

1 JEFFREY L. GREYBER (*Pro Hac Vice Admitted*)
2 Email: jgreyber@greyberlaw.com
3 GREYBER LAW, PLLC
4 9170 Glades Rd., #161
5 Boca Raton, FL 33434
6 Telephone: (561) 702-7673
7 Facsimile: (833) 809-0137

8 CONSTANCE J. YU (SBN 182704)
9 E-mail: cyu@plylaw.com
10 PUTTERMAN | YU | WANG LLP
11 345 California Street, Suite 1160
12 San Francisco, CA 94104-2626
13 Telephone: (415) 839-8779
14 Facsimile: (415) 737-1363

15 *Attorneys for Plaintiff Jason Fyk*

16 **UNITED STATES DISTRICT COURT**
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

18 JASON FYK,

19 *Plaintiff,*

20 v.

21 FACEBOOK, INC.,

22 *Defendant.*

Case No. 4:18-cv-05159- HSG

**PLAINTIFF’S NOTICE OF FILING
SUPPLEMENTAL AUTHORITY IN
FURTHER SUPPORT OF [D.E. 61] AND
[D.E. 66]**

BEFORE: HON. H.S. GILLIAM, JR.

LOCATION: OAKLAND, CT. 2, FL. 4

1 Plaintiff, Jason Fyk, through undersigned counsel and pursuant to N.D. Cal. L.R. 7-3(d), files
2 this Notice of Filing Supplemental Authority in Further Support of (a) Plaintiff’s June 16, 2023, Second
3 Motion for Relief Pursuant to F.R.C.P. 60(b) to Vacate and Set Aside Entry of Judgment [D.E. 61], and
4 (b) Plaintiff’s September 19, 2023, F.R.C.P. 5.1 Motion Re: the (Un)constitutionality of 47 U.S.C. §
5 230(c)(1) [D.E. 66]. Plaintiff respectfully submits the following as supplemental authority in further
6 support of his pending Rule 60(b) motion and Rule 5.1 constitutional challenge: *Dangaard, et al. v.*
7 *Instagram, LLC, et al.*, No. C 22-01101-WHA (N.D. Cal. Nov. 30, 2022), attached for ease of reference.¹

8 Plaintiff’s pending Rule 60(b) motion and Rule 5.1 constitutional challenge relate to the Good
9 Samaritan intelligible principle / general provision applying to all of 47 U.S.C. § 230(c) (“CDA”), not
10 just Section 230(c)(2) (as Judge White decided here in ratifying dismissal, *see* [D.E. 51]). With
11 anticompetition / unfair competition (Count II of Plaintiff’s Verified Complaint, [D.E. 1]) being the
12 antithesis of Good Samaritanism, the *Dangaard* decision (involving Facebook / Meta) attached hereto
13 holds that unfair competition lawsuits are not subject to CDA immunity under Section 230(c)(1) as well:

14 While *Zango* and *Enigma* applied only to Section 230(c)(2), and the parties in *Enigma* were
15 direct competitors, the same policy concerns arise here: Meta defendants’ ‘filtering practices
16 [are] aimed at suppressing competition’ in the online adult entertainment business. In fact,
17 Meta defendants could have employed Section 230(c)(2) to attempt to defend themselves –
18 they claim to be removing obscene material from their platforms in good faith, which is what
19 Section 230(c)(2) immunizes. But they instead chose Section 230(c)(1) to shield themselves.
20 To approve Meta defendants’ CDA defense would make Section 230(c)(1) a backdoor to CDA
21 immunity — ‘contrary to the CDA’s history and purpose.’ Thus, congressional policy weighs
22 heavily against Meta defendants’ CDA defense.

23 *Dangaard*, No. 3:22-cv-01101-WHA, [D.E. 101] at 9. Per L.R. 7-3(d), we now refrain from argument.

24 Dated: December 15, 2023.

25 Respectfully Submitted,

26 /s/ Jeffrey Greyber
27 **Jeffrey L. Greyber, Esq.**
28 GREYBER LAW, PLLC
Counsel for Plaintiff

¹ *Dangaard* has not been published (*i.e.*, there is no reporter citation), in that the only Westlaw version is a slip copy. We accordingly attach the actual Court order from the *Dangaard* docket found on PACER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 15, 2023, I electronically filed the foregoing documents with the Clerk of the Court by using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record *via* Notices of Electronic Filing generated by CM/ECF.

/s/ Jeffrey Greyber
Jeffrey Greyber, Esq.

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