*** 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

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Cal Code Civ Proc § 425.16 (2010)

§ 425.16. Legislative findings; Special motion to strike action arising from "act in furtherance of person's right of petition or free speech under United States or California Constitution in connection with a public issue"

(a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. 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. To this end, this section shall be construed broadly.

(b)

(1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

(2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability that he or she will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, or in any subsequent action, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination in any later stage of the case or in any subsequent proceeding.

(c)

(1) Except as provided in paragraph (2), in any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

(2) A defendant who prevails on a special motion to strike in an action subject to paragraph (1) shall not be entitled to attorney's fees and costs if that cause of action is brought pursuant to Section 6259, 11130, 11130.3, 54960, or 54960.1 of the Government Code. Nothing in this paragraph shall be construed to prevent a prevailing defendant from recovering attorney's fees and costs pursuant to subdivision (d) of Section 6259, 54690.5, or 11130.5.

(d) This section shall not apply to any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor.

(e) As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: (1) any written or oral statement or writing made

before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) 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; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(f) The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

(g) All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision.

(h) For purposes of this section, "complaint" includes "cross-complaint" and "petition," "plaintiff" includes "cross-complainant" and "petitioner," and "defendant" includes "cross-defendant" and "respondent."

(i) An order granting or denying a special motion to strike shall be appealable under Section 904.1.

(j)

(1) Any party who files a special motion to strike pursuant to this section, and any party who files an opposition to a special motion to strike, shall, promptly upon so filing, transmit to the Judicial Council, by e-mail or facsimile, a copy of the endorsed, filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any order issued pursuant to this section, including any order granting or denying a special motion to strike, discovery, or fees.

(2) The Judicial Council shall maintain a public record of information transmitted pursuant to this subdivision for at least three years, and may store the information on microfilm or other appropriate electronic media.

HISTORY:

Added Stats 1992 ch 726 § 2 (SB 1264). Amended Stats 1993 ch 1239 § 1 (SB 9); Stats 1997 ch 271 § 1 (SB 1296); Stats 1999 ch 960 § 1 (AB 1675), effective October 10, 1999; Stats 2005 ch 535 § 1 (AB 1158), effective October 5, 2005; Stats 2009 ch 65 § 1 (SB 786), effective January 1, 2010.

NOTES:

Amendments:

1993 Amendment:

(1) Substituted "shall" for "may" before "award costs" in subd (c); and **(2)** added subd (h).

1997 Amendment:

(1) Added the last sentence in subd (a); **(2)** redesignated former subd (b) to be subd (b)(1); **(3)** added subdivision designations (b)(2) and (b)(3); **(4)** amended subd (e) by **(a)** adding ": (1)"; **(b)** adding "(2)"; **(c)** substituting "(3)" for "or" before "any written or"; and **(d)** adding "; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest" at the end; **(5)** added the last sentence in subd (f); **(6)** deleted the former second sentence in subd (g) which read: "The motion shall be noticed for hearing not more than 30 days after service unless the docket conditions of the court require a later hearing."; **(7)** added subd (h); and **(8)** redesignated former subd (h) to be subd (i).

1999 Amendment:

Added subds (j) and (k).

2005 Amendment:

(1) Added "or in any subsequent action," before "and no burden of proof" in subd (b)(3); (2) substituted "determination in any later stage of the case or in any subsequent proceeding." for "determination." in subd (b)(3); (3) substituted "scheduled by the clerk of the court for a" for "noticed for" in subd (f); (4) added "the" before "service unless the docket conditions of the court require a later hearing." to subd (f); (5) deleted the first sentence of subd (i) which read: "On or before January 1, 1998, the Judicial Council shall report to the Legislature on the frequency and outcome of special motions made pursuant to this section, and on any other matters pertinent to the purposes of this section."; (6) redesignated former subds (j) and (k) to subd (j)(1) and (j)(2); (7) substituted "facsimile," for "fax," and "endorsed, filed" for "endorsed filed" in subd (j)(1).

2009 Amendment:

(1) Substituted "United States Constitution or the California Constitution" for "United States or California Constitution" in subd (b)(1); (2) added subdivision designation (c)(1); (3) added "Except as provided in paragraph (2)," in the first sentence of subd (c)(1); and (4) added subd (c)(2).

Note

Stats 2005 ch 535 provides:

SEC. 3. It is the intent of the Legislature, in amending subdivision (f) of Section 425.16 of the Code of Civil Procedure, to overrule the decisions in Decker v. U.D. Registry, Inc. (2003) 105 Cal.App.4th 1382, 1387-1390, and Fair Political Practices Commission v. American Civil Rights Coalition, Inc. (2004) 121 Cal.App.4th 1171, 1174-1178.

Cross References:

Legislative findings as to abuse of § 425.16; Inapplicability of § 425.16 to certain actions: CCP § 425.17.

Collateral References:

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

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 42 "Appeal: Notice Of Appeal".

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 302 "Initiative, Referendum, And Recall".

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 340 "Libel And Slander".

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 357 "Malicious Prosecution And Abuse Of Process".

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

Cal. Points & Authorities (Matthew Bender(R)) ch 20 "Arbitration: Compelling" § 20.89.

Cal. Points & Authorities (Matthew Bender(R)) ch 24A "Attorneys At Law: Malpractice" § 24A.29.

Cal. Points & Authorities (Matthew Bender(R)) ch 35A "Civil Rights: Equal Protection" § 35A.03.

Cal. Points & Authorities (Matthew Bender(R)) ch 60 "Costs" § 60.405.

Cal. Points & Authorities (Matthew Bender(R)) ch 105 "Fraud And Deceit" § 105.160.

Cal. Points & Authorities (Matthew Bender(R)) ch 116 "Injunctions" § 116.35.

Cal. Points & Authorities (Matthew Bender(R)) ch 116 "Injunctions" § 116.48.

Cal. Points & Authorities (Matthew Bender(R)) ch 142 "Libel And Slander (Defamation)" § 142.21.

Cal. Points & Authorities (Matthew Bender(R)) ch 142 "Libel And Slander (Defamation)" § 142.24.

Cal. Points & Authorities (Matthew Bender(R)) ch 142 "Libel And Slander (Defamation)" § 142.32.

Cal. Points & Authorities (Matthew Bender(R)) ch 142 "Libel And Slander (Defamation)" § 142.46.

Cal. Points & Authorities (Matthew Bender(R)) ch 142 "Libel And Slander (Defamation)" § 142.48.

Cal. Points & Authorities (Matthew Bender(R)) ch 142 "Libel And Slander (Defamation)" § 142.50.

Cal. Points & Authorities (Matthew Bender(R)) ch 142 "Libel And Slander (Defamation)" § 142.56.

Cal. Points & Authorities (Matthew Bender(R)) ch 142 "Libel And Slander (Defamation)" § 142.60.

Cal. Points & Authorities (Matthew Bender(R)) ch 142 "Libel And Slander (Defamation)" § 142.67.

Cal. Points & Authorities (Matthew Bender(R)) ch 142 "Libel And Slander (Defamation)" § 142.85.

Cal. Points & Authorities (Matthew Bender(R)) ch 147 "Malicious Prosecution And Abuse Of Process" § 147.20.

Cal. Points & Authorities (Matthew Bender(R)) ch 147 "Malicious Prosecution And Abuse Of Process" § 147.29.

Cal. Points & Authorities (Matthew Bender(R)) ch 147 "Malicious Prosecution And Abuse Of Process" § 147.34.

Cal. Points & Authorities (Matthew Bender(R)) ch 147 "Malicious Prosecution And Abuse Of Process" § 147.40.

Cal. Points & Authorities (Matthew Bender(R)) ch 147 "Malicious Prosecution And Abuse Of Process" § 147.42.

Cal. Points & Authorities (Matthew Bender(R)) ch 147 "Malicious Prosecution And Abuse Of Process" § 147.49.

Cal. Points & Authorities (Matthew Bender(R)) ch 147 "Malicious Prosecution And Abuse Of Process" § 147.50.

Cal. Points & Authorities (Matthew Bender(R)) ch 147 "Malicious Prosecution And Abuse Of Process" § 147.53.

Cal. Points & Authorities (Matthew Bender(R)) ch 147 "Malicious Prosecution And Abuse Of Process" § 147.70.

Cal. Points & Authorities (Matthew Bender(R)) ch 147 "Malicious Prosecution And Abuse Of Process" § 147.74.

Cal. Points & Authorities (Matthew Bender(R)) ch 147 "Malicious Prosecution And Abuse Of Process" § 147.76.

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

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

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

Cal. Points & Authorities (Matthew Bender(R)) ch 184 "Privacy: Invasion Of Privacy" § 184.20.

Cal. Points & Authorities (Matthew Bender(R)) ch 184 "Privacy: Invasion Of Privacy" § 184.27.

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

Cal. Employment Law (Matthew Bender(R)), § 20.33.

Cal. Employment Law (Matthew Bender(R)), § 21.71.

Cal. Employment Law (Matthew Bender(R)), § 40.20.

Cal. Employment Law (Matthew Bender(R)), § 40.26.

Cal. Employment Law (Matthew Bender(R)), § 63.02.

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

Cal. Employment Law (Matthew Bender(R)), § 90.20.

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

Cal. Torts (Matthew Bender(R)), § 40.106.1.

Cal. Torts (Matthew Bender(R)), § 40.106.2.

Cal. Torts (Matthew Bender(R)), § 43.05.

Cal. Torts (Matthew Bender(R)), § 43.10.

Cal. Torts (Matthew Bender(R)), § 45.13.

Cal. Torts (Matthew Bender(R)), § 45.13.1.

Cal. Torts (Matthew Bender(R)), § 45.26.

Cal. Torts (Matthew Bender(R)), § 82.11.

Cal. Class Actions Practice & Procedure ch 6.19, 15.10.

Matthew Bender (R) Insurance Law & Practice § 13.08.

Matthew Bender (R) Practice Guide: Cal. Trial and Post Trial Civil Procedure §§ 25A.10[10], 25A.17[4].

Matthew Bender(R) Practice Guide: California Pretrial Civil Procedure, 13.01-13.03, 13.05-13.08, 13.10, 13.13, 13.14, 13.16-13.20, 13.22-13.25.

Matthew Bender(R) Practice Guide: Federal Pretrial Civil Procedure in California, 8.26.

5 Witkin Procedure (5th ed) Pleading §§ 1017, 1019, 1020, 1025-1027, 1032, 1033, 1039-1042.

5 Witkin Summary (10th ed) Torts §§ 507, 510, 521, 567.

SLAPPing down the right to trial by jury: The SLAPP legislation confusion of 1992. CEB Civ Lit Rep Vol. 14 No. 8 p 485.

The SLAPP statute: a three-year retrospective on a constitutional experiment. 17 CEB Civ Lit Rep 401.

Rutter Cal Prac Guide, Civil Procedure Before Trial §§ 7:206 et seq.

Law Review Articles:

2006 Ethics Roundup: Bad Acts by Both Private Attorneys and Prosecutors Spurred Decisions in Legal Ethics Last Year. 30 LA Law 29 (March, 2007.

Reducing the cost of free expression: a call for fee shifting in cases challenging freedom of expression. 17 Hast Com/Ent LJ 571.

Barristers Tips: Applying the Litigation Privilege Before Trial. 26 Los Angeles Lawyer 12 (June, 2003).

Common-law and statutory solutions to the problem of SLAPPs. 26 Loyola U of LA LR 395.

Increasing SLAPP protection: unburdening the right of petition in California. 32 UCD LR 965.

2004 Ethics Roundup. 28 LA Lawyer 21 (June).

Appellate Mediation--"Settling" the Last Frontier of ADR. 41 San Diego LR 177.

Hierarchy Notes:

Pt. 2, Tit. 6, Ch. 2 Note

NOTES OF DECISIONS

1. Constitutionality 2. Purpose 3. Legislative Intent 4. Construction 4.5. Construction with Other Law 5. Person 6. Acts in Furtherance of Rights of Free Speech or Petition 7. Public Interest 8. Public Forum 9. Official Proceeding 10. Motive and Intent 11. Malice 12. Application Generally 13. Retroactive Application 14. Two Step Process 15. What Defendant Must Show 16. Shift of Burden to Plaintiff 17. Probability of Prevailing 18. Admissible Evidence 19. Discovery 20.

Right to Jury Trial 21. Duty of Trial Court 22. Continuance 23. Cross-Complaints and Counterclaims 24. Joinder 25. Different Causes of Action 26. Voluntary Dismissal 27. Declaratory Relief 28. Timeliness 29. Right to Amend 30. Fees and Costs 31. Res Judicata and Collateral Estoppel 32. Appeal Generally 33. Standard of Review 34. Stay on Appeal 35. Remand on Appeal 36. Actions Subject to Motion to Strike 37. Actions Not Subject to Motion to Strike

1. Constitutionality

The anti-SLAPP statute (CCP § 425.16), which provides a procedural remedy to expose and dismiss at an early stage nonmeritorious actions which chill the valid exercise of the constitutional right of freedom of speech, does not violate the equal protection or due process rights of plaintiffs to whom the statute is applied. The procedure mandated by the statute is rationally related to the Legislature's expressed goal of encouraging public participation in matters of public significance, and does not bar complaints that arise from a person's exercise of his or her rights of free speech or petition for redress of grievances, but only provides a mechanism through which such complaints can be evaluated at an early stage of the litigation process. Lafayette Morehouse, Inc. v. Chronicle Publishing Co. (1995, Cal App 1st Dist) 37 Cal App 4th 855, 44 Cal Rptr 2d 46, 1995 Cal App LEXIS 762, review denied (1995, Cal) 1995 Cal LEXIS 7325, cert den (1996) 519 US 809, 136 L Ed 2d 136, 117 S Ct 53, 1996 US LEXIS 4658, superseded by statute as stated in Damon v. Ocean Hills Journalism Club (2000, Cal App 4th Dist) 85 Cal App 4th 468, 102 Cal Rptr 2d 205, 2000 Cal App LEXIS 943.

Exemption of public prosecutors from the strictures did not prevent SLAPP defendants from exercising free speech or deprive them of access to the judicial system to challenge the prosecutor's action; thus, CCP § 425.16(d) did not create a legislative classification subject to strict scrutiny. Applying the rational basis test, the classification created by the exemption of public prosecutors' enforcement actions from anti-SLAPP motions had a direct bearing on furthering the state's legitimate interest of allowing prosecutors to pursue enforcement actions. Accordingly, there was no violation of equal protection. (Cal Const art I § 7). People v. Health Laboratories of North America, Inc. (2001, Cal App 1st Dist) 87 Cal App 4th 442, 104 Cal Rptr 2d 618, 2001 Cal App LEXIS 142.

Stating that frivolousness was not an invariable prerequisite to the constitutional validity of a statute authorizing recovery of attorney fees by a governmental entity, the court held that CCP § 425.16(c) was valid. Schroeder v. Irvine City Council (2002, Cal App 4th Dist) 97 Cal App 4th 174, 118 Cal Rptr 2d 330, 2002 Cal App LEXIS 2493, review denied (2002, Cal) 2002 Cal LEXIS 4369.

Classification created by CCP § 425.16(d)'s exemption of public prosecutors' enforcement actions from anti-strategic lawsuits against public participation (SLAPP) motions does not jeopardize the exercise of a fundamental right or categorize litigants on the basis of an inherently suspect characteristic; it is rationally related to the state's legitimate interest in allowing public prosecutors who did not create the SLAPP problem to pursue actions to enforce laws, unencumbered by delay, intimidation, or distraction, and thus it does not violate the Equal Protection Clause of either the United States or California Constitution, Const Art. I, § 7. Bernardo v. Planned Parenthood Federation of America (2004, Cal App 4th Dist) 115 Cal App 4th 322, 9 Cal Rptr 3d 197, 2004 Cal App LEXIS 111, review denied Bernardo v. Planned Parenthood (2004) 2004 Cal. LEXIS 3097, cert den Bernardo v. Planned Parenthood Fed'n of Am. (2004) 543 U.S. 942, 125 S. Ct. 373, 160 L. Ed. 2d 254, 2004 U.S. LEXIS 6963, 73 U.S.L.W. 3246 .

CCP § 425.16 did not prevent citizens from bringing a meritorious claim against organizations. Rather, it properly prevented them from continuing to prosecute their meritless strategic lawsuit against public participation. Thus the application of the statute did not violate the citizens' First Amendment rights. Bernardo v. Planned Parenthood Federation of America (2004, Cal App 4th Dist) 115 Cal App 4th 322, 9 Cal Rptr 3d 197, 2004 Cal App LEXIS 111, review denied Bernardo v. Planned Parenthood (2004) 2004 Cal. LEXIS 3097, cert den Bernardo v. Planned Parenthood Fed'n of Am. (2004) 543 U.S. 942, 125 S. Ct. 373, 160 L. Ed. 2d 254, 2004 U.S. LEXIS 6963, 73 U.S.L.W. 3246 .

"Reasonable probability of success on the merits" standard codified in CCP § 425.16(b)(1), as interpreted by the California Supreme Court, is not unconstitutionally vague; the standard was sufficient for due process purposes to put citizens on adequate notice as to the burden that had to be met under the statute to defeat a motion to strike. Bernardo v. Planned Parenthood Federation of America (2004, Cal App 4th Dist) 115 Cal App 4th 322, 9 Cal Rptr 3d 197, 2004 Cal App LEXIS 111, review denied Bernardo v. Planned Parenthood (2004) 2004 Cal. LEXIS 3097, cert den Bernardo v. Planned Parenthood Fed'n of Am. (2004) 543 U.S. 942, 125 S. Ct. 373, 160 L. Ed. 2d 254, 2004 U.S. LEXIS 6963, 73 U.S.L.W. 3246 .

Court's award of attorney fees under CCP § 425.16(c) in favor of organizations did not violate citizens' constitutional right to petition the government for redress of grievances because (1) the fee shifting simply required the citizens

to bear the fees and costs of the strategic lawsuit against public participation, and (2) case law had previously found the provision valid and passed constitutional muster. Bernardo v. Planned Parenthood Federation of America (2004, Cal App 4th Dist) 115 Cal App 4th 322, 9 Cal Rptr 3d 197, 2004 Cal App LEXIS 111, review denied Bernardo v. Planned Parenthood (2004) 2004 Cal. LEXIS 3097, cert den Bernardo v. Planned Parenthood Fed'n of Am. (2004) 543 U.S. 942, 125 S. Ct. 373, 160 L. Ed. 2d 254, 2004 U.S. LEXIS 6963, 73 U.S.L.W. 3246 .

Court's award of attorney fees under CCP § 425.16(c) in favor of organizations did not violate citizens' due process rights because (1) it had already been held that the standard under the statute was not unconstitutionally vague, and (2) the citizens' contention was based on the unsupported premise that they had a fundamental First Amendment right to bring a strategic lawsuit against public participation. Bernardo v. Planned Parenthood Federation of America (2004, Cal App 4th Dist) 115 Cal App 4th 322, 9 Cal Rptr 3d 197, 2004 Cal App LEXIS 111, review denied Bernardo v. Planned Parenthood (2004) 2004 Cal. LEXIS 3097, cert den Bernardo v. Planned Parenthood Fed'n of Am. (2004) 543 U.S. 942, 125 S. Ct. 373, 160 L. Ed. 2d 254, 2004 U.S. LEXIS 6963, 73 U.S.L.W. 3246 .

Federal court did not have jurisdiction over claims challenging the constitutionality of California's anti-SLAPP statute, CCP § 425.16. To the extent claims were based on a threat of injury to the plaintiff they were unripe; to the extent they were based on a chilling effect to the right to petition for redress the claims were not brought against the right defendant (which would have been the state). Shalaby v. Jacobowitz (2003, ND Cal) 2003 US Dist LEXIS 6551, aff'd (2005, 9th Cir Cal) 138 Fed Appx 10, 2005 US App LEXIS 9709.

State's Fed. R. Civ. P. 12(b)(1) motion to dismiss an attorney's action challenging CCP § 425.16 was granted where the State had Eleventh Amendment immunity, Congress had not unequivocally abrogated the State's immunity when it adopted 42 USCS § 1983, and the State had not explicitly waived its immunity. Shalaby v. Cal. (2003, ND Cal) 2003 US Dist LEXIS 11634, aff'd (2005, 9th Cir Cal) 132 Fed Appx 720, 2005 US App LEXIS 9647.

California Attorney General's Fed. R. Civ. P. 12(b)(1) motion to dismiss an attorney's claim challenging CCP § 425.16 was granted where the Attorney General had no role in enforcing the statute; thus, the Ex Parte Young doctrine did not apply. Shalaby v. Cal. (2003, ND Cal) 2003 US Dist LEXIS 11634, aff'd (2005, 9th Cir Cal) 132 Fed Appx 720, 2005 US App LEXIS 9647.

Attorney's 42 USCS § 1983 action to enjoin application of CCP § 425.16, the SLAPP statute, as unconstitutional was dismissed because defendant judges were entitled to Eleventh Amendment immunity; Ex parte Young (1908) 209 US 123, 28 S Ct 441, 52 L Ed 714, 1908 US LEXIS 1726, superseded by statute as stated in Presbyterian Church (U.S.A.) v. United States (1989, 9th Cir Ariz) 870 F2d 518, 1989 US App LEXIS 4978, did not apply because the SLAPP statute was a private statute that could only be invoked by private litigants, and as such the judges could not commence or even threaten to commence a proceeding under the SLAPP statute. Shalaby v. Freedman (2003, ND Cal) 2003 US Dist LEXIS 18819.

In case in which a website operator moved to strike an attorney's claim for defamation, under Code Civ Proc § 425.16, the website operator fell within the statutory definition of an internet service provider, as defined by 47 USCS § 230(c), but as there was an issue as to whether the allegedly defamatory email was meant to be posted on the website's listserv, the matter of whether the operator had immunity under § 230(c) would be remanded to the district court. Batzel v. Smith (2003, 9th Cir Cal) 333 F3d 1018, 2003 US App LEXIS 12736, rehearing denied (2003, 9th Cir) 351 F3d 904, 2003 US App LEXIS 24304, cert den (2004) 541 US 1085, 124 S Ct 2812, 159 L Ed 2d 246, 2004 US LEXIS 4045.

2. Purpose

CCP § 425.16, provides for a special motion to strike a "SLAPP" suit, described as a meritless suit filed primarily to chill the defendant's exercise of U.S. Const., 1st Amend., rights. One of the purposes of the statute is to eliminate meritless litigation at an early stage. Bradbury v. Superior Court (1996, Cal App 2d Dist) 49 Cal App 4th 1108, 57 Cal Rptr 2d 207, 1996 Cal App LEXIS 935, rehearing denied (1996, Cal App 2d Dist) 50 Cal App 4th 917C, 1996 Cal App LEXIS 1030, review denied (1997, Cal) 1997 Cal LEXIS 135.

The legislative purpose of CCP § 425.16, is to provide a procedural device which would allow for prompt exposure and dismissal of SLAPP (strategic law suits against public participation) suits. The actions falling into this category have been generally recognized as civil law suits aimed at preventing citizens from exercising their political rights or at punishing those who have done so: suits that are brought to obtain an economic advantage over the defendant, not to vindicate a legally cognizable right of plaintiff. Ericsson GE Mobile Communications, Inc. v. C.S.I. Telecommunications Engineers (1996, Cal App 1st Dist) 49 Cal App 4th 1591, 57 Cal Rptr 2d 491, 1996 Cal App LEXIS 961, review

denied (1997, Cal) 1997 Cal LEXIS 69, overruled Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701, overruled Briggs v. Eden Council For Hope & Opportunity (1999) 19 Cal 4th 1106, 81 Cal Rptr 2d 471, 969 P2d 564, 1999 Cal LEXIS 7, overruled in part as stated Wang v. Wal-Mart Real Estate Business Trust (2007, 4th Dist) 2007 Cal App LEXIS 1219, overruled as stated Midland Pacific Building Corp. v. King (2007, Cal App 2d Dist) 153 Cal App 4th 499, 63 Cal Rptr 3d 129, 2007 Cal App LEXIS 1189.

CCP § 425.16 is designed to expose and dismiss at an early stage nonmeritorious actions which are filed "to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." Linsco/Private Ledger, Inc. v. Investors Arbitration Services, Inc. (1996, Cal App 1st Dist) 50 Cal App 4th 1633, 58 Cal Rptr 2d 613, 1996 Cal App LEXIS 1102, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701, overruled Briggs v. Eden Council For Hope & Opportunity (1999) 19 Cal 4th 1106, 81 Cal Rptr 2d 471, 969 P2d 564, 1999 Cal LEXIS 7.

A SLAPP suit (CCP § 425.16) has been described as a meritless suit filed primarily to chill the defendant's exercise of U.S. Const. 1st Amend. rights. One of the purposes of the statute is to eliminate meritless litigation at an early stage in the proceedings. Macias v. Hartwell (1997, Cal App 2d Dist) 55 Cal App 4th 669, 64 Cal Rptr 2d 222, 1997 Cal App LEXIS 444, review denied (1997, Cal) 1997 Cal LEXIS 5053.

Strategic lawsuits against public participation (SLAPP suits) are meritless suits filed primarily to chill a defendant's exercise of First Amendment rights. CCP § 425.16, the anti-SLAPP statute, provides that a cause of action arising from a person's exercise of the constitutional rights of petition or free speech in connection with a public issue is subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim. The purpose of § 425.16 is to encourage continued participation in matters of public significance by eliminating meritless litigation at an early stage in the proceedings. Conroy v. Spitzer (1999, Cal App 4th Dist) 70 Cal App 4th 1446, 83 Cal Rptr 2d 443, 1999 Cal App LEXIS 286.

CCP § 425.16 is designed to protect citizens in the exercise of their First Amendment constitutional rights of free speech and petition. It is California's response to the problems created by meritless lawsuits brought to harass those who have exercised these rights. Kyle v. Carmon (1999, Cal App 3d Dist) 71 Cal App 4th 901, 84 Cal Rptr 2d 303, 1999 Cal App LEXIS 440.

CCP § 425.16(b)(1) authorizes a special motion to strike a cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue. The goal is to eliminate meritless or retaliatory litigation at an early stage of the proceedings. Seelig v. Infinity Broadcasting Corp. (2002, Cal App 1st Dist) 97 Cal App 4th 798, 119 Cal Rptr 2d 108, 2002 Cal App LEXIS 3974.

The purpose of CCP § 425.16 is to encourage participation in matters of public significance by allowing a court to promptly dismiss unmeritorious actions or claims that are brought to chill another's valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. In furtherance of this purpose, the anti-SLAPP (Strategic Lawsuits Against Public Participation) statute is to be construed broadly. Padres L.P. v. Henderson (2003, Cal App 4th Dist) 114 Cal App 4th 495, 8 Cal Rptr 3d 584, 2003 Cal App LEXIS 1865, rehearing denied (2004, Cal App 4th Dist) 2004 Cal App LEXIS 44, review denied (2004, Cal) 2004 Cal LEXIS 3174.

There is no policy reason to protect citizens who maliciously file frivolous reverse validation actions that are designed to thwart public projects through delay, litigation, and increased project costs resulting therefrom by disallowing private parties who are individually injured by such conduct from suing for malicious prosecution; the availability of the anti-SLAPP (Strategic Lawsuits Against Public Participation) procedure, CCP § 425.16, provides adequate protection to persons who legitimately pursue reverse validation claims against non-meritorious malicious prosecution claims arising from such an action. This balances the policies of discouraging frivolous litigation and protecting the rights of citizens to challenge governmental actions. Padres L.P. v. Henderson (2003, Cal App 4th Dist) 114 Cal App 4th 495, 8 Cal Rptr 3d 584, 2003 Cal App LEXIS 1865, rehearing denied (2004, Cal App 4th Dist) 2004 Cal App LEXIS 44, review denied (2004, Cal) 2004 Cal LEXIS 3174.

3. Legislative Intent

Although the statute requires only a showing of "probability" and similar statutes require showing "a reasonable probability," the Legislature did not intend by eliminating the adjective "substantial" from the original version of the statute to permit a threshold lower than a "reasonable probability." Wilcox v. Superior Court (1994, Cal App 2d Dist) 27

Cal App 4th 809, 33 Cal Rptr 2d 446, 1994 Cal App LEXIS 838, modified, rehearing denied (1994, Cal App 2d Dist) 28 Cal App 4th 940, 1994 Cal App LEXIS 922, review denied (1994, Cal) 1994 Cal LEXIS 6186, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

CCP § 425.16, enacted to protect citizens in the exercise of their constitutional rights of free speech and petition, is California's response to the problems created by meritless lawsuits. These SLAPP suits (strategic lawsuits against public participation), are civil lawsuits that are aimed at preventing citizens from exercising their political rights or punishing those who have done so. They are brought not to vindicate a legal right but rather to interfere with the defendant's ability to pursue his or her interests. Characteristically, the SLAPP suit lacks merit and will achieve its objective if it depletes the defendant's resources or energy. The aim is not to win the lawsuit but to detract the defendant from his or her objective, which is adverse to the plaintiff. Church of Scientology v. Wollersheim (1996, Cal App 2d Dist) 42 Cal App 4th 628, 49 Cal Rptr 2d 620, 1996 Cal App LEXIS 87, review denied (1996, Cal) 1996 Cal LEXIS 2783, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

When a party to a lawsuit engages in a course of oppressive litigation conduct designed to discourage the opponents' right to utilize the courts to seek legal redress, the trial court may properly apply CCP § 425.16, and in determining whether the statute applies, may properly consider the litigation history between the parties. The legislative rationale in enacting the statute is consistent with such an analysis because acts that are designed to discourage the bringing of a lawsuit are no more oppressive than acts that seek to prolong the litigation to a point where it is economically impracticable to maintain and pursue it to a final conclusion. Church of Scientology v. Wollersheim (1996, Cal App 2d Dist) 42 Cal App 4th 628, 49 Cal Rptr 2d 620, 1996 Cal App LEXIS 87, review denied (1996, Cal) 1996 Cal LEXIS 2783, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

In 1992, the Legislature enacted CCP § 425.16, the anti-SLAPP (strategic lawsuit against public participation) statute, to protect citizens in their exercise of the right of political free speech Averill v. Superior Court (1996, Cal App 4th Dist) 42 Cal App 4th 1170, 50 Cal Rptr 2d 62, 1996 Cal App LEXIS 152.

In light of the statute's purpose to protect free speech, the Legislature intended the statute to have broad application. Averill v. Superior Court (1996, Cal App 4th Dist) 42 Cal App 4th 1170, 50 Cal Rptr 2d 62, 1996 Cal App LEXIS 152.

By its terms, CCP § 425.16, the anti-SLAPP (strategic lawsuit against public participation) statute, is designed to provide a procedural remedy to expose and dismiss at an early stage nonmeritorious actions that chill, inter alia, the valid exercise of the constitutional rights of freedom of speech. SLAPP plaintiffs do not intend to win their suits; rather, they are filed solely for delay and distraction and to punish activists by imposing litigation costs on them for exercising their constitutional right to speak and petition the government for redress of grievances. Averill v. Superior Court (1996, Cal App 4th Dist) 42 Cal App 4th 1170, 50 Cal Rptr 2d 62, 1996 Cal App LEXIS 152.

To determine whether the Legislature intended to include within the scope of CCP § 425.16 acts relating to the performance of a contract, courts look not only to the articulated purpose but to the language of the operative provisions of the statute itself. These provisions must be given a reasonable, common sense meaning, one that is practical (not technical) which upon application will result in attaining the legislative goal, rather than creating mischief or absurdity. Ericsson GE Mobile Communications, Inc. v. C.S.I. Telecommunications Engineers (1996, Cal App 1st Dist) 49 Cal App 4th 1591, 57 Cal Rptr 2d 491, 1996 Cal App LEXIS 961, review denied (1997, Cal) 1997 Cal LEXIS 69, overruled Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701, overruled Briggs v. Eden Council For Hope & Opportunity (1999) 19 Cal 4th 1106, 81 Cal Rptr 2d 471, 969 P2d 564, 1999 Cal LEXIS 7, overruled in part as stated Wang v. Wal-Mart Real Estate Business Trust (2007, 4th Dist) 2007 Cal App LEXIS 1219, overruled as stated Midland Pacific Building Corp. v. King (2007, Cal App 2d Dist) 153 Cal App 4th 499, 63 Cal Rptr 3d 129, 2007 Cal App LEXIS 1189.

In determining whether a cause of action falls within the scope of CCP § 425.16, the Legislature intended to include only those suits that are based upon acts that are primarily in furtherance of a person's constitutional right of free speech, i.e., acts which advance or promote that right. It is only in those cases where the party acted for the purpose of promoting or advancing his or her right of free speech, in contrast to one where the parties are performing or breaching their contractual obligations, that the right could be chilled by the specter of an unfounded lawsuit. Ericsson GE Mobile Communications, Inc. v. C.S.I. Telecommunications Engineers (1996, Cal App 1st Dist) 49 Cal App 4th 1591, 57 Cal Rptr 2d 491, 1996 Cal App LEXIS 961, review denied (1997, Cal) 1997 Cal LEXIS 69, overruled Equilon Enterprises

v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701, overruled Briggs v. Eden Council For Hope & Opportunity (1999) 19 Cal 4th 1106, 81 Cal Rptr 2d 471, 969 P2d 564, 1999 Cal LEXIS 7, overruled in part as stated Wang v. Wal-Mart Real Estate Business Trust (2007, 4th Dist) 2007 Cal App LEXIS 1219, overruled as stated Midland Pacific Building Corp. v. King (2007, Cal App 2d Dist) 153 Cal App 4th 499, 63 Cal Rptr 3d 129, 2007 Cal App LEXIS 1189.

The legislature does not intend that in order to invoke the special motion to strike under CCP § 425.16, the defendant must first establish her actions are constitutionally protected under the First Amendment as a matter of law. If this were the case then the secondary inquiry as to whether the plaintiff has established a probability of success would be superfluous. Navellier v. Sletten (2002) 29 Cal 4th 82, 124 Cal Rptr 2d 530, 52 P3d 703, 2002 Cal LEXIS 5700.

4. Construction

While CCP § 425.16, subd. (e), establishes the environment in which the speech (act) occurs, it does not by itself define the acts subject to a motion to strike. This is accomplished in CCP § 425.16, subd. (b). Preliminarily, the court construes CCP § 425.16, subd. (b), as containing a two-part test for determining whether an action is a SLAPP suit. The first part tests whether the action is a SLAPP suit; the second decides whether, if it is a SLAPP suit, it may nonetheless survive the motion to strike. Ericsson GE Mobile Communications, Inc. v. C.S.I. Telecommunications Engineers (1996, Cal App 1st Dist) 49 Cal App 4th 1591, 57 Cal Rptr 2d 491, 1996 Cal App LEXIS 961, review denied (1997, Cal) 1997 Cal LEXIS 69, overruled Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701, overruled Briggs v. Eden Council For Hope & Opportunity (1999) 19 Cal 4th 1106, 81 Cal Rptr 2d 471, 969 P2d 564, 1999 Cal LEXIS 7, overruled in part as stated Wang v. Wal-Mart Real Estate Business Trust (2007, 4th Dist) 2007 Cal App LEXIS 1219, overruled as stated Midland Pacific Building Corp. v. King (2007, Cal App 2d Dist) 153 Cal App 4th 499, 63 Cal Rptr 3d 129, 2007 Cal App LEXIS 1189.

In light of the legislative history and the declared legislative purpose of the anti-SLAPP statute, the statute must be given a narrow interpretation. The anti-SLAPP statute applies only to lawsuits described by the statement of legislative purpose in CCP § 425.16, subd. (a), i.e., those brought to chill "participation in matters of public significance." Linsco/Private Ledger, Inc. v. Investors Arbitration Services, Inc. (1996, Cal App 1st Dist) 50 Cal App 4th 1633, 58 Cal Rptr 2d 613, 1996 Cal App LEXIS 1102, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701, overruled Briggs v. Eden Council For Hope & Opportunity (1999) 19 Cal 4th 1106, 81 Cal Rptr 2d 471, 969 P2d 564, 1999 Cal LEXIS 7.

Requirement that the offending comments by defendants were made in connection with an issue of public interest, CCP § 425.16(e)(3), like all of CCP § 425.16, is to be construed broadly so as to encourage participation by all segments of our society in vigorous public debate related to issues of public interest, CCP § 425.16(a). Seelig v. Infinity Broadcasting Corp. (2002, Cal App 1st Dist) 97 Cal App 4th 798, 119 Cal Rptr 2d 108, 2002 Cal App LEXIS 3974.

Pursuant to CCP § 425.16(a), the statute against strategic lawsuits against public participation or anti-SLAPP statute, CCP § 425.16, is to be broadly construed. Du Charme v. International Brotherhood of Electrical Workers (2003, Cal App 1st Dist) 110 Cal App 4th 107, 1 Cal Rptr 3d 501, 2003 Cal App LEXIS 1002.

Litigation privilege of CC § 47(b) did not protect a purportedly libelous attorney letter because when the letter was written, litigation was not imminent. The court noted that a communication protected by CCP § 425.16(e)(4), as in the case at bar, would not necessarily be protected by the litigation privilege. Ruiz v. Harbor View Community Assn. (2005, Cal App 4th Dist) 134 Cal App 4th 1456, 37 Cal Rptr 3d 133, 2005 Cal App LEXIS 1937.

Assuming that the litigation privilege of CC § 47(b) applies to prelitigation related communications that constitute extortion, such communications are not protected under CCP § 425.16 because the litigation privilege and § 425.16 are substantively different statutes that serve quite different purposes, and it is not consistent with the language or the purpose of § 425.16 to protect such threats. Flatley v. Mauro (2006) 39 Cal 4th 299, 46 Cal Rptr 3d 606, 139 P3d 2, 2006 Cal LEXIS 9074.

CCP § 425.16(f), as amended, requires the court clerk to schedule a special motion to strike for a hearing no more than 30 days after the motion is served if such a hearing date is available on the court's docket, but does not require the moving party to ensure that the hearing is so scheduled and does not justify the denial of a special motion to strike solely because the motion was not scheduled for a hearing within 30 days after the motion was served. Hall v. Time Warner, Inc. (2007, Cal App 2d Dist) 153 Cal App 4th 1337, 63 Cal Rptr 3d 798, 2007 Cal App LEXIS 1280.

There is no requirement that a statement of decision must accompany an order granting an anti-SLAPP motion and no basis for departing from general rule that statement of decision is not required for an order on a motion; anti-SLAPP motions often place important interests at stake, but are distinguishable from those motions that have been declared exceptions to the general rule recited in CCP § 632. Lien v. Lucky United Properties Investment, Inc. (2008, 1st Dist) 2008 Cal App LEXIS 817.

Even the broadest interpretation of the plain language of CCP § 425.16 cannot stretch it to cover a request for a subpoena; request for a subpoena is not a complaint, cross-complaint, petition, or any equivalent pleading, does not contain any causes of action, and does not serve to initiate a judicial proceeding. Tendler v. www.Jewishsurvivors.blogspot.com (2008, 6th Dist) 2008 Cal App LEXIS 994.

As a request for a subpoena does not contain causes of action, does not seek relief, and does not serve to formally allege a party's claims and seek judgment, it bears no resemblance whatsoever to pleadings at which CCP § 425.16 is directed. Tendler v. www.Jewishsurvivors.blogspot.com (2008, 6th Dist) 2008 Cal App LEXIS 994.

This section does not immunize police officers from misconduct; it merely attempts to insulate them from having to litigate plainly unmeritorious lawsuits, the possibility of which would otherwise chill their ability to make statements in connection with official proceedings, as their duties to the public require. Schaffer v. City & County of San Francisco (2008, 1st Dist) 2008 Cal App LEXIS 2363.

Scope of the protections afforded to litigation-related communications under the anti-SLAPP statute, CCP § 425.16, and that afforded by the litigation privilege under CC § 47 are not identical, and the two statutes are substantively different and serve quite different purposes; while prelitigation communications can fall within the ambit of the anti-SLAPP statute, the question is whether the communications at issue were accurately characterized as such. Haneline Pacific Properties, LLC v. May (2008, 4th Dist) 83 Cal Rptr 3d 919, 167 Cal App 4th 311, 2008 Cal App LEXIS 1491.

CCP § 425.16, may not be interpreted to exclude governmental entities and public officials from its potential protection. Vargas v. City of Salinas (2009, Cal) 2009 Cal LEXIS 3698.

Statutory remedy afforded by CCP § 425.16, extends to statements and writings of governmental entities and public officials on matters of public interest and concern that would fall within the scope of the statute if such statements were made by a private individual or entity. Vargas v. City of Salinas (2009, Cal) 2009 Cal LEXIS 3698.

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.

4.5. Construction with Other Law

It is possible that a landlord could successfully claim the litigation privilege under Civ. Code, § 47, subd. (b), or move to strike under Code Civ. Proc., § 425.16, if he or she were to be sued under Oakland California's Just Cause for Eviction ordinance for filing an unsuccessful action to recover possession, but the mere possibility that the ordinance can be applied in such a way does not make it facially invalid. Rental Housing Assn. of Northern Alameda County v. City of Oakland (2009, 1st Dist) 171 Cal App 4th 741, 90 Cal Rptr 3d 181, 2009 Cal App LEXIS 266, review denied Rental Housing Association of Northern Alameda County v. City of Oakland/(Howell) (2009, Cal.) 2009 Cal. LEXIS 6669.

In a case in which an inventor sued a law firm after the firm requested reexamination of two of the inventor's patents, the inventor's complaints arose under federal law and were subject to the exclusive jurisdiction of the federal courts under 28 U.S.C. § 1338; therefore, the trial court's decision to grant the firm's special motions to strike the complaints pursuant to CCP § 425.16, was vacated, and the trial court was directed on remand to dismiss the action for lack

of subject matter jurisdiction. Lockwood v. Sheppard, Mullin, Richter & Hampton (2009, 2d Dist) 2009 Cal App LEXIS 665.

Anti-strategic lawsuit against public participation (anti-SLAPP) statute, CCP § 425.16 did not apply to federal law causes of action. A motion to dismiss one cause of action was not, ordinarily, inextricably intertwined with a motion to strike a different cause of action under California's anti-SLAPP law, even if the two claims were doctrinally similar; therefore, the appellate court lacked jurisdiction to review the Lanham Act, 15 U.S.C.S. § 1125 claim because a federal court could only entertain anti-SLAPP special motions to strike in connection with state law claims, and there was no properly appealable order with which the claim under the Lanham Act could have been inextricably intertwined. Hilton v. Hallmark Cards (2009, CA9 Cal) 2009 US App LEXIS 19571.

Neither the denial nor the grant of a motion under the anti-strategic lawsuit against public participation (anti-SLAPP) statute, CCP § 425.16 necessarily resolved a motion to dismiss regarding the same claim, and thus, it was possible for an appellate court to hold that an anti-SLAPP special motion to strike should be granted or denied without thereby dictating the result of a motion to dismiss the same claim under Fed. R. Civ. P. 12(b)(6). If the properly appealable order can be resolved without necessarily resolving the pendent order, then the latter was not inextricably intertwined with the former; therefore, the appellate court lacked jurisdiction to review that portion of the corporation's Fed. R. Civ. P. 12(b)(6) motion to dismiss the right of publicity claim because it was not inextricably intertwined with any properly appealable order. Hilton v. Hallmark Cards (2009, CA9 Cal) 2009 US App LEXIS 19571.

Suits brought by a governmental agency to enforce laws aimed at public protection are not subject to the anti-SLAPP (strategic lawsuit against public participation) statute, CCP § 425.16. Similarly, a suit to enforce competitive bidding laws is outside the ambit of the anti-SLAPP statute. Graffiti Protective Coatings, Inc. v. City of Pico Rivera (2010, 2d Dist) 181 Cal App 4th 1207, 2010 Cal App LEXIS 138.

In a lawsuit brought by a corporate plaintiff against a city after the city entered into a municipal contract to maintain the city's bus stops with one of plaintiff's competitors without going through competitive bidding, the city did not engage in protected activity by deciding whether the competitive bidding laws applied to the contract. Thus, a judgment and order granting the city's motion to strike pursuant to CCP § 425.16 were reversed. Graffiti Protective Coatings, Inc. v. City of Pico Rivera (2010, 2d Dist) 181 Cal App 4th 1207, 2010 Cal App LEXIS 138.

5. Person

Given the compelling interest in the promotion of free speech, and federal and state precedents, the word "person" as used in CCP § 425.16 must be read to include a governmental entity. Bradbury v. Superior Court (1996, Cal App 2d Dist) 49 Cal App 4th 1108, 57 Cal Rptr 2d 207, 1996 Cal App LEXIS 935, rehearing denied (1996, Cal App 2d Dist) 50 Cal App 4th 917C, 1996 Cal App LEXIS 1030, review denied (1997, Cal) 1997 Cal LEXIS 135.

A cause of action arising out of insurance fraud lawsuits in which the allegations as a whole related to the filing and prosecution of those actions, as well as statements made to the press and to government agencies in relation to those lawsuits, was appropriately the subject of a CCP § 425.16 motion to strike, and the attorneys for the insurer had standing to bring the motion. Although in some cases a lawyer may not be "that person" within the meaning of CCP § 425.16(b)(1), here the allegations at issue arose from the attorneys' exercise of free expression rights, albeit on behalf of their clients. Shekhter v. Financial Indemnity Co. (2001, Cal App 2d Dist) 89 Cal App 4th 141, 106 Cal Rptr 2d 843, 2001 Cal App LEXIS 365.

6. Acts in Furtherance of Rights of Free Speech or Petition

An "act in furtherance of" a person's rights under U.S. Const., 1st Amend., is not limited to oral and written statements, but may arise out of a defendant's constitutionality protected conduct. Wilcox v. Superior Court (1994, Cal App 2d Dist) 27 Cal App 4th 809, 33 Cal Rptr 2d 446, 1994 Cal App LEXIS 838, modified, rehearing denied (1994, Cal App 2d Dist) 28 Cal App 4th 940, 1994 Cal App LEXIS 922, review denied (1994, Cal) 1994 Cal LEXIS 6186, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

The right to speak on political matters is the quintessential subject of the constitutional protections of the right of free speech, and public discussion about the qualifications of those who hold or who wish to hold positions of public trust presents the strongest possible case for applications of the safeguards afforded by the First Amendment. Matson v. Dvorak (1995, Cal App 3d Dist) 40 Cal App 4th 539, 46 Cal Rptr 2d 880, 1995 Cal App LEXIS 1134.

