UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON

SARAH JONES, a/k/a/ JANE DOE, Plaintiff, v. DIRTY WORLD ENTERTAINMENT RECORDINGS LLC dba THEDIRT.COM, HOOMAN KARAMIAN aka NIK RICHIE aka CORBIN GRIMES, DIRTY WORLD, LLC dba THEDIRTY.COM, and DIRTY WORLD ENTERTAINMENT, LLC dba THEDIRTY.COM, Defendants.	Case No. 2:09-cv-00219-WOB Judge William O. Bertelsman **REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS DIRTY WORLD, LLC AND NIK RICHIE**

In support of their Motion for Summary Judgment, Defendants Dirty World, LLC and Nik Lamas Richie a/k/a Nik Richie ("Defendants"), by counsel, respectfully submit the following Reply Memorandum of Law.

I. PREFATORY REMARKS

As an elementary matter of civil procedure, any party opposing a Motion for Summary Judgment has two options: 1.) argue the facts; or 2.) argue the law. Because the *facts* of this case are genuinely undisputed, these Defendants anticipated that Plaintiff would try to avoid summary judgment by disputing the application of the *law* which controls most of her claims; the Communications Decency Act, 47 U.S.C. § 230(c)(1) or "CDA". For that reason, their summary judgment motion offered an extensive and comprehensive discussion and analysis of the law, including a detailed discussion of factually analogous cases interpreting the CDA such as *Shiamili v. The Real Estate Group of New York, Inc.*, --- N.E.2d ---, 17 N.Y.3d 281, 2011 WL 2313818 (N.Y. June 14, 2011).

In her response brief, Plaintiff neither makes an effort to distinguish this case from *Shiamili*, nor does she explain how this case is different from any of the dozens of other CDA cases which have held that "Section 230(c) affords immunity to [website operators] against suits that seek to hold [them] liable for third-party content." *Collins v. Purdue Univ.*, 703 F.Supp.2d 862, 877 (N.D.Ind. 2010). Incredibly, rather than explaining why these Defendants have incorrectly interpreted the CDA, Plaintiff's brief fails to discuss *or even mention* any of these cases which are directly contrary to her position.

Perhaps realizing that it was impossible for her to dispute the application of the CDA, Plaintiff has opted to abandon any argument about the law and focus entirely on a single but incorrect factual premise—"Defendants are the 'actual' authors and posters of all postings on the website www.thedirty.com." Plaintiff's Response at 5 (emphasis added). If this statement was true (which it is not) and if it was supported by any admissible evidence (which it is not), then these Defendants would agree summary judgment would not be appropriate here because, as a matter of law, the CDA does not apply to material which Defendants authored themselves.

Despite trying to create a factual dispute where none exists, Plaintiff's brief actually removes any doubt that summary judgment is proper here. This is so because Plaintiff's startling allegation that these Defendants personally create every post on the site is supported by no evidence of any kind, and it is directly contradicted by these Defendants' sworn testimony in which they flatly deny creating the posts at issue in this case. Because Plaintiff has offered no evidence to create a *genuine* factual dispute as to any of the few material facts relevant to the issue of CDA immunity, the question of whether that immunity applies here is purely a question of law for the court. As for any remaining statements that these Defendants did create (i.e., "Why are all high school teachers freaks in the sack?"), these statements are non-defamatory and

otherwise non-actionable. As such, summary judgment should be granted in these Defendants' favor.

II. ARGUMENT

[1]Insofar as these Defendants can understand it, Plaintiff's response is two-fold.[2] First, she incorrectly argues that the CDA does not apply here because these Defendants personally create every post on www.thedirty.com. Second, she incorrectly suggests that the CDA does not apply because these Defendants operate a website which "encourages" "offensive" and even defamatory content. Both of these arguments will be addressed in turn.

a. Defendants Did Not Create or Alter The Posts About Plaintiff

On page 5 of her response brief, Plaintiff begins with a shocking assertion. She incorrectly claims the CDA does not apply here because—"Defendants are the 'actual' authors and posters of all postings on the website www.thedirty.com." She incorrectly alleges that two discrete sources support her stunning allegation: 1.) Mr. Richie's deposition transcript; and 2.) an unauthenticated transcript purportedly from an interview of Mr. Richie conducted during the taping of the "Dr. Phil McGraw" television show. Neither of these sources supports Plaintiff's contention that these Defendants somehow personally created the 90,000 original posts and more than 2.5 *million* user comments on www.thedirty.com or that they created the seven posts at issue in this case.

