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FILED
Superior Court of California
County of Los Angeles

SEP 03 2014

Sherri R. Carter, Executive Officer/Clerk
By M. Solo, Deputy
Moses Solo

5 Attorney for Plaintiffs
6 MICHIKO SHIOTA GINGERY, KOICHI
6 MERA and GAHT-US CORPORATION

D-34 Michael P. Linfield

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

BY FAX

10 MICHIKO SHIOTA GINGERY, an
11 individual, KOICHI MERA, an individual,
12 GAHT-US CORPORATION, A California
13 Non-Profit Corporation,

Case No.: **BC556600**

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF FOR
VIOLATION OF THE GLENDALE
MUNICIPAL CODE**

14 Plaintiffs,

15 v.

16 CITY OF GLENDALE, A Municipal
17 Corporation, and DOES 1 through 20,
18 inclusive,

19 Defendants.

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CIT/JUDGE: BC556600
LEA/DEF#: _____
RECEIPT #: CCH524880085
DATE PAID: 09/03/14 04:06 PM
PAYMENT: \$435.00 310
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CHECK: \$435.00
CASH: \$0.00
CHANGE: \$0.00
CARD: \$0.00

Case No.: -1-

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1 Plaintiffs **MICHIKO SHIOTA GINGERY**, an individual, **KOICHI MERA**, an
2 individual, and **GAHT-US CORPORATION**, a California Non-Profit Corporation,
3 hereby complain against Defendants and allege as follows:

4 1. Plaintiffs seek injunctive and declaratory relief relating to the presence of a
5 monument authorized by Glendale and condemning the nation of Japan, and by
6 implication, all persons of Japanese origin and descent, regarding individuals that have
7 come to be known as "comfort women."

8 2. The monument is located on public land in a publicly owned park in Glendale
9 known as Central Park, located at 201 South Colorado St., Glendale, CA 91205 (the
10 "Public Monument").

11 3. Plaintiffs allege herein that the emplacement of the Public Monument violates
12 Glendale's Municipal Code, among other things.

13 **PARTIES**

14 4. Plaintiff Michiko Shiota Gingery ("Gingery") is a long-time resident of Glendale.
15 Gingery lives in the vicinity of Central Park and the Public Monument. Gingery is a
16 founding member of Glendale's Sister City Committee, a committee created to develop
17 and administer Glendale's Sister City Program. In this capacity, Gingery made significant
18 contributions to Glendale's establishment of a Sister City relationship with the City of
19 Higashiosaka (at the time called Hiraoka), Japan, Glendale's first Sister City. Gingery was
20 born in Japan, and is now a naturalized U.S. citizen. As a Glendale resident of Japanese
21 heritage, Gingery believes the Public Monument presents an unfairly one-sided portrayal
22 of the historical and political debate surrounding comfort women and presents the potential
23 to disrupt the United States' strategic alliances with its closest East Asian allies, Japan and
24 South Korea. She also believes the emplacement of the Public Monument represents a
25 significant obstacle in maintaining friendly relations among Glendale's sister-cities in
26 Japan and elsewhere, the primary objective of the Sister City Program.

27 5. Gingery suffers feelings of exclusion, discomfort, and anger because of the position
28 espoused by her city of residence through its display and endorsement of the Public

1 Monument. Gingery would like to use Glendale's Central Park and the Adult Recreation
2 Center located within Central Park. But she now avoids doing so because she is offended
3 by the Public Monument's pointed expression of disapproval of Japan and the Japanese
4 people. In addition, the presence of the Public Monument diminishes Gingery's enjoyment
5 of the Central Park and its Adult Recreation Center.

6 6. Plaintiff GAHT-US Corporation ("GAHT-US") is a non-profit public benefit
7 corporation organized under the laws of the State of California. The purpose of GAHT-US
8 is to provide accurate and fact-based educational resources to the public in the U.S.,
9 including within California and Glendale, concerning the history of World War II and
10 related events, with an emphasis on Japan's role. GAHT-US has undertaken this goal in an
11 effort to enhance a mutual historical and cultural understanding between and among the
12 Japanese and American people. Given its mission, GAHT-US believes that the Public
13 Monument advances an unfairly biased portrayal of the Japanese government's purported
14 involvement with comfort women during the Second World War. Individual members of
15 GAHT-US reside in Glendale and nearby cities. GAHT-US's members suffer feelings of
16 exclusion, discomfort, and anger by the continued presence of the Public Monument, and
17 the controversial and disputed stance on the debate surrounding comfort women that it
18 perpetuates. Although GAHT-US members would like to use Glendale's Central Park and
19 its Adult Recreation Center, they no longer intend to do so as a result of their distress due
20 to the Public Monument. In addition, the presence of the Public Monument diminishes
21 GAHT-US members' enjoyment of the Central Park and its Adult Recreation Center.

22 7. Plaintiff Koichi Mera ("Mera") is a Japanese-American resident of the City of Los
23 Angeles and the President of GAHT-US. Mera disagrees with and is offended by the
24 position espoused by Glendale through the Public Monument and its pointed
25 condemnation of the Japanese people and government. Although Mera would like to use
26 Glendale's Central Park and its Adult Recreation Center, as a result of his alienation due to
27 the Public Monument, he avoids doing so. In addition, the presence of the Public
28

1 Monument diminishes Mera's enjoyment of the Central Park and its Adult Recreation
2 Center.

3 8. Defendant, the City of Glendale, is a political subdivision of the State of California
4 operating under a charter authorized by the State of California that empowers it to pass
5 lawful ordinances and to govern and administer municipal activities within Glendale's city
6 limits, with authority to be sued in its own name. Glendale's governing authority consists
7 of city council, composed of five city council members (the "City Council"), one of whom
8 also serves as the mayor. The City Council makes policy decisions for Glendale, including
9 decisions regarding the use of public lands.

10 **FACTUAL BACKGROUND**

11 **Glendale's Public Monument**

12 9. At a Special Meeting on July 9, 2013, the City Council approved the installation of
13 the Public Monument, described as "a Korean Sister City 'Comfort Woman' Peace
14 Monument," on a substantial portion of public land immediately adjacent to the Adult
15 Recreation Center Plaza in Central Park.

16 10. The Public Monument was unveiled 21 days later, on July 30, 2013. The Public
17 Monument is a 1,100-pound bronze statue of a young girl in Korean dress sitting next to an
18 empty chair with a bird perched on her shoulder.

19 11. Integral to and alongside the statue is a permanent bronze plaque that reads, among
20 other things:

21 "I was a sex slave of Japanese military

- 22 • Torn hair symbolizes the girl being snatched from her home by the Imperial
23 Japanese Army.
- 24 • Tight fists represent the girl's firm resolve for a deliverance of justice.
- 25 • Bare and unsettled feet represent having been abandoned by the cold and
26 unsympathetic world.
- 27 • Bird on the girl's shoulder symbolizes a bond between us and the deceased
28 victims.
- Empty chair symbolizes survivors who are dying of old age without having
yet witnessed justice.
- Shadow of the girl is that of an old grandma, symbolizing passage of time
spent in silence.