The categories enumerated in CCP § 425.16, subd. (e), are not all inclusive. The enumeration of acts protected is preceded by the word "includes," which implies that other unmentioned acts are also protected under the statute. Averill v. Superior Court (1996, Cal App 4th Dist) 42 Cal App 4th 1170, 50 Cal Rptr 2d 62, 1996 Cal App LEXIS 152.

CCP § 425.16, providing that when a lawsuit arises out of the exercise of free speech or petition, a defendant may move to strike the complaint, which is subject to dismissal unless the plaintiff establishes a probability that he or she will prevail on the claim, applies to a political campaign. The constitutional guaranty of free speech has its fullest and most urgent application precisely to the conduct of campaigns for political office, and there is nothing in the language of § 425.16 that denies its use by politicians. Beilenson v. Superior Court (1996, Cal App 2d Dist) 44 Cal App 4th 944, 52 Cal Rptr 2d 357, 1996 Cal App LEXIS 367.

In a class action against a pharmaceutical company alleging that defendant made false statements before regulatory bodies, the medical profession, and the public in connection with one of its products, the trial court erroneously concluded that the first prong of the anti-SLAPP statute, CCP § 425.16, had not been met, as the complaint alleged acts in furtherance of defendant's right of petition or free speech in connection with a public issue and therefore qualified under the first step of the SLAPP analysis. Remand was necessary to give the trial court an opportunity to consider the second prong, i.e., whether there was a probability that plaintiffs would prevail. DuPont Merck Pharm. Co. v. Superior Court (2000, Cal App 4th Dist) 78 Cal App 4th 562, 92 Cal Rptr 2d 755, 2000 Cal App LEXIS 118, rehearing denied (2000, Cal App 4th Dist) 2000 Cal App LEXIS 119, review denied (2000, Cal) 2000 Cal LEXIS 3504.

Action based on defendant trustee's having filed counterclaims in a prior, unrelated proceeding in federal court was one "arising from" activity protected by CCP § 425.16, which provides for early dismissal of certain actions known as "strategic lawsuits against public participation," and hence, the case would be remanded to determine whether plaintiffs could establish a probability of prevailing. Navellier v. Sletten (2002) 29 Cal 4th 82, 124 Cal Rptr 2d 530, 52 P3d 703, 2002 Cal LEXIS 5700.

Because there was no dispute that a proposed development of a bay area was a matter of public interest, port district's statements and writings fell within CCP § 425.16(e)(4). Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist. (2003, Cal App 4th Dist) 106 Cal App 4th 1219, 132 Cal Rptr 2d 57, 2003 Cal App LEXIS 382.

"Arising from" prong encompasses any action based on protected speech or petitioning activity, as defined in CCP § 425.16(e), regardless of whether the plaintiff's lawsuit was intended to chill, or actually chilled, the defendant's protected conduct. Martinez v. Metabolife Internat., Inc. (2003, Cal App 4th Dist) 113 Cal App 4th 181, 6 Cal Rptr 3d 494, 2003 Cal App LEXIS 1686, review denied Martinez v. Metabolife International (2004, Cal) 2004 Cal LEXIS 1786.

Ministerial event of a sheriff's sale or auction does not concern an issue under review or determine some disputed matter as contemplated under the anti-SLAPP (strategic lawsuits against public participation) law. Rather, it consists merely of offers and the acceptance of the highest bid made according to certain requirements without any determination based on the exercise of one's free speech or petition rights; as such, it concerns a business dealing or transaction and not the exercise of protected activity. Blackburn v. Brady (2004, Cal App 4th Dist) 116 Cal App 4th 670, 10 Cal Rptr 3d 696, 2004 Cal App LEXIS 272.

Because protected speech was not the gravamen or principal thrust of claims alleging personal injuries to a consumer caused by a defective product, such claims did not arise from protected activity within the meaning of CCP § 425.16(e). 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.

Mother's allegations of domestic violence against a second parent, her former partner in a lesbian relationship, were made in connection with an issue under consideration by a judicial body under CCP § 425.16(e)(2) where the second parent's adoption petition was pending in the superior court at the time, writ proceedings concerning the validity of second-parent adoptions were pending in the appellate courts, and the mother's statements were directly at issue in the underlying adoption proceedings. Annette F. v. Sharon S. (2004, Cal App 4th Dist) 119 Cal App 4th 1146, 15 Cal Rptr 3d 100, 2004 Cal App LEXIS 1013, review denied (2004, Cal) 2004 Cal LEXIS 9700.

Comments of a water district board member to a newspaper reporter regarding the supposed conflict of interest of the board's former general counsel did not come within CCP § 425.16(e)(3) and (4) because they were unconnected to any ongoing debate; the employment action was a fait accompli and the stated reasons for counsel's firing were informational only. The board member did not meet his threshold burden of showing his speech was protected under the anti-SLAPP (strategic lawsuit against public participation) statute. Harron v. Bonilla (2005, Cal App 4th Dist) 125 Cal App

4th 738, 23 Cal Rptr 3d 73, 2005 Cal App LEXIS 14, review gr, depublished (2005) 28 Cal Rptr 3d 3, 110 P 3d 1217, 2005 Cal. LEXIS 4585, review dismissed (2006, Cal) 49 Cal Rptr 3d 654, 143 P3d 655, 2006 Cal LEXIS 12703.

City's cross-action against initiative sponsor arose out of the sponsor's actions in furtherance of the right of free speech or petition. Even if the act which led to the filing of the cross-complaint was the voters' approval of the initiative, as the city claimed, that approval represented a paradigmatic exercise of the sponsor's and the voters' engagement in conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest under CCP § 425.16(e)(4). City of Santa Monica v. Stewart (2005, Cal App 2d Dist) 126 Cal App 4th 43, 24 Cal Rptr 3d 72, 2005 Cal App LEXIS 109, modified, rehearing denied (2005, Cal App 2d Dist) 2005 Cal App LEXIS 304, review denied (2005, Cal) 2005 Cal LEXIS 4616.

Complaint brought by plaintiffs, an animal testing laboratory and its employee, against defendants, an animal rights organization and its president, arose from protected speech within the meaning of CCP § 425.16; however, the trial court properly denied defendants' motion to strike as to plaintiffs' cause of action for harassment, as plaintiffs showed a probability of prevailing thereon. Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc. (2005, Cal App 4th Dist) 129 Cal App 4th 1228, 29 Cal Rptr 3d 521, 2005 Cal App LEXIS 878.

In an action arising from a homeowner's conflict with his housing association, two letters from the association's lawyer to the owner were protected speech under CCP § 425.16(e)(4), even though the letters were private, because they concerned ongoing disputes that were of interest to a definable portion of the public; specifically, the members of the association, residents of over 523 lots, would be impacted by the outcome and had a stake in the association's governance. Ruiz v. Harbor View Community Assn. (2005, Cal App 4th Dist) 134 Cal App 4th 1456, 37 Cal Rptr 3d 133, 2005 Cal App LEXIS 1937.

In a case in which a fired high school baseball coach sued the parents of his players for libel, the trial court properly granted the parents' motion to strike pursuant to CCP § 425.16; a letter written by one of the parents to school officials that contained allegedly libelous statements about the coach was written to prompt official action and was privileged under CC § 47(b). Lee v. Fick (2005, Cal App 2d Dist) 135 Cal App 4th 89, 37 Cal Rptr 3d 375, 2005 Cal App LEXIS 1964, rehearing denied (2005, Cal App 2d Dist) 2005 Cal App LEXIS 2013, review denied (2006, Cal) 2006 Cal LEXIS 2759.

In a defamation action brought by a podiatrist against a newspaper and others, stating facts and opinions about the podiatrist in a newspaper article was conduct in furtherance of defendants' constitutional right of free speech under CCP § 425.16(e)(4). Carver v. Bonds (2005, Cal App 1st Dist) 135 Cal App 4th 328, 37 Cal Rptr 3d 480, 2005 Cal App LEXIS 1983.

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 a defendant brings a motion to strike under CCP § 425.16, based on a claim that the plaintiff's action arises from activity by the defendant in furtherance of the defendant's exercise of protected speech or petition rights, but either the defendant concedes, or the evidence conclusively establishes, that the assertedly protected speech or petition activity was illegal as a matter of law, the defendant is precluded from using the statute to strike the plaintiff's action. Flatley v. Mauro (2006) 39 Cal 4th 299, 46 Cal Rptr 3d 606, 139 P3d 2, 2006 Cal LEXIS 9074.

In a dispute regarding a construction contract with a school district, suppliers were not entitled to strike, under CCP § 425.16, an electrical contractor's lawsuit for libel, slander, and unfair business practices because the suppliers' stop notices under CC §§ 3184, 3210 and their collection efforts were not privileged as communications in anticipation of litigation; this privilege is coextensive with the litigation privilege of CC § 47(b). A.F. Brown Electrical Contractor, Inc. v. Rhino Electric Supply, Inc. (2006, Cal App 4th Dist) 137 Cal App 4th 1118, 41 Cal Rptr 3d 1, 2006 Cal App LEXIS 405, rehearing denied (2006) 2006 Cal. App. LEXIS 632, review denied (2006) 2006 Cal. LEXIS 8506.

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 arose from protected activity because it was predicated on the voting of the two reelected directors for measures relating to the conduct of the election. 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.

Where a complaint alleged anticompetitive activity in violation of Cal. Bus. & Prof. Code §§ 16720, 17200 and 18 U.S.C.S. §§ 1961(f), 1962(c), based on petitioning to stay processing of workers' compensation bills and lien claims, these activities were in the exercise of the First Amendment, U.S. Const. amend. I, right to petition and fell within the Noerr-Pennington doctrine; hence, an anti-SLAPP motion to strike under "CCP" § 425.16 should have been granted. Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn. (2006, Cal App 2d Dist) 136 Cal App 4th 464, 39 Cal Rptr 3d 43, 2006 Cal App LEXIS 145, rehearing denied (2006) 2006 Cal. App. LEXIS 302, review denied (2006) 2006 Cal. LEXIS 5594.

Where a complaint alleged anticompetitive activity in violation of B & P C §§ 16720, 17200 and 18 U.S.C.S. §§ 1961(f), 1962(c), based on petitioning to stay processing of workers' compensation bills and lien claims, these activities were in the exercise of the First Amendment, U.S. Const. amend. I, right to petition and fell within the Noerr-Pennington doctrine; hence, an anti-SLAPP motion to strike under CCP § 425.16 should have been granted. Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn. (2006, Cal App 2d Dist) 136 Cal App 4th 464, 39 Cal Rptr 3d 43, 2006 Cal App LEXIS 145, rehearing denied (2006) 2006 Cal. App. LEXIS 302, review denied (2006) 2006 Cal. LEXIS 5594.

For the purposes of CCP § 425.16(b)(1), a cause of action does not "arise from" an activity simply because it is filed after such activity took place, nor does the fact that a cause of action arguably may have been triggered by protected activity necessarily mean that it "arises" therefrom. The trial court must instead focus on the substance of the lawsuit in analyzing the first prong of a special motion to strike, paying especial attention to whether the plaintiff's cause of action itself was based on an act in furtherance of the defendant's rights of petition or free speech. Flores v. Emerich & Fike (2006, ED Cal) 416 F Supp 2d 885, 2006 US Dist LEXIS 9011.

In a case in which plaintiffs, two members of a city council, alleged the city council's meetings violated the Ralph M. Brown Act, Gov C § 54950 et seq., because they frequently ran late into the night, plaintiffs' causes of action arose from protected activity; therefore, CCP § 425.16 applied to the causes of action. Holbrook v. City of Santa Monica (2006, Cal App 2d Dist) 144 Cal App 4th 1242, 51 Cal Rptr 3d 181, 2006 Cal App LEXIS 1810, review denied (2007, Cal) 2007 Cal LEXIS 1757.

In a case in which a local church sought to disaffiliate itself from the national church and take the local church property with it, the trial court erred in reaching the merits of defendants' special motion to strike under CCP § 425.16 without first determining whether defendants made a threshold showing that the challenged cause of action arose from protected activity. The motion should have been denied because the lawsuit did not arise out of some desire on the part of the national church to litigate the free exercise rights of the local congregation. Episcopal Church Cases (2007, Cal App 4th Dist) 152 Cal App 4th 808, 61 Cal Rptr 3d 845, 2007 Cal App LEXIS 1041, rehearing denied (2007, Cal. App. 4th Dist.) 2007 Cal. App. LEXIS 1583, superseded (2009, Cal) 45 Cal 4th 467, 87 Cal Rptr 3d 275, 198 P 3d 66, 2009 Cal LEXIS 1.

Motion to strike under CCP § 425.16 was properly granted as to a claim brought by plaintiff business competitor based on defendant business competitor's conduct in filing an underlying action and on statements contained in an e-mail sent by defendant business's president to customers regarding the suit. The acts were protected activity and did not come within the commercial speech exemption of CCP § 425.17(c). 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.

Tenants' declaratory action challenging their landlords' right to withdraw their apartment from the rental market was not subject to being stricken under CCP § 425.16 because the cause of action arose not from the landlords' filing of legal notices and other protected petitioning activity, but from the termination of the tenancy. Marlin v. Venezia (2007, 2d Dist) 2007 Cal App LEXIS 1353.

Landlord was not entitled to strike a disability discrimination complaint as a strategic lawsuit against public participation because it did not meet its burden of showing that the suit was based on protected activity; the gravamen of the action was discrimination in evicting a tenant who had a disability, not the landlord's filing of market removal notices or eviction papers. Dep't of Fair Empl. & Hous. v. 1105 Alta Loma Rd. Apts. (2007, 2d Dist) 2007 Cal App LEXIS 1473.

Under CCP § 425.16, child abuse reports by an alleged victim to the victim's parents and to the police were protected activity. Chabak v. Monroy (2007, 5th Dist) 2007 Cal App LEXIS 1491.

Because a termination notice was a legal prerequisite for bringing an unlawful detainer action, a landlord's service of such a notice upon his tenants constituted activity in furtherance of the constitutionally protected right to petition under CCP § 425.16(e), although terminating a tenancy is not itself a protected activity. Birkner v. Lam (2007, 1st Dist) 67 Cal Rptr 3d 190, 156 Cal App 4th 275, 2007 Cal App LEXIS 1733.

In an action arising from the termination of a private prison contract, the dissemination to the press of a letter asserting that the contractor misappropriated public funds was a protected activity. The underlying dispute as to the contractor's retention of revenue from inmate telephone calls was undoubtedly an "issue under consideration" by the Department of Corrections within the meaning of CCP § 425.16(e)(2), even though there were no formal proceedings; in addition, the letter qualified as a written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest under CCP § 425.16(e)(3). Maranatha Corrections, LLC v. Department of Corrections & Rehabilitation (2008, 3d Dist) 158 Cal App 4th 1075, 70 Cal Rptr 3d 614, 2008 Cal App LEXIS 37.

Where the reviewing court found no error in an order striking defamation-related claims, an award of attorney fees under CCP § 425.16(c) had to be affirmed. Maranatha Corrections, LLC v. Department of Corrections & Rehabilitation (2008, 3d Dist) 158 Cal App 4th 1075, 70 Cal Rptr 3d 614, 2008 Cal App LEXIS 37.

Restaurant's declaratory relief action against defendant, who sent a Proposition 65 notice to the restaurant stating that some of its food products contained a cancer-causing chemical, naphthalene, requiring the restaurant to warn consumers, arose from protected activity, and was properly subject to a special motion to strike pursuant to CCP § 425.16. CKE Restaurants, Inc. v. Moore (2008, 2d Dist) 2008 Cal App LEXIS 119.

Former employee's published interview in a Finnish magazine about the employer's working conditions was a protected activity because the magazine was a public forum and the statements concerned an issue of public interest; there was evidence of extensive interest in the employer's owner, a prominent businessperson and celebrity of Finnish extraction, among the Finnish public. Nygard, Inc. v. Uusi-Kerttula (2008, 2d Dist) 2008 Cal App LEXIS 170.

In a Florida defamation claim, a California subpoena to discover the identity of an anonymous Internet poster from the message-board host should have been quashed because there was not a prima facie showing that a libelous statement had been made; in requiring the prima facie showing, the court noted that for lawsuits brought in California and about half the other states, an anti-strategic lawsuit against public participation (anti-SLAPP) statute, such as CCP § 425.16, protected defendants from meritless actions arising from their exercise of the right of free speech. Krinsky v. Doe 6 (2008, 6th Dist) 2008 Cal App LEXIS 180.

Lawyer's claim against a second lawyer for soliciting a client arose from a protected activity within the meaning of the anti-SLAPP statute because the action arose directly from communications that were about pending lawsuits, and thus that were made in connection with an issue under consideration or review by a judicial body under CCP § 425.16(e)(2). Taheri Law Group v. Evans (2008, 2d Dist) 2008 Cal App LEXIS 281.

There was no merit to an attorney's special motion to strike a complaint alleging that he disbursed the proceeds of personal injury settlements without notifying the medical providers or satisfying the medical liens; the complaint, although related to attorney conduct, did not arise from protected speech or petitioning. California Back Specialists Medical Group v. Rand (2008, 2d Dist) 2008 Cal App LEXIS 340.

In a real estate dispute, a seller was entitled to strike a buyer's claims for conversion and intentional interference with prospective economic advantage because the seller's acts of recording a notice of rescission, contacting the police department and the district attorney, and recording a notice of lis pendens were protected activity under CCP § 425.16(e); moreover, the buyer did not demonstrate a probability of success on the merits under § 425.16(b)(1) because the seller's protected activity came within the litigation privilege of CC § 47(b), an unprotected trespass by the seller was not shown to have caused economic harm, and a conversion claim could not be maintained as to real property. Salma v. Capon (2008, 1st Dist) 2008 Cal App LEXIS 513.

Causes of action for breach of a settlement agreement and specific performance did not arise from protected activity under CCP § 425.16(b)(1); alleged retaliatory motive for filing the complaint was irrelevant, and although entering into the settlement agreement was a protected activity, the alleged breaching conduct was not. Applied Bus. Software v. Pac. Mortg. Exch. (2008, 2d Dist) 2008 Cal App LEXIS 1053.

Property dispute between a local church and the general church was not an action "arising from" protected activity within the meaning of CCP § 425.16 even though protected activity arguably lurked in the background because the ac-

tual dispute concerned property ownership rather than any such protected activity. Episcopal Church Cases (2009, Cal) 45 Cal 4th 467, 87 Cal Rptr 3d 275, 198 P 3d 66, 2009 Cal LEXIS 1, modified, rehearing denied (2009, Cal.) 2009 Cal. LEXIS 1494, cert den Rector, Wardens & Vestrymen v. Protestant Episcopal Church (2009, U.S.) 130 S. Ct. 179, 175 L. Ed. 2d 41, 2009 U.S. LEXIS 5586.

Employer's statements to the California Employment Development Department in the context of an unemployment claim was protected activity under CCP § 425.16(e) because they were part of an "official proceeding." Dible v. Haight Ashbury Free Clinics (2009, 1st Dist) 2009 Cal App LEXIS 84.

Landlord's fraudulent act of terminating a tenancy or removing a unit from the rental market and allowing that unit to stand empty in breach of the Los Angeles rent stabilization ordinance is an actionable unlawful eviction under CC § 1947.10(a); neither that act nor the failure to make good on a check tendered to a former tenant are acts protected by a landlord's constitutional rights of petition or speech for purposes of a special motion to strike under CCP § 425.16, the anti-SLAPP statute. Clark v. Mazgani (2009, 2d Dist) 2009 Cal App LEXIS 151.

Anti-SLAPP (strategic lawsuit against public participation) statute, CCP § 425.16, does not protect the act of initiating private, contractual arbitration, but, rather, it protects statements made in, or concerning issues under review by, a judicial proceeding, or any other official proceeding authorized by law, pursuant to § 425.16, subds. (e)(1), (2). Private, contractual arbitration is neither because it is a private alternative to a judicial proceeding, and it is not an official proceeding because it is a nongovernmental activity not reviewable by administrative mandate or required by statute. 21 Chamberlain & Assocs. v. Haberman (2009, 4th Dist) 2009 Cal App LEXIS 558.

Because talent agents' wrongful termination and retaliation claims against the company that employed them did not arise from the company's First Amendment activity, the company's special motions to strike the agents' wrongful termination and retaliation claims pursuant to CCP § 425.16 were properly denied. McConnell v. Innovative Artists Talent & Literary Agency, Inc. (2009, 2d Dist) 2009 Cal App LEXIS 1011.

Unsuccessful attempt by landlords to settle a dispute with a tenant does not constitute "protected activity" under the first prong of CCP § 425.16. Delois v. Barrett Block Partners (2009, 1st Dist) 2009 Cal App LEXIS 1550.

Where no litigation is ever commenced--although possibly contemplated by one side or another--but, rather, there is an agreement entered into to resolve the parties' disputes, a later suit alleging breach of that agreement and related tortious conduct does not constitute the sort of activity encompassed by the strategic lawsuit against public participation statute's first prong. Delois v. Barrett Block Partners (2009, 1st Dist) 2009 Cal App LEXIS 1550.

Prelitigation investigation to support a potential claim is sufficiently related to the right to petition as to fall within the protected "breathing space" of that right. However, whether it does in a particular case further depends on whether the potential claim being investigated was legitimate or a sham. Tichinin v. City of Morgan Hill (2009, 6th Dist) 2009 Cal App LEXIS 1557.

Hiring an investigator can be considered protected under the right of free speech. Tichinin v. City of Morgan Hill (2009, 6th Dist) 2009 Cal App LEXIS 1557.

In a case in which plaintiff sued a city under 42 U.S.C.S. § 1983 after the city council adopted a resolution that condemned plaintiff for hiring a private investigator to conduct surveillance of the city manager and then denying that he had done so, plaintiff satisfied his burden to make a prima facie showing of success on the merits, where plaintiff's evidence would support findings that (1) plaintiff was engaged in conduct protected by the First Amendment rights to petition and right of free speech; (2) the city took adverse action in response to his conduct with the intent to retaliate against him and deter that conduct; and (3) the city's adverse action caused injuries that would deter a person of ordinary firmness from engaging in that conduct. Because plaintiff demonstrated that his lawsuit was sufficiently viable to survive a special motion to strike under CCP § 425.16 and go forward, the trial court erred in granting the city's motion. Tichinin v. City of Morgan Hill (2009, 6th Dist) 2009 Cal App LEXIS 1557.

Non-petitioning conduct is within the protected "breathing space" of the right of petition if that conduct is (1) incidental or reasonably related to an actual petition or actual litigation or to a claim that could ripen into a petition or litigation and (2) the petition, litigation, or claim is not a sham. Tichinin v. City of Morgan Hill (2009, 6th Dist) 2009 Cal App LEXIS 1557.

In a case in which plaintiff sued a city under 42 U.S.C.S. § 1983 after the city council adopted a resolution that condemned plaintiff for hiring a private investigator to conduct surveillance of the city manager and then denying that

he had done so, plaintiff made a prima facie showing that his prelitigation investigation was protected by the right to petition. Plaintiff's investigation was incidental and reasonably related to a potential claim that the city attorney, who was rumored to be having a romantic affair with the city manager, had a conflict of interest, a claim that plaintiff would have made to the city council or incorporated into a lawsuit against the city had that investigation produced evidence of an inappropriate romantic relationship to support it. Tichinin v. City of Morgan Hill (2009, 6th Dist) 2009 Cal App LEXIS 1557.

California's anti strategic lawsuit against public participation (SLAPP) statute, CCP § 425.16, applied because the property owner's state law clams were based on conduct in furtherance of the exercise of the constitutional right of petition. Kearney v. Foley & Lardner, LLP (2009, CA9 Cal) 2009 US App LEXIS 20950.

Filing of a lawsuit in a foreign country is not protected activity under the United States or California Constitutions so as to implicate CCP § 425.16, the anti-Strategic Lawsuit Against Public Participation (anti-SLAPP) statute, because neither the United States nor California Constitution grants a United States citizen the right to petition a foreign government. Guessous v. Chrome Hearts (2009, 2d Dist) 2009 Cal App LEXIS 1919.

In an action between businesses competitors, plaintiffs' claims for breach of contract and declaratory relief were not subject to a special motion to strike under CCP § 425.16, the anti-SLAPP (Strategic Lawsuit Against Public Participation) statute, because both actions arose from prior suits filed by defendant in France. The foreign suits were not protected activity under Cal Const Art I § 3, and the anti-SLAPP statute. Guessous v. Chrome Hearts (2009, 2d Dist) 2009 Cal App LEXIS 1919.

Law firm and attorneys were not entitled to strike a client's complaint for breach of fiduciary duty, legal malpractice, and other causes of action arising from an alleged conflict of interest and failure to investigate and disclose wrongdoing by a corporate officer; they did not establish that the principal thrust of any of the causes of action was protected activity. Prediwave Corp. v. Simpson Thacher & Bartlett Llp (2009, 6th Dist) 2009 Cal App LEXIS 1925.

Where the act of putting demands concerning conditions, covenants, and restrictions compliance in writing gave rise to breach of contract and other causes of action, including alleged violations of CC § 1378 and B & P C § 17200, that did not raise free speech concerns, consequently, whether or not the subject matter of the underlying dispute was a matter of public interest, a trial court erred in granting a homeowners association's CCP § 425.16 motion to strike homeowners' complaint because the association's actions that formed the basis of the homeowners' causes of action were not undertaken in furtherance of the association's right of free speech. Turner v. Vista Pointe Ridge Homeowners Assn. (2009, 4th Dist) 2009 Cal App LEXIS 2046.

Not every mundane communication between a homeowners association and a homeowner gives rise to a freedom of speech issue, and CCP § 425.16(e)(4) does not come into play unless the right of free speech or the right to petition is involved. The cause of action itself must be based on the speech or petitioning activity, and if neither of those rights is at stake, § 425.16(e)(4) is inapplicable, irrespective of whether the subject of the dispute may otherwise be a matter of public interest. Turner v. Vista Pointe Ridge Homeowners Assn. (2009, 4th Dist) 2009 Cal App LEXIS 2046.

In a case in which plaintiff, an attorney, sued defendant, also an attorney, for fraud and intentional infliction of emotional distress, plaintiff's complaint was subject to a special motion to strike pursuant to CCP § 425.16. Plaintiff's causes of action against defendant arose from speech or petitioning activity, where defendant's alleged conduct was the negotiation of a settlement agreement with a homeowners association in a prior case. Seltzer v. Barnes (2010, 1st Dist) 2010 Cal App LEXIS 313.

Under either an objective or subjective standard for a First Amendment "true threat" analysis, a high school student's statement on another student's Web page was not shown to be protected activity under CCP § 425.16, subd. (b)(1). The posting, which defendant claimed was intended as jocular humor, stated in part: "I want to rip out your fucking heart and feed it to you/I heard your song while driving my kid to school and from that moment on I've wanted to kill you/If I ever see you I'm going to pound your head in with an ice pick/Fuck you, you dick-riding penis lover/I hope you burn in hell." D.C. v. R.R. (2010, 2d Dist) 2010 Cal App LEXIS 340.

In a case involving a threatening post by defendant high school student to plaintiff high school student's Web site, plaintiff was not a "public figure," even though he was using the Web site to pursue an entertainment career. Absent evidence on the point, the court could not say that, as of the date of the post, plaintiff's stint in entertainment had garnered public attention. D.C. v. R.R. (2010, 2d Dist) 2010 Cal App LEXIS 340.

Where a plaintiff seeks relief based on a threat of bodily harm, the author of the threat should not be able to satisfy his burden under CCP § 425.16 by talking out of both sides of his mouth. Therefore, a student who posted a threat on another student's Web site did not establish, with conflicting evidence as to his own intent, that he did not have the subjective intent to threaten the other student. D.C. v. R.R. (2010, 2d Dist) 2010 Cal App LEXIS 340.

Providing employment-screening reports is a constitutionally founded, protected activity within the meaning of CCP § 425.16. Mendoza v. ADP Screening And Selection Services, Inc. (2010, 2d Dist) 2010 Cal App LEXIS 383.

In a case in which plaintiff sued an employment-screening business for violations of Pen C §§ 290.4 and290.46, the business had a constitutional free speech right under the anti-SLAPP statute, CCP § 425.16 to republish information disclosed on the Megan's Law website to its clients, notwithstanding the statutory prohibitions on the use of such information. Trial court properly granted the business's anti-SLAPP motion to strike plaintiff's complaint for damages on the ground that plaintiff could not show as a matter of law a probability of prevailing. Mendoza v. ADP Screening And Selection Services, Inc. (2010, 2d Dist) 2010 Cal App LEXIS 383.

In a case in which a soap company sued a trade association under the Unfair Competition Law, B & P C § 17200 et seq., the association's special motion to strike the complaint pursuant to CCP § 425.16 was properly denied, where the challenged speech was not in furtherance of the association's exercise of free speech in connection with a public issue. Although the association sought to develop a standard that would provide a definition of "organic" specific to beauty and personal care products and would permit its members whose products met this standard to advertise using the association's organic seal on the product, it was not necessary for the association to certify individual products and authorize members to use its seal on products in order for the association to express its general opinion about what constituted an "organic" personal care product. 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 trade association sought to develop a standard that would provide a definition of "organic" specific to beauty and personal care products and would permit its members whose products met this standard to advertise using the association's seal on the product, the association's commercial speech was not protected activity on an issue of public interest. Fact that the association's seal would be placed on some member products, rather than its own products, did not automatically transform the association's certification activities into a statement about the larger issue of "organic" health and beauty care products. All One God Faith, Inc. v. Organic & Sustainable Industry Standards, Inc. (2010, 1st Dist) 2010 Cal App LEXIS 516.

7. Public Interest

In an action brought by a church against a former church member, seeking to set aside a judgment that defendant had obtained against it in an underlying tort action for emotional distress, defendant's underlying tort action was a matter of public interest subject to the protection of CCP § 425.16, California's anti-SLAPP suit, even though it was brought against the church, a private party. Although matters of public interest include legislative and governmental activities, they may also include activities that involve private persons and entities, especially when a large, powerful organization may impact the lives of many individuals. Further, the underlying action concerned constitutional protection under the religious practices guaranties; the public has a compelling secular interest in discouraging certain conduct even though it qualifies as a religious expression of plaintiff's religion. Church of Scientology v. Wollersheim (1996, Cal App 2d Dist) 42 Cal App 4th 628, 49 Cal Rptr 2d 620, 1996 Cal App LEXIS 87, review denied (1996, Cal) 1996 Cal LEXIS 2783, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

Private conversations regarding a public issue are protected under CCP § 425.16. Averill v. Superior Court (1996, Cal App 4th Dist) 42 Cal App 4th 1170, 50 Cal Rptr 2d 62, 1996 Cal App LEXIS 152.

Definition of "public interest" within the meaning of the anti-SLAPP statute, CCP § 425.16, has been broadly construed to include not only governmental matters, but also private conduct that impacts a broad segment of society and/or that affects a community in a manner similar to that of a governmental entity. Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist. (2003, Cal App 4th Dist) 106 Cal App 4th 1219, 132 Cal Rptr 2d 57, 2003 Cal App LEXIS 382.

Prospect of commercial and residential development of a substantial parcel of bayfront property, with its potential environmental impact, is plainly a matter of public interest under the anti-SLAPP statute, CCP § 425.16. Tuchscher

Development Enterprises, Inc. v. San Diego Unified Port Dist. (2003, Cal App 4th Dist) 106 Cal App 4th 1219, 132 Cal Rptr 2d 57, 2003 Cal App LEXIS 382.

No logical interpretation of CCP § 425.16 (a) suggests that "matters of public significance" includes specific advertising statements about a particular commercial product, absent facts that truly make the product a matter of genuine public interest. Consumer Justice Center v. Trimedica International, Inc. (2003, Cal App 4th Dist) 107 Cal App 4th 595, 132 Cal Rptr 2d 191, 2003 Cal App LEXIS 459, review denied (2003, Cal) 2003 Cal LEXIS 3555.

In a former employee's defamation action against a local and a national union for the Internet-posting of a statement that he was terminated from his position as assistant business manager of the local union for financial mismanagement, the unions' motion to strike the defamation claim did not satisfy the requirements of the statute against strategic lawsuits against public participation or anti-SLAPP statute at CCP § 425.16(e)(3) or (4) because the statement was not made in the context of an ongoing controversy of public significance in which participation might be squelched if the right to make the statement were not protected; hence, the unions did not made a prima facie showing that the statement was made in connection with a public issue or an issue of public interest within the meaning of the anti-SLAPP statute. Du Charme v. International Brotherhood of Electrical Workers (2003, Cal App 1st Dist) 110 Cal App 4th 107, 1 Cal Rptr 3d 501, 2003 Cal App LEXIS 1002.

Postings to a web site chat room disparaging a former employer were made in a public forum where the web site where the former employee made the postings was a site that organized chat rooms dedicated to discussion of a large, publicly-traded corporation. MCSi, Inc. v. Woods (2003, ND Cal) 290 F Supp 2d 1030, 2003 US Dist LEXIS 3086.

Mother's allegations of domestic violence by a second parent, her former partner in a lesbian relationship, were made in a public forum in connection with an issue of public interest under CCP § 425.16(e)(3); a gay and lesbian newspaper qualified as a "public forum" for purposes of libel complaint, and the mother's letter to the newspaper was written in connection with an issue of public interest that potentially affected a large number of children and adoptive parents beyond the direct participants. Annette F. v. Sharon S. (2004, Cal App 4th Dist) 119 Cal App 4th 1146, 15 Cal Rptr 3d 100, 2004 Cal App LEXIS 1013, review denied (2004, Cal) 2004 Cal LEXIS 9700.

Former insurance agent's comments on her Web site regarding a viatical settlements broker's business practices were made in connection with an issue in the public interest; the statements were made in the context of information ostensibly provided to aid consumers choosing among brokers. Wilbanks v. Wolk (2004, Cal App 1st Dist) 121 Cal App 4th 883, 17 Cal Rptr 3d 497, 2004 Cal App LEXIS 1356.

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 statute, CCP § 425.16; there were important First Amendment issues and issues of public interest under CCP § 425.16(a), (e)(3), (4), involved, as the software company's own submissions showed there was indeed a community concerned with internet privacy, that the subject was a matter of public discussion, and that the software company's surreptitious downloads were a topic of discussion and concern in that context. New.Net, Inc. v. Lavasoft (2004, CD Cal) 356 F Supp 2d 1090, 2004 US Dist LEXIS 27434.

Anti-SLAPP statute did not apply to the physician's claims because the alleged wrongful conduct of the hospital peer review committee and its members was not connected to a public issue or an issue of public interest under CCP § 425.16(e)(4). O'Meara v. Palomar-Pomerado Health System (2005, Cal App 4th Dist) 125 Cal App 4th 1324, 23 Cal Rptr 3d 406, 2005 Cal App LEXIS 74, review gr, depublished (2005) 28 Cal Rptr 3d 2, 110 P 3d 1216, 2005 Cal. LEXIS 4600, transferred (2006, Cal) 49 Cal Rptr 3d 657, 143 P3d 657, 2006 Cal LEXIS 11458.

Challenged statements were made in connection with a public issue or an issue of public interest under CCP § 425.16(e)(4) where both plaintiffs were candidates for public office at the time the offending web pages were published. The character and qualifications of a candidate for public office constitute a public issue or an issue of public interest. Vogel v. Felice (2005, Cal App 6th Dist) 127 Cal App 4th 1006, 26 Cal Rptr 3d 350, 2005 Cal App LEXIS 402.

Defamation action arising from statements in a volume of oral history was not barred by the one-year statute of limitations in CCP § 340, even though the action was brought more than 8 years after the copyright date, because the volume was not directed to a mass readership. A special motion to strike had been granted to two defendants under CCP § 425.16 on the ground that plaintiffs could not establish a probability of success because of the bar of the statute of limitations. Hebrew Academy of San Francisco v. Goldman (2005, Cal App 1st Dist) 129 Cal App 4th 391, 28 Cal Rptr

3d 515, 2005 Cal App LEXIS 765, review gr, depublished (2005) 33 Cal. Rptr. 3d 802, 118 P.3d 1017, 2005 Cal. LEXIS 9358, 2005 Cal. Daily Op. Service 7688.

In a defamation action brought by plaintiff, a former superintendent of a charter school system, the trial court properly granted defendants' motion to strike the complaint pursuant to CCP § 425.16; the alleged libel pertained to plaintiff's role as a public official, and there was no clear and convincing evidence that defendants acted with actual malice in making the challenged statements. Ghafur v. Bernstein (2005, Cal App 1st Dist) 131 Cal App 4th 1230, 32 Cal Rptr 3d 626, 2005 Cal App LEXIS 1250.

Church was entitled to strike a defamation complaint, which arose from an investigation of child molestation, as a strategic lawsuit against public participation; the cause of action arose from protected activity within the meaning of CCP § 425.16(e)(4), which applies to private communications concerning issues of public interest, a probability of prevailing on the complaint was not shown under § 425.16(b)(1) because the statements did not declare or imply a provably false assertion of fact and thus were not libelous under CC § 45 or slanderous under CC § 46, and a qualified privilege under CC § 47(c) applied to communications between church members on subjects relating to the church's interest. Terry v. Davis Community Church (2005, Cal App 3d Dist) 131 Cal App 4th 1534, 33 Cal Rptr 3d 145, 2005 Cal App LEXIS 1291.

CCP § 425.16(e)(4) applies to private communications concerning issues of public interest. Terry v. Davis Community Church (2005, Cal App 3d Dist) 131 Cal App 4th 1534, 33 Cal Rptr 3d 145, 2005 Cal App LEXIS 1291.

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.

In a defamation action brought by a podiatrist against a newspaper and others, a newspaper article about the podiatrist involved a public issue or an issue of public interest under CCP § 425.16(e)(4), because the statements at issue served as a warning against the podiatrist's method of self-promotion, and were provided along with other information to assist patients in choosing doctors. Carver v. Bonds (2005, Cal App 1st Dist) 135 Cal App 4th 328, 37 Cal Rptr 3d 480, 2005 Cal App LEXIS 1983.

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.

E-mail message sent by a member of a hospital's executive committee questioning a holding company's financial condition concerned a public issue and an issue of public interest under CCP § 425.16(e)(4). Thus, an order denying the member's special motion to strike the company's complaint against him was reversed. Integrated Healthcare Holdings, Inc. v. Fitzgibbons (2006, Cal App 4th Dist) 140 Cal App 4th 515, 44 Cal Rptr 3d 517, 2006 Cal App LEXIS 872.

Because unlawful workplace activity is not necessarily an issue of public interest, the trial court did not abuse its discretion in finding that a special motion to strike was frivolous in a wrongful termination case; there was no merit to the employers' assertion that their investigation of suspected sexual harassment was a constitutionally protected activity. Carpenter v. Jack in the Box Corp. (2007, Cal App 2d Dist) 151 Cal App 4th 454, 59 Cal Rptr 3d 839, 2007 Cal App LEXIS 849.

Patient's Web site that related her experiences with a plastic surgeon (including before and after photos), as well as information and advice for those considering plastic surgery, concerned a matter of public interest within the meaning of CCP § 425.16(e)(3) because: (1) assertions that a prominent and well-respected plastic surgeon produced "nightmare" results that necessitated extensive revision surgery contributed toward public discussion about the benefits and risks of plastic surgery in general, and particularly among persons contemplating plastic surgery as a means of looking younger or improving their appearance; and (2) a review of the entire Web site showed that it was not limited to the patient's interactions with the plastic surgeon. The Web site contained advice, information, and a contact page where

readers could share their own experiences. Gilbert v. Sykes (2007, Cal App 3d Dist) 147 Cal App 4th 13, 53 Cal Rptr 3d 752, 2007 Cal App LEXIS 107.

In a case in which a retired housekeeper sued the producers of a television program for, inter alia, trespass, the acts from which the housekeeper's complaint arose constituted conduct in furtherance of the producers' right of free speech in connection with a public issue or an issue of public interest under CCP § 425.16(e), clause (4), where a well-known actor's will had named the housekeeper as a beneficiary in the actor's living trust. Although the housekeeper was a private person and may not have voluntarily sought publicity or to comment publicly on the actor's will, the housekeeper nevertheless became involved in an issue of public interest by virtue of being named in the actor's will, and the producers' television program contributed to the public discussion of the issue by identifying the housekeeper as a beneficiary and showing her on camera. Hall v. Time Warner, Inc. (2007, Cal App 2d Dist) 153 Cal App 4th 1337, 63 Cal Rptr 3d 798, 2007 Cal App LEXIS 1280.

Statements made in a newspaper article and at a parents' meeting about the reasons for a college football coach's termination constituted speech in connection with a public issue or a matter of public interest within the meaning of CCP § 425.16(e)(4); the coach did not meet his burden under § 425.16(b)(1) to show a probability of prevailing on defamation claims under CC § 45 because he was a limited purpose public figure and could not show malice, a general assertion of immorality was not actionable, and Cal Const Art I § 2(b) shielded the reporters who wrote the article from compelled disclosure of their sources. McGarry v. University of San Diego (2007, Cal App 4th Dist) 154 Cal App 4th 97, 64 Cal Rptr 3d 467, 2007 Cal App LEXIS 1350.

"Issue of public interest" within the meaning of CCP § 425.16(e)(3) is any issue in which the public is interested; the issue need not be "significant" for the related activity to be protected. Nygard, Inc. v. Uusi-Kerttula (2008, 2d Dist) 2008 Cal App LEXIS 170.

8. Public Forum

Former insurance agent's statements on her Web site were made in a public forum under CCP § 425.16(e)(3); the Web site posted statements that could be read by anyone who was interested, and others could post a message elsewhere on the Web that interested persons could read. Wilbanks v. Wolk (2004, Cal App 1st Dist) 121 Cal App 4th 883, 17 Cal Rptr 3d 497, 2004 Cal App LEXIS 1356.

Web sites that are accessible free of charge to any member of the public, where members of the public may read the views and information posted, and post their own opinions, meet the definition of a public forum for purposes of CCP § 425.16. Ampex Corp. v. Cargle (2005, Cal App 1st Dist) 128 Cal App 4th 1569, 27 Cal Rptr 3d 863, 2005 Cal App LEXIS 710.

City was not required to provide access to its website for proponents of a ballot measure because the website was not a public forum. It was operated as a repository of information provided by the city alone; it was not offered as a forum for airing views by either the proponents or the opponents. 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.

Newspapers and magazines are public fora within the meaning of CCP § 425.16(e)(3). Nygard, Inc. v. Uusi-Kerttula (2008, 2d Dist) 2008 Cal App LEXIS 170.

When city and city officials filed an anti-SLAPP motion to strike a lessee's defamation claim, alleged defamatory statements in a press release and in new publications were shown to be protected activities because the press release and news articles were statements in public fora and were in connection with litigation between the city and the lessee and a loan to the lessee of public funds, which were issues of public interest. Fabbrini v. City of Dunsmuir (2008, ED Cal) 544 F Supp 2d 1044, 2008 US Dist LEXIS 79849.

9. Official Proceeding

In a former employee's defamation action against a local and a national union for the Internet-posting of a statement that he was terminated from his position as assistant business manager of the local union for financial mismanagement, the unions' motion to strike the defamation claim did not satisfy the requirements of the statute against strategic lawsuits against public participation or anti-SLAPP statute at CCP § 425.16(e)(2) because it was not made in connection with an issue under consideration and review by an official proceeding authorized by law, despite the fact that the local union

was in receivership due to financial problems. Du Charme v. International Brotherhood of Electrical Workers (2003, Cal App 1st Dist) 110 Cal App 4th 107, 1 Cal Rptr 3d 501, 2003 Cal App LEXIS 1002.

CCP § 425.16 is entirely consistent with the statutory scheme governing challenges to statements in voter pamphlets, including Elec C §§ 9380, 13313. Moraga-Orinda Fire Protection Dist. v. Weir (2004, Cal App 1st Dist) 115 Cal App 4th 477, 10 Cal Rptr 3d 13, 2004 Cal App LEXIS 119, rehearing denied (2004, Cal App 1st Dist) 2004 Cal App LEXIS 571, review denied Moraga-Orinda Fire Protections District v. Weir (Moraga Del Ray Homeowners Assn.) (2004, Cal) 2004 Cal LEXIS 4145.

Court rejected a fire district's claim that applying CCP § 425.16 operated to deter governmental entities from seeking to keep misleading statements out of voter pamphlet arguments; Elec C § 9380 granted no standing to governmental entities to file voter pamphlet challenges, and only election officials under Elec C § 13313(b)(1) could file challenges to candidate statements. It was not an unreasonable burden for such an official to be prepared to demonstrate a prima facie case of probable success in order to avoid dismissal and a fee award under CCP § 425.16. Moraga-Orinda Fire Protection Dist. v. Weir (2004, Cal App 1st Dist) 115 Cal App 4th 477, 10 Cal Rptr 3d 13, 2004 Cal App LEXIS 119, rehearing denied (2004, Cal App 1st Dist) 2004 Cal App LEXIS 571, review denied Moraga-Orinda Fire Protections District v. Weir (Moraga Del Ray Homeowners Assn.) (2004, Cal) 2004 Cal LEXIS 4145.

Anti-SLAPP statute did not apply to physician's claims because hospital peer review committee did not constitute an "official proceeding" under CCP § 425.16(e)(2). The committee was not a public agency created and funded by the state, the conduct was not reviewed by independent, professional investigators, and the "public" protected by the peer review process was limited to the patients of the particular hospital. O'Meara v. Palomar-Pomerado Health System (2005, Cal App 4th Dist) 125 Cal App 4th 1324, 23 Cal Rptr 3d 406, 2005 Cal App LEXIS 74, review gr, depublished (2005) 28 Cal Rptr 3d 2, 110 P 3d 1216, 2005 Cal. LEXIS 4600, transferred (2006, Cal) 49 Cal Rptr 3d 657, 143 P3d 657, 2006 Cal LEXIS 11458.

Trial court properly granted an anti-SLAPP motion to strike a complaint for breach of contract and conversion where a safety manager cooperated in criminal investigations of, and testified against, his former employer; disclosure of information related to legal proceedings is protected activity under CCP § 425.16, subd. (e)(1). Greka Integrated, Inc. v. Lowrey (2005, Cal App 2d Dist) 133 Cal App 4th 1572, 35 Cal Rptr 3d 684, 2005 Cal App LEXIS 1790.

