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October 19, 2017

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VIA HAND DELIVERY

SUPREME COURT
FILED

OCT 20 2017

Jorge Navarrete Clerk

Deputy

Honorable Chief Justice
Tani Gorre Cantil-Sakauye
And Honorable Associate Justices
California Supreme Court
Earl Warren Building
350 McAllister Street
San Francisco, CA 94102

Re: *Rand Resources, LLC, et al.*, Plaintiffs, Appellants, and Respondents v. *City of Carson, et al.*, Defendants, Respondents, and Petitioners, Supreme Court Case No. S235735 (Court of Appeal, Second Appellate District, Division One, Case No. B264493)

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Plaintiffs, Appellants, and Respondents Rand Resources, LLC and Carson El Camino, LLC (collectively, "Plaintiffs" or "Rand") hereby submit their letter brief responding to arguments raised by Defendants, Respondents, and Petitioners the City of Carson (the "City"), James Dear ("Dear"), Dr. Leonard Bloom ("Bloom") and U.S. Capital LLC ("U.S. Capital") (collectively, "Defendants") in the above-captioned matter.

Unable to contest *Park*'s applicability, Defendants instead ignore its reasoning and base their letter brief almost entirely on a different case (*Navellier v. Sletten*, 29 Cal. 4th 82, 85 (2002)) that they misread altogether. Defendants' arguments should be rejected.[1]

[1] Because Defendants' letter briefs are virtual carbon copies of each other, Rand responds to the arguments raised therein together here.

I. *PARK* SUPPORTS THE COURT OF APPEAL'S UNANIMOUS OPINION THAT PLAINTIFFS' CLAIMS ARISE FROM CONDUCT, NOT SPEECH.

Speech, in its literal sense, plays a role in every (or nearly every) case, and thus the mere fact that a case involves such "speech" cannot possibly trigger the anti-SLAPP statute. In *Park*, the Court reaffirmed as much, explaining that:

> [A] claim is not subject to a motion to strike simply because it contests an action or decision that was arrived at following speech or petitioning activity, or that was thereafter communicated by means of speech or petitioning activity. Rather, a claim may be struck only *if the speech or petitioning activity itself is the wrong complained of.*

Park v. Board of Trustees of California State University, 2 Cal. 5th 1057, 1060 (emphasis added).

In *Park*, this Court held that the anti-SLAPP statute did not apply to an assistant professor's claim that he had been wrongfully denied tenure due to racial animus. The basis of alleged liability was the denial of tenure, which was an *action* taken by the school rather than protected speech. *Id.* at 1068. That speech was involved in numerous ways – alleged comments by the professor's dean, statements made in connection with the school's internal grievance process, comments and evaluations regarding whether he deserved tenure, and communications by the school documenting the tenure decision – did not implicate the anti-SLAPP statute because those communications were fundamentally evidence and context, not the basis of alleged liability. *Id.*

As the Court of Appeal's opinion details, the same distinction applies here. Defendants' liability is premised on their wrongful conduct—acting as the City's *de facto* agent in negotiations with the National Football League (NFL) during a period when Rand possessed the exclusive right to act as the City's agent, actively undermining Rand's contract with the City, and lying to Rand about their actions. (Court of Appeal Op. at 13, 16-17; AA:1:2:31-33). The mere fact that Defendants may have spoken in the course of breaching their contractual and tort-based duties to Rand does not transmute the

complaint from one based on garden-variety commercial conduct to one based on protected speech.

II. DEFENDANTS MISREPRESENT THE RECORD AND THE LAW.

Unable to reasonably dispute *Park*'s applicability, Defendants essentially ignore it and focus instead an entirely different case, *Navellier*. In so doing, they profoundly misread both *Park* and *Navellier* and misrepresent the factual record here.

Defendants' substantive argument that *Navellier* helps them is specious. There, a defendant in a federal lawsuit signed a settlement and release stating his intention not to file claims against the plaintiffs, and then later turned around and filed counterclaims against the plaintiffs later in the case. 29 Cal.4th at 85-86. The federal plaintiffs sued in state court for fraud and breach of contract, alleging that filing the counterclaims breached the defendant's earlier promise not to file such claims. *Id.* at 87. This Court first determined that the action arose from (i) statements made in the settlement of litigation, and (ii) the filing of subsequent pleadings in that litigation. The Court then asked whether those statements and pleadings were "statement[s] or writing[s] made in connection with an issue under consideration or review by . . . a judicial body." *Id.* at 90 (alteration in original). The Court reached the unexceptional conclusion that they were and thus the action arose from petitioning activity implicating the anti-SLAPP statute. *Id.* ("Sletten is being sued because of the affirmative counterclaims he filed in federal court. In fact, but for the federal lawsuit and Sletten's alleged actions taken in connection with that litigation, plaintiffs' present claims would have no basis.").

Here, by stark contrast, Defendants are not being sued because of filings they made in federal court or any other judicial proceeding. Neither are they being sued for expressing an opinion about who should be the City's representative, or about whether the NFL should come to Carson, or for petitioning the City Council to change agents when it was next able to do so.