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[1] As explained at length in their motion, these Defendants contend that the absolute immunity afforded by the CDA applies here because the allegedly defamatory material at issue (which involves every single post about the Plaintiff on www.thedirty.com, excluding only Mr. Richie's after-the fact commentary about those posts) was created solely and exclusively by a third party. The legal test for the CDA is so simple and so well-settled—i.e., immunity will apply as long as defendants did not create or materially alter the text submitted by a third party— that those points of law need not be repeated here.

[2] On page four of her response, Plaintiff also suggests that this Court previously "overruled" Defendants' CDA immunity when it denied these Defendants' Rule 12(b)(6) motions. This is, of course, a totally inaccurate interpretation of the Court's ruling which expressly declined to address or resolve the application of the CDA at that time.

With respect to Mr. Richie's deposition, at no time did Mr. Richie say that he personally authored all of the material posted on www.thedirty.com. At most, the deposition testimony Plaintiff cites merely confirms an undisputed fact—that as the founder of www.thedirty.com Mr. Richie performs typical editorial functions such as reviewing material submitted to the site by third parties and choosing which material to publish and which material to reject. This testimony is *not* new. On the contrary, the deposition testimony cited by Plaintiff merely duplicates the discussion the editorial process described in Mr. Richie's summary judgment affidavit (Doc. #64–2). Of course, these types of editorial practices cannot affect Mr. Richie's immunity because these actions are *per se* protected by the CDA; "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." *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1170–71 (9th Cir. 2008) (emphasis added).

The fact that Mr. Richie "moderates" content by choosing what user-submitted material to publish and what content to reject is *per se* insufficient to impact his immunity under the CDA. In fact, rather than establishing liability as to these Defendants, this is precisely the type of conduct protected and encouraged by the CDA. *See Zeran v. America Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997) (holding, "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.").[3]

[3] S*ee also Ben Ezra, Weinstein & Co., Inc. v. America Online, Inc*., 206 F.3d 980, 986 (10th Cir. 2000) (explaining "Congress clearly enacted § 230 to forbid the imposition of publisher liability on a service provider for the exercise of its editorial and self-regulatory functions"); *DiMeo v. Max*, 433 F.Supp.2d 523, 530 (E.D.Penn. 2006) (finding CDA protection applied even where defendant "can select which posts to publish and edits their content … .") (*aff'd*, 248 Fed.App. 280 (3rd Cir. 2007)); *Batzel v. Smith*, 333 F.3d 1018, 1031 (9th Cir. 2003) (concluding, "the exclusion of 'publisher' liability necessarily precludes liability for exercising the usual prerogative of publishers to choose among proffered material and to edit the material published while retaining its basic form and message.")

b. There is no question that TheDirty.com is an Interactive Computer Service.

Apparently deeply confused about the law on imputing liability under the CDA, Plaintiff moves on to argue that the CDA does not apply because:

> Richie clearly states in his own words why www.thedirty.com is not an "interactive computer service." By Richie's own statements, there are no posts put up on the site by any third party. Richie asks for and receives thousands of "submissions" a day from readers of his site. He then sifts through them to choose the very select few that he wants to actually put up on his site. Every single thing anyone reads on that site is always put on that site by Richie himself, not any third party. This makes www.thedirty.com not an interactive computer service, but a tabloid.

Plaintiff's Response at 5–6 (emphasis added). This argument is circular and self-defeating. Putting aside the fact that Plaintiff cites no evidence for most of her incorrect factual assertions, it appears that Plaintiff's argument is that the CDA does not apply because Mr. Richie "puts up" (i.e., publishes) material submitted to the site by third parties. Because Mr. Richie has the editorial power to determine what material to "put up", Plaintiff claims he should be deemed a "content provider" of every single post on the site. This argument is simply wrong as a matter of law; "A website is generally not a 'content provider' with respect to comments posted by third-party users." *Shiamili*, 2011 WL 2313818, *5 (citing *DiMeo*, *supra*).

