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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE, CENTRAL DISTRICT

WILLIAM R. ("RUSTY") BAILEY III, MARCIA McQUERN, and THOMAS MULLEN,

Petitioners and Plaintiffs,

v.

CITY OF RIVERSIDE,

Respondent and Defendant.

CASE NO. RIC1804755
Unlimited Jurisdiction

(Case assigned to Hon. Randall S. Stamen)

RESPONDENT AND DEFENDANT CITY OF RIVERSIDE'S OPPOSITION BRIEF ON MAYORAL VETO ISSUES

Complaint Filed:	March 9, 2018
Trial Date:	November 22, 2019
Time:	8:30 a.m.
Department:	7

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I. INTRODUCTION

The Court cannot ignore the political nature of this dispute. Petitioners William R. ("Rusty") Bailey, III; Marcia McQuern; and Thomas Mullen (together, "Bailey" or "Petitioners") lost the battle but won the war — Respondent and Defendant City of Riverside's ("City") City Council properly ignored Mayor Bailey's veto of former City Manager John Russo's amended contract, but dismissed Russo two months later, making this dispute over the amended contract largely academic. Mayor Bailey, too, has announced he will not seek reelection, raising questions whether he has sufficient interest in the veto power of the office he temporarily holds to have standing here. He seeks a writ of mandate against the City he serves, and two of the three other petitioners and plaintiffs in this action and *Clymer v. City of Riverside* ("*Clymer*"), set for trial with the issues briefed here, serve on the City's Charter Review Committee, which controls the Charter amendments the City Council might propose to voters. Parties to these cases thus hold the power to effect the change they seek through the political process and without the Court's intervention.

Bailey seeks extension of his weak-mayor power without the approval voters have previously refused. Though the City has amended the Charter many times since voters adopted it generations ago, Riverside's government still rests upon a Council-Manager foundation with a largely ceremonial Mayor. Under that Charter, as in nearly all other Council-Manager cities, the City Council retains sole authority over the Charter officers — the City Manager, City Attorney, and City Clerk — ensuring they serve but one master: the Council as a whole. Riverside's Charter states the City Manager serves "at the pleasure of" the Council, not the Mayor, and that a majority of the City Council selects him. The Court would need to ignore both Charter provisions — and several others — to conclude the mayor's veto power extends to employment decisions affecting Charter officers.

Cities like San Bernardino and San Diego that provide for stronger mayors have done so expressly, persuading voters to amend their charters to grant the mayoral powers Bailey seeks; Sacramento and Miami voters recently rejected such "strong-mayor" proposals. Riverside has not adopted "strong mayor" amendments and Bailey cites no previous example of a Riverside mayor vetoing a Charter officer employment contract. He thus seeks what amounts to a Charter amendment

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without a vote of the people. Mayor Loveridge wished the same over 20 years ago, regretting he did not have the "hiring and firing" power mayors of some other cities do.

Bailey has the burden to prove his entitlement to a writ, and any doubts about the Court's power to enter it or grant other relief should be resolved against him. The City repeats several of the procedural issues barring relief the Court addressed in denying Bailey's motion for summary adjudication — standing, the absence of Russo (a necessary party), mootness — and any of these is sufficient to deny or limit the relief Bailey seeks. Regardless of how the Court rules, the Charter Review Commission's work will continue, and the voters will have the final say as to the scope of the mayor's power, as is appropriate in a democracy.

II. STATEMENT OF FACTS[1]

A. HISTORY OF THE RELEVANT CITY CHARTER PROVISIONS

The history of the City's Charter shows a fundamental and lasting commitment to exclusive City Council control of Charter officers and reluctance to extend mayoral power. Riverside's voters first allowed its Mayor the power to veto in 1963 — decades after approving the first Charter. (2 AR 10, 4 AR 62.)[2] Riverside voters considered competing charter amendment proposals in 1966, preferring one that allowed the Mayor one vote of eight on appointments to boards and commissions over one giving the Mayor exclusive appointment authority. (7 AR 80, 8 AR 85, 10 AR 116.) In 1985, then-Mayor Ab Brown proposed an "Effective Mayor/City Council/City Manager form of government" (138 AR 2842) to grant the Mayor a vote in the City Council (again, one vote in eight) on all matters. The Charter Review Committee considered the proposal the following year, but rejected it for lack of the required supermajority. (139 AR 2852.) In 1994, former Mayor Ron Loveridge informed the Charter Review Committee that he did not have "hiring and firing" power, but instead held only a "ceremonial" office. (140 AR 2855.)

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[1] The City repeats here some of the Statement of Facts from its brief in the *Clymer* matter, which is consolidated for trial, and omits section II.E. from its *Clymer* brief.

[2] References to certified administrative record are in this format: ([Document #] AR [Page(s)].)

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Consistent with this understanding, the City Council's operating resolution has assigned responsibility for the evaluation of Charter officers to the Mayor Pro Tem, chosen by the City Council — not the Mayor. (E.g., 14 AR 228, 33 AR 410, 40 AR 482, 43 AR 525.) Operating resolutions over the years have consistently stated the "City Council," not the Mayor, directs the City Manager. (E.g., 33 AR 413, 40 AR 486, 43 AR 530.) The current version, on which Bailey relies (e.g., Petitioners' Opening Brief ("Open. Br.") at p. 18 [citing City Council Reso. No. 23035]), maintains this language. (92 AR 1960, 92 AR 1964.) The resolution has been amended many times, but these provisions have never changed.

B. THE CITY'S COMPENSATION OF CHARTER OFFICERS

Given their unique roles in the City's government, the City Council has extended non-standard compensation to its Charter officers and inconsistently approved or amended Charter officer contracts by "formal" resolutions while consistently doing so in setting employment terms for other City employees. The City has adjusted its master compensation resolution several times, sometimes addressing benefits afforded Charter officers, sometimes not. For example, in 2005, the City Council amended its master resolution to exempt certain employees from the City's "classification plan" (something akin to civil service) including "persons appointed by the City Council, including the City Manager, City Clerk, and City Attorney," distinguishing them from those "appointed by the Mayor" (52 AR 726) — meaning members of boards and commissions. This provision confirms the City's understanding the City Council alone supervises Charter officers and exempts them from other employment requirements of the Charter and Municipal Code.

The City has extended unique treatment to its Charter officers several times in recent memory.

- In 1996, the City Council hired City Clerk Colleen Nicol, and has since amended her employment agreement several times without "formal" resolutions. (17 AR 307, 18 AR 316, 19 AR 324, 20 AR 327, 23 AR 336.) In 1999, the City Council — not the Mayor — conducted Nicol's annual review and recommended increasing her compensation. (25 AR 348, 26 AR 350.) The City Council increased Nicol's compensation again in 2017 without a separate resolution. (94 AR 2012, 97 AR 2042.)

