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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF RIVERSIDE

10
11 URBAN LOGIC CONSULTANTS, INC., a) CASE NO. RIC 10019763
California corporation; DEEPAK MOORJANI,)
12 an individual; ERNEST EGGER, an individual;) The Hon. Comm. Paulette Durand-Barkley
and DAVID DILLON, an individual,) Dept. 02
13)
Plaintiffs,)
14)
v.) **DEFENDANTS' MEMORANDUM OF**
15) **POINTS AND AUTHORITIES IN**
BEAUMONT CITIZENS FOR RESPONSIBLE) **SUPPORT OF SPECIAL MOTION TO**
16 GROWTH, a California entity of unknown type,) **STRIKE COMPLAINT [Code Civ. Proc. §**
JUDITH BINGHAM, an individual; MARY) **425.16]**
17 DANIEL, an individual; NANCY HALL, an) DATE:
individual ; and DOES 1 through 20, inclusive,) TIME:
18) DEPT: 02
Defendants.)
19)

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19	JUDITH BINGHAM, an individual; MARY)	425.16]
20	DANIEL, an individual; NANCY HALL, an)	DATE:
21	individual ; and DOES 1 through 20, inclusive,)	TIME:
22	Defendants.)	DEPT: 02

20 Defendants Beaumont Citizens for Responsible Growth ("BCRG"), Judith Bingham
21 ("Bingham"), Mary Daniel ("Daniel"), and Nancy Hall ("Hall")(hereinafter, collectively,
22 "Defendants") submit the following in support of their special motion to strike the complaint filed in
23 this action under Code of Civil Procedure Section 425.16 (hereinafter, "Section 425.16"):

24 **I**
25 **INTRODUCTION**

26 For the past 17 years, the City of Beaumont (the "City") has paid over \$20 million to Urban
27 Logic Consultants, Inc. ("Urban Logic"), a company wholly owned by plaintiffs Moorjani, Egger,
28 and Dillon. During this time, Moorjani has served as the City's Public Works Director, Egger has

1 served as the City's Planning Director, and Dillon has served as the City's Economic Development
2 Director. Plaintiffs provide City-related services, such as plan checking, inspecting, construction
3 management, and analyzing and budgeting public works projects, and have recommended that
4 millions of dollars in public works projects be awarded to a small group of contractors in a manner
5 which discourages and prevents competition. The contract under which Plaintiffs provide these
6 services has not been reviewed or re-bid since its adoption in 1994. During Plaintiffs' tenure, the
7 City's payments to them has grown from \$458,764 in 2000 to \$3,141,595 in 2009. (Ex. "J" to
8 Bingham Decl. and Ex. "C" to Mann Decl.)

9 Defendants are a group of Beaumont residents and business owners who, for over five years,
10 have publicly questioned the relationship between Plaintiffs and the City, sought and obtained
11 public records, and appeared before the Beaumont City Council with their concerns. As a means to
12 get their message out to the public, Defendants created a non-profit citizen's group, BCRG, and set
13 up a website calling for an end to the arrangement between Plaintiffs and the City. It is this website
14 and the statements contained thereon that is the subject of Plaintiffs' complaint.

15 The gist of Plaintiffs' complaint is that, from August, 2004 to the present, Defendants have
16 operated a website (www.beaumontgate.org [the "Website"]) that allegedly contains defamatory
17 statements about Plaintiffs. Plaintiffs are public figures and their lawsuit targets the free speech of
18 concerned local residents about issues of public interest. Therefore, Plaintiffs' lawsuit is a prime
19 example of the type of action heavily proscribed by the California Legislature in Section 425.16,
20 i.e., seeking to punish the exercise of First Amendment rights.

21 Defendants' motion is made on the grounds that the alleged conduct is protected by the First
22 Amendment and Plaintiffs cannot sustain their burden of proof to show that they are likely to prevail
23 on their claims. Specifically, the challenged statements are not defamatory, are substantively true,
24 and are based on public records. Accordingly, Defendants respectfully request that the Court strike
25 the complaint under Section 425.16(b) and award them their attorneys' fees, costs and expenses as
26 mandated in Section 425.16(c).

