of one hundred and twenty (120) days, the seat of such Commissioner shall automatically become vacant.

Charter of the City of North Miami Beach §2.5. The Charter is attached hereto as Exhibit “A.”

8. Section 3.3 of the City Charter states, “The City Commission shall appoint the City Attorney or law firm to serve at the pleasure of the City Commission. The City Attorney or law firm shall be removed by a majority vote of the City Commission.”

**B. Commission Meeting Scheduled December 20, 2022.**

9. A Commission Meeting was scheduled for December 20, 2022, during which six of the seven elected officials were present. Commissioner Michael Joseph was absent.

10. Mayor DeFillipo asked for a motion to terminate the contract of the law firm serving as the City Attorney. The motion was duly made and seconded, and discussion began (“Termination Motion”).

11. At that point, Commissioner Daniela Jean excused herself and left the meeting, leaving five members of the Commission present.

12. As discussion on the termination motion continued, Commissioner McKenzie Fleurimond announced her vehement opposition to terminating the City Attorney, noting he was the Commissioner who initially suggested the hiring of that law firm, Ottinott, P.A, be hired.

13. After discussion, Commissioner Fortuna Smukler called the question, and the matter was ready for voting.

14. At that point, Commissioner McKenzie Fleurimond announced he was leaving the meeting, thus breaking quorum, for the sole purpose of preventing the Mayor and Commission from voting to terminate the City Attorney’s contract.

15. No further City business was transacted, and the Meeting paused for lack of a quorum.

**C. Special Call Meetings Failed for Absence of Quorum.**

16. Thereafter, Mayor DeFillipo attempted to call a Special Meeting on two separate occasions for the purpose of resuming the December 20, 2022 meeting. But three Commissioners, Michael Joseph, McKenzie Fleurimond, and Daniela Jean, refused to respond for the sole purpose of preventing a Commission Meeting from taking place due to lack of a quorum.

**D. Regular Meeting Scheduled January 17, 2023.**

17. A regularly scheduled Commission Meeting is noticed and scheduled for to be held Tuesday, January 17, 2023.

18. Based on information and belief, the three Commissioners who refused to respond to the Special Meeting calls intend not absent themselves from the January 17, 2023 meeting to prevent a quorum and the transaction of business, including the Termination Motion.

19. In his capacity as City Mayor, Mayor DeFillipo has great concern that the same three Commissioners will refuse to attend the meeting, and once again cause a lack of quorum, for the sole purpose of preventing the transaction of City business, including voting on the Termination Motion.

20. The City, by failing to have a quorum, cannot call a meeting, vote on resolutions, or conduct any other official City business requiring Commission approval.

21. The City presently has urgent business it must conduct for the benefit of its citizens, including resolutions regarding its budget, water utility, and outstanding legal matters that it has a duty to undertake.

22. In effect, the City of North Miami Beach is shut down and no City business has been transacted as a result of Commissioners intentionally refusing to attend in order to avoid the quorum needed to transact City business, which has not been done for more than 90 days;

23. Florida Statutes 1!66.041 provides that a majority of Commissioners present for a meeting in any City, in this case four, constitutes quorum for purposes of conducting City business.

### **COUNT I – DECLARATORY JUDGMENT**

24. Plaintiff incorporates and re-alleges paragraphs 1 to 23.

25. This is an action to declare the rights of the parties under the Charter.

26. The City and the plaintiff is in doubt of the rights and



obligations under the Charter, and by this Complaint seek a declaration of the rights and obligations with respect to calling a meeting attended by the Commissioners for the purpose of conducting the City's business.

27. There exists a *bona fide* actual, present, and practical need for the declaration of the Mayor and Commission's rights and duties attendant to the Charter. The City is entitled to have all doubts as to the rights and obligations under the Charter resolved in its favor, requiring Commissioner attendance at a duly called Commission Meeting for the transaction of official City business.

28. The rights and obligations of the City under the Charter are dependent upon the facts and the law applicable to the City pursuant to the Charter in these circumstances.

29. Plaintiff and the City have an actual, present controversy in the subject matter described herein.

For these reasons, Plaintiff Mayor DeFillipo requests that the Court adjudicate the rights, responsibilities, and liabilities of the parties under the Charter, and that the Court enter an Order declaring that the City may call a Meeting attended by four (4) members of the Commission for the limited and express purpose of

conducting the City business until such time as the remaining three (3) members of the Commission see fit to fulfill their duties as elected officials as prescribed in the Charter of the City of North Miami Beach.

