

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO  
GORDON D SCHABER COURTHOUSE**

**MINUTE ORDER**

DATE: 02/13/2014

TIME: 09:00:00 AM

DEPT: 54

TEMPORARY JUDGE: Rudolph Loncke

CLERK: D. Ahee

REPORTER/ERM: S. Adams CSR# 12554

BAILIFF/COURT ATTENDANT: C. Chambers

CASE NO: **34-2013-00151782-CU-PL-GDS** CASE INIT.DATE: 09/23/2013

CASE TITLE: **Cherms vs. Sony Online Entertainment LLC**

CASE CATEGORY: Civil - Unlimited

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EVENT ID/DOCUMENT ID: ,10845977

**EVENT TYPE:** Motion to Strike (SLAPP) - Civil Law and Motion - MSA/MSJ/SLAPP

MOVING PARTY: Electronic Arts Inc, Warner Bros Entertainment Inc, Sony Online Entertainment LLC

CAUSAL DOCUMENT/DATE FILED: Motion for SLAPP, 01/21/2014

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**APPEARANCES**

Gregory A Cherms, Sr, self represented Plaintiff, present.

Jonathan G Riddell, counsel, present for Defendant(s).

Richard DeNatale appeared on behalf of defendant.

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**Nature of Proceeding: Motion to Strike (SLAPP)**

**TENTATIVE RULING**

Defendants Sony Online Entertainment LLC, *et al.*'s special anti-SLAPP motion to strike plaintiff's complaint filed 9/23/2013 is GRANTED, as follows.

Moving counsel is admonished because the notice of motion does not provide the correct address for Dept. 54.

Defendants' objections to Exhibits B and C to plaintiff's opposition are sustained.

In this action, plaintiff (who is representing himself and despite his argument to the contrary, is entitled to the same treatment as parties represented by counsel (see, *e.g.*, *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985)) alleges he is the father of an adult son who is addicted to video games. The Judicial Council form-complaint purports to assert causes of action against defendants for general negligence and products liability claiming that the warnings on videogames are insufficient and that plaintiff has suffered emotional distress as a result of his son's addiction.

Defendants move to strike the entire complaint on the ground that it fundamentally "arises from" conduct protected by the provisions of Code of Civil Procedure §425.16. Specifically, defendants insist that developing, publishing and selling videogames are acts "in furtherance of" their First Amendment free speech rights and further that the availability of videogames is an issue of "public interest," both of which fall within the scope of protections afforded by §425.16. Additionally, defendants assert that plaintiff cannot satisfy his burden of showing a "probability of prevailing" on his causes of action for several reasons. First, defendants contend plaintiff cannot satisfy the prerequisites for "bystander" emotional distress claim since the complaint fails to allege any underlying "physical injury" or any specific "injury-causing event" and since plaintiff could not perceive any injury to his son at the time it allegedly occurred. Second, defendants maintain that the content of video games is not a "product" for purposes

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of strict liability law and that tort liability should not be imposed for dissemination of content protected by the First Amendment and other laws.

Plaintiff opposes the motion but concedes defendants' have a First Amendment right to create and sell video games. (Oppos., p.2:15-19; p.2:25-p.3:1.) Plaintiff nevertheless argues that his complaint is seeking "relief for the general public" in the form of warnings that video games are "addictive." The opposition cites Exhibit B, an excerpt from a publication available on the internet, as authority for the unremarkable proposition that the videogame industry requires a constant supply of new players in order to survive and Exhibit C, an excerpt from a book on videogame addiction, which opines that videogames should include warnings about the impact on the player's relationships, job, *etc.*

At the outset, this Court must agree with defendants that Code of Civil Procedure §425.16 does afford constitutional and other legal protection to defendants' development, marketing and distribution of videogames. Not only does §425.16(a) expressly provide that "this section shall be construed broadly" but also plaintiff's opposition cites no authority which suggests much less compels a different conclusion here.

Having determined that the gravamen of this action is conduct of defendants which is protected by the broad scope of Code of Civil Procedure §425.16, the burden shifts to plaintiff to show he has a "probability of prevailing" in this action. Specifically, he must show not only that the pleading of his complaint is "legally sufficient" but also that he has admissible evidence sufficient to sustain a judgment in his favor. (Code Civ. Proc. §425.16(b); *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88-89.) As will now be shown, plaintiff has failed to address much less satisfy either of these requirements and thus, the special motion to strike must be granted.

The complaint here is legally deficient for several reasons, many of which were pointed out in defendants' moving papers. Defendant correctly asserts that plaintiff cannot state a valid claim for emotional distress under a "bystander" theory since such a claim requires the plaintiff to be physically present at the scene of the injury-producing event when it occurs and be contemporaneously aware it is causing harm. (*Thing v. La Chusa* (1989) 48 Cal.3d 644, 667-668.) The complaint does not plead facts which satisfy this requirement and the opposition suggests that such facts could not, in good faith, be pled. For this reason alone, plaintiff has failed to establish the legal sufficiency of his complaint and the Court finds that given the facts alleged, it is doubtful plaintiff would be able to establish under any other theory the requisite legal standing to bring this action against defendants.

But even if the complaint otherwise included sufficient allegations, plaintiff has also failed to produce admissible evidence which could support a judgment in his favor. The opposition includes only three (3) exhibits which could arguably be considered "evidence." Exhibit A, the complaint itself, is not evidence and does nothing to satisfy plaintiff's evidentiary burden. The only other potential evidence here is Exhibits B and C, cited above, but defendants' objections to both of these documents have been sustained. In short, plaintiff has offered no admissible evidence which can be considered in connection with his burden to produce evidence that is sufficient to support a judgment in his favor.

In light of the foregoing, plaintiff has fallen far short in showing he has a "probability of prevailing" in this action and thus, based on the express language of Code of Civil Procedure §425.16, the special motion to strike must be granted.

Having prevailed on their motion, defendants may now seek by noticed motion attorney fees as provided for in Code of Civil Procedure §425.16.

This minute order is effective immediately. Pursuant to CRC Rule 3.1312, defendants to prepare formal order and judgment of dismissal.

**COURT RULING**

The matter was argued and submitted. The Court affirmed the tentative ruling.