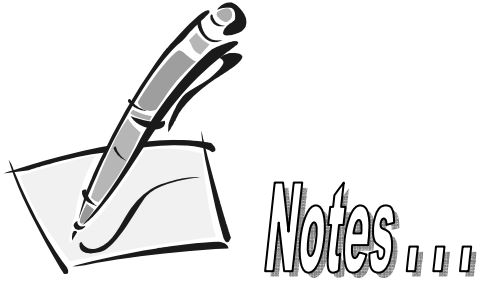




# **Crisis Management and Restoring Public Trust after Bell**

**Friday, May 6, 2011 General Session; 10:45 a.m. – 12:00 p.m.**

**James M. Casso, Meyers Nave  
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City Attorneys Department  
League of California Cities  
Spring Conference  
May 4-6, 2011

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**Bell – What Happened and How It Happened:**  
The Role of the New Administration and the City Attorney

For many in local government, July 15, 2010, is a day that shook the foundations upon which every City Hall throughout California is constructed. From the very moment readers saw the headline on the front page of the *Los Angeles Times*<sup>1</sup> that morning -“Is a city manager worth \$800,000.00?” - the City of Bell scandal was born and the way government compensates its workers and how the public’s business is conducted, changed forever.

For some, the shocking story was more about exorbitant salary spiking and less about the alleged illegal conduct and breach of the public trust that has been uncovered over the past eight months in the City of Bell.<sup>2</sup> For others, however, especially a few vigilant Bell residents, there was a gut feeling that the exorbitant compensation and benefits were only the tip of the iceberg and that their community had been the victim of a systematic conspiracy based on unfettered corruption and unadulterated greed by some high level public officials.

Bell’s former chief administrative officer, Robert Rizzo, claimed in the July 15 *Los Angeles Times* article that he was worth every penny he had been paid. Mr. Rizzo stated, “If that’s a number people choke on, maybe I’m in the wrong business. I could go into private business and make that money. This council has compensated me for the job I’ve done.”

On July 23, about a week after the scandal broke, Mr. Rizzo, his top assistant Angela Spaccia, and Police Chief Randy Adams submitted their resignations. City Hall was in disarray. The City Council, during a special meeting that went on into the wee hours of the morning, appointed Pedro Carrillo of Urban Associates, a consultant to the City with years of experience working in local communities as well as the state and federal government, as Bell’s Interim Chief Administrative Officer. Mr. Carrillo’s appointment was reported out of closed session on a 5-0 vote. Mr. Carrillo was charged by the Council to examine what facts and circumstances led to the excessive compensation of these top officials and to stabilize the administration and management of the City going forward. Mr. Carrillo immediately began the task of calming the fears of City Hall staff, reviewing the employment of the highly compensated department heads and figuring out how to right Bell’s badly listing ship.

On Sunday, July 25, Mr. Carrillo placed a call to State Controller John Chiang, asking for his immediate assistance in reviewing Bell’s financial books and in helping him determine whether the City had any money in its bank accounts. The next day, Mr. Chiang, accompanied by an

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<sup>1</sup> Go here for copy of the *Los Angeles Times* article, Exhibit 1.

<sup>2</sup> Bell is a charter city served by five at large elected councilmembers. Its mayor and vice mayor are selected among the councilmembers. Bell has approximately 40,000 residents; it is located ten miles southeast of downtown Los Angeles. Its population is 90% Latino and 53% foreign-born. The average annual household income with two wage earners is \$40,000.

army of accountants, sat down with Mr. Carrillo and began a painstaking two-month review of Bell's financial condition.<sup>3</sup>

During the last week in July, Mr. Carrillo also reached out to a number of other local elected and appointed officials to assist in developing a strategy to address the myriad management, policy and political issues that were unfolding. While all offered their support and wise counsel, none had ever imagined what would be revealed in the ensuing months. The City also was immediately besieged by countless subpoenas for documents and records from both the District Attorney and the Attorney General as well as a daily barrage of public records requests from Bell residents. Everyone wanted to know what happened, how it happened and how it was going to be resolved. The public demanded immediate accountability and transparency.

On Monday, August 2, 2010, longtime city attorney Ed Lee and his law firm Best, Best & Krieger resigned as Bell's city attorney. Mr. Carrillo worried how the City would respond to the countless demands for documents that were piling up in the City Clerk's office and who could provide him and the City the legal advice necessary to navigate through the troubled waters that lay ahead.

On August 4, during a special meeting, the City Council appointed the law firm of Meyers Nave, naming James Casso, to serve as Bell's Interim City Attorney. Immediately, and with little warning, Bell's new interim city attorney law firm was confronted with an avalanche of subpoenas and public records requests that required prompt attention.

The Attorney General's office was relentless in its demand for documents. The requests for public records from members of the media, in particular the *Los Angeles Times*, sought hundreds of thousands of pages of documents and the City received non-stop requests from other reporters. Several other agencies, including the District Attorney, sought documents and records to assist in their investigative efforts.

Further complicating the City's ability to respond to the public records requests was the condition of the City's recordkeeping system. The City's recordkeeping practices presented significant challenges, to say the least. The City had not kept up with basic modern technology and staff training in records management. Many of the demands for documents sought records from the early 1990s to the present day. To respond within the California Public Records Act's (the "CPRA") statutory time frame and to the countless subpoenas that often sought records "forthwith," 17 years of documents and records had to be located, sorted, categorized and reviewed for CPRA exemptions and/or privilege issues. Within days of taking over Bell's legal affairs, Meyers Nave had to form a team of attorneys, each with an intimate understanding of

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<sup>3</sup> To read the Controller's audits, please visit [www.sco.ca.gov](http://www.sco.ca.gov) and search "City of Bell."

the CPRA and experience in responding to subpoenas from investigative agencies, as well as a team of paralegals and technology experts, each with the ability to develop a database that could be easily searched. To date, the newly established database houses nearly 900,000 pages of official City documents.

Initially, while the database was being formed, many of the demands were produced the old fashioned way -- by copier. Within about two weeks, however, the database was up and running and responses were made using modern technology and producing thousands of bates stamped pages on CDs. This practice saved time and, most importantly, City resources. Bell had begun its progression from the dark ages of recordkeeping to modern day and best practices.

Through most of August and into September, from the *Los Angeles Times* to every television and radio station in the greater Los Angeles area, each day stories about Bell told a mesmerized audience about highly compensated administrators, generous loans to various city employees, police officers and certain Bell business owners as well as the rich vacation, sick leave and retirement policies that city administrators awarded themselves. The public grew infuriated over the practices that Mr. Rizzo and his administration used in effectively destroying the financial well-being of Bell.

Bondholders and credit rating companies were persistent in their demands for financial data from the City. Each wanted to know whether the City would be able to meet its bond obligations. For a city with an annual operating budget under \$15.0 million, Bell had amassed bond debt totaling \$137.355 million. Even though Bell had never missed a bond payment or defaulted on any of its indebtedness, by late August 2010, its credit rating plummeted to junk bond status. When asked, the credit rating companies merely responded that the decision was based on the innumerable newspaper stories about the City's troubles. It was a frustrating moment, especially given the careful scrutiny cities typically undergo when issuing bonds, to learn that newspaper stories, not solid financial data, could determine a community's credit worthiness. To date and since the Bell crisis began, the City has made each of its bond payments, with the exception of one private placement matter. Notwithstanding this practice, Bell's credit rating has not been upgraded.

As the stories were published and Meyers Nave attorneys reviewed more and more documents, it became crystal clear that the situation in Bell was less about salary spiking and more about the blatant disregard and respect that certain high level public officials had for the governmental process and corruption, at its worst.

By mid-August, the State Controller's office and the Los Angeles County Auditor-Controller had determined that Bell was charging its residents illegal property tax rates. The Council immediately adopted a resolution rolling back the tax rates to legal limits and Mr. Carrillo and

Meyers Nave attorneys drafted state legislation authorizing the refunding of the illegally charged taxes to Bell property owners. In pushing for the legislation, Mr. Carrillo and Mr. Casso met with numerous state legislators telling them about how important it was to the efforts to “fix” Bell to get the illegal taxes back to the property owners. Within days after the legislation was introduced, AB 900 was adopted and by early October, property owners started receiving their refund checks.<sup>4</sup>

In early September, Attorney General Jerry Brown (the “AG”) filed a civil lawsuit<sup>5</sup> against the former administrators, current and former councilmembers and the City of Bell. From a public law perspective and litigation tactic, naming the City, the municipal corporation, as a defendant in the lawsuit, along with the named individuals, placed the City in a difficult conflict situation. In the lawsuit, the AG alleged the waste of public funds, negligence, fraud, conflict of interest and breach of fiduciary duty, and sought to recover City funds. The AG also sought to have a “receiver” appointed to manage the day-to-day affairs of the City to ensure “transparency.”

One week after the AG filed the lawsuit, Mr. Carrillo and the City’s attorneys met with attorneys from the AG’s Sacramento office to discuss the merits of the lawsuit, to seek the dismissal of the City and to get further clarification on the legal rationale behind the AG’s request for a receiver. While the meeting was cordial, the AG offered little insight as to its legal authority for its lawsuit against the City or the other defendants and instead argued that the City should voluntarily agree to permit a receiver to take over Bell’s municipal operations on a day-to-day basis.

After much dialogue over the ensuing weeks, the AG changed its position and proposed that a “monitor” be appointed for the City rather than a receiver. The City offered extensive legal analysis, authority and argument addressing the constitutional rights afforded a charter city and countered the allegations made by the AG that certain City leaders were being obstructionists to open government because they would not unilaterally agree to the demands of the AG. Finally, the propriety of whether a monitor would be appointed was put into the hands of the Los Angeles Superior Court Writs & Receivers courtroom. There, Judge Robert H. O’Brien ruled that the Court would not impose a monitor on the City, and observed that the AG’s legal rationale was flawed and that the City had made significant strides in opening its municipal affairs.<sup>6</sup>

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<sup>4</sup> Go here for copy of [AB 900](#), Exhibit 2.

<sup>5</sup> Go here for copy [Judge Dau’s tentative ruling on the demurrers](#), Exhibit 3. Also included in Exhibit 3 are the Attorney General’s Complaint and First Amended Complaint.

<sup>6</sup> Go here for copy of Judge O’Brien’s ruling on the [Attorney General’s motion seeking a monitor](#), Exhibit 4. Also included in Exhibit 4 are copies of correspondence between the AG and Bell’s city attorney’s office on the monitor issue.

