

BLUE FOLDER ITEM

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CITY COUNCIL MEETING APRIL 2, 2024

H.15. APPROVE THE LEGAL SERVICES AGREEMENT WITH COVINGTON & BURLING, LLP FOR LEGAL SERVICES AND ADD THIS FIRM TO THE CITY ATTORNEY'S APPROVED LAW FIRM LIST

Attached is the following document

- Administrative Report
- Legal Services Agreement
- Covington & Burling LLP firm information
- Abigail O'Brient biography



Administrative Report

H.15., File # 24-0548

Meeting Date: 4/2/2024

To: MAYOR AND CITY COUNCIL
From: Michael W. Webb, City Attorney

TITLE

APPROVE THE LEGAL SERVICES AGREEMENT WITH COVINGTON & BURLING, LLP FOR LEGAL SERVICES AND ADD THIS FIRM TO THE CITY ATTORNEY'S APPROVED LAW FIRM LIST

EXECUTIVE SUMMARY

This Agreement for Legal Services with Covington & Burling LLP will allow Abigail O'Brien to continue to represent the City in Bankruptcy matters.

BACKGROUND

Attorney Abigail O'Brien was representing the City of Redondo Beach on Bankruptcy matters when she was employed at another firm. Starting January 1, 2024, Abby O'Brien moved to the law firm of Covington & Burling LLP.

This Agreement would allow Abigail O'Brien to continue her representation of the City of Redondo Beach on a complex Bankruptcy matter.

COORDINATION

The Agreement has been approved by Covington & Burling LLP and has been approved as to form by the City Attorney's Office.

ATTACHMENTS

- Agreement for Legal Services with Covington & Burling LLP
- Covington & Burling LLP firm information
- Abigail O'Brien biography

AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT is made this 2nd day of April 2024, by the CITY OF REDONDO BEACH, a municipal corporation, ("CITY"), and COVINGTON & BURLING LLP ("ATTORNEY").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Redondo Beach City Council authorization on April 2nd, 2024.
2. The CITY is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
3. The CITY and ATTORNEY desire to enter into an Agreement for services upon the terms and conditions herein.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This Agreement shall cover services rendered from April 2, 2024 and until December 31, 2024, unless terminated earlier pursuant to Section 3.5.
2. **Services to be Provided.**
 - 2.1 **Services.** The services to be performed by ATTORNEY shall consist of the following: Legal Services as assigned by the City Attorney's Office with respect to the chapter 11 bankruptcy case captioned *In re 9300 Wilshire, LLC*, Bankr. C.D. Cal. case no. 2:23-bk-10918-VZ (the "REPRESENTATION").
 - 2.2 **Client.** CITY shall be ATTORNEY'S client in this representation, and not any of the CITY'S related parties.
3. **Compensation.** ATTORNEY shall be compensated as follows:
 - 3.1 **Amount.** \$760 per hour. This is a blended rate. Abigail O'Brien will be the primary attorney performing legal services pursuant to this agreement but she is authorized to use other members of the firm to assist her in this work. Compensation under this Agreement shall be paid only for assigned

work and after approval of hourly billing statement by the City Attorney. If CITY engages ATTORNEY to continue the REPRESENTATION after December 31, 2024, the CITY and ATTORNEY shall negotiate in good faith regarding ATTORNEY'S compensation commencing on January 1, 2025.

- 3.2 Payment. For work under this Agreement, payment shall be made per monthly invoice. Payment of ATTORNEY'S invoices in full is due within 30 days of receipt. If any statement remains unpaid for more than 60 days, CITY agrees that ATTORNEY will have the right to cease performing services until satisfactory arrangements have been made for payment of outstanding statements and payment of future statements.
- 3.3 Expenses and Records of Expenses. ATTORNEY shall keep accurate records of time and expenses. These records will be made available to CITY. ATTORNEY'S invoices may include charges for support services incurred on CITY'S behalf, such as printing, duplicating, transcripts, computer research, telecommunications, any secretarial overtime attributable to CITY'S special needs, mail, deliveries and the like, as well as out-of-pocket costs, such as travel. If substantial third-party payments (such as co-counsel fees, expert fees, special studies, transcripts, or any single charge of more than \$1,000) are required, ATTORNEY reserves the right to forward the charge to CITY for CITY to pay directly, or to ask CITY to advance to ATTORNEY funds sufficient to allow ATTORNEY to pay the charge on CITY'S behalf.
- 3.4 Hours. No specific number of hours of work is guaranteed. It is expected that Attorney's services will be on an as needed basis depending upon the work load.
- 3.5 Termination. CITY and ATTORNEY shall have the right to terminate this Agreement, without cause, by giving fifteen (15) days written notice.

