

*** THIS DOCUMENT IS CURRENT THROUGH 2009-2010 EXTRAORDINARY SESSIONS 1-5, ***
7, AND 8, AND URGENCY LEGISLATION THROUGH CH 17 OF THE 2010 REGULAR SESSION

CODE OF CIVIL PROCEDURE
Part 2. Of Civil Actions
Title 6. Of the Pleadings in Civil Actions
Chapter 2. Pleadings Demanding Relief
Article 1. General Provisions

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Code Civ Proc § 425.17 (2010)

§ 425.17. Legislative findings as to abuse of § 425.16; Inapplicability of § 425.16 to certain actions; Appeal provisions not applicable

(a) The Legislature finds and declares that there has been a disturbing abuse of Section 425.16, the California Anti-SLAPP Law, which has undermined the exercise of the constitutional rights of freedom of speech and petition for the redress of grievances, contrary to the purpose and intent of Section 425.16. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process or Section 425.16.

(b) Section 425.16 does not apply to any action brought solely in the public interest or on behalf of the general public if all of the following conditions exist:

(1) The plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which the plaintiff is a member. A claim for attorney's fees, costs, or penalties does not constitute greater or different relief for purposes of this subdivision.

(2) The action, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons.

(3) Private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter.

(c) Section 425.16 does not apply to any cause of action brought against a person primarily engaged in the business of selling or leasing goods or services, including, but not limited to, insurance, securities, or financial instruments, arising from any statement or conduct by that person if both of the following conditions exist:

(1) The statement or conduct consists of representations of fact about that person's or a business competitor's business operations, goods, or services, that is made for the purpose of obtaining approval for, promoting, or securing sales or leases of, or commercial transactions in, the person's goods or services, or the statement or conduct was made in the course of delivering the person's goods or services.

(2) The intended audience is an actual or potential buyer or customer, or a person likely to repeat the statement to, or otherwise influence, an actual or potential buyer or customer, or the statement or conduct arose out of or within the context of a regulatory approval process, proceeding, or investigation, except where the statement or conduct was made by a telephone corporation in the course of a proceeding before the California Public Utilities Commission and is the subject of a lawsuit brought by a competitor, notwithstanding that the conduct or statement concerns an important public issue.

(d) Subdivisions (b) and (c) do not apply to any of the following:

(1) Any person enumerated in subdivision (b) of Section 2 of Article I of the California Constitution or Section 1070 of the Evidence Code, or any person engaged in the dissemination of ideas or expression in any book or academic journal, while engaged in the gathering, receiving, or processing of information for communication to the public.

(2) Any action against any person or entity based upon the creation, dissemination, exhibition, advertisement, or other similar promotion of any dramatic, literary, musical, political, or artistic work, including, but not limited to, a motion picture or television program, or an article published in a newspaper or magazine of general circulation.

(3) Any nonprofit organization that receives more than 50 percent of its annual revenues from federal, state, or local government grants, awards, programs, or reimbursements for services rendered.

(e) If any trial court denies a special motion to strike on the grounds that the action or cause of action is exempt pursuant to this section, the appeal provisions in subdivision (j) of Section 425.16 and paragraph (13) of subdivision (a) of Section 904.1 do not apply to that action or cause of action.

HISTORY:

Added Stats 2003 ch 338 § 1 (SB 515).

NOTES:

Note

Stats 2003 ch 338 provides:

SEC. 2. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 2 "Procedural Guide For Civil Actions".

Cal. Points & Authorities (Matthew Bender(R)) ch 160 "Motions To Strike" § 160.38.

Cal. Points & Authorities (Matthew Bender(R)) ch 160 "Motions To Strike" § 160.40.

Cal. Points & Authorities (Matthew Bender(R)) ch 160 "Motions To Strike" § 160.70.

Cal. Points & Authorities (Matthew Bender(R)) ch 160 "Motions To Strike" § 160.40A.

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 375 "Motions to Strike" §375.24.

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 2 "Procedural Guide For Civil Actions".

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 375 "Motions To Strike".

Cal. Employment Law (Matthew Bender(R)), § 70.03.

Cal. Torts (Matthew Bender(R)), § 40.106.

