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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

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21  
22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
23  
24 **FOR THE COUNTY OF RIVERSIDE, CENTRAL DISTRICT**

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

28 **Petitioners/Plaintiffs,**

**v.**

**CITY OF RIVERSIDE,**

**Respondent/Defendant.**

**CASE NO. RIC 1804755**

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

**OPENING TRIAL BRIEF BY**  
**PETITIONERS/PLAINTIFFS ON THE**  
**BIFURCATED ISSUES OF THE**  
**MAYOR'S VETO AUTHORITY,**  
**INCLUDING HIS EXERCISE OF THAT**  
**AUTHORITY, THE EFFECT OF THE**  
**EXERCISE OF HIS AUTHORITY, AND**  
**RELATED ISSUES**

**[Filed Concurrently with Index of Exhibits]**

**DATE: November 22, 2019**  
**TIME: 8:30 a.m.**  
**DEPT: 7**

**TRIAL DATE: November 22, 2019**  
**ACTION FILED: March 9, 2018**

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1 COME NOW PETITIONERS/PLAINTIFFS WILLIAM R. ("RUSTY") BAILEY III,  
2 MARCIA McQUERN, AND THOMAS MULLEN (collectively hereinafter "Plaintiffs") and submit  
3 the following Opening Trial Brief concerning bifurcated issues pursuant to the Stipulated Order  
4 dated August 23, 2019.

5 I.

6 **INTRODUCTION RE THE NATURE AND PURPOSE OF THE WITHIN ACTION**

7 This action was originally filed on March 9, 2018, one month and three (3) days after the  
8 Riverside City Council voted 5 to 2 at a February 6, 2018 City Council meeting to approve a  
9 renegotiated employment contract for then City Manager, John Russo. During that same City  
10 Council meeting, Plaintiff William R. ("Rusty") Bailey, III, Mayor of the City of Riverside ("the  
11 Mayor") verbally registered his veto of that contract approval after the 5 to 2 vote. The City  
12 Attorney, Gary Geuss, informed the gathering that the Mayor could not veto that contract approval.  
13 The Mayor Pro Tem, the City Attorney and Mr. Russo fully executed the renegotiated contract  
14 immediately. The Mayor timely perfected the veto in writing as required by the Charter, to no avail.

15 Since that date, the Defendant City of Riverside has refused to acknowledge that the office of  
16 the Mayor has the authority to veto formal action taken by vote of the City Council concerning  
17 personnel matters, including contracts for City Officers (e.g., the City Manager, the City Attorney  
18 and the City Clerk) based on language in the Charter that states these officers serve at the pleasure of  
19 the City Council. This position ignores pointed language specifically establishing the veto authority  
20 of the office of the Mayor for "*any formal action taken by vote of the City Council* including any  
21 ordinance or resolution, except an emergency ordinance, the annual budget or an ordinance proposed  
22 by initiative petition." (See Charter at § 413, INDEX0187, italics added.)

23 Initially, the Mayor filed a petition for writ of mandate and sought an ex parte order directing  
24 the City to schedule a timely veto-override vote as required by the Charter. Ironically, the same 5 to  
25 2 vote that approved the contract in the first instance would have overridden the Mayor's veto, but  
26 then the City Council – directed by the City Attorney – would have had to admit the Mayor had that  
27 veto authority in the first instance. So, no veto override vote ever occurred, the ex parte relief was  
28 denied, and the time to override the Mayor's veto (as set forth in section 413 of the Charter

1 [INDEX0187]) has long since passed. The result is that the fully-executed contract that was partially  
2 performed before Mr. Russo was fired was void *ab initio* (from the inception) and any monies paid  
3 thereunder were unlawful gifts to him of public funds.

4 Because the City argued during the ex parte proceedings that the Mayor did not have  
5 standing to bring the writ petition, the Mayor filed a first amended petition, two members of the  
6 public joined him as petitioners/plaintiffs, and the three of them added a cause of action for  
7 declaratory relief. While the initial writ petition sought to compel the City to take ministerial action  
8 by scheduling and taking veto override vote with regard to the Russo contract, the amended petition  
9 became ancillary to the declaratory relief cause of action. The declaratory relief cause of action  
10 sought a judicial determination and declaration that the contract was void *ab initio* and any monies  
11 paid thereunder were unlawful gifts to Mr. Russo of public funds. Then, if the court were to make  
12 that judicial determination and declaration that the contract was void *ab initio* and monies paid  
13 thereunder were unlawful gifts to Mr. Russo of public funds, the amended writ petition requested  
14 that the City be directed to declare it such, conduct an accounting of all money paid thereunder,  
15 compare it with what Mr. Russo would have received under his original contract (including his  
16 severance pay), and undertake to recover it. The petition *did not* request that the court direct the City  
17 on how to recover the funds or supervise the recovery of funds.<sup>1</sup>

18 Plaintiffs thereafter moved for summary adjudication of the declaratory relief cause of action  
19 to expedite judicial findings. At the time of this brief, the court has not ruled on Plaintiffs' motion  
20 for summary adjudication of the declaratory relief cause of action.

21 The action by the City Council in interfering with the Mayor's veto authority was not a  
22 quasi-judicial, administrative proceeding. No evidence was presented to the City Council, and the  
23 City Council did not make any factual findings. Nor was the City Council's action quasi-legislative.  
24 It did not pass new City law. It was a personnel action, a formal vote of its seven (7) members, five  
25 (5) of whom agreed that the renegotiated City Manager contract should be executed and performed  
26

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27 <sup>1</sup> There is another action pending entitled *Clymer v. City of Riverside*, RIC 1806669 that is to be  
28 heard simultaneously with this case on November 22, 2019. That action seeks specific relief for the  
recovery of monies paid to Mr. Russo and, as a result, Mr. Russo is a party.

1 by the City.

2 Pursuant to stipulation and order of the court, trial is now scheduled to take place on briefs  
3 and declarations on November 22, 2019 concurrently with the trial in the *Clymer* matter, and with  
4 regard to bifurcated issues. The parties have also stipulated, and that stipulation was made the Order  
5 of this court on August 23, 2019, that this trial of bifurcated issues shall decide:

6 **II. Whether this court should issue a judicial declaration and determination that the Office of**  
7 **the Mayor of the City of Riverside has veto authority over “any formal action taken by vote of**  
8 **the City Council. . . , except an emergency ordinance, the annual budget or an ordinance**  
9 **proposed by initiative petition,” and that that express language in the Charter allows the**  
10 **Office of the Mayor to veto City Council approval of contracts, including contracts of City**  
11 **employees who serve at the pleasure of the City Council (Paragraph 1 of Plaintiffs’ Prayer for**  
12 **Relief);**

- 13 1. Whether this court should issue a peremptory writ of mandate or other extraordinary  
14 relief directing the City to acknowledge and honor Mayor Bailey’s veto of February 6,  
15 2018 with regard to the City Council’s approval of the City Manager’s Contract and  
16 declaring the City Manager’s Contract void *ab initio* such that all monies paid there under  
17 must be recovered by the City (Paragraph 3 of Plaintiffs’ Prayer for Relief); and  
18 2. Whether this court should issue a peremptory writ of mandate or other extraordinary  
19 relief directing the City to perform an accounting of all monies paid to former City  
20 Manager, John Russo, under the void City Manager’s Contract, to calculate the monies  
21 John Russo would have instead been entitled to in 2018 under his former contract up to  
22 and including the date of his termination (including severance), to apply those sums as an  
23 offset to recoverable monies under the void City Manager’s Contract, and to proceed to  
24 take action to recover the difference from Mr. Russo (Paragraph 5 of Plaintiffs’ Prayer  
25 for Relief).

