Case No. S-235735

SUPREME COURT
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SUPREME COURT OF CALIFORNIA

RAND RESOURCES, LLC, et al.

Plaintiffs, Appellants & Respondents,

v.

CITY OF CARSON, et al.

Defendants, Respondents & Petitioners

REPLY BRIEF OF THE CITY OF CARSON & JAMES DEAR

On Review From the Court of Appeal for the State of California,
Second Appellate District, Division One
Appellate Case No. B-264493

After An Appeal From The Superior Court For The State Of California,
County Of Los Angeles, Case No. BC-564093, Hon. Michael L. Stern

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I. INTRODUCTION & SUMMARY OF THE ARGUMENT

"Under California's anti-SLAPP statute, a defendant may bring a special motion to strike a cause of action arising from constitutionally protected *speech or petitioning activity*." (*Barry v. State Bar of California* (Jan. 5, 2017) Supreme Court Case No. S-214058, Slip Op. at 1 [emphasis added].) The answering brief of Rand Resources, LLC and Carson El Camino, LLC (collectively, "Rand") largely ignores the plain language of this statute, the recent decisions of this Court applying the same, and the issues as framed by this Court in its order granting review.

Instead, Rand focuses well over half of its argument on whether its First Amended Complaint ("FAC") has pled a viable cause of action for breach of contract or tortious breach of contract on the part of the City of Carson or its former Mayor Jim Dear (collectively, the "City"). (Answering Brief, pp. 4-19.) Rand's answering brief boldly proclaims that its causes of action against the City are not targeted at speech at all, but rather at the "commercial conduct" of the City. (Answering Brief, pp. 14-21.) That argument conveniently ignores the fact that the City's underlying special motion to strike that was filed in the trial court does not address any purported "commercial conduct" and does not address Rand's breach of contract claim. (City's Opening Brief, p. 9, n. 6, p. 15, n. 7, p. 26, n. 13 & p. 45, n. 17.)

To suggest that the FAC only targets "commercial conduct" (and not speech) belies the bulk of Rand's operative pleading itself. (*See* AA:I:2:30 [alleged Wynder promises]; AA:I:2:31 [alleged "confidential" emails]; AA:I:2:31-32 [alleged "rumors"]; AA:I:2:32 [more "confidential emails"]; AA:I:2:32-33 [alleged Wynder statements to Rand]; AA:I:2:35-36 [more secret meetings & Wynder "promise[s]"]; AA:I:2:36 [still more allegations of Wynder "promise[s]"].) Without a doubt, all three of the fraud-based causes of action (two, three, and four) in the FAC allege "speech" (commercial or otherwise) giving rise to purported claims against the City and its former Mayor.

More to the point, however, the alleged fraud in the FAC is all predicated on ***representations*** that are protected under the anti-SLAPP statute. "Representations," in the context of this dispute and the allegations of the FAC, were all made by "speech," either oral or written. Equally important (and contrary to the Rand answering brief) the anti-SLAPP statute does not distinguish between "commercial speech" and "constitutional speech" in its reach and application.

In fact, this Court recently found that "[t]he Legislature did not limit the scope of the anti-SLAPP statute to activity protected by the constitutional rights of speech and petition. It went on to include "any act . . . *in furtherance of*" those rights. [Citations omitted].)" (*City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 421 [holding Council members' statements and votes in connection with award of waste-hauling contract and City Manager's involvement in negotiating waste-hauling contract were protected activity under the anti-SLAPP statute].)

Stated simply, each of the causes of action (two, three, and four) in the FAC that the City challenged through its special motion to strike are subject to the anti-SLAPP statute. "Because SLAPPs seek to deplete the defendant's energy and drain his or her resources, the anti-SLAPP statute contains several provisions designed to limit the costs of defending against such a lawsuit and to prevent SLAPPs by ending them early and without great cost to the SLAPP target." (*Barry, supra,* Slip Op. at 3 [internal quotations omitted].) The City's motion was properly brought and the decision of the trial court granting the same should be reinstated by this Court.