In a defamation action brought by a podiatrist against a newspaper, complaints filed with the Board of Podiatric Medicine against the podiatrist were considered to be part of an "official proceeding" under CCP § 425.16(e)(1); thus, a newspaper article reporting such complaints was a report of an "official proceeding" for purposes of CC § 47(d). Carver v. Bonds (2005, Cal App 1st Dist) 135 Cal App 4th 328, 37 Cal Rptr 3d 480, 2005 Cal App LEXIS 1983.

In a lawsuit brought by a hospital staff physician against a hospital that arose out of a disciplinary recommendation by the hospital's peer review committee, the hospital was entitled under CCP § 425.16(e)(2) to file a special motion to strike the physician's complaint as a strategic lawsuit against public participation. The hospital's peer review proceeding was an official proceeding authorized by law within the meaning of § 425.16(e)(2). 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.

Phrase "other official proceeding authorized by law" in CCP § 425.16(e)(2) is not limited to proceedings before governmental entities. 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, is disapproved to the extent it conflicts with this conclusion. 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.

Where a former employee's defamation complaint against a private company did not implicate statements made during a legislative, executive, or judicial proceeding and did not concern a matter of public interest, CCP § 425.16 did not apply. Olaes v. Nationwide Mutual Ins. Co. (2006, Cal App 3d Dist) 135 Cal App 4th 1501, 38 Cal Rptr 3d 467, 2006 Cal App LEXIS 85.

Corporation's sexual harassment procedure is not a quasi-judicial proceeding for purposes of CCP § 425.16. Olaes v. Nationwide Mutual Ins. Co. (2006, Cal App 3d Dist) 135 Cal App 4th 1501, 38 Cal Rptr 3d 467, 2006 Cal App LEXIS 85.

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In a civil rights action by an employee of the University of California arising from sexual harassment allegations, a motion to strike should have been granted under CCP § 425.16(e)(2) as to the manager who denied the employee's administrative grievances because the manager was acting to further the employee's right to petition. Vergos v. McNeal (2007, Cal App 3d Dist) 146 Cal App 4th 1387, 53 Cal Rptr 3d 647, 2007 Cal App LEXIS 78.

In a defamation case arising out of a dispute between a brother and sister concerning the distribution of their deceased father's assets, voicemail statements made by the brother's attorney to a listing agent that accused the agent of conspiring with the sister to defraud the brother and that threatened to take "appropriate action" were protected activity under CCP § 425.16 and were absolutely privileged under CC § 47 as statements made in anticipation of litigation contemplated in good faith and under serious consideration. Therefore, the trial court erred when it denied the attorney's special motion to strike the sister's defamation complaint pursuant to CCP § 425.16. Rohde v. Wolf (2007, 2d Dist) 2007 Cal App LEXIS 1303.

Letter from an employer's attorney to customers, accusing a former employee of breach of contract and misappropriation of trade secrets and stating that legal remedies would be sought, was protected speech under CCP § 425.16(e)(2) because it was made in connection with an issue under consideration or review by a judicial body. Neville v. Chudacoff (2008, 2d Dist) 2008 Cal App LEXIS 356.

Case law under CC § 47(b) was helpful but not dispositive in resolving the issue of whether a letter from an attorney was protected speech under CCP § 425.16(e)(2). Neville v. Chudacoff (2008, 2d Dist) 2008 Cal App LEXIS 356.

Attorney was not entitled to strike a client's complaint seeking damages and rescission of a contingency fee contract because the attorney's conduct in pursuing a lawsuit on the client's behalf was not protected petitioning activity; the gravamen of the client's claims against the attorney was breach of fiduciary duty, although the complaint alluded to the attorney's petitioning activity. Hylton v. Frank E. Rogozienski, Inc. (2009, 4th Dist) 2009 Cal App LEXIS 1567.

10. Motive and Intent

Although CCP § 425.16 sets out a mere rule of procedure, it is founded in the constitutional doctrine that those who petition the government are essentially immune from liability. Under this doctrine the motive of the petitioners is irrelevant, as long as the intent is genuinely to induce government to action rather than to frustrate or deter a third party by the use of the governmental process. Ludwig v. Superior Court (1995, Cal App 4th Dist) 37 Cal App 4th 8, 43 Cal Rptr 2d 350, 1995 Cal App LEXIS 713, review denied (1995, Cal) 1995 Cal LEXIS 7128.

A party seeking protection from the SLAPP statute (CCP § 425.16) does not have the burden of proving the plaintiff was motivated by an improper purpose. Therefore, a defendant moving to strike a SLAPP suit is not required to show the plaintiff intended its suit to chill the defendant's exercise of First Amendment rights or that the suit had such an effect. Fox Searchlight Pictures, Inc. v. Paladino (2001, Cal App 2d Dist) 89 Cal App 4th 294, 106 Cal Rptr 2d 906, 2001 Cal App LEXIS 377.

Although the California Legislature in CCP § 425.16(a) has characterized SLAPP suits as having an underlying meritless goal of chilling a defendant's exercise of U.S. Const. Amend. I rights, the California Supreme Court has held that a plaintiff's subjective motivations in bringing the suit are irrelevant to the application of the anti-SLAPP statute, CCP § 425.16. Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist. (2003, Cal App 4th Dist) 106 Cal App 4th 1219, 132 Cal Rptr 2d 57, 2003 Cal App LEXIS 382.

Clients' causes of action against attorneys based upon the attorneys' acts on behalf of those clients categorically are not being brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition. Prediwave Corp. v. Simpson Thacher & Bartlett Llp (2009, 6th Dist) 2009 Cal App LEXIS 1925.

11. Malice

Common law malice--ill will--does not defeat the protection afforded by the right to petition the government. If the privilege is defeated at all, it is only by a showing of "actual malice". Wilcox v. Superior Court (1994, Cal App 2d Dist) 27 Cal App 4th 809, 33 Cal Rptr 2d 446, 1994 Cal App LEXIS 838, modified, rehearing denied (1994, Cal App 2d Dist) 28 Cal App 4th 940, 1994 Cal App LEXIS 922, review denied (1994, Cal) 1994 Cal LEXIS 6186, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

In an action for intentional and negligent interference with contractual relations and prospective economic advantage, libel, slander and trade libel, brought by a firm which had performed archaeological tests on a site believed by many Native American Indians to be an ancient village against a university professor who opposed development on the site through a letter-writing campaign, the application of CCP § 425.16, subd (b) did not violate plaintiff's right to due process by requiring it to establish probability of success without the opportunity to conduct discovery to show a triable issue of fact as to malice, where the professor's motivation in making the complained-of statement was held to be irrelevant, and, thus, proof of malice was not material. Dixon v. Superior Court (1994, Cal App 4th Dist) 30 Cal App 4th 733, 36 Cal Rptr 2d 687, 1994 Cal App LEXIS 1223, review denied Dixon v. Orange County Superior Court (1995, Cal) 1995 Cal LEXIS 2174.

In a city council member's libel action against four other city council members, arising from one defendant's statement that plaintiff was fined for running an illegal business out of his home, the trial court properly granted defendants' motion to strike plaintiff's complaint on the ground that plaintiff could not establish a probability of prevailing on the claim (CCP § 425.16), since plaintiff failed to make a prima facie showing that the declarant defendant made the statement with actual malice. The mere fact that the compromise agreement contained a boilerplate denial of wrongdoing did not show that defendant acted with actual malice in accusing plaintiff of running an illegal business. Robertson v. Rodriguez (1995, Cal App 2d Dist) 36 Cal App 4th 347, 42 Cal Rptr 2d 464, 1995 Cal App LEXIS 599.

In an action by a city against a developer, alleging defendant was behind other persons' environmental objections to plaintiff's efforts to attract a mall to the city, the trial court erred in denying defendant's motion to strike the pleadings under CCP § 425.16 as to claims based on the principles of malicious prosecution. An essential element of an action for malicious prosecution is that the prior litigation have resulted in a "favorable termination" for plaintiff, but the suits in question were terminated by a settlement, involving a compromise and plaintiff's payment of money and a waiver of costs. Under these circumstances plaintiff could not argue that it agreed to the settlements only under duress and thus show that the settlements reflected in its favor as a matter of fact. Ludwig v. Superior Court (1995, Cal App 4th Dist) 37 Cal App 4th 8, 43 Cal Rptr 2d 350, 1995 Cal App LEXIS 713, review denied (1995, Cal) 1995 Cal LEXIS 7128.

In considering whether to grant a defendant's special motion to strike a plaintiff's defamation action under CCP § 425.16, the appellate court must independently review the entire record to determine whether the plaintiff made a sufficient prima facie showing of clear and convincing evidence of constitutional malice. Evans v. Unkow (1995, Cal App 1st Dist) 38 Cal App 4th 1490, 45 Cal Rptr 2d 624, 1995 Cal App LEXIS 973.

In a libel action by a losing political candidate against the winner for allegedly libelous statements made during the campaign, plaintiff, in order to defeat defendant's SLAPP motion to strike (CCP § 425.16), had the burden of showing, by clear and convincing evidence, that the objectionable statements had been made with actual malice. Malice may be established by showing that the defendant had recklessly disregarded the truth. The clear and convincing standard requires that the evidence be such as to command the unhesitating assent of every reasonable mind. Actual malice cannot be implied and must be proven by direct evidence. Beilenson v. Superior Court (1996, Cal App 2d Dist) 44 Cal App 4th 944, 52 Cal Rptr 2d 357, 1996 Cal App LEXIS 367.

Plaintiff public official failed to establish a probability of prevailing on his defamation claim against defendant and, accordingly, the trial court did not err in granting defendant's motion to strike the complaint. Plaintiff could not recover damages for statements about his fitness for office unless he proved by clear and convincing evidence that the statements were made with actual malice, that is, with knowledge that they were false or with reckless disregard of whether or not they were false. The trial court found that the factual statements defendant made were either true (plaintiff was indeed reprimanded by the Assembly for sexual harassment) or based on reliable evidence (the Assembly investigation report and reprimand letter, newspaper articles, and plaintiff's own statements). Conroy v. Spitzer (1999, Cal App 4th Dist) 70 Cal App 4th 1446, 83 Cal Rptr 2d 443, 1999 Cal App LEXIS 286.

Second parent was a limited purpose public figure who had voluntarily invited attention and comment with respect to the issues involved in litigation involving the validity of second-parent adoption; the second parent's purposeful activities in drawing public attention to her relationship with the mother in order to promote gay marriage and second-parent

adoptions, and portraying the adoption litigation as a battle to protect the rights of gay and lesbian parents and their children, made her a limited purpose public figure on the subject matter of the litigation. As a result, in order to prevail on her libel claim under CCP § 425.16(b), the second parent had the burden of proving actual malice by clear and convincing evidence. Annette F. v. Sharon S. (2004, Cal App 4th Dist) 119 Cal App 4th 1146, 15 Cal Rptr 3d 100, 2004 Cal App LEXIS 1013, review denied (2004, Cal) 2004 Cal LEXIS 9700.

Public office candidates' complaint was legally insufficient on its face because it failed to plead that a website host made the challenged statements with "actual malice," i.e., with knowledge that it was false or with reckless disregard of whether it was false or not. A conclusory boilerplate allegation that a defendant acted maliciously and oppressively and in conscious disregard of the plaintiff's rights is insufficient to state a cause of action in a case where "actual malice" of the Sullivan type is required. Vogel v. Felice (2005, Cal App 6th Dist) 127 Cal App 4th 1006, 26 Cal Rptr 3d 350, 2005 Cal App LEXIS 402.

In a defamation action brought by public figure plaintiffs, a religious organization and its president, against a former employee, the trial court's order denying the former employee's special motion to strike plaintiffs' complaint pursuant to CCP § 425.16 was reversed on appeal, where plaintiffs failed to show by a preponderance of the evidence that the former employee made the challenged statement with actual malice. Christian Research Institute v. Alnor (2007, Cal App 4th Dist) 148 Cal App 4th 71, 55 Cal Rptr 3d 600, 2007 Cal App LEXIS 273.

(Unpublished) School's libel complaint against appellees, a corporation and an individual, arising from appellees' publication about the school properly was dismissed under California's Anti-SLAPP law, CCP § 425.16, because the school failed to demonstrate that there was a probability that it would prevail on its claim, as required under § 425.16(b)(1), where the school failed to present sufficient evidence suggesting that the use of the Japanese term "kakushu-gakko" to describe the school's American status was malicious. Soka Univ. of Am. v. Shogakukan, Inc. (2008, CA9 Cal) 279 Fed Appx 553, 2008 US App LEXIS 11641.

(Unpublished) School's libel complaint against appellees, a corporation and an individual, arising from appellees' publication about the school properly was dismissed under California's Anti-SLAPP law, CCP § 425.16, because the school failed to demonstrate that there was a probability that it would prevail on its claim, as required under § 425.16(b)(1), where the numbers in the publication relating to the school's graduation rate were culled from former professors and the school's own website, and the school failed to present evidence suggesting that the juxtaposition of the numbers from different sources was malicious. Soka Univ. of Am. v. Shogakukan, Inc. (2008, CA9 Cal) 279 Fed Appx 553, 2008 US App LEXIS 11641.

(Unpublished) School's libel complaint against appellees, a corporation and an individual, arising from appellees' publication about the school properly was dismissed under California's Anti-SLAPP law, CCP § 425.16, because the school failed to demonstrate that there was a probability that it would prevail on its claim, as required under § 425.16(b)(1). As to a quotation regarding the school's accreditation prospects ascribed to one professor, while appellees might have been negligent in attributing the quote to the wrong speaker, malice was not shown. Soka Univ. of Am. v. Shogakukan, Inc. (2008, CA9 Cal) 279 Fed Appx 553, 2008 US App LEXIS 11641.

12. Application Generally

While SLAPP suits masquerade as ordinary lawsuits, the conceptual features that reveal them as SLAPP's are that they are generally meritless suits brought by large private interests to deter common citizens from exercising their political or legal rights or to punish them for doing so. Ericsson GE Mobile Communications, Inc. v. C.S.I. Telecommunications Engineers (1996, Cal App 1st Dist) 49 Cal App 4th 1591, 57 Cal Rptr 2d 491, 1996 Cal App LEXIS 961, review denied (1997, Cal) 1997 Cal LEXIS 69, overruled Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701, overruled Briggs v. Eden Council For Hope & Opportunity (1999) 19 Cal 4th 1106, 81 Cal Rptr 2d 471, 969 P2d 564, 1999 Cal LEXIS 7, overruled in part as stated Wang v. Wal-Mart Real Estate Business Trust (2007, 4th Dist) 2007 Cal App LEXIS 1219, overruled as stated Midland Pacific Building Corp. v. King (2007, Cal App 2d Dist) 153 Cal App 4th 499, 63 Cal Rptr 3d 129, 2007 Cal App LEXIS 1189.

It does not apply in every case where the defendant may be able to raise a free speech defense to a cause of action. Rather, it is limited to exposing and dismissing SLAPP suits--lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances in connection with a public issue. Ericsson GE Mobile Communications, Inc. v. C.S.I. Telecommunications Engineers (1996, Cal App 1st Dist) 49 Cal App 4th 1591, 57 Cal Rptr 2d 491, 1996 Cal App LEXIS 961, review denied (1997, Cal) 1997 Cal LEXIS 69, overruled Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal

LEXIS 5701, overruled Briggs v. Eden Council For Hope & Opportunity (1999) 19 Cal 4th 1106, 81 Cal Rptr 2d 471, 969 P2d 564, 1999 Cal LEXIS 7, overruled in part as stated Wang v. Wal-Mart Real Estate Business Trust (2007, 4th Dist) 2007 Cal App LEXIS 1219, overruled as stated Midland Pacific Building Corp. v. King (2007, Cal App 2d Dist) 153 Cal App 4th 499, 63 Cal Rptr 3d 129, 2007 Cal App LEXIS 1189.

When construing CCP § 425.16, the Supreme Court of California declines to hold that CCP § 425.16 does not apply to events that transpire between private individuals, and explicitly rejects the assertion that the only activities qualifying for statutory protection are those which meet the lofty standard of pertaining to the heart of self-government. Navellier v. Sletten (2002) 29 Cal 4th 82, 124 Cal Rptr 2d 530, 52 P3d 703, 2002 Cal LEXIS 5700.

A lawsuit seeking redress for a harassing investigation of topics unrelated to those under consideration in an official proceeding was not the type of "abuse of the judicial process" that the Legislature sought to prevent when it enacted § 425.16. Paul v. Friedman (2002, Cal App 2d Dist) 95 Cal App 4th 853, 117 Cal Rptr 2d 82, 2002 Cal App LEXIS 846, review denied (2002, Cal) 2002 Cal LEXIS 3303.

Filing a lawsuit is an exercise of one's constitutional right of petition, and statements made in connection with or in preparation of litigation are subject to CCP § 425.16. Kashian v. Harriman (2002, Cal App 5th Dist) 98 Cal App 4th 892, 120 Cal Rptr 2d 576, 2002 Cal App LEXIS 4143.

Court declined to create a categorical exemption from the anti-SLAPP statute for malicious prosecution causes of action. Jarrow Formulas, Inc. v. LaMarche (2003) 31 Cal 4th 728, 3 Cal Rptr 3d 636, 74 P3d 737, 2003 Cal LEXIS 6091.

In the context of the anti-SLAPP statute, CCP § 425.16, the critical consideration for a defendant's initial burden is whether the cause of action is based on the defendant's protected free speech or petitioning activity. The statute's focus is not on the form of the plaintiff's cause of action, but rather the defendant's activity giving rise to his or her asserted liability and whether the activity constitutes protected speech or petitioning. Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist. (2003, Cal App 4th Dist) 106 Cal App 4th 1219, 132 Cal Rptr 2d 57, 2003 Cal App LEXIS 382.

List of product ingredients on labels and a Web site is not protected speech under CCP § 425.16. Nagel v. Twin Laboratories, Inc. (2003, Cal App 4th Dist) 109 Cal App 4th 39, 134 Cal Rptr 2d 420, 2003 Cal App LEXIS 764.

It is the principal thrust or gravamen of the plaintiff's cause of action that determines whether the anti-SLAPP statute applies, and when the allegations referring to arguably protected activity are only incidental to a cause of action based essentially on nonprotected activity, collateral allusions to protected activity should not subject the cause of action to the anti-SLAPP statute. Martinez v. Metabolife Internat., Inc. (2003, Cal App 4th Dist) 113 Cal App 4th 181, 6 Cal Rptr 3d 494, 2003 Cal App LEXIS 1686, review denied Martinez v. Metabolife International (2004, Cal) 2004 Cal LEXIS 1786.

The First Amendment does not protect the manufacturer or seller of an unsafe product from liability for injuries caused by defects in that product, and the anti-SLAPP statute does not extend to a product liability claim merely because the complaint also alleges the manufacturer or seller engaged in commercial speech to market the product. Martinez v. Metabolife Internat., Inc. (2003, Cal App 4th Dist) 113 Cal App 4th 181, 6 Cal Rptr 3d 494, 2003 Cal App LEXIS 1686, review denied Martinez v. Metabolife International (2004, Cal) 2004 Cal LEXIS 1786.

Trial court correctly determined that a distributor made the necessary threshold showing that the act or acts of which two physicians complained were taken in furtherance of the distributor's right of petition or free speech under the United States or California Constitution in connection with a public issue under CCP § 425.16(b)(1) and were therefore within the ambit of the protection afforded by CCP § 425.16. Internet venues to which members of the public have relatively easy access constitute a "public forum" or a place "open to the public" within the meaning of CCP § 425.16. Barrett v. Rosenthal (2004, Cal App 1st Dist) 114 Cal App 4th 1379, 9 Cal Rptr 3d 142, 2004 Cal App LEXIS 76, rev'd (2006) 40 Cal 4th 33, 51 Cal Rptr 3d 55, 146 P3d 510, 2006 Cal LEXIS 13529.

CCP § 425.16(b), (c), of the Anti-Strategic Lawsuit Against Public Participation statute may be applied to pendant state law claims without running afoul of Fed. R. Civ. P. Rules 8, 12, and 56. New.Net, Inc. v. Lavasoft (2004, CD Cal) 356 F Supp 2d 1090, 2004 US Dist LEXIS 27434.

Anti-SLAPP motions may be filed challenging petitions for injunctive relief against civil harassment, CCP § 527.6, because they constitute "causes of action" under the anti-SLAPP law, CCP § 425.16, and there is nothing in CCP §

425.16 which would exempt such petitions from the broad reach of that remedial statute. However, the anti-SLAPP statute does not apply to a proceeding under CCP § 527.6(c), which is limited to determining whether an interim temporary restraining order (TRO) should be issued as a prelude to a hearing on the petition for injunctive relief. 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.

California's anti-SLAPP statute, CCP § 425.16, does not apply to matters involving federal questions of bankruptcy law, but where an adversary proceeding in a bankruptcy court also includes pendent state law claims, the anti-SLAPP statute does apply to the pendent state claims. Restaino v. Bah (In re Bah) (2005, BAP 9th Cir) 321 BR 41, 2005 Bankr LEXIS 238.

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.

CCP § 425.16 did not apply to New York resident's request for subpoenas directed at a third party web search engine where the New York resident, who had filed a defamation lawsuit against John Doe defendants in Ohio, never filed a complaint, petition, or other similar pleading that would be sufficient to initiate a lawsuit in California. Tendler v. www.Jewishsurvivors.blogspot.com (2008, 6th Dist) 2008 Cal App LEXIS 994.

13. Retroactive Application

This section does not change the legal effect of past conduct, but merely is a procedural screening mechanism for determining whether a plaintiff can demonstrate sufficient facts to establish a prima facie case to permit the matter to go to a trier of fact. Robertson v. Rodriguez (1995, Cal App 2d Dist) 36 Cal App 4th 347, 42 Cal Rptr 2d 464, 1995 Cal App LEXIS 599.

14. Two Step Process

CCP § 425.16 requires a trial court to undertake a two-step process in determining whether to grant a SLAPP motion; first, the court decides whether the defendant has made a threshold prima facie showing that the defendant's acts, of which the plaintiff complains, were ones taken in furtherance of the defendant's constitutional rights of petition or free speech in connection with a public issue, and if the court finds that the defendant has made the requisite showing, the burden then shifts to the plaintiff to establish a "probability" of prevailing on the claim by making a prima facie showing of facts that would, if proved, support a judgment in the plaintiff's favor. Without weighing the evidence or making credibility determinations, the court considers the defendant's opposing evidence, if admissible at trial, to determine if it defeats the plaintiff's showing as a matter of law. Whether CCP § 425.16 applies and whether the plaintiff has shown a probability of prevailing are both questions a court reviews independently on appeal. Kashian v. Harriman (2002, Cal App 5th Dist) 98 Cal App 4th 892, 120 Cal Rptr 2d 576, 2002 Cal App LEXIS 4143.

Determination of a motion to strike filed under CCP § 425.16 requires a two-part inquiry: first, the defendant must make an initial prima facie showing that the plaintiff's suit arises from activity that is protected thereunder, which in turn requires a consideration of whether the plaintiff's claim is based on an act in furtherance of the defendant's right of petition or free speech. If the defendant makes the threshold showing, the burden shifts to the plaintiff to demonstrate a probability of prevailing on the challenged claims, which requires it to show that the claim is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited. Flores v. Emerich & Fike (2006, ED Cal) 416 F Supp 2d 885, 2006 US Dist LEXIS 9011.

15. What Defendant Must Show

CCP § 425.16, enacted to allow prompt disclosure and dismissal of SLAPP suits (strategic lawsuits against public participation), requires the defendant in such an action to make a prima facie showing that the plaintiff's suit arises "from any act of defendant in furtherance of defendant's right of petition or free speech under the United States or California Constitution in connection with a public issue." The defendant may meet this burden by showing the act that forms the basis for the plaintiff's cause of action was a written or oral statement made before a legislative, executive, or judicial proceeding, or such a statement in connection with an issue under consideration or review by a legislative, executive, or judicial body, or that such a statement was made in a place open to the public or a public forum in connec-

tion with an issue of public interest. Wilcox v. Superior Court (1994, Cal App 2d Dist) 27 Cal App 4th 809, 33 Cal Rptr 2d 446, 1994 Cal App LEXIS 838, modified, rehearing denied (1994, Cal App 2d Dist) 28 Cal App 4th 940, 1994 Cal App LEXIS 922, review denied (1994, Cal) 1994 Cal LEXIS 6186, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

The plaintiff must demonstrate the merits of its cause of action by showing the defendant's purported constitutional defenses are not applicable to the case as a matter of law, or by a prima facie showing of facts which, if accepted by the trier of fact, would negate such defenses. Wilcox v. Superior Court (1994, Cal App 2d Dist) 27 Cal App 4th 809, 33 Cal Rptr 2d 446, 1994 Cal App LEXIS 838, modified, rehearing denied (1994, Cal App 2d Dist) 28 Cal App 4th 940, 1994 Cal App LEXIS 922, review denied (1994, Cal) 1994 Cal LEXIS 6186, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

The party moving to strike a complaint under CCP § 425.16 has the burden of making a prima facie showing that the lawsuit arises from an act of defendant in furtherance of defendant's right of petition or free speech under the United States or California Constitution in connection with a public issue. Dixon v. Superior Court (1994, Cal App 4th Dist) 30 Cal App 4th 733, 36 Cal Rptr 2d 687, 1994 Cal App LEXIS 1223, review denied Dixon v. Orange County Superior Court (1995, Cal) 1995 Cal LEXIS 2174.

CCP § 425.16 by requiring scrutiny of the supporting and opposing affidavits stating the facts upon which the liability or defense is based, calls upon the plaintiff to meet the defendant's constitutional defenses, such as lack of actual malice. This burden is met in the same manner the plaintiff meets the burden of demonstrating the merits of the causes of action: by showing that the defendant's purported constitutional defenses are not applicable to the case as a matter of law or by a prima facie showing of facts that, if accepted by the trier of fact, would negate such defenses. Robertson v. Rodriguez (1995, Cal App 2d Dist) 36 Cal App 4th 347, 42 Cal Rptr 2d 464, 1995 Cal App LEXIS 599.

Under CCP § 425.16 the plaintiff must establish, through the pleadings or affidavits, a "probability" that it will prevail, making a prima facie showing by competent admissible evidence within the personal knowledge of the declarant, with reference to the familiar standards applied to evidentiary showings on summary judgment motions. Such a burden on the plaintiff is appropriately moderate and is compatible with the early stage at which the motion is brought and heard and the limited opportunity to conduct discovery. An overly lenient standard would be inappropriate, given that the statute is intended to provide a fast and inexpensive unmasking and dismissal of SLAPP suits. Ludwig v. Superior Court (1995, Cal App 4th Dist) 37 Cal App 4th 8, 43 Cal Rptr 2d 350, 1995 Cal App LEXIS 713, review denied (1995, Cal) 1995 Cal LEXIS 7128.

CCP § 425.16, enacted to provide a procedural remedy to resolve SLAPP suits (strategic lawsuits against public participation) expeditiously, requires the moving party to bear the initial burden of establishing a prima facie showing that the plaintiff's cause of action arises from the defendant's free speech or petition activity. The defendant may meet this burden by showing that the act forming the basis for the plaintiff's cause of action was a written or oral statement made before a legislative, executive, or judicial proceeding. If the defendant establishes a prima facie case, then the burden shifts to the plaintiff to establish a probability that the plaintiff will prevail on the claim, i.e., make a prima facie showing of facts that would, if proved at trial, support a judgment in the plaintiff's favor. In making its determination, the trial court is required to consider the pleadings and the supporting and opposing affidavits stating the facts upon which the liability or defense is based (CCP § 425.16, subd. (b)). Discovery is stayed upon the filing of the motion (CCP § 425.16, subd. (g)). However, upon noticed motion and for good cause shown, the court may allow specified discovery. Church of Scientology v. Wollersheim (1996, Cal App 2d Dist) 42 Cal App 4th 628, 49 Cal Rptr 2d 620, 1996 Cal App LEXIS 87, review denied (1996, Cal) 1996 Cal LEXIS 2783, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

The party bringing the motion to strike has the initial burden of making a prima facie showing that the lawsuit qualifies as a SLAPP suit, i.e., that it arises from an act in furtherance of a person's right of petition or free speech in connection with a public issue. Linsco/Private Ledger, Inc. v. Investors Arbitration Services, Inc. (1996, Cal App 1st Dist) 50 Cal App 4th 1633, 58 Cal Rptr 2d 613, 1996 Cal App LEXIS 1102, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701, overruled Briggs v. Eden Council For Hope & Opportunity (1999) 19 Cal 4th 1106, 81 Cal Rptr 2d 471, 969 P2d 564, 1999 Cal LEXIS 7.

A defendant pursuing an anti-SLAPP statute motion CCP § 425.16 must make an initial prima facie showing that the plaintiff's suit arises from an act in furtherance of defendant's right of petition or free speech. A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause fits one of the categories spelled out in CCP §

425.16, subd. (e). Braun v. Chronicle Publishing Co. (1997, Cal App 1st Dist) 52 Cal App 4th 1036, 61 Cal Rptr 2d 58, 1997 Cal App LEXIS 110, review denied Braun v. Chronicle Publ. Co. (1997, Cal) 1997 Cal LEXIS 3341.

Defendant, in order to obtain a dismissal of plaintiff's SLAPP suit (strategic lawsuit against public participation), did not have to demonstrate that plaintiff's action was brought with the intent to chill defendant's exercise of constitutional speech or petition rights. Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

To prevail on a motion to strike a suit constituting a strategic lawsuit against public participation, defendants must make a threshold showing that they were sued for engaging in conduct covered by CCP § 425.16. Under the statutory language, such a threshold showing can be established in several circumstances, including if the party seeking the protection of the section demonstrates that it made the offending statement in a place open to the public or a public forum in connection with an issue of public interest, CCP § 425.16(e)(3). Seelig v. Infinity Broadcasting Corp. (2002, Cal App 1st Dist) 97 Cal App 4th 798, 119 Cal Rptr 2d 108, 2002 Cal App LEXIS 3974.

Generally, a party cannot simply rely on the allegations in its own pleadings, even if verified, to make the evidentiary showing required in the summary judgment context or similar motions; the same rule applies to motions under CCP § 425.16. Gallant v. City of Carson (2005, Cal App 2d Dist) 128 Cal App 4th 705, 27 Cal Rptr 3d 318, 2005 Cal App LEXIS 617, review denied (2005, Cal) 2005 Cal LEXIS 9286.

Challenged conduct of an animal rights activist and organization was in furtherance of their right to petition and free speech in connection with a public issue within the meaning of CCP § 425.16(e)(4) where they engaged in demonstrations, leafleting, and publication of articles on the Internet to criticize government policy regarding the alleged mistreatment of animals at city-run animal shelters. City of Los Angeles v. Animal Defense League (2006, Cal App 2d Dist) 135 Cal App 4th 606, 37 Cal Rptr 3d 632, 2006 Cal App LEXIS 7, modified, rehearing denied (2006, Cal App 2d Dist) 2006 Cal App LEXIS 107, review denied (2006, Cal) 2006 Cal LEXIS 4460.

By demonstrating that alleged statements made by two police officers were in connection with an issue under consideration by the district attorney, the city that employed the officers made a prima facie showing that the acts underlying plaintiff's causes of action were within the ambit of CCP § 425.16. Schaffer v. City & County of San Francisco (2008, 1st Dist) 2008 Cal App LEXIS 2363.

Where the Department of Corrections and Rehabilitation (CDCR) met its burden of establishing that a retired employee's causes of action against it arose out of activities that were protected by Code Civ. Proc., § 425.16, and the retired employee failed to establish that his claims had even minimal merit, the trial court properly granted the CDCR's motion to strike the retired employee's complaint. Hansen v. Department of Corrections & Rehabilitation (2008, 5th Dist) 2008 Cal App LEXIS 2538.

16. Shift of Burden to Plaintiff

If the defendant establishes a prima facie case, then the burden shifts to the plaintiff to establish a probability that the plaintiff will prevail on the claim, i.e., make a prima facie showing of facts that would, if proved at trial, support a judgment in the plaintiff's favor. Church of Scientology v. Wollersheim (1996, Cal App 2d Dist) 42 Cal App 4th 628, 49 Cal Rptr 2d 620, 1996 Cal App LEXIS 87, review denied (1996, Cal) 1996 Cal LEXIS 2783, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

A SLAPP suit is subject to a special motion to strike the complaint under CCP § 425.16 unless the court determines that the plaintiff has established a probability of prevailing on the claim. The moving party bears the initial burden of establishing a prima facie showing that the plaintiff's cause of action arises from the defendant's free speech or petition activity. If the defendant establishes a prima facie case, then the burden shifts to the plaintiff to establish a probability that the plaintiff will prevail on the claim, i.e., make a prima facie showing of facts which would, if proved at trial, support a judgment in plaintiff's favor. Kyle v. Carmon (1999, Cal App 3d Dist) 71 Cal App 4th 901, 84 Cal Rptr 2d 303, 1999 Cal App LEXIS 440.

A defendant bringing an anti-SLAPP (Strategic Lawsuits Against Public Participation) motion to strike must make a prima facie showing that the plaintiff's suit is subject to section CCP § 425.16, i.e., that the defendant's challenged acts were taken in furtherance of his constitutional rights of petition or free speech in connection with a public issue, as defined by the statute, and if the defendant makes such a showing, the burden shifts to the plaintiff to demonstrate, by admissible and competent evidence, a reasonable probability that it will prevail on the merits at trial; the plaintiff must make a prima facie showing of facts that would be sufficient to sustain a favorable judgment under the applicable evi-

dentiary standard. Padres L.P. v. Henderson (2003, Cal App 4th Dist) 114 Cal App 4th 495, 8 Cal Rptr 3d 584, 2003 Cal App LEXIS 1865, rehearing denied (2004, Cal App 4th Dist) 2004 Cal App LEXIS 44, review denied (2004, Cal) 2004 Cal LEXIS 3174.

Although a former insurance agent claimed that a viatical settlements broker would not be able to prove at trial that she in fact published allegedly defamatory statements about the broker on her Web site or that she acted with malice, the broker only had to demonstrate that the suit was viable, so that the trial court should deny the special motion to strike and allow the case to go forward. Wilbanks v. Wolk (2004, Cal App 1st Dist) 121 Cal App 4th 883, 17 Cal Rptr 3d 497, 2004 Cal App LEXIS 1356.

17. Probability of Prevailing

Under CCP § 425.16, subd (b) (procedural remedy allowing prompt exposure and dismissal of SLAPP suits), the requirement that the plaintiff establish a "probability that the plaintiff will prevail on the claim," means that the plaintiff must demonstrate the complaint is legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited. If either of these requirements is not met, the motion to strike must be granted; if both are satisfied, it must be denied. Wilcox v. Superior Court (1994, Cal App 2d Dist) 27 Cal App 4th 809, 33 Cal Rptr 2d 446, 1994 Cal App LEXIS 838, modified, rehearing denied (1994, Cal App 2d Dist) 28 Cal App 4th 940, 1994 Cal App LEXIS 922, review denied (1994, Cal) 1994 Cal LEXIS 6186, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

In opposing a special motion to strike under CCP § 425.16, the plaintiff has the burden of establishing a probability of prevailing on the claim. This means that the plaintiff must present evidence showing that he or she would establish a prima facie case at trial. However, affidavits on information and belief, within the context of a special motion to strike a SLAPP suit, are inadequate to establish a probability of prevailing on the claim and are permitted only when the facts to be established are incapable of positive averment. Evans v. Unkow (1995, Cal App 1st Dist) 38 Cal App 4th 1490, 45 Cal Rptr 2d 624, 1995 Cal App LEXIS 973.

Once the party moving to strike a complaint pursuant to CCP § 425.16, subd. (b), has made a prima facie showing that the lawsuit arises from an act by the defendant in furtherance of his right of petition or free speech under the United States or California Constitution in connection with a public issue, the plaintiff must establish a probability that he will prevail on the merits of the complaint. To establish such a probability, a plaintiff must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited. Whether the plaintiff has done so is a question of law, which a reviewing court must determine de novo on appeal. Matson v. Dvorak (1995, Cal App 3d Dist) 40 Cal App 4th 539, 46 Cal Rptr 2d 880, 1995 Cal App LEXIS 1134.

Because the existence of a libel action against a winning political candidate potentially impaired the right of free speech, the reviewing court, on defendant's writ petition challenging the trial court's denial of his SLAPP (strategic lawsuit against public participation) motion (CCP § 425.16), independently decided whether plaintiff made a sufficient showing of the probability of success of his lawsuit so as to defeat a motion to strike under the SLAPP statute. Beilenson v. Superior Court (1996, Cal App 2d Dist) 44 Cal App 4th 944, 52 Cal Rptr 2d 357, 1996 Cal App LEXIS 367.

In order to establish a probability of prevailing on the claim, a plaintiff responding to a motion brought under CCP § 425.16 must state and substantiate a legally sufficient claim. The plaintiff must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited. Wilson v. Parker, Covert & Chidester (2002) 28 Cal 4th 811, 123 Cal Rptr 2d 19, 50 P3d 733, 2002 Cal LEXIS 4836, rehearing denied (2002, Cal) 2002 Cal LEXIS 6389, superseded by statute as stated in Hutton v. Hafif (2007, Cal App 2d Dist) 150 Cal App 4th 527, 59 Cal Rptr 3d 109, 2007 Cal App LEXIS 680.

Summary judgment on underlying cross-claim on grounds of insufficient evidence did not establish that plaintiff necessarily could "state and substantiate" a malicious prosecution claim; thus, the "probability of prevailing" prong was not met for surviving an anti-SLAPP motion. Jarrow Formulas, Inc. v. LaMarche (2003) 31 Cal 4th 728, 3 Cal Rptr 3d 636, 74 P3d 737, 2003 Cal LEXIS 6091.

Although a malicious prosecution action by the owner of a major league baseball team against an opponent to a ballpark construction project was not barred under the analysis of City of Long Beach v. Bozek (1982) 31 Cal 3d 527, 183 Cal Rptr 86, 645 P2d 137, 1982 Cal LEXIS 166, vacated (1983) 459 U.S. 1095, 103 S. Ct. 712, 74 L. Ed. 2d 943,

1983 U.S. LEXIS 2807 because the owner was a private party with a unique interest in the city's project, the owner did not meet its statutory burden of establishing a probability of success on the merits of its malicious prosecution claims based on two of the three underyling actions; however, the owner did produce evidence supporting each of the three elements of the malicious prosecution tort relating to one of the underlying claims and satisfied its burden to make a prima facie showing in support of its malicious prosecution claim arising out of that lawsuit to show a probability of success within the meaning of CCP § 425.16. Padres L.P. v. Henderson (2003, Cal App 4th Dist) 114 Cal App 4th 495, 8 Cal Rptr 3d 584, 2003 Cal App LEXIS 1865, rehearing denied (2004, Cal App 4th Dist) 2004 Cal App LEXIS 44, review denied (2004, Cal) 2004 Cal LEXIS 3174.

Mother's statement that a second parent was a "convicted perpetrator of domestic violence" was not so far from the truth as to permit an inference of actual malice by clear and convincing evidence; the mother's use of the word "convicted" to refer to a non-criminal adjudication was a fairly common use of the term. The second parent thus failed to show that there was a probability that she would prevail on her libel claim, as required by CCP § 425.16(b). Annette F. v. Sharon S. (2004, Cal App 4th Dist) 119 Cal App 4th 1146, 15 Cal Rptr 3d 100, 2004 Cal App LEXIS 1013, review denied (2004, Cal) 2004 Cal LEXIS 9700.

With respect to a mother's statement that a second parent had made repeated false accusations of child abuse and neglect against the mother, the second parent failed to show a probability of establishing falsehood by clear and convincing evidence. The second parent thus failed to show that there was a probability that she would prevail on her libel claim, as required by CCP § 425.16(b). Annette F. v. Sharon S. (2004, Cal App 4th Dist) 119 Cal App 4th 1146, 15 Cal Rptr 3d 100, 2004 Cal App LEXIS 1013, review denied (2004, Cal) 2004 Cal LEXIS 9700.

Where a defendant has shown that a substantial part of a cause of action constitutes speech or petitioning activity protected by the anti-SLAPP statute, thereby requiring the plaintiff to show a probability of prevailing on the cause of action to avoid dismissal, the plaintiff need only show a probability of prevailing on any part of its claim; once the plaintiff makes this showing, the court need not determine whether the plaintiff can substantiate all theories presented within the single cause of action. The anti-SLAPP procedure may not be used like a motion to strike under CCP § 436, eliminating those parts of a cause of action that a plaintiff cannot substantiate. 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.

Trial court should have granted an initiative sponsor's motion to strike because the city did not and could not demonstrate a probability of success on its claim for a judicial declaration that the initiative was unconstitutional or otherwise illegal and unenforceable and that the city had no duty under the initiative. Irrespective of the constitutionality of an initiative, public officials must perform their ministerial statutory duties to certify the results of an initiative election City of Santa Monica v. Stewart (2005, Cal App 2d Dist) 126 Cal App 4th 43, 24 Cal Rptr 3d 72, 2005 Cal App LEXIS 109, modified, rehearing denied (2005, Cal App 2d Dist) 2005 Cal App LEXIS 304, review denied (2005, Cal) 2005 Cal LEXIS 4616.

Trial court erred in striking, pursuant to CCP § 425.16, an employee's defamation cause of action against a city, where the employee established that there was a probability that she would prevail on the claim; the employee had offered evidence, if credited at trial, demonstrating that she was likely to succeed. Gallant v. City of Carson (2005, Cal App 2d Dist) 128 Cal App 4th 705, 27 Cal Rptr 3d 318, 2005 Cal App LEXIS 617, review denied (2005, Cal) 2005 Cal LEXIS 9286.

Trial court did not err in granting an employee's special motion to strike her employer's complaint under CCP § 425.16 where there was no probability that the employer would prevail upon its claim that the employee had knowingly filed a fraudulent workers' compensation claim because the employer could not have relied upon any misrepresentations made by the employee, and because the employer failed to establish damages. The employer's allegation that it reasonably relied upon the employee's misrepresentations by forwarding her claim to its insurer lacked merit because controlling law, as well as the insurance policy, established that the employer was required to forward the claim, and, furthermore, if the employer believed that the claim was fraudulent, it had a statutory remedy within the workers' compensation framework. Leegin Creative Leather Products, Inc. v. Diaz (2005, Cal App 2d Dist) 131 Cal App 4th 1517, 33 Cal Rptr 3d 139, 2005 Cal App LEXIS 1292, modified, rehearing denied (2005) 2005 Cal. App. LEXIS 1402, review denied, (2005) 2005 Cal. LEXIS 13063 .

Where a safety manager cooperated in criminal investigations of and testified against his former employer, an anti-SLAPP motion striking the employer's complaint against him was properly granted; the employer failed to establish a probability of prevailing under CCP § 425.16, subd. (b)(1), because privileged statements could not form the basis for

its breach of contract claim and it did not present evidence to support its conversion claim. Greka Integrated, Inc. v. Lowrey (2005, Cal App 2d Dist) 133 Cal App 4th 1572, 35 Cal Rptr 3d 684, 2005 Cal App LEXIS 1790.

Franchisor's special motion to strike a franchisee's complaint pursuant to CCP § 425.16, the anti-SLAPP statute, should have been granted on the ground that the franchisee was barred from prevailing on the merits because her fraud claim was barred by the litigation privilege, CC § 47(b), as she sought to introduce statements made during previous settlement negotiations with the franchisor. In addition, the franchisee did not establish a prima facie case of fraud under the false promise prong of CC § 1710 because she had a serious causation problem and offered nothing to dispute compelling evidence that any losses she suffered were not as a result of any false promise by the franchisor, but her own failure to meet the obligations set forth in a previous stipulated judgment she entered into with the franchisor. 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.

In an action arising from a homeowner's conflict with his housing association, the owner, an attorney, made a prima facie showing that a letter to him from the associations attorney was libelous under CC §§ 45, 45a when it opined that the owner engaged in "unconscionable" conduct by concealing his superior legal knowledge; the term "virtually stalking," however, was nonactionable rhetorical hyperbole because it was a metaphor used to describe the owner's conduct at board meetings. Thus, in responding to a special motion to strike his libel action under CCP § 425.16, the owner showed a likelihood of prevailing as to the first letter but not the second. Ruiz v. Harbor View Community Assn. (2005, Cal App 4th Dist) 134 Cal App 4th 1456, 37 Cal Rptr 3d 133, 2005 Cal App LEXIS 1937.

City did not make improper government expenditures for communications on an initiative election because its communications, which analyzed the impact of a tax-relief measure, did not contain words of express advocacy. Therefore, proponents of the initiative did not establish a likelihood of success in their action against the city, and their action was properly struck. 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.

Claim for malicious prosecution was properly stricken under CCP § 425.16, because plaintiff could not demonstrate a likelihood of success as to favorable termination of the underlying action, given that judgment was entered for defendant on one of three claims. The two unsuccessful claims could not be severed. Staffpro, Inc. v. Elite Show Services, Inc. (2006, Cal App 4th Dist) 136 Cal App 4th 1392, 39 Cal Rptr 3d 682, 2006 Cal App LEXIS 235, review denied (2006) 2006 Cal. LEXIS 7198.

City failed to establish a probability that it would prevail on its workplace violence petitions under CCP § 425.16(b)(1). CCP § 527.8 authorizes issuance of a workplace violence restraining order only against "individuals," not against groups, associations, or corporate entities; the city's petition on behalf of one of its employees against an animal rights activist also failed because the city presented no evidence she conveyed a credible threat of violence that could reasonably be construed to be carried out at the workplace. City of Los Angeles v. Animal Defense League (2006, Cal App 2d Dist) 135 Cal App 4th 606, 37 Cal Rptr 3d 632, 2006 Cal App LEXIS 7, modified, rehearing denied (2006, Cal App 2d Dist) 2006 Cal App LEXIS 107, review denied (2006, Cal) 2006 Cal LEXIS 4460.

