

1 Robert E. Racine, Esq., SBN 107044  
 2 Law Offices of Robert E. Racine  
 3 3455 Ocean View Boulevard, Suite 100  
 4 Glendale, California 91208  
 Telephone: (818) 248-8562  
 Facsimile: (818) 248-8557  
 E-mail: robert@racinetrialworks.com

5 Attorneys for Defendant  
 6 Southern California Darts Association, Inc.

7  
 8 UNITED STATES OF DISTRICT COURT  
 9 FOR THE CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION

11 SOUTHERN CALIFORNIA DARTS  
 12 ASSOCIATION,

13 Plaintiff,

14 vs.

16 SOUTHERN CALIFORNIA DARTS  
 17 ASSOCIATION, INC., et al.

18 Defendants.

CASE NO: 2:12-CV-01899 RGK (JCGx)  
 [Assigned to the Honorable Judge R.  
 Gary Klausner in Department 850]

**NOTICE OF MOTION AND  
 MOTION TO DISMISS PLAINTIFF'S  
 COMPLAINT BY DEFENDANT  
 SOUTHERN CALIFORNIA DARTS  
 ASSOCIATION, INC. PURSUANT TO  
 F.R.C.P. RULE 12(b)(6) AND  
 MOTION TO STRIKE PURSUANT  
 TO CAL. CODE CIV. PRO § 425.16;  
 DECLARATION OF DINO M.  
 ZAFFINA IN SUPPORT THEREOF  
 FILED CONCURRENTLY  
 HERewith**

**[F.R.C.P. RULE 12(g)(1)]**

DATE: May 7, 2012  
 TIME: 9:00 A.M.  
 DEPT: 850

COMPLAINT FILED: 03/06/12

1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORDS:**

2 PLEASE TAKE NOTICE that on May 7, 2012, at 9:00 a.m. or as soon thereafter  
3 as the matter may be heard in Department 850 of the United States District Court  
4 located at 255 E. Temple Street, Los Angeles, California 90012, Defendant, Southern  
5 California Darts Association, Inc. ("Corporation") and Defendant, Dino M. Zaffina  
6 ("Zaffina") will move this Court for an order to strike the complaint filed by Plaintiff,  
7 Southern California Darts Association ("Plaintiff"), a self-proclaimed unincorporated  
8 association. This Motion is made pursuant to *Federal Rules of Civil Procedure* Rule  
9 12(b)(6), and is based on the grounds that: (1) Plaintiff fails to state facts sufficient to  
10 support its Lanham Act claim; (2) Corporation has fulfilled its burden of making a  
11 threshold showing that the challenged causes of action arises from protected activity,  
12 and, (3) has established that the Plaintiff has failed to demonstrate a reasonable  
13 probability of prevailing at trial on the merits of its challenged causes of action.

14 The underlying action brought by Corporation in State Court on September 26,  
15 2011, is an action for several torts committed by 66 named defendants and up to 500  
16 doe defendants. All the State Court defendants are members of Plaintiff and several  
17 business establishments allegedly sponsoring it and its members. Subsequent to the  
18 filing of the State action and prior to this motion, all eight of the business  
19 establishments have settled with Corporation. [See Declaration of Dino M. Zaffina ¶ 2]

20 Plaintiff's Complaint is a SLAPP suit designed to intimidate, harass, and  
21 financially deplete Corporation from pursuing its Verified Complaint against them in  
22 state court. The Complaint was filed in response to Corporation's (a) pre-incorporation  
23 and post-incorporation activity, (b) the State Complaint, (c) Corporation prevailing in its  
24 anti-SLAPP motion against William F. Lynch, a member of Plaintiff and (d) the L.A.  
25 Weekly newspaper article – [See attached a copy of a newspaper article to Plaintiff's  
26 Complaint that arose prior to filing its Federal lawsuit. As such, Corporation and  
27 Zaffina's rights guaranteed under the First Amendment have been compromised and  
28 violated.

1 Plaintiff's Complaint, even if true, which it is not, claims conduct pertaining to  
2 executive, litigation-related activities, and other official proceedings authorized by law,  
3 and thus, it falls within the reach of the anti-SLAPP statute. Therefore, to overcome this  
4 motion, Plaintiff must establish, through admissible evidence, a probability of success.  
5 This is a burden that they cannot meet because the Complaint alleges conduct subject to  
6 the absolute litigation privilege of *Civil Code* § 47(b).

7 This Motion to Dismiss is made on the following grounds:

8 1. Plaintiff's Complaint violates the *Lanham Act* because Plaintiff is not and has  
9 never been a trademark registrant for any of the tradenames or marks set forth in their  
10 Complaint, and is not a common law trademark or servicemark holder;

11 2. Plaintiff's state law claims 2 thru 5 are barred pursuant to *Cal. Rev. and Tax*  
12 *Code* § 19719 (a)<sup>1</sup> because of Plaintiff's suspended corporate status and in the event the  
13 Court determines that Plaintiff is an unincorporated association, then Plaintiff is barred  
14 under *Cal. Bus. Prof. Code* § 17918<sup>2</sup> for failure to file a fictitious business name  
15 statement. [Zaffina Decl. ¶ 8];

16 3. Furthermore, Plaintiff's state law claims are compulsory claims which Plaintiff  
17 was required to bring in the state action;

18 4. Plaintiff's Complaint constitutes a Strategic Litigation Against Public  
19 Participation ("SLAPP"), under *Cal. Code Civ. Proc.* § 425.16;

20  
21  
22  
23 <sup>1</sup> *Cal. Revenue and Tax Code* § 19719 (a) states in pertinent part, "Any person who  
24 attempts or purports to exercise the powers, rights, and privileges of a corporation that  
25 has been suspended...."

26 <sup>2</sup> *Cal. Bus. Prof. Code* § 17918 "No person transacting business under a fictitious  
27 business name contrary to the provisions of this chapter, or his assignee, may maintain  
28 any action ... in the fictitious business name in any court of this state until the  
fictitious business name statement has been executed, filed, and published as required  
by this chapter...."

- 1 a. The Complaint against Corporation and Zaffina arises from an act of  
2 Corporation in furtherance of its right of petition under the United States and  
3 California Constitutions, and that such right will be chilled if the Complaint is  
4 allowed to stand and if the Plaintiff is allowed to continue prosecuting it; and  
5 b. Plaintiff cannot, as a matter of law, establish a probability of success on the  
6 merits of any cause of action of the Complaint.

