

California's Anti-SLAPP Act Was Not Intended to Thwart FEHA Claims

By Andrew Friedman



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The United States of America was founded and the First Amendment ratified against the backdrop not only of a “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open,”¹ but also the recognition that speech and the right to petition the government for redress of grievances “are integral to the democratic process.”² A strategic lawsuit against public participation (SLAPP),³ on the other hand, is the antithesis of that for which America stands; it is a lawsuit filed to deter citizens and groups of citizens from exercising their constitutional rights to speak out on public issues and/or petition the government.⁴ A SLAPP—usually masquerading as an ordinary lawsuit such as defamation or interference with prospective economic advantage⁵—is typically filed by a deep-pocketed corporation against a citizen or a group of citizens in order to silence criticism, punish a whistleblower, or win a commercial dispute.⁶ Indeed, “[t]he quintessential SLAPP is filed by an economic powerhouse to dissuade its opponent from exercising its constitutional right to free speech or to petition. The objective of the litigation is not to prevail but to exact enough financial pain to induce forbearance. As its name suggests, it is a strategic lawsuit designed to stifle dissent or public participation.”⁷

At the strong and repeated urging of then California State Senator Bill Lockyer (Chair of the California Senate Judiciary Committee), the California Legislature enacted Civil

Procedure Code § 425.16, California’s anti-SLAPP statute, “out of concern over ‘a disturbing increase’ in civil suits ‘aimed at preventing *citizens* from exercising their political rights or punishing those who have done so.’”⁸ Senator Lockyer commented that the anti-SLAPP legislation was needed to protect “ordinary citizens who are sued by well-heeled special interests.”⁹ The Legislature was particularly concerned with ensuring “continued participation in matters of *public* significance and that this participation should not be chilled through abuse of the judicial process.”¹⁰

Section 425.16 “requires that a court engage in a two-step process when determining whether a defendant’s anti-SLAPP motion should be granted.”¹¹

First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one “arising from” protected activity—*i.e.*, the defendant’s free speech in connection with a public issue or petitioning of the government.¹² In determining whether the matter concerns an issue of public interest, the courts must keep in mind that “‘public interest’ does not equate with mere curiosity”;¹³ “a matter of public interest should be something of concern to a substantial number of people”;¹⁴ “the assertion of a broad and amorphous public interest is not sufficient”;¹⁵ and an “issue of public interest must ‘go beyond the parochial particulars of the given parties.’”¹⁶ In determining

whether the challenged cause of action is one “arising from” protected activity, the courts must keep in mind that the mere fact that an action was filed after protected activity took place does not mean the action arose from that activity for the purposes of the anti-SLAPP statute.¹⁷ Moreover, that a cause of action arguably may have been “triggered” by protected activity does not prove that it is one arising from such.¹⁸ In the anti-SLAPP context, the critical consideration is whether the cause of action is based on the defendant’s protected free speech (made in connection with a public issue) or petitioning activity.¹⁹ Accordingly, “a claim is not subject to a motion to strike simply because it contests an action or decision that was arrived at following speech or petitioning activity, or that was thereafter communicated by means of speech or petitioning activity. Rather, a claim may be struck only if the speech or petitioning activity *itself* is the wrong complained of, and not just evidence of liability or a step leading to some different act for which liability is asserted.”²⁰

If the court finds that the defendant has satisfied the first prong of the § 425.16 test, it then must consider whether the plaintiff has demonstrated a probability of prevailing on the claim.²¹ Only a cause of action that satisfies both prongs of the anti-SLAPP statute—*i.e.*, that arises from protected speech or petitioning and shows a probability

of success—is a SLAPP, subject to being stricken under the statute.²²

Unfortunately, but not unexpectedly, deep-pocketed corporations and other economic powerhouses have attempted to corrupt the anti-SLAPP statute and turn what was supposed to be the “cure” into a “disease,” to be used by those powerhouses against ordinary citizens (consumers and employees) and citizen groups, in an effort to silence them.²³ Indeed, those powerhouses began to misuse the anti-SLAPP statute in an effort to thwart various civil and consumer rights lawsuits, including employment

and housing discrimination claims brought under the Fair Employment and Housing Act (FEHA).

