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19 **Attorneys for Petitioners/Plaintiffs, WILLIAM R. ("RUSTY") BAILEY III, MARCIA**
20 **McQUERN, and THOMAS MULLEN**

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
22 **FOR THE COUNTY OF RIVERSIDE, CENTRAL DISTRICT**

23 **WILLIAM R. ("RUSTY") BAILEY, III,**
24 **MARCIA McQUERN, and THOMAS**
25 **MULLEN,**

26 **Petitioners/Plaintiffs,**

27 **v.**

28 **CITY OF RIVERSIDE,**


Respondent/Defendant.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JAN 09 2019

V. Alvarado 

CA1

JAN 10 2019


CASE NO. RIC 1804755

Hon. Judge John Vineyard
Department 1

Hon. Judge Randall S. Stamen
Department 7 – L&M purposes only

NOTICE OF MOTION AND MOTION
FOR SUMMARY ADJUDICATION
(Code of Civil Procedure section 437c,
subdivision (f))

DATE: April 10, 2019

TIME: 8:30 a.m.

DEPT: 7

RESERVATION NO: RES86534

TRIAL DATE: None yet

ACTION FILED: March 9, 2018

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1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:

2 PLEASE TAKE NOTICE that on April 10, 2019, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard, in Department 7 of the above-entitled Court, located at 4050 Main Street,
4 Riverside, California 92501, Petitioners/Plaintiffs WILLIAM R. ("RUSTY") BAILEY III, MARCIA
5 McQUERN, and THOMAS MULLEN (collectively hereinafter "Moving Parties" or
6 "Petitioners/Plaintiffs") will move the Court for an order granting summary adjudication of their
7 cause of action for declaratory relief pursuant to Code of Civil Procedure section 437c, subdivision
8 (f). The motion will seek an order of this Court as follows:

- 9 1. That Mayor Bailey has veto authority over formal action taken by vote of the City
10 Council to approve contracts/personnel actions with regard to employees who serve at
11 the pleasure of the City Council under the Charter (e.g., the City Manager, the City
12 Attorney, and the City Clerk);
- 13 2. That formal resolutions must be submitted to the City Council for formal action taken
14 by vote to approve contracts with regard to employees who serve at the pleasure of
15 the City Council under the Charter (e.g., the City Manager, the City Attorney, and the
16 City Clerk);
- 17 3. That Mayor Bailey did, in fact, have veto authority on February 6, 2018 to veto City
18 Council approval of the renegotiated contract of City Manager, John Russo;
- 19 4. That a formal resolution should have been submitted to the City Council for formal
20 action taken by vote to approve the renegotiated contract of City Manager, John
21 Russo;
- 22 5. That the renegotiated contract of City Manager, John Russo is void *ab initio* such that
23 all monies paid thereunder were unlawful gifts of public funds;
- 24 6. That the City Attorney who serves at the pleasure of the City Council under the
25 Charter had, and will have in the future, a conflict of interest with regard to
26 counselling the City and its elected officials on the Mayor's veto authority over
27 contracts/personnel actions for all of the employees who serve at the pleasure of the
28

1 City Council under the Charter (e.g., the City Manager, the City Attorney, and the
2 City Clerk); and

- 3 7. That Moving Parties are entitled to an award of attorneys' fees pursuant to Code of
4 Civil Procedure section 1021.5 which allows an award of "attorneys' fees to a
5 successful party [whose action results] in the enforcement of an important right
6 affecting the public interest." (Code Civ. Proc., § 1021.5)

7 This motion is based on this Notice, the Memorandum of Points and Authorities, the Separate
8 Statement of Undisputed Facts, and the Index of Exhibits filed herewith, which exhibits include, but
9 are not limited to, the Declarations of William R. ("Rusty") Bailey III, Marcia McQuern, and
10 Thomas Mullen, the Declaration of Susan Knock Beck and Request for Judicial Notice, the records
11 and pleadings on file herein, and on such other evidence as may be presented.

12 DATED: January 4, 2019

THOMPSON & COLEGATE LLP

13
14 (By: 

15 SUSAN KNOCK BECK
16 Attorneys for Petitioners/Plaintiffs,
17 WILLIAM R. ("RUSTY") BAILEY III,
18 MARCIA McQUERN, and THOMAS MULLEN
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I.**
4 **INTRODUCTION**

5 There is an elephant in the City Council Chambers and it must be addressed so the people's
6 business can be properly conducted. To that end, this Court should grant summary adjudication on
7 Moving Parties' declaratory relief cause of action so that an important matter of public interest is
8 resolved with directions to the parties going forward. The City Council has been informed by the
9 City Attorney that the Mayor does not have veto authority over formal action taken by vote of the
10 City Council when it comes to contracts/personnel actions concerning the City Manager, the City
11 Attorney and the City Clerk. The issue became apparent last February when the City Council voted
12 to approve a renegotiated contract for the City Manager and the Mayor attempted to veto it.

13 There are no ambiguous Charter provisions, ordinances or resolutions at issue here. The
14 Charter, the Riverside Municipal Code and City Council Resolution No. 23035 make it clear that the
15 Mayor's veto authority exists, that it intends that there be a balance of power. The facts also make it
16 clear that the Mayor's attempted veto on February 6, 2018 was improperly thwarted by the City
17 Attorney. Moving Parties desire a judicial determination and declaration that the veto authority
18 exists, that performance under the City Manager's contract executed on February 6, 2018 constituted
19 an unlawful gift of public funds, that the City Attorney has a conflict of interest in advising the City
20 on these actions, and that Moving Parties are entitled to recover their reasonable attorneys' fees
21 under Code of Civil Procedure section 1021.5 upon prevailing on these issues.

