

1 MARK GOLDOWITZ, # 96418
CALIFORNIA ANTI SLAPP-PROJECT
2 2903 Sacramento Street
Berkeley, CA 94702
3 Phone: (510) 486-9123 x 301
Fax: (510) 486-9708

4 Special Counsel for Defendant
5 JOHN DOE A/K/A KNOWFCFS

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA

10 FIRST CASH FINANCIAL SERVICES,)
INC.,)
11 Plaintiff,)
12 v.)
13 JOHN DOE A/K/A KNOWFCFS,)
14 et al.,)
15 Defendants.)
_____)

CASE NO.: 1-03-CV002135
DEFENDANT JOHN DOE A/K/A
KNOWFCFS'S NOTICE OF MOTION AND
SPECIAL MOTION TO STRIKE,
PURSUANT TO C.C.P. § 425.16;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF;
DECLARATION OF MARK GOLDOWITZ
BY FAX

16 Date: October 9, 2003
17 Time: 9 a.m.
18 Dept.: 2
19 Judge: Hon. William J. Elfving
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1 **DEFENDANT JOHN DOE’S NOTICE OF MOTION AND**
2 **SPECIAL MOTION TO STRIKE, PURSUANT TO C.C.P. § 425.16**

3 TO PLAINTIFF AND ITS ATTORNEYS:

4 Please take notice that on October 9, 2003, at 9 a.m., being the first date available on the court
5 docket for this matter to be heard, or as soon thereafter as counsel may be heard, in Santa Clara Superior
6 Court, Department 2, 191 North First Street, San Jose, defendant John Doe a/k/a knowfcfs
7 (“defendant”) will specially move the Court for an order striking this action and for other appropriate
8 relief.

9 This special motion to strike will be made pursuant to section 425.16 of the Code of Civil
10 Procedure, on the grounds that this action arises from defendant’s acts in furtherance of his
11 constitutional rights of petition and speech and that plaintiff cannot establish a probability of prevailing
12 on its claims.

13 This special motion to strike will be based on this notice of motion and special motion to strike;
14 the memoranda of points and authorities, request for judicial notice, declarations and exhibits which are
15 being or will be filed in support thereof; all other materials on file herein; and on such other and further
16 matters as the Court may consider at the hearing.

17 Dated: September 4, 2003

Respectfully submitted,

18 _____
19 Mark Goldowitz
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1 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF**
2 **DEFENDANT’S SPECIAL MOTION TO STRIKE**

3 **INTRODUCTION.**

4 This case is a SLAPP, a Strategic Lawsuit Against Public Participation. As one court has noted,
5 “while SLAPP suits ‘masquerade as ordinary lawsuits’ the conceptual features which reveal them as
6 SLAPP’s are that they are generally meritless suits brought by large private interests to deter common
7 citizens from exercising their political or legal rights or to punish them for doing so.” (*Wilcox v.*
8 *Superior Court* (1984) 27 Cal.App.4th 809, 816.)

9 In this case, First Cash Financial Services (“First Cash” or “plaintiff”), a publicly-traded
10 corporation, has assets of more than \$130 million. First Cash has sued defendant John Doe in Texas last
11 year, based on three posts defendant made in July 2002 on an Internet financial message board, alleging
12 wrongdoing by top corporate officials. To discover the identity of the person it sued in Texas, the
13 corporation has filed this action in California. The California anti-SLAPP law was enacted to protect
14 speech such as defendant’s here.

15 Defendant John Doe a/k/a knowfcfs (“defendant”) has a First Amendment right to speak
16 anonymously and remain anonymous. (*McIntyre v. Ohio Elections Comm.* (1995) 514 U.S. 334, 341-
17 342.) See also *Rancho Publications v. Superior Court* (1999) 68 Cal.App.4th 1538, 1545, 1547, 1549
18 (quashing subpoena seeking the names of anonymous authors of nondefamatory advertorials). In
19 addition, as the record will show, plaintiff’s claims against defendant are without merit.

