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

Scott Rigsby, et al.,

No. CV-19-05710-PHX-MTL

Plaintiffs,

## ORDER

V.

GoDaddy Incorporated, et al.,

## Defendants.

Before the Court is the Motion to Dismiss Plaintiff's Third Amended Complaint filed by Defendants GoDaddy Inc., Inc., GoDaddy.com, LLC ("GoDaddy"), Go Daddy Operating Company, LLC, and Desert Newco, LLC (collectively, "Defendants"). (Doc. 89.) For the following reasons, Defendants' motion is granted; the Third Amended Complaint is dismissed with prejudice.<sup>1</sup>

## I. BACKGROUND

The following facts are derived from the Third Amended Complaint. (Doc. 86.) As a young man, Plaintiff Scott Rigsby suffered serious injuries when a tractor trailer collided with a pickup truck that itself had a trailer in tow. Mr. Rigsby was a passenger riding in the bed of that pickup. The impact ejected him. His body then became trapped by the pickup's trailer. He was dragged for about 324 feet. Mr. Rigsby spent the next 12 years in medical care and underwent 26 surgeries. Both of Mr. Rigsby's legs were ultimately amputated and

<sup>1</sup> Neither party has requested oral argument. Both parties have submitted legal memoranda and oral argument would not have aided the Court's decisional process. *See Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998); *see also* LRCiv 7.2(f); Fed. R. Civ. P. 78(b).

1 he was provided prosthetics. (*Id.* ¶¶ 5–6.)

2 In the years following the accident, Mr. Rigsby defied expectations by training for  
 3 and competing in Iron Man Triathlons. In 2007 he established the Scott Rigsby Foundation  
 4 Inc., the other plaintiff in this case, for the purpose of raising money for persons with  
 5 disabilities and promoting himself as a motivational speaker. Mr. Rigsby registered a  
 6 domain name, [www.scottrigsbyfoundation.org](http://www.scottrigsbyfoundation.org) (the “Domain Name”) with GoDaddy.com  
 7 for the foundation around that time. Plaintiffs acknowledge that to register a website with  
 8 GoDaddy, Mr. Rigsby necessarily consented to GoDaddy’s Universal Terms of Service  
 9 Agreement (“UTSA”). (*Id.* ¶ 30; at 32–75.)

10 Mr. Rigsby alleges that he “paid for the domain name through the first portion of  
 11 2018 through the GoDaddy.com website,” believed to be operated by GoDaddy Operating  
 12 Company, LLC. (*Id.* ¶ 21.) But, Mr. Rigsby alleges, there was a “glitch in GoDaddy.com’s  
 13 billing to Rigsby in the spring of 2018.” (*Id.* ¶ 25.) Mr. Rigsby alleges that he “did not  
 14 timely receive a bill for the cost of maintaining the domain name” and, as a result, he did  
 15 not pay the bill. (*Id.* ¶ 26.) Having not paid, his rights to the Domain Name were forfeited.  
 16 An unknown third party, which Plaintiffs refer to as the “hijacker,” then purchased the  
 17 Domain Name from GoDaddy once it became available. (*Id.* ¶ 27.) Mr. Rigsby attempted  
 18 to work with GoDaddy to re-register the Domain Name before filing this lawsuit. (*Id.*  
 19 ¶¶ 26–29.)

20 The website content now associated with the Domain Name promotes gambling.  
 21 (*Id.* ¶ 41.) It provides users with “betting tips, football betting picks, insider betting  
 22 information for a price, etc.—solicitations for activities with which The [Scott Rigsby]  
 23 Foundation has no connection.” (*Id.*) It “use[s] the name of The [Scott Rigsby] Foundation  
 24 and the name of Scott Rigsby” without consent. (*Id.*) Plaintiffs allege that Defendants  
 25 refuse “to terminate the use of the domain name [scottrigsbyfoundation.org](http://scottrigsbyfoundation.org) by the hijacker  
 26 and . . . allow Scott Rigsby to re-register the domain name.” (*Id.* ¶ 39.)

