IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ___

STAY REQUESTED

No. _____

CRAIGSLIST, INC.
Defendant and Petitioner,

vs.

THE SUPERIOR COURT OF SAN FRANCISCO COUNTY,
Respondent,

SCOTT P.
Plaintiff and Real Party in Interest.

PETITION FOR WRIT OF MANDATE, PROHIBITION OR OTHER APPROPRIATE RELIEF AND REQUEST FOR STAY AS TO PETITIONER PENDING RESOLUTION OF THIS PETITION; MEMORANDUM OF POINTS AND AUTHORITIES

From July 6, 2010, Order Overruling in Part craigslist, Inc.'s Demurrer

San Francisco Superior Court, No. CGC-10-496687
The Honorable Peter J. Busch, Department 301
Tel. Number (415) 551-3719

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PETITIONER CRAIGSLIST, INC.'S
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
(CALIFORNIA RULES OF COURT 8.208 AND 8.488)

Interested entities or persons required to be listed in this certificate under rules 8.208 and 8.488 are as follows.

Full Name of Interested Entity or Person	**Nature of Interest**
Craig Newmark	Founder and shareholder of craigslist, Inc.
Jim Buckmaster	Chief Executive Officer and shareholder of craigslist, Inc.
eBay Domestic Holdings, Inc.	Shareholder of craigslist, Inc.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in craigslist, Inc.; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Dated: August 31, 2010

Philip A. Leider

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I. INTRODUCTION AND SUMMARY OF PETITION

Petitioner craigslist, Inc. ("craigslist") operates an Internet website that provides online localized classified ad placements and communication forums. The complaint in this case stems from craigslist's immediate and helpful response to three phone calls from Plaintiff Scott P. to craigslist's customer service department regarding two allegedly fraudulent posts by a third party relating to Plaintiff. Plaintiff admits that craigslist removed the offending posts within minutes. He alleges, however, that removing the posts was not enough and that craigslist customer service representatives who told him they would "take care of it" committed craigslist to prevent any future posts about him.

Eventually, Plaintiff's true antagonist—the author of the posts—crafted messages that craigslist did not succeed in blocking from the site in advance. Immediately upon notice of these posts, craigslist removed them and no posts related to Plaintiff have appeared on the site since. Nonetheless, Plaintiff seeks to hold craigslist liable for damages caused by these unsuccessfully blocked posts on a theory of promissory estoppel.

As a matter of law, Plaintiff's claims against craigslist are barred by Section 230 of the Communications Decency Act, 47 U.S.C. § 230 ("§ 230"). Pursuant to § 230—including the text and framework of the statute, its legislative history, the policies it was developed to promote and its judicial interpretation by California courts and all others—online service providers, such as craigslist, are protected from all state claims that treat

them as publishers of third-party content and from all claims based on voluntary, good-faith efforts to block or screen objectionable content. The trial court's holding that Plaintiff's promissory estoppel claim is exempt from § 230's prohibitions is erroneous and its order overruling craigslist's demurrer on this count must be reversed.

This Court should grant writ relief now rather than waiting until the case reaches final judgment some years and many proceedings down the line. Before the trial court's ruling, craigslist and other online service providers could safely rely on § 230 to cooperatively address user and public concerns about third-party content without fear of liability for efforts to help. In light of the ruling, craigslist and its online peers face the Hobson's choice of (1) helping users and the public and risking lawsuits and even liability for those good-faith efforts, or (2) not helping users and the public and avoiding litigation costs and even liability, but resulting in harm to innocent users, the public and their goodwill and reputation. If left unreversed, the trial court's ruling encourages—if not requires—craigslist, and other online service providers, to make the choice to substantially limit the help they offer, or the content they allow, to avoid opening the door to lawsuits like this one. Writ relief is the only fair and expedient resolution to this dilemma.

II. PETITION FOR WRIT OF MANDATE OR OTHER APPROPRIATE RELIEF AND REQUEST FOR STAY

1. craigslist petitions this Court for a writ of mandate or other appropriate relief directing the Respondent Superior Court of the State of California for the County of San Francisco to vacate the portion of its July 6, 2010, order overruling craigslist's demurrer to the promissory estoppel caused of action and instead enter an order sustaining the demurrer with prejudice in its totality.

2. In addition, to avoid irreparable injury and burden to craigslist, to online service providers overall and to freedom of speech on the Internet as it continues to grow, craigslist requests that this Court order the Respondent Superior Court to stay the underlying action as to craigslist pending resolution of this Petition.

A. Petitioner, Respondent and Real Party in Interest

3. Petitioner in this case, craigslist, is a named defendant in the currently pending action in Respondent Superior Court entitled *Scott P. v. craigslist, Inc., et al.*, San Francisco Superior Court, No. CGC 10-496687 (the "Scott P. Action"). App. Vol. 1, Exh. 2 (Plaintiff's First Amended Complaint ("FAC")) at 169 (¶ 17).

4. craigslist is a corporation with its principal place of business in San Francisco, California. *Id.*

5. craigslist operates an Internet website, www.craigslist.org, that provides online localized classified ad placements and online communication services. *Id.* at 174 (¶ 39).

6. craigslist began in 1995 and was incorporated in 1999. *Id.* at 173 (¶ 36). It is currently the largest classified advertisement site in the world. *Id.*

7. craigslist provides its classified ad platforms and other services in 700 cities in 70 countries worldwide. *Id.* at 173 (¶ 37). More than 50 million Americans alone visit the craigslist website each month, posting more than 40 million free classified ads and generating more than 20 billion page views. *Id.*

8. Respondent in this matter is the San Francisco Superior Court, the Honorable Peter J. Busch presiding. App. Vol. 4, Exh. 14.

9. The Real Party in Interest in this matter is the named plaintiff in the Scott P. Action ("Plaintiff"). *Id.*; *see also* App. Vol. 1, Exh. 2 at 169 (¶ 15). Plaintiff is identified in the underlying action (and here) only by his first name and last initial. App. Vol. 1, Exh. 2 at 163 (p. 1, note 1).

10. Plaintiff resides in Kern County, California. *Id.* at 168 (¶ 15).

11. Foster Dairy Poultry Farms ("Foster Farms") is also a named defendant in the Scott P. Action. *Id.* at 168 (¶ 18).

12. Foster Farms is one of the largest commercial dairies in California and the western United States. *Id.* at 164 (¶ 2).

13. Plaintiff was employed by Foster Farms from August 2001 until February 2009. *Id.* at 170 (¶ 28).

14. Plaintiff's direct supervisor at Foster Farms was Michael O. Simpson ("Simpson"), a management-level employee of Foster Farms

residing in Kern County and an additional named defendant in the Scott P. Action. *Id.* at 165, 169 (¶¶ 3, 20).

15. Simpson's supervisor at Foster Farms was Albert Carreno ("Carreno"), a management-level employee of Foster Farms residing in Kern County and an additional named defendant in the Scott P. Action. *Id.* at 165, 168 (¶¶ 4, 19).

16. Foster Farms, Simpson and Carreno are referred to collectively in this Petition as the "Employer Defendants."

B. Factual Background

1. The Employer Defendants' Alleged Harassment of Plaintiff

17. The underlying lawsuit arose as a result of the Employer Defendants' alleged harassment of, retaliation against and discrimination toward Plaintiff, including undue criticism of his job performance, demotion, underpayment, denial of proper benefits, rude and offensive remarks and gestures (often related to sexual orientation), and vandalism of his vehicle. App. Vol. 1, Exh. 2 at 165-66, 171-73, 202-204, 218-20 (¶¶ 5, 6, 30-34, 127, 134, 196, 197, 199).

18. The harassment of and discrimination against Plaintiff by the Employer Defendants allegedly began in 2004 and continued into 2009. *Id.* at 168, 170-73 (¶¶ 16, 29-35).

19. Within those five years, craigslist allegedly was a "tool" that the Employer Defendants (Simpson specifically) used on three dates—

March 16, 2009, March 18, 2009, and April 18, 2009—to harass Plaintiff with fraudulent Internet advertisements. App. Vols. 1-2, Exh. 2 at 166-68, 178-86, 291-92, 298-99, 308-312, 325-31 (¶¶ 8, 12, 16, 51-71, FAC Exhs. 10, 12, 16, 23).

2. craigslist's Allegedly Wrongful Conduct

20. Plaintiff's claim against craigslist centers on craigslist's immediate and helpful response to three phone calls to craigslist's customer service department regarding the two fraudulent ads posted by Simpson in March 2009.

a. craigslist's Alleged Promises

21. Defendant Simpson first posted a fraudulent ad regarding Plaintiff on the craigslist website on March 16, 2009, App. Vol. 1, Exh. 2 at 179 (¶ 53), and posted a second ad on March 18, 2009, *id.* at 181 (¶ 59). Both ads identified Plaintiff as a newly openly gay man and invited sexual liaisons. *Id.*

22. Plaintiff learned of the posts and called craigslist about them on March 18 and 20, 2009, respectively. *Id.* at 180-82 (¶¶ 56, 61, 62). He placed a further call to craigslist on March 21, 2009. *Id.* at 182 (¶ 63).

23. Upon notice from plaintiff, craigslist personnel voluntarily removed the ads within minutes. App. Vols. 1-2, Exh. 2 at 188-89, 291-92, 298-99, 303-04 (¶ 78, FAC Exhs. 10, 12, 14).