26 If this court issues a ruling granting Plaintiffs’ cause of action for declaratory relief prior to  
27 November 22, 2019, the first of these three (3) bifurcated issues will have been resolved.  
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III.

THE EVIDENCE

A. Plaintiffs' Evidence is Properly Submitted with a Concurrently Filed Index of Evidence.

Plaintiffs' evidence is submitted separately herewith through an Index of Exhibits.

1. Plaintiffs' Evidentiary Burden as to Some Exhibits and Facts has been Resolved Through the Verified Pleadings.

It is well-settled that a verified answer that admits allegations and the authenticity of documents requires no burden of proof at trial on the admitted matters. However, where a verified pleading contains allegations in positive terms and the defendant/respondent's verified answer responds "with a statement that he had no information or belief on the subject and therefore denied it, [s]uch an answer [is] no denial but [rather] tantamount to an admission, and raise[s] no issue upon which testimony [i]s required." (*Straus v. Straus* (1935) 4 Cal.App.2d 461, 465, reh'g denied and opinion modified (1935) 4 Cal.App.2d 461, 465 citing *Weill & Co. v. Crittenden* (1903) 139 Cal. 488; *Hall v. James* (1926) 79 Cal. App. 433, 436; *Loveland v. Garner* (1887) 74 Cal. 298.) Here, the verified first amended petition/complaint and the City's verified answer have resolved a number of evidentiary issues for this case. Plaintiffs' **Exhibit 5** is the VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE OR OTHER EXTRAORDINARY RELIEF (CODE OF CIVIL PROCEDURE SECTION 1085, ET SEQ.) AND COMPLAINT FOR DECLARATORY RELIEF filed on May 24, 2018. Plaintiffs' **Exhibit 18** is the City's Verified Answer. Between them the authenticity of the following documents and the truth of the following facts have been resolved:

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a. Documents

Plaintiffs' Index of Exhibits (also Exhibits to Plaintiffs' Pleading) <sup>2</sup>	Description	Location in Plaintiff's Verified Pleading/the City's Verified Answer	Page(s) in Plaintiff's Index of Exhibits
5 (Exh F)	The opinion Letter of February 5, 2018 from Rutan & Tucker.	@ Paragraph 18, Exhibit F to Plaintiff's Operative Pleading	INDEX0136
6 (Exh B)	The Charter of the City of Riverside filed with the California Secretary of State on October 23, 2012	@ Paragraph 3, Exhibit B to Plaintiffs' Operative Pleading	(INDEX0049) INDEX 0176
8 (Exh C)	City Council Resolution No. 23035	@ Paragraph 3, Exhibit C to Plaintiffs' Operative Pleading	(INDEX0081) INDEX 0213
10 (Exh D)	City Council and Housing Authority Minutes for the City of Riverside on February 6, 2018	@ Paragraph 21, Exhibit D to Plaintiffs' Operative Pleading	(INDEX0120) INDEX0262
11 (Exh A)	Contract for City Manager, John Russo, dated February 6, 2018 (fully-executed)	@ Paragraph 3, Exhibit A to Plaintiffs' Operative Pleading	(INDEX0040) INDEX0273
13 (Exh G)	City Council Minutes for the City of Riverside dated December 5, 2017 and corresponding Employment Agreement of City Attorney Gary Geuss dated December 7, 2017	@ Paragraph 15, Exhibit G to Plaintiffs' Operative Pleading	(INDEX0154) INDEX 0287

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<sup>2</sup> “( )” indicates where the document is found as an Exhibit to Plaintiffs' Operative Pleading.

b. Admitted Facts

Admitted Facts Nos.	Fact(s)	Location in Plaintiff's Verified Pleading/the City's Verified Answer
1	The City of Riverside is a Charter City organized under the laws of the State of California, including Article XI, section 5 of the California Constitution.	Admitted @ Paragraphs 5, 8. INDEX0802
2	Petitioners and Plaintiffs Marcia McQuern and Thomas Mullen are, and at all relevant times were, residents, registered voters and taxpayers of the City of Riverside	Denied based on the lack of "sufficient knowledge or information to form a belief as to the truth" of the allegations @ Paragraph 6. INDEX0802
3	In the fall of 2017, Mayor Bailey became aware that the City Attorney, Gary Geuss, and the City Manager, John Russo, were drafting their own employment contracts with the City, which contracts were slated to be voted on in or about December of 2017 . . . the City Manager's Contract still had more than two (2) years before it would expire.	Denied based on the lack of "sufficient knowledge or information to form a belief as to the truth" of the allegations @ Paragraph 11. INDEX0802-0803
4	At the same time [fall of 2017] Mayor Bailey received information concerning the content of the proposed City Manager's Contract. . ."	Denied based on the lack of "sufficient knowledge or information to form a belief as to the truth" of the allegations @ Paragraph 12. INDEX0803
5	In 2017, the City obtained a legal opinion from Colantuono, Highsmith & Whatley, PC regarding the scope of the Mayor's veto power and provided it to the Mayor and the City Council.	Admitted @ Paragraphs 14, 17. INDEX0803, 0804
6	The Mayor did not object to the approval of the City Attorney's employment contract in December of 2017.	Admitted @ Paragraph 16. INDEX0803-0804
7	Then, on or about December 12, 2017, the City Attorney forwarded an email and attachment from Colantuono, Highsmith & Whatley, PC. The attached Memorandum [was] dated December 11, 2017. . . [and] Mayor Bailey was discouraged at receiving the outside opinion from the firm he	Denied based on the lack of "sufficient knowledge or information to form a belief as to the

1		asked the City Attorney not to use. Also, and although the Charter specifically charges the City Attorney with the duty to advise the Mayor on his legal duties, the City Attorney did not tell him that he could not share the opinion with others or that he could not seek another opinion from another firm.	truth” of the allegations @ Paragraph 17. INDEX0804
2	8	Mayor Bailey, believing the City Attorney had deliberately disregarded his request and sought to undermine the veto authority of the Office of the Mayor sought an outside opinion from another law firm, Rutan & Tucker, LLP, a firm that was on the approved list of attorneys to work for the City. Attached hereto as Exhibit F is a true and correct copy of that February 5, 2018 legal opinion that examines the legislative history of the Charter and opines that the Office of the Mayor does, in fact, have veto authority over City Council approval of contracts of employees such as the City Manager, the City Attorney and City Clerk who “serve at the pleasure of the City Council.”	Denied based on the lack of “sufficient knowledge or information to form a belief as to the truth” of the allegations @ Paragraph 18. INDEX0804  (Also, see <i>supra</i> , re Exhibit F to Plaintiffs’ Operative Pleading. INDEX0136)
3	9	The City Council voted to approve John Russo’s contract on February 6, 2018.	Admitted @ Paragraph 20. INDEX 0804
4	10	The City Council did not schedule a meeting to consider whether to override the Mayor’s veto of John Russo’s contract.	Admitted @ Paragraph 26. INDEX0804