22 **II.**
23 **UNDISPUTED MATERIAL FACTS AND RELATED CITY LEGISLATION**

24 Petitioner/Plaintiff, William R. "Rusty" Bailey, was elected Mayor of the City of Riverside in
25 2012, and has at all times since he was sworn in continued to be Mayor of the City of Riverside.
26 [UMF 1.] Petitioners/Plaintiffs Marcia McQuern and Thomas Mullen are members of the public,
27 taxpayers, voters, and citizens of the City of Riverside. [UMF 2.] Petitioners/Plaintiffs desire a
28 judicial determination of the respective rights and duties of Mayor Bailey and the City under the

1 Charter, City Council Resolution 23035 and Riverside Municipal Code Sections 2.32.10, et seq. as
2 to (1) the Mayor's Veto Authority with regard to contracts/ personnel actions for the City Manager,
3 City Attorney and City Clerk (since such actions are not expressly listed in Section 413 of the
4 Charter as exceptions to his veto authority), (2) the involvement/conflict of interest of the City
5 Attorney in employment matters for employees who, according to the Charter, serve at the pleasure
6 of the City Council, (3) whether a formal, written Resolution must be included when the contracts of
7 the City Manager, the City Attorney and the City Clerk are brought before the City Council for
8 approval, (4) whether the February 6, 2018 City Manager Contract of John Russo is void *ab initio*,
9 (5) whether monies paid to John Russo under the City Manager's Contract executed on February 6,
10 2018 were unlawful gifts of public funds, and (6) whether Petitioners/Plaintiffs may recover their
11 attorneys' fees in successfully bringing this action. [UMF 4.]

12 John Russo was hired as City Manager for the City of Riverside after formal action taken by
13 vote of the City Council on February 24, 2015 whereby they approved his employment contract and
14 an accompanying formal, written Resolution #22089. [UMF 5.] Gary Geuss was hired as City
15 Attorney for the City of Riverside after formal action taken by vote of the City Council on March 3,
16 2015 whereby they approved his employment contract and an accompanying formal, written
17 Resolution #22812. [UMF 6.] In December of 2017, while Mr. Geuss was employed as City
18 Attorney for the City of Riverside, a renegotiated employment contract for him was approved by
19 formal action taken by vote of the City Council. However, the contract was not accompanied by a
20 formal, written Resolution and, as a result, the City Council did not take formal action by vote to
21 approve a formal Resolution. [UMF 7.] Mayor Bailey did not attempt to veto approval of Mr.
22 Geuss's contract in December of 2017. [UMF 8.]

23 Towards the end of 2017, Mayor Bailey became aware that a new employment contract was
24 being prepared for City Manager John Russo as well, and Mayor Bailey indicated to Mr. Geuss that
25 he was inclined to veto any City Council approval of that contract. [UMF 9.] Prior to the February
26 6, 2018 formal action taken by vote by the City Council to approve the City Manager's Contract, the
27 City Attorney for the City of Riverside, Gary Geuss, provided to Mayor Bailey a written opinion by
28 the firm of Colantuono, Highsmith & Whatley, PC, which opinion was directed to Mr. Geuss and

1 opined that Mayor Bailey has no veto authority over the City Council's formal action taken by vote
2 to approve the City Manager's Contract. [UMF 10.] Mr. Geuss also informed Mayor Bailey prior to
3 February 6, 2018 that he agreed with the written opinion by the firm of Colantuono, Highsmith &
4 Whatley, PC that Mayor Bailey had/has no veto authority over the City Council's formal action
5 taken by vote to approve the City Manager's Contract. [UMF 11.]

6 The City of Riverside is a California Charter City in accordance with Article XI, section 5,
7 subdivision (a) of the California Constitution which provides:

8 "It shall be competent in any city charter to provide that the city governed
9 thereunder may make and enforce all ordinances and regulations in respect to
10 municipal affairs, subject only to restrictions and limitations provided in their several
11 charters adopted pursuant to this Constitution shall supersede any existing charter,
and with respect to municipal affairs shall supersede all laws inconsistent therewith."

12 (Cal. Const., art. XI, § 5, subd. (a).)

13 The Charter for the City of Riverside (which became effective on October 23, 2012) is the
14 equivalent of the City's local constitution. (See *Creighton v. City of Santa Monica* (1984) 160
15 Cal.App.3d 1011, 1017.) It provides, in pertinent part:

16 Section 200: "The City shall have the power to make and enforce all laws and
17 regulations in respect to municipal affairs, subject only to such restrictions and
18 limitations as may be provided in this Charter and in the Constitution of the State of
California. . ." [INDEX0182¹.]

19 Section 201: "City agencies, boards, commissions, committees, officials, staff
20 and officers, including the Mayor and members of the City Council, exist to conduct
21 the people's business." [INDEX0182.]

22 Section 400, paragraphs (a) through (c): The Charter establishes the elective
"office of Mayor" within the City, and the Mayor is elected "from the City at large."
23 [INDEX0183.] Section 400, paragraphs (a) and (b) also provide that the City
Council, consisting of seven members, shall be elected by the public, specifically, that
24 "[t]he City Council shall be elected by wards by the registered voters of the respective
wards only" and that "[o]ne member of the City Council shall be elected by each
25 ward, and only the registered voters of each ward shall vote for the member of the
26

27 ¹ Citations to copies of the Charter, Chapter 2.32 of the Riverside Municipal Code, and City Council
28 Resolution No. 23035 are to the Bates-stamped page numbers of the Index of Exhibits in support of
the motion.

1 City Council to be elected by that ward." [Ibid.]

2 Section 405: "The Mayor shall be the presiding officer at all meetings of the
3 City Council and shall have a voice in all its proceedings but shall not vote except to
4 break a City Council tie-vote which exists for any cause." [INDEX0185.]

5 Section 406: "All powers of the City shall be vested in the City Council
6 except as otherwise provided in [the] Charter." [INDEX0185.]

7 Section 410: "A majority of the members of the City Council shall constitute
8 a quorum to do business but a lesser number may adjourn from time to time."
9 [INDEX0186.]

10 Section 413: "At any time before the adjournment of a meeting, the Mayor
11 may, by public declaration spread upon the minutes of the meeting, veto any formal
12 action taken by vote of the City Council including any ordinance or resolution, except
13 an emergency ordinance, the annual budget or an ordinance proposed by initiative
14 petition. Thereupon, pending the vote to override the veto as herein provided such
15 ordinance resolution or action shall be deemed neither approved nor adopted. The
16 Mayor shall, no more than twenty days following the veto, provide to Council
17 members in writing reasons for the Mayor's veto. If the Mayor fails to provide a
18 written veto message within the time allotted, the original action of the Council shall
19 stand. At any regular or adjourned meeting held not less than thirty days nor more
20 than sixty days after veto the City Council shall reconsider such ordinance resolution
21 or action and vote on the question of overriding the veto. Five affirmative votes shall
22 be required for its adoption or approval. The Mayor shall have no right to veto the
23 veto override of any ordinance, resolution, or action." [INDEX0187.]

