



## Alerts

### Extortionate Demand Letter Not Protected by Anti-SLAPP Statute

June 26, 2013

*Lawyers for the Profession® Alert*

*Mendoza v. Hamzeh*, 215 Cal. App. 4th 799, 155 Cal. Rptr. 3d 832 (2013)

#### Brief Summary

The California Court of Appeal, Second District, Division 1, held that a demand letter that threatened to report a crime and demanded money constituted criminal extortion and therefore fell outside of the protections of the anti-SLAPP statute, in spite of the litigation privilege and regardless of the egregiousness of the threat involved.

#### Complete Summary

The attorney for an employer sent a demand letter to a former employee of the employer indicating that the employer would report the former employee's allegedly fraudulent conduct to several public agencies unless the former employee repaid more than \$75,000 in damages related to such conduct.

The former employee sued the employer's attorney for civil extortion among other causes of action. In response, the attorney filed an anti-SLAPP motion, stating that the demand letter was a protected litigation communication and that the former employee could not establish a probability of success on his claims, as required by California's anti-SLAPP statute. The former employee sought attorneys' fees, arguing the attorney's motion was frivolous in light of the controlling anti-SLAPP case, *Flatley v. Mauro* 39 Cal. 4th 299 (2006), in which a lawyer's extortionate demand letter was held to be unprotected by the anti-SLAPP statute.

The trial court denied the anti-SLAPP motion, holding that *Flatley* controlled, and awarded attorneys' fees to the former employee. The court of appeals affirmed the trial court's order, holding that any threat to report a crime coupled with a demand for money is criminal extortion as a matter of law. While the *Flatley* Court had stated that its conclusion was "based on the specific and extreme circumstances of this case," the court of appeals here concluded that a bright-line rule was appropriate. The court therefore held that all communications that constitute criminal extortion as a matter of law fall outside of the protections of the anti-SLAPP statute, regardless of whether such communications fall under the litigation privilege and regardless of the

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egregiousness of such communications.

### **Significance of Opinion**

This opinion appears to broaden the holding in *Flatley*. Given that demand letters generally include a demand for money, California lawyers should be careful to avoid language in such letters that could be construed as a threat to report criminal conduct.

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