The fact that Mr. Richie reviews third party submissions intended to be posts before they are "put up" on the site is irrelevant because this is exactly the situation where the CDA prohibits liability. *See Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1124 (9th Cir. 2003) (holding, "Under § 230(c) …. so long as a third party willingly provides the essential published content, the interactive service provider receives full immunity regardless of the specific editing or selection process.") (emphasis added).[4]

[4] *See also*, *DiMeo*, 433 F.Supp.2d at 530 (finding CDA immunity applied where website operator was accused of "merely editing portions of [content] and selecting material for publication."); *Roommates.com*, 521 F.3d at 1171–72 (explaining "The claim against the website was, in effect, that it failed to review each user-created profile to

Put simply, the question of CDA immunity does not depend on whether Mr. Richie actively "selected" the posts at issue for publication because the CDA protects exactly that type of editorial choice. *See Batzel*, 333 F.3d at 1031. Rather, the sole dispositive question is whether Mr. Richie created or developed the allegedly defamatory material within those posts. As to that question, the evidence in this case provides an undisputed answer of no. Further, an unsupported allegation that Mr. Richie somehow generally "encourages" his viewers to post comments is, as a matter of law, not sufficient to treat Mr. Richie as a co-creator of every post on the site. *See Shiamili*, 2011 WL 2313818 at *4 (holding, "Creating an open forum for third-parties to post content—including negative commentary—is at the core of what section 230 protects.").[5]

Contrary to Plaintiff's argument, to defeat CDA immunity Plaintiff must show that these Defendants either personally created the defamatory material or that they "directly participated" in the creation of such content by materially changing the text of a third party's statement to convert a harmless message into a defamatory one. In the context of summary judgment, these showings require admissible evidence, not unsupported arguments of counsel; "In order to survive a motion for summary judgment, the non-moving party must be able to show 'sufficient probative evidence [that] would permit a finding in [his] favor on more than mere speculation,

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ensure that it wasn't defamatory. That is precisely the kind of activity for which Congress intended to grant absolution with the passage of section 230.").

[5] *See also*, *Roommates.com*, 521 F.3d at 1174–75 (holding, "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 … ."); *Global Royalties, Ltd. v. Xcentric Ventures, LLC*, 544 F.Supp.2d 929, 933 (D.Ariz. 2008) (holding, "It is obvious that a website entitled Ripoff Report encourages the publication of defamatory content. However, there is no authority for the proposition that this makes the website operator responsible, in whole or in part, for the 'creation or development' of every post on the site.").

conjecture, or fantasy.'" *Lewis v. Philip Morris, Inc.*, 355 F.3d 515, 533 (6th Cir. 2004) (quoting *Godfrey v. Pulitzer Publishing Co.*, 276 F.3d 405, 412 (8th Cir. 2002).[6]

Here, the evidence on these points is entirely undisputed. Mr. Richie has expressly denied creating or altering any of the posts about Plaintiff:

> To be clear—I did not create any of the posts about Plaintiff, nor did I create the titles to any of these posts. I did not edit, change, alter, or modify these posts or their titles in any manner. I did not ask or encourage anyone else to submit these posts on my behalf, nor did I ask the site's viewers to submit anything regarding Plaintiff. All of this material originated solely with a third party or parties.

Richie Aff. (Doc. #64-2) ¶ 19 (emphasis added).

The two items of evidence offered by Plaintiff to contradict Mr. Richie's affidavit do not do so. Mr. Richie's deposition simply does not say what Plaintiff claims. Nothing in Mr. Richie's deposition would support a finding that he personally created or materially altered any of the third-party posts at issue in this case. On the contrary, Mr. Richie's deposition testimony confirms that he has exercised his general editorial duties as permitted by the CDA. Given the total lack of evidence in Plaintiff's favor, no *genuine* issue of fact exists as to this point.[7]

The only other "evidence" Plaintiff cites in an effort to demonstrate a genuine factual dispute is an unauthenticated document purporting to be a transcript of an interview of Mr. Richie which took place on the Dr. Phil McGraw television program in November 2010. Although Plaintiff makes no effort to demonstrate the authenticity of this transcript as required

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[6] S*ee also Travelodge Hotels, Inc. v. Govan*, 155 Fed.Appx. 235, 237 (6th Cir. 2005) (holding that briefs which are "simply filled with conclusory allegations ... failed to present sufficient evidence" to withstand summary judgment).

[7] Indeed, although Plaintiff's counsel never specifically asked Mr. Richie during his deposition whether he created the posts concerning Plaintiff, Mr. Richie still took the time to confirm that he did not create any of those posts:

> [By Mr. Deters]
> Q: Um, Sarah Jones maintains that she sent emails … asking you to remove these postings about her having sex with every Bengals player and the fact that she had these STDs and had sex at work. Isn't it true that you –
> [By Mr. Richie]
> A: These are third-party postings. I didn't write – I didn't say any of that stuff.