## **COUNT II – INJUNCTIVE RELIEF**

30. Petitioner incorporates and re-alleges paragraphs 1 through 23.

31. Pursuant to the Charter, the plaintiff as Mayor and the City cannot conduct any business absent a quorum.

32. As a result, the City is facing irreparable harm, as the City cannot conduct official business for the benefit of the citizens, residents, and businesses within the City, thereby disenfranchising and depriving its citizens of their government. No business can be conducted by the City absent a quorum.

33. The City has a right and an obligation to conduct official business as granted by its Charter, the Miami-Dade County Home Rule Charter, and the Constitution and laws of the State of Florida.


34. If relief is denied, the City will be without any adequate remedy at law.

35. Consideration of the public interest favors the relief sought herein as the citizens of North Miami Beach are entitled to a functioning government, including its provision of services, including police, water, and sanitation services.

For these reasons, Mayor DeFillipo requests that the Court adjudicate the rights, responsibilities, and liabilities of the parties under the Charter, and that the Court enter an Order declaring that the City may call an Emergency Meeting with four (4) members of the Commission for the purpose of conducting City Business as provided in the Charter, as well as any other relief the Court deems proper.

**VERIFICATION**

I make this declaration according to 28 U.S.C § 1746. I make this declaration in Miami-Dade County, State of Florida, United States of America. I declare under penalty of perjury that the foregoing, including all facts, are true and correct. Executed at Miami-Dade County, Florida, January 17, 2023.

Signature:   
Anthony DeFillipo (Jan 17, 2023 01:03 EST)  
Email: defillipoanthony@gmail.com  

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**ANTHONY F. DeFILLIPO**

Respectfully submitted,

**MICHAEL A. PIZZI, JR.**  
**Attorney for Plaintiff**  
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By: /s/ Michael A. Pizzi, Jr.  
**MICHAEL A. PIZZI, JR.**

S/ David P. Reiner  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the above and foregoing was e-filed via the State's eFiling Portal and copies furnished electronically to all parties of record, including Andrise

Bernard, Clerk, City of North Miami Beach,  
andrise.bernard@citynmb.com, on January 17, 2023.

By: /s/ Michael A. Pizzi, Jr.  
**MICHAEL A. PIZZI, JR.**

# **EXHIBIT B**

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR MIAMI  
DADE COUNTY FLORIDA

CIVIL DIVISION

ANTHONY F. DEFILLIPO, in his Official  
Capacity as Mayor, North Miami Beach,  
Florida,

CASE NO.: 2023-618 CA (25)

Plaintiff/Counter-Defendant,

v.

CITY OF NORTH MIAMI BEACH,

Defendant/Counter-Plaintiff.

\_\_\_\_\_ /

**COUNTERCLAIM**

Counter-Plaintiff, CITY OF NORTH MIAMI BEACH (“**City**”) counterclaims against Counter-Defendant, ANTHONY F. DEFILLIPO (“**DeFillipo**”), and says:

1. This is an action seeking a declaratory judgment and injunctive relief.
2. The City is a municipal corporation authorized pursuant to the laws of the State of Florida, located in Miami-Dade County, Florida.
3. DeFillipo is an individual over 18 years of age and is otherwise *sui juris*.
4. DeFillipo personally submitted to the jurisdiction of this Court by commencing the above-styled action and seeking affirmative relief.
5. This Court possesses subject-matter jurisdiction pursuant to *Fla. Stat.* § 26.012(2)(a), (3), and § 86.011.
6. Venue is proper in Miami-Dade County Circuit Court pursuant to *Fla. Stat.* § 47.011 because the causes of action asserted herein accrued in Miami-Dade County, Florida.

7. The City has retained Heise Suarez Melville, P.A. (“**HSM**”) to represent the City in this action. The City has agreed to pay HSM’s reasonable attorneys’ fees for HSM’s services herein.

**GENERAL ALLEGATIONS**

**A. The relevant sections of the City’s Charter.**

8. The City is governed by its *Charter* (“Charter”). A true and correct copy of the Charter is attached hereto as **Exhibit “A.”**

9. The Charter states that “this Charter and the powers of the [City] shall be construed liberally in favor of the [City].” *Id.* at Art. I, § 1.5.

10. The Charter states that each candidate for the office of mayor, “at the time of qualifying,” must have, among other things, “continuously resided in the [City] for at least one (1) full year.” *Id.* at Art. IV, § 4.3.

