No. S235968

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

DAWN L. HASSELL and THE HASSELL LAW GROUP, P.C.,
Plaintiffs and Respondents

v.

YELP, INC.
Defendant and Appellant.

After a Decision by the Court of Appeal
First Appellate District, Division Four, Case No. A143233

Appeal from the Superior Court of the State of California,
County of San Francisco, Case No. CGC-13-53025,
The Honorable Donald J. Sullivan and the Honorable Ernest H. Goldsmith,
presiding

[PROPOSED] BRIEF OF ERWIN CHERMERINSKY, VALENCIA CORRIDOR MERCHANTS ASSOCIATION, DERIK LEWIS, AARON MORRIS, AND HENRY KARNILOWICZ AS *AMICI CURIAE* IN FAVOR OF RESPONDENTS

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INTRODUCTION

The Court of Appeal's opinion in this case struck a correct and careful balance between two important competing interests. The Internet has been a significant advance for the cause of free speech, but it has also made it easy for people to anonymously defame others and has provided platforms to make it possible. Such platforms also allow anonymous users to invade people's privacy, infringe intellectual property rights, make criminal threats, and engage in campaigns of targeted harassment.

The law, of course, provides remedies against those who engage in these forms of conduct, online as well as offline. However, in many cases, the actionable statements are made on interactive websites, where they are published for anyone to come across. Thus, as the Court of Appeal properly recognized, there must be a legal process to remove such materials. Otherwise, the rights of Respondents, and of those similarly situated, to obtain legal relief for defamation, invasion of privacy, criminal threats, harassment, and similar torts would be rendered a complete nullity.

Appellant Yelp, Inc. ("Yelp") and its supporting *amici* contend that any such remedy violates either its First Amendment rights, its Due Process rights, or its claimed rights under Section 230 of the Communications Decency Act, 47 U.S.C. § 230. This is not the case. In this case, there was a legal process by which the statements were adjudicated to be defamatory. It is black letter law that once statements have been adjudicated to be defamatory, they may be permanently enjoined. Indeed, this is often the only effective remedy to protect victims of defamation (as well as other torts involving content posted on the Internet), as many perpetrators are unidentifiable, beyond the court's jurisdiction, and/or judgment proof.

Yelp makes much of the fact that it was not a party to the underlying action in which the statements were adjudicated to be defamatory. Rather, Yelp was enjoined from publishing the defamatory statements only after the trial court

adjudicated that they were in fact unprotected. What Yelp has **not** done is make any showing that any of the defamatory statements here were protected by the First Amendment. In the event that a court erroneously enjoins protected speech and extends such a ruling to website operators such as Yelp, the website operator may have legal standing to collaterally attack the judgment and assert its own First Amendment rights. However, this case involves clearly unprotected defamatory statements.

Moreover, the approach proposed by Yelp and its *amici* for addressing this issue – to simply impose a flat bar on injunctions against Internet services that host and publish tortious statements – would leave the victims of online harassment, privacy invasions, and other tortious conduct with no remedy whatsoever. Under the rule of law urged by Yelp, the big winners will be online tortfeasors. Assuming they can be located and subjected to the court's jurisdiction, such tortfeasors will perhaps owe a monetary judgment that they may be unable to pay – presuming it even made economic sense for the victim to have sued them in the first instance. But their statements, even if entirely constitutionally unprotected, will remain on the Internet, injuring victims in perpetuity (or at least so long as publishers such as Yelp decide to make them available).

Finally, the Court of Appeal correctly interpreted Section 230 of the Communications Decency Act. Yelp is not a party to this action. The premise of Section 230 is that providers of certain sorts of interactive services on the Internet should not face lawsuits and the threat of monetary damages merely for acting as a conduit for the speech of others. The Court of Appeal's decision wholly fulfills that statutory purpose. Respondents sued, sought and obtained a permanent injunction against the user who posted the defamatory statements. Yelp has not been ordered to pay damages, nor has it been required to defend a lawsuit. Respondents have respected Yelp's claimed statutory immunity. Rather, Respondents did exactly what Section 230 envisioned – seek judicial relief against the speaker who uttered

the defamatory statements, not the corporation that operated the website where they were posted. The injunction prohibits the publication of the defamatory statements. It happens that because the defamatory statements are posted on Yelp's website, the order must require their removal; thus, that portion of the court's order must bind Yelp to remove them. However, Yelp has not been held liable for anything, and has not been forced to defend a lawsuit. There will be no chilling effect on Yelp's expression, as Yelp will not be required to defend future lawsuits and need not concern itself with the threat of liability or self-censorship as a result of such a threat. All that is required of Yelp is that it obey a take-down injunction when one is issued by a California court. The Court of Appeal's decision is completely consistent with the statutory language and purpose of Section 230.

