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16  
17 IN THE UNITED STATES DISTRICT COURT  
18 FOR THE DISTRICT OF ARIZONA

19 United States of America,  
20 Plaintiff,

21 v.

22 Michael Lacey, et al.,  
23 Defendants.

CR-18-422-PHX-SPL (BSB)

**UNITED STATES' SUPPLEMENT IN  
SUPPORT OF MOTION TO  
DISQUALIFY COUNSEL  
(DWT FIRM)**

**[Supplement to CR 193]**

24 The law firm of Davis Wright Tremaine (“DWT”) has appeared in this case on  
25 behalf of two defendants: Michael Lacey and James Larkin. The United States has, in turn,  
26 moved to disqualify DWT based on conflicts of interest arising from DWT’s previous  
27 representation of Carl Ferrer (CR 118). The United States recently filed a reply (CR 193)  
28 to Lacey and Larkin’s response (CR 180). Exhibit A to the United States’ reply is the

1 transcript of the May 23, 2018 hearing in *R.O. and K.M. v. Medalist Holdings, Inc., et al.*,  
2 No. 17-2-04897-1 (Wash. Super. Ct.). At the hearing, a Washington state judge  
3 disqualified DWT from representing Lacey and Larkin in *R.O.*, a Backpage-related civil  
4 case, based on DTW's prior representation of Ferrer. The court found DWT's continued  
5 participation would "create an injustice on the administration of justice" due to  
6 "intertwined" conflicts. CR 193-1 at 61:12-19. The United States files this Supplement to  
7 provide the Court with the *R.O.* court's written order of June 28, 2018, which  
8 "memorialize[s] and supplement[s]" the court's findings and conclusions from the May 23  
9 hearing. Exhibit 1 at 3 and n.1 (June 28, 2018 Order, attached hereto).

10 Most pertinent to the United States' disqualification motion, the court granted  
11 DWT's request to withdraw as counsel for 12 of the 17 defendants in *R.O.* (the  
12 "Backpage.com Defendants," including Ferrer) *and* ordered DWT disqualified from  
13 representing the five remaining defendants (the "Medalist Defendants," including Lacey  
14 and Larkin). Exhibit 1 at 12. DWT had only sought to withdraw from representing the  
15 Backpage.com Defendants. Nevertheless, after reviewing *in camera* "supporting  
16 materials" submitted by DWT, the court "conclude[d] that continued representation of the  
17 Medalist Defendants by Davis Wright Tremaine is impermissible pursuant to the Rules of  
18 Professional Conduct," and disqualified DWT "from continuing to represent any parties in  
19 this litigation, including the Medalist Defendants." Exhibit 1 at 12-13.

20 The court made several findings in support of this ruling, including:

21 1. Ferrer had "effectively revoked his consent allowing defense counsel to  
22 jointly represent the multiple Defendants in this lawsuit because of material changes in  
23 circumstances arising, in part, out of the federal criminal proceedings implicating several  
24 of the Backpage.com and Medalist Defendants..." Exhibit 1 at 13.

25 2. "The federal criminal proceedings are substantially related to the facts and  
26 claims in this litigation." Exhibit 1 at 13.

27 3. "Defense counsel has jointly represented all defendants in numerous lawsuits  
28 across the country that are also substantially related to the facts and claims in this litigation

1 and the federal criminal proceedings. These past and current representations are relevantly  
2 interconnected such that defense counsel is familiar with both the Backpage.com  
3 Defendants' and Medalist Defendants' pattern of conduct as it relates to the claims in this  
4 litigation." Exhibit 1 at 13.

5 4. "[T]he Court concludes that there is a high possibility that Davis Wright  
6 Tremaine, Davis Wright Tremaine's attorneys, Eric Stahl, and James Grant will encounter  
7 an impermissible conflict of interest jeopardizing the effective administration of justice if  
8 they continue to represent the Medalist Defendants in this litigation." Exhibit 1 at 13-14.

9 5. "The Court further concludes that the Backpage.com Defendants' interest to  
10 preserve the confidences previously disclosed to [DWT] combined with the high possibility  
11 that [DWT] will encounter conflict if allowed to continue representing the Medalist  
12 Defendants, outweighs the Medalist Defendants' interest in maintaining defense counsel  
13 as their attorneys in this litigation." Exhibit 1 at 14.