11. The Charter states that the person filling the office of mayor of the City shall, among other things, “preside over meetings of the Commission.” *Id.* at Art. II, § 2.1.

12. The Charter states that the person filling the office of vice mayor of the City “shall act in the absence or disability of the Mayor and who shall exercise the powers of the Mayor when so acting.” *Id.*

13. The Charter states that the City’s Commission “shall be composed of seven members, elected as herein provided, one of whom shall be the Mayor.” *Id.* at Art. II, § 2.2.

14. The Charter states that “The Commission shall be the legislative body of the City of North Miami Beach and shall have power to investigate any phase, function or operation of the City Government in such manner and at such time as to it shall be deemed necessary to the



determination by the Commission of the public policy of the City. It shall have such other powers as are hereinafter expressly or impliedly set forth, or inherent in the legislative department of government.” *Id.*

15. The Charter states that the City’s Commission may pass ordinances. *Id.* at Art. II, § 2.7.

**B. The relevant City ordinances.**

16. City Ordinance Section 7-5(a) states that prospective candidates for the Office of mayor shall, among other things, “be a bona fide residence of the [City] and express an intent to remain permanently a bona fide residence of the City during the entire term of office for which he or she is a candidate.” A true and correct copy of City ordinance section 7.5 is attached hereto as **Exhibit “B.”**

17. City Ordinance Section 7-5(b) states “All elected officials of the City of North Miami Beach, in order to remain in office during the term for which they were elected, must always be and remain bona fide residents of the City of North Miami Beach.” *Id.*

18. City Ordinance Section 7-5(c) defines “bona fide residence” as “a permanent, fixed place of domicile within the City of North Miami Beach, to the exclusion of all other places.” *Id.*

19. City Ordinance Section 7-5(d) states “Should any elected official of the City of North Miami Beach, during his term of office, change his bona fide residence from within to without the City of North Miami Beach, his seat on the Council shall be ***automatically vacated and forfeited.***” *Id.* (emphasis added).

20. City Ordinance Section 7-5(e) states “A vacancy shall be filled in accordance with Section 7-7 of the Code of Ordinances of the City of North Miami Beach.” *Id.*

21. A true and correct copy of City Ordinance Section 7-7 is attached hereto as **Exhibit “C.”**

**C. DeFillipo served as a City Commissioner.**

22. DeFillipo served as Commissioner on the City Commission from approximately May 2013 through November 2018.

23. During that time, DeFillipo’s fellow Commissioner, Frantz Pierre (“**Pierre**”), was not attending the City Council<sup>1</sup> meetings in person. A true and correct copy of contemporaneous emails in this regard are attached hereto as **Exhibit “D.”**

24. On January 25, 2018, outside counsel for the City, Jean Olin, Esq., prepared a memorandum (the “**Olin Memorandum**”) concluding that Pierre had automatically vacated his office, by operation of law, due to his failure to continually attend in-person meetings of the City Council. A true and correct copy of the Olin Memorandum is attached hereto as **Exhibit “E.”**

25. On February 5, 2018, the City of North Miami Beach held a Special Commission Meeting to discuss Pierre’s absences. A true and correct copy of the February 5, 2018 Commission meeting minutes are attached hereto as **Exhibit “F.”**

26. Pierre was given notice of and invited to attend that Commission meeting.

27. DeFillipo was present at that Commission meeting in his role as Commissioner.

28. At the February 5, 2018 meeting, the City Council accepted the Olin Memorandum’s conclusion that Pierre’s office had been automatically deemed vacant by operation of law. *Id.*

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<sup>1</sup> Article I, section 1.2 of the City’s Code of Ordinances uses the term “City Council” when describing the authority of the City Commission to fill a vacancy.

29. DeFillipo concurred in that conclusion, stating on the record that, although it was an unfortunate situation, “it is the responsibility of the Mayor and Commission to uphold the City Charter.” *Id.* DeFillipo further remarked that, because the City Council had provided notice of the Special Meeting in the local newspapers, “due process was put into effect and the proper procedures were followed.” *Id.*

30. At the end of the meeting, Pierre’s seat was deemed vacant, and the Council passed a motion to fill the vacant Commission seat by allowing all interested individuals to submit a letter of interest and qualifications to the Office of the City Clerk. *Id.*

**D. DeFillipo was elected, and re-elected, as Mayor of the City.**

31. DeFillipo was elected to the office of the City’s Mayor on or about November 6, 2018.

32. DeFillipo qualified for that office by listing a house located at 1458 NE 177th Street, North Miami Beach, Florida 33162 (the “**Qualifying Residence**”) as his primary residence.

