

ORIGINAL

EXEMPT FROM FILING FEES PURSUANT TO
GOVERNMENT CODE SECTION 6103

DEEMED VERIFIED PURSUANT TO CODE OF
CIVIL PROCEDURE SECTION 446

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUN 30 2017

E. Rodriguez

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

WESTERN RIVERSIDE COUNCIL OF
GOVERNMENTS, a California joint
powers authority,

Plaintiff,

v.

JOSEPH AKLUFU, an individual; DAVID
WYSOCKI, an individual; DAVID L.
WYSOCKI dba AKLUFU AND
WYSOCKI, a California Fictitious
Business; and DOES 1 through 20,
inclusive,

Defendants.

Case No. **RIC 17120 44**
Judge:

COMPLAINT FOR:

- 1. LEGAL MALPRACTICE**
- 2. BREACH OF FIDUCIARY DUTY**
- 3. BREACH OF WRITTEN CONTRACT**

COMPLAINT FOR LEGAL MALPRACTICE; BREACH OF FIDUCIARY DUTY; BREACH OF WRITTEN CONTRACT

By Fax

CRC 2.390

AAJ

JUL 03 2017

COMPLAINT

Plaintiff Western Riverside Council of Governments alleges as follows:

PARTIES

1. Plaintiff Western Riverside Council of Governments is a joint powers authority operating in Riverside County, and organized and existing under the laws of the State of California.

2. Plaintiff is informed and believes, and on that basis alleges, that Defendant Joseph Aklufi ("Aklufi") is, and at all times herein mentioned was, an individual residing in Riverside County, California. Plaintiff is informed and believes that Aklufi, as a partner of Aklufi & Wysocki ("Aklufi & Wysocki"), was the City Attorney for the City of Beaumont and City-related entities (hereinafter individually and collectively referred to as "City") for a continuous period beginning on or about March 1, 1992, and ending in or about 2014. Aklufi is named herein in both his official and personal capacities.

3. Plaintiff is informed and believes, and on that basis alleges, that Defendant David Wysocki ("Wysocki") is, and at all times herein mentioned was, an individual residing in San Bernardino County, California. Plaintiff is further informed and believes, that Wysocki, as partner of Aklufi & Wysocki, acted as Deputy City Attorney for the City and City-related entities during the continuous period beginning on or about March 1, 1992, and ending in about 2014. From 2014 until about May 2015, Wysocki served as City Attorney until in or about May 2015, when City terminated their relationship with Defendants. Wysocki is named in both his official and personal capacities.

4. Plaintiff is informed and believes, and on that basis allege, that Defendant Aklufi & Wysocki is an unknown California entity and was doing business at all times herein mentioned in the County of Riverside, California.

5. Plaintiff is unaware of the true names and capacities of Defendants sued herein as Does 1 through 20, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names when ascertained. Plaintiff is informed and believes and on that basis alleges that each fictitiously named Defendant is

1 responsible in some manner for the acts and/or omissions alleged in this Complaint, that the
2 damages as herein alleged were proximately caused by these Defendants' acts and/or omissions,
3 and that each of said Defendants is liable to Plaintiff upon the claims alleged herein.

4 6. Plaintiff is informed and believes, and on that basis alleges, that the Defendants,
5 and each of them, including Does 1 through 20, in doing the acts and/or omissions herein alleged,
6 were acting as the agents, representatives, servants or employees of each of the other Defendants,
7 and were acting with the course and scope of their employment or agency with the full knowledge
8 and consent of the other Defendants (hereinafter collectively referred to as "Defendants").

9 7. City has assigned each and every claim alleged herein against Defendants, and
10 each of them, to the Western Riverside Council of Governments ("WRCOG") pursuant to a 2017
11 settlement agreement and assignment of claims. City assigned their claims after WRCOG
12 prevailed in a lawsuit against the City in a case entitled Western Riverside Council of
13 Governments v. City of Beaumont, Orange County Superior Court Case No. 30-2010-00357976
14 (the "WRCOG Action"). The WRCOG Action resulted in a judgment against the City in excess of
15 \$60 million, and the City and WRCOG settled the matter after the judgment had been entered and
16 while the City was appealing the judgment against it. Plaintiff is informed and believes, and on
17 that basis alleges, that City is bringing a separate action against Defendants, and each of them, for
18 similar claims as are asserted herein. Plaintiff is informed and believes, and on that basis alleges,
19 that City has filed the separate action for the claims herein in the event that Defendants, or any of
20 them, challenge City' right to assign their claims to the Western Riverside Council of
21 Governments.