24 Sections 600 and 700: The City Manager, the City Attorney and the City
25 Clerk serve at the pleasure of the City Council. [INDEX0189, 0190.]

26 Section 601: The selection of a City Manager shall be determined by a
27 majority vote of the City Council, and all City employees who do not serve at the
28 pleasure of the City Council pursuant to the Charter, serve at the pleasure of the City
Manager. [INDEX0189-0190.]

Section 701: "The City Council, subject to the provisions of [the] Charter,
shall provide for the number, titles, qualification, powers, duties and compensation of
all officers and employees." [INDEX0190.]

Chapter 2.32 of the Riverside Municipal Code contains Salary Regulations for City
employees. [INDEX0208-0212.] It provides, in pertinent part:

Section 2.32.010: "This chapter shall be known as the "Salary Regulations of
the City," and may be cited as such." [INDEX0209.]

Section 2.32.020: "This chapter is enacted pursuant to Section 701 of the City
Charter to provide for the number, titles, qualifications, powers, duties, compensation

1 and terms of employment of City officers and employees and to conform to the
2 principle of equal pay for equal work.” [INDEX0209.]

3 Section 2.32.030: “The basic monthly compensation plan for City officers
4 and employees shall be established by resolution of the City Council.” [INDEX0209.]

5 Sections 2.32.080 through 2.32.140: The following matters (for all City
6 employees) must be established by formal resolution of the City Council:
7 overtime/call time, vacation, holidays, sick leave, bereavement leave, industrial
8 accident leave, leave of absence, and military leave. [INDEX0211.]

9 Article IV, section A of Resolution No. 23035 of the City Council of the City of Riverside,
10 which establishes the “Rules of Procedure and Order of Business” dated July 26, 2016 contains
11 language that mirrors Section 413 of the Charter with regard to the Mayor’s veto authority.
12 [INDEX0213-0251, specifically 0215-0216.]

13 On February 6, 2018, a renegotiated employment contract for then City Manager, John Russo
14 (“City Manager’s Contract”) came before the Riverside City Council for a vote of approval during a
15 regular City Council meeting. [UMF 12.] The City Manager’s Contract provided for changes to Mr.
16 Russo’s salary, vacation, and administrative leave. [UMF 13.] The City Manager’s Contract added
17 employment benefits, including a life insurance policy in the amount of \$700,000 with premiums to
18 be paid by the City until December 31, 2024 or until Mr. Russo’s termination, and a mortgage for
19 Mr. Russo’s home in the amount of \$675,000 at a reduced interest rate. [UMF 14.]

20 On February 6, 2018, the City Manager’s Contract that was presented for formal action by
21 vote of the City Council included a signature line for the Mayor, Petitioner/Plaintiff William R.
22 “Rusty” Bailey. [UMF 15.] On February 6, 2018, the City Manager’s Contract that was presented
23 for formal action by vote of the City Council was not accompanied by a written Resolution. [UMF
24 16.] On February 6, 2018, the City Council approved the City Manager’s Contract by a vote of 5 to
25 2. [UMF 17.] The City Council has never taken a formal action by vote to approve a written
26 Resolution with regard to the City Manager’s Contract. [UMF 18.]

27 On February 6, 2018, and during the regular City Council meeting, Mayor Bailey verbally
28 vetoed the City Council’s vote to approve the City Manager’s Contract. [UMF 19.] On February 6,
2018, after Mayor Bailey verbally vetoed the City Council’s formal action taken by vote to approve
the City Manager’s Contract, Mr. Geuss as City Attorney, stated to all present that Mayor Bailey did

1 not have veto authority with regard to the City Council's vote to approve the City Manager's
2 Contract. [UMF 20.] On February 6, 2018, the City Manager's Contract was fully executed by City
3 Manager, John Russo and the City's Mayor Pro Tem, Chris MacArthur. It was also approved as to
4 form by the City Attorney, Gary Geuss, and attested to by the City Clerk, Colleen J. Nicol. (There
5 was no longer a signature line for the Mayor on the fully-executed City Manager's Contract.) [UMF
6 21.] Following the City Council's formal vote to approve the City Manager's Contract, the City
7 immediately commenced performance under that contract. [UMF 22.]

8 Within 20 days of the February 6, 2018 regular City Council meeting, Mayor Bailey
9 submitted to the City Council his written bases for his veto of the formal action taken by vote of the
10 City Council to approve the City Manager's Contract. [UMF 23.] The City Council has never held
11 a veto override vote with regard to Mayor Bailey's veto of its formal vote to approve the City
12 Manager's Contract. [UMF 24.]

13 The City Council has taken the position that Mayor Bailey had/has no veto authority over the
14 City Council's formal vote to approve the City Manager's Contract because the Charter provides that
15 the City Manager serves at the pleasure of the City Council. [UMF 25.] The City Council has also
16 taken the position that it was not required to take formal action by vote to approve a written
17 Resolution with regard to the City Manager's Contract. [UMF 26.] Mayor Bailey now realizes that
18 after Mr. Geuss and Mr. Russo were hired by the City, their subsequent contracts were not
19 accompanied by formal resolutions for formal action by vote of the City Council. [UMF 27.]
20 Petitioners/Plaintiffs assert that the City Manager's Contract is void *ab initio* because Mayor Bailey
21 vetoed it in accordance with the Charter and Resolution No. 23035 and no veto override vote has
22 ever been taken by the City Council. Petitioners/Plaintiffs assert that, because the City Manager's
23 Contract is void *ab initio*, any monies paid to or for John Russo by the City under the City
24 Manager's Contract are unlawful gifts of public funds. The City Manager, John Russo, was
25 terminated from his employment with the City of Riverside on April 17, 2018 pursuant to formal
26 action taken by vote of the City Council while Mayor Bailey was in South Korea visiting the City's
27 Sister City. [UMF 28.]

28 In summary, Petitioners/Plaintiffs assert that:

1 commission's recommendation" for the approval of zoning ordinances or the amendment of zoning
2 ordinances. (*Id.* at pp. 881-884.) The plaintiff asserted that the streamlined practice was improperly
3 used with regard to a particular subdivision application, and that it violated the Government Code.
4 (*Id.* at pp. 881-883.) The County disagreed and represented that it would continue to utilize the
5 streamlined process. (*Id.* at pp. 883-884.) The superior court granted the plaintiff's motion under
6 Code of Civil Procedure section 437c and granted declaratory relief finding that the Government
7 Code section in question "require[s] receipt of the planning commission's recommendation before
8 notice [can] be given of the board of supervisors' hearing." (*Id.* at p. 884.) The court of appeal
9 affirmed, and it discussed what constitutes an "actual controversy" under Code of Civil Procedure
10 section 1060 governing actions for declaratory relief. (*Id.* at pp. 884-888.)