27 This case was initially filed in the United States District Court for the Northern  
 28 District of Georgia. That court granted GoDaddy’s Motion to Transfer Venue to the District

1 of Arizona. (Doc. 39.) Plaintiffs then filed their Second Amended Complaint in this Court,  
 2 which Defendants moved to dismiss for failure to state a claim. (Docs. 59, 62.) At the  
 3 conclusion of the parties' oral argument on the prior motion to dismiss, the Court granted  
 4 Defendants' motion for failure to state a cognizable claim for relief or "well pled  
 5 allegations to support any of those claims for relief." (Doc. 74 at 36.) It permitted Plaintiffs  
 6 21 days to file a Third Amended Complaint.

7 Plaintiff's Third Amended Complaint, now pending, asserts the same claims as did  
 8 the Second Amended Complaint: for injunctive relief, a federal Lanham Act claim,  
 9 invasion of privacy/publicity, trade libel, libel, declaratory relief, and violations of  
 10 A.R.S. § 44-1522 (unlawful trade practices). (Doc. 86 at 19–27.) Defendants now move to  
 11 dismiss the Third Amended Complaint for failure to state a claim and failure to correct the  
 12 legal deficiencies that led to the dismissal of the Second Amended Complaint. (Doc. 89.)  
 13 The motion is now fully briefed.<sup>2</sup> (Docs. 95, 98.)

14 **II. LEGAL STANDARD**

15 To survive a motion to dismiss, a complaint must contain "a short and plain  
 16 statement of the claim showing that the pleader is entitled to relief" such that the defendant  
 17 is given "fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atl.*  
 18 *Corp. v. Twombly*, 550 U.S. 545, 555 (2007) (quoting Fed. R. Civ. P. 8(a)(2); *Conley v.*  
 19 *Gibson*, 355 U.S. 41, 47 (1957)). Dismissal under Rule 12(b)(6) "can be based on the lack  
 20 of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable  
 21 legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). A  
 22 complaint should not be dismissed "unless it appears beyond doubt that the plaintiff can  
 23 prove no set of facts in support of the claim that would entitle it to relief." *Williamson v.*  
 24 *Gen. Dynamics Corp.*, 208 F.3d 1144, 1149 (9th Cir. 2000).

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25 <sup>2</sup> The Court admonishes counsel for both sides to review and comply with local rules in the  
 26 future. This District's Local Rules of Civil Procedure permit up to 17 pages for any motion  
 27 and response, and up to 11 pages for a reply. *See* LRCiv 7.2(e). Defendants submitted a  
 28 22-page motion (Doc. 89), and Plaintiffs submitted a 37-page response, without obtaining  
 leave. (Doc. 95.) The Court reviewed both filings in full, although it was not obligated to  
 do so.

1       The Court must accept material allegations in the Complaint as true and construe  
 2 them in the light most favorable to Plaintiff. *North Star Int'l v. Arizona Corp. Comm'n*,  
 3 720 F.2d 578, 580 (9th Cir. 1983). “Indeed, factual challenges to a plaintiff’s complaint  
 4 have no bearing on the legal sufficiency of the allegations under Rule 12(b)(6).” *Lee v. City*  
 5 *of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). Review of a Rule 12(b)(6) motion is  
 6 “limited to the content of the complaint.” *North Star Int'l*, 720 F.2d at 581. “Determining  
 7 whether a complaint states a plausible claim for relief will . . . be a context-specific task  
 8 that requires the reviewing court to draw on its judicial experience and common sense.”  
 9 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