7 Additionally, should the Court grant the Motion to Strike under *Cal. Code Civ.*  
8 *Proc.* § 425.16, Corporation will move the Court to award reasonable attorney's fees to  
9 Corporation against Plaintiff and all its members named herein, and/or Plaintiff's  
10 counsel of record from Kawahito, Shraga & Westrick LLP in an amount to be  
11 determined by the Court pursuant to notice of motion. Who will ultimately pay may be  
12 problematic because the unincorporated association status is so ambiguous.

13 This Motion is further based upon this Notice of Motion, the Memorandum of  
14 Points and Authorities submitted herewith, the Declaration of Dino M. Zaffina (Exhibits  
15 1-3, attached therewith) and the Declaration of Dino M. Zaffina (Exhibits 1-11  
16 previously filed on March 26, 2012), as well as, the papers and records on file in this  
17 action, and upon such oral and documentary evidence that may be presented at the time  
18 of the hearing of this Motion.

19  
20 DATED: April 4, 2012

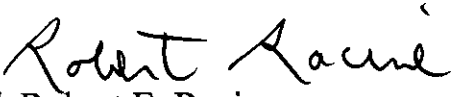
21   
22 By: /S/ Robert E. Racine  
23 Robert E. Racine, Esq.  
24 Attorneys for Defendant,  
25 Southern California Darts Association, Inc.  
26  
27  
28

TABLE OF CONTENTS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**MEMORANDUM OF POINTS AND AUTHORITIES** . . . . . 5-20

**I. PRELIMINARY STATEMENT** . . . . . 5

**II. STANDARDS TO DISMISS AND TO STRIKE** . . . . . 6-7

**A. STANDARD FOR A MOTION TO DISMISS PURSUANT TO**  
        **RULE 12(b)(6)** . . . . . 6

**B. MOTION TO STRIKE PURSUANT TO CAL. CODE CIV.**  
        **CODE § 425.16** . . . . . 7

**III. LEGAL ARGUMENT** . . . . . 8-20

**A. PLAINTIFF’S COMPLAINT FAILS TO STATE FACTS**  
        **SUFFICIENT TO SUPPORT ANY VIOLATION OF THE**  
        **LANHAM ACT** . . . . . 8-11

        1. Valid, protectable trademark . . . . . 8

        2. Likely to cause confusion . . . . . 9-11

            a. Strength of the mark . . . . . 9

            b. Since There Is No Confusion and Plaintiff can not establish  
                any of the other *Sleekcraft* factors, the Complaint lacks Merit . . . . . 9-10

            c. The Public Could Not Possibly be Confused. . . . . 10-11

            d. Plaintiff has Failed to Plead Facts to Support a Secondary  
                Meaning or Genericness . . . . . 11

**B. PLAINTIFF’S STATE LAW CLAIMS ARE BARRED** . . . . . 11-13

        1. Cal. Rev. and Tax Code § 19719(a) and Cal. Bus. Prof. Code  
            § 17918 . . . . . 12

        2. Plaintiff’s State Law Claims are Compulsory. . . . . 12-13

**C. PLAINTIFF’S ENTIRE COMPLAINT IS A “SLAPP” SUIT**  
        **(CAL. CODE CIV. PROC § 425.16)—STEP ONE OF A TWO-**  
        **STEP PROCESS** . . . . . 13-17

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1. Any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law . . . . .	16
2. Any written or oral statement or writing 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 . . . . .	16-17
3. Or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest . . . . .	17
<b>D. <u>PLAINTIFF’S PROBABILITY OF SUCCESS ON THE MERITS—STEP TWO OF THE TWO-STEP PROCESS</u> . . . .</b>	<b>17-20</b>
1. Violation of <i>Cal. Bus. Prof. Code</i> § 17200 et seq. . . . .	18
2. Violation of California Common Law for Trademark Infringement . . . . .	18-19
3. Violation of California Common Law for Unfair Competition . . . . .	19
4. Violation of <i>Cal. Bus. Prof. Code</i> § 14247 . . . . .	19
5. The Scope and Application of the Section 47(b) Privilege Bars Claims . . . . .	19-20
<b>IV. CONCLUSION . . . . .</b>	<b>20</b>

**TABLE OF AUTHORITIES**

1

2 **Cases**

3 *Albillo v. Intermodal Container Servs, Inc.* (2003)

4 114 Cal App. 4th 190, 206 ..... 18

5 *Applied Info. Sciences Corp. v. eBay, Inc.,*

6 511 F.3d 966, 969 (9th Cir.2007) ..... 8

7 *Brookfield Commc'ns, Inc. v. West Coast Entm't Corp.*

8 174 F.3d 1036, 1047 (9th Cir.1999) ..... 8

9 *Committee for Idaho's High Desert, Inc., v. Yost*

10 92 F. 3d 814, 823 (9th Cir. 1996) ..... 11

11 *Dastar Corp., v. Twentieth Century Fox Film Corp.* (2003)

12 539 U.S. 23 ..... 8, 10

13 *Dove Audio, Inc. v. Rosenfeld* (1996)

14 47 Cal. App. 4th 777, 781-83 ..... 19

15 *Entrepreneur Media, Inc. v. Smith,*

16 279 F.3d 1135, 1141 (9th Cir.2002) ..... 9

17 *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*

18 408 F. 3d 596, 608 (9th Cir. 2005) ..... 9

19 *Magic Wand, Inc. v. RDB, Inc.*

20 940 F. 2d (Fed. Cir. 1991) ..... 11

21 *Metabolife Int'l, Inc. v. Wornick*

22 264 F. 3d 832, 840 (9th Cir. 2001) ..... 17

23 *Mindys v. Dakar*

24 611 F. 3d 590 (9th Cir. 2010) ..... 17

25 *Pareto v. F.D.I.C.*

26 139 F. 3d 696, 699 (9th Cir. 1998) ..... 6

27 *Rubin v. Green* (1993)