11 "The purpose of declaratory relief is 'to set controversies at rest before they lead to
12 repudiation of obligations, invasion of rights or commission of wrongs.' [Citation.] It 'is to be used
13 in the interests of preventive justice, to declare rights rather than execute them.' [*Ibid.*]"
14 (*Environmental Defense Project of Sierra County v. County of Sierra, supra*, 158 Cal.App.4th at p.
15 884.) Thus, the court of appeal determined that under such circumstances, where " 'there [i]s a
16 reasonable expectation that the wrong [] will be repeated,' . . . declaratory relief was therefore
17 appropriate." (*Id.* at p. 887.)

18 This motion for summary adjudication seeks a similar judicial determination and declaration
19 that, under the Charter, City Council Resolution No. 23035, and Chapter 2.32 of the Riverside
20 Municipal Code:

- 21 1. That Mayor Bailey has veto authority over formal action taken by vote of the City
22 Council to approve contracts/personnel actions with regard to employees who serve at
23 the pleasure of the City Council under the Charter (e.g., the City Manager, the City
24 Attorney, and the City Clerk);
- 25 2. That formal resolutions must be submitted to the City Council for formal action taken
26 by vote to approve contracts for employees who serve at the pleasure of the City
27 Council under the Charter (e.g., the City Manager, the City Attorney, and the City
28 Clerk);

- 1 3. That Mayor Bailey did, in fact, have veto authority on February 6, 2018 to veto City
2 Council approval of the renegotiated contract of City Manager, John Russo;
3 4. That a formal resolution should have been submitted to the City Council for formal
4 action taken by vote to approve the renegotiated contract of City Manager, John
5 Russo;
6 5. That the renegotiated contract of City Manager, John Russo is void *ab initio* such that
7 all monies paid thereunder were unlawful gifts of public funds;
8 6. That the City Attorney who serves at the pleasure of the City Council under the
9 Charter had, and will have in the future, a conflict of interest with regard to
10 counselling the City and its elected officials on the Mayor's veto authority for
11 contracts/personnel actions for all of the employees who serve at the pleasure of the
12 City Council under the Charter (e.g., the City Manager, the City Attorney, and the
13 City Clerk); and
14 7. That Moving Parties are entitled to an award of attorneys' fees pursuant to Code of
15 Civil Procedure section 1021.5 which allows an award of "attorneys' fees to a
16 successful party [whose action results] in the enforcement of an important right
17 affecting the public interest." (Code Civ. Proc., § 1021.5)

18 Of course, the "particular legislation" at issue here are the Charter, City Council Resolution
19 23035 and Chapter 2.32 of the Riverside Municipal Code.

20 IV.

21 **THE CHARTER EXPRESSLY PROVIDES FOR A BALANCE OF POWER THAT**
22 **INCLUDES THE MAYOR'S VETO AUTHORITY OVER ANY FORMAL ACTION TAKEN**
23 **BY VOTE OF THE CITY COUNCIL, EXCEPT AS TO SPECIFICALLY ENUMERATED**
24 **ACTIONS NOT RELEVANT HERE.**

25 "A city's charter is, of course, the equivalent of a local constitution. It is the supreme organic
26 law of the city, subject only to conflicting provisions in the federal and state constitutions and to
27 preemptive state law. (*Creighton v. City of Santa Monica, supra*, 160 Cal.App.3d at p. 1017; citing
28 *San Francisco Fire Fighters v. City and County of San Francisco* (1977) 68 Cal.App.3d 896, 898;
Brown v. City of Berkeley (1970) 57 Cal.App.3d 223, 231.) " "[Charter] cities may make and enforce

1 all ordinances and regulations subject only to restrictions and limitations imposed in their several
2 charters.... Within its scope, such a charter is to a city what the state Constitution is to the state.’ ”
3 (*Ibid.*; quoting *Campen v. Greiner* (1971) 15 Cal.App.3d 836, 840.)

4 “Under settled rules of statutory interpretation, the various sections of a charter must be
5 construed together, giving effect and meaning so far as possible to all parts thereof, with the primary
6 purpose of harmonizing them and effectuating the legislative intent as therein expressed.”
7 (*Creighton v. City of Santa Monica, supra*, 160 Cal.App.3d at p. 1017; citing *Hanley v. Murphy*
8 (1953) 40 Cal.2d 572, 576.) “Where it is impossible to reconcile conflicting provisions, special
9 provisions control more general provisions and later enacted provisions control those earlier in
10 time.” (*Id.* at pp.1017-1018; citing *County of Placer v. Aetna Cas. Etc. Co.* (1958) 50 Cal.2d 182,
11 189; *City of Petaluma v. Pacific Telephone & Telegraph Co.* (1955) 44 Cal.2d 284, 288; *Diamond*
12 *International Corp. v. Boas* (1979) 92 Cal.App.3d 1015.) The courts first look to “the language of
13 the charter, giving effect to its plain meaning.” (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9
14 Cal.4th 161, 172; citing *Burden v. Snowden* (1992) 2 Cal.4th 556, 562.)

15
16 **A. The Mayor’s Veto Authority is Set Forth in Sections 405 and 413 of the City’s**
17 **Charter.**

18 Black’s Law Dictionary defines a “resolution” as “a main motion that formally expresses the
19 sense, will, or action of a deliberative assembly.” (Black’s Law Dictionary (10th ed. 2014).) A
20 resolution “ ‘is the mere expression of the opinion of the legislative body concerning some
21 administrative matter for the disposition of which it provides.’ [Citation.]” (*Central Mfg. Dist., Inc.*
22 *v. Board of Sup’rs of Los Angeles County* (1960) 176 Cal.App.2d 850, 860.) Thus, every formal
23 action taken by vote of the City Council that is not an ordinance, is necessarily a resolution (e.g., as
24 here, a resolution to approve a contract, a resolution to terminate a contract).

