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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

YANA HENRIKS, an individual,  
Plaintiff,

vs.

LOUISA MORITZ; VICTOR NOVAL;  
TANIA NOVAL; and PHILIP  
MARKOWITZ,  
Defendants.

) Case No.: 2:06-CV-05670-JFW-SH(x)  
)  
) **NOTICE OF MOTION AND SPECIAL**  
) **MOTION OF DEFENDANT LOUISA MORITZ**  
) **TO DISMISS COMPLAINT AS A SLAPP**  
) **LAWSUIT AND FOR ATTORNEYS' FEES**  
) **[C.C.P. § 425.16, 42 U.S.C. 1988; F.R.C.P**  
) **12(b)(6)]; SUPPORTING DECLARATION AND**  
) **EXHIBITS.**  
)  
) [DECLARATION AND EXHIBITS FILED  
) SEPARATELY.]  
)  
) [This Motion is made following the conference of  
) counsel pursuant to Local Rule 7.3, which took place  
) on March 28, 2007.]  
)  
) TRIAL DATE: August 7, 2007  
) DISCOVERY CUT-OFF: None  
)  
) **HEARING DATE: May 7, 2007**  
) **HEARING TIME: 1:30 p.m.**  
) **PLACE: Courtroom of the**  
**Hon. John F. Walter (Ctrm. 16)**

TO PLAINTIFF YANA HENRIKS AND TO HER ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 7, 2007, in Courtroom 16 of the United States District Court located at 312 North Spring Street, Los Angeles, California, 90012 at 1:30 p.m., or as soon thereafter as counsel can be heard, Defendant LOUISA MORITZ will move this Court, pursuant to

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1 California *Code of Civil Procedure* §425.16, 42 U.S.C. 1988, *Federal Rule of Civil Procedure*  
2 12(b)(6) and other applicable Federal authority, for an Order dismissing Louisa Moritz from this  
3 action, on the basis that no claim for relief under the RICO statute may be applied to Defendant  
4 LOUISA MORITZ, and for an award of attorneys' fees.

5 This Motion will be based upon this notice, the Memorandum of Points and Authorities  
6 attached hereto, the Declaration of attorney Richard D. Farkas, accompanying exhibits, and upon all  
7 of the records, pleadings and files in this matter, and upon such further arguments and evidence that  
8 may be presented at the time of the hearing of this Motion.

9 WHEREFORE, Defendant prays that this Motion be granted, that the complaint against  
10 MORITZ be dismissed, that Plaintiff take nothing by her complaint, and that MORITZ be awarded  
11 her fees and costs in defending against this action.

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Dated: June 8, 2008

LAW OFFICES OF RICHARD D. FARKAS

By \_\_\_\_\_  
RICHARD D. FARKAS,  
Attorneys for Defendant,  
LOUISA MORITZ

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**I. INTRODUCTION**

In her RICO lawsuit pending before this Court, Plaintiff YANA HENRIKS, by and through her attorney, Philip Dapeer, does nothing but reiterate claims she has asserted in several state court actions. Moving Party LOUISA MORITZ, an attorney, did nothing—and is alleged to have done nothing—but represent some of the parties to some of those actions for several months. Based solely on actions taken in the context of the state court cases, the litigious YANA HENRIKS has now attempted to spin her previously-asserted state court claims into alleged violations of the Racketeer Influenced Corrupt Organizations Act (RICO), 18 U.S.C. 1961, et seq. Plaintiff’s RICO claim is merely a regurgitation of the same allegations she has already presented on several separate occasions.<sup>1</sup> The activity plaintiff finds objectionable is defendant MORITZ’s zealous—albeit brief—representation of some of HENRICK’s adversaries in state court actions seeking to control a family trust. The demonstrated lack of merit to plaintiff’s allegations indicates that this suit has been brought solely to quell defendant MORITZ’s exercise of her constitutional rights to utilize the state court legal system, to petition and speech, not to vindicate any valid claim.

Plaintiff’s action is a SLAPP (Strategic Lawsuit Against Public Participation) aimed at interfering with defendants’ legitimate exercise of their First Amendment and statutory rights. This Court must follow the mandate of 42 U.S.C. 1988(a) and apply the California anti-SLAPP statute (C.C.P. § 425.16) in this action, to protect defendant’s fundamental constitutional rights of petition and speech. F.R.C.P. 12(b)(6), alternatively, would also mandate dismissal of this action.

As discussed below, SLAPP lawsuits frequently mask themselves as ordinary lawsuits. Plaintiffs win political battles by dragging defendants into court and enmeshing them in protracted litigation. (See *Wilcox v. Superior Court*, 27 Cal.App.4th 809, 815-818, 33 Cal.Rptr.2d 446 (1994).) The California Legislature recognized the chilling effect of SLAPPs on First Amendment rights when it enacted section 425.16. Federal law does not provide anything analogous to the section 425.16 discovery stay and provisions for early termination of SLAPPs, but has ruled that these

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<sup>1</sup> See, e.g., Plaintiff’s RICO Case Statement, Exhibit C, in which many of the same claims were made to a State Court judge. See, also, RICO Case Statement Exhibit F, pages 68 - 92

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1 provisions made be utilized in the Federal courts. Therefore, this Court must apply section 425.16,  
2 pursuant to section 1988. Because plaintiff cannot establish that there is a probability that she will  
3 prevail on her claims, as required by section 425.16(b), this Court should grant defendant's special  
4 motion to strike, and award her attorneys' fees as well.

## 5 **II. FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>**

### 6 **A. THE PARTIES**

#### 7 **i. LOUISA MORITZ**

8 Defendant Louisa Moritz, who brings this motion, is an attorney, having been admitted to the  
9 California State Bar in November, 2004. Ms. Moritz was retained by Tania Noval (another  
10 Defendant named in this action, described below), as well as several of her family members with  
11 respect to disputes concerning family trusts. The opposing party in these disputes is the Plaintiff,  
12 Yana Henriks; Ms. Moritz never represented Ms. Henriks. Ms. Moritz briefly (from approximately  
13 April, 2006 to September, 2006) represented members of the Noval family, having ceased  
14 representing anyone in the Noval family in September, 2006, when she filed substitution of attorney  
15 forms in all of the lawsuits involving the family.

#### 16 **ii. YANA HENRIKS**

17 Plaintiff Yana Henriks, who filed the complaint against Ms. Moritz, is the former live-in  
18 girlfriend of Victor Noval, the brother of Ms. Moritz's client, Tania Noval. Ms. Henriks (also known  
19 as Gayane Khachatryan), on April 23, 2004, replaced Tania Noval as Trustee of one of the Novals'  
20 family trusts (Brothers' Irrevocable Trust), and it was her role as Trustee that led to much of the  
21 litigation in which Ms. Moritz was briefly involved.<sup>3</sup> As detailed herein, Victor Noval, Tania Noval,  
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23 <sup>2</sup> Defendant Moritz acknowledges that this Motion must address the sufficiency of the complaint  
24 (and its accompanying RICO Case Statement). This section is intended solely to give the Court  
25 some background of the dispute between Plaintiff and Defendants, to make the otherwise confusing  
26 pleadings more understandable. Defendant is not relying upon the facts in this introduction to  
support its Motion to Dismiss.

27 <sup>3</sup> As will be described herein, Ms. Henriks has filed a number of acrimonious charges against the  
28 Noval family and people associated with it, in state and federal courts, and elsewhere. These charges  
include applications for restraining orders, and countless claims of civil and criminal wrongdoing  
and, in many cases, are substantially identical to her claims in this RICO action.

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1 and all of Victor Noval's children (the beneficiaries of the Brothers Irrevocable Trust) requested that  
2 Ms. Henriks step aside as Trustee. Disputes concerning Ms. Henriks' role as trustee led to much of  
3 the litigation in this complex matter.

