No. 20-987
IN THE SUPREME COURT
OF THE UNITED STATES

SPIELBAUER LAW OFFICE

Petitioner

v.

MIDLAND FUNDING, LLC, MIDLAND CREDIT MANAGEMENT, INC., AND DOES 1-10

Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SIXTH DISTRICT COURT OF APPEAL

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

Midland Funding, LLC and Midland Credit Management, Inc. disclose the following parent corporations and any publicly held company that owns 10% or more of the corporation's stock:

Encore Capital Group, Inc., a publicly-held company which trades on NASDAQ under the symbol 'ECPG," is the parent company of Midland Credit Management and the ultimate parent of Midland Funding, LLC.

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SUMMARY OF THE ARGUMENT

Spielbauer Law Office's ("Spielbauer") Petition for Writ of Certiorari ("Petition") invites this Court to review a California Court of Appeal's garden variety order, which applied state statutory authority to dismiss Spielbauer's state law appeal as untimely. The Court should decline this invitation.

In making its argument, Spielbauer invokes federal constitutional provisions never raised below in an attempt to manufacture federal jurisdiction over these state law issues. Spielbauer never presented any of the federal issues raised in the Petition to any of the state court tribunals who decided the issues, nor did those courts rule on any federal question, let alone an important one. Because federal jurisdiction requires a federal question for review of a state court decision; because Spielbauer never presented any such federal issue to any of the state courts; and because no state court passed on any issue of federal law; the case does not present any issue either appropriate or suitable for this Court's review.

Nor is California law on the deadline to file a notice of appeal unconstitutionally "vague." California law, both statutory and case law, is clear. An order granting or denying the type of motion that was brought in the state trial court, known as a special motion to strike brought pursuant to California Code of Civil Procedure section 425.16 (the "anti-SLAPP" statute), is immediately appealable under California Code of Civil Procedure section

425.16(i) and section 904.1(a)(13). Under clear state statutory authority, this means the deadline to appeal begins to run upon entry of the order granting or denying an anti-SLAPP motion, or the clerk's service of a Notice of Ruling or file-stamped copy of the order. The law is also clear that the subsequent entry of judgment does not restart the deadline to appeal from an appealable order.

The application of this authority in this case presents no federal question of law for this Court's review. Instead, it presents the unremarkable application of settled state law to determine that Spielbauer's appeal here was untimely. The Court should therefore deny the Petition.

CORRECTION TO PETITION'S STATEMENT OF THE CASE

On December 6, 2018, Spielbauer filed a complaint in the Superior Court of the State of California for the County of Santa Clara (the "Superior Court") against Respondents Midland Credit Management, Inc. and Midland Funding LLC (collectively, "Midland"), alleging state common law claims for intentional interference with contractual relations, negligent interference with prospective economic advantage, unjust enrichment, and a state statutory claim for unfair business practices against Midland. App.6a.

On February 8, 2019, Midland filed an anti-SLAPP motion under California law against Spielbauer's complaint in its entirety.

While the basis of Midland's motion is irrelevant to the subsequent dismissal of Spielbauer's appeal, to the extent the Court considers Spielbauer's recitation of facts, the actual facts and basis for Midland's motion can be summarized as follows:

Respondent Midland Funding LLC (MF) owned two credit card accounts belonging to non-party Melanie Barr. App.10a. MF filed suit in state court against Ms. Barr on one of those accounts, and Spielbauer represented her in that collection action. The collection action later became inactive, and Ms. Barr eventually reached out to Midland to inquire about settlement. Midland immediately asked if she was represented by counsel, and she said she no

longer had an attorney. Midland then settled the lawsuit with Ms. Barr. App.12a.

Spielbauer later sued Midland, and that lawsuit arose out of Midland's act in settling the collection action with Ms. Barr. Because Spielbauer's complaint challenged Midland's act of settling a lawsuit, which is protected speech and petitioning activity, Midland filed an anti-SLAPP motion. App.6a. An anti-SLAPP motion provides for a procedural mechanism for a defendant to address, early in a case, a claim that arises from the defendant's acts that constitute the exercise of the constitutional rights of freedom of speech and petition. If a complaint arises from protected activity, the burden shifts to the plaintiff to show a probability of prevailing by submitting admissible evidence on each element of the claim. App.7a-8a.