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- Butterfly in shadow represents hope that victims may resurrect one day to receive their apology.

Peace Monument

In memory of more than 200,000 Asian and Dutch women who were removed from their homes in Korea, China, Taiwan, Japan, the Philippines, Thailand, Vietnam, Malaysia, East Timor and Indonesia, to be coerced into sexual slavery by the Imperial Armed Forces of Japan between 1932 and 1945.

And in celebration of proclamation of "Comfort Women Day" by the City of Glendale on July 30, 2012, and of passing of House Resolution 121 by the United States Congress on July 30, 2007, urging the Japanese Government to accept historical responsibility for these crimes.

It is our sincere hope that these unconscionable violations of human rights shall never recur.

July 30, 2013."

12. No other monuments are present in this area of Central Park and, upon information and belief, no other permanent markers may be placed there without approval of the City Council.

13. Glendale exercises exclusive custody and control of Central Park and the Public Monument, and upon information and belief, provides all necessary maintenance services for the Public Monument.

The Historical Background of The Debate Concerning Comfort Women

14. During World War II and the decade leading up to it, an unknown number of women from Japan, Korea, China, and a number of nations in Southeast Asia, were recruited, employed, and/or otherwise acted as sexual partners for troops of the Japanese Empire in various parts of the Pacific Theater of war. These women are often referred to as comfort women, a loose translation of the Japanese word for prostitute.

15. Beginning in the 1980s, a dispute arose between South Korea and the government of Japan concerning the hardships experienced by Korean comfort women and whether the Japanese government forcefully recruited comfort women.

16. Officials of the Japanese government assert that the Japanese military and Japanese Imperial government were not responsible for or directly involved in the recruitment of comfort women, and that private firms and individuals undertook the recruitment.

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1 17. Other governments, including that of South Korea, claim that comfort women were
2 recruited by and/or forced into sexual slavery by the Imperial Japanese government and/or
3 officials of the Japanese military.

4 18. The debate concerning historic responsibility for the comfort women camps has
5 been a significant and ongoing source of tension in recent decades between Japan and
6 South Korea, both of which are critical American allies. Disagreements concerning
7 responsibility for comfort women are a major impediment to improved present-day
8 relations between Japan and South Korea, which are less than cordial.

9 **Efforts by Japan and South Korea to Address the Dispute**

10 19. After some years of controversy regarding the Japanese Imperial Government's
11 alleged involvement with comfort women, in 1995 Japan established the Asian Women's
12 Fund to distribute compensation to former comfort women in South Korea, the Philippines,
13 Taiwan, the Netherlands, and Indonesia, and to provide them with letters of apology from
14 the Prime Minister of Japan.

15 20. Nonetheless, several governments, including the government of South Korea, have
16 continued to demand that Japan take additional steps to redress grievances relating to
17 comfort women.

18 21. The Japanese government asserts that all World War II-related claims against Japan,
19 including those related to comfort women, were resolved by the Treaty of Peace signed in
20 San Francisco by Japan, the United States, and 47 other allied nations in 1951 (the "Treaty
21 of San Francisco"), the Treaty on Basic Relations between Japan and the Republic of
22 Korea dated June 22, 1965, and/or the Agreement on the Settlement of Problems
23 Concerning Property and Claims and on Economic Co-operation between Japan and the
24 Republic of Korea also dated June 22, 1965 (the "Settlement Agreement").

25 22. Article 4(a) of the Treaty of San Francisco provides that claims of Korean and
26 Chinese nationals relating to Japan's wartime conduct, including issues related to comfort
27 women, are to be addressed through government-to-government negotiations between
28 Japan and each of those countries.

1 23. Article 2(1) of the Settlement Agreement provides that the “problem concerning
2 property, rights and interests of the two Contracting Parties [i.e., Japan and South Korea]
3 and their nationals (including juridical persons) and concerning claims between the
4 Contracting Parties and their nationals . . . is settled completely and finally.”

5 24. In December 2011, Japanese Prime Minister Yoshihiko Noda and South Korean
6 President Lee Myung-bak held talks in Kyoto, Japan in an effort to improve bilateral
7 relations between the two neighboring countries. The discussions terminated when
8 President Lee pressed Prime Minister Noda to take additional responsibility for Korean
9 comfort women. Plaintiffs are informed and believe that no further discussions between
10 Japan and South Korea have since taken place.

11 **Glendale’s Installation of the Public Monument**

12 25. Glendale has established a Glendale Sister Cities program to initiate ongoing
13 communication and “promote[] interest and good will” between and among Glendale and
14 its Sister Cities. As of March 2009, Glendale had six Sister City partnerships:
15 Higashiosaka, Japan; Hiroshima, Japan; Tlaquepaque, Mexico; Rosarito, Mexico; Ghapan,
16 Armenia; and Goseong City, the Republic of Korea.

17 26. On September 6, 2011, the City Council instructed Glendale’s Community Services
18 and Parks staff to explore the possibility of dedicating a portion of public land within
19 Glendale for acceptance and installation of memorials, monuments, and/or artifacts
20 representative of Glendale’s sister city partners.

21 27. On March 26, 2013, the City Council voted to dedicate a plot of public land within
22 Central Park and adjacent to the Adult Recreation Center Plaza for the purpose of sister
23 city-related monuments and memorials.

24 28. In the spring and summer of 2013, a proposal was made to place a statue in Central
25 Park dedicated to comfort women. During that period, the City Council received hundreds
26 of letters and emails in opposition to the installation of the monument, almost entirely from
27 residents and interested persons of Japanese ancestry.

28

1 29. At a July 9, 2013 Special Meeting the City Council considered and approved a
2 motion to install the Public Monument, described as a "Korean Sister City 'Comfort
3 Women' Peace Monument," on public land within Central Park. The report recommending
4 approval of the installation of the Public Monument, submitted to the City Council in
5 conjunction with the motion, included a schematic diagram depicting the proposed statue
6 and its location.

7 30. The schematic diagram of the proposed statue did not include any mention of, or
8 reference to, the text of the plaque that currently is part of the Public Monument. During
9 the Special Meeting, City Council Member Ara Najarian asked Glendale Community
10 Relations Coordinator Dan Bell whether the statue would be accompanied by a plaque and,
11 if so, its inscription. Mr. Bell advised the City Council that the plaque would say that it
12 was "commemorating and in honor of the comfort women." Mr. Bell made no mention of
13 the text of the plaque that ultimately was installed as part of the Public Monument.

14 31. During the Special Meeting, numerous individuals, including Japanese-Americans,
15 publicly opposed and condemned the proposed installation of the statue, arguing that the
16 comfort women issue is a matter of current diplomatic communications between South
17 Korea and Japan, and the disputed view advanced by the South Korean government on
18 comfort women.

19 32. Notwithstanding the numerous objections voiced at the Special Meeting, the City
20 Council approved the installation of the "Korean Sister City 'Comfort Women' Peace
21 Monument" "as shown and described in the Report to Council dated July 9, 2013" by a
22 vote of 4 to 1. Glendale Mayor Dave Weaver, who voted against installation of the Public
23 Monument, later explained in a letter to Yoshikazu Noda, Mayor of Higashiosaka, Japan (a
24 Glendale sister city) that the dispute over comfort women "is an international one between
25 Japan and South Korea and the City of Glendale should not be involved on either side."