28 4 Cal. 4th 1187, 1193 ..... 15, 19, 20

1	<i>Surgicenters of Am., Inc. v. Med. Dental Surgeries, Co.,</i>	
2	601 F.2d 1011, 1019 (9th Cir.1979) .....	9
3	<i>United States ex rel. Newsham v. Lockheed Missiles &amp; Space Company, Inc.</i>	
4	190 F. 3d 963, 970 (9th Cir. 1999) .....	7
5	<i>Vess v. Ciba-Geigy Corp. USA</i>	
6	317 F. 3d 1097, 1110 (9th Cir. 2003) .....	14
7	<i>Western Mining Council v. Watt</i>	
8	643 F. 2d 618, 624 (9th Cir. 1981) .....	6
9		
10	<b><u>Statutes</u></b>	
11	15 U.S.C. § 1114 .....	8
12	15 U.S.C. § 1125(a) .....	8
13	<i>California Business and Professions Code</i> § 14247 .....	19
14	<i>California Business and Professions Code</i> § 17200 .....	18
15	<i>California Business and Professions Code</i> § 17918 .....	3, 12, 15
16	<i>California Civil Code</i> § 47(b) .....	3, 15, 19, 20
17	<i>California Code Civil Procedure</i> § 425.16 .....	7, 16
18	<i>California Code Civil Procedure</i> § 426.30(a) .....	15
19	<i>California Revenue and Tax Code</i> § 19719(a) .....	3, 12, 15
20	<i>Federal Rules of Civil Procedure</i> , Rule 12(b)(6) .....	6
21		
22	<b><u>Treatise</u></b>	
23	5A Charles A. Wright & Arthur R. Miller,	
24	<i>Federal Practice and Procedure</i> § 1356 (1990) .....	6
25		
26		
27		
28		



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PRELIMINARY STATEMENT**

3 Plaintiff, Southern California Darts Association (“Plaintiff”) is a defunct  
4 corporation (Entity No: C0516738), due to a Franchise Tax Board (“FTB”) suspension  
5 on March 1, 1977. Plaintiff continued to operate as a corporation throughout the  
6 remainder of the 70s, 80s, 90s, and 2000s, until Zaffina exposed their sham on August  
7 24, 2010. Plaintiff was exposed for lying about its lack of active corporate status, and  
8 that the business was not, and by all accounts, was never, a 501(c)(3) as they claimed  
9 and advertised. [Zaffina Decl. ¶¶ 2, 3; Complaint ¶¶ 18-21]

10 Over the next year Plaintiff ignored their unlawful status because they never  
11 made any attempt to try and revive their suspended corporation or reincorporate. Had  
12 they done so, Zaffina, as incorporator for Southern California Darts Association, Inc.  
13 (“Corporation”), would have been unable to file on January 3, 2011, Articles of  
14 Incorporation for Corporation, with the Office of the Secretary of State (“SOS”).  
15 [Zaffina Decl. ¶¶ 2 - 4]

16 Plaintiff continued to operate as a corporation throughout the next eight months  
17 until Corporation put them on notice that they were violating its rights to its tradename,  
18 trademarks, and servicemarks. Corporation first brought this to Plaintiff’s attention in a  
19 Press Release on August 29, 2011. [Complaint ¶ 18]

20 Up and until Corporation filed a Verified Complaint in State court (LASC No.  
21 EC056642) against many individuals affiliated with Plaintiff herein, Plaintiff continued  
22 to operate as a *de facto* corporation (representing to the public that it is a nonprofit  
23 organization). Now, Plaintiff claims to be an unincorporated association, without a  
24 principal place of business or any named members, even though it changed its name –  
25 again - to Los Angeles Darts Association. [Complaint ¶¶ 1, 10-12; Zaffina Decl. ¶¶ 2, 5]

26 Plaintiff seeks this Court’s protection under the Lanham Act and supplemental  
27 State claims. However, the Complaint is unclear, vague, ambiguous, does not provide  
28 adequate notice of the facts supporting its legal contentions, and is a SLAPP suit.

1 **II. STANDARDS TO DISMISS AND TO STRIKE**

2  
3 **A. STANDARD FOR A MOTION TO DISMISS PURSUANT TO RULE**  
4 **12(b)(6).**

5 A Rule 12(b)(6) motion tests the legal sufficiency of the claims asserted in the  
6 complaint. [Fed. R. Civ. P., Rule 12(b)(6)]. Rule 12(b)(6) must be read in conjunction  
7 with Rule 8(a) which requires a “short and plain statement of the claim showing that the  
8 pleader is entitled to relief.” [5A Charles A. Wright & Arthur R. Miller, *Federal*  
9 *Practice and Procedure* § 1356 (1990)].<sup>3</sup>

10 “The Court must accept as true all material allegations in the complaint, as well as  
11 reasonable inferences to be drawn from them.” [*Pareto v. F.D.I.C.*, 139 F. 3d 696, 699  
12 (9th Cir. 1998)]. “Moreover, the complaint must be read in the light most favorable to  
13 the plaintiff.” [*Pareto*, *Ibid.*]. “However, the Court need not accept as true  
14 **unreasonable inferences, unwarranted deductions of fact, or conclusory legal**  
15 **allegations** cast in the form of factual allegations.” [e.g., *Western Mining Council v.*  
16 *Watt*, 643 F. 2d 618, 624 (9th Cir. 1981)].<sup>4</sup> (Emphasis added)

17  
18  
19 <sup>3</sup> “A Rule 12(b)(6) dismissal is proper only where there is either a ‘lack of a cognizable  
20 legal theory’ or ‘the absence of sufficient facts alleged under a cognizable legal  
21 theory.’ [*Balistreri v. Pacifica Police Dept.*, 901 F. 2d 969, 699 (9th Cir. 1988)]

22 <sup>4</sup> “Moreover, in ruling on a 12(b)(6) motion, a court generally cannot consider material  
23 outside of the complaint (e.g., facts presented in briefs, affidavits, or discovery  
24 materials).” [*Branch v. Tunnell*, 14 F. 3d 449, 453 (9th Cir. 1994)]. “A court may,  
25 however, consider exhibits submitted with the complaint.” [*Branch*, *Ibid.* at 453-54].  
26 “Also, a court may consider documents which are not physically attached to the  
27 complaint but ‘whose contents are alleged in [the] complaint and whose authenticity  
28 no party questions.’” [*Branch*, *Ibid.* at 454]. “Further, it is proper for the court to  
consider matters subject to judicial notice pursuant to Federal Rule of Evidence 201.”  
[*Mir, M.D. v. Little Co. of Mary Hospital*, 844 F. 2d 646, 649 (9th Cir. 1988)].