10 **III. DISCUSSION**

11       Plaintiffs’ Third Amended Complaint makes few substantive changes to the  
 12 previously-dismissed Second Amended Complaint. The Court has identified only two new  
 13 factual allegations.<sup>3</sup> First, Plaintiffs allege in the Third Amended Complaint that only  
 14 GoDaddy—as opposed to the other defendants—has a valid contract (the UTSA) with  
 15 Plaintiffs. *See, e.g.*, Doc. 86 ¶ 10 (“ONLY GoDaddy.com, LLC has a purported  
 16 electronically signed ‘contract’ with Plaintiffs.”); ¶ 31 (“Neither GoDaddy Inc., GoDaddy  
 17 Operating Company, LLC nor Desert Newco, LLC had any contract with the Scott Rigsby  
 18 Foundation ever—not when The Foundation first procured the domain name in 2007, and  
 19 never subsequent to that date.”); ¶ 34 (“GoDaddy Inc., GoDaddy Operating Company, and  
 20 Desert Newco, LLC are in no way protected in their actions by the UTSA as they are not  
 21 parties to it.”). Second, the Third Amended Complaint alleges that the UTSA is  
 22 periodically revised, and the most recent revision provides that domain names  
 23 automatically renew by default. *See, e.g.*, *id.* ¶ 48 (“Now the USTA provides for automatic  
 24 renewal of domain names, a 180% [sic] change from the policy that allowed the  
 25 hijacking.”); ¶ 49 ([T]he aforementioned update to the USTA “100% acknowledges the  
 26 validity of Plaintiffs’ position from the inception of this case, and particularly the ongoing

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27       <sup>3</sup> Plaintiffs’ Third Amended Complaint does not comply with LRCiv 15.1 in that it does  
 28 not “indicate in what respect it differs from the pleading which it amends, by bracketing or  
 striking through the text to be deleted and underlining the text to be added.” LRCiv 15.1(a).

1 harm the previous policy the Defendants asserted to Rigsby in this very case caused.”). As  
 2 addressed below, neither of these allegations remedy the Second Amended Complaint’s  
 3 pleading deficiencies.

4 **A. Lanham Act (Count II)**

5 Plaintiffs assert a claim under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a),  
 6 which prohibits the use of false or misleading designations of origin, descriptions, or  
 7 representations in the sale of goods or services. They allege that Defendants “control” the  
 8 Domain Name and are “knowingly providing” it “in a way in which deceives as to whether  
 9 Scott Rigsby and his Foundation sponsor or approve of, or actually offer as a part of their  
 10 commercial activities, online betting services.” (Doc. 86 ¶ 52.) Plaintiffs also state that  
 11 Defendants are “misrepresenting the characteristics of the Foundation’s services,” and that,  
 12 but for Defendants’ hosting activities, “the online betting service’s hijacking activities  
 13 could never be seen.” (*Id.*) The Court agrees with Defendants that Plaintiffs have not stated  
 14 a valid Lanham Act claim.

15 **1. Anti-Cybersquatting Consumer Protection Act**

16 First, Plaintiffs’ Lanham Act claim fails because GoDaddy is exempt from liability  
 17 as a domain name registrar. The Anti-Cybersquatting Consumer Protection Act (“ACPA”)  
 18 “was enacted in 1999 to protect consumers and to prevent misappropriation of trademarks  
 19 by stopping conduct known as ‘cybersquatting.’” *City of Carlsbad v. Shah*, 850 F. Supp.  
 20 2d 1087, 1103 (S.D. Cal. 2012). The ACPA specifically limits liability for “domain name  
 21 registrars” under the Lanham Act: a “domain name registrar, a domain name  
 22 registry . . . shall not be liable for damages under this section for the registration or  
 23 maintenance of a domain name for another absent a showing of bad faith intent to profit  
 24 from such registration or maintenance of the domain name.” 15 U.S.C. § 1114(2)(D)(iii).  
 25 Because § 1114 sets forth remedies for the Lanham Act as a whole, Courts have interpreted  
 26 this provision to limit liability for domain name registrars under § 1125(a) of the Lanham  
 27 Act, as alleged here. *See, e.g., Petroliam Nasional Berhad v. GoDaddy.com, Inc.*, 737 F.3d  
 28 546, 551 (9th Cir. 2013) (“By its terms, Section 1114(2)(D)(iii), applies only to ‘this

1 section,’ meaning Section 1114. Section 1114, in turn, sets out remedies for the entire  
 2 Lanham Act, including actions brought under Section 1125(a.”); *InvenTel Prod., LLC v.*  
 3 *Li*, 406 F. Supp. 3d 396, 402 (D.N.J. 2019) (“Because Section 1114 provides the remedy  
 4 for all Lanham Act violations, Section 1114(2)(D) limits liability for Section 1125 claims  
 5 despite the ‘under this section’ phraseology.”).

