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

19 United States of America,
20
21 Plaintiff,

22 v.

23 Michael Lacey, et al.,
24 Defendants.
25

CR-18-422-PHX-DJH

**UNITED STATES' MOTION
IN LIMINE TO PRECLUDE
REFERENCES TO COURT
DECISIONS, RULINGS, OPINIONS,
OR RESULTS FROM PRIOR
LITIGATION FILED BY OR
AGAINST BACKPAGE.COM, LLC
OR ITS OWNER(S)**

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1 you'll hear about[.]").²

2 Defendants failed to mention that they had misled courts across the United States in
3 these cases. (*See, e.g.*, Doc. 649, Resp. at 21-26.) Not only did many of the cases involve
4 challenges to state laws not at issue here, but they all relied on the broad immunity of
5 Section 230—which does not apply at all in this federal criminal proceeding, as this Court
6 has recognized. *Compare n.2 with United States v. Lacey*, 423 F. Supp. 3d 748, 760 (D.
7 Ariz. 2019) and Doc. 840 at 7. Moreover, the cases were all premised on the notion that
8 Backpage was merely a passive “intermediary between the advertisers of adult services and
9 visitors to Backpage’s website.” *Backpage.com LLC v. Dart*, 807 F.3d 229, 233-34 (7th
10 Cir. 2015). Yet, after these cases were decided, Backpage disclosed evidence in response
11 to U.S. Senate and grand jury subpoena that belied this premise. (Doc. 649, Resp. at 22-
12 24.) Backpage and its CEO then pleaded guilty in 2018 and admitted that the “great
13 majority” of Backpage’s revenue-generating ads were “for prostitution services.” (18-CR-
14 464, Doc. 7-2 at 12-13; 18-CR-465, Doc. 8-2 at 11; *see* Doc. 271 at 9-10.) Following these
15 developments, the Northern District of Illinois dismissed *Dart* and imposed \$250,000 in
16 sanctions on Backpage for perpetuating a fraud on the court. (*See* Doc. 516-1 at 2-9.)

17 During the prior trial, the Court wanted to address “the admissibility of all these
18 other cases” (Doc. 1343 at 103:3-5), and had “issues with the way some of those rulings
19 were portrayed.” (Doc. 1343 at 103:25-104:1.) The Court observed that cases discussing
20 Section 230—*i.e.*, all of the cases referenced in the defense openings—are “misleading”
21 and “not applicable” here. (Doc. 1334 at 12:25, 13:9.)

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25 ² *See* Doc. 1342 at 55:6-63:18, 70:4-9, 75:17-76:8, referencing these Section 230 cases:
26 *M.A. v. Village Voice Media Holdings, LLC*, 809 F. Supp. 2d 1041, 1047-59 (E.D. Mo.
27 2011); *Backpage.com, LLC v. McKenna*, 881 F. Supp. 2d 1262, 1271-75 (W.D. Wash.
28 2012); *Backpage.com, LLC v. Cooper*, 939 F. Supp. 2d 805, 821-28 (M.D. Tenn. 2013);
Backpage.com, LLC v. Hoffman, 2013 WL 4502097, at *5-7 (D.N.J. Aug. 20, 2013), *Doe*
ex rel. Roe v. Backpage.com, LLC, 104 F. Supp. 3d 149, 155-65 (D. Mass. 2015), *aff’d sub*
nom. Jane Doe No. 1 v. Backpage.com, LLC, 817 F.3d 12, 18-24, 29 (1st Cir. 2016);
Backpage.com LLC v. Dart, 807 F.3d 229, 233-34 (7th Cir. 2015).

1 **Argument**

2 The judicial decisions referenced in the defense openings all involved Section 230
3 and far less information about Backpage than is currently known. (*See supra* at 2 and n.2.)
4 The decisions are “not applicable” to this case, as this Court has already found. (*See id.* at
5 2.) Accordingly, they should be excluded as irrelevant under Rule 401-402.

6 They also should be excluded under Rule 403. Discussing these decisions will create
7 serious risks of confusing the issues, misleading the jury, and wasting time. The United
8 States would have to explain that these cases involved different statutes, standards, parties,
9 and facts. It would have to spend time articulating how numerous exhibits in this case were
10 unknown to opposing litigants in earlier cases, and thus how the outcomes in those cases
11 involved Backpage’s lack of transparency. This trial would devolve into a series of mini
12 trials about those earlier cases. In addition, the United States faces the substantial, highly
13 prejudicial risk that jurors could misconstrue these prior decisions as probative, or conclude
14 that they should reach the same or similar results. *See Engquist v. Oregon Dept. of Agric.*,
15 478 F.3d 985, 1009-10 (9th Cir. 2007) (“[M]ost courts forbid the mention of [related]
16 verdicts” because “[a] jury is likely to give” them “more weight” than warranted); *States*
17 *v. Kealoha*, 2019 WL 2620004, at *5-6 (D. Haw. June 26, 2019) (same); *Marez v. Bassett*,
18 2011 WL 13213813, at *3 (C.D. Cal. Oct. 3, 2011) (barring discussion of results of related
19 lawsuits because they “would likely . . . unduly sway[]” jurors and “give rise to time-
20 consuming tangents” about the other cases’ merits).

21 Moreover, because the court instructs on the law, Defendants should be precluded
22 from arguing legal authority to the jury at any stage of the trial. And, the cited decisions
23 are inadmissible hearsay under Rule 802 and are not subject to admission under Rule
24 803(22)—which only applies to prior criminal judgments.

25 **Conclusion**

26 The Court should preclude all counsel, parties, and witnesses from referring at trial
27 to the decisions, rulings, or opinions issued in, or the outcomes of, any prior litigation in
28 which Backpage or any of its then-owners or parent companies was a plaintiff or defendant.

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Respectfully submitted this 8th day of June, 2023.

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s/Kevin M. Rapp

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CERTIFICATE OF SERVICE

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I hereby certify that on June 8, 2023, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants who have entered their appearance as counsel of record.

s/ Daniel Parke
Daniel Parke
U.S. Attorney’s Office