1 2 3 4 5 6 7 8 9	R. Scott Jerger (pro hac vice) Field & Jerger, LLP 610 SW Alder Street, Suite 910 Portland, OR 97205 Tel: (503) 228-9115 Fax: (503) 225-0276 Email: scott@fieldjerger.com  John C. Gorman (CA State Bar #91515) Gorman & Miller 210 N 4th Street, Suite 200 San Jose, CA 95112 Tel: (408) 297-2222 Fax: (408) 297-2224 Email: jgorman@gormanmiller.com  Attorneys for Defendants Matthew Katzer and Kamind Associates, Inc.			
11	Watthew Ratzer and Ramind Associates, Inc.			
12	UNITED STATES DISTRICT COURT			
13	NORTHERN DISTRICT OF CALIFORNIA			
14	SAN FRANCISCO DIVISION			
15	ROBERT JACOBSEN, an individual,	Case Number C06-1905-JSW		
16	Plaintiff,			
17 18 19 20 21 22 23	Vs.  MATTHEW KATZER, an individual, KAMIND ASSOCIATES, INC., an Oregon corporation dba KAM Industries, and KEVIN RUSSELL, an individual,  Defendants.  This matter came before the court on June 30	ORDER STRIKING PLAINTIFF'S LIBEL CLAIM UNDER CAL. CIV. PROC. CODE § 425.16  0, 2006 on Defendants Matthew Katzer and		
24	Kamind Associates, Inc.'s Special Motion to Strike	Plaintiff's Libel Claim under Cal. Civ. Proc.		
25	Code § 425.16. The court reviewed the parties' written submissions and oral argument and finds			
26	as follows:			

Case Number C 06 1905 JSW Order on Defendants' Motion to Strike Libel Claim under Cal. Civ. Proc. Code § 425.16

- Kamind Associates, Inc., ("KAM") through its attorney Kevin Russell, sent a written
  Freedom of Information Act request under 5 U.S.C. § 552 ("FOIA") to the United State's
  Department of Energy.
- 2. Plaintiff Robert Jacobsen ("Jacobsen") contends that that written FOIA request contains libelous statements against him and has asserted a pendent state court libel claim against defendants KAM, KAM's principal Matthew Katzer ("Katzer"), and KAM's attorney, Kevin Russell.
- 3. Cal. Civ. Proc. Code § 425.16 is a California state procedural statute that is applicable to pendent state court claims in Federal court to the extent the state statute's provisions do not conflict with the Federal Rules of Civil Procedure. *US v. Lockheed Missiles & Space. Co.*, 171 F.3d 1208, 1218 (9<sup>th</sup> Cir. 1999).
- 4. Cal. Civ. Proc. Code § 425.16 (b)(1) provides that "any cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue" shall be stricken unless "the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim."
- 5. Ruling on a Cal. Civ. Proc. Code § 425.16 is a two step process where the court first decides whether a defendant has made a "threshold showing that the challenged cause of action is one arising from protected activity." *Equilion Enterprises v. Consumer Cause, Inc.*, 124 Cal. Rptr.2d 507, 52 P.3d 685 (2002). If the challenged cause of action arises from protected activity, the second step is to determine whether the plaintiff has demonstrated a probability of prevailing on the claim. *Id.*
- 6. Cal. Civ. Proc. Code § 425.16 (e) defines an act in furtherance of a person's free speech right in connection with a public issue to include "any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law."

1	7.	KAM's FOIA request to the Department of Energy was made within the context of an	
2		"official proceeding authorized by law" and is a protected activity under Cal. Civ. Proc.	
3		Code § 425.16.	
4	8.	Jacobsen has not demonstrated a probability of prevailing on his libel claim against either	
5		KAM or Katzer because the FOIA request is absolutely privileged under California Civil	
6		Code section 47(b).	
7			
8	Therefore, based upon the above findings and being fully advised in the premises, it is		
9	ORDE	ERED that KAM and Katzer's special motion to strike Jacobsen's libel claim under Cal.	
10	Civ. P	roc. Code § 425.16 is GRANTED and Jacobsen's libel claim is stricken.	
11			
12		Hon. Jeffrey S. White	
13		District Court Judge	
14	Presen	nted by:	
15		/s/	
16	1	ott Jerger ( <i>pro hac vice</i> ) & Jerger, LLP	
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