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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
AMBROSE YVONNE vs. BACK PAGE LLC

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**MOTION (Memorandum in support of Motion to Dismiss 735 ILCS 5/2-615(a) or in the alternative
for a more definite statement under 735 ILCS 5/2-606 and 2-615(a))**

EXHIBITS (Exhibit A)

EXHIBITS (Exhibit B)

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

YVONNE AMBROSE, individually and
as Administrator for the Estate of Desiree
Robinson, Deceased,

Plaintiff,

v.

BACKPAGE.COM, L.L.C.;
BACK PAGE, L.L.C.; MEDALIST
HOLDINGS, L.L.C.; LEEWARD
HOLDINGS, L.L.C.; CAMARILLO
HOLDINGS, L.L.C.; DARTMOOR
HOLDINGS, L.L.C.; IC HOLDINGS, L.L.C.;
NEW TIMES MEDIA, L.L.C.; UGC TECH
GROUP C.V.; JOSEPH HAZLEY; CHARLES
MCFEE and ANTONIO ROSALES

Defendants.

No. 17 L 4979

**DEFENDANTS BACKPAGE.COM, LLC, LEEWARD HOLDINGS, LLC,
CAMARILLO HOLDINGS, LLC, DARTMOOR HOLDINGS, LLC,
UGC TECH GROUP C.V. AND IC HOLDINGS, LLC'S MEMORANDUM IN SUPPORT
OF MOTION TO DISMISS 735 ILCS 5/2-615(a); OR IN THE ALTERNATIVE FOR A
MORE DEFINITE STATEMENT UNDER 735 ILCS 5/2-606 AND 2-615(a)**

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OTHER AUTHORITIES

BACKPAGE.COM SUCCUMBING TO GOVERNMENT IS BLOW TO FREE SPEECH ONLINE,
 JAN. 10, 2017, CTR. FOR DEMOCRACY & TECHNOLOGY,
[HTTPS://CDT.ORG/PRESS/BACKPAGE-COM-SUCCUMBING-TO-GOVERNMENT-IS-BLOW-TO-FREE-SPEECH-ONLINE](https://cdt.org/press/backpage-com-succumbing-to-government-is-blow-to-free-speech-online). [4](#)

[HTTP://CHICAGO.CBSLOCAL.COM/2017/05/17/BACKPAGE-LAWSUIT-MURDER-SEX-TRAFFICKING](http://chicago.cbslocal.com/2017/05/17/backpage-lawsuit-murder-sex-trafficking). [8](#)

[HTTP://WWW.NBCNEWS.COM/NEWS/US-NEWS/BACKPAGE-CRITICS-FIND-SURPRISE-AMMUNITION-PHILIPPINES-RAID-N778221](http://www.nbcnews.com/news/us-news/backpage-critics-find-surprise-ammunition-philippines-raid-n778221). [22, 23](#)

[WWW.CHICAGOTRIBUNE.COM/SUBURBS/DAILY-SOUTHTOWN/NEWS/CT-STA-BACKPAGE-LAWSUIT-ST-0518-20170517-STORY.HTML](http://www.chicagotribune.com/suburbs/daily-southtown/news/ct-sta-backpage-lawsuit-st-0518-20170517-story.html). [8](#)

[WWW.NBCNEWS.COM/FEATURE/LONG-STORY-SHORT/VIDEO/NBC-NEWS-EXCLUSIVE-INSIDE-BACKPAGE-COM-S-GLOBAL-ADULT-AD-SALES-OPERATION-98148768369](http://www.nbcnews.com/feature/long-story-short/video/nbc-news-exclusive-inside-backpage-com-s-global-adult-ad-sales-operation-98148768369). [22](#)

IN SUPPORT OF THEIR MOTION TO DISMISS PURSUANT TO 735 ILCS 5/2-615(A), OR IN THE ALTERNATIVE FOR A MORE DEFINITE STATEMENT PURSUANT TO 735 ILCS 5/2-606 AND 2-615(A), THE BACKPAGE DEFENDANTS SUBMIT AS FOLLOWS:

I. INTRODUCTION

PLAINTIFF’S DAUGHTER, DESIREE ROBINSON, WAS VICTIMIZED BY DEFENDANT ANTONIO ROSALES, WHO HAS BEEN CHARGED WITH HER SEXUAL ASSAULT AND MURDER DURING AN ENCOUNTER FACILITATED BY CO-DEFENDANTS JOSEPH HAZLEY (“HAZLEY”) AND CHARLES MCFEE (“MCFEE”) (HER “TRAFFICKERS”), WHO ALLEGEDLY INVOLVED HER IN SEX TRAFFICKING THROUGH THE CLASSIFIED AD WEBSITE BACKPAGE.COM. PLAINTIFF CONTINUES TO ACKNOWLEDGE IN THE SECOND AMENDED COMPLAINT (“COMPL.”) THAT ADS ON BACKPAGE.COM ARE CREATED BY THIRD-PARTY USERS, THAT THE TRAFFICKERS—NOT ANYONE ASSOCIATED WITH BACKPAGE, *SEE ID.* ¶¶ 117, 123, 129, 131-133, 137—CREATED ANY ADS CONCERNING MS. ROBINSON, AND THAT ROSALES PERPETRATED THE ATTACKS ON HER. NONETHELESS, PLAINTIFF SEEKS TO BLAME THE WEBSITE AND AFFILIATED ENTITIES FOR THOSE CRIMINAL ACTS, DESPITE SCORES OF JUDICIAL DECISIONS IN VIRTUALLY IDENTICAL SUITS, INCLUDING IN CASES AGAINST THE SAME BACKPAGE DEFENDANTS SUED HERE, HOLDING THAT ONLINE PUBLISHING IS PROTECTED BY THE FIRST AMENDMENT AND IMMUNIZED FROM LIABILITY BY SECTION 230 OF THE COMMUNICATIONS DECENCY ACT (“CDA”), WHICH PROVIDES: “NO PROVIDER ... OF AN INTERACTIVE COMPUTER SERVICE SHALL BE TREATED AS THE PUBLISHER OR SPEAKER OF ANY INFORMATION PROVIDED BY ANOTHER [] CONTENT PROVIDER.” 47 U.S.C. § 230 (“SECTION 230”).

PLAINTIFF SEEKS TO CIRCUMVENT SECTION 230 BY PEPPERING THE COMPLAINT WITH CONCLUSORY ASSERTIONS THAT BACKPAGE SOMEHOW “CONSPIRED” WITH THOSE WHO PURCHASED ADS ON ITS SITE, OR IN SOME WAY “HELPED” THIRD-PARTY USERS CREATE CONTENT

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VIA EDITORIAL PRACTICES. IT IS RIFE WITH INFLAMMATORY RHETORIC AND ALLEGATIONS ABOUT BACKPAGE’S RULES, POLICIES, AND MODERATION, FOCUSED ALMOST EXCLUSIVELY ON SALACIOUSNESS AND OPPROBRIUM—AND SCARCELY ON THE ADS RELATING TO MS. ROBINSON. THE SAME KINDS OF ALLEGATIONS HAVE BEEN REJECTED IN, *E.G.*, *M.A. EX REL. P.K. V. VILLAGE VOICE MEDIA HOLDINGS, LLC*, 809 F. SUPP. 2D 1041 (E.D. MO. 2011), AND *DOE V. BACKPAGE.COM, LLC*, 104 F. SUPP. 3D 149, 152 (D. MASS. 2015), *AFF’D*, 817 F.3D 12 (1ST CIR. 2016), *CERT. DENIED*, 137 S. CT. 622 (2017) (EACH DISCUSSED *INFRA* AT 12-14 & APPENDIX A), AND SHOULD BE DISMISSED HERE AS WELL. THAT IS PARTICULARLY SO, AS THE BACKPAGE.COM ADS INVOLVING MS. ROBINSON, WHICH PLAINTIFF FAILED TO ATTACH, CONTRARY TO 735 ILCS 5/2-606, AND ARE THUS PROVIDED HERE AS APPENDIX B, CONTAIN NOTHING THAT EXPRESSLY PROPOSES ILLEGAL ACTIVITY OR FORECASTS THE HARM SHE SUFFERED.

MORE IMPORTANTLY, AVERMENTS THAT BACKPAGE EDITED ADS RELATED TO MS. ROBINSON AMOUNT TO NO MORE THAN CONCLUSORY ALLEGATIONS UNSUPPORTED BY ANY WELL-PLEADED FACTS, ESPECIALLY WITH RESPECT TO CLAIMS THE ALLEGED “EDITING” CONTRIBUTED IN ANY WAY TO UNLAWFULNESS. IN FACT, MOST OF PLAINTIFF’S ALLEGATIONS IN THIS VEIN ARE CONCLUSORY AND REST “UPON INFORMATION AND BELIEF,” *ID.* ¶ 144, WHICH ILLINOIS’ SUPREME COURT HAS MADE “CLEAR ... IS NOT EQUIVALENT TO AN ALLEGATION OF RELEVANT FACT.” *WHITLEY V. FRAZIER*, 171 N.E.2D 644, 646 (ILL. 1961).¹ MEANWHILE, THE PRACTICES ALLEGED TO MAKE BACKPAGE A “CONSPIR[ATOR],” “FACILITAT[OR],” OR “HELP[ER]” OF THE TRAFFICKERS ARE SOLELY DESCRIPTIONS OF PUBLISHING ACTIVITIES THAT COURTS UNIFORMLY HAVE HELD ARE EDITORIAL PRACTICES SECTION 230 IMMUNIZES. SUCH “ARTFUL PLEADING” CANNOT “SKIRT[.]”

¹

A complaint alleging facts “upon information and belief” must allege how those facts were discovered, *Patrick Eng’g, Inc. v. City of Naperville*, 976 N.E.2d 318, 332 (Ill. 2012), but the Complaint fails to do so, rendering its “information and belief” allegations entitled to no weight.

THE LAW. *KIMZEY V. YELP! INC.*, 836 F.3D 1263, 1266 (9TH CIR. 2016); *SEE ALSO ARMSTRONG V. GUIGER*, 673 N.E.2D 290, 293 (ILL. 1996) (PLAINTIFF CANNOT GET AROUND ABSOLUTE BAR TO A CLAIM “MERELY BY MEANS OF ARTFUL PLEADING”).

BACKPAGE BY NO MEANS MINIMIZES THE GRIEVOUS HARM MS. ROBINSON AND PLAINTIFF SUFFERED. BUT “[W]HILE THE FACTS OF A ... CASE SUCH AS THIS ONE MAY BE HIGHLY OFFENSIVE, CONGRESS [] DECIDED THAT THE PARTIES TO BE PUNISHED AND DETERRED ARE NOT THE INTERNET SERVICE PROVIDERS BUT RATHER THOSE WHO CREATED AND POSTED THE ILLEGAL MATERIAL,” *DOE V. BATES*, 2006 WL 3813758, AT *4 (E.D. TEX. DEC. 27, 2006), SO AS NOT TO CRIPPLE THE INTERNET BY ALLOWING LIABILITY FOR ONLINE HOSTS OF THIRD-PARTY-CREATED CONTENT. CASES LIKE THIS ILLUSTRATE “THE IMPORTANCE OF PRESERVING FREE SPEECH ON THE [I]NTERNET, EVEN THOUGH [IT] SERVES AS A CONDUIT FOR MUCH THAT IS DISTASTEFUL OR UNLAWFUL.” *GOOGLE, INC. V. HOOD*, 822 F.3D 212, 220 (5TH CIR. 2016). THIS ACTION SHOULD THUS BE DISMISSED, ESPECIALLY GIVEN THAT, EVEN IF SECTION 230 DID NOT BAR IT, PLAINTIFF FAILS TO STATE A CLAIM UNDER ILLINOIS LAW.

ALTERNATIVELY, BACKPAGE REQUESTS THAT PLAINTIFF BE ORDERED MAKE A MORE DEFINITE STATEMENT UNDER 735 ILCS 5/2-615(A). THE COMPLAINT IS BASED ON ADS THIRD PARTIES POSTED AT BACKPAGE.COM SUCH AS THOSE IN APPENDIX B. WHILE BACKPAGE HAS SOME OF THE ADS LIKELY AT ISSUE, *SEE SUPRA* 2; *SEE ALSO INFRA* NOTE 9 & ACCOMPANYING TEXT, PLAINTIFF’S FAILURE TO IDENTIFY THE UNIVERSE OF ADS PUTS BACKPAGE AT A DISADVANTAGE, AS IT CANNOT ADEQUATELY DEFEND AGAINST ALLEGATIONS RELATED TO ADS ON ITS WEBSITE WITHOUT BEING ABLE TO REVIEW THEM. PLAINTIFF ALSO ALLEGES BACKPAGE EDITED THE ADS, BUT HAS NOT PLED ANY DESCRIPTION OR FACTS REGARDING ANY EDITING. COMPL. ¶¶ 144, 163. ESPECIALLY GIVEN THE IMPORTANCE OF THE SPECIFIC CONTENT TO THE LEGAL ISSUES, *SEE INFRA* 15, FAILURE TO IDENTIFY THE CHANGES IS GROUNDS TO DISMISS; BUT IF THE CASE IS NOT

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DISMISSED, PLAINTIFF MUST CLEARLY DESCRIBE THE FACTS RELEVANT TO ANY ALLEGED EDITING
BEFORE BACKPAGE SHOULD BE REQUIRED TO ANSWER.

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II.BACKGROUND

BACKPAGE OPERATES AN ONLINE CLASSIFIED ADVERTISING SERVICE THROUGH WHICH USERS CAN POST ADS IN VARIOUS CATEGORIES, INCLUDING LOCAL PLACES, BUY/SELL/TRADE, REAL ESTATE, JOBS, DATING, AND SERVICES. *SEE BACKPAGE.COM, LLC V. COOPER*, 939 F. SUPP. 2D 805, 813 (M.D. TENN. 2013). THE SITE IS ORGANIZED GEOGRAPHICALLY, BY STATE AND MUNICIPALITY.² UNTIL JANUARY 2017, BACKPAGE ALSO INCLUDED AN “ADULT” CATEGORY (SUCH AS ESCORT SERVICES), WHICH—FOLLOWING YEARS OF PRESSURE FROM GOVERNMENT ACTORS, INCLUDING EFFORTS THE SEVENTH CIRCUIT DESCRIBED AS AN UNCONSTITUTIONAL EFFORT TO “CRUSH BACKPAGE,” *BACKPAGE.COM, LLC V. DART*, 807 F.3D 229, 230 (7TH CIR. 2015), *CERT. DENIED*, 137 S. CT. 46 (2016)—HAS NOW BEEN SHUTTERED.³ MILLIONS OF ADS POST ON BACKPAGE.COM EVERY MONTH, MAKING IT THE SECOND-LARGEST U.S. ONLINE CLASSIFIED AD SERVICE AFTER CRAIGSLIST. *BACKPAGE.COM, LLC V. MCKENNA*, 881 F. SUPP. 2D 1262, 1266 (W.D. WASH. 2012). USERS PROVIDE ALL CONTENT FOR ADS THEY POST, USING AN AUTOMATED INTERFACE; BACKPAGE.COM DOES NOT DICTATE OR REQUIRE ANY CONTENT. *COOPER*, 939 F. SUPP. 2D AT 813.

BACKPAGE.COM’S TERMS AND RULES SEEK TO PREVENT IMPROPER POSTS OR MISUSE OF THE SITE. TO POST, USERS MUST AFFIRMATIVELY ACCEPT TERMS OF USE THAT EXPRESSLY

²

See <http://chicago.backpage.com>. As Plaintiff’s allegations concerning Backpage.com’s asserted content appear throughout the Complaint (*e.g.*, ¶¶ 55, 64, 68-71, 83, 90-91, 96-100, 102-103), the Court may take judicial notice of it. *E.g.*, *People v. Crawford*, 2 N.E.3d 1143, 1171 n.9 (Ill. App. Ct. 2013); *see also People v. Clark*, 940 N.E.2d 755, 766 (Ill. App. Ct. 2010). The same applies to ads depicting Ms. Robinson (Appendix B) as discussed throughout the Complaint. *See also supra* 2; *cf.* 735 ILCS 5/2-606. The Court also may judicially notice court decisions about the site and similar claims. Ill. Evid. R. 201(b); *see, e.g., Aurora Loan Servs., LLC v. Kmiecik*, 992 N.E.2d 125, 135 (Ill. App. Ct. 2013).

See Backpage.com Succumbing to Government Is Blow to Free Speech Online, Jan. 10, 2017, Ctr. for Democracy & Technology, <https://cdt.org/press/backpage-com-succumbing-to-government-is-blow-to-free-speech-online>.

