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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA ex rel EDMUND G. BROWN JR., Attorney General of The State of California, Plaintiffs, **v.** **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 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE ATTORNEY GENERAL'S MOTION FOR APPOINTMENT OF A MONITOR FOR THE CITY OF BELL** Date: November 17, 2010 Time: 8:30 a.m. Dept: 57 Judge: The Honorable Ralph W. Dau Action Filed: September 15, 2010

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INTRODUCTION

Something is terribly wrong in the City of Bell. The City's Chief Administrative Officer, the City's Assistant Chief Administrative Officer, the City Attorney, the City's Police Chief, and one City Council member have all resigned. Three of the four current City Council members, including the Mayor, have been arrested, as have the former Chief Administrative Officer, the former Assistant Chief Administrative Officer, and several former City Council members. An audit by the State Controller has revealed a panoply of exorbitant City salary and benefits packages, illegal taxes, inappropriate personal loans, mismanaged bond funds, and other questionable expenditures. The present civil enforcement action, filed on behalf of the people of California by the Attorney General, accuses the majority of the current City Council and a number of former City officials of fraud, waste of public funds, and breaches of fiduciary duty. The Attorney General's civil enforcement action requests that all excessive compensation paid out be returned to the City, and going forward that all excessive compensation be enjoined.

Bell's problems will take time to resolve. In the meantime, its citizens are entitled to have some degree of assurance that the City is operating as appropriately and effectively as possible. Many of the City's programs, projects, contracts, and staff were put in place by the previous City administration. Meanwhile, the remaining City Council -- tainted as it is -- has not officially met since September 20th due to the lack of a quorum. And while some steps have now been taken to improve public access to City processes, in many important regards the activities of the current City administration, hired on an interim basis by the tainted City Council, remain shrouded in secrecy.

Ideally, the people of the City of Bell will be able on their own to take control of their city, through the democratic process, from those who have long exploited it for their own personal gains. Indeed it is the Attorney General's intention, for now, to let the political process proceed with as little outside involvement as possible. But the foundation on which the City's solid political recovery can be built must be full transparency and accountability, and governmental transparency does not yet exist in Bell. For this reason, the Attorney General requests that the

Court appoint a monitor with power simply to *observe* and *report* all goings-on within Bell's city government.

Transparency may reveal that the City's governance is so irretrievably broken that nothing short of takeover via judicially-controlled receivership can restore the City to proper standing with its citizens. Some voices in the community are already calling for that step. But, for now, the Attorney General is asking only that the Court give the citizens of Bell transparency as a tool to assist them in reclaiming their city, in the hopes of avoiding the need for a more invasive remedy.

STATEMENT OF FACTS

A. The People's Allegations in This Action

On September 15th of this year, the Attorney General filed this civil enforcement action against eight individual defendants: Robert Rizzo, the former Chief Administrative Officer; Pier'angela Spaccia, the former Assistant Chief Administrative Officer; Randy Adams, the former Police Chief; Oscar Hernandez, the current Mayor; Teresa Jacobo, a current City Council member; George Mirabal, a current City Council member; Victor Bello, a former City Council member; and George Cole, a former City Council member. (Complaint, ¶¶ 10-17, 19.) The Attorney General's enforcement action describes a pattern of abuse, corruption, and neglect at the City.

Specifically, the complaint alleges that Rizzo and Spaccia received excessive salaries and received and cashed out excessive vacation and sick leave, with Rizzo receiving over three times the average salary of other city managers in the Los Angeles area (Complaint, ¶ 24), both receiving 143 paid days off per year (Complaint, ¶¶ 29, 37), and both getting raises while the City laid off employees and cut back on other services. (Complaint, ¶¶ 25, 35.) The defendants successfully turned the City into a charter city in 2005 so that they could increase their own salaries. (Complaint, ¶¶ 57, 58.) City Council members thus each received over $96,000 in base salary, while under state law, council members of general law cities with the City's population level receive no more than $4,800 per year. (Complaint, ¶ 51.) After the City was converted to a

charter city, Rizzo and Spaccia received raises of 47 and 42 percent, respectively. (Complaint, ¶ 60.)

