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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Jan E. Kruska,

Plaintiff,

vs.

Perverted Justice Foundation Incorporated,
et al.,

Defendants.

No. CV-08-0054-PHX-SMM

**DEFENDANTS GODADDY.COM,
INC.'S, AND BOB PARSONS'
MOTION TO DISMISS, AND
MEMORANDUM IN SUPPORT**

(Oral Argument Requested)

(Assigned to The Honorable Stephen
M. McNamee)

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants Go Daddy.com, Inc. ("Go Daddy"), and Bob Parsons ("Parsons") (collectively, the "Go Daddy Defendants"), respectfully move this court for an Order dismissing all of the claims asserted against them, on at least the following grounds:

- Under the Communications Decency Act ("CDA"), Go Daddy is immune from liability for defamatory content appearing on a website hosted by a hosting company such as Go Daddy. Thus, Plaintiff's defamation claim must be dismissed with prejudice.
- The CDA also provides hosting companies such as Go Daddy with immunity from any inconsistent state and local law claims. Accordingly,

1 Plaintiff's claims for intentional infliction of emotional distress, prima
2 facie tort and injunctive relief, which are based on the same conduct, must
3 also be dismissed with prejudice.

- 4 • Plaintiff's RICO claim must also fail because (i) CDA immunity extends
5 to federal civil Rico claims; (ii) to the extent that it is based on the same
6 conduct, such conduct is does not constitute a predicate act, and (ii)
7 Plaintiff has not pled facts sufficient to put the Go Daddy Defendants on
8 notice of the conduct that gave rise to the claim. Thus, Plaintiff's Rico
9 claim must also be dismissed, with prejudice.
- 10 • The only allegations made against Defendant Parsons are that he is the
11 owner and an officer of Go Daddy, an Arizona corporation. There are no
12 factual allegations that he did anything whatsoever, or that he was even
13 aware of the website at any time prior to the filing of this lawsuit. As such,
14 all claims against Defendant Parsons, to the extent that any claims have
15 even been alleged against him, should be dismissed.
- 16 • Plaintiff's claim for copyright infringement under the Digital Millennium
17 Copyright Act must fail because Plaintiff has not alleged that she provided
18 Go Daddy with a substantially conforming Notice of Infringement as
19 required by the DMCA, before liability can be imposed. As such,
20 Plaintiff's DMCA claim must also be dismissed, with prejudice.

21 This Motion is supported by the following arguments and authorities.

22 **MEMORANDUM OF ARGUMENTS AND AUTHORITIES IN SUPPORT OF**
23 **THE GO DADDY DEFENDANTS' MOTION TO DISMISS**

24 **I. UNDER THE COMMUNICATIONS DECENCY ACT, PLAINTIFF'S**
25 **DEFAMATION CLAIM AGAINST GO DADDY MUST BE DISMISSED**
26 **WITH PREJUDICE.**

26 The following allegations constitute the entirety of the allegations made by
27 plaintiff against Go Daddy:
28

1 9. Godaddy.com a Scottsdale Arizona based internet domain name
2 registrar and web hosting company doing business in the state of Arizona
and is the web hosting company for jankruska.com and jankruska.net.

3 47. GoDaddy.com is an Arizona based company. GoDaddy.com is
4 the domain name registrar as well as the web hosting company for the
websites www.jankruska.com and www.jankruska.net.

5 48. GoDaddy.com is the domain name holder for several other
6 websites responsible for reproducing the same factually incorrect, highly
7 inflammatory and defamatory information as well as illegal use of
Plaintiff's copyrighted works and images.

8 49. Bob Parsons is the president, owner, and CEO of GoDaddy.com
9 an Arizona based Corporation. The sites which are and will be called into
question in this action will be shown to clearly and willingly violate
GoDaddy.com's own Terms of Service as well as statutory violations listed.

10 50. Godaddy.com was contacted and asked to cease and desist.
11 Plaintiff was told if she didn't like it "to get and [sic] injunction".

12 Nowhere, is there any allegation in the Complaint that Go Daddy was the author
13 of any of the defamatory statements, or that it otherwise had any input into the
14 defamatory content allegedly contained on the Website. Indeed, the allegedly defamatory
15 statements are specifically attributed to the website owners and others. *See, e.g.,*
16 Complaint at ¶30. The absence of such allegations is fatal to Plaintiff's claims against Go
17 Daddy because Go Daddy is immune from liability for any state law cause of action that
18 holds a computer service provider (including a website hosting company such as Go
19 Daddy) liable for information originating with a third party.

