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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FAIR HOUSING COUNCIL OF SAN FERNANDO VALLEY; FAIR HOUSING COUNCIL OF SAN DIEGO, individually and on behalf of the GENERAL PUBLIC,

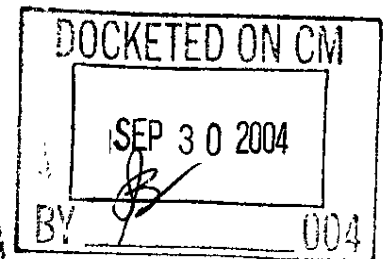
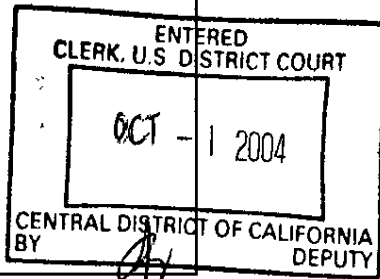
Plaintiffs,

v.

ROOMMATE.COM, LLC,  
Defendant.

No. CV 03-09386 PA (RZx)

ORDER GRANTING IN PART DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT



Before the Court are cross-motions for summary judgment. Plaintiffs Fair Housing Council of San Fernando Valley and Fair Housing Council of San Diego (collectively "Plaintiffs") have filed a Motion for Summary Judgment (Docket No. 47) ("Plaintiffs' Motion"). Defendant Roommate.Com, LLC ("Roommate") has also filed a Motion for Summary Judgment (Docket No. 44) ("Roommate's Motion").

Plaintiffs' Motion seeks a ruling that Roommate is liable for making and publishing "discriminatory statements that indicate preferences based on race, religion, national origin, gender, familial status, age, sexual orientation, source of income, and disability, all in violation of fair housing laws." Plaintiffs' Memorandum of Points and Authorities, p. 2, ll.

1 11-13. Roommate's Motion seeks a judgment that it is immune from suit pursuant to section  
2 230 of the Communications Decency Act ("CDA") because Plaintiffs seek to make it liable  
3 for the publication of content provided by third parties. Roommate alternatively argues that  
4 Plaintiffs' claims are barred by the First Amendment.

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5 I. FACTUAL BACKGROUND

6 Roommate owns and operates www.roommates.com, an Internet website which  
7 provides a roommate locator service for individuals who have residences to share or rent  
8 out, and individuals looking for residences to share. The website allows those with  
9 residences, and those looking for residences, to post information about themselves and  
10 available housing options on a searchable database. Basic membership is free and allows a  
11 user to create a personal profile, conduct searches of the database, and send "roommail"—a  
12 type of internal e-mail system—to other users. Paid memberships allow users to view the  
13 free-form essay "comments" posted by other users, view full-size photos, and receive  
14 roommail from other users. Roommates.com currently receives over 50,000 visits and  
15 1,000,000 page views per day. Approximately 40,000 users are offering rooms for rent,  
16 110,000 users are looking for a residence to share, and 24,000 users have paid for upgraded  
17 memberships.

18 To become a member of Roommate's service, a person must author a personal  
19 profile. The profile includes information, much of which is entered by selecting from  
20 among a number of predetermined options provided by Roommate, concerning, among other  
21 things, the person's age, gender, sexual orientation, occupation, and number of children. A  
22 user must provide a response for each inquiry. Roommate's questionnaire makes no  
23 inquiries concerning a user's race or religion. Users create their own nicknames, can attach  
24 photographs, and may add a free-form essay to personalize the entry by describing  
25 themselves and their roommate preferences. When listing a room for rent, the user responds  
26 to prompts which result in the posting of specific details about the area, rent and deposit  
27 information, date of availability, and features of the residence. Information may also be  
28 posted about the current occupants of the household and roommate preferences for the

1 incoming roommate. In addition to admittedly non-discriminatory information such as  
2 cleanliness, smoking habits, and pet ownership, these preferences can, when selected,  
3 include the user's responses to Roommate's questions about age, gender, sexual orientation,  
4 occupation, and familial status.

5 Under its terms of service, Roommate informs users that it does not screen postings.  
6 The terms of service also inform users that they are "entirely responsible" for all content and  
7 that Roommate is not the author of the information posted on the website. As soon as a new  
8 user completes the questionnaire, the resulting profile is made available online to other  
9 users. Although Roommate does not review or edit the text of users' profiles, Roommate  
10 does review photographs before they are posted to make sure that they do not contain images  
11 that violate the terms of service.