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- The City Council hired former City Attorney Greg Priamos in 2002 without an accompanying resolution (28 AR 377) and agreed to pay him $10,000 in relocation expenses (29 AR 380). The City Council later increased this relocation allowance to $20,000, again without an accompanying resolution (35 AR 449), an amount intended to allow Priamos to buy a home upon moving to Riverside (36 AR 451) from his previous post in Los Angeles County.

- In 2015, the City Council adopted a resolution to hire City Attorney Geuss, to grant an automobile allowance greater than afforded by the master compensation resolution. (80 AR 1596, 81 AR 1641.) But when the City Council amended Geuss's contract, with Mayor Bailey's endorsement, in 2017, the changes were not accomplished by resolution. (99 AR 2055, 100 AR 2061, 101 AR 2077.)

C. THE CITY'S EMPLOYMENT OF RUSSO AND RENEGOTIATION OF HIS CONTRACT

Mayor Bailey recommended the City Council hire John Russo to serve as City Manager in 2015, and the City Council approved Russo's original contract by resolution. (75 AR 1356.) The present dispute arose in late 2017 regarding Russo's request to extend and amend his contract, which Russo negotiated with the City Council, which always had the sole authority to negotiate Charter officer contracts.

Upon hearing Bailey's claim he could veto any extension of Russo's contract, City Attorney Geuss sought, on behalf of the Mayor and City Council, an opinion from Colantuono, Highsmith & Whatley, PC ("CHW") whether the Mayor's veto power extended to Charter employee contracts. (128 AR 2635, 146 AR 3115.) Despite multiple notices the memorandum was "confidential," Bailey shared it at least six times with people not on the City Council. (128 AR 2627, 128 AR 2634–2673.) How many others might have received the memo is uncertain, as Bailey forwarded it from his City email account to a personal account and may have forwarded it to others from there. (128 AR 2649, 128 AR 2656, 128 AR 2663.) Bailey shared the memo with his counsel in this case, who analyzed this obviously privileged memo and assisted him with a political response. (128 AR 2627, 128 AR 2635, 128 AR 2664.)

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Bailey also sought a competing opinion from Rutan & Tucker (145 AR 3098), a firm with an attorney-client relationship with the City, not Bailey personally or individually (128 AR 2631). The Rutan opinion only briefly discussed City Charter section 600, which grants the City Council sole authority to choose the City Manager. That opinion identifies no previous use of the Riverside Mayor's veto power as to personnel matters. (145 AR 3114.)

The City Council agendized Russo's contract extension for its February 6, 2018 meeting. (109 AR 2217.) Bailey encouraged members of the public to contact the City Clerk and City Council to register their opposition. (110 AR 2343, 110 AR 2437.) R. Ben Clymer, Jr., plaintiff in the *Clymer* matter consolidated for trial with this case, was among those who did so. (110 AR 2308.)

D. THE CITY COUNCIL AMENDS RUSSO'S CONTRACT, WHICH BAILEY PURPORTS TO VETO

Despite Bailey's political campaign — exercising his "voice" (but not vote) under the City Charter — the City Council voted 5–2 to amend Russo's contract and authorized the Mayor and Mayor Pro Tem to execute it. (111 AR 2485.) The City's Human Resources Department concluded the amendment had "no net cost" to the City, and its primary effect was to assure Russo and his department heads of his tenure through the next three City elections. (110 AR 2234.)

Knowing the City Attorney concluded he could not veto the amendment, Bailey nevertheless stated his veto at the conclusion of the February 6, 2018 City Council meeting and then tried to immediately adjourn and preclude Council discussion. (111 AR 2493, 113 AR at 4:06:56.[3]) When Councilmember MacArthur asked the City Attorney's opinion on whether the Mayor could veto Russo's amended contract, Bailey stated the meeting was adjourned and the veto could not be discussed. (*Id.* at 4:07:30.) Bailey then stated he had obtained a competing interpretation of the Charter (*id.* at 4:12:24), and City Attorney Geuss advised Bailey he had improperly obtained that opinion, as the City (not the Mayor in his individual capacity) had an attorney-client relationship with Rutan & Tucker, which provided the opinion (*id.* at 4:15:00). The Mayor Pro Tem, City

[3] Video clips of the January 31, 2018 Budget Engagement Commission meeting (document 108) and City Council meetings of February 6, 2018 (document 113), February 13, 2018 (document 116), February 20, 2018 (document 119), March 13, 2018 (document 122), and April 17, 2018 (document 125) are included in the certified administrative record.

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Attorney, and City Clerk executed the amended Russo contract, as the City Council had instructed. (112 AR 2501.)

At its February 20, 2018 meeting, the Council stated its support for the City Attorney as the City's "sole legal authority" under the Charter, confirming its conclusion at its February 6 meeting that the Mayor could not veto the contract extension. (118 AR 2538.) Thus, it is not simply the City Attorney's ruling at issue here, but also the City Council's action on that ruling. Even after this affirmation, a dissenting Councilmember asked at a later meeting that the Council calendar a veto override vote, but given his (and the Council's) conclusion that no legally meaningful veto existed, the City Attorney ruled such a vote would be out of order (121 AR 2555) and the City Council never scheduled it.

Having lost the battle, however, Bailey won the war. The City Council terminated Russo's employment without cause on a 4–3 vote on April 17, 2018. (124 AR 2577.) He is now City Manager of Irvine and there is no prospect of his return to Riverside City Hall. (City's Request for Judicial Notice ("RJN"), Item A.) Bailey, too, has announced he will not seek re-election and will leave office in 2020. (RJN, Item B.)

III. PROCEDURAL HISTORY[4]

Bailey sued on March 9, 2018 and sought ex parte relief to stay enforcement of the Russo contract, which the Court denied April 9, 2018. Bailey then amended his complaint, adding two new petitioners including Marcia McQuern, a member of the City's Charter Review Committee. (RJN, Exhs. C, D.)

R. Ben Clymer, Jr., sued in reverse validation, an in rem proceeding, to challenge the extension of Russo's contract and the mortgage the City provided Russo under that contract on April 6, 2018 and filed the operative First Amended Complaint July 10, 2018. As the Validation Statutes (Code Civ. Proc., § 860 et seq.) require, Clymer named "all persons interested in the matter of the City of Riverside's adoption of a seven[-]year contract extension of [sic] City Manager John Russo"

[4] The City repeats here the Procedural History from its brief in the *Clymer* matter.

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— not merely those who opposed the contract. Like McQuern, Clymer is a member of the Charter Review Committee. (RJN, Exhs. C, D.)

