The Honorable Susan K. Serko
Hearing Date: April 26, 2013 or other date as set by the Court
With Oral Argument[1]

SUPERIOR COURT OF THE STATE OF WASHINGTON
PIERCE COUNTY

J.S., S.L., and L.C., Plaintiffs, v. VILLAGE VOICE MEDIA HOLDINGS, L.L.C., d/b/a Backpage.com; BACKPAGE.COM, L.L.C; NEW TIMES MEDIA, L.L.C., d/b/a Backpage.com; and BARUTI HOPSON, Defendants.	No. 12-2-11362-4 **BACKPAGE.COM, LLC'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT**

[1] The parties agreed to a briefing schedule for this motion, specifically that Backpage.com would file the motion on March 25, 2013, Plaintiffs would respond by April 8, 2013, and Backpage.com would reply by April 15, 2013. The parties also agreed to request that the Court schedule a hearing date and time separate from the general civil motions calendar, to allow the Court sufficient time to address and consider the issues raised by the motion.

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I. INTRODUCTION

Congress enacted Section 230 of the Communications Decency Act, 47 U.S.C. § 230 ("CDA"), to preserve the robust free flow of information on the Internet and to encourage self-policing by websites and other online service providers. Congress achieved these goals by making such providers immune from any and all state-law claims based on content provided by third parties (such as users of a website), including any steps that providers take to restrict, monitor or remove content. *Id.* §§ 230(c)(1), 230(e)(3). Plaintiffs' claims, if allowed, would entirely negate the protections of Section 230 and directly contravene Congress's goals.

Plaintiffs are three minors who allege they were victimized by adults who prostituted them. Rather than target the pimps, however, they have taken aim at Backpage.com, the website where the pimps allegedly posted ads. Yet they admit that the pimps—not Backpage.com—created and posted the ads. They also admit that Backpage.com imposes rules and restrictions to prevent and prohibit ads for illegal conduct (including, specifically, any explicit or implicit offers of sex for money) and that the pimps violated those rules, although they agreed and appeared to comply with them. Thus, Plaintiffs seek to sue Backpage.com because individuals misused the website and, despite its efforts, Backpage.com is unable to prevent all such misuse.

In enacting the CDA, Congress recognized the reality that some people will misuse the Internet to post unlawful and offensive content. Section 230 reflects a carefully considered choice of Congress, and its mandate is clear, as hundreds of cases have held: A website is immune from claims based on third-party content it publishes, even if (as Plaintiffs allege here) it knew or should have known the content was unlawful or received notice that the content was illegal. Congress's choice is not subject to Plaintiffs' second-guessing. It also makes good sense. Any other rule would stifle speech on the Internet because websites, fearful of liability and incapable of reviewing the millions of posts submitted by users daily, would be incentivized to preclude all but the most innocuous

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third-party content or all third-party content in its entirety. This would not merely chill free speech on the Internet, it would destroy it. Moreover, Plaintiffs' attempt to sue a website ***because of*** its rules, restrictions and other self-policing efforts would cause websites to abandon voluntary measures to prevent unlawful or unwanted content in favor of the safer course of not policing their websites.

No court has ever accepted such a backwards interpretation of Section 230. Quite the contrary, courts have flatly rejected the very theories Plaintiffs advance, including in one case against Backpage.com, *M.A. v. Village Voice Media Holdings, LLC*, 809 F. Supp. 2d 1041 (E.D. Mo. 2011), and another against Craigslist, *Dart v. Craigslist, Inc.*, 665 F. Supp. 2d 961 (N.D. Ill. 2009). These courts recognize the broad immunity that Section 230 provides, as have courts in Washington. *See Schneider v. Amazon.com*, 108 Wn. App. 454, 31 P.3d 37 (2001). At bottom, all of the case law is clear that, while a plaintiff may sue someone who used a website for an unlawful purpose, they cannot sue the website.

II. FACTUAL BACKGROUND

According to their First Amended Complaint, Plaintiffs are three minors who ran away from home and were recruited into prostitution by "professional adult pimps." *See* First Am. Compl. ¶ 1.2. The pimps—defendant Baruti Hopson and two other, unnamed individuals—allegedly created and posted advertisements about Plaintiffs on Backpage.com. *Id*. ¶¶ 1.2 ("adult pimps … posted advertisements for the girls"); 4.1 ("Hopson … uploaded advertisements of minor J.S. on Backpage.com"); 5.2 ("adult pimps … create[d] … and then uploaded [the] advertisements of S.L. onto … Backpage.com"); *id.* ¶¶ 2.8, 6.2, 6.3. Plaintiffs do ***not*** allege that Backpage.com[2] prostituted the Plaintiffs or

[2] Plaintiffs have sued Backpage.com, LLC, as well as its corporate parents at the time the complaint was filed, New Times Media, LLC, and Village Voice Media Holdings, LLC. *See* First Am. Compl. ¶¶ 2.4-2.7. The Backpage.com Defendants do not concede that Plaintiffs have properly named all three companies in this action. For simplicity, however, this motion refers to all three companies as "Backpage.com," and seeks dismissal of all three under the CDA.

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wrote, created, or posted ads concerning them. *See* First Am. Compl. ¶¶ 1.2, 2.8, 4.1, 5.2, 6.2, 6.3.

Plaintiffs also allege (correctly) that Backpage.com takes measures to police its site and prohibit improper or illegal conduct, particularly prostitution and underage sex trafficking. *See* First Am. Compl. ¶¶ 3.6-3.13. For example, they admit that Backpage.com forbids "[s]exually explicit language," *id.* ¶ 3.6; prohibits ads with "naked images [or] images using transparent clothing," *id.* ¶ 3.9; and bars posting "content which advertises an illegal service" or "suggest[s] an exchange of sex acts for money," *id.* Plaintiffs also admit that Backpage.com "removes ads that violate these requirements," *id.* ¶ 3.9, and that, before posting content on Backpage.com, a user must agree ***not*** to post any "obscene or lewd … photographs," "any solicitation directly or in 'coded' fashion for any illegal service," or "any material … that exploits minors in any way." *Id.* ¶ 3.13. Finally, Plaintiffs concede that the posting rules on Backpage.com require users to certify that they are at least eighteen years old. *Id.* ¶ 3.19. Plaintiffs admit that users post ads to Backpage.com using an automated computer process and have no other contact with Backpage.com. *Id.* ¶ 3.19.