6 There can be no dispute that GoDaddy is a domain name registrar. *See e.g.*,  
 7 *Petroliam Nasional Berhad*, 737 F.3d at 548 (“GoDaddy.com, Inc. (GoDaddy) is the  
 8 world’s largest domain name registrar.”); *Dent v. Lotto Sport Italia S.p.A.*, No. CV-17-  
 9 00651-PHX-ROS, 2018 WL 11318189, at \*1 (D. Ariz. Feb. 12, 2018) (GoDaddy is an  
 10 “internet domain name registrar”). Plaintiffs do not appear to dispute as much, alleging that  
 11 GoDaddy was the entity from which Plaintiffs “obtained” the Domain Name. (Doc. 86  
 12 ¶ 20.) Nonetheless, Plaintiffs argue that the ACPA cannot bar their § 1125(a) claim because  
 13 the ACPA “has nothing to do with a Lanham Act claim made under 15 U.S.C. 1125(a),  
 14 made as here, about false and misleading descriptions, representations, or designations  
 15 about service.” (Doc. 95 at 31.) This argument fails because, as noted, the ACPA clearly  
 16 limits domain name registrars from liability under § 1125(a). *See* 15 U.S.C. § 1114(2)(D);  
 17 *Petroliam Nasional Berhad*, 737 F.3d at 551. Accordingly, the Court finds that GoDaddy  
 18 is immune from liability under the Lanham Act, § 1125(a), “absent a showing of bad faith  
 19 intent to profit from such registration or maintenance of the domain name.” 15 U.S.C.  
 20 § 1114(2)(D)(iii).

21 Plaintiffs make no allegations that GoDaddy acted in such bad faith. They state that  
 22 Defendants “are knowingly providing the use of the domain name in a way in which  
 23 deceives” and are “misrepresenting the characteristics of the Foundation’s services.” (Doc.  
 24 86 ¶ 52.) This is not the same as a bad faith intent to profit. Indeed, as other courts have  
 25 recognized, “failing to prevent its computer system from registering the [Domain Name]  
 26 does not constitute ‘bad faith.’” *InvenTel Prod., LLC*, 406 F. Supp. 3d at 402. Plaintiffs  
 27 provide “no basis for the proposition that GoDaddy must predict which URLs will be used  
 28 for infringement purposes and proactively stop them from being registered.” *Id.* at 402–03.

1 Accordingly, Plaintiffs' Lanham Act claim against GoDaddy will be dismissed.

2 **2. "Use" in Commerce**

3 Further, Plaintiffs' Lanham Act claim fails against all Defendants because the Third  
 4 Amended Complaint does not adequately allege that Defendants' actions constitute a "use  
 5 in commerce." 15 U.S.C. § 1125(a)(1). To state a claim under § 1125(a), a plaintiff must  
 6 show that a defendant is using, in commerce, false or misleading designations of origin,  
 7 descriptions, or representations in the sale of goods or services. *See Brookfield Communs., Inc. v. West Coast Entertainment Corp.*, 174 F.3d 1036, 1046 (9th Cir. 1999). To use in  
 8 commerce means that a mark is "placed in any manner on the goods or their containers or  
 9 the displays associated therewith or on the tags or labels affixed thereto. . ." and the "goods  
 10 are sold or transported in commerce," or on services "when it is used or displayed in the  
 11 sale or advertising of services and the services are rendered in commerce." 15  
 12 U.S.C. § 1127.

14 Nowhere does the Third Amended Complaint allege that Defendants have "used"  
 15 Plaintiffs' marks in commerce. Indeed, numerous courts have found that mere control of a  
 16 domain name does not amount to "use" under the Lanham Act. *See, e.g., Petroleum*  
 17 *Nasional Berhad v. GoDaddy.com, Inc.*, 897 F. Supp. 2d 856, 866 (N.D. Cal. 2012), aff'd,  
 18 737 F.3d 546 (9th Cir. 2013) ("The forwarding of the Disputed Domains does not amount  
 19 to 'use' of the domain names. Domain name forwarding is a standard service that has been  
 20 provided by Go Daddy and virtually all registrars for more than a decade."); *Lockheed*  
 21 *Martin Corp. v. Network Sols., Inc.*, 985 F. Supp. 949, 957-59 (C.D. Cal. 1997), aff'd, 194  
 22 F.3d 980 (9th Cir. 1999) (finding that domain name registrar did not "use" the plaintiff's  
 23 mark in commerce; "something more than the registration of the name is required before  
 24 the use of a domain name is infringing").