24. During his telephone calls to craigslist, Plaintiff allegedly asked, among other things, that any future posts identifying him by name,

telephone number or address not be allowed on the craigslist website without his express consent, to which the unidentified craigslist service representatives allegedly all volunteered that they would "'take care of it.'" App. Vol. 1, Exh. 2 at 180-82 (¶¶ 56, 61-63).[1]

b. craigslist's Alleged Breach of Promises

25. No further ads regarding Plaintiff were successfully posted to the craigslist website by Simpson until April 18, 2009. App. Vols. 1 and 2, Exh. 2 at 182-83, 308-312, 325-31 (¶¶ 63-64, FAC Exhs. 16, 23). On April 18, Simpson posted six ads for items purportedly available for sale or for free from Plaintiff (for example, a car, furniture, television, etc.). *Id.*

26. Plaintiff alleges that craigslist's failure to block the April 18 ads by Simpson were breaches of purported promises made by craigslist personnel in the three March telephone calls from Plaintiff to the craigslist customer service department. App. Vol. 1, Exh. 2 at 182-83, 189 (¶¶ 63-64, 79). Plaintiff alleges that, by endeavoring to accommodate Plaintiff, these customer service representatives contractually bound craigslist to prevent

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[1] Notably, in a March 20, 2009, email, Plaintiff asked craigslist for identification data regarding the poster of the ads and asked craigslist to stop any future posts from being made under his name or with his telephone numbers "without verbal consent from [him] first." *Id.* at 293-97, 298-99 (FAC Exhs. 11, 12). craigslist responded and provided the identification data, but did not assent to or make any promises, affirmations or representations regarding the request to block future posts. *Id.* In this email, Plaintiff also acknowledged craigslist's removal of the first fraudulent ad and thanked craigslist for doing so. *Id.* at 298-99 (FAC Exh. 12).

any ads identifying Plaintiff by name, telephone number or address from being posted on the craigslist website without Plaintiff's express consent—ever. *Id.* at 182-83 (¶¶ 62-64); App. Vol. 3, Exh. 7 (Plaintiff's Opposition to Defendant craigslist's Demurrer ("Opposition")) at 625-26; App. Vol. 4, Exh. 13 (Demurrer Hearing Transcript ("Hearing")) at 1176 (lines 15:18-27).[2]

27. Upon notice, craigslist voluntarily removed the April ads and provided Plaintiff with the underlying identification data. App. Vol. 2, Exh. 2 at 308-312, 325-31 (FAC Exhs. 16, 23).

28. craigslist also voluntarily implemented "additional steps" that, as craigslist informed Plaintiff, "may help prevent th[e] issue from happening again." *Id.* at 186, 188, 308-12, 325-31 (¶¶ 71, 77, FAC Exhs. 16, 23).

29. No further fraudulent ads related to Plaintiff are alleged to have been posted. *Id.*, *passim*.

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[2] The First Amended Complaint includes allegations that craigslist was obligated to remove the fraudulent ads from its website based on Plaintiff's communications, but, at the same time, concedes that craigslist *did* immediately remove the ads. App. Vol. 1, Exh. 2 at 180-81, 186, 291-92, 303-04 (¶¶ 57, 71, 78, FAC Exhs. 10, 14). Consequently, the only allegation relevant to the purported promissory estoppel claim is the allegation that craigslist promised to but did not successfully block all future posts related to Plaintiff to Demurrer. This was the issue addressed by the parties and the trial court on craigslist's Demurrer. *See id.* at 182, 189 (¶¶ 63, 79); Vol. 2, Exh. 3 (Demurrer of craigslist, Inc.) at 350; Vol. 3, Exh. 7 (Opposition to Demurrer) at 633.

C. Procedural Background

30. Plaintiff filed his original complaint on February 5, 2010, in Respondent Superior Court. App. Vol. 1, Exh. 1. On March 3, 2010, Plaintiff filed a First Amended Complaint adding Carreno to the suit. App. Vol. 1, Exh. 2. That First Amended Complaint remains the operative Complaint.

31. The First Amended Complaint pled two causes of action against craigslist, *id.* at 188-94 (¶¶ 76-94), and twelve causes of action against the Employer Defendants, *id.* at 194-222 (¶¶ 95-208).

32. The claims against craigslist were for breach of contract (promissory estoppel under California common law) and violation of Business & Professions Code Section 17200. *Id.* at 188-94 (¶¶ 76-94).

33. The claims against the Employer Defendants are for defamation; nuisance; invasion of privacy by placing him in a false light; invasion of privacy by intrusion into seclusion; invasion of privacy by public disclosure of private facts; invasion of privacy by misappropriation of name; employment discrimination and harassment, sexual harassment, hostile work environment; negligent hiring, retention and supervision; intentional infliction of emotional distress; retaliation; disability discrimination; and constructive discharge. *Id.* at 195-222 (¶¶ 95-208).

34. craigslist filed a demurrer to the First Amended Complaint on May 3, 2010. App. Vols. 2 -3, Exhs. 3-6 ("Demurrer"). craigslist demurred to both causes of action under § 230 and on other grounds. *Id.* [3]

35. Plaintiff filed an opposition to the Demurrer on May 17, 2010. App. Vol. 3, Exhs. 7-8 ("Opposition"). craigslist filed a reply on May 25, 2010. App. Vols. 3-4, Exhs. 9-11 ("Reply").

36. On June 1, 2010, the trial court issued a tentative ruling sustaining craigslist's Demurrer in part and overruling it in part. App. Vol. 4, Exh. 12. The tentative ruling sustained the Demurrer as to the § 17200 cause of action without leave to amend on the grounds that the claim was barred by § 230 and Plaintiff lacked standing to sue. *Id.* It overruled the Demurrer as to the promissory estoppel cause of action on the ground that Plaintiff had "sufficiently pleaded an agreement supported by promissory estoppel." *Id.*

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[3] craigslist also demurred to the promissory estoppel count for failure to state a claim based on lack of an enforceable promise. App. Vol. 2, Exh. 3 at 356-57. craigslist further demurred to this cause of action because the exhibits to the First Amended Complaint demonstrate that Plaintiff referred the ads to counsel and to local law enforcement, which prosecuted and convicted Simpson for the ads, thereby negating reliance and resulting detriment. *Id.* at 357; App. Vols. 1-2, Exh. 2 at 166, 187, 291-97, 308-12, 337-38 (¶¶ 9, 74-75, FAC Exhs. 10, 11, 16,25). craigslist demurred to the § 17200 claim for lack of standing in addition to protection under § 230. App. Vol. 2, Exh. 3 (Demurrer) at 358-59.

37. craigslist did not submit to the tentative ruling on the promissory estoppel claim, and a hearing was held on June 2, 2010. App. Vol. 4, Exh. 13 (Hearing).

38. At the hearing, the trial court elaborated briefly on its reasoning, stating that it was persuaded by *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096 (9th Cir. 2009), to overrule the Demurrer under § 230 to the promissory estoppel claim, and adopted its tentative ruling. *Id.* at 1164-65 (lines 4:26-5:12). However, the court temporarily stayed discovery as to craigslist to allow craigslist to seek relief from this Court, recognizing that whether and when to apply *Barnes* in cases alleging promissory estoppel is an issue of "first impression" in California state courts. *Id.* at 1180 (lines 20:23-28.)

39. The order at issue in this Petition was filed on July 6, 2010. App. Vol. 4, Exh. 14 ("Order") at 1189-91. craigslist served notice of entry of the Order on all parties on July 8, 2010. *Id.* at 1191.

40. The writ petition is timely. *See Cal W. Nurseries, Inc. v. Superior Court*, 129 Cal. App. 4th 1170, 1173 (2005) (writ petition timely if filed within 60 days of service of order). No other writ petitions have been filed in the case to date.

D. Basis for Relief

41. The basis for the relief requested in this Petition is § 230's federal prohibition against all state claims that treat an interactive computer service provider (hereinafter, "online service provider") as a publisher of

third-party content and against all claims based on the voluntary, good faith actions taken by an online service provider to block or screen objectionable content. 47 U.S.C. §§ 230(c)(1), (c)(2) and (e).

42. Section 230(c)(1) provides that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). Section 230(c)(2)(A) provides that "[n]o provider or user of an interactive computer service shall be held liable on account of . . . any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected." 47 U.S.C. § 230(c)(2)(A). And § 230(e)(3) provides that "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." 47 U.S.C. § 230(e)(3).

43. As the California Supreme Court has recognized, "the plain language of section 230 creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service." *Barrett v. Rosenthal*, 40 Cal. 4th 33, 43 (2006) (emphasis added) (internal quotation marks and citation omitted). Further, § 230 protects online service providers from liability for good faith efforts to restrict access to objectionable material on their services even if

unsuccessful. *Id.* at 49, 53; *Delfino v. Agilent Technologies, Inc.*, 145 Cal. App. 4th 790, 802 (2006).

44. By interpreting *Barnes* to permit a promissory estoppel cause of action in the circumstances of this case, the trial court abrogated the federal protections afforded to craigslist and similarly situated online service providers in § 230(c)(1) and (c)(2)(A). The promissory estoppel cause of action treats craigslist as the "publisher" of information originating with a third party (defendant Simpson) because the publication or prohibition of content is a traditional publisher function. Moreover, the promissory estoppel cause of action purports to hold craigslist liable for volunteering in good faith to aid Plaintiff by trying to screen and block objectionable material. Section 230 does not allow claims based on such allegation to proceed.

