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ARTICLE

# SLAPP HAPPY: AN ANALYSIS OF CALIFORNIA'S ANTI-SLAPP (STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION) STATUTE

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## I. THE PROBLEM: GETTING SLAPPED

The seemingly lighthearted "SLAPP" acronym belies the potentially devastating nature of so-called Strategic Lawsuits Against Public Participation, as well as "anti-SLAPP" statutes enacted to counteract them. An acronym that lends itself to overuse and bad puns, SLAPP describes civil lawsuits aimed at preventing citizens from exercising their political rights or punishing those who have done so.

The paradigm SLAPP suit is one filed by a large business against local activists or associations to chill the defendants' political or legal opposition to the company's plans, whether those plans involve land development or selling more hamburgers. The SLAPP plaintiff's objective is not necessarily to win; rather its purpose is to effectively "muzzle" the defendants from engaging in constitutionally protected activity. In essence, the SLAPP plaintiff achieves its goals by filing the lawsuit. Because they are primarily concerned with stifling speech or petition rights, SLAPP suits often lack underlying merit.

While the victim of a SLAPP lawsuit may resort to traditional remedies like malicious prosecution, abuse of process, and sanctions against a SLAPP plaintiff who filed a truly frivolous suit, those remedies can be illusory; malicious prosecution and related claims are difficult to prove and may be mooted by the plaintiffs' procedural maneuvering, and the SLAPP plaintiff may have already achieved its goals by filing the suit. The SLAPP victim may therefore be left without practical recourse.

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In response to these concerns, the Legislature enacted Code of Civil Procedure section 425.16 in 1992. The statute 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," and "it is in the public interest to encourage continued participation in matters of public significance and…this participation should not be chilled through abuse of the judicial process." Accordingly, the "anti-SLAPP" statute allows a SLAPP defendant to file a "special motion to strike" early in the case to challenge the plaintiff's claims on the merits. If successful, the motion requires dismissal of the plaintiff's lawsuit and exposes the plaintiff to a mandatory award of attorney's fees.

Section 425.16 provides defendants with a potent weapon in cases involving issues of public interest and free speech or petition rights. The recipient of an anti-SLAPP motion must deal with evidentiary burdens and procedural oddities that may "stack the deck" in its opponent's favor. The motion automatically stays discovery and gives the losing party an automatic right to appeal, causing SLAPP issues to take an increasing toll on appellate caseloads.[1]

One cannot overstate the dynamic nature of SLAPP litigation and the need to stay apprised of recent developments.[2] The first half of 2004 has seen over 20 published SLAPP decisions, and the courts of appeal have decided over 50 SLAPP cases in the last 90 days. Accordingly, rather than focusing on one or two cases of note, this article will focus on the operation of section 425.16, discuss several recent cases interpreting the statute, and identify several lessons to be learned from that analysis.

## II. SLAPPING BACK WITH SECTION 425.16—THE BASICS

Section 425.16's core is subdivision (b)(1), which provides: "A cause of action against a person arising from any act of the 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 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." The statute defines the phrase "act in furtherance of a person's right of petition or free speech" as including one of the following:

> (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.[3]

In enacting section 425.16, the Legislature sought to protect all direct petitioning of governmental bodies and petition-related statements and writings.[4] Thus, the items enumerated in section 425.16 subdivision (e) mirror, but go beyond the scope of, Civil Code section 47 which attaches a privilege to statements made in official proceedings. Specifically, section 425.16 encompasses statements made outside of official proceedings, but in connection with an issue under consideration in official proceedings. Moreover, the statute applies to statements relating to official proceedings that have not yet commenced, whether or not the issue is of public interest or concern. Section 425.16's breadth supports its application in diverse contexts, some far afield of core First Amendment and public issue controversies. Section 425.16's broad reach presents challenges for the Legislature, litigants, and the courts.

### A. Procedural Features

The special motion to strike has several distinct procedural features. The motion must be brought within 60 days of the service of the complaint or at a later date that the court may allow, and it must be noticed for hearing not more than 30 days after service.[5] Because the motion is typically heard within 90 days of the service of the complaint, it is often the first substantive motion filed and, if successful, may be the last.