14 The court also imposed continuing obligations on DWT to preserve "two terabytes  
15 of data" pertaining to Backpage that DWT apparently continues to retain in its possession,  
16 notwithstanding its withdrawal from representing Ferrer and Backpage.com, LLC in *R.O.*  
17 and multiple other cases throughout the country. Exhibit 1 at 6-7.

18 Moreover, the court granted plaintiffs' motion for sanctions "as to all defendants"  
19 and found, *inter alia*, that the defendants had "knowingly undertaken a pattern of  
20 misconduct over several years to deny claims asserted by Plaintiffs and similarly situated  
21 plaintiffs in the *J.S.* litigation, which Defendant Ferrer's plea agreement confirms were  
22 true." Exhibit 1 at 7, 9-10. The court "jointly sanctioned" the defendants "in the amount  
23 of \$200,000.00 (\$100,000.00 per Plaintiff)," and awarded plaintiffs' "reasonable attorney's  
24 fees and costs that were necessitated by defendants' misconduct." Exhibit 1 at 11.

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1 Respectfully submitted this 2nd day of July, 2018.

2 ELIZABETH A. STRANGE  
3 First Assistant United States Attorney  
4 District of Arizona

5 */s/ Kevin Rapp*  
6 KEVIN M. RAPP  
7 MARGARET PERLMETER  
8 PETER S. KOZINETS  
9 ANDREW C. STONE  
10 Assistant U.S. Attorneys

11 JOHN J. KUCERA  
12 Special Assistant U.S. Attorney

13 JOHN P. CRONAN  
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15 Criminal Division, U.S. Department of Justice

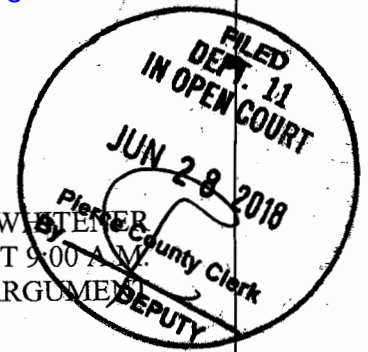
16 REGINALD E. JONES  
17 Senior Trial Attorney  
18 U.S. Department of Justice, Criminal Division  
19 Child Exploitation and Obscenity Section

20 **Certificate of Service**

21 I hereby certify that on this date, I electronically transmitted the attached document to the  
22 Clerk's Office using the CM/ECF system for filing and transmittal of a Notice of Electronic  
23 Filing to the following CM/ECF registrants: Anne Chapman, Erin McCampbell, James  
24 Grant, Lee Stein, Paul Cambria, Robert Corn-Revere, Ronald London, Janey Henze Cook,  
25 John Littrell, Kenneth Miller, Thomas Bienart, Jr., Bruce Feder, Michael Kimerer, Rhonda  
26 Neff, KC Maxwell, David Wakukawa, Michael Piccarreta, Stephen Weiss.

27 *s/Zachry Stoebe*  
28 U.S. Attorney's Office

# **EXHIBIT 1**



ASSIGNED TO THE HONORABLE G. HELEN WESTER  
HEARING DATE: JUNE 28, 2018, AT 9:00 A.M.  
WITH ORAL ARGUMENT

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR PIERCE COUNTY

R.O. and K.M.,

NO. 17-2-04897-1

Plaintiffs,

~~PROPOSED~~ REVISED]

v.

MEDALIST HOLDINGS, INC., et al.,

COMBINED ORDER GRANTING  
PLAINTIFFS' MOTION TO COMPEL,  
PLAINTIFFS' MOTION FOR  
SANCTIONS, DAVIS WRIGHT  
TREMAINE'S NOTICE OF INTENT TO  
WITHDRAW, AND NOTICE OF  
LODGING OF *IN CAMERA*  
DECLARATION AND MOTION TO  
SEAL

Defendants.

THESE MATTERS came before the Court on (1) Plaintiffs' Motion to Compel Compliance with Court's Order and Motion to Preserve Evidence, (2) Plaintiffs' Motion for Sanctions Against Backpage Defendants, (3) the Notice of Intent to Withdraw filed by Davis Wright Tremaine, and (4) Notice of Lodging of *In Camera* Declaration and Motion to Seal filed by Davis Wright Tremaine. The Court heard oral argument from the parties, reviewed the existing record, and reviewed the materials submitted by the parties, including the following:

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**Plaintiffs’ Motion to Compel Compliance with Court’s Order and Motion to Preserve Evidence**