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PROHIBIT THOSE YOUNGER THAN 18 FROM POSTING OR VIEWING ADULT CONTENT OR EXPLICIT MATERIAL. *COOPER*, 939 F. SUPP. 2D AT 813-14. *SEE* BACKPAGE.COM TERMS OF USE ¶ 4(A)(II), AVAILABLE AT HTTP://CHICAGO.BACKPAGE.COM/CLASSIFIEDS/TERMSOFUSE. THE TERMS OF USE BAR ADVERTISING ILLEGAL ACTIVITIES AND NUDE OR LEWD PHOTOS. *SEE ID.* ¶¶ 4(B), 5. THEY ALSO SPECIFICALLY FORBID ANY: “SOLICITATION DIRECTLY OR IN ‘CODED’ FASHION FOR ANY ILLEGAL SERVICE EXCHANGING SEXUAL FAVORS FOR MONEY OR OTHER VALUABLE CONSIDERATION,” *ID.* ¶ 4(C); “MATERIAL ... THAT EXPLOITS MINORS IN ANY WAY,” *ID.* ¶ 4(D); AND “MATERIAL ... THAT IN ANY WAY CONSTITUTES OR ASSISTS IN HUMAN TRAFFICKING.” *ID.* ¶ 4(E). USERS ARE ASKED TO “REPORT ANY VIOLATIONS OF THESE TERMS TO: ABUSE@BACKPAGE.COM.” *ID.* ¶ 18. *SEE ALSO COOPER*, 939 F. SUPP. 2D AT 814.

WHEN A USER ATTEMPTS TO POST AN AD IN THE BACKPAGE.COM DATING SECTION (OR, WHILE IT WAS ACTIVE, THE ADULT SECTION), THE FOLLOWING HIGHLIGHTED “POSTING RULES” APPEAR:

YOU AGREE TO THE FOLLOWING WHEN POSTING IN THIS CATEGORY:

- I WILL NOT POST OBSCENE OR LEWD AND LASCIVIOUS GRAPHICS OR PHOTOGRAPHS WHICH DEPICT GENITALIA, ACTUAL OR SIMULATED SEXUAL ACTS OR NAKED IMAGES;
- I WILL NOT POST ANY SOLICITATION DIRECTLY OR IN “CODED” FASHION FOR ANY ILLEGAL SERVICE, INCLUDING EXCHANGING SEXUAL FAVORS FOR MONEY OR OTHER VALUABLE CONSIDERATION;
- I WILL NOT POST ANY MATERIAL ON THE SITE THAT EXPLOITS MINORS IN ANY WAY;
- I WILL NOT POST ANY MATERIAL ON THE SITE THAT IN ANY WAY CONSTITUTES OR ASSISTS IN HUMAN TRAFFICKING;
- I AM AT LEAST 18 YEARS OF AGE OR OLDER AND NOT CONSIDERED TO BE A MINOR IN MY STATE OF RESIDENCE.

ANY POST EXPLOITING A MINOR IN ANY WAY WILL BE SUBJECT TO CRIMINAL PROSECUTION AND WILL BE REPORTED TO THE CYBERTIPLINE FOR LAW ENFORCEMENT.⁴

⁴

The “Cybertipline”—provided as a hypertext link—is operated by the National Center for Missing and Exploited Children (“NCMEC”), to assist law enforcement. *United States v. Ackerman*, 831 F.3d 1292, 1294 (10th Cir. 2016). Backpage.com also has numerous hyperlinks to a “User Safety” page with links to NCMEC and like resources. *McKenna*,

POSTINGS VIOLATING THESE RULES AND OUR TERMS OF USE ARE SUBJECT TO REMOVAL WITHOUT REFUND.

OTHER BACKPAGE EFFORTS TO POLICE USER POSTS HAVE INCLUDED “MONITOR[ING] ... ADS THROUGH AUTOMATED AND MANUAL REVIEWS,” *COOPER*, 939 F. SUPP. 2D AT 814, WHICH BLOCK AND REMOVE POSTS, AND REFERRING TO NCMEC ADS THAT MAY INVOLVE CHILD EXPLOITATION. *SEE MCKENNA*, 881 F. SUPP. 2D AT 1266-67; *COOPER*, 939 F. SUPP. 2D AT 814. *SEE ALSO* COMPL. ¶¶ 67-68, 74, 78-80, 83-84, 86, 89-90, 95, 96-97, 100 (ALLUDING TO SCREENING).⁵ IT ALSO “REGULARLY WORKS WITH ... LAW ENFORCEMENT OFFICIALS BY RESPONDING TO SUBPOENA REQUESTS, PROVIDING OFFICIALS WITH INTERNET SEARCH TOOLS, AND REMOVING POSTS AND BLOCKING USERS AT THE REQUEST OF OFFICIALS.” *COOPER*, 939 F. SUPP. 2D AT 814.

AGAINST THIS BACKDROP, PLAINTIFF ALLEGES EIGHT CAUSES OF ACTION AGAINST BACKPAGE—WRONGFUL DEATH AND SURVIVAL NEGLIGENCE ACTIONS, WRONGFUL DEATH AND SURVIVAL WILLFUL-AND-WANTON-CONDUCT ACTIONS, INTENTIONAL AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS, CIVIL CONSPIRACY, AND VIOLATION OF THE PREDATOR ACCOUNTABILITY ACT—BASED ON MS. ROBINSON’S VICTIMIZATION BY ROSALES AND THE TRAFFICKERS. COMPL. ¶¶ 192-261, 323-329.⁶ SHE ALLEGES HAZLEY AND MCFEE “PAID [] BACKPAGE.COM [] A FEE ... TO ADVERTISE ON WWW.BACKPAGE.COM,” *ID.* ¶ 156, AND THAT, AS A RESULT, MS. ROBINSON “WAS SEXUALLY ABUSED AND EXPLOITED BY MEN, INCLUDING []

881 F. Supp. 2d at 1266. All ads also have a “Report” button and email (abuse@backpage.com) for ads users believe are improper or suspect. See Cooper, 939 F. Supp. 2d at 814.

The Complaint contains multiple errors with respect to its numbered paragraphs. For example, on p.22, paragraphs jump from 97 back to 96. This reference is to the “second” ¶ 96, and hereafter, page numbers may accompany paragraph cites where necessary to avoid confusion.

Plaintiff alleges claims against Rosales, and Hazley and McFee as well. *Id.* ¶¶ 262-322.

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ROSALES, WHO PURCHASED HER FOR SEX BY PAYING MONEY TO PIMPS, INCLUDING ... HAZLEY AND MCFEE.” *ID.* ¶ 164 (EMPHASIS ADDED). PLAINTIFF ALSO ALLEGES BACKPAGE FAILED TO “TAKE ANY STEPS TO PREVENT [MS. ROBINSON] FROM BEING ADVERTISED FOR SEX,” *ID.* ¶ 159, BUT DOES NOT ALLEGE IT HAD ANY SPECIAL RELATIONSHIP WITH HER.

PLAINTIFF ALLEGES BACKPAGE “OWNED, OPERATED, DESIGNED AND CONTROLLED THE WEBSITE, INCLUDING ITS CONTENT,” *ID.* ¶ 7, EDITED ADS IN ACCORD WITH ITS POSTING RULES, *ID.* ¶ 63, AND SOMEHOW “THROUGH [] MODERATING OR EDITING PRACTICES, COMBINED WITH THE [] TERMS OF USE, WAS RESPONSIBLE IN PART FOR THE CREATION AND DEVELOPMENT OF THE CONTENT OF THE ADVERTISEMENTS.” *ID.* ¶ 158. BUT PLAINTIFF PLEADS NO FACTS TO SUPPORT HER THEORY THAT BACKPAGE CREATED OR DEVELOPED AD CONTENT AT THE SITE—OR, MORE VITALLY—THE CONTENT OF ANY ADS RESULTING IN MS. ROBINSON’S VICTIMIZATION. THE COMPLAINT ALSO CONCLUSORILY CLAIMS BACKPAGE “INTENTIONALLY DEVELOPED THE [] WEBSITE TO REQUIRE INFORMATION THAT PROMOTED THIS ILLEGAL TRADE,” *ID.* ¶ 50, BUT FAILS TO IDENTIFY THE “INFORMATION” SUPPOSEDLY “REQUIRED,” OR HOW IT WAS THAT THAT INFORMATION “PROMOTED” ANY “ILLEGAL TRADE.”

THESE ALLEGATIONS RELY ON NO MORE THAN BACKPAGE’S GENERAL EXERCISE OF EDITORIAL FUNCTIONS IN OPERATING A WEBSITE AVAILABLE TO MILLIONS OF USERS AS A BASIS FOR LIABILITY FOR ITS USERS’ CONDUCT. THE COMPLAINT ALLEGES BACKPAGE “INTENTIONALLY HELPED SEX TRAFFICKERS CREATE AND DEVELOP THE CONTENT OF THEIR ADS” BY, PARADOXICALLY, PROHIBITING AND REMOVING CONTENT THAT MIGHT INDICATE SALE OF SEX, *SEE ID.* ¶ 61, AND IS REplete WITH CONCLUSORY ALLEGATIONS THAT IT “HELPS” UNSPECIFIED “SEX TRAFFICKERS” IN THE AGGREGATE “AVOID DETECTION” BY LAW ENFORCEMENT.⁷ *E.G.*, COMPL.

⁷

These and related allegations that Backpage “knowingly” “helped” sex traffickers, *e.g.*, Compl. ¶ 1, rely on a Senate Report attached to the Complaint. *See id.* ¶¶ 124-131 (pp.26-28) &

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¶¶ 1, 62-63, 96, 122. THESE JAUNDICED DESCRIPTIONS OF BACKPAGE’S USE OF POSTING RULES, AUTOMATIC FILTERING, AND MODERATION TO BAR AND DELETE OBJECTIONABLE CONTENT ONLY UNDERSCORE THAT USERS CONCEIVE, CREATE, AND POST ALL ADS. *E.G., ID.* ¶¶ 63, 67-68, 74, 78-79, 83-86, 89-90, 92, 96-97, 100, 102-104.

IT IS ALLEGED THAT THROUGH THESE GENERAL EDITORIAL PRACTICES BACKPAGE DEFENDANTS “TRAINED POTENTIAL SEX TRAFFICKERS, INCLUDING THOSE TRAFFICKING [MS.] ROBINSON, TO CREATE SANITIZED ADS,” *ID.* ¶¶ 157-158, BUT APART FROM CLAIMING BACKPAGE GENERALLY REMOVES OFFENDING CONTENT, *E.G., ID.* ¶¶ 63, 67-68, 74, 78-79, 83-86, 89-90, 92, 96-97, 100, 102-104, THERE IS NO AVERMENT HOW IT “MODERATED” ADS DEPICTING MS. ROBINSON.⁸ THE COMPLAINT INSTEAD MAKES CLEAR THAT MODERATION AND SCREENING FUNCTIONS WERE APPLIED AS A *SYSTEMATIC* ANTI-ABUSE POLICY APPLICABLE TO *ALL* USERS, NOT JUST THE TRAFFICKERS. *E.G., ID.* ¶¶ 83, 86, 89 (ALLEGATIONS OF “AUTOMATIC ‘MODERATION’” THROUGH WHICH “WEBSITE WOULD REMOVE THE OFFENDING LANGUAGE AND THEN POST THE REMAINDER OF THE AD”).

THE COMPLAINT ALLEGES BACKPAGE KNEW THE TRAFFICKERS “WERE SELLING WOMEN AND CHILDREN FOR SEX,” BUT “MADE NO EFFORT TO PREVENT” THEIR DOING SO, *ID.* ¶ 160, YET OFFERS NO SPECIFIC FACTS FOR THIS CLAIM. INSTEAD, THESE ASSERTIONS REST ON STATEMENTS

Ex. A. However, the Report is a polemic colored by argument, inadmissible hearsay and conjecture that is not properly incorporated. Under 735 ILCS 5/2-605, pleadings may incorporate only “written instruments” *i.e.*, those “upon which a claim is founded.” *McCormick v. McCormick*, 455 N.E.2d 103, 108 (Ill. App. Ct. 1983). The Report—which does not create any legal rights or duties among the parties—is exactly the sort of extrinsic document courts refuse to allow to be incorporated. *Jones v. Lazerson*, 561 N.E.2d 151, 155 (Ill. App. Ct. 1990) (noting that written “instrument” is that “sued upon,” that evidence attached to pleading is not controlling, and that courts should not assume facts therein are true). Backpage has thus moved to strike the Report.

See Compl., *passim*; *cf. id.* ¶ 158 (conclusory claim that Backpage “through [] moderating or editing practices, combined with [] terms of use, was [*sic*] responsible in part for the creation and development of the content of the ad[s] featuring [Ms.] Robinson”).

THAT (I) BACKPAGE.COM GENERALLY SCREENS FOR OBJECTIONABLE CONTENT, *ID.* ¶¶ 63, 67-68, 74, 78-79, 83-86, 89-90, 92, 96-97, 100, 102-104; AND (II) GIVEN THE ADULT SECTION’S ADS FOR “ESCORTS,” *ID.* ¶ 46, BACKPAGE SOMEHOW KNEW “ALL AD[S] THEREIN WERE FOR SEX,” *ID.* ¶ 48, BECAUSE “THE WORD ‘ESCORT’ STANDS FOR ... ‘PROSTITUTE’ AND MEANS VIRTUALLY THE SAME THING.” *ID.* ¶ 49. BUT THE ADS OF MS. ROBINSON CONVEY NO SUCH “KNOWLEDGE.” VIEWING APPENDIX B, THERE IS NO OFFER TO ENGAGE IN SEX (FOR MONEY OR OTHERWISE), AND IT IS EXPLICITLY STATED WHAT IS OFFERED IS COMPANIONSHIP ONLY. IF ANYTHING, REFERENCES TO EXPLICIT TALK, VULGAR LANGUAGE, AND CALLS FROM BLOCKED NUMBERS BEING UNWANTED, AND TO TERMINATING CALLS IF THOSE (AND OTHER) RULES ARE NOT FOLLOWED, SUGGEST SOMETHING OTHER THAN IN-PERSON CONTACT. THE AD ALSO REFLECTS IN A USER-SUPPLIED HEADER THAT THE PERSON DEPICTED IS 18 YEARS OLD.⁹

⁹ When this case was in federal court after removal, before remand, and Backpage’s motion to dismiss attached the ads, Plaintiff moved to redact on grounds ranging from Plaintiff’s inability to find “meaningful explanation” for the exhibit, to procedural propriety, privacy, and even allusions to child pornography, and the court provisionally redacted without awaiting opposition, and with little explanation. *Ambrose v. Backpage.com, LLC*, No. 1:17-cv-05081, ECF Nos. 19, 32 (N.D. Ill. 2017). Backpage is sensitive to the delicacy of the matter, but not only are the ads germane to the case, *the Complaint* should have attached them as documentary matter sued upon, as noted *infra* 30. That is especially so given the Complaint’s allegations about what Backpage “knew” or “should have known” based on the ads. *See infra* 17-19. And even cursory review of the ads makes clear they depict no nudity or sexual activity of any kind, belying any claim of child pornography. *See, e.g.*, 18 U.S.C. § 2256(2), (8) (requiring depiction of minor in sex act or lasciviously exhibiting the genitals or pubic area); 720 ILCS § 5/11-20.1(a)(1) (requiring sex act or “lewd exhibition of the unclothed or transparently clothed genitals, pubic area, buttocks, or ... female ... breast”); *People v. Lamborn*, 708 N.E.2d 350, 355 (Ill. 1999); *U.S. v. Griesbach*, 540 F.3d 654, 656 (7th Cir. 2008); *United States v. Dost*, 636 F. Supp. 828 (S.D. Cal. 1986), *aff’d*, 812 F.2d 1239 (9th Cir. 1987); *People v. Wayman*, 885 N.E.2d 416, 423 (Ill. App. 2012) (quoting *Lamborn*, at 354 (citing, *inter alia*, *Dost*)). Further, as Plaintiff alleges, these ads were previously publicly online. Compl. ¶¶ 120, 124, 126, 145-148 (pp.30-33). Plaintiff chose to bring this action, loaded the Complaint with salaciousness and opprobrium targeting Backpage, and has freely made it the subject of press conferences and releases. *E.g.*, <http://chicago.cbslocal.com/2017/05/17/backpage-lawsuit-murder-sex-trafficking>; www.chicagotribune.com/suburbs/daily-southtown/news/ct-sta-backpage-lawsuit-st-0518-20170517-story.html). Any suggestion that Backpage must contest those public allegations even partially in secret is unfounded.

