Case No. S246669

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SOUTHERN CALIFORNIA GAS COMPANY,
A CALIFORNIA CORPORATION,

Respondent to Petition for Review,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES,

Respondent to Petition for Writ of Mandate.

FIRST AMERICAN WHOLESALE
LENDING CORPORATION et al.,

Real Parties in Interest, Petitioners.

After a Decision by the Court of Appeal,
Second Appellate District, Division Five, Case No. B283606

The Superior Court of Los Angeles County,
Judicial Council Coordination Proceeding No. 4861,
The Hon. John Shepard Wiley, Jr., Judge

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION AND COUNTER-STATEMENT OF THE QUESTION PRESENTED

This case involves negligence claims for the recovery of lost profits by businesses in the Porter Ranch neighborhood allegedly arising from the 2015 Aliso Canyon gas leak ("the Business Plaintiffs"). The Business Plaintiffs do not allege that they suffered any physical injury to person or property due to the gas leak. Instead, they assert claims for purely economic losses that allegedly resulted from a general economic slowdown of the Porter Ranch economy during the gas leak. As a matter of this Court's longstanding precedent applying the "economic loss doctrine," the Business Plaintiffs fail to state a cause of action, because a defendant owes no duty in negligence to protect a plaintiff's purely economic interests.

The Court of Appeal's decision in this case correctly applied this settled law and does not warrant further review by this Court. The Superior Court's order reversed by the Court of Appeal, in contrast, clearly deviated from this Court's decisions. In overruling Respondent Southern California Gas Company's ("SoCalGas") demurrer to the Business Plaintiffs' claims, the Superior Court recognized that in the absence of a contract-based "special relationship," which in certain circumstances may give rise to an exception to the economic loss doctrine, SoCalGas owed no duty of care to protect the Business Plaintiffs' economic expectations. The Business Plaintiffs failed to allege any contract or transactional basis for such a

special relationship exception, and they declined to amend their complaint because they could not do so. The Superior Court nevertheless denied SoCalGas' demurrer, holding as a categorical matter that the economic loss doctrine should not be applied in "mass tort actions."

The Court of Appeal granted SoCalGas' writ petition, rejecting the Superior Court's unprecedented rule. Following the longstanding decisions of this Court, the Court of Appeal reiterated that, absent a special relationship, "a defendant owes no duty to prevent purely economic loss to third parties under any negligence theory." (Op. at 7.)[1] The Business Plaintiffs have petitioned this Court for review from the Court of Appeal's well- founded opinion directing dismissal of their causes of action.

Accordingly, the question presented for potential review by this Court is: Does a defendant in a negligence action owe a duty to prevent purely economic loss to third parties with whom it has no special relationship?

As the Court of Appeal correctly held, the clear answer to this question is "no." That conclusion is compelled by an unbroken line of precedent going back decades, and is founded in important policy considerations favoring the reasoned limitation of otherwise potentially

[1] "Op." refers to the Court of Appeal opinion below. "Pet." is the Business Plaintiffs' petition. Citations to the appellate record are to the corresponding volume and page number(s) and are in the form "Vol. __, App. __."

limitless liability for negligence. The Business Plaintiffs' Petition for Review offers no sound basis for this Court to second-guess the Court of Appeal. There is no split of authority among the appellate courts and no inconsistency with this Court's precedent. The economic loss doctrine is so well established, and the Court of Appeal's application so straightforward, that no issue of statewide importance is presented by the Petition. The Petition should be denied.

II. FACTUAL AND PROCEDURAL BACKGROUND

The facts are taken from the Court of Appeal opinion under Rule 8.500(c)(2).

A. The Aliso Canyon Gas Leak

On October 23, 2015, SoCalGas discovered a gas leak at its Aliso Canyon Facility. (Op. at 3.) Some residents of the nearby Porter Ranch community complained of odors they attributed to the leak. (Op. at 3.) State officials confirmed that the leak was permanently stopped on February 18, 2016. (Op. at 3.)

B. The Relocation Program

On November 19, 2015, the Los Angeles County Department of Public Health directed SoCalGas to offer temporary relocation to anyone living within a five-mile radius of the facility. (Op. at 3.) Approximately 15,000 Porter Ranch residents elected to relocate. (Op. at 4.)

