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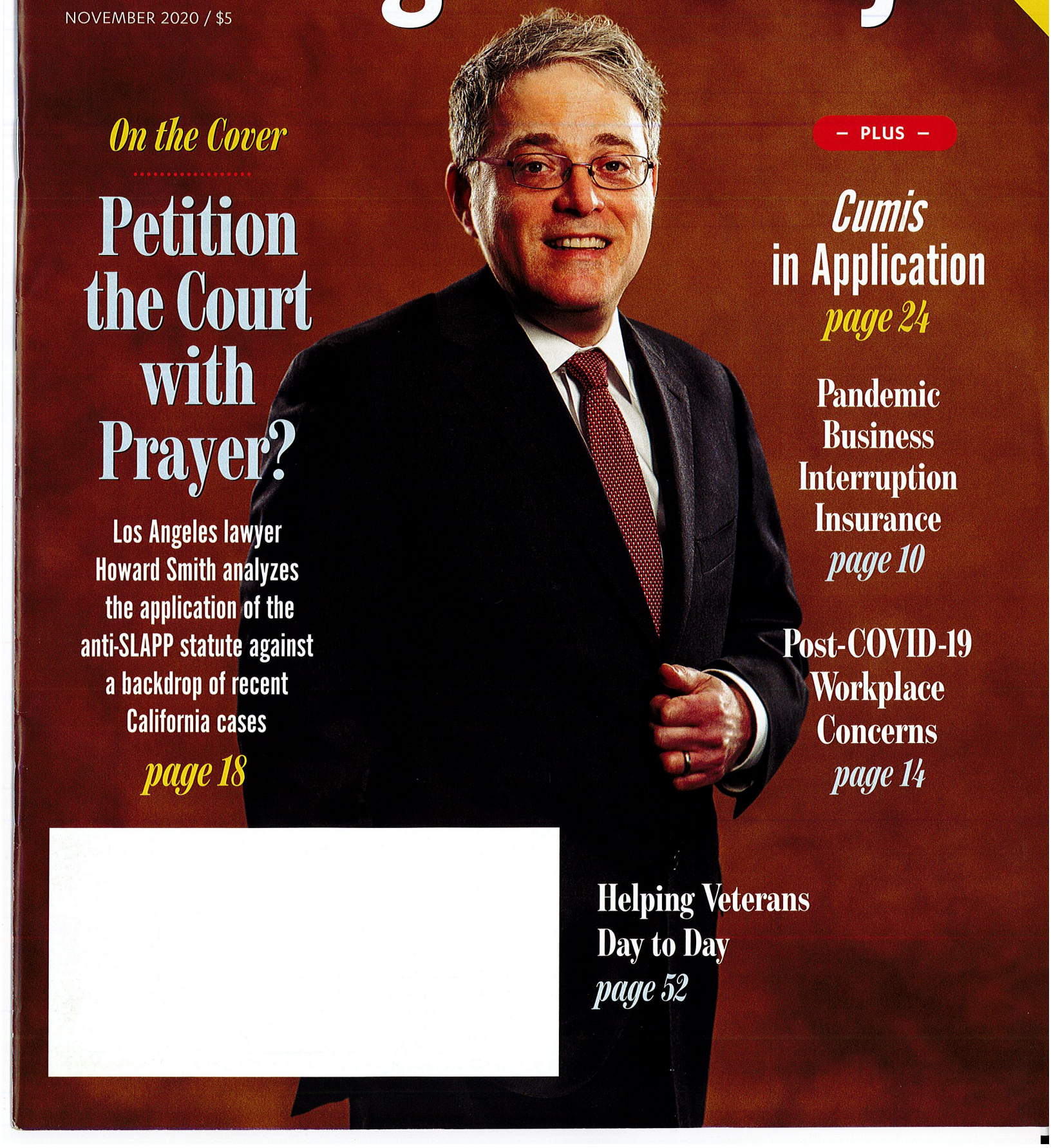
Semiannual Guide to EXPERT WITNESSES



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by Howard Smith

Petition the Court with Prayer?