20 Therefore, defendant brings this special motion to strike plaintiff’s action, pursuant to the
21 California anti-SLAPP (Strategic Lawsuit Against Public Participation) law, Code of Civil Procedure
22 section 425.16.¹ As discussed below, the anti-SLAPP law clearly applies to the allegations in plaintiff’s
23 action, which arises from defendant’s speaking out on an Internet financial message board about a matter
24 of public interest – that top executives of a publicly-traded corporation have been engaging in an illegal
25 activity which harms the shareholders financially. As plaintiff’s attorney states in his declaration in
26 support of the issuance of the Deposition Subpoena, plaintiff’s underlying “lawsuit involves, among
27

28 ¹ Subsequent statutory references herein are to this Code, unless otherwise indicated.

1 other issues, postings of derogatory material on the web sites created to allow users to post messages
2 about First Cash.” (Curran Decl., filed 7/30/03, ¶ 3.)

3 To defeat this motion, plaintiff must show a probability of prevailing on its claim against
4 defendant. Because it will not be able to do so, plaintiff’s action must be struck and dismissed.²

5
6 **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY.³**

7 **A. Factual Background.**

8 On July 3, 2002, defendant John Doe a/k/a knowfcfs posted message 1523, entitled “why you
9 should avoid,” on Yahoo’s finance message board for First Cash (FCFS), under the screen name
10 knowfcfs.⁴ This message stated that First Cash’s management and board engage annually in an illegal
11 options scam and that the board is not independent from management:

12 The management team issues options after the fact on an annual basis. . . . What a great deal for
13 management and board members, they can’t lose. They can get in-the-money option grants
without having to expense them in the financials, and without shareholders knowing. . . .

14 The board of directors of FCFS is NOT independent. This may as well be a closely held
15 company, the newest board member, tara, is a close personal friend of philliprick powell and his
personal broker for years. Ditto for the other two supposed “outside” directors. . . . Folks, not
16 only does this do financial harm to FCFS shareholders, but it is also CRIMINAL.

17 Now you know how these guys have made millions over the last five years on options and
warrants when the underlying stock price has not even kept up with inflation over the same
18 period. And let’s not forget the \$5 million plus loans to management at 4% interest.

19
20 ² It is defendant’s understanding, which accords with the representation of the office of
counsel for plaintiff, that the only documents plaintiff has filed in this action are a Deposition
21 Subpoena, Declaration of James F. Curran, and a Letter Rogatory from a Texas court.
(Goldowitz Decl., ¶ 2.) If this is correct, then by striking this action, defendant means the
22 Deposition Subpoena. However, a Court clerk has indicated that the Court’s computer says that
23 plaintiff has filed a Petition in this action. (Goldowitz Decl., ¶ 4.) If such a Petition has been
filed, striking this action would include striking such a Petition.

24
25 ³ Many documents supporting this discussion of the factual and procedural history of this
case are attached as exhibits to defendant’s Request for Judicial Notice (“RFJN”), filed herewith.

26
27 ⁴ Each of the three messages by defendant which are quoted in this section are part of
Exhibit A to plaintiff’s Original Petition (“Petition”), *First Cash Financial Services, Inc. v. John*
Doe a/k/a knowfcfs, Tarrant County (Texas) District Court, No. 96 19455202, filed on August
28 19, 2002, which is attached as Exhibit A to RFJN.

1 They also have the same type of aggressive accounting practices that have gotten other
2 companies into deep trouble. FCFS apparently does it thru its pawn interest accrual. . . . It
3 seems as if they manipulate their pawn interest income through the interest accrual account. . . .

4 This co., the industry it operates in, its management and its board are as sleazy as they come.

5 On July 9, 2002, defendant posted message 1544 entitled “illegal act,” which stated in part:

6 You guys are glossing right over my main point, and that is these guys have acted ILLEGALLY
7 in the grant of options. . . .

8 The issue is management cherrypicking an exercise price (the lowest price for the preceding 12
9 months, no surprise) based on data already known, and then preparing board minutes after the
10 fact with these option grants, and passing these minutes to the auditors (who KNOW this is going
11 on) in one lump batch once a year. . . .

12 Its like buying your lottery ticket after the numbers have already been drawn. . . . They get the
13 best of all worlds: in the money options grants, no expensing of the options in the financials, and
14 no fuss from ignorant shareholders.

15 Are any of you touts concerned about an illegal activity by the board and management of the
16 company you supposedly own stock in?

17 On July 22, 2002, defendant posted message 1558, entitled “When do they report?”, which stated in
18 part:

19 Guys, I can’t believe there are still cheerleaders on this board after what I posted here a couple of
20 weeks ago. . . .

