

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

BEFORE THE HONORABLE PETER J. BUSCH, JUDGE PRESIDING

DEPARTMENT NUMBER 301

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SCOTT P.,)
)
Plaintiff,) Case No. 10-496687
)
vs.)
) Pages 1 - 25
CRAIGSLIST, INC., ET AL.,)
)
Defendants.)
_____)

Reporter's Transcript of Proceedings

Wednesday, June 2, 2010

APPEARANCES OF COUNSEL:

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(VIA COURTCALL)

(Appearances continued on next page)

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(Appearances continued from previous page)

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1 WEDNESDAY, JUNE 2, 2010

2 P R O C E E D I N G S

3 **THE CLERK:** Line 6, Scott P. versus Craigslist, Inc.

4 **MR. CIFARELLI:** (Via CourtCall) Good morning, Your Honor.
5 Tom Cifarelli for the plaintiff, Scott P., over CourtCall.

6 **THE COURT:** Good morning.

7 **MR. LEIDER:** Good morning, Your Honor. Philip Leider,
8 Perkins Coie for Craigslist, Inc., and I have with me Elizabeth
9 McDougall from our firm in Seattle.

10 **MR. HELSLEY:** Good morning, Your Honor. Michael Helsley for
11 Foster Dairy Farms and Al Carreno.

12 **THE COURT:** Good morning.

13 **MS. SMITH:** Good morning, Your Honor. Dawn Smith on behalf
14 of the plaintiff, Scott P.

15 **THE COURT:** Good morning. All right, we have two motions
16 here. We have the Craigslist demurrer -- we actually have
17 three: We have the motion to admit counsel pro hac vice for
18 Craigslist. The tentative ruling is to grant that, no
19 opposition having been filed.

20 I take it, Mr. Leider, you're not aware of any opposition to
21 that.

22 **MR. LEIDER:** No, sir.

23 **THE COURT:** Nobody has advised you they would come to
24 contest?

25 **MR. LEIDER:** No, Your Honor.

26 **THE COURT:** And nobody is here contesting; is that right?

27 **MR. HELSLEY:** That's correct, Your Honor. No objection.

28 **MS. SMITH:** That's correct, Your Honor.

1 **THE COURT:** That motion is granted. Do you have a form of
2 order for that?

3 **MR. LEIDER:** Yes, Your Honor.

4 **THE COURT:** Bring that up so everything will be shipshape.

5 (Pause in the proceedings.)

6 **THE COURT:** Except I will not sign an order where the only
7 thing on the second page is "It is so ordered." Not that I
8 don't trust counsel.

9 I have signed it. You're welcome, Ms. McDougall.

10 **MS. MCDOUGALL:** Yes, Your Honor.

11 **THE COURT:** All right. That gets us to the other motions.
12 Let's start with the demurrer.

13 As indicated, I am inclined to sustain it without leave to
14 amend as to the second cause of action, the 17200 claim, for the
15 two independent reasons that the plaintiff lacks standing here
16 because the only remedies sought are damages, and the only
17 injury alleged is in the nature of damages as opposed to
18 restitution.

19 So I don't think that there is standing. But even if there
20 were standing, I think this claim would be barred by Section 230
21 because it does attack Craigslist as a publisher and the rules
22 that Craigslist publishes by. I think it goes directly to the
23 heart of what Section 230 was enacted to address by trying to
24 impose liability on the basis of how an Internet marketplace
25 does business.

26 I am, however, inclined to overrule the demurrer as to the
27 first cause of action because I think the plaintiff has
28 sufficiently pleaded a promissory estoppel claim, an agreement

1 supported by promissory estoppel by virtue of the substance of
2 the conversations the plaintiff alleges specific to his
3 circumstances, and whether that is -- that recitation is
4 ultimately found true, of course, is not the issue here. I have
5 to assume it is true, and I think that while the response of the
6 Craigslist representative standing alone might be thought vague
7 in the context of the specific inquiries and requests made by
8 the plaintiff according to the plaintiff's allegations, it is
9 not sufficiently specific for the reasons that the *Barnes* court
10 has explained I think can survive the argument that that claim
11 would be barred by Section 230.

