UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON

JANE DOE,	:	**Case No. 2:09-cv-219-WOB**
PLAINTIFF,	:	
	:	**Judge William O. Bertelsman**
	:	
vs.	:	**PLAINTIFF'S MEMORANDUM CONTRA DEFENDANT DIRTY WORLD, LLC'S MOTION TO DISMISS**
DIRTY WORLD ENTERTAINMENT RECORDINGS, LLC d/b/a Thedirt.com and HOONAN KARAMIAN,	:	
Defendants	:	

The plaintiff hereby responds to the Defendant Dirty World, LLC's motion to dismiss.

BACKGROUND

The Second Amended Complaint contains sufficient allegations against the Defendant Dirty World, LLC to state prima facie causes of action against Defendant Dirty World, LLC. For defamation, libel per se, false light defamation and intentional infliction of emotional distress. ((Doc. #22, ¶¶ 1-51). The Second Amended Complaint specifically alleges that the Defendant Dirty World, LLC published false statements, alleging that Plaintiff had contracted sexually transmitted diseases and that one of the Defendants, agents, or employees, Hooman Karamian, aka Nik Ritchie had commented on the post, by asking "Why are high school teachers freaks in the sack?" (Doc. # 22, ¶¶ 8-14) Further, the site published a false allegation that Plaintiff had slept with every member of the Cincinnati Bengals football team. (Doc. #22, ¶ 15).

Defendant Dirty World, LLC is liable for the acts of its agent/employee, Hooman

Karamian aka Nik Ritchie. The Defendant Dirty World, LLC has (1) allowed the publication of defamatory material; (2) published defamatory material themselves on the site; (3) have actively written and published defamatory material on the site and (4) have encouraged and developed defamatory statements which have caused harm to the Plaintiff. (Second Amended Complaint, ¶¶ 1-51). The Second Amended Complaint alleges that Defendants wrote and posted their own comments on www.thedirty.com, which were defamatory. (Second Amended Complaint, ¶¶ 1-22). And that the Defendants did not publish a retraction or remove them from the site until notice of the default judgment hearing in this case was served upon said defendants. (Doc. # 22, ¶22).

ARGUMENT

A. This Court's Exercise of Personal Jurisdiction Over the Defendant is Proper.

Plaintiff "need only make a *prima facie* showing of jurisdiction." *Compuserve, Inc. v. Patterson*, 89 F.3d 1257 (6th Cir.1992). The burden of a *prima facie* showing is met when the Plaintiff establishes "with reasonable particularity sufficient contacts between [Defendants] and the forum state to support jurisdiction." *Neogen Corp. v. Neo Gen Screening, Inc.*, 282 F.3d 883, 887 (6th Cir.2002) (citation omitted). "When determining whether there is personal jurisdiction over a Defendant, a federal Court must apply the law of the state in which it sits, subject to Constitutional limitations." *Reynolds v. Amateur Athletic Federation*, 23 F.3d 1110, 1115 (6th Cir. 1994) (internal citations omitted). *See also Auto Channel, Inc. v. Speedvision Network, LLC*, 995 F.Supp. 761, 762 (W.D.Ky.1997). The Sixth Circuit interprets Kentucky's Long Arm Statute as "extending to the limits of Due Process." *Id*. at 764. Therefore, this Court's examination of Kentucky's long-arm statute dovetails with its inquiry into "whether Due Process permits the

exercise of personal jurisdiction." *Papa John's Int'l, Inc. v. Entertainment Marketing & Communications Int'l, Ltd.*, 381 F.Supp.2d 638, 641 (W.D.Ky.2005). As such, to determine whether or not the Defendants have the requisite minimum contacts, the Court applies the three-part *Mohasco* Test: (1) "'The Defendant[s] must purposefully avail [themselves] of the privilege of acting in the forum state or causing a consequence in the forum state'; (2) 'the Plaintiff's cause of action must arise from the Defendant[s'] activities there'; and (3) 'the acts of the Defendant[s] or consequences caused by the Defendant[s] must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the Defendant[s] reasonable.'" *Papa John's*, 381 F.Supp.2d at 641 (quoting *Southerm Mach. Co. v. Mohasco Indus., Inc.*, 401 F.2d 374, 381 (6th Cir.1998) [*Mohasco*]). *See also Friction Materials, Inc. v. Stinson*, 883 S.W.2d 388, 390 (Ky.1992) (citing *Mohasco*, 401 F.2d at 381).