The motion is usually filed before there has been any discovery, and discovery is stayed from the time the motion is filed until it is ruled on.[6] The statute allows a defendant to summarily adjudicate plaintiff's claims much more quickly than a summary judgment motion; indeed, an anti-SLAPP motion can be heard before a litigant even has the right to file a summary judgment motion under Code of Civil Procedure section 437c.

An order granting or denying a special motion to strike is automatically appealable.[7] Thus, if an appeal is taken, the entire action is stayed until the court of appeal makes its decision, which can take a year or more. Moreover, given the favorable standard of review on appeal—independent judgment—parties are more likely to appeal adverse rulings on anti-SLAPP motions.[8] In sum, a motion to strike can completely disrupt the plaintiff's lawsuit.

### B. Discovery—Early Is Best

If a practitioner suspects that an anti-SLAPP motion may be filed, he or she should seriously consider conducting discovery as early as possible. An anti-SLAPP motion, after all, automatically stays discovery.[9] The court can lift the stay on a showing of good cause, but this requires a separately noticed motion and proof of the specific additional evidence the plaintiff expects to find in discovery.[10] Also, the court cannot allow discovery on specified elements unless the plaintiff first substantiates the other elements of its claims.[11] The party opposing an anti-SLAPP motion who does not conduct discovery early should notice a motion for additional discov-

ery to be heard at the time of the anti-SLAPP motion in case the court finds deficiencies with its claims or evidence.

### C. Burdens of Proof

The framework and burdens of proof for anti-SLAPP motions are well established. The moving party bears the initial burden of establishing a prima facie showing the plaintiff's claims arise from conduct within the scope of section 425.16, i.e., the defendant's free speech or petition activity or conduct in furtherance of such activity. If the defendant meets its initial burden, 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 could, if proven at trial, support a judgment in plaintiff's favor.[12] The plaintiff must meet this burden by offering admissible evidence substantiating its claims.[13] The plaintiff's burden is heightened if the substantive law requires proof by clear and convincing evidence.[14]

The court does not weigh the evidence and gives plaintiff the benefit of all inferences that may fairly be drawn from the evidence.[15] The court's goal is only to determine if the plaintiff's complaint is legally sufficient and supported by substantial evidence. In short, while the "probable validity" language conjures up preliminary injunction standards, the anti-SLAPP motion is more akin to a motion for summary judgment or nonsuit.

Notably, the statute does not require the defendant to prove the plaintiff's action was filed to chill defendants' constitutional rights to free speech or petition. "Intent to chill" is not an element that must be proven in an anti-SLAPP motion.[16] Also missing is any opportunity for the plaintiff to temporarily fend off an anti-SLAPP motion by arguing for leave to amend, as the statute does not provide for such leave.[17] Also, a voluntary dismissal filed before or after an anti-SLAPP motion has been filed does not necessarily save a party from the potentially adverse impacts of the anti-SLAPP motion.[18]

### D. Recovery of Attorney's Fees

The SLAPP plaintiff is not on equal footing with the defendant when it comes to attorney's fees. The statute contains a one-way attorney's fees provision entitling the moving party to recover fees if he or she prevails. By contrast, the plaintiff can only recover fees if he or she proves that the motion was frivolous or was solely intended to cause unnecessary delay.[19] Upon a showing of entitlement to fees, an award of attorney's fees is mandatory.[20] The only apparent exception to this rule is when a plaintiff dismisses an alleged SLAPP lawsuit while the anti-SLAPP motion is pending, and the decision to dismiss was made for reasons unrelated to the merits of the pending motion.[21]

### E. The Legislature Acts To Curb Perceived Abuses of Section 425.16

The Legislature added Code of Civil Procedure section 425.17 to the anti-SLAPP statute effective January 1, 2004, to address a "disturbing abuse" of section 425.16. The amendment declares the need to encourage continued participation in matters of public significance and to avoid having such participation chilled through abuse of the judicial process or section 425.16. The new statute excludes certain types of claims from the anti-SLAPP motion to strike procedure, including but not limited to: (1) claims brought solely in the public interest or on behalf of the general public if certain conditions are met; and (2) causes of action relating to businessperson's statements to a prospective customer regarding his or her or a competitor's products.