12 So that is where I'm coming from. Ms. McDougall, if you
13 want to start off.

14 **MS. MCDOUGALL:** Thank you, Your Honor. Your Honor, *Barnes*
15 has complicated the 230 landscape, but there are two important
16 points that need to be addressed whenever --

17 **THE COURT:** It doesn't complicate it; I think it's clarified
18 it.

19 **MS. MCDOUGALL:** That's an interesting perspective.

20 **THE COURT:** From your client's perspective it may make it
21 more difficult, but I think the legal scope of Section 230, as
22 it relates to this complaint at least, is made relatively clear.

23 **MS. MCDOUGALL:** That's an interesting perspective, Your
24 Honor. I appreciate that. I think that while that might be
25 true of the outcome in *Barnes*, the opinion itself is not a model
26 of clarity in how the court actually applied the requirements of
27 230 -- 230(c)(1) specifically because that is the only scope of
28 *Barnes*.

1 In particular, there are two distinct issues here: The
2 first issue is whether the promissory estoppel claim treats
3 Craigslist as a publisher, whether the complaint treats
4 Craigslist as a publisher.

5 Distinct from that is the question whether there is a
6 promissory estoppel claim that has been stated here, and those
7 are two distinct issues, and we know that, first of all, by the
8 language of 230(c)(1).

9 230(c)(1) --

10 **THE COURT:** Nobody questions that.

11 **MS. MCDOUGALL:** I beg your pardon?

12 **THE COURT:** Nobody questions that. You don't have to
13 convince anybody that they are distinct questions.

14 **MS. MCDOUGALL:** Okay. The tentative ruling states that the
15 reason for overruling the demurrer is that the plaintiff has
16 sufficiently pleaded an agreement supported by promissory
17 estoppel.

18 And, Your Honor, our position is that that is -- that
19 addresses the second issue of whether there's been a claim
20 stated, but the mere fact of an allegation, even a supportable
21 allegation, of promissory estoppel is not sufficient alone to
22 overcome 230(c)(1). The Court has to first address the question
23 of whether the complaint treats Craigslist as a publisher, and
24 particularly whether the complaint does that here on a demurrer,
25 a motion-to-dismiss standard.

26 As the Court is well aware, simple labels, conclusions and
27 artful pleading have been specifically found to be insufficient
28 to overcome 230's protection of online service providers.

1 Indeed, if it was sufficient to simply say "promissory
2 estoppel," and allege that, it would be contrary to the language
3 of the statute, which says you can't treat an online service
4 provider as a publisher. It doesn't say "except if you allege
5 promissory estoppel."

6 And specifically in *Barnes*, the Ninth Circuit supported that
7 because the Ninth Circuit said that if the plaintiff has alleged
8 a claim for promissory estoppel, then it would survive the
9 230(c)(1) protection. The Court did not go on to find that the
10 promissory estoppel claim had been asserted; it remanded on that
11 point.

12 If promissory estoppel was going to be carved out of the
13 language of 230(c)(1) and 230(e), which is the one that
14 prohibits any state law cause of action that is inconsistent
15 with 230(c)(1) or (c)(2), Congress would have to do that.
16 That's not permitted pursuant to the official language --

17 **THE COURT:** If that argument were going to succeed *Barnes*
18 couldn't have been decided the way it was.

19 *Barnes* did decide that the conduct of agreeing to do
20 something is not conduct of a publisher within the meaning of
21 230, and was separate and apart and could survive.

22 **MS. MCDOUGALL:** Your Honor --

23 **THE COURT:** I think that has to be the holding in *Barnes*.

24 **MS. MCDOUGALL:** *Barnes* --

25 **THE COURT:** Bearing in mind, of course, *Barnes* doesn't
26 control this Court, but it is I think persuasive.

27 **MS. MCDOUGALL:** *Barnes* -- Your Honor, I would respectfully
28 disagree. That again was the outcome in *Barnes*, but the first

1 question was whether the complaint treated Yahoo in that case as
2 a publisher or something else. And on the very specific facts
3 in *Barnes*, the Ninth Circuit held that it did. In that case,
4 based on the executive director of communications contacting
5 Ms. Barnes and promising to personally take care of removal of
6 very specific --

7 **THE COURT:** I don't think the direction of the phone call
8 had anything to do with the outcome. It was mentioned, but it
9 certainly wasn't a basis for the holding, and I don't think the
10 outcome would have been different either if the title of the
11 person making the promise was any different.

