

1 MARC M. SELTZER (54534)  
mseltzer@susmangodfrey.com  
2 SUSMAN GODFREY L.L.P.  
1901 Avenue of the Stars, Suite 950  
3 Los Angeles, CA 90067-6029  
Telephone: (310) 789-3100  
4 Fax: (310) 789-3150

5 HOWARD I. LANGER  
(Pro Hac Vice Application To Be Submitted)  
6 hlanger@langergrogan.com  
LANGER GROGAN & DIVER, P.C.  
7 1717 Arch Street, Suite 4130  
Philadelphia, PA 19103  
8 Telephone: (215) 320-5660  
Fax: (215) 320-5703

9 Attorneys for Defendant  
10 Kav LaOved

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13 **WESTERN DIVISION**

15 MORDECHAI Y. ORIAN, an  
16 individual, and GLOBAL HORIZONS,  
17 INC.,

18 Plaintiffs,

19 vs.

20 FEDÉRATION INTERNATIONALE  
DES DROITS DE L'HOMME, corporate  
21 form unknown, EURO-  
22 MEDITERRANEAN HUMAN RIGHTS  
NETWORK, corporate form unknown,  
23 SIDIKI KABA, an individual,  
24 ABDELAZIZ BENNANI, an individual,  
25 and KAV LAOVED, an Israeli  
Corporation, form unknown,

26 Defendants.

Case No. CV 11-6904 PSG (FFMx)

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF DEFENDANT KAV  
LAOVED'S MOTION TO STRIKE  
OR, IN THE ALTERNATIVE, TO  
DISMISS PLAINTIFFS'  
COMPLAINT**

Date: November 14, 2011  
Time: 1:30 p.m.  
Place: Courtroom of the  
Hon. Philip S. Gutierrez

**TABLE OF CONTENTS**

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

	<b><u>Page</u></b>
I. INTRODUCTION.....	1
II. FACTUAL BACKGROUND .....	2
A. Plaintiffs .....	2
B. Defendants .....	5
C. Plaintiffs’ Allegations .....	6
III. ARGUMENT .....	11
A. Pursuant to California’s Anti-SLAPP Statute, Plaintiffs’ Complaint Must be Stricken. ....	11
1. The Anti-SLAPP Statute Applies to Claims that Target the Exercise of Free Speech. ....	11
2. Plaintiffs’ Complaint is Subject to the Anti-SLAPP Statute. ....	13
3. Because Plaintiffs’ Complaint is Frivolous, Plaintiffs Cannot Meet Their Burden and Show a Probability of Prevailing on the Merits. ....	14
B. Plaintiffs’ Action Must Be Dismissed on Several Independently Sufficient Grounds .....	15
1. The Complaint Has Not Been Properly Served.....	15
2. The Court Lacks Jurisdiction Over Kav and this Action. ....	15
a. There is No Personal Jurisdiction. ....	15
b. This Case Fails to Meet the Requisite Amount in Controversy for Diversity Jurisdiction.....	17
3. The Action is Time-Barred.....	18
4. The Complaint Fails to State a Claim for Relief.....	19
a. Plaintiffs Fail to State a Claim for Tortious Interference.....	19
b. Plaintiffs Fail to State a Claim for Libel .....	20
C. Plaintiffs Are Libel Proof.....	24

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

IV. AN AWARD OF DEFENDANT’S ATTORNEY’S FEES IS  
MANDATED BY THE ANTI-SLAPP STATUTE.....24

V. CONCLUSION .....25

**TABLE OF AUTHORITIES**

**CASES**

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

*AccuImage Diagnostics Corp v. Terarecon, Inc.*,  
260 F. Supp. 2d 941 (N.D. Cal. 2003) ..... 19

*Alberghetti v. Corbis Corp.*,  
713 F. Supp. 2d 971 (C.D. Cal. 2010)..... 19

*Ashcroft v. Iqbal*,  
129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) ..... 22

*Bell Atlantic Corp. v. Twombly*,  
550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) ..... 22

*Berliner Corcoran & Rowle LLP v. Orian*,  
662 F. Supp. 2d 130 (D.D.C. 2009) *aff'd*, 2010 WL 2574139 (D.C.  
Cir. June 10, 2010) ..... 4, 5

*Bingham v. Blair LLC*,  
2010 WL 2196106 (W.D. Wash. May 27, 2010)..... 16

*Braun v. Chronicle Publ.*,  
52 Cal. App. 4th 1036, 61 Cal. Rptr. 2d 58 (1997)..... 11

*Briggs v. Eden Council*,  
19 Cal. 4th 1106, 81 Cal. Rptr. 2d 471 (1999)..... 12

*Brockmeyer v. May*,  
383 F.3d 798 (9th Cir. 2004)..... 15

*Cabrera v. Alam*,  
197 Cal. App. 4th 1077, 129 Cal.Rptr.3d 74 (2011)..... 20, 21

*Church of Scientology*,  
42 Cal. App. 4th 628 (1996)..... 15

*Circle Four Farms, LLC v. Orian*,  
2007 WL 3462817 (D. Utah Nov. 14, 2007) ..... 3

*Cohee v. Global Horizons Inc.*,  
310 Fed. Appx. 579 (4th Cir. 2009) ..... 3

*Copp v. Paxton* (1996) 45 Cal. App. 4th 829, 52 Cal. Rptr. 2d 831 ..... 21

*Data Discount, Inc. v. System Tech. Associates, Inc.*,  
557 F.2d 1280 (9th Cir. 1977)..... 16

*DuPont Merck Pharm. v. Superior Court*,  
78 Cal. App. 4th 562, 92 Cal. Rptr. 2d 755 (2000)..... 14

*Equilon Enterprises v. Consume Cause, Inc.*,  
29 Cal.4th 53 (2002)..... 15

1 *Forcier v. Microsoft Corp.*,  
 123 F. Supp. 2d 520 (N.D. Cal. 2000) ..... 19

2 *Global Horizons v. U.S. Department of Labor*,  
 3 510 F.3d 1054 (9th Cir. 1997)..... 2, 5

4 *Global Horizons Incorporated v. Del Monte Fresh Produce, N.A., Inc.*  
 5 392 Fed. Appx. 805 (11th Cir. August 17, 2010) ..... 3

6 *Hawaii Employers' Mutual Insurance Co. v. Global Horizons, Inc.*,  
 2008 WL. 1744726 (D. Haw. Apr. 16, 2008) ..... 4, 17

7 *Hilton v. Hallmark Cards*,  
 8 599 F.3d 894 (9th Cir. 2010)..... 13

9 *Kauai Coffee Company v. Global Horizons, Inc.*,  
 2011 WL. 740438 (D. Hawaii Feb. 22, 2011) ..... 4, 5

10 *Kav LaOved v. Government of Israel*,  
 11 910 Isr LR 260 (30 March 2006) ..... 7

12 *Ketchum v. Moses*,  
 24 Cal. 4th 1122 (2001)..... 25

13 *Maloney v. Verizon Internet Services, Inc.*,  
 2009 WL. 8129871 (C.D. Cal. Oct. 4, 2009) ..... 6

14 *Manufactured Home Communities, Inc. v. County Of San Diego*,  
 15 2011 WL. 3771277 (9th Cir. 2011)..... 3

16 *Meridian Sec. Insurance Co. v. Sadowski*,  
 17 441 F.3d 536 (7th Cir. 2006)..... 17

18 *Mindys Cosmetics v. Dakar*,  
 611 F.3d 590 (9th Cir. 2010)..... 15

19 *Navellier v. Sletten*,  
 20 29 Cal. 4th 82, 124 Cal. Rptr. 2d 530 (2002)..... 12, 13

21 *Northon v. Rule*,  
 2011 WL. 135720 (9th Cir.2011)..... 25

22 *Nygaard v. Uusi -Kerttula*,  
 23 159 Cal. App. 4th 1027, 72 Cal.Rptr.3d 210 (2008)..... 13

24 *Orian v. Commissioner of Internal Revenue*,  
 100 T.C.M. (CCH) 356, T.C. Memo 2010-234 (Tax Court, Oct. 25,  
 25 2010)..... 4

26 *PG&E v. Bear Stearns & Co.*,  
 50 Cal. 3d 1118 (1990)..... 20

27 *Parrino v. FHP, Inc.*,  
 146 F.3d 699 (9th Cir.1998)..... 6

28

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

*Perez-Farias*,  
2009 WL. 1011180 (E.D. Wash. April 15, 2009)..... 3

*Perez-Farias v. Global Horizons*,  
2008 U.S. Dist. LEXIS 118725 (E.D. Wash. July 21, 2008)..... 4, 10, 18