- (1) Plaintiffs’ Motion to Compel Compliance with Court’s Order and Motion to Preserve Evidence, including the Declaration of Michael T. Pfau submitted in support thereof;
- (2) Defendants’ Opposition to Plaintiffs’ Motion to Compel Compliance with Court’s Order and Motion to Preserve Evidence, including the Declaration of Eric Stahl submitted in support thereof;
- (3) Plaintiffs’ Reply in Support of Plaintiffs’ Motion to Compel Compliance with Court’s Order and Motion to Preserve Evidence, including the Declaration of Michael T. Pfau submitted in support thereof;
- (4) Supplemental Declaration of Michael T. Pfau in Support of Plaintiffs’ Motion to Compel Compliance with Court’s Order and Motion to Preserve Evidence; and
- (5) \_\_\_\_\_

**Plaintiffs’ Motion for Sanctions Against Backpage Defendants**

- (1) Plaintiffs’ Motion for Sanctions Against Backpage Defendants, including the Declaration of Michael T. Pfau submitted in support thereof;
- (2) Defendants’ Request for Extension and Opposition to Plaintiffs’ Motion for Sanctions, including the Declaration of Eric M. Stahl submitted in support thereof;
- (3) Plaintiffs’ Reply in Support of Plaintiffs’ Motion for Sanctions and Plaintiffs’ Opposition to Defendants’ Motion for Extension, including the Declaration of Michael T. Pfau submitted in support thereof; and
- (4) \_\_\_\_\_

**Notice of Intent to Withdraw Filed by Davis Wright Tremaine and Notice of Lodging of In Camera Declaration and Motion to Seal filed by Davis Wright Tremaine**

- (1) Notice of Intent to Withdraw filed by Davis Wright Tremaine LLP;
- (2) Supplement to Notice of Intent to Withdraw filed by Davis Wright Tremaine LLP;



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- (3) Plaintiffs’ Objections to Backpage Defendants’ Counsel’s Notice of Intent to Withdraw;
- (4) Notice of Lodging of *In Camera* Declaration and Motion to Seal filed by Davis Wright Tremaine, LLP, as well as the documents that Davis Wright Tremaine filed with the Court for *in camera* review;
- (5) The Declaration of James C. Grant Regarding Davis Wright Tremaine’s Notice of Intent to Withdraw;
- (6) Plaintiffs’ Opposition to the Notice of Lodging of In Camera Declaration and Motion to Seal filed by Davis Wright Tremaine, including the Declaration of Jason P. Amala submitted in support thereof; and
- (7) \_\_\_\_\_  
\_\_\_\_\_

The Court has also considered the following materials regarding the contents and presentation of this Order:

- (1) Medalist Defendants’ Objections to Plaintiffs’ Proposed Combined Order;
- (2) Plaintiffs’ Response to Medalist Defendants’ Objections to Plaintiffs’ Proposed Combined Order; and
- (3) \_\_\_\_\_  
\_\_\_\_\_

Based on the Court’s review of the foregoing and the existing record, and for the reasons the Court articulated at the hearing in open court on May 23, 2018,<sup>1</sup> for the reasons stated below, and for the reasons stated in Plaintiffs’ briefing, the Court enters the following findings and conclusions. The Court adopts its findings and conclusions from that hearing as if fully articulated in this written order, which is intended to memorialize and supplement the Court’s findings and conclusions.

<sup>1</sup> A copy of the Verbatim Transcript of Proceedings from May 23, 2018, is attached hereto as Exhibit 1. The Court adopts its findings and conclusions from that hearing as if fully articulated in this written order, which is intended to memorialize and supplement the Court’s findings and conclusions.



**Plaintiffs' Motion to Compel Compliance with Court's Order and Motion to Preserve Evidence**

Plaintiffs' Motion to Compel Compliance with Court's Order and Motion to Preserve Evidence is **GRANTED** as to the "Backpage Corporate Defendants,"<sup>2</sup> and discovery sanctions are imposed, as set forth below, should those defendants fail to comply with this Order. In support of this ruling, the Court makes the following findings and conclusions:

1. On January 12, 2018, the Court entered the Order Granting Plaintiffs' Motion to Compel Full and Complete Responses from Backpage Corporate Defendants with Regards to Discovery Requests Outlined in Appendix A ("January 12th Order").

2. The Backpage Corporate Defendants failed to comply with the January 12th Order or otherwise make reasonable efforts to substantially comply with the January 12th Order, including but not limited to the production of responsive documents on a rolling basis. The limited documents that were produced by the Backpage Corporate Defendants did not comprise the scope of relevant documents covered in the January 12th Order.