In an action filed by four Navy Sea, Air, Land (SEAL) members and one SEAL's wife alleging invasion of privacy rights under Cal Const Art I, § 1, public disclosure of private facts, and intrusion of the wife's seclusion, a news reporter was entitled to strike the complaint under California's Anti-Strategic Lawsuits Against Public Participation (anti-SLAPP) statute, CCP § 425.16, because the reporter established that the newspaper article and photographs at issue were published in furtherance of the right of free speech in connection with a public issue under U.S. Const. amend. I, and plaintiffs failed to meet their burden of establishing a probability of prevailing on the claims; the fatal defects in the privacy claims included the absence of an offensive or egregious invasion of privacy and plaintiffs' lack of a reasonable expectation of privacy in the photographs, which the SEALs took of themselves while capturing and detaining prisoners in Iraq and which the wife posted on her publicly-accessible website. Four Navy Seals & Jane Doe v. AP (2005, SD Cal) 413 F Supp 2d 1136, 2005 US Dist LEXIS 40036.

Anti-SLAPP motion should have been granted in a malicious prosecution action because a declaration by counsel that plaintiff was not liable in the underlying action was insufficient, as a matter of law, to establish that defendant lacked probable cause to pursue that action. Thus, there was not probability of success on the merits. Marijanovic v. Gray, York & Duffy (2006, Cal App 2d Dist) 137 Cal App 4th 1262, 40 Cal Rptr 3d 867, 2006 Cal App LEXIS 415.

Because of (1) the disfavored status of malicious prosecution claims, (2) the rather lenient standard of probable cause, (3) the broad scope of the unfair competition law (UCL), B & P C §§ 17200 et seq., and (4) the UCL's intended purpose of addressing, among other things, unfair conduct that may run the gamut of human ingenuity and chicanery, an appellate court concluded that an individual claiming malicious prosecution failed to make a prima facie showing that a competitor's UCL claim (under either the "unlawful" or "unfair" prongs) lacked probable cause. In light of the court's conclusion that the individual did not make a prima facie showing that the competitor's prior suit lacked probable cause, the trial court properly granted the competitor's special motion to strike the individual's malicious prosecution claim under CCP § 425.16. Paulus v. Bob Lynch Ford, Inc. (2006, Cal App 6th Dist) 139 Cal App 4th 659, 43 Cal Rptr 3d 148, 2006 Cal App LEXIS 730, review denied (2006) 2006 Cal. LEXIS 9683.

Motion under CCP § 425.16 was properly denied in a malicious prosecution action because plaintiffs would probably be able to establish that defendants, when filing a prior malicious prosecution action, did not have probable cause to believe that plaintiffs lacked probable cause as to negligence in plaintiffs' original personal injury suit. Kreeger v. Wanland (2006, Cal App 3d Dist) 141 Cal App 4th 826, 46 Cal Rptr 3d 790, 2006 Cal App LEXIS 1144, review denied (2006) 2006 Cal. LEXIS 12480.

Trial court correctly granted motions to strike filed by defendants, a law firm and another attorney, under the anti-SLAPP (strategic lawsuit against public participation) statute, CCP § 425.16, where plaintiff attorney failed to establish a probability of prevailing on his claims that defendants interfered with his contract with a client by communicating with the client at a time when plaintiff had not agreed to being substituted, in violation of CCP §§ 284 and 285 and Cal. R. Prof. Conduct 2-100(A), because plaintiff cited nothing to refute the evidence produced by the law firm that it engaged in no discussions with the client until after being informed that the client had discharged plaintiff as his attorney, and because, even if the law firm preferred dealing with the client rather than plaintiff, and therefore had a motive for getting plaintiff out of the picture, there was no evidence to support even an inference that the law firm did anything to facilitate the client's actions. All the evidence suggested that the client discharged plaintiff as his attorney because plaintiff refused to comply with the client's wishes regarding resolution of the pending litigation, and neither the law firm nor the other attorney had any dealings with the client until after such discharge. Witte v. Kaufman (2006, Cal App 3d Dist) 141 Cal App 4th 1201, 46 Cal Rptr 3d 845, 2006 Cal App LEXIS 1184.

Although defendants were not barred from using the anti-SLAPP (strategic lawsuits against public participation) statute, CCP § 425.16, to attempt to strike plaintiff's action because the filing and maintenance of defendants' underlying action could not be characterized as "illegal as a matter of law" so as to exempt plaintiff's malicious prosecution action from the anti-SLAPP statute, and because the Legislature had decided against a categorical rule exempting SLAPPbacks from the anti-SLAPP statute by its enactment of CCP § 425.18(h), defendants' motions to strike the action as a SLAPP should not have been granted because plaintiff had nonetheless demonstrated a probability of prevailing on her malicious prosecution claim so as to defeat the motions. Soukup v. Law Offices of Herbert Hafif (2006) 39 Cal 4th 260, 46 Cal Rptr 3d 638, 2006 Cal LEXIS 9073, rehearing denied (2006, Cal) 2006 Cal LEXIS 12453.

When lawyer employees of a district attorneys association prosecuted a criminal action against a mine and its director, the individual lawyers were uncompensated public officers or public servants of the county district attorney's office and were de facto deputy district attorneys engaged in activity protected by the anti-SLAPP (strategic lawsuit against public participation) statute, CCP § 425.16, making them entitled to absolute immunity for their actions in the criminal prosecution, even though the district attorney's appointment of the lawyers to serve as deputy district attorneys was technically deficient because, although they signed and filed written oaths of office with the clerk of the superior court, the district attorney neglected to file their written appointments as required by Gov C § 24102. Consequently, the mine and its director could not prevail in their civil lawsuit against the association and the lawyers that sought damages for malicious prosecution and related causes of action, and the trial court therefore erred in denying an anti-SLAPP motion filed by the association and the lawyers. Miller v. Filter (2007, Cal App 3d Dist) 150 Cal App 4th 652, 58 Cal Rptr 3d 671, 2007 Cal App LEXIS 693, rehearing denied (2007, Cal App 3d Dist) 2007 Cal App LEXIS 1081, review denied Miller (Michael) v. Filter (Gale) (2007, Cal) 2007 Cal LEXIS 8544.

For purposes of a motion to strike under CCP § 425.16, an alleged film producer did not show a probability to prevail in a claim against a web site for failing to attribute credit to the producer. The site based its credit listing for the film on a review of the actual screen credits for the film, as it was entitled to do, and the site expressly reserved the right to reject any proffered listing if it could not be verified. Kronemyer v. Internet Movie Database Inc. (2007, Cal App 2d Dist) 150 Cal App 4th 941, 59 Cal Rptr 3d 48, 2007 Cal App LEXIS 737.

Corporate financial officer's declaration identifying false statements in investment reports sufficed to establish a probability that the company would prevail in demonstrating the falsity of assertions that it engaged in accounting irregularities; thus, the trial court did not err in denying CCP § 425.16, special motions to strike a complaint for libel under CC §§ 44(a), 45 and other causes of action. Overstock.com, Inc. v. Gradient Analytics, Inc. (2007, Cal App 1st Dist) 151 Cal App 4th 688, 61 Cal Rptr 3d 29, 2007 Cal App LEXIS 876, rehearing denied Overstock.com Inc. v. Gradient Analytics, Inc. (2007, Cal App 1st Dist) 2007 Cal App LEXIS 1510, review denied Overstock.com v. Gradient Analytics (2007, Cal.) 2007 Cal. LEXIS 10104.

Plaintiff business failed to show a probability of prevailing on claims against defendant business competitor arising from underlying litigation because: (1) as to malicious prosecution, there was not a favorable determination on the merits of the underlying action because it was voluntarily dismissed by defendant; (2) as to abuse of process, mere filing of a lawsuit, even for an improper purpose, was not a proper basis for a claim; (3) as to defamation, the asserted statements were not sufficient to support a claim; (4) as to interference with prospective economic advantage, there was no showing that the underlying acts were wrongful. 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.

In a civil rights action by an employee of the University of California arising from sexual harassment allegations, the employee failed to establish a probability of prevailing on the merits as to the manager who denied the employee's administrative grievances; therefore the manager's motion to strike should have been granted. The manager was not liable under Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e et seq., because the manager was an employee, not an employer, and the employee had no evidence that the manager violated any civil rights for purposes of 42 U.S.C.S. § 1983. Vergos v. McNeal (2007, Cal App 3d Dist) 146 Cal App 4th 1387, 53 Cal Rptr 3d 647, 2007 Cal App LEXIS 78.

Real estate sellers were not entitled to strike a complaint for breach of contract and fraud alleging that they submitted a high density tract map to the city council after they had agreed to submit a low density tract map; although the act was in furtherance of the sellers' rights of petition or free speech within the meaning of CCP § 425.16(e), the buyer had a probability of prevailing. Midland Pacific Building Corp. v. King (2007, Cal App 2d Dist) 153 Cal App 4th 499, 63 Cal Rptr 3d 129, 2007 Cal App LEXIS 1189, rehearing granted, depublished (2007, Cal App 2d Dist) 2007 Cal App LEXIS 1427.

Law firm's causes of action in its cross-complaint against a client for fraud and negligent misrepresentation fell within the protection of CCP § 425.16, where each claim was based substantially upon the client's petitioning activity. Because the firm failed to demonstrate a probability of prevailing on its fraud and negligent misrepresentation claims, the trial court erred in denying the client's special motion to strike these claims. Philipson & Simon v. Gulsvig (2007, 4th Dist) 2007 Cal App LEXIS 1369.

Where an abuse of process cross-complaint arose out of conduct protected by CCP § 425.16, and the cross-complainant showed he would probably prevail on the merits, the cross-defendant's special motion to strike the cross-complaint was properly denied. Booker v. Rountree (2007, 4th Dist) 155 Cal App 4th 1366, 66 Cal Rptr 3d 733, 2007 Cal App LEXIS 1660.

Buyer of real estate had a probability of prevailing, within the meaning of CCP § 425.16(b)(1), on its contract claim against sellers who obtained preliminary approval for a high density tract map, contrary to the parties' agreement to seek approval of a low density tract map; hence, although this was protected activity under § 425.16(e)(1), (2), the complaint could not be stricken. Midland Pacific Building Corp. v. King (2007, 2d Dist) 2007 Cal App LEXIS 1955.

For purposes of a motion to strike under CCP § 425.16, a landlord demonstrated a probability of prevailing in a malicious prosecution claim against lawyers who represented a tenant in an underlying suit that made no distinctions among 45 named plaintiffs with regard to 18 separate causes of action alleging physical injury and property damage. The evidence suggested that the tenant's voluntary dismissal was a favorable termination for the landlord because the tenant's interrogatory responses indicated that no damages were incurred other than mental and emotional distress. Sycamore Ridge Apartments LLC v. Naumann (2007, 4th Dist) 2007 Cal App LEXIS 2042.

In a malicious prosecution claim, support for a finding of malicious intent and thus a probability of prevailing for purposes of CCP § 425.16 included the continued prosecution of the underlying action, evidence that the proceedings were initiated and maintained in order to force a settlement, and the originating lawyers' lack of investigation and shotgun approach. Sycamore Ridge Apartments LLC v. Naumann (2007, 4th Dist) 2007 Cal App LEXIS 2042.

In a landlord's malicious prosecution claim against a tenant and the tenant's lawyers, the landlord was not required to provide specific evidence of the extent of the damages to survive motions to strike under CCP § 425.16. However, there was sufficient evidence in the record of damages based on attorney fees for defending the prior action Sycamore Ridge Apartments LLC v. Naumann (2007, 4th Dist) 2007 Cal App LEXIS 2042.

In an action arising from the termination of a private prison contract, the contractor did not establish a probability of prevailingfor purposes of a special motion to strike on its claim that it was defamed by a termination letter, in which the director of the Department of Corrections asserted that the contractor misappropriated public funds, because the letter was protected by the absolute privilege for acts in the proper discharge of an official duty, as set forth in CC § 47(a); the director released the termination letter to the press in defense of a policy decision and had a duty to communicate with the press about matters of public concern. Maranatha Corrections, LLC v. Department of Corrections & Rehabilitation (2008, 3d Dist) 158 Cal App 4th 1075, 70 Cal Rptr 3d 614, 2008 Cal App LEXIS 37.

In an action arising from a former employee's statements about the employer in a published magazine article, the employer did not establish a probability of prevailing on claims for breach of or intentional interference with contract; the employee's disclosures did not violate the terms of a confidentiality provision becaue they concerned only the employee's personal experiences, not sensitive economic information such as trade secrets, financial data, customer information, or information about other employees. Nygard, Inc. v. Uusi-Kerttula (2008, 2d Dist) 2008 Cal App LEXIS 170.

Former employer failed to establish a probability of prevailing in a defamation claim under CC § 45 because the former employee's challenged statements regarding the employer's working conditions were either nonactionable statements of opinion or were within the protected zone of rhetorical hyperbole; the statements included that working for the employer was "horrible," that the employee felt used, that the employee endured around-the-clock pestering, and that the employee worked like a slave without a break. Nygard, Inc. v. Uusi-Kerttula (2008, 2d Dist) 2008 Cal App LEXIS 170.

Manufacturer of galvanized screws did not show a probability of prevailing on a libel claim against an attorney who advertised in anticipation of class action litigation because the advertisement did not contain a provably false assertion of fact; therefore, trial court acted properly in granting a motion under CCP § 425.16 as to claims for libel and trade libel. Simpson Strong-Tie Co., Inc. v. Gore (2008, 6th Dist) 2008 Cal App LEXIS 656.

Manufacturer did not show a probability of prevailing on a claim for false advertising or unfair business practices against an attorney who advertised in anticipation of class action litigation because the advertisement said nothing about the attorney except that the he was an attorney, could be reached at a specified number and address, and might investigate the potential claims of persons who called; there was no indication that any of these statements could be shown to be false. Simpson Strong-Tie Co., Inc. v. Gore (2008, 6th Dist) 2008 Cal App LEXIS 656.

Trial court did not err in granting chamber of commerce's CCP § 425.16 motion to strike group's claim that the chamber violated California's Unruh Civil Rights Act, CC § 51 et seq., by denying group's applications to participate in chamber-sponsored events to commemorate the Chinese New Year, including a community street fair and flower market fair, where group had no probability of success on the claim because the fairs were expressive events and were entitled to exclude as participants those who wished to express their own discordant views; group could have held its own fair or attended the fairs and expressed its views verbally or by signs, pamphlets, or other paraphernalia, and had no right to insist on being included in the chamber's expressive activity. U.S. Western Falun Dafa Assn. v. Chinese Chamber of Commerce (2008, 1st Dist) 2008 Cal App LEXIS 815.

Trial court did not err in granting chamber of commerce's CCP § 425.16 motion to strike group's claim that chamber violated California's Unruh Civil Rights Act by denying group's applications to participate in a chamber-sponsored parade to commemorate the Chinese New Year where group had no probability of success on the claim because the parade was expressive, and the First Amendment barred the government from compelling the chamber to include in the presentation of its message the very different political message communicated by the group; parade's overall message was distilled from the individual presentations along the way, and each unit's expression was perceived by spectators as part of the whole. U.S. Western Falun Dafa Assn. v. Chinese Chamber of Commerce (2008, 1st Dist) 2008 Cal App LEXIS 815.

(Unpublished) Student's special motion to strike pursuant to California's anti-SLAPP provision, CCP § 425.16, was properly denied where a university had established a probability of prevailing on its counterclaim, as its claims were legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment. La Marca v. Capella Univ. (2008, CA9 Cal) 265 Fed Appx 664, 2008 US App LEXIS 2600.

When city and city officials filed an anti-SLAPP motion to strike a lessee's defamation claim, the lessee did not demonstrate a probability of prevailing on the merits because as to alleged defamatory statements in a press release, the lessee did not show that the lessee had filed a tort claim with the city alleging the press release was defamatory, so the lessee could not show that the claim was not barred under the California Tort Claims Act, Gov C § 900 et seq.Fabbrini v. City of Dunsmuir (2008, ED Cal) 544 F Supp 2d 1044, 2008 US Dist LEXIS 79849.

When city and city officials filed an anti-SLAPP motion to strike a lessee's defamation claim, the lessee did not demonstrate a probability of prevailing on the merits because as to alleged defamatory statements to members of the public through publications of news articles, the lessee did not present admissible evidence of the statements or who made the statements. Fabbrini v. City of Dunsmuir (2008, ED Cal) 544 F Supp 2d 1044, 2008 US Dist LEXIS 79849.

Motion to strike under CCP § 425.16 should have been granted for defendant homeowners in a malicious prosecution action because plaintiff neighbor did not show a probability of prevailing, given that there was probable cause for defendants' underlying trespass claim; preliminary injunction conclusively established probable cause to initiate defendants' trespass suit, even though defendants failed to post a bond. Paiva v. Nichols (2008, 6th Dist) 2008 Cal App LEXIS 2366.

Employee was not likely to succeed on the merits of a defamation claim based on statements that employer made to employee about the reason for employee's termination because employee could not prove publication; therefore, a motion to strike was properly granted under CCP § 425.16. Dible v. Haight Ashbury Free Clinics (2009, 1st Dist) 2009 Cal App LEXIS 84.

Employee was not likely to succeed on the merits of a defamation claim based on statements that employer made to the California Employment Development Department in the context of an unemployment claim; given that employee was found eligible for benefits, no damages were shown, and therefore a motion to strike was properly granted under CCP § 425.16. Dible v. Haight Ashbury Free Clinics (2009, 1st Dist) 2009 Cal App LEXIS 84.

Since the term "probability" is susceptible to more than one meaning, and courts that have interpreted the term have stated that only a suit lacking even minimal merit would not satisfy the standard, the court adopted the more lenient meaning of the term "probability," such that a plaintiff needs to show a mere possibility of success on his claim to survive an Anti-SLAPP (Strategic Lawsuit Against Public Participation) motion. Browne v. McCain (2009, CD Cal) 2009 US Dist LEXIS 18882.

Songwriter had met his burden of establishing, for purposes of CCP § 425.16, a probability of success on his right of publicity claim against defendants for using his song in a commercial for a presidential candidate by showing that: (1) defendants had used his identity, specifically his voice in a recording of his song; (2) defendants appropriated his identity to their advantage; (3) defendants lacked consent to use the song in the commercial; and (4) the use resulted in injury, specifically, it gave the false impression that he was associated with or endorsed a candidacy and defendants did not pay a licensing fee for the composition. Browne v. McCain (2009, CD Cal) 2009 US Dist LEXIS 18882.

Special motion to strike was properly granted as to an action alleging that an attorney maliciously prosecuted two suits against former clients because the clients did not obtain a favorable termination of the previous suits and thus could not prevail in their malicious prosecution action; the attorney was successful in a suit for his fees after initially having pursued it in the wrong forum, and his voluntary dismissal of the other suit after an unfavorable appellate decision was not a termination on the merits. Drummond v. Desmarais (2009, 6th Dist) 2009 Cal App LEXIS 1289.

In a malicious prosecution case, a motion to strike was properly granted under CCP § 425.16 to the attorneys who brought the prior suit. There was no probability of prevailing as to malice, despite their client's ill will and a lack of evidentiary support, because there was no affirmative evidence that they knew the case lacked probable cause. Daniels v. Robbins (2010, 4th Dist) 2010 Cal App LEXIS 223.

In a case in which plaintiff, an attorney, sued defendant, also an attorney, for fraud and intentional infliction of emotional distress, plaintiff's complaint was subject to a special motion to strike pursuant to CCP § 425.16. Because defendant could not be held liable for his alleged conduct under the litigation privilege, CC § 47, subd. (b), plaintiff failed to demonstrate a probability of prevailing on her causes of action. Seltzer v. Barnes (2010, 1st Dist) 2010 Cal App LEXIS 313.

18. Admissible Evidence

While it is only necessary that plaintiff provide a sufficient prima facie showing of facts to sustain a favorable decision if the evidence submitted is credited, implicit therein is the assumption the evidence referred to is admissible, or at least not objected to, since otherwise there would be nothing for the trier of fact to credit. Wilcox v. Superior Court (1994, Cal App 2d Dist) 27 Cal App 4th 809, 33 Cal Rptr 2d 446, 1994 Cal App LEXIS 838, modified, rehearing denied (1994, Cal App 2d Dist) 28 Cal App 4th 940, 1994 Cal App LEXIS 922, review denied (1994, Cal) 1994 Cal LEXIS 6186, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

Generally, a party cannot simply rely on the allegations in its own pleadings, even if verified, to make the evidentiary showing required in the summary judgment context or similar motions, i.e., to submit admissible evidence to demonstrate its claim, such as a motion to strike the complaint under CCP § 425.16. Similarly, an averment on information and belief is inadmissible at trial and thus cannot show a probability of prevailing on the claim, as required by CCP § 425.16, subd. (b). An assessment of the probability of prevailing on the claim looks to trial and the evidence that will be presented at that time, and such evidence must be admissible. Church of Scientology v. Wollersheim (1996, Cal App 2d Dist) 42 Cal App 4th 628, 49 Cal Rptr 2d 620, 1996 Cal App LEXIS 87, review denied (1996, Cal) 1996 Cal LEXIS 2783, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

Under CCP § 425.16(b)(1), the assessment of the probability of prevailing on the claim looks to trial, and the evidence that will be presented at that time, and such evidence must be admissible. Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist. (2003, Cal App 4th Dist) 106 Cal App 4th 1219, 132 Cal Rptr 2d 57, 2003 Cal App LEXIS 382.

Where a retailer and its owner filed a defamation action against a human rights organization and its employee and the organization and its employee filed a motion to strike under CCP § 425.16, the trial court did not err by considering for purposes of the motion an edited video tape offered by the retailer and its owner, despite the lack of testimony required by Ev C § 1402 that the editing did not materially alter the activities shown on the video, because that authenticity issue could easily have been remedied by the videographer's testimony and the tape was not otherwise inadmissible under a substantive rule. Fashion 21 v. Coalition for Humane Immigrant Rights of Los Angeles (2004, Cal App 2d Dist) 117 Cal App 4th 1138, 12 Cal Rptr 3d 493, 2004 Cal App LEXIS 574, rehearing denied (2004) 2004 Cal. App. LEXIS 754, review denied Fashion 21 v. Coalition for Humane Immigration Rights of Los Angeles (2004) 2004 Cal. LEXIS 7699.

19. Discovery

In a libel action in which defendants filed a special motion to strike the complaint on the ground that plaintiff could not establish a probability of prevailing on the claim (CCP § 425.16), the trial court did not abuse its discretion in failing to continue defendants' motion to permit plaintiff to conduct additional discovery. Plaintiff failed to file a noticed motion to conduct additional discovery pursuant to CCP § 425.16, subd. (g), but instead merely asserted in his declaration that he required more time to ascertain the facts and had not yet taken the depositions of several individuals. In any event plaintiff did obtain adequate discovery prior to the motion, since he took the deposition of the defendant who made the statement at issue and of person whom defendant contended gave him the information that formed the basis for the statement. Robertson v. Rodriguez (1995, Cal App 2d Dist) 36 Cal App 4th 347, 42 Cal Rptr 2d 464, 1995 Cal App LEXIS 599.

The anti-SLAPP statute (CCP § 425.16), properly construed, does not deny due process by arbitrarily curtailing or precluding necessary discovery. Although the discovery stay and 30-day hearing requirements of the statute, literally applied in all cases, might well adversely implicate a plaintiff's due process rights, particularly in a libel suit against a media defendant, a plaintiff who makes a timely and proper showing, in response to the motion to strike, that a defendant or witness possesses evidence needed to establish a prima facie case, must be given a reasonable opportunity to obtain that evidence through discovery before the motion to strike is adjudicated. Lafayette Morehouse, Inc. v. Chronicle Publishing Co. (1995, Cal App 1st Dist) 37 Cal App 4th 855, 44 Cal Rptr 2d 46, 1995 Cal App LEXIS 762, review denied (1995, Cal) 1995 Cal LEXIS 7325, cert den (1996) 519 US 809, 136 L Ed 2d 136, 117 S Ct 53, 1996 US LEXIS 4658, superseded by statute as stated in Damon v. Ocean Hills Journalism Club (2000, Cal App 4th Dist) 85 Cal App 4th 468, 102 Cal Rptr 2d 205, 2000 Cal App LEXIS 943.

The trial court must liberally exercise its discretion by authorizing reasonable and specified discovery timely petitioned for by a plaintiff when evidence to establish a prima facie case is reasonably shown to be held, or known, by the

defendant or its agents and employees. Lafayette Morehouse, Inc. v. Chronicle Publishing Co. (1995, Cal App 1st Dist) 37 Cal App 4th 855, 44 Cal Rptr 2d 46, 1995 Cal App LEXIS 762, review denied (1995, Cal) 1995 Cal LEXIS 7325, cert den (1996) 519 US 809, 136 L Ed 2d 136, 117 S Ct 53, 1996 US LEXIS 4658, superseded by statute as stated in Damon v. Ocean Hills Journalism Club (2000, Cal App 4th Dist) 85 Cal App 4th 468, 102 Cal Rptr 2d 205, 2000 Cal App LEXIS 943.

In a defamation action in which defendants filed a special motion to strike the complaint on the ground that plaintiff could not establish a probability of prevailing on the claim (CCP § 425.16), the trial court did not err in denying plaintiff's motion for reconsideration to permit plaintiff to conduct discovery to build a prima facie case. Plaintiff failed to comply with CCP § 425.16, subd. (g), in that he failed to file a noticed motion below for discovery supported by a showing of good cause. He did not ask for discovery until he moved for reconsideration, and his counsel's only excuse for the tardy request was that plaintiff was reasonable in believing that it would not be necessary to cite the statutory discovery provision in order to prevail on the previous motion. Evans v. Unkow (1995, Cal App 1st Dist) 38 Cal App 4th 1490, 45 Cal Rptr 2d 624, 1995 Cal App LEXIS 973.

Under CCP § 425.16, discovery is stayed upon the filing of the motion (CCP § 425.16, subd. (g)). However, upon noticed motion and for good cause shown, the court may allow specified discovery. Church of Scientology v. Wollersheim (1996, Cal App 2d Dist) 42 Cal App 4th 628, 49 Cal Rptr 2d 620, 1996 Cal App LEXIS 87, review denied (1996, Cal) 1996 Cal LEXIS 2783, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

Discovery is stayed upon the filing of a motion under CCP § 425.16. However, upon noticed motion and for good cause shown, the court may allow specified discovery. Kyle v. Carmon (1999, Cal App 3d Dist) 71 Cal App 4th 901, 84 Cal Rptr 2d 303, 1999 Cal App LEXIS 440.

In a libel action in which defendant magazine filed a special motion to strike the complaint pursuant to CCP § 425.16, and plaintiff made an ex parte application to continue the hearing on the special motion so that she could pursue discovery, the court held that early consideration of the magazine's motion would contradict the scheme of the Federal Rules of Civil Procedure and therefore run afoul of the Erie doctrine. The court granted plaintiff's application and continued the hearing on the special motion to strike to allow plaintiff time to attempt to conduct discovery. Only after discovery issues were resolved and discovery was complete would it be appropriate for the court to consider the special motion to strike. Rogers v. Home Shopping Network, Inc. (1999, CD Cal) 57 F Supp 2d 973, 1999 US Dist LEXIS 11339.

Filing of a CCP § 425.16 motion to strike stays discovery until the motion is ruled on, although the court has discretion to permit specified discovery for good cause. Schroeder v. Irvine City Council (2002, Cal App 4th Dist) 97 Cal App 4th 174, 118 Cal Rptr 2d 330, 2002 Cal App LEXIS 2493, review denied (2002, Cal) 2002 Cal LEXIS 4369.

CCP § 425.16(g) requires both a timely motion for discovery and a showing of good cause. Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist. (2003, Cal App 4th Dist) 106 Cal App 4th 1219, 132 Cal Rptr 2d 57, 2003 Cal App LEXIS 382.

Trial court did not abuse its discretion under CCP § 425.16(g) by denying plaintiff's discovery request, where plaintiff's first discovery request was not made by noticed motion, and where plaintiff's second discovery request was made after plaintiff filed its motion to reconsider the trial court's order granting defendants' CCP § 425.16 motion to strike. Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist. (2003, Cal App 4th Dist) 106 Cal App 4th 1219, 132 Cal Rptr 2d 57, 2003 Cal App LEXIS 382.

In a former employee's defamation action against a local and a national union for the Internet-posting of a statement that he was terminated from his position as assistant business manager of the local union for financial mismanagement, the unions' motion to strike the defamation claim did not satisfy the requirements of the statute against strategic lawsuits against public participation or anti-SLAPP statute at Cal. Code Civ. Proc. § 425.16(e)(2) because it was not made in connection with an issue under consideration and review by an official proceeding authorized by law, despite the fact that the local union was in receivership due to financial problems. Du Charme v. International Brotherhood of Electrical Workers (2003, Cal App 1st Dist) 110 Cal App 4th 107, 1 Cal Rptr 3d 501, 2003 Cal App LEXIS 1002.

Trial court abused its discretion in permitting plaintiffs in an action for libel to conduct discovery on the issue of actual malice prior to the hearing on defendants' motion to strike plaintiffs' libel claim as a SLAPP. The court reasoned in part that this was the very kind of case the anti-SLAPP statute was designed to address: an action for defamation by a large, well-financed retailer acting in its corporate interest against a small, non-profit organization advocating for social

justice on behalf of a disadvantaged class, low-income immigrant workers. The Garment Workers Center v. Superior Court (2004, Cal App 2d Dist) 117 Cal App 4th 1156, 12 Cal Rptr 3d 506, 2004 Cal App LEXIS 576.

Trial court did not abuse its discretion in denying additional discovery under CCP § 425.16(g) where the litigation privilege of CC § 47(b) rendered business records irrelevant to the trial court's determination. 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 .

In an action alleging state law claims of unfair competition, trade libel, and tortious interference with prospective economic advantage filed by plaintiff internet software company against defendant spy-ware provider, where the provider filed a motion to strike under the anti-SLAPP statute, CCP § 425.16, the software company's Erie doctrine argument, that the stay of discovery under CCP § 425.16(g) would result in a "direct collision" with Fed. R. Civ. P. 56(f), was rejected because both statutes conferred discretion on the trial court to permit discovery in the face of a dispositive motionin the appropriate case and upon a proper showing, and in any event, the software company's statements that it desired discovery about the spy-ware provider's business plan, sales, revenue, and motives had little bearing on the issues raisedin the motion as the software company's complaint focused on what the spy-ware provider did, not so much on why it did it. New.Net, Inc. v. Lavasoft (2004, CD Cal) 356 F Supp 2d 1090, 2004 US Dist LEXIS 27434.

Discovery limiting sections of the Anti-Strategic Lawsuit Against Public Participation (anti-SLAPP) statute, CCP § 425.16(f), (g), conflicted with Fed. R. Civ. P. 56(f) where the trial court granted summary judgment in favor of a reporter, doctor, and television station in an action by an herbal company for trade libel on the issue of falsity without permitting the herbal company sufficient discovery. Metabolife Int'l v. Wornick (2001, 9th Cir Cal) 264 F3d 832, 2001 US App LEXIS 19676.

On defendant's appeal from the denial of a motion to strike, plaintiff did not waive his right to challenge the denial of his request for discovery by failing to file his own notice of appeal because there was no adverse appealable order or judgment, within the meaning of CCP § 904.1(e), from which plaintiff could file a notice of appeal. Ruiz v. Harbor View Community Assn. (2005, Cal App 4th Dist) 134 Cal App 4th 1456, 37 Cal Rptr 3d 133, 2005 Cal App LEXIS 1937.

In a defamation action brought against a newspaper and other defendants, the trial court did not abuse its discretion in denying plaintiff's motion for leave to conduct discovery, pursuant to CCP § 425.16(g). Evidence of what a reporter told one of the defendants was not reasonably calculated to shed any light of the matters at issue. Carver v. Bonds (2005, Cal App 1st Dist) 135 Cal App 4th 328, 37 Cal Rptr 3d 480, 2005 Cal App LEXIS 1983.

Trial court did not abuse its discretion in denying plaintiff's motion for limited discovery, which was filed four months after defendant filed a motion to strike, because plaintiff had not identified any factual issue that it hoped to establish through the requested discovery that could affect the outcome of the motion to strike. The discovery sought was purportedly needed to establish a prima facie case for defamation, but defendant successfully asserted an absolute privilege. Tutor-Saliba Corp. v. Herrera (2006, Cal App 1st Dist) 136 Cal App 4th 604, 39 Cal Rptr 3d 21, 2006 Cal App LEXIS 165.

Trial court erred not only in proceeding with a hearing on plaintiffs' discovery motion while defendants' second anti-SLAPP (strategic lawsuit against public participation) motion was pending, but also in issuing its order compelling their compliance with discovery requests, imposing monetary sanctions against them, and finding a waiver of their objections, because, pursuant to CCP § 425.16(g), discovery motions, including those that were pending, were stayed upon the filing of an anti-SLAPP motion. Britts v. Superior Court (2006, Cal App 6th Dist) 145 Cal App 4th 1112, 52 Cal Rptr 3d 185, 2006 Cal App LEXIS 1953.

Stay on all "discovery proceedings" as provided in CCP § 425.16(g) of the anti-SLAPP (strategic lawsuit against public participation) statute applies to discovery motions, including those already pending at the time the special motion to strike is filed, even though this term has a more narrow meaning in the California Civil Discovery Act, because such a narrow construction could very well thwart the legislative purposes of the anti-SLAPP statute. Nothing about the stay on discovery proceedings as provided at CCP § 425.16(g), interferes with the core judicial function of the essential power of the judiciary to resolve specific controversies between parties. Britts v. Superior Court (2006, Cal App 6th Dist) 145 Cal App 4th 1112, 52 Cal Rptr 3d 185, 2006 Cal App LEXIS 1953.

When an anti-SLAPP motion was pending, the trial court did not abuse its discretion by refusing to grant an ex parte application seeking permission to conduct limited discovery because CCP § 425.16(g) unequivocally required a noticed motion for such requests. The trial court also did not err by refusing to grant an alternative request for an order

shortening time on such a noticed motion because the opposing party was not sufficiently apprised of that request under former Cal. Rules of Court, Rule 379(e)(2). 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 a plaintiff in a defamation action subject to the constitutional malice standard fails to demonstrate that allegedly defamatory statements are provably false factual assertions, which the plaintiff must do to establish the necessary probability of prevailing on its defamation claim, no "good cause" under CCP § 425.16(g) exists to conduct discovery concerning actual malice. Paterno v. Superior Court (2008, 4th Dist) 2008 Cal App LEXIS 872.

Where a newspaper owner suing a journalist in a defamation action subject to the constitutional malice standard had failed to show good cause for discovery delaying the journalist's anti-SLAPP motion, forcing the journalist to submit to discovery in the absence of good cause jeopardized protections afforded by the anti-SLAPP statute against harassing litigation. Journalist had no constitutional obligation to include in her article the owner's explanation concerning its decision not to run a story about the drunk driving sentence of the newspaper's editorial page editor because the journalist's truthful statements enjoyed First Amendment protection, and in publishing them she was entitled to a reasonable degree of flexibility in the choice of language. Paterno v. Superior Court (2008, 4th Dist) 2008 Cal App LEXIS 872.

Where a newspaper owner suing a journalist in a defamation action subject to the constitutional malice standard had not introduced sufficient evidence to establish a prima facie case of unprivileged statements, trial court erred in permitting discovery concerning the journalist's actual malice while the journalist's anti-SLAPP motion was pending; journalist had no constitutional obligation to provide the owner's explanation why it dropped its efforts to obtain a restraining order against a former newspaper employee because the journalist's report on the owner's dismissal of the complaint was absolutely privileged as a matter of law as a fair report of a statement made in an official judicial proceeding pursuant to CC § 47(d). Paterno v. Superior Court (2008, 4th Dist) 2008 Cal App LEXIS 872.

In a newspaper owner's defamation action against a journalist, which was subject to the constitutional malice standard, trial court erred in permitting discovery concerning the journalist's actual malice while the journalist's anti-SLAPP motion was pending because the owner had not introduced sufficient evidence to establish a prima facie case of false statements; journalist's description of the newspaper as having "slashed" employee benefits was not actionable because it was protected opinion and did not imply a provably false assertion of fact. Paterno v. Superior Court (2008, 4th Dist) 2008 Cal App LEXIS 872.

20. Right to Jury Trial

In an action for intentional and negligent interference with contractual relations and prospective economic advantage, libel, slander and trade libel brought by a firm, which had performed archaeological tests on a site believed by many Native American Indians to be an ancient village against a university professor who opposed development on the site through a letter-writing campaign, the application of CCP § 425.16 subd (b) did not violate plaintiff's right to due process by requiring it to establish probability of success without the opportunity to conduct discovery to show a triable issue of fact as to malice, where the professor's motivation in making the complained-of statement was held to be irrelevant, and, thus, proof of malice was not material. Dixon v. Superior Court (1994, Cal App 4th Dist) 30 Cal App 4th 733, 36 Cal Rptr 2d 687, 1994 Cal App LEXIS 1223, review denied Dixon v. Orange County Superior Court (1995, Cal) 1995 Cal LEXIS 2174.

In an action for intentional and negligent interference with contractual relations and prospective economic advantage, libel, slander and trade libel brought by a firm, which had performed archaeological tests on a site believed by many Native American Indians to be an ancient village against a university professor who opposed development on the site through a letter-writing campaign, the application of CCP § 425.16, subd. (b) did not unconstitutionally deprive plaintiff of the right to trial by jury by requiring the court to weigh the evidence in ruling on the motion to strike, as the court does not weigh the evidence in ruling on the motion, and moreover, even if all of the plaintiff's evidence were accepted as true, because defendant's statements were entitled to absolute immunity, plaintiff still could not make a prima facie showing. Dixon v. Superior Court (1994, Cal App 4th Dist) 30 Cal App 4th 733, 36 Cal Rptr 2d 687, 1994 Cal App LEXIS 1223, review denied Dixon v. Orange County Superior Court (1995, Cal) 1995 Cal LEXIS 2174.

21. Duty of Trial Court

CCP § 425.16 does not, properly construed, obligate the court to weigh the evidence in violation of the right to a jury trial. The provision only requires the trial court to consider the plaintiff's affidavits for the purpose of determining whether sufficient evidence has been presented to demonstrate a prima facie case. In making this judgment, the trial

court's consideration of the defendant's opposing affidavits does not permit a weighing of those affidavits against the plaintiff's supporting evidence, but only a determination that they do not, as a matter of law, defeat that evidence. Lafayette Morehouse, Inc. v. Chronicle Publishing Co. (1995, Cal App 1st Dist) 37 Cal App 4th 855, 44 Cal Rptr 2d 46, 1995 Cal App LEXIS 762, review denied (1995, Cal) 1995 Cal LEXIS 7325, cert den (1996) 519 US 809, 136 L Ed 2d 136, 117 S Ct 53, 1996 US LEXIS 4658, superseded by statute as stated in Damon v. Ocean Hills Journalism Club (2000, Cal App 4th Dist) 85 Cal App 4th 468, 102 Cal Rptr 2d 205, 2000 Cal App LEXIS 943.

In making its determination, the trial court is required to consider the pleadings and the supporting and opposing affidavits stating the facts upon which the liability or defense is based (CCP § 425.16, subd. (b)). Discovery is stayed upon the filing of the motion (CCP § 425.16, subd. (g)). However, upon noticed motion and for good cause shown, the court may allow specified discovery. Church of Scientology v. Wollersheim (1996, Cal App 2d Dist) 42 Cal App 4th 628, 49 Cal Rptr 2d 620, 1996 Cal App LEXIS 87, review denied (1996, Cal) 1996 Cal LEXIS 2783, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

In a strategic lawsuit against public participation (SLAPP) action, the trial court is required to rule on the merits of a defendant's SLAPP motion, and to award attorney fees when defendant demonstrates that plaintiff's action falls within the provisions of CCP § 425.16(b) and plaintiff is unable to establish a reasonable probability of success. Pfeiffer Venice Properties v. Bernard (2002, Cal App 2d Dist) 101 Cal App 4th 211, 123 Cal Rptr 2d 647, 2002 Cal App LEXIS 4507.

Minute order granting defendant's motion to strike pursuant to CCP § 425.16 did not comply with the literal requirement under Cal Rules of Court, Rule 2(a)(1), that the document be entitled "Notice of Entry," where the words "Notice of Entry" appeared on page 13 of the 14-page order. Sunset Millennium Associates, LLC v. Le Songe, LLC (2006, Cal App 2d Dist) 138 Cal App 4th 256, 41 Cal Rptr 3d 273, 2006 Cal App LEXIS 473.

Appellants failed to explain why order issued by trial court granting respondent's anti-SLAPP motion to strike appellant's cross-complaint was inadequate where after the hearing, trial court issued one-page written order stating that appellants had not shown a likelihood of success on the merits on either of their causes of action for malicious prosecution and set forth its reasons for so concluding, and trial court stated in the order that appellants' request for a further statement of decision was denied; thus, although document was entitled an "order," it was apparent that trial court considered document to be a statement of decision and had concluded no further statement of decision was required, and appellants never argued that statement of decision was inadequate, which it was not. Lien v. Lucky United Properties Investment, Inc. (2008, 1st Dist) 2008 Cal App LEXIS 817.

22. Continuance

Nothing in CCP § 425.16 prevents the trial court from continuing the hearing to a later date so that the discovery it authorized can be completed when a reasonable exercise of judicial discretion dictates the necessity therefor. Lafayette Morehouse, Inc. v. Chronicle Publishing Co. (1995, Cal App 1st Dist) 37 Cal App 4th 855, 44 Cal Rptr 2d 46, 1995 Cal App LEXIS 762, review denied (1995, Cal) 1995 Cal LEXIS 7325, cert den (1996) 519 US 809, 136 L Ed 2d 136, 117 S Ct 53, 1996 US LEXIS 4658, superseded by statute as stated in Damon v. Ocean Hills Journalism Club (2000, Cal App 4th Dist) 85 Cal App 4th 468, 102 Cal Rptr 2d 205, 2000 Cal App LEXIS 943.

23. Cross-Complaints and Counterclaims

Although a cross-complaint may be subject to a motion to strike under California's anti-SLAPP suit statute (CCP § 425.16), not all cross-complaints qualify as SLAPP suits. Only those cross-complaints alleging a cause of action arising from the plaintiff's act of filing the complaint against the defendant and the subsequent litigation potentially qualify as SLAPP actions (CCP § 425.16, subds. (b) and (d)). Church of Scientology v. Wollersheim (1996, Cal App 2d Dist) 42 Cal App 4th 628, 49 Cal Rptr 2d 620, 1996 Cal App LEXIS 87, review denied (1996, Cal) 1996 Cal LEXIS 2783, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

The district court erred in finding that CCP § 425.16, subd. (b) and (c) (California's Anti-SLAPP statute for Strategic Lawsuits Against Public Participation) could not be applied to defendant's counterclaims. As to whether California's Anti-SLAPP law should be applied to the dismissal of those state law counterclaims, the appellate court observed that CCP § 425.16 was passed in response to concern about civil actions aimed at private citizens to deter or punish them for exercising their political or legal rights. (The counterclaims in question were for breach of duties imposed by fiduciary

obligations and loyalty, as well as by contract and statute and the implied covenant of good faith.) The court also noted that principles of discouragement of forum-shopping and avoidance of inequitable administration of the law, both favored application of California's Anti-SLAPP statute in federal cases. United States ex rel. Newsham v. Lockheed Missiles & Space Co. (1999, 9th Cir Cal) 171 F3d 1208, 1999 US App LEXIS 5135, amended (1999, 9th Cir Cal) 190 F3d 963, 1999 US App LEXIS 21656.

Where plaintiffs brought a qui tam action against defendant contractor under the False Claims Act (FCA), 31 USCS §§ 3729-3733, the district court erred in finding that California's Anti-Strategic Lawsuit Against Public Participation (SLAPP) statute, CCP § 425.16 could not be applied to defendant's state law counterclaims. The qui tam plaintiffs were entitled to bring a special motion to strike pursuant to § 425.16(b) and if successful, might be entitled to attorney's fees and costs pursuant to § 425.16(c). United States ex rel. Newsham v. Lockheed Missiles & Space Co. (1999, 9th Cir Cal) 190 F3d 963, 1999 US App LEXIS 21656, cert den (2000) 530 US 1203, 147 L Ed 2d 232, 120 S Ct 2196, 2000 US LEXIS 3656.

Where a judgment debtor's cross-complaint against an attorney for abuse of process was based on the communicative act of filing allegedly false declarations of service to obtain a default judgment, the attorney's postjudgment enforcement efforts were protected by the litigation privilege of CC § 47(b); therefore, the trial court properly granted the attorney's special motion to strike the cross-complaint pursuant to CCP § 425.16. Rusheen v. Cohen (2006) 37 Cal 4th 1048, 39 Cal Rptr 3d 516, 128 P3d 713, 2006 Cal LEXIS 2542.

Trial court, in a patient's medical malpractice action against a plastic surgeon, should have granted the patient's special motion to strike the surgeon's cross-complaint that alleged that he was defamed and suffered loss of business as a result of false and misleading statements appearing on the patient's Web site where the surgeon, who was a limited purpose public figure based on his sought-after prominence as an expert in and advocate for plastic surgery as a means of personal enhancement, failed to meet his burden of making a prima facie showing that the statements in the Web site were both false and published with actual malice. Because the before and after photographs of the patient on the Web site were substantially accurate representations of what took place with respect to the surgeon's surgery, they were not defamatory as a matter of law, and although the surgeon alleged that the Web site falsely suggested that he was compensated for the procedures "under the table," nowhere on the Web site did the patient ever state or imply that the surgeon accepted cash under the table, and the cross-complaint contained no explanation how a statement made about doctors generally suggested that the surgeon engaged in such unethical behavior. Gilbert v. Sykes (2007, Cal App 3d Dist) 147 Cal App 4th 13, 53 Cal Rptr 3d 752, 2007 Cal App LEXIS 107.

Corporation's motion to strike a cross-complaint pursuant to CCP § 425.16 was properly granted where the gravamen of the cross-complaint was directed at the corporation's filing of a complaint - a protected activity; incidental reference to one potentially nonprotected activity could not save the entire cross-complaint from the § 425.16 motion. Raining Data Corp. v. Barrenechea (2009, 4th Dist) 2009 Cal App LEXIS 1178.

Corporation's cross-complaint against a city was not subject to a special motion to strike under CCP § 425.16 because the essential issue in the cross-complaint concerned a private matter between the corporation and the city that was not a public issue or of public interest. Cross-complaint did not concern the application of backfilling standards and the city's land use guidelines to landfill operations in the city generally, but instead, concerned whether the city could use the guidelines to alter the backfilling standards for a particular landfill operation. USA Waste of California, Inc. v. City of Irwindale (2010, 2d Dist) 2010 Cal App LEXIS 570.