For example, in *Tuszynska v. Cunningham*,²⁴ Danuta Tuszynska, an attorney, sued the Riverside Sheriffs’ Association Legal Defense Trust (RSA-LDT), a prepaid legal services plan that provides legal representation and related services to Riverside Sheriffs’ Association members, for violating FEHA and the Unruh Civil Rights Act. Tuszynska alleged that, because she is a woman, RSA-LDT assigned her fewer case referrals after defendant James Cunningham became its administrator, and that cases were, instead, referred to male attorneys with less experience than her. Defendants RSA-LDT and Cunningham filed an anti-SLAPP motion, contending (incredibly) that Tuszynska was somehow chilling their First Amendment rights. The trial court correctly denied the motion on the ground that Tuszynska’s allegations of gender discrimination did not arise from protected speech or petitioning activities. In its decision, the court wrote that the

“gravamen” of Tuszynska’s claims was that “because she is a woman, she is not getting cases,” and reasoned that Tuszynska’s claims were based on defendants’ alleged “conduct”

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in failing to refer cases to her. On appeal, the Court of Appeal for the Fourth Appellate District erroneously failed to consider that Tuszynska was not an economic powerhouse (but rather, an ordinary citizen who was supposed to be protected by the anti-SLAPP statute) and that she was not bringing the typical claims brought by SLAPPers (defamation or interference with prospective economic advantage). Next, the Court of Appeal erred by incorrectly concluding that RSA-LDT’s motive to discriminate against Tuszynska was irrelevant in determining whether RSA-LDT had satisfied its threshold burden to prove that the gravamen of Tuszynska’s lawsuit was based on RSA-LDT’s protected activity.

Likewise, in *DeCambre v. Rady Children’s Hosp.-San Diego*,²⁵ a physician, Marvalyn DeCambre, sued her employer, the Rady Children’s Hospital—San Diego, for retaliation and racial discrimination in violation of FEHA after the hospital made the decision to not renew Dr. DeCambre’s employment contract. In response, the hospital filed an anti-SLAPP

motion contending that, because the nonrenewal decision occurred as a result of the hospital’s peer review process (a process that is privileged for anti-SLAPP purposes), DeCambre’s lawsuit was a SLAPP. In opposition to the motion, DeCambre argued that the motive for her termination was unlawful discrimination and, therefore, the termination was not protected by the anti-SLAPP statute. The court of appeal erroneously rejected DeCambre’s argument, finding that because the hospital’s decision to not renew DeCambre’s contract stemmed from protected peer review activity, DeCambre’s retaliation and discrimination lawsuit was a SLAPP.

Additionally, in *Hunter v. CBS Broadcasting, Inc.*,²⁶ an employer being sued for discrimination in violation of FEHA filed an anti-SLAPP motion in an effort to thwart the claims of the plaintiff, Kyle Hunter. Hunter, a meteorologist, sued CBS Broadcasting Inc. for refusing to hire him as a weather news anchor because of his gender and age. In response to CBS’s anti-SLAPP motion, Hunter argued that the “conduct” underlying his causes of action was not CBS’s selection of its weather anchors, but rather CBS’s decision to utilize discriminatory criteria in making those selections. As in *Tuszynska*, the superior court got it right, ruling that a discriminatory hiring decision is not protected activity. Misunderstanding and mis-citing a passage from *Navellier v. Sletten*,²⁷ the Court of Appeal for the Second Appellate District (Division 7), however, erroneously concluded that CBS’s alleged motive (*i.e.*, employment discrimination) in not hiring Hunter was irrelevant to the

anti-SLAPP analysis and reversed the decision of the superior court.