20 The Communications Decency Act of 1996 (CDA) provides immunity from
21 liability for parties such as Go Daddy, who merely act as an intermediary for the content
22 provider whose statements have been challenged. *See Zeran v. America Online, Inc.*, 129
23 F.3d 327, 330-331 (4th Cir. 1997); 47 U.S.C. § 230(c). Section 230(c)(1) of the CDA
24 provides that "[n]o provider or user of an interactive computer service shall be treated as
25 the publisher or speaker of any information provided by another information content
26 provider." Thus, a defendant will be immune from liability from state law claims if (i)
27 the defendant is a provider or user of an interactive computer service; (ii) the asserted
28 claims treat the defendant as the publisher or speaker of the information and (iii) the

1 claim is based on information provided by another information content provider. *See*,
2 *e.g.*, *Schneider v. Amazon.com*, 108 Wash. App. 454, 31 P.3d 37 (2001).

3 The grant of immunity under the CDA is broad and far reaching. The policy
4 reasons underlying the CDA are of critical importance:

5 The purpose of this statutory immunity is not difficult to discern. Congress
6 recognized the threat that tort-based lawsuits pose to freedom of speech in
7 the new and burgeoning Internet medium.... Section 230 was enacted, in
8 part, to maintain the robust nature of Internet communication and,
9 accordingly, to keep government interference in the medium to a
10 minimum.... *Congress made a policy choice, however, not to deter harmful*
11 *online speech through the separate route of imposing tort liability on*
12 *companies that serve as intermediaries for other parties' potentially*
13 *injurious messages.... The specter of tort liability in an area of such*
14 *prolific speech would have an obvious chilling effect. It would be*
15 *impossible for service providers to screen each of their millions of postings*
16 *for possible problems. Faced with potential liability for each message*
17 *republished by their services, interactive computer service providers might*
18 *choose to severely restrict the number and type of messages posted.*
19 *Congress considered the weight of speech interests implicated and chose to*
20 *immunize service providers to avoid any such restrictive effect.*

21 *Zeran v. America Online, Inc.*, 129 F.3d 327, 330-331 (4th Cir. 1997)(emphasis added).

22 This broad-reaching immunity protects Go Daddy from Plaintiff's defamation claims in
23 this case.

24 **1. Go Daddy is a provider of an interactive computer service.**

25 To be entitled to immunity, a defendant must be either a provider or user of an
26 interactive computer service. 47 U.S.C. § 230(c). "Interactive computer service" is
27 defined under the CDA as "any information service, system, or access software provider
28 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." 47 U.S.C.
§ 230(f)(2) (emphasis added).

Plaintiff alleges that Go Daddy is a hosting company. Complaint at ¶9. This is
true. Indeed, Go Daddy currently hosts more than 1,000,000 websites on its servers.

That web hosting companies are providers of interactive computer services and,
therefore, satisfy the first requirement for immunity under the CDA has been confirmed
in *Austin v. CrystalTech Web Hosting*, 211 Ariz. 569, 125 P.3d 389, 394 (App. 2005)

1 (“[B]ecause the CDA provides immunity to interactive computer service providers, like
2 CrystalTech [a web hosting company], we affirm the trial court’s grant of summary
3 judgment against Austin.). *See also*, Doe v. GTE Corp., 347 F.3d 655 (7th Cir. 2003)
4 (holding that web hosting company GTE was entitled to the protections of Section 230(c)
5 of the CDA). These holdings are consistent with the policy choice made by Congress to
6 not “deter harmful online speech through the separate route of imposing tort liability on
7 companies that serve as intermediaries for other parties’ potentially injurious messages.”
8 *Zeran*, 129 F.3d at 330-331.

9 Thus, this element of CDA immunity is satisfied.¹

10 **2. The asserted claims treat Go Daddy as the publisher or speaker of the**
11 **information .**

12 CDA immunity applies when a plaintiff seeks to hold the defendant liable for the
13 publication of third-party content or harms flowing from the dissemination of that
14 content. *See Zeran v. America Online, Inc.*, 129 F.3d 327, 330-331 (4th Cir. 1997).

15 In this case, plaintiff alleges that Go Daddy hosted a website on which a third
16 party or parties posted allegedly defamatory statements. Complaint at ¶¶ 9, 30 and 48.
17 *There is no allegation that Go Daddy was the author of any of the allegedly defamatory*
18 *or unlawful statements on the website.* Rather, the defamation claim asserted by Plaintiff
19 against Go Daddy treats it as the publisher or speaker of the challenged information on
20 the Website, and seeks to hold Go Daddy liable for third-party content simply because it
21 hosted the website. Accordingly, the second element of CDA immunity is satisfied.