Deposition of Nik Lamas-Richie (Doc. #66) at 39:16–40:4.

by Fed. R. Evid. 901(a), this is ultimately irrelevant because nothing in the transcript is sufficient to defeat summary judgment here.

For instance, on page six of her brief, Plaintiff cites a portion of the "Dr. Phil" transcript for the premise that "Richie takes every 'submission' he receives and changes it to suit his purposes." However, the *actual* colloquy between Dr. Phil and Mr. Richie does not support Plaintiff's argument that Mr. Richie "changes" every submission he receives. Rather, Mr. Richie merely confirmed that he generally posts an editorial comment in response to submissions. This is a non-controversial fact which is completely consistent with Mr. Richie's summary judgment affidavit in which he stated: "as a general rule I will typically make a short, one-line comment about the post with some sort of humorous or satirical observation, but I never materially change, create, or modify any part of the user-generated submission, nor do I "fact check" user submissions for accuracy." Richie Aff., Doc. #64–2 at ¶ 15 (emphasis added).

CDA immunity is not lost by making an after-the-fact comment about another person's words because the plain language of the statute expressly prohibits treating any website provider or user as the "publisher or speaker of any information provided by *another* information content provider." 47 U.S.C. § 230(c)(1) (emphasis added). Moreover, if commenting about material posted by someone else was sufficient to make the second author responsible for the speech of the first, this would create an exception that would swallow the entire rule. *See Shiamili*, 2011 WL 2313818, *7 (rejecting argument that immunity was lost because website host posted comments which "preceded" and "prefaced" the objectionable third party commentary).[8] As such, the fact that Mr. Richie may post his own comments *responding to* material submitted to the site by third parties *does not* make Mr. Richie the author of everything users submit to the

[8] *See also*, *Phan v. Pham*, 182 Cal.App.4th 323, 327–28, 105 Cal.Rptr.3d 791, 794–95 (3rd Dist. App. 2010) (finding that user who added his own non-defamatory comment to allegedly defamatory email created by third party before forwarding email to others was entitled to CDA immunity).

site. *See Barrett v. Rosenthal*, 40 Cal.4th 33, 146 P.3d 510 (Cal. 2006) (noting, "we reject the … view that actively selected and republished information is no longer 'information provided by another information content provider' under section 230(c)(1)… A user who actively selects and posts material based on its content fits well within the traditional role of 'publisher.' Congress has exempted that role from liability.").[9]

Unless Plaintiff offers admissible evidence showing that these Defendants personally created or materially changed the third party-generated content, Mr. Richie and Dirty World are entitled to absolute immunity under the CDA. Because Plaintiff has failed to offer any evidence on those issues, summary judgment must be granted on the question of CDA immunity.

c. TheDirty.com Is NOT "Designed To Encourage Defamatory Material"

As expected, Plaintiff cites *FTC v. Accusearch, Inc.*, 570 F.3d 1187 (10th Cir. 2009) for the general but false premise that the CDA does not apply here because (without citing any actual evidence for the assertion), Mr. Richie somehow "encourages" users to post *defamatory* statements.[10] As a matter of law, Plaintiff grossly misstates the holding in *Accusearch*, which does not support the cited premise that a website host will lose immunity if it somehow generally "encourages" users to post content (which is, of course, arguably true of every website that allows users to post comments). As explained at length in *Shiamili*, the facts of *Accusearch* were extremely unusual because the website operator in that case was directly involved in the development of illegal content; the host paid and directed third party "researchers" to obtain telephone records using methods that "would almost inevitably require [the researcher] to violate the Telecommunications Act or to circumvent it by fraud or theft." 570 F.3d at 1192. Because

[9] *See also DiMeo*, 433 F.Supp.2d at 527 (granting 12(b)(6) dismissal of claims against website operator based on CDA immunity even though defendant admitted "that he selects, removes, and alters posts on the message boards.").