22 JURISDICTION AND VENUE

23 8. Jurisdiction is proper in this court as the subject matter is within the general
24 jurisdiction of this court and the amount in controversy exceeds the jurisdictional minimum of
25 this court.

26 9. Venue is proper in the County of Riverside in that the violations, breaches, acts
27 and/or omissions which are the subject of this action occurred in the County of Riverside.

28 GENERAL BACKGROUND ALLEGATIONS

1 10. Plaintiff brings this lawsuit against Aklufi & Wysocki, Joseph Aklufi, and David
2 Wysocki, for legal malpractice, breach of fiduciary duties, and breach of contract arising out of
3 Defendants' acts and/or omissions while acting as City Attorney for the City and City-related
4 entities.

5 11. Plaintiffs are informed and believe, and on that basis allege, that Defendant Aklufi
6 was at all times relevant a partner of Defendant Aklufi & Wysocki, and he was the City Attorney
7 for the City and City-related entity for a continuous period beginning in or about March 1, 1992
8 and ending in or about 2014.

9 12. Plaintiffs are informed and believe, and on that basis allege, that Defendant
10 Wysocki was at all times relevant a partner of Defendant Aklufi & Wysocki, and that he and/or
11 Aklufi & Wysocki acted as Deputy City Attorney for the City and City-related entities during the
12 continuous period beginning in or about March 1, 1992 through in or about 2014, after which
13 time he took over as City Attorney, which position he held until in or about May 2015, at which
14 point, Plaintiffs terminated Defendants.

15 13. Thus, for over 20 years, Defendants, and each of them, were responsible for
16 providing comprehensive legal representation to the City as its City Attorney and to the City-
17 related entity as its General Counsel. Defendants' representation of the City as City Attorney and
18 the City-related entities as General Counsel included, but was not limited to, advising City
19 officials in all legal matters pertaining to City business; framing ordinances and/or resolutions
20 required by the legislative bodies of the City and related entities; and/or performing other legal
21 services required from time to time by the legislative bodies of the City and City-related entity.
22 Defendants, and each of them, as City Attorney for the City and General Counsel for the City-
23 related entity, served at the pleasure of the City Council and the City-related entity's Boards, and
24 owed all ethical obligations to the City and City-related entities themselves—as clients—and not
25 to any individual public official, employee, independent contractor, or community member.

26 14. As City Attorney for the City and General Counsel for the City-related entity,
27 Defendants, and each of them, were responsible for and had a duty to provide legal advice to the
28 City and City-related entity regarding material issues that impacted the City and City-related

1 entity and to oversee any and all outside counsel to whom matters requiring special expertise
2 were referred. Moreover, Defendants, and each of them, had a duty to and were obligated to
3 serve as independent advisors to the City Council and other City related entity Boards, and to
4 provide a check and balance to insure that actions undertaken by the City Council/Boards and
5 City officials and employees were fully and completely lawful and undertaken consistent with all
6 applicable laws, regulations, and standards.

7 15. As City Attorney for the City and General Counsel for City-related entities,
8 Defendants, and each of them, had a duty to attend public Council/Board meetings, as well as
9 closed sessions of the City Council/Boards, and to provide legal representation to the City and
10 related entities during the Council/Board meetings, and otherwise to ensure conformance by the
11 City and City-related entity with all legal requirements. Specifically, such duties included, but
12 were not limited to, preparation and review of contracts on behalf of the City and City-related
13 entity, reviewing materials submitted by City staff to the City Council/Boards, and drafting,
14 preparing and approving as to form legal documents for the City and City-related entity, including
15 employment contracts, ordinances and resolutions. Additionally, Defendants, and each of them,
16 were or should have been aware and fully familiar with applicable State law, including the Brown
17 Act, and the requirements for placing matters on the Agenda, noticing the Agenda, posting the
18 Agenda, and properly considering Agenda items to ensure the Council/Boards have acted
19 lawfully. Moreover, Defendants, and each of them, were aware or should have been aware and
20 fully familiar with applicable State law governing the award and approval of public contracts,
21 agreements for professional services, and public bidding.