On July 3, 2019, the Superior Court entered an order granting Midland's motion.

On July 5, 2019, the clerk served a file-endorsed copy of the entered order by mail. On August 9, 2019, the trial court entered judgment in favor of Midland and against the Spielbauer.

On October 1, 2019—88 days after the clerk served the order granting the anti-SLAPP motion—Spielbauer filed a notice of appeal. App.3a.

On January 21, 2020, Midland filed a motion to dismiss the appeal. On February 10, 2020, Spielbauer filed an opposition to the motion.

On July 13, 2020, the Court of Appeal dismissed the appeal as untimely.

On July 25, 2020, Spielbauer filed a petition for rehearing. On July 29, 2020, the Court of Appeal denied Spielbauer's petition.

On October 21, 2020, the California Supreme Court denied Spielbauer's petition for review.

ARGUMENT

I. The State Court Decided No Important Issues of Federal Law Warranting Review Under Rule 10 or 28 U.S.C. § 1257.

The Supreme Court's jurisdiction is defined by statute. As relevant here, a final judgment of the highest court of a State "may be reviewed by the Supreme Court by writ of certiorari. . . where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States." 28 U.S.C. § 1257(a).

"Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." Rule 10. Where it involves review of a state court decision, a matter may warrant review where "a state court of last resort has decided an important federal question in a way that conflicts with a decision" of another state court of last resort or a United States court of appeals; or where the state court decided an "important question of federal law" that should be settled by the Court or that conflicts with a decision of this Court. Rule 10.

"In reviewing the judgments of state courts under the jurisdictional grant of 28 U. S. C. § 1257, the Court has, with very rare exceptions, refused to consider petitioners' claims that were not raised or addressed below." *Yee v. City of Escondido*, 503 U.S. 519, 533 (1992) (noting that the issue may be jurisdictional); *Howell v. Mississippi*, 543 U.S. 440,

443 (2005) ("this Court has almost unfailingly refused to consider any federal-law challenge to a state-court decision unless the federal claim "was either addressed by or properly presented to the state court that rendered the decision we have been asked to review.").

Here, the state court opinions at issue are silent on any federal issue. App.1a-3a. "When the highest state court is silent on a federal question before us, we assume that the issue was not properly presented." *Adams v. Robertson*, 520 U.S. 83, 86 (1997).

Spielbauer presents no evidence that the federal issues it attempts to raise here were presented to the state courts. Spielbauer cannot present such evidence, because it never raised any federal constitutional or statutory issue before the California courts.

Likewise, Spielbauer has not attempted to demonstrate that any state court below decided any federal question, let alone any important question. Nor has Spielbauer demonstrated that the state court's decision conflicts with the decision of any United States court of appeal, or with the decision of any state court of last resort, as contemplated under Rule 10. Instead, Spielbauer asserts that the "Constitutional Dimensions" of the matter are that, under the uniform California case authority construing the California statutes at issue, an attorney could commit legal malpractice if he or she missed a deadline to file a notice of appeal. (Petition,

p. 24.) This is not an issue of constitutional dimension, nor does the potential of malpractice for missing a deadline to appeal trigger the due process clause of the United States Constitution.[1]

In short, because this matter concerns a garden variety dismissal of a state court appeal for untimeliness, made on state law grounds under uniform state law authority, there is no important federal question at issue, let alone one that conflicts with any other authority. In short, this case presents neither an appropriate nor a compelling federal issue for this Court's review.

II. Spielbauer's Arguments Invoke Legal Error in Applying State Law, Not Unconstitutionality.

To attempt to invoke federal jurisdiction, Spielbauer asserts in the "Questions Presented" that the state statutes at issue are unconstitutionally vague. (Petition, p. i.)[2] Yet, nowhere in the Petition

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[1] Invoking the specter of state bar disciplinary proceedings as a potential consequence likewise does not transform the interpretation of these statutes into an issue of federal constitutional law. Not only are such proceedings unrelated to, and far afield from, the interpretation of any of the procedural statutes at issue or whether those statutes are unconstitutionally vague, Spielbauer overstates the issue. Attorney negligence becomes subject to discipline only when the attorney "intentionally, recklessly, with gross negligence, or repeatedly fail[s] to perform legal services with competence." Cal. Rules Prof. Conduct 1.1(a).