4 **iii. TANIA NOVAL**

5 Tania Noval, Ms. Moritz's former client, is the sister of Victor Noval, and the Settlor,  
6 Trustor, and original trustee to the Brothers' Irrevocable Trust. Tania Noval, therefore is the aunt of  
7 Victor Noval's children, who, with her own son, are the beneficiaries of the Brothers' Irrevocable  
8 Trust. In 2003, during illness of Tania Noval, and while Yana Henriks was romantically involved  
9 with Victor Noval, Yana Henriks assumed the role of Trustee of the Brothers' Irrevocable Trust.<sup>4</sup>  
10 The relationship between Victor Noval and Yana Henriks later ended (bitterly), and the Noval family  
11 (Victor, Tania, Tania's son, and Victor's children—the beneficiaries) have sought to replace Ms.  
12 Henriks as the Trustee of the family trust. Ms. Henriks has refused, rather engaging in litigation  
13 against the Novals in several courts.

14 **iv. VICTOR NOVAL**

15 As indicated above, Victor Noval is the brother of Tania Noval, the original Trustee of the  
16 Brothers' Irrevocable Trust. He is also the father of Victor Franco, Jon Hunter, Jake Harrison, and  
17 Victor Peter Noval, beneficiaries of the Brothers' Irrevocable Trust, and the uncle of Bijan  
18 Nasehipour, the other beneficiary (and Tania Noval's son). Victor Noval was once romantically  
19 involved with Yana Henriks. He was also, several years ago, indicted and later incarcerated in  
20 connection with a criminal matter concerning his business (unrelated to and long before the  
21 representation by Ms. Moritz). When Mr. Noval was defending himself in the criminal action, he  
22 had Ms. Henriks—then his girlfriend—assume the role of Trustee of the Trust, of which his children  
23 and nephew were beneficiaries. Mr. Noval's romantic relationship with Yana Henriks subsequently

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25 <sup>4</sup> As Tania Noval stated in a May 10, 2006 declaration, attached hereto as Exhibit A, "In late 2003, I  
26 started to have severe rheumatoid arthritis and was be unable to take care of the Trust's business. I  
27 explained my problem to Yana Henriks, and she assured me that she would be the person most  
28 qualified to be successor trustee during my illness. She informed me of her educational background  
and her high position with her employer, Met Life. As a girlfriend of my brother, she was also  
believed to be the future stepmother to my nephews, which I stated above, are the beneficiaries of the  
Trust." [Tania Noval Declaration, May 10, 2006, paragraph 3.]

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1 ended, and resulted in several personal and professional conflicts, including disputes concerning her  
2 continued role as Trustee of the trust established for the benefit of his minor children.<sup>5</sup>

3 **B. THE UNDERLYING LAWSUITS**

4 As will be illustrated herein, all of the claims brought against Attorney Moritz by Plaintiff  
5 Yana Henriks relate to Ms. Moritz's filings in several other lawsuits (and communications made in  
6 those actions), on behalf of her clients. The litigation privilege applies in each of these underlying  
7 lawsuits:

8 i. **BLUE WATER SUNSET, LLC, YANA HENRIKS vs. VICTOR NOVAL,**  
9 **TANIA NOVAL, Los Angeles Superior Court Case Number BC 349115**

10 This declaratory relief action (first referenced in Plaintiff's RICO Case Statement at page 8,  
11 lines 12-19) was filed in the Los Angeles Superior Court on March 16, 2006 by Yana Henriks and  
12 Blue Water Sunset, LLC, an entity formed by Victor Noval for the benefit of the beneficiaries of the  
13 Brothers Irrevocable Trust. The complaint against Victor and Tania Noval alleges that "An actual  
14 dispute and controversy new [*sic*] exists as between plaintiff and defendants concerning their  
15 respective rights and duties relative to the defense of plaintiff Blue Water Sunset, LLC...." [A copy  
16 of this declaratory relief action is attached hereto as Exhibit B.] Louisa Moritz was retained to  
17 represent Tania Noval in this case, and represented her through September 12, 2006, when she  
18 substituted out.

19 In response to the complaint in this action, Tania Noval filed a cross-complaint against Yana  
20 Henriks, attached hereto as Exhibit D. In her cross-complaint, filed by Louisa Moritz, Tania Noval  
21 alleged "Cross-Defendant GAYANE KHACHATRYAN [a.k.a. Yana Henriks] assumed  
22 management and control of BLUE WATER SUNSET, L.L.C., as well as the BROTHERS'  
23 IRREVOCABLE TRUST through fraud, deceit and misrepresentation, as described herein, and  
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25 <sup>5</sup> The extent of the animosity between Victor Noval and Yana Henriks is evidenced by Victor  
26 Noval's May 3, 2006 "Answer to Request for Orders to Stop Harassment (in case number BS  
27 102745), in which he declared that "Henriks has told me that she will dedicate her life to ruining  
28 mine and that since she is on disability she has all the time in the world to ruin my life." [Exhibit C.]  
He further alleged, among other things, that Henriks committed insurance fraud, threatened violence  
toward him and third parties, and caused him to be "afraid for my life and the life of my family."  
[Exhibit C, page 6.]

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1 thereafter mismanaged these entities and utilized their assets for her personal gain.” [Tania Noval’s  
2 Cross-complaint ¶ 5. A copy of Tania Noval’s cross-complaint is attached hereto as Exhibit D.] The  
3 lengthy cross-complaint further alleged:

4 “Cross-Defendant GAYANE KHACHATRYAN, and her attorney, PHILIP DA PEER, ESQ.,  
5 prepared all the documents for the alleged “transfer” of BLUE WATER SUNSET, L.L.C.,  
6 through a \$100 “bill of sale”, which they attempted to have TANIA NOVAL, Cross-  
7 Complainant, sign the final copy, and which they explained to TANIA through others they  
8 (Cross-Defendant and her attorney PHILIP DA PEER, ESQ.) needed for the Cross-Defendant  
9 GAYANE KHACHATRYAN, to get standing to sue or represent the LLC in litigation which  
10 BLUE WATER SUNSET, L.L.C. was involved in, and after the litigation was completed,  
11 this “transfer” would be voidable and rescindable at will by Cross-Complainant and Cross-  
12 Defendant would immediately surrender possession and control over BLUE WATER  
13 SUNSET, L.L.C., and return it to Cross-Complainant TANIA NOVAL, who would in turn  
14 deed it over to BROTHERS IRREVOCABLE TRUST, A TRUST formed for the children of  
15 TANIA NOVAL and VICTOR NOVAL.” [Tania Noval cross-complaint, Exhibit D, ¶ 11.]

16 The disputed agreement described in the preceding paragraph is also relevant to the  
17 contention of Ms. Henriks that Ms. Moritz presented a forged or altered exhibit, discussed below.

18 Victor Noval, then acting *in pro per*, also filed a similar cross-complaint against Yana  
19 Henriks. [A copy of Victor Noval’s cross-complaint is attached hereto as Exhibit E.] Mr. Noval’s  
20 cross-complaint against Ms. Henriks set forth causes of action for Breach of Written Contracts,  
21 Intentional Interference with Prospective Business Relations, Breach of Implied Covenant of Good  
22 Faith and Fair Dealing, Unfair Business Practices, Fraud, Conspiracy to Defraud, Negligent  
23 Misrepresentation, Declaratory Relief, Extortion, Accounting, Declaration of Constructive Trust, and  
24 Removal and Surcharge of Trustee.

25 In the introductory portion of his cross-complaint against Ms. Henriks, Mr. Noval alleged the  
26 following:

27 “10. This litigation relates to TANIA NOVAL, BLUE WATER SUNSET, L.L.C.,  
28 property of BROTHERS IRREVOCABLE TRUST, of which TANIA NOVAL, Cross-  
Complainant is the Trustee.