Matthew Bender(R) Practice Guide: Cal Pretrial Proc, 13.06, 13.17A.

Matthew Bender(R) Practice Guide: Cal Unfair Competition, § 9.17.

Law Review Articles:

Review of Selected 2003 California Legislation: Civil: Chapter 338: Another New Law, Another SLAPP in the Face of California Business. 35 McGeorge L. Rev. 409.

Hierarchy Notes:

NOTES OF DECISIONS

In an action against a poultry producer alleging that the poultry producer made false and deceptive representations about chicken products that it sold to consumers in California, the trial court's order granting the poultry producer's motion to strike pursuant to CCP § 425.16 had to be reversed; the enactment of CCP § 425.17 during the pendency of the appeal operated as a repeal of the statutory authorization for the trial court's order. The suit against the poultry producer for deceptive advertising practices came squarely within § 425.17(c). *Physicians Com. for Responsible Medicine v. Tyson Foods, Inc.* (2004, Cal App 1st Dist) 119 Cal App 4th 120, 13 Cal Rptr 3d 926, 2004 Cal App LEXIS 836, review denied *Physicians Committee for Responsible Medicine v. Tyson Foods Inc.* (2004, Cal) 2004 Cal LEXIS 9099.

CCP § 425.17(c) does not restrict or regulate speech by redefining the availability of a procedure for early adjudication of claims. *Physicians Com. for Responsible Medicine v. Tyson Foods, Inc.* (2004, Cal App 1st Dist) 119 Cal App 4th 120, 13 Cal Rptr 3d 926, 2004 Cal App LEXIS 836, review denied *Physicians Committee for Responsible Medicine v. Tyson Foods Inc.* (2004, Cal) 2004 Cal LEXIS 9099.

Customers' UCL action did not fall within the exception to the anti-SLAPP (strategic lawsuits against public participation) procedure because the claim, if successful, would not enforce an important right affecting the public interest under CCP § 425.17(b)(2); the customers wanted to enjoin a satellite television programming provider from sending a particular demand letter concerning the specific electronic device to users of this device. *Blanchard v. Directv, Inc.* (2004, Cal App 2d Dist) 123 Cal App 4th 903, 20 Cal Rptr 3d 385, 2004 Cal App LEXIS 1830, review denied (2005) 2005 Cal. LEXIS 920 .

Customers' UCL action did not fall within the exception to the anti-SLAPP (strategic lawsuits against public participation) procedure because they could not satisfy the necessity and financial burden factor of CCP § 425.17(b)(3). The customers' UCL claim was entirely personal to them as the recipients of a particular demand letter; the benefits that would have been conferred on them, if they were victorious in the lawsuit, far transcended any conceivable benefit to the general public. *Blanchard v. Directv, Inc.* (2004, Cal App 2d Dist) 123 Cal App 4th 903, 20 Cal Rptr 3d 385, 2004 Cal App LEXIS 1830, review denied (2005) 2005 Cal. LEXIS 920 .

Action brought against building contractors and subcontractors fell within CCP § 425.17(b). The labor organization and related individual did not belong to the wronged class, non-union workers who were not paid the prevailing wage, and they brought the action solely in the public interest and did not seek any relief greater than or different from the relief sought for the general public. *Northern Cal. Carpenters Regional Council v. Warmington Hercules Associates* (2004, Cal App 1st Dist) 124 Cal App 4th 296, 20 Cal Rptr 3d 918, 2004 Cal App LEXIS 1955, review denied (2005, Cal) 2005 Cal LEXIS 1783.

Action came within CCP § 425.17(b)(3) because it alleged that private enforcement was necessary as the city had failed to take any action to enforce its wage policy on a building project. The financial burden on the labor organization and related individual was disproportionate to their stake in the action as they did not themselves belong to the under-compensated class of nonunion workers. *Northern Cal. Carpenters Regional Council v. Warmington Hercules Associates* (2004, Cal App 1st Dist) 124 Cal App 4th 296, 20 Cal Rptr 3d 918, 2004 Cal App LEXIS 1955, review denied (2005, Cal) 2005 Cal LEXIS 1783.

