

ERVIN COHEN & JESSUP LLP

1 Patrick A. Fraioli (SBN 191824)  
 pfraioli@ecjlaw.com  
 2 Russell M. Selmont (SBN 252522)  
 rselmont@ecjlaw.com  
 3 **ERVIN COHEN & JESSUP LLP**  
 9401 Wilshire Boulevard, Ninth Floor  
 4 Beverly Hills, California 90212-2974  
 Telephone (310) 273-6333  
 5 Facsimile (310) 859-2325

6 Wendy E. Giberti (SBN 268933)  
 wgiberti@igeneralcounsel.com  
 7 **iGeneral Counsel, P.C.**  
 9595 Wilshire Blvd., Ste. 900  
 8 Beverly Hills, CA 90212  
 Telephone (310) 300-4082  
 9 Facsimile (310) 300-8401

10 Attorneys for Defendant  
 INTERNET BRANDS, INC.

11  
 12 **UNITED STATES DISTRICT COURT**  
 13 **CENTRAL DISTRICT OF CALIFORNIA**

14 JANE DOE No. 14,  
 15 Plaintiff,  
 16 v.  
 17 INTERNET BRANDS, INC., D/B/A  
 MODEL MAYHEM.COM  
 18 Defendant.

Case No. CV-12-3626 JFW (PYX)

**DEFENDANT INTERNET  
 BRANDS, INC.'S NOTICE OF  
 MOTION AND MOTION TO  
 DISMISS PURSUANT TO  
 FEDERAL RULES OF CIVIL  
 PROCEDURE, RULE 12(B)(6);  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT  
 THEREOF**

[Filed concurrently with Declaration of Patrick A. Fraioli]

Date: August 6, 2012  
 Time: 1:30 p.m.  
 Place: Courtroom No. 16

The Honorable John F. Walter  
 Courtroom No. 16



ERVIN COHEN & JESSUP LLP

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**INTRODUCTION**

Headquartered in El Segundo, California, Internet Brands is a media company that operates various websites and also develops and licenses internet software and social and professional media applications. Within its Consumer Internet Division, Internet Brands owns and operates more than 200 principal websites in seven different categories. One of the websites owned and operated by Internet Brands is modelmayhem.com (the “Website”), which is a social and professional networking site for models, make-up artists, stylists, and photographers.

Plaintiff Jane Doe No. 14 (“Plaintiff”) alleges she was assaulted by someone she met through the Website, which for purposes of this motion only, the Court may assume to be true.<sup>1</sup> Specifically, Plaintiff alleges she was “lured to come to South Florida” where she was drugged and assaulted by unrelated third parties. *See Complaint*, paragraph 11(a-e). Plaintiff then alleges that the Website owner should be liable for the acts of these third parties because, (1) “Jane Doe was never warned nor given any information about this scheme by Internet Brands, despite the fact that she was a MODEL MAYHEM.COM member, which made her particularly vulnerable to the scheme” and (2) Internet Brands had the requisite knowledge to avoid future victimizations of MODEL MAYHEM.COM users by warning user of online predators generally, and of the scheme employed by Flanders and Callum in particular.” *Id.*, at paragraphs 10 and 28, respectively. Plaintiff further alleges the Website owner had a duty to warn, a duty to disclose, and a “duty of protection from reasonably foreseeable harm.” *Id.*, at paragraphs 33 and 34. Finally, plaintiff alleges that her injuries were caused, “as a direct and proximate result of the

---

<sup>1</sup> Internet Brands specifically denies the alleged assailant contacted Plaintiff through the Website.

ERVIN COHEN & JESSUP LLP

1 fraudulent solicitation, drugging, and rape...” *Id.*, at paragraph 14. Put simply,  
2 Plaintiff’s claim relies entirely on her theory that Internet Brands had a common law  
3 duty to warn.

4 **II.**

5 **STANDARD OF REVIEW**

6 *Federal Rules of Civil Procedure*, Rule 12(b), provides, in pertinent part, as  
7 follows:

8 Every defense to a claim for relief in any pleading must be asserted in the  
9 responsive pleading if one is required. But a party may assert the following  
10 defenses by motion:

11 \* \* \*

12 (6) failure to state a claim upon which relief can be granted.

