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10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ORANGE**

14 THE BISHOP OF THE PROTESTANT)
EPISCOPAL CHURCH IN LOS)
15 ANGELES, etc.,)

16 Plaintiff,)

17 v.)

18 GRIFFITH COMPANY, etc, et. al.,)

19 Defendants.)
20 _____)

Case No. 30-2015-00795665-CU-IR-CJC
Assigned for All Purposes to:
Judge Honorable DAVID T. MCEACHEN
Dept. C-21

**DEFENDANT GRIFFITH COMPANY'S
NOTICE OF MOTION AND SPECIAL
MOTION TO STRIKE THE THIRD
CAUSE OF ACTION IN PLAINTIFF'S
COMPLAINT AND REQUEST FOR
AWARD OF ATTORNEY'S FEES
AGAINST SAID PLAINTIFF IN THE
SUM OF \$51,126.00; MEMORANDUM
OF POINTS & AUTHORITIES IN
SUPPORT THEREOF; AND,
SUPPORTING DECLARATIONS AND
EXHIBITS**

[Cal. Code. Civ. Pro. § 425.16]

HEARING DATE: November 3, 2015
HEARING TIME: 1:30 p.m.
HEARING DEPT.: C-21
Trial Date: Not Assigned

[Hearing Reservation 163304646]

1 **TO ALL PARTIES AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD HEREIN:**

2 **PLEASE TAKE NOTICE** that on November 3, 2015, at 1:30 p.m., or as soon thereafter as the matter
3 may be heard in Department C-21 of the above-entitled Court, located at 700 Civic Center Drive West,
4 Santa Ana, CA 92701, Defendant, GRIFFITH COMPANY, will, and hereby does, move to strike the
5 Third Cause of Action for Slander of Title as set forth in the Complaint of Plaintiff, THE BISHOP OF
6 THE PROTESTANT EPISCOPAL CHURCH IN LOS ANGELES, pursuant to *Code of Civil Procedure*
7 section 425.16 on the grounds that the Third Cause of Action for Slander of Title asserted against
8 GRIFFITH COMPANY:

9 (1) Arises from an act in furtherance of its rights of petition and free speech under the United
10 States Constitution and the California Constitution in connection with a public issue and
11 Plaintiff cannot demonstrate a probability of prevailing on said claim.

12 **PLEASE TAKE FURTHER NOTICE** that moving Defendant, GRIFFITH COMPANY, also requests
13 that the Court award its attorneys' fees and costs under *Code of Civil Procedure* section 425.16(c) against
14 Plaintiff, THE BISHOP OF THE PROTESTANT EPISCOPAL CHURCH IN LOS ANGELES in the
15 sum of \$51,126.00.

16 This motion is based on this notice and motion; the accompanying memorandum of points and
17 authorities; the declarations of Timothy L. Joens and Ronald B. Pierce and the exhibits thereto; the
18 arguments and other evidence as may be presented at or prior to the hearing on this motion; the records
19 and files in this action; and, such matters of which the Court may take notice.

20 DATED: August 27, 2015

LAW OFFICE OF TIMOTHY L. JOENS

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Timothy L. Joens, Esq.
Matthew J. Joens, Esq.
Attorneys for Defendant,
GRIFFITH COMPANY

1 **TABLE OF CONTENTS**

2 **I. SUMMARY OF ARGUMENT** 1

3 **II. STATEMENT OF FACTS.** 2

4 **a. BEGINNINGS OF THE CONTROVERSY.** 2

5 **b. PUBLIC HEARINGS** 5

6 **c. NEWS ARTICLES & T.V. NEWS STORIES** 6

7 **d. CONTEMPLATED LITIGATION** 6

8 **e. BISHOP BRUNO: A HISTORY OF INTIMIDATION.** 7

9 **III. LEGAL STANDARD** 7

10 **a. THE ANTI-SLAPP LAW.** 7

11 **b. THE TWO-STEP PROCESS: PLAINTIFF’S BURDEN.** 8

12 **c. THE FIRST STEP: THE PROTECTED CLASSES.** 8

13 **IV. ARGUMENT.** 9

14 **a. THE COMPLAINT ARISES FROM PROTECTED ACTIVITY** 9

15 **i. PUBLIC INTEREST.** 9

16 **1. THIS MATTER IS AN ISSUE OF PUBLIC**

17 **INTEREST UNDER § 425.16(E)(4).** 9

18 **2. THIS MATTER IS AN ISSUE OF PUBLIC INTEREST**

19 **UNDER 425.16(E)(2).** 13

20 **3. THIS MATTER IS AN ISSUE OF PUBLIC INTEREST**

21 **UNDER 425.16(E)(3).** 13

22 **ii. LITIGATION PRIVILEGE: LETTERS WRITTEN IN ANTICIPATION**

23 **OF LITIGATION FALL WITHIN THE LITIGATION PRIVILEGE.** 14

24 **iii. PLAINTIFF CANNOT DEMONSTRATE A PROBABILITY OF**

25 **PREVAILING.** 15

26 **b. DEFENDANT IS ENTITLED TO ATTORNEY’S FEES AND COSTS.** 15

27 **V. CONCLUSION.** 15

28

1 **TABLE OF AUTHORITIES**

2
3 *Case Authorities*

4 *Aronson v. Kinsella*, (1997) 58 Cal. App. 4th 254 14

5 *Batzel v. Smith*, (9th Cir. 2003) 333 F. 3d 1018 7

6 *Braun v. Chronicle Publishing Co.*, (1997) 52 Cal. App. 4th 1036 7, 8

7 *Briggs v. Eden Council for Hope and Opportunity*, (1999) 19 Cal. 4th 1106 8

8 *Cayley v. Nunn*, (1987) 190 Cal. App. 3d 300 14

9 *Church of Scientology v. Wollersheim*, (1996) 42 Cal. App. 4th 628 (overruled in
10 part on other grounds, *Equilon enterprises vs. Consumer Cause, Inc.* (2002)
11 29 Cal. 4th 53, 68 ftnt. 5) 9, 12