2. **Plaintiffs’ Remaining Evidence Includes Declarations by the Plaintiffs and Certified Copies of City Documents.**

Plaintiffs’ Index of Exhibits submitted herewith includes declarations by the Plaintiffs and the following City documents which were obtained as certified copies from the City Clerk. The certified copies of the following City documents will be provided at the hearing on November 22, 2019:

- Exhibit 6 The Charter of the City of Riverside filed with the California Secretary of State on October 23, 2012 (INDEX0176);
- Exhibit 7 Chapter 2.32 of the Riverside Municipal Code (INDEX0208);
- Exhibit 8 City Council Resolution No. 23035 (INDEX0213);
- Exhibit 9 City Council Memorandum dated February 6, 2018 (INDEX0252);
- Exhibit 10 City Council and Housing Authority Minutes for the City of Riverside

- 1 on February 6, 2018 (INDEX0262);
- 2 Exhibit 11 Contract for City Manager, John Russo, dated February 6, 2018 (fully-
- 3 executed) (INDEX0273);
- 4 Exhibit 12 Written Communication from Mayor Bailey to the Riverside City
- 5 Council dated February 6, 2018 (INDEX0282);
- 6 Exhibit 13 City Council Minutes for the City of Riverside dated December 5,
- 7 2017 and corresponding Employment Agreement of City Attorney
- 8 Gary Geuss dated December 7, 2017 (INDEX0287);
- 9 Exhibit 14 City Council Agenda for March 3, 2015 (INDEX0296), corresponding
- 10 City Council Memorandum dated March 3, 2015 (INDEX0305) with
- 11 appended proposed contract for City Attorney Gary Geuss
- 12 (INDEX0307) and corresponding proposed resolution (INDEX0313),
- 13 City Council Minutes for March 3, 2015 (INDEX0408), and resulting
- 14 City Council Resolution 22812 (INDEX0416);
- 15 Exhibit 15 City Council Agendas for February 24, 2015 (INDEX0511),
- 16 corresponding City Council Memorandum (INDEX0541) with
- 17 appended proposed contract for City Manager John Russo
- 18 (INDEX0543) and corresponding proposed resolution (INDEX0550),
- 19 City Council Minutes for February 24, 2015 (INDEX0661), resulting
- 20 fully executed Employment Agreement for City Manager John Russo
- 21 (INDEX0676), and City Council Resolution No. 22809 (INDEX0684);

22 **B. The City's Purported Administrative Record Was Unsolicited and**

23 **Inappropriate.**

24 As more fully set forth in the Beck Declaration, the City has compiled and certified for

25 lodgment/filing more than 3,000 pages documents that it refers to as an administrative record. This

26 compilation was not requested by the Plaintiffs. This action does not arise from an administrative

27 proceeding and there is no statute that requires an administrative record in this situation.

28 This action does not arise from quasi-judicial action by the City Council. No evidence was

1 introduced, no factual findings were made. (See, e.g., Code Civ. Proc., § 1094.5.<sup>3</sup>) Nor does this  
2 action arise from a quasi-legislative act. No new laws or regulations were passed. (See *Megrabian*  
3 *v. Saenz* (2005) 130 Cal.App.4<sup>th</sup> 468, 477-478 [“An agency acts in its quasi-legislative capacity  
4 when it adopts rules or “regulations to fill in the details of the statutes enacted by the Legislature.”  
5 In contrast, “an agency’s interpretation of a statute when it is merely ‘an agency’s legal opinion,  
6 however “expert,” [is not] the exercise of a delegated legislative power to make law.’ ”].) As a  
7 result, there is no record of the City Council’s deliberations, findings of fact, or decision to review.

8 As a result, this action arises from a formal vote by the City Council for the City of Riverside  
9 on February 6, 2018 to approve a renegotiated contract for the City Manager. Five (5) of the seven  
10 (7) members of the City Council voted that it should be signed and performed, the Mayor attempted  
11

12 <sup>3</sup> Code of Civil Procedure section 1094.5 provides in pertinent part:

13 (a) Where the writ is issued for the purpose of inquiring into the validity of any final  
14 administrative order or decision made as the result of a proceeding in which by law a  
15 hearing is required to be given, evidence is required to be taken, and discretion in the  
16 determination of facts is vested in the inferior tribunal, corporation, board, or officer,  
17 the case shall be heard by the court sitting without a jury. All or part of the record of  
18 the proceedings before the inferior tribunal, corporation, board, or officer may be  
19 filed with the petition, may be filed with respondent’s points and authorities, or may  
20 be ordered to be filed by the court. Except when otherwise prescribed by statute, the  
21 cost of preparing the record shall be borne by the petitioner. Where the petitioner has  
22 proceeded pursuant to Article 6 (commencing with Section 68630) of Chapter 2 of  
23 Title 8 of the Government Code and the Rules of Court implementing that section and  
24 where the transcript is necessary to a proper review of the administrative proceedings,  
25 the cost of preparing the transcript shall be borne by the respondent. Where the party  
26 seeking the writ has proceeded pursuant to Section 1088.5, the administrative record  
27 shall be filed as expeditiously as possible, and may be filed with the petition, or by  
28 the respondent after payment of the costs by the petitioner, where required, or as  
otherwise directed by the court. If the expense of preparing all or any part of the  
record has been borne by the prevailing party, the expense shall be taxable as costs.

(b) The inquiry in such a case shall extend to the questions whether the respondent  
has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and  
whether there was any prejudicial abuse of discretion. Abuse of discretion is  
established if the respondent has not proceeded in the manner required by law, the  
order or decision is not supported by the findings, or the findings are not supported by  
the evidence.

(c) Where it is claimed that the findings are not supported by the evidence, in cases in  
which the court is authorized by law to exercise its independent judgment on the  
evidence, abuse of discretion is established if the court determines that the findings  
are not supported by the weight of the evidence. In all other cases, abuse of discretion  
is established if the court determines that the findings are not supported by substantial  
evidence in the light of the whole record.

1 to veto that approval, and the City Attorney *opined* that he could not. Plaintiffs moved for summary  
2 adjudication of the declaratory relief cause of action and remarkably, the City did not cite to its  
3 unsolicited administrative record in opposition to that motion. In fact, only three (3) of the  
4 documents offered in opposition to the motion were in the unsolicited administrative record. There  
5 is no evidence that the City relied in anyway on the documents contained in the unsolicited  
6 administrative record except perhaps the Russo Contract and the Charter.

