

NO. 2018-69816\*

Jane Doe  
vs.  
Facebook, Inc; et al

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IN THE DISTRICT COURT OF  
HARRIS COUNTY, TEXAS  
334th JUDICIAL DISTRICT

NO. 2018-82214

Jane Doe,  
vs.  
Facebook, Inc., dba Instagram, Inc. et  
al

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IN THE DISTRICT COURT OF  
HARRIS COUNTY, TEXAS  
334th JUDICIAL DISTRICT

Order

Defendant Facebook seeks dismissal of these two cases pursuant to 91a of the Texas Rules of Civil Procedure. This motion is one of several procedural preliminary hurdles that the parties advise will be filed and argued in these cases prior to full litigation of the underlying claims. While a ruling in Facebook's favor may end the case for Facebook, a ruling for the Plaintiffs only allows the case to proceed to the next level.

Rule 91a requires dismissal of a claim if the action "has no basis in law or fact. A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle a claimant to the relief sought. A cause of action has no basis in fact if no reasonable person could believe the facts pleaded." Tex. R. Civ. P. 91a.1. The Court may not consider evidence, but only the allegations in the petition and arguments of counsel in their motions and responses. At this stage, Facebook is not arguing the facts, but rather claims it is not liable to the Plaintiffs because of the immunity granted internet service providers under Section 230 of the Federal Communications Decency Act, 47 U.S.C. § 230 (the "Act").

47 USC § 230(c)(1) provides: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." In 2018, Congress added exclusions to this broad grant of immunity to ensure that sex trafficking laws were not impacted. The parties debate the extent of the exclusions.

The parties do not dispute that Facebook is an interactive computer service as defined in the statute at 47 § USC 230(f)(2). The question presented to the Court is

whether the claims raised by Plaintiffs treat Facebook as the publisher or speaker of information provided by another.

Plaintiffs have brought causes of action sounding in negligence, gross negligence and statutory damages under the Texas Civil Practice and Remedies Code Chapter 98, which allows for damages from persons who engage in trafficking or knowingly or intentionally benefit from such traffic. Plaintiffs contend that Facebook facilitates and/or was used by predators to find, groom, target, recruit and kidnap children into the sex trade. Plaintiffs allege that Facebook profits from the collection of data and the use of the data to target and promote interactions between Facebook users. These interactions include minors and sexual predators. Each of the Plaintiffs are victims of human trafficking to whom Plaintiffs contend Facebook owes a variety of duties which have been breached leading to the Plaintiffs being victimized in human trafficking. Plaintiffs contend they are not seeking to impose liability for the publication of the third party communications, but rather they seek to impose liability for Facebook's independent actions or failure to act, specifically failure to warn, negligence in undertaking to protect potential victims of sex trafficking, and for knowingly facilitating and benefiting from the sex trade.

Facebook contends that all of Plaintiffs' claims turn entirely on the communications Plaintiffs had with malicious third parties. Because Plaintiffs' injuries are dependent on those communications, Facebook contends they are all barred by the immunity granted internet service providers under the Act.

The language of the statute is broad and both parties have cited cases that support their positions. Facebook points to the broad grants of immunity articulated in *Zeran v. America Online Inc.* 129 F.3d 327 (4<sup>th</sup> Cir. 1997) (republishing defamation) and *Doe v. MySpace, Inc.* 528 F.3d 413 (5<sup>th</sup> Cir. 2008) (negligence—failure to implement safety measures), among others. Plaintiffs points to the more narrow immunity recognized in *Doe v. Internet Brands, Inc.*, 824 F.3d 846 (9<sup>th</sup> Cir. 2016) (ISP not immune to failure to warn claim) and *Huon v. Denton*, 841F.3d 733 (7<sup>th</sup> Cir. 2016) (ISP not immune to defamation in content it generated).

While the injuries presented in the 9<sup>th</sup> and 5<sup>th</sup> Circuit cases are similar to those presented in this case, the failure to warn cause of action presented in this case mirrors that presented in the 9<sup>th</sup> Circuit case. None of the cases deal with the statutory cause of action pled in this case, and all of the cases pre-dated the amendments adopted in 2018.

The few Texas cases that have addressed the issue come out of the Beaumont Court of Appeals and none of these deal with the same causes of action or facts as are presented in this case. See *Milo v. Martin*, 311 S.W.3d 210 (Tex. App.—Beaumont 2010, no pet.) (defamation); *GoDaddy.com LLC v. Toups*, 429 S.W.3d 752 (Tex. App.—Beaumont 2014, pet. denied) (intentional infliction of emotional distress); and, *Davis v. Motiva Enterprises LLC*, No. 09-14-00434-CV, 2015 WL 1535694 (Tex. App.—Beaumont April 2, 2015, pet. denied) (failure to supervise employees' internet use).

In reviewing the statute and the cases cited by the parties, the Court concludes that Plaintiffs have plead causes of action that would not be barred by the immunity granted under the Act. Accordingly, Defendants' Rule 91A Motions to Dismiss are denied.



Signed:  
5/23/2019

A handwritten signature in black ink, appearing to read "Steven Kirkland".

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STEVEN KIRKLAND  
Judge Presiding

**FILED**  
Marilyn Burgess  
District Clerk  
MAY 22 2019

Time: \_\_\_\_\_  
Harris County, Texas  
By \_\_\_\_\_  
Deputy

Unofficial Copy Office of Marilyn Burgess District Clerk