“11. Cross-Complainant is informed and believes and thereon alleges that the Cross-  
Defendant GAYANE KHACHATRYAN [another name of Yana Henriks], and her attorney,  
Cross-defendant PHILIP DAPEER, prepared documents for an alleged “transfer” of BLUE  
WATER SUNSET, L.L.C., through a \$100 “bill of sale.” BLUE WATER SUNSET, L.L.C.  
was an asset belonging to BROTHERS IRREVOCABLE TRUST. Cross-defendants  
DAPEER and KHACHATRYAN conspired to have KHACHATRYAN hold title to BLUE  
WATER SUNSET (and other assets) as trustee in constructive trust for BROTHERS  
IRREVOCABLE TRUST, with the understanding that the asset would be returned to

1 BROTHERS IRREVOCABLE TRUST upon the completion of pending litigation.  
2 Accordingly, DAPEER and KHACHATRYAN attempted to have TANIA NOVAL, sign  
3 documents to effectuate this transfer, explaining to TANIA through others they (Cross-  
4 Defendant KHACHATRYAN and her attorney PHILIP DAPEER, ESQ.) needed for the  
5 Cross-Defendant GAYANE KHACHATRYAN, to get standing to sue or represent the LLC  
6 in litigation which BLUE WATER SUNSET, L.L.C. was involved in. After the litigation  
7 was completed, this “transfer” would be voidable and rescindable at will by TANIA NOVAL  
8 and Cross-Defendant KHACHATRYAN would immediately surrender possession and  
9 control over BLUE WATER SUNSET, L.L.C., and return it to Cross-Complainant TANIA  
10 NOVAL, who would in turn deed it over to BROTHERS IRREVOCABLE TRUST, a trust  
11 formed for the children of TANIA NOVAL and VICTOR NOVAL.

12 “12. The facts are that Cross-Complainant TANIA NOVAL never signed the final  
13 documentation to effectuate the transfer. In effect, KHACHATRYAN acquired a multi-  
14 million dollar asset for \$100.00.

15 “13. Attorney PHILIP DAPEER explained to Cross-Complainant that the “transfer”,  
16 which TANIA NOVAL did not sign, was solely to complete the litigation, which was for the  
17 benefit of BLUE WATER SUNSET, L.L.C. and that Cross-Defendant GAYANE  
18 KHACHATRYAN and himself were the persons best qualified to perform this legal work,  
19 since GAYANE KHACHATRYAN was in her own words “a great litigator” and she would  
20 immediately return the ownership of the properties involved to Cross-Complainant TANIA  
21 NOVAL. The beneficiaries of BROTHERS IRREVOCABLE TRUST were the children of  
22 TANIA NOVAL and her brother VICTOR.” [Victor Noval cross-complaint, Exhibit E, ¶s  
23 10-13.]

24 In a sworn declaration filed in this action, Tania Noval stated, among other things that Ms.  
25 Henriks engaged in “self-dealing” and “wasted and misappropriated valuable Trust assets.” [A copy  
26 of her Declaration is attached as Exhibit A.] To properly understand the claims of the Noval family  
27 (advanced through the representation of Ms. Moritz), the substantive assertions of Ms. Tania Noval  
28 (in her May 10, 2006 declaration) are set forth at length below:

“2. My name is Tania Noval. I am the Settlor, Trustor and original trustee to the  
Brothers Irrevocable Trust (hereafter the “Trust”). This trust was set up for the benefit of my  
son and nephews, who are the only beneficiaries of the Trust. This declaration is submitted  
in support of the Petition to remove Yana Henriks as Trustee of the Trust, and for related  
relief.

“3. In late 2003, I started to have severe rheumatoid arthritis and was unable to take  
care of the Trust’s business. I explained my problem to Yana Henriks, and she assured me  
that she would be the person most qualified to be successor trustee during my illness. She  
informed me of her educational background and her high position with her employer, Met  
Life. As a girlfriend of my brother, she was also believed to be the future stepmother to my  
nephews, which I stated above, are the beneficiaries of the Trust. Given her excellent  
personal history I believed that she indeed would be a trustworthy individual to handle the  
future well being of my son and nephews.

“4. I was wrong about Ms. Henriks. She is claiming that Blue Water Sunset L.L.C. is  
her property. This is false. This L.L.C. was formed for the benefit of the beneficiaries, and it

1 was to be placed in the trust once certain litigation ended. She has tried to sell this L.L.C.  
2 and/or its valuable assets belonging to the trust.

3 "5. Yana Henriks has ignored numerous requests made by the beneficiaries regarding  
4 accounting and the sale of a Mustang belonging to beneficiary Victor Franco Noval.

5 "6. Ms. Henriks has been asked (by me, as Settlor, and by all of the beneficiaries,  
6 whose declarations are attached to this Petition) to step down and turn over her position as  
7 Trustee. She has not only completely ignored this but also wrote a letter to my attorney  
8 Louisa Moritz (attached to the Petition) insulting her practice and making false statements.

9 "7. Henriks wrote letters to my brother telling him that his children (beneficiaries)  
10 don't care about him and that they do not deserve anything.

11 "8. Henriks is in the bad habit of threatening people and is well known for  
12 threatening attorneys with reporting them to the bar.

13 "9. I have personally heard a cassette tape where Henriks threatens my brother. Yana  
14 Henriks has also called our friend Heather Mercado and threatened her life.

15 "10. Henriks falsely claims that my brother abused her. My brother was married  
16 twice about 10 years each and has never abused mentally or physically his wives or anyone  
17 else.

18 "11. Henriks has sent me letters via fax insulting me and telling me to "Fasten your  
19 seatbelt".

20 "12. Henriks wrote letters to my brother in which she says she is an attorney. (See  
21 attached copy of envelope.)

22 "13. My brother told me that, after learning of Henriks' misdeeds, he decided not to  
23 marry her. This resulted in enormous animosity, causing significant harm to the Trust, me,  
24 and the beneficiaries.

25 "14. My brother applied for a restraining order against Henriks. Upon being notified  
26 of the order, Henriks immediately rushed to the court and sought a restraining order against  
27 my brother who is the father to four of the beneficiaries.

28 "15. In addition to the foregoing, I am aware of the following acts of Ms. Henriks, to  
the detriment of the Trust:

-- She had not made any distributions to the beneficiaries, and has not  
communicated with the beneficiaries;

-- She has never provided an accounting relative to the Trust;

-- She has wasted and misappropriated valuable Trust assets;

-- She has initiated litigation against me, as well as against the father of the  
beneficiaries (her former boyfriend);

-- She claims to have personally acquired millions of dollars worth of assets  
belonging to the Trust for negligible consideration (i.e., \$100.00);

-- She has engaged in self-dealing, to the detriment of the Trust and its  
beneficiaries;

-- She has filed a restraining order application against the father of some of the  
beneficiaries, without good cause;

-- She is assisting, without good cause, through a sham forcible detainer  
action, to evict one or more of the beneficiaries from their rightful home;

-- She has threatened our attorney in this action.

"16. The beneficiaries and I all request the court to reinstate my position as trustee.  
We have all requested that Ms. Henriks step aside (in writing, attached to this Petition), and  
she has failed and refused to do so.

1                   “17. I have the best interest of my son and nephews at heart, and hereby request the  
2 court to reinstate my original position as trustee to Brothers Irrevocable Trust. We would all  
3 like to have this woman out of our lives forever.” [Tania Noval declaration, May 10, 2006,  
4 Exhibit A.]

5                   **ii.       IN THE MATTER OF THE BROTHERS IRREVOCABLE TRUST**  
6                   **(Case Number SP006830)**

7                   This action was filed in the Probate Court on May 26, 2006 by the Brothers Irrevocable  
8 Trust, acting by and through Tania Noval (represented by Louisa Moritz).<sup>6</sup> [A copy of Tania  
9 Noval’s probate filing is attached hereto as Exhibit F.] As noted above, in this action, Tania Noval  
10 declared: “The beneficiaries and I all request the court to reinstate my position as trustee. We have  
11 all requested that Ms. Henriks step aside (in writing, attached to this Petition), and she has failed and  
12 refused to do so. I have the best interest of my son and nephews at heart, and hereby request the  
13 court to reinstate my original position as trustee to Brothers Irrevocable Trust.” [Tania Noval  
14 declaration, Exhibit A, ¶s 16, 17.]

15                   The Petition filed by Ms. Moritz in this case was brought pursuant to the California *Probate*  
16 *Code* Section 15404, which provides: “Modification or Termination by Settlor and All Beneficiaries.  
17 (a) If the settlor and all beneficiaries of a trust consent, **THEY MAY COMPEL THE**  
18 **MODIFICATION OR TERMINATION OF THE TRUST.**” (*Emphasis added.*) Attached to the  
19 Petition were the sworn Declarations of the Settlor of this trust (Tania Noval) and all of the  
20 beneficiaries of the Brothers Irrevocable Trust in support of this Petition. Also attached to this  
21 Petition were documents evidencing the requests of the Settlor and all of the Beneficiaries, that Yana  
22 Henricks step down as acting Trustee, and additional documents evidencing the failure and refusal of  
23 Yana Henriks to do so, which necessitated this Petition.

