ELECTRONICALLY FILED - 2019 May 22 8:44 AM - HORRY - COMMON PLEAS - CASE#2018CP2606158

SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	FIFTEENTH JUDICIAL CIRCUIT
KEVIN RALPH RICHARD, Plaintiff, v. FACEBOOK, INC., a Delaware corporation, and MALEKO KIRK MALEPEAI, individually, Defendants.	C/A No. 2018-CP-2606158 **ORDER GRANTING FACEBOOK, INC.'S MOTION TO DISMISS**

Plaintiff Kevin Ralph Richard is the owner of Filet's restaurant in North Myrtle Beach, South Carolina. Compl., ¶ 13. He alleges that in December 2016 a former employee, Defendant Maleko Kirk Malepeai ("Malepeai"), posted to Malepeai's Facebook account various false and defamatory statements about Plaintiff and his family. *Id*. at ¶¶ 14-16. To remedy the injuries allegedly caused by Malepeai's statements, Plaintiff now brings suit against Malepeai and Defendant Facebook, Inc. ("Facebook") for defamation, civil conspiracy, outrage, and intentional infliction of emotional distress.[1]

The complaint does not describe the content of the allegedly defamatory statements. Nor does Plaintiff allege that Facebook had any role in creating or developing the content at issue. Rather, the crux of Plaintiff's complaint is that Facebook's platform "provid[es] inadequate options to rectify the gross injustices faced by the Plaintiff," and that Facebook should have applied its Community Standards to remove the offending posts or suspend Defendant

[1] Plaintiff has pleaded separate claims for outrage and intentional infliction of emotional distress, but South Carolina courts have recognized that these are two names for the same cause of action. *See Hawkins v. Greene*, 311 S.C. 88, 90, 427 S.E. 2d 692, 693 (Ct. App. 1993).

ELECTRONICALLY FILED - 2019 May 22 8:44 AM - HORRY - COMMON PLEAS - CASE#2018CP2606158

Malepeai's account. Compl., ¶¶ 20-21.

Facebook moves to dismiss the claims as to Facebook under Rules 12(b)(2) and 12(b)(6), SCRCP, on the grounds that (i) this Court lacks personal jurisdiction over Facebook, (ii) Plaintiff's claims against Facebook are barred by Section 230 of the Communications Decency Act ("CDA"), 47 U.S.C. § 230(c)(1); and (iii) Plaintiff has failed to allege facts stating any plausible claim for relief against Facebook. The motion to dismiss is **GRANTED**.

First, the complaint provides no factual allegations to establish that Facebook is subject to general or specific personal jurisdiction in South Carolina with respect to the claims asserted in this case. Because the Court lacks personal jurisdiction over Facebook, the claims against Facebook must be dismissed. But even if personal jurisdiction were proper, the Court finds that Section 230(c)(1) of the CDA immunizes Facebook from Plaintiff's claims and that Plaintiff's allegations are insufficient to support any of the asserted claims against Facebook.

I. The Court Lacks Personal Jurisdiction Over Facebook

The party seeking to invoke personal jurisdiction over a non-resident defendant bears the burden of proving the existence of personal jurisdiction. *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 327, 594 S.E. 2d 878, 882 (Ct. App. 2004). Here, the complaint does not allege any facts supporting personal jurisdiction over Facebook. Plaintiff asserts essentially that Facebook is subject to personal jurisdiction in this Court simply because it provides a platform that may be used and accessed in South Carolina. But Plaintiff provides no support for that sweeping proposition, and the Court is aware of none. Because the Court lacks personal jurisdiction over Facebook, the claims against Facebook must be dismissed.

South Carolina courts exercise personal jurisdiction to the full extent authorized by the United States Constitution. *See Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611

S.E. 2d 505, 508 (2005). "Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Moosally,* 358 S.C. at 330, 594 S.E. 2d at 883 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985)). "Further, the due process requirement mandates the defendant possess sufficient minimum contacts with the forum state such that he could reasonably anticipate being haled into court there." *Power Prods. & Servs. Co. v. Kozma*, 379 S.C. 423, 431-32, 665 S.E. 2d 660, 665 (Ct. App. 2008) (citing *Cockrell*, 363 S.C. at 491-92, 611 S.E. 2d at 508).

There are two types of personal jurisdiction: (1) general jurisdiction; and (2) specific jurisdiction. *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 17-19, 655 S.E. 2d 476, 478-80 (2007). Neither type of jurisdiction is proper here because Plaintiff has failed to establish that Facebook has sufficient minimum contacts with South Carolina.

A. The Court lacks general personal jurisdiction over Facebook

A court may assert general jurisdiction over a nonresident defendant only when the defendant's "affiliations with the State are so continuous and systematic as to render them essentially at home in the forum State." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (internal quotation marks omitted). "The 'paradigm' forums in which a corporate defendant is 'at home,' [the Supreme Court of the United States has] explained, are the corporation's place of incorporation and its principal place of business." *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017) (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014)).

