

# The Intricacies Behind California Anti-SLAPP Motions

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The California legislature enacted Code of Civil Procedure section 425.16 to provide for the early dismissal of meritless suits aimed at chilling the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. (See *C.C.P. § 425.16(a); Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 37 Cal.App.4th 855, 858-59.) These meritless lawsuits are often referred to as “Strategic Lawsuits Against Public Participation” or “SLAPP” suits. (*Id.*) The point of the anti-SLAPP statute is to have the right not to be dragged through the courts because of an exercise of constitutional rights. (*Varian Med. Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 193.) The Legislature explicitly directed that the anti-SLAPP statute “shall be construed broadly.” (*C.C.P. § 425.16(a).*) Any of the following types of lawsuits can be a SLAPP suit: defamation, malicious prosecution, abuse of process, nuisance, invasion of privacy, conspiracy, intentional infliction of emotional distress, interference with contract, or economic advantage, among others.

The Court conducts a two-step analysis to determine whether a complaint should be stricken pursuant to the anti-SLAPP statute. (*Navallier v. Sletten* (2002) 29 Cal.4th 82, 88.) First, the court decides whether the “defendant has made a threshold showing that the challenged cause of action is one arising from a protected activity.” (*Id.*) The first inquiry is the “principal thrust or gravamen of plaintiff’s cause of action.” (*Martinez v. Metabolife International, Inc.* (2003) 113 Cal.App.4th 181, 188.) Under the anti-SLAPP statute, the phrase “cause of action...arising from” means simply the defendant’s act underlying the plaintiff’s cause of action must itself have been an act in furtherance of the right of petition or free speech. (*Chabak v. Monroy* (2007) 154 Cal.App.4th 1502, 1511.)

Protected activities include “any 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.” (*C.C.P. § 425.16(e).*) This includes 1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, 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, 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, or 4) 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. (*C.C.P. § 425.16(e).*) Thus, to win an anti-SLAPP motion, the defendant must first show the speech in question falls under one of the above four sections.

Once a defendant makes a threshold showing that plaintiff’s Complaint arises from statutorily protected activity, the burden then shifts to the plaintiff to establish a “probability” he will prevail on whatever claims are asserted against the defendant. (*C.C.P. § 425.16(b).*) This is called making a *prima facie* showing. Plaintiff must show “the complaint is both legally sufficient and supported by a sufficient *prima facie* showing of facts to sustain a favorable judgment.” (*Premier Med. Mgmt. Systems, Inc. v. California Ins. Guar. Ass’n* (2006) 136 Cal.App.4th 464, 476.) 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.” (*C.C.P. § 425.16(b)(2).*)

If the defendant prevails and the judge grants the anti-SLAPP motion, the defendant is entitled

to recover his or her mandatory attorneys' fees or costs. (C.C.P. § 425.16(c)(1).) This is *not* discretionary. Once an anti-SLAPP motion has been filed, a plaintiff cannot escape this mandatory fee award by amending or even dismissing his complaint. If the defendant does not meet his burden and the judge denies the motion when it should have been granted, the statute provides that the order denying the motion is immediately appealable.

As seen above, there are many actions which can result in an anti-SLAPP motion. The anti-SLAPP statute is an effective means of fighting litigation which is designed to retaliate against, or chill, protected speech.

## **ABOUT THE AUTHORS**

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