12 *ComputerXpress, Inc. v. Jackson*, (2001) 93 Cal. App. 4th 993 14

13 *Cross v. Cooper* (2011) 197 Cal. App. 4th 357 2, 9, 12

14 *Digerati Holdings, LLC v. Young Money Ent’t, LLC*, (2011) 194 Cal. App. 4th 873 7

15 *Dove Audio, Inc. v. Rosenfeld*, (1996) 47 Cal. App. 4th 777 14

16 *Equilon Enterprises vs. Consumer Cause, Inc.*, (2002) 29 Cal. 4th 53 9

17 *Fox Searchlight vs. Paladino* (2001) 89 Cal. App. 4th 294 9

18 *George Terry v. Davis Community Church*, (2005) 131 Cal. App. 4th 1534 13

19 *Gilbert v. Sykes*, (2007) 147 Cal. App. 4th 13 14

20 *Healy v. Tuscany Hills Landscape & Recreation Corp.*, (2006) 137 Cal. App. 4th 1 14

21 *Integrated Healthcare Holdings, Inc. v. Michael Fitzgibbons*, (2006) 140 Cal.
22 App. 4th 515 9, 10, 11

23 *Larmour v. Campanale* (1979) 96 Cal. App. 3rd 566 2, 14

24 *Los Angeles v. Animal Defense League*, (2006) 135 Cal. App. 4th 606 15

25 *McGarry v. Univ. of San Diego*, (2007) 154 Cal. App. 4th 97 8, 15

26 *Navellier v. Sletten*, (2002) 29 Cal. 4th 82 8, 15

27 *Seelig v. Infinity Broadcasting Corp.*, (2002) 97 Cal. App. 4th 798 14

28 *Stevenson vs. Baum* (1998) 65 Cal. App. 4th 159 13

1	<i>Summit Bank v. Rodgers</i> , (2012) 206 Cal. App. 4th 669	14
2	<i>Tuchscher Development Enterprises, Inc. v. San Diego Unified Port District</i> , (2003)	
3	106 Cal. App. 4th 1219	9, 11, 12
4	<i>Vogel v. Felice</i> , (2005) 127 Cal. App. 4 th 1006	8, 15
5	<i>Wilkbanks v. Wolk</i> , (2004) 121 Cal. App. 4th 883	14
6		
7	<i>Statutory Authorities</i>	
8	<i>Business & Professions Code</i> § 17200	11
9	<i>Civil Code</i> § 47	14
10	<i>Code of Civil Procedure</i> § 425.16	<i>passim</i>
11		
12	<i>Miscellaneous Authorities</i>	
13	Miller and Star, <i>California Real Estate</i> (3rd ed., 2000)	13
14		
15		
16		
17		
18		
19		
20		
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1 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF SPECIAL MOTION TO STRIKE**

2 **I. SUMMARY OF ARGUMENT**

3 Plaintiff, THE BISHOP OF THE PROTESTANT EPISCOPAL CHURCH IN LOS ANGELES
4 ("Plaintiff" or "BISHOP"), filed a Slander of Title cause of action against Defendant, GRIFFITH
5 COMPANY, in retaliation for it having done no more than exercise its Constitutional rights of petition
6 and free speech by sending a June 10, 2015 letter *to the BISHOP* in which it asserted he ought to
7 respect the use conditions that were part of a gift of valuable land that was given to his church. (Please
8 Complaint filed with this Court on June 26, 2015, especially the Third Cause of Action, pg. 4, para. 14;
9 and, pg. 6, para 30, ff) This letter was in response to the BISHOP's May 17 announcement of his
10 intention to close down and bulldoze St. James the Great ("St. James"), a church in the Lido Isle/Balboa
11 Peninsula area, so he might liquidate that asset to build unaffordable housing for his personal profit.
12 (Dec. of Ronald B. Pierce in support of this motion ("RBP"), pg. 2, para. 3-5, and Ex. 17 thereto; Dec.
13 of Robert Voorhees in support of this motion ("RV"), pg. 2-3, para. 4-6)¹

14 In 1945, Defendant made a gift of the property occupied by St. James and specified in the deed by
15 which that donation was made that the property must be used exclusively for church purposes. (RBP
16 pg. 2, para. 3, and Ex. 15) For 70 years from that time to now, a church affiliated with the BISHOP
17 recognized the terms of that grant by, not surprisingly, making use of the property for a church. (RV pg.
18 5, para. 10) The BISHOP now finds those conditions inconvenient as he would prefer to ignore his
19 benefactor's intentions so he might turn a profit. (RV pg. 3, para. 6; RBP Ex.s 20 and 21)

20 Upon learning of the BISHOP's intentions, GRIFFITH COMPANY sent its letter expressing its
21 dismay and saying that it wanted the original conditions of its gift to be honored. (RBP pg. 2, para. 5
22 and Ex. 17) In response, the BISHOP embarked on a series of tactics by which he attempted to
23 intimidate Defendant so that it would simply shut up and go away. (RBP Ex.s 20 and 21) Indeed,
24 Plaintiff is no stranger to litigation as he has previously utilized his abundant resources to engage in a
25 nine (9) year campaign against the former congregation that was using the subject property. (RV pg. 2,

26 1 GRIFFITH COMPANY has been ensnared in a venomous dispute between THE BISHOP, the
27 local St James congregation, and concerned community members. Defendant is not a part of that
28 argument. Rather, it is solely concerned with the public issues involving community
development and with the parties' compliance with the use condition on the gift that they
accepted, and indeed respected for 70 years.

1 para. 4)² Having completed that crusade, the BISHOP recently went before the entirely new
2 congregation that he himself had installed in the property following his victory in the prior battle and
3 announced his "cash for condos" plan. (RV pg. 3, para. 6)

4 Predictably, indeed inevitably given the history of this property and this church, the BISHOP's
5 announcement sparked dozens of articles, news stories and commentary as this was and is a public issue
6 of import to the community. Citizenry began posting daily comments about the BISHOP, the property,
7 the proposed development, parking, traffic, zoning, the GRIFFITH COMPANY, and *even the deed and*
8 *use conditions at issue in this case*. Further, the local Newport Beach City Council began *immediately*
9 addressing the fate of St. James, the BISHOP's plans, and the issues presented in this lawsuit. For
10 example, Mayor Pro Tem Dixon hosted a June 15, 2015 Town Hall meeting packed with over 200
11 people. In anticipation of that hearing, the BISHOP himself sent a June 5 letter directly to Ms. Dixon to
12 hedge against the repercussions of the upcoming meeting. (RV pg. 3-4, para. 6-7; pg. 5-9, para. 10-11;
13 pg. 10-13, para. 14-19; and, Ex.s 1, 2, 5, 6, 7, 8, 9, 10, and 11) When his efforts failed, and after
14 receiving Defendant's June 10 demand letter and knowing there would be additional public hearings, the
15 BISHOP resorted to filing this retaliatory suit aimed at deterring GRIFFITH COMPANY from and
16 punishing it for exercising its political and legal rights.