Similarly, in *Daniel v. Wayans*,²⁸ another employer also filed an anti-SLAPP motion in response to an employee's FEHA racial harassment lawsuit. In that case, Pierre Daniel, an actor working on "A Haunted House 2," alleged that Marlon Wayans, the writer, producer and star of the movie, racially harassed Daniel by, among other things, calling him a "nigga," a "black fat ass," making fun of his afro hairstyle, and referring to him as "Cleveland Brown," an African-American cartoon character in the adult cartoon comedy series "Family Guy." In affirming the superior court's grant of the employer's anti-SLAPP motion, the Court of Appeal for the Second Appellate District (Division 1) rejected Daniel's argument that "Wayans's conduct necessarily falls outside the protections of the anti-SLAPP statute because the gravamen of his complaint is race-based harassment and such conduct is not a protected activity."²⁹ In reaching its decision, the court of appeal incorrectly noted that motive was irrelevant, because "[c]auses of action do not arise from motives; they arise from acts."³⁰

The courts of appeal in *Tuszynska*, *Hunter*, and *Wayans* all made the same basic mistakes—failing to understand three propositions basic to any anti-SLAPP analysis: (1) private employment actions are not SLAPPs, because they are not designed to prevent employers from exercising their First Amendment rights; (2) in FEHA cases, motive is critically important; and (3) it is the motive or *mens rea* of the SLAPPer (*i.e.*, the plaintiff) that is unimportant in the anti-SLAPP analysis; the motive of the SLAPpee (*i.e.*, the defendant) is, particularly in FEHA cases, extremely important. These mistakes are best explained by the Second Appellate District (Division 1) in *Wilson v. Cable*

News Network, Inc.,³¹ where Stanley Wilson, a former Emmy-award-winning television news producer, sued his employer, CNN, for employment discrimination and retaliation under FEHA. Wilson alleged that he was passed over for promotion because of his race (African-American) and that he was fired because of his race and complaints of race discrimination. In response, CNN (again, like CBS, an economic powerhouse if ever there was one) filed an anti-SLAPP motion, arguing that because it is a news provider, all of its "staffing decisions" regarding Wilson were part of its "editorial discretion" and "so inextricably linked with the content of the news that the decisions themselves" were acts in furtherance its right of free speech that were necessarily in connection with a matter of public interest—news stories relating to current events and matters of interest to CNN's news consumers. CNN also argued that its alleged discriminatory "motive" in making those "staffing decisions" was irrelevant. The superior court granted the anti-SLAPP motion and Wilson appealed. The Court of Appeal for the Second Appellate District (Division 1) reversed.

Initially, the court of appeal held that private employment discrimination and retaliation cases are not SLAPPs:

This is a private employment discrimination and retaliation case, not an action designed to prevent defendants from exercising their First Amendment rights. Defendants may have a legitimate defense but the merits of that defense should be resolved through the normal litigation process, with the benefit of discovery, and not at the initial phase of this action.³²

Next, the court of appeal explained why the motive of the SLAPpee (*i.e.*, the defendant) is an important factor in FEHA cases and must be considered during the analysis of an anti-SLAPP motion:

[E]quating a SLAPPer's subjective intent in filing the litigation to an employer's motive in subjecting an employee to a retaliatory grievance procedure is a mistake and does violence to the purpose of both the anti-SLAPP and antiretaliation laws.

