MARK D. ROSENBAUM (BAR NO. 59940)
DANIEL P. TOKAJI (BAR NO. 182114)
PETER J. ELIASBERG (BAR NO. 189110)
ACLU FOUNDATION OF SOUTHERN CALIF.
1616 Beverly Boulevard
Los Angeles, California 90026
T. 213 977-9500
F. 213 250-3919

JULIE A. SU (BAR NO. 174279)
STEWART KWOH (BAR NO. 61805)
ASIAN PACIFIC AMERICAN LEGAL CENTER
OF SOUTHERN CALIFORNIA
1145 Wilshire Boulevard, 2nd floor
Los Angeles, California 90017
T. 213 977-7500
F. 213 977-7595

DOUGLAS E. MIRELL (BAR NO. 94169)
CRAIG R. SCHULTZ (BAR NO. 211695)
10100 Wilshire Boulevard, Ste. 2200
Los Angeles, California 90067
T. 310 282-2151
F. 310 282-

Attorneys for Defendants Garment Worker Center, Sweatshop Watch, Kimi Lee, and Joann Lo

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES- CENTRAL DISTRICT

FASHION 21, INC, dba FOREVER 21, et al., **v.** **Plaintiffs,** **THE GARMENT WORKERS CENTER, et al.,** **Defendants.**	**CASE NO: BC269427** **CCP §425.16: SPECIAL MOTION TO STRIKE FILED ON BEHALF OF DEFENDANTS GARMENT WORKERS CENTER, SWEATSHOP WATCH, LEE AND LO; DECLARATIONS; EXHIBITS** **COMPLAINT FILED: MAR. 6, 2002** **ASSIGNED TO JUDGE HOFFMAN** **DATE: May 21, 2002** **TIME: 8:30 A.M.** **DEPT: 33**

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I. INTRODUCTION

Defendants bring this special motion to strike the complaint in this action pursuant to California Code of Civil Procedure §425.16. This statute is a legislative response to the proliferation of lawsuits which have as their purpose and/or effect deterring public discourse on matters of public interest and concern. Such lawsuits are commonly known as Strategic Lawsuits Against Public Participation ("SLAPP"). The moving parties in this motion are four of the defendants in this action, including two non-profit groups: the Garment Worker Center[1] ("GWC") and Sweatshop Watch. The other two moving parties are employees of defendant GWC: Kimi Lee and Joann Lo.[2]

Plaintiffs now seek to use this Court to chill defendants and other anti-sweatshop advocates from engaging in such protected expressive activities. They argue that California Labor Code §2677 and the related statutes, which create a legislative scheme aimed at eliminating substandard and unlawful work conditions in the garment industry, do not apply to them because they are engaged solely in the retail sales of clothing. Plaintiffs further allege that defendants' statements – specifically, that plaintiffs owe wages to, and are responsible for the work conditions of, garment workers involved in the finishing of plaintiffs' retail merchandise – constitute libel, slander, intentional interference with prospective business advantage, unfair competition and nuisance. There is no serious question but that the Complaint in this case seeks to hold defendants liable for these torts based on acts in furtherance of defendants' speech and petition rights and those of the garment workers on whose behalf they advocate.

Defendants do not deny that they engaged in most of the activities described in the allegations of the complaint, including the boycott of plaintiffs' businesses, pickets outside plaintiffs' stores, demonstrations in plaintiff Chang's residential area, pickets outside other

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[1] The Complaint sued this defendant as the "Garment Workers Center." The correct name for the organization is Garment Worker Center.

[2] The defendants in this motion are collectively referred to as the GWC defendants. The other two defendants in this lawsuit, Narro and CHIRLA, are collectively referred to as the CHIRLA defendants. Plaintiffs dismissed 19 individual garment Worker from the lawsuit on April 5, 2002.

businesses Chang owns, and published statements on the internet, in leaflets, and on signs at demonstrations about the unpaid wages owed the garment workers and the conditions in which the garment workers were forced to labor. All of this activity is core speech and petition activity protected by the First Amendment. All of the defendants' advocacy, moreover, is absolutely protected under CCP §425.16 because it was made in connection with official proceedings under review before the California Labor Commissioner and the United States District Court.