The Court of Appeal correctly found that victims of torts committed online are not barred from obtaining an effective injunction that bars the publication of adjudicated defamatory statements. Any concerns regarding the First Amendment interests of website operators should be addressed not by preventing effective redress for online torts, but rather by permitting website operators to assert any valid First Amendment claim it may claim to have as part of a motion for relief from the injunction.

STATEMENT OF INTEREST OF AMICI

Dean Erwin Chemerinsky is the founding Dean and Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law, at the University of California, Irvine School of Law. He is the author of ten books, many of which discuss or concern the First Amendment. Dean Chemerinsky has also authored more than 200 law review articles, most of which likewise address First Amendment and other constitutional issues. He writes a weekly column for the *Orange County Register*, monthly columns for the *ABA Journal* and the *Daily Journal*, and frequent op-eds in newspapers across the country. Dean Chemerinsky

frequently argues appellate cases, including in the United States Supreme Court. In January 2017, the *National Jurist* magazine again named him the most influential person in legal education in the United States.

Dean Chemerinsky was counsel of record for Defendant and Appellant Anne Lemen, who was contesting a permanent injunction entered in a defamation case before this Court, in *Balboa Island Village Inn, Inc. v. Lemen*, 40 Cal.4th 1141 (2007). Dean Chemerinsky has an interest in this case as one who has defended the First Amendment, as well as privacy and reputational interests, through litigation and legislative advocacy as well as in his legal scholarship.

The Valencia Corridor Merchants Association ("VCMA") is a member-operated neighborhood association, including merchants in and around the Valencia Corridor of San Francisco. The VCMA has an interest in this action because its members are reviewed on consumer websites such as Yelp, and a defamatory review can cause them substantial harm.

Derik Lewis is the founder, president and one of the managing attorneys of Vantis Law Firm. He is a California real estate attorney, a licensed realtor, and a member of the National Association of Consumer Bankruptcy Attorneys with over 20 years' experience in the real estate business. For more than a decade as an attorney in private practice, Mr. Lewis has represented real estate developers, investors, lenders, and borrowers in negotiating, structuring, documenting, and closing commercial and residential real estate transactions. Mr. Lewis has an interest in this case as a practicing attorney whose law practice is reviewed by consumers on the Internet, and whose practice has been negatively (and falsely) reviewed by a former client on a review website.

Aaron Morris is a partner in the law firm of Morris & Stone, LLP, located in Tustin, California. He attended Southwestern University School of Law, where he was Editor-in-Chief of the Law Review and graduated *cum laude* in 1987. His primary practice areas include litigation arising from free speech issues (anti-

SLAPP, defamation, First Amendment), business litigation (breach of contract, trade secret, partnership dissolution, etc.), and employment law (wrongful termination defense and prosecution). He worked as an Adjunct Professor of Law at Whittier Law School in Costa Mesa, California, teaching "Litigation Skills & Strategies" and at National University in Irvine, California, teaching litigation techniques. Mr. Morris is a writer and lecturer on the subjects of free speech, defamation and anti-SLAPP, and is the author of the California SLAPP Law and Internet Defamation blogs, and host of the California SLAPP Law podcast. He has also published numerous articles on law office efficiency, and was Editor-in-Chief of Law Office Technology Solutions and Contributing Editor of Law Office Computing. He has been a featured speaker at such functions as the American Bar Association TechShow. Mr. Morris is frequently asked to consult with other law firms on anti-SLAPP motions and is often retained as an expert to opine on fee applications following anti-SLAPP motions.

Mr. Morris is also the founder and current President of the California Defamation Lawyers Association ("CDLA"). The CDLA is an organization of attorneys representing clients in actions arising from defamation. The CDLA helps its lawyer members better represent their clients by facilitating education and the exchange of ideas, and through legislative advocacy. The CDLA's motto is "Freedom Through Truth," based on the premise that the marketplace of ideas envisioned by the First Amendment is best served when that marketplace is vibrant and free from falsity. CDLA members pledge never to represent clients seeking to use litigation as a means to suppress valid free speech.

Mr. Morris has an interest in this litigation as a lawyer and educator practicing in the area of defamation law. Many of Mr. Morris' clients have been harmed by defamatory speech on the Internet; they seek effective remedies that will result in the removal of defamatory Internet postings.