C. The Business Plaintiffs' Complaint

The Business Plaintiffs are various businesses located within a five-mile radius of the Aliso Canyon facility. (Op. at 4.) The Business Plaintiffs do not claim that they have suffered any personal injuries or property damage due to the Gas Leak. (Op. at 4.) Instead, the Business Plaintiffs' causes of action are premised on the theory that economic activity in Porter Ranch temporarily slowed because many Porter Ranch residents chose to relocate. (Op. at 19-20.)

The Business Plaintiffs seek to recover for these alleged disappointed economic expectations via three causes of action: (1) strict liability for ultrahazardous activities; (2) negligence; and (3) negligent interference with prospective economic advantage. (Op. at 4.)

D. SoCalGas' Demurrer to the Business Plaintiffs' Complaint

SoCalGas demurred to the Business Plaintiffs' Second Amended Complaint, arguing that it did not owe a duty of care to the Business Plaintiffs under any of the alleged theories. (Op. at 4.) Further, SoCalGas argued that under *J'Aire Corp. v. Gregory* (1979) 24 Cal.3d 799 (*J'Aire*), no special relationship existed between it and the Business Plaintiffs because the Complaint "did not include allegations of a transaction, as required by Supreme Court authority, to establish a special relationship sufficient to impose a duty on SoCalGas." (Op. at 4-5.)

The Business Plaintiffs opposed, arguing that the economic loss doctrine does not apply outside products liability cases, or in cases not predicated on alleged negligence growing out of a contractual relationship between the plaintiff and defendant. (Op. at 5.) Alternatively, they argued that if the economic loss doctrine applies, they adequately alleged a *J'Aire* "special relationship" exception. (Op. at 5.)

E. The Superior Court Overruled SoCalGas' Demurrer

The Superior Court overruled SoCalGas' demurrer. It acknowledged that "[t]ort law normally does not permit recovery for economic loss absent physical injury," and that "[t]he economic loss rule routinely limits tort recoveries to avoid limitless rippling liability." (Vol. 2, App. 387; *In re Coordination Proceedings Special Title (Rule 3.550) Southern California Gas Leak CA* (Los Angeles County Super. Ct., 2017, No. JCCP 4861), 2017 WL 2361919, at *4.) But instead of following the general rule, the court created a new exception, imposing a duty on SoCalGas to protect the economic expectations of neighboring businesses in "a classic mass tort action where high transactions costs precluded transactions, where the risk of harm was foreseeable and was closely connected with [the defendant's] conduct, where damages were not wholly speculative, and where the injury was not part of the plaintiff's ordinary business risk." (Op. at 5.)

F. On Writ Review the Court of Appeal Ordered that SoCalGas' Demurrer Be Sustained

SoCalGas petitioned for a writ of mandate in the Court of Appeal and the Business Plaintiffs filed a preliminary opposition. (Op. at 5.) The Court of Appeal issued an alternative writ directing the Superior Court to vacate its order overruling the demurrer or show cause why the relief sought in the petition should not be granted. (Op. at 5.) The Superior Court elected not to comply with the alternative writ. (Op. at 5.) The Business Plaintiffs subsequently filed a return and SoCalGas filed a reply. (Op. at 5.)

The Court of Appeal held that "[w]here the alleged negligence has caused economic loss, but no personal injury or property damage, duty is not presumed." (Op. at 9.) In such circumstances, the Court of Appeal held, "a defendant owes no duty to prevent purely economic loss to third parties under any negligence theory." (Op. at 7.) The Court of Appeal further held that, if a party has "purely economic loss arising from a transaction," "courts examine the *Biakanja* factors to determine whether to impose on the defendant 'an exceptional duty to third parties.'" (Op. at 9, 14, quoting *Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc.* (2016) 1 Cal.5th 994, 1013 (*Centinela*).) Thus, the Court of Appeal reiterated that "a third party's purely economic loss *arising from a transaction* is a prerequisite for recovery in tort, absent injury to

person or property[,]" and "[t]he failure to establish this foundation precludes a finding of the 'special relationship' required by *J'Aire* and subsequent Supreme Court decisions." (Op. at 14, italics added.)

The Court of Appeal emphasized that the Business Plaintiffs alleged neither personal injury nor property damage (Op. at 2), and they specifically disavowed that any contractual relationship existed between SoCalGas and them (Op. at 13-14). Indeed, the Court of Appeal noted, the Plaintiffs "confirmed at oral argument [that] they do not seek leave to further amend their pleading[s]" to try to allege a contractual or transactional basis for a special relationship. (Op. at 20.) Because Plaintiffs alleged no personal injury, property damage, or contract-based special relationship, the Court of Appeal found that SoCalGas had no duty to protect against their purely economic losses. The Court of Appeal thus issued a peremptory writ of mandate directing the Superior Court to vacate its order overruling the demurrer and issue a new order sustaining the demurrer without leave to amend. (Op. at 21.)