*Perez-Farias v. Global Horizons, Inc.*,  
2011 WL. 3605687 (9th Cir. Aug. 17, 2011)..... 2

*Rasidescu v. Midland Credit Management, Inc.*,  
435 F. Supp. 2d 1090 (S.D. Cal. 2006) ..... 17

*Schwarzenegger v. Fred Martin Motor Co.*,  
374 F.3d 797 (9th Cir. 2004)..... 16

*Seelig v. Infinity Broadcasting*,  
97 Cal. App. 4th 798, 119 Cal. Rptr. 2d 108 (2002)..... 13

*Shepard v. Miler*,  
2011 WL. 1740603 (E.D. Cal. May 5, 2011)..... 25

*URS Corp. v. Lebanese Co. for Development & Reconstruction of Beirut  
Central District SAL*,  
512 F. Supp. 2d 199 (D. Del. 2007) ..... 16

*U.S. Department of Labor v. Global Horizons Manpower, Inc. and  
Mordechai Orian*,  
No. 2008-TAE-0003 (July 7, 2008) ..... 5

*U.S. ex rel. Newsham v. Lockheed Missiles & Space Co., Inc.*,  
190 F.3d 963 (9th Cir. 1999)..... 1, 13

*United States v. Orian*,  
Cr No. 10-00576..... 6

*Valley Fruit Orchards, LLC v. Global Horizons Manpower*,  
2011 WL. 1539788 (E.D. Wash. April 22, 2011)..... 5

*Vess v. Ciba-Geigy Corp. USA*,  
317 F.3d 1097 (9th Cir. 2003)..... 1

*Wynberg v. National Enquirer, Inc.*,  
564 F. Supp. 924 (C.D. Cal. 1982)..... 24

**STATUTES**

28 U.S.C. §1332(a) ..... 18

Cal. Code Civ. Proc. Code § 340..... 18

Cal. Code of Civ. Proc. §425.16..... 1, 11

1 Cal. Code Civ. Proc. §425.16(b) ..... 1, 12, 13, 14  
2 Cal.Civ. Code § 45..... 20  
3 Cal. Civ. Code § 3425.3..... 19

4  
5 **OTHER AUTHORITIES**

6 5B Wright & Miller, *Fed. Prac. & Proc* ..... 16  
7 Wright & Miller, 14AA *Fed. Prac. & Proc.* § 3702.2 (4th ed.) ..... 17

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **I. INTRODUCTION**

2 Defendant Kav LaOved (“Kav”) is an Israeli human rights organization  
3 dedicated to protecting the rights of foreign workers in Israel. It is one of the three  
4 nonprofit organizations that combat human trafficking plaintiffs have sued.<sup>1</sup> This  
5 action for alleged defamation is based on a report on human trafficking published in  
6 2003 issued by the other two organization defendants named in plaintiffs’  
7 complaint. A paragraph in that report described abuses of guest workers in Israel  
8 by plaintiffs, Mordechai “Motti” Orian and his company, Global Horizons  
9 (“Global”). Because plaintiffs’ lawsuit targets the exercise of free speech regarding  
10 matters of significant public interest, it is subject to an anti-SLAPP motion under  
11 California Code of Civil Procedure §425.16, which California “enacted to allow  
12 early dismissal of meritless first amendment cases . . .” *Vess v. Ciba-Geigy Corp.*  
13 *USA*, 317 F.3d 1097, 1109 (9<sup>th</sup> Cir. 2003) (internal citation omitted). The statute  
14 requires claims be stricken at the outset unless a plaintiff presents admissible  
15 evidence establishing a “probability” of prevailing on the merits. Cal. Code Civ.  
16 Proc. §425.16(b).<sup>2</sup> Plaintiffs cannot meet this standard for many reasons.

17 As demonstrated below, plaintiffs’ complaint should be dismissed for several  
18 independently sufficient reasons if it is not stricken. Plaintiffs failed to serve Kav  
19 properly. This Court lacks personal jurisdiction over Kav, which has not had any  
20 contacts with California. Plaintiffs cannot satisfy the amount in controversy  
21 requirement for diversity jurisdiction. The claims arising from a 2003 publication  
22 are barred by the one-year statute of limitations. Plaintiffs’ complaint fails to state  
23 a claim because it does not allege what is false in the allegedly defamatory

24 <sup>1</sup> Kav LaOved means “Workers’ Hotline” in English.

25 <sup>2</sup> The Ninth Circuit has held that a defendant facing state law claims in federal court  
26 “may bring a special motion to strike pursuant to § 425.16(b).” *U.S. ex rel.*  
27 *Newsham v. Lockheed Missiles & Space Co., Inc.*, 190 F.3d 963, 972 (9<sup>th</sup> Cir.  
28 1999). “If successful, the litigant may be entitled to fees pursuant to § 425.16(c). If  
unsuccessful, the litigant remains free to bring a Rule 12 motion to dismiss . . .” *Id.*

1 statements. Indeed, an array of judicial and administrative opinions establish that  
2 plaintiffs are human traffickers (and serial abusers of the judicial process).

3 In short, this lawsuit is nothing more than a scurrilous attempt to stifle the  
4 important work done by defendants to expose the abhorrent practice of human  
5 trafficking by persons like the plaintiffs.

## 6 **II. FACTUAL BACKGROUND**

### 7 **A. Plaintiffs**

8 Mordechai Orian (“Orian”) and his company, Global, are corrupt labor  
9 contractors, colloquially known as human traffickers. The United States  
10 Department of Labor has repeatedly sanctioned them for extensive abuses against  
11 guest workers. In May and July 2006, they were barred for three years from  
12 participating in the H-2A visa program for guest workers and required to pay  
13 \$292,445 in civil penalties and back wages.<sup>3</sup> On December 17, 2010 they were  
14 ordered to pay \$522,508 in back pay and fines.<sup>4</sup> On December 21, 2010, they were  
15 fined \$199,600 for yet other violations.<sup>5</sup> On May 19, 2011, they were again barred  
16 for three years and fined \$194,000.<sup>6</sup> Last month, the Ninth Circuit ordered damages  
17 increased to \$1.98 million in a class action brought against Global by abused  
18 workers in Washington. *Perez-Farias v. Global Horizons, Inc.* 2011 WL 3605687

19 \_\_\_\_\_  
20 <sup>3</sup> *Global Horizons v. U.S. Dept. of Labor*, 510 F.3d 1054 (9<sup>th</sup> Cir. 1997) and *In re*  
21 *Global Horizons*, Settlement Agreement and Consent Finding Case No 2005-TAE-  
22 0001 and 2005-TLC-00006 (U.S. Dept. of Labor 5/3/ 2006). (See Exhibit A to the  
23 Declaration of Howard I. Langer (“Langer Decl.”), dated September 28, 2011.)  
24 The Court is requested to take judicial notice of the documents attached to the  
25 Langer Decl. pursuant to F.R. Evid. 201(b).

26 <sup>4</sup> *In re Global Horizons and Orian*, Case No. 2010-TAE-00002 (U.S. Dept of  
27 Labor, 12/17/2010) (Langer Decl., Exh. B).

28 <sup>5</sup> *In re Administrator Wage & Hour, Division, U.S. Dept. of Labor v. Global*  
*Horizons Manpower, Inc. and Mordechai Orian*, 2010 DOL Ad. Rev. Bd. LEXIS  
117, 30-31 (DOL Ad. Rev. Bd. 2010).

<sup>6</sup> *In re Global Horizons and Orian*, Cases No. 2005-TAE00002 and 00006 (U.S.  
Dept of Labor, 5/6/2011) (Langer Decl., Exh. C).

1 (9<sup>th</sup> Cir. Aug. 17, 2011). Global had previously “admitted to violating Washington  
2 state and federal laws.” *Perez-Farias*, 2009 WL 1011180, 6 (E.D. Wash. April 15,  
3 2009).<sup>7</sup>

4 The complaint alleges that Orian was indicted last year in Hawaii for human  
5 trafficking violations,<sup>8</sup> in the largest human trafficking case ever brought in the  
6 United States.<sup>9</sup> In April the EEOC sued plaintiffs for major violations related to  
7 trafficking. (Langer Decl., Exh. E).