Even though it may be inadmissible, an adverse anti-SLAPP ruling can make it extremely difficult to bring a successful motion for summary judgment later

The California anti-SLAPP (Strategic Lawsuits Against Public Participation) statute can be explained through the words of lead singer of the Doors Jim Morrison from 1969: "When I was back there in [law] school, there was a person there who put forth the proposition that you can petition the [court] with prayer. Petition the [court] with prayer? Petition the [court] with prayer? You cannot petition the [court] with prayer!"[1] Fifty years later in 2019, similar words were echoed by the California Supreme Court: "Code of Civil Procedure Section 425.16, commonly known as the anti-SLAPP statute, allows defendants to request early judicial screening of legal claims targeting free speech or petitioning activities."[2]

The application of the statute focuses on two issues or "prongs": 1) whether the claim arises out of petitioning activity, and 2) if a prayer for relief alone is insufficient, what is the necessary showing that must be made in opposing a motion under Section 425.16. The question of the proper evidentiary standard under the statute has been the subject of recent activity by the California Supreme Court and courts of appeal.

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Under Section 425.16(e), the anti-SLAPP statute applies to claims arising out of four different types of activity: 1) a written or oral statement made in a judicial proceeding; 2) a written or oral statement made in legislative, executive, or any other official proceeding; 3) a written or oral statement 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 free speech in connection with a public issue or an issue of public interest.[3] Specifically, "[a] claim arises from protected activity when that activity underlies or forms the basis for the claim."[4]

Under Section 425.16(e)(1), the statute applies to any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding. Courts have adopted "a fairly expansive view of what constitutes litigation-related activities within the scope of Section 425.16."[5] For this reason, "[s]tatements made before an 'official proceeding' or in connection with an issue under consideration or review by a legislative, executive, or judicial body, or in any other 'official proceeding'" are subject to protection under the statute.[6]

Similarly, the "litigation privilege" of Civil Code Section 47(b) provides that a statement made as part of a judicial proceeding may not form the basis of liability.[7] The litigation privilege encompasses not only testimony in court and statements made in pleadings but also communications in connection with matters related to a lawsuit.[8] The court of appeal in *Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.*[9] compared the application of Section 425.16 and Civil Code Section 47(b) with statements made during ongoing litigation: "In general, communications in connection with matters related to a lawsuit are privileged under Civil Code section 47(b) (*citations.*) Communications 'within the protection of the litigation privilege of Civil Code section 47(b) are equally entitled to the benefits of section 425.16 (*citations.*)'"[10]

The statute also applies to the filing of a lawsuit.[11] For this reason, an action for malicious prosecution based upon a party's or attorney's statements or writings in connection with or in an earlier judicial proceeding is subject to being stricken as a SLAPP suit: "[B]y its terms, section 425.16 potentially may apply to every Malicious Prosecution action, because every such action arises from an underlying lawsuit, or petition to the judicial branch."[12] Specifically, the anti-SLAPP statute protects attorneys from an action for malicious prosecution brought against them by parties whom they had sued on behalf of a client.[13]

The statute applies to pre-lawsuit notices,[14] including pre-lawsuit communication about contemplated litigation.[15] Moreover, the statute applies to statements regarding pending litigation[16] and litigation conduct, which includes settlement discussions.[17]

Under Section 425.16(e)(2) the statute applies to 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. All statements or conduct made "in connection with an issue under consideration" by a judicial body or "other office proceeding authorized by law" are protected by the anti-SLAPP statute, even if no public issue is involved.[18]

The same bright-line test that protected statements or conduct made during a legislative, executive, judicial body, or other official proceedings (Section 425.16(e)(2)) protects conduct outside the proceedings if sufficiently related to matters considered by the official body.[19]

Under Section 425.16(e)(3), the statute applies to 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. What constitutes a public forum is broadly defined. It is not limited to government proceedings but anything open to the public, such as the board meetings of a homeowners association.[20]

The key decision in this context is *Park v. Board of Trustees of California State University.*[21] In *Park,* the California Supreme Court found the vote of a school board leading to the denial of tenure—based upon a discriminatory intent—was not entitled to protection under the statute because the plaintiff was not suing on account of the vote but due to the later denial of tenure.[22] The rule under *Park* has been stated as: "[T]he focus is on determining what 'the defendant's activity [is] that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning.'"[23]

The decision in *Park* and the later appellate cases appear to require an additional showing beyond whether the activity took place in a public forum. In order to fall under the protection of the statute, the statement both must have been made in in a public forum and the defendant's activity upon which liability is based must constitute protected speech or petitioning activity. Under this formulation, the supreme court in *Park* found that the statute did not apply: While the vote was made in a public forum (before the school board), the activity giving rise to the claimed liability was not the vote (which is protected) but the ultimate failure to provide tenure (not a protected activity).

