

1 THOMAS R. BURKE (CA State Bar No.141930)
JEANNE M. SHEAHAN (CA State Bar No. 253875)
2 DAVIS WRIGHT TREMAINE LLP
505 Montgomery Street, Suite 800
3 San Francisco, California 94111
Telephone: (415) 276-6500
4 Facsimile: (415) 276-6599
Email: thomasburke@dwt.com
5 jeannesheahan@dwt.com

6 BRUCE E. H. JOHNSON (CA State Bar No. 159927)
DAVIS WRIGHT TREMAINE LLP
7 1201 Third Avenue, Suite 2200
Seattle, Washington 98101-3045
8 Telephone: (206) 757-8069
Facsimile: (206) 757-7069
9 Email: brucejohnson@dwt.com

10 Attorneys for Defendants
CalCoastNews/Uncovered SLO,
11 Karen Velie and Daniel Blackburn

12
13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 IN AND FOR THE COUNTY OF SAN LUIS OBISPO
15 UNLIMITED JURISDICTION

16 CHARLES TENBORG, an individual,) Case No. CV 130237
17)
Plaintiff,) **NOTICE OF DEFENDANTS' SPECIAL**
18) **MOTION TO STRIKE AND SPECIAL**
v.) **MOTION TO STRIKE UNDER ANTI-**
19) **SLAPP STATUTE (CCP § 425.16);**
CALCOASTNEWS/UNCOVEREDSLO.COM) **MEMORANDUM OF POINTS AND**
20) **AUTHORITIES; DECLARATIONS OF**
CalCoastNews, KAREN VELIE, an individual,) **KAREN VELIE WITH EXHIBITS A-E,**
21) **DOUGLAS DOWDEN WITH EXHIBITS**
DANIEL BLACKBURN, an individual, and) **A-E; AND JEANNE M. SHEAHAN WITH**
DOES 1-10,) **EXHIBIT A**
22)
Defendants.)
23) Complaint Filed: May 10, 2013
24) Hearing: October 16, 2013
25) Time: 9 a.m.
26) Dept. 1
27)
28)

1 TO PLAINTIFF AND TO HIS COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE THAT on October 16, 2013, at 9 am, or as soon thereafter as the
3 parties may be heard in Department 1, located at 1050 Monterey Street, San Luis Obispo,
4 California 93408, defendants CALCOASTNEWS/ UNCOVEREDSLO.COM, KAREN VELIE,
5 and DANIEL BLACKBURN (collectively, "Cal Coast News") will and do hereby move this
6 Court, pursuant to California's anti-SLAPP statute, Code of Civil Procedure § 425.16, for an order
7 striking Plaintiff Charles Tenborg's Complaint for Libel ("Complaint") in its entirety with
8 prejudice.¹

9 Plaintiff's Complaint alleges one claim against Cal Coast News for libel. Because this
10 claim arises from Cal Coast News' exercise of its free speech rights – specifically from
11 publication of its November 14, 2012, article, entitled "Hazardous waste chief skirts law" (the
12 "Article"), about Eco Solutions' illegal handling of hazardous waste – the entire Complaint is
13 subject to a special motion to strike under Code of Civil Procedure Section 425.16(e)(2)-(e)(4).
14 Consequently, the burden shifts to Plaintiff to present evidence establishing a probability that he
15 will prevail on his claim. *See* Code of Civ. Proc. § 425.16(b)(1). He cannot meet his burden
16 under Section 425.16 on each of the following independent grounds:

17 1. Plaintiff's libel claim against Cal Coast News is barred by the statutory and
18 constitutional privileges for "fair and true" reports about government records and proceedings (Civ.
19 Code § 47(d)), because the statements at issue were a fair and accurate report of information that
20 Plaintiff's company, Eco Solutions was "no longer licensed to haul" hazardous waste for the City
21 of San Luis Obispo made at a public meeting. This information is confirmed by a public record of
22 the minutes of the meeting – that was provided to the Cal Coast News by then senior City of San
23 Luis Obispo ("City" or "City of San Luis Obispo") employee, Douglas Dowden. For the same
24 reason, the reporting is also absolutely protected under Civil Code Section 47, subdivisions (b) and
25 (e).

26 2. Plaintiff's libel claim is barred under the First Amendment of the United States
27

28 ¹ Defendants' motion was scheduled by the Court for the earliest available hearing date, based on
its docket conditions. Declaration of Jeanne M. Sheahan ("Sheahan Decl.") ¶ 2.

1 Constitution and California's state Constitution because the statements complained of are literally
2 or substantially true.

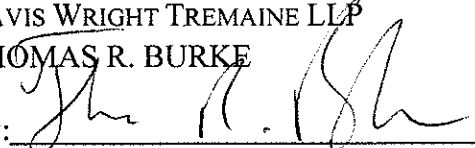
3 3. Plaintiff's libel claim is barred because a majority of the alleged defamatory
4 statements are not "of and concerning" Plaintiff as is required by the First Amendment.

5 4. Several of the statements complained about in Plaintiff's Complaint are not
6 reasonably susceptible to a defamatory meeting and cannot provide the basis for a defamation
7 claim.

8 For each of these reasons, Plaintiff cannot meet his burden under Section 425.16(b)(1) of
9 demonstrating a "probability of prevailing" on his claims and thus his Complaint for Libel must be
10 stricken in its entirety. Pursuant to Section 425.16(c), Cal Coast News is also entitled to recover
11 its attorneys' fees and costs incurred in this action.²

12 Cal Coast News' Motion is based on this Notice; on the attached Memorandum of Points
13 and Authorities; on the Declarations of Karen Velie with Exhibits A – F; Douglas Dowden with
14 Exhibits A – E; and Jeanne M. Sheahan with Exhibit A; on all matters of which this Court may
15 take judicial notice; on all pleadings, files, and records in this action; and on such other argument
16 as may be received by this Court at the hearing on this motion.

17 DATED: September 12, 2013

18 DAVIS WRIGHT TREMAINE LLP
19 THOMAS R. BURKE
By: 
20 Thomas R. Burke

21 Attorneys for Defendants
22 CalCoastNews/Uncovered SLO,
23 Karen Velie and Daniel Blackburn

24
25
26
27 ² Code of Civil Procedure Section 425.16(c) mandates that the prevailing defendant on an anti-
28 SLAPP motion "shall" recover its attorneys' fees and costs. If the Court grants this Motion, Cal
Coast News will file a separate fee motion. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1131-1132
(2001).

