CONSENT CALENDAR
ITEM 13

MOBILE DATE COMPUTER (MDC) REPLACEMENT

GREEN, BRENDA

From: FRANCIS, RICK
Sent: Monday, November 18, 2013 4:14 PM
To: GREEN, BRENDA
Subject: FW: Potential protest of MDC contract
Attachments: L3 RFPNo1158.pdf

Rick

From: FRANCIS, RICK
Sent: Friday, November 15, 2013 9:05 PM
To: CITY COUNCIL; 'Gary Monahan'; Sandra Genis
Cc: HATCH, THOMAS; DUARTE, TOM
Subject: Potential protest of MDC contract

Dear Members of the City Council:

As you know, on the November 5th Council Agenda, Item #14 was pulled from the Consent Calendar due to a protest being lodged by L-3 Mobile-Vision, Inc. and the City needed more time to resolve the dispute process. L-3 contended that pricing was not accurately reflected in the staff report and it was their assumption that because they ranked highest in one aspect of the RFP, they should have received the entire MDC award, not just the award for the Fire Department. Upon further research into their concerns, we discovered that the City would actually save money going with Datalux Corporation for the entire MDC award (Datalux initially received the award for Police Department MDC's). We responded to their initial protest (contained in attachment) and will provide another response to the latest protest we received today in response to our current recommendation.

The staff report details the process we engaged in to arrive at our final conclusion. I have also attached the string of correspondence between the City and L-3 in order to give you background on how the protest transpired and some of the subsequent conversations. L-3 representatives may be at the Council meeting on Tuesday.I will send our response to the latest protest in a separate email.

I am happy to discuss this further with anyone who is interested.

Thank you,

Rick Francis
Assistant Chief Executive Officer
City of Costa Mesa
(714) 754-5099 | (714) 754-5330 (fax)
rick.francis@costamesaca.gov

Costa Mesa

RFP No. 1158 (MDCs) – Communications with L3
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CHANG, MARGARET

From: CHANG, MARGARET
Sent: Monday, November 04, 2013 8:57 AM
To: 'jeff.reeve@l-3com.com'; WILSON, KIMBERLY
Cc: FRANCIS, RICK; GREEN, BRENDA; 'Ivy M. Tsai'
Subject: RE: City of Costa Mesa MDC award RFP 1158
Attachments: L3Communications.pdf

Hi Jeff,

We are in receipt of your e-mail and are currently reviewing your request. Attached is the letter that we sent through e-mail to Mike Turner, your Regional Sales Manager, on Thursday, October 31, 2013. We also mailed out the original letter to Mike Turner that day.

Thank you for your request.

Margaret Chang
Management Analyst
City of Costa Mesa
714.754.5618| 714.754.5330 (fax)
margaret.chang@costamesaca.gov

Costa Mesa

From: jeff.reeve@l-3com.com [mailto:jeff.reeve@l-3com.com]
Sent: Sunday, November 03, 2013 3:39 PM
To: WILSON, KIMBERLY; CHANG, MARGARET
Subject: City of Costa Mesa MDC award RFP 1158

Attention Kimberly Wilson and Margaret Chang,

L-3 Mobile-Vision commonly monitors the web sites of the Government Organizations and Governmental board's agenda items for procurement projects we are involved in. In doing so, while reviewing the City of Costa Mesa Council Agenda for November 5th, , 2013. we were surprised to discover late Friday evening (11-01-13) City Council Agenda consent agenda Item 14.

As you are aware item 14 is in regards to the current MDC replacement project. A copy of the language from the Agenda and specifically item #14 is listed below.
==========
MOBILE DATA COMPUTER (MDC) REPLACEMENTRECOMMENDATION:
1. City Council approve and authorize the CEO to sign the Purchasing Agreement in the amount of $388,300.80 for the replacement of the current Police Department Mobile Data Computers (MDC) with Datalux Corporation, 155 Aviation Drive, Winchester, VA22602; and
2. Approve and authorize the CEO to sign the Purchasing Agreement in the amount of$120,476.16 for the replacement of the current Fire Department Mobile Data Computers (MDC) with L3 Mobile-Vision, Inc., 90 Fanny Road, Boontown, NJ 07005;and
4. Approve Budget Adjustment No. 14-012 to appropriate available fund balance in the Narcotics Asset Forfeiture Fund ($388,300.80) and Proposition 172 Fund ($120,476.16) in the total amount of $508,776.96 for this purchase.
==========

With only days away from the City Council meeting, L-3 Mobile-Vision is formally requesting via the

Freedom of Information Act including but not limited to all information and documentation pertaining to the submittal, scoring bid tabs, evaluation scores and pricing to the final decision and recommendations that are being made to the City Council for award. The information being asked for is for the Datalux data only pertaining to Council Consent item 14 sub-item #1.

I am requesting these documents prior to noon on November 4th.

In addition per the instructions in RFP #1158, item 10 page 13 protest procedures "*Protests based upon alleged improprieties that are not apparent or which could not reasonably have been discovered prior to submission date of the proposals, such as disputes over the staff recommendation for contract award, shall be submitted in writing to the RFP Facilitator, within forty-eight hours from receipt of the notice from the City advising of staff's recommendation for award of contract*" we have 48 hours after receipt of notice to disclose of any formal protest from us.

On Friday October 18 11:43 AM Kim sent an email to all finalists that **"Each of the 3 finalists will be notified of the City's Recommendation to Council via email on or before Tuesday, November 5th."** I am asking that as stated, we be officially notified via email on or before Tuesday, November 5th as to the recommendations being made to the City Council on November 5th 2013.

Thank you for your immediate attention to this.

Jeff Reeve

Mobile-Vision, Inc.
Jeff Reeve
Western Area Sales Director
C: 973-202-0485
http://www.l-3com.com/mv

CHANG, MARGARET

From: CHANG, MARGARET
Sent: Tuesday, November 05, 2013 9:55 AM
To: 'jeff.reeve@l-3com.com'
Cc: GREEN, BRENDA; FRANCIS, RICK; imt@jones-mayer.com; WILSON, KIMBERLY; bjb@jones-mayer.com
Subject: RE: RFP No. 1158 for Mobile Data Computer

Hi Jeff,

Please see the first e-mail in this chain. That is the original copy that was sent last Thursday.

Margaret Chang
Management Analyst
City of Costa Mesa
714.754.5618| 714.754.5330 (fax)
margaret.chang@costamesaca.gov

Costa Mesa

From: jeff.reeve@l-3com.com [mailto:jeff.reeve@l-3com.com]
Sent: Tuesday, November 05, 2013 9:36 AM
To: CHANG, MARGARET
Cc: GREEN, BRENDA; FRANCIS, RICK; imt@jones-mayer.com; WILSON, KIMBERLY; bjb@jones-mayer.com
Subject: RE: RFP No. 1158 for Mobile Data Computer

Margaret Chang,

Thanks for letting me know. We would still like a copy of the sent email so could you please send that to me?

Per the section 10 of the RFP, please use this email as notification that we do plan to protest the award to Datalux based on the initial information we have and documentation of staff report that was included in the City Council agenda that is available on the City of Costa Mesa City Website.

Initial details of the protest include but are not limited to:

Comparable pricing that is included in the staff report for Agenda item 14 sub-item 1.

- The total cost to outfit the Police and Fire Department from L-3 Mobile-Vision was $390,820.00.
- Based on the information provided in the staff report the Datalux price for Police only is $388,300.80. Add that number to our Fire number of $120,476.16 and the new total the City is expending is $508,776.96.
- Hence, using the costs that are being provided, the City of Costa Mesa is spending $117,976.96 above the L-3 Mobile-Vision response total. ($508,776.96 - $390,820.00 = $117,976.96)

Prior to the on site evaluation the week of October 14th, Kimberly Wilson, RFP facilitator informed Mike Turner verbally that the L-3 Mobile-Vision response was ranked the highest above all other submittals and because of that, we were given first choice of day and time to do our presentation. Once we receive the bid tabs identifying the rankings etc, we will be able to provide additional details.

Thank you very much for assisting us in this and we look forward to a quick resolution

Thank You and Best Regards,

Jeff

Mobile-Vision, Inc.
Jeff Reeve
Western Area Sales Director
C: 973-202-0485
http://www.l-3com.com/mv

From: CHANG, MARGARET [mailto:margaret.chang@costamesaca.gov]
Sent: Monday, November 04, 2013 3:17 PM
To: Reeve, Jeff @ PRG - MVI
Cc: GREEN, BRENDA; FRANCIS, RICK; Ivy M. Tsai; WILSON, KIMBERLY; 'Baron J. Bettenhausen'
Subject: FW: RFP No. 1158 for Mobile Data Computer

Hi Jeff,

I apologize, it looks like we misspelled Mike Turner's e-mail address when we tried to send the letter last Thursday. The e-mail did not bounce, so we were not aware that Mike had not received the e-mail. Please use the attached letter as your formal notification.

Regarding the documentation, our City Attorney's office is still reviewing your request.

Thank you for your understanding.

Margaret Chang
Management Analyst
City of Costa Mesa
714.754.5618| 714.754.5330 (fax)
margaret.chang@costamesaca.gov
Costa Mesa

From: CHALMERS, SYLVIA
Sent: Thursday, October 31, 2013 4:02 PM
To: 'mike.turner@l-3.com.com'
Cc: CHANG, MARGARET; FRANCIS, RICK
Subject: RFP No. 1158 for Mobile Data Computer

Please see the attached letter.
Thank you,

Sylvia Chalmers
Executive Secretary
CEO's Office, City of Costa Mesa
(714) 754-5099 Fax (714) 754-5330
sylvia.chalmers@costamesaca.gov

Page 3 is the end of Sylvia's signature line.

CITY OF COSTA MESA

77 FAIR DRIVE, P.O. BOX 1200, COSTA MESA, CA 92628-1200

CHIEF EXECUTIVE OFFICE

October 31, 2013

Mr. Mike Turner
Regional Sales Manager
L-3 Communications Mobile-Vision, Inc.
90 Fanny Road, Suite 2
Boonton, NJ 07005

SUBJECT: RFP NO. 1158 FOR MOBILE DATA COMPUTER

Dear Mr. Turner:

Thank you for your participation in the Mobile Data Computer (MDC) Request for Proposal (RFP) from the City of Costa Mesa. The City thoroughly reviews all viable proposals based on objective evaluation of the Proposal Pricing Sheet, Specifications Table, Scope of Work, and staffing and qualifications for each applicant. We received a great selection of responses to this RFP and after an extensive analysis of these variables and the results of the surveys received during the demonstration process, Datalux Corp. was chosen to provide MDCs for the Costa Mesa Police Department and L-3 Communications Mobile-Vision, Inc. was chosen to provide MDCs for the Costa Mesa Fire Department.

The City Council will take action on this item at the November 5, 2013 City Council Meeting. The staff report can be found on the City of Costa Mesa's website under City Council Agendas beginning the afternoon of Friday, November 1.

Once again, the City of Costa Mesa would like to thank you for your interest in providing services, and we encourage you to participate in future RFPs.

Sincerely,

RICHARD L. FRANCIS
Assistant CEO

CHANG, MARGARET

From: WILSON, KIMBERLY
Sent: Tuesday, November 05, 2013 5:55 PM
To: 'jeff.reeve@l-3com.com'; CHANG, MARGARET
Cc: GREEN, BRENDA; FRANCIS, RICK; imt@jones-mayer.com; bjb@jones-mayer.com
Subject: RE: RFP No. 1158 for Mobile Data Computer
Importance: High

Hello Jeff,

This is a follow-up message to the 4:20pm voicemail message I left on your office phone. As mentioned on the voicemail and the 2:47pm email Margaret Chang sent to you and Mike Turner today, Costa Mesa Consent Calendar Item 14 – Mobile Data Computer (MDC) Replacement was withdrawn from tonight's Council Agenda to give us time to adequately respond to the L-3 Comm dispute.

The City's takes L-3 Comm's concerns about the Evaluation and Selection processes very seriously. To properly address the concerns below related to the City's costs based on its recommendation to award a portion of the award for this RFP to Datalux, I will need a quote from L-3 Comm for Accidental Damage Coverage. A request was made for Accidental Damage Coverage for the Police Department units during negotiations, as an add-on to the base warranty quoted in the proposal. Since the Fire Department wasn't concerned about this additional coverage, L-3 was not asked to provide a quote for it.

However, since the total about requested by staff to be awarded to Datalux and cited by L-3 Comm below, includes this additional coverage, we'll need a quote from L-3 Comm, for the sake of making an apples-to-apples comparison.

Please also note that Datalux included in their original proposal a 5yr warranty (2 yrs more than the RFP request of 3 yrs). L-3 Comm offered a 4yr warranty upgrade at no additional cost to the City in it's October 28, 2013 revised quote for the (21) twenty-one Fire Department MDCs.

Please provide me with this additional quote 2pm, Thursday, November 7, 2013.

Thank you,

Kim Wilson
RFP Facilitator
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Phone 714-754-5062
Fax 714-754-5040
kimberly.wilson@costamesaca.gov

From: jeff.reeve@l-3com.com [mailto:jeff.reeve@l-3com.com]
Sent: Tuesday, November 05, 2013 9:36 AM
To: CHANG, MARGARET
Cc: GREEN, BRENDA; FRANCIS, RICK; imt@jones-mayer.com; WILSON, KIMBERLY; bjb@jones-mayer.com
Subject: RE: RFP No. 1158 for Mobile Data Computer

Margaret Chang,

Costa Mesa

From: jeff.reeve@l-3com.com [mailto:jeff.reeve@l-3com.com]
Sent: Wednesday, November 06, 2013 8:57 AM
To: WILSON, KIMBERLY; CHANG, MARGARET
Cc: GREEN, BRENDA; FRANCIS, RICK; imt@jones-mayer.com; bjb@jones-mayer.com
Subject: RE: RFP No. 1158 for Mobile Data Computer

Kim,

Thanks for getting back to me. At this point it looks like you are asking for a Best and Final Offer from us. This is somewhat concerning as we feel it may violate the intent and possible legalities of the RFP since an intent to award was already committed.

Through the limited documentation we have publicly obtained, we feel there may be additional factors for the award that could be biased or miss-interpreted for the said award.

Since the three finalist have been notified of a potential award, I am again requesting through the Freedom of Information Act all proposals submitted by Datalux including the original and modified or addendum follow up proposals including that were submitted after the RFP submittal date and any and all documents such as bid tabs, proposal rankings, evaluation scores, pricing etc. so that we may have a better understanding of the intent to ward.

Once we receive all of the documents, we will respond to you with a detailed list of items we feel may have incorrectly influenced the intent to award.

Please let me know when we can expect the documents.

Thank You

Jeff

L-3 Mobile-Vision, Inc.
Jeff Reeve
Western Area Sales Director
C: 973-202-0485
http://www.l-3com.com/mv

From: WILSON, KIMBERLY [mailto:kimberly.wilson@costamesaca.gov]
Sent: Tuesday, November 05, 2013 5:55 PM
To: Reeve, Jeff @ PRG - MVI; CHANG, MARGARET
Cc: GREEN, BRENDA; FRANCIS, RICK; imt@jones-mayer.com; bjb@jones-mayer.com
Subject: RE: RFP No. 1158 for Mobile Data Computer
Importance: High

Hello Jeff,

This is a follow-up message to the 4:20pm voicemail message I left on your office phone. As mentioned on the voicemail and the 2:47pm email Margaret Chang sent to you and Mike Turner today, Costa Mesa Consent Calendar Item 14 – Mobile Data Computer (MDC) Replacement was withdrawn from tonight's Council Agenda to give us time to adequately respond to the L-3 Comm dispute.

The City's takes L-3 Comm's concerns about the Evaluation and Selection processes very seriously. To properly address the concerns below related to the City's costs based on its recommendation to award a portion of the award for this RFP to Datalux, I will need a quote from L-3 Comm for Accidental Damage Coverage. A request was made for Accidental Damage Coverage for the Police Department units during negotiations, as an add-on to the base warranty quoted in the proposal. Since the Fire Department wasn't concerned about this additional coverage, L-3 was not asked to provide a quote for it.

However, since the total about requested by staff to be awarded to Datalux and cited by L-3 Comm below, includes this additional coverage, we'll need a quote from L-3 Comm, for the sake of making an apples-to-apples comparison.

CHANG, MARGARET

From: WILSON, KIMBERLY
Sent: Tuesday, November 12, 2013 5:33 PM
To: DUNIVENT, STEVE
Cc: CHANG, MARGARET; FRANCIS, RICK
Subject: FW: RESPONSE TO L-3 CLAIMS - RFP No. 1158 for Mobile Data Computer
Attachments: Response_l-3.pdf

FYI

Thanks,
~Kim Wilson
x5062

From: WILSON, KIMBERLY
Sent: Tuesday, November 12, 2013 5:33 PM
To: 'jeff.reeve@l-3com.com'
Cc: FRANCIS, RICK; 'Ivy M. Tsai'; DUARTE, TOM; GREEN, BRENDA
Subject: RESPONSE TO L-3 CLAIMS - RFP No. 1158 for Mobile Data Computer

Hello Jeff,

Please see my response to L-3's claims against the City of Costa Mesa's November 5, 2013 Recommendation to split the MDC award between Datalux and L-3 and the subsequent questions sent to the City via email.

Thank you,

Kim Wilson
RFP Facilitator
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Phone 714-754-5062
Fax 714-754-5040
kimberly.wilson@costamesaca.gov

From: jeff.reeve@l-3com.com [mailto:jeff.reeve@l-3com.com]
Sent: Monday, November 11, 2013 8:20 AM
To: WILSON, KIMBERLY
Subject: RFP No. 1158 for Mobile Data Computer

Kim,

Can you let me know when we can expect to get the documentation we requested? Our goal is to verify the information in a timely manner.

Thank You

CITY OF COSTA MESA
DEPARTMENT OF FINANCE
INTEROFFICE MEMORANDUM

TO: RICK FRANCIS, ASSISTANT CEO

FROM: KIM WILSON, RFP FACILITATOR

DATE: NOVEMBER 12, 2013

SUBJECT: RESPONSE TO JEFF REEVE'S EMAIL REGARDING RFP #1158 MOBILE DATA COMPUTER

This is a formal response to an email Mr. Jeff Reeve, Western Area Sales Director of L-3 Mobile-Visions, Inc. (L-3) sent to Margaret Chang, Management Analyst for the City of Costa Mesa on November 5, 2013, L-3's plan to protest the award of (64) units to Datalux based the enumerated items addressed below:

1. The total cost to outfit the Police and Fire Department from L-3 Mobile-Vision was $390,820.00.

CITY OF COSTA MESA RESPONSE: This total is for 75 MDCs as requested in the RFP, which does not include the 8% sales tax, nor does it include the cost to provide Accidental Damage Coverage for the sixty-four (64) Police Department units or the (10) ten additional units the City ultimately recommends for Council approval, bringing the total number of units to (85) eighty-five, rather than (75) seventy-five. Using L-3's unit pricing, revised cost of (85) eighty-five units plus sales tax is $483,602.40 without the Accidental Damage Insurance while Datalux' cost to provide (85) eighty-five units is $467,262.00 without the Accidental Damage.

2. Based on the information provided in the staff report the Datalux price for Police only is $388,300.80. Add that number to our Fire number of $120,476.16 and the new total the City is expending is $508,776.96.

3. Hence, using the costs that are being provided, the City of Costa Mesa is spending $117,976.96 above the L-3 Mobile-Vision response total. ($508,776.96 - $390,820.00 = $117,976.96)

CITY OF COSTA MESA RESPONSE: As stated above, included in this expenditure is (10) ten additional units, Accidental Damage Cover on (64) sixty-four units and mandatory sales tax which was not calculated in L-3's proposed $390,820 quote. L-3's calculations are correct in that having two vendors instead of one would result in a cost increase. In reviewing this, it was determined that the actual comparative cost to award all (85) eighty-five units including Accidental Damage and Sales Tax to (1) one vendor would be $520,082 (L-3) or $503,742.00 (Datalux).

Datalux' quote of $36,480 for Accidental Damage Coverage was added to both Datalux' and L-3's base prices to arrive at the aforementioned total cost of award to a single vendor. A request was made to L-3 to provide a quote for comparative purposes only and the request was refused.

4. Prior to the on site evaluation the week of October 14th, Kimberly Wilson, RFP facilitator informed Mike Turner verbally that the L-3 Mobile-Vision response was ranked the highest above all other submittals and because of that, we were given first choice of day and time to do our presentation.

CITY OF COSTA MESA RESPONSE: L-3 was in fact the highest ranked proposer during the proposal evaluations, which was only a portion of the evaluation process.

5. Thanks for getting back to me. At this point it looks like you are asking for a Best and Final Offer from us. This is somewhat concerning as we feel it may violate the intent and possible legalities of the RFP since an intent to award was already committed.

CITY OF COSTA MESA RESPONSE: The email dated Tuesday, November 5, 2013, from me (Kimberly Wilson, RFP Facilitator for the City of Costa Mesa) to Jeff Reeves, Western Area Sales Director for L-3 specifically requested a quote for Accidental Damage Coverage to properly address L-3's concern that the City of Costa Mesa based on its recommendation to award a portion of the award for this RFP to Datalux. The sole purpose for the request was for comparative purposes only, as stipulated in said email, as the price for this add-on item was included in the Datalux award amount and was not part of the original RFP, which means it wasn't in the price L-3 used to compare prices. The November 5th request was by no means a Best and Final Offer request.

6. Through the limited documentation we have publicly obtained, we feel there may be additional factors for the award that could be biased or miss-interpreted for the said award.

CITY OF COSTA MESA RESPONSE: The decision to split the award between Datalux and L-3 came down to overall departmental preference, which is well within the City's right to do, per Section 7 of the RFP (see full cite below), wherein the Police Department preferred Datalux' unit 4-to-1 over the L-3 unit and the Fire Department preferred the L-3 unit 4-to-1 over the Datalux unit (2 Police Department and 1 Fire Department personnel preferred CDCE's unit).

> This RFP does not commit the City to award a contract or to pay any costs incurred for any services. *The City, at its sole discretion, reserves the right to* accept or reject any or all proposals received as a result of this RFP, *to negotiate with any qualified source(s), or to cancel this RFP in part or in its entirety.* The City may waive any irregularity in any proposal. All proposals will become the property of the City of Costa Mesa, USA. If any proprietary information is contained in the proposal, it should be clearly identified. – City of Costa Mesa RFP 1158, Section 7 RFP Process for Submitting Proposals, subsection Conditions for Proposal Acceptance, page 10 last paragraph.

7. Since the three finalist have been notified of a potential award, I am again requesting through the Freedom of Information Act all proposals submitted by Datalux including the original and modified or addendum follow up proposals including that were submitted after the RFP submittal date and any and all documents such as bid tabs, proposal rankings, evaluation scores, pricing etc.

CITY OF COSTA MESA RESPONSE: (Request for Proposals)
The City of Costa Mesa is governed by the California Public Records Act rather than the Freedom of Information Act which applies to Federal Government entities. Pursuant to Government Code 6255 and Michaelis, Montanari & Johnson v. Superior Court, 38 Cal. App. 4th 1065 (2006), the proposals are exempt from production until after award of the contract.

This allows the City, on behalf of its residents and taxpayers, to complete the negotiations and finalize the contract without potential compromise of the process. To make proposals available for public review prior to this time would seriously impact the City's ability to negotiate a fair and cost effective proposed contract" and it's RFP Section 9.C, Evaluation of Proposals and Selection Process: Interviews, Reference Checks, Revised Proposals, Discussions which states the following:

> Recommendation for award is contingent upon the successful negation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Proposers unless an agreement is reached. p.12

Providing the proposal(s) to L-3 beforehand would potentially jeopardize the City's bargaining advantage, provide L-3 with an unfair advantage over Datatux and the other proposers, which is not in keeping with the City's practice of fair and aboveboard treatment of all proposers, thus tainting the integrity of the process.

8. Once we receive all of the documents, we will respond to you with a detailed list of items we feel may have incorrectly influenced the intent to award.

CITY OF COSTA MESA RESPONSE: If L-3 has a legitimate reason to believe the City's decision was incorrectly influenced in any manner other than the reasons mentioned in its November 5th email to City of Costa Mesa Management Analysis, Margaret Chang, it should be able to list those additional reasons, whereupon the City will respond.

The City of Costa Mesa takes the Evaluation and Selection process of its RFP Solicitations very seriously. Hence the integrity of each phase of these processes are guide our actions.

Distribution:

L-3 Mobile-Vision, Inc.
Counsel for the City of Costa Mesa
Costa Mesa City Clerk
File

From: jeff.reeve@l-3com.com [mailto:jeff.reeve@l-3com.com]
Sent: Wednesday, November 13, 2013 2:29 PM
To: WILSON, KIMBERLY
Cc: FRANCIS, RICK; imt@jones-mayer.com; DUARTE, TOM; GREEN, BRENDA
Subject: RESPONSE TO L-3 CLAIMS - RFP No. 1158 for Mobile Data Computer

Dear Kim Wilson,

Again, thank you for providing the information so that we could better understand and compare the proposals cost section in an "apple to apple" approach as you stated. We too agree and want to re-iterate that our only intention of looking into the award is based on a fair and competitive analysis of all the accurate facts.

With the information you provided in your response, we conclude that the L-3 Mobile Vision proposal cost numbers were incorrectly added up in a way that influenced our overall cost incorrectly higher to the you and the City. Now that we understand that and based on your offer to supply our cost with an additional charge of the "Accidental Coverage" that Datalux has provided after the fact, we are submitted a cost sheet that is accurate and totaled up correctly for the Costa Mesa Police Department Mobile Data Computers.

PLEASE NOTE THAT IN NO WAY WAS ANY OF OUR LINE ITEM PRICES MODIFIED FROM OUR ORIGINAL PROPOSAL.

Please use the attached as our submittal for a correct and accurate cost sheet for evaluations of RFP No. 1158 for Mobile Data Computer.

Highlights of the document are:

- ✓ Per unit cost was lowered to 64 as per information you provided; no per unit items dollar amounts were modified.
- ✓ Installation quantity of units was changed to 64 per your information; no per unit items dollar amounts were modified.
- ✓ Removal quantity of existing units was changed to 64 per your information; no per unit items dollar amounts were modified.

- ✓ Mounting hardware was removed; Troy Industries is providing mounting hardware.
- ✓ Tax was added to equipment only at 8% and included in the line item total.
- ✓ New Grand Total for equipment and Services for the L-3 solution is now $340,323.84*

*Please note that only the quantity numbers changed, not dollar amounts. This was done to provide a fair and equal comparison and adhere to the rules of the RFP.

With the correct numbers and information provided, the L-3 Mobile Vision solution for the Costa Mesa Police Department is $340,323.84 compared to the Datalux revised submittal to the Costa Mesa Police Department of $388,300.80, hence making **the L-3 Mobile-Vision cost response low bid by $47,976.96.** Again this is comparable that both quotes are for the same quantities, both have 5 year warranties and both now contain the Accidental Coverage.

If the City of Costa Mesa Police would like us to add in the mounting equipment our new total would be $40,000.00 + 8% tax of $3,200 additional ($340,323.84 + $43,200 = $383,523.84). Hence the L-3 Mobile-Vision price is still low bid compared to Datalux by $4,776.96.

In the attachment are two addendums for the accurate pricing. Addendum 1 is the total price without the mounts. This is being provided as information given to us on October 16 at the evaluation where the Police Department and James Michaels informed Mike Turner and myself that mounts should not be included in the final decision. The reason being that the Police Department was having the mounts made and supplied by Troy Products.

In case that information of the mounts not being included is incorrect in anyway, Addendum 2 is the total price with the mounts included. Again, as you can plainly see both total amounts are low bid to Datalux.

Finally:

The Evaluation Criteria section 8 page 11 state the following

A. ***Qualifications of Entity and Key Personnel***-------25%
B. ***Approach to Providing the Requested Scope of Services***-------10%
C. ***Price Proposal***-----50%
D. ***Innovative and/or Creative Approaches*** to providing the services that provide additional efficiencies or increased performance capabilities. ----15%

With the facts that L-3 Mobile-Vision was ranked the highest in the proposal response as confirmed by you, items A-25%, B-10% and D-15% above and L-3 Mobile-Vision's is low bid price item C-50% above, via price individually and overall and we providing a much superior product solutions with increased performance capabilities, we expect recommendation to City Council to be in favor of Mobile Data Computers to L-3 Mobile-Vision for both the Police and Fire Departments.

I look forward to your response and in doing so, please inform me of which addendum you would like us to provide a formal quote to as we did for the Fire Department award.

Thank You

Jeff

APPENDIX D ADDENDUM 1

PROPOSAL PRICING SHEET

RFP requests mounting equipment. This page cannot be considered.

Mobile Data Computers without Mounting Equipment
Costa Mesa Police Headquarters Facility for:

DESCRIPTION	QTY	UNIT PRICE		TOTAL COST
Mobile Data Computers Shipping Included	64 EA	$4,007.00	X	$256,448.00
Installation	64 EA	$440.00		$28,160.00
De-Installation existing MDC	64 EA	$105.00		$6,720.00
Warranty & Maintenance for three (4) years	64 EA	Included		Included N/C
Advanced Replacement (Accidental Coverage / Includes Year 5 Warranty	64EA	$445.00		$28,480.00
		Tax*		$20,515.84
			TOTAL PROPOSAL COST	$340,323.84

NOTE* Tax is based on equipment only

APPENDIX D ADDENDUM 2

PROPOSAL PRICING SHEET

Mobile Data Computers with Mounting Equipment
Costa Mesa Police Headquarters Facility for:

DESCRIPTION	QTY	UNIT PRICE		TOTAL COST
Mobile Data Computers Shipping Included	64 EA	$4,007.00	X	$256,448.00
* Installation	64 EA	$440.00		$28,160.00
De-Installation existing MDC	64 EA	$105.00		$6,720.00
Mounting Equipment	64 EA	$625.00*		$40,000.00
Warranty & Maintenance for three (4) years	64 EA	Included		Included N/C
Advanced Replacement (Accidental Coverage / Includes Year 5 Warranty	64EA	$445.00		$28,480.00
		Tax*		$23,715.84
			TOTAL PROPOSAL COST	**$383,523.84**

original proposal says $440 for crown victorias, $550 for all other vehicles. Total= $31,460

NOTE* Tax is based on equipment only

CITY OF COSTA MESA

77 FAIR DRIVE, P.O. BOX 1200, COSTA MESA, CA 92628-1200

November 13, 2013

Jeff Reeve
Western Area Sales Director
L-3 Communications Mobile-Vision, Inc.
90 Fanny Road, Suite 2
Boonton, NJ 07005

Subject: RFP No. 1158 for Mobile Data Computer

Dear Mr. Reeve,

On November 5, 2013, L3 Mobile Vision, Inc. notified City staff of an intention to protest the award to Datalux Corporation for the purchase of MDCs for the Police Department, pointing the purchase cost of $508,776.96 for both police and fire, a $117,976.96 cost increase over L3's initial quote of $390,820.00 for both. This inquiry led to a thorough re-evaluation of information for the actual costs, evaluation scores (proposal and demo) and comments.

Upon thorough review, two things were discovered: 1) the City would actually realize a cost savings by making the award to one vendor rather than two and 2) the disparage between the two units initially selected for the Police and Fire Departments was related to the aftermarket keyboard that can actually be swapped out. Now that the keyboard issue has been resolved both departments are onboard with a single vendor selection. Hence, the City's recommendation is to award the purchase of (85) MDC units to Datalux.

The City Council will take action on this item at the November 19, 2013 City Council Meeting. The staff report can be found on the City of Costa Mesa's website under City Council Agendas beginning the afternoon of Friday, November 15, 2013

Once again, the City of Costa Mesa would like to thank you for your interest in providing services, and we encourage you to participate in future RFPs.

Sincerely,

Kimberly Wilson
RFP Facilitator
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

From: WILSON, KIMBERLY
Sent: Thursday, November 14, 2013 4:45 PM
To: 'jeff.reeve@l-3com.com'
Cc: FRANCIS, RICK; GREEN, BRENDA
Subject: 4th RESPONSE TO L-3 CLAIMS - RFP No. 1158 for Mobile Data Computer

Hello Jeff,

Please see my attached response to the email you sent me this morning.

Thank you,

Kim Wilson
RFP Facilitator
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Phone 714-754-5062
Fax 714-754-5040
kimberly.wilson@costamesaca.gov

CITY OF COSTA MESA

77 FAIR DRIVE, P.O. BOX 1200, COSTA MESA, CA 92628-1200

November 14, 2013

Jeff Reeve
Western Area Sales Director
L-3 Communications Mobile-Vision, Inc.
90 Fanny Road, Suite 2
Boonton, NJ 07005

Subject: RFP No. 1158 for Mobile Data Computer

Dear Mr. Reeve,

The purchase of the MDCs is an integral part of a major IT project with very tight timelines. Avoiding further delays is of paramount concern to the City and we thank you for your concern as well. As such, the City plans to move forward with its recommendation to Council for the award of (85) eighty-five MDCs to Datalux as calendarized and referenced in the correspondence sent to L-3 Wednesday, November 13, 2013 at 4:34pm.

The questions highlighted in your 8:17am email to me, which is attached here for reference, are the kinds of questions that are routinely addressed during the Debriefing Session. Each of the (8) eight unsuccessful proposers, including L-3 Mobile-Visions, Inc. will be contacted at the end of next week to schedule private debriefing sessions.

Debriefing is an essential part of the Government Contracting process in that it affords an explanation of the evaluation process, an assessment of your proposal in relation to the evaluation criteria, a general understanding of the basis of the award decision, and the rationale for the City's decision. In the past, this process has helped to strengthen and enhance proposer's chances of winning future contracts.

Once again, the City of Costa Mesa would like to thank you for your interest in providing services, and we encourage you to participate in future Request for Proposals.

Sincerely,
Kimberly Wilson
Kimberly Wilson
RFP Facilitator
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

From: jeff.reeve@l-3com.com
Sent: Thursday, November 14, 2013 8:15 AM
To: WILSON, KIMBERLY
Cc: FRANCIS, RICK; GREEN, BRENDA
Subject: RE: RESPONSE TO L-3 CLAIMS - RFP No. 1158 for Mobile Data Computer

Kimberly,

Thank you for getting back to me on this. Of course we are disappointed of the decision.

Our intent of gathering the information was only to verify the accuracy of the costs that the final decision is based on. Now your letter brings up something to do with a keyboard that brings up questions as this is the first time we have been made aware of it.

At this point instead of continued emails back and forth that seem to warrant miss-communication, I would like to schedule an in person meeting either with you or with your supervisor before the council meeting on the 19th to simply understand how this award was finalized upon.

I do know this project is very important to the City in many ways and in no way do we want to further delay it. A meeting before the 19th would extinguish that delay.

I am local to Costa Mesa and can be at your office within 30 minutes.

My available times are:

Any time this morning, before 11

This afternoon after 3:30

Anytime Friday

Anytime Monday

Anytime Tuesday

I look forward to hear back from you soon to set up a time.

Thank You

Jeff

Jeff Reeve

Western Area Sales Director

C: 973-202-0485

http://www.l-3com.com/mv

From: WILSON, KIMBERLY [mailto:kimberly.wilson@costamesaca.gov]
Sent: Wednesday, November 13, 2013 4:34 PM
To: Reeve, Jeff @ PRG - MVI
Cc: FRANCIS, RICK; GREEN, BRENDA
Subject: RE: RESPONSE TO L-3 CLAIMS - RFP No. 1158 for Mobile Data Computer

Hello Jeff,

Your response has been received. As mentioned in number 5 of my response to L-3's protest, the request made on Tuesday, November 5th was for an Accidental Damages quote on the (64) police units, not a "Best and Final" offer. Hence, the only new price being considered, to ensure the integrity of the RFP process, is the Accidental Damages quote. Please see the attached letter for the City's revised recommendation to Council.

Thank you,

Kim Wilson

RFP Facilitator

City of Costa Mesa

77 Fair Drive

Costa Mesa, CA 92626

Phone 714-754-5062

Fax 714-754-5040

kimberly.wilson@costamesaca.gov

From: jeff.reeve@l-3com.com [mailto:jeff.reeve@l-3com.com]
Sent: Wednesday, November 13, 2013 2:29 PM
To: WILSON, KIMBERLY
Cc: FRANCIS, RICK; imt@jones-mayer.com; DUARTE, TOM; GREEN, BRENDA
Subject: RESPONSE TO L-3 CLAIMS - RFP No. 1158 for Mobile Data Computer

Dear Kim Wilson,

Again, thank you for providing the information so that we could better understand and compare the proposals cost section in an "apple to apple" approach as you stated. We too agree and want to re-iterate that our only intention of looking into the award is based on a fair and competitive analysis of all the accurate facts.

With the information you provided in your response, we conclude that the L-3 Mobile Vision proposal cost numbers were incorrectly added up in a way that influenced our overall cost incorrectly higher to the you and the City. Now that we understand that and based on your offer to supply our cost with an additional charge of the "Accidental Coverage" that Datalux has provided after the fact, we are submitted a cost sheet that is accurate and totaled up correctly for the Costa Mesa Police Department Mobile Data Computers.

PLEASE NOTE THAT IN NO WAY WAS ANY OF OUR LINE ITEM PRICES MODIFIED FROM OUR ORIGINAL PROPOSAL.

Please use the attached as our submittal for a correct and accurate cost sheet for evaluations of RFP No. 1158 for Mobile Data Computer.

Highlights of the document are:

ü Per unit cost was lowered to 64 as per information you provided; no per unit items dollar amounts were modified.

ü Installation quantity of units was changed to 64 per your information; no per unit items dollar amounts were modified.

ü Removal quantity of existing units was changed to 64 per your information; no per unit items dollar amounts were modified.

ü Mounting hardware was removed; Troy Industries is providing mounting hardware.

ü Tax was added to equipment only at 8% and included in the line item total.

ü New Grand Total for equipment and Services for the L-3 solution is now $340,323.84*

*Please note that only the quantity numbers changed, not dollar amounts. This was done to provide a fair and equal comparison and adhere to the rules of the RFP.

With the correct numbers and information provided, the L-3 Mobile Vision solution for the Costa Mesa Police Department is $340,323.84 compared to the Datalux revised submittal to the Costa Mesa Police Department of $388,300.80, hence making the L-3 Mobile-Vision cost response low bid by $47,976.96. Again this is comparable that both quotes are for the same quantities, both have 5 year warranties and both now contain the Accidental Coverage.

If the City of Costa Mesa Police would like us to add in the mounting equipment our new total would be $40,000.00 + 8% tax of $3,200 additional ($340,323.84 + $43,200 = $383,523.84). Hence the L-3 Mobile-Vision price is still low bid compared to Datalux by $4,776.96.

In the attachment are two addendums for the accurate pricing. Addendum 1 is the total price without the mounts. This is being provided as information given to us on October 16 at the evaluation where the Police Department and James Michaels informed Mike Turner and myself that mounts should not be included in the final decision. The reason being that the Police Department was having the mounts made and supplied by Troy Products.

In case that information of the mounts not being included is incorrect in anyway, Addendum 2 is the total price with the mounts included. Again, as you can plainly see both total amounts are low bid to Datalux.

Finally:

The Evaluation Criteria section 8 page 11 state the following

A. Qualifications of Entity and Key Personnel-------25%

B. Approach to Providing the Requested Scope of Services-------10%

C. Price Proposal-----50%

D. Innovative and/or Creative Approaches to providing the services that provide additional efficiencies or increased performance capabilities. ----15%

With the facts that L-3 Mobile-Vision was ranked the highest in the proposal response as confirmed by you, items A-25%, B-10% and D-15% above and L-3 Mobile-Vision's is low bid price item C-50% above, via price individually and overall and we providing a much superior product solutions with increased performance capabilities, we expect recommendation to City Council to be in favor of Mobile Data Computers to L-3 Mobile-Vision for both the Police and Fire Departments.

I look forward to your response and in doing so, please inform me of which addendum you would like us to provide a formal quote to as we did for the Fire Department award.

Thank You

Jeff

Jeff Reeve

Western Area Sales Director

C: 973-202-0485

http://www.l-3com.com/mv

GREEN, BRENDA

From: FRANCIS, RICK
Sent: Monday, November 18, 2013 4:59 PM
To: CITY COUNCIL; 'Gary Monahan'; SANDRA GENIS
Cc: HATCH, THOMAS; GREEN, BRENDA; DUARTE, TOM
Subject: MDC award protest

Dear Members of the City Council:

The Mayor Pro-Tem asked that I provide additional information about the evaluation panel and the process we engaged in to select the ultimate contract awardee. Here is my response to him:

Hello Steve – we had two levels of panels. The first was the end user panel. We convened this panel to ensure that line staff that will ultimately use the equipment the most, had an opportunity to look at the functionality of the equipment in a real life environment. During live demos of the products, 13 police and fire personnel rated the equipment. Several other fire personnel saw the equipment over the weekend, without the benefit of the live demo. Some of them submitted ratings without the benefit of having the live demo.

Next, we did a management panel that consisted of Les Gogerty, Mike James, Fred Seguin/Bill Kershaw and Adam Silva. Below are the steps in the process that support our current recommendation. It is also important to emphasize that in a RFP process that is not Public Works related, the City does NOT have to select the lowest price proposal. All of the issues L-3 raised, from our perspective, are based on their belief that cost should have been the overriding factor in the award of the contract.

General Info

- MDC replacement is a portion of the greater IT project, including server infrastructure upgrade, broadband upgrade, desk top computer replacement and the CAD/RMS replacement
- Everything is interrelated and dependent upon one another for the overall project to be completed successfully and on time
- More importantly, our CAD/RMS project, which requires the new MDCs to be installed within an established timeline, is part of a joint effort with Newport Beach, which is also implementing the same CAD/RMS (SunGard) – Each agency is currently realizing a cost savings associated with implementation because instead of having to fly technicians from back east for both agencies at separate times, they work on both systems each time they come out, thus reducing the cost of multiple, duplicate flight and lodging costs
- Any further delay with the implementation of MDCs will negatively impact our current implementation schedule and could cause the City to incur extra costs

The Process

- Very tight timelines with little room for error

- RFP extended to be fair to everyone
- Staff narrowed vendors down to 3 based on the highest ranked proposal evaluation scores
- Demos conducted and MDC units from the top 3 vendors were rated and personnel were asked which unit they preferred
- As staff reviewed rater's responses, we determined some raters were not in attendance for the demos and subsequently, they made decisions/comments based upon inaccurate information and assumptions
- The situation resulting in personnel rating MDCs without attending demos was an attempt to be more inclusive by allowing personnel, not available for the demo to provide input
- While it's true that PD rated L-3 slightly higher than Datalux by 1.07%, when asked which unit they preferred, PD chose Datalux over L-3 4-to-1. Fire rated L3 higher
- Sentiment at the time was this, as long as PD and Fire could choose their own, each was content with the results and moved forward with initial recommendation listed in the original agenda report
- During negotiation process with Datalux, PD decided it would benefit greatly by adding "accidental protection" to the purchase price. Fire personnel did not have the same concern, so there was no need to request a quote for this insurance from L-3 at the time of the initial staff recommendation.
- L-3 notifies City of protest and the report must be pulled from agenda, impacting the CAD/RMS project timeline
- As staff is looking into L-3's concerns, we determined the reason Fire selected L-3 originally was because, Fire personnel who did not attend demo but rated the MDCs, liked L-3's keyboard better – staff determined Datalux could be outfitted with the same keyboard Fire personnel liked. Now that Fire personnel realizes the keyboard is no longer an issue and the actual cost to the City is less by purchasing all Datalux MDCs, Fire concurs that we purchase all required MDCs from Datalux
- Additionally, it is more cost effective to purchase all MDCs from Datalux than from L-3
- Datalux has a 5-year warranty – L-3 has 4-year warranty
- Of significant concern to staff is that based upon the unexpected and unwarranted adversarial interaction by employees of L-3, we are not confident of this vendor's capability to deliver this project on schedule
- Bottom line – MDC purchase and implementation in accordance with established timelines is

absolutely necessary to prevent delay in the overall IT project implementation and further cost increases incurred by the City

Please be advised that we received yet another protest this afternoon from CDCE (the third place finisher). They did not submit their protest within 48 hours of the award notification in adherence to our RFP protocols, so this protest is not valid. However, as a courtesy, we are responding to the issues they raised concerning pricing and how many of their MDC units they could bring to the demo session.

Thank you,

Rick Francis
Assistant Chief Executive Officer
City of Costa Mesa
(714) 754-5099 | (714) 754-5330 (fax)
rick.francis@costamesaca.gov

Costa Mesa

November 18, 2013

Richard L. Francis
Assistant CEO
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Mr. Francis,

This letter is to inform the City of Costa Mesa of CDCE's intent to formally protest the results of RFP No. 1158 for Mobile Data Computers. CDCE is protesting on the following grounds:

1) CDCE's bid is $114,605 less than the DataLux solution and affords a similar solution with the same support and warranties
2) CDCE was not allowed to show, discuss or demo the 2nd computer that we included in our original RFP response. CDCE was not informed of this until minutes before we were walking into the presentation to the City

CDCE received notice from the City on November 13th, 2013 of the intent to award RFP No. 1158 to DataLux. Upon review the bid summary attached to the City Council Agenda Report for the November 19th City Council meeting, the solution quoted from CDCE was $114,605 lower in cost compared to the DataLux solution. It also appears that DataLux was allowed to add a "5 year accidental coverage" warranty to their purposed solution and was not part of their original cost to the City. This option which was only added to the 64 police units added an additional cost of $570 per unit. That same warranty was included in CDCE original cost of each computer and would have covered the units purchased by the Fire Department as well. That $570 warranty cost extended over the 21 units being purchased by Fire represents another $11,970 cost savings to the City that the CDCE solution provides.

On October 4th CDCE was notified by the City that our bid had been selected as one of the finalists for RFP No. 1158. Our bid included 2 different size and styles of Mobile Data Computers in order to provide options for the various department and vehicle types. We were instructed by Ms. Wilson to bring 2 demos of each of the computers in our response to a presentation that was scheduled for October 17th at 10am. Upon CDCE's arrival to this meeting we were told 10 minutes before the meeting started that we would only be allowed to show, discuss and demo one of the computers we included in our bid because presenting two computers gave CDCE an unfair advantage over the other 2 finalists. CDCE has 15 years' experience in supplying Mobile Data Computer solutions and from this experience we understand that within the same department as well as across multiple departments there is not a "one computer fits all"

solution. During CDCE's presentation to the City multiple people from the city, especially the end users, expressed that the computer we were allowed to show and demo was a little too big, especially for the newer police vehicles. This was the reason we included a smaller more compact computer in our response but we were not allowed to show this unit or leave it behind for the other City users to see and consider after our presentation was over.

CDCE feels that our inability to show the solution we purposed at the pricing we offered affected the outcome of this bid in an unfair advantage against the CDCE solution.

Included in this notice is a price breakdown comparing our proposed solution to the DataLux solution demonstrating the cost savings to the city. Feel free to contact me below with any questions you may have on this matter.