Under Section 425.16(e)(4) the statute applies to any other conduct in furtherance of the exercise of the constitutional right of free speech in connection with a public issue or an issue of public interest. There are several key decisions concerning this activity. First, in *Wilson v. Cable News Network, Inc.*,[24] the California Supreme Court found that claims for employment discrimination and retaliation under Government Code Section 12940, against a news organization, could qualify for anti-SLAPP protection.[25] The supreme court reasoned that any protection would fall under Section 425.16(e)(4) as speech on a matter of public interest, as terminating an employee based on plagiarism was protected speech under the First Amendment because journalistic integrity is central to news products.[26] While the claim for employment discrimination and retaliation is protected under the statute, the supreme court found the plaintiff's claim for defamation was not subject to the anti-SLAPP statute because the employee was not a public figure and the alleged privately made statements about the reason for termination did not address a public controversy.[27]

In *FilmOn.com Inc. v. DoubleVerify Inc.*,[28] in determining whether a confidential report evaluating a company's business practices fell within the anti-SLAPP catchall provision in Section 425.16(e)(4), the commercial context of the report had to be considered, as well as its content.[29] The catchall provision required an inquiry into whether the speech contributed to the public debate, under a two-part analysis, identifying a matter of public interest and then asking what functional relationship existed between the public interest and the speech.[30] The court found the statute did not apply because a report evaluating a company's internal business practice did not involve any issue of public interest.[31]

When determining whether the defendant's conduct falls under the above subsections, a court does not consider the legitimacy of the plaintiff's claims.[32] Specifically, "[a]rguments about the merits of the claims are irrelevant to the first step of the anti-SLAPP analysis."[33]

Further, it must be acknowledged that criminal conduct is not protected under the statute. In *Flatley v. Mauro*,[34] the supreme court found that the anti-SLAPP statute did not apply to petitioning activity that is illegal as a matter of law—criminal activity, not merely violative of a statute of common law.[35] It almost became the exception that swallowed the rule because potentially any prelitigation settlement demand could be alleged to be some form of criminal extortion. However, realizing the overbreadth of the rule, the appellate courts have taken steps to limit the exception, which includes finding that heated prelitigation threats and/or settlement demands do not constitute criminal extortion.[36]

In order to avoid overreaching, it is important to know which claims do not fall under the statute. First, Section 425.16 does not apply to causes of action for legal malpractice.[37] Likewise, Section 425.16 does not apply to an action brought by a consumer against a manufacturer of dietary supplements for violations of California's unfair competition false advertising laws and the Consumer Legal Remedies Act.[38] Again, the reason for this rule is clear. The manufacturer's list of product ingredients on product labels and on its website was commercial speech, not a matter of public interest.[39]

The statute also does not apply to a bad faith claim based upon the insurer's report to the California Department of Insurance.[40] Again, the ruling is consistent with the purpose of the statute. While the report to the Department of Insurance may have triggered the plaintiff's action, the action did not arise from the report but instead from the insurer's claims handling.[41]

Similarly, the statute does not apply to an action based upon the failure to comply with the statutory requirements of Welfare and Institutions Code Section 5152 resulting in the release of a person previously detained for psychiatric evaluation.[42] Again, the action did not arise out of communicating medical information but constituted medical malpractice in releasing the patient from physical custody.[43]

Evidentiary Standard

Notwithstanding the statute's long history, California case law has focused almost entirely on the first prong, i.e., whether the statute applies. This has left open the question of what constitutes the proper standard under prong two: If the moving party has shown the anti-SLAPP statute applies, the court "must then determine whether the Plaintiff has demonstrated a probability of prevailing on the claim."[44]