III. REVIEW IS UNWARRANTED

A. The Court of Appeal's Straightforward Application of a Well-Established Doctrine Does Not Warrant Review

In admittedly departing from established precedent, the Superior Court acknowledged that it may be "travel[ing] down [an] erroneous road" (Vol. 2, App. 357) by creating a broad "mass tort" exception to the general

rule of California law that parties owe no duty to third parties to prevent purely economic losses. The trial court had enough doubt about its ruling that it invited Court of Appeal writ review. (Vol. 2, App. 357.)

In response, the Court of Appeal reiterated that, absent a special relationship, "a defendant owes no duty to prevent purely economic loss to third parties under any negligence theory." (Op. at 7, citing *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 58 (*Quelimane*).) The court correctly held that there is no "mass tort" exception to the economic loss doctrine. Instead, the only exceptions are those found in *Biakanja* and *J'Aire*, for "negligent performance of a contract" where the defendant's conduct was specifically intended to affect the plaintiffs, and a "special relationship exists between the parties." (*J'Aire*, *supra*, 24 Cal.3d at 804, citations omitted; *Biakanja v. Irving* (1958) 49 Cal.2d 647, 650 (*Biakanja*).) Only where there is a contractual basis for a special relationship will the law impose a duty to protect a third party's purely economic expectations.

Here, the Business Plaintiffs never alleged any contractual basis for a special relationship; they disavowed an interest in amending their pleadings to strengthen their assertion of a special relationship; and their theory of liability—that a general economic slowdown in the Porter Ranch area during the leak caused business losses—is inconsistent with any attempt to show that SoCalGas' conduct was specifically intended to affect them. (Op. at 20.) SoCalGas operates the Aliso Canyon facility under

close regulatory supervision to store natural gas that serves millions of residential, commercial and industrial customers. The Business Plaintiffs are merely a small subset of that population. That is not a "special relationship." (See *Ott v. Alfa-Laval Agri, Inc.* (1995) 31 Cal.App.4th 1439, 1456 (*Ott*) [holding that there is no special relationship where conduct is not specifically directed to a particular third party].)

Because the Court of Appeal's decision involves a straightforward application of this Court's well-established precedent, the Business Plaintiffs present no plausible basis for review.

1. The economic loss doctrine is well established by decades of precedent.

In California, "where a defendant's alleged negligence has resulted in economic loss *in conjunction with* personal injury or property damage," a duty to protect against such economic loss is presumed under Civil Code section 1714. (Op. at 8, italics added.) In such circumstances "courts consider the *Cabral/Rowland* factors" to determine whether economic loss damages should be denied despite the general presumption in such cases that they are recoverable alongside personal injury and property damages. (Op. at 9, citing *Lichtman v. Siemans Industry Inc.* (2017) 16 Cal.App.5th 914, 921.)

However, under the economic loss doctrine, "[w]here the alleged negligence has caused economic loss, but no personal injury or property

damage, duty is not presumed." (Op. at 9.) If a duty is not presumed, but the economic loss arose from a transaction, "courts examine the *Biakanja* factors to determine whether to impose on the defendant 'an exceptional duty to third parties'" based on a special relationship between the parties. (Op. at 9, quoting *Centinela, supra,* 1 Cal.5th at 1013.) Absent such a special relationship, "a defendant owes no duty to prevent purely economic loss to third parties under any negligence theory." (Op. at 7.)

California courts have reiterated the general applicability of the economic loss doctrine and the limited nature of its exception for decades. (See, e.g., *Quelimane, supra,* 19 Cal.4th at 58 ["[A] duty to manage business affairs so as to prevent purely economic loss to third parties in their financial transactions is the exception, not the rule, in negligence law."]; *Zamora v. Shell Oil Co*. (1997) 55 Cal.App.4th 204, 211 (*Zamora*), disagreed with on other grounds by *Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1330 ["the general rule [is] that economic loss alone is insufficient to state a negligence cause of action . . . ."]; *Ott, supra,* 31 Cal.App.4th at 1448 ["[E]conomic damages, standing alone, can be recovered under some circumstances in an action for negligence . . . . Nevertheless, *J'Aire* does require that the parties have a 'special relationship' for such a cause of action to arise," citations omitted].)