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

TABLE OF CONTENTS

	Page
I. SUMMARY OF ARGUMENT AND INTRODUCTION.....	1
II. FACTUAL BACKGROUND	3
III. SECTION 425.16 APPLIES TO PLAINTIFF’S LIBEL COMPLAINT BECAUSE IT ARISES FROM CAL COAST NEWS’ FREE SPEECH ACTIVITIES	5
A. The Anti-SLAPP Statute Is Applied Broadly To Protect Free Speech Activities.....	5
B. This Lawsuit Arises From Cal Coast News’ Free Speech Activities	6
C. The Challenged Article Is Expressly Protected By The Anti- SLAPP Statute.....	6
IV. PLAINTIFF CANNOT DEMONSTRATE A PROBABILITY OF PREVAILING ON HIS LIBEL ACTION AGAINST CAL COAST NEWS.....	7
A. The Cal Coast News Article Is Privileged Under California Civil Code Section 47.	8
B. The Article Is Substantially True And Therefore Protected By The United States And California Constitution	12
C. Because Many Of The Statements At Issue Are Not “Of And Concerning” Plaintiff, His Libel Claim Is Barred By The First Amendment	13
D. Several Statements Are Not Reasonably Susceptible To A Defamatory Meaning And Cannot Provide The Basis For Plaintiff’s Libel Claim.....	14
V. CONCLUSION	15

TABLE OF AUTHORITIES

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

Page(s)

Cases

Barger v. Playboy Enterprises,
564 F. Supp. 1151 (N.D. Cal. 1983) 13

Blatty v. New York Times Co.,
42 Cal.3d 1033 (1986)..... 13

Braun v. Chronicle Publ’g Co.,
52 Cal. App. 4th 1036 (1997)..... 5, 6

Briggs v. Eden Council,
19 Cal.4th 1106 (1999)..... 5

Carver v. Bonds,
135 Cal. App. 4th 328 (2005)..... 6, 12

Collins v. City of Philadelphia,
Civ. A. No. 91-3729, 1993 WL 40309 (E.D. Pa. Feb. 12, 1993)..... 14

Colt v. Freedom Comm’n,
109 Cal. App. 4th 1551 (2003)..... 2, 9, 11

Cox Broadcasting v. Cohn,
420 U.S. 469 (1975) 10

Damon v. Ocean Hills Journalism Club,
85 Cal. App. 4th 468 (2000)..... 7

Davis v. Ross,
754 F.2d 80 (2d Cir. 1985)..... 14

Dorsey v. National Enquirer, Inc.,
973 F.2d 1431 (9th Cir. 1992)..... 9, 10, 11

Dove Audio, Inc. v. Rosenfeld, Meyer & Sussman,
47 Cal. App. 4th 777 (1996)..... 6

DTSC v. Superior Court,
44 Cal. App. 4th 1418 (1996)..... 7

DuPont Merck Pharm. Co. v. Superior Court,
78 Cal. App. 4th 562 (2000)..... 7

Equilon Enterprises v. Consumer Cause,
29 Cal.4th 53 (2002)..... 8

1	<i>Fairbanks Publ'g Co. v. Pitka,</i>	
2	376 P.2d 190 (Alaska 1962).....	14
3	<i>Florida Star v. BJF,</i>	
4	491 U.S. 524 (1989).....	10
5	<i>Francis v. Dun & Bradstreet,</i>	
6	3 Cal. App. 4th 535 (1992).....	12
7	<i>Gates v. Discovery Communications, Inc.,</i>	
8	34 Cal.4th 679 (2005).....	10
9	<i>Green v. Cortez,</i>	
10	151 Cal. App. 3d 1068 (1984).....	10
11	<i>Handelsman v. San Francisco Chronicle,</i>	
12	11 Cal. App. 3d 381 (1970).....	8
13	<i>Hawran v. Hixon,</i>	
14	209 Cal. App. 4th 256 (2012).....	14
15	<i>Hayward v. Watsonville Register-Pajaronian,</i>	
16	265 Cal. App. 2d 255 (1968).....	9, 11
17	<i>Jennings v. Telegram-Tribune Co.,</i>	
18	164 Cal. App. 3d 119 (1985).....	2, 9, 11
19	<i>Kennedy v. Jennelle,</i>	
20	1993 WL 12826 (E.D. Pa. Jan. 15, 1993).....	14
21	<i>Kilgore v. Younger,</i>	
22	30 Cal.3d 770 (1982).....	8
23	<i>Lesperance v. North Am. Aviation, Inc.,</i>	
24	217 Cal. App. 2d 336 (1963).....	14
25	<i>Ludwig v. Superior Court,</i>	
26	37 Cal. App. 4th 8 (1995).....	7
27	<i>Masson v. New Yorker Magazine,</i>	
28	501 U.S. 496 (1991).....	12
29	<i>McClatchy Newspapers v. Superior Court,</i>	
30	189 Cal. App. 3d 961 (1987).....	8, 10
31	<i>Navellier v. Sletten,</i>	
32	29 Cal.4th 82 (2002).....	5
33	<i>New York Times Co. v. Sullivan,</i>	
34	376 U.S. 254 (1964).....	13

1	<i>Paterno v. Superior Court,</i>	
2	163 Cal. App. 4th 1342 (2008).....	10, 11
3	<i>Philadelphia Newspapers, Inc. v. Hepps,</i>	
4	475 U.S. 767 (1986).....	6
5	<i>Reader's Digest Ass'n v. Superior Court,</i>	
6	37 Cal.3d 244 (1984).....	9, 11
7	<i>Reeves v. American Broadcasting Cos.,</i>	
8	719 F.2d 602 (2d Cir. 1983).....	9
9	<i>Ringler Assocs. v. Maryland Casualty Co.,</i>	
10	80 Cal. App. 4th 1165 (2000).....	12
11	<i>Robertson v. Rodriguez,</i>	
12	36 Cal. App. 4th 347 (1995).....	8
13	<i>Rosenblatt v. Baer,</i>	
14	383 U.S. 75 (1966).....	13
15	<i>Sipple v. Found for Nat'l Progress,</i>	
16	71 Cal. App. 4th 226 (1999).....	8, 9, 11
17	<i>Smith v. Maldonado,</i>	
18	72 Cal. App. 4th 637 (1999).....	14
19	<i>Taus v. Loftus,</i>	
20	40 Cal.4th 683 (2007).....	8
21	<i>Traditional Cat Ass'n, Inc. v. Gilbreath,</i>	
22	118 Cal. App. 4th 392 (2004).....	7
23	<i>Williams v. Daily Review, Inc.,</i>	
24	236 Cal. App. 2d 405 (1965).....	12
25	Statutes	
26	C.C.P. § 425.16	passim
27	C.C.P. § 425.16(b)(1).....	5, 7
28	C.C.P. § 425.16(c).....	15
	C.C.P. § 425.16(e).....	2
	Cal. Civ. Code § 47	2, 8
	Cal. Civ. Code § 47(b)	2, 12