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I. ARGUMENT

THE COMPLAINT MUST BE DISMISSED UNDER 735 ILCS 5/2-615(A) AS LEGALLY DEFICIENT “ON ITS FACE,” *MARSHALL V. BURGER KING CORP.*, 856 N.E.2D 1048, 1053 (ILL. 2006), AND AS FAILING TO “ALLEGE SPECIFIC FACTS SUPPORTING EACH ELEMENT OF [THE] CAUSE OF ACTION.” *STONE V. PADDOCK PUBL’NS, INC.*, 961 N.E.2D 380, 390 (ILL. APP. CT. 2011). “BECAUSE ILLINOIS IS A FACT-PLEADING STATE ... BARE CONCLUSIONS OF LAW OR CONCLUSORY [] ALLEGATIONS UNSUPPORTED BY SPECIFIC FACTS” DO NOT SUFFICE “FOR ... A SECTION 2-615 MOTION.” *COGHLAN V. BECK*, 984 N.E.2D 132, 144 (ILL. APP. CT. 2013). PLAINTIFFS MUST SET OUT ULTIMATE FACTS THAT SUPPORT THE CAUSE OF ACTION, *ID.* AT 141-42, AND IF “THERE ARE NOT SUFFICIENT ALLEGATIONS OF FACT TO STATE A CAUSE OF ACTION, A MOTION TO DISMISS WILL [] BE GRANTED, NO MATTER HOW MANY CONCLUSIONS MAY HAVE BEEN STATED” OR “WHETHER THEY INFORM THE DEFENDANT IN A GENERAL WAY OF THE NATURE OF THE CLAIM.” *ADKINS V. SARAH BUSH LINCOLN HEALTH CTR.*, 544 N.E.2D 733, 744 (ILL. 1989). “FACT PLEADING IMPOSES A HEAVIER BURDEN ..., SO THAT A COMPLAINT THAT WOULD SURVIVE ... IN A NOTICE-PLEADING JURISDICTION MIGHT NOT” IN ILLINOIS. *CITY OF CHI. V. BERETTA U.S.A. CORP.*, 821 N.E.2D 1099, 1112 (ILL. 2004). “AFTER STRIPPING THE PLEADING OF UNSUPPORTED CONCLUSIONS AND INFERENCES, SUFFICIENT FACTS MUST REMAIN TO SUSTAIN A CAUSE OF ACTION.” *IN RE ESTATE OF BAUMGARTEN*, 975 N.E.2D 651, 654 (ILL. APP. CT. 2012).

IMMUNITY UNDER SECTION 230 SHOULD BE RESOLVED AT THE EARLIEST PHASE OF A CASE, BECAUSE IT “FORECLOSES LIABILITY” WHERE, AS HERE, AN ONLINE PUBLISHER “IS NOT THE AUTHOR OF THE ADS AND [CAN]NOT BE TREATED AS THE ‘SPEAKER’ OF THE POSTERS’ WORDS.” *DART V. CRAIGSLIST*, 665 F. SUPP. 2D 961, 966 (N.D. ILL. 2009) (CITING *CHICAGO LAWYERS’ COMM. FOR CIVIL RIGHTS UNDER LAW, INC. V. CRAIGSLIST, INC.*, 519 F.3D 666, 669-71 (7TH CIR.

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2008)).¹⁰ NUMEROUS CASES HAVE GRANTED OR AFFIRMED DISMISSALS OF SUITS THAT, LIKE THIS, SEEK TO HOLD WEBSITES LIABLE FOR CONTENT CREATED BY THIRD PARTIES. *E.G.*, *CRAIGSLIST*, 665 F. SUPP. 2D 961; *DOE NO. 1*, 817 F.3D 12; *UNIVERSAL COMMC'N SYS., INC. V. LYCOS, INC.*, 478 F.3D 413 (1ST CIR. 2007). THIS COURT SHOULD DO THE SAME BY APPLYING SECTION 230'S PRECLUSIVE EFFECT, AND BECAUSE PLAINTIFF HAS NOT ALLEGED FACTS SUFFICIENT TO BRING ANY OF HER CLAIMS WITHIN A RECOGNIZED CAUSE OF ACTION. *BERETTA*, 821 N.E.2D AT 1112.

A. SECTION 230 BARS PLAINTIFF'S CLAIMS.

SECTION 230 CODIFIES FIRST AMENDMENT PRINCIPLES FOR ONLINE SPEECH BY GRANTING IMMUNITY TO "ENCOURAGE UNFETTERED AND UNREGULATED DEVELOPMENT OF FREE SPEECH ON THE INTERNET," "PROMOTE DEVELOPMENT OF E-COMMERCE," AND INCENT ONLINE PROVIDERS TO "SELF-POLICE" POTENTIALLY HARMFUL OR OFFENSIVE MATERIAL. *BATZEL V. SMITH*, 333 F.3D 1018, 1027-28 (9TH CIR. 2003). CONGRESS SOUGHT TO ELIMINATE THE "OBVIOUS CHILLING EFFECT" THAT LIABILITY FOR ONLINE PROVIDERS WOULD CAUSE, "GIVEN THE VOLUME OF MATERIAL [ONLINE], THE DIFFICULTY OF SEPARATING LAWFUL FROM UNLAWFUL SPEECH, AND THE RELATIVE LACK OF INCENTIVES TO PROTECT LAWFUL SPEECH." *LYCOS*, 478 F.3D AT 418-19 (CITATION OMITTED). ALONG WITH SHIELDING INTERACTIVE COMPUTER SERVICE PROVIDERS, 47 U.S.C. § 230(C)(1), QUOTED *SUPRA* AT 1, SECTION 230(E)(3) PREEMPTS ALL CIVIL CLAIMS AND ALL STATE-LAW CLAIMS (CIVIL OR CRIMINAL) AGAINST SUCH ONLINE PUBLISHERS IF BASED ON THIRD-PARTY CONTENT. *DOE V. GTE CORP.*, 347 F.3D 655, 658 (7TH CIR. 2003); *CHI. LAWYERS*, 519 F.3D 666, *AFF'G*, 461 F. SUPP. 2D 681 (N.D. ILL. 2006).

¹⁰

See also, e.g., Jones v. Dirty World Entm't Recordings LLC, 755 F.3d 398, 417 (6th Cir. 2014); *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 254 (4th Cir. 2009) (Section 230 protection is "effectively lost if a case is erroneously permitted" to proceed).

SECTION 230 APPLIES EXPANSIVELY, *LYCOS*, 478 F.3D AT 419, WITH “CLOSE CASES ... [TO] BE RESOLVED IN FAVOR OF IMMUNITY.” *JONES*, 755 F.3D AT 408 (QUOTING *FAIR HOUS. COUNCIL OF SAN FERNANDO VALLEY V. ROOMMATES.COM, LLC*, 521 F.3D 1157, 1174 (9TH CIR. 2008) (*EN BANC*)).¹¹ IMMUNITY LIES WHERE “(1) [A DEFENDANT] IS A PROVIDER OR USER OF AN INTERACTIVE COMPUTER SERVICE, (2) THE CLAIM RELIES ON INFORMATION PROVIDED BY ANOTHER [] CONTENT PROVIDER; AND (3) [IT] WOULD TREAT [DEFENDANT] AS THE PUBLISHER ... OF THAT INFORMATION.” *DOE NO. 1*, 817 F.3D AT 19. AT LEAST SEVEN COURTS HAVE AFFORDED BACKPAGE SECTION 230 IMMUNITY,¹² AND THE SAME SHOULD FOLLOW HERE.

“BACKPAGE.COM IS THE QUINTESSENTIAL PUBLISHER CONTEMPLATED BY THE CDA,” *COOPER*, 939 F. SUPP. 2D AT 823; *SEE ALSO FERRER I*, 2016 WL 7237305, AT *6, AND THE CLAIMS HERE ARE BASED ON ADS PLAINTIFF ALLEGES THE THIRD-PARTY TRAFFICKERS CREATED AND POSTED ON BACKPAGE.COM,¹³ WHICH ARE THE ESSENCE OF “INFORMATION PROVIDED BY ANOTHER CONTENT PROVIDER.” *E.G., DOE NO. 1*, 817 F.3D AT 17-21; *M.A.*, 809 F. SUPP. 2D AT 1050-53. THOSE CLAIMS TREAT BACKPAGE AS “PUBLISHER OR SPEAKER” OF ADS FOR MS.

¹¹

See also Doe v. MySpace, Inc., 474 F. Supp. 2d 843, 849 (W.D. Tex. 2007) (“Nothing on the face of [§ 230] supports [a] narrow interpretation”), *aff’d*, 528 F.3d 413 (5th Cir. 2008); *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006).

M.A., 809 F. Supp. 2d at 1047-55; *McKenna*, 881 F. Supp. 2d at 1266, 1271-75; *Backpage.com, LLC v. Hoffman*, 2013 WL 4502097, at *8 (D.N.J. Aug. 20, 2013); *Cooper*, 939 F. Supp. 2d at 823-25; *Doe No. 1*, 104 F. Supp. 3d at 157-58, *aff’d* 817 F.3d at 20-22; *People v. Ferrer*, 2016 WL 7237305, at *3-6 (Cal. Super. Ct. Dec. 9, 2016) (“*Ferrer I*”); *People v. Ferrer*, No. 16FE024013 (Cal. Super. Ct. Aug. 23, 2017) (“*Ferrer II*”).

See Compl. ¶¶ 117 (p.30), 131-133 (p.31), 137-138 (p.32) (“an ad[] depicting [Ms. Robinson] was posted on Backpage.com from the address of Defendant Hazley”), 154 (“[Ms.] Robinson was advertised for sex ... by unknown adult individuals, including but not limited to Defendants Hazley and McFee”); *id.* ¶ 170 (“[Ms. Robinson] was sold to [] Rosales by Defendant Hazley.”). The Complaint also alleges the Traffickers may have been aided and/or preceded by an “unknown 19-year-old female” who, to the extent that was the case, is encompassed within the “Traffickers” designation. *See Compl.* ¶¶ 116-118 (p.29-30).

ROBINSON BY TAKING IT TO TASK FOR, ESSENTIALLY, DECIDING “WHETHER TO PUBLISH, WITHDRAW, POSTPONE OR ALTER CONTENT”—ALL TRADITIONAL EDITORIAL FUNCTIONS SECTION 230 PROTECTS. *JONES*, 755 F.3D AT 407 (CITATION OMITTED). *SEE INFRA* 11-17. NO “ARTFUL PLEADING” CAN CIRCUMVENT THIS WELL-SETTLED IMMUNITY. *COHEN V. FACEBOOK, INC.*, 2017 WL 2092621, AT *11 (E.D.N.Y. MAY 18, 2017); *ARMSTRONG*, 673 N.E.2D AT 293.

1. BACKPAGE’S EDITORIAL CHOICES ARE PROTECTED BY SECTION 230.

PLAINTIFF SEEKS TO IMPOSE LIABILITY BASED ON BACKPAGE.COM’S POSTING RULES AND ALLEGED PRACTICES OF “REVIEWING AND EDITING” ADS BY FILTERING AND MODERATION, COMPL. ¶ 74, BUT THESE EDITORIAL PRACTICES *SUPPORT* SECTION 230 IMMUNITY, AS BACKPAGE.COM IS NOT THE ORIGINATOR OR CREATOR OF THE ALLEGEDLY ACTIONABLE CONTENT. CONCLUSORY ALLEGATIONS THAT BACKPAGE “CREATE[S],” OR “DEVELOP[S]” CONTENT BASED ON GENERAL WEBSITE FEATURES FAIL, BECAUSE A VALID CLAIM REQUIRES “SPECIFIC ALLEG[ATIONS]” SHOWING THE DEFENDANT “CREATED THE CONTENT OF THE STATEMENTS” AT ISSUE *CONCERNING ROBINSON*. *KIMZEY*, 836 F.3D AT 1268-69. HERE, CONCLUSORY RECITATIONS OF BACKPAGE.COM’S “AUTHORSHIP” ARE BELIED BY AVERMENTS THAT ADS ON THE SITE ARE POSTED BY THIRD PARTY USERS, AND THAT THE CONTENT OF ADS CONCERNING MS. ROBINSON WERE PROVIDED BY THE TRAFFICKERS.¹⁴

CLAIMS THAT BACKPAGE SOUGHT TO “HELP SEX TRAFFICKERS CREATE AND DEVELOP ADS ... THAT [] EVADE LAW ENFORCEMENT,” COMPL. ¶¶ 62, 96, START FROM THE PREMISE THAT IT WAS THE TRAFFICKERS WHO “ADVERTISED” MS. ROBINSON. *ID.* ¶¶ 117, 129, 131-133, 137, 154

¹⁴

Compl. ¶ 96 (“*traffickers create and develop ads* for sex”); *id.* ¶ 86 (“when a *user posted* an ad with certain words that ... indicated the ad was for sex, the website would remove the offending language”); *id.* ¶ 154 (Robinson “was advertised for sex on www.backpage.com *by unknown adult individuals, including but not limited to Defendants Hazley and McFee*”) (all emphases added). Paradoxically, Plaintiff also faults Backpage for *not* editing third-party ads, or not doing so quickly enough. *E.g.*, Compl. ¶¶ 98-99, 101, 103, 111-112.

(PP.30-34) (“HAZLEY POSTED ADS OF [MS. ROBINSON] ON WWW.BACKPAGE.COM”). THE COMPLAINT THUS MAKES CLEAR ANY CONTENT INVOLVING MS. ROBINSON WAS PROVIDED BY THE TRAFFICKERS, NOT BACKPAGE. AT MOST, BACKPAGE APPLIED GENERALLY APPLICABLE MODERATION AND FILTERING POLICIES TO **REMOVE** HARMFUL CONTENT FROM THE POSTS. *E.G.*, *ID.* ¶¶ 78-80, 83-84, 88-90, 95, 96-97 (P.21-22).

EVEN NARROW READINGS OF SECTION 230 MAKE CLEAR THE ISSUE IS “WHETHER IT IS THE THIRD-PARTY CONTENT (WHICH WOULD FALL WITHIN SECTION 230(C)(1)’S PROTECTION) OR THE [SITE’S] ALTERATION (WHICH WOULD NOT) [] CAUSED THE INJURY.” *CHICAGO LAWYERS*, 461 F. SUPP. 2D AT 695. AT THE SAME TIME, “[A] CLAIM AGAINST AN ONLINE SERVICE PROVIDER FOR NEGLIGENTLY PUBLISHING HARMFUL INFORMATION CREATED BY USERS TREATS DEFENDANT AS THE ‘PUBLISHER’ OF THAT INFORMATION.” *CRAIGSLIST*, 665 F. SUPP. 2D AT 967-68. THERE IS NO CREDIBLE ALLEGATION HERE THAT BACKPAGE CREATED OR EDITED ANY ADS DEPICTING MS. ROBINSON. *COMPARE BLOCKOWICZ V. WILLIAMS*, 675 F. SUPP. 2D 912, 916 (N.D. ILL. 2009), *AFF’D*, 630 F.3D 563 (7TH CIR. 2010) (WEBSITE COULD NOT BE LIABLE BASED ON ALLEGATION ITS TERMS OF SERVICE WERE A “DELIBERATE ANNOUNCEMENT TO POTENTIAL [USERS] THAT [SITE] IS A SAFE HAVEN” FOR CRIMINAL ACTIVITY). AND ANY CLAIM THAT BACKPAGE EDITED ADS INVOLVING MS. ROBINSON MADE SOLELY UPON “INFORMATION AND BELIEF,” COMPL. ¶ 144, MUST BE DISREGARDED, *WHITLEY*, 171 N.E.2D AT 646, AS PLAINTIFF FAILS TO OUTLINE SUPPORTING FACTS. *PATRICK ENG’G, INC.*, 976 N.E.2D AT 332. IN ANY EVENT, ANY “EDITING” WOULD HAVE INVOLVED DELETION AND/OR REMOVAL OF CONTENT. *SEE INFRA* 16-17.

IN *DOE NO. 1*, WHICH INVOKED STRIKINGLY SIMILAR THEORIES OF LIABILITY BASED ON ALLEGATIONS THAT THIRD-PARTY TRAFFICKERS ADVERTISED PLAINTIFFS FOR SEX ON BACKPAGE.COM, THE COMPLAINT SIMILARLY ALLEGED BACKPAGE DELIBERATELY STRUCTURED ITS SITE, SELECTIVELY REMOVED CONTENT, PERMITTED ANONYMOUS POSTING, STRIPPED

METADATA FROM PHOTOS, ACCEPTED PAYMENTS BY MEANS THAT ALLOWED POSTERS TO REMAIN ANONYMOUS, AND OTHERWISE TAILORED POSTING RULES TO FACILITATE TRAFFICKING TO MAXIMIZE PROFITS. *Id.* AT 16-17 & N.2. IN DISMISSING, THE DISTRICT COURT HELD THOSE WEBSITE FEATURES “AMOUNT TO NEITHER AFFIRMATIVE PARTICIPATION IN AN ILLEGAL VENTURE NOR ACTIVE WEB CONTENT CREATION,” WHILE NOTING “COURTS HAVE REPEATEDLY REJECTED THIS ‘ENTIRE WEBSITE’ THEORY AS INCONSISTENT WITH THE SUBSTANCE AND POLICY OF SECTION 230.” *DOE NO. 1*, 104 F. SUPP. 3D AT 152, 156-157, 162. THE FIRST CIRCUIT AFFIRMED, HOLDING THE CLAIMS UNIFORMLY “ADDRESS THE STRUCTURE AND OPERATION OF THE BACKPAGE WEBSITE”—IN OTHER WORDS, “BACKPAGE’S DECISIONS ABOUT HOW TO TREAT [THIRD-PARTY] POSTINGS.” *DOE NO. 1*, 817 F.3D AT 21. AS WITH THE ALLEGATIONS HERE, THE

CLAIMS CHALLENGE FEATURES THAT ARE PART AND PARCEL OF THE OVERALL DESIGN AND OPERATION OF THE WEBSITE FEATURES SUCH AS THESE, WHICH REFLECT CHOICES ABOUT WHAT CONTENT CAN APPEAR ON THE WEBSITE AND IN WHAT FORM, ARE ***EDITORIAL CHOICES THAT FALL WITHIN THE PURVIEW OF TRADITIONAL PUBLISHER FUNCTIONS.***

Id. (EMPHASIS ADDED). COMPARE ALSO *M.A.*, 809 F. SUPP. 2D AT 1053-54, WITH COMPL. ¶¶ 157-61.¹⁵

IN *M.A.*, PLAINTIFF SIMILARLY ALLEGED SHE WAS TRAFFICKED BY A THIRD PARTY WHO POSTED ADS ON BACKPAGE.COM. 809 F. SUPP. 2D AT 1043-44. LIKE PLAINTIFF HERE, *M.A.* TARGETED THE SITE’S GENERAL FEATURES, ALLEGING BACKPAGE SOUGHT TO CREATE “A HIGHLY TUNED MARKETING SITE” WITH A “VEIL OF LEGALITY,” WHILE HAVING “KNOWLEDGE” POSTS WERE “FOR PROSTITUTION” AND “ILLEGAL SEXUAL CONTACT WITH MINORS.” *Id.* AT 1044. THE COURT REJECTED ARGUMENTS CHALLENGING GENERAL ASPECTS OF THE SITE’S “CONSTRUCT AND OPERATION,” *Id.* AT 1050, HOLDING THAT A PROVIDER IS “IMMUNE UNDER § 230 UNLESS IT

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Plaintiff’s claims here mirror those in *Doe* in numerous ways. A full comparison showing the similarity of allegations in this case to those in *Doe No. 1* is attached as Appendix A.