II. ANALYSIS

California's "anti-SLAPP statute's core provision authorizes defendants to file a special motion to strike '[a] cause of action against a person arising from' the petition or speech activities 'of that person . . . in connection with a public issue.'" (*Barry, supra,* Slip Op. at 2.) Another provision of the anti-SLAPP statute allows a special motion to strike any cause of action that implicates an "issue under consideration or review by a legislative . . . body." (Code of Civ. Proc. § 425.16(e).)

"The analysis of an anti-SLAPP motion proceeds in two steps: First, the court decides whether the . . . [City] has made a threshold showing that the challenged cause[s] of action . . . [are] one[s] arising from" protected activity. [Citation.] If the court finds such a showing has been made, it then must consider whether the plaintiff has demonstrated a probability of prevailing on the claim[s]." (*Barry, supra,* Slip Op. at 2-3 [internal quotations omitted].) Causes of action which attempt to punish individuals or governments that engage in speech involving matters of public interest or matters pending before a legislative body are vulnerable to a "special motion to strike" under the statute and this Court's line of cases interpreting the same.

A. The Weight Of Authority From This Court And The Courts Of Appeal Demonstrate That Rand's Fraud-Based Causes Of Action In The First Amended Complaint Involved An "Issue Of Public Interest" Or A "Public Issue."

What "constitutes a 'public issue or an issue of public interest'" (*Albanese v. Menounos* (2013) 218 Cal.App.4th 923, 929) "has been one of many subjects of anti-SLAPP jurisprudence which has garnered substantial judicial attention in the last several years." (*Thomas v. Quintero* (2005) 126 Cal.App.4th 635, 658.) The various Courts of Appeal have developed "criteria or tests for determining whether particular speech or conduct concerns an issue of public interest." (*Burke, Anti-SLAPP Litigation*

(Rutter Group 2015) § 3-103; *Hilton v. Hallmark Cards* (9th Cir. 2010) 599 F.3d 894, 906-07 & n. 10.)

The majority (not to mention the better reasoned) of published opinions from the Courts of Appeal have elected to follow the Legislature's statutory directive, as reinforced by this Court in its recent pronouncements, to construe the anti-SLAPP statute and its protected speech broadly. (*See Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 18-19 & n. 9; City's Opening Brief, pp. 1-3, 28-30 [and cases discussed therein].) One such case which follows the majority line of cases is *Tuchscher Dev. Enters., Inc. v. S.D. Unified Port Dist.* (2003) 106 Cal.App.4th 1219. *Tuchscher* is helpful to this Court because of its striking factual similarities (indeed, it is virtually on "all fours") with the allegations of the FAC (City's Opening Brief, pp. 31-33), but it is by no means the "exclusive authority" upon which the City relies. (*See* City's Opening Brief, pp. 22-30.) Rand's latest attempt to distinguish *Tuchscher* is unavailing.

Rand adopts the distinction (Answering Brief, pp. 32-34) employed by the Second Appellate District in its opinion below (which, as has been demonstrated, amounts to a distinction which should make no difference under the law). (City's Opening Brief, pp. 34-35.) Because there was an "actual planned development" in *Tuchscher*, its holding is distinguishable from the FAC, so the argument goes. That distinction has been rebutted in the City's opening brief (*id.*), but the distinction, standing alone, is also contrary to the weight of well-reasoned authority. (*Cf. Industrial Waste & Debris Box Service Inc. v. Murphy* (2016) 4 Cal.App.5th 1135, 1151 ["an existing controversy is [not] necessary for speech to be on a matter of public interest," instead holding that the public interest requirement is "not limited to speech made in the context of an ***ongoing*** controversy [or an ***actual*** development for that matter]." [emphasis added].)

The weight of the better reasoned Court of Appeals decisions have concluded "that 'an issue of public interest' . . . is ***any issue in which the public is interested***. In other words, the issue need not be 'significant' [or an "actual development"] to be protected by the anti-SLAPP statute - it is ***enough that it is one in which the public takes an interest***." (*Nygård, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1042 [emphasis added].)