In the typical employment discrimination or retaliation case involving at-will employees, the conduct breaching a duty *is* the discrimination or retaliation because an employer's firing, failure to promote, demotion, etc. breaches no duty to an at-will employee. Here, where plaintiff does not allege an employment contract and was employed by a private corporation, not a governmental entity, the only reason the defendants' failure to promote and firing of plaintiff are actionable is that they were allegedly acts of discrimination and retaliation. Absent these "motivations," Wilson's employment-related claims would not state a cause of action and defendants no doubt would have demurred, not filed an answer and anti-SLAPP motion. Discrimination and retaliation are not simply motivations for defendants' conduct, they *are* the defendants' conduct.³³

Like *Wilson*, in *Nam v. Regents of the Univ. of Cal.*³⁴, the Court of Appeal for the Third Appellate District also held, correctly, that private employment discrimination and retaliation cases

are not appropriate for resolution via an anti-SLAPP motion.³⁵ Indeed, the court of appeal questioned whether Nam's lawsuit could even be classified as a SLAPP:

The quintessential SLAPP is filed by an economic powerhouse to dissuade its opponent from exercising its constitutional right to free speech or to petition. The objective of the litigation is not to prevail but to exact enough financial pain to induce forbearance. As its name suggests, it is a strategic lawsuit designed to stifle dissent or public participation. It is hard to imagine that a resident's complaint alleging retaliatory conduct was designed to, or could, stifle the University from investigating and disciplining doctors who endanger public health and safety. The underlying lawsuit may or may not have merit that can be tested by summary judgment, but it is quite a stretch to consider it a SLAPP merely because a public university commences an investigation.³⁶

Additionally, the court of appeal in *Nam* also explained why the motive or intent of the defendant employer is highly relevant:

To conclude otherwise would subject most, if not all, harassment, discrimination, and retaliation cases to motions to strike. Any employer who initiates an investigation of an employee, whether for lawful or unlawful motives, would be at liberty to claim that its conduct was protected and thereby shift the burden of proof to the employee,

who, without the benefit of discovery and with the threat of attorney fees looming, would be obligated to demonstrate the likelihood of prevailing on the merits. Such a result is at odds with the purpose of the anti-SLAPP law, which was designed to ferret out meritless lawsuits intended to quell the free exercise of First Amendment rights, not to burden victims of discrimination and retaliation with an earlier and heavier burden of proof than other civil litigants and dissuade the exercise of their right to petition for fear of an onerous attorney fee award.³⁷

On May 4, 2017, the California Supreme Court issued an extremely important anti-SLAPP motion decision in an employment case—*Park v. Board of Trustees of The California State University*.³⁸ In *Park*, the supreme court agreed with the reasoning in *Nam* and specifically disapproved of *Tuszynska* and *DeCambre* (and expressed no opinion regarding whether *Hunter* was correctly decided).

In *Park*, the plaintiff, Sungho Park, was a tenure-track assistant professor of Korean national origin employed by California State University, Los Angeles. Mr. Park applied for tenure but his application was denied. Mr. Park sued the Board of Trustees under FEHA, alleging national origin discrimination. The Board of Trustees responded to the lawsuit with an anti-SLAPP motion contending that Mr. Park's claims arose from its decision to deny him tenure and the communications that led up to and followed that decision (communications that were made in connection with an official proceeding, the tenure decision-making process, and therefore "protected" for purposes of the anti-SLAPP statute). The superior court

denied the motion, finding that Park's lawsuit was based on the university's decision to deny him tenure, rather than any communicative conduct in connection with that decision, and that the denial of tenure based on national origin was not protected activity. A divided court of appeal reversed. The majority reasoned that, although the gravamen of Park's complaint was the university's decision to deny him tenure, that decision necessarily rested on communications the university made in the course of arriving at that decision, and such communications were protected activity for purposes of the anti-SLAPP statute. The dissent argued, in contrast, that because Mr. Park's lawsuit involved only the decision to deny tenure and not any arguably protected communications that preceded it, the trial court's ruling should have been affirmed.