Even if the city's issuance of a notice of violation (NOV) was protected speech within the meaning of the CCP § 425.16 the city's contention that the causes of action in a corporation's cross-complaint against the city were based on protected speech failed because those causes of action were not based on the issuance of the NOV. USA Waste of California, Inc. v. City of Irwindale (2010, 2d Dist) 2010 Cal App LEXIS 570.

24. Joinder

A notice of joinder does not alone constitute a motion to strike under CCP § 425.16. Decker v. U.D. Registry, Inc. (2003, Cal App 4th Dist) 105 Cal App 4th 1382, 129 Cal Rptr 2d 892, 2003 Cal App LEXIS 156, superseded by statute as stated in Hall v. Time Warner, Inc. (2007, Cal App 2d Dist) 153 Cal App 4th 1337, 63 Cal Rptr 3d 798, 2007 Cal App LEXIS 1280.

25. Different Causes of Action

A special motion to strike under CCP § 425.16 can apply to one cause of action when other claims remain to be resolved. The express language of § 425.16(b)(1) allowed a single cause of action to be stricken. The fact that other claims remained did not bar a trial court from granting a § 425.16 motion to strike. Shekhter v. Financial Indemnity Co. (2001, Cal App 2d Dist) 89 Cal App 4th 141, 106 Cal Rptr 2d 843, 2001 Cal App LEXIS 365.

In an action arising out of a failed corporate merger, the fact defendants' SLAPP motion (CCP § 425.16) was properly denied as to causes of action for fraud, misrepresentation, negligence, and interference with contractual relations did not preclude granting the motion as to the remaining causes of action for trade libel, interference with prospective economic advantage, abuse of process, conspiracy, and injunctive relief, where the claims were not factually or legally intertwined, but were instead based on entirely different conduct. Moreover, as to the causes of action for which the SLAPP motion was denied, the reason for such conclusion was not that plaintiff had shown a probability of prevailing on those claims, but that the claims were not subject to the SLAPP statute; hence plaintiff was not required to show a probability of prevailing. ComputerXpress, Inc. v. Jackson (2001, Cal App 4th Dist) 93 Cal App 4th 993, 113 Cal Rptr 2d 625, 2001 Cal App LEXIS 2012.

Defendant was entitled to reasonable attorney fees pursuant to CCP § 425.16(c) for his motion to dismiss federal claims insofar as the work performed on that motion was premised on the Noerr-Pennington doctrine and/or litigation privilege, but not otherwise; if the plaintiff had not filed federal causes of action, a special motion to strike would have been sufficient to close the case and she should not be permitted to avoid imposition of attorney fees for a motion to dismiss when it was her decision to bring federal claims that were inextricably intertwined with the state law claims and subject to the same or similar defenses. Kearney v. Foley & Lardner (2008, SD Cal) 2008 US Dist LEXIS 20101.

Because a defendant achieved the dismissal of all of the plaintiff's claims, awarding defendant all attorney fees associated with the right to petition would advance the public policy underlying the anti-SLAPP statute, which was enacted to allow early dismissal of meritless first amendment cases aimed at chilling expression through costly, time-consuming litigation; accordingly, the defendant was entitled to reasonable attorney fees for his motion to dismiss the federal claims insofar as the work performed on the dismissal motion was premised on the Noerr-Pennington doctrine and/or litigation privilege, but not otherwise. Kearney v. Foley & Lardner (2008, SD Cal) 2008 US Dist LEXIS 21115.

26. Voluntary Dismissal

Where (1) plaintiff filed a civil action for damages against defendant, (2) defendant moved to dismiss the action pursuant to CCP § 425.16, (3) a hearing was held on the SLAPP motion and, at the conclusion of the hearing, the trial court took the motion under submission, and (4) while the motion was under submission, plaintiff filed with the clerk a voluntary dismissal of the action with prejudice pursuant to CCP § 581, the trial court erred when, despite the filing of the dismissal, it granted the SLAPP motion. The trial court was without authority to strike the complaint once the dismissal with prejudice had been filed since it had not yet ruled on the § 425.16 motion. However, the trial court did not err when it awarded defendant attorney's fees and costs. Kyle v. Carmon (1999, Cal App 3d Dist) 71 Cal App 4th 901, 84 Cal Rptr 2d 303, 1999 Cal App LEXIS 440.

Plaintiff was a "prevailing party" despite defendants' belated voluntary dismissal of counterclaims premised on a letter that fell within the absolute privilege afforded to communications regarding judicial proceedings; defendant was not absolved of liability for attorney's fees and costs incurred by plaintiff in attempting to strike the claims pursuant to CCP § 425.16(c). Techs., Inc. v. Guagliardo (2000, CD Cal) 210 F Supp 2d 1138, 2000 US Dist LEXIS 18314.

Trial court erred in refusing to consider limited partners' motion to recover attorney fees and costs under the anti-SLAPP (strategic lawsuit against public participation) statute, CCP § 425.16(a). The voluntary dismissal by the partnership and general partners of their action prior to the filing of the anti-SLAPP motion did not deprive the trial court of jurisdiction. S. B. Beach Properties v. Berti (2004, Cal App 2d Dist) 120 Cal App 4th 1001, 16 Cal Rptr 3d 204, 2004 Cal App LEXIS 1176, review gr, depublished (2004) 20 Cal Rptr 3d 692, 100 P3d 1, 2004 Cal LEXIS 10267, rev'd, superseded (2006) 39 Cal 4th 374, 46 Cal Rptr 3d 380, 138 P3d 713, 2006 Cal LEXIS 9285.

Because trial had not commenced for purposes of CCP § 581 in an attorney fee dispute when the law firm voluntarily dismissed its complaint while a CCP § 425.16, anti-SLAPP motion, that it had failed to oppose was pending, the dismissal was effective upon filing, and the trial court could not rule on the anti-SLAPP motion. Law Offices of Andrew L. Ellis v. Yang (2009, 2d Dist) 178 Cal App 4th 869, 2009 Cal App LEXIS 1723.

27. Declaratory Relief

In declaratory relief actions challenging the validity of a proposed ballpark initiative measure in which the trial court properly granted plaintiffs' motions for summary judgments, the trial court was correct in determining that SLAPP motions to strike (CCP § 425.16) were moot. Since plaintiffs' declaratory relief actions presented purely legal questions about the validity of the subject matter of the lawsuits, the SLAPP issue of whether the plaintiffs were more probably than not going to prevail in their actions could appropriately be determined by the use of related summary judgment proceedings. The question was not whether the defendant proponents were likely to prevail in their defense of the measure. Under the SLAPP statute, the question was whether the plaintiffs who were challenging the ballot measure were more likely to prevail at trial or at pretrial motion proceedings. City of San Diego v. Dunkl (2001, Cal App 4th Dist) 86 Cal App 4th 384, 103 Cal Rptr 2d 269, 2001 Cal App LEXIS 30, review denied (2001, Cal) 2001 Cal LEXIS 3036, cert den (2001) 534 US 892, 151 L Ed 2d 148, 122 S Ct 209, 2001 US LEXIS 6596.

Where defendant failed to meet her burden to show that plaintiffs' cause of action for declaratory relief arose from activity protected by the anti-SLAPP (strategic lawsuit against public participation) statute, CCP § 425.16, the trial court correctly denied her anti-SLAPP motion. The declaratory relief cause of action arose from defendant's arbitration demand because plaintiffs had sought a declaration that they did not have to arbitrate a negligence claim against them. 21 Chamberlain & Assocs. v. Haberman (2009, 4th Dist) 2009 Cal App LEXIS 558.

28. Timeliness

Because the Legislature specified that the anti-SLAPP suit law was to be construed broadly, the provision that a special motion to strike could be brought within 60 days of the service of the complaint (CCP § 425.16(f)) included amended as well as original complaints. And when the complaint was served by mail, the moving party had an extra five days to file an anti-SLAPP suit motion. Accordingly, a motion to strike, filed 64 days after the service of the first amended complaint by mail, was timely. Lam v. Ngo (2001, Cal App 4th Dist) 91 Cal App 4th 832, 111 Cal Rptr 2d 582, 2001 Cal App LEXIS 652.

Denial of SLAPP motions was required where the motions were noticed for hearing more than 30 days after they were served, the movant did not show the condition of the superior court's docket required a hearing more than 30 days after the date of service. Use of the word "shall" in the phrase the "motion shall be noticed for hearing not more than 30 days after service" in CCP § 425.16(f) was mandatory. Decker v. U.D. Registry, Inc. (2003, Cal App 4th Dist) 105 Cal App 4th 1382, 129 Cal Rptr 2d 892, 2003 Cal App LEXIS 156, superseded by statute as stated in Hall v. Time Warner, Inc. (2007, Cal App 2d Dist) 153 Cal App 4th 1337, 63 Cal Rptr 3d 798, 2007 Cal App LEXIS 1280.

Trial court properly denied defendants' anti-SLAPP motion because it was not heard within 30 days after service of the motion, as required by CCP § 425.16(f), and the ambiguous declaration of an assistant to the defense attorneys did not establish that the trial court's docket conditions required a later hearing; moreover, defendants could have asked the trial court for a hearing by ex parte motion or could have waited to serve the motion until less than 30 days before the scheduled hearing. Fair Political Practices Com. v. American Civil Rights Coalition, Inc. (2004, Cal App 3d Dist) 121 Cal App 4th 1171, 18 Cal Rptr 3d 157, 2004 Cal App LEXIS 1416, superseded by statute as stated in Hall v. Time Warner, Inc. (2007, Cal App 2d Dist) 153 Cal App 4th 1337, 63 Cal Rptr 3d 798, 2007 Cal App LEXIS 1280.

SLAPP motion was properly denied as untimely where it was brought more than 60 days after a bankruptcy court remanded the case to state court. The court reversed a sanctions award against defendants, however, because the trial court failed to justify the order as required by CCP §§ 425.16(c) and 128.5; the trial court had merely stated it found the defendants' justification for their late filing "unpersuasive." Morin v. Rosenthal (2004, Cal App 2d Dist) 122 Cal App 4th 673, 19 Cal Rptr 3d 149, 2004 Cal App LEXIS 1585, modified, rehearing denied (2004) 2004 Cal. App. LEXIS 1730, review denied (2004) 2004 Cal. LEXIS 12010.

Procedural defects in a motion to strike did not require dismissal of defendants' appeal from the denial of the motion to strike. The 30-day period of CCP § 425.16(f) was not jurisdictional in the fundamental sense of subject matter jurisdiction or personal jurisdiction; therefore, error could be and had been waived. 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.

In an action alleging state law claims of unfair competition, trade libel, and tortious interference with prospective economic advantage filed by plaintiff internet software company against defendant spy-ware provider, the provider's motion to strike under CCP § 425.16, was allowed although it was not filed within the 60 days under CCP § 425.16(f), because the case had not proceeded in any material respect with the exception of litigating the software company's motion for a preliminary injunction, and the delay in filing the motion to strike reflected prudence on the part of the spy-

ware provider because the court's ruling on the software company's motion for a preliminary injunction would, in most instances, have resulted in the voluntary dismissal of the lawsuit, and indeed, in light of the denial of the preliminary injunction, the spy-ware provider delayed the filing of the anti-SLAPP motion in the hope that the software company might appreciate the lack of merit in its lawsuit. New.Net, Inc. v. Lavasoft (2004, CD Cal) 356 F Supp 2d 1090, 2004 US Dist LEXIS 27434.

Where a hearing on an anti-SLAPP motion to strike a complaint for breach of contract and conversion was scheduled, with both parties' consent, for a date beyond the 30-day period provided in CCP § 425.16, subd. (f), the right to object to the untimely hearing was waived by consent, in accordance with CC § 3515. Greka Integrated, Inc. v. Lowrey (2005, Cal App 2d Dist) 133 Cal App 4th 1572, 35 Cal Rptr 3d 684, 2005 Cal App LEXIS 1790.

Plaintiff opposing a late anti-SLAPP motion need not demonstrate prejudice. Olsen v. Harbison (2005, Cal App 3d Dist) 134 Cal App 4th 278, 35 Cal Rptr 3d 909, 2005 Cal App LEXIS 1817, review denied (2006, Cal) 2006 Cal LEXIS 1971.

Defendants violated the express 30-day time limit of CCP § 425.16(f) because they filed and served their motion on November 24, 2004, for a January 31, 2005, hearing date and did not request an earlier date by ex parte application. The court rejected the argument that defendants could not wait to serve the motion until after the complaint had been answered. Hoskins v. Hogstad (2006, Cal App 3d Dist) 136 Cal App 4th 1182, 2006 Cal App LEXIS 213, op withdrawn by order of the ct, (2006, Cal App 3d Dist) 2006 Cal App LEXIS 278, rehearing denied (2006) 2006 Cal. App. LEXIS 492.

Nothing in CCP § 425.16 bars service of the motion after the service of the answer. Hoskins v. Hogstad (2006, Cal App 3d Dist) 136 Cal App 4th 1182, 2006 Cal App LEXIS 213, op withdrawn by order of the ct, (2006, Cal App 3d Dist) 2006 Cal App LEXIS 278, rehearing denied (2006) 2006 Cal. App. LEXIS 492.

Time frames set forth in CCP § 435 do not apply to motions under CCP § 425.16, which has its own time limitations. Hoskins v. Hogstad (2006, Cal App 3d Dist) 136 Cal App 4th 1182, 2006 Cal App LEXIS 213, op withdrawn by order of the ct, (2006, Cal App 3d Dist) 2006 Cal App LEXIS 278, rehearing denied (2006) 2006 Cal. App. LEXIS 492.

Order granting a special motion to strike under CCP § 425.16, the anti-Strategic Lawsuit Against Public Participation (anti-SLAPP) statute, was not an interim order, even though it included no ruling on defendant's request for attorney fees and costs, because defendant's failure to prompt a ruling amounted to a forfeiture of its request. Therefore, the court could not review the merits of plaintiffs' appeal from a later order, which included the attorney fee decision, because the appeal was not filed within 60 days of the original order. Maughan v. Google Technology, Inc. (2006, Cal App 2d Dist) 143 Cal App 4th 1242, 49 Cal Rptr 3d 861, 2006 Cal App LEXIS 1574, review denied (2007, Cal) 2007 Cal LEXIS 1438.

In a defamation case, the trial court did not abuse its discretion under CCP § 425.16(f) when it denied a motion for reconsideration and a renewed motion to strike, filed about six weeks before the trial date; although a motion for reconsideration under CCP § 1008(b) is permitted in the context of anti-SLAPP motions, timeliness is important. Kunysz v. Sandler (2007, Cal App 4th Dist) 146 Cal App 4th 1540, 53 Cal Rptr 3d 779, 2007 Cal App LEXIS 89, review denied (2007, Cal) 2007 Cal LEXIS 4703.

Trial court abused its discretion in granting defendant's application to file a late anti-SLAPP motion under CCP § 425.16 where: (1) Delay was extreme, as it was more than two years after plaintiffs filed their complaint; (2) Defendant did not articulate any extenuating circumstances justifying a late filing; (3) Trial court's reasons for granting the application were unrelated to the purpose of the SLAPP statute; and (4) Potential prejudice to plaintiff, given the lengthy delay occasioned by defendant's appeal, was great; rather than advancing the anti-SLAPP statute's purpose of promptly resolving SLAPP suits, trial court's ruling had the effect of undermining that statute. Platypus Wear, Inc. v. Goldberg (2008, 4th Dist) 2008 Cal App LEXIS 1396.

In exercising discretion in considering party's request to file an anti-SLAPP motion after the 60-day period stated in CCP § 425.16(f), trial court must carefully consider whether allowing such a filing is consistent with the primary purpose of the anti-SLAPP statute, i.e., ensuring the prompt resolution of lawsuits that impinge on a defendant's free speech rights. Platypus Wear, Inc. v. Goldberg (2008, 4th Dist) 2008 Cal App LEXIS 1396.

29. Right to Amend

In an unfair business practice action by an insurer against various medical entities, alleging fraud and the overtreatment of patients, in which defendants filed a defamation-based cross-complaint, the trial court properly struck the

cross-complaint, as a SLAPP suit (CCP § 425.16), without leave to amend. The anti-SLAPP statute made no provision for amending the complaint once the court found the requisite connection to First Amendment speech, and such a right would not be implied. Allowing a SLAPP plaintiff leave to amend once the court found the prima facie showing had been met would completely undermine the statute by providing the pleader a ready escape from CCP § 425.16's quick dismissal remedy. Simmons v. Allstate Ins. Co. (2001, Cal App 3d Dist) 92 Cal App 4th 1068, 112 Cal Rptr 2d 397, 2001 Cal App LEXIS 801.

There is no express or implied right in CCP § 425.16 to amend a pleading to avoid a SLAPP motion; it is the public policy of California that complaints arising from the exercise of free speech rights be evaluated at an early stage, and this cannot be defeated by filing an amendment even as a matter of right pursuant to CCP § 472. Therefore, plaintiff's filing of an amended cross-complaint prior to a hearing on a defendant's SLAPP motion did not render the SLAPP motion moot, and the trial court did not err in addressing the merits of the motion and awarding attorney fees and costs. Sylmar Air Conditioning v. Pueblo Contracting Services, Inc. (2004, Cal App 2d Dist) 122 Cal App 4th 1049, 18 Cal Rptr 3d 882, 2004 Cal App LEXIS 1619.

Granting a defendant's anti-Strategic Lawsuits Against Public Participation motion to strike a plaintiff's initial complaint without granting the plaintiff leave to amend would directly collide with Fed. R. Civ. P. 15(a)'s policy favoring liberal amendment. Verizon Del., Inc. v. Covad Communs. Co. (2004, 9th Cir Cal) 377 F3d 1081, 2004 US App LEXIS 15453.

In an action arising out of a dispute as to the plaintiff's possible infringement of the trademarks of an organization encouraging recycling, the plaintiff met its burden to show that the recycling organization's counterclaim for unfair competition under B & P C § 17200 arose out of speech acts in connection with an issue of public interest under CCP § 425.16(e)(3), but the record did not explain how the plaintiff had infringed the defendant's marks; because of the incomplete record and the existence of a preliminary injunction granted by another court, the court ordered the recycling organization to file amended pleadings that specified the legal and factual basis for its unfair competition claim. FreecycleSunnyvale v. Freecycle Network, Inc. (2006, ND Cal) 2006 US Dist LEXIS 54374.

Insured's motion to dismiss an insurer's answer and the insured's CCP § 425.16 motion to strike the insurer's counterclaim were moot with respect to the counterclaim because the insurer amended its counterclaim as of right under Fed. R. Civ. P. 15(a) while the insured's motions were pending, and the amended counterclaim omitted many of the allegations at issue in the instant motions. In federal court, a plaintiff is permitted to amend as of right under Fed. R. Civ. P. 15(a) before a CCP § 425.16 motion is considered. IDEC Corp. v. Am. Motorists Ins. Co. (2006, ND Cal) 2006 US Dist LEXIS 57975.

In a real estate dispute, although a buyer of real property amended his cross-complaint before the trial court ruled on a special motion to strike his causes of action for conversion and intentional interference with prospective economic advantage, the amended claims had to be dismissed when the initial claims were stricken. Salma v. Capon (2008, 1st Dist) 2008 Cal App LEXIS 513.

Where claims are amended before the trial court rules on a special motion to strike, the amended claims are subject to automatic dismissal upon the trial court's dismissal of the initial claims. Salma v. Capon (2008, 1st Dist) 2008 Cal App LEXIS 513.

30. Fees and Costs

In a libel action in which defendants prevailed on their motion to strike plaintiff's complaint on the ground that plaintiff could not establish a probability of prevailing on the claim (CCP § 425.16), the trial court did not err in awarding defendants $15,000 in attorney fees and costs rather than the $23,847 they requested. While CCP § 425.16, subd. (c), states that a plaintiff who establishes that a motion to strike is frivolous or solely intended to cause delay may recover costs and reasonable attorney fees, but gives no indication that fees must be reasonable, to construe the provision as preventing a trial court from awarding fees to defendant in an amount that it deemed reasonable would mandate the court to make what might be an unreasonable award. Such an intention cannot be ascribed to the Legislature. Robertson v. Rodriguez (1995, Cal App 2d Dist) 36 Cal App 4th 347, 42 Cal Rptr 2d 464, 1995 Cal App LEXIS 599.

A statute authorizing an attorney fee award at the trial court level includes appellate attorney fees unless the statute specifically provides otherwise. Under CCP § 425.16, subd. (c) a prevailing defendant on a special motion to strike a SLAPP suit is entitled to recover his or her attorney fees and costs. Since the statute does not preclude recovery of ap-

pellate attorney fees by a prevailing defendant-respondent, they are recoverable. Evans v. Unkow (1995, Cal App 1st Dist) 38 Cal App 4th 1490, 45 Cal Rptr 2d 624, 1995 Cal App LEXIS 973.

After dismissing a libel complaint by a university and others against a newspaper and its reporters pursuant to CCP § 425.16, the trial court's award to defendants of attorney fees and costs under subd. (c) of the statute was not improper. Moreover, plaintiffs' due process rights were not violated by the fact that billing statements submitted by defendants for fees concealed information protected by the attorney-client privilege. However, defendants were only entitled to recover costs and fees for the motion to strike, not the entire libel suit. Lafayette Morehouse, Inc. v. Chronicle Publishing Co. (1995, Cal App 1st Dist) 39 Cal App 4th 1379, 46 Cal Rptr 2d 542, 1995 Cal App LEXIS 1088, review denied (1996, Cal) 1996 Cal LEXIS 999.

Although the language of subd. (c) is ambiguous, a Senate Committee on the Judiciary report and a Senate floor report showed the Legislature intended that a prevailing defendant be allowed to recover fees and costs only on the motion to strike, not the entire suit. Lafayette Morehouse, Inc. v. Chronicle Publishing Co. (1995, Cal App 1st Dist) 39 Cal App 4th 1379, 46 Cal Rptr 2d 542, 1995 Cal App LEXIS 1088, review denied (1996, Cal) 1996 Cal LEXIS 999.

Following the trial court's granting of defendant's special motion to strike his former church's complaint against him and dismissal of the action with prejudice, pursuant to CCP § 425.16, the trial court did not abuse its discretion in awarding attorney fees pursuant to CCP § 425.16, subd. (c), in the amount of $130,506.71. The church failed to present any evidence that the award was based upon unnecessary or duplicative work or any other improper basis. Moreover, substantial evidence supported the award, given that defense counsel submitted declarations of their experience and expertise providing information supportive of the rates charged by counsel as well as itemized accountings of attorney time, and defendant submitted the declaration of an expert on attorney fees who opined that the rates requested by defendant's counsel were well within the range of market rates charged by attorneys of equivalent experience, skill, and expertise. Church of Scientology v. Wollersheim (1996, Cal App 2d Dist) 42 Cal App 4th 628, 49 Cal Rptr 2d 620, 1996 Cal App LEXIS 87, review denied (1996, Cal) 1996 Cal LEXIS 2783, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

A trial court did not abuse its discretion in awarding over $27,000 in attorney fees to a law firm that prevailed in its special motion to strike a recording company's defamation complaint as an anti-SLAPP suit (CCP § 425.16). While the award was generous, the trial court did not exceed the bounds of reason, given that it included attorney fees and costs incurred in connection with the appeal, and CCP § 425.16 does not preclude recovery of appellate fees and costs. Dove Audio v. Rosenfeld, Meyer & Susman (1996, Cal App 2d Dist) 47 Cal App 4th 777, 54 Cal Rptr 2d 830, 1996 Cal App LEXIS 825.

Under CCP § 425.16, subd. (c), which provides that the prevailing party on a motion to dismiss an anti-SLAPP suit (strategic lawsuit against public participation) is entitled to attorney fees, a defendant who successfully brings an anti-SLAPP motion is not barred from recovering attorney fees that were paid by a third party. Macias v. Hartwell (1997, Cal App 2d Dist) 55 Cal App 4th 669, 64 Cal Rptr 2d 222, 1997 Cal App LEXIS 444, review denied (1997, Cal) 1997 Cal LEXIS 5053.

In an action by the owners of an apartment complex against neighboring homeowners for defamation, trade libel, and intentional and negligent infliction of emotional distress, where the defendants filed a special motion to strike plaintiffs' complaint under CCP § 425.16, claiming this was a strategic lawsuit against public participation (SLAPP), because the defendants had filed nuisance abatement actions against the apartment complex owners in small claims court, and where the plaintiffs responded by dismissing their complaint, the trial court properly awarded the defendants attorney's fees against the plaintiffs under the SLAPP statute, finding that the defendants were the prevailing parties on the special motion to strike. When the plaintiff voluntarily dismisses an alleged SLAPP suit while a special motion to strike is pending, the trial court has discretion to determine whether the defendant is the prevailing party for purposes of attorney's fees under CCP § 425.16, subd. (c). Coltrain v. Shewalter (1998, Cal App 4th Dist) 66 Cal App 4th 94, 77 Cal Rptr 2d 600, 1998 Cal App LEXIS 723.

A defendant, moving specially under CCP § 425.16, the anti-SLAPP statute, to strike a cause of action arising from a statement made before, or in connection with an issue under consideration by, a legally authorized official proceeding is not required to demonstrate separately that the statement concerned an issue of public significance. This result is in accord with the plain language of the statute and in consonance with discernible legislative intent, and it is supported for reasons of sound public policy. Medical providers could not avoid liability under CCP § 425.16(a) for the attorney's fees of the whistle blower by dismissing the providers' cross-complaint that qualified as a Strategic Lawsuit Against Public Participation (SLAPP) against the whistle blower prior to the hearing on the whistle blower's motion to strike the cross-

complaint; the whistle blower's right to the fees depended on the merits of the motion to strike and not awarding the fees wrongfully circumvented the purpose of discouraging improper lawsuits and would have deprived the whistle blower of the compensation to which she would have been entitled if the motion had been granted; further, it was erroneous to hold that the whistle blower could only have recovered attorney's fees if she filed a motion for them under CCP § 128.7 because CCP § 128.7(c)(1) provided that a dismissal within 30 days of a motion for fees precluded awarding those fees. Liu v. Moore (1999, Cal App 2d Dist) 69 Cal App 4th 745, 81 Cal Rptr 2d 807, 1999 Cal App LEXIS 76.

CCP § 425.16 does not prohibit an award of appellate attorney's fees. However, it specifically states that a defendant is only entitled to attorney's fees if he or she prevails on the motion to strike the complaint. Therefore, if appellate were to prevail on her motion to strike, upon remand of the case for hearing on that motion, the trial court should award reasonable attorney's fees to her for her trial court efforts (both before and after the appeal), and her efforts on the appeal. Liu v. Moore (1999, Cal App 2d Dist) 69 Cal App 4th 745, 81 Cal Rptr 2d 807, 1999 Cal App LEXIS 76.

Where the trial court did not err in granting a motion to strike a defamation complaint under CCP § 425.16, it was also correct in ordering defendant to pay defendant's attorney fees, defendant having been the prevailing party within the meaning of CCP § 425.16(c). Conroy v. Spitzer (1999, Cal App 4th Dist) 70 Cal App 4th 1446, 83 Cal Rptr 2d 443, 1999 Cal App LEXIS 286.

The lodestar adjustment method, including the use of fee enhancements, was applicable to a fee award under CCP § 425.16, the anti-SLAPP statute. In the absence of any indication by the Legislature of an intent to specially limit attorney fees in anti-SLAPP actions, a per se rule against such fee enhancement would not be imposed. However, the trial court was not required to include a fee enhancement for contingent risk, exceptional skill, or other factors and should not consider these factors to the extent they were already encompassed within the lodestar. The trial court should award a multiplier for exceptional representation only when the quality of representation far exceeded the quality of representation that would have been provided by an attorney of comparable skill and experience billing at the hourly rate used in the lodestar calculation. Ketchum v. Moses (2001) 24 Cal 4th 1122, 104 Cal Rptr 2d 377, 17 P3d 735, 2001 Cal LEXIS 916, rehearing denied (2001, Cal) 2001 Cal LEXIS 3277.

In order to effectuate the purpose of the anti-SLAPP statute (CCP § 425.16) and the Legislature's intent to deter SLAPP suits, a defendant who appears in a SLAPP action in propria persona and later retains specially appearing counsel who successfully brings a special motion to strike the complaint is entitled to recover an award of reasonable attorney fees under the mandatory provisions of § 425.16(c) in order to compensate the retained counsel for the legal services provided in connection with both the special motion to strike and the recovery of attorney fees and costs. Dowling v. Zimmerman (2001, Cal App 4th Dist) 85 Cal App 4th 1400, 103 Cal Rptr 2d 174, 2001 Cal App LEXIS 12.

The prevailing defendants in a SLAPP suit were entitled to recover attorney fees (CCP § 425.16(c), even though defense counsel agreed to a partial pro bono fee arrangement that relieved defendants, but not their insurers, of their obligation to satisfy counsel's accrued fees. The statute drew no distinction between fees for which the prevailing defendant was liable and those which had been accrued on behalf of a prevailing defendant. In addition, the recovery of fees by a defendant who successfully brought an anti-SLAPP motion, regardless of whether defense costs were underwritten by another, was consistent with the statutory purpose. Separate language in § 425.16 that awarded attorney fees to a prevailing plaintiff made it clear that a plaintiff need not have paid the fees in order to receive an award, and there was no reason for more favorable treatment for plaintiffs than for the defendants for whose benefit the statute was enacted. Rosenaur v. Scherer (2001, Cal App 3d Dist) 88 Cal App 4th 260, 105 Cal Rptr 2d 674, 2001 Cal App LEXIS 265.

A motion for costs and attorney fees pursuant to CCP § 425.16 was improperly denied on grounds that no documentation of the amount of fees and costs incurred accompanied the special motion to strike. American Humane Assn. v. Los Angeles Times Communications (2001, Cal App 2d Dist) 92 Cal App 4th 1095, 112 Cal Rptr 2d 488, 2001 Cal App LEXIS 799.

There are three ways a special motion to strike attorney fee issue can be raised. A successful defendant could make a subsequent noticed motion, seek an attorney fee and cost award at the same time as the special motion to strike is litigated, or as part of a cost memorandum. The successful defendant who specially moves to strike pursuant to CCP § 425.16 has the option of utilizing a separate noticed attorney fee motion. The trial court can not deny a CCP § 425.16 attorney fee motion because the defendant seeks to litigate that issue in a separate subsequently filed noticed motion. American Humane Assn. v. Los Angeles Times Communications (2001, Cal App 2d Dist) 92 Cal App 4th 1095, 112 Cal Rptr 2d 488, 2001 Cal App LEXIS 799.

In an action arising out of a failed corporate merger in which defendants' SLAPP motion was determined to be meritorious as to five out of the nine causes of action to which it was directed, defendants clearly prevailed, at least as to those five causes of action, and were consequently entitled to recover attorney fees and costs incurred in moving to strike the claims on which they prevailed, but not fees and costs incurred in moving to strike the remaining claims. The differential standard for awarding fees under CCP § 425.16(c) reflected a preference for compensating parties who furthered the public policies underlying the SLAPP statute through their litigation efforts. Accordingly, defendants were entitled to be considered prevailing parties, notwithstanding their partial success on their SLAPP motion. ComputerXpress, Inc. v. Jackson (2001, Cal App 4th Dist) 93 Cal App 4th 993, 113 Cal Rptr 2d 625, 2001 Cal App LEXIS 2012.

CCP § 425.16 permits a defendant to recover his attorney's fees and costs for bringing a successful motion to strike in a so-called strategic lawsuit against public participation. Lolley v. Campbell (2002) 28 Cal 4th 367, 121 Cal Rptr 2d 571, 48 P3d 1128, 2002 Cal LEXIS 4350, rehearing denied (2002, Cal) 2002 Cal LEXIS 6236.

CCP § 425.16 permits recovery of attorney fees that have accrued in representing the defendants notwithstanding counsel's agreement not to look to defendants for payment. Lolley v. Campbell (2002) 28 Cal 4th 367, 121 Cal Rptr 2d 571, 48 P3d 1128, 2002 Cal LEXIS 4350, rehearing denied (2002, Cal) 2002 Cal LEXIS 6236.

CCP § 425.16(c) is a mandatory provision, and the court refuse a citizen's invitations to rewrite the statute so as to exclude governmental entities from the class of defendant entitled to a mandatory attorney fee award. Schroeder v. Irvine City Council (2002, Cal App 4th Dist) 97 Cal App 4th 174, 118 Cal Rptr 2d 330, 2002 Cal App LEXIS 2493, review denied (2002, Cal) 2002 Cal LEXIS 4369.

In an action to prevent or limit anti-abortion demonstrations on or near plaintiff's facilities, defendant, who prevailed on a motion to strike, pursuant to CCP § 425.16, was entitled to recover attorney fees reasonably incurred in defending against plaintiff's appeal, even though plaintiff dismissed its appeal before filing opening briefs. Wilkerson v. Sullivan (2002, Cal App 4th Dist) 99 Cal App 4th 443, 121 Cal Rptr 2d 275, 2002 Cal App LEXIS 4299.

Trial court erred in determining that, having dismissed sua sponte plaintiff's action at a hearing on defendants' strategic lawsuit against public participation (SLAPP), it was without jurisdiction to award defendants their attorney fees; the defendants were entitled to a ruling on the merits of their SLAPP motion. Pfeiffer Venice Properties v. Bernard (2002, Cal App 2d Dist) 101 Cal App 4th 211, 123 Cal Rptr 2d 647, 2002 Cal App LEXIS 4507.

After being dismissed from a manufacturer's defamation suit, a physician who had criticized the manufacturer's dietary supplement obtained an attorney fees award based on California's anti-SLAPP statute, CCP § 425.16. The physician was a prevailing party; all of the claims against the physician were subject to the anti-SLAPP motion. Fed. R. Civ. P. 12(h) required the physician to raise the defenses of lack of personal jurisdiction and improper venue in the motion to dismiss with the anti-SLAPP motion or suffer a waiver of those defenses, and any failure of the physician to mitigate damages was de minimis when compared to the manufacturer's actions. Metabolife Int'l., Inc. v. Wornick (2002, SD Cal) 213 F Supp 2d 1220, 2002 US Dist LEXIS 14977.

Where the court's written order awarding attorney fees under CCP § 425.16(c) stated only that consumer credit reporting agency's SLAPP motions were "frivolous," the court's order did no more than recite the words of the statute and was insufficient to comply with the requirements of CCP § 128.5(c) that the court recite in detail the conduct or circumstances justifying the order. Decker v. U.D. Registry, Inc. (2003, Cal App 4th Dist) 105 Cal App 4th 1382, 129 Cal Rptr 2d 892, 2003 Cal App LEXIS 156, superseded by statute as stated in Hall v. Time Warner, Inc. (2007, Cal App 2d Dist) 153 Cal App 4th 1337, 63 Cal Rptr 3d 798, 2007 Cal App LEXIS 1280.

Order awarding attorney fees under CCP § 425.16(c) after a finding that the consumer credit reporting agency's SLAPP motions were "frivolous" was an abuse of discretion; the record did not support a finding of frivolousness because the residential tenants that sued the credit reporting agency never contended that the agency had failed to meet its burden of making a threshold showing that their claims were subject to CCP § 425.16. Decker v. U.D. Registry, Inc. (2003, Cal App 4th Dist) 105 Cal App 4th 1382, 129 Cal Rptr 2d 892, 2003 Cal App LEXIS 156, superseded by statute as stated in Hall v. Time Warner, Inc. (2007, Cal App 2d Dist) 153 Cal App 4th 1337, 63 Cal Rptr 3d 798, 2007 Cal App LEXIS 1280.

CCP § 128.5, relating to expenses for frivolous action and punitive damages, is generally inapplicable to actions and proceedings commenced after 1994; fact that the Legislature incorporated its procedures, standards, or definitions in CCP § 425.16(c) did not undermine that conclusion. Olmstead v. Arthur J. Gallagher & Co. (2004) 32 Cal 4th 804, 11 Cal Rptr 3d 298, 86 P3d 354, 2004 Cal LEXIS 2554.

Where the court granted defendant spy-ware provider's motion to strike under CCP § 425.16(b), and dismissed plaintiff internet software provider's state law claims as being without merit, it was proper under CCP § 425.16(c) to reimburse defendant provider for expenses incurred in extricating itself from the baseless lawsuit. New.Net, Inc. v. Lavasoft (2004, CD Cal) 356 F Supp 2d 1090, 2004 US Dist LEXIS 27434.

Former general counsel of a water district waived his argument that he was entitled to attorney fees under CCP § 425.16(c) because he did not cite the appellate record to show he even raised the issue of attorney fees at the trial court. Harron v. Bonilla (2005, Cal App 4th Dist) 125 Cal App 4th 738, 23 Cal Rptr 3d 73, 2005 Cal App LEXIS 14, review gr, depublished (2005) 28 Cal Rptr 3d 3, 110 P 3d 1217, 2005 Cal. LEXIS 4585, review dismissed (2006, Cal) 49 Cal Rptr 3d 654, 143 P3d 655, 2006 Cal LEXIS 12703.

Attorney fees award under CCP § 425.16(c) was proper; city had no reasonable basis for asserting that residents' petition arose from the city's appeal involving the coastal commission, and thus, the trial court had a sufficient basis to conclude that the city's purpose in moving to dismiss was frivolous and in bad faith. Visher v. City of Malibu (2005, Cal App 2d Dist) 126 Cal App 4th 364, 23 Cal Rptr 3d 816, 2005 Cal App LEXIS 162.

In a defamation action, a trial court order denying an Internet poster's request for attorney fees pursuant to CCP § 425.16(c) was reversed, where plaintiffs, a publicly-traded company and its chairman, did not carry their burden of establishing that the poster's allegedly defamatory speech was uttered with actual malice. Ampex Corp. v. Cargle (2005, Cal App 1st Dist) 128 Cal App 4th 1569, 27 Cal Rptr 3d 863, 2005 Cal App LEXIS 710.

Although the documentation of the hours expended by company's counsel was somewhat summary, it was sufficient to meet the applicable documentation standard for an attorney's fee award where the hours breakdown was further specified and detailed in the company's reply and a supplemental declaration by one attorney. eCash Techs., Inc. v. Guagliardo (2000, CD Cal) 2000 US Dist LEXIS 22676.

Hourly rates charged by a company's counsel were reasonable for purposes of an attorney's fee award under CCP § 425.16 where they were consistent with the prevailing market rates and were based on the hourly rates that the company's counsel normally charged fee-paying clients for attorney and legal assistant services. eCash Techs., Inc. v. Guagliardo (2000, CD Cal) 2000 US Dist LEXIS 22676.

Some reduction in the number of hours a company's counsel spent on a motion to strike and a motion to determine amount was reasonable to reflect a more reasonable number of hours spent preparing the motions and as a result, the number of hours spent on the two motions by a litigation associate was capped and the hours charged by the litigation partner on the motion to strike were reduced slightly. eCash Techs., Inc. v. Guagliardo (2000, CD Cal) 2000 US Dist LEXIS 22676.

Though there is not much guidance on whether the CCP § 425.16 reasonableness determination is the same as that typically applied under federal fee-shifting statutes, it does appear the court has its normal duty to review claimed amounts and to reduce an award where appropriate. eCash Techs., Inc. v. Guagliardo (2000, CD Cal) 2000 US Dist LEXIS 22676.

Defendant, a pro se attorney, could not recover attorney fees for his own work. The absence of the word "incurred" in CCP § 425.16(c) does not mean the legislature intended that a pro se litigant is entitled to recover his attorney fees. Soukup v. Stock (2004, Cal App 2d Dist) 2004 Cal App LEXIS 969.

By filing the anti-SLAPP motion pursuant to CCP § 425.16(c), the employee succeeded in narrowing the scope of the action by clarifying that the employee's communications to the California Department of Fair Employment and Housing were not the subject of the complaint's allegations. Accordingly, the employee was properly deemed to have prevailed on her motion to strike and was entitled to recover attorneys' fees under the anti-SLAPP statute. Lytel v. Simpson (2005, ND Cal) 2005 US Dist LEXIS 30865.

Commonly understood definition of attorney fees applies with equal force to the anti-SLAPP (strategic lawsuit against public participation) statute, CCP § 425.16, and a prevailing defendant is entitled to recover attorney fees if represented by counsel. Accordingly, where the evidence supported a trial court's determination that an attorney was representing all defendants in connection with their anti-SLAPP motion, and one of the attorney defendants rendered legal services to the attorney's nonattorney clients by assisting his successful defense against plaintiff's suit, the fact that an attorney-client relationship existed between the prevailing defendants and the attorney defendant did not preclude an award of attorney fees merely because she was a codefendant with the nonattorney clients to whom she provided legal

assistance. Ramona Unified School Dist. v. Tsiknas (2005, Cal App 4th Dist) 135 Cal App 4th 510, 37 Cal Rptr 3d 381, 2005 Cal App LEXIS 2027.

Trial court properly found that defendants could not recover attorney fees and costs pursuant to CCP § 425.16(c) where defendants failed to file an anti-SLAPP (strategic lawsuit against public participation) motion under § 425.16 before plaintiffs voluntarily dismissed their action under CCP § 581. S. B. Beach Properties v. Berti (2006) 39 Cal 4th 374, 46 Cal Rptr 3d 380, 138 P3d 713, 2006 Cal LEXIS 9285.

Defendants who fail to file an anti-SLAPP (strategic lawsuit against public participation) motion before the voluntary dismissal of all causes of actions against them cannot recover fees or costs under CCP § 425.16(c) because, under § 425.16(c), only a prevailing defendant on a special motion to strike may recover attorney fees and costs. This statutory language is unambiguous, making the filing of a viable anti-SLAPP motion a prerequisite to recovering any fees and costs, and, as a matter of logic, a defendant must file a special motion to strike in order to prevail on one. S. B. Beach Properties v. Berti (2006) 39 Cal 4th 374, 46 Cal Rptr 3d 380, 138 P3d 713, 2006 Cal LEXIS 9285.

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Where plaintiff filed a notice of appeal from both an order granting defendant's motion to strike the complaint under CCP § 425.16 and an order granting attorney fees and costs to defendant, but made no argument in his opening brief that the trial court erred in its award of attorney fees and costs, plaintiff had failed to preserve the issue for appeal. The statement in the brief's introduction that the order granting the § 425.16 motion and award of attorney fees should be reversed did not constitute a sufficient argument to preserve the issue for appeal. Paulus v. Bob Lynch Ford, Inc. (2006, Cal App 6th Dist) 139 Cal App 4th 659, 43 Cal Rptr 3d 148, 2006 Cal App LEXIS 730, review denied (2006) 2006 Cal. LEXIS 9683.

Defendants in a defamation action were not entitled to attorney fees under CCP § 425.16(c) because plaintiff unilaterally dismissed the claims before the motion was filed. There was nothing left for the court to strike, and therefore defendants did not prevail on a special motion to strike. Chambers v. Miller (2006, Cal App 4th Dist) 140 Cal App 4th 821, 44 Cal Rptr 3d 777, 2006 Cal App LEXIS 910.

In an action in which a trial court granted a law firm's special motion to strike under the anti-SLAPP (strategic lawsuit against public participation) statute, CCP § 425.16, the trial court wrongly found that the law firm was entitled to attorney fees. The law firm incurred no attorney fees in bringing its motion to strike because all the work was done by members of the firm on their own behalf. Witte v. Kaufman (2006, Cal App 3d Dist) 141 Cal App 4th 1201, 46 Cal Rptr 3d 845, 2006 Cal App LEXIS 1184.

Concern with treating self-represented attorneys more favorably than other self-represented parties applies to CCP § 425.16(c), but not Code CCP §§ 128.5 and 128.7, under which both an attorney litigant and a nonattorney litigant may

obtain sanctions. An award of sanctions is markedly different from an award of attorney fees under CCP § 425.16 because § 425.16 is intended to compensate the strategic lawsuit against public participation (SLAPP) defendant for attorney fees incurred in bringing a motion to strike, not to punish the SLAPP plaintiff, and an award under § 425.16(c) is limited to costs and attorney fees, whereas sanctions may cover any expenses incurred. Witte v. Kaufman (2006, Cal App 3d Dist) 141 Cal App 4th 1201, 46 Cal Rptr 3d 845, 2006 Cal App LEXIS 1184.

There was no prevailing party on appeal for purpose of attorneys' fees on appeal under CCP § 425.16(c). Although the reviewing court affirmed the judgment against plaintiffs, defendant did not "prevail" on appeal because the reviewing court also affirmed the part of the judgment that was challenged by defendant in its cross-appeal, specifically the amount of attorney fees awarded by the trial court. Maughan v. Google Technology, Inc. (2006, Cal App 2d Dist) 143 Cal App 4th 1242, 49 Cal Rptr 3d 861, 2006 Cal App LEXIS 1574, review denied (2007, Cal) 2007 Cal LEXIS 1438.

After granting defendant's motion to strike, the trial court did not abuse its discretion in awarding $ 23,000 in attorneys' fees, rather than the $ 98,000 requested. The trial court found that 50 hours of attorney time was reasonable and allowed fees at a rate of $ 425 per hour, the average of the rates sought for two attorneys. Maughan v. Google Technology, Inc. (2006, Cal App 2d Dist) 143 Cal App 4th 1242, 49 Cal Rptr 3d 861, 2006 Cal App LEXIS 1574, review denied (2007, Cal) 2007 Cal LEXIS 1438.

Award of attorney fees to defendants for litigating the adequacy of plaintiffs' undertaking was authorized by an appellate court's earlier award of costs and attorney fees on appeal where the undertaking was directly related to the appeal because plaintiffs filed the undertaking in order to obtain a stay of enforcement of the award of attorney fees incurred in connection with defendants' anti-SLAPP motion during the pendency of the appeal. In order to protect their award, defendants were forced to challenge plaintiffs' inadequate sureties, which were expenses that defendants would not have incurred absent the appeal and, thus, within the scope of the appellate court's award, and, to the extent that those fees were expenses of enforcing the attorney fees award, they were recoverable costs under CCP § 685.040. Wanland v. Law Offices of Mastagni, Holstedt & Chiurazzi (2006, Cal App 3d Dist) 141 Cal App 4th 15, 45 Cal Rptr 3d 633, 2006 Cal App LEXIS 1036.

