



**Court Dismisses *Fisher v. DIRECTV*; DIRECTV will seek to recover its attorney's fees from Mr. Fisher**

*Fisher v. DIRECTV* was filed by John Fisher, a former DIRECTV employee in the End-User Development Group who is represented by Jeffrey Wilens. Mr. Fisher's complaint alleged two causes of action. First, Mr. Fisher contended that he was constructively discharged when he resigned because he was offended by the nature of DIRECTV's end user litigation program. Second, the complaint included a cause of action alleging that the end user litigation program violated California's unfair business practices statute.

Judge Nishimoto granted DIRECTV's special motion to strike the unfair business practices claim under California's anti-SLAPP statute. The court ruled that DIRECTV's demand letters have a logical relationship to anticipated litigation and are, therefore, protected by the litigation privilege, which is an absolute bar to the claim that the end user litigation program violates California's unfair business practices statute.

DIRECTV had also moved to dismiss the wrongful termination claim, but Mr. Fisher voluntarily dismissed that claim, which is subject to an arbitration agreement that will proceed separately. We do not believe that Mr. Fisher will be able to demonstrate that he was constructively discharged in violation of public policy since the Court ruled that the activity of which Mr. Fisher complains is constitutionally protected.

DIRECTV intends to file, as permitted by the anti-SLAPP statute, a motion that Mr. Fisher be ordered to pay DIRECTV's attorney's fees.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES - SOUTHWEST DISTRICT

JOHN FISHER, on behalf of himself and the )  
general public as private attorney general, )  
Plaintiff, )  
v. )  
DIRECTV, INC., and DOES 1 through 50, )  
inclusive, )  
Defendants. )

CASE NO. YC 048689  
NOTICE OF RULING ON SPECIAL  
"ANTI-SLAPP" MOTION TO  
STRIKE AND DEMURRER  
Date: May 27, 2004  
Time: 8:30 a.m.  
Dept: E  
Judge: Hon. Cary H. Nishimoto  
Filing Date: March 24, 2004  
Trial Date: None Set

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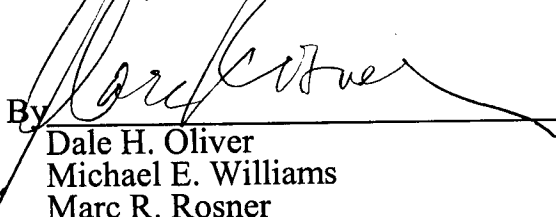
TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:  
PLEASE TAKE NOTICE that on May 27, 2004, at 8:30 a.m., in

Department E of the Los Angeles Superior Court, defendant DIRECTV's (i) Special "Anti-SLAPP" Motion to Strike Section 17200 Cause of Action, and (ii) Demurrer to Complaint or, Alternatively, Motion to Compel Arbitration came on for hearing before the Honorable Carey H. Nishimoto. Michael E. Williams appeared on behalf of DIRECTV. Jeffrey Wilens appeared on behalf of plaintiff, John Fisher.

After hearing oral argument, the Court ruled in accordance with its Tentative Ruling, a copy of which is attached as Exhibit A hereto, and (i) granted the Anti-SLAPP Motion and dismissed the remainder of the action in its entirety with prejudice, (ii) ruled that the Demurrer and Alternative Motion to Compel Arbitration is moot, and (iii) ordered DIRECTV to give notice of its ruling.

DATED: May 27, 2004

QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP

By   
Dale H. Oliver  
Michael E. Williams  
Marc R. Rosner  
Megan O'Neil  
Attorneys for Defendant DIRECTV, Inc.

**Exhibit A**

LOS ANGELES SUPERIOR COURT

Civil Division

Thursday - May 27, 2004

Cary Nishimoto, Judge

Department SW E

Time	Case	Date Filed
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8:30 am	JOHN FISHER V DIRECTV, INC	
#2	YC048689	

