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9 Attorneys for Respondent  
10 CITY OF CARMEL-BY-THE-SEA

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF MONTEREY

14  
15 ROYAL CALKINS, an Individual,  
16 Petitioner,  
17 v.  
18 CITY OF CARMEL-BY-THE-SEA, and  
Does 1 through 10, inclusive,  
19 Respondents.

CASE NO.: 18CV002532

**DECLARATION OF JON R. GIFFEN  
IN SUPPORT OF RESPONDENT  
CITY OF CARMEL-BY-THE-SEA'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO  
APPLICATION/PETITION FOR  
WRIT OF MANDATE**

20  
21 Date: September 7, 2018  
22 Time: 9:00 a.m.  
23 Dept: 14

24  
25 I, Jon R. Giffen, declare as follows:

26 1. I am an attorney duly licensed to practice in the State of California and am a  
27 shareholder in the law firm of Kennedy, Archer & Giffen, counsel for respondent City of Carmel-  
28 by-the-Sea (the "City"). I make this declaration in support of the City's memorandum in

1 opposition to Petitioner’s Application/Petition for Writ of Mandate. Except where expressly stated  
2 on information and belief, I have personal knowledge of the facts set forth below and, if called as a  
3 witness, I could and would testify competently thereto.

4 2. On June 4, 2018, as part of City Attorney Glen Mozingo’s first annual performance  
5 review, and additionally to address allegations of misrepresentations in Mr. Mozingo’s  
6 resume/application made by Petitioner Royal Calkins (“Petitioner” or “Calkins”), the City Council  
7 held a closed session, as authorized under provisions of the Brown Act (the “Closed Session”).

8 3. A true and correct copy of the City Council Agenda including the Closed Session is  
9 attached hereto as **Exhibit A** (the “Agenda”).

10 4. The Closed Session Agenda items included a “Public Employee Performance  
11 Evaluation” for Mr. Mozingo, and a “Conference with Legal Counsel” pertaining to facts and  
12 circumstances of anticipated litigation from Petitioner about Mr. Mozingo.

13 5. I attended part of the Closed Session – i.e., Agenda line item B of the Public  
14 Employee Performance Evaluation of Mr. Mozingo. During the Closed Session, members of the  
15 City Council met with Mr. Mozingo, me in my capacity as Assistant City Attorney, and Gerard  
16 Rose in his capacity as Deputy City Attorney.

17 6. The purposes of the Closed Session were in part (a) to conduct Mr. Mozingo’s first  
18 annual performance review and (b) to consider and address Calkins’ allegations of fraud and  
19 malfeasance, and to assess any potential threat of litigation.

20 7. During the Closed Session, Mr. Mozingo and counsel were requested to address the  
21 substance of the allegations made by Calkins against Mr. Mozingo. These conversations were  
22 protected by the attorney-client privilege and work product protections.

23 8. During the Closed Session, Mr. Mozingo provided an extensive and in-depth  
24 review of supporting documentation to his resume, including by showing the City Council  
25 diplomas, degrees, licenses, membership verifications and National Republican Congressional  
26 Committee awards, letters of verification and substantiation, scholastic awards, a letter confirming  
27 his appointment to the London Court of Arbitration, and letters of commendation from the  
28 Secretary of the Treasury and then-sitting Supreme Court Justice William O’ Douglas (the “Closed



# EXHIBIT A



## CITY OF CARMEL-BY-THE-SEA CITY COUNCIL AGENDA

Mayor Steve G. Dallas, Council Members Carolyn  
Hardy,  
Jan Reimers, Bobby Richards, and Carrie Theis  
Contact: 831.620.2000 [www.ci.carmel.ca.us/carmel](http://www.ci.carmel.ca.us/carmel)

All meetings are held in the City Council Chambers  
East Side of Monte Verde Street  
Between Ocean and 7th Avenues

### CITY COUNCIL SPECIAL MEETING - CLOSED SESSION Monday, June 4, 2018

**OPEN SESSION  
2:00 PM**

#### CALL TO ORDER AND ROLL CALL

#### ANNOUNCEMENTS

#### PUBLIC APPEARANCES

Members of the public are entitled to speak on matters of municipal concern not on the agenda during Public Appearances. Each person's comments shall be limited to 3 minutes, or as otherwise established by the City Council, Board or Commission. Matters not appearing on the City Council, Board or Commission's agenda will not receive action at this meeting but may be referred to staff for a future meeting. Persons are not required to give their names, but it is helpful for speakers to state their names so that they may be identified in the minutes of the meeting.

#### CLOSED SESSION IMMEDIATELY FOLLOWING

- A. Public Employee Performance Evaluation (Government Code § 54957) City Administrator
- B. Public Employee Performance Evaluation (Government Code § 54957) City Attorney
- C. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
Pursuant to Government Code Section 54956.9(D)(1)  
Name of Case: Alfred Johnson v. City of Carmel and Does 1 through Doe 20, inclusive,  
Respondents/Defendants: Monterey County Superior Court Case No.17CV003800
- D. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
Pursuant to Government Code Section 54956.9(D)(1)  
Name of Case: Chilone Payton vs. City of Carmel-by-the-Sea, CA  
Monterey Superior Court Case No. 16CV003820
- E. CONFERENCE WITH LEGAL COUNSEL - EXISTING OR ANTICIPATED LITIGATION  
(Facts and Circumstances)