8 Plaintiffs’ corrupt labor practices have been reported extensively in the press  
9 and in studies of human trafficking. *See, e.g., Help Wanted: Hiring, Human*  
10 *Trafficking and Modern-Day Slavery in the Global Economy, Immigrant Workers*  
11 *in US Agriculture: The Role of Labor Brokers in Vulnerability to Forced Labor,*  
12 *Verite*, 2010 (which devotes a chapter to Global);<sup>10</sup> *Bound for America*, Mother  
13 *Jones*, May/June 2010;<sup>11</sup> and *A Story of Modern Slavery in Utah, Thais tricked,*  
14 *trapped and imported here to be slaves*, *Deseret News*, August 15, 2010.<sup>12</sup>

15 Plaintiffs have also been the subject of large judgments stemming from their  
16 corrupt practices. *See, e.g., Cohee v. Global Horizons Inc.*, 310 Fed. Appx. 579  
17 (4th Cir. 2009) (affirming \$920,000 verdict); *Global Horizons Incorporated v. Del*

18 <sup>7</sup> *See also Circle Four Farms, LLC v. Orian*, 2007 WL 3462817 (D. Utah Nov. 14,  
19 2007)(describing allegations that Global failed to pay its workers.)

20 <sup>8</sup> A copy of the indictment is attached as Exhibit D to the Langer Decl.

21 <sup>9</sup> *Feds Charge 6 In Forced Labor Of 400 Thai Workers, Largest Human-Trafficking*  
22 *Case In U.S. History*, *The Huffington Post*, 9/2/2010 available at  
[http://www.huffingtonpost.com/2010/09/02/us-human-trafficking-thai-forced-labor\\_n\\_704290.html](http://www.huffingtonpost.com/2010/09/02/us-human-trafficking-thai-forced-labor_n_704290.html).

23 <sup>10</sup> Available at, [http://www.verite.org/system/files/images/HELP%20WANTED](http://www.verite.org/system/files/images/HELP%20WANTED%20Verite%CC%81%20Report_Migrant%20Workers%20in%20the%20United%20States.pdf)  
24 [A%20Verite%CC%81%20Report\\_Migrant%20Workers%20in%20the%20United%20States.pdf](http://www.verite.org/system/files/images/HELP%20WANTED%20Verite%CC%81%20Report_Migrant%20Workers%20in%20the%20United%20States.pdf)

25 <sup>11</sup> Available at [http://motherjones.com/politics/2010/05/immigration-law-](http://motherjones.com/politics/2010/05/immigration-law-indentured-servitude)  
26 [-indentured-servitude](http://motherjones.com/politics/2010/05/immigration-law-indentured-servitude).

27 <sup>12</sup> Available at [http://www.deseretnews.com/article/700057024/A-story-of-modern-](http://www.deseretnews.com/article/700057024/A-story-of-modern-slavery-in-Utah.html?pg=1)  
28 [slavery-in-Utah.html?pg=1](http://www.deseretnews.com/article/700057024/A-story-of-modern-slavery-in-Utah.html?pg=1)

1 *Monte Fresh Produce, N.A., Inc.* 392 Fed. Appx. 805 (11th Cir. August 17, 2010)  
2 (affirming \$1.196 million in attorneys' fees and costs); *Berliner Corcoran & Rowle*  
3 *LLP v. Orian*, 662 F. Supp. 2d 130 (D.D.C. 2009) *aff'd*, 2010 WL 2574139 (D.C.  
4 Cir. June 10, 2010) (awarding \$223,000 in attorneys' fees Orian failed to pay his  
5 lawyers); *Hawaii Employers' Mut. Ins. Co. v. Global Horizons, Inc.*, 2008 WL  
6 1744726 (D. Haw. Apr. 16, 2008) (awarding \$550,589.81 in unpaid insurance  
7 premiums; default judgment after Global's lawyer withdrew from case); *Kauai*  
8 *Coffee Company v. Global Horizons, Inc.* 2011 WL 740438 (D. Hawaii Feb. 22,  
9 2011) (default judgment on indemnification claims by farmer forced to defend labor  
10 abuse claims regarding Global).

11 Plaintiffs are also the subject of large tax claims for failing to pay taxes.  
12 *Orian v. Commissioner of Internal Revenue* 100 T.C.M. (CCH) 356, T.C. Memo  
13 2010-234 (Tax Court, Oct. 25, 2010) (affirming over \$1.5 million in penalties  
14 noting failure to file tax returns for several years); *Perez-Farias v. Global Horizons*,  
15 2008 U.S. Dist. LEXIS 118725 (E.D. Wash. July 21, 2008), *vacated as moot*  
16 *following judgment for plaintiffs*, 2011 U.S. Dist. LEXIS 541 (E.D. Wash. Jan. 4,  
17 2011) ("Global is subject to a . . . federal tax lien . . . in the neighborhood of  
18 \$4 million").

19 Many cases describe plaintiffs' abuses of the judicial process: flouting court  
20 orders, destruction of evidence, and obstruction through bad faith argument. In  
21 *Berliner*, Judge Kollar-Kotelly referred to the "overwhelming evidentiary record  
22 and illogical nature of [Orian's] arguments" and the "factual incoherence associated  
23 with Defendants' arguments..." Mem. Op. (D.D.C. August 17, 2009 (Langer  
24 Decl., Exh. F at HIL 269). *Perez-Farias* described Global's "abuse of the judicial  
25 process," and recommended default as a sanction. 2008 U.S. Dist. LEXIS 118725  
26 at \*2. The Department of Labor Administrative Review Board affirmed entry of  
27 judgment as a sanction. *See Dept. of Labor v. Global Horizons Manpower, Inc. and*  
28 *Mordechai Orian*, 2010 DOL Ad. Rev. Bd. LEXIS 117, 30-31 (2010) ("Global

1 acted in bad faith by: repeatedly disobeying court orders; withholding documents  
2 from the Administrator's request; willfully failing to provide documents...;  
3 obstructing the completion of the deposition .... Global's conduct constitutes  
4 willful, contumacious disregard of the discovery process as well as disregard  
5 of...warnings and orders.”); *see also In re Global Horizons, Inc. and Mordechai*  
6 *Orian*, Case No-TAE-00001, 2005 TLC-00006 (May 6, 2011) (Langer Decl., Exh.  
7 C, at HIL 34-35) (“Extraordinary obstruction during the course of discovery plays a  
8 role in the disposition of this case. ... The Respondents’ scorched-earth tactics are  
9 neither new nor unique to this case.”); *U.S. Department of Labor v. Global*  
10 *Horizons Manpower, Inc. and Mordechai Orian*, No. 2008-TAE-0003 (July 7,  
11 2008) (Langer Decl., Exh. G, at HIL 292) (“there is a long history of Global’s bad  
12 faith, delay, and negligence in discovery”)

13 In *Perez-Farias*, and other cases judgments were entered when Orian and  
14 Global failed to respond to summary judgment motions. *See, e.g., Valley Fruit*  
15 *Orchards, LLC v. Global Horizons Manpower*, 2011 WL 1539788 (E.D. Wash.  
16 April 22, 2011); *Kauai Coffee Company, supra*; *see also Berliner Corcoran &*  
17 *Rowe LLP v. Orian*, 09-7163, 2010 WL 2574139 (D.C. Cir. June 10, 2010) (“ The  
18 merits of the parties’ positions are so clear as to warrant summary action.”); *Global*  
19 *Horizons v. U.S. Department of Labor*, 510 F.3d 1054 (9<sup>th</sup> Cir. 2007) (noting  
20 plaintiffs’ repeated delays in district court).

## 21 **B. Defendants**

22 Kav is a non-governmental non-profit organization located in Israel,  
23 committed to protecting disadvantaged workers employed in Israel and the  
24 Occupied Territories. In 2009, it received an award from the President of Israel for  
25 combating human trafficking. It has no offices in the United States, let alone  
26 California, and transacts no business in California. *See* Declaration of Hanna Zohar  
27 (“Zohar Decl.”), dated September 26, 2011, at ¶¶3-15.

1 The other two organizational defendants are leading human rights  
2 organizations headquartered in Denmark and France. The complaint alleges they  
3 are a consortium of over eighty international human rights organizations. (¶¶3-6).

4 **C. Plaintiffs' Allegations**

5 Plaintiffs allege that they sued the defendants “because the US attorney used  
6 the defamatory material in its submission to the District Court in Hawaii upon  
7 which the Court based its decision to keep ORIAN in pretrial detention...” (¶ 19).  
8 Plaintiffs do not attach the full submission containing the so-called “defamatory  
9 material.” The docket shows that it was an exhibit to the Government’s “Appeal To  
10 The District Judge of The Magistrate Judge’s Bench Ruling Authorizing  
11 Defendant’s Release On Bond.” (Langer Decl., Exh. H, Attachment 8 (HIL 376-  
12 82))<sup>13</sup> Even if a claim could arise against third parties from a judge’s ruling at a  
13 bail hearing, which Kav vigorously disputes, plaintiffs’ assertion that the  
14 “defamatory” material was something upon which “the Court based its decision to  
15 keep ORIAN in pretrial detention...” (¶ 19) is demonstrably false. Judge Mollway  
16 *denied* the Government’s appeal and set bail conditions for Orian. *United States v.*  
17 *Orian*, Cr No. 10-00576 SOM, Minute Order (D. Hawaii Oct. 8, 2010) (Langer  
18 Decl., Exh. I).

