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

JANE DOE, Plaintiff, v. DIRTY WORLD ENTERTAINMENT RECORDINGS LLC dba THEDIRT.COM, HOOMAN KARAMIAN aka NIK RICHIE aka CORBIN GRIMES, DIRTY WORLD, LLC dba THEDIRTY.COM, and DIRTY WORLD ENTERTAINMENT, LLC dba THEDIRTY.COM, Defendants.	Case No. 2:09-cv-00219-WOB Judge William O. Bertelsman **DIRTY WORLD, LLC'S REPLY IN SUPPORT OF MOTION TO DISMISS**

Comes now, Defendant Dirty World Entertainment, LLC ("DW"), by counsel, and hereby submits that DW's Motion to Dismiss should be granted, as Plaintiff's response thereto fails to establish any grounds for this Court to deny the same. As set forth fully in DW's Memorandum of Law in Support of its Motion to Dismiss, dismissal of this civil action is warranted because merely setting forth a collection of irrelevant facts and emotional pleas neither confers personal jurisdiction over DW nor does it allow Plaintiff to circumvent the immunity provided to DW by the Communications Decency Act ("CDA").

Regarding the issue of personal jurisdiction, it appears that Plaintiff is attempting to impermissibly combine the theories of general and specific jurisdiction to convince this Court to believe that it has personal jurisdiction over DW. However, this is simply not true. Regarding the CDA, it appears that Plaintiff simply lacks a sufficient understanding of the Act, its intended purpose, and the consequences thereof. By relying on irrelevant and emotional commentary, Plaintiff seeks to have the Court rely not on applicable law but instead on matters wholly outside of the pleadings. Of course, this is inappropriate and, for the reasons set forth in DW's Motion and herein, DW's Motion to Dismiss should be granted.

I. THIS COURT LACKS PERSONAL JURISDICTION OVER DW.

In her brief, Plaintiff argues only that DW is "subject to specific personal jurisdiction" and does not assert that general jurisdiction is appropriate for DW. Plaintiff's Memorandum

("PM") at 3. Therefore, any arguments asserting facts that would be relevant only to a determination of general jurisdiction are wholly irrelevant to the issues at hand. Instead, only those contacts related "to the case at hand" are relevant to determining whether this Court may exercise personal jurisdiction over DW. *The Cadle Company v. Sclichtmann*, 123 Fed. Appx. 675, 677 (6th Cir. 2005). Importantly, not only must said contacts be related to the case at hand, but there must be "a substantial enough connection…to make the exercise of jurisdiction over the defendant reasonable." *Bird v. Parsons*, 289 F.3d 865, 874 (6th Cir. 2002).

A. The "Cities" and "Colleges" Categories on DW's Website are Irrelevant and Unrelated to this Civil Action.

In Plaintiff's brief, counsel identifies no contacts between DW and this jurisdiction that are related to this case but instead merely raises red herrings that are irrelevant to the jurisdiction determination. First, Plaintiff argues that the "Cities" categories included on DW's website and, in particular, the fact that Cincinnati is listed, is a contact that is relevant to the jurisdiction determination. However, as this Court is well aware, Cincinnati is located in the state of Ohio, is not within this Court's District, and is instead within the Southern District of Ohio. As such, regardless of Plaintiff's attempt to characterize it as "the greater Cincinnati area," there is no United States District Court for "the greater Cincinnati area." Therefore, this "contact" does not connect DW to this Court's District, and it must be disregarded. Furthermore, numerous cities are included in DW's "Cities" categories, so even if the Cincinnati category tag were relevant to this District, there is still nothing to show that DW was trying specifically to target citizens of this District as opposed to a nationwide audience with the posts at issue. More importantly, no city located within the Commonwealth of Kentucky is included in the "Cities" categories, and no city within the Commonwealth of Kentucky or within this Court's district is referenced in the postings at issue in this litigation.