21 Now here’s the latest, (again , my opinion) There is a real possibility of an 8K announcing a
22 resignation of auditors. I doubt D&T wants to extend their liability for knowingly allowing
23 management to cheat stockholders by cherry-picking option strike prices (reference my prior
24 posts).

25 If this happens, look for the stock price to go sub \$5. Just keeping you boys informed the best I
26 can. You can act on it, or you can continue to cheerlead.

27 (Petition, Exhibit A [RFJN, Ex. A], messages 1523, 1544, and 1558.) Based on these three posts,
28 plaintiff is suing defendant.

29 **B. Procedural History.**

30 Plaintiff did not post any response to defendant’s posts on the FCFS message board. Plaintiff did
31 not demand that defendant post a retraction and/or stop posting such statements. Nor, apparently, did
32 plaintiff ask Yahoo! to discipline the allegedly obtrusive poster, as Yahoo! procedure allows. (RFJN,
33 Ex. K.) Instead, on August 19, 2002, plaintiff filed an Original Petition in Tarrant County, Texas,
34 against defendant John Doe a/k/a knowfcfs. The Petition alleges a cause of action for breach of contract,
35 by three of defendant’s posts (quoted above) in July 2002 on the Yahoo message board, which were

1 allegedly based at least in part on confidential information regarding plaintiff. (See Plaintiff's Petition
2 [RFJN, Exhibit A] Exhibit A thereto, ¶¶ 5-7.)

3 Almost a year later, on July 30, 2003, plaintiff asked this Court to issue a Deposition Subpoena,
4 which requires that the person most knowledgeable at Yahoo! appear and provide plaintiff with
5 identification and contact information for defendant John Doe a/k/a knowfcfs. On July 30, 2003, a court
6 clerk issued the Deposition Subpoena. (Deposition Subpoena, 7/30/03.)

7 Defendant Doe now brings this special motion to strike plaintiff's action. Said motion stays all
8 discovery until it is resolved, including plaintiff's Deposition Subpoena. (§ 425.16(g).)

9
10 **II. THE ALLEGATIONS OF THE DEPOSITION SUBPOENA AND THE UNDERLYING**
11 **PETITION ARE COVERED BY C.C.P. § 425.16, BECAUSE THEY ARISE FROM**
12 **DEFENDANT'S ACTS IN FURTHERANCE OF THE FIRST AMENDMENT RIGHT TO**
13 **SPEAK OUT ON A PUBLIC ISSUE.**

14 **A. The California Anti-SLAPP Law Was Enacted to Protect the Fundamental**
15 **Constitutional Rights of Petition and Speech and Is to Be Construed Broadly.**

16 In 1992, in response to the "disturbing increase" in meritless lawsuits brought "to chill the valid
17 exercise of the constitutional rights of freedom of speech and petition for the redress of grievances," the
18 Legislature overwhelmingly enacted California's anti-SLAPP law, Code of Civil Procedure section
19 425.16, to protect against these SLAPPs.⁵ (Subsequent section references herein are to the Code of Civil
20 Procedure unless otherwise indicated.)

21 In 1997, the Legislature unanimously amended the anti-SLAPP statute to mandate expressly that
22 it "shall be construed broadly." (Stats. 1997, ch. 271, § 1; amending § 425.16, subd. (a).) This
23 amendment also added subdivision (e)(4) to the statute, making clear that section 425.16 covers any
24 other conduct that furthers petition or speech rights, in addition to statements and writings. In 1999, the

25 ⁵ Subdivision (a) of section 425.16, as amended in 1997, provides: "The Legislature finds
26 and declares that there has been a disturbing increase in lawsuits brought primarily to chill the
27 valid exercise of the constitutional rights of freedom of speech and petition for the redress of
28 grievances. The Legislature finds and declares that it is in the public interest to encourage
continued participation in matters of public significance, and that this participation should not be
chilled through abuse of the judicial process. To this end, this section shall be construed
broadly."

1 Supreme Court issued its first opinion construing the anti-SLAPP law, directing that courts, “whenever
2 possible, should interpret the First Amendment and section 425.16 in a manner ‘favorable to the exercise
3 of freedom of speech, not to its curtailment.’” (*Briggs v. Eden Council for Hope and Opportunity*
4 (1999) 19 Cal.4th 1106, 1119, quoting *Bradbury v. Superior Court* (1996) 49 Cal.App.4th 1170, 1176.)