4. **Insurance Requirements.**

- 4.1 Workers' Compensation Insurance. ATTORNEY shall maintain Workers' Compensation Insurance where applicable.
- 4.2 Insurance Amounts. ATTORNEY is not authorized to drive an automobile for the CITY or on CITY business.
- 4.3 Malpractice Insurance. ATTORNEY shall maintain malpractice insurance as agreed between CITY and ATTORNEY.

5. **Non-Liability of Officials and Employees of the CITY.** No official or employee

of CITY shall be personally liable for any default or liability under this Agreement.

6. **Non-Liability of Partners of ATTORNEY.** ATTORNEY is a limited liability partnership organized under the laws of the District of Columbia. Under this form of partnership, a partner's personal assets are not subject to claims against ATTORNEY (and other partners) based on contracts, professional negligence or other liability unless the partner is personally liable based on his or her own conduct.
7. **Non-Discrimination.** ATTORNEY covenants there shall be no discrimination based upon race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.
8. **Independent Contractor.** It is agreed to that ATTORNEY shall work as an independent contractor and not as employee of CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
9. **Compliance with Law.** ATTORNEY shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
10. **Ownership of Work Product.** All documents or other information developed or received by ATTORNEY in the course and scope of work for the City shall be the property of CITY. ATTORNEY shall provide CITY with copies of these items upon demand or upon termination of this Agreement. ATTORNEY retains ownership of and may re-use ATTORNEY's own know-how and precedents even if used or generated for ATTORNEY's representation of CITY, subject to ATTORNEY's professional ethical obligations to CITY.
11. **Conflict of Interest and Reporting.**
 - 11.1 ATTORNEY shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement. ATTORNEY agrees to complete and file a California State Form 730 disclosure statement if required by the City Attorney.
 - 11.2 CITY consents and agrees that ATTORNEY may be adverse to CITY on behalf of other clients in matters that are not substantially related to the REPRESENTATION or to any additional matter we may undertake on CITY'S behalf in the future. ATTORNEY might be adverse to CITY in litigation, intellectual property matters (including patent litigation), transactional matters, counseling, matters involving administrative agencies, lobbying and other legislative matters, or any other type of matter so long as the matter is not substantially related to work ATTORNEY has performed for CITY. If there are parties adverse to CITY in the REPRESENTATION, it is possible that those adverse parties will have

need for counsel in matters that are not adverse to CITY and which do not have a substantial relationship to the REPRESENTATION. Even though ATTORNEY would, as a result, receive some fee income from CITY'S adversary, CITY consents to ATTORNEY'S representing such parties in such matters. ATTORNEY commits to continued zealous representation of CITY'S interests in the REPRESENTATION notwithstanding any fee income ATTORNEY may receive from CITY'S adversary.

12. **Electronic Devices.** CITY and ATTORNEY may use electronic devices and Internet services to communicate with each other and forward documents, notwithstanding some risk that such communications may be intercepted by and disclosed to unauthorized parties. CITY agrees that the benefits of such technology outweigh the risks of unauthorized disclosure.
13. **Notices.** All notices shall be personally delivered or mailed to the below listed addresses. These addresses shall be used for delivery of service of process.
 - a. Address of ATTORNEY is as follows:
Covington & Burling LLP
Attention: Abigail O'Brient
1999 Avenue of the Stars
Los Angeles, CA 90067-4643
 - b. Address of CITY is as follows:
City Attorney's Office
415 Diamond Street
Redondo Beach, California 90277
14. **Licenses, Permits, and Fees.** ATTORNEY shall maintain a current **California State Bar License**, and all permits, fees, or licenses as may be required by this Agreement.
15. **Familiarity with Work.** By executing this Agreement, ATTORNEY warrants that: (1) he has investigated the work to be performed, (2) he has investigated the site of the work and is aware of all conditions there; and (3) he understands the difficulties and restrictions of the work under this Agreement. Should ATTORNEY discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at ATTORNEY'S risk, until instructions are received from CITY.
16. **Time of Essence.** Time is of the essence in the performance of this Agreement.
17. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement or any portion shall be assigned by ATTORNEY without prior consent of the CITY

ATTORNEY.