Personal jurisdiction will be found to be either general or specific. *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414-16 (1984). In the case at hand, Defendants are subject to specific personal jurisdiction. Specific jurisdiction exposes the Defendants to suit in the forum state only on claims that arise out of or relate to Defendants' contacts with the forum. *Kerry Steel, Inc. v. Paragon Industries*, 106 F.3d 147, 149 (6th Cir.1997).

1. Purposeful Availment

The first step in the three part *Mohasco* standard is purposeful availment, which is measured by whether or not the Defendants have "Purposefully availed [themselves] of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Burger King v. Rrudzewicz*, 471 U.S. 462, 475 (1985). More generally,

"The 'purposeful availment' prong of the *Mohasco* analysis is satisfied when the Defendant[s'] contacts with the forum state are such that '[they] should reasonably anticipate being haled into court there.'" *Papa John's*, 381 F.Supp.2d at 641 (quoting *Burger King, 471 U.S. At 475).*

Assessment of purposeful availment requires special treatment when dealing with business conducted over the internet, because simply being available to residents of the jurisdiction to read is not adequate contacts with the state. As Defendants point out, and upon which their argument hangs, merely having a presence on the internet of a website is not sufficient contacts to "subject[Defendants] to personal jurisdiction in each State in which the information is accessed." *ALS Scan, Inc. v. Digital Service Consultants, Inc.*, 293 F.3d 707, 713 (4th Cir.2002). However, Defendants' website, www.thedirty.com, goes far beyond activity such as the conduct contemplated in *ALS Scan*. "A Defendant purposefully avails itself of the privilege of acting in a State through its website if the website is interactive to a degree that reveals specifically intended interaction with residents of the State." *Neogen Corp. v. Neo Gen Screening,* Inc., 282 F.3d 883, 690 (6th Cir. 2002) (quoting *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119, 1124 (W.D.Pa. 1997) (using a "sliding scale" of interactivity to identify internet activity that constitutes purposeful availment). "In *Zippo*, the District Court held that intentional interaction with the residents of a forum State... is evidence of a conscious choice to transact business with inhabitants of a forum state in a way that the passive posting of information accessible from anywhere in the world is not." *Neogen* at 890.

The business and nature of the website of Defendants, www.thedirty.com certainly includes activities which can and indeed must be categorized as "intentional interaction with the residents of a forum State." On the main gateway portal page (home page) of www.thedirty.com,

the first menu option a website user is presented with is "Cities." Cincinnati is included in this list of cities, and postings within that category include discussions of individuals who are residents of the greater Cincinnati area, both on the Ohio and the Kentucky side of the Ohio River. Additionally, the second menu option presented is "Colleges." The list of colleges includes both The University of Kentucky and Western Kentucky University. The website invites site users to "Submit Dirt" on people from these targeted cities and colleges, and once this "Dirt" has been submitted Defendants, writing as Nik Richie, proceeds to enter into a dialogue about the postings and their content, as well as editorializing about the unfortunate individuals who are the subjects of the postings.

In this manner, www.thedirty.com engages in "intentional interaction with the residents of a forum State" on multiple levels.