II. STATEMENT OF FACTS AND JOINDER

Defendants join in the Special Motion to Strike filed by co-defendants Victor Narro and the Coalition for Humane Immigrant Rights of Los Angeles ("CHIRLA"), concurrently filed with this motion. In addition to the grounds set forth in that motion, defendants advance another bases upon which the motion should be granted. The additional bases arise from the relationship between the GWC defendants and the garment workers on whose behalf they advocate. The mission of each of the non-profit defendants includes advocacy on behalf of low-income workers in the garment industry. Dec. of Kimi Lee ("Lee") at ¶3; Dec of Nikki Bas ("Bas") at ¶2. Defendants directly assisted the dismissed garment workers with the exercise of their rights of speech and petition regarding the violations of state labor law provisions, including meeting with and writing to plaintiffs on behalf of the garment workers to request payment of unpaid wages,[3] and filing claims for unpaid wages with the state Division of Labor Standards Enforcement ("DLSE").

Defendants adopt the statement of facts set forth in the concurrently filed motion to strike of co-defendants Narro and CHIRL and set forth the following additional facts..

A. Defendants Garment Worker Center, Lee and Lo

Defendants set forth the following additional facts concerning their advocacy on behalf of the 19 dismissed defendants. Each of the 19 garment workers originally named as defendants in this lawsuit was a plaintiff in a lawsuit filed in federal court against all of the plaintiffs, as well as other individuals and corporations involved in the manufacturer and sale of clothing and related

[3] Lee at ¶¶ 10-12 and Exhibits 2-14; Dec. of Joann Lo ("Lo") at ¶¶ 6-8 and Exhibits 1-13.

garment accessories. Lee at ¶14 and Exhibit 16.[4] The individual garment workers alleged that they were employed at one or more facilities where they performed various tasks related to preparing plaintiffs' retail merchandise for sale, including sewing labels in the clothes, ironing them, and similar finishing tasks, for which they were not paid properly. Dec. of VitilianiVarela ("Varela") at ¶¶2,5,7; Dec. of Araceli Castro ("Castro") at ¶¶2,5,7. The garment workers also alleged that they worked in substandard conditions in the factories where they finished plaintiffs' merchandise. Varela at ¶8; Castro at ¶8. When they were not paid their full wages due, and prior to filing the federal lawsuit, the garment workers enlisted the assistance of the GWC to help them obtain the unpaid wages. Varela at ¶9; Castro at ¶9; Lo at ¶4; Lee at ¶7.

Defendants assisted the garment workers with filing claims with the DLSE. Lo at ¶3 and Exhibit 14. Defendants GWC, Lee and Lo also attempted to collect the unpaid wages directly from plaintiffs, meeting with and writing to plaintiffs and providing specific information as to the precise nature of each garment worker's claims. See, footnote 3. When these efforts proved unsuccessful, the garment workers filed a lawsuit in federal court to obtain relief against several parties, including the plaintiffs in this action, alleging violations of the California Business & Professions Code §17200 (unfair business practices) and California Labor Code §2677. Ex.16.

B. Defendant Sweatshop Watch

The Garment Worker Center is a Los Angeles-based project of Sweatshop Watch, which is located in Oakland. Bas at ¶¶2,3. Sweatshop Watch is a coalition of labor, community, civil rights, immigrant rights, women's, religious and student organizations dedicated to eliminating sweatshop conditions in the global garment industry. Bas at ¶2. It is not engaged in any business activities. Bas at ¶2, lines 11-13. Other than one demonstration in front of the Oxford Hotel (Bas at ¶4, lines 22-23) and one demonstration outside one of plaintiffs' stores in Pasadena in October 2001 (Bas at ¶4, lines 22-23), Sweatshop Watch did not participate in other

[4] The federal action filed in the United States District Court for the Central District of California is captioned *Castro et al. v. Fashion 21, et al,* CV 9487 R. Defendants request that the Court take judicial notice of the conformed copy of the Complaint pursuant to Evidence Code §452(d)(2) as a record of a court of the United States.

demonstrations at plaintiff's' home or businesses, did not create fliers, did not put fliers in clothing in plaintiffs' stores or under the doors at the Oxford Hotel, and did not direct anyone else to do so. Bas at ¶¶4,5,7,8.