12 Here the allegation is that a Craigslist employee made a
13 promise, and I think it's exactly the same conduct as the
14 essential conduct in *Barnes*.

15 **MS. MCDOUGALL:** The conduct is actually exactly the same as
16 the conduct in *Zerin*, where there were harassing posts regarding
17 the plaintiff who asked in that case America Online to remove
18 the offensive posts and to prevent them in the future. In *Zerin*
19 AOL apparently failed to do that, and the Fourth Circuit very
20 clearly held that that was protected conduct under 230(c)(1).

21 **THE COURT:** Was there any allegation in that case that there
22 had been a promise to do so in AOL?

23 **MS. MCDOUGALL:** No. The claim asserted was one for
24 negligence, but --

25 **THE COURT:** That's the distinction, counsel.

26 **MS. MCDOUGALL:** That's exactly my point, Your Honor. Simply
27 saying "promissory estoppel" is not enough.

28 **THE COURT:** It's not the label; it is the conduct that is

1 pleaded that counts, and the conduct wasn't an element of the
2 case that you're telling me was exactly the same; so it was
3 completely different.

4 The conduct was essentially the same as in *Barnes*, and so,
5 therefore, is relatively indistinguishable from *Barnes* on this
6 point, unless you can point me to something I'm missing there.

7 **MS. MCDOUGALL:** I can, Your Honor.

8 **THE COURT:** All right.

9 **MS. MCDOUGALL:** The conduct in *Barnes* was very, very
10 specific. It was a specific promise by a specific person to do
11 a specific act.

12 This executive director of communications was going to walk
13 the facts profile over to the division responsible for removal
14 and they would be removed, and that is a very discernible,
15 identifiable, measurable act.

16 In this case we have a plaintiff who is saying, "I contacted
17 Craigslist multiple ways, multiple times. I emailed, I called,
18 and in those calls I expressed my frustration with what was
19 going on, I explained the effect on my family. I asked them to
20 remove the posts; I asked them to send me identifying data. I
21 asked them to prevent anything else related to me in any way,
22 shape or manner possible."

23 And Craigslist, pursuant to its policy and practice, was
24 helpful, removed the posts, sent the identifying information so
25 the plaintiff could do something about it, and said, "Yes, we're
26 going to try to help you."

27 Those are allegations that are --

28 **THE COURT:** That's, of course, not what is pleaded. They

1 didn't say, "We'll try to help you."

2 **MS. MCDOUGALL:** They said, "We'll take care of it."

3 **THE COURT:** Had they merely said, "We'll try to help you but
4 we can't make any promises," as the *Barnes* court pointed out,
5 that's a simple and easy way for the Internet
6 provider -- however you prefer to refer to Craigslist -- to
7 protect itself. *Barnes* pointed that out.

8 That's not the allegation here. I have to accept as true
9 what is alleged.

10 **MS. MCDOUGALL:** I hear you, Your Honor, but the point that
11 I'm actually trying to get to is that what is alleged here is an
12 attack not based on a specific promise; it's based on Craigslist
13 policy and practices of responding to complaints. It's been
14 their policy and practice to be cooperative, to try to help to
15 take care of it.

16 Now, if a complaint -- if a claim can be based on stating
17 that compliance with those policies and practices constitutes a
18 promise that takes a service provider out of 230, effectively
19 there are two things that have happened. I mean 230 has had the
20 guts ripped out of it here because --

21 **THE COURT:** Don't go there. *Barnes* answered that. It
22 hasn't. It's easy to avoid that. It hasn't had its guts ripped
23 out at all. It's only had its guts explained.

24 **MS. MCDOUGALL:** Well, Your Honor, I think -- I understand
25 what you're saying. The *Barnes* court said that a service
26 provider -- in this case -- in that case the executive director
27 of communications -- could have said, "I'm going to walk it over
28 but this is not a binding promise."