[10] This anticipated argument was previously addressed on pages 12–23 of these Defendants' motion, and, of course, Mr. Richie rebutted this allegation at length in his affidavit, so this reply will offer only brief additional comments on this point.

these third party researchers were paid by and working at the direction of the website host, the court determined that the host could be fairly treated as a co-creator of their unlawful content.[11] Furthermore, as explained by the *Shiamili* court, these unusual facts make *Accusearch* readily distinguishable from a case such as this where there is no similar allegation and, indeed, no evidence showing that Mr. Richie paid for the creation of posts or that he had any contact with the original author(s) of the offending material. *See Shiamili*, 2011 WL 2313818, *6.[12]

As was true in *Shiamili*, the material differences between the facts of this case and those of *Accusearch* are obvious. The undisputed facts show that material posted on www.thedirty.com covers a broad range of topics including President Barack Obama, sports, and stories about the United States economy. Richie Aff. (Doc. #64-2) ¶ 11. The submission form provided to visitors of the site is 100% content neutral; it does not ask users to post anything about any particular individual, nor does the site suggest what the author should say. Richie Aff. ¶ 12. The only instructions given by the site are as follows: "Tell us what's happening. Remember to tell us Who, What, When, Where, Why." *Id*. With regard to the posts at issue, Mr. Richie states that he "did not ask or encourage anyone else to submit these posts on my behalf, nor did I ask the site's viewers to submit anything regarding Plaintiff." *Id*. at ¶ 19. This type of *de minimus* involvement in the creation of content bears no similarity to *Accusearch* and, as a matter of law, it does not deprive Mr. Richie of immunity. *See Whitney Information Network, Inc. v. Xcentric*

[11] The Tenth Circuit's decision in *Accusearch* did not mention other cases which reached the *opposite* conclusion. *See Blumenthal v. Drudge*, 992 F.Supp. 44, 51–52 (D.D.C. 1998) (finding website operator AOL was entitled to CDA immunity for material created by blogger Matt Drudge, even though Drudge was paid by AOL to create content for AOL's website; "If it were writing on a clean slate, this Court would agree with plaintiffs. AOL has certain editorial rights with respect to the content provided by Drudge and disseminated by AOL, including the right to require changes in content and to remove it; and it has affirmatively promoted Drudge as a new source of unverified instant gossip on AOL … But Congress has made a different policy choice by providing immunity even where the interactive service provider has an active, even aggressive role in making available content prepared by others.").

[12] *See also Collins*, 703 F.Supp.2d at 879 (finding that even if website operator "invit[ed] readers' comments" about an online article, the CDA still applied because "none of the facts before the court show any encouragement by [the website operator] for readers to comment on the website articles *in a defamatory way*.") (emphasis added).

Ventures, LLC, 2009 WL 450095, *11 (M.D.Fla. 2008) (granting summary judgment based on CDA even though plaintiff alleged that defendant website operator "actively solicit[s] visitors to post reports about companies that rip-off consumers";).

Despite these undisputed facts, Plaintiff continues her rote refrain: "The entire purpose and nature of www.thedirty.com is to encourage and assist in development of defamatory material." Pla. Resp. at 7. Of course, Plaintiff offers no admissible evidence to support this assertion but simply argues that by commenting on material submitted by others, Mr. Richie somehow "encourages his readers to post more about that victim, as well as to generate similar submissions about others …" Again, this is precisely the argument directly rejected by the court in *Shiamili*, and it is essentially the same argument that has been repeatedly rejected in other similar cases such as *DiMeo*, *Global Royalties*, and so forth.

Rather than supporting Plaintiff's position, the undisputed facts here show that the material giving rise to this case was created solely by third parties without any encouragement or assistance from Mr. Richie. Richie Aff. ¶ 19. This content was published exactly as submitted, without any changes. Richie Aff. ¶ 18. If anything about this content was unlawful or defamatory, Plaintiff has a remedy—she may pursue the author(s) who originally created the material, but she cannot impute blame to Mr. Richie for failing to censor these posts. This is precisely the type of conduct for which the CDA provides absolute immunity.[13]

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[13] Under the heading of "Conclusion", Plaintiff again offers what amounts to a vitriolic closing rant, railing against the CDA, decrying Mr. Richie, and falsely condemning these Defendants as "professional slanderers and tortfeasors". Plaintiff's extreme anger is understandable, but it is also completely misdirected. Clearly, *but for* the specific material posted by a third party on www.thedirty.com about Plaintiff, this case would never have been filed. Plaintiff's argument is *not* that the website www.thedirty.com *itself* is unlawful, nor does she claim these Defendants harmed her by some act *other than* by merely allowing the publication of the posts. Plaintiff claims only that she was harmed by the *content of material* submitted to the site by a third party. This distinction is important because it demonstrates why Plaintiff's position is clearly wrong as a matter of law.