17 While GRIFFITH COMPANY welcomes the BISHOP's Quiet Title action so the issues relating to
18 the proper use of the subject land can be adjudicated, his Third Cause of Action for Slander of Title is
19 nothing more than a meritless SLAPP suit aimed at chilling the valid exercise of constitutional rights of
20 free speech and petition for the redress of grievances. (C.C.P. § 425.16(a).) Not only is this matter one
21 of public interest (§ 425.16(e)(2), (4)), the June 10 demand letter falls squarely within the litigation
22 privilege (§ 425.16(e)). As such, it is respectfully submitted this Court should grant this Anti-SLAPP
23 motion and send a message that such intimidation will not be tolerated. (*Cross v. Cooper* (2011) 197
24 Cal. App. 4th 357; *Larmour v. Campanale* (1979) 96 Cal. App. 3rd 566).

25 **II. STATEMENT OF FACTS.**

26 **a. BEGINNINGS OF THE CONTROVERSY.**

27 On Sunday, May 17, 2015, the BISHOP entered a service at St. James the Great and unilaterally

28 ² Defendant relates these facts solely because they put the controversy into context.

1 announced to congregants he was selling the St. James property to a developer for \$15,000,000.00 and
2 congregants would have to find a new place to worship. (RV pg. 3, para. 6) The announcement sent
3 shock waves through both the congregation and the community. (*Id.*) A local group called 'Save St.
4 James the Great Episcopal Church' ("Save St. James") was immediately formed, a website was
5 established at <http://savesaintjamesthegreat.org>, and the group began *publicly* advocating against the
6 sale. (*Id.*, and pg. 5-6, para. 10, and Ex.s 5 and 6 thereto)

7 Newspapers articles and television news stories immediately reported the controversy. (RV pg.
8 6-9, para. 11, and Ex. 8) Among other things, such articles described the BISHOP's actions as "another
9 twist in the tumultuous story of the church, which opened in the 1940s." (*Id.*) They also observed the
10 property is zoned for private institutions and current zoning does not allow the construction of
11 residences. If a developer wanted to build condominiums, it would have to request a zoning amendment
12 which the city would then have to review. (*Id.*) In fact, such public city reviews *immediately*
13 commenced through public hearings at the Newport Beach City Council and Town Hall Meetings on
14 June 9th, June 15th, and 23rd. (RV pg. 10-13, para. 14-17, and Ex.s 9 and 10.)

15 On June 9th, members of St. James and Save St. James wrote emails to the GRIFFITH
16 COMPANY inquiring about the history of its grant of the property to St. James the Great and the
17 accompanying use conditions. They also raised questions about what they saw as legal issues with an
18 alleged Quitclaim deed from 1984, including the facts that deed was addressed only to the local
19 congregation and not to the Diocese / Bishop; only released a reversionary interest, but not the binding
20 church use condition; and, only listed three of the four St. James properties. The email also inquired
21 about the intentions of the grantor in the original deed from 1945. (RV pg. 4-5, para. 8-9, and Ex.s 3 and
22 4; RBP pg. 2-3, para. 6-7, and Ex.s 18 and 19)

23 Those same church members sent another email to GRIFFITH COMPANY the next day, June 10,
24 2015, at 5:14 am, mere hours after the first public hearing (June 9, 2015), again expressing concern over
25 the BISHOP's proposed development despite clearly violating the use conditions, and observing lot 1199
26 (in the middle of church) was not included in the 1984 quitclaim deed and the 1984 quitclaim deed was
27 "very specific and only seem[ed] to release the Reverter clause to the (local) Rector, wardens and
28 vestrymen of St. James" with no mention of its successors or assigns - i.e. not the Bishop or the Diocese.

1 (RBP pg. 3, para. 7, Ex. 19; and, RV pg. 5, para. 9, and Ex. 4) This public advocacy group pointed out
2 that the BISHOP had never been released from the use conditions.

3 GRIFFITH COMPANY began looking into the situation and quickly realized that the BISHOP
4 was proposing to violate the conditions on its gift through his planned sale. On June 10, 2015, its
5 attorney, Ronald B. Pierce, Esq., sent the BISHOP a demand letter stating that GRIFFITH COMPANY
6 donated the four lots on which St. James sat on the condition, covenant and restriction that,

7 "The property conveyed shall be used church purposes exclusively and no
8 building other than a church and appurtenances may be erected, placed or
9 maintained thereon. The foregoing restriction/shall be binding upon the grantee,
10 his successors and assigns. Upon the breach of the foregoing condition, the title
11 to said property hereby conveyed and to the whole thereof shall become at once
12 divested from the grantee herein, his successors and assigns, and shall revert and
13 revest in the grantor, its successors or assigns." (RBP pg. 2, para. 5; Ex. 17)

14 He further stated Griffith Company released its reversionary interest *as to only three (3) of the four (4)*
15 *lots*, but had never released the use conditions. The demand letter made clear that Griffith Company
16 *never* released the covenant as to the central church building lot, or the adjoining lots, from their ancillary
17 role to serve 'church purposes' solely, and concluded with Griffith Company continuing to assert "any and
18 all of its rights, title, and interests in the property." (*Id.*)