On this issue, the decisions from the California Court of Appeal found that an anti-SLAPP motion worked as a motion for summary judgment in reverse, acting as a gatekeeper to weed out unsupported claims early in the litigation by requiring the plaintiff to present admissible evidence supporting every element of the claim.[45] "[A] standard 'similar to that employed in determining nonsuit, directed verdict or summary judgment motions.'"[46] For this reason, it has been called a motion for summary judgment in reverse.[47]

It was not until February 28, 2019, that the California Supreme Court issued its first decision addressing the necessary evidentiary showing—under the second prong—in *Sweetwater Union High School District v. Gilbane Building Co.*[48]

In *Sweetwater*, the California Supreme Court held that in order to demonstrate a probability of prevailing on the claim, courts require that the evidence relied on by the plaintiff must be admissible at trial.[49] Unless the evidence referred to is admissible, or at least not objected to, there is nothing for the trier of fact to credit. An assessment of the probability of prevailing on the claim looks to trial and the evidence that will be presented at that time. Such evidence must be admissible.

Consistent with the gatekeeper purpose of the statute, the supreme court found that the case law contemplated a SLAPP plaintiff's presentation of competent, i.e., admissible, evidence in support of its prima facie case in opposition to the motion.[50] The court, without resolving evidentiary conflicts, must determine whether the plaintiff's showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment.[51]

The decision, however, included language that appeared to suggest a lesser evidentiary standard on the motion: While the opposition required the presentation of evidence that would be admissible at trial, evidence could be considered if it is reasonably possible the evidence would be admissible at trial.[52]

Not surprisingly, there has been little case law addressing the evidentiary standard under *Sweetwater*.[53] In fact, it took almost a full year—until February 19, 2020—for the issuance of an appellate decision that provided an interpretation of *Sweetwater* in *Kinsella v. Kinsella*.[54]

In *Kinsella*, the court of appeal addressed a cause of action for malicious prosecution based upon the filing of a prior civil action.[55] On a cause of action for malicious prosecution, the plaintiff's opposition to an anti-SLAPP motion must demonstrate the claim is "supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the Plaintiff is credited."[56]

In *Kinsella*, the inquiry focused upon whether the defendant as the plaintiff in the prior action had probable cause to bring a claim under *Marvin v. Marvin*[57] for breach of an express oral habitation agreement.[58] Relying upon *Sweetwater*, the court of appeal found the plaintiff (defendant in the prior action), had shown a probability of prevailing because he did not only submit proof to support the claim, but also evidence making a prima facie showing that the prior action was based upon false evidence.[59]

In reaching this conclusion, again relying upon *Sweetwater*, the court of appeal was clear that under prong two, the applicable standard is whether "plaintiff presented evidence of a prima facie case of the elements of the Cause of Action"—here the cause of action for malicious prosecution.[60] If the plaintiff has made the necessary showing, the court then evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law.[61] These defenses may include both factual and legal defenses, such as the litigation privilege of Civil Code Section 47(b).[62]

The gatekeeping function of the anti-SLAPP statute was affirmed on June 30, 2020, when the court of appeal in *Roche v. Hyde*[63] cited *Sweetwater* in describing the "summary-judgment-like" proceedings at prong two of the anti-SLAPP process and the need to weed out, at an early stage, meritless claims arising from protected activity.[64]

The court of appeal in *Roche* quoted the language from *Sweetwater* that the trial court may consider evidence if it is reasonably possible the proffered evidence will be admissible at trial.[65] The court of appeal in *Roche*, however, neither attempted to define this standard nor apply any kind of lesser standard. Instead, as in *Kinsella*, the court in *Roche* focused upon whether admissible evidence had been presented to show that a finding in a prior action—providing probable cause to pursue that action—was obtained through fraud.[66]

The question of the evidentiary standard on prong two of the anti-SLAPP statute continues to evolve. Based upon *Sweetwater* and the subsequent appellate decisions, it is clear the regular admissibility standard at trial will apply. Consistent with the gatekeeper function of the statute, in order to demonstrate a probability of prevailing on the claim, the plaintiff is

required to support his or her claim with admissible evidence, sufficient to sustain a favorable judgment.

For parties opposing an anti-SLAPP motion, a possible argument may exist. Consistent with the language from *Sweetwater,* it appears that a lesser standard may apply. The issue is not the presentation of admissible evidence, but in order to establish the necessary minimal merit of a claim, the court may consider evidence if it is reasonably possible the evidence would be admissible at trial.