As for the AG's primary lawsuit, on March 17, 2011, Superior Court Judge Ralph Dau, in a tentative ruling, sustained the various demurrers filed by the defendants, including the City's, and did not grant the AG leave to amend its complaint.

To date, it is estimated that more than a million dollars has been spent by all of the parties litigating the AG's lawsuit (from the City of Bell, to the individually named defendants to the State of California) and yet the case could not survive several demurrers and no one had been found liable for the damage that Bell has suffered. In short, not one cent has been ordered returned to the City of Bell.

Some could easily argue that the AG's lawsuit was more about politics and less about good government. Others might argue that the value of open government is priceless. Whatever one's position may be, it is abundantly clear that the AG could have accomplished as much by spending far less and by merely seeking common ground with the new administration in Bell and in deferring to the efforts of the District Attorney. Had the AG listened more to those involved in Bell's daily operations and had they been willing to see the work that had been accomplished in a short amount of time, the expenditure of valuable resources and the filing of cross-complaints against the City by the individually named defendants seeking payment of their attorney's fees might not have occurred.

On September 21, the Los Angeles County District Attorney (the "DA") arrested almost all of the defendants named in the AG's complaint, except for former Police Chief Adams. Mr. Rizzo initially faced 54 criminal counts alleging various crimes from fraud to violations of Government Code section 1090. Since the arrests, Mr. Rizzo and others have been charged or indicted on other criminal counts.

At the heart of the DA's case is its effort to seek nearly \$5.5 million in restitution for the victims, the City of Bell and its residents. Much of the DA's case was built around the mounds of documents that had been produced by the City in response to either subpoenas or CPRA requests. To ensure the City was not served with search warrants, creating further alarm and fear at City Hall, the city attorney's office established a working relationship with the DA's office, without compromising the City's legal obligation to protect the attorney-client privileges and the closed session privileges, in addition to analyzing documents and records with the crime fraud exception in mind.

The DA's criminal charges also made it difficult to garner a quorum of the City Council to conduct a Council meeting and transact City business. From October to mid-February, the City Council convened only three times. At each of those meetings, the councilmembers facing criminal charges were subjected to verbal attacks and demeaning comments by members of the



public. For most councilmembers, it is assumed that their personal attorneys admonished them to say very little at the meetings. Their responses to the public's comments were measured and restrained. During public comment, latitude was given to speakers to state their displeasure and express their anger over what had happened to their community. Best efforts were made to adhere to generally accepted rules of decorum and on one occasion the Council Chambers had to be cleared and order restored.

Without a functioning City Council, the daily business of governance fell onto the shoulders of the Interim CAO, Mr. Carrillo. His actions were either grounded in the Charter's provisions or in ensuring that the basic functions of the City continued on a daily basis and without interruption. At no time during this crisis has Bell's garbage collection been interrupted, its streets not swept, its parks closed, its police department unable to protect or City Hall not open to serve the public. It is doubtful that any other local government in California or the United States has ever faced the magnitude of the problems that have beset the City of Bell over the past eight months.

While Mr. Carrillo tried to get his arms around Bell's obvious fiscal challenges, with a skeleton crew focused on helping respond to subpoenas and CPRA requests, in addition to dealing with the day-to-day operations of City Hall, after numerous meetings with County Supervisor Gloria Molina about how he and his administration were restoring order to the City, the County Auditor-Controller's Office began the process of analyzing the City's revenues and expenditures. Previously, Mr. Rizzo operated the City under a five year budget plan. Since his resignation, it has been learned that the budget was filled with unrealistic assumptions of revenue and underestimated expenditures.

After an approximate two month review, in early January 2011, the Auditor-Controller announced that Bell faced a 2010-2011 fiscal year deficit of between \$2.5 to \$4.5 million. Within weeks, Mr. Carrillo and the city attorney's office drafted a fiscal sustainability plan that offered the Council a variety of options that would cut the deficit and bring the City's fiscal house in order. Unfortunately, the plan was never discussed by the Council (the Council never met), but the media reported and residents discussed the draconian cuts that the City faced. Bell's budget woes are easily quantified into one simple problem: the former administration seemingly spent far more money than revenues collected. Investigations, widely reported by the media, have found that the former administration had an insatiable desire to raise revenue from any source whether it be through illegal taxes, car impound fees, excessive business license fees or the termination of hourly city employees on Christmas Eve to fund their outrageous compensation packages that, evidently, they handsomely and without authorization awarded themselves.

The scandal created a ground swell of community activism and interest in local government that had not been seen in decades. The now organized Bell community circulated petitions and

mounted a recall of four of the five councilmembers. In less than 30 days, the recall proponents collected more than the required signatures to qualify the measure for the ballot. Adding even more complexity to an already complex set of circumstances, among the biggest supporters of the recall effort were members of the police officers association that was engaged in negotiating a new contract with the recall's targets (the incumbent councilmembers). You can imagine the challenge of managing the negotiation process and seeking direction from the Council given the intense political dynamics.

Either through a stroke of good luck or, arguably, careful political and fiscal planning, the recall election coincided with the date of the City's scheduled general municipal election. The consolidation of the recall election with the general municipal election resulted in a significant cost saving for the City. In an effort to have an election conducted beyond reproach, the County Registrar of Voters was asked to assist.

While many had hoped for an election without legal complexities, that was not to be the case. The City faced a challenge to its Charter provision that the eligibility of a candidate was determined by a 60 day pre-filing residency requirement. After thoroughly researching the matter, on the advice of the city attorney, the Council determined that the 60 day requirement was constitutionally unsound and ordered that Council candidates were required to follow California's generally accepted rule that residency is required at the time nomination papers are issued and an elector at the time of assuming office.. The Council hoped its directive would avoid another costly and protracted lawsuit.<sup>7</sup>

The campaign had its various twists and turns. Complaints of non-Bell money trying to influence the campaign were regularly heard and the garden variety campaign brochures filled mail boxes throughout the City. Even the POA issued its own mailers with police officers wearing their uniforms in apparent violation of Department Policy and the Government Code. On election day, March 8, 2011, the incumbent councilmembers were either recalled or defeated and five new faces were elected to help Bell continue its progress towards a reformed government.

Because the remaining councilmembers, as a condition of their bail in the criminal proceeding, were ordered to stay away from City Hall and not participate in the governing of Bell, the City, as required by the Charter and California's Elections Code, did not have a "governing body" to declare the canvass of the March 8 vote and certify the election. As a result, the City's attorneys drafted emergency State legislation (AB 93) to establish an exception to the Elections Code by

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<sup>7</sup> Go here to read the [Resolutions calling for the recall election](#) and notice from the City Clerk regarding candidate qualifications, Exhibit 6.

designating the Board of Supervisors as opposed to the City Council as the governing body that would declare the election results and permit the swearing in of the new councilmembers.<sup>8</sup>

In a span of less than a year:

- the State Legislature unanimously adopted two different legislative proposals to assist in the governance of Bell;
- former and longtime city leaders and elected officials have been charged with nearly 100 criminal counts or indictments citing wrongdoings of various sorts;
- nearly 15 different federal, state or local investigating agencies have served subpoenas on the City and are currently conducting investigations into a variety of allegations of malfeasance and illegal conduct;
- the City has operated with an Interim Chief Administrative Officer, Interim City Attorney, one department head and a skeleton crew of dedicated staffers;
- Council meetings have been more the exception than the rule;
- hundreds of articles have been written about Bell and countless TV news stories have been viewed during regular news broadcasts or on You Tube;
- an electronic database with nearly 900,000 pages of public documents has been created;
- personnel, civil rights and workers' compensation lawsuits against the City that inexplicably languished for years have been resolved; and
- requests for public records are now responded to in statutorily compliant timeframes.

Yet, despite this herculean effort, an incredible amount of work remains to be done. The City's new leadership appears to be committed to continuing the progress made to restore trust, ethics and fiscal stability in Bell's government.

## Conclusion

Perhaps some of the most important lessons learned for city attorneys and public lawyers are that you must remain vigilant and perform your duties as required by law and ethical standards. A city's attorney must call out wrongdoing and non-best practices loudly and clearly. A city attorney cannot be a shrinking violet with his/her clients or be a legal advisor who goes along to get along.

Finally, another lesson learned from Bell is that city councils and staff must be better trained on their legal obligations and ethical obligations. To engage in any less is a disservice to our profession and, perhaps most important, to the very public we are obligated to serve.

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<sup>8</sup> Go here for copy of [AB 93](#), Exhibit 5.

# **EXHIBIT 1**

**Los Angeles Times**  
**Thursday, July 15, 2010**

**IS A CITY MANAGER WORTH \$800,000?**

**\* Bell isn't a big town, or a wealthy one. But some of its top officials are paid two or three times as much as their counterparts elsewhere**

*Home Edition, Main News, Page A-1*  
*Metro Desk*

*31 inches; 1223 words*

*Type of Material: Infographic; Infobox; Profile*

**By Jeff Gottlieb and Ruben Vives,**

Bell, one of the poorest cities in Los Angeles County, pays its top officials some of the highest salaries in the nation, including nearly \$800,000 annually for its city manager, according to documents reviewed by The Times.

In addition to the \$787,637 salary of Chief Administrative Officer Robert Rizzo, Bell pays Police Chief Randy Adams \$457,000 a year, about 50% more than Los Angeles Police Chief Charlie Beck or Los Angeles County Sheriff Lee Baca and more than double New York City's police commissioner. Assistant City Manager Angela Spaccia makes \$376,288 annually, more than most city managers.

Top officials have routinely received hefty annual raises in recent years. Rizzo's contract calls for 12% raises each July, the same as his top deputy, according to documents obtained under the California Public Records Act.

Rizzo, who has run Bell's day-to-day civic affairs since 1993, was unapologetic about his salary.

"If that's a number people choke on, maybe I'm in the wrong business," he said. "I could go into private business and make that money. This council has compensated me for the job I've done."

Spaccia agreed, adding: "I would have to argue you get what you pay for."

Bell Mayor Oscar Hernandez defended the salaries. "Our city is one of the best in the area. That is the result of the city manager. It's not because I say it. It's because my community says it."

Hernandez and other council members said the city was near bankruptcy when Rizzo came aboard 17 years ago. Since then, they said, he has put Bell on sound financial footing, with its general fund nearly tripling to about \$15 million.

"Our streets are cleaner, we have lovely parks, better lighting throughout the area, our community is better," Hernandez said. "These things just don't happen, they happen because he had a vision and made it happen."

Bell made headlines in recent weeks when the city of 37,000 agreed to take over operations of the neighboring city of Maywood, which fired most of its employees and disbanded its police department when it could not obtain insurance.