Plaintiff J.S. also asserts claims against Hopson, although the complaint contains only a single sentence asserting factual allegations about him—that he is the pimp who prostituted J.S., engaged in immoral communications with her, took naked and illicit photographs of her, and posted ads on Backpage.com about her. *Id.* ¶ 2.8. Plaintiffs S.L. and L.C. make similar allegations about a "pair of adult pimps" who prostituted them. *Id.* ¶¶ 5.1-5.2; 6.1-6.3. Again, the complaint contains almost no factual allegations about what these individuals did, except post ads on Backpage.com. *See* First Am. Compl. ¶¶ 5.1-6.7. Plaintiffs also admit that the ads posted by the alleged pimps complied with all of the site's rules and restrictions, at least facially, *id.* ¶¶ 4.1, 5.2, 6.4, although Plaintiffs' complaint as a whole alleges that the pimps lied and the ads they posted ***were*** for unlawful purposes.

These are essentially all of the ***factual*** allegations in Plaintiffs' First Amended Complaint. The balance of the 26-page complaint contains conclusory allegations, offered

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"upon information and belief," that all escort ads are actually ads for prostitution, *id.* ¶¶ 3.1, 3.2, 3.5; Backpage.com receives income from ads, *id.* ¶¶ 3.2, 3.4; and the many rules and restrictions prohibiting illicit content or illegal activities allow Backpage.com to "fly under the radar, *id.* ¶ 3.6, are "window dressing," *id.* ¶ 3.7, and are "a fraud and a ruse" to "evade law enforcement," *id.* ¶¶ 3.9, 3.14. At bottom, Plaintiffs challenge all of Backpage.com's efforts to monitor, police and restrict content on its site, asserting that "the entire purpose" of the website "is exactly what its content requirements … prohibit." *Id.* at ¶ 3.14. Based on this rationale—that Backpage.com must mean the opposite of what it says and does—Plaintiffs contend it should be liable for third-party ads on the site and whatever may occur as a result, asserting state-law claims for negligence, outrage, sexual exploitation of children in violation of RCW ch. 9.68A, vicarious liability, unjust enrichment, invasion of privacy, and civil conspiracy. *Id.* ¶¶ 7.1-7.21, 7.25-26.

III. ARGUMENT

A. Standards for Dismissal Under CR 12(b)(6).

Civil Rule 12(b)(6) is intended to "weed[] out complaints where, even if what the plaintiff alleges is true, the law does not provide a remedy." *McCurry v. Chevy Chase Bank*, 169 Wn. 2d 96, 102, 233 P.3d 861 (2010). "Dismissal under CR 12(b)(6) is appropriate in those cases where the plaintiff cannot prove any set of facts, consistent with the complaint, that would entitle the plaintiff to relief." *Perry v. Rado*, 155 Wn. App. 626, 230 P.3d 203 (2010) (citing *Bravo v. The Dolsen Cos.*, 125 Wn. 2d 745, 750, 888 P.2d 147 (1995)); *see McCurry*, 169 Wn. 2d at 101. The Court should treat well-pleaded factual allegations in the complaint as true, but need not accept legal conclusions or conclusory allegations. *Haberman v. Wash. Pub. Power Supp. Sys.*, 109 Wn. 2d 107, 120, 744 P.2d 1032, 755 P.2d 254 (1987); *Rodriguez v. Loudeye Corp.*, 144 Wn. App. 709, 717-18, 189 P.3d 168 (2008); *see, e.g., Clallam Cnty. Citizens for Safe Drinking Water v. City of Port Angeles*, 137 Wn. App. 214, 227, 151 P.3d 1079 (2007) (issue of whether city's fluoridation

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proposal was exempt from review under State Environmental Policy Act concerned statutory interpretation and so trial court did not have to accept plaintiff's allegation that water fluoridation is an unhealthy practice that should be eliminated).[3]

Dismissal under CR 12(b)(6) is particularly appropriate for claims preempted under federal law or barred by immunity, as many Washington cases demonstrate. *See, e.g.*, *Gorman*, 155 Wn. 2d at 215-219 (affirming 12(b)(6) dismissal of shipyard workers' claims as barred by the federal Longshore and Harbor Workers' Compensation Act); *Parsons v. Comcast of California/Colorado/Washington, Inc.*, 150 Wn. App. 721, 729, 208 P.3d 1261 (2009) (preemption under federal Cable Act); *Regan v. McLachlan*, 163 Wn. App. 171, 257 P.3d 1122 (2011) (affirming 12(b)(6) dismissal based on quasi-judicial immunity).[4] Both preemption and immunity are issues of law. *McCurry*, 169 Wn. 2d at 101 (preemption); *Michaels v. CH2M Hill, Inc*., 171 Wn. 2d 587, 597, 257 P.3d 532 (2011) (statutory immunity). Since the purpose of immunity is to provide "an *immunity from suit* rather than a mere defense to liability …, it is critical that insubstantial claims be resolved as quickly as possible," and dismissed at the earliest opportunity. *Robinson v. City of Seattle*, 119 Wn. 2d 34, 65, 830 P.2d 318, 336 (1992) (internal quotation and citation omitted; emphasis supplied by the court); *see Bailey v. State*, 147 Wn. App. 251, 259, 191 P.3d 1285 (2008).

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[3] The Court may also consider "hypothetical facts," but only if they are "*legally sufficient to support plaintiff's claim.*" *Gorman v. Garlock*, 155 Wn. 2d 198, 215, 118 P.3d 311 (2005) (quoting *Bravo*, 125 Wn. 2d at 750 (emphasis supplied by the court)). Thus, "[i]f a plaintiff's claim remains legally insufficient even under his or her proffered hypothetical facts, dismissal pursuant to CR 12(b)(6) is appropriate." *Gorman*, 155 Wn. 2d at 215. This aspect of the standards for assessing CR 12(b)(6) claims is irrelevant in this case because, as discussed below, Plaintiffs' claims are barred under Section 230 regardless of their speculative and conclusory allegations.