Mr. Henry Karnilowicz is the President of the South of Market Business Association ("SOMBA"), which represents businesses in the South of Market district of San Francisco. SOMBA's members include many small businesses that rely on the patronage of consumers who use review websites such as Yelp, and are thus vulnerable to defamatory reviews.

THE COURT OF APPEAL'S DECISION WAS NECESSARY TO ADDRESS A MAJOR PROBLEM OF ONLINE DEFAMATION, HARASSMENT, AND OTHER UNLAWFUL CONTENT

This case addresses a real and pressing problem. The Internet has benefitted Californians immensely, but it has also provided an extraordinarily powerful new mechanism for people to engage in tortious conduct, and for disseminating tortious statements and other unlawful content to a much wider audience. Further, it allows users to engage in such tortious conduct anonymously or semi-anonymously.

Accordingly, posting material on the Internet has become the favored methodology of numerous tortfeasors. For instance, jilted ex-lovers have posted intimate photographs and sex videos – so-called "revenge porn" – to get back at their lovers or exes. Danielle K. Citron & Mary A. Franks, *Criminalizing Revenge Porn*, 49 Wake Forest L. Rev. 345, 347 (2014). Internet users have also been subjected to "doxing," a practice where someone who disagrees with another person posts personally identifying information such as that other person's home address and Social Security number and encourages others to harass the person. David M. Douglas, *Doxing: A Conceptual Analysis*, 18 Ethics & Info. Tech. 199 (2016). A recent Pew survey found that 25 percent of Internet users had seen physical threats to someone posted online. Maeve Duggan, *Online Harassment* (Oct. 22, 2014), http://www.pewinternet.org/2014/10/22/online-harassment/. Internet users have hounded women and subjected them to vicious sexual harassment. Alice E. Marwick & Ross Miller, *Online Harassment, Defamation, and Hateful Speech: A*

Primer of the Legal Landscape (Jun. 10, 2014) at 5, http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1002&context=clip. "Online harassment has various and wide-ranging harms: targets have committed suicide, lost jobs, dropped out of school, withdrawn from social activities, and decreased their participation in employment, educational, and recreational (including online) activities." Mary A. Franks, *Sexual Harassment 2.0*, 71 Md. L. Rev. 655, 658 (2012).

Online defamation, the issue in the case at bar, is a significant aspect of this larger problem. Examples of online defamation include posts which falsely claim that a person had a mental illness or a sexually transmitted disease, doctored photographs depicting a person's head atop another's naked body, a false claim that a person had been in a drug rehabilitation center, and false accusations of sexual affairs. Danielle K. Citron, *Cyber Civil Rights*, 89 Boston U. L. Rev. 61, 70, 73, 76 (2009).

Further, once such defamatory statements are made online, they then appear prominently in Google searches of the person's or business' name, thereby causing continuing damage to the victim. Jessica L. Chilson, Note, *Unmasking John Doe: Setting a Standard for Discovery in Anonymous Internet Defamation Cases*, 95 Va. L. Rev. 389, 419 (2009) ("Defamatory statements on the Internet are perpetual...."); *id.* at 425; David S. Ardia, *Freedom of Speech, Defamation, and Injunctions*, 55 William & Mary L. Rev. 1, 17 (2013) (stating there is a greater need for injunctions in Internet defamation cases because defamatory statements persist on the Internet in a way that they did not in the pre-Internet era).

In addition to the harm suffered by individual victims, the climate of online harassment, intimidation, threats, privacy invasions, and defamation is bad for free speech as a whole. The perpetrators of these acts seek to drive their victims off the Internet and away from discussions and debates; in this endeavor, they often unfortunately succeed. Anita Bernstein, *Abuse and Harassment Diminish Free*

Speech, 35 Pace L. Rev. 1, 11-17 (2014) (detailing examples of victims who were forced to curtail online discourse); Duggan, *supra* (10 percent of Pew respondents withdrew from an online forum in response to harassment). Accordingly, a legal rule that prevents the removal of these forms of expression is no victory for online free speech. Just like Gresham's Law states with respect to money, bad discourse drives out the good.

The judicial system must make effective remedies available for victims of online torts, just like it does for torts committed offline. However, most online tortfeasors do not operate their own online publishing service. Rather, they publish their tortious statements and material on bulletin boards, online fora, blogs published by a specialized website, online review sites (such as Yelp), and through other similar services.

