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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DC COMICS,
 	
     Plaintiff - Appellee,
 	
 v.
 	
PACIFIC PICTURES CORPORATION; IP WORLDWIDE, LLC; IPW, LLC; MARC TOBEROFF; MARK WARREN PEARY, as personal representative of the Estate of Joseph Shuster; LAURA SIEGEL LARSON, individually and as personal representative of the Estate of Joanne Siegel; JEAN ADELE PEAVY,
 	
     Defendants - Appellants.
	No. 11-56934
	
	D.C. No. 2:10-cv-03633-ODW-RZ
	
	MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
Otis D. Wright, District Judge, Presiding

Argued and Submitted November 5, 2012
Pasadena, California

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  [*] This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Before: REINHARDT and THOMAS, Circuit Judges, and SEDWICK, District Judge.[**]

Defendants Pacific Pictures Corporation et al. ("defendants") bring this interlocutory appeal challenging the district judge's denial of their motion to strike, pursuant to California's anti-SLAPP statute, Cal. Civ. Proc. Code § 425.16, the fourth, fifth, and sixth claims brought by plaintiff DC Comics ("DC") in its First Amended Complaint. As explained in the contemporaneously-filed opinion, we have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We affirm.

The district judge properly held that DC's claims were not "based on" defendants' protected activity. *In re Episcopal Church Cases*, 198 P.3d 66, 73 (Cal. 2009). DC's fourth and fifth claims arise from the heirs' repudiation, at Toberoff's apparent urging, of their agreements or economic relationships with DC. Neither the heirs' repudiation nor Toberoff's alleged inducement itself constitutes protected conduct under the anti-SLAPP statute. We reject defendants' contentions that DC's claims involve protected conduct simply because (1) protected conduct may have been the ultimate motivation for, or eventual result of,

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[**]   The Honorable John W. Sedwick, Senior U.S. District Judge for the District of Alaska, sitting by designation.

the repudiation, or (2) an attorney may have induced that repudiation. *See id.*[1]

Defendants' arguments based on the legal sufficiency of DC's claims are not

relevant to our determination of whether those claims arise from protected conduct;

such arguments are properly directed to the district court in the form of a

dispositive motion. *See, e.g.,* Fed R. Civ. P. 56.

We also agree with DC that its sixth claim does not encompass protected

conduct, even when the heirs' 2008 "lock-up" agreement is considered as a basis

for that claim. Although the agreement was apparently produced immediately

before settlement negotiations and, allegedly, in anticipation of them, the

settlement negotiations themselves are incidental to the fact that the agreement may

itself constitute unfair competition. Indeed, the lock-up agreement appears to bind

the heirs long after the expiration of any settlement negotiations. Any protected

conduct is thus merely the backdrop to—and not the basis of—the unfair

competition claim. *See Episcopal Church Cases*, 198 P.3d at 73. Further, the anti-

SLAPP statute does not, as defendants suggest, extend to the protected activities of

the party *bringing* the underlying claims. *See* Cal. Civ. Proc. Code § 425.16(b)(1)

(providing a motion to strike for "[a] cause of action *against* a person arising from

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[1]Accordingly, we need not decide whether the filing of copyright termination notices would constitute protected conduct under California's anti-SLAPP statute.

any *act of that person* in furtherance of *the person's right* of petition or free

speech" (emphasis added)).

AFFIRMED.[2]

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[2]Because we need not assess the merits of DC's claims, its motion for partial reconsideration of this court's order denying its motion to supplement the record (D.E. 29) and its motion for judicial notice (D.E. 28) are denied as moot. For the same reason, Defendants' motion for judicial notice (D.E. 58) is denied as moot. DC is awarded costs on appeal.