7 An example of writ proceedings that require an administrative record is in *American*  
8 *Coatings Assn., Inc. v. South Coast Air Quality Dist.* (2012) 54 Cal.4<sup>th</sup> 446, 460, cited by the City in  
9 opposition to the Plaintiffs' motion for summary adjudication. That case involved challenges to The  
10 South Coast Air Quality Management District 2002 amendments to its nonvehicular air pollution  
11 emissions standards. One of the questions in that case was whether the record *evidence* before the  
12 District of relative technology was sufficient so that its adoption of the challenged emissions limits .  
13 . . was not "arbitrary, capricious, or entirely lacking in evidentiary support." (*Id.* at p. 471.) An  
14 Administrative Record in such proceedings is consistent with Code of Civil Procedure section  
15 1094.5 which discusses the *record* in the context of administrative orders or decisions, "made as the  
16 result of a proceeding in which, by law, a hearing is required to be given, evidence is required to be  
17 taken, and discretion in the determination of facts is vested in [an] inferior tribunal. (Code Civ.  
18 Proc., § 1094.5.) The court will note that Plaintiffs' action is not brought under Code of Civil  
19 Procedure section 1094.5, and the statute is not cited once in their pleadings. To the extent that the  
20 City attempts to use any of the documents included in the unsolicited and purported administrative  
21 record, Plaintiffs reserve the right to object and to move to exclude the documents from evidence.

22 Contrary to *American Coatings Ass'n*, Plaintiffs' writ petition is brought pursuant to Code of  
23 Civil Procedure section 1085, and the Petition arises from "an act which the law specially enjoins, as  
24 a duty resulting from an office, trust, or station" not an administrative proceeding. (Code Civ. Proc.,  
25 § 1085.) "A ministerial act is one which a public officer is required to perform in a prescribed  
26 manner in obedience to the mandate of legal authority, without regard to his own judgment or  
27 opinion." (*Morgan v. City of Los Angeles Board of Pension Commissioners* (2000) 85 Cal.App.4<sup>th</sup>  
28 836, 843.) Thus, the writ petition in this case initially sought the scheduling of a veto override vote

1 – a wholly ministerial act. Now that the time for such a vote has passed, the petition seeks a  
2 directive to the appropriate City officer/employee to perform a calculation of monies paid to Mr.  
3 Russo under the void renegotiated contract beginning on February 6, 2018 (the day it was executed),  
4 offset by what he would have received under his prior contract that still had two (2) years left to  
5 perform. It's math. Finally, it seeks an order that the City recover monies improperly paid – but not  
6 how to accomplish this.

#### 7 IV.

#### 8 FACTS

9 Petitioner/Plaintiff, William R. “Rusty” Bailey, was elected Mayor of the City of Riverside in  
10 2012, and has at all times since he was sworn in continued to be Mayor of the City of Riverside.  
11 [Exhibit 2, Bailey Declaration at 1:9 (INDEX0011).] Petitioners/Plaintiffs Marcia McQuern and  
12 Thomas Mullen are members of the public, taxpayers, voters, and citizens of the City of Riverside.  
13 [Exhibits 2, 3 and 4, Bailey Declaration at 4:2-7; McQuern Declaration at 2:8-9; Mullen Declaration  
14 at 2:8-9 (INDEX0014, 0018, 0021).]

15 John Russo was hired as City Manager for the City of Riverside after formal action taken by  
16 vote of the City Council on February, 24, 2015 whereby they approved his employment contract and  
17 an accompanying formal, written Resolution #22089. [Exhibit 1, Beck Declaration at 3:13-19  
18 (INDEX0008); Exhibit 2, Bailey Declaration at 1:17-18 (INDEX0012); Exhibit 15, John Russo  
19 Original Contract Documents (INDEX0511-0779, specifically 0517, 0527, 0533, 0536, 0542, 0674,  
20 0676-0683, 0684-0685).] Gary Geuss was hired as City Attorney for the City of Riverside after  
21 formal action taken by vote of the City Council on March 3, 2015 whereby they approved his  
22 employment contract and an accompanying formal, written Resolution #22812. [Exhibit 1, Beck  
23 Declaration at 3:8-12 (INDEX0008); Exhibit 2, Bailey Declaration at 1:19-20 (INDEX0012);  
24 Exhibit 14, Gary Geuss Original Contract Documents (INDEX0296-0510, specifically 0298, 0301,  
25 0305-0306, 0313-0314, 0408, 0412, 0416-0417).] In December of 2017, while Mr. Geuss was  
26 employed as City Attorney for the City of Riverside, a renegotiated employment contract for him  
27 was approved by formal action taken by vote of the City Council. However, the contract was not  
28 accompanied by a formal, written Resolution and, as a result, the City Council did not take formal

1 action by vote to approve a formal Resolution. [Exhibit 1, Beck Declaration at 3:3-7 (INDEX0008);  
2 Exhibit 2, Bailey Declaration at 1:21-23 (INDEX0012); Exhibit 13, Gary Geuss Renegotiated  
3 Contract Documents (INDEX0287-0295, specifically 0288-0294, 0295).] Mayor Bailey did not  
4 attempt to veto approval of Mr. Geuss's contract in December of 2017. [Exhibit 1, Beck Declaration  
5 at 3:3-7 (INDEX0008); Exhibit 2, Bailey Declaration at 1:24 (INDEX0012); Exhibit 13, Gary Geuss  
6 Renegotiated Contract Documents (INDEX0287-0295, specifically 0295).]

7 Towards the end of 2017, Mayor Bailey became aware that a new employment contract was  
8 being prepared for City Manager John Russo as well, and Mayor Bailey indicated to Mr. Geuss that  
9 he was inclined to veto any City Council approval of that contract. [Exhibit 2, Bailey Declaration at  
10 1:25-27 (INDEX0012).] Prior to the February 6, 2018 formal action taken by vote by the City  
11 Council to approve the City Manager's Contract, the City Attorney for the City of Riverside, Gary  
12 Geuss, provided to Mayor Bailey a written opinion by the firm of Colantuono, Highsmith &  
13 Whatley, PC, which opinion was directed to Mr. Geuss and opined that Mayor Bailey has no veto  
14 authority over the City Council's formal action taken by vote to approve the City Manager's  
15 Contract. [Exhibit 2, Bailey Declaration at 1:27-2:5 (INDEX0012-0013).] Mr. Geuss also informed  
16 Mayor Bailey prior to February 6, 2018 that he agreed with the written opinion by the firm of  
17 Colantuono, Highsmith & Whatley, PC that Mayor Bailey had/has no veto authority over the City  
18 Council's formal action taken by vote to approve the City Manager's Contract. [Exhibit 2, Bailey  
19 Declaration at 2:2-5 (INDEX0013).]

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

22 "It shall be competent in any city charter to provide that the city governed  
23 thereunder may make and enforce all ordinances and regulations in respect to  
24 municipal affairs, subject only to restrictions and limitations provided in their several  
25 charters and in respect to other matters they shall be subject to general laws. City  
26 charters adopted pursuant to this Constitution shall supersede any existing charter,  
27 and with respect to municipal affairs shall supersede all laws inconsistent therewith."

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

The Charter for the City of Riverside (which became effective on October 23, 2012) is the



1 equivalent of the City's local constitution. (See *Creighton v. City of Santa Monica* (1984) 160  
2 Cal.App.3d 1011, 1017.) It provides, in pertinent part:

3           Section 200: "The City shall have the power to make and enforce all laws and  
4 regulations in respect to municipal affairs, subject only to such restrictions and  
5 limitations as may be provided in this Charter and in the Constitution of the State of  
6 California. . ." [INDEX0182<sup>4</sup>.]