19 The exhibit was pages from a 2003 publication of the Euro-Mediterranean  
20 Human Rights Network (EMHRN) and International Federation For Human Rights

21 \_\_\_\_\_  
22 <sup>13</sup> The Court may rely upon the complete documents referred to in the complaint.  
23 *See Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir.1998) (“a district court ruling  
24 on a motion to dismiss may consider a document the authenticity of which is not  
25 contested, and upon which the plaintiff's complaint necessarily relies.”); *Maloney v.*  
26 *Verizon Internet Services, Inc.*, 2009 WL 8129871 (C.D. Cal. Oct. 4, 2009) (“the  
27 Ninth Circuit and commentators alike endorse a court's consideration of pertinent  
28 documents alleged, yet not included, in a complaint without converting the motion  
as one for summary judgment. ... In addition, the Ninth Circuit has held that, when  
a “plaintiff's claims are predicated upon a document, the defendant may attach the  
document to his Rule 12(b)(6) motion.”) *See also* 2 James Wm. Moore, Moore's  
Federal Practice § 12.34[2] (3d ed.2008).

1 (FIDH), entitled “Migrant Workers In Israel-A Contemporary Form of Slavery”<sup>14</sup>  
2 (The “Migrant Workers study”). Plaintiffs omit from their exhibit the page of the  
3 Government exhibit showing the 2003 copyright.<sup>15</sup>

4 In addition to the Migrant Workers study, the Government attached to its  
5 appeal of the bail order: (1) an Auto Track report showing Orian used 26 aliases  
6 and 4 social security numbers; (2) an opinion finding Orian guilty of knowingly  
7 making fraudulent statements regarding workers that it imported for non-existent  
8 jobs; (3) Orian’s 2006 debarment from the H-2A program; (4) Magistrate Judge  
9 Hutton’s report describing Orian’s and Global’s contumacious behavior; (5) the  
10 Department of Labor’s action against Orian in 2005; and (6) a judgment based on  
11 Orian’s mistreatment of workers in Canada.

12 The sole allegation against Kav is that, “In 2005, FIDH and EMHRN (at the  
13 direction of KIBI and Bennani) published defamatory material about plaintiffs  
14 Orian and Global obtained from Defendant Kav . . . ”(¶10) ; *i.e.*, that Kav provided  
15 the other defendants with information when they were researching their report  
16 before it was published in 2003. There is no further allegation of any relevant

---

17 <sup>14</sup> A subsequent unanimous decision of the Israeli Supreme Court held that certain  
18 practices discussed in the report represented conditions of servitude and struck  
19 down the relevant regulations in a suit brought by Kav. *Kav LaOved v.*  
20 *Government of Israel*, [2006] 910 Isr LR 260 (30 March 2006) available at  
[http://elyon1.court.gov.il/files\\_eng/02/420/045/o28/02045420.o28.pdf](http://elyon1.court.gov.il/files_eng/02/420/045/o28/02045420.o28.pdf).

21 In his concurring opinion, Vice-President of the Supreme Court Emeritus Cheshin  
expressly thanked Kav for having brought the matter:

22 Indeed, the foreign workers, the weak and vulnerable among us, have  
23 had the good fortune that good people [Kav LaOved] have voluntary  
24 come to their aid. These are the petitioners before us. By virtue of the  
25 merit of these compassionate people, we have been given the good  
26 fortune and the merit of protecting the human image of those workers.  
And we will protect them, the foreign workers, even though they have  
not asked this of us.

27 *Id.* at 315.

28 <sup>15</sup> The complaint incorrectly alleges it was published in 2005 (¶10).

1 activity by Kav.

2 The complaint avers that Orian sued Kav for the alleged defamatory  
3 statements in Israel in late 2005 and that that case settled. The complaint in the  
4 Israeli action involved a different publication; namely, statements made on Kav's  
5 website in 2005. The publication was attached to that complaint. It reads:

6 Israeli manpower agency "Global Manpower" managed by Mordechai  
7 (Motti) Orian, was closed down a few years ago by the Labor Ministry  
8 due to complaints concerning fraud, non-payment, violence and forced  
9 deportation. Following some attempts to re-establish business in Israel,  
10 Mr. Orian is now working in the U.S. running an international  
11 adoption agency. (*See* Zohar Decl., Exh. J).<sup>16</sup>

12 Kav removed the language in 2005 solely to avoid the costs of further litigation.  
13 There is no allegation that it was ever republished.

14 The present complaint does not aver that Kav engaged in any  
15 communications regarding Orian or Global since 2005, or that it was involved in  
16 the alleged 2010 republication. Rather it states, entirely upon information and  
17 belief, that the other defendants, "FIDH, EMHRN . . . republished the defamatory  
18 material . . . at the behest of unnamed co-conspirators..." Complaint ¶ 19

19 The allegedly defamatory material in the 2003 Migrant Workers study is  
20 quoted at paragraph 10 of the complaint:

21 On 29 February 1996, 19 Chinese workers employed by the Global  
22 Manpower Company were expelled from the country after working for  
23 only a few months. Each had paid \$5000 in China for the privilege of  
24 working in Israel for a two-year period; \$3000 of this went straight

---

25  
26 <sup>16</sup> By the time of Orian's suit in Israel, Kav had removed, after demand from Orian,  
27 a more detailed posting. Israel Compl. at ¶ 26 (Zohar Decl., Exh. J). Kav requests  
28 the Court to take judicial notice of the exhibits attached to the Zohar Decl. pursuant  
to F. R. Evid. 201(b).

1 into the hands of Global Manpower director Motti Orian. By the end  
2 of February Mr. Orian owed each of the workers between 2-3 months  
3 wages. Instead of paying the workers, he sent ten armed guards to  
4 surprise the workers in their sleep, beat them and drive them to the  
5 airport, where they were forcibly deported. Back in China, these  
6 workers demanded the return of their \$5000; on this occasion Chinese  
7 representatives flew to Israel to negotiate and the Chinese Embassy put  
8 the representatives in touch with Kav La'Oved, who arranged a  
9 meeting with the Labour Ministry.

10 The complaint alleges “the material was almost 10 years old when it was  
11 published and is false.” (¶11). But as to falsity, plaintiffs admit that they “imported  
12 Chinese workers in 1992.” (¶12) The supposed falsehood is that “there was never  
13 any government investigation of Global or Orian” and “there was never any  
14 lawsuits against the company or Orian arising out of his business activities in  
15 Israel...”(¶12). But the allegedly “defamatory material” does not say anything  
16 about any governmental investigation or any lawsuits. Plaintiffs’ complaint is not  
17 only incoherent, it does not specify any falsehood in the alleged defamatory  
18 material.

19 Solely based on the fact that the Government attached the 2003 Migrant  
20 Worker study as one of nine exhibits to its pleading, plaintiffs claim upon  
21 information and belief that “between September 3 and September 9, 2010,  
22 subsequent to ORIAN’s arrest . . . , FIDH, EMHRN . . . republished the defamatory  
23 material [*i.e.*, the Migrant Workers study] in its entirety . . . upon information and  
24 belief, at the behest of unnamed co-conspirators in the United States . . . .” (¶ 19),  
25 who “are presently unknown to Plaintiffs.” (¶ 20) However, Kav does not fit  
26 within this description because it is not present in the United States. Further,  
27 plaintiffs do not expressly allege that Kav is one of the purported co-conspirators.  
28

1 The allegation, made upon “information and belief” that FIDH and EMRHN  
2 republished the report with plaintiffs’ full identities is also specious. The report as  
3 posted on the FIDH website remains in the bowdlerized form that plaintiffs allege  
4 they demanded to avoid its showing up in an internet search of their names (¶ 17).<sup>17</sup>

5 Plaintiffs aver that the alleged republication caused Orian to suffer “gross  
6 impairment of his good name” (¶ 24). In totally conclusory fashion, plaintiffs  
7 allege damages to Orian of \$100 million and damages to Global of \$10 million.

8 However, plaintiffs have conceded in another case that they could not have  
9 been damaged at all. In *In re Global Horizons Inc.*, 2010-TAE-00002 (Dept of  
10 Labor, Dec. 17, 2010) (Langer Decl., Exh. B), Judge Berliner noted that Orian and  
11 Global represented in a brief filed on August 30, 2010 (*i.e.*, less than a week *before*  
12 the alleged defamation took place), that “it [Global] is essentially defunct and  
13 without assets.” (Langer Decl., Exh. B at HIL 13). In *Perez-Farias*, 2008 U.S. Dist.  
14 LEXIS 118725 at \*14, Magistrate Judge Hutton had found that Global was  
15 “financially insolvent” with millions of dollars in judgments and tax liens pending  
16 against it.