25 Absent any other allegations as to how Defendants "used" Plaintiffs' mark, the  
 26 Lanham Act claim must fail. Plaintiffs' additions to the Third Amended Complaint do not  
 27 resolve the previously-dismissed Second Amended Complaint's pleading deficiencies. The  
 28 UTSA has no bearing on the fact that Defendants are statutorily barred from liability for

1 Plaintiffs' Lanham Act claim, nor that Plaintiffs have failed to allege that Defendants "use"  
 2 their marks in commerce. Count II of Plaintiffs' Third Amended Complaint is dismissed.<sup>4</sup>

3 **B. State Law Claims (Counts III, IV, V, VII)**

4 Plaintiffs also bring claims of invasion of privacy/publicity, trade libel, libel,<sup>5</sup> and  
 5 violations of A.R.S. § 44-1522, all under state law (Counts III, IV, V, VII). Defendants  
 6 argue that those claims should be dismissed, first, because the Communications Decency  
 7 Act ("CDA"), 47 U.S.C. § 230, shields them from liability. Plaintiffs state that this  
 8 argument "will have to be sorted out in discovery." (Doc. 95 at 25.) The Court agrees that  
 9 Defendants are statutorily barred from liability for Plaintiffs' state law claims on the face  
 10 of the Third Amended Complaint.

11 The CDA shields providers and users of interactive computer services from liability  
 12 for "information provided by another information content provider." 47 U.S.C. § 230(c)(1).  
 13 In general, § 230(c)(1) "protects websites from liability [under state or local law] for  
 14 material posted on the[ir] website by someone else." *Doe v. Internet Brands, Inc.*, 824 F.3d  
 15 846, 850 (9th Cir. 2016). Section 230 further provides that "[n]o cause of action may be  
 16 brought and no liability may be imposed under any State or local law that is inconsistent  
 17 with this section."<sup>6</sup> 47 U.S.C. § 230(e)(3). The "majority of federal circuits have interpreted  
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19 <sup>4</sup> Defendants also argue that the Lanham Act claim fails because Plaintiffs do not allege  
 20 that they "have protectable marks at all." (Doc. 89 at 22.) Based on the foregoing, the Court  
 need not reach this argument.

21 <sup>5</sup> The Third Amended Complaint does not specifically identify under which state's law  
 22 Plaintiffs bring these claims. (Doc. 86 at 23–26.) Defendants appear to assume that the  
 23 claims are brought under Arizona law (Doc. 89 at 26)—a reasonable interpretation, given  
 24 the "long-recognized principle that federal courts sitting in diversity 'apply state  
 substantive law and federal procedural law.'" *Hanna v. Plumer*, 380 U.S. 460, 465 (1965).  
 25 Nonetheless, Plaintiffs' response to the motion to dismiss indicates that the claims are  
 26 brought under Georgia law. (Doc. 95 at 21.) As discussed below, these state law claims are  
 barred by the Communications Decency Act, 47 U.S.C. § 230, regardless of whether  
 brought under Georgia or Arizona law.

27 <sup>6</sup> Section 230(e) excludes "intellectual property" claims. The Ninth Circuit has  
 28 "construe[d] the term 'intellectual property' to mean 'federal intellectual property'" in this  
 context. *Perfect 10, Inc. v. CCBill LLC*, 488 F.3d 1102, 1119 (9th Cir. 2007). Accordingly,  
 the Court does not examine this statute in the context of Plaintiffs' Lanham Act claim.

1 the CDA to establish broad ‘federal immunity to any cause of action that would make  
 2 service providers liable for information originating with a third-party user of the service.’”  
 3 *Perfect 10, Inc.*, 488 F.3d at 1118 (citing *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316,  
 4 1321 (11th Cir. 2006)). Section 230 immunity was created because “[i]t would be  
 5 impossible for service providers to screen each of their millions of postings for possible  
 6 problems.” *Zeran v. America Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997).