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

10           Section 400, paragraphs (a) through (c): The Charter establishes the elective  
11 "office of Mayor" within the City, and the Mayor is elected "from the City at large."  
12 [INDEX0183.] Section 400, paragraphs (a) and (b) also provide that the City  
13 Council, consisting of seven members, shall be elected by the public, specifically, that  
14 "[t]he City Council shall be elected by wards by the registered voters of the respective  
15 wards only" and that "[o]ne member of the City Council shall be elected by each  
16 ward, and only the registered voters of each ward shall vote for the member of the  
17 City Council to be elected by that ward." [*Ibid.*]

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

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

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

26           Section 413: "At any time before the adjournment of a meeting, the Mayor  
27 may, by public declaration spread upon the minutes of the meeting, veto any formal  
28 action taken by vote of the City Council including any ordinance or resolution, except  
an emergency ordinance, the annual budget or an ordinance proposed by initiative  
petition. Thereupon, pending the vote to override the veto as herein provided such  
ordinance resolution or action shall be deemed neither approved nor adopted. The  
Mayor shall, no more than twenty days following the veto, provide to Council  
members in writing reasons for the Mayor's veto. If the Mayor fails to provide a  
written veto message within the time allotted, the original action of the Council shall  
stand. At any regular or adjourned meeting held not less than thirty days nor more  
than sixty days after veto the City Council shall reconsider such ordinance resolution

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<sup>4</sup> Citations to copies of the Charter, Chapter 2.32 of the Riverside Municipal Code, and City Council Resolution No. 23035 are to the Bates-stamped page numbers of the Index of Exhibits.

1 or action and vote on the question of overriding the veto. Five affirmative votes shall  
2 be required for its adoption or approval. The Mayor shall have no right to veto the  
veto override of any ordinance, resolution, or action.” [INDEX0187.]

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

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

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

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

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

16 Section 2.32.020: “This chapter is enacted pursuant to Section 701 of the City  
17 Charter to provide for the number, titles, qualifications, powers, duties, compensation  
18 and terms of employment of City officers and employees and to conform to the  
19 principle of equal pay for equal work.” [INDEX0209.]

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

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

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

On February 6, 2018, a renegotiated employment contract for then City Manager, John Russo  
 (“City Manager’s Contract”) came before the Riverside City Council for a vote of approval during a  
 regular City Council meeting. [Exhibit 1, Beck Declaration at 2:5-11, 12-15 (INDEX0007); Exhibit  
 2, Bailey Declaration at 2:6-8 (INDEX0013); Exhibit 9, City Council Memorandum of February 6,

1 2018 (INDEX0252-0261); Exhibit 10, City Council Minutes of February 6, 2018 (INDEX0262-  
2 0272, specifically 0263-0264, 0272).] The City Manager's Contract provided for changes to Mr.  
3 Russo's salary, vacation, and administrative leave. [Exhibit 1, Beck Declaration at 2:5-11, 12-15,  
4 2:21-3:2, 3:13-19 (INDEX0007, 0008); Exhibit 2, Bailey Declaration at 2:9-10 (INDEX0013);  
5 Exhibit 9, City Council Memorandum of February 6, 2018 (INDEX0252-0261, specifically 0255-  
6 0258); Exhibit 12, Mayor's Written Veto (INDEX0282-0286); Exhibit 15, John Russo Original  
7 Contract Documents (INDEX0511-0779, specifically 0544-0548, 0677-0680).] The City Manager's  
8 Contract added employment benefits, including a life insurance policy in the amount of \$700,000  
9 with premiums to be paid by the City until December 31, 2024 or until Mr. Russo's termination, and  
10 a mortgage for Mr. Russo's home in the amount of \$675,000 at a reduced interest rate. [Exhibit 1,  
11 Beck Declaration at 2:5-11 (INDEX0007); Exhibit 2, Bailey Declaration at 2:10-14 (INDEX0013);  
12 Exhibit 9, City Council Memorandum of February 6, 2018 (INDEX0252-0261); Exhibit 12, Mayor's  
13 Written Veto (INDEX0282-0286); Exhibit 15, John Russo Original Contract Documents  
14 (INDEX0511-0779, specifically 0676-0683).]

15 On February 6, 2018, the City Manager's Contract that was presented for formal action by  
16 vote of the City Council included a signature line for the Mayor, Petitioner/Plaintiff William R.  
17 "Rusty" Bailey. [Exhibit 1, Beck Declaration at 2:5-11 (INDEX0007); Exhibit 2, Bailey Declaration  
18 at 2:15-17 (INDEX0013); Exhibit 9, City Council Memorandum of February 6, 2018 (INDEX0252-  
19 0261, specifically 0253, 0261).] On February 6, 2018, the City Manager's Contract that was  
20 presented for formal action by vote of the City Council was not accompanied by a written  
21 Resolution. [Exhibit 1, Beck Declaration at 2:5-15 (INDEX0007); Exhibit 2, Bailey Declaration at  
22 2:15-17 (INDEX0013); Exhibit 9, City Council Memorandum of February 6, 2018 (INDEX0252-  
23 0261); Exhibit 10, City Council Minutes of February 6, 2018 (INDEX0262-0272, specifically 0263-  
24 0264).] On February 6, 2018, the City Council approved the City Manager's Contract by a vote of 5  
25 to 2. [Exhibit 1, Beck Declaration at 2:12-15 (INDEX0007); Exhibit 2, Bailey Declaration at 2:18-20  
26 (INDEX0013); Exhibit 10, City Council Minutes of February 6, 2018 (INDEX 0262-0272,  
27 specifically 0264).] The City Council has never taken a formal action by vote to approve a written  
28 Resolution with regard to the City Manager's Contract. [Exhibit 2, Bailey Declaration at 2:18-20

1 (INDEX0013).]

2 On February 6, 2018, and during the regular City Council meeting, Mayor Bailey verbally  
3 vetoed the City Council's vote to approve the City Manager's Contract. [Exhibit 1, Beck Declaration  
4 at 2:12-15 (INDEX0007); Exhibit 2, Bailey Declaration at 2:21-22 (INDEX0013); Exhibit 10, City  
5 Council Minutes of February 6, 2018 (INDEX0262-0272, specifically 0272).] On February 6, 2018,  
6 after Mayor Bailey verbally vetoed the City Council's formal action taken by vote to approve the  
7 City Manager's Contract, Mr. Geuss as City Attorney, stated to all present that Mayor Bailey did not  
8 have veto authority with regard to the City Council's vote to approve the City Manager's Contract.  
9 [Exhibit 1, Beck Declaration at 2:12-15 (INDEX0007); Exhibit 2, Bailey Declaration at 2:21-22  
10 (INDEX0013); Exhibit 10, City Council Minutes of February 6, 2018 (INDEX0262-0272,  
11 specifically 0272).] On February 6, 2018, the City Manager's Contract was fully executed by City  
12 Manager, John Russo and the City's Mayor Pro Tem, Chris MacArthur. It was also approved as to  
13 form by the City Attorney, Gary Geuss, and attested to by the City Clerk, Colleen J. Nicol. (There  
14 was no longer a signature line for the Mayor on the fully-executed City Manager's Contract.)  
15 [Exhibit 1, Beck Declaration at 2:16-20 (INDEX0007); Exhibit 2, Bailey Declaration at 2:26-3:2  
16 (INDEX0013-0014); Exhibit 11, John Russo's Fully-executed Renegotiated Contract dated February  
17 6, 2018 (INDEX0273-0281, specifically 0281).] Following the City Council's formal vote to  
18 approve the City Manager's Contract, the City immediately commenced performance under that  
19 contract. [Bailey Declaration at 3:3-4 (INDEX0014).]