Next, Plaintiff attempts to rely upon the "Colleges" categories included on DW's website and, in particular, the fact that the University of Kentucky and Western Kentucky University are listed, as contacts that are relevant to the jurisdiction determination. However, as this Court is aware neither of these universities is within this Court's District. Furthermore, over 100 colleges across the nation are listed in DW's "Colleges" categories, so there is no evidence that DW specifically targeted Kentucky residents as opposed to viewers nationwide with the posts at issue. Finally and most importantly, neither University is mentioned in the posts at issue in this litigation.

In summary, neither the tag for Cincinnati nor the tags for two colleges within Kentucky are related to the case at hand as required by *Cadle* and *Bird*, supra. Neither of these category tags was listed on any of the postings on which Plaintiff's allegations rely. As such, these category tags are irrelevant to the determination of jurisdiction.

B. The Postings at Issue Have Insufficient Connections to Kentucky to Make Jurisdiction Proper.

Although Plaintiff claims that DW "through [its] website www.thedirty.com sell[s] the opportunity to defame, humiliate, and embarrass Kentucky citizens in return for advertising dollars," Plaintiff fails to allege that any posting regarding Plaintiff even mentions Kentucky or the fact that Plaintiff is a Kentucky resident. Plaintiff's failure to do so is not an oversight, however, as there would be absolutely no facts to support such an allegation. In fact, there is no evidence that DW had any knowledge that Plaintiff is a Kentucky resident. Although in her brief Plaintiff chose to rely on emotional language, as this Court is well aware such an attempt does not create jurisdiction.

More specifically, under the "effects test" that is applicable in the 6th Circuit, jurisdictional determinations involve an analysis of the "focal point of the story and the harm

suffered." *Id.* at 679 (internal citations omitted). Although Plaintiff attempts to rely upon the effects test to argue that the harm alleged here was "intentional and aimed at Kentucky," Plaintiff fails to offer any support for this conclusory statement.[1] Further, despite Plaintiff's inability to argue beyond conclusory statements that the focal point of the story and harm suffered is Kentucky, Plaintiff nonetheless argues in support of jurisdiction by citing exclusively to authority wherein the conduct at issue was aimed at the particular forum at issue, and where the defendants therein specifically referred to such forum state. *See Calder v. Jones*, 465 U.S. 783 (1984). In the cases cited by Plaintiff, it was these facts that led to a finding that jurisdiction was proper. Such facts are noticeably absent from the case *sub judice*.

In fact, the allegations of the case at hand support a finding that jurisdiction is absent. Specifically, plaintiff's failure to distinguish the myriad cases where jurisdiction was held to be improper is understandable, as any such attempt would have been futile. *See Reynolds v. International Amateur Athletic Federation*, 23 F.3d 1110 (6th Cir. 1994) (in holding jurisdiction lacking, Court recognized that press release at issue involved activities of the plaintiff occurring outside of the forum state and because although the plaintiff suffered harm in the forum state, ***there is no evidence that the defendant knew of the plaintiff's connections to the forum state***); *Cadle*, 123 Fed. Appx. at 679 (in holding jurisdiction lacking, Court recognized that alleged defamation on website did not discuss forum); *Oxford Round Table, Inc. v. Mahone*, 2007 U.S. Dist. LEXIS 82915 (W.D. Ky. 2007) (in holding jurisdiction lacking, court noted that the defendant's allegedly wrongful actions took place outside of Kentucky even though Kentucky corporate resident was allegedly harmed); *Revell v. Lidov*, 317 F.3d 467, 473 (5th Cir. 2002) (in holding jurisdiction lacking, court recognized that the website article in question "contains no reference to Texas [the forum state], nor does it refer to the Texas activities of [the Plaintiff], and

[1] Making such a showing would be difficult, however, as there is no evidence of Kentucky ever being mentioned in any of the postings about which Plaintiff complains.

