

**FILED**  
Marilyn Burgess  
District Clerk

JAN 29 2021

Time: 3:04 PM  
Harris County, Texas  
By: Lewis Miller  
Deputy

THE HONORABLE MARK DAVIDSON

Multi District Litigation Judge  
201 San Jacinto, 17<sup>th</sup> Floor  
Houston, Texas 77002

January 26, 2021

Mr. Bryan Blevins  
Ms. Annie McAdams  
Mr. Michael Reiff  
Ms. Allison Ho

In re: Cause No 2020-28545; Jane Doe Cases

Dear Counsel:

You will recall that oral arguments were held on December 16, 2020 on Salesforce's second motion to Dismiss and Summary Judgment. This is the ruling of the court on those motions.

First, a short note of apology. I had intended to make this ruling shortly after the new year. It is late. My excuse is that I had hoped to be able to watch the oral arguments in the Facebook case currently pending before the Supreme Court of Texas before announcing a ruling. The postponement of the arguments resulted in a reset that I think it inappropriate to make you all wait for a ruling on the pending motions.

The easy ruling is on the motion for summary judgment. It is denied. No discovery has taken place, and I think that the Plaintiff is entitled to take discovery before they have to present evidence.

The motion to dismiss under Rule 91(a) is a different matter. The standard in the rule is that I am to take as true every word of the Plaintiff's pleadings, as well as inferences that can be drawn from them and determine if there is any basis in law for the suit. I discussed the rule and the applicable law in my letter ruling of August 28, 2020. The law has not changed since then.<sup>1</sup> The Plaintiff's pleadings have changed and contain no express suit against Salesforce for the publication of information relating to the sex trafficking of the Plaintiffs. The question before the court is whether that makes a difference.

My ruling is that it does not, and the motion to dismiss will be granted, subject to one small matter of timing. The fact is that without publication of material about sex trafficking on Backpage, the Plaintiff's pleadings read in a light most favorable to them and giving them the benefit of every presumption, still would not exist. All of the Plaintiffs' claims against Salesforce arise out of their association with Backpage. Backpage is alleged to have been the publisher of advertisements relating to sex trafficking. The cause of action against Salesforce

therefore falls squarely within the language of Section 230 of the Communications Decency Act, and therefore cannot be maintained.

In the last portion of our December 16<sup>th</sup> hearing, the Plaintiff asked me, if I planned to grant the Defendant's motion, to let them plead a Federal cause of action, which they acknowledged would result in removal to Federal Court. Given the state of the law, that would make no difference. The cause of action would still be barred.

I would ask Counsel for Salesforce to prepare an order consistent with this ruling.

Respectfully,



MARK DAVIDSON

MD/ms

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<sup>1</sup> I will note that there was an attempt made to repeal Section 230 of the Communications Decency Act in the last sixty days. As of last week, that issue is moot.