Sincerely,

Brian Solomon

Brian Solomon
Vice President and Co-Founder
714-282-8881 x225
BSolomon@cdce.com

Datalux Solution

Police			
Description	QTY	Unit Price	Total Cost
Mobile Data Computer	64	$ 5,090.00	$ 325,760.00
Mounting Hardware	64	Included	Included
Warranty & Mainteance for 3 Years	64	Included	Included
Accidental Damage Coverage	64	$ 570.00	$ 36,480.00
Sales Tax (8%)			$ 26,060.80
Total Proposal			**$ 388,300.80**

Fire			
Description	QTY	Unit Price	Total Cost
Mobile Data Computer	21	$ 4,662.00	$ 97,902.00
Mounting Hardware	21	$ 650.00	$ 13,650.00
Warranty & Mainteance for 3 Years	21	Included	Included
Sales Tax (8%)			$ 8,924.16
Total Proposal			**$ 120,476.16**

Combinded Total $ 508,776.96

Fire would have to pay an additonal $11,970 for 5 year accidental coverage with the DataLux solution

CDCE - Getac Solution

Police			
Description	QTY	Unit Price	Total Cost
Mobile Data Computer	64	$ 4,173.00	$ 267,072.00
Mounting Hardware	64	Included	Included
Warranty & Mainteance for 3 Years	64	Included	Included
Accidental Damage Coverage	64	Included	Included
Sales Tax (8%)			$ 21,365.76
Total Proposal			**$ 288,437.76**

Fire			
Description	QTY	Unit Price	Total Cost
Mobile Data Computer	21	$ 4,662.00	$ 97,902.00
Mounting Hardware	21	Included	Included
Warranty & Mainteance for 3 Years	21	Included	Included
Accidental Damage Coverage	**21**	**Included**	**Included**
Sales Tax (8%)			$ 7,832.16
Total Proposal			**$ 105,734.16**

Combinded Total $ 394,171.92

The CDCE solution is $114,605.04 less

CITY OF COSTA MESA
MEMORANDUM

TO: BRIAN L. SOLOMON, VP & CO-FOUNDER, CDCE, Inc.

FROM: KIM WILSON, RFP FACILITATOR

DATE: NOVEMBER 18, 2013

SUBJECT: RESPONSE TO CDCE, INC.'S PROTEST OF STAFF DECISION REGARDING THE CITY'S RFP #1158 MOBILE DATA COMPUTER

This is a formal response to CDCE, Inc.'s (CDCE) Protest of the results of RFP No. 1158 for Mobile Data Computers, sent to Rick Francis, Assistant CEO for the City of Costa Mesa via email on November 18, 2013 at 12:40pm. Mr. Brian Solomon, Vice President and Co-Founder of CDCE sent the email to Rick Francis and copied, Margaret Chang, Management Analyst for the City of Costa Mesa, Michael Contois of CDCE and myself, Kimberly Wilson, RFP Facilitator for the City of Costa Mesa.

CDCE's protest of the City of Costa Mesa staff recommendation to award (85) eighty-five Mobile Data Computers (MDC) to Datalux is based on the enumerated items addressed below:

CLAIM:

1) CDCE's bid is $114,605 less than the Datalux solution and affords a similar solution with the same support and warranties.

CITY OF COSTA MESA RESPONSE: This solicitation was a RFP, not a BID; hence the City is not obligated to award the contract for this purchase to the lowest bidder. This position is supported in Sections 8 and 9 of the RFP and those sections are cited below:

> **Section 8 of the RFP**: The City's evaluation and selection process will be conducted in accordance with Chapter V, Article 2 of the City's Municipal Code (Code). In accordance with the Code, the lowest responsible bidder will be determined based on evaluation of qualitative factors in addition to price.
>
> **Section 9 of the RFP**: In accordance with its Municipal Code, the City will adhere to the following procedures in evaluating proposals. An Evaluation/Selection Committee (Committee), which may include members of the City's staff and possibly one or more outside experts, will screen and review all proposals according to the weighted criteria set forth above. While price is one basic factor for award, it is not the sole consideration.

Please note that while CDCE was one of the top (3) three finalists, neither of the (2) two units proposed and demonstrated were preferred over the Datalux or L-3 units. The total number of police officers and firemen who preferred CDCE units over Datalux and L-3 units was 3 out of 13 and CDCE was the lowest ranked out of the top (3) three finalists.

CLAIM:

2) CDCE was not allowed to show, discuss or demo the second computer that we included in our original RFP response. CDCE was not informed of this until minutes before we were walking into the presentation to the City.

CITY OF COSTA MESA RESPONSE: This is actually a false claim in that CDCE was instructed to choose (1) one of the (2) two units it proposed, to demo so that CDCE would not have an unfair advantage over the other (2) two finalist who were demonstrating (1) one unit. CDCE not only neglected to adhere to this request, which was made prior to the demonstration, CDCE in fact demonstrated and talked about (3) three units, the (2) two proposed units and a tablet that had only been on the market for a week or so prior to the demonstration and was not an option for review.

The City of Costa Mesa takes the Evaluation and Selection process of its RFP Solicitations very seriously. Hence the integrity of each phase of these processes guide our actions.

The City sincerely appreciates CDCE's decision to respond to this solicitation.

Distribution:

Rick Francis, Assistant CEO, City of Costa Mesa
Mike Contois, CDCE Mobile-Vision, Inc.
Counsel for the City of Costa Mesa
Costa Mesa City Clerk
File

GREEN, BRENDA

From: RODELIUS, SHARON
Sent: Tuesday, November 19, 2013 9:45 AM
To: DEPARTMENT DIRECTORS
Subject: Additional Warrant Information 11-19-13

Date	Remittance to:	Payment Amount	Explanation of payment
11/1/13	Bon Terra Consulting	$1,652.60	What is this for? Engineering Fairview Park Wetland Presentation This fee for BonTerra Consulting was for the presentation to the Fairview Park Citizens Advisory Committee (FPCAC) on October 2, 2013, that reviewed the archeological resources at the park. The fee includes compensation for the time spent to research, prepare the PowerPoint presentation, and presenting the information.
11/1/13	Costa Mesa Police Explorer Post #198	$1,000.00	What is this for? Police Dept. This is a refund for Police Explorer Post from OC Fair Service.
11/1/13	HML Tennis	$571.18	What is this for? Recreation Dept. Check returned. HML paid with credit card. This is a voided expense. Tennis Tournament Equipment Rental
11/1/13	Soukup & Schiff	$472.50	What is this for? Planning-Development For September 10, 2013 Study Session. Lydia Lim of Soukup & Schieff, provided some information prior to the meeting and was available at the meeting via conference call for any legal questions related to the upcoming ordinance. Small Lot Subdivision Study
11/8/13	Ann Rodd	$60.96	What is this for? Police Dept. Mileage reimbursement to Critical incident stress management workshops.
11/8/13	HdL Coren & Cone	$695.00	What is this for? Finance Dept. HDL Companies 12-13 CAFR Statistical Report.

Sharon Rodelius
Executive Secretary to the CEO's Office
CITY OF COSTA MESA
(714) 754-5107 Fax: (714) 754-5330
sharon.rodelius@costamesaca.gov

Reading Folder

2a: Claims Received
Costa Mesa Police Association

1773 Oriole Drive
Costa Mesa, CA 92626

(714) 697-7239
colinkmccarthy@yahoo.com

VIA ELECTRONIC MAIL

November 19, 2013

Honorable James Righeimer
Honorable Stephen Mensinger
Honorable Wendy Leece
Honorable Gary Monahan
Honorable Sandra Genis

Re: City Council Meeting 11/19/13- Closed Session Item No. 4

Mayor Righeimer and Councilmembers,

As a Costa Mesa resident, registered voter and taxpayer I am writing to provide public comment regarding Closed Session Item No. 4 for the Costa Mesa City Council meeting of November 19, 2013. That matter relates to the claim by the Costa Mesa Police Officers Association ("POA") for payment by the City of legal expenses related to a civil lawsuit filed by Mayor Righeimer and Mayor Pro Tem Mensinger ("the Action"). I request that this correspondence become part of the official record related to this item.

For the reasons set forth below, I am requesting that the voting members for this item ***reject*** the POA's request for reimbursement of defense costs in this matter.

1. The POA is Not a Public Entity and Therefore the City Owes No Duty to Provide a Defense in an Underlying Civil Action

It is critical to note that POA is not a public entity. The POA is incorporated and licensed by the California Department of Corporations (No. C0732862.) They have a registered agent for service of process. They are not, nor do they want to be, an agent or body of the City. Logically, this makes sense. This separation is necessary to effectively negotiate their employment contracts. Any alteration in that *status quo* would constitute a sea change in the city/public safety relationship hierarchy.

The POA cannot have its cake and eat it too. If it is a public entity, and truly an arm of the City, it must open its books and records to public scrutiny. Its contract

negotiations will become public and all correspondence, emails, letters, etc. regarding its negotiation of its contracts with the City will become public. It would be required to respond to FOIA requests. I highly doubt the POA would agree to this, nor would such an arrangement be in the best interests of our sworn Police officers.

2. The POA's Actions are Outside the Course and Scope of any Law Enforcement Duty and Therefore no Defense is Warranted

Another argument advanced by the POA is that the City must defend and indemnify the POA because its employees were acting under the course and scope of its law enforcement duties at the time of the allegations alleged in the Action. This is absurd. Harassing, surveiling, and setting up elected officials to gain an advantage in a pending City election is not within the course and scope of any legitimate law enforcement activity. This is pure criminality! The Action is at the pleading stage where all allegations contained in the Complaint are admitted as true. If the Councilmembers allegations are correct, this criminal conduct bears no rational relationship to any legitimate law enforcement purpose. By analogy, the California Court of Appeal recently ruled that the City of Bell was not legally obligated to pay defense costs related to civil and criminal allegations asserted against its former City Manager, Robert Rizzo. It simply did not pass the smell test. The same rationale applies here. *City of Bell v. Superior Court* (Rizzo), B247362.

Likewise, if the City agrees to defend the POA, would it also have an obligation to pay the legal fees of Councilmembers Righeimer and Mensinger? They are agents of the City who were acting in the course and scope of their employment when the criminality alleged in the Action occurred. Would the same logic apply to them as applies to the POA? By accepting the POA's argument, is the City opening the door to further exposure from the Plaintiffs in the Action? The taxpayers cannot and should not be burdened with this matter.

3. Where is the POA's Insurance Policy?

Prior to demanding a defense from the City, the POA should have tendered defense of the Action to its insurance carrier. However, it appears that the POA does not carry any insurance. Why not? Has the City Attorney offered an opinion on whether insurance is required and sought an explanation for why there is no insurance? A cursory review of the Department of Corporations records illustrates that the POA is listing 99 Fair Drive (Police Department) as its physical address. If the POA is conducting business on City property aren't they required to have adequate insurance naming the City as an additional insured? What happens if

there is an incident involving the POA at the Police Department? Are the taxpayers liable? Without insurance, the POA's actions subject the City and its residents to unnecessary legal exposure. The City requires I obtain a $1 million insurance policy before I schedule a simple block party on my street. Why isn't one required for something as significant as the POA using our City property to conducts its business?

What happens if it is discovered that some of the alleged criminality in the Action took place on City property. Could Councilmembers Righeimer and Mensinger ultimately recover from the City? Is the City liable? Can the POA indemnify the City for any potential loss in this lawsuit if it doesn't have insurance. Has a demand for indemnity to the POA been made? Why not?

The City cannot begin to analyze whether it owes the POA a duty to defend them in the Action until the issues regarding insurance and indemnity in the Action are resolved. This issue also opens the door to larger questions regarding liability for our bargaining units which utilize City property or asserts. How are the residents and taxpayers protected? If the Costa Mesa Fire Department is cooking hot dogs at a park picnic and a child is burned, are the taxpayers potentially liable? If the Council agrees to a legal defense in this case, we might be.

4. Wouldn't Payment of the POA's Defense Costs Constitute an Illegal Gift of Public Funds and a Violation of Nepotism Rules

The POA's President and registered agent for process is Sergeant Ed Everett. However, it has been disclosed that the POA is being represented by Sgt. Everett's brother. Now, the POA has the audacity to demand that the City pay the POA's brother to defend the POA in the Action. This payment request would constitute an illegal gift of public funds as the City is under no legal obligation to honor this outlandish request. On top of this, this entire request reeks of nepotism. How can the City honestly use taxpayer dollars to pay its Police Union's brother to defend an underlying lawsuit?

5. Does Lackie, Dammeier's Employment of Costa Mesa Police Officer Damien Stafford Create a Conflict of Interest and Implicate the City in the Action?

The POA, through Sergeant Everett, contends that its relationship with the Lackie, Dammeier firm is limited to contract negotiation and legal counsel. That is not true. Costa Mesa Police officer Damien Stafford was an employee of Lackie Dammeier. Officer Stafford was a Board member of the POA, and according to the Lackie, Dammeier website:

> ***"In 2007, Damian was selected as the lead negotiator where he worked closely with Dieter Dammeier for the first time. With Dieter's supervision, the negotiating team successfully reached an agreement with the city establishing his agency as one of the highest paid police departments in Southern California."***

Stafford was moonlighting for the firm while under employment with CMPD. Is this arrangement legal? Did the City Manager or Police Chief give Officer Stafford permission to hold two such conflicted positions? Are other current CMPD officers so employed?

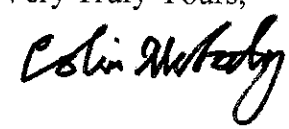
It is interesting to note that Officer Stafford was quietly removed from the Lackie, Dammeier website when allegations regarding the firm's criminality first arose. What is the relationship with Officer Stafford and this law firm? Was he performing firm work during work time? Does his conflict of interest call into question the legality of the current City/Police employment agreement? Was this relationship properly disclosed to the City, the Council and its residents before the latest contract was entered into? Would this information have altered that critical vote?

The City should not become embroiled in a separate civil action and District Attorney investigation into Lackie, Dammeier and its agents. No good can come of it! It certainly should not use precious taxpayer dollars to defend a private organization from allegations of criminality so divorced from any law enforcement purpose. This issue raises many more questions than it answers and our Council should be adequately armed with the information before voting on such a significant issue.

I strongly encourage the City Council to reject the Costa Mesa Police Officer Association's request to pay legal fees in defense of Councilmember Righeimer and Mensinger's lawsuit.

Thank you for your consideration.

Very Truly Yours,



Colin K. McCarthy

cc: City Attorney

{1400 16942}

Council Members:

Today you will be tasked with a decision that has the potential to be a tipping point within our city that was created by a Police Officers Association that has gone unfettered with a pattern of phenomenally poor judgment and behavior, a euphemism to be sure.

The unmitigated pattern of intimidation against our City Council and those who dare to speak against the POA has gone on far too long. This pattern began with the unprofessional negative attacks on a potential city councilmember being towed behind a truck through our city, the CMPOA's brazen ownership of Righeimer.com, bricks being thrown through the windows of Councilman Monahan's restaurant, the vandalizing of Councilman Mensinger's car in front of his house, the false DUI report on Councilman Righeimer, the attempted maligning of Councilmembers Mensinger and Monahan with a questionable woman, which led to the false DUI report against Righeimer, and the illegal use of a GPS tracking device on Councilman Mensinger's car. The citizens of Costa Mesa can't wait to see what is uncovered next by the FBI and the OC District Attorney.

While some of you may wish to debate the details of what can and can't be proven in a court, what you cannot debate are the optics and the pattern. You also can't debate the poor judgment in using sexist statements in publications by two of our councilmembers who seem more than willing to play "attack the victim" in what "appears" to be a return on investment for tens of thousands of dollars in political contributions. Again, you may wish to debate the details, but you cannot debate the optics.

The request by the CMPOA to have the citizens of Costa Mesa cover the legal fees for a mess they got themselves into is going to be a hornet's nest of epic proportion with untold fallout. This request is tantamount to a bank robber asking the bank he robbed to pay for his legal defense for robbing them in the first place.

I would encourage each and every one of you to give very careful consideration to your decisions on this subject as things are potentially about to leap out of the frying pan and into the fire.

A very concerned citizen,
Kent Mora

OCT 14 '13 AM 9:17
Emailed

WSH&B WOOD SMITH HENNING & BERMAN LLP

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Website: www.wshblaw.com
Refer to: 10301-0001

October 11, 2013

VIA FACSIMILE (714-754-5330) AND CERTIFIED MAIL RETURN RECEIPT REQUESTED

Tom Hatch, City Manager
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Costa Mesa City Council
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Re: ***James Righeimer, et al. v. Costa Mesa Police Association, et al.***
Our Client: Costa Mesa Police Association
Case No.: 30-2013-00670139-CU-CR-CXC

Dear Mr. Hatch and Costa Mesa City Council:

Please accept this correspondence as a follow-up to the tender submitted to the City of Costa Mesa via certified mail on October 4, 2013 on behalf of the Costa Mesa Police Association ("CMPA") for defense and indemnity of the above referenced matter. We respectfully request that the City of Costa Mesa respond on or before October 18, 2013.

Plaintiffs James Righeimer and Steve Mensinger have recently unreasonably rejected the CMPA's request to dismiss the lawsuit as it relates to the CMPA. It is clear that plaintiffs have every intention to pursue their complaint against the CMPA, and by virtue of their allegations, against employees of the City of Costa Mesa. As you know, the CMPA is comprised entirely of employees of the City of Costa Mesa. The plaintiffs' allegations against the CMPA are based on the alleged conduct of city employees during the course and scope of their employment.

Please be advised, in light of the fact that the plaintiffs' allegations attack employees of the City of Costa Mesa, it is our intent to work with the city in a cooperative manner to refute these baseless allegations. To this end, on behalf of the CMPA, we are ready and willing to provide you with any non-privileged information to assist the city with its evaluation of the tender. Please let me know if you need any additional information.

With respect to the CMPA's prior request that James Righeimer and Steve Mensinger recuse themselves from all discussions and actions contemplated or taken by the City Council and the City of Costa Mesa with respect to the above referenced tender and/or any issues impacted by the subject lawsuit, this correspondence shall serve as an immediate demand that Plaintiffs Mayor James Righeimer and Councilmember Steve Mensinger "cease and desist" from such conduct. Moreover, the CMPA respectfully requests that the remaining city council members and all city employees "cease and desist" from discussing the subject matter with Plaintiffs Mayor James Righeimer and Coucilmember Steve Mensinger. In light of the upcoming City Council Meeting (Closed and Open Sessions) scheduled for October 15, 2013, we respectfully request that the City of Costa Mesa respond on or before close of business October 14, 2013.

For the reasons set forth in our correspondence dated October 4, 2013, it is wholly improper for Plaintiffs James Righeimer and Steve Mensinger to discuss, influence or take any action related to police officers who concurrently are members of the CMPA. Any action or inaction taken by Plaintiffs James Righeimer and Steve Mensinger constitutes a conflict, as such conduct may directly and/or indirectly benefit plaintiffs in their lawsuit.

As mentioned above, the CMPA looks forward to working with the City of Costa Mesa in a cooperative manner to protect the brave men and women who serve the city as police officers. Should you have any questions regarding the foregoing or need any additional information, please do not hesitate to contact the undersigned.

Very truly yours,

WOOD, SMITH, HENNING & BERMAN LLP

By: _____
DAVID L. MARTIN, ESQ.

Sylvia emailed
Saved in mail file

October 14, 2013

VIA FACSIMILE & U.S. MAIL
(949) 757-4550

David L. Martin, Esq.
Wood, Smith, Hennigan & Berman, LLP
5000 Birch Street, Suite 8500
Newport Beach, CA 92660-8136

Re: *James Righeimer, et al. v. Costa Mesa Police Association, et al.*

Dear Mr. Martin:

Incredibly, I have just received a copy of a letter you sent to my clients directly in connection with our representation of them. I enclose a copy for your reference as Exhibit "A." I'm drawing this matter to your attention because I believe you, and your firm, have engaged in a serious ethical violation, and a violation of the California Rules of Professional Conduct and the California Evidence Code.

Every lawyer understands that it is unlawful to directly communicate with a represented party. You know very well that my office represents The Mayor, and The Mayor Pro Tem, in connection with serious claims against the Costa Mesa Police Officers Association. Despite that fact, you continue to directly address correspondence to the Costa Mesa City Council directly. While I recognize the need for you to communicate your client's needs to the City, such correspondence should be directed to the Costa Mesa City Attorney who represents the Council, not to the Council directly. Your letter violates the rule against *ex parte* contact of a represented party in two ways. First, the Council is represented by a City Attorney. Second, two of the council people are represented by this firm in litigation where you represent an adverse party. Clearly you are attempting to influence their decision making and involvement in this litigation by contacting them directly. This conduct is wrong and unethical.

Additionally, you and your office have elected in violation of Evidence Code Section 1152 to attempt to introduce confidential settlement negotiations into an administrative proceeding. Not only does that move violate the letter and spirit of 1152, but, moreover,

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unfortunately it demonstrates a willingness to flout and ignore the professional and ethical obligations of every attorney in California. Given your decision to publicize settlement discussions, we will feel no obligation to respond to any future offer your client, or your office may present.

Thank you for your attention to this very serious matter.

Very truly yours,

JOHN C. MANLY, ESQ.
MANLY, STEWART & FINALDI

JCM:kaf

WSH&B WOOD SMITH HENNING & BERMAN LLP

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Website: www.wshblaw.com
Refer to: 10301-0001

October 16, 2013

VIA FACSIMILE AND U.S. MAIL

Vince W. Finaldi, Esq.
Manly, Stewart & Finaldi
19100 Von Karman Ave.
Suite 800
Irvine, CA 92612

Re: *James Righeimer, et al. v. Costa Mesa Police Association, et al.*
Case No.: 30-2013-00670139-CU-CR-CXC

Dear Mr. Finaldi:

Thank you for your correspondence dated October 14, 2013, which is enclosed herewith as Exhibit 1. Please be advised, although your unfounded personal attack that my firm has committed ethical violations is undeserving and unworthy of a response[1], in an effort to work with you and your firm in a professional manner to resolve an apparent misunderstanding, please accept this letter as our response.

Further Attempt to Violate CMPA's Constitutional Rights

First and foremost, your letter is troubling because it follows a pattern begun when your clients filed their complaint. Your letter suggests that attorneys for the Costa Mesa Police Association ("CMPA") and its members are precluded from communicating with the City of Costa Mesa. Apparently your expectation is that the CMPA will keep the City of Costa Mesa in the dark regarding the rights of their employees and the impact that the litigation may have on the city.

[1] As you are aware, it is unethical and a party is strictly prohibited from making threats regarding alleged improper ethical behavior in order to obtain advantage in a civil suit. See California Rules of Professional Conduct, Rule 5-100; see also Cohen v. Brown, (2009) 173 Cal.App.4th 302, 318.

As explained in detail in our Anti-SLAPP motions, as it relates to my client, it is clear plaintiffs' lawsuit is designed to chill the CMPA's valid exercise of its Constitutional rights to free speech and petition[2]. The unfounded allegations of ethical violations in your October 14, 2013 correspondence further confirm that the purpose of your client's lawsuit is to prevent the CMPA from having an attorney represent its interests. This is a violation of core civil rights, and we will take all action necessary to counter such conduct. See *United Mine Workers of America v. Illinois State Bar Ass'n*, (1967) 389 U.S. 217.

As counsel for the CMPA, we have the right and obligation to communicate with the City of Costa Mesa. We intend to continue to cooperate and communicate with the City of Costa Mesa, including, but not limited to, keeping them apprised of the status of the lawsuit. To this end, we have copied City Manager Tom Hatch and City Attorney Tom Duarte on this correspondence. We will consult with Mr. Hatch and Mr. Duarte regarding whom we should direct future correspondence to at the City of Costa Mesa. We will also defer to Mr. Hatch and Mr. Duarte regarding whether or not they believe a copy of this correspondence should be provided to the City Council. (We believe this correspondence and the attachment should be provided to the City Council.)

<u>No *Ex Parte* Communications</u>

In regard to your allegations of *ex parte* communications with a represented party, they have no basis in fact or law. Rule 2-100 of the California Rules of Professional Conduct contains an express exception for "Communications with a public officer, board, committee, or body." CRPC 2-100(C)(1). As a result, there is no prohibition on communications with the City of Costa Mesa or the City Council.

Moreover, Rule 2-100 only applies to parties to the litigation. *See Matter of Dale* (Rev.Dept. 2005) 4 Cal. State Bar Ct.Rptr. 798, 804–807; *see also* California Practice Guide: Professional Responsibility, Ch. 8-D (noting that Rule 2-100 "does not apply to situations where an attorney contacts a person who is represented by counsel but who is *not a party* to the action.") (emphasis in original). As you are aware, the City of Costa

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[2] As you know, as it relates to my client, the CMPA contends plaintiffs' complaint is a "Strategic Lawsuit Against Public Participation" ("SLAPP"). In response to the complaint, the CMPA has filed an Anti-SLAPP motion and requested that the Court dismiss the lawsuit and enter judgment in favor of CMPA.

Mesa is not a party to this action. Moreover, the City Council is not a party to the litigation. James Righeimer and Steve Mensinger do not constitute the City Council; rather, they are just two of five members on the council.

We also note that neither you nor your firm represents the City of Costa Mesa or the City Council in this matter. In fact, by filing a lawsuit against the CMPA (whose members are city employees), you, your firm, and your clients are adverse to the City of Costa Mesa. Accordingly, we suggest that you stop communicating with the City of Costa Mesa directly and direct any communication to their city attorney, including, but not limited to, reviewing and responding to letters that are sent to the City of Costa Mesa and the City Council.

Correspondence between CMPA and Costa Mesa

In your letter, you also incorrectly state that we "continue to directly address correspondence to the Costa Mesa City Council directly. [sic]" Your accusation implies that multiple letters have been sent to the Costa Mesa City Council, which is not correct. Although it is none of your concern, to be clear, we sent a total of two letters. The first was to the City Clerk of Costa Mesa. We were required under California *Government Code* Section 945.4 and Section 2-183, *et seq.* of the Costa Mesa Municipal Code to submit a claim to the City of Costa Mesa in order to tender our defense and indemnity in this matter. As a result, such communication falls within the exception contained in CRPC 2-100(C)(3) for communications authorized by law. Moreover, the communication is also permitted because neither the City Clerk nor the City of Costa Mesa is a party to this action.

The second letter was sent to the City Manager and the Costa Mesa City Council. This letter was sent as a follow-up to our tender to the City. This communication did not violate CRPC 2-100 because it was a communication with "a public officer, board, committee, or body" and because neither the City Manager nor the City Council is a party to this action. As a result, none of our communications have violated any ethical duty or obligation.

Settlement Communications

In your correspondence, you also cite to California Evidence Code Section 1152, which causes evidence of a defendant's willingness to compromise to be "inadmissible to prove his or her liability." The purpose of this statute is to prevent a plaintiff from demonstrating liability by showing that the defendant was willing to reach a settlement.

This section of the Evidence Code does not prohibit a defendant from accurately stating that its request to be dismissed from a lawsuit has been denied. Furthermore, contrary to your assertion, in order to honor the privilege associated with settlement communications, we did not disclose the letters.

At the conclusion of your letter, you indicate that you no longer have any "obligation to respond to any future offer your client, or your office may present." Although you are free to choose how you want to practice law and what is in the best interest of your clients, we respectfully remind you that Business & Professions Code § 6103.5 requires attorneys to "promptly communicate" to their clients all "amounts, terms, and conditions of any written offer of settlement made by or on behalf of an opposing party." A similar obligation is imposed by CRPC 3-510.

In closing, our intent is not to engage in a letter writing campaign that wastes our clients' respective resources and potentially burdens the City of Costa Mesa. In the future, before you write accusatory letters, please pick up the phone and call to discuss any issues or problems you perceive. To this end, we remain ready and willing to discuss the issues referenced above in an in-peson meeting or on the telephone. Further, we intend to address these issues with the Court at the October 22, 2013, Status Conference to avoid any further miscommunication between our offices.

Once again, thank you for your correspondence and we look forward to working with you to amicably resolve the apparent misunderstandings regarding my client's right to communicate with the City of Costa Mesa.

Very truly yours,

WOOD, SMITH, HENNING & BERMAN LLP

By: _____
SEYMOUR B. EVERETT, III
DAVID L. MARTIN

cc: Tom Hatch, Costa Mesa City Manager (Via Facsimile and Regular U.S. Mail)
Tom Duarte, Costa Mesa City Attorney (Via Facsimile and Regular U.S. Mail)

Enclosure
LEGAL:10301-0001/2777604.1

emailed
NOV 7 '13 AM 9:59

WSH&B WOOD SMITH HENNING & BERMAN LLP

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received via fax 11/1

Direct dial: (949) 757-4510
Email: severett@wshblaw.com
Website: www.wshblaw.com
Refer to: 10301-0001

November 4, 2013

DELIVERED VIA FACSIMILE (714-754-5330) AND CERTIFIED MAIL RETURN RECEIPT REQUESTED

Costa Mesa City Council
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Tom Hatch, City Manager
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Re: ***James Righeimer, et al. v. Costa Mesa Police Association, et al.***
Our Client: Costa Mesa Police Association
Case No.: 30-2013-00670139-CU-CR-CXC

Dear Mr. Hatch and Costa Mesa City Council:

Please accept this correspondence as further follow-up to the tender submitted to the City of Costa Mesa via certified mail on October 4, 2013 on behalf of the Costa Mesa Police Association ("CMPA") for defense and indemnity of the above referenced matter. Additionally, please permit this correspondence to further follow-up on CMPA's request that Mayor James Righeimer and Mayor Pro Tem Steve Mensinger recuse themselves and **cease and desist** from participating in or influencing any action take by the City Council with respect to the tender or related issues. We note that a month has passed since the tender was made, and we have not yet received a response from the City or an acknowledgement that it received our requests.

We recently learned Mayor James Righeimer and Mayor Pro Tem Steve Mensinger seek to depose Costa Mesa Police Officers, including Kha Bao, Jason Chamness, and others as it relates to alleged acts in the course and scope of their employment. They also seek documents from the CMPA related to actions taken by Costa Mesa Police Officers. Enclosed herewith is a copy of the motion for discovery filed with the Court. The information sought directly impacts the City of Costa Mesa and its employees. Moreover, the depositions could impact ongoing police investigations. In light of the plaintiffs' allegations, the City must act to defend its employees against meritless claims.

In their motion, Plaintiffs repeatedly make false accusations that the CMPA engaged in criminal conduct. As you are aware, the CMPA is comprised solely of Costa Mesa Police Officers. As a result, Plaintiffs are accusing Costa Mesa Police Officers of engaging in criminal conduct. There is no basis for such allegations, which are an affront to the brave men and women who serve Costa Mesa and put themselves in harm's way to protect its citizens. For a city's mayor and councilmember to falsely accuse its own police force of engaging in criminal conduct is irresponsible and potentially dangerous. Moreover, it demeans the police force and damages the City's reputation as a whole. False accusations of criminal conduct constitute slander per se. (*See* Civil Code Section 46). Ironically, Plaintiffs are now engaging in the very conduct that they claim forms the basis of their lawsuit. There is no justification for Plaintiffs' conduct, who apparently believe their false accusations are shielded by the litigation privilege, which defense they seek to deny the parties in the underlying litigation.

In reaching a decision on the matters set forth herein, the City Council cannot be influenced by Mayor James Righeimer or Mayor Pro Tem Steve Mensinger, who must recuse themselves from any action taken by the City Council. Moreover, they must **cease and desist** from any involvement in discussions with respect to the above referenced tender and/or any issues impacted by the subject lawsuit. Further, we repeat our request that the remaining city council members and all city employees, including, but not limited to, the City Manager and City Attorney, **cease and desist** from discussing the subject matter with Mayor James Righeimer and Mayor Pro Tem Steve Mensinger.

Government Code Section 87100 states: "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." Mayor James Righeimer and Mayor Pro Tem Steve Mensinger have a financial interest in the lawsuit they filed, in which they seek recovery of monetary damages from the CMPA. Given their clear financial interest, they are prevented from participating in or influencing the City Council's decision with respect to the tender or any related matter.

Section 87100 not only prohibits Righeimer and Mensinger from participating in any votes related to the litigation, it also prohibits them from observing any discussions of the litigation and this claim, or having access to any information regarding the Council's discussions. (*Hamilton v. Town of Los Gatos*, (1989) 213 Cal.App.3d 1050, 1058-59).

Should Mayor James Righeimer or Mayor Pro Tem Steve Mensinger participate in any manner in any City Council discussions or decisions regarding the subject matter, we will have no choice but to pursue our client's rights under Government Code §91003.

We respectfully request that the City of Costa Mesa respond to CMPA's tender and corresponding request for recusal at its earliest convenience. On behalf of the CMPA and the men and women who serve the City of Costa Mesa as police officers, we remain reading and willing to work in a cooperative fashion with the City of Costa Mesa to defend its employees. Should you have any questions regarding the foregoing or need any additional information, please do not hesitate to contact the undersigned.

Very truly yours,

WOOD, SMITH, HENNING & BERMAN LLP

By: _____
SEYMOUR B. EVERETT, III
DAVID L. MARTIN

Enclosures

cc: Tom Duarte, Costa Mesa City Attorney (Via Facsimile and Regular U.S. Mail)

LEGAL:10301-0001/2795341.1

JOHN C. MANLY, Esq. (State Bar No. 149080)
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Attorneys of Record for Plaintiffs,
JAMES RIGHEIMER, LENE RIGHEIMER and
STEVE MENSINGER.

MANLY, STEWART & FINALDI
ATTORNEYS AT LAW
19100 Von Karman Ave., Suite 800
Irvine, CA 92612

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE CENTRAL CIVIL COMPLEX

JAMES RIGHEIMER, an individual; LENE RIGHEIMER, an individual; and STEVE MENSINGER, an individual, Plaintiffs, v. COSTA MESA POLICE ASSOCIATION, a California corporation; LACKIE, DAMMEIER, MCGILL & ETHIR, A PROFESSIONAL CORPORATION, a California corporation; BIG GIANTS INVESTIGATIONS, a business entity of form unknown; CHRISTOPHER J. LANZILLO, an individual and DOES 1-25. Defendants.	Case No.: 30-2013-00670139-CU-CR-CXC Judge: Gail A. Andler **PLAINTIFFS' NOTICED MOTION TO CONTINUE FOR ALLOWED DISCOVERY PURSUANT TO CCP § 425.16(g); MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF VINCE W. FINALDI IN SUPPORT THEREOF.** **Date:** November 25, 2013 **Time:** 1:30pm **Dept:** CX101

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on Monday November 25, 2013, at 1:30 p.m., in Department CX101 of the above-entitled Court, Plaintiffs JAMES RIGHEIMER, LENE

RIGHEIMER, and STEVE MENSINGER, through their attorney of record herein, will appear before this Court for Plaintiffs' Motion for Allowed Discovery pursuant to CCP § 425.16(g).

California's anti-SLAPP statutes are designed to protect First Amendment Rights and prevent abuse of litigation. The anti-SLAPP statute affords Defendants no sanctuary. Their criminal and tortious conduct, simply put, is unprotected activity therefore not within the purview of the anti-SLAPP statute.

On August 20, 2013, Plaintiffs filed a Complaint alleging the Defendants had engaged in a long course of tortious and criminal conduct against all Plaintiffs. The Complaint alleges that Defendants engaged in this course of conduct to humiliate, intimidate, and coerce Plaintiffs James Righeimer and Steve Mensinger to gain their political obedience as duly elected officials of Costa Mesa, California and for financial gain.

On October 7, 2013, Defendants Lackie, Lanzillo and Big Giant Investigations filed an anti-SLAPP motion pursuant to CCP § 425.16. This motion incorrectly alleges that the Plaintiffs' entire Complaint arises solely from a knowingly false 911 call made by Defendant Lanzillo; conduct that Defendants allege is protected under the First Amendment of the United States Constitution.

On October 10, 2013, Defendant Costa Mesa Police Association (CMPOA) filed three separate anti-SLAPP motions against each individual Plaintiff, all alleging that the causes of action in the Plaintiffs' Complaint arose from conduct protected under the First Amendment of the United States Constitution.

Plaintiffs contend that Defendants Lackie, Dammeier, McGill & Ethir (Lackie), Christopher J. Lanzillo (Lanzillo), and Big Giant Investigations (Big Giant) improperly narrow Plaintiffs' Complaint to one 911 call made by Defendant Lanzillo, contrary to the allegations of the Complaint. In reality, Plaintiffs' Complaint is based on a long course of tortious and criminal conduct committed by all Defendants against Plaintiffs, in an attempt to silence political opposition, force political action in their favor, and for financial gain.

MANLY, STEWART & FINALDI
ATTORNEYS AT LAW
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The instant Motion for Order Allowing Discovery stems from the Plaintiffs' need for discovery to properly oppose the Defendants' anti-SLAPP motions. Plaintiffs believe, and have substantial evidence supporting the allegation, that the Defendants' anti-SLAPP motions are based on tortious and illegal conduct, as alleged in the Complaint, which is an improper basis for an anti-SLAPP motion. Plaintiffs request that discovery be allowed with respect to such tortious and criminal conduct of the Defendants, pursuant to CCP § 425.16(g), because that information is in large part in the sole possession of Defendant moving parties in the anti-SLAPP motions.

This Motion shall be based on this Notice, the attached Memorandum of Points and Authorities, the Declaration of Vince W. Finaldi and attachments thereto, all papers and pleadings on file with the Court, and any upon any argument, oral or otherwise, raised at the hearing of this Motion.

Dated: October 29, 2013

MANLY, STEWART & FINALDI

By: _____
VINCE W. FINALDI, Esq.
Attorneys for Plaintiffs,
JAMES RIGHEIMER, LENE RIGHEIMER and STEVE MENSINGER.

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I.

INTRODUCTION

California's anti-SLAPP statutes are designed to protect First Amendment Rights and prevent abuse of litigation. The anti-SLAPP statute affords Defendants no sanctuary. Their criminal and tortious conduct, simply put, is unprotected activity therefore not within the purview of the anti-SLAPP statute.

Plaintiffs James Righeimer and Steve Mensinger are both elected political figures of the City of Costa Mesa, California (Mayor and Mayor *Pro Tem*, respectively). Lene Righeimer is James Righeimer's wife. In the Complaint, Plaintiffs have alleged a widespread course of criminal and tortious conduct through which the Defendants intimidated, harassed, coerced, and humiliated the Plaintiffs, in order to obtain Plaintiffs' political obedience, and for financial gain. In response to the Complaint, Defendants Costa Mesa Police Association (CMPOA), Lackie, Dammeier, McGill & Ethir (Lackie), Christopher J. Lanzillo (Lanzillo), and Big Giant Investigations (Big Giant) have all filed anti-Strategic Lawsuit Against Public Policy (anti-SLAPP) motions alleging that this alleged course of conduct is First Amendment "protected activity," and that the Complaint should be stricken in its entirety.

Plaintiffs request an Order to Continue the Anti-SLAPP Hearing Date and Allow Discovery pursuant to CCP § 425.16(g), on the basis that Defendants' anti-SLAPP motions arise from tortious and criminal conduct. Tortious and criminal conduct is not a proper basis for an anti-SLAPP motion, therefore Plaintiffs need discovery to substantiate that, in fact, the Defendants have committed these crimes and torts, as alleged in the Complaint.

When Defendants filed their anti-SLAPP motion, discovery was automatically stayed. This stay on discovery has denied the Plaintiffs access to evidence substantiating the Defendants' illegal and tortious conduct, which is largely in these Defendants' possession because they are

the individuals who allegedly engaged in the criminal and tortious conduct. As a result, Plaintiffs now request discovery of this information in support of their oppositions to the anti-SLAPP motions.

II.

PROCEDURAL HISTORY

On August 20, 2013, Plaintiffs filed a Complaint against Defendants alleging a course of tortious and illegal conduct by the Defendants. (Complaint ("C"), attached hereto as Exhibit "A" to Declaration of Vince Finaldi ("DVF").) On October 7, 2013, Defendants Lackie, Lanzillo and Big Giant filed an anti-SLAPP motion alleging that the Plaintiffs' Complaint violated the Defendants' protected rights under the First Amendment of United States Constitution. (LACKIE Motion, attached hereto as Exhibit "B" to DVF, p. 3-5.) On October 10, 2013, Defendant CMPOA filed three anti-SLAPP motions, one against each Plaintiff, alleging that all conduct alleged in the Complaint was protected under the First Amendment. (CMPOA Motion, attached hereto as Exhibit "C" to DVF.) Plaintiffs come now with a Motion for an Order Allowing Discovery, pursuant to CCP § 425.16 (g) requesting a fair chance to gather evidence of the Defendants' criminal conduct in support of their oppositions. This evidence is necessary to allow Plaintiffs to adequately respond to the Defendants' motions, as Plaintiffs' allege they engaged in tortious and criminal conduct, against Plaintiffs' rights, and the evidence of such is in Defendants'—moving parties—possession.

III.

FACTUAL BACKGROUND

Plaintiffs Jim Righeimer and Steve Mensinger are elected political figures- Mayor and Mayor *Pro Tem* of the City of Costa Mesa, respectively. (C, attached hereto as Exhibit "A" to

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the DVF, ¶ 2.) Lene Righeimer is Mr. Righeimer's wife. (C, ¶ 3.) Plaintiffs' Complaint is grounded in the systematic, tortious and illegal acts of harassment, coercion, intimidation, and embarrassment committed by the Defendants, intended to intimidate Plaintiffs and into changing their political positions in Defendants' favor and for Defendants' financial gain. (C ¶¶ 1, 6, 16, 18, 31, 36).

Defendant Lackie is a law firm based out of Upland, California that "specializes in the representation of police officers and their associations throughout California." (C ¶ 6.)

Defendant CMPOA is "the governing body of the police officers under the rank sergeant in the Costa Mesa Police Department." (C ¶ 5).

Defendant Lanzillo is the owner and manager of Big Giant. (C, ¶ 8.) Prior to opening Big Giant Investigations, Defendant Lanzillo was a police officer with the City of Riverside. (FAC, ¶ 8.) After his retirement (and after a tumultuous legal battle to be reinstated), Defendant Lanzillo opened Big Giant Investigations, which is believed to have been retained by Defendant Lackie since June 18, 2011. (C, ¶ 8.)

The following is a catalogue of the criminal and tortious course of conduct perpetrated by the Defendants:

The "Playbook" (FAC, ¶ 16.)

- Prior to August 22, 2012, Defendant Lackie had a document posted on its website entitled the "Playbook" which outlined various conduct for police officers' associations, from around the state to engage in, in order to gain coerce local public officials into changing their positions on police funding. (C, ¶16.) The "Playbook" detailed various pressure tactics, and even went as far as referring to targeted city council members as "victims." (C, ¶16.)

Defendants Publicizing Personal Financial Information of the Righeimers. (FAC, ¶ 18.)

- In 2010, Defendants orchestrated a plot to publish James and Lene Righeimer's personal information to the public. (C, ¶ 18.) The plot involved Defendant CMPA hiring a truck drive around Costa Mesa with a billboard advertising a website. (C, ¶ 18.) The website had personal financial information from James and Lene Righeimer posted on it. (C, ¶ 18.)

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"Storming" of the Costa Mesa City Council

- On August 21, 2012, a group of angry citizens flooded the Costa Mesa City Council meeting. (C, ¶ 18.) The citizens were enraged, alleging that more police officers were needed on the streets of Costa Mesa. (C, ¶ 18.) One of the citizens stated that they had been sent to the meeting by a "police officer." (C, ¶ 18.) At this meeting, James Righeimer publicly criticized the "Playbook" and the attempts of Defendants to hold the City Council "hostage." (C, ¶ 18.)

False 9-1-1 Call Made by Defendant Lanzillo

- On August 22, 2012, Defendant Lanzillo made a phone call to police, reporting that Plaintiff James Righeimer had been "under the influence" while walking to his car from a restaurant/bar. (C, ¶¶ 31.) Defendant Lanzillo then claimed that James Righeimer was speeding, swerving, and not staying in his lane while driving his car. (C, ¶¶ 31, 34.) Defendant Lanzillo then proceeded to follow Mr. Righeimer to his home. (C, ¶¶ 31, 34.) When the police arrived, they detained Mr. Righeimer on his front lawn and conducted a sobriety test, while Defendant Lanzillo observed from a parked car. (C, ¶ 25.) Mr. Righeimer passed all tests and even has a receipt showing that he had only purchased two Diet Cokes, and had not been drinking alcoholic beverages that night. (C, ¶ 24, 25.)

Woman Sent into Skosh Monahan's

- Prior to making the knowingly false 911 call, Defendant Lanzillo enlisted a woman to attempt to seduce and publicly embarrass Plaintiffs James Righeimer and Steve Mensinger, while at Skosh Monahan's, a restaurant/bar. (C, ¶ 36.) Defendant Lanzillo admitted to the press that he sent the woman into the bar to catch Mr. Mensinger and Mr. Righeimer "behav[ing] inappropriately." (C, ¶ 36, 37.)

Defendant Lanzillo Assaulting Mrs. Lene Righeimer with his car. (C, ¶ 27.)

- While James Righeimer was being detained by Officer Kha Bao, Mrs. Righeimer noticed a suspicious white Kia SUV was parked on the street near her home. (C, ¶ 27.) The vehicle began to leave, so Mrs. Righeimer entered the path of the vehicle and hailed for it to stop. (C, ¶ 27.) The vehicle stopped and she approached the driver side window, where she began speaking with Defendant Lanzillo. (C, ¶ 27.) After an exchange of words with Defendant Lanzillo, and no warning, the white Kia SUV accelerated past Lene Righeimer, and swerved out of the way of running over her feet. (C, ¶ 27.) Mrs. Righeimer states that she felt the heat of the engine and wind from the car, as it flew past her. (C, ¶ 27.)

The Re-Published 911 Call Contents in Local Newspapers. (C ¶ 31.)

- On August 24, 2012, the Orange County Register referenced the 911 call of Defendant Lanzillo, from the incident on August 22, 2012, where Defendant

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Lanzillo stated, "I think he's DUI...He's just swerving all over the road...I don't know what's wrong with him." (C ¶ 31.) Defendant stated further in the call that James Righeimer was driving over 50 mph in a residential zone and that he had run a stop sign. (C ¶ 31.)

Defendant Lanzillos Defamatory Statements to the Press. (C ¶ 34-35.)

- On August 28, 2012, Defendant Lanzillo spoke to the OC Register and stated, "[w]hen I saw him leave the bar it appeared to me by the way that Mr. Righeimer was walking that he could be under the influence or possibly just disabled." (C ¶ 34-35.) Defendant Lanzillo further stated, "[w]e all know if you order a soda or tea at a restaurant/bar, you only pay for one drink and the rest are free[...] I'm sure (Councilman Gary) Monhan who provided the receipt for Mr. Righeimer didn't even realize this when he gave him the suspected receipt." (C, ¶ 34.)

Recent Police Investigation of the Defendants and Stay of Discovery

Prior to the filing of Defendants' anti-SLAPP motions, the deposition of key witnesses Dieter Dammeier (Managing Partner of Defendant Lackie) and the person most knowledgeable regarding supervision of Defendant Lanzillo were scheduled to take place on October 11th, 2013. (Deposition Notice of Dieter Dammeier, attached hereto as Exhibit "F" to DVF; Deposition Notice of PMQ For Supervision of Defendant Lanzillo, attached hereto as Exhibit "G" to DVF.) Since the imposition of the stay on discovery, Plaintiffs have not been allowed to conduct any further investigation and these important depositions have not taken place. Moreover, the information necessary to prove the Defendants acted tortiously and criminally is in the sole possession of the Defendants, thus grounding the present motion.

On October 10, 2013, the Orange County District Attorney (OCDA) executed a search warrant against Defendant Lackie which resulted in the seizure of "scores of boxes full of documents and other materials." (San Bernardino County Sentinel, October 11, 2013, "Orange County DA Raids Upland Law Office of Lackie, Dammeier McGill," attached hereto as Exhibit "H" to DVF.) Plaintiffs believe that the nature of this police investigation is integrally involved with the present action, though they have not received any information regarding specific

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contents of the seizure. Plaintiffs' counsel has been informed that the FBI was a part of the raid and that substantial items were seized. Also of importance is the fact that since filing the Complaint, Defendant Lackie has been publicly accused of substantial billing impropriety in police cases and is now in the process of dissolution. This criminal investigation is on-going and little specific information has been provided to Plaintiffs.