45. Accordingly, and for the reasons further explained below, § 230 bars Plaintiff's promissory estoppel claim and this Court should direct the trial court to sustain craigslist's Demurrer to this claim with prejudice.

E. Authenticity of Exhibits

46. Exhibits 1 through 14 accompanying this Petition are true and correct copies of documents on file with Respondent Superior Court in the Scott P. Action. Exhibit 13 is a true and correct copy of the original Reporter's Transcript of Proceedings from the June 2, 2010, hearing on craigslist's Demurrer to Plaintiff's First Amended Complaint.

47. The exhibits are presented in separately bound, consecutively paginated volumes, but are incorporated by reference as though fully set forth in this Petition. Page references in the Petition are to the consecutive pagination. Supplemental references to paragraph numbers or exhibit numbers in the original pleadings are included in parentheses for the Court's convenience.

F. Prayer for Relief

WHEREFORE, and for the reasons stated more fully below, craigslist prays that this Court:

A. Order a stay of the trial court proceedings as to craigslist pending resolution of this Petition;

B. Grant the Petition and issue a writ of mandate directing Respondent Superior Court to vacate the portion of the Order overruling craigslist's Demurrer to Plaintiff's promissory estoppel cause of action;

C. Direct Respondent Superior Court to enter a new order sustaining craigslist's Demurrer to Plaintiff's promissory estoppel cause of action with prejudice;

D. Award craigslist its costs in this proceeding; and

E. Grant such further or other relief as may be just and proper.

DATED: August 31, 2010

Respectfully submitted,

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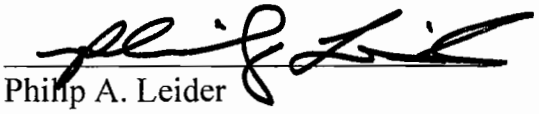
VERIFICATION

I, Philip A. Leider, am a member of Perkins Coie LLP, the law firm representing Petitioner. I make this verification as Petitioner's counsel because I am familiar with the facts relevant to this Petition. The facts referred to in this Petition are true based on my personal knowledge or from my review of the pleadings, briefs and other documents filed in the Superior Court.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct and that this verification was executed on August 31, 2010, at San Francisco, California.



Philip A. Leider

III. MEMORANDUM OF POINTS AND AUTHORITIES

A. Writ Review Is Appropriate and Necessary

The question presented in this Petition is whether the trial court erred in overruling craigslist's Demurrer invoking 47 U.S.C. § 230 to bar Plaintiff's alleged promissory estoppel cause of action. It did. The trial court's extension of the Ninth Circuit's opinion in *Barnes v Yahoo!, Inc.*, 570 F.3d 1096 (9th Cir. 2009), confuses the test for § 230(c)(1) protection, exalts the complaint's labels and conclusions over the actual nature and substance of Plaintiff's claims and allegations, contradicts California law on § 230(c)(1), and ignores the separate protection of craigslist's voluntary measures under § 230(c)(2). The result undermines the Constitutional interest in freedom of speech on the Internet and Congress's mandate for self-regulation by the Internet industry.

Consequently, writ review is appropriate because the trial court ruling presents a significant issue of first impression within California and because it is an issue of widespread interest to the Internet companies, entrepreneurs, nonprofit organizations, individual users, government entities, and legal bars and benches across the country concerned with regulation of online content. *See* App. Vol. 4, Exh. 13 (Hearing) at 1178 (lines 18:16-17) ("It is a point of first impression and it is potentially a significant issue."); *Marron v. Superior Court*, 108 Cal. App. 4th 1049, 1056 (2003) (writ review appropriate where "the petition presents a significant issue of first impression"); *Brandt v. Superior Court*, 37 Cal. 3d

813, 816 (1985) (writ review appropriate where the "issue is of widespread interest"); *see also Valley Bank v. Superior Court*, 15 Cal. 3d 652, 655 (1975) (issuing alternative writ where "the issue before us is of first impression and of general interest to the bench and bar").

Until *Barnes*, courts throughout California and across the country uniformly and unambiguously held that the plain language of § 230(c)(1) bars all state law claims (other than intellectual property claims) that treat online service providers as publishers of third-party content. *See, e.g., Barrett v. Rosenthal*, 40 Cal. 4th 33, 43 (2006) ("[S]ection 230 creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service") (internal quotation marks and citation omitted); *Doe II v. MySpace Inc.*, 175 Cal. App. 4th 561, 569 (2009), *review denied* Oct. 14, 2009; *Delfino v. Agilent Technologies, Inc.*, 145 Cal. App. 4th 790, 803-808 (2006); *Gentry v. eBay, Inc.*, 99 Cal. App. 4th 816, 828-31 (2002); *Kathleen R. v. City of Livermore*, 87 Cal. App. 4th 684, 692 (2001); *see also Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1162 (9th Cir. 2008) ("*Roommates.com*") (en banc); *Chi. Lawyers' Comm. for Civil Rights Under Law, Inc. v. craigslist, Inc.*, 519 F.3d 666, 671-72 (7th Cir. 2008); *Universal Commc'n Sys. Inc. v. Lycos, Inc.*, 478 F.3d 413, 419 (1st Cir. 2007); *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1123 (9th Cir. 2003); *Batzel v. Smith*, 333 F.3d 1018, 1020 (9th Cir. 2003); *Green v. Am. Online, Inc.*, 318 F.3d 465, 471 (3d Cir. 2003); *Ben Ezra,*

Weinstein, & Co. v. Am. Online, Inc., 206 F.3d 980, 984-85 (10th Cir. 2000); *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 328 (4th Cir. 1997); *Dart v. craigslist, Inc.*, 665 F. Supp. 2d 961, 965-66 (N.D. Ill. 2009); *Gibson v. craigslist, Inc.*, No. 08-7735, 2009 WL 1704355, at *4 (S.D.N.Y. June 15, 2009); *Doe v. City of New York*, 583 F. Supp. 2d 444, 449 (S.D.N.Y. 2008); *Murawski v. Pataki*, 514 F. Supp. 2d 577, 591 (S.D.N.Y. 2007); *Langdon v. Google, Inc.*, 474 F. Supp. 2d 622, 631 (D. Del. 2007); *Prickett v. infoUSA, Inc.*, 561 F. Supp. 2d 646, 650-52 (E.D. Tex. 2006); *Parker v. Google, Inc.*, 422 F. Supp. 2d 492, 501 (E.D. Pa. 2006), *aff'd*, 242 Fed. Appx. 833 (3d Cir. 2007); *Beyond Sys., Inc. v. Keynetics, Inc.*, 422 F. Supp. 2d 523, 536-37 (W.D. Md. 2006); *Corbis Corp. v. Amazon.com, Inc.*, 351 F. Supp. 2d 1090, 1117-18 (W.D. Wash. 2004); *Perfect 10, Inc. v. CCBill, LLC*, 340 F. Supp. 2d 1077, 1107-08 (C.D. Cal. 2004), *aff'd in part and rev'd in part*, 481 F.3d 751 (9th Cir. 2007); *Novak v. Overture Servs. Inc.*, 309 F. Supp. 2d 446, 452 (E.D.N.Y. 2004); *Noah v. AOL Time Warner Inc.*, 261 F. Supp. 2d 532, 537-40 (E.D. Va. 2003), *aff'd*, No. 03-1770, 2004 WL 602711 (4th Cir. 2004); *PatentWizard, Inc. v. Kinko's Inc.*, 163 F. Supp. 2d 1069, 1071 (D.S.D. 2001); *Marczeski v. Law*, 122 F. Supp. 2d 315, 327 (D. Conn. 2000); *Blumenthal v. Drudge*, 992 F. Supp. 44, 49 (D.D.C. 1998).

The leading case remains the Fourth Circuit's seminal decision in *Zeran v. America Online*, which held that § 230 bars any state law cause of action against an online service provider for content posted to its service by a third party. 129 F.3d at 328, 330. In 2006, the California Supreme Court

adopted *Zeran* and held that "the plain language of section 230 'creates a federal immunity to *any cause of action* that would make service providers liable for information originating with a third-party user of the service.'" *Barrett*, 40 Cal. 4th at 43 (emphasis added) (quoting *Zeran*, 129 F.3d at 330). Courts in other jurisdictions have followed *Zeran* in applying § 230 to bar contract claims, including promissory estoppel claims. *See Green*, 318 F.3d at 468, 470 (breach of member agreement); *Schneider v. Amazon.com, Inc.*, 31 P.3d 37, 43 (Wash. Ct. App. 2001) (broken promise); *Jane Doe One v. Oliver*, 755 A.2d 1000, 1003-04 (Conn. Super. Ct. 2000), *aff'd*, 792 A.2d 911 (Conn. App. Ct. 2002) (breach of contract).

Last year, in an anomalous decision based on extraordinary facts, the Ninth Circuit in *Barnes* held that alleged promissory estoppel claim in that case did not treat the online service provider as a publisher and, therefore, that claim, if it existed, was not barred by § 230(c)(1). 570 F.3d at 1107-09. Whether California courts should stray from the principles adopted by the state Supreme Court in *Barrett* and articulated in *Zeran* to create an exemption to § 230's protection for certain alleged promissory estoppel claims, as in *Barnes*, is a novel issue. Indeed, while the trial court here extended *Barnes* in contravention of *Barrett* and *Zeran*, it pronounced:

> It's a fair question whether the California courts of appeal and Supreme Court are going to adopt *Barnes*'s view of Section 230. That's an issue of first impression. It has a certain amount of significance to it.