[4] *See also, e.g., Parrott-Horjes v. Rice*, 168 Wn. App. 438, 450, 276 P.3d 376 (2012) (preemption under Federal Employees' Group Life Insurance Act); *Howell v. Alaska Airlines, Inc.*, 99 Wn. App. 646, 652-53, 994 P.2d 901 (2000) (preemption under Airline Deregulation Act); *Rodriguez*, 144 Wn. App. at 719-720 (dismissal based on statutory immunity of corporate directors); *Jeckle v. Crotty*, 120 Wn. App. 374, 386, 85 P.3d 931, 937-38 (2004) (immunity of attorneys and law firms for acts arising out of representing their clients).

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This is precisely the point of Section 230 of the CDA—because the statute is meant to prevent websites from being ***sued*** for third-party content, the Court should apply it at the earliest possible juncture, *i.e.*, a 12(b)(6) motion to dismiss:

> As we have often explained in the qualified immunity context, "immunity is an *immunity from suit* rather than a mere defense to liability" and "it is effectively lost if a case is erroneously permitted to go to trial." *Brown v. Gilmore*, 278 F.3d 362, 366 n.2 (4th Cir.2002) (quotations omitted) (emphasis in original). We thus aim to 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." [*Fair Hous. Council v.*] *Roommates.com*, 521 F.3d [1157, 1175 (9th Cir. 2008)].

Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 591 F.3d 250, 254-55 (4th Cir. 2009); *see also MCW, Inc. v. Badbusinessbureau.com LLC*, 2004 WL 833595, at *7 (N.D. Tex. Apr. 19, 2004) ("The CDA, if applicable, is an appropriate ground for dismissal of the complaint under Rule 12(b)(6) because the Act would preclude [plaintiff] from establishing a set of facts that would entitle it to relief.").

The Washington Court of Appeals respected these principles and the important purposes of Section 230 in *Schneider v. Amazon.com*, 108 Wn. App. at 454. Applying the traditional Washington CR 12(b)(6) dismissal standard, the court recognized that, in Section 230, "Congress intended to extend immunity to all civil claims" under state law, and therefore affirmed the trial court's dismissal of all claims against Amazon.com. 108 Wn. App. at 42, 43. (*Schneider* is discussed in more detail below.) Dismissal under CR 12(b)(6) is appropriate here too.

B. Section 230 Provides Broad Immunity to Online Service Providers.

1. Congress Enacted Section 230 to Preserve Free Speech on the Internet and to Encourage Self-Policing.

Section 230 of the CDA unequivocally bars state-law claims seeking to impose liability on online service providers based on third-party content or efforts to restrict or police content. The statute provides immunity through three provisions. First, "[n]o

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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." 47 U.S.C. § 230(c)(1). Second, providers may not be liable for "any action voluntarily taken in good faith to restrict access to or availability" of material that is "obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable." 47 U.S.C. § 230(c)(2). Third, "no liability may be imposed under any State or local law that is inconsistent with this section." 47 U.S.C. § 230(e)(3).

Congress enacted Section 230 to achieve two fundamental goals. *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1122 (9th Cir. 2003) (the two goals of Section 230 are "to promote the free exchange of information and ideas over the Internet and to encourage voluntary monitoring"). "First, Congress wanted to encourage the unfettered and unregulated development of free speech on the Internet, and to promote the development of e-commerce." *Batzel v. Smith*, 333 F.3d 1018, 1027 (9th Cir. 2003); *see also Ben Ezra, Weinstein, & Co. v. Am. Online Inc.*, 206 F.3d 980, 985 n.3 (10th Cir. 2000) (Section 230 is meant "to promote freedom of speech"). To this end, Congress decided to "bar state-law plaintiffs from holding interactive computer service providers legally responsible for information created and developed by third parties." *Nemet Chevrolet*, 591 F.3d at 254. Otherwise, Congress realized, if online service providers could be liable for all content posted by third parties, they would severely restrict information available on the Internet. *See Zeran v. Am. Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997) (if online service providers were "[f]aced with potential liability for every message republished by their services, [they] might choose to severely restrict the number and type of messages posted"); *Batzel*, 333 F.3d at 1027-28 ("Making interactive computer services … liable for the speech of third parties would severely restrict the information available on the Internet.").

Second, Congress sought to encourage online service providers to "self-police" offensive material by providing immunity for such voluntary efforts. *Batzel*, 333 F.3d at 1028. In this regard, Congress made clear that it expressly intended to overrule *Stratton*

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Oakmont, Inc. v. Prodigy Services Co., 1995 WL 323710, at *4 (N.Y. Sup. Ct. May 24, 1995). In that case, a New York trial court held that, because Prodigy voluntarily deleted some offensive messages from its online service, it became liable as a publisher for defamatory content in messages it did not delete.[5] Congress enacted Section 230 to eliminate the "grim choice" that such a rule would present to online service providers, *i.e.*, those that voluntarily filter content would be responsible for all posts, while "providers that bury their heads in the sand and ignore problematic posts would escape liability altogether." *Roommates*, 521 F.3d at 1163; *see also Batzel*, 333 F.3d at 1029 ("If efforts to review and omit third-party defamatory, obscene or inappropriate material make a computer service provider or user liable for posted speech, then website operators and Internet service providers are likely to abandon efforts to eliminate such material from their site[s]." (citation omitted)).

Thus, courts across the country have interpreted the CDA to establish broad federal immunity to state-law claims against service providers, such as Plaintiffs' claims against Backpage.com here. *See Perfect 10, Inc. v. CCBill LLC*, 488 F.3d 1102, 1118 (9th Cir. 2007); *Johnson v. Arden*, 614 F.3d 785, 791 (8th Cir. 2010); *Nemet Chevrolet*, 591 F.3d at 260; *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008); *Universal Commc'n Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 419 (1st Cir. 2007); *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006); *Carafano*, 339 F.3d at 1129; *Green v. Am. Online, Inc.*, 318 F.3d 465, 471 (3d Cir. 2003); *Ben Ezra, Weinstein & Co.*, 206 F.3d at 984-85.

2. Washington Law Recognizes Congress's Purposes In the CDA and the Broad Immunities Section 230 Provides.

In *Schneider v. Amazon.com, Inc.*, 108 Wn. App. at 454, the Court of Appeals recognized the purposes of Section 230 and its broad immunity. There, an author sued Amazon.com, alleging that third-party comments about him on the website were "false,

[5] Newspapers, magazines, and television and radio stations historically could be held liable for publishing obscene or defamatory material written or prepared by others. *Batzel*, 333 F.3d at 1026.