Located about 10 miles southeast of downtown Los Angeles, Bell has a population that is about 90% Latino and 53% foreign-born. Its per capita income is about half that for the U.S.

Experts in city government said they were amazed at the salaries the city pays, particularly Rizzo's. "I have not heard anything close to that number in terms of compensation or salary," said Dave Mora, West Coast regional director of the International City/County Management Assn., and a retired city manager.

By comparison, Manhattan Beach, a far wealthier city with about 7,000 fewer people, paid its most recent city manager \$257,484 a year. The city manager of Long Beach, with a population close to 500,000, earns \$235,000 annually. Los Angeles County Chief Executive William T Fujioka makes \$338,458.

The salaries do not appear to violate any laws, said Dave Demerjian, head of the Los Angeles County District Attorney's Public Integrity Division.

State law governs how much city council members can be paid, but not the amounts that council members decide to pay administrators, Demerjian said.

The district attorney is investigating Bell over the hefty compensation of its City Council members -- about \$100,000 a year for part-time positions. Normally, council members in a city the size of Bell would be paid about \$400 a month, Demerjian said.

The council has increased its compensation by paying members for serving on a variety of city agencies, including the Community Redevelopment Agency, the Community Housing Authority, the Planning Commission, the Public Financing Authority, the Surplus Property Authority and the Solid Waste and Recycling Authority.

Demerjian said city records show each council member receives \$7,873.25 per month for sitting on those boards

Records indicate that the boards of those agencies perform little work and that board meetings take place during council meetings, though the names of some of the agencies seldom appear.

In some years, the council would hold separate meetings for those agencies, and they would sometimes last no more than a minute. On July 31, 2006, four agencies each met for one minute. On March 3, 2008, the redevelopment agency meeting was called to order at 7:21 p.m. and adjourned at 7:22 p.m.

Councilman Luis Artiga, who was appointed to the council 15 months ago to fill an unexpired term, said he had no idea how much he would be paid. When he received his first check, he thought it was "a miracle from God."

Artiga, who is pastor of Bell Community Church, said he uses about half his salary to pay the church's mortgage.

Rizzo received his bachelor's degree from UC Berkeley and a master's in public administration from Cal State East Bay.

Council members hired Rizzo in 1993 from the High Desert city of Hesperia as interim chief administrative officer with a starting salary of \$72,000 a year. By September 2004, he was being paid \$300,000 a year. Ten months later, his salary jumped 47% to \$442,000.

His salary continued climbing \$52,000 a year until July 1, 2008, when Rizzo received his usual salary increase and signed an addendum to his contract that gave him a 5% raise in September and guaranteed 12% increases each July.

His last raise was \$84,389.76. Next July, he will receive a \$94,516 pay hike.

Rizzo defended his salary and that of his staff and the council by saying they don't receive car or cellphone allowances and must pay their own way to out-of-town conferences.

However, according to their contracts, Rizzo, Spaccia and Adams can be reimbursed for their expenses. Bell council members are also eligible for reimbursements as board members of several city commissions, according to city resolutions.

Adams, who said he spent \$6,000 of his own money to buy furniture for his office, was hired after retiring as the police chief in Glendale. His salary of \$215,304 more than doubled when he took the job in Bell.

Spaccia was hired July 1, 2003, at \$102,310. A year later, she was making \$130,000. She currently earns \$376,203 and gets the same 12% annual increases as Rizzo.

Spaccia has been on leave since February while serving as acting city manager for Bell's troubled neighbor Maywood, with her salary being paid by Bell's taxpayers.

"We have a neighbor in trouble," said Rizzo, a short heavy-set man with reddish-brown hair. "If your neighbor's yard is messed up, it brings down your property values. Is it a unique situation? Definitely."

On top of his salary, Rizzo recently received an added boost -- the council voted to give him an extra week's vacation. He now gets five weeks.

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## **EXHIBIT 2**



CHAPTER 223

FILED WITH SECRETARY OF STATE    SEPTEMBER 13, 2010  
PASSED THE SENATE    AUGUST 30, 2010  
PASSED THE ASSEMBLY    AUGUST 31, 2010  
AMENDED IN SENATE    AUGUST 27, 2010  
AMENDED IN SENATE    AUGUST 20, 2010  
AMENDED IN SENATE    AUGUST 17, 2009  
AMENDED IN SENATE    JULY 13, 2009  
AMENDED IN SENATE    JUNE 30, 2009  
AMENDED IN ASSEMBLY    APRIL 28, 2009

INTRODUCED BY    Assembly Members De Leon and De La Torre  
(Principal coauthor: Senator Calderon)

FEBRUARY 26, 2009

An act to amend Section 96.31 of the Revenue and Taxation Code, relating to property taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 900, De Leon. Property taxation: City of Bell: refunds for overpayment.

Existing property tax law establishes various procedures and requirements with respect to the annual allocation of ad valorem property tax revenues derived from the ad valorem taxation of locally assessed property. These procedures include a reduction in the allocation of ad valorem property taxes to a jurisdiction that imposes a rate in excess of the maximum rate authorized by law in amounts equal to the amount collected pursuant to the excess rate, and requires any amount subtracted from a jurisdiction's allocation to be allocated to elementary, high school, and unified school districts, as provided.

This bill would instead require, with respect to the ad valorem property taxes collected in excess of the maximum rate authorized by law in the 2007-08, 2008-09, and 2009-10 fiscal years for the City of Bell, that the City of Bell pay the County of Los Angeles an amount equal to the amount of ad valorem property taxes collected in excess of the maximum rate, and would require the County of Los Angeles to make refunds to taxpayers, as provided. This bill would require those amounts remaining after making refunds to taxpayers, as specified, to be allocated to elementary, high school, and unified school districts, as provided. This bill would require the City of Bell to reimburse the county auditor for the actual and reasonable costs incurred by the county in administering these refunds and allocations, including specified administrative overhead costs. This bill would also make findings and declarations regarding the necessity of a special statute.

By imposing additional duties upon county officials in issuing refunds or reducing the allocation of ad valorem property tax revenues, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The bill would declare that it is to take effect immediately as an urgency statute.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 96.31 of the Revenue and Taxation Code is amended to read:

96.31. (a) For the 1985-86 fiscal year and each fiscal year thereafter, no jurisdiction shall impose a property tax rate pursuant to subdivision (a) of Section 93, unless it is imposed for one or more of the following purposes:

(1) To make annual payments for the interest and principal on general obligation bonds approved by the voters before July 1, 1978, and on bonded indebtedness for the acquisition and improvement of real property approved by the voters by a two-thirds vote after June 4, 1986.

(2) To make payments to the State of California under contracts for the sale, delivery, or use of water entered into pursuant to California Water Resources Development Bond Act in Chapter 8 (commencing with Section 12930) of Part 6 of Division 6 of the Water Code or to make payments to the United States or another public agency under voter-approved contracts for the sale, delivery, or use of water or for the repayment of voter-approved obligations for the construction, maintenance, or operation of water conservation, treatment, or distribution facilities, provided that the indebtedness was approved by the voters before July 1, 1978.

(3) To make payments pursuant to lease-purchase programs approved by the voters before July 1, 1978, provided that the jurisdiction imposed the property tax rate in the 1982-83 fiscal year.

(4) To make payments in support of pension programs approved by the voters before July 1, 1978, provided that the local agency imposed the property tax rate in the 1982-83 or 1983-84 fiscal year.

(5) To make payments in support of paramedic, library, or zoo programs approved by the voters before July 1, 1978, provided that the jurisdiction imposed the property tax rate in the 1982-83 fiscal year.

(6) To make payments for the interest and principal on an indebtedness, pursuant to Section 5544.2 of the Public Resources Code, approved by the voters before July 1, 1978, provided that the local agency imposed the property tax rate in the 1982-83 fiscal year.

(b) In the 1985-86 fiscal year and any fiscal year thereafter, a jurisdiction shall not impose a property tax rate, pursuant to subdivision (a) of Section 93, in excess of the rate it imposed in the 1982-83 or 1983-84 fiscal year. Notwithstanding the limit imposed by this subdivision, a higher property tax rate may be imposed whenever necessary to make payments for any of the purposes specified in paragraphs (1), (2), and (3) of subdivision (a). However, no property tax rate increase in excess of the rate imposed in the 1984-85 fiscal year shall be imposed if the purpose of the rate increase is to fund a reduction in the rates charged for water at the time of the property tax rate increase.

(c) Notwithstanding subdivisions (a) and (b), a charter city may levy an ad valorem property tax rate to make payments in support of a retirement system for fire and police employees if all of the following criteria are met:

(1) The retirement system is part of the city's charter and was approved by the voters before July 1, 1978.

(2) The city did not levy a separate ad valorem property tax rate to support the retirement system in the 1983-84 fiscal year.

(3) The retirement system provides for a cost-of-living adjustment that is indexed to a consumer price index and does not limit the annual increases which may be paid to members after their retirement.

(4) The retirement system is not currently available to newly hired fire and police employees and will not be available in the

future.

(5) Before January 1, 1985, the city unsuccessfully litigated a limit to the cost-of-living adjustment that may be paid to members of the retirement system after their retirement.

(6) After July 1, 1985, the city conducted an election and a question authorizing the levying of an ad valorem property tax for the purpose of making payments in support of the retirement system received the affirmative votes of at least 60 percent of those voting on that question.

The proceeds of an ad valorem property tax rate levied pursuant to this subdivision shall be used only to pay for the obligations of a retirement system described by this subdivision. The proceeds shall not be used to finance more than 75 percent of the annual obligations of this retirement system. A city shall not levy an ad valorem property tax pursuant to this subdivision after June 30, 2034.

(d) (1) Except as otherwise provided in paragraph (2), if a jurisdiction imposes a rate in excess of the maximum rate authorized by subdivision (a), (b), or (c), the amount of property tax allocated to the jurisdiction pursuant to this chapter shall be reduced by one dollar (\$1) for each one dollar (\$1) of property tax revenue attributable to the excess rate. Any property tax revenue that has been subtracted from a jurisdiction's allocation pursuant to this subdivision shall be allocated to elementary, high school, and unified school districts within the jurisdiction's jurisdiction in proportion to the average daily attendance of each district.

(2) With respect to the ad valorem property taxes collected pursuant to paragraph (4) of subdivision (a) in excess of the maximum rate authorized by subdivision (b) in the 2007-08, 2008-09, and 2009-10 fiscal years for the City of Bell, all of the following shall apply:

(A) (i) On or before December 31, 2010, the City of Bell shall pay to the County of Los Angeles an amount equal to the amount of ad valorem property tax collected pursuant to paragraph (4) of subdivision (a) in excess of the maximum rate authorized by subdivision (b) in the 2007-08, 2008-09, and 2009-10 fiscal years, including interest thereon calculated at the average rate earned by the City of Bell on its idle funds in the 2007-08, 2008-09, and 2009-10 fiscal years.