it was not directed at Texas readers as distinguished from readers in other states. Texas was not the focal point of the article or the harm suffered."); *Best Van Lines, Inc. v. Walker*, 490 F.3d 239 (2nd Cir. 2007) (in holding jurisdiction lacking, court recognized that allegedly defamatory statements posted by defendant on his website were not purposefully directed to residents of the forum state as opposed to a nationwide audience); *Griffis v. Luban*, 646 N.W.2d 527, 536 (Minn. 2002) (in holding jurisdiction lacking, court noted that "[t]he mere fact that [the defendant, who posted allegedly defamatory statements about the plaintiff on the Internet] knew that [the plaintiff] resided and worked in Alabama is not sufficient to extend personal jurisdiction over [the defendant] in Alabama, because that knowledge does not demonstrate targeting of Alabama as the focal point of the ... statements."). These cases are on point with the facts presented by Plaintiff's claim herein, and they support a finding that Plaintiff has failed to carry her burden with respect to jurisdiction and that this civil action must be dismissed.

II. THE COMMUNICATIONS DECENCY ACT BARS PLAINTIFF'S CLAIMS

A. The Court Should Disregard Plaintiff's References to Matters Outside the Pleadings

Before discussing the merits of Plaintiff's arguments, it is important to note that "Generally, a Court deciding a motion to dismiss pursuant to Rule 12(b)(6) cannot consider facts outside the pleadings." *Moss v. Unum Life Ins. Co. of America*, 2010 WL 3829203, *2 (W.D. Ky. 2010) (emphasis added). Despite this rule, Plaintiff's brief contains extensive references to inflammatory factual matters far beyond the pleadings:

> The entire nature of www.thedirty.com is to encourage the development of such defamatory material. Nik Richie 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 [sic] subjects of these postings.

PM at 13. Of course, none of these detailed factual allegations (and others like them in Plaintiff's brief) are found anywhere in Plaintiff's Second Amended Complaint, nor does

Plaintiff offer any evidentiary basis whatsoever for such allegations. Because these statements are outside of the pleadings and appear to be based upon nothing but the personal speculation of Plaintiff's counsel, they should be disregarded by the Court when considering the legal sufficiency of the Second Amended Complaint under the standards of Rule 12(b)(6).

B. Prefatory Comments Re: Interpretation & Scope of the CDA

With due respect, Plaintiff's arguments demonstrate a fundamental lack of understanding of DW's position as to the effect and application of the Communications Decency Act, 47 U.S.C. § 230(c)(1). Specifically, in an effort to encourage this Court to reach a decision based upon emotion rather than law, Plaintiff makes a passionate plea for a narrow reading of the CDA because otherwise she claims she will have no remedy at all ("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 … ." PM at 11 (emphasis added)). This statement is absolutely incorrect, however, and evidences Plaintiff's gross misunderstanding of applicable law — under the CDA, the *author* of a defamatory statement is never protected and is always subject to complete liability; under the CDA "plaintiffs may hold liable the person who creates or develops unlawful content, but not the interactive computer service provider who merely enables that content to be posted online." *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 254 (4th Cir. 2009) (citing *Doe v. MySpace, Inc.*, 528 F.3d 413, 419 (5th Cir. 2008); *Chicago Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc.,* 519 F.3d 666, 672 (7th Cir. 2008)).

In plain English, DW's position is simply this—if an author creates defamatory material, he/she is fully liable for his/her own speech. The CDA does not affect a plaintiff's right to sue the author in any way. As such, it is a manifestly erroneous statement of law to suggest that DW's position is that "any author of defamatory material can attack others with impunity and

without consequence…." This is not DW's position. Rather, when a plaintiff sues an author for the author's own statements, the CDA does not apply at all because by its own terms, the CDA only bars claims which attempt to *transfer* or *impute* liability to a website operator for material created by "*another* information content provider," i.e., material created by a third party user of the site. *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1125 (9th Cir. 2003) (emphasis in original) (quoting 47 U.S.C. § 230(c)(1)).[2] The only limitation imposed by the CDA is that a plaintiff cannot expand his or her claims further to hold a website host or operator liable for material created by a user of the site. Accordingly, Plaintiff's claims herein against DW, the website host, are precluded by the CDA.