3. The Backpage Corporate Defendants' failure to comply with the Court's January 12th Order was willful and was not substantially justified under the circumstances. The claim by Davis Wright Tremaine that it could not comply with the Court's January 12th Order without first reviewing the entire set of responsive documents for privilege is unsupported. ~~The evidence demonstrates (1) that much of the materials have already been reviewed for privilege in the context of other similar litigation; and (2) that Davis Wright Tremaine has vetted the documents for privilege, per Mr. Ferrer.~~

*(Handwritten initials)*

<sup>2</sup> Consistent with the January 12th Order, the "Backpage Corporate Defendants" include Medalist Holdings, Inc.; Leeward Holdings, LLC; Camarillo Holdings, LLC; Dartmoor Holdings, LLC; Backpage.com, LLC; UGC Tech Group CV; Website Technologies, LLC; Atlantische Bedrijven, CV; Amstel River Holdings, LLC; Lupine Holdings, LLC; Kickapoo River Investments, LLC; CF Holdings GP, LLC; and CF Acquisitions, LLC.

1  
2 4. The Backpage Corporate Defendants' failure to comply with the Court's  
3 January 12th Order has caused undue delay and has substantially prejudiced Plaintiffs' ability  
4 to prepare for the trial scheduled to begin October 16, 2018.

5 5. The Court has considered lesser sanctions than those set forth below, including  
6 lesser monetary sanctions, but finds that lesser sanctions would not suffice in deterring these  
7 defendants from continued noncompliance with the Court's prior Order.

8  
9 6. The Court finds that Defendant Carl Ferrer has waived the attorney/client  
10 privilege, on behalf of himself and Defendants Backpage.com, L.L.C., Dartmoor Holdings,  
11 L.L.C., IC Holdings, L.L.C., and Website Technologies, L.L.C., with respect to the topics set  
12 forth in the document executed April 5, 2018, which was attached as Exhibit A to the  
13 Declaration of Jason P. Amala in Support of Plaintiffs' Opposition to the Notice of Lodging  
14 of In Camera Declaration and Motion to Seal Filed by Davis Wright Tremaine.

(GTM)

15 7. \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_  
18 \_\_\_\_\_

19 Based on the foregoing, the Court hereby **ORDERS** as follows:

20 1. Within 60 days of this Order, the Backpage Corporate Defendants shall  
21 produce to Plaintiffs the approximately 1.2 million responsive documents identified by Eric  
22 Stahl in his letter dated March 20, 2018, which was attached as Exhibit 2 to the Declaration of  
23 Michael T. Pfau in Support of Plaintiffs' Motion to Compel Compliance with Court's Order  
24 and Motion to Preserve Evidence.

25 2. If the defendants fail to produce the approximately 1.2 million responsive  
26 documents referenced above within 60 days of this Order, the defendants will be sanctioned in  
the amount of \$1.00 per document for every 14 days of noncompliance with this Order.

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2  
3 3. Within 60 days of this Order, the Backpage Corporate Defendants shall  
4 produce any remaining documents responsive to the January 12th Order that are in their  
5 possession, which includes documents in the possession of Davis Wright Tremaine and other  
6 legal counsel who represents any of these defendants.

7 4. To the extent the defendants assert that any of the foregoing responsive  
8 documents should be withheld on the basis of the attorney/client privilege or work product  
9 doctrines, defendants shall produce to Plaintiffs any such records that have been provided to  
10 the United State Senate or other law enforcement after a court concluded the records were not  
11 subject to the attorney/client privilege or work product doctrines. The Court so orders  
12 because the defendants are not entitled to re-litigate whether those records may be withheld  
13 on the basis of privilege. The defendants shall also produce to Plaintiffs any such records that  
14 are no longer subject to the attorney/client privilege because of the express waiver executed  
15 by Defendant Ferrer on April 5, 2018, or because such records were disclosed to third parties.

16  
17 5. To the extent additional records exist that defendants assert are subject to the  
18 attorney/client privilege or work product doctrine, defendants shall provide Plaintiffs with a  
19 privilege log that includes the basis for how the defendants defined their "control group" as to  
20 each withheld record. The log shall be sufficiently detailed so that Plaintiffs are able to  
21 determine whether the asserted privilege is valid as to each record, including whether any  
22 privilege may have been waived based on who sent or received the record. The privilege log  
23 shall also include the date of the record, the time of the record (where available), who  
24 authored the record, who received the record, and a general description of the record. A  
25 privilege log shall be produced contemporaneously with the records that are produced  
26 pursuant to this Order.