The California Supreme Court, finding that the courts of appeal were hopelessly confused regarding what nexus a defendant must show between a challenged claim and the defendant's protected activity for the claim to be struck, granted review and reversed, holding that the Board of Trustees had failed to demonstrate that Park's lawsuit arose from protected activity. In so holding, the supreme court specifically approved *Nam* and held that "while discrimination may be carried out by means of speech, such as a written notice of termination, and an illicit animus may be evidenced by speech, neither circumstance transforms a discrimination suit to one arising from speech. What gives rise to liability is not that the defendant spoke, but that the defendant denied the plaintiff a benefit, or subjected the plaintiff to a burden, on account of a discriminatory or retaliatory consideration."³⁹ The supreme court then explained why an anti-SLAPP motion was ill-suited for FEHA claims:

Failing to distinguish between the challenged

decisions and the speech that leads to them or thereafter expresses them would chill the resort to legitimate judicial oversight over potential abuses of legislative and administrative power. Similar problems would arise for attempts to enforce the state's antidiscrimination public policy. Any employer who initiates an investigation of an employee, whether for lawful or unlawful motives, would be at liberty to claim that its conduct was protected and thereby shift the burden of proof to the employee who, without the benefit of discovery and with the threat of attorney fees looming, would be obligated to demonstrate the likelihood of prevailing on the merits. Conflating, in the anti-SLAPP analysis, discriminatory decisions and speech involved in reaching those decisions or evidencing discriminatory animus could render the anti-SLAPP statute fatal for most harassment, discrimination and retaliation actions against public employers.⁴⁰

Unlike employment cases, where the courts of appeal have struggled with the application of the anti-SLAPP act to FEHA claims, the courts have had no such difficulties in correctly concluding that the anti-SLAPP act does not encompass FEHA housing discrimination claims.

For example, in *DFEH v. 1105 Alta Loma Rd. Apartments*,⁴¹ a landlord filed an anti-SLAPP motion in response to a tenant's disability discrimination lawsuit. The landlord contended that it had engaged in protected activity when

it sent the tenant an Ellis Act notice of its intention to remove its property from the rental market and then removed the tenant through an action for unlawful detainer, and that the tenant's subsequent lawsuit was a SLAPP. The superior court denied the landlord's anti-SLAPP motion. The Court of Appeal for the Second Appellate District affirmed, concluding that FEHA discrimination cases are not appropriately subject to anti-SLAPP motions:

[I]f this kind of suit could be considered a SLAPP, then landlords and owners, if not

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Alta Loma, could discriminate during the removal process with impunity knowing any subsequent suit for disability discrimination would be subject to a motion to strike and dismissal. We are confident the Legislature did not intend for section 425.16 to be applied in this manner either. As the trial court aptly observed, "I just feel like to rule for the defendant in this case would be to say that section 425.16 provides a safe harbor for discriminatory conduct and I don't think that's what it's intended to do."⁴²

Similarly, in *Blanton v. Torrey Pines Prop. Mgmt., Inc.*,⁴³ the court denied a landlord's anti-SLAPP motion

in a FEHA housing discrimination case because "the eviction itself would appear to be ancillary to the gravamen of the suit—[defendant's] ostensibly discriminatory occupancy policy."⁴⁴ Moreover, this very issue was thoroughly discussed in *Radell v. Park Wilshire Homeowners Ass'n*.⁴⁵ In *Radell*, a former tenant of the defendant landlord sued, claiming that it had evicted her from her home because of her Puerto Rican ancestry and gender in violation of FEHA. In response, the landlord filed an anti-SLAPP motion arguing that the tenant's lawsuit arose from the landlord's protected activity.

In opposition, the plaintiff argued that the gravamen of her FEHA lawsuit was the landlord's discrimination, rather than any activity protected by the anti-SLAPP statute. Holding that "Housing Discrimination Is Not a Protected Activity," the Court of Appeal for the Second

Appellate District (Division 4), in an unpublished but nonetheless persuasive decision, agreed:

As in *Pearl Street* [109 Cal. App. 4th 1308 (2003)] and *1105 Alta Loma Road* [154 Cal. App. 4th 1273 (2007)], defendants in this case are not being sued for the exercise of protected rights. Defendants are being sued for discriminating against the Radells on the basis of their sex, race, ancestry, and national origin in violation of the FEHA and FHA. There is no constitutional right to engage in such conduct.⁴⁶

