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FILED  
TULARE COUNTY  
SUPERIOR COURT

APR 27 1999

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7  
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10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF TULARE

13 99-186487

14 KAWEAH DELTA HEALTH CARE  
15 DISTRICT

Case No.

16 Plaintiff,

COMPLAINT FOR:

17 v.

1. Breach of Contract
2. Libel
3. Misappropriation of Trade Secrets
4. Unfair competition ✓

18 JOSEPH MOZA, M.D., and DOES 1  
through V, Inclusive,

19 Defendant.

20  
21 Plaintiff, Kaweah Delta Health Care District ("Kaweah") alleges as follows:

22 GENERAL ALLEGATIONS

23 1. Kaweah is, and at all times herein mentioned was, a California Health Care  
24 District, doing business in Visalia, California.

25 2. Defendant, Joseph Moza, M.D., is, and at all times herein mentioned was, an  
26

1 individual who resides and practices medicine in Visalia, California.

2 3. Kaweah is ignorant of the true names and capacities of defendants sued herein as  
3 DOES 1 through V, inclusive, and therefore sues these defendants by such fictitious names.  
4 Kaweah will amend this complaint to allege their true names and capacities when ascertained.  
5 Kaweah is informed and believes and thereon alleges that each of the fictitiously named  
6 defendants is responsible in some manner for the occurrences herein alleged and that Kaweah's  
7 damages as herein alleged were proximately caused by their conduct.  
8

9 **FIRST CAUSE OF ACTION**

10 (Breach of Contract)

11 4. Kaweah incorporates by reference herein the allegations of Paragraphs 1 through  
12 3 above as though set forth in full herein.

13 5. On or about July 1, 1997, Kaweah and Moza entered into a written contract (the  
14 "Contract") whereby Kaweah agreed to process and consider Moza's application for appointment  
15 to the Medical Staff at Kaweah's hospital facility and Moza agreed, among other things, to abide  
16 by the provisions of Kaweah's Medical Staff organization bylaws, including the provision that  
17 requires staff members to keep peer review information and medical staff, department, or  
18 committee minutes, files and records confidential. Moza made this agreement without regard to  
19 whether or not he was appointed to the Medical Staff. A copy of that Contract is attached hereto  
20 as Exhibit "A".  
21

22 6. Kaweah has performed all terms and conditions required of it by the Contract,  
23 including verifying Moza's educational background, licensure, and prior hospital affiliations and  
24 checking his references. During the time this credentialing process was in progress, Moza was  
25  
26

1 afforded temporary Medical Staff privileges at Kaweah's hospital facility.

2 7. On or about September 28, 1998, Moza was notified by the Medical Executive  
3 Committee that in accordance with Section 8.3-1 of the Medical Staff Bylaws, the Medical Staff  
4 had voted to recommend denial of his application for medical staff membership and clinical  
5 privileges. A copy of Section 8.3-1 of the Medical Staff Bylaws is attached hereto as Exhibit "B".  
6

7 8. On or about October 1, 1998, Moza requested a formal hearing in accordance with  
8 the Medical Staff Bylaws and Section 809 of the Business and Professions Code, to contest the  
9 recommendations to deny his application. During the course of the hearing process, Moza was  
10 entitled to obtain and did obtain certain confidential credentials committee, medical executive  
11 committee, and department of surgery meeting minutes and peer review reports.  
12

13 9. On or about September 25, 1998 and again on November 6, 1998, Moza breached  
14 the Contract by disclosing the confidential Medical Staff peer review information to the Joint  
15 Commission for the Accreditation of Healthcare Organizations ("JCAHO") in an improper  
16 attempt to circumvent the hearing and appeal process provided for in the Medical Staff bylaws  
17 and required by Section 809.  
18

19 10. As a direct and proximate result of Moza's breach of the Contract, Kaweah's  
20 reputation has been injured, its ability to conduct peer reviews has been inhibited, and it has  
21 suffered damage to its business prospects all in an amount subject to proof at trial.

22 11. Moza's wrongful conduct in breaching his Contract, and in particular, Kaweah's  
23 Medical Staff bylaws, Article XIII, Paragraph 13.2 (Confidentiality of Information), unless and  
24 until enjoined and restrained by order of this court, will cause great and irreparable injury to  
25 Kaweah's business in that the peer review and medical staffing process will be compromised if  
26

1 participants are not confident that all aspects of the proceedings will be kept confidential.  
2 Without an effective peer review and medical staffing process, Kaweah will not be able to  
3 properly control the quality of medical services being provided to the public and assure high  
4 quality patient care.

5  
6 12. Kaweah has no adequate remedy at law for the injuries which are threatened in that  
7 should Moza receive an adverse recommendation at the hearing held by the Medical Executive  
8 Committee at Kaweah Delta Healthcare District, Moza will continue to breach the Contract by  
9 disclosing confidential Medical Staff peer review information to unauthorized entities and Kaweah  
10 would be required to maintain a multiplicity of judicial proceedings to protect its interests.  
11

12  
13 **SECOND CAUSE OF ACTION**

14 (Trade Libel)

15 13. Kaweah incorporates by reference herein the allegations of Paragraphs 1 through 3  
16 and 5 through 12 above as though set forth in full herein.

17 14. At all times herein mentioned, Kaweah has enjoyed a good reputation for  
18 providing quality medical services and for conducting itself in a fair and professional manner in its  
19 business affairs, including issues relating to hospital Medical Staff privileges and peer review  
20 hearings.  
21

22 15. On or about September 25, 1998, Moza sent a letter to the JCAHO in which he  
23 stated, among other things:

24 I have a very serious problem with Kaweah Delta District Hospital . . .

25 It seems clear that the Medical Staff is abusing its authority because . . .  
26

1 I have established my presence as an effective competition to some of the  
2 most influential surgeons on the staff . . . I am suspicious of the whole  
3 process . . . My case cries out for a serious outside investigation.

4 16. On or about October 6, 1998, Moza sent a letter to the Institute of Medical  
5 Quality in which he stated, among other things: *A. M. M. M.*

6 I am concerned about hiding or making new proctor reports . . . proctoring in this  
7 department is being used politically to exclude and screen out competitors . . .