Facebook is a Delaware corporation, with its principal place of business in Menlo Park, California. Compl., ¶ 2. General jurisdiction outside these forums is permissible only "in an

ELECTRONICALLY FILED - 2019 May 22 8:44 AM - HORRY - COMMON PLEAS - CASE#2018CP2606158

'exceptional case,'" when "a corporate defendant's operations in another forum 'may be so substantial and of such a nature as to render the corporation at home in that State.'" *BNSF*, 137 S. Ct. at 1558 (quoting *Daimler AG*, 571 U.S. at 139 n.19). In *BNSF*, the Supreme Court of the United States held that a national railroad company was not subject to general jurisdiction in Montana notwithstanding the fact it had "over 2,000 miles of railroad track and more than 2,000 employees" in the state because those contacts were small compared to the company's activities throughout the country. *Id*. at 1559; *see Daimler AG*, 571 U.S. at 139 n.20 ("A corporation that operates in many places can scarcely be deemed at home in all of them."). Likewise, there is no basis to assert general jurisdiction over Facebook here because Plaintiff has alleged no facts that could establish that this is an "exceptional case" such that Facebook can be said to be "essentially at home" in South Carolina. *Goodyear Dunlop Tires Operations*, 564 U.S. at 919.

B. The Court lacks specific personal jurisdiction over Facebook

"Specific jurisdiction is the State's right to exercise personal jurisdiction because the cause of action arises specifically from a defendant's contacts with the forum." *Coggeshall,* 376 S.C. at 16, 655 S.E. 2d at 478. "Courts have construed South Carolina's long-arm statute . . . to extend to the outer limits of the due process clause." *Hidria, USA, Inc. v. Delo*, 415 S.C. 533, 540, 783 S.E. 2d 843 (Ct. App. 2016). Determining whether the requirements of due process are satisfied requires a two-prong analysis of (1) the "power" prong, under which minimum contacts grant a court the "power" to adjudicate the action; and (2) the "fairness" prong, which requires the exercise of jurisdiction to be "reasonable" or "fair." *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 259-60, 423 S.E. 2d 128, 130-31 (1992). The plaintiff bears the burden of satisfying both prongs. *Id*. at 259. "If either prong fails, the exercise of personal jurisdiction over the [nonresident] defendant fails to comport with the requirements of due process." *Id*. at

ELECTRONICALLY FILED - 2019 May 22 8:44 AM - HORRY - COMMON PLEAS - CASE#2018CP2606158

ELECTRONICALLY FILED - 2019 May 22 8:44 AM - HORRY - COMMON PLEAS - CASE#2018CP2606158

260.

"Under the power prong, a minimum contacts analysis requires a court to find that the defendant directed its activities to residents of South Carolina and that the cause of action arises out of or relates to those activities." *Moosally*, 358 S.C. at 331-32, 594 S.E. 2d at 884. "It is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." *Id*. at 332. "Under the fairness prong, [courts] examine such factors as the burden on the defendant, the extent of the plaintiff's interest, South Carolina's interest, efficiency of adjudication, and the several states' interest in substantive social policies." *Id.*

Plaintiff's allegations do not touch upon or give rise to any of the requirements for specific jurisdiction over Facebook under either prong. The only contacts with South Carolina that can plausibly be inferred from the allegations in the complaint are that (1) Facebook operated a website that was accessible in South Carolina; (2) Facebook allegedly caused injury in South Carolina; and (3) Facebook participated in an alleged conspiracy that included a South Carolina resident. The first two contacts, without more, are never sufficient to confer personal jurisdiction, and the third alleged contact is insufficient because it is not pleaded with the specificity required to establish that jurisdiction exists.

Notably, courts in other states have also concluded that they lack personal jurisdiction over Facebook notwithstanding the fact that the website is available to and used by residents of those states and allegedly caused harm in those states. *See, e.g.*, *Georgalis v. Facebook, Inc.*., 324 F. Supp. 3d 955, 961 (N.D. Ohio 2018); *Ralls v. Facebook*, 221 F. Supp. 3d 1237, 1242-44 (W.D. Wash. 2016); *Gullen v. Facebook.com, Inc.*, No. 15 C 7681, 2016 WL 245910, at *1-3 (N.D. Ill. Jan. 21, 2016). As this Court has no basis for exercising personal jurisdiction over

Facebook, it must reach the same result.

1. Operating a website in the state is not sufficient to confer personal jurisdiction

Facebook's operation of a website that is accessible worldwide does not establish minimum contacts with South Carolina. The ability of forum residents to access a defendant's website is insufficient to establish minimum contacts with a forum state. *Hidria*, 415 S.C. at 544-45, 783 S.E. 2d at 845 (affirming the dismissal of a defamation claim); *see also Power Prods. & Servs*., 379 S.C. at 434, 665 S.E. 2d at 666 ("[Plaintiff] failed to make any allegations or produce any evidence a South Carolina resident purchased any product from or because of [defendant's] website, or that the website was particularly directed at South Carolinians"); *Smarter Every Day, LLC v. Nunez*, No. 2:15-cv-01358-RDP, 2017 WL 1247500, at *3 (N.D. Ala. Apr. 5, 2017) ("Courts generally agree that the ability of forum residents to access a defendant's website, standing alone, does not suffice to establish minimum contacts with the forum state.").