The first way that Defendants engaged in intentional interaction is by inviting with intent—indeed the entire intent—website users to come to www.thedirty.com to post defamatory and/or embarrassing and humiliating material about residents of Kentucky's cities, and attendees of Kentucky's universities. The cities and universities are targeted and listed by name, and do not include other cities and/or schools that have even larger populations or other characteristics that make them equally likely to be listed—however, they are not. In fact, website visitors wishing to post are **required** to name a city and/or college in order to be allowed to make a posting on the website. It is a "drop down menu" from which cities must be chosen from a prescribed list chosen by the Defendants. There is not even an option for a poster to indicate a city or college which is not one of the places that Defendants have intentionally and deliberately

chosen to target through the layout of their website.

Second, the Defendant Dirty World, LLC, acting through Defendant Hooman Karamian AKA Nik Ritchie, write, publish and broadcast defamatory material about residents of Kentucky.

Third, Defendants, writing as Nik Richie, engage in dialogue with the posters, the majority of whom are from the same locations that the subjects of their postings are from, within Kentucky. Lastly, Defendants, writing as Nik Richie, do themselves engage in creating their own content about residents of Kentucky, a great deal of which is defamatory and harmful to residents of Kentucky.

The operation of an internet website can constitute the purposeful availment of the privilege of acting in a forum state under the first Mohasco factor "if the website is interactive to a degree that reveals specifically intended interaction with residents of the state." *Bird v.* Parsons, 289 F.3d 865, 874 (6th Cir. 2002) (citing *Neogen Corp. v. Neo Gen Screening, Inc.*, 282 F.3d 883, 890 (6th Cir.2002). Defendants in their Memorandum in Support of their Motion to Dismiss cite to *Young v. New Haven Advocate*, 315 F.3d 256 (4th Cir. 2002), wherein the Court states that "more than posting and accessibility is needed to "indicate that the [Defendants] purposefully (albeit electronically) directed activity in a substantial way to the forum State..." Implicit in this statement is the recognition of the fact that when a Defendant in fact **does** purposefully direct activity in a substantial way towards Kentucky, of a nature and manner which is more than simply posting passively to a website which is potentially accessible by residents of Kentucky, then Kentucky exercising jurisdiction over those Defendants is reasonable and fair. Defendants, though the writings of Nik Ritchie, have clearly directed activity in a substantial way towards Kentucky and its residents, and the expectation that they would eventually be haled to Court in

Kentucky for these defamatory statements is more than just fair and reasonable. Given the outrageous nature of statements made on www.thedirty.com by Nik Ritchie and the damage caused by his defamatory comments it was, in all reality, **inevitable** that Defendants would be haled into Court in Kentucky to answer for their outrageous, false, and damaging statements made to and about Kentucky citizens.

The website www.thedirty.com is operated for profit. Defendants' make profits from the website by selling advertising. They are paid when visitors to the site "click" embedded links on the website which then route users to websites hosted by the Defendants' sponsors who pay Defendants for every "click" to their links. Without visitors, Defendants make no money. Defendants attract these visitors to their site by creating a venue for posters to defame residents of Kentucky, further by creating a venue for readers to go to read defamatory material about Kentucky's citizens, and lastly by contributing to the defamatory material themselves, through the writings of Nik Ritchie. The cities and/or universities whose residents are the targets of these harmful postings is an identifying tag of all the articles posted, and thereby makes Kentucky, Kentucky's communities, Kentucky's universities, and Kentucky's citizens the targeted focal point of the postings. Essentially, Defendants through their website www.thedirty.com sell the opportunity to defame, humiliate, and embarrass Kentucky citizens in return for advertising dollars.