Demurrer of defendant DirectTV, Inc to complaint and Anti-Slapp motion to strike. **Tentative ruling:** ANTI-SLAPP MOTION TO STRIKE, grant. CCP §425.16 et seq. Demurrer and alternative motion to compel arbitration, moot. There is no authority presented by either side to establish the court's power or lack of authority to decide the motion to strike prior to ruling on a motion to compel arbitration. Whether an action is covered by the Anti-SLAPP statute involves a two step test: (1) defendant must show the case arises out of activities protected by statute (Church of Scientology v Wollersheim 42 Cal.App.4th 628, 646 (1996)); (2) once this burden has been met, the burden shifts to plaintiff who must establish a probability of prevailing on the claim. Kyle v Carmon 71 Cal.App.4th 901, 907 (1999). Here, defendant meets its burden to establish that the Unfair Competition cause of action arises from defendants exercise of its right of petition. Letters containing pre-litigation settlement demands and threats of legal action are exercises of the right of petition and protected by the Anti-Slapp statute. Kashian v Harriman 98 Cal.App.4th 892, 908 (2002). Plaintiff fails to meet his burden to establish a probability of prevailing on his cause of action as plaintiff's cause of action is barred by the litigation privilege under Civ. Code §47(b).

The litigation privilege of Civ. Code §47(b) is an absolute bar to plaintiff's claims. That statute applies to communications having some relation to judicial proceedings. Aronson v Kinsella 58 Cal.App.4th 254, 262 (1997). Here, demand letters have a logical relationship to anticipated litigation and therefore the privilege applies. The parties dispute the proper standards to apply to the "interests of justice" test and the "good faith belief" test. Defendant contends Silberg v Andereson 50 Cal.3d 205, 217 (1990) overruled the applicability of the "interests of justice" test but as noted by Aronson, the two tests are not necessarily the same. "The genesis of the test is the Restatement Second of Torts, §586, comment e which seeks to prevent application of the privilege when the statements are made at a time when the possibility of litigation is not seriously considered. Thus the good faith and serious consideration of litigation test of the Restatement is addressed to the requirement the statements

[CONTINUED ON THE NEXT PAGE]

**EXHIBIT A**

L O S A N G E L E S S U P E R I O R C O U R T

Civil Division

Thursday - May 27, 2004

Cary Nishimoto, Judge

Department SW E

Time	Case	Date Filed
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8:30 am JOHN FISHER V DIRECTV, INC

#2 YC048689

[TENTATIVE RULING, CONTINUED FROM PREVIOUS PAGE]

"have some connection or logical relation to the action. In other words, if the statement is made with a good faith belief in a legally viable claim and in serious contemplation of litigation, then the statement is sufficiently connected to litigation and will be protected by the litigation privileged. The privilege then applies is absolute." Aronson 58 Cal.App.4th at 266. Here, defendant presents evidence that the letters were sent in serious contemplation of litigation. More than 24,000 federal lawsuits were filed against individuals. Decl. Mader, ¶5. This is contrary to authority cited by plaintiff i.e. Fuhrman v California Satellite Systems 179 Cal.App.3d 408 (1986) in which no such lawsuits were filed. The bare

fact that some individuals were not sued after a demand letter does not mitigate the good faith belief in a legally viable claim and in serious contemplation of litigation. Plaintiff's contention that the demand letters contain misleading or deceptive statements does not avoid the application of the litigation privilege. Even allegedly false, perjurious, unethical or illegal statements are protected by the privilege. Kashian v Harriman 98 Cal.App.4th 892, 920 (2002); Aronson v Kinsella 58 Cal.App.4th 254, 270.

Plaintiff contends an exception to the Anti-Slapp statute applies but this contention is without merit. CCP §425.17 does not apply to this case. After this motion was filed, plaintiff dismissed his wrongful termination cause of action in an apparent concession to arbitrate, arguing that CCP §425.17(b) applies to the Unfair Competition cause of action as having been brought solely in the public interest.

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Civil Division

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#2 YC048689

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A plaintiff can not, by amendment or dismissal, divest an action of allegations that subject it to the anti-SLAPP statute. Pfeiffer Venice Properties, v Bernard 101 Cal.App.4th 211, 218 (2002). Plaintiff cites and relies on Simmons v Allstate 94 Cal.App.4th 1068. However, Simmons did not state that an amendment could be used to evade the anti-SLAPP statute. In fact, the Simmons court noted that plaintiff therein should not be permitted to avoid the anti-SLAPP statute by amending its complaint. Id. at 1073 and 1074. The exception of CCP §425.17(b) applies only when actions are brought solely for the public interest. Here, plaintiff's complaint included a wrongful termination cause of action and was clearly not brought solely for the public interest. To dismiss the wrongful termination cause of action after the anti-SLAPP motion was filed does not shield the plaintiff from attorney's fees under precisely this scenario.

The parties are to notify the court clerk if submitting on the tentative ruling.

**EXHIBIT A**