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defamatory and/or scurrilous" (including accusations that he was a felon). *Id.* at 458. Amazon.com agreed that one or more of the postings violated its guidelines but failed to remove them. *Id.* The plaintiff asserted claims of negligent misrepresentation, tortious interference and breach of contract. *Id.* On a CR 12(b)(6) motion, the trial court dismissed plaintiff's claims with prejudice on the ground that Amazon.com was immune and the claims were barred under Section 230. *Id.* The Court of Appeals affirmed and held that Amazon.com fell squarely within the immunity protections of Section 230, recognizing that the law was intended to preserve the vibrant and free flow of information on the Internet and to remove disincentives for service providers to block and filter information. *Id.*at 461-62. The plaintiff's claims, the court found, sought to hold Amazon.com liable for editorial functions—*i.e.*, "deciding whether to publish, withdraw, postpone or alter content" of "the failure to remove [content]"— exactly what "Congress sought to protect." *Id.* at 463, 466.

C. Section 230(c)(1) Bars Plaintiffs' Claims Because They Would Impose Publisher Liability on Backpage.com for Third-Party Content.

Section 230(c)(1) immunity applies here because all three elements under the statute are satisfied: (1) Backpage.com is a "provider … of an interactive computer service," (2) Plaintiffs base their claims on "information provided by another information content provider," and (3) their claims seek to treat Backpage.com "as the publisher or speaker" of that information. *See* 47 U.S.C. § 230(c)(1); *Schneider*, 108 Wn. App. at 460 (listing three elements); *Batzel*, 333 F.3d at 1037 (same).

1. Backpage.com Is an "Interactive Computer Service."

The CDA defines an "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, including specifically a service or system that provides access to the Internet …." 47 U.S.C. § 230(f)(2).

Websites like Backpage.com are the quintessential and "most common interactive computer services." *Roommates.com*, 521 F.3d at 1162 n.6; *see also Schneider*, 108 Wn.

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App. at 461 (holding that Amazon.com website is "squarely within the definition" of an interactive computer service); *Lycos*, 478 F.3d at 419 ("[W]eb site operators … are providers of interactive computer services within the meaning of Section 230."). More specifically, courts have held that Backpage.com and other classified ad websites are "interactive computer services" within the meaning of the CDA. *See M.A. v. Village Voice Media*, 809 F. Supp. 2d at 1048 (Backpage.com is an interactive computer service); *Chicago Lawyers' Comm. For Civil Rights Under Law v. Craigslist, Inc.*, 519 F.3d 666, 672 (7th Cir. 2008) (same for Craigslist); *Dart*, 665 F. Supp. 2d at 965 (Craigslist).

2. The Ads Plaintiffs Challenge Are "Information Provided By Another Information Content Provider."

Plaintiffs base their claims against Backpage.com on ads that are "information provided by another information content provider." *See* 47 U.S.C. § 230(c)(1). The CDA defines an "information content provider" as "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service." 47 U.S.C. § 230(f)(3).

Here, Plaintiffs admit the ads that are the basis of their claims were created and posted by the pimps (*i.e.*, third-party users), not Backpage.com. As to Plaintiff J.S., the First Amended Complaint alleges that Hopson "posted illicit photographs," "uploaded advertisements" and "advertise[d] [her] for sex." First Am. Compl. ¶¶ 2.8, 4.1, 4.2. As to Plaintiff S.L., the complaint alleges that "adult pimps" "create[d] advertisements for the Backpage.com escort website" and "uploaded [the] advertisements" for sex with her. *Id.* ¶¶ 5.2, 5.3. As to Plaintiff L.C., the complaint alleges that the "pimp took photographs of L.C." and "posted multiple advertisements of L.C. on the Backpage.com escort website." *Id.* ¶¶ 6.2, 6.3, 6.5. Plaintiffs make no allegations that Backpage.com created the ads or required any of the content contained in the ads, nor could they—the content was provided entirely by the users who posted the ads. According to Plaintiffs' allegations, at most the

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Backpage.com website provided only a "context" in which users (including the alleged pimps) chose what to post and where to post it.

3. Plaintiffs Seek to Hold Backpage.com Liable As the "Publisher or Speaker" of Third-Party Content.

Section 230(c)(1) of the CDA immunizes Backpage.com from any state-law claims seeking to impose liability as though it were "the publisher or speaker" of third-party content. 47 U.S.C. § 230(c)(1). This applies to all "lawsuits seeking 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; *accord Doe v. MySpace*, 528 F.3d at 419-20. Accordingly, "any activity that can be boiled down to deciding whether to exclude material that third parties seek to post online is perforce immune under section 230." *Roommates.com*, 521 F.3d at 1170-71; *accord Barnes v. Yahoo!, Inc*., 570 F.3d 1096, 1105 (9th Cir. 2009) (Section 230 "shields from liability all publication decisions, whether to edit, to remove, or to post, with respect to content generated entirely by third parties").

Plaintiffs seek to impose liability on Backpage.com for allowing third parties to post ads, or, to put it in the converse, for not blocking or disallowing certain ads. *See* First Am. Compl. ¶¶ 1.2, 3.2, 3.3. These are quintessential publisher functions that fall squarely within Section 230 immunity. *See, e.g., Barnes v. Yahoo!, Inc.*, 570 F.3d at 1103 ("removing content is something publishers do," and failure to remove content falls within Section 230 immunity); *Green v. AOL*, 318 F.3d at 469 ("decisions relating to the monitoring, screening, and deletion of content [are] quintessentially related to a publisher's role," as to which Section 230 "specifically proscribes liability"); *Doe v. MySpace*, 528 F.3d at 420 (alleged failure to implement measures to prevent harmful content are publisher's functions, immune under Section 230); *Lycos*, 478 F.3d at 422 (website policies

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and decisions about how to treat third-party postings generally are editorial decisions, subject to Section 230 immunity).[6]

In short, all three of the requirements for Section 230(c)(1) immunity are met here. Plaintiffs are seeking to hold Backpage.com liable for third-party content it allowed to be published and did not block. Section 230 plainly bars Plaintiffs' claims, and the Court need go no further to dismiss Plaintiffs' complaint as to Backpage.com with prejudice.

