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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

KEVIN BLANCHARD, et al.,
Plaintiffs,

v.

DIRECTV, INC., et al.,
Defendants

Case No: BC284166

STATEMENT OF DECISION RE: ANTI-SLAPP MOTION

I

BACKGROUND

Defendant DIRECTV, Inc. (DIRECTV) provides satellite-television services. In response to numerous instances of pirating, DIRECTV sent demand letters to addresses which purchased alleged satellite-theft devices. The letters demand that persons obtaining free DIRECTV services immediately stop any pirating activities and demand settlement sums. Plaintiffs Kevin Blanchard, et al. (Plaintiffs) allege the demand for settlement sums constitutes a form of extortion.

DIRECTV brings a special motion to strike on ground that Plaintiffs' complaint impinges on activity protected by California's anti-SLAPP statute. Opposing, Plaintiffs provide evidence claimed to support claims against DIRECTV for unfair business practices, interference with civil rights, and extortion.

II

DISCUSSION

California Code of Civil Procedure § 425.16, known as the anti-SLAPP statute, provides “a mechanism through which complaints that arise from the exercise of free speech [or petition] rights can be evaluated at an early stage of the litigation process and resolved expeditiously.” *Simmons v. Allstate Ins. Co.* (2001) 92 Cal.App.4th 1068, 1073 (internal quotation marks omitted). Application of the anti-SLAPP statute involves a two-part test. *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88. Initially, moving party must show that the case arises from protected activities within the scope of the statute. *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 646. Then, if moving party meets its burden, the burden shifts to opposing party to show probability of success on the merits, meaning opposing party must establish a legally sufficient claim. *Id.*

A. *Scope of the Anti-SLAPP Statute*

Statements made in connection with, or in preparation for, litigation are subject to anti-SLAPP governance. *Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 908. The parties agree that pre-litigation demand letters, like those here sent by DIRECTV, constitute protected communications. As such, by filing federal suits against over 600 individuals for satellite theft, DIRECTV has established not only that its demand letters were prepared in connection with, and in preparation for, litigation, but also that Plaintiffs’ complaint implicates activity protected by the anti-SLAPP statute.

B. *Admissibility, Probability of Success, and the Litigation Privilege*

1. *Admissibility and Probability of Success*

As Plaintiffs explained during oral argument, their claims turn on the fact that DIRECTV’s demand letters demand settlement sums. Plaintiffs contend these demands constitute extortion. First, no authority supports Plaintiffs’ contention; case law does not hold that pre-litigation demand letters cannot demand settlement sums. Second, and significantly, DIRECTV’s demand letters do not demand particular sums. Rather, they list a phone number letter recipients may call to discuss

settlement and/or possible litigation. On calling the number, any caller can explain his or her situation. If he or she has not pirated DIRECTV services, DIRECTV does not request fees or pursue litigation. Accordingly, DIRECTV's written demand does not necessarily end in payment of fees or litigation. By demonstrating to DIRECTV that he or she did not steal DIRECTV services, any Plaintiff using pirating equipment in a "lawful" manner can avoid fees or litigation.

Plaintiffs argue the Court cannot weigh evidence in deciding DIRECTV's anti-SLAPP motion. Plaintiffs are correct. *See Simmons, supra*, 92 Cal.App.4th at 1073. However, contrary to Plaintiffs' argument, this does not mean the Court applies a demurrer-like standard, assuming the truth of Plaintiffs' allegations and speculations. "Unlike demurrers or motions to strike, which are designed to eliminate sham or facially meritless allegations, at the *pleading* stage a SLAPP motion, like a summary judgment motion, *pierces* the pleadings and requires an evidentiary showing." *Id.* (emphasis in original). Plaintiffs must "make a prima facie showing of facts which would, if proved at trial, support a judgment in [Plaintiffs'] favor." *Wollersheim, supra*, 42 Cal.App.4th at 646. Speculation and wishful inference are not enough. *See Tuchsher Development Enterprises, Inc. v. San Diego Unified Port Dist.*, 2003 WL 1046109, *9.