Section 230 of the Communications Decency Act provides that interactive computer services which publish the content of others, rather than providing their own content, are generally immune from liability for such content. Accordingly, the law envisions that victims of online torts should first seek redress against the poster, not the publisher.

However, damages alone are often an inadequate remedy against someone who posts tortious content on the Internet. For one thing, the poster may be judgment-proof. Citron & Franks, *supra*, at 358. There may well also be issues in enforcing the judgment for damages if the poster is in another state or outside the United States. Most importantly, the fact that the Internet functions as a continuous publication of the defamatory content means that damages will continue to accrue indefinitely.

In addition, permitting injunctions against defamatory communications will, in the end, redound to the benefit of business review websites like Yelp and the consumers who rely on them. Neither Yelp nor its users stand to benefit if Yelp reviews are replete with false, defamatory information. Consumers want accurate

information, positive and negative, about businesses, and Yelp benefits if consumers know that false and defamatory statements will be removed from Yelp reviews. Injunctions such as the one entered in this case serve the larger cause of free speech, by ensuring that consumers will be able to seek out truthful information about the businesses they patronize and that online discussions of business do not become so saturated by lies and defamation that consumers no longer turn to them for accurate information.

The issue in this case is whether a litigant who has sued the actual speaker for defamation and prevailed against him or her in court, and obtained a permanent injunction requiring the material to be removed, can enforce that injunction against third parties to prevent ongoing publication of the defamatory content. The answer must be yes, or else a victim of Internet defamation who has won in court will have no effective remedy.

That the actual speaker did not appear in court to contest the claim that the statements were defamatory does not in any way change this result. The rules governing default judgments have been designed to fully protect the rights of defendants to due process, and the rights of plaintiffs to relief. If defendants could avoid liability and enforcement of judgments simply by refusing to appear in court, the law would be rendered impotent.

Indeed, the circumstances that often give rise to a default judgment are those most in need of an injunctive remedy. An Internet poster who is effectively judgment-proof runs less risk than other litigants in failing to appear. In such a case, the only effective means of redress is an order requiring the removal of the content. To give such an order effect will logically require the website where the material is posted to comply. To preclude this remedy would be to concede total victory to the tortfeasors. The overwhelming probability in most cases would be that the content would never be removed and would continue to have its injurious effect in perpetuity. Ardia, *supra*, at 15-16 (discussing research that shows libel

plaintiffs want a retraction more than they want money damages: "The irony for those who suffer reputational harm is that money is an especially inadequate remedy for defamation. This is because reputational injuries are not readily translatable into monetary relief; money can neither restore a diminished reputation nor make a plaintiff's emotional distress go away."); Citron & Franks, *supra,* at 358-59 (discussing "revenge porn": "The removal of images is the outcome that most victims desire above all else, and civil litigation may be unable to make that happen"). If Yelp's argument were to prevail, the Internet would continue to descend into an uncontrolled and uncontrollable wasteland of defamatory content, threats, harassment, and non-consensually posted private sex videos.

THE COURT OF APPEAL'S DECISION WAS CONSISTENT WITH THE LAW.

At the center of this case is a straightforward application of this Court's decision in *Balboa Island Village Inn, Inc. v. Lemen*, 40 Cal. 4th 1141 (2007). In *Lemen*, this Court approved of narrowly tailored injunctions enjoining the publication of statements after a final adjudication that they were defamatory. Importantly, the *Lemen* decision recognized the importance of injunctive relief as often the only effective remedy against defamatory statements:

> Accepting Lemen's argument that the only remedy for defamation is an action for damages would mean that a defendant harmed by a continuing pattern of defamation would be required to bring a succession of lawsuits if an award of damages was insufficient to deter the defendant from continuing the tortuous behavior. This could occur if the defendant either was so impecunious as to be "judgment proof," or so wealthy as to be willing to pay any resulting judgments. Thus, a judgment for money damages will not always give the plaintiff effective relief from a continuing pattern of defamation.

Id. at 1158.[1]

Lemen thus recognizes the need for injunctive relief in defamation cases, precisely because it is often the only effective remedy. As noted above, this is especially true on the Internet, not only due to the likelihood that Internet users may be judgment proof or enforcement proof (by virtue of residing in a foreign jurisdiction), but also due to the architecture of the Internet, including search engines, which facilitate the widespread and long-lasting dissemination of defamatory statements. Famously, in another context, the second Justice Harlan approved the judicial fashioning of a damages remedy by saying that for people like

[1] Notably, the Balboa Island Village Inn, like many defamation victims studied in the academic research, did not want money damages—it only wanted the defamation to stop. *Lemen, supra,* 40 Cal. 4th at 1158.

the plaintiff, it was "damages or nothing." *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 410 (1971) (Harlan, J., concurring). Here, for plaintiffs such as Respondents (and the small business members of VCMA and SOMBA, when they are victimized by defamatory reviews posted by disgruntled customers or people holding vendettas), it is often an injunction or nothing.