25 At some point after Mr. Russo and Mr. Geuss joined the City, formal written resolutions did
26 not accompany their renegotiated contracts that were presented to the City Council for formal action
27 by vote – this although the Charter prescribes, among the City Attorneys’ duties, the duty to
28 “[a]pprove the form of all contracts [] made by the City, endorsing the City Attorney’s approval
thereon in writing,” and to “[p]repare any and all proposed [] resolutions for the City.” (Charter, §

1 702(d) and (e) [INDEX0191].) Then, on February 6, 2018, when Mayor Bailey attempted to veto
2 the City Council's approval of Mr. Russo's renegotiated contract (which, like Mr. Geuss'
3 renegotiated contract, was not presented to the City Council along with a formal written resolution),
4 Mr. Geuss informed the Mayor that the Charter afforded him no veto authority over that approval.

5 On February 6, 2018, the City Council adopted Mr. Geuss' opinion, and an opinion Mr.
6 Geuss obtained from Colantuono, Highsmith and Whatley, PC that validated his opinion. The
7 opinions were based, in part, on Section 600 of the City Charter which provides that the City
8 Manager "shall serve at the pleasure of the City Council." (Exh. 6, Charter, § 700 [INDEX0190].)
9 The City also relied on Section 300 of the Charter which states that "[t]he municipal government
10 established by this Charter shall be known as 'Council-manager' form of government." (*Id.* at §300
11 [INDEX0183].) These opinions take a myopic view of the two Charter provisions and fail to
12 construe "the various sections of [the] charter [], giving effect and meaning so far as possible to all
13 parts thereof, with the primary purpose of harmonizing them and effectuating the legislative intent as
14 therein expressed." (*Creighton v. City of Santa Monica, supra*, 160 Cal.App.3d at p. 1017.)

15 The City ignores that Section 201 of the Charter prescribes that "[c]ity agencies, boards,
16 commissions, committees, officials, staff and officers including the Mayor and members of the City
17 Council exist to conduct the people's business." (Exh. 6, Charter, §201, underline added
18 [INDEX0182].) Section 406 of the Charter also provides: "'[a]ll powers of the City shall be vested
19 in the City Council *except as otherwise provided in this Charter*." (*Id.* at §406, italics added
20 [INDEX0183].) Thus, it is important to consider the Charter language that *otherwise provides* for
21 mayoral powers, including veto authority. First, Section 405 of the Charter provides that "[t]he
22 Mayor shall be the presiding officer at all meetings of the City Council and shall have a voice in all
23 its proceedings." (*Id.* at, § 405, underline added [INDEX0185].) The Mayor shall also vote to
24 "break a City Council tie-vote." (*Ibid.*) Additionally, at Section 413, the Mayor may "veto any
25 formal action taken by vote of the City Council," except under three specifically delineated
26 circumstances: (1) an emergency ordinance, (2) the annual budget, or (3) an ordinance proposed by
27 initiative petition. (*Id.* at §413, underline added [INDEX0187].) Notably, the approval of personnel
28 actions for the three (3) city employees who serve at the pleasure of the City Council (e.g., the City

1 Manager, the City Attorney, and the City Clerk), are not mentioned in this clear and unambiguous
2 recitation of actions that are excepted from the Mayor's veto authority. (*Ibid.*)

3 Nor is the City's reliance on the "Council-manager" form of government referenced in
4 Section 300 of the Charter dispositive. As noted in the official website for the National League of
5 Cities (Exhibit 16, National League of Cities website [INDEX0780-0791]), the labels that purport to
6 characterize forms of municipal government are not necessarily dispositive.² For example,
7 according to the National League of Cities, the Council-manager form of government (referenced in
8 the subject Charter at Section 300) is usually characterized by a "city council [that] oversees the
9 general administration, [and] policy, [and] sets [a] budget." (Exh. 16 [INDEX0781].) As here, such
10 governments usually appoint "a professional city manager to carry out day-to-day administrative
11 operations." (*Ibid.*) However, in contrast with the City's Charter, "[o]ften the mayor is chosen from
12 among the council on a rotating basis." (*Ibid.*) The National League of Cities finds this to be the
13 "most common form of government." (*Ibid.*)

14 Riverside's Charter does not establish a cookie-cutter, "Council-manager" form of
15 government. The Mayor is elected from all registered voters within the City of Riverside, in contrast
16 with the City Councilmembers who are each elected from their respective Wards. (Exh. 6, Charter,
17 § 400 [INDEX0056-0057].) The Mayor participates in conducting the people's business. (*Id.* at §
18 201 [INDEX0055].) The Mayor is "the official head of the City for all ceremonial purposes."
19 (§405.) The Office of the Mayor is a full-time salaried position, which includes benefits. (*Id.* at §
20 403, [INDEX0057-0058].) The Mayor presides "at all meetings of the City Council," he has "a
21 voice in all of its proceedings," and has "the primary but not exclusive responsibility for interpreting
22 the policies, programs and needs of the City government to the people," and he is also charged with
23 "informing the people of any major change in policy or program." (*Id.* at § 405 [INDEX0058].)
24 With regard to his relationship with the City Council, he "advises the City Council on all matters of
25

26
27 ² No secondary authority, including one published on a website, is "preemptive law" as that term is
28 used in *Creighton v. City of Santa Monica*, *supra*, 160 Cal.App.3d at p. 1017. Secondary authority is
merely persuasive of a particular point for which there is no controlling authority. (See Eisenberg,
CAL. PRAC. GUIDE: CIVIL APPEALS & WRITS (The Rutter Group 2017) Ch. 9-B.)

1 policy and public relations and perform[s] such other duties as may be prescribed by [the] Charter.”
2 (*Ibid.*) And finally, the Mayor has veto authority with regard to “any formal action taken by vote of
3 the City Council including any ordinance or resolution, except an emergency ordinance, the annual
4 budget or an ordinance proposed by initiative petition.” (*Id.* at § 413 [INDEX0060].)

5 To be sure there are other forms of municipal governments recognized by the National
6 League of Cities. There is the Mayor-Council form of government where the “Mayor is elected
7 separately from the council, is often full-time and paid, [and] with significant administrative and
8 budgetary authority.” (Exh. 16 [INDEX0782].) And “[d]epending on the municipal charter [], the
9 mayor could have weak or strong powers.” (*Ibid.*) Under this form of government, the “Council is
10 elected and maintains legislative powers,” and sometimes the municipality appoints “a professional
11 manager who maintains limited administrative authority.” (*Ibid.*) However, the Charter for the City
12 of Riverside does not wholly resemble this form of government either – except that under
13 Riverside’s “municipal charter” the Mayor does not have weak powers. (See, *supra*.)