If an award of costs and attorney fees is not permitted for a challenge to an inadequate undertaking submitted to stay enforcement of an award of attorney fees under CCP § 425.16(c), the protection provided to a defendant who is brought into court for exercising free speech and petition rights would be compromised, which would be inconsistent with the legislature's directive that § 425.16 be broadly construed to encourage continued participation in free speech and petition activities. The full protection of a defendant's rights requires an award of attorney fees for litigating the adequacy of the plaintiff's undertaking. Wanland v. Law Offices of Mastagni, Holstedt & Chiurazzi (2006, Cal App 3d Dist) 141 Cal App 4th 15, 45 Cal Rptr 3d 633, 2006 Cal App LEXIS 1036.

Where costs and attorney fees are authorized for responding to an appeal of an order awarding costs and attorney fees under CCP § 425.16(c), there is no reason why this should not also encompass costs and attorney fees incurred in challenging the undertaking submitted by the plaintiff to stay enforcement of the award pending appeal. Accordingly, in a case in which plaintiffs' inadequate sureties led to litigation regarding their undertaking to stay enforcement of an attorney fees and costs award pending appeal, the trial court properly awarded defendants costs and attorney fees that included expenses incurred for their challenge to the undertaking, and because defendants were entitled to those expenses, they were also entitled to the expenses incurred in connection with plaintiffs' appeal of the award. Wanland v. Law Offices of Mastagni, Holstedt & Chiurazzi (2006, Cal App 3d Dist) 141 Cal App 4th 15, 45 Cal Rptr 3d 633, 2006 Cal App LEXIS 1036.

Employee's motion for statutory attorney fees and expenses under CCP § 425.16(c), which was filed approximately two years after the denial of the employers' special motion to strike in a wrongful termination case, was timely under Cal. Rules of Court, Rule 3.1702, 8.104 because it was filed before entry of judgment. Carpenter v. Jack in the Box Corp. (2007, Cal App 2d Dist) 151 Cal App 4th 454, 59 Cal Rptr 3d 839, 2007 Cal App LEXIS 849.

Time limits imposed by Cal. Rules of Court, Rule 3.1702, 8.104 for filing a motion for attorney fees under CCP § 425.16(c) do not commence to run until entry of judgment at the conclusion of the litigation. Carpenter v. Jack in the Box Corp. (2007, Cal App 2d Dist) 151 Cal App 4th 454, 59 Cal Rptr 3d 839, 2007 Cal App LEXIS 849.

Attorney fees award in favor of an attorney and his law firm that was made pursuant to CCP § 425.16(c) had to be reversed where a client's malicious prosecution lawsuit against them met the statutory definition of a SLAPPback action in CCP § 425.18(b)(1) because the client's claim was based on the filing and maintenance of an action by the attorney and his firm that was dismissed pursuant to CCP § 425.16; attorney fees were not recoverable by a defendant who suc-

cessfully filed a special motion to strike in a SLAPPback action. Hutton v. Hafif (2007, Cal App 2d Dist) 150 Cal App 4th 527, 59 Cal Rptr 3d 109, 2007 Cal App LEXIS 680, rehearing denied (2007, Cal App 2d Dist) 2007 Cal App LEXIS 967, review denied (2007, Cal) 2007 Cal LEXIS 8488.

Self-representing lawyer who was sued for soliciting a client was not entitled to attorney fees for prevailing on a special motion to strike; a party, whether or not an attorney, who is not represented by counsel and who litigates an anti-SLAPP motion on the party's own behalf, may not recover attorney fees under CCP § 425.16, the anti-SLAPP statute. Taheri Law Group v. Evans (2008, 2d Dist) 2008 Cal App LEXIS 281.

In a case in which a trial court granted defendant publicist's special motion to strike plaintiff band member's complaint for slander and false light invasion of privacy under CCP § 425.16, the trial court did not abuse its discretion in denying plaintiff's motion to tax costs with respect to defendant's attorney fees where, while expressing awareness of plaintiff's submission regarding junior associates' billing rates, the trial court found that the experience of defendant's counsel, the exigency of the case, and the demonstrated level of performance by counsel justified the hourly fee level. The trial court recognized counsel's representation that he brought to the case far more extensive trial experience than an average junior associate at a law firm would have had, and plaintiff's arguments failed to take into account the trial court's observations concerning the quality of counsel's performance and the time constraints under which he undertook representation of defendant. Russell v. Foglio (2008, 2d Dist) 2008 Cal App LEXIS 302.

Attorney fees were properly awarded as sanctions under CCP § 425.16(c) because the trial court found the special motion to strike to be frivolous and complied with the procedural provisions of CCP § 128.5 regarding notice and a hearing. California Back Specialists Medical Group v. Rand (2008, 2d Dist) 2008 Cal App LEXIS 340.

Collaboration does not necessarily amount to duplication that is not compensable under CCP § 425.16(c). Premier Med. Mgt. Sys., Inc. v. California Ins. Guarantee Assoc. (2008, 2d Dist) 2008 Cal App LEXIS 809.

Because each fee application under CCP § 425.16(c) must be assessed on its own merits, taking into account what is reasonable under the circumstances, broad rule adopting a 50-hour limit as an upper limit for the hours allowed on a § 425.16 motion to strike would be contrary to this case-by-case approach; it also would conflict with application of the deferential abuse of discretion standard that an appellate court applies on appeal. Premier Med. Mgt. Sys., Inc. v. California Ins. Guarantee Assoc. (2008, 2d Dist) 2008 Cal App LEXIS 809.

Although appellants challenging trial court's award of attorney fees and costs to respondents pursuant to CCP § 425.16(c) complained that each respondent claimed fees for the joint pleadings on appeal, suggesting that much of the work must have been duplicative and unnecessary, and also argued that fees on appeal should have been reduced because the issues on appeal were the same as the issues researched and briefed in trial court, appellants submitted no evidence to contradict declarations and billing records submitted by respondents to establish that the work was performed in connection with the collaborative appellate briefing; accordingly, appellants provided no basis to overturn trial court's exercise of discretion. Premier Med. Mgt. Sys., Inc. v. California Ins. Guarantee Assoc. (2008, 2d Dist) 2008 Cal App LEXIS 809.

Where appellants challenging award of attorney fees and costs to respondents pursuant to CCP § 425.16(c) failed to file any declarations in support of their opposition to respondents' fee motions, nor did appellants provide evidentiary challenge to the fees claimed, they provided no evidence to contradict the description by the lead counsel for joint defense of the division of labor among respondents or collaboration on the preparation of trial court and appellate pleadings relating to respondents' special motion to strike. Premier Med. Mgt. Sys., Inc. v. California Ins. Guarantee Assoc. (2008, 2d Dist) 2008 Cal App LEXIS 809.

Where appellants challenging an award of attorney fees and costs to respondents pursuant to CCP § 425.16(c) presented no evidence to refute declarations by counsel for respondents explaining that time spent on drafting respondents' special motion to strike reflected the division of labor and collaborative nature of the joint defense, reviewing court was presented with no evidentiary basis to second guess the conclusion of trial court that collaboration on joint documents was not duplicative, and thus had no basis to reverse that decision as an abuse of discretion; appellants also had not refuted respondents' declarations stating that only fees for work related to the special motion to strike were claimed. Premier Med. Mgt. Sys., Inc. v. California Ins. Guarantee Assoc. (2008, 2d Dist) 2008 Cal App LEXIS 809.

In a case where trial court's subsequent denial of appellant's request for discovery at a hearing on respondent's motion for attorney fees following the granting of respondent's special motion to strike pursuant to CCP § 425.16 was a final determination of the issue, appellant's failure to appeal within 60 days of being served with the notice of entry of

the order rendered his subsequent appeal from the "judgment" untimely under Cal. Rules of Court, Rule 8.104(a)(2), (b), (f). Melbostad v. Fisher (2008, 1st Dist) 2008 Cal App LEXIS 1192.

Trial court's order granting defendants' special motion to strike pursuant to CCP § 425.16 was a judgment pursuant to CCP § 581d because it was a written order of dismissal of the entire action, and the order was also the final determination of the rights of the parties in the action pursuant to CCP § 577 because it disposed of the entire case against defendants, leaving no issue for future determination; accordingly, trial court's order that awarded attorney fees to one defendant after granting the special motion to strike was appealable under CCP § 904.1(a)(2) as an order made after a judgment, and plaintiff's failure to appeal within 60 days of being served with the notice of entry of the order rendered his subsequent appeal from the judgment untimely under Cal. Rules of Court, Rule 8.104(a)(2), (b), (f). Melbostad v. Fisher (2008, 1st Dist) 2008 Cal App LEXIS 1192.

In a case where defendant had prevailed on his anti-SLAPP special motion to strike, trial court did not abuse discretion in awarding compensation for 71 hours of attorney time even though defendant argued that his counsel reasonably expended more than 600 hours on the anti-SLAPP motion, where the record suggested that defendant sought to transfer to the opposing parties the cost of every minute counsel expended on the case, whether or not anti-SLAPP work was involved; substantial evidence supported trial court's conclusion that the billing hours counsel submitted were vague, unreasonably padded, and noncredible, thereby justifying a severe reduction. Christian Research Inst. v. Alnor (2008, 4th Dist) 2008 Cal App LEXIS 1232.

Because a reversal on appeal of a trial court's grant of mandate relief meant that the trial court's partial grant of an anti-SLAPP motion had some practical effect, a remand was necessary for reconsideration of the prevailing party determination under CCP § 425.16(c). Lin v. City of Pleasanton (2009, 1st Dist) 2009 Cal App LEXIS 1170.

Trial court's order awarding attorney fees to a corporate plaintiff pursuant to CCP § 425.16(c) was affirmed; plaintiff's attorneys provided declarations detailing their experience and expertise supporting their billing rates, and explained the work provided to plaintiff, and defendant did not offer any evidence to challenge any statement in these declarations. Raining Data Corp. v. Barrenechea (2009, 4th Dist) 2009 Cal App LEXIS 1178.

Because a reversal on appeal of a trial court's grant of mandate relief meant that the trial court's partial grant of an anti-SLAPP motion had some practical effect, a remand was necessary for reconsideration of the prevailing party determination under CCP § 425.16 subd. (c). Lin v. City of Pleasanton (2009, 1st Dist) 2009 Cal App LEXIS 1345.

Amount of attorney fees under CCP § 425.16, subd. (c), was upheld, even though defendants were represented by three separate law firms who made essentially the same arguments, because plaintiff did not demonstrate that the trial court abused its discretion in determining implicitly that this was reasonable under the circumstances of the case. Cabral v. Martins (2009, 1st Dist) 2009 Cal App LEXIS 1483.

Successful malicious prosecution claimants were entitled to recover as special damages all of their attorney fees and expenses incurred to defend the underlying action; it was not their burden to segregate unpaid fees awarded in the underlying action under CCP § 425.16, subd. (c), the amount of which had collateral estoppel effect, although an offset might be proper in the event of an overlap in services. Jackson v. Yarbray (2009, 2d Dist) 2009 Cal App LEXIS 1806.

Where neither party obtained a final judgment from the court, the 15-day time limit under Cal. Rules of Court, Rule 3.1700, on filing a memorandum of costs, never started to run. Therefore costs relating to an anti-SLAPP (Strategic Lawsuit Against Public Participation) motion were properly awarded under CCP § 425.16, subd. (c). Daniels v. Robbins (2010, 4th Dist) 2010 Cal App LEXIS 223.

Although a terminated sales representative requested an award solely against appellants, CCP § 128.5, authorized the trial court, upon its own motion, to impose the award upon appellants and respondents, and CCP § 425.16, obliged the trial court to make an appropriate award. As the trial court did not direct respondents to pay the award, they had no liability for the award that would support an indemnity claim. Jocer Enterprises, Inc. v. Price (2010, 2d Dist) 2010 Cal App LEXIS 464.

(Unpublished) District court erred in denying plaintiff attorney's fees associated with plaintiff's motion to strike because the district court granted the timely motion and, under the plain language of CCP § 425.16, such an award is mandatory. Cornwell v. Belton (2007, CA9 Cal) 245 Fed Appx 592, 2007 US App LEXIS 18019.

(Unpublished) When defendant prevailed on a special motion to strike because plaintiff's action was barred by the statute of limitations, defendant was entitled, pursuant to CCP § 425.16(c), to recover fees for prevailing on the merits;

the statute made no distinction between cases in which a defendant prevailed substantively and those in which a defendant won due to a procedural bar. Zwebner v. Coughlin (2007, CA9 Cal) 2007 US App LEXIS 18273.

31. Res Judicata and Collateral Estoppel

Because the issues involved in consideration of a preliminary injunction were different from those involved in an anti-SLAPP suit motion to strike, the granting of a preliminary injunction in favor of the plaintiff did not have collateral estoppel or res judicata effect as against a subsequent anti-SLAPP suit motion. The standards bearing on the two kinds of proceedings were different. Collateral estoppel required, among other things, that the issue be the same. Lam v. Ngo (2001, Cal App 4th Dist) 91 Cal App 4th 832, 111 Cal Rptr 2d 582, 2001 Cal App LEXIS 652.

Trial court's denial of a motion to strike under CCP § 425.16 on the ground that the plaintiff has established the requisite probability of success, establishes probable cause to bring the action, and precludes the maintenance of a subsequent malicious prosecution action, unless the prior ruling is shown to have been obtained by fraud or perjury. Wilson v. Parker, Covert & Chidester (2002) 28 Cal 4th 811, 123 Cal Rptr 2d 19, 50 P3d 733, 2002 Cal LEXIS 4836, rehearing denied (2002, Cal) 2002 Cal LEXIS 6389, superseded by statute as stated in Hutton v. Hafif (2007, Cal App 2d Dist) 150 Cal App 4th 527, 59 Cal Rptr 3d 109, 2007 Cal App LEXIS 680.

A trial court's denial of a motion to strike under CCP § 425.16 on the ground that the plaintiff has established the requisite probability of success, establishes probable cause to bring the action, and precludes the maintenance of a subsequent malicious prosecution action, unless the prior ruling is shown to have been obtained by fraud or perjury. Fleishman v. Superior Court (2002, Cal App 2d Dist) 102 Cal App 4th 350, 125 Cal Rptr 2d 383, 2002 Cal App LEXIS 4673, review denied (2002, Cal) 2002 Cal LEXIS 8609.

The obvious intent of CCP § 425.16(b)(3) is that a decision by a court that a plaintiff has presented a prima facie case in response to a defendant's CCP § 425.16 motion to strike should not be used as proof that a verdict in the plaintiff's favor should be rendered in a later dispositive or potentially dispositive portion of the case, such as at trial or a motion by the plaintiff for summary judgment. Bergman v. Drum (2005, Cal App 2d Dist) 129 Cal App 4th 11, 28 Cal Rptr 3d 112, 2005 Cal App LEXIS 720, review denied (2005, Cal) 2005 Cal LEXIS 9262.

32. Appeal Generally

An order granting a motion to strike under CCP § 425.16 is an appealable order. A party may appeal from a purportedly void judgment to clear the record. Kyle v. Carmon (1999, Cal App 3d Dist) 71 Cal App 4th 901, 84 Cal Rptr 2d 303, 1999 Cal App LEXIS 440.

Order granting or denying a special motion to strike under CCP § 425.16 is an appealable order. Kashian v. Harriman (2002, Cal App 5th Dist) 98 Cal App 4th 892, 120 Cal Rptr 2d 576, 2002 Cal App LEXIS 4143.

Under CCP § 425.16(b)(2), a trial court, in making its determinations under CCP § 425.16(b)(1) on whether a defendant showed that a challenged cause of action was one arising from a protected activity and whether the plaintiff has demonstrated a probability of prevailing on the claim, considers the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based. These determinations are legal questions subject to the court's de novo review. Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist. (2003, Cal App 4th Dist) 106 Cal App 4th 1219, 132 Cal Rptr 2d 57, 2003 Cal App LEXIS 382.

Where in a malicious prosecution action a trial court denied a motion to strike filed under the anti-SLAPP statute by an insurer, its law firm, and its lawyer, on appeal the denial was reviewed de novo. Slaney v. Ranger Ins. Co. (2004, Cal App 2d Dist) 115 Cal App 4th 306, 8 Cal Rptr 3d 915, 2004 Cal App LEXIS 112, review denied (2004, Cal) 2004 Cal LEXIS 4148.

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 CCP § 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.

Former employees' anti-SLAPP (strategic lawsuit against public participation) motions under CCP § 425.16 encompassed all of the causes of action filed by the employers and a coworker. As such, all of the matters on trial were

embraced in and affected by the employees' appeal from the denial of that motion, and the trial court lacked subject matter jurisdiction over these matters under CCP § 916(a). Varian Medical Systems, Inc. v. Delfino (2005) 35 Cal 4th 180, 25 Cal Rptr 3d 298, 106 P3d 958, 2005 Cal LEXIS 2308.

Trial court was divested of jurisdiction under CCP § 916(a) to consider the merits of the city's summary judgment motion once the initiative sponsor filed its appeal from the denial of its CCP § 425.16 anti-SLAPP (strategic lawsuit against public participation) motion to strike. City of Santa Monica v. Stewart (2005, Cal App 2d Dist) 126 Cal App 4th 43, 24 Cal Rptr 3d 72, 2005 Cal App LEXIS 109, modified, rehearing denied (2005, Cal App 2d Dist) 2005 Cal App LEXIS 304, review denied (2005, Cal) 2005 Cal LEXIS 4616.

In an appeal from the denial of a motion to strike, the court ruled on evidentiary objections that appeared in the record but that were not ruled on below. 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.

Notice of appeal from an order granting a special motion to strike was timely, even though it was filed more than 60 days after notice of the ruling because the minute order granting the motion directed defendant to submit a proposed order to the court; therefore, entry of the order did not occur until the signed formal order was filed. The notice of appeal was filed within 60 days of notice of entry of the judgment, which triggered the 60 day period under Cal. R. Ct. 2(a)(2). Barak v. The Quisenberry Law Firm (2006, Cal App 2d Dist) 135 Cal App 4th 654, 37 Cal Rptr 3d 688, 2006 Cal App LEXIS 14.

Individual who successfully opposed a CCP § 425.16 special motion to strike could not obtain interlocutory review under § 425.16(i) of an order that denied a request for attorney fees under § 425.16(c). Doe v. Luster (2006, Cal App 2d Dist) 145 Cal App 4th 139, 51 Cal Rptr 3d 403, 2006 Cal App LEXIS 1869.

Although CCP § 425.16(i) authorizes an interlocutory appeal from an order granting or denying a special motion to strike, it does not make related but ancillary rulings or orders separately appealable. Doe v. Luster (2006, Cal App 2d Dist) 145 Cal App 4th 139, 51 Cal Rptr 3d 403, 2006 Cal App LEXIS 1869.

Plaintiff had failed to perfect an appeal from an anti-strategic lawsuits against public participation (anti-SLAPP) order striking his complaint because although his arguments on appeal sought review and reversal of the anti-SLAPP order, as well as a subsequent "judgment" denying his motion to tax costs with respect to defendant's attorney fees, plaintiff's notice of appeal, upon which the appeal was based, addressed only the judgment regarding costs, and it would be beyond liberal construction to view that notice of appeal as relating to a further and different order, rendered a year previously. Given the absence of a notice of appeal from the order granting the motion to strike and that the notice of appeal before the appellate court was filed more than a year after the motion was granted, the appellate court did not have jurisdiction to review the anti-SLAPP order. Russell v. Foglio (2008, 2d Dist) 2008 Cal App LEXIS 302.

Just because all orders granting or denying anti-strategic lawsuits against public participation motions are now appealable under CCP § 904.1(a)(13), it does not follow that dismissal of an entire action following the granting of a special motion to strike is not a judgment pursuant to CCP § 581d. Melbostad v. Fisher (2008, 1st Dist) 2008 Cal App LEXIS 1192.

In a case where defendant filed an interlocutory appeal of trial court's denial of his anti-SLAPP motion, plaintiff was authorized pursuant to CCP § 906 to seek review in its respondent's brief of trial court's order that granted defendant's application to file a late anti-SLAPP motion; having adequately raised its objection to defendant's filing of the anti-SLAPP motion, plaintiff did not forfeit its right to oppose on appeal the filing of defendant's anti-SLAPP motion through its later actions in responding to the motion. Platypus Wear, Inc. v. Goldberg (2008, 4th Dist) 2008 Cal App LEXIS 1396.

33. Standard of Review

Appellate court reviews for abuse of discretion a trial court's decision as to whether a plaintiff has complied with the requirements of CCP § 425.16(g) to merit discovery prior to a hearing on a motion to strike, and under this standard the reviewing court will not disturb the trial court's decision unless it has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination. Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist. (2003, Cal App 4th Dist) 106 Cal App 4th 1219, 132 Cal Rptr 2d 57, 2003 Cal App LEXIS 382.

Defendant's appeal of a trial court's decision denying his special motion to strike under CCP § 425.16 was dismissed as frivolous, where defendant made no colorable showing that the trial court's exercise of discretion in denying his untimely motion was whimsical, arbitrary, or capricious. Olsen v. Harbison (2005, Cal App 3d Dist) 134 Cal App 4th 278, 35 Cal Rptr 3d 909, 2005 Cal App LEXIS 1817, review denied (2006, Cal) 2006 Cal LEXIS 1971.

34. Stay on Appeal

A prevailing SLAPP defendant's enforcement of a judgment awarding reasonable attorney fees and costs under CCP § 425.16 was not automatically stayed by the SLAPP plaintiff's perfecting of an appeal from that judgment, absent the filing of an appropriate appeal bond or other undertaking. The portion of the judgment awarding fees and costs came within the meaning of the money judgment exception to the automatic stay rule (CCP § 917.1(a)(1)); such an award could not be construed as an award of routine or incidental costs subject to the automatic stay rule under CCP § 917.1(d). In addition, CCP § 1033.5 could not be construed as controlling authority given the clear and compelling legislative intent to deter SLAPP litigation not only at the trial court level, but also in appellate courts. Requiring a SLAPP plaintiff who appealed from an adverse judgment to give an undertaking to stay enforcement of an award of attorney fees and costs would promote meritorious appeals and would deter continued SLAPP litigation at the appellate level. Dowling v. Zimmerman (2001, Cal App 4th Dist) 85 Cal App 4th 1400, 103 Cal Rptr 2d 174, 2001 Cal App LEXIS 12.

In case in which defendant employees posted numerous derogatory messages about plaintiff employers on the Internet, following the termination of one defendant, where the employees' anti-SLAPP motions encompassed all of plaintiffs' causes of action, all of the matters on trial were embraced in and affected by the employees' appeal from the denial of that motion, and the trial court lacked subject matter jurisdiction over these matters while the employees' appeal from the denial of their motion was pending, so as to find the employees liable for libel, invasion of privacy, breach of contract, and conspiracy. Varian Medical Systems, Inc. v. Delfino (2005) 35 Cal 4th 180, 25 Cal Rptr 3d 298, 106 P3d 958, 2005 Cal LEXIS 2308.

An appeal from the denial of a special motion to strike under the anti-SLAPP statute effects an automatic stay of the trial court proceedings under CCP § 916(a). Because granting a motion to strike under CCP § 425.16 results in the dismissal of a cause of action on the merits, an appellate reversal of an order denying such a motion could similarly result in a dismissal. Such an appellate outcome would be irreconcilable with a judgment for the plaintiff on that cause of action following a proceeding on the merits. Moreover, such a proceeding would be inherently inconsistent with the appeal because the appeal would be seeking to avoid that very proceeding. Varian Medical Systems, Inc. v. Delfino (2005) 35 Cal 4th 180, 25 Cal Rptr 3d 298, 106 P3d 958, 2005 Cal LEXIS 2308.

Appeal from the denial of a special motion to strike under CCP § 425.16 automatically stays all further trial court proceedings on the merits upon the causes of action affected by the motion under CCP § 916(a). Varian Medical Systems, Inc. v. Delfino (2005) 35 Cal 4th 180, 25 Cal Rptr 3d 298, 106 P3d 958, 2005 Cal LEXIS 2308.

35. Remand on Appeal

Where (1) individual and company sued trustee and others in federal court for breach of fiduciary duties they owed in not renewing an investment advisory contract, in rejecting a certain merger proposal, and in failing to reasonably evaluate the consequences those decisions might have on shareholders; (2) the parties later entered into an agreement by virtue of which the trustee signed a general release of claims; (3) the federal claims were amended, and the trustee filed counterclaims; (4) the company and individual used the release to dismiss two of the counterclaims; (5) the dismissal of those claims was affirmed on appeal; and (6) the company and individual later sued the trustee in state court for fraud and breach of contract, Supreme Court would reverse and remand denial of the trustee's motion to strike the action pursuant to CCP § 425.16. Because the action arose from statutorily protected activity, the complaint was potentially subject to § 425.16. On remand, the Court of Appeal was to consider whether plaintiffs' fraud and contract claims have the minimal merit required to survive an anti-SLAPP motion. Navellier v. Sletten (2002) 29 Cal 4th 82, 124 Cal Rptr 2d 530, 52 P3d 703, 2002 Cal LEXIS 5700.

In case in which a website operator moved to strike an attorney's claim for defamation, under CCP § 425.16, the website operator fell within the statutory definition of an internet service provider, as defined by 47 USCS § 230(c), but as there was an issue as to whether the allegedly defamatory email was meant to be posted on the website's listserv, the matter of whether the operator had immunity under § 230(c) would be remanded to the district court. Batzel v. Smith (2003, 9th Cir Cal) 333 F3d 1018, 2003 US App LEXIS 12736, rehearing denied (2003, 9th Cir) 351 F3d 904, 2003 US App LEXIS 24304, cert den (2004) 541 US 1085, 124 S Ct 2812, 159 L Ed 2d 246, 2004 US LEXIS 4045.

36. Actions Subject to Motion to Strike

A certified shorthand reporter made a sufficient showing under CCP § 425.16 (motion to strike SLAPP suit), that a cross-complaint filed against her by a shorthand reporters' alliance alleging libel, defamation, and unlawful restraint of trade--filed in response to her action against the alliance alleging its "direct contracting" was an unfair business practice--arose from acts in furtherance of her rights of petition and free speech in connection with a public issue. Thus, the trial court erred in denying the reporter's motion to strike the cross-complaint. Wilcox v. Superior Court (1994, Cal App 2d Dist) 27 Cal App 4th 809, 33 Cal Rptr 2d 446, 1994 Cal App LEXIS 838, modified, rehearing denied (1994, Cal App 2d Dist) 28 Cal App 4th 940, 1994 Cal App LEXIS 922, review denied (1994, Cal) 1994 Cal LEXIS 6186, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

In an action for intentional and negligent interference with contractual relations and prospective economic advantage, libel, slander and trade libel, brought by a firm, which had performed archaeological tests on a site believed by many Native American Indians to be an ancient village, against a university professor who opposed development on the site through a letter-writing campaign, the professor was entitled to an order striking the complaint pursuant to CCP § 425.16, subd (b), where each of the professor's allegedly slanderous and libelous comments was made during the public review period contemplated by the California Environmental Quality Act (CEQA), Pub Res §§ 21050 et seq., 21092. Because of the statutory invitation for public participation in CEQA, the professor's statements were entitled to absolute immunity, and, thus as a matter of law, plaintiff firm could not establish a probability of prevailing at trial. Dixon v. Superior Court (1994, Cal App 4th Dist) 30 Cal App 4th 733, 36 Cal Rptr 2d 687, 1994 Cal App LEXIS 1223, review denied Dixon v. Orange County Superior Court (1995, Cal) 1995 Cal LEXIS 2174.

In an action by a city against a developer alleging defendant was behind other persons' environmental objections to plaintiff's efforts to attract a mall to the city, the fact that defendant did not personally perform any of the challenged acts did not preclude his motion to strike the pleadings under CCP § 425.16, which provides for a procedural remedy allowing prompt exposure and dismissal of SLAPP suits (strategic law suites against public participation). The statute covers "any act of [a] person in furtherance of the person's right of petition or free speech...," and a person can exercise his or her own rights by supporting the activities of others. Ludwig v. Superior Court (1995, Cal App 4th Dist) 37 Cal App 4th 8, 43 Cal Rptr 2d 350, 1995 Cal App LEXIS 713, review denied (1995, Cal) 1995 Cal LEXIS 7128.

The trial court properly applied CCP § 425.16, the anti-SLAPP statute, which is directed against litigation filed without merit to dissuade or punish the exercise of free speech rights, to a libel action filed against a newspaper and its reporters. Fact that the newspaper was a corporation did not exclude it from the ambit of the statute (CCP § 17). Moreover, the allegedly libelous newspaper articles were writings made in connection with "an issue under consideration or review by a legislative, executive, or judicial body" that triggers the application of the special motion to strike procedure. Lafayette Morehouse, Inc. v. Chronicle Publishing Co. (1995, Cal App 1st Dist) 37 Cal App 4th 855, 44 Cal Rptr 2d 46, 1995 Cal App LEXIS 762, review denied (1995, Cal) 1995 Cal LEXIS 7325, cert den (1996) 519 US 809, 136 L Ed 2d 136, 117 S Ct 53, 1996 US LEXIS 4658, superseded by statute as stated in Damon v. Ocean Hills Journalism Club (2000, Cal App 4th Dist) 85 Cal App 4th 468, 102 Cal Rptr 2d 205, 2000 Cal App LEXIS 943.

The trial court properly dismissed a libel action against a newspaper and its reporters pursuant to the anti-SLAPP statute (CCP § 425.16), where plaintiff, an alternative lifestyle university, failed to establish a probability that it would prevail. The university alleged it was libeled when an article stated that it offered a "unique course in carnal knowledge." However, review of the university's general catalog showed the essential accuracy of the article's characterization. The founder of the school was not libeled when he was described as a "reclusive guru" since a statement cannot be deemed libelous unless it conveys a provably false assertion of fact, and the term, as used in the articles, was not capable of being proven true or false. A statement in the article that a former student had alleged the school was engaged in questionable and illegal activity was not libelous, since the university had sued the former student for libel because of his allegations and a "fair and true" report of a judicial proceeding is absolutely privileged (Civ. Code, § 47, subd. (d)). Lafayette Morehouse, Inc. v. Chronicle Publishing Co. (1995, Cal App 1st Dist) 37 Cal App 4th 855, 44 Cal Rptr 2d 46, 1995 Cal App LEXIS 762, review denied (1995, Cal) 1995 Cal LEXIS 7325, cert den (1996) 519 US 809, 136 L Ed 2d 136, 117 S Ct 53, 1996 US LEXIS 4658, superseded by statute as stated in Damon v. Ocean Hills Journalism Club (2000, Cal App 4th Dist) 85 Cal App 4th 468, 102 Cal Rptr 2d 205, 2000 Cal App LEXIS 943.

In a defamation action brought by a former board member against ten individual defendants, after plaintiff was voted from office in a recall election initiated by defendants, the trial court properly granted defendants' special motion

to strike under CCP § 425.16, and dismissed the action. Plaintiff failed to make a sufficient prima facie showing of clear and convincing evidence of constitutional malice. Although there was specific evidence of hostility between plaintiff and another board member, plaintiff failed to establish, that defendants knew of the hostility when they made certain allegations against plaintiff in their notice of intention to circulate a petition to recall him (former Elec C §§ 27020 et seq., see now Elec C §§ 11020 et seq.). Further, defendants' allegations that plaintiff had refused to repair a known toxic leak and lethal contamination were not so inherently improbable that only a reckless person would have put them in circulation. Evans v. Unkow (1995, Cal App 1st Dist) 38 Cal App 4th 1490, 45 Cal Rptr 2d 624, 1995 Cal App LEXIS 973.

In an action for libel and invasion of privacy brought by a political candidate against a financial contributor to a political organization arising from publication of a flyer accusing the candidate of owing hundreds of dollars in unpaid fines and citations to the police department, the trial court did not err in permitting defendant to move to strike the complaint pursuant to CCP § 425.16. In ruling that plaintiff had not established a probability of success on his claims, the trial court impliedly found that defendant had satisfied the threshold requirement of CCP § 425.16, which is to show that plaintiff's claims arose from an act in furtherance of defendant's right to free speech. The right to speak on political matters is the quintessential subject of the constitutional protections of the right of free speech. Public discussion about the qualifications of those who hold or who wish to hold positions of public trust presents the strongest possible case for applications of the safeguards afforded by the First Amendment. Hence, the campaign mailer was plainly published in furtherance of the author's right of free speech. Matson v. Dvorak (1995, Cal App 3d Dist) 40 Cal App 4th 539, 46 Cal Rptr 2d 880, 1995 Cal App LEXIS 1134.

CCP § 425.16, enacted to protect citizens in the exercise of their constitutional rights of free speech and petition, applies to a cause of action against a person arising from any act of that person in furtherance of those rights in connection with a public issue (CCP § 425.16, subd. (b)). The right of access to the courts is an aspect of the First Amendment right to petition the government for redress of grievances. Thus, a cause of action arising from a defendant's litigation activity may appropriately be the subject of a CCP § 425.16 motion to strike. Church of Scientology v. Wollersheim (1996, Cal App 2d Dist) 42 Cal App 4th 628, 49 Cal Rptr 2d 620, 1996 Cal App LEXIS 87, review denied (1996, Cal) 1996 Cal LEXIS 2783, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

In an action brought by a church against a former church member, seeking to set aside a judgment that defendant had obtained against it in an underlying tort action for emotional distress, the trial court properly granted defendant's special motion to strike the complaint against him and dismissed the action with prejudice, pursuant to CCP § 425.16. The section applied, since the church's cause of action arose from defendant's valid exercise of his petition rights, i.e., his litigation activities, and since an examination of the history of the underlying litigation revealed that the action was consistent with a pattern of conduct by the church to employ every means, regardless of merit, to frustrate or undermine defendant's petition activity. Church of Scientology v. Wollersheim (1996, Cal App 2d Dist) 42 Cal App 4th 628, 49 Cal Rptr 2d 620, 1996 Cal App LEXIS 87, review denied (1996, Cal) 1996 Cal LEXIS 2783, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

In an action brought by a church against a former church member, seeking to set aside a judgment that defendant had obtained against it in an underlying tort action for emotional distress, the trial court properly granted defendant's special motion to strike the complaint against him and dismissed the action with prejudice, pursuant to CCP § 425.16. The church failed to satisfy its burden, pursuant to CCP § 425.16, subd. (b), of establishing the probability that it would succeed in obtaining an injunction to set aside the former judgment in defendant's favor on the ground of judicial bias during the conduct of the underlying action, and failed in carrying its burden of filing a timely lawsuit to set aside the verdict. Church of Scientology v. Wollersheim (1996, Cal App 2d Dist) 42 Cal App 4th 628, 49 Cal Rptr 2d 620, 1996 Cal App LEXIS 87, review denied (1996, Cal) 1996 Cal LEXIS 2783, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

In a slander suit, the trial court erred in denying defendant's motion to strike the complaint pursuant to CCP § 425.16. Plaintiff was an organization that planned to purchase a home in defendant's neighborhood for use as a shelter for battered women. Defendant opposed the plan, made public statements of opposition, and unsuccessfully attempted to dissuade her employer from supporting plaintiff as a charity. Averill v. Superior Court (1996, Cal App 4th Dist) 42 Cal App 4th 1170, 50 Cal Rptr 2d 62, 1996 Cal App LEXIS 152.

In a libel action by a losing political candidate against the winner for allegedly libelous statements made during the campaign concerning plaintiff's keeping his law practice while in the employ of the state, plaintiff did not establish the

probability that he would prevail in his lawsuit so as to defeat defendant's motion to strike (CCP § 425.16), in view of defendant's free speech defenses under the Constitution. Plaintiff was required, but failed, to show a likelihood that he could produce clear and convincing evidence of defendant's purported actual malice. Beilenson v. Superior Court (1996, Cal App 2d Dist) 44 Cal App 4th 944, 52 Cal Rptr 2d 357, 1996 Cal App LEXIS 367.

In an action for defamation and interference with economic relationship brought by a recording company against a law firm, the trial court properly struck the company's complaint under the anti-SLAPP suit statute, CCP § 425.16. The law firm had sent a letter to certain celebrities that had performed on a recording for the company seeking to confirm their support for the filing of a complaint to the Attorney General with regard to the recording company's alleged underpayment of royalties to the celebrities' designated charities. Since communications preparatory to an official proceeding are within the protection of the litigation privilege of CC § 47, subd. (b), the recording company could not have established a probability of prevailing at trial. The law firm's statements were equally entitled to the benefits of CCP § 425.16. Dove Audio v. Rosenfeld, Meyer & Susman (1996, Cal App 2d Dist) 47 Cal App 4th 777, 54 Cal Rptr 2d 830, 1996 Cal App LEXIS 825.

The anti-SLAPP suit statute (CCP § 425.16) applied to an action for defamation and violation of federal civil rights brought by a county sheriff against the county district attorney who publicly reported that the sheriff's search for marijuana plants at a ranch, which resulted in the sheriff shooting and killing the ranch owner, was based on a false affidavit and motivated by the sheriff's desire to seize the ranch as a drug forfeiture. Bradbury v. Superior Court (1996, Cal App 2d Dist) 49 Cal App 4th 1108, 57 Cal Rptr 2d 207, 1996 Cal App LEXIS 935, rehearing denied (1996, Cal App 2d Dist) 50 Cal App 4th 917C, 1996 Cal App LEXIS 1030, review denied (1997, Cal) 1997 Cal LEXIS 135.

In an action by the medical director of a research and training center at a state university against a publishing company and a reporter for defamation and other torts, following publication of news articles stemming from allegations of illegal and improper management of the center, the articles reported on matters "in connection with a public issue" for purposes of defendants' motion to strike plaintiff's claims under the anti-SLAPP statute (CCP § 425.16). Although the investigative audit that was reported on was confidential, clause two of CCP § 425.16, subd. (e), defines an act in furtherance of free speech rights "in connection with a public issue" as "any" writing made "in connection with an issue under consideration or review by" any official proceeding authorized by law. The audit, conducted by the State Auditor, was an authorized official proceeding (Gov. C § 8547 et seq.), and the articles were "in connection with" this proceeding. Nor did the confidentiality of the audit transmute it into an unofficial or nonpublic activity; it was a public proceeding that was government-sponsored and provided for by statute. The articles were also made in connection with a public issue "under consideration or review" by an official proceeding, even though the powers of the State Auditor were investigatory only. Braun v. Chronicle Publishing Co. (1997, Cal App 1st Dist) 52 Cal App 4th 1036, 61 Cal Rptr 2d 58, 1997 Cal App LEXIS 110, review denied Braun v. Chronicle Publ. Co. (1997, Cal) 1997 Cal LEXIS 3341.

In an action by the medical director of a research and training center at a state university against a publishing company and a reporter for defamation and other torts, following publication of news articles stemming from allegations of illegal and improper management of the center, plaintiff, upon defendants' filing of a motion to strike plaintiff's claims under the anti-SLAPP statute (CCP § 425.16), could not establish a probability that she would prevail on her claim (CCP § 425.16, subd. (b)). Plaintiff asserted she would prevail because she could defeat application of CC § 47, subd. (d) (privilege for publication of fair and true report in public journal, of judicial, legislative, or other public official proceeding), thereby destroying defendants' privilege. The privilege applied, however, notwithstanding that the investigative audit that was reported on was confidential. The articles constituted a history of the audit conducted by the State Auditor; the activities were newsworthy and the public was entitled to information about them. Braun v. Chronicle Publishing Co. (1997, Cal App 1st Dist) 52 Cal App 4th 1036, 61 Cal Rptr 2d 58, 1997 Cal App LEXIS 110, review denied Braun v. Chronicle Publ. Co. (1997, Cal) 1997 Cal LEXIS 3341.

In a libel action brought by a candidate for union office, where defendent, an opposing candidate, distributed to 10,000 union members prior to the election of union officers, the trial court properly determined that the anti-SLAPP suit statute (CCP § 425.16) applied, and properly dismissed the action. Where a candidate speaks out on issues relevant to the office or the qualifications of an opponent, the speech activity is protected by U.S. Const. 1st Amend., and involves a public issue. Also, speech by mail, i.e., the mailing of a campaign flyer, is a recognized public forum under the anti-SLAPP statute. Macias v. Hartwell (1997, Cal App 2d Dist) 55 Cal App 4th 669, 64 Cal Rptr 2d 222, 1997 Cal App LEXIS 444, review denied (1997, Cal) 1997 Cal LEXIS 5053.

A defendant, moving specially under CCP § 425.16, the anti-SLAPP statute, to strike a cause of action arising from a statement made before, or in connection with an issue under consideration by, a legally authorized official proceeding

is not required to demonstrate separately that the statement concerned an issue of public significance. This result is in accord with the plain language of the statute and in consonance with discernible legislative intent, and it is supported for reasons of sound public policy. Briggs v. Eden Council For Hope & Opportunity (1999) 19 Cal 4th 1106, 81 Cal Rptr 2d 471, 969 P2d 564, 1999 Cal LEXIS 7.

In a defamation action arising from a labor dispute against a hotel and restaurant employees union and a union official in connection with the official's statement in a local news telecast that the federal government had found that plaintiff hotel's firings of two housekeepers were illegal, plaintiff failed to establish a prima facie case of slander in its pleadings and supporting declarations that defendants made a false statement with malice. Thus, the trial court did not err in granting defendants' special motion to strike the complaint as a SLAPP suit. Monterey Plaza Hotel v. Hotel Employees Local 483 (1999, Cal App 6th Dist) 69 Cal App 4th 1057, 82 Cal Rptr 2d 10, 1999 Cal App LEXIS 94, rehearing denied (1999, Cal App 6th Dist) 1999 Cal App LEXIS 95.

CCP § 425.16 applies to suits involving statements made during political campaigns. The right to speak on political matters is the quintessential subject of our constitutional protections of the right of free speech. Public discussion about the qualifications of those who hold or who wish to hold positions of public trust presents the strongest possible case for applications of the safeguards afforded by the First Amendment. Defendant's statements obviously fell within the purview of CCP § 425.16 because they addressed a matter of public concern: a candidate's qualifications and conduct in office. Conroy v. Spitzer (1999, Cal App 4th Dist) 70 Cal App 4th 1446, 83 Cal Rptr 2d 443, 1999 Cal App LEXIS 286.

Trial court did not err when it dismissed plaintiff political consultant's complaint against publishers of information as to a custody dispute between plaintiff and his first wife, which revealed instances of past spousal abuse by plaintiff, a developer of campaigns for political candidates based on preventing and punishing domestic violence. The custody dispute itself clearly came within CCP § 425.16(e)(1) as it was an authorized judicial proceeding. The wife-beating allegations, while not a part of the custody hearing, involved an extremely important public issue. Sipple v. Foundation For Nat. Progress (1999, Cal App 2d Dist) 71 Cal App 4th 226, 83 Cal Rptr 2d 677, 1999 Cal App LEXIS 312, review or rehearing denied (1999, Cal) 1999 Cal LEXIS 5229.

In a defamation action arising out of a dispute between the former manager of a homeowners association and a private homeowners association club, the trial court properly determined that the anti-SLAPP statute (CCP § 425.16) applied, where the two locations at which the alleged defamatory statements were made, at board meetings and in a newsletter, were open to the public and constituted public forums. Additionally, because each of the allegedly defamatory statements concerned the manner in which a large community would be governed, they concerned issues of public interest. The newsletter did not lose its "public forum" character merely because it did not provide a balanced point of view. Damon v. Ocean Hills Journalism Club (2000, Cal App 4th Dist) 85 Cal App 4th 468, 102 Cal Rptr 2d 205, 2000 Cal App LEXIS 943.

An action arising out of an unlawful detainer dispute alleging causes of action for defamation, misrepresentation, and intentional and negligent infliction of emotional distress fell within the ambit of CCP § 425.16, the anti-SLAPP statute, and defendant's motion to strike was properly granted, where defendant, an attorney who represented the tenant in the underlying dispute, met her burden of establishing a prima facie showing that the instant action against her arose from conduct on her part that implicated First Amendment speech or petition rights and where the plaintiff failed to show a probability of prevailing on his claims. The evidence submitted by defendant established that all four causes of action arose from her acts of negotiating a settlement of the unlawful detainer action and of writing and publishing a letter in connection with that action, while plaintiff's complaint was pleaded without the requisite specificity and was based on conclusory allegations. Dowling v. Zimmerman (2001, Cal App 4th Dist) 85 Cal App 4th 1400, 103 Cal Rptr 2d 174, 2001 Cal App LEXIS 12.

In an action for defamation arising out of a bitterly fought local initiative campaign concerning the commercial development of certain real property, the trial court properly granted defendants' motion to strike the complaint under the anti-SLAPP statute (CCP § 425.16). The allegation that one of the defendants called plaintiff a "thief" in the context of a heated confrontation at a shopping center was reasonably interpreted as loose figurative language and hyperbole, not a claim that the plaintiff actually had a criminal past. As to false statements in defendants' campaign literature that the property at issue was owned by "a partnership of speculators based in Los Angeles," defendants did not act with the requisite malice, since they relied on a publicly filed partnership statement and nothing in the record suggested they harbored any doubts as to its accuracy. Defendants were under no obligation to ask plaintiff about the composition of the property and their failure to do so did not constitute a reckless disregard of the falsity of their statements. Rosenaur v. Scherer (2001, Cal App 3d Dist) 88 Cal App 4th 260, 105 Cal Rptr 2d 674, 2001 Cal App LEXIS 265.

The SLAPP statute (CCP § 425.16) was applicable to an action by an in-house counsel's former employer alleging that she disclosed confidential and privileged information to the attorneys handling her wrongful termination case. The initial determination whether a lawsuit was subject to a motion to strike under § 425.16 was not a determination of the merits of the suit and the defendant did not have to show that the suit was intended to chill her right to petition for redress of grievances. Whether the material at issue was privileged or confidential was not relevant to the threshold issue of whether the SLAPP statute applied to the employer's complaint. Furthermore, a plaintiff could not frustrate the purposes of the SLAPP statute through a pleading tactic of combining allegations of protected and nonprotected activity under the label of one "cause of action." Fox Searchlight Pictures, Inc. v. Paladino (2001, Cal App 2d Dist) 89 Cal App 4th 294, 106 Cal Rptr 2d 906, 2001 Cal App LEXIS 377.