7 Numerous courts have confirmed GoDaddy’s immunity under the CDA. *See, e.g.*,  
 8 *Kruska v. Perverted Just. Found. Inc.*, No. CV08-0054-PHX-SMM, 2008 WL 2705377, at  
 9 \*2 (D. Ariz. July 9, 2008) (dismissing state law defamation, intentional infliction of  
 10 emotional distress, and negligence claims based on § 230 immunity); *Franklin v. X Gear*  
 11 *101, LLC*, No. 17-CIV-6452-GBD-GWG, 2018 WL 4103492, at \*8 (S.D.N.Y. Aug. 28,  
 12 2018) (dismissing state law claims for unjust enrichment and conversion against GoDaddy  
 13 as “barred by the Communications Decency Act, 47 U.S.C. § 230(c)(1), which provides  
 14 broad-based immunity to defendants who are providers of interactive computer services  
 15 from certain state law claims”); *Laake v. Dirty World LLC*, No. CV-19-5444-PHX-DMF,  
 16 2020 WL 1091217, at \*3 (D. Ariz. Jan. 8, 2020), report and recommendation adopted, No.  
 17 CV-19-05444-PHX-DMF, 2020 WL 1083830 (D. Ariz. Mar. 6, 2020) (“Plaintiff fails to  
 18 state a claim against GoDaddy Inc. upon which relief may be granted because GoDaddy  
 19 Inc. is immunized from the libel claim in the proposed First Amended Complaint pursuant  
 20 to the Communications Decency Act.”).

21 Section 230 immunity “has proved nearly limitless, protecting providers from  
 22 defamation, invasion of privacy, misappropriation of right of publicity, general negligence,  
 23 and intentional infliction of emotional distress, among other claims.” *Kruska*, 2008 WL  
 24 2705377, at \*2 (citations omitted). Here, Plaintiffs’ state law claims rely on Defendants’  
 25 provision of domain name registration services. The invasion of privacy/publicity claim,  
 26 for example, states, “Defendants have used Scott Rigsby’s name and the name of his  
 27 Foundation, which of course includes his name, without his consent. . .” (Doc. 86 ¶ 56.)  
 28 Plaintiffs’ trade libel claim states, “[s]ince the hijack of the site, daily, Defendants have

1 published false and defamatory statements concerning the Foundation's activities in the  
 2 gambling world . . ." (*Id.* ¶ 58.) And the libel claim also states that Defendants have  
 3 published false and defamatory statements "[s]ince the hijack of the site." (*Id.* ¶ 60.) At no  
 4 point do Plaintiffs assert that Defendants independently publish or generate the website  
 5 content at issue. Accordingly, Plaintiffs' state law claims for invasion of privacy/publicity,  
 6 trade libel, and libel (Counts III, IV, V) are statutorily barred.

7 Plaintiffs also allege violations of A.R.S. § 44-1522, the Arizona Consumer Fraud  
 8 Act. The elements of a private claim under this statute are "a false promise or  
 9 misrepresentation, made in connection with the sale or advertisement of merchandise, and  
 10 the plaintiff's consequent and proximate injury from reliance on such a misrepresentation."  
 11 *Ferren v. Westmed Inc.*, No. CV-19-00598-TUC-DCB, 2021 WL 2012654, at \*4 (D. Ariz.  
 12 May 20, 2021). The Third Amended Complaint alleges, as the apparent sole basis for this  
 13 claim, that Defendants have caused Plaintiffs "crushing damages," and that Plaintiffs are  
 14 "entitled to a judgment against Defendants in that amount."<sup>7</sup> (Doc. 86 at 27 ¶ 51.)