Action came within CCP § 425.17(b)(2) because it sought to enforce the city's prevailing wage policy, which was designed to permit union contractors to compete with nonunion contractors, benefit the public through the superior efficiency of well-paid employees, and protect employees from substandard wages. *Northern Cal. Carpenters Regional Council v. Warmington Hercules Associates* (2004, Cal App 1st Dist) 124 Cal App 4th 296, 20 Cal Rptr 3d 918, 2004 Cal App LEXIS 1955, review denied (2005, Cal) 2005 Cal LEXIS 1783.

Enactment of CCP § 425.17 had the effect of repealing the remedy of an anti-SLAPP motion under CCP § 425.16 as it applied to an action alleging failure to pay the prevailing wage rate. The labor organization and related individual brought the action solely in the public interest and sought the same relief as that sought for the general public. *Northern Cal. Carpenters Regional Council v. Warmington Hercules Associates* (2004, Cal App 1st Dist) 124 Cal App 4th 296, 20 Cal Rptr 3d 918, 2004 Cal App LEXIS 1955, review denied (2005, Cal) 2005 Cal LEXIS 1783.

Challenge to a county retirement system's decision to increase employer contributions was not subject to an anti-SLAPP motion because the system's decision, from which the challenge arose, was not an act in furtherance of the right to free speech. Allowing the motion to strike would have significantly burdened the petition rights of those seeking mandamus review for governmental action, even if CCP § 425.17(b) would have exempted most mandamus petitions seeking review of decisions made at public hearings from CCP § 425.16. *San Ramon Valley Fire Protection Dist. v. Contra Costa County Employees' Retirement Assn.* (2004, Cal App 1st Dist) 125 Cal App 4th 343, 22 Cal Rptr 3d 724, 2004 Cal App LEXIS 2226.

CCP § 425.17(c) finding is part of the first prong of the CCP § 425.16(b) assessment where the defendant has the burden of proof. *Brill Media Co., LLC v. TCW Group, Inc.* (2005, Cal App 2d Dist) 132 Cal App 4th 324, 33 Cal Rptr 3d 371, 2005 Cal App LEXIS 1374, review denied (2005, Cal) 2005 Cal LEXIS 13770.

Trial court erred in granting a CCP § 425.16 special motion to strike filed by financial management and services conglomerates because CCP § 425.17(c) explicitly excluded their alleged conduct in breaching confidentiality agreements to advance their financial self interest by forcing 74 media related companies into default and liquidation. *Brill Media Co., LLC v. TCW Group, Inc.* (2005, Cal App 2d Dist) 132 Cal App 4th 324, 33 Cal Rptr 3d 371, 2005 Cal App LEXIS 1374, review denied (2005, Cal) 2005 Cal LEXIS 13770.

Filing an involuntary bankruptcy petition is conduct within the meaning of CCP § 425.17(c). *Brill Media Co., LLC v. TCW Group, Inc.* (2005, Cal App 2d Dist) 132 Cal App 4th 324, 33 Cal Rptr 3d 371, 2005 Cal App LEXIS 1374, review denied (2005, Cal) 2005 Cal LEXIS 13770.

Trial court did not err in finding bill sponsor's anti-SLAPP (Strategic Lawsuit Against Public Participation) motion frivolous where opponents brought an action against the insurance commissioner and the State solely in the public interest or on behalf of the general public and otherwise satisfied the requirements of CCP § 425.17(b). An action that satisfies the conditions set forth in § 425.17(b) does not lose its exemption solely because it might contain extraneous allegations not essential to a cause of action. *Foundation for Taxpayer & Consumer Rights v. Garamendi* (2005, Cal App 2d Dist) 132 Cal App 4th 1375, 34 Cal Rptr 3d 368, 2005 Cal App LEXIS 1513.

Because CCP § 425.17(c), which removed unfair business practices claims from the operation of CCP § 425.16, was a procedural statute, it was applicable to an action pending at the time of its enactment, and its withdrawal of the benefits conferred by CCP § 425.16 from commercial speakers did not deny constitutional protection for commercial speech. *Brenton v. Metabolife Internat., Inc.* (2004, Cal App 4th Dist) 116 Cal App 4th 679, 10 Cal Rptr 3d 702, 2004 Cal App LEXIS 274.