24                   **iii.       CONSTANTINO NOVAL vs. VICTOR NOVAL (Case Number SC**  
25                   **089359)**

26                   <sup>6</sup> In her RICO Case Statement, Plaintiff HENRIKS claims that “The Novals, through their attorney,  
27 Louisa Moritz retaliated by initiating probate proceedings in the Los Angeles Superior Court seeking  
28 to remove Yana Henriks as successor trustee of the Brothers Irrevocable Trust.” [RICO Case  
Statement, page 8, lines 16-19.]

1 This action was a “forcible detainer” complaint filed against Victor Noval (Tania Noval’s  
2 brother) by Victor Noval’s uncle, Constantino Noval.<sup>7</sup> Initially, and for a very brief period of time,  
3 Louisa Moritz represented Mr. Noval in this case (she filed a demurrer to the complaint on April 21,  
4 2006, and substituted out on May 31, 2006).

5 In this action, Victor Noval argued that, although the Plaintiff alleged he was the owner of  
6 the subject residential unit, the Plaintiff obtained title to the property as trustee of a family trust for  
7 the benefit of Defendant’s children. Defendant Victor Noval began occupying the premises upon its  
8 completion in May 2000, and the only occupants of the unit since that time had been Defendant  
9 Victor Noval, Defendant’s wife and children, and (following Defendant’s divorce), Defendant’s  
10 then-girlfriend, Yana Henriks, who had moved out. Plaintiff, who held title only as trustee, had  
11 never occupied the unit since it was completed in May, 2000.

12 **iv. BROTHERS IRREVOCABLE TRUST vs. CONSTANTINO NOVAL,**  
13 **etc., et al. (Case Number SC 089394)**

14 This case, too, concerns disputes concerning the administration of the Brothers Irrevocable  
15 Trust, as well as who, as Trustee, has the power to administer the Trust. The lawsuit was filed on  
16 April 19, 2006, and was brought by the Law Offices of Louisa Moritz as “Attorneys for Plaintiffs,  
17 the Beneficiaries of Brothers Irrevocable Trusts, BROTHERS IRREVOCABLE TRUST, a  
18 California Trust.” [Complaint, page 1, lines 3, 4.] [A copy of this complaint is attached hereto as  
19 Exhibit G.]

20 The suit alleges, among other things, that “During 1999, Victor and TANIA NOVAL desired  
21 to establish a trust to acquire and hold real estate and the income, earning and proceeds thereof for  
22 their grandchildren and children respectively. Victorino contributed \$1,000,000.00 to the trust,  
23 Shirley DaSilva (Victor’s ex-wife) contributed \$62,500.00 and Victor NOVAL contributed  
24 \$57,000.00 for a total contribution of \$1,119,500.00 to the Brothers Trust. The funds were  
25 transferred to Constantino to buy real estate for the benefit of a trust to set up for the Beneficiaries.  
26 Although repeated assurances were made by DEFENDANT CONSTANTINO, DEFENDANT

27 <sup>7</sup> As noted below, Tania Noval’s son declared that this action to evict Victor Noval was engineered  
28 by Yana Henriks.

1 CONSTANTINO never established the trust and, in spite of his promises, used the funds to purchase  
2 seven properties....” [Complaint, Exhibit G, ¶ 10 page 3, line 27 through page 4, line 7.] The suit  
3 then alleges that “Defendant Constantino has made false and intentional misrepresentations to Victor  
4 and TANIA NOVAL in that he intended to set up trust to hold the assets and Property for the benefit  
5 of the beneficiaries,” [Exhibit G, ¶ 13, page 5], and that “The true facts are that ... DEFENDANT  
6 was not intending to hold the Assets and Property for the beneficiaries.” [Exhibit G, ¶ 13, page 5.]

7 v. **UNITED STATES OF AMERICA vs. MI SUK YI AND PAUL**  
8 **AMORELLO (United States District Court No. 03-406(B)-CAS)**

9 This is an action in which the family trustee asserted an interest in certain property before the  
10 federal court. Ms. Moritz was never an attorney of record and never appeared as attorney of record  
11 for any party in this case, although she did make a single appearance at a hearing on May 19, 2006.  
12 This hearing was to resolve certain procedural matters following the withdrawal of the forfeiture  
13 attorney representing the trust in that action, and Ms. Moritz appeared to advise the Federal Court of  
14 the status of the disputed trust matters pending in the State Court actions. [A copy of the transcript  
15 of this May 19, 2006 hearing is attached hereto as Exhibit H.]

16 \* \* \*

17 **C. THE CLAIMS OF YANA HENRIKS IN THE RICO COMPLAINT AND RICO CASE**  
18 **STATEMENT.**

19 With the general background of the various lawsuits involving Complainant Yana Henriks  
20 described above, Defendant MORITZ will now attempt to address the specific claims of Ms. Henriks  
21 in her RICO complaint as it applies to Defendant Ms. Moritz. As will become apparent, **every**  
22 **action allegedly taken by Defendant Moritz was as an attorney, in connection with pleadings**  
23 **and statements presented in pending litigation, all of which are protected by the litigation**  
24 **privilege.**

- 25 ■ “With respect to the federal forfeiture proceedings, attorney Moritz appeared in the action  
26 and falsely represented to the court that plaintiff Henriks had been removed as trustee of  
27 the Brothers Irrevocable Trust.” [RICO Case Statement, page 10, line 27 through page  
28 11, line 3.]

1 The hearing to which Ms. Henriks referred was in the federal case of *United States of*  
2 *America vs. Mi Suk Yi and Paul Amorello*, Case number CR 03-406(b)-CAS. [RICO Case Statement,  
3 page 4, lines 14-16.] Ms. Moritz is not, and never has been, an attorney for any of the litigants in  
4 this federal forfeiture case.

5 At the hearing of May 19, 2006, an issue was whether the petitioner, Brothers Irrevocable  
6 Trust, was a *bona fide* purchaser for value of certain property. The Trust was a party to that action,  
7 and, on the date of the hearing, Yana Henriks apparently attempted to appear without counsel (prior  
8 counsel for the trust had withdrawn because of a conflict of interest, related to the conflicting claims  
9 concerning the trust of Yana Henriks and Tania Noval). At that hearing, the Court said to Ms.  
10 Henriks: “Ms. Hendriks [*sic*], we’re going to have [*sic*] direct you to retain counsel. You can’t  
11 represent yourself. You can’t appear pro se under the rules of the court.” [Exhibit H, page 5, line 23  
12 through page 6, line 1.]

13 Ms. Moritz, upon the request of her client Tania Noval (who, as noted above, asserts that she  
14 is the Trustee of the Brothers Irrevocable Trust), also appeared at the Federal Court hearing to advise  
15 the Court of the position of the Trust (which, because of the withdrawal of the Trust’s forfeiture  
16 attorney, was unrepresented by counsel).<sup>8</sup> Ms. Moritz introduced herself as follows, according to the  
17 transcript: “Your honor, my [name] is Louisa Maritz [*sic*] and I am representing the trustee of the  
18 brothers irrevocable trust.” [page 12, lines 2-4.] She then advised the Court of her role: “I am only  
19 here to request a continuance because there is a question about the brothers irrevocable trust and the  
20 attorney has resigned and withdrawn and I understand that Your Honor has allowed it and so they are  
21 without an attorney.” [Exhibit H, page 12, lines 16-20.]

22 Ms. Noval did not make a misrepresentation to the Court as claimed by Ms. Henriks. In the  
23 time she was allotted, she explained that there was a petition to remove Ms. Henriks. The transcript  
24 states: “Okay. Your Honor we do have an order<sup>9</sup> from the court and we have made—I am the

25 \_\_\_\_\_  
26 <sup>8</sup> It should be noted that Ms. Noval was never “removed” as trustee. Rather, as she declared, she  
27 resigned because “In late 2003, I started to have severe rheumatoid arthritis and was unable to take  
care of the Trust’s business.” [Exhibit A, ¶3.]