1 Cal. Civ. Code § 47(d) 2, 8, 9, 10
2 Cal. Civ. Code § 47(e)..... 2, 12
3 **Other Authorities**
4 Article I, § 2 of the California Constitution 10
5 First Amendment..... passim
6 Fourteenth Amendment..... 10
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF ARGUMENT AND INTRODUCTION**

3 Plaintiff Charles Tenborg, a manager and handler of hazardous waste through his
 4 company, Eco Solutions, brought this libel lawsuit to punish and silence Cal Coast News for
 5 truthfully reporting that Eco Solutions was unlicensed to handle hazardous waste in the City and
 6 County of San Luis Obispo. Fortunately, Cal Coast News' reporting is protected by absolute
 7 privileges as a matter of law. Karen Velie, a reporter for Cal Coast News, accurately reported on
 8 information that she uncovered from public records and interviews with persons with intimate
 9 knowledge of Eco Solutions and its work on behalf of the City. More than half the Article is not
 10 even *about* Plaintiff, but is instead about other persons and entities involved in hazardous waste
 11 transportation and regulation in the City and County of San Luis Obispo, including the Integrated
 12 Waste Management Authority ("IWMA"); William Worrell, manager of the IWMA, and the City
 13 of San Luis Obispo, who have not sued and are not parties to this action. Only Plaintiff targeted
 14 Cal Coast News' exercise of its free speech rights in this classic retaliatory lawsuit squarely barred
 15 by California's anti-SLAPP statute.

16 Cal Coast News' reporting is absolutely privileged as a matter of law under the Civil Code
 17 because it accurately reported on the unlawful transportation of hazardous waste by Eco Solutions,
 18 Plaintiff's company – a charge indisputably documented by minutes of the Stormwater
 19 Management Team Meeting as revealed to Ms. Velie by Douglas Dowden, a former top City of
 20 San Luis Obispo official with oversight responsibilities of hazardous waste in the City. Mr.
 21 Dowden attended the City meeting where Plaintiff's company's unlicensed status was openly
 22 discussed. Plaintiff seeks to punish Cal Coast News for bringing a public spotlight on this
 23 wrongful activity. Settled legal protections exist to protect Cal Coast News from those, like
 24 Plaintiff, who seek to punish the media for exposing such misconduct.

25 To grant Cal Coast News' special motion to strike and dismiss Plaintiff's Complaint, this
 26 Court need not become an environmental sleuth and decide whether Plaintiff was handling
 27 hazardous waste without a license or reassess whether Plaintiff and Eco Solutions violated the
 28 complex patchwork of state and federal environmental regulations. This Court need only uphold

1 the long-standing First Amendment defense for substantially true statements or the absolute
2 privileges recognized in Civil Code Section 47 subdivisions (b) (d), and/or (e) that the media
3 enjoys to report on public official records, proceedings, and matters for the public benefit as well
4 as apply settled principles of constitutional law that protect this kind of vital news reporting that
5 Plaintiff here seeks to silence. *Colt v. Freedom Comm'n*, 109 Cal. App. 4th 1551, 1558 (2003);
6 *Jennings v. Telegram-Tribune Co.*, 164 Cal. App. 3d 119, 125 (1985).

7 Cal Coast News' special motion to strike should be granted and Plaintiff's Complaint
8 summarily dismissed for the following reasons. As a media defendant being sued for its news
9 reporting, Cal Coast News easily satisfies its initial burden under the anti-SLAPP statute of
10 showing that Plaintiff's claims arise from protected speech or conduct. Cal. Civ. Proc. Code §
11 425.16, subs. (e)(2), (e)(3) and/or (e)(4). Thus, the burden shifts to Plaintiff to demonstrate a
12 probability of prevailing on his libel claim. If Plaintiff cannot do so, his Complaint must be
13 stricken. In this case, Plaintiff cannot meet that burden because the Cal Coast News Article is
14 protected by a variety of constitutional and statutory defenses.

15 *First*, Cal Coast News' reporting is protected by the absolute privileges found in Civil
16 Code Section 47. The Article is protected by the fair and true reporting of official proceedings
17 found in Civil Code Section 47(d) and the First Amendment, which provide an absolute privilege
18 for any "fair and true report" of information about public official proceedings or public records.
19 The Cal Coast News Article accurately reported statements made about Eco Solutions being
20 unlicensed to transport hazardous waste made by a public official during a Stormwater
21 Management Team meeting on January 12, 2010 and the records of this City meeting. Cal Coast
22 News' publication of this information was indisputably a "publication" in an "official proceeding"
23 under subdivision (b) and/or "for the public benefit" under subdivision (e) of Civil Code § 47.
24 Section IV.A., *infra*.

25 *Second*, the First Amendment absolutely protects Cal Coast News from liability because
26 the information reported about Plaintiff is true. The constitutional requirement that a libel plaintiff
27 prove the falsity of any factual statements about them mandates that plaintiff establish a material
28 inaccuracy. Nothing about the Article was factually inaccurate as is reflected in the declarations

1 attached hereto. Plaintiff therefore has not -- and cannot -- satisfy his burden to show that the
 2 Article was provably false, and his action should be stricken for this additional reason. Section
 3 IV.B., *infra*.

4 *Third*, Statements 2-4, 5, 7-8, and 10-11 challenged by Plaintiff must be dismissed because
 5 these particular statements are not “of and concerning” Plaintiff and, as such, they are protected by
 6 settled First Amendment precedent as a matter of law.³ Section IV.C., *infra*.

7 *Fourth*, Statements 1-4, 5, 7-8, and 10-11 challenged by Plaintiff must be dismissed for the
 8 independent reason that they are not reasonably susceptible to a defamatory meaning. Section
 9 IV.D., *infra*.

10 For all of these reasons, this Court should grant Cal Coast News’ special motion to strike,
 11 dismiss this lawsuit with prejudice, and award Cal Coast News its attorneys’ fees for having to
 12 defend this meritless action.