In addition to purposeful availment, this first prong of *Mohasco* may be satisfied through proving the effects test, which looks at whether the harm caused by Defendants is intentional and aimed at Kentucky. *Calder v. Jones*, 465 U.S. 783, 788-90, 104 S.Ct. 1482 (1984). *Accord, Southerm Mach. Co. v. Mohasco Indus., Inc.*, 401 F.2d at 381 (court must first determine whether

the defendant "purposefully availed itself of the privilege of acting in the forum state or causing a consequence in the forum state"). In this way, it is possible to meet the minimum contacts requirement, whether or not Defendants have any actual physical connection to Kentucky. The U.S. Supreme Court has held that Courts may properly exercise personal jurisdiction over out-of-state Defendants based solely on the effects that their out-of-state actions had on Plaintiffs within the Court's jurisdiction. *Calder*, 104 S.Ct. 1481. In *Calder*, the Supreme Court focused on the fact that the Defendants' intentional actions were aimed at California, that the Defendants knew the stories "would have a potentially devastating impact" on the Plaintiff, and they knew the "brunt of the harm" would be suffered in California, and consequently Defendants could "reasonably anticipate being haled into Court" where the harm occurred. *Id.* at 1482. This is exactly the situation in the case at hand: Defendants' intentional tortious actions were aimed at Kentucky, Defendants knew their postings on www.thedirty.com "would have a potentially devastating impact" on the Plaintiff, and they knew the "brunt of the harm" would be suffered in Kentucky. Consequently, Defendants could "reasonably anticipate being haled into Court" in Kentucky.

2. Plaintiff's Cause of Action Arises From Defendants' Activities in Kentucky.

"The (second) prong of *Mohasco* requir[ing] Plaintiff's cause of action to arise from Defendant's activities in the forum State should not be construed too strictly." *Weather Underground v. Navigation Catalyst Sys.*, 688 F.Supp.2d 693, 701 (E.D. Mich., 2009) (quoting *Mohasco*). As shown in these cases, "Arises From" is a lenient standard. "Only when the operative facts of the controversy are not related to the Defendant's contact with the State can it be said that the cause of action does not arise from that contact." *Mohasco* at 384. Plaintiff's

claims would never have arisen in absence of Defendants' targeting of Plaintiff. Defendants did target Plaintiff, and Plaintiff was in Kentucky, and so there is a substantial connection between Defendants actions and Kentucky.

3. Reasonableness.

"An inference arises that the third [*Mohasco*] factor is satisfied if the first two requirements are met." *Bird*, 289 F.3d at 875. Such is the case here. "Due Process [does not permit] arbitrary assertion of power to bind nonresident Defendants with little or no connection to the forum State." *Wilson v. Case*, 85 S.W.3d 589, 597 (Ky.2002) In the modern day, minimum contacts is defined by *International Shoe Co. v. State of Washington*, 326 U.S. 310, 316 (1945). This malleable "minimum contacts" approach was developed to address "the many developments of transportation and mobility, as well as increased interstate commerce." *Wilson* at 592. It is all the more true in this ever-smaller world of the internet age. It was never intended that the internet should be some "no-man's-land" from which all means of illegality and mischief can be wrought without consequence, which is exactly the reason why such a large body of law has grown up alongside the internet as it has grown as an economic force. "Internet-based communication and commerce represent yet another step in the time-space compression to which the 'minimum contacts' standard of *International Shoe* sought to respond." *Skyway USA, Inc. v. SynergisticCommunications LLC, et al.*, 2008 WL 4000560 (W.D.Ky.). Exercise by this Court of jurisdiction over these Defendants is both fair and reasonable.

4. Kentucky Long Arm Statute.

Kentucky's long-arm statute is construed by the Courts to be coextensive with the limits of Due Process. *Wilson v. Case*, 85 S.W.3d 589, 592 (Ky. 2002). The Kentucky Supreme Court

has made their position clear: "In practice, the precise language of the [long-arm] statute and the application of its terms are much less important than the simple fact that the statute exists... '[T]he long-arm statute within this jurisdiction allows Kentucky Courts to reach the full Constitutional limits of Due Process in entertaining jurisdiction over non-resident Defendants.'" *Id.* At 592 (Quoting, in part, *Mohler v. Dorado Wings, Inc.*, 675 S.W.2d 404, 405 (Ky.Ct.App. 1984). Thus the only question to explore in determining whether or not Defendants fall under Kentucky's long-arm statute is whether or not Defendants have "minimum contacts with Kentucky as defined by *International Shoe.* Said minimum contacts have clearly been demonstrated, and therefore exercise of Kentucky's long-arm statute over the Defendants is appropriate.