8 17. The above-described statements are false and are libelous on their face in that they  
9 accuse Kaweah of conducting biased and unfair peer review and medical staffing hearings, and of  
10 withholding and manufacturing evidence.

11 18. Moza's letters were seen and read by staff members of the JCAHO and by at least  
12 one staff member of the Institute of Medical Quality.

13 19. As a proximate result of the above described letters, Kaweah has suffered a loss to  
14 its reputation and has incurred expenses in defending itself all to its damage in an amount subject  
15 to proof at trial.

16 20. The above-described letters were written and sent by Moza with malice and  
17 oppression in that he knew the statements contained therein were false and sent the letters in an  
18 attempt to intimidate Kaweah and influence the outcome of his Medical Staff hearing. Thus,  
19 Kaweah seeks an award of punitive damage.

20 THIRD CAUSE OF ACTION

21 (Misappropriation of Trade Secrets)

22 21. Kaweah incorporates by reference herein the allegations of Paragraphs 1 through  
23  
24  
25  
26

1 3, 5 through 12 and 14 through 20 above as though set forth in full herein.

2 22. At all times herein mentioned, Kaweah was in possession of trade secret  
3 information consisting of its committee meeting agendas, minutes, and notes and peer review  
4 reports.

5 23. Kaweah's trade secret information had and has actual and potential economic  
6 value in that it allows Kaweah to attract the best medical personnel possible and thereby allows  
7 Kaweah to provide the highest quality medical services to members of the public, obtain health  
8 insurance plan contracts, and to attract patient referrals. Kaweah has made reasonable efforts to  
9 insure that its trade secret information remains a secret by requiring all Medical Staff members to  
10 agree to keep the trade secret information confidential and not to disclose it except in certain  
11 limited and necessary circumstances.

12 24. On or about September 25, 1998, Moza breached his contractual duty to keep  
13 Kaweah's trade secret information confidential by disclosing certain credentials committee,  
14 medical executive committee, and department of surgery meeting minutes and peer review reports  
15 to the JCAHO.

16 25. As a proximate result of Moza's disclosure of Kaweah's trade secret information,  
17 Kaweah has suffered damages in an amount subject to proof at trial.

18 26. Kaweah is informed and believes and thereon alleges that the aforementioned acts  
19 of Moza were willful and malicious in that Moza misappropriated Kaweah's trade secret  
20 information with the deliberate intent to injure Kaweah's reputation, to inhibit its ability to  
21 conduct peer reviews, and to damage its business prospects. Kaweah is therefore entitled to  
22 punitive damages. Kaweah is also entitled to its reasonable attorneys fees in bringing this action.  
23  
24  
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26

1 27. Moza's wrongful conduct in misappropriating Kaweah's trade secrets, unless and  
2 until enjoined and restrained by order of this court, will cause great and irreparable injury to  
3 Kaweah's business in that the peer review and medical staffing process will be compromised if  
4 participants are not confident that all aspects of the proceedings will be kept confidential.  
5 Without an effective peer review and medical staffing process, Kaweah will not be able to  
6 properly control the quality of medical services being provided to the public and assure high  
7 quality patient care.

8  
9 28. Kaweah has no adequate remedy at law for the injuries which are threatened in that  
10 should Moza receive an adverse recommendation at the hearing held by the Medical Executive  
11 Committee at Kaweah Delta Healthcare District, Moza will continue to misappropriate the trade  
12 secrets in an effort to explain his denial of privileges to other health care facilities and Kaweah  
13 would be required to maintain a multiplicity of judicial proceedings to protect its interests.  
14  
15

16 **FOURTH CAUSE OF ACTION**

17 (Unfair Trade Practices)

18  
19 29. Kaweah incorporates by reference herein the allegations of Paragraphs 1 through  
20 3, 5 through 12, 14 through 20, and 22 through 28 above as though set forth in full herein.

21 30. Commencing on or about September 1999, Moza committed acts of unfair  
22 competition, as defined by Business & Professions Code § 17200, i.e., acts that are either  
23 fraudulent, unlawful or unfair, in the State of California, by engaging in the following practices,  
24 *inter alia*: violating his contractual duty to maintain Kaweah's committee meeting agendas,  
25 minutes, and notes and peer review reports confidential; misappropriating Kaweah's trade secret  
26

1 information; publishing false and defamatory statements regarding Kaweah's integrity and  
2 business practices, specifically its medical staff hearing process; and attempting to disrupt  
3 Kaweah's medical staff hearing practice by wrongfully involving outside agencies in same.

4  
5 31. The foregoing acts, practices and conduct violate Business & Professions Code  
6 § 17200, i.e., constitute acts of unfair competition, in that they compromise the peer review and  
7 Medical Staff credentialing process. Without an effective peer review and Medical Staff  
8 credentialing process, Kaweah will not be able to properly control the quality of medical services  
9 being provided to the public and assure high quality patient care.

10  
11 32. The harm to Kaweah, and to the members of the general public, outweighs the  
12 utility, if any, of Moza's acts and conduct.

13  
14 33. Moza's unfair methods of unfair competition unless and until enjoined and  
15 restrained by order of this court, will cause great and irreparable injury to Kaweah's business in  
16 that the peer review and medical staffing process will be compromised if participants are not  
17 confident that all aspects of the proceedings will be kept confidential. Without an effective peer  
18 review and medical staffing process, Kaweah will not be able to properly control the quality of  
19 medical services being provided to the public and assure high quality patient care.

20  
21 34. Kaweah has no adequate remedy at law for the injuries currently being suffered in  
22 that Moza will continue to engage in unfair competition unless restrained and enjoined by this  
23 court.

24 WHEREFORE, Kaweah prays for judgment as follows:

25 1. On the First Cause of Action for Breach of Contract:

26 A. For general damages in an amount subject to proof at trial; and

1 B. For special damages in an amount subject to proof at trial.

2 C. For a preliminary injunction, and a permanent injunction, all enjoining  
3 Moza and his agents, servants, and employees, and all persons acting under, in concert with, or  
4 for him, from: engaging in acts or conduct constituting a breach of Moza's Contract with Kaweah  
5 by disseminating, or causing to be made or disseminated in any manner whatever, any confidential  
6 Medical Staff peer review information.  
7

8 2. On the Second Cause of Action for Trade Libel:

9 A. For general damages in an amount subject to proof at trial;

10 B. For special damages in an amount subject to proof at trial;

11 C. For exemplary damages.  
12

13 3. On the Third Cause of Action for Misappropriation of Trade Secrets:

14 A. For general damages in an amount subject to proof at trial;

15 B. For special damages in an amount subject to proof at trial;

16 C. For exemplary damages;

17 D. Reasonable attorneys fees; and  
18

19 E. For a preliminary injunction, and a permanent injunction, all enjoining

20 Moza and his agents, servants, and employees, and all persons acting under, in concert with, or  
21 for him, from: engaging in acts or conduct constituting misappropriation of trade secrets and from  
22 disseminating, or causing to be made or disseminated in any manner whatever, any confidential  
23 Medical Staff peer review information.  
24

25 4. On the Fourth Cause of Action for Unfair Competition:

26 A. For a preliminary injunction, and a permanent injunction, all enjoining

1 Moza and his agents, servants, and employees, and all persons acting under, in concert with, or  
2 for him, from: engaging in acts or conduct constituting unfair competition and from disseminating,  
3 or causing to be made or disseminated in any manner whatever, any confidential Medical Staff  
4 peer review information.

5 5. As to all Causes of Action:

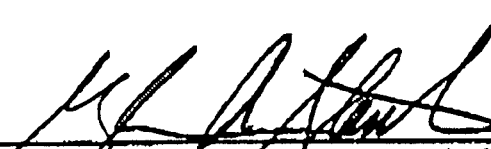
6 A. For costs of suit incurred; and

7 B. For all other relief as the Court may deem necessary and proper.  
8

9  
10 KLOSTER, RUDDLELL, HORNBERG  
11 COCHRAN, STANTON & SMITH, LLP

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13  
14 Dated: April 27, 1999

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 IN AND FOR THE COUNTY OF TULARE

16 KAWEAH DELTA HEALTH  
CARE DISTRICT, )

17 Plaintiff,

18 vs.

19  
20 JOSEPH MOZA, M.D.,  
and DOES 1 through V, Inclusive,

21 Defendant.  
22

Case No. 99-186487

**DEFENDANT JOSEPH MOZA,  
M.D.'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF HIS SPECIAL  
MOTION TO STRIKE THE  
COMPLAINT AS A SLAPP**

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Date: August 6, 1999  
Time: 8:30 a.m.  
Dept.: 7

**FILED BY FAX**

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1 INTRODUCTION

2 This case is a clear example of a SLAPP (Strategic Lawsuit Against Public Participation).  
3 On its face, this lawsuit alleges that it is filed in retaliation for a defendant's attempts to obtain  
4 action from hospital oversight authorities and which seeks a prior restraint to stop the defendant  
5 from communicating with those authorities. It should be dismissed under the anti-SLAPP  
6 statute, because it is based on conduct which is absolutely privileged.

7  
8 I. HISTORY AND CONTEXT OF THE DISPUTE BETWEEN THE PARTIES

9 This SLAPP suit is brought by Kaweah Delta Hospital ("Kaweah"), a public hospital,  
10 against Dr. Joseph Moza ("Dr. Moza"), in retaliation for Dr. Moza's complaints during the  
11 Consolidated Accreditation and Licensure Survey ("CALs survey"). The CALs survey is  
12 conducted by the state Department of Health Services ("DHS") which, pursuant to Health &  
13 Safety Code § 1282, contracts with the Joint Commission on Accreditation of Healthcare  
14 Organizations ("JCAHO") and the Institute for Medical Quality ("IMQ") to participate in the  
15 survey. (Nelson Decl., ¶ 3.) As the DHS contract for the CALs survey states, "from the  
16 standpoint of the State [the purpose of the CALs survey program] is to provide information to  
17 enable the State to determine whether the hospitals inspected are complying with the Health  
18 Facilities Act and regulations thereunder." (Nelson Decl., ¶ 11; see also ¶¶ 6-26.)<sup>1</sup>

19 Dr. Moza's complaints to the CALs survey related to Kaweah's handling of his  
20 application for staff privileges at Kaweah. (Complaint, ¶¶ 16, 24, 30.) Dr. Moza's application  
21 for staff privileges was denied even though he had an exceptional record as a surgeon: 174  
22 major surgeries with no mortality and minimal morbidity. (Blaisdell Decl., ¶¶ 4-7.) Kaweah's  
23 treatment of Dr. Moza has been so outrageous that leading surgeons in the country have  
24 volunteered to help him *pro bono*. (Blaisdell Decl., ¶ 3; Antoine Decl., ¶ 25.) William  
25 Blaisdell, a renowned surgeon, filed a statement, noting that the proceeding was like "witch  
26

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27 <sup>1</sup> Defendant requests that this Court grant judicial notice, pursuant to Evidence Code  
28 sections 452(c) and (h) and 453, of the three exhibits to the declaration of Kathleen Nelson: the  
contract between DHS, JCAHO, and IMQ; JCAHO standards; and CMA's CALs criteria.

1 hunting" and that the meritlessness of the allegations had "destroyed the credibility of [Dr.  
2 Moza's] accusers." (Blaisdell Decl., ¶ 12.) JCAHO has issued to Kaweah a "type 1"  
3 recommendation rating in the credentialing area, meaning that the hospital must correct its errors  
4 in the area of credentialing. (Antoine Decl., ¶ 23 and Exhibit P thereto; on the meaning of a type  
5 1 recommendation, see Ex. B to Nelson Decl., AC-21.)

6 The consequences of a refusal to grant staff privileges in California are very severe.<sup>2</sup> Dr.  
7 Moza's career is being ruined, since he cannot operate at Kaweah, the local public hospital, and  
8 he is being refused staff privileges at additional hospitals. (Moza Decl., ¶ 12.) Kaweah has now  
9 filed this SLAPP to further drain Dr. Moza's resources and to punish him for his complaints  
10 during the CALS survey.

## 11 12 II. DR. MOZA'S ACTIONS ARE COVERED BY THE CALIFORNIA ANTI-SLAPP 13 LAW.

### 14 A. The California Anti-SLAPP Law Was Enacted to Protect the Fundamental 15 Constitutional Rights of Petition and Speech and Is to Be Construed Broadly.