App. Vol. 4, Exh. 13 (Hearing) at 1178 (lines 18:5-8). Writ review is appropriate to resolve this question. *See Oceanside Union Sch. Dist. v. Superior Court*, 58 Cal. 2d 180, 186 n.4 (1962) (writ review appropriate "where general guidelines can be laid down for future cases").

Writ review is also necessary because this case poses an issue of widespread significance to the actions, operations and decision-making of all online service providers potentially subject to jurisdiction in California—of which there are many. If not corrected, the trial court's ruling stands as an encouragement to online service providers to restrict content on their services to that which even the most zealous censors could not find objectionable, and/or to prohibit, ignore or refuse complaints regarding content posted by third parties for fear that a cooperative or constructive response could jeopardize their statutory protection under § 230.

As the *amicus* briefing and the volume of decisions involving § 230 (nearly 200 to date) demonstrate, the exposure of online service providers to potential liability for third-party content is a critical issue in this age of the still-burgeoning Internet. *See California Highway Patrol v. Superior Court*, 135 Cal. App. 4th 488, 496 (2006) ("[I]nterlocutory writ review is appropriate because the petition raises an issue of first impression that is of

widespread interest, as the multiplicity of similar lawsuits confirms. Judicial economy is served by an early appellate resolution of the issue.") (citation omitted). When Congress enacted § 230 in the mid-1990's era of online bulletin boards and chat rooms, it was to promote the goals of protecting and advancing online free speech and Good Samaritan self-regulation by online service providers. The significance of § 230 to secure these goals has only grown with the expansion and evolution of Internet services and systems—particularly the boom of online social networks—in daily personal, professional, educational, commercial and recreational life.

If permitted to stand, the loophole to § 230 suggested by the trial court could be gaping. Following the trial court's ruling, any moderately creative plaintiff's attorney could craft an allegation that a request for help to an online service provider regarding third-party content that was not explicitly rejected became a promise and, adding utterance of the magic words "promissory estoppel," claims against service providers for third-party content could withstand demurrers and motions to dismiss in the most dubious of circumstances. craigslist along with other online service providers and the California courts could shortly be inundated with claims exploiting this perceived breach in § 230's otherwise formidable barrier. The California Supreme Court has acknowledged such a danger and cautioned against allowing it: "Adopting a rule of liability under section 230 that diverges from the rule announced in *Zeran* and followed in all other jurisdictions would be an open invitation to forum shopping by

defamation plaintiffs." *Barrett*, 40 Cal. 4th at 58 (denying claim that would impose liability outside *Zeran*'s parameters).

Writ review is therefore necessary to address the widespread significance and potential detrimental impacts of the trial court's ruling to the Internet industry, its operations and the framework of its continued evolution.

Finally, a "writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law." Cal. Civ. Proc. Code § 1086. Writ review is thus proper when "resolution of the issue would result in a final disposition as to the petitioner." *County of Santa Clara v. Superior Court*, 171 Cal. App. 4th 119, 125-26 (2009) (internal quotation marks and citation omitted). Section 230 would and should on its face and under applicable precedent dispose of Plaintiff's sole remaining purported claim against craigslist. Unless review is granted, however, craigslist will be forced to endure lengthy and costly discovery, motion practice, trial and potentially appeals before it can exit this suit. This process is not a plain, speedy or adequate remedy when federal law is designed to prevent Plaintiff's claim and to relieve online service providers from the defense of such claims at the earliest stages. Writ review is necessary and appropriate for this final reason as well.

B. This Court Exercises *De Novo* Review of the Trial Court's Order

This Court reviews an order overruling a demurrer *de novo*. *Casterson v. Superior Court*, 101 Cal. App. 4th 177, 182-83 (2002). A

general demurrer should be sustained where the complaint discloses that a defense or bar to recovery, such as a statutory immunity, applies. *Id.* at 183 (granting petition for writ of mandate and holding that statutory immunity barred complaint). The court accepts the truth of well-pleaded allegations of a complaint, but does not accept the truth of "contentions or conclusions of fact or law." *Barnett v. Fireman's Fund Ins. Co.*, 90 Cal. App. 4th 500, 505 (2001).

Questions of law, such as statutory interpretation, are also reviewed *de novo*. *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365, 373 (2005). In construing a statute, the court's function is to ascertain the legislature's intent in order to effectuate the law's purpose. *Rudd v. California Casualty Gen. Ins. Co.*, 219 Cal. App. 3d 948, 952 (1990). A statute's words should be given their ordinary meaning, and the language must be construed in the context of the entire statute, "keeping in mind the policies and purposes of the statute." *Id.*

C. Section 230 of the Communications Decency Act Was Designed to Protect Online Service Providers from Lawsuits Like This

In 1996, Congress enacted § 230 of the Communications Decency Act to, among other things, protect online service providers, such as craigslist, from lawsuits seeking to treat them as "publishers or speakers" of content originated by third parties or seeking to impose liability on them for measures taken voluntarily and in good faith to prevent or remove objectionable content from their services. Section 230(c) reads:

> **(c) Protection for "Good Samaritan" blocking and screening of offensive material**
>
> (1) **Treatment of publisher or speaker.**
>
> 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.
>
> (2) **Civil liability**
>
> No provider or user of an interactive computer service shall be held liable on account of—
>
> (A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or
>
> (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

47 U.S.C. § 230(c). Section 230(e)(3) additionally provides:

> [n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

Id. § 230(e)(3).

In adopting § 230, Congress sought to further two primary purposes. First, it aimed to perpetuate the growing and independent role of the Internet and interactive computer services. *See Zeran*, 129 F.3d at 330 ("Section 230 was enacted, in part, to maintain the robust nature of Internet communication and, accordingly, to keep government interference in the

medium to a minimum."); 47 U.S.C. § 230(a) (congressional findings).[4] Second, Congress wanted to encourage online service providers to self-regulate dissemination of objectionable material through their services. *See* 141 Cong. Rec. H8470 (Aug. 4, 1995) (statement of Rep. Barton) (§ 230 was intended to provide online services "a reasonable way to ... help them self-regulate themselves without penalty of law"); *Zeran*, 129 F.3d at 331; *see also* 47 U.S.C. § 230(b).[5]

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[4] Section 230(a) reads:

> (1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.
>
> (2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.
>
> (3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.
>
> (4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.
>
> (5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

47 U.S.C. § 230(a).

[5] Declared policies underlying the enactment of Section 230 include:

The concern underlying Congress's enactment of § 230 was that online service providers cannot systematically review and edit all third-party content coming to their services, and, faced with potential liability for each third-party item of content, service providers would instead reasonably choose to severely restrict the numbers and types of third-party posts that they would allow on their services. "There is no way that any of those [online service providers] can take the responsibility to edit out information that is going to be coming in to them from all manner of sources onto their bulletin board. ... [T]o have that imposition imposed on them is wrong. [§ 230] will cure that problem....". 141 Cong. Rec. H8471 (Aug. 4, 1995) (statement of Rep. Goodlatte). Further, the legislative history shows that § 230 was adopted, in part, to remove the disincentive to self-regulation created by a 1995 New York decision, *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, 1995 N.Y. Misc. LEXIS 229 (N.Y. Sup. Ct. 1995). *Stratton* held that an online service provider was a "publisher" of third-party content posted on its electronic bulletin board because the service provider

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> (1) to promote the continued development of the Internet and other interactive computer services and other interactive media; [and]
>
> (2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation[.]

47 U.S.C. § 230(b)(1)(2).

advertised its practice of controlling content and screened and edited messages posted on its bulletin boards. *Id.* Following *Stratton*, online service providers regulating dissemination of third-party content risked liability to a greater degree than service providers that did not. Congress consequently determined to cast broad protection over online service providers in cases involving objectionable content originating from third parties and for efforts to regulate such content on their services.[6] Sections 230(c) and (e) were the result.

As summarized by Representative Cox of California, who offered the amendment proposing § 230:

> Our amendment will do two basic things: First, it will protect computer Good Samaritans, online service providers, anyone who provides a front end to the Internet, let us say, who takes steps to screen indecency and offensive material for their customers.... Second, it will establish as the policy of the United States that we do not wish to have content regulation by the Federal Government of what is on the Internet, that we do not wish to have a Federal Computer Commission with an army of bureaucrats regulating the Internet because frankly the Internet has grown up to be what it is without that kind of help from the Government.

141 Cong. Rec. H8470 (Aug. 4, 1995).

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[6] "One of the specific purposes of this section is to overrule *Stratton Oakmont v. Prodigy* and any other similar decisions which have treated such providers and users as publishers or speakers of content that is not their own because they have restricted access to objectionable material." H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 194 (1996).

D. Courts in California and Nationwide Have Broadly Construed Section 230 to Bar Lawsuits Based on Content Posted by Third Parties

Mindful of Congress's policy choice, courts have consistently upheld § 230's bar to claims against online service providers for content originated by third parties. Indeed, since § 230 was enacted, courts across the country have enforced and bolstered online service providers' protection under § 230 against a wide variety of claims, including tort claims, tax claims, consumer protection claims and contract claims.

As noted, the leading case is *Zeran*, 129 F.3d 327. In *Zeran*, the Fourth Circuit held:

> By its plain language, § 230 creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service. Specifically, § 230 precludes courts from entertaining claims that would place a computer service provider in a publisher's role. Thus, lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred.

