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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

MICHIKO SHIOTA GINGERY, an individual; KOICHI MERA, an individual; GAHT-US CORPORATION, a California Non-Profit Corporation; and MASATOSHI NAOKI, an individual,

Plaintiffs,

vs.

CITY OF GLENDALE, a Municipal Corporation; and DOES 1 through 20, inclusive,

Defendants.

Case No. BC556600

PLAINTIFFS' OPPOSITION TO DEFENDANT'S SPECIAL MOTION TO STRIKE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE 425.16

[Filed concurrently with the Declarations of Maxwell M. Blecher, Koichi Mera, Masatoshi "Andy" Naoki, and Michiko Shiota Gingery; Request for Judicial Notice; Notice of Lodging; Plaintiffs' Opposition and Objections to Defendant's Evidence; [Proposed] Order]

Date: February 23, 2015
Time: 8:30 a.m.
Place: Department 34

Assigned for All Purposes to:
Hon. Michael P. Linfield

Complaint Filed: September 3, 2014

Trial Date: None set

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Federal Rule of Civil Procedure 41(b) 11

Plaintiffs herein ("Plaintiffs") respectfully submit this opposition ("Opposition") to Defendant City of Glendale's ("Defendant" or "Glendale") Special Motion to Strike ("Motion") pursuant to California Code of Civil Procedure ("CCP") Section 425.16.

I. INTRODUCTION

Defendant seeks to convert this action into one about who did what to whom during World War II, but that is **not** the subject of this action. Filed for **public benefit**, under CCP § 425.17, this suit instead concerns Defendant's SLAPP **unprotected and unconstitutional activities** 70 years later—intruding upon the federal government's exclusive province over foreign affairs and the right to speak with "one voice" regarding an important international partner. *See Crosby v. National Foreign Trade Council* (2000) 530 U.S. 363, 381. In its Motion, Defendant distorts applicable fact and law to argue **incorrectly** that its activities are protected under CCP § 425.16. Should this Court disagree, Plaintiffs make the requisite "**minimal**" showing herein that they should prevail on the merits. **Either way**, Defendant's Motion must be denied and Plaintiffs should recover their attorneys' fees and costs in opposition.

II. STATEMENT OF FACTS

In July 2013, in an unprecedented, stark and highly criticized departure from its traditional local governmental interests, Defendant invaded the field of foreign affairs reserved exclusively to the federal government under the Supremacy Clause of the U.S. Constitution by "approving" and installing a monument ("Monument") in publicly owned Glendale Central Park ("Central Park"), ostensibly for the **sole** purpose of "commemorating" World War II comfort women, but in fact also accusing, trying, convicting, and condemning the Japanese "military" of disputed and contentious alleged war crimes. **As reflected in the officially videotaped minutes of its July 9, 2013 City Council meeting ("Meeting")**, Defendant's conduct exhibits all the characteristics of a biased and contentious "**Kangaroo Court**" engaged in the "adjudication" of matters of foreign affairs:

- In spite of the absence of any deadline, and as was advocated by its then-mayor, the City Council failed to first poll Glendale residents to see how they felt before "voting" on the Monument.
- The overwhelming **written** expression of the public submitted to Defendant **before** the Meeting, and the overwhelming public expression **during** the Meeting, was **against** the Monument.
- The language in the Monument's plaque ("Plaque") was withheld from the City Council and

was not voted on either during or after the Meeting. When asked at the Meeting what the Plaque would say, Glendale staff said it would merely "commemorate" the comfort women. Only three weeks later, the Plaque's anonymously drafted language harshly denounces the Japanese government.

- The "vote" was four in favor and one against. The dissenting then-mayor said both during the Meeting, and again thereafter in a letter on official Glendale stationery delivered to Glendale's sister city Higashiosaka City, that the action was improper. As to the remaining four votes, one, a practicing lawyer, acknowledged during the Meeting that he knew the City Council's action intruded on foreign affairs and violated applicable Ninth Circuit case law; a second, assured during the Meeting that the language in the Plaque would merely "commemorate" comfort women, never inquired nor spoke against the actual caustic language; in spite of the fact that the actual language was not disclosed, a third said in the Meeting that the language in the Plaque would not be critical of the Japanese, but never spoke out against the caustic language after it was not what she promised; and the fourth gratuitously disparaged the Japanese in attendance at the Meeting for supposedly not knowing their own history.