13 II. FACTUAL BACKGROUND

14 During the fall of 2011, Cal Coast News reporter, Karen Velie, began to investigate issues
 15 with illegal dumping occurring in the City and County of San Luis Obispo based on tips she had
 16 received. Declaration of Karen Velie (“Velie Decl.”) ¶ 4. Over the course of a year, she learned
 17 about the process for handling hazardous waste in California. *Id.* She read a large volume of City
 18 and County of San Luis Obispo documents; analyzed records on the County of San Luis Obispo
 19 IWMA website; studied manifests from the City and California Department of Toxic Substances
 20 Control (“DTSC”); reviewed records at the IWMA office that included audits, budgets, contracts,
 21 and meeting minutes; and interviewed about a dozen individuals, including officials at the DTSC,
 22 IWMA and the City and County of San Luis Obispo and other individuals who are knowledgeable
 23 about the handling of hazardous waste. *Id.* ¶ 4, Exs. A, B, D-F. She also interviewed Plaintiff,
 24 William Worrell head of the IWMA, and employees of Eco Solutions, Plaintiff’s company. *Id.* ¶¶
 25 4, 14-15

26 As her investigated unfolded, she discovered numerous acts of wrongdoing by Mr.

27 _____
 28 ³ For the convenience of the Court, attached to the Declaration of Jeanne M. Sheahan as Exhibit A
 is a chart reflecting the challenged statements identified in Plaintiff’s Complaint (¶ 9(a)-(j)) in the
 order they appear in the Complaint.

1 Tenborg and his company, Eco Solutions. *Id.* ¶¶ 7-13. Ms. Velie interviewed a variety of people,
2 including Douglas Dowden, a top employee at the City of San Luis Obispo with oversight
3 responsibilities for hazardous waste management at the City. *Id.* ¶ 9; Declaration of Douglas
4 Dowden (“Dowden Decl.”) ¶¶ 4-8. He told her that starting in 2005, he led the effort to get the
5 City into compliance with state and federal hazardous waste regulations. Dowden Decl. ¶¶ 7-8,
6 Velie Decl. ¶ 9. He selected Eco Solutions and Charles Tenborg to transport hazardous waste
7 based on the recommendations of Mr. Worrell, head of the IWMA. Dowden Decl. ¶ 8, Velie
8 Decl. ¶ 9. Mr. Dowden told Ms. Velie that for years, the City used Eco Solutions to transport
9 hazardous waste all of the while under the impression that Eco Solutions was properly licensed.
10 Dowden Decl. ¶¶ 9-10, Velie Decl. ¶¶ 9-10. Mr. Dowden told Ms. Velie that in January of 2010,
11 he attended a Stormwater Management Team Meeting with other City officials where it was
12 revealed by another city employee, Kerry Boyle, that Eco Solutions was not handling hazardous
13 waste with the proper permits. Dowden Decl. ¶ 10, Velie Decl. ¶ 10. Mr. Dowden gave Ms. Velie
14 a copy of notes from the meeting that specifically noted: “Eco-Solutions no longer licensed to
15 haul” Dowden Decl. ¶ 10, Ex. A; Velie Decl. ¶ 10, Ex. C. City employee, Kerry Boyle, also
16 said at this meeting that Eco Solutions was improperly classifying entities as exempt small
17 quantity waste generators without the proper authority. Dowden Decl. ¶¶ 9, 12-17, Exs. B-E.

18 Mr. Dowden told Ms. Velie he was shocked by this because he knew based on invoices he
19 had been reviewing that the City was paying Eco Solutions \$1,500 to \$3,000 per load to transport
20 hazardous waste, including hazardous waste from homeless encampments, and it had been
21 transporting hazardous waste for the City for years. Dowden Decl. ¶¶ 9, 11; Velie Decl. ¶ 9. Mr.
22 Dowden explained to Ms. Velie that Eco Solutions was improperly filling out IWMA forms to
23 designate the City as a small quantity hazardous waste generator, which would exempt an entity
24 from certain reporting requirements. Dowden Decl. ¶¶ 9, 12-17; Exs. B-E; Velie Decl. ¶ 12. Ms.
25 Velie also reviewed the manifest and other documents she received from her request to the City.
26 Velie Decl. ¶ 11. One of these documents showed Mr. Tenborg himself was collecting and
27 transporting hazardous waste in early 2010, the precise time period when Mr. Dowden stated Eco
28 Solutions was not licensed. Velie Decl. ¶ 11, Ex. D.

1 The Article reveals only a small fraction of the information Ms. Velie intended to publish
 2 in a series of articles about hazardous waste practices in the community. *Id.* ¶ 6. This lawsuit
 3 sought to silence her before further articles could appear.

4 **III. SECTION 425.16 APPLIES TO PLAINTIFF'S LIBEL COMPLAINT BECAUSE IT**
 5 **ARISES FROM CAL COAST NEWS' FREE SPEECH ACTIVITIES**

6 **A. The Anti-SLAPP Statute Is Applied Broadly To Protect Free Speech Activities**

7 In 1992, the Legislature enacted Section 425.16 to check a “disturbing increase” in suits
 8 that “chill the valid exercise of the constitutional right[] of freedom of speech,” and “to nip
 9 SLAPP litigation in the bud[,]” by quickly disposing of claims that target the exercise of free-
 10 speech rights. *Braun v. Chronicle Publ'g Co.*, 52 Cal. App. 4th 1036, 1042 (1997). Any “cause
 11 of action against a person arising from any act ... in furtherance of the person’s right of ... free
 12 speech ... in connection with a public issue shall be subject to a special motion to strike, unless . .
 13 . the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.”
 14 C.C.P. § 425.16(b)(1). In 1997, reacting to court rulings that interpreted the statute narrowly, the
 15 Legislature amended Section 425.16 to ensure that it “shall be construed broadly.” C.C.P.
 16 § 425.16(a)(1). The Supreme Court has declared that this “broad construction . . . is desirable
 17 from the standpoint of judicial efficiency,” and has cautioned “that [a narrow construction] would
 18 serve Californians poorly.” *Briggs v. Eden Council*, 19 Cal.4th 1106, 1121-1122 (1999).

19 A two-step process is followed to determine whether a cause of action must be stricken
 20 under Section 425.16. *Navellier v. Sletten*, 29 Cal.4th 82, 88 (2002). “First, the court decides
 21 whether the defendant has made a threshold showing that the challenged cause of action is one
 22 arising from protected activity.” *Id.* To make this showing, the defendant must demonstrate that
 23 the plaintiff’s claim arises from actions by the defendant that “fit[] one of the categories spelled
 24 out in section 425.16, subdivision (e).” *Id.* Once this threshold requirement is satisfied, in the
 25 second step the burden shifts to plaintiff to establish, with competent evidence, “a probability that
 26 [plaintiff] will prevail on the claim[s].” C.C.P. § 425.16(b)(1). If a plaintiff cannot meet that
 27 burden, the court must dismiss their lawsuit with prejudice. *Id.*

28 In this case, as is demonstrated below, Cal Coast News easily meets its burden of showing

1 that this lawsuit arises from its exercise of protected speech activities and Plaintiff cannot meet his
2 burden of establishing a probability of prevailing on his claim.