IV.

ARGUMENT

A. CCP § 425.16(g) PROVIDES FOR ALLOWED DISCOVERY , UPON A SHOWING OF "GOOD CAUSE"

CCP § 425.16(g) states:

> The court, on noticed motion and ***for good cause shown***, may order that specified discovery be conducted notwithstanding this subdivision. CCP § 425.16 [Emphasis Added].

The Court in Lafayette Morehouse, Inc. v. Chronicle Publishing Co., (1995) 37 Cal.App.4th 855, 868 held that discovery is allowed in an anti-SLAPP motion when "the plaintiff makes a timely and proper showing in response to the motion to strike, that a defendant or witness possesses evidence needed by plaintiff to establish a prima facie case." Id. at 868. The Court went further to state: "the plaintiff ***must be given reasonable opportunity to obtain evidence through discovery*** before the motion to strike is adjudicated." Id.[emphasis added].

B. AN ANTI-SLAPP MOTION MAY NOT BE PREDICATED UPON CRIMINAL AND TORTIOUS CONDUCT

Violent criminal and tortious acts do not "arise" from protected activities for the purposes of the anti-SLAPP statute. Lam v. Ngo, (2001) 91 Cal. App. 4th 832, 845. The Court in Lam v. Ngo, (2001) 91 Cal. App. 4th 832 stated:

> "[T]he present case ***involves discrete 'elements of criminality,' and certainly tortious conduct unprotected by the First Amendment***. [citation omitted]. Justice Stevens there noted, the ***'First Amendment does not protect violence'*** [citation omitted] and the present case-particularly events in the first week of the protests-certainly involved acts of

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violence, not political theater. Some protesters, presently anonymous, accosted patrons of the Vien Dong, slashed the tires of cars, plastered posters on the outside of the restaurant, and urinated on it. ***All clearly unprotected acts.***" Lam v. Ngo, (2001) 91 Cal. App. 4th 832, 851.

In 2006, the California Supreme Court in Flatley v. Mauro, (2006) 39 Cal. 4th 299 reiterated this notion regarding California's anti-SLAPP statute and criminal conduct:

> "where a defendant brings a motion to strike under section 425.16 based on a claim that the plaintiff's action arises from activity by the defendant in furtherance of the defendant's exercise of protected speech or petition rights, but either the defendant concedes, or the evidence conclusively establishes, ***that the assertedly protected speech or petition activity was illegal as a matter of law, the defendant is precluded from using the anti-SLAPP statute to strike the plaintiff's action***." Flatley, (2006) 39 Cal. 4th at 320[emphasis added].

Defendants cannot base an anti-SLAPP motion on their own criminal and tortious conduct. There is strong, if not overwhelming evidence (already found in the public sphere and alleged in the Complaint) which ***strongly evidences and indicates that tortious and criminal activity is the basis for the present anti-SLAPP motions.*** The Defendants' course of tortious and criminal conduct is catalogued in the Complaint and supported by numerous personal accounts from Plaintiffs, local newspapers, local municipal officials, and documented police reports. This information that already exists in the public sphere, coupled with the on-going investigation by the Orange County District Attorney, makes ***an already strong and convincing showing*** that the Defendants have engaged in criminal and tortious conduct. California's anti-SLAPP statutes are designed to protect First Amendment Rights and prevent abuse of litigation. The anti-SLAPP statute affords Defendants no sanctuary. Their criminal and tortious conduct, simply put, is unprotected activity therefore not within the purview of the anti-SLAPP statute.

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C. "GOOD CAUSE" EXISTS TO GRANT PLAINTIFFS' MOTION FOR ALLOWED DISCOVERY

1. All Information Necessary to Respond to Defendants' Anti-SLAPP Motions is in Possession of the Defendants

Plaintiffs have alleged a wide-reaching pattern and business practice of tortious and criminal conduct by the Defendants, based on reliable and credible information. However, Defendants are in sole possession and control over most evidence of their criminal and tortious behavior. Discovery is necessary to ensure that the Plaintiffs are provided a fair and adequate chance to oppose the anti-SLAPP motions and to substantiate the claims of tortious and illegal behavior by the Defendants. Plaintiffs have no other means to obtain further evidence of the Defendants tortious and criminal behavior.

Much of the evidence needed to substantiate Plaintiffs' claims involves the relationships between Defendants, communications between Defendants, documents in the Defendants' possession, and documentation that needs to be subpoenaed from third parties. None of this evidence is available to Plaintiffs' and cannot be accessed due to the stay on discovery. This information is critical to substantiating the illegal and tortious activity of Defendants which, in turn, is essential to Plaintiffs' opposition to the anti-SLAPP motions, thus the reason for this motion.

2. Denying Discovery For Plaintiffs Would Allow Defendants to Conceal Their Own Criminal and Tortious Conduct, Contrary to Public Policy

The California anti-SLAPP law does not permit anti-SLAPP motions to be made on the basis of criminal and violent tortious activities. Plaintiffs have alleged widespread illegal and tortious conduct in which the Defendants engaged in soliciting and conspiring with a prostitute, violations of the Ralph and Bane Acts, making a false 911 call, defamation, slander, and even assault. Discovery of this criminal and tortious conduct is needed in order to substantiate these

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allegations and to prevent the anti-SLAPP procedure from shielding the Defendants' illegal and tortious conduct.

By filing the anti-SLAPP motion, Defendants dodged meaningful discovery. Denying discovery now would allow Defendants to base their anti-SLAPP motions on criminal and tortious conduct simply because the proceedings are in their infancy. Clearly, the facts alleged (coupled with the on-going investigation of the Defendants by the OCDA) show that more discovery is warranted and would substantiate the crimes and torts committed by the Defendants; crimes and torts that Defendants base their anti-SLAPP motions on.

Moreover, section (g) of California Code of Civil Procedure § 425.16 ***expressly*** provides an avenue for allowed discovery when Plaintiffs show "that a defendant or witness possesses evidence needed by plaintiff to establish a prima facie case." Lafayette Morehouse, Inc., (1995) 37 Cal.App.4th at 868. The present case is ***the exact reason*** why section (g) was written into the statute. Discovery is needed to prevent Defendants from hiding their criminal and tortious activity behind California's anti-SLAPP statute and to give the Plaintiffs fair chance to oppose the anti-SLAPP motion.

3. Plaintiffs Are Not Interested in Conducting a "Fishing Expedition"

Plaintiffs are not interested in discovering each and every fact and facet of the current case. Plaintiffs are only interested in discovering evidence of the Defendants' criminal and tortious conduct underlying Defendants' alleged "protected activity," for the present motions. Below, Plaintiffs detail the specific discovery that is requested.

D. DISCOVERY REQUESTED

To be given fair opportunity to substantiate the already supported allegations of criminal and tortious conduct underlying the Defendants' anti-SLAPP motions, Plaintiffs request the following to be discovered prior to opposing the Defendants' motions:

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Depositions of:

- Officer Kha Bao
- Defendant Christopher J. Lanzillo
- Dieter Dammeier
- Person Most Qualified for Supervision at Defendant Lackie for Defendant Lanzillo
- Person Most Qualified for Supervision at CMPOA.
- Former CMPOA President Jason Chamness
- Potentially other critical witnesses whose identities arise during the course of the above depositions, or below produced documents.

Requests for Production of Documents:

- Subpoenaed records from Orange County District Attorney
- Subpoenaed records from Custodian of Records from Defendant Lackie.
- Subpoenaed records from Custodian of Records from Defendant CMPOA.
- Subpoenaed records from Custodian of Records from Defendant Big Giant Investigations.
- Potentially other critical records from entities who arise during the course of the above discovery.

Special Interrogatories to:

- Each Defendant (50 Interrogatories)

V.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully move the Court for an Order Continuing the Hearing Date for the Anti-SLAPP Motions and Allowing Discovery, on the basis that Plaintiffs have shown "good cause" pursuant to CCP § 245.16(g).

Dated: October 29, 2013

MANLY, STEWART & FINALDI

By: _____
VINCE WILLIAM FINALDI, Esq.
Attorneys for Plaintiffs,
JAMES RIGHEIMER, LENE RIGHEIMER
and STEVE MENSINGER.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the county of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 19100 Von Karman Ave., Suite 800, Irvine, CA 92612,

On October 30, 2013, I served the foregoing document described as **PLAINTIFFS' NOTICED MOTION TO CONTINUE FOR ALLOWED DISCOVERY PURSUANT TO CCP § 425.16(g); MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF VINCE W. FINALDI IN SUPPORT THEREOF** on the interested parties in this action

[X] by placing [ ] the original [X] a true copy thereof enclosed in sealed envelopes addressed as follows:

Stephen G. Larson, Esq.
Jerrold Abeles, Esq.
Jonathan E. Phillips, Esq.
ARENT FOX LLP
555 West Fifth Street, 48th Floor
Los Angeles, CA 90013-1065
(213) 629-7400
(213) 629-7401-facsimile
Attorneys for Defendants LACKIE, DAMMEIER, MCGILL & ETHIR, A PROFESSIONAL CORPORATION, a California Corporation; CHRISTOPHER J. LANZILLO; and BIG GIANT INVESTIGATIONS.

Seymour B. Everett, III, Esq.
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Attorneys for Defendant COSTA MESA POLICE OFFICER'S ASSOCIATION

[X] BY MESSENGER SERVICE

[ ] I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and providing them to a professional messenger service for service.

[X] (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.

Executed on October 30, 2013, Irvine, California.

Kathy Frederiksen

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Attorneys of Record for Plaintiffs,
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STEVE MENSINGER.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE CENTRAL CIVIL COMPLEX

JAMES RIGHEIMER, an individual; LENE RIGHEIMER, an individual; and STEVE MENSINGER, an individual, Plaintiffs, v. COSTA MESA POLICE ASSOCIATION, a California corporation; LACKIE, DAMMEIER, MCGILL & ETHIR, A PROFESSIONAL CORPORATION, a California corporation; BIG GIANTS INVESTIGATIONS, a business entity of form unknown; CHRISTOPHER J. LANZILLO, an individual and DOES 1-25. Defendants.	Case No.: 30-2013-00670139-CU-CR-CXC Judge: Gail A. Andler **DECLARATION OF VINCE W. FINALDI IN SUPPORT OF PLAINTIFFS LENE RIGHEIMER, JAMES RIGHEIMER, AND STEVE MENSINGER'S MOTION FOR CONTINUANCE FOR ALLOWED DISCOVERY PURSUANT TO CCP § 425.16(g).** Date: November 25, 2013 Time: 1:30 am Dept: CX101

DECLARATION OF VINCE E. FINALDI

I, VINCE W. FINALDI, hereby declare:

1. I am an attorney duly licensed to practice law in the state of California. I am an attorney with Manly, Stewart & Finaldi, attorney of record for Plaintiffs JAMES RIGHEIMER,

LENE RIGHEIMER, and STEVE MENSINGER in the above-entitled matter. I am personally familiar with the facts of this case and the contents of this Declaration, and if called upon, could and would competently testify as to its contents.

2. This Declaration is made in support of Plaintiffs' JAMES RIGHEIMER, LENE RIGHEIMER, and STEVE MENSINGER Motion to Continue for Allowed Discovery, pursuant to California Code of Civil Procedure § 425.16(g).

3. Plaintiffs allege that the Defendants have engaged in substantial criminal activity directed at them. Those acts are the basis of the Plaintiffs' Complaint and the Defendants' anti-SLAPP motion.

4. Plaintiffs have reason to believe that the recent search and seizure of Defendants' documents and items (stemming from a search warrant executed by the Orange County District Attorney and Orange County Sherriff's Department) is integrally related to the present action against Defendants. Plaintiffs believe that further discovery of information arising from these police actions is relevant, admissible, and highly probative in opposing the Defendants' anti-SLAPP motion.

5. "Good cause" exists to grant this motion because CCP § 425.16(g) specifically provides a means to obtain discovery from a moving party, prior to the adjudication of the anti-SLAPP motions. Plaintiffs believe that the Defendants have based their anti-SLAPP motion on criminal and tortious conduct, which is an improper basis for such a motion. Plaintiffs are at a marked disadvantage without discovery in this matter because the information sought to substantiate these criminal and tortious acts is in the exclusive possession of the Defendants. Plaintiffs had the deposition of Defendant DAMMEIER scheduled for October 11, 2013, however, the stay on discovery that occurred with the Defendants' anti-SLAPP motion eliminated this deposition from the calendar. The requested discovery consists of various depositions and written discovery, which is intended to elicit the necessary information from the Defendants. Without this discovery, Plaintiffs are prevented from having a fair chance to respond to the anti-SLAPP motions.

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6. Attached hereto as Exhibit "A" is the Plaintiffs' Complaint, referenced in Plaintiff's Noticed Motion.

7. Attached hereto as Exhibit "B" is a true and correct copy of the Defendants' LACKIE, DAMMEIER, MCGILL & ETHIR, CHRISTOPHER J. LANZILLO, and BIG GIANT INVESTIGATIONS anti-SLAPP motion filed on October 7, 2013, referenced in Plaintiff's Noticed Motion.

8. Attached hereto as Exhibit "C" is a true and correct copy of the Defendant CMPA anti-SLAPP motion filed on October 10, 2013 against Plaintiff LENE RIGHEIMER, referenced in Plaintiff's Noticed Motion.

9. Attached hereto as Exhibit "D" is a true and correct copy of the Defendant CMPA anti-SLAPP motion filed on October 10, 2013 against Plaintiff JAMES RIGHEIMER, referenced in Plaintiff's Noticed Motion.

10. Attached hereto as Exhibit "E" is a true and correct copy of the Defendant CMPA anti-SLAPP motion against filed on October 10, 2013, Plaintiff STEVE MENSINGER, referenced in Plaintiff's Noticed Motion.

11. Attached hereto at Exhibit "F" is a true and correct copy of the notice of DIETER DAMMEIER's deposition, referenced in Plaintiff's Noticed Motion.

12. Attached hereto as Exhibit "G" is a true and correct copy of the deposition notice of the Person Most Qualified At LACKIE, DAMMEIER, MCGILL & ETHIR, A PROFESSIONAL LAW CORPORATION, Regarding Supervision of Christopher J. Lanzillo, referenced in Plaintiff's Noticed Motion.

13. Attached hereto at Exhibit "H" is a true and correct copy of the San Bernardino County Sentinel article from October 11, 2013 entitled, "Orange County DA Raids Upland Office of Lackie Dammeier McGill," referenced in Plaintiff's Noticed Motion.

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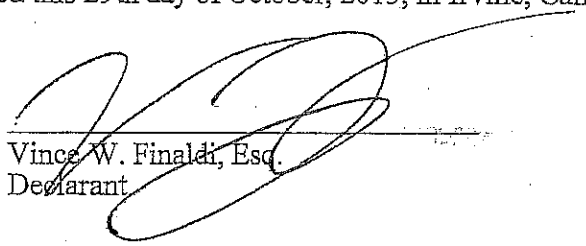
I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 29th day of October, 2013, in Irvine, California.



Vince W. Finaldi, Esq.
Declarant

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MANLY
STEWART
FINALDI
LAWYERS

NOV 14 '13 AM 10:18

November 12, 2013

VIA FACSIMILE AND US MAIL

Tom Hatch, City Manager
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Costa Mesa, CA 92626
(f) (714) 754-5330

Costa Mesa City Council
City of Costa Mesa
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Costa Mesa, CA 92626
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Re: ***Righeimer, et al. v. Lackie, Dammeier, McGill & Ethir, et al.: Costa Mesa Police Association's Request for Indemnification.***

Dear Councilmembers,

Our names are John C. Manly and Vince W. Finaldi of the law firm Manly, Stewart & Finaldi, and we represent Councilmen Steve Mensinger and James Righeimer, along with Mr. Righeimer's wife Lene Righeimer, in the above-noted claim for damages and injunctive relief, currently pending against the Costa Mesa Police Association ("CMPOA") and other defendants in the Orange County Superior Court. We write to clarify and correct some misleading and erroneous statements made by counsel for the CMPOA, in a letter to the Costa Mesa City Council dated October 11, 2013, against Messrs. Righeimer and Mensinger, regarding the CMPOA's claimed entitlement to indemnification or legal defense by the City of Costa Mesa. The following are a few basic points that our firm wishes to address:

I. THE CURRENT LAWSUIT IS AGAINST THE CMPOA, NOT ANY INDIVIDUAL POLICE OFFICER OR MUNICIPAL POLICE AGENCY.

The current lawsuit against the CMPOA is based on conduct that this private and voluntary labor union engaged in to unlawfully intimidate, embarrass, and harass Messrs. Righeimer and Mensinger, for political gain. Neither the City of Costa Mesa, nor the Costa Mesa Police Department (CMPD), nor Officer Kha Bao are Defendants in this lawsuit. In fact, the first allegation in the Complaint clarifies this, clearly stating:

> **"This lawsuit is neither about nor against the general rank and file police officers who diligently serve our communities in the face of grave danger, on a daily basis, whom Plaintiffs respect and honor without reservation..."** (Paragraph 1, of Complaint).

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The general thrust of the Plaintiffs' allegations in the Complaint are that the CMPOA intentionally hired, retained, supervised, and empowered a local law firm (Defendant Lackie, Dammeier, McGill & Ethir ("LDME")) for the purpose of engaging in illegal and tortious actions—to intimidate, coerce and harass Messrs. Righeimer and Mensinger. Contrary to the assertions in the October 11, 2013 letter from CMPOA's counsel, ***nowhere in the Complaint*** are the CMPD, Officer Kha Bao, or the City of Costa Mesa implicated in having any responsibility for the illegal and tortious conduct against these individuals.

II. OFFICER KHA BAO'S INVOLVEMENT IN THE CURRENT LAWSUIT.

Officer Kha Bao is sworn peace officer of the City of Costa Mesa. Plaintiffs acknowledge and appreciate Officer Bao's decorated work history and service to the community. A portion of the Complaint arises from a false police report made by an agent of the CMPOA and LDME against Mr. Righeimer for driving under the influence. Officer Bao happened to be the police officer who was sent by the Costa Mesa Police Department, to Mr. Righeimer's home, to perform the field sobriety tests and investigate the report. The CMPOA has created some confusion regarding this issue, which we wish to clarify.

On August 22, 2012, Officer Bao was called to Mr. Righeimer's residence on the basis of a ***knowingly false and illegal*** 911 call placed by an agent for the CMPOA and LDME, Defendant Christopher J. Lanzillo. Mr. Lanzillo is a former law enforcement officer, who performed investigative services on behalf of these two entities through his business Big Giants Investigations. This false 911 call was made to coerce, harass and intimidate Mr. Righeimer, and it was done on behalf of the CMPOA. Officer Bao's actions with respect to this issue are merely incidental. The crux of this claim is not Officer Bao's actions—it is the fraudulent scheme that initiated the false police investigation that lies at the heart of Plaintiffs' claims and nothing more.

III. CMPOA'S ALLEGED ENTITLEMENT TO INDEMINIFCATION BY THE CITY OF COSTA MESA.

The CMPOA claims it is entitled to indemnification and legal defense from the City of Costa Mesa. The CMPOA, however, is a ***private*** labor union that lobbies solely on behalf of the interests of its officers. Though the CMPOA is composed of public employees, it is a ***voluntary*** organization that has ***no formal ties*** to the City of Costa Mesa, often advocates policies adverse to the City of Costa Mesa, and only has a duty to its members to advocate in their favor.

If indemnification ***were to be granted*** to the CMPOA, this would open the flood gates for the City of Costa Mesa to indemnify and provide legal defense to ***any organization composed of public employees***. This accusation, that the City of Costa Mesa has a duty to indemnify and provide a defense to the CMPOA, is unfounded and would lead to the City of Costa Mesa indemnifying any organization, simply because the organization is composed of public employees. There is no legal authority grounding the CMPOA's request for such indemnification or legal defense based upon illegal acts.

IV. CMPOA'S LEGAL REPRESENTATION AND CONFLICTS.

CMPOA has retained the law firm Wood, Smith, Henning & Berman LLP ("WSHB") for its representation in this matter. One of the partners at WSHB, representing CMPOA in this very action, even attending a hearing to advocate on behalf of the CMPOA, is Seymour "Sy" Everrett. He is the brother of current CMPOA president, Ed Everrett.

Though there are no *per se* ethical restraints against an attorney taking on the representation of a family member of which this firm is aware, in this instance, such should be called into question. The fact that the CMPOA President's brother is its attorney, and he is asking the City of Costa Mesa to pay its legal bills, without even notifying the City of Costa Mesa of this blood relationship, is questionable at best. In the event that the City of Costa Mesa were to choose to indemnify the CMPOA, it would be paying for the legal defense of CMPOA ***directly to the President's brother***. This incestuous relationship calls into question the propriety of the request for indemnification, and should be considered by the Council before a decision on indemnification is made. Especially since the CMPOA is asking the City of Costa Mesa to consider and rule upon this ***in closed session, without input from its constituents***.

V. CMPOA'S ATTEMPTS TO SKIRT RESPONSIBILITY.

Throughout the duration of this young lawsuit, the CMPOA has failed to take any responsibility for its role in hiring the law firm LDME, well-regarded as a hard-nosed bully by Southern California municipalities. The following are various actions taken by the CMPOA to skirt its responsibility in the lawsuit:

- The night of the illegal police report against Mr. Righeimer, the CMPOA held an emergency meeting and fired LDME as its legal counsel. This was done ***after*** the police stop occurred and after the CMPOA discovered its potential liability for the chain of events.
- On October 8, 2013, the CMPOA sent our office a letter asking that they be dismissed from the current case, but provided no justification for such a request.
- The CMPOA alleges in their Demurrer to Plaintiffs' Complaint that they are a "public entity," thus are availed of the same claims process and protection that a City, County or Public Entity would be entitled to. This allegation is clearly erroneous, considering that the CMPOA is not listed as a public entity under any California registry, and is organized as a corporation with the California Secretary of State.

The current request by the CMPOA for indemnification by the City of Costa Mesa is the CMPOA's latest attempt to avoid its obligations and attone for its wrongful acts. Our office ***purposefully*** refrained from including the City of Costa Mesa, Officer Bao, or the CMPD. They have no liability in this action, because they are not parties to the action. CMPOA acted wrongfully in its capacity as a private lobbying entity, therefore, Plaintiffs only wish to hold ***them, their legal counsel and their investigator*** responsible.

VI. CMPOA'S REQUEST FOR MSSRS. RIGHEIMER AND MENSINGER'S RECUSAL.

As you are well aware, the CMPOA has requested that Mssrs. Righeimer and Mensinger recuse themselves from voting on matters related to the CMPOA. The CMPOA has brought various issues (indemnification and ministerial police bonus) to the forefront of the City Council, however, these arguments appear manufactured, in order to create a conflict between the Councilmen and their jobs. Clearly, the lawsuit ***could create conflicts*** based on the Councilmen's positions as leaders of Costa Mesa, however, there is ***no current, good-faith conflict at issue***. Moreover, the CMPOA should not be allowed to benefit from its "unclean hands" by asking for the very victims of its crimes to recuse themselves. The CMPOA clearly is not entitled to indemnification, and the police officer compensation that is due is ministerial in nature. These are not true conflicts—it is merely another improper attempt by the CMPOA to silence Mssrs. Mensinger and Righeimer.

VII. THE CITY SHOULD INVESTIGATE AND HOLD HEARINGS.

In order to make a proper, informed decision on this issue, should the City decide there is a potential for it to indemnify or provide a defense to the CMPOA, it should hold a public hearing on this issue, and gather evidence for such through testimony CMPOA administrators involved with the retention and firing or LDME. Only then can the City make a decision as to the proper course of conduct. Providing indemnification or a defense to the CMPOA under these circumstances would result in a grotesque gift of public funds to protect what amounts to indisputably criminal conduct—surely an unjust result. See Stanson v Mott , (1976) 17Cal. 3d. 206.

Based on these points, Mssrs. Righeimer and Mensinger request that the City Council refuse to indemnify the CMPOA and refuse to grant it a defense in this action. The CMPOA is alleged to have engaged in this course and scope of conduct, not the City of Costa Mesa or Officer Bao. The City of Costa Mesa has no duty to indemnify this private, voluntary organization for its wrongful acts.

Thank you for your time and consideration.

Very Truly Yours,

JOHN C. MANLY, Esq.
VINCE W. FINALDI, Esq.
MANLY , STEWART & FINALDI

cc: Thomas Duarte, Esq.

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November 18, 2013

DELIVERED BY HAND, VIA FACSIMILE (714-754-5330) AND REGULAR U.S. MAIL

Costa Mesa City Council
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Tom Hatch, City Manager
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Re: ***James Righeimer, et al. v. Costa Mesa Police Association, et al.***
Our Client: Costa Mesa Police Association
Case No.: 30-2013-00670139-CU-CR-CXC

Dear Mr. Hatch and Costa Mesa City Council:

Please accept this correspondence as a follow-up to the tender for defense and indemnity originally submitted by the Costa Mesa Police Association ("CMPA") to the City of Costa Mesa via certified mail on October 4, 2013 and further requested on October 11, 2013, and November 4, 2013. Thus far, the CMPA has not received any response from the city.

Please be advised, in the interest of complete transparency, we are instructing the City Attorney to use his discretion to disclose this correspondence as well as the prior correspondence to the public. Prior correspondence has been sent to the City Clerk, City Council and City Attorney Tom Duarte with a reasonable expectation that the information be conveyed to the City Council and the public.[1]

As you know, Mayor James Righeimer and Councilmember Steve Mensinger filed a Complaint in Orange County Superior Court against the CMPA, which sets forth 15 causes of action: Negligence; Negligent Hiring/Training/ Supervision/Retention;

[1] The CMPA has not received an explanation from the City Attorney regarding why the information has not been shared with the public and/or why the City has refused to honor and acknowledge the direct conflict of interest for Mayor Righeimer and Councilmember Mensinger.

Negligent Entrustment of Agents; Intentional Infliction of Emotional Distress; Interference with Civil Rights; Violence or Intimidation; Civil Conspiracy; Malicious Prosecution; Unfair Business Practices; Assault; Invasion of Privacy (False Light); Invasion of Privacy (Intrusion Upon Seclusion); Defamation (Slander); Defamation (Libel); and Declaratory/Injunctive Relief. (*Enclosed, please find a copy of Plaintiffs' first amended complaint.*)

In regard to the allegations in plaintiffs' lawsuit specifically related to the CMPA, the CMPA's position is as follows:

> **Plaintiffs' lawsuit is disingenuous and an insult to the City of Costa Mesa and the brave men and women who serve the community as police officers. The allegations against the COSTA MESA POLICE ASSOCIATION ("CMPA") are nothing more than a veiled attempt to violate the Constitutional rights to free speech and petition, with the ultimate goal of furthering plaintiffs' political agenda and silencing opposition. This lawsuit is an affront to all of the honorable public servants in communities throughout the United States. In filing this lawsuit, plaintiffs have gravely jeopardized the safety of police officers in the City of Costa Mesa and stand to set a precedent to compromise the ability of all police officers to safely protect the citizens they swore to serve.**[2]

Plaintiffs falsely allege that the CMPA, which is composed solely of Costa Mesa police officers employed by the city of Costa Mesa engaged in illegal conduct when they opposed Righeimer's and Mensinger's agendas, including, but not limited to, encouraging citizens to attend City Council meetings, hiring a law firm to assist in petitioning activities, and responding to a report of a possible DUI.[3]

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[2] Excerpt from CMPA's Motion to Strike Plaintiffs' Complaint as a Strategic Lawsuit Against Public Participation aka "Anti-SLAPP" motion. Enclosed is a copy of the motion.

[3] Be advised, if certain allegations against the co-defendants are true, the CMPA and its officers did not condone, direct, authorize or approve such conduct. For example, the CMPA did not author, contribute to, or endorse Lackie Dammeier's "playbook" repeatedly referenced by plaintiffs. Moreover, CMPA and its members are not employees, agents or representatives of Lackie Dammeier. The CMPA and its officers will fully cooperate and assist in the investigation of any illegal acts.

RIGHEIMER & MENSINGER CONFLICTS OF INTEREST

As set forth in Section 2-189 of the *Costa Mesa Municipal Code*, the City Manager does not have the authority to settle matters in excess of fifty thousand dollars. Thus, by law, the City Council, rather than the City Manager, must consider CMPA's tender of defense.

Plaintiffs' and plaintiffs' attorneys held a press conference on November 14, 2013. The purpose of the press conference was to improperly influence the City Council to deny CMPA's tender. By doing so, plaintiffs are in direct violation of *Costa Mesa Municipal Code* §2-183, which states:

> "No city officer shall, except for his own service, present any claim, account or demand for services, goods or materials for allowance against the city, or in any way, except in the discharge of his official duty, advocate the relief asked in the claim or demand made by any other person."

By holding their press conference, Righeimer and Mensinger are advocating for a specific response to CMPA's tender. As parties to this litigation, they have a direct conflict, and it appears they are using their public offices to advocate for specific relief that will benefit them financially. **To be clear, if the City denies the CMPA's tender for defense, Righeimer and Mensinger will benefit politically and financially. Political and financial benefits create a conflict of interest.**

Accordingly, Righeimer and Mensinger <u>must</u> recuse themselves from any discussions or votes related to the litigation.

Government Code §87100 states:

> "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

This code section not only prohibits Righeimer and Mensinger from participating in any votes related to the litigation, it also prohibits them from observing any discussion of the litigation and this claim, or having access to any information regarding the Council's discussions. (*See, Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050, 1058-59 ("In our society, information is power. The council member might use the confidential

information to his advantage personally, or he might disclose the information improperly to others interested in the decision.")

Similarly, *Costa Mesa Municipal Code* §2-403 states:

> "Designated employees **must** disqualify themselves from making or participating in the making of any decisions which will foreseeably have a material financial effect, distinguishable from its effect on the public generally, on any reportable interest in that employee (except sources of gifts less than two hundred fifty dollars ($250.00)). . . ." (Emphasis added.)

The only exception is when the employee's participation in the decision is legally required. However, here, plaintiffs' participation in the decision regarding CMPA's tender is not legally required. The City Council is composed of five members, including Righeimer and Mensinger. *Costa Mesa Municipal Code* §2-47 provides that three members of the council constitutes a quorum, and that motions may be passed by a majority (i.e., two council members) if only three attend. Thus, plaintiffs' participation is not necessary to constitute a quorum.[4]

It is crystal clear that plaintiffs must **cease and desist** from any involvement in discussions regarding this tender and/or any discussion regarding the litigation.[5] Moreover, the remaining City Council members and all city employees, including the City Manager and City Attorney must not discuss the subject matter with Righeimer and Mensinger. (*Hamilton, supra,* 213 Cal.App.3d at 1058-59 ("[T]he disqualified member's mere presence, or knowledge thereafter, might also subtly influence the decisions of other council members who must maintain an ongoing relationship with him.")

For these reasons, by operation of law, any discussion of CMPA's tender must be held in a closed session meeting to prevent Righeimer and Mensinger from improperly

---

[4] If three members are not available to constitute a quorum, the CMPA reasonably expects that the meeting will be continued, rather than have Righeimer and Mensigner vote on an issue that they have a financial interest in.

[5] The CMPA has requested on at least four occasions in written correspondence that Righeimer and Mensinger recuse themselves dating back to August 23, 2013. CMPA has not received any response. Attached, please find copies of correspondence sent to the City of Costa Mesa.

influencing the decision. (*Government Code* §§54956.9, 54956.95; *see also, Government Code* §54956.9(h) (a local agency is considered to be a "party" to or "have significant exposure to" litigation in which the officer or employee was in the course and scope of employment *or when their is a question of whether or not the officer or employee was in the course and scope of employment.*)

Furthermore, both the *Ralph M. Brown Act* and the *Costa Mesa Municipal Code* make it unlawful for a Councilmember or City employee to disclose confidential information from a closed session meeting. *Government Code* §54963(a) provides:

> "A person may not disclose confidential information that has been acquired by being present in a closed session . . . to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information."

Costa Mesa Municipal Code §2-41(b) states:

> "It shall be unlawful for any member of the city council, or any employee of the city or any other person present during a closed session to disclose to any person the content or substance of any discussion which took place during such closed session on any matter legally authorized to be heard in closed session, unless the city council has authorized the disclosure of such information by majority vote."

Should Righeimer or Mensinger participate in any manner in any Council discussions or decisions regarding the litigation, or should they obtain confidential information from any such closed session meetings, we will have no choice but to pursue our client's rights under *Government Code* §91003, by way of Complaint for Injunctive Relief; Complaint with the California Fair Political Practices Commission; and/or further investigate grounds for a criminal investigation for political corruption.

TENDER OF DEFENSE

The City Council has the legal authority to accept the CMPA's request to participate in its defense and defend city employees. (*Costa Mesa Municipal Code* §2-189.)

Government Code §995 states:

> "Except as otherwise provided in Sections 995.2 and 995.4, upon request of an employee or former employee, a public entity shall provide for the defense of any civil action or proceeding brought against him, in his official or individual capacity or both, on account of an act or omission in the scope of his employment as an employee of the public entity.
>
> For the purposes of this part, a cross-action, counterclaim or cross-complaint against an employee or former employee shall be deemed to be a civil action or proceeding brought against him."

In circumstances in which it is not clear if the allegations arise out of the course and scope of employment, the public entity is permitted to provide a defense while reserving its rights to not pay a judgment, compromise, or settlement until it is established that the injury arose out of an act or omission occurring within the scope of employment. (*Government Code* §825.) (*Although the CMPA is respectfully requesting defense and indemnity, the CMPA acknowledges that the City has the option of participating in the defense of the CMPA without assuming any obligation related to a potential judgment, compromise, or settlement.*)[6]

Officer Bao's Conduct in Course and Scope of Employment

In regard to the alleged conduct of police officers employed by the city of Costa Mesa, plaintiffs' complaint specifically includes, but is not limited to, the following allegations regarding Officer Bao's conduct in the course and scope of his employment:

> After Plaintiff JAMES RIGHEIMER arrived at his home in Costa Mesa, less than four miles away, parked in the garage and entered his residence, a City of Costa Mesa Police Officer named Kha Bao, who has received public recognition on several occasions for his extremely high drunk driving arrest record, arrived at the home. He asked plaintiff JAMES RIGHEIMER if he had been drinking alcohol, to which, Plaintiff JAMES

[6] As noted in our prior tender letters, Righeimer and Mensinger seek to depose Costa Mesa Police Officers Kha Bao and Jason Chamness, and others as it relates to their complaint. Plaintiffs also seek documents from the CMPA related to actions taken by Costa Mesa Police Officers during the course and scope of their employment. The information sought directly impacts the City of Costa Mesa.

> RIGHEIMER replied "no," because in fact, he had not. Officer BAO then requested that Plaintiff JAMES RIGHEIMER perform a field sobriety test, designed to determine whether he had been operating a motor vehicle while intoxicated. Plaintiff JAMES RIGHEIMER complied, as his wife and children stood by and observed. His children distraught, asked if their "daddy was going to be arrested and go to jail." BAO informed Plaintiff JAMES RIGHEIMER that he had passed the test, and authorized him to carry on with his affairs.
>
> After Officer BAO authorized Plaintiff JAMES RIGHEIMER to carry on with his business, Plaintiff LENE RIGHEIMER noticed Officer BAO walking down the street towards a vehicle that was parked at the end of the cul-de-sac, and saw him talk to the driver of the vehicle.

(First Amended Complaint, Page 12, Line 25 through Page 13, Line 10.)

Plaintiffs claim that Officer Bao's conduct caused plaintiffs damages, including, but not limited to,

> "[A] law enforcement officer to arrive at the home of Plaintiff JAMES RIGHEIMER, and make contact with him was intended to and did place Plaintiff JAMES RIGHEIMER in imminent apprehension of grave bodily harm, or was intended to place Plaintiff JAMES RIGHEIMER in imminent apprehension of such contact[.]"

(First Amended Complaint Page 35, Line 7 through 10.)

Ford Road Conduct in Course and Scope of Employment

Plaintiffs also claim that citizens of Costa Mesa who had concerns about crime on Ford Road were told by Police Officers to take their complaints to the next City Council meeting. This act provides a further catalyst for plaintiffs' allegations, as in response to these complaints, Righeimer and Mensinger felt that they were "held hostage" by the citizens of Costa Mesa and thereafter toured Ford Road shortly before spending part of the afternoon at a local bar on the day of the incident. There is no doubt that Police Officers are expected to address citizens concerns regarding crime in an area and, while in the course and scope of their employment, provide citizens with suggestions for an appropriate outlet for their complaints. This further illustrates the fact that plaintiffs'

Complaint arises out of the course and scope of the Costa Mesa Police Officers' employment.

CMPA's Board's Alleged Conduct in Course and Scope of Employment

Furthermore, to the extent plaintiffs' allegations are based upon actions taken by CMPA Board Members (who are all Costa Mesa Police Officers employed by the City of Costa Mesa) related to collective bargaining activities, those actions were still within the course and scope of employment because such activities were a foreseeable outgrowth of their employment with, and benefit to, the City of Costa Mesa.

It is well-settled that the primary goal of collective bargaining is to promote peace and stability between labor and management. (*Dyna-Med, Inc. v. Fair Employment and Housing Commission* (1987) 43 Cal.3d 1379, 1398; *Relyea v. Ventura County Fire Protection District* (1992) 2 Cal.App.4th 875, 882.) Costa Mesa benefits from the improved quality of services it can provide when there is a peaceful and productive relationship with labor.

Where activity has become a "recognized, established, and encouraged custom" of the employer's enterprise, particularly where the activity is conceivably of some benefit to the employer, such activity is within the scope of employment. (*McCarty v. Workmen's Comp. Appeals Bd.* (1974) 12 Cal.3d 677, 682-83; *Rogers v. Kemper Constr. Co.* (1975) 50 Cal.App.3d 608. Collective bargaining activities and other actions carried out by CMPA Board Members are recognized, established, and encouraged customs that provide a benefit to the City.

Moreover, the California Supreme Court has affirmed that a primary purpose of the defense and indemnity provisions under the *Government Code* is to protect public employees from vexatious lawsuits that arise out of their employment. (*Farmers Insurance Group v. County of Santa Clara* (1995) 11 Cal.4th 992, 1018. Activities that serve the interests of the employer, even indirectly, are within the scope of employment. Accordingly, the actions taken by CMPA Board Members fall within the scope of their employment.

The allegations plaintiffs have made against Costa Mesa's Police Officers compromise the integrity of the officers, the safety of the officers and their ability to perform the duties they swore to perform. In light of the plaintiffs' allegations, the City must act to defend its employees against false and meritless claims. Plaintiffs would have the City

leave its Police Officers to fend for themselves and use their limited resources to fight plaintiffs' vindictive and baseless allegations.

On behalf of the CMPA and the men and women who serve the City of Costa Mesa as Police Officers, we remain ready and willing to work in a cooperative fashion with the city to defend its employees. Should you have any questions regarding the foregoing or need any additional information, please do not hesitate to contact the undersigned.

Very truly yours,

WOOD, SMITH, HENNING & BERMAN LLP

By: _____
SEYMOUR B. EVERETT, III
DAVID L. MARTIN

Enclosures

cc: Tom Duarte, Costa Mesa City Attorney (Via Hand Delivery, E-Mail, Facsimile and Regular U.S. Mail)

LEGAL:10301-0001/2808584.1

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Attorneys for Defendant, COSTA MESA POLICE ASSOCIATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE - CIVIL COMPLEX DIVISION

JAMES RIGHEIMER, an individual; LENE RIGHEIMER, an individual; and STEVE MENSINGER, an individual, Plaintiffs, v. COSTA MESA POLICE ASSOCIATION, a California corporation, LACKIE, DAMMEIER, MCGILL & ETHIR, A PROFESSIONAL CORPORATION, a California corporation; BIG GIANTS INVESTIGATIONS, a business entity of form unknown; CHRISTOPHER J. LANZILLO, an individual and DOES 1-25 Defendants.	CASE NO. 30-2013-00670139-CU-CR-CXC **DEFENDANT, COSTA MESA POLICE ASSOCIATION'S NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE ALL CLAIMS BROUGHT BY PLAINTIFF JAMES RIGHEIMER; MEMORANDUM OF POINTS AND AUTHORITIES; [PROPOSED] ORDER** **(Cal. Code of Civ. Proc. §425.16)** **REQUEST FOR JUDICIAL NOTICE FILED CONCURRENTLY** **ORAL ARGUMENT REQUESTED** DATE: November 4, 2013 TIME: 1:30 p.m. DEPT.: CX-101 Complaint Filed: 8/20/13 [Assigned for All Purposes to Judge Gail A. Andler, Dept. CX101]

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 4, 2013, at 1:30 p.m., in Department CX-101 of the Orange County Superior Court, Complex Division, which is located at 751 West Santa Ana Blvd., Santa Ana, CA 92701, or as soon thereafter as may be heard, Defendant, COSTA

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MESA POLICE ASSOCIATION (hereinafter "CMPA") will move this Court for an order striking the Complaint filed by plaintiff, JAMES RIGHEIMER (hereinafter "Righeimer") on the grounds that the Complaint constitutes a Strategic Lawsuit Against Public Participation ("SLAPP").

This motion pertains to each of the claims brought by Righeimer in the Complaint filed on August 20, 2013, which include the First (Negligence), Second (Negligent Hiring, Training, Supervision, Retention), Third (Negligent Entrustment of Agent), Fourth (Intentional Infliction of Emotional Distress), Fifth (Interference with Civil Rights), Sixth (Violence or Intimidation), Seventh (Civil Conspiracy), Eighth (Malicious Prosecution), Ninth (Unfair Business Practices), Tenth (Assault), Eleventh (Invasion of Privacy: False Light), Twelfth (Invasion of Privacy: Intrusion Upon Seclusion), Thirteenth (Defamation: Slander), Fourteenth (Defamation: Libel), and Fifteenth (Declaratory and Injunctive Relief) causes of action.

This motion is based on Code of Civil Procedure §425.16, the Anti-SLAPP statute, on the grounds that the claims arise from acts in furtherance of the right of petition and free speech.

This Motion is based upon this notice; the attached Memorandum of Points and Authorities; the Declarations of Kha Bao, Steve Staveley, and David L. Martin; the exhibits to the declarations; the Request for Judicial Notice; the records, pleadings and documents on file with the Court; and on all other matters presented to the Court at the time of the hearing.

DATED: October 10, 2013

WOOD, SMITH, HENNING & BERMAN LLP

By: _____
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MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

Plaintiffs' lawsuit is disingenuous and an insult to the City of Costa Mesa and the brave men and women who serve the community as police officers. The allegations against the COSTA MESA POLICE ASSOCIATION ("CMPA") are nothing more than a veiled attempt to violate the Constitutional rights to free speech and petition, with the ultimate goal of furthering plaintiffs' political agenda and silencing opposition. This lawsuit is an affront to all of the honorable public servants in communities throughout the United States. In filing this lawsuit, plaintiffs have gravely jeopardized the safety of police officers in the City of Costa Mesa and stand to set a precedent to compromise the ability of all police officers to safely protect the citizens they swore to serve. For the reasons discussed below, this lawsuit must be dismissed.

A. The Parties

Plaintiff, JAMES RIGHEIMER ("Righeimer") was elected to the Costa Mesa City Council in November 2010, and now serves as the City's Mayor. *Complaint* ¶2. Plaintiff, LENE RIGHEIMER is Righeimer's wife. *Id.* ¶3. Plaintiff, STEVE MENSINGER ("Mensinger") was appointed to the City Council in January 2011, and now serves as Mayor Pro Tem. *Id.* ¶4.

CMPA is the governing body of police officers in the Costa Mesa Police Department ("CMPD") with the rank of Sergeant and below. *Id.* ¶5. Plaintiffs assert that CMPA retained the law firm of Defendant, LACKIE, DAMMEIER, McGILL & ETHER, APC ("Lackie Dammeier") to assist with labor negotiations, and the firm retained the services of Defendants, BIG GIANTS INVESTIGATIONS ("BGI") and CHRISTOPHER J. LANZILLO ("Lanzillo"). *Id.* ¶¶5, 10, 15

B. Righeimer's 2010 Campaign and DUI Checkpoint Incident

Righeimer was elected to City Council in November 2010. *Id.* ¶2. Prior to that, he was on the City Planning Commission. *Id.* He partially based his City Council campaign on reducing pay and benefits for public employees. *Declaration of David L. Martin ("Martin Decl.")* ¶41.

In September 2010, CMPD operated a DUI checkpoint that delayed Righeimer in traffic. *Id.* ¶49. He confronted the officers and then posted a news article about the incident on his campaign website. *Id.* The article boasts that he gave a "tepid tongue-lashing to police" at the

scene. *Id.* ¶50. He also vowed that "This is not going to happen anymore." *Id.*

By waging a public battle against unions, Righeimer has received state, local, and national attention. *Id.* ¶53. A news article stated that he has "built his reputation over the past two years with hard-line measures against labor." *Id.* ¶42. After his election, Righeimer led the City Council's efforts to privatize city services. *Complaint* ¶14. He also led the Council to approve more than 200 layoff notices to City employees. *Martin Decl.* ¶42.

C. City Budget Cuts and Privatization

In 2012, Righeimer supported a plan for outsourcing city services. *Complaint* ¶14. He recommended a charter city ballot proposal in order to facilitate privatization. *Id.* At the same time, "the Costa Mesa City Council had been embroiled in contract negotiations...regarding the pension and benefits schedule of the Costa Mesa Police Department." *Id.* He acknowledges that the CMPA "was directly opposed to this position, and actively lobbied in an attempt to make Plaintiffs JAMES RIGHEIMER and STEVE MENSINGER change their positions." *Id.* ¶15.

There have been frequent discussions regarding compensation and pension benefits, in part because of the COIN ordinance passed in 2012. *Id.* ¶14. A Memorandum of Understanding ("MOU") governs officer compensation and will expire in 2014. *Martin Decl.* ¶38.

D. CMPA's Opposition to Righeimer's Policies

CMPA opposes Righeimer's efforts to reduce public employee benefits, compensation, and pensions. *Complaint* ¶15. It campaigned against him in the November 2010 elections. *Martin Decl.* ¶43. Righeimer contends that the CMPA drove a political billboard around the city that directed voters to a website describing his past financial woes. *Complaint* ¶18.

Righeimer claims that police officers have urged citizens to attend city council meetings and raise public safety concerns. *Id.* ¶18. The President and Vice-President of the CMPA attended a city council meeting on September 21, 2010, and spoke out against a possible abuse of authority by Righeimer related to the DUI checkpoint incident. *Martin Decl.* ¶9.

E. Impact on CMPD and the Community

The prolonged dispute over employee benefits and pension reform has impacted Costa Mesa police officers. *Id.* ¶46. Several officers have left to work for other cities. *Id.* ¶46. One

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retired Costa Mesa police lieutenant stated that "[t]he council majority has created a work environment that is so hostile that Costa Mesa is now easily the least attractive place in Orange County to work as a police officer." *Id.* ¶47. He also stated, "A great agency that has been decimated, cut to the core and forced into a position of fighting not just the enemy on the streets but the very employer who employs you." *Id.* He indicated that the department is understaffed and overwhelmed. *Id.* Crime in Costa Mesa was up 5.79% in 2011 and 15.51% in 2012. *Id.* ¶¶48-49.