12 II. DISCUSSION

13 Plaintiffs filed their Complaint on December 22, 2003 and a First Amended  
14 Complaint on April 21, 2004. The First Amended Complaint alleges a claim under the Fair  
15 Housing Act ("FHA"), 42 U.S.C. section 3604(c), and state law causes of action for  
16 violations of the California Fair Employment and Housing Act and the Unruh Civil Rights  
17 Act, and claims for unfair business practices and negligence. Plaintiffs seek monetary  
18 damages, punitive damages, declaratory and injunctive relief, disgorgement of profits, and  
19 attorneys' fees.

20 Plaintiffs contend that Roommate violates state and federal fair housing laws in three  
21 ways. First, Plaintiffs object to the nicknames which some users have picked for  
22 themselves. These nicknames include: ChristianGrl, CatholicGirl, Asianpride, Asianmale,  
23 Whiteboy, Chinesegirl, Latinpride, and Blackguy. Second, Plaintiffs object to the free-form  
24 essays written by some users which indicate at least potentially discriminatory preferences.  
25 Some of the essays include statements such as: "looking for an ASIAN FEMALE OR  
26 EURO GIRL"; "I'm looking for a straight Christian male"; "I am not looking for freaks,  
27 geeks, prostitutes (male or female), druggies, pet cobras, drama, black muslims or mortgage  
28 brokers"; and "Here is free rent for the right woman . . . I would prefer to have a Hispanic

1 female roommate so she can make me fluent in Spanish or an Asian female roommate just  
2 because I love Asian females.” Third, Plaintiffs contend that the questions posed by  
3 Roommate’s questionnaire, by requiring the disclosure of information about a user’s age,  
4 gender, sexual orientation, occupation, and familial status, violate the fair housing laws.  
5 Roommate argues that it is entitled to the grant of immunity provided by the CDA  
6 notwithstanding any potential violations of the fair housing laws.

7 A. Plaintiffs’ Federal Fair Housing Act Claim

8 Plaintiffs’ federal claim seeks to make Roommate liable for making unlawful  
9 inquiries into the personal characteristics of people looking for a place to live which are then  
10 published. The FHA makes it unlawful:

11 To make, print, or publish, or cause to be made, printed, or published  
12 any notice, statement, or advertisement, with respect to the sale or  
13 rental of a dwelling that indicates any preference, limitation, or  
14 discrimination based on race, color, religion, sex, handicap, familial  
15 status, or national origin, or an intention to make any such preference,  
16 limitation, or discrimination.

17 42 U.S.C. § 3604(c). Plaintiffs’ FHA claim deals solely with section 3604(c)’s prohibition  
18 against making or publishing of discriminatory statements. Plaintiffs have neither alleged  
19 nor presented any facts in support of their FHA claim which do not relate to Roommate’s  
20 role as a publisher.

21 B. CDA’s Immunity for Content Provided by Third Parties

22 Roommate argues that the CDA shields it from liability for Plaintiffs’ claims. The  
23 immunity provision of the CDA at issue here provides: “No provider or user of an  
24 interactive computer service shall be treated as the publisher or speaker of any information  
25 provided by another information content provider.” 47 U.S.C. § 230(c)(1). The CDA  
26 clarifies its effect on other laws and specifically exempts federal criminal laws, laws  
27 pertaining to intellectual property, and the Electronic Communications Privacy Act of 1986.  
28 47 U.S.C. § 230(e). State laws which are consistent with the CDA are not barred, but “[n]o

1 cause of action may be brought and no liability may be imposed under any State or local law  
2 that is inconsistent with this section.” 47 U.S.C. § 230(e)(3).

3 This is apparently the first case to address the relationship between the CDA’s grant  
4 of immunity and the FHA’s imposition of liability for the making or publishing of  
5 discriminatory real estate listings. The FHA is not among the types of laws which are  
6 specifically exempted from the CDA. As such, and without evidence of contrary legislative  
7 intent, a court may not create an exemption for the fair housing laws without violating the  
8 maxim expressio unius est exclusio alterius. Leatherman v. Tarrant County Narcotics  
9 Intelligence and Coordination Unit, 507 U.S. 163, 168, 113 S. Ct. 1160, 1163, 122 L. Ed. 2d  
10 517 (1993). “Where Congress explicitly enumerates certain exceptions to a general  
11 prohibition, additional exceptions are not to be implied, in the absence of evidence of a  
12 contrary legislative intent.” TRW Inc. v. Andrews, 534 U.S. 19, 28, 122 S. Ct. 441, 447,  
13 151 L. Ed. 2d 339 (2001) (quoting Andrus v. Glover Constr. Co., 446 U.S. 608, 616-17, 100  
14 S. Ct. 1905, 1910, 64 L. Ed. 2d 548 (1980)). In the absence of contrary legislative intent,  
15 therefore, the Court finds that the CDA applies to shield Roommate from liability for the  
16 FHA violations alleged by Plaintiffs to the extent that Plaintiffs seek to make Roommate  
17 liable for the content provided by its users.