The Court of Appeal applied well-settled precedent in holding that the purpose of the economic loss doctrine is to prevent the imposition of

"liability out of proportion to fault or . . . virtually unlimited responsibility for intangible injury.'" (Op. at 12, quoting *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 398 (*Bily*).)

2. The Court of Appeal faithfully applied the economic loss doctrine to this case.

The Court of Appeal held that "[w]ithout personal injury, property damage or a special relationship, the general rule that precludes business plaintiffs from recovering for pure economic losses under a negligence theory remains viable." (Op. at 20; see also *id.* at 13-14.) Its holding follows inexorably from decades of this Court's precedent.

This Court has long made clear that the economic loss doctrine applies generally to all cases involving claims for negligence and strict liability, because "[r]ecognition of a duty to manage business affairs so as to prevent purely economic loss to third parties in their financial transactions is the exception, not the rule, in negligence law." (*Quelimane, supra,* 19 Cal.4th at 58.) Thus, it is well established that a complaint in a strict liability or negligence action alleging purely economic losses should be dismissed on demurrer, because "[u]ntil physical injury occurs—until damage rises above the level of mere economic loss—a plaintiff cannot state a cause of action for strict liability or negligence." (*San Francisco Unified School Dist. v. W. R. Grace & Co.* (1995) 37 Cal.App.4th 1318, 1327, 1329-30.) "The necessity that a plaintiff present proof of the

existence of damages other than purely economic loss arises from the fact that, rather than being a *defense* to a tort claim, the economic loss rule provides that entities generally have no *duty* to prevent purely economic loss to a potential plaintiff." (*Greystone Homes, Inc. v. Midtec, Inc.* (2008) 168 Cal.App.4th 1194, 1215, italics in original, citation omitted.)

Moreover, consistent with this Court's precedent, the Court of Appeal found that "hold[ing] SoCalGas accountable to business plaintiffs for 'all the costs its accident caused' would 'promote virtually unlimited responsibility.'" (Op. at 20, citing *Bily, supra,* 3 Cal.4th at 398.) In doing so, it relied on this Court's oft-cited illustration of the economic loss doctrine:

> One frequently used illustration of the need to limit liability for economic loss assumes a defendant negligently causes an automobile accident that blocks a major traffic artery such as a bridge or tunnel. Although defendant would be liable for personal injuries and property damage suffered in such an accident, it is doubtful any court would allow recovery by the myriad of third parties who might claim economic losses because the bridge or tunnel was impassible.

(Op. at 12-13, quoting *Bily, supra,* 3 Cal.4th at 400, fn. 11.) Like the "myriad of third parties" in the illustration, the Business Plaintiffs claim economic losses due to a general decline in business from the gas leak, and the same result follows. Indeed, even Justice Baker, who would have preferred not to address issues at the demurrer stage, agreed that the Superior Court's broad exception for all mass-tort claims was

fundamentally inconsistent with this Court's decisions applying the economic loss doctrine. (Op. (dis. opn. of Baker, J.) at 1.)[2]

The Court of Appeal also correctly held that no special relationship existed between the parties that would impose on SoCalGas a duty to protect against third parties' economic losses. The Business Plaintiffs explicitly disavowed any underlying transaction that could form the basis for such a special relationship. (Op. at 13-14, 20.)

3. The economic loss doctrine is not limited to cases involving contractual relationships.

The Business Plaintiffs' assertions that the economic loss doctrine does not apply to mass tort actions where the alleged negligence affects numerous plaintiffs or applies only to cases involving losses in connection with a contract are demonstrably wrong and provide no basis to grant review.