Id. at 330. Since then, Congress has confirmed that *Zeran* and its progeny "correctly interpreted section 230(c)." H.R. Rep. No. 107-449, at 13 (2002).

Federal appellate courts have followed *Zeran* in holding that § 230 confers broad protection on online service providers. *See, e.g., Roommates.com*, 521 F.3d at 1162 ("Section 230 of the CDA immunizes providers of interactive computer services against liability arising from

content created by third parties") (footnotes omitted); *Chi. Lawyers' Comm.*, 519 F.3d at 672 ("[G]iven § 230(c)(1) [a plaintiff] cannot sue the messenger just because the message reveals a third party's plan to engage in unlawful discrimination."); *Universal Commc'n Sys.*, 478 F.3d at 419 ("[W]e too find that Section 230 immunity should be broadly construed."); *Carafano*, 339 F.3d at 1123 (observing the "consensus developing across other courts of appeals that § 230(c) provides broad immunity for publishing content provided primarily by third parties"); *Batzel*, 333 F.3d at 1027 n.10 ("[E]very court to reach the issue has decided that Congress intended to immunize both distributors and publishers."); *Green*, 318 F.3d at 471 ("By its terms, § 230 provides immunity to AOL as a publisher or speaker of information originating from another information content provider."); *Ben Ezra,* 206 F.3d at 984-85 (§ 230 "creates a federal immunity to any state law cause of action that would hold computer service providers liable for information originating with a third party").

Lower federal courts have held the same. *See, e.g., Dart*, 665 F. Supp. 2d at 965-66; *Gibson*, 2009 WL 1704355, at *4; *Doe*, 583 F. Supp. 2d at 449; *Murawski*, 514 F. Supp. 2d at 591; *Langdon*, 474 F. Supp. 2d at 631; *Beyond Sys., Inc.*, 422 F. Supp. 2d at 536-37; *Prickett*, 561 at 650-52; *Parker*, 422 F. Supp. 2d at 501; *Novak*, 309 F. Supp. 2d at 452; *Corbis Corp.*, 351 F. Supp. 2d at 1117-18; *Perfect 10, Inc.*, 340 F. Supp. 2d at 1107-08; *Noah,*. 261 F. Supp. 2d at 537-40; *PatentWizard, Inc.*, 163 F.

Supp. 2d at 1071; *Marczeski*, 122 F. Supp. 2d at 327; *Blumenthal*, 992 F. Supp. at 49.

Crucially here, California appellate courts have also held the same. *See, e.g.*, *Barrett*, 40 Cal. 4th at 43; *Hung Tan Pham v. Lang Van Phan*, 182 Cal. App. 4th 323, 327 (2010); *Delfino*, 145 Cal. App. 4th at 803-08; *Gentry*, 99 Cal. App. 4th at 828-31; *Kathleen R.*, 87 Cal. App. 4th at 692.

As noted previously, the leading California authority is *Barrett v. Rosenthal*, where the California Supreme Court thoroughly analyzed § 230 and adhered to *Zeran*'s broad interpretations and holding. It empathized with concerns over § 230's expansive immunity but observed that "[t]he terms of section 230(c)(1) are broad and direct" and concluded that "section 230 has been interpreted literally." *Id.* at 48, 63. The court further acknowledged that "[t]he provisions of section 230(c)(1), conferring broad immunity on Internet intermediaries, are themselves a strong demonstration of legislative commitment to the value of maintaining a free market for online expression." *Id.* at 56.

In so concluding, the court adopted *Zeran*'s holding that § 230 "'creates a federal immunity to *any cause of action*'" that would impose liability on a service provider for third-party content. *Id.* at 43 (quoting *Zeran*, 129 F.3d at 330) (emphasis added). *Barrett* did *not* say that federal § 230 protection extends to any cause of action *other than promissory estoppel.* Rather, it concluded that Congress intended to promote active screening of online content by service providers "by broadly shielding all

providers from liability for 'publishing' information received from third parties." *Id.* at 53. Indeed, the court observed that § 230's immunity "applies even when self-regulation is unsuccessful, or completely unattempted." *Id.* Simply put, § 230 serves "to protect online freedom of expression and to encourage self-regulation, as Congress intended." *Id.* at 63.

Cases since *Barrett* have reinforced this settled principle of California law. *See, e.g.*, *Doe II*, 175 Cal. App. 4th at 567 ("[T]he legislative history demonstrates Congress intended to extend immunity to *all civil claims*.") (emphasis added); *Delfino*, 145 Cal. App. 4th at 803 (recognizing *Zeran* as "the leading case addressing the issue of immunity granted under section 230 to interactive computer service providers").

In short, however a claim against an online service provider is styled, if it is based on an online service provider's regulation of third-party content, it is barred by § 230 because "Congress' desire to promote unfettered speech on the Internet must supersede conflicting common law causes of action." *Zeran*, 129 F.3d at 334.

E. Section 230(c)(1) Bars Plaintiff's Promissory Estoppel Claim

craigslist first demurred to Plaintiff's promissory estoppel claim under § 230(c)(1). Three elements are necessary for § 230(c)(1) to apply: (1) the defendant is a "provider or user of an interactive computer service"; (2) the content was "provided by another information content provider"; and (3) the claim seeks to treat the defendant as the "publisher or speaker"

of the allegedly harmful content. *Delfino*, 145 Cal. App. 4th at 804-08. All three elements are present here.

The first two elements are not disputed. As an online classified ad and communication forum, craigslist is an "interactive computer service" provider. *See* 47 U.S.C. § 230(f)(2) ("interactive computer service" includes any service or system that "provides or enables computer access by multiple users to a computer server"); *see generally Dart*, 665 F. Supp. 2d at 965-66. And the alleged fraudulent ads were admittedly posted by a third-party information content provider, i.e., defendant Simpson. *See* 47 U.S.C. § 230(f)(3) ("information content provider" is "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"); App. Vol. 1, Exh. 2 at 166-67, 173, 181, 183-85, 187 (¶¶ 9, 12, 37, 58-59, 65-66, 68, 74-75); App. Vol. 3, Exh. 7 (Opposition) at 628, 630.

The only dispute is whether Plaintiff's promissory estoppel claim treats craigslist as the "publisher" of Simpson's posts. App. Vol. 2, Exh. 3 (Demurrer) at 351; App. Vol. 3, Exh. 7 (Opposition) at 629. As a matter of law, it does.

1. Regardless of Label, Section 230(c)(1) Bars Claims That Treat Online Service Providers as Publishers or Speakers

In declining to find Plaintiff's claim barred, the trial court relied on its conclusion that Plaintiff had sufficiently pleaded an agreement that could support promissory estoppel. App. Vol. 4, Exh. 12. But under

§ 230(c)(1), what matters is not the cause of action pled; what matters is whether the claim treats the defendant *as a publisher*. Indeed, the parties agreed that the cause of action pled was irrelevant under § 230(c)(1). *See* App. Vol. 2, Exh. 3 (Demurrer) at 351; App. Vol. 3, Exh. 7 (Opposition) at 629.

Where a statute's plain meaning is clear, that plain meaning controls. *Imperial Merchant Services, Inc. v. Hunt*, 47 Cal. 4th 381, 387-88 (2009). Section 230(c)(1) is entitled "Treatment of publisher or speaker" and plainly precludes treating an online service provider as the publisher of third-party content regardless of how a claim is labeled:

> 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.

47 U.S.C. § 230(c)(1) (emphasis added). To bolster this prohibition, § 230(e)(3) adds:

> *No cause of action* may be brought and *no liability* may be imposed under any State or local law that is inconsistent with this section.

Id. § 230(e)(3) (emphasis added). Thus, *any* state cause of action that *treats* an online service provider *as the publisher or speaker* of third-party content is barred. The statute contains no exception for contract claims—based on promissory estoppel or otherwise.

The California Supreme Court has adhered to this plain language of the statute. In *Barrett*, it corrected a misinterpretation that would have

excluded "distributor liability" from § 230(c)(1)'s protection because such liability, although not based on "primary" publisher conduct, nonetheless would treat the online service provider as a publisher. 40 Cal. 4th at 39-63.

The Ninth Circuit does not disagree. In *Barnes* in particular, the Ninth Circuit took particular pains to reinforce this principle, explaining that "what matters is not the name of the cause of action ... what matters is whether the cause of action inherently requires the court to treat the defendant as the 'publisher or speaker' of content provided by another." 570 F.3d at 1101-02; *see also id.* at 1100 (§ 230(c)(1) "bars courts from treating certain internet service providers as publishers or speakers"). *Barnes* agreed that "section 230(c)(1) precludes courts from treating Internet service providers as publishers not just for the purposes of defamation law ... but *in general*." *Id.* at 1104 (emphasis added).

Courts therefore must examine the nature, essence and intent of a complaint's claims and allegations to determine whether they treat the defendant as a "publisher or speaker" of third-party content, regardless of what cause of action is pled. Indeed, courts have specifically rejected "artful pleading" around § 230(c)(1) by labeling or endeavoring to frame claims in a manner that obscures a defendant's role as a publisher or speaker. *See, e.g., Doe v. MySpace, Inc.*, 474 F. Supp. 2d 843, 849 (W.D. Tex. 2007), *aff'd*, 528 F.3d 413 (5th Cir. 2008); *see also Zeran*, 129 F.3d at 332; *Carafano*, 339 F.3d at 1122; *Green*, 318 F.3d at 468; *Ben Ezra,* 206 F.3d at 983; *PatentWizard, Inc.*, 163 F. Supp. 2d at 1070-71; *Goddard v.*

Google, Inc., 640 F. Supp. 2d 1193, 1195 (N.D. Cal. 2009) ("*Goddard II*"); *Goddard v. Google, Inc.*, No. 08-2738, 2008 WL 5245490, at * 4-5 (N.D. Cal. Dec. 17, 2008) ("*Goddard I*"); *Gentry*, 99 Cal. App. 4th at 831, 834-35.