1 **B. MOTION TO STRIKE PURSUANT TO CAL. CODE CIV. PRO. § 425.16.**

2 C.C.P. § 425.16, commonly referred to as the “*Anti-SLAPP*” law, was enacted in  
3 1993 “in response to the legislature’s concern about civil actions aimed at private  
4 citizens to deter or punish them for exercising their political or legal rights.” [*United*  
5 *States ex rel. Newsham v. Lockheed Missiles & Space Company, Inc.*, 190 F. 3d 963,  
6 970 (9th Cir. 1999) (citing *Wilcox v. Superior Court*, 27 Cal. App. 4th 809 (1994))].  
7 “The hallmark of a SLAPP suit is that it lacks merit, and is brought with the goal of  
8 obtaining an economic advantage over a citizen party by increasing the cost of litigation  
9 to the point that the citizen party’s case will be weakened or abandoned....”

10 To combat the perceived threat of lawsuits filed merely to deter the exercise of  
11 political or legal rights, Section 425.16 sets up a “special motion to strike,” that is akin  
12 to a Rule 12(b)(6) motion to dismiss. The Ninth Circuit has determined that the  
13 procedure set up by Section 425.16 applies to state law claims filed in federal court.  
14 [See *id.* at 972-73 (applying § 425.16 to state-law counterclaims)]. “In order to prevail, a  
15 citizen party must make a prima facie showing that the SLAPP suit arises from any act  
16 ... ‘in furtherance of the person’s right of petition or free speech under the United States  
17 or California Constitutions in connection with a public issue.’”[*Id.* at 971].<sup>5</sup>

18 Here, Plaintiff’s filing of the Federal complaint is clearly a retaliatory response to  
19 Defendant Corporation’s protected activity of seeking redress in State court. [Zaffina  
20 Decl. ¶¶ 1-12] But for Corporation’s filing the State action, this Federal lawsuit would  
21 never have been filed and stems solely from the underlying State litigation process.

22  
23 <sup>5</sup> “The court makes this determination from the pleadings and supporting or opposing  
24 affidavits. Once this prima facie showing is made, the burden then shifts to the  
25 plaintiff to establish by a ‘reasonable probability’ that he or she will prevail on the  
26 claim and that the defendant’s “purported constitutional defenses are not applicable to  
27 the case as a matter of law or by a prima facie showing of facts which, if accepted by  
28 the trier of fact, would negate such defenses.” [See *id.* (quoting *Wilcox*, 27 Cal. App.  
4th at 824-25)]. “The prevailing party on a special motion to strike is entitled to his or  
her attorneys’ fees and costs.” [See *id.* (citing Section 425.16(c))].

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

### III. LEGAL ARGUMENTS

A. **PLAINTIFF'S COMPLAINT FAILS TO STATE FACTS SUFFICIENT TO SUPPORT ANY VIOLATION OF THE LANHAM ACT.**

The Trademark Act of 1946 ("Lanham Act") prohibits uses of trademarks, trade names, and trade dress that are likely to cause confusion about the source of a product or service. [15 U.S.C §§ 1114, 1125(a)]. "A plaintiff may show that it is likely to succeed on the merits of its trademark infringement claim under the Lanham Act by establishing that (1) it has a 'valid, protectable trademark,' and (2) defendant's 'use of the mark is likely to cause confusion.'" [*Applied Info. Sciences Corp. v. eBay, Inc.*, 511 F. 3d 966, 969 (9th Cir. 2007)]

Plaintiff has pled Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) [Complaint ¶ 45], but fails to plead how Plaintiff has the legal rights and privileges, superior to Corporation, since, after all, **Plaintiff has been dead for 35-years.** The Supreme Court cautioned that "the words of the Lanham Act should not be stretched to cover matters that are typically of no consequence to purchasers." [*Dastar Corp., v. Twentieth Century Fox Film Corp.*, (2003) 539 U.S. 23]

**1. Valid, protectable trademark.**

"Registration of a trademark with the USPTO constitutes prima facie evidence of the validity of the mark and the registrant's exclusive right to use the mark on the goods and services delineated in the registration." [*Brookfield Commc'ns, Inc. v. West Coast Entm't Corp.*, 174 F.3d 1036, 1047 (9th Cir. 1999)].

Plaintiff has not alleged that they own a protectable mark, either a registered trademark or a mark that they own through common law priority of use. Plaintiff alleges that it has operated continuously from the 1960s to the present day. [Complaint ¶ 11]. Yet, Plaintiff has failed to specify in its pleading facts showing even one scintilla of evidence that it has operated a legal business over the past 35-years. Plaintiff has not pled that it has a valid protectable trademark.

1           **2.     Likely to cause confusion.**

2           The Ninth Circuit considers the following factors, known as *Sleekcraft* factors, in  
3 determining whether likelihood of confusion exists “(1) strength of the mark, (2)  
4 proximity or relatedness of the goods, (3) similarity of the marks, (4) evidence of actual  
5 confusion, (5) marketing channels used, (6) degree of care customers are likely to  
6 exercise in purchasing the goods, (7) defendant’s intent in selecting the mark, and (8)  
7 likelihood of expansion into other markets.” [*KP Permanent Make-Up, Inc. v. Lasting*  
8 *Impression I, Inc.*, 408 F. 3d 596, 608 (9th Cir. 2005)].

9           Corporation has been using three marks. Two of the marks are unique and the  
10 copyrighted concepts of Corporation. The third is a “**generic**” dartboard which is a true  
11 image of a product that Corporation intends on selling. Moreover, the dartboard mark is  
12 not at all similar to Plaintiff’s childlike sketch of a dartboard, and thus, there could be  
13 no likelihood of confusion. [Zaffina Decl. ¶ 6]. Plaintiff has not adequately alleged  
14 facts establishing that its mark is “confusingly similar” to Corporation’s or addresses the  
15 *Sleekcraft* factors with requisite specificity or detail to provide adequate notice.