B. Defendants' Assertion of Immunity under The Communications Decency Act, 47 U.S.C. § 230(c)(1) ("CDA") Should Not Apply in This Case Because They Were the Author and Originator of Defamatory Material. Plaintiff's Claims Do Not Treat DW Merely as a Publisher. The Defendants Themselves Created the Actionable Language, and Plaintiff's Second Amended Complaint So States.

Defendants' Motion to Dismiss, and their Memorandum in Support of that motion, claims that they are immune from liability under the Communications Decency Act, 47 U.S.C. § 230(c)(1) ("CDA"). There is not uniform agreement on how to apply this immunity to interactive website operators, which is what Defendants claim to be. In the Sixth Circuit, the Court has clearly stated that it **does not accept** a broad interpretation of the CDA. *Doe v. Sexsearch.com*, 551 F.3d 412 (6th Cir., 2008). Defendants' Memorandum in Support cites to multiple Circuit, District, and even State Court opinions, but none of them come from the Sixth Circuit. Similarly, none of them come from any District within the Sixth District. This Court in *Doe v. Sexsearch* specifically stated a future interest in addressing the scope of the CDA and the

immunity it might provide to Defendants here in the Sixth Circuit. This Court has specifically rejected a broad analysis of the CDA, and "explicitly reserve the question of its scope to another day." *Id*. at 416. None of the cases cited by Defendants establish precedent in the Sixth Circuit, and Defendants omission of any citation to a Sixth Circuit case –or from any of the other Circuits where a less broad application of CDA is applied-- when more than sixteen other jurisdictions were clearly fished through for favorable dicta, is not a mere coincidence. Defendants would have this Court substitute the judgments of other jurisdictions over its fair and just analysis of the case on its merits as this Court sees fit, even when it has specifically stated its desire to do so.

More to the point, Defendants would argue for a broader interpretation of CDA immunity than has ever been applied in **any** Circuit to date. In the case at hand, Defendants are not merely the owner/operator of an interactive computer service. Defendants are not even merely the publisher of defamatory material. Defendants are, in fact, through the writings of Nik Ritchie, the **authors** of said defamatory material, as was clearly stated in Paragraphs 4, 11, 21, 26, 33, 40, and 48 of Plaintiff's Second Amended Complaint. In addition, statements in other paragraphs of the Second Amended Complaint could be seen as treating the Defendants as either the publisher of defamatory material or the author of it, or both. As such, the Defendants ask this Court to extend the protection of CDA immunity from liability to an unprecedented and unacceptable extreme. What the Defendants argue, in effect, is that any author of defamatory material can attack others with impunity and without consequence, and then may hide behind the immunity offered by the CDA, by claiming to be an Internet Service Provider (ISP). Nik Ritchie writes his own comments on practically every single post that appears on www.thedirty.com. Even the cases cited by Defendants themselves, while dicta, still make it very clear that the CDA

immunity does not extend as far as Defendants have argued in their Memorandum in Support. "CDA immunizes a web site operator for defamatory material it publishes **if it is not the creator of the content at issue.**"[1] (emphasis added). It can be stated no more clearly than has been stated by the Defendants themselves in their own memorandum: "Essentially, the CDA protects website operators from liability as publishers, **but not from liability as authors**." *Global Royalties, Ltd. v. Xcentric Ventures, LLC*, 2007 U.S. Dist Lexis 77551 (D. Ariz. 2007) (emphasis added).