26 33. Three weeks after the City Council's approval, on July 30, 2013, the 1,100 pound
27 bronze Public Monument was unveiled in Central Park. As described above, the statue was
28 accompanied by a plaque accusing the Japanese government of "coerc[ing]" more than

1 200,000 women “into sexual slavery,” and “urging the Japanese Government to accept
2 historical responsibility for these crimes,” which it labels an “unconscionable violations of
3 human rights.” The City Council never voted to approve the language included on the
4 plaque.

5 34. Following the Public Monument’s installation, at the July 30, 2013 Meeting of the
6 City Council, Glendale City Council Member Laura Friedman commented: “We really put
7 the city of Glendale on the international map today by doing this.”

8 35. The installation of the Public Monument prompted opponents of the Public
9 Monument to commence a petition to compel its removal. The petition, posted on
10 President Barack Obama’s website “We The People” in late 2013, quickly received more
11 than 108,000 signatures.

12 **The Japanese Government’s Reaction to the Public Monument**

13 36. Glendale’s decision to install the Public Monument has elicited numerous
14 unfavorable reactions from the Japanese government.

15 37. On July 24, 2013, Kuni Sato, the press secretary of the Japanese Ministry of
16 Foreign Affairs, expressed Japan’s official displeasure, remarking that installation of the
17 Public Monument “does not coincide with our understanding” of the comfort women
18 dispute.

19 38. On July 25, 2013, Yoshikazu Noda, the Mayor of Glendale’s sister city,
20 Higashiosaka, Japan, advised the City Council that the installation of the Public Monument
21 was “an extremely deplorable situation and the people of Higashiosaka are hurt at a
22 decision made by [Glendale] city to install a comfort woman monument.”

23 39. On July 31, 2013, Kenichiro Sasae, Japanese Ambassador to the United States,
24 declared that Glendale’s action is “irreconcilable” with the position of the Government of
25 Japan and is “highly regrettable.”

26 40. On July 31, 2013, Mr. Yoshihide Suga, Japan’s Chief Cabinet Secretary, described
27 Glendale’s decision to install the Public Monument as “extremely regrettable.” He added
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1 that Glendale's action "conflicts with the [Japanese] government's view that the issue of
2 the comfort women should not be part of any political or diplomatic agenda."

3 41. On August 13, 2013, Japanese Prime Minister Shinzo Abe stated that he was
4 "extremely dissatisfied" with the installation of the Public Monument.

5 42. On January 16, 2014, after being denied a request to meet with Glendale's Mayor
6 and City Council, an association of 321 local Japanese government legislators submitted
7 an official letter to Glendale, protesting the Public Monument's installation "in the
8 strongest terms" and requesting "that the statue be removed immediately." The letter
9 advised Glendale that "the distorted view of history that the statue represents . . . will
10 surely jeopardize world peace and the possibility of a bright future for our children."

11 **The Public Monument Threatens Irreparable Injury to Plaintiffs**

12 43. Despite vocal domestic and international public protest, Glendale persisted in
13 installing the Public Monument, forcing Plaintiffs to bring this action.

14 44. Allowing the Public Monument to remain in place in Glendale's Central Park
15 threatens irreparable injury to Gingery, Mera, GAHT-US, and its members. As a
16 longtime resident of Glendale with active involvement in Glendale's Sister City
17 Program, the presence of the Public Monument within the designated Sister City area
18 of Glendale's Central Park has turned visiting Central Park into a highly offensive
19 endeavor, effectively denying Gingery full enjoyment of the Park's benefits.

20 45. The presence of the Public Monument has had a similar impact on GAHT-US's
21 members, including Mera, who avoid using and benefitting from Glendale's Central
22 Park.

23 46. Plaintiffs have no adequate remedy at law to address the foregoing injuries.

24 47. If the Public Monument is removed, Plaintiffs will again make use of Glendale's
25 Central Park and its Adult Recreation Center.

26 48. An actual controversy has arisen and now exists between Plaintiffs and
27 Defendants.

28

1 49. Plaintiffs contend that installation of the Public Monument violates Glendale's
2 Municipal Code.

3 50. Plaintiffs are informed and believe that Defendants disagree with Plaintiffs'
4 contentions as set forth in the prior paragraph.

5 51. A justiciable controversy therefore exists between Plaintiffs and Defendants and
6 a judicial declaration is necessary and appropriate at this time in order to determine the
7 legality of Glendale's installation of the Public Monument.

8 **CLAIM FOR RELIEF**

9 **(Against All Defendants)**

10 **(Declaratory Relief - Violation of the Glendale Municipal Code)**

11 52. Plaintiffs repeat and incorporate the allegations in Paragraph 1 through 51, as
12 though fully set forth herein.

13 53. Glendale Municipal Code Section 2.04.140 provides: "In all matters and things
14 not otherwise provided for in this chapter, the proceedings of the council shall be
15 governed under Robert's Rules of Order, revised copy, 1952 edition." Pursuant to
16 Robert's Rules of Order, to introduce a new piece of business or propose a decision or
17 action, a motion must be made by a group member. A second motion must then also be
18 made. And after limited discussion, the group then votes on the motion. A majority
19 vote is required for the motion to pass.

20 54. The Public Monument was not properly approved by the City Council pursuant
21 to Glendale Municipal Code Section 2.04.140. An integral part of the Public
22 Monument—the plaque that specifically attributes responsibility for, inter alia,
23 "snatching [women] from their homes" and "coerc[ing them] into sexual slavery" to
24 Japan—was neither proposed to the City Council nor made the subject of a motion to
25 the City Council, and was not approved by it, as required. In fact, the proposed
26 language presented to the Council never mentioned Japan at all, and the City Council
27 was specifically advised that the inscription on the plaque would be different than the
28 inscription ultimately used.

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1 55. As a result, the installation of the monument violated the Glendale Municipal
2 Code.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs pray for the following relief:

5 1. That the Court declare Glendale's installation of the public monument
6 unconstitutional and null and void;


7 2. That the Court preliminarily and permanently enjoin and compel Defendants,
8 and each of them, to remove the Public Monument from public property in Glendale,
9 including but not limited to, any area in or adjacent to Central Park;

10 3. That the Court award Plaintiffs their costs and attorneys' fees pursuant to
11 California Code of Civil Procedure § 1021.5; and

12 4. For such other and further relief as the Court deems just and proper.

13 DATED: September 3, 2014

DECLERCQ LAW GROUP

14
15 By: 

16 **WILLIAM B. DECLERCQ**

17 Attorney for Plaintiffs
18 Michiko Shiota Gingery, Koichi Mera and
19 GAHT-US Corporation

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF LOS ANGELES

17 MICHIKO SHIOTA GINGERY, an individual,) Case No. BC 556600
KOICHI MERA, an individual, GAHT-US)
18 CORPORATION, a California non-profit) Assigned to: Honorable Michael Paul Linfield
corporation, MASATOSHI NAOKI, an)
19 individual,) **[PROPOSED] ORDER**

20 Plaintiffs,

21 v.

