UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Jane Doe (D.R.), *Plaintiff*, v. SALESFORCE.COM, INC. and BACKPAGE.COM, LLC, *Defendants*.	Case No. 4:21-CV-2856

MOTION OF DEFENDANT SALESFORCE.COM, INC. TO DISMISS COMPLAINT

This case improperly seeks to hold salesforce.com, inc. ("Salesforce") liable for the criminal acts of third parties with whom it had no relationship, based on entirely innocuous commercial activities—Salesforce's sale of its online customer relationship management ("CRM") business software. The Court should dismiss the claims against Salesforce with prejudice because they are barred by section 230 of the Communications Decency Act, or insufficiently pled, or both.

The underlying facts here are tragic, but they are not sufficiently connected to Salesforce, which sells subscriptions to cloud-based CRM software to tens of thousands of customers. Plaintiff alleges that she met a man on a dating website and became enamored of him. Compl. ¶ 74, Dkt No. 1. She alleges that he coerced her into commercial sex, and posted advertisements for sex with her on the classified ad website backpage.com, operated by defendant Backpage.com, LLC ("Backpage"). *Id.* Although backpage.com held itself out as an online ad website similar to Craigslist, the Complaint alleges that it was widely used by sex traffickers. *Id.* ¶¶ 22–23.

Although Plaintiff seeks to hold Salesforce liable under federal sex-trafficking laws based on these ads, the Complaint relies on the sale of Salesforce's CRM software to an affiliate of Backpage

as the only real connection between the companies. *Id.* ¶¶ 2, 39. Beyond that, the Complaint is most notable for what it does ***not*** allege against Salesforce. Unlike with Backpage, there is no allegation that Salesforce had anything to do with the trafficker who forced D.R., or anyone else, into sex trafficking. There are no allegations that Salesforce had anything to do with the backpage.com website, through which D.R. alleges she was trafficked. Nor does the Complaint allege any facts linking Salesforce's software with the backpage.com website, or the ads thereon.

This fundamental flaw in Plaintiff's legal theory requires dismissal of her claims under the Trafficking Victims Protection Act ("TVPA"), 18 U.S.C. § 1589 *et seq.*, and Chapter 98 of the Texas Civil Practice and Remedies Code. The suggestion that Salesforce somehow knowingly facilitated Plaintiff's trafficking simply by selling CRM software to a Backpage affiliate—software that Backpage allegedly used to expand its customer base—is unfounded and unsupported. But beyond these *merits* issues, Plaintiff's claims are barred by section 230, which precludes liability where, as here, a plaintiff seeks to hold an "interactive computer service" liable based on third-party content posted online. *See* 47 U.S.C. § 230(c)(1); *see also Doe v. MySpace*, 528 F.3d 413, 418 (5th Cir. 2008); Compl. ¶¶ 74, 76, 123(a)–(c), 124.

To be clear, sex trafficking is a legitimate and serious concern. But Plaintiff's attempt to impose liability on Salesforce for the acts of third-party criminals, and the harmful effects of classified ads placed by those criminals on another company's website, is without any legal basis and would create a dangerous precedent for a host of companies that sell legitimate business software to a wide variety of customers. The claims against Salesforce should be dismissed with prejudice.

BACKGROUND

As Plaintiff admits, Salesforce offers an internet-based CRM platform, on a subscription basis, that allows subscribers to manage their own customer data. Compl. ¶¶ 29–33, 39, 45 n.20.

Salesforce's own website—cited in the Complaint to describe the software functionality (*e.g.*, *id.* ¶ 45 n.20)—states that CRM "is a technology for managing [a] company's relationships and interactions with customers and potential customers." Linsley Decl., Ex. B ("What is CRM?"); *see also* Salesforce RJN. Plaintiff alleges that, in 2013, Backpage bought a subscription to Salesforce's CRM tool. Compl. ¶ 37. Backpage allegedly used this software to "collect detailed, in-depth customer data … to streamline communications and overall business practices." *Id.* ¶ 39.

The Complaint alleges that, when D.R. was a minor, she was "trafficked continuously on Backpage." Compl. ¶ 74; *see also id.* ¶ 123(a)–(c). As noted above, she met her trafficker on a dating website, after which he forced her into commercial sex through ads on backpage.com. *Id.* ¶ 74. D.R. eventually escaped her trafficker, who was arrested and sent to jail. *Id.*

The Complaint specifically alleges that it was Backpage's internal website content policies and practices that allowed the trafficker to post ads for her on backpage.com. Compl. ¶¶ 123(a)–(i), 124. Indeed, each of Plaintiff's specific allegations of harm is directly linked to allegations against the trafficker and Backpage—but not Salesforce. Plaintiff alleges she was trafficked by ads posted on backpage.com by the trafficker. *Id.* ¶ 74. The Complaint further alleges that Backpage facilitated the posting of such illegal ads by "designing and implementing" policies that "sanitize[d] advertisements intended to promote" trafficking, and "maximize[d] revenue" "instead of removing th[em]" or reporting them to the police. *Id.* ¶ 123 (d)–(f). Backpage employed an internal policy for the adult section of its website that discouraged moderators and employees from contacting the police about apparent sex trafficking, and refused to remove such ads even after receiving specific complaints. *Id.* ¶ 123 (g)–(i). Plaintiff alleges that these actions by Backpage constituted a "venture" and "were intended to support, facilitate, harbor, and otherwise further" her trafficking. *Id.* ¶ 124.

