

1 Sean D. Meenan (SBN: 260466)
smeenan@winston.com
2 **WINSTON & STRAWN LLP**
101 California Street
3 San Francisco, CA 94111
Telephone: (415) 591-1000
4 Facsimile: (415) 591-1400

5 Heather Lamberg (*pro hac vice*)
hlamberg@winston.com
6 **WINSTON & STRAWN LLP**
1700 K Street, NW
7 Washington, DC 20006
Telephone: (202) 282-5000
8 Facsimile: (202) 282-5100

9 Lev Tsukerman (SBN: 319184)
ltsukerman@winston.com
10 **WINSTON & STRAWN LLP**
333 S. Grand Avenue
11 Los Angeles, CA 90071-1543
Telephone: (213) 615-1700
12 Facsimile: (213) 615-1750

13 Attorneys for Defendants
ZILLOW GROUP, INC. and ZILLOW, INC.
14

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

17
18 924 BEL AIR ROAD, LLC, a
California Limited Liability
19 Company,

20 Plaintiff,

21 v.

22 ZILLOW GROUP, INC., a
Washington Corporation; and
23 ZILLOW, INC., a Washington
Corporation; and DOES 1 through
24 10, inclusive,

25 Defendants.
26
27
28

Case No. 2:19-CV-01368-ODW-AFM

Assigned to: Judge Otis D. Wright II

**DEFENDANTS’ NOTICE OF MOTION
AND MOTION TO DISMISS
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Complaint Filed: February 24, 2019

Date: June 24, 2019

Time: 1:30 PM

Place: Courtroom 5D

TABLE OF CONTENTS

Page

1

2

3 NOTICE OF MOTION..... v

4 MEMORANDUM OF POINTS AND AUTHORITIES 1

5 I. INTRODUCTION 1

6 II. RELEVANT ALLEGATIONS 1

7 III. LEGAL STANDARD 4

8 IV. ARGUMENT 5

9 A. The Communications Decency Act bars this suit..... 5

10 1. Zillow is an “interactive computer service.” 6

11 2. Bel Air’s claