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7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF ORANGE

10 GENTLE GIANTS RESCUE AND)
ADOPTIONS, INC., a California)
11 Non-Profit Public Benefit)
Corporation, BURT WARD, an)
12 Individual, and TRACY WARD, an)
Individual,)
13 Plaintiffs,)

14 vs.)

15 BARBARA LAIRD, an Individual,)
16 MARC SAYER, an Individual,)
JAIME GARCIA, an Individual,)
17 RENEE BRODEN, an Individual,)
and DOES 1 through 100, Inclusive,)

18 Defendants.)
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Case No. 05CC09035

DEFENDANT BARBARA LAIRD'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF HER SPECIAL
MOTION TO STRIKE THE COMPLAINT AS A
MERITLESS SLAPP
(C.C.P § 425.16)

Date: January 3, 2006
Time: 1:45 p.m.
Dept.: C-7
Judge: Hon. Derek G. Johnson

Complaint Filed: August 8, 2005
Trial Date: None Set

[Filed in conjunction with defendant's notice of
motion, declarations, request for judicial notice,
compendium of federal authority, and proof of
service of moving papers]

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1 **INTRODUCTION.**

2 In January, 2005, defendant Barbara Laird decided that she wanted to adopt a Great Dane
3 into her family. Laird located plaintiff Gentle Giants and Adoptions Rescue and adopted a Great
4 Dane. She renamed him "Samson." What should have been the beginning of a happy
5 relationship between Laird and Samson soon turned into a nightmare, when plaintiffs discovered
6 that Laird was no longer feeding Samson the food which plaintiffs recommended and threatened
7 to repossess Samson.

8 Laird posted a message on an Internet message board, asking people who had adopted
9 dogs from Gentle Giants to contact her. She discovered that many others had had far worse
10 experiences with plaintiffs. Laird filed complaints with the City of Norco and the State of
11 California regarding plaintiffs. She posted additional messages to Internet message boards
12 which told her story and the stories of others. She also encouraged others to speak out and
13 complain to the City and tell their stories of their experiences with plaintiffs. Plaintiffs then filed
14 this lawsuit against Laird, without any prior warning. This suit is a meritless SLAPP and should
15 be dismissed.

16
17 **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY.**

18 **A. Factual Background.**

19 **1. Plaintiffs Burt and Tracy Ward.**

20 Plaintiff Burt Ward is best known for his role as Robin, The Boy Wonder, from the
21 1960's television series, "Batman & Robin." He also appeared in numerous other television
22 programs and movies thereafter. (Clifford Decl., ¶ 2, Exhibit A.) Burt Ward has been in the
23 public eye since the age of two, when he was listed in the magazine "Strange as it Seems" as the
24 world's youngest professional ice skater. (Clifford Decl., ¶ 2, Exhibit A.) His autobiography,
25 "Boy Wonder: My Life in Tights," was published in 1995. (Clifford Decl., ¶ 3, Exhibit B.)
26 Ward continues to make public appearances at memorabilia collectors' shows. (Clifford Decl.,
27 ¶ 4, Exhibit C.) Ward maintains an "official website" at "Robintheboywonder.com." (Clifford
28 Decl., ¶ 2, Exhibit A.) Plaintiff Burt Ward is an officer and director of plaintiff Gentle Giants

1 Rescue and Adoptions, Inc. (“Gentle Giants”). (Complaint, ¶ 10.)

2 Plaintiff Tracy Ward is the wife of Burt Ward and the daughter of the notorious corporate
3 raider, Victor Posner, whose estate has been the subject of high-profile disputes and litigation.
4 (Clifford Decl., ¶¶ 5-7, Exhibits D-F.) She is also an officer and director of plaintiff Gentle
5 Giants. (Complaint, ¶ 10.)