Moreover, Defendants' contention that the speech alleged in the operative complaint "address[ed] whom [sic] should act for, or continue to act for, the City as its exclusive agent . . ." is flatly contradicted by the record.

City Ltr. Br. at 4; Bloom Ltr. Br. at 4. Indeed, even a cursory review of the actual First Amended Complaint (as opposed to the straw man portrayed in Defendants' briefs) makes clear that the communications cited therein nowhere make reference to such normative policy opinions as who *should* represent the City in negotiations. Rather, they are prosaic communications evidencing Bloom's displacement of Rand as the City's *de facto* agent and Defendants' attempts to interfere with Rand's contract and lies about their actions and intentions. AA:1:2:31-33. Indeed, far from expressing protected opinions, most of the conversations alleged here *took place in secret*, putting the lie to Defendants' argument that this case arises out of some grand policy debate. *Id.*[2]

Further, even if discussions about who *should* be the City's agent had been alleged, Rand does not assert liability on the basis of such discussions. In *Park*, this Court acknowledged that the defendant and affiliated individuals may have had some protected conversations before and after the conduct for which they were being sued, including conversations about whether the professor deserved tenure. 2 Cal. 5th at 1068 (communications at issue included evaluations made during the tenure application process). This Court explicitly acknowledged as much but recognized the distinction between those conversations and the ultimate non-protected tenure decision forming the basis of liability. *Id.* at 1068; *see also id.* at 1071 ("[N]one of the core purposes the Legislature sought to promote when enacting the anti-SLAPP statute are furthered by ignoring the distinction between a government entity's decisions and the individual speech or petitioning that may contribute to them."). So too here. Defendants are not being sued because they got together and talked about how Rand should be displaced as the City's agent; they are being sued because they implemented that decision by actively displacing Rand in negotiations with the NFL and lying about it. *Id.*; AA:1:2:31-40.

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[2] Defendants' briefs contain other misstatements of the record as well. For instance, the Bloom letter brief states that "it is alleged the gist of these communications were designed to 'induce the City to cease negotiations,'" citing paragraph 42 of the operative complaint. Bloom Ltr. Br. at 4. But that paragraph does not contain the cited language, nor does any other paragraph of the FAC. AA:1:2:35.

Unable to mount a coherent argument based on *Navellier* or *Park*, Defendants resort to quoting *Park*'s description of *Navellier* using an aggressive ellipsis that wildly distorts the reasoning of both cases and appears designed to mislead the Court. This Court's *Park* opinion actually and accurately described *Navellier* as follows: "**The defendant's filing of counterclaims constituted the alleged breach of contract.** Likewise, the defendant's misrepresentation of his intent not to file counterclaims, **a statement we explained was protected activity made in connection with a pending judicial matter (see § 425.16, subd. (e)(1), (2))**, supplied an essential element of the fraud claim," and thus brought the fraud claim within the ambit of the anti-SLAPP statute. *Park*, 2 Cal. 5th at 1064 (emphasis added, internal citation omitted).

Defendants omit the sections of *Park* in bold above, in an apparent attempt to manufacture authority for their otherwise-unsupportable contention that the mere involvement of communications or statements of present intent in a case is enough to implicate the anti-SLAPP statute. *See* Carson Letter Br. at 3; Bloom Letter Br. at 3. But that is not the law, and the fact that Defendants had to resort to such tactics confirms as much.

III. CONCLUSION

Liability in the present case arises from conduct, not protected speech. The Court of Appeal unanimously so held, and *Park* confirms its reasoning and result. The Court of Appeal should be affirmed.

Respectfully Submitted,

Joseph Ybarra /by A.M.M.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is: 550 South Hope Street, Suite 1850, Los Angeles, California 90071.

On October 19, 2017, I served the foregoing document(s) described as: **REPLY LETTER BRIEF** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

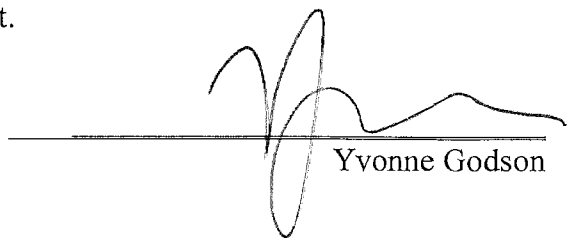
[ ] **BY FIRST CLASS MAIL**. I placed such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[X] **BY OVERNIGHT COURIER**. I am familiar with the practice at my place of business for collection and processing of packages for overnight delivery by Federal Express. Such correspondence with delivery fees paid will be deposited with a facility regularly maintained by Federal Express for receipt on the next business day.

[ ] **BY ELECTRONIC SERVICE**. Pursuant to the C.R.C. Rule 8.78 an electronic copy will be automatically served to the recipients at the email addresses listed on the service list through the TrueFilings electronic system.

Executed on October 19, 2017, at Los Angeles, California.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Yvonne Godson

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