(ii) From the amounts paid to the County of Los Angeles as required by clause (i), the County of Los Angeles shall make a refund to any taxpayer who paid the ad valorem property tax collected as specified in clause (i), in a manner generally consistent with the County of Los Angeles tax refund practices.

(B) (i) If, by December 31, 2011, the County of Los Angeles is unable to locate a taxpayer who paid the ad valorem property tax collected as specified in clause (i) of subparagraph (A) in order to make a refund to the taxpayer, those amounts remaining from those amounts paid to the County of Los Angeles pursuant to subparagraph (A) shall be allocated to elementary, high school, and unified school districts as provided by paragraph (1).

(ii) The requirement of paragraph (1) shall apply only with respect to any amounts remaining after making refunds to taxpayers as provided by clause (i).

(C) The City of Bell shall reimburse the county auditor for the actual and reasonable costs incurred by the county to administer this subdivision, including applicable administrative overhead costs as permitted by federal Office of Management and Budget Circular A-87 standards.

(e) This section shall be deemed to be a limit on the maximum property tax rate pursuant to Section 20 of Article XIII of the California Constitution.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances encountered by the City of Bell

with respect to the collection of property taxes.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for reimbursement to a local agency in the form of additional revenues that are sufficient in amount to fund the new duties established by this act, within the meaning of Section 17556 of the Government Code.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that taxpayers in the City of Bell who overpaid on their property taxes are reimbursed, it is necessary for this act to take effect immediately.

# **EXHIBIT 3**

## TENTATIVE RULING

### The People of the State of California v. Robert A. Rizzo, et al.

**Case:** BC 445497

**Hearing Date:** February 3, 2011

**Motions:**

- (1) Defendant City of Bell's Demurrer to First Amended Complaint
- (2) Defendant Randy G. Adams' Demurrer to First Amended Complaint
- (3) Defendant George Cole's Demurrer to First Amended Complaint
- (4) Defendant Oscar Hernandez's Demurrer to First Amended Complaint
- (5) Defendant Teresa Jacobo's Demurrer to First Amended Complaint
- (6) Defendant Robert A. Rizzo's Demurrer to First Amended Complaint
- (7) Defendant Pier'Angela Spaccia's Demurrer to First Amended Complaint
- (8) Defendant Randy G. Adams' Motion to Strike Portions of First Amended Complaint
- (9) Defendant City of Bell's Motion to Strike Portions of First Amended Complaint
- (10) Defendant Robert A. Rizzo's Demurrer to City of Bell's First Amended Cross-Complaint
- (11) Defendant Robert A. Rizzo's Demurrer to City of Bell's Answer to Rizzo's Cross-Complaint

**Moving Party:** Defendants City of Bell, et al.

**Responding Party:** Plaintiff The People of the State of California; Defendant/Cross-Complainant City of Bell

**Tentative Ruling:**

**The court sustains defendant City of Bell's demurrer to plaintiff's first cause of action without leave to amend on the ground of failure to state facts sufficient to constitute a cause of action.**

**The court sustains defendant Randy Adams's demurrer to plaintiff's first and sixth causes of action without leave to amend on the ground of failure to state facts sufficient to constitute a cause of action.**

**The court sustains demurrers of defendants Teresa Jacobo, Oscar Hernandez, and George Cole to plaintiff's first, second, third, and sixth causes of action without leave to amend on the ground of failure to state facts sufficient to constitute a cause of action.**

**The court sustains defendant Robert A. Rizzo's demurrer to plaintiff's first through sixth causes of action without leave to amend on the ground of failure to state facts sufficient to constitute a cause of action.**

**The court sustains defendant Pier'Angela Spaccia's demurrer to plaintiff's first, fifth, and sixth causes of action without leave to amend on the ground of failure to state facts sufficient to constitute a cause of action.**

The court sustains cross-defendant Robert A. Rizzo's demurrer to City's third, sixth, and seventh causes of action alleged in its first amended cross-complaint without leave to amend on the ground of failure to state facts sufficient to constitute a cause of action; the court sustains cross-defendant Robert A. Rizzo's demurrer to City's first, second, and fourth causes of action with leave to amend on the ground of failure to state facts sufficient to constitute a cause of action; the court overrules cross-defendant Robert A. Rizzo's demurrer to City's fifth and eighth causes of action.

The Court sustains cross-complainant Robert A Rizzo's demurrer to City's second through fifth, seventh through ninth and thirteenth through twenty fourth affirmative defenses alleged in City's first amended answer to Rizzo's cross-complaint with leave to amend on the ground of failure to state facts sufficient to constitute a defense; Rizzo's demurrer to City's first, sixth, and tenth through twelfth affirmative defenses is overruled.

#### Discussion:

#### Demurrers to First Amended Complaint

#### Facts

Plaintiff's first amended complaint (FAC) is summarized below. Defendant Robert Rizzo ("Rizzo") was the Chief Administrative Officer for defendant City of Bell ("City"). (FAC ¶ 2.) Defendant Pier' Angela Spaccia ("Spaccia") was City's Assistant Chief Administrative Officer. (*Id.* at ¶ 4.) Defendant Randy G. Adams ("Adams") was City's Police Chief from May, 2009 through at least July, 2010 and was hired by Rizzo. (*Id.* at ¶ 12.) Defendant Oscar Hernandez ("Hernandez") was a council member and mayor for City. (*Id.* at ¶ 13.) Defendants Teresa Jacobo ("Jacobob"), George Mirabal ("Mirabal"), Victor Bello ("Bello"), and George Cole ("Cole") were council members at all relevant times. (*Id.* at ¶¶ 14-17.)

Plaintiff alleges that each individual defendant has received excessive and wasteful compensation from City. (*Id.* at ¶ 22.) Rizzo's salary in 2010 was \$787,500 and his salary was raised 16 times since 1993. (*Id.* at ¶¶ 23-25.) The council member defendants also provided Rizzo excessive benefits, giving him 107 vacation days and 36 sick days per year. (*Id.* at ¶ 29.) Plaintiff alleges that Rizzo's salary and benefits were not commensurate with Rizzo's responsibilities, as required by the City Charter. (*Id.* at ¶ 32.) Plaintiff believes the council member defendants approved Rizzo's employment contracts without requisite deliberation and due care. (*Id.* at ¶ 33.) Plaintiff also alleges that Spaccia's salary of \$336,000 in 2010 is excessive and wasteful and that Spaccia received comparably excessive benefits. (*Id.* at ¶¶ 34-39.)

Plaintiff contends that Adams's salary of more than \$457,000 is also excessive. (*Id.* at ¶ 42.) Rizzo approved Adams's employment contract in 2009 without consulting with the council member defendants. (*Id.* at ¶ 44.) Plaintiff also believes that the council member defendants awarded themselves excessive compensation of \$96,000 in 2010, which is approximately 20 times the salary of council members of general law cities with the population of City. (*Id.* at ¶ 51.) Since 2003, the council member defendants have awarded themselves annual increases in salary averaging 16 percent each year. (*Id.* at ¶ 53.)

Plaintiff believes that defendants converted City into a Charter City rather than a general law city in order to increase their compensation. (*Id.* at ¶¶ 56-60.) Plaintiff alleges that defendants also took active measures to conceal their true compensation and carefully crafted their own contracts to avoid discovery of their compensation. (*Id.* at ¶¶ 61-62.) As a specific example, plaintiff points to Ordinance No. 1158 adopted in February, 2005 titled “An Ordinance of the City Council of the City of Bell Limiting Compensation for Members of the City Council Pursuant to California Government Code § 36516(c).” (*Id.* at ¶ 63.) Plaintiff takes issue with Ordinance No. 1158 because the text of the ordinance actually increased the council member defendants’ salaries. (*Id.* at ¶ 64.) Plaintiff also highlights the fact that the purported justification for Ordinance No. 1158 was false because council members represented that they had not received a pay increase since 1991 when they had previously received an increase in 2001. (*Id.* at ¶ 66.)

Plaintiff has also alleged fraud and misrepresentation by Rizzo, Spaccia, and Adams. Rizzo purportedly split his salary among five contracts to conceal the full amount of his salary from the public. (*Id.* at ¶¶ 72-73.) Rizzo’s contracts were also unauthorized and ultra vires. (*Id.* at ¶ 75.) Spaccia also had a contract that did not disclose her salary in 2008 but rather states that she would be paid according to her 2005 contract with gradual salary increases. (*Id.* at ¶ 76.) Adams’s contract was drawn so as not to attract attention to his pay. (*Id.* at ¶ 78.) Defendants also provided false information in a September, 2008 memorandum. (*Id.* at ¶¶ 80-85.)

Lastly, in 2003 City implemented a Supplemental Retirement Plan that provided benefits to a small group of City officers and employees, including defendants. (*Id.* at ¶ 86.) Since the implementation of the plan, Rizzo Spaccia, and other defendants have modified the terms of the plan to maximize their own benefits and further their personal agendas. (*Id.* at ¶ 87.)

Based on the foregoing allegations plaintiff filed the FAC on November 15, 2010, containing six causes of action including waste of public funds, negligence, and fraudulent deceit. The prayer of the FAC seeks an order requiring “defendants to make restitution to the City for compensation they approved and/or accepted, and which was in excess of what was reasonable and appropriate, in an amount proven at trial.”

Rizzo, Spaccia, Adams, Hernandez, Jacobo, Cole, and City have now demurred to plaintiff’s causes of action on multiple grounds. City and Adams have also filed a motion to strike portions of the First Amended Complaint. The relevant law, arguments, and allegations are discussed as necessary below.

#### Judicial Notice

Rizzo asks the court to take judicial notice of the Charter of the City of Bell and the 2010 California Roster of Public Agencies. The court takes judicial notice of these documents pursuant to California Evidence Code section 452(h).

Adams asks the court to take judicial notice of his employment contract and an addendum to his employment contract. The court declines to take judicial notice of these documents because they have not been authenticated and are not reasonably beyond being subject to dispute.



City asks the court to take judicial notice of Resolution No. 2010-32, a resolution of the city council requesting the consolidation of a special election and regular election to be held on March 8, 2011. City also asks the court to take judicial notice of felony complaints in Case Nos. BA376026 and BA377197. The court takes judicial notice of these documents but not of the truth of all matters therein pursuant to California Evidence Code section 452(h).