16 In response to the disturbing increase in meritless lawsuits brought "to chill the valid  
17 exercise of the constitutional rights of freedom of speech and petition for the redress of  
18 grievances," in 1992 the Legislature overwhelmingly enacted California's pioneering anti-  
19 SLAPP law, Code of Civil Procedure section 425.16,<sup>3</sup> to protect against these SLAPPs, Strategic

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20  
21 <sup>2</sup> California courts have long recognized that "It is common knowledge ... that in these  
22 modern times a surgeon or physician who is not permitted to practice in a hospital is, as a  
23 practical matter, denied his right to fully practice his profession, the staff privilege being, in  
24 effect, equivalent to a special license." (*Ascherman v. Natanson* (1972) 23 Cal.App.3d 861, 866-  
25 867, quoting *Wyatt v. Tahoe Forest Hospital District* (1959) 174 Cal.App.2d 709.)

26 A doctor is entered into a database. (See Business & Professions Code § 805.) Every  
27 subsequent hospital to which the doctor applies is required to consult the database and therefore  
28 is informed about the averse status of the doctor. (*Id.*) The result is that a doctor loses staff  
privileges or is never granted staff privileges ad seriatim at more and more hospitals, ruining the  
doctor's career forever. (Moza Decl., ¶ 12.)

<sup>3</sup> Statutory section references herein are to the Code of Civil Procedure, unless  
otherwise indicated.

1 Lawsuits Against Public Participation.<sup>4</sup>

2 To invoke the protection of the anti-SLAPP statute, a defendant must merely make a  
3 prima facie showing that section 425.16 applies, by showing that the plaintiff's causes of action  
4 arise from defendant's acts in furtherance of his or her right of petition and/or right of free  
5 speech in connection with a public issue. (§ 425.16, subd. (b)(1);<sup>5</sup> *Wilcox v. Superior Court*  
6 (1994) 27 Cal.App.4th 809, 819-821.)

7 In 1997, the Legislature unanimously amended the statute to expressly require that it be  
8 "construed broadly." (Stats. 1997, ch. 271, § 1.) In response, the Supreme Court has directed  
9 that courts, "whenever possible, should interpret the First Amendment and section 425.16 in a  
10 manner 'favorable to the exercise of freedom of speech, not to its curtailment.'" (*Briggs v. Eden*  
11 *Council for Hope and Opportunity* (1999) 19 Cal.4th 1106, 1119, quoting *Bradbury v. Superior*  
12 *Court* (1996) 49 Cal.App.4th 1170, 1176.)

13 **B. The Allegations of the Complaint.**

14 On the face of the complaint, Dr. Moza is being sued for his petition and speech which is  
15 covered under the anti-SLAPP law. The complaint alleges that:

- 16 • On or about September 25, 1998, and November 6, 1998, Dr. Moza "disclosed ...  
17 confidential Medical Staff peer review information to the Joint Commission for the  
18 Accreditation of Healthcare Organizations ('JCAHO') in an improper attempt to circumvent the  
19 hearing and appeal process provided for in the medical staff bylaws and required by Section  
20

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21 <sup>4</sup> Subdivision (a) of section 425.16 provides: "The Legislature finds and declares that  
22 there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of  
23 the constitutional rights of freedom of speech and petition for the redress of grievances. The  
24 Legislature finds and declares that it is in the public interest to encourage continued participation  
25 in matters of public significance, and that this participation should not be chilled through abuse  
of the judicial process. To this end, this section shall be construed broadly."

26 <sup>5</sup> Subdivision (b) (1) provides: "A cause of action against a person arising from any act of  
27 that person in furtherance of the person's right of petition or free speech under the United States  
28 or California Constitution in connection with a public issue shall be subject to a special motion  
to strike, unless the court determines that the plaintiff has established that there is a probability  
that the plaintiff will prevail on the claim."

1 809." (Complaint, ¶ 9.) The confidential information which Dr. Moza allegedly disclosed to  
2 JCAHO consisted of "certain credentials committee, medical executive committee, and  
3 department of surgery meeting minutes and peer review reports." (*Id.*, ¶ 24.)

4 • On or about September 25, 1998, Dr. Moza sent a letter to JCAHO in which he stated  
5 among other things, that he has "a very serious problem with Kaweah," that "the Medical Staff  
6 abusing its authority" because he is "a competitor," that he is "suspicious of the whole process,  
7 and that his "case cries out for outside investigation." (*Id.*, ¶ 15.)

8 • On or about October 6, 1998, Dr. Moza sent a letter to the Institute of Medical Quality  
9 (IMQ) of the California Medical Association (CMA) in which he stated his belief that proctorin  
10 at Kaweah was "being used politically to exclude and screen out competitors." (*Id.*, ¶ 16; see  
11 also ¶ 30.)<sup>6</sup>

12 Finally, the complaint alleges that, by engaging in the above activity, Dr. Moza defamed  
13 "Kaweah's integrity and business practices, specifically its medical staff hearing process," and  
14 attempted "to disrupt Kaweah's medical staff hearing practice by wrongfully involving outside  
15 agencies in same." (*Id.*, ¶ 30.)

### 16 C. The Anti-SLAPP Statute Applies to this Lawsuit.

17 Subdivision (e) contains illustrations of acts covered under this statute:

18 (e) As used in this section, "act in furtherance of a person's right of petition or free  
19 speech under the United States or California Constitution in connection with a public  
20 issue" includes: (1) any written or oral statement or writing made before a legislative,  
21 executive, or judicial proceeding, or any other official proceeding authorized by law; (2)  
22 any written or oral statement or writing made in connection with an issue under  
23 consideration or review by a legislative, executive, or judicial body, or any other official  
24 proceeding authorized by law; (3) any written or oral statement or writing made in a place  
25 open to the public or a public forum in connection with an issue of public interest; (4) or  
26 any other conduct in furtherance of the exercise of the constitutional right of petition or  
27  
28

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<sup>6</sup> The first allegation, that Dr. Moza disclosed confidential information to JCAHO, is  
24 contained expressly in the first and third causes of action, and is incorporated in the other two by  
25 reference. (Complaint, ¶¶ 9, 24, 13, 21, and 29-30.) The second allegation, regarding Dr.  
26 Moza's letter to JCAHO of September 25, 1998, is contained in the second cause of action, and  
27 is incorporated by reference in the third and fourth. (*Id.*, ¶¶ 15, 21, and 29-30.) The third  
28 allegation, regarding Dr. Moza's letter to IMQ of October 6, 1998, is also contained in the  
second cause of action and incorporated by reference in the third and fourth. (*Id.*, ¶¶ 16, 21, 29-  
30.)