The City gave Bailey notice of *Clymer*, notifying him and his counsel of his duty to participate in that case to assert the claims in this case. (RJN, Exh. E.) Bailey refused to answer the *Clymer* complaint and has never sought to participate in that suit. Clymer's First Amended Complaint added Russo as a real party in interest; Russo and the City have answered. No other interested parties appeared in *Clymer*.

Bailey then moved for summary adjudication of his declaratory relief claim. The City opposed, raising several procedural issues, including whether Bailey and McQuern had standing, a point it raised early in the case and which led to Bailey's amended pleading. At the April 19, 2019 hearing, the Court questioned whether Russo was a necessary and indispensable party and requested additional briefing on the issue. (RJN, Exh. F.)

After additional argument on June 4, 2019 on the indispensable party issue, the Court denied Bailey's motion on September 3, 2019 because triable issues of act existed: (1) as to Bailey's and McQuern's standing; and (2) whether Russo was an indispensable party. Bailey filed his opening trial brief the same day. Placing all of his eggs in one basket, Bailey has never sought leave to amend his complaint to dismiss Bailey and McQuern for lack of standing, to add Russo as a party, or to join *Clymer* as a defendant or "interested person."

IV. ARGUMENT

A. BAILEY HAS THE BURDEN TO SHOW HE IS ENTITLED TO RELIEF

Bailey and the other Petitioners have the burden of proof on their writ and declaratory relief claims. (*California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1153–1154 [petitioner bears burden to show necessity of writ]; *Merkley v. Merkley* (1939) 12 Cal.2d 543, 547 [plaintiff bears burden to show need for court's discretionary grant of declaratory relief].) The Court should defer to the City Council's determination the Mayor of Riverside may not veto Charter officer employment contracts unless Bailey bears this burden to persuade otherwise. (Evid. Code, § 664 [presumption of regular performance of official duties]; *Yamaha Corp. of America v.*

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State Bd. of Equalization (1998) 19 Cal.4th 1, 6 (*Yamaha Corp.*) [deference to agency interpretation of statute under which it operates]; Cal. Const., art. XI, § 5, subd. (a) [city charter has force of statute].)

B. TRIAL OF THE MERITS IS LIMITED TO THE ADMINISTRATIVE RECORD

1. *Western States* limits trial to the City's administrative record

This case challenges a City contract, approval of which is a legislative act. (*Mike Moore's 24-Hour Towing v. City of San Diego* (1998) 45 Cal.App.4th 1294, 1303 ["A public entity's award of a contract, and all of the acts leading up to the award, are legislative in character[,]" internal quotation and citation omitted].) Accordingly, evidence here is limited to the administrative record. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 578 (*Western States*) [judicial review of legislation is limited to the administrative record with "rare" and "narrowly construed" exceptions]; *SN Sands Corp. v. City and County of San Francisco* (2008) 167 Cal.App.4th 185, 191 (*SN Sands*).) *SN Sands*, a similar case challenging a contract as illegal under San Francisco's charter, did not involve administrative mandate under Code of Civil Procedure section 1094.5 but was still limited to the administrative record. Moreover, **any** challenge to a legislative act is limited to an administrative record, whether the plaintiff seeks reverse validation, a writ, declaratory relief, or an injunction. (*Western States*, *supra*, 9 Cal.4th at p. 566 [declaratory and mandamus relief]; *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 695 & 706 [mandate, declaratory, injunctive relief]; *Meaney v. Sacramento Housing & Redevelopment Agency* (2007) 13 Cal.App.4th 566, 582 [reverse validation].)

As in his motion for summary adjudication, Bailey claims, without support, that *Western States*' rule is limited to administrative mandamus. (Open. Br. at pp. 12–15.) He simply ignores the authorities to the contrary cited here, as on his motion for summary adjudication. He had no answer to these cases then and offers none now; he concedes the point by silence. *American Coatings Assn., Inc., v. South Coast Air Quality Dist.* (2012) 54 Cal.4th 446, which Bailey tries to distinguish (Open. Br. at p. 14), is just one of many cases on point. If more were required, *SN Sands*, *supra*, applies *Western States*' litigation-on-the-record rule to something other than an administrative mandamus claim. Validation actions like *Clymer* are also limited to the administrative record (*Poway Royal*

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Mobilehome Owners Assn. v. City of Poway (2007) 149 Cal.App.4th 1460, 1479); Clymer adheres to that rule.

2. Bailey may not cite the City's denials of his verified pleading as evidence

Because the Court is limited to the administrative record of the City's approval of the contract Bailey challenges, he may not cite his verified pleading and the City's denials for lack of information and belief as evidence. Any extra-record evidence the Court might allow is limited to that which existed **before** the City Council made the challenged decision. (*Western States*, *supra*, 9 Cal.4th at p. 578.) As the complaint, its amendment, and the City's answer all post-date approval of Russo's amended contract, they cannot be evidence on the merits here. Other than the declarations Petitioners offer, most of their evidence is part of the administrative record, in any event. The City objects in its concurrently-filed objections to only the declarations.

Denials, even if based on a lack of information and belief, are enough to put a complaint's allegations at issue and require a plaintiff to support them unless the matters denied are presumptively within the defendant's knowledge. (Code Civ. Proc., §§ 431.20, subd. (a); 431.30, subd. (f) ["The denials of the allegations controverted may be stated … by denial of certain allegations upon information and belief, **or for lack of sufficient information or belief**," emphasis added].) The cases Bailey cites to the contrary (Open. Br. at p. 8) were all decided before the 1971 adoption of Code of Civil Procedure sections 431.20 and 431.30. Moreover, no reported case has cited *Straus v. Straus* (1935) 4 Cal.App.2d 461, for the point for which Bailey cites it in the 84 years since it was published.

More recent authority holds denials based on a defendant's lack of information and belief are proper and put the denied allegations at issue unless the denied matters are presumptively within the defendant's knowledge (*Dobbins v. Hardister* (1966) 242 Cal.App.2d 787, 791–792) or relate to facts of public record (*Transworld Systems, Inc. v. Rogan* (1989) 210 Cal.App.3d 731, 733 [*Transworld Systems*]). The City's denials based on a lack of information and belief Bailey claims as evidence (Open. Br. at pp. 10–11) did not relate to matters the City presumptively knows or the contents of public records like the collection agency licenses at issue in *Transworld Systems*. Rather

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they went to when Bailey learned particular facts and whether Petitioners McQuern and Mullen were residents and registered voters of the City at all relevant times — facts Petitioners know far better than can the City, which does not maintain voter registration rolls; the County Registrar of Voters does. The City denied these allegations because it did not know, when it filed its answer, whether they were true and — because the evidence here is limited to the administrative record and no discovery is allowed — it had no opportunity (or need) to discover them.