In *Doe II*, this Court squarely rejected the argument adopted by the trial court here: that § 230(c)(1)'s prohibition against liability arising from an online service provider's exercise of a publisher's functions can be evaded by alleging a simultaneous non-publisher duty or obligation. 175 Cal. App. 4th at 561. In *Doe* II, minor females, through parents and guardians, brought negligence and strict product liability claims against a social networking website because they were sexually assaulted by men met through the site. *Id.* at 564. The trial court sustained demurrers on § 230 grounds, and this Court affirmed. *Id.* at 566, 576. The Court emphasized that, regardless of the label, § 230 bars any claim based on an online service provider's publication of content from another:

> That appellants characterize their complaint as one for failure to adopt reasonable safety measures does not avoid the immunity granted by section 230. It is undeniable that appellants seek to hold MySpace responsible for the communications between the Julie Does and their assailants. At its core, appellants want MySpace to regulate what appears on its Web site.

Id. at 573. It further explained:

> Appellants argue they do not "allege liability on account of MySpace's exercise of a publisher's traditional editorial functions, such as editing,

> altering, or deciding whether or not to publish certain material, which is the test for whether a claim treats a website as a publisher under *Barrett.*" But that is precisely what they allege; that is, they want MySpace to ensure that sexual predators do not gain access to (i.e., communicate with) minors on its Web site. That type of activity—to restrict or make available certain material—is expressly covered by section 230.

Id.

2. Plaintiff's Claim Treats craigslist as a Publisher

Plaintiff seeks to impose liability on craigslist for its publication, rather than exclusion (successful block), of Simpson's April posts. App. Vol. 1, Exh. 2 (FAC) at 166, 167, 181, 183-85, 187, 187 (¶¶ 9, 12, 58-59, 65-66, 68, 74-75). craigslist's publication or exclusion of content from its website is a quintessential publisher's function. And, regardless whether Plaintiff asked craigslist to prevent all posts related to him and whether craigslist service representatives said they would "take care of it," any claim based on this function treats craigslist as the publisher of the posts, contrary to § 230(c)(1).

As *Zeran* observed, under § 230(c)(1) a "publisher's traditional editorial functions" include "deciding whether to publish, withdraw, postpone or alter content." *Zeran*, 129 F.3d at 330. The California Supreme Court has gone a step further, concluding that even failed or unattempted exercises of editorial functions are immunized. *Barrett*, 40 Cal. 4th at 53 ("Thus, the immunity conferred by section 230 applies even when self-regulation is unsuccessful, or completely unattempted.") (citing

Blumenthal, 992 F. Supp. at 52; *Schneider*, 31 P.3d at 43; *Donato v. Moldow*, 865 A.2d 711, 726 (N.J. Super. App. Div. 2005)). The Ninth Circuit concurs that "publication involves reviewing, editing and deciding whether to publish or to withdraw from publication third-party content." *Barnes*, 570 F.3d at 1102. "[R]emoving content is something publishers do, and to impose liability on the basis of such conduct necessarily involves treating the liable party as a publisher of the content it failed to remove." *Id.* at 1103. As explained by the Ninth Circuit sitting *en banc*, "any activity that can be boiled down to deciding whether to exclude material that third parties seek to post online is perforce immune under section 230." *Roommates.com*, 521 F.3d at 1170-71.

Plaintiff here wanted craigslist to exclude all posts related to him from craigslist's website. Publishing or excluding posts from the craigslist website is within craigslist's ability only because craigslist is the publisher. If craigslist were not the publisher, it could not review, exclude or withdraw the content. Consequently, while Plaintiff argued that his promissory estoppel claim treated craigslist as a promissor rather than a publisher, craigslist *could not* make any enforceable promise regarding screening, prevention or removal of content from craigslist's website unless craigslist was a publisher. As the Seventh Circuit recently explained regarding allegedly objectionable housing ads posted on craigslist's site, "only in a capacity as publisher could craigslist be liable" (under § 3604(c) of the Fair Housing Act in that case); consequently, craigslist was protected from that

liability under § 230(c)(1). *Chi. Lawyers' Comm.*, 519 F.3d at 671. The same is true here.

In sum, the proper test for application of § 230(c)(1) is whether the online service provider is treated as a publisher (or other speaker) of third-party content. Here, Plaintiff seeks to impose liability for craigslist's publication rather than exclusion of Simpson's posts, *i.e.*, regulation of content on its services. But, as in *Doe II*, this allegation treats craigslist as a publisher of third-party content and is therefore barred by § 230(c)(1).

3. The Trial Court Misinterpreted and Misapplied *Barnes*

The trial court misinterpreted and misapplied *Barnes* to reach the erroneous conclusion that Plaintiff's claim for promissory estoppel may survive § 230(c)(1) .

First, although the trial court was entitled to consider Ninth Circuit authority, it was obliged to "look to our own state's treatment of section 230 immunity to confirm" its proper interpretation and application by California courts. *Doe II*, 175 Cal. App. 4th at 571. Here, the trial court ignored the California Supreme Court's unequivocal holdings in *Barrett*, which adopted *Zeran* and, as explained above, affirmed that: (1) "the plain language of section 230 creates a federal immunity to *any cause of action* that would make service providers liable for information originating with a third-party user of the service"; and (2) § 230's protection "applies *even when self-regulation is unsuccessful, or completely unattempted.*" 40 Cal.

4th at 43, 53 (emphasis added) (internal quotation marks and citation omitted).

Second, the trial court misread *Barnes*. The trial court confused the test for § 230(c)(1) protection and, consequently, interpreted and applied *Barnes* in a manner that elevated labels and conclusions over the nature and substance of Plaintiff's claims and allegations, contrary to *Barnes* itself. As noted, the sole ground on which the trial court overruled craigslist's demurrer was that Plaintiff had "sufficiently pleaded an agreement supported by promissory estoppel." App. Vol. 4, Exh. 12 at 1160; Exh. 13 at 1169-74; Exh. 14 at 1190. But whether Plaintiff has sufficiently pled promissory estoppel is not the test for application of § 230(c)(1)'s protection and is not the holding of *Barnes*. Specifically, the Ninth Circuit did not hold that *any* sufficiently pleaded promissory estoppel claim is an instant shield against an online service provider's § 230(c)(1) defense. Rather, the Ninth Circuit carefully articulated and emphasized that the test under § 230(c)(1) was whether the allegations treated Yahoo! as a publisher. *Id.* at 1101-02 ("what matters is not the name of the cause of action ... what matters is whether the cause of action inherently requires the court to treat the defendant as the 'publisher or speaker' of content provided by another"). And *Barnes* concluded—on its specific facts—that Barnes's allegations there did *not* treat Yahoo! as a publisher and, thus, *if* Barnes's complaint was found on remand to state a claim for promissory estoppel,

that promissory estoppel claim was not barred by § 230(c)(1). 570 F.3d at 1108.

The only federal case addressing the promissory estoppel portion of *Barnes* read the decision in similarly limited fashion. *See Goddard II*, 640 F. Supp. 2d at 1199-1201. *Goddard II* rejected the plaintiff's argument that it was a third-party beneficiary of Google's Advertising Terms and Content Policy and could sue Google for breaches of those agreements by third-party content providers. *Id.* at 1199-1201. The court read *Barnes* as holding only that "*certain promissory conduct* by a defendant may remove it from the protections of [§ 230] even where the alleged promise was to remove or screen third-party content." *Id.* at 1200 (emphasis added). The court rejected the contract-based theory there because "there [wa]s no allegation that Google ever promised Plaintiff or anyone else, in any form or manner, that it would enforce its Content Policy." *Id.*

Accordingly, even under *Barnes*, all state law causes of action, including contractual and promissory estoppel claims, are barred by § 230(c)(1) if they treat the online service provider as a speaker or publisher of third-party content. Consistent with this determination, other courts addressing allegations that an online service provider breached a purported contract agreement, promise or commitment involving a publisher's function have firmly denied the purported claim under § 230(c)(1), regardless of the label.

Zeran is the most closely analogous case. An unidentified third party posted advertisements on an American Online ("AOL") bulletin board falsely claiming that Zeran was selling T-shirts and other tasteless souvenirs bearing jokes about the then-recent Oklahoma City bombing. 129 F.3d at 329. Zeran began receiving harassing phone calls, even death threats, as a result of the false postings. *Id.* Zeran called AOL and a company representative "assured" him that the posts would be removed from AOL's bulletin board. *Id.* However, fraudulent posts about Zeran continued. *Id.* Zeran called AOL repeatedly. *Id.* In response, AOL representatives told Zeran that the account from which the messages were being posted would soon be closed. *Id.* However, the offensive messages persisted. *Id.*

Zeran sued AOL and alleged that AOL was liable for unreasonably delaying removal of the defamatory posts, refusing to post retractions of the messages, and failing to screen and block similar posts. *Id.* at 328, 330. The trial court and the Fourth Circuit held AOL was protected by § 230:

> In this case, AOL is legally considered to be a publisher. '[E]very one who takes part in the publication ... is charged with publication.' ... Even distributors are considered to be publishers for purposes of defamation law.... AOL falls squarely within this traditional definition of a publisher and, therefore, is clearly protected by § 230's immunity.