The ability of South Carolina residents to interact with a non-resident's website is also insufficient, standing along, to confer personal jurisdiction. In *Poole v. Transcon. Fund Admin. Ltd.*, for instance, the court held that it lacked personal jurisdiction over a defendant whose website was "at least semi-interactive" because the plaintiff did not show that the defendant "acted with the manifest intent to engage in business or other interactions within the state of South Carolina." No. 6:12-2943-MGL, 2013 WL 12243970, at *4 (D.S.C. Aug. 7, 2013). Indeed, a South Carolina resident reaching out to access Facebook's website is precisely the type of "unilateral activity" that has repeatedly been held not to confer personal jurisdiction over a nonresident. *Vinten v. Jeantot Marine Alls., S.A*., 191 F. Supp. 2d 642, 648 (D.S.C. 2002) (defendant's interactive website did not confer personal jurisdiction where plaintiff failed to

ELECTRONICALLY FILED - 2019 May 22 8:44 AM - HORRY - COMMON PLEAS - CASE#2018CP2606158

show that the defendant "directed its website at South Carolina residents" or "ha[d] done anything to encourage South Carolina residents to visit the website").

Here, the complaint alleges that a South Carolina resident, Defendant Malepeai, "published" via Facebook "false and defamatory statements concerning the Plaintiff." Compl., ¶ 15; *see also id*. at ¶¶ 16-17. The complaint does not allege that Facebook took part in any of these activities. Rather, they are quintessentially "unilateral activit[ies] of another party or a third person" that do not establish contact between Facebook and South Carolina sufficient to confer personal jurisdiction. *Vinten*, 191 F. Supp. at 645 (quoting *Burger King*, 471 U.S. at 475).

Courts in other states that have considered this issue with respect to Facebook have held that it would be inconsistent with the Due Process Clause of the Fourteenth Amendment to subject Facebook to personal jurisdiction "simply because a user avails himself of Facebook's services in a state other than the states in which Facebook is incorporated and has its principal place of business." *Ralls*, 221 F. Supp. 3d at 1244; *see also Gullen*, 2016 WL 245910, at *2 ("If the defendant merely operates a website, even a 'highly interactive' website, that is accessible from, but does not target, the forum state, then the defendant may not be haled into court in that state without offending the Constitution." (quoting *be2 LLC v. Ivanov*, 642 F.3d 555, 559 (7th Cir. 2011) (internal quotation marks omitted)). This Court agrees.

2. Causing alleged injury in the state is insufficient to confer personal jurisdiction

Plaintiff's allegation that he suffered an injury in South Carolina as a result of Facebook's conduct is also insufficient to establish personal jurisdiction over Facebook in South Carolina. The Supreme Court of the United States has "made clear that mere injury to a forum resident is not a sufficient connection to the forum" to establish minimum contacts. *Walden v. Fiore*, 571 U.S. 277, 290 (2014). More specifically, a plaintiff's allegation that he was injured in South

ELECTRONICALLY FILED - 2019 May 22 8:44 AM - HORRY - COMMON PLEAS - CASE#2018CP2606158

ELECTRONICALLY FILED - 2019 May 22 8:44 AM - HORRY - COMMON PLEAS - CASE#2018CP2606158

Carolina by an out-of-state website operator does not establish personal jurisdiction over the website operator. *See Hidria,* 415 S.C. at 549-50, 783 S.E. 2d at 848. Rather, Plaintiff must demonstrate that Facebook has purposefully availed itself of the forum by "specifically target[ing] South Carolina readers." *Id.* at 550; *see also Power Prods. & Servs*., 379 S.C. at 434, 665 S.E. 2d at 666; *Goldowsky v. Gareri*, C.A. No. 4:17-cv-2073-RBH-TER, 2018 WL 942278, at *5 (D.S.C. Jan. 29, 2018) (finding no personal jurisdiction over a defendant who allegedly defamed a South Carolina resident on a website accessible to South Carolinians because the plaintiff failed to show that the defendant intended to direct the statements to residents of South Carolina), *report and recommendation adopted*, 2018 WL 936382 (D.S.C. Feb. 16, 2018). Plaintiff has not done so.

3. A conclusory allegation of a conspiracy with a resident of South Carolina is insufficient to confer personal jurisdiction

Count II of the complaint vaguely suggests that Defendants Facebook and Malepeai "act[ed] in concert with one another" to "publish[] materially false information about the plaintiff." Compl., ¶ 32. Such allegations are insufficient to establish personal jurisdiction because they are not pleaded with particularity. To establish personal jurisdiction on a conspiracy theory, the "plaintiff must plead with particularity the conspiracy as well as the overt acts within the forum taken in furtherance of the conspiracy." *Unspam Techs., Inc. v. Chernuk*, 716 F.3d 322, 329 (4th Cir. 2013) (quoting *Jungquist v. Sheikh Sultan Bin Khalifa Al Nahyan*, 115 F.3d 1020, 1031 (D.C. Cir. 1997)).