33. When DeFillipo ran for re-election in 2020, he again listed the Qualifying Residence as his primary residence. *See Exhibit “G.”*

34. DeFillipo was re-elected to the office of the City’s Mayor on or about November 3, 2020.

**E. DeFillipo failed to continuously maintain a “bona fide” residence in the North Miami Beach throughout his term, thereby creating an “automatic vacancy” of the mayoral office.**

35. On February 22, 2021, DeFillipo purchased a home located at 7531 SW 26th Ct., Davie, Florida 33314 (the “**First Davie Property**”).

36. Davie is located in Broward County, Florida.

37. The First Davie Property is outside of the City's boundaries.

38. On December 21, 2021, at DeFillipo's request, the City Clerk sent an email to the City's human resources department to change DeFillipo's records to reflect his new address as Unit 406 at 3601 NE 170 Street, North Miami Beach, Florida 33160 (the "**Sham Residence**"). See **Exhibit "H."**

39. The Sham Residence is a one-bedroom, 830-square-foot condominium unit in the Eastern Shores neighborhood. See **Exhibit "I."**

40. DeFillipo has a wife and two children.

41. On or about December 27, 2021, DeFillipo sold the Qualifying Residence. See **Exhibit "J."**

42. On April 15, 2022, DeFillipo listed the First Davie Property for sale. The photos in the property listing appear to show that DeFillipo and his family were living in the residence, and that the home included many of DeFillipo's personal items, including a framed wedding photograph and a walk-in closet filled with clothes and storage. See **Exhibit "K."**

43. DeFillipo sold the First Davie Property on June 25, 2022. See **Exhibit "L."**

44. On June 30, 2022, DeFillipo filed his 2021 *Form 1 Financial Disclosure* with the City Clerk wherein he listed the Sham Residence as his permanent address. See **Exhibit "M."**

45. On July 11, 2022, DeFillipo purchased a home located at 1985 E. Sierra Ranch Drive, Davie, Florida 33324 (the "**Second Davie Property**") for \$1,226,500.00. See **Exhibits "N" and "O."**

46. The Second Davie Property is a 5-6 bedroom, 5,000-plus square-foot home in the gated Sierra Ranches community. A true and correct copy of a photograph of the Second Davie

Property taken from the Broward County Property Appraiser’s website is attached hereto as **Exhibit “P.”**

47. The Second Davie Property is outside of the City’s boundaries and in the neighboring county: Broward.

48. A November 30, 2022 internet screenshot of DeFillipo’s voter registration information listed his address as the Qualifying Residence even though he sold that property almost a year earlier. *See Exhibit “Q.”*

**F. DeFillipo’s move to Broward County invited an ethics complaint.**

49. Someone retained Countywide Investigations (“**Countywide**”) to investigate allegations of whether DeFillipo was in violation of the residency requirements that he was bound by. At the conclusion of Countywide’s surveillance and investigation, they prepared a report (“**Countywide Report**”). A true and correct copy of the Countywide Report is attached hereto as **Exhibit “R.”**

50. Countywide’s surveillance of the neighborhood entrance to the Second Davie Property revealed that DeFillipo routinely entered the gated community at night and left in the morning. *Id.* It also revealed that DeFillipo’s name was registered in the access box associated with the Second Davie Property. *Id.*

51. On or about December 17, 2022, a sworn ethics complaint was filed against DeFillipo with the Miami-Dade Commission on Ethics & Public Trust (“**Ethics Complaint**”). A true and correct copy of the Ethics Complaint is attached hereto as **Exhibit “S.”**

52. The Ethics Complaint accuses DeFillipo of living in the Second Davie Property in violation of the City’s residency requirements. *Id.*

**G. After seeking outside legal advice, the City Attorney formally recognized the mayoral office was vacant.**

53. A Commission meeting was scheduled for December 20, 2022. Unsurprisingly, the Ethics Complaint was brought up, and was the source of substantial discussion, during that meeting.