### Demurrer

Where pleadings are defective, a party may raise the defect by way of a demurrer. (*Coyne v. Krempels* (1950) 36 Cal.2d 257.) A demurrer tests the sufficiency of a pleading, and the grounds for a demurrer must appear on the face of the pleading or from judicially noticeable matters. (Code Civ. Proc., 430.30, subd. (a); *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

The sole issue on demurrer for failure to state facts sufficient to constitute a cause of action is whether the facts pleaded, if true, would entitle the pleader to relief. (*Garcetti v. Superior Court* (1996) 49 Cal.App.4th 1533, 1547.) The question of the pleader's ability to prove the allegations of the complaint or the possible difficulty in making such proof does not concern the reviewing court. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 47.) The ultimate facts alleged in the complaint must be deemed true, as well as all facts that may be implied or inferred from those expressly alleged. (*Marshall v. Gibson, Dunn & Crutcher* (1995) 37 Cal.App.4th 1397, 1403.) Nevertheless, this principle does not apply to allegations expressing mere conclusions of law, or allegations contradicted by the exhibits to the complaint or by matters of which judicial notice may be taken. (*Vance v. Villa Park Mobilehome Estates* (1995) 36 Cal.App.4th 698, 709.)

If a complaint does not state a cause of action, but there is a reasonable possibility that the defect can be cured by amendment, leave to amend must be granted. (*Blank, supra*, 39 Cal.3d at 318.) However, where the facts are not in dispute and the nature of the plaintiff's claim is clear, but no liability exists under substantive law and no amendment would change the result, the sustaining of a demurrer without leave to amend is proper. (*City of Ceres v. City of Modesto* (1969) 274 Cal.App.2d 545, 554.)

### Analysis

#### *First Cause of Action (Waste of Public Funds) Against All Defendants*

##### Standing

Defendants argue that plaintiff does not have standing to bring a cause of action for waste of public funds and that the individual defendants are entitled to legislative immunity for the actions alleged to support plaintiff's first cause of action. The court agrees with defendants.

Plaintiff alleges that the excess compensation which was paid to defendants and authorized by City ordinances or employment contracts constitutes waste of public funds pursuant to Code of Civil Procedure section 526a. (FAC ¶ 95.) Section 526a states in pertinent part, as

follows:

An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein.

Due to the language in section 526a stating that a suit may be maintained by “a citizen resident . . . or by a corporation,” defendants argue that plaintiff cannot properly bring a cause of action for waste under section 526a. (E.g., *Rizzo Demurrer*, pp. 1-2.) In opposition to defendants’ demurrers plaintiff points to authority stating that the Attorney General, “possesses not only extensive statutory powers but also broad powers derived from the common law relative to the protection of the public interest.” (*D’Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 14.) From the *D’Amico* decision, a case in which the Attorney General defended an action brought against a state licensing board, plaintiff quotes the following language: “[I]n the absence of any legislative restriction [the Attorney General] has the power to file any civil action or proceeding directly involving the rights and interests of the state, or which [s]he deems necessary for the enforcement of the laws of the state, the preservation of order, and the protection of public rights and interest.” (*D’Amico, supra*, 11 Cal.3d at pp. 14-15, quoting *Pierce v. Superior Court* (1934) 1 Cal.2d 759, 761-762 [upholding the Attorney General’s power to bring a claim alleging voter fraud under a provision of the former Political Code, which authorized “any person” to bring a challenge].)

The circumstances delineated in *D’Amico*, under which the Attorney General would have standing to prosecute a civil action, are not shown to be present here.

- The state has no interest in the salary decisions of charter cities. (See Cal. Const. art. 11, § 5.) The Attorney General claims (Opp. to Bell demurrer p. 7) she is not interested in “enforc[ing] a conflicting state law that attempts to override a charter city’s power to establish salaries for its employees.” Yet, she is attempting to get the court to override the City’s salary decisions in this case. She claims (*id.* at p. 9) that without this suit those salaries “could become the basis of excessive retirement payments by CalPERS, taxing the resources of the State entity.” But, as City points out (Reply p. 3), this contention does not involve a state interest that can be protected by the Attorney General, because all public employee retirement boards have the “sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system. (Cal. Const. art XVI, § 17, subd. (a).) This constitutional provision exists to “insulate the administration of retirement systems from oversight and control by legislative and executive authorities.” (*Singh v. Board of Retirement* (1996) 41 Cal.App.4th 1180, 1192.)
- No facts showing a necessity for the “preservation of order” are alleged in the FAC.

- This case does not involve public rights and interests, such as the fraudulent voter registrations that were claimed to be involved in *Pierce v. Superior Court, supra*, 1 Cal.2d 759. In *Pierce*, the Supreme Court “canvass[ed] the policy considerations involved [and] merely held that the [“any person”] statutory language included the Attorney General.” (*Safer v. Superior Court* (1975) 15 Cal.3d 230, 240, fn. 18.) And, while a taxpayer suit to prevent waste of a city’s funds under Code of Civil Procedure section 526a could be said to involve a public interest, the Attorney General has cited no authority for the proposition that she can maintain a suit under this statute.

Plaintiff argues that the language of section 526a should not be interpreted purely literally. (Opposition, p. 8.) In the past section 526a has been interpreted to apply to a non-resident taxpayer even though the language of the statute confers standing only to a “citizen resident.” (*Irwin v. City of Manhattan Beach* (1966) 65 Cal.2d 13, 18-20.) *Irwin* held it would deny equal protection to an individual non-resident who owned property and thus paid taxes while allowing such a claim by a corporate taxpayer; to render the statute constitutional the court read it to treat corporate and individual non-resident taxpayers alike. (*Id.* at p. 19.)

The court is not persuaded that section 526a can be interpreted as broadly as plaintiff advocates. Defendants do not dispute that plaintiff, “in the absence of any legislative restriction, has the power to file any civil action or proceeding directly involving the rights and interests of the state, or which he deems necessary for the enforcement of the laws of the state, the preservation of order, and the protection of public rights and interests.” (*Pierce v. Superior Court* (1934) 1 Cal.2d 759, 761-762.) The compensation of a charter city’s officials cannot be said to be a matter of statewide interest.

Article XI, section 5 of the California Constitution gives local governments plenary authority to establish the terms of compensation for city employees and officers. Therefore, “the determination of the wages paid to employees of charter cities as well as charter counties is a matter of local rather than statewide concern.” (*Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 317.) That employee compensation in charter cities is a local matter cuts strongly against plaintiff’s argument that she has standing to bring this action. Furthermore, plaintiff cites no authority in which the Attorney General has been permitted to bring a comparable action based on section 526a.

*California Oregon Power Co. v. Superior Court* (1955) 45 Cal.2d, 858, which is cited by plaintiff, involved a suit against a power company rather than a local government entity and local legislators. The interest of the state in that case was obvious: the operation of a hydroelectric dam on the Klamath River intermittently caused the river banks to run dry, killing thousands of state-owned fish, and then the massive amounts of water released created a wave front, which had killed several people. In *Pierce v. Superior Court, supra*, 1 Cal.2d 758, the state was permitted to bring a suit to purge fraudulent voter registrations because “[i]t is one of the high prerogatives of the state to provide for and insure honest elections.” (*Id.* at p. 761.) The court finds that none of the other cases cited by plaintiff squarely address this factual scenario in which local officials have authority over an issue such as their compensation, and a statute such as section 526a confers standing only upon resident or corporate taxpayers in a locality.

When the language of section 526a is considered in conjunction with the California Constitution and accompanying case law, the court concludes that plaintiff does not have standing to bring a cause of action against defendants for waste of public funds simply because plaintiff believes that defendants' compensation was excessive. Defendants' compensation is a local matter pursuant to article XI, section 5 of the California Constitution. Furthermore, section 526a confers standing to bring an action for waste exclusively on citizen residents or taxed corporations. The court declines to read standing for the Attorney General into the California Constitution or section 526a. Therefore, plaintiff's lack of standing is one independent ground on which the court sustains defendants' demurrers to plaintiff's first cause of action without leave to amend.

#### Separation of powers/legislative immunity

The California Constitution expressly provides: "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." (Cal. Const. art. III, § 3.)

In article XI, section 5, subdivision (b)(4) the California Constitution grants to charter cities "plenary authority . . . subject only to the restrictions of this article, to provide therein or by amendment thereto the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed . . . and for their compensation . . . ."

As noted above, plaintiff's FAC (¶ 22) alleges "each defendant has received excessive and wasteful compensation from the City. The amount of compensation that exceeds what was reasonable and commensurate with defendants' respective duties and responsibilities provided no use or benefit to the City, and was totally unnecessary, wasteful, and illegal." The prayer of the FAC seeks "[a] declaration that all employment contracts and addenda of Rizzo, Spaccia, and Adams executed in and after 2005 are null and void *ab initio*" (¶ 2) and "[a]n order enjoining the City from paying salaries or providing benefits to defendants in excess of what is commensurate with their duties and responsibilities, in an amount to be proven at trial" (¶ 12).

Plaintiff is asking the court to, in effect, substitute its judgment for that of the legislative body of the City insofar as that body's determination of the compensation of municipal officers and employees. The court does not have this power, and plaintiff has cited no provision of law that would guide the court in reaching such a determination. For example, courts may not compel a legislative body to act or vacate such an enactment. (*Sklar v. Franchise Tax Board* (1986) 185 Cal.App.3d 616, 618.) In *Hilton v. Board of Supervisors* (1970) 7 Cal.App.3d 708, 714, the court held: "[S]ince the passage of a zoning ordinance is a legislative act, it necessarily follows that the vacating of such an enactment (the relief sought here) is likewise legislative in character. As in *Tandy v. City of Oakland* [(1962) 208 Cal.App.2d 609] 'the complaint simply asks the court to issue the writ to compel the city council of the defendant city to perform a legislative act. . . . It is elementary that the courts have no such power.' (*Supra*, p. 711.)"

An equally important corollary of the separation of powers doctrine is that legislators have absolute immunity from damage suits based on legislative acts. (*Steiner v. Superior Court*

(1996) 50 Cal.App.4th 1771, 1784.) The doctrine of legislative immunity has been construed expansively to apply to those activities involving planning or enacting legislation. (*Ibid.*) Moreover, the principle of legislative immunity protects not only the conduct of municipal legislators, but also the acts of municipal administrators and executives taken in direct assistance of legislative activity. (*D'Amato v. Superior Court* (2009) 167 Cal.App.4th 861, 871.) Here plaintiff alleges the excess compensation was approved by City ordinances. (FAC ¶ 95.)