1 If this Court chooses to say that helping customers is a
2 promise unless you say, "We're helping you, but this is not
3 creating a binding promise" --

4 **THE COURT:** See, this is all going to the second point which
5 you asked the Court to keep distinct. It's going to the
6 question of whether there was a sufficient promise here.

7 I think that it's sufficiently pleaded. I understand you
8 think that it isn't, but if it was, then I think that promise is
9 sufficient to raise a contract, and therefore come within the
10 *Barnes* rule concerning the scope of 230.

11 I understand you think that this was too vague. I don't.

12 **MS. MCDOUGALL:** Your Honor, my point is not that this
13 promise was too vague. My point is that this addresses policies
14 and practices of an online service provider, and the suggestion
15 that --

16 **THE COURT:** If the policy of Craigslist were to reach an
17 agreement with everybody who calls in, the fact that it had that
18 policy would not protect it under 230, and I don't think you're
19 telling me that that's Craigslist's policy nor could I get
20 there, because it's not on the face of the pleadings in any
21 event.

22 But it wouldn't matter because if the policy was to enter
23 into a contract with everybody who calls, those contracts would
24 still be enforceable.

25 **MS. MCDOUGALL:** Your Honor, if you would allow me to finish
26 this point. My point is that if the Court chooses to say that
27 an online service provider must be so specific in their language
28 when they are addressing a complaint they must negate the

1 possibility of a promise, then that is regulation of the policy
2 and practices of online service providers.

3 **THE COURT:** It's also got nothing whatsoever to do with
4 either what I said my tentative ruling is based on or the
5 discussion that we've had. But if you want to argue that
6 strawman, go ahead.

7 **MS. MCDOUGALL:** Well, Your Honor, I don't think it is
8 strawman because we have to deal first with this question of
9 whether we're being treated as a publisher, and we are being
10 treated as a publisher because this complaint focuses on our
11 method, as a publisher, of dealing with complaints that are
12 received by customer service. That's exactly what is addressed
13 here.

14 And the outcome of this decision as it stands would impose
15 on all online service providers -- not simply Craigslist -- an
16 obligation -- either we shut down customer service entirely
17 because -- unless we have some specific negating language, any
18 commitment -- when somebody has asked to us help them, any
19 commitment to help them, anything other than rebuffing the
20 request could expose us to liability that otherwise we don't
21 have under 230.

22 The best recourse is shut down customer service until we can
23 find a template of language that requires -- that we are certain
24 could not be deemed under any circumstance a promise, because
25 otherwise we're giving up this immunity that's been granted to
26 us.

27 And that is certainly not the intent behind 230. I don't
28 believe that was the intent behind *Barnes*.

1 If you consider the Ninth Circuit's language, for example,
2 in the *Roommates* case, and even if you look at the Northern
3 District of California decision in the *Goddard versus Google*
4 case, which is the only case to date to address *Barnes* in any
5 substance, *Barnes* is an anomaly.

6 If you look at the language in those cases, the Ninth
7 Circuit said that when there's a close call the close call has
8 to be resolved in favor of immunity, because otherwise it's
9 going to cut the heart out of Section 230.

10 It also noted that you have to interpret 230 to protect
11 websites from costly and protracted legal battles, and the door
12 that is being opened with the proposed tentative ruling would
13 exactly expose service providers in a multitude of circumstances
14 to protracted legal battles to get the immunity that 230 was
15 intended to grant.

16 It is -- there's no way to interpret a requirement or a
17 ruling that simply responding positively and constructively to
18 customer complaints creates a promise unless you specifically
19 negate it. There is no way to interpret it other than
20 regulation of online service provider conduct policy and
21 practice, and for that reason we submit that the tentative
22 ruling on 230(c)(1) is mistaken.

23 We also believe, as a second issue, that it's mistaken on
24 finding an agreement supported by promissory estoppel. You and
25 I have discussed that, and I understand we have different views
26 on that.

27 The one point, Your Honor, that you did not address there
28 was the reliance issue, and I understand that you believe there

1 may be a promise that was alleged here, however, the exhibits to
2 the complaint irrefutably --

3 **THE COURT:** "Irrefutably" may be one of the bigger
4 overarguments I've heard this morning among several.