28 <sup>9</sup> As noted below, Ms. Moritz’s reference to an “order” was to the state court’s order appointing a  
guardian ad litem in the brothers irrevocable trust case.

1 attorney for the present trustee Tanya Noval and we have made a petition to remove the previous  
2 trustee.” [page 13, lines 10-13.] The Court clearly understood that the litigation concerning the  
3 actual trustee was unresolved, and pending in the state court. Specifically, the Court responded:  
4 “Well, you’ll do that over in another court.... Obviously there is a dispute between the Novals and  
5 the current trustee. I’m well aware of that and you’re going to have to get that problem resolved  
6 across the street because I am going to proceed with my case on my schedule and not sit around and  
7 wait for this matter to be resolved over in state court.” [Exhibit H, page 13, lines 14-21.] Ms. Moritz  
8 then responded, accurately, “Well, we have an ex parte application for next Friday.” [Exhibit H,  
9 page 13, lines 22-23.]

10 Ms. Moritz, after this hearing, never again appeared in this federal action and, to Defendant’s  
11 knowledge, the issue as to the appropriate trustee has never again been raised in that court. The  
12 Trustee disputes continue to be litigated.

- 13 ■ “She [Ms Henriks] has also initiated another lawsuit in the Los Angeles Superior Court  
14 on behalf of The Brothers Irrevocable Trust against Victor’s uncle, case number  
15 SC089394 That [*sic*] action was brought without my [*sic*] knowledge or consent as the  
16 trustee.” [RICO Case Statement, page 11, lines 3-7.]

16 The factual background of this litigation is described above. Although Ms. Moritz filed this  
17 action as “Attorneys for Plaintiffs, the Beneficiaries of Brothers Irrevocable Trusts, BROTHERS  
18 IRREVOCABLE TRUST, a California Trust,” there was no “misrepresentation” concerning her  
19 role.<sup>10</sup> To the contrary, Ms. Moritz filed this action with the express consent of Tania Noval (who  
20 asserted her role as Trustee in then-pending case number SP 006830) and the beneficiaries  
21 themselves, who oppose the actions of Yana Henriks.<sup>11</sup>

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23 <sup>10</sup> In her RICO Case Statement, Ms. Henriks writes: “attorney Moritz appeared in the action and  
24 falsely represented to the court that plaintiff Henriks had been removed as the trustee of The  
25 Brothers Irrevocable Trust.” [RICO Case Statement, page 10, line 28 through page 11, line 3.]

26 <sup>11</sup> On April 6, 2006, all five (5) of the young beneficiaries of the Brothers’ Irrevocable Trust signed  
27 a document stating that they “hereby agree and assent to the rescission of the above cited document  
28 [rescinding Tania Noval’s resignation] and to the removal of Yana Henriks ... as Trustee of the  
Brothers’ Irrevocable Trust and further agree and assent to the immediate reinstatement of Tania  
Noval as Trustee of the Brothers’ Irrevocable Trust effective April 6, 2006.” [Exhibit I.]

1 The authority of Ms. Moritz to act for Tania Noval is not disputed, and it is clear from the  
2 pleadings and Tania Noval's declaration (above) that Tania Noval maintains that she is the legal  
3 Trustee. The position is supported by the beneficiaries as well. For example, attached to the Answer  
4 of Victor Noval to Ms. Henriks' restraining order application is a Declaration of Tania Noval's son,  
5 Bijan Nasehipour, who states that Yana Henriks "Is trying to get back at him [Victor Noval] by  
6 hurting me and his sons." Concerning the "forcible detainer" action filed against Victor Noval, 21-  
7 year-old Bijan declared that "I saw a letter where Yana Henriks says she's going to evict us from our  
8 condo in Marina del Rey. She knows this condo belongs to our trust and she has absolutely no right  
9 to do this." He further declares that "All the beneficiaries sent a letter to Yana Henriks requesting  
10 documents, accounting and information... and she has completely ignored our request. We also  
11 asked her to remove herself as trustee and she has ignored this too."

12 As noted above, in seeking to remove Ms. Henriks as Trustee, Ms. Moritz relied, in part, on  
13 California *Probate Code* Section 15404, which provides for "Modification or Termination by Settlor  
14 and All Beneficiaries." The desires of Ms. Moritz's client, Tania Noval, were properly advanced by  
15 Ms. Moritz, and supported by Tania Noval, as evidenced by her Declaration. The desire of the  
16 beneficiaries is similarly supported by Mr. Nasehipour's declaration, in which he concludes: "I know  
17 that having Yana Henriks as trustee of our trust will be detrimental to all the beneficiaries well being.  
18 I would like my mother, Tania Noval to resume her position as trustee." [Exhibit C, page 12.]

- 19 ■ "Defendants filed with the court what purported to be a letter in the handwriting of Victor  
20 Noval and signed by plaintiff Yana Henriks wherein plaintiff Yana Henriks allegedly  
21 agreed that she was holding her ownership interest in Blue Water Sunset, L.L.C. in a  
22 representative capacity. That document, upon examination by a forensic hand-writing  
23 expert, is a forgery...." [RICO Case Statement, page 9, lines 19-27.]

24 Ms. Henriks, in asserting presentation of an altered or forged exhibit, is referring to a dispute  
25 concerning the validity of the signature on an undated, handwritten letter produced by Victor Noval,  
26 purporting to bear the signature of Yana Henriks. This letter concludes with a statement that "I,  
27 Yana Henriks, will transfer BWS [presumably Blue Water Sunset, an asset which is the subject of  
28 the litigation] to Brothers Trust after litigation with Phil is over. The \$100 transfer is only being  
done so Yana can have standing in court with [illegible]. This is a confidential memo and will not be  
disclosed." This document, obtained by Ms. Moritz from her client, appears to contain the signature

RICHARD D. FARKAS\|C:\CASE FILES\NOVAL-VICTOR\MORITZ-LOUISA ADV HENRIKS -- RICO\MORITZ ADV HENRIKS -- MOTION TO DISMISS RICO COMPLAINT AS SLAPP LAWSUIT.DOC

1 of Yana Henriks, and states, in part, that Ms. Henriks would transfer one of the contested assets to  
2 the Brothers Irrevocable Trust, as Ms. Moritz’s client maintained. Ms. Henriks, in this litigation,  
3 denied that this was her signature. [A copy of the disputed letter is attached hereto as Exhibit J, and  
4 to Plaintiff’s RICO Case Statement, Exhibit I, page 171.]

5 Ms. Moritz vehemently denies that she ever knowingly presented a forged or altered exhibit,  
6 to the Court or to any other party. In this hotly-contested litigation, in which all parties claim the  
7 others have committed criminal and tortuous acts, the validity of the handwritten letter is a matter of  
8 dispute. Victor Noval declared that the statements of Yana Henriks “were false, in that Cross-  
9 Defendant GAYANE KHACHATRYAN [Yana Henriks] did not intend to step aside as represented.  
10 To the contrary, Cross-Defendant GAYANE KHACHATRYAN planned to appropriate for herself  
11 the property owned by BLUE WATER SUNSET, L.L.C., an interest adverse to Beneficiaries of  
12 BROTHERS IRREVOCABLE TRUST, and information presented by Cross-defendant to Cross-  
13 Complainant to the contrary was false and fraudulent.” [see, e.g., Exhibit E, ¶48.] With respect to  
14 this particular document, after its authenticity was challenged, Ms. Moritz retained Joe B. Alexander,  
15 M.D., a medical doctor and Certified Forensic Document Examiner. This professional handwriting  
16 expert evaluated the document and concluded (under penalty of perjury) that “It is my professional  
17 opinion, as a Certified Forensic Document Examiner, that the signature on the questioned document  
18 has significant similarities to the signature of the author that penned the known comparison  
19 documents, and I am therefore clearly convinced that in fact, Yana Hendricks is the author of the  
20 signature on the questioned handwritten letter.” [Exhibit K, ¶ 6.] Dr. Alexander also declared: “It is  
21 my further opinion that the signature on the questioned document shows the effects of medication  
22 and/or intentional disguise such as signing with the non-dominant hand possible in order to disavow  
23 the authorship at a later date.” [Exhibit K, ¶ 7.] Although Ms. Henriks, too, obtained a handwriting  
24 expert who rendered a contrary opinion, there is no evidence whatsoever that Ms. Moritz in any way  
25 presented evidence that was altered or forged, with knowledge that it was anything other than  
26 genuine. To the contrary, Ms. Moritz advanced the sworn assertions of her client, in addition to  
27 Victor Noval (who produced the letter), and the Certified Forensic Document Examiner.