In June 2011, Police Chief Steve Staveley resigned from his position. *Declaration of Steve Staveley* ¶4. In a letter he drafted that was printed in the Los Angeles Times, he stated that the City Council was meddling in police department affairs. *Id.* ¶5. He also stated that he believed that the City Council had created the appearance of a fiscal crisis in order to layoff police officers. *Id.*

F. <u>The August 21, 2013, Incident</u>

Righeimer claims that unidentified police officers encouraged "several" unidentified citizens to attend a City Council meeting on August 21, 2013, to complain of lawlessness near Ford Rd., and to suggest that the City needed more police officers. *Complaint* ¶18. He perceived the "parade of citizens and complaints" as an attempt by CMPA to "shake[] down" the City Council and "hold them hostage." *Id.* The next day, he and Mensinger toured Ford Rd. *Id.*

After the tour, they drove to a local bar. *Id.* ¶24. After having a drink, Righeimer and Mensinger left the bar and returned to their respective homes. *Id.* Lanzillo purportedly saw Righeimer as he left the bar. *Id.* ¶31. Lanzillo called in a report of possible DUI, stating that he observed Righeimer stumbling, weaving on the road, speeding, and running a stop sign. *Id.*

Costa Mesa Police Officer Kha Bao ("Officer Bao") responded to the call. *Id.* ¶25. By the time he responded, Righeimer was home. *Id.* Officer Bao knocked on the door and asked Righeimer if he would come out of his house, which he consented to do. *Id.* Officer Bao asked him whether he had been drinking alcohol, and Righeimer responded that he had not. *Id.* As was standard procedure following a report of a possible drunk driver, Officer Bao asked Righeimer if we would be willing to submit to a test, and Righeimer agreed. *Id.* Officer Bao then performed a horizontal gaze nystagmus test. *Id.* It is a simple test that requires the individual to follow a pen with his eyes. *Declaration of Officer Kha Bao* ("*Bao Decl.*") ¶12. Officer Bao then informed

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Righeimer that he had passed the test and left. *Complaint* ¶25. The test lasted less than one minute, and Righeimer was not subjected to any further tests. *Bao Decl.* ¶14. He was not arrested, and no charges were filed. *Complaint* ¶104. The action was "terminated, almost immediately." *Id.*

G. Lanzillo Acted On His Own

Since the incident, Lanzillo has repeatedly stated that he acted on his own. *Id.* ¶34. News articles reported that he stated, "I was not hired in any manner to follow Mr. Righeimer or call in a traffic violation." *Id.* He also stated that, "[t]his was a spur of the moment observation, which I decided to take action on without any request from anyone.'" *Id.*

Lackie Dammeier has denied that Lanzillo was acting on its behalf. A local news article stated that "Dammeier denied any connection between the law firm and the Righeimer call." *Id.* ¶33. It quoted Mr. Dammeier as stating that "he was not employed or authorized to surveil (or do anything else to) Mr. Righeimer by this firm." *Id.*

Similarly, CMPA denies that Lanzillo acted on its behalf. The president of the Costa Mesa Police Association unequivocally stated: "The CMPA had no knowledge or participation surrounding this incident." *Martin Decl.* ¶58. He also said that the "CMPA does not condone such activities." *Id.* Finally, he stated that "our members were not involved in any wrongful reporting against Mr. Righeimer." *Id.*

Righeimer acknowledged that the police were **not** trying to set him up. *Id.* ¶59. He described Officer Bao as being "very professional." *Id.* He also said that "[i]f it was guys in our department trying to set me up out there, they would've done it differently." *Id.* Despite these statements, Righeimer now claims that the police removed him from his home and "forcefully" submitted him to sobriety test, causing him to be in "imminent apprehension of harmful or offensive contact." *Complaint* ¶119. He claims defendants were in a "position of authority and dominance" over him and attempted to "inflict fear and injury." *Id.* ¶120.

II. *CODE OF CIVIL PROCEDURE* §425.16 AUTHORIZES THIS MOTION.

The Anti-SLAPP statute, at *Code of Civil Procedure* (*C.C.P.*) §425.16, protects acts in furtherance of the rights of petition or free speech under the United States and California Constitutions. It establishes a procedure for quickly resolving litigation that chills the exercise of

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the rights of free speech and petition. *Sipple v. Foundation for Nat. Progress* (1999) 71 Cal.App.4th 226, 235. It is interpreted broadly in a manner "favorable to the exercise of freedom of speech." *Bradbury v. Superior Court* (1996) 49 Cal.App.4th 1170, 1176; *see also C.C.P.* §425.16(a) ("this section shall be construed broadly"). A plaintiff cannot avoid its application by artful pleading. *Navellier v. Sletten* (2002) 29 Cal.4th 82, 90-92. Courts must "examine the principal thrust or gravamen of a plaintiff's cause of action to determine whether the anti-SLAPP statute applies." *Ramona Unified School Dist. v. Tsiknas* (2005) 135 Cal.App.4th 510, 519-22.

Section 425.16 requires a defendant to make a prima facie showing that the plaintiff's claims arise from an act in furtherance of the right of petition and/or the right of free speech in connection with a public issue. *C.C.P.* §425.16(b)(1). The burden then shifts to the plaintiff to establish a probability of prevailing on the claims. *Id.* The plaintiff must meet this burden with "competent and admissible evidence." *Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 26. However, the motion should still be granted if the defendant establishes an affirmative defense to the plaintiff's claims. *Chabak v. Monroy* (2007) 154 Cal.App.4th 1502, 1513.

III. THIS LAWSUIT FROM ACTS IN FURTHERANCE OF CMPA'S RIGHTS.

The Anti-SLAPP statute applies to any cause of action arising from any act "in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue." *C.C.P.* §425.16(b)(1). This includes, but is not limited to: 1) statements or writings made before a legislative, executive, or judicial or other official proceeding; 2) statements or writings made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other legally authorized official proceeding; 3) statements or writings made in a place open to the public or in a public forum, in connection with an issue of public interest; and 4) conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with an issue of public interest. *Id.* §425.16(e)(1)-(4)); *see also, Averill v. Superior Court* (1996) 42 Cal.App.4th 1170, 1175 (the statute's use of the word "includes" implies that "other acts which are not mentioned are also protected under the statute")

Courts are to "examine the principal thrust or gravamen of a plaintiff's cause of action to

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determine whether the anti-SLAPP statute applies." *Ramona Unified School Dist. v. Tsiknas* (2005) 135 Cal.App.4th 510, 519-22. Commenting on a matter of public concern is a classic form of speech that lies at the heart of the First Amendment. *Schenck v. Pro-Choice Network* (1997) 519 U.S. 357, 377; *Annette F. v. Sharon S.* (2004) 119 Cal.App.4th 1146, 1162. Here, the Complaint targets the CMPA's expressive speech concerning labor negotiations, which were discussed in City Council meetings and made the basis of candidate platforms. This litigation imposes a burden on the CMPA, forcing it to incur significant legal costs and divert its attention and limited resources from contract negotiations and the current debate about pensions in order to protect its First Amendment rights. The Court must not condone Righeimer's tactics.

IV. ALL CONDUCT THAT FORMS THE BASIS OF RIGHEIMER'S CAUSES OF ACTION AGAINST CMPA IS PROTECTED BY THE FIRST AMENDMENT.

A. All Pre-Incident Conduct Is Protected.

Righeimer claims that CMPA and co-defendants implemented an aggressive strategy in CMPA's contract negotiations with the City. Those activities include driving around with a billboard in 2010 that advertised a website created to show Righeimer's past financial woes. Righeimer does not identify the website's address, any specific statements on the website, or contend that the statements regarding his past financial woes were false, and CMPA therefore assumes he concedes that they were true. The activities also include the allegation that unidentified police officers encouraged unidentified citizens to go to a City Council meeting to complain about crime. None of the pre-incident conduct alleged is actionable conduct.

The right to raise questions and concerns to public officials is protected by the First Amendment. *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1116, 1122 (all petition-related activity is protected by the First Amendment); *People v. Stanistreet* (2002) 29 Cal.4th 497, 504 ("The right to criticize the government and governmental officials is among the quintessential rights Americans Enjoy under the First Amendment to the United States Constitution and Californians enjoy under the California Constitution, article I, section 2.") A "parade" of "several citizens" and complaints at a City Council meeting is not equivalent to holding public officials "hostage" or a "shake down." Instead, it is the exercise of a basic

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Constitutional right.

In *Averill*, the plaintiff filed a complaint against an individual who expressed views at a city council meeting, wrote to the local newspaper, and expressed views about the plaintiff to her employer. *Averill v. Superior Court* (1996) 42 Cal.App.4th 1170, 1170-72. The defendant filed an Anti-SLAPP motion, which the trial court denied. *Id.* at 1170, 1176. The Appellate Court reversed and issued an order granting the motion. It found that the suit was filed "to punish [defendant] for her criticism of the Eli project and to impose litigation costs upon her for exercising her right to free speech and to petition the government." *Id.* Further, court stated that "[t]o allow this matter to proceed against Averill would have the precise effect the statute was designed to avoid." *Id.*

Righeimer makes much ado of the Lackie Dammeier "playbook." The CMPA did not author, contribute to, or endorse the "playbook" in any way. Moreover, CMPA and its members are not employees, agents or representatives of Lackie Dammeier. Even with this in mind, Righeimer has not identified a single statement in the "playbook" that falls outside the scope of petitioning activities. In fact, he concedes that the "playbook" details various strategies regarding negotiations after an impasse. The fact that he may not like Lackie Dammeier's "playbook," or may find the strategies aggressive, does not render the strategies illegal or actionable.

Righeimer is a public official. "Public office is no place for the thin-skinned. Those who function in the public arena 'must be prepared to withstand...the protest and controversy which their earlier actions and statements have generated.'" *Pittsburg Unified School Dist. v. California School Employees Assn.* (1985) 166 Cal.App.3d 875, 899 (quoting *In re Kay* (1970) 1 Cal.3d 930, fn.3). While Righeimer may find it annoying or inconvenient to have to respond to questions and concerns about his political agenda, that does not render such an exercise of constitutional rights actionable. Furthermore, driving a billboard around the city that directs citizens to a website that contains information critical of a candidate is protected. *Stanistreet, supra*, 29 Cal.4th at 504. Simply put, he has not identified any pre-incident conduct that is not protected.

B. <u>Lanzillo's Call to 911 Was Privileged.</u>

As discussed above, CMPA denies any involvement in the report of possible drunk driving allegedly made by Lanzillo. However, even assuming Plaintiffs' allegations are true, the report of

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possible drunk driving made by Lanzillo is protected and not actionable.

Civil Code (*C.C.*) §47 sets forth California's privilege for statements made in connection with official proceedings. The privilege is absolute. *Hagberg v. California Federal Bank FSB* (2004) 32 Cal.4th 350, 375; *Silberg v. Anderson* (1990) 50 Cal.3d 205, 215. It bars all tort actions that are based on privileged statements, except for actions for malicious prosecution. *Hagberg, supra*, 32 Cal.4th at 375; *Silberg, supra*, 50 Cal.3d at 215-16. Reports made by citizens to police regarding potential criminal activity fall within the absolute privilege. *Hunsucker v. Sunnyvale Hilton Inn* (1994) 23 Cal.App.4th 1498, 1502-03. Furthermore, "[a]ny doubt as to whether the privilege applies is resolved in favor of applying it." *Adams v. Superior Court* (1992) 2 Cal.App.4th 521, 529 (internal citations omitted).

CMPA anticipates that plaintiffs will argue that the litigation privilege is not absolute. However, even assuming the litigation privilege is not absolute, Lanzillo's statements to 911 would still be privileged. In *Dwight R. v. Christy B.* (2013) 212 Cal.App.4th 697, the plaintiff sued the defendant, a therapist who had reported suspected sexual abuse by the plaintiff. Following juvenile dependency proceedings in which the court did not sustain any allegations against the plaintiff, he filed a Complaint against the therapist, among others. *Id.* at 706. The therapist filed an Anti-SLAPP motion, which the trial court granted. On appeal, the Fourth District Court of Appeals found that the report of suspected sexual abuse was protected activity. The court then analyzed the facts in the context of *Lefebvre v. Lefebvre* (2011) 199 Cal.App.4th 696, a Second District case. The *Dwight R.* court distinguished the facts of that case from the facts of *Lefebvre*. It noted that in *Lefebvre*, the defendant *admitted* that she filed a false police report. *Id.* at 713, quoting *Lefebvre v. Lefebvre* (2011) 199 Cal.App.4th 696, 705. Thus, as a matter of law, the *Lefebvre* defendant could not show that the claims were based on protected speech or activities. *Id.*

The court went on to note that there is a "critical distinction between a plaintiff's bare allegations of unlawful activities and uncontroverted evidence of unlawful activities." *Id.*, citing *Siam v. Kizilbash* (2005) 130 Cal.App.4th 1563 (the defendant's *allegedly* false report to school officials was protected activity, notwithstanding the plaintiff's allegation that the report was simply

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an attempt to manufacture corroboration for the defendant's false accusations of abuse).

Here, Righeimer speculates that Lanzillo made a false report to 911. However, he offers no facts to suggest that this claim is anything more than speculation. According to Lanzillo, he observed Righeimer stumbling out of a bar, getting into his car, and driving at high speeds, running a stop sign, and swerving down the street. Any claim that Lanzillo's 911 call was a false report is based on speculation. Unlike *Lefebvre*, Righeimer cannot produce competent, admissible evidence to establish that the 911 call was a false report, and Lanzillo's call is therefore protected.

C. <u>CMPA's Activities Were Protected.</u>

To the extent that Righeimer claims that CMPA is directly liable to him for Lanzillo's actions, CMPA's activities were protected. As noted above, Righeimer claims that CMPA retained Lackie Dammeier to represent it in contract negotiations with the City. The right to retain an attorney to assist with petitioning activities is protected by the First Amendment. *United Mine Workers of America v. Illinois State Bar Ass'n* (1967) 389 U.S. 217. Righeimer then alleges that Lackie Dammeier retained Lanzillo and BGI to assist with representation of CMPA. While, CMPA denies any involvement in the report of possible drunk driving allegedly made by Lanzillo, even if plaintiff's allegations were true, the conduct of which they complain would arise from protected conduct.

The right to retain an investigator to assist with petitioning activities is similarly protected by the First Amendment. *Tichinin v. City of Morgan Hill* (2009) 117 Cal.App.4th 1049, 1074-75. In *Tichinin*, the plaintiff, an attorney, represented a number of individuals in matters that were before a city council, including a developer who was seeking approval for a proposed project that city manager and city attorney opposed. *Id.* The developer authorized the plaintiff to hire an investigator to determine whether rumors of an inappropriate relationship between the city attorney and city manager were true and, if so, to request that the city attorney be removed from further involvement with the developer's project due to a conflict of interest. *Id.* at 1057.

Thereafter, while the city manager was attending an official conference in another city, the investigator checked into the same hotel as the city manager and conducted surveillance of the city manager over the next few days. *Id.* at 1057-58. When the city manager caught the investigator, he

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claimed that he became shaken and distressed by what he considered to be intrusive surveillance, and he feared for his family. *Id.* at 1058. The city issued a formal reprimand of the plaintiff.

The appellate court held that the plaintiff's conduct in hiring an investigator to conduct surveillance of the city manager was protected by the First Amendment. The court recognized that hiring an investigator is not necessarily a form of petition, and that Tichinin ultimately did not bring evidence of an inappropriate relationship to the city's attention. *Id.* at 1066. However, the court held that those circumstances did not preclude constitutional protection. *Id.* Instead, the court recognized the rule that conduct incidental to a petition includes conduct normally and reasonably necessary to an effective exercise of the right to petition. *Id.*

The court recognized that rights afforded by the First Amendment encompass a "breathing space" necessary for the effective exercise of those rights. *Id.*, citing *Sosa v. DIRECTV, Inc.* (9th Cir. 2006) 437 F.3d 923, 932-33. This "breathing space" includes both overprotection (i.e., the protection of some baseless petitions in order to ensure that citizens continue to enjoy the right to petition without fear of prosecution or liability) and collateral protection (i.e., the protection of non-expressive conduct closely related to the full exercise of First Amendment rights). *Id.*

The court further noted that the right of free speech protects the right to gather information about what public officials do on public property, in common areas of private property, and in public places outside of private property. *Id.* at 1076, 1078. *The court went on to state, "the right of free speech protects . . . non-expressive conduct that intrinsically facilitates one's ability to exercise the right of free speech, including lawful efforts to gather evidence and information about public officials concerning allegedly improper or unlawful conduct." Id.* at 1077. Thus, even assuming that Lanzillo was acting on CMPA's behalf, such conduct would be protected by the First Amendment.

D. <u>Officer Bao's Conduct Is Protected.</u>

To the extent Righeimer bases his claims against CMPA on Officer Bao's conduct during

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the course of his investigation, Officer's Bao's conduct and statements are privileged. *Schaffer v. City & County of San Francisco* (2008) 168 Cal.App.4th 992, 1003.

V. THE FIRST THROUGH FOURTH & NINTH THROUGH FOURTEENTH CAUSES OF ACTION ARE BASED ON PROTECTED CONDUCT.

A. These Causes of Action are Based On the Incident.

Righeimer primarily bases his First through Fourth causes of action (Negligence, Negligent Hiring//Training/Supervision/Retention, Negligent Entrustment of Agent, and Intentional Infliction of Emotional Distress) on the incident. His Ninth cause of action (Unfair Business Practices) is also based on the incident. Righeimer's Tenth cause of action (Assault) is based on the allegation that the presence of Officer Bao at his home caused him to be in "imminent apprehension of harmful or offensive contact." His Eleventh through Fourteenth causes of action (Invasion of Privacy (False Light), Invasion of Privacy (Intrusion Upon Seclusion), Defamation (Slander), and Defamation (Libel)) are based on the allegation that he was characterized as a person who violates traffic rules, drives drunk, and disregards laws.

B. Righeimer Cannot Avoid Constitutional Rights Associated with Speech-Based Causes of Action by Casting His Causes of Action In Another Light.

Regardless of how Righeimer casts his claim, he cannot avoid the Constitutional protections that apply to speech-based causes of action, discussed below, simply by converting his causes of action to Negligence-based causes of action, Intentional Infliction of Emotional Distress, Assault, Unfair Business Practices, or Invasion of Privacy. *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 182 ("A plaintiff may thus not 'plead around' an 'absolute bar to relief' simply 'by recasting the cause of action as one for unfair competition.'"); *Blatty v. New York Times Co.* (1986) 42 Cal.3d 1033, 1042-43 (Constitutional protection does not depend on the label given to the cause of action); *Reader's Digest Ass'n v. Superior Court* (1984) 37 Cal.3d 244, 265 (ordering dismissal of false light claim because it was duplicative of a failed defamation claim); *Hall v. Time Warner, Inc.* (2007) 153 Cal.App.4th 1337, 1346 (finding that intrusion upon seclusion, among other causes of action, arose from an act in furtherance of defendant's right of free speech); *Felton v. Schaeffer* (1991) 229 Cal.App.3d 229,

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239 ("If plaintiffs...were permitted to sue in negligence, [they] would seek to evade the strictures of libel law and avoid the applicable defenses by framing all libel actions as negligence causes of action, merely by pleading the defendant was negligent[.]"), citing *Flynn v. Higham* (1983) 149 Cal.App.3d 677, 681-83 (same rule with respect to intentional infliction of emotional distress).

C. All Speech and Conduct In Connection With the Incident Is Protected.

As discussed at length above, Lanzillo's call to 911 is subject to the litigation privilege set forth in *C.C.* §47. *Tichinin, supra*, 117 Cal.App.4th at 1077; *Dwight R., supra*, 212 Cal.App.4th at 713. To the extent Righeimer's claims are based on Lanzillo's statements in the August 28, 2012, O.C. Register article, the protections of *C.C.* §47 extend to statements made to a public journal in connection with an official proceeding. *C.C.* §47(d)(1).

Righeimer bases his claim for assault on the allegation that defendants placed him in imminent apprehension of grave bodily harm by directing and encouraging law enforcement to arrive at his home and make contact with him. As noted above, Lanzillo's 911 call is protected. As such, neither Lanzillo nor the CMPA can be held liable for Lanzillo's communication to 911, or the subsequent conduct of Officer Bao in making contact with Righeimer. *Hunsucker v. Sunnyvale Hilton Inn* (1994) 23 Cal.App.4th 1498, 1505.

For the reasons discussed above, all speech and conduct by CMPA related to the incident is protected and Righeimer cannot maintain his First through Fourth and Ninth through Fourteenth causes of action against CMPA.

VI. THE FIFTH & SIXTH CAUSES OF ACTION ARE BASED ON PROTECTED CONDUCT.

Righeimer's Fifth (Interference with Civil Rights) and Sixth (Violence or Intimidation) causes of action are based on all of the conduct alleged throughout the entire Complaint. In the Fifth cause of action, he asserts, "During Plaintiffs' public service for the City of Costa Mesa, Defendants engaged in oppressive and unlawful tactics, including but not limited to, the use of threats, intimidation, harassment, violence, and coercion...." In the Sixth cause of action, he states, "During these Plaintiffs' public service for the City of Costa Mesa, Defendants instigated violence and intimidation by threat of violence against these Plaintiffs, against their person or property,

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because of their political affiliation or on account of their contrary position in a labor dispute...."

As set forth above, all conduct alleged in the Complaint was protected conduct. *See Briggs, supra*, 19 Cal.4th at 1116, 1122 (all petition-related activity is protected by the First Amendment); *Stanistreet, supra*, 29 Cal.4th at 504 ("The right to criticize the government and governmental officials is among the quintessential rights Americans Enjoy under the First Amendment to the United States Constitution and Californians enjoy under the California Constitution, article I, section 2."); *Tichinin, supra*, 117 Cal.App.4th at 1077; *Dwight R., supra*, 212 Cal.App.4th at 713.

Righeimer is a public official and must be prepared to withstand criticism. *Pittsburg Unified School Dist., supra*, 166 Cal.App.3d at 899. The California Supreme Court has acknowledged that "since [labor] disputes, realistically considered, normally involve considerable differences of opinion and vehement adherence to one side or the other, a necessarily broad area of discussion without civil responsibility in damages is an indispensable concomitant of the controversy." *Emde v. San Joaquin County Central Labor Council* (1943) 23 Cal.2d 146, 155-56.

As Righeimer's Fifth and Sixth causes of action arise from statements or conduct "made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law." *C.C.P.* §425.16(e). As such, these claims fall within the anti-SLAPP statute. *Id.*; *see also Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.

VII. THE SEVENTH CAUSE OF ACTION FOR CONSPIRACY IS NOT VALID.

In his Seventh Cause of Action, Righeimer alleges that defendants conspired to pursue and harass him, to file false reports, to assault him, and to coerce, harass, and intimidate him. This cause of action fails because it is based on the same protected conduct as all other causes of action asserted by Righeimer, and because "Conspiracy" is not a separate tort.

A conspiracy cannot be alleged as a tort separate from the underlying wrong it is designed to achieve. Therefore, conspiracy to commit a tort is not a separate cause of action from the tort itself. *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1015. Righeimer's Conspiracy claim is based on the same facts he alleges to support all other causes of action. It is based entirely on the alleged conspiracy to harass and intimidate him, to falsely report him driving under the

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influence, and to assault him. As such, he cannot sustain a Conspiracy claim. Additionally, this claim is barred by Lene Righeimer's failure to comply with Civil Code section 1714.10.

VIII. THE EIGHTH CAUSE OF ACTION IS BASED ON PROTECTED ACTIVITY.

Righeimer's Malicious Prosecution cause of action is based on Lanzillo's 911 call. Malicious prosecution claims are also subject to the provisions of Section 425.16. *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 735. Furthermore, every claim for malicious prosecution necessarily depends on statements made in a judicial proceeding, and thus, every claim for malicious prosecution arises out of a protected activity for purposes of the Anti-SLAPP statute. *Daniels v. Robbins* (2010) 182 Cal.App.4th 204, 215.

However, Righeimer cannot prevail on a malicious prosecution claim against CMPA because he was never arrested. "[M]alicious prosecution is the *procuring of the arrest and prosecution* of another under lawful process, but from malicious motives and without probable cause." *Barrier v. Alexander* (1950) 100 Cal.App.2d 497, 499 (emphasis added); *see also*, *County of Los Angeles v. Superior Court* (2000) 78 Cal.App.4th 212, 221 (malicious prosecution begins at the point at which the person is arraigned.). As such, Righeimer's Eighth cause of action is subject to dismissal.

IX. RIGHEIMER'S FIFTEENTH CAUSE OF ACTION IS A THINLY VEILED ATTEMPT TO INFRINGE ON CMPA'S FIRST AMENDMENT RIGHTS.

By way of his Fifteenth cause of action for Declaratory/Injunctive Relief, Righeimer seeks a judicial declaration and determination that CMPA engaged in unfair business practices with the intent to infringe upon his Constitutional rights. He also seeks an injunction that prohibits CMPA from conducting unlawful business practices in a manner similar to the facts alleged in the Complaint. Essentially, Righeimer asks the Court to declare that CMPA's exercise of its constitutional rights was illegal, and to prohibit CMPA from any further exercise of its constitutional rights. His final cause of action confirms the true intent behind the filing of his Complaint—to intimidate CMPA and any others that disagree with his agenda.

Simply put, the Court cannot enjoin CMPA from exercising its constitutional right to free speech and right to petition. An injunction cannot be granted if it interferes with protected First

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Amendment activity without a showing of *substantial public need* for the injunction. *Pittsburg Unified School Dist., supra,* 166 Cal.App.3d at 890; *see also, In re Berry* (1968) 68 Cal.2d 137, 151 (injunction was constitutionally overbroad because it improperly restricted the exercise of First Amendment freedoms; it was also too and uncertain to satisfy the requirements of notice and fair trial inherent in the due process clause.). Here, Righeimer seeks an injunction ordering defendants "to refrain from conduct or activities as alleged in the INCIDENT[.]" As discussed at length above, such conduct was protected conduct and a valid exercise of CMPA's constitutional rights. The Court must not condone such a blatant attempt by a City official to infringe on the First Amendment rights of those officers who are sworn to protect the citizens of Costa Mesa.

X. THE BURDEN NOW SHIFTS TO RIGHEIMER.

Because Righeimer's claims arise from CMPA's acts in furtherance of its rights, the burden now shifts to Righeimer to establish a probability of prevailing. *C.C.P.* §425.16(b)(1). He must meet its burden with "competent and admissible evidence." *Gilbert, supra,* 147 Cal.App.4th at 26. However, even if he does so, the motion should still be granted if the defendant establishes an affirmative defense to the plaintiff's claims. *Chabak, supra,* 154 Cal.App.4th at 1513. For the reasons discussed above and in CMPA's concurrent Demurrer, Righeimer cannot meet his burden.

XI. CMPA IS ENTITLED TO AN AWARD OF ATTORNEYS' FEES.

C.C.P. §425.16(c) states that "a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs." The fee award is mandatory. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131.

XII. CONCLUSION

CMPA respectfully requests that Righeimer's claims be stricken under *C.C.P.* §425.16.

DATED: October 10, 2013 WOOD, SMITH, HENNING & BERMAN LLP

By:

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 5000 Birch Street, Suite 8500, Newport Beach, California 92660.

On October 10, 2013, I served the following document(s) described as **DEFENDANT, COSTA MESA POLICE ASSOCIATION'S NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE ALL CLAIMS BROUGHT BY PLAINTIFF JAMES RIGHEIMER; MEMORANDUM OF POINTS AND AUTHORITIES; [PROPOSED] ORDER** on the interested parties in this action as follows:

SEE ATTACHED LIST

BY PERSONAL SERVICE: I caused to be personally delivered such document(s) directly to the office of the person(s) being served. (Code Civ. Proc. §1011, subd. (a) and (b))

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 10, 2013, at Newport Beach, California.

Carmen Vargas

SERVICE LIST
James Righeimer, et al. v. Costa Mesa Police Association
Case No. 30-2013-00670139-CU-CR-CXC

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STEVE MENSINGER.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE CENTRAL CIVIL COMPLEX

JAMES RIGHEIMER, an individual; LENE RIGHEIMER, an individual; and STEVE MENSINGER, an individual,

Plaintiffs,

v.

COSTA MESA POLICE ASSOCIATION, a California corporation; LACKIE, DAMMEIER, MCGILL & ETHIR, A PROFESSIONAL CORPORATION, a California corporation; BIG GIANTS INVESTIGATIONS, a business entity of form unknown; CHRISTOPHER J. LANZILLO, an individual and DOES 1-25.

Defendants.

Case No.: 30-2013-00670139-CU-CR-CXC
Judge: Honorable Gail Andler

FIRST AMENDED COMPLAINT FOR DAMAGES FOR:

1) **NEGLIGENCE;**
2) **NEGLIGENT HIRING/ TRAINING/ SUPERVISION/RETENTION;**
3) **NEGLIGENT ENTRUSTMENT OF AGENTS;**
4) **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;**
5) **INTERFERENCE WITH CIVIL RIGHTS (Violation of Bane Act) [C.C.P. § 52.1];**
6) **VIOLENCE OR INTIMIDATION (Violation of Ralph Act) [C.C.P. § 51.7];**
7) **CIVIL CONSPIRACY;**
8) **MALICIOUS PROSECUTION;**
9) **UNFAIR BUSINESS PRACTICES [B&P. C. § 17200];**
10) **ASSAULT;**
11) **INVASION OF PRIVACY (False Light);**
12) **INVASION OF PRIVACY (Intrusion Upon Seclusion);**

13) DEFAMATION (Slander);
14) DEFAMATION (Libel); and
15) DECLARATORY/INJUNCTIVE RELIEF.

DEMAND FOR JURY TRIAL.

COME NOW, Plaintiffs JAMES RIGHEIMER, LENE RIGHEIMER and STEVE MENSINGER, individuals, who complain and allege as follows:

GENERAL STATEMENT OF THE CASE

1. **This lawsuit is neither about nor against the general rank and file police officers who diligently serve our communities in the face of grave danger, on a daily basis, whom Plaintiffs respect and honor without reservation. This is a civil action to vindicate the constitutional rights of Plaintiffs—a duly-elected city mayor, his wife, and a city councilmember—and recover damages therefor, resulting from injuries they suffered at the hands of rogue Defendants COSTA MESA POLICE ASSOCIATION; its legal representative LACKIE, DAMMEIER, MCGILL & ETHIR, A PROFESSIONAL CORPORATION; and their private investigator-agents BIG GIANTS INVESTIGATIONS and CHRISTOPHER JOSEPH LANZILLO**. Plaintiffs allege these Defendants acted in concert, conspiring to violate their constitutional rights for the illegitimate purpose of coercing political action in Defendants' favor.

1.1 Code of Civil Procedure section 472 grants a plaintiff the right to file an amended complaint at any time before the hearing on a demurrer, regardless of whether an anti-SLAPP motion has been filed by a defendant. People ex rel. Strathmann v. Acacia Research Corp., (2012) 210 Cal.App.4th 487, 505-506. In Sylmar Air Conditioning v. Pueblo Contracting Services, Inc., (2004) 122 Cal.App.4th 1049, 1054-56, the California Court of Appeal, Second District, confirmed that a plaintiff, however, may not avoid an anti-SLAPP motion by voluntarily dismissing a cause of action or amending a complaint. **This amendment to Plaintiffs' Complaint is made with full knowledge of the above rulings, and is not made to avoid defendants' anti-SLAPP motions, which Plaintiffs oppose and assert are groundless**. The

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express purpose of this amendment is to include recently-discovered facts regarding additional criminal conduct by Defendants against Plaintiffs, which are relevant to the claims causes of action herein.

THE PARTIES

2. Plaintiff JAMES RIGHEIMER is an individual who was elected and sworn in as Mayor *Pro Tem* of the Costa Mesa City Council, in the County of Orange, California, in November of 2010. Prior to that time, he held a position on the City of Costa Mesa Planning Commission. He was elevated to the position of Mayor through election by the Council in December of 2012, and serves in such position and capacity to the present day. During the entire period of time alleged herein, he resided in the City of Costa Mesa with his wife and family.

3. Plaintiff LENE RIGHEIMER, an individual, is and was the wife of JAMES RIGHEIMER during the entire period of time alleged herein, also residing in the City of Costa Mesa, County of Orange.

4. Plaintiff STEVE MENSINGER is an individual who was appointed to the Costa Mesa City Council, in the County of Orange, California, in January of 2011, and serves in such position and capacity to the present day. During the entire period of time alleged herein, he resided in the City of Costa Mesa with his wife and family.

5. Defendant COSTA MESA POLICE ASSOCIATION ("CMPOA UNION") is and at all times mentioned herein was a corporation duly organized under the laws of the State of California, with its principal place of business in the City of Costa Mesa, County of Orange, California. The CMPOA UNION is a union that represents duly sworn officers of the Costa Mesa Police Department. Its website advertises: "**The Costa Mesa Police Officers' Association is the governing body of the police officers under the rank sergeant in the Costa Mesa Police Department.**" It states: "**Our goal as an Association is to ensure that our membership receives the tools it needs to better serve and protect the public, our children, businesses, homes, property, and the dream of a better future for our families.**" Plaintiffs are informed and believe, and on that basis allege, that the CMPOA UNION retained Defendant LACKIE, DAMMEIER, MCGILL & ETHIR, A PROFESSIONAL CORPORATION, a law firm, to

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represent it and perform legal services from the early 2000's through the present. Plaintiffs are informed and believe, and on that basis allege, that the CMPOA UNION retained the services of BIG GIANTS INVESTIGATIONS and CHRISTOPHER LANZILLO, to perform investigative work for it for the purpose of furthering the goals of the CMPOA UNION, from the early 2000's through the present.

6. Defendant LACKIE, DAMMEIER, MCGILL & ETHIR, A PROFESSIONAL CORPORATION ("LACKIE") is and at all times mentioned herein was a professional corporation duly organized under the laws of the State of California, with its principal place of business in the City of Upland, County of San Bernardino, California. It is a law firm. LACKIE's website, **www.policeattorney.com**, advertises that it "**specializes in the representation of police officers and their associations throughout California.**" The website continues, stating:

> "**The firm currently represents over 120 California public safety associations in labor, litigation and/or disciplinary matters. Most of the firm's attorneys are former police officers or deputy sheriffs.** It is with these backgrounds and experience that we are able to provide the representation today's police officers need and deserve in the following areas;
>
> ***Contract Negotiations*** - The firm prides itself on the successful contracts obtained for our clients and strives to ensure our clients are the leaders in salary and benefits in the industry. The approach taken by the firm has resulted in record level increases for the associations represented by Lackie, Dammeier, McGill & Ethir and the police industry as a whole.
>
> ***Discipline Representation*** - As PORAC LDF panel attorneys, the firm vigorously defends officers and protects their rights in disciplinary proceedings. Our track record in this area is among the best in the state. Lackie, Dammeier, McGill & Ethir has successfully had officers reinstated who were told by their prior firm they should resign. We take seriously the need to protect your livelihood for you and your family.
>
> ***Litigation*** - In aggressively representing officers and associations, the need for experienced litigators is imperative. The firm's litigation section handles FLSA, Civil Rights (retaliation), Writs (enforcing MOU's), Injunctions (enforcing POBR) and other litigation necessary in protecting the best interests of our client associations and their members." (Emphasis added).

LACKIE's website continues, "**Most of the firm's attorneys and staff are former police officers or deputy sheriffs. In addition to Mike and Dieter, Kasey Castillo and Kasey Sirody, were both former Deputy District Attorneys and they provide criminal defense to our police officer clients. Mike McCoy is a retired Colton Police Officer. Russell Perry is a former Deputy Probation Officer. Chris Gaspard is a former Riverside Police Officer. Andrew Dawson is a former California Highway Patrolman. John Bakhit is a former Oakland Police Officer. It is with these backgrounds that**

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we are able to provide the representation today's police officers need and deserve."

Plaintiffs are informed and believe, and on that basis allege, that LACKIE performed legal services for the CMPOA UNION, retaining and utilizing the investigative services of BIG GIANTS INVESTIGATIONS and CHRISTOPHER LANZILLO to further such ends, from the early 2000's through the present.

7. Defendant BIG GIANTS INVESTIGATIONS ("BIG GIANTS") is and at all times mentioned herein was a business entity of form unknown with its principal place of business in the City of Menifee, County of Riverside, California. It operates as a private investigation business, and was issued Private Investigator license number 27407 on June 18, 2011 by California's Department of Consumer Affairs, Bureau of Security and Investigative Services. The license expires on June 30, 2015. The Department of Consumer Affairs' website states the manager and business owner of BIG GIANTS is Defendant CHRISTOPHER J. LANZILLO. Plaintiffs are informed and believe, and on that basis allege, that BIG GIANTS performed private investigative services for the CMPOA UNION and LACKIE from June 18, 2011 through the present.

8. Defendant CHRISTOPHER J. LANZILLO ("LANZILLO") is an individual, who Plaintiffs are informed and believe, and on that basis allege resides in Sun City, in the County of Riverside, California. For 17 years, he was a City of Riverside police officer, during the latter-portion of his career serving also as the President of the Riverside Police Officer's Association. Local media coverage indicates he demoted and later fired for cause by the Riverside Police Department. Defendant LANZILLO, represented by LACKIE, on May 6, 2010, sued the Riverside Police Department for "retaliation," purportedly due to his union activities with the Riverside Police Officer's Association. He filed eight separate worker's compensation claims related to his employment with the City of Riverside. The City of Riverside Police Department stated it fired Defendant LANZILLO "not because he was a member of the leadership of the [police union], but **because he did some really bad things**." In October of 2010, LACKIE reached a settlement with the Riverside Police Department. Under the terms of the settlement, LANZILLO was reinstated to the City's payroll, then granted medical retirement in January of

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2011. He applied for, and on June 18 of 2011 was granted private investigator license number 27407 by the California Department of Consumer Affairs, Bureau of Security and Investigative Services. He has been employed as a private investigator from June 18, 2011 to the present. He is the owner and manager of BIG GIANTS and its principal private investigator. Plaintiffs are informed and believe, and on that basis allege, that LANZILLO also possesses a firearm license, and performed private investigative services for the CMPOA UNION and LACKIE from June 18, 2011 through the present. Defendant LACKIE employed Defendant LANZILLO to perform investigative services. Prior to hiring LANZILLO, Defendant LACKIE was aware that Defendant LANZILLO was unfit to be a police officer, and also to be a private investigator. Notwithstanding, Defendant LACKIE hired him because he possessed knowledge of law enforcement tactics, maintained substantial contacts with the law enforcement community, and also maintained substantial contacts with police officer associations throughout the state.

9. Defendants DOES 1-25 are sued herein under said fictitious names because at this time Plaintiffs are ignorant as to their true names and capacities, whether individual, corporate, associate or otherwise. If and when their true names and capacities are ascertained, Plaintiffs will request leave of Court to amend this Complaint to state their true names and capacities herein. Plaintiffs are informed and believe, and on that basis allege, that at all times mentioned herein, each fictitiously-named Defendant was responsible in some manner or capacity for the occurrences herein alleged, and that Plaintiffs' damages were proximately contributed to by all said DOE Defendants.

10. Defendants are sometimes collectively referred to herein as "Defendants" and/or "All Defendants." Such refers to all specifically named Defendants as well as those fictitiously named herein. Plaintiffs allege the CMPOA UNION hired LACKIE to further its political agenda, and that LACKIE did so through the use of agents BIG GIANTS and LANZILLO. As such, CMPOA UNION and LACKIE are directly liable, vicariously liable, and responsible under the doctrine of *respondeat superior* for the actions of BIG GIANTS and LANZILLO that were carried out against Plaintiffs, whether done as actual or apparent agents, under their direct supervision, direction and control or not, as such acts were done in furtherance of a conspiracy

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between these Defendants to carry out the following tortious and unlawful activities against Plaintiffs.

11. Plaintiffs are informed and believe, and on that basis allege, that at all times mentioned herein, there existed a unity of interest and ownership among Defendants and each of them, such that any individuality and separateness between Defendants, and each of them, ceased to exist. Defendants were the successors-in-interest and/or alter egos of the other Defendants, in that they purchased, controlled, dominated and operated each other without any regard to maintaining a separate identity, observing formalities, or other manner of division. To continue maintaining the facade of a separate and individual existence between and among Defendants, and each of them, would serve to perpetrate a fraud and an injustice.

12. Plaintiffs are informed and believe, and on that basis allege, that at all times mentioned herein, Defendants and each of them were the agents, representatives and/or employees of each and every other Defendant. In doing the things hereinafter alleged, Defendants and each of them were acting within the course and scope of said alternative personality, capacity, identity, agency, representation and/or employment and were within the scope of their authority, whether actual or apparent. The following actions were undertaken by Defendants in the course and scope of their employment, and with full knowledge of, or while each Defendant had reason to know of, such actions. The actions undertaken by Defendants were done with the full acknowledgement and active participation of every other Defendant.

13. Plaintiffs are informed and believe, and on that basis allege, that at all times mentioned herein, Defendants and each of them were the trustees, partners, servants, joint venturers, shareholders, contractors, and/or employees of each and every other Defendant, and the acts and omissions herein alleged were done by them, acting individually, through such capacity and within the scope of their authority, and with the permission and consent of each and every other Defendant and that said conduct was thereafter ratified by each and every other Defendant, and that each of them is jointly and severally liable to Plaintiffs.

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CMPOA UNION AND BUDGET CUTS

14. By the Spring of 2012, the City of Costa Mesa had been experiencing a decline in sales and property tax revenues along with an increase in expenditures, resulting in difficult decisions for the City Council. Plaintiffs JAMES RIGHEIMER and STEVE MENSINGER, as members of the City Council, supported a plan for outsourcing some city services, suggesting a charter city ballot proposal be initiated, to address the problem. Prior to then, the Costa Mesa City Council had been embroiled in contract negotiations with the CMPOA UNION, regarding the pension and benefits schedule of the Costa Mesa Police Department. Plaintiffs JAMES RIGHEIMER and STEVE MENSINGER had taken the position that these areas needed to be addressed so as to assist the City of Costa Mesa in achieving budget-balancing objectives.

15. The CMPOA UNION was directly opposed to this position, and actively lobbied in an attempt to make Plaintiffs JAMES RIGHEIMER and STEVE MENSINGER change their positions, which they refused to do. The CMPOA UNION retained LACKIE as its agent and representative to further its interests with respect to contract negotiations with the City of Costa Mesa. With knowledge of the CMPOA UNION, LACKIE hired BIG GIANTS and LANZILLO as its agents and representatives to assist in furthering the objectives of its retention by the CMPOA UNION. In such capacities, the CMPOA UNION, LACKIE, BIG GIANTS and LANZILLO were acting in concert, according to an explicit common plan and scheme.

LACKIE'S "PLAYBOOK" FOR POLICE UNION REPRESENTATION

16. LACKIE drafted and published a "Playbook" to its website sometime before August of 2012. It contains a section entitled "Negotiations After Impasse," which lays out in detail its methodology and strategy regarding police union negotiation after impasse. The complete text of the section is pasted below:

> Former Cops Defending Current Ones
> Home | Association Leadership Training | Negotiations
>
> *Negotiations After Impasse*
>
> *Association Options -*
> **In gearing up for negotiations, hopefully your association has developed some political ties with members of your governing body. Now is the time those political endorsements, favors, and friendships come into play.** When

negotiations reach an impasse, the association will have options which may be utilized simultaneously, or one before the other.

Political Option
As most association leaders already know, associations should be selective in their battles. However, this does not mean that the association should roll over for everything either. Association respect (by the employer) is gained over years of actions or inactions. **Associations who rarely, if ever, take things to the mat or challenge the employer gain little respect at the bargaining table or elsewhere.** The flip side is also true. Those associations that battle over every minor issue may be seen as an association that simply cannot be pleased, so why bother. While it is a fine line, somewhere in the middle is where you want to be. **The association should be like a quiet giant[1] in the position of, "do as I ask and don't piss me off."** Depending on the circumstances surrounding the negotiations impasse, **there are various tools available to an association to put political pressure on the decision makers.** A few things to keep in mind when utilizing these tools are the following:

Public Message
Always keep this in mind. **The public could care less about your pay, medical coverage and pension plan.** All they want to know is "what is in it for them." Any public positions or statements by the association should always keep that focus. The message should always be public safety first. You do not want wage increases for yourselves, but simply to attract better qualified candidates and to keep more experienced officers from leaving.

The Future
Also keep in mind that once the fight is over, you and your members will still be working there. Avoid activities where one or just a few members are involved who can be singled out for retaliation. Always keep in mind your department policies and the law. **You should be in very close contact with your association's attorney during these times to ensure you are not going to get yourself or any of your members in trouble.** For associations in the Legal Defense Fund, please keep in mind that concerted labor activity should always be discussed with the LDF Trustees prior to the activity to ensure coverage.

Let the Debate Begin
Again, the ideas listed below are not in any particular order. Just as in your use-of-force guidelines, you can start with simple verbal commands or jump to a higher level, based on the circumstances.

Keep in mind that most of these tools are not to deliver your message to the public but are designed to simply get the decision makers into giving in to your position.

•*Storm City Council* – While an association is at impasse, **no city council or governing board meeting should take place where members of your association and the public aren't present publicly chastising them for their lack of concern for public safety.**

[1] This imperative in LACKIE's Playbook, that a POA be like a "quiet giant," is informative. Plaintiffs assert it is no mere coincidence that LANZILLO chose to name his private investigative firm BIG GIANTS INVESTIGATIONS—it evidences goals of LACKIE, BIG GIANTS and LANZILLO and BIG GIANTS, to carry out plans derived directly from the Playbook.

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•*Picketing* - Plan a few well organized picketing events. Keep these events spread out to avoid burning out your membership.

•*Public Appearances* – During impasse, **the association should make known at every significant public event, such as parades, Christmas tree lightings, the Mayor's Gala and any other event of interest to the decision makers, that the association is upset about the lack of concern for public safety.**

•*Newspaper Ads* - Again, keep the message focused on "public safety."

•*Billboards* – **Nothing seems to get more attention than a billboard entering the city limits which reads that crime is up and the City could care less about your safety.**

•*Websites* – **GardenGroveSucks.com was a big hit.**

•*Job Fair* – Getting your members to apply at a large local agency, which causes an influx of personnel file checks by background investigators always sends a strong signal. Keep this for last, as some of your members may ultimately leave anyway.

•*Work Slowdown* – This involves informing your members to comply closely with Department policy and obey all speed limits. It also involves having members do thorough investigations, such as canvassing the entire neighborhood when taking a 459 report and asking for a back-up unit on most calls. Of course, **exercising officer discretion in not issuing citations and making arrests is also encouraged.**

•*Blue Flu* – This one is very rarely used and only in dire circumstances. As with all of these, **please consult your association's attorney before even discussing this** issue with your members.

•*Public Ridicule* – **Blunders by the City Manager, Mayor, or City Council members or wasteful spending should be highlighted and pointed out to the public at every opportunity.**

•*Referendum / Ballot Initiatives* – Getting the public to vote for a wage increase is seldom going to fly, however, **as a pressure tactic, seeking petition to file a referendum on eliminating the City Manager's position for a full time elected mayor may cause the City Manager to rethink his or her position.**

•*Mailers* – Again, the message should be for "public safety" in getting the public to attend city council meetings and to call the City Council members (preferably at home) to **chastize them for their inaction.**

•*Campaigning* – **If any members of the governing body are up for election, the association should begin actively campaigning against them, again for their lack of concern over public safety.** If you are in a non-election year, make political flyers which you can explain will be mailed out the following year during the election season.