Here, Plaintiff's civil-conspiracy allegations against Facebook could not be more conclusory. Plaintiff speculates that "Defendants act[ed] in concert with one another," but he pleads no facts to support that allegation. Compl., ¶ 32. Because this averment "amounts to no more than a bare allegation or logical possibility," it "does not suffice to allege a plausible claim

of the existence of a conspiracy," nor does it "satisfy the requirements for establishing a conspiracy theory of personal jurisdiction." *Unspam Techs.,* 716 F.3d at 330.

In sum, Plaintiff has failed to make averments sufficient to carry his burden of establishing that Facebook is subject to personal jurisdiction in this Court. Because this Court lacks personal jurisdiction over Facebook, the claims against Facebook must be dismissed.

II. Plaintiff's Claims Against Facebook Are Barred by CDA Section 230(c)(1)

Even if Facebook were subject to personal jurisdiction in this Court, the Court finds that Plaintiff's claims would fail because they are barred by CDA Section 230(c)(1), 47 U.S.C. § 230(c)(1). The complaint seeks to hold Facebook liable for regulating what content it permits on its platform. *See* Compl., ¶¶ 27, 33-34, 38, 45. Section 230(c)(1) of the CDA directly prohibits such a claim.

Section 230(c)(1) immunity, "like other forms of immunity, is generally accorded effect at the first logical point in the litigation process," because "immunity is an ***immunity from suit*** rather than a mere defense to liability." *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 254 (4th Cir. 2009) (*quoting Brown v. Gilmore*, 278 F.3d 362, 366 n.2 (4th Cir. 2002)) (internal quotation marks omitted) (emphasis in original). Courts routinely dismiss lawsuits against interactive computer service providers given the protections afforded under the CDA.[2]

Section 230 of the CDA provides that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another

---

[2] *See, e.g., Nemet.*, 591 F.3d at 254 (affirming grant of motion to dismiss based on CDA Section 230(c)(1)); *Kimzey v. Yelp! Inc*., 836 F.3d 1263, 1270 (9th Cir. 2016) (same); *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096 (9th Cir. 2009) (same); *Klayman v. Zuckerberg*, 753 F.3d 1354, 1357 (D.C. Cir. 2014) (same); *Green v. Am. Online (AOL)*, 318 F.3d 465, 471 (3d Cir. 2003) (same).

ELECTRONICALLY FILED - 2019 May 22 8:44 AM - HORRY - COMMON PLEAS - CASE#2018CP2606158

information content provider." 47 U.S.C. § 230(c)(1). As the Fourth Circuit has observed, Section 230 (c)(1) establishes "broad" immunity from suit, "bar[ring] state-law plaintiffs from holding interactive computer service providers legally responsible for information created and developed by third parties." *Nemet*, 591 F.3d at 254 & n.4. "Parties complaining that they were harmed by a Web site's publication of user-generated content have recourse; they may sue the third-party user who generated the content, but not the interactive computer service that enabled them to publish the content online." *Doe v. MySpace, Inc.*, 528 F.3d 413, 419 (5th Cir. 2008). *Ricci v. Teamsters Union Local 456*, 781 F.3d 25, 28 (2d Cir. 2015) ("In short, a plaintiff defamed on the internet can sue the original speaker, but typically cannot sue the messenger.") (internal quotations and citations omitted).[3]

CDA immunity applies if three conditions are met. *See Nemet*, 591 F.3d at 254.[4] First, Facebook must be a "provider . . . of an interactive computer service." 47 U.S.C. § 230(c)(1). Second, the offending communications must be "provided by another information content provider." *Id.* Third, Plaintiff's claims must be premised on Facebook's role as "publisher" of

---

[3] The policy underlying this rule is evident. As the Fourth Circuit has explained, "[i]nteractive computer services have millions of users," and Congress has recognized that "the specter of tort liability in an area of such prolific speech would have an obvious chilling effect." *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997). "Faced with potential liability for each message republished by their services," for instance, "interactive computer service providers might choose to severely restrict the number and type of messages posted." *Id.* "Congress considered the weight of the speech interests implicated and chose to immunize service providers to avoid any such restrictive effect." *Id.*

[4] *See also, e.g.*, *Jones v. Dirty World Entm't Recordings LLC*, 755 F.3d 398, 409 (6th Cir. 2014); *Klayman*, 753 F.3d at 1357; *Barnes*, 570 F.3d at 1100-01; *Green*, 318 F.3d at 470; *Internet Brands, Inc. v. Jape*, 328 Ga. App. 272, 277-78 (2014); *Hill v. StubHub, Inc.*, 219 N.C. App. 227, 236 (2012).