For example, in *Sipple*, the Court of Appeal held that statements about a nationally known political consultant's alleged abuse of his former wives involved issues of public interest. (*Sipple v. Foundation for Nat. Progress* (1999) 71 Cal.App.4th 226, 238-239.) In *Nygård*, the Court of Appeal found an issue of public interest to be at stake in an employer's lawsuit against a former employee where the employee described to a Finnish magazine the alleged conditions under which he and others worked for the employer and revealed that a dancer and her granddaughters were Christmas guests of the company's founder. (*Nygård, Inc.*, *supra*, 159 Cal.App.4th at pp. 1032-33, 1039-44.) The court arrived at this conclusion because the Finnish public was interested in the company's founder - and particularly in his famous Bahamian residence. (*Id.* at 1042.)

In *Chaker*, the Court of Appeal concluded that a businessman's defamation lawsuit against his ex-girlfriend and her mother involved the public interest where these defendants allegedly made derogatory remarks about his character and his business on various websites. (*Chaker v. Mateo* (2012) 209 Cal.App.4th 1138, 1141-42, 1145-47.) The appellate court "emphasized that the public interest may extend to statements about conduct between private individuals" and held that the statements in question fell "within the broad parameters of public interest" since the information about his "character and business practices" were plainly meant as warnings for consumers. (*Id.* at 1145-47.)

In *Rivera v. First DataBank, Inc.* (2010) 187 Cal.App.4th 709, the Court of Appeal decided that pamphlets concerning the drug Paxil implicated an issue of public interest where the plaintiffs - relatives of a man who committed suicide after he was prescribed Paxil for stress - sued the publisher based on their contention that the pamphlets were confusing and misleading. (*Id.* at 713-14, 716-17.) The appellate court stressed that the public interest requirement "may encompass activity between private people" and decided this requirement was met by these pamphlets since "[t]reatment for depression is a matter of public interest." (*Id.* at 716.)

In *Ingels v. Westwood One Broadcasting Services Inc.* (2005) 129 Cal.App.4th 1050, the Court of Appeals determined that matters of public interest were at issue in an age discrimination lawsuit against a radio station and call-in show host where the host ridiculed the plaintiff, who had called into the show, on air about his age. (*Id.* at 1062-64.)

Applying this weight of authority, communications by City representatives about "who" should be selected or retained as its exclusive agent in negotiating with the NFL about a potential billion dollar football stadium and franchise is a public issue or an issue of public interest. The opinion of the Second Appellate District is contrary to the weight of authority on this subject, is inconsistent with this Court's "broad" reading of the anti-SLAPP statute, and is proffered without any rationale for its hair-splitting distinction between negotiations about an "actual development" and discussions (secret or otherwise) about "who" the City's exclusive agent should be to engage in those "actual" negotiations.[1]

B. The Second Appellate District Erroneously Adopted The Minority Opinion In *Weinberg* In Determining Whether The Fraud-Based Causes Of Action In The First Amended Complaint Involved An "Issue Of Public Interest" Or A "Public Issue."

The Second Appellate District concluded that the fraud-based allegations in the FAC did not involve a matter of public interest (*Rand*

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[1] Lastly, Rand's argument that *Tuchsher* has been limited by its particular facts is contrary to the weight of authority discussed herein.

Resources, LLC v. City of Carson (2016) 247 Cal.App.4th 1080) by adopting the criteria of what constitutes a matter of "public interest" as articulated in *Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122. (*Id.* at 1091-92.) According to *Weinberg*: (1) "'public interest' does not equate with mere curiosity;" (2) "a matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest;" and (3) "there should be some degree of closeness between the challenged statements and the asserted public interest" since "the assertion of a broad and amorphous public interest is not sufficient." (*Weinberg*, *supra*, 110 Cal.App.4th at 1132.)

Applying this unduly narrow analytical methodology, the Second Appellate District reasoned that, while the City's goal of constructing an NFL football stadium and bringing an NFL franchise to Carson was undoubtedly a matter of public interest, the Rand FAC focused on the identity of the City's "representative" to achieve this admitted matter of public interest. The Second Appellate District then concluded that communications about "who" should be designated the City's "exclusive representative" to accomplish a matter of great public interest was, somehow, not a matter of public interest in and of itself. Why so? What policy consideration(s) would lead to such a conclusion? Why adopt an analytical approach that represents a minority methodology employed by one of its sister court of appeals?