19 In response to Griffith Co.'s demand letter, the Bishop sent a June 15, 2015 letter directly to
20 Griffith Company's CEO 'requesting' he execute a '*simple document*' to resolve this matter (likely another
21 Quitclaim Deed, but as to the fourth (4th) lot). (RBP pg. 3, para. 9, and Ex. 20) The Bishop's thinly
22 veiled threat argued Griffith Company's assertion of its property rights was "incorrect", that it "could
23 result in millions of dollars of damages", and that this was an urgent matter requiring immediate
24 attention. (*Id.*) Indeed, a June 11, 2015, letter from the L.A. Diocese to the Diocesan Council confirmed
25 the building had been sold, despite receiving many concerning emails. (RV pg. 451, Ex. 11)

26 Two days later, on June 17, 2015, the Bishop's attorney, Allen Matkins, sent Mr. Pierce their own
27 demand letter. The Bishop's attorney admitted that the 1984 Quitclaim Deed only dealt with three (3) of
28 the four (4) lots, again "requested" that Griffith Co. execute appropriate documents to clear title, and
demanded a "prompt response." (RBP pg. 3, para. 10, and Ex. 21) The following Friday, June 26, 2015,
that same attorney filed suit against Griffith Co., alleging among other things, Slander of Title for the

1 alleged 'cloud on title' purportedly caused by Griffith Co.'s June 10, 2015, demand letter. (Please Com-
2 plaint filed June 26, 2015, especially the Third Cause of Action, pg. 4, para. 14; and, pg. 6, para 30, ff)

3 **b. PUBLIC HEARINGS**

4 Immediately after Bishop Bruno's May 17, 2015, announcement, public hearings commenced.
5 For instance, on June 4, 2015, members of St. James sent a letter to all clergy in the diocese announcing
6 the Bishop's intended sale and inviting recipients to attend Newport Beach's Town Hall on June 15, 2015.
7 (RV pg. 10, para. 13) On June 5, 2015, Bishop Bruno sent a letter to Mayor Pro Tem Dixon
8 acknowledging the upcoming Town Hall. Save St. James association was formed on June 10th. (*Id.*)

9 At a June 9, 2015, City of Newport Beach City Council Meeting Mayor Pro Tem Dixon, Mayor
10 Selich, Council Members and numerous members of St. James objected to the sale. Minutes reflect:

11 "Aurther Jeppe [] provided background of the sale [], and []that every effort is being
12 made to resist the sale of the church [] and []zone change[]. He stated [] the elimination
13 of a long-established, religious community and church and the replacement of that by
14 high-density, high traffic, high water-use condominium developments makes no sense.
15 []

16 Ann Parker, [] urged [] Council help protect the Peninsula[,] noted that the area is under-
17 parked and questioned adding high density with increased water use to same. She []
18 **announced a town hall meeting at the old City Hall on June 15th at 6:00 pm.**
19 (Volume 62 - Page 346-347 (emphasis added); See Ex.s 23, 24 and 25, certified copies of
20 the minutes and video of said meeting.)

21 On June 15, a crowd of 200 people packed into the old city hall for a town hall meeting. Many
22 wore red "Save St. James the Great" T-shirts debated as to the general plan amendment and zoning
23 changes. The meeting made headlines *next morning!* (RV pg. 11, para. 15; Ex. 8, pg. 178-208.)

24 On June 23, 2015, the City of Newport Beach City Council had another City Council Meeting
25 with Mayor Pro Tem Dixon, Mayor Selich, Council Members and numerous members of St. James who
26 again voiced objections. (RV pg. 11-12, para. 17) City Meeting Minutes reflect:

27 "Mayor Pro Tem Dixon commented on communications she received asking for the
28 preservation of the St. James the Great Episcopal Church. She addressed applicable
29 provisions in the General Plan and noted her support relative to maintaining the current
30 land use. She expressed her appreciation for the diversity of faiths in the community.
31 []

32 Council Member Curry...expressed concerning regarding the lack of facilities and zoning
33 for churches in the City. He added that he will carefully consider how to protect those
34 areas in the community that are set aside for sacred spaces **and commented negatively on**
35 **how the Bishop handled this matter.**" (Volume 62 - Page 363 (emphasis added) (see

1 also Volume 62 - Page 369-370 (emphasis added).) See Ex.s 23, 24 and 25, certified
2 copies of the minutes and video of said meeting.)

3 **c. NEWS ARTICLES & T.V. NEWS STORIES**

4 This matter *quickly* became a public issue at the center of media attention. No fewer than 27
5 news articles were published on the subject between May 18 and July 21, 2015. (See RV Ex. 8)
6 Hundreds of citizenry are publishing comments on online and Save St. James' Facebook page alone has
7 418 "likes." (RV Ex. 6) A June 2, 2015, article entitled, "The Spiteful Episcopal Bishop", *had 68 public*
8 *responses*. One article was *written from northwest China*. (RV Ex. 8, pg. 157) Other articles discuss
9 the Mayor's June 15 Town Hall Meeting. A June 22 article *discusses the Griffith Company's wishes in*
10 *donating the property, including public comments about the deed restrictions and reversionary interest*.
11 (RV Ex. 8, pg. 202) A June 29 article entitled, "St. James parishioners say goodbye, although deed
12 dispute clouds church's sale" specifically *describe Griffith Company's deed, use restrictions, and the June*
13 *10, 2015 letter*. (RV Ex. 8, pg. 243) Others described the *current lawsuit* and include *public comments*
14 *on that article*, including a Lynn Scheid who stated,

15 "I don't attend this church but it has been a mainstay in the neighborhood for 70 years. It
16 is a shame that it will be demolished. *It would be wonderful if the Griffith Co. can prove*
17 *the restriction still stands*. So much of the history of the area is being bulldozed over."
(RV Ex. 8, pg. 264)

18 The backlash against the Bishop has been so fierce and so immediate *that he himself published a July 18th*
19 *article, which has 31 Likes!* (RV pg 13, para. 19, and Ex. 11) Finally, a July 21st OC Register article
20 states, "*Griffith Co. lawyers sent a letter to Bruno saying that as far as the company is concerned, the*
21 *original restriction remains in place. The bishop countered, filing a complaint against the Griffith Co. in*
22 *Orange County Superior Court*". (RV Ex. 8, pg. 316)

23 **d. CONTEMPLATED LITIGATION**

24 The June 10, 2015, letter was written in anticipation of litigation. Among other things, Mr.
25 Pierce's attached declaration details he read numerous articles mentioning that the Bishop had had
26 extensive litigation over the St. James site in the past and which quote members of the public on their
27 differing views. He concluded there was a public controversy (a) already being debated in the City of
28 Newport Beach, and its building and zoning departments, and (b) likely to be litigated in the future. He