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II
RELEVANT BACKGROUND FACTS

In or about April, 2004, after conflict with the City involving failure to notify citizens about taking property by inverse condemnation, Bingham inquired about the City's specific operations and learned that it outsourced its planning, economic development, public works and engineering services to Urban Logic. (Bingham Decl., ¶¶ 3-4.) Thereafter, Bingham formed BCRG and set up a website with information about how to get involved in City government and providing information on development plans for the City. (Bingham Decl., ¶¶ 2 and 4, Ex. "A" thereto.)

To obtain more information, Bingham made public records requests to the City for documents including, contracts with Urban Logic, City Council meeting minutes, staff reports, contracts, warrants, invoices, checks, and ledgers. (Bingham Decl., ¶ 5 and Exs. "C" and "D" thereto.) In response to these requests, Bingham received three contracts between the City and Urban Logic dating back to 1993 and 1994. (Bingham Decl., ¶ 5.) One was an agreement amending a prior contractual arrangement to provide administrative, management, urban planning and environmental services. (RJN, Ex. "1.") Another retained Urban Logic as the City's private consulting firm to undertake planning, economic development, development services, and public works and engineering services (hereinafter, the "Urban Logic Contract"). (RJN, Ex. "2.") The final agreement amended the Urban Logic Contract by adding construction management to Urban Logic's scope of work (hereinafter, the "Amended Contract"). (RJN, Ex. "3.")

Based on the public documents received, Bingham, Hall, and other Beaumont residents began voicing their concerns to the City Council regarding the interplay between the two entities. Various instances of threats and retaliation followed. (Bingham Decl., ¶ 6-9 and Ex. "B" thereto; Hall Decl., ¶¶ 4-7; Wagner Decl., ¶ 2; Ostermann Decl., ¶ 2.) In or about August, 2010, BCRG launched the Website, which contains statements questioning the legality of the Urban Logic contracts with a link to download PDF versions of the actual contracts.

In their complaint, Plaintiffs quote 17 excerpts from the Website alleging that they are false and defamatory and, on that basis seek to enjoin their publication and collect damages. As set forth in detail below, however, the challenged statements are constitutionally-protected speech, are not

1 defamatory, are not false, relate to public figures concerning issues of public interest, and are all
2 well-founded on matters of public record. For these reasons, the instant motion is proper.

3 III

4 AUTHORITY FOR MOTION

5 Section 425.16(b)(i) provides that a suit arising from any act in furtherance of the right of
6 free speech and/or petition "shall be subject to a special motion to strike, unless the court determines
7 that the plaintiff has established there is a probability that plaintiff will prevail on the claim." The
8 California Legislature enacted Section 425.16 in 1992 to provide for the elimination of meritless
9 suits that chill First Amendment freedoms (speech, press, petition). The purpose of the special
10 motion to strike under Section 425.16 is to test the validity of the action at an early stage in order to
11 eliminate meritless claims and deter frivolous and improperly motivated suits. (Section 425.16(a);
12 Church of Scientology v. Wollersheim (1996) 42 Cal.App.4th 628, 644-645, 648.)

13 In a strong reaffirmance of its desire to eliminate meritless suits, in 1997, the legislature
14 added the following sentence to subdivision (a) of 425.16: "To this end, this section shall be
15 construed broadly." Such liberality promotes judicial efficiency by providing a "reasonable, bright-
16 line test applicable to a large class of potential section 425.16 motions." (Briggs v. E.C.H.O. (1999)
17 19 Cal.4th 1106, 1121-1122.) Under this bright-line test, in ruling on a Section 425.16 motion, a
18 court must engage in a two-pronged analysis: (1) does the challenged conduct arise from an act in
19 furtherance of protected speech or petition activity and if so, (2) has plaintiff established a
20 probability of prevailing on the claim. (Equilon Enterprises v. Consumer Cause, Inc. (2002) 29
21 Cal.4th 53, 67.) The first prong is discussed in Section IV below; the second prong is discussed in
22 Section V below.