22 16. Finally, as City Attorney for the City and General Counsel for the City-related
23 entity, Defendants had a duty to supervise, monitor and oversee the actions of the City
24 Council/Boards and City officials, contractors and employees to insure that they acted lawfully.

25 17. As City Attorney for the City and General Counsel for the City-related entity,
26 Defendants failed to exercise reasonable care and skill in performing legal services and giving
27 legal advice to the City and City-related entity, including but not limited to the following:
28

1 a. Defendants, and each of them, negligently failed to supervise, monitor
2 and/or oversee the actions of City officials, contractors and/or other City employees who
3 were tasked with the daily administration of the City and City-related entity, and
4 defendants negligently permitted members of the City staff, contractors and employees,
5 including, but not limited to, the City Manager, the City Finance Director, the City
6 Engineer, the City Public Works Director, the Economic Development Director, and the
7 Planning Director to manipulate and ignore legal requirements regarding conflicts of
8 interest, to overcharge the City and City-related entity for purported services, and to act
9 secretly and unlawfully and to engage in self-dealing to the detriment of the City and City-
10 related entity, including but not limited to the following:

11 i. Defendants, and each of them, negligently allowed the City and
12 City-related entity to enter into, renew and/or amend agreements with various
13 companies, including but not limited to, Cherry Valley Automotive and Beaumont
14 Tire, despite City officials, including the Finance Director, Bill Aylward, having a
15 direct or indirect financial interest in the businesses, in violation of the City's
16 Conflict of Interest Code, Government Code section 1090 and the Political Reform
17 Act. Defendants, and each of them, further permitted Aylward to approve and
18 process payments and requisitions for these businesses despite the clear conflict of
19 interest.

20 ii. Defendants, and each of them, negligently allowed the City and
21 City-related entity to employ as City officials, individuals who owned Urban
22 Logic Consultants ("ULC"), a corporation that had a planning, economic
23 development, public works, engineering and other services contract with the City
24 since 1993. ULC was owned by Deepak Moorjani, David Dillon, and Ernest
25 Egger. Despite never being acknowledged or placed on City payroll, Moorjani
26 served as City Engineer and Public Works Director, Dillon served as Economic
27 Development Director, and Egger served as Planning Director. All three of these
28 individuals served in positions requiring compliance with the City's Conflict of

1 Interest Code and State conflict of interest laws, including Government Code
2 section 1090. However, on information and belief, defendants, and each of them,
3 negligently permitted Moorjani to improperly approve invoices/requisitions for
4 ULC, and Defendants, and each of them, negligently allowed Dillon, Moorjani,
5 and Egger to unlawfully profit from ULC contracts with the City in violation of
6 conflict of interest laws. On information and belief, Defendants, and each of them,
7 further allowed ULC, Dillon, Moorjani, Egger and/or other contractors of City to
8 grossly overcharge City for purported services. Despite having direct knowledge
9 of the conflicts of interest and other overcharges, Defendants, and each of them,
10 did nothing to inform/disclose to the City Council and/or other City related entity
11 Boards the conflicts of interest and/or overcharges or otherwise to prevent the
12 conflicts of interest and/or overcharges from occurring.

13 iii. Defendants, and each of them, negligently allowed the former City
14 Manager Kapanicas and former City Finance Director Alyward to submit false and
15 inflated billings to the City and City-related entity for payment and negligently
16 allowed the City and City-related entity to pay said false claims to these
17 individuals and to other contractors as well. On information and belief,
18 Defendants, and each of them, knew or should have known that false claims were
19 being submitted to the City and City-related entity for payments by Kapanicas,
20 Alyward and other contractors, and despite having direct knowledge of the false
21 claims, Defendants, and each of them, did nothing to inform/disclose to the City
22 Council and/or other City related entity Boards of the false claims, or otherwise to
23 prevent the conflicts of interest and/or overcharges from occurring