The Court of Appeal's decision did nothing more than apply established principles of California injunction law to a *Lemen* injunction. First, injunctions may properly extend to "carrying out prohibited acts with or through nonparties." *Planned Parenthood Golden Gate v. Garibaldi*, 107 Cal. App. 4th 345, 352 (2003). As noted above, the online tortfeasor often acts through nonparty websites which host the content posted by the tortfeasor. The Court of Appeal was clearly correct that an injunction may extend to the website that hosted the defendant's defamatory statements; the defendant was clearly acting through Yelp.

Second, default judgments conclusively adjudicate the rights and obligations of the parties with respect to the pleaded claims. *Gottlieb v. Kest*, 141 Cal. App. 4th 110, 149 (2006). This rule must be applied to *Lemen* injunctions since, if it were not, online tortfeasors would be given a strong incentive to default, especially if they are judgment-proof, because a default would result in their injurious content remaining on the Internet, where it would continue to harm the plaintiff forever.

Yelp's Due Process and First Amendment rights were not violated here. There is no constitutional right to publish defamatory statements. *See, e.g., Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340 (1974). Nor is there any constitutional right to republish someone else's defamatory statements. 5 B.E. Witkin, *Summary of California Law*, Torts § 537 (10th Ed. 2005) ("If the defendant reprints or circulates a libelous writing, this has the same effect as an original publication"). There is simply no basis under First Amendment law for Yelp to claim the right to publish a comment that was adjudicated to be libelous.

The due process arguments of Yelp and its *amici* are based on hypothetical scenarios where a plaintiff uses the court system to obtain an injunction that is inconsistent with the First Amendment. However, the way to address that issue is not a rule precluding any injunctive relief to victims of online torts, but rather for trial courts to properly scrutinize applications for injunctions in default judgment cases, and to afford a non-party an opportunity to be heard if the non-party has actual evidence that the statements are protected by the First Amendment. Indeed, the Court of Appeal properly recognized Yelp's standing to bring a nonstatutory motion to vacate the judgment, as an "aggrieved" non-party. If a California trial court improperly issues an injunction binding a non-party website operator and requiring the removal of protected expression, that website operator can bring a nonstatutory motion to vacate the judgment and be heard on the First Amendment issue; if that argument is found to be well founded, the injunction can be vacated. That is more than sufficient due process.

Finally, Yelp's Section 230 argument must fail. As noted above, Yelp is not a party to the underlying action. Because of this, whatever the extent of Yelp's Section 230 immunity may be, that immunity was respected and adhered to in this action. Section 230's purpose clause identifies the breadth and depth of free expression on the Internet as the motivation for the immunity granted to certain website operators. 47 U.S.C. § 230(a)(3). Further, Section 230 repeatedly refers to its protections as barring "liability" for certain acts and omissions by certain website operators. 47 U.S.C. § 230(c)(2) ("No provider or user of an interactive computer service shall be held liable..."), (e)(3) ("No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section."). Further, the statute's cardinal rule is that "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1).

Yelp, of course, has not been held "liable" for anything. Yelp has not been adjudicated to be in violation of any law, or to have committed any tort, or violated any regulation. Yelp has not been required to pay any damages, or to return any property, or to convey any title. Yelp has simply been ordered to remove defamatory statements from its website following a court judgment finding the actual speaker of those statements (and not Yelp) liable for them. This is precisely what Section 230 envisions.

Yelp has no Section 230 defense against compliance with the court's order because Yelp has not been treated as the publisher or speaker of the defamatory content. Yelp has not been found liable for anything. Yelp has been treated, as Section 230 requires, as a conduit, not a publisher or speaker. As might any third party following a judgment in a defamation lawsuit, Yelp has merely been ordered not to act in concert with the defendant in the dissemination of the adjudicated defamatory statements.

Yelp attempts to evade the plain language of Section 230 with arguments about whether it is an "interactive computer service" under the statute, but those arguments are irrelevant, because Yelp has not been held "liable" in this proceeding.