3 **B. This Lawsuit Arises From Cal Coast News' Free Speech Activities**

4 Plaintiff's lawsuit against Cal Coast News easily fits within the scope of the anti-SLAPP
5 statute because Plaintiff's libel claim arises solely based on reporting about illegal hazardous
6 waste transportation in the City and County of San Luis Obispo and the central role of Plaintiff's
7 company, Eco Solutions, and Plaintiff in this activity. This reporting involves the quintessential
8 exercise of Cal Coast News' free speech rights and is plainly protected by controlling United
9 States Supreme Court and California appellate authority. *See, e.g., Philadelphia Newspapers, Inc.*
10 *v. Hepps*, 475 U.S. 767, 775-776 (1986) (equating news reporting with free speech); *see also*
11 *Braun*, 52 Cal. App. 4th at 1046 ("news reporting activity is free speech" for purposes of applying
12 § 425.16).⁴

13 **C. The Challenged Article Is Expressly Protected By The Anti-SLAPP Statute**

14 The Article challenged by Plaintiff that was published by Cal Coast News plainly falls
15 within the scope of the anti-SLAPP statute. *First*, under subsection 425.16(e)(2), the statute
16 applies to "any written . . . statement . . . made in connection with an issue under consideration or
17 review" by an official proceeding. News reports on pending proceedings have uniformly been
18 held to come under this provision.⁵ Here, Plaintiff's Complaint challenges the Cal Coast News
19 reporting about the illegal handling of hazardous waste by Eco Solutions that was the topic of a
20 San Luis Obispo Stormwater Management Team Meeting. Dowden Decl. ¶ 10, Ex. A; Velie Decl.
21 ¶ 10, Ex. C; *see, e.g.,* Complaint at ¶ 9(b)-(f). As a result, the Article unquestionably falls within
22 the ambit of Section 425.16(e)(2).

23 *Second*, subsection (e)(3) applies because it safeguards "any written . . . statement or

24 _____
25 ⁴ Courts consistently have held that claims against media defendants arising from news reports fall
26 within the scope of the anti-SLAPP statute. *See, e.g., Carver*, 135 Cal. App. 4th at 342-344
(applying Section 425.16 to newspaper and website reports about baseball player Barry Bonds's
27 dispute with a podiatrist and related discussion of state medical board records); *Braun*, 52 Cal.
App. 4th at 1043-1045 (stating Section 425.16 applies to media defendants).

28 ⁵ *See, e.g., Dove Audio, Inc. v. Rosenfeld, Meyer & Sussman*, 47 Cal. App. 4th 777, 783-784
(1996) (Communications made preliminarily to an official proceeding are sufficiently connected
thereto for inclusion in the anti-SLAPP statute.).

1 writing made in a . . . public forum in connection with an issue of public interest.” *See Traditional*
 2 *Cat Ass’n, Inc. v. Gilbreath*, 118 Cal. App. 4th 392, 397 n.4 (2004). Here, Plaintiff challenges
 3 news reporting that was published on www.calcoastnews.com, a local news forum, with
 4 approximately 115,000 views per week. Velie Decl. ¶ 3.

5 *Third*, the Article falls squarely within subdivision (e)(4), which extends the statute’s reach
 6 to any speech connected to “an issue of public interest.” “The definition of ‘public interest’ within
 7 the meaning of the anti-SLAPP statute has been broadly construed[.]” *Damon v. Ocean Hills*
 8 *Journalism Club*, 85 Cal. App. 4th 468, 479 (2000). This lawsuit involves an “issue of public
 9 interest” because, as a matter of law, activities that carry with them “potential environmental
 10 effects”, are undeniably of interest to the public and Plaintiff’s claim arises from Plaintiff’s
 11 handling of hazardous waste. *See Ludwig v. Superior Court*, 37 Cal. App. 4th 8, 15 (1995)
 12 (“development of . . . mall, with potential environmental effects such as increased traffic and
 13 impaction on natural drainage, was clearly a matter of public interest.”); *DTSC v. Superior Court*,
 14 44 Cal. App. 4th 1418, 1424 (1996) (“[I]t is in the public interest to establish regulations and
 15 incentives which ensure . . . safe handling . . . of . . . hazardous wastes . . .”). There is no
 16 question that Cal Coast News’ reporting about unlawful transportation of hazardous City waste by
 17 Plaintiff and his company, Eco Solutions, is indisputably a matter of significant public interest to
 18 members of the community as well as the numerous businesses throughout California that use the
 19 services of Tenborg’s companies to transport hazardous waste. Thus, the lawsuit is also well
 20 within Section 415.16(e)(4).

21 **IV. PLAINTIFF CANNOT DEMONSTRATE A PROBABILITY OF PREVAILING ON**
 22 **HIS LIBEL ACTION AGAINST CAL COAST NEWS**

23 Because the Cal Coast News Article plainly falls within the scope of Section 425.16, the
 24 burden shifts to Plaintiff to present evidence establishing a probability of prevailing on his libel
 25 claim. C.C.P. § 425.16(b)(1). This burden is substantial and cannot be overcome here. As the
 26 court explained in *DuPont Merck Pharm. Co. v. Superior Court*, 78 Cal. App. 4th 562, 568
 27 (2000), “to satisfy [his] burden under the second prong of the SLAPP statute, it is not sufficient
 28 that [the plaintiff’s] complaint survive a demurrer” or motion to dismiss. Nor can Plaintiff rely on

1 the bare allegations of his own pleading; instead, he must “establish evidentiary support for [his]
2 claim.” *Taus v. Loftus*, 40 Cal. 4th 683, 775-776 (2007). (citation omitted); *Equilon Enterprises v.*
3 *Consumer Cause*, 29 Cal. 4th 53, 67 (2002) (plaintiff must provide the court with sufficient
4 evidence, not the theories in the complaint, to permit the court to determine whether he can
5 prevail). Plaintiff also must “meet the defendant’s constitutional defenses[.]” *Robertson v.*
6 *Rodriguez*, 36 Cal. App. 4th 347, 359 (1995).

7 Reviewing a special motion to strike, the Court applies a summary judgment-like standard
8 in analyzing the motion. *Taus*, 40 Cal. 4th at 714. Plaintiff’s claims must be “supported by a
9 sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted
10 by the plaintiff is credited.” *Id.* at 713-14. As explained below, Plaintiff cannot meet his burden
11 and the Court must dismiss his action.