5 Just last month, our Supreme Court issued its seventh opinion under the anti-SLAPP statute,
6 *Jarrow Formulas v. LaMarche* (S106503, August 18, 2003) ___ Cal.4th ___, ___ Cal.Rptr.3d ___,
7 3 CDOS 7433, 2003 DJDAR 9295, 2003 WL 21956001. Writing for a unanimous Court, Justice
8 Werdegar held that malicious prosecution claims were not exempt from the anti-SLAPP law. The
9 opinion emphasized the plain language of the statute, noting that “[n]othing in the statute excludes any
10 particular type of action” and “the express statutory command that this section shall be construed
11 broadly.” (*Jarrow Formulas, supra*, 2003 WL 21956001, *3.)

12 **B. The Procedure and Standards for Determining Applicability of the Anti-SLAPP**
13 **Statute.**

14 Last year, our Supreme Court explained the defendant’s burden on a special motion to strike:

15 Section 425.16 posits . . . a two-step process for determining whether an action is a SLAPP.
16 First, the court decides whether the defendant has made a threshold showing that the challenged
17 cause of action is one arising from protected activity. (§ 425.16, subd. (b)(1).) “A defendant
18 meets this burden by demonstrating that the act underlying the plaintiff’s cause fits one of the
categories spelled out in section 425.16, subdivision (e)” (*Braun v. Chronicle Publishing Co.*
(1997) 52 Cal.App.4th 1036, 1043). If the court finds that such a showing has been made, it
must then determine whether the plaintiff has demonstrated a probability of prevailing on the
claim.

19 (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.) To invoke the protection of the anti-SLAPP statute, a
20 defendant must merely make a *prima facie* showing that plaintiff’s cause of action arises from any act of
21 defendant in furtherance of the right of petition, and/or the right of free speech in connection with a
22 public issue. (§ 425.16, subd. (b)(1);⁶ *Braun v. Chronicle Publishing Co.* (1997) 52 Cal.App.4th 1036,
23 1042-43.)

24 In deciding whether the initial “arising from” requirement is met, a court considers “the

25
26 ⁶ Subdivision (b)(1) provides: “A cause of action against a person arising from any act of
27 that person in furtherance of the person’s right of petition or free speech under the United States
28 or California Constitution in connection with a public issue shall be subject to a special motion to
strike, unless the court determines that plaintiff has established that there is a probability that
plaintiff will prevail on the claim.”

1 pleadings, and supporting and opposing affidavits stating the facts upon which the liability or
2 defense is based.” (§ 425.16, subd. (b).)

3 (*Navellier, supra*, at p. 89.)

4 The statute’s definitional focus is not on the form of the plaintiff’s cause of action, but rather on
5 the defendant’s activity giving rise to his or her asserted liability and whether that activity constitutes
6 protected speech or petitioning. (*Navellier v. Sletten* (2002) 24 Cal.4th 82, 92.)

7 Subdivision (e) of the anti-SLAPP statute sets forth four *illustrations* of the types of acts covered
8 under the statute:

9 (1) any written or oral statement or writing made before a legislative, executive, or
10 judicial proceeding, or any other official proceeding authorized by law; (2) any written or
11 oral statement or writing made in connection with an issue under consideration or review
12 by a legislative, executive, or judicial body, or any other official proceeding authorized by
13 law; (3) any written or oral statement or writing made in a place open to the public or a
14 public forum in connection with an issue of public interest; (4) or any other conduct in
15 furtherance of the exercise of the constitutional right of petition or the constitutional right
16 of free speech in connection with a public issue or an issue of public interest.

17 As discussed below, this action arises from statements covered under subdivisions (e)(3) and (4) of the
18 anti-SLAPP law.