6 **2. Plaintiff Gentle Giants.**

7 Plaintiff Gentle Giants is a California non-profit public benefit corporation, with its
8 principle place of business in Riverside County. (Complaint, ¶ 1.) It purports to be an animal
9 rescue and adoption agency for large breed dogs. (Complaint, ¶ 10.) The Gentle Giants
10 business and plaintiffs Burt and Tracy Ward have been featured in numerous television
11 programs, including: Public Broadcasting’s “Visiting . . . with Huell Howser -- Big Dogs” and
12 “Woof! It’s a Dog’s Life”; Animal Planet’s “Adoption Tales,” “Pet Story,” and “Amazing
13 Tales”; as well as segments on “Hard Copy,” “Inside Edition,” “Entertainment Tonight,” and
14 VH-1’s “Super Heroes; Where are They Now?” (Clifford Decl., ¶ 10, Exhibit I.) Plaintiff
15 Gentle Giants maintains a website, “gentlegiantsrescue.com.” (Clifford Decl., ¶ 8, Exhibit G.)

16 **3. Gentle Giants’ Business Is the Source of Ongoing Controversy in the**
17 **City of Norco.**

18 According to a February 2004 memorandum from Norco’s Director of Community
19 Development, plaintiffs’ business “has been the source [of] an on-going community debate
20 regarding dog rescue operations since 1997.” (Clifford Decl., ¶ 17, Exhibit P.) The Norco
21 Superintendent of Animal Control reported that in April 1997 plaintiffs began operating an
22 illegal kennel. In April 1997, Animal Control staff found 94 dogs on plaintiffs’ property, some
23 90 dogs above the legal limit. Animal Control twice ordered plaintiffs to comply with the City’s
24 ordinance, but plaintiffs appealed to the City Council, which suspended the orders pending
25 further proceedings. (Clifford Decl., ¶¶ 12, 13, and 19, Exhibits K, L and R.)

26 In 1998, Animal Control informed the City Council about complaints about plaintiffs’
27 business. (Clifford Decl., ¶ 12, Exhibit K.) In January 2002, 13 complaints to Animal Control
28 and Code Enforcement about Gentle Giants led to the preparation of “a code amendment to

1 establish requirements for dog rescue operations . . .” (Clifford Decl., ¶ 13, Exhibit L.) In
2 September 2002 and May 2003, the City Council considered and rejected two proposed code
3 amendments. Both proposals were motivated by “*continuing* complaints from residents
4 regarding the illegal dog rescue operation.” (Clifford Decl., ¶ 14, Exhibit M [emphasis added].)
5 After a 2002 “workshop,” City officials determined that there was no common ground between
6 proponents and opponents of plaintiffs’ kennel. (Clifford Decl., ¶¶ 13-14, Exhibits L and M.)
7 Council members were concerned that the special amendment would be “unfair and inequitable”
8 to others desiring to own animals in excess of the City’s legislated maximum. (Clifford Decl., ¶
9 14, Exhibit M.)

10 Plaintiffs’ illegal business highlighted a larger public issue about variances to the zoning
11 ordinance that impacted animal owners and their neighbors across the City. On May 21, 2003,
12 the Council adopted a resolution directing City staff to explore whether the CUP process could
13 resolve issues raised by plaintiffs’ business. (Clifford Decl., ¶ 15, Exhibit N.)

14 4. The City of Norco Issues Plaintiffs a Conditional Use Permit.

15 In February 2004, the City Council again held public meetings about plaintiffs’ business
16 and finally voted to issue a CUP for it. (Clifford Decl., ¶ 17, Exhibit P.) Among the conditions
17 placed upon Gentle Giants by the CUP are: no more than 55 animals may reside on the property
18 at any one time; complaints regarding barking, inadequate record keeping, and lack of waste
19 clean-up which are deemed valid shall be cause for review of the conditional use permit and may
20 be grounds for revocation; all rescue dogs shall be spayed/neutered prior to adoption; all dogs
21 must be implanted with microchips and ownership information kept up-to-date; all dogs four
22 months or older shall be vaccinated for rabies and accurate and complete vaccination and
23 adoption records shall be maintained by Gentle Giants. (Clifford Decl., ¶ 20, Exhibit S.)