III. ARGUMENT

A. Section 425.16(e)(2) Applies to the "Acts" of Defendants in Furtherance of Their Speech and Petition Rights

1. The legislative policy supporting CCP §425.16

In 1992, in an effort to encourage participation in public debate and prevent abuse of the judicial process to chill rigorous public discourse, the state Legislature enacted CCP §425.16. This statute establishes a procedure to "allow prompt exposure and dismissal" of "civil lawsuits . . . aimed at preventing citizens from exercising their political rights or punishing those who have done so." *Wilcox v. Superior Court*, 27 Cal.App.4th 809, 815, 817, 33 Cal.Rptr.2d 446 (1994).

The dangers of these lawsuits to core liberties are real. Indeed, as our courts have recognized, the purpose of a SLAPP suit is not to win the lawsuit, but to "tie up the defendant's resources," *Wilcox*, 27 Cal.App.4th at 816. While "masquerad[ing] as ordinary lawsuits, . . . [a]s long as the defendant is forced to devote its time, energy and financial resources to combating the lawsuit **its ability to combat the plaintiff in the political arena is substantially diminished**." *Wilcox*, 27 Cal.App.4th 816 (internal citation omitted) (emphasis added).

2. The additional basis for invoking the provisions of the SLAPP statute

a. The public forum requirement of CCP §425.16(e)(3)

Plaintiffs allege that defamatory statements were made about them in leaflets distributed at the various pickets and also on the internet. The GWC defendants admit that they prepared written materials distributed during their pickets. Lee at ¶16 and Ex. 19. One of the web sites plaintiffs identify as containing the purportedly defamatory statements is the web site maintained by defendant Sweatshop Watch. Comp. at ¶64. The other sites alleged to contain defamatory postings about plaintiffs are not operated or maintained by any of these defendants.

The leaflets and internet web site constitute a public forum within the meaning of the anti-SLAPP statute. The "public forum" requirement of §425.16(3) has been "broadly construed

. . . to include publications with a single viewpoint." *Damon v. Journalism Club*, 85 Cal.App.4th 468, 476, 102 Cal.Rptr.2d 205 (2000). Thus, a union campaign flyer was held to be a "recognized public forum under the SLAPP statute." *Macias v. Hartwell*, 55 Cal.App.4th 669, 674, 64 Cal.Rptr.2d 222 (1997). The key criterion in assessing the "public forum" element is whether the means "was a vehicle for communicating a message about public matters to a large and interested community." *Damon*, 85 Cal.App.4th at 476.[5]

> Given the mandate that [the courts] broadly construe the anti-SLAPP statute, a single publication does not lost its "public forum" character merely because it does not provide a balanced point of view. [¶] This construction comports with the fundamental purpose underlying the anti-SLAPP statute. . . . Further, because section 425.16, subdivision (e)(4) includes *conduct* in furtherance of free speech rights, regardless whether that conduct occurs in a place where ideas are freely exchanged, it would be anomalous to interpret section 425.16, subdivision (e)(3) as imposing that requirement merely because the challenged speech is an oral or written statement.

Damon, 85 Cal.App.4th at 477 (emphasis in original).

The leaflets and other written materials prepared and distributed by the GWC and defendants Lo and Lee, as well as the web site maintained by defendant Sweatshop Watch, all come within the protection of CCP §425.16(e)(3) as public fora.

b. CCP §425.16(e)(3)(2)

In addition to the claims under CCP §425.16(e)(3) and (4) set forth in the concurrently filed motion by the CHIRLA defendants, the GWC defendants assert a third basis upon which their acts come within the protection of the anti-SLAPP statute. Section 425.16(e)(2) provides that an "`act in furtherance of a person's right of petition or free speech . . . in connection with a

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[5] The issue of sweatshop conditions in the garment industry is a public matter. *See Street Beat Sportswear, Inc. v. National Mobilization Against Sweatshops*, 698 N.Y.S.2d 820, 182 Misc.2d 447 (1999) (anti-sweatshop groups' speech and other advocacy regarding retailer's labor practices is speech on issues of public concern under New York SLAPP law).

public issue' includes: . . . (2) any written or oral statement or writing made **in connection with an issue under consideration or review** by a legislative, executive, or judicial body, or any other official proceeding authorized by law[.]"

The GWC defendants have been directly involved in helping the 19 dismissed garment workers seek recourse through the statutory scheme for reclaiming unpaid wages, as well as the the federal court proceeding. They aided the individual garment workers in exercising their right to petition by filing claims with the Labor Commissioner and assisting in the preparation of a lawsuit in federal court. Lee at ¶14 and Ex. 16; Lo at ¶3 and Ex. 14.[6] Thus, these defendants may, properly, assert this additional basis for invoking §425.16.