In general, Plaintiff does not seriously dispute that this result is required by literally dozens if not hundreds of CDA-based cases from both the District Court and Court of Appeals level across the country. At the same time, Plaintiff argues "[i]n the Sixth Circuit, the Court has clearly stated that it **does not accept** a broad interpretation of the CDA." PM at 10 (emphasis in original). To support that position, Plaintiff cites a single case—*Doe v. Sexsearch.com*, 551 F.3d 412 (6th Cir. 2008). However, *Doe* does not in any way support the principle advocated by Plaintiff. On the contrary, *Doe* involved the review of a district court's decision that granted a defendant's motion to dismiss a variety of claims based on two alternative grounds (only one of which was CDA immunity). *See Doe*, 551 F.3d at 415. On appeal, the Sixth Circuit *affirmed*

[2] Under the CDA, a plaintiff can always sue and obtain complete relief from the author of a defamatory statement. "By its plain language, §230 creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service." *Zeran v. America Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997); *see also Noah v. AOL Time Warner, Inc.*. 261 F.Supp.2d 532, 540 (E.D.Va. 2003) (explaining, "under § 230 [of the CDA], plaintiff may not seek recourse against AOL as publisher of the offending statements; instead, plaintiff must pursue his rights, if any, against the offending AOL members themselves.") (emphasis added); *Miles v. Raycom Media, Inc.*, 2010 WL 3419438, *2 (S.D.Miss. 2010) (explaining, "Persons who claim that they were harmed by a website's publication of user-generated content may sue the third-party user who generated that content, but they may not sue the interactive computer service that enabled the third-party user to publish the content online.") (Emphasis added). In this civil action, though, Plaintiff is attempting to impose liability on a website operator for material that the site itself did not create, even though this is exactly what the CDA does not permit the Plaintiff to do.

the district court's dismissal in its entirety based on its conclusion that the claims at issue were insufficiently pleaded and therefore subject to dismissal under Rule 12(b)(6). *See id.* Because the claims were defective on their face, the Sixth Circuit in *Doe* did not consider whether the claims would have been barred by the CDA. Moreover, because the CDA was not necessary to the disposition of the appeal, the court did *not* (as Plaintiff argues) "specifically reject[] a broad analysis of the CDA … ." PM at 11. In fact, the Sixth Circuit took no position at all on the matter other than to say it was leaving the question open for another day. Of course, no previous case in the Sixth Circuit itself has answered that open question, nor have the state courts of Kentucky tackled the matter.

As such, there is simply no basis whatsoever for Plaintiff to allege, as she does, that this court must construe the CDA narrowly. Rather, as explained further below, such a result would be directly at odds with the overwhelming majority of state and federal cases which have agreed with near unanimous consistency that the CDA should be construed broadly and with a goal of implementing Congress' expressly stated intent of limiting liability for website operators like Defendants; "Near-unanimous case law holds that Section 230(c) affords immunity to [website operators] against suits that seek to hold [them] liable for third-party content." *Collins v. Purdue Univ.*, 703 F.Supp.2d 862, 877 (N.D.Ind. 2010) (emphasis added); *Global Royalties, Ltd. v. Xcentric Ventures, LLC*, 544 F.Supp.2d 929, 931 (D.Ariz. 2008) (explaining, "In light of Congress' goals to encourage development of the internet and to prevent the threat of liability from stifling free expression, CDA immunity has been interpreted very broadly.") (citing *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1122–23 (9th Cir. 2003)); *Johnson v. Arden*, --- F.3d ----, 2010 WL 3023660 (8th Cir. 2010) ("The majority of federal circuits have interpreted the CDA to establish broad 'federal immunity to any cause of action that would make

service providers liable for information originating with a third-party user of the service.' " (quoting *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006)).