Plaintiffs' evidence includes form declarations they believe call into question whether DIRECTV sent demand letters in good faith. Arguably, Plaintiffs' declarations are inadmissible because they convey improper, speculative legal conclusions that Plaintiffs' use of pirating equipment was "lawful." *See, e.g.*, Declaration of Kevin Blanchard at ¶ 7(c). Still, even if they are admissible, Plaintiffs' declarations do not bear on whether DIRECTV may send letters which include demands for settlement sums. The Court cannot "weigh" evidence in Plaintiffs' favor by inferring bad faith on DIRECTV's part simply because DIRECTV sent numerous letters which included demands for settlement sums.

2. The Litigation Privilege

California Civil Code § 47's litigation privilege applies to communications having some relation to judicial proceedings. *Aronson v. Kinsella* (1997) 58 Cal App 4th 254, 262. Demand

letters “are precisely the type of statements that the litigation privilege is intended to protect since [they] represent[] the first step toward litigation” *Id.* at 270. The only caveat is that the letters must be sent in good faith in serious contemplation of litigation. *Id.* at 262.

As noted above, DIRECTV, after sending demand letters, filed lawsuits against over 600 individuals. The Court finds this evidence sufficient, for purposes of this motion, to show DIRECTV sent its demand letters in serious contemplation of litigation. The record does not contain evidence which renders a demand for settlement sums an act of bad faith here. Accordingly, the litigation privilege attaches, thereby barring Plaintiffs’ claims.

Plaintiffs cite *Fuhrman v. California Satellite Systems* (1986) 179 Cal.App.3d 408 for the proposition that the litigation privilege does not apply to pre-litigation demand letters. *Fuhrman* does not control for three reasons: (1) *Fuhrman* was decided before the Legislature enacted the anti-SLAPP statute; (2) contrary to Plaintiffs’ argument, the *Fuhrman* court never reached the determination whether the litigation privilege applies to pre-litigation demand letters; and (3) the motion before the *Fuhrman* court was a demurrer, not a SLAPP motion, meaning a different, lesser standard governed its analysis.

C. Discovery

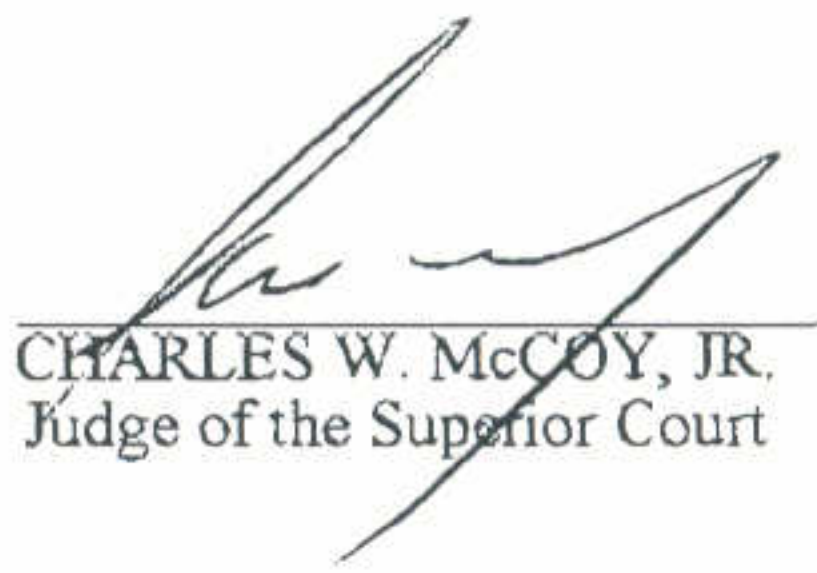
The Court denies Plaintiffs’ request for additional discovery.

III

CONCLUSION

DIRECTV’s anti-SLAPP motion is granted.

DATED: April 1, 2003



CHARLES W. McCOY, JR.
Judge of the Superior Court