4. Plaintiffs Cannot Defeat Section 230 Immunity By Alleging that Backpage.com Knows of or Encourages Unlawful Content.

Apparently misunderstanding Section 230 immunity, Plaintiffs argue repeatedly in their complaint that Backpage.com should be liable because it supposedly knows or should know that all escort ads are really ads for prostitution and therefore the website encourages "illicit commercial sex." First. Am. Compl. ¶ 3.1; *see, e.g., id.* ¶¶ 3.1-3.16. Plaintiffs' allegations are not only baseless speculation that the Court need not credit,[7] they do not defeat Section 230 immunity regardless. Online service providers are entitled to such immunity even if they know of illegal content or fail to take down content after notice of its illegality.

As an initial matter, the federal district court for the Western District of Washington recently rejected the same contention Plaintiffs make here—that escort ads on Backpage.com are merely veiled ads for prostitution. Noting that "numerous states license, tax and otherwise regulate escort services as legitimate businesses," the court concluded that forcing a website to shut down a section for escort ads "will likely chill protected

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[6] The fact that Plaintiffs seek the same relief from Backpage.com for operating its website as they do against Hopson for posting ads and exploiting, prostituting and assaulting Plaintiff J.S. underscores that they are seeking to treat Backpage.com as the publisher or speaker of the ads. *See Zeran*, 129 F.3d at 333 ("Our view that [plaintiff's] complaint treats AOL as a publisher is reinforced because AOL is cast in the same position as the party who originally posted the offensive messages.")

[7] For example, Plaintiffs claim the escort ads they collected from the Backpage.com website are "obviously for the purpose of commercial sexual services," First Am. Compl. ¶ 3.3, yet they admit that all ads must comply with prohibitions against "suggest[ing] an exchange of sex acts for money" or "advertis[ing] an illegal service," *id.* ¶ 3.9.

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speech." *Backpage.com, LLC v. McKenna*, 881 F. Supp. 2d 1262, 1281 (W.D. Wash. 2012) (citations omitted).

Moreover, "[i]t 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" and cannot defeat Section 230 immunity. *Lycos*, 478 F.3d at 420. If an online provider could be held liable based merely on alleged or implicit notice of unlawful user content—or even actual notice—that would destroy "the vigor of Internet speech and … service provider self-regulation." *Zeran*, 129 F.3d at 333; *see Schneider*, 108 Wn. App. at 463-64 (Amazon.com entitled to Section 230 immunity even though plaintiff provided notice of unlawful content and Amazon.com failed to remove it). For this reason, courts have rejected knowledge and notice as exceptions to Section 230's immunity. For example, the Stubhub website was held entitled to Section 230 immunity, notwithstanding allegations that it knew or should have known tickets were being sold by third parties at more than face value in violation of state anti-scalping laws. *Hill v. Stubhub, Inc.*, 727 S.E.2d 550, 559-60 (N.C. App. 2012). Even more squarely on point, a court rejected the same argument of knowledge and notice-based liability asserted against Backpage.com for escort ads on its site in *M.A. v. Village Voice*, 809 F. Supp. 2d at 1041, which is discussed more fully below.

"Similarly, the fact that a website acted in such a manner as to encourage the publication of unlawful material does not preclude a finding of immunity pursuant to [Section] 230." *Hill v. Stubhub*, 727 S.E.2d at 560. Here again, if any plaintiff can eliminate Section 230 simply by making bare allegations that a website "encouraged" unlawful content, the protections of the CDA would become meaningless and websites would be forced to preclude or severely restrict third-party speech to avoid liability.[8] Courts uniformly reject such arguments about supposed "encouragement." *See, e.g.*, *Ascentive*,

[8] Backpage.com categorically disagrees with Plaintiffs' allegations that its website "encourages" illegal content of any kind. In fact, Backpage.com employs extensive measures (including using automated filters and conducting manual review of ads) to prevent illegal or improper content. However, as explained above, Section 230 applies regardless.

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LLC v. Opinion Corp., 2011 WL 6181452, at *20 (E.D.N.Y. Dec. 13, 2011) ("[T]here is simply 'no authority for the proposition that [encouraging the publication of allegedly improper content] makes the website operator responsible, in whole or in part, for the 'creation or development' of every post on the site." (quoting *Global Royalties, Ltd. v. Xcentric Ventures, LLC*, 544 F. Supp. 2d 929, 933 (D. Ariz. 2008) (holding that "ripoffreport.com" was not an information content provider even though it allegedly encouraged defamatory reviews by others for its financial benefit)); *S.C. v. Dirty World, LLC*, 2012 WL 3335284, at *4 (W.D. Mo. Mar. 12, 2012) ("As a matter of law, and even if true, encouraging defamatory posts is not sufficient to defeat CDA immunity.").

In short, Plaintiffs' theory and their patent attempts to avoid Section 230 immunity are wrong. Each element of section 230(c)(1) immunity is satisfied here.[9]

D. Plaintiffs Cannot Defeat Backpage.com's Section 230 Immunity By Attacking the Website As a Whole.

Plaintiffs' complaint is, on the whole, a broadside attack on adult-oriented advertising on the Backpage.com site. But courts have uniformly rejected claims premised

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[9] Backpage.com is also immune under Section 230(c)(2)(A), which provides separate protection for any actions taken by an online service provider to voluntarily restrict access to material the provider believes may be obscene, lewd, or otherwise objectionable. Section 230(c)(2)(A) provides:

> No provider or user of an interactive computer service shall be held liable on account of … any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.

47 U.S.C. § 230(c)(2)(A). *See, e.g.*, *Holomaxx Technologies v. Microsoft Corp*., 783 F. Supp. 2d 1097, 1104 (N.D. Cal. 2011); *see also, e.g.*, *Green*, 318 F.3d at 470-71 (affirming dismissal of claim that AOL "negligent[ly] fail [ed] to properly police its network for content transmitted by its users," noting that Section 230(c)(2)(A) "allows AOL to establish standards of decency without risking liability for doing so."), *cert. denied*, 540 U.S. 877 (2003); *Doe v. MySpace, Inc.*, 474 F. Supp. 2d 843, 850 n.5 (W.D. Tex. 2007) ("To the extent Plaintiffs seek to hold MySpace liable for ineffective security measures and/or policies … the Court … finds such claims are barred under § 230(c)(2)(A)."), *aff'd*, 528 F.3d 413 (5th Cir. 2008), *cert. denied*, 555 U.S. 1031 (2008).