•*Focus on an Individual* – Avoid spreading your energy. **Focus on a city manager, councilperson, mayor or police chief and keep the pressure up until that person assures you his loyalty and <u>then move on to the next victim</u>.**

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•*Press Conferences* – Every high profile crime that takes place should result in the association's uproar at the governing body for not having enough officers on the street, which could have avoided the incident.

Of course, other ideas that cops come up with are very imaginative. Just keep in mind, the idea is to show the decision makers that the public favors public safety and it will only harm their public support by not prioritizing you and almost equally as important, **to let them know that next time they should agree with you much sooner.** (Emphasis added) (Exhibit "A" to Complaint).

DEFENDANTS IMPLEMENT "PLAYBOOK" STRATEGY IN AUGUST 22, 2012 "INCIDENT" INVOLVING PLAINTIFF JAMES RIGHEIMER

17. Playbook strategy advises: "*Storm City Council* – **While an association is at impasse, no city council or governing board meeting should take place where members of your association and the public aren't present publicly chastising them for their lack of concern for public safety.**

18. On August 21, 2012, several citizens[2] attended a Costa Mesa City Council meeting and complained of blight and lawlessness on Ford Road—a small street on the west side of Costa Mesa. The gist of the complaints was that the city needed more police officers to deal with crime. One speaker stated a "police officer" had instructed him to go to the City Council meeting to complain. Plaintiff JAMES RIGHEIMER stated he perceived the parade of citizens and complaints as an attempt by the CMPOA UNION to "shake[] down" the Costa Mesa City Council and hold them hostage. He publicly criticized LACKIE's Playbook tactics. Plaintiffs are informed and believe, and on that basis allege, that in 2010, the CMPOA UNION and LACKIE drove a billboard around the City of Costs Mesa, advertising a website that was created to show Plaintiff JAMES RIGHEIMER's past financial woes. On August 21, 2012, Plaintiffs JAMES RIGHEIMER and STEVE MENSINGER assembled a team of city officials to tour Ford Road the next day, to take note of its condition and improvements, in response to the days' activities.

19. The next day, on August 22, 2012, in the early afternoon, Plaintiffs JAMES RIGHEIMER and STEVE MENSINGER and the team of city officials toured Ford Road to take note of its condition and improvements.

20. Playbook strategy advises: "**Associations should be selective in their battles [...] Associations who rarely, if ever, take things to the mat or challenge the employer gain**

[2] Plaintiffs are unaware of the true identities of these citizens at this time.

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little respect at the bargaining table or elsewhere. [...] The association should be like a quiet giant in the position of, "do as I ask and don't piss me off."

21. Playbook strategy informs: "**[T]here are various tools available to an association to put political pressure on the decision makers. [...] You should be in very close contact with your association's attorney during these times to ensure you are not going to get yourself or any of your members in trouble." "[M]ost of these tools are not to deliver your message to the public but are designed to simply get the decision makers into giving in to your position."**

22. Playbook strategy dictates: "**Focus on an Individual – Avoid spreading your energy. Focus on a city manager, councilperson, mayor or police chief and keep the pressure up until that person assures you his loyalty and then move on to the next victim." "[T]he idea is to [...] let them know that next time they should agree with you much sooner."**

AUGUST 22, 2012 "INCIDENT"

23. Paragraphs 23-27 describe what shall be defined for the remainder of the Complaint as the "INCIDENT."

24. After the tour of Ford Road, Plaintiffs JAMES RIGHEIMER and STEVE MENSINGER drove a few blocks away, to Skosh Monahan's—a bar/restaurant on the east side of Costa Mesa owned and operated by fellow councilmember GARY MONAHAN. Plaintiffs JAMES RIGHEIMER and STEVE MENSINGER sat in the bar/restaurant and each drank a single Diet Coke and nothing else, for which Plaintiff JAMES RIGHEIMER paid and obtained a computerized receipt. After finishing their drinks, it was late afternoon and Plaintiffs JAMES RIGHEIMER and STEVE MENSINGER drove to their respective homes in their separate motor vehicles.

25. After Plaintiff JAMES RIGHEIMER arrived at his home in Costa Mesa, less than four miles away, parked in the garage and entered his residence, a City of Costa Mesa Police Officer named KHA BAO, who has received public recognition on several occasions for his extremely high drunk driving arrest record, arrived at the home. He asked Plaintiff JAMES

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RIGHEIMER if he had been drinking alcohol, to which, Plaintiff JAMES RIGHEIMER replied "no," because in fact, he had not. Officer BAO then requested that Plaintiff JAMES RIGHEIMER perform a field sobriety test, designed to determine whether he had been operating a motor vehicle while intoxicated. Plaintiff JAMES RIGHEIMER complied, as his wife and children stood by and observed. His children, distraught, asked if their "daddy was going to be arrested and go to jail." Officer BAO informed Plaintiff JAMES RIGHEIMER that he had passed the test, and authorized him to carry on with his affairs.

26. After Officer BAO authorized Plaintiff JAMES RIGHEIMER to carry on with his business, Plaintiff LENE RIGHEIMER noticed Officer BAO walking down the street towards a vehicle that was parked at the end of the cul-de-sac, and saw him talk to the driver of the vehicle. She told Plaintiff JAMES RIGHEIMER what she saw. Plaintiff JAMES RIGHEIMER exited the home to go speak with the officer.

27. Plaintiff LENE RIGHEIMER witnessed the car, a white KIA, attempting to drive away while her husband was attempting to speak to the police officer and the driver. She walked into the street and signaled to the driver, a middle-aged man with a goatee, to stop the car. He stopped the vehicle and Plaintiff LENE RIGHEIMER approached the driver's door while the man rolled down the window. The man stated "Are you standing in front of my car for a reason?" She told the man, "Yeah, I'd like to know who you are." The man frowned, said "oh please," and sped off in the vehicle, nearly hitting Plaintiff LENE RIGHEIMER, swerving to miss her foot—the car came so close to her that she felt the heat of the tire and wind of the car's movement as it passed, putting her in imminent fear of grave bodily harm. At the time, Plaintiff LENE RIGHEIMER believed the driver intended to, and was going to run her over. Plaintiff LENE RIGHEIMER noticed the vehicle was a white KIA with no license plates. It had markings indicating that it was from Riverside. Plaintiffs are informed and believe, and on that basis allege that man in the car was Defendant LANZILLO.

28. Plaintiffs allege the foregoing August 22, 2012 incident was orchestrated by Defendants, against Plaintiffs, as part of their routine "Playbook" strategy, for the purpose of violating Plaintiffs' civil rights and illegally coercing Plaintiffs JAMES

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RIGHEIMER and STEVE MENSINGER into political action in favor of the CMPOA UNION.

29. Plaintiff JAMES RIGHEIMER passed the field sobriety tests. He possesses a computerized receipt for the two Diet Cokes he and Plaintiff STEVE MENSINGER imbibed on August 22, 2012. Video from the bar/restaurant shows he was not "stumbling" when he left the bar/restaurant, and was not drinking alcoholic beverages therein. A later statement by the Costa Mesa Police Department states "The officer made contact with the driver, identified as City Council member Jim Righeimer, and determined that Mr. Righeimer had not been drinking and was not under the influence."

PLAINTIFFS LEARN THE TRUE FACTS SURROUNDING THE INCIDENT

30. In the days that followed the INCIDENT, Plaintiffs discovered, partially through investigative efforts of the media, the true nature of events leading up to and comprising the INCIDENT.

31. On August 24, 2012, the O.C. Register referenced a 911 tape that identified Defendant LANZILLO as a caller who reported Plaintiff RIGHEIMER to law enforcement the afternoon of the INCIDENT, for allegedly driving while intoxicated. Defendant LANZILLO stated he was "**following a possibly intoxicated driver.**" He stated, "**I think he's DUI ... He's just swerving all over the road ... I don't know what's wrong with him.**" Defendant LANZILLO stated he could be wrong but "**why take a chance?**" He then told the 911 operator he did not want to get involved. He informed the 911 operator "**When I pulled into a location, I saw him coming out. I was meeting a friend over at some location, I can't remember the name of it now and I saw him like stumbling out of this location [...] I don't know, maybe he's disabled.**" Despite the 911 operator stating "**You don't have to follow the vehicle if you don't have to,**" Defendant LANZILLO continued to follow Defendant JAMES RIGHEIMER, listing off street names that he was passing. Defendant LANZILLO stated Defendant JAMES RIGHEIMER drove 50 miles per hour down a residential street and ran a stop sign. He stated "**It's just ... he's not staying in his lanes.**" Plaintiff asserts at no time did he drive 50 miles per hour down a residential street, run a stop sign, swerve in or out of any lanes, or stumble out of

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the restaurant. The article noted Defendant LANZILLO appeared on Defendant LACKIE's website as its staff. The article stated DIETER DAMMIER, the Managing Partner and Agent for Service of Process of Defendant LACKIE, confirmed that Defendant LANZILLO worked for Defendant LACKIE as a private investigator.

32. The same day, the President of Defendant CMPOA UNION, JASON CHAMNESS, emailed the O.C. Register, announcing it was "firing" Defendant LACKIE because of its aggressive tactics.

33. Also the same day, DIETER DAMMIER wrote, in an email to the O.C. Register, on behalf of Defendant LACKIE, "**I assure you, he was not employed or authorized to surveil (or do anything else to) Mr. Righeimer by this firm.**" The firm then removed Defendant LANZILLO from its website. DIETER DAMMEIER's email continued, "**While our firm does have a reputation for being aggressive, we have learned to acclimate to the various clients we represent. Given the hyper anti-public employee nature of the council in Costa Mesa, it is understandable that any employee group there will have to go to great lengths to accommodate them.**" He wrote, "**The reason we represent most POA's in L.A., Riverside and San Bernardino counties is because police officers like and on occasion require aggressive representation.**"

34. Defendant LANZILLO, in a written statement from Defendant BIG GIANTS and reported on August 28, 2012 by the O.C. Register, stated "**I was not hired in any manner to follow Mr. Righeimer or call in a traffic violation [...] this was a spur of the moment observation, which I decided to take action on without request from anyone.**" Contrary to this claim, Plaintiffs are informed and believe, and on that basis allege that during the INCIDENT, Defendant LACKIE (through DIETER DAMMEIER), the CMPOA, Defendant LANZILLO and Defendant BIG GIANTS INVESTIGATION were in constant electronic communication. Defendant LANZILLO's reported statement continues, "**When I saw him leave the bar it appeared to me by the way Mr. Righeimer was walking that he could be under the influence or possibly just disabled.**" Defendant LANZILLO's reported statement then takes issue with Plaintiff JAMES RIGHEIMER's proof, via receipt, that he purchased two Diet

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Cokes—one for himself and one for Plaintiff STEVE MENSINGER, during the INCIDENT. Defendant LANZILLO's statement argues **"We all know if you order a soda or tea at a restaurant/bar, you only pay for one drink and the rest are free [...] I'm sure (Councilman Gary) Monahan who provided the receipt for Mr. Righeimer didn't even realize this when he gave him the suspected receipt."** Defendant LANZILLO reiterated comments he made on the 911 call to the O.C. Register, stating **"As I continued to follow the SUV on the road he was not able to stay in the lane he was driving in and his speed was over the limit."** Defendant LANZILLO then stated **"I believe the Officer realized who the person was and thought it was best to leave it alone."**

35. Defendant LANZILLO, in a statement reported on August 28, 2012 by the Daily Pilot, stated "**I believe the officer realized who the person was and thought it was best to leave it alone,**" Defendant LANZILLO said, "**This is apparent by [Righeimer's] ... behavior that night and the bully he has become days after the incident.**"

36. Defendant LANZILLO spoke with an O.C. Register reporter on November 8, 2012, and his statements were reported in an article published that date. Defendant LANZILLO stated he was at the bar on the afternoon of the INCIDENT in an attempt to catch bar owner and Councilman GARY MONAHAN in a compromising position with a woman who'd been sent into the bar for at very purpose. Defendant LANZILLO stated he was there to gather "dirt" on Plaintiff STEVE MENSINGER as well. Defendant LANZILLO stated, **"I do this stuff every day ... to other people it looks wrong ... but it's not illegal. You ever watch 'Cheaters'?"** Plaintiffs are informed and believe, and on that basis allege Defendants schemed to follow Plaintiffs JAMES RIGHEIMER and STEVE MENSINGER on August 22, 2012 and illegally entrap them through the use of Defendant LANZILLO and a woman.

37. Defendant LANZILLO stated, in an article reported by the Daily Pilot on November 9, 2012, that he was hired to "tail" and "gather dirt" on councilmen STEVE MENSINGER and GARY MONAHAN on the day of the INCIDENT—that he was "sent" to the establishment, with a woman, to see whether either councilmember would "behave inappropriately." Defendant LANZILLO stated the woman sat at a table in the establishment,

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smiled at GARY MONAHAN and interacted with him as he poured whiskey. The woman was wearing a low-cut top. GARY MONAHAN ignored the woman's overtures. Surveillance video from the establishment, taken at the time, shows the woman enter the bar behind Plaintiff JAMES RIGHEIMER. Defendant LANZILLO denied being familiar with Plaintiff JAMES RIGHEIMER before reporting him to the police as an alleged drunk driver.

LACKIE REMOVES PLAYBOOK FROM ITS WEBSITE

38. After the INCIDENT, LACKIE removed the Playbook from its website. In its place, the website now contains the following statement: **"This portion of the material has been removed from the website. What was intended to be informational, historical and educational material has been misconstrued by some as advice on negotiations "tactics." Accordingly, to avoid the misperception, the information has been removed."**

POLITICIANS FROM OTHER LOCAL COMMUNITIES HAVE BEEN SUBJECTED TO LACKIE'S, BIG GIANTS' AND LANZILLO'S "PLAYBOOK" TACTICS AS WELL

39. City councilmembers from other cities around Southern California have recently come forward to criticize Defendant LACKIE's "Playbook" tactics, used against them, as well. Councilmembers from the cities of El Monte, San Dimas, Buena Park, Montclair and other locations have made similar allegations. The San Gabriel Police Management Group wrote, of its city's association: "**[LACKIE's] tactics have become reckless and their methods, delivered through their attorney, are designed to bully and intimidate.**"

DEFENDANTS WERE TRACKING PLAINTIFF MENSINGER'S WHEREABOUTS USING A GPS DEVICE THEY MOUNTED TO HIS MOTOR VEHICLE

39.1. In Fall of 2013, Plaintiffs discovered, and on that basis are informed, believe and allege, that during the time of the 2012 Costa Mesa City Council Elections, Defendants, acting in concert, placed Plaintiff MENSINGER under unauthorized electronic surveillance by affixing a law enforcement grade Global Positioning Satellite (GPS) spying device to the undercarriage of his personal motor vehicle, without his knowledge or consent, in order to unlawfully spy, surveil, investigate, and track Plaintiff MENSINGER. This unlawful tactic enabled Defendants to track Plaintiff MENSINGER's whereabouts, in furtherance of their conspiratorial plan to intimidate,

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harass, humiliate and threaten him and Plaintiff JAMES RIGHEIMER with respect to their positions as duly elected officials of the City of Costa Mesa.

39.2. Every evening during the period of time alleged herein-above, Plaintiff MENSINGER would park his personal motor vehicle truck in the driveway of his family home in Costa Mesa. Plaintiffs are informed and believe, and on that basis allege, that Defendants, on numerous occasions prior to September 2012, intruded onto Plaintiff MENSINGER's property under the cover of darkness, wielded themselves beneath Plaintiff MENSINGER's vehicle, which was located on his own property and in his own driveway, and affixed a law enforcement grade GPS spying device to the undercarriage of the vehicle, without Plaintiff MENSINGER's consent.

39.3. Plaintiffs are informed and believe, and on that basis allege, that the unauthorized GPS spying device was used by Defendants to track Plaintiff MENSINGER's whereabouts throughout the entire Costa Mesa Election of 2012 and up until the Defendants' illegal conspiratorial scheme was revealed in late-August of 2012.

39.4. Plaintiffs are informed and believe, and on that basis allege, that the GPS spying device affixed to the undercarriage of Plaintiff MENSINGER's vehicle required frequent charging and downloading. Based on this requirement, Plaintiffs allege Defendants repeatedly intruded upon Plaintiff MENSINGER's property to attach, remove, and re-attach the GPS spying device on numerous occasions, in furtherance of the conspiracy.

39.5. Plaintiff MENSINGER had no knowledge of this GPS spying device, did not authorize any of the Defendants to intrude on his property, and did not authorize the placement of this GPS spying device on his personal motor vehicle.

39.6. Plaintiffs are informed and believe, and on that basis allege, that the unauthorized GPS spying device placed on Plaintiff MENSINGER's personal motor vehicle by Defendants enabled them to follow Plaintiffs MENSINGER and RIGHEIMER to Skosh Monahan's on August 22, 2012 and generally follow Mr. Mensinger throughout the duration of the Costa Mesa City Council Election of 2012.

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39.7. These allegations of unauthorized GPS spy surveillance are made with knowledge that there is an ongoing FBI and Orange County DA investigation of the Defendants, which culminated in the recent search of LACKIE's offices through search warrant. Plaintiffs allege this is likely to produce more actionable facts, not yet disclosed to Plaintiffs or the public, due to the importance of potential criminal prosecution of Defendants.

PLAINTIFFS' DAMAGES

40. Plaintiffs have suffered extensive physical, psychological and emotional damage due to the actions of Defendants CMPOA UNION, LACKIE, BIG GIANTS and LANZILLO arising from the INCIDENT, which continue to this day.

41. At the time of the INCIDENT, Plaintiff JAMES RIGHEIMER knew that he and the City Council had publicly taken positions that were contrary to the position of the CMPOA UNION, which he knew was represented by LACKIE, and he knew about LACKIE's Playbook tactics. Plaintiff JAMES RIGHEIMER also knew that he was not intoxicated, that had not imbibed any alcoholic beverages or intoxicants that day, did not break any traffic rules when driving from Skosh Monahan's to his home, and had done nothing to warrant inquiry by Costa Mesa Law enforcement. Plaintiff immediately believed he was being "set up" by Defendants and feared for his life and the life of his family, especially because he knew the police officer who came to his home, dressed in uniform, was carrying a loaded firearm, likely possessed a taser and pepper spray, and was acting under the color of authority. As a result of the INCIDENT, Plaintiff JAMES RIGHEIMER experiences anxiety, humiliation, embarrassment, nervousness, fear, sleeplessness and worry. He lives in constant fear for the well-being of himself and his family—that he and his family are being followed or "set up" by Defendants, through the use of law enforcement-related agents with weapons, licenses to carry them, specialized knowledge of police tactics, and extensive contacts with the law enforcement community. Plaintiff JAMES RIGHEIMER has suffered damage to his business reputation in the community as a result of the INCIDENT.

42. Plaintiff LENE RIGHEIMER has suffered physical, psychological and emotional damage as a result of the INCIDENT. Plaintiff LENE RIGHEIMER lives with constant worry,

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embarrassment, fright, humiliation, sleeplessness, anxiety, and fear for the well-being of herself and her family. She lives in constant fear of she and her family being followed or "set up" by Defendants, through the use of law enforcement-related agents with weapons, licenses to carry them, specialized knowledge of police tactics, and extensive contacts with the law enforcement community. She has suffered damage to her business reputation in the community as a result of the INCIDENT.

43. Plaintiff STEVE MENSINGER has suffered physical, psychological and emotional damage as a result of the INCIDENT. Plaintiff LENE RIGHEIMER lives with constant worry, embarrassment, fright, humiliation, sleeplessness, anxiety, and fear for the well-being of himself and his family. He lives in constant fear of being followed or "set up" by Defendants, through the use of law enforcement-related agents with weapons, licenses to carry them, specialized knowledge of police tactics, and extensive contacts with the law enforcement community. He has suffered damage to his business reputation in the community as a result of the INCIDENT.

44. Defendants interfered, through actual or attempted threats, intimidation or coercion, with Plaintiffs' exercise or enjoyment of rights secured by the Constitutions of the United States and State of California. Moreover, they interfered with Plaintiffs' right to be free from violence and intimidation by threat of violence, against their persons or property, because of political affiliation, or position in a labor dispute, or because another person perceives them to have one or more of those characteristics.

PLAINTIFFS ACKNOWLEDGE PORTIONS OF THEIR CLAIMS ARE NOVEL

45. Plaintiffs acknowledge the California Supreme Court's holding in Hagberg v. California Federal Bank, (2004) 32 Cal.4th 39, 355, stating tort liability may only be imposed against a citizen, for a privileged report of criminal activity to law enforcement personnel, if the plaintiff can establish the elements of the tort of malicious prosecution. Plaintiffs, though this lawsuit, allege Defendants are liable for injuries resulting from the 911 false INCIDENT report by Defendant LANZILLO under a theory of malicious prosecution. Plaintiffs further allege because the 911 false INCIDENT report was made with malice, by persons in the law

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enforcement and legal community with specialized knowledge of 911 call immunities, and for the purpose of violating a duly-elected city official and his family's constitutional rights, a narrow exception to the privilege recognized by the Supreme Court in Hagberg must be recognized, allowing Plaintiffs to pursue tort theories in addition to malicious prosecution against said Defendants. Further, Plaintiffs allege the statements made by Defendants, including Defendant LANZILLO, that lie outside of the 911 false INCIDENT report, including the many statements made to press outlets in the months that followed the INCIDENT, as well as the tactics employed by Defendants that lie outside the 911 phone call, do not fall within the Hagberg holding's privilege protection, as they were not reports to law enforcement of criminal activity, made to a law enforcement agency, and are thus actionable under tort theories in addition to malicious prosecution.

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FIRST CAUSE OF ACTION
NEGLIGENCE
(By All Plaintiffs Against ALL Defendants)

46. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

47. Plaintiffs allege that prior to the INCIDENT, Defendants knew or had reason to know that Defendants LACKIE, LANZILLO and BIG GIANTS had or were capable of wrongfully accusing Plaintiffs of committing crimes and/or violating their civil rights to further Defendants' political agenda, because of their past history of such violations.

48. Defendants had a duty to exercise reasonable care in carrying out their business activities directed towards Plaintiffs and their families, especially due to the nature of Defendants' employment and the potentially abusive actions their investigative agents can undertake while carrying out their duties.

49. Defendants breached their duties to Plaintiffs, who were foreseeable victims substantially certain to incur injury from Defendants' lack of ordinary care, by hiring Defendants LACKIE, LANZILLO and BIG GIANTS and employing them in a manner such as to illegitimately accuse Plaintiffs of committing crimes and/or to violate their civil rights.

50. Defendants' above-noted actions were the legal and proximate causes of physical, psychological, emotional, and economic damages, and damage to their reputation Plaintiffs have suffered and continue to suffer to this day. The actions of Defendants have also resulted in Plaintiffs incurring, and will require them to incur into the future, expenses for medical and psychological treatment, therapy, and counseling.

51. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain loss of earning capacity; have and will continue to suffer damage to their business reputation; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. They have also suffered economic business loss as a result.

52. In subjecting Plaintiffs to the wrongful treatment described herein, Defendants acted negligently and in disregard of Plaintiffs' rights, entitling Plaintiffs to damages in a sum to be shown according to proof.

SECOND CAUSE OF ACTION
NEGLIGENT HIRING / TRAINING / SUPERVISION / RETENTION
(By All Plaintiffs Against Defendants CMPOA UNION, LACKIE and BIG GIANTS)

53. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

54. Plaintiffs allege that prior to the INCIDENT, Defendants knew or had reason to know that Defendants LACKIE, LANZILLO and BIG GIANTS were unfit agents who had or were capable of wrongfully accusing Plaintiffs of committing crimes and/or violating their civil rights to further Defendants' political agenda, because of their past history of such violations.

55. Defendants owed Plaintiffs a duty to properly hire, train, retain, supervise and discipline their employees and agents who they put into direct contact with Plaintiffs and their families, including private investigators such as Defendants LANZILLO and BIG GIANTS and

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attorneys such as Defendant LACKIE, so as to avoid unreasonable harm to Plaintiffs. Defendants breached their duty to properly hire, train, retain, supervise and discipline their employees and agents, including private investigator Defendants LANZILLO and BIG GIANTS, and attorney Defendant LACKIE, so as to avoid unreasonable harm to Plaintiffs, specifically with respect to the INCIDENT. Defendants failed to institute adequate safeguards to protect Plaintiffs, in violatiou of Plaintiffs' civil rights, causing them injury.

56. Defendants breached their duties to Plaintiffs, who were foreseeable victims substantially certain to incur injury from Defendants' lack of ordinary care, by hiring Defendants LACKIE, LANZILLO and BIG GIANTS and employing them in a manner such as to illegitimately accuse Plaintiffs of committing crimes and/or to violate their civil rights.

57. Defendants' above-noted actions were the legal and proximate causes of physical, psychological, emotional, and economic damages, and damage to their reputation Plaintiffs have suffered and continue to suffer to this day. The actions of Defendants have also resulted in Plaintiffs incurring, and will require them to incur into the future, expenses for medical and psychological treatment, therapy, and counseling.

58. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain loss of earning capacity; have and will continue to suffer damage to their business reputation; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. They have also suffered economic business loss as a result.

59. In subjecting Plaintiffs to the wrongful treatment described herein, Defendants acted negligently and in disregard of Plaintiffs' rights, entitling Plaintiffs to damages in a sum to be shown according to proof.

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THIRD CAUSE OF ACTION
NEGLIGENT ENTRUSTMENT OF AGENT
(By All Plaintiffs Against Defendants CMPOA UNION, LACKIE and BIG GIANTS)

60. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

61. Plaintiffs allege this cause of action for negligent entrustment of agents pursuant to authority clarified in Nobel v. Sears, Roebuck & Co. (1973) 33 Cal.App.3d 654.

62. Plaintiffs allege that prior to the INCIDENT, Defendants knew or had reason to know that Defendants LACKIE, LANZILLO and BIG GIANTS were unfit agents who had or were capable of wrongfully accusing Plaintiffs of committing crimes and/or violating their civil rights to further Defendants' political agenda, because of their past history of such violations.

63. Defendants negligently, in breach of their duties to Plaintiffs, employed and entrusted power and authority to Defendants LACKIE, BIG GIANTS and LANZILLO, who they knew, or had reason to know were unfit agents and were likely to use their position of authority in a manner involving unreasonable risk of harm to others, including Plaintiffs, for the purpose of violating their civil rights.

64. Defendants designed the oppressive tactics to be used against Plaintiffs in the INCIDENT through use of the Playbook mentioned herein, and exercised the requisite control over Defendants LACKIE, BIG GIANTS and LANZILLO so to further and accomplish Defendants' wrongful and unlawful objectives. Defendants had a duty to not expose Plaintiffs and the general public to Defendants LACKIE, BIG GIANTS and LANZILLO, who they knew or had reason to know posed a danger to others, based upon their previous actions, employment and personnel record.

65. Defendants breached their duties to Plaintiffs when they exposed Defendants LACKIE, BIG GIANTS and LANZILLO to Plaintiffs, in the course of their employment, when Defendants knew or had reason to know they would engage in behavior or tactics involving unreasonable risk of harm to Plaintiff and others, for the purpose of violating their civil rights. The harm to Plaintiffs from these actions of Defendants was reasonably foreseeable and sufficiently likely to cause Plaintiffs damage.

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66. Defendants breached their duties to Plaintiffs, who were foreseeable victims substantially certain to incur injury from Defendants' lack of ordinary care, by hiring Defendants LACKIE, LANZILLO and BIG GIANTS and employing them in a manner such as to illegitimately accuse Plaintiffs of committing crimes and/or to violate their civil rights.

67. Defendants' above-noted actions were the legal and proximate causes of physical, psychological, emotional, and economic damages, and damage to their reputation Plaintiffs have suffered and continue to suffer to this day. The actions of Defendants have also resulted in Plaintiffs incurring, and will require them to incur into the future, expenses for medical and psychological treatment, therapy, and counseling.

68. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain loss of earning capacity; have and will continue to suffer damage to their business reputation; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. They have also suffered economic business loss as a result.

69. In subjecting Plaintiffs to the wrongful treatment described herein, Defendants acted negligently and in disregard of Plaintiffs' rights, entitling Plaintiffs to damages in a sum to be shown according to proof.

FOURTH CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)
(By All Plaintiffs Against ALL Defendants)

70. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

71. Defendants' conduct, directed towards Plaintiffs, as described herein, especially with respect to the INCIDENT, was outrageous and extreme and beyond the bounds of conduct

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tolerated by civilized society. It was carried out intentionally, or wonton disregard of the probability of causing Plaintiffs to suffer emotional distress.

72. Any reasonable person would not expect or tolerate Defendants' conduct towards Plaintiffs, as alleged herein.

73. Defendants' above-noted actions were the legal and proximate causes of physical, psychological, emotional, and economic damages, and damage to their reputation Plaintiffs have suffered and continue to suffer to this day. The actions of Defendants have also resulted in Plaintiffs incurring, and will require them to incur into the future, expenses for medical and psychological treatment, therapy, and counseling.

74. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain loss of earning capacity; have and will continue to suffer damage to their business reputation; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. They have also suffered economic business loss as a result.

75. The above-described conduct of Defendants was willful, oppressive, malicious and despicable in that it was intentional and done in conscious disregard of the rights and safety of Plaintiffs, and was carried out with a conscious disregard of Plaintiffs' right to be free from such tortious behavior, such as to constitute oppression, fraud or malice pursuant to California Civil Code section 3294, entitling Plaintiffs to punitive damages against Defendants in an amount appropriate to punish and set an example of them, as well as compensatory damages in a sum to be shown according to proof, and other such relief as the court deems proper.

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FIFTH CAUSE OF ACTION
VIOLATION OF RIGHTS, (Violation of Bane Act): CIVIL CODE §52.1(b)
(By Plaintiffs JAMES RIGHEIMER and STEVE MENSINGER Only Against ALL Defendants)

76. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

77. Defendants' actions, as alleged herein, have had and will continue to have a chilling effect on these Plaintiffs' civil rights, including citizen participation in government and free speech.

78. During Plaintiffs' public service for the City of Costa Mesa, Defendants engaged in oppressive and unlawful tactics, including but not limited to, the use of threats, intimidation, harassment, violence, and coercion in order to prevent or infringe, or attempt to prevent or infringe, upon Plaintiffs JAMES RIGHEIMER's and STEVE MENSINGER's constitutional rights under the First, Fourth, Fifth, Ninth, and Fourteenth Amendments of the United States Constitution to peaceably assemble and speak freely; to be free from unwarranted search and seizure; to due process of the law; to privacy; to be free from imposed stigmas or disabilities which foreclose Plaintiffs' freedom to take advantage of employment opportunities; Plaintiffs' right to be free from discrimination because of political affiliation; and generally, Plaintiffs' right to enjoy and carry on their lives free from wrongful and unwarranted intrusion from those seeking to harm them in their person and interfere with their property interests. In addition, these actions were contrary to Plaintiffs' civil rights guaranteed under the Constitution of the State of California.

79. Defendants' wrongful conduct was intended to, and did successfully interfere with Plaintiffs' Constitutional Rights to peaceably assemble and speak freely; to be free from unwarranted search and seizure; to due process; to privacy in one's personal affairs; to be free from imposed stigmas or disabilities which foreclose Plaintiffs' freedom to take advantage of employment opportunities; and generally, Plaintiffs' right to enjoy and carry on their lives free from wrongful and unwarranted intrusion from those seeking to harm them in their person or property.

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80. Defendants unlawfully and wrongfully used, or employed others to wrongfully use threats, intimidation, harassment, violence, and coercion over Plaintiffs' person, to which Plaintiffs had no relief except to submit to the Defendants' wrongful threats, intimidation, harassment, violence, and coercion, which rendered Plaintiffs' submission involuntary.

81. Defendants' above-noted actions were the legal and proximate causes of physical, psychological, emotional, and economic damages, and damage to their reputation Plaintiffs have suffered and continue to suffer to this day. The actions of Defendants have also resulted in Plaintiffs incurring, and will require them to incur into the future, expenses for medical and psychological treatment, therapy, and counseling.

82. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain loss of earning capacity; have and will continue to suffer damage to their business reputation; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. They have also suffered economic business loss as a result.

83. In subjecting Plaintiffs to the wrongful treatment described herein, Defendants acted willfully and maliciously with the intent to harm Plaintiffs, and in conscious disregard of Plaintiffs' rights, entitling Plaintiffs to compensatory damages in a sum to be shown according to proof, emotional distress damages in a sum to be shown according to proof, punitive and/or exemplary damages, attorney's fees, other damages pursuant to Civil Code section 52(b)(1), and a temporary restraining order or a preliminary or permanent injunction ordering Defendants to refrain from conduct or activities as alleged in the INCIDENT, stating "VIOLATION OF THIS ORDER IS A CRIME PUNISHABLE UNDER SECTION 422.77 OF THE PENAL CODE," and other such relief as the court deems proper.

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SIXTH CAUSE OF ACTION
VIOLENCE OR INTIMIDATION (Violation of Ralph Act): C.C.P. §51.7
(By Plaintiffs JAMES RIGHEIMER and STEVEN MENSINGER Only Against ALL Defendants)

84. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

85. Defendants' actions, as alleged herein, have had and will continue to have a chilling effect on these Plaintiffs' civil rights, including citizen participation in government and free speech.

86. During these Plaintiffs' public service for the City of Costa Mesa, Defendants initiated, motivated, and wrongfully instigated violence and intimidation by threat of violence against these Plaintiffs, against their persons or property, because of their political affiliation or on account of their contrary position in a labor dispute, or because Defendants perceived them to have one or more of those characteristics.

87. Defendants unlawfully used force upon Plaintiffs, for the purpose of interfering with and attempting to interfere with Plaintiff's Constitutional Rights under the First, Fourth, Fifth, Ninth, and Fourteenth Amendments of the United States Constitution to peaceably assemble and speak freely; to be free from unwarranted search and seizure; to due process of the law; to privacy in one's personal affairs; to be free from imposed stigmas or disabilities which foreclose Plaintiffs' freedom to take advantage of employment opportunities; and generally, Plaintiffs' right to be free from discrimination based upon political affiliation, and be free from illegal and oppressive conduct because of ongoing labor negotiations with Defendants; and for those reasons, Defendants violated Plaintiffs' Constitutional Rights and Civil Code section 52.1(b).

88. Defendants' wrongful conduct was done maliciously and for the purpose of inflicting emotional, psychological and physical injury upon Plaintiffs. Such ill will was premised upon Plaintiffs' political affiliation and actual or perceived adverse position in a labor dispute.

89. Defendants' above-noted actions were the legal and proximate causes of Plaintiffs' physical, psychological, emotional, and economic damages, and damage to their

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reputation, which they suffered and continue to suffer to this day. The actions of Defendants have also resulted in Plaintiffs incurring, and will require them to incur into the future, expenses for medical and psychological treatment, therapy, and counseling.

90. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain loss of earning capacity; have and will continue to suffer damage to their business reputation; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. They have also suffered economic business loss as a result.

91. In subjecting Plaintiffs to the wrongful treatment described herein, Defendants acted willfully and maliciously with the intent to harm Plaintiffs, and in conscious disregard of Plaintiffs' rights, entitling Plaintiffs to compensatory damages in a sum to be shown according to proof, emotional distress damages in a sum to be shown according to proof, punitive and/or exemplary damages, attorney's fees, relief in the form of a permanent or temporary injunction, restraining order, or other order against Defendants necessary to ensure Plaintiffs' and others' full enjoyment of rights as described herein; and other such relief as the court deems proper.

SEVENTH CAUSE OF ACTION
CIVIL CONSPIRACY
(By All Plaintiffs Against ALL Defendants)

92. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

93. Defendants, as herein alleged, in their individual and collective capacities, endeavored to and did make an unlawful agreement to coerce, intimidate, assault and harass Plaintiffs in an effort to wrongfully obtain Plaintiffs' submission to their demands, to which Defendants committed at least one overt act by coercing, intimidating, assaulting or harassing

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Plaintiffs, in furtherance of the agreement. As a result, Plaintiffs have suffered harm, and will continue to suffer harm from Defendants' unlawful, oppressive and wrongful conduct.

94. Defendants engaged in the formation of the conspiracy, individually and collectively, and had an agreement to commit wrongful acts upon Plaintiffs, including but not limited to, pursuing and harassing Plaintiffs, calling the legal authorities to file false reports, assault Plaintiffs, and coerce, harass and intimidate them.

95. Defendants participated in conspiracy, individually and collectively, and committed at least one overt and wrongful act in furtherance of the intent of the conspiracy, including but not limited to, pursuing and harassing Plaintiffs, calling the legal authorities to file false reports, assault Plaintiffs, and coerce, harass and intimidate them.

96. As a result of Defendants' wrongful conduct, Plaintiffs has, and will continue to, sustain damage resulting from Defendants' wrongful conduct and operation of the conspiracy.

97. Defendants' above-noted actions were the legal and proximate causes of Plaintiffs' physical, psychological, emotional, and economic damages, and damage to their reputation, which they suffered and continue to suffer to this day. The actions of Defendants have also resulted in Plaintiffs incurring, and will require them to incur into the future, expenses for medical and psychological treatment, therapy, and counseling.

98. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain loss of earning capacity; have and will continue to suffer damage to their business reputation; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. They have also suffered economic business loss as a result.

99. In subjecting Plaintiffs to the wrongful treatment described herein, Defendants acted willfully and maliciously with the intent to harm Plaintiffs, and in conscious disregard of

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Plaintiffs' rights, entitling Plaintiffs to compensatory damages in a sum to be shown according to proof, emotional distress damages in a sum to be shown according to proof, punitive and/or exemplary damages, attorney's fees, and other such relief as the court deems proper.

EIGHTH CAUSE OF ACTION
MALICIOUS PROSECUTION
(By Plaintiff JAMES RIGHEIMER Only Against ALL Defendants)

100. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

101. During Plaintiff JAMES RIGHEIMER's public service for the City of Costa Mesa, Defendants initiated legal action against Plaintiff, through the INCIDENT, which any reasonable legal professional would regard as totally and completely without merit. The legal action was terminated in Plaintiff JAMES RIGHEIMER's favor based on the complete lack of evidence and probable cause. The legal action was initiated by Defendants for the wrongful and malicious purpose of injuring Plaintiff JAMES RIGHEIMER.

102. Defendants wrongfully pursued, harassed and oppressed Plaintiff JAMES RIGHEIMER and improperly initiated and commenced police action against Plaintiff JAMES RIGHEIMER for the purpose of pressuring and coercing Plaintiff JAMES RIGHEIMER into political action in their favor, in violation of his civil rights, to gain advantage in a political and labor dispute.

103. The allegations made by Defendants in the legal action were knowingly false, based upon a fraudulent police report and accusation, without any reliable personal knowledge thereof, or verifiable facts in support of the wrongful claim.

104. Defendants' false allegations resulted in the prior action being terminated, almost immediately, in Plaintiff JAMES RIGHEIMER's favor because the prosecuting party determined the prior action lacked merit and, if pursued further, would unquestionably result in a decision in favor of Plaintiff JAMES RIGHEIMER based upon the merits of the case.

105. Defendants' wrongful conduct lacked any probable cause, and any reasonable attorney would regard Defendants actions as totally and completely without merit.

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106. Defendants possessed malice, ill will or an improper purpose, whether expressed or implied, when initiating the prior action against Plaintiff JAMES RIGHEIMER.

107. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain loss of earning capacity; have and will continue to suffer damage to their business reputation; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. They have also suffered economic business loss as a result.

108. In subjecting Plaintiff JAMES RIGHEIMER to the wrongful treatment described herein, Defendants acted willfully and maliciously with an intent to harm Plaintiff JAMES RIGHEIMER, and in conscious disregard of Plaintiff JAMES RIGHEIMER's rights, entitling Plaintiff JAMES RIGHEIMER to compensatory damages, punitive and/or exemplary damages, attorney's fees, and other such relief as the court deems proper.

NINTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES; B&P.C. §17200
(By All Plaintiffs Against ALL Defendants)

109. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

110. In doing the things alleged herein, Defendants acted unlawfully and unfairly in conducting their business, which resulted in injury to Plaintiffs as well as California consumers in general.

111. Defendants' wrongful conduct included, but was not limited to, making knowingly false and defamatory allegations against Plaintiffs, conspiring to harm Plaintiffs, assaulting Plaintiffs, all of which harmed Plaintiffs, for the purpose of coercing political action in Defendants' favor, adversely affecting Plaintiffs, California consumers and offending public policy.

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112. Defendants' unlawful conduct included, but was not limited to, instances of falsely accusing Plaintiffs of facts Defendants knew to be untrue, conspiring to injure Plaintiffs, filing a false police report, defaming Plaintiffs, violating Plaintiffs' Constitutional rights, as well as other illicit activities.

113. Defendants' conduct was unfair to Plaintiffs, as well as the California general public because it offends public policy, and Defendants' business practice of intimidating, harassing and extorting public officials is immoral, unethical, oppressive, unscrupulous and substantially injurious to Plaintiffs and the general public.

114. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain loss of earning capacity; have and will continue to suffer damage to their business reputation; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. They have also suffered economic business loss as a result.

115. In subjecting Plaintiffs to the wrongful treatment described herein, Defendants acted willfully and maliciously with an intent to harm Plaintiffs, and in disregard of Plaintiff's rights, entitling Plaintiff to injunctive relief pursuant to California Business and Professional Code section 17203, restoration of monies or property acquired by Defendants' unfair competition pursuant to California Business and Professional Code section 17203, and other such relief as the court deems proper.

TENTH CAUSE OF ACTION
ASSAULT
(By Plaintiffs JAMES and LENE RIGHEIMER Only Against ALL Defendants)

116. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

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117. Defendants, in doing the things herein alleged, including but not limited to, intending to directing and encouraging agent-Defendant LANZILLO to drive a motor vehicle at a high rate of speed at Plaintiff LENE RIGHEIMER, was intended to and did place Plaintiff LENE RIGHEIMER in imminent apprehension of grave bodily harm, or was intended to place Plaintiff LENE RIGHEIMER in imminent apprehension of such contact.

118. Defendants, in doing the things herein alleged, including but not limited to, intending to directing and encouraging a law enforcement officer to arrive at the home of Plaintiff JAMES RIGHEIMER, and make contact with him, was intended to and did place Plaintiff JAMES RIGHEIMER in imminent apprehension of grave bodily harm, or was intended to place Plaintiff JAMES RIGHEIMER in imminent apprehension of such contact.

119. Defendants, in doing the things herein alleged, including but not limited to, directing and encouraging agent-Defendant LANZILLO to drive his motor vehicle recklessly towards Plaintiff LENE RIGHEIMER, and pursue, with fraudulent intent, Plaintiff JAMES RIGHEIMER, calling the authorities on him, resulting in the police removing Plaintiff JAMES RIGHEIMER from of his home, and forcefully and under duress, submit him to an unwarranted use of force upon his person and property, put Plaintiffs into imminent apprehension of such contact, and such was intended to put Plaintiffs into imminent apprehension of such contact

120. In doing the things herein alleged, Plaintiffs JAMES RIGHEIMER and LENE RIGHEIMER were put into imminent apprehension of harmful or offensive contact by Defendants, and Plaintiffs actually believed Defendants had the ability to make harmful or offensive contact with Plaintiffs' person.

121. Because of Defendants' position of authority and dominance over Plaintiffs while attempting to inflict fear and injury upon Plaintiffs, and Plaintiffs' strained mental and emotional state at the time, Plaintiffs were unable to and did not give meaningful consent to such acts.

122. In doing the things herein alleged, Defendants violated Plaintiffs' right, pursuant to Civil Code section 43, to be protected from bodily restraint or harm, and from personal insult. In doing the things herein alleged, Defendants violated their duty, pursuant to Civil Code section 1708, to abstain from injuring the person of Plaintiffs or infringing upon their rights.

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123. Defendants' above-noted actions in harassing, threatening, and menacing Plaintiffs JAMES RIGHEIMER and LENE RIGHEIMER were the proximate and legal causes of physical, psychological, emotional, and economic damages Plaintiffs have suffered and continue to suffer to this day. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain loss of earning capacity; have and will continue to suffer damage to their business reputation; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. They have also suffered economic business loss as a result.

124. The above-described conduct of the Defendants was oppressive, malicious and despicable in that it was intentional and done in conscious disregard for the rights and safety of Plaintiffs, and was carried out with a conscious disregard of Plaintiffs' right to be free from such tortious behavior, such as to constitute oppression, fraud or malice pursuant to California Civil Code section 3294, entitling Plaintiffs to punitive damages against Defendants in an amount appropriate to punish and set an example of them, and compensatory damages.

ELEVENTH CAUSE OF ACTION
INVASION OF PRIVACY: FALSE LIGHT
(By Plaintiff JAMES RIGHEIMER Only Against ALL Defendants)

125. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

126. Defendants' wrongful, oppressive and unauthorized actions as alleged herein invaded Plaintiff JAMES LENE RIGHEIMER's right to privacy and placed Plaintiff JAMES RIGHEIMER in a false light in the public eye to which the Defendants knew, or recklessly disregarded the falsity of the publicized fact, and the false light in which the Plaintiff was placed, and Defendants' acted with a high degree of awareness that the statements were false. The false light into which Plaintiff JAMES RIGHEIMER was placed was that of a person who violates

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traffic rules, drives drunk and disregards laws of the State of California. This is especially damaging due to the fact that he is a duly-elected public official.

127. Defendants' wrongful and unauthorized invasion of Plaintiffs' privacy was disseminated to the public in general through various news and media outlets, and such was received by a large number of persons who knew of Plaintiff.

128. Defendants' wrongful and unauthorized invasion of Plaintiffs' privacy was an unfair and inaccurate depiction of the Plaintiff, and was done in order to place Plaintiffs' character and reputation in a false light to the public.

129. Defendants' wrongful and unauthorized conduct placed Plaintiff in a false light which was so offensive as to shock the community's notions of decency, was extremely offensive to Plaintiff, and would be considered to be highly offensive to a reasonable person.

130. Defendants knew, yet acted in complete disregard of the false and misleading allegations pertaining to Plaintiff's character and fraudulently alleged violation of law, and the false light in which the Plaintiff would be placed. Defendant acted purely out of hatred or ill will toward Plaintiff when placing Plaintiff in an injurious and oppressive false light.

131. Defendants' intentionally and unlawfully accused Plaintiff of violating a statute out of spite, ill will and oppression, which constitutes a facially libelous statement (libel *per se*).

132. Defendants' above-noted actions were the proximate and legal causes of physical, psychological, emotional, and economic damages Plaintiff has suffered and continues to suffer to this day. As a result of the above-described conduct, Plaintiff suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; has and will continue to sustain loss of earning capacity; has and will continue to suffer damage to his business reputation; and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. He has also suffered economic business loss as a result.

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133. In subjecting Plaintiff to the wrongful treatment described herein, Defendants acted willfully and maliciously with the intent to harm Plaintiff, and in conscious disregard of Plaintiff's rights, entitling Plaintiff to compensatory damages, general damages pursuant to Civil Code section 48a(4)(a), special damages pursuant to Civil Code section 48a(4)(b), punitive and/or exemplary damages, and to such other relief as the court deems proper.

TWELFTH CAUSE OF ACTION
INVASION OF PRIVACY: INTRUSION UPON SECLUSION
(By All Plaintiffs Against ALL Defendants)

134. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

135. Defendants intentionally and with ill will, intruded upon the solitude, seclusion, private affairs or concerns of Plaintiffs in a manner that was oppressive and extremely offensive to them, and such behavior and conduct would be highly offensive to a reasonable person.