20 Within 20 days of the February 6, 2018 regular City Council meeting, Mayor Bailey  
21 submitted to the City Council his written bases for his veto of the formal action taken by vote of the  
22 City Council to approve the City Manager's Contract. [Exhibit 1, Beck Declaration at 2:21-3:2  
23 (INDEX0007-0008); Exhibit 2, Bailey Declaration at 3:5-7 (INDEX0014); Exhibit 12, Mayor's  
24 Written Veto (INDEX0282-0286).] The City Council has never held a veto override vote with  
25 regard to Mayor Bailey's veto of its formal vote to approve the City Manager's Contract. [Exhibit 2,  
26 Bailey Declaration at 3:8-9 (INDEX0014).]

27 The City Council has taken the position that Mayor Bailey had/has no veto authority over the  
28 City Council's formal vote to approve the City Manager's Contract because the Charter provides that

1 the City Manager serves at the pleasure of the City Council. [Exhibit 2, Bailey Declaration at 3:10-  
2 13 (INDEX0014).] The City Council has also taken the position that it was not required to take  
3 formal action by vote to approve a written Resolution with regard to the City Manager's Contract.  
4 [Exhibit 2, Bailey Declaration at 3:14-16 (INDEX0014).] Mayor Bailey now realizes that after Mr.  
5 Geuss and Mr. Russo were hired by the City, their subsequent contracts were not accompanied by  
6 formal resolutions for formal action by vote of the City Council. [Exhibit 2, Bailey Declaration at  
7 3:17-20 (INDEX0014).] Petitioners/Plaintiffs assert that the City Manager's Contract is void *ab*  
8 *initio* because Mayor Bailey vetoed it in accordance with the Charter and Resolution No. 23035 and  
9 no veto override vote has ever been taken by the City Council. Petitioners/Plaintiffs assert that,  
10 because the City Manager's Contract is void *ab initio*, any monies paid to or for John Russo by the  
11 City under the City Manager's Contract are unlawful gifts of public funds. The City Manager, John  
12 Russo, was terminated from his employment with the City of Riverside on April 17, 2018 pursuant  
13 to formal action taken by vote of the City Council while Mayor Bailey was in South Korea visiting  
14 the City's Sister City. [Exhibit 2, Bailey Declaration at 3:21-23 (INDEX0014).]

15  
16 **V.**

17 **LEGAL ARGUMENT**

18 What is in dispute, and particularly for the bifurcated issues set forth in paragraphs 1, 3 and 5  
19 of the operative pleading, is the interpretation of official documents. The interpretation of such  
20 documents is a question of law for the court to perform. (*City of San Diego v. Shapiro* (2014) 228  
21 Cal.App.4<sup>th</sup> 756, 771.) Plaintiffs' writ petition and their cause of action for declaratory relief both  
22 include matters to be determined at this bifurcated trial of issues. We begin with the interpretation of  
23 the official documents

24 **A. The Charter Expressly Provides for a Balance of Power that Includes the**  
25 **Mayor's Veto Authority Over Any Formal Action Taken by Vote of the City**  
26 **Council, Except as to Specifically Enumerated Actions Not Relevant Here.**

27 "A city's charter is, of course, the equivalent of a local constitution. It is the supreme organic  
28 law of the city, subject only to conflicting provisions in the federal and state constitutions and to

1 preemptive state law. (*Creighton v. City of Santa Monica, supra*, 160 Cal.App.3d at p. 1017; citing  
2 *San Francisco Fire Fighters v. City and County of San Francisco* (1977) 68 Cal.App.3d 896, 898;  
3 *Brown v. City of Berkeley* (1970) 57 Cal.App.3d 223, 231.) “ ‘[Charter] cities may make and enforce  
4 all ordinances and regulations subject only to restrictions and limitations imposed in their several  
5 charters.... Within its scope, such a charter is to a city what the state Constitution is to the state.’ ”  
6 (*Ibid.*; quoting *Campen v. Greiner* (1971) 15 Cal.App.3d 836, 840.)

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

18 **1. The Mayor’s Veto Authority is Set Forth in Sections 405 and 413 of the**  
19 **City’s Charter.**

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

27 ///

1 At some point after Mr. Russo and Mr. Geuss joined the City, formal written resolutions did  
2 not accompany their renegotiated contracts that were presented to the City Council for formal action  
3 by vote – this although the Charter prescribes, among the City Attorneys’ duties, the duty to  
4 “[a]pprove the form of all contracts [] made by the City, endorsing the City Attorney’s approval  
5 thereon in writing,” and to “[p]repare any and all proposed [] resolutions for the City.” (Charter, §  
6 702(d) and (e) [INDEX0191].) Then, on February 6, 2018, when Mayor Bailey attempted to veto  
7 the City Council’s approval of Mr. Russo’s renegotiated contract (which, like Mr. Geuss’  
8 renegotiated contract, was not presented to the City Council along with a formal written resolution),  
9 Mr. Geuss informed the Mayor that the Charter afforded him no veto authority over that approval.

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

20 The City ignores that Section 201 of the Charter prescribes that “[c]ity agencies, boards,  
21 commissions, committees, officials, staff and officers including the Mayor and members of the City  
22 Council exist to conduct the people’s business.” (Exh. 6, Charter, §201, underline added  
23 [INDEX0182].) Section 406 of the Charter also provides: “[a]ll powers of the City shall be vested  
24 in the City Council *except as otherwise provided in this Charter.*” (*Id.* at §406, italics added  
25 [INDEX0183].) Thus, it is important to consider the Charter language that *otherwise provides* for  
26 mayoral powers, including veto authority. First, Section 405 of the Charter provides that “[t]he  
27 Mayor shall be the presiding officer at all meetings of the City Council and shall have a voice in all  
28 its proceedings.” (*Id.* at, § 405, underline added [INDEX0185].) The Mayor shall also vote to

1 “break a City Council tie-vote.” (*Ibid.*) Additionally, at Section 413, the Mayor may “veto any  
2 formal action taken by vote of the City Council,” except under three specifically delineated  
3 circumstances: (1) an emergency ordinance, (2) the annual budget, or (3) an ordinance proposed by  
4 initiative petition. (*Id.* at §413, underline added [INDEX0187].) Notably, the approval of personnel  
5 actions for the three (3) city employees who serve at the pleasure of the City Council (e.g., the City  
6 Manager, the City Attorney, and the City Clerk), are not mentioned in this clear and unambiguous  
7 recitation of actions that are excepted from the Mayor’s veto authority. (*Ibid.*)

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

19 Riverside’s Charter does not establish a cookie-cutter, “Council-manager” form of  
20 government. The Mayor is elected from all registered voters within the City of Riverside, in contrast  
21 with the City Councilmembers who are each elected from their respective Wards. (Exh. 6, Charter,  
22 § 400 [INDEX0056-0057].) The Mayor participates in conducting the people’s business. (*Id.* at §  
23 201 [INDEX0055].) The Mayor is “the official head of the City for all ceremonial purposes.”  
24 (§405.) The Office of the Mayor is a full-time salaried position, which includes benefits. (*Id.* at §  
25

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26  
27 <sup>5</sup> 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.)