ELECTRONICALLY FILED - 2019 May 22 8:44 AM - HORRY - COMMON PLEAS - CASE#2018CP2606158

the third-party content. *Id.* All three conditions are met here.[5]

A. Facebook is an interactive computer service provider

The CDA defines "interactive computer service" as "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server." 47 U.S.C. § 230(f)(2). Plaintiff does not dispute that Facebook meets this definition. *See* Opp. at 4-6. Accordingly, the Court finds that the first element for Section 230(c)(1) immunity is satisfied.[6]

B. The offending content was authored by another information content provider

The CDA defines "information content provider" as "any person or entity that is responsible, in whole or in part, for the creation or development" of the content at issue. 47 U.S.C. § 230(f)(3). Plaintiff does not dispute that Defendant Malepeai, not Facebook, provided the content at issue in this case. *See* Opp. at 4-6; *see also* Compl. at ¶ 15 ("Defendant Malepeai published via his Facebook account false and defamatory statements."). Accordingly, the Court finds that the second element for Section 230(c)(1) immunity is also satisfied. *See, e.g.*, *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 329-330 (4th Cir. 1997) (applying Section 230 immunity where a service provider's platform was used by one of its subscribers to post allegedly actionable

---

[5] As there is no binding South Carolina authority regarding CDA immunity, the Court considers case law from the Fourth Circuit, as well as persuasive authority from other federal circuits and state courts of appeal. *See Chase Home Fin., LLC v. Risher*, 405 S.C. 202, 213, 746 S.E.2d 471, 477 (Ct. App. 2013); *Bass v. Isochem*, 365 S.C. 454, 478, 617 S.E.2d 369, 382 (Ct. App. 2005).

[6] Other courts have likewise concluded that Facebook is an "interactive computer service provider." *See, e.g.*, *Klayman v. Zuckerberg,* 910 F. Supp. 2d 314, 318 (D.D.C. 2012).

ELECTRONICALLY FILED - 2019 May 22 8:44 AM - HORRY - COMMON PLEAS - CASE#2018CP2606158

information).[7]

C. Plaintiff's claims seek to hold Facebook liable for "a publisher's traditional editorial functions"

The third requirement for section 230(c)(1) immunity is met if a plaintiff "seek[s] to hold a service provider liable for its exercise of a publisher's traditional editorial functions — such as deciding whether to publish, withdraw, postpone or alter content." *Zeran*, 129 F.3d at 330; *see also, e.g.*, *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 20 (1st Cir. 2016) (same); *Jones v. Dirty World Entm't Recordings LLC*, 755 F.3d 398, 407 (6th Cir. 2014) (same); *Klayman v. Zuckerberg,* 753 F.3d 1354, 1359 (D.C. Cir. 2014) (same); *Johnson v. Arden*, 614 F.3d 785, 792 (8th Cir. 2010) (same). In determining whether the third requirement is met, "what matters is not the name of the cause of action" but rather "whether the cause of action inherently requires the court to treat the defendant as the 'publisher or speaker' of content provided by another." *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1101-02 (9th Cir. 2009). If "the duty that the plaintiff alleges the defendant violated derives from the defendant's status or conduct as a 'publisher or speaker,'" then "[S]ection 230(c)(1) precludes liability." *Id.* at 1102.

Here, each of Plaintiff's claims seeks to hold Facebook liable for, and is derived from, Facebook's "exercise of a publisher's traditional editorial functions — such as deciding whether to publish, withdraw, postpone or alter content." *Zeran*, 129 F.3d at 330. Plaintiff's claims are predicated entirely on allegations that Facebook "published," and failed to block or remove, allegedly defamatory statements posted by Defendant Malepeai.

---

[7] *See also, e.g.*, *Klayman*, 753 F.3d at 1358 (affirming a dismissal where "the complaint nowhere alleges or even suggests that Facebook provided, created, or developed any portion of the content" at issue); *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1124-25 (9th Cir. 2003); *Green*, 318 F.3d at 471; *Internet Brands*, 328 Ga. App. at 277.

ELECTRONICALLY FILED - 2019 May 22 8:44 AM - HORRY - COMMON PLEAS - CASE#2018CP2606158

- <u>Count I: Defamation/Libel per se.</u> *See* Compl., ¶ 24 ("The defendants have ***published*** and tolerated material in such a way to deny the plaintiff a reasonable opportunity to conduct a lawful business . . . ." (emphasis added)); *id*. ¶ 25 ("The defendants' intentional ***publication*** of false information . . . . (emphasis added)); *id*. ¶ 27 ("Because the Defendants have acted jointly to ***publish*** false information . . . . (emphasis added)).

- <u>Count II: Civil Conspiracy.</u> *Id*. at ¶ 32 ("That Defendants acting in concert with one another, have ***published*** materially false information . . ." (emphasis added)); *id*. at ¶ 33 ("That Defendants' actions in ***publishing*** false information . . . constitute a combination of the defendants" (emphasis added)).

- <u>Count III: Outrage.</u> *Id*. at ¶ 38 ("That Facebook ***published*** and consented to the unlawful acts of Defendant Malepeai . . . (emphasis added)).

- <u>Count IV: Intentional Infliction of Mental/Emotional Distress.</u> *Id*. at ¶ 42 ("The Defendants entered a course of conduct to ***publish*** materially false information about the Plaintiff . . . ." (emphasis added)).

Editorial decisions of this kind "fall[] squarely within th[e] traditional definition of a publisher and, therefore, [are] clearly protected by [Section] 230's immunity." *Zeran*, 129 F.3d at 332; *see also Barnes*, 570 F.3d at 1102 ("[P]ublication involves reviewing, editing, and deciding ***whether to publish or to withdraw from publication*** third-party content." (emphasis added)); *Klayman*, 753 F.3d at 1359.