22 **3. All of the content at issue was provided by another information content**
23 **provider.**

24 The final prong of the test is whether the defendant acted as an information content
25 provider with respect to the information the plaintiff contends is false. An “internet
26 content provider” is defined as “any person or entity that is responsible, in whole or in
27

28 ¹ In providing web hosting services, Go Daddy is also a user of interactive computer services in that it accesses the Internet with its servers to allow interactive exchange through the hosting service between the website owner and the Internet public.

1 part, for the creation or development of information provided through the Internet or any
2 other interactive computer service.” 47 U.S.C. § 230(f)(3). A defendant qualifies for
3 immunity so long as it did not function as an information content provider for the portion
4 of the statement or publication at issue in the lawsuit. *Carafano v. Metrosplash.com, Inc.*,
5 339 F.3d 1119, 1123 (9th Cir. 2003).

6 There is no allegation in the Complaint that Go Daddy was the author of the
7 allegedly defamatory statements in question here, or that Go Daddy participated in any
8 manner whatsoever in creating, developing, modifying or editing any of the allegedly
9 defamatory information on the Website. Indeed go Daddy’s only alleged connection with
10 the Website is that it provided web hosting services through which the owner of the
11 Website disseminated the content of the Website over the internet. Accordingly, Go
12 Daddy meets this final requirement and is entitled to immunity from liability under the
13 CDA with respect to all claims asserted against it by the Plaintiff.

14 Having established from Plaintiff’s own Complaint that Go Daddy qualifies for
15 immunity under the CDA, it follows that Go Daddy is immune from Plaintiff’s claim for
16 defamation. Indeed, courts have specifically held that CDA immunity applies to claims
17 for defamation. *See Blumenthal v. Drudge*, 992 F. Supp. 44 (D.D.C. 1998) (defendant
18 entitled to CDA immunity in defamation case); *Barrett v. Fonorow*, 343 Ill. App. 3d 1184
19 (Ill. App. Ct. 2003) (defamation and false light claims subject to CDA immunity; *See*
20 *generally, Perfect 10, Inc. v. CCBill LLC*, 481 F.3d 751, 768 (9th Cir. 2007) (ruling that
21 district court should have granted immunity with respect to claim for violation of right of
22 publicity).

23 Accordingly, Plaintiff’s defamation claim against Go Daddy should be dismissed
24 with prejudice.

25 **II. CDA IMMUNITY ALSO PRECLUDES PLAINTIFF’S CLAIMS AGAINST**
26 **GO DADDY FOR INTENTIONAL INFLICTION OF EMOTIONAL**
27 **DISTRESS, PRIMA FACIE TORT AND INJUNCTIVE RELIEF.**

28 CDA immunity is broad reaching and is not limited to claims for defamation. The
CDA also provides that “[n]o cause of action may be brought and no liability may be

1 imposed under any State or local law that is inconsistent with this section.” 47 U.S.C. §
2 230(e)(3). Immunity under Section 230(e)(3) applies to any state cause of action that is
3 inconsistent with the immunity provisions of Section 230(c), which clearly provides that
4 “[n]o provider or user of an interactive computer service shall be treated as the publisher
5 or speaker of any information provided by another information content provider.” In
6 other words, if the immunity applies, the provider cannot be held liable for any state law
7 claim that is based upon content provided by a third person.

8 The immunity provided by the CDA has been broadly applied to numerous federal
9 and state claims. *Barrett v. Fonorow*, 343 Ill. App. 3d 1184 (Ill. App. Ct. 2003)
10 (defamation and false light claims subject to CDA immunity); *Perfect 10, Inc. v. CCBill*
11 *LLC*, 481 F.3d 751, 768 (9th Cir. 2007) (ruling that district court should have granted
12 immunity with respect to claim for violation of right of publicity); *Ben Ezra, Weinstein*
13 *& Co. v. America Online, Inc.*, 206 F.3d 980, 986 (10th Cir., 2000) (applying the CDA to
14 a negligence claim against AOL); *Perfect 10, Inc. v. CCBill, LLC*, 340 F. Supp.2d 1077
15 (C.D. Cal., 2004) (applying the CDA to a claim of unfair competition); *Novak v.*
16 *Overture Services, Inc.*, 309 F.Supp.2d 446 (E.D.N.Y., 2004) (prohibiting a claim of
17 tortious interference with prospective economic advantage); *Schneider v. Amazon.com,*
18 *Inc.*, 31 P.3d 37, 42 (Wash.Ct.App.2001) (noting that courts have applied the CDA to
19 breach of contract claims).