The Court need not consider this separate immunity because Backpage.com is plainly immune under Section 230(c)(1). But if there were *any* doubt about the latter, Section 230(c)(2)(A) makes clear that Congress intended that providers like Backpage.com be immune in precisely the circumstances here.

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on general allegations about an entire website, as Plaintiffs assert here, recognizing instead that the focus must be on the specific content that is challenged.

In *S.C. v. Dirty World*, 2012 WL 3335284, for example, the court rejected the plaintiff's assertions that a website should be treated as a content provider (and therefore lose Section 230 immunity) because its general structure and operation encouraged submission of salacious and offensive content about individuals, stating: "This argument fails because the CDA focuses on the specific post at issue." *Id.* at *4. The court in *Whitney Info. Network v. Xcentric Ventures, LLC*, 2008 WL 450095, at *12 (M.D. Fla. Feb. 15, 2008), rejected a similar attack, stating, "The issue … is whether Defendants are responsible, in whole or in part, for the creation or development *of the particular postings* relating to [Plaintiff] that are the subject of this lawsuit." (emphasis added)). Likewise, *Hill v. Stubhub*, 727 S.E.2d at 550, held that the trial court erred in concluding that Stubhub was not entitled to Section 230 immunity based on its views of the company's business and website as a whole. This "'entire website' approach was fatally flawed," the court found, holding that, instead, the CDA required focus on the specific posts and transactions that were the subject of the plaintiff's claims. *Id.*

Plaintiffs attempt the same fatally flawed approach here. They devote the vast majority of their complaint to unsupported and speculative arguments about Backpage.com as a whole, while saying almost nothing about the ads they allege third parties posted about them—again with the exceptions that they admit the pimps created the ads, they had no contact with Backpage.com other than through the automated process to upload ads, and the ads were required to comply with all rules and restrictions of the site, and appeared to do so.[10] Plaintiffs' attempt to castigate Backpage.com in general should be rejected as improper and irrelevant to Section 230 immunity.

[10] Although Plaintiffs allege that Backpage.com "conspired" with the pimps, First Am. Compl. ¶¶ 3.2, 4.2, 5.3, 5.4, 6.5, 7.25, they do so with nothing but conclusory allegations without any factual basis. This is insufficient as a matter of law because allegations of conspiracy, when they sound in fraud, must meet the heightened pleading standard of CR 9(b). *See Kreidler v.*

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E. No Court Has Ever Accepted Plaintiffs' Theory that a Website Can Be Held Liable *Because* It Prohibits Improper or Unlawful Content, and Plaintiffs' Theory Would Destroy Section 230.

Plaintiffs seek to impose liability on Backpage.com and contend it should be stripped of Section 230 immunity ***because*** it imposes rules and restrictions and self-polices posts to prevent improper or unlawful content. *See* First Am. Compl. ¶¶ 3.6-3.20. This is an argument that no court has ever accepted, turns the intent of Section 230 on its head, and would destroy fundamental purposes of the CDA. If such bare allegations were enough, every plaintiff could defeat Section 230 immunity and override Congress's intent to protect online service providers from "costly and protracted legal battles," *Roommates*, 521 F.3d at 1174; *Goddard v. Google*, 640 F. Supp. 2d 1193, 1198 (N.D. Cal. 2009), by alleging that a website's rules and restrictions mean the opposite of what they say.

Plaintiffs admit Backpage.com takes numerous steps to police its site and prohibit improper or illegal content, such as forbidding "[s]exually explicit language," illicit images, any "content which advertises an illegal service" or "suggest[s] an exchange of sex acts for money" and requiring users to abide by these rules, while removing posts that are even suspected of violating the rules. *See* First Am. Compl. ¶¶ 3.6-3.13. Plaintiffs contend, however, that rather than shield Backpage.com from liability as Congress intended, its self-policing should be the basis for ***imposing liability***. They ask the Court to assume that Backpage.com's policies and requirements are designed to encourage illegal conduct, *i.e.*, they mean the exact opposite of what they say and what Backpage.com does in monitoring and blocking posts. *Id.* ¶ 2.14 ("the entire purpose of the escort website is exactly what its

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Pixler, 2006 WL 3539005, at *10 (W.D. Wash. Dec. 7, 2006) (applying heightened standard in dismissing plaintiff's claim for civil conspiracy under Washington law); *see also Wilson v. State*, 84 Wn. App. 332, 350-51, 929 P.2d 448 (1996) ("Mere suspicion or commonality of interests is insufficient to prove a conspiracy."). Plaintiffs' claims plainly sound in fraud by alleging Backpage.com's rules and restrictions to prevent prostitution ads allegedly are meant to encourage such ads. *See* Section III.D, *supra*. Plaintiffs' allegations therefore must satisfy Rule 9(b), and they are entirely deficient under that rule.

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content requirements … prohibit."); ¶ 3.6 (Backpage.com's content requirements "assist pimps and prostitutes in avoiding detection.").

Thus, Plaintiffs take direct aim at Backpage.com's efforts to restrict the availability of objectionable content and advance a theory that would destroy Section 230 immunity. If websites can be liable ***because*** they prohibit and eliminate unlawful content on the theory that they thereby encourage such content by telling users what is prohibited, then a plaintiff could always defeat Section 230 immunity and hold websites liable for ***all*** self-regulatory efforts. This would, for example, strip Amazon.com and eBay of immunity for claims based on third-party advertisments for sales of misrepresented or stolen goods by third parties, because those websites impose rules prohibiting such transactions. It would also eliminate immunity for Google for claims premised on search results, because Google reserves rights to remove certain content. Courts have uniformly rejected such claims. *See, e.g., Gentry v. eBay, Inc.*, 99 Cal. App. 4th 816, 832, 121 Cal. Rptr. 2d 703 (2002) (refusing to hold eBay responsible for third-party sales of forged sports memorabilia); *Getachew v. Google, Inc.*, 491 Fed. Appx. 923 (10th Cir. Aug. 9, 2012).

Contrary to Plaintiffs' theory, while many courts have held that Section 230 immunity is ***supported*** by the fact that users may have violated rules and restrictions, no court has ever held that online providers' rules and restrictions or users' violations of them ***defeat*** immunity. *See, e.g., Dart v. Craigslist*, 665 F. Supp. 2d at 969 (rejecting argument that Craigslist causes or induces illegal content in part because Craigslist's rules prohibit such content); *Goddard v. Google, Inc.*, 640 F. Supp. 2d at 1198 (rejecting plaintiff's attempt to hold Google liable for third-party ads where they were "contrary to Google's express policy" (internal quotation omitted)); *Roommates.com*, 521 F.3d at 1171 (discussing *Carafano v. Metrosplash*, 339 F.3d at 1119, in which a dating site was immune from claims premised on third party's allegedly defamatory posting "contrary to the website's express policies").