Thus, the City properly controverted the allegations Bailey cites, and the Court may consider no extra-record evidence to support the points he asserts. Moreover, evidence (like the City's denials) created after the challenged action is **never** admissible under *Western States*. (*Western States*, *supra*, 9 Cal.4th at p. 578.) The City's denials for lack of information and belief are not "evidence" here for both reasons.

C. BAILEY AND MCQUERN LACK STANDING

Though the Court is limited to the administrative record on the merits, parties may cite extra-record evidence in raising issues unrelated to the merits that could not have been included in the administrative record, including equitable defenses and standing. (*Western States*, *supra*, 9 Cal.4th at p. 575, fn. 5.) Petitioners Bailey and McQuern are City officials with authority to effect amendment of the Charter they seek, and lack standing for that reason. (*Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 795; *Braude v. City of Los Angeles* (1990) 226 Cal.App.3d 83, 90–91; *Holbrook v. City of Santa Monica* (2006) 144 Cal.App.4th 1242, 1258–1259.) Intramural disputes among public officials should be resolved in the political process, not in court. Clymer, also a member of the Charter Review Committee, lacks standing to bring his reverse validation claim for this same reason, a point the City addresses in its brief in that case.

The City identified this issue in opposing Bailey's motion for summary adjudication — and before, in meeting and conferring regarding a demurrer Bailey made unnecessary by filing an amended complaint to add more petitioners — but Bailey has never sought leave to amend nor does his opening brief on the merits address it. Perhaps he hopes to address the issue only on reply when the City might have no rebuttal, or perhaps he has nothing to say. As he cannot dispute he is Mayor

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and McQuern a member of the Charter Review Committee, the Court should conclude Bailey and McQuern lack standing.

D. THE COURT CAN AWARD NO RELIEF HERE BECAUSE PETITIONERS DID NOT NAME RUSSO AS A RESPONDENT NOR PARTICIPATE IN *CLYMER*

1. Russo is necessary and indispensable here because Bailey challenges Russo's mortgage and employment contract

Code of Civil Procedure section 389 states a party is necessary if: (1) in his absence, complete relief cannot be afforded to those who are parties; or (2) if he claims an interest relating to the subject of the action such that without his participation, he may be impaired in protecting that interest or another party to the case may face multiple or otherwise inconsistent obligations. If either is shown, "the court shall order that he be made a party." (Code Civ. Proc., § 389, subd. (a).)

All parties to a contract must be joined in an action to interpret it because all are necessary under Code of Civil Procedure section 389. (*Deltakeeper v. Oakdale Irrigation Dist.* (2001) 94 Cal.App.4th 1092, 1106; *Sierra Club, Inc. v. California Coastal Commission* (1979) 95 Cal.App.3d 495, 501; *Lomayaktewa v. Hathaway* (9th Cir. 1975) 520 F.2d 1324, 1325.) California decisions apply federal decisions under Federal Rule of Civil Procedure Rule 19 as persuasive authority to interpret Code of Civil Procedure section 389. (*Dreamweaver Andalusians, LLC v. Prudential Ins. Co. of America* (2015) 234 Cal.App.4th 1168, 1174.)

Bailey seeks an order that Russo's amended contract is void and that the City recoup compensation it paid him, making Russo a necessary party under the general rule that all parties to a contract must be named. Bailey quibbles as to what his petition requests (Open Br., p. 31) but admits he seeks an order declaring the amended Russo contract void *ab initio* (*id.* at p. 7, line 16) and compelling the City seek recoupment from Russo (*id.* at p. 7 at lines 16–17 & 23–24, p. 31 at line 9). The Court of Appeal ordered public employees made parties when a petitioner sought a writ compelling them to repay Social Security contributions a County agency paid on their behalf in a decision the City cited to oppose Bailey's motion for summary adjudication, but which Bailey has neither discussed nor distinguished on that motion or in his opening brief. (*Silver v. Los Angeles County Metropolitan Transportation Agency* (2000) 79 Cal.App.4th 338, 350; see also *Gill v.*

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Momentum Development, LLC (C.D.Cal. Jan. 12, 2015, Case No. CV 14-4799) 2015 WL 12830391 at *3 [ordering plaintiff to add necessary party to case].)[5] Bailey's authorities on the necessary party issue arise in special contexts with facts not present here.

Even if the general rule requiring all parties to a contract be named did not apply and the Court needed to resort to the statutory elements of Code of Civil Procedure section 389, those, too, support requiring Russo's participation. The City does not share Russo's interest in upholding his employment contract or as to whether the City should seek to recover from him. Thus Russo is necessary under section 389's subdivision (a). Whether an absent party's interests will be protected turns on whether his interests are sufficiently aligned with a party's so that his rights necessarily will not be affected or impaired by the judgment or proceeding. (*County of Imperial v. Superior Court* (2007) 152 Cal.App.4th 13, 38 (*County of Imperial*).) Only a "minimal" showing is needed to defeat a claim of alignment. (*Natural Resources Defense Council v. Kempthorne* (E.D.Cal. 2008) 539 F.Supp.2d 1155, 1188.)

The City and Russo may share a position as to whether Bailey's veto was valid, but do not as to whether the City should recoup from Russo. The general rule, as stated above, is that **all** parties to a challenged contract are necessary, meaning the general rule is that parties on opposite sides of a contract cannot be assumed to protect their absent counterparties. (*Wilbur v. Locke* (9th Cir. 2005) 423 F.3d 1101, 1113–1114, abrogated on other grounds by *Levin v. Commerce Energy* (2010) 560 U.S. 413.) Russo's interests obviously differ from the City's because he received the compensation the City would be directed to recover. (*Tracy Press, Inc. v. Superior Court* (2008) 164 Cal.App.4th 1290, 1300 [absent City Council member's interests in public records she retained not shared by city, making her indispensable in Public Records Act case].) Moreover, Bailey prays for an order that the City recover (or take action to recover) from Russo compensation paid under his amended contract and the City plainly cannot adequately represent Russo's interest on that point. The City and Russo are not in privity with respect to the amended contract or the compensation the City paid under it;

[5] The Court may consider unpublished federal district court opinions. (*Farm Raised Salmon Cases* (2008) 42 Cal.4th 1077, 1096, fn. 18.)

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they were on opposite sides of the bargaining table as employer and employee. (*Deorosan v. Haslett Warehouse Co.* (1958) 165 Cal.App.2d 599, 619.)

Prejudice to Russo cannot be avoided without his participation in this case, as the City does not share his interest in his compensation and cannot be expected to defend those interests here. If due process forbids a remedy that alters Russo's rights in his absence (as it does), then the City faces the risks of inconsistent outcomes — a duty to recoup from Russo here, and a bar on doing so in a subsequent case against him. This goes to the heart of the necessary party rule. (*County of Imperial, supra*, 152 Cal.App.4th at p. 38.) Bailey could reduce the prejudice by naming Russo but refuses to do so. (Code Civ. Proc., § 389, subd. (b)(4).)