1 the constitutional right of free speech in connection with a public issue or an issue of  
2 public interest.

3 As discussed below, Dr. Moza's alleged communications are covered by at least three of these  
4 subdivisions: (e)(1), (e)(2), and (e)(4).

5 **1. Dr. Moza's Alleged Communications Were Made before an Official  
6 Proceeding Authorized by Law, and Are Covered Under Subdivision  
7 (e)(1).**

8 Kaweah's lawsuit is covered by the anti-SLAPP law because all of the causes of action  
9 arise from Dr. Moza's alleged statements "made before ... any other official proceeding  
10 authorized by law," as provided in subdivision (e)(1) of the anti-SLAPP law.

11 In this case, there are two official proceedings. First, there is Kaweah's administrative  
12 hearing regarding Dr. Moza's application for staff privileges at Kaweah. (Complaint, ¶¶ 5, 7-9.)  
13 Dr. Moza's alleged communications were made to achieve the objects of that proceeding and  
14 they have some connection or logical relation to it. (See *Silberg v. Anderson* (1990) 50 Cal.3d  
15 205, 212.) (See Complaint, ¶¶ 8-9, 15-16.) As discussed below in Part III-A-2, such a public  
16 hospital proceeding on a doctor's application for staff privileges is an "official proceeding  
17 authorized by law" for purposes of Civil Code section 47, subdivision (b) (hereafter, section  
18 47(b)). An official proceeding for purposes of section 47(b) is also an official proceeding for  
19 purposes of the anti-SLAPP law. (*Briggs v. ECHO, supra*, at p. 1121.)

20 Second, there is the hospital accreditation and licensure process, conducted under the  
21 state DHS contract with JCAHO and IMQ, pursuant to Health & Safety Code section 1282. As  
22 discussed below in Part III-A-3, Dr. Moza's alleged communications to JCAHO and IMQ were  
23 made in that process and thus were made in an "official proceeding authorized by law" for  
24 purposes of section 47(b). As just noted, that means they were also made in an official  
25 proceeding for purposes of the anti-SLAPP law.

26 **2. Dr. Moza's Alleged Communications Were Made in Connection With  
27 An Issue Under Consideration or Review by an Official Proceeding  
28 Authorized by Law, and Are Covered Under Subdivision (e)(2).**

Dr. Moza's alleged communications are also covered by subdivision (e) (2) of the anti-  
SLAPP statute, as statements "made in connection with an issue under consideration or review

1 by ... any other official proceeding authorized by law." (Emphasis added.)

2 Dr. Moza's alleged communications were made in connection with issues under  
3 consideration or review, in Kaweah's peer review proceeding, as well as in the  
4 DHS/JCAHO/IMQ oversight of Kaweah, as discussed below in Part III-A-2 and -3. A statement  
5 "in connection with" an official proceeding need not be a statement to the official proceeding.  
6 (*Ludwig v. Superior Court* (1995) 37 Cal.App.4th 8, 14-15; see also *Briggs, supra*, 19 Cal.4th at  
7 pp. 1110, 1114-1117 [private telephone message covered under anti-SLAPP statute as relating to  
8 issues under consideration or review in proceeding]; *Braun, supra*, 52 Cal.App.4th at p. 1046-  
9 1048 [speech relating to issues under consideration in official proceeding covered under  
10 statute].) Subdivision (e)(2) of the anti-SLAPP law covers communications made not just during  
11 an official proceeding, but also those made preparatory to or in anticipation of such a proceeding  
12 (*Dove Audio, supra*, 47 Cal.App.4th at p. 784), as well as those made in connection with it.  
13 (*Lafayette Morehouse v. Chronicle Publishing Co.* (1995) 39 Cal.App.4th 855, 863.)

14 **3. Dr. Moza's Alleged Conduct Was Done in Furtherance of His**  
15 **Constitutional Rights of Petition and of Speech in Connection with a**  
**Public Issue, and Are Covered under Subdivision (e)(4).**

16 Dr. Moza's communications about Kaweah's administrative adjudication of the dispute  
17 regarding his application for medical staff privileges, and his attempts to elicit investigation and  
18 action from DHS, JCAHO and IMQ, also constitute "conduct in furtherance of the exercise of  
19 the constitutional right of petition or of the constitutional right of free speech in connection with  
20 a public issue or an issue of public interest," as provided in subdivision (e) (4) of the anti-SLAPP  
21 law. Although a public issue is not necessary for subdivision (e)(4) to apply to petition-related  
22 activity, the protection of public health and the interest in fair peer review are important public  
23 issues or issues of public interest. (See *Perez v. City of San Bruno* (1980) 27 Cal.3d 875, 890;  
24 *Business & Professions Code § 809(a)*; *Anton v. San Antonio Community Hospital* (1977) 19  
25 Cal.3d 802, 823-825.)

1 **III. PLAINTIFF CANNOT ESTABLISH A PROBABILITY OF PREVAILING ON IT**  
2 **CLAIMS.**

3 Once the defendant makes a prima facie showing that the lawsuit is covered by section  
4 425.16, as Dr. Moza has, to defeat the special motion to strike the plaintiff must establish, by  
5 competent admissible evidence within the personal knowledge of the declarant(s), that there is a  
6 probability that the plaintiff will prevail on its claims. (*Wilcox v. Superior Court, supra*, 27  
7 Cal.App.4th at pp. 819-821, 823-825, 828-830; *Church of Scientology v. Wollersheim* (1996) 42  
8 Cal.App.4th 628, 653-655.) Plaintiff Kaweah can not do so.

9 **A. Defendant Moza's Alleged Communications Are Privileged under the Federal  
and State Constitutions and Civil Code section 47(b).**

10 As discussed below, Dr. Moza's communications to JCAHO and IMQ were absolutely  
11 privileged under the federal and state constitutions and Civil Code section 47(b). This case  
12 involves not one but two acts of petitioning the government. Dr. Moza's act of petitioning  
13 Kaweah, a public entity, for staff privileges, and his use of Kaweah's administrative process, is  
14 the first. Second, Dr. Moza's alleged communications to IMQ and JCAHO were also acts of  
15 petitioning the government.