22 CITY OF GLENDALE, A municipal)
corporation, and DOES 1 through 20, inclusive,)

23 Defendants.
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CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAR 18 2015

Sherri R. Carter, Executive Officer/Clerk
By Irene Ayala, Deputy

1 On February 23, 2015, the following matters came on for hearing in Department 34 of the
2 above-referenced Court: (1) Defendant City of Glendale's ("Defendant") Special Motion to Strike
3 Plaintiffs' Second Amended Complaint Pursuant to California Code of Civil Procedure § 425.16 (the
4 "Motion"); (2) Defendant's Request for Judicial Notice; (3) Defendant's objections to the
5 declarations of Plaintiffs Koichi Mera, Masatoshi "Andy" Naoki, and Michiko Shiota Gingery (the
6 "Defendant's Objections"); (4) Plaintiffs' Request for Judicial Notice; and (5) Plaintiffs' Opposition
7 and Objections to Defendant's Evidence Submitted with Defendant's Special Motion to Strike (the
8 "Plaintiffs' Objections"). The Court, having considered the Defendant's Motion and the papers filed
9 in support thereof, as well as the opposition thereto and the papers filed in support thereof, and the
10 arguments presented by the parties, and good cause appearing,

11 **IT IS HEREBY ORDERED** that:

12 1. The Motion is **GRANTED** for all of the reasons set forth in the Court's tentative
13 order (the "Tentative Order") ^{which was adopted as the Court's Order on 2/23/15} a true and correct copy of which is attached hereto as Exhibit A and
14 incorporated herein by this reference;

15 2. Plaintiffs' Second Amended Complaint is **DISMISSED** in its entirety with prejudice;

16 3. Defendant's Request for Judicial Notice is **GRANTED** as to Exhibits 2-20 and 22-
17 23, and **DENIED** as to Exhibit 1 for the reasons set forth in the Tentative Order;

18 4. Plaintiffs' Request for Judicial Notice is **GRANTED** as to Exhibits A, B, E, and G,
19 and **DENIED** as to Exhibits C, D, and F for the reasons set forth in the Tentative Order;

20 5. Defendants' Objections are **SUSTAINED** as to Objections 4-9, 12-19, 22-23, 32, and
21 37, and **OVERRULED** as to Objections 1-3, 10-11, 20-21, 24-31, 33-36, and 38, as reflected in the
22 Tentative Order;

23 6. Plaintiffs' Objections are **SUSTAINED** as to Objection 1, and **OVERRULED** as to
24 Objections 2-21, as reflected in the Tentative Order; and

25 ///

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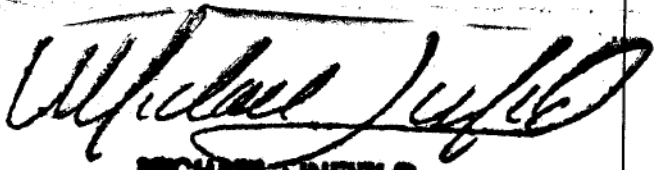
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7. This matter is set for hearing on March 24, 2015 at 8:30 a.m. regarding an Order to Show Cause Regarding Judgment.

IT IS SO ORDERED.

DATED: MAR 13 2015, 2015


MICHAEL LINFIELD

HON. MICHAEL PAUL LINFIELD
Judge of the Superior Court

EXHIBIT A

DEPARTMENT 34 LAW AND MOTION RULINGS

Please call the clerk at (213) 633-0154 by 4:00 pm. the court day before the hearing if you wish to submit on the tentative.

Case Number: BC556600 **Hearing Date:** February 23, 2015 **Dept:** 34

Moving Party: Defendant City of Glendale (“defendant”)

Resp. Party: Plaintiffs Michiko Shiota Gingery, Koichi Mera, GHAT-US Corporation, and Masatoshi Naoki (“plaintiffs”)

Defendant’s special motion to strike is GRANTED.

INTRODUCTION

There can be no legitimate dispute that the Japanese government engaged in a horrendous crimes against the Comfort Women prior to and during World War II. The United States House of Representatives – and even the Japanese government itself – has recognized these abuses. Even Plaintiffs themselves do not dispute this historical truth.

Nonetheless, plaintiffs ask that this Court to order the City of Glendale to remove a public monument in Glendale Central Park which recognizes the suffering of the Comfort Women. Plaintiffs’ main argument is that the creation and public display of this monument interferes with the federal government’s right to conduct foreign policy, and hence is unconstitutional under the Supremacy Clause.

Cities and states have routinely – and historically – passed resolutions in support or, or in opposition to, various foreign policy issues. In the 1960's and 1970's, hundreds if not thousands of local governmental bodies passed resolutions supporting or opposing America’s involvement in the Vietnam War. In the 1980's and 1990's, states and localities passed resolutions in opposition to the Contra War in Nicaragua, apartheid in South Africa and genocide in Rwanda. More recently, we have seen resolutions and proclamations recognizing the Armenian genocide of 1915.

If plaintiffs’ argument were correct, then such historically routine activities undertaken by state and local governments throughout the Country would all be unconstitutional. There is no constitutional difference between the monument and plaque at issue in this lawsuit and a proclamation by the City with the same wording.

However, plaintiffs are wrong; such local pronouncements – and this monument – are not unconstitutional. For the reasons indicated below, plaintiffs’ complaint must be dismissed.

PRELIMINARY ISSUES:

1. The Parties' Request for Judicial Notice:

The Court GRANTS Defendant's Request for Judicial Notice as to Exhs. 2-20 and 22-23. The Court DENIES Defendant's Request for Judicial Notice as to Exh. 1 as this is not a proper matter for judicial notice.

The Court GRANTS Plaintiffs' Request for Judicial Notice as to Exhs. A, B, E and G. The Court DENIES plaintiffs' Request for Judicial Notice as to Exhs. C, D and F. News articles are not proper items for judicial notice.

As to the documents for which judicial notice has been granted, the Court takes judicial notice of the existence of these documents and statements, but does not take judicial notice of the truth of the matters asserted. (See Evid. Code, § 452(c), (d); *Aquila, Inc. v. Sup. Ct.* (2007) 148 Cal.App.4th 556, 569; *Day v. Sharp* (1975) 50 Cal.App.3d 904, 914; *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1565.)