17 In early September 2010, before the alleged republication, Orian’s  
18 indictment—describing years of abuse of poor Thai workers—was widely  
19 publicized. An internet search of Orian shows hundreds of news reports from the  
20

---

21 <sup>17</sup> See <http://www.fidh.org/IMG/pdf/il1806a.pdf> at 21 which reads: “On 29  
22 February 1996, 19 Chinese workers employed by the GI\*\*al Man\*\*wer Company  
23 were expelled from the country after working for only a few months. Each had paid  
24 \$5000 in China for the privilege of working in Israel for a two-year period; \$3000  
of this went straight into the hands of GI\*\*al Man\*\*wer director "Motti" O. By the  
end of February Mr.O...” It does not appear on the EMRHN website.

25 Orian and Global concede that the report may have even been available on the  
26 internet since 2003. They aver that based on their prior efforts to muzzle FIDH and  
27 EMHRN, “Plaintiffs were *under the impression* that FIDH and EMHRN had taken  
28 steps so that ‘Motty Orian’ and ‘Global Horizons’ did not show up in Internet  
search results” (¶ 18) (emphasis added).

1 Los Angeles Times<sup>18</sup> to the Israeli press<sup>19</sup> to the Hindustan Times.<sup>20</sup> By September  
2 9, the Los Angeles Times had published interviews with Thai workers exploited by  
3 Orian.<sup>21</sup> Before the indictment, plaintiffs had been found to have abused workers  
4 warranting their debarment from the H-2A visa program. Global had been held  
5 liable for \$2 million to abused laborers. In May they were debarred again for  
6 further abuses. It is beyond frivolous for plaintiffs to claim that the 2003 report  
7 damaged Orian's "good name."

8 It is hard to imagine a lawsuit that is so lacking in merit as this one. It should  
9 not be permitted to proceed.

### 10 **III. ARGUMENT**

#### 11 **A. Pursuant to California's Anti-SLAPP Statute, Plaintiffs'** 12 **Complaint Must be Stricken.**

##### 13 **1. The Anti-SLAPP Statute Applies to Claims that Target** 14 **the Exercise of Free Speech.**

15 In 1992, the California Legislature enacted Code of Civil Procedure § 425.16  
16 "to nip . . . in the bud" meritless claims that target exercise of free speech. *Braun v.*  
17 *Chronicle Publ.*, 52 Cal. App. 4th 1036, 1042, 61 Cal.Rptr.2d 58 (1997). Under the  
18 statute, any "cause of action against a person arising from any act of that person in  
19 furtherance of that person's right of . . . free speech . . . , in connection with a public  
20

21 <sup>18</sup> Federal grand jury indicts associates of Beverly Hills firm in human-trafficking  
22 case, 9/4/2010 available at <http://articles.latimes.com/2010/sep/04/local/la-me-0904-human-trafficking-20100904>

23 <sup>19</sup> *Israeli says not guilty of 'largest human trafficking case in U.S. history,'* Haartz, 9/5/2010 available at <http://www.haaretz.com/news/national/israeli-says-not-guilty-of-largest-human-trafficking-case-in-u-s-history-1.312199>.

24 <sup>20</sup> \$1mn bail ordered in human trafficking case, 9/9/2010 available at  
25 [http://www.hindustantimes.com/1mn-bail-ordered-in-human-trafficking-](http://www.hindustantimes.com/1mn-bail-ordered-in-human-trafficking-case/Article1-597999.aspx)  
26 [case/Article1-597999.aspx](http://www.hindustantimes.com/1mn-bail-ordered-in-human-trafficking-case/Article1-597999.aspx).

27 <sup>21</sup> *Thai workers describe being lured into slavery in U.S.*, available at  
28 <http://articles.latimes.com/2010/sep/09/local/la-me-0909-slave-labor-20100909>.

1 issue shall be subject to a special motion to strike, unless the court determines that  
2 the plaintiff has established that there is a probability that [he] will prevail on the  
3 claim.” Cal. Code Civ. Proc. § 425.16(b)(1).

4 In 1997, section 425.16 was amended to make it clear that the statute “shall  
5 be construed broadly.” *Id.* at § 425. 16(a). The California Supreme Court declared  
6 that this “broad construction . . . is desirable from the standpoint of judicial  
7 efficiency,” and “that [a narrow construction] would serve Californians poorly.”  
8 *Briggs v. Eden Council*, 19 Cal. 4th 1106, 1121-1122, 81 Cal.Rptr.2d 471 (1999).

9 Subsequently, in *Navellier v. Sletten*, 29 Cal. 4th 82, 88, 124 Cal.Rptr.2d 530  
10 (2002), the California Supreme Court outlined the two-step process under § 425.16.  
11 “First, the court decides whether the defendant has made a threshold showing that  
12 the challenged cause of action arises from protected activity.” To make this  
13 showing, the defendant must demonstrate that the alleged conduct “underlying the  
14 plaintiff’s cause [of action] fits one of the categories spelled out . . . in section  
15 425.16, subdivision (e).” *Id.* Those categories include:

- 16 (1) any written or oral statement or writing made before a legislative,  
17 executive, or judicial proceeding, or any other official proceeding  
18 authorized by law; (2) any written or oral statement or writing made in  
19 connection with an issue under consideration or review by a ... judicial  
20 body, or any other official proceeding authorized by law; (3) any  
21 written or oral statement or writing made in ... a public forum in  
22 connection with an issue of public interest; (4) or any other conduct in  
23 furtherance of the exercise of the constitutional right ... of free speech  
24 in connection with a public issue or an issue of public interest.

25 Cal. Code Civ. Proc. § 425.16(e).

26 Second, if the claim arises from protected conduct, the court “must then  
27 determine whether the plaintiff has demonstrated a probability of prevailing on the  
28 claim.” *Navellier*, 29 Cal. 4th at 88. If the plaintiff cannot meet this burden, then

1 the claim must be stricken. *Id.*<sup>22</sup>

2 **2. Plaintiffs' Complaint is Subject to the Anti-SLAPP**  
 3 **Statute.**

4 “The California Supreme Court has stressed the critical point is whether the  
 5 plaintiff’s cause of action itself was based on an act in furtherance of the  
 6 defendant’s right of petition or free speech.” *Id.* In other words, the statute applies if  
 7 the plaintiff is attacking the defendant on the basis of the defendants’ exercise of  
 8 free speech regarding an issue of public interest. That is the circumstance here.

9 Kav L’Oved is protected under Cal. Code Civ. Proc. § 425.16(e)(4), which  
 10 applies the statute to any statement made “in connection with . . . an issue of public  
 11 interest.” Cal. Code Civ. Proc. § 425.16(e)(4). This provision has been interpreted  
 12 broadly, even applying to reality television programs. *Seelig v. Infinity*  
 13 *Broadcasting*, 97 Cal. App. 4th 798, 807-808, 119 Cal.Rptr.2d 108 (2002).

14 An issue of public interest “is any issue in which the public is interested,”  
 15 *Nygaard v. Uusi -Kerttula*, 159 Cal. App. 4th 1027, 1042, 72 Cal.Rptr.3d 210 (2008),  
 16 including, in that case, an article about a Finnish businessman’s vacation home in  
 17 the Bahamas. “[T]he issue need not be ‘significant’ to be protected by the anti-  
 18 SLAPP statute—it is enough that it is one in which the public takes an interest.” *Id.*  
 19 The Ninth Circuit has instructed courts to “construe . . . ‘issue of public interest’ . . .  
 20 broadly” to include any “topic of widespread, public interest” or “person . . . in the  
 21 public eye.” *Hilton v. Hallmark Cards*, 599 F.3d 894, 906-07 (9th Cir. 2010).

22 The statements about plaintiffs’ human trafficking plainly relate to a matter  
 23 of public interest. Indeed, Orian himself has given repeated interviews in the press  
 24 and on television regarding the subject. *See, e.g., “KITV Exclusive: Mordechai Orian*

25 \_\_\_\_\_  
 26 <sup>22</sup> The anti-SLAPP statute applies to state law claims filed in federal court because  
 27 it confers substantive rights and does not “directly collide” with the Federal Rules  
 28 of Civil Procedure. *United States v. Lockheed Missiles & Space Co.*, 190 F.3d 963,  
 970-73 (9th Cir. 1999).