16 **1. Dr. Moza's Alleged Communications Are Constitutionally Privileged  
17 Petition Activity, under the First Amendment and the California  
Constitution, Art. I, § 3.**

18 According to the United States Supreme Court, petition activity is constitutionally  
19 protected by the First Amendment unless it was "'not genuinely aimed at procuring favorable  
20 government action' at all." (*City of Columbia v. Omni Outdoor Advertising Inc.* (1991) 499 U.S.  
21 365, 380.) Here there can be no doubt that Dr. Moza's intention behind his communications to  
22 JCAHO and IMQ was to spur favorable action by these hospital oversight agencies. (Moza  
23 Decl., ¶ 7.) Equally clear is Kaweah's attempt to silence Dr. Moza, most vividly illustrated by  
24 the prior restraint requested in the form of an injunction to stop that petitioning activity.  
25 (Complaint, Prayer ¶¶ 1C, 3E, & 4A.)

26 Similarly, the California Constitution provides that "The people have the right to ...  
27 petition government for the redress of grievances." (Article I, § 3.) California's constitutional  
28 protections for petition and speech are greater than those in the First Amendment. (*Robins v.*

1 *Pruneyard Shopping Center* (1979) 23 Cal.3d 899, 910.) In California, petitioning statements  
2 are constitutionally entitled to "absolute immunity" when in response to "statutory invitation for  
3 public participation." (*Dixon v. Superior Court* (1994) 30 Cal.App.4th 733, 745.) Here, the  
4 express invitation for public participation is a fundamental part of the CALS survey, which is  
5 conducted by the Department of Health Services, JCAHO, and IMQ, pursuant to Health and  
6 Safety Code section 1282. (Nelson Decl., ¶¶ 3, 23-26.)

7           **2. Dr. Moza's Alleged Communications Were Made in the Course of Staff**  
8           **Privilege Proceedings of a Public Hospital and Are Absolutely**  
9           **Privileged under Civil Code section 47(b).**

10 Civil Code section 47(b) provides in relevant part: "A privileged publication or broadcast  
11 is one made: ... (3) in any other official proceeding authorized by law, or (4) in the initiation or  
12 course of any other proceeding authorized by law and reviewable pursuant to Chapter 2  
13 (commencing with Section 1084) of Title I of Part 3 of the Code of Civil Procedure..."

14 This section 47(b) privilege is absolute and it "applies to any publication required or  
15 permitted by law in the course of" an official proceeding, "even though the publication is made  
16 outside the courtroom" and no function of the official body or its officers is involved. The  
17 communication must be made "to achieve the objects of the [proceeding]" and must "have some  
18 connection or logical relation to the action." (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 212.)  
19 "The only cause of action not subject to the [§ 47(b)] privilege is malicious prosecution."  
20 (*Financial Corporation of America v. Wilburn* (1987) 189 Cal.App.3d 764, 771.)

21 As discussed above, Dr. Moza's alleged communications were made in the course of staff  
22 privilege proceedings of a public hospital. It is well established that these are official  
23 proceedings authorized by law, for purposes of the litigation privilege in Civil Code section  
24 47(b). (*Ascherman v. Natanson* (1972) 23 Cal.App.3d 861, 866-867.)

25 Kaweah is obligated to follow JCAHO standards regarding the staff privileges process.  
26 (See Health & Safety Code § 32128(a)(2).) Thus, Dr. Moza's complaint to JCAHO about  
27 Kaweah's staff privileges procedures, an effort to obtain a fair staff privileges process, has a  
28 connection or logical relation to the staff privileges proceeding. (Moza Decl., ¶ 7.) Therefore,  
Dr. Moza's complaints about Kaweah's staff privileges process to, and request for an

1 investigation by, JCAHO and IMQ are privileged under Civil Code section 47(b)(3) and (4).<sup>7</sup>

2           **3. Dr. Moza's Alleged Communications Were Made to JCAHO and IMQ,**  
3           **Both Official Hospital Oversight Agencies, and Are Absolutely**  
4           **Privileged under Civil Code section 47(b).**

5           The CALS survey and DHS/JCAHO/IMQ hospital oversight are official proceedings  
6 authorized by law and communications made therein are absolutely privileged. (See *Braun v.*  
7 *Bureau of State Audits* (1998) 67 Cal.App.4th 1382, 1388-1391 [confidential investigative audit  
8 is an "official proceeding authorized by law" for purposes of Civil Code § 47(b)]; *Lebbos v.*  
9 *State Bar of California* (1985) 165 Cal.App.3d 656, 668 [informal complaints to the State Bar  
10 are part of "official proceedings" protected by Civil Code § 47(b): "any communication with an  
11 official agency designed to prompt investigation by that agency is absolutely privileged."] )

12           Dr. Moza's communications to JCAHO and IMQ were appropriately intended to invoke  
13 their oversight responsibility with respect to Kaweah's peer review and hearing/appeal process.  
14 (See Complaint, ¶¶ 9, 12, 15-16, 18, 20, 24; Moza Decl., ¶ 7.) The peer review proceeding of a  
15 public hospital is governed by JCAHO standards.<sup>8</sup> In fact, Dr. Moza's complaints apparently led  
16 to JCAHO giving Kaweah a "type 1" recommendation in the area of credentialing performance.  
17 (Antoine Decl., ¶ 23 and Exhibit P thereto; Nelson Decl., Ex. B, p. AC-21.) Therefore, Dr.  
18 Moza's communications to JCAHO and IMQ were absolutely privileged under Civil Code  
19 section 47(b)(3), as attempts to secure official action from DHS, JCAHO and IMQ. (*Dove*  
20 *Audio v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 780 [letter soliciting support  
21 for complaint to attorney general absolutely privileged].)  
22

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23           <sup>7</sup> Dr. Moza's communications are also privileged under Civil Code sections 47(c) and  
24 43.8.