19 **C. First Cash Financial Services.**

20 Plaintiff First Cash Financial Services, Inc. (“First Cash”) is a Delaware corporation whose stock
21 is publicly traded on the NASDAQ market. (Petition, ¶ 2; RFJN, Ex. D.) First Cash is the nation’s third
22 largest publicly-traded pawnshop operator. (First Cash SEC 10-Q, filed August 11, 2003 [RFJN, Ex. E],
23 p. 1.) First Cash bills itself as “a leading provider of specialty consumer finance products” and states on
24 its website that it “currently owns and operates over 200 pawnshops and check cashing/short-term loan
25 stores in eleven U.S. states and Mexico.” (First Cash website [RFJN, Ex. B].) The eleven U.S. states
26 are California, Texas, District of Columbia, Illinois, Maryland, Missouri, Oklahoma, Oregon, South
27 Carolina, Virginia, and Washington. (First Cash website [RFJN, Ex. B].)

28 According to First Cash’s Yahoo!/Multex business profile, the total number of shares of the
company’s stock outstanding, as of June 30, 2003, was 9,580,000. (Yahoo!/Multex business profile for
First Cash [“business profile”] [RFJN, Ex. D].) For the fiscal year ending December 31, 2003, First
Cash’s annual report lists its total revenue as \$118,793,000. (RFJN, Ex. J, p. 46.) As of December 31,
2002, First Cash maintained assets of \$130,990,000 (RFJN, Ex. J, p. 45) and a market capitalization of

1 \$192.5 million as of August 29, 2003. (RFJN, Ex. D.) First Cash employs over 1,200 persons. (RFJN,
2 Ex. D.)

3 First Cash, by its own actions, has invited public attention. It maintains a website on the Internet
4 at www.firstcash.com. (RFJN, Ex. B.) First Cash regularly distributes press releases promoting the
5 company and its products and posts copies of these press releases on its website. (List of First Cash
6 Press Releases, 2002-03 [RFJN, Ex. C].) First Cash's earnings releases are available to the public by
7 way of its SEC 8-K filings. (See SEC 8-K for First Cash, filed 07-22-03 [RFJN, Exhibit F].)

8 First Cash's website contains copies of recent articles in respected news outlets, touting First
9 Cash:

- 10 • a *Wall Street Journal* article entitled "Mexico's Bankers Credit Boom: U.S.
11 Pawnshop Chairs Caters to Consumers South of the Border";
- 12 • a Forbes.com article touting First Cash as one of the "Small Companies with Big
13 Futures," uniquely positioned "in a segment of the financial services industry: It owns
14 and operates more than 200 pawn shops and cash advance centers in the U.S. and
15 Mexico"; and
- 16 • a MSN.CNBC "company focus": "Pawnshop, payday loan and rent-to-own chains are
17 growing rapidly, thanks to high fees, more relaxed regulation and a clientele with few
18 other places to turn."

19 (RFJN, Exs. G, H, and I.)

20 **D. Messages Posted on an Internet Financial Message Board Website about a Publicly-
21 Traded Corporation, Such as those Posted by Defendant, Are Covered under
22 Subdivision (e)(3) of the Anti-SLAPP Statute.**

23 Plaintiff's action in this Court is based upon plaintiff's Texas lawsuit against defendant John Doe
24 a/k/a knowfcfs. (Curran Decl., filed 7/30/03 in this action, ¶¶ 2-3.) This lawsuit is for breach of
25 contract, based on messages defendant posted on the FCFS message board on the Yahoo! Internet
26 website, which is dedicated to topics concerning First Cash and the value of its stock. (Petition, ¶ 5, and
27 Exhibit A thereto [RFJN, Ex. A]; Curran Decl., ¶¶ 2-3.) The messages posted by the defendant stated
28 that First Cash's management team and board members engaged in illegal activities that harmed First
Cash shareholders financially. (See messages 1523 (7/3/02) and 1544 (7/9/02), attached as Exhibit A to
plaintiff's Petition [RFJN, Ex. A].) As discussed below, the messages posted are covered by section
425.16(e)(3), as "statement[s] or writing[s] made in a place open to the public or a public forum in
connection with an issue of public interest."