Because Russo is necessary and indispensable but Bailey refuses to name him, the Court should deny Bailey relief and dismiss. The Court's ruling in denying Bailey's motion for summary adjudication is such that Russo's status as a necessary party should come as no surprise. Bailey, apparently disagreeing with the Court's apparent conclusion Russo is a necessary party, has not sought leave to amend to name him — either when the Court first raised the point in April, while his motion for summary adjudication was pending, or since the Court denied it. The Court should interpret Bailey's continued refusal to name Russo as an invitation to dismiss the complaint without prejudice, as Code of Civil Procedure section 389 directs when an indispensable party is not made party. (Code Civ. Proc., § 389, subd. (b); *Bianka M. v. Superior Court* (2018) 5 Cal.5th 1004, 1019.) If Bailey thinks the Court's conclusion in error, he can offer on appeal the explanation he has yet to make here.

2. Bailey's stipulation to try his veto issues with *Clymer* does not change the analysis

The parties' stipulation to consolidate this case and *Clymer* for trial changes nothing. The stipulation to consolidate, and the order consolidating *Clymer* and this action for trial only, did not merge the cases, but only set them for concurrent trial and decision, keeping everything else about them distinct, as Bailey's counsel demanded. (Code Civ. Proc., § 1048, subd. (a); *Hamilton v. Asbestos Corp., Ltd.* (2000) 22 Cal.4th 1127, 1147.) That the Court may be able to grant relief in *Clymer* — if Clymer could show standing, which he cannot — does not mean it must grant the same

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relief here, even if the arguments and evidence overlap. The Court will decide the cases together because they pertain to the same facts and to some of the same legal issues, but the City's arguments in the two need not be, and are not, the same. Moreover, two imperfect cases cannot together confer equitable jurisdiction here. That Bailey refused to name Russo defeats his case; that Clymer lacks standing defeats his. One case may not, by mere association, cure defects in the other.

Bailey had notice of the Court's interest in this issue at the April hearing on his motion for summary adjudication — five months before he filed his opening brief — and has since vigorously opposed any suggestion Russo is a necessary party. He might easily have withdrawn his motion and sought permission to amend to name Russo before trial; that he chose not to and refuses to name Russo does not mean Russo cannot be made a party under Code of Civil Procedure section 389. Indeed, since the Court ruled on the motion for summary adjudication on September 3, the same day Bailey filed his opening brief, counsel for the City has heard nothing from Bailey as to a request to name Russo.

Nor does the stipulation cure impermissible claim-splitting. Bailey claims, without evidence, that he and Clymer seek distinct relief, attempting to distinguish: (i) a writ of mandate directing the City to "undertake to recover the difference" between what Russo would have earned under his original contract and what he was paid under the amendment; from (ii) Court supervision of "the accountings and recovery of monies," which he claims Clymer alone seeks. (Open. Br. at p. 31.) There is no difference. If the City must recover the difference from Russo under the writ Bailey seeks, the City must make a return to the writ reporting its efforts to do so. Bailey might challenge that return as insufficient, requiring the Court to determine whether the City properly accounted for and recovered the necessary sum from Russo — the relief Bailey claims he does not seek, and that he claims Clymer does.

3. *Clymer* precludes relief in *Bailey*

A challenge to Russo's amended contract and mortgage was available as a reverse validation action, as *Clymer* demonstrates. Accordingly, Bailey cannot challenge it separately. (*Hills for Everyone v. Local Agency Formation Com.* (1980) 105 Cal.App.3d 461, 466; *Leach v. City of San Marcos* (1989) 213 Cal.App.3d 648, 656–657.)

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The Validation Statutes (Code Civ. Proc., § 860 et seq.) provide that, when validation is available, it is the exclusive means to challenge agency action. "No contest except by the public agency or its officer or agent of any thing or matter under this chapter shall be made other than within the time and the manner herein specified." (Code Civ. Proc., § 869.) "Actions brought pursuant to this chapter [i.e., validation actions] shall be given preference over all other civil actions before the court in the matter of setting the same for hearing or trial, and in hearing the same, to the end that such actions shall be speedily heard and determined." (Code Civ. Proc, § 867.) "The judgment, if no appeal is taken, or if taken and the judgment is affirmed, shall, notwithstanding any other provision of law including, without limitation, Sections 473 and 473.5, thereupon become and thereafter be forever binding and conclusive, as to all matters therein adjudicated or which at that time could have been adjudicated, against the agency and against all other persons, and the judgment shall permanently enjoin the institution by any person of any action or proceeding raising any issue as to which the judgment is binding and conclusive." (Code Civ. Proc. § 870, subd. (a).)

Thus, only a validation case like *Clymer* can challenge the amendment of Russo's contract; it is entitled to trial preference over "all other actions," including *Bailey*, and, if it reaches judgment before *Bailey*, is "binding and conclusive" there. As Bailey should have pursued his challenge to Russo's contract and compensation paid under it in reverse validation — or appeared in *Clymer* — the Court cannot grant him relief here. To achieve early finality, the Validation Statutes impose this election of remedies.

E. BAILEY'S "VETO" OF THE AMENDED RUSSO CONTRACT IS MOOT

Bailey still seeks a writ of mandate and declaratory relief that the City Council must acknowledge his veto of a contract the City Council has since terminated. (Open. Br. at p. 7.) Prospective relief is necessarily moot and amounts to an advisory opinion. (*Colberg v. State Bd. of Equalization* (1926) 199 Cal. 51, 52 [writ relief moot after repeal of act under which relief was sought]; *Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541 [duty of courts "not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it"].) Thus, the Court cannot issue a writ compelling the City Council to recognize Bailey's veto of a contract that

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no longer exists — it would be an abstract proposition and would not affect any other question presented here.

For the same reason, declaratory relief as to whether the City need recognize Mayor Bailey's purported veto is no longer appropriate, and the Court cannot show the parties' dispute is ripe and worthy of this Court's limited resources. (*Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 909; *Lee v. Silveira* (2016) 6 Cal.App.5th 527, 546.) Bailey must persuade the Court that it should exercise its discretion to grant declaratory relief; it is not the City's burden to show otherwise. (*Merkley v. Merkley* (1939) 12 Cal.2d 543, 547.)

Environmental Defense Project of Sierra County v. County of Sierra (2008) 158 Cal.App.4th 877, which Bailey cites (Open. Br. at pp. 29–30) is not to the contrary because Bailey challenges one purported veto, not the City Council's general practice as to the Mayor's veto power. Moreover, the case confirms that the dispute as to the validity of Bailey's purported veto of Russo's amended contract is moot because the controversy has passed the point where declaratory relief as to the validity of the veto would "permit an intelligent and useful decision to be made." (*Id.* at p. 885.) Whether Bailey had the right to veto Russo's amended contract is no longer at issue; Russo is no longer employed by the City, he is the City Manager of Irvine. (RJN, Item A.) Even further, Bailey (RJN, Item B) and three of the seven City Council members have announced they are not seeking re-election in 2020, and there is no likelihood either Bailey or Russo will return to his former position with the City that brought them into temporary conflict.