6/11/18

1  
2           6. Defendants and Davis Wright Tremaine shall secure and continue to preserve  
3 all electronic evidence in their possession, including the two terabytes of data that Davis  
4 Wright Tremaine previously identified as described in Plaintiffs' motion. Defendants and  
5 Davis Wright Tremaine shall also duplicate ~~that electronic evidence~~ <sup>the 2 terabytes of data</sup> and place it in trust,  
6 ~~either with the Court or~~ with a neutral third party approved by the Court, within 60 days after  
7 this Order is entered. Unless the parties agree otherwise at the hearing on this Order, the  
8 Court approves John Cooper of WAMS as the approved neutral third party. The purpose of  
9 duplicating the data is to ensure that the Court's existing order can be honored, and in the  
10 event the federal government desires to seize the data, a copy will remain available for this  
11 litigation.

Case

13           7. \_\_\_\_\_  
14 \_\_\_\_\_  
15 \_\_\_\_\_

16 **Plaintiffs' Motion for Sanctions Against Backpage Defendants**

17           Plaintiffs' Motion for Sanctions Against Backpage Defendants is **GRANTED** as to  
18 **all defendants**. In support of this ruling, the Court makes the following findings and  
19 conclusions:  
20

21           1. The CEO of defendant Backpage.com, defendant Carl Ferrer, recently pled  
22 guilty to a range of crimes and admitted the following relevant facts:

23           In 2004, I co-founded the website www.Backpage.com ("Backpage"), along  
24 with M.L. [Michael Lacey] and J.L. [James Larkin]. Backpage eventually  
25 became the second-largest classified advertising in the world, during its 14  
26 years of existence, has derived the great majority of its revenue from fees  
charged in return for publishing advertisements for 'adult' and 'escort'  
services.

1  
2 I have long been aware that the great majority of these advertisements  
3 are, in fact, advertisements for prostitution services (which are not  
4 protected by the First Amendment and which are illegal in 49 states and  
5 in much of Nevada). Acting with this knowledge, I conspired with other  
6 Backpage principals (including but not limited to M.L., J.L., S.S., D.H.,  
7 A.P., and J.V.) to find ways to knowingly facilitate state-law prostitution  
8 crimes being committed by Backpage customers. For example, I worked  
9 with my co-conspirators to create 'moderation' processes through which  
10 Backpage would remove terms and pictures that were particularly  
11 indicative of prostitution and then publish a revised version of the ad.  
Such editing did not, of course, change the essential nature of the illegal  
service being offered in the ad—it was merely intended to create a veneer of  
deniability for Backpage. These editing practices were one component of  
an overall, company-wide culture and policy of concealing and refusing to  
officially acknowledge the true nature of the services being offered in  
Backpage's 'escort' and 'adult' ads.

12 In addition to conspiring to knowingly facilitate the state-law prostitution  
13 offenses being committed by Backpage's customers, I also conspired with  
14 other Backpage principals (including but not limited to M.L., J.L., S.S., D.H.,  
15 A.P., and J.V.) to engage in various money laundering offenses. **Since 2004,**  
16 **Backpage has earned hundreds of millions of dollars in revenues from**  
17 **publishing "escort" and "adult" ads.** Over time, many banks credit card  
18 companies, and other financial institutions refused to do business with  
19 Backpage due to the illegal nature of its business. In response, I worked with  
my co-conspirators to find ways to fool credit card companies into believing  
Backpage-associated charges were being incurred on different websites, to  
route Backpage-related payments and proceeds through bank accounts held in  
name of seemingly unconnected entities, . . . and to use cryptocurrency-  
processing companies . . . for similar purposes.