These questions are never addressed, let alone answered, by the Second Appellate District in the opinion below, or by Rand in its answering brief. Respectfully, communications by City officials (even with private persons) about "who" should represent the City of Carson in an effort that admittedly involves a matter of public interest is at least as much a matter of public interest itself as were statements alleging spousal abuse in *Sipple,* as were the defamatory statements alleged in *Nygård*, as were the statements made about an ex-girlfriend and her mother in *Chaker*, and as were the statements made by a radio talk show host in *Ingels*. Most importantly, for purposes of addressing the issues raised by this Court in its order granting review, the Second Appellate District (and Rand in its answering brief) fails to explain why speech involving the selection of the City's "exclusive agent" is not "in furtherance of" a matter which the court below acknowledged is indisputably one of public interest. (*Vasquez, supra,* 1 Cal.5th at 421 ["The Legislature's directive that the anti-SLAPP statute is to be 'construed broadly' so as to 'encourage continued ***participation in matters of public significance'*** supports the view that statutory ***protection of acts 'in furtherance' of*** the constitutional rights incorporated by section 425.16 may extend beyond the contours of the constitutional rights themselves."] [emphasis added & in original].)

The *Weinberg* criteria for assessing whether a matter is of public interest represents a minority view among the courts of appeal and is inconsistent with the recent teachings of this Court and does not advance any meaningful public interest. Both *Weinberg* and now *Rand* represent a dangerous narrowing of California's anti-SLAPP statute which should be repudiated by this Court. Given the weight of authority among the sister courts of appeal and the very recent pronouncements of this Court, and given further the utter lack of policy discussion by the Second Appellate District in the opinion below, this Court should reverse that opinion and reinstate the decision of the trial court.

Admittedly, there are courts of appeal that have applied this *Weinburg*-esque interpretation of the anti-SLAPP statute (contrary to the expansive reading commanded by this Court). Under this minority line of cases activities are deemed to be of "public interest" ***only*** if they fall within one or more of three narrow categories. (*Rivero v. American Federation of State, County, and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913, 919-24.) "The first category comprises cases where the statement or activity precipitating the underlying cause of action [is] 'a person or entity in the public eye.'" (*Cross v. Cooper* (2011) 197 Cal.App.4th 357, 373.) "The second category comprises cases where the statement or activity precipitating the underlying cause of action 'involve[s] conduct that could affect large numbers of people beyond the direct participants.'" (*Id.*) "And the third category comprises cases where the statement or activity precipitating the claim involve[s] 'a topic of widespread, public interest.'" (*Id.*)

In *Rivero*, the Court of Appeal concluded that a union's statements about the plaintiff's supervision of a staff of custodians was "hardly a matter of public interest" even though the statements involved criticism of an allegedly unlawful workplace activity and was part of a labor dispute. (*Rivero*, *supra*, 105 Cal.App.4th at 924-25.) In *Albanese*, the Court of Appeal held that the public interest requirement was not satisfied by a television personality's comments accusing the plaintiff celebrity stylist of stealing from her even though the evidence showed "some public interest" in the plaintiff "based on her profession as a celebrity stylist and style expert" and even though she received "publicity" from "creating and maintaining a Web page." (*Albanese, supra*, 218 Cal.App.4th at 934-37.)

This minority line of cases is easily distinguished from the allegations of the FAC. First, the Second Appellate District acknowledged that luring an NFL franchise and building a professional football stadium in Carson is a matter of public interest. Next, the Second Appellate District narrowly concluded that speech about "who" the City's representative should be to do that luring was not a matter of public interest notwithstanding that the actual speech "of" that representative would be fully protected.

The fatal flaw in this reasoning is that the Second Appellate District failed to articulate any policy reason(s) why speech by City representatives and a private party about "who" should be the exclusive representative for the City was not protected speech "in furtherance of" what the lower court acknowledged was a matter of public interest (the bringing of professional football to Carson). The only fair-minded conclusion to be reached from this flawed logic is to acknowledge that speech about "who" should represent the City in its NFL negotiations is just as protected as the speech "of" that exclusive representative with the NFL about that football stadium and professional football franchise. The two kinds of speech are inextricably intertwined, both are "in furtherance of" the other, and the Second Appellate District's distinction is without any meaningful legal or policy difference.