## III. ANTI-SLAPP STATUTE IN MOTION

Anti-SLAPP motions are routinely used to dismiss a variety of claims, including defamation, various business torts (e.g., interference with prospective economic advantage), nuisance, and intentional infliction of emotional distress.[22] However, the statute's broad scope and application has translated into its use in many other areas as well. Indeed, because of its breadth, analyzing anti-SLAPP cases is much like riding the subway: you never know whom you might meet.

In the past six months, the anti-SLAPP statute has been invoked by dueling cat aficionados, feuding former lesbian partners, a company that reported a competitor to the National Terrorist Hotline, and a city sued by a homeowner over a child's playhouse. Even maestro Michael Flatley has had to dance his way out of an anti-SLAPP assault.

### A. Cases Involving Real Property Development.

In *Levy v. City of Santa Monica*,[23] the Levys spent $11,000 to build "a large elevated backyard playhouse" for their son. A neighbor complained about it to a city council member, who emailed the city's planning department regarding the structure. The building inspector sent the Levys a notice of violation requiring them to "remove or modify the playhouse" as an unapproved structure. The Levys immediately sued the city, which responded with a special motion to strike the complaint. The court denied the motion on the basis that the SLAPP statute did not apply.

The court of appeal reversed, concluding that the neighbor's communication with the city council member and the city council member's communication with the planning staff involved constitutionally protected speech and petitions for grievances to governmental agencies triggering the anti-SLAPP statute. Moreover, because the city had rescinded the notices of violation and the city attorney had indicated that the city had no intention of reissuing the notices, the issue was moot and there was no justiciable controversy.

In *Tuchscher Development Enterprises, Inc. v. San Diego Unified Port District,*[24] the court of appeal affirmed a trial court's decision granting an

anti-SLAPP motion for defendants and its award of over $55,000 in attorney's fees. In *Tuchscher*, the plaintiff developer sued the San Diego Port District and Lennar Communities, among others, for allegedly inducing a breach of contract, interference, and unfair competition based on its claim that the defendants essentially disrupted an exclusive negotiating agreement between plaintiff, the City of Chula Vista, and its redevelopment agency. Under that agreement, plaintiff was to take steps to enter into a development agreement to build a mixed-use bay front development. The period on its agreement expired before a development agreement could be signed, and Tuchscher sued the City, District, and Lennar for essentially conspiring to deny Tuchscher of the benefits under the agreement. The trial court granted the defendants' special motion to strike the complaint.

The appellate court affirmed finding that the anti-SLAPP statute applied even though many of the allegedly tortious statements were not made strictly during any official proceeding. As the court noted, "there appears to be no dispute that the proposed development of Crystal Bay is a matter of public interest, and thus respondent's statements and writings fall within subdivision (e)(4) of section 425.16."[25] Thus, the burden shifted to Tuchscher to demonstrate a probability of success on the merits. Tuchscher failed to meet that burden because much of its proffered evidence was inadmissible, and the grant of the motion to strike was affirmed.

**B. Website Cases**

The Internet has been featured in three published anti-SLAPP decisions in 2004.[26] Bloggers[27] can now argue that their musings are covered by section 425.16.

*Traditional Cat Association, Inc. v. Gilbreadth*[28] pitted two cat breeders against each other. Fineran was the president of a cat-breeding association. She had disputes with defendant Gilbreadth and others, who were also members of the association, so she started a competing organization. Fineran sued her former group and its members alleging a wide range of bad conduct. In response, defendants created a website called "the Diana Fineran Response Website," to report on the status of Fineran's litigation. As might be expected, the website was highly critical of Fineran. Fineran sued defendants for defamation based on the website's critical material. Defendants moved to strike the complaint under section 425.16. The trial court found that the statements on the website were made in furtherance of the defendants' petition and free speech rights. However, it denied the motion because it found that the defendants' statute-of-limitations defense, upon which it based its motion, was not the proper subject of an anti-SLAPP motion.

The court of appeal reversed, holding that the statute of limitations defense was appropriate for determination in a motion to strike since it goes to the merits of the claim. The court also held that the "single publication rule" (traditionally used in defamation cases) applied to material posted on a website for purposes of calculating the statute of limitations. Under

this rule, publication is deemed to occur on the first general distribution of the publication to the public, regardless of when the plaintiff became aware of it. For website publications, the statute of limitations is triggered when the defamatory statement is posted.