1 *Claims Conspiracy Against Him,”* KITV News Report, (June 17, 2011);<sup>23</sup> *“In an*  
2 *Exclusive Interview, Global Horizon Founder Disputes Trafficking Charges,”*  
3 Hawaii Reporter, February 8, 2011 (“Orlan maintained that his company has been  
4 vindicated at every turn for every accusation and that the claims against him are  
5 lies.”);<sup>24</sup> *“Human Trafficking Defendant Speaks Out, Mordechai Orian Says*  
6 *Government Turned Against Him,”* KITV 4 News Report, June 16, 2011 (““They  
7 don't have a case anyway,’ Orian said in an interview Friday”).<sup>25</sup> Orian was the  
8 subject of stories on National Public Radio as early as 2006. *See “Government*  
9 *Fines Immigrant Labor Company,”* NPR Report, May 23, 2006.<sup>26</sup>

10 The anti-SLAPP statute was designed for cases like this one. This lawsuit is  
11 a blatant attempt to silence those who speak out against human trafficking. The  
12 statute is especially apt here since Orian has stated in interviews “that his company  
13 has been vindicated at every turn for every accusation,” when he has twice been  
14 debarred and has been fined on numerous occasions by the United States  
15 Department of Labor, has a \$2 million judgment against him for abusing foreign  
16 workers, and has admitted to major violations in state proceedings.

17 **3. Because Plaintiffs’ Complaint is Frivolous, Plaintiffs**  
18 **Cannot Meet Their Burden and Show a Probability of**  
19 **Prevailing on the Merits.**

20 Because defendant’s conduct falls under the anti-SLAPP statute, the burden  
21 shifts to plaintiffs to establish a probability that he will prevail. *See* Cal. Code Civ.  
22 Proc. § 425.16(b)(1). This burden is substantial. As the court explained in *DuPont*  
23 *Merck Pharm. v. Superior Court*, 78 Cal. App. 4th 562, 572, 92 Cal.Rptr.2d 755

24 <sup>23</sup> Available at <http://www.youtube.com/watch?v=TohcG0hxBik>.

25 <sup>24</sup> Available at <http://www.hawaiireporter.com/in-an-exclusive-interview-global-horizon-founder-disputes-trafficking-charges/123>.

26 <sup>25</sup> Available at <http://www.kitv.com/r/28266357/detail.html>.

27 <sup>26</sup> Available at <http://www.npr.org/templates/story/story.php?storyId=5424680>.

1 (2000), “to satisfy [his] burden under the second prong of the anti-SLAPP statute, it  
2 is not sufficient that [the plaintiff’s] complaint survive a demurrer” or motion to  
3 dismiss. A plaintiff cannot simply rely on the allegations set forth in the complaint,  
4 nor can a court accept those allegations. *Church of Scientology*, 42 Cal. App. 4th at  
5 656, *disapproved on other grounds, Equilon Enterprises v. Consume Cause, Inc.*, 29  
6 Ca1.4th 53 (2002). The plaintiff must adduce “competent, admissible evidence”  
7 showing that he has a legally sufficient claim, *Mindys Cosmetics v. Dakar*, 611 F.3d  
8 590,599 (9th Cir. 2010) (citations omitted). Here, the plaintiffs, by pleading upon  
9 “information and belief,” tacitly admit that they lack knowledge of the most basic  
10 facts.

11 For many reasons, plaintiffs cannot meet their burden.

12 **B. Plaintiffs’ Action Must Be Dismissed on Several**  
13 **Independently Sufficient Grounds**

14 **1. The Complaint Has Not Been Properly Served.**

15 Plaintiffs have not properly served Kav. The complaint to Kav was mailed  
16 by registered letter to Tel Aviv, Israel by plaintiffs’ attorney.<sup>27</sup> This is not adequate  
17 service on a foreign entity. In *Brockmeyer v. May*, 383 F.3d 798, 808-09 (9th Cir.  
18 2004), the Ninth Circuit held that if a foreign entity is not served through the Hague  
19 Convention, service by mail is only valid if done by the clerk of court or by a form  
20 of service approved in advance by the court. The Ninth Circuit vacated a default  
21 where these procedures were not followed. *Id.* at 808-09.<sup>28</sup>

22 **2. The Court Lacks Jurisdiction Over Kav and this**  
23 **Action.**

24 **a. There is No Personal Jurisdiction.**

25 <sup>27</sup> The Envelope is attached as Exhibit K to the Zohar Decl.

26 <sup>28</sup> While this is an independently sufficient grounds for dismissal, plaintiffs may  
27 seek to cure their service failings. Kav therefore requests that the Court consider  
28 and reach the other grounds for dismissal and to strike the complaint.

1 Kav has no offices and transacts no business either in California or the  
2 United States. (Zohar Decl., ¶¶3-15).<sup>29</sup> Plaintiffs' complaint avers that Kav is "an  
3 Israel-based human rights organization whose purpose is to protect the rights of  
4 immigrant laborers in Israel..." (¶5). It does not aver any activity by Kav in  
5 California or the United States. That is why Orian sued Kav in Israel when he  
6 sought to assert similar claims against Kav several years ago (¶11).<sup>30</sup>

7 "Where a defendant moves to dismiss a complaint for lack of personal  
8 jurisdiction, the plaintiff bears the burden of demonstrating that jurisdiction is  
9 appropriate." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th  
10 Cir. 2004). The Due Process Clause protects a defendant's liberty interest in not  
11 being subject to the binding judgments of a forum with which it has established no  
12 meaningful contacts. *Bingham v. Blair LLC*, 2010 WL 2196106 (W.D. Wash. May  
13 27, 2010). In *Schwarzenegger*, the Ninth Circuit held that an Ohio auto dealer had  
14 insufficient contacts with California to warrant jurisdiction over claims brought  
15 under California law by Schwarzenegger, a prominent resident of California, for  
16 injuries resulting from the dealership's unauthorized use of his image. Here, like  
17 the Ohio auto dealer, Kav was never present in California and has never done  
18 business in California or in the United States for that matter. (Zohar Decl., ¶¶3-15).

19 The complaint contains boilerplate language alleging that "Defendants have  
20

---

21 <sup>29</sup> The motion to dismiss for want of jurisdiction is brought pursuant to Rule  
22 12(b)(2) and the Court may consider matters beyond the pleading on a motion  
23 challenging jurisdiction. *See* 5B Wright & Miller, Fed. Prac. & Proc. Civ. § 1351  
24 (3d ed.) ("the court may receive and weigh the contents of affidavits and any other  
25 relevant matter submitted by the parties to assist it in determining the jurisdictional  
26 facts."); *Data Disc, Inc. v. Sys. Tech. Associates, Inc.*, 557 F.2d 1280, 1285 (9th  
27 Cir. 1977); *URS Corp. v. Lebanese Co. for Dev. & Reconstruction of Beirut Cent.  
28 Dist. SAL*, 512 F. Supp. 2d 199, 206 (D. Del. 2007).

29 <sup>30</sup> The complaint filed by plaintiff Orian in the Tel Aviv Yaffo court avers: "And let  
it be emphasized, that as the goal of the defendant [Kav LaOved] is allegedly to  
assist workers 'employed in Israel...'" at ¶ 15. (Emphasis in original.) (Zohar Decl.,  
Exh. J).

1 committed tortious acts . . . in this District,” but does not specify any of them. The  
2 only acts it specifies occurred in other countries or had effects elsewhere. The  
3 primary allegation, albeit not actionable and demonstrably false, is that the  
4 Government submitted the defamatory material to a court in *Hawaii*, which led to  
5 Orian’s detention in *Hawaii* (§ 19). While that allegation would not give rise to  
6 jurisdiction in Hawaii either, it underscores the lack of personal jurisdiction over  
7 Kav in this Court.

8 **b. This Case Fails to Meet the Requisite Amount in**  
9 **Controversy for Diversity Jurisdiction.**

10 When federal jurisdiction is invoked pursuant to diversity of citizenship, the  
11 plaintiff must establish that the amount in controversy exceeds the jurisdictional  
12 threshold of \$75,000. “The district court is not obliged to accept the plaintiff’s  
13 allegations regarding subject matter jurisdiction.” Wright & Miller, 14AA *Fed.*  
14 *Prac. & Proc.* § 3702.2 (4th ed.). “A proponent of federal jurisdiction must...  
15 prove those jurisdictional facts by a preponderance of the evidence.” *Meridian Sec.*  
16 *Ins. Co. v. Sadowski*, 441 F.3d 536, 543 (7th Cir. 2006). Because “Plaintiff bears  
17 the burden of establishing subject matter jurisdiction, no presumption of  
18 truthfulness attaches to the allegations of plaintiff’s complaint and the Court must  
19 presume it lacks jurisdiction until plaintiff establishes jurisdiction.” *Rasidescu v.*  
20 *Midland Credit Mgmt., Inc.*, 435 F. Supp. 2d 1090, 1094 (S.D. Cal. 2006).