15 The Ninth Circuit Court of Appeals has recognized that, for purposes of § 230  
 16 immunity, "what matters is not the name of the cause of action—defamation versus  
 17 negligence versus intentional infliction of emotional distress—what matters is whether the  
 18 cause of action inherently requires the court to treat the defendant as the 'publisher or  
 19 speaker of content provided by another.'" *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1101–02  
 20 (9th Cir. 2009), as amended (Sept. 28, 2009). Put another way, "courts must ask whether  
 21 the duty that the plaintiff alleges the defendant violated derives from the defendant's status  
 22 or conduct as a 'publisher or speaker.' If it does, section 230(c)(1) precludes liability." *Id.*  
 23 at 1102. In this case, the Court "need not perform any intellectual gymnastics" to conclude  
 24 that Plaintiffs' claim under the Arizona Consumer Fraud Act relies on the allegation that  
 25 Defendants published false information. *Id.*; *see also* A.R.S. § 44-1522. Accordingly, this

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27 <sup>7</sup> Plaintiffs also reference, in passing, A.R.S. § 44-6561, which permits the Attorney  
 28 General to investigate and "take appropriate action" in the context of unlawful practices  
 under § 44-1522.

1 claim (Count VII), too, is dismissed pursuant to the CDA.<sup>8</sup>

2 **C. Declaratory Judgment (Count VI)**

3 Plaintiffs also seek a declaratory judgment, pursuant to the Declaratory Judgment  
 4 Act, 28 U.S.C. § 2201, that the UTSA is unenforceable between Plaintiffs and GoDaddy  
 5 “given the failure to comply with the electronic signature requirements of 15 U.S.C.  
 6 [§] 7001 and A.R.S. [§] 55-7001 [sic].” (Doc. 86 ¶ 62.) The Electronic Signatures in Global  
 7 and National Commerce Act, 15 U.S.C. § 7001 (“E-SIGN Act”), provides:

8 [W]ith respect to any transaction in or affecting interstate or  
 9 foreign commerce—

10 (1) a signature, contract, or other record relating to such  
 11 transaction may not be denied legal effect, validity, or  
 12 enforceability solely because it is in electronic form; and  
 13 (2) a contract relating to such transaction may not be denied  
 14 legal effect, validity, or enforceability solely because an  
 15 electronic signature or electronic record was used in its  
 16 formation.

17 15 U.S.C. § 7001(a). The Third Amended Complaint does not contain any well-pleaded  
 18 allegations as to the E-SIGN Act. Further, “[n]o provision of the [E-SIGN Act], nor any  
 19 case interpreting it, recognizes such a private right of action based on the electronic form  
 20 of a document.” *Yoshimura v. Takahashi*, 446 F. Supp. 3d 644, 652 (D. Haw. 2020)  
 21 (citation omitted). Accordingly, the E-SIGN Act does not provide a basis for the  
 22 declaratory judgment Plaintiffs seek.

23 Plaintiffs also invoke A.R.S. § “55-7001.” (Doc. 86 ¶ 62.) The Arizona Revised  
 24 Statutes do not contain a Title 55. Defendants interpret the Third Amended Complaint to  
 25 invoke A.R.S. § 44-7001, *et seq.*, the Arizona Electronic Transactions Act, under which a  
 26 “contract formed by an electronic record cannot be denied legal effect and enforceability  
 27 solely because an electronic record was used in its formation.” A.R.S. § 44-7007(B).

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28 <sup>8</sup> As before, Plaintiffs’ new allegations in the Third Amended Complaint in no way remedy  
 29 the pleading deficiencies of the Second Amended Complaint as to Plaintiffs’ state law  
 30 claims.

1 Plaintiffs have not provided authority indicating that the Arizona Electronic Transactions  
 2 Act permits a private right of action. They also do not include well-pleaded allegations of  
 3 purported violations of this statute. The Arizona Electronic Transactions Act is also not a  
 4 basis for Plaintiffs' claim for declaratory relief.

5 Plaintiffs also seek a declaratory judgment that the "Scott Rigsby Foundation Inc.  
 6 is the proper owner of the domain name scottrigsbyfoundation.org, so that Defendants must  
 7 allow Plaintiffs to use that domain name." (Doc. 86 ¶ 64.) The Declaratory Judgment Act  
 8 "only creates a remedy," not a cause of action. *Stock W., Inc. v. Confederated Tribes of the*  
 9 *Colville Rsr.,* 873 F.2d 1221, 1225 (9th Cir. 1989). Because Plaintiffs have otherwise  
 10 failed to assert that they are entitled to this relief, the Court grants Defendants' motion to  
 11 dismiss Plaintiffs' request for a declaratory judgment (Count VI).