First, as the Court of Appeal explained, the economic loss doctrine applies generally to all negligence and strict liability actions, whether the alleged harms resulting from the defendant's conduct affect many plaintiffs or few. And the doctrine has been applied in cases that have nothing to do with injuries arising out of a contract. One example is this Court's decision

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[2] The Opinion is also consistent with the application of the economic loss doctrine in other "disaster" cases across the nation. (See, e.g., *Louisiana ex rel. Guste v. M/V Testbank* (5th Cir. 1985) 752 F.2d 1019 [collecting cases and discussing policy rationales for economic loss doctrine in context of rejecting economic loss claims by local businesses seeking lost revenue caused by chemical spill in an adjacent waterway].)

in *Fifield Manor v. Finston* (1960) 54 Cal.2d 632, 634, where, as here, the plaintiff's injury did not arise from any contract with the defendant or the defendant's performance of a contract with anyone else. The plaintiff had entered into a contract with an individual to provide "life-care" medical services. The individual subsequently was injured in a car accident with the defendant. The plaintiff provided medical care as required by the contract but the individual died. The plaintiff sued the defendant for negligence, seeking to recover the economic losses it incurred providing the increased amounts of medical care necessary under the "life-care" contract as a result of the accident. This Court observed that "courts have quite consistently refused to recognize a cause of action based on negligent, as opposed to intentional, conduct which interferes with the performance of a contract between third parties," and held that the plaintiff could not recover its economic losses. (*Id.* at 636.)

Another example is *County of Santa Clara v. Atlantic Richfield Co*. (2006) 137 Cal.App.4th 292, 318, where government entities sued lead manufacturers for economic losses incurred to remove lead paint from the plaintiffs' buildings. The plaintiffs had no contract with the lead manufacturers, nor was any part of their complaint predicated on the defendants' performance of a contract with another party. The Court of Appeal held that the economic loss doctrine applied because the paint had caused no personal or property injury. "One thing is clear: economic loss

alone, without physical injury, does not amount to the type of damage that will cause a negligence or strict liability cause of action to accrue. 'In a strict liability or negligence case, the *compensable injury* must be *physical harm to persons or property*, not mere economic loss.'" (*Ibid.*, quoting *Zamora, supra,* 55 Cal.App.4th at 210, italics in original.)

Second, the Business Plaintiffs' attempt to limit the economic loss doctrine to cases involving injuries that arise from a defendant's contract ignores that the underlying premise of the rule is to limit defendants' duties in negligence and strict liability: "An actor has no general duty to avoid the unintentional infliction of economic loss on another." (Rest. 3d of Torts: Liab. for Econ. Harm § 1 TD No 1 (2012).) As the Opinion reiterates, this duty concept applies in all negligence cases regardless of the particular context, because "[c]ourts . . . invoke[ ] the concept of duty to limit generally 'the otherwise potentially infinite liability which would follow from every negligent act . . . .'" (*Bily, supra,* 3 Cal.4th at 397, quoting *Thompson v. County of Alameda* (1980) 27 Cal.3d 741, 750.) "The conclusion that a defendant did not have a duty constitutes a determination by the court that public policy concerns outweigh, for a particular category of cases, the broad principle enacted by the Legislature that one's failure to exercise ordinary care incurs liability for all the harms that result." (*Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1143.) And as this Court declared in *Aas v. Superior Court* (2000) 24 Cal.4th 627 (*Aas*), the economic loss

doctrine is a "general principle" that applies to all actions for negligence to bar recovery "for economic loss alone." (*Aas*, 24 Cal.4th at 636, superseded by statute on other grounds as stated in *McMillin Albany LLC v. Superior Court* (2018) ___ Cal.5th ___ [227 Cal.Rptr.3d 191, 193].)

Third, the Business Plaintiffs' argument confuses the economic loss doctrine with its narrow special relationship *exception*, thereby turning the rule on its head. As this Court has made clear, "[r]ecognition of a duty to manage business affairs so as to prevent purely economic loss to third parties in their financial transactions *is the exception, not the rule*, in negligence law." (*Quelimane, supra,* 19 Cal.4th at 58, italics added.)

Plaintiffs note that "[a]ll of these 'special relationship' cases, from *Biakanja* to *Centinela*, examine the existence of a duty where only economic loss was sought—but they all do so in the context of at least one, and sometimes multiple, contractual relationships." (Pet. at 15-16.) But it is unsurprising that cases applying the narrow special relationship exception all involved contractual relationships, since the existence of such a transaction is precisely what gives rise to the potential for a special relationship in the first place. (See *J'Aire, supra,* 24 Cal.3d at 804 [applying special relationship factors to claim of "negligent performance of a contract"].)

Accordingly, the Court of Appeal followed this Court's decisions when it stated that "a third party's purely economic loss arising from a

transaction is a prerequisite for recovery in tort, absent injury to person or property" and that the "failure to establish this foundation precludes a finding of the 'special relationship' required by *J'Aire* and subsequent Supreme Court decisions." (Op. at 14.) The Business Plaintiffs' argument would cause the exception to swallow the rule.