23 IV

24 THE FIRST PRONG IS SATISFIED IN THIS CASE

25 Initially, the Court must decide whether the defendant has made a threshold showing that the
26 conduct challenged by plaintiff in the suit arises from speech or petition activity. (Church of
27 Scientology, supra, 42 Cal.App.4th at 646.) This burden is met when the act underlying the
28 plaintiff's claims fits one of the categories spelled out in Section 425.16(e). (Braun v. Chronicle

1 Pub. Co. (1997) 52 Cal.App.4th 1036, 1043.) Specifically, subdivision (e) of Section 425.16
2 provides protection for:

3 "(1) any written or oral statement or writing made before a legislative, executive, or
4 judicial proceeding, or any other official proceeding authorized by law; (2) any
5 written or oral statement or writing made in connection with an issue under
6 consideration or review by a legislature, executive, or judicial body, or any other
7 official proceeding authorized by law; (3) **any written or oral statement or writing
8 made in a place open to the public or a public forum in connection with an issue
9 of public interest; (4) or any other conduct in furtherance of the exercise of the
10 constitutional right of petition or the constitutional right of free speech in
11 connection with a public issue or an issue of public interest.**" (Emphasis added.)

12 As set forth below, Defendants' conduct falls within subsections (3) and (4) above.

13 In deciding whether the initial "arising from" requirement is met, a court "shall consider the
14 pleadings, and supporting and opposing affidavits stating the facts upon which the liability or
15 defense is based." (Section 425.16(b)(2).) In this case, Plaintiffs challenge alleged defamatory
16 statements published on a website available to all of the California public. (Complaint, ¶¶ 20 and
17 21.) A public website is considered a public forum and does not have to allow open forums or other
18 forms of public participation to be considered as such. (Wilbanks v. Wolk (2004) 121 Cal.App.4th
19 883, 897.) Accordingly, this case involves written statements (freedom of speech and press)
20 published via a public forum.

21 Moreover, the published content in this case also involves an issue of public interest. The
22 term "public interest" within Section 426.16 has been broadly construed to include issues that either
23 concern "a person or entity in the public eye, conduct that could directly affect a large number of
24 people beyond the direct participants, **or** a topic of widespread public interest." (Rivero v. Am. Fed.
25 of State, County, and Municipal Employees, AFL-CIO (2003) 105 Cal.App.4th 913, 924.) (Internal
26 citations omitted and emphasis added.)

27 The fact that the statements question conduct of an entity and individuals employed by the
28 City to ensure compliance with building codes, inspect public works projects, and allocate City and
29 taxpayers' money is sufficient to place the statements within the meaning of "public issue."
30 (DuCharme v. Intl Broth. of Elec. Workers, Local 45 (2003) 110 Cal.App.4th 107, 115-116.) "The
31 Legislature has made clear that the government's business is the people's business and that
32 California's citizens have a right to full disclosure of all information which affects the public fisc."

1 (Maranatha Corrections, LLC v. Department of Corrections & Rehabilitation (2008) 158
2 Cal.App.4th 1075, 1086 - citing Gov. Code §6250 ["access to information concerning the conduct
3 of the people's business is a fundamental and necessary right of every person in this state"].) The
4 way Urban Logic conducts the business of the City is an issue of public interest, thus, the first prong
5 has been satisfied under the last two categories of Section 425.16(e) - a defendant only needs one.

6 V

7 **PLAINTIFFS CANNOT MEET THE "SECOND PRONG" BURDEN**

8 Once a defendant makes the "first prong" *prima facie* showing that Section 425.16 applies,
9 the burden shifts to plaintiff to satisfy the "second prong," to wit, establish the probability of
10 plaintiff's success on the merits. (Section 425.16(b); Tuchscher Development, supra, 106 Cal.App.
11 4th at 1235.) To meet this burden, a plaintiff must be able to substantiate the underlying claim --
12 demonstrate that the complaint is both legally sufficient and supported by a sufficient *prima facie*
13 showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is
14 credited. (Navellier v. Slatten (2002) 29 Cal. 4th 82, 89.) Absent such a showing, the court must
15 strike the complaint and award defendants' attorneys' fees and costs. (Section 425.16(c); Braun v.
16 Chronicle Pub. Co., supra, 52 Cal.App.4th at 1052.)

17 Arguably, Defendants could stop here and reply to Plaintiffs' opposition. Defendants,
18 however, will discuss some reasons why Plaintiffs have no probability of prevailing and cannot
19 meet their burden under Section 425.16, so that the motion to strike should be granted. Note, even
20 if Plaintiffs were to refute the points below, this would not end the inquiry. Plaintiffs must produce
21 competent, admissible evidence to show that their causes of action can withstand substantive
22 scrutiny. (Lau v. Ngo (2001) 91 Cal.App. 4th 832, 843-844.) Plaintiffs cannot meet this burden.

