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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TAMARA FIELDS, et al.,
Plaintiffs,
v.
TWITTER, INC.,
Defendant.

Case No. 16-cv-00213-WHO

ORDER GRANTING MOTION TO DISMISS

Re: Dkt. No. 27

INTRODUCTION

In November 2015, Lloyd “Carl” Fields, Jr. and James Damon Creach were shot and killed while working as United States government contractors at a law enforcement training center in Amman, Jordan. The shooter was a Jordanian police officer who had been studying at the center. In subsequent statements, the Islamic State of Iraq and Syria (“ISIS”) claimed responsibility for the attack, describing the gunman as a “lone wolf.” Plaintiffs, the wife of Fields and the wife and children of Creach, seek to hold defendant Twitter, Inc. (“Twitter”) liable under 18 U.S.C. § 2333(a), part of the Anti-Terrorism Act (“ATA”), on the theory that Twitter provided material support to ISIS by allowing ISIS to sign up for and use Twitter accounts, and that this material support was a proximate cause of the November 2015 shooting.

Twitter moves to dismiss on several grounds, including that plaintiffs’ claims are barred by the Communications Decency Act (“CDA”), 47 U.S.C. § 230(c). As horrific as these deaths were, under the CDA Twitter cannot be treated as a publisher or speaker of ISIS’s hateful rhetoric and is not liable under the facts alleged. Twitter’s motion to dismiss is GRANTED with leave to amend.

BACKGROUND

In 2015, Fields and Creach travelled to Jordan through their work as government

1 enforcement officers in the United States, and both were assigned to the International Police
2 Training Center (“IPTC”), a facility in Amman run by the United States Department of State. *Id.*
3 ¶ 73.

4 One of the men studying at the IPTC was Anwar Abu Zaid, a Jordanian police captain. *Id.*
5 ¶ 76. On November 9, 2015, Abu Zaid smuggled an assault rifle and two handguns into the IPTC
6 and shot and killed Fields, Creach, and three other individuals. *Id.* ¶ 78. ISIS subsequently
7 “claimed responsibility” for the attack, describing Abu Zaid as a “lone wolf” and stating,

8 Do not provoke the Muslims more than this, especially recruited and
9 supporters of the Islamic State. The more your aggression against
10 the Muslims, the more our determination and revenge . . . [T]ime
11 will turn thousands of supporters of the caliphate on Twitter and
12 others to wolves.

13 *Id.* ¶ 80.

14 Plaintiffs do not allege that ISIS recruited or communicated with Abu Zaid over Twitter,
15 that ISIS or Abu Zaid used Twitter to plan, carry out, or raise funds for the attack, or that Abu
16 Zaid ever viewed ISIS-related content on Twitter or even had a Twitter account. The only
17 arguable connection between Abu Zaid and Twitter alleged in the FAC is that Abu Zaid’s brother
18 told reporters that Abu Zaid had been very moved by ISIS’s execution of Jordanian pilot Maaz al-
19 Kassasbeh in February 2015. *Id.* ¶ 84. After capturing al-Kassasbeh, ISIS launched a Twitter
20 campaign “to crowd source ideas for his method of execution.” *Id.* ISIS subsequently used a
21 Twitter account to distribute a 22-minute video of al-Kassasbeh’s horrific killing. *Id.* Plaintiffs do
22 not allege that Abu Zaid ever viewed the video, either on Twitter or by any other means.

23 Plaintiffs accuse Twitter of violating 18 U.S.C. § 2333(a), part of the ATA, by knowingly
24 providing material support to ISIS, in violation of 18 U.S.C. § 2339A and 18 U.S.C. § 2339B.
25 FAC ¶¶ 87-90 (Count 1, section 2339A), 91-94 (count 2, section 2339B). Section 2333(a)
26 provides:

27 Any national of the United States injured in his or her person,
28 property, or business by reason of an act of international terrorism,
29 or his or her estate, survivors, or heirs, may sue therefor in any
30 appropriate district court of the United States and shall recover
31 threefold the damages he or she sustains and the cost of the suit,
32 including attorney’s fees.

1 18 U.S.C. § 2333(a). Sections 2339A and 2339B prohibit the knowing provision of “material
2 support or resources” for terrorist activities or foreign terrorist organizations. 18 U.S.C. §§
3 2339A(a), 2339B(a)(1). The term “material support or resources” is defined to include “any
4 property, tangible or intangible, or service,” including “communications equipment.” 18 U.S.C.
5 §§ 2339A(b)(1), 2339B(g)(4).

6 Plaintiffs assert that Twitter’s “provision of material support to ISIS was a proximate cause
7 of [their] injur[ies].” FAC ¶¶ 89, 93. They allege that Twitter “has knowingly permitted . . . ISIS
8 to use its social network as a tool for spreading extremist propaganda, raising funds and attracting
9 new recruits,” and that “[t]his material support has been instrumental to the rise of ISIS and has
10 enabled it to carry out numerous terrorist attacks, including the November 9, 2015 shooting attack
11 in Amman, Jordan in which [Fields and Creach] were killed.” *Id.* ¶ 1.

12 Specifically, plaintiffs contend that ISIS uses Twitter to disseminate its official media
13 publications and other content, thereby “spread[ing] propaganda and incit[ing] fear [through]
14 graphic photos and videos of its terrorist feats.” *Id.* ¶¶ 35-36. ISIS also uses Twitter “to raise
15 funds for its terrorist activities,” *id.* ¶ 30, and to “post instructional guidelines and promotional
16 videos,” *id.* ¶ 23.