B. There Is No Conflict or Confusion in the Lower Courts Warranting this Court's Review

The Business Plaintiffs argue that review is necessary to "resolve a conflict in the lower courts on the application of the special relationship test." (Pet. at 16.) They are mistaken. There is no conflict.

The Business Plaintiffs argue that there is conflicting authority as to whether the first *Biakanja* factor—the extent to which the transaction was intended to affect the plaintiff—is "dispositive." But the Business Plaintiffs plainly misread the precedent they cite.

As an initial matter, there is *no* California decision recognizing the existence of a special relationship in the absence of any contract or transaction giving rise to plaintiffs' economic losses, which is what the Business Plaintiffs seek here. By asking "the *extent* to which the transaction was intended to affect the plaintiff" (*Biakanja, supra*, 49 Cal.2d at 650, italics added), the first *Biakanja* factor (along with all the others) *presupposes* that some contract or transaction giving rise to the plaintiff's losses exists. Here, as the Court of Appeal found, Plaintiffs concede that no

such contract or transaction exists. (Op. at 20.) Thus, as the Opinion reflects, Plaintiffs are not seeking a weighing of the *Biakanja* factors, but a wholesale rejection of the very premise of the economic loss doctrine, namely that defendants to negligence and strict liability claims have no duty to avoid purely economic losses of third parties.

The Court of Appeal correctly held that "a third party's purely economic loss arising from *a transaction is a prerequisite* for recovery in tort, absent injury to person or property." (Op. at 14, italics added.) All California courts agree that the *Biakanja* factors are only applied when "(1) the defendant was acting pursuant to a contract, and (2) the defendant's negligent performance of the contract injures a third party." (*Stop Loss Ins. Brokers, Inc. v. Brown & Toland Medical Group* (2006) 143 Cal.App.4th 1036, 1042; see also *Biakanja, supra,* 49 Cal.2d at 650 [considering whether defendant had a duty to protect plaintiff from economic injury "even though they were *not in privity*" to the contract at issue; "The determination whether in a specific case the defendant will be held liable to a third person *not in privity* is a matter of policy and involves the balancing of various factors," italics added].) Plaintiffs cite no authority to the contrary, and none exists.

The Opinion also correctly noted that, in balancing the *Biakanja* factors, "[n]o appellate authority addressing negligent liability for purely economic loss to third parties has found the existence of a duty of care in

the absence of the first factor." (Op. at 13.)

Moreover, Plaintiffs' asserted conflict concerning how lower courts weigh each of the *Biakanja* factors is based on a misreading of precedent. The court in *Ott* endorsed "the full six-part test in determining the presence or absence of a duty of care." (*Ott, supra,* 31 Cal.App.4th at 1454, 1455 ["We must consider the applicability of all six *J'Aire* factors as we measure the allegations of the complaint."].) Applying that test, the court found that the relevant transaction (the design and sale of a milking system) "was [not] 'intended to affect' the plaintiffs in any way particular to the plaintiffs." (*Id.* at 1455.) Because there was no intent to affect the plaintiffs in a special way, the transaction could not be the "foundation" for a special relationship between the parties. (*Id.* at 1455-56.) The court then considered the second factor and held that "injury to plaintiffs was not reasonably foreseeable." (*Id.* at 1456.) Having determined that the first and second factors weighed strongly against finding a special relationship, the court concluded that it "need not consider the remaining *Biakanja* factors" because "[e]ven if all four weighed in favor of finding a duty of care, we would still conclude that no duty existed." (*Ibid.*)

Similarly, as the Business Plaintiffs note, *Alereza v. Chicago Title Co.* (2016) 6 Cal.App.5th 551 (*Alereza*) applied the six *Biakanja* factors because it also involved a contractual relationship, which could establish a special relationship. (Pet. at 17.) The *Alereza* court considered the first

Biakanja factor, "'the *extent* to which the transaction was intended to affect the plaintiff,'" and determined that "[a]t most, the benefit to Alereza was a collateral benefit." (*Alereza, supra,* 6 Cal.App.5th at 558, 560, italics added.) After considering the remaining factors, *Alereza* held "that the defendant *owed no duty* to the plaintiff." (Pet. at 18, citing *Alereza, supra,* 6 Cal.App.5th at 560-62, italics added.)