Storage company's anti-SLAPP motion, filed in a consumer's suit that alleged fraud and unfair competition that arose from the company's advertised storage unit sizes, was properly denied even though CCP § 425.17, which anti-SLAPP motions unavailable in commercial speech cases, was enacted only after the suit was filed. *Metcalf v. U-Haul International, Inc.* (2004, Cal App 4th Dist) 118 Cal App 4th 1261, 13 Cal Rptr 3d 686, 2004 Cal App LEXIS 790.

Application of CCP § 425.17 as the basis for affirming the denial of a storage company's motion to strike filed under the anti-SLAPP (strategic lawsuit against public policy) statute, CCP § 425.16, in a consumer's suit that arose from the company's advertising did not violate state equal protection provisions because CCP § 425.17 did not create an impermissible classification among those who uttered constitutionally protected speech; rather, the statute created classifications of litigants who could take advantage of the anti-SLAPP statute, regulating who could seek dismissal of certain lawsuits at a particular stage in litigation. *Metcalf v. U-Haul International, Inc.* (2004, Cal App 4th Dist) 118 Cal App 4th 1261, 13 Cal Rptr 3d 686, 2004 Cal App LEXIS 790.

Anti-SLAPP motion to strike should have been granted as to a trade libel claim in a former employer's action alleging that former employees formed a competing company and solicited customers with fraudulent statements, including that the employer used illegal and carcinogenic chemicals. The court reasoned that: (1) the employees' reports to government agencies formed a substantial part of the factual basis, making the claims subject to the anti-SLAPP statute even though they were also based on statements to customers that were not subject to the statute; (2) the employer did not demonstrate a likelihood that it could prevail on the merits because there was no showing that it was deprived of particular customers and transactions as a result of the trade libel; and (3) CCP § 425.17 did not apply because those portions of the challenged claims implicating § 425.17, the statements to customers, did not involve petitioning activity and were not protected by the anti-SLAPP statute. *Mann v. Quality Old Time Service, Inc.* (2004, Cal App 4th Dist) 120 Cal App 4th 90, 15 Cal Rptr 3d 215, 2004 Cal App LEXIS 1046.

In a class action alleging misrepresentations to consumers, a grocery company had no right of immediate appeal under CCP §§ 425.16(j), 904.1(a)(13) from the denial of its special motion to strike where the trial court found that the cause of action was exempt from such a procedure pursuant to CCP § 425.17(b)(1); an appeal from such a ruling was precluded by § 425.17(e). *Goldstein v. Ralphs Grocery Co.* (2004, Cal App 2d Dist) 122 Cal App 4th 229, 19 Cal Rptr 3d 292, 2004 Cal App LEXIS 1514, review denied *Goldstein v. Ralph's Grocery Company* (2004, Cal) 2004 Cal LEXIS 12431.

Anti-SLAPP motions can be filed to challenge petitions for injunctive relief brought under CCP § 527.6. The anti-SLAPP statute expressly exempted some forms of legal proceedings, but not such petitions, and if exemptions were specified in a statute, the court could not imply additional exemptions unless there was a clear legislative intent to the contrary. *Thomas v. Quintero* (2005, Cal App 1st Dist) 126 Cal App 4th 635, 24 Cal Rptr 3d 619, 2005 Cal App LEXIS 188, rehearing denied (2005) 2005 Cal. App. LEXIS 437, review denied (2005, Cal) 2005 Cal LEXIS 5068.

Where defendant spy-ware provider's free software scanned for, detected, and if prompted, deleted defendant software company's surreptitiously "bundled" and unknowingly downloaded programs, the provider's motion to strike an unfair competition claim was granted under the Anti-Strategic Lawsuit Against Public Participation (anti-SLAPP) statute, CCP § 425.16; the spy-ware provider's internet site made no reference to the software company's product until after the user downloaded the provider's spy-ware and it thus fell outside the scope of CCP § 425.17(c)(1)'s exception to the anti-SLAPP statute because any statements as to the software company's product was not made in the course of delivering goods. *New.Net, Inc. v. Lavasoft* (2004, CD Cal) 356 F Supp 2d 1090, 2004 US Dist LEXIS 27434.