12 **D. Injunctive Relief (Count I)**

13 The Third Amended Complaint also seeks injunctive relief "forbidding Defendants  
 14 until further order of the Court from letting the hijacker or anyone else other than The Scott  
 15 Rigsby Foundation, Inc. to register the domain name scottrigsbyfoundation.org." (Doc. 86  
 16 ¶ 46.) It is "well-settled that a claim for 'injunctive relief,' standing alone, is not a cause of  
 17 action." *Adelman v. Rheem Mfg. Co.*, No. 2:15-CV-00190 JWS, 2015 WL 4874412, at \*8  
 18 (D. Ariz. Aug. 14, 2015). As Plaintiffs have failed to state any other valid claims for relief,  
 19 this claim, too, is dismissed.<sup>9</sup>

20 **E. Leave to Amend**

21 Rule 15(a)(2) of the Federal Rules of Civil Procedure states that "[t]he court should  
 22 freely give leave [to amend a pleading] when justice so requires." Fed. R. Civ. P. 15(a)(2).  
 23 Exceptions to the general policy of granting leave exist "where the amendment:

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24  
 25 <sup>9</sup> Plaintiffs also argue in their response brief that Defendants' motion should be denied  
 26 because it includes a declaration from Jessica Hayden, a Business Operations Manager for  
 27 GoDaddy. (Doc. 89-1; Doc. 95 at 3.) Plaintiffs rely on Rule 12(d), which provides that,  
 28 "[i]f, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented  
 to and not excluded by the court, the motion must be treated as one for summary judgment  
 under Rule 56." Fed. R. Civ. P. 12(d). Because the Court does not consider Ms. Hayden's  
 declaration in granting Defendants' motion to dismiss, it does not address this argument.

1 (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay  
 2 in litigation; or (4) is futile.” *AmerisourceBergen Corp. v. Dialysis West, Inc.*, 465 F.3d  
 3 946, 951 (9th Cir. 2006). Here, the Court finds that amendment would both produce an  
 4 undue delay and would be futile.

5 As to undue delay, this case has been pending since August 25, 2019.<sup>10</sup> (Doc. 1.)  
 6 Plaintiffs have already amended the complaint three times. Also, relevant to the “delay  
 7 issue is whether the moving party knew or should have known the facts and theories raised  
 8 by the amendment in the original pleading.” *Jackson v. Bank of Hawaii*, 902 F.2d 1385,  
 9 1388 (9th Cir. 1990). Here, the Court dismissed Plaintiffs’ Second Amended Complaint,  
 10 stating it did not plead sufficient allegations for “any” of the claims for relief. (Doc. 74 at  
 11 3.) Plaintiffs then filed a Third Amended Complaint containing the exact same claims for  
 12 relief. (Doc. 59 at 17–25; Doc. 86 at 19–27.) The only additional factual allegations in the  
 13 Third Amended Complaint are regarding the USTA, none of which remedy the various  
 14 pleading deficiencies of the Second Amended Complaint. There is no conceivable reason  
 15 that Plaintiffs would know additional facts or theories to raise in a Fourth Amended  
 16 Complaint that they have not raised in the first four filings. Relatedly, given Plaintiffs’  
 17 opportunities to amend the complaint, the Court finds that further amendment would be  
 18 futile. The Third Amended Complaint will be dismissed with prejudice.

19 **IV. CONCLUSION**

20 Accordingly,

21 **IT IS ORDERED** that Defendants’ Motion to Dismiss Plaintiff’s Third Amended  
 22 Complaint With Prejudice (Doc. 89) is **granted**. The Third Amended Complaint is  
 23 dismissed with prejudice.

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<sup>10</sup> The case was transferred to this District on December 2, 2020. (Doc. 53.)

**IT IS FURTHER ORDERED** directing the Clerk of the Court to terminate this case and enter judgment accordingly.

Dated this 14th day of June, 2021.

Michael T. Fiburdi

Michael T. Liburdi

United States District Judge