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1 **A. Legal Authority: Plaintiff Cannot Prove That the Statements are "Defamatory"**¹

2 1. There is No Defamation

3 Libel presumes the publication of a "false and unprivileged publication" which exposes a
4 person to "hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or
5 which has a tendency to injure him in his occupation." (Civ. Code §45.) If material published is not
6 fairly susceptible of a defamatory meaning, it is proper to dismiss the action. (Polygram Records,
7 supra, 170 Cal.App.3d 543, 551.) Where challenged claims rely upon implication or innuendo, "a
8 court must refrain from scrutinizing what is not said to find a defamatory meaning which the article
9 does not convey to a lay reader." (Forsher v. Bugliosi (1980) 26 Cal.3d 792, 803.) As shown
10 below, there is no defamation here.

11 2. Plaintiffs Cannot Prove That the Statements are False

12 The threshold ingredient of the tort of defamation is the unprivileged publication of a **false**
13 fact. (Civ. Code §45.) Truth is an absolute defense to a defamation action. (Smith v. Maldonado
14 (1999) 72 Cal.App.4th 637, 646.) In this regard, Defendants need not justify the literal truth of
15 every word of the allegedly defamatory matter, irrespective of slight inaccuracy in the details, so
16 long as the substance of the charge is true so as to justify the "gist" or "sting" of the statement.
17 (Ringler Associates Inc. v. Maryland Casualty Co. (2000) 80 Cal.App.4th 1165, 1180.)

18 As shown below, the substance or gist of all the challenged statements are substantively true.

19 3. The Statements Do Not Declare a Provably False Assertion of Fact

20 A statement is actionable only if "a reasonable fact finder could conclude the published
21 statement declares or implies a provably false assertion of fact." (Franklin v. Dynamic Details, Inc.
22 (2004) 116 Cal.App.4th 375, 386.) In determining whether a statement communicates or implies a
23 provably false assertion of fact, a court must examine the totality of the circumstances, consisting of
24 an examination of the statement and the context in which the statement is made. (Id. at 385.) In this
25 regard, it has been found that statements cannot form the basis of defamation when they are based
26

27 _____
28 ¹ Section "A" below provides a general discussion of the legal authority applicable herein. Section "B" contains Plaintiffs' specific allegations and explains why each is subject to a special motion to strike based on the cited legal authority and cites to the corresponding evidence.

1 on fully disclosed truthful facts. (Id. at 384-390 - finding that e-mails were not actionable as libel or
2 trade libel because they directed the reader to provably true facts on plaintiffs' website.) As set forth
3 below, all of the statements regarding Urban Logic's contracts appear on the Website with a **direct**
4 **link** to the actual contracts, thus the statements are not actionable.

5 4. Hyperbole is Not Actionable

6 Satirical, hyperbolic, imaginative, or figurative statements are not actionable because "the
7 context and tenor of the statements negate the impression that the author seriously is maintaining an
8 assertion of actual fact." (Id. at 385.) In this case, some of the statements are mere hyperbole.

9 5. Plaintiffs are Public Officials/Figures

10 As an entity and individuals employed by the City, tasked with duties that have a large or
11 dramatic impact on members of the public, Plaintiffs are public figures. (Kahn v. Bower (1991) 232
12 Cal.App.3d 1599, 1611; See also, Gov. Code §82048(a) - including consultants in the definition of a
13 "public official.") A plaintiff who is a "public official" or "public figure" seeking damages for
14 defamation relating to his official conduct, must plead and prove that defendants made the
15 defamatory statement with "actual malice." (Miller v. Nestande (1987) 192 Cal.App.3d 191, 199.)

16 **B. Application of Legal Principles to the Specific Allegations in the Complaint**

17 In the interest of brevity and efficiency, the 17 challenged excerpts are categorized into five
18 subheadings: (1) Terms of the Contract; (2) Contract Review; (3) Monetary Amounts and Billing
19 Practices; (4) Favoritism; and, (5) Intimidation/Restriction of Public Access.