28

1 In any event, it is clear that every action alleged to have been done by Defendant MORITZ  
2 was in her capacity as an attorney, filing pleadings and presenting evidence on behalf of her clients.<sup>12</sup>  
3 Such actions cannot form the basis for a RICO claim, and must be dismissed pursuant to the  
4 authorities presented herein.

5 **III.42 U.S.C. 1988 REQUIRES APPLICATION OF CALIFORNIA CODE OF CIVIL**  
6 **PROCEDURE SECTION 425.16 IN THIS CASE.**<sup>13</sup>

6 42 U.S.C. 1988(a) provides:

7 The jurisdiction in civil and criminal matters conferred on the courts by the provisions of  
8 titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United  
9 States in their civil rights, and for their vindication, shall be exercised and enforced in  
10 conformity with the laws of the United States, so far as such laws are suitable to carry the  
11 same into effect; but in all cases where they are not adapted to the object, or are deficient in  
12 the provisions necessary to furnish suitable remedies and punish offenses against law, the  
13 common law, as modified and changed by the constitution and statutes of the State wherein  
14 the court having jurisdiction is held, so far as the same is not inconsistent with the  
15 Constitution and laws of the United States, *shall be extended to and govern the said courts in*  
16 *the trial and disposition of the cause*, and if it is of a criminal nature, in the infliction of  
17 punishment on the party found guilty. [Emphasis added.]<sup>14</sup>

15 <sup>12</sup> Indeed, this is confirmed by even a cursory review of Henriks' RICO Case Statement. She  
16 contends that "Moritz was involved in several litigation matters..." [RICO Case Statement, page 2,  
17 lines 19-20.] She states that Moritz "became directly involved in the dissolution action, the  
18 declaratory relief action and the probate proceeds as attorney..." [RICO Case Statement, page 2,  
19 lines 24-26.] She states that Moritz presented documents "to the Los Angeles Superior Court..."  
20 [RICO Case Statement, page 2, line 27.] Elsewhere, she asserts that Moritz's arguments were  
21 "asserted in judicial proceedings." [RICO Case Statement, page 7, lines 22-23.] She then states that  
22 "attorney, Louisa Moritz, retaliated by initiating probate proceedings in the Los Angeles Superior  
23 Court..." [RICO Case Statement, page 8, lines 16-18.] Enumerating the alleged "racketeering acts,"  
24 Henriks merely asserts that Moritz "filed an altered trust agreement in the probate proceedings,"  
25 [RICO Case Statement, page 9, lines 11-12], "filed with the court what purported to be a letter,"  
26 [RICO Case Statement, page 9, lines 20-21], "filed [cross-complaints] in the declaratory relief  
27 action" [RICO Case Statement, page 10, lines 23-24], "appeared in the action," [RICO Case  
28 Statement, page 10, line 28] and "Moritz filed a lis pendens." [RICO Case Statement, page 11, line  
8.] These are, on their face, privileged actions that cannot proceed through Plaintiff's SLAPP  
lawsuit.

25 <sup>13</sup> "California's Anti-SLAPP provisions may be applied to pendant state law claims in federal  
26 question cases." *Globetrotter Software, Inc. v. Elan Computer Group, Inc.*, 63 F. Supp. 2d 1127 (N.  
27 D. Cal. 1999)

27 <sup>14</sup> Section 1988 was enacted to "fill in the gaps" in federal law in order to provide the widest  
28 possible protection for civil rights. As the United States Supreme Court observed in *Robertson v.*  
*Wegmann*, 436 U.S. 584, 591 (1978), "This statute recognizes that in certain areas federal law is  
unsuited or insufficient to furnish suitable remedies."

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1                   **A. THE INSIDIOUS NATURE OF SLAPPS REQUIRES A MECHANISM**  
2 **TAILORED TO CURBING THEIR HARMFUL EFFECTS ON FIRST AMENDMENT**  
3 **RIGHTS.**

4                   SLAPPs are lawsuits aimed at silencing a plaintiff’s opponents. The purpose of a SLAPP is  
5 not to win, but to intimidate the SLAPP defendant and to chill petition and/or free speech rights. The  
6 court in *Wilcox v. Superior Court*, 27 Cal.App.4th 809, 816, 33 Cal.Rptr.2d 446 (1994), explained  
7 the characteristics of SLAPP suits as follows:

8                   SLAPP suits are brought to obtain an economic advantage over the defendant, not to  
9 vindicate a legally cognizable right of the plaintiff. Indeed, one of the common characteristics  
10 of a SLAPP suit is its lack of merit. But lack of merit is not of concern to the plaintiff  
11 because the plaintiff does not expect to succeed in the lawsuit; only to tie up the defendants’  
12 resources for a sufficient length of time to accomplish plaintiff’s underlying objective. As  
13 long as the defendant is forced to devote its time, energy and financial resources to  
14 combating the lawsuit, its ability to combat the plaintiff in the political arena is substantially  
15 diminished. [Citations omitted]

16                   Thus, while SLAPP suits “masquerade as ordinary lawsuits,” the conceptual features which  
17 reveal them as SLAPPs are that they are generally meritless suits brought by large private interests to  
18 deter common citizens from exercising their political or legal rights or to punish them for doing so.  
19 [Citations omitted]

20                   Therefore, since plaintiffs who bring SLAPPs can “win” simply by dragging victims into  
21 court and draining their (and the courts’) resources, these suits must be identified and dismissed at  
22 the earliest possible moment.

23                   As the court noted in *Wilcox, supra*, the California Legislature was aware that pleading-based  
24 motions such as demurrers and motions to strike are ineffective in dealing with SLAPPs because a  
25 plaintiff may satisfy basic pleading requirements by making constitutionally protected behavior  
26 appear as defamation, interference with business relations, or restraint of trade. Therefore, the  
27 Legislature provided that in the special anti-SLAPP motion to strike, the court is to consider, in  
28 addition to the pleadings, supporting and opposing affidavits stating facts upon which the liability or  
defense is based. (C.C.P. s. 425.16(b), See also *Wilcox, supra*, 27 Cal.App.4th at 822.)

29                   **B. THIS COURT MUST LOOK TO CALIFORNIA COMMON LAW AS MODIFIED**  
30 **AND CHANGED IN ITS STATUTES AND CONSTITUTION.**

1 As discussed above, the federal court is to look to the state law reflected in the statutes and  
2 constitution of the state. Here, the California anti-SLAPP statute specifically addresses the gap in  
3 federal law by providing a “suitable remedy” against SLAPPs by providing a discovery stay and  
4 early termination of the claim. The California Legislature recognized both the growth of SLAPP  
5 suits and the ineffectiveness of existing California procedures, such as motions to strike and motions  
6 for summary judgment. (*Wilcox, supra*, 27 Cal.App.4th at 820.)

7 In response to the need to protect the rights of speech and petition, in 1992 the Legislature  
8 overwhelmingly passed section 425.16, which provides that any cause of action arising from a  
9 defendant’s exercise of the constitutional right to petition the government or to speak out in  
10 connection with a public issue shall be subject to a special motion to strike unless the plaintiff can  
11 establish that it has a probability of prevailing on the merits of its claims.

12 The purpose of section 425.16 is set forth in subsection (a) of the statute:

13 (a) The Legislature finds and declares that there has been a disturbing increase in lawsuits  
14 brought primarily to chill the valid exercise of the constitutional rights of freedom of speech  
15 and petition for the redress of grievances. The Legislature finds and declares that it is in the  
16 public interest to encourage continued participation in matters of public significance, and that  
17 this participation should not be chilled through the judicial process.