2. The Parties' Evidentiary Objections:

Plaintiffs' Objections to Defendant's Evidence

Objection

- 1 SUSTAINED OVERRULED
- 2 OVERRULED
- 3 OVERRULED
- 4 OVERRULED
- 5 OVERRULED
- 6 OVERRULED
- 7 OVERRULED
- 8 OVERRULED
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- 14 OVERRULED
- 15 OVERRULED
- 16 OVERRULED
- 17 OVERRULED
- 18 OVERRULED
- 19 OVERRULED
- 20 OVERRULED

21 OVERRULED

Defendant's Objections to Plaintiffs' Evidence:

Objection

- 1 OVERRULED
- 2 OVERRULED
- 3 OVERRULED
- 4 SUSTAINED
- 5 SUSTAINED
- 6 SUSTAINED
- 7 SUSTAINED
- 8 SUSTAINED
- 9 SUSTAINED
- 10 OVERRULED
- 11 OVERRULED
- 12 SUSTAINED
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- 25 OVERRULED
- 26 OVERRULED
- 27 OVERRULED
- 28 OVERRULED
- 29 OVERRULED
- 30 OVERRULED
- 31 OVERRULED
- 32 SUSTAINED
- 33 OVERRULED
- 34 OVERRULED
- 35 OVERRULED
- 36 OVERRULED
- 37 SUSTAINED
- 38 OVERRULED

3. Normally, the motions and oppositions on an anti-SLAPP motion are limited to 15 pages. (See CRC rule 3.1113(d).) At the parties' request, the Court allowed each party up to a maximum of 20 pages for their pleadings. (Minute Order, 1/7/15.) The Court notes that both parties – but particularly plaintiffs – have included substantive, extended, single-spaced footnotes in their memoranda in an apparent attempt to circumvent the extended 20-page limit. The Court has not considered the points raised in these footnotes.

4. The Court wishes to thank defendant for providing the Court with a hyperlinked DVD of the cases and exhibits in its pleadings, in compliance with the Court's trial orders, ¶ VII(A).

BACKGROUND:

Plaintiffs commenced this action on 9/3/14 against defendant for declaratory and injunctive relief. On 9/18/14, plaintiffs filed a first amended complaint (“FAC”) for: (1) violation of the Glendale Municipal Code; (2) violation of the Equal Protection Clause of the California Constitution; and (3) violation of the Privileges and Immunities Clause of the California Constitution. On 1/7/15, plaintiffs filed a second amended complaint (“SAC”) against defendant for: (1) unconstitutional interference with foreign affairs power; (2) violation of the Glendale Municipal Code; (3) violation of the Equal Protection Clause of the California Constitution; and (4) violation of the Privileges and Immunities Clause of the California Constitution. Plaintiffs are seeking injunctive and declaratory relief ordering the removal of a monument authorized by the City of Glendale recognizing and honoring individuals known as “Comfort Women.”

ANALYSIS:

I. CCP section 425.17(b) Does Not Apply

Plaintiffs argue that this action is exempt from the anti-SLAPP statute. Even though an action may otherwise qualify under the anti-SLAPP statute, it may nonetheless be exempt from dismissal under certain “safe harbor” provisions. (Weil & Brown, *Civ. Proc. Before Trial* (The Rutter Group 2014) ¶ 7:530 [citing *Holbrook v. City of Santa Monica* (2006) 144 Cal.App.4th 1242, 1249].)

Pursuant to Code Civ. Proc., § 425.17(b):

“Section 425.16 does not apply to any action brought solely in the public interest or on behalf of the general public if all of the following conditions exist:

“(1) The plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which the plaintiff is a member. A claim for attorney's fees, costs, or penalties does not constitute greater or different relief for purposes of this subdivision.

“(2) The action, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons.

“(3) Private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff’s stake in the matter.

All of these conditions must be met in order to exempt the action from the anti-SLAPP statute. (See Weil & Brown, ¶ 7:540.) Whether this exemption applies is a threshold issue, as determined by examining the complaint type and prayer, to ascertain whether it seeks to vindicate public policy goals, without getting into evidence. (*Tourgeman v. Nelson & Kennard* (2014) 222 Cal.App.4th 1447, 1463.)

The relief sought by plaintiffs includes a declaration that the installation of the monument was unconstitutional and null and void, an injunction compelling defendant to remove the monument and its plaque, an award of attorney’s fees and costs, and any further relief the Court deems just and proper. (See Prayer ¶¶ 1-4.) This relief does not appear to be any greater than or different from relief that could be sought by the general public or members of plaintiffs’ class (i.e., persons of Japanese origin or descent). These remedies allege – at least according to the allegations of the complaint – to enforce important rights and to confer significant benefits to plaintiffs’ class of persons. Other than appealing to the electoral process, defendant fails to show that the purported rights of plaintiffs’ class can be litigated outside of a private action. There is no dispute that plaintiffs have accepted a disproportionate financial burden in relation to their stake in this matter. (See *Mera Decl.*, ¶ 25; *Naoki Decl.*, ¶ 17.)

However, section 425.17(b) does not apply to “[a]ny action against any person or entity based upon the creation, dissemination, exhibition, advertisement, or other similar promotion of any dramatic, literary, musical, political, or artistic work, including, but not limited to, a motion picture or television program, or an article published in a newspaper or magazine of general circulation.” (Code Civ. Proc., § 425.17(d)(2).) Plaintiffs’ action concerns a public monument. Neither party argues that this monument is an artistic creation. However, the monument, as plaintiffs acknowledge in their complaint, “is intended to send a political message.” (See SAC ¶ 30. See also *id.*, ¶¶ 11, 22, 28 [describing the comfort women issue as part of a political debate].)

The Court finds that plaintiffs’ action is based on the creation, exhibition and promotion of a political work, and thus section 425.17(b) does not apply.

II. Defendant has Engaged in Protected Activity

In determining whether a defendant seeking to strike a claim under the anti-SLAPP statute has made a prima facie showing that the plaintiff’s action arises from activity protected by statute, the critical consideration is whether the plaintiff’s cause of action itself, and the act of which the plaintiff complains, is based on an act taken by defendant in furtherance of his right of petition or free speech. (See, e.g., *Philipson & Simon v. Gulsvig* (2007) 154 Cal.App.4th 347, 358; *Birkner v. Lam* (2007) 156 Cal.App.4th 275, 281.) “The anti-SLAPP statute’s definitional focus is not on the form of the plaintiff’s cause of action but, rather, the defendant’s activity that gives rise to his or her asserted liability-and whether that activity constitutes protected speech or petitioning.” (*Navellier v.*

Sletten (2002) 29 Cal.4th 82, 92 [emphasis in original].) The statute is to be broadly applied and includes four categories of protected conduct:

(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(Code Civ. Proc., § 425.16(e).)

Defendant argues that its actions are protected under each of the four prongs of § 425.16(e). Defendant argues that plaintiffs' claims are based on conduct falling within sections 425.16(e)(1) and (2) because plaintiffs are challenging decisions made during a meeting of the City Council. Defendant argues that the claims are also based on conduct falling under sections 425.16(e)(3) and (4) because the placement of the monument and plaque constitutes an exercise of free speech and addresses an issue of public interest.