12 **A. The Cal Coast News Article Is Privileged Under California Civil Code Section**
13 **47.**

14 California Civil Code Section 47(d) provides an absolute privilege for “a fair and true
15 report in ... a public journal of ... a ... judicial, ... legislative, ... or [any] other public official
16 proceeding, or ... anything said in the course thereof[.]” Cal. Civ. Code § 47(d) (emphasis
17 added).⁶ Whether a publication falls within the scope of this “fair and true report” privilege is a
18 question of law for the Court. *See, e.g., McClatchy Newspapers v. Superior Court*, 189 Cal. App.
19 3d 961, 974 (1987).

20 Courts have applied this settled privilege in a wide variety of circumstances. For example,
21 a newspaper article describing documents and testimony in a libel lawsuit was found to be
22 absolutely privileged under Section 47(d). *McClatchy*, 189 Cal. App. 3d at 971. The “fair and
23 true” report privilege similarly immunized a newspaper article describing allegations contained in
24 a civil complaint for conversion (*Handelsman v. San Francisco Chronicle*, 11 Cal. App. 3d 381,
25 386, 381 (1970)); a magazine article reporting about a custody proceeding (*Sipple v. Found for*
26 *Nat’l Progress*, 71 Cal. App. 4th 226, 240-246 (1999)); and a newspaper article describing
27 allegations made in a written report by a state commission and at a related press conference

28 ⁶ Before its amendment in 1990, this provision was designated Civil Code § 47(4); consequently,
earlier cases refer to Section 47(4).

1 (*Kilgore v. Younger*, 30 Cal. 3d 770, 783 (1982)).

2 In evaluating the application of the privilege, the California Supreme Court has
3 emphasized that “a certain degree of flexibility/literary license” must be given “in defining ‘fair
4 report.’” *Reader’s Digest Ass’n v. Superior Court*, 37 Cal.3d 244, 261-262 n.13 (1984). Section
5 47(d) applies as long as the defendant’s publication captures the “substance, the gist, [or] the
6 sting” of the underlying proceeding that was reported on. *Sipple*, 71 Cal. App. 4th at 244
7 (citations omitted).

8 Thus, for example, in *Colt*, 109 Cal. App. 4th at 1554-1555, the Fourth District Court of
9 Appeal concluded that a newspaper’s reports published on its newspaper and an “affiliated Web
10 site” based on an SEC complaint accusing the plaintiffs of securities violations were privileged,
11 even though the reports contained factual errors. Rejecting the plaintiff’s argument that the
12 privilege applied only if the newspaper had published “word-for-word quotations from legal
13 documents,” the court held that the defendant’s articles were absolutely privileged because “the
14 effect on readers of the [defendant’s] articles would have been substantially the same as the effect
15 on readers of the SEC complaint.” *Id.* at 1560. A publication concerning official proceedings is
16 privileged as long as the “substance, the gist, the sting” of the proceedings is described accurately
17 as measured by their impact on the average reader. *Id.* at 1558. In *Jennings*, the court found that a
18 newspaper report that the plaintiff had been “convicted of tax fraud” captured the gist of the court
19 records at issue, even though the plaintiff in fact had pleaded “no contest” to failing to file tax
20 returns. 164 Cal. App. 3d at 127. And in *Hayward v. Watsonville Register-Pajaronian*, 265 Cal.
21 App. 2d 255 (1968), the court held that a newspaper’s report that the plaintiff had “served a term
22 in [] prison on a checks charge” was a fair and true report of an official record reflecting that he
23 had been sent to a reformatory and given probation on a forgery charge. *Id.* at 258, 261, 262.

24 Significantly, Section 47(d) protects both reports concerning the official proceedings as
25 well as comments illuminating the background and context of the proceeding (*Dorsey v. National*
26 *Enquirer, Inc.*, 973 F.2d 1431, 1437 (9th Cir. 1992)) and the surrounding circumstances of the
27 proceedings. See *Hayward*, 265 Cal. App. 2d at 299. A report can be “fair and true” under
28 Section 47(d) even if it does not resolve the merits of the dispute or present the plaintiff’s version

1 of the facts. *See Reeves v. American Broadcasting Cos.*, 719 F.2d 602, 606-607 (2d Cir. 1983)
 2 (applying California law); *Paterno v. Superior Court*, 163 Cal. App. 4th 1342, 1355 (2008)
 3 (same); *Dorsey*, 973 F.2d at 1436. If the Court determines that the allegedly defamatory
 4 statements fall within Section 47(d), then those statements are absolutely privileged, regardless of
 5 the statements veracity, the defendant's motive for publishing it, or the plaintiff's alleged injuries.
 6 *McClatchy*, 189 Cal. App. 3d at 974; *Green v. Cortez*, 151 Cal. App. 3d 1068, 1074 (1984).⁷

7 Applying this well-established law, it is clear that the Cal Coast News Article was a fair
 8 and true report of a "public official proceeding" under 47(d). For example, Plaintiff complains
 9 about the first sentence of the Article that:

10 A contractor paid more than \$400,000 annually by San Luis Obispo
 11 County's Integrated Waste Management Authority (IWMA)
 12 illegally transports hazardous wastes and has exposed taxpayers to
 huge fines by encouraging member public agencies to ignore state
 law, a CalCoastNews investigation shows.

13 Compl. ¶ 9(b), (d), & (e). This information came directly from information provided by a then
 14 City employee, Douglas Dowden. Dowden Decl. ¶¶ 7-18; Velie Decl. ¶¶ 9-10, 12-14, 16. Mr.
 15 Dowden told Ms. Velie that for years he thought Eco Solutions was operating with all of the
 16 proper licenses and, for this reason, he would call Plaintiff to have him coordinate with Bud Nance
 17 to arrange pick-ups of hazardous waste from the Corporation Yard shed and then review the
 18 invoices Eco Solutions would submit to the City for around \$1,500 to \$3,000 for those pick-ups.
 19 Dowden Decl. ¶¶ 8-10; Velie Decl. ¶¶ 9-10. Then, he attended a Stormwater Management Team
 20 Meeting on January 12, 2010, where Kerry Boyle, another City employee, publicly revealed that
 21 Eco Solutions was not operating with a license. Dowden Decl. ¶ 10, Ex. A; Velie Decl. ¶ 10, Ex.