1 **1. Posts on an Internet Website are Statements Made in a Public Forum.**

2 The term “public forum” as used in section 425.16 is traditionally defined as a place that is open
3 to the public where information is freely exchanged. (*Damon v. Ocean Hills Journalism Club* (2000) 85
4 Cal.App.4th 468, 475.) “Under its plain meaning, a public forum is not limited to a physical setting, but
5 also includes other forms of public communication.” (*Damon*, at p. 476.) Thus, the court in *Damon v.*
6 *Ocean Hills Journalism Club* noted that the statute is to be construed broadly, and held that a
7 homeowners’ association newsletter was a public forum for purposes of section 425.16 because it was “a
8 vehicle for open discussion of public issues and was widely distributed to all interested parties”
9 (*Id.*, at p. 478.) Statements made on an Internet website finance message board are statements made in a
10 public forum. (*ComputerXpress v. Jackson* (2001) 93 Cal.App.4th 993, 1006-08; *Global Telemedia*
11 *International v. Doe 1 a/k/a. BUSTED AGAIN 40* (C.D. Cal. 2001) 132 F.Supp.2d 1261, 1265-1266.)

12 **2. Defendant’s Posts about First Cash, a Publicly-Traded Corporation, Were**
13 **Made in Connection with an Issue of Public Interest.**

14 A recent law review article traced the rise of the cyberSLAPP, particularly the version arising
15 from communications on an Internet financial message board, as in this case:

16 The late 1990s witnessed the democratization of securities trading and a booming stock market.
17 These phenomena popularized online financial discussion boards and chat rooms, such as those
18 hosted by Raging Bull, Yahoo!, Motley Fool and Silicon Investor. Most users post their
19 messages anonymously or more accurately, pseudonymously under fictional screen names.
20 This anonymity has fostered a robust and freewheeling debate on Internet message boards. As in
21 real speech, speech on the message boards and chat rooms includes true statements, valid
22 insights, rank speculation, opinion, acerbic criticism, defamatory speech, trade secrets, irrational
23 diatribe, and more. Targets of online criticism cannot sue ISPs for failing to remove allegedly
24 defamatory material, because section 230(c) of the Communications Decency Act grants ISPs
25 broad immunity for such conduct. That leaves only one defendant: John Doe.

26 (Shaun B. Spencer, “Cyber SLAPP Suits and John Doe Subpoena: Balancing Anonymity and
27 Accountability in Cyperspace,” 19 *John Marshall Journal of Computer and Information Law* 493 (Spring
28 2001), attached as Exhibit C to defendant’s Compendium, filed herewith.)

29 Speech about the operations of the management team and board of directors of a company
30 engaged in commercial activities constitutes “matters of public interest” for First Amendment purposes.
31 (*Paradise Hills Associates v. Procel* (1991) 235 Cal.App.3d 1528, 1544-1545.) As one court has noted,
32 “The definition of ‘public interest’ within the meaning of the anti-SLAPP statute has been broadly
33 construed to include not only governmental matters, but also private conduct that impacts a broad

1 segment of society...” (*Damon, supra*, 85 Cal.App.4th at p. 479.) Indeed, the decision of a woman to
2 participate in the “Who Wants to Marry a Multimillionaire” television show was held to involve an issue
3 of public interest, for purposes of subdivision (e)(3) of the anti-SLAPP law. (*Seelig v. Infinity*
4 *Broadcasting Corporation* (2002) 97 Cal.App.4th 798, 807-808.)

5 The issue of malfeasance by corporate officers of publicly-traded companies is of public interest,
6 and defendant’s comments in this action clearly relate to these issues and are subject to the anti-SLAPP
7 statute. (See, e.g., *Sipple v. Foundation for National Progress* (1999) 71 Cal.App.4th 226, 238
8 [domestic abuse and defendant’s comments regarding an individual’s history of such are an issue of
9 public interest].)

10 Consistent with the above, two published opinions have held that messages on an Internet
11 finance message board about a publicly-traded corporation are statements made “in connection with an
12 issue of public interest.” (*ComputerXpress, supra*, at pp. 1007-08; *Global Telemedia, supra*.) In
13 *ComputerXpress v. Jackson, supra*, 93 Cal.App.4th at pp. 1006-08, the court held that Internet message
14 board messages about a publicly-traded corporation were made “in connection with an issue of public
15 interest” and were covered by subdivision (e)(3) of the anti-SLAPP law. The statements which were the
16 basis for suit against the defendants

17 included claims that ComputerXpress’s products were inferior, the company was a stock scam
18 and would be out of business within 30 days, the officers and directors were illegally conspiring
19 to manipulate the value of its stock, and one of the officers or directors had filed bankruptcy.
20 (*ComputerXpress*, at p. 1005.) The court noted that plaintiff was a publicly-traded company, which
21 “apparently made use of press releases in an effort to promote the company,” and “the comments in the
22 messages appear to have been directed at existing or potential shareholders rather than potential
23 customers.” (*ComputerXpress*, at pp. 1007-08.) Similarly, in *Global Telemedia, supra*, the court held
24 that posting messages about a publicly-traded corporation on an Internet chat room is covered under
25 subdivision (e)(3) as speech in connection with a public issue.