20 There is no allegation in the Complaint that Go Daddy was the author or provider
21 of any of the allegedly defamatory statements posted on the website and complained of in
22 the complaint. As such, Go Daddy cannot be held liable for any claim that is based upon
23 that content. Nevertheless, Plaintiff attempts to impose liability for this third-party
24 content by asserting claims for intentional infliction of emotional distress, and a nebulous
25 and unsupported claim for prima facie tort, both based upon the third party content on the
26 website. The CDA precludes the imposition of such liability on Go Daddy. Accordingly,
27 these claims should be dismissed with prejudice.²

28 ² Similarly, the immunity provided under the CDA also precludes injunctive relief. *Noah*
v. AOL Time Warner, Inc., 261 F. Supp 2d 532,540 (E.D. Va. 2003) (“Indeed, given that

1 **III. PLAINTIFF’S CIVIL RICO CLAIM AGAINST GO DADDY IS ALSO**
2 **PRECLUDED BY THE CDA.**

3 Plaintiff’s third claim purports to assert a Civil RICO claim against the
4 “Defendants.” However, there is no allegation in the Complaint that indicates Go Daddy
5 (or Defendant Parsons for that matter) has done anything more than provide hosting
6 services for a website that allegedly contains defamatory or illegal content posted there
7 by a third party. Nor is there any allegation that Go Daddy participated in any of the
8 predicate acts alleged in Paragraph 93 of the Complaint. Accordingly, this claim fails to
9 state a cause of action and is also subject to the CDA and should be dismissed with
10 prejudice as to Go Daddy as well.

11 The CDA applies to most federal civil claims as well. In *Noah v. AOL Time*
12 *Warner, Inc.*, 261 F. Supp 2d 532, 540 (E.D. Va. 2003), the Court held that a Title II
13 Civil Rights claim was subject to the provisions of the CDA immunity. In so holding, the
14 court noted that Title II claims were not specifically excluded from the scope of the CDA
15 (although a limited number of federal statutes such as the Electronic Communications
16 Privacy Act were excluded). The court therefore concluded that Title II claims were
17 subject to the CDA, citing *TRW, Inc. v. Andrews*, 534 U.S. 19, 28, 122 S. Ct. 441, 151 L.
18 Ed.2d 339 (2001) (noting that “[w]here Congress explicitly enumerates certain
19 exceptions to a general prohibition, additional exceptions are not to be implied, in the
20 absence of evidence of a contrary legislative intent”). Civil RICO claims are not
21 excluded from the Scope of the CDA. Because Go Daddy has CDA Immunity with
22 respect to Rico claims, this claim must be dismissed with prejudice as well.

23
24
25
26
27 the purpose of [§ 230](#) is to shield service providers from legal responsibility for the
28 statements of third parties, [§ 230](#) should not be read to permit claims that request only
injunctive relief. After all, in some circumstances injunctive relief will be at least as
burdensome to the service provider as damages, and is typically more intrusive.”).

1 **IV. PLAINTIFF'S CLAIMS AGAINST DEFENDANT BOB PARSONS**
2 **SHOULD BE DISMISSED FOR FAILING TO STATE A CLAIM FOR**
3 **WHICH RELIEF CAN BE GRANTED.**

4 The allegations against Bob Parsons are even more sparse than the allegations
5 asserted against GoDaddy.com, Inc. Indeed, the only allegations specifically addressed
6 toward Mr. Parsons are the following:

7 10. Bob Parsons is the president and CEO of GoDaddy.com a
8 resident of the state of Arizona and doing business in the state of Arizona.

9 49. Bob Parsons is the president, owner, and CEO of GoDaddy.com
10 an Arizona based Corporation. The sites which are and will be called into
11 question in this action will be shown to clearly and willingly violate
12 GoDaddy.com's own Terms of Service as well as statutory violations listed.

13 50. Godaddy.com was contacted and asked to cease and desist.
14 Plaintiff was told if she didn't like it "to get and [sic] injunction".