CREATED THE OFFENDING ADS,” AND THAT “HOWEVER HORRIFIC THE CONSEQUENCES TO M.A. ... THE ADS WERE CREATED BY [THE PIMP].” *ID.* AT 1051 (QUOTATION MARKS AND CITATION OMITTED).¹⁶

THE COMMON THREAD OF THESE CASES IS THAT A PLAINTIFF MAY NOT HOLD A WEBSITE LIABLE FOR EXERCISING TRADITIONAL EDITORIAL FUNCTIONS, INCLUDING DECIDING WHAT THIRD-PARTY-CREATED CONTENT—INCLUDING CLASSIFIED ADS—TO POST, DELETE, OR EDIT, OR WHAT PORTIONS OF THIRD-PARTY CONTENT VIOLATE THE SITE’S TERMS OF USE. *SEE, E.G., GTE*, 347 F.3D AT 657-58, 662 (AFFIRMING § 230 DISMISSAL WHERE USER VIOLATED USE RESTRICTIONS YET GTE DID NOT EXERCISE RIGHT TO TERMINATE, EVEN IF IT “MAY HAVE REALIZED THE CHARACTER” OF USER’S CONTENT). NOR MAY PLAINTIFFS EVADE SECTION 230’S PROTECTION BY ATTACKING THE FUNDAMENTAL DESIGN AND CONFIGURATION OF A WEBSITE. WHERE “THIRD-PARTY CONTENT ... APPEARS AS AN ESSENTIAL COMPONENT OF EACH AND ALL” OF PLAINTIFF’S CLAIMS, *DOE NO. 1*, 817 F.3D AT 22—AS IT DOES HERE—PLAINTIFF SEEKS TO DO WHAT SECTION 230 EXPRESSLY PROHIBITS: IMPOSE LIABILITY ON BACKPAGE “AS THE PUBLISHER OR SPEAKER,” 47 U.S.C. § 230(C)(1), OF ADS CREATED BY THIRD PARTIES.

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¹⁶

Numerous other decisions are to the same effect. *E.g., Ferrer*, 2016 WL 7237305, at *1-5 (dismissing indictment against Backpage principals on grounds “the only ‘manipulation’ would be ... extracting [] content from the original ad,” which “is not prohibited activity” but rather “protected editorial functions”); *Ferrer II*, slip op. 1, 13-14, 16-17 (granting demurrer months after Senate Report on grounds that, *inter alia*, Section 230 immunity cannot be lost based on an “overall course of conduct,” as the alleged “editing” of ads through “a moderation system where terms would be deleted or blocked” “generally fall within the scope” of Section 230’s “protected editorial functions”); *id.* 14 (deleting terms to “sanitize” ads is not “material contribution to the offensive content”). *See also, e.g., Herrick v. Grindr, LLC*, 2018 WL 566457, at *7 (S.D.N.Y. Jan. 25, 2018), *appeal filed*, No. 18-396 (2d Cir. Feb. 9, 2018); *Doe v. MySpace*, 528 F.3d at 419-20 (Section 230 barred holding social networking site liable for sexual assault of 14-year-old victim by a man who met her on site); *Doe II v. MySpace Inc.*, 175 Cal. App. 4th 561, 573 (2009) (plaintiffs “want MySpace to ensure [] sexual predators do not gain access to (*i.e.*, communicate with) minors,” yet “[t]hat type of activity—to restrict or make available [] material—is expressly covered by section 230”); *Green v. AOL*, 318 F.3d 465, 471 (3d Cir. 2003) (plaintiff sought “to hold AOL liable for ... monitoring, screening, and deletion of content,” *i.e.*, “actions quintessentially related to a publisher’s role”). *Cf. Doe v. AOL*, 783 So. 2d 1010, 1017 (Fla. 2001) (AOL immune from claims it knowingly hosted chats where users violated child pornography laws).

2. ALLEGATIONS REGARDING BACKPAGE.COM’S EDITORIAL FUNCTIONS DO NOT SUPPORT LIABILITY BASED ON THE ADS AT ISSUE.

SECTION 230 ANALYSIS “TURNS ON WHO WAS RESPONSIBLE FOR *THE SPECIFIC HARMFUL MATERIAL AT ISSUE*, NOT ON WHETHER THE SERVICE PROVIDER WAS RESPONSIBLE FOR THE GENERAL FEATURES AND MECHANISMS OF THE SERVICE OR OTHER CONTENT...THAT MIGHT HAVE ALSO APPEARED.” *BATES*, 2006 WL 3813758, AT *17 (CITING *CARAFANO V. METROSPLASH.COM*, 339 F.3D 1119 (9TH CIR. 2003)) (EMPHASIS ADDED). COURTS UNIFORMLY HOLD A WEBSITE CAN BE LIABLE ONLY TO THE EXTENT IT CREATED OR DEVELOPED THE “SPECIFIC CONTENT THAT WAS THE SOURCE OF THE ALLEGED LIABILITY.” *FTC V. ACCUSEARCH, INC.*, 570 F.3D 1187, 1198-99 (10TH CIR. 2009). *SEE ALSO, E.G., JONES*, 755 F.3D AT 410 (TO LOSE § 230 IMMUNITY, WEBSITE MUST BE “RESPONSIBLE FOR WHAT MAKES THE DISPLAYED CONTENT ALLEGEDLY UNLAWFUL”). AS THE *M.A.* COURT HELD, BACKPAGE CANNOT BE LIABLE FOR “CONSEQUENCES OF THE ADS POSTED BY [TRAFFICKERS]” IF IT DID NOT DEVELOP “THE SPECIFIC CONTENT” AT ISSUE. 809 F. SUPP. 2D AT 1051 (CITATION OMITTED).

NOT ONLY DO PLAINTIFF’S ALLEGATIONS ABOUT WHAT HAPPENS GENERALLY AT BACKPAGE.COM REST ON SUPPOSITION AND CONJECTURE, MALFEASANCE AS TO THE ADS IN QUESTION “CAN’T BE PRESUMED.” *HART V. AMAZON.COM, INC.*, 845 F.3D 802, 803-04 (7TH CIR. 2017). AS ALL HARM TO MS. ROBINSON IS ALLEGED ONLY FROM ADS THE TRAFFICKERS CREATED AND FELONIOUS CONDUCT BY ANOTHER THIRD-PARTY (ROSALES),¹⁷ NOT FROM SPECIFIC ADS (OR

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See Compl. ¶ 22 (“Rosales engaged ... [Ms.] Robinson for immoral [] and illegal purposes, ... solicited sex ..., and raped, abused, assaulted, and eventually killed” her); ¶ 117 (p.30) (“Hazley posted ads of [Ms. Robinson] on www.backpage.com”); ¶ 131 (p.31) (“ad[] depicting [Ms. Robinson] was posted on Backpage.com from the address of Defendant Hazley”); ¶ 156 (discussing “individuals sex trafficking [Ms. Robinson], including ... Hazley and McFee”); ¶ 164 (“Robinson was sexually abused and exploited by men, including [] Rosales, who purchased her for sex by paying ... pimps, including but not limited to [] Hazley and McFee”); *id.* ¶ 167 (“Hazley took or forced [Ms.] Robinson into a vehicle and drove her to ... Rosales”); *id.* ¶ 170 (“Robinson was sold to [] Rosales by Defendant Hazley”); ¶ 181 (“Rosales

PORTIONS) BACKPAGE SUPPOSEDLY CREATED, SHE CANNOT AVOID SECTION 230. *BATES*, 2006 WL 3813758, AT *16 (IMMUNITY DESPITE ALLEGATION THAT “DOES’ NEIGHBOR [] TOOK ILLEGAL CHILD-PORNOGRAPHIC PHOTOGRAPHS ... AND UPLOADED THEM”) (INTERNAL QUOTATION MARKS OMITTED).

BUT PERHAPS MOST FATAL IS NOT JUST HOW THE ALLEGATIONS CONCERN QUINTESSENTIAL PUBLISHER EDITORIAL CONDUCT, BUT THAT THE COMPLAINT MAKES PATENTLY CLEAR THAT PLAINTIFF’S CLAIMS OF BACKPAGE “SANITIZING [] ADS,” COMPL. ¶ 77, EXCLUSIVELY MEAN “MANUALLY REMOVING OR EDITING LANGUAGE” THAT VIOLATES POSTING RULES, *ID.* ¶ 78, AND THAT IT “ALSO REMOVE[S] IMAGES.” *ID.* ¶ 79. *SEE ALSO, E.G., ID.* ¶¶ 197.E,G,I, 208.E,G,I, 218.E,G,I, 230.Q,S,U, 259. WHATEVER PLAINTIFF’S JAUNDICED VIEW OF BACKPAGE’S POSTING RULES MAY BE, *SEE, E.G., ID.* ¶¶ 63-72, THE COMPLAINT IS EMPHATIC THAT, WHETHER IT ATTACKS USE OF AN “ELECTRONIC FILTER TO ‘STRIP’—THAT IS, DELETE—HUNDREDS OF WORDS,” *ID.* ¶ 85, OR “[M]ANUAL EDITING [THAT] ENTAILED THE DELETION OF LANGUAGE,” ¶ 89; *SEE ALSO ID.* ¶¶ 90-92, 100, 102, THE CLAIMS INVOLVE SOLELY *DELETING, BLOCKING OR REFUSING TO ALLOW* NON-COMPLIANT USER CONTENT. *CF. ID.* ¶ 86 (“THE WEBSITE WOULD REMOVE THE OFFENDING LANGUAGE AND THEN POST THE REMAINDER”). THE COMPLAINT ALSO INSISTS THIS PROCESS “CHANGED NOTHING” IN THE AD’S OVERALL IMPORT. *SEE ID.* ¶ 87 (“THE STRIP TERM FROM AD FILTER CHANGED NOTHING ABOUT THE TRUE NATURE OF THE [] TRANSACTION”).

PLAINTIFF’S THEORY IS THUS NOT THAT BACKPAGE CREATED CONTENT, OR EVEN ADDED ANYTHING TO ADS THAT WAS IN ANY WAY ILLEGAL; RATHER, IT IS THAT ITS POSTING RULES AND MODERATION PRACTICES OPERATED TO “SANITIZE” ADS AND “MASK” THEM FROM LAW

tried to forcibly rape [Ms.] Robinson”); *id.* ¶¶ 182-183 (“Rosales beat [Ms.] Robinson ..., strangled her as she tried to call for help, and/or used a knife to slash [her] throat” and “left her dead”). Other matters as stated in the allegations are so far-fetched as to be nonsensical. *See, e.g.,* Compl. ¶ 174 (“using www.backpage.com ... Rosales raped [Ms.] Robinson”); *id.* ¶ 181 (same).

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ENFORCEMENT. THIS IS IN SIGNIFICANT TENSION WITH THE CLAIM THAT “NOTHING CHANGED” THE NATURE OF ADS REGARDLESS OF WHETHER THEY WERE EDITED. BUT PERHAPS THE MOST DEVASTATING ADMISSION THAT FLOWS FROM THIS IS THAT, IF ANYTHING WAS ILLEGAL, BACKPAGE NEITHER CREATED NOR POSTED IT. THIS IS FATAL TO PLAINTIFF’S CLAIMS, BECAUSE SECTION 230 IMMUNITY DOES NOT PERMIT LIABILITY FOR A SITE’S DELETION OF OFFENSIVE CONTENT—WHICH IS NOT “DISPLAYED CONTENT.” *JONES*, 755 F.3D AT 410. *CF. DAVIS V. MOTIVA ENTERS., L.L.C.*, 2015 WL 1535694, AT *4 (TEX. APP. APR. 2, 2015). NONE OF WHAT THE COMPLAINT DESCRIBES CONSTITUTES PROVIDING THE UNLAWFUL CONTENT THAT THE COMPLAINT ADMITS THE TRAFFICKERS POSTED.¹⁸ RATHER, PLAINTIFF SEEKS TO HOLD THE BACKPAGE DEFENDANTS LIABLE NOT FOR ANYTHING THEY CREATED OR POSTED, BUT FOR CONTENT ALLEGEDLY **REJECTED** FROM THE WEBSITE UNDER BACKPAGE.COM’S TERMS OF SERVICE.

THAT RUNS CONTRARY TO A UNIFORM BODY OF CASE LAW HOLDING THAT “§ 230 FORBIDS ... PUBLISHER LIABILITY ... FOR THE EXERCISE OF ITS EDITORIAL AND SELF-REGULATORY FUNCTIONS.” *ZERAN V. AM. ONLINE, INC.*, 129 F.3D 327, 331 (4TH CIR. 1997). “IN KEEPING WITH THIS EXPANSIVE VIEW OF THE PUBLISHER’S ROLE, JUDICIAL DECISIONS IN THIS AREA CONSISTENTLY STRESS THAT ... WHETHER [] CONTENT SHOULD BE REMOVED ... FALL[S] WITHIN THE EDITORIAL PREROGATIVE.” *COHEN*, 2017 WL 2092621, AT *11 (SECTION 230 BARRED LIABILITY FOR FACEBOOK.COM’S “‘PROVISION OF SERVICES’ TO HAMAS...‘COUPLED WITH [] REFUSAL TO USE AVAILABLE RESOURCES ... TO IDENTIFY AND SHUT DOWN [ITS] HAMAS ACCOUNTS.’”). IN SHORT, “ANY ACTIVITY THAT CAN BE BOILED DOWN TO DECIDING WHETHER TO

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Cf. GW Equity LLC v. Xcentric Ventures LLC, 2009 WL 62173, at *7 (N.D. Tex. 2009) (even if website added content, if added content itself did not constitute unlawful portion of post, that did not create question of fact material to whether service provider lost § 230 immunity).

EXCLUDE MATERIAL THAT THIRD PARTIES SEEK TO POST [] IS **PERFORCE IMMUNE** UNDER SECTION 230,” *ROOMMATES*, 521 F.3D AT 1170-71 (EMPHASIS ADDED), AND THAT IS ALL THAT PLAINTIFF ALLEGES HERE.

3. NOTICE LIABILITY CANNOT DEFEAT SECTION 230.

PLAINTIFF CANNOT EVADE SECTION 230 BY ALLEGING BACKPAGE KNEW (OR SHOULD HAVE KNOWN) THIRD PARTIES MAY MISUSE ITS WEBSITE. *SEE, E.G.*, COMPL. ¶¶ 63-70, 101, 140-143. SUCH GENERAL CLAIMS OF “KNOWLEDGE” TARGET TRADITIONAL EDITORIAL FUNCTIONS IMMUNIZED BY SECTION 230, *SEE SUPRA* § III.A.1, AND IT IS “WELL ESTABLISHED THAT NOTICE OF THE UNLAWFUL NATURE OF THE INFORMATION [POSTED] IS NOT ENOUGH TO MAKE TO THE SERVICE PROVIDER’S OWN SPEECH.” *LYCOS*, 478 F.3D AT 420. *SEE BATES*, 2006 WL 3813758, AT *3, *6, *18 (IMMUNITY EVEN WHERE IT WAS ALLEGED YAHOO! “KNEW OR HAD REASON TO KNOW ABOUT THE ILLEGAL NATURE” OF USERS’ ACTIVITIES). AS HELD IN *GTE*, 347 F.3D AT 659, “[E]VEN ENTITIES THAT KNOW THE INFORMATION’S CONTENT [ARE] NOT [] LIABLE FOR THE SPONSOR’S DEEDS.”