13 \* \* \*

14 A Motion to Dismiss under Rule 12(b)(6) is similar to the common law  
15 general demurrer, i.e., it tests the *legal sufficiency* of the claims stated in the  
16 Complaint. “The issue is not whether a plaintiff’s success on the merits is likely but  
17 rather whether the claimant is entitled to proceed beyond the threshold in attempting  
18 to establish [her] claims.” *Scheuer v. Rhodes* (1974) 416 U.S. 232, 236, 94 S.Ct.  
19 1683, 40 L.Ed.2d 90. In considering a Motion to Dismiss brought under Rule  
20 12(b)(6), the court’s duty is to, “determine whether or not it appears...under existing  
21 law that no relief can be granted under any set of facts that might be proved in  
22 support of plaintiffs' claims.” *De La Cruz v. Tormey* (1978) 582 F.2d 45, 48. “A  
23 complaint may be dismissed as a matter of law for one of two reasons: (1) lack of a  
24 cognizable legal theory or (2) insufficient facts under a cognizable legal claim.”  
25 *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530 (9<sup>th</sup> Cir. 1984).

26 In the present matter, it is clear that plaintiff’s only claim, a claim of  
27 negligence for failure to warn, is fatally defective. Applicable law does not create a  
28 duty of care, a duty to warn, and provides absolute immunity in the circumstances

ERVIN COHEN & JESSUP LLP

1 alleged in this Complaint. As “no relief can be granted under any set of facts that  
2 might be proved in support of plaintiff’s claim” as pleaded, it must be dismissed  
3 pursuant to Rule 12(b)(6).

4 **III.**

5 **ISSUE TO BE DECIDED BY THIS HONORABLE COURT**

6 The issues presented by this Motion are whether Plaintiff’s only cause of  
7 action, negligence, should be dismissed pursuant to Federal Rules of Civil  
8 Procedure, Rule 12(b)(6).

9 **IV.**

10 **PLAINTIFF’S ONLY CAUSE OF ACTION, NEGLIGENCE, FAILS TO**  
11 **STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED**

12 Well-settled authority establishes Internet Brands does not have a duty to  
13 warn its users of the harm alleged and is absolutely immune from liability for the  
14 harm alleged in this case. *Julie Doe II v. MySpace, Inc.*, 175 Cal.App. 4<sup>th</sup> 561, is  
15 directly on-point. The court in *Julie Doe II* carefully and thoroughly reviewed  
16 voluminous state and federal decisions regarding similar claims, and concluded that  
17 web-based service providers are not liable for common law torts committed by one  
18 user against another user.

19 The question posed by this appeal is: Can an internet Web server such  
20 as MySpace Incorporated, be held liable when a minor is sexually  
21 assaulted by an adult she met on its Web site? The answer hinges on  
22 our interpretation of section 230 of the Communications Decency Act.  
We hold section 230 immunizes MySpace from liability. (citations  
omitted).

23 The *Julie Doe II* court’s interpretation of the Communications Decency Act, 47  
24 U.S.C. §230(c) (the “CDA”), relied upon extensive and unanimous authority  
25 upholding the immunity granted by the CDA to web-based service providers for all  
26 civil claims brought by a web user for harm caused by another user, as set forth  
27 more fully below. The *Julie Doe II* court’s interpretation of section 230 of the CDA  
28

ERVIN COHEN & JESSUP LLP

1 began with a review of the explicit language of the statute, which provides, in  
2 relevant part:

3 Protection for ‘good samaritan’ blocking and screening of offensive material

4 (1) Treatment of publisher or speaker

5 ‘No provider or user of an interactive computer service shall be treated as the  
6 publisher or speaker of any information provided by another information  
7 content provider.

8 (2) Civil liability

9 No provider or user of an interactive computer service shall be held liable on  
10 account of –

11 (A) any action voluntarily taken in good faith to restrict access to or  
12 availability of material that the provider or user considers to be obscene,  
13 lewd, lascivious filthy, excessively violent, harassing, or otherwise  
14 objectionable, whether or not such material is constitutionally protected; or

15 (B) any action taken to enable or make available to information content  
16 providers or others the technical means to restrict access to material described  
17 in paragraph (1).

18 The *Julie Doe II* court specifically found that section 230 of the CDA applied to all  
19 common law torts. “The express language of the statute indicates Congress did not  
20 intend to limit its grant of immunity to defamation. Instead, the legislative history  
21 demonstrates Congress intended to extend immunity to all civil claims.” *Julie Doe*  
22 *II*, at 568.