C. The Second Amended Complaint Fails To State A Claim Sufficient To Defeat Immunity Because It Does Not Allege That Defendant Dirty World Created The Content At Issue

As explained on pages 15–16 of DW's Memorandum of Law in Support of its Motion to Dismiss, the fundamental defect in Plaintiff's Complaint is that she does not accuse DW of creating any of the material which she claims was defamatory or otherwise actionable. The failure to make such an allegation renders the entire Complaint insufficient to state a claim and is unable to survive dismissal under Rule 12(b)(6). *See Nemet Chevrolet*, 591 F.3d at 258 (affirming Rule 12(b)(6) dismissal where plaintiff failed to plead sufficient facts alleging the defendant website host actually created the material at issue); *Global Royalties, Ltd. v. Xcentric Ventures, LLC*, 2007 WL 2949002 (D.Ariz. 2007) (finding where Complaint did not allege website itself created defamatory postings, dismissal under Rule 12(b)(6) was proper); *Doe v. MySpace, Inc*. 528 F.3d 413 (5th Cir. 2008) (CDA immunity was proper basis for Rule 12(b)(6) dismissal where allegations were insufficient to defeat CDA); *Parker v. Google, Inc.*, 242 Fed.Appx. 833 (3rd Cir. 2007) (same).

In response and placing the law aside, Plaintiff's brief argues that DW's position is simply wrong as a matter *of fact* because according to her view of the Complaint, "Defendants are … 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." PM at 11. Simply put, this is not at all an accurate summary of the allegations found in the Complaint, as this statement directly misstates the facts set forth in Plaintiff's Second Amended Complaint.[3] Contrary to her argument, none of the cited paragraphs from the Complaint contains any allegation accusing DW

[3] If it were, DW might agree that the Complaint would be sufficient to survive a Rule 12(b)(6) challenge but certainly not a Motion for Summary Judgment under Rule 56 since DW did not actually create the content at issue.

of personally authoring the material at issue in this case. Specifically, ¶4 of the Second Amended Complaint (Doc. #22) merely alleges that Dirty World LLC was incorporated in Delaware and located in Arizona. Nothing in this paragraph accuses DW of authoring any defamatory content. Likewise, ¶11 simply references the website address of the posting at issue. Nothing in this paragraph accuses DW of authoring any defamatory content. ¶21 alleges that Plaintiff asked Defendants to remove the material. Nothing in this paragraph accuses DW of authoring any defamatory content. ¶¶26, 33 and 40 are each conclusory statements generally alleging that Defendants "published"[4] the defamatory material. Nothing in these paragraphs accuses DW of authoring any defamatory content. Finally, through ¶48, Plaintiff simply alleges injuries and claims damages. Nothing in this paragraph accuses DW of authoring any defamatory content.

Given the lack of any allegation that DW personally authored the statements at issue, Plaintiff's Second Amended Complaint is insufficient to overcome the "robust" immunity afforded by the CDA. This was the exact result reached in a recent case involving factually similar claims against Google:

> A fair reading of Plaintiffs' complaint demonstrates that they seek to impose liability on Defendant for content created by an anonymous third party. They assert that their lawsuit "arises from an online comment posted upon the Google web site...." Compl. ¶ 1. They aver that the allegedly defamatory comment is "anonymous," id. ¶ 21, but they do not allege that Defendant was its author. Finally, they summarize their action by stating that Defendant's "business review 'courtesy advertisement' process which allows for consumer generated content is illegal and inappropriate as it manifest into allowing parties to seek revenge against businesses and professionals." Id. ¶ 34. Based on these allegations, Defendant is immune from their suit.

Black v. Google, Inc., 2010 WL 3222147, *2 (N.D.Cal. August 13, 2010) (emphasis added). Here, contrary to Plaintiff's arguments, her Second Amended Complaint does *not* accuse DW of authoring any of the statements which she claims were false or defamatory or otherwise

[4] It is this precise allegation that the CDA precludes Plaintiffs from making absent an affirmative showing that DW was the actual author of the statements at issue.

actionable. As a result, although Plaintiff can certainly pursue her case against the author of that material, the CDA precludes her from attempting to impute liability to the website host for material which it did not create.