Bailey also seeks a writ directing the City to "proceed to take action to recover" certain sums from Russo. (Open. Br. at p. 7, lines 23–24.) This demand for backward-looking relief may not be moot, but it requires Russo's participation, and relief can be denied for that reason.

F. THE CHARTER AND DECADES OF CONSISTENT CITY INTERPRETATION PRECLUDE VETO OF CHARTER EMPLOYEE EMPLOYMENT DECISIONS[6]

If it need interpret the relevant Charter provisions to decide this case, the Court is guided by the canons of construction. Charters are interpreted like the statutes with which they have equal

[6] Many of the City's arguments here are repeated in its brief in *Clymer*, as Clymer claimed to incorporate Bailey's arguments by reference in his opening brief in that case.

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force, and the Court must therefore interpret Riverside's Charter to harmonize all its provisions. (*Mel v. Franchise Tax Board* (1981) 119 Cal.App.3d 898, 905–906; *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) Specific provisions control general ones. (*Division of Labor Law Enforcement v. Moroney* (1946) 28 Cal.2d 344, 346.) The Court should also defer to the City's consistent interpretation of its own Charter. (*Yamaha Corp., supra*, 19 Cal.4th at p. 6.)

I. Riverside's Charter specifies a Council-Manager form of government with a ceremonial mayor with limited powers

City Charter section 300 identifies the City's government as a "council-manager" form. (144 AR 3074 at § 300.) That form is consistent with the statutory form for general law cities that similarly limits the powers of a city's ceremonial mayor. (Gov. Code, §§ 36801, 40605; *Creighton v. City of Santa Monica* (1984) 160 Cal.App.3d 1011, 1015 [in Council-Manager form of government, "City Council is vested with all powers of the city except as limited by the Charter and the state Constitution"]; see *Hubbard v. City of San Diego* (1976) 55 Cal.App.3d 380, 392 [invalidating attempt by City Council to duplicate substantial duties of City Manager with separate office as "tending to undermine the harmony of the council/manager system of municipal government"].)

Charter section 406 reserves all "powers of the City" to the "City Council" except as otherwise provided, fully consistent with the council-manager form of government that places all power in the City Council unless otherwise stated. (144 AR 3076 at § 406.) The City Council establishes the City's organizational structure (144 AR 3081–3082 at § 701), creates boards and commissions (144 AR 3084 at § 800), and approves the budget and makes appropriations (144 AR 3084, 3087, 3090 at §§ 801, 1101, 1110). Section 405 confirms the Mayor's largely ceremonial role — presiding officer at Council meetings, ceremonial head of the City, communication of policies to City residents, advising the City Council on policy, and delivering the State of the City address. (144 AR 3076 at § 405.)

Consistent with the Council-Manager form of government, the Charter limits mayoral control over Charter officers, empowering the City Council alone to hire and fire them. The Charter directs the City Council to "appoint, by majority vote" the City Manager (144 AR 3080 at § 600), states that the City Manager "serve[s] at the pleasure of the City Council" (*ibid.*) and is "responsible to the City

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Council" (*id.* at § 601) with no mention of a mayoral role in the selection, management, or supervision of the City Manager. The Court must harmonize these provisions — which specify the City leaders charged with managing Charter officers and employees — with the Mayor's veto power. To allow the Mayor a role in the selection and compensation decisions for the City Manager would be to ignore all of the provisions specifying which City leaders play a role in that decision — the City Council — and the provision which reserves all powers to the City Council unless otherwise stated.

The plain, specific language of Charter section 600 — "a majority vote" of the Council appoints the City Manager (four of seven votes) — precludes use of the veto, too. Allowing the Mayor to veto the selection of a City Manager would require **five** votes to override a veto — a supermajority. (144 AR 3078 at § 413.) Such an interpretation would allow a mayor to veto the decision to fire a City Manager, too, as Bailey could have, under his view of the Charter, when the City Council dismissed Russo. Russo was dismissed on a 4–3 vote (124 AR 2577); had another City Manager whom Bailey supported been dismissed on the same vote, under Bailey's interpretation of the Charter he could have vetoed that "formal action" and required the City Council to muster a supermajority of five to override it. Thus, adopting Bailey's view requires this Court to add or delete words from Charter section 600's reference to "a majority vote" to appoint a City Manager.

Charter section 600 also states the City Manager serves "at the pleasure of" the City Council, which is a term of art identifying the City decisionmaker responsible for managing an employee, more evidence the City Council alone controls the selection of the City Manager. (*Renna v. County of Fresno* (2000) 78 Cal.App.4th 1, 12 ["being personally accountable to someone other than the elected official means that the employee does not serve solely at the pleasure of the elected official, but of others as well," quotation and citation omitted]; *Hill v. City of Long Beach* (1995) 33 Cal.App.4th 1684, 1693 ["[s]erving at pleasure means one is an at-will employee who can be fired without cause"]; Black's Law Dictionary (10th ed. 2014) ["pleasure appointment" is "the assignment of someone to employment that can be taken away at any time, with no requirement for cause, notice, or a hearing"].) The Court must harmonize the specific Charter requirement that the City Manager be accountable only to the City Council with the Mayor's general veto power. They are

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most easily harmonized by recognizing the Mayor cannot veto City Council decisions as to the employment of the City Manager or other Charter officers.

Charter sections 600 and 700, which state Charter officers are appointed by, and serve at the pleasure of, the City Council, are in studied contrast to section 802, which states part-time, volunteer members of boards and commissions serve "at the pleasure **of the Mayor and the City Council**[.]" (144 AR 3084 at § 802, emphasis added.) Thus, on these decisions the Mayor has one of eight votes, and Riverside's voters expressly amended the Charter to extend this power to the Mayor. (7 AR 80, 8 AR 85, 10 AR 116.) Other Charter sections indicate which officials have a role in the selection and oversight of City employees, including sections 601 (City Manager is responsible to the City Council; all other non-Charter employees are responsible to the City Manager) and 804 (board and commission chairs serve at the pleasure of the board or commission). (144 AR 3081, 3085 at §§ 601, 804.) The *expressio unius* canon (*Gonzales & Co. v. Department of Alcoholic Bev. Control* (1984) 151 Cal.App.3d 172, 178) holds that where the City has listed, in one document, the offices with control over selection and supervision of particular officers, the omission of an office is purposeful. Thus, that the Charter gives the Mayor a role in appointing members of boards and commissions, but not Charter officers or others, indicates intent that he have no power over Charter officers or other City employees. Charter officers work for the Council; everyone else works for the City Manager but for the part-time volunteers who serve on boards and commissions by appointment of the Mayor and Council.

