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17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE DISTRICT OF ARIZONA**

19 United States of America,
20
21 Plaintiff,

22 v.

23 Michael Lacey, et al.,
24 Defendants.
25

CR-18-422-PHX-DJH

**UNITED STATES' MOTION
IN LIMINE TO PRECLUDE
REFERENCES TO COURT
DECISIONS, RULINGS, OPINIONS,
OR RESULTS FROM PRIOR
LITIGATION FILED BY OR
AGAINST BACKPAGE.COM, LLC
OR ITS OWNER(S)**

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1 you'll hear about[.]").²

2 Defendants failed to mention that they had misled courts across the United States in
3 these cases. (*See, e.g.*, Doc. 649, Resp. at 21-26.) Not only did many of the cases involve
4 challenges to state laws not at issue here, but they all relied on the broad immunity of
5 Section 230—which does not apply at all in this federal criminal proceeding, as this Court
6 has recognized. *Compare n.2 with United States v. Lacey*, 423 F. Supp. 3d 748, 760 (D.
7 Ariz. 2019) and Doc. 840 at 7. Moreover, the cases were all premised on the notion that
8 Backpage was merely a passive “intermediary between the advertisers of adult services and
9 visitors to Backpage’s website.” *Backpage.com LLC v. Dart*, 807 F.3d 229, 233-34 (7th
10 Cir. 2015). Yet, after these cases were decided, Backpage disclosed evidence in response
11 to U.S. Senate and grand jury subpoena that belied this premise. (Doc. 649, Resp. at 22-
12 24.) Backpage and its CEO then pleaded guilty in 2018 and admitted that the “great
13 majority” of Backpage’s revenue-generating ads were “for prostitution services.” (18-CR-
14 464, Doc. 7-2 at 12-13; 18-CR-465, Doc. 8-2 at 11; *see* Doc. 271 at 9-10.) Following these
15 developments, the Northern District of Illinois dismissed *Dart* and imposed \$250,000 in
16 sanctions on Backpage for perpetuating a fraud on the court. (*See* Doc. 516-1 at 2-9.)

17 During the prior trial, the Court wanted to address “the admissibility of all these
18 other cases” (Doc. 1343 at 103:3-5), and had “issues with the way some of those rulings
19 were portrayed.” (Doc. 1343 at 103:25-104:1.) The Court observed that cases discussing
20 Section 230—*i.e.*, all of the cases referenced in the defense openings—are “misleading”
21 and “not applicable” here. (Doc. 1334 at 12:25, 13:9.)

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25 ² *See* Doc. 1342 at 55:6-63:18, 70:4-9, 75:17-76:8, referencing these Section 230 cases:
26 *M.A. v. Village Voice Media Holdings, LLC*, 809 F. Supp. 2d 1041, 1047-59 (E.D. Mo.
27 2011); *Backpage.com, LLC v. McKenna*, 881 F. Supp. 2d 1262, 1271-75 (W.D. Wash.
28 2012); *Backpage.com, LLC v. Cooper*, 939 F. Supp. 2d 805, 821-28 (M.D. Tenn. 2013);
Backpage.com, LLC v. Hoffman, 2013 WL 4502097, at *5-7 (D.N.J. Aug. 20, 2013), *Doe*
ex rel. Roe v. Backpage.com, LLC, 104 F. Supp. 3d 149, 155-65 (D. Mass. 2015), *aff'd sub*
nom. Jane Doe No. 1 v. Backpage.com, LLC, 817 F.3d 12, 18-24, 29 (1st Cir. 2016);
Backpage.com LLC v. Dart, 807 F.3d 229, 233-34 (7th Cir. 2015).

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Respectfully submitted this 8th day of June, 2023.

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CERTIFICATE OF SERVICE

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I hereby certify that on June 8, 2023, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants who have entered their appearance as counsel of record.

s/ Daniel Parke
Daniel Parke
U.S. Attorney’s Office