18 Speed is of the essence in dealing with SLAPPs, as it is whenever First Amendment rights  
19 are in jeopardy. (*Franchise Realty Interstate Corp. v. San Francisco Local Joint Executive Board of*  
20 *Culinary Workers*, 542 F.2d 1076, 1086 (9th Cir. 1976) (when complaint seeks to suppress or punish  
21 First Amendment rights it should be “properly nipped in the bud by the trial judge”).) California’s  
22 anti-SLAPP legislation provides an accelerated review process for potential SLAPP suits previously  
23 unavailable under California law.<sup>15</sup>

24 The California Legislature further provided that, in the absence of good cause shown, SLAPP  
25 plaintiffs would be required to establish the merits of their claims before any discovery is taken. This

---

26 15 A special motion to strike may be filed within sixty days of service of the complaint or at any  
27 later time in the court’s discretion, and the motion will be heard within thirty days after service  
28 unless the docket condition of the court requires a later hearing. (C.C.P. s. 425.16(f), (g).) This  
Court, on March 21, 2007, granted Defendant’s motion to vacate her default, and directed Defendant  
to file a responsive pleading by April 9, 2007; a 12(b)(6) or Anti-SLAPP motion, therefore, is timely.

1 stay on discovery was adopted in response to the common strategy of SLAPP plaintiffs to attempt to  
2 dredge up after-the-fact justifications for meritless suits as part of an overall tactic to punish  
3 opponents for the exercise of their First Amendment rights. Thus, section 425.16 provides a tailor-  
4 made response to SLAPP suits to deal with their pernicious effects.

5 **IV. DEFENDANT’S SPECIAL MOTION TO STRIKE MUST BE GRANTED BECAUSE**  
6 **HER ACTIVITIES WERE IN FURTHERANCE OF THEIR HER RIGHTS (AND THE**  
7 **RIGHTS OF HER CLIENTS) TO PETITION AND SPEECH, PROTECTED BY THE**  
8 **CALIFORNIA LITIGATION PRIVILEGE, AND BECAUSE PLAINTIFF CANNOT SHOW**  
9 **A PROBABILITY THAT SHE WILL PREVAIL ON HER CLAIM.**

9 California cases applying section 425.16 have established a two-pronged analysis, as follows:

10 1. To come within the purview of the anti-SLAPP statute, defendants must make a prima  
11 facie showing that plaintiff’s causes of action “arise from any act of [defendants] in furtherance of  
12 [defendants’] right of petition or free speech under the United States or California Constitution in  
13 connection with a public issue.”

12 2. The burden then shifts to plaintiff to show that “there is a probability that the plaintiff will  
13 prevail on the claim.”<sup>16</sup>

14 **A. PLAINTIFF’S RICO CAUSE OF ACTION ARISES SOLELY FROM ACTS IN**  
15 **FURTHERANCE OF DEFENDANT’S RIGHTS TO FREE SPEECH AND PETITION.**

15 Included in the definition of an “act in furtherance of a person’s right of petition or free  
16 speech” are the following:

17 [1] Any written or oral statement or writing made before a legislative, executive, or judicial  
18 proceeding, or any other official proceeding authorized by law; [2] any written or oral  
19 statement or writing made in connection with an issue under consideration or review by a  
20 legislative, executive, or judicial body, or any other official proceeding authorized by law; or  
21 [3] any written or oral statement or writing made in a place open to the public or a public  
22 forum in connection with an issue of public interest.<sup>17</sup>

21 **B. CODE OF CIVIL PROCEDURE SECTION 425.16 APPLIES BECAUSE PLAINTIFF’S**  
22 **CLAIM ARISES FROM PRIVILEGED ACTS WITHIN THE SCOPE OF SECTION 425.16.**

23 <sup>16</sup> (C.C.P. s. 425.16(b); *Dixon v. Superior Court*, 30 Cal.App.4th 733, 36 Cal.Rptr.2d 687, 695-97  
24 (1994); *Wilcox v. Superior Court*, 27 Cal.App.4th 809, 820-24, 33 Cal.Rptr.2d 446 (1994).) The  
25 point of the anti-SLAPP statute is to prevent the inevitable chill on free speech and petitioning of the  
26 government that results from protracted litigation from a baseless SLAPP suit. (See, e.g., *Wilcox*,  
*supra*, 27 Cal.App.4th at 815-18.)

27 <sup>17</sup> (C.C.P. s. 425.16(e) (bracketed numbers added).) Note that the complained-of activities need  
28 only be in connection with an official proceeding, not at an official proceeding. (*Id.*; *Wilcox, supra*,  
27 Cal.App.4th at 820.)

1            *Code of Civil Procedure* Section 425.16 applies to Henriks' RICO claim because Moritz's  
2 communications in connection with pending or anticipated litigation are protected by the United  
3 States and California Constitutions, and fall within the protections of *Civil Code* Section 47, entitling  
4 her to the benefits of Section 425.16. *Briggs, v. Eden Council for Hope & Opportunity* (1999) 19  
5 Cal.4th 1106, at 1115 [communications within the protection of the litigation privilege of *Civil Code*  
6 section 47 are equally entitled to the benefits of section 425.16.].

7            Henriks' RICO cause of action arises from filings and communications relating to legal actions  
8 to which Henricks was a party. Such communications and filings are well within the litigation  
9 privilege set forth in *Civil Code* § 47. The scope of the litigation privilege is very broad. In  
10 *Albertson v. Raboff* (1956) 46 Cal.2d 375, the Court held that to be privileged, the communications  
11 need not address the merits, or the issues actually before the court. Rather, the communications need  
12 only have some connection to, or be reasonably related to the litigation to be protected by Section  
13 47. *Id.* at 380381. In subsequent cases, this broad application of the litigation privilege has been  
14 upheld numerous times. See *Profile Structures, Inc. v. Long Beach Bldg. Material Co.* (1986) 181  
15 Cal.App.3d 437, 442 (a matter need not be pertinent, relevant or material in a technical sense to any  
16 issue if it has some connection or relation to the proceedings]; see also *Abraham v. Lancaster*  
17 *Community Hospital* (1990) 217 Cal.App.3d 796 at 816-819 [enumerating cases from various  
18 appellate districts upholding the privilege using a broad scope). It is the context in which the  
19 statements are made that will bear upon the question of privilege. *Sacramento Brewing Co. v.*  
20 *Desmond, Miller & Desmond* (1999) 75 Cal.App4th 1082,1090.

21            Further, if there is any doubt as to whether an adequate relationship or connection exists, such  
22 doubt must be resolved in favor of a finding of privilege. See *Profile Structures*, supra, at 442; see  
23 also *Izzi v. Rellas* (1980) 104 Cal.App.3d 254,263. Stated another way, privilege can only be denied  
24 if the matter is so irrelevant that no reasonable man could doubt its irrelevancy. See *Lewis v. Linn*  
25 (1962) 209 Cal.App.2d 394, 399. Moritz's privileged filings and communications also fall within  
26 the scope of Section 425.16 because they represent constitutionally protected speech. There is no  
27 indication that the statements were of an "illegal" nature, punishable under the penal code, or that  
28

1 they encompass conduct outside the protections offered by Section 425.16. See generally, *Flatley v.*  
2 *Mauro* (2006) 39 Cal4th 299,323 -325.

