

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

**GIVEFORWARD, INC.,
a Delaware Corporation,**

Plaintiff,

v.

**KENA HODGES, individually and as legal
guardian for KDH,**

Defendants.

Civil Action No. 13-cv-1891-JFM

COMPLAINT

Plaintiff GiveForward, Inc. (“GiveForward”) states the following Complaint against Defendants Kena Hodges, individually and as legal guardian for KDH (“Defendants”):

BACKGROUND

1. GiveForward provides an online fundraising platform to allow individuals to raise funds to help with medical expenses.
2. An individual by the name of Kimani Johnson used GiveForward’s online platform to launch a fundraiser to raise funds for KDH, his son.
3. On or about May 20, 2013, Defendants contacted GiveForward and asserted that Mr. Johnson’s fundraiser was fraudulent and that KDH was not in fact sick. (*See* May 20, 2013 letter attached as Ex. A.)
4. GiveForward immediately conducted an appropriate investigation into the allegation that Mr. Johnson’s fundraiser was fraudulent.
5. In response to GiveForward’s inquiries, Mr. Johnson told GiveForward that he had believed his son was ill, but upon learning his son was not in fact sick, he returned the

money donated in connection with the fundraiser except for approximately \$400 donated by anonymous donors.

6. GiveForward has confirmed that Mr. Johnson has returned several donations and is currently in the process of facilitating the return of the remaining donations, including donations made anonymously.

7. Defendants allege GiveForward's conduct violated "multiple federal and state laws including consumer protection and deceptive business practices laws, as well as computer fraud, wirefraud, and electronic privacy laws" including Maryland's Consumer Protection Act; MD CODE Ann., Bus. Reg. § 6-101 *et seq.*; Federal Consumer Protection Act; Telemarketing Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 1601 *et seq.*; Telemarketing Sales Rule, 16 C.F.R. §§ 310 *et seq.*; USA PATRIOT Act, 15 U.S.C. § 6102(a)(2); Title III, 18 U.S.C.A. §§ 2510-2522; Electronic Communications Privacy Act, 18 U.S.C.A §§ 2701-2712§ 25:4; Computer Fraud and Abuse Act, 18 U.S.C.A § 1030; Fraud and related activity in connection with access devices, 18 U.S.C.A. § 1029; Identity Theft, 18 U.S.C.A 1028(a)(7); Privacy Protection Act, 42 U.S.C.A § 2000aa; CANSPAM Act, 15 U.S.C.A § 7701-7713, 18 U.S.C.A § 1037; Wire Fraud, 18 U.S.C.A. § 1343 § 25:14; Copyright Infringement Act and No Electronic Theft Act, 17 U.S.C.A § 506; Digital Millennium Copyright Act, 17 U.S.C.A §§ 1201-1205; negligence; reckless endangerment; intentional misrepresentation; constructive fraud; negligent misrepresentation; invasion of privacy: intrusion upon seclusion; invasion of privacy: appropriation of name and likeness; invasion of privacy: unreasonable publicity given to private life; civil conspiracy; aiding and abetting; and breach of fiduciary duty. (*See Ex. A.*)

8. Defendants and their counsel have stated an intention to bring state law claims in Prince George's County, where "[s]ome of the largest jury verdicts in the state of Maryland hail"

and “immediately proceed with extensive discovery.” (See June 26, 2013 letter attached as Ex. B.)

9. GiveForward provides an interactive computer service as that term is defined in the Communications Decency Act of 1996, 47 U.S.C. § 230 (the “CDA”). GiveForward did not provide, create, or select any content for the KDH fundraiser. Accordingly, GiveForward has immunity under the CDA to any cause of action for which a claim is made that GiveForward is liable as an interactive computer service provider for information originating with a third-party information content provider.

PARTIES

10. GiveForward is a Delaware corporation with its principal place of business in Chicago, Illinois.

11. Both Kena Hodges and KDH are believed to be residents of Prince George’s County, Maryland.

JURISDICTION AND VENUE

12. This court has subject matter jurisdiction over the subject matter of this action under 28 U.S.C. § 1331, because this Court will be interpreting a federal law, the Communications Decency Act of 1996, 47 U.S.C. § 230.

13. Venue is proper pursuant to 28 U.S.C. § 1391 because Defendants are deemed to reside in this judicial district, and because a substantial part of the events occurred in this judicial district.

COUNT I – DECLARATORY JUDGMENT

14. GiveForward incorporates by reference the allegations in paragraphs 1-13

15. Under 28 U.S.C. § 2201, this Court has jurisdiction to issue a declaratory judgment declaring GiveForward's and Defendants' respective rights, obligations and remedies under the CDA.

16. Any such declaration under 28 U.S.C. § 2201 shall have the force and effect of a final judgment or decree and shall be reviewable as such.

17. Defendants' representations create an actual controversy between the parties of sufficient immediacy and reality to warrant issuance of a declaratory judgment.

18. Thus, GiveForward and Defendants have a genuine and pressing dispute as to their respective rights, obligations, and liabilities under the CDA.

19. A declaratory judgment is both necessary and proper to set forth and determine the rights, obligations, and liabilities that exist between GiveForward and Defendants.

WHEREFORE, GiveForward requests this Court order, adjudge and decree:

- (A) That, pursuant to the Communications Decency Act of 1996, 47 U.S.C. § 230, GiveForward has immunity to any cause of action for which a claim is made that GiveForward is liable as an interactive computer service provider for information originating with a third-party information content provider;
- (B) That, pursuant to the Communications Decency Act of 1996, 47 U.S.C. § 230, GiveForward has no obligation to Defendants; and
- (C) Such other and further relief as the Court deems just and proper.

Date: June 27, 2013

Respectfully submitted,

/s/ Jessica E. Morrison

Jessica E. Morrison (Bar No. 26824)

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