In an action arising out of a failed corporate merger, Internet postings on financial web sites came within the scope of the SLAPP statute (CCP § 425.16(e)(3)), where the sites at issue, which were places open to the public where information was freely exchanged, were a public forum and where defendants' statements on the web sites were made in connection with an issue of public interest. Plaintiff was a publicly traded company, and although defendants at one time contemplated a merger with plaintiff, the record did not indicate the defendants who published the web site messages were in competition with plaintiff when they made the postings. Further, the tenor of the messages indicated defendants were speaking as investors rather than competitors, as the comments in the messages appeared to have been directed at existing or potential shareholders rather than potential customers. ComputerXpress, Inc. v. Jackson (2001, Cal App 4th Dist) 93 Cal App 4th 993, 113 Cal Rptr 2d 625, 2001 Cal App LEXIS 2012.

In an action arising out of a failed corporate merger, a letter of complaint sent by defendants to the SEC against plaintiff's corporate predecessor, and subsequently posted on the Internet, fell within the SLAPP statute (CCP § 425.16) as a statement before an official proceeding, where the purpose of the complaint was to solicit an SEC investigation. In addition, the posting of the complaint on the Internet amounted to a statement in a public forum in connection with an issue of public interest. Plaintiff's possible securities law violations qualified as an issue of public interest to the investing public just as its management and performance did. The posting of the complaint therefore also fell within CCP § 425.16. ComputerXpress, Inc. v. Jackson (2001, Cal App 4th Dist) 93 Cal App 4th 993, 113 Cal Rptr 2d 625, 2001 Cal App LEXIS 2012.

A cause of action arising from a defendant's alleged improper filing of a lawsuit could appropriately be the subject of a motion to strike under the anti-SLAPP statute (CCP § 425.16). The malicious prosecution claim at issue was that the plaintiff in the underlying action filed litigation that was improper because it was allegedly filed with a malicious motive and without probable cause. This claim arose from the defendant's constitutionally protected petitioning activity, and therefore was subject to CCP § 425.16. This conclusion would not prevent valid malicious prosecution claims, but would require a plaintiff bringing this claim to demonstrate early on that the complaint was supported by a sufficient prima facie showing of facts to sustain a favorable judgment. This result was also consistent with the disfavored nature of the malicious prosecution tort. Chavez v. Mendoza (2001, Cal App 4th Dist) 94 Cal App 4th 1083, 114 Cal Rptr 2d 825, 2001 Cal App LEXIS 3669.

Under CCP § 425.16, a lawsuit brought by a publicly traded telecommunications company against defendants who posted allegedly libelous messages on an internet bulletin board was dismissed as defendants' alleged bad acts arose from the defendants' exercise of free speech in connection with a public issue, and as the plaintiff could not show a probability of success on the claims. Global Telemedia Int'l, Inc. v. Doe 1 (2001, CD Cal) 132 F Supp 2d 1261, 2001 US Dist LEXIS 2852.

In an action by a hospital group's board member against a lawyer and the medical advocacy organizations he represented, alleging unfair business practices, a violation of B & P C § 17200, and defamation arising from the publishing of a newspaper article regarding the lawyer's letter to the attorney general seeking investigation of the hospital group's activities, pursuant to Gov C § 12598(a), the trial court properly granted the lawyer's motion to strike the complaint pursuant to the anti-SLAPP statute, CCP § 425.16, which allows a trial court to dismiss at an early stage nonmeritorious litigation meant to chill the valid exercise of the constitutional rights of freedom of speech and petition in connection with a public issue. Kashian v. Harriman (2002, Cal App 5th Dist) 98 Cal App 4th 892, 120 Cal Rptr 2d 576, 2002 Cal App LEXIS 4143.

A lawsuit brought by the Governor of the State of California against a tax lobby for an ad criticizing the Governor's 2002 campaign was subject to an anti-SLAPP motion to strike. Governor Gray Davis Com. v. American Taxpayers Alliance (2002, Cal App 1st Dist) 102 Cal App 4th 449, 125 Cal Rptr 2d 534, 2002 Cal App LEXIS 4699, review denied (2002, Cal) 2002 Cal LEXIS 8331.

In a developer's suit against a port district and its commissioner (collectively district) on various claims arising from the developer's attempted development of a bayfront area, the trial court properly granted the district's CCP § 425.16 motion to strike and awarded the district attorney fees, where the development of the area constituted a public interest, and where the district's statements and writings, which formed the basis of the developer's claims, constituted an exercise of the district's rights of petition and free speech in connection with a public issue. Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist. (2003, Cal App 4th Dist) 106 Cal App 4th 1219, 132 Cal Rptr 2d 57, 2003 Cal App LEXIS 382.

Because an optometrist's communications with other optometrists inviting pursuit of prospective legislation concerning mail order contact lens sales and the optometrist's discussions with a contact lens sales corporation's attorney fell within one or more of the categories under CCP § 425.16 (e), defining acts in furtherance of petition or free speech rights, the trial court properly found that corporation's action against the optometrist for inducing breach of contract and fiduciary duty arose from acts in furtherance of the optometrist's rights of petition or free speech. (1) The corporation did not establish a probability of prevailing on its breach of contract claim; (2) the tortious charge was precluded by CP § 47 (b)(1); (3) there was no showing that the optometrist, who was also an attorney, either knowingly assisted in any violation of Cal. R. Prof. Conduct 1-120, 3-210, nor did such rules create a cause of action, pursuant to Cal. R. Prof. Conduct 1-100(A); and (4) there was insufficient evidence that the optometrist knew that the attorney was going to breach a fiduciary duty to the corporation or intended to assist in such a wrong, and any violation by the attorney of Utah Code Jud. Admin. R. 1.6(a), 1.9 also did not give rise to a cause of action. 1-1-800 Contacts, Inc. v. Steinberg (2003, Cal App 2d Dist) 107 Cal App 4th 568, 132 Cal Rptr 2d 789, 2003 Cal App LEXIS 458, review denied (2003) 2003 Cal. LEXIS 4501.

Trial court should have granted defendant dental association's special motion to strike, under CCP § 425.16, plaintiffs' four causes of action under the Unfair Competition Law; two of the causes of action sought in significant part to restrict the association's public pronouncements on health effects of dental amalgam, while the other two causes of action, which challenged enforcement of an advisory opinion regarding the removal of amalgam restorations from non-allergic patients should have been dismissed, because there was no evidence of any conduct by the association that might have entitled plaintiffs to prevail on these causes of action. Kids Against Pollution v. California Dental Association (2003, Cal App 1st Dist) 108 Cal App 4th 1003, 134 Cal Rptr 2d 373, 2003 Cal App LEXIS 761, rehearing denied (2003, Cal App 1st Dist) 2003 Cal App LEXIS 1083, review gr, depublished (2003) 4 Cal Rptr 3d 808, 76 P3d 843, 2003 Cal LEXIS 6935, transferred (2006) 49 Cal. Rptr. 3d 655, 143 P.3d 655, 2006 Cal. LEXIS 12704.

Complaint against newspaper brought by plaintiffs after the newspaper carried an article about plaintiffs having stipulated to the entry of a consent decree to a Securities and Exchange Commission (SEC) complaint, alleging that plaintiff son carried out an illegal scheme to manipulate stock prices of four stocks and that both plaintiffs profited from the scheme, where at the time plaintiff mother was a city council member and her son was also a limited public figure in the community where the article ran, was properly dismissed, as the effect on a reader of the newspaper article would be same as the effect on a reader of the actual Securities and Exchange Commission's complaint. Colt v. Freedom Communications, Inc. (2003, Cal App 4th Dist) 109 Cal App 4th 1551, 1 Cal Rptr 3d 245, 2003 Cal App LEXIS 953, review denied (2003, Cal) 2003 Cal LEXIS 7238.

Invasion of privacy claim based on allegations of harm caused by a media defendant's publication of facts obtained from public official records of a criminal proceeding is barred by the First Amendment to the United States Constitution; therefore, the producers and presenters of a television documentary program could not be held liable in tort for publishing therein information they gathered from public official court records concerning a person who many years previously served a prison term for a felony conviction but who had since lived an obscure, lawful life and become a respected member of the community. Because plaintiff's invasion of privacy cause of action was barred, the motion brought by the producers and presenters pursuant to CCP § 425.16, the anti-SLAPP statute, should have been granted. Gates v. Discovery Communications, Inc. (2004) 34 Cal 4th 679, 21 Cal Rptr 3d 663, 101 P3d 552, 2004 Cal LEXIS 11656, cert den (2005) 546 US 828, 163 L Ed 2d 77, 126 S Ct 368, 2005 US LEXIS 6136.

Court of Appeals would reverse trial court's denial of city's SLAPP motion, In case in which homeowners sued city and a council member, seeking a declaration that a playhouse was a conforming structure and an injunction under the city charter against council members influencing staff. The council member's inquiry to city planning staff about a constituent's zoning complaint regarding the playhouse involved petition for grievance against the government protected by the First Amendment. Moreover, homeowners did not meet their burden of demonstrating probable success on their causes of action as (1) whether the playhouse was conforming was moot because the city unequivocally rescinded its notices of violation; (2) under 42 USCS § 1983, the homeowners were not entitled to an abstract trial on the constitutio-

nality of past actions of some city employees that caused no damage; and (3) the city charter allowed direct contact for the purpose of inquiry, while the council member did not give orders, and enjoining advocacy for constituents would be an overly broad restraint on speech. Levy v. City of Santa Monica (2004, Cal App 2d Dist) 114 Cal App 4th 1252, 8 Cal Rptr 3d 507, 2004 Cal App LEXIS 51, review denied Levy v. City of Santa Monica (Garal) (2004, Cal) 2004 Cal LEXIS 2858.

Because 47 USCS § 230 did not restrict distributor or knowledge-based liability under the common law and no reason appeared why a distributor could not be subjected to such liability, a trial court erred in finding that a physician's defamation claim was barred by the statute and in striking the complaint under California's anti-SLAPP statute, CCP § 425.16. Barrett v. Rosenthal (2004, Cal App 1st Dist) 114 Cal App 4th 1379, 9 Cal Rptr 3d 142, 2004 Cal App LEXIS 76, rev'd (2006) 40 Cal 4th 33, 51 Cal Rptr 3d 55, 146 P3d 510, 2006 Cal LEXIS 13529.

Trial court properly dismissed citizens' action against organizations under CCP § 425.16. Citizens did not and could not meet their statutory burden under the statute of showing a reasonable probability of prevailing on the merits because (1) the challenged statements of the organization were expressions of opinion about an issue of genuine scientific debate, and those statements were noncommercial speech fully protected by the United States Constitution and not actionable under B & P C § 17200 of the Unfair Competition Law, B & P C §§ 17200 et seq., or B & P C § 17500 of the False Advertising Law, B & P C §§ 17500 et seq., and (2) the citizens' challenge to the organizations' statements regarding the safety of abortion failed as a matter of law because the citizens' own evidence showed that the challenged statements were based on the unsupported premise that a particular link of the organization was an established scientific fact. Bernardo v. Planned Parenthood Federation of America (2004, Cal App 4th Dist) 115 Cal App 4th 322, 9 Cal Rptr 3d 197, 2004 Cal App LEXIS 111, review denied Bernardo v. Planned Parenthood (2004) 2004 Cal. LEXIS 3097, cert den Bernardo v. Planned Parenthood Fed'n of Am. (2004) 543 U.S. 942, 125 S. Ct. 373, 160 L. Ed. 2d 254, 2004 U.S. LEXIS 6963, 73 U.S.L.W. 3246 .

Fire district's petition against homeowner associations arose from the associations' political speech, comprised of statements in a voter pamphlet, on an issue of public interest, which fell under the anti-strategic lawsuit against public participation statute, CCP § 425.16(b)(1), because CCP § 425.16(e)(3) included such cases, and the district, having failed to present a viable petition challenging the associations' statements in the voter pamphlet, for which there was no exemption under CCP § 425.16(d), or to appeal the trial court's dismissal of the petition on procedural grounds, had no chance of establishing a probability of success; the court did not have to consider the factual sufficiency of the district's petition, given its legal insufficiency, and in such a case, an award of fees and costs to the associations was mandatory. Moraga-Orinda Fire Protection Dist. v. Weir (2004, Cal App 1st Dist) 115 Cal App 4th 477, 10 Cal Rptr 3d 13, 2004 Cal App LEXIS 119, rehearing denied (2004, Cal App 1st Dist) 2004 Cal App LEXIS 571, review denied Moraga-Orinda Fire Protections District v. Weir (Moraga Del Ray Homeowners Assn.) (2004, Cal) 2004 Cal LEXIS 4145.

Trial court erred in not granting defendants' motion to strike in a defamation cause of action arising from statements about plaintiffs in an Internet web site, where the web site contained constitutionally protected free speech; moreover, the single-publication rule applied, and the cause of action was time barred. Traditional Cat Assn., Inc. v. Gilbreath (2004, Cal App 4th Dist) 118 Cal App 4th 392, 13 Cal Rptr 3d 353, 2004 Cal App LEXIS 694.

In the underlying suit, the attorney sued a former law firm employee for breach of confidential information; that suit was dismissed, and the employee brought the current suit, alleging abuse of process and malicious prosecution. Trial court should have granted the attorney's special motion to strike, as the attorney's conduct, with respect to the litigation and the advocacy for his client, was protected by the First Amendment. Soukup v. Stock (2004, Cal App 2d Dist) 118 Cal App 4th 1490, 15 Cal Rptr 3d 303, 2004 Cal App LEXIS 814, rehearing denied (2004, Cal App 2d Dist) 2004 Cal App LEXIS 969, review gr, depublished (2004) 20 Cal Rptr 3d 175, 99 P3d 499, 2004 Cal LEXIS 10016, rev'd, superseded Soukup v. Law Offices of Herbert Hafif (2006) 39 Cal 4th 260, 46 Cal Rptr 3d 638, 2006 Cal LEXIS 9073.

Second parent's libel complaint was within the scope of the anti-SLAPP statute where mother's allegations of domestic violence by the second parent were acts in furtherance of her constitutional right of free speech in connection with an issue of public interest; the mother had a constitutional right to speak out about the issues pending adoption litigation, and in doing so, to explain the reasons for her decision to withdraw her consent to the second parent's adoption and to challenge its validity. Annette F. v. Sharon S. (2004, Cal App 4th Dist) 119 Cal App 4th 1146, 15 Cal Rptr 3d 100, 2004 Cal App LEXIS 1013, review denied (2004, Cal) 2004 Cal LEXIS 9700.

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 statement 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 CCP § 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.

Complaint against an opposing party's attorneys and employer was properly dismissed; in the nonpublished portion of the opinion, the court affirmed the dismissal because the claims sought to impose liability based on conduct protected by the anti-SLAPP statute, CCP § 425.16, and there was not a sufficient showing that plaintiff would prevail at trial. The claims included fraud by using vague and ambiguous terms in negotiating and drafting a settlement agreement. Stasz v. Schwab (2004, Cal App 2d Dist) 121 Cal App 4th 420, 17 Cal Rptr 3d 116, 2004 Cal App LEXIS 1282, review denied (2004, Cal) 2004 Cal LEXIS 11089.

Where defendant spy-ware provider's free software scanned for, detected, and if prompted, deleted plaintiff software company's surreptitiously "bundled" and unknowingly downloaded programs, the spy-ware provider's motion to strike plaintiff's unfair competition claim was granted under the Anti-Strategic Lawsuit Against Public Participation statute, CCP § 425.16; "public forum" under CCP § 425.16(e)(3) included the Internet. New.Net, Inc. v. Lavasoft (2004, CD Cal) 356 F Supp 2d 1090, 2004 US Dist LEXIS 27434.

Trial court should have granted initiative sponsor's motion to strike because the city did not show a probability of success on the merits. The city's constitutional challenge was premature, in that the city persisted in its refusal to certify the initiative, and the city's constitutional claims involved only hypothetical concerns because the initiative had not been applied to anyone. City of Santa Monica v. Stewart (2005, Cal App 2d Dist) 126 Cal App 4th 43, 24 Cal Rptr 3d 72, 2005 Cal App LEXIS 109, modified, rehearing denied (2005, Cal App 2d Dist) 2005 Cal App LEXIS 304, review denied (2005, Cal) 2005 Cal LEXIS 4616.

Tenant who demonstrated at his landlord's church was able to use the anti-SLAPP statute to strike the landlord's petition for injunctive relief against civil harassment because the protest involved issues of "public interest," including the landlord's alleged patterns of improper evictions and refusal to make needed repairs. The landlord was not likely to prevail on the merits, both because of evidentiary deficiencies and because the trial court had ultimately ruled against him after hearing testimony from both parties. 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.

Anti-SLAPP statute, CCP § 425.16, applied to a physician's action against a hospital, which had summarily suspended him for violence to hospital employees, because the hospital's petitions for injunctions and the peer review proceedings were judicial official proceedings under CCP § 425.16(e)(1) and (2), despite the possible confidentiality of the review. The physician had no probability of success because: (1) he failed to exhaust administrative and judicial remedies that he should have pursued before filing the action; and (2) he had expressly waived all claims relating to the suspension and agreed not to sue. Kibler v. Northern Inyo County Local Hospital Dist. (2005, Cal App 4th Dist) 126 Cal App 4th 713, 24 Cal Rptr 3d 220, 2005 Cal App LEXIS 195, modified (2005) 2005 Cal. App. LEXIS 187, review granted, depublished, (2005) 28 Cal. Rptr. 3d 1, 110 P.3d 1216, 2005 Cal. LEXIS 4596, 2005 Cal. Daily Op. Service 3555, 2005 D.A.R. 4860, aff'd, superseded, (2006) 39 Cal 4th 192, 46 Cal Rptr 3d 41, 138 P3d 193, 2006 Cal LEXIS 8765.

Strategic Lawsuit Against Public Participation (SLAPP) statute, CCP § 425.16, applied to a libel suit brought by candidates for local public office against a website host. The web pages underlying the candidates' claims consisted of writing made in a public forum, and the conduct underlying the candidates' claims consisted of pure speech. Vogel v. Felice (2005, Cal App 6th Dist) 127 Cal App 4th 1006, 26 Cal Rptr 3d 350, 2005 Cal App LEXIS 402.

All of the causes of action alleged by candidates for public office rested exclusively and entirely on a website host's conduct in publishing offending statements on his website. Because that conduct fell squarely within the realm protected by CCP § 425.16, all of the candidates' causes of action, not just the libel claim, were subject to the statute. Vogel v. Felice (2005, Cal App 6th Dist) 127 Cal App 4th 1006, 26 Cal Rptr 3d 350, 2005 Cal App LEXIS 402.

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 pro-

tected activity under CCP § 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 allowed on the air, and was then berated by the host for complaining. The show's subjects and the host's criticism of the caller were both matters of public interest, and the caller did not establish a probability of success because he failed to demonstrate a compelling interest to apply the Unruh Act in the face of the First Amendment implications. 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.

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.

Under Lab C §§ 2673.1 and 2671, a retailer had an obligation to assure the proper overtime and minimum wage payments of the employees of manufacturers that produced clothing specifically for sale in the retailer's stores; hence, where the retailer and its owner filed an action against a human rights organization and its employee, alleging defamation from pamphlets distributed about the underpayment of the manufacturers' employees and the store's obligation to assure the proper payment of the manufacturers' employees, the motion to strike filed by the organization and its employee was improperly denied because the retailer could not show a probability of success on the merits of the defamation claim. Fashion 21 v. Coalition for Humane Immigrant Rights of Los Angeles (2004, Cal App 2d Dist) 117 Cal App 4th 1138, 12 Cal Rptr 3d 493, 2004 Cal App LEXIS 574, rehearing denied (2004) 2004 Cal. App. LEXIS 754, review denied Fashion 21 v. Coalition for Humane Immigration Rights of Los Angeles (2004) 2004 Cal. LEXIS 7699.

Defendant unions met the threshold showing that their challenged activity arose from a protected activity pursuant to CCP § 425.16(b)(1), where plaintiffs' suit was clearly based on the unions' act of displaying banners and distributing leaflets. Unions' motion was granted as to claims of trade libel, intentional and negligent interference with prospective economic advantage, intentional interference with contractual relations, and unlawful business practices, and was denied as to claims for unlawful secondary boycott, and intentional and negligent infliction of emotional distress. The motion was continued pending discovery on the libel claim. Manchester Resorts, L.P. v. Southwest Reg'l Council of Carpenters (2003, SD Cal) 2003 US Dist LEXIS 2392.

Where a well known specialty retailer sued a publisher of consumer information, alleging that the publisher made false statements indicating that the retailer's proprietary air cleaner was ineffective, the retailer challenged the publisher's right to freedom of speech on a public issue, and the complaint was stricken on the publisher's special motion pursuant to CCP § 425.16(b)(1) since the retailer failed to show a reasonable probability that the statements were false; the evidence indicated that the publishers properly tested air cleaners using industry standard methodology, expressly defined effectiveness to refer to cleaning speed, and stated only the undisputed results of the publisher's testing. Sharper Image Corp. v. Consumers Union of United States, Inc. (2004, ND Cal) 2004 US Dist LEXIS 23204.

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.

CCP § 527.8 workplace violence petitions are subject to special motions to strike under CCP § 425.16. The plain language of § 425.16 is to be respected and exceptions to the statute's broad reach must not be lightly implied City of Los Angeles v. Animal Defense League (2006, Cal App 2d Dist) 135 Cal App 4th 606, 37 Cal Rptr 3d 632, 2006 Cal App LEXIS 7, modified, rehearing denied (2006, Cal App 2d Dist) 2006 Cal App LEXIS 107, review denied (2006, Cal) 2006 Cal LEXIS 4460.

Although CCP § 425.16(d) applies somewhat more broadly than the literal language of the provision may suggest, only actions brought by a governmental agency to enforce laws aimed generally at public protection qualify for this exemption to anti-SLAPP (strategic lawsuit against public participation) scrutiny. A city's CCP § 527.8 workplace violence petition against an animal rights activist who protested at a city employee's house simply did not satisfy this definition of civil enforcement actions. City of Los Angeles v. Animal Defense League (2006, Cal App 2d Dist) 135 Cal App 4th 606, 37 Cal Rptr 3d 632, 2006 Cal App LEXIS 7, modified, rehearing denied (2006, Cal App 2d Dist) 2006 Cal App LEXIS 107, review denied (2006, Cal) 2006 Cal LEXIS 4460.

In a malicious prosecution action, a defendant was properly allowed to join in other defendants' special motion to strike under CCP § 425.16, because malicious prosecution qualified for treatment under § 425.16 as a matter of law; thus, it was not necessary for the client to present admissible evidence to shift the burden to plaintiff. Barak v. The Quisenberry Law Firm (2006, Cal App 2d Dist) 135 Cal App 4th 654, 37 Cal Rptr 3d 688, 2006 Cal App LEXIS 14.

Anti-SLAPP motion to strike was properly granted in a contractor's defamation action against a city attorney because the official duty privilege of CC § 47(a), applied to the attorney's statements, which he made in a speech at a dinner that he attended in his official capacity and which concerned the city's litigation against the contractor. Tutor-Saliba Corp. v. Herrera (2006, Cal App 1st Dist) 136 Cal App 4th 604, 39 Cal Rptr 3d 21, 2006 Cal App LEXIS 165.

Refusal by drug claims processors to transmit a study of pharmacy fees to third party payors and thus to comply with the compelled speech requirement of CC § 2527 was an act in furtherance of the processors' right of free speech within the meaning of CCP § 425.16; further, since the statute was unconstitutional, it was unenforceable, and therefore the processors' opponents could not establish that they were likely to prevail on a claim that the processors violated the statute. The trial court had no choice but to grant an anti-SLAPP motion, and to award attorney fees to the processors, even though the opponents brought the case under a seemingly valid statute. ARP Pharmacy Services, Inc. v. Gallagher Bassett Services, Inc. (2006, Cal App 2d Dist) 138 Cal App 4th 1307, 42 Cal Rptr 3d 256, 2006 Cal App LEXIS 619.

Employee could not demonstrate a prima facie case of malicious prosecution based on the filing of a CCP § 527.8 petition; hence, the trial court erred when it denied the employer's CCP § 425.16 motion to strike. Robinzine v. Vicory (2006, Cal App 1st Dist) 143 Cal App 4th 1416, 50 Cal Rptr 3d 65, 2006 Cal App LEXIS 1616.

Litigation privilege applied to a purportedly defamatory letter from a homeowners association to its members because one purpose was to inform association members of pending litigation involving the association and one member. Therefore, the association's anti-SLAPP motion should have been granted as to the owner's defamation claim. Healy v. Tuscany Hills Landscape & Recreation Corp. (2006, Cal App 4th Dist) 137 Cal App 4th 1, 39 Cal Rptr 3d 547, 2006 Cal App LEXIS 269.

Continued pursuit of meritless litigation for an improper collateral purpose, although actionable under malicious prosecution principles, is not separately actionable under an abuse of process theory. Accordingly, a trial court correctly ruled that a school district could not satisfy its burden of showing probable success on the merits and therefore properly granted defendants' anti-SLAPP (strategic lawsuit against public participation), CCP § 425.16, motion, where the gravamen of the district's claim was for malicious prosecution, rather than for abuse of process, which was barred because a government entity could not institute a proceeding against a former plaintiff based on malicious prosecution. Ramona Unified School Dist. v. Tsiknas (2005, Cal App 4th Dist) 135 Cal App 4th 510, 37 Cal Rptr 3d 381, 2005 Cal App LEXIS 2027.

Trial court properly granted defendants' anti-SLAPP (strategic lawsuit against public participation), CCP § 425.16, motion on a school district's barratry claim because there was but a single proceeding. Although the district suggested each amendment to defendants' writ petition qualified as a separate lawsuit or proceeding, thereby satisfying the quantitative threshold for a barratry claim, the plain language of the statute requires multiple suits or proceedings and has never been applied to a single lawsuit. Ramona Unified School Dist. v. Tsiknas (2005, Cal App 4th Dist) 135 Cal App 4th 510, 37 Cal Rptr 3d 381, 2005 Cal App LEXIS 2027.

Defendants' motion to strike re alleged state law claims in plaintiffs' amended complaint was granted because it would be improper to allow plaintiffs to amend the state law claims that had been stricken pursuant to the Anti-SLAPP statute, CCP § 425.16. Flores v. Emerich & Fike (2006, ED Cal) 2006 US Dist LEXIS 63251, dismissed without prejudice (2007, ED Cal) 2007 US Dist LEXIS 58727.

Because, by its terms 47 U.S.C.S. § 230 exempted Internet intermediaries from defamation liability for republication, in an action in which two operators of Web sites devoted to exposing health frauds claimed that an Internet discussion group operator committed libel by maliciously distributing defamatory statements in e-mails and Internet postings,

impugning their character and competence and disparaging their efforts to combat fraud, the court of appeal erred in vacating a trial court order that granted the discussion group operator's motion to strike under the anti-strategic lawsuit against public participation statute, CCP § 425.16. Plaintiffs are free under § 230 to pursue the originator of a defamatory Internet publication, but any further expansion of liability had to await congressional action. Barrett v. Rosenthal (2006) 40 Cal 4th 33, 51 Cal Rptr 3d 55, 146 P3d 510, 2006 Cal LEXIS 13529.

In a property owner's federal diversity action against a mortgage company arising from the foreclosure of the owner's real property, an adverse state court judgment, and bankruptcy proceedings, the mortgage company was entitled to strike the owner's claim for fraud on the court pursuant to California's anti-Strategic Litigation Against Public Participation statute, CCP § 425.16, because the claim arose from acts in furtherance of the mortgage company's right of petition and free speech rights, and the owner failed to demonstrate a probability of prevailing on the claim. Whitty v. First Nationwide Mortg. Corp. (2007, SD Cal) 2007 US Dist LEXIS 12988.

In a patent and copyright infringement case, where defendant company president counterclaimed, alleging that a statement in plaintiff's complaint libeled him, plaintiff's motion to strike was granted under the Strategic Lawsuits Against Public Participation statute, Cal. Code Civ. Proc § 425.16(b)(1), as the statement was protected by the litigation privilege pursuant to CC § 47 given that defendants could not demonstrate a probability of success. The statement was made in a judicial proceeding by litigations to achieve litigation goals that had some connection or logical relation to the action; moreover, the federal district court found that, in an intellectual property dispute, allegations relating to the reputation of potential infringer were not so palpably irrelevant to the subject matter of the action that no reasonable person could doubt their irrelevancy. Dealertrack, Inc. v. Huber (2006, CD Cal) 460 F Supp 2d 1177, 2006 US Dist LEXIS 81099.

Unnamed subject in a case study on recovered memory of childhood abuse did not establish prima facie privacy or defamation claims arising from certain conduct of critics of the study. Motions to strike should have been granted regarding a disclosure of the subject's position in the military at a conference, a disclosure of the subject's initials at a deposition for an unrelated case, and for collection of information from court files. Taus v. Loftus (2007) 40 Cal 4th 683, 54 Cal Rptr 3d 775, 151 P3d 1185, 2007 Cal LEXIS 1896.

Nothing in CCP § 425.18(h) required a trial court's order granting a special motion to strike a client's complaint to be reversed where although the client argued that a second action between the parties was illegal as a matter of law under B & P C § 6094(a) because in that lawsuit she was sued for reporting her attorney and his law firm to the California State Bar, the attorney and the firm did not concede that their filing or maintenance of that action was illegal, and neither did they effectively concede the illegal nature of that action. Further, the attorney and the firm did not concede the existence of any facts that conclusively establish that the second action was illegal as a matter of law, and the client failed to conclusively prove by citation to the evidence that the second action was illegal as matter of law because it violated § 6094(a). Hutton v. Hafif (2007, Cal App 2d Dist) 150 Cal App 4th 527, 59 Cal Rptr 3d 109, 2007 Cal App LEXIS 680, rehearing denied (2007, Cal App 2d Dist) 2007 Cal App LEXIS 967, review denied (2007, Cal) 2007 Cal LEXIS 8488.

2005 amendment to CCP § 425.16(b)(3) did not require reversal of a trial court's order granting a special motion to strike a client's malicious prosecution action against her attorney and his law firm because an order denying the client's summary judgment motion in an action brought against her by the attorney and the firm established as matter of law that there was probable cause to file that action against her. Nothing in the 2005 amendment to § 425.16(b)(3) changes the well established rule of law applicable to a malicious prosecution complaint that the denial of a summary judgment motion in the underlying action establishes probable cause to file that lawsuit. Hutton v. Hafif (2007, Cal App 2d Dist) 150 Cal App 4th 527, 59 Cal Rptr 3d 109, 2007 Cal App LEXIS 680, rehearing denied (2007, Cal App 2d Dist) 2007 Cal App LEXIS 967, review denied (2007, Cal) 2007 Cal LEXIS 8488.

Listing of film production credits on a Web site was an act in furtherance of the right of free speech protected under CCP § 425.16 because the issue was the content of the site; the listings were not commercial speech; the movie at issue was a topic of widespread public interest; and the site was a public forum. Kronemyer v. Internet Movie Database Inc. (2007, Cal App 2d Dist) 150 Cal App 4th 941, 59 Cal Rptr 3d 48, 2007 Cal App LEXIS 737.

In an action brought by a high school principal against a school district's local superintendent and the superintendent of schools (officials) that alleged that the officials' statements to the press in newspaper articles invaded his privacy and defamed him, the principal's claims were subject to an anti-strategic lawsuit against public participation motion on the ground that none of the challenged statements divulged private information, but rather amounted to constitutionally privileged comment by a public officer in the proper discharge of an official duty under CC § 47(a) because, to the ex-

tent that the challenged disclosures included any private fact, the disclosure was logically relevant to the newsworthy subject of violence at the principal's school and the school district's response to it. Furthermore, the personnel exception in California's Brown Act, found in Gov C § 54957, was inapplicable because the officials' statements were not the equivalent of a personnel evaluation under the district's collective bargaining agreement, and because dismissal of the causes of action for defamation and invasion of privacy could not be considered trivial victories for the officials in the context of the case, an award of attorney fees to them was proper. Morrow v. Los Angeles Unified School Dist. (2007, Cal App 2d Dist) 149 Cal App 4th 1424, 57 Cal Rptr 3d 885, 2007 Cal App LEXIS 616.

When a child abuse victim reports that he or she allegedly has been abused, the litigation privilege of CC § 47(b) is not superseded by the liability provision of Pen C § 11172(a), which permits damages for false reports by third parties. Therefore, a physical therapist could not establish a prima facie case against a client who allegedly made false reports to the police, to the client's parents, and to a paralegal; the statements were privileged, and the therapist's claims were subject to a motion to strike under the anti-strategic lawsuit against public participation (anti-SLAPP) statute, CCP § 425.16. Chabak v. Monroy (2007, 5th Dist) 2007 Cal App LEXIS 1491.

Subtenants' claims against a landlord for retaliatory eviction, negligence, breach of implied covenant of quiet enjoyment, wrongful eviction, breach of contract, and unfair business practices were subject to a special motion to strike under CCP § 425.16 because the landlord's underlying actions were protected activity; the subtenants failed to demonstrate a probability of success on the merits because all of the communications and conduct providing the bases for the causes fell within the litigation privilege of CC § 47. 1100 Park Lane Associates v. Feldman (2008, 1st Dist) 2008 Cal App LEXIS 378.

Acts which a Chapter 11 trustee and his counsel performed while working on Chapter 11 debtors' bankruptcy estate were protected by the doctrines of quasi-judicial immunity and derived judicial immunity, and the bankruptcy court properly dismissed the debtors' action claiming that the trustee mismanaged their bankruptcy estate and conspired with his counsel and the bankruptcy judge to violate their rights. The debtors' state law claims also arose from the trustee's actions and they were properly dismissed under CCP § 425.16 because the trustee acted pursuant to his right to petition the bankruptcy court. Keenan v. Pyle (In re Keenan) (2008, SD Cal) 2008 US Dist LEXIS 25064.

Patent holder did not show, in support of a malicious prosecution claim, that competing patent applicant lacked probable cause for a federal challenge, even though a California trial court ruled in favor of the holder, because the Board of Patent Appeals found in favor of the challenger, and the prior state court finding for the holder did not establish that the challenger's victory before the board was based on fraudulent testimony; therefore, motion to strike should have been granted for the competing applicant and the applicant's attorney in the holder's malicious prosecution claim. Plumley v. Mockett (2008, 2d Dist) 2008 Cal App LEXIS 1048.

In a case where a nonprofit organization alleged that a local government agency had unlawfully advocated and spent public funds for passage of a ballot measure, trial court properly granted agency's special motion to strike the nonprofit's complaint pursuant to CCP § 425.16; agency's activity in proposing the measure was not electoral advocacy because it was in furtherance of the agency's express statutory duties and occurred before the measure was qualified for placement on the ballot. Santa Barbara County Coalition Against Automobile Subsidies v. Santa Barbara County Assn. of Governments (2008, 2d Dist) 167 Cal App 4th 1229, 2008 Cal App LEXIS 1703.

Allegations of buyer's complaint which asserted claims for interference with contract, interference with prospective economic relations, and "tort of another" against a property co-owner, did not fall within CC § 47(b)'s litigation privilege where the gravamen of the complaint did not relate to contemplated litigation, but attempted at persuasion and negotiation between co-owners of property regarding how best to manage their property; because the communications at issue were not covered by the litigation privilege, co-owner's anti-SLAPP motion should not have been granted. Haneline Pacific Properties, LLC v. May (2008, 4th Dist) 83 Cal Rptr 3d 919, 167 Cal App 4th 311, 2008 Cal App LEXIS 1491.

Initiation and prosecution of a trespass suit involved written or oral statements or writings made before a judicial proceeding within the meaning of CCP § 425.16(e)(1), and thus were acts in furtherance of the right of petition protected under § 425.16. Paiva v. Nichols (2008, 6th Dist) 2008 Cal App LEXIS 2366.

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. Club Members for An Honest Election v. Sierra Club (2008, Cal) 2008 Cal LEXIS 13720.

In an action arising from an employment termination, claims by former civil service employee for defamation and intentional infliction of emotional distress were subject to a motion to strike under CCP § 425.16; first prong was satisfied because the thrust of the claims was the city's investigation and determination that former employee engaged in misconduct on the job constituting a conflict of interest as well as theft of city property, and the second prong was satisfied because former employee was collaterally estopped from arguing that the termination was wrongful, in light of the finality of administrative proceedings concluding that employee was properly terminated. Miller v. City of Los Angeles (2008, 2d Dist) 169 Cal App 4th 1373, 87 Cal Rptr 3d 510, 2008 Cal App LEXIS 2494, review denied Miller, Jr., (Daniel J.) v. City of Los Angeles (2009, Cal.) 2009 Cal. LEXIS 2978.

Home manufacturer had not shown a probability of success on the merits of the claim with respect to the supervisor's statement that the manufacturer had a reputation throughout the country of running people out of older mobile home parks, increasing the value of the park, and then selling it at a profit because while the manufacturer offered evidence to show that it did not have a practice of flipping properties, it had not provided evidence to demonstrate that the "gist" or "sting" of the statement was false. Moreover, the county and the supervisor provided several news articles from across the country that detailed the steep rent increases the manufacturer imposed after purchasing properties, the negative impact these increases had on senior citizen residents, and the manufacrturer's attempts to challenge rent control ordinances in areas where it owned property; therefore, the court granted the county and the supervisor's renewed motion to strike the state tort causes of action under the anti-SLAPP (strategic lawsuit against public participation) statute, CCP § 425.16. Manufactured Home Cmtys., Inc. v. County of San Diego (2009, SD Cal) 2009 US Dist LEXIS 22794.

Home manufacturer had not shown a probability of success on the merits of the claim with respect to the supervisor's statement that the manufacturer lied to the county about the sewage situation being fixed because it was clear that although the manufacturer did take some steps to remedy the problem, it was not fixed by the time the supervisor made her statement. therefore, the court granted the county and the supervisor's renewed motion to strike the state tort causes of action under the anti-SLAPP (strategic lawsuit against public participation) statute, CCP § 425.16. Manufactured Home Cmtys., Inc. v. County of San Diego (2009, SD Cal) 2009 US Dist LEXIS 22794.

Home manufacturer had not shown a probability of success on the merits of the claim with respect to the supervisor's statement regarding the district attorney's interest in the case because the manufacturer failed to offer evidence that proved the falsity of the underlying implied facts of the statement. Therefore, the court granted the county and the supervisor's renewed motion to strike the state tort causes of action under the anti-SLAPP (strategic lawsuit against public participation) statute, CCP § 425.16. Manufactured Home Cmtys., Inc. v. County of San Diego (2009, SD Cal) 2009 US Dist LEXIS 22794.

Although the proponents of a ballot measure that proposed repealing a city-imposed utility users tax challenged the validity of a number of actions taken by the city regarding the measure, all of the activities of the city that were challenged by the proponents constituted permissible informational activities - and not inappropriate campaign activities. Therefore, the trial court properly granted the city's special motion to strike the proponents' complaint pursuant to CCP § 425.16. Vargas v. City of Salinas (2009, Cal) 2009 Cal LEXIS 3698.

Trial court properly granted a news network's anti-SLAPP motion on a defamation cause of action against it where plaintiffs did not meet their burden to show a probability of prevailing on their claim because there was an insufficient basis for a factfinder to conclude that a caption, "MANHUNT AT THE BORDER," which was displayed at the bottom of the television screen during a four-minute story featuring an anti-illegal immigration activist who claimed he was attacked by several immigrants, when viewed in context with the entire story, was reasonably susceptible of the false and defamatory meaning attributed to it by plaintiffs. An owner of a cable television news program has broad First Amendment, U.S. Const., 1st Amend., rights to present information in the manner it chooses, and the use of captions and graphics has become a popular method for television stations to enhance their news programs and thus to increase viewer audiences. Balzaga v. Fox News Network, LLC (2009, 4th Dist) 2009 Cal App LEXIS 757.

Fact that some of the property owner's state law claims were based on events which took place prior to the initiation of the condemnation action did not prevent that conduct from being protected by the anti-strategic lawsuit against public participation (SLAPP) statute, CCP § 425.16. Kearney v. Moser (2009, CA9 Cal) 2009 US App LEXIS 10917.

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.

In an action stemming from attempts to collect a child-support judgment, claims against opposing attorneys arose from protected activity under CCP § 425.16, subd. (e)(1), (2); the claims related to the attorneys' actions in revising a grandparent's estate plan, attempting to implement the revised plan through probate proceedings, and defending child-support litigation. A probability of success on the merits was not shown, even if a claim was stated under the child support evasion statutes, because the attorneys had dispositive defenses, including the litigation privilege. Cabral v. Martins (2009, 1st Dist) 2009 Cal App LEXIS 1483.

In an easement dispute, the filing of a notice of lis pendens on the dominant tenement was within the scope of the litigation privilege under CC § 47 and thus within the definition of a protected activity for purposes of CCP § 425.16, the anti-SLAPP (Strategic Lawsuit Against Public Participation) statute. Park 100 Investment Group II, LLC v. Ryan (2009, 2d Dist) 2009 Cal App LEXIS 2070.

Litigation privilege foreclosed claims against the attorneys of an opposing party for abuse of process, negligence, and intentional infliction of emotional distress. Therefore, a probability of prevailing was not established, and a motion to strike was properly granted under CCP § 425.16. Daniels v. Robbins (2010, 4th Dist) 2010 Cal App LEXIS 223.

37. Actions Not Subject to Motion to Strike

Trial court erred in a slander action against a decedent's brother, based on statements defendant allegedly made to a newspaper reporter and to defendant's father about the possible involvement of plaintiff in the decedent's death and the forging of his will, under the anti-SLAPP statute (CCP § 425.16), since defendant failed to make the required prima facie showing that the slander action arose from an act of defendant in furtherance of his constitutional right of petition or free speech in connection with a public issue or that the communications in question were made "before a legislative, executive, or judicial proceeding, or any other official proceeding" or "in a place open to the public or a public forum." Zhao v. Wong (1996, Cal App 1st Dist) 48 Cal App 4th 1114, 55 Cal Rptr 2d 909, 1996 Cal App LEXIS 795, review denied (1996, Cal) 1996 Cal LEXIS 6340, overruled Briggs v. Eden Council For Hope & Opportunity (1999) 19 Cal 4th 1106, 81 Cal Rptr 2d 471, 969 P2d 564, 1999 Cal LEXIS 7, overruled in part as stated, superseded in part as stated Castillo v. Pacheco (2007, Cal App 2d Dist) 150 Cal App 4th 242, 58 Cal Rptr 3d 305, 2007 Cal App LEXIS 654, superseded by statute as stated in Kronemyer v. Internet Movie Database Inc. (2007, Cal App 2d Dist) 150 Cal App 4th 941, 59 Cal Rptr 3d 48, 2007 Cal App LEXIS 737, overruled in part as stated Integrated Healthcare Holdings, Inc. v. Fitzgibbons (2006, Cal App 4th Dist) 140 Cal App 4th 515, 44 Cal Rptr 3d 517, 2006 Cal App LEXIS 872, superseded by statute as stated in Damon v. Ocean Hills Journalism Club (2000, Cal App 4th Dist) 85 Cal App 4th 468, 102 Cal Rptr 2d 205, 2000 Cal App LEXIS 943.

In an action for interference with prospective economic advantage by a telecommunications manufacturer against a company that evaluated plaintiff's bid on a contract to be let by a county, under a contract with the county, the trial court erred in finding that defendant's report, on which the action was based, was in furtherance of the right to free speech and made in connection with a public issue, as contemplated by CCP § 425.16, the anti-SLAPP suit statute. The record demonstrated that defendant was advancing its purely private interest involving its contractual relationship with the county and was acting primarily in contemplation of fulfilling its contractual obligation, not for the purpose of speaking out on a public issue. Defendant was not providing any information to the general public regarding the expenditure of public funds or regarding any other matter. Ericsson GE Mobile Communications, Inc. v. C.S.I. Telecommunications Engineers (1996, Cal App 1st Dist) 49 Cal App 4th 1591, 57 Cal Rptr 2d 491, 1996 Cal App LEXIS 961, review denied (1997, Cal) 1997 Cal LEXIS 69, overruled Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701, overruled Briggs v. Eden Council For Hope & Opportunity (1999) 19 Cal 4th 1106, 81 Cal Rptr 2d 471, 969 P2d 564, 1999 Cal LEXIS 7, overruled in part as stated Wang v. Wal-Mart Real Estate Business Trust (2007, 4th Dist) 2007 Cal App LEXIS 1219, overruled as stated Midland Pacific Building Corp. v. King (2007, Cal App 2d Dist) 153 Cal App 4th 499, 63 Cal Rptr 3d 129, 2007 Cal App LEXIS 1189.

The trial court erred in dismissing, under CCP § 425.16, a complaint seeking to enjoin a company from engaging in the unlawful practice of law by representing investors in arbitration against securities brokers. Defendant failed to meet its initial burden of showing that the suit arose from an act in furtherance of defendant's right of petition or free speech in connection with a public issue. Disputes over individual investment losses are matters of private, not public, concern. Plaintiffs' lawsuits thus did not arise from statements "in connection with a public issue." Linsco/Private Ledger, Inc. v. Investors Arbitration Services, Inc. (1996, Cal App 1st Dist) 50 Cal App 4th 1633, 58 Cal Rptr 2d 613, 1996 Cal App LEXIS 1102, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507,

52 P3d 685, 2002 Cal LEXIS 5701, overruled Briggs v. Eden Council For Hope & Opportunity (1999) 19 Cal 4th 1106, 81 Cal Rptr 2d 471, 969 P2d 564, 1999 Cal LEXIS 7.

In an action against a homeowner by an homeowners' association for failure to pay an assessment, the trial court properly denied the defendant's SLAPP suit motion under CCP § 425.16. Although the defendant's alleged activities involved matters of sufficient public interest, made in a sufficiently public forum, to invoke the protection of CCP § 425.16, the claim failed, in that the defendant failed to meet his burden to show the lawsuit was brought to chill his first amendment rights. The homeowners' association's suit appeared to be no more than a dogged effort to collect the assessment. Moreover, CCP § 425.16 motions should not be granted unless the court finds the plaintiff's case is meritless, and the homeowners' association's case had merit. Foothills Townhome Assn. v. Christiansen (1998, Cal App 4th Dist) 65 Cal App 4th 688, 76 Cal Rptr 2d 516, 1998 Cal App LEXIS 636, review denied sub nom. Foothills Townhouse Ass'n v. P.M.C. Trust Estate (1998, Cal) 1998 Cal LEXIS 6020, cert den (1999) 525 US 1106, 119 S Ct 874, 142 L Ed 2d 774, 1999 US LEXIS 626, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

In an action by an insurance company alleging that defendants, who assisted individuals in compiling and preparing repair estimates, were part of a scheme to increase the amount of money the insurer paid to defendants' clients who suffered damage from the Northridge earthquake, the trial court properly denied a special motion to strike, since defendants failed to make a prima facie showing that the causes of action arose from free speech or petition activity. While some of the reports eventually were used in official proceedings or litigation, they were not created "before," or "in connection with an issue under consideration or review" in official proceedings or litigation. Accordingly, the underlying suit did not fall within the protection of the anti-SLAPP statute (CCP § 425.16). People ex rel. 20th Century Ins. Co. v. Building Permit Consultants, Inc. (2000, Cal App 2d Dist) 86 Cal App 4th 280, 103 Cal Rptr 2d 71, 2000 Cal App LEXIS 1005.