26 In this case, plaintiff First Cash is also a publicly-traded company which made use of press
27 releases in an effort to promote the company, and is suing because of statements on an Internet financial
28 message board devoted exclusively to First Cash, which were critical of First Cash’s top corporate
officials. Defendant’s posts do not involve private grievances. Rather, they serve the public interest by

1 attempting to inform the public “about illegal activity by the board and management of the company.”
2 (Message 1544 (7/9/02).) Defendant’s posts are clearly directed to existing and potential shareholders,
3 rather than potential customers, as in *ComputerXpress*. (See messages 1523 (7/3/02), 1544 (7/9/02), and
4 1558 (7/22/02), attached as Exhibit A to Plaintiff’s Petition [RFJN, Ex. A].)

5 **E. Messages Posted on an Internet Financial Message Board Website about a Publicly-**
6 **Traded Corporation, Including those Posted by Defendant, Are Covered under**
7 **Subdivision (e)(4) of the Anti-SLAPP Law.**

8 Defendant’s statements are also “any other conduct in furtherance of the exercise of the
9 constitutional right of free speech in connection with a public issue or an issue of public interest.”
10 (§ 425.16(e)(4); *Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1420 [statements and letter
11 regarding a landlord-tenant dispute involve a public issue]; see also *Finke v. Walt Disney Co.* (2003)
12 ___ Cal.App.4th ___, 2 Cal.Rptr.3d 436, 451-53 [articles about litigation over merchandising rights are
13 protected by subd. (e)(4)]; *Tuchscher Development Enterprises v. San Diego Unified Port District*
14 (2003) 106 Cal.App.4th 1219, 1234 [communication to city officials and employees about a proposed
15 development fall within (e)(4)]; *Kids Against Pollution v. California Dental Association* (2003) 108
16 Cal.App.4th 1003, 1015 [public expression of views about the safety of dental amalgam are covered by
17 (e)(4)]; *1-800-Contacts v. Steinberg* (2003) 107 Cal.App.4th 568, 583 [communications about possible
18 legislation concerning mail order contact lens sales covered under (e)(4)].)

19 **III. PLAINTIFF CANNOT ESTABLISH A PROBABILITY OF PREVAILING ON ITS**
20 **CLAIM, SO THIS SLAPP MUST BE DISMISSED.**

21 The California Supreme Court has stated that “because unnecessarily protracted litigation would
22 have a chilling effect upon the exercise of First Amendment rights, speedy resolution of cases involving
23 free speech is desirable.” (*Good Government Group of Seal Beach v. Superior Court* (1978) 22 Cal.3d
24 672, 685.) To this end, the anti-SLAPP law was enacted to provide “a fast and inexpensive dismissal of
25 SLAPP’s.” (*Wilcox v. Superior Court, supra*, 27 Cal.App.4th at p. 823.) Such speedy dismissal also
26 serves the ends of judicial economy, by reducing the time and resources that courts and litigants must
27 spend on meritless SLAPPs.

28 ///

1 The policy favoring early disposition applies squarely to this action because plaintiff's action
2 arises from statements that top corporate officials of a publicly-traded company have been engaging in
3 illegal activity. Once a defendant has made a prima facie showing that the lawsuit arises from petition or
4 speech activity covered by section 425.16, as defendant has here, the burden shifts to the plaintiff to
5 establish a probability of prevailing on its claims, which must be done by competent and admissible
6 evidence. (*Navellier v. Sletten, supra*, 27 Cal.4th at p. 88; *Ludwig v. Superior Court* (1995) 37
7 Cal.App.4th 8, 15-16, 21 fn. 16, 25.) Plaintiff cannot meet this burden. Therefore, defendant's special
8 motion to strike should be granted under section 425.16, and this action should be struck and dismissed.