EVEN *ACTUAL* KNOWLEDGE OF ILLEGAL POSTS DOES NOT MAKE AN ONLINE PROVIDER LIABLE JUST BECAUSE IT FAILS TO DELETE THEM. *E.G.*, *ZERAN*, 129 F.3D AT 331-32. *CF. GTE*, 347 F.3D AT 658 (§ 230 DISMISSAL AFFIRMED DESPITE GTE “POLICY OF NOT CENSORING ANY HOSTED WEBSITE”). THAT IS BECAUSE “[L]IABILITY UPON NOTICE WOULD DEFEAT THE [] PURPOSES” OF SECTION 230 BY “REINFORC[ING] PROVIDERS’ INCENTIVES TO RESTRICT SPEECH AND ABSTAIN FROM SELF-REGULATION.” *ZERAN*, 129 F.3D AT 333. COURTS CONSISTENTLY REJECT THE ARGUMENT PLAINTIFF MAKES HERE—THAT BACKPAGE SHOULD BE DENIED IMMUNITY BECAUSE IT ALLEGEDLY KNOWS OR SHOULD KNOW “OF MINORS BEING SEXUALLY TRAFFICKED” ON ITS SITE. *M.A.*, 809 F. SUPP. 2D AT 1050-51. *SEE ALSO BARRETT V. ROSENTHAL*, 40 CAL. 4TH 33, 41-50 (2006) (SECTION 230 BARRED CLAIMS AGAINST WEBSITE EVEN THOUGH DEFENDANTS RECEIVED

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NOTICE THE OFFENDING MESSAGES WERE ALLEGEDLY DEFAMATORY); *CARACCIOLI V. FACEBOOK, INC.*, 2017 WL 2445063, AT *1 (9TH CIR. 2017) (“FACEBOOK DID NOT BECOME THE ‘INFORMATION CONTENT PROVIDER UNDER § 230(C)(1) MERELY BY VIRTUE OF REVIEWING THE CONTENTS ... AND DECIDING NOT TO REMOVE IT”).

HERE, NOT ONLY CAN ALLEGATIONS OF KNOWLEDGE NOT AVOID SECTION 230, THEY ARE PURE SPECULATION, WITH NO SUPPORTING FACTS TYING BACKPAGE’S PURPORTED KNOWLEDGE TO ADS OF MS. ROBINSON.¹⁹ PLAINTIFF FAILS TO EXPLAIN HOW, AMONG BACKPAGE.COM’S MILLIONS OF USERS AND ADS, IT GAINED KNOWLEDGE ABOUT ADS RELATING TO MS. ROBINSON. ALL SUCH ALLEGATIONS OF “KNOWLEDGE” INSTEAD CONCERN ALLEGED REMOVAL OF OBJECTIONABLE CONTENT AND GENERAL EDITORIAL PRACTICES, *E.G.*, COMPL. ¶¶ 157-160, OR UNFOUNDED AND INCORRECT PREMISES THAT ALL “ESCORTS” ARE “PROSTITUTES.” *ID.* ¶¶ 48, 49.²⁰ AND NO FACTS ARE ALLEGED THAT BACKPAGE KNEW ROBINSON WAS A MINOR. IN THIS REGARD, THE COMPLAINT “DOES NOT CONTAIN FACTS ALLEGING HOW [BACKPAGE] RECEIVED NOTICE” OF THE TRAFFICKERS’ OR ROSALES’S CONDUCT. *MOTIVA*, 2015 WL 1535694, AT *4.

THIS CASE ILLUSTRATES PRECISELY WHY SECTION 230 IMMUNIZES ONLINE INTERMEDIARY PUBLISHERS LIKE BACKPAGE.COM. THE ADS DEPICTING MS. ROBINSON GIVE NO INSIGHT INTO

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Many, if not all, of the allegations supporting Plaintiff’s notice liability theory are also based on “information and belief.” *E.g.*, Compl. ¶¶ 101, 103, 128 (p.31), 138, 140-143, 150-151, 160-161. Because Plaintiff fails to describe how that information and belief came about, these assertions should be disregarded for reasons discussed *supra* at 2, 8-9.

Courts—including the United States District Court for the Northern District of Illinois and the Seventh Circuit—repeatedly have rejected claims that ads for escort or adult services are *per se* illegal. *Dart*, 807 F.3d at 234 (“[N]ot all advertisements for sex are [] for illegal sex.”); *McKenna*, 881 F. Supp. 2d at 1282 (“an advertisement for escort services may be just that”); *Craigslist*, 665 F. Supp. 2d at 968 (“The phrase ‘adult,’ even in conjunction with ‘services,’ is not unlawful in itself nor does it necessarily call for unlawful content.”); *see also id.* (“Plaintiff is simply wrong when he insists that [‘adult’ is] synonymous for illegal sexual services.”). Even in the Complaint here, Plaintiff unwittingly admits that ads at Backpage.com could just as easily be for things like “sex-camera shows,” which are lawful, as for anything illicit. *See* Compl. ¶ 55.

HER ACTUAL AGE, AND NOTHING EXPRESSLY SUGGESTS AN ILLEGAL TRANSACTION IS NECESSARILY PROPOSED. PLAINTIFF CHARGES BACKPAGE WITH “KNOWING [MS.] ROBINSON WAS ... LIKELY A MINOR,” COMPL. ¶ 161; *SEE ALSO ID.* ¶ 217, BUT OFFERS NO EXPLANATION HOW THAT WOULD BE SO.²¹ AS NOTED, ESCORT ADS ARE NOT ILLEGAL, *SUPRA* NOTE 20, AND IF ANYTHING, THE ADS ARE MORE SUGGESTIVE OF PHONE SEX. *SEE* APP. B AT 10 (“NO BLOCKED CALLS,” “NO EXPLICIT TALK OR VULGAR LANGUAGE,” “VIOLATIONS ... WILL AUTOMATICALLY END THE CALL”). EVEN IF BACKPAGE NOTICED THESE ADS IN THE MILLIONS POSTED EACH MONTH, THEY CERTAINLY DO NOT PROVIDE NOTICE SUFFICIENT TO TRIGGER THE KIND OF LIABILITY PLAINTIFF SEEKS TO IMPOSE—AND SECTION 230 FORBIDS—IN THIS CASE.²² THIS IS THE “DIFFICULTY OF SEPARATING LAWFUL FROM UNLAWFUL SPEECH” AGAINST WHICH SECTION 230 PROTECTS. *LYCOS*, 478 F.3D AT 418-19 (CITATION OMITTED).

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In fact, the ad on its face indicates the opposite. It states the poster’s age is 18 and repeats that age in the headline in describing the person depicted. App. B. Significantly, for all of Plaintiff’s allegations, that “18” in the header could not have come from “filtering,” “stripping,” “removing” or “deleting” material from ads. *E.g.*, Compl. ¶¶ 78-80, 84-87, 95, 96 (p.22), 259.

Even law enforcement seems to require more to proceed. *See Craigslist*, 665 F. Supp. 2d at 963 n.3. Plaintiff may claim entitlement to “all reasonable inferences” on a Section 2-615(a) motion, *e.g.*, *Account Servs. Corp. v. Dakcs Software Servs., Inc.*, 567 N.E.2d 381, 383 (Ill. App. Ct. 1990), but the point is not whether Ms. Robinson was trafficked through the ads, but whether Backpage was responsible for their content and/or became subject to any duty based on the face of the ads. These all are precisely the sort of allegations that cannot survive a motion to dismiss. *See Alpha Sch. Bus Co. v. Wagner*, 910 N.E.2d 1134, 1148 (Ill. App. Ct. 2009) (“conclusions of law and conclusory factual allegations unsupported by specific facts are not deemed admitted”).

4. CONCLUSORY ALLEGATIONS OF FACILITATION, ENCOURAGEMENT, CONSPIRACY AND PROFIT-MOTIVE CANNOT OVERCOME SECTION 230.

PLAINTIFF CANNOT EVADE SECTION 230 BY CHARACTERIZING BACKPAGE AS “HELPING SEX TRAFFICKERS POST ... ADS,” *E.G.*, COMPL. ¶¶ 162-163, 194, OR THROUGH “FACILITAT[ION]” OR “CONSPIRACY” THEORIES. *E.G.*, *ID.* ¶¶ 257-61. TO BE CLEAR, BACKPAGE WORKS TO *PREVENT* MISUSE OF THE SITE AND TO *COMBAT* SEX TRAFFICKING. IN ANY CASE, SUCH CLAIMS “*NECESSARILY* TREAT THE WEBSITE AS A PUBLISHER OR SPEAKER OF CONTENT PROVIDED BY THIRD PARTIES AND, THUS, ARE PRECLUDED BY SECTION 230(C)(1).” *DOE NO. 1*, 817 F.3D AT 22 (EMPHASIS ADDED). AND THE PRACTICES PLAINTIFF CLAIMS “FACILITATE” OR “ASSIST” TRAFFICKERS ARE GENERAL FUNCTIONS NOT SPECIFICALLY TIED TO ADS CONCERNING MS. ROBINSON.²³ WEBSITES CANNOT BE SUED ON AN “ENCOURAGEMENT” THEORY, BECAUSE THAT WOULD “ECLIPS[E] THE IMMUNITY FROM PUBLISHER-LIABILITY THAT CONGRESS ESTABLISHED.” *JONES*, 755 F.3D AT 414. NO DOUBT “A CLEVER LAWYER COULD ARGUE THAT *SOMETHING* THE WEBSITE OPERATOR DID ENCOURAGED THE ILLEGALITY,” BUT SUCH CASES “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.” *ROOMMATES*, 521 F.3D AT 1174.

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²³

See Compl. ¶¶ 102, 197, 208, 218, 229-230, 240-241, 250-251. *Compare GTE*, 347 F.3d at 657, 662 (affirming § 230 dismissal even though “complaint raise[d] the possibility that GTE’s staff gave [content-providers] technical or artistic assistance in the creation” of content). *Cf. Craigslist*, 665 F. Supp. 2d at 967 (“‘Facilitating’ and ‘assisting’ encompass a broad[] range of conduct” and doing so does not make service providers “culpable for ‘aiding and abetting’ their customers who misuse their services to commit unlawful acts.”) (quoting *GTE*, 347 F.3d at 659). Here, too, every allegation involving Backpage’s involvement with posts concerning Ms. Robinson rests on “information and belief,” *e.g.*, Compl. ¶¶ 144, 162-163, and must be rejected. *See Lake Cty. Grading Co. v. Advance Mech. Contractors*, 654 N.E.2d 1109, 1116 (Ill. App. Ct. 1995).

THE SAME APPLIES TO CLAIMS THAT BACKPAGE SOMEHOW “HELP[S]” OR “COACH[ES]” TRAFFICKERS TO DRAFT ADS TO AVOID LAW ENFORCEMENT DETECTION. *SEE, E.G.*, COMPL. ¶¶ 62, 66, 96 (p.21), 163, 197, 208, 218, 230, 259. THIS IS PURE SPECULATION, CONTRADICTED BY WELL-DOCUMENTED BACKPAGE EFFORTS TO ASSIST LAW ENFORCEMENT, *SEE SUPRA* 4, AND IT DISTORTS FACTS REGARDING BACKPAGE’S POSTING AND MODERATION POLICIES THAT DISALLOW CERTAIN TERMS OR IMAGES AND PROHIBIT POSTS BY MINORS AND FOR ILLEGAL ACTIVITY. *SEE* COMPL. ¶¶ 66-68. AS THE NORTHERN DISTRICT OF ILLINOIS HELD IN *CRAIGSLIST*, 665 F. SUPP. 2D AT 969, ANY “ARGUMENT THAT [A SITE] CAUSES OR INDUCES ILLEGAL CONDUCT IS [] UNDERCUT” WHERE IT “REPEATEDLY WARNS [] NOT TO POST SUCH CONTENT.” AND JUST AS FEATURES “THAT ARE PART AND PARCEL OF THE OVERALL DESIGN AND OPERATION OF THE SITE” DO NOT MAKE IT A CONTENT CREATOR, SECTION 230 CANNOT BE EVADED BY CLAIMING BACKPAGE “ENABLED” SEX TRAFFICKING. *DOE NO. 1*, 817 F.3D AT 21.²⁴ ANY OTHER RESULT WOULD THWART THE KINDS OF SELF-POLICING SECTION 230 SEEKS TO INCENTIVIZE. *SEE MOTIVA*, 2015 WL 1535694, AT *4 (§ 230 ALLOWS PROVIDERS TO “ESTABLISH STANDARDS OF DECENCY WITHOUT RISKING LIABILITY FOR DOING SO”) (CITATION OMITTED); *SEE ALSO BATZEL*, 333 F.3D AT 1027-28.

FURTHER, CONCLUSORY CIVIL CONSPIRACY CLAIMS, LACKING SUPPORTING ALLEGATIONS OF BACKPAGE’S AGREEMENT WITH ROSALES, THE TRAFFICKERS, OR ANY OTHER TRAFFICKER, *SEE* COMPL. ¶¶ 42, 257-59, CANNOT SUGGEST BACKPAGE CONSPIRED WITH ANY OF THEM MERELY BY OPERATING A WEBSITE AVAILABLE TO MILLIONS OF USERS, MUCH LESS THAT BACKPAGE KNEW MS. ROBINSON WAS BEING SOLD FOR SEX OR THAT ROSALES WOULD HARM HER.²⁵ NOT ONLY ARE

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Such allegations are precisely the sort that *Doe No. 1* held do not overcome Section 230. *Id.* (discussing phone number verification, rules for whether a person may post after trying to enter a forbidden term, and procedures for uploading photos). *Compare* Compl. ¶¶ 62, 96 (p.21), 158, 197, 208, 218, 230, 259.

²⁵

See supra 19 (lack of knowledge of ads involving Ms. Robinson). *See also infra* § III.B.3

PLAINTIFF’S ALLEGATIONS ABOUT WHAT HAPPENS GENERALLY ON BACKPAGE.COM BASED ON SUPPOSITION AND CONJECTURE, MALFEASANCE “CAN’T BE PRESUMED,” AS NOTED, *SEE SUPRA* 15 (CITING *HART V. AMAZON*), NOR CAN SUCH PRESUMPTIONS SERVE AS A BASIS FOR LIABILITY IN THE FACE OF SECTION 230.

ATTEMPTS TO IMPOSE LIABILITY ON A SERVICE PROVIDER BASED ON ALLEGATIONS IT “PROFITED FROM THE ACTIVITY” ALSO FAIL UNDER SECTION 230. *GTE*, 347 F.3D AT 659 (GTE “DOES PROFIT FROM THE SALE OF SERVER SPACE AND BANDWIDTH, BUT THESE ARE LAWFUL COMMODITIES WHOSE USES ARE OVERWHELMINGLY SOCIALLY PRODUCTIVE”). THAT IS SO EVEN IF IT IS ALLEGED THOSE POSTING THE CONTENT ENGAGED IN SUCH ILLEGAL ACTIVITY AS CHILD PORNOGRAPHY, OBSCENITY, OR NON-CONSENSUAL “REVENGE PORN.” *E.G.*, *GODADDY.COM, LLC V. TOUPS*, 429 S.W.3D 752, 760 (TEX. APP. 2015) (§ 230’S “PLAIN LANGUAGE” AFFORDS “IMMUNITY FROM CIVIL SUIT ... EVEN WHEN THE POSTED CONTENT IS ILLEGAL ... OR ... CRIMINAL.”). *COMPARE* COMPL. ¶¶ 1, 7, 37, 41, 44, 46, 81, 94 (ALLEGING BACKPAGE PROFITED FROM TRAFFICKING BY OPERATING WEBSITE HOSTING CONTENT POSTED BY OTHERS). IN *M.A.*, IT WAS “IMMATERIAL” THAT BACKPAGE ALLEGEDLY “ELICIT[ED] ONLINE CONTENT FOR PROFIT,” BECAUSE WHAT MATTERS FOR SECTION 230 IS WHETHER IT IS THE WEBSITE OR THIRD PARTIES WHO CREATE THE CONTENT AT ISSUE. 809 F. SUPP. 2D AT 1050 (QUOTATION MARKS OMITTED). *COMPARE, E.G.*, COMPL. ¶ 158. *SEE ALSO FERRER*, 2016 WL 7237305, AT *1-5 (ALLEGATIONS THAT BACKPAGE “‘MANIPULATED’ CONTENT ... [TO] PROFIT FROM ACTIVITY RESULTING FROM [] AD PLACEMENT” DID NOT SUPPORT STATE CRIMINAL COUNTS IN FACE OF § 230).²⁶

(failure to sufficiently plead conspiracy); *Coghlan*, 984 N.E.2d at 151 (“mere characterization of a combination of acts as a conspiracy is insufficient to withstand a motion to dismiss. Instead, ... to allege a conspiracy, the complaint must set forth with particularity the facts and circumstances constituting the alleged conspiracy.”) (internal quotation marks and citations omitted).