24 5. Burt Ward Sues the Riverside Press Enterprise for 25 Defamation; the Suit is Dismissed as a Meritless SLAPP.

26 On November 12, 2003, plaintiff Burt Ward sued the Riverside Press Enterprise for
27 defamation for two articles it had published about concerns that the local water quality control
28 board had about Ward’s Great Dane rescue operations. (Clifford Decl., ¶ 28, Exhibit AA.) On

1 July 23, 2004, the Riverside Superior Court dismissed the lawsuit as a meritless SLAPP.
2 (Clifford Decl., ¶ 29, Exhibit BB.)

3 **6. Defendant Barbara Laird Adopts Samson, a Great Dane.**

4 Barbara Laird is a single mother who grew up with dogs and other pets. (Laird Decl.,
5 ¶¶ 2-3.) She also volunteered for a dog and cat rescue organization. (Laird Decl., ¶ 3.)

6 In January 2005, Laird decided to adopt a Great Dane. On January 30, 2005, Laird visited
7 plaintiff Gentle Giants Rescue and Adoptions in Norco, operated by plaintiffs Burt and Tracy
8 Ward. Laird fell in love with and adopted a three-year-old neutered male Great Dane, which
9 was very affectionate to her. On the way home, Laird renamed the dog "Samson." (Laird Decl.,
10 ¶¶ 5-7.) Laird and Samson are featured on Gentle Giants' website. (Clifford Decl., ¶ 11, Exhibit
11 J.)

12 At the time of the adoption, Tracy Ward provided Laird with a plastic bag of pills which
13 she indicated were antibiotics and told Laird that she should give the medication to Samson.
14 Plaintiffs did not provide Laird with Samson's vaccination record; Tracy Ward said that she
15 would have to locate it and would provide the record to Laird at a later date. To this day, Laird
16 has not received Samson's vaccination record. (Laird Decl., ¶ 7.)

17 Tracy Ward recommended that Samson be fed Pedigree brand dog food. After about
18 three weeks of Samson suffering from diarrhea, Laird gradually switched Samson's food to
19 Eagle brand, which had been recommended to Laird by various Great Dane breeders, trainers,
20 and handlers. In early April 2005, Laird mentioned to Tracy Ward in an e-mail that she had
21 switched Samson's food. Tracy Ward objected to this. (Laird Decl., ¶ 8.)

22 **7. Plaintiffs Threaten to Repossess Samson.**

23 On April 11, 2005, Burt Ward sent Laird via e-mail a "Notice of Violation of Adoption
24 Agreement and Notice of Intent to Repossess Samson," which was based upon her change in
25 Samson's food. Laird told the Wards that there was no clause in the adoption agreement which
26 required that Samson be fed a particular brand of food. Nonetheless, on April 13, 2005, Laird
27 received another e-mail from Burt Ward and a letter from the Wards' attorney stating plaintiffs'
28 intention to repossess Samson. The Wards gave Laird 24 hours to return Samson or they would

1 take legal action against her. On May 21, 2005, Laird received a second letter from the Wards'
2 attorney requesting confirmation that she had switched Samson back to Pedigree brand food or
3 food which could be bought directly from Gentle Giants. The Wards' attorney stated that if
4 Laird failed to comply, his clients would proceed with legal action to repossess Samson. (Laird
5 Decl., ¶ 8, Exhibits A E.)