As explained above, the CDA provides federal immunity to website operators and hosts from civil claims arising from unlawful material created by a third party. Similarly, in 2005 Congress enacted the "*Protection of Lawful Commerce in Arms Act*" or "PLCAA", codified at 15 U.S.C. §§ 7901–03. The PLCAA does exactly the same thing for firearm manufacturers and dealers that the CDA does for website operators—it prohibits injured plaintiffs from imposing liability on a firearm maker/seller for harm resulting from the unlawful use of a gun by a

d. Mr. Richie's Own Comments Are Non-Defamatory And Non-Actionable Opinions

Although the CDA precludes Plaintiff's claims to the extent they are based on material created by third parties, these Defendants agree that the CDA has no application to their own content, such as Mr. Richie's tongue-in-cheek comment: "Why are all high school teachers freaks in the sack?" was a non-actionable expression of opinion. These Defendants' initial motion also argued that this statement was not actionable here because it was directed at a group ("all high school teachers") which was too large to permit individual defamation claims by each member of that group.

Amazingly, Plaintiff's response fails to address these arguments in any way. This failure is particularly troubling given that the determination of whether a statement is *capable* of sustaining a defamation claim is generally a threshold question of law for the court, not a question of fact for a jury. *See Yancey v. Hamilton*, 786 S.W.2d 854, 857 (Ky. 1990) (explaining, "the court 'must determine whether an expression of opinion is capable of bearing a

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third party. As one can imagine Plaintffs have tried to get courts to rule based upon emotion to avoid the effects of the PLCAA just as Plaintiff here makes emotional pleas to avoid the effects of the CDA. That said the courts have refused these pleas even in the most tragic circumstances.

Ileto v. Glock, Inc, 565 F.3d 1126 (9th Cir. 2005) involved an action by the survivors and family members of victims injured and killed in a shooting rampage in California in which a Glock pistol was used. Three of the victims were young children attending a summer camp. *See Ileto*, 565 F.3d at 1129. The plaintiffs sued Glock, Inc., and argued that even though the shootings were committed by the criminal actions of a third party, Glock itself should be held liable because, *inter alia*, "[Glock's] deliberate and reckless marketing and distribution strategies create an undue risk that their firearms would be obtained by illegal purchasers for criminal purposes." *Id*. at 1130. This argument is functionally equivalent to Plaintiff's rhetoric in this case; "www.thedirty.com destroys reputations. It destroys lives. Nik Richie knows it, and Nik Richie does not care. The Defendants bask in the glory of the hurt they cause, because it makes them money." Pla. Resp. at 10.[13]

That said the *Ileto* Court commendably rejected the opportunity to rule from emotion. While expressing deep sympathy for the victims shot by one of Glock's firearms, the Court recognized that "the Constitution 'allocates to Congress responsibility for [such] fundamental policy judgments'", *Ileto*, 565 F.3d at 1146 (quoting *Landgraf v. USI Film Prods*., 511 U.S. 244, 273, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994)), and with respect to the PLCAA, the intent of Congress was clear: "Congress found that manufacturers and sellers of firearms 'are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.'" *Ileto*, 565 F.3d at 1135 (quoting 15 U.S.C. § 7901(a)(5)). The same statements are true in this case. In both cases, Congress has expressly chosen to curtail liability even if it means some injured victims may receive less than complete satisfaction for their injuries. *See Noah v. AOL Time Warner, Inc.*, 261 F.Supp.2d 532 , 539 n. 5 (E.D.Va. 2003) (noting, "Plaintiff argues that providing ISPs immunity … is bad policy. Yet, it is not the role of the federal courts to second-guess a clearly stated Congressional policy decision.").

defamatory meaning …'") (quoting Restatement (Second) of Torts § 566, cmt. 'c'). Instead, Plaintiff chose to completely divert the discussion on this issue without any reference to substance. The fact that Plaintiff failed to respond to these arguments should be construed as a concession that Mr. Richie's own statements are non-actionable as a matter of law.

III. CONCLUSION

For the reasons stated herein, summary judgment should be entered in favor of Defendants Dirty World, LLC and Nik Lamas-Richie and against Plaintiff as to all claims in this matter.

DIRTY WORLD, LLC AND NIK LAMAS-RICHIE

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CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2011 I electronically filed the foregoing Reply in support of Motion for Summary Judgment with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s Alexander C. Ward_____
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