

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SHIVA AYYADURAI, an individual,

Plaintiff,

v.

FLOOR64, INC., a California corporation
d/b/a TECHDIRT; MICHAEL DAVID
MASNICK, an individual; LEIGH
BEADON, an individual; and DOES 1-20,

Defendants.

C.A. No. 17-cv-10011-FDS

**SPECIAL MOTION TO STRIKE PLAINTIFF’S COMPLAINT
PURSUANT TO THE CALIFORNIA ANTI-SLAPP LAW**

In this broad-sweeping libel action, a self-described “world-renowned scientist, inventor, lecturer, philanthropist and entrepreneur” is seeking \$15 million in compensatory damages, plus an untold additional sum in punitive damages, from a California technology blog and its chief blogger—simply because they dared to question his bold assertion that he, alone, “invented email.”

Plaintiff Shiva Ayyadurai claims that Defendants Floor64, Inc. and Michael Masnick have harmed his reputation by characterizing his grandiose claim—that he is responsible for the development of a now-ubiquitous technology that has fundamentally changed the nature of human correspondence—as “fake,” “bogus,” and “misleading.” In reality, Ayyadurai is seeking to use this Court as his instrument to silence critics who are exercising their constitutional right to free speech.

Fortunately, the California Legislature has provided the Defendants with an avenue of legal recourse against the Plaintiff’s bullying. Pursuant to the California Anti-SLAPP law, Cal.

Code Civ. Proc. § 425.16, Defendants ask this Court to recognize that Plaintiff's action is a strategic lawsuit "brought primarily to chill [their] valid exercise of the constitutional right[] of freedom of speech"; to strike the Plaintiff's complaint against them; and to award them the attorney's fees and costs they have incurred to defend against this vindictive action.

As grounds for this motion, Defendants state as follows:

1. Defendant Floor64, Inc. is a California corporation that operates an online technology-focused blog, Techdirt.com. Defendant Michael Masnick is a California resident, Floor64's founder, and Techdirt's chief blogger. (The third named defendant, Leigh Beadon, has not yet been served with process.)

2. The Anti-SLAPP law of California applies to this case because the Defendants are located in California, the articles at issue were written in California, and under Massachusetts choice of law principles, California has the greater interest in the application of its anti-SLAPP law to this controversy.

3. Plaintiff's Complaint arises from statements contained in 14 blog posts concerning a matter of obvious public interest: the historic origins and evolution of electronic mail technology.

4. Accordingly, pursuant to the California Anti-SLAPP Law, Cal. Code Civ. Proc. § 425.16, the plaintiff may not proceed with this action unless he presents this Court with evidence establishing a *probability* that he will prevail on his claims of libel, intentional interference with prospective economic advantage, and intentional infliction of emotional distress.

5. Plaintiff cannot shoulder this burden, because all of the statements at issue are expressions of opinion protected by the First Amendment, and because he cannot show by clear

and convincing evidence that Defendants published the challenged statements with knowledge of falsity or reckless disregard for the truth.

In further support of this Special Motion to Strike, Defendants submit the accompanying memorandum of law and Affidavit of Michael Masnick, and further refer the Court to the arguments set out in their memorandum in support of their contemporaneously filed motion to dismiss Plaintiff's Complaint for failure to state a claim.

FLOOR64, INC. and MICHAEL MASNICK

By their attorneys,

/s/ Robert A. Bertsche
Robert A. Bertsche (BBO #554333)
rbertsche@princelobel.com
Jeffrey J. Pyle (BBO #647438)
jpyle@princelobel.com
Thomas Sutcliffe (BBO #675379)
tsutcliffe@princelobel.com
PRINCE LOBEL TYE LLP
One International Place, Suite 3700
Boston, Massachusetts 02110
Tel: (617) 456-8018

Dated: February 17, 2017

CERTIFICATION PURSUANT TO LOCAL RULE 7.1

I hereby certify that on February 16, 2017, I conferred with counsel for the Plaintiff by telephone in a good faith attempt to narrow or resolve the issues raised by this motion.

/s/ Jeffrey J. Pyle
Jeffrey J. Pyle

CERTIFICATE OF SERVICE

I hereby certify that the within document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and by first-class mail to any non-registered participants.

/s/ Robert A. Bertsche
Robert A. Bertsche