24 b. Defendants, and each of them, negligently failed to discover, impede or
25 otherwise disclose to the City Council/City related entity Boards the City officials',
26 contractors' and employees' conflicts of interest and overcharges, and on information and
27 belief, defendants, and each of them, know of and/or negligently permitted the conflicts of
28 interest and overcharges to continue, and/or actively concealed the existence of the

1 conflicts of interest and overcharges from the City Council/City related entity Boards.
2 Plaintiffs are informed and believe, and on that basis allege, that Defendants, and each of
3 them, knew or should have known, of the conflicts of interest of the City officials and of
4 the overcharges as alleged above, and defendants, and each of them, had a duty to report
5 these conflicts of interest and overcharges and to prevent the same, and Defendants, and
6 each of them, failed to do so.

7 c. Defendants, and each of them, negligently permitted the City to enter into
8 contracts in violation of State law and the City Code, which require the City to enter into
9 contracts through public bidding and hiring practices provided by the California Contract
10 Code. In violation of State law and City Code, Defendants, and each of them, permitted
11 the City and City-related entity to enter into agreements with the former City Manager
12 without advertising or accepting any applications for the position, and allowed City
13 professional services contracts, including that for the "City Engineer", to be awarded
14 without complying with competitive bidding procedures. Furthermore, Defendants, and
15 each of them, negligently failed to require ULC contracts to be submitted and approved in
16 an open and competitive process. Defendants, and each of them, also negligently
17 permitted the City to enter into contracts for procurement of electrical supplies and
18 equipment and contracts for services with Beaumont Electric without complying with
19 proper procurement procedures or competitive bidding.

20 d. Defendants negligently failed to discover and/or prevent the City from
21 making improper loans to public officials and gifting public funds, including but not
22 limited to the following:

23 i. Defendants negligently permitted the City to loan money to
24 individual members of the then City Council and a number of City employees.
25 Plaintiff is informed and believes, and on that basis alleges, that these were
26 personal loans (home repairs, personal computers, technology devices for
27 employees' families), and not for the public benefit, and were not disclosed on the
28 applicable Form 700s as required by law. Plaintiff is informed and believes, and

1 on that basis, alleges that the loans were unsecured and interest free, and that these
2 loans were not approved by City, or any of them, and were in violation of the City
3 Code and State law. Plaintiff is informed and believes, and on that basis alleges,
4 that Defendants, and each of them, knew or should have known of these improper
5 loans, and Defendants failed to report, disclose or otherwise prevent said loans
6 and/or failed to seek repayment and/or restitution for the City.

7 ii. Plaintiff is informed and believes, and on that basis alleges, that
8 Defendants, and each of them, negligently permitted the City Manager, Kapanicas,
9 to improperly authorize the wife of Deepak Moorjani to receive City healthcare/
10 COBRA benefits, despite having never been an employee of the City. Moreover,
11 Plaintiff is informed and believes, and on that basis alleges, that Defendants, and
12 each of them, negligently permitted Kapanicas to authorize Moorjani, an
13 independent contractor and not a City employee, to also receive healthcare benefits
14 under the City's group healthcare plan. Neither of the individuals qualified for
15 enrollment in the City employee plan, and yet, on information and believe,
16 defendants, and each of them, were aware that this was occurring and that it was
17 improper, and did nothing to stop it.

18 e. Defendants, and each of them, negligently allowed the City to improperly
19 transfer special funds to the General Fund. Plaintiff is informed and believes, and on that
20 basis alleges, that the City owes at least \$10 million to a special fund established to fund
21 crucial transportation and other infrastructure. Defendants, and each of them, negligently
22 permitted the City to "borrow" said special funds with no plan for repayment in violation
23 of State law and the California Constitution.

24 f. Defendants, and each of them, negligently advised and/or failed to advise
25 the City regarding the collection of Transportation Uniform Mitigation Fees ("TUMF") on
26 development projects, which the City was obliged to collect and remit to WRCOG
27 pursuant to the City's participation in Western Riverside Council of Government's TUMF
28 program, which was designed to mitigate traffic congestion in western Riverside County.

