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

John Laake,  
Plaintiff,  
v.  
Dirty World LLC, et al.,  
Defendants.

No. CV-19-5444-PHX-DMF

**REPORT AND RECOMMENDATION**

**TO THE HONORABLE STEPHEN M. MCNAMEE, SENIOR UNITED STATES  
DISTRICT JUDGE:**

This matter is before the Court on Plaintiff’s motion to amend his complaint and to file the proposed First Amended Complaint (Doc.17).

After the filing of the original Complaint (Doc. 1), Plaintiff consented to proceeding before a United States Magistrate Judge (Doc. 10). Undersigned thereafter granted Plaintiff’s Application for Leave to Proceed In Forma Pauperis (Doc. 2), screened the Complaint (Doc. 1), and allowed the Complaint to proceed (Doc. 12). The service packet for the named defendant in the Complaint, Dirty World LLC, has since been forwarded to the United States Marshal’s service for service.

Plaintiff has filed a motion to amend and attached to the motion his proposed First Amended Complaint, which complies with LRCiv 15.1 (Doc. 17). Without consents to proceed before a United States Magistrate Judge by all the parties, including unserved defendants, undersigned lacks authority to screen the First Amended Complaint with the

1 issuance of an Order that dismisses a party or a claim. *See Williams v. King*, 875 F.3d 500  
2 (9<sup>th</sup> Cir. 2017). Thus, undersigned will instead proceed by Report and Recommendation  
3 regarding the proposed First Amended Complaint (Doc. 17).

#### 4 **I. Screening/Review Pursuant to § 1915**

5 Where a plaintiff is found to be indigent under 28 U.S.C. § 1915(a)(1) and is granted  
6 leave to proceed in forma pauperis, courts must engage in screening and dismiss any claims  
7 which: (1) are frivolous or malicious; (2) fail to state a claim on which relief may be  
8 granted; or (3) seek monetary relief from a defendant who is immune from such relief. 28  
9 U.S.C. § 1915(e)(2)(B); *see Marks v. Solcum*, 98 F.3d 494, 495 (9<sup>th</sup> Cir. 1996). *See also*  
10 *Lopez v. Smith*, 203 F.3d 1122, 1126 fn. 7 (9<sup>th</sup> Cir. 2000) (28 U.S.C. § 1915(e) “applies to  
11 all in forma pauperis complaints,” not merely those filed by prisoners). Federal Rule of  
12 Civil Procedure (“Fed. R. Civ. P.”) 8(a)(2) provides that a pleading must contain a “short  
13 and plain statement of the claim showing that the pleader is entitled to relief.” A complaint  
14 that lacks such statement fails to state a claim and must be dismissed.

15 In determining whether a plaintiff fails to state a claim, the court assumes that all  
16 factual allegations in the complaint are true. *Parks Sch. of Bus. v. Symington*, 51 F.3d 1480,  
17 1484 (9<sup>th</sup> Cir. 1995). However, “the tenet that a court must accept a complaint’s allegations  
18 as true is inapplicable to legal conclusions [and] mere conclusory statements.” *Ashcroft v.*  
19 *Iqbal*, 556 U.S. 662, 678 (2009) (*citing Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555  
20 (2007)). The pertinent question is whether the factual allegations, assumed to be true,  
21 “state a claim to relief that is plausible on its face.” *Id.* (*citing Twombly*, 550 U.S. at 570).

22 Where a complaint contains the factual elements of a cause, but those elements are  
23 scattered throughout the complaint without any meaningful organization, the complaint  
24 does not set forth a “short and plain statement of the claim” for purposes of Rule 8, Federal  
25 Rules of Civil Procedure. *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 640 (9<sup>th</sup> Cir.  
26 1988). Further, a complaint may be dismissed where it lacks a cognizable legal theory,  
27 lacks sufficient facts alleged under a cognizable legal theory, or contains allegations  
28 disclosing some absolute defense or bar to recovery. *See Balistreri v. Pacifica Police*

1 *Dept.*, 901 F.2d 696, 699 (9<sup>th</sup> Cir. 1988); *Weisbuch v. County of L.A.*, 119 F.3d 778, 783,  
2 fn. 1 (9<sup>th</sup> Cir. 1997).

3 To survive dismissal, a complaint must give each defendant “fair notice of what the  
4 claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,  
5 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (citation omitted). In the absence of fair  
6 notice, a defendant “should not be required to expend legal resources to guess which claims  
7 are asserted against her or to defend all claims ‘just in case.’” *Gregory v. Ariz. Div. of*  
8 *Child Support Enforcement*, No. CV11-0372-PHX-DGC, 2011 WL 3203097, at \*1  
9 (D.Ariz. July 27, 2011).

10 Where the complaint has been filed by a pro se plaintiff, as is the case here, courts  
11 must “construe the pleadings liberally ... to afford the petitioner the benefit of any doubt.”  
12 *Hebbe v. Pliler*, 627 F.3d 338, 342 (9<sup>th</sup> Cir. 2010) (citations omitted). Under the pleading  
13 standard set by the Supreme Court’s decision in *Iqbal*, however, “[t]hreadbare recitals of  
14 the elements of a cause of action, supported by mere conclusory statements, do not suffice.”  
15 *Iqbal*, 556 U.S. at 678. Further, “[a] district court should not dismiss a pro se complaint  
16 without leave to amend unless ‘it is absolutely clear that the deficiencies of the complaint  
17 could not be cured by amendment.’” *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9<sup>th</sup> Cir. 2012)  
18 (*quoting Schucker v. Rockwood*, 846 F.2d 1202, 1203-04 (9<sup>th</sup> Cir. 1988) (per curiam)).