Critically, *none* of these detailed allegations about how D.R. was harmed by Backpage or the

trafficker involves the use of Salesforce's software, much less actions by Salesforce itself. *See id.* ¶ 123(a)–(c). Although the Complaint uses vague allegations to try to conflate Salesforce with its software—or to conflate Backpage's ***use*** of that software with Salesforce, *e.g.*, Compl. ¶¶ 31, 33, 40, 88, 93[1]—the specific allegations in paragraph 123 make crystal clear that neither Salesforce, nor its CRM software, had *anything* to do with D.R.'s trafficking. Rather, the harms to D.R. are all linked to classified ads posted on backpage.com by the trafficker, and Backpage's website content policies that allowed or encouraged those ads, including its refusal to remove them—and Plaintiff does not allege Salesforce or its software had anything to do with any of these actions.

LEGAL STANDARD

Dismissal under Rule 12(b)(6) is proper "on the basis of a dispositive issue of law." *Walker v. Beaumont Indep. Sch. Dist.*, 938 F.3d 724, 734 (5th Cir. 2019). To survive a Rule 12(b)(6) motion, a complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "[N]aked legal conclusions" are not facts. *Id.* at 696. After stripping away "conclusory statement[s]," the Court must decide whether the remaining factual allegations "raise a right to relief above the speculative level," *Twombly*, 550 U.S. at 555, so as to justify the costs and burdens of discovery. Factual allegations that "do not permit a court to infer more than the mere possibility of misconduct" are insufficient. *Walker*, 938 F.3d at 734.

ARGUMENT

I. Section 230 Bars Plaintiff's Claims Against Salesforce

Section 230 provides that "[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

[1] Salesforce's counsel sent a Rule 11 letter to Plaintiff's counsel regarding these blatantly false allegations.

provider." 47 U.S.C. § 230(c)(1); *see also MySpace,* 528 F.3d at 418 (recognizing "broad immunity" under section 230 "for all claims" that seek to treat web-based service providers as the publisher of third-party content); *Marshall's Locksmith Serv. Inc. v. Google LLC*, 925 F.3d 1263, 1267 (D.C. Cir. 2019) (section 230 covers "causes of action of all kinds"). Section 230 bars Plaintiff's claims because, as the Complaint shows, Salesforce is an interactive computer service provider and it seeks to hold Salesforce liable for the effects of ads posted online by third parties.[2] Although the 2018 FOSTA amendments created an exemption to section 230 for certain civil claims, that exemption does not apply here.[3] The exemption is expressly limited to civil claims where the defendant's conduct violates the federal *criminal* trafficking statute, 18 U.S.C. § 1591, and Plaintiff comes nowhere near plausibly alleging such a violation.

A. Salesforce Is a Provider of an "Interactive Computer Service"

Under section 230, an "interactive computer service" is "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server." 47 U.S.C. § 230(f)(2). "[A]ccess software provider" means "a provider of software (including client or server software) or enabling tools" that perform functions such as filtering,

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[2] That was precisely the holding of the San Francisco Superior Court in a 2019 ruling that is the most comprehensive analysis of these issues to date. *See* Linsley Decl., Ex. A, *Does # 1 through # 90 v. Salesforce.com, inc.*, No. CGC-19-574770, at 5 (S.F. Super. Ct. Oct. 3, 2019) ("Cal. Order"), *appeal pending*, Cal. Ct. App. No. A159566. In a separate action in this District, Judge Hanen held that he was unable to determine on the pleadings whether the claims against Salesforce were covered by section 230, *A.B. v. Salesforce*, 2021 WL 3616097, at *4 (S.D. Tex. 2021), and he has now initiated proceedings to determine that limited immunity issue on summary judgment.

[3] The Texas Supreme Court recently construed Chapter 98 claims as exempt from section 230's immunity if a defendant engages in an "affirmative act" of participation in a trafficking venture. *In re Facebook*, 625 S.W.3d 80, 96–97 (Tex. 2021). This case wrongly interprets federal law, but even if correct, it is inapposite here because, unlike in *Facebook*, where Facebook's software directed traffickers towards potential victims and facilitated communications, Salesforce's software is not alleged to have been connected to the backpage.com website at all.

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