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

**LOS ANGELES  
SUPERIOR COURT**

SMITH CODIO, et al.,  
Plaintiffs,

v.

DIRECTV, INC., et al,  
Defendants.

Case No: BC320735

**STATEMENT OF DECISION RE:  
DEFENDANTS' SPECIAL "ANTI-SLAPP"  
MOTION TO STRIKE COMPLAINT**

**I. BACKGROUND**

Defendant DIRECTV disseminates television programming to its subscribers via satellite transmission. Defendant encrypts its transmissions to prevent unauthorized reception. End User Development Group, an entity run entirely by DIRECTV investigates and pursues individuals who manufacture, sell, purchase, or use devices which "descramble" and thereby misappropriate DIRECTV's signal. Through these investigative pursuits, defendants obtained the names of individuals who allegedly purchased one or more descrambling devices.

Defendants sent demand letters to these individuals, notifying them that DIRECTV intends to pursue legal action against them unless they choose to resolve the issue prior to DIRECTV filing a complaint. These demand letters advised descrambling device users that this use was illegal, requested that device purchasers cease and desist that use, and demanded

payment of a settlement. Plaintiffs allege the sending of these letters violates the California Fair Debt Collection Practices Act (CFDCPA), Civil Code section 1788 et seq., constituting an unlawful business practice under the Unfair Competition Law (UCL), Business & Professions Code section 17200 et seq.

Plaintiffs' counsel previously filed a substantially similar action in this court, *Blanchard v. DIRECTV, Inc.*, Superior Court No. BC284166. This court dismissed *Blanchard* pursuant to DirecTV's Special Motion to Strike pursuant to Code of Civil Procedure section 425.16. The Court of Appeal upheld that decision in its entirety. *Blanchard v. DIRECTV, Inc.* (2004) 123 Cal.App.4th 903. Defendants now bring a Special Motion to Strike the present claims. Plaintiffs contend that the claims underlying the alleged UCL violation distinguish the instant action from *Blanchard*, thereby warranting a different result.

## II. DISCUSSION

Plaintiffs dispute this motion's timeliness. Code of Civil Procedure section 425.16, subdivision (f) provides, "[t]he motion shall be noticed for hearing not more than 30 days after service unless the docket conditions of the court require a later hearing." Defendants filed this motion on November 15, 2004. At that point, the case had just been ordered transferred to Department 323. Minute Order of November 9, 2004. On December 6, 2004, the court issued an Initial Status Conference Order, staying all pleading activity and setting an initial status conference for January 26, 2005. On January 26, 2005, this court ordered that this motion be served January 26, 2005 and the hearing was set for February 25, 2005. The motion was served on January 27, 2005. Under the circumstances, defendants followed the correct procedure in waiting to serve the motion until 30 days prior to the hearing date obtained from the court. See *Fair Political Practices Comm'n v. American Civil Rights Coalition, Inc.* (2004) 121 Cal.App.4th 1171, 1177. The motion is timely and suitable for this court's consideration.

Code of Civil Procedure section 425.17(b) exempts suits from the anti-SLAPP provision of Code of Civil Procedure section 425.16 if all three of the following apply:

(1) The plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which the plaintiff is a member. A claim for attorney's fees, costs, or penalties does not constitute greater or different relief for purposes of this subdivision.

(2) The action, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons.

(3) Private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter.

The *Blanchard* Court found section 425.17 inapplicable in a case involving the same conduct and identical demand letters sent by the same defendant. *Blanchard*, 123 Cal.App.4th at 912-17. Plaintiffs contend that this suit is distinguishable from *Blanchard* for two reasons: (1) plaintiff Mahoney has no personal stake in the matter and is, therefore, acting completely in the public interest, and (2) defendants' actions are alleged to constitute a violation of the CFDCPA and plaintiffs' suit would vindicate important public interests.