Moreover, the defendants took affirmative steps to hide their salaries from the public. The Council members passed an ordinance in 2005 titled, in part, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BELL LIMITING COMPENSATION . . .," when, in fact, the ordinance nearly doubled the salaries of the Council. (Complaint, ¶ 63.) This was intended to deceive the public, as only the title of the ordinance, and not the text, was published in the agenda and minutes of the relevant city council meetings. (Complaint, ¶ 65.) Moreover, Rizzo, Spaccia, and Adams concealed their salaries by splitting them over multiple contracts. (Complaint, ¶¶ 72, 73, 76.) As Spaccia told Adams, "[w]e have crafted our Agreements carefully so we do not draw attention to our pay." (Complaint, ¶ 78.) Finally, a memorandum was prepared for distribution to members of the public who asked about the salaries of defendants. The 2008 salary memorandum states that the council member defendants were paid $673 per month ($8,076 per year) and Rizzo was paid $15,478 per month ($185,736 per year). (Complaint, ¶ 83.) But in September 2008, the council member defendants were actually paid over $7,600 per month (over $91,200 per year) and Rizzo was paid over $52,000 per month (over $624,000 per year). (Complaint, ¶ 84.)

B. California State Controller's September 2010 City of Bell Audit Report

On September 22nd, the State Controller published a detailed audit of Bell's administrative and internal accounting controls, for the period of July 1, 2008 to June 30, 2010, the results of which were unacceptable: "[B]ecause the control deficiencies were so serious and pervasive, the City of Bell's internal control system was virtually non-existent."

Based just on review of a limited sample of transactions, the State Controller identified a number of conditions suggesting possible intentional abuse and misuse of city funds:

> * The Bell City Council approved exorbitant salary and benefits for the former CAO [Chief Administrative Officer] without any accountability for performance. The former CAO continued this process by allowing enormous salaries for other chief administrative staff.

* More than $93,000 in city funds was used to repay the former CAO's personal loans, apparently without any authorization or justification of public benefit. . . .

* Approximately $1.5 million in loans were made to members of the Bell City Council, city officials, and city employees at the sole discretion of the CAO and without any justification of public benefit. . . .

* Payments were made to a contractor, who was also acting as the city's "Director of Planning Services." Payments continued even after the contract had expired in 1997. The contractor also charged the city a 10% administrative fee (profit) for any subcontractor he hired, which raised questions about conflict-of-interest with his role of the Director of Planning Services. Total payment to two firms owned by the contractor was in excess of $10.4 million from January 1995 through June 2010. In effect, the Director oversaw many subcontractors of the city, each garnering him a 10% administrative fee (profit).

* The city in May 2009 purchased real property for $4.8 million from a trust established by a former Bell mayor who paid $480,000 for it in 1981. There was no documentation available to show what the property was to be used for, how the property was selected, and cost analyses to justify the purchase amount. The store on the acquired site has been vacated and there has not been any activity on this site.

(RJN, ex. 1, Chiang letter to Carrillo, pp. 1-2.)

One explanation of how the City administration was able to engage in such excess is identified in the State Controller's finding that the City mismanaged its voter-approved Measure A bond funds:

* The city issued $50 million in general obligation bonds for Measure A without any documented plan and timeframe to utilize the proceeds and apparent need for the funds.

* The 2007 series of bond proceeds of $35 million had the former CAO assume the role of fiscal agent. As such he had total control and discretion over how bond funds were to be used. As of August 31, 2010, approximately $11.5 million of the $35 million had been spent. . . .

* The amount of 2007 series of bond issuance ($35 million) was far in excess of the amount that was needed and thus unnecessarily increased the city's costs of borrowing. . . .

* Rather than depositing increased property tax proceeds in a separate Debt Service Trust Account as specified in the city's paying agent agreement with the U.S. Bank National Association, the funds were deposited in the General Fund, which artificially inflated the General Fund cash balance. . . .

(RJN, ex. 1, Chiang letter to Carrillo, pp. 2-3.)

Another source of potentially misused funds was assessments and taxes improperly made without voter approval:

* The Bell City Council improperly increased the assessment of the Sanitation and Sewerage System District without voter approval. The estimated amount of overcharge is $621,737 for FY 2007-08 though FY 2009-10.

> * The city improperly used $1,143,618 in funds from four assessment districts (Sanitation and Sewerage System, Refuse Collection, Recycling and Integrated Waste Management, and Landscape and Lighting) to pay for portions of payments to the former CAO and the Assistant CAO for regular and holiday pay, and pay in lieu of vacation. . . .
>
> * Other unauthorized increases in pension assessment and business license taxes have had the effect of reducing General Fund pension obligations or enhancing General Fund revenues, which in turn provided greater flexibility to increase compensation. At least in appearance, this raised the question of whether the decisions to increase assessments and taxes were motivated by personal gain considerations. The amount of the unallowable pension assessment is $2,934,144 for FY 2007-08 through FY 2009-10. The estimated overcharge to the business license taxes is $2,105,441 for calendar years 2000 through 2010.