22 _____
 23 ⁷ Plaintiff's lawsuit against Cal Coast News is barred independently by the analogous fair report
 24 privilege that exists under the First and Fourteenth Amendments to the United States Constitution,
 25 and Article I, § 2 of the California Constitution. *See, e.g., Cox Broadcasting v. Cohn*, 420 U.S.
 26 469, 491, 495-496 (1975) (news report based on a public court record revealing the name of a rape
 27 victim in violation of a state confidentiality statute was absolutely privileged under the First
 28 Amendment); *Florida Star v. B.J.F.*, 491 U.S. 524, 526-529, 533 (1989) (news report based on
 police records revealing the name of a rape victim in violation of a state confidentiality statute was
 absolutely privileged under the First Amendment); *Gates v. Discovery Communications, Inc.*, 34
 Cal. 4th 679, 692 (2005) (reaffirming rule when it held that the First Amendment provided an
 absolute privilege for a news report based on an obscure public court record).

1 C. Mr. Dowden told Ms. Velie he was shocked to learn that Eco Solutions was unlawfully
2 operating without a license because it had been transporting hazardous waste for the City for
3 years. Dowden Decl. ¶ 10; Velie Decl. ¶ 10. He gave Ms. Velie a copy of the Stormwater
4 Management Team Meeting Notes dated January 12, 2010, confirming that Eco-Solutions was not
5 licensed to haul: “Eco-Solutions no longer licensed to haul” Dowden Decl. ¶ 10, Ex. A;
6 Velie Decl. ¶ 10, Ex. C. Kerry Boyle also said at that meeting that Eco Solutions was improperly
7 classifying entities as exempt small quantity waste generators without the proper authority.
8 Dowden Decl. ¶ 10. Mr. Dowden explained to Ms. Velie this sort of conduct can expose an
9 agency to huge fines. Dowden Decl. ¶ 18; Velie Decl. ¶ 13.

10 Given these statements by a public official, Mr. Dowden, summarizing the contents of
11 public proceedings, Cal Coast News was well within the 47(d) concept of “literary license” to
12 report that Eco Solutions was “illegally transport[ing] hazardous wastes” and explain that this had
13 exposed taxpayers to huge fines. *See Jennings*, 164 Cal. App. 3d at 125; *Reader’s Digest Ass’n*,
14 37 Cal. 3d at 261-262 n.13; *see, e.g.,* Statements 2, 4, and 5-6. For the same reason, it was well
15 within Cal Coast News’ province to provide the surrounding circumstances communicated by Mr.
16 Dowden, including describing the relationship between the City of San Luis Obispo and Eco
17 Solutions (Statement 7), the amount of payments from the City to Eco Solutions (Statement 8); the
18 relationship between Plaintiff and the IWMA (Statement 9); and other examples of unlawful
19 transportation (Statement 6). *See Dorsey*, 973 F.2d at 1437; *Hayward*, 265 Cal. App. 2d at 299.

20 The crux of Mr. Dowden’s statements about the Stormwater Management Team Meeting
21 and meeting notes was that Plaintiff and his company were unlawfully handling hazardous waste,
22 which was accurately reported in Cal Coast News’ Article. The Article accurately reflected the
23 gist of the statements about Eco Solutions at the City’s Stormwater Management Team Meeting
24 and the sting of Mr. Dowden’s commentary about those government proceedings. *See, e.g. Sipple*,
25 71 Cal. App. 4th at 244; *Paterno*, 163 Cal. App. 4th at 1355; *Colt*, 109 Cal. App. 4th at 1558-
26 1559. Accordingly, Plaintiff’s libel action is absolutely barred as a matter of law under 47(d) and
27 the First Amendment.

28 For the same reason, the challenged statements based on information from a public official

1 and statements communicated in a meeting that addressed the very issue that is the subject of this
 2 litigation – Plaintiff and Eco Solutions’ unlawful handling of hazardous waste – are absolutely
 3 privileged under the plain language of both subdivision (b), which protects a publication “in the . .
 4 . course of any other proceeding authorized by law” and subdivision (e), which protects
 5 publications that are “for the public benefit.”⁸

6 **B. The Article Is Substantially True And Therefore Protected By The United**
 7 **States And California Constitution**

8 Because the touchstone of any defamation claim is a provably false factual statement, truth
 9 is an absolute defense. *Ringler Assocs. v. Maryland Casualty Co.*, 80 Cal. App. 4th 1165, 1180
 10 (2000); *Francis v. Dun & Bradstreet*, 3 Cal. App. 4th 535, 540 (1992). To ensure robust public
 11 discourse, courts focus not on the literal truth of an allegedly defamatory statement, but instead on
 12 whether it is “substantially true so as to justify the ‘gist or sting’ of the remark.” *Ringler Assocs.*,
 13 80 Cal. App. 4th at 1180-1181. This “substantial truth” defense is premised upon the need to
 14 protect the free speech and free flow of information that is central to democracy. “[E]rroneous
 15 statement is inevitable in free debate, and ... must be protected if the freedoms of expression are to
 16 have the ‘breathing space’ that they ‘need ... to survive.’” *Carver v. Bonds*, 135 Cal. App. 4th
 17 328, 351 (2005) (quoting *Reader’s Digest Assn.*, 37 Cal.3d at 261). Moreover, the constitutional
 18 requirement that a libel plaintiff prove that the publication was false mandates that there be a
 19 material inaccuracy; the First Amendment protects against liability for “[m]inor inaccuracies ... so
 20 long as ‘the substance, the gist, the sting, of the libelous charge be justified.’” *Masson v. New*
 21 *Yorker Magazine*, 501 U.S. 496, 517 (1991).

22 Here, Cal Coast News’ fairly and even-handedly reported on the background and operation
 23 of hazardous waste handling in the City and County of San Luis Obispo overall, as well as the

24 _____
 25 ⁸ See *Williams v. Daily Review, Inc.*, 236 Cal. App. 2d 405, 418-419 (1965), *overruled on other*
 26 *grounds, Brown v. Kelly Broadcasting Co.*, 47 Cal. 3d 711 (1989) (Under the absolute privilege of
 27 Civil Code § 47(5) (now Civil Code § 47(e)), a “publication is privileged if it is a fair and true
 28 report of the proceedings of a public meeting lawfully convened for a lawful purpose and open to
 the public, or, alternatively, if it is a fair and true report of the proceedings of a public meeting
 which is not lawfully convened for a lawful purpose or not open to the public, provided that the
 publication is for the public benefit.”). The plain language of these subdivisions independently
 confers an absolute privilege on Cal Coast News’ reporting.

1 unlawful handling of hazardous waste by Eco Solutions and Plaintiff. Plaintiff therefore cannot
2 remotely meet his burden to show that the Cal Coast News Article was provably false, and
3 therefore his Complaint must be stricken as a matter of law.