20 1. TERMS OF THE CONTRACT

21 **Para. 22** - "Urban Logic has an exclusive agreement with the City to provide
22 planning, economic development and public works services on a contract basis,
23 which provides Urban Logic principals \$15,000 per month to serve as the City's
24 Planning Director, Public Works Director and Economic Development Director."

24 **Para. 26** - Under their contract with the City, Urban Logic is paid a commission of
25 up to 4.5% of the construction costs of both public and private development and
26 public improvements. In addition, under a separate contract, Urban Logic is paid
27 another 4.5% to provide construction management services for all public projects.
28 Thus, Urban Logic is making commission of 4.5% of the cost of all private
development projects and 9% of the cost of all public projects."

Para. 31 - "Per their contract with the City, Urban Logic has hired itself, and bills the
City on an hourly basis as an independent contractor, to provide key services such
as..."

1 **Para. 72** - “Urban Logic principals, who serve as key City department heads and
2 staff members, work out of City Hall only two days per week.”

3 These statements are not defamatory. They do not expose anyone to hatred, contempt or
4 ridicule or tend to cause occupational injury; they merely restate what is already in a public record.

5 Also, the gist or sting of the statements are true, as gleaned from the contract language itself.
6 The Urban Logic Contract and the Amended Contract state the following:

- 7 • Compensation of \$15,000 per month (¶ IX(1) of RJN, Ex. “2”);
- 8 • Compensation on a time and materials basis not exceeding 4.5% of the confirmed
9 construction cost of the public improvements to be constructed (¶ IX(2) of RJN, Ex.
10 “2”);
- 11 • The Urban Logic Contract is amended **to include** construction management duties
12 (Page 2 of RJN, Ex. “3”);
- 13 • The Urban Logic Contract is amended **to include** compensation on a time and
14 materials basis not exceeding 4.5% of the bid price awarded by the City for
15 construction management services (Page 3 of RJN, Ex. “3”);
- 16 • Payment on an hourly basis for certain services and “additional services on an as-
17 needed basis.” (¶¶ VII and IX(4) of RJN, Ex. “2”);
- 18 • Moorjani, Egger, and Dillon are the “individuals directly responsible for the
19 execution of the services” set forth in the Urban Logic Contract (¶ XII of RJN, Ex.
20 “2”);
- 21 • An Urban Logic professional planning principal shall maintain an office presence at
22 City Hall for 28 hours weekly and the Director of Public Works shall maintain a
23 presence at City Hall for 24 hours weekly (¶¶ I(I-A)(10) and IV(1) of RJN, Ex. “2”).

24 First, Plaintiffs allege that the statements above are false because they do not earn a
25 “commission.” (Complaint, ¶ 27.) The word “commission” is defined as “a fee or percentage paid
26 to a salesperson or agent for his or her services.” (Webster’s New College Dict. (3rd ed. 2008) p.
27 231.) Based on the language of the Urban Logic Contract and Amended Contract, Urban Logic is
28 receiving a commission because it receives a fee for its services and its compensation is linked to

1 the percentage of the project or bid price. Specifically, Urban Logic can receive up to 9% of the
2 cost of a public project if it performs plan checking and/or inspection and management services.

3 Plaintiffs next allege that the statements are false because they do not hire themselves.
4 (Complaint, ¶ 32.) This is exactly, however, what the contracts allow them to do. Urban Logic is
5 compensated on an hourly basis for inspecting, surveying, managing, and performing “additional”
6 services on projects it recommends. Invoices from Plaintiffs to the City show that this is, in fact,
7 what happens. (RJN, Exs. “26-27.”) Additionally, Dillon, in his position as Economic Director, has
8 recommended that the City Council approve Urban Logic to act as the inspector, surveyor, and
9 construction manager on several projects (RJN, Exs. “10” and “16”) and Urban Logic formed Urban
10 Logic Services to manage the City’s Waste Water Treatment Plant after Egger prepared a negative
11 declaration for the upgrade and expansion of the plant (RJN, Exs. “4,” “5,” and “41”).