23 The court therein then reviewed uniform authority from other jurisdictions,  
24 including *Jane Doe v. MySpace, Inc.*, 528 F.3d 413 (5<sup>th</sup> Cir. 2008) (“*Jane Doe v.*  
25 *MySpace*”); *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119 (9<sup>th</sup> Cir. 2003); and  
26 *Zeran v. Am. Online, Inc.*, 129 F.3d 327 (4<sup>th</sup> Cir. 1997) (“*Zeran*”). Each of those  
27 cases is directly on point; the first two of which involve the sexual exploitation,  
28 abuse, or assault of women and girls. The *Julie Doe II* court concluded that the *Jane*  
*Doe v. MySpace* case was “exactly on point” and similarly ruled that the CDA  
provided immunity to the web-based service provider. *Julie Doe II*, at 573, fn. 6. In  
the *Jane Doe v. MySpace* case, the Fifth Circuit also addressed actual knowledge of  
the alleged tortious conduct and held that the immunity provision of the CDA still  
applied. “Thus like strict liability, liability upon notice has a chilling effect on the

1 freedom of Internet speech. . . Because the probable effects of distributor liability on  
2 the vigor of Internet speech and on service provider self-regulations are directly  
3 contrary to §230’s statutory purposes, we will not assume that Congress intended to  
4 leave liability upon notice intact.” *Jane Doe v. MySpace*, supra, at 419 (quoting  
5 *Zeran*, supra, at 333.)

6 The *Julie Doe II* court also relied upon the Fourth Circuit Court of Appeals  
7 decision in *Zeran*, supra, quoting:

8 Congress’ purpose in providing the §230 immunity was thus evident.  
9 Interactive computer services have millions of users. The amount of  
10 information communicated via interactive computer services is  
11 therefore staggering. The specter of tort liability in an area of such  
12 prolific speech would have an obvious chilling effect. It would be  
13 impossible for service providers to screen each of their millions of  
14 postings for possible problems. Faced with potential liability for each  
15 message republished by their services, interactive computer service  
16 providers might choose to severely restrict the number and type of  
17 messages posted. Congress considered the weight of the speech  
18 interests implicated and chose to immunize service providers to avoid  
19 any such restrictive effect.

20 *Id.* at 567. (quoting *Zeran*, at 331). Finally, authority is also well-settled that a  
21 web-based service provider need not adopt safety measures in order to receive the  
22 protection afforded by the CDA. *Julie Doe II*, at 572-73 (“That appellants  
23 characterize their complaint as one for failure to adopt reasonable safety measures  
24 does not avoid the immunity granted by section 230”).

25 In this case, Plaintiff’s allegations are identical to those pleaded in the *Julie*  
26 *Doe II* and *Jane Doe v. MySpace* cases. She alleges she was contacted through the  
27 Website and was “lured” to South Florida by her assailants. Her harm occurred off-  
28 line as a result of tortious conduct by two individuals un-affiliated with Internet  
Brands. As in the other cases cited by the *Julie Doe II* court, the allegations do not  
give rise to a cause of action against the web-based service provider. Internet  
Brands did not owe Plaintiff a duty to warn and is protect by the immunity provided  
by the CDA. Therefore, Plaintiff has failed to state a claim for relief and the  
requested dismissal is appropriate.

ERVIN COHEN & JESSUP LLP

1           Lastly, Plaintiff does not even plead that the Internet Brands’ alleged failure  
2 to perform in accordance with any legally recognized duty was the cause of her  
3 injuries. As with the *Julie Doe II* and *Jane Doe v. MySpace* cases, the injury  
4 occurred off-line, which means the web-based service provider was not the  
5 proximate cause of the plaintiff’s injury. *Julie Doe II*, at 574. Here, Plaintiff  
6 pleaded that her injuries were caused by unrelated third parties, not Internet Brands.  
7 As such, and consistent with authority on this point, she cannot state a claim for  
8 relief in the absence of a causation allegation, which is an independent basis to  
9 dismiss the Complaint.

V.

**CONCLUSION**

12           The law is well-settled and unanimous; the CDA provides immunity to web-  
13 based service providers for common law torts committed by website users. Persons  
14 injured or otherwise damaged by third party tortfeasors are not without remedy, and  
15 may hold directly liable the person(s) causing the harm. Plaintiff may file a claim  
16 against the alleged third party tortfeasors, but her claim against Internet Brands runs  
17 afoul of the CDA.

18 ///  
19 ///  
20 ///  
21 ///  
22 ///  
23 ///  
24 ///  
25 ///  
26 ///  
27 ///  
28 ///





ERVIN COHEN & JESSUP<sup>LLP</sup>

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28