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Accepting Plaintiffs' theory would bastardize Section 230, incentivizing online service providers to do the opposite of what Congress intended. Websites would be far better off to impose no rules or restrictions on content and to do no monitoring, because, according to Plaintiffs' warped interpretation, they only increase their liability risk by undertaking such efforts. *See Backpage.com, v. McKenna*, 2012 WL 3064543, at *9 (making Backpage.com and other websites liable for efforts to prohibit content would "create[] an incentive for online service providers not to monitor the content that passes through [their] channels[,] precisely the situation that the CDA was enacted to remedy."); *see also Nemet Chevrolet*, 591 F.3d at 258 (plaintiff's claims would thwart Congress's purpose to "remove disincentives for the development and utilization of blocking and filtering technologies." (quoting 47 U.S.C. § 230(b)(4)); *see also Ben Ezra, Weinstein & Co. v. AOL*, 206 F.3d at 986.

F. Every Court to Consider Plaintiffs' Theory Has Rejected It.

Plaintiffs' claims are a virtual carbon copy of ones that have been tried and rejected before. Courts have held that classified advertising websites—Backpage.com specifically, but also Craigslist—are immune from claims alleging they promoted or aided prostitution.

In *M.A. v. Village Voice Media*, 809 F. Supp. 2d at 1041, a federal court dismissed a sex trafficking victim's nearly identical claims against Backpage.com. Like Plaintiffs, M.A. attempted to circumvent Section 230 by alleging Backpage.com "creat[ed] a highly viewed website" with "adult sex focused categories," and used "posting rules and limitations which … create the veil of legality." *Id.* at 1044. She also alleged Backpage.com "had knowledge" that "postings … were advertisements for prostitution," including for "numerous minors," and "had a desire that these posters accomplish[] their nefarious illegal prostitution activities so that the posters would return to the website and pay for more posting." *Id.* at 1045. The plaintiff maintained that she was not suing

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Backpage.com for the content of particular postings, but for "the creation and maintenance of [the] website" as a whole. *Id.* at 1046.

The court rejected all of the plaintiff's arguments, held that Backpage.com was immune under Section 230, and dismissed the case outright on a Rule 12(b)(6) motion. The court held that the plaintiff could not overcome Section 230 immunity based on arguments about the structure of the website or the fact that it provided "categorized advertising for escorts under the adult section," because users, not Backpage.com, create the content of ads and choose the categories where their ads will appear. 809 F. Supp. 2d at 1044, 1049. The court rejected the claims that Backpage.com encourages prostitution ads to increase revenues, noting that "[t]he fact that a website elicits online content for profit is immaterial," and the only relevant inquiry is whether the service provider or third parties create the content at issue. *Id.* at 1050 (quoting *Goddard v. Google*, 2008 WL 5245490, at *3 (N.D. Cal. Dec. 17, 2008)). The plaintiff also claimed, as Plaintiffs do here, that "prostitution was the object of almost each and every ad" in the adult category, but the court rejected this argument too, noting the well-established rule that "even if a service provider knows that third parties are posting illegal content, 'the service provider's failure to intervene is immunized." *Id.* at 1051 (quoting *Goddard v. Google*, 2008 WL 5245490, at *3 (N.D. Cal. Dec. 17, 2008)). Finally, the court also rejected the plaintiff's attempt to treat Backpage.com as a "developer" of content, holding that a website can be a developer only if it ***requires*** and thereby is responsible for "the specific content that was the source of the alleged liability," rather than being merely a "neutral conduit" for content provided by others. *Id.* at 1051 (quoting *FTC v. Accusearch, Inc.*, 570 F.3d 1187, 1199 (10th Cir. 2009). Ultimately, the court recognized the plaintiff's "dismay with the scope of immunity" afforded by the CDA, but found that Congress's choice is clear—Section 230 "errs on the side of robust communication and prevents the plaintiffs from moving forward with their claims." *Id.* at 1053 (quoting *PatentWizard, Inc. v. Kinko's, Inc.*, 163 F. Supp. 2d 1069, 1072 (D.S.D. 2001)).

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Similarly, in *Dart v. Craigslist, Inc.*, 665 F. Supp. 2d at 961, the court rejected the Cook County sheriff's claims that Craigslist created a public nuisance and aided and abetted prostitution by inducing users to post prostitution ads. Like Plaintiffs here, the sheriff alleged that even though Craigslist prohibited illegal content, users routinely posted ads promising sex for money, and Craigslist made it easier for prostitutes, pimps, and patrons to conduct business. *Id.* at 962-63. The court dismissed the claims outright because Craigslist, as an intermediary, could not be culpable for content provided by customers who misused its service. *Id.* at 967. The sheriff's claims amounted to allegations of "negligent publishing," and even if "users routinely flout Craigslist's guidelines," Craigslist had not caused them to do so, except "in the sense that no one could post [unlawful content] if craigslist did not offer a forum." *Id.* at 967, 969 (quotation marks and citation omitted). The court found that "[n]othing in the service craigslist offers induces anyone to post any particular listing." *Id.* at 968 (quoting *Chicago Lawyers' Comm. for Civil Rights Under the Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666, 668 (7th Cir. 2008)). And it explained that "Plaintiff's argument that Craigslist causes or induces illegal content is further undercut by the fact that Craigslist repeatedly warns users not to post such content." *Id.* at 969. In the end, the court disregarded the sheriff's "conclusory allegations … that Craigslist induces users to post ads for illegal services," reasoning that Section 230 "would serve little purpose if companies like Craigslist were found liable under state laws for 'causing' or 'inducing' users to post unlawful content in this fashion." *Id.* The court concluded: "Sheriff Dart may continue to use Craigslist's website to identify and pursue individuals who post allegedly unlawful content … [b]ut he cannot sue Craigslist for their conduct." *Id.* (citation omitted).