The Complaint includes a Section “C” of Allegations Common to All Claims alleging

A. THE COMPLAINT ALSO FAILS TO STATE A CLAIM AGAINST THE BACKPAGE DEFENDANTS

EVEN WERE THERE NO SECTION 230 IMMUNITY, THE CASE AGAINST THE BACKPAGE DEFENDANTS STILL SHOULD BE DISMISSED BECAUSE EACH COUNT IN THE COMPLAINT NAMING THEM FAILS TO STATE A CLAIM UNDER ILLINOIS LAW. IN PARTICULAR, EACH OF THOSE CLAIMS—NEGLIGENT AND/OR WILLFUL AND WANTON WRONGFUL DEATH (COUNTS 1-4), INTENTIONAL AND/OR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS (COUNTS 5-6), CIVIL CONSPIRACY (COUNT 7), AND VIOLATION OF THE PREDATOR ACCOUNTABILITY ACT (COUNT 14)—BOTH FAILS TO ALLEGE FACTS THAT BRING THE CLAIMS “WITHIN A LEGALLY RECOGNIZED CAUSE OF ACTION,” *BERETTA*, 821 N.E.2D AT 1112, AND TO SUPPORT LEGAL CONCLUSIONS WITH FACTUAL ALLEGATIONS. *BORCIA V. HATYINA*, 31 N.E.3D 298, 309 (ILL. APP. CT. 2015) (LEGAL CONCLUSION IS A “STATEMENT THAT EXPRESSES A LEGAL DUTY OR RESULT BUT OMITTS THE FACTS CREATING OR SUPPORTING THE DUTY OR RESULT”).

various efforts by Backpage.com to draw traffic to the site that are purported to bear on this case. Compl. ¶¶ 51-60. The Backpage Defendants deny these allegations, but even if taken as true for purposes of this Motion, they are irrelevant. None allege conduct involving content on Backpage.com that involved Ms. Robinson, which is all that is germane to Section 230 immunity. It is irrelevant if Backpage may create *other* content that Plaintiff does not allege caused harm. *See Prickett v. InfoUSA, Inc.*, 561 F. Supp. 646, 651-52 (E.D. Tex. 2006). Whatever else Backpage may do on the site generally—and, again, Defendants expressly deny these allegations—under Section 230, “an interactive computer service qualifies for immunity so long as it does not also function as an information content provider for the portion of the content at issue.” *GW Equity*, 2009 WL 62173, at *3. *See also Carafano*, 339 F.3d at 1123. In any case, the conduct described in Section C involves Backpage sites “outside the U.S.” *See* www.nbcnews.com/feature/long-story-short/video/nbc-news-exclusive-inside-backpage-com-s-global-adult-ad-sales-operation-981487683699. Significantly, Plaintiff’s counsel acquired the information on which it appears to base these allegations from unrelated litigation, *see* <http://www.nbcnews.com/news/us-news/backpage-critics-find-surprise-ammunition-philippines-raid-n778221> (“NBC [] obtained the data from Romanucci & Blandin, the law firm representing Yvonne Ambrose”), and—even more significantly—counsel knew “[t]he only [such] activity [involving Backpage] explicitly occurring in the U.S. that was found ... involved ‘moderating’ or policing adult ads for content.” *Id.*

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1. CLAIMS BASED ON NEGLIGENCE AND/OR WILLFUL OR WRONGFUL DEATH ARE NOT SUFFICIENTLY PLED.

THE FACTS PLEADED IN SUPPORT OF COUNTS 1-4 THAT SEEK TO IMPOSE LIABILITY ON BACKPAGE FOR ROSALES' MURDER OF MS. ROBINSON DO NOT BRING PLAINTIFF'S CLAIMS WITHIN THOSE CAUSES OF ACTION. TO STATE A CLAIM, PLAINTIFF MUST PLEAD A DUTY OWED PLAINTIFF BY THE BACKPAGE DEFENDANTS, BREACH OF THAT DUTY, PROXIMATE CAUSE, AND HARM, AND FOR WILLFUL AND WANTON MISCONDUCT, EITHER DELIBERATE INTENT TO HARM, OR UTTER INDIFFERENCE OR CONSCIOUS DISREGARD FOR MS. ROBINSON'S WELFARE. *KIRWAN V. LINCOLNSHIRE-RIVERWOODS FIRE PROT. DIST.*, 811 N.E.2D 1259, 1263-64 (ILL. APP. CT. 2004). THESE COUNTS FAIL, AT A MINIMUM, ON LACK OF DUTY AND PROXIMATE CAUSE.²⁷

PLAINTIFF ALLEGES BACKPAGE HAD DUTIES TO "OPERATE WWW.BACKPAGE.COM IN A MANNER THAT DID NOT ENDANGER MINOR CHILDREN, INCLUDING [Ms.] ROBINSON," COMPL. ¶¶ 193, 205, 215, 227, TO "TAKE REASONABLE STEPS TO PROTECT THE FORESEEABLE VICTIMS OF THE DANGER CREATED BY THEIR ... ONLINE MARKETPLACE," ID. ¶¶ 194, 206, AND/OR TO "NOT INTENTIONALLY AND/OR RECKLESSLY ENDANGER MINOR[S], INCLUDING [Ms.] ROBINSON," ID. ¶¶ 216, 228, BUT OFFERS NO FACTS (OR LEGAL THEORY) ON WHICH SUCH DUTY IS BASED. SEE, E.G., *CULLOTA V. CULLOTA*, 678 N.E.2D 717, 720 (ILL. APP. CT. 1997) (CITING *PELHAM V. GREISHEIMER*, 440 N.E.2D 96 (ILL. 1982)). TO THE EXTENT THE COMPLAINT MEANS TO IMPLY A DUTY BECAUSE BACKPAGE "KNEW, OR SHOULD HAVE KNOWN, [] ADULTS WORKING AS [] TRAFFICKERS WERE USING THEIR WEBSITE TO POST ... ADVERTISEMENTS OF [Ms.] ROBINSON," E.G., COMPL. ¶¶ 196, 207, 217, 229, THAT FAILS FOR REASONS ALREADY STATED. SEE SUPRA 17-19. MOREOVER, A PARTY

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The Illinois Wrongful Death Act, 740 ILCS 180/1, et seq., cf. Compl. ¶¶ 200, 221, 233, similarly requires Plaintiff to plead Backpage owed a duty to the deceased, a breach proximately causing death and damages. Lough v. BNSF Ry. Co., 988 N.E.2d 1090, ¶ 20 (Ill. App. Ct. 2013).

“[O]RDINARILY ... OWES NO DUTY OF CARE TO PROTECT ANOTHER” FROM “HARMFUL OR CRIMINAL ACTS OF THIRD PERSONS,” WITH ONE EXCEPTION TO THAT GENERAL RULE BEING IF “THE PARTIES ARE IN A SPECIAL RELATIONSHIP AND THE HARM IS FORESEEABLE.” *PETERSEN V. U.S. REDUCTION Co.*, 641 N.E.2D 845, 848 (ILL. APP. CT. 1994).²⁸ THE COMPLAINT ALLEGES NO SUCH SPECIAL RELATION, NOR THAT MS. ROBINSON WAS EVEN A BACKPAGE.COM USER, OR THAT BACKPAGE HAD REASON TO KNOW ROSALES FOUND HER ON THE WEBSITE AND/OR DECEIVED HER TRAFFICKERS TO ASSAULT AND ULTIMATELY MURDER HER. AS THE SEVENTH CIRCUIT HAS HELD, WEBSITES HAVE NO DUTY TO THOSE HARMED BY USERS. *VESELY*, 762 F.3D AT 665-66 (SITE FACILITATING SALES BETWEEN PRIVATE OWNERS HAD NO DUTY TO PLAINTIFF KILLED BY BUYER IN ILLEGAL FIREARMS SALE).

THESE CLAIMS ALSO FAIL BECAUSE BACKPAGE’S CONDUCT CANNOT BE THE PROXIMATE CAUSE OF MS. ROBINSONS’ INJURIES AND DEATH, NOTWITHSTANDING PLAINTIFF’S ALLEGATIONS. *SEE* COMPL. ¶¶ 166, 178, 182, 189, 203, 207. THIS REQUIREMENT IS MET ONLY IF A DEFENDANT’S CONDUCT IS “SO CLOSELY TIED TO THE PLAINTIFF’S INJURY THAT HE SHOULD BE HELD LEGALLY RESPONSIBLE FOR IT,” *SIMMONS V. GARCES*, 763 N.E.2D 720, 732 (ILL. 2002), AND NO SUCH CLOSE CONNECTION CAN BE SAID TO EXIST BETWEEN BACKPAGE’S OPERATION OF A WEBSITE FOR THIRD-PARTY ADS AND ROSALES’ MURDER OF MS. ROBINSON. MOREOVER, CONDUCT CANNOT BE THE LEGAL CAUSE OF INJURY WHERE INTERVENING CRIMINAL ACTS OF THIRD-PARTIES, ALL ALLEGED IN THE COMPLAINT—TRAFFICKING OF MS. ROBINSON, HER ASSAULT AND MURDER BY

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The four special relationships Illinois recognizes are common-carrier/passenger, innkeeper/guest, custodian/ward, and business invitor/invitee. *See, e.g., Vesely v. Armslist LLC*, 762 F.3d 661, 665 (7th Cir. 2014). Other exceptions also exist—employees in imminent danger known to employers, failure by principals to warn agents of unreasonable risk of harm, contractual assumption of duty, *see Johnson* ¶ 19—but likewise have no application here. *See also Dyroff v. Ultimate Software Grp., Inc.*, 2017 WL 5665670, at *14-15 (N.D. Cal. Nov. 26, 2017).

ROSALES—BREAK THE CAUSAL CONNECTION. ILLINOIS LAW IS CLEAR THAT IF SUCH THIRD-PARTY ACTS ARE THE IMMEDIATE CAUSE OF THE INJURY, AND THAT THIRD-PARTY IS NOT UNDER “CONTROL” OF THE ENTITY TO WHOM PLAINTIFF SEEKS TO ASSIGN LIABILITY, THERE IS NO PROXIMATE CAUSE. *KIRSCHBAUM V. VILL. OF HOMER GLEN*, 848 N.E.2D 1052, 1058 (ILL. APP. CT. 2006).²⁹

IN *BERETTA*, A CASE WHERE THE CITY OF CHICAGO SUED GUN MANUFACTURERS ON A PUBLIC NUISANCE THEORY, THE ILLINOIS SUPREME COURT NOTED THAT A “DEFENDANTS’ *LAWFUL COMMERCIAL ACTIVITY*, HAVING BEEN FOLLOWED BY HARM TO PERSON ... CAUSED DIRECTLY AND PRINCIPALLY BY THE CRIMINAL ACTIVITY OF INTERVENING THIRD PARTIES, MAY NOT BE CONSIDERED A PROXIMATE CAUSE OF SUCH HARM.” 821 N.E.2D AT 1136 (EMPHASIS ADDED) (CITATION OMITTED). NOTHING IN THE SERVICE BACKPAGE OFFERS INDUCES USERS TO POST ADS FOR ILLEGAL CONDUCT AND, MOST FUNDAMENTALLY, IT CERTAINLY DOES NOT INDUCE PERSONS TO COMMIT MURDER. THE SEVENTH CIRCUIT ILLUSTRATED THIS POINT IN *CHICAGO LAWYERS* WHEN IT HELD:

NOTHING ... CRAIGSLIST OFFERS INDUCES ANYONE TO POST ANY PARTICULAR LISTING IF CRAIGSLIST “CAUSES” DISCRIMINATORY NOTICES, THEN SO DO PHONE COMPANIES AND COURIER SERVICES (AND, FOR THAT MATTER, THE FIRMS THAT MAKE THE COMPUTERS AND SOFTWARE THAT OWNERS USE TO POST THEIR NOTICES ONLINE), YET NO ONE COULD THINK THAT MICROSOFT AND DELL ARE LIABLE FOR “CAUSING” DISCRIMINATORY ADVERTISEMENTS.

519 F.3D AT 671-72. THUS, AS A MATTER OF LAW, PLAINTIFF’S ALLEGATIONS AFFIRMATIVELY ESTABLISH THAT BACKPAGE DID NOT PROXIMATELY CAUSE MS. ROBINSON’S INJURIES OR DEATH. *SEE GENERALLY, E.G., FIELDS V. TWITTER, INC.*, 881 F.3D 739, 749 (9TH CIR. 2018) (“[C]OMMUNICATION SERVICES AND EQUIPMENT ARE HIGHLY INTERCONNECTED WITH MODERN

²⁹

While proximate cause is generally a question of fact, lack of proximate cause may be determined as a matter of law if the facts alleged do not sufficiently demonstrate defendant’s conduct was the proximate cause of the harm claimed. *See, e.g., Beretta*, 821 N.E.2d at 1128-29.

ECONOMIC AND SOCIAL LIFE, SUCH THAT THE[IR] PROVISION ... COULD BE EXPECTED TO CAUSE RIPPLES OF HARM TO FLOW FAR BEYOND THE DEFENDANT’S MISCONDUCT,” BUT ONLY “DIRECT RELATIONSHIP WITH THE INJURIES THAT PLAINTIFFS [] SUFFERED” SATISFIES PROXIMATE CAUSE).

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2. KEY ELEMENTS OF NEGLIGENT AND/OR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS ARE ABSENT FROM THE COMPLAINT.

COUNTS 5 AND 6 LIKEWISE MUST BE DISMISSED BECAUSE PLAINTIFF FAILS TO PLEAD FACTS SUPPORTING KEY ELEMENTS OF THE CLAIMS. THE COMPLAINT FAILS TO PROPERLY PLEAD COUNT 5'S INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CLAIM AGAINST BACKPAGE, WHICH UNDER ILLINOIS LAW REQUIRES FOUR ELEMENTS: (1) EXTREME AND OUTRAGEOUS CONDUCT; (2) INTENT OR RECKLESS DISREGARD THE CONDUCT WILL CAUSE EMOTIONAL DISTRESS; (3) SEVERE OR EXTREME EMOTIONAL DISTRESS SUFFERED BY THE PLAINTIFF; AND (4) ACTUAL AND PROXIMATE CAUSATION OF THE EMOTIONAL DISTRESS BY DEFENDANT'S OUTRAGEOUS CONDUCT. *ULM v. MEM'L MED. CTR.*, 964 N.E.2D 632, 643 (ILL. APP. CT. 2012). AT THE OUTSET, PROXIMATE CAUSE IS ABSENT HERE FOR THE SAME REASON AS ON THE NEGLIGENCE CLAIMS. *SEE SUPRA* 24-25. FURTHER, THE COMPLAINT DOES NOT ALLEGE OBJECTIVELY EXTREME OR OUTRAGEOUS CONDUCT (INTENTIONAL OR OTHERWISE) DIRECTED TO MS. ROBINSON (OR MS. AMBROSE).³⁰ AT MOST, IT ALLEGES EDITORIAL DECISION-MAKING, AS OUTLINED ABOVE, *SUPRA* 11-17, AND OPERATING A WEBSITE WITH POSTING RULES REINFORCED BY FILTERING AND MODERATION. THESE ARE NOT ONLY NOT "INTOLERABLE IN A CIVILIZED COMMUNITY,"³¹ THEY ARE ENCOURAGED BY SECTION 230. *SEE SUPRA* 9-11, 19. THE COMPLAINT ALSO DOES NOT ALLEGE *INTENT* BY BACKPAGE TO CAUSE EMOTIONAL DISTRESS TO ANYONE, LET ALONE MS. ROBINSON OR MS. AMBROSE.

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Courts use an objective test for whether conduct is "extreme and outrageous," based on all relevant facts and circumstances. *Bianchi v. McQueen*, 58 N.E.3d 680, 700 (Ill. App. Ct. 2016).

³¹

Kolegas v. Heftel Broad. Corp., 607 N.E.2d 201, 211 (Ill. 1990) ("nature of the defendant's conduct must be so extreme as to go beyond all bounds of decency, and to be regarded as intolerable in a civilized community").

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AS TO RECKLESSNESS, JUST AS PLAINTIFF CANNOT TURN BACKPAGE.COM’S FILTERING, MODERATION AND OTHER EDITORIAL FUNCTIONS DESIGNED TO PREVENT POSTINGS THAT VIOLATE ITS TERMS OF USE AS SECTION 230 ENCOURAGES INTO “CONTENT CREATION,” *SEE SUPRA* 4-5, 14-17, SHE CANNOT CLAIM THESE AMELIORATIVE EFFORTS WERE “EXTREME AND OUTRAGEOUS” CONDUCT, COMPL. ¶ 242, THAT “DISREGARDED” OR “TOOK NO STEPS” TO ADDRESS MISUSE OF THE SITE. *ID.* ¶¶ 240, 244. THE COMPLAINT, AT MOST, ALLEGES GENERALIZED EDITORIAL DECISION-MAKING BY BACKPAGE, AND THUS LACKS “SPECIFIC, RELEVANT FACTS NECESSARY TO SUPPORT EACH ELEMENT OF EACH CAUSE OF ACTION.” *DUFFY V. ORLAN BROOK CONDO. OWNERS’ ASS’N*, 981 N.E.2D 1069, 1073 (ILL. APP. CT. 2012). THE COMPLAINT NOT ONLY FAILS TO ALLEGE FACTS RATHER THAN CONCLUSORY ALLEGATIONS THAT BACKPAGE DEFENDANTS WERE AWARE OF ADS DEPICTING MS. ROBINSON, OR THAT BACKPAGE EDITED THOSE ADS, *HADLEY V. GATEHOUSE MEDIA FREEPORT HLDGS.*, 2012 WL 2866463, AT *2 (N.D. ILL. 2012), BUT, EVEN IF IT HAD, IT IS NOT “OBJECTIVELY” EXTREME AND OUTRAGEOUS TO EXERCISE EDITORIAL PREROGATIVE TO REMOVE CONTENT THAT VIOLATES THE WEBSITE’S TERMS OF USE.