- 18. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.
- 19. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified on provisions waived only by subsequent mutual written agreement executed by CITY and ATTORNEY.
- 20. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Los Angeles County Superior Court.
- 21. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.
- 22. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

CITY OF REDONDO BEACH

COVINGTON & BURLING LLP

By: _____
James A. Light, Mayor

By: _____
Abigail O'Brient, Attorney

Date: _____

Date: _____

ATTEST:

By: _____
Eleanor Manzano, City Clerk

APPROVED AS TO FORM:

By: _____
Michael W. Webb, City Attorney

Covington & Burling LLP
1999 Avenue of the Stars
Los Angeles, CA 90067-4643
T +1 424 332 4826 | aobrient@cov.com
www.cov.com

COVINGTON

About

Our restructuring lawyers provide creative and pragmatic solutions to troubled companies, boards and management, trustees, creditors, creditors' committees, asset acquirers, and distressed investors. We integrate corporate and litigation expertise to devise effective strategies for addressing financial distress, restructuring debt obligations, and resolving complex issues and claims in non-judicial consensual restructurings and contentious bankruptcies. Our lawyers have represented key constituents in multiple industries, including energy, financial services, retail, construction, media-entertainment, manufacturing, aerospace, and insurance.

Our core restructuring lawyers regularly draw on the firm's broad and deep industry and regulatory experience in areas such as communications, energy, financial institutions, life sciences, sports, technology, and transportation, as well as M&A, capital markets and securities, antitrust, environmental, ERISA, insurance, and tax practices.

Together with our international offices, we also provide advice in cross-border restructurings and complex international insolvencies involving multiple laws and jurisdictions including Europe, Asia, and Latin America.

Bankruptcy Litigation

Covington is experienced in bankruptcy litigation of all types of controversies, in bankruptcy court and other forums. Our attorneys have represented clients in a broad range of bankruptcy-related disputes, from subordination disputes to cram-down contests in plan confirmation proceedings, as well as a wide variety of financial litigation related to bankruptcy cases, including contract disputes, breach of fiduciary duty claims, avoidance actions (fraudulent transfer and preference litigation), and claims litigation. We also represent examiners in bankruptcy cases, including conducting internal investigations and evaluating potential causes of action.

Creditor Representation

Covington's creditor practice includes representing a wide variety of clients, including bank agents and groups, creditors and ad hoc committees, financial institutions, indenture trustees, investment firms engaging in "loan-to-own" strategies, hedge funds, and trade creditors. We advise clients on formulating and negotiating financing arrangements, including DIP and exit financing facilities, as well as assist in review of a debtor's day-to-day operational issues including employee, cash management and contractual issues. We have significant experience analyzing the debtor's long-term strategies, negotiating plans of reorganization, and litigating inter-creditor disputes, with a view to maximizing the client's recovery.

Debtor Representation

We assist clients navigating financial distress, providing a broad range of business advisory and crisis management services, including advising on governance and strategic review of options to develop and execute creative legal strategies and solutions to preserve corporate value. A substantial part of this focus involves bolstering liquidity and avoiding operational crisis by employing alternative financing techniques. We have significant experience guiding clients through consensual out-of-court workouts, prepackaged or pre-negotiated bankruptcies, debt and equity exchanges, contested bankruptcy proceedings, and asset sales.

Distressed M&A

We have significant experience representing parties in connection with sales of assets of distressed companies both outside of bankruptcy and via “363 transactions” in Chapter 11 cases. We combine the skills necessary for traditional M&A transactions with the specialized knowledge of bankruptcy law and procedures, fraudulent transfer, successor liability and other risk-protection, and similar issues that must be addressed to protect our clients’ interests. Our lawyers are particularly adept at acquisitions of intellectual property from distressed companies and have been involved in a number of recent transactions involving IP sales.