1 was right as THE BISHIP sued GRIFFITH COMPANY 14 days later. (RBP pg. 2-4, para. 5-13)

2 **e. BISHOP BRUNO: A HISTORY OF INTIMIDATION.**

3 As head of the six-county Los Angeles diocese, The Bishop of Los Angeles, J. Jon Bruno's
4 Diocese encompasses 70,000 Episcopalians in 148 congregations located in Southern California, is
5 served by some 400 clergy, and includes some 40 Episcopal schools and some 20 social service and
6 chaplaincy institutions. (RV pg. 13-14, para. 20; and, Ex. 13, pg. 457) He has frequently been the
7 subject of public controversy. *Public comments on* a July 21, 2015, article call Bishop Bruno, " *The*
8 *Enforcer'...He's a bully...pure and simple.; Bozo Bruno has spent his entire ministry bulldozing the*
9 *church...*" (RV Ex. 8, pg. 325) Indeed, he has *repeatedly* been involved in efforts to *intimidate* those in
10 the Episcopal church who disagree with his teachings and he has sued at least two (2) local congregations
11 for their properties, including the property at issue here. (RV pg. 13-14, para. 20) Articles have been
12 written about his aggressive tactics since at least 2007. (*Id.*; and Ex. 14, pg. 460, ff) More recently, on
13 July 6, 2015, the St. James local congregation filed a presentment (or complaint) against him which
14 alleges 147 specific violations of church law, include misrepresentation, conduct unbecoming, and
15 creating or promoting conflict. On July 15, 2015, the Episcopal Office of Pastoral Development wrote to
16 Bishop Bruno and informed him that it was undertaking investigation. (RV pg. 5, para. 10; and, Ex. 7)
17 Three (3) days later, on July 18, 2015, *Bishop Bruno published an article* indicating he was taking a
18 month of sabbatical leave. (RV pg. 13, para. 19; and, Ex. 11)

19 **III. LEGAL STANDARD**

20 **a. THE ANTI-SLAPP LAW.**

21 Nearly twenty-five (25) years ago, the Legislature enacted *C.C.P.* § 425.16 to provide for the
22 early dismissal of meritless claims aimed at chilling the valid exercise of constitutional rights of free
23 speech and petition for the redress of grievances. (*Braun v. Chronicle Publishing Co.*, (1997) 52
24 Cal.App.4th 1036, 1042; *Digerati Holdings, LLC v. Young Money Ent't, LLC*, (2011) 194 Cal.App.4th
25 873, 882-83, review denied.) These meritless suits are referred to as "Strategic Lawsuits Against Public
26 Participation". (*Braun, supra*, at 1040 & n. 1; *Batzel v. Smith*, (9th Cir. 2003) 333 F.3d 1018, 1023-24
27 ("SLAPPs'...[are] lawsuits that 'masquerade as ordinary lawsuits' brought to deter common citizens
28 from exercising their political or legal rights or to punish them for doing so.") The statute provides:

1 “A cause of action against a person arising from any act of that person in furtherance of
2 the person's right of petition or free speech under the United States Constitution or the
3 California Constitution in connection with a public issue shall be subject to a special
4 motion to strike, unless the court determines that the plaintiff has established that there is
5 a probability that the plaintiff will prevail on the claim.” (CCP, § 425.16(b)(1).)

6 The Legislature has mandated that this statute “shall be construed broadly” and the Supreme Court has
7 directed that it should be, "whenever possible, [interpreted] in a manner 'favorable to the exercise of
8 freedom of speech.'" (*Briggs v. Eden Council for Hope and Opportunity*, (1999) 19 Cal.4th 1106, 1119.)

9 **b. THE TWO-STEP PROCESS: PLAINTIFF’S BURDEN.**

10 Anti-SLAPP motions involve a two-step process. First, the defendant must make a threshold
11 showing that the lawsuit arises from activity that is protected under the Anti-SLAPP law. (*Navellier v.*
12 *Sletten*, (2002) 29 Cal.4th 82, 88; CCP § 425.16(b)(1).) A defendant meets this burden by merely
13 demonstrating that the act underlying the plaintiff’s cause fits even one of the categories spelled out in
14 section 425.16(e). (C.C.P. § 425.16(b)(1); *Braun, supra*, 52.) Next, the burden shifts to the plaintiff to
15 demonstrate *a probability of prevailing* on the claim. In this step, a motion to strike “operates like a
16 demurrer or motion for summary judgment in ‘reverse’ requiring a Plaintiff to show “there is a
17 reasonable probability [it] will prevail on the merits at trial” by demonstrating with competent and
18 admissible evidence that his claims have merit, not based on speculation or mere allegations, but such
19 that the claim is legally sufficient to sustain a favorable judgment. (*McGarry v. Univ. of San Diego*,
20 (2007) 154 Cal. App.4th 97.) If a plaintiff fails to substantiate all of the elements of a legally sufficient
21 claim, the court must dismiss the action. (*Vogel v. Felice*, (2005) 127 Cal.App.4th 1006, 1017.)

22 **c. THE FIRST STEP: THE PROTECTED CLASSES.**

23 Section 425.16(e) sets forth four types of protected activity protected by the act, including:

24 “. . . (2) any written or oral statement or writing made in connection with an issue under
25 consideration or review by a legislative, executive, or judicial body, or any other official
26 proceeding authorized by law,

27 . . . (4) any other conduct in furtherance of the exercise of the constitutional right of
28 petition or the constitutional right of free speech in connection with a public issue or an
issue of public interest.”

1 *Any* speech within these categories is protected and a lawsuit arising³ from that speech may be stricken.