In another website case, *Bernardo v. Planned Parenthood Federation of America,*[29] the plaintiff alleged that defendant's website contained misleading statements regarding the safety of abortion. The trial court granted defendant's special motion to strike because plaintiff had failed to meet her burden of showing a reasonable probability of prevailing on the merits. The court of appeal affirmed, noting that the website's statements were protected, noncommercial speech because they were made for educational purposes and not in connection with an offer to sell abortion services. The court also found the plaintiff failed to establish that the statements were unlawful, unfair, or fraudulent to substantiate her unfair-competition claim. Thus, the motion to strike was properly granted.

Finally, in *Wilbanks v. Wolk,*[30] the court of appeal reversed a trial court's decision granting the defendant's anti-SLAPP motion. The case involved a "consumer watchdog" website that allegedly published defamatory and harmful statements about a viatical settlement broker. Viatical settlement brokers purchase the rights to life insurance proceeds from the insureds who are, in essence, cashing out their policies during their lifetimes. Consumer advocate Wolk had specific concerns regarding these transactions and ran a consumer protection website to educate consumers. Her website targeted Wilbanks as an allegedly unethical and incompetent broker who was purportedly under investigation by the state insurance department. Wilbanks sued for defamation and unfair business practices. Wolk moved to strike the complaint, and the trial court granted the motion. The court of appeal reversed.

In reversing, the court of appeal confirmed that a website can be a public forum subject to the anti-SLAPP statute's protections. However, the court held that the trial court erred in finding that plaintiff failed to meet its burden of showing a probability of success on the merits. Notably, neither party was a large corporation or public interest group seeking to muzzle free speech or petition rights. The court had little difficulty with this anomaly, stating that section 425.16 applies to cases "bearing very little relationship to SLAPP litigation."[31]

### C. Routine Business Disputes

In *Mann v. Quality Old Time Service, Inc.,*[32] an industrial water systems business (WSSI) and its president sued a competing business (Quality) and others for interference with contractual relationship, intentional interference with prospective economic advantage, defamation, and trade libel. WSSI claimed that Quality had illegally solicited the company's customers and had made fraudulent and disparaging statements about WSSI, including reporting the company to the National Response Center and the

National Terrorist Hotline, falsely claiming that the company was polluting public drainage systems. Perhaps the lowest blow came when Quality caused WSSI to receive large volumes of unsolicited facsimiles, phone calls, e-mails, magazine subscriptions, junk mail, and pornography. The trial court denied Quality's motion to strike WSSI's lawsuit, finding that the challenged claims did not "arise from" an act in furtherance of defendant's right of petition or free speech.

The court of appeal reversed, holding that plaintiff's defamation and trade libel claims arose from the reporting of WSSI to governmental agencies, and these claims were therefore based on protected speech. The court also held that while WSSI had shown a probability of success on its defamation claim, it failed to substantiate its trade libel claim, warranting dismissal of that claim.

Furthermore, plaintiff's interference claims were not based on communications to governmental agencies, but rather were based on communications to WSSI's customers, which were not alleged to include reference to the reports to the governmental agencies. Thus, they were outside of the scope of the anti-SLAPP statute. The court also clarified that plaintiff needs only to show a probability of prevailing on any part of its claim to defeat the motion.

### D. The Old Standbys: Defamation/Libel

Defamation and libel are "favored" causes of action in SLAPP lawsuits,[33] and they continue to generate published decisions in this area.

In *Garment Workers Center v. Superior Court,*[34] a retailer sued a nonprofit organization for libel, claiming that the nonprofit defamed the retailer by alleging that the retailer owed its workers substantial amounts of unpaid wages and other employment benefits. The nonprofit moved to strike the retailer's complaint, but the trial court allowed the retailer to conduct discovery on the issue of actual malice before the hearing on the motion. The nonprofit filed a petition for writ of mandate in the court of appeal challenging the discovery order. The court granted the petition, finding the trial court abused its discretion by permitting discovery on the issue of actual malice before determining whether the retailer had a reasonable probability of establishing the other elements of its libel claim, including the falsity of the alleged libelous statements.

