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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JANE DOE, (K.B.),

Plaintiff - Appellant,

v.

FACEBOOK, INC., formerly known as Meta Platforms Inc.; META PLATFORMS, INC.,

Defendants - Appellees,

BACKPAGE.COM, LLC,

Defendant.

No. 25-2246

D.C. No. 3:23-cv-02387-RFL

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Rita F. Lin, District Judge, Presiding

Argued and Submitted August 12, 2026
San Francisco, California

Before: LEE, MENDOZA, JR., and DE ALBA, Circuit Judges.

Jane Doe appeals from the district court's dismissal of her civil sex-trafficking claim under 18 U.S.C. § 1595, and product-liability claims for design

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

defects and a failure to warn under California law, against Meta Platforms, Inc. ("Meta"). As the parties are familiar with the facts, we do not recount them here. We have jurisdiction under 28 U.S.C. § 1291. We affirm in part, reverse in part, and remand for further proceedings consistent with this disposition.

A district court's decision on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) is reviewed de novo. *Mudpie, Inc. v. Travelers Cas. Ins. Co. of Am.*, 15 F.4th 885, 889 (9th Cir. 2021).

1. Section 230 of the Communications Decency Act, 47 U.S.C. § 230, bars Doe's Section 1595 claim.[1] Section 230 immunizes from liability "(1) a provider or user of an interactive computer service (2) whom a plaintiff seeks to treat . . . as a publisher or speaker (3) of information provided by another information content provider." *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100–01 (9th Cir. 2009). The second and third steps of the *Barnes* test are at issue here. They "require us to consider each cause of action alleged to determine whether a plaintiff's *theory of liability* would treat a defendant as a publisher or speaker of third-party content." *Doe v. Grindr Inc.*, 128 F.4th 1148, 1151 (9th Cir. 2025) (citation modified).

[1] Section 1595 allows a sex-trafficking victim to bring a civil action against "whoever knowingly benefits, or attempts or conspires to benefit, financially . . . from participation in a venture which that person knew or should have known has engaged in [a sex-trafficking] act." 18 U.S.C. § 1595(a).

Doe posits two theories of liability under Section 1595. First, Doe alleges that Meta did not "ban sex traffickers from using and posting on Instagram" or take "reasonable steps to abate human trafficking," which created a "breeding ground" for sex trafficking on Instagram. Yet a failure to "review each user-created profile" to ensure it is not unlawful is "precisely the kind of activity for which Congress intended to grant absolution with the passage of [S]ection 230." *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1171–72 (9th Cir. 2008).

Second, Doe alleges that Instagram uses "algorithms" that "generate targeted recommendations to its users" and "encourag[e] connections between sex traffickers and vulnerable persons on Instagram." As the district court correctly explained, however, "Doe 'cannot plead around Section 230 immunity by framing' her claim as one involving Meta's connection algorithms rather than the user-generated content that those algorithms facilitate." *Doe (K.B.) v. Backpage.com, LLC*, 724 F. Supp. 3d 882, 885 (N.D. Cal. 2024) (quoting *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1098 (9th Cir. 2019)).[2]

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[2] Contrary to Doe's assertion, the Supreme Court's decision in *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024), did not overrule *Dyroff*. *See, e.g.*, *Doe 1 v. Meta Platforms, Inc.*, 174 F.4th 1159, 1171 (9th Cir. 2026) (Berzon, J., concurring) ("Some courts have taken *Moody* as an invitation to reconsider the scope of [S]ection 230 immunity[.] . . . Our case law has nevertheless continued to reinforce a reading of the term 'publisher' in [S]ection 230 that reaches far outside the scope of traditional publication.").

2. Section 230 bars Doe's product-liability claims for design defects and a failure to warn only in part. Doe's design-defects claim is based on two separate theories of liability, one related to identity and age verification requirements and the other related to reporting requirements. Section 230 bars the former theory but not the latter.

