

# **FACT SHEET**

*Updated November 15, 2015*

## **What is “SLAPP”?**

California law protects free speech and the right to petition government. It provides an expedited process to stop “Strategic Lawsuits Against Public Participation (SLAPPs)”. When a lawsuit aims to limit free speech or the right to petition government, an Anti-SLAPP motion can be filed to end the lawsuit at an early stage, thus preventing someone from using the court system to chill free speech. Once an Anti-SLAPP motion is filed, the plaintiff is required to make a showing to the Court why the lawsuit should not be terminated. If a lawsuit is found to constitute a SLAPP, the plaintiff is responsible for paying the defendant’s attorney’s fees.

## **Anti-SLAPP Motion/Case History**

In August, 2015, Desert Healthcare District (DHCD) Board Member Michael Solomon, M.D. filed a civil complaint against DHCD, a board member and staff claiming privacy violations for disclosure of alleged confidential health records. His lawsuit seeks money damages and the termination of the Chief Executive Officer. The lawsuit is an effort by Solomon to force his personal will upon DHCD rather than following the democratic process of majority rule.

Solomon’s allegations first surfaced in the Fall, 2014, while he was the Board President. Before filing the lawsuit, Solomon demanded \$20 million from DHCD. He demanded the money or alternatively the termination or resignation of the District’s CEO, resignation of the Board President, the termination and suing of DHCD legal counsel, and dissolution of the Desert Healthcare Foundation. In January, 2015, DHCD rejected Solomon’s claim and referred the matter to the Riverside County District Attorney’s Office, Public Integrity Unit. DHCD rejected the claims as being groundless and referred the lawsuit to its attorneys for defense.

In response to Solomon’s lawsuit, on October 21, 2015, DHCD filed an Anti-SLAPP motion. In essence, Solomon claims that a call to DHCD staff to let them know Solomon was on his way to the hospital because of a possible stroke, DHCD was liable for passing that information along to other staff members and members of the board. Solomon added a claim in his opposition to the Anti-SLAPP motion that liability exists for the dissemination of information freely passed from his doctor to DHCD staff. Solomon claims the dissemination of this information was an improper distribution of his medical records. The Anti-SLAPP motion sets forth that DHCD never had access to Solomon’s medical records, that any information it received was public information passed to it from non-privileged sources, and that the limited dissemination of the information is protected speech because Solomon is a publically elected official whose health and ability to perform the duties of his office was a public issue. In fact, for a period of time, Solomon was unable to perform his duties as president of the DHCD board.

Solomon claims that DHCD violated California Civil Code Section 1798 *et seq.*, the Information Practices Act of 1977. The declarations filed by Solomon in his opposition to the Anti-SLAPP motion are lacking the necessary facts to establish likelihood of prevailing in the lawsuit. Furthermore, the declarations are replete with inadmissible hearsay evidence, foundational problems, and improper opinion. Regardless, Solomon cannot establish a violation of the Information Practices Act because:

(1) as a publically elected board member of DHCD, the newsworthiness of Solomon's health is a complete bar his claim;

(2) the Information Practices Act applies to state agencies, but specifically does not apply to local districts such as DHCD (local districts do not generally maintain confidential information); and

(3) DHCD does not (and is not supposed to) maintain a system of records governed by the the Information Practices Act.

Solomon improperly attempts to add a claim in his opposition to the Anti-SLAPP motion that DHCD also violated Civil Code Section 56 *et seq.*, the Confidentiality of Medical Information Act. Regardless of the procedural deficiencies in this new claim, DHCD is not a health care provider or contractor governed by this Act and therefore cannot be held liable.

**A hearing on DHCD's Anti-SLAPP motion is scheduled to be heard by the Court on November 20, 2015.**