D. Plaintiff's Reliance on The Ninth Circuit's Decision in *Fair Housing Council* Is Misplaced

In Part C of her brief at pages 12–14 and relying primarily on the Ninth Circuit's decision in *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157 (9th Cir. 2008) ("*Roomates.com*"), Plaintiff suggests that DW and Mr. Ritchie are simply not entitled to CDA immunity at all because "their website is specifically designed to encourage the posting of, and assist in the development of, defamatory material." PM at 12. To support those sweeping assertions, Plaintiff relies entirely on one thing—the arguments of her counsel set forth in her brief. Of course, Plaintiff does not point to any allegation in her Complaint which would support her position that DW encourages or even tolerates the posting of defamatory material[5] and as already explained above, it is entirely improper for Plaintiff to seek to present matters outside the pleadings in the context of a Rule 12(b)(6) motion.

However, even if Plaintiff could make a good faith allegation that Defendants somehow directly "encourage" the posting of defamatory material (as opposed to encouraging the submission of material generally) this allegation is insufficient by itself to overcome CDA immunity. This was precisely the holding in *Global Royalties, Ltd. v. Xcentric Ventures, LLC*, *supra*, which arose from several complaints posted about the plaintiff on a website called www.RipoffReport.com. In *Global Royalties*, the plaintiff admitted that the statements at issue were created by third party users not by the website operator. However, exactly as in this case the plaintiff alleged that the operator of the site was not entitled to CDA immunity because

[5] If such a claim were made here, the present motion would rely on Rule 11(a), not Rule 12(b)(6). This is particularly true given that DW has a liberal policy of removing material upon request even when they are under no obligation to do so. In addition, DW removed the posting at issue in this case upon Plaintiff's request.

"defendants encourage defamatory postings from others for their own financial gain and, therefore, are partly responsible for the 'creation or development' of the messages." *Global Royalties*, 544 F.Supp.2d at 932–33. The district court in *Global Royalties* rejected this argument, explaining that allowing the plaintiff to blame the website operator would be inconsistent with the congressional intent behind the CDA:

> It is obvious that a website entitled Ripoff Report encourages the publication of defamatory content. However, there is no authority for the proposition that this makes the website operator responsible, in whole or in part, for the "creation or development" of every post on the site. Essentially, that is plaintiffs' position. After all, plaintiffs have not alleged that defendants solicited Sullivan's postings in particular, or that they specifically solicited any postings targeting Global. Nor have they alleged that defendants altered Sullivan's comments, or had any more than the most passive involvement (providing a list of possible titles) in composing them.
>
> Unless Congress amends the statute, it is legally (although perhaps not ethically) beside the point whether defendants refuse to remove the material, or how they might use it to their advantage. Through the CDA, "Congress granted most Internet services immunity from liability for publishing false or defamatory material so long as the information was provided by another party." Here, the material was unequivocally provided by another party.

Global Royalties, 544 F.Supp.2d at 933 (emphasis added).

Just like in *Global Royalties*, Plaintiff is attempting to overcome the CDA by making a general allegation that DW somehow "encourages" the posting of defamatory information and just like in *Global Royalties*, there is no allegation in this case that DW specifically asked anyone to submit the statements at issue. As such, there is simply no authority for Plaintiff's position that she can overcome the CDA's immunity by claiming that this DW generally encourages the posting of defamatory content.