2 **IV. ARGUMENT.**

3 **a. THE COMPLAINT ARISES FROM PROTECTED ACTIVITY**

4 **i. PUBLIC INTEREST.**

5 **1. THIS MATTER IS AN ISSUE OF PUBLIC INTEREST UNDER § 425.16(E)(4).**

6 As to activities within 425.16(e)(4), the definition of “Public interest” is to “be construed
7 broadly” to safeguard the valid exercise of the constitutional rights of freedom of speech and petition for
8 the redress of grievances. (*Cross v. Cooper*, (2011) 197 Cal.App.4th 357, 370.) Even before the
9 Legislature mandated broad construction, the court in *Church of Scientology v. Wollersheim*, (1996) 42
10 Cal.App.4th 628 [overturned on other grounds, *Equilon Enterprises vs. Consumer Cause, Inc.*, (2002) 29
11 Cal. 4th 53, 68] opined that “although matters of public interest include legislative and governmental
12 activities, they may also include activities that involve private persons and entities, especially when a
13 large, powerful organization may impact the lives of many individuals.” (*Id.* at pg. 649, 650 [examples
14 include *real estate scams.*; *the Church is a matter of public interest, as evidenced by media coverage and*
15 *the extent of the Church’s membership and assets*]; See also *Integrated Healthcare Holdings, Inc. v.*
16 *Michael Fitzgibbons*, (2006) 140 Cal.App.4th 515, 523-524.) Further, an issue of public interest “need
17 not be ‘significant’”. (*Cross vs. Cooper, supra.* At pg. 373.)

18 In *IHHI*, the Court reversed the denial of an Anti-SLAPP motion finding that the alleged conduct
19 was an issue of public interest. *Integrated Healthcare Holdings, Inc (IHHI)* sought to purchase four
20 Orange County hospitals from *Tenet Healthcare Corporation*. (*Id.* at pg. 520.) Because of concerns
21 about *IHHI*'s financial ability to operate the four hospitals, the County of Orange and the California
22 Senate conducted public hearings on the proposed acquisitions. (*Ibid.*) Though the deal did close, two
23 (2) months later *IHHI* defaulted to an investment partner. (*Ibid.* at pg. 521.) The default was disclosed in
24 SEC filings and reported in an Orange County Register article. (*Ibid.*) A member of the medical staff's
25

26 ³ In showing that a cause of action “arises from” protected activity, the moving party need not prove that
27 a plaintiff’s intent in bringing a non-meritorious claim was to chill the exercise of protected rights --- the
28 intent of a plaintiff is irrelevant. The only consideration is whether the defendant’s speech would
actually be chilled. (*Fox Searchlight Pictures v. Paladino*, (2001) 89 Cal.App.4th 294, 305; *Tuchscher,*
supra, 106 Cal.App.4th at pg. 1232.)

1 medical executive committee, Michael Fitzgibbons, then sent an email to the medical executive
2 committee members and others expressing concern IHHI could be headed for bankruptcy and voicing
3 other concerns. (*Ibid.*) IHHI then filed a complaint against Fitzgibbons based on the email, alleging
4 defamation and interference with a contractual relationship. (*Id.* at pg. 521-522.) Among other things
5 the complaint alleged that the email was forwarded to Blue Cross/Wellpoint, Inc., which had been
6 negotiating with IHHI for higher insurance payments, provoking concern on the part of Blue Cross and
7 stalling negotiations. (*Ibid.*) IHHI alleged resulting delays cost it over \$500,000.00. (*Id.* at pg. 522.)

8 Fitzgibbons filed an Anti-SLAPP motion, which the trial court denied. (*Ibid.*) The Court
9 *reversed* saying it had "little trouble" concluding Fitzgibbons' email concerned "an issue of public
10 interest" under (e)(4) as it was the subject of public hearings and discussed in numerous articles. (*Id.* at
11 pg. 523.) In short, the Court held the challenged e-mail *manifestly* concerned a public issue. (*Id.* at pg.
12 526.) The facts of *IHHI* are very similar to those here. As Fitzgibbons was alleged to have interfered
13 with IHHI's pending deal with a third party (Blue Cross/Wellpoint), by sending an email expressing
14 concern over IHHI's financial strength, the Bishop alleges that Griffith Company interfered with its real
15 estate transaction with a third party, by sending a letter expressing concern over the Bishop's lack of
16 ability to sell that property. As Fitzgibbons' rights of free speech were protected, so too are Griffith's.

17 Further, as the *IHHI* acquisition was the subject of public hearings and discussed in numerous
18 articles and periodicals (including the OC Register), the Bishop's alleged transaction has been the subject
19 of numerous public hearings and numerous articles, including the OC Register. In addition, as IHHI was
20 a large and powerful entity operating four OC hospitals and capable of impacting the healthcare needs of
21 local residents, the Bishop is a large and powerful entity controlling at least three (3) local churches,
22 owning millions of dollars worth of real property, and is capable of impacting the religious and
23 community interests of local residents. In fact, the Bishop's Diocese encompasses 70,000 Episcopalians
24 in 147 congregations located in Los Angeles, Orange, Riverside, San Bernardino, Santa Barbara and
25 Ventura counties, is served by some 400 clergy, and includes some 40 Episcopal schools and some 20
26 social service and chaplaincy institutions. Clearly, the Episcopal Church and Bishop Bruno are matters
27 of public interest as evidenced by media coverage and the extent of their membership and assets. As
28

1 such, it is respectfully submitted that this Court should have no difficulty concluding the June 10, 2015
2 email concerned "a public issue" under 425.16(e)(4).⁴

3 The present case is also similar to *Tuchscher Development Enterprises, Inc. v. San Diego Unified*
4 *Port District*, (2003) 106 Cal.App.4th 1219, in which Tuchscher Development Enterprises, Inc. ("TDE")
5 sued the San Diego Unified Port District and one of its commissioners for inducing breach of contract,
6 interference with prospective economic advantage and violations of *Bus. & Prof.*, § 17200. (*Id.* at pg.
7 1226.) In that case, TDE entered into an exclusive negotiating agreement with the City of Chula Vista
8 under which it and the City would take preliminary steps and negotiate towards a development agreement
9 for the creation of a mixed use real estate project on certain bayfront property. (*Id.* at pg. 1227.) When
10 the exclusivity agreement expired, TDE sued the City, Lennar Corp., and the Port Authority for
11 conspiracy to deprive TDE of the benefits of the exclusivity agreement by disrupting the City's staff from
12 negotiating the development agreement and inducing the City to cease negotiations. (*Id.* at pg. 1228.)
13 The trial court granted an Anti-SLAPP motion. (*Id.* at pg. 1230.)

