

- 1 1. Kamind Associates, Inc., (“KAM”) through its attorney Kevin Russell, sent a written
2 Freedom of Information Act request under 5 U.S.C. § 552 (“FOIA”) to the United State’s
3 Department of Energy.
- 4 2. Plaintiff Robert Jacobsen (“Jacobsen”) contends that that written FOIA request contains
5 libelous statements against him and has asserted a pendent state court libel claim against
6 defendants KAM, KAM’s principal Matthew Katzer (“Katzer”), and KAM’s attorney,
7 Kevin Russell.
- 8 3. Cal. Civ. Proc. Code § 425.16 is a California state procedural statute that is applicable to
9 pendent state court claims in Federal court to the extent the state statute’s provisions do
10 not conflict with the Federal Rules of Civil Procedure. *US v. Lockheed Missiles & Space.*
11 *Co.*, 171 F.3d 1208, 1218 (9th Cir. 1999).
- 12 4. Cal. Civ. Proc. Code § 425.16 (b)(1) provides that “any cause of action against a person
13 arising from any act of that person in furtherance of the person’s right of petition or free
14 speech under the United States or California Constitution in connection with a public
15 issue” shall be stricken unless “the court determines that the plaintiff has established that
16 there is a probability that the plaintiff will prevail on the claim.”
- 17 5. Ruling on a Cal. Civ. Proc. Code § 425.16 is a two step process where the court first
18 decides whether a defendant has made a “threshold showing that the challenged cause of
19 action is one arising from protected activity.” *Equilion Enterprises v. Consumer Cause,*
20 *Inc.*, 124 Cal. Rptr.2d 507, 52 P.3d 685 (2002). If the challenged cause of action arises
21 from protected activity, the second step is to determine whether the plaintiff has
22 demonstrated a probability of prevailing on the claim. *Id.*
- 23 6. Cal. Civ. Proc. Code § 425.16 (e) defines an act in furtherance of a person’s free speech
24 right in connection with a public issue to include “any written or oral statement or writing
25 made before a legislative, executive, or judicial proceeding, or any other official
26 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).

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8 Therefore, based upon the above findings and being fully advised in the premises, it is
9 ORDERED that KAM and Katzer's special motion to strike Jacobsen's libel claim under Cal.
10 Civ. Proc. Code § 425.16 is GRANTED and Jacobsen's libel claim is stricken.

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13 _____
14 Hon. Jeffrey S. White
15 District Court Judge

16 Presented by:

17 _____
18 /s/
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