The *M.A.* and *Dart* decisions are not alone. In many other cases, plaintiffs have sued websites claiming they were sexually abused as a result of third-party content that appeared on the sites, and in every case, courts have dismissed the claims on the basis of Section 230 immunity. *See, e.g. Doe v. MySpace*, 528 F.3d at 420 (dismissing claims brought on behalf of a minor girl who was sexually assaulted after meeting a man through the MySpace

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website: "[Plaintiffs'] claims are barred by the CDA, notwithstanding their assertion that they only seek to hold MySpace liable for its failure to implement measures that would have prevented Julie Doe from communicating with Solis. Their allegations are merely another way of claiming that MySpace was liable for … third-party-generated content."); *Doe II v. MySpace Inc.*, 175 Cal. App. 4th 561, 96 Cal. Rptr. 3d 148, 156-57 (2009) (dismissing similar claims: "[Plaintiffs] want MySpace to ensure that sexual predators do not gain access to (i.e., communicate with) minors on its Web site. That type of activity—to restrict or make available certain material—is expressly covered by section 230."); *Doe v. SexSearch.com*, 502 F. Supp. 2d 719, 727-28 (N.D. Ohio 2007) (similar claims: "At the end of the day … Plaintiff is seeking to hold SexSearch liable for its publication of third-party content and harms flowing from the dissemination of that content. … Section 230 specifically proscribes liability in such circumstances." (citations omitted)).[11]

This does not mean that injured parties have no 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*, 528 F.3d at 419; *accord Nemet Chevrolet*, 591 F.3d at 254; *Zeran*, 129 F.3d at 330-31. "Congress made a policy choice … not to deter harmful online speech through the separate route of imposing tort liability on companies that serve as intermediaries for other parties' potentially injurious messages." *Carafano*, 339 F.3d at 1123 (quoting *Zeran*, 129 F.3d at 330). While Plaintiffs may pursue

[11] *See also Doe v. Am. Online, Inc.*, 783 So.2d 1010 (Fla. 2001) (affirming dismissal of claims against AOL brought by mother of a minor after a predator photographed him and marketed the photos through an AOL chat room: "AOL falls squarely within [the] traditional definition of a publisher and, therefore, is clearly protected by § 230's immunity …. It is precisely the liability based upon negligent failure to control the content of users' publishing of allegedly illegal posting on the Internet that is the gravamen of [plaintiff's] alleged cause of action."); *Gibson v. Craigslist, Inc.*, 2009 WL 1704355, at *4 (S.D.N.Y. June 14, 2009) (dismissing claims that Craigslist failed to adequately monitor and police sales of merchandise on its website, including a handgun that an assailant used to shoot the plaintiff); *Hill*, 727 S.E.2d at 561-63 (finding Stubhub immune under Section 230 for scalping tickets by users; "the fact that [Stubhub] may have been on notice that its website could be used to make unlawful sales … does not support a decision stripping [it] of its immunity under 47 U.S.C. § 230").

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claims against Hopson and the other alleged pimps, they cannot seek recovery from Backpage.com for ads the pimps posted on the Backpage.com website.

IV. CONCLUSION

Backpage.com respectfully requests that the Court dismiss Plaintiffs' action in its entirety. Given Section 230 immunity, Plaintiffs "cannot sue the messenger just because the message reveals a third party's [effort] to engage in unlawful [conduct]." *Chicago Lawyers' Comm.*, 519 F.3d at 672. The CDA categorically bars Plaintiffs' claims, no matter how artfully they attempt to plead them. *Doe v. MySpace*, 528 F.3d at 420; *M.A. v. Village Voice*, 809 F. Supp. 2d at 1050. The Court should dismiss Plaintiffs' claims with prejudice because to do otherwise would contravene Section 230 and Congress's overarching purpose to preserve open and free communications on the Internet.[12]

DATED this 25th day of March, 2013.

[12] Numerous courts have recognized that when plaintiffs' claims contravene Section 230, dismissal ***with prejudice*** is appropriate. *Nemet Chevrolet*, 591 F.3d at 259-60 (affirming 12(b)(6) dismissal with prejudice of claims against website as barred under CDA section 230); *Klayman v. Zuckerberg*, 2012 WL 6725588, at *6-7 (D.D.C. Dec. 28, 2012) (dismissing claims with prejudice against website based on CDA section 230 immunity); *Levitt v. Yelp! Inc.*, 2011 WL 5079526, at *9 (N.D. Cal. Oct. 26, 2011) (same); *Hadley v. GateHouse Media Freeport Holdings, Inc.*, 2012 WL 2866463, at *2 (N.D. Ill. July 10, 2012) (same); *M.A. v. Village Voice*, 809 F. Supp. 2d at 1058 (same); *Black v. Google Inc.*, 2010 WL 3222147, at *3 (N.D. Cal. Aug. 13, 2010) (same); *Collins v. Purdue University*, 703 F. Supp. 2d 862, 880 (N.D. Ind. 2010) (same). Indeed, dismissal should be with prejudice in order to fulfill Congress's purpose in Section 230 of providing robust protections for websites, including protecting them from having to "fight costly and protracted legal battles" about third-party content. *Goddard v. Google, Inc.*, 640 F. Supp. 2d at 1202 (quoting *Roommates*, 521 F.3d at 1174).

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The Honorable Susan K. Serko
Hearing Date: April 26, 2013 or other date as set by the Court
With Oral Argument

SUPERIOR COURT OF THE STATE OF WASHINGTON
PIERCE COUNTY

J.S., S.L., and L.C., Plaintiffs, v. VILLAGE VOICE MEDIA HOLDINGS, L.L.C., d/b/a Backpage.com; BACKPAGE.COM, L.L.C; NEW TIMES MEDIA, L.L.C., d/b/a Backpage.com; and BARUTI HOPSON, Defendants.	No. 12-2-11362-4 **[PROPOSED] ORDER GRANTING BACKPAGE.COM, LLC'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT**

THIS MATTER came before the Court on Backpage.com, LLC's Motion to Dismiss Plaintiffs' First Amended Complaint. Having considered the papers and arguments submitted in support of and opposition to the motion as well as the argument of counsel, the Court **ORDERS:**

That the Motion to Dismiss is **GRANTED**, and Plaintiffs' claims against Defendants Village Voice Media Holdings, LLC; Backpage.com, LLC; and New Times Media, LLC are dismissed in their entirety with prejudice.

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DATED this _____ day of _____, 2013.

_____
Hon. Susan K. Serko

Presented by:

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