136. Defendants' wrongful conduct, including but not limited to, the assault and battery alleged herein by Plaintiff JAMES RIGHEIMER violated Plaintiff's right to be free from intrusion into his private affairs, and Defendants' violated Plaintiff's reasonable expectation of seclusion or solitude in his business affairs, privacy pertaining to personal matters of and concerning Plaintiff, to use his personal vehicle without fear or wrongful intimidation, and remain peacefully and without anxiety, fear and terror in his personal residence.

136.1. Defendants' wrongful conduct, including, but not limited to, the unauthorized GPS spying device surveillance, entrance onto his property, and securing of the GPS spying device surveillance to the undercarriage of his truck alleged herein by Plaintiff STEVE MENSINGER violated Plaintiff's right to be free from intrusion into his private affairs, and Defendants' violated Plaintiff's reasonable expectation of privacy, seclusion, or solitude in his business affairs, privacy pertaining to personal matters and concerning Plaintiff, to use his personal vehicle without fear or wrongful intimidation, and remain peacefully and without anxiety, fear and terror in his personal residence.

137. Defendants' conduct was willful and intentional, and did intrude upon Plaintiffs' reasonable expectation of seclusion or solitude in his business affairs, privacy pertaining to

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personal matters of and concerning Plaintiffs, to use their personal vehicles without fear or wrongful intimidation, and reside peacefully and without anxiety, fear and terror in their personal residences.

138. Defendants' conduct violated Plaintiffs' right to privacy, to live their lives in seclusion, and to be free from discrimination and oppression, and has prejudiced and deprived Plaintiffs of their personal liberty pertaining to these rights.

139. Defendants' deceptive practices and unauthorized intrusion was highly offensive to Plaintiffs, and such deceptive practices and unauthorized intrusions would be highly offensive to a reasonable person.

140. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain loss of earning capacity; have and will continue to suffer damage to their business reputation; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. They have also suffered economic business loss as a result.

141. In subjecting Plaintiffs to the wrongful treatment described herein, Defendants acted willfully and maliciously with the intent to harm Plaintiffs, and in conscious disregard of Plaintiffs' rights, entitling Plaintiffs to compensatory damages, damages resulting from Plaintiffs' sustained and ongoing emotional distress, punitive, exemplary and/or treble damages in an amount to be shown according to proof, and any other relief the court may deem proper.

THIRTEENTH CAUSE OF ACTION
DEFAMATION: SLANDER: CIVIL CODE § 46
(By Plaintiff JAMES RIGHEIMER Only Against ALL Defendants)

142. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

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143. Defendants made oral defamatory representations pertaining to Plaintiff JAMES RIGHEIMER's purported violation of the California Penal Code that were disseminated by numerous media outlets, which directly injured Plaintiff's business and professional reputation, and caused, as a natural consequences of the defamatory statements, actual damage to the Plaintiff.

144. The slanderous statements made by Defendants were knowingly false and intended to cause harm to Plaintiff, and thus give rise to Defendants' liability for defamation.

145. There is no applicable privilege to Defendants' defamatory statements.

146. The publication of Defendants' defamatory statements was made intentionally and knowingly, and thereafter disseminated to persons other than Plaintiff and Defendant.

147. The Defendants' defamatory statements were spoken of and concerning Plaintiff JAMES RIGHEIMER.

148. The Defendants' statements were knowingly and falsely charging Plaintiff with a violation of the California Penal Code.

149. The Defendants possessed knowledge that the statements were false, or recklessly disregarded the likelihood the statements were false, yet Defendants acted with a high degree of awareness that the statements were false.

150. The statements are facially defamatory.

151. Defendants' above-noted actions were the proximate and legal causes of physical, psychological, emotional, and economic damages Plaintiff has suffered and continues to suffer to this day. As a result of the above-described conduct, Plaintiff suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; has and will continue to sustain loss of earning capacity; has and will continue to suffer damage to his business reputation; and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. He has also suffered economic business loss as a result.

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152. In subjecting Plaintiff to the wrongful treatment described herein, Defendants acted willfully and maliciously with the intent to harm Plaintiff, and in conscious disregard of Plaintiff's rights, entitling Plaintiff to compensatory damages, special damages, punitive damages, an award of money judgment for defamation *per se*, nominal damages in a sum to be shown according to proof, any other relief the court may deem proper.

FOURTEENTH CAUSE OF ACTION
DEFAMATION: LIBEL
(By Plaintiff JAMES RIGHEIMER Only Against ALL Defendants)

153. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

154. Defendants made one or more false and unprivileged publications, specifically the alleged and false violation of the California Penal Code, which was made in a fixed representation to the eye, which exposed Plaintiff to hatred, contempt, ridicule, disgrace, which caused Plaintiff to be shunned and avoided, and had a tendency to injure Plaintiff in his occupation.

155. Defendants' publication was false, and Defendants knew it to be untrue, yet acted with a high degree of awareness that the statements were false.

156. Defendants' defamatory publication was not privileged.

157. Defendants' defamatory publication was made and transmitted in fixed form, and was thereafter disseminated by several media outlets in fixed form.

158. Defendants' defamatory statements were made of and concerning the Plaintiff.

159. Defendants' statement was alleging a violation of the California Penal Code and thus defamatory on its face, and exposed Plaintiff to hatred, contempt, ridicule, disgrace, caused Plaintiff to be shunned or avoided, and injured Plaintiff in his occupation.

160. Defendants knew the defamatory statements were false, and acted with a high degree of awareness that the statements were false.

161. As a result of the above-described conduct, Plaintiff suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of

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enjoyment of life; has suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; has and will continue to sustain loss of earning capacity; has and will continue to suffer damage to his business reputation; and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. He has also suffered economic business loss as a result.

162. In subjecting Plaintiff to the wrongful treatment described herein, Defendants acted willfully and maliciously with the intent to harm Plaintiff, and in conscious disregard of Plaintiff's rights, entitling Plaintiff to compensatory damages, special damages, punitive damages, nominal damages, an award of money judgment for defamation *per se*, and other relief the court may deem proper.

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FIFTEENTH CAUSE OF ACTION
DELACLATORY / INJUCTIVE RELIEF
(By All Plaintiffs Against ALL Defendants)

163. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

164. An actual controversy exists between Plaintiffs and Defendants relating to the legal rights and duties of the respective parties, and Defendants' alleged violations relative to Plaintiffs' rights.

165. Plaintiffs contend that:

a. Defendants lack a right to defame and assault them, violate their civil rights, conspire against them, or otherwise injure Plaintiffs' reputation and standing in the community;

b. The aforementioned acts of Defendants were performed out of malice, spite, ill-will, cruelty and hatred, in order to harm, injure or otherwise damage Plaintiffs' rights, privileges and immunities;

c. Plaintiffs have the right to be free from interference or attempted interference with Plaintiffs' rights under the First, Fourth and Fourteenth Amendments to be free from unreasonable search and seizure, to be free from unwarranted invasion of privacy, to be free from unwarranted infringement upon Plaintiffs' right to employment and to be accorded due process under the California Constitution.

///

166. Plaintiffs are informed and believe, and on that basis allege that Defendants will contend that:

a. They have a right to make false, misleading and offensive statements regarding Plaintiffs, with the intent to harm, injure and oppress Plaintiffs in such a way as to pressure them into submitting to the wants and needs of Defendants, and those who Defendants represent;

b. They were not acting intentionally, or in breach of any duty, law, regulation or statutory boundary, and have a right to conduct their affairs in a similar manner as to others in the community in a similar nature as the facts alleged by Plaintiffs.

167. Plaintiffs seeks a judicial declaration and determination that it be adjudged that Defendants engaged in unfair business practices with the intent to infringe upon the constitutional rights of Plaintiffs.

168. Plaintiff seek injunctive relief to prohibit Defendants from conducting unlawful business practices in a manner similar to the facts and allegations presented herein by Plaintiffs.

169. Plaintiffs seek relief in the form of a permanent or temporary injunction, restraining order, or other order against Defendants necessary to ensure Plaintiffs' and others' full enjoyment of rights as described herein.

170. Plaintiffs seek a temporary restraining order or a preliminary or permanent injunction ordering Defendants to refrain from conduct or activities as alleged in the INCIDENT, stating "VIOLATION OF THIS ORDER IS A CRIME PUNISHABLE UNDER SECTION 422.77 OF THE PENAL CODE."

WHEREFORE, Plaintiffs pray for a jury trial and for judgment against Defendants as follows:

FOR ALL CAUSES OF ACTION

1. For past, present and future damages in an amount to be determined at trial;

2. For past, present and future special damages, including but not limited to past, present and future lost earnings, economic damages and others, in an amount to be determined at trial;

3. Any appropriate statutory damages;

4. For costs of suit;

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5. For an award of money judgment for defamation per se;

6. Punitive damages, according to proof;

7. For interest based on damages, as well as pre-judgment and post-judgment interest as allowed by law;

8. For attorney's fees pursuant to California Code of Civil Procedure sections 1021, et seq., 52, et seq., or as otherwise allowable by law;

9. Any appropriate punitive or exemplary damages against Defendants;

10. For declaratory and injunctive relief; and

11. For such other and further relief as the Court may deem proper.

Dated: November 13, 2013

MANLY, STEWART & FINALDI

By: VINCE WILLIAM FINALDI, Esq.
Attorneys for Plaintiffs,
JAMES RIGHEIMER, LENE RIGHEIMER and STEVE MENSINGER.

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DEMAND FOR JURY TRIAL

Plaintiffs hereby respectfully request a jury trial.

Dated: November 13, 2013

MANLY, STEWART & FINALDI

By: _____
VINCE WILLIAM FINALDI, Esq.
Attorneys for Plaintiffs,
JAMES RIGHEIMER, LENE RIGHEIMER
and STEVE MENSINGER.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the county of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 19100 Von Karman Ave., Suite 800, Irvine, CA 92612.

On November 13, 2013, I served the foregoing document described as FIRST AMENDED COMPLAINT FOR DAMAGES on the interested parties in this action.

[X] by placing [ ] the original **[X]** a true copy thereof enclosed in sealed envelopes addressed as follows:

Jonathan E. Phillips, Esq.
Arent Fox LLP | Attorneys at Law
Gas Company Tower
555 West Fifth Street, 48th Floor
Los Angeles, CA 90013
Direct: (213) 443-7584
Fax: (213) 629-7401
jonathan.phillips@arentfox.com
Attorneys for Defendants Lackie, Dammeier, McGill & Ether, APC, Big Giants Investigations and Christopher J. Lanzillo

David L. Martin, Esq.
Wood, Smith, Hennigan & Berman, LLP
5000 Birch Street, Suite 8500
Newport Beach, CA 92660-8136
Phone: (949) 757-4500
Fax: (949) 757-4550
Attorneys for Defendant Costa Mesa Police Association

[X] BY E-MAIL OR ELECTRONIC TRANSMISSION I hereby certify that the above-referenced document(s) were served electronically on the parties listed above at their most recent known email address or email of record by transmission of DDS (designated electronic service provider).

[X] BY U.S. MAIL

[ ] I deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

[X] I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

[X] **(State)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 13, 2013, Irvine, California.

KATHY FREDERIKSEN

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WSH&B WOOD SMITH HENNING & BERMAN LLP

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Website: www.wshblaw.com
Refer to: 10301-0001

October 4, 2013

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

City Clerk
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Re: *James Righeimer, et al. v. Costa Mesa Police Association, et al.*
Our Client: Costa Mesa Police Association
Case No.: 30-2013-00670139-CU-CR-CXC

Dear Sir or Madam:

On behalf of our client, please accept this correspondence and the enclosed Claim for Damages as a tender for defense and indemnity on behalf of the Costa Mesa Police Association (hereinafter "CMPA") in the above referenced matter. On August 20, 2013, James Righeimer, Lene Righeimer, and Steve Mensinger filed a civil complaint against the CMPA and other defendants in Orange County Superior Court (Civil Complex Division), Case No. 30-2013-00670139-CU-CR-CXC. A copy of the complaint is enclosed herewith.

The complaint is far reaching and alleges misconduct and negligence by police officers who are employees of the City of Costa Mesa. It specifically alleges acts committed in the course and scope of employment with the City of Costa Mesa. The CMPA hereby requests defense and indemnity in this matter under all applicable theories, including but not limited to, California Government Code Sections 825, 825.2, California Code of Civil Procedure Sections 1021.5, 1021.6, 1021.7 and under any applicable insurance. (Please tender the requested defense to your insurance providers and provide us with the names and policy numbers of any applicable insurance.)

In light of the likelihood that defense fees and cost will exceed $50,000, we respectfully request that this tender be considered by the Costa Mesa City Council. In view of the clear conflict of interest between plaintiffs James Righeimer/Steve Mensinger and the

City of Costa Mesa/CMPA, we request that James Righeimer and Steve Mensinger immediately recuse themselves from all discussions and actions contemplated or taken by the City Council with respect to this tender and any issues impacted by the subject lawsuit. If James Righeimer and Steve Mensinger do not voluntarily recuse themselves, the CMPA further requests that the City of Costa Mesa seek all legal remedies to prevent plaintiffs James Righeimer and Steve Mensinger from voting, commenting, and/or improperly influencing the City of Costa Mesa's consideration of this tender in any way. Further, we request that plaintiffs Righeimer and Mensinger refrain from speaking to other councilmembers or City employees regarding their complaint.

If James Righeimer and Steve Mensinger refuse to voluntarily recuse themselves from issues related to this matter and the City of Costa Mesa does not take legal action to prevent them from improperly influencing the City of Costa Mesa's consideration of this tender, we request that the City of Costa Mesa notify the undersigned immediately and provide the legal basis for not taking action to avoid this conflict of interest.

Please be advised, this correspondence should not be construed as a waiver of the rights of those who serve in the Costa Mesa Police Department and the CMPA in the event the City of Costa Mesa refuses to accept this tender, including the right to seek all available legal remedies against the City of Costa Mesa.

The CMPA looks forward to working with the City of Costa Mesa in a cooperative manner in defense of this lawsuit. Should you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Very truly yours,

WOOD, SMITH, HENNING & BERMAN LLP

By: _____
DAVID L. MARTIN, ESQ.

Encl: (1) Complaint; (2) Claim Form

JOHN C. MANLY, Esq. (State Bar No. 149080)
VINCE W. FINALDI, Esq. (State Bar No. 238279)
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Attorneys of Record for Plaintiffs,
JAMES RIGHEIMER, LENE RIGHEIMER and
STEVE MENSINGER.

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
08/20/2013 at 09:21:32 AM
Clerk of the Superior Court
By Margaret M Demaria,Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE CENTRAL CIVIL COMPLEX

JAMES RIGHEIMER, an individual; LENE RIGHEIMER, an individual; and STEVE MENSINGER, an individual,

Plaintiffs,

v.

COSTA MESA POLICE ASSOCIATION, a California corporation; LACKIE, DAMMEIER, MCGILL & ETHIR, A PROFESSIONAL CORPORATION, a California corporation; BIG GIANTS INVESTIGATIONS, a business entity of form unknown; CHRISTOPHER J. LANZILLO, an individual and DOES 1-25.

Defendants.

Case No.: 30-2013-00670139-CU-CR-CXC
Judge: Judge Gail A. Andler

COMPLAINT FOR DAMAGES FOR:

1) **NEGLIGENCE;**
2) **NEGLIGENT HIRING/ TRAINING/ SUPERVISION/RETENTION;**
3) **NEGLIGENT ENTRUSTMENT OF AGENTS;**
4) **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;**
5) **INTERFERENCE WITH CIVIL RIGHTS (Violation of Bane Act) [C.C.P. § 52.1];**
6) **VIOLENCE OR INTIMIDATION (Violation of Ralph Act) [C.C.P. § 51.7];**
7) **CIVIL CONSPIRACY;**
8) **MALICIOUS PROSECUTION;**
9) **UNFAIR BUSINESS PRACTICES [B&P. C. § 17200];**
10) **ASSAULT;**
11) **INVASION OF PRIVACY (False Light);**
12) **INVASION OF PRIVACY (Intrusion Upon Seclusion);**
13) **DEFAMATION (Slander);**

14) DEFAMATION (Libel); and
15) DECLARATORY/INJUNCTIVE RELIEF.

DEMAND FOR JURY TRIAL.

COME NOW, Plaintiffs JAMES RIGHEIMER, LENE RIGHEIMER and STEVE MENSINGER, individuals, who complain and allege as follows:

GENERAL STATEMENT OF THE CASE

1. **This lawsuit is neither about nor against the general rank and file police officers who diligently serve our communities in the face of grave danger, on a daily basis, whom Plaintiffs respect and honor without reservation. This is a civil action to vindicate the constitutional rights of Plaintiffs—a duly-elected city mayor, his wife, and a city councilmember—and recover damages therefor, resulting from injuries they suffered at the hands of rogue Defendants COSTA MESA POLICE ASSOCIATION; its legal representative LACKIE, DAMMEIER, MCGILL & ETHIR, A PROFESSIONAL CORPORATION; and their private-investigator-agents BIG GIANTS INVESTIGATIONS and CHRISTOPHER JOSEPH LANZILLO.** Plaintiffs allege these Defendants acted in concert, conspiring to violate their constitutional rights for the illegitimate purpose of coercing political action in Defendants' favor.

THE PARTIES

2. Plaintiff JAMES RIGHEIMER is an individual who was elected and sworn in as Mayor *Pro Tem* of the Costa Mesa City Council, in the County of Orange, California, in November of 2010. Prior to that time, he held a position on the City of Costa Mesa Planning Commission. He was elevated to the position of Mayor through election by the Council in December of 2012, and serves in such position and capacity to the present day. During the entire period of time alleged herein, he resided in the City of Costa Mesa with his wife and family.

3. Plaintiff LENE RIGHEIMER, an individual, is and was the wife of JAMES RIGHEIMER during the entire period of time alleged herein, also residing in the City of Costa Mesa, County of Orange.

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4. Plaintiff STEVE MENSINGER is an individual who was appointed to the Costa Mesa City Council, in the County of Orange, California, in January of 2011, and serves in such position and capacity to the present day. During the entire period of time alleged herein, he resided in the City of Costa Mesa with his wife and family.

5. Defendant COSTA MESA POLICE ASSOCIATION ("CMPOA UNION") is and at all times mentioned herein was a corporation duly organized under the laws of the State of California, with its principal place of business in the City of Costa Mesa, County of Orange, California. The CMPOA UNION is a union that represents duly sworn officers of the Costa Mesa Police Department. Its website advertises: "**The Costa Mesa Police Officers' Association is the governing body of the police officers under the rank sergeant in the Costa Mesa Police Department.**" It states: "**Our goal as an Association is to ensure that our membership receives the tools it needs to better serve and protect the public, our children, businesses, homes, property, and the dream of a better future for our families.**" Plaintiffs are informed and believe, and on that basis allege, that the CMPOA UNION retained Defendant LACKIE, DAMMEIER, MCGILL & ETHIR, A PROFESSIONAL CORPORATION, a law firm, to represent it and perform legal services from the early 2000's through the present. Plaintiffs are informed and believe, and on that basis allege, that the CMPOA UNION retained the services of BIG GIANTS INVESTIGATIONS and CHRISTOPHER LANZILLO, to perform investigative work for it for the purpose of furthering the goals of the CMPOA UNION, from the early 2000's through the present.

6. Defendant LACKIE, DAMMEIER, MCGILL & ETHIR, A PROFESSIONAL CORPORATION ("LACKIE") is and at all times mentioned herein was a professional corporation duly organized under the laws of the State of California, with its principal place of business in the City of Upland, County of San Bernardino, California. It is a law firm. LACKIE's website, **www.policeattorney.com**, advertises that it "**specializes in the representation of police officers and their associations throughout California.**" The website continues, stating:

> "**The firm currently represents over 120 California public safety associations in labor, litigation and/or disciplinary matters. Most of the firm's attorneys are former police officers or deputy sheriffs.** It is with these backgrounds and

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experience that we are able to provide the representation today's police officers need and deserve in the following areas;

Contract Negotiations - The firm prides itself on the successful contracts obtained for our clients and strives to ensure our clients are the leaders in salary and benefits in the industry. The approach taken by the firm has resulted in record level increases for the associations represented by Lackie, Dammeier, McGill & Ethir and the police industry as a whole.

Discipline Representation - As PORAC LDF panel attorneys, the firm vigorously defends officers and protects their rights in disciplinary proceedings. Our track record in this area is among the best in the state. Lackie, Dammeier, McGill & Ethir has successfully had officers reinstated who were told by their prior firm they should resign. We take seriously the need to protect your livelihood for you and your family.

Litigation - In aggressively representing officers and associations, the need for experienced litigators is imperative. The firm's litigation section handles FLSA, Civil Rights (retaliation), Writs (enforcing MOU's), Injunctions (enforcing POBR) and other litigation necessary in protecting the best interests of our client associations and their members." (Emphasis added).

LACKIE's website continues, "**Most of the firm's attorneys and staff are former police officers or deputy sheriffs. In addition to Mike and Dieter, Kasey Castillo and Kasey Sirody, were both former Deputy District Attorneys and they provide criminal defense to our police officer clients. Mike McCoy is a retired Colton Police Officer. Russell Perry is a former Deputy Probation Officer. Chris Gaspard is a former Riverside Police Officer. Andrew Dawson is a former California Highway Patrolman. John Bakhit is a former Oakland Police Officer. It is with these backgrounds that we are able to provide the representation today's police officers need and deserve.**"

Plaintiffs are informed and believe, and on that basis allege, that LACKIE performed legal services for the CMPOA UNION, retaining and utilizing the investigative services of BIG GIANTS INVESTIGATIONS and CHRISTOPHER LANZILLO to further such ends, from the early 2000's through the present.

7. Defendant BIG GIANTS INVESTIGATIONS ("BIG GIANTS") is and at all times mentioned herein was a business entity of form unknown with its principal place of business in the City of Menifee, County of Riverside, California. It operates as a private investigation business, and was issued Private Investigator license number 27407 on June 18, 2011 by California's Department of Consumer Affairs, Bureau of Security and Investigative Services. The license expires on June 30, 2015. The Department of Consumer Affairs' website states the manager and business owner of BIG GIANTS is Defendant CHRISTOPHER J. LANZILLO. Plaintiffs are informed and believe, and on that basis allege, that BIG GIANTS

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performed private investigative services for the CMPOA UNION and LACKIE from June 18, 2011 through the present.

8. Defendant CHRISTOPHER J. LANZILLO ("LANZILLO") is an individual, who Plaintiffs are informed and believe, and on that basis allege resides in Sun City, in the County of Riverside, California. For 17 years, he was a City of Riverside police officer, during the latter-portion of his career serving also as the President of the Riverside Police Officer's Association. Local media coverage indicates he demoted and later fired for cause by the Riverside Police Department. Defendant LANZILLO, represented by LACKIE, on May 6, 2010, sued the Riverside Police Department for "retaliation," purportedly due to his union activities with the Riverside Police Officer's Association. He filed eight separate worker's compensation claims related to his employment with the City of Riverside. The City of Riverside Police Department stated it fired Defendant LANZILLO "not because he was a member of the leadership of the [police union], but <u>because he did some really bad things</u>." In October of 2010, LACKIE reached a settlement with the Riverside Police Department. Under the terms of the settlement, LANZILLO was reinstated to the City's payroll, then granted medical retirement in January of 2011. He applied for, and on June 18 of 2011 was granted private investigator license number 27407 by the California Department of Consumer Affairs, Bureau of Security and Investigative Services. He has been employed as a private investigator from June 18, 2011 to the present. He is the owner and manager of BIG GIANTS and its principal private investigator. Plaintiffs are informed and believe, and on that basis allege, that LANZILLO also possesses a firearm license, and performed private investigative services for the CMPOA UNION and LACKIE from June 18, 2011 through the present. Defendant LACKIE employed Defendant LANZILLO to perform investigative services. Prior to hiring LANZILLO, Defendant LACKIE was aware that Defendant LANZILLO was unfit to be a police officer, and also to be a private investigator. Notwithstanding, Defendant LACKIE hired him because he possessed knowledge of law enforcement tactics, maintained substantial contacts with the law enforcement community, and also maintained substantial contacts with police officer associations throughout the state.

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9. Defendants DOES 1-25 are sued herein under said fictitious names because at this time Plaintiffs are ignorant as to their true names and capacities, whether individual, corporate, associate or otherwise. If and when their true names and capacities are ascertained, Plaintiffs will request leave of Court to amend this Complaint to state their true names and capacities herein. Plaintiffs are informed and believe, and on that basis allege, that at all times mentioned herein, each fictitiously-named Defendant was responsible in some manner or capacity for the occurrences herein alleged, and that Plaintiffs' damages were proximately contributed to by all said DOE Defendants.

10. Defendants are sometimes collectively referred to herein as "Defendants" and/or "All Defendants." Such refers to all specifically named Defendants as well as those fictitiously named herein. Plaintiffs allege the CMPOA UNION hired LACKIE to further its political agenda, and that LACKIE did so through the use of agents BIG GIANTS and LANZILLO. As such, CMPOA UNION and LACKIE are directly liable, vicariously liable, and responsible under the doctrine of *respondeat superior* for the actions of BIG GIANTS and LANZILLO that were carried out against Plaintiffs, whether done as actual or apparent agents, under their direct supervision, direction and control or not, as such acts were done in furtherance of a conspiracy between these Defendants to carry out the following tortious and unlawful activities against Plaintiffs.

11. Plaintiffs are informed and believe, and on that basis allege, that at all times mentioned herein, there existed a unity of interest and ownership among Defendants and each of them, such that any individuality and separateness between Defendants, and each of them, ceased to exist. Defendants were the successors-in-interest and/or alter egos of the other Defendants, in that they purchased, controlled, dominated and operated each other without any regard to maintaining a separate identity, observing formalities, or other manner of division. To continue maintaining the facade of a separate and individual existence between and among Defendants, and each of them, would serve to perpetrate a fraud and an injustice.

12. Plaintiffs are informed and believe, and on that basis allege, that at all times mentioned herein, Defendants and each of them were the agents, representatives and/or

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employees of each and every other Defendant. In doing the things hereinafter alleged, Defendants and each of them were acting within the course and scope of said alternative personality, capacity, identity, agency, representation and/or employment and were within the scope of their authority, whether actual or apparent. The following actions were undertaken by Defendants in the course and scope of their employment, and with full knowledge of, or while each Defendant had reason to know of, such actions. The actions undertaken by Defendants were done with the full acknowledgement and active participation of every other Defendant.

13. Plaintiffs are informed and believe, and on that basis allege, that at all times mentioned herein, Defendants and each of them were the trustees, partners, servants, joint venturers, shareholders, contractors, and/or employees of each and every other Defendant, and the acts and omissions herein alleged were done by them, acting individually, through such capacity and within the scope of their authority, and with the permission and consent of each and every other Defendant and that said conduct was thereafter ratified by each and every other Defendant, and that each of them is jointly and severally liable to Plaintiffs.

CMPOA UNION AND BUDGET CUTS

14. By the Spring of 2012, the City of Costa Mesa had been experiencing a decline in sales and property tax revenues along with an increase in expenditures, resulting in difficult decisions for the City Council. Plaintiffs JAMES RIGHEIMER and STEVE MENSINGER, as members of the City Council, supported a plan for outsourcing some city services, suggesting a charter city ballot proposal be initiated, to address the problem. Prior to then, the Costa Mesa City Council had been embroiled in contract negotiations with the CMPOA UNION, regarding the pension and benefits schedule of the Costa Mesa Police Department. Plaintiffs JAMES RIGHEIMER and STEVE MENSINGER had taken the position that these areas needed to be addressed so as to assist the City of Costa Mesa in achieving budget-balancing objectives.

15. The CMPOA UNION was directly opposed to this position, and actively lobbied in an attempt to make Plaintiffs JAMES RIGHEIMER and STEVE MENSINGER change their positions, which they refused to do. The CMPOA UNION retained LACKIE as its agent and representative to further its interests with respect to contract negotiations with the City of Costa

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Mesa. With knowledge of the CMPOA UNION, LACKIE hired BIG GIANTS and LANZILLO as its agents and representatives to assist in furthering the objectives of its retention by the CMPOA UNION. In such capacities, the CMPOA UNION, LACKIE, BIG GIANTS and LANZILLO were acting in concert, according to an explicit common plan and scheme.

LACKIE'S "PLAYBOOK" FOR POLICE UNION REPRESENTATION

16. LACKIE drafted and published a "Playbook" to its website sometime before August of 2012. It contains a section entitled "Negotiations After Impasse," which lays out in detail its methodology and strategy regarding police union negotiation after impasse. The complete text of the section is pasted below:

> Former Cops Defending Current Ones
> Home | Association Leadership Training | Negotiations
>
> *Negotiations After Impasse*
>
> *Association Options -*
> **In gearing up for negotiations, hopefully your association has developed some political ties with members of your governing body. Now is the time those political endorsements, favors, and friendships come into play.** When negotiations reach an impasse, the association will have options which may be utilized simultaneously, or one before the other.
>
> *Political Option*
> As most association leaders already know, associations should be selective in their battles. However, this does not mean that the association should roll over for everything either. Association respect (by the employer) is gained over years of actions or inactions. **Associations who rarely, if ever, take things to the mat or challenge the employer gain little respect at the bargaining table or elsewhere.** The flip side is also true. Those associations that battle over every minor issue may be seen as an association that simply cannot be pleased, so why bother. While it is a fine line, somewhere in the middle is where you want to be. **The association should be like a quiet giant[1] in the position of, "do as I ask and don't piss me off."** Depending on the circumstances surrounding the negotiations impasse, **there are various tools available to an association to put political pressure on the decision makers.** A few things to keep in mind when utilizing these tools are the following:
>
> *Public Message*
> Always keep this in mind. **The public could care less about your pay, medical coverage and pension plan.** All they want to know is "what is in it for them." Any public positions or statements by the association should always keep that focus. The message should always be public safety first. You do not want wage

[1] This imperative in LACKIE's Playbook, that a POA be like a "quiet giant," is informative. Plaintiffs assert it is no mere coincidence that LANZILLO chose to name his private investigative firm BIG GIANTS INVESTIGATIONS—it evidences goals of LACKIE, BIG GIANTS and LANZILLO and BIG GIANTS, to carry out plans derived directly from the Playbook.

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increases for yourselves, but simply to attract better qualified candidates and to keep more experienced officers from leaving.

The Future

Also keep in mind that once the fight is over, you and your members will still be working there. Avoid activities where one or just a few members are involved who can be singled out for retaliation. Always keep in mind your department policies and the law. **You should be in very close contact with your association's attorney during these times to ensure you are not going to get yourself or any of your members in trouble.** For associations in the Legal Defense Fund, please keep in mind that concerted labor activity should always be discussed with the LDF Trustees prior to the activity to ensure coverage.

Let the Debate Begin

Again, the ideas listed below are not in any particular order. Just as in your use-of-force guidelines, you can start with simple verbal commands or jump to a higher level, based on the circumstances.

Keep in mind that most of these tools are not to deliver your message to the public but are designed to simply get the decision makers into giving in to your position.

•*Storm City Council* – While an association is at impasse, **no city council or governing board meeting should take place where members of your association and the public aren't present publicly chastising them for their lack of concern for public safety.**

•*Picketing* - Plan a few well organized picketing events. Keep these events spread out to avoid burning out your membership.

•*Public Appearances* – During impasse, **the association should make known at every significant public event, such as parades, Christmas tree lightings, the Mayor's Gala and any other event of interest to the decision makers, that the association is upset about the lack of concern for public safety.**

•*Newspaper Ads* - Again, keep the message focused on "public safety."

•*Billboards* – **Nothing seems to get more attention than a billboard entering the city limits which reads that crime is up and the City could care less about your safety.**

•*Websites* – **GardenGroveSucks.com was a big hit.**

•*Job Fair* – Getting your members to apply at a large local agency, which causes an influx of personnel file checks by background investigators always sends a strong signal. Keep this for last, as some of your members may ultimately leave anyway.

•*Work Slowdown* – This involves informing your members to comply closely with Department policy and obey all speed limits. It also involves having members do thorough investigations, such as canvassing the entire neighborhood when taking a 459 report and asking for a back-up unit on most calls. Of course, **exercising officer discretion in not issuing citations and making arrests is also encouraged.**

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•*Blue Flu* – This one is very rarely used and only in dire circumstances. As with all of these, **please consult your association's attorney before even discussing** this issue with your members.

•*Public Ridicule* – **Blunders by the City Manager, Mayor, or City Council members or wasteful spending should be highlighted and pointed out to the public at every opportunity.**

•*Referendum / Ballot Initiatives* – Getting the public to vote for a wage increase is seldom going to fly, however, **as a pressure tactic, seeking petition to file a referendum on eliminating the City Manager's position for a full time elected mayor may cause the City Manager to rethink his or her position.**

•*Mailers* – Again, the message should be for "public safety" in getting the public to attend city council meetings and to call the City Council members (preferably at home) to **chastize them for their inaction.**

•*Campaigning* – **If any members of the governing body are up for election, the association should begin actively campaigning against them, again for their lack of concern over public safety.** If you are in a non-election year, make political flyers which you can explain will be mailed out the following year during the election season.

•*Focus on an Individual* – Avoid spreading your energy. **Focus on a city manager, councilperson, mayor or police chief and keep the pressure up until that person assures you his loyalty and <u>then move on to the next victim</u>.**

•*Press Conferences* – Every high profile crime that takes place should result in the association's uproar at the governing body for not having enough officers on the street, which could have avoided the incident.

Of course, other ideas that cops come up with are very imaginative. Just keep in mind, the idea is to show the decision makers that the public favors public safety and it will only harm their public support by not prioritizing you and almost equally as important, **to let them know that next time they should agree with you much sooner.** (Emphasis added) (Exhibit "A" to Complaint).

DEFENDANTS IMPLEMENT "PLAYBOOK" STRATEGY IN AUGUST 22, 2012 "INCIDENT" INVOLVING PLAINTIFF JAMES RIGHEIMER

17. Playbook strategy advises: "*Storm City Council* – **While an association is at impasse, no city council or governing board meeting should take place where members of your association and the public aren't present publicly chastising them for their lack of concern for public safety.**

18. On August 21, 2012, several citizens[2] attended a Costa Mesa City Council meeting and complained of blight and lawlessness on Ford Road—a small street on the west side of Costa Mesa. The gist of the complaints was that the city needed more police officers to deal

[2] Plaintiffs are unaware of the true identities of these citizens at this time.

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with crime. One speaker stated a "police officer" had instructed him to go to the City Council meeting to complain. Plaintiff JAMES RIGHEIMER stated he perceived the parade of citizens and complaints as an attempt by the CMPOA UNION to "shake[] down" the Costa Mesa City Council and hold them hostage. He publicly criticized LACKIE's Playbook tactics. Plaintiffs are informed and believe, and on that basis allege, that in 2010, the CMPOA UNION and LACKIE drove a billboard around the City of Costs Mesa, advertising a website that was created to show Plaintiff JAMES RIGHEIMER's past financial woes. On August 21, 2012, Plaintiffs JAMES RIGHEIMER and STEVE MENSINGER assembled a team of city officials to tour Ford Road the next day, to take note of its condition and improvements, in response to the days' activities.

19. The next day, on August 22, 2012, in the early afternoon, Plaintiffs JAMES RIGHEIMER and STEVE MENSINGER and the team of city officials toured Ford Road to take note of its condition and improvements.

20. Playbook strategy advises: "**Associations should be selective in their battles [...] Associations who rarely, if ever, take things to the mat or challenge the employer gain little respect at the bargaining table or elsewhere. [...] The association should be like a <u>quiet giant</u> in the position of, "<u>do as I ask and don't piss me off</u>."**

21. Playbook strategy informs: "**<u>[T]here are various tools available to an association to put political pressure on the decision makers</u>. [...] You should be in very close contact with your association's attorney during these times to ensure you are not going to get yourself or any of your members in trouble." "[M]ost of these tools are not to deliver your message to the public but are designed to simply get the decision makers into giving in to your position."**

22. Playbook strategy dictates: "**<u>Focus on an Individual</u> – Avoid spreading your energy. <u>Focus on a city manager, councilperson, mayor or police chief and keep the pressure up until that person assures you his loyalty and then move on to the next victim</u>." "<u>[T]he idea is to [...] let them know that next time they should agree with you much sooner</u>."**

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AUGUST 22, 2012 "INCIDENT"

23. Paragraphs 23-27 describe what shall be defined for the remainder of the Complaint as the "INCIDENT."

24. After the tour of Ford Road, Plaintiffs JAMES RIGHEIMER and STEVE MENSINGER drove a few blocks away, to Skosh Monahan's—a bar/restaurant on the east side of Costa Mesa owned and operated by fellow councilmember GARY MONAHAN. Plaintiffs JAMES RIGHEIMER and STEVE MENSINGER sat in the bar/restaurant and each drank a single Diet Coke and nothing else, for which Plaintiff JAMES RIGHEIMER paid and obtained a computerized receipt. After finishing their drinks, it was late afternoon and Plaintiffs JAMES RIGHEIMER and STEVE MENSINGER drove to their respective homes in their separate motor vehicles.

25. After Plaintiff JAMES RIGHEIMER arrived at his home in Costa Mesa, less than four miles away, parked in the garage and entered his residence, a City of Costa Mesa Police Officer named KHA BAO, who has received public recognition on several occasions for his extremely high drunk driving arrest record, arrived at the home. He asked Plaintiff JAMES RIGHEIMER if he had been drinking alcohol, to which, Plaintiff JAMES RIGHEIMER replied "no," because in fact, he had not. Officer BAO then requested that Plaintiff JAMES RIGHEIMER perform a field sobriety test, designed to determine whether he had been operating a motor vehicle while intoxicated. Plaintiff JAMES RIGHEIMER complied, as his wife and children stood by and observed. His children, distraught, asked if their "daddy was going to be arrested and go to jail." Officer BAO informed Plaintiff JAMES RIGHEIMER that he had passed the test, and authorized him to carry on with his affairs.

26. After Officer BAO authorized Plaintiff JAMES RIGHEIMER to carry on with his business, Plaintiff LENE RIGHEIMER noticed Officer BAO walking down the street towards a vehicle that was parked at the end of the cul-de-sac, and saw him talk to the driver of the vehicle. She told Plaintiff JAMES RIGHEIMER what she saw. Plaintiff JAMES RIGHEIMER exited the home to go speak with the officer.

27. Plaintiff LENE RIGHEIMER witnessed the car, a white KIA, attempting to drive away while her husband was attempting to speak to the police officer and the driver. She walked into the street and signaled to the driver, a middle-aged man with a goatee, to stop the car. He stopped the vehicle and Plaintiff LENE RIGHEIMER approached the driver's door while the man rolled down the window. The man stated "Are you standing in front of my car for a reason?" She told the man, "Yeah, I'd like to know who you are." The man frowned, said "oh please," and sped off in the vehicle, nearly hitting Plaintiff LENE RIGHEIMER, swerving to miss her foot—the car came so close to her that she felt the heat of the tire and wind of the car's movement as it passed, putting her in imminent fear of grave bodily harm. At the time, Plaintiff LENE RIGHEIMER believed the driver intended to, and was going to run her over. Plaintiff LENE RIGHEIMER noticed the vehicle was a white KIA with no license plates. It had markings indicating that it was from Riverside. Plaintiffs are informed and believe, and on that basis allege that man in the car was Defendant LANZILLO.

28. Plaintiffs allege the foregoing August 22, 2012 incident was orchestrated by Defendants, against Plaintiffs, as part of their routine "Playbook" strategy, for the purpose of violating Plaintiffs' civil rights and illegally coercing Plaintiffs JAMES RIGHEIMER and STEVE MENSINGER into political action in favor of the CMPOA UNION.

29. Plaintiff JAMES RIGHEIMER passed the field sobriety tests. He possesses a computerized receipt for the two Diet Cokes he and Plaintiff STEVE MENSINGER imbibed on August 22, 2012. Video from the bar/restaurant shows he was not "stumbling" when he left the bar/restaurant, and was not drinking alcoholic beverages therein. A later statement by the Costa Mesa Police Department states "The officer made contact with the driver, identified as City Council member Jim Righeimer, and determined that Mr. Righeimer had not been drinking and was not under the influence."

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PLAINTIFFS LEARN THE TRUE FACTS SURROUNDING THE INCIDENT

30. In the days that followed the INCIDENT, Plaintiffs discovered, partially through investigative efforts of the media, the true nature of events leading up to and comprising the INCIDENT.

31. On August 24, 2012, the O.C. Register referenced a 911 tape that identified Defendant LANZILLO as a caller who reported Plaintiff RIGHEIMER to law enforcement the afternoon of the INCIDENT, for allegedly driving while intoxicated. Defendant LANZILLO stated he was "**following a possibly intoxicated driver.**" He stated, "**I think he's DUI ... He's just swerving all over the road ... I don't know what's wrong with him.**" Defendant LANZILLO stated he could be wrong but "**why take a chance?**" He then told the 911 operator he did not want to get involved. He informed the 911 operator "**When I pulled into a location, I saw him coming out. I was meeting a friend over at some location, I can't remember the name of it now and I saw him like stumbling out of this location [...] I don't know, maybe he's disabled.**" Despite the 911 operator stating "**You don't have to follow the vehicle if you don't have to,**" Defendant LANZILLO continued to follow Defendant JAMES RIGHEIMER, listing off street names that he was passing. Defendant LANZILLO stated Defendant JAMES RIGHEIMER drove 50 miles per hour down a residential street and ran a stop sign. He stated "**It's just ... he's not staying in his lanes.**" Plaintiff asserts at no time did he drive 50 miles per hour down a residential street, run a stop sign, swerve in or out of any lanes, or stumble out of the restaurant. The article noted Defendant LANZILLO appeared on Defendant LACKIE's website as its staff. The article stated DIETER DAMMIER, the Managing Partner and Agent for Service of Process of Defendant LACKIE, confirmed that Defendant LANZILLO worked for Defendant LACKIE as a private investigator.

32. The same day, the President of Defendant CMPOA UNION; JASON CHAMNESS, emailed the O.C. Register, announcing it was "firing" Defendant LACKIE because of its aggressive tactics.

33. Also the same day, DIETER DAMMIER wrote, in an email to the O.C. Register, on behalf of Defendant LACKIE, "**I assure you, he was not employed or authorized to surveil**

(or do anything else to) Mr. Righeimer by this firm." The firm then removed Defendant LANZILLO from its website. DIETER DAMMEIER's email continued, "While our firm does have a reputation for being aggressive, we have learned to acclimate to the various clients we represent. Given the hyper anti-public employee nature of the council in Costa Mesa, it is understandable that any employee group there will have to go to great lengths to accommodate them." He wrote, "The reason we represent most POA's in L.A., Riverside and San Bernardino counties is because police officers like and on occasion require aggressive representation."

34. Defendant LANZILLO, in a written statement from Defendant BIG GIANTS and reported on August 28, 2012 by the O.C. Register, stated "I was not hired in any manner to follow Mr. Righeimer or call in a traffic violation [...] this was a spur of the moment observation, which I decided to take action on without request from anyone." Contrary to this claim, Plaintiffs are informed and believe, and on that basis allege that during the INCIDENT, Defendant LACKIE (through DIETER DAMMEIER), the CMPOA, Defendant LANZILLO and Defendant BIG GIANTS INVESTIGATION were in constant electronic communication. Defendant LANZILLO's reported statement continues, "When I saw him leave the bar it appeared to me by the way Mr. Righeimer was walking that he could be under the influence or possibly just disabled." Defendant LANZILLO's reported statement then takes issue with Plaintiff JAMES RIGHEIMER's proof, via receipt, that he purchased two Diet Cokes—one for himself and one for Plaintiff STEVE MENSINGER, during the INCIDENT. Defendant LANZILLO's statement argues "We all know if you order a soda or tea at a restaurant/bar, you only pay for one drink and the rest are free [...] I'm sure (Councilman Gary) Monahan who provided the receipt for Mr. Righeimer didn't even realize this when he gave him the suspected receipt." Defendant LANZILLO reiterated comments he made on the 911 call to the O.C. Register, stating "As I continued to follow the SUV on the road he was not able to stay in the lane he was driving in and his speed was over the limit." Defendant LANZILLO then stated "I believe the Officer realized who the person was and thought it was best to leave it alone."

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35. Defendant LANZILLO, in a statement reported on August 28, 2012 by the Daily Pilot, stated "**I believe the officer realized who the person was and thought it was best to leave it alone,**" Defendant LANZILLO said, "**This is apparent by [Righeimer's] ... behavior that night and the bully he has become days after the incident.**"

36. Defendant LANZILLO spoke with an O.C. Register reporter on November 8, 2012, and his statements were reported in an article published that date. Defendant LANZILLO stated he was at the bar on the afternoon of the INCIDENT in an attempt to catch bar owner and Councilman GARY MONAHAN in a compromising position with a woman who'd been sent into the bar for at very purpose. Defendant LANZILLO stated he was there to gather "dirt" on Plaintiff STEVE MENSINGER as well. Defendant LANZILLO stated, "**I do this stuff every day ... to other people it looks wrong ... but it's not illegal. You ever watch 'Cheaters'?**" Plaintiffs are informed and believe, and on that basis allege Defendants schemed to follow Plaintiffs JAMES RIGHEIMER and STEVE MENSINGER on August 22, 2012 and illegally entrap them through the use of Defendant LANZILLO and a woman.

37. Defendant LANZILLO stated, in an article reported by the Daily Pilot on November 9, 2012, that he was hired to "tail" and "gather dirt" on councilmen STEVE MENSINGER and GARY MONAHAN on the day of the INCIDENT—that he was "sent" to the establishment, with a woman, to see whether either councilmember would "behave inappropriately." Defendant LANZILLO stated the woman sat at a table in the establishment, smiled at GARY MONAHAN and interacted with him as he poured whiskey. The woman was wearing a low-cut top. GARY MONAHAN ignored the woman's overtures. Surveillance video from the establishment, taken at the time, shows the woman enter the bar behind Plaintiff JAMES RIGHEIMER. Defendant LANZILLO denied being familiar with Plaintiff JAMES RIGHEIMER before reporting him to the police as an alleged drunk driver.

LACKIE REMOVES PLAYBOOK FROM ITS WEBSITE

38. After the INCIDENT, LACKIE removed the Playbook from its website. In its place, the website now contains the following statement: "**This portion of the material has been removed from the website. What was intended to be informational, historical and**

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educational material has been misconstrued by some as advice on negotiations "tactics." Accordingly, to avoid the misperception, the information has been removed."

POLITICIANS FROM OTHER LOCAL COMMUNITIES HAVE BEEN SUBJECTED TO LACKIE'S, BIG GIANTS' AND LANZILLO'S "PLAYBOOK" TACTICS AS WELL

39. City councilmembers from other cities around Southern California have recently come forward to criticize Defendant LACKIE's "Playbook" tactics, used against them, as well. Councilmembers from the cities of El Monte, San Dimas, Buena Park, Montclair and other locations have made similar allegations. The San Gabriel Police Management Group wrote, of its city's association: "[LACKIE's] **tactics have become reckless and their methods, delivered through their attorney, are designed to bully and intimidate."**

PLAINTIFFS' DAMAGES

40. Plaintiffs have suffered extensive physical, psychological and emotional damage due to the actions of Defendants CMPOA UNION, LACKIE, BIG GIANTS and LANZILLO arising from the INCIDENT, which continue to this day.