1 Plaintiff is informed and believes, and on that basis alleges, that ULC, Dillon, Egger,
2 Moorjani, Kapanicas, and/or other City officials, contractors and/or employees, devised an
3 illegal scheme to avoid collecting and/or remitting TUMF payments to the Western
4 Riverside Council of Governments, and that Defendants, and each of them, knew of
5 should have known of this illegal scheme, and they failed to disclose this illegal scheme to
6 the then City Council, which had voted for the City to participate in the TUMF program,
7 thereby setting the policy directive of the City to fully participate in the TUMF program in
8 good faith as a member of Western Riverside Council of Governments. As a result of the
9 City's failure to collect and/or remit TUMF payments to the Western Riverside Council of
10 Governments due to the illegal scheme as alleged herein, Western Riverside Council of
11 Governments filed the Western Riverside Council of Governments Action and prevailed
12 in its suit against the City, resulting in a judgment against the City for roughly \$60
13 million. As alleged above, the City and the Western Riverside Council of Governments
14 settled the Western Riverside Council of Governments Action in 2017 after judgment had
15 been entered, but while the City was appealing the matter. Plaintiff is informed and
16 believes, and on that basis alleges, that Defendants, and each of them, negligently gave the
17 City improper and/or incorrect legal advice to the City regarding its obligations to collect
18 and remit TUMF payments to Western Riverside Council of Governments both before and
19 during the TUMF Action, which resulted in the substantial judgment against the City,
20 which the City has since settled.

21 g. Defendants, and each of them, negligently failed to require City staff to
22 keep proper accounting and records of bond issuances, fixed assets and inventory; failed
23 to provide adequate oversight over contract awards; failed to advise the City and related
24 entities regarding State law and the City Code; failed to require the City to maintain
25 written administrative policies and procedures; and failed to require adequate financial
26 reporting or control over fiscal functions, which caused a massive deficit in the City's
27 General Fund to go unreported for many years.

1 h. Plaintiff is informed and believes, and on that basis allege, that Defendants,
2 and each of them, negligently or intentionally delayed in timely providing City with a
3 copy of all of their files related to City matters when requested following their termination
4 as City Attorney and General Counsel for the City-related entity. In or about April 2016,
5 City requested copies of their files from Defendants, and each of them, and yet it was not
6 until September or October 2016 that Defendants, and each of them, provided some, but
7 clearly not all, files to City. Plaintiff is informed and believes, and on that basis alleges,
8 that Defendants, and each of them, intentionally and/or negligently failed to provide all of
9 City's files to City, even though Defendants, and each of them, had a legal duty to do so.
10 As an example, but without limitation, Defendants, and each of them, have not given to
11 City any of their files regarding the Western Riverside Council of Governments Action,
12 which resulted in a judgment against the City in excess of \$60 million, even though City
13 had timely requested all of their files be returned upon termination of defendants.

14 18. As a direct result of Defendants', and each of their, gross negligence and failure to
15 fulfill the duties of City Attorney for the City and General Counsel for the City-related entity, the
16 City and City-related entity were damaged in an amount to be determined at trial, but in excess of
17 the jurisdictional minimum of this Court.

18 19. On or about April 1, 2016, City and Defendants, and each of them, entered into a
19 tolling agreement, which tolled the running of all applicable statutes of limitation for all claims
20 asserted herein. The original tolling agreement was set to expire on December 31, 2016, but on
21 or before December 30, 2016, the parties executed a first amended tolling agreement, which
22 further tolled the running of all applicable statutes of limitation for all claims asserted herein
23 through and until June 30, 2017.

24 **FIRST CAUSE OF ACTION**

25 (Legal Malpractice against all Defendants)

26 20. Plaintiff hereby incorporates by reference the allegations contained in paragraph 1
27 through 19 above as though fully set forth herein.
28

1 21. As a consequence of the attorney-client relationship that existed between
2 Defendants and City as alleged above, at all times relevant herein, Defendants owed a legal duty
3 City to exercise reasonable care and skill in performing legal services and giving legal advice to
4 City, and to refrain from acts of negligence and carelessness in discharging said duties.