21 Here, damages of \$100 million and \$10 million are alleged, when, a week  
22 before the tort allegedly occurred in September 2009 (§19), plaintiffs represented  
23 to an administrative law judge that they were, in effect, destitute. Judge Berlin  
24 states in his Order of December 17, 2010, referring to plaintiffs’ submission of  
25 August 31, 2010, that “[Global] states that . . . it is essentially defunct and without  
26 assets.” *In re Global Horizons Inc. and Mordechai Orian, supra* (Langer Decl.,  
27 Exh. B at HIL 13). *Perez-Farias*, found in 2008, “Global is financially insolvent. Its  
28 debts far exceed its assets,” and that, “Orian testified that he did not want to [file for

1 bankruptcy], ... since there were no corporate assets remaining for creditors to  
2 seize.” 2008 U.S. Dist. LEXIS 118725, at \*14. Since plaintiffs were debarred from  
3 the H-2A visa program, they cannot claim any future adverse impact from the  
4 alleged defamation.

5 Moreover, Orian’s conclusory allegations regarding the purported damage to  
6 his “good name” cannot satisfy the jurisdictional threshold because they are not  
7 plausible. Days before the tort was alleged to have occurred, the Department of  
8 Justice issued a press release outlining the Government’s charges that Orian was  
9 engaging in a massive human trafficking scheme. This was widely disseminated.<sup>31</sup>  
10 A headline in the Los Angeles Times read: “Federal grand jury indicts associates of  
11 Beverly Hills firm in human-trafficking case. In a mind-boggling case, the owner  
12 and four employees of Global Horizons Manpower Inc. are indicted on charges of  
13 engaging in a conspiracy to coerce the labor of hundreds of Thai nationals.”<sup>32</sup>  
14 Before the criminal action, the numerous Department of Labor actions and court  
15 decisions had received wide publicity. It is implausible that the alleged  
16 republication could have wrought any cumulative harm to Orian, let alone caused  
17 damages in an amount sufficient to meet the jurisdictional threshold under 28  
18 U.S.C. §1332(a).

### 19 **3. The Action is Time-Barred**

20 Plaintiffs’ complaint is time-barred. The complaint alleges that the  
21 “defamatory material” was first published in 2005. The statute of limitations for  
22 libel is one year. *See* Cal. Civ. Proc. Code § 340. California has adopted a single  
23 publication rule, limiting the time to bring an action measured by the first  
24

25 \_\_\_\_\_  
26 <sup>31</sup> *See* <http://www.justice.gov/opa/pr/2010/September/10-crt-999.html> (United  
States Department of Justice press release, Sept. 2, 2010).

27 <sup>32</sup> *See* [http://articles.latimes.com/2010/sep/04/local/la-me-0904-human-trafficking-  
20100904](http://articles.latimes.com/2010/sep/04/local/la-me-0904-human-trafficking-20100904) (Los Angeles Times, Sept. 4, 2010).  
28

1 publication.<sup>33</sup>

2 While plaintiffs' counsel failed to attach the pages of the report that showed  
3 when it was published, the Government exhibit clearly shows that it was published  
4 in 2003. (Langer Decl., Exh. F at HIL 378.) In *Alberghetti v. Corbis Corp.* 713 F.  
5 Supp. 2d 971 (C.D. Cal. 2010), the Court cited the extensive law applying § 3425.3  
6 to the internet and holding that the statute of limitations begins to run with the first  
7 posting. 713 F. Supp. 2d at 976-77. Similarly, "A cause of action for interference  
8 with contractual relations is governed by the two-year limitations period of [Cal.  
9 Code Civ. Proc.] section 339, subdivision 1." *Forcier v. Microsoft Corp.*, 123 F.  
10 Supp. 2d 520, 530 (N.D. Cal. 2000).

11 The only relevant action alleged by Kav occurred in 2005. The Complaint  
12 refers to no conduct by Kav after 2005 (¶ 10). However, Kav's conduct—the  
13 furnishing of information to the authors of the human rights study—had to have  
14 occurred before the study was published in 2003.<sup>34</sup>

#### 15 **4. The Complaint Fails to State a Claim for Relief**

##### 16 **a. Plaintiffs Fail to State a Claim for Tortious** 17 **Interference**

18 In their Third Cause of Action, plaintiffs purport to state a claim for tortious  
19 interference with plaintiffs' business relations. A barebones assertion that a party  
20 "tortiously interfered" cannot withstand a motion to dismiss. *AccuImage*

21 \_\_\_\_\_  
22 <sup>33</sup> Cal. Civ. Code § 3425.3 reads:

23 No person shall have more than one cause of action for damages for libel or slander  
24 or invasion of privacy or any other founded upon any single publication or  
25 exhibition or utterance, such as any one issue of a newspaper or book or magazine  
26 or any one presentation to an audience or any one broadcast over radio or television  
27 or any one exhibition of a motion picture. Recovery in any action shall include all  
28 damages for any such tort suffered by the plaintiff in all jurisdictions.

<sup>34</sup> As explained above, the Israeli lawsuit is a red herring. It involved a different  
publication and there is no allegation that the publication at issue in that 2005 case  
was ever republished. In any event, those events occurred in 2005 as well.

1 *Diagnostics Corp v. Terarecon, Inc.*, 260 F. Supp. 2d 941, 956 (N.D. Cal. 2003).  
2 “[T]he elements which a plaintiff must plead to state the cause of action for  
3 intentional interference with contractual relations are (1) a valid contract between  
4 plaintiff and a third party; (2) defendant’s knowledge of this contract; (3)  
5 defendant’s intentional acts designed to induce a breach or disruption of the  
6 contractual relationship; (4) actual breach or disruption of the contractual  
7 relationship; and (5) resulting damage.” *PG&E v. Bear Stearns & Co.*, 50 Cal. 3d  
8 1118, 1126 (1990). None are pleaded here.

9 The elements have not and cannot be pleaded because a week before the  
10 alleged tortious conduct, plaintiffs conceded that their business was—and had long  
11 been—defunct. Since they were debarred from engaging in their business,  
12 importation of foreign workers, there can be no plausible claim for tortious  
13 interference.

14 **b. Plaintiffs Fail to State a Claim for Libel**

15 The alleged defamation represented privileged speech on a public issue and  
16 cannot give rise to a claim for libel.<sup>35</sup> Moreover, because plaintiffs are public  
17 figures or at least limited public figures, as plaintiffs’ extensive appearances in the  
18 press and television make clear, the burden is even higher. In *Cabrera v. Alam*, 197  
19 Cal.App.4th 1077, 1082, 129 Cal.Rptr.3d 74 (2011), the Court reversed denial of a  
20 motion to strike a defamation complaint almost identical to plaintiffs’ claims, but  
21 involving a more limited public forum and an issue of less important public  
22 concern:

23  
24  
25 <sup>35</sup> California Civil Code section 45 provides, “Libel is a false and unprivileged  
26 publication by writing, printing, picture, effigy, or other fixed representation to the  
27 eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which  
28 causes him to be shunned or avoided, or which has a tendency to injure him in his  
occupation.” The alleged defamation is privileged and does not contain the  
statements plaintiffs aver are false.

1 Plaintiff's complaint asserted claims for defamation (slander),  
2 intentional interference with contractual obligation, negligent  
3 interference with contractual obligation, and unfair business practices.  
4 ... the gravamen of her defamation claim is that defendant "stated to a  
5 room full of residents from Brookhurst Village, that Plaintiff had  
6 committed the crime of fraud on the Brookhurst Village Homeowners  
7 Association and stolen funds from the Association."

8 *Cabrera*, 197 Cal.App.4th at 1082, 129 Cal.Rptr.4th at 78.

9 The court also held that because the case involved a limited public figure,  
10 malice had to be established:

11 "The limited purpose public figure is an individual who voluntarily  
12 injects him or herself or is drawn into a specific public controversy,  
13 thereby becoming a public figure on a limited range of issues."  
14 [citation] *Copp v. Paxton* (1996) 45 Cal.App.4th 829, 845–846, 52  
15 Cal.Rptr.2d 831, sets forth the elements that must be present in order  
16 to characterize a plaintiff as a limited purpose public figure. First, there  
17 must be a public controversy, which means the issue was debated  
18 publicly and had foreseeable and substantial ramifications for  
19 nonparticipants. (*Id.* at p. 845, 52 Cal.Rptr.2d 831.) Second, the  
20 plaintiff must have undertaken some voluntary act through which he or  
21 she sought to influence resolution of the public issue. (*Ibid.*) In this  
22 regard, it is sufficient that the plaintiff " 'attempts to thrust himself into  
23 the public eye.' " \*\*86 (*Id.* at pp. 845–846, 52 Cal.Rptr.2d 831.)  
24 Finally, "the alleged defamation must have been germane to the  
25 plaintiff's participation in the controversy."