In *Fashion 21 v. Coalition for Humane Immigrant Rights of Los Angeles,*[35] a women's clothier sued a group representing low-income immigrant workers alleging defamation, interference with prospective business advantage, unfair business practices, and nuisance. The organization had called for a nationwide boycott and participated in demonstrations and picketing in a labor dispute between the retailer and its employees. The retailer sued, and the advocacy group moved to strike the complaint. The parties and the trial court agreed the complaint was subject to the anti-SLAPP motion. The trial court found that the retailer's claims were meritorious and denied the motion. The court of appeal reversed, holding that

the retailer failed to substantiate its damages, which were an element of its claims.

In *Annette F. v. Sharon S.,*[36] the defendant allegedly wrote to a gay/lesbian organization and a newspaper claiming that the plaintiff, her former lesbian partner, had committed acts of domestic violence and other misconduct. The plaintiff sued for defamation, and the defendant responded with an anti-SLAPP motion. The trial court denied the motion, and the court of appeal reversed. The court of appeal found that the former partner's libel complaint fell within the scope of the anti-SLAPP statute, and that the former partner had failed to establish a probability of prevailing on her libel claim. The court found that the former partner was a limited purpose public figure with respect to the issue of "second-parent" adoptions, and that the plaintiff failed to prove actual malice and the statement's falsity by clear and convincing evidence. Thus, the anti-SLAPP motion should have been granted.

### E. Extortion and Other Illegal Activities

While the anti-SLAPP motion can give a defendant a powerful edge early in the case, at times requiring a plaintiff to prove up its case without the benefit of discovery, the Second District Court of Appeal recently reined in what many might view as an abusive use of section 425.16. In *Flatley v. Mauro,* the court held that the plaintiff's action was not a SLAPP lawsuit because it did not involve the defendants' valid exercise of free speech rights, affirming the trial court. In the case, the "Lord of the Dance," Michael Flatley, sued Illinois attorney D. Dean Mauro for extortion and related claims. Attorney Mauro represented a woman who alleged that Flatley sexually assaulted her in a motel room in Las Vegas.[37] Before suing, Mauro contacted Flatley's lawyers several times threatening that unless Flatley made a substantial payment to the alleged victim, Mauro would "go public" with the allegations.

In a demand letter, Mauro stated that nonpayment would result in a very public lawsuit, one that would expose Flatley's personal and business interests to the public. Mauro further stated that he intended to coordinate damaging press releases with Flatley's touring schedule. Mauro was apparently unconcerned with California and Illinois rules of professional conduct (and criminal laws) that make such threats criminal and unethical.

In response to Flatley's extortion suit, Mauro filed an anti-SLAPP motion contending that his statements were protected speech. The trial court held that Mauro failed to meet his initial burden on the motion because the conduct complained of—extortion—was illegal and not a valid exercise of free speech rights. The appellate court agreed. The court held that "indisputably illegal conduct can never prevent the burden of proof from shifting." Amazingly, Mauro never disputed that he made the allegedly illegal statements. He instead argued that Flatley had the burden of proving extortion, a position the court declined to adopt.

## IV. LESSONS LEARNED

The anti-SLAPP statute should be a useful tool in one's litigation toolbox. The uninitiated may view an anti-SLAPP motion with dubiety only to learn later that the motion can be the procedural equivalent of a Klingon deathblow. The anti-SLAPP motion can be a way to get to summary judgment in 30 days or less. There may be no need to slog through expensive discovery and wait through lengthy notice periods to obtain dispositive rulings. The statute can be used to stymie the plaintiff's action while giving the defendant a chance to preview its case to the judge at a very early stage. It creates lopsided attorney's fees exposure in favor of SLAPP defendants even where the substantive law does not provide for such recovery.

Litigants should recognize the breadth with which the courts of appeal have applied the anti-SLAPP statute. Trial courts are being reversed at a noticeable rate for their narrow application of the statute. Appellate courts will not hesitate to reverse trial courts that misapply the statute; the standard of review on appeal (independent judgment) only exacerbates this trend.

Plaintiff's attorneys should not ignore the importance of the pleadings or discovery in anti-SLAPP motions. The complaint typically determines if the anti-SLAPP statute applies. Because these motions can be heard very early, a plaintiff may not have time to recast its pleadings or conduct discovery. Thus, plaintiffs should avoid allegations implicating "acts in furtherance of a person's right of petition or free speech" protected by the anti-SLAPP statute. They must be ready to substantiate their claims with admissible evidence.

