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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2007-003720 10/24/2007

HONORABLE PETER SWANN

CLERK OF THE COURT
D. Monroe
Deputy

CHILDREN OF AMERICA INC RUSSELL B STOWERS

v.

EDWARD MAGEDSON, et al. DAVID S GINGRAS

MINUTE ENTRY

Pending before the Court is Defendant's Motion to Dismiss the Amended Complaint. The Court has considered the parties' briefing and oral argument and now rules. For the following reasons,

IT IS ORDERED granting the motion in part and denying it in part.

This is a defamation action brought against the owners and operators of an internet business, commonly known as "ripoffreport.com." Defendants have moved for dismissal on a single ground – that they are not "publishers" of the statements at issue pursuant to 47 U.S.C. § 230(c)(1). The statute provides that: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by *another* information content provider." (Emphasis added). Section 230(f)(2) provides: "The term 'interactive computer service' means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions." Finally, "The term 'information content provider' means any person or entity that is responsible, in whole or in part, for the creation or

development of information provided through the Internet or any other interactive computer service." §230(f)(3).

The published case law construing the statute is surprisingly scant, and there is no precedent binding on this Court that addresses the issues raised by the motion. Though some cases describe the protection conferred by the statute as an "immunity," this Court concludes that the statute simply creates a substantive defense to the state law claim for defamation, which contains as an essential element "publication" by the Defendant. If the statute applies, and Defendant, therefore, is not a "publisher," there can be no liability. The frequent use of the term "immunity," however, tends to cast the applicability of the statute as an all-or-nothing question focused upon the overall character of the Defendant's computer services. Plaintiff here and those in other cases have contended that if an operator of a website generates any part of the content, that the protection of the statute vanishes entirely. Conversely, Defendants assert essentially that because the postings on their site are furnished by third parties, any minor augmentations of that content are insufficient to strip them of protection. In the circumstances of this case, the Court can agree completely with neither position.

First, it is clear from the face of the Amended Complaint that Defendants are providers of an "interactive computer service." Defendants' site makes available to the public content created by multiple "information content providers." The question under the statute is simple and direct – is the content at issue "provided by *another* information content provider"? The mere fact that Defendants may provide some content need not divest them of protection under the statute if the content at issue is provided by another. "Under the statutory scheme, 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 statement or publication at issue*." *Carafano v. Metrosplash.com. Inc*., 339 F.3d 1119, 1123 (9th Cir. 2003) (emphasis added). But the mere fact that the website contains the unaltered comments of its users does not constitute a complete defense if Defendants create content which is itself actionable.

Against this legal background, the Court concludes that Defendants cannot as a matter of law face liability for their provision of access to the comments created by users. Nor can they face liability for their actions in promoting the site, organizing its content, making the contents more accessible on search engines or soliciting contributions of content. *See Carafano.* But Plaintiff alleges more: "Defendants edit and/or author the headlines that accompany posted complaints. . . ." Amended Complaint, ¶27(e). Plaintiffs then cite certain statements taken from headlines which, absent the defense conferred by statute could be actionable. Because the Court must treat the allegations of the Complaint as true at this stage, dismissal is inappropriate with respect to those statements (and only those statements) alleged to have been *authored* by Defendants. Should Plaintiff be unable to prove that Defendants authored any actionable

statement, the remainder of this case will likely be susceptible to resolution by way of summary judgment.