54. Commissioner McKenzie Fleurimond (“**Fleurimond**”) walked out of the December 20, 2022 Commission meeting on the grounds that the allegations in the Ethics Complaint gave rise to a concern that DeFillipo forfeited the office of mayor and that DeFillipo therefore lacked the authority to continue to preside over that Commission meeting, call any votes, or handle any City business.<sup>2</sup>

55. Hans Ottinot, Esq. (“**City Attorney**”) is the City Attorney.

56. In light of the aforementioned developments, on or about January 13, 2023, the City Attorney followed the procedure that occurred in 2018 when dealing with the Pierre vacancy, by procuring a *Memorandum* from outside counsel: *i.e.*, HSM shareholder, Luis E. Suarez, Esq. (the “**Residency Memorandum**”). *See Exhibit “T.”*

57. The Residency Memorandum concluded, in pertinent part, that “because the publicly available facts would lead a reasonable person to objectively conclude that DeFillipo failed to comply with Section 7-5(b) of the North Miami Code of Ordinances’ requirement to

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<sup>2</sup> See Mark Sell, *NMB Ended 2022 With a Bang*, BISCAYNE TIMES (Dec. 2022), <https://www.biscaynetimes.com/news/nmb-ended-2022-with-a-bang/>; *Does North Miami Beach Mayor Live in Another City? Ethics Complaint Filed*, MIAMI HERALD (Dec. 2022), <https://www.miamiherald.com/news/local/community/miami-dade/north-miami/article270543772.html>.

continually maintain a ‘bona fide’ residence in North Miami Beach, an ‘automatic vacancy’ of the office of mayor has occurred by operation of law.” *Id.*

58. The Residency Memorandum also recounted, and gave weight to, the manner and method the City and the Commission handled the vacancy caused by Pierre in 2018:

In sum, the Commissioner Pierre scenario arguably created precedent that, although the term “automatic” did not mean the City Council could fill a vacancy without calling a special meeting, it also did not require the City Council to file a lawsuit and wait until the conclusion of the litigation and all pending appeals before filling the vacancy. It meant, in that scenario, before declaring a vacancy, due process should be provided in the form of notice of a special commission meeting and an opportunity for the allegedly offending elected official to speak and present rebuttal at that meeting.

(the “**Pierre Precedent**”).

59. Upon review and analysis, the City Attorney concurred with the Residency Memorandum. This included that the City’s mayoral office was vacant and no longer held by DeFillipo.

60. At or about 5:01 p.m. on January 13, 2023, the City Attorney sent an email (the “**Formal Recognition of Vacancy**”) to each of the six Commissioners and DeFillipo, which attached a copy of the Residency Memorandum, announced that he concurred with its conclusions, and recommended “that a Special City Commission meeting be held to discuss how the vacancy will be filled.” *See Exhibit “U”* (without attachments).

**H. DeFillipo refuses to recognize he no longer serves as the City’s mayor.**

61. Despite the Formal Recognition of Vacancy, DeFillipo refuses to recognize or concede that he no longer serves as the City’s mayor.

62. By way of just one example, over the objection of the City Attorney during a January 17, 2023 Commission meeting, DeFillipo sat in the seat designated for the City’s mayor and attempted to operate and conduct business as the City’s mayor.

**I. The current situation is untenable.**

63. DeFillipo does not currently hold the office of mayor, but is actively holding himself out as mayor and purporting to conduct City business in that capacity.

64. DeFillipo is actively attempting to schedule special Commission meetings, but not for the purpose that the City Attorney has requested on January 13, 2023 (*i.e.*, to discuss how the mayoral vacancy will be filled). *See Exhibit “U.”* Instead DeFillipo is attempting to schedule a meeting to procure the votes necessary to terminate the City Attorney as retaliation for issuing the Formal Resignation of Vacancy.

65. Per Article II, section 2.1 of the Charter, the vice mayor is the person authorized to preside over meetings of the Commission during the period leading up to an election to fill the mayoral vacancy.

66. The Vice Mayor has asked for a special meeting to discuss vacancy and has been unsuccessful in securing same. *See Exhibit “V.”*

67. The conflict and disruption that DeFillipo has caused and continues to cause is deleterious to the City and its ability to conduct business.