In *Zeran*, for instance, the Fourth Circuit held that Section 230(c)(1) barred a defamation claim alleging that AOL had unreasonably delayed in removing defamatory messages, refused to post retractions of those messages, and failed to screen for similar postings thereafter. 129 F.3d at 330-31; *see also Nemet*, 591 F.3d at 254-55 (Section 230(c)(1) barred defamation claim against website operator who allegedly published defamatory content created by third parties); *Winter v. Bassett*, No. 1:02 CV 00382, 2003 WL 27382038, at *7 (M.D.N.C. Aug. 22, 2003) ("The Fourth Circuit has clearly held that § 230 creates a federal immunity to any cause of action that would make ISPs liable for information originating with a third-party user of the service."),

ELECTRONICALLY FILED - 2019 May 22 8:44 AM - HORRY - COMMON PLEAS - CASE#2018CP2606158

aff'd, 157 F. App'x 653 (4th Cir. 2005).

In his opposition, Plaintiff appears to concede that CDA immunity applies to his defamation and conspiracy claims.[8] *See* Opp. at 4-6. But he contends that the CDA does not apply to his outrage and intentional infliction of emotional distress claims because, for those causes of actions, "Plaintiff does not need to establish Defendant Facebook as the publisher of the vulgar and false statements of Defendant Malepeai." Opp. at 5. Plaintiff provides no authority supporting that proposition, but the thrust of his argument seems to be that CDA immunity does not apply if the material published is particularly offensive, or if an interactive computer service provider is asked to remove allegedly offensive content but does not. *Id*. at 4-6. The Court disagrees.

First, as numerous courts have held, the applicability of Section 230(c)(1) immunity does not turn on whether, or to what degree, the content at issue is offensive. Instead, what matters is "whether the cause of action inherently requires the court to treat the defendant as the 'publisher or speaker' of content provided by another." *Barnes*, 570 F.3d at 1101-02. If it does, immunity applies. *Id.* at 1102. Thus, courts routinely apply CDA immunity to all manner of tort claims, including claims for intentional infliction of emotional distress (*i.e.*, outrage) predicated on the

---

[8] Plaintiff's only argument against the dismissal of his defamation and conspiracy claims on CDA immunity grounds is that the CDA is purportedly unconstitutional. Opp. at 4-5. However, Plaintiff has failed to cite any case, and this Court is aware of none, holding that any part of the CDA is unconstitutional. Moreover, federal courts of appeal, including the Fourth Circuit, have repeatedly upheld lower court decisions applying the CDA to dismiss claims against interactive service providers. *See, e.g., Zeran*, 129 F.3d at 330-31; *Nemet*, 591 F.3d at 254-55 (concluding Section 230(c)(1) barred defamation claim against website operator who allegedly published defamatory content created by third parties). Accordingly, the Court declines to hold that the CDA is unconstitutional.

ELECTRONICALLY FILED - 2019 May 22 8:44 AM - HORRY - COMMON PLEAS - CASE#2018CP2606158

posting of allegedly defamatory content. *See, e.g.*, *Winter*, 157 F. App'x at 654, affirming *Winter*, 2003 WL 27382038, at *7.[9] Indeed, courts have held that interactive computer service providers may enjoy CDA immunity even when a third party is alleged to have committed an illegal act by posting the content at issue. *See, e.g.*, *Jane Doe No. 1*, 817 F.3d at 22 ("[C]laims that a website facilitates illegal conduct through its posting rules necessarily treat the website as a publisher or speaker of content provided by third parties and, thus, are precluded by section 230(c)(1).").[10]

Second, it is immaterial whether an interactive computer service provider is alerted to offending content or asked to remove it. Removing content, or declining to do so, falls squarely within the category of "editorial and self-regulatory functions" subject to CDA immunity. *Nemet*, 591 F.3d at 258; *Zeran*, 129 F.3d at 331. That is true regardless of whether the interactive computer service provider was asked to remove the content at issue. *See, e.g.*, *Universal Commc'n Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 420 (1st Cir. 2007) ("It is, by now, well established that notice of the unlawful nature of the information provided is not enough to make it the service provider's own speech." (citing *Zeran*, 129 F.3d at 332-33)).

In *Zeran*, for example, the plaintiff was allegedly subjected to defamatory and harassing

---

[9] *See also, e.g.*, *Bennett v. Google, LLC*, 882 F.3d 1163, 1165-68 (D.C. Cir. 2018); *Caraccioli v. Facebook, Inc.*, 700 F. App'x 588 (9th Cir. 2017); *Kabbaj v. Google Inc.*, 592 F. App'x 74 (3d Cir. 2015); *Jones*, 755 F.3d at 407; *Getachew v. Google, Inc.*, 491 F. App'x 923, 925-26 (10th Cir. 2012).

[10] *See also, e.g.*, *Jones*, 755 F.3d at 407; *Doe v. Am. Online, Inc.*, 783 So. 2d 1010, 1013-18 (Fla. 2001) (holding that Section 230(c)(1) preempts Florida law as to causes of action based in negligence against an Internet Service Provider (ISP) as a distributor of information allegedly in violation of Florida criminal statutes prohibiting the distribution of obscene literature and computer pornography).