Based on the allegations in plaintiff's FAC, the court agrees with defendants. This is plaintiff's second attempt to argue that the doctrine of legislative immunity does not apply and plaintiff fails to point to any authority supporting its position. Plaintiff argues in opposition that defendants are not being sued for purely legislative acts but for "waste of public funds and related conduct that they facilitated through their council positions." (Opposition, p. 16.) Plaintiff does not clearly explain what related conduct was facilitated through defendants' council positions. This is likely because plaintiff cannot allege the existence of any such conduct. Again, plaintiff has clearly alleged that defendants approved excess compensation for themselves through City ordinances. (FAC ¶ 95.) Plaintiff's allegations therefore trigger the doctrine of legislative immunity. The fact that plaintiff characterizes the passages of those ordinances as wasteful does not get around the issue.

In sum, legislators cannot be sued for passing ordinances to raise their own compensation. To permit plaintiff to bring such an action would set a precedent by which local legislators throughout the state could be dragged into court any time they pass an ordinance that the Attorney General deems imprudent. Setting such a precedent would undoubtedly impede the functioning of legislatures throughout the state.

The conduct alleged by plaintiff in support of its first cause of action may be reprehensible, but it is not actionable in civil court. The proper means of reforming a legislature rife with greed and ineptitude is the electoral process. There is no precedent for a civil suit like this and the court declines to blaze a new trail today and potentially open the floodgates of litigation for comparable actions. Therefore, defendants' demurrers to plaintiff's first cause of action are sustained without leave to amend on the ground of failure to state facts sufficient to constitute a cause of action.

The court's discussion of standing applies to each of plaintiff's causes of action.

#### *Second Cause of Action (Negligence) Against Council Member Defendants and Rizzo*

Plaintiff's second cause of action is based on the same underlying allegations as the first cause of action. Furthermore, the court is aware of no legal authority establishing that legislators can be personally liable for not using due care in authorizing the expenditure of public funds. *Stanson v. Mott* (1976) 17 Cal.3d 206, 226-227, the only case plaintiff cites in opposition to defendants' demurrers, is not on point. *Stanson* involved a public agency expending public funds to promote a partisan election campaign. This case involves no comparable facts. Therefore, the Court sustains defendants' demurrers to plaintiff's second cause of action without leave to amend on the ground of failure to state facts sufficient to constitute a cause of action.

### *Third Cause of Action (Fraudulent Deceit) Against Council Member Defendants and Rizzo*

The elements for a claim of fraud are: (1) misrepresentation, concealment, or non-disclosure by the defendant, (2) knowledge of falsity by the defendant, (3) intent to defraud by the defendant, i.e., intent to induce reliance from the plaintiff, (4) justifiable reliance by the plaintiff, and (5) resulting damage to the plaintiff. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.)

For a fraud claim to withstand a demurrer, “the facts constituting every element of fraud must be alleged with particularity, and the claim cannot be salvaged by references to the general policy favoring the liberal construction of pleadings.” (*Goldrich v. Natural Y Surgical Specialties, Inc.* (1994) 25 Cal.App.4th 772, 782.) “This particularity requirement necessitates pleading facts which ‘show how, when, where, to whom, and by what means the representations were tendered.’” (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 73, citing *Hills Trans. Co. v. Southwest* (1968) 266 Cal.App.2d 702, 707.)

Plaintiff alleges that defendants defrauded the public by passing Ordinance No. 1158 in February, 2005 titled “An Ordinance of the City Council of the City of Bell Limiting Compensation for Members of the City Council Pursuant to California Government Code § 36516(c).” (FAC ¶ 63.) Plaintiff takes issue with Ordinance No. 1158 because the text of the ordinance actually increased the council member defendants’ salaries. (*Id.* at ¶ 64.)

The court finds that plaintiff’s allegations are insufficient to withstand defendants’ demurrer. First, there are the aforementioned issues of standing and separation of powers/legislative immunity, the latter of which applies to the passage of Ordinance No. 1158. Second, plaintiff has not plead how anyone relied on the purported misrepresentations and consequently has not plead how the misrepresentations caused damages. The court accordingly sustains defendants’ demurrers to plaintiff’s third cause of action without leave to amend on the ground of failure to state facts sufficient to constitute a cause of action.

### *Fourth Cause of Action (Fraudulent Deceit) Against Rizzo*

Plaintiff’s fourth cause of action is similarly defective. Plaintiff has alleged that Rizzo’s compensation was broken up into five separate contracts. (FAC ¶ 72.) However, plaintiff has not alleged how anyone relied on representations about Rizzo’s compensation and how damages resulted from said reliance. Therefore, the court sustains Rizzo’s demurrer to plaintiff’s fourth cause of action without leave to amend on the ground of failure to state facts sufficient to constitute a cause of action.

### *Fifth Cause of Action (Government Code Section 1090) Against Rizzo and Spaccia*

Government Code section 1090 states:

Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or

employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

In California, “[t]o determine whether section 1090 has been violated, a court must identify (1) whether the defendant government officials or employees participated in the making of a contract in their official capacities, (2) whether the defendants had a cognizable financial interest in that contract, and (3) (if raised as an affirmative defense) whether the cognizable interest falls within any one of section 1091's or section 1091.5's exceptions for remote or minimal interests. (*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1074.)

Plaintiff alleges that defendants violated section 1090 by directing the modification of the City's Supplemental Retirement Plan such that it created particularized benefits to themselves and furthered their personal agendas. (FAC ¶ 127.) This occurred in August, 2003 when City implemented a Supplemental Retirement Plan that provided retirement benefits, at the expense of the City, to a small group of City officers and employees, including the defendants. (*Id.* at ¶ 86.) Since the implementation of the plan, Rizzo, Spaccia, and other defendants have modified the plan to maximize their own benefits. (*Id.* at ¶ 87.)

Defendants believes that plaintiff has not clearly identified a contract at issue and that plaintiff's interpretation of section 1090 is improper. (Rizzo's Demurrer, pp. 7-8.) The Court agrees with defendants. Plaintiff has not identified what party, if any, defendants purportedly contracted with. Therefore, plaintiff has not alleged how defendants' conduct can fall under the purview of section 1090 and the court sustains Rizzo's demurrer to plaintiff's fifth cause of action without leave to amend on the ground of failure to state facts sufficient to constitute a cause of action.

#### *Sixth Cause of Action (Breach of Fiduciary Duty and Violation of Public Trust) Against All Defendants*

Because plaintiff's sixth cause of action is derivative of the first five, the court sustains defendants' demurrers to plaintiff's sixth cause of action without leave to amend on the ground of failure to state facts sufficient to constitute a cause of action.

#### **Motions To Strike**

In light of the court's ruling on defendants' demurrers, defendants' motions to strike are moot.

#### **Demurrer to City of Bell's First Amended Cross-Complaint**

City has filed a First Amended Cross-Complaint against Rizzo alleging that Rizzo embezzled, stole, and misappropriated millions of dollars in City funds by obtaining grossly excessive and unwarranted compensation. (FACC ¶ 1.) City highlights the fact that although Rizzo's responsibilities from 1993 to 2010 remained relatively constant, he received an approximate tenfold increase in salary during that time period. (*Id.* at ¶ 8.)

City alleges that while facing public scrutiny in 2010, Rizzo created and signed a series of employment contracts—one with City, and four with various City Authorities: Bell Solid Waste and Recycling Authority; Bell Surplus Property Authority, Bell Community Housing Authority, and Bell Public Financing Authority. (*Id.* at ¶ 10.) Rizzo then backdated the contracts to 2008. (*Ibid.*) Therefore, City alleges that Rizzo attempted to conceal and mislead the City and its citizens about the full amount of his compensation. (*Ibid.*)

In 2008 Rizzo instructed staff to prepare a memorandum that purportedly set forth the salary information for the City Council members and Rizzo. (*Id.* at ¶ 12.) The information in the memorandum was false because it did not accurately portray the amount of compensation being received by Rizzo. (*Ibid.*) Rizzo instructed the City Clerk to provide the memorandum to any citizen, press member, or other member of the public who was interested in checking Rizzo's compensation.

City also alleges that Rizzo manipulated the aforementioned Supplemental Retirement Plan to maximize his own benefits. (*Id.* at ¶ 15.)

Based on the foregoing allegations, City has alleged eight causes of action against Rizzo. Rizzo has demurred to each cause of action on the ground of failure to state facts sufficient to constitute a cause of action. The relevant law and arguments are discussed as necessary below.

#### Judicial Notice

Rizzo asks the court to take judicial notice of the minutes of the City Council's February 7, 2005 meeting. The Court takes judicial notice of the document but not of the truth of all matters therein.

#### Analysis

##### *Standing argument*

The court notes at the outset that Rizzo argues that City has no standing to assert any of its claims. (Rizzo's Demurrer, pp. 4-5.) Because Rizzo cites no applicable authority in support of his argument, the court declines to find that City lacks standing. The court accordingly turns to each individual cause of action asserted by City.

##### *First and Second Causes of Action (Intentional Misrepresentation and Constructive Fraud)*

The court sustains Rizzo's demurrer to City's first and second causes of action for the same reason the Court sustained defendants' demurrers to plaintiff's third and fourth causes of action—there are no factual allegations establishing how anyone relied on the purported misrepresentations. City only alleges that "City and its citizens reasonably relied upon the misrepresentation identified above." (FACC ¶ 19.) City's allegation is a legal conclusion that is not supported by ultimate facts. The Court sustains Rizzo's demurrer to City's first and second causes of action with leave to amend on the ground of failure to state facts sufficient to constitute a cause of action.



### *Third Cause of Action (Breach of Fiduciary Duty)*

To plead a cause of action for breach of fiduciary duty, the plaintiff must show: (1) the existence of a fiduciary relationship, (2) breach of the fiduciary relationship, and (3) damages proximately caused by that breach. (*Pierce v. Lyman* (1991) 1 Cal.App.4th 1093, 1101.) A fiduciary relationship is "any relation existing between parties to a transaction wherein one of the parties is . . . duty bound to act with the utmost good faith for the benefit of the other party." (*Wolf v. Superior Court* (2003) 107 Cal.App.4th 25, 29.) Inherent in each of these relationships is the duty of undivided loyalty the fiduciary owes to its beneficiary, imposing on the fiduciary obligations far more stringent than those required of ordinary contractors. (*Id.* at p. 30.) A mere contract or a debt does not constitute a trust or create a fiduciary relationship. (*Waverly Productions, Inc. v. RKO General, Inc.* (1963) 217 Cal.App.2d 721, 732-734.)