2. Bailey's interpretation is unpersuasive because it extends the veto to matters reserved to the City Council

Bailey argues Riverside's Mayor may veto "any formal action" of the City Council, meaning he can veto "City Council approval of employment contracts" of Charter officers. (Open. Br. at p. 26, lines 10–20.) He frees the phrase of its context in the legislative article of the Charter to make it unlimited. This, the canons forbid. (*Baeza v. Superior Court* (2011) 201 Cal.App.4th 1214, 1222 [statutory words "should be construed in their statutory context" to preclude "judicial construction that renders part of the statute meaningless or inoperative[,]" internal quotations and citation

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omitted]; *Giles v. Horn* (2002) 100 Cal.App.4th 206, 220 ["The legislative purpose will not be sacrificed to a literal construction of any part of the statute[,]" citation omitted].)

Bailey's view of the Charter does not distinguish his claimed authority to veto a Charter officer's contract from a decision to hire or fire such an officer. Yet the Charter expressly limits hiring and firing to the Council. Given that plain limit, the power to veto contracts is unworkable because it amounts to a role in hiring and firing. A mayor opposed to the City Council's selection could simply veto **any** contract offered a candidate he or she does not approve, thus requiring the supermajority discussed above, meaning his ability to veto employment contracts amounts to a veto over the selection of a Charter officer. "There is no greater power than the power of the purse." (*Committee to Defend Reproductive Rights v. Myers* (1981) 29 Cal.3d 252, 284.) Here, the Mayor has a voice, not a vote, although that voice proved sufficient to send Russo to Irvine.

The other Charter provisions Bailey cites on pages 17 and 18 of his Opening Brief to support his reading of the Charter do not undermine those granting the City Council sole authority to manage Charter officers.

- **Section 200** (construing power of "The City" as opposed to its constituent officers) – This section has no effect on City Council management of Charter officers.
- **Section 201** – That all City offices, including that of the Mayor, "exist to conduct the people's business" is a general, not specific, rule and consistent with either view of the veto power advocated here.
- **Section 400** (election, qualifications, and terms of Mayor and Councilmembers) – This section has no effect on City Council management of Charter officers.
- **Section 405** – Giving the Mayor "a voice" in the City Council's debates pointedly does not give him a "vote" or "veto"; those are provided by other, more specific provisions. Moreover, Bailey has not been denied a "voice" here; his views of Russo's contract amendment are well known and he encouraged his political supporters to urge the City Council to reject the amended Russo contract. (110 AR 2343.) His office may be primarily ceremonial, but it provides a bully pulpit. The City Manager, too, is entitled by

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the Charter to a voice at City Council meetings (144 AR 3081 at § 602); but, like the Mayor, he has neither vote nor veto by virtue of that language. The Mayor's limited rights to vote on, and to veto, legislation are provided by more specific provisions which demonstrate their intended reach.

- **Section 406** – A general clause giving the City Council "all powers" except as otherwise provided supports the City's, not the Mayor's, view of his veto authority.
- **Section 410** (defining Council quorum without reference to the Mayor) – This section has no effect on City Council management of Charter officers.
- **Section 413** – Entitled "Adoption of ordinances and resolutions," this section generally provides the Mayor's legislative veto; it must be harmonized with the other, more specific provisions empowering the Council alone to govern Charter officers discussed above.
- **Sections 600 and 700** – These are specific provisions relating to employment of Charter officers, stating they serve at the pleasure of the City Council alone, and stating no role for the Mayor in their selection, management, or supervision.
- **Section 601** – This is another specific provision giving the City Council alone the right to select a City Manager by majority vote and stating no right of the Mayor to veto that majority decision so as to compel a supermajority of five of seven Councilmembers.
- **Section 701** – This section reserves for the City Council alone the power to control City employment.

Jordan v. California Dept. of Motor Vehicles (2002) 100 Cal.App.4th 431 (*Jordan*), which Bailey cites to argue any payment to Russo is an improper gift of public funds because his contract is void (Open. Br. at p. 29), adds nothing. Even putting aside Bailey's lack of standing and failure to name Russo, his purported veto of Russo's contract amendment was not valid and there is no other basis to void the contract *ab initio*. Moreover, *Jordan*'s facts are meaningfully different. The plaintiffs there successfully challenged the constitutionality of the State's smog impact fee, and the Governor and Legislature set up a refund account and procedure to process refund claims. (*Jordan*,

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supra, 100 Cal.App.4th at pp. 439–440.) Plaintiffs' counsel sought fees of $18 million under the common fund doctrine, which the Court of Appeal held set a ceiling on the State's potential exposure. (*Id.* at pp. 439, 449–450.) Thus, an arbitrator's later award of $88 million to plaintiffs' counsel was a gift of public funds because it exceeded the statutory authority of $18 million. (*Id.* at pp. 438, 450–451.) No statutory limitation or arbitrator's award is in issue; Bailey identifies no limitation on the amount the City Council could choose to pay Russo or the types of compensation it might establish for his services — none exists. While a court could intervene if the consideration for a contract were so trivial or outrageous as to be a fraud, the weighing of that consideration is for the legislative body absent a very apparent abuse of discretion. It is for that reason that courts weigh policy-laden choices within a wide range of discretion. (E.g., *Scott v. Common Council* (1996) 44 Cal.App.4th 684, 693–694 [deferential review of budget decisions absent very clear rule to be enforced].)

3. Charter history and secondary sources support the City's interpretation, too

The City should prevail on the merits here, if they are reached, on the plain meaning of the Charter. Were more needed, however, the history of the relevant Charter provisions and secondary sources also support exclusive City Council control over employment decisions affecting Charter officers. The City recites the history of the Charter veto provision and City leaders' understanding of them in the Statement of Facts above. It is authority the Court might consider in interpreting the Charter if it concludes there is ambiguity. (*Don't Cell Our Parks v. City of San Diego* (2018) 21 Cal.App.5th 338, 349–350 [interpreting San Diego charter, citing *Yamaha Corp.*, *supra*, 19 Cal.4th 1].)

Bailey cites no previous attempt by any Riverside Mayor to veto the selection of Charter officers or their employment terms. His outside counsel's advice letter listing all previous vetoes (145 AR 3114) includes no such use of the veto power. Until the February 2018 purported veto contested here, the consistent, unchallenged belief of all who have ever served the City was that the Mayor's veto did not extend to Charter officer employment matters.