ELECTRONICALLY FILED - 2019 May 22 8:44 AM - HORRY - COMMON PLEAS - CASE#2018CP2606158

messages wrongfully associating him with the Oklahoma City bombing. 129 F.3d at 330-31. America Online, the online service provider, was notified of the messages, but allegedly delayed in removing them, refused to post retractions, and failed to screen for similar postings thereafter, thus allowing the messages to reappear. *Id.* In concluding that Section 230(c)(1) barred the plaintiff's claims, the Fourth Circuit specifically rejected that argument that notice of offending content precludes CDA immunity. *Id.* at 332-34. Indeed, as the court explained, such an approach "would defeat the . . . primary purposes of the [CDA] and would certainly lessen the scope plainly intended by Congress' use of the term 'publisher.'" *Id.* at 334 (internal quotation marks omitted).

In sum, even if Plaintiff had established personal jurisdiction as to Facebook, the Court concludes that each of Plaintiff's claims against Facebook would be barred by CDA Section 230(c)(1).[11]

III. The Complaint Fails to State any Cause of Action Against Facebook

Finally, the Court finds that Plaintiff's complaint fails to state any plausible claim for relief against Facebook.

To survive a motion to dismiss under Rule 12(b)(6), SCRCP, a plaintiff must "state facts sufficient to constitute a cause of action." Rule 12(b)(6), SCRCP; *Paradis v. Charleston Cty. Sch. Dist.*, 424 S.C. 603, 613, 819 S.E.2d 147, 152 (Ct. App. 2018), *reh'g denied* (Oct. 18,

---

[11] During oral argument, Plaintiff's counsel suggested that it would be appropriate to defer the issue of CDA immunity until after discovery. The Court disagrees. As the Fourth Circuit has explained, CDA provides "an immunity from suit rather than a mere defense to liability." *Nemet*., 591 F.3d at 254 (quoting *Brown*, 278 F.3d at 366 n.2). Courts "resolve the question of § 230 immunity at the earliest possible stage of the case because that immunity protects websites not only from ultimate liability, but also from having to fight costly and protracted legal battles. *Id*. at 255 (internal quotations and citations omitted).

ELECTRONICALLY FILED - 2019 May 22 8:44 AM - HORRY - COMMON PLEAS - CASE#2018CP2606158

ELECTRONICALLY FILED - 2019 May 22 8:44 AM - HORRY - COMMON PLEAS - CASE#2018CP2606158

2018). This Court will "construe the complaint in a light most favorable to the nonmovant," and "determine if the 'facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.'" *Rydde v. Morris*, 381 S.C. 643, 646 (2009) (quoting *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct. App. 2001)). Factual allegations must be "well-pled" to be taken as true. *Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 135 (2014). "[A] claim should fail" if "a plaintiff states nothing more than legal conclusions." *Paradis*, 424 S.C. at 613 (citing *Talbot v. Padgett*, 30 S.C. 167, 171 (1889)).

A. The complaint fails to state a claim for defamation

Plaintiff alleges that Facebook "published and tolerated [defamatory] material." Compl. at ¶ 24. But nowhere does Plaintiff's complaint describe the content of any allegedly defamatory statements. This deficiency is fatal to Plaintiff's defamation claim. *See, e.g.*, *Paradis*, 424 S.C. at 613, 819 S.E. 2d at 153; *McNeil v. S.C. Dep't of Corr.*, 404 S.C. 186, 195, 743 S.E. 2d 843, 848 (Ct. App. 2013) (affirming dismissal of a defamation claim where the complaint failed to "set forth with any specificity what the alleged false statements were"); *Erby v. Webster Univ.*, C.A. No. 3:13-518-JFA-SVH, 2013 WL 5495586, at *3 (D.S.C. Oct. 1, 2013) (applying South Carolina law, and concluding that the complaint failed to state a valid claim for defamation because it failed to describe the content of the statements).

In *Paradis*, for instance, the complaint alleged that the defendant's "statements and actions, including false accusations that Plaintiff could not effectively teach her students and manage her classroom, injured Plaintiff in her trade business and profession." *Paradis*, 424 S.C. at 613-14, 819 S.E. 2d at 153. The court found those allegations insufficient to support a defamation claim because, among other reasons, the plaintiff failed to describe what was said.

ELECTRONICALLY FILED - 2019 May 22 8:44 AM - HORRY - COMMON PLEAS - CASE#2018CP2606158

Id. at 614 ("Rule 12(b)(6) requires the plaintiff to allege facts. [Plaintiff] failed to do so."). The same holds true here. Plaintiff's complaint recites legal conclusions without providing any factual basis. Accordingly, his defamation claim against Facebook must be dismissed.

B. The complaint fails to state a claim for civil conspiracy

Plaintiff's claim for civil conspiracy likewise fails, for three reasons.