A cause of action "arising" from litigation activity is, properly, the subject of a special motion to strike under §425.16. *Briggs v. Eden Council for Hope & Opportunity*, 19 Cal.4th 1106, 1115, 81 Cal.Rptr.2d 411 (1999). The First Amendment guarantees access to the courts as a core exercise of the right to petition. *Shekhter v. Indemnity Company*, 89 Cal.App.4th 141, 151, 106 Cal.Rptr. 2d 843 (2001). This right is protected regardless of "whether it be to vindicate individualized wrongs or draw attention to issues of broad public significance and interest." *Wilcox*, 27 Cal.App.4th at 826. Section 425.16(e)(2) protects not only statements made in connection with already pending proceedings, but also "communications preparatory to or in anticipation of the bringing of an action or other official proceeding." *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman*, 47 Cal.App.4th 777, 784 (1996), *accord, Briggs*, 19 Cal.4th at 1115.

It does not matter that plaintiffs' complaint does not allege liability on the basis of the federal lawsuit or the claims filed with the Labor Commissioner. So long as the "act" itself is one in furtherance of speech or petition rights, "[a] lawsuit is adequately shown to be one `arising from' an act in furtherance of the rights of petition or free speech as long as suit was brought after the defendant engaged in such an act, whether or not the purported basis for the suit is that

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[6] Defendants request that the Court take judicial notice of the Notice of Claim documents issued and signed by the Deputy Labor Commissioner for the State of California. The documents are identified in ¶3 and attached at pp.22 and 24 of Exhibit 14 to the Declaration of Joann Lo.

act itself." *Church of Scientology v. Wollersheim,* 42 Cal.App.4th 628, 647-48, 49 Cal.Rptr.2d 620 (1996).

It makes no difference that defendants were not acting to advance their own legal claims. *Briggs*, 19 Cal.4th 1116. *Briggs* explicitly rejected the argument that the protections of §425.16 were not available to a defendant who is sued for advocacy on behalf of others.

> According to plaintiffs, section 425.16 protects only statements or writings that defend the speaker's or writer's own free speech or petition rights or that are otherwise `vital to allow citizens to make informed decisions. . . . [¶] 'Even assuming, for purposes of argument, that plaintiffs accurately have characterized [defendant's] activities as constituting neither self-interested nor general political speech, we cannot conclude such activities thereby necessarily fall otuside the protections of the anti-SLAPP statute. **Contrary to plaintiffs' implied suggestion, the statute does not require that a defendant moving to strike under section 425.16 demonstrate that its protected statements or writings were made on its own behalf (rather than, for example, on behalf of its clients or the general public).**

Briggs, 19 Cal.4th at 1116 (bold emphasis added). *Ludwig v. Superior Court*, 37 Cal.App.4th 8, 18 (1995) (recognizing that "[a] person can exercise his own rights by supporting the forceful activities of others," and holding that defendants who "instigated" lawsuits and "encouraged" others to speak out fell within the protections of §425.16)).

3. <u>The public interest/public concern element</u>

A special motion to strike pursuant to §425.16(e)(2) does not require the moving party to demonstrate, separately, that the acts in furtherance of speech or petition concern a "public issue or an issue of public concern." By statutory definition, acts in connection with a legislative, executive, judicial or other proceeding authorized by law automatically meet this requirement, *Briggs*, 19 Cal.4th at 1113-14, so the defendants "need not separately demonstrate that the statement concerned an issue of public importance" when the statements are made "in connection with an issue under consideration by . . . a legally authorized proceeding." *Id.* at 1123. *Accord*,

Sipple v. Found. for Nat'l. Progress, 71 Cal.App.4th 226, 236, 83 Cal.Rptr.2d 677 (1999).