(RJN, ex. 1, Chiang letter to Carrillo, pp. 2-3.)

C. Los Angeles District Attorney's Criminal Complaints

On September 20th, the Los Angeles District Attorney filed two felony complaints against current and former Bell city officials. A 53-count criminal complaint was filed against defendant Rizzo, alleging misappropriation of funds, falsification of public records, and conflict of interest. (See RJN, ex. 2.) Additional misappropriation of funds charges were brought against defendants Spaccia, Hernandez, Jacobo, Mirabal, Cole, and Bello, and against former Council member Luis Artiga. (See RJN, ex. 2 and 3.)

D. Current City of Bell Operations

The current process for management and direction of City operations is unclear. As for the City Council, one council member has resigned, leaving just four. One of these is still in jail. Two others, recently released from jail following their arrests, called in "sick" and did not attend the last City Council meeting. (Declaration of Lorenzo S. Velez, ¶ 2.)

There is an interim Chief Administrative Officer and interim City Attorney, but it is unclear how, if at all, they can be receiving oversight from the Council. According to the only non-indicted City Council member, he is not being consulted by the interim Chief Administrative Officer and interim City Attorney, and they are making City decisions without his input. (*Id.*, ¶ 3.) He is rarely briefed on City dealings with other government offices, he did not receive a timely response to a request for current City salary information, he has not received requested City financial information, and his requests for items to be included on City Council meeting agendas have not been honored. (*Id.*, ¶¶ 3, 5-8.)

Nor is it just the City Council that is in the dark. According to Captain Anthony Miranda, Bell's Acting Chief of Police, there has been little to no communication between the City administrators and the Bell Police Department since the current administration was put in place. (Declaration of Captain Anthony Miranda, ¶ 4.) He learns of changes in City government (for instance, the recent departure of the individual in charge of the City's emergency operations, who served as the Police Department's liaison to state and federal emergency response operations) through the media or the community. (*Id.*, ¶¶ 5-7.) The interim Chief Administrative Officer has not attended standing weekly meetings established with the Police Department, and did not provide any concrete information at the one Department-wide meeting with the Police Department called by the interim Chief Administrative Officer on short notice. (*Id.*, ¶¶ 8-10.)

The public is legitimately dissatisfied with the continuing lack of transparency within the City. (Declaration of Ali H. Saleh, ¶ 8.) According to a co-founder of the citizens' group Bell Association to Stop the Abuse ("BASTA"), the City has responded only partially to BASTA's Public Record Act requests. (*Id.*, ¶¶ 9-10.) The interim Chief Administrative Officer and interim City Attorney met with BASTA representatives on October 5th, and agreed to respond within two days to BASTA's written request for information on the City's finances, operations, and employees, but to date no response has been provided. (*Id.*, ¶ 12.)

Even now, more than three months after the initial public revelations of the abuses that have taken place in Bell, the status and legitimacy of the City's programs, projects, contracts, and staff put in place by the previous City administration remains unclear.

ARGUMENT

The City of Bell has been systematically plundered, in a coordinated fashion, by the defendants named in the Attorney General's civil enforcement action as well as others who have been named as "Does." The abuses have been varied in kind and astonishing in degree. And at least several of the defendants remain in a position to continue to perpetrate abuses hidden from the public view, even in the face of the universal outcry that has arisen. The transparency that is missing is the key to restoration of the public trust, and correspondingly is the key to the return of a healthy, functioning governance in the City of Bell. But, unfortunately, transparency is not

developing naturally in Bell as matters presently stand. The Attorney General requests that this Court appoint a monitor for the City of Bell, vested with the power to observe and report upon all government activities of the City.

A court has "broad equitable powers" to ensure the administration of justice. (See *Crawford v. Board of Education* (1976) 17 Cal.3d 280, 307 [court can use its "broad equitable powers" to ensure desegregation plan would be carried out in the face of a recalcitrant school board]; *Crain v. Electronic Memories & Magnetics Corp.* (1975) 50 Cal.App.3d 509, 524 ["courts have broad equitable powers to fashion whatever remedies are needed to redress obvious wrongs"].) And in particular, in any action brought in the name of the people of the State of California by the Attorney General:

> The court may appoint a receiver, in actions in which the appointment of a receiver is authorized by law, upon the application of the Attorney General if the court determines both of the following:
>
> (1) The Attorney General has a reasonable probability of prevailing on the merits at trial in establishing that the defendant obtained real or personal property by any unlawful means.
>
> (2) The appointment of a receiver would facilitate the maintenance, preservation, operation, or recovery of that property for any restitutionary purpose.