6 **8. Laird Posts Messages on the Internet Seeking Advice Regarding**
7 **Plaintiffs' Threat to Repossess Samson.**

8 Shortly after receiving the e-mails and letters from the Wards and their attorney
9 threatening legal action to repossess Samson, Laird posted messages on the Internet asking
10 anyone who had adopted a dog from Gentle Giants to contact her. Laird was seeking advice on
11 how to deal with her situation from people who had experience with the plaintiffs. (Laird Decl.,
12 ¶ 10.) Among others, Laird received statements from many people who had unknowingly
13 adopted sick or violent dogs from Gentle Giants. As part of the ongoing Internet discussions
14 about plaintiffs, Laird re-posted some of these statements directly, and she posted summaries of
15 others from people who had bad experiences with the plaintiffs but did not want their identities
16 revealed to the plaintiffs for fear of being sued. (Laird Decl., ¶ 10.)

17 **9. Laird Complains about Plaintiffs to the City of Norco and the State**
18 **Veterinary Board.**

19 On May 26, 2005, Laird contacted the City of Norco animal control agency. She
20 explained that she had adopted Samson from Gentle Giants and had not been able to obtain his
21 vaccination record and asked what she should do about Samson's missing vaccination record.
22 She was told to complete a complaint form so the agency could investigate the matter. On June
23 20, 2005, Laird sent her completed complaint form to the City of Norco. (Laird Decl., ¶ 9,
24 Exhibit F.)

25 On June 24, 2005, Laird contacted the California Veterinary Board to inquire about the
26 pills which Tracy Ward had given to her for Samson. Laird explained that Ward told her they
27 were antibiotics, which Laird believed were prescription medication. Laird was told to complete
28 a complaint form and return it to the Board, which she did that same day. (Laird Decl., ¶ 13,
29 Exhibit I.) In its reply to Laird's complaint, the Veterinary Board stated that "Concern and

1 action on the part of consumers such as you enable the Board to monitor the practice of
2 veterinary medicine in California.” (Laird Decl., ¶ 13, Exhibit J.)

3 **10. The City of Norco Considers Complaints Regarding Plaintiffs’**
4 **Business Again in June 2005.**

5 On June 1, 2005, the Norco City Council heard complaints from two members of the
6 community who stated that Gentle Giants was failing to meet its obligations under the CUP and
7 requesting that it be revoked. The community members asked that the matter be referred back to
8 the Planning Commission to review the kennel’s compliance with the CUP. (Clifford Decl.,
9 ¶ 18, Exhibit Q.)

10 **11. Responding to Advice from a City Official, Laird Encourages Others to**
11 **Complain to the City of Norco About Plaintiffs.**

12 Also on June 1, 2005, a Norco animal control official advised Laird that the animal
13 control department had been wanting to close down Gentle Giants for some time, but needed
14 citizen complaints to present to the City Council. (Laird Decl., ¶ 11.) Acting on this advice,
15 Laird encouraged readers to file complaints about Gentle Giants with the City of Norco in a June
16 10, 2005, post to the discussion group “danesonline.com,” which stated in relevant part:

17 THE CITY OF NORCO, CA (ANIMAL CONTROL DIVISION) IS NEEDING MORE
18 PEOPLE TO STEP UP AND TO FILE A WRITTEN COMPLAINT (EVEN IF THE
19 COMPLAINT IS AS SMALL AS “GENTLE GIANTS NEVER PROVIDED YOU
20 WITH RABIES VACCINATION RECORDS” ... THAT’S ALL THEY NEED)

21 Please send me a private email if you would like to receive a complaint form.

22 (Laird Decl., ¶ 11, Exhibit G.)

23 **B. Procedural History.**

24 Without any prior warning to Laird, plaintiffs filed their Complaint against her and three
25 other defendants on August 8, 2005, alleging causes of action for defamation (libel), defamation
26 (trade libel), intentional interference with prospective economic advantage, negligent
27 interference with prospective economic advantage, intentional infliction of emotional distress,
28 and negligence. (Complaint, pp. 1, 6-12; Laird Decl., ¶ 17.) Plaintiffs also requested an
“injunction restraining and enjoining all defendants . . . from publishing or disseminating, or
otherwise providing to any person or entity, in any medium, any information about the Plaintiffs,

1 or each of them.” (Complaint, 14:8-10.) Laird was served with the Complaint on August 24,
2 2005. (Laird Decl., ¶ 16.) Plaintiffs agreed to extend the time for Laird to file a responsive
3 pleading to October 21, 2005. (Clifford Decl., ¶ 27.) Defendant Laird now files this special
4 motion to strike under the anti-SLAPP law.