B. Plaintiffs Cannot Prevail on Their Claim of Interference with Prospective Economic Advantage

Plaintiffs allege that defendants' boycott activities, including picketing and leafletting, constitute the tort of interference with prospective economic advantage. Plaintiffs cannot establish a probability they will prevail on this claim for three reasons. First, it is undisputable that the "state may not `award compensation for the consequences of nonviolent, protected activity.'" *NAACP v. Claiborne Hardware*, 458 U.S. 886, 918, 73 L.Ed.2d 1215, 102 S.Ct. 3409 (1982); *accord, Lam v. Ngo*, 91 Cal.App.4th 832, 836, 111 Cal.Rptr.2d 582 (2001). There is no allegation of violence in this case, nor could there be. Defendants have every right to be in public areas and to distribute leaflets to plaintiffs' potential customers as "the activity of peaceful pamphleteering is a form of communication protected by the First Amendment." *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419, 29 L.Ed.2d 1, 91 S.Ct. 1575 (1971); *accord, Paradise Hills Associates v. Procel*, 235 Cal.App.3d 1528,1539, 1 Cal.Rptr.2d 514 (1991).

Second, because plaintiffs' allegations in this cause of action rest squarely on the purported defamatory statements, the interference claim is subsumed by the first and second causes of action for libel and slander. It cannot stand separately and it fails for the same reasons that the defamation causes fail. *Kahn v. Bower*, 232 Cal.App.3d 1599, 1615, 289 Cal.Rptr. 244 (1991). See the concurrently filed Special Motion to Strike filed by defendants Narro and CHIRLA at Section III.C 2 (a).

The cause of action for Interference with Prospective Economic Advantage, necessarily, fails for a third independent reason. In order to state a claim for this tort, "a plaintiff . . . must plead and prove as part of its case-in-chief that the defendant not only knowingly interfered with the plaintiff's expectancy, but engaged in conduct that was wrongful by some legal measure other than the fact of interference itself." *Della Penna v. Toyota Motor Sales, U.S.A.*, 11 C.4th 376, 393, 45 Cal.Rptr.2d 436 (1995). The "interference" plaintiffs complain of is all lawful expressive activity. *McKay v. Retail Auto S.L. Union No. 1067*, 16 Cal.2d 311, 319, 106 P.2d 373 (1940) (peaceful picketing is a "lawful means of advertising . . . grievances to the public, and

as such is guaranteed by the Constitution as an incident of freedom of speech"). See, CHIRLA special motion to strike at Section III.C.3. Defendants' pickets, signs, chants and leaflets are lawful exercises of free speech rights and cannot establish "conduct that was wrongful by some legal measure other than the fact of interference itself." *Della Penna*,11 Cal.4th at 393.

C. Plaintiffs Cannot Establish a Probability They Will Prevail on Their Claims of Unfair Competition

Plaintiffs also allege that defendants' expressive activities violate Business & Professions Code §17200, which defines unfair competition as "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) . . . of the Business and Professions Code." This cause of action rests on the assertion that defendants' statements "are likely to mislead and deceive the general public" (Comp. at ¶96) by casting "the negative stigma of `sweatshops' and mistreatment of workers to be improperly associated with Plaintiffs." Comp. at ¶95. In essence, plaintiffs complain that defendants' protected expression is persuasive. These allegations are insufficient to sweep defendants' conduct within the scope of §17200 since, most fundamentally, there is no "business" activity by defendants. Bas at ¶¶2,3; Lee at ¶5; Lo at ¶3.[7]

The complaint does not allege either (1) any unlawful, unfair or fraudulent business act or practice, or (2) any unfair, deceptive, untrue, misleading, or unlawful commercial advertising. "[A]n unlawful business activity includes anything that can properly be called a business practice and that at the same time is forbidden by law." *Hewlett v. Squaw Valley Ski Corp.*, 54 Cal.App.4th 499, 519 (1997). Moreover, there is no allegation that defendants engaged in any commercial speech. As the Court of Appeal has recognized, "[t]he act does not seek to restrict noncommercial speech in any manner. It is tailored to protect the public from false commercial speech. . . . " *Keimer v. Buena Vista Books, Inc.*, 75 Cal.App.4th 1220, 1231 (1999). So, all that is left is fully protected expressive activity. This cannot be the basis for a §17200 claim.

D. Plaintiffs Cannot Establish a Probability They Will Prevail on Their

[7] See also the declarations of Victor Narro at ¶24 and Mayron Payes at ¶14, attached to the concurrently filed special motion to strike on behalf of Narro and CHIRLA.