Corporation's defamation claim against a dissenting shareholder was stricken under the California Anti-SLAPP statute, CCP § 425.16, where the shareholder's rhetorical reference to the corporate management as "the biggest crooks on the planet" was a clearly exaggerated statement of opinion. *Troy Group, Inc. v. Tilson* (2005, CD Cal) 364 F Supp 2d 1149, 2005 US Dist LEXIS 6001.

Anti-SLAPP motion should have been granted on a securities dealer's claim that his former employer defamed him when it provided reasons for his termination to the National Association of Securities Dealers. The filing was a protected activity under Code Civ. Proc., § 425.16, the anti-Strategic Lawsuit Against Public Participation (anti-SLAPP) statute, both because it was before an official proceeding and because the employer's allegation of misrepresentations about annuities was a matter of public interest. *Fontani v. Wells Fargo Investments, LLC* (2005, Cal App 1st Dist) 129 Cal App 4th 719, 28 Cal Rptr 3d 833, 2005 Cal App LEXIS 800, overruled in part *Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal 4th 192, 46 Cal Rptr 3d 41, 138 P3d 193, 2006 Cal LEXIS 8765.

Motion to strike was properly granted to the producers and host of a radio talk show as to an age discrimination claim by a caller who alleged that he was told that he was too old for the show, was then allowed on the air, and was berated by the host for complaining. The action was not exempt from dismissal under CC § 425.17(b) because the claims sought damages personal to the caller; further, the claims were excepted from exemption by § 425.17(d)(2). *Ingels v. Westwood One Broadcasting Services, Inc.* (2005, Cal App 2d Dist) 129 Cal App 4th 1050, 28 Cal Rptr 3d 933, 2005 Cal App LEXIS 863, review denied (2005) 2005 Cal. LEXIS 9474.

In a case in which CCP § 425.17 did not apply because the speech at issue, a franchisor's allegedly false promises to process potential buyers of a franchisee's franchise rights "without undue delay," did not meet the requirements of § 425.17(c) the trial court erred in denying the franchisor's special motion to strike the franchisee's complaint because the franchisee's claim arose from litigation activity and thus fell within the ambit of the anti-SLAPP statute, CCP § 425.16(e), meeting the statute's first prong; the statements alleged were the franchisor's promises in exchange for a stipulation of judgment. *Navarro v. IHOP Properties, Inc.* (2005, Cal App 4th Dist) 134 Cal App 4th 834, 36 Cal Rptr 3d 385, 2005 Cal App LEXIS 1876, rehearing denied (2005, Cal App 4th Dist) 2005 Cal App LEXIS 1892, review denied (2006, Cal) 2006 Cal LEXIS 1969.

Trial court erred in denying a campaign worker's request for attorney fees under the anti-SLAPP (strategic lawsuits against public participation) law, CCP § 425.16. The legislature did not intend to exclude political literature on candidate qualifications from the political works denoted in CCP § 425.17(d)(2), given the legislature's goal of reaffirming the anti-SLAPP law as a protector of free speech rights through the enactment of § 425.17. *Major v. Silna* (2005, Cal App 2d Dist) 134 Cal App 4th 1485, 36 Cal Rptr 3d 875, 2005 Cal App LEXIS 1942.

Attorney fees were appropriate under CCP § 425.17(d)(2) because a city resident failed to carry his burden of demonstrating a probability that he would prevail on his claims for injunctive relief because he lacked standing. Although Gov C § 84300, of the Political Reform Act of 1974 barred cash contributions exceeding \$ 100 and imposed reporting requirements on contributions that were greater than \$ 100, it did not contain the city's per se ban on contributions exceeding \$ 100. *Major v. Silna* (2005, Cal App 2d Dist) 134 Cal App 4th 1485, 36 Cal Rptr 3d 875, 2005 Cal App LEXIS 1942.

In an action arising from a city's analysis of a taxrelief initiative, the city carried its initial burden, under CCP § 425.16, of demonstrating that the claims arose from constitutionally protected speech. The government had the right to speak on such matters, and because the writings were political works, the exemptions of CCP § 425.17, did not apply. *Vargas v. City of Salinas* (2005, Cal App 6th Dist) 135 Cal App 4th 361, 37 Cal Rptr 3d 506, 2005 Cal App LEXIS 1984, modified, rehearing denied (2006, Cal App 6th Dist) 2006 Cal App LEXIS 90, review gr, depublished (2006, Cal) 43 Cal Rptr 3d 748, 135 P3d 1, 2006 Cal LEXIS 5077.