12 Plaintiffs further allege that the statements are false because Egger, Moorjani, and Dillon
13 have never held a City position. (Complaint, ¶¶ 24 and 73.) Again, it is unclear how this is
14 defamatory. Nonetheless, City documents show that the City identifies defendants Egger, Dillon,
15 and Moorjani in these respective positions. (RJN, Exs. “23,” “25” and “40.”) In fact, even
16 Moorjani, Egger, and Dillon identify themselves in these positions, including in signed letters and
17 signed CA Form 700s. (RJN, Exs. “17,” “22,” “24,” and “6-8.”) Even the State of California knew
18 Egger as the Planning Director (RJN, Exs. “19” and “31”) and so do others (Hall Decl., ¶ 2; Gall
19 Decl., ¶ 5; Wagner Decl., ¶¶ 3-6 and Exs. “A,” “B,” and “C” thereto). Pursuant to the terms of the
20 contracts, as set forth above, as the directors of these services, Moorjani, Egger, and Dillon are
21 required to spend 52 hours at City Hall, which, when divided among three principals, equals 17
22 hours weekly for each director or approximately two eight hour days.

23 Finally, the above statements are not actionable because BCRG conspicuously posted links
24 to the Urban Logic contracts on both websites (Exs. “E” and “F” to Bingman Decl.), thereby fully
25 disclosing the truthful facts by a means readily accessible to the public. (See Section V(A)(3), *infra*,
26 and Franklin, *supra*, 116 Cal.App.4th 375.) Accordingly, because the statements are all based on the
27 language of a fully disclosed public record, they are not actionable.

28 ///

1 2. CONTRACT REVIEW

2 **Para. 34** - "Urban Logic's contract with the City of Beaumont has been in place
3 since 1994 and has never been reviewed or put out to bid since that time"

4 **Para. 45** - "Urban Logic's contract to provide planning, economic development and
5 public works services has never been reviewed since it was first adopted in 1994"

6 These statements are not defamatory. If anything, they are a reflection on the City, not
7 Plaintiffs. A defamation action may proceed only where the challenged statement conveys a
8 meaning "of and concerning the plaintiff." (Blatty v. New York Times Co. (1986) 42 Cal.3d 1033,
9 1042.)

10 Moreover, the substance or gist is true. BCRG and an independent consultant obtained
11 thousands of City documents. (Bingham Decl., ¶ 10; Wolfe Decl., ¶¶ 2-5 and Ex. "A" thereto.) The
12 only references to Urban Logic's contracts were in 1993 and 1994 when the three agreements were
13 initially adopted (see, RJN, Exs. "32-34"). No other references were found. (Bingham Decl., ¶ 10;
14 Wolfe Decl., ¶ 8.) Additionally, councilwoman Nancy Gall, who has been on the Beaumont City
15 Council for the last two years, does not know of any reviews or re-bids. (Gall Decl., ¶ 3.)

16 Accordingly, because the statements are based on actual facts derived from public records
17 and persons with knowledge, the statements are not actionable.

18 3. MONETARY AMOUNTS AND BILLING PRACTICES

19 **Para. 37** - "The City of Beaumont is being run by a private corporation which is
20 making millions of dollars by taking a cut of all development projects and public
21 improvements approved by the City."

22 **Para. 54** - "Urban Logic has been paid over \$23.8 million of public funds on top of
23 their salaries as commission for approved development projects and public
24 improvements. Per their unusual contract with the City, which has not been reviewed
25 or put out to bid since it was adopted in 1994, Urban Logic receives a commission of
26 4.5% of the cost of all development projects and 9% of the cost of all public work
27 projects."

28 **Para. 61** - "Urban Logic's contract, which gives them a percentage of every
development and allows them to collect even more money by billing hourly for many
other services, motivates them to approve as many development projects as
possible."

These statements are not defamatory. Highlighting, emphasizing, or stating facts forcefully
does not create defamatory innuendo. (Smith, supra, 72 Cal.App.4th 637, 646.) Furthermore, the
only parts of these statements that Urban Logic challenges is how Urban Logic is paid. Specifically,

1 Plaintiffs allege that Urban Logic does not submit hourly bills on top of a percentage collection.
2 (Complaint, ¶ 62.) This is not what the challenged statement says. Instead, the statement says that
3 the **Urban Logic contracts** give them a percentage and a means to collect more money by billing
4 hourly. This is, in fact, what the contracts allow. Specifically, Urban Logic can receive up to 4.5%
5 of the construction cost of public improvements for plan checking and inspection services **and** up to
6 \$100 per hour for “additional services.” (RJN, Ex. “2,” ¶ IX(2) and (4) thereto.)