20 2. Defendant Ferrer's plea agreement admits the existence of an overriding  
21 conspiracy to facilitate illegal sex trafficking beginning in 2004 and persisting through March  
22 2018. This timeframe covers when Plaintiffs allege they were marketed and sold for sex on  
23 Backpage.com, and when the plaintiffs in the *J.S.* litigation allege they were marketed and sold  
24 for sex on Backpage.com. Defendant Ferrer's guilty plea contains admissions that are highly  
25 consistent with the allegations of Plaintiffs in this case, and with the allegations of the plaintiffs  
26



1  
2 in the *J.S.* litigation, yet the defendants in both cases expressly denied those allegations. ~~This~~  
3 ~~timeframe also implicates all named defendants as co-conspirators.~~

4 3. ~~The defendants have not provided any convincing evidence, including sworn~~  
5 ~~testimony or other evidence, to refute the sworn statements in defendant Ferrer's guilty plea.~~  
6 ~~Nor have the defendants filed an Answer in this case to refute Plaintiffs' allegations.~~

7  
8 4. The evidence presented by Plaintiffs demonstrates that the Backpage Corporate  
9 Defendants collectively operated and owned the backpage.com website and have acted  
10 collectively in all relevant respects throughout the course of this litigation, including but not  
11 limited their responses to Plaintiffs' discovery requests.

12 5. Defendant Ferrer's guilty plea admits that "moderation processes" were  
13 implemented to remove terms and images indicative of prostitution in order to "create a veneer  
14 of deniability for Backpage." Defendant Ferrer further admits that the defendants engaged in  
15 "various money laundering offenses" in order to realize "hundreds of millions of dollars" in  
16 revenue from the illegal conduct facilitated on the Backpage.com website.

17  
18 6. The above admissions by Defendant Ferrer are central to Plaintiffs' claims and  
19 allegations against the defendants as set forth in the First Amended Complaint. Further, the  
20 admissions in Defendant Ferrer's guilty plea directly contradict the defendants' responses to  
21 several interrogatories, requests for admission, and requests for production propounded by  
22 Plaintiffs in this litigation as outlined in Plaintiffs' briefing.

23  
24 7. Based on the foregoing, the Court finds that the defendants have engaged in pre-  
25 litigation misconduct. Defendants have knowingly undertaken a pattern of misconduct over  
26 several years to deny claims asserted by Plaintiffs and similarly situated plaintiffs in the *J.S.*

litigation, which Defendant Ferrer's plea agreement confirms were true. Accordingly, the

1  
2 defendants' conduct in this litigation in responding to the claims and discovery requests  
3 propounded by Plaintiffs has not been grounded in fact.

4 8. Based on the foregoing, the Court further finds that defendants have committed  
5 procedural bad faith by engaging in vexatious conduct throughout this litigation designed to  
6 necessitate undue delay and force Plaintiffs to incur significant costs in pursuing their claims.  
7 For example, defendants' denials in response to Plaintiffs' discovery requests were untruthful  
8 and submitted for the improper purpose causing unnecessary delay and increasing the costs of  
9 litigation, as demonstrated by Defendant Ferrer's guilty plea.

10  
11 9. Defendants' misconduct and procedural bad faith has severely prejudiced  
12 Plaintiffs, causing undue delay and needlessly increasing the costs of litigation. Defendants  
13 misconduct and procedural bad faith has also wasted judicial resources.

14  
15 10. The Court finds that sanctions are warranted in order to deter the defendants  
16 from engaging in future misconduct, to punish the defendants for the misconduct described  
17 above, and to compensate Plaintiffs for the costs they were forced to incur as a result of the  
18 misconduct. The Court has considered the punitive, compensatory, and educational impact of  
19 the sanctions set forth below in light of the misconduct engaged in by the defendants. The  
20 Court has also considered the financial status of the defendants in fashioning the sanctions set  
21 forth below. ~~Specifically, the Court takes note of the report issued by the U.S. Senate's~~  
22 ~~Permanent Subcommittee on Investigations, which states that Backpage.com's gross revenues~~  
23 ~~were \$135 million as of 2014 and the company's domestic operations were purchased in 2015~~  
24 ~~for \$526 million.<sup>3</sup>~~ *GHU*.

25  
26  
<sup>3</sup> See STAFF REP. OF S. PERM. SUBCOMM. ON INVESTIG., 114TH CONG., BACKPAGE.COM'S KNOWING FACILITATION OF ONLINE SEX TRAFFICKING (Comm. Print 2017) (available at COMBINED ORDER GRANTING PLTFFS' MOT TO COMPEL, MOT FOR SANCTIONS, NOTICE OF WITHDRAWAL, & MOT TO SEAL - 10 of 16 PFAU COCHRAN VERTETIS AMALA PLLC 403 Columbia St. Suite 500 Seattle, Washington 98104 Phone: (206) 462-4334 Fax: (206) 623-3624 <http://www.pcvlaw.com>