Finally, defendants must scrutinize complaints with the anti-SLAPP statute in mind. If applicable the statute provides defendants with the unique ability to obtain dispositive rulings within 60 or 90 days after a case has been filed. The statute places a relatively mild initial burden on the defendant to show the statute applies. Once that burden is met, the plaintiff must bare all to the defendant and court. The only downside for the defendant is the potential for attorney's fees liability to the plaintiff, but that potential only arises if the motion is frivolous or filed for an improper purpose. For many defendants, the anti-SLAPP motion is a "heads I win, tails you lose" proposition.

## NOTES

1. Code Civ. Proc., § 425.16 subd. (j).
2. Code Civ. Proc., § 425.16 subd. (k)(1) requires a party filing an anti-SLAPP motion to notify the Judicial Council of its motion. The Judicial Council maintains a public list of these motions broken down by county. The list can be obtained at the Judicial Council's website (www.courtinfo.ca.gov/cgi-bin/slapp.cgi).
3. Code Civ. Proc., § 425.16(e), emph. added.
4. *Briggs v. Eden Council for Hope & Opportunity*, 19 Cal. 4th 1106, 1120-1121, 81 Cal. Rptr. 2d 471, 969 P.2d 564 (1999).
5. Code Civ. Proc., § 425.16, subd. (f).
6. Code Civ. Proc., § 425.16, subd. (g).

7. Code Civ. Proc., § 425.16, subd. (j).
8. *Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.,* 106 Cal. App. 4th 1219, 1232, 132 Cal. Rptr. 2d 57 (4th Dist. 2003).
9. Code Civ. Proc., § 425.16, subd. (g).
10. *Garment Workers Center v. Superior Court*, 117 Cal. App. 4th 1156, 1162-63, 12 Cal. Rptr. 3d 506, 21 I.E.R. Cas. (BNA) 309 (2d Dist. 2004); *Sipple v. Foundation For Nat. Progress*, 71 Cal. App. 4th 226, 231, 83 Cal. Rptr. 2d 677 (2d Dist. 1999).
11. *Garment Workers Center v. Superior Court*, 117 Cal. App. 4th at 162-63.
12. *Wilbanks v. Wolk*, 121 Cal. App. 4th 883, 894, 17 Cal. Rptr. 3d 497 (1st Dist. 2004).
13. *Wilcox v. Superior Court*, 27 Cal. App. 4th 809, 830, 33 Cal. Rptr. 2d 446 (2d Dist. 1994), as modified on denial of reh'g, (Sept. 15, 1994) and (disapproved of on other grounds by, *Equilon Enterprises v. Consumer Cause, Inc.*, 29 Cal. 4th 53, 124 Cal. Rptr. 2d 507, 52 P.3d 685 (2002)) and (disapproved of on other grounds by, *Bidbay.com, Inc. v. Bruce Spry, Jr.*, 2003 WL 723297 (Cal. App. 2d Dist. 2003)).
14. *Annette F. v. Sharon S.*, 119 Cal. App. 4th 1146, 15 Cal. Rptr. 3d 100 (4th Dist. 2004), review filed, (Aug. 6, 2004).
15. *Kyle v. Carmon,* 71 Cal. App. 4th 901, 84 Cal. Rptr. 2d 303 (3d Dist. 1999); *Dixon v. Superior Court*, 30 Cal. App. 4th 733, 746, 36 Cal. Rptr. 2d 687, 23 Media L. Rep. (BNA) 1663 (4th Dist. 1994).
16. *Equilon Enterprises v. Consumer Cause, Inc.*, 29 Cal. 4th 53, 57, 124 Cal. Rptr. 2d 507, 52 P.3d 685 (2002).
17. *Simmons v. Allstate Ins. Co.*, 92 Cal. App. 4th 1068, 1074, 112 Cal. Rptr. 2d 397 (3d Dist. 2001).
18. *S.B. Beach Properties v. Berti*, 120 Cal. App. 4th 1001, 1005, 16 Cal. Rptr. 3d 204 (2d Dist. 2004), review filed, (Sept. 1, 2004).
19. Code Civ. Proc., § 425.16, subd. (c).
20. *Moore v. Shaw,* 116 Cal. App. 4th 182, 200, 10 Cal. Rptr. 3d 154 (2d Dist. 2004), as modified, (Mar. 26, 2004).
21. *Coltrain v. Shewalter*, 66 Cal. App. 4th 94, 107, 77 Cal. Rptr. 2d 600 (4th Dist. 1998), as modified, (Sept. 4, 1998).
22. *Wilbanks v. Wolk*, 121 Cal. App. 4th 883, 890-91, 17 Cal. Rptr. 3d 497 (1st Dist. 2004).
23. *Levy v. City of Santa Monica*, 114 Cal. App. 4th 1252, 8 Cal. Rptr. 3d 507 (2d Dist. 2004), review denied, (Mar. 30, 2004).
24. *Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.*, 106 Cal. App. 4th 1219, 132 Cal. Rptr. 2d 57 (4th Dist. 2003).
25. *Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.*, 106 Cal. App. 4th 1219, 1233, 132 Cal. Rptr. 2d 57 (4th Dist. 2003).
26. The seminal website case in the anti-SLAPP context is *ComputerXpress, Inc. v. Jackson*, 93 Cal. App. 4th 993, 1008, 113 Cal. Rptr. 2d 625 (4th Dist. 2001). Because that case is relatively ancient in the area of anti-SLAPP law, it is not discussed in this article.
27. A "blog" is a web log or diary published on an Internet website. Blogs are as diverse as their creators, covering topics ranging from recipes to politics.
28. *Traditional Cat Ass'n, Inc. v. Gilbreath*, 118 Cal. App. 4th 392, 13 Cal. Rptr. 3d 353, 32 Media L. Rep. (BNA) 1998 (4th Dist. 2004).
29. *Bernardo v. Planned Parenthood Federation of America*, 115 Cal. App. 4th 322, 9 Cal. Rptr. 3d 197 (4th Dist. 2004), review denied, (Apr. 14, 2004) and petition for cert. filed, (July 13, 2004).
30. *Wilbanks v. Wolk*, 121 Cal. App. 4th 883, 17 Cal. Rptr. 3d 497 (1st Dist. 2004).
31. *Wilbanks v. Wolk*, 121 Cal. App. 4th 883, 894, 17 Cal. Rptr. 3d 497 (1st Dist. 2004).
32. *Mann v. Quality Old Time Service, Inc.*, 120 Cal. App. 4th 90, 15 Cal. Rptr. 3d 215 (4th Dist. 2004).
33. *Gallimore v. State Farm Fire & Casualty Ins. Co.*, 102 Cal. App. 4th 1388, 1409, 126 Cal. Rptr. 2d 560 (2d Dist. 2002), review denied, (Jan. 29, 2003).
34. *Garment Workers Center v. Superior Court*, 117 Cal. App. 4th 1156, 12 Cal. Rptr. 3d 506, 21 I.E.R. Cas. (BNA) 309 (2d Dist. 2004).