41. At the time of the INCIDENT, Plaintiff JAMES RIGHEIMER knew that he and the City Council had publicly taken positions that were contrary to the position of the CMPOA UNION, which he knew was represented by LACKIE, and he knew about LACKIE's Playbook tactics. Plaintiff JAMES RIGHEIMER also knew that he was not intoxicated, that had not imbibed any alcoholic beverages or intoxicants that day, did not break any traffic rules when driving from Skosh Monahan's to his home, and had done nothing to warrant inquiry by Costa Mesa Law enforcement. Plaintiff immediately believed he was being "set up" by Defendants and feared for his life and the life of his family, especially because he knew the police officer who came to his home, dressed in uniform, was carrying a loaded firearm, likely possessed a taser and pepper spray, and was acting under the color of authority. As a result of the INCIDENT, Plaintiff JAMES RIGHEIMER experiences anxiety, humiliation, embarrassment, nervousness, fear, sleeplessness and worry. He lives in constant fear for the well-being of himself and his family—that he and his family are being followed or "set up" by Defendants, through the use of law

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enforcement-related agents with weapons, licenses to carry them, specialized knowledge of police tactics, and extensive contacts with the law enforcement community. Plaintiff JAMES RIGHEIMER has suffered damage to his business reputation in the community as a result of the INCIDENT.

42. Plaintiff LENE RIGHEIMER has suffered physical, psychological and emotional damage as a result of the INCIDENT. Plaintiff LENE RIGHEIMER lives with constant worry, embarrassment, fright, humiliation, sleeplessness, anxiety, and fear for the well-being of herself and her family. She lives in constant fear of she and her family being followed or "set up" by Defendants, through the use of law enforcement-related agents with weapons, licenses to carry them, specialized knowledge of police tactics, and extensive contacts with the law enforcement community. She has suffered damage to her business reputation in the community as a result of the INCIDENT.

43. Plaintiff STEVE MENSINGER has suffered physical, psychological and emotional damage as a result of the INCIDENT. Plaintiff LENE RIGHEIMER lives with constant worry, embarrassment, fright, humiliation, sleeplessness, anxiety, and fear for the well-being of himself and his family. He lives in constant fear of being followed or "set up" by Defendants, through the use of law enforcement-related agents with weapons, licenses to carry them, specialized knowledge of police tactics, and extensive contacts with the law enforcement community. He has suffered damage to his business reputation in the community as a result of the INCIDENT.

44. Defendants interfered, through actual or attempted threats, intimidation or coercion, with Plaintiffs' exercise or enjoyment of rights secured by the Constitutions of the United States and State of California. Moreover, they interfered with Plaintiffs' right to be free from violence and intimidation by threat of violence, against their persons or property, because of political affiliation, or position in a labor dispute, or because another person perceives them to have one or more of those characteristics.

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PLAINTIFFS ACKNOWLEDGE PORTIONS OF THEIR CLAIMS ARE NOVEL

45. Plaintiffs acknowledge the California Supreme Court's holding in Hagberg v. California Federal Bank, (2004) 32 Cal.4th 39, 355, stating tort liability may only be imposed against a citizen, for a privileged report of criminal activity to law enforcement personnel, if the plaintiff can establish the elements of the tort of malicious prosecution. Plaintiffs, though this lawsuit, allege Defendants are liable for injuries resulting from the 911 false INCIDENT report by Defendant LANZILLO under a theory of malicious prosecution. Plaintiffs further allege because the 911 false INCIDENT report was made with malice, by persons in the law enforcement and legal community with specialized knowledge of 911 call immunities, and for the purpose of violating a duly-elected city official and his family's constitutional rights, a narrow exception to the privilege recognized by the Supreme Court in Hagberg must be recognized, allowing Plaintiffs to pursue tort theories in addition to malicious prosecution against said Defendants. Further, Plaintiffs allege the statements made by Defendants, including Defendant LANZILLO, that lie outside of the 911 false INCIDENT report, including the many statements made to press outlets in the months that followed the INCIDENT, as well as the tactics employed by Defendants that lie outside the 911 phone call, do not fall within the Hagberg holding's privilege protection, as they were not reports to law enforcement of criminal activity, made to a law enforcement agency, and are thus actionable under tort theories in addition to malicious prosecution.

FIRST CAUSE OF ACTION
NEGLIGENCE
(By All Plaintiffs Against ALL Defendants)

46. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

47. Plaintiffs allege that prior to the INCIDENT, Defendants knew or had reason to know that Defendants LACKIE, LANZILLO and BIG GIANTS had or were capable of wrongfully accusing Plaintiffs of committing crimes and/or violating their civil rights to further Defendants' political agenda, because of their past history of such violations.

48. Defendants had a duty to exercise reasonable care in carrying out their business activities directed towards Plaintiffs and their families, especially due to the nature of Defendants' employment and the potentially abusive actions their investigative agents can undertake while carrying out their duties.

49. Defendants breached their duties to Plaintiffs, who were foreseeable victims substantially certain to incur injury from Defendants' lack of ordinary care, by hiring Defendants LACKIE, LANZILLO and BIG GIANTS and employing them in a manner such as to illegitimately accuse Plaintiffs of committing crimes and/or to violate their civil rights.

50. Defendants' above-noted actions were the legal and proximate causes of physical, psychological, emotional, and economic damages, and damage to their reputation Plaintiffs have suffered and continue to suffer to this day. The actions of Defendants have also resulted in Plaintiffs incurring, and will require them to incur into the future, expenses for medical and psychological treatment, therapy, and counseling.

51. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain loss of earning capacity; have and will continue to suffer damage to their business reputation; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. They have also suffered economic business loss as a result.

52. In subjecting Plaintiffs to the wrongful treatment described herein, Defendants acted negligently and in disregard of Plaintiffs' rights, entitling Plaintiffs to damages in a sum to be shown according to proof.

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SECOND CAUSE OF ACTION
NEGLIGENT HIRING / TRAINING / SUPERVISION / RETENTION
(By All Plaintiffs Against Defendants CMPOA UNION, LACKIE and BIG GIANTS)

53. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

54. Plaintiffs allege that prior to the INCIDENT, Defendants knew or had reason to know that Defendants LACKIE, LANZILLO and BIG GIANTS were unfit agents who had or were capable of wrongfully accusing Plaintiffs of committing crimes and/or violating their civil rights to further Defendants' political agenda, because of their past history of such violations.

55. Defendants owed Plaintiffs a duty to properly hire, train, retain, supervise and discipline their employees and agents who they put into direct contact with Plaintiffs and their families, including private investigators such as Defendants LANZILLO and BIG GIANTS and attorneys such as Defendant LACKIE, so as to avoid unreasonable harm to Plaintiffs. Defendants breached their duty to properly hire, train, retain, supervise and discipline their employees and agents, including private investigator Defendants LANZILLO and BIG GIANTS, and attorney Defendant LACKIE, so as to avoid unreasonable harm to Plaintiffs, specifically with respect to the INCIDENT. Defendants failed to institute adequate safeguards to protect Plaintiffs, in violation of Plaintiffs' civil rights, causing them injury.

56. Defendants breached their duties to Plaintiffs, who were foreseeable victims substantially certain to incur injury from Defendants' lack of ordinary care, by hiring Defendants LACKIE, LANZILLO and BIG GIANTS and employing them in a manner such as to illegitimately accuse Plaintiffs of committing crimes and/or to violate their civil rights.

57. Defendants' above-noted actions were the legal and proximate causes of physical, psychological, emotional, and economic damages, and damage to their reputation Plaintiffs have suffered and continue to suffer to this day. The actions of Defendants have also resulted in Plaintiffs incurring, and will require them to incur into the future, expenses for medical and psychological treatment, therapy, and counseling.

58. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of

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emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain loss of earning capacity; have and will continue to suffer damage to their business reputation; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. They have also suffered economic business loss as a result.

59. In subjecting Plaintiffs to the wrongful treatment described herein, Defendants acted negligently and in disregard of Plaintiffs' rights, entitling Plaintiffs to damages in a sum to be shown according to proof.

THIRD CAUSE OF ACTION
NEGLIGENT ENTRUSTMENT OF AGENT
(By All Plaintiffs Against Defendants CMPOA UNION, LACKIE and BIG GIANTS)

60. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

61. Plaintiffs allege this cause of action for negligent entrustment of agents pursuant to authority clarified in Nobel v. Sears, Roebuck & Co. (1973) 33 Cal.App.3d 654.

62. Plaintiffs allege that prior to the INCIDENT, Defendants knew or had reason to know that Defendants LACKIE, LANZILLO and BIG GIANTS were unfit agents who had or were capable of wrongfully accusing Plaintiffs of committing crimes and/or violating their civil rights to further Defendants' political agenda, because of their past history of such violations.

63. Defendants negligently, in breach of their duties to Plaintiffs, employed and entrusted power and authority to Defendants LACKIE, BIG GIANTS and LANZILLO, who they knew, or had reason to know were unfit agents and were likely to use their position of authority in a manner involving unreasonable risk of harm to others, including Plaintiffs, for the purpose of violating their civil rights.

64. Defendants designed the oppressive tactics to be used against Plaintiffs in the INCIDENT through use of the Playbook mentioned herein, and exercised the requisite control over Defendants LACKIE, BIG GIANTS and LANZILLO so to further and accomplish

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Defendants' wrongful and unlawful objectives. Defendants had a duty to not expose Plaintiffs and the general public to Defendants LACKIE, BIG GIANTS and LANZILLO, who they knew or had reason to know posed a danger to others, based upon their previous actions, employment and personnel record.

65. Defendants breached their duties to Plaintiffs when they exposed Defendants LACKIE, BIG GIANTS and LANZILLO to Plaintiffs, in the course of their employment, when Defendants knew or had reason to know they would engage in behavior or tactics involving unreasonable risk of harm to Plaintiff and others, for the purpose of violating their civil rights. The harm to Plaintiffs from these actions of Defendants was reasonably foreseeable and sufficiently likely to cause Plaintiffs damage.

66. Defendants breached their duties to Plaintiffs, who were foreseeable victims substantially certain to incur injury from Defendants' lack of ordinary care, by hiring Defendants LACKIE, LANZILLO and BIG GIANTS and employing them in a manner such as to illegitimately accuse Plaintiffs of committing crimes and/or to violate their civil rights.

67. Defendants' above-noted actions were the legal and proximate causes of physical, psychological, emotional, and economic damages, and damage to their reputation Plaintiffs have suffered and continue to suffer to this day. The actions of Defendants have also resulted in Plaintiffs incurring, and will require them to incur into the future, expenses for medical and psychological treatment, therapy, and counseling.

68. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain loss of earning capacity; have and will continue to suffer damage to their business reputation; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. They have also suffered economic business loss as a result.

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69. In subjecting Plaintiffs to the wrongful treatment described herein, Defendants acted negligently and in disregard of Plaintiffs' rights, entitling Plaintiffs to damages in a sum to be shown according to proof.

FOURTH CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)
(By All Plaintiffs Against ALL Defendants)

70. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

71. Defendants' conduct, directed towards Plaintiffs, as described herein, especially with respect to the INCIDENT, was outrageous and extreme and beyond the bounds of conduct tolerated by civilized society. It was carried out intentionally, or wanton disregard of the probability of causing Plaintiffs to suffer emotional distress.

72. Any reasonable person would not expect or tolerate Defendants' conduct towards Plaintiffs, as alleged herein.

73. Defendants' above-noted actions were the legal and proximate causes of physical, psychological, emotional, and economic damages, and damage to their reputation Plaintiffs have suffered and continue to suffer to this day. The actions of Defendants have also resulted in Plaintiffs incurring, and will require them to incur into the future, expenses for medical and psychological treatment, therapy, and counseling.

74. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain loss of earning capacity; have and will continue to suffer damage to their business reputation; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. They have also suffered economic business loss as a result.

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75. The above-described conduct of Defendants was willful, oppressive, malicious and despicable in that it was intentional and done in conscious disregard of the rights and safety of Plaintiffs, and was carried out with a conscious disregard of Plaintiffs' right to be free from such tortious behavior, such as to constitute oppression, fraud or malice pursuant to California Civil Code section 3294, entitling Plaintiffs to punitive damages against Defendants in an amount appropriate to punish and set an example of them, as well as compensatory damages in a sum to be shown according to proof, and other such relief as the court deems proper.

FIFTH CAUSE OF ACTION
VIOLATION OF RIGHTS, (Violation of Bane Act): CIVIL CODE §52.1(b)
(By Plaintiffs JAMES RIGHEIMER and STEVE MENSINGER Only Against ALL Defendants)

76. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

77. Defendants' actions, as alleged herein, have had and will continue to have a chilling effect on these Plaintiffs' civil rights, including citizen participation in government and free speech.

78. During Plaintiffs' public service for the City of Costa Mesa, Defendants engaged in oppressive and unlawful tactics, including but not limited to, the use of threats, intimidation, harassment, violence, and coercion in order to prevent or infringe, or attempt to prevent or infringe, upon Plaintiffs JAMES RIGHEIMER's and STEVE MENSINGER's constitutional rights under the First, Fourth, Fifth, Ninth, and Fourteenth Amendments of the United States Constitution to peaceably assemble and speak freely; to be free from unwarranted search and seizure; to due process of the law; to privacy; to be free from imposed stigmas or disabilities which foreclose Plaintiffs' freedom to take advantage of employment opportunities; Plaintiffs' right to be free from discrimination because of political affiliation; and generally, Plaintiffs' right to enjoy and carry on their lives free from wrongful and unwarranted intrusion from those seeking to harm them in their person and interfere with their property interests. In addition, these actions were contrary to Plaintiffs' civil rights guaranteed under the Constitution of the State of California.

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79. Defendants' wrongful conduct was intended to, and did successfully interfere with Plaintiffs' Constitutional Rights to peaceably assemble and speak freely; to be free from unwarranted search and seizure; to due process; to privacy in one's personal affairs; to be free from imposed stigmas or disabilities which foreclose Plaintiffs' freedom to take advantage of employment opportunities; and generally, Plaintiffs' right to enjoy and carry on their lives free from wrongful and unwarranted intrusion from those seeking to harm them in their person or property.

80. Defendants unlawfully and wrongfully used, or employed others to wrongfully use threats, intimidation, harassment, violence, and coercion over Plaintiffs' person, to which Plaintiffs had no relief except to submit to the Defendants' wrongful threats, intimidation, harassment, violence, and coercion, which rendered Plaintiffs' submission involuntary.

81. Defendants' above-noted actions were the legal and proximate causes of physical, psychological, emotional, and economic damages, and damage to their reputation Plaintiffs have suffered and continue to suffer to this day. The actions of Defendants have also resulted in Plaintiffs incurring, and will require them to incur into the future, expenses for medical and psychological treatment, therapy, and counseling.

82. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain loss of earning capacity; have and will continue to suffer damage to their business reputation; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. They have also suffered economic business loss as a result.

83. In subjecting Plaintiffs to the wrongful treatment described herein, Defendants acted willfully and maliciously with the intent to harm Plaintiffs, and in conscious disregard of Plaintiffs' rights, entitling Plaintiffs to compensatory damages in a sum to be shown according to

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proof, emotional distress damages in a sum to be shown according to proof, punitive and/or exemplary damages, attorney's fees, other damages pursuant to Civil Code section 52(b)(1), and a temporary restraining order or a preliminary or permanent injunction ordering Defendants to refrain from conduct or activities as alleged in the INCIDENT, stating "VIOLATION OF THIS ORDER IS A CRIME PUNISHABLE UNDER SECTION 422.77 OF THE PENAL CODE," and other such relief as the court deems proper.

SIXTH CAUSE OF ACTION
VIOLENCE OR INTIMIDATION (Violation of Ralph Act): C.C.P. §51.7
(By Plaintiffs JAMES RIGHEIMER and STEVEN MENSINGER Only Against ALL Defendants)

84. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

85. Defendants' actions, as alleged herein, have had and will continue to have a chilling effect on these Plaintiffs' civil rights, including citizen participation in government and free speech.

86. During these Plaintiffs' public service for the City of Costa Mesa, Defendants initiated, motivated, and wrongfully instigated violence and intimidation y threat of violence against these Plaintiffs, against their persons or property, because of their political affiliation or on account of their contrary position in a labor dispute, or because Defendants perceived them to have one or more of those characteristics.

87. Defendants unlawfully used force upon Plaintiffs, for the purpose of interfering with and attempting to interfere with Plaintiff's Constitutional Rights under the First, Fourth, Fifth, Ninth, and Fourteenth Amendments of the United States Constitution to peaceably assemble and speak freely; to be free from unwarranted search and seizure; to due process of the law; to privacy in one's personal affairs; to be free from imposed stigmas or disabilities which foreclose Plaintiffs' freedom to take advantage of employment opportunities; and generally, Plaintiffs' right to be free from discrimination based upon political affiliation, and be free from illegal and oppressive conduct because of ongoing labor negotiations with Defendants; and for

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those reasons, Defendants violated Plaintiffs' Constitutional Rights and Civil Code section 52.1(b).

88. Defendants' wrongful conduct was done maliciously and for the purpose of inflicting emotional, psychological and physical injury upon Plaintiffs. Such ill will was premised upon Plaintiffs' political affiliation and actual or perceived adverse position in a labor dispute.

89. Defendants' above-noted actions were the legal and proximate causes of Plaintiffs' physical, psychological, emotional, and economic damages, and damage to their reputation, which they suffered and continue to suffer to this day. The actions of Defendants have also resulted in Plaintiffs incurring, and will require them to incur into the future, expenses for medical and psychological treatment, therapy, and counseling.

90. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain loss of earning capacity; have and will continue to suffer damage to their business reputation; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. They have also suffered economic business loss as a result.

91. In subjecting Plaintiffs to the wrongful treatment described herein, Defendants acted willfully and maliciously with the intent to harm Plaintiffs, and in conscious disregard of Plaintiffs' rights, entitling Plaintiffs to compensatory damages in a sum to be shown according to proof, emotional distress damages in a sum to be shown according to proof, punitive and/or exemplary damages, attorney's fees, relief in the form of a permanent or temporary injunction, restraining order, or other order against Defendants necessary to ensure Plaintiffs' and others' full enjoyment of rights as described herein; and other such relief as the court deems proper.

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SEVENTH CAUSE OF ACTION
CIVIL CONSPIRACY
(By All Plaintiffs Against ALL Defendants)

92. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

93. Defendants, as herein alleged, in their individual and collective capacities, endeavored to and did make an unlawful agreement to coerce, intimidate, assault and harass Plaintiffs in an effort to wrongfully obtain Plaintiffs' submission to their demands, to which Defendants committed at least one overt act by coercing, intimidating, assaulting or harassing Plaintiffs, in furtherance of the agreement. As a result, Plaintiffs have suffered harm, and will continue to suffer harm from Defendants' unlawful, oppressive and wrongful conduct.

94. Defendants engaged in the formation of the conspiracy, individually and collectively, and had an agreement to commit wrongful acts upon Plaintiffs, including but not limited to, pursuing and harassing Plaintiffs, calling the legal authorities to file false reports, assault Plaintiffs, and coerce, harass and intimidate them.

95. Defendants participated in conspiracy, individually and collectively, and committed at least one overt and wrongful act in furtherance of the intent of the conspiracy, including but not limited to, pursuing and harassing Plaintiffs, calling the legal authorities to file false reports, assault Plaintiffs, and coerce, harass and intimidate them.

96. As a result of Defendants' wrongful conduct, Plaintiffs has, and will continue to, sustain damage resulting from Defendants' wrongful conduct and operation of the conspiracy.

97. Defendants' above-noted actions were the legal and proximate causes of Plaintiffs' physical, psychological, emotional, and economic damages, and damage to their reputation, which they suffered and continue to suffer to this day. The actions of Defendants have also resulted in Plaintiffs incurring, and will require them to incur into the future, expenses for medical and psychological treatment, therapy, and counseling.

98. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of

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enjoyment of life; have suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain loss of earning capacity; have and will continue to suffer damage to their business reputation; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. They have also suffered economic business loss as a result.

99. In subjecting Plaintiffs to the wrongful treatment described herein, Defendants acted willfully and maliciously with the intent to harm Plaintiffs, and in conscious disregard of Plaintiffs' rights, entitling Plaintiffs to compensatory damages in a sum to be shown according to proof, emotional distress damages in a sum to be shown according to proof, punitive and/or exemplary damages, attorney's fees, and other such relief as the court deems proper.

EIGHTH CAUSE OF ACTION
MALICIOUS PROSECUTION
(By Plaintiff JAMES RIGHEIMER Only Against ALL Defendants)

100. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

101. During Plaintiff JAMES RIGHEIMER's public service for the City of Costa Mesa, Defendants initiated legal action against Plaintiff, through the INCIDENT, which any reasonable legal professional would regard as totally and completely without merit. The legal action was terminated in Plaintiff JAMES RIGHEIMER's favor based on the complete lack of evidence and probable cause. The legal action was initiated by Defendants for the wrongful and malicious purpose of injuring Plaintiff JAMES RIGHEIMER.

102. Defendants wrongfully pursued, harassed and oppressed Plaintiff JAMES RIGHEIMER and improperly initiated and commenced police action against Plaintiff JAMES RIGHEIMER for the purpose of pressuring and coercing Plaintiff JAMES RIGHEIMER into political action in their favor, in violation of his civil rights, to gain advantage in a political and labor dispute.

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103. The allegations made by Defendants in the legal action were knowingly false, based upon a fraudulent police report and accusation, without any reliable personal knowledge thereof, or verifiable facts in support of the wrongful claim.

104. Defendants' false allegations resulted in the prior action being terminated, almost immediately, in Plaintiff JAMES RIGHEIMER's favor because the prosecuting party determined the prior action lacked merit and, if pursued further, would unquestionably result in a decision in favor of Plaintiff JAMES RIGHEIMER based upon the merits of the case.

105. Defendants' wrongful conduct lacked any probable cause, and any reasonable attorney would regard Defendants actions as totally and completely without merit.

106. Defendants possessed malice, ill will or an improper purpose, whether expressed or implied, when initiating the prior action against Plaintiff JAMES RIGHEIMER.

107. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain loss of earning capacity; have and will continue to suffer damage to their business reputation; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. They have also suffered economic business loss as a result.

108. In subjecting Plaintiff JAMES RIGHEIMER to the wrongful treatment described herein, Defendants acted willfully and maliciously with an intent to harm Plaintiff JAMES RIGHEIMER, and in conscious disregard of Plaintiff JAMES RIGHEIMER's rights, entitling Plaintiff JAMES RIGHEIMER to compensatory damages, punitive and/or exemplary damages, attorney's fees, and other such relief as the court deems proper.

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NINTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES: B&P.C. §17200
(By All Plaintiffs Against ALL Defendants)

109. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

110. In doing the things alleged herein, Defendants acted unlawfully and unfairly in conducting their business, which resulted in injury to Plaintiffs as well as California consumers in general.

111. Defendants' wrongful conduct included, but was not limited to, making knowingly false and defamatory allegations against Plaintiffs, conspiring to harm Plaintiffs, assaulting Plaintiffs, all of which harmed Plaintiffs, for the purpose of coercing political action in Defendants' favor, adversely affecting Plaintiffs, California consumers and offending public policy.

112. Defendants' unlawful conduct included, but was not limited to, instances of falsely accusing Plaintiffs of facts Defendants knew to be untrue, conspiring to injure Plaintiffs, filing a false police report, defaming Plaintiffs, violating Plaintiffs' Constitutional rights, as well as other illicit activities.

113. Defendants' conduct was unfair to Plaintiffs, as well as the California general public because it offends public policy, and Defendants' business practice of intimidating, harassing and extorting public officials is immoral, unethical, oppressive, unscrupulous and substantially injurious to Plaintiffs and the general public.

114. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain loss of earning capacity; have and will continue to suffer damage to their business reputation; and have incurred and will continue to incur expenses for medical and

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psychological treatment, therapy, and counseling. They have also suffered economic business loss as a result.

115. In subjecting Plaintiffs to the wrongful treatment described herein, Defendants acted willfully and maliciously with an intent to harm Plaintiffs, and in disregard of Plaintiff's rights, entitling Plaintiff to injunctive relief pursuant to California Business and Professional Code section 17203, restoration of monies or property acquired by Defendants' unfair competition pursuant to California Business and Professional Code section 17203, and other such relief as the court deems proper.

TENTH CAUSE OF ACTION
ASSAULT
(By Plaintiffs JAMES and LENE RIGHEIMER Only Against ALL Defendants)

116. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

117. Defendants, in doing the things herein alleged, including but not limited to, intending to directing and encouraging agent-Defendant LANZILLO to drive a motor vehicle at a high rate of speed at Plaintiff LENE RIGHEIMER, was intended to and did place Plaintiff LENE RIGHEIMER in imminent apprehension of grave bodily harm, or was intended to place Plaintiff LENE RIGHEIMER in imminent apprehension of such contact.

118. Defendants, in doing the things herein alleged, including but not limited to, intending to directing and encouraging a law enforcement officer to arrive at the home of Plaintiff JAMES RIGHEIMER, and make contact with him, was intended to and did place Plaintiff JAMES RIGHEIMER in imminent apprehension of grave bodily harm, or was intended to place Plaintiff JAMES RIGHEIMER in imminent apprehension of such contact.

119. Defendants, in doing the things herein alleged, including but not limited to, directing and encouraging agent-Defendant LANZILLO to drive his motor vehicle recklessly towards Plaintiff LENE RIGHEIMER, and pursue, with fraudulent intent, Plaintiff JAMES RIGHEIMER, calling the authorities on him, resulting in the police removing Plaintiff JAMES RIGHEIMER from of his home, and forcefully and under duress, submit him to an unwarranted

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use of force upon his person and property, put Plaintiffs into imminent apprehension of such contact, and such was intended to put Plaintiffs into imminent apprehension of such contact

120. In doing the things herein alleged, Plaintiffs JAMES RIGHEIMER and LENE RIGHEIMER were put into imminent apprehension of harmful or offensive contact by Defendants, and Plaintiffs actually believed Defendants had the ability to make harmful or offensive contact with Plaintiffs' person.

121. Because of Defendants' position of authority and dominance over Plaintiffs while attempting to inflict fear and injury upon Plaintiffs, and Plaintiffs' strained mental and emotional state at the time, Plaintiffs were unable to and did not give meaningful consent to such acts.

122. In doing the things herein alleged, Defendants violated Plaintiffs' right, pursuant to Civil Code section 43, to be protected from bodily restraint or harm, and from personal insult. In doing the things herein alleged, Defendants violated their duty, pursuant to Civil Code section 1708, to abstain from injuring the person of Plaintiffs or infringing upon their rights.

123. Defendants' above-noted actions in harassing, threatening, and menacing Plaintiffs JAMES RIGHEIMER and LENE RIGHEIMER were the proximate and legal causes of physical, psychological, emotional, and economic damages Plaintiffs have suffered and continue to suffer to this day. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain loss of earning capacity; have and will continue to suffer damage to their business reputation; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. They have also suffered economic business loss as a result.

124. The above-described conduct of the Defendants was oppressive, malicious and despicable in that it was intentional and done in conscious disregard for the rights and safety of Plaintiffs, and was carried out with a conscious disregard of Plaintiffs' right to be free from such

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tortious behavior, such as to constitute oppression, fraud or malice pursuant to California Civil Code section 3294, entitling Plaintiffs to punitive damages against Defendants in an amount appropriate to punish and set an example of them, and compensatory damages.

ELEVENTH CAUSE OF ACTION
INVASION OF PRIVACY: FALSE LIGHT
(By Plaintiff JAMES RIGHEIMER Only Against ALL Defendants)

125. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

126. Defendants' wrongful, oppressive and unauthorized actions as alleged herein invaded Plaintiff JAMES LENE RIGHEIMER's right to privacy and placed Plaintiff JAMES RIGHEIMER in a false light in the public eye to which the Defendants knew, or recklessly disregarded the falsity of the publicized fact, and the false light in which the Plaintiff was placed, and Defendants' acted with a high degree of awareness that the statements were false. The false light into which Plaintiff JAMES RIGHEIMER was placed was that of a person who violates traffic rules, drives drunk and disregards laws of the State of California. This is especially damaging due to the fact that he is a duly-elected public official.

127. Defendants' wrongful and unauthorized invasion of Plaintiffs' privacy was disseminated to the public in general through various news and media outlets, and such was received by a large number of persons who knew of Plaintiff.

128. Defendants' wrongful and unauthorized invasion of Plaintiffs' privacy was an unfair and inaccurate depiction of the Plaintiff, and was done in order to place Plaintiffs' character and reputation in a false light to the public.

129. Defendants' wrongful and unauthorized conduct placed Plaintiff in a false light which was so offensive as to shock the community's notions of decency, was extremely offensive to Plaintiff, and would be considered to be highly offensive to a reasonable person.

130. Defendants knew, yet acted in complete disregard of the false and misleading allegations pertaining to Plaintiff's character and fraudulently alleged violation of law, and the false light in which the Plaintiff would be placed. Defendant acted purely out of hatred or ill will toward Plaintiff when placing Plaintiff in an injurious and oppressive false light.

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131. Defendants' intentionally and unlawfully accused Plaintiff of violating a statute out of spite, ill will and oppression, which constitutes a facially libelous statement (libel *per se*).

132. Defendants' above-noted actions were the proximate and legal causes of physical, psychological, emotional, and economic damages Plaintiff has suffered and continues to suffer to this day. As a result of the above-described conduct, Plaintiff suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; has and will continue to sustain loss of earning capacity; has and will continue to suffer damage to his business reputation; and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. He has also suffered economic business loss as a result.

133. In subjecting Plaintiff to the wrongful treatment described herein, Defendants acted willfully and maliciously with the intent to harm Plaintiff, and in conscious disregard of Plaintiff's rights, entitling Plaintiff to compensatory damages, general damages pursuant to Civil Code section 48a(4)(a), special damages pursuant to Civil Code section 48a(4)(b), punitive and/or exemplary damages, and to such other relief as the court deems proper.

TWELFTH CAUSE OF ACTION
INVASION OF PRIVACY: INTRUSION UPON SECLUSION
(By Plaintiffs JAMES and LENE RIGHEIMER Only Against ALL Defendants)

134. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

135. Defendants intentionally and with ill will, intruded upon the solitude, seclusion, private affairs or concerns of Plaintiffs JAMES and LENE RIGHEIMER, in a manner that was oppressive and extremely offensive to them, and such behavior and conduct would be highly offensive to a reasonable person.

136. Defendants' wrongful conduct, including but not limited to, the assault and battery alleged herein by Plaintiff JAMES RIGHEIMER violated Plaintiff's right to be free from intrusion into his private affairs, and Defendants' violated Plaintiff's reasonable expectation of

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seclusion or solitude in his business affairs, privacy pertaining to personal matters of and concerning Plaintiff, to use his personal vehicle without fear or wrongful intimidation, and remain peacefully and without anxiety, fear and terror in his personal residence.

137. Defendants' conduct was willful and intentional, and did intrude upon Plaintiff's reasonable expectation of seclusion or solitude in his business affairs, privacy pertaining to personal matters of and concerning Plaintiff, to use his personal vehicle without fear or wrongful intimidation, and reside peacefully and without anxiety, fear and terror in his personal residence.

138. Defendants' conduct violated Plaintiff's right to privacy, to live his life in seclusion, and to be free from discrimination and oppression, and has prejudiced and deprived Plaintiff of his personal liberty pertaining to these rights.

139. Defendants' deceptive practices and unauthorized intrusion was highly offensive to Plaintiff, and such deceptive practices and unauthorized intrusions would be highly offensive to a reasonable person.

140. As a result of the above-described conduct, Plaintiffs suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; have and will continue to sustain loss of earning capacity; have and will continue to suffer damage to their business reputation; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. They have also suffered economic business loss as a result.

141. In subjecting Plaintiffs to the wrongful treatment described herein, Defendants acted willfully and maliciously with the intent to harm Plaintiffs, and in conscious disregard of Plaintiffs' rights, entitling Plaintiffs to compensatory damages, damages resulting from Plaintiffs' sustained and ongoing emotional distress, punitive, exemplary and/or treble damages in an amount to be shown according to proof, and any other relief the court may deem proper.

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THIRTEENTH CAUSE OF ACTION
DEFAMATION; SLANDER; CIVIL CODE § 46
(By Plaintiff JAMES RIGHEIMER Only Against ALL Defendants)

142. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

143. Defendants made oral defamatory representations pertaining to Plaintiff JAMES RIGHEIMER's purported violation of the California Penal Code that were disseminated by numerous media outlets, which directly injured Plaintiff's business and professional reputation, and caused, as a natural consequences of the defamatory statements, actual damage to the Plaintiff.

144. The slanderous statements made by Defendants were knowingly false and intended to cause harm to Plaintiff, and thus give rise to Defendants' liability for defamation.

145. There is no applicable privilege to Defendants' defamatory statements.

146. The publication of Defendants' defamatory statements was made intentionally and knowingly, and thereafter disseminated to persons other than Plaintiff and Defendant.

147. The Defendants' defamatory statements were spoken of and concerning Plaintiff JAMES RIGHEIMER.

148. The Defendants' statements were knowingly and falsely charging Plaintiff with a violation of the California Penal Code.

149. The Defendants possessed knowledge that the statements were false, or recklessly disregarded the likelihood the statements were false, yet Defendants acted with a high degree of awareness that the statements were false.

150. The statements are facially defamatory.

151. Defendants' above-noted actions were the proximate and legal causes of physical, psychological, emotional, and economic damages Plaintiff has suffered and continues to suffer to this day. As a result of the above-described conduct, Plaintiff suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has suffered and continue to suffer and were prevented and will continue to be prevented from

performing daily activities and obtaining the full enjoyment of life; has and will continue to sustain loss of earning capacity; has and will continue to suffer damage to his business reputation; and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. He has also suffered economic business loss as a result.

152. In subjecting Plaintiff to the wrongful treatment described herein, Defendants acted willfully and maliciously with the intent to harm Plaintiff, and in conscious disregard of Plaintiff's rights, entitling Plaintiff to compensatory damages, special damages, punitive damages, an award of money judgment for defamation *per se*, nominal damages in a sum to be shown according to proof, any other relief the court may deem proper.

FOURTEENTH CAUSE OF ACTION
DEFAMATION: LIBEL
(By Plaintiff JAMES RIGHEIMER Only Against ALL Defendants)

153. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

154. Defendants made one or more false and unprivileged publications, specifically the alleged and false violation of the California Penal Code, which was made in a fixed representation to the eye, which exposed Plaintiff to hatred, contempt, ridicule, disgrace, which caused Plaintiff to be shunned and avoided, and had a tendency to injure Plaintiff in his occupation.

155. Defendants' publication was false, and Defendants knew it to be untrue, yet acted with a high degree of awareness that the statements were false.

156. Defendants' defamatory publication was not privileged.

157. Defendants' defamatory publication was made and transmitted in fixed form, and was thereafter disseminated by several media outlets in fixed form.

158. Defendants' defamatory statements were made of and concerning the Plaintiff.

159. Defendants' statement was alleging a violation of the California Penal Code and thus defamatory on its face, and exposed Plaintiff to hatred, contempt, ridicule, disgrace, caused Plaintiff to be shunned or avoided, and injured Plaintiff in his occupation.

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160. Defendants knew the defamatory statements were false, and acted with a high degree of awareness that the statements were false.

161. As a result of the above-described conduct, Plaintiff suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; has and will continue to sustain loss of earning capacity; has and will continue to suffer damage to his business reputation; and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling. He has also suffered economic business loss as a result.

162. In subjecting Plaintiff to the wrongful treatment described herein, Defendants acted willfully and maliciously with the intent to harm Plaintiff, and in conscious disregard of Plaintiff's rights, entitling Plaintiff to compensatory damages, special damages, punitive damages, nominal damages, an award of money judgment for defamation *per se*, and other relief the court may deem proper.

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FIFTEENTH CAUSE OF ACTION
DELACLATORY / INJUCTIVE RELIEF
(By All Plaintiffs Against ALL Defendants)

163. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

164. An actual controversy exists between Plaintiffs and Defendants relating to the legal rights and duties of the respective parties, and Defendants' alleged violations relative to Plaintiffs' rights.

165. Plaintiffs contend that:

a. Defendants lack a right to defame and assault them, violate their civil rights, conspire against them, or otherwise injure Plaintiffs' reputation and standing in the community;

b. The aforementioned acts of Defendants were performed out of malice, spite, ill-will, cruelty and hatred, in order to harm, injure or otherwise damage Plaintiffs' rights, privileges and immunities;

c. Plaintiffs have the right to be free from interference or attempted interference with Plaintiffs' rights under the First, Fourth and Fourteenth Amendments to be free from unreasonable search and seizure, to be free from unwarranted invasion of privacy, to be free from unwarranted infringement upon Plaintiffs' right to employment and to be accorded due process under the California Constitution.

166. Plaintiffs are informed and believe, and on that basis allege that Defendants will contend that:

a. They have a right to make false, misleading and offensive statements regarding Plaintiffs, with the intent to harm, injure and oppress Plaintiffs in such a way as to pressure them into submitting to the wants and needs of Defendants, and those who Defendants represent;

b. They were not acting intentionally, or in breach of any duty, law, regulation or statutory boundary, and have a right to conduct their affairs in a similar manner as to others in the community in a similar nature as the facts alleged by Plaintiffs.

167. Plaintiffs seeks a judicial declaration and determination that it be adjudged that Defendants engaged in unfair business practices with the intent to infringe upon the constitutional rights of Plaintiffs.

168. Plaintiff seek injunctive relief to prohibit Defendants from conducting unlawful business practices in a manner similar to the facts and allegations presented herein by Plaintiffs.

169. Plaintiffs seek relief in the form of a permanent or temporary injunction, restraining order, or other order against Defendants necessary to ensure Plaintiffs' and others' full enjoyment of rights as described herein.

170. Plaintiffs seek a temporary restraining order or a preliminary or permanent injunction ordering Defendants to refrain from conduct or activities as alleged in the INCIDENT, stating "VIOLATION OF THIS ORDER IS A CRIME PUNISHABLE UNDER SECTION 422.77 OF THE PENAL CODE."

WHEREFORE, Plaintiffs pray for a jury trial and for judgment against Defendants as follows:

FOR ALL CAUSES OF ACTION

1. For past, present and future damages in an amount to be determined at trial;

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2. For past, present and future special damages, including but not limited to past, present and future lost earnings, economic damages and others, in an amount to be determined at trial;

3. Any appropriate statutory damages;

4. For costs of suit;

5. For an award of money judgment for defamation per se;

6. Punitive damages, according to proof;

7. For interest based on damages, as well as pre-judgment and post-judgment interest as allowed by law;

8. For attorney's fees pursuant to California Code of Civil Procedure sections 1021, et seq., 52, et seq., or as otherwise allowable by law;

9. Any appropriate punitive or exemplary damages against Defendants;

10. For declaratory and injunctive relief; and

11. For such other and further relief as the Court may deem proper.

Dated: August 20, 2013

MANLY, STEWART & FINALDI

By: _____
VINCE WILLIAM FINALDI, Esq.
Attorneys for Plaintiffs,
JAMES RIGHEIMER, LENE RIGHEIMER
and STEVE MENSINGER.

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DEMAND FOR JURY TRIAL

Plaintiffs hereby respectfully request a jury trial.

Dated: August 20, 2013

MANLY, STEWART & FINALDI

By: VINCE WILLIAM FINALDI, Esq.
Attorneys for Plaintiffs,
JAMES RIGHEIMER, LENE RIGHEIMER
and STEVE MENSINGER.

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City of Costa Mesa

CLAIM FOR DAMAGES

TO PERSON OR PROPERTY

RESERVE FOR FILING STAMP

File with: City Clerk
City of Costa Mesa
77 Fair Drive
Costa Mesa CA 92626
714-754-5225

This is a [X] NEW [ ] AMENDED Claim

INSTRUCTIONS

1. Except as otherwise provided in the California Government Code, claims for death, injury to person or to personal property must be filed not later than six months after the occurrence (Gov. Code Sec. 911.2).
2. Claims for damages to real property must be filed not later than one year after the occurrence (Gov. Code Section 911.2).
3. Provide correct and complete information. Claim forms that are unsigned or have insufficient information will be returned with no action taken.
4. Attach separate sheets, if needed, to give full details. SIGN EACH SHEET.
5. PLEASE PRINT LEGIBLY USING BLACK OR BLUE INK.

Claimant's Name: Costa Mesa Police Association Date of Birth: N/A Daytime Phone: (714) 754-5368

Claimant's Mailing Address: 99 Fair Drive Costa Mesa CA 92626
Number Street Apt. No. City State Zip

Give name, address and phone number to which you desire notices or communication to be sent regarding this claim:

Name: David L. Martin, Wood Smith Henning & Berman, LLP Relationship: Attorney

Address: 5000 Birch Street, Ste. 8500 Newport Beach, CA 92660 Daytime Phone: (949) 757-4500
Number Street City State Zip

Date of Incident: 8/20/13 Time of Incident: 9:21 AM

Was this incident reported to a law enforcement agency? Yes [ ] No [X] If yes, which agency/report#?

Were paramedics called? Yes [ ] No [X] If yes, name of agency/report#?

Location of incident. State in as much detail as possible and attach photographs and diagram, if applicable to this claim:

Address: 751 West Santa Ana Blvd, Santa Ana, CA 92701 Street: Santa Ana Blvd. Cross-Street: Flower Street

The events giving rise to this claim occured in and around the City of Costa Mesa. The complaint discussed below and attached hereto was filed in Orange County Superior Court, Civil Complex Division.

Describe the incident that caused this claim: James Righeimer, Lene Righeimer and Steve Mensinger filed a civil complaint against the Costa Mesa Police Association and other defendants on August 20, 2013 in Orange County Superior Court (Complex Division). Plaintiffs' complaint is broad and far reaching. It alleges misconduct by police officers, who are employees of The City of Costa Mesa.

State why you believe the City is responsible. Identify City employee(s) involved, if known. Give exact and full details, attach additional pages if necessary: See attached letter.

WARNING: PRESENTATION FOR ALLOWANCE OR PAYMENT OF A FALSE OR FRAUDULENT CLAIM, WITH INTENT TO DEFRAUD, IS A CRIME PUNISHABLE AS A FELONY UNDER CALIFORNIA PENAL CODE, SECTION 72.

(over)

State amount claimed. Failure to state amount claimed will result in claim form being returned with no action taken.

☐ The amount claimed totals less than $10,000. Enter the amount claimed here: $_____.

☐ The amount claimed totals more than $10,000, but not over $25,000 (this is a Limited Civil Case).

☒ The amount claimed is more than $25,000 (this is not a Limited Civil Case).

List names and addresses of all witnesses who saw or may be able to substantiate your claim:

Name: Officer Kha Bao Address: CMPD - 99 Fair Drive, Costa Mesa, CA 92626 Phone: 714-754-5368

Name: _____ Address: _____ Phone: _____

Name: _____ Address: _____ Phone: _____

Are you claiming any injuries? Yes [ ] No [x] Description of Injuries: No medical injuries are claimed.

Attach medical bills and list names and addresses of all hospitals, doctors and medical providers you have seen:

Name: _____ Address: _____ Phone: _____

Name: _____ Address: _____ Phone: _____

Name: _____ Address: _____ Phone: _____

Are you claiming any property damage? Yes [ ] No [x] Describe property and attach copies of three repair estimates or replacement invoices. If property is owned by another party, list contact information for that party: No property damage is claimed.

Are you claiming any loss of income? Yes [ ] No [x] Amount of claim: No loss of income is claimed

Nature of job: N/A

Company Name: N/A Address: N/A

Supervisor Name: N/A Phone: N/A

Describe any other injury, loss, or damage that you have incurred as a result of this accident; and provide any additional information that you believe might be helpful to the City in considering this claim: Claimant hereby tenders its defense and indemnity to the City of Costa Mesa related to Case No. 30-2013-00870139, in Orange County Superior Court, Civil Complex Division. Additional information is contained in the attached letter.

The person signing this claim states, under penalty of perjury, that all information and statements made in the above Claim Against the City of Costa Mesa are TRUE and CORRECT.

10/4/13
Date Signed

Signature of Claimant (or Guardian if Claimant is a minor)
David Martin, Attorney for Costa Mesa Police Association

WARNING: PRESENTATION FOR ALLOWANCE OR PAYMENT OF A FALSE OR FRAUDULENT CLAIM, WITH INTENT TO DEFRAUD, IS A CRIME PUNISHABLE AS A FELONY UNDER CALIFORNIA PENAL CODE, SECTION 72.

WSH&B WOOD SMITH HENNING & BERMAN LLP

5000 Birch Street, Suite 8500
Newport Beach, California 92660
tel (949) 757-4500 fax (949) 757-4550

Direct dial: (949) 757-4509
Email: dmartin@wshblaw.com
Website: www.wshblaw.com
Refer to: 10301-0001

October 11, 2013

VIA FACSIMILE (714-754-5330) AND CERTIFIED MAIL RETURN RECEIPT REQUESTED

Tom Hatch, City Manager
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Costa Mesa City Council
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Re: ***James Righeimer, et al. v. Costa Mesa Police Association, et al.***
Our Client: Costa Mesa Police Association
Case No.: 30-2013-00670139-CU-CR-CXC

Dear Mr. Hatch and Costa Mesa City Council:

Please accept this correspondence as a follow-up to the tender submitted to the City of Costa Mesa via certified mail on October 4, 2013 on behalf of the Costa Mesa Police Association ("CMPA") for defense and indemnity of the above referenced matter. We respectfully request that the City of Costa Mesa respond on or before October 18, 2013.

Plaintiffs James Righeimer and Steve Mensinger have recently unreasonably rejected the CMPA's request to dismiss the lawsuit as it relates to the CMPA. It is clear that plaintiffs have every intention to pursue their complaint against the CMPA, and by virtue of their allegations, against employees of the City of Costa Mesa. As you know, the CMPA is comprised entirely of employees of the City of Costa Mesa. The plaintiffs' allegations against the CMPA are based on the alleged conduct of city employees during the course and scope of their employment.

Please be advised, in light of the fact that the plaintiffs' allegations attack employees of the City of Costa Mesa, it is our intent to work with the city in a cooperative manner to refute these baseless allegations. To this end, on behalf of the CMPA, we are ready and willing to provide you with any non-privileged information to assist the city with its evaluation of the tender. Please let me know if you need any additional information.

With respect to the CMPA's prior request that James Righeimer and Steve Mensinger recuse themselves from all discussions and actions contemplated or taken by the City Council and the City of Costa Mesa with respect to the above referenced tender and/or any issues impacted by the subject lawsuit, this correspondence shall serve as an immediate demand that Plaintiffs Mayor James Righeimer and Councilmember Steve Mensinger "cease and desist" from such conduct. Moreover, the CMPA respectfully requests that the remaining city council members and all city employees "cease and desist" from discussing the subject matter with Plaintiffs Mayor James Righeimer and Coucilmember Steve Mensinger. In light of the upcoming City Council Meeting (Closed and Open Sessions) scheduled for October 15, 2013, we respectfully request that the City of Costa Mesa respond on or before close of business October 14, 2013.

For the reasons set forth in our correspondence dated October 4, 2013, it is wholly improper for Plaintiffs James Righeimer and Steve Mensinger to discuss, influence or take any action related to police officers who concurrently are members of the CMPA. Any action or inaction taken by Plaintiffs James Righeimer and Steve Mensinger constitutes a conflict, as such conduct may directly and/or indirectly benefit plaintiffs in their lawsuit.

As mentioned above, the CMPA looks forward to working with the City of Costa Mesa in a cooperative manner to protect the brave men and women who serve the city as police officers. Should you have any questions regarding the foregoing or need any additional information, please do not hesitate to contact the undersigned.