5 **MS. MCDOUGALL:** You're right.

6 **THE COURT:** It doesn't irrefutably do that at all. The fact
7 that someone would continue to pursue other avenues hardly
8 negates the reliance on the provider's promise not to allow this
9 to happen again in the future.

10 I understand you don't think it was a promise, but assuming
11 that the allegation is correct and sufficient that it was, that
12 relates to the future. Pursuing remedies for the past hardly
13 shows no reliance.

14 **MS. MCDOUGALL:** Your Honor, there's no allegation of
15 reliance or -- there's no allegation of reliance but for the
16 statement that plaintiff relied on these purported promises, and
17 that's a conclusion. That's not --

18 **THE COURT:** It's also a fact. It's a mixed statement. If
19 the argument is that there needs to be more specific allegations
20 of specific things that were done in reliance, I don't think
21 that that's the pleading standard in California.

22 **MS. MCDOUGALL:** Okay. Well, lastly, Your Honor, I would
23 point out that we have also alleged protection under 230(c)(2).
24 The existence of an agreement whether or not a service provider
25 is treated as a publisher is entirely irrelevant under
26 230(c)(2). It's simply a standard that the service provider had
27 to voluntarily act in good faith.

28 Now, I know the plaintiff has said we acted here pursuant to

1 a promise, but that's putting the cart before the horse.
2 Craigslist and its policy and practice of trying to be helpful
3 in response to complaints is a voluntary act. We don't have to
4 do this. 230 protects us if we don't. We don't have to do
5 this, but we do. We do it voluntarily, and there's no
6 allegation in the complaint that we did it other than in good
7 faith, and there's no -- there's no ulterior motive alleged and
8 there couldn't be. There's no -- there's no -- we weren't in
9 cahoots with the other defendants. None of that is alleged and
10 none of that existed here.

11 So 230(c)(2), in absence of 230(c)(1), provides the same
12 protection and we rely on that.

13 **THE COURT:** Ms. Smith, were you going to argue this on
14 behalf of the plaintiff?

15 **MS. SMITH:** Yes, I was, Your Honor.

16 **THE COURT:** Okay. Go ahead. If you wouldn't mind moving
17 over to the microphone, please.

18 **MS. SMITH:** Sure. As to the last point on 230(c)(2), the
19 voluntary action here is definitely not present. Plaintiff
20 Scott P. called into Craigslist. He asked for assistance.
21 Craigslist promised to provide him with assistance and that did
22 not happen in this case, Your Honor, and that's what the theory
23 of this lawsuit is based on in the first cause of action.

24 The facts are more significant in this case than they were
25 in *Barnes*. Specifically, there were three separate promises
26 that were made. Three separate times Craigslist promised to
27 perform certain actions and failed to do so.

28 In *Barnes* there was one specific promise that was

1 voluntarily undertaken by a representative of the company, as
2 opposed to plaintiff calling in and speaking to a customer care
3 representative.

4 **THE COURT:** Is that what you think "voluntary" means in the
5 context of 230(c)(2)?

6 **MS. SMITH:** Well, Your Honor, we would agree with the Court
7 in that the fact that plaintiff initiated these contacts, it was
8 fully up to Craigslist and the capability of the representative
9 to take no steps to assist him, to make no promises.

10 **THE COURT:** If that's what 230(c)(2) were all about -- and
11 I'm not sure at all that it is -- that's what Ms. McDougall's
12 argument is. They didn't have to do it at all, so they
13 volunteered to do it.

14 **MR. CIFARELLI:** Your Honor, this is --

15 **THE COURT:** No, counsel. We're not going to back and forth
16 on this. Ms. Smith is arguing this point. Plaintiff gets
17 somebody to argue. I'm not going to have a tag team on this.

18 **MR. CIFARELLI:** Okay. I understand, Your Honor.

19 **THE COURT:** Ms. Smith, go ahead.

20 **MS. SMITH:** I'm sorry, had you finished, Your Honor?

21 **THE COURT:** Yes.

22 **MS. SMITH:** I'm not sure if there was a question to me. I
23 lost -- I thought you were asking me a question, Your Honor. I
24 was trying to answer the question.