16                   **a.     Strength of the mark.**

17           “The stronger the mark, the greater the protection it receives.” [*Entrepreneur*  
18 *Media, Inc. v. Smith*, 279 F. 3d 1135, 1141 (9th Cir.2002)]. A suggestive mark  
19 “requires imagination, thought and perception to reach a conclusion as to the nature of  
20 goods.” [*Surgicenters of Am.,Inc.v.Med. Dental Surgeries*, 601 F. 2d 1011, 1019 (9th  
21 Cir. 1979)].

22           Plaintiff has not alleged how it’s “service mark” won the race to the marketplace  
23 such that they own the exclusive right to use the particular mark. It’s a dartboard!  
24 Here, Plaintiff has not pled facts of its existence in the marketplace, let alone, that it will  
25 likely succeed in establishing that its mark is suggestive. [Complaint ¶¶ 21-23, 32 -37]

26                   **b.     Since There Is No Confusion and Plaintiff can not establish any**  
27                           **of the other *Sleekcraft* factors, the Complaint lacks Merit.**

28           Justice Scalia’s point is spot on regarding the facts of the case at bar because the

1 same actions of *Dastar* apply. The purchaser of Corporation’s “goods and services,”  
2 knows exactly who Corporation is, and that they are not associated with Plaintiff. The  
3 professional quality of Corporation’s business is a difference between day and night  
4 from that of Plaintiff. No reasonable person would confuse the two. “In general,  
5 unless an intellectual property right such as a patent or copyright protects an item, it will  
6 be subject to copying.” [*Dastar*, Ibid.]

7 Even though the evidence is clear that Corporation **did not copy** Plaintiff’s mark  
8 (based on the professional artwork vs. the amateurish marks), the facts in *Dastar* can be  
9 applied to the case at bar because, Plaintiff’s alleged name and marks **were in the**  
10 **“public domain” for approximately 34-years** before Corporation incorporated and  
11 began using the available tradename and generic mark as its own. Plaintiff has failed to  
12 plead facts to allege confusion. [Complaint ¶¶ 21-23, 30-37]

13 Plaintiff has not pled any facts relating to “goods.” Plaintiff does not even sell  
14 goods, only unidentifiable services. [Complaint ¶¶ 21, 32, 41-44]. Nevertheless, the  
15 Court in *Dastar* concluded that “the phrase refers to the producer of the tangible goods  
16 that are offered for sale, and not to the author of any idea, concept, or communication  
17 embodied in those goods.” Plaintiff cannot prevail on their Lanham Act claim and  
18 cannot plead facts to the contrary to save their Complaint.

19 **c. The Public Could Not Possibly be Confused.**

20 Plaintiff has not pled facts regarding the public’s confusion, only improper  
21 conclusions. Plaintiff’s remaining consumers (i.e., approximately two dozen members)  
22 are not confused because they know the difference between the Corporation’s “legal  
23 activity” and Plaintiff’s “illegal activity.” [Complaint ¶¶ 16, 34, 38, 41-44]

24 Moreover, because of the LA Weekly article that Plaintiff attached to the  
25 Complaint, Plaintiff has made a “**clear distinction**” world-wide between the legal owner  
26 of Southern California Darts Association, Inc. and its subsidiaries and the Plaintiff, the  
27 defunct corporation. [Complaint ¶ 13, Exhibit A]

1 Plaintiff's assertion of being afforded complete protection for a "generic" mark as  
2 if it were a strong mark at its inception is without factual basis and merely a conclusion.  
3 [Complaint ¶¶ 25-27]

4 **d. Plaintiff has Failed to Plead Facts to Support a Secondary**  
5 **Meaning or Genericness.**

6 Plaintiff has pled that it has goodwill [Complaint ¶¶ 25-31, 29, 43, 57], yet it fails  
7 to provide any facts to support this conclusion or any extent of damages caused by the  
8 loss of the supposed "good will." Plaintiff's alleged servicemark – a dart board – **is**  
9 **generic**. Even though Plaintiff failed to register its claimed "servicemark," it cannot  
10 prevail on this point under [*Committee for Idaho's High Desert, Inc., v. Yost* 92 F. 3d  
11 814, 822 (9th Cir. 1996) ("Committee")]. Plaintiff has not pled facts as to "What do the  
12 buyers understand by the word for whose use the parties are contending?" [*Magic*  
13 *Wand, Inc. v. RDB, Inc.*, 940 F. 2d (Fed. Cir. 1991)]. A dart board with Plaintiff's name  
14 is merely a geographic description that has not taken on any secondary meaning.<sup>6</sup>

15 Therefore, the Complaint lacks the specificity required under Rule 12(b)(6).

16 **B. PLAINTIFF'S STATE LAW CLAIMS ARE BARRED.**

17 Corporation also argues that Plaintiff's state law counterclaims should be  
18 dismissed with prejudice because it lacks standing here to do so, and has not and cannot  
19 plead the special damages that are required to sufficiently state such claims.

20 On October 26, 2011, Plaintiff filed and obtained a fictitious business name  
21 statement in Los Angeles County, doing business as Los Angeles Darts Association  
22 (Doc. No. 2011122766). [Zaffina Decl. ¶¶ 2, 5, 7]

23  
24  
25 <sup>6</sup> Defendants request that this court take judicial notice of Defendant Southern  
26 California Darts Association, Inc.'s Memorandum Of Points And Authorities In  
27 Opposition To Plaintiff's Request For Preliminary Injunction, Declaration of Dino M.  
28 Zaffina, etc., and in particular the Exhibits attached to Decl. of Zaffina, and pursuant  
F.R.E. Rule 201(b)(c) and though fully set forth herein.

1           **1. Cal. Rev. and Tax Code § 19719(a) and Cal. Bus. Prof. Code § 17918.**

2           Plaintiff has pled in its Complaint that it is an unincorporated association that was  
3 organized in or around Santa Monica in or around 1960; and has pled that it operated  
4 alongside a separate nonprofit corporation **by the same name**. [Complaint. ¶¶ 10, 11]

5           Although, these facts on their face are preposterous, assuming to be true that  
6 Plaintiff is not the defunct corporation, that bears its name, that was suspended by the  
7 FTB for failure to pay taxes, Plaintiff is still barred from maintaining any action, in that  
8 it “*lacks capacity*” because “No person transacting business under a fictitious business  
9 name (Plaintiff) ... may maintain any action ... in the fictitious business name in any  
10 court of this state until the fictitious business name statement has been executed, filed,  
11 and published as required by this chapter....” [§ 17918, Ibid.]