Plaintiffs argue that the protected activity is merely collateral and incidental to plaintiffs' claims. "[W]hen the allegations referring to arguably protected activity are only incidental to a cause of action based essentially on nonprotected activity, collateral allusions to protected activity should not subject the cause of action to the anti-SLAPP statute." (Martinez v. Metabolife Intern., Inc. (2003) 113 Cal.App.4th 181, 188 ["The bulk of the complaint alleges garden-variety personal injury claims for physical injuries proximately caused by activity apart and distinct from any protected conduct, and the allegedly protected activity mentioned in the complaint comprises only a small and insignificant portion of each of the causes of action."].) This argument is not well taken. "A cause of action 'arising from protected activity' means that the defendant's acts underpinning the plaintiff's cause of action involved an exercise of the right of petition or free speech." (Gerbosi v. Gaims, Weil, West & Epstein, LLP (2011) 193 Cal.App.4th 435, 443.) While it is true that plaintiffs' claims are based on defendant's alleged constitutional and Municipal Code violations, such violations do not exist in a vacuum and must be the result of actual conduct by the defendant. Here, the defendant's alleged acts which constitute these violations, and therefore the underlying conduct upon which plaintiffs' claims are based, include the erection of the monument and placement of the plaque. If the placement of the monument and wording of the plaque constitute protected activity, such activity is not merely collateral to, and is instead the primary basis of, plaintiffs' claims.

Plaintiffs argue that sections 425.16(e)(1) and (2) relate only to statements made to a governing body and not to statements made by the governing body. The Court does not find plaintiffs' argument to be persuasive. First, Plaintiffs' argument also does not comport with the clear wording of section 425.16(e).

Subsection (e)(1) immunizes "any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law." The Court recognizes that the wording of this subsection is ambiguous, and it is possible to read this subsection as plaintiff suggests. However, this would create an absurd result. It would be anomalous

for the same statement to be protected activity if made by a speaker addressing the City Council, but not to be protected if made by a member of the City Council in response to the speaker. Similarly, under plaintiff's analysis, an attorney would be engaged in protected activity if she made a specific statement before a court, but the judge's uttering of the same statement would not be protected activity. This could not be what the Legislature intended.

Even if there is some ambiguity as to the wording of subsection (e)(1), subsection (e)(2) is unambiguous. Subsection (e)(2) immunizes "any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law." It refers to "any written or oral statement or writing" – regardless of who makes it.

Thus, the Court finds that under both subsections (e)(1) and (e)(2), defendant was engaged in protected activity.

However, even if section 425.16(e)(1) and (2) do not apply, defendant's conduct falls under sections 425.16(e)(3) and (4). The challenged plaque constitutes a written statement and there is no dispute that it was placed in a public forum. (See SAC ¶¶ 1-3.) Plaintiffs make the conclusory assertion that the "placement" of the monument and plaque cannot be considered speech. Plaintiffs provide no authority which holds that the placement of a monument, especially an admittedly political monument, cannot constitute an exercise of free speech in connection with a public issue. Plaintiffs do not dispute that the issue of the mistreatment of – and crimes committed against – Comfort Women preceding and during World War II issue is one of public interest. (See SAC ¶¶ 7-10; Def. Exhs. 2-17.) Instead, plaintiffs once again assert that their claims are based on defendant's alleged constitutional and Code violations and not on its speech. As stated above, the underlying conduct against which plaintiffs complain is the placement of the monument and plaque. Plaintiffs' assertion that they are not challenging the content of defendant's speech is specious. It is clear that it is the message conveyed by the monument and plaque that offends plaintiffs; had the monument contained a different message or no message at all, plaintiffs would have no complaint.

Finally, to the extent that plaintiffs argue that defendant's conduct is not protected because it consists of constitutional violations, this argument is rejected because it goes to the merits of its allegations. Arguments by opposing parties as to the merits cannot be considered in the threshold analysis of whether causes of action arise from protected activity. (*Freeman v. Schack* (2007) 154 Cal.App.4th 719, 733 ["merits based arguments have no place in our threshold analysis of whether plaintiffs' causes of action arise from protected activity."]; *Birkner v. Lam* (2007) 156 Cal.App.4th 275, 284-285.) "If . . . a factual dispute exists about the legitimacy of the defendant's conduct, it cannot be resolved within the first step but must be raised by the plaintiff in connection with the plaintiff's burden to show a probability of prevailing on the merits." (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 316.)

The Court finds that plaintiffs' claims are based on defendant's protected activity under each of the four subsections of CCP § 426.16(e).

III. Plaintiffs' Have Not Met Their Burden of Showing a Probability of Prevailing on the Merits

Because defendant has shown that the anti-SLAPP statute applies to the complaint, the burden now

shifts to plaintiff to demonstrate a “probability” of success on the merits. (Code Civ. Proc., § 425.16 (b); *Equilon Enterprises LLC v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) “[A claimant] must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the [claimant] is credited.” (*Matson v. Dvorak* (1995) 40 Cal.App.4th 539, 548.)

The evidentiary showing by the claimant must be made by competent and admissible evidence. (*Morrow v. Los Angeles Unified School District* (2007) 149 Cal.App.4th 1424, 1444; see also *Evans v. Unkow* (1995) 38 Cal.App.4th 1490, 1497-98 [proof cannot be made by declaration based on information and belief]; *Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219, 1236-38 [documents submitted without proper foundation could not be considered in determining plaintiff’s probability of prevailing on its claim].) The trial court properly considers the evidentiary submissions of both the plaintiff and the defendant, but it may not weigh the credibility or comparative strength of the evidence and must instead simply determine whether the claimant’s evidence would, if believed by the trier of fact, be sufficient to result in a judgment for claimant. (*McGarry v. University of San Diego* (2007) 154 Cal.App.4th 97, 108-09.) Further, “[w]hether or not the evidence is in conflict, if the [claimant] has presented a sufficient pleading and has presented evidence showing that a prima facie case will be established at trial, the [claimant] is entitled to proceed.” (*Moore v. Shaw* (2004) 116 Cal.App.4th 182, 193.)

A claimant need not establish a probability of prevailing on all theories presented. As long as the claimant “shows a probability of prevailing on any part of its claim, the plaintiff has established that its cause of action has some merit and the entire cause of action stands.” (*Mann v. Quality Old Time Service, Inc.* (2004) 120 Cal.App.4th 90, 106 [italics in original].)

A. First Amendment

Defendant argues that plaintiffs’ claims are barred by the First Amendment. At least one court has found that the First Amendment may apply to a government entity where the statements involved a matter of public interest and the right to keep the public informed. (See *Bradbury v. Superior Court* (1996) 49 Cal.App.4th 1108, 1115-1116 [citing *Nizam-Aldine v. City of Oakland* (1996) 47 Cal.App.4th 364].) However, “[t]his does not mean that there are no restraints on government speech. For example, government speech must comport with the Establishment Clause. The involvement of public officials in advocacy may be limited by law, regulation, or practice.” (*Pleasant Grove City, Utah v. Summum* (2009) 555 U.S. 460, 468.) “[I]t is to be hoped that the courts will recognize that limitations, both constitutional and otherwise derived, constrain the government’s power to speak on controversial issues.” (*R.J. Reynolds Tobacco Co. v. Bonta* (E.D.Cal. 2003) 272 F.Supp.2d 1085, 1106.) Therefore, even if the First Amendment applies to defendant’s speech, it must still be determined whether the speech must be limited by other constitutional or legal requirements.