17 In addition, ISIS uses Twitter as a recruitment platform, “reach[ing] potential recruits by
18 maintaining accounts on Twitter so that individuals across the globe can reach out to [ISIS]
19 directly.” *Id.* ¶ 20. “After first contact, potential recruits and ISIS recruiters often communicate
20 via Twitter’s Direct Messaging capabilities.”¹ *Id.* Plaintiffs allege that “[t]hrough its use of
21 Twitter, ISIS has recruited more than 30,000 foreign recruits over the last year.” *Id.* ¶ 29.

22 Plaintiffs cite a number of media reports from between 2011 and 2014 concerning ISIS’s
23 use of Twitter and Twitter’s “refusal to take any meaningful action to stop it.” *Id.* ¶¶ 48-56. They
24 also describe several attempts by members of the public and United States government to persuade
25 Twitter to crack down on ISIS’s use of its services. *Id.* ¶¶ 57-62. They allege that, while Twitter
26 has now instituted a rule prohibiting threats of violence and the promotion of terrorism, “many
27

28 ¹ Twitter’s Direct Messaging capabilities allow Twitter users to communicate privately through

1 ISIS-themed accounts are still easily found on Twitter.” *Id.* ¶ 70.

2 LEGAL STANDARD

3 Federal Rule of Civil Procedure 8(a)(2) requires a complaint to contain “a short and plain
4 statement of the claim showing that the pleader is entitled to relief,” Fed. R. Civ. P. 8(a)(2), in
5 order to “give the defendant fair notice of what the claim is and the grounds upon which it rests,”
6 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal quotation marks and alterations
7 omitted).

8 A motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure
9 12(b)(6) tests the legal sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir.
10 2001). “Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a cognizable
11 legal theory or sufficient facts to support a cognizable legal theory.” *Mendiondo v. Centinela*
12 *Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). While a complaint “need not contain
13 detailed factual allegations” to survive a Rule 12(b)(6) motion, “it must plead enough facts to state
14 a claim to relief that is plausible on its face.” *Cousins v. Lockyer*, 568 F.3d 1063, 1067-68 (9th
15 Cir. 2009) (internal quotation marks and citations omitted). A claim is facially plausible when it
16 “allows the court to draw the reasonable inference that the defendant is liable for the misconduct
17 alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted).

18 In considering whether a claim satisfies this standard, the court must “accept factual
19 allegations in the complaint as true and construe the pleadings in the light most favorable to the
20 nonmoving party.” *Manzarek v. St. Paul Fire & Marines Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir.
21 2008). However, “conclusory allegations of law and unwarranted inferences are insufficient to
22 avoid a Rule 12(b)(6) dismissal.” *Cousins*, 568 F.3d at 1067 (internal quotation marks omitted).
23 A court may “reject, as implausible, allegations that are too speculative to warrant further factual
24 development.” *Dahlia v. Rodriguez*, 735 F.3d 1060, 1076 (9th Cir. 2013).

25 DISCUSSION

26 Twitter moves to dismiss on multiple grounds, but its principal argument is that plaintiffs’
27 claims are barred by section 230(c), the “protection for ‘Good Samaritan’ blocking and screening
28 of offensive material” provision of the CDA, 47 U.S.C. § 230(c). Section 230(c) contains two

1 subsections, only the first of which, section 230(c)(1), is relevant here:

2 (1) Treatment of publisher or speaker

3 No provider or user of an interactive computer service shall be
4 treated as the publisher or speaker of any information provided by
another information content provider.

5 47 U.S.C. § 230(c)(1).

6 While the Ninth Circuit has described the reach of section 230(c)(1) in broad terms, stating
7 that it “immunizes providers of interactive computer services against liability arising from content
8 created by third parties,” the statute does not “create a lawless no-man’s-land on the internet.”
9 *Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1162, 1164
10 (9th Cir. 2008); *see also Doe v. Internet Brands, Inc.*, No. 12-56638, 2016 WL 3067995, at *6 (9th
11 Cir. May 31, 2016) (noting that “the CDA does not declare a general immunity from liability
12 deriving from third-party content”) (internal quotation marks omitted). Rather, separated into its
13 elements, section 230(c)(1) protects from liability only (a) a provider or user of an interactive
14 computer service (b) that the plaintiff seeks to treat as a publisher or speaker (c) of information
15 provided by another information content provider. *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100-
16 01 (9th Cir. 2009).

17 Plaintiffs do not dispute that Twitter is an interactive computer service provider, or that the
18 offending content highlighted in the FAC was provided by another information content provider.
19 They dispute only the second element of Twitter’s section 230(c)(1) defense, i.e., whether they
20 seek to treat Twitter as a publisher or speaker.

21 The prototypical cause of action seeking to treat an interactive computer service provider
22 as a publisher or speaker is defamation. *See, e.g., Internet Brands, Inc.*, 2016 WL 3067995, at *4;
23 *Barnes*, 570 F.3d at 1101.² However, “the language of the statute does not limit its application to
24 defamation cases.” *Barnes*, 570 F.3d at 1101. Courts have applied section 230(c)(1) against a

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26
27 ² Congress enacted section 230(c)(1) in part to respond to a New York state court decision,
28 *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995),
finding that an internet service provider could be held liable for defamation based on third-party
content posted on its message boards. *See Internet Brands*, 2016 WL 3067995, at *5; *Barnes*, 570

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