

# ALERT

Volume VIII, No. IV

May, 2008

## CALIFORNIA'S ANTI-SLAPP STATUTE PROVIDES REAL RELIEF TO DEFENDANTS

### **A. THE PURPOSE OF THE ANTI-SLAPP STATUTE.**

Some 15 years ago, California passed a statute designed to protect parties from meritless claims arising from exercise of their constitutional rights of free speech and petitioning the government. The anti-SLAPP statute (Strategic Lawsuit Against Public Participation), Section 425.16 of the Code of Civil Procedure, allows such parties to promptly eliminate frivolous, tactical claims against them in such situations. Such claims are known as "Strategic Lawsuits Against Public Participation", or "SLAPP suits," and the statute is commonly referred to as the "anti-SLAPP statute." For example, a person or business might be sued for acts taken in support of requesting a license or permit from a local government authority in connection with property or business. Such conduct is recognized by the statute as the exercise of the right to petition the government, and thus falls within the protection of the statute.

While the statute applies to individuals as well as business entities, companies are often the targets of SLAPP suits, and before the statute was enacted, could be held hostage by such litigation for years. The anti-SLAPP statute allows a special motion to strike at the outset (usually, within 60 days) of commencement of the lawsuit, thus permitting target defendants

the opportunity to eliminate such claims at the very start of the case, without needless and expensive discovery and delay. And because the statute is meant to address tactical lawsuits, the courts give it a broad reading, in favor of carrying out its remedial purpose.

### **B. HOW THE ANTI-SLAPP STATUTE OPERATES.**

When a SLAPP suit is brought, the party defending it has the right to bring a special motion to strike in accordance with the statute, which, if successful, eliminates from the case those claims determined to be "SLAPP" claims. When this motion is brought, the court uses a 2-prong analysis to analyze the pleadings and evidence and decide the motion.

#### **1. Prong One – Is The Activity Protected?**

First, the party defending the claim must make a threshold showing that the claim arises from acts in furtherance of the right to petition and/or free speech. Such acts in-furtherance include "any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive or judicial body, or any other official proceeding authorized by law," or "any other conduct in furtherance of the exercise of the constitutional right of petition. All that need be shown is that the defending

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party's actions arise from such protected activity. There is no need to prove that claimant has acted in bad faith, or for the purpose of chilling protected conduct. Nor need it be proven that the claim has *actually* chilled protected activity. Further, where there are multiple allegations made in a claim, the statute applies to every allegation that concerns protected conduct. If the party defending the claim is unable to demonstrate that the claim arises from protected activity, the motion will be denied. But if this showing is made, the court then moves on to the second prong of the anti-SLAPP statute.

**2. Prong Two – Will the  
Claimant Probably Prevail?**

Once the first prong of the statute has been met, the burden then shifts to the claimant to establish a *probability* that he or she will prevail in the case. To satisfy the second prong, the claimant has to convince the court that his or her complaint is both legally sufficient, and supported by a sufficient showing of facts to sustain a favorable judgment if the evidence submitted by the claimant is credited. To do this, the claimant's evidence must be of such a quality that it would be admissible at trial. A claim that can be substantiated by such proof will survive an anti-SLAPP motion, and the case then proceeds on (unless appealed) as if the motion had not been made. But a claim that cannot be substantiated by adequate proof, *i.e.*, a frivolous claim, will be stricken by the court and eliminated from the case.

**C. OTHER IMPORTANT FEATURES  
OF THE ANTI-SLAPP STATUTE.**

- The anti-SLAPP statute is not limited in scope or application to the California state courts. Since it primarily embodies substantive law, the statute also applies in federal courts when California law is applied.
- The trial court's ruling granting or denying an anti-SLAPP motion is immediately appealable (and if an appeal is to be taken, must be timely made) by the losing party, and such an appeal may in many instances halt disposition of the case until the appeal is decided.
- Finally, the statute entitles a successful defendant to an award of legal fees and costs incurred in bringing the special motion to strike, or, if the motion itself is frivolous, entitles the claimant to an award of such fees and costs.

In Short, California's anti-SLAPP statute is a welcome and powerful tool for eliminating frivolous claims that impact protected activities, such as the exercise of free speech, or petitioning the government.

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