5 22. Defendants, and each of them, owed a duty to City, in their capacity as City
6 Attorney for the City and General Counsel to the City-related entity, to use such skill, prudence,
7 and diligence as members of its profession commonly possess and exercise when acting in such
8 capacities.

9 23. Plaintiff is informed and believes, and on that basis alleges, that Defendants, and
10 each of them, breached the duties owed to City by, inter alia, failing to properly supervise,
11 monitor and/or oversee the actions of City officials contractors and/or employees, and negligently
12 permitting members of the City staff and contractors to manipulate and ignore the requirements of
13 the law regarding conflicts of interest, and to act secretly and unlawfully and engage in self-
14 dealing to the detriment of the City, and to overcharge the City and City-related entity for
15 purported services rendered; by failing to discover, impede or otherwise disclose to the City
16 Council/City related entity Boards, the City Officials' conflicts of interest, and by negligently
17 permitting the conflicts to continue and/or actively concealing the existence of conflicts of
18 interest thereof; by negligently permitting the City to enter into contracts in violation of State law
19 and the City Code which requires the City to enter contracts through public bidding and hiring
20 practices provided by the California Contract Code; by negligently failing to discover and/or
21 prevent the City from making improper loans to public officials and gifting public funds; by
22 negligently permitting the City to improperly transfer special funds to the General Fund; by
23 negligently advising and/or failing to advise the City regarding the collection and remittance of
24 TUMF fees on development projects to Western Riverside Council of Governments; by
25 negligently failing to require City staff, contractors and/or employees to keep proper accounting
26 and records of bond issuances, fixed assets and inventory; by negligently failing to provide
27 adequate oversight over contract awards; by negligently failing to advise the City regarding State
28 law and the City Code; by negligently failing to require the City to maintain written

1 administrative policies and procedures; by negligently failing to require adequate financial
2 reporting or control over fiscal functions, and by negligently (or intentionally) delaying in
3 providing City with their files upon termination of the attorney-client relationship, or for some
4 matters, including but not limited to the Western Riverside Council of Governments Action,
5 failing to return to City any of their files.

6 24. Plaintiff is informed and believes, and on that basis alleges, that as a direct and
7 proximate result of Defendants' negligence in failing to exercise proper care and skill as alleged
8 herein, City sustained actual damages and continue to sustain actual damages. City's damages
9 are in an amount to be determined at trial, but are in excess of the jurisdictional minimum of this
10 Court.

11 SECOND CAUSE OF ACTION

12 (Breach of Fiduciary Duty against all Defendants)

13 25. Plaintiff hereby incorporates by reference the allegations contained in paragraph 1
14 through 24 above as though fully set forth herein.

15 26. By virtue of the attorney-client relationship that existed between Defendants and
16 City, and by virtue of City having placed confidence in the honesty, fidelity, and integrity of
17 Defendants, and each of them, a confidential relationship existed between the City and City-
18 related entity, on the one hand, and Defendants, and each of them, on the other hand, at all times
19 mentioned herein. Defendants, and each of them, thereby owed City a fiduciary duty to act at all
20 times in the best interests of the City and City-related entity.

21 27. Despite having accepted the trust and confidence of City, and in violation of this
22 relationship of trust and confidence, Defendants, and each of them, abused the trust and
23 confidence of City by, inter alia, failing to properly supervise, monitor and/or oversee the actions
24 of City officials, contractors and/or employees, and negligently permitting members of the City
25 staff and contractors to manipulate and ignore the requirements of the law regarding conflicts of
26 interest, and to overcharge the City for purported services rendered, and to act secretly and
27 unlawfully and engage in self-dealing to the detriment of City; by failing to discover, impede or
28 otherwise disclose to the City Council and City related entity Boards the City officials',