Rizzo argues that City's third cause of action fails based on legislative and discretionary immunity and generally fails to state facts sufficient to constitute a cause of action. (Rizzo's Demurrer, p. 9.) The court agrees with Rizzo as to the latter argument. The court is aware of no fiduciary duty owed by a city's Chief Administrative Officer to the city or its citizens, and City cites no authority for that proposition. The court declines to create such a duty today and sustains Rizzo's demurrer to City's third cause of action without leave to amend on the ground of failure to state facts sufficient to constitute a cause of action.

### *Fourth Cause of Action (Negligence)*

The court sustains Rizzo's demurrer to City's fourth cause of action for the reasons discussed in connection with City's first three causes of action. The demurrer is sustained with leave to amend on the ground of failure to state facts sufficient to constitute a cause of action.

### *Fifth Cause of Action (Violation of Government Code § 1090)*

City alleges that Rizzo violated section 1090 by creating and backdating five agreements between himself and City, Bell Solid Waste and Recycling Authority; Bell Surplus Property Authority, Bell Community Housing Authority, and Bell Public Financing Authority. City also believes Rizzo violated section 1090 because he oversaw the Supplemental Retirement Plan. The Court is not persuaded that City can state a cause of action based on Rizzo's involvement with the Supplemental Retirement Plan for the reasons discussed in connection with plaintiff's section 1090 cause of action.

Rizzo argues that he cannot have violated section 1090 based on backdating the five agreements due to section 1091.5(a)(9), which creates an exception to section 1090 for, "a person receiving salary . . . from a government entity, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that the interest is disclosed to the body or board at the time of consideration of the contract, and provided further that the interest is noted in its official record."

Rizzo has not explained how the section 1091.5 exception would apply in this case because the contracts at issue directly involved City. Furthermore, the court is not persuaded by

Rizzo's statute of limitations argument given that the alleged backdating of contracts occurred in 2010. (FACC ¶ 17.) The court accordingly overrules Rizzo's demurrer to City's fifth cause of action.

*Sixth Cause of Action (Declaratory Relief)*

To state a cause of action for declaratory relief Code of Civil Procedure section 1060 requires is that there be "actual controversy relating to the legal rights and duties of the respective parties."

In this action Rizzo has filed a Cross-Complaint against City asserting that he is entitled to indemnity and contribution from City. In its First Amended Cross-Complaint city seeks a declaration that it is not required to provide any indemnity because litigation is now filed between City and Rizzo. (FACC ¶¶ 48-50.)

The City cites no authority for the proposition that Rizzo's cross-complaint for indemnity relieves it of any duty to indemnify or defend Rizzo. Accordingly, the court sustains Rizzo's demurrer to the sixth cause of action without leave to amend on the ground on the ground of failure to state facts sufficient to constitute a cause of action.

*Seventh Cause of Action (Unjust Enrichment)*

As Rizzo points out, there is no independent cause of action for unjust enrichment. (*Melchior v. New Line Productions, Inc.* (2003) 106 Cal.App.4th 779, 793.) Therefore, the court sustains Rizzo's demurrer to City's seventh cause of action without leave to amend on the ground of failure to state facts sufficient to constitute a cause of action.

*Eighth Cause of Action (Declaratory Relief)*

Lastly, City seeks a declaration that Rizzo is not entitled to receive any pension benefits, or is entitled only to reduced benefits, from the ICMA Retirement Corporation, CalPERS or other funds because some or all of the monies paid into those funds came from fraudulent contracts entered into or created by Rizzo. (FACC ¶ 57.)

Rizzo argues that City's eighth cause of action fails because the earliest date of any allegation in the FACC is 2003 and therefore City cannot conceivably provide a basis for depriving Rizzo of pension benefits that were earned prior to that date. (Demurrer, p. 4.) Rizzo cites no authority whatsoever in support of that argument.

Rizzo also argues that his pension cannot be subject to the process of this court pursuant to Government Code section 31452, which states:

The right of a person to a pension, annuity, retirement allowance, return of contributions, the pension, annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under this chapter, the money in the fund created or continued under this chapter, and any property purchased for

investment purposes pursuant to this chapter, are exempt from taxation, including any inheritance tax, whether state, county, municipal, or district. They are not subject to execution or any other process of court whatsoever except to the extent permitted by Section 31603 of this code and Section 704.110 of the Code of Civil Procedure, and are unassignable except as specifically provided in this chapter.

Rizzo does not adequately explain how section 31452 applies to this case. Rizzo does not articulate how sections 31603 or 704.110 come into play. Rizzo also fails to address the point that City contends that Rizzo does not have a "right" to all of his pension in the first place. In light of the deficiencies in Rizzo's arguments and the fact that City's eighth cause of action remains, the court overrules Rizzo's demurrer to City's eighth cause of action.

### **Demurrer of Rizzo to City of Bell's Answer**

The plaintiff may, within 10 days after service of the answer, demur to it. (Code Civ. Proc., § 430.40, subd. (b).) A demurrer to an answer may lie if, inter alia: (1) the answer fails to state facts sufficient to constitute an affirmative defense or (2) the answer is uncertain. (Code Civ. Proc. § 430.20, subds. (a), (b).)

In most respects, the demurrer to the answer is governed by the same rules as those applicable to the demurrer to the complaint. (5 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 1181, p. 61.) An affirmative defense must be averred as carefully and with as much detail as the facts which constitute the cause of action and are alleged in the complaint. (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384.) Allegations of affirmative defense that are proffered in the form of legal conclusions, rather than as facts, will not survive a demurrer. (*Ibid.*) However, unlike a demurrer to a complaint, each defense must be considered separately without regard to any other defense, and one defense does not become insufficient because it is inconsistent with other parts of the answer. (*South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 733.)

### **Analysis**

Rizzo has demurred to City's second through ninth and thirteenth through twenty-fourth affirmative defenses on the ground of failure to state facts sufficient to constitute a defense and uncertainty. City argues that it does not have to set forth in detail the facts supporting every affirmative defense. (Opposition, p. 3.) The court finds that City's argument is unsupported by the clear language of *FPI Development, Inc.* City's affirmative defenses consist almost entirely of legal conclusions. For example, City alleges that Rizzo is guilty of laches by his conduct in support of City's third affirmative defense, but City fails to elaborate as to what conduct Rizzo might have engaged in that make him guilty of laches.

In light of the foregoing, the court sustains Rizzo's demurrer to City's second through fifth, seventh through ninth and thirteenth through twenty fourth affirmative defenses with leave to amend on the ground of failure to state facts sufficient to constitute a defense; Rizzo's demurrer to City's first, sixth, and tenth through twelfth affirmative defenses is overruled.

## Conclusion

The court sustains defendant City of Bell's demurrer to plaintiff's first cause of action without leave to amend on the ground of failure to state facts sufficient to constitute a cause of action.

The court sustains defendant Randy Adams's demurrer to plaintiff's first and sixth causes of action without leave to amend on the ground of failure to state facts sufficient to constitute a cause of action.

The court sustains defendants Teresa Jacobo, Oscar Hernandez, and George Cole's demurrers to plaintiff's first, second, third, and sixth causes of action without leave to amend on the ground of failure to state facts sufficient to constitute a cause of action.

The court sustains defendant Robert A. Rizzo's demurrer to plaintiff's first through sixth causes of action without leave to amend on the ground of failure to state facts sufficient to constitute a cause of action.

The court sustains cross-defendant Robert A. Rizzo's demurrer to City's first through fourth and seventh causes of action without leave to amend on the ground of failure to state facts sufficient to constitute a cause of action.

The court sustains defendant Pier'Angela Spaccia's demurrer to plaintiff's first, fifth, and sixth causes of action without leave to amend on the ground of failure to state facts sufficient to constitute a cause of action.

The court sustains cross-defendant Robert A. Rizzo's demurrer to City's third, sixth, and seventh causes of action alleged in City's first amended cross-complaint without leave to amend on the ground of failure to state facts sufficient to constitute a cause of action; the court sustains with leave to amend Rizzo's demurrer to City's first, second, and fourth causes of action on the ground of failure to state facts sufficient to constitute a cause of action; the court overrules cross-defendant Robert A. Rizzo's demurrer to City's fifth and eighth causes of action.

The Court sustains cross-complainant Robert A Rizzo's demurrer to City's second through fifth, seventh through ninth, and thirteenth through twenty fourth affirmative defenses alleged in City's first amended answer to Rizzo's cross-complaint with leave to amend on the ground of failure to state facts sufficient to constitute a defense; Rizzo's demurrer to City's first, sixth, and tenth through twelfth affirmative defenses is overruled.

# **EXHIBIT 4**

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**FILED**  
Superior Court of California  
County of Los Angeles

S DEC 06 2010

John A. Clarke, Executive Officer/Clerk  
By A. Fajardo, Deputy  
ANNETTE FAJARDO

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,  
ex rel EDMUND G. BROWN JR., Attorney  
General of The State of California,

Plaintiffs,

vs.

ROBERT A. RIZZO, PIER'ANGELA SPACCIA,  
RANDY G. ADAMS, OSCAR HERNANDEZ,  
TERESA JACOBO, GEORGE COLE, VICTOR  
BELLO, AND GEORGE MIRABAL, in their  
official and personal capacities, CITY OF  
BELL, AND DOES 1-100, inclusive,

Defendants.

) Case No. BC445497

) DECISION RE: MOTION TO  
) APPOINT MONITOR

The People of the State of California ("Plaintiff") applies for appointment of a monitor for the City of Bell ("City"). The court has read and considered the moving papers, the City's "response," the reply, and pleadings regarding wording for a possible motion, and renders the following tentative decision.

Statement of the Case as Alleged

Plaintiff commenced this lawsuit against The City and nine individual Defendants (all current or former employees and Council Members of the City, Bell (the City), challenging their conduct, both intentional and negligent, by which they enriched

1 themselves at the expense of the City and its citizens whom they assumed an obligation  
2 to faithfully serve). Among other things, the city council members and Chief  
3 Administrative Officer (Robert Rizzo) awarded to themselves and certain other City  
4 officers and employees, and took great pains to conceal, salaries and benefits that grossly  
5 exceeded what were reasonable and commensurate with their respective offices and  
6 duties, all in blatant disregard of the public trust confided in them.

7 Defendant Rizzo dictated the terms of the employment contracts for the City  
8 officers and employees, and council members negligently approved those contracts  
9 without ever reviewing or even seeking to learn the terms of the contracts. Defendants,  
10 including Rizzo and Pier'angela Spaccia (Assistant Chief Administrative Officer) were  
11 aware that their compensation was excessive and wasteful, and thus crafted their  
12 employment contracts to conceal their full compensation from the public. The city council  
13 members were also aware that the compensation that they gave themselves was  
14 excessive and wasteful, and thus they also took action to deceive the public, by both  
15 active concealment and affirmative misrepresentations, as to their true compensation.