7 Plaintiffs further allege that the statements are false because they do not receive a “cut” or
8 “commission.” (Complaint, ¶¶ 38 and 55.) As discussed above, whether it is called a “cut,” a
9 “commission,” or just “compensation,” the substance or gist is the same. Plaintiffs are receiving
10 millions of dollars under a contract that compensates them based on a percentage of the total project
11 cost.

12 Accordingly, because the statements regarding Urban Logic’s billing practices and money it
13 receives are well-founded in public records, the gist of the statements are true and otherwise not
14 actionable.

15 4. FAVORITISM

16 **Para. 42** - “The City of Beaumont under Urban Logic and City
17 manager Alan Kapanicas, has consistently demonstrated favoritism
18 and cronyism in the awarding of public contracts. Bid specifications
19 are kept vague, allowing Urban Logic and Alan Kapanicas to simply
20 dismiss bids at will by stating that the bids do not match the scope of
21 the work desired.”

22 **Para. 48** - “Urban Logic and City Manager Alan Kapanicas have consistently seen to
23 it that public contracts are awarded to a small group of close friends and business
24 associates. This type of blatant cronyism is shameful and illegal and should not be
25 tolerated by the City Council or the residents of Beaumont.”

26 **Para. 51** - “Urban Logic’s contract with the City of Beaumont which allows it to
27 profit from each approved development, along with their on-going practice of
28 awarding high-dollar public contracts to a small group of friends and associates
instead”

Para. 78 - “Many local businesses do not have a fair opportunity to bid on public
contracts as Urban Logic and City Manager Alan Kapanicas consistently see to it that
contracts are awarded to a small and exclusive group of close friends and business
associates.”

27 ///
28 ///

1 Through the years, Bingham reviewed, City Council meeting minutes, staff reports, and
2 warrants and noticed that a vast majority of the public works contracts were being awarded to
3 certain contractors. Specifically, a review of the warrants revealed that only one outside contractor,
4 Matich Corp., received more than \$1 million dollars of work from the City during the 2000-2009
5 time period, while favored contractors like Beaumont Electric and Moody Construction received
6 over \$10 million and Tyner Paving over \$20 million. (Bingham Decl., ¶ 12 and Ex. "J" thereto.)

7 The documents also reveal that, on numerous occasions, the City and Urban Logic violated
8 Beaumont Municipal Code §3.02.050 and Public Contract Code §§20162 and 20163 by issuing task
9 orders for amounts in excess of \$5,000 instead of sending the work out for public bid. (RJN, Exs.
10 "42-43" and "11-14," "35-36"; Wolfe Decl., ¶ 9.) See also the declarations of Suzanne and Clyde
11 Birchard and David Loop, who both own businesses that have been denied fair opportunities to bid
12 and fair opportunities to compete with the City's "favored" contractors.

13 Plaintiffs allege that the statements are false because "awarding" contracts is the exclusive
14 province of the City. (Complaint, ¶¶ 43, 49, and 52.) While Plaintiffs may not have the authority to
15 sign the final contract, they are responsible for recommending or rejecting bids and do so through
16 written staff reports to the City Council (RJN, Exs. "10-17") and oral presentations (RJN, Ex. "35-
17 40"). Favoritism is evident through these written reports and oral presentations. One such example
18 is Urban Logic rejecting bid proposals where there is only one bidder in cases when the lone bidder
19 was someone other than Moody Construction, Tyner Paving, or Beaumont Electric. (RJN, Exs. "15-
20 18" and "37-38"; Wolfe Decl., ¶ 11.)

21 Another example is blatant favoritism for Beaumont Electric, the owner of which used to be
22 the City's Planning Commissioner (RJN, Ex. "9"). Such favoritism has prevented competition from
23 other electrical contractors in Beaumont. (S. Birchard Decl., ¶¶ 4-5; C. Birchard Decl., ¶¶ 2-5 and
24 Ex. "A" thereto; Loop Decl., ¶¶ 3-6; RJN, Exs. "28-30" and Ex. "C" to Wolfe Decl. - showing that
25 the City paid Beaumont Electric for expenses that it told other contractors that they would have to
26 bear.) In one instance, a \$20,000 claim was submitted to the City stating that the City had failed to
27 provide a fair opportunity to bid because plans and specifications were inadequate and had
28 otherwise entered into a collusive agreement with Beaumont Electric (RJN, Ex. "21"; Loop Decl., ¶

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1 6 and Ex. "A" thereto). Other complaints on similar grounds were received as well. (S. Birchard
2 Decl. ¶¶ 4-5 and Ex. "B" thereto). Subsequently, the \$20,000 claim was rejected (RJN, Ex. "39")
3 and Beaumont Electric, being the only bidder, was awarded the contract (RJN, Exs. "20").