14 On appeal, the Court determined that there was no dispute that the development project was a
15 matter of public interest and that the statements fell within 425.16(e)(4). (*Id.* at pg. 1233.) The activity
16 underlying each of TDE's causes of action were the communications to either the City or Lennar
17 involving the proposed development. (*Ibid.*) Particularly, the City's mayor and staff encouraged TDE to
18 pursue the development of a large-scale project on the bayfront and the City Council approved the
19 exclusivity agreement after being publicly noticed. Numerous public forums were held with government
20 agencies, local community groups, and individuals. Further, *the prospect of commercial and residential*
21 *development of a substantial parcel of bayfront property, with its potential environmental impacts, is*
22 *plainly a matter of public interest.* (*Id.* at pg. 1234 (emphasis added).)

24 Here, formal public hearings have been noticed and held on the development of St. James. The

25
26 ⁴ All the *IHHI* categories are met here: (1) the Bishop, the Church and the development of St. James the
27 Great into a residential project are all issues, persons, and entities in the public eye, (2) the development
28 affects large numbers of people beyond the Bishop and Griffith Company, 200 of whom showed up at a
City Council meeting, as well as local residents on the Peninsula and the entire City of Newport Beach,
(3) the alleged statements concerning the use conditions, and the development of the church into a
residential project involve a topic of widespread public interest. Hence, each of those criteria is met here.

1 June 9, 15, and 23rd hearings all dealt with those issues. The June 15th Town Hall meeting was noticed
2 especially for the proposed development. Further, the St. James church is a substantial parcel of property
3 on the Newport Peninsula that the Bishop is proposing for luxury, residential development. Thus, the
4 facts of this case fall squarely with those of *Tuchscher* and this is a matter of public interest under
5 425.16(e)(4) and a protected activity.⁵

6 This case is also similar to *Church of Scientology of California, supra*, in which the Court upheld
7 the granting of an Anti-SLAPP stating that the record reflected *the Church is a matter of public interest,*
8 *as evidenced by media coverage and the extent of the Church's membership and assets.* (*Id.* at pg. 634,
9 651.) It further stated matters of public interest include activities involving private persons and entities,
10 especially when a large, powerful organization may impact the lives of many. (*Id.* at pg. 650.) Similarly,
11 here the Bishop and the development are matters of public interest, as evidenced by media coverage and
12 the extent of the Church's membership and assets. As such, these are public issues.

13 Finally, another case substantially similar to the facts at hand is *Cross v. Cooper, supra*. That
14 matter dealt with Anti-SLAPP issues in regards to a complaint against a third party's disclosure of
15 material facts to a potential purchaser of real property when the seller refused to disclose those facts.
16 There a landlord alleged her tenants threatened to disclose that a sex offender lived nearby, if she did not
17 waive their last month's rent. (*Id.* at pg. 365-366.) The landlord sued when the proposed sale did not go
18 through. (*Id.* at pg. 366.) The Court held the tenants' alleged actions constituted acts in furtherance of
19 their rights of free speech under (e)(4). (*Id.* At pg. 366.) Specifically, the issues of molestation and a
20 *real property owner's duty to disclose actual knowledge* about registered offenders and the location
21 thereof were issues of public interest. (*Id.* at pg. 371.) The Court had “no difficulty concluding that the
22 [tenants] made a *prima facia* showing that most of [the] causes of action arise from protected activity”
23

24
25 ⁵ To the degree that Plaintiff argues that Griffith Company was not involved in the public issue of the
26 Church's development of this property it should be noted that the *Tuchscher* Court specifically rejected
27 this agreement. Interestingly, when TDE argued that the public issue of the development agreement did
28 not involve respondents or give them the authority to bring Lennar to the City, the Court stated that TDE
improperly focused on the legitimacy of respondents' conduct and thus confused the threshold question of
whether the SLAPP statute potentially applies with the question whether an opposing plaintiff has
established a probability of success on the merits. (*Id.* at pg. 1234.)

1 under § 425.16(e)(4)). (*Id.* at pg. 378, 391-392.)

2 Similarly, here the Bishop has alleged Griffith Company has interfered with its sale of real
3 property to a potential buyer by publishing assertions of its enforceable use conditions to a potential
4 buyer resulting in the transaction's failure and costing the Bishop profit (Complaint ¶¶ 14, 17).
5 Essentially, the Bishop complains that Griffith Company allegedly disclosed material facts that he
6 concealed. As in *Cross*, this Court should reject such absurdities. Among other things, existing law
7 required the Bishop to disclose such material facts himself. Hence, this is an issue of public interest.⁶

8 Finally, Plaintiff may argue that the June 10, 2015, letter from Griffith Company to the Bishop
9 was a private communication and therefore does not fall under a protected class. In that regard, it should
10 be noted that section 425.16 governs even private communications, so long as they relate to a public
11 issue, and subdivision (e)(4) does not require a public forum. (*George Terry v. Davis Community*
12 *Church*, (2005) 131 Cal.App.4th 1534, 1545 [private communications distributed to Church members on
13 possible inappropriate relationship with minor were issue of public interest].)⁷

14
15 **2. THIS MATTER IS AN ISSUE OF PUBLIC INTEREST UNDER 425.16(E)(2).**

16 The June 10, 2015, letter is also protected activity under *C.C.P.* § 425.16(e)(2), as the Newport
17 Beach City Council (a legislative body) had numerous city council hearings on the topic and the Mayor
18 had a June 15 Town Hall meeting on it. Thus, the June 10, 2015 letter is a writing made in connection
19 with those public debated issues and falls squarely within § (e)(2). In addition, and as further explained
20 below, the demand letter also falls within the litigation privilege under (e)(2) and (e)(3).

21 **3. THIS MATTER IS AN ISSUE OF PUBLIC INTEREST UNDER 425.16(E)(3).**

22 Plaintiff alleges that Griffith Co. published the June 10, 2015, letter "numerous times, and to
23 numerous third parties." To the degree such alleged publications occurred in public forums, such as City

24
25 ⁶ The duty to disclose material facts applies to the sale of commercial property and to property
26 sold for commercial development. (Miller and Star, *California Real Estate* (3rd ed., 2000)
27 Sections 1:140, 1:142, 1:143; *Stevenson vs. Baum* (1998) 65 Cal. App. 4th 159, 165.)