Procedural Features

The anti-SLAPP statute has numerous procedural features. Foremost, an anti-SLAPP motion is a motion to strike and may be brought against the entire complaint.[67] However, as with any motion to strike, the moving party may move against specific allegations of petitioning activity in the complaint.[68] Again, as with any motion to strike, the filing of an answer does not preclude the later filing of the motion.[69]

It is intended that the motion be heard on an expedited basis and there are specific requirements as to when the motion may be filed and heard. Under Section 425.16(f), the motion needs to be filed within 60 days of the service of the complaint or amended complaint or at any later time in the court's discretion. Under Section 425.16(f), the motion needs to be heard not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

The filing of an amended complaint, however, does not automatically reopen the time to file the motion. If the claims in the amended complaint were included in an earlier complaint, the filing of the amended complaint does not reopen the time to file an anti-SLAPP motion as to those claims.[70]

The court maintains the ability—even when defendants did not first seek leave—to hear an untimely motion if it serves the purpose of the statute.[71] Specifically, the trial court has discretion to consider and grant late-filed anti-SLAPP motions, even when the defendant did not first seek leave before filing the motion.[72] When determining whether to hear an untimely motion, the court should consider the following: 1) the purpose of the statute, i.e., to dismiss meritless lawsuits designed to chill a defendant's petitioning activity early in the case; 2) whether there was extreme delay; 3) the status of the case, i.e., how close to trial has the motion been filed and whether significant discovery has been conducted; and 4) potential prejudice to the plaintiff.[73]

Once the motion is filed, all discovery is stayed pending the ruling on the motion.[74] The statute provides: "The court, on a noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision."[75] As shown by the language of the statute, the request for discovery during the stay may not be sought through ex-parte relief but only through a noticed motion. Similarly, the filing of an amended complaint—after the motion has been filed—does not prevent the court from ruling on the motion.[76]

An important feature of the statute is the automatic right to appeal: "An order granting or denying a special motion to strike shall be appealable under section 904.1."[77] Accordingly, as the defendant maintains the right to appeal from any adverse ruling, counsel should have a court reporter present to transcribe the hearing on the motion to facilitate appellate review.

Attorneys' Fees

Under the statute, the prevailing party may move for attorneys' fees and costs necessary to bring or oppose the motion. However, different standards apply when the defendant or plaintiff is the prevailing party.

The prevailing defendant on an anti-SLAPP motion shall be entitled to recover his or her attorneys' fees and costs.[78] The fee award is mandatory: "[A]ny defendant who brings a successful Special Motion to Strike under section 425.16 is entitled to mandatory attorney fees."[79] The court applies a lodestar approach—the number of hours reasonably expended multiplied by the reasonable hourly rate prevailing in the community—in setting a fee award under Section 425.16(c).[80]

The plaintiff can only recover attorneys' fees under Code of Civil Procedure Section 128.5 if he or she can establish the prior anti-SLAPP motion was "frivolous or solely intended to cause unnecessary delay."[81] The reference to Section 128.5 means a court "must use the procedures and apply the substantive standards of section 128.5 in deciding whether to award fees under the anti-SLAPP statute."[82] Specifically, the standards of Section 128.5 guide the implementation of the attorney fee provision of Section 425.16(c).[83]

Section 128.5(b)(2) defines "frivolous" to mean "totally and completely without merit" or "for the sole purpose of harassing an opposing party." When a motion has even partial merit, it is not "totally and completely without merit" nor can it be said its "sole" purpose is to harass.[84]

The determination if an anti-SLAPP motion is "totally and completely without merit" or "solely to harass" requires a finding "any reasonable attorney would agree such a motion is totally and completely without merit."[85] Under this standard, a motion that any reasonable attorney would agree is totally and completely without merit would be a business dispute that simply mentions incidental protected activity.[86]

Practical Considerations

When representing the plaintiff, counsel needs to advise any client of the existence of the anti-SLAPP statute, which requires: 1) the client has all of his or her evidence available before filing the case, 2) any estimate of fees or costs provided to the client includes opposing the anti-SLAPP motion, and 3) the client understands that he or she could have to pay the other side's attorneys' fees.