Most recently, on March 17, 2017, in *Pitts v. Financial Mgmt Co.*,⁴⁷ the Hon. Ernest M. Hiroshige (Department 54 of the Los Angeles Superior Court)

denied a landlord's anti-SLAPP motion filed in response to the plaintiffs' FEHA discrimination lawsuit. The landlord argued that the Pitts filed their lawsuit because the landlord engaged in protected activity—*i.e.*, serving them with a 60-day notice to quit (a statutorily mandated prerequisite to filing an unlawful detainer action). The Pitts, represented by the author of this article, argued that the Pitts' FEHA discrimination lawsuit arose from the landlord's allegedly discriminatory eviction and not any protected activity. In his decision, Judge Hiroshige agreed with the Pitts' arguments:

Plaintiffs are not challenging the eviction procedure but the eviction decision itself. Thus, while service of the 60-day notice is arguably a protected activity, Plaintiffs' complaint does not arise from this activity and thus is not subject to the anti-SLAPP statute.

Indeed, in the housing context, the courts have gone far beyond holding that FEHA actions are not properly subject to an anti-SLAPP motion and have recognized that the anti-SLAPP statute was not intended to and does not protect landlords from engaging in other forms of illegal conduct *even if that conduct is manifested as an unlawful detainer action or other protected activity*.⁴⁸

With *Wilson* and *Daniel* up for review, it is high time for the California Supreme Court to expressly clarify that anti-SLAPP motions are not appropriate in the context of FEHA employment and housing discrimination, harassment, retaliation, and failure to accommodate cases.⁴⁹

ENDNOTES

1. *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).
2. *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 388 (2011).
3. The "SLAPP" acronym was coined by Penelope Canan and George W.

- Pring, professors at the University of Denver. *See generally* Penelope Canan & George W. Pring, *Strategic Lawsuits Against Public Participation*, 35 Soc. PROBS. 506 (1988); George W. Pring & Penelope Canan, *SLAPPs: Getting Sued For Speaking Out*, (Temple Univ. Press 1996).
4. Pring & Canan, *SLAPPs: Getting Sued For Speaking Out*, *supra* note 3, at 1-2, 196. *See also* *Simpson Strong-Tie Co., Inc. v. Gore*, 49 Cal. 4th 12, 21 (2010) ("A SLAPP is a civil lawsuit that is aimed at preventing citizens from exercising their political rights or punishing those who have done so.").
5. *Simpson Strong-Tie Co., Inc. v. Gore*, *supra* note 4 at 21.
6. *See U.S. needs an anti-SLAPP law like California's*, LOS ANGELES TIMES, Aug. 16, 2015, accessible at <http://www.latimes.com/opinion/editorials/la-ed-slapp-20150816-story.html>.
7. *Wilson v. Cable News Network, Inc.*, 6 Cal. App. 5th 822, 830 (2016), review granted, No. S239686, 214 Cal. Rptr. 3d 290 (2017).
8. *Id.*, quoting *Simpson Strong-Tie Co., Inc. v. Gore*, 49 Cal. 4th 12, 21 (2010) (emphasis added). *See also* Cal. Civ. Proc. Code § 425.16(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.").
9. Pring & Canan, *SLAPPs: Getting Sued For Speaking Out*, *supra* note 3 at 196, quoting *Deukmejian Vetoes Limits on SLAPP Suits*, SAN FRANCISCO DAILY JOURNAL, Sept. 27, 1990, at 8.
10. Cal. Civ. Proc. Code § 425.16(a) (emphasis added).
11. *Episcopal Church Cases*, 45 Cal. 4th 467, 477 (2009), quoting *City of Cotati v. Cashman*, 29 Cal. 4th 69, 76 (2002). *See also* Cal. Civ. Proc. Code § 425.16(e) ("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.").
12. Cal. Civ. Proc. Code § 425.16(e).
13. *Wilson v. Cable News Network, Inc.*, *supra* note 7, quoting *Weinberg v. Feisel*, 110 Cal. App. 4th 1122, 1132-33 (2003).
14. *Id.*
15. *Id.*
16. *Wilson v. Cable News Network, Inc.*, *supra* note 7, quoting *Commonwealth Energy Corp. v. Investor Data Exch., Inc.*, 110 Cal. App. 4th 26, 33 (2003).
17. *Navellier v. Sletten*, 29 Cal. 4th 82, 89 (2002).
18. *Id.*
19. *Id.*
20. *Park v. Board of Trustees of Cal. State Univ.*, 2 Cal. 5th 1057, 1060 (2017).
21. *Navellier v. Sletten*, 29 Cal. 4th 82, 89 (2002).
22. *Id.*
23. *Nam v. Regents of the Univ. of Cal.*, 1 Cal. App. 5th 1176, 1179 (2016) ("[t]he cure has become the disease—SLAPP motions are now just the latest form of abusive litigation"), quoting *Navellier v. Sletten*, 29 Cal. 4th 82, 96 (2002) (dissenting opinion of Brown, J.).
24. 99 Cal. App. 4th 257 (2011).
25. 235 Cal. App. 4th 1 (2015).
26. 221 Cal. App. 4th 1510 (2013).
27. 29 Cal. 4th 82, 94 (2002).
28. 8 Cal. App. 5th 367 (2017).
29. *Id.* at 381.
30. *Id.* at 380, quoting *People ex rel. Fire Ins. Exch. v. Anapol*, 211 Cal. App. 4th 809, 823 (2012).
31. *Wilson v. Cable News Network, Inc.*, *supra* note 7 at 822.
32. *Id.* at 827.
33. *Id.* at 834-35 (full citations and internal quotations omitted).
34. *Nam v. Regents of the Univ. of Cal.*, *supra* note 22.
35. *Id.* at 1190-91.
36. *Id.* at 1193.