Id. at 332 (citations omitted).

At oral argument below, the trial court disagreed that *Zeran* was analogous because Zeran did not assert a claim for promissory estoppel or expressly allege a "promise" by AOL. App. Vol. 4, Exh. 13 (Hearing) at 1168-69 (lines 8:15-9:3). But the trial court's analysis and holding exalt labels over the substance of the allegations, exactly as courts are directed not to do. Both here and in *Zeran*, the service provider is alleged to have told the plaintiff that certain content would be screened and blocked, and, both here and in *Zeran*, the alleged misconduct is the purported failure of the provider to screen and block that content. Whether Zeran alleged that AOL "assured" him or "told" him versus "promised" him or said "they would take care of it" is strictly a matter of semantics. Whether Zeran asserted negligence or promissory estoppel based on these allegations is merely a matter of label. In each case, the plaintiff sought to impose liability based on the online service provider's function as a publisher, specifically its publication rather than exclusion of third-party content. In doing so, both equally treated the online service provider as a publisher of the third-party content, and, in both case, liability is equally barred by § 230(c)(1).

In any event, although Zeran did not expressly include a claim for breach of contract or promissory estoppel or the word "promise" in his allegations, other plaintiffs have done so and the courts in those cases have similarly held that § 230(c)(1) bars liability. In *Green*, for example, the plaintiff alleged that AOL breached its member agreement by failing to ban

AOL users who harassed him and transmitted a virus to his computer via an AOL chatroom. 318 F.3d at 468. Affirming dismissal of the claims, the Third Circuit noted that holding "AOL liable for its alleged negligent failure to police its network for content transmitted by its users . . . would 'treat' AOL 'as the publisher or speaker' of that content." *Id.* at 470.

Even closer to this case, in *Schneider*, the plaintiff alleged that Amazon.com "promised to remove" unlawful reviews from its website, but then "failed to do so, and reposted the reviews rather than deleting them." 31 P.3d at 43. As here, the plaintiff asserted that his claim was based not on any publishing conduct, but on Amazon.com's broken promise. *Id.* Following *Zeran*, the Washington Court of Appeals held that § 230 barred the plaintiff's claim. *Id.* Because the "broken promise" claims were ultimately based on an alleged "failure to remove the posting," they were based on Amazon.com's "exercise of editorial discretion" and therefore fell within § 230's prohibition against publisher liability. *Id.*

Likewise, in *Doe One*, the plaintiff asserted breach of contract as one of many claims against AOL based on an allegedly offensive email sent by a third-party co-defendant. 755 A.2d at 1002 . AOL moved to strike the contract claim (and others) under § 230(c)(1). *Id.* The court granted the motion, holding:

> [L]awsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred.... This federal law [§ 230(c)(1)] accords with

> common law principles of what is required to be considered a "publisher." *See Lunney v. Prodigy Services Co.*, 94 N.Y.2d 242, 250, 723 N.E.2d 539, 701 N.Y.S.2d 684 (1999) (commercial online service provider not held liable on libel claim because it did not "publish" allegedly defamatory e-mail message). The plaintiffs have not stated claims upon which relief can be granted against AOL since the claims are precluded by the act.

Id. at 1003-04 (internal quotation marks and citation omitted).

The trial court's conclusion that any adequately pled claim of "promissory estoppel" can circumvent § 230(c)(1) is inconsistent with the totality of *Barnes* and the plethora of other precedent, including Ninth Circuit and California cases, holding that the test under § 230(c)(1) is not based on labels or formulations, rather, it assesses whether allegations treat an online service provider as a publisher of third-party content. Whether a promise is sufficiently pled or not is irrelevant.

Third, even if *Barnes* is read more expansively, the trial court erred in extending it to the unremarkable facts of this case. In *Barnes*, the Director of Communications at Yahoo!, Osako, placed an affirmative telephone call to Barnes after Yahoo! for months failed to act on Barnes's repeated written requests to remove fraudulent, sexually-explicit profiles of her from Yahoo!'s service. 570 F.3d at 1098-99. In that call, Osako specifically committed to "personally walk" the written requests to the division responsible for profile removals and "they would take care of it," yet the profiles remained online. *Id.* The call from Osako occurred the day before a local news program was scheduled to broadcast a report about the

incident. *Id.* The Ninth Circuit found that the communications director's call and commitment to personally attend to and ensure that the fraudulent profiles were removed, placed on the eve of a newscast about the incident, amounted to such a legally significant event as to generate a contractual obligation. *Id.* at 1107. The Ninth Circuit concluded that these facts were beyond traditional publisher functions and that § 230(c)(1) did not preclude the Plaintiff's promissory estoppel claim, if one was stated. *Id.* at 1109. Notably, the Court did *not* find that a viable contract/promissory estoppel claim actually existed. *Id.* This question was remanded. *Id.*

Plaintiff's allegations are in marked contrast. The alleged promises in *Barnes* came from the Communications Director who was trying to head off adverse news coverage. Here, the purported commitments came from anonymous customer service representatives who were carrying out craigslist's regular publisher functions, including exclusion of content. *Roommates.com*, 521 F.3d at 1170-71 ("[A]ny activity that can be boiled down to deciding whether to exclude material that third parties seek to post online is perforce immune under section 230."). Furthermore, Plaintiff does not allege that anyone at craigslist reached out to call him and assume a responsibility as in *Barnes*. Instead, Plaintiff called craigslist's customer relations department, just like hundreds or thousands of others. Moreover, the alleged promissory estoppel claim in *Barnes* "rested on a promise that scarcely could have been clearer or more direct." *Goddard II*, 640 F. Supp. 2d at 1201. Even according to Plaintiff's allegations, the customer service

representatives here did not commit to any specific act, but merely said that craigslist would "take care of it" in response to Plaintiff's calls and overlapping demands to remove content, provide identification data and exclude all future ads. As *Barnes* itself recognized, an "attempt to help a particular person[] on the part of an interactive computer service" is no basis for liability. 570 F.3d at 1108.

The trial court's expansive interpretation of *Barnes*, enabling claims if a plaintiff pleads any agreement by any representative of an online service provider to help block offensive content, would grossly undermine § 230(c)(1). Under the trial court's analysis, whenever a customer service representative responds to a concern about third-party content and the representative addresses the concern rather than rebuffing the request, the online service provider may no longer be acting as a publisher and may face liability for the effort to help. Such a result would gut § 230(c)(1) and its goals to encourage Good Samaritanism and self-regulation. It would effectively return online service providers to the status before § 230, when they risked liability if they took measures to prohibit and prevent objectionable content but avoided liability if they did nothing. This is not what Congress intended.

As explained by the Ninth Circuit in the *en banc* decision in *Roommates.com* preceding *Barnes*:

> We must keep firmly in mind that this is an immunity statute we are expounding, a provision enacted to protect websites against the evil of

> liability for failure to remove offensive content.... Websites are complicated enterprises, and there will always be close cases where a clever lawyer could argue that *something* the website operator did encouraged the illegality. Such *close cases, we believe, 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.*

521 F.3d at 1174 (second emphasis added).

F. Section 230(c)(2) Bars Plaintiff's Promissory Estoppel Claim

Separate and independent from § 230(c)(1), § 230(c)(2) also bars Plaintiff's promissory estoppel claim. Section 230(c)(2) precludes online service provider liability for voluntary, good-faith efforts to remove offensive material, even when they are not completely successful. The trial court's reason for overruling craigslist's Demurrer to Plaintiff's promissory estoppel claim—a sufficiently pleaded promise—does not negate this additional protection.

1. Section 230(c)(2) Bars Claims Based on Actions Voluntarily Taken in Good Faith to Block or Screen Objectionable Content

Section 230(c) is entitled "Protection for 'Good Samaritan' blocking and screening of offensive material." 47 U.S.C. § 230(c). To this end, § 230(c)(2) prohibits claims premised on an online service provider's good Samaritan efforts to regulate content on its service. It provides:

(2) **Civil liability**

> No provider or user of an interactive computer service shall be held liable on account of ... any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.

47 U.S.C. § 230(c)(2)(A). This proscription is also reinforced by § 230(e):

> *No cause of action* may be brought and *no liability* may be imposed under any State or local law that is *inconsistent* with this section.

Id. § 230(e)(3) (emphasis added).

Under the plain terms of § 230(c)(2), an online service provider is wholly immune from liability for (a) any voluntary action, (b) taken in good faith, (c) to restrict access to or availability of objectionable material. Nothing limits § 230(c)(2) to certain claims. Nor does § 230(c)(2) require treatment of the online service provider as a publisher or speaker. And there is no carve-out when an online service provider tells a user or member of the public that it will "take care of" certain content. *Barrett*, 40 Cal. 4th at 49 (Section 230(c)(2) is "directed at actions taken by Internet service providers or users to restrict access to online information."); *see also Delfino*, 145 Cal. App. 4th at 802 ("Thus, section 230(c)(2) immunizes from liability an interactive computer service provider or user who makes good faith efforts to restrict access to material deemed objectionable."). *Barnes*, 570 F.3d at 1105 ("Crucially, the persons who can take advantage

of this liability shield are not merely those whom subsection (c)(1) already protects, but *any* provider of an interactive computer service [that] act[s] to restrict access to the content because they consider it obscene or otherwise objectionable.").