[2] Spielbauer also asserts in the "Questions Presented" and "Conclusion" sections that the statutes create an

does Spielbauer demonstrate that the statutes at issue are vague under any standard construing a civil statute under the "vagueness" provision of the United States Constitution. Instead, Spielbauer later argues that the statutes "are harmonious" and are "not ambiguous," if the California Courts of Appeal would apply them differently. (*See, e.g.*, Petition, pp. 5-6.)

In short, Spielbauer's argument is not that the statutes are unconstitutionally vague, but that the California Court of Appeal made a legal error in construing a state statute. That is not grounds for review by this Court.

III. The Statutes at Issue Are Not Unconstitutionally Vague.

A. California Statutory and Case Law on the Deadline to Appeal an Anti-SLAPP Order Is Clear.

"To find a civil statute void for vagueness, the statute must be 'so vague and indefinite as really to be no rule or standard at all.' *Boutilier v. INS*, 387 U.S. 118, 123, 87 S. Ct. 1563, 1566, 18 L. Ed. 2d 661

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unconstitutional taking, but Spielbauer neither develops nor repeats this argument anywhere else in the Petition to explain how a deadline to appeal causes a "taking" of a constitutionally protected property right. In the absence of any authority or argument explaining Spielbauer's reasoning, and because the "question presented" appears to be based on the same assertion of vagueness, Midland treats the two arguments as repeating the same "vagueness" argument.

(1967)." *Seniors Civil Liberties Ass'n v. Kemp*, 965 F.2d 1030, 1036 (11th Cir. 1992).

Spielbauer comes nowhere near meeting this high standard. As discussed above, Spielbauer itself argues that the statutes are "not ambiguous" if the California courts would simply interpret them differently—which is the opposite of imposing "no rule or standard at all." As discussed above, Spielbauer's argument is really an argument that the California courts are misinterpreting state statutes, which provides no federal law hook for this Court's jurisdiction.

Moreover, Spielbauer is simply wrong. California Courts of Appeal that have examined the deadline to appeal from an order granting or denying an anti-SLAPP motion have uniformly held that the deadline to appeal begins to run when the order is entered or served, regardless of whether judgment is entered later.

(1) Appealable Orders Must Be Timely Appealed, and an Order Granting a Special Motion to Strike is Appealable.

The California legal principles at issue are clear. "'If a judgment or order is appealable, an aggrieved party must file a timely appeal or forever lose the opportunity to obtain appellate review.' [Citations.]" *Mauhan v. Google Technology, Inc.*, 143 Cal.App.4th 1242, 1246-1247 (2006) ("*Maughan*"),

quoting *Norman I. Krug Real Estate Investments, Inc. v. Praszker,* 220 Cal.App.3d 35, 46 (1990).

California's anti-SLAPP statute itself provides that "[a]n order granting or denying a special motion to strike shall be appealable under Section 904.1." Cal. Code Civ. Proc. § 425.16, subd. (i). Likewise, Section 904.1 provides "[a]n appeal ... may be taken ... [f]rom an order granting or denying a special motion to strike under Section 425.16." *Id.* § 904.1, subd. (a)(13).

The deadline to file a notice of appeal from an appealable order typically begins to run upon the earliest of three potential triggering dates:

> (A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, showing the date either was served;
>
> (B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service; or
>
> (C) 180 days after entry of judgment.

Cal. Rules of Court, Rule 8.104, subd. (a)(1); *id.* subd. (e) ("As used in (a) and (d), 'judgment' includes an appealable order if the appeal is from an appealable

order."). "If a notice of appeal is filed late, the reviewing court must dismiss the appeal." Cal. Rules of Court, Rule 8.104, subd. (b).

(2) The California Courts of Appeal Have Uniformly Held that the Deadline to Appeal Runs from Entry of the Order, Despite Later Entry of Judgment.