5
6 **II. PLAINTIFFS’ CLAIMS ARE COVERED BY THE ANTI-SLAPP LAW.**

7 **A. The California Anti-SLAPP Law Was Enacted to Protect the Fundamental**
8 **Constitutional Rights of Petition and Speech and Is to Be Construed Broadly.**

9 **1. Section 425.16 Must Be Construed Broadly.**

10 SLAPPs (Strategic Lawsuits Against Public Participation) have been defined as “civil
11 lawsuits . . . aimed at preventing citizens from exercising their political rights or punishing those
12 who have done so.” (*Monterey Plaza Hotel v. Hotel Employees & Restaurant Employees Local*
13 *483* (1999) 69 Cal.App.4th 1057, 1063 [citation omitted].)

14 In 1992, in response to the “disturbing increase” in meritless lawsuits brought “to chill the
15 valid exercise of the constitutional rights of freedom of speech and petition for the redress of
16 grievances,” the Legislature overwhelmingly enacted Code of Civil Procedure section 425.16,
17 California’s anti-SLAPP law. (Stats. 1992, ch. 726, § 2.) In 1997, the Legislature unanimously
18 amended the statute to expressly state that it “shall be construed broadly.” (Stats. 1997, ch. 271,
19 §1; amending § 425.16(a).)¹

20 In 1999, the California Supreme Court underscored this requirement of broad
21 construction, directing that courts, “whenever possible, should interpret the First Amendment
22 and section 425.16 in a manner ‘favorable to the exercise of freedom of speech, not to its
23 curtailment.’” (*Briggs v. Eden Council for Hope and Opportunity* (1999) 19 Cal.4th 1106,
24

25 ¹ Subdivision (a) of section 425.16 provides: “The Legislature finds and declares that
26 there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of
27 the constitutional rights of freedom of speech. The Legislature finds and declares that it is in the
28 public interest to encourage continued participation in matters of public significance, and this
participation should not be chilled through abuse of the judicial process. *To this end, this section*
shall be construed broadly.” (Emphasis added.)

1 1119, quoting *Bradbury v. Superior Court* (1996) 49 Cal.App.4th 1170, 1176.)

2 **2. Section 425.16 Sets Forth a Two-Step Analysis.**

3 Section 425.16 sets forth a two-step process for evaluating a special motion to strike.
4 First, the defendant must make a prima facie showing that the plaintiff's cause of action arises
5 from an act of the defendant in furtherance of the right of petition and/or the right of free speech
6 in connection with a public issue. (§ 425.16, subd. (b)(1); *Navellier v. Sletten* (2002) 29 Cal.4th
7 82, 88; *Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883, 894.) Once a defendant has made this
8 showing, the burden shifts to the plaintiff to establish a probability of prevailing on his claims,
9 by establishing that "the complaint is both legally sufficient and supported by a sufficient prima
10 facie showing of facts to sustain a favorable judgment." (*Wilson v. Parker, Covert & Chidester*
11 (2003) 28 Cal.4th 811, 821 [citations and internal punctuation omitted].)

12 **3. The Scope of Acts Covered by Section 425.16**

13 Subdivision (e) of the anti-SLAPP statute provides four illustrations of the types of acts
14 covered by the statute:

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

23 As discussed below, plaintiff's Complaint is subject to the anti-SLAPP law, pursuant to
24 subdivisions (e)(1), (e)(2), (e)(3), and (e)(4) of the statute.