Moreover, § 230(c)(2) applies to such actions regardless whether they are successful. *Goddard I*, 2008 WL 5245490, at *6 ("The intent of Congress in enacting § 230(c)(2) was to encourage efforts by Internet service providers to eliminate [objectionable] material by immunizing them from liability where those efforts failed."); *see also Barrett*, 40 Cal. 4th at 53 ("Thus, the immunity conferred by section 230 applies even when self-regulation is unsuccessful, or completely unattempted.") (citations omitted).

2. craigslist's Voluntary, Good Faith Actions to Help Plaintiff Are Protected By Section 230(c)(2)

When craigslist respond to Plaintiff's concerns and endeavored to block access to and screen posts at Plaintiff's behest, it did so voluntarily as a good Samaritan and in good faith and it is protected by § 230(c)(2). Indeed, there is no genuine dispute that craigslist acted in good faith to remove and block posts. *See* App. Vol. 4, Exh. 13 (*Hearing*) at 1175-77. Plaintiff does not allege that craigslist harbored some ulterior, malevolent motive for its cooperation in removing and blocking content for Plaintiff. To the contrary, the First Amended Complaint and its exhibits plainly show that craigslist acted with speed, decisiveness and good faith in taking down the offensive content on Plaintiff's word that it was fraudulent, in

successfully blocking similar content for an extended period, and in providing evidence to identify and bring the perpetrator to justice. App. Vols. 1-2, Exh. 2 (FAC) at 189, 293-99, 303-04, 308-12, 325-31, 337-38 (¶¶ 78, FAC Exhs.11, 12, 14, 16, 23, 25).

As Plaintiff acknowledges, craigslist had no duty to respond to Plaintiff's complaints about purported fraudulent posts. App. Vol. 4, Exh. 13 (Hearing) at 1175-77. Instead, Plaintiff argued that craigslist's efforts were not voluntary because, once on notice from Plaintiff, craigslist could have refused to help but did not. *Id.* But that is the very nature of voluntary action. *See Black's Law Dictionary* 1088 (6th ed. abridged 1991) (defining "voluntary" as "Proceeding from the free and unrestrained will of the person. Produced in or by an act of choice."). craigslist was not compelled to act, but helped Plaintiff of its own free will—exactly the conduct Congress intended § 230(c) to encourage and protect. *See Roommates.com*, 521 F.3d at 1172 n.32 ("Section 230 requires us to scrutinize particularly closely any claim that can be boiled down to the failure of an interactive computer service to edit or block user-generated content that it believes was tendered for posting online ... as that is the very activity Congress sought to immunize by passing the section.").

Further, the allegation that craigslist's representatives told Plaintiff that they would "take care of it" does not convert craigslist's actions from "voluntary" to "involuntary." This argument truly begs the question—if craigslist had no independent obligation to act but instead volunteered to

act, does that action then somehow become "involuntary" based on craigslist's voluntary commitment? The obvious answer is no. After all, even economic compulsion, including threatened litigation for breaking a promise, is insufficient "duress" to negate a party's free will. *See Louisville Title Ins. Co. v. Surety Title & Guar. Co.*, 60 Cal. App. 3d 781, 801-02 (1976).

As Plaintiff alleges, craigslist freel y chose in good faith to help Plaintiff by removing and attempting to block Simpson's posts. Section 230(c)(2) bars claims and liability for these good Samaritan acts and efforts.

3. *Barnes* Did Not Create Any Exception to Section 230(c)(2)

Barnes stated expressly that it did not address the applicability of § 230(c)(2). *Id.* at 1100, 1109. Rather, the court emphasized that Yahoo! had only asserted § 230(c)(1) as a defense and intimated that Yahoo! could rely on § 230(c)(2) on remand:

> Because we have only reviewed the affirmative defense that Yahoo raised in this appeal, we do not reach the question whether ... Yahoo has an affirmative defense under subsection 230(c)(2) of the Act.

Id. at 1109. To the extent it relied on *Barnes* in holding that Plaintiff can evade § 230(c)(2) simply by pleading a claim for promissory estoppel, the trial court was in plain error. In fact, *Barnes* reaffirmed that § 230(c)(2) provides protection beyond the protection of § 230(c)(1):

> Subsection (c)(2), for its part, provides an *additional* shield from liability, but only for "any action voluntarily taken in good faith to restrict access to or availability of material that the provider ... considers to be obscene ... or otherwise objectionable."

570 F.3d at 1105 (emphasis added). As demonstrated above, § 230(c)(2) squarely applies and independently bars Plaintiff's promissory estoppel cause of action.

G. The Underlying Action Should Be Stayed as to craigslist

Absent a stay of proceedings below, craigslist will be required to respond to discovery and possibly face trial on a claim that is clearly preempted by federal law. Section 230 does not merely bar the imposition of *liability* in these circumstances; it prohibits *bringing* any cause of action barred by § 230. *See* 47 U.S.C. § 230(e)(3) ("*No cause of action may be brought* and no liability may be imposed under any State or local law that is inconsistent with this section.") (emphasis added). A stay is necessary to respect this § 230 mandate and to avoid broad irreparable harm to craigslist and to free speech on the Internet.

First, as shown above, craigslist is highly likely to prevail on the merits. Second, absent a stay, craigslist will suffer irreparable injury. craigslist will be forced to choose alteration of its present cooperative, good Samaritan customer service practices if it wants to maintain § 230's barrier to prevent additional potential lawsuits. The consequential harm to craigslist's goodwill and reputation with users and the communities it

serves cannot be made up or undone. Further, craigslist will be subjected to the expense and burden of litigation to establish its defenses, which § 230(c) should prevent. *See* 47 U.S.C. § 230(e); *Roommates.com*, 521 F.3d at 1174 ("section 230 must be interpreted to protect websites not merely from ultimate liability, but from having to fight costly and protracted legal battles").

Moreover, Plaintiff will not be significantly prejudiced by a stay as to craigslist. He can still proceed on his claims against the Employer Defendants responsible for his alleged harassment, including Simpson who originated the alleged offending posts and the person truly responsible for any resulting harm.

Finally, a stay of proceedings is in the public interest. The decision below garnered substantial publicity and, as shown in the *amicus* letters, it is causing great concern among Internet advocates, academics and online service providers nationwide. All online service providers now must fear claims for damages if they do not succeed in taking down content that draws complaints, do not take down the content fast enough, or do not prevent other content that users or the public deem objectiobale. If not stayed (and ultimately reversed), the ruling establishing a promissory estoppel exception to § 230 will encourage, if not require, industry-wide defensive practices that harm customer service and restrict online content in precisely the manner Congress intended to prevent.

A stay is urgent to craigslist, vital to the Internet community and critical to protecting the principles underlying § 230(c). *See Greenberg v. Superior Court,* 172 Cal. App. 4th 1339, 1345 (2009); *California Pub. Employee's Retirement Sys. v. Superior Court*, 160 Cal. App. 4th 174, 187 (2008).

IV. CONCLUSION

For the foregoing reasons, craigslist respectfully requests that the Court direct Plaintiff to respond to this Petition and order a stay of trial court proceedings as to craigslist while this Petition remains under consideration, and that, after the return, this Court issue a writ directing the trial court to vacate its order denying craigslist's Demurrer as to the promissory estoppel claim and to enter a revised order sustaining the Demurrer without leave to amend.

Date: August 31, 2010

Respectfully submitted,

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CERTIFICATION OF WORD COUNT
(Cal. Rules of Court 8.204 and 8.490)

The text of this petition consists of 12,942 words as counted by the Word 2003 word processing program used to generate this petition.

Dated: August 31, 2010

Philip A. Leider

DECLARATION OF SERVICE

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States, employed in the city of San Francisco, California, over the age of 18 years, and not a party to or interested in the within action, and that declarant's business address is Four Embarcadero Center, Suite 2400, San Francisco, CA 94111.

2. That on August 31, 2010, declarant served the foregoing documents by Messenger (Hand Delivery) and Overnight Service as noted on the attached service list by placing a true copy thereof in a sealed envelope addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 31st day of August, 2010, at San Francisco, California.

Sheila M. Merrill

CRAIGSLIST, INC.
Defendant and Petitioner,

vs.

THE SUPERIOR COURT OF SAN FRANCISCO COUNTY,
Respondent,

SCOTT P.
Plaintiff and Real Party in Interest.

(From the Superior Court of San Francisco County,
No. CGC-10-496687, Judge Peter J. Busch)

SERVICE LIST
August 31, 2010

Attorneys for Plaintiff Scott P.

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(Hardcopy Petition and Appendix)
Via Overnight Service

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(Hardcopy Petition and Appendix)
Via Overnight Service

Court Clerk

Clerk of the Court
California Court of Appeal
First Appellate District
350 McAllister Street
San Francisco, CA 94102
Telephone: (415) 865-7300

(Original Petition + 4 copies of Petition + Appendix)
Via Messenger (Hand Delivery)

Superior Court

The Honorable Peter J. Busch
San Francisco County Superior Court
Department 301
400 McAllister Street
San Francisco, CA 94102
Telephone: (415) 551-3719

(Petition only)

Via Messenger (Hand Delivery)

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