As the defendant's counsel, if the court determines the plaintiff has established a probability 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 the applicable burden of proof shall not be affected by that determination in any later stage of the case.[87] However, counsel needs to advise the client that even if the ruling is inadmissible, an adverse ruling on the motion will make it extremely difficult to bring a successful motion for summary judgment later in the action. ■

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[1] THE DOORS, THE SOFT PARADE (Electra Records 1969).
[2] Wilson v. Cable News Network, Inc., 7 Cal. 5th 871, 880-81 (2019).
[3] City of Cotati v. Cashman, 29 Cal. 4th 69, 78 (2002).
[4] *Id.*
[5] Neville v. Chudacoff, 160 Cal. App. 4th 1255, 1268 (2008).
[6] Digerati Holdings, LLC v. Young Money Entm't, LLC, 194 Cal. App. 4th 873, 886-87 (2011).
[7] Action Apartment Ass'n, Inc. v. City of Santa Monica, 41 Cal. 4th 1232, 1241 (2007).
[8] Sylmar Air Conditioning v. Pueblo Contracting Servs., Inc., 122 Cal. App. 4th 1049, 1058 (2004).
[9] *Id.* at 1049.
[10] *Id.* at 1058.
[11] Navellier v. Sletten, 29 Cal. 4th 82, 90 (2002).
[12] Jarrow Formulas, Inc. v. LaMarche, 31 Cal. 4th 728, 734-35 (2003); Dickens v. Provident Life & Accident Ins. Co., 117 Cal. App. 4th 705, 713 (2004).
[13] Chavez v. Mendoza, 94 Cal. App. 4th 1083, 1087 (2001).
[14] Feldman v. 1100 Park Lane Assocs.,160 Cal. App.4th 1467, 1479-80 (2008).
[15] Bailey v. Brewer, 197 Cal. App. 4th 781, 789 (2011).
[16] Contemporary Servs. Corp. v. Staff Pro Inc., 152 Cal. App. 4th 1043, 1055 (2007).
[17] Gene Thera, Inc. v. Troy & Gould Prof'l Corp., 171 Cal. App.4th 901, 907-908 (2009).
[18] Briggs v. Eden Council for Hope & Opportunity, 19 Cal. 4th 1106, 1116 (1999).