IN THIS SENSE, THERE IS NO ALLEGATION OF A “HIGH PROBABILITY,” *MCGRATH V. FAHEY*, 533 N.E.2D 806, 809 (ILL. 1988), THAT BACKPAGE DEFENDANTS’ ACTIONS WOULD CAUSE SEVERE EMOTIONAL DISTRESS *TO MS. ROBINSON OR MS. AMBROSE*. IN FACT, NOTHING IN THE COMPLAINT, BEYOND PURE SPECULATION, SUGGESTS THE BACKPAGE DEFENDANTS WERE EVEN AWARE OF MS. ROBINSON. FINALLY, AS TO “SEVERE EMOTIONAL DISTRESS,” BEYOND “MERELY PARAPHRASE[ING] THE ELEMENTS OF [THE] CAUSE OF ACTION,” *ALPHA SCH. BUS*, 910 N.E.2D AT 1148, *COMPARE, E.G.*, COMPL. ¶¶ 245, 255, THE COMPLAINT DOES NOT ALLEGE MS. ROBINSON SUFFERED SEVERE EMOTIONAL DISTRESS AS A RESULT OF BACKPAGE’S ACTIONS, AS OPPOSED TO

THOSE OF HER TRAFFICKERS AND ASSAILANT. *SEE, E.G., ID.* ¶ 243 (“EXPLOITATION, RAPE AND/OR SEXUAL ASSAULTS WOULD INFLICT SEVERE EMOTIONAL DISTRESS UPON [MS.] ROBINSON”).³²

FINALLY, COUNT 6 DOES NOT STATE A NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS CLAIM FOR THE SAME REASONS COUNTS 1-4 FAIL: “[A] PLAINTIFF CLAIMING TO BE A DIRECT VICTIM OF NEGLIGENTLY INFLICTED EMOTIONAL DISTRESS MUST ESTABLISH THE TRADITIONAL ELEMENTS OF NEGLIGENCE,” *I.E.*, “DUTY, BREACH, CAUSATION AND INJURY.” *COONEY V. CHI. PUB. SCHS.*, 943 N.E.2D 23, 29 (ILL. APP. CT.. 2010). AS THOSE ELEMENTS ARE ABSENT, *SEE SUPRA* 24-26, THE “NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS CLAIM MUST FALL WITH THE[] GENERAL NEGLIGENCE CLAIM[S].” *ID.*³³ THESE CLAIMS MUST BE DISMISSED.

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There is also no allegation that either Robinson or Ambrose were aware of Backpage’s alleged conduct at any point prior to suffering the alleged emotional distress.

To the extent Ms. Ambrose purports to allege she is an *indirect* victim for this claim, it must be dismissed because there is no allegation either that she was in the “zone of danger” during Ms. Robinson’s trafficking or assault, or that she feared for her safety as a result, or that she sustained physical injury or illness from her emotional distress, all of which are necessary to such a claim. *See generally Corgan v. Muehling*, 574 N.E.2d 602, 604-06 (Ill. 1991).

3. THE CONSPIRACY CLAIM FAILS AS A MATTER OF LAW.

COUNT 7 OF THE COMPLAINT FOR “CONSPIRACY” DIRECTED SOLELY AT THE BACKPAGE DEFENDANTS, WHO ARE ALLEGED TO HAVE “UNITY OF OWNERSHIP AND INTEREST,” AND ARE “PARTNERS” OR “ALTER EGOS OF ONE OTHER,” AND/OR ARE “A JOINT VENTURE,” COMPL. ¶¶ 18-21,³⁴ MUST BE DISMISSED BECAUSE PARENT COMPANIES AND THEIR SUBSIDIARIES AND CORPORATE AFFILIATES ARE NOT CAPABLE OF CONSPIRING.³⁵ COUNT 7 ALSO DOES NOT AVER THE AGREEMENT AMONG ALLEGED CONSPIRATORS THAT IS “A NECESSARY AND IMPORTANT ELEMENT” OF THE CLAIM. *ADCOCK V. BRAKEGATE, LTD.*, 645 N.E.2D 888, 894 (ILL. 1994). WHILE A PLAINTIFF IS NOT REQUIRED TO PLEAD FACTS THAT ARE WITHIN THE DEFENDANT’S SOLE CONTROL AND KNOWLEDGE, THERE MUST BE MORE THAN MERE CONCLUSIONS THAT A CONSPIRACY EXISTS. *TIME SAVERS, INC. V. LASALLE BANK, N.A.*, 863 N.E.2D 1156, 1167-68 (ILL. APP. CT. 2007). AND EVEN FACTORING IN ROSALES AND THE TRAFFICKERS—WHICH COUNT 7 DOES NOT, BUT WHOM THE COMPLAINT MAKES CLEAR WERE RESPONSIBLE FOR MS. ROBINSON’S INJURIES—THERE IS NO ALLEGATION OF AGREEMENT AND/OR COORDINATION, OR EVEN DIRECT CONTACT, WITH THE BACKPAGE DEFENDANTS. *CF. GTE*, 347 F.3D AT 658-59 (EVEN IF GTE HAD CONTRACTUAL RIGHT TO INSPECT CUSTOMER’S WEBSITE AND SOME OF ITS PERSONNEL “MAY HAVE REALIZED THE CHARACTER OF THE [CUSTOMER]’S WARES,” A “WEB HOST CANNOT BE CLASSIFIED AS AN AIDER AND ABETTOR OF CRIMINAL ACTIVITIES CONDUCTED THROUGH ACCESS TO THE INTERNET”).

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Cf. Compl. ¶¶ 141-142 (alleging Backpage Defendants “share[] a company director, [] shareholders, and owners” with third-party website that allegedly posted ads of Ms. Robinson).

See Buckner v. Atlantic Plant Maint., 649 N.E.2d 565, 571 (Ill. 1998); *Kovac v. Barron*, 6 N.E.3d 819, 839-40 (Ill. App. Ct. 2014). *See also Frontline Commc’ns, Inc. v. Comcast Corp.*, 2013 WL 4777370, at *4 (N.D. Ill. Sept. 5, 2013); *Nissan Motor Acceptance Corp. v. Schaumburg Nissan, Inc.*, 1993 WL 360426, at *7-9 (N.D. Ill. Sept. 15, 1993).

4. THE CLAIM FOR VIOLATION OF THE PREDATOR ACCOUNTABILITY ACT FAILS AS A MATTER OF LAW

THE COURT SHOULD ALSO DISMISS PLAINTIFF’S CLAIMS UNDER THE PREDATOR ACCOUNTABILITY ACT (THE “ACT”), 740 ILCS 128/1, *ET SEQ.* FIRST, THE BACKPAGE DEFENDANTS ARE NOT LIABLE UNDER 740 ILCS 128/15(C), WHICH EXEMPTS FROM LIABILITY PERSONS OR ENTITIES “WHO PROVIDE GOODS OR SERVICES TO THE GENERAL PUBLIC” UNLESS THEY SUPERVISE, KNOWINGLY MARKET TO, OR RECEIVE A HIGHER LEVEL OF COMPENSATION FROM SPECIFIC CATEGORIES OF INDIVIDUALS AS TO WHOM THE ACT CREATES CAUSES OF ACTION. *ID.* AS HAS BEEN ESTABLISHED *SUPRA*, BACKPAGE DID NOT **KNOWINGLY** “MARKET[] OR PROVIDE[] ITS GOODS OR SERVICES PRIMARILY” TO PARTIES LIABLE UNDER THE ACT, *E.G.*, THE TRAFFICKERS, AND THE COMPLAINT ALLEGES NO FACTS TO SUPPORT SUCH SPECIFIC KNOWLEDGE. *SEE SUPRA* 18-19. NOR DOES BACKPAGE **KNOWINGLY** RECEIVE HIGHER COMPENSATION FROM OR CONTROL THOSE PARTIES, AND THE COMPLAINT DOES NOT ALLEGE AS MUCH, EVEN GENERALLY, IN ANY EVENT.

APPLICATION OF THE ACT AS PLAINTIFF ALLEGES WOULD THUS BE UNCONSTITUTIONAL AS APPLIED TO BACKPAGE HERE, INASMUCH IT WOULD IMPOSE LIABILITY WITHOUT THE CONSTITUTIONALLY REQUIRED SCIENTER. *SEE SMITH V. CALIFORNIA*, 361 U.S. 147, 151-53 (1959); *UNITED STATES V. X-CITEMENT VIDEO, INC.*, 513 U.S. 64, 70 (1994); *ELONIS V. UNITED STATES*, 135 S. CT. 2001, 2009 (2015). *CF. BACKPAGE.COM, LLC V. LYNCH*, 216 F. SUPP. 3D 96, 109 (D.D.C. 2016). IN ANY CASE, THE ACT BARS DOUBLE RECOVERY, *SEE* 740 ILCS 128/40, WHICH PRECLUDES PLAINTIFF FROM SEEKING TO RECOVER FROM BACKPAGE UNDER THE ACT IN ADDITION TO THE OTHER STATUTES OR THEORIES UNDER WHICH SHE HAS SUED.

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A. IN THE ALTERNATIVE, PLAINTIFF MUST PROVIDE A MORE DEFINITE STATEMENT

FINALLY, IF THE COURT DOES NOT DISMISS THE COMPLAINT OUTRIGHT, BACKPAGE REQUESTS AN ORDER COMPELLING A MORE DEFINITE STATEMENT FROM PLAINTIFF UNDER 735 ILCS 5/2-606 AND 2-615(A). THE COMPLAINT DISCUSSES ONLY IN THE MOST GENERALIZED WAY BACKPAGE’S PRACTICES WITH RESPECT TO THE ALLEGED EDITING OF ADS FEATURING MS. ROBINSON, *E.G.*, COMPL. ¶¶ 130 (P.28), 144, 158, WITHOUT ANY FACTS AS TO HOW THEY WERE ALLEGEDLY EDITED AFTER ORIGINAL POSTING. SECTION 2-615(A) CLEARLY PROVIDES THAT IN SUCH CIRCUMSTANCE, A COURT MAY ORDER A MORE DEFINITE STATEMENT IF A PLEADING IS INSUFFICIENT IN SUBSTANCE OR FORM, AS IS THE CASE HERE, GIVEN THE FAILURE TO ALLEGE SPECIFIC EDITING, AND WHERE, AS NOTED, PLAINTIFF HAS NOT ATTACHED TO THE COMPLAINT THE ORIGINAL OR ALLEGEDLY EDITED ADS, DESPITE THEIR BEING DOCUMENTS AT THE HEART OF THE SUIT. *SEE* 735 ILCS 5/2-606 (COPY OF DOCUMENTS SUED ON “MUST BE ATTACHED TO THE PLEADING AS AN EXHIBIT OR RECITED THEREIN”). WITHOUT MORE SPECIFIC FACTS ON BACKPAGE’S ALLEGED CONDUCT, A RESPONSIVE PLEADING CANNOT BE PROPERLY FRAMED.

ALLEGATIONS IN THE COMPLAINT THAT AVER CONDUCT BY THE BACKPAGE DEFENDANTS RELATING TO ANY CLAIM THAT SECTION 230 IMMUNITY DOES NOT APPLY, AND TO PROXIMATE CAUSE, ALSO SHOULD BE STATED MORE DEFINITELY TO DESCRIBE SPECIFIC ACTIONS THAT BACKPAGE.COM IS ALLEGED TO HAVE TAKEN WITH RESPECT TO THE SPECIFIC ADS CONCERNING PLAINTIFF. THE COMPLAINT IS REplete WITH GENERALIZED ALLEGATIONS THAT THE BACKPAGE DEFENDANTS “SANITIZED” OR “ALTERED” ADS TO “FACILITATE,” “ENABLE” OR “ASSIST” SEX TRAFFICKING, BUT CONTAINS NO FACTS INDICATING HOW ANY SUCH ALLEGED CONDUCT AFFECTED THE SPECIFIC ADS IN ISSUE. *E.G.*, COMPL. § 144. A MORE DEFINITE STATEMENT ACCORDINGLY IS REQUIRED IF THE COMPLAINT IS NOT DISMISSED.

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II. CONCLUSION

CONSISTENT WITH CONGRESS' BINDING POLICY JUDGMENT IN SECTION 230 THAT "PLAINTIFFS MAY HOLD LIABLE THE PERSON WHO CREATES OR DEVELOPS [THE] UNLAWFUL CONTENT, BUT NOT THE INTERACTIVE COMPUTER SERVICE PROVIDER," *NEMET*, 591 F.3D AT 254, THIS COURT SHOULD DISMISS THE COMPLAINT.

DATED: MARCH 25, 2018.

RESPECTFULLY SUBMITTED,

BY: S/ ROBERT CORN-REVERE

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LLC, DARTMOOR HOLDINGS, LLC, AND
IC HOLDINGS, LLC*

CERTIFICATE OF SERVICE

I, ROBERT CORN-REVERE, ATTORNEY FOR THE BACKPAGE.COM DEFENDANTS, CERTIFY THAT ON MARCH 25, 2018, A COPY OF THE FOREGOING WAS ELECTRONICALLY FILED WITH THE CLERK OF THE COURT USING THE ECF SYSTEM WHICH WILL SEND NOTIFICATION OF SUCH FILING TO THE ATTORNEYS OF RECORD.

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S/ ROBERT CORN-REVERE

ROBERT CORN-REVERE

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CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
LAW DIVISION
CLERK DOROTHY BROWN

APPENDIX A

Appendix A

Allegations in *Ambrose v. Backpage.com LLC* Compared With *Doe No. 1 v. Backpage.com LLC*

<i>Ambrose v. Backpage.com et al.</i> (N.D. Ill.)	<i>Doe No. 1 et al. v. Backpage.com et al.</i> (D. Mass./1st Cir.)
Backpage 's "'posting rules', 'content requirements' and 'moderation' practices were designed to help sex traffickers create and develop ads for sex that would evade law enforcement. (Compl. ¶ 94.)	Backpage "assist[ed] in the crafting, placement, and promotion of illegal advertisements offering the plaintiffs for sale that would attract potential customers yet escape detection by law enforcement." (Compl. ¶ 4.)
<p>Backpage "used a category on www.backpage.com called 'Escorts' knowing full well that all advertisements therein were for sex." (Compl. ¶46.)</p> <p>Backpage "knew all of this and intentionally developed their website to require information that promoted this illegal trade to occur through their website, including the illegal trafficking of women and underage children." (Compl. ¶ 48.)</p>	"The Backpage Defendants have knowingly and intentionally designed Backpage.com in a manner that results in all or nearly all illegal sex advertisements being posted in the 'Escorts' section." (Compl. ¶ 5.)
Backpage "knew that in the world of illicit human sex trafficking, the word 'escort' stands for and in place of 'prostitute' and means virtually the same thing." (Compl. ¶ 47.)	"The Backpage Defendants know that customers understand that the 'Escorts' subcategory is where they will find offers of sex in exchange for money. In fact, as the Backpage Defendants have conceded, the 'Escorts' subcategory was created for the purpose of organizing advertisements for illegal commercial sex in a single location, thus making it easier for customers seeking to pay for sex to find those services on Backpage.com." (Compl. ¶ 39.)
Backpage's "'posting rules', 'content requirements' and 'moderation' practices were designed to help sex traffickers create and develop ads for sex that would evade law enforcement." (Compl. ¶ 94.)	Backpage.com "attempts to essentially coach individuals about how to advertise the sale of sexual services and the exploitation of underage sex trafficking victims without including terms that will most likely trigger detection by law enforcement." (Compl. ¶ 57.)
<p>"The manual and automatic 'moderation' of sex ads on www.backpage.com included words and phrases that indicated the subject of the sex ad was a child. For example, words such as 'lolita,' 'teenage,' 'rape,' 'young,' 'amber alert,' 'little girl,' 'fresh,' 'innocent,' and 'school girl' were all manually or automatically removed from ads. (Compl. ¶ 88.)</p> <p>"After the ad was sanitized, the Backpage.com defendants would then post the ad with the same girl on www.backpage.com minus the offending and incriminating language such as 'little girl' or 'Lolita'." (Compl. ¶ 89.)</p>	"Despite creating the appearance that it prohibits certain transactions, Backpage.com allows a poster to include close synonyms and misspellings of the non-permitted terms after receiving the advisory 'Oops!' message. For example, rather than 'teenage' or 'schoolgirl,' the poster may include the terms 'girl,' 'young,' 'underage,' or 'fresh.' Similarly, while a poster may not include 'barely legal' or 'high school,' which are known to be code words for underage, Backpage.com permits 'brly legal' (as shown below) and 'high schl.'" (Compl. ¶ 56.)
"In October 2011, Defendant Ferrer directed a Backpage technology consultant to create an error message when a user supplied an age under 18. Ferrer stated that, 'An error could pop up on the page: 'Oops! Sorry, the ad poster must be over 18 years of age.' With a quick adjustment to the poster's putative age,	"Backpage.com also does not require any age verification to post an advertisement in the 'Escorts' section. While a poster must enter his or her age as part of the advertisement drafting interface prior to paying for and posting an advertisement in the 'Escorts' section, if the poster enters an age under 18, he or she receives a