"Nuisance" Cause of Action

1. <u>The Elements of a "Nuisance" Claim</u>

To prove a "nuisance," plaintiffs must show that there is a substantial and unreasonable interference with the use of their property and that the "interference," if any, has no social utility. *San Diego Gas & Electric v. Superior Court*, 13 Cal.4th 893, 938 (1996). Plaintiffs cannot prove these elements in this instance because there is no "substantial and unreasonable interference" with plaintiffs' use of their property and, even if there were, the alleged "interference" attributed to defendants' conduct has clear "social utility" as it is fully protected by the First Amendment.

2. <u>The "Nuisance" Allegations</u>

Plaintiffs allege that all of the defendants have engaged in conduct that constitutes a nuisance in violation of California Civil Code §§3479-3481. They seek the extraordinary remedy of an injunction against First Amendment activities for the "nuisance" claims based on the assertions that "Mr. Chang lives in a quiet neighborhood in Beverly Hills. . . . a residential neighborhood with little activity or noise [and that] [t]he residents of Beverly Hills appreciate this aspect of their environment [and] pay a premium to live in a community free from the congestion, noise and commotion of other neighborhoods." Comp. at ¶98, lines 11-15. Plaintiffs also assert that defendants have upset the "tranquility" of Mr. Chang's neighborhood and that defendants' acts are "not normal activity in Beverly Hills." Comp. at ¶¶99-102.

Plaintiffs also assert a nuisance based on their allegations that defendants "place[d] libelous fliers in the clothing sold at Plaintiffs' retail stores, and under the doors at the Hotel partially owned by Mr. Chang." Comp. at ¶103. Finally, plaintiffs allege that "[d]efendants' actions dissuade customers from entering Plaintiffs' stores. . . ." Comp. at ¶107. As a result of the nuisance created by defendants' actions, plaintiffs claim to have suffered, *inter alia*, "public scorn" and a diminution of the "comfortable enjoyment of their property." Comp. at ¶109.

These allegations are insufficient to meet plaintiffs' burden on these nuisance causes of action. Most fundamentally, defendants have constitutionally protected rights to protest in front of plaintiffs' stores, to dissuade members of the public from patronizing plaintiffs' business because it would support sweatshop conditions, and to engage in peaceful protests in the vicinity

of plaintiffs' home. *Claiborne*, 458 U.S. 886*, Paradise Hills,* 235 Cal.App.3d 1528; *Lam*, 91 Cal.App.4th 832. All of the remaining named defendants' conduct at these locations has been fully protected expressive activity. Narro at ¶¶12-16,19; Payes at ¶¶6,9; Lee at ¶¶19,25,27,29; Lo at ¶¶9,11,14,15; Bas at ¶6. Even if it were true that some supporters of the anti-sweatshop movement placed fliers in the clothing at retail stores or under hotel room doors, there is not a shred of evidence that any of these defendants did so or directed anyone else to do so. Lee at ¶¶20,21; Narro at ¶¶20,21; Lo at ¶¶11,12,14; Payes at ¶¶9,lines13-14, 16-19.

a. <u>The Protests Near Plaintiff's Residence Do Not Constitute a "Nuisance"</u>

It is black letter law that "`peaceful picketing or handbilling `carried on in a location open generally to the public is . . . protected by the First Amendment.'" *Paradise Hills Associates*, 235 Cal.App.3d at1545, *quoting In re Lane*, 71 Cal.2d 872, 874, 79 Cal.Rptr. 729 (1969). This rule applies with full force in the City of Beverly Hills. Thus, despite the fact that home prices in Beverly Hills are, no doubt, among the highest in the nation, defendants' rights to engage in lawful protest activities in a residential neighborhood may not be made dependent upon an inverse relationship to the price plaintiff and his neighbors paid for their homes. Nor do they depend upon what is "normal activity" for Beverly Hills. It is black letter law that "a public street does not lose its status as a traditional public forum simply because it passes through a residential neighborhood." *Frisby v. Schultz*, 487 U.S. 474, 480, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988). To the contrary, "all public streets are held in the public trust and are properly considered traditional public fora." *Frisby*, 487 U.S. at 481.

The First Amendment does not permit a "ban `general marching through residential neighborhoods, or even walking a route in front of an entire block of house[.]'" *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 775, 114 S.Ct. 2516, 129 L.Ed.2d 593 (1994), *citing Frisby*, *supra*, at 483. Thus, as in *Frisby*, defendants may not be "barred from [plaintiffs'] residential neighborhoods. They [must be permitted] to enter such neighborhoods, alone or in groups, even marching . . ." *Frisby,* 487 U.S. at 484.