In an action arising out of a city council election alleging that defendants interfered with plaintiff's candidacy by influencing the election with illegal campaign contributions, the trial court erred in determining the action was a SLAPP suit (CCP § 425.16). There was no dispute that defendants violated the Political Reform Act by laundering campaign contributions and thus were not engaged in a valid exercise of their constitutional rights of freedom of speech or petition for redress of grievances. Since defendants did not meet their burden, plaintiff had no obligation to establish a probability that he would prevail on his causes of action and the trial court was required to deny defendants' motion to strike plaintiff's causes of action. Paul for Council v. Hanyecz (2001, Cal App 2d Dist) 85 Cal App 4th 1356, 102 Cal Rptr 2d 864, 2001 Cal App LEXIS 6, overruled in part Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal 4th 53, 124 Cal Rptr 2d 507, 52 P3d 685, 2002 Cal LEXIS 5701.

In an action by the People to enjoin the manufacturer of a weight loss product from making unsubstantiated advertising claims and for civil penalties, the trial court properly denied a motion to strike under the anti-SLAPP statute (CCP § 425.16). People v. Health Laboratories of North America, Inc. (2001, Cal App 1st Dist) 87 Cal App 4th 442, 104 Cal Rptr 2d 618, 2001 Cal App LEXIS 142.

In an action for invasion of privacy arising after the manager of a Little League team was convicted of child molestation and the defendant, a media conglomerate, televised a picture of the team and also published the photograph in a magazine, the trial court properly denied defendant's SLAPP motion (CCP § 425.16), where plaintiffs demonstrated a reasonable probability of success on the merits. At this preliminary stage in the proceedings, plaintiffs presented a prima facie claim that the private fact of their membership on the team was not newsworthy. Based on the theory of invasion of privacy for public disclosure of private facts, plaintiffs' cause of action was sufficient to overcome the SLAPP motion. M.G. v. Time Warner, Inc. (2001, Cal App 4th Dist) 89 Cal App 4th 623, 107 Cal Rptr 2d 504, 2001 Cal App LEXIS 406, review denied (2001, Cal) 2001 Cal LEXIS 6289.

City's state court action for declaratory relief regarding the constitutionality of a mobile home park rent stabilization ordinance, filed in response to a federal court declaratory relief action brought by mobile home park owners pertaining to the same ordinance, did not constitute a strategic lawsuit against public participation. City of Cotati v. Cashman (2002) 29 Cal 4th 69, 124 Cal Rptr 2d 519, 52 P3d 695, 2002 Cal LEXIS 5702.

A lawyer's investigative acts in the course of prosecuting his clients' arbitration claims against a securities broker, as alleged in the broker's subsequent lawsuit, did not fall within the purview of the anti-SLAPP statute (CCP § 425.16), since the acts did not occur in connection with an issue under consideration or review in the arbitration. Accordingly, the lawyer's special motion to strike the broker's complaint as a meritless lawsuit brought primarily to chill the valid exercise of his constitutional rights should have been denied. Paul v. Friedman (2002, Cal App 2d Dist) 95 Cal App 4th 853, 117 Cal Rptr 2d 82, 2002 Cal App LEXIS 846, review denied (2002, Cal) 2002 Cal LEXIS 3303.

A cross-complaint or independent lawsuit filed in response to, or in retaliation for, threatened or actual litigation was not subject to the anti-SLAPP statute (CCP § 425.16) simply because it could be viewed as an oppressive litigation tactic. No lawsuit is properly subject to a special motion to strike under § 425.16 unless its allegations arose from acts in furtherance of the right of petition or free speech. Sanctions, including attorney fees and other expenses, to be awarded in the trial court's discretion, would be the appropriate remedy, not the anti-SLAPP statute. Kajima Engineering & Construction, Inc. v. City of Los Angeles (2002, Cal App 2d Dist) 95 Cal App 4th 921, 116 Cal Rptr 2d 187, 2002 Cal App LEXIS 1005, review denied (2002, Cal) 2002 Cal LEXIS 3309.

Citizen's civil complaint seeking a declaration that city council and city's "Vote 2000" program was an illegal expenditure of public funds was properly dismissed under the "anti-SLAPP" statute, CCP § 425.16 because the plaintiff failed to show a likelihood of success on the merits; additionally, it was not error for the district court to deny plaintiff an opportunity to conduct discovery before ruling on the motion, because plaintiff proffered no evidence other than his own speculation that certain documents included an improper plea to vote for a specific measure. Schroeder v. Irvine City Council (2002, Cal App 4th Dist) 97 Cal App 4th 174, 118 Cal Rptr 2d 330, 2002 Cal App LEXIS 2493, review denied (2002, Cal) 2002 Cal LEXIS 4369.

An insurer's declaratory relief action was not subject to a special motion to strike as a strategic lawsuit against public policy. State Farm General Ins. Co. v. Majorino (2002, Cal App 2d Dist) 99 Cal App 4th 974, 121 Cal Rptr 2d 719, 2002 Cal App LEXIS 4330.

An insured's suit against an insurance company based on allegations of claims misconduct was not a "SLAPP suit" within the gatekeeping provisions of CCP § 425.16. The fact that the allegations arose from confidential written reports and related materials that the insurance company had filed with the Department of Insurance did not provide a basis for a motion to strike. Gallimore v. State Farm Fire & Casualty Ins. Co. (2002, Cal App 2d Dist) 102 Cal App 4th 1388, 126 Cal Rptr 2d 560, 2002 Cal App LEXIS 4841, review denied (2003, Cal) 2003 Cal LEXIS 797.

In case in which a credit card consumer filed a class action against issuing bank and its successor in interest, alleging that the banks' long-arm program of pursuing collection actions in Virginia against California credit card holders constituted distant forum abuse, abuse of process and unfair business practice, banks could not succeed on an anti-SLAPP motion to strike the complaint as the challenged conduct was not a valid exercise of the bank's constitutional rights. Yu v. Signet Bank/Virginia (2002, Cal App 1st Dist) 103 Cal App 4th 298, 126 Cal Rptr 2d 516, 2002 Cal App LEXIS 4890, rehearing denied (2002) 2002 Cal. App. LEXIS 5044, review denied (2003, Cal) 2003 Cal LEXIS 220.

Court found that a war veteran did not show a probability of success on his defamation claims and struck the complaint under CCP § 425.16(b); the veteran was a limited purpose public figure whose cooperation in the publication of a biography invited attention, investigation, and questions, and that was all that a newspaper and writer did. Thomas v. L.A. Times Communs. LLC (2002, CD Cal) 189 F Supp 2d 1005, 2002 US Dist LEXIS 3579, aff'd (2002, 9th Cir Cal) 45 Fed Appx 801, 2002 US App LEXIS 18465.

Libel lawsuit by wife of former Congressman concerned disputed claims over defamation, not the type of meritless case brought to obtain a financial or political advantage over or to silence opposition from a defendant, which California's anti- Strategic Lawsuits Against Public Participation (SLAPP) statute was designed to discourage. Condit v. Nat'l Enquirer Inc. (2002, ED Cal) 248 F Supp 2d 945, 2002 US Dist LEXIS 16107.

In a supervisor's tort suit against employees and union, the trial court properly denied the union's motion to strike pursuant to the anti-SLAPP (strategic lawsuits against public participation) statute as the union's publication and distribution of documents containing the allegations eight employees made against the supervisor did not turn otherwise private information into a matter of public interest. Rivero v. American Federation of State, County, and Municipal Employees, AFL-CIO (2003, Cal App 1st Dist) 105 Cal App 4th 913, 130 Cal Rptr 2d 81, 2003 Cal App LEXIS 123, review denied (2003, Cal) 2003 Cal LEXIS 3059.

Because speech of a corporation, company, and related individuals concerning a product was purely commercial speech, the public interest limitation under CCP § 425.16 applied, and because plaintiffs showed a probability of prevailing, given that they sued for false advertising under CCP § 1700 (a)(5) of the Consumer Legal Remedies Act and under the unfair competition law, Cal. Bus. & Prof. Code §§ 17200 et seq., and there was no evidence to support the product claims, the trial court properly denied the motion of the corporation, individuals, and company to strike the complaint. Consumer Justice Center v. Trimedica International, Inc. (2003, Cal App 4th Dist) 107 Cal App 4th 595, 132 Cal Rptr 2d 191, 2003 Cal App LEXIS 459, review denied (2003, Cal) 2003 Cal LEXIS 3555.

Trial court erred in entering judgment in favor of defendants on plaintiff's complaint for abuse of process, where plaintiff, who alleged that defendants wrongfully levied on property pursuant to a writ of execution, established a reasonable probability of success on the merits of his action sufficient to defeat a motion to strike pursuant to CCP § 425.16. Drum v. Bleau, Fox & Associates (2003, Cal App 2d Dist) 107 Cal App 4th 1009, 132 Cal Rptr 2d 602, 2003 Cal App LEXIS 511.

In an action brought by plaintiff against defendant manufacturer of dietary supplements for violations of California's unfair competition and false advertising laws and the Consumer Legal Remedies Act, the trial court properly denied the manufacturer's motion to strike the complaint pursuant to CCP § 425.16; the manufacturer's list of product ingredients on product labels and on its Web site was not speech in furtherance of the manufacturer's constitutional right of petition or free speech in connection with a public issue within the meaning of CCP § 425.16, and even if the list of ingredients did arise from protected speech, plaintiff provided sufficient admissible evidence to show that he had a probability of prevailing on the merits of his claims. Nagel v. Twin Laboratories, Inc. (2003, Cal App 4th Dist) 109 Cal App 4th 39, 134 Cal Rptr 2d 420, 2003 Cal App LEXIS 764.

Action against a corporate landlord, its manager, and the property's prior owner filed by the rent control board for violation of rent control law was based on the alleged charging of illegal rent, not on the landlord's filing of documents to withdraw and then reinstate the property to the rental market; hence, the suit was not a strategic lawsuit against public participation (SLAPP), the motion filed under CCP § 425.16 to strike the complaint should not have been granted, and fees should not have been awarded to the landlord, the manager, and the prior owner under CCP § 425.16(c). Santa Monica Rent Control Bd. v. Pearl Street, LLC (2003, Cal App 2d Dist) 109 Cal App 4th 1308, 135 Cal Rptr 2d 903, 2003 Cal App LEXIS 923, review denied (2003, Cal) 2003 Cal LEXIS 7773.

Where a seller of investigatory services obtained a list of a corporation's shareholders and used that list to make telephone solicitations, it was not entitled to dismissal of the corporation's business tort action on an anti-SLAPP motion because there was no threshold showing that the challenged causes of action arose from protected activity; the general importance of consumer information did not make a specific sales pitch implicate an issue of public interest. Commonwealth Energy Corp. v. Investor Data Exchange, Inc. (2003, Cal App 4th Dist) 110 Cal App 4th 26, 1 Cal Rptr 3d 390, 2003 Cal App LEXIS 984, review denied (2003, Cal) 2003 Cal LEXIS 8085.

Bad faith complaint against an insurer was not subject to the anti-SLAPP statute because the insurer's alleged bad faith acts consisted of nonaction and delays, not communication, and could not be deemed to be in furtherance of the insurer's constitutional right of petition. Beach v. Harco National Ins. Co. (2003, Cal App 3d Dist) 110 Cal App 4th 82, 1 Cal Rptr 3d 454, 2003 Cal App LEXIS 993, modified (2003, Cal App 3d Dist) 2003 Cal App LEXIS 992, rehearing denied (2003, Cal App 3d Dist) 2003 Cal App LEXIS 1151.

In a former employee's defamation action against a local and a national union for the Internet posting of a statement that he was terminated from his position as assistant business manager of the local union for financial mismanagement, under CCP § 425.16(b)(1), the unions' failure to make a prima facie showing that the acts of which the employee complained were taken in furtherance of the unions' constitutional rights of petition or free speech in connection with a public issue meant that the court did not need to address whether the employee demonstrated a reasonable probability of prevailing on the merits of his defamation action. Du Charme v. International Brotherhood of Electrical Workers (2003, Cal App 1st Dist) 110 Cal App 4th 107, 1 Cal Rptr 3d 501, 2003 Cal App LEXIS 1002.

While surreptitious recordings made by a television station of a doctor prescribing controlled substances to patients without first conducting appropriate medical examinations dealt with an issue of great public interest, the station's motion under CCP § 425.16(b)(1) failed because the doctor's complaint, which asserted violations of Pen C § 632, set out a prima facie claim against the station. Lieberman v. KCOP Television, Inc. (2003, Cal App 2d Dist) 110 Cal App 4th 156, 1 Cal Rptr 3d 536, 2003 Cal App LEXIS 1007, review denied (2003, Cal) 2003 Cal LEXIS 7451.

Causes of action arising out of false allegations of criminal conduct could not be stricken under the anti-SLAPP statute when there had been no filing of charges or other action intended to result in a criminal investigation or prosecution. Weinberg v. Feisel (2003, Cal App 3d Dist) 110 Cal App 4th 1122, 2 Cal Rptr 3d 385, 2003 Cal App LEXIS 1132.

In a city's suit against a citizen group seeking to enforce local election regulations, the trial court erred in dismissing the city's suit as California's anti-SLAPP statute, CCP § 425.16, did not apply to the city's enforcement action. City of Long Beach v. California Citizens for Neighborhood Empowerment (2003, Cal App 2d Dist) 111 Cal App 4th 302, 3 Cal Rptr 3d 473, 2003 Cal App LEXIS 1239, rehearing denied (2003, Cal App 2d Dist) 2003 Cal App LEXIS 1429, review denied (2003, Cal) 2003 Cal LEXIS 9296.

Trial court erred in granting a lot owner's demurrer and motion to strike his neighbor's lawsuit for false arrest/imprisonment, intentional infliction of emotional distress, abuse of process and malicious prosecution; the act of conducting a citizen's arrest of the neighbor was not a publication or broadcast within the meaning of CC § 47, and thus not privileged. Wang v. Hartunian (2003, Cal App 2d Dist) 111 Cal App 4th 744, 3 Cal Rptr 3d 909, 2003 Cal App LEXIS 1313, review denied (2003, Cal) 2003 Cal LEXIS 9603.

Superior court did not err in denying defendant's motion to strike a complaint brought by owner of minimall and proprietors of adult entertainment club with premises therein against defendant, who had coordinated daily protests against plaintiffs, in light of the fact that the mall was similar to a stand-alone store, and the protests were less than peaceable. Slauson Partnership v. Ochoa (2003, Cal App 2d Dist) 112 Cal App 4th 1005, 5 Cal Rptr 3d 668, 2003 Cal App LEXIS 1585, rehearing denied (2003, Cal App 2d Dist) 2003 Cal App LEXIS 1776.

The Anti-SLAPP statute did not apply to a consumer's claim for breach of the implied warranty of fitness because the claim was based on the nature and impacts of the product, not on injuries attributable to the marketing efforts by the seller. Martinez v. Metabolife Internat., Inc. (2003, Cal App 4th Dist) 113 Cal App 4th 181, 6 Cal Rptr 3d 494, 2003 Cal App LEXIS 1686, review denied Martinez v. Metabolife International (2004, Cal) 2004 Cal LEXIS 1786.

Appellate court affirmed the denial of defendant attorneys' motion to strike pursuant to CCP § 425.16, as the complaint filed by clients was one for legal malpractice, and the attorneys' actions in the underlying case did not involve the rights of free speech or petition. Jespersen v. Zubiate-Beauchamp (2003, Cal App 2d Dist) 114 Cal App 4th 624, 7 Cal Rptr 3d 715, 2003 Cal App LEXIS 1875, review denied (2004, Cal) 2004 Cal LEXIS 3065.

In a patent infringement suit brought by a university and its licensing agent, under choice-of-law analysis, California's anti-SLAPP law did not apply to the accused infringers' counterclaims for unfair competition and abuse of process. Competitive Techs. v. Fujitsu Ltd. (2003, ND Cal) 286 F Supp 2d 1118, 2003 US Dist LEXIS 18222, appeal dismissed (2004) 374 F.3d 1098, 2004 U.S. App. LEXIS 13446, 71 U.S.P.Q.2d (BNA) 1359.

Motion to strike a former employer's suit against a competitor based on a former employee's postings to a web site chat room disparaging the former employer was denied because the postings were commercial speech by a competitor against a competitor, and thus did not satisfy the "issue of public interest" requirement of the California anti-SLAPP statute, CCP § 425.16. MCSi, Inc. v. Woods (2003, ND Cal) 290 F Supp 2d 1030, 2003 US Dist LEXIS 3086.

In an action alleging malicious prosecution of a fraud lawsuit, the trial court improperly granted defendant attorneys' motion to strike under CCP § 425.16(b)(1) because plaintiff attorneys presented evidence in opposition to defendants' motion that, if believed by the trier of fact, was sufficient to support a judgment in plaintiffs' favor, indicating that defendants were given transcripts shortly after the fraud lawsuit was filed that showed that defendants knew or should have known that the fraud lawsuit had no merit. Zamos v. Stroud (2004) 32 Cal 4th 958, 12 Cal Rptr 3d 54, 87 P3d 802, 2004 Cal LEXIS 3048.

In a former airplane owner's malicious prosecution action against an insurer, its law firm, and its lawyer, based on a fraud claim filed against the owner in a prior action, the denial of the owner's first two motions for summary judgment in the underlying action did not establish probable cause as a matter of law for the fraud claim, and the ultimate grant of summary judgment to the owner in the underlying action did not conclusively establish a lack of probable cause; however, such grant of summary judgment to the owner, coupled with the jury's finding of malice and award of punitive damages against the insurer in the underlying action, demonstrated a potential for recovery in the malicious prosecution action sufficient to withstand a motion to strike under CCP § 425.16(b)(1). Slaney v. Ranger Ins. Co. (2004, Cal App 2d Dist) 115 Cal App 4th 306, 8 Cal Rptr 3d 915, 2004 Cal App LEXIS 112, review denied (2004, Cal) 2004 Cal LEXIS 4148.

Manufacturer's anti-SLAPP motion to strike a consumer's personal injury complaint was properly denied because the gravamen of the consumer's four personal injury claims, each asserted under a different theory of liability, was that her injury was sustained from the proper use of an allegedly defective product, a claim that did not involve the manufacturer's assertion of First Amendment rights of free speech and the right to petition. Scott v. Metabolife Internat., Inc. (2004, Cal App 3d Dist) 115 Cal App 4th 404, 9 Cal Rptr 3d 242, 2004 Cal App LEXIS 115.

Manufacturer's anti-SLAPP motion to strike a consumer's personal injury complaint was properly denied because although the gravamen of the consumer's false advertising claim was that the manufacturer had made false claims in its advertising about its product, such advertising was not a public issue as contemplated by CCP § 425.16 because it was about a specific consumer product and was made only for the purposes of increasing the sales of that particular product;

hence, CCP § 425.16 did not apply to the false advertising claim. Scott v. Metabolife Internat., Inc. (2004, Cal App 3d Dist) 115 Cal App 4th 404, 9 Cal Rptr 3d 242, 2004 Cal App LEXIS 115.

Defendant, an attorney, appealed the denial of his anti-SLAPP motion in an action by the Attorney General to stop the attorney from filing allegedly abusive unfair competition lawsuits. Defendant's appeal was dismissed as frivolous because the anti-SLAPP statute specifically exempted actions by public prosecutors, including the Attorney General; the court commented that the appeal virtually had the words "brought for reasons of delay" tattooed on its forehead. People ex rel. Lockyer v. Brar (2004, Cal App 4th Dist) 115 Cal App 4th 1315, 9 Cal Rptr 3d 844, 2004 Cal App LEXIS 214.

Trial court properly denied a studio's special motion to strike a lawsuit alleging consumer protection violations based on the studio's use of a nonexistent movie critic in its advertisements because the advertisements constituted commercial speech. Rezec v. Sony Pictures Entertainment, Inc. (2004, Cal App 2d Dist) 116 Cal App 4th 135, 10 Cal Rptr 3d 333, 2004 Cal App LEXIS 226.

Attorney's conduct related to the drafting of a termination agreement that constituted a breach of trust did not constitute an oral or written statement made before a judicial proceeding or a statement made in connection with an issue under consideration or review by a judicial body, and the transaction was a private issue that was unconnected to any "public issue" or "issue of public interest"; therefore, a special motion to strike under the California anti-Strategic Lawsuit Against Public Participation statute, CCP § 425.16, was properly denied. Attorney fees should have been awarded to the trustee because the motion was frivolous. Moore v. Shaw (2004, Cal App 2d Dist) 116 Cal App 4th 182, 10 Cal Rptr 3d 154, 2004 Cal App LEXIS 229.

Where insured's disability benefits were discontinued because of alleged fraud, his malicious prosecution claim against the insurer based on the insurer's alleged instigation of fraud prosecution was properly struck under the anti-SLAPP statute because the claim arose from an act in furtherance of defendants' right to petition or free speech, namely the insurer's report of the alleged fraud to public officials as required by statute. Dickens v. Provident Life & Accident Ins. Co. (2004, Cal App 2d Dist) 117 Cal App 4th 705, 11 Cal Rptr 3d 877, 2004 Cal App LEXIS 465.

Motion to strike was properly denied in a malicious prosecution case because, although the case was based on the protected activity of freedom to petition, a broker established the probability of prevailing on the action since a prior lawsuit was terminated in favor of the broker (despite a post-verdict settlement on the issue of costs), the company's prior action seeking cancellation fees was meritless since they were not recoverable, and evidence that the company demanded a certain amount for settlement of the case was admissible to show malice, despite the prohibitions of Ev C §§ 1152, 1154. HMS Capital, Inc. v. Lawyers Title Co. (2004, Cal App 2d Dist) 118 Cal App 4th 204, 12 Cal Rptr 3d 786, 2004 Cal App LEXIS 653.

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.

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 would 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 CCP § 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 Foodns Inc. (2004, Cal) 2004 Cal LEXIS 9099.

Anti-SLAPP motion to strike was properly denied as to interference claims in a former employer's action alleging that former employees formed a competing company and solicited customers with fraudulent statements, including allegation that the employer used illegal and carcinogenic chemicals. Those claims did not arise from the employees' reports to government agencies, in that the clients did not know about the reports; further, the speech was not made in connection with a public issue or an issue of public interest because it was not about pollution or potential public health and safety issues in general, but about the employer's specific business practices. 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.

Anti-SLAPP motion to strike was properly denied where plaintiff, a former employer, established a prima facie claim of slander per se with the sworn declaration of a client that defendants, former employees who had started a com-

peting business, told the client that the employer was engaging in illegal chemical use and dumping, but did not inform the client of their request for a government investigation. The absolute "litigation privilege" did not apply as there was no evidence that the comments to customers had any relationship to the employees' reports to the government; conditional privilege did not apply because the parties were business competitors and it was not reasonable to assume that the motive of the communication was innocent. 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.

Trial court erred in granting motion to strike, although a former insurance agent's statements were an issue of public interest, because the publication reasonably could be construed as asserting as fact that a viatical settlements broker had engaged in specific wrongful conduct leading to a judgment and an investigation and that the broker engaged in incompetent and unethical business practices. The facts implied by the publication as a whole were provably false. Wilbanks v. Wolk (2004, Cal App 1st Dist) 121 Cal App 4th 883, 17 Cal Rptr 3d 497, 2004 Cal App LEXIS 1356.

Attorney was not entitled to strike a civil extortion complaint alleging that he threatened criminal prosecution and publicity regarding a purported sexual assault if a settlement were not paid; such a demand, which the attorney effectively conceded that he made, constituted extortion under Pen C §§ 518, 519, as well as professional misconduct under Cal. R. Prof. Conduct 5-100(A) and Ill. Sup. Ct. R. Prof. Conduct 1.2(e), so it was not protected communication within the meaning of CCP § 425.16(b)(1), regardless of the merits of the civil extortion claim. Flatley v. Mauro (2004, Cal App 2d Dist) 121 Cal App 4th 1523, 18 Cal Rptr 3d 472, 2004 Cal App LEXIS 1465, rehearing denied (2004) 2004 Cal. App. LEXIS 1666, review gr, depublished (2004) 22 Cal Rptr 3d 517, 102 P3d 904, 2004 Cal. LEXIS 11902, aff'd, superseded (2006) 39 Cal 4th 299, 46 Cal Rptr 3d 606, 139 P3d 2, 2006 Cal LEXIS 9074.

Class action brought by customers of satellite television programming provider, alleging violation of B & P C §§ 17200 et seq., interference with civil rights, and extortion and duress, following provider's sending of demand letters, followed by filing of federal lawsuits nationwide against more than 600 people who purchased pirating devices, did not fall within an exception to the anti-SLAPP procedure. The customers' claim, if successful, would not enforce an important right affecting the public interest under CCP § 425.17(b)(2), nor could they satisfy the necessity and financial burden factor of § 425.17(b)(3) or demonstrate prima facie that they could overcome the litigation privilege of CC § 47(b), which applied to the demand letters. 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 .

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. 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.

Water district board member's comments to a newspaper reporter about the board's reasons for firing its general counsel violated Gov C § 54957.1(a)(5) of the Ralph M. Brown Act, Gov C § 54950 et seq., and were thus not protected by the anti-SLAPP (strategic lawsuit against public participation) statute, CCP § 425.16. The board member admitted that his comments revealed the closed session discussion; closed sessions, when authorized by the Brown Act, are not subject to public scrutiny. Harron v. Bonilla (2005, Cal App 4th Dist) 125 Cal App 4th 738, 23 Cal Rptr 3d 73, 2005 Cal App LEXIS 14, review gr, depublished (2005) 28 Cal Rptr 3d 3, 110 P 3d 1217, 2005 Cal. LEXIS 4585, review dismissed (2006, Cal) 49 Cal Rptr 3d 654, 143 P3d 655, 2006 Cal LEXIS 12703.

Trial court properly denied a city's request to dismiss residents' action as a strategic lawsuit against public participation in violation of CCP § 425.16(b)(1); it was the city's refusal to process permits of which the residents complained, not the city's engagement in the protected activity of suing the coastal commission regarding the permits. Visher v. City of Malibu (2005, Cal App 2d Dist) 126 Cal App 4th 364, 23 Cal Rptr 3d 816, 2005 Cal App LEXIS 162.

In an action arising from incidents at the home of an employee of an animal testing laboratory, the trial court properly denied an animal rights organization's motion to strike the employee's causes of action for intentional infliction of emotional distress and invasion of privacy, where the employee showed a probability of prevailing on those claims; the employee also showed a probability of prevailing on her individual claim of unfair competition. Huntingdon Life

Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc. (2005, Cal App 4th Dist) 129 Cal App 4th 1228, 29 Cal Rptr 3d 521, 2005 Cal App LEXIS 878.

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.

An infringement lawsuit by a trademark owner over a defendant's unauthorized use of the mark as his domain name does not necessarily impair the defendant's free speech rights. Hence, the court would reverse the grant of the anti-SLAPP motion to strike and remand to the district court for further proceedings on the state law claims. Bosley Med. Inst., Inc. v. Kremer (2005, 9th Cir Cal) 403 F3d 672, 2005 US App LEXIS 5329.

Where it was difficult for the court to see how a newspaper's statements could have been made in connection with a government investigation when the charity allegedly under investigation was alleging that there had been no investigation before the time of publication, the newspaper's motion to dismiss pursuant to CCP § 425.16(b)(1) was denied. Global Relief Found. v. New York Times Co. (2002, ND Ill) 2002 US Dist LEXIS 17081.

Where a limited liability company filed a first amended complaint (FAC) after a company's anti-SLAPP motion (CCP § 425.16), the motion was mooted pursuant to Fed. R. Civ. P. 15(a); the company had to bring its anti-SLAPP motion against the FAC, not the original complaint. Optinrealbig.com, LLC v. Ironport Sys., Inc. (2004, ND Cal) 2004 US Dist LEXIS 15375.

District court erred in granting a former patient's motion to strike a medical institute's state law trademark claims pursuant to the Anti-SLAPP statute, CCP § 425.16, on the ground that the institute was seeking to limit the patient's free speech rights under U.S. Const. Amend. I; the patient set up a critical website using the institute's trademark, and the institute's complaint about the unauthorized use of its trademark as the patient's domain name was not so lacking in merit as to be susceptible to an anti-SLAPP motion to strike at such as early stage of the case. Bosley Med. Inst., Inc. v. Kremer (2005, 9th Cir Cal) 403 F3d 672, 2005 US App LEXIS 5329.

Trial court properly denied an attorney's motion to strike a well-known entertainer's civil extortion complaint against the attorney, where the activity by the attorney that formed the basis for the motion to strike constituted extortion as a matter of law, and such activity was not constitutionally protected activity for purposes of CCP § 425.16. Flatley v. Mauro (2006) 39 Cal 4th 299, 46 Cal Rptr 3d 606, 139 P3d 2, 2006 Cal LEXIS 9074.

Car manufacturer's action against a dealer for breach of an agreement to waive protest rights was not subject to a motion to strike under CCP § 425.16. The manufacturer established a likelihood of prevailing on the merits because there was no dispute that the dealer breached the agreement by filing protests. DaimlerChrysler Motors Co. v. Lew Williams, Inc. (2006, Cal App 3d Dist) 142 Cal App 4th 344, 48 Cal Rptr 3d 233, 2006 Cal App LEXIS 1308.

In a legal malpractice action, defendant law firm's special motion to strike was properly denied. The firm conceded that the case was a garden variety malpractice action; because the claims arose from the firm's alleged legal malpractice and not from petitioning activity protected under CCP § 425.16, the anti-strategic lawsuit against public participation (anti-SLAPP) statute, the firm failed to meet its burden under the statute's first prong. Kolar v. Donahue, McIntosh & Hammerton (2006, Cal App 4th Dist) 145 Cal App 4th 1532, 52 Cal Rptr 3d 712, 2006 Cal App LEXIS 2033, review denied (2007, Cal) 2007 Cal LEXIS 2820.

Where plaintiff's motion to strike targeted only defendants' arbitration claim, which had been asserted by the claimants only in the arbitral forum and not as part of a complaint, cross-complaint or petition filed in court, and this claim was not subject to CCP § 425.16, the trial court erred in partially granting plaintiff's motion to strike. Sheppard v. Lightpost Museum Fund (2006, Cal App 6th Dist) 146 Cal App 4th 315, 52 Cal Rptr 3d 821, 2006 Cal App LEXIS 2069, review denied (2007) 2007 Cal. LEXIS 2070.

CCP § 425.16 does not authorize a superior court to grant a motion to strike an arbitration claim filed only in an agreed arbitral forum and not asserted by the claimant in any complaint, cross-complaint or petition filed in court. Sheppard v. Lightpost Museum Fund (2006, Cal App 6th Dist) 146 Cal App 4th 315, 52 Cal Rptr 3d 821, 2006 Cal App LEXIS 2069, review denied (2007) 2007 Cal. LEXIS 2070.

Defendant's motion to dismiss pursuant to CCP § 425.16 was denied because the statute did not apply to federal claims brought under federal racketeering and antitrust law; furthermore, defendant failed to show that statements made at California Department of Transportation auction for billboard permits were protected under the statute and there was sufficient evidence to permit a reasonable jury to find that defendant knowingly paid money to the mayor with the intent to induce the mayor to use his office to secure city contracts for defendant and prevent plaintiff from obtaining necessary billboard permits. Bulletin Displays, LLC v. Regency Outdoor Adver., Inc. (2006, CD Cal) 448 F Supp 2d 1172, 2006 US Dist LEXIS 64074.

In a case in which a biopharmaceutical company sued an animal rights organization after the company's employees had been targeted for "home visits" by the organization's members, the trial court properly denied the organization's special motion to strike under CCP § 425.16. The activities described in the company's complaint were illegal as a matter of law, and there was ample evidence the organization conspired with the demonstrators to commit these wrongful acts. Novartis Vaccines & Diagnostics, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc. (2006, Cal App 1st Dist) 143 Cal App 4th 1284, 50 Cal Rptr 3d 27, 2006 Cal App LEXIS 1577.

Client's refusal to be deposed reasonably could be construed as a concession his claims for breach of contract and legal malpractice against his attorney lacked merit. Because the attorney produced evidence sufficient to establish a probability of prevailing on his claim against the client for malicious prosecution, the trial court properly denied the client's special motion to strike that claim. Ross v. Kish (2006, Cal App 2d Dist) 145 Cal App 4th 188, 51 Cal Rptr 3d 484, 2006 Cal App LEXIS 1867, review denied (2007, Cal) 2007 Cal LEXIS 1769.

Dismissal of claims under CC §§ 1770 et seq., 1788 et seq., and for intentional and negligent infliction of emotional distress, pursuant to the anti-Strategic Litigation Against Public Participation statute, CCP § 425.16, was denied as the filing of a lien by a law office after it won a default judgment was not protected activity under § 425.16(e). Further, a son, who sued after he was pursued by the law office and other defendants who were collecting a debt against his father, despite repeatedly assuring them that they had the wrong person, raised no suspicion that he sued for any other person than to succeed on the merits of his claims. Rouse v. Law Offices of Rory Clark (2006, SD Cal) 465 F Supp 2d 1031, 2006 US Dist LEXIS 91744.

Unnamed subject in a case study on recovered memory of childhood abuse established a prima facie claim against a critic of the study for intrusion into private matters because the critic's conduct could be found highly offensive if a trier of fact believed, as alleged, that the critic misrepresented herself as a colleague of the study's author, a psychiatrist, in order to obtain information from the subject's former foster mother. The intrusion claim therefore properly survived a motion to strike. Taus v. Loftus (2007) 40 Cal 4th 683, 54 Cal Rptr 3d 775, 151 P3d 1185, 2007 Cal LEXIS 1896.

In a tortious interference action by a doctor against lawyers representing the doctor's associate, a letter from the lawyers to a health maintenance organization (HMO) was neither a public forum nor of public interest under CCP § 425.16. The letter was to the president of the HMO, not its members, and it concerned a private matter as to who would reap the benefits of a provider agreement. Kurwa v. Harrington, Foxx, Dubrow & Canter, LLP (2007, Cal App 2d Dist) 146 Cal App 4th 841, 53 Cal Rptr 3d 256, 2007 Cal App LEXIS 36, review denied (2007, Cal) 2007 Cal LEXIS 3085.

Although CCP § 425.16 provides a procedural vehicle for early scrutiny of claims against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue, it does not extend to claims against a person arising from any act of that person in furtherance of the person's right of free exercise of religion. Castillo v. Pacheco (2007, Cal App 2d Dist) 150 Cal App 4th 242, 58 Cal Rptr 3d 305, 2007 Cal App LEXIS 654, rehearing denied (2007, Cal App 2d Dist) 2007 Cal App LEXIS 975, review denied (2007, Cal) 2007 Cal LEXIS 7727.

In a case in which plaintiffs alleged that defendants were committing a nuisance by holding large ceremonial outdoor open fires in their backyard, plaintiffs' nuisance claim against defendants, arising out of their ceremonial fire, was not subject to a special motion to strike under CCP § 425.16. Castillo v. Pacheco (2007, Cal App 2d Dist) 150 Cal App 4th 242, 58 Cal Rptr 3d 305, 2007 Cal App LEXIS 654, rehearing denied (2007, Cal App 2d Dist) 2007 Cal App LEXIS 975, review denied (2007, Cal) 2007 Cal LEXIS 7727.

Claim that a real estate seller wrongfully pursued a nonjudicial foreclosure was not subject to a motion to strike under CCP § 425.16, the anti-strategic lawsuit against public participation (anti-SLAPP) statute, because the seller's underlying activity--initiation of a nonjudicial foreclosure--concerned a commercial transaction that was not protected activity. The fact that nonjudicial foreclosure activity under CC § 2924(d) constituted privileged communications under CC §

47(b) did not mean that foreclosure proceedings were "official proceedings" for purposes of the anti-SLAPP statute. Garretson v. Post (2007, 4th Dist) 156 Cal App 4th 1508, 2007 Cal App LEXIS 1892.

Denial of defendants' motion to strike pursuant to CCP § 425.16 plaintiff's claims under CCP §§ 724.050 and 724.070 was affirmed because Fed. R. Civ. P. 69(a), which incorporated state law, was valid under the Rules Enabling Act, 28 U.S.C.S. § 2072, and it applied to satisfaction of judgments and acknowledgment thereof. Zamani v. Carnes (2007, 9th Cir Cal) 491 F3d 990, 2007 US App LEXIS 12863.

Trial court properly denied a client's special motion to strike a law firm's breach of contract and breach of covenant claims pursuant to CCP § 425.16, where the client waived her right to enforce the Mandatory Fee Arbitration Act, B & P C § 6201 et seq., by filing her own cross-complaint against the firm in court. Philipson & Simon v. Gulsvig (2007, 4th Dist) 2007 Cal App LEXIS 1369.

CCP § 425.16 did not apply to a claim alleging that a lawyer abandoned clients in order to represent adverse interests because the principal thrust of the allegedly actionable conduct was not petitioning activity but rather was violation of the duty of loyalty that the lawyer assertedly owed to the clients. Freeman v. Schack (2007, 4th Dist) 2007 Cal App LEXIS 1406.

Court denied defendants' motion to strike plaintiff's cause of action raised under California's Rosenthal Act, CC § 1788.17, where the court determined that an anti-Strategic Lawsuits Against Public Participation motion to strike was inappropriate, as there was a question as to when the underlying debt went into default. Mello v. Great Seneca Fin. Corp. (2007, CD Cal) 2007 US Dist LEXIS 93985.

Motion to strike was properly denied as to city attorney's action seeking declarations that two ballot initiative measures were unconstitutional because city attorney established a probability of prevailing on the merits; proposed initiative measures were an improper exercise of electorate's initiative power under Cal Const Art II § 8 because they did not contain actual statutes or ordinances, but rather were in the nature of resolutions that declared policies without providing the specific laws to be enacted. Widders v. Furchtenicht (2008, 2d Dist) 167 Cal App 4th 769, 84 Cal Rptr 3d 428, 2008 Cal App LEXIS 1614.

Company's motion to strike intervenor competitor's counter-claim for declaratory relief based on California's Anti-SLAPP statute was denied; although the competitor sought resolution of the validity of the same ordinance that the company was challenging, the competitor's claim did not arise from the company's filing of its action. Summit Media LLC v. City of Los Angeles (2008, CD Cal) 530 F Supp 2d 1084, 2008 US Dist LEXIS 3834.

Because defendant John Does who had been sued in Ohio for defamation by a New York resident could not establish that CCP § 425.16, applied to the New York resident's request for a subpoena directed at a third party web search engine, California trial court erred in granting the Does' § 425.16 special motion to strike and awarding them attorney fees. Tendler v. www.Jewishsurvivors.blogspot.com (2008, 6th Dist) 2008 Cal App LEXIS 994.

Claim that a landlord fraudulently invoked the family occupancy exemption of the Los Angeles rent stabilization ordinance should not have been struck under CCP § 425.16 because the tenant's claims did not arise from the landlord's protected activity; rather, the claims were based on the landlord's violation of rent control laws. Clark v. Mazgani (2009, 2d Dist) 2009 Cal App LEXIS 151.

In a former client's suit to enjoin a law firm from engaging in a successive representation, a motion to strike under Code Civ. Proc., § 425.16, the anti-Strategic Lawsuit Against Public Participation (anti-SLAPP) statute, was properly denied because the firm's protected activity was only incidental to the principal thrust of the complaint: the acceptance by the firm of representation adverse to the former client. United States Fire Ins. Co. v. Sheppard, Mullin, Richter & Hampton (2009, 1st Dist) 2009 Cal App LEXIS 333.

Action against a business competitor was not subject to a motion to strike under the anti-Strategic Lawsuit Against Public Participation (anti-SLAPP) statute because the alleged misappropriation of trade secrets and use of confidential information for solicitation did not arise from "protected activity," within the meaning of CCP § 425.16(e)(4). World Financial Group, Inc. v. HBW Ins. & Financial Services, Inc. (2009, 2d Dist) 2009 Cal App LEXIS 553.

Where defendant failed to meet her burden to show that plaintiffs' cause of action for account stated arose from activity protected by the anti-SLAPP (strategic lawsuit against public participation) statute, CCP § 425.16, the trial court correctly denied her anti-SLAPP motion. The account stated cause of action arose from defendant's alleged failure to pay interest on a loan, which was the act underlying the cause of action, and it was immaterial whether plaintiffs had

asserted the cause of action in response to, or in retaliation for, defendant's attempt to initiate arbitration. 21 Chamberlain & Assocs. v. Haberman (2009, 4th Dist) 2009 Cal App LEXIS 558.

In a case in which a trial court denied defendant's anti-SLAPP (strategic lawsuit against public participation) motion to strike the complaint of plaintiffs, defendant had mistakenly relied upon the litigation privilege, CC § 47(b)(2), because, while defendant's arbitration demand might have been privileged, her demand was not automatically protected by the anti-SLAPP statute, CCP § 425.16. Defendant had to affirmatively show that her conduct qualified as constitutionally protected activity under CCP § 425.16, which she failed to do. 21 Chamberlain & Assocs. v. Haberman (2009, 4th Dist) 2009 Cal App LEXIS 558.

Attorney's filing of a State Bar complaint against co-counsel, through the client in the underlying suit, was properly found to be an act of extortion, intended to pressure co-counsel into immediately signing off on a settlement check. Because the act was illegal, it was not a protected activity under CCP § 425.16, and did not support a motion to strike co-counsel's complaint arising from the extortion. Cohen v. Brown (2009, 2d Dist) 2009 Cal App LEXIS 619.

Trial court erred in granting respondent lis pendens recorders' special motion to strike appellant building owner's slander of title complaint pursuant to the anti-SLAPP (strategic lawsuit against public participation) statute, CCP § 425.16, where the filings of the lis pendens had a direct connection to respondents' arbitration proceedings against appellant, which involved claims that affected title to and rights of possession of the building. Because no action in a court of law was pending at the time respondents filed the two lis pendens, they improperly recorded the notices of pendency of action, and it thus followed that the litigation privilege, CC § 47, subd. (b)(4), was inapplicable because the lis pendens did not identify an action previously filed with a court of competent jurisdiction. Manhattan Loft, Llc v. Mercury Liquors, Inc. (2009, 2d Dist) 2009 Cal App LEXIS 688.

Plaintiff's false imprisonment and negligence claims were not barred by CCP § 425.16 because the line between communication and conduct was crossed when the security guards executed a citizen arrest and caused the police officers to take plaintiff into custody. The anti-SLAPP statute and the "litigation privilege" did not immunize the company from liability arising from this alleged conduct. Tisdale v. City of L.A. (2009, CD Cal) 2009 US Dist LEXIS 40740.

Special motion to strike under CCP § 425.16 only applied to state law claims brought in federal court and did not apply to counter-claimants' claims for false or fraudulent registration of trademarks or for unfair trade practices and unfair competition pursuant to 15 U.S.C.S. § 1125(a). Sonoma Foods, Inc. v. Sonoma Cheese Factory, LLC (2007, ND Cal) 2007 US Dist LEXIS 56032.

Counter-claims for fraud and breach of contract were based on plaintiff's alleged failure to assign counter-claimants certain retail trademarks. Because they arose out of an alleged agreement and plaintiff's alleged failure to act as promised, not on any protected activity, the claims were not subject to a special motion to strike under CCP § 425.16. Sonoma Foods, Inc. v. Sonoma Cheese Factory, LLC (2007, ND Cal) 2007 US Dist LEXIS 56032.

Where defendant landlords' CCP § 425.16 motion in the trial court did not, on the facts and pleadings of the case, satisfy the first prong of that statute, the trial court erred in granting it as to any of the causes of action in plaintiff tenant's complaint because plaintiff's action did not challenge any communications preparatory to, or in anticipation of, a lawsuit. Rather, it challenged defendants' actions in allegedly breaching a tenancy termination agreement the parties had entered into after plaintiff would not meet their new rental demands, and there was no litigation commenced by defendants, not even an unlawful detainer action. Delois v. Barrett Block Partners (2009, 1st Dist) 2009 Cal App LEXIS 1550.

In an action alleging unfair debt collection practices, the debt collector's motion to strike was denied because it failed to show that the disputed debt collection letter was a protected activity. There was no evidence litigation was under serious consideration. Welker v. Law Office of Daniel J. Horwitz (2009, SD Cal) 626 F Supp 2d 1068, 2009 US Dist LEXIS 54107.

Appellate court affirmed the denial of the corporation's motion to strike the celebrity's right to publicity claim pursuant to the anti-strategic lawsuit against public participation (anti-SLAPP) statute, CCP § 425.16 because although the corporation's card qualified as speech and fell comfortably within the universe of types of communication that California courts considered conduct in furtherance of the exercise of free speech rights upon which to base anti-SLAPP motions to strike, and the celebrity was a topic of widespread public interest, thus making the corporation's card in connection with a public issue or an issue of public interest, the corporation was not entitled to the transformative use or public interest defenses, and thus, the celebrity had at least some probability of prevailing on the merits before a trier of fact. Hilton v. Hallmark Cards (2009, CA9 Cal) 2009 US App LEXIS 19571.

Law firm was not entitled to strike a consumer's complaint alleging violation of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C.S. § 1692 et seq., under California's anti-SLAPP statute, CCP § 425.16; the overwhelming gist of the consumer's FDCPA action was that a dunning letter sent by the law firm, and not the lawsuit that the law firm filed against the consumer in state court, was the inspiration behind the consumer's FDCPA action. Hutton v. Law Offices of Collins & Lamore (2009, SD Cal) 2009 US Dist LEXIS 104085.