Interpreting Section 230 consistently with established judicial remedies for defamation by the actual speaker (the actual "information content provider," in the language of Section 230) is the only reasonable construction of the statute. It protects Yelp from liability, and ensures that Yelp will not be treated as the publisher or speaker, which is precisely what the statute requires. If Section 230 were not given this common-sense construction, it would mean that Congress actually intended to eliminate any effective remedy for defamation, so long as it occurs on the Internet, so long as tortfeasors publish their unprotected content on an interactive computer service, i.e., someone else's website which complies with the strictures of *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157 (9th Cir. 2008) (holding that website's interactive features

shaping user content defeated Section 230 immunity). Notably, Yelp has, on at least two occasions, been held to be an interactive computer service entitled to Section 230 immunity from direct lawsuits for damages by victims of postings on its website. Eric Goldman, *Dentist's Defamation Lawsuit Against Yelp Preempted by Section 230–Braverman v. Yelp*, Technology and Marketing Law Blog (Jul. 16, 2013), http://blog.ericgoldman.org/archives/2013/07/dentist_lawsuit.htm; Eric Goldman, *Yelp Gets Another Anti-SLAPP Victory in Lawsuit Over Consumer Review—Bernath v. Tabitha J.*, Technology and Marketing Law Blog (Sep. 2, 2013), http://blog.ericgoldman.org/archives/2013/09/yelp_gets_anoth.htm. Yelp offers no route for any victim to take to obtain the removal of tortious content from its site.

The express purpose of the statute's authors, as spelled out in the findings that form the preamble to Section 230, was to reduce offensive material on the Internet by creating incentives for websites to take it down themselves. The Section 230 immunity was meant to protect someone like Yelp from publisher liability just because they were being a Good Samaritan and voluntarily removing offensive material from their site. As the chief author of the legislation, Rep. Chris Cox of California, stated during floor debate, Section 230 was meant "to encourage people like Prodigy, like CompuServe, like America Online, like the new Microsoft Network [i.e., interactive service providers such as Yelp claims to be], to do everything possible for us, the customer" by way of, at a minimum, taking down material that is "prohibited by law."[2] Instead, Yelp is now using Section 230 as an excuse for refusing to clean up its website even when presented with a court judgment finding that material Yelp is broadcasting worldwide is defamatory, and even after being ordered by a court to do so.

If accepted, Yelp's argument would leave a large class of victims with no effective remedy against grievously harmful conduct – death threats and threats to

[2] Statement of Rep. Cox, 141 Cong. Record H8470 (daily ed. Aug. 4, 1995).

their families, harassment, invasions of privacy including even the posting of secretly recorded sex videos, and defamation. They will be at the mercy of tortfeasors who can sadistically inflict injuries that will continue for the rest of their lives. In the case of these Respondents, tortfeasors will be given the green light to permanently ruin a law practice with defamatory reviews that will never be removed.

Neither the First Amendment, the Due Process clause, nor Section 230 requires this result. This Court should affirm the decision of the Court of Appeal.

CONCLUSION

For the foregoing reasons and those stated in Respondents' Answering Brief, the judgment of the Court of Appeal should be affirmed.

Dated: April 14, 2017

HARDER MIRELL & ABRAMS LLP
Charles Harder
Douglas Mirell
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By: _____

Douglas Mirell
Attorneys for Amici Curiae

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.204(c)(1) of the California Rules of Court, Plaintiffs and Respondents hereby certify that the typeface in the attached brief is proportionally spaced, the type style is roman, the type size is 13 points or more and the word count for the portions subject to the restrictions of Rule 8.204(c)(3) is 4,774.

Dated: April 14, 2017

HARDER MIRELL & ABRAMS LLP
Douglas E. Mirell
Charles J. Harder
Dilan A. Esper

By: _____

Douglas E. Mirell
Attorneys for Amici Curiae

PROOF OF SERVICE

Case No. S235968

I, the undersigned, declare that I am over the age of 18 years, employed in the City and County of Beverly Hills, California, and not a party to the within action. My business address is 132 S. Rodeo Drive, Fourth Floor, Beverly Hills, CA 94104. On April 14, 2017, I served the following document(s):

[PROPOSED] BRIEF OF ERWIN CHERMERINSKY, VALENCIA CORRIDOR MERCHANTS ASSOCIATION, DERIK LEWIS, AARON MORRIS, AND HENRY KARNILOWICZ AS AMICI CURIAE IN FAVOR OF RESPONDENTS

as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 14, 2017, at Beverly Hills, California.

VIVIAN WINN