Where plaintiffs' action against an environmental organization regarding the conduct of an election to the organization's board of directors concerned participation of members in an ongoing controversy and involved statements in connection with an issue of public interest within the meaning of CCP § 425.16(e)(3) and (4), the case came within the public interest criteria of CCP § 425.17(b), and the trial court acted properly in partially denying the organization's special motion to strike plaintiffs' complaint. *Club Members for an Honest Election v. Sierra Club* (2006, Cal App 1st Dist) 137 Cal App 4th 1166, 40 Cal Rptr 3d 818, 2006 Cal App LEXIS 404, review gr, depublished (2006, Cal) 47 Cal Rptr 3d 216, 139 P3d 1169, 2006 Cal LEXIS 7582.

In an action in which plaintiffs challenged an environmental organization's election procedures, the relief requested by plaintiffs did have the effect of transforming the action otherwise qualifying for the exemption of CCP § 425.17(b) into an action for personal advantage of a particular faction of the organization. *Club Members for an Honest Election v. Sierra Club* (2006, Cal App 1st Dist) 137 Cal App 4th 1166, 40 Cal Rptr 3d 818, 2006 Cal App LEXIS 404, review gr, depublished (2006, Cal) 47 Cal Rptr 3d 216, 139 P3d 1169, 2006 Cal LEXIS 7582.

In an action in which plaintiffs challenged an environmental organization's board of directors election procedures, plaintiffs' breach of fiduciary duty cause of action against two reelected directors did not satisfy the public interest criterion of CCP § 425.17; although the alleged breach of fiduciary duty related to election measures, it did not directly present the issue of fair election procedures but rather formed the basis for disqualifying and punishing the reelected directors. *Club Members for an Honest Election v. Sierra Club* (2006, Cal App 1st Dist) 137 Cal App 4th 1166, 40 Cal Rptr 3d 818, 2006 Cal App LEXIS 404, review gr, depublished (2006, Cal) 47 Cal Rptr 3d 216, 139 P3d 1169, 2006 Cal LEXIS 7582.

CCP § 425.17(c) did not provide a basis for denial of a CCP § 425.16 special motion to strike because alleged statements and conduct intended to forestall environmental approval of a hotel expansion project were not made for the purpose of promoting goods and services and were not made in the course of delivering goods or services. *Sunset Millennium Associates, LLC v. LHO Grafton Hotel, L.P.* (2006, Cal App 2d Dist) 146 Cal App 4th 300, 52 Cal Rptr 3d 828, 2006 Cal App LEXIS 2068.

Where Anti-SLAPP statute was invoked in action involving plaintiff creditors who sued the debtors' law firm and attorneys, CCP § 425.17, exempting from Anti-SLAPP coverage certain public interest lawsuits, did not apply; it was strictly a private dispute, plaintiffs sought monetary damages for themselves only, and none of plaintiffs' claims purported to vindicate an important right solely in the public interest or on behalf of the general public; moreover, the commercial speech exception to the Anti-SLAPP statute under CCP § 425.17(c) did not apply, since the actions that were the focus of the claim did not pertain to efforts to market services or representations that were made to potential consumers or to gain a competitive advantage. *Flores v. Emerich & Fike* (2006, ED Cal) 416 F Supp 2d 885, 2006 US Dist LEXIS 9011.

Commercial speech exemption of CCP § 425.17(c) was inapplicable to a claim brought by plaintiff business based on defendant competing business's conduct in filing an underlying action and on statements contained in an e-mail sent by defendant's president to customers regarding the suit because (1) the act of filing the underlying action for defamation and unfair competition did not constitute representations of fact about business operations, goods, or services, made for the purpose of influencing a customer and (2) although the e-mail was critical of plaintiff's litigation tactics, plaintiff was not in the business of litigating claims. *Contemporary Services Corp. v. Staff Pro Inc.* (2007, Cal App 4th Dist) 152 Cal App 4th 1043, 61 Cal Rptr 3d 434, 2007 Cal App LEXIS 1088.