Ironically, Plaintiff even attempts to support her position by citing the Ninth Circuit's decision in *Roommates.com*. In that case, the Fair Housing Council of San Fernando Valley brought suit against www.Roommates.com arguing it violated the Fair Housing Act, 42 U.S.C. § 3604(c) (the "FHA") which prohibits discrimination on the basis of "race, color, religion, sex,

familial status, or national origin." Specifically, the Council argued that the Roommates website violated the FHA in three different ways: 1.) by asking racially/sexually discriminatory questions; 2.) by providing a search mechanism which filters responses in a discriminatory way according to the user's answers regarding age, sex, number of children, etc., and 3.) by providing an "additional comments" section where users were allowed to post whatever additional information they wanted.[6]

Relevant to the present case, the Court concluded that the CDA fully applied to the "additional comments" section of Roommates website. Even if a user posted a blatantly discriminatory comment such as "[t]he person applying for the room MUST be a BLACK GAY MALE", *id.* at 1173, the Ninth Circuit found the website was entitled to CDA immunity and thus was not responsible for these "additional comments":

> Roommate publishes these [additional] comments as written. It does not provide any specific guidance as to what the essay should contain, nor does it urge subscribers to input discriminatory preferences. Roommate is not responsible, in whole or in part, for the development of this content, which comes entirely from subscribers and is passively displayed by Roommate. Without reviewing every essay, Roommate would have no way to distinguish unlawful discriminatory preferences from perfectly legitimate statements … . This is precisely the kind of situation for which section 230 was designed to provide immunity.

Id. at 1173–74. Accordingly, applying *Roommates.com* to this case actually helps DW, not Plaintiff. Plaintiff is not suggesting that DW's entire website violates the law simply by virtue of its existence without regard to the accuracy of any user-submitted content (as was specifically alleged in *Roommates.com*). Likewise, Plaintiff is not seeking to impose liability upon DW

[6] The Ninth Circuit held that the CDA did not apply to protect the Roommates website with regard to the Council's first and second arguments because neither theory of liability was premised on content created by third parties. Rather, the plaintiff's argument was that the Fair Housing Act was violated merely by asking such obviously discriminatory questions in a housing-related transaction. Because the violation occurred regardless of how or even if the user answered the question, the Ninth Circuit properly concluded that the CDA did not apply to the first two theories; "[the website operators] has no immunity for asking the discriminatory questions, as we concluded above, [so] it can certainly have no immunity for using the answers to the unlawful questions to limit who has access to housing." *Roommates*, 521 F.3d at 1167.

solely based on questions propounded on the site, as was the case in *Roommates.com*. Here Plaintiff's only concern involves the accuracy of particular content created by third parties. This is exactly the type of activity which *Roommates.com* affirmed as falling squarely within the CDA's protection:

> We must keep firmly in mind that this is an immunity statute we are expounding, a provision enacted to protect websites against the evil of liability for failure to remove offensive content. Websites are complicated enterprises, and there will always be close cases where a clever lawyer could argue that something the website operator did encouraged the illegality. Such close cases, we believe, must be resolved in favor of immunity, lest we cut the heart out of section 230 by forcing websites to face death by ten thousand duck-bites, fighting off claims that they promoted or encouraged-or at least tacitly assented to-the illegality of third parties. Where it is very clear that the website directly participates in developing the alleged illegality-as it is clear here with respect to Roommate's questions, answers and the resulting profile pages-immunity will be lost. But in cases of enhancement by implication or development by inference-such as with respect to the "Additional Comments" here section 230 must be interpreted to protect websites not merely from ultimate liability, but from having to fight costly and protracted legal battles.

Id. at 1174–75 (emphasis added).

Here, none of the well-pleaded allegations in Plaintiff's Second Amended Complaint are remotely similar to those found sustainable in *Roommates.com*. Rather than basing her Complaint on the actions of DW, Plaintiff is clearly attempting to impose substantial liability on DW for merely "publishing" material posted to their site by a third party. These allegations are directly prohibited the CDA and as a result, her Second Amended Complaint fails to state a claim upon which relief can be granted as to DW.

Wherefore, for the foregoing reasons, Defendant Dirty World, LLC respectfully requests that this Court grant its Motion to Dismiss, dismissing Plaintiff's claims against DW with prejudice, and for such other relief as the Court deems appropriate.

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CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2010, I electronically filed the foregoing Reply in Support of Motion to Dismiss with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s Alexander C. Ward_____
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