25 **THE COURT:** It is. If that is what you think 230(c)(2) is
26 about and that the problem with it is it isn't voluntary, that's
27 exactly Ms. McDougall's argument: That what you just said, that
28 they didn't have to do anything, is clearly right and they

1 voluntarily chose to do something.

2 **MS. SMITH:** Well, no, Your Honor. In this case they
3 specifically took action to -- and took steps to prevent the
4 conduct from occurring, so it was not in the context of
5 230(c)(2).

6 As to the facts regarding whether or not there was a
7 promise, those are factual issues, Your Honor, that will have to
8 be addressed at a later stage in this action. At the pleading
9 stage the facts pled regarding reliance and promise were
10 sufficient and Ms. McDougall's arguing facts regarding a
11 promise.

12 We'll submit on the tentative, Your Honor.

13 **THE COURT:** Okay. Ms. McDougall, anything else?

14 **MS. MCDOUGALL:** Your Honor, the only thing I would add is if
15 the Court is inclined to issue the ruling in this case pursuant
16 to the tentative ruling, we would like to request permission to
17 file an interlocutory appeal, or at least alert the Court that
18 we would like to file a briefing seeking an interlocutory appeal
19 and move to stay discovery with respect to Craigslist during the
20 pendency of that appeal.

21 We say that not because of simply the effect on Craigslist
22 in this case. This is an issue that is going to affect service
23 providers nationally, potentially subject them to different
24 standards in different states. It's an issue of significant
25 import to an industry that is very relevant and important, both
26 to the state and to the nation.

27 **THE COURT:** Ms. Smith.

28 **MS. SMITH:** This issue has already been decided and

1 addressed by *Barnes*, Your Honor.

2 **THE COURT:** But not by a California court. The argument to
3 do that in my mind is not that I have any question that if
4 *Barnes* were controlling this should go forward on that basis.
5 It's a fair question whether the California courts of appeal and
6 Supreme Court are going to adopt *Barnes*'s view of Section 230.
7 That's an issue of first impression. It has a certain amount of
8 significance to it.

9 Counsel, would you please stop nodding your head constantly.

10 **MR. LEIDER:** I'm sorry.

11 **THE COURT:** It's really very distracting, and I don't need
12 to be told when you do or don't agree with anything I say.

13 **MR. LEIDER:** I apologize, Your Honor.

14 **THE COURT:** This is how distracting it is, I forgot where I
15 was.

16 It is a point of first impression and it is potentially a
17 significant issue. So the question is -- I'm not going to order
18 an interlocutory appeal, or refer this to the Court of Appeal,
19 or anything like that. The question is whether I should stay
20 this for a modest amount of time for the defendant to see if
21 they can get the Court of Appeal to accept a writ, and whether
22 the Court of Appeal is prepared to do that, and then stay this
23 further.

24 **MR. CIFARELLI:** Your Honor, this is Tom Cifarelli. May I
25 respond?

26 **THE COURT:** All right. This is a separate issue. Go ahead.

27 **MR. CIFARELLI:** With respect to their appeal, there's
28 nothing to stop the defense from taking an appeal. A stay,

1 however, would only further delay this case beyond which we've
2 already suffered.

3 **THE COURT:** Of course, they can't take an appeal. There's
4 nothing to stop them from taking a writ, but --

5 **MR. CIFARELLI:** A writ, excuse me, Your Honor.

6 **THE COURT:** But that's something that we can find out pretty
7 quickly whether the Court of Appeal is interested or not.

8 **MR. CIFARELLI:** That's correct.

9 **THE COURT:** So the stay wouldn't need to be for more than 10
10 or 15 days.

11 **MS. MCDUGALL:** Your Honor, I would also --

12 **THE COURT:** Hold on.

13 **MS. MCDUGALL:** I beg your pardon.

14 **THE COURT:** Mr. Cifarelli has the floor. Anything else,
15 Mr. Cifarelli?

16 **MR. CIFARELLI:** No, Your Honor. Thank you, Your Honor,
17 other than the fact that we would like to get on with the
18 discovery in this matter.