First, Plaintiff's core allegation that Facebook "published and tolerated materially false information" posted by Defendant Malepeai, even if true, does not plausibly demonstrate any agreement between Facebook and Malepeai, much less an agreement whose "primary purpose . . . [was] to injure the plaintiff." *Lee v. Chesterfield Gen. Hosp., Inc*., 289 S.C. 6, 13, 344 S.E. 2d 379, 383 (Ct. App. 1986); *see also Pye v. Estate of Fox*, 369 S.C. 555, 567, 633 S.E. 2d 505, 511 (2006); *Walker v. Progressive Cas. Ins. Co*., C.A. No. 3:17-1935-MBS-SVH, 2017 WL 4617031, at *2 (D.S.C. Oct. 16, 2017) (applying South Carolina law, and granting a motion to dismiss in part because "a civil conspiracy claim cannot exist unless two or more persons are acting in concert").[12]

Second, the claim fails to "allege additional acts in furtherance of a conspiracy rather than reallege other claims within the complaint." *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E. 2d 871, 874 (Ct. App. 2009) (citing *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E. 2d 607, 611 (1981)). To support "a civil conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from

[12] In South Carolina, a civil conspiracy consists of three elements: "(1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage." *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E. 2d 871, 874 (Ct. App. 2009).

other wrongful acts alleged in the complaint." *Hackworth*, 385 S.C. at 115-16, 682 S.E. 2d at 875 (granting motion to dismiss where plaintiff's civil conspiracy claim reiterated the allegations contained in other causes of action); *Kuznik v. Bees Ferry Assocs*., 342 S.C. 579, 611, 538 S.E. 2d 15, 31 (Ct. App. 2000) ("Because [the third party plaintiff] . . . merely realleged the prior acts complained of in his other causes of action as a conspiracy action but failed to plead additional acts in furtherance of the conspiracy, he was not entitled to maintain his conspiracy cause of action."). Here, because Plaintiff's civil conspiracy claim relies on the same factual predicate as his other causes of action, the civil conspiracy claim necessarily fails.

Third, Plaintiff has failed to allege special damages that "go beyond the damages alleged in other causes of action." *Hackworth*, 385 S.C. at 116-17, 682 S.E. 2d at 875-76; *see, e.g.*, *Todd*, 276 S.C. at 293, 278 S.E. 2d at 611 (sustaining a demurrer because the complaint "does no more than incorporate the prior allegations and then allege the existence of a civil conspiracy and pray for damages"); *Paradis*, 424 S.C. at 616, 819 S.E. 2d at 154 (affirming dismissal of a civil conspiracy claim, and noting that the claimed "reputational damages" for the alleged civil conspiracy "are precisely the damages one would expect from defamatory statements"); *Hotel & Motel Holdings, LLC v. BJC Enters., LLC*, 414 S.C. 635, 650-51, 780 S.E. 2d 263, 272 (Ct. App. 2015) (affirming a dismissal because "Appellants . . . failed to plead with specificity any special damages . . . for conspiracy"). Plaintiff alleges that he has suffered damages for civil conspiracy in the form of "injury to reputation and standing in the community, embarrassment, humiliation, diminishment of earnings, and loss of goodwill." Compl., ¶ 35. But these are precisely the damages requested in his defamation claim, *see id.* at ¶¶ 27, 29, and his outrage claim, *see id.* at ¶¶ 45, 48 — none of which the complaint provides any factual basis for in any event.

C. The complaint fails to state a claim for outrage or intentional infliction of emotional distress

ELECTRONICALLY FILED - 2019 May 22 8:44 AM - HORRY - COMMON PLEAS - CASE#2018CP2606158

Plaintiff's claims for outrage and intentional infliction of emotional distress fail because Plaintiff's complaint offers no allegations to suggest that Facebook's regulation of unspecified content, allegedly created and posted by Defendant Malepeai, was "so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community."[13] Nor does the complaint include any allegations to suggest that Facebook has "acted intentionally or recklessly to inflict severe emotional distress." *Melton v. Medtronic, Inc.*, 389 S.C. 641, 651, 698 S.E. 2d 886, 891 (Ct. App. 2010).

IV

For the foregoing reasons, Facebook's motion to dismiss is GRANTED. IT IS THEREFORE ORDERED that the complaint is DISMISSED WITH PREJUDICE as to Facebook.

AND IT IS SO ORDERED.

____
Benjamin H. Culbertson
Resident Circuit Judge
Fifteenth Judicial Circuit

_____________________, 2019

_________________________, South Carolina

[13] "To establish intentional infliction of emotional distress or outrage, a plaintiff must establish: (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable man could be expected to endure it." *Melton v. Medtronic, Inc.*, 389 S.C. 641, 651, 698 S.E. 2d 886, 891 (Ct. App. 2010).

ELECTRONICALLY FILED - 2019 May 22 8:44 AM - HORRY - COMMON PLEAS - CASE#2018CP2606158

ELECTRONICALLY FILED - 2019 May 22 8:44 AM - HORRY - COMMON PLEAS - CASE#2018CP2606158

Horry Common Pleas

Case Caption: Kevin Ralph Richard VS Facebook Inc A Delaware Corporation , defendant, et al

Case Number: 2018CP2606158

Type: Order/Dismissal

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2019-05-21 12:45:42

ELECTRONICALLY FILED - 2019 May 22 8:44 AM - HORRY - COMMON PLEAS - CASE#2018CP2606158