Not all purported public interest lawsuits are exempt from the anti-SLAPP law. *Id.* at 914-15 (citation omitted). All three of the "sharply defined" factors delineated in C.C.P. section 425.17 must be present for the exemption to apply. *Id.* As in *Blanchard*, the second element is absent here. *Blanchard* focused on the letters and the effect of the suit if successful. *Id.* at 914-15. *Blanchard* held that plaintiffs' successful lawsuit would not establish a "ringing declaration of the rights of all pirating-device purchasers, nor would it lead to a wholesale change in the practice of sending demand letters." *Id.* at 915. The facts underlying the suit analyzed in *Blanchard* and the facts underlying the current action are identical. Both involve the same defendant sending an identical demand letter to the same individuals. Altering the cause of action or inserting a disinterested plaintiff, as done here, does not change the analysis iterated in *Blanchard*. Plaintiffs' suit, even in its altered state, can still only hope to prevent "DIRECTV from sending *this particular* demand letter concerning this specific electronic device" to individuals alleged to have purchased it. *Id.* at 914-15 (emphasis added). Having found that plaintiffs fail to fulfill one of the elements required for

application of section 425.17, the court must address the merits of defendants' anti-SLAPP motion.

Code of Civil Procedure section 425.16 requires a two-step process. First, the moving party must demonstrate that the challenged cause of action arises from a protected activity. Cal. Code Civ. Proc. § 425.16(b)(1); *Blanchard*, 123 Cal.App.4th at 917-18. Here, it is beyond dispute that defendants' conduct arises from a protected activity. *Blanchard*, 123 Cal.App.4th at 918 ("plaintiffs cannot successfully argue that their complaint does not arise from DIRECTV's constitutionally protected right to petition for redress of grievances.").

Second, an anti-SLAPP motion requires the court to determine whether plaintiff has shown a probability of success on the merits. Cal. Code Civ. Proc. § 425.16(b)(1); *Blanchard*, 123 Cal.App.4th at 917-18. The court must accept as true the evidence favorable to plaintiffs and determine whether plaintiffs have established a prima facie case. *HMS Capital, Inc. v. Lawyer's Title Co.* (2004) 118 Cal.App.4th 204, 212 (citations omitted).

Plaintiffs' claims rely on their contention that defendants' demand letters subject them to the CFDCPA. Plaintiffs submit that, because plaintiffs purchased their devices on credit, and because defendants' letter made a claim against plaintiffs based on the mere purchase of the device, defendants were attempting to collect a debt owed by reason of a credit card transaction and therefore are subject to the CFDCPA.

The CFDCPA requires "debt collectors" attempting to collect a "consumer debt" to comply with the Federal Fair Debt Collection Practices Act, which in turn requires certain disclosures and notices while granting debtors certain rights. Cal. Civil Code § 1788.17; 15 U.S.C. §§ 1692e-g. Collection of a "consumer debt" is defined as collection of money owed by reason of a "consumer credit transaction," meaning a credit transaction primarily for personal or household use. Cal. Civil Code §§ 1788.2(e)-(f); § 1788.17.

Plaintiffs have failed to state a claim under the CFDCPA. Civil Code section 1788.1 states the legislature's general intent to regulate "grantors of credit," who depend upon the collection of debts, and the debt collectors they employ. Civil Code § 1788.1. Defendant is not a grantor of

credit, nor is defendant associated with the "grantors of credit" from whom plaintiffs obtained the monies needed to finance purchases of the allegedly offending devices. Plaintiffs purchased their devices from third parties, not from defendants, using credit granted by their lending institutions, not by defendants. Neither the sellers nor the grantors of credit are in any way associated with defendants. When defendant sent the demand letters, there was no attempt to collect a "consumer debt" owing from the sale of the devices. Rather, the demand letters were an attempt to halt and remedy alleged theft of defendants' product. Defendants' conduct does not fall within the purview of the CFDCPA.

Therefore, plaintiffs have failed to show, prima facie, a probability of their prevailing on the merits. Defendants' Special Motion to Strike pursuant to Code of Civil Procedure section 425.16 is granted.

### **III. Conclusion**

Defendant's Motion to Strike is granted. Defendants are ordered to submit any request for attorney's fees or costs within 25 days.

DATED: March 25, 2005

  
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CAROLYN B. KUHL  
Judge of the Superior Court