26 *Cabrera*, 197 Cal.App.4th at 1092, 129 Cal.Rptr.3d at 85-86.

27 Orian is a public figure. His notoriety is reflected in a vast number of news  
28 articles. He has undertaken voluntary acts to place himself in the public limelight,

1 including granting interviews to the press and on television—unusual for a criminal  
2 defendant—in which he has falsely denied ever being found to have engaged in any  
3 violations of the law and has claimed that the indictment against him is politically  
4 motivated by the administration of President Obama.<sup>36</sup> The claims at issue here  
5 clearly involve protected speech precluding a cause of action under California law.

6 And even if they did not, as discussed above, the complaint does not allege  
7 the most basic element of a libel action. It does not allege any untruth.

8 The complaint’s allegations of libel against Kav also do not plausibly state  
9 any cause of action under *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d  
10 868 (2009), and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1961,  
11 167 L. Ed. 2d 929 (2007).

12 Further, under the anti-SLAPP statute, plaintiffs must go far beyond the *Iqbal*  
13 standard. They must demonstrate an actual probability of success on the merits.  
14 Since most of their complaint is alleged upon information and belief and plaintiffs  
15 thereby concede lack of knowledge, their complaint fails the requisite showing on  
16 its face. They meet neither *Iqbal* nor the anti-SLAPP standard.

17 Nothing is alleged against Kav other than that it possibly furnished  
18 information to researchers later used in a study published in 2003. But even that  
19 inference is implausible. No basis is alleged for assuming that Kav even provided  
20 the alleged defamatory material in 2003. It was one of over twenty sources whom  
21 the authors identified in the study’s appendix.<sup>37</sup> As discussed above, the allegations

22 <sup>36</sup> “*Mordechai Orian says he and his company are victims of a political*  
23 *prosecution, engineered by the Obama administration.*” KITV, June 17, 2011,  
available at <http://www.youtube.com/watch?v=xsqepHv08jM>.

24 <sup>37</sup> Kav LaOved served as an intermediary at the request of the Chinese Embassy in  
25 Israel in 1996 on behalf of Chinese workers allegedly abused by Orian’s company.  
26 It would not deny that fact alleged in the “defamatory material.” It would not  
27 concede that it is the source of any of the other information. While not relevant to  
28 the present motion, the “defamatory material” is likely true. See,  
<http://www.journeyman.tv/?lid=9811&tmpl=transcript> (transcript of documentary  
interviewing Chinese workers in Israel in 1996, regarding employment by, among

1 regarding the lawsuit in Israel are irrelevant except that they make clear that that  
2 case dealt with a different publication and there is no allegation here that that 2005  
3 publication was ever republished after Kav removed it from its website as part of a  
4 settlement.<sup>38</sup>

5 As discussed above, the remaining allegations in the complaint relate to  
6 FIDH and EMHRN. They allege a conspiracy with unknown conspirators, *not*  
7 *expressly including Kav*, and a republication based entirely on “information and  
8 belief.”

9 There is no basis alleged for any such “information and belief.” The location  
10 of the posting on the internet is not identified. As discussed above, the study on the  
11 FIDH website remains in the bowdlerized form that plaintiffs allege they  
12 demanded. There is nothing connecting any defendant to any other posting or even  
13 establishing the Government obtained the 2003 report from the internet. Plaintiffs  
14 cannot even allege that all postings of the report on the internet in 2003 had been  
15 removed. They may have been there for years. Plaintiffs admittedly never  
16 checked: “Plaintiffs were *under the impression* that FIDH and EMHRN had taken  
17 steps so that ‘Motty Orian’ and ‘Global Horizons’ did not show up in internet  
18 search results and the matter was dropped.” FIDH and EMHRN apparently did as  
19 Orian demanded as the FIDH site shows, but they do not control the entire internet.

20 \_\_\_\_\_  
21 (... cont’d)

22 others, Orian). <http://www.journeyman.tv/?lid=9811&tmpl=transcript>

23 <sup>38</sup> It underscores the implausibility of the complaint. The only allegations regarding  
24 Kav’s communications with that FIDH and EMHRN would have occurred in 2002  
25 or 2003 before the Migrant Workers Study was published in 2003. The Kav  
26 LaOved case was conducted in Hebrew in Israel in 2006. FIDH and EMHRN were  
27 not parties and there is no allegation that they had anything to do with Kav’s  
28 posting at issue there. Yet the complaint alleges that FIDH and EMHRN “knew,  
based on the previous lawsuit in Israel that [the defamatory statements ] were  
false.” ¶ 25. Not only were FIDH and EMHRN not involved in Israel lawsuit, that  
suit dealt with an entirely different posting. There is no allegation of Kav’s  
involvement with the alleged 2010 republication.

1 There is no basis for the inference that any new posting was made between  
2 September 3 and 9, 2010, let alone one to which any defendant was connected.

3 The inference of conspiracy is equally implausible. The mere fact that the  
4 Government attached a page from a 2003 study on human trafficking to an appeal  
5 does not create an inference that the authors of the study were engaged in a  
6 conspiracy. Were Judge Hutton and the various Department of Labor ALJs whose  
7 documents were exhibits to the same motion also conspirators? There is no more  
8 basis for one inference than for the other.

9 Because the complaint relates to protected speech, does not aver the  
10 publication is false, and does not plausibly allege republication in 2010 or connect  
11 any defendant with the alleged republication, it should be dismissed.

### 12 **C. Plaintiffs Are Libel Proof**

13 The court should, as an alternative holding, find that the plaintiffs are libel  
14 proof. Judge Stephens explained in *Wynberg v. National Enquirer, Inc.* 564 F.  
15 Supp. 924, 927 -928 (C.D. Cal. 1982):

16 First Amendment considerations of free press and speech, promoting  
17 society's interest in uninhibited, robust, and wide-open discussion,  
18 must prevail over an individual's interest in his reputation in such  
19 cases. An individual who engages in certain anti-social or criminal  
20 behavior and suffers a diminished reputation may be "libel proof" as a  
21 matter of law, as it relates to that specific behavior. [extensive  
22 citations]

23 Orian and Global have been repeatedly found to have seriously abused  
24 foreign workers. All of this has been widely reported in the world press. They are  
25 libel proof and the case should be dismissed as a matter of law.

### 26 **IV. AN AWARD OF DEFENDANT'S ATTORNEY'S FEES IS** 27 **MANDATED BY THE ANTI-SLAPP STATUTE**

28 "Under California's anti-SLAPP statute, 'a prevailing defendant on a special

1 motion to strike shall be entitled to recover his or her attorney’s fees and costs.”  
2 *Manufactured Home Communities, Inc. v. County Of San Diego*, 2011 WL  
3 3771277, \*9 (9<sup>th</sup> Cir. 2011) . “It is well-settled that such an award of fees and costs  
4 is mandatory under the statute, *Ketchum v. Moses*, 24 Cal.4th 1122, 1131, 104  
5 Cal.Rptr.2d 377 (2001), and applies to successful anti-SLAPP motions brought in  
6 federal court.” *Shepard v. Miler*, 2011 WL 1740603, \*1 (E.D. Cal. May 5, 2011)  
7 (Slip Op.) (citing *Verizon Del., Inc. v. Covad Commc'ns Co.*, 377 F.3d 1081, 1091  
8 (9th Cir.2004)).

9 The mandatory fee-shifting provision is “to discourage[ ] strategic lawsuits  
10 against public participation by imposing the litigation costs on the party seeking to  
11 ‘chill the valid exercise of the constitutional rights of freedom of speech and  
12 petition for the redress of grievances’ and encourage ‘private representation in  
13 SLAPP cases.” *Ketchum*, 24 Cal.4th at 1131, 104 Cal.Rptr.2d at 383 (2001); *see*  
14 *also Northon v. Rule*, 2011 WL 135720 at \*2 (9th Cir.2011)

15 Accordingly, Kav respectfully requests that this Court award it the  
16 reasonable value of the attorneys’ fees and costs incurred in defending this action.

17 **V. CONCLUSION**

18 For the foregoing reasons and authorities, Kav respectfully requests that the  
19 complaint be stricken under the anti-SLAPP statute or, in the alternative, that this  
20 action be dismissed and that Kav be awarded its costs and attorneys’ fees incurred  
21 in defending this meritless action.

22 Dated: September 28, 2011

MARC M. SELTZER  
SUSMAN GODFREY L.L.P.

HOWARD LANGER  
LANGER GROGAN & DIVER, P.C.

26 By: /s/ Marc M. Seltzer  
27 Marc M. Seltzer  
28 Attorneys for Defendant  
Kav LaOved