19 And frankly, Your Honor, this -- counsel for defendant
20 Craigslist has mentioned that this impacts Internet companies
21 throughout the country. The fact is that this is a very unique
22 set of facts in this case based upon very specific promises made
23 by Craigslist.

24 **THE COURT:** Maybe, maybe not. I don't know that. I don't
25 know whether every plaintiff's attorney with a complaint about
26 an Internet service provider will put what that plaintiff now
27 views as magic words into their conversations and this issue pop
28 up all over the place. I don't know that.

1 I certainly don't have any record to suggest that this is
2 unique, and in fact, Ms. McDougall tells me that it's consistent
3 with Craigslist's policy on how to handle callers, so maybe it's
4 all over the place. I don't know.

5 **MR. CIFARELLI:** There are no other cases out there that
6 describe facts like this. In fact, this is in many ways more
7 specific as it relates to promises and multiple promises than
8 *Barnes* was. So I don't think there's a flood of similar cases.
9 There's no indication that there's a flood of similar cases out
10 there like this very unique set of facts.

11 **THE COURT:** All right.

12 **MS. MCDOUGALL:** Your Honor, may I make one comment?

13 **THE COURT:** Yes.

14 **MS. MCDOUGALL:** We're only asking for a stay of discovery
15 with respect to Craigslist, and that's the only thing that's
16 necessary here, and that will not impact the case proceeding on
17 the employment discrimination and harassment claims.

18 **THE COURT:** All right. The tentative ruling is going to be
19 confirmed. The 17200 claim is sustained without leave to amend.

20 The promissory estoppel claim, the demurrer is overruled for
21 the reasons that I've indicated. It is not barred by
22 Section 230 and is sufficient.

23 That decision is going to be -- at the request of the
24 defendant, discovery against Craigslist will be stayed, but it
25 will be stayed for a period of two weeks only to permit
26 Craigslist, if they choose, to seek a writ and give time for the
27 Court of Appeal, should it choose, to accept that writ and
28 extend a stay should it so choose.

1 The Court isn't taking any position one way or another on
2 whether any such writ is appropriate or significant, but I do
3 recognize that this is an issue of first impression in the
4 California courts.

5 So that's going to be the Court's order. Both sides are
6 getting a piece of this. Ms. McDougall, if you want to take
7 responsibility for preparing a form of order on the demurrer.

8 **MS. MCDUGALL:** Will do.

9 **THE COURT:** All right. That gets us to the motion to change
10 venue, which was continued until today to find out what was
11 going to happen with the demurrer.

12 The outcome of the demurrer is that Craigslist remains a
13 defendant, and the claims against Craigslist are distinct from
14 the claims against Foster Farms. And I think that, while again
15 I'm not aware of case law which has specifically answered the
16 question of whether under these circumstances the FEHA venue
17 provisions must overcome even claims on distinct facts against a
18 separate defendant alleged in the same case, the *Brown* court
19 seems to have confined its ruling short of this situation.

20 So I am inclined, therefore, to deny the motion to change
21 venue, but as indicated, not award anybody any costs with
22 respect to that.

23 Mr. Helsley, if you would like to address that.

24 **MR. HELSLEY:** Yes. Thank you, Your Honor.

25 What I would really like to address is just more of a
26 clarification as to your findings rather than to your
27 conclusion. Part of the reason is, as in my papers as you
28 probably saw, this is probably more properly brought as a

1 misjoinder than a demurrer.

2 **THE COURT:** I'm not going to take that up in this case.
3 That was raised only on reply --

4 **MR. HELSLEY:** Exactly.

5 **THE COURT:** -- and I'm certainly not encouraging that motion
6 or suggesting that it has any merit, but I just don't think it's
7 properly before me today.

8 **MR. HELSLEY:** Right. And that's why -- I'm not going to ask
9 you to rule on that; it was more to get clarification as to your
10 factual findings in making this ruling.

11 For example, I assume that you adopted plaintiff's
12 contentions that the FEHA and non-FEHA claims do not arise from
13 the same --

14 **THE COURT:** Don't try to pin me down fact by fact through
15 this. I'm not going to issue a statement of decision on that.
16 That's not appropriate.