For the public's benefit, Plaintiffs have sued for declaratory and injunctive relief to remedy Defendant's failure to abide by the Supremacy Clause of the U.S. Constitution, various provisions of the California Constitution and Glendale's Municipal Code of Ordinances ("Code").

III. ARGUMENT

A. Plaintiffs' Public Interest Suit Is Exempt From The Anti-SLAPP Statute

The anti-SLAPP statute is intended to protect First Amendment rights from governmental retaliation. CCP § 425.16(a). In deciding this motion, this Court must **first** decide whether Glendale has met its burden to show Plaintiffs have attacked protected activity. **If** Glendale first demonstrates that the attack is on the exercise of some free expression or petition rights of Glendale, only then does the burden shift to Plaintiffs to show a probability of prevailing in the litigation. *Kajima Engineering and Construction, Inc. v. City of Los Angeles* (2002) 95 Cal. App. 4th 921, 928. "Only a cause of action . . . that [attacks] protected speech or petitioning *and* lacks even **minimal** merit . . . is a SLAPP subject to being stricken under the statute." *Navellier v. Sletten* (2002) 29 Cal. 4th 82, 89 (italics original, bold added).

In 2003, the legislature recognized "a disturbing abuse of Section 425.16 . . . contrary to [its] purpose and intent." CCP § 425.17(a). Thus, § 425.17 was enacted to "encourage continued participation

in matters of public significance," which "should not be chilled through abuse of the judicial process or Section 425.16." *Id.* Section 425.17 creates an **exemption** for any action "brought solely in the public interest or on behalf of the general public," so long as (1) the plaintiff does not seek any relief greater than or different from the relief sought for the general public or a large class of persons; (2) the action, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit on the general public or a large class of persons; and (3) private enforcement is necessary and places a disproportionate financial burden on the plaintiff. CCP § 425.17(b); *People ex rel. Strathmann v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 491, 503-504.

If these three conditions are met, the suit "is **not** subject to a [SLAPP motion]," *id.* at 491 (emphasis added), and a court does **not** "need to discuss the merits of the motion to strike." *Northern California Carpenters Regional Council v. Warmington Hercules Associates* (2004) 124 Cal.App.4th 296, 299. Whether a suit falls within § 425.17(b) is to be examined **prior to** the applicability of § 425.16 or the merits of the motion. *Id.* To determine whether § 425.17(b) controls, courts **"rely on the allegations of the complaint because the public interest exception is a threshold issue based on the nature of the allegations and scope of relief sought in the prayer."** *Strathmann*, at 499; *Northern*, at 300.

Plaintiffs' action falls squarely within § 425.17(b). Accordingly, the Motion must be denied.

1. In suits seeking only declaratory and injunctive relief, plaintiffs do not stand to receive any greater remedy than the public, and the public interest exemption is widely applied. *See e.g., Tourgeman v. Nelson & Kennard* (2014) 222 Cal.App.4th 1447, 1461. Here, solely to remedy violations of federal, state, and municipal law, the Second Amended Complaint ("SAC") requests for the public benefit "[t]hat the Court declare [Defendant's] installation of the [Monument and Plaque] unconstitutional and null and void," and that "the Court preliminarily and permanently enjoin and compel Defendant . . . to remove the [Monument and Plaque] from public property in Glendale." Plaintiffs will not be awarded any monetary damages, restitution, additional rights, or other relief beyond this public benefit.[1]

2. In determining whether § 425.17(b)(2) is met, this Court examines the nature of the allegations in the complaint to determine whether the suit could **potentially** benefit the public interest, **regardless of**

[1] Consistent with the exemption, the SAC also requests the Court to award Plaintiffs their costs and attorneys' fees pursuant to CCP § 1021.5. A "claim for attorney's fees, costs, or penalties does not constitute greater or different relief for the purposes of this subdivision." CCP § 425.17(b)(1).