GIBSON DUNN

Gibson, Dunn & Crutcher LLP

333 South Grand Avenue
Los Angeles, CA 90071-3197
Tel 213.229.7000
www.gibsondunn.com

Theodore J. Boutrous Jr.
Direct: +1 213.229.7804
Fax: +1 213.229.6804
TBoutrous@gibsondunn.com

July 11, 2018

VIA ELECTRONIC FILING

California Court of Appeal
Second Appellate District, Division Eight
Ronald Reagan State Building
300 South Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

Re: Re: *City of Santa Monica v. Superior Court*
Court of Appeal Case No. B291048
Trial Court Case No. BC616804

Dear Justices of the Court,

I write in response to plaintiffs' preliminary opposition, dated July 9, 2018. The opposition is remarkable not for what it says, but for what it does not say.

First, plaintiffs make no effort to defend the trial court's clear error in denying the City's summary judgment motion on procedural grounds. They do not, for example, address the controlling case law presented in the writ petition, including the *Carlton* and *National Grange* decisions, which hold on materially identical facts that any timeliness-of-service objection was forfeited by plaintiffs' failure to show prejudice. Nor do plaintiffs try to defend the trial court's decision against California's strong policy preference for deciding cases on the merits rather than on empty procedural technicalities. (See Code Civ. Proc., § 475; *Bahl v. Bank of Am.* (2001) 89 Cal.App.4th 389, 398.)

Second, plaintiffs again fail to show *any* prejudice resulting from the service of the City's motion. They have now had four opportunities to do so—(1) at the June 14 hearing, (2) in their June 18 response to the City's supplemental brief on the controlling case law, (3) at the June 19 hearing, and (4) in their July 9 preliminary opposition. But plaintiffs have yet to make any showing that, if only they had gotten the City's motion by personal service as well as email, "they could have put on an even bigger or better showing" than the 856-page submission they did file. (*Nat'l Grange of the Order of Patrons of Husbandry v. Cal. Guild* (2017) 17 Cal.App.5th 1130, 1146-1147.) The City's motion was indisputably fully briefed by both sides, which have been and remain prepared to argue the motion on the merits.

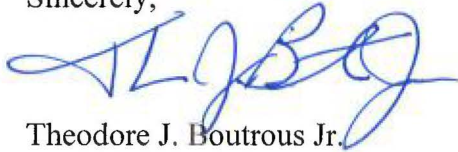
Received by Second District Court of Appeal

Third, although plaintiffs purport to address whether the City's writ is worthy of this Court's attention, they do not meaningfully address any of the City's arguments, all supported by legal authority, that this case does indeed present a writ-worthy issue. (Pet. at pp. 20–28.) Plaintiffs instead "boil[] down" four of the City's five reasons for granting writ relief into what they characterize as the single assertion that going to trial would be a "great hardship." Plaintiffs' arguments that no such hardship has been shown, if accepted, would appear to call into question the propriety of writ relief following *any* denial of summary judgment. But the Legislature has specifically provided for such relief by statute, and the case law recognizes the propriety of writ relief in circumstances such as this. "We may grant writ relief for the erroneous denial of a motion for summary judgment pursuant to Code of Civil Procedure section 437c, subdivision (m)(1). While writ relief is extraordinary because a party often has an adequate remedy through filing a postjudgment appeal, '[t]he adequacy of an appellate remedy depends on the circumstances of the case, thereby necessarily vesting a large measure of discretion in the appellate court to grant or deny a writ.'" (*Local TV, LLC v. Superior Court* (2016) 3 Cal.App.5th 1, 7 [granting petition and ordering trial court to vacate order denying summary judgment motion and enter a new order granting that motion].) Appellate intervention is warranted in this case in particular not just because the trial court denied a meritorious motion that should end the litigation before trial, but because an error of law led it to deny the City its right to have that motion heard on the merits at all.

Fourth, plaintiffs say nothing at all about the City's request for a stay, thereby confirming that they would suffer no prejudice from a brief delay of the trial.

In sum, writ relief is necessary here. The City's petition presents a narrow and important question concerning the application of Code of Civil Procedure section 437c, one of California's most frequently cited statutes. And plaintiffs' letter concedes that the merits issues posed by the City's summary judgment motion present "a matter of significant public interest," though plaintiffs incorrectly claim those issues are not implicated by the City's petition. There is no question that this Court has the discretion, if it grants the City's petition, to resolve the underlying motion on the merits. At a minimum, this Court may provide urgently needed guidance to the trial court on the important issues of first impression regarding the statutory interpretation of the CVRA's terms in light of their plain meaning, structure, and fundamental constitutional backdrop. The trial court's denial of the City's summary judgment motion despite the lack of prejudice was clearly erroneous, and it has deprived the City of the right to have its motion heard on the merits—a right that cannot be vindicated on appeal after a needless trial. The parties stand ready to argue the merits of the City's motion, and this Court should vacate the trial court's erroneous decision so that they may have that opportunity.

Sincerely,



Theodore J. Boutrous Jr.

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