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Superior Court of California,
County of San Diego
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5 Attorney for Defendant Abhay Schweitzer, individually and doing business as TECHNE

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO, CENTRAL DIVISION

10 AMY SHERLOCK, an individual and on behalf)
of her minor children, T.S. and S.S., ANDREW)
11 FLORES, an individual,)

12 Plaintiffs,)

13 v.)

14 GINA M. AUSTIN, an individual; AUSTIN)
LEGAL GROUP, a professional corporation,)
15 LARRY GERACI, an individual, REBECCA)
BERRY, an individual; JESSICA McELFRESH,)
16 an individual; SALAM RAZUKI, an individual;)
NINUS MALAN, an individual; FINCH,)
17 THORTON, AND BARID, a limited liability)
partnership; ABHAY SCHWEITZER, an)
18 individual and dba TECHNE; JAMES (AKA JIM))
BARTELL, an individual; NATALIE)
19 TRANG-MY NGUYEN, an individual, AARON)
MAGAGNA, an individual; BRADFORD)
20 HARCOURT, an individual; SHAWN MILLER,)
an individual; LOGAN STELLMACHER, an)
21 individual; EULENTHIAS DUANE)
ALEXANDER, an individual; STEPHEN LAKE,)
22 an individual, ALLIED SPECTRUM, INC., a)
California corporation, PRODIGIOUS)
23 COLLECTIVES, LLC, a limited liability)
company, and DOES 1 through 50, inclusive,)
24)

25 Defendants.)
26)
27)
28)

CASE NO.: 37-2021-00050889-CU-AT-CTL
REPLY BRIEF IN SUPPORT OF SPECIAL
MOTION TO STRIKE FIRST AMENDED
COMPLAINT SUBMITTED BY
DEFENDANT ABHAY SCHWEITZER,
INDIVIDUALLY AND DOING BUSINESS
AS TECHNE

IMAGED FILE

UNLIMITED CIVIL CASE

Complaint Filed: 12/3/2021

Date: December 2, 2022
Time: 9:00 a.m.
Dept.: C-75
Judge: Honorable James A Mangione

1 Defendant ABHAY SCHWEITZER, individually and doing business as TECHNE
2 (“Defendant Schweitzer”), hereby submits his Reply Brief in Support of Special Motion to Strike the
3 First Amended Complaint (“FAC”) filed against him by Plaintiffs Amy Sherlock, an individual and
4 on behalf of her minor children, T.S. and S.S., and Andrew Flores, an individual.

5 **I**

6 **DISCUSSION**

7 FAC, paragraph 119, alleges Defendant Schweitzer helped to prepare, submit and lobby for
8 the Berry CUP application. Plaintiffs’ Omnibus opposition brief does not deny that this is a protected
9 activity. Rather, Plaintiffs imply without authority that Defendant Schweitzer somehow owed them
10 a duty to investigate the veracity and legality of the information provided for the preparation of the
11 Berry CUP application, and failure to do so morphed into a crime.

12 Plaintiffs failed to provide uncontroverted and uncontested evidence establishing the
13 “preparing, submitting and lobbying” of the Geraci CUP Application was a crime as a matter of law.
14 *Zucchet v. Galardi* (2014) 229 Cal. App. 4th 1466, 1478. Therefore, Defendant Schweitzer met his
15 initial burden establishing that the challenged lawsuit arose from an act on the part of the defendant
16 in furtherance of his right of petition or free speech. *Equilon Enterprises, LLC v. Consumer Cause,*
17 *Inc.* (2002) 29 Cal. 4th 53, 61.

18 As to the second prong, Plaintiffs responsive burden was to submit competent, admissible
19 evidence, affidavits, declarations or requests for judicial notice showing a probability of prevailing
20 on the merits as to the causes of action they alleged against Defendant Schweitzer. Plaintiffs’
21 Omnibus opposition brief solely relies upon unverified legal argument. Plaintiffs cannot simply rely
22 on their pleadings, even if verified. Rather, Plaintiffs “must adduce competent, admissible evidence.”
23 *Roberts v. Los Angeles County Bar Association* (2003) 105 Cal. App.4th 604, 614.

24 Plaintiffs failed to address, and therefore impliedly concede, Defendant Schweitzer’s
25 Litigation Privilege, Statutes of Limitations, No Violation of the Cartwright Act, No Unlawful
26 Business Practice, and non-actionable Civil Conspiracy arguments.

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II
CONCLUSION

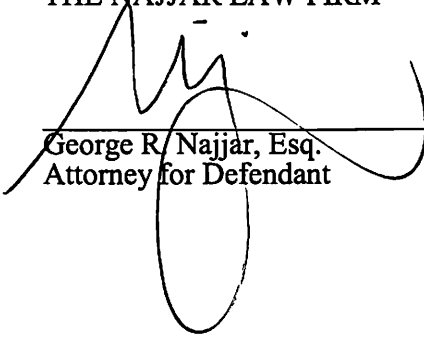
Participation in the preparation, submission and lobbying of the Berry CUP application, the only act alleged against Defendant Schweitzer, constitutes “petitioning before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law” under Code of Civ. Proc. § 425.16, subd. (e)(1). (First prong.) Plaintiffs failed to submit competent, admissible evidence, affidavits, declarations or requests for judicial notice showing a probability of prevailing on the merits as to the causes of action they alleged against Defendant Schweitzer. (Second prong.)

The FAC must be stricken as against Defendant Schweitzer because the allegations therein arise from protected speech or petitioning, and they lack even minimal merit. *Navellier v. Sletten* (2002) 29 Cal. 4th 82, 89. Therefore, Defendant Schweitzer requests the Court grant his special motion to strike.

Defendant Schweitzer reserves his right to seek attorney fees in a subsequent motion pursuant to Code of Civil Procedure § 425.16, subd. (c)(1).

Respectfully submitted,
THE NAJJAR LAW FIRM

Dated: November 21, 2022



George R. Najjar, Esq.
Attorney for Defendant