12           Plaintiff has pled that it has been operating for almost five decades under a  
13 fictitious business name. [Complaint ¶¶ 10-12] A thorough search by the County of  
14 Los Angeles Registrar-Recorder/County Clerk’s Office (“RRCC”) for the period of  
15 January 1, 1992 through March 31, 2011 (the period of dead files) indicates “*No record*  
16 *was found of the requested document for Southern California Darts Association.*”  
17 [Zaffina Decl. ¶ 8].

18           **2. Plaintiff’s State Law Claims are Compulsory.**

19           On September 26, 2011, Corporation filed a verified lawsuit against many  
20 individuals affiliated with Plaintiff herein, including Irete, who filed a verified answer.  
21 [Complaint ¶ 20; Zaffina Decl. ¶ 2]. He, nor any other “member,” filed a cross-  
22 complaint alleging the pendent State claims to this Federal complaint. Only defendant,  
23 William F. Lynch (“Lynch”) filed a cross-complaint alleging claims for abuse of process  
24 and civil extortion, **only**. [Zaffina Decl. ¶ 9].

25           “[I]f a party against whom a complaint has been filed and served fails to  
26 allege in a cross-complaint any related cause of action which (at the time of  
27 serving his answer to the complaint) he has against the plaintiff, such party  
28 may not thereafter in any other action assert against the plaintiff the related  
cause of action not pleaded.” [Cal. Code Civ. Pro § 426.30(a)].



1 Plaintiff is the fictitious business of Irete and other defendants in the state action  
2 who have already been served and their answers filed. Plaintiff is not an entity of itself  
3 that Corporation would have named in the state action. At best, Plaintiff is either a 35  
4 year old defunct corporation or an illegal fictitious business. Either way, Corporation  
5 would not have sued an “*empty shell*” in the State action.

6 Therefore, pursuant to Section 426.30, since Irete and/or another defendant in the  
7 state action was required to allege in a cross-complaint any related cause(s) of action  
8 (e.g. Claims 2 thru 5 herein, and even Claim 1) which at the time of serving his answer  
9 to the complaint he has against Corporation, Irete and/or those other defendants may  
10 not, now, in any other action (e.g., the case at bar) assert against the Corporation the  
11 related causes of action not previously pled in the state action.

12 Plaintiff has pled six claims in this federal action, albeit one claim falls under  
13 Federal law (i.e., Claim 1), nevertheless, even that claim could have, and should have,  
14 been asserted in a Cross-Complaint in the State Court. Therefore, at minimum,  
15 Plaintiff’s claims 2 thru 5 should be dismissed with prejudice.

16 **C. PLAINTIFF’S ENTIRE COMPLAINT IS A “SLAPP” SUIT (CAL. CODE**  
17 **CIV. PROC § 425.16)—STEP ONE OF A TWO-STEP PROCESS.**

18 On September 26, 2011, Corporation filed a verified lawsuit against many  
19 individuals affiliated with Plaintiff herein, including Irete. [Complaint ¶ 20; Zaffina  
20 Decl. ¶ 2]

21 On October 26, 2011, Lynch, a member of Plaintiff’s group, filed a Cross-  
22 Complainant in the State action, alleging abuse of process and civil extortion. After a  
23 full briefing and a hearing, the cross-complaint was defeated by an anti-SLAPP motion  
24 that was officially dismissed on January 9, 2012. [Zaffina Decl. ¶ 9]

25 On November 7, 2011, Irete filed a verified answer claiming he “lacks sufficient  
26 information or belief to answer” any of Corporation’s seventy-three (73) averments.  
27 [Zaffina Decl. ¶10]. Now, another member, Irete, is behind this Federal lawsuit filed in  
28 derogation of C.C.P. § 425.16.

1 "A court considering a motion to strike under the anti-SLAPP statute must  
2 engage in a two-part inquiry. First, the defendant must make a prima facie showing that  
3 the plaintiff's suit "arises from an act in furtherance of the defendant's rights of petition  
4 or free speech." *Id.* (internal quotation marks omitted). "Second, once the defendant has  
5 made a prima facie showing, the burden shifts to the plaintiff to demonstrate a  
6 probability of prevailing on the challenged claims." *Id.* (internal quotation marks  
7 omitted). The defendant bringing a motion to strike "need not show that the plaintiff's  
8 suit was brought with the intention to chill the defendant's speech" or "that any speech  
9 was actually chilled." [*Vess v. Ciba-Geigy Corp. USA*, 317 F. 3d 1097, 1110].

10 While SLAPP suits "masquerade as ordinary lawsuits' the conceptual features  
11 which reveal them as SLAPPs are that they are generally meritless suits brought by  
12 individuals or entities to deter citizens from exercising their political or legal rights or to  
13 punish them for doing so." [*Wilcox, Ibid.*]<sup>7</sup>

14 The face of the SLAPP Complaint shows that it is based on protected litigation-  
15 related activity – acts that, even if true, furthered Corporation's right to petition. The  
16 allegation supporting the SLAPP Complaint is the fact that Corporation followed the  
17 proper government procedures, establishing a valid California Corporation, inter alia,  
18 filing the underlying state action against Plaintiff's members and others. By definition,  
19 the SLAPPER's allegations [Comp. ¶¶ 2-6; ¶¶ 16, 18-20] bring its Complaint within the  
20 reach of the anti-SLAPP statute. As such, Plaintiff bears the burden of establishing,  
21 through admissible evidence, a probability of success on the merits. Furthermore,  
22 Corporation is afforded protection under California's broad litigation privilege.

23  
24  
25 <sup>7</sup> "Plaintiff's who bring SLAPP suits do not intend to win their suits; rather, they are  
26 filed solely for delay and distraction, and to punish those who oppose them by  
27 threatening ruinous damages and imposing litigation costs on them for exercising  
28 their constitutional rights of petition and free speech." [*Dixon v. Superior Court*  
(1994) 30 Cal. App. 4th 733]

1 The Federal filing does not pursue any legitimate legal claims. It is untimely,  
2 lacks foundation, and states invalid state law claims that are barred by Section 426.30  
3 [Ibid.]. The Federal filing was brought by a party that is barred by either Section  
4 19719(a) [Ibid.] or Section 17918 [Ibid.]. It is a transparent attempt by Plaintiff to  
5 intimidate, harass, and drive-up the litigation expenses for Corporation—in hopes that it  
6 will deter it from pursuing its right to legal redress. It is precisely the type of situation  
7 that the Legislature envisioned when it enacted the anti-SLAPP statute and its fee award  
8 provisions. [Zaffina Decl. ¶¶ 2, 9, 10, 12].