1 contractors' and/or employees' conflicts of interest, overcharges and self-dealings, and by
2 negligently permitting the conflicts, overcharges and self-dealings to continue and/or actively
3 concealing the existence thereof; by negligently permitting the City to enter into contracts in
4 violation of State law and the City Code which requires the City to enter contracts through public
5 bidding and hiring practices provided by the California Contract Code; by negligently failing to
6 discover and/or prevent the City from making improper loans to public officials and gifting public
7 funds; by negligently permitting the City to improperly transfer special funds to the General
8 Fund; by negligently advising and/or failing to advise the City regarding the collection and
9 remittance of TUMF fees to the Western Riverside Council of Governments on development
10 projects; by negligently failing to require City staff and contractors to keep proper accounting and
11 records of bond issuances, fixed assets and inventory; by negligently failing to provide adequate
12 oversight over contract awards; by negligently failing to advise the City regarding State law and
13 the Municipal Code; by negligently failing to require the City to maintain written administrative
14 policies and procedures; by negligently failing to require adequate financial reporting or control
15 over fiscal functions, and by delaying in providing City with their files upon termination of the
16 attorney-client relationship, or for some matters, including but not limited to the Western
17 Riverside Council of Governments Action, failing to return to City any of their files.

18 28. Plaintiff is informed and believes, and on that basis alleges, that as a direct and
19 proximate result of Defendants' negligence in failing to exercise proper care and skill as alleged
20 herein, City sustained actual damages and continue to sustain actual damages. City's damages
21 are in an amount to be determined at trial, but are in excess of the jurisdictional minimum of this
22 Court.

23 29. Plaintiff is informed and believes, and on that basis allege, that the conduct of
24 Defendants, and each of them, as alleged herein, was malicious and unconscionable, and that an
25 award of exemplary or punitive damages is warranted as against these defendants, and each of
26 them, in an amount to be proven at trial.

27 ///

28 ///

THIRD CAUSE OF ACTION

(Breach of Contract against all Defendants)

30. Plaintiff hereby incorporates by reference the allegations contained in paragraph 1 through 29 above as though fully set forth herein.

31. On or about March 1, 1992, Defendant Aklufi and Defendant Wysocki, as partners of Defendant Aklufi & Wysocki, entered into an agreement with the City for general legal services, which was later formalized in writing and renewed and amended periodically ("Agreement").

32. Pursuant to the Agreement, Aklufi & Wysocki was appointed as the City's legal counsel: Defendant Aklufi was to represent the City as City Attorney and City-related entity as General Counsel; Defendant Wysocki was to function as Deputy City Attorney for the City and Deputy General Counsel for the City-related entity. Pursuant to the Agreement, Defendants, and each of them, were to "provide such legal services to the City as are requested by the City including, but not limited to, attending all meetings of the City Council; conferring with and advising any and all officers and employees of the City and furnishing written opinions relating to City matters when requested to do so; drafting and preparing any and all ordinances, resolutions, legal instruments or documents requested by the City; preparing pleadings and other documents relating to matters involving the City pending before the courts, quasi-judicial or administrative bodies, and making appearances to represent the City before any court, quasi-judicial, administrative or legislative body."

33. City and/or Plaintiff have performed all conditions, covenants, and promises required to be performed in accordance with the terms of the Agreement, except for those conditions, covenants and promise which were excused by the Defendants and/or conditions, covenants, and promises which City was prevented from performing by the acts or omissions on the part of Defendants.

34. Defendants, and each of them, have breached the Agreement by, inter alia, failing to properly supervise, monitor and/or oversee the actions of City officials, contractors and/or employees, and negligently permitting members of the City staff and contractors to manipulate

1 and ignore the requirements of the law regarding conflicts of interest, to overcharge the City and
2 City-related entity for purported services, and to act secretly and unlawfully and engage in self-
3 dealing to the detriment of City; by failing to discover, impede or otherwise disclose to the City
4 Council and City related entity Boards the City officials', contractors' and employees' conflicts
5 of interest, and by permitting the conflicts, overpayments and self-dealings to continue and/or
6 actively concealing the existence thereof; by permitting City to enter into contracts in violation of
7 State law and the City Code which requires the City to enter into contracts through public bidding
8 and hiring practices provided by the California Contract Code; by negligently failing to discover
9 and/or prevent the City from making improper loans to public officials and gifting public funds;
10 by negligently permitting the City to improperly transfer special funds to the General Fund; by
11 negligently advising and/or failing to advise the City regarding the collection of TUMF fees on
12 development projects; by negligently failing to require City Management to keep proper
13 accounting and records of bond issuances, fixed assets and inventory; by negligently failing to
14 provide adequate oversight over contract awards; by negligently failing to advise the City
15 regarding State law and the Municipal Code; by negligently failing to require the City to maintain
16 written administrative policies and procedures; by negligently failing to require adequate financial
17 reporting or control over fiscal functions, and by delaying in providing City with their files upon
18 termination of the attorney-client relationship, or for some matters, including but not limited to
19 the Western Riverside Council of Governments Action, failing to return to City any of their files.