(Gov. Code, § 12527, subd. (b).)[1] In the interest of limiting outside involvement in the City's affairs, the monitor sought here is a form of receiver, but with substantially circumscribed powers.

Both state and federal courts have appointed monitors for a variety of reasons. (See *Dawson v. East Side Union High School Dist.* (1994) 28 Cal.App.4th 998, 1045 [court retains jurisdiction to appoint monitor in action challenging use of commercial programming in schools]; see also *Ruiz v. Estelle* (5th Cir. 1982) 679 F.2d 1115, 1161-1162 [special master and monitors appointed in action challenging prison conditions], modified on other grounds, 688 F.2d 266 (5th Cir. 1982), cert. denied, 460 U.S. 1042 (1983); *Officers for Justice v. Civil Service Com'n of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 637 [court appoints monitor to implement settlement and administer back pay award]; *Hoptowit v. Ray* (9th Cir. 1982) 682 F.2d

[1] Code of Civil Procedure section 564, subdivision (b)(9) provides that a receiver may be appointed in all cases "where necessary to preserve the property or rights of any party."

1237, 1259 [appointment of special master to "monitor compliance" but not to take control of prison], abrogated on other grounds by *Sandin v. Conner* (1995) 515 U.S. 472.)

Here the recent history in Bell is one of unchecked exploitation of the City of Bell and its citizens, perpetrated by those entrusted to faithfully serve the City and its people. The State Controller's audit report documents a list of exorbitant salaries and benefits provided to city officials, improper personal loans, and improper city contracting. The defendants apparently funded their self-dealing by looting the City's bond proceeds and illegally increasing taxes.

The Attorney General filed the present civil enforcement action to obtain restitution of the excess compensation paid out to the defendants, and the District Attorney has brought criminal charges against most of the defendants. But even with the actions taken by the Attorney General and the District Attorney, for practical purposes, the people of Bell still have no assurance that the exploitation is over. Although the City has taken some basic steps to improve public access, the evidence is that the interim Chief Administrative Officer and interim City Attorney (hired by the tainted City Council) are not being transparent with the City Council, such as it is, are not being transparent with the City's Police Department, and are not being fully transparent with the public. Accordingly, in order to facilitate the City's transition to a position of trust and good standing with its citizens, this Court's broad equitable powers should be exercised to appoint a monitor for Bell.

As envisioned in the proposed order submitted with this motion, the monitor would have access to all matters relating to the City, including access to review all documents within the possession or control of the City, the right to participate in all meetings and discussions relating to the City's affairs, and the right to examine the financial affairs of the City and all financial transactions involving the City. In addition, the monitor would have the authority to investigate all matters relevant to this civil enforcement action and the criminal complaints filed by the District Attorney, and any other allegations of fraud, dishonesty, or mismanagement in the affairs of the City.

The monitor would be required to hold a public forum at least once a month to take questions from the public and report on City operations. In addition, the monitor would be

required to report as often as necessary, but at least once a month, to the offices of the Attorney General and District Attorney as to any information related to their respective actions and any facts concerning fraud, dishonesty, or mismanagement in the affairs of the City. The appointment would be temporary, lasting until one month after the results of the City's March 2011 election are certified. And the expense to the City would be capped at $85,000.

It is the Attorney General's hope that the mere presence of the monitor will have a positive effect on the governance of the City, and that the observations reported by the monitor will be instrumental in establishing transparency as a permanent feature of City government.

CONCLUSION

For all of these reasons, the People respectfully request that this Court appoint a monitor to oversee city activities in the City of Bell, to report on such activities, and to help the people of Bell begin the process of transitioning to a healthy and functioning City government.

Dated: October 21, 2010

Respectfully Submitted,

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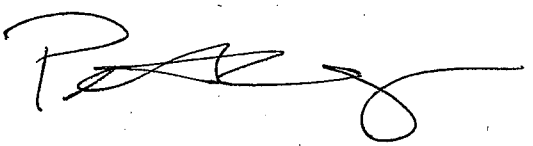

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