4 **C. Because Many Of The Statements At Issue Are Not “Of And Concerning”**
5 **Plaintiff, His Libel Claim Is Barred By The First Amendment**

6 The First Amendment requires that a defamation plaintiff demonstrate that each allegedly
7 defamatory statement is “of and concerning” that particular plaintiff. *Rosenblatt v. Baer*, 383 U.S.
8 75, 83 (1966), (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 288-292 (1964)). This
9 requirement “limits the right of action for injurious falsehood ... to those who are the direct object
10 of criticism and den[ies] it to those who merely complain of nonspecific statements they believe
11 cause them some hurt.” *Blatty v. New York Times Co.*, 42 Cal. 3d 1033, 1044 (1986) (emphasis
12 added). To satisfy the “of and concerning” requirement, a defamation plaintiff must establish that
13 each statement either expressly mentions the plaintiff, or reasonably can be interpreted as referring
14 to [him]. *Blatty*, 42 Cal. 3d at 1042, 1046; *see also Rosenblatt*, 383 U.S. at 83. Whether a
15 statement is “of and concerning” a particular plaintiff is a question of law for the court. *See, e.g.*,
16 *id.* at 1048. *Barger v. Playboy Enterprises*, 564 F. Supp. 1151, 1155 (N.D. Cal. 1983) (dismissing
17 complaint with prejudice because statements were not “of and concerning” plaintiff).

18 Applying this constitutional requirement, it is obvious that the vast majority of the
19 supposedly defamatory statements are not “of and concerning” Plaintiff. *See, e.g.*, Statements 2-4,
20 5, 7-8, 10-11. For example, Plaintiff complains that the Article is defamatory because it falsely
21 asserts the existence of a no bid contract for more than \$15,000. *See* Statement 11. But the full
22 statement in the Article identifies facts about only the IWMA, not Plaintiff: “However, as a public
23 entity, the IWMA is required by law to put work of more than \$15,000 out to bid and to avoid
24 using public resources to support private business.” (emphasis added). Further, while not only
25 true, many of the statements are only about Plaintiff’s company, Eco Solutions, a separate legal
26 entity from Plaintiff and not a party to this lawsuit, such as in Statements 2, 4, and 5 where the full
27 quotation specifically refers to the “contractor”, Eco Solutions: “A contractor paid more than
28 \$400,000 annually by San Luis Obispo County’s [IWMA] illegally transports hazardous wastes

1 and has exposed taxpayers to huge fines by encouraging member public agencies to ignore state
 2 law, a CalCoastNews investigation shows.” (emphasis added); *see also* Statements 3, 7-8, 10.
 3 Because Plaintiff cannot show that the above-identified statements he complains about are “of and
 4 concerning” him, the First Amendment independently bars any libel claim on these statements.

5 **D. Several Statements Are Not Reasonably Susceptible To A Defamatory**
 6 **Meaning And Cannot Provide The Basis For Plaintiff’s Libel Claim**

7 A libel claim requires that the challenged statement be subject to a defamatory meaning.
 8 *Hawran v. Hixon*, 209 Cal. App. 4th 256, 289-290 (2012). “[W]hether a statement is reasonably
 9 susceptible to a defamatory interpretation is a question of law for the trial court.” *Smith v.*
 10 *Maldonado*, 72 Cal. App. 4th 637, 647 (1999).

11 Statement 1, the reporting that Tenborg was fired from the San Luis Obispo Certified
 12 Unified Program Agency (“CUPA”), is not defamatory as a matter of law. A statement that an
 13 employee has been fired alone does not constitute defamation. *See e.g., Lesperance v. North Am.*
 14 *Aviation, Inc.*, 217 Cal. App. 2d 336, 342 (1963) (“[M]erely stating . . . that a plaintiff was
 15 discharged for ‘not performing his job satisfactorily’ which on its face falls short of charging
 16 incompetency, is not defamatory per se.”); *Davis v. Ross*, 754 F.2d 80, 84 (2d Cir. 1985) (“[T]he
 17 mere statement of discharge from employment does not constitute” defamation . . .”).⁹ Here, the
 18 statement identifies only that Plaintiff was fired “for undisclosed reasons” from his job with the
 19 CUPA. That does not impugn anything negative towards Plaintiff because there is no reference to
 20 a reason why he was fired. Plaintiff has no claim for libel where there is no reference whatsoever
 21 to a reason that would cast a negative aspersion on his character or position.

22 Moreover, the challenged statements that pertain to Eco Solutions or other entities do not
 23 defame Plaintiff. *See, e.g.,* Statements 2-4, 5, 7-8, 10-11. For example, the challenged statement
 24 that there was a “‘no bid contract’ for more than \$15,000” in “violation of state law”, Compl.

25 ⁹ *See also Collins v. City of Philadelphia*, Civ. A. No. 91-3729, 1993 WL 40309, at *2 (E.D. Pa.
 26 Feb. 12, 1993) (“A statement that an employee has been fired does not alone constitute
 27 defamation.”); *Kennedy v. Jennelle*, 1993 WL 12826, at *2 (E.D. Pa. Jan. 15, 1993) (same);
 28 *Fairbanks Publ’g Co. v. Pitka*, 376 P.2d 190, 195 (Alaska 1962) (“The right to hire implies the
 right to fire, and therefore a statement that the latter right has been exercised by one’s employer
 does not necessarily have a tendency to injure or discredit the employee who has been
 discharged.”) (citation omitted).

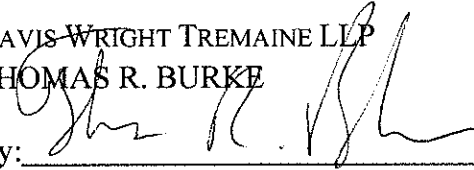
1 ¶ 9(j), is similarly flawed because it does not defame Plaintiff. The statement refers to the IWMA,
2 not Plaintiff. Accordingly, Plaintiff's libel claim should be dismissed on this independent basis.

3 **V. CONCLUSION**

4 Plaintiff's lawsuit is barred by settled privileges and defenses that exist to safeguard speech
5 about vital public information – like the reporting speech by Cal Coast News that Plaintiff seeks to
6 silence and civilly punish. Because Plaintiff cannot establish a probability of prevailing on his
7 defamation claim, Cal Coast News respectfully requests that the Court grant its special motion to
8 strike, dismiss Plaintiff's Complaint with prejudice, and award Cal Coast News its attorneys' fees
9 and costs as mandated by Code of Civil Procedure Section 425.16(c).

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: September 12, 2013

DAVIS WRIGHT TREMAINE LLP
THOMAS R. BURKE
By: 
Thomas R. Burke

Attorneys for Defendants
CalCoastNews/Uncovered SLO,
Karen Velie and Daniel Blackburn