25 **B. Plaintiffs' Claims Are Covered Under Subdivisions (e)(1) and/or (e)(2) of the**
26 **Anti-SLAPP Law, Because They Arise from Statements to the Government**
27 **and/or Statements Made in Connection with an Official Proceeding.**

28 Subdivision (e)(1) of section 425.16 provides in relevant part that the statute covers "any
written or oral statement or writing made before . . . [an] executive . . . proceeding, or any other
official proceeding authorized by law." Subdivision (e)(2) provides in relevant part that the
statute covers "any written or oral statement or writing made in connection with an issue under
consideration or review by . . . [an] executive . . . body, or any other official proceeding

1 authorized by law.”

2 Defendant Laird’s speech which is the basis for this lawsuit falls squarely within the
3 scope of subdivisions (e)(1) and (e)(2) of the anti-SLAPP law. Plaintiffs allege that defendant
4 Laird contacted “governmental agencies” and others “to disseminate unprivileged, false and
5 misleading information about Plaintiffs Gentle Giants, Burt and Tracy.” (Complaint, ¶ 12; see
6 also ¶ 13.) Plaintiffs also allege that “Defendant Laird . . . contacted said individuals and
7 entities, and requested that they share their experiences, if any, with the Plaintiffs, and reduce
8 same to writing on [two Internet websites].” (Complaint, ¶ 14.) Plaintiffs allege further that
9 “Defendants . . . intentionally [solicited] . . . certain governmental agencies” in order to
10 communicate their belief that said agencies should “intercept as many dogs as possible, to
11 prevent them from ending up at” plaintiffs’ business. (Complaint, ¶¶ 38, 45.)

12 These allegations are based in large part upon Laird’s complaints to state and local
13 government agencies in an effort to protect the public from plaintiffs’ dogs and to protect the
14 other animals in plaintiffs’ custody from further neglect. (Laird Decl., ¶ 16.) Laird filed a
15 complaint about Samson’s missing vaccination records with the City of Norco on a form entitled
16 “City of Norco Animal Control Code Violation Request for Inspection.” By its own terms, this
17 complaint is a request for the government to take action. (Laird Decl., ¶ 9, Exhibit F.) Laird
18 also filed a “Consumer Complaint Form” with the State Veterinary Medical Board concerning
19 the pills plaintiffs gave her without any documentation indicating what they were or how they
20 should be administered to Samson. (Laird Decl., ¶ 13, Exhibit I.)

21 Laird’s complaints to state and local government agencies are “communication[s] to an
22 official administrative agency . . . designed to prompt action by that agency,” which are covered
23 under subd. (e)(1) as a statement before an official proceeding. (*ComputerXpress v. Jackson*
24 (2001) 93 Cal.App.4th 993, 1009; see also *Dove Audio v. Rosenfeld, Meyer & Susman* (1996)
25 47 Cal.App.4th 777, 784 [statements to private parties made in connection with a “proposed
26 complaint to the Attorney General seeking an investigation” are protected by the statute];
27 *Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 900-02, 906, 910 [§ 425.16 covers letter to the
28 Attorney General requesting an investigation]; *Walker v. Kiouisis* (2001) 93 Cal.App.4th 1432,

1 1439 [complaint to government is covered by § 425.16].) Statements intended to initiate official
2 proceedings, such as plaintiffs allege, are covered by the anti-SLAPP law.

3 Similarly, Laird's requests that others speak out and share their experiences are also
4 covered by the anti-SLAPP statute. "There is no requirement that the writing or speech be
5 promulgated directly to the official body." (*Ludwig v. Superior Court* (1995) 37 Cal.App.4th 8,
6 17-18 [§ 425.16 covers claims arising from encouraging third parties to speak out in opposition
7 to a development project; emphasis in original]; see also *Wilcox v. Superior Court* (1994) 27
8 Cal.App.4th 809, 821-22 [§ 425.16 covers statement asking private parties to contribute to cost
9 of litigation].)