15 There is no allegation that Mr. Parsons personally provided unlawful content to any of
16 the websites identified in the Complaint. There is no factual allegation that that Mr.
17 Parsons committed any acts that would constitute a predicate act under RICO. Indeed,
18 there is no allegation whatsoever that Mr. Parsons even knew of the existence of the
19 websites that are the subject of this lawsuit, or that he had any communication with the
20 Plaintiff regarding any of the websites identified in the Complaint. General, conclusory
21 allegations unsupported by facts are insufficient to constitute a cause of action. *See*
22 *Associated Gen. Contractors v. Metro. Water Dist.*, 159 F.3d 1178, 1181 (9th Cir.1998)
(noting that conclusory allegations and unwarranted inferences are insufficient to defeat a
motion to dismiss for failure to state a claim upon which relief can be granted)
(quotations and citations omitted).

23 In short, the Complaint alleges nothing more than Mr. Parsons is the owner and
24 officer of GoDaddy.com, Inc. Unquestionably, such allegations are wholly insufficient to
25 state any claim against Mr. Parsons individually. For this reason, the claims against Mr.
26 Parsons should be dismissed in their entirety.

1 **V. PLAINTIFF’S CLAIM UNDER THE DIGITAL MILLENNIUM**
2 **COPYRIGHT ACT FAIL TO STATE A CLAIM UPON WHICH RELIEF**
3 **CAN BE GRANTED, AND SHOULD BE DISMISSED.**

4 Plaintiff also asserts a claim for copyright violation under the Digital Millennium
5 Copyright Act (“DMCA”). Title II of that Act (17 U.S.C. §512), however, provides a
6 safe harbor for service providers such as Go Daddy if they comply with the requirements
7 of the Act and set up a Notification and Counter-Notification system for receiving
8 infringement complaints, designate a copyright agent to receive infringement complaints,
9 timely take action and otherwise comply with the Act.

10 Go Daddy has implemented such a system under the Act and has appointed Ben
11 Butler as its Agent to Receive Notification of Claimed Infringement. *See* Declaration of
12 Ben Butler dated February 26, 2008 (“Butler Declaration”), which is attached hereto as
13 Exhibit A. As indicated in Mr. Butler’s declaration, Mr. Butler has been Go Daddy’s
14 copyright agent to receive infringement complaints for several years. However, he has
15 never been served with a complaint by the plaintiff:

16 To date, I have not received a notification of claimed copyright
17 infringement from the plaintiff, Jan Kruska, with respect to either of the
18 two websites that Ms. Kruska alleges were hosted by Go Daddy –
19 www.jankruska.com and www.jankruska.net. Indeed, I have not been
20 served with a notification of claimed copyright infringement from Plaintiff
21 for any website that Go Daddy has hosted since I was first designated as the
22 Copyright Agent by Go Daddy several years ago.

23 Butler Declaration at ¶5.

24 Because plaintiff has not submitted a infringement notification in accordance with
25 Go Daddy’s infringement policy, Plaintiff cannot recover damages from Go Daddy under
26 the DMCA.

27 However, even if the DMCA was not implicated, plaintiff’s copyright claim would
28 still fail to state a claim. There are no allegations that Plaintiff notified Go Daddy of the
copyright violation, identified the URL where the infringed materials are located, provided
proof of Copyright, or identified the specific materials that Plaintiff claims was violated. As

1 such, she has failed to place defendants on notice of the basis for plaintiff's claims. Thus,
2 Plaintiff's claims for copyright violation should be dismissed, with prejudice.³

3 **CONCLUSION**

4 For the reasons set forth above, the Go Daddy Defendants respectfully request that
5 the Complaint be dismissed as to them, in its entirety.

6 RESPECTFULLY SUBMITTED this 26th day of February, 2008.

7 LEWIS AND ROCA LLP

8
9 By s/Robert H. McKirgan

10 Robert H. McKirgan

Brian J. Pollock

11 and

12 THE GO DADDY GROUP INC.

Kelly W. Lewis

13 Christine Jones

14 14455 North Hayden Road, Suite 219
Scottsdale, Arizona 85012

15 Attorneys for Defendants Godaddy.Com, Inc.
16 and Bob Parsons

17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on February 26, 2008 I electronically transmitted this
19 document to the Clerk's Office using the CM/ECF System for filing and served a copy of
20 the foregoing document by U.S. First Class Mail on the following, who is not a registered
participant of the CM/ECF System:

21 Jan E. Kruska

4102 West Woodridge Drive

22 Glendale, Arizona 85308

23 s/Debi Garrett

24
25
26
27 ³ Plaintiff also nominally asserts a claim against the Go Daddy Defendants for
cyberstalking under 18 U.S.C. §2261A(2). However, that is a criminal statute, and does
28 not provide a private right of recovery. Indeed, plaintiff seeks no damages for this claim.
Even if plaintiff were asserting such a claim, however, it would be subject to CDA
immunity for the same considerations discussed below.