9 As shown below, the Federal Complaint is a SLAPP suit in the purest form  
10 because it infringes on Corporation’s and Zaffina’s “act(s) in furtherance of a person’s  
11 right of petition or free speech” in derogation of Defendants Corporation and Zaffina’s  
12 rights under the First Amendment.<sup>8</sup>

13 Plaintiff also moves under Rule 12(b)(6) to dismiss Plaintiff’s state law  
14 counterclaims, with prejudice, arguing (1) that all activity alleged against Corporation  
15 and Zaffina are barred as a matter of law by the privilege under Section 47(b) of the  
16 California Civil Code for any communication related to pending and actual litigation,  
17 and (2) that in any case Plaintiffs have not pled and cannot plead special damages,  
18 required to support claims of trade libel or slander of title. [*Rubin v. Green*, (1993) 4  
19 Cal. 4th 1187, 1193].

---

21 <sup>8</sup> An “act in furtherance of a person’s right of petition or free speech” includes:

22 (1) any written or oral statement or writing made before a legislative, executive,  
23 or judicial proceeding, or any other official proceeding authorized by law;

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

27 (3) any written or oral statement or writing made in a place open to the public or a  
28 public forum in connection with an issue of public interest;

(4) or any other conduct in furtherance of the exercise of the constitutional right  
of petition or the constitutional right of free speech in connection with a public issue  
or an issue of public interest. Cal.Civ.Proc.Code § 425.16(e).

1           **1. Any written or oral statement or writing made before a legislative,**  
2           **executive, or judicial proceeding, or any other official proceeding**  
3           **authorized by law.**

4           On January 3, 2011, Corporation, through its incorporator, Zaffina, incorporated  
5 Southern California Darts Association, Inc. The articles of incorporation filed with the  
6 SOS is a writing made before an executive proceeding because the articles create a  
7 contract between the corporation and the state. [§425.16(e)(1), *Ibid.*] [Zaffina Decl. ¶ 3].

8           The act of incorporating Corporation is the same constitutionally protected speech  
9 that the Plaintiff is now alleging to be an illegal act. Corporation acted in furtherance of  
10 its right of petition to the executive branch. Corporation had to petition the SOS for  
11 valid corporate status. The SOS conducted a full investigation and granted Corporation  
12 its “active” corporate status in California.

13           Corporation also filed proper documents with many other government agencies:  
14 (a) *Internal Revenue Service*; (b) *Los Angeles RRCC*; (c) *California Board of*  
15 *Equalization*; (d) *State of Franchise Tax Board*; and (e) *City of Los Angeles Office of*  
16 *Finance*. [Zaffina Decl. Exh. 16]. Corporation’s communications with these agencies is  
17 protected speech. [See *Mindys v. Dakar*, 611 F.3d 590, 596 (9th Cir. 2010) – filing of  
18 trademark application is a protected act.]

19           **2. Any written or oral statement or writing made in connection with an**  
20           **issue under consideration or review by a legislative, executive, or**  
21           **judicial body, or any other official proceeding authorized by law.**

22           Corporation through its President and CEO, Zaffina filed a civil complaint (*Ibid.*)  
23 on behalf of the Corporation for the Court’s consideration of the injunctive relief  
24 sought, as well as, for the four other causes of action that also need judicial review.  
25 [Zaffina Decl. ¶ 2].

26           Corporation’s filing of the complaint is unequivocally protected activity. Section  
27 425.16 covers lawsuits arising out of litigation-related conduct because “[t]he right of  
28 access to the courts is an aspect of the First Amendment right to petition the government

1 for redress of grievances.” This protected activity falls under the first of the Court’s  
2 two-step process of determining whether the defendant has made a threshold showing  
3 that the challenged causes of action arises from protected activity. [*Mindys*, *Ibid.*]  
4 [Section 425.16(e)(2), *Ibid.*]

5 Corporation also filed an anti-SLAPP motion on November 22, 2011, in response  
6 to Lynch’s Cross-Complaint, filed on October 26, 2011. Corporation prevailed in that  
7 action. Prior to the filing of this Federal action, Defendant Corporation successfully  
8 moved to strike another member’s (Lynch) State cross-complaint. [Zaffina Decl. ¶ 9].  
9 The Court granted Corporation’s anti-SLAPP motion and Lynch was ordered to pay  
10 \$4,500.00 in attorney’s fees and \$435.00 in costs. [Zaffina Decl. ¶ 9].

11 **3. Or any other conduct in furtherance of the exercise of the**  
12 **constitutional right of petition or the constitutional right of free speech**  
13 **in connection with a public issue or an issue of public interest.**

14 The anti-SLAPP statute applies to “any written or oral statement or writing made  
15 in connection with an issue under consideration or review by a ... judicial body” and  
16 “any other conduct in furtherance of the exercise of the constitutional right of petition or  
17 constitution right of free speech...” [§ 425.16(e)(2) & (e)(4), *Ibid.*]. Corporation and  
18 Zaffina’s statements made to Vogel is protected activity because the comments fall  
19 under protected speech. This Federal filing occurred after the news article was widely  
20 disseminated. [Complaint ¶ 13, Exhibit A]

21 **D. PLAINTIFF’S PROBABILITY OF SUCCESS ON THE MERITS—STEP**  
22 **TWO OF THE TWO-STEP PROCESS.**

23 To satisfy this second prong, the plaintiff “must show a ‘reasonable probability’  
24 of prevailing in its claims for those claims to survive dismissal.” [*Metabolife Int’l, Inc.*  
25 *v. Wornick*, 264 F. 3d 832, 840 (9th Cir. 2001)]. “The court is to consider “the  
26 pleadings, and supporting and opposing affidavits stating the facts upon which the  
27 liability or defense is based.” [§ 425.16(b)(2), *Ibid.*]. Corporation refers its arguments,  
28 *supra*, regarding the probability of Plaintiff prevailing on its Lanham Act claims.