Applying these authorities, in 2006 the California Court of Appeal in *Maughan v. Google Technology, Inc.* held that the deadline to appeal ran from the date the clerk of the superior court served notice of entry of the order granting the anti-SLAPP motion, despite the trial court's later entry of judgment awarding attorneys' fees. (*Maughan v. Google Technology, Inc.,* 143 Cal.App.4th 1242, 1247 (2006). The court rejected the argument that the order was an interim order reviewable on appeal from the final judgment under Code of Civil Procedure section 906, because that section itself expressly provides that it does "not authorize the reviewing court to review any decision or order from which an appeal might have been taken." *Id.* at 1247.

Likewise, in *Russell v. Foglio*, the Court of Appeal determined that the deadline to file an appeal from an order granting an anti-SLAPP motion began to run when the clerk mailed the parties a file-stamped copy of the order granting the motion to strike. *Russell v. Foglio,* 160 Cal.App.4th 653, 659 (2008). As the court held, "[u]nder California Rules of

Court, former rule 2(a)(1), (f) (8.104(a), (f)), plaintiff had 60 days from this notification. . . in which to file a notice of appeal from the order." *Id.* Because the plaintiff did not meet that deadline, the appeal was untimely despite the later entry of a judgment. *Id.* at 658-659, 660.

Spielbauer relies heavily on the concurring opinion written by Justice Rubin in *Russell.* Notably, in Justice Robin's concurring opinion, the Justice in fact found that under the plain meaning of the statutes at issue, the Court of Appeal had no jurisdiction because the deadline to appeal began to run when the order was entered and served.(*Id.* at 663 (Rubin, J., concurring). He discussed at length the Legislature's balancing act in providing for direct appeals from orders disposing of anti-SLAPP motions, noting that the resulting statutory framework could create a trap for the unwary because it would often require two appeals—one from the order granting the anti-SLAPP motion, and one from a judgment awarding attorneys' fees.(*Id.* at 662-665. He wrote his opinion to "suggest that the Legislature may wish to consider amending the statute involving such an appeal."(*Id.* at 663.

In the 12 years since Justice Rubin's concurring opinion was issued, the California legislature has declined to follow Justice Rubin's suggestion. While the inference that can be drawn from the legislature's inaction is somewhat questionable (*see City and County of San Francisco v. Sweet,* 12 Cal.4th 105, 121 (1995)), the implication is that the Legislature believes that the Court of Appeal

in *Russel v. Foglio* got it right. In any event, in the absence of an amendment to the statutes at issue, the law remains clear—an order granting or denying an anti-SLAPP motion is immediately appealable, and failure to appeal within the jurisdictional timeframe forfeits the right to review. There is no split in authority on any of these statutes or legal principles.

The authority cited in an attached letter brief and relied on by Spielbauer, *Tuchscher Dev. Enters., Inc. v. San Diego Unified Port Dist.*, 106 Cal. App. 4th 1219, 1245 (2003), does not invoke constitutional due process or any other federal law issue. It is also not on point on the issue of when an appeal may be filed, because it did not consider timeliness of the appeal in any way; does not consider when the order was entered versus the judgment; does not discuss whether the court served a notice of entry or a file-stamped copy of the order, which may have extended the deadline to appeal to a half year instead of 60 days (which would have made the notice of appeal timely); and the letter does not discuss the Court of Appeal's discretion to treat a timely notice of appeal as embracing an appeal of the order itself. *Id.* In short, it is inapplicable to any of the factors at issue in this case.

This case involved a conventional—and very clear—application of the authorities considered by the California Courts of Appeal in *Russel. v. Foglio* and *Maughan v. Google Technology, Inc.* On July 3, 2019, the trial court entered the order granting Midland's anti-SLAPP motion. This was an

appealable order. Cal. Code Civ. Proc. § 425.16, subd. (i); *id.* § 904.1, subd. (a)(13). On July 5, 2019, the clerk served the parties, including Spielbauer, with a file-endorsed copy of the entered order. This began the 60-day deadline for Spielbauer to file an appeal from the order. Cal. Rules of Court, Rule 8.104, subd. (a)(1)(A). Because Spielbauer did not file an appeal within that time frame, the Court of Appeal properly dismissed the appeal as untimely. The application of these legal issues are an issue of state law and are nowhere near being "so vague and indefinite as really to be no rule or standard at all." *Boutilier v. INS*, 387 U.S. at 123.