10 Further, the statements Laird made about plaintiffs served several purposes. Laird
11 initially was seeking advice on how she should deal with plaintiffs' threats to repossess Samson.
12 Laird sought to protect herself and Samson from what she reasonably believed was imminent
13 legal action against her by plaintiffs. Laird wanted to communicate with others who had dealt
14 with Gentle Giants to help her decide how to proceed in light of plaintiffs' threat. (Laird Decl.,
15 ¶ 10.) Second, after receiving numerous stories about the conditions at the Gentle Giants
16 compound and plaintiffs' treatment of the dogs in their care, Laird encouraged others to
17 complain to the City of Norco and publicly tell their stories and speak out about Gentle Giants.
18 (Laird Decl., ¶ 11.) Even a statement which merely comments on or discusses official
19 proceedings, without asking anyone to take any action, is covered by section 425.16. (*Briggs v.*
20 *Eden Council, supra*, 19 Cal.4th at pp. 1114-17 [§ 425.16 covers statements made in connection
21 with a government investigation and actual and potential civil litigation, and even covers a
22 notation on a telephone message slip]; *Lafayette Morehouse v. Chronicle Publishing Co.* (1995)
23 37 Cal.App.4th 855, 860-63 [§ 425.16 covers news articles about official proceedings].)

24 Laird's statements were clearly intended to secure official governmental action to address
25 the public safety and consumer protection issues arising from plaintiffs' business and plaintiffs'
26 failure to comply with their CUP and to encourage others to join in that effort, as well as to help
27 her respond to plaintiffs' threat of legal action. Her speech is therefore covered by subsections
28 (e)(1) and (e)(2) of the anti-SLAPP law.

1 **C. Plaintiffs' Claims Are Also Covered Under Subdivisions (e)(3) and/or (e)(4) of**
2 **the Anti-SLAPP Law, Because They Arise from Statements Made in**
3 **Connection With an Issue of Public Interest.**

4 Subdivision (e)(3) of section 425.16 covers any "statement . . . made in a place open to
5 the public or a public forum in connection with an issue of public interest." Subdivision (e)(4)
6 of section 425.16 covers "any other conduct in furtherance of the exercise of the constitutional
7 right of petition or the constitutional right of free speech in connection with a public issue or an
8 issue of public interest." The requirement that the activity be "in connection with an issue of
9 public interest' . . . is to be 'construed broadly' so as to encourage participation by all segments
10 of our society in vigorous public debate related to issues of public interest." (*Seelig v. Infinity*
11 *Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 808.)

12 The Complaint alleges that:

13 . . . Defendant Laird commenced a campaign against the Plaintiffs, and contacted many of
14 Plaintiffs' actual and prospective clients, other individuals, governmental agencies and
15 other animal welfare entities, nationwide, all with the intent to disseminate unprivileged,
16 false and misleading information about Plaintiffs Gentle Giants, Burt and Tracy. Laird
17 made contact with the above described individuals and entities using various Internet
18 electronic mail addresses, Internet Chat Rooms, and Internet Discussion Groups and
19 Forums.

20 (Complaint, ¶ 12.)

21 Much of the activity for which plaintiffs have sued Laird consists of statements which she
22 made on Internet discussion groups. (Complaint, ¶¶ 12-17, 22, 25, 31.) Internet message boards
23 and discussion groups are public fora. (*ComputerXpress v. Jackson, supra*, at pp. 1006-07;
24 *Wilbanks v. Wolk, supra*, at pp. 895-97.)

25 Laird's statements also involve public safety, animal welfare, and animal rescue
26 organizations, matters which are also clearly of public interest.² (Laird Decl., ¶ 16.) Her
27 statements were also made in connection with proceedings by the City of Norco with regard to
28

² One of the stated purposes of the federal Animal Welfare Act is "to ensure that animals intended for use . . . as pets are provided humane care and treatment." (7 USC § 2131.) Google Internet searches produced 7,010,000 "hits" for the phrase "animal welfare," 44,100 for "animal rescue organization," and 10,900 for "dog rescue organization." (Clifford Decl., ¶¶ 24-26, and Exhibits X, Y, and Z thereto.)

