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October 4, 2017

Honorable Chief Justice,
Tani Gorre Cantil-Sakauye
& Honorable Associate Justices,
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: *Rand Resources, LLC et al. v. City of Carson et al*,
California Supreme Court, Case No. S235735

The Honorable Chief Justice Cantil-Sakauye & Associate Justices:

As invited by this Honorable Court, by order dated September 20, 2017, Dr. Leonard Bloom and U.S. Capital LLC. (collectively referred to as "Dr. Bloom") submits this letter brief to address the effect, if any, of *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, on the issues presented in the current appeal. For the reasons that follow, Dr. Bloom is of the opinion that *Park* resolves one of the issues pending in this appeal in favor of Dr. Bloom.

I. INTRODUCTION

This Court's *Park* opinion addresses an existing "uncertainty over how to determine when '[a] cause of action against a person 'aris[es] from' that person's protected activity." (*Id.* at 1062, quoting Code of Civ. Proc. § 425.15, subd. (b).)[1] *Park* defines how a claim "arises from" certain activity, but does not address whether that activity constitutes "protected activity."

This Court's grant of review raised two discrete issues: (1) Did [Rand Resources, LLC and Carson El Camino, LLC's (collectively, "Rand's") fraud based] causes of action alleging the breach of and interference with an exclusive agency agreement to negotiate the designation

[1] All further unlabeled statutory references are to the Code of Civil Procedure.

and development of a National Football League (NFL) stadium and related claims *arise out of* a public issue or *an issue of public interest* within the meaning of Code of Civil Procedure section 425.16? (2) Did plaintiffs' causes of action *arise out of* communications made in connection with an *issue under consideration by a legislative body*? (Italics added.)

Respectfully, *Park* resolves the "*arise out of*" issue in Dr. Bloom's favor because each of the alleged statements/activities made or taken by Dr. Bloom are alleged in the underlying complaint to have arose only from Dr. Bloom's and the City of Carson and then Mayor James Dear's (collectively referred to as "City") exercise of their free speech rights in connection with a public issue which are, "in and of themselves," the acts which Rand's intentional interference and fraud-based causes of action "arise from." *Park* however does not address whether the speech in question involved ***either*** an "*issue of public interest*" ***or*** an "*issue under consideration by a legislative body*." As such *Park* is distinguishable in that respect.

II. ANALYSIS

It is without dispute, that Section 425.16 provides a two-prong analysis for determining whether an action may be stricken under the anti-SLAPP statute. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.) The first prong requires the trial courts to determine whether a defendant has made a threshold showing that the challenged cause of action is one arising from protected activity.[2] (*Id.*) The present appeal is focused on this first prong, which can be broken down as follows: Do the challenged causes of action for intentional interference and fraud in the Rand First Amended Complaint ("FAC") (1) arise from (2) protected activity? As noted, *Park* addresses the "arising from" requirement, but not the "protected activity" element.

Pursuant to *Park*, a claim "arises from" protected activity "if the protected activity[3] *itself* is the wrong complained of, and not just evidence of liability or a step leading to some

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[2] The second prong of a court's analysis is to determine whether the plaintiff has demonstrated a probability of prevailing on the claim (*Navellier*, 29 Cal.4th at 89); however this second prong is not at issue in the present appeal.

[3] At issue in the present appeal is whether the underlying statements/actions of Dr. Bloom in interacting with Mayor Dear, which are the basis of Plaintiffs' intentional interference and fraud based causes of action, constitute "protected activity" pursuant to Section 425.16, subd. (e). This Court's *Park* opinion, however, ***assumed*** that the underlying conduct subject to the anti-SLAPP statute constituted "protected activity" in assessing whether claims "arise from" protected activity. Accordingly, for the purposes of addressing the "arising from" requirement argument, this brief will refer to the underlying conduct as "protected activity," (and as previously fully briefed) although that characterization of the conduct in the present appeal in disputed by Rand.

different act for which liability is asserted." (*Park, supra,* 2 Cal.5th at 1060.) This Court's *Park* opinion embraced your previous opinion in *Navellier v. Sletten* (2002) 29 Cal.4th 82, which held that claims of breach of contract and fraud can be stricken pursuant to the anti-SLAPP statute where the protected activity supplied "elements" of the challenged claims. (*Id.* at 1063-64.)

The present appeal is factually analogous to *Navellier* in that Rand alleges causes of action for intentional interference with contract/business advantage and fraud which are based on misrepresentations similar to those alleged in *Navellier*, which were found to "arise from" protected activity. Accordingly, the "arising from" requirement has been met in the appeal before this Court pursuant to *Park.*

A. Because *Park* Affirmed This Court's Previous Ruling in *Navellier*, the "Arising From" Requirement Has Been Met With Respect to the Claims that are the Subject of Dr. Bloom's Anti-SLAPP Motion.