18 As the Ninth Circuit has indicated, “reviewing courts have treated § 230(c) immunity  
19 as quite robust, adopting a relatively expansive definition of ‘interactive computer service’  
20 and a relatively restrictive definition of ‘information content provider.’ Under the statutory  
21 scheme, an ‘interactive computer service’ qualifies for immunity so long as it does not also  
22 function as an ‘information content provider’ for the portion of the statement or publication  
23 at issue.” Carafano v. Metrosplash.Com. Inc., 339 F.3d 1119, 1123 (9th Cir. 2003). In  
24 Carafano, the Ninth Circuit applied the CDA’s immunity provision to invasion of privacy,  
25 defamation, and negligence claims brought against Matchmaker.com arising out of a false  
26 listing on Matchmaker’s website. As in this case, the questionnaire at issue there contained  
27 both multiple choice and essay questions. Id. at 1121. In the multiple choice section,  
28 members could select from answers to more than fifty questions from menus providing

1 between four and nineteen options. Id. “The actual profile ‘information’ consisted of the  
2 particular options chosen and the additional essay answers provided.” Id. at 1124.

3 In Carafano, the Ninth Circuit concluded that Matchmaker “was not responsible, even  
4 in part, for associating certain multiple choice responses with a set of physical  
5 characteristics, a group of essay answers, and a photograph.” In those circumstances,  
6 Matchmaker could not be “considered an ‘information content provider’ under the statute  
7 because no profile has any content until a user actively creates it.” Id. The Ninth Circuit  
8 went on to find that “the fact that Matchmaker classifies user characteristics into discrete  
9 categories and collects responses to specific essay questions does not transform Matchmaker  
10 into a ‘developer’ of the ‘underlying misinformation.’” Id.

11 Plaintiffs express a concern that application of the CDA might eviscerate the FHA.  
12 Though mindful of that concern, the most that can be said is that operators of Internet sites  
13 such as Roommate have an advantage over traditional print media because websites, unlike  
14 newspapers, are exempt from 42 U.S.C. section 3604(c) and the related state fair housing  
15 laws for publishers. This is a concern created by Congress’ adoption of the CDA, and is not  
16 unique to the FHA. Instead, it is identical to the numerous other federal and state statutes  
17 and common law remedies for which the CDA’s immunity provision applies. See Batzel v.  
18 Smith, 333 F.3d 1018, 1026-27 (9th Cir. 2003) (“The specific provision at issue here, §  
19 230(c)(1), overrides the traditional treatment of publishers, distributors, and speakers under  
20 statutory and common law. As a matter of policy, ‘Congress decided not to treat providers  
21 of interactive computer services like other information providers such as newspapers,  
22 magazines or television and radio stations, all of which may be held liable for publishing or  
23 distributing obscene or defamatory material written or prepared by others.’ Absent § 230, a  
24 person who published or distributed speech over the Internet could be held liable for  
25 defamation even if he or she was not the author of the defamatory test, and, indeed, at least  
26 with regard to publishers, even if unaware of the statement. Congress, however, has chosen  
27 to treat cyberspace differently.”) (quoting Blumenthal v. Drudge, 992 F. Supp. 44, 49  
28 (D.D.C. 1998)).

1 The Ninth Circuit's decision in Carafano compels the conclusion that Roommate  
2 cannot be liable for violating the FHA arising out of the nicknames chosen by its users, the  
3 free-form comments provided by the users, or the users' responses to the multiple choice  
4 questionnaire. Plaintiffs' federal claims against Roommate are therefore barred by the CDA.  
5 This result does not, however, leave Plaintiffs without a remedy under the fair housing laws.  
6 Any individual user of Roommate's service who posts discriminatory preferences is not  
7 shielded from liability by the CDA. The users who posted the descriptions and preferences  
8 of which Plaintiffs complain are responsible for the content they have provided. Moreover,  
9 the FHA's safe harbors for single family homes and four-unit dwellings rented by an owner  
10 do not apply to section 3604(c). 42 U.S.C. § 3603(b). As a result, Plaintiffs could, if they so  
11 decided, pursue actions against Roommate's users and members without running afoul of  
12 the CDA's immunity provision.