B. Plaintiffs’ Have Not Met Their Burden of Showing a Probability of Prevailing on their First Cause of Action for Unconstitutional Interference with Foreign Affairs Power

While the federal court’s decision is not controlling, the Court agrees with its analysis. Plaintiffs allege that defendant’s action takes a position on matters of foreign policy and that this violates the

Supremacy Clause. (See SAC ¶¶ 28-29.) As to this claim, the district court found:

Plaintiffs have alleged no well-pleaded factual allegations that could plausibly support a conclusion that the Comfort Women monument in Glendale's Central Park, with a plaque expressing "sincere hope that these unconscionable violations of human rights never recur," violates the Supremacy Clause or foreign affairs powers. See *Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 421, 123 S. Ct. 2374, 2390, 156 L. Ed. 2d 376 (2003) ("The exercise of federal executive authority [over the conduct of foreign relations] means that state law must give way where, as here, there is evidence of clear conflict between the policies adopted by the two."). Plaintiffs' Complaint provides no well-pleaded allegations of the required "clear conflict" between the federal government's foreign relations policies concerning recognition of the plight of the Comfort Women and Glendale's placement of the monument in its Central Park. *Id.* Indeed, as alleged in the Complaint, the plaque accompanying the statue cites to House Resolution 121, passed by Congress on July 30, 2007, "urging the Japanese Government to accept historical responsibility for these crimes." (Compl. ¶ 11.)

Any contrary conclusion would invite unwarranted judicial involvement in the myriad symbolic displays and public policy issues that have some tangential relationship to foreign affairs. For instance, those who might harbor some factual objection to the historical treatment of a state or municipal monument to the victims of the Holocaust could make similar claims to those advanced by Plaintiffs in this action. Neither the Supremacy Clause nor the Constitution's delegation of foreign affairs powers to the federal government prevent a municipality from acting as Glendale has done in this instance:

Holding that cities are preempted under . . . federal law . . . from making pronouncements on matters of public interest . . . would mark an unprecedented and extraordinary intrusion on the rights of state and local governments. An inherent power of any sovereign government and one that is fundamental to any form of democracy is the ability to communicate with the citizenry. . . . Absent explicit direction from Congress, we are not willing to conclude that our federal government has chosen to adopt a rule that is so antithetical to fundamental principles of federalism and democracy.

Alameda Newspapers, Inc. v. City of Oakland, 95 F.3d 1406, 1415 (9th Cir. 1996).

Glendale's placement of the Comfort Women monument in its Central Park does not pose the type of interference with the federal government's foreign affairs powers that states a plausible claim for relief. Instead, even according to the facts alleged in the Complaint, Glendale's placement of the statue is entirely consistent with the federal government's foreign policy.

(Def. Exh. 20, pp. 6-7. See also SAC ¶ 2 [alleging that the plaque cites to H.R. 121].)

This Court sees no reason to deviate from this conclusion. Plaintiffs' citation to *Movsesian v. Victoria Versicherung AG* (9th Cir. 2012) 670 F.3d 1067 does not change this analysis. *Movsesian* concerned the enactment of a law concerning the Armenian genocide that was not "merely expressive" and instead "impose[d] a concrete policy of redress . . . subjecting foreign insurance companies to suit in California by overriding forum-selection provisions and greatly extending the statute of limitations for a narrowly defined class of claims." (*Id.* at p. 1077.) The court declined to "offer any opinion about California's ability to express support for Armenians by, for example, declaring a commemorative day." (*Id.* at p. 1077, fn. 5.) Here, it is not alleged that defendant attempted to regulate or conduct foreign affairs; instead, defendant at most expressed an opinion on

the issue of comfort women. Plaintiffs provide no authority which has held that purely expressive conduct, such as the placement of a monument and plaque, intrudes upon the federal government's exclusive power to conduct and regulate foreign affairs. The cases cited by plaintiffs in the opposition concerned actions that went beyond mere expressive conduct. (See *American Ins. Ass'n v. Garamendi* (2003) 539 U.S. 396 [statute required disclosure of information about insurance policies]; *Crosby v. National Foreign Trade Council* (2000) 530 U.S. 363 [state law restricted ability of the state and its agencies to purchase goods or services from companies doing business with Burma (Myanmar)]; *Foster v. Love* (1997) 522 U.S. 67 [statute regulated election for congressional office]; *Gade v. National Solid Wastes Management Ass'n* (1992) 505 U.S. 88 [laws provided for the training, testing, and licensing of hazardous waste site workers]; *In re World War II Era Japanese Forced Labor Litigation* (N.D. Cal. 2001) 164 F.Supp.2d 1160 [statute allowed for suits seeking compensation for forced labor during World War II]; *Deutsch v. Turner Corp.* (9th Cir. 2003) 317 F.3d 1005 [same]; *Zschernig v. Miller* (1968) 389 U.S. 429 [statute provided conditions under which an alien not residing in the U.S. could take property by succession or testamentary disposition]; *Hines v. Davidowitz* (1941) 312 U.S. 52 [statute required aliens to annually register]; *Von Saher v. Norton Simon Museum of Art at Pasadena* (9th Cir. 2010) 592 F.3d 954 [statute allowed persons to bring actions against museums to recover art looted by the Nazis].)

The Court finds that plaintiffs have not established a probability of prevailing on their first cause of action.

C. Plaintiffs' Have Not Met Their Burden of Showing a Probability of Prevailing on their Second Cause of Action for Violation of the Glendale Municipal Code.

Plaintiffs' second cause of action alleges that defendant violated its Municipal Code because the monument was not properly approved by the City Council pursuant to Glendale Municipal Code section 2.04.140. (See SAC ¶¶ 33-34.) Plaintiffs allege that this section provides: "In all matters and things not otherwise provided for in this chapter, the proceedings of the council shall be governed under Robert's Rules of Order, revised copy, 1952 edition." (Id., ¶ 33. See also Blecher Decl., Exh. G.) Plaintiffs allege: "Pursuant to Robert's Rules of Order, to introduce a new piece of business or propose a decision or action, a motion must be made by a group member. (Art. 1, Sec. 4.) A second motion must then also be made. (Art. I, Sec. 5.) And after limited discussion, the group then votes on the motion. (Art. I, Sec. 7 & 9.) A majority vote is required for the motion to pass. (Id.)" (SAC ¶ 33.) Plaintiffs allege that the monument was not properly before the City Council because the plaque was neither proposed to the Council nor made the subject of a motion that was approved. (Id., ¶ 34.)

Roberts' Rules of Order is a "parliamentary guide is adopted by legislative bodies to expedite the transaction of their affairs in an orderly fashion." (*City of Pasadena v. Paine* (1954) 126 Cal.App.2d 93, 96.) "Such rules are therefore procedural and their strict observance is not mandatory. Consequently, a failure to observe one of them is not jurisdictional and does not invalidate action which is otherwise in conformity with charter requirements." (Ibid.) "[T]he mere failure of a municipal legislative body to conform to parliamentary usage will not invalidate its action when the requisite number of members have agreed to the particular measure." (Ibid.)