B. It Is Settled That an Appealable Order Does Not Become Appealable Again Upon Entry of Judgment.

Spielbauer argues that the statutes at issue are ambiguous because Section 904.1(a) of California's Code of Civil Procedure permits appeals from final judgments as well from as a variety of appealable orders, including from an order granting or denying an anti-SLAPP motion. Spielbauer thus suggests that the Court of Appeal erred, and should have ruled that an anti-SLAPP motion should therefore be appealable twice—after entry of the appealable order, and again after entry of judgment.

Spielbauer neither cites nor discusses the plethora of authority holding directly the opposite, nor does Spielbauer cite any authority holding that the law is unclear on this issue. No court has suggested that the statutes at issue in this Petition,

including Section 904.1, are ambiguous.[3] Indeed, the main authority on which Spielbauer relies, the concurring opinion filed by Justice Rubin in *Russell v. Foglio*, clearly states that under the plain meaning of the statutes, the Court of Appeal had no jurisdiction to consider the appeal. 160 Cal.App.4th at 663.[4] Spielbauer recites canons of statutory construction without actually applying any of the canons to the statutory language at issue. (Petition p. 18-22.) And, Spielbauer fails to address Justice Rubin's application of those canons to determine that the statutory language is clear.

Justice Rubin was correct that the laws on the issue are plain and the outcome clear, and Spielbauer's reliance on principles of equity and forfeiture is misplaced. Under California law, there is no constitutional right to appeal in a civil action; the right to appeal is entirely a creature of statute. *E.g.*, *Powers v. City of Richmond,* 10 Cal.4th 85, 109

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[3] The principles of statutory construction begin with the plain language of the statute. *E.g., Collection Bureau of San Jose v. Rumsey* 24 Cal.4th 301, 310 (2000). "The statute's plain meaning controls the court's interpretation unless its words are ambiguous. If the plain language of a statute is unambiguous, no court need, or should, go beyond that pure expression of legislative intent." *Kobzoff v. Los Angeles County Harbor/UCLA Medical Center,* 19 Cal.4th 851, 861 (1998).

[4] The amicus letter by Kevin Sullivan, filed on August 19, 2020, also relies on the paragraph from Justice Rubin's concurring opinion that cautions that the "two appeal" scenario creates a trap for the unwary. App.22a. Like Spielbauer, the letter does not mention Justice Rubin's conclusion that the meaning of statutes at issue is plain (the opposite of ambiguous).

(1995); *Trede v. Superior Court of San Francisco,* 21 Cal.2d 630, 634 (1943) ("There is no constitutional right to an appeal; the appellate procedure is entirely statutory and subject to complete legislative control."); *California Fruit & Meat Shipping Co. v. Superior Court of San Francisco,* 60 Cal. 305, 307 (1882) ("The right of appeal is a creature of statute.").

Code of Civil Procedure section 906, which permits appellate review of intermediate rulings after entry of judgment, specifically provides that "[t]he provisions of this section do not authorize the reviewing court to review any decision or order from which an appeal might have been taken." Cal. Code Civ. Proc. § 906. The meaning of this statute is plain, and "[t]he Rules of Court do not provide, once a judgment or appealable order has been entered, that the time to appeal can be restarted or extended by the filing of a subsequent judgment or appealable order making the same decision." *Laraway v. Pasadena Unified School Dist.*, 98 Cal.App.4th 579, 583 (2002). In other words, "California follows a 'one shot' rule under which, if an order is appealable, appeal must be taken or the right to appellate review is forfeited." *In re Baycol Cases I & II,* 51 Cal.4th 751, 761, fn. 8 (2011).

All of this authority makes clear that later entry of judgment does not "restart" the clock to appeal from an appealable order. Spielbauer does not, and cannot, explain why the result should be different in this case. The conclusion resulting from application of these authorities is unavoidable here. The order granting Midland's anti-SLAPP motion

was, by statute, immediately appealable. Cal. Code Civ. Proc., § 904.1, subd. (a)(13); *id.* § 425.16, subd. (i). The 60-day deadline to appeal began to run upon service of the file-stamped order by the clerk. Cal. Rules of Court, Rule 8.104, subd. (a)(1). Spielbauer did not meet that deadline. Because the deadline to appeal is jurisdictional, Spielbauer's failure to meet that deadline required dismissal. *Van Beurden Ins. Servs. v. Customized Worldwide Weather Ins. Agency,* 15 Cal.4th 51, 56 (1997) ("The time for appealing a judgment is jurisdictional; once the deadline expires, the appellate court has no power to entertain the appeal.").

