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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

JFF PUBLICATIONS LLC, d/b/a JustFor.Fans, on behalf of itself and all others similarly situated,

Plaintiff,

vs.

FACEBOOK OPERATIONS, LLC, LEONID RADVINSKY, FENIX INTERNATIONAL INC., META PLATFORMS, INC., INSTAGRAM, LLC, FENIX INTERNET LLC, and JOHN DOES 1-10,

Defendants.

Case No. 22-CIV-00782

PLAINTIFF'S REPLY TO DEFENDANTS' OPPOSITIONS TO PLAINTIFF'S MOTION FOR LEAVE TO CONDUCT DISCOVERY TO OPPOSE EACH OF THE ANTI-SLAPP MOTIONS

Date: September 9, 2021
Time: 2:00 p.m.
Dept.: 21 (Hon. Robert D. Foiles)

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INTRODUCTION

Plaintiff believes that discovery may be necessary if the Court gets to step 2 of the anti-SLAPP analysis because CDA Section (c)(1) does not apply, therefore there is no absolute immunity. If Section 230 applies to this lawsuit at all – and Plaintiff does not concede it does, or that this case even falls within the scope of the SLAPP statute – the applicable provision is (c)(2), which has a requirement of "good faith." By definition, designating organizations as terrorist organizations in return for a bribe is not good faith under any of the case law or normal meaning of that term.

Meta's argument (adopted by Fenix Defendants) shows why Plaintiff addressed Section (c)(2) in earlier-filed papers, even though Meta moved for dismissal only under (c)(1). Section (c)(1) applies only to decisions by platforms to publish or not publish the content of others. That section reads in its entirety, "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." Meta ignores that Plaintiff does not accuse it of wrongdoing as a third-party platform. Rather, *it is Meta's own content at issue* – its private designation of organizations on an internal list of dangerous individuals and organizations, which involves unique consequences and is far different than merely deciding that certain content is not allowed on their own websites. That is why if Meta wants to assert CDA protection, it must depend on Section (c)(2), which has the good faith element that Meta obviously cannot meet. If Meta disclaims any (c)(2) argument, then it loses the CDA argument entirely.

Further, even as to (c)(1), it cannot be the case that Congress intended the CDA to mean that Meta's employees can take private bribes to add innocent businesses to a terror list to help one business over another, while Meta is absolutely immune from any responsibility it might otherwise have under the law (and immune under every possible factual scenario so that the case ends on a demurrer without discovery). That interpretation is not only beyond the plain language of the CDA, but it also violates principles of textual interpretation. Such an interpretation would result in no limits on liability under (c)(1) and would therefore obviate the (c)(2) provision and swallow it whole. Put simply, the distinction is that Section (c)(1) protects internet service providers from

liability for content *others* place on their website (i.e., for the content itself); Section (c)(2) protects internet service providers from liability for *blocking or removing* material that *others place* on their website, *provided* the removal or blocking was done in good faith.

Plaintiff maintains that if the Court finds the anti-SLAPP statute is applicable at all under Step 1, there will likely be the need for discovery under Step 2, to determine whether Meta acted in good faith when its employees' accepted bribes in return for including Plaintiff (and its partner-publishers) on the terror list.

As to the Fenix Defendants, their anti-SLAPP motion specifically challenged Plaintiff's claims under the Step 2 of § 425.16, thus making them subject to Plaintiff's present Motion for Leave to Conduct Discovery. Fenix Br. at 3 (Plaintiff's "claims are not legally sufficient or factually substantiated for the reasons outlined in the Fenix Defendants' concurrently filed demurrer and motion to quash"). Fenix Defendants cannot avail itself of immunity under the CDA or First Amendment for the reasons stated against Meta, along with extra hurdles that prevent them from piggybacking on Meta's position since they are in a structurally different position. To the extent that Fenix Defendants possibly could assert an anti-SLAPP, discovery is warranted.

ARGUMENT

This case is about anti-competitive conduct. Plaintiff's allegations do not implicate Meta's ability to regulate content on its platform or its First Amendment rights – or those of the Fenix Defendants. Despite this, Defendants have filed anti-SLAPP motions claiming immunity under Section 230 of the CDA and the First Amendment. Plaintiff has no means to oppose some of the assertions Defendants make in their anti-SLAPP motions absent discovery. It follows that Plaintiff has good cause under § 425.16(g) to pursue discovery to determine whether Defendants are engaging in anti-competitive conduct, as clearly and sufficiently pled in the Complaint, and whether either are acting as a publisher under the First Amendment or Section 230(c)(1). We focus on Meta's position first, since Fenix Defendants join it, and then address Fenix in the last section, along with details of some of discovery requested in the moving papers.

If Meta's sweeping position were correct, then it would be able insulate itself, for example, from civil violations of the Sherman Act, which was certainly not Congress' intent when it passed

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