20 35. Plaintiff is informed and believes, and on that basis alleges, that as a direct and
21 proximate result of &W's breaches of the Agreement as alleged herein, City sustained actual
22 damages and continue to sustain actual damages. City's damages are in an amount to be
23 determined at trial, but are in excess of the jurisdictional minimum of this Court.

24 36. Further, the Agreement provides that "[s]hould it become necessary to file an
25 action or proceeding to enforce this agreement, or any provision of this agreement, the prevailing
26 party in such an action shall be entitled to recover, in addition to damages, the reasonable amount
27 of his attorneys' fees and costs incurred in such action."

28 ///

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

37. For compensatory damages in an amount to be determined at trial;
38. For exemplary and punitive damages in amount to be determined at trial;
39. For costs of suit incurred herein;
40. For reasonable attorneys' fees, as allowed by law; and
41. For such other and further relief as the Court deems just and proper.

Dated: June 30, 2017

BEST BEST & KRIEGER LLP

By: 

JEFFREY V. DUNN
CHRISTOPHER M. PISANO
Attorneys for Plaintiff
Western Riverside Council of
Governments

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jeffrey V. Dunn, SBN 131926 Best Best & Krieger LLP 18101 Von Karman Ave., Ste. 1000 Irvine, CA 92612 TELEPHONE NO.: (949) 263-2600 FAX NO.: ATTORNEY FOR (Name): Plaintiff Western Riverside Council of Governments	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE STREET ADDRESS: 4050 Main Street MAILING ADDRESS: CITY AND ZIP CODE: Riverside, California 92501 BRANCH NAME:	
CASE NAME: Western Riverside Council of Governments v. Joseph Aklufi, an individual; et al.	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
	CASE NUMBER: RIC 1712044 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 3
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 30, 2017

Jeffrey V. Dunn

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36) Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
4050 Main Street
Riverside, CA 92501
www.riverside.courts.ca.gov

NOTICE OF DEPARTMENT ASSIGNMENT FOR ALL PURPOSES

WESTERN RIVERSIDE COUNCIL VS AKLUFU

CASE NO. RIC1712044

This case is assigned to the Honorable Judge Irma Poole Asberry in Department 03 for all purposes.

The Case Management Conference is scheduled for 12/28/17 at 8:30 in Department

The plaintiff/cross-complainant shall serve a copy of this notice on all defendants/cross-defendants who are named or added to the complaint and file proof of service.

Any disqualification pursuant to CCP Section 170.6 shall be filed in accordance with that section. The court follows California Rules of Court, Rule 3.1308(a) (1) for tentative rulings (see Riverside Superior Court Local Rule 3316). Tentative Rulings for each law and motion matter are posted on the Internet by 3:00 pm on the court day immediately before the hearing at <http://www.riverside.courts.ca.gov/tentativerulings.shtml>. If you do not have internet access, you may obtain the tentative ruling by telephone at (760)904-5722.

To request oral argument, not later than 4:30 pm on the court day before the hearing you must (1) notify the judicial secretary at (760)904-5722 and (2) inform all other parties. If no request for oral argument is made by 4:30 pm, the tentative ruling will become the final ruling on the matter effective the date of the hearing.

Requests for accommodations can be made by submitting Judicial Council form MC-410 no fewer than five court days before the hearing. See California Rules of Court, rule

CERTIFICATE OF MAILING

I certify that I am currently employed by the Superior Court of California, County of Riverside, and that I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the foregoing NOTICE on this date, by depositing said copy as stated above.

Date: 06/30/17

Court Executive Officer/Clerk

by:


ELIZETH RODRIGUEZ, Deputy Clerk