Spielbauer suggests liberal construction of its notice of appeal might rescue its appeal from this outcome. It is unclear how this argument applies to the federal question and constitutionality issues Spielbauer raises here. However, the problem with Spielbauer's appeal is not simply a technical defect involving a misdescription of the judgment or order at issue. With any construction of the notice of appeal, liberal or otherwise, the appeal remains untimely. *Russell v. Foglio*, *supra*, 160 Cal.App.4th at 661 (liberal construction doctrine did not rescue timeliness of late-filed appeal).

For all of these reasons, the Court of Appeal properly dismissed the appeal. There is nothing of critical importance about the application of the law in this case, let alone of federal constitutional importance; belated appeals from appealable orders are regularly held to be untimely. *E.g., Chong v Fremont Indem. Co.*, 202 Cal.App.3d 1097, 1102

(1988) (failure to appeal from sanctions order appealable under collateral order doctrine precluded review on cross-appeal from summary judgment). The application of this settled state rule in this case does not merit this Court's review.

C. Spielbauer's Merits-Based Authorities Are Irrelevant to the Issues in this Petition.

Spielbauer spends several pages outlining arguments on the merits, rather than issues relevant to the deadline to file an appeal. (Petition, pp. 12-17.) The facts it recites and cases it discusses are irrelevant to the issues raised by the Petition, because neither of Spielbauer's authorities, *Mancini & Associates v. Schwetz* and *Spencer v. Mowat*, addresses the timeliness of an appeal from an anti-SLAPP motion. *See Spencer v. Mowat,* 46 Cal.App.5th 1024 (2020) ("*Spencer*"); *Mancini & Associates v. Schwetz,* 39 Cal.App.5th 656 (2019) ("*Schwetz*").) Midland also disagrees with their applicability on the merits. *Spencer*, 46 Cal.App.5th at 1033 (anti-SLAPP statute did not apply to acts of harassment and threats of violence unrelated to any protected speech or petitioning activity); *Schwetz*, 39 Cal.App.5th at 660 (appeal from judgment following trial; anti-SLAPP statute was not at issue). Because Midland's disagreement with Spielbauer's position on the merits is, however, irrelevant to the issues before this Court, which concern timeliness of an appeal, Midland will refrain from expending more of its or this Court's time or resources addressing this issue.

D. Code of Civil Procedure 425.17 Was Not Raised With the California Trial Court or Court of Appeal, Is Unambiguous, and Does Not Apply.

Spielbauer argues that a provision of section 425.17 of the California Code of Civil Procedure ("Section 425.17") makes the application of Section 425.16, subdivision (i) ambiguous. Notably, Spielbauer did not raise this argument with the California Court of Appeal, either in his opposition to Midland's motion to dismiss or in his petition for rehearing.

On the merits, this code section does not create any ambiguity. Section 425.17 creates an exception to applicability of the anti-SLAPP statute for certain causes of action "brought solely in the public interest or on behalf of the general public." Cal. Code Civ. Proc. § 425.17. Subsection (e), in turn, provides that "[i]f any trial court denies a special motion to strike on the grounds that the action or cause of action is exempt pursuant to this section, the appeal provisions in subdivision (i) of Section 425.16 and paragraph (13) of subdivision (a) of Section 904.1 do not apply to that action or cause of action."

Because Spielbauer did assert exemption from the anti-SLAPP statute under Section 425.17 (because the statute does not apply), the trial court had no occasion to consider it, and it does not apply here. Moreover, the meaning and application of this provision is clear. If Spielbauer had raised Section 425.17 and the trial court denied Midland's anti-

SLAPP motion for that reason, Midland would have had no right to immediate appeal. If the trial court had granted the anti-SLAPP motion as to any of the causes of action, Spielbauer would have retained the right to immediate appeal. These clear provisions do not create ambiguity where there is none. The Petition should be denied.

CONCLUSION

For the foregoing reasons, the Court should deny the Petition.

DATED: February 24, 2021

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