1 plaintiffs' CUP, also an issue of public interest.

2 Statements of no greater public significance have been held to be covered by section
3 425.16. (*Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1420, 406 [statement that
4 someone had entered the tenants' locked garage and turned the dial of their water heater off was
5 protected under section 425.16 as conduct that "arguably involved public issues of nuisance and
6 safety," even though it directly affected only two tenants]; see also *Seelig v. Infinity*
7 *Broadcasting Corporation, supra*, at pp. 807-8 [radio "shock jock" commentary about plaintiff's
8 decision to appear on *Who Wants to Marry a Multimillionaire?* television show was made in
9 connection with an issue of public interest and is covered under § 425.16]; *Ingels v. Westwood*
10 *One Broadcasting Services, Inc.* (2005) 129 Cal.App.4th 1050, 1062-64 [interchange on radio
11 call-in talk show regarding whether caller was too old to participate in the show involves a
12 matter of public interest and is covered by § 425.16]; *Damon v. Ocean Hills Journalism Club*
13 (2000) 85 Cal.App.4th 468, 475-480 [statements in a newsletter regarding plaintiff's competency
14 to manage a homeowner's association involve a matter of public interest and are covered by
15 § 425.16]; see also *Dora v. Frontline Video* (1993) 15 Cal.App.4th 536, 540-44 [documentary
16 about Malibu surfers of the 1950's involved a matter of public interest (not a § 425.16 case)].
17 Therefore, defendant's statements are covered under subdivisions (e)(3) and/or (e)(4) of the anti-
18 SLAPP law.

19 Subdivision (e)(4) covers "even private communications, so long as they concern a public
20 issue." (*Wilbanks v. Wolk, supra*, 121 Cal. App.4th at p. 897; see also *Dowling v. Zimmerman,*
21 *supra*, 85 Cal.App.4th at pp. 1418-1420 ; *Terry v. Davis Community Church* (2005) 131
22 Cal.App.4th 1534, 1545-46 [statements to members of church that two of its youth group leaders
23 had an inappropriate relationship with a minor female are covered by subd. (e)(4)].)

24
25 **III. PLAINTIFFS WILL NOT BE ABLE TO SHOW A PROBABILITY OF**
26 **PREVAILING ON THEIR CLAIMS.**

27 Once a defendant has made a prima facie showing that the lawsuit arises from petition or
28 speech activity covered by section 425.16, as defendant Laird has here, the burden shifts to the

1 | plaintiffs to establish a probability of prevailing on their claims, which must be done by
2 | competent and admissible evidence. "In order to establish a probability of prevailing on the
3 | claim, a plaintiff responding to an anti-SLAPP motion . . . must demonstrate that the complaint
4 | is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a
5 | favorable judgment . . ." (*Wilson v. Parker, Covert & Chidester, supra*, 28 Cal.4th at p. 821
6 | [citations and internal quotation marks and punctuation omitted].) Plaintiff must meet his
7 | burden with "competent, admissible evidence." (*Ludwig v. Superior Court* (1995) 37
8 | Cal.App.4th 8, 15-16, 21 fn.16, 25; see also *Navellier v. Sletten* (2004) 106 Cal.App.4th 763,
9 | 775 [plaintiff has the burden in papers opposing the special motion to strike to show a
10 | probability of prevailing on his claims].) In this case, plaintiffs will not be able to meet this
11 | burden. Therefore, defendant Laird's special motion to strike should be granted.

12 |
13 | Dated: October 20, 2005

Respectfully submitted,

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16 | _____
17 | Mark Goldowitz
18 | CALIFORNIA ANTI-SLAPP PROJECT
19 | Special Counsel for Defendant
20 | Barbara Laird
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