Doe alleges that Meta failed to include identity and age verification requirements as part of the account setup process. Such requirements implicate Meta's role as a publisher. *See Barnes*, 570 F.3d at 1102 (concluding that publication pertains to "deciding whether to publish *or* to withdraw from publication third-party content") (emphasis added). That the requirements would apply to the account-creation process immunize Meta no less from Doe's claim.[3] *See Grindr*, 128 F.4th at 1152 (concluding that Section 230 immunity applied to claim that Grindr did "not verify users' ages").

Doe's design-defects claim based on reporting requirements, however, survives Section 230. Doe alleges that Meta failed to provide "an adequate

[3] Doe's reliance on *Lemmon v. Snap, Inc.*, is misplaced. 995 F.3d 1085 (9th Cir. 2021). As we explained in *Grindr*, the "duty to avoid designing a product that encouraged dangerous driving [in *Lemmon*] was fully independent of [the] defendant's role in monitoring or publishing third-party content, and it did not seek to hold the defendant responsible as a publisher or speaker." 128 F.4th at 1153 (citation modified). The same is not true here. Identity and age verification requirements are "not independent" of Meta's "role as a facilitator or publisher of third-party content." *Id.* (footnote omitted).

mechanism to report sex trafficking" or an "immediate response" tool through which Meta would "timely take[] action." Meta's Section 230 argument is foreclosed by our decision in *Doe 1 v. Twitter, Inc.*, 148 F.4th 635 (9th Cir. 2025). Because Meta's "improvement of its reporting mechanism . . . would not necessarily require [Meta] to monitor third-party content," Meta "is not immune from liability on this claim."[4] *Id.* at 645.

3. Section 230 bars Doe's failure-to-warn claim. Doe alleges that Instagram "lacks any warnings that sex trafficking is rampant" on the platform, that "foreseeable product use included interactions with traffickers," and that the use of fake accounts might facilitate sex trafficking. *Grindr* is instructive. There, we determined that Section 230 barred a claim that Grindr "had a duty to warn Doe about the risks of child sexual exploitation on the [application]" because that duty was based on Grindr's "role as a publisher of third-party content." *Grindr*, 128 F.4th at 1154. Like here, the plaintiff in *Grindr* did not allege that Grindr had "independent knowledge of a conspiracy."[5] *Id.* Nor does a company's "role as a

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[4] Meta's argument to the contrary notwithstanding, in *Twitter*, we discussed 18 U.S.C. § 2258A as it related to the plaintiffs' negligence per se claim, not as it related to the plaintiffs' reporting-requirement claim. *See* 148 F.4th at 645, 647. Nor does *Meta Platforms* aid us on the reporting-requirement claim, as the plaintiffs there "forfeited any argument about their reporting infrastructure theory." 174 F.4th at 1167 n.4.

[5] This is why Doe's reliance on *Doe v. Internet Brands, Inc.* is misplaced. 824 F.3d 846 (9th Cir. 2016). There, we determined that Section 230 did not bar a

publisher of third-party content" give it "a duty to warn users of a general possibility of harm resulting from the [application]." *Id.* (citation modified). It follows that Section 230 bars Doe's failure-to-warn claim here: Meta did not have a duty to warn Instagram users of the general possibility of harm resulting from users who might use Instagram for a criminal purpose.[6]

AFFIRMED IN PART, **REVERSED IN PART**, and **REMANDED** for further proceedings consistent with this disposition.

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failure-to-warn claim where the defendant "failed to warn of a *known* conspiracy operating independent of the site's publishing function." *Est. of Bride by & through Bride v. Yolo Techs., Inc.*, 112 F.4th 1168, 1181 (9th Cir. 2024) (emphasis added); *cf. Internet Brands*, 824 F.3d at 852–53 (noting that the defendant had "actual knowledge . . . from an outside source of information" that certain men were using the defendant's modeling website to sexually assault women).

[6] Meta argues that Doe's complaint alternatively fails because Plaintiff does not allege cognizable claims. Yet the district court addressed Section 230's applicability only. To the extent any claim survives Section 230, the district court should address cognizability in the first instance below. *See Twitter*, 148 F.4th at 647 n.5.