19 When the court dismisses the complaint of a pro se litigant with leave to amend, the  
20 “court must provide the litigant with notice of the deficiencies in his complaint in order to  
21 ensure that the litigant uses the opportunity to amend effectively.” *Id.* (*quoting Ferdik v.*  
22 *Bonzelet*, 963 F.2d 1258, 1261 (9<sup>th</sup> Cir. 1992)). “Without the benefit of a statement of  
23 deficiencies, the pro se litigant will likely repeat previous errors.” *Karim-Panahi v. L.A.*  
24 *Police Dep’t*, 839 F.2d 621, 624 (9<sup>th</sup> Cir. 1988) (*quoting Noll v. Carlson*, 809 F.2d 1446,  
25 1448 (9<sup>th</sup> Cir. 1987)). The court should not, however, advise the litigant how to cure the  
26 defects; this type of advice “would undermine district judges’ role as impartial  
27 decisionmakers.” *Pliler v. Ford*, 542 U.S. 225, 231, 124 S.Ct. 2441, 159 L.Ed.2d 338  
28 (2004).

## 1       **II.     Screening the Proposed First Amended Complaint**

### 2           **A.     Screening of the Original Complaint**

3           The original Complaint (Doc. 1), which was already screened by the Court (Doc.  
4 12), alleges claims against two defendants: The first defendant is named Dirty World LLC  
5 doing business as Thedirty.com (“The Dirty”), and the second defendant’s name is  
6 presently unknown to Plaintiff so is named as “John Doe”. According to the Complaint,  
7 The Dirty is a user-submitted gossip website on the worldwide web which began in 2007  
8 at the website: www.thedirty.com” (Doc. 1 paragraph 4). In addition, the Complaint  
9 alleges that “The Dirty specifically encourages users to upload their own ‘dirt’ which may  
10 include news, gossip, accusations, photos, videos, or text, and users can comment on posts  
11 submitted by others” (*Id.*). The Complaint describes John Doe as “an unknown individual  
12 who posted anonymously upon the host website: www.thedirty.com under the pseudonym  
13 of ‘psychic vampire slayer’ wherein that person defamed and libeled Plaintiff John Laake,  
14 too” (Doc. 1 paragraph 6). The Complaint alleges two claims, libel and copyright  
15 infringement (Doc. 1; *see* Doc. 12 at 3-4).

16           While the Court found the Complaint sufficient to allow the case to go forward with  
17 service and adversarial testing of Plaintiff’s claims, the Court reserved for later decision  
18 whether the Complaint can proceed beyond the pleading/motion to dismiss stage. *See* Doc.  
19 12 at 3-4. The Court expressed concerns about “whether Plaintiff’s libel claim may  
20 proceed in light of the Communications Decency Act (“CDA”), 47 U.S.C. § 230 and  
21 whether Plaintiff’s copyright infringement claim may proceed in light of the Digital  
22 Millennium Copyright Act (“DMCA”), specifically 17 U.S.C § 512.” *See* Doc. 12 at 4.

### 23           **B.     The First Amended Complaint**

24           In the proposed First Amended Complaint, Plaintiff seeks to make some drafting  
25 changes that do not affect the Court’s analysis regarding claims against The Dirty and John  
26 Doe. The Court recommends allowing such changes.<sup>1</sup> In the proposed First Amended  
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28       <sup>1</sup> *See, e.g.*, First Amended Complaint paragraph 3, which proposes to add: “The libel  
against him was first posted on thedirty.com on December 31, 2018” (Doc. 17-1 at 3).

1 Complaint, Plaintiff also seeks to add GoDaddy Inc. as a new defendant for the libel claim  
2 (First Amended Complaint paragraphs 23 and 48; Doc. 17-1 at 7, 13). As described by  
3 Plaintiff in his motion to amend, “Plaintiff asserts that Godaddy Inc. either knew or should  
4 have known that Dirty World is running a website that libels people, namely, the Plaintiff  
5 herein” (Doc. 17 at 1-2). As set forth in the proposed First Amended Complaint, Plaintiff  
6 seeks libel damages against GoDaddy Inc., asserting that GoDaddy Inc.’s “conduct in  
7 facilitating and providing a platform on an ongoing basis for the libelous website, the  
8 dirty.com contributed in creating an atmosphere of harm for Plaintiff” and that GoDaddy  
9 Inc. “ought to be found liable for contributory negligence, in that by continuing to host a  
10 website, thedirty.com, that [GoDaddy Inc.] knew or should have known libels individuals  
11 – primarily the Plaintiff” (Doc. 17-1 at 7, 13).

12 Here, Plaintiff fails to state a claim against GoDaddy Inc. upon which relief may be  
13 granted because GoDaddy Inc. is immunized from the libel claim in the proposed First  
14 Amended Complaint pursuant to the Communications Decency Act (“CDA”), 47 U.S.C. §  
15 230. As the Ninth Circuit stated:

16 Section 230 of the CDA immunizes providers of interactive computer  
17 services against liability arising from content created by third parties: “No  
18 provider ... of an interactive computer service shall be treated as the publisher  
19 or speaker of any information provided by another information content  
20 provider.” 47 U.S.C. § 230(c). This grant of immunity applies only if the  
21 interactive computer service provider is not also an “information content  
22 provider,” which is defined as someone who is “responsible, in whole or in  
23 part, for the creation or development of” the offending content. *Id.* §  
24 230(f)(3).

23 *Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1162  
24 (9<sup>th</sup> Cir. 2008) (footnotes omitted). Thus, undersigned recommends that Plaintiff’s  
25 proposed amendments in the First Amended Complaint adding GoDaddy Inc. as a  
26 defendant not be allowed to proceed and be dismissed.

27 Accordingly,  
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