Park defines the requisite nexus between the claims an anti-SLAPP motion challenges and the underlying activity forming the bases of the claims. *Park* held that in order to meet the "arising from" requirement "the defendant's act underlying the plaintiff's cause of action must *itself* have been an act in furtherance of the right of petition or free speech." (*Park, supra,* 2 Cal.5th at 1063 (emphasis in original).)

Park followed its previous ruling in *Navellier*, which found breach of contract and fraud claims were subject to be stricken pursuant to the anti-SLAPP statute. (*Id.* 1063-1064.) As this Court noted in *Navellier*, "fraud claims are not categorically excluded from the operation of the anti-SLAPP statute . . . . ." (*Navellier, supra,* 29 Cal.4th at 82). In *Navellier*, the plaintiffs, Navellier and NMI, filed a federal action against the defendant, Sletten. (*Id.* at 85.) The parties subsequently entered into an agreement to settle part of the federal action and Sletten executed a release of liability in favor of Navellier and NMI as part of the settlement. (*Id.* at 86.)

Sletten nevertheless proceeded to file counterclaims against Navellier and NMI in the remaining federal action. (*Id.*) In state court, Navellier and NMI alleged that Sletten fraudulently represented his intent to be bound by the release and that he breached the settlement agreement by filing his counterclaims in the federal action. (*Id.*) This Court found that Sletten's "misrepresentation of his intent not to file counterclaims . . . supplied an essential element of the fraud claim," thereby "falling squarely within the ambit of the anti-SLAPP statute's 'arising from' prong." (*Id.* at 1063, 1064.)

The present appeal presents facts strikingly similar to those of *Navellier*. Rand alleges that here, the communications between Dr. Bloom and the City that are the heart of the fraud claims consisted of "clandestine meetings," "talk(s) by the phone or through text messages," and "confidential emails." (FAC at ¶¶ 31, 35-37 and 63-65). Moreover, it is alleged the gist of these the communications were designed to "induc[e] the City to cease negotiations" to end the exclusive negotiation agreement and were designed here "to cause the City to breach its prior representations and agreement to extend the EAA" (FAC at ¶42.).

Accordingly, Rand's intentional interference and fraud-based causes of action allege that Dr. Bloom's actions with the City engaged in "secret" and "clandestine" meetings and conversations which "in and of themselves" were "in furtherance of the right of petition or free speech" by addressing whom should act for, or continue to act for, the City as its exclusive agent for purposes of negotiation a billion dollar football franchise and stadium. They constitute the acts which Rand's intentional interference and fraud-based causes of action "arise from."

B. *Park* Did Not Address What Conduct Constitutes "Protected Activity."

Also before this Court in the present appeal is whether Rand's intentional interference and fraud based causes of action arose out of "protected activity" under Section 425.16. Specifically, the issue is whether the aforementioned alleged conduct by Dr. Bloom constituted either (1) conduct in furtherance of the exercise of the constitutional right of free speech in connection with a public issue or an issue of public interest (section 452.16, subd. (e)(4)); or oral statements made in connection with an issue under consideration or review by a legislative body (section 452.16, subd. (e)(2)).

While this Court's opinion in *Park* clarifies whether the "arise out of" requirement has been met in a case, this Court specifically did not address the issue of whether particular conduct was "in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest" pursuant to Section 425.16, subd. (e)(4). (*Park, supra,* 2 Cal. 5th at 1072.)

Park is also silent on the issue of what oral statements could be considered "made in connection with an issue under consideration or review by a legislative . . . body" pursuant to Section 425.16, subd. (e)(2). Because *Park* does not address the issue of whether the conduct alleged by Rand constituted protected activity within the meaning of Section 425.16, it does

not have any effect on whether the alleged activity of Dr. Bloom and the City were made in furtherance of speech as described in Section 425.16, subd. (e).[4]

III. CONCLUSION

The *Park* opinion supports the Dr. Bloom's argument that Rand's intentional interference and fraud based causes of action "arose from" the alleged protected activity of these defendants. *Park,* however, does not address whether those activities which form the basis for Rand's intentional interference and fraud based causes of action constitute "protected activity."

Respectfully Submitted,
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[4] As this court is aware, Dr. Bloom outlined in his prior briefing how the alleged conduct was "in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest" and/or "made in connection with an issue under consideration or review by a legislative . . . body".

PROOF OF SERVICE:
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 21700 Oxnard Street, Suite 1590, Woodland Hills, California, which is located in the county in which the within-mentioned mailing occurred.

On October 4, 2017, I served true copies of the following document(s) described as
Dr. Leonard Bloom and U.S. Capital LLC.'s Letter Brief by order dated September 20, 2017
on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY OVERNIGHT and US MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Tamborelli Law Group's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

I declare under penalty of perjury that the foregoing is true and correct.
Executed on October 4, 2017, at Woodland Hills, California.

Ronnie Gipson

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