Most compelling, even if (for the sake of argument, only) this Court were to apply one of these narrow three-alternatives to the City's special motion to strike causes of action two, three, and four of the FAC, the selection and retention of the City's "exclusive agent" would ***still*** be found to be a matter of public interest. The alleged fraudulent statements of the former Mayor and/or the former City Attorney involved speech by two public officials (one elected by the residents of Carson, and the other appointed by the Carson City Council) who are regularly in the "public eye."

Alternatively, the selection of an exclusive agent to represent the City in negotiations with the NFL (and the skills and "contacts" of that representative) had the potential to impact the entire community of Carson (not the mention transforming Carson into a destination city that an NFL franchise would mean). And, applying the third alternative criteria, selection of the City's negotiator to bring the NFL to Carson undoubtedly involves "a topic of widespread, public interest" (indeed the matter was presented to two separate legislative bodies of the City in multiple public meetings) as the court below acknowledged.

C. The Fraud-Based Causes Of Action In The First Amended Complaint All Arose Out Of Communications About A Matter Under Consideration By The Carson City Council.

Communications ***precedent*** to an official proceeding come within the protection of the anti-SLAPP statute. (Code Civ. Proc. § 425.16(e)(2).) A statement is made "in connection with" a proceeding under Section 425.16(e)(2) if it relates to substantive issues in that proceeding and is directed to persons having some potential interest in that proceeding. (*See, Contemporary Services Corp. v. Staff Pro Inc.* (2007) 152 Cal.App.4th 1043, 1055.) For example, in *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 780, the plaintiff sued for libel and interference with economic relationship in a dispute which arose because the defendant intended to file a complaint with the

California Attorney General seeking an investigation of whether the plaintiff had honored its contractual obligation to pay the proceeds of a celebrity recording to charity.

The factual predicate of the lawsuit was a letter the defendant had sent to various celebrities who had participated in a recording of support for a complaint defendant had initiated to the Attorney General. The Court of Appeals held that "[j]ust as communications preparatory to or in anticipation of the bringing of an action or other official proceeding are within the protection of the litigation privilege of Civil Code section 47, subdivision (b)[,] we hold that such statements are equally entitled to the benefits of section 425.16. [Citation.]" (*Dove Audio, Inc., supra,* 47 Cal.App.4th at 784; *see also, Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1115 [counseling a tenant was in anticipation of litigation and as such was within the protection of the anti-SLAPP statute]; *Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2006) 136 Cal.App.4th 464, 474-75.)

In its FAC, Rand alleges the former Mayor and other unidentified "City officials" held "clandestine meetings," "talk[ed] by the phone or through text messages," and sent "confidential emails." (AA:I:2:31, 35-36, 37.) The purpose of these "predicate" communications was to "cause[] the City to breach its prior representations and agreement to extend the EAA." (AA:I:2:33.)

By Rand's own admission, these alleged communications related to an item that was imminently under review by the City Council (the potential extension of the EAA) and were between two parties having a substantial interest in that proceeding (the former Mayor and the alleged rival potential "exclusive agent"). Rand's allegations are, therefore, entirely consistent with this Court's assessment in *Briggs* of communications and actions taken in anticipation of an official proceeding (consideration of whether the Carson City Council should extend the EAA).

Rand's answering arguments that its fraud-based causes of action do not arise from communications made in connection with an issue under consideration by a legislative body are twofold: *first* Rand argues that the underlying claims arise from conduct rather than speech and *second* Rand argues that the speech at issue occurred *after* the adoption of the EAA and had nothing to do with whether the EAA should be renewed.

As an initial reply to these arguments, the City notes that Rand fails to address, on the merits, this Court's analysis and rationale in its recent *Vasquez* opinion; yet another case with ***similar facts*** to those alleged in the FAC. (*Vasquez*, *supra,* 1 Cal.5th at 421.) The similarities between the alleged 2012 "promise(s)" of the former City Attorney during the negotiations of the Rand EAA and the alleged statements made by the city manager during the negotiation of a contract in this Court's *Vasquez* opinion are striking (and have been discussed at length in the City's

Opening Brief, pp. 22-26).[2] This Court's *Vasquez* opinion, standing alone, mandates that Rand's second and third causes of action, both of which are based on the former City Attorney's alleged statements, should be stricken.