Where legal advice to a specific client on a pending matter has occurred contemporaneously with an alleged solicitation of the client, CCP § 425.17(c), which is the commercial speech exemption to CCP § 425.16, the anti-SLAPP statute, may not be applied to a lawyer's conduct. *Taheri Law Group v. Evans* (2008, 2d Dist) 2008 Cal App LEXIS 281.

Lawyer's claim against a second lawyer for soliciting a client did not come within CCP § 425.17(c), the commercial speech exemption to CCP § 425.16, which is the anti-SLAPP statute, because the conduct was in essence advice by a lawyer on a pending legal matter. *Taheri Law Group v. Evans* (2008, 2d Dist) 2008 Cal App LEXIS 281.

Party claiming exemption under CCP § 425.17(c) has the burden of establishing its applicability. *Simpson Strong-Tie Co., Inc. v. Gore* (2008, 6th Dist) 2008 Cal App LEXIS 656.

In an action arising from attorney's advertisement, the ad's alleged assertion that the manufacturer's galvanized screws were defective was not about the business operations, goods, or services of the attorney or a competitor for purposes of CCP § 425.17(c)(1), but rather was a statement about the manufacturer's products; the alleged assertion therefore fell squarely outside CCP § 425.17's content-based exemption. *Simpson Strong-Tie Co., Inc. v. Gore* (2008, 6th Dist) 2008 Cal App LEXIS 656.

Attorney's advertisement in anticipation of class action litigation is not "services" for purposes of the delivery exemption in CCP § 425.17(c)(1), and therefore a manufacturer's claims arising from allegedly defamatory statements in such an advertisement were subject to a motion to strike; the advertisement in question was seeking business from prospective clients, not delivering services to them. *Simpson Strong-Tie Co., Inc. v. Gore* (2008, 6th Dist) 2008 Cal App LEXIS 656.

Public interest exception in CCP § 425.17(b) from the anti-SLAPP protection provided by CCP § 425.16 did not apply to claims asserted by members of an advocacy group who challenged the group's election procedures while seeking a personal advantage because the action was not brought solely in the public interest; "principal thrust or gravamen" test does not apply to § 425.17(b). *Club Members for An Honest Election v. Sierra Club* (2008, Cal) 2008 Cal LEXIS 13720.

Because a complaint that a business competitor misappropriated trade secrets and used confidential information for solicitation did not arise from protected activity, the reviewing court did not need to decide whether any of the claims were exempt from CCP § 425.16, the anti-Strategic Lawsuit Against Public Participation (anti-SLAPP) statute, under CCP § 425.17(c). *World Financial Group, Inc. v. HBW Ins. & Financial Services, Inc.* (2009, 2d Dist) 2009 Cal App LEXIS 553.

In a trademark action, counterclaims for common law injury to business reputation and unjust enrichment were subject to plaintiff's special motion to strike pursuant to California's anti-SLAPP statute, CCP § 425.16, because only those counterclaims were premised on plaintiff's filing of the lawsuit, and the exception at CCP § 425.17(c)(1) was inapplicable to them. *Sonoma Foods, Inc. v. Sonoma Cheese Factory, LLC* (2007, ND Cal) 2007 US Dist LEXIS 56032.

CCP § 425.17, subd. (c), does not provide that every case arising from statements uttered by a commercial enterprise is exempted from CCP § 425.16's purview. *Mendoza v. ADP Screening And Selection Services, Inc.* (2010, 2d Dist) 2010 Cal App LEXIS 383.

Better understanding of CCP § 425.17, subd. (c), is that all of the speech exempted from CCP § 425.16 is commercial speech, but not all commercial speech is exempted thereunder. *All One God Faith, Inc. v. Organic & Sustainable Industry Standards, Inc.* (2010, 1st Dist) 2010 Cal App LEXIS 516.

In a case in which a soap company sued a trade association, CCP § 425.17 did not provide an alternate basis for denial of the association's special motion to strike under CCP § 425.16. Association was not a person primarily engaged in the business of selling or leasing goods or services under § 425.17, subd. (c). *All One God Faith, Inc. v. Organic & Sustainable Industry Standards, Inc.* (2010, 1st Dist) 2010 Cal App LEXIS 516.