37. *Id.* at 1189.
38. *Park v. Board of Trustees of Cal. State Univ.*, 2 Cal. 5th 1057 (2017).
39. *Id.* at 1066.
40. *Id.* at 1067.
41. 154 Cal. App. 4th 1273 (2007).
42. *DFEH v. 1105 Alta Loma Rd. Apartments*, 154 Cal. App. 4th at 1288.
43. No. 15-CV-0892 W (NLS), 2015 WL 9692737, 2015 U.S. Dist. LEXIS 174692 (SD Cal. Dec. 17, 2015).
44. *Id.*, 2015 WL 9692737 at * 8.
45. No. B220470, 2011 WL 2164014, 2011 Cal. App. Unpub. LEXIS 4223 (June 3, 2011).
46. *Id.*, 2011 WL 2164014 at * 7 (citations omitted).
47. Los Angeles Superior Court Case No. BC644978.
48. See *Ben-Shahar v. Pickart*, 231 Cal. App. 4th 1043, 1051–52 (2014). (“Numerous anti-SLAPP cases have discussed a landlord’s unlawful detainer action that is followed by a tenant’s lawsuit. Unless the sole basis of liability asserted in the tenant’s complaint is the filing and prosecution of the unlawful detainer action, the tenant’s action will not be targeted at protected activity. Where, however, the action is predicated upon conduct distinct from the prosecution of the unlawful detainer action—even though the complaint is based upon the unlawful detainer action or arises from it—the tenant’s action is not targeted at protected activity and thus does not meet the first prong of the anti-SLAPP analysis.”); *Marlin v. Aimco Venezia LLC*, 154 Cal. App. 4th 154 (2007) (landlord’s anti-SLAPP motion denied where tenants sued landlord after it served Ellis Act notices instructing tenants to vacate apartments—the court held that even if the service of the Ellis Act notices was protected activity, the tenants’ action was directed at the landlord’s wrongful reliance on the Ellis Act).

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