1           **1. Violation of *Cal. Bus. Prof. Code* § 17200 et seq.**

2           “In order to state a claim for unfair competition under *Cal. Bus. Prof. Code* §  
3 17200, a plaintiff must establish that the defendant’s business practice is ‘either  
4 unlawful (i.e., is forbidden by law), unfair (i.e., harm to victim outweighs any benefit) or  
5 fraudulent (i.e., is likely to deceive members of the public).” [*Albillo v. Intermodal*  
6 *Container Servs, Inc.* (2003) 114 Cal App. 4th 190, 206]

7           Plaintiff fails to provide any facts as to how Corporation is conducting unfair  
8 competition when Corporation is conducting itself in a legal manner. Plaintiff fails to  
9 state facts how Corporation is (a) unlawful, (b) unfair, or (c) conducting fraudulent  
10 business acts or practices and unfair, deceptive, untrue or misleading advertising.

11           After all, Corporation is recognized as a legal business entity by all relevant  
12 federal, state, and local government agencies. Corporation has not been unfair and has  
13 not disseminated any misleading advertising, since everything published is true.

14           Plaintiff’s pleadings are ambiguous as to the particular type of legal claim it  
15 alleges. Plaintiff does not even state a claim how Corporation or Zaffina engaged in  
16 “unauthorized and improper activities” which infringe the unregistered marks. Plaintiff  
17 fails to specify, either in its pleading or by affidavit, facts showing “unauthorized and  
18 improper activities” that “constitute unfair competition” in violation of Section 17200 et  
19 seq. [Complaint ¶ 48]

20           Similarly, Plaintiff has not pled facts supporting its assertion that it has suffered  
21 harm due to loss of distinctiveness, or to support intentional or willful conduct. Plaintiff  
22 does not even attempt to explain how Corporation has conducted itself in an illegal,  
23 unfair, or fraudulent practice. [Complaint ¶¶ 6, 33, 35]

24           **2. Violation of California Common Law for Trademark Infringement.**

25           Plaintiff does not state a claim how Corporation has engaged in acts which  
26 infringe an alleged common law right to a servicemark that has been dead for over 35-  
27 years. [Complaint ¶ 51]. Moreover, Plaintiff has not pled facts supporting its assertion  
28 that it has suffered damages for the dead servicemark. [Complaint ¶ 52]

1           **3. Violation of California Common Law for Unfair Competition.**

2           Plaintiff does not state a claim how Corporation has engaged in unfair  
3 competition which infringes an alleged common law right. Plaintiff has not stated in its  
4 complaint how it has a common law right to its business that it abandoned over 35-years  
5 ago. [Complaint ¶ 54] Similarly, Plaintiff has not pled facts supporting its assertion  
6 that it has suffered harm due to loss of distinctiveness, or to support its (new) claim of  
7 fraud. [Complaint ¶ 55]

8           **4. Violation of Cal. Bus. Prof. Code § 14247.**

9           The first six words in *Cal. Bus. Prof. Code* § 14247 state, “***Subject to the***  
10 ***principles of equity....***” “Equity,” **something that is fair and just.** These are the most  
11 important words in this entire section because they go to the crux of this entire  
12 litigation. That is, whether it is “***fair and just***” to allow a business who has been illegal  
13 for over 35-years, who has done nothing to follow the laws of the city and state for  
14 which it claims to be situated and the United States of America, to come now into a  
15 Court and asked for redress of its grievances.<sup>9</sup>

16           **5. The Scope and Application of the Section 47(b) Privilege Bars Claims.**

17           Section 47(b) protects participants in judicial proceedings from derivative tort  
18 actions based on communications in or regarding the judicial proceeding.” [*Dove*  
19 *Audio, Inc. v. Rosenfeld* (1996) 47 Cal. App. 4th 777, 781-83] (holding that letter to  
20 possible co-claimants seeking support for filing of suit was covered by the privilege).  
21 “A ‘communication preparatory to or in anticipation of the bringing of an action or  
22 other official proceeding [is] within the protection of the litigation privilege of Civil  
23 Code section 47, subdivision (b).’” [Id. at 784; see also *Rubin*, at 1194, Ibid]  
24 (“numerous decisions have applied the privilege to prelitigation communications”).

25 \_\_\_\_\_  
26 <sup>9</sup> Corporation has addressed this issue in Opposition to Preliminary Injunction, page 18  
27 – F. Equitable Defenses – and incorporates these arguments by reference as though  
28 fully set forth herein.


1 “Thus, a communication merely informing a third party of the pendency of this  
2 litigation must clearly fall within the privilege.”

3 It seems clear as a matter of settled California law that the State verified  
4 complaint is subject to the privilege under Section 47(b) for communications “with  
5 ‘some relation’ to judicial proceedings.” [*Rubin* at 1193, *Ibid*].<sup>10</sup>

#### 6 7 IV. CONCLUSION

8  
9 Plaintiff’s Complaint is a SLAPP suit in its purest form. Plaintiff and its  
10 attorneys attest to this fact by the substantive content of the pleadings. Absent  
11 Corporation’s protected activity of filing the proper government documents, the  
12 Verified Complaint, the Press Releases, and conducting an interview with a Internet  
13 publication, Plaintiff would not have the ability or means to file this Federal lawsuit.  
14 Based on the foregoing, Defendant respectfully requests that the Court grant  
15 Defendants’ Motion to Dismiss under FRCP 12(b)(6) and Motion to Strike under  
16 California’s anti-SLAPP law, and to set a motion date to determine the award of  
17 attorney’s fees in favor of Defendant Corporation.

18  
19 DATED: April 4, 2012

20 By:   
21 Robert E. Racine  
22 Robert E. Racine, Esq.  
23 Attorneys for Defendant,  
24 Southern California Darts Association, Inc.

25 <sup>10</sup> “This privilege has been given an ‘expansive reach’ by California courts, as  
26 recognized by the California Supreme Court.” [*Rubin* at 1194, *Ibid*]. “This privilege  
27 affords absolute immunity against tort liability arising out of such a communication,  
28 regardless of attempts by the ‘plaintiff’ to ‘plead around’ this ‘absolute barrier.’”  
[See *id.* at 1201 02]. “Thus, the immunity applies regardless of the particular label  
given to the cause of action (e.g., unfair competition).”