1 403, [INDEX0057-0058].) The Mayor presides “at all meetings of the City Council,” he has “a  
2 voice in all of its proceedings,” and has “the primary but not exclusive responsibility for interpreting  
3 the policies, programs and needs of the City government to the people,” and he is also charged with  
4 “informing the people of any major change in policy or program.” (*Id.* at § 405 [INDEX0058].)  
5 With regard to his relationship with the City Council, he “advises the City Council on all matters of  
6 policy and public relations and perform[s] such other duties as may be prescribed by [the] Charter.”  
7 (*Ibid.*) And finally, the Mayor has veto authority with regard to “any formal action taken by vote of  
8 the City Council including any ordinance or resolution, except an emergency ordinance, the annual  
9 budget or an ordinance proposed by initiative petition.” (*Id.* at § 413 [INDEX0060].)

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

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

26 Obviously that *mixing* has occurred here. The Mayor participates in conducting the people’s  
27 business. (Exh. 6, Charter, § 201 [INDEX0182].) The Mayor has a voice in all proceedings. (*Id.* at  
28 § 405 [INDEX0185].) All “powers of the [are] vested in the City Council, except as otherwise

1 provided in [the] Charter.” (*Id.* at § 406 [INDEX0185].) Whenever formal action is taken by vote  
2 of the City Council, the Mayor has veto authority except under three *otherwise provided* exceptions  
3 that have nothing to do with personnel actions/contracts concerning City employees who serve at the  
4 pleasure of the City Council. (Exh. 6, Charter, § 413 [INDEX0187].)

5  
6 **2. The Charter Incorporates Requirements that Preclude the City Council**  
7 **from Circumventing the Mayor’s Powers.**

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

22 For the Court’s convenience, Exhibit 17 [INDEX0792-0798] is a spreadsheet which  
23 establishes the frequency and location within the Charter of the essential terms in the veto provisions  
24 of Section 413 (e.g., *budget, emergency, formal action, initiative, resolution, ordinance, veto* and  
25 *vote*). It also indicates the frequency and location of the term *contract* which is not found in the  
26 exceptions to Section 413. There is no other language in the Charter addressing votes by the City

27  
28 <sup>6</sup> Section 600 provides the selection of a City Manager must be by a majority of the votes. (Exh. 6,  
Charter, § 600 [INDEX0189].)

1 Council to approve *contracts* of employees who serve at the pleasure of the City Council, or the  
2 Mayor's veto of specific personnel actions as to such employees. Sections 600 and 700 provide that  
3 these employees serve at the pleasure of the City Council. However, this language provides no more  
4 exclusivity of control to the City Council than does Section 406 which states, "[a]ll powers of the  
5 City shall be vested in the City Council *except as otherwise provided in this Charter.*" (Exh. 6,  
6 Charter, § 406, italics added [INDEX0185].) Section 413 is the *exception*. The Mayor may veto  
7 "*any formal action* taken by vote of the City Council including any ordinance or resolution, except  
8 an emergency ordinance, the annual budget or an ordinance proposed by initiative petition." (*Id.* at §  
9 413, italics added [INDEX0187].) Similarly, the Mayor "shall have no right to veto the veto  
10 override of *any* ordinance, resolution or *action.*" (*Ibid.*, italics added.)

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

19 Additionally, Section 701 of the Charter states that "[t]he City Council shall by *ordinance*,  
20 provide for the organization of all City operations and activities into functional units and may  
21 modify and change the organization from time to time [and], subject to the provisions of this  
22 Charter, shall provide for the number, titles, qualifications, powers, duties and compensation of all  
23 officers and employees." (Exh. 6, Charter, §701, italics added [INDEX0191].) Consistent with this  
24 language, City ordinances in the Riverside Municipal Code at Sections 2.32.10, et seq. require that  
25 all changes in compensation and benefits, even as to City Officers such as the City Manager, the  
26 City Attorney, and the City Clerk require a formal City Council Resolution. (Exh. 7 [INDEX0208-  
27 0212].) Under Section 413, the Mayor would have veto authority over both of these kinds of  
28 ordinances and the resolutions. (Exh. 6, Charter, § 413 [INDEX0187].) And to the extent that the

1 City Council should ever undertake to change these ordinances, the Mayor would have veto  
2 authority as to those changes. (*Ibid.*)

3 Moreover, City Council Resolution No. 23035, entitled Rules of Procedure and Order of  
4 Business, formally resolved by vote of the City Council and adopted on July 26, 2016, repeats the  
5 Charter language concerning the Mayor's veto authority at Title IV, Section A. (See Exh. 8  
6 [INDEX0215-0216]; see also Exh. 6, Charter, § 413 [INDEX0187].) The heading for Title IV,  
7 Section A is not "Adoption of ordinances and resolutions," but rather "DUTIES OF MAYOR;  
8 MAYOR PRO TEMPORE." (See Exh. 8 [INDEX0215].)

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

15 **B. The Renegotiated Contract of City Manager John Russo is Void *Ab Initio***  
16 **Because Mayor Bailey Properly Exercised His Veto Authority and the City**  
17 **Council Held No Veto Override Vote.**

18  
19 At issue for the purpose of this bifurcated trial are the rights and duties of the City, the City  
20 Council and the Office of the Mayor under the Charter, City Council Resolution No. 23035 and  
21 Chapter 2.32 of the Riverside Municipal Code with regard to Mr. Russo's renegotiated employment  
22 contract that was approved by the City Council and vetoed by the Mayor on February 6, 2018. (See  
23 Code Civ. Proc., § 1060.) As to the declaratory relief cause of action, this court's determination on  
24 those rights and duties will affect the Mayor and the City Council going forward. As to the petition  
25 for writ of mandate, this court's decision will instruct the City to calculate the monies paid under the  
26 contract and the difference between that and what would not have been paid under the contract that  
27 was in effect until February 6, 2019. A discussion of the underlying legal principles follows.

28 Plaintiffs do not seek an order or judgment setting aside Mr. Russo's renegotiated

1 employment contract. Plaintiffs assert that there is nothing to set aside. The contract is “not merely  
2 voidable but absolutely void for want of power in the [City] officers [who executed it], and no  
3 subsequent action by the officers themselves can give validity to the void act or ratify it in any way.”  
4 (*People ex inf. Webb v. California Fish Co.* (1913) 166 Cal. 576, 611.) It could not have been  
5 executed and performed by the City because it was duly vetoed by the Mayor and there was no veto  
6 override vote by the City Council within sixty days as required by Section 413 of the City’s Charter.  
7 Because the contract is void, payments made thereunder serve no public purpose, and constitute an  
8 improper gift of public funds which must be recovered. (*Jordan v. California Department of Motor*  
9 *Vehicles* (2002) 100 Cal.App.4<sup>th</sup> 431, 450-451.)