35. *Fashion 21 v. Coalition for Humane Immigrant Rights of Los Angeles*, 117 Cal. App. 4th 1138, 118 Cal. App. 4th 954a, 12 Cal. Rptr. 3d 493, 21 I.E.R. Cas. (BNA) 300 (2d Dist. 2004), as modified on denial of reh'g, (May 18, 2004) and review denied, (Aug. 18, 2004).
36. *Annette F. v. Sharon S.*, 119 Cal. App. 4th 1146, 15 Cal. Rptr. 3d 100 (4th Dist. 2004), review filed, (Aug. 6, 2004).
37. *Flatley v. Mauro*, 121 Cal. App. 4th 1523, 18 Cal. Rptr. 3d 472 (2d Dist. 2004). The alleged victim's facts were never substantiated; indeed, the court found that Mauro failed to rebut evidence from Flatley and others showing that the entertainer's sexual activities with the alleged victim were consensual.

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Edmund Regalia, Marvin Starr and Harry Miller founded the law firm of Miller, Starr & Regalia, headquartered in Walnut Creek. Mr. Regalia's litigation practice has concentrated on complex real estate and business litigation for over 40 years. Mr. Starr is the original coauthor (with Harry Miller) of the Current Law of California Real Estate (1965-1967), later revised as California Real Estate 2d (1990) and California Real Estate 3d (2000-2001). His practice has included all aspects of real property law including the income tax aspects of real estate transactions. Both received an LL.B. (later J.D.) from Boalt Hall in 1958.

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