4 Additionally, the statements contain hyperbole based on their tenor and language and contain
5 legal conclusions and opinions.

6 Accordingly, because the substance or gist of the statements are true, an absolute defense
7 exists.

8 5. INTIMIDATION/RESTRICTION OF PUBLIC ACCESS

9 **Para. 66** - "Urban Logic protects its ability to extract money from the City of
10 Beaumont at all costs, resorting to intimidation and threats when necessary."

11 **Para. 69** - "Urban Logic and City Manager Alan Kapanicas have blatantly restricted
12 public access to City government. All correspondence from citizens to the Council
13 must now go through Urban Logic and City Manager. Sealed envelopes addressed to
14 Council members are opened by Urban Logic and/or City Manager before being
15 given to elected officials."

16 **Para. 75** - "Urban Logic maintains its stronghold over the City of Beaumont by
17 restricting public access, intimidating detractors and threatening those who dare
18 speak out against them."

19 **Para. 81** - "Urban Logic and City Manager Alan Kapanicas have made government
20 less accountable and less accessible to residents by limiting the number of citizens
21 who can attend public meetings/hearings, restricting public access to key department
22 heads (who are principals of Urban Logic) by having them work out of City Hall only
23 two days a week, and by forcing all correspondence between the public and their
24 elected officials to be opened and screened by Urban Logic or City Manager Alan
25 Kapanicas prior to being given to Councilmembers."

26 Plaintiffs deny all conduct set forth above. (Complaint, ¶¶ 67, 70, 76, 83.) The facts are
27 otherwise. Councilwoman Nancy Gall attests that, if she even gets her mail, it has been opened and
28 taped shut by City staff, some of which are Urban Logic employees and there have been instances
where she has not received certain mail. (Gall Decl., ¶ 6; S. Birchard Decl., ¶3 and Ex. "A"
thereto.) Moreover, the e-mail addresses provided to Council members by the City do not work and
business cards provided to Council members have the City's telephone number, not an actual
telephone number that can be called to reach the Council member directly. Therefore, all calls must
go through the City staff, some of which are Urban Logic employees. (Gall Decl., ¶ 7.)

///

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

3 I am employed in the County of Riverside, State of California. I am over the age of 18 and
4 not a party to the within action; my business address is 3880 Lemon Street, Fifth Floor, Post Office
Box 1300, Riverside, California 92502-1300.

5 On January 10, 2011, I served the foregoing document described as **DEFENDANTS'**
6 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF SPECIAL MOTION**
7 **TO STRIKE COMPLAINT** on the interested parties in this action by placing true copies thereof
enclosed in sealed envelopes addressed as follows:

8 Andrew Do, Esq.
9 Peter Sunukjian, Esq.
10 BRIGGS & ALEXANDER, APC
11 558 S. Harbor Blvd., Suite 100
12 Anaheim, CA 92805
13 (714) 520-9250 (telephone)
14 (714) 520-9248 (facsimile)
15 andrew@andrewdolaw.com
16 peter@briggsandalexander.com

17 Attorneys for Plaintiffs

18 BY MAIL

19 I deposited such envelope in the mail at Riverside, California. The envelope was
20 mailed with postage thereon fully prepaid.

21 I am "readily familiar" with the firm's practice of collection and processing
22 correspondence for mailing. It is deposited with U.S. postal service on that same day
23 with postage thereon fully prepaid at Riverside, California in the ordinary course of
24 business. I am aware that on motion of the party served, service is presumed invalid
25 if postal cancellation date or postage meter date is more than one day after date of
26 deposit for mailing in affidavit.

27 Executed on January 10, 2011, at Riverside, California.

28 (State) I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at
whose direction the service was made.

29 Tamara M. Sosa
30 Type or print name

31 
32 Signature

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