Insurance

Our restructuring lawyers work closely with lawyers in our preeminent insurance practice in representing policyholders in insurance coverage disputes arising in bankruptcy cases and related bankruptcy litigation. We advise clients on a variety of coverage issues, including coverage for mass-tort liability, property and business interruption losses, claims against directors, officers and employees and many other types of exposures, solvent schemes, and other issues triggered by a bankruptcy filing. We have significant experience addressing issues particular to bankruptcy proceedings, including the status and treatment of insurance policies in bankruptcy, disputes regarding the ownership of policy proceeds following bankruptcy, and the application of certain exclusions to coverage such as the “insured v. insured” exclusion in D&O policies.

Abigail O'Brient

Covington & Burling LLP
1999 Avenue of the Stars
Los Angeles, CA 90067-4643
T +1 424 332 4826 | aobrient@cov.com
www.cov.com

COVINGTON

About

Abby O'Brient's wide-ranging restructuring and creditor rights litigation practice focuses on representation of secured and unsecured creditors in insolvency cases and other proceedings nationwide. She routinely represents parties in litigation related to insolvency and distressed debt in state and federal court, as well as purchasers and sellers of distressed assets and fiduciaries in bankruptcy cases and other insolvency matters. Outside of the insolvency arena, Abby has significant judgment enforcement and asset recovery experience. Her clients value her practical, business-oriented approach to resolving legal issues and her ability to coordinate and manage proceedings pending in multiple courts to achieve positive litigation outcomes.

Representative Matters

- Represented DIP lender and chair of Official Committee of Unsecured Creditors in chapter 11 case of fintech company serving cryptocurrency industry. (*In re Prime Core Technologies Inc., et al.*, Bankr. D. Del.)
- Represented litigation trustee and asset recovery manager in post-confirmation administration of trust and related entities formed to recover hundreds of millions owed to creditors of failed investment funds. (*In re Zohar III Corp, et al.*, U.S. Bankr. Ct., D. Del.)
- Represented liquidating trustee in post-confirmation administrative and litigation matters arising from failed oil refinery in U.S. Virgin Islands, including over \$1 billion of asserted claims. (*In re Limetree Bay Services, LLC et al.*, U.S. Bankr. Ct., S.D. Tex.)
- Represented post-confirmation plan administrator in matters arising from failed offshore oil and gas exploration and development companies, including tens of billions of dollars of asserted claims. (*In re Fieldwood Energy III LLC, et al.*, U.S. Bankr. Ct., S.D. Tex.)
- Represented liquidating trustee in post-confirmation administration of trust and litigation matters arising from failed healthcare insurance technology company. (*In re Benefytt Technologies, Inc., et al.*, U.S. Bankr. Ct., S.D. Tex.)
- Represented secured creditors of municipal borrower in pre-bankruptcy litigation, successfully obtaining judgment and appointment of post-judgment receiver to enforce judgment; chapter 9 case; and post-bankruptcy receivership to liquidate collateral. (*In re City of Stockton*, Bankr. N.D. Cal.)
- Represented family office in enforcing \$30 million fraud judgment, successfully seizing assets sufficient to pay judgment and post-judgment interest in full.