14 Other forms of government recognized by the National League of Cities are the Commission
15 form of government, the Town Meeting form of government, and the Representative Town Meeting
16 form of government. (Exh. 16 [INDEX0782-0784].) However, NLC notes that the current trend is
17 that the “forms of government are less distinct than they once were.” (*Ibid.* [INDEX0784].) That is,
18 there is a tendency by municipalities to incorporate “structural features from other forms into one’s
19 current form.” In fact, “[t]he most common *mixing* occurs across the two most prevalent forms,
20 mayor-council and the council-manager.” (*Ibid.*, italics added.)

21 Obviously that *mixing* has occurred here. The Mayor participates in conducting the people’s
22 business. (Exh. 6, Charter, § 201 [INDEX0182].) The Mayor has a voice in all proceedings. (*Id.* at
23 § 405 [INDEX0185].) All “powers of the [are] vested in the City Council, except as otherwise
24 provided in [the] Charter.” (*Id.* at § 406 [INDEX0185].) Whenever formal action is taken by vote
25 of the City Council, the Mayor has veto authority except under three *otherwise provided* exceptions
26 that have nothing to do with personnel actions/contracts concerning City employees who serve at the
27 pleasure of the City Council. (Exh. 6, Charter, § 413 [INDEX0187].)
28

1 B. The Charter Incorporates Requirements that Preclude the City Council from
2 Circumventing the Mayor's Powers.

3 Section 413 of the Charter provides that “unless a higher vote is required by other provisions
4 of [the] Charter, the affirmative votes of at least four members of the City Council shall be required
5 for the adoption of any ordinance or resolution.”³ (Exh. 6, Charter, § 413 [INDEX0187].) The
6 Section continues by establishing the Mayor’s authority to veto “any formal action taken by vote of
7 the City Council *including* any ordinance or resolution, except an emergency ordinance, the annual
8 budget or an ordinance proposed by initiative petition.” (*Ibid.*, italics and underline added.) The
9 absence of *contract* in this sentence establishing veto authority cannot be reasonably construed to
10 signify that the Mayor may not veto City Council approval of employment contracts for the City
11 Manager, the City Attorney, and the City Clerk. Rather, it is enough that the City Council is taking
12 “any formal action” by vote to give rise to the Mayor’s veto authority – unless the City Council is
13 voting on “an emergency ordinance, the annual budget or an ordinance proposed by initiative
14 petition” which exceptions are expressly stated. (*Ibid.*) However, other provisions in the Charter,
15 and borne out by City ordinances and resolutions, fortify the Mayor’s veto authority. They also
16 show that there has been no question until now that the Mayor has veto authority.

17 For the Court’s convenience, Exhibit 17 [INDEX0792-0798] is a spreadsheet which
18 establishes the frequency and location within the Charter of the essential terms in the veto provisions
19 of Section 413 (e.g., *budget, emergency, formal action, initiative, resolution, ordinance, veto* and
20 *vote*). It also indicates the frequency and location of the term *contract* which is not found in the
21 exceptions to Section 413. There is no other language in the Charter addressing votes by the City
22 Council to approve *contracts* of employees who serve at the pleasure of the City Council, or the
23 Mayor’s veto of specific personnel actions as to such employees. Sections 600 and 700 provide that
24 these employees serve at the pleasure of the City Council. However, this language provides no more
25 exclusivity of control to the City Council than does Section 406 which states, “[a]ll powers of the
26 City shall be vested in the City Council *except as otherwise provided in this Charter.*” (Exh. 6,
27
28

³ Section 600 provides the selection of a City Manager must be by a majority of the votes. (Exh. 6, Charter, § 600 [INDEX0189].)

1 Charter, § 406, italics added [INDEX0185].) Section 413 is the *exception*. The Mayor may veto
2 “*any formal action* taken by vote of the City Council including any ordinance or resolution, except
3 an emergency ordinance, the annual budget or an ordinance proposed by initiative petition.” (*Id.* at §
4 413, italics added [INDEX0187].) Similarly, the Mayor “shall have no right to veto the veto
5 override of *any* ordinance, resolution or *action*.” (*Ibid.*, italics added.)

6 To the extent that the City argues that the heading for Section 413, e.g., “Adoption of
7 ordinances and resolutions” limits the veto authority to only ordinances and resolutions, it should be
8 noted that the City Council’s adoption of a budget does not specifically require an ordinance or a
9 formal written resolution. (See Exh. 6, Charter, §§ 1101-1103 [INDEX0196-0197].) Nevertheless,
10 Section 413 of the Charter includes it as an exception to the Mayor’s veto authority under the title
11 heading “Adoption of ordinances and resolutions.” (*Id.* at § 413 [INDEX0187].) So the language at
12 Section 413, construed with other parts of the Charter is clear. “*Any formal action* taken by vote of
13 the City Council” can be vetoed by the Mayor. (See *Ibid.*, italics added.)

14 Additionally, Section 701 of the Charter states that “[t]he City Council shall by *ordinance*,
15 provide for the organization of all City operations and activities into functional units and may
16 modify and change the organization from time to time [and], subject to the provisions of this
17 Charter, shall provide for the number, titles, qualifications, powers, duties and compensation of all
18 officers and employees.” (Exh. 6, Charter, §701, italics added [INDEX0191].) Consistent with this
19 language, City ordinances in the Riverside Municipal Code at Sections 2.32.10, et seq. require that
20 all changes in compensation and benefits, even as to City Officers such as the City Manager, the
21 City Attorney, and the City Clerk require a formal City Council Resolution. (Exh. 7 [INDEX0208-
22 0212].) Under Section 413, the Mayor would have veto authority over both of these kinds of
23 ordinances and the resolutions. (Exh. 6, Charter, § 413 [INDEX0187].) And to the extent that the
24 City Council should ever undertake to change these ordinances, the Mayor would have veto
25 authority as to those changes. (*Ibid.*)

26 Moreover, City Council Resolution No. 23035, entitled Rules of Procedure and Order of
27 Business, formally resolved by vote of the City Council and adopted on July 26, 2016, repeats the
28 Charter language concerning the Mayor’s veto authority at Title IV, Section A. (See Exh. 8

1 [INDEX0215-0216]; see also Exh. 6, Charter, § 413 [INDEX0187].) The heading for Title IV,
2 Section A is not “Adoption of ordinances and resolutions,” but rather “DUTIES OF MAYOR;
3 MAYOR PRO TEMPORE.” (See Exh. 8 [INDEX0215].)