Thus, the Business Plaintiffs' citations to *Ott* and *Alereza* show no conflict among appellate courts. Both cases noted the applicability of all six factors and ultimately determined that no duty existed. These cases are fully consistent with the Opinion here.

Similarly, the Business Plaintiffs' citation to Justice Baker's separate opinion provides no basis for review. Contrary to their assertion, Justice Baker did not "recognize[] that the absence of a transaction [is] not dispositive." (Pet. at 18.) Rather, he agreed that the broad exception for mass tort claims adopted by the Superior Court was contrary to settled law. Nevertheless, he expressed concern about appellate intervention at the demurrer stage because it is "possible that some—but certainly not all—of the businesses" could have established that they met the special relationship test had there been a "more developed record." (Op. (dis. opn. of Baker, J.) at 2.) He did not elaborate on what facts would prove sufficient in his view. Importantly, the Business Plaintiffs disclaimed any desire to differentiate different plaintiffs via amended pleadings, effectively

declining Justice Baker's suggestion that different plaintiffs might be differently situated. Insofar as Justice Baker implies that a relationship sufficient to remove some Business Plaintiffs from the economic loss doctrine may be established purely based on the "foreseeability" of the injury (see *ibid.*), that view conflicts with this Court's clear precedent. (*Bily, supra,* 3 Cal.4th at 399 ["[W]e will not treat the mere presence of a foreseeable risk of injury to third persons as sufficient, standing alone, to impose liability for negligent conduct."].)

IV. CONCLUSION

As the Court of Appeal rightly concluded, the proper resolution of the issue presented in this proceeding involves a straightforward application of well-established precedent. The Business Plaintiffs' Petition for Review makes clear that they can point to no decision of this Court or any Court of Appeal recognizing a special relationship in the absence of a contract or transaction giving rise to the plaintiffs' economic losses. The Court of Appeal's rejection of their arguments thus broke no new ground and faithfully applied settled precedent. The Court should deny review.

Dated: February 13, 2018

MORGAN, LEWIS & BOCKIUS LLP

By /s/ David L. Schrader
James J. Dragna
David L. Schrader
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Attorneys for Petitioner Southern California Gas Company

CERTIFICATE OF WORD COUNT

I certify that this answer contains 4,912 words, as counted by the Microsoft Word 2010 software used to generate it.

Dated: February 13, 2018

MORGAN, LEWIS & BOCKIUS LLP

By /s/ David L. Schrader
James J. Dragna
David L. Schrader
Yardena R. Zwang-Weissman

Attorneys for Petitioner Southern California Gas Company

CERTIFICATION OF SERVICE

I, Michelle M. Bronk, certify and declare as follows:

I am a citizen of the United States and a resident of the State of California. I am over eighteen years of age, not a party to this action, and am employed in the City and County of Los Angeles, State of California. My business address is Morgan, Lewis & Bockius LLP, 300 South Grand Avenue, Suite 2200, Los Angeles, California 90071-3132. I am readily familiar with the practice of this office for collection and processing of correspondence for mail/fax/hand delivery/next business day delivery, and they are deposited that same day in the ordinary course of business. On February 13, 2018, I served the following document on the interested parties in this action:

ANSWER TO PETITION FOR REVIEW

By Electronic Service: The parties currently registered to receive electronic service via CaseAnywhere have agreed to accept service through the electronic system in the Coordinated Action entitled *Southern California Gas Leak Cases,* Judicial Council Coordinated Proceeding No. 4861. A full list of recipients and their respective email addresses is attached hereto as **Service List A**.

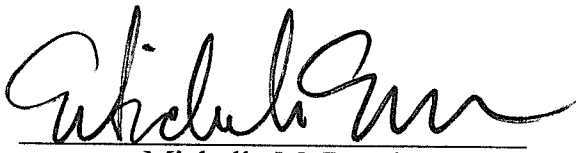
By U.S. Mail: By putting a true and correct copy thereof, together with a signed copy of this declaration in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth in **Service List B** attached hereto. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on the 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 the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

By Electronic Upload: By uploading a true and correct copy thereof through the upload Link provided by the Truefiling online service provided by the California Supreme Court. A full list of recipients is attached hereto as **Service List C**.

By Electronic Upload: By uploading a true and correct copy thereof through the upload Link at https://oag.ca.gov/services-info/17209-brief/add pursuant to Business and Professions Code 17209 and by request of the Office of the Attorney General.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 13, 2018, at Los Angeles, California.

By: 
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