Appendix A

Allegations in *Ambrose v. Backpage.com LLC* Compared With *Doe No. 1 v. Backpage.com LLC*

<p>the ad would post.” (Compl. ¶ 69.)</p>	<p>message that reads: ‘Oops! Sorry, the ad poster must be over 18 years of age.’ Then, no matter how many times the poster has entered an age under 18 along with other information necessary to complete the advertisement, the poster has the option to then enter an age above 18, but to otherwise use the same information entered previously, without being blocked from completing the advertisement.” (Compl. ¶ 48.)</p>
<p>Backpage “allowed one credit card to be used finance sex ads for several different woman or children at the same time, and went so far as to instruct sex traffickers how to pay anonymously in order to avoid law enforcement detection and criminal prosecution.” (Compl. ¶ 122.)</p>	<p>“Backpage allows users to pay for advertisements using prepaid credit cards that need not be linked to a name, address, or any other identifying information.” (Compl. ¶ 47.)</p>

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CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
LAW DIVISION
CLERK DOROTHY BROWN

APPENDIX B

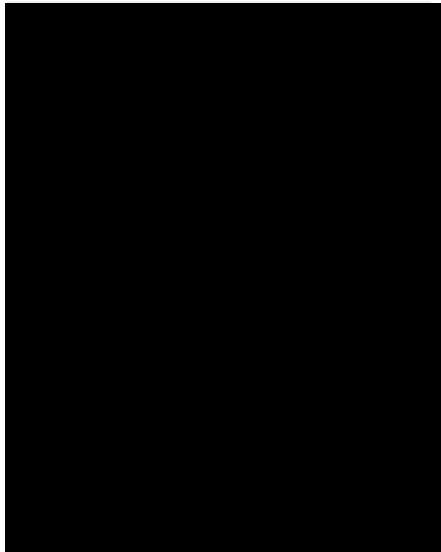
This ad is not live. Status: Expired

Report Ad

New in town 😊 Upscale Model 773-495-██████ - 18

Posted: Monday, December 12, 2016 11:41 PM

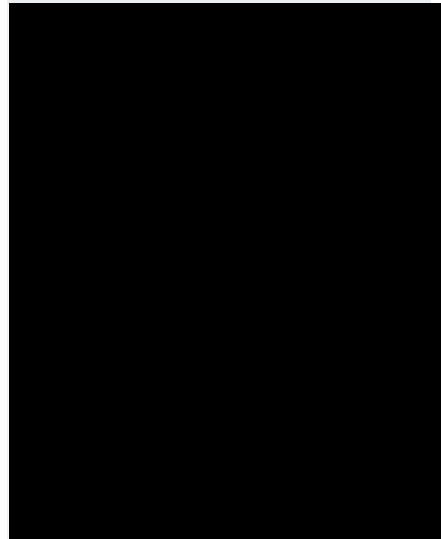
Hi Guys My Name Is Nicki ☐ I'm
 New In town for a short stay and
 looking for upscale Gentlemen
 to have a great time with I am
 independent No Law
 Enforcement Or Police Of Any
 kind..No Pimps..No AA under
 30☐ All Donations are for my
 time (Companionship) All My
 Pics are 100% Real ☐ So Why
 Wait Call or Text Me now 😊
 Time Will Not Be
 Rushed....Fetish
 Friendly 😊 773-495-██████



[Enlarge Picture](#)

Poster's age: 18

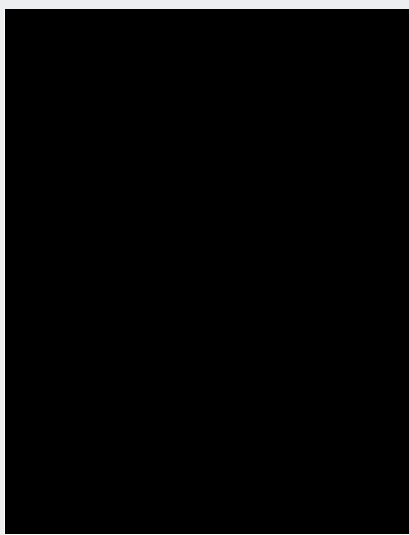
- Location: Chicago, City of Chicago, Downtown Chicago, Lancing, Calumet
- Post ID: 44854242
chicago



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[email to friend](#)



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This ad is not live. Status: Removed by Me

Report Ad

Special's All Night 😊 Satisfaction guaranteed 773916 [REDACTED] - 18

Posted: Friday, December 2, 2016 1:12 AM

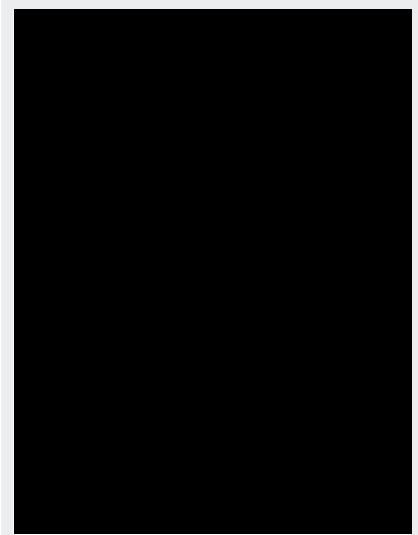
Hello Gentlemen My Name Is Niki ☐ I'm New In town and looking for upscale Gentlemen.No Law Enforcement Or Police Of Any kind..No Pimps..No AA under 30 ☐ All Donations are for my time (Companionship) ☐ So Why Wait Call or Text Me now 😊 Time Will Not Be Rushed...Fetish Friendly 😊

Poster's age: 18

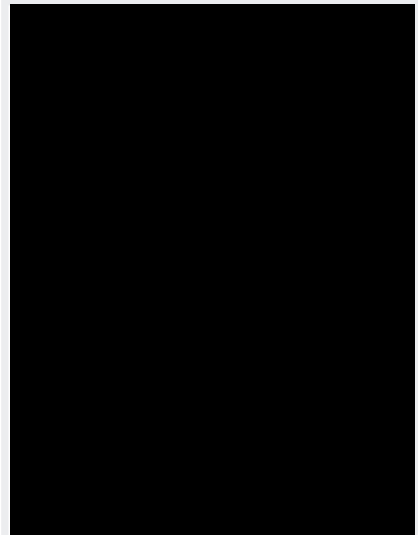
- Location: Chicago, City of Chicago, Downtown Chicago
- Post ID: 44853847 chicago

email to friend

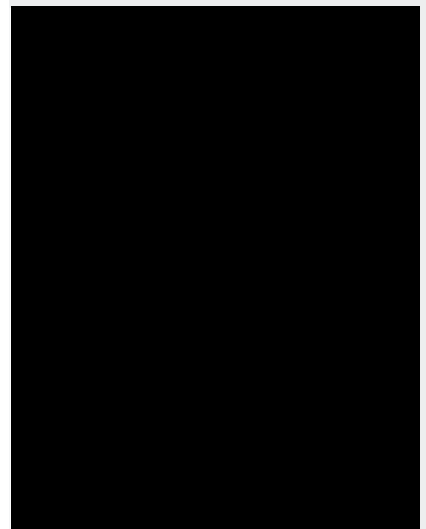
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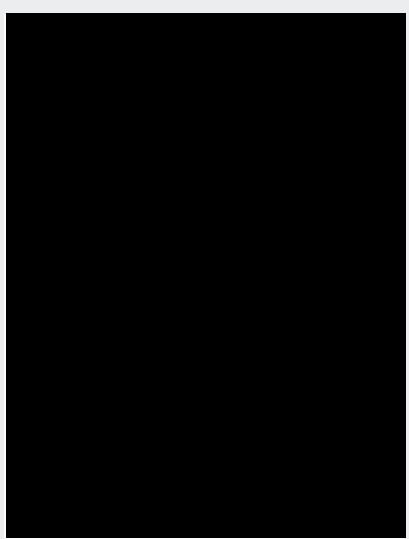
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Report Ad

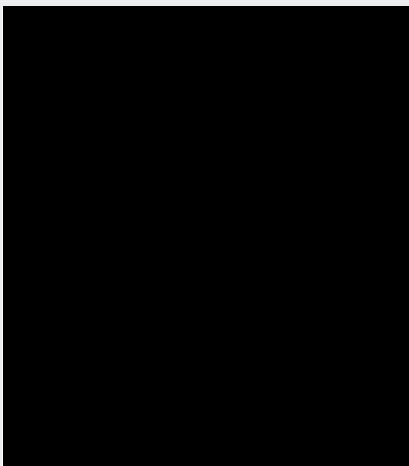
New in town One Night Only Dont Miss Out 773-495- - 18

Posted: Saturday, December 17, 2016 8:23 PM

Hi Guys My Name Is Nicki ☐ I'm New In town for a short stay and looking for upscale Gentlemen to have a great time with I am independent No Law Enforcement Or Police Of Any kind..No Pimps..No AA under 30☐ All Donations are for my time (Companionship) All My Pics are 100% Real ☐ So Why Wait Call or Text Me now 😊 Time Will Not Be Rushed....Fetish Friendly 😊 773-495-



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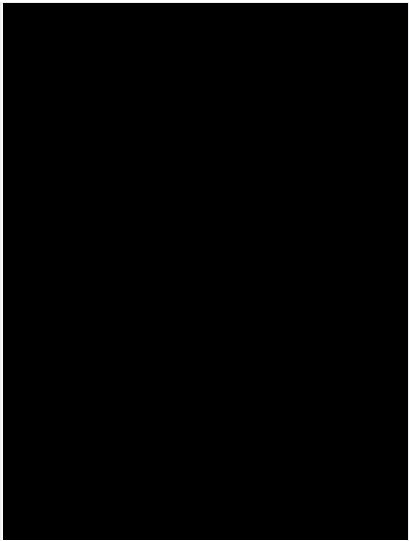
Poster's age: 18

• Location: Downtown, Downtown Indianapolis, Indianapolis

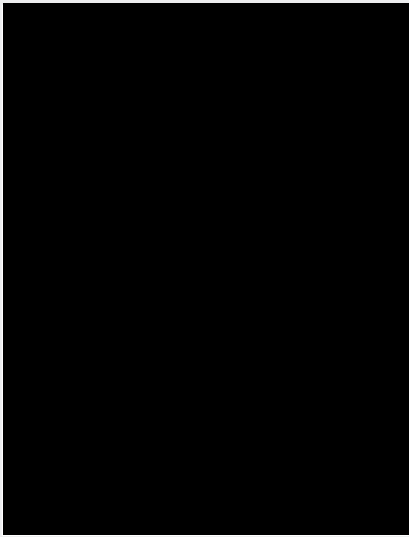
• Post ID: 18982732 indianapolis

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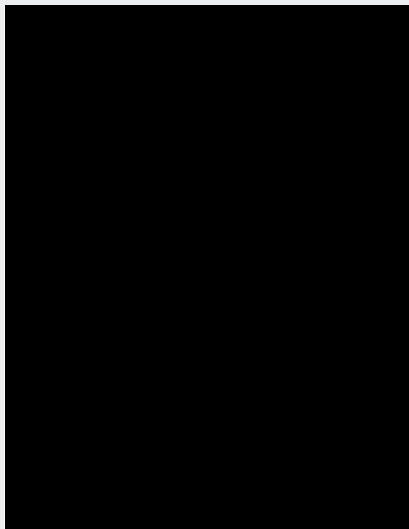
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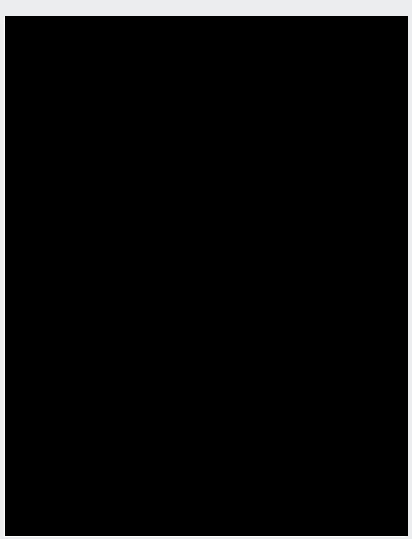
This ad is not live. Status: Removed by Me

Report Ad

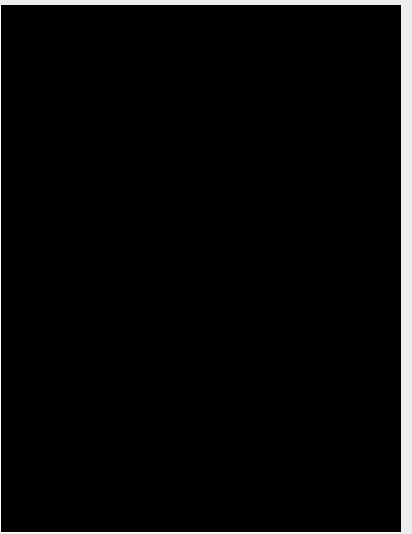
Holiday Specials All Night 😊 Upscale Model 773-495- - 18

Posted: Maturday, December 12, 1064 H0GNI

ki ' uys l y wame fs wicpi ☐fm
weL fn toLn ☉r a short stay and
looping ☉r uAscale ' entlemen
to ha. e a great time Lith f am
indeAendent wo 3aL
En☉rcement (r Police (☉Nny
pind))wo PimAs))wo NN under
H☐Nll Donations are ☉r my
time %ComAanionshiARNll l y
Pics are 600S Weal ☐Mb T hy
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7riendly☉ - - H☉258☉



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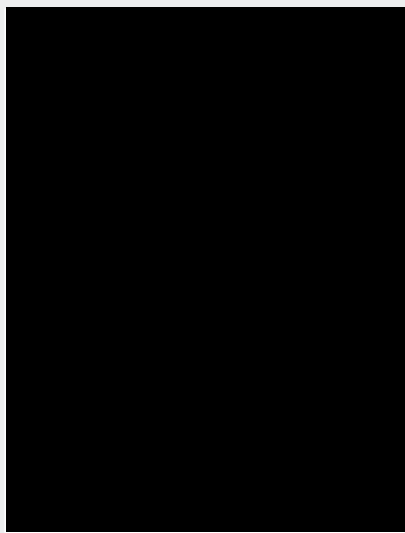
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Posters age: 6G

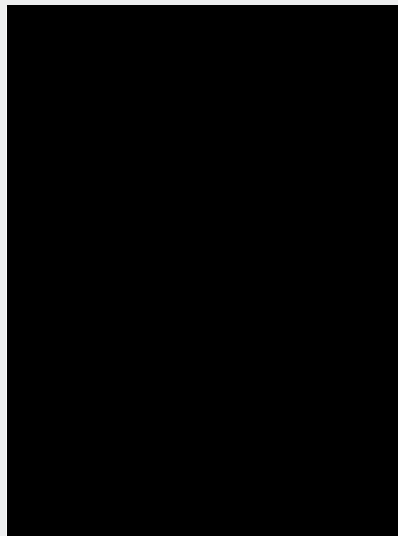
- 3ocation: Chicago, City oO Chicago, DoLntoLn Chicago, 3ancing, Calumet

- Post fD: 241H82H1
chicago

[email to friend](#)



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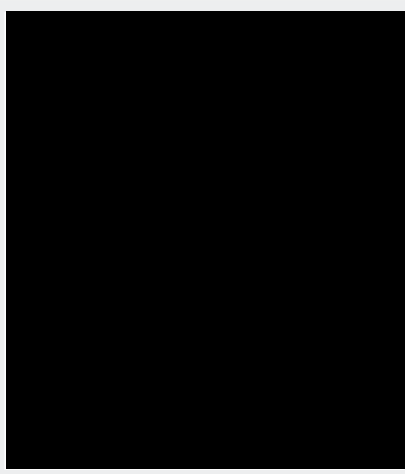


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★ **ATTENTION** ★
✦ *No Law Enforcement*
✦ *No Blocked Calls*
✦ *Give A Notice Before Terminating Your Appointment 🗓️*
✦ *No Negotiations W/ Prices 🙅*
✦ *No Explicit Talk, Or Vulgar Language*
▪ *Violations To Any Of These Rules, Will Automatically End The Call, & You Will Be Blocked 😞*

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Law DIVISION

Litigant List

Printed on 03/23/2018

Case Number: 2017-L-004979

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Plaintiffs

Plaintiffs Name	Plaintiffs Address	State	Zip	Unit #
AMBROSE YVONNE			0000	
ROBINSON DESIREE EST			0000	

Total Plaintiffs: 2

Defendants

Defendant Name	Defendant Address	State	Unit #	Service By
BACK PAGE LLC			0000	
CAMARILLO HOLDINGS LLC			0000	
DARTMOOR HOLDINGS LLC			0000	
IC HOLDINGS LLC			0000	
LEEWARD HOLDINGS LLC			0000	
MEDALIST HOLDINGS LLC			0000	
NEW TIMES MEDIA LLC			0000	
ROSALES ANTONIO	2800 S CALIFORNIA	IL	0000	
UGC TECH GROUP CV			0000	
BACKPAGE.COM LLC			0000	

Total Defendants: 10