Turning now to the merits of Rand's two-prong argument, there is utterly no basis to support the argument that interpreting the anti-SLAPP statute to apply to "commercial conduct" (accepting for the sake of argument ***only*** that "commercial conduct" is the thrust of the promissory fraud cause of action) would make it impossible to bring suit against a municipality for breach of contract. The single purported cause of action for breach of contract in the FAC is ***not*** the target of the City's special motion to strike and remains pending before the trial court to this day. (City's Opening Brief, pp. 9, n. 6, p. 15, n. 7, p. 26, n. 13 & p. 45, n. 17.)

Rand's second argument fails because the speech at issue (i) was allegedly made as a part of the negotiations and drafting of the EAA which was then presented to the Carson City Council for its consideration ***and*** (ii) was allegedly made in connection with the consideration and presentation to the Carson City Council of the requested extension of that EAA. In both circumstances, the alleged "speech" of the former City Attorney involved

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2 To the extent Rand now claims the City has not timely raised *Vasquez* in its arguments to this Court, the simple response is that this Court's opinion in *Vasquez* was not published until August 8, 2016, one month ***after*** the City filed its Petition for Review. So, there can be no waiver of any arguments under *Vasquez* by the City which did not exist at the time the City sought review by this Court. (*See, also,* note 3, *infra.*)

either the selection or the retention of the City's "exclusive agent" in dealing with the NFL, issues that could ***only*** be addressed to and resolved by the Carson City Council at duly noticed public meetings (and ***not*** by the former City Attorney or Mayor [who was merely one of five votes on that City Council]).

1. The Second And Third Causes Of Action Squarely Fit Within The Interpretation Of An Issue Under Consideration By A Legislative Body Established By This Court.

The allegations in the second and third causes of action rise or fall on the alleged "promise" made by the former City Attorney, purportedly made during the 2012 negotiation of the EAA, that the EAA would be renewed so long as Rand showed reasonable progress. (AA:I:2:30.) All allegations about "promises" made by the former City Attorney fit squarely within the speech which this Court found to be protected by Code of Civil Procedure § 425.16 (e)(2). (*Vasquez, supra,* 1 Cal. 5th at 424.)[3]

In an effort to avoid this inescapable conclusion, Rand now claims that the gravamen of the second and third causes of action "is [really] commercial activity, not protected speech." (Answering Brief, p. 40.)

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[3] See note 2, *supra*. Moreover, this Court's order granting the Petition for Review specifically ***requested*** briefing on whether "plaintiffs' causes of action [arose] out of communications made in connection with an issue under consideration by a legislative body?" Hence, given the ***post hoc*** announcement of the *Vasquez* decision and the specific request from this Court in its order granting review, the City is free to raise this Court's *Vasquez* holding and rationale in its briefs on review.

Again, this argument belies the FAC; the only allegations in support of the third cause of action for promissory fraud are (i) the former City Attorney's alleged 2012 "promise(s)" (which is undoubtedly protected under *Vasquez*), and (ii) the City Council's refusal to extend the EAA past its initial two-year term in spite of Rand's alleged reasonable progress. (AA:I:2:36-37.) To the extent that this cause of action arises from the City Council's refusal to extend the EAA, Rand admits that "any contract with a municipality must be approved by its City Council." (Answering Brief, p. 3.)

This City Council approval process necessarily occurs only during a legislative proceeding protected by Section 425.16 (e)(2). Further, without being able to rely on the alleged "promises" (speech on the part of the former City Attorney), the purported cause of action for promissory fraud is reduced to a garden variety breach of contract claim. That cause of action remains pending before the trial court.

2. The Second and Fourth Causes Of Action Arise From Alleged Protected Activity Made In Connection With The City Council's Consideration Of The Possible Extension Of The EAA.

As discussed immediately above, the alleged "promise" that the EAA would be renewed (if supported by "reasonable progress") fits squarely within the type of speech protected by Section 425.16(e)(2). (*Vasquez, supra,* 1 Cal. 5^{th} at 424.) The only other allegations supporting the fourth cause of action are (i) alleged secret meetings between the City and Mr. Bloom, (ii) Mr. Bloom allegedly ghost-writing letters for the former Mayor, and (iii) the former Mayor's alleged false denial of his interactions with Mr. Bloom. (AA:I:2:31-32, 37-38.)