4 As a result, any argument that the Mayor may not veto City Council approval of personnel
5 actions/contracts for the City Manager, City Attorney, and City Clerk misconstrues Section 413 of
6 the Charter, and ignores Section 701 of the Charter, Sections 2.32.10, et seq. of the Municipal Code
7 and City Council Resolution No. 23035. It is a new argument that, as noted above, came into being
8 after Mr. Russo and Mr. Geuss were initially hired by the City, and it is has all of the earmarks of a
9 strategy to avoid the Mayor’s oversight with regard to their employment.

10 V.

11 **THE RENEGOTIATED CONTRACT OF CITY MANAGER JOHN RUSSO IS VOID AB**
12 **INITIO BECAUSE MAYOR BAILEY PROPERLY EXERCISED HIS VETO AUTHORITY**
13 **AND THE CITY COUNCIL HELD NO VETO OVERRIDE VOTE.**

14 Moving Parties’ cause of action for Declaratory Relief seeks a judicial determination and
15 declaration of the rights and duties of the City, the City Council and the Office of the Mayor under
16 the Charter, City Council Resolution No. 23035 and Chapter 2.32 of the Riverside Municipal Code
17 with regard to Mr. Russo’s renegotiated employment contract that was approved by the City Council
18 and vetoed by the Mayor on February 6, 2018. (See Code Civ. Proc., § 1060.) It also seeks a
19 declaration going forward under the Charter as to the Mayor’s veto power over personnel
20 actions/contracts of City employees who, under the Charter, serve at the pleasure of the City
21 Council, precisely because the City has advised Mayor Bailey that it will not recognize his veto in
22 such matters going forward. (See Exh. 2, Bailey Declaration at ¶ 18 [INDEX0014].)

23 In this motion, Moving Parties do not seek an order setting aside Mr. Russo’s negotiated
24 employment contract. Moving Parties assert that there is nothing to set aside. The contract is “not
25 merely voidable but absolutely void for want of power in the [City] officers, and no subsequent
26 action by the officers themselves can give validity to the void act or ratify it in any way.” (*People ex*
27 *inf. Webb v. California Fish Co.* (1913) 166 Cal. 576, 611.) As a result, Moving Parties seek a
28 judicial determination and declaration that it is void from the inception. It could not have been

1 executed and performed by the City because it was duly vetoed by the Mayor and there was no veto
2 override vote by the City Council within sixty days as required by Section 413 of the City's Charter.
3 Because the contract is void, payments made thereunder serve no public purpose, and constitute an
4 improper gift of public funds which must be recovered. (*Jordan v. California Department of Motor*
5 *Vehicles* (2002) 100 Cal.App.4th 431, 450-451.)

6 VI.

7 **THE CITY ATTORNEY HAS A CONFLICT OF INTEREST WHEN IT COMES TO**
8 **ADVISING THE CITY ON THE MAYOR'S VETO AUTHORITY OVER PERSONNEL**
9 **ACTIONS INVOLVING EMPLOYEES WHO SERVE AT THE PLEASURE OF**
10 **THE CITY COUNCIL**

11 As noted above, in the City of Riverside, there are two types of City employees. Under the
12 Charter, the City Manager, the City Attorney, and the City Clerk serve at the pleasure of the City
13 Council. (Exh. 6, Charter, §§ 600 and 700 [INDEX0189, 0190].) Also under the Charter, all other
14 City employees serve at the pleasure of the City Manager. (*Id.* at § 600 [INDEX0189].) Prior to the
15 arrival of City Manager John Russo and City Attorney Gary Geuss, each of their initial contracts was
16 presented to the City Council for formal action by vote, along with a formal, written resolution.
17 However, in December of 2017 and in February of 2018, their respective renegotiated employment
18 contracts were presented to the City Council without formal written resolutions.

19 On February 6, 2018, when the Mayor attempted to veto the City Council's approval of Mr.
20 Russo's renegotiated contract, it was Mr. Geuss who spoke on the record that the Mayor had no such
21 veto authority. (Exh. 10, City Council Minutes of February 6, 2018 [INDEX0272].) This was an
22 opinion Mr. Geuss had voiced to the Mayor months earlier at a time when his own renegotiated
23 contract was to be brought before the City Council – also without a formal resolution.

24 Moving Parties assert that the City Attorney, Mr. Geuss, has a conflict of interest when it
25 comes to providing such advice – any advice – to the City, to the City Council and to the Mayor.
26 This is because the Charter provides that he, as does the City Manager and the City Clerk, serves at
27 the pleasure of the City Council. Nevertheless, City Attorney Gary Geuss undertook to render legal
28 opinions for the City and the Mayor in 2017 on whether the Mayor can veto City Council approval
of the proposed City Manager Contract. Upon opining that the veto authority did not exist, he

1 undertook to choose to serve the interests of the City Council (which benefitted him) and arbitrarily
2 abandon the Office of the Mayor.

3
4 **A. The City Attorney Has a Financial Interest in Contracts for City Employees
Who Serve at the Pleasure of the City Council.**

5 The Charter charges the City Attorney with the preparation of proposed resolutions. (Exh. 6,
6 Charter § 702(e).) It also provides that the City Attorney serves at the pleasure of the City Council.
7 (*Id.* at § 700 [INDEX0190].) His service at the pleasure of the City Council places him in a uniquely
8 similar financial position along with the City Manager and the City Clerk. If he successfully advises
9 the City Council that formal written resolutions are not necessary for the approval of contracts for
10 City employees who serve at the pleasure of the City Council – which has apparently happened – he
11 insulates his employment from the scrutiny of the Mayor. He assures for himself and the other two
12 City employees who serve at the pleasure of the City Council that no personnel action or contract
13 can be vetoed by the Mayor. As a result, he has a financial interest in all three employees' contracts
14 made by him in his official capacity as City Attorney in violation of Government Code section 1090.
15 (Gov. Code, § 1090, subd. (a) [“[C]ity [] employees shall not be financially interested in any contract
16 made by them in their official capacity. . .”].)