3 **C. PLAINTIFF CANNOT SHOW A PROBABILITY THAT SHE WILL PREVAIL**  
4 **ON HER CLAIM.**

5 Once defendants have shown that the anti-SLAPP statute applies, the burden shifts to  
6 plaintiff to show a probability of success on the merits. (C.C.P. s. 425.16(b); *Wilcox, supra*, 27  
7 Cal.App.4th at 820-24.) Plaintiff also bears the burden of negating defendant’s defenses, such as the  
8 constitutional privilege to petition the government. (C.C.P. s. 425.16(b).) Most importantly for the  
9 instant lawsuit, plaintiff must show its probability of success by admissible evidence. (*Wilcox, supra*,  
10 27 Cal.App.4th at 830.) As discussed at length, plaintiff’s vague allegations, do not meet this  
11 criterion.  
12

13 Since California *Code of Civil Procedure* Section 425.16 applies here, the burden shifts to  
14 Henriks to establish a probability of prevailing on the merits in her claims against Moritz. See *Code*  
15 *of Civil Procedure* Section 425.16 (b) (1). To meet that burden, Henriks must state *and substantiate*  
16 a legally sufficient claim—i.e. she must “demonstrate that the complaint is both legally sufficient  
17 and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the  
18 evidence submitted by the plaintiff is credited.” *Navellier v. Sletten* (2002) 29 Cal. 4th 82, 88. The  
19 plaintiff must first show that defendant’s purported constitutional defenses are not applicable as a  
20 matter of law, or otherwise establish facts which, if accepted, would negate such defenses. *Wilcox v*  
21 *Superior Court* (1994, 2nd Dist) 27 Cal.App.4th 809 (disapproved in part by *Equilon Enterprises v*  
22 *Consumer Cause, Inc.* (2002) 29 Cal4th 53. Plaintiff must establish both that that her case is  
23 meritorious, and that she is likely to prevail -this plaintiff cannot meet those requirements.  
24  
25

26 In the context of this case, the litigation privilege continues to be relevant to the second prong  
27 of an anti-SLAPP analysis because it presents a “substantive defense plaintiff must overcome to  
28 demonstrate a probability of prevailing.” *Flatley, supra*, at 323. The litigation privilege, as codified

1 at *Civil Code* § 47, is very broad, and as discussed more fully above, encompasses legal arguments  
2 and filings, and even communications between counsel that is related to the litigation, even if the  
3 communications do not address issues actually before the court. [See *Albertson supra ;see also*  
4 *Profile Structures, Inc., supra.*] In this case, Henriks cannot overcome the defendant’s litigation  
5 privilege defense, and thus will be unable to establish that she is likely to prevail on her claim. The  
6 filings she alleges were actionable were allegedly made by Defendant Moritz in connection with  
7 pending litigation, and were all subject to the litigation privilege. Henriks will be unable to  
8 establish any probability of prevailing on the merits of her RICO action against Moritz, since the  
9 litigation privilege will completely bar her action as it is based entirely on filings and arguments in  
10 litigation in which Henriks was involved.  
11

12 In sum, plaintiff cannot show a probability of success on her claims because she has no  
13 admissible evidence of anything other than lawful petitioning activity, protected by the First  
14 Amendment and statutory privileges.  
15

## 16 V. CONCLUSION

17 Both prongs of the Anti-SLAPP Statute analysis are satisfied here. Under the Anti-SLAPP  
18 statute, this Court should strike the plaintiff’s claim. The plaintiff’s claim arises from the exercise of  
19 Defendant Moritz’s right to petition and free expression, putting it well within the statutory  
20 definition. In addition, plaintiff cannot establish a likelihood of prevailing on the merits of her claim,  
21 because the defendant may employ the complete defense of the litigation privilege of *Civil Code*  
22 section 47. Given that the alleged conduct is constitutionally protected, and any claim based upon  
23 the alleged conduct will be barred by the litigation privilege, both prongs of the Anti-SLAPP  
24 analysis are satisfied. This Defendant therefore respectfully requests this Court to strike the  
25 plaintiff’s claim that is based upon constitutionally protected and privileged conduct, in its entirety.

26 For the foregoing reasons, the California anti-SLAPP statute (C.C.P. § 425.16) must be applied  
27 by this Court. Since defendants’ activities were in furtherance of their rights to petition and speech,  
28 and plaintiff cannot show a probability of prevailing on the merits, the RICO complaint must be

1 stricken in its entirety pursuant to section 425.16. In addition, defendant asks this Court to award her  
2 attorney's fees and costs under C.C.P. section 425.16(c).

3 Dated: June 8, 2008 LAW OFFICES OF RICHARD D. FARKAS

4  
5 By \_\_\_\_\_  
6 RICHARD D. FARKAS  
7 Attorneys for Defendant,  
8 LOUISA MORITZ  
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**SUPPLEMENTAL DECLARATION OF RICHARD D. FARKAS**

**(re: Compliance with Local Rule 7.3)**

I, RICHARD D. FARKAS, declare:

1. I am an attorney duly licensed to practice law in the State of California and am the principal of the Law Offices of Richard D. Farkas, attorneys of record for Defendant LOUISA MORITZ in this action. This Supplemental Declaration is made to specifically to detail my efforts to “meet and confer” with opposing counsel pursuant to Local Rule 7.3 before filing this Special “Anti-SLAPP Motion” to Strike the Plaintiff’s RICO complaint against Defendant Moritz.

2. The following facts are within my personal knowledge and I could testify to same if called as a witness herein.

3. On March 28, 2007, I prepared a letter to Plaintiff’s attorney, Philip Dapeer. A true and correct copy of that letter is attached hereto as Exhibit L, and incorporated by this reference.

4. In my March 28, 2007 letter to Mr. Dapeer, I wrote, in part, “to request that you voluntarily dismiss the lawsuit of Yana Henriks your office filed against my client, Louisa Moritz. Her RICO action is a SLAPP (Strategic Lawsuit Against Public Participation), subject to a special motion to strike.”

5. In my March 28, 2007 letter to Mr. Dapeer, after detailing my reasons, I concluded: “we request that you immediately dismiss Ms. Henriks’ lawsuit against Ms. Moritz. Failure to do so will leave us with no alternative but to file our Motion to Strike, which will necessarily seek to recover Ms. Moritz’s fees and costs.” [Exhibit L.]

5. I sent my March 28, 2007 letter by facsimile to Mr. Dapeer on the morning of March 28, 2007. Mr. Dapeer called me on the telephone on the afternoon of March 29, 2007, and we discussed

1 the substance of this letter (as well as some of the background of this litigation). At the conclusion  
2 of our conversation, he said that he would communicate with his client, to determine how to proceed.  
3 During our conversation, it was clear that we did not agree that the Plaintiff's contentions against  
4 Defendant Moritz were subject to an anti-SLAPP motion.  
5

6 6. As of the date of this Declaration, I have not heard from Mr. Dapeer since our March 29,  
7 2007 conversation concerning the subject of this motion.  
8

9 I declare under penalty of perjury, under the laws of the United States of America, that the  
10 foregoing is true and correct.

11 Executed this \_\_\_\_ day of \_\_\_\_\_, 2007, at Sherman Oaks, California.  
12

13  
14 By \_\_\_\_\_  
15 RICHARD D. FARKAS, Declarant  
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*Tania Henriks vs. Louisa Moritz, Victor Noval, Tania Noval, etc., et al.*  
United States District Court Case No. 2:06-cv-05670-JFW-SH

**PROOF OF SERVICE**

I am a resident of the State of California, I am over the age of 18 years, and I am not a party to this lawsuit. My business address is Law Offices of Richard D. Farkas, 15300 Ventura Boulevard, Suite 504, Sherman Oaks, California 91403. On the date listed below, I served the following document(s):

**NOTICE OF MOTION AND MOTION OF DEFENDANT LOUISA MORITZ TO STRIKE PLAINTIFF’S SLAPP COMPLAINT**

\_\_ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5 p.m. Our facsimile machine reported the “send” as successful.

XX by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.  
I am readily familiar with the firm’s practice of collecting and processing correspondence for mailing. According to that practice, items are deposited with the United States mail on that same day with postage thereon fully prepaid. I am aware that, on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing stated in the affidavit.

\_\_ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, deposited with Federal Express Corporation on the same date set out below in the ordinary course of business; that on the date set below, I caused to be served a true copy of the attached document(s).

\_\_ by causing personal delivery of the document(s) listed above to the indicated recipient(s) at the address set forth below.

\_\_ by personally delivering the document(s) listed above to the person at the address set forth below.

<b>Philip D Dapeer</b> Philip D Dapeer Law Offices 699 Hampshire Road, Suite 105 Westlake Village, CA 91361-2379	<b>Jon Hugh Freis</b> Jon H Freis Law Offices 120 El Camino Dr. Beverly Hills, CA 90212
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: April \_\_, 2007

\_\_\_\_\_  
KERRI CONAWAY