Each of these alleged writings or oral communication were "made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law." (Code Civ. Proc. §425.16(e)(2).) The EAA was allegedly entered into by Rand and the City in September 2012. (AA:I:2:24.) The EAA had an initial two-year term, ending in September of 2014. (*Id.*) In August, 2014, Rand allegedly requested the City Council approve the first of the two extensions of the EAA. (AA:I:2:25.) The alleged "fraud" commenced "beginning in at least the summer of 2013" just prior to Rand's extension request. (AA:I:2:24, 31-32.)

The "fraud" was allegedly perpetrated by the "parties as part of their efforts to undermine the EAA" and with the aim of "***discuss[ing]*** and conspir[ing] about how to breach the EAA and not extend it." (AA:I:2:31-32; emphasis added.) Notably, this "fraud" is allegedly perpetrated by Mr. Bloom and the former Mayor who just so happened to be the then-presiding officer of the Carson City Council, the only body with authority to either enter into or extend the EAA.

Each of these allegedly fraudulent communications was (i) made prior to the City Council's consideration of the EAA extension and (ii) concerned the identity of the City's representative going forward, an issue under review when the Council considered extending the EAA. As such, all of these alleged communications were made in in connection with the extension of the EAA, an issue under review by the Carson City Council.

III. CONCLUSION

This dispute arises from an agreement between the City and Rand designating the latter as the former's "exclusive representative" for negotiating with the NFL to bring a potentially billion dollar football stadium and franchise to the City. (*Rand Resources, supra,* 247 Cal.App.4th at 1084-85.) That agreement had a fixed term and vested in the City Council the "sole and unfettered" discretion whether to extend the same. Unhappy that he did not get the hoped-for extension, Rand now alleges the City allowed others to begin acting as its "'agent and representative' with respect to the NFL and development of the sports and entertainment complex." (*Id.* at 1086.)

The Second Appellate District has erroneously concluded that communications about the identity of that exclusive agent did not involve a matter of public interest. (*Id.* at 1091-97.) In arriving at this conclusion, the court below elected to embrace the narrow public interest test articulated by the Court of Appeal in *Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122 (*id.* at 1091-92) notwithstanding that the weight of authority from its sister courts of appeal (not to mention this Court) command a more expansive interpretation of the anti-SLAPP statutory scheme.

Applying this minority and restrictive standard, the court below erroneously held that although the City's goal of bringing a football stadium to Carson was a matter of public interest, communication about the identity of the City's agent were not an issue of public interest. As has been demonstrated herein the *Weinberg* standard(s) for assessing whether a matter is of public interest conflict(s) with the recent pronouncements of this Court and the weight of authority in other courts of appeal that California's anti-SLAPP statute is to be broadly construed.

This Court must correct this plain error and hold that selection or retention of the City's "exclusive representative" to negotiate with the NFL met the public interest requirement of the statute, and that discussions about who should continue to act as the City's representative prior to the City Council's consideration of a possible extension of the EAA ***all*** involved a subject matter within the sole province of the Carson City Council.

Respectfully Submitted,

DATED: January 23, 2017

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CERTIFICATE OF WORD COUNT

I certify that pursuant to Rule 8.520(c)(1) of the California Rules of Court, the attached REPLY BRIEF OF THE CITY OF CARSON & JAMES DEAR was produced on a computer and contains 5,176 words as counted by the Microsoft Word 2010 word-processing program used to generate the Reply Brief.

Dated: January 23, 2017

Christina M. Burrows

CERTIFICATE 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 2361 Rosecrans Ave., Suite 475, El Segundo, CA 90245.

On **January 24, 2017**, I served true copies of the following document(s) described as **REPLY BRIEF OF THE CITY OF CARSON & JAMES DEAR** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY OVERNIGHT DELIVERY: I enclosed said document(s) in an envelope or package provided by the overnight service carrier and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.

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

Executed on **January 24, 2017**, at El Segundo, California.

Diane N. Branche

DIANE N. BRANCHE

SERVICE LIST
Rand Resources, et al v. Leonard Bloom, et al
California Supreme Court Case No. S235735

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