25           <sup>8</sup> JCAHO standards govern medical staff appointment, hearing, and appeal procedures,  
26 and have the force of law. (See Health & Safety Code § 32128(a)(2) [hospital rules must  
27 provide for appointment of medical staff as provided by JCAHO standards]; *Anton v. San*  
28 *Antonio Community Hospital, supra*, 19 Cal.3d at pp. 818-820 & n. 18; see also Business &  
Professions Code § 809.6(a) [parties in peer review proceedings are bound by any applicable  
professional society or medical staff bylaws].)

1           **B. Plaintiff Cannot Show a Probability of Prevailing on Any of Its Causes of**  
2           **Action.**

3           As discussed above, Dr. Moza's communications to JCAHO and IMQ are absolutely  
4 privileged. In addition to and independent of that fundamental flaw in Kaweah's SLAPP,  
5 Kaweah cannot show that it has a probability of prevailing on any of its individual causes of  
6 action, as discussed below.

7           **1. Kaweah's Claim for Breach of Contract Has No Merit.**

8           The completely meritless nature of this lawsuit is underscored by the fact that Kaweah is  
9 suing Dr. Moza for allegedly violating a bylaw which was drafted to expressly permit his  
10 communications to IMQ and JCAHO.

11           **a. Kaweah's Bylaw 13.2-2 Permits Disclosure of Peer Review**  
12           **Information to DHS, IMQ and JCAHO**

13           Bylaw 13.2-2, which Kaweah claims Dr. Moza violated by communicating with JCAHO  
14 and IMQ (see Complaint, ¶¶ 9, 11), is taken verbatim from Bylaw 12.2-2 from the California  
15 Medical Association (CMA) Model Medical Staff Bylaws. The CMA bylaw in question reads:

16           12.2-2 Breach of Confidentiality. Inasmuch as effective peer review and consideration  
17 of the qualifications of Medical Staff members and applicants to perform specific  
18 procedures must be based on free and candid discussions, any breach of confidentiality of  
19 the discussions or deliberations of Medical Staff departments or committees, except in  
20 conjunction with other hospital, professional society or licensing authority, is outside  
21 appropriate standards of conduct for this Medical Staff and will be deemed disruptive to  
22 the operations of the hospital. . . .

23 (Nelson Decl., ¶ 28; emphasis added.)

24           The key language for the purposes of this case is that underlined above, which permits  
25 disclosure of peer review and other medical staff committee information to "other hospital,  
26 professional society or licensing authority." IMQ and JCAHO, as "nonprofit professional  
27 organizations," perform inspections of hospitals as described in Health & Safety Code section  
28 1282. (Nelson Decl., ¶¶ 3, 11.)

          In fact, as explained in the declarations of Cedric Tealer, the Senior Policy Analyst for the  
CMA, and Kathleen Nelson, the Chief Operating Officer at IMQ, this language in CMA's Model  
Medical Staff Bylaws was intended to specifically permit disclosure to JCAHO and IMQ.

(Nelson Decl., ¶ 29; Tealer Decl., ¶ 4.)

1 Disclosure by physicians to DHS, JCAHO, and IMQ, is vitally necessary to preserve the  
2 ability of those organization to perform their accreditation and licensing functions. As stated in  
3 the Tealer and Nelson declarations, organizations like IMQ and JCAHO are staffed by trained  
4 professionals with expertise in such matters, who are prepared to and have a duty to consider  
5 reports of concerns about peer review and credentialing matters and to respond appropriately.  
6 (Nelson Decl., ¶ 30.) Unless this Court interprets the bylaws to permit appropriate disclosure,  
7 "[t]he ability of organizations like IMQ and JCAHO to function appropriately in such matters  
8 would be severely jeopardized unless members of the medical staff, physicians and others are  
9 able to communicate concerns to IMQ and JCAHO without fear of reprisal." (Nelson Decl., ¶  
10 30; Tealer Decl., ¶ 5.) It is an important part of the CALS survey that these organizations  
11 receive complaints from the public and staff members. (Nelson Decl., ¶¶ 23-25.) This Court  
12 should interpret bylaw 12.2 to preserve the continued viability of the CALS survey and the  
13 licensure and accreditation of California hospitals.

14 **b. Kaweah's Interpretation of Its Contract With Dr. Moza Violates**  
15 **The Ethical Rules of The American Medical Association and the**  
16 **California Medical Association**

17 Kaweah is not actually suing Dr. Moza directly for his alleged breach of the medical staff  
18 bylaws, since such a cause of action can only be brought by the medical staff, not the hospital.  
19 (See discussion below.) Kaweah is instead suing for breach of the consent and release form,  
20 which it construes as a contract, which Dr. Moza signed with the hospital. (See Complaint, ¶5.)  
21 That document provides in pertinent part that Dr. Moza agreed to be bound by the bylaws of the  
22 medical staff and "with the principles of medical ethics of the American Medical Association."  
23 (Ex. A to Complaint, ¶ 2.) The ethical rules and policies of the AMA are also binding upon  
24 members of the CMA. (Tealer Decl., ¶ 6.)

25 Cedric Tealer, who interprets the ethical Code and ethical policies of the AMA for CMA,  
26 because the AMA rules are binding on CMA (Tealer Decl., ¶ 1), has explained that "there is  
27 nothing unethical about a physician reporting concerns regarding peer review or credentialing  
28 matters to IMQ, JCAHO or DHS." (Tealer Decl., ¶ 6.) Tealer explains that "if anything, it  
would be unethical to retaliate against a physician for making such a report." (*Id.*) IMQ also

1 states that it is unethical for a hospital to retaliate against a person who complains about a  
2 hospital to IMQ or the CALS survey. (Nelson Decl., ¶ 26.) Accordingly, the contract upon  
3 which Kaweah is allegedly suing Dr. Moza, properly interpreted, prohibits Kaweah's contract  
4 cause of action.

5 c. **Kaweah's Interpretation of the Bylaw is Arbitrary, Capricious,  
6 Illegal and Void as Against Public Policy.**

7 Kaweah's reading of the bylaws should also be rejected by this Court because it is  
8 arbitrary, capricious, illegal and void against public policy. As noted above, California public  
9 hospitals have a duty to conform with JCAHO's standards, which have the force of law for  
10 public hospitals in California. (*Anton, supra*, 19 Cal.3d at p. 820, n. 18; Health and Safety Code  
11 § 32128.) The Legislature has specifically authorized, and the State of California has contracted  
12 for, the CALS survey, which evaluates whether the medical staff's bylaw are being fairly and  
13 uniformly applied. (Nelson Decl., ¶¶ 3, 6-22, and Ex. A thereto.) As part of the survey,  
14 JCAHO, DHS and IMQ have a right to review all medical staff documents and conduct  
15 interviews with the medical staff and the public. (Nelson Decl., ¶¶ 13, 21.)