Defendants would have this Court rule that anyone wishing to defame a person need only create a website before committing the tortious acts, and to conduct the defamation on that site while inviting interactive input from users. The intent of Congress in writing the CDA was to promote the continued development of the internet and to preserve a vibrant and competitive free market for the internet. *Id*. At 1027 (citing The Communications Decency Act, 47 U.S.C. § 230(c)(1) ("CDA")). It has never been, nor should it ever be, the intent of Congress or any Court to make the internet a haven for those who would defame the helpless and the innocent – which is exactly what Defendants have done to Plaintiff, and to other victims of Nik Ritchie's misogynistic, defamatory, humiliating, and revolting writings.

C. Even as an Owner/Operator of an Interactive Computer Service, Defendants Can Be Held Liable Because Their Website is Specifically Designed to Encourage the Posting of, and Assist in the Development of, Defamatory Material.

An interactive computer service is afforded the protection of CDA's immunity provisions for content created or posted by a third party. However, an interactive computer service that is also an "information content provider" of certain content is not immune from liability arising

1 See Defendants' memorandum in Support of Motion to Dismiss, page 10. Citing *See generally, Batzel v. Smith*, 333 F.3d 1018, 1027-28.

from publication of that content. *Fair Hous. Council v. Roommates.com, LLC,* 521 F.3d 1157, 1163 (9th Cir. 2008). *See also Ben Ezra, Weinstein, & Co., Inc. v. Am. Online Inc.,* 206 F.3d 980, 985 (10th Cir. 2000).

The definition of "internet content provider" is furnished in the CDA: "any 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). It has been further clarified that "This is a broad definition, covering even those who are responsible for the development of content only 'in part.'" *Universal Commc'ns Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 419 (1st Cir. 2007).

The CDA finds that an interactive computer service provider is responsible for the development of offensive content "if it in some way specifically encourages development of what is offensive about the content." *Federal Trade Commission v. Accusearch Inc.*, 570 F.3d 1187, 1199 (10th Cir. 2009), 48 Comm. Reg. (P & F) 208. The entire nature of www.thedirty.com is to encourage the development of such defamatory material. Nik Ritchie reads all such defamatory material. He replies to it. He adds to it. He validates the posters for their offensive content. He engages in additional editorial commentary of the victim subjects of these postings. People create posts asking Nik Ritchie questions, and he replies to those questions. People post to www.thedirty.com just to see what Nik Ritchie will post in reply. It's very frequent for the posts on www.thedirty.com to turn into a running dialogue or group conversation which centers around and whose tone is set and guided by Nik Ritchie's posts. The website even has "The Dirty Army" which is comprised of regular and loyal fans of the website and its conduct, all of whom engage in regular dialogue with Nik Ritchie. Without Nik Ritchie, there would be no

website named www.thedirty.com. Nik Ritchie's postings are the highlight, the goal, and the primary draw to the website. Nik Ritchie contributes to the development of virtually every single posting on www.thedirty.com, and therefore Defendants are responsible for all the content found on the site.

D. **Defendants May not Seek Protection of CDA Immunity Because They Have Voluntarily Assumed the Role of a Publisher.**

Again, in demonstration of the fact that the website www.thedirty.com is not merely an interactive computer service, likewise Defendants are not uninvolved with posts made on the www.thedirty.com site by third parties, Defendants voluntarily assume the role of publisher with every website visitor who posts on the site. Anyone wishing to submit a post on www.thedirty.com must first agree to a "CONTENT SUBMISSION/FEEDBACK LICENSE RELEASE AND WAIVER."[2] When compared against other industry leaders, it is clear that Defendants reserve far more rights in submitted material than do other websites which are true uninvolved internet service providers that do not actively participate in creating or developing content for their site.[3] Specifically, Defendants' license provides in Paragraph 1 That any and all user submissions create with DirtyWorld LLC a license in perpetuity of the submitted content, even if the agreement is terminated between the two parties (Paragraph 7). This license is not limited to wwww.thedirty.com, and is not even limited to internet use, as Paragraph 2 clearly extends Defendants rights under the license to include republication in print media. Paragraph 5 goes on to stipulate that Dirty World LLC has the right to use submitted content in any manner and at its sole discretion, to include (but not limited to) editing and/or broadcasting content in

