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VIA HAND DELIVERY

SUPREME COURT
FILED

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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:

On September 20, 2017, this Court ordered the parties to submit letter briefs addressing the effect, if any, of *Park v. Board of Trustees of Calif. State Univ.*, 2 Cal.5th 1057 (2017), on the issues presented in this matter.

Plaintiffs, Appellants, and Respondents Rand Resources, LLC and Carson El Camino, LLC (collectively, "Plaintiffs" or "Rand") hereby submit their letter brief in accordance with the Court's Order.

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

In *Park*, the Court clarified the law with respect to Prong One of the two-step test governing Anti-SLAPP Motions—whether the plaintiffs' claims arise from actions taken in furtherance of the defendant's right of petition or free speech.

Park, 2 Cal.4th at 1062. In so doing, the Court made clear that a claim arises from protected activity only when such activity "underlies or forms the basis for the claim." *Id.* In other words, "the focus is on determining what 'the defendant's activity [is] that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning.'" *Id.* at 1063 (internal citations omitted).

The Court of Appeal opinion at issue here is entirely consistent with *Park*. The Court of Appeal expressly stated that Prong One turned on the defendant's "allegedly wrongful and injury-producing conduct; *i.e.*, the actions on which liability is based..." (Op. at 10). Thus, the Court of Appeal reasoned, in determining whether the anti-SLAPP statute has been triggered, the trial court must distinguish between: "'(1) speech or petitioning activity that is mere *evidence* related to liability and (2) liability that is *based on* speech or petitioning activity.'" (Op. at 10-11 (internal citations omitted) (emphasis in original)).

Applying the foregoing test, the Court of Appeal held, unanimously, that none of Plaintiffs' claims arises out of defendant's protected activity. With respect to Plaintiffs' Second Cause of Action for tortious breach of contract, the Court of Appeal held that the claim was premised on the City's "carrying out (or not) its contract with Rand Resources...," not actions taken in further of the City's right to free speech or petition. (Op. at 13). Similarly, although Plaintiffs' fraud claims (3rd and 4th Causes of Action) involved alleged affirmative misrepresentations by defendants, defendants' liability turned on "the manner in which the City conducted itself in relation to the business transaction between it and Rand Resources..." (Op. at 16). Finally, Plaintiffs' interference claims (5th and 6th Causes of Action) arose from the "Bloom defendants' efforts to usurp Rand Resources's rights and role under the EAA..."—actions that involved the Bloom defendants' "private conduct of their own business, not their free speech or petitioning activities." (Op. at 17).

In short, the Court of Appeal applied the correct Prong One standard, relying on cases later cited approvingly by this Court in *Park* (*e.g.*, *Graffiti Protective Coatings, Inc. v. City of Pico Rivera* (2010) 181 Cal.App.4th 1207, *Navallier v. Sletten* (2002) 29 Cal.4th 82) and reached the conclusion that the gravamen of Plaintiffs' claims was defendants' breach of contract and interference with Plaintiffs' contractual rights, not actions in furtherance of their First Amendment rights. In so doing, the Court of Appeal avoided the error that the Court cautioned

against in *Park*—namely, "[f]ailing to distinguish between the challenged [government] decisions and the speech that leads to them or thereafter express them...". *Park*, 2 Cal.5th at 1067. The Court of Appeal's decision should be affirmed.

II. THE PRESENT PETITION SHOULD NOW BE DENIED.

Park also compels the denial of the present Petition for Review, without oral argument or further briefing.

The Court granted Respondents' Petition for Review as to two issues only: (1) did plaintiffs' causes of action alleging the breach of and interference with an exclusive agency agreement to negotiate the designation 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?; and (2) did plaintiffs' causes of action arise out of communications made in connection with an issue under consideration by a legislative body?

Park plainly renders Issue (1) moot. If the Court of Appeal correctly determined that Plaintiffs' claims involved conduct, not speech, then whether or not the claims arise out of a public issue or an issue of public interest is immaterial, as the predicate triggering conduct (defendant's acts in furtherance of the constitutional rights of petition or free speech) is not present. Indeed, if it were otherwise, any claim involving an issue of public interest would trigger the anti-SLAPP statute, irrespective of whether the defendant's liability arose from conduct in furtherance of his or her First Amendment rights. As this Court recognized in *Park*, that is not the law. *Park*, 2 Cal.5th at 1072 ("Whether the grant or denial of tenure to this faculty member is, or is not, itself a matter of public interest has no bearing on the relevant questions—whether the tenure decision furthers particular University speech, and whether that speech is on a matter of public interest—and cannot alone establish the tenure decision is protected activity under section 425.16, subdivision (e)(4).").

Park is also dispositive of Issue (2). As this Court noted in *Park*, "[g]overnment decisions are frequently 'arrived at after discussion and a vote at a public meeting...,'" and thus "[f]ailing to distinguish between the challenged decisions and the speech that leads to them or thereafter expresses them 'would chill the resort to legitimate judicial oversight over potential abuses of legislative

and administrative power.'" *Park*, 2 Cal.5th at 1067 (internal citations omitted). Here, defendants' breach of and interference with Plaintiffs' contract began in or around April 2013—more than a year before Plaintiffs' contract expired (absent renewal). Thus, as the Court of Appeal noted, "the communications and conduct alleged...were made solely in connection with the breach of the EAA, and not in connection with its renewal or any other issue under consideration or review by the City." (Op. at 15). Indeed, because all municipal contracts must be approved by the city council (*Authority for California Cities Excess Liability v. City of Los Altos* (2006) 136 Cal.App.4th 1207, 1212), a holding that Plaintiffs' claims necessarily involved an issue under consideration by a legislative body because the City Council *later* voted not to renew the EAA would mean that *any claim* for breach of contract against a municipality would trigger the anti-SLAPP statute. This would chill "the resort to legitimate judicial oversight" that *Park* sought to protect.

Respectfully Submitted,

Joseph Ybarra /KKH

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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 5, 2017, I served the foregoing document(s) described as:
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

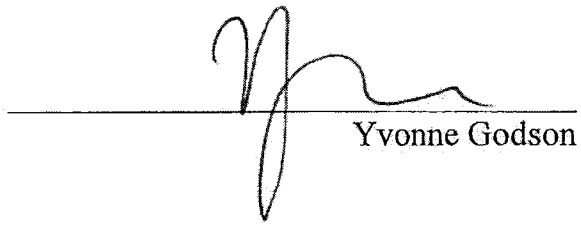
[X] **BY FIRST CLASS MAIL.** I placed such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with 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 5, 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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