16 The CALS survey requires hospitals to facilitate those public interviews. (Nelson Decl.,  
17 ¶ 23 and AC 15-17 of Ex. B thereto.) A hospital that fails to facilitate the public  
18 interview/complaint process or which misrepresents pertinent facts may be penalized in the  
19 accreditation process. (Nelson Decl., ¶ 23 and AC 1-16 of Ex. B thereto.)

20 Doctors should be encouraged to report concerns regarding medical care, or unethical  
21 conduct in peer review, to appropriate authorities and to participate in the CALS survey. Such  
22 reports are privileged under California law because they encourage quality patient care. (Civil  
23 Code § 47 (b); *Dorn v. Mendelzon* (1987) 196 Cal.App.3d 933, 941-943.) To facilitate  
24 disclosure, Civil Code section 56.10(2) specifically authorizes physicians to disclose medical  
25 records to accreditation authorities, so long as patient identifying information (*e.g.*, name,  
26 telephone number) is not disclosed. "All contracts which have for their object, directly or  
27 indirectly, to exempt anyone from responsibility for his own . . . willful injury to the person or  
28 property of another, or violation of law. . . are against the policy of the law." (Civil Code §

1 1668.) Accordingly, this Court should reject Kaweah's unreasonable interpretation of the  
2 bylaws as void and against public policy.

3 **2. Kaweah's Claim for Misappropriation of Trade Secrets Has No Merit**

4 Kaweah's trade secret cause of action fails for three additional reasons. First, Kaweah's  
5 trade secret claim is based upon its contract claim. (Complaint, ¶ 24.) The contract claim, as  
6 discussed above, fails by its own terms and is void as against public policy. Second, Kaweah  
7 alleges its trade secret consists of "its committee meeting agendas, minutes and notes and peer  
8 review reports." (Complaint, ¶ 22.) However, these materials are not trade secrets since they do  
9 not derive "independent actual or potential economic value from not being generally known to  
10 the public or to other persons who can obtain economic value from its disclosure or use." (Civil  
11 Code §3426.1(d).) Third, Kaweah does not own the materials it claims are trade secrets.  
12 Hospitals have a dual structure consisting of an administrative governing body and the organized  
13 medical staff. (See *Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1224.) Medical staff  
14 documents are not the property of the hospital -- they are the property of the medical staff, which  
15 is an independent entity by law. (*Santa Rosa Memorial Hospital v. Superior Court* (1985) 174  
16 Cal.App.3d 711, 724 [drawing distinction between information protected as peer review  
17 information in hospital's file], cited with approval in *Alexander, supra*, 5 Cal.4th at p. 1224, n.  
18 8.) The contract Dr. Moza signed with the hospital does not convert the medical staff materials  
19 into the property of the hospital.

20 **3. Kaweah's Claim for Trade Libel Has No Merit.**

21 Kaweah's trade libel claim, its second cause of action, is without merit because Dr.  
22 Moza's allegedly defamatory statements are either:

23 • true (Dr. Moza does have a serious problem with Kaweah, and he is suspicious of the  
24 whole process; compare Moza Decl., ¶ 14, with Complaint, ¶ 15), which eliminates a key  
25 element of the tort of trade libel, falsity (*Leonardini v. Shell Oil Co.* (1989) 216 Cal.App.3d 547,  
26 572) or

27 • protected opinion (that the medical staff is abusing its authority because he is a  
28 competitor, that his case cries out for outside investigation, and that proctoring at Kaweah was

1 being used politically to exclude and screen out competitors). (Complaint, ¶¶ 15-16.) (See  
2 *Dong v. Board of Trustees of Leland Stanford Junior University* (1987) 191 Cal.App.3d 1572,  
3 1585-86 [letter accusing doctor of fraud and deception and calling for a peer group examination  
4 of his behavior was protected opinion].)

5 Further, it is unclear how plaintiff can show actionable intentional disparagement of the  
6 quality of property, which results in special damages in the form of pecuniary loss, required  
7 elements for this tort. (*Witkin, Summary of California Law, Torts*, § 573, p. 668, citing Rest.2d,  
8 Torts §§ 626; *Guess, Inc. v. Superior Court* (1986) 176 Cal.App.3d 473, 479.)

9 **4. Kaweah's Claim for Unfair Competition Has No Merit.**

10 Kaweah's fourth cause of action for unfair trade practices is completely derivative of the  
11 facts alleged in the first three causes of action. It alleges no new facts. (See Complaint, ¶¶ 29-  
12 34.) Therefore, it is as meritless as the first three causes of action on which it is based.

13 **5. All of Kaweah's Claims Fail Because of Kaweah's Failure To Exhaust  
14 Its Judicial and Administrative Remedies**

15 Finally, all of Kaweah's claims fail because of Kaweah's failure to exhaust its judicial  
16 and administrative remedies. Kaweah's only possible claim of injury from Dr. Moza's alleged  
17 discussions with JCAHO and IMQ are that Kaweah received a type 1 recommendation in the  
18 area of credentialing performance in response to Dr. Moza's complaint in the CALS Survey.  
19 (See Antoine Decl., ¶ 23 and Exhibit F thereto; Nelson Decl., Ex. B, p. AC-21.) However,  
20 Kaweah makes no allegation that it has sought to appeal that determination or to have it set aside  
21 through the administrative processes provided by JCAHO, the State Department of Health  
22 Services, or even the Superior Court. Without exhausting its appropriate remedies, Kaweah  
23 cannot sue. (See Health & Safety Code § 1280.5; see also *Westlake Community Hospital v.*  
24 *Superior Court* (1976) 17 Cal.3d 465, 474-478.)

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28 ///

1 **CONCLUSION**

2 For the reasons set forth above, defendant requests that this Court grant his special motion  
3 to strike and dismiss this SLAPP.

4 Dated: July 16, 1999

Respectfully submitted,

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6 Elizabeth E. Bader  
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7 Richard Antoine  
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