17 On the facts as presented here and the law as presented here
18 in the moving papers, I think it is insufficient to permit -- to
19 require change of venue, and therefore to permit change of
20 venue, given the presence in this case of another defendant
21 sued.

22 I already said this. You're asking me to repeat the basis
23 for the ruling which I've already given you.

24 **MR. HELSLEY:** Okay. And even more so now, now that
25 Craigslist -- the 17200 claim is gone, all that we're left with
26 now is just a breach of contract claim between Craigslist and
27 the plaintiff, and that's --

28 **THE COURT:** Where the breach of contract has to do with the

1 consequences of your client's acts. But again, I'm not going to
2 get into those issues.

3 **MR. HELSLEY:** That's where it gets murky. On the one hand,
4 they're saying Craigslist has nothing to do with Foster Farms;
5 it's a different set of circumstances, a different set of facts.

6 **THE COURT:** Those are different things. Nobody said it had
7 nothing to do with Foster Farms. It obviously has much to do
8 with Foster Farms, but that doesn't -- that's not what *Brown* was
9 talking about in terms of the factual basis for the claims that
10 would require FEHA venue to control in my view.

11 **MR. HELSLEY:** *Brown* said that given the same set of facts
12 and the same set of circumstances, that the FEHA special venue
13 provisions control, and here --

14 **THE COURT:** We don't.

15 **MR. HELSLEY:** -- they don't.

16 **THE COURT:** Therefore, the venue provisions don't control,
17 and therefore your motion is denied.

18 **MR. HELSLEY:** And that's the clarification. Thank you.

19 **THE COURT:** Anybody else want to speak to that motion?

20 **MS. SMITH:** No, Your Honor.

21 **MS. MCDUGALL:** No, Your Honor.

22 **THE COURT:** The tentative ruling is confirmed. The motion
23 to change venue is denied.

24 I'll ask the plaintiff to prepare a form of order with
25 respect to that, unless somebody brought a form of order.

26 **MS. SMITH:** I'll prepare the order, Your Honor.

27 **THE COURT:** All right.

28 **MR. HELSLEY:** Just one more thing, Your Honor, I'm sorry.

1 Ten days to respond?

2 **THE COURT:** Whatever time is provided under the statute.

3 **MR. HELSLEY:** Thank you.

4 **MR. CIFARELLI:** Your Honor, this is Tom Cifarelli on the
5 phone. I just have a question for clarification relative to
6 Craigslist. Since Your Honor has granted or provided a two-week
7 stay on discovery as to Craigslist, when will the ten days
8 Craigslist has to answer start to run?

9 **THE COURT:** Immediately on notice of entry of the order.

10 **MR. CIFARELLI:** Okay. So it doesn't affect their ability or
11 requirement to answer?

12 **THE COURT:** Why are we having this discussion? Counsel was
13 very clear that the only thing she wanted stayed was discovery;
14 that everything else could go forward.

15 **MR. CIFARELLI:** Okay. Thank you, Your Honor.

16 **THE COURT:** My order was that everything -- that what was
17 stayed was discovery. If you're cross-examining me, don't do
18 it. If there's some -- I don't understand why that discussion
19 is coming up.

20 **MR. CIFARELLI:** I understand. I was just unclear. Now I'm
21 clear. Thank you, Your Honor.

22 **THE COURT:** All right. Thank you, all.

23 **MS. MCDUGALL:** Thank you, Your Honor.

24 **MR. HELSLEY:** Thank you, Your Honor.

25 (Whereupon, the proceedings were concluded.)

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State of California)
)
County of San Francisco)

I, Carol A. Karen, Official Reporter for the Superior Court of California, County of San Francisco, do hereby certify:

That I was present at the time of the above proceedings;

That I took down in machine shorthand notes all proceedings had and testimony given;

That I thereafter transcribed said shorthand notes with the aid of a computer;

That the above and foregoing is a full, true, and correct transcription of said shorthand notes, and a full, true and correct transcript of all proceedings had and testimony taken;

That I am not a party to the action or related to a party or counsel;

That I have no financial or other interest in the outcome of the action.

Dated: June 3, 2010

Carol A. Karen, CSR No. 8189