

**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN, PLLC**
DAVID E. AZAR (SBN 218319)
280 S. Beverly Drive, Suite PH
Beverly Hills, California 90212
Telephone: 1-866-252-0878
dazar@milberg.com

*Attorney for Plaintiff JFF Publications LLC,
d/b/a JustFor.Fans*

Electronically
FILED
by Superior Court of California, County of San Mateo
ON **8/23/2022**
By /s/ Vanessa Jimenez
Deputy Clerk

**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)

PLAINTIFF'S REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO

TABLE OF CONTENTS

1		
2	INTRODUCTION	1
3	ARGUMENT	2
4	I. Plaintiff's Request for Discovery Is Necessary to Address Meta's Section	
5	230 Defense	3
6	II. Plaintiff Requires Discovery to Defend Against Meta's First Amendment	
7	Defense	7
8	III. Plaintiff's Motion is Proper	8
9	IV. Plaintiff's Motion Properly Seeks Limited Discovery from the Fenix	
10	Defendants	9
11	CONCLUSION.....	10
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Doe v. Internet Brands, Inc.</i> , 824 F.3d 846 (9th Cir. 2016)	4, 5
<i>Enigma Software Group USA, LLC v. Malwarebytes, Inc.</i> , 946 F.3d 1040 (2019)	6
<i>Fair Housing Council of San Fernando Valley v. Roomates.com</i> , 521 F.3d 1157 (9th Cir. 2016)	3
<i>Lemmon v. Snap, Inc.</i> , 995 F.3d 1085 (9th Cir. 2021).....	4
<i>Nat'l Soc. of Prof'l Eng'rs v. United States</i> , 435 U.S. 679 (1978)	3, 7
Statutes	
47 U.S.C. § 230	8
Cal. C.C.P. § 425.16	2, 3, 9

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

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

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

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

16 ARGUMENT

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

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

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.