13 C. Roommate's First Amendment Argument

14 Having found that Plaintiffs' FHA claim is barred by the CDA, the Court declines to  
15 reach Roommate's alternative argument which seeks to invalidate the FHA as an  
16 unconstitutional abridgement of the First Amendment's free speech guarantee. "A  
17 fundamental and longstanding principle of judicial restraint requires that courts avoid  
18 reaching constitutional questions in advance of the necessity of deciding them." Lyng v.  
19 Northwest Indian Cemetery Protective Ass'n, 485 U.S. 439, 445, 108 S. Ct. 1319, 1322, 99  
20 L. Ed. 2d 534 (1998); see also United States v. Lamont, 330 F.3d 1249, 1251 (9th Cir. 2003)  
21 ("This principle means that 'a decision on a constitutional question is appropriate only after  
22 addressing the statutory questions.' Here, our statutory analysis resolves the issue and there  
23 is thus no cause to reach the constitutional question.") (quoting United State v. Odom, 252  
24 F.3d 1289, 1293 (11th Cir. 2001)).

25 D. Plaintiffs' Remaining Supplemental State Law Claims

26 The only basis for jurisdiction alleged in the Complaint was federal question  
27 jurisdiction based on the FHA claim. Plaintiff's remaining causes of action brought  
28 pursuant to California's Fair Employment and Housing Act, Unruh Act, negligence, and

1 unfair business practices claims, however, raise only state law causes of action. “The  
2 district courts shall have supplemental jurisdiction over all other claims that are so related to  
3 the claims in the action within such original jurisdiction that they form part of the same case  
4 or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a).  
5 Once supplemental jurisdiction has been established under section 1367(a), the district court  
6 “can decline to assert supplemental jurisdiction over a pendant claim only if one of the four  
7 categories specifically enumerated in section 1367(c) applies.” Executive Software v. U.S.  
8 Dist. Court for Cent. Dist. of California, 24 F.3d 1545, 1555-56 (9th Cir. 1994).

9 The four bases to decline supplemental jurisdiction under section 1367(c) are: “(1)  
10 the claim raises a novel or complex issue of State law, (2) the claim substantially  
11 predominates the claims over which the district court has original jurisdiction, (3) the district  
12 court dismissed all claims over which it has original jurisdiction, or (4) in exceptional  
13 circumstances, there are other compelling reasons for declining jurisdiction.” Id. at 1556.  
14 This Court declines to exercise supplemental jurisdiction over Plaintiffs’ remaining state law  
15 claims as the only claim over which it had original jurisdiction is now dismissed. See 28  
16 U.S.C. § 1367(c)(3). The Court additionally declines to exercise supplemental jurisdiction  
17 because Plaintiffs’ claim that Roommate has aided and abetted its users’ violations of the  
18 Fair Employment and Housing Act raises a novel issue of California law. The parties  
19 should, as a first resort, have access to California’s courts to resolve the state law issues.  
20 Accordingly, the Fair Employment and Housing Act, Unruh Act, negligence, and unfair  
21 business practices claims, which can be brought in state court, are dismissed without  
22 prejudice.<sup>1/</sup>

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24 <sup>1/</sup> 28 U.S.C. § 1367(d) provides that:

25  
26 The period of limitations for any claim asserted under subsection  
27 (a), and for any other claim in the same action that is voluntarily  
28 dismissed at the same time as or after the dismissal of the claim  
under subsection (a), shall be tolled while the claim is pending  
and for a period of 30 days after it is dismissed unless State law  
provides for a longer tolling period.

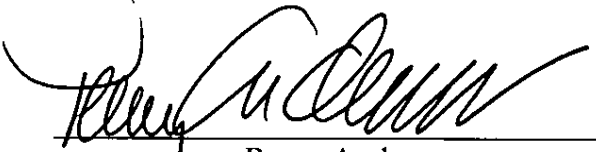


1 III. CONCLUSION

2 For all of the foregoing reasons, the Court finds that Plaintiffs' FHA claim is barred  
3 by the immunity provision of the CDA. The Court therefore grants Roommate's Motion for  
4 Summary Judgment as to the FHA claim. Plaintiffs' state law claims, over which this Court  
5 declines to exercise supplemental jurisdiction, are dismissed with prejudice. Plaintiffs'  
6 Motion for Summary Judgment is denied.

7 IT IS SO ORDERED.

8 DATED: September 30, 2004

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11   
12 Percy Anderson  
13 UNITED STATES DISTRICT JUDGE  
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