## 10 VI.

### 11 THE RELIEF SOUGHT UNDER PLAINTIFFS’ CLAIMS

#### 12 A. Plaintiffs’ Declaratory Relief Cause of Action Presents an Actual Controversy.

13 Plaintiffs’ verified pleading contains a cause of action for Declaratory Relief. “ ‘The  
14 fundamental basis of declaratory relief is the existence of an actual, present controversy over a  
15 proper subject.’ ” (*City of Cotati v. Cashman* (2002) 29 Cal.4<sup>th</sup> 69, 79; quoting 5 Witkin, Cal.  
16 Procedure (4th ed. 1997) Pleading, § 817, p. 273.) “ ‘An action for declaratory relief lies when the  
17 parties are in fundamental disagreement over the construction of particular legislation, or they  
18 dispute whether a public entity has engaged in conduct or established policies in violation of  
19 applicable law.’ ” (*City of Cotati v. Cashman, supra*, 29 Cal.4<sup>th</sup> at p. 79; quoting *Alameda County*  
20 *Land Use Assn. v. City of Hayward* (1995) 38 Cal.App.4<sup>th</sup> 1716, 1723.)

21 In *Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158  
22 Cal.App.4<sup>th</sup> 877, a plaintiff community group filed a verified petition for writ of mandate and  
23 complaint for declaratory relief with regard the practice by the Sierra County Board of Supervisors  
24 “of not giving 10 days’ notice of the board of supervisors’ hearing following receipt of the planning  
25 commission’s recommendation” for the approval of zoning ordinances or the amendment of zoning  
26 ordinances. (*Id.* at pp. 881-884.) The plaintiff asserted that the streamlined practice was improperly  
27 used with regard to a particular subdivision application, and that it violated the Government Code.  
28 (*Id.* at pp. 881-883.) The County disagreed and represented that it would continue to utilize the

streamlined process. (*Id.* at pp. 883-884.) The superior court granted the plaintiff's motion under Code of Civil Procedure section 437c and granted declaratory relief finding that the Government Code section in question "require[s] receipt of the planning commission's recommendation before notice [can] be given of the board of supervisors' hearing." (*Id.* at p. 884.) The court of appeal affirmed, and it discussed what constitutes an "actual controversy" under Code of Civil Procedure section 1060 governing actions for declaratory relief. (*Id.* at pp. 884-888.)

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

Moreover, declaratory relief does not look back for the purpose of changing what happened. It looks at what is, and then forward "to liquidate uncertainties and controversies which might result in future litigation." (*Hannula v. Hacienda Homes* (1949) 34 Cal.2d 442, 448, citing *Columbia Pictures Corp. v. DeToth* (1945) 26 Cal.2d 753, 760; *Maguire v. Hibernia Savings & Loan Society* (1944) 23 Cal.2d 719, 729; *Jackson v. Lacy* (1940) 37 Cal.App.2d 551, 561. Thus, the only reason why what has happened in the past is relevant now is to show (1) that there is an actual dispute between the Plaintiffs and the City and (2) what the City has done in the past as a road map to what it will do in the future unless this court liquidates uncertainties and controversies over what the City's current governing documents provide/require. (See *ibid.*) Because of what has already happened, the City, through its City Attorney and its hired counsel that advised the City Attorney on the subjects raised by this brief (and which represent the City in this litigation) will most certainly take the position *in the future* (1) that Mayor Bailey could not (and therefore, did not) veto the Russo Contract; (2) that the Russo Contract is not void *ab initio*; (3) and that the office of the Mayor does not have veto authority over formal actions taken by vote of the City Council when it comes to personnel actions concerning the City Manager, the City Attorney, and the City Clerk ("Charter

1 Officers”) each time such formal actions taken by vote occur *in the future*.

2       **B. Plaintiffs’ Petition for a Writ of Mandate, Similar to the *Clymer* Action in Some**  
3       **Respects, Seeks an Order Directing the City to Recoup Monies Paid Under the**  
4       **Russo Contract.**

5       With regard to the bifurcated issues, where the declaratory relief cause of action leaves off,  
6 the petition for writ of mandate picks up. It seeks all of the things the declaratory relief cause of  
7 action seeks on the bifurcated issues, *and* it seeks an order directing the City to calculate all monies  
8 paid out under the Russo Contract, to compare that with monies that would have been paid to John  
9 Russo under the prior contract, and to undertake to recover the difference from Mr. Russo. The  
10 calculations are ministerial functions, mathematical calculations, and the within petition seeks to  
11 compel ministerial functions.

12       The within petition does not ask this court to supervise the accountings and recovery of  
13 monies. The *Clymer* action which is to be tried concurrently with the bifurcated issues seeks that,  
14 and it would be enough that this court order the City to comply with the findings and orders in the  
15 *Clymer* action with regard to the recovery of monies from John Russo. This why the Plaintiffs  
16 stipulated to concurrent trials of the bifurcated veto issues in this case and the *Clymer* action on  
17 November 22, 2019.

18                               **VII.**

19                               **CONCLUSION**

20       Based on the foregoing, Plaintiffs respectfully request that this court decide paragraphs 1, 3,  
21 and 5 of their operative pleading (and paragraph 7 as it applies to them) as follows:


- 22               • By making judicial declaration and determination that the Office of the Mayor of the  
23 City of Riverside has veto authority over “any formal action taken by vote of the City  
24 Council. . . , except an emergency ordinance, the annual budget or an ordinance  
25 proposed by initiative petition,” and that that express language in the Charter allows  
26 the Office of the Mayor to veto City Council approval of contracts, including  
27 contracts of City employees who serve at the pleasure of the City Council (Paragraph  
28 1 of Plaintiffs’ Prayer for Relief);

- 1 • By issuing a peremptory writ of mandate or other extraordinary relief directing the  
2 City to acknowledge and honor Mayor Bailey's veto of February 6, 2018 with regard  
3 to the City Council's approval of the City Manager's Contract and declaring the City  
4 Manager's Contract void *ab initio* such that all monies paid there under must be  
5 recovered by the City (Paragraph 3 of Plaintiffs' Prayer for Relief); and  
6 • By issuing a peremptory writ of mandate or other extraordinary relief directing the  
7 City to perform an accounting of all monies paid to former City Manager, John  
8 Russo, under the void City Manager's Contract, to calculate the monies John Russo  
9 would have instead been entitled to in 2018 under his former contract up to and  
10 including the date of his termination (including severance), to apply those sums as an  
11 offset to recoverable monies under the void City Manager's Contract, and to proceed  
12 to take action to recover the difference from Mr. Russo (Paragraph 5 of Plaintiffs'  
13 Prayer for Relief).

14 Respectfully submitted,

15 DATED: August 29, 2019

THOMPSON & COLEGATE LLP

16  
17 By: 

18 SUSAN KNOCK BECK  
19 Attorneys for Petitioners/Plaintiffs,  
20 WILLIAM R. ("RUSTY") BAILEY III,  
21 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 September 3, 2019, I served the foregoing document described as **OPENING TRIAL BRIEF BY PETITIONERS/PLAINTIFFS ON THE BIFURCATED ISSUES OF THE MAYOR'S VETO AUTHORITY, INCLUDING HIS EXERCISE OF THAT AUTHORITY, THE EFFECT OF THE EXERCISE OF HIS AUTHORITY, AND RELATED ISSUES** 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 September 3, 2019, at Riverside, California.

  
ERMENIA OLIVAS

**SERVICE LIST**

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