

RESOLUTION NUMBER R- 310409

DATE OF FINAL PASSAGE MAY 04 2016

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO DENYING THE DEFENSE REQUEST OF STEPHANIE AUDETTE IN THE MATTER OF *GIOCONDO HYCHKO V. CITY OF SAN DIEGO, ET AL.*, SAN DIEGO SUPERIOR COURT CASE NO. 37-2016-00005845-CU-NP-CTL.

WHEREAS, on February 19, 2016, Gioconda Hychko (Plaintiff) filed suit against the City of San Diego (City) and San Diego Police Officer Stephanie Audette alleging, among other things, an invasion of privacy related to Officer Audette’s alleged unlawful access to Plaintiff’s cellphone account. Plaintiff brought suit in the San Diego Superior Court. The suit is entitled *Gioconda Hychko v. City of San Diego, et al.*, Case No 37-2016-00005845-CU-NP-CTL; and

WHEREAS, on April 11, 2016, Officer Audette requested the City provide her with a defense to the above-entitled action; and

WHEREAS, except as otherwise provided in California Government Code (Government Code) sections 995.2 and 995.4, upon request of an employee, the City shall provide for the defense of any civil action or proceeding brought against the employee, in his official or individual capacity or both, on account of an act or omission in the scope of his employment as an employee of the City, under Government Code section 995; and

WHEREAS, the City may refuse to provide a defense under Government Code section 995.2 to an employee in a civil action or proceedings if the City determines any of the following:

1. The act or omission was not within the scope of employment;
2. The employee acted or failed to act because of actual fraud, corruption, or actual malice;

3. The defense of the action or proceeding by the public entity would create a specific conflict of interest between the public entity and the employee or former employee. For the purposes of this section, "specific conflict of interest" means a conflict of interest or an adverse or pecuniary interest, as specified by statute or by a rule or regulation of the public entity; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City of San Diego has denied Officer Audette's defense request to *Gioconda Hychko v. City of San Diego, et al.*, Case No 37-2016-00005845-CU-NP-CTL, under Government Code section 995.2.

BE IT FURTHER RESOLVED, that the City Council has determined, based on the City Attorney report dated April 26, 2016, that Officer Audette has acted outside the scope of her employment with the City.

BE IT FURTHER RESOLVED, that the City Council has determined, based on the City Attorney report dated April 26, 2016, that to provide Officer Audette with a defense would create a specific conflict of interest between the City and Officer Audette.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 

David J. Karlin
Chief Deputy City Attorney

DJK:slc:ccm
4/27/2016 COR. COPY
4/22/2016
Or.Dept: City Attorney
Doc No. 1272138_2

I certify that this Resolution was passed by the Council of the City of San Diego, at this meeting
of APR 26 2016.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 5/3/16
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on APR 26 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAY 04 2016

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By Mary Fernandez, Deputy

Office of the City Clerk, San Diego, California

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