One (1) Anticipated case  
Significant exposure to litigation pursuant to subdivision (b) of  
Government Code Section 54956.9(d)(2): 1 case

**F. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Pursuant to Government Code Section 54956.9(D)(1)

Name of Case: Yolanda Macias v. City of Carmel-by-the-Sea, California, and Does 1  
through Doe 25, inclusive, Respondents/Defendants Monterey County Superior Court  
Case No.17CV003685

**G. Public Employee Discipline/Dismissal Release § 54957**

**FUTURE AGENDA ITEMS**

**ADJOURNMENT**

This agenda was posted at City Hall, Monte Verde Street between Ocean Avenue and 7th Avenue, Harrison Memorial Library, NE corner of Ocean Avenue and Lincoln Street, and the Carmel-by-the-Sea Post Office, 5th Avenue between Dolores Street and San Carlos Street, and the City's webpage <http://www.ci.carmel.ca.us/carmel/> on in accordance with the applicable legal requirements.

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Thomas A. Graves, MMC  
City Clerk

**SUPPLEMENTAL MATERIAL RECEIVED AFTER THE POSTING OF THE AGENDA**

Any supplemental writings or documents distributed to a majority of the City Council, Board or Commission regarding any item on this agenda, after the posting of the agenda and received by 12:00PM the day of the Council meeting, will be available for public review in the City Clerk's Office located at City Hall, Monte Verde Street between Ocean Avenue and 7th Avenue, during normal business hours. In addition, such writings or documents will be available for public review at the respective meeting. Documents or and writings received at the meeting or after 12:00PM the day of the meeting will be made available for public review the following business day.

**SPECIAL NOTICES TO PUBLIC**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at 831-620-2007 at least 48 hours prior to the meeting to ensure that reasonable arrangements can be made to provide accessibility to the meeting (28CFR 35.102-35.104 ADA Title II).

**CHALLENGING DECISIONS OF CITY ENTITIES** The time limit within which to commence any lawsuit or legal challenge to any quasi-adjudicative decision made by the City of Carmel-by-the-Sea is governed by Section 1094.6 of the Code of Civil Procedure, unless a shorter limitation period is specified by any other provision, including without limitation Government Code section 65009 applicable to many land use and zoning decisions, Government Code section 66499.37 applicable to the Subdivision Map Act, and Public Resources Code section 21167 applicable to the California Environmental Quality Act (CEQA). Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred. Government Code section 65009 and 66499.37, and Public Resources Code section 21167, impose shorter limitations periods and requirements, including timely service in addition to filing. If a person wishes to challenge the above actions in court, they may be limited to raising only those issues they or someone else raised at the meeting described in this notice, or in written correspondence delivered to the City of Carmel-by-the-Sea, at or prior to the meeting. In addition, judicial challenge may be limited or barred where the interested party has not sought and exhausted all available administrative remedies.

1 **PROOF OF SERVICE**

2 I am a resident of the County of Monterey. I am over the age of eighteen (18) years and  
3 not a party to the within above-entitled action; my business address is 24591 Silver Cloud Court,  
4 Suite 200, Monterey, California 93940. I am readily familiar with my employer's business  
5 practice for collection and processing of correspondence for mailing with the United States Postal  
6 service.

7 On the date written below, following ordinary business practice, I served a copy of the  
8 following documents:

9 **DECLARATION OF JON R. GIFFEN IN SUPPORT OF RESPONDENT CITY OF**  
10 **CARMEL-BY-THE-SEA'S MEMORANDUM OF POINTS AND AUTHORITIES IN**  
11 **OPPOSITION TO APPLICATION/PETITION FOR WRIT OF MANDATE**

12 by serving on the parties or their attorney of record in this action listed below by the following  
13 means:

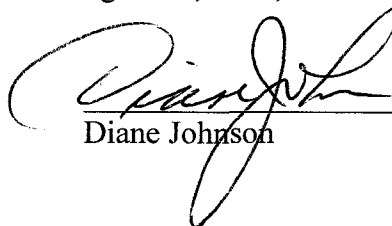
14 [ ] **BY MAIL.** By placing each envelope (with postage affixed and pre-paid thereto) in the  
15 U.S. Mail at the law offices of Kennedy, Archer & Giffen, 24591 Silver Cloud Court, Suite  
16 200, Monterey, CA 93940, addressed as shown below. I am readily familiar with this  
17 firm's practice for collection and processing of correspondence for mailing with the U.S.  
18 Postal Service and in the ordinary course of business, correspondence would be deposited  
19 with the U.S. Postal Service the same day it was placed for collection and processing.

20 [ ] **BY OVERNIGHT DELIVERY.** By placing with Federal Express for delivery a true  
21 copy thereof, enclosed in a sealed envelope, with delivery charges to be billed to Kennedy,  
22 Archer & Giffen, to the address(es) shown below.

23 [ X ] **BY E-MAIL/ELECTRONIC TRANSMISSION.** Based on an agreement of the parties  
24 to accept service by email or electronic transmission, I caused the documents to be sent to  
25 the persons at the email addresses listed below. I did not receive, within a reasonable time  
26 after the transmission, any electronic message or other indication that the transmission was  
27 unsuccessful.

28 Neil L. Shapiro, Esq.  
Law Offices of Neil L. Shapiro  
P.O. Box 4086  
Carmel, CA 93921  
nlshapiro@sbcglobal.net

I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct. Executed on August 17, 2018, at Monterey, California.

  
\_\_\_\_\_  
Diane Johnson