Defendant provides evidence that defendant's City Council did comply with Robert's Rules of

Order in approving the monument. (See Cruz Decl., Exh. A; Mera Decl., Exh. A.) However, plaintiffs' evidence suggests that the contents of the plaque were not discussed or known to the council members prior to approval of the monument. (See Mera Decl., ¶¶ 8, 16, Exh. A; Naoki Decl., ¶¶ 9, 13.) But the council later voted to defend the instant lawsuit. (See Cruz Decl., Exh. B.) There is no showing that the council members were unaware of the contents of the plaque at that time, and their decision to defend the monument and plaque can only be viewed as approval of its contents. Plaintiff makes no showing that a decision remains improper where it is later ratified.

Therefore, plaintiffs have not shown a probability of prevailing on the second cause of action.

D. Plaintiffs' Have Not Met Their Burden of Showing a Probability of Prevailing on Their Third Cause of Action for Violation of the Equal Protection Clause of the California Constitution

In the third cause of action, plaintiffs seek a declaration that the placement of the monument denies plaintiffs equal protection under the law because it expressly and impliedly disapproves of individuals of Japanese origin, because no monument exists in the park that honors any of Glendale's other sister cities, because the monument interferes with plaintiffs' use and enjoyment of the park and the nearby Adult Recreation Center, and because the monument discourages plaintiffs from equal and unfettered access to these areas. (See SAC ¶ 39.)

"[A]n equal protection claim contains the following essential elements: (1) plaintiff was treated differently from other similarly situated persons; [Fn. omitted.] (2) the difference in treatment was intentional; and (3) there was no rational basis for the difference in treatment." (Genesis Environmental Services v. San Joaquin Valley Unified Air Pollution Control Dist. (2003) 113 Cal.App.4th 597, 605.) "The equal protection clause contained in article I, section 7, of the California Constitution is coextensive with its federal counterpart found in the Fourteenth Amendment to the United States Constitution." (In re Conservatorship and Estate of Edde (2009) 173 Cal.App.4th 883, 891. See also People v. Shields (2011) 199 Cal.App.4th 323, 333 ["Federal and state equal protection analysis is substantially the same"].)

State actors may create classifications facially, when such categorization appears in the language of legislation or regulation, [citation], or de facto, through the enforcement of a facially neutral law in a manner so as to disparately impact a discernible group. The Supreme Court has instructed us time and again, however, that disparate impact alone cannot suffice to state an Equal Protection violation; otherwise, any law could be challenged on Equal Protection grounds by whomever it has negatively impacted. [Citation.] Thus, a party who wishes to make out an Equal Protection claim must prove "the existence of purposeful discrimination" motivating the state action which caused the complained-of injury. [Citations.] "Discriminatory purpose in an equal protection context implies that the decisionmaker selected a particular course of action at least in part because of, and not simply in spite of, the adverse impact it would have on an identifiable group."

(Johnson v. Rodriguez (5th Cir. 1997) 110 F.3d 299, 306-307. See also Coleman v. Miller (11th Cir. 1997) 117 F.3d 527, 529 [in a disparate impact claim, the plaintiff must show that the action produces disproportionate effects and that discrimination was a substantial or motivating factor].)

The monument and plaque do not create a classification that singles out Japanese persons. Though the plaque refers to the Japanese military, the Imperial Japanese Army, and the Government of

Japan, it also states that it is dedicated to the memory of all comfort women, including women from Japan. (See SAC ¶ 2.) Plaintiffs are not alleged to be members of the Japanese armed forces. Further, being a member of the Imperial Japanese Army during World War II is not a suspect classification to which the Equal Protection Clause would apply.

Plaintiffs also allege that the monument impliedly condemns all persons of Japanese origin and descent. (See SAC ¶ 1.) Plaintiffs argue that the monument disparately impacts this class of people. To support this claim, plaintiffs must provide specific factual evidence which demonstrates that the monument imposes on persons of Japanese origin a measurable burden or denies them an identifiable benefit. (See *Coleman*, 117 F.3d at p. 530.) Plaintiff Gingery declares that she no longer feels comfortable or welcome at the park because of the presence of the monument. (Gingery Decl., ¶ 10.) Plaintiff Mera states that he feels compelled to avoid the area because of the presence of the monument and the plaque. (See Mera Decl., ¶ 20.) Plaintiff Naoki declares that he and his wife no longer feel comfortable in the park and avoid the area because of the monument. (Naoki Decl., ¶ 16.) At most, this merely suggests intangible harm to the plaintiffs based on their decisions to avoid the park; there is no evidence that other persons of Japanese descent similarly avoided the park, or that they were prohibited from going to the park simply because of the monument's existence. (See *Coleman*, 117 F.3d at p. 530 [anecdotal evidence of individual harm of two individuals was not sufficient to establish disparate impact].) The fact that plaintiffs and others find the message of the monument offensive is not sufficient, by itself, to support an equal protection claim. (See *Freedom from Religion Foundation, Inc. v. City of Warren, Mich.* (6th Cir. 2013) 707 F.3d 686, 698 [government's disparate treatment of a preferred message is not sufficient].)

Moreover, plaintiffs do not point to sufficient evidence that discrimination was a substantial motivating factor in defendant's decision. At most, plaintiffs show that defendant was aware that people of Japanese descent would be upset by the monument and that the monument would be controversial. (See Mera Decl., ¶¶ 9-10; Naoki Decl., ¶ 10.) There is no indication that the statement by Councilmember Quintero that certain persons present at the meeting discussing the monument "do not know your own history," was motivated by discrimination against persons of Japanese descent. (See Mera Decl., ¶ 9, Exh. A.) (The Court also notes that Councilmember Quintero was the one member of the Council who voted against approving the Comfort Women monument.) Further, a review of the video of the meeting suggests that most of the council members expressed a lack of discriminatory intent with regard to persons of Japanese origin. (See *id.*, Exh. A.)

Therefore, plaintiffs fail to establish a probability of prevailing on their third cause of action.

E. Plaintiffs' Have Not Met Their Burden of Showing a Probability of Prevailing on Their Fourth Cause of Action for Violation of the Privileges and Immunities Clause of the California Constitution

In the fourth cause of action, plaintiffs allege that defendant violated the Privileges and Immunities Clause of the California Constitution because the placement of the monument denies plaintiffs privileges and immunities on the same terms as non-Japanese citizens. (See SAC ¶ 41.) Plaintiffs allege the same violations as in the third cause of action. (See *id.*, ¶¶ 39, 41.) "The California and United States privileges and immunities clauses call for the same analysis as called for by the equal protection provisions . . ." (*People v. Housman* (1984) 163 Cal.App.3d Supp. 43, 52-53.) Plaintiffs do not present any additional arguments or evidence for the fourth cause of action that were not addressed for the third cause of action.

Therefore, plaintiffs fail to establish a probability of prevailing on their fourth cause of action.

Defendant has shown that it engaged in protected activity. Plaintiff's have failed to show that they have probability of succeeding on any of their causes of action.

Defendant's special motion to strike is GRANTED.

1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) ss

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 years and not a party to the within action. My business address is 555 West Fifth Street, Suite 4000,
Los Angeles, California 90013-1010.

5 On **March 3, 2015**, I served the following document described as **[PROPOSED] ORDER**
6 on all interested parties in this action as follows (or as on the attached service list):

7 Donald R. Pepperman Attorneys for Plaintiffs
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