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2           11. The Court has considered whether alternative lesser sanctions would suffice,

3 including lesser monetary sanctions than those set forth below. The Court concludes, however,

4 that the sanctions set forth below are the least severe sanctions necessary to fulfill the purposes

5 of sanctions underlying CR 11. The Court's conclusion is based on (1) the extent and duration

6 of defendants' bad-faith misconduct, which has spanned many years, (2) the serious prejudicial

7 effect suffered by Plaintiffs as a result of defendants' misconduct, which includes the significant

8 amount of time and resources they have spent pursuing discovery ~~to prove allegations that~~

9 ~~Defendant Ferrer now concedes in his guilty plea, time and resources that could have been spent~~ *GMU*

10 ~~focusing on other discovery and preparing for trial,~~ (3) the litigation costs the defendants'

11 misconduct has caused Plaintiffs to incur along with the needless waste of judicial resources,

12 and (4) the defendants' financial status ~~as described above.~~ *GMU* .

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15           12. \_\_\_\_\_

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18           Based on the foregoing, the Court **ORDERS** as follows:

19           1. The defendants are jointly sanctioned in the amount of \$200,000.00

20 (\$100,000.00 per Plaintiff). This amount shall be paid to the trust account of Plaintiffs' counsel

21 within 30 days of this Order.

22           2. Plaintiffs are awarded their reasonable attorney's fees and costs that were

23 necessitated by defendants' misconduct. Within 30 days of the entry of this Order, Plaintiffs

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<https://www.hsgac.senate.gov/imo/media/doc/Backpage%20Report%202017.01.10%20FINAL.pdf>, last visited June 15, 2018).

1  
2 shall file a separate motion that requests the awarded attorney’s fees and costs and shall special  
3 set the motion for a date approved by the Court.

4 3. \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_

8 **Notice of Intent to Withdraw Filed by Davis Wright Tremaine and Notice of Lodging of In**  
9 **Camera Declaration and Motion to Seal filed by Davis Wright Tremaine**

10 The Notice of Intent to Withdraw filed by Davis Wright Tremaine was timely objected  
11 to by Plaintiffs. Accordingly, withdrawal may be obtained only by order of the court pursuant  
12 to CR 71(c)(4). The Notice of Intent to Withdraw pertains to twelve of the seventeen  
13 defendants jointly represented by Davis Wright Tremaine in this litigation (collectively, the  
14 twelve defendants are referred to herein as the “Backpage.com Defendants”).<sup>4</sup> Defense counsel  
15 does not seek to withdraw from representing the five remaining Defendants (collectively, the  
16 five defendants are referred to herein as the “Medalist Defendants”).<sup>5</sup>

17 Based on the Court’s *in camera* review of the supporting materials submitted by Davis  
18 Wright Tremaine, including the Grant Declaration, Davis Wright Tremaine’s request to  
19 withdraw with respect to the Backpage.com Defendants is **GRANTED**, subject to the  
20 conditions set forth in this Order. The Court further concludes that continued representation of  
21 the Medalist Defendants by Davis Wright Tremaine is impermissible pursuant to the Rules of  
22 Professional Conduct. The Court hereby **DISQUALIFIES** Davis Wright Tremaine, Davis  
23 \_\_\_\_\_  
24 \_\_\_\_\_

25 <sup>4</sup> Namely, Defendants Carl Ferrer, Backpage.com, L.L.C., Dartmoor Holdings, L.L.C., IC Holdings, L.L.C.,  
26 UGC Tech Group C.V., Website Technologies, L.L.C., Atlantishe Bedrijven C.V., Amstel River Holdings,  
L.L.C., Lupine Holdings, L.L.C., Kickapoo River Investments, L.L.C., CF Holdings GP, L.L.C., and CF  
Acquisitions, L.L.C. (collectively “Backpage.com Defendants”).

<sup>5</sup> Namely, Defendants Medalist Holdings, Inc., Leeward Holdings, L.L.C., Camarillo Holdings, L.L.C., Michael  
Lacy, and James Larkin (collectively “Medalist Defendants”).