Very truly yours,

WOOD, SMITH, HENNING & BERMAN LLP

By: _____
DAVID L. MARTIN, ESQ.

WSH&B WOOD SMITH HENNING & BERMAN LLP

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Direct dial: (949) 757-4509
Email: dmartin@wshblaw.com
Website: www.wshblaw.com
Refer to: 10301-0001

October 16, 2013

VIA FACSIMILE AND U.S. MAIL

Vince W. Finaldi, Esq.
Manly, Stewart & Finaldi
19100 Von Karman Ave.
Suite 800
Irvine, CA 92612

Re: *James Righeimer, et al. v. Costa Mesa Police Association, et al.*
Case No.: 30-2013-00670139-CU-CR-CXC

Dear Mr. Finaldi:

Thank you for your correspondence dated October 14, 2013, which is enclosed herewith as Exhibit 1. Please be advised, although your unfounded personal attack that my firm has committed ethical violations is undeserving and unworthy of a response[1], in an effort to work with you and your firm in a professional manner to resolve an apparent misunderstanding, please accept this letter as our response.

Further Attempt to Violate CMPA's Constitutional Rights

First and foremost, your letter is troubling because it follows a pattern begun when your clients filed their complaint. Your letter suggests that attorneys for the Costa Mesa Police Association ("CMPA") and its members are precluded from communicating with the City of Costa Mesa. Apparently your expectation is that the CMPA will keep the City of Costa Mesa in the dark regarding the rights of their employees and the impact that the litigation may have on the city.

[1] As you are aware, it is unethical and a party is strictly prohibited from making threats regarding alleged improper ethical behavior in order to obtain advantage in a civil suit. See California Rules of Professional Conduct, Rule 5-100; see also Cohen v. Brown, (2009) 173 Cal.App.4th 302, 318.

As explained in detail in our Anti-SLAPP motions, as it relates to my client, it is clear plaintiffs' lawsuit is designed to chill the CMPA's valid exercise of its Constitutional rights to free speech and petition[2]. The unfounded allegations of ethical violations in your October 14, 2013 correspondence further confirm that the purpose of your client's lawsuit is to prevent the CMPA from having an attorney represent its interests. This is a violation of core civil rights, and we will take all action necessary to counter such conduct. See *United Mine Workers of America v. Illinois State Bar Ass'n*, (1967) 389 U.S. 217.

As counsel for the CMPA, we have the right and obligation to communicate with the City of Costa Mesa. We intend to continue to cooperate and communicate with the City of Costa Mesa, including, but not limited to, keeping them apprised of the status of the lawsuit. To this end, we have copied City Manager Tom Hatch and City Attorney Tom Duarte on this correspondence. We will consult with Mr. Hatch and Mr. Duarte regarding whom we should direct future correspondence to at the City of Costa Mesa. We will also defer to Mr. Hatch and Mr. Duarte regarding whether or not they believe a copy of this correspondence should be provided to the City Council. (We believe this correspondence and the attachment should be provided to the City Council.)

<u>No *Ex Parte* Communications</u>

In regard to your allegations of *ex parte* communications with a represented party, they have no basis in fact or law. Rule 2-100 of the California Rules of Professional Conduct contains an express exception for "Communications with a public officer, board, committee, or body." CRPC 2-100(C)(1). As a result, there is no prohibition on communications with the City of Costa Mesa or the City Council.

Moreover, Rule 2-100 only applies to parties to the litigation. *See Matter of Dale* (Rev.Dept. 2005) 4 Cal. State Bar Ct.Rptr. 798, 804–807; *see also* California Practice Guide: Professional Responsibility, Ch. 8-D (noting that Rule 2-100 "does not apply to situations where an attorney contacts a person who is represented by counsel but who is *not a party* to the action.") (emphasis in original). As you are aware, the City of Costa

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[2] As you know, as it relates to my client, the CMPA contends plaintiffs' complaint is a "Strategic Lawsuit Against Public Participation" ("SLAPP"). In response to the complaint, the CMPA has filed an Anti-SLAPP motion and requested that the Court dismiss the lawsuit and enter judgment in favor of CMPA.

Mesa is not a party to this action. Moreover, the City Council is not a party to the litigation. James Righeimer and Steve Mensinger do not constitute the City Council; rather, they are just two of five members on the council.

We also note that neither you nor your firm represents the City of Costa Mesa or the City Council in this matter. In fact, by filing a lawsuit against the CMPA (whose members are city employees), you, your firm, and your clients are adverse to the City of Costa Mesa. Accordingly, we suggest that you stop communicating with the City of Costa Mesa directly and direct any communication to their city attorney, including, but not limited to, reviewing and responding to letters that are sent to the City of Costa Mesa and the City Council.

Correspondence between CMPA and Costa Mesa

In your letter, you also incorrectly state that we "continue to directly address correspondence to the Costa Mesa City Council directly. [sic]" Your accusation implies that multiple letters have been sent to the Costa Mesa City Council, which is not correct. Although it is none of your concern, to be clear, we sent a total of two letters. The first was to the City Clerk of Costa Mesa. We were required under California *Government Code* Section 945.4 and Section 2-183, *et seq.* of the Costa Mesa Municipal Code to submit a claim to the City of Costa Mesa in order to tender our defense and indemnity in this matter. As a result, such communication falls within the exception contained in CRPC 2-100(C)(3) for communications authorized by law. Moreover, the communication is also permitted because neither the City Clerk nor the City of Costa Mesa is a party to this action.

The second letter was sent to the City Manager and the Costa Mesa City Council. This letter was sent as a follow-up to our tender to the City. This communication did not violate CRPC 2-100 because it was a communication with "a public officer, board, committee, or body" and because neither the City Manager nor the City Council is a party to this action. As a result, none of our communications have violated any ethical duty or obligation.

Settlement Communications

In your correspondence, you also cite to California Evidence Code Section 1152, which causes evidence of a defendant's willingness to compromise to be "inadmissible to prove his or her liability." The purpose of this statute is to prevent a plaintiff from demonstrating liability by showing that the defendant was willing to reach a settlement.

This section of the Evidence Code does not prohibit a defendant from accurately stating that its request to be dismissed from a lawsuit has been denied. Furthermore, contrary to your assertion, in order to honor the privilege associated with settlement communications, we did not disclose the letters.

At the conclusion of your letter, you indicate that you no longer have any "obligation to respond to any future offer your client, or your office may present." Although you are free to choose how you want to practice law and what is in the best interest of your clients, we respectfully remind you that Business & Professions Code § 6103.5 requires attorneys to "promptly communicate" to their clients all "amounts, terms, and conditions of any written offer of settlement made by or on behalf of an opposing party." A similar obligation is imposed by CRPC 3-510.

In closing, our intent is not to engage in a letter writing campaign that wastes our clients' respective resources and potentially burdens the City of Costa Mesa. In the future, before you write accusatory letters, please pick up the phone and call to discuss any issues or problems you perceive. To this end, we remain ready and willing to discuss the issues referenced above in an in-peson meeting or on the telephone. Further, we intend to address these issues with the Court at the October 22, 2013, Status Conference to avoid any further miscommunication between our offices.

Once again, thank you for your correspondence and we look forward to working with you to amicably resolve the apparent misunderstandings regarding my client's right to communicate with the City of Costa Mesa.

Very truly yours,

WOOD, SMITH, HENNING & BERMAN LLP

By: _____
SEYMOUR B. EVERETT, III
DAVID L. MARTIN

cc: Tom Hatch, Costa Mesa City Manager (Via Facsimile and Regular U.S. Mail)
Tom Duarte, Costa Mesa City Attorney (Via Facsimile and Regular U.S. Mail)

Enclosure
LEGAL:10301-0001/2777604.1

EXHIBIT "1"

October 14, 2013

VIA FACSIMILE & U.S. MAIL
(949) 757-4550

David L. Martin, Esq.
Wood, Smith, Hennigan & Berman, LLP
5000 Birch Street, Suite 8500
Newport Beach, CA 92660-8136

Re: *James Righeimer, et al. v. Costa Mesa Police Association, et al.*

Dear Mr. Martin:

Incredibly, I have just received a copy of a letter you sent to my clients directly in connection with our representation of them. I enclose a copy for your reference as Exhibit "A." I'm drawing this matter to your attention because I believe you, and your firm, have engaged in a serious ethical violation, and a violation of the California Rules of Professional Conduct and the California Evidence Code.

Every lawyer understands that it is unlawful to directly communicate with a represented party. You know very well that my office represents The Mayor, and The Mayor Pro Tem, in connection with serious claims against the Costa Mesa Police Officers Association. Despite that fact, you continue to directly address correspondence to the Costa Mesa City Council directly. While I recognize the need for you to communicate your client's needs to the City, such correspondence should be directed to the Costa Mesa City Attorney who represents the Council, not to the Council directly. Your letter violates the rule against *ex parte* contact of a represented party in two ways. First, the Council is represented by a City Attorney. Second, two of the council people are represented by this firm in litigation where you represent an adverse party. Clearly you are attempting to influence their decision making and involvement in this litigation by contacting them directly. This conduct is wrong and unethical.

Additionally, you and your office have elected in violation of Evidence Code Section 1152 to attempt to introduce confidential settlement negotiations into an administrative proceeding. Not only does that move violate the letter and spirit of 1152, but, moreover,

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unfortunately it demonstrates a willingness to flout and ignore the professional and ethical obligations of every attorney in California. Given your decision to publicize settlement discussions, we will feel no obligation to respond to any future offer your client, or your office may present.

Thank you for your attention to this very serious matter.

Very truly yours,

JOHN C. MANLY, ESQ.
MANLY, STEWART & FINALDI

JCM:kaf

EXHIBIT "A"

OCT 15 2013 AM 9:17

WSH&B WOOD SMITH HENNING & BERMAN LLP

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Website: www.wshblaw.com
Refer to: 10301-0001

October 11, 2013

VIA FACSIMILE (714-754-5330) AND CERTIFIED MAIL RETURN RECEIPT REQUESTED

Tom Hatch, City Manager
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Costa Mesa City Council
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Re: *James Righeimer, et al. v. Costa Mesa Police Association, et al.*
Our Client: Costa Mesa Police Association
Case No.: 30-2013-00670139-CU-CR-CXC

Dear Mr. Hatch and Costa Mesa City Council:

Please accept this correspondence as a follow-up to the tender submitted to the City of Costa Mesa via certified mail on October 4, 2013 on behalf of the Costa Mesa Police Association ("CMPA") for defense and indemnity of the above referenced matter. We respectfully request that the City of Costa Mesa respond on or before October 18, 2013.

Plaintiffs James Righeimer and Steve Mensinger have recently unreasonably rejected the CMPA's request to dismiss the lawsuit as it relates to the CMPA. It is clear that plaintiffs have every intention to pursue their complaint against the CMPA, and by virtue of their allegations, against employees of the City of Costa Mesa. As you know, the CMPA is comprised entirely of employees of the City of Costa Mesa. The plaintiffs' allegations against the CMPA are based on the alleged conduct of city employees during the course and scope of their employment.

Please be advised, in light of the fact that the plaintiffs' allegations attack employees of the City of Costa Mesa, it is our intent to work with the city in a cooperative manner to refute these baseless allegations. To this end, on behalf of the CMPA, we are ready and willing to provide you with any non-privileged information to assist the city with its evaluation of the tender. Please let me know if you need any additional information.

WOOD SMITH
HENNING & BERMAN LLP

Our File No.: 10301-0001
October 11, 2013
Page 2

With respect to the CMPA's prior request that James Righeimer and Steve Mensinger recuse themselves from all discussions and actions contemplated or taken by the City Council and the City of Costa Mesa with respect to the above referenced tender and/or any issues impacted by the subject lawsuit, this correspondence shall serve as an immediate demand that Plaintiffs Mayor James Righeimer and Councilmember Steve Mensinger "cease and desist" from such conduct. Moreover, the CMPA respectfully requests that the remaining city council members and all city employees "cease and desist" from discussing the subject matter with Plaintiffs Mayor James Righeimer and Councilmember Steve Mensinger. In light of the upcoming City Council Meeting (Closed and Open Sessions) scheduled for October 15, 2013, we respectfully request that the City of Costa Mesa respond on or before close of business October 14, 2013.

For the reasons set forth in our correspondence dated October 4, 2013, it is wholly improper for Plaintiffs James Righeimer and Steve Mensinger to discuss, influence or take any action related to police officers who concurrently are members of the CMPA. Any action or inaction taken by Plaintiffs James Righeimer and Steve Mensinger constitutes a conflict, as such conduct may directly and/or indirectly benefit plaintiffs in their lawsuit.

As mentioned above, the CMPA looks forward to working with the City of Costa Mesa in a cooperative manner to protect the brave men and women who serve the city as police officers. Should you have any questions regarding the foregoing or need any additional information, please do not hesitate to contact the undersigned.

Very truly yours,

WOOD, SMITH, HENNING & BERMAN LLP

By: _____
DAVID L. MARTIN, ESQ.

LEGAL:05000-0102/2775163.1

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Website: www.wshblaw.com
Refer to: 10301-0001

November 4, 2013

DELIVERED VIA FACSIMILE (714-754-5330) AND CERTIFIED MAIL RETURN RECEIPT REQUESTED

Costa Mesa City Council
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Tom Hatch, City Manager
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Re: *James Righeimer, et al. v. Costa Mesa Police Association, et al.*
Our Client: Costa Mesa Police Association
Case No.: 30-2013-00670139-CU-CR-CXC

Dear Mr. Hatch and Costa Mesa City Council:

Please accept this correspondence as further follow-up to the tender submitted to the City of Costa Mesa via certified mail on October 4, 2013 on behalf of the Costa Mesa Police Association ("CMPA") for defense and indemnity of the above referenced matter. Additionally, please permit this correspondence to further follow-up on CMPA's request that Mayor James Righeimer and Mayor Pro Tem Steve Mensinger recuse themselves and cease and desist from participating in or influencing any action take by the City Council with respect to the tender or related issues. We note that a month has passed since the tender was made, and we have not yet received a response from the City or an acknowledgement that it received our requests.

We recently learned Mayor James Righeimer and Mayor Pro Tem Steve Mensinger seek to depose Costa Mesa Police Officers, including Kha Bao, Jason Chamness, and others as it relates to alleged acts in the course and scope of their employment. They also seek documents from the CMPA related to actions taken by Costa Mesa Police Officers. Enclosed herewith is a copy of the motion for discovery filed with the Court. The information sought directly impacts the City of Costa Mesa and its employees. Moreover, the depositions could impact ongoing police investigations. In light of the plaintiffs' allegations, the City must act to defend its employees against meritless claims.

In their motion, Plaintiffs repeatedly make false accusations that the CMPA engaged in criminal conduct. As you are aware, the CMPA is comprised solely of Costa Mesa Police Officers. As a result, Plaintiffs are accusing Costa Mesa Police Officers of engaging in criminal conduct. There is no basis for such allegations, which are an affront to the brave men and women who serve Costa Mesa and put themselves in harm's way to protect its citizens. For a city's mayor and councilmember to falsely accuse its own police force of engaging in criminal conduct is irresponsible and potentially dangerous. Moreover, it demeans the police force and damages the City's reputation as a whole. False accusations of criminal conduct constitute slander per se. (*See* Civil Code Section 46). Ironically, Plaintiffs are now engaging in the very conduct that they claim forms the basis of their lawsuit. There is no justification for Plaintiffs' conduct, who apparently believe their false accusations are shielded by the litigation privilege, which defense they seek to deny the parties in the underlying litigation.

In reaching a decision on the matters set forth herein, the City Council cannot be influenced by Mayor James Righeimer or Mayor Pro Tem Steve Mensinger, who must recuse themselves from any action taken by the City Council. Moreover, they must cease and desist from any involvement in discussions with respect to the above referenced tender and/or any issues impacted by the subject lawsuit. Further, we repeat our request that the remaining city council members and all city employees, including, but not limited to, the City Manager and City Attorney, cease and desist from discussing the subject matter with Mayor James Righeimer and Mayor Pro Tem Steve Mensinger.

Government Code Section 87100 states: "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." Mayor James Righeimer and Mayor Pro Tem Steve Mensinger have a financial interest in the lawsuit they filed, in which they seek recovery of monetary damages from the CMPA. Given their clear financial interest, they are prevented from participating in or influencing the City Council's decision with respect to the tender or any related matter.

Section 87100 not only prohibits Righeimer and Mensinger from participating in any votes related to the litigation, it also prohibits them from observing any discussions of the litigation and this claim, or having access to any information regarding the Council's discussions. (*Hamilton v. Town of Los Gatos*, (1989) 213 Cal.App.3d 1050, 1058-59).

Should Mayor James Righeimer or Mayor Pro Tem Steve Mensinger participate in any manner in any City Council discussions or decisions regarding the subject matter, we will have no choice but to pursue our client's rights under Government Code §91003.

We respectfully request that the City of Costa Mesa respond to CMPA's tender and corresponding request for recusal at its earliest convenience. On behalf of the CMPA and the men and women who serve the City of Costa Mesa as police officers, we remain reading and willing to work in a cooperative fashion with the City of Costa Mesa to defend its employees. Should you have any questions regarding the foregoing or need any additional information, please do not hesitate to contact the undersigned.

Very truly yours,

WOOD, SMITH, HENNING & BERMAN LLP

By: _____
SEYMOUR B. EVERETT, III
DAVID L. MARTIN

Enclosures

cc: Tom Duarte, Costa Mesa City Attorney (Via Facsimile and Regular U.S. Mail)

LEGAL:10301-0001/2795341.1

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Attorneys of Record for Plaintiffs,
JAMES RIGHEIMER, LENE RIGHEIMER and
STEVE MENSINGER.

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ATTORNEYS AT LAW
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE CENTRAL CIVIL COMPLEX

JAMES RIGHEIMER, an individual; LENE RIGHEIMER, an individual; and STEVE MENSINGER, an individual, Plaintiffs, v. COSTA MESA POLICE ASSOCIATION, a California corporation; LACKIE, DAMMEIER, MCGILL & ETHIR, A PROFESSIONAL CORPORATION, a California corporation; BIG GIANTS INVESTIGATIONS, a business entity of form unknown; CHRISTOPHER J. LANZILLO, an individual and DOES 1-25. Defendants.	Case No.: 30-2013-00670139-CU-CR-CXC Judge: Gail A. Andler **PLAINTIFFS' NOTICED MOTION TO CONTINUE FOR ALLOWED DISCOVERY PURSUANT TO CCP § 425.16(g); MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF VINCE W. FINALDI IN SUPPORT THEREOF.** **Date:** November 25, 2013 **Time:** 1:30pm **Dept:** CX101

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on Monday November 25, 2013, at 1:30 p.m., in Department CX101 of the above-entitled Court, Plaintiffs JAMES RIGHEIMER, LENE

RIGHEIMER, and STEVE MENSINGER, through their attorney of record herein, will appear before this Court for Plaintiffs' Motion for Allowed Discovery pursuant to CCP § 425.16(g).

California's anti-SLAPP statutes are designed to protect First Amendment Rights and prevent abuse of litigation. The anti-SLAPP statute affords Defendants no sanctuary. Their criminal and tortious conduct, simply put, is unprotected activity therefore not within the purview of the anti-SLAPP statute.

On August 20, 2013, Plaintiffs filed a Complaint alleging the Defendants had engaged in a long course of tortious and criminal conduct against all Plaintiffs. The Complaint alleges that Defendants engaged in this course of conduct to humiliate, intimidate, and coerce Plaintiffs James Righeimer and Steve Mensinger to gain their political obedience as duly elected officials of Costa Mesa, California and for financial gain.

On October 7, 2013, Defendants Lackie, Lanzillo and Big Giant Investigations filed an anti-SLAPP motion pursuant to CCP § 425.16. This motion incorrectly alleges that the Plaintiffs' entire Complaint arises solely from a knowingly false 911 call made by Defendant Lanzillo; conduct that Defendants allege is protected under the First Amendment of the United States Constitution.

On October 10, 2013, Defendant Costa Mesa Police Association (CMPOA) filed three separate anti-SLAPP motions against each individual Plaintiff, all alleging that the causes of action in the Plaintiffs' Complaint arose from conduct protected under the First Amendment of the United States Constitution.

Plaintiffs contend that Defendants Lackie, Dammeier, McGill & Ethir (Lackie), Christopher J. Lanzillo (Lanzillo), and Big Giant Investigations (Big Giant) improperly narrow Plaintiffs' Complaint to one 911 call made by Defendant Lanzillo, contrary to the allegations of the Complaint. In reality, Plaintiffs' Complaint is based on a long course of tortious and criminal conduct committed by all Defendants against Plaintiffs, in an attempt to silence political opposition, force political action in their favor, and for financial gain.

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The instant Motion for Order Allowing Discovery stems from the Plaintiffs' need for discovery to properly oppose the Defendants' anti-SLAPP motions. Plaintiffs believe, and have substantial evidence supporting the allegation, that the Defendants' anti-SLAPP motions are based on tortious and illegal conduct, as alleged in the Complaint, which is an improper basis for an anti-SLAPP motion. Plaintiffs request that discovery be allowed with respect to such tortious and criminal conduct of the Defendants, pursuant to CCP § 425.16(g), because that information is in large part in the sole possession of Defendant moving parties in the anti-SLAPP motions.

This Motion shall be based on this Notice, the attached Memorandum of Points and Authorities, the Declaration of Vince W. Finaldi and attachments thereto, all papers and pleadings on file with the Court, and any upon any argument, oral or otherwise, raised at the hearing of this Motion.

Dated: October 29, 2013

MANLY, STEWART & FINALDI

By: _____
VINCE W. FINALDI, Esq.
Attorneys for Plaintiffs,
JAMES RIGHEIMER, LENE RIGHEIMER and STEVE MENSINGER.

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I.

INTRODUCTION

California's anti-SLAPP statutes are designed to protect First Amendment Rights and prevent abuse of litigation. The anti-SLAPP statute affords Defendants no sanctuary. Their criminal and tortious conduct, simply put, is unprotected activity therefore not within the purview of the anti-SLAPP statute.

Plaintiffs James Righeimer and Steve Mensinger are both elected political figures of the City of Costa Mesa, California (Mayor and Mayor *Pro Tem*, respectively). Lene Righeimer is James Righeimer's wife. In the Complaint, Plaintiffs have alleged a widespread course of criminal and tortious conduct through which the Defendants intimidated, harassed, coerced, and humiliated the Plaintiffs, in order to obtain Plaintiffs' political obedience, and for financial gain. In response to the Complaint, Defendants Costa Mesa Police Association (CMPOA), Lackie, Dammeier, McGill & Ethir (Lackie), Christopher J. Lanzillo (Lanzillo), and Big Giant Investigations (Big Giant) have all filed anti-Strategic Lawsuit Against Public Policy (anti-SLAPP) motions alleging that this alleged course of conduct is First Amendment "protected activity," and that the Complaint should be stricken in its entirety.

Plaintiffs request an Order to Continue the Anti-SLAPP Hearing Date and Allow Discovery pursuant to CCP § 425.16(g), on the basis that Defendants' anti-SLAPP motions arise from tortious and criminal conduct. Tortious and criminal conduct is not a proper basis for an anti-SLAPP motion, therefore Plaintiffs need discovery to substantiate that, in fact, the Defendants have committed these crimes and torts, as alleged in the Complaint.

When Defendants filed their anti-SLAPP motion, discovery was automatically stayed. This stay on discovery has denied the Plaintiffs access to evidence substantiating the Defendants' illegal and tortious conduct, which is largely in these Defendants' possession because they are

the individuals who allegedly engaged in the criminal and tortious conduct. As a result, Plaintiffs now request discovery of this information in support of their oppositions to the anti-SLAPP motions.

II.

PROCEDURAL HISTORY

On August 20, 2013, Plaintiffs filed a Complaint against Defendants alleging a course of tortious and illegal conduct by the Defendants. (Complaint ("C"), attached hereto as Exhibit "A" to Declaration of Vince Finaldi ("DVF").) On October 7, 2013, Defendants Lackie, Lanzillo and Big Giant filed an anti-SLAPP motion alleging that the Plaintiffs' Complaint violated the Defendants' protected rights under the First Amendment of United States Constitution. (LACKIE Motion, attached hereto as Exhibit "B" to DVF, p. 3-5.) On October 10, 2013, Defendant CMPOA filed three anti-SLAPP motions, one against each Plaintiff, alleging that all conduct alleged in the Complaint was protected under the First Amendment. (CMPOA Motion, attached hereto as Exhibit "C" to DVF.) Plaintiffs come now with a Motion for an Order Allowing Discovery, pursuant to CCP § 425.16 (g) requesting a fair chance to gather evidence of the Defendants' criminal conduct in support of their oppositions. This evidence is necessary to allow Plaintiffs to adequately respond to the Defendants' motions, as Plaintiffs' allege they engaged in tortious and criminal conduct, against Plaintiffs' rights, and the evidence of such is in Defendants'—moving parties—possession.

III.

FACTUAL BACKGROUND

Plaintiffs Jim Righeimer and Steve Mensinger are elected political figures- Mayor and Mayor *Pro Tem* of the City of Costa Mesa, respectively. (C, attached hereto as Exhibit "A" to

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the DVF, ¶ 2.) Lene Righeimer is Mr. Righeimer's wife. (C, ¶ 3.) Plaintiffs' Complaint is grounded in the systematic, tortious and illegal acts of harassment, coercion, intimidation, and embarrassment committed by the Defendants, intended to intimidate Plaintiffs and into changing their political positions in Defendants' favor and for Defendants' financial gain. (C ¶¶ 1, 6, 16, 18, 31, 36).

Defendant Lackie is a law firm based out of Upland, California that "specializes in the representation of police officers and their associations throughout California." (C ¶ 6.)

Defendant CMPOA is "the governing body of the police officers under the rank sergeant in the Costa Mesa Police Department." (C ¶ 5).

Defendant Lanzillo is the owner and manager of Big Giant. (C, ¶ 8.) Prior to opening Big Giant Investigations, Defendant Lanzillo was a police officer with the City of Riverside. (FAC, ¶ 8.) After his retirement (and after a tumultuous legal battle to be reinstated), Defendant Lanzillo opened Big Giant Investigations, which is believed to have been retained by Defendant Lackie since June 18, 2011. (C, ¶ 8.)

The following is a catalogue of the criminal and tortious course of conduct perpetrated by the Defendants:

The "Playbook" (FAC, ¶ 16.)

- Prior to August 22, 2012, Defendant Lackie had a document posted on its website entitled the "Playbook" which outlined various conduct for police officers' associations, from around the state to engage in, in order to gain coerce local public officials into changing their positions on police funding. (C, ¶16.) The "Playbook" detailed various pressure tactics, and even went as far as referring to targeted city council members as "victims." (C, ¶16.)

Defendants Publicizing Personal Financial Information of the Righeimers. (FAC, ¶ 18.)

- In 2010, Defendants orchestrated a plot to publish James and Lene Righeimer's personal information to the public. (C, ¶ 18.) The plot involved Defendant CMPA hiring a truck drive around Costa Mesa with a billboard advertising a website. (C, ¶ 18.) The website had personal financial information from James and Lene Righeimer posted on it. (C, ¶ 18.)

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"Storming" of the Costa Mesa City Council

- On August 21, 2012, a group of angry citizens flooded the Costa Mesa City Council meeting. (C, ¶ 18.) The citizens were enraged, alleging that more police officers were needed on the streets of Costa Mesa. (C, ¶ 18.) One of the citizens stated that they had been sent to the meeting by a "police officer." (C, ¶ 18.) At this meeting, James Righeimer publicly criticized the "Playbook" and the attempts of Defendants to hold the City Council "hostage." (C, ¶ 18.)

False 9-1-1 Call Made by Defendant Lanzillo

- On August 22, 2012, Defendant Lanzillo made a phone call to police, reporting that Plaintiff James Righeimer had been "under the influence" while walking to his car from a restaurant/bar. (C, ¶¶ 31.) Defendant Lanzillo then claimed that James Righeimer was speeding, swerving, and not staying in his lane while driving his car. (C, ¶¶ 31, 34.) Defendant Lanzillo then proceeded to follow Mr. Righeimer to his home. (C, ¶¶ 31, 34.) When the police arrived, they detained Mr. Righeimer on his front lawn and conducted a sobriety test, while Defendant Lanzillo observed from a parked car. (C, ¶ 25.) Mr. Righeimer passed all tests and even has a receipt showing that he had only purchased two Diet Cokes, and had not been drinking alcoholic beverages that night. (C, ¶ 24, 25.)

Woman Sent into Skosh Monahan's

- Prior to making the knowingly false 911 call, Defendant Lanzillo enlisted a woman to attempt to seduce and publicly embarrass Plaintiffs James Righeimer and Steve Mensinger, while at Skosh Monahan's, a restaurant/bar. (C, ¶ 36.) Defendant Lanzillo admitted to the press that he sent the woman into the bar to catch Mr. Mensinger and Mr. Righeimer "behav[ing] inappropriately." (C, ¶ 36, 37.)

Defendant Lanzillo Assaulting Mrs. Lene Righeimer with his car. (C, ¶ 27.)

- While James Righeimer was being detained by Officer Kha Bao, Mrs. Righeimer noticed a suspicious white Kia SUV was parked on the street near her home. (C, ¶ 27.) The vehicle began to leave, so Mrs. Righeimer entered the path of the vehicle and hailed for it to stop. (C, ¶ 27.) The vehicle stopped and she approached the driver side window, where she began speaking with Defendant Lanzillo. (C, ¶ 27.) After an exchange of words with Defendant Lanzillo, and no warning, the white Kia SUV accelerated past Lene Righeimer, and swerved out of the way of running over her feet. (C, ¶ 27.) Mrs. Righeimer states that she felt the heat of the engine and wind from the car, as it flew past her. (C, ¶ 27.)

The Re-Published 911 Call Contents in Local Newspapers. (C ¶ 31.)

- On August 24, 2012, the Orange County Register referenced the 911 call of Defendant Lanzillo, from the incident on August 22, 2012, where Defendant

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Lanzillo stated, "I think he's DUI...He's just swerving all over the road...I don't know what's wrong with him." (C ¶ 31.) Defendant stated further in the call that James Righeimer was driving over 50 mph in a residential zone and that he had run a stop sign. (C ¶ 31.)

Defendant Lanzillos Defamatory Statements to the Press. (C ¶ 34-35.)

- On August 28, 2012, Defendant Lanzillo spoke to the OC Register and stated, "[w]hen I saw him leave the bar it appeared to me by the way that Mr. Righeimer was walking that he could be under the influence or possibly just disabled." (C ¶ 34-35.) Defendant Lanzillo further stated, "[w]e all know if you order a soda or tea at a restaurant/bar, you only pay for one drink and the rest are free[...] I'm sure (Councilman Gary) Monhan who provided the receipt for Mr. Righeimer didn't even realize this when he gave him the suspected receipt." (C. ¶ 34.)

Recent Police Investigation of the Defendants and Stay of Discovery

Prior to the filing of Defendants' anti-SLAPP motions, the deposition of key witnesses Dieter Dammeier (Managing Partner of Defendant Lackie) and the person most knowledgeable regarding supervision of Defendant Lanzillo were scheduled to take place on October 11th, 2013. (Deposition Notice of Dieter Dammeier, attached hereto as Exhibit "F" to DVF; Deposition Notice of PMQ For Supervision of Defendant Lanzillo, attached hereto as Exhibit "G" to DVF.) Since the imposition of the stay on discovery, Plaintiffs have not been allowed to conduct any further investigation and these important depositions have not taken place. Moreover, the information necessary to prove the Defendants acted tortiously and criminally is in the sole possession of the Defendants, thus grounding the present motion.

On October 10, 2013, the Orange County District Attorney (OCDA) executed a search warrant against Defendant Lackie which resulted in the seizure of "scores of boxes full of documents and other materials." (San Bernardino County Sentinel, October 11, 2013, "Orange County DA Raids Upland Law Office of Lackie, Dammeier McGill," attached hereto as Exhibit "H" to DVF.) Plaintiffs believe that the nature of this police investigation is integrally involved with the present action, though they have not received any information regarding specific

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contents of the seizure. Plaintiffs' counsel has been informed that the FBI was a part of the raid and that substantial items were seized. Also of importance is the fact that since filing the Complaint, Defendant Lackie has been publicly accused of substantial billing impropriety in police cases and is now in the process of dissolution. This criminal investigation is on-going and little specific information has been provided to Plaintiffs.

IV.

ARGUMENT

A. CCP § 425.16(g) PROVIDES FOR ALLOWED DISCOVERY , UPON A SHOWING OF "GOOD CAUSE"

CCP § 425.16(g) states:

> The court, on noticed motion and ***for good cause shown***, may order that specified discovery be conducted notwithstanding this subdivision. CCP § 425.16 [Emphasis Added].

The Court in Lafayette Morehouse, Inc. v. Chronicle Publishing Co., (1995) 37 Cal.App.4th 855, 868 held that discovery is allowed in an anti-SLAPP motion when "the plaintiff makes a timely and proper showing in response to the motion to strike, that a defendant or witness possesses evidence needed by plaintiff to establish a prima facie case." Id. at 868. The Court went further to state: "the plaintiff ***must be given reasonable opportunity to obtain evidence through discovery*** before the motion to strike is adjudicated." Id.[emphasis added].

B. AN ANTI-SLAPP MOTION MAY NOT BE PREDICATED UPON CRIMINAL AND TORTIOUS CONDUCT

Violent criminal and tortious acts do not "arise" from protected activities for the purposes of the anti-SLAPP statute. Lam v. Ngo, (2001) 91 Cal. App. 4th 832, 845. The Court in Lam v. Ngo, (2001) 91 Cal. App. 4th 832 stated:

> "[T]he present case ***involves discrete 'elements of criminality,' and certainly tortious conduct unprotected by the First Amendment***. [citation omitted]. Justice Stevens there noted, the ***'First Amendment does not protect violence'*** [citation omitted] and the present case-particularly events in the first week of the protests-certainly involved acts of

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violence, not political theater. Some protesters, presently anonymous, accosted patrons of the Vien Dong, slashed the tires of cars, plastered posters on the outside of the restaurant, and urinated on it. ***All clearly unprotected acts.***" Lam v. Ngo, (2001) 91 Cal. App. 4th 832, 851.

In 2006, the California Supreme Court in Flatley v. Mauro, (2006) 39 Cal. 4th 299 reiterated this notion regarding California's anti-SLAPP statute and criminal conduct:

> "where a defendant brings a motion to strike under section 425.16 based on a claim that the plaintiff's action arises from activity by the defendant in furtherance of the defendant's exercise of protected speech or petition rights, but either the defendant concedes, or the evidence conclusively establishes, ***that the assertedly protected speech or petition activity was illegal as a matter of law, the defendant is precluded from using the anti-SLAPP statute to strike the plaintiff's action.***" Flatley, (2006) 39 Cal. 4th at 320[emphasis added].

Defendants cannot base an anti-SLAPP motion on their own criminal and tortious conduct. There is strong, if not overwhelming evidence (already found in the public sphere and alleged in the Complaint) which ***strongly evidences and indicates that tortious and criminal activity is the basis for the present anti-SLAPP motions.*** The Defendants' course of tortious and criminal conduct is catalogued in the Complaint and supported by numerous personal accounts from Plaintiffs, local newspapers, local municipal officials, and documented police reports. This information that already exists in the public sphere, coupled with the on-going investigation by the Orange County District Attorney, makes ***an already strong and convincing showing*** that the Defendants have engaged in criminal and tortious conduct. California's anti-SLAPP statutes are designed to protect First Amendment Rights and prevent abuse of litigation. The anti-SLAPP statute affords Defendants no sanctuary. Their criminal and tortious conduct, simply put, is unprotected activity therefore not within the purview of the anti-SLAPP statute.

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C. "GOOD CAUSE" EXISTS TO GRANT PLAINTIFFS' MOTION FOR ALLOWED DISCOVERY

1. All Information Necessary to Respond to Defendants' Anti-SLAPP Motions is in Possession of the Defendants

Plaintiffs have alleged a wide-reaching pattern and business practice of tortious and criminal conduct by the Defendants, based on reliable and credible information. However, Defendants are in sole possession and control over most evidence of their criminal and tortious behavior. Discovery is necessary to ensure that the Plaintiffs are provided a fair and adequate chance to oppose the anti-SLAPP motions and to substantiate the claims of tortious and illegal behavior by the Defendants. Plaintiffs have no other means to obtain further evidence of the Defendants tortious and criminal behavior.

Much of the evidence needed to substantiate Plaintiffs' claims involves the relationships between Defendants, communications between Defendants, documents in the Defendants' possession, and documentation that needs to be subpoenaed from third parties. None of this evidence is available to Plaintiffs' and cannot be accessed due to the stay on discovery. This information is critical to substantiating the illegal and tortious activity of Defendants which, in turn, is essential to Plaintiffs' opposition to the anti-SLAPP motions, thus the reason for this motion.

2. Denying Discovery For Plaintiffs Would Allow Defendants to Conceal Their Own Criminal and Tortious Conduct, Contrary to Public Policy

The California anti-SLAPP law does not permit anti-SLAPP motions to be made on the basis of criminal and violent tortious activities. Plaintiffs have alleged widespread illegal and tortious conduct in which the Defendants engaged in soliciting and conspiring with a prostitute, violations of the Ralph and Bane Acts, making a false 911 call, defamation, slander, and even assault. Discovery of this criminal and tortious conduct is needed in order to substantiate these

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allegations and to prevent the anti-SLAPP procedure from shielding the Defendants' illegal and tortious conduct.

By filing the anti-SLAPP motion, Defendants dodged meaningful discovery. Denying discovery now would allow Defendants to base their anti-SLAPP motions on criminal and tortious conduct simply because the proceedings are in their infancy. Clearly, the facts alleged (coupled with the on-going investigation of the Defendants by the OCDA) show that more discovery is warranted and would substantiate the crimes and torts committed by the Defendants; crimes and torts that Defendants base their anti-SLAPP motions on.

Moreover, section (g) of California Code of Civil Procedure § 425.16 ***expressly*** provides an avenue for allowed discovery when Plaintiffs show "that a defendant or witness possesses evidence needed by plaintiff to establish a prima facie case." Lafayette Morehouse, Inc., (1995) 37 Cal.App.4th at 868. The present case is ***the exact reason*** why section (g) was written into the statute. Discovery is needed to prevent Defendants from hiding their criminal and tortious activity behind California's anti-SLAPP statute and to give the Plaintiffs fair chance to oppose the anti-SLAPP motion.

3. Plaintiffs Are Not Interested in Conducting a "Fishing Expedition"

Plaintiffs are not interested in discovering each and every fact and facet of the current case. Plaintiffs are only interested in discovering evidence of the Defendants' criminal and tortious conduct underlying Defendants' alleged "protected activity," for the present motions. Below, Plaintiffs detail the specific discovery that is requested.

D. DISCOVERY REQUESTED

To be given fair opportunity to substantiate the already supported allegations of criminal and tortious conduct underlying the Defendants' anti-SLAPP motions, Plaintiffs request the following to be discovered prior to opposing the Defendants' motions:

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Depositions of:

- Officer Kha Bao
- Defendant Christopher J. Lanzillo
- Dieter Dammeier
- Person Most Qualified for Supervision at Defendant Lackie for Defendant Lanzillo
- Person Most Qualified for Supervision at CMPOA.
- Former CMPOA President Jason Chamness
- Potentially other critical witnesses whose identities arise during the course of the above depositions, or below produced documents.

Requests for Production of Documents:

- Subpoenaed records from Orange County District Attorney
- Subpoenaed records from Custodian of Records from Defendant Lackie.
- Subpoenaed records from Custodian of Records from Defendant CMPOA.
- Subpoenaed records from Custodian of Records from Defendant Big Giant Investigations.
- Potentially other critical records from entities who arise during the course of the above discovery.

Special Interrogatories to:

- Each Defendant (50 Interrogatories)

V.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully move the Court for an Order Continuing the Hearing Date for the Anti-SLAPP Motions and Allowing Discovery, on the basis that Plaintiffs have shown "good cause" pursuant to CCP § 245.16(g).

Dated: October 29, 2013

MANLY, STEWART & FINALDI

By: _____
VINCE WILLIAM FINALDI, Esq.
Attorneys for Plaintiffs,
JAMES RIGHEIMER, LENE RIGHEIMER
and STEVE MENSINGER.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the county of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 19100 Von Karman Ave., Suite 800, Irvine, CA 92612,

On October 30, 2013, I served the foregoing document described as **PLAINTIFFS' NOTICED MOTION TO CONTINUE FOR ALLOWED DISCOVERY PURSUANT TO CCP § 425.16(g); MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF VINCE W. FINALDI IN SUPPORT THEREOF** on the interested parties in this action

[X] by placing [ ] the original [X] a true copy thereof enclosed in sealed envelopes addressed as follows:

Stephen G. Larson, Esq.
Jerrold Abeles, Esq.
Jonathan E. Phillips, Esq.
ARENT FOX LLP
555 West Fifth Street, 48th Floor
Los Angeles, CA 90013-1065
(213) 629-7400
(213) 629-7401-facsimile
Attorneys for Defendants LACKIE, DAMMEIER, MCGILL & ETHIR, A PROFESSIONAL CORPORATION, a California Corporation; CHRISTOPHER J. LANZILLO; and BIG GIANT INVESTIGATIONS.

Seymour B. Everett, III, Esq.
Shannon M. Benbow, Esq.
David L. Martin, Esq.
Wood Smith, Henning & Berman LLP
5000 Birch Street, Suite 8500
Newport Beach, California 92660
(949) 757-4500
(949) 757-4550-facsimile
Attorneys for Defendant COSTA MESA POLICE OFFICER'S ASSOCIATION

[X] BY MESSENGER SERVICE

[ ] I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and providing them to a professional messenger service for service.

[X] (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.

Executed on October 30, 2013, Irvine, California.

Kathy Frederiksen

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Attorneys of Record for Plaintiffs,
JAMES RIGHEIMER, LENE RIGHEIMER and
STEVE MENSINGER.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE CENTRAL CIVIL COMPLEX

JAMES RIGHEIMER, an individual; LENE RIGHEIMER, an individual; and STEVE MENSINGER, an individual, Plaintiffs, v. COSTA MESA POLICE ASSOCIATION, a California corporation; LACKIE, DAMMEIER, MCGILL & ETHIR, A PROFESSIONAL CORPORATION, a California corporation; BIG GIANTS INVESTIGATIONS, a business entity of form unknown; CHRISTOPHER J. LANZILLO, an individual and DOES 1-25. Defendants.	Case No.: 30-2013-00670139-CU-CR-CXC Judge: Gail A. Andler **DECLARATION OF VINCE W. FINALDI IN SUPPORT OF PLAINTIFFS LENE RIGHEIMER, JAMES RIGHEIMER, AND STEVE MENSINGER'S MOTION FOR CONTINUANCE FOR ALLOWED DISCOVERY PURSUANT TO CCP § 425.16(g).** Date: November 25, 2013 Time: 1:30 am Dept: CX101

DECLARATION OF VINCE E. FINALDI

I, VINCE W. FINALDI, hereby declare:

1. I am an attorney duly licensed to practice law in the state of California. I am an attorney with Manly, Stewart & Finaldi, attorney of record for Plaintiffs JAMES RIGHEIMER,

LENE RIGHEIMER, and STEVE MENSINGER in the above-entitled matter. I am personally familiar with the facts of this case and the contents of this Declaration, and if called upon, could and would competently testify as to its contents.

2. This Declaration is made in support of Plaintiffs' JAMES RIGHEIMER, LENE RIGHEIMER, and STEVE MENSINGER Motion to Continue for Allowed Discovery, pursuant to California Code of Civil Procedure § 425.16(g).

3. Plaintiffs allege that the Defendants have engaged in substantial criminal activity directed at them. Those acts are the basis of the Plaintiffs' Complaint and the Defendants' anti-SLAPP motion.

4. Plaintiffs have reason to believe that the recent search and seizure of Defendants' documents and items (stemming from a search warrant executed by the Orange County District Attorney and Orange County Sherriff's Department) is integrally related to the present action against Defendants. Plaintiffs believe that further discovery of information arising from these police actions is relevant, admissible, and highly probative in opposing the Defendants' anti-SLAPP motion.

5. "Good cause" exists to grant this motion because CCP § 425.16(g) specifically provides a means to obtain discovery from a moving party, prior to the adjudication of the anti-SLAPP motions. Plaintiffs believe that the Defendants have based their anti-SLAPP motion on criminal and tortious conduct, which is an improper basis for such a motion. Plaintiffs are at a marked disadvantage without discovery in this matter because the information sought to substantiate these criminal and tortious acts is in the exclusive possession of the Defendants. Plaintiffs had the deposition of Defendant DAMMEIER scheduled for October 11, 2013, however, the stay on discovery that occurred with the Defendants' anti-SLAPP motion eliminated this deposition from the calendar. The requested discovery consists of various depositions and written discovery, which is intended to elicit the necessary information from the Defendants. Without this discovery, Plaintiffs are prevented from having a fair chance to respond to the anti-SLAPP motions.

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6. Attached hereto as Exhibit "A" is the Plaintiffs' Complaint, referenced in Plaintiff's Noticed Motion.

7. Attached hereto as Exhibit "B" is a true and correct copy of the Defendants' LACKIE, DAMMEIER, MCGILL & ETHIR, CHRISTOPHER J. LANZILLO, and BIG GIANT INVESTIGATIONS anti-SLAPP motion filed on October 7, 2013, referenced in Plaintiff's Noticed Motion.

8. Attached hereto as Exhibit "C" is a true and correct copy of the Defendant CMPA anti-SLAPP motion filed on October 10, 2013 against Plaintiff LENE RIGHEIMER, referenced in Plaintiff's Noticed Motion.

9. Attached hereto as Exhibit "D" is a true and correct copy of the Defendant CMPA anti-SLAPP motion filed on October 10, 2013 against Plaintiff JAMES RIGHEIMER, referenced in Plaintiff's Noticed Motion.

10. Attached hereto as Exhibit "E" is a true and correct copy of the Defendant CMPA anti-SLAPP motion against filed on October 10, 2013, Plaintiff STEVE MENSINGER, referenced in Plaintiff's Noticed Motion.

11. Attached hereto at Exhibit "F" is a true and correct copy of the notice of DIETER DAMMEIER's deposition, referenced in Plaintiff's Noticed Motion.

12. Attached hereto as Exhibit "G" is a true and correct copy of the deposition notice of the Person Most Qualified At LACKIE, DAMMEIER, MCGILL & ETHIR, A PROFESSIONAL LAW CORPORATION, Regarding Supervision of Christopher J. Lanzillo, referenced in Plaintiff's Noticed Motion.

13. Attached hereto at Exhibit "H" is a true and correct copy of the San Bernardino County Sentinel article from October 11, 2013 entitled, "Orange County DA Raids Upland Office of Lackie Dammeier McGill," referenced in Plaintiff's Noticed Motion.

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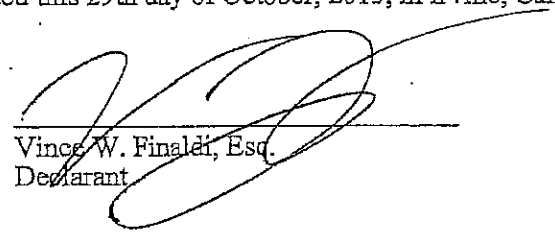
I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 29th day of October, 2013, in Irvine, California.



Vince W. Finaldi, Esq.
Declarant

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