

# EXHIBIT 1

**MAY 24 2023**

David W. Slayton, Executive Officer/Clerk of Court

By: R. Duron, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES - NORTHWEST DISTRICT**

BRILLIANT DIGITAL ENTERTAINMENT, )  
INC., a Delaware corporation; EUROPLAY )  
CAPITAL ADVISORS, LLC, a Delaware, )  
limited liability company; CLARIA )  
INNOVATIONS, LLC, a Delaware limited )  
liability company; and MONTO HOLDINGS )  
PTY LTD, an Australian company, )

Plaintiffs,

vs.

PERSONALWEB TECHNOLOGIES, LLC, a )  
Texas limited liability company; and DOES 1- )  
100, inclusive, )

Defendants.

CASE NO: 21VECV00575

FINAL ORDER RE:  
DEFENDANTS-IN-INTERVENTION'S  
SPECIAL ANTI-SLAPP MOTIONS TO  
STRIKE THE SECOND CAUSE OF  
ACTION AND RELATED PORTIONS  
OF INTERVENORS' COMPLAINT-IN-  
INTERVENTION

JUDGE VALERIE SALKIN  
Dept. NW-U

May 24, 2023

**I. BACKGROUND**

This case is a collection action. Plaintiffs Brilliant Digital Entertainment, Inc. ("BDE"); Europlay Capital Advisors, LLC ("Europlay"); Claria Innovations, LLC ("Claria"); and Monto Holdings Pty Ltd. ("Monto") allege default on \$19 million of promissory notes by Defendant PersonalWeb Technologies, LLC ("PWT").

On April 27, 2021, Plaintiffs filed their complaint against PWT, alleging: (1) breach of promissory note held by BDE; (2) breach of promissory note held by Europlay; (3) breach of promissory note held by Claria; (4) breach of promissory note held by Monto; (5) recovery of personal property; (6) conversion; and (7) specific performance for the appointment of a receiver.

On August 10, 2021, Intervenors Amazon.com, Inc., Amazon Web Services, Inc., and Twitch Interactive, Inc. (collectively, "Amazon") filed a motion for leave to intervene in this case. Then-assigned Judge Bernie LaForteza denied Amazon's intervention motion, but the denial was later overturned by the Second Appellate District Court of Appeal.

On December 14, 2022, Amazon filed its complaint-in-intervention against Defendants-In-Intervention Europlay, Claria, BDE, and Monto, seeking/alleging: (1) judgment enforcement; (2) equitable subordination; and (3) equitable accounting.

On January 30, 2023, Defendants-In-Intervention Europlay and Claria filed their special motion to strike the second (2<sup>nd</sup>) cause of action in Amazon's complaint-in-intervention as a strategic lawsuit against public participation ("SLAPP") pursuant to Code of Civil Procedure section 425.16.

On February 7, 2023, Defendants-In-Intervention BDE and Monto filed their anti-SLAPP motion to strike the second (2<sup>nd</sup>) cause of action and related sections in Amazon's complaint-in-intervention.

On April 4, 2023, Amazon filed its opposition brief.

On April 13, 2023, Defendants-In-Intervention Europlay, Claria, BDE, and Monto (hereafter, "Plaintiffs") filed their reply brief, supplemental RJN, and their Objection to Todd Gregorian's Declaration.

On May 15, 2023, Amazon filed its response to Defendants-in-Interventions' objections.

On May 19, 2023, the Court delivered its tentative ruling denying both of Plaintiffs' anti-SLAPP motions to all parties.

On May 22, 2023, the Court held a hearing on Plaintiffs' anti-SLAPP motions, at which all parties appeared and were represented by counsel. At the conclusion of the hearing, the Court

took the matter under submission. The following analysis has been revised from the Court's original tentative ruling to include, among other things, a section addressing Plaintiffs' further argument that Amazon's equitable subordination claim should be at least partially stricken as a "mixed cause of action."

## II. LEGAL STANDARD

"A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." Code Civ. Proc., § 425.16 (b)(1).

The trial court applies a burden shifting analysis when considering a special motion to strike brought under section 425.16 (the "Anti-SLAPP Statute"). *Soukun v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 278 (*Soukun*). First, the defense carries the burden of making a threshold showing that the challenged cause of action arises from "any act of that person in furtherance of the person's right of petition or free speech under the [federal or state constitution] with a public issue." Code Civ. Proc., § 425.16 (b); see *Soukun*, at p. 278. Second, and only if the defense meets its threshold burden, the burden will shift to the plaintiff to demonstrate a probability of prevailing on the merits of the claims at issue. See *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67 (*Equilon*).

For purposes of analysis herein, Defendants-in-Intervention (Plaintiffs) have the initial burden, which will shift to Complainants-in-Intervention (Amazon) if Plaintiffs' threshold burden is met.

## III. REQUESTS FOR JUDICIAL NOTICE

Plaintiffs request that the Court take judicial notice of the following copies of documents:

1. The complaint filed in this case on April 27, 2021;
2. The *Ex Parte* Application for Immediate Appointment of Receiver and Preliminary Injunction in Aid of Receiver, filed on May 3, 2021;
3. The Nomination of Receiver: Declaration of Brick Kane, filed on May 3, 2021;
4. The Declaration of Michael Weiss re: No Opposition to *Ex Parte* Application for Appointment of Receiver and Preliminary Injunction, filed on May 3, 2021;
5. The Declaration of Bruce Poltrock re: *Ex Parte* Notice, filed on May 3, 2021;
6. The Order for Immediate *Ex Parte* Appointment of Receiver, filed on May 10, 2021;
7. The Temporary Restraining Order in Aid of Receiver, filed on May 10, 2021;
8. The Stipulation for Entry of Preliminary Injunction in Aid of the Receiver, filed on May 20, 2021;
9. The Order for Entry of Preliminary Injunction in Aid of the Receiver, filed on June 1, 2021;
10. The Secured Lenders' Statement of Non-Opposition to Amazon's Motion to Intervene, filed on August 19, 2021;
11. The Minute Order denying Amazon's Motion for Leave to Intervene entered on November 17, 2021;
12. The Appellate Court Opinion Reversing Denial of Intervention, filed on October 3, 2022;
13. The Minute Order as to Receiver Communications, filed on October 6, 2022;
14. The Declarations of Val Miller, David Stapleton and Michael Bubman in Support of *Ex Parte* Application to Approve Stipulation re: Substitution of Receiver, filed on September 19, 2022;

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