1  
2 Wright Tremaine’s attorneys, Eric Stahl, and James Grant, from continuing to represent any  
3 parties in this litigation, including the Medalist Defendants, subject to the conditions set forth in  
4 this Order. In support of this ruling, the Court makes the following findings:

5 1. Defendant Carl Ferrer effectively revoked his consent allowing defense counsel  
6 to jointly represent the multiple Defendants in this lawsuit because of material changes in  
7 circumstances arising, in part, out of the federal criminal proceedings implicating several of the  
8 Backpage.com and Medalist Defendants. This lack of consent is expressly stated in Mr.  
9 Ferrer’s April 24, 2018 letter to the attorneys at Davis Wright Tremaine.  
10

11 2. The federal criminal proceedings are substantially related to the facts and claims  
12 in this litigation. ~~For example, both proceedings involve the central allegation that defendants~~  
13 ~~knowingly facilitated sex trafficking and minor sex trafficking on the backpage.com website~~  
14 ~~through various means such as the use “moderation” processes. Defendant Ferrer’s guilty plea,~~  
15 ~~on behalf of himself and several other corporate defendants, effectively admits these allegations.~~  
16 ~~Several of the Medalist Defendants are currently charged as co-defendants in the federal~~  
17 ~~criminal proceedings, rendering their interests materially adverse to the interests of Mr. Ferrer~~  
18 ~~and, by extension, the Backpage.com Defendants.~~  
19

GTW

20 3. Defense counsel has jointly represented all defendants in numerous lawsuits  
21 across the country that are also substantially related to the facts and claims in this litigation and  
22 the federal criminal proceedings. These past and current representations are relevantly  
23 interconnected such that defense counsel is familiar with both the Backpage.com Defendants’  
24 and Medalist Defendants’ pattern of conduct as it relates to the claims in this litigation.  
25

26 4. Given the above, the Court concludes that there is a high possibility that Davis  
Wright Tremaine, Davis Wright Tremaine’s attorneys, Eric Stahl, and James Grant will

1  
2 encounter an impermissible conflict of interest jeopardizing the effective administration of  
3 justice if they continue to represent the Medalist Defendants in this litigation.

4         5.       The Court further concludes that the Backpage.com Defendants' interest to  
5 preserve the confidences previously disclosed to Davis Wright Tremaine, Davis Wright  
6 Tremaine's attorneys, Eric Stahl, and James Grant combined with the high possibility that Davis  
7 Wright Tremaine, Davis Wright Tremaine's attorneys, Eric Stahl, and James Grant will  
8 encounter conflict if allowed to continue representing the Medalist Defendants, outweighs the  
9 Medalist Defendants' interest in maintaining defense counsel as their attorneys in this litigation.  
10

11         6.       \_\_\_\_\_

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13 \_\_\_\_\_

14         Based on the foregoing, the Court **ORDERS** as follows:

- 15
- 16         1.       Davis Wright Tremaine's request to withdraw is granted with respect to the  
17 Backpage.com Defendants.
  - 18         2.       Davis Wright Tremaine is disqualified from continuing to represent any other  
19 parties in this litigation, including the Medalist Defendants.
  - 20         3.       Davis Wright Tremaine may continue to represent the Medalist Defendants only  
21 insofar as is necessary to secure the interests of the Medalist Defendants pursuant to the  
22 obligations set forth in the Rules of Professional Conduct. To this end, Davis Wright Tremaine  
23 shall file a status report with the Court, served upon all parties, within 30 days of this Order and  
24 every 30 days thereafter, detailing their progress in securing the interests of Medalist  
25 Defendants until such time as representation ceases.  
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4. The Motion to Seal filed by Davis Wright Tremaine regarding the Declaration of James C. Grant:

[ ] is granted in part. Pursuant to GR 15(c)(3) and applicable law, Davis Wright Tremaine is directed to submit a redacted version of the Grant Declaration for Court approval within 5 court days of this Order. Davis Wright Tremaine shall redact only those portions of the Grant Declaration subject to the attorney-client privilege. Any proposed redactions shall not include unprivileged materials, such as joint defense agreements or retainer agreements or any communications no longer privileged because of the waiver executed by Defendant Ferrer on April 5, 2018. The Court will approve, reject, or modify the redactions and file the final redacted version of the Grant Declaration in the court record. The original, unredacted version of the Grant Declaration will remain under seal.

is granted.

[ ] \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DONE IN OPEN COURT this 28<sup>th</sup> day of June 2018.

  
\_\_\_\_\_  
THE HONORABLE G. HELEN WHITENER

PRESENTED BY:


COMBINED ORDER GRANTING PLTFFS' MOT TO COMPEL, MOT FOR SANCTIONS, NOTICE OF WITHDRAWAL, & MOT TO SEAL - 15 of 16

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