[19] Maranatha Corr., LLC v. Department. of Corr. & Rehab.,158 Cal. App. 4th 1075, 1085 (2008).
[20] Lee v. Silveira, 6 Cal. App. 5th 527, 539-45 (2016).
[21] Park v. Board of Trs. of Cal. State Univ., 2 Cal. 5th 1057, 1062-67 (2017).
[22] *Id.* at 1062.
[23] Okorie v. Los Angeles Unified Sch. Dist.,14 Cal. App. 5th 574, 591 (2017).
[24] Wilson v. Cable News Network, Inc., 7 Cal. 5th 871, 871 (2019).
[25] *Id.* at 880-81.
[26] *Id.* at 884-85.
[27] *Id.* at 892-93.
[28] FilmOn.com Inc. v. DoubleVerify Inc., 7 Cal. 5th 133 (2019).
[29] *Id.* at 143-46, 149-52.
[30] *Id.* at 152-54.
[31] *Id.*
[32] Coretronic Corp. v. Cozen O'Connor, 192 Cal. App. 4th 1381, 1388 (2011); Daimler-Chrysler Motors Co. v. Lew Williams, Inc., 142 Cal. App. 4th 344, 351 (2006).
[33] Coretronic Corp., 192 Cal. App. 4th at 1388.
[34] Flatley v. Mauro, 39 Cal. 4th 299 (2006).
[35] *Id.* at 320.
[36] Malin v. Singer, 217 Cal. App. 4th 1283, 1293, 1300 (2013).
[37] Jespersen v. Zubiate-Beauchchamp, 114 Cal. App. 4th 624, 630-32 (2003).
[38] Nagel v. Twin Labs., Inc., 109 Cal. App. 4th 39, 46-49 (2003).
[39] *Id.* at 47-51.
[40] Gallimore v. State Farm Fire & Cas. Ins. Co., 102 Cal. App. 4th 1388, 1397-99 (2002).
[41] *Id.* at 1398-99.
[42] Swanson v. County of Riverside, 36 Cal. App. 5th 361, 366 (2019).
[43] *Id.* at 372-73.
[44] Navellier v. Sletten, 29 Cal. 4th 82, 88 (2002).
[45] Tichinin v. City of Morgan Hill, 177 Cal. App. 4th 1049, 1062 (2009).
[46] *Id.*
[47] *Id.*
[48] Sweetwater Union High Sch. Dist. v. Gilbane Bldg. Co., 6 Cal. 5th 931, 940 (2019).
[49] *Id.* at 946-48.
[50] *Id.* at 946-47.
[51] *Id.*
[52] *Id.* at 947.
[53] *See* Wilson v. Cable News Network, Inc., 7 Cal. 5th 871, 891-92 (2019) (burden of proof on a claim for employment discrimination.); Monster Energy Co. v. Schechter, 7 Cal. 5th 781, 795-96 (2019) (burden of proof on a claim for breach of settlement agreement.); Citizens of Humanity, LLC v. Hass, 46 Cal. App. 5th 589, 598-99 (2020) (declaration allowed as evidence on claim for malicious prosecution.); Swanson v. County of Riverside, 36 Cal. App. 5th 361, 366 n.3 (2019) (evidence on a claim for medical malpractice.); Jenni Rivera Enters., LLC v. Latin World Entm't Holdings, Inc., 36 Cal .App. 5th 766, 783 (2019) (burden of proof on a claim for breach of nondisclosure agreement.).
[54] Kinsella v. Kinsella, 45 Cal. App. 5th 442 (2020).
[55] *Id.* at 450-52.
[56] *Id.* at 453.
[57] Marvin v. Marvin, 18 Cal. 3d 660 (1976).
[58] Kinsella, 45 Cal. App. 5th at 454-57.
[59] *Id.* at 457-60.
[60] *Id.* at 463 n.16 (emphasis in original).
[61] *Id.* at 453.
[62] Peregrine Funding v. Sheppard Mullin Richter & Hampton, LLP, 133 Cal. App. 4th 658, 675-87 (2005).
[63] Roche v. Hyde 51 Cal. App. 5th 757 (2020).
[64] *Id.* at 771, 787.
[65] *Id.* at 787.
[66] *Id.* at 821.
[67] Robertson v. Rodriguez, 36 Cal. App. 4th 347, 356 (1995).
[68] Baral v. Schnitt, 1 Cal. 5th 376, 391-92 (2016).
[69] Dixon v. Superior Ct., 30 Cal. App. 4th 733, 739-40 (1994).
[70] Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism, 4 Cal. 5th 637, 640 (2018).
[71] Chitsazzadeh v. Kramer & Kaslow, 199 Cal. App. 4th 676, 684 (2011).
[72] *Id.*
[73] Platypus Wear, Inc. v. Martin Goldberg, 166 Cal. App. 4th 772, 776, 784-87 (2008).
[74] Code Civ. Proc. §425.16(g).
[75] *Id.*
[76] Salma v. Capon, 161 Cal. App. 4th 1275, 1293-1294 (2008); Summons v. Allstate Ins. Co., 92 Cal. App. 4th 1068, 1072 (2001).
[77] Code Civ. Proc. §425.16(i).
[78] Code Civ. Proc. §425.16(c).
[79] Ketchum v. Moses, 24 Cal. 4th 1122, 1131 (2001).
[80] *Id.* at 1136.
[81] Code Civ. Proc. §425.16(c); Ketchum, 24 Cal. 4th at 1131.
[82] California Back Specialists Med. Group v. Rand, 160 Cal. App. 4th 1032, 1038 (2008).
[83] Moore v. Shore, 116 Cal. App. 4th 182, 199 n.9 (2004).
[84] Gerbosi v. Gaims, Weil, West & Epstein, LLP, 193 Cal. App. 4th 435, 450 (2011).
[85] Moore, 116 Cal. App. 4th at 199; Gerbosi, 193 Cal. App. 4th at 450.
[86] Baharian-Mehr v. Smith, 189 Cal. App. 4th 265, 275 (2010).
[87] Code Civ. Proc. §425.16(b)(3).

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