68. The current situation is untenable and is harmful to the City and its citizens.

**COUNT I**  
**DECLARATORY JUDGMENT**

69. City repeats and realleges paragraphs 1–68.



70. This count seeks a declaratory judgment pursuant to Chapter 86 of the Florida Statutes.

71. The City seeks the following declaratory judgments stating that:

- (i) the City Attorney’s written Formal Recognition of Vacancy concurring that DeFillipo “automatically vacated and forfeited” the office of mayor for the City by failing to consistently and continuously remain a bona fide resident of the City for the entire duration of his tenure as mayor of the City in violation of City’s Charter and Ordinance Section 7-5’s residency requirements, permits the City, consistent with the Pierre Precedent, to call a Commission meeting (the “**Due Process Special Commission Meeting**”) to give DeFillipo an opportunity to testify under oath and present evidence that he did not violate City Ordinance Section 7-5’s bona fide residence requirement and, thereafter, to have the Commissioners vote on whether to overrule by majority the City Attorney’s written Formal Recognition of Vacancy before filling the mayoral office vacancy pursuant to the manner and method detailed in City Ordinance Section 7-7.
- (ii) in the event DeFillipo does not appear at or choose to participate in the Due Process Special Commission Meeting, the Commissioners, can and will immediately proceed to filling the mayoral office vacancy pursuant to the manner and method detailed in City Ordinance Section 7-7.

(collectively, the “**Declaration**”).

72. There is a bona fide, actual, present practical need for the Declaration.

73. The Declaration deals with a present controversy as to an ascertained (or ascertainable) state of facts.

74. Some power, privilege or right of the City is dependent upon the facts or the law applicable to the facts.

75. DeFillipo has, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law.

76. DeFillipo is before the court by proper process.

77. The relief sought is not merely giving of legal advice by the courts or the answer to questions propounded from curiosity.

**WHEREFORE**, the City respectfully requests this Court enter judgment in its favor and against DeFillipo **(i)** granting the requested Declaration; **(ii)** granting the City all supplemental relief naturally following from the Declaration pursuant to *Fla. Stat.* § 86.061; **(iii)** awarding the City its taxable costs to be paid for by DeFillipo pursuant to *Fla. Stat.* § 86.081; and **(iv)** granting the City such other and further relief as this Court deems just and proper.

**COUNT II**  
**INJUNCTIVE RELIEF**

78. The City repeats and realleges paragraphs 1–68.

79. DeFillipo is improperly attempting to act as if he is currently the City’s mayor despite (i) failing to consistently and continuously remain a bona fide resident of the City for the entire duration of his tenure as mayor of the City that resulted in his automatically vacating and forfeiting the office and (ii) the City Attorney having issued a Formal Recognition of Vacancy.

80. DeFillipo’s continued statements to the public, attempts to call Commission meetings, and attempt to conduct City business at Commission meetings despite no longer holding the office of mayor is confusing to the public and disruptive to City business.

81. The City seeks entry of an injunction prohibiting DeFillipo from (i) representing, saying, or implying that he is the City’s active, sitting mayor and (ii) attempting to, purporting to, or actually exercising any of the rights, obligations, or authority that is reserved for the holder of the office of City’s active, sitting mayor (collectively, the “**Requested Injunctive Relief**”).

82. The City has a substantial likelihood of success on the merits given, among other things, the size of his family, the size of the Sham Residence, his personal effects being present in

the listing photos for the First Davie Property, the size of the Second Davie Property, and related public records and investigative materials associated with the same.

83. The City does not have an adequate remedy at law when an individual who does not currently hold the office of mayor is actively holding himself out as mayor and purporting to conduct City business in that capacity.

84. Accordingly, the City will sustain irreparable harm absent entry of the requested injunction.

85. The injunction the City is seeking herein would serve the public interest by, among other things, avoiding confusion and preventing the public from collaterally attacking any decisions or business DeFillipo purports to make as mayor.

**WHEREFORE**, the City respectfully requests this Court enter judgment in its favor and against DeFillipo **(i)** granting the City the Requested Injunctive Relief and **(ii)** granting the City such other and further relief as this Court deems just and proper.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** on January 20, 2023, that a true and correct copy of the foregoing was filed with the Clerk of the Court and served by email on the following counsel using the Florida Courts E-Filing Portal:

- (i)** Michael A. Pizzi, Jr., Esq., 6625 Miami Lakes Drive, Suite 316, Miami Lakes, Florida 33014 at [mpizzi@pizzilaw.com](mailto:mpizzi@pizzilaw.com);
- (ii)** Benedict P. Kuehne, Esq. and Johan D. Dos Santos, Esq., of Kuehne Davis Law, P.A., 100 S.E. Second Street, Suite 3150, Miami, Florida 33131 at

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- (iii) David P. Reiner, Esq. of Reiner & Reiner, P.A., 9100 S. Dadeland Boulevard, Suite 901, Miami, Florida 33156 at [dpr@reinerslaw.com](mailto:dpr@reinerslaw.com) and [eservice@reinerslaw.com](mailto:eservice@reinerslaw.com).

Respectfully submitted,

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