28 ⁷ The Court stated one need not prove a particular adult is in actuality a sexual predator for the matter to
be a legitimate subject of discussion. The broad topic of the report and the meetings was the protection
of children in church programs was an issue of public interest. (*Id.* at pg. 1548.) *Similarly, here it need
not be proved that the use restrictions are valid as these topics are matters of public interest.*

1 Council meetings, newspapers, or internet sites, they are privileged under 425.16(e)(3). (*Gilbert v. Sykes*,
2 (2007) 147 Cal.App.4th 13; *Seelig v. Infinity Broadcasting Corp.*, (2002) 97 Cal.App.4th 798.) Internet
3 bulletin boards, web sites, newspapers and magazines are public forums within § 425.16(e)(3). (*Summit*
4 *Bank v. Rodgers*, (2012) 206 Cal.App.4th 669; *Wilkbanks v. Wolk*, (2004) 121 Cal.App.4th 883, 897;
5 *ComputerXpress, Inc. v. Jackson*, (2001) 93 Cal.App.4th 993, 1007.)

6 **ii. LITIGATION PRIVILEGE: LETTERS WRITTEN IN ANTICIPATION OF LITIGATION**
7 **ARE WITHIN THE LITIGATION PRIVILEGE.**

8 Statements or writings made in connection with litigation in the civil courts are included as acts in
9 furtherance of the constitutional right to petition under *C.C.P.* § 425.16(e)(2). (*Healy v. Tuscan Hills*
10 *Landscape & Recreation Corp.*, (2006) 137 Cal.App.4th 1, 5 [a communication is absolutely immune
11 from any tort liability if it has "some relation" to judicial proceedings].) In that regard, the litigation
12 privilege, *Civil Code* § 47(b), provides an *absolute* privilege for a publication made in any legislative,
13 judicial, or other official proceeding authorized by law. (*Dove Audio, Inc. v. Rosenfeld*, (1996) 47
14 Cal.App.4th 777, 783.) The privilege applies to communications preliminary to a proposed judicial
15 proceeding, such as a demand letter from an attorney to a potential adversary. (*Ibid.*; *Aronson v.*
16 *Kinsella*, (1997) 58 Cal.App.4th 254, 260-261 [classic demand letter falls within litigation privilege].)
17 Here, as in *Healy*, *Dove Audio*, and *Aronson*, the June 10, 2015, letter is a classic prelitigation
18 communication which falls squarely within the litigation privilege.

19 The privilege also applies to communications made during an attorney's investigatory interviews with
20 private individuals preparatory to a hearing. (*Ibid.*; *Dove, supra*, 47 Cal.App.4th at pg. 783; *Cayley v.*
21 *Nunn*, (1987) 190 Cal.App.3d 300 [statements made to other private citizens while marshaling evidence
22 and preparing for presentation at city council within the litigation privilege].) Here, the June 10, 2015,
23 demand letter was preparatory to the June 15, 2015, Town Hall meeting and thus protected activity.

24 Allegations that Griffith Company forwarded the June 10, 2015, letter to third parties are also covered
25 by the litigation privilege. (*Larmour v. Nicholas J. Campanale*, (1979) 96 Cal.App.3d 566, 569, 570,
26 [sending copy of demand letter to escrow company in real estate dispute was *absolutely* privileged].) In
27 *Larmour*, the Court stated that keeping the escrow holder advised of legal developments in the
28 transaction was proper to provide protection to the buyer and to advise another potential adversary of the

1 legal problems it too may face." (*Id.* at pg. 569.) Similarly, it would be proper for Griffith Company to
2 advise any potential buyer of the legal problems it may face, thus barring the current suit.

3 **iii. PLAINTIFF CANNOT DEMONSTRATE A PROBABILITY OF PREVAILING.**

4 Inasmuch as Griffith Company has met its threshold showing that the lawsuit arises from activity
5 that is protected under the Anti-SLAPP law (*Navellier v. Sletten, supra*, 88; CCP § 425.16(b)(1)), the
6 burden shifts to the plaintiff to demonstrate *a probability of prevailing* on the claim by demonstrating
7 with competent, admissible evidence that his claims have merit. (*McGarry v. Univ. of San Diego, supra.*)
8 If a plaintiff fails to substantiate a legally sufficient claim, the court must dismiss the action. (*Vogel v.*
9 *Felice, supra*, 1017.) Plaintiff here is unable to meet this burden. He cannot show that Griffith Company
10 damaged his property by its statement as the boundaries of his property interest were set by deeds that
11 were long ago recorded (in 1945 and 1984) requiring him to use the St. James site "for church purposes
12 exclusively." Moreover, the Griffith Company's statement falls well within the ambit of protected speech
13 and is simply not actionable. As such, it is respectfully submitted this action should be dismissed.

14 **b. DEFENDANT IS ENTITLED TO ATTORNEY'S FEES AND COSTS.**

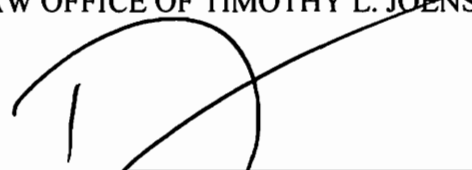
15 Any SLAPP defendant who brings a successful motion to strike is entitled to mandatory attorney
16 fees. (*Code Civ. Proc.*, § 425.16(c); *Los Angeles v. Animal Defense League*, (2006) 135 Cal.App.4th 606,
17 627 n.19) As set forth in the declarations of Griffith Company's attorneys, Ronald B. Pierce and Timothy
18 L. Joens, those fees have been \$44,826.00 to date and are anticipated to increase to a total of at least
19 \$51,126.00 by the time this motion is heard.

20 **V. CONCLUSION**

21 For the foregoing reasons, Griffith Company respectfully requests this Court grant this special
22 motion to strike the Third Cause of Action of Plaintiff's Complaint.

23 DATED: August 27, 2015

LAW OFFICE OF TIMOTHY L. JOENS

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GRIFFITH COMPANY