16 The excessive and wasteful compensation given to the Defendants were paid out  
17 of public funds, and thus the City and its citizens ultimately footed the bill left by the  
18 Defendants' self-enriching activities. In addition to the compensation already paid to  
19 Defendants, the City is responsible for a much larger bill in the future when it must pay for  
20 the Defendants' wrongfully-gained retirement benefits under CalPERS and the City's own  
21 Supplemental Retirement Plan.

22 Decision

23 A "monitor" is an acceptable formal legal position in California for Family Law and  
24 other situations involving court appointed assistants, overseers, referees, etc. In other  
25 Civil cases there is no clear precedent for a formal "monitor" that will have some duties  
26 similar to a civil "receiver." Accordingly, the law relating to receivers is appropriately  
27 considered in the evaluation of the motion.

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1           There are four general areas of the law that the court considered in evaluating if  
2 the plaintiff's motion is legally founded. First, plaintiff who seeks appointment of a receiver  
3 of certain property under CCP § 564(b)(1), has the burden to establish by a  
4 preponderance of the evidence that plaintiff has a joint interest with defendant in the  
5 property, that the property is in danger of being lost, removed or materially injured and that  
6 plaintiff's right to possession is probable. Alhambra-Shumway Mines, Inc. v. Alhambra  
7 Gold Mine Corp., (1953) 116 Cal.App.2d 869, 873. Also, CCP § 564(b)(9) provides for  
8 the appointment of a receiver, "in all other cases where necessary to preserve the  
9 property or rights of any party."

10           Second, in any action brought in the name of the People of the State of California  
11 by the Attorney General, the court may appoint a receiver, in actions in which the  
12 appointment of a receiver is authorized by law, upon the application of the Attorney  
13 General if the court determines both of the following: (1) The Attorney General has a  
14 reasonable probability of prevailing on the merits at trial in establishing that the defendant  
15 or defendants obtained real or personal property by any unlawful means or allowed and  
16 considered such action; (2) The appointment of a receiver perhaps would facilitate the  
17 maintenance, preservation, operation, or recovery of that property for any restitutionary  
18 purpose. Gov. Code § 12527(b).

19           Third, "the attorney-general, as the chief law officer of the state, has broad powers  
20 derived from the common law, and in the absence of any legislative restriction, has the  
21 power to file any civil action or proceeding directly involving the rights and interests of the  
22 state, or which he deems necessary for the enforcement of the laws of the state, the  
23 preservation of order, and the protection of public rights and interests. (Pierce v. Superior  
24 Court, 1 Cal.2d 759, 762). See also, 58 Cal. Jur.3d State of California, par. 35.

25           Fourth, both state and federal courts have recognized appointed monitors for a  
26 variety of reasons. See Dawson v. East Side Union High School Dist. (1994) 28  
27 Cal.App.4th 998, 1045 [court retains jurisdiction to appoint monitor in action challenging  
28 use of commercial programming in schools]; see also Ruiz v. Estelle, (5<sup>th</sup> Cir. 1982) 679



1 F.2d 1115, 1161-1162 [special master and monitors appointed in action challenging prison  
2 conditions], modified on other grounds, 688 F.2d 266 (5<sup>th</sup> Cir. 1982), *cert. denied*, 460  
3 U.S. 1042 (1983); Officers for Justice v. Civil Service Comm. of City and County of San  
4 Francisco, (9<sup>th</sup> Cir. 1982) 688 F.2d 615, 637 [court appoints monitor to implement  
5 settlement and administer back pay award]; Hoptowit v. Ray, (9<sup>th</sup> Cir. 1982) 682 F.2d  
6 1237, 1259 [appointment of special master to "monitor compliance" but not to take control  
7 of prison], abrogated on other grounds by Sandin v. Conner, (1995) 515 U.S. 472.

8 The court has determined that there is a proper legal foundation for what the  
9 attorney general seeks.

10 The court likens the concept of a "monitor" as a role not unlike a receiver as to the  
11 appointment process, but with different and circumscribed scope and authority.

12 The appointment of a receiver is a drastic remedy to be utilized only in "exceptional  
13 cases." As such, a receiver should not be appointed unless absolutely essential and  
14 because no other remedy will serve its purpose. City & County of San Francisco v. Daley,  
15 (1993) 16 Cal.App.4th 734, 744.

16 The observation and complaints contained in the several independent declarations  
17 submitted in support of an appointment, assert abuses, lack of transparency and general  
18 distrust as a basis for an appointment. An appointed monitor would not be able to function  
19 as a full fledged receiver and thus the question is whether he/she could be effective.

20 As far as transparency is concerned, the court observes that presently all eyes are  
21 on the City by several law enforcement and other agencies delving into its past activities.

22 The court recognizes, as with a receiver, that an appointment of a monitor will be  
23 intrusive, and perhaps costly process. There would be no purpose in appointing a lifeless  
24 monitor without some detailed authority to insure the People of the City that their fiscal  
25 affairs are being properly handled. If a monitor is warranted at all, it has to be effective  
26 and helpful to the current situation. A monitor cannot be effective as a mere overseer.  
27 Also, he/she cannot be just an agent of one party or the other.

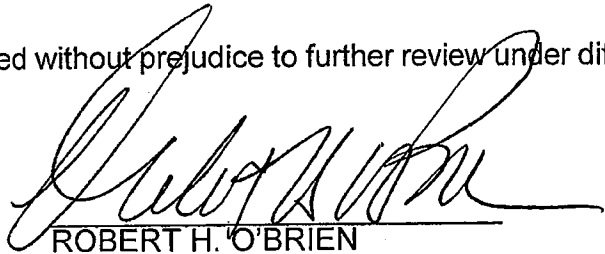
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Notwithstanding counsel and the court's activity leading to a possible appointment (i.e. preparation of a proper and acceptable order, soliciting possible appointees, etc.), the court has further reflected on the need and purpose of a court-appointed monitor. First, unlike a receiver, the monitor would have limited authority which could possibly result in just another party to the litigation regarding disputes as to access and authority to review City documents and records. Second, in the time devoted to determining what should be in the appointment order, it became obvious that whatever has been proposed to date is too vague, unspecific and ambiguous which probably would result in a stream of motions to the court for clarification on the needs and requests of the monitor in daily dealing with the City's operations. Third, the court is not convinced, at this stage, that the plaintiff cannot obtain the access and information in discovery that plaintiff needs to proceed with the lawsuit in the normal course of pretrial activity. Thus, it is not apparent at this point that a monitor is needed.

Accordingly, the motion is denied without prejudice to further review under different circumstances.

Dated: DEC 06 2010



ROBERT H. O'BRIEN  
Judge of the Superior Court

RHO:ks  
12-6-10  
(revised)

# **EXHIBIT 5**

CHAPTER 1  
FILED WITH SECRETARY OF STATE MARCH 21, 2011  
APPROVED BY GOVERNOR MARCH 21, 2011  
PASSED THE SENATE MARCH 17, 2011  
PASSED THE ASSEMBLY MARCH 21, 2011  
AMENDED IN SENATE MARCH 14, 2011

INTRODUCED BY Assembly Member Lara  
(Principal coauthor: Senator Calderon)

JANUARY 10, 2011

An act relating to elections, and declaring the urgency thereof,  
to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 93, Lara. Elections: City of Bell.

Existing provisions of the California Constitution and statute authorize the recall of local officers. Existing law provides that the results of a recall election be declared in substantially the manner provided by law for a regular election for the office.

Existing law requires the local elections official to conduct a canvass of the vote after an election and, upon completion of the canvass, to certify the results to the local governing body. Under existing law, upon the completion of the canvass and before installing the new officers, the governing body is required to adopt a resolution reciting the fact of the election and other information, as specified, and to declare the results and install the newly elected officers. Depending upon whether the city election is consolidated, existing law prescribes different timelines for when the governing body is required to meet to make the above declaration and install the newly elected officers.

In lieu of any inconsistent provisions set forth above, with respect to the March 8, 2011, City of Bell General Municipal Election, Special Recall Election, and Special Election to Fill a Vacancy, this bill would authorize the City of Bell to comply, subject to approval by the Los Angeles County Board of Supervisors, with an alternative procedure for certification, declaration of election results, and installation of newly elected officers. Under this alternative procedure, upon completion of the canvass of the votes by the Los Angeles County Registrar-Recorder/County Clerk, the City of Bell City Clerk would be required to certify the election results to the Los Angeles County Board of Supervisors. Under the alternate procedure, the Los Angeles County Board of Supervisors would, within 7 days of receiving the certification, adopt the above-described resolution and declare the results of the elections. Within 48 hours of the above-described resolution being adopted and the declaration being made, under the alternate procedure, the City of Bell City Clerk would install the newly elected officers at the Bell Council Chambers of the Bell City Hall.

This bill would make legislative findings and declarations as to the necessity of a special statute for the City of Bell.

This bill would declare that it is to take effect immediately as an urgency statute.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) With respect to the March 8, 2011, City of Bell

General Municipal Election, Special Recall Election, and Special Election to Fill a Vacancy, the City of Bell may comply, subject to approval of the Los Angeles County Board of Supervisors, with subdivision (b) in lieu of any inconsistent provisions set forth in Sections 10262 and 10263 of the Elections Code.

(b) (1) Upon completion of the canvass of the votes by the Los Angeles County Registrar-Recorder/County Clerk, the City of Bell City Clerk shall certify the results to the Los Angeles County Board of Supervisors.

(2) Within seven days of the City of Bell City Clerk's certification of the election results pursuant to paragraph (1), the Los Angeles County Board of Supervisors shall adopt a resolution reciting the fact of the elections and the other matters that are enumerated in Section 10264 of the Elections Code and declare the results of the elections.

(3) Within 48 hours of the resolution being adopted and the declaration being made pursuant to paragraph (2), the City of Bell City Clerk shall install the newly elected officers at the Bell Council Chambers of the Bell City Hall.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the current unique circumstances in the City of Bell that will affect the certification, declaration of results, and installation of officers following the March 8, 2011, City of Bell General Municipal Election, Special Recall Election, and Special Election to Fill a Vacancy.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure the certification, declaration of results, and installation of officers following the March 8, 2011, City of Bell General Municipal Election, Special Recall Election, and Special Election to Fill a Vacancy, it is necessary that this act take effect immediately.