17
18 **B. The City Attorney has a Conflict of Interest as Between the City Council and the
Mayor on the Subject of the Mayor's Veto Authority.**

19
20 In addition to his personal conflict, the City Attorney has a conflict as between advice given
21 to the City Council and the Office of the Mayor which, under the Charter, are two separate groups of
22 elected officers with separate powers and duties. (See Exh. 6, Charter, §§ 400-406 [INDEX0183-
23 0185].) In this instance, the City Attorney has taken the side of one against the other. He has
24 undertaken to opine in favor of the City Council and to enforce his opinion to the detriment of the
25 Mayor. The Attorney General of the State of California was disqualified under similar facts in
26 *People ex rel. Deukmejian v. Brown* (1981) 29 Cal.3d 150. There the Supreme Court, in granting the
27 Governor's motion to disqualify the Attorney General instructed that the Attorney General may not
28 represent various departments in the state “one day, give them legal advice with regard to pending

1 litigation, withdraw, and then [represent the opposing parties in the litigation the next day] “on a
2 purported cause of action arising out of the identical controversy.” (See *People ex rel. Deukmejian*
3 *v. Brown, supra*, 29 Cal.3d at p. 155.) The high Court confessed “[w]e can find no constitutional,
4 statutory, or ethical authority for such conduct by the Attorney General.”

5 Here, the City Attorney’s conflicts arose as far back as the fall of 2017 when Mayor Bailey
6 disclosed his intention to veto the proposed renegotiated contract of the City Manager, an individual
7 who, like the City Attorney, “serves at the pleasure of the City Council.” (See Exh. 6, Charter, §§
8 600 and 700 [INDEX0189, 0190].) The City Attorney reported to the Mayor his own personal
9 opinion and that of Colantuono, Highsmith & Whatley PC, and both opinions were the same. The
10 Mayor did not have veto authority.

11 Moving Parties contend that the City Attorney, who knows that his employment is subject to
12 the same oversight as the City Manager (see Exhibit 6, Charter, §§ 600 and 700 [INDEX0189,
13 0190]), should have informed Mayor Bailey of his conflict and disqualified himself from giving an
14 opinion. That is, the Charter provides that the City Attorney shall “[r]epresent and advise the City
15 Council and all City officers in all matters of law pertaining to their offices,” similar to the duties of
16 the Attorney General of the State of California in *People ex rel. Deukmejian v. Brown, supra*. (Exh.
17 6, Charter, § 702(a) [INDEX0191]; see also *People ex rel. Deukmejian v. Brown, supra*, 29 Cal.3d at
18 p. 155.) The City Attorney should have informed the Mayor that he could not give advice on the
19 subject because of his duties under the Charter to both the City Council and the Office of the Mayor,
20 in addition to the conflict with his own employment. (See Exh. 6, Charter, §§ 700 and 702(a)
21 [INDEX0189, 0190].) Instead, the City Attorney undertook to choose to serve the interests of the
22 City Council and arbitrarily abandon the Office of the Mayor. Based on *People ex rel. Deukmejian*
23 *v. Brown, supra*, there is “no constitutional, statutory, or ethical authority for such conduct.”
24 (*People ex rel. Deukmejian v. Brown, supra*, 29 Cal.3d at p. 155.)

25 VII.

26 **MOVING PARTIES ARE ENTITLED TO RECOVER THEIR REASONABLE** 27 **ATTORNEYS’ FEES UNDER CODE OF CIVIL PROCEDURE SECTION 1021.5**

28 Code of Civil Procedure section 1021.5 provides that “a successful party . . . in any action

1 which has resulted in the enforcement of an important right affecting the public interest” may
2 recover its attorneys’ fees if the result of the action conveys “a significant benefit, . . . on the general
3 public or a large class of persons.” (Code Civ. Proc., 1021.5.)

4 Submitted with this motion are declarations by the Moving Parties. Mayor Bailey is the
5 Mayor of the City of Riverside, elected from the general electorate of the City. He filed this action
6 on behalf of his Office to preserve the veto authority of that Office and its voice with regard to the
7 expenditure of public funds for a renegotiated contract that he believed was fiscally unwise for the
8 City. Moving Parties Marcia McQuern and Thomas Mullen are members of the public, taxpayers,
9 voters, and citizens of the City of Riverside. They also participated in bringing this action in order to
10 enforce the veto power of the Mayor under the Charter; specifically, to enforce, for the benefit of
11 themselves and the public, the right of the Mayor under the City’s Charter to veto any action taken
12 by formal vote of the City Council (subject to express exceptions that do not apply here). This
13 includes, but is not limited to, contracts of City employees who serve at the pleasure of the City
14 Council. That would include the City Manager, the City Attorney and the City Clerk.

15 As a result, this Court should make a judicial determination that, upon prevailing on this
16 motion, Moving Parties are entitled to bring a subsequent motion for their attorneys’ fees.

17 **VIII.**

18 **CONCLUSION**

19 Based on the foregoing, request is hereby made this Court grant this motion for declaratory
20 relief and that it issue a judicial determination and declaration as to the matters set forth in the notice
21 of motion.

22 Respectfully submitted,

23 DATED: January 4, 2019

THOMPSON & COLEGATE LLP

24 By: 

25 SUSAN KNOCK BECK
26 Attorneys for Petitioners/Plaintiffs,
27 WILLIAM R. ("RUSTY") BAILEY III,
28 MARCIA McQUERN, and THOMAS MULLEN

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

I am employed in the County of Riverside, State of California. I am over the age of 18 years and not a party to the within action. My business address is **3610 Fourteenth Street, P. O. Box 1299, Riverside, California 92502.**

On January 9, 2019, I served the foregoing document described as **NOTICE OF MOTION AND MOTION FOR SUMMARY ADJUDICATION** on the interested parties in this action.

☒ by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

SEE ATTACHED SERVICE LIST

☒ **BY REGULAR MAIL:** I deposited such envelope in the mail at 3610 Fourteenth Street, Riverside, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

☐ **BY FACSIMILE MACHINE:** I transmitted a true copy of said document(s) by facsimile machine, and no error was reported. Said fax transmission(s) were directed as indicated on the service list.

☐ **BY OVERNIGHT DELIVERY:** I caused such documents to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressees. The envelope or package was deposited with delivery fees thereon fully prepaid.

☐ **BY ELECTRONIC MAIL:** I transmitted a true copy of said document(s) via electronic mail, and no error was reported. Said email was directed as indicated on the service list.

☐ **BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the above addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 9, 2019, at Riverside, California.


ERMINIA OLIVAS

SERVICE LIST

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