- Represented litigation trustee in fraudulent transfer case to recover over \$140 million of transfers by debtors engaged in onshore oil and natural gas acquisition, exploitation, exploration and production. (*In re Alta Mesa Resources, Inc., et al.*, U.S. Bankr. Ct., S.D. Tex.)
- Represented family office in obtaining successive dismissals, prior to discovery, of \$50 million fraudulent transfer case brought by post-confirmation liquidating entity. (*Stillwater Liquidating LLC v. Chernyakova, et al.*, Los Angeles Sup. Ct. (Complex Div.))
- Represented numerous creditors and potential avoidance action defendants in various cryptocurrency bankruptcy cases.
- Represented commodity vendor in cross-border litigation against customer.
- Chaired Official Committee of Unsecured Creditors in chapter 11 cases of health insurance technology company. (*In re Benefytt Technologies, Inc., et al.*, U.S. Bankr. Ct., S.D. Tex.)
- Represented member of Official Committee of Unsecured Creditors in chapter 11 cases of operators of on-demand office and co-working spaces. (*In re RGN-Group Holdings, LLC., et al.*, Bankr. D. Del.)
- Represented landlord and member of Official Committee of Unsecured Creditors in chapter 11 cases of data center operators. (*In re Cyxtera Technologies Inc., et al.*, Bankr. D.N.J.)
- Represented purchaser of bankrupt cellulosic ethanol plant and cogeneration facility for \$48.5 million. (*In re Abengoa Bioenergy and Biomass of Kansas LLC*, Bankr. D. Kan.)
- Represented secured creditor in defending litigation filed by former director/officer of borrower in connection with assignment for the benefit of creditors.
- Represented directors of venture capital firm in defending litigation filed by state regulator with respect to environmental liabilities of insolvent portfolio company.
- Represented director/officer in obtaining dismissal of breach of contract, fraudulent transfer, and breach of fiduciary duty claims by assignee for the benefit of creditors.
- Represented senior secured lender, DIP lender, and stalking horse purchaser in chapter 11 case of professional services firm with nationwide operations. (*In re EYP Group Holdings, Inc., et al.*, Bankr. D. Del.)
- Represented indenture trustees and master trustees in connection with receivership and bankruptcy proceedings in California and Florida to recover hundreds of millions of dollars in debt.
- Represented real estate investor in enforcement of \$20 million judgment against former business associate, and amended judgment to include alter egos.
- Represented competitor and creditor of debtor in large utility bankruptcy.

- Represented unsecured creditor of wholesale pharmacy in successful pre-bankruptcy litigation and in bankruptcy case. Obtained conversion of the case, on an emergency basis, shortly after petition date to staunch ongoing theft and fraud by former management.
- Represented unsecured creditors in confirming creditor chapter 11 plan in contested bankruptcy case of failed real estate developer.
- Represented secured creditor in purchase of substantially all assets of bankrupt developer of membranes for industrial separation and purification processes, and in settlement with committee and aggressive undersecured junior creditors – with sale and settlement consummated within sixty days after petition date.
- Represented chapter 11 trustee in sale of water utility and numerous real estate assets.
- Represented supervisory board of liquidating trust in obtaining dismissal of claims for equitable subordination and breach of fiduciary duty.
- Represented luxury boutique hotel in selling assets and confirming chapter 11 plan during heavily contested bankruptcy case, including preventing confirmation of secured creditor's competing plan, allowing equity holders to receive significant distribution.
- Represented Chapter 7 trustee in successfully prosecuting and collecting millions of dollars in judgment and settlements in fraudulent transfer litigation arising out of failed equipment leasing company. (*In re Creative Capital Leasing Group, LLC*, U.S. Bankr. Ct., S.D. Cal.)
- Advised numerous publicly-traded and private company Boards of Directors and executive management teams regarding insolvency issues, including potential workouts or insolvency proceedings, distressed dispositions/acquisitions of assets, fiduciary duties, and creditor rights.

Credentials

Education

- University of California, Berkeley School of Law, J.D.
- Washington and Lee University, B.A.
Magna cum laude

Bar Admissions

- California
- U.S. Court of Appeals for the Ninth Circuit
- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Southern District of California

Accolades

- *Best Lawyers in America*, Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law (2023-2024)
- *Best Lawyers in America*, Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law (2023-2024)
- *Los Angeles Times Banking and Finance Magazine: Trends, Updates and Visionaries*, Visionary (2021-2022)
- *Los Angeles Business Journal*, Women of Influence - Attorneys (2021)
- *Los Angeles Times Business of Law*, Finalist Visionaries Leadership Award (2021)
- *Los Angeles Business Journal*, Top Women Attorneys (2020)
- *Los Angeles Business Journal*, Leaders in Law - Firm Attorney Nominees (2019); Finalist - Bankruptcy (2020-2021)
- *Southern California Super Lawyers*, Rising Star: Bankruptcy (2019)
- *Southern California Super Lawyers*, Top Women Attorneys Rising Star: Bankruptcy (2019)
- *San Diego Super Lawyers*, Rising Star: Bankruptcy (2018)
- One of 40 attorneys selected to participate in the National Conference of Bankruptcy Judges' Next Generation Program (2016)