9 Dated: September 4, 2003

Respectfully submitted,

11 _____
12 Mark Goldowitz
13 Special Counsel for
14 Defendant John Doe a/k/a "knowfcfs"

1 – a deposition subpoena, a declaration from James Curran in support of said subpoena, and a Letter
2 Rogatory from the Texas court, each of which had already been faxed to me on Friday, August 29. She
3 assured me that plaintiff had NOT filed a fourth document, whether called a “petition” or anything else.

4 I hereby declare that the above statements are true and correct. Signed under the penalty of
5 perjury under the laws of the State of California, on the date set forth below, in Berkeley, California.

6 Dated: September 4, 2003

7 _____
8 Mark Goldowitz

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1 **PROOF OF SERVICE**

2 The undersigned hereby states under the penalty of perjury under the laws of the State of
3 California:

4 I am employed in Alameda County; I am over the age of eighteen and not a party to the within
5 cause; and my business address is 2903 Sacramento Street, Berkeley, California 94702.

6 On this day, I caused envelopes to be addressed to:

7 **Jim Curran**
8 **Matheny Sears Linkert & Long, LLP**
9 **Post Office Box 131711**
10 **Sacramento, CA 95853-4711**

11 **Heather Asselin**
12 **Coats Rose Yale Ryman Lee**
13 **800 First City Tower, 1001 Fanin**
14 **Houston, TX 77002-6707**

15 and I enclosed and sealed in said envelopes a copy of the following document:

16 **DEFENDANT JOHN DOE A/K/A “KNOWFCFS”’S NOTICE OF MOTION AND SPECIAL**
17 **MOTION TO STRIKE PURSUANT TO C.C.P. § 425.16;**
18 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF;**
19 **DECLARATION OF MARK GOLDOWITZ**

20 and I deposited said envelopes, postage prepaid fully thereon, in a U.S. mail depository, in Berkeley,
21 California; all on this day.

22 Dated: September 4, 2003

23 _____
24 Dana Gregg

1 **TABLE OF AUTHORITIES**

2 **FEDERAL CASES**

3 *Global Telemedia International v. Doe 1 a/k/a. BUSTED AGAIN 40*
4 (C.D. Cal. 2001)132 F.Supp.2d 1261 8, 9
5 *McIntyre v. Ohio Elections Committee* (1995) 514 U.S. 334 1

6 **STATE CASES**

7 *Bradbury v. Superior Court* (1996) 49 Cal.App.4th 1170 5
8 *Braun v. Chronicle Publishing Co.* (1997) 52 Cal.App.4th 1036 5
9 *Briggs v. Eden Council for Hope and Opportunity* (1999) 19 Cal.4th 1106 5
10 *ComputerXpress v. Jackson* (2001) 93 Cal.App.4th 993 8, 9, 10
11 *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468 8, 9
12 *Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400 10
13 *Finke v. Walt Disney Co.* (2003) ___ Cal.App.4th ___, 2 Cal.Rptr.3d 436 10
14 *Good Government Group of Seal Beach v. Superior Court* (1978) 22 Cal.3d 672 10
15 *Jarrow Formulas v. LaMarche* (S106503, August 18, 2003) ___ Cal.4th ___ 5
16 *Kids Against Pollution v. California Dental Association*
17 (2003)108 Cal.App.4th 1003 10
18 *Ludwig v. Superior Court* (1995) 37 Cal.App.4th 8 11
19 *Navellier v. Sletten* (2002) 24 Cal.4th 82 5, 6, 11
20 *Paradise Hills Associates v. Procel* (1991) 235 Cal.App.3d 1528 8
21 *Rancho Publications v. Superior Court* (1999) 68 Cal.App.4th 1538 1
22 *Seelig v. Infinity Broadcasting Corporation* (2002) 97 Cal.App.4th 798 9
23 *Sipple v. Foundation for National Progress* (1999) 71 Cal.App.4th 226 9
24 *Steinberg* (2003) 107 Cal.App.4th 568 10
25 *Tuchscher Development Enterprises v. San Diego Unified Port District*
26 (2003) 106 Cal.App.4th 1219 10
27 *Wilcox v. Superior Court* (1984) 27 Cal.App.4th 809 1, 10
28 *1-800-Contacts v. Steinberg* (2003) 107 Cal.App.4th 568 10

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STATUTES

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§ 425.16(a) 4

§ 425.16(b) 5

§ 425.16(e) 4, 6, 7

§ 425.16(g) 4

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