2 See Exhibit 1, attached. Attachment is taken from www.thedirty.com's submission form page: http://thedirty.com/submit_a_tip/

3 For instance, See Exhibit 2, attached. Exhibit 2 is the Terms of Service of Google.com's Youtube.com website. http://www.youtube.com/t/terms http://www.youtube.com/create_account

any way Defendants see fit.

As such, Defendants willfully assumed the role of full owner of all submissions to their site, and take upon themselves the rights to edit and broadcast all submitted material. It is not possible for Defendants to assume these rights without also assuming the attendant liability. By contract, they voluntarily make themselves a publisher, and step into that role of publisher, of every single submission which is made on www.thedirty.com. This being the case, it is only right that Defendants be treated by this Court as they voluntarily contract to be treated by every visitor who uses their site: the role of a publisher. As such, the immunity protections of CDA should not, cannot, and must not be afforded to these Defendants.

CONCLUSION

The website www.thedirty.com is not a passive website. Defendants are not owner operators of an interactive computer service. In fact, to call them businessmen is in and of itself a generous interpretation of the word. They are professional tortfeasors. They defame people as an industry. In their memorandum in support of motion to dismiss, Defendants would argue that there is no evil too great, no defamation so grave and unforgivable, that it may not be entered into blithely and without consequence by choosing to do so via an internet website.

www.thedirty.com is a website that destroys reputations. It destroys lives. The owner/operators of this company care not one bit for the irreparable damage done to those who are posted about on its servers. Defendants engage regularly –in fact, incessantly-- in the ruthless defamation of Kentucky citizens who are of upright moral standing and have the highest degree of respect in their community – that is, until Nik Ritchie gets done trashing them.

Nik Ritchie's writings are defamatory. They target a Kentucky resident, Kentucky communities, and Kentucky institutions. They encourage and contribute to the creation of defamatory material by others. They have chosen to actively defame our residents, and to do great harm to our citizens where they live, here in Kentucky. It is only fair and reasonable that they should be haled to Court here, to answer for their wrongs. The fact that they do have wrongs to answer for is not in question in any way, as they have clearly assumed by multiple means responsibility for the content found on their websites, the most dispositive of which is that they themselves –not just a third party- created defamatory material. Any protection that they seek by way of immunity under the CDA does not apply to them and is forfeit.

Plaintiff's Second Amended Complaint states claims upon which relief may be granted. Defendants' Due Process rights are in no way violated through this Court's exercise of jurisdiction over them for their tortious actions which were targeted at Kentucky and had their effect in Kentucky. The law, as well as the upstanding moral standards and decency of the Commonwealth of Kentucky, demand that Defendants' motion to dismiss should be denied.

Respectfully Submitted,

/s/ Eric C. Deters
Eric C. Deters (#81812)
ERIC C. DETERS & ASSOCIATES, PSC
5247 Madison Pike
Independence, Kentucky 41051
(859) 363-1900 - telephone
(859) 363-1444 – facsimile
eric@ericdeters.com

Trial Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served upon the persons named below by the Court's ECF system on November 5, 2010.

/s/ Eric C. Deters
Eric C. Deters

cc:

Alexander C. Ward
Huddleston, Bolen, LLP – Ashland
855 Central Avenue, Suite 301
P.O. Box 770
Ashland, Kentucky 41101
award@huddlestonbolen.com

Alexis B. Mattingly
Huddleston, Bolen, LLP – Huntington, West Virginia
611 Third Avenue
P.O. Box 2185
Huntington, West Virginia 25722-2185
amattingly@huddlestonbolen.com