



## Legislation Details (With Text)

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<b>Title:</b>	STATUS OF THE LITIGATION BETWEEN RICHARD RAND AND MAYOR PRO TEM JAMES DEAR AND THE CITY OF CARSON-RECEIVE AND FILE THIS STATUS REPORT (CITY COUNCIL)				
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## Report to Mayor and City Council

Tuesday, April 07, 2020

Consent

### SUBJECT:

**STATUS OF THE LITIGATION BETWEEN RICHARD RAND AND MAYOR PRO TEM JAMES DEAR AND THE CITY OF CARSON-RECEIVE AND FILE THIS STATUS REPORT (CITY COUNCIL)**

### I. SUMMARY

Rand Resources, LLC and Carson El Camino, LLC filed their complaint against the City, Mayor *Pro Tem* James Dear, Leonard Bloom, and U.S. Capital, LLC in November 2014, related to allegations of a breach of contract, fraud, misrepresentation and various other causes of action related to an Exclusive Agency Agreement Rand had in connection with representation of City before the NFL. The case had been stayed while it was appealed first to the Court of Appeal, and then to the California Supreme Court, which remanded back to the Court of Appeal for further proceedings, which in turn remanded the case back to the Superior Court.

Recent "law and motion" proceedings before the Los Angeles County Superior Court has resulted in important litigation victories for both the City and the Mayor *Pro Tem*. We write to brief the City Council and the community on these important rulings. In short, the Court has fully dismissed the Mayor *Pro Tem* in his individual capacity from the lawsuit, and the action against the City is now reduced to one simple garden variety breach of contract cause of action.

### II. RECOMMENDATION

CONSIDER this status report from the Office of the City Attorney.

RECEIVE and FILE the report.

### III. ALTERNATIVES

TAKE such action the City Council deems appropriate consistent with the requirements of law.

### IV. BACKGROUND

Upon the return of this lawsuit to the Superior Court from the California Supreme Court, our office **simultaneously** filed two (2) motions in that court:

(a) a motion for “judgment on the pleadings” with respect to the three so-called “fraud” causes of action alleged in the First Amended Complaint against the City. This type of legal procedure essentially argues to the court that even if, for the sake of argument only, everything alleged in the three fraud causes of action in the First Amended Complaint were true that does not give rise to any legal remedy against the City; and

(b) a “demurrer” to the entire First Amended Complaint as to former-Mayor, now Mayor *Pro Tem*, Jim Dear. This type of legal procedure also essentially argues to the court that even if, for the sake of argument only, everything alleged in the First Amended Complaint as to Mr. Dear were true that does not give rise to any legal remedy against him.

We are pleased to report that the superior court (with a new judge in place) has **granted** the City’s motion and **sustained** the demurrer brought on behalf of Mayor *Pro Tem* Dear. With respect to the allegations made against the Mayor *Pro Tem*, the Superior Court concluded:

“The official duty privilege is unquestionably available to high-ranking state officials, such as the governor or individuals whose positions correspond to cabinet officers in the federal government.” Within the hierarchy of city politics, the [former] mayor would certainly count as a ‘high ranking’ official. . . . Regardless of Plaintiffs arguments, the primary issue is if the [former] mayor of a city was acting within his role as mayor when talking about a city contract. This is a clearly discretionary act, as the [former] mayor was involved . . . at every stage.”

The Superior Court then concluded that “Gov. Code § 820.2 states “[e]xcept as otherwise provided by statute, a public employee is not liable for . . . his act or omission where the act or omission was the result of the exercise of the discretion vested in him . . . .” As a consequence, the Superior Court granted the demurrer on behalf of the Mayor *Pro Tem* as to the entire First Amended Complaint. With respect to the City’s motion, the Superior Court concluded: “Plaintiff attempts to frame the causes of action (tortious breach of contract, promissory fraud, and fraud) as contract-based. However, the case law does not support his position. . . . [The c]laims are based in tort, [as a consequence] they are subject to government immunity”

### V. FISCAL IMPACT

None.

### VI. EXHIBITS

Prepared by: City Attorney's Office