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Cities that have expanded the powers of their mayors to participate in the selection of Charter officers have done so expressly — with voter approval. San Bernardino's charter expressly allows its mayor to veto any action approved by fewer than five city councilmembers and to participate in votes to appoint or remove the City Manager, City Attorney, and City Clerk. (RJN, Exh. G at § 303.) San Diego approved a "strong-mayor" charter amendment in 2004, eliminating the City Manager position and providing for a "chief operating officer" hired and fired by the mayor. (RJN, Exh. H.) Indeed, voters often reject such proposals; voters in Sacramento and Miami recently rejected strong-mayor charter amendments that would have authorized their mayors to hire and fire Charter officers. (RJN, Exhs. I, J, K, L.)

4. No "formal, written" resolution was required to amend Russo's contract, nor could the Mayor veto such a resolution, besides

It matters not whether the City Council sought to deprive Bailey of a veto by not accomplishing Russo's contract extension by resolution; Bailey has no authority to veto any employment action as to a Charter officer no matter the form, as discussed *supra*. Bailey cites no section of the Charter or Municipal Code requiring the City Council enact a "formal resolution" to approve Charter officer contracts, besides, and nothing to prohibit the City Council from approving contracts by minute action (i.e., an action other than approval of an ordinance or resolution and shown on the Council's minutes). The City's discretion to set employment terms is broad (*Los Angeles G. & E. Corp. v. Los Angeles* (1922) 188 Cal. 307, 317) and Charter section 701, which directs the City Council to manage City employment, does not limit how it may do so (144 AR 3081–3082 at § 701). The City's practice has been inconsistent, at best; some Charter officer contracts and amendments were accompanied by resolutions, others not. Bailey signed the City Attorney's contract extension and amendment just months before Russo's (99 AR 2055, 101 AR 2077); that extension was not accompanied by resolution, formal or otherwise, and Bailey made no complaint of that fact.

Other Charter sections, too, give the City Council broad authority in determining how to manage Charter officer employment. Section 200 provides "The City shall … have the power to exercise, or act pursuant to any and all rights, powers, privileges or **procedures**, heretofore or

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hereafter established, granted or prescribed by any law of the State, by this Charter, or by other lawful authority, or **which a municipal corporation might or could exercise**, or act pursuant to, under the Constitution of the State of California." (144 AR 3073 at § 200, emphases added.) Section 412 allows the City Council to "establish, and uniformly apply rules for the conduct of its proceedings[.]" (144 AR 3077 at § 412.) Section 419 governs contracting procedures, stating: "The City shall not be bound by any contract except as hereinafter provided unless the same shall be made in writing, approved by the City Council and signed on behalf of the City by the Mayor and City Clerk or by such other officer or officers as shall be designated by the City Council. … **The provisions of this section shall not apply to services rendered by any person in the employ of the City at a regular salary.**" (144 AR 3079–3080 at § 419, emphasis added.) Thus, the Charter provides the Council discretion whether to approve contracts by resolution, ordinance (as is sometimes true of franchises), or minute action. There is no dispute that a majority of the City Council voted to approve Russo's amended contract, that was stated in writing, and signed by those authorized to do so.

Bailey's Opening Brief quotes provisions of the Municipal Code at page 18, but none requires Council resolutions to approve employment contracts of the City Manager or other Charter officers who, unlike all other City employees, serve "at the pleasure of the City Council." The City Charter, not a City Council resolution, identifies the powers and duties of the City Manager (144 AR 3080–3081 at §§ 600, 601, 602), City Attorney (144 AR 3082 at § 702), and City Clerk (144 AR 3082–3083 at § 703). These provisions suggest Charter section 701 — in an article governing "Officers and Employees Generally" — does not apply to the City Manager or other employees governed by the Charter. Moreover, the City Council may not alter the Charter's requirements for Charter employees by resolution or ordinance (*Marculescu v. City Planning Commission of City and County of San Francisco* (1935) 7 Cal.App.2d 371, 373), suggesting no resolution is required to authorize their compensation.

If a written resolution **were** required to approve Russo's contract, the signed contract, executed by the Mayor Pro Tem and other City officials, and the City Council minutes reflecting that agreement are sufficient "resolutions." The City Charter and Municipal Code do not define

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"resolution" or prescribe a form other than saying it must be signed by the mayor and attested by the City Clerk. (144 AR 3078 at § 413.) The Charter also states the City is bound by written contracts approved by the City Council and signed by the mayor or another designee of the City Council and attested by the City Clerk. (144 AR 3079–3080 at § 419.) The Mayor Pro Tem, City Attorney, and City Clerk all signed the amended Russo contract (112 AR 2501) and the City immediately began performing it. The City Council approved the minutes of the meeting at which it approved the amended Russo contract. (118 AR 2535.) A resolution is something less formal than an ordinance (*Central Mfg. Dist., Inc. v. Board of Sup'rs of Los Angeles County* (1960) 176 Cal.App.2d 850, 860) and thus the executed contract and approved minutes are a sufficient resolution to enact a contract were a "resolution" required.

V. CONCLUSION

The Court might avoid the merits of this obviously political dispute for any of several reasons: Petitioners lack standing, they failed to name Russo but seek an order that the City collect from him, their action is precluded by *Clymer*, and this dispute is moot to the extent *Clymer* does not preclude it. If the Court reaches the merits, the parties agree that Bailey's attempt to veto Russo's contract amendment is the first attempt by a Riverside Mayor to veto an employment decision as to Charter officers.

The Charter reserves all City powers to the City Council unless otherwise stated and provides that the City Council controls selection and employment of Charter officers. Bailey's attempt to veto Russo's contract amendment amounts to a veto of the City Council's decision to continue Russo's service as City Manager and thus conflicts with the plain language of the Charter granting that decision to the Council alone. Thus, on the merits or for any of many procedural reasons, the Court should deny Bailey — and Clymer — any relief and grant judgment to the City in both actions.

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DATED: October 4, 2019

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PROOF OF SERVICE
William R. ("Rusty") Bailey III v. City of Riverside
Case No. Case # RIC 1804755
11082-0010

I, Lourdes Hernandez, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business October 4, 2019, I served the document(s) described as **RESPONDENT AND DEFENDANT CITY OF RIVERSIDE'S OPPOSITION BRIEF ON MAYORAL VETO ISSUES** on the interested parties in this action as follows:

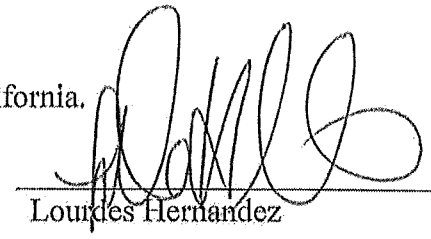
By placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on October 4, 2019, at Pasadena, California.



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William R. ("Rusty") Bailey III v. City of Riverside
Riverside Superior Court Case No.: RIC1804755
11082-0010

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