The allegations of the Complaint make clear that plaintiff Chang believes the nuisance

exists in the mere fact that defendants are present in his privileged neighborhood with their "libelous" signs. This is insufficient to state a "nuisance" and to justify an injunction to restrain First Amendment protected expression.

b. Defendants Lawful Protest Activities at Plaintiffs' Business Locations Do Not Constitute a "Nuisance"

The second basis on which plaintiffs attempt to establish a "nuisance" is the protest activities engaged in by defendants outside the hotel co-owned by plaintiff Chang and outside the retail establishments owned by plaintiffs. Although plaintiffs also allege that libelous fliers were placed in the clothing inside its retail establishments and under the doors of the hotel, even if these acts could substantiate the "nuisance" claim, none of these defendants committed or directed such acts. Lee at ¶¶20,21,23,24,27; Lo at ¶¶12,14; Bas at ¶¶7,8; Narro at ¶¶ .

Defendants readily admit they entered the stores, as a courtesy, to inform plaintiffs' employees that they would be outside picketing and that, where necessary, they had obtained a permit for their activities. Lee at ¶ 20. They also admit that, at some of their earlier protests, they also showed employees their materials, but when asked to leave, did so without further discussion. Lee at ¶21. There is no evidence to show that any of the defendants have continued these practices, so, even if these allegations were sufficient to sustain a finding of a "nuisance" – which they are not -- there is no basis to find an ongoing "nuisance" or to issue an injunction.

Defendants do not dispute that they organized and conducted pickets outside plaintiffs; businesses in areas open to the public to protest plaintiffs' business practices, but these activities cannot constitute a "nuisance." Defendants have every right to distribute leaflets to plaintiffs' potential customers as "the activity of peaceful pamphleteering is a form of communication protected by the First Amendment." *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419, 29 L.Ed.2d 1, 91 S.C. 1575 (1971); *accord, Paradise Hills*, 235 Cal.App.3d at 1539. Additionally, "[p]eaceful picketing of a business for political reasons cannot be burdened by state tort liability," even if it has the effect of interfering with a business. *Lam*, *supra*, 91 Cal.App.4th at 836; *accord, Paradise Hills*, 235 Cal.App.3d at 1545.

To the extent that any unlawful acts were committed during defendants' lawful protest

activities, plaintiffs cannot restrain defendants' lawful conduct in order to stop any unlawful conduct. The First Amendment does not permit enjoining expressive activity in advance of its occurrence on the basis that unlawful conduct occurred in the past. *Collins v. Jordan*, . Nor may the remaining named defendants, in their roles as organizers of the protests, "be held personally liable for acts committed by other protestors unless he or she authorized, directed or ratified specific tortious activity. . . ." *Lam*, 91 Cal.App.4th at 837; *id.* at 845; *id.* at 846 ("tort liability cannot be predicated merely on [defendant's] rule as an `organizer' of protests in which some protestors committed wrongful acts"). In short, there is no evidence in this case that can establish liability on this basis.

Similarly, the fact that the group effort might have a "coercive" effect on consumers is a fully protected outcome under the First Amendment. This principle was applied in *Paradise Hills* to overturn an injunction prohibiting a homeowner from criticizing a home builder by picketing, posting signs, handing out leaflets in front of model homes in the development and urging prospective purchasers not to buy the homes because of shoddy work. 235 Cal.App.3d at 1534. *Paradise Hills* quickly dismissed the developer's claim that Procel's expressive activity could be enjoined. The fact that the speech was "intended to exercise a coercive impact on [plaintiffs] does not remove [this expression] from the reach of the First Amendment." 235 Cal.App.3d at 1539. As in *Paradise Hills*, the potential customers defendants are attempting to enlist for their cause "clearly have an interest in matters which affect their roles as consumers, and peaceful activities, such as [defendants'], which inform them about such matters are protected by the First Amendment." 235 Cal.App.3d at 1544 (citation omitted). Thus, on this basis as well, plaintiffs cannot establish a probability they will prevail because there is no authority for the proposition that "the interest of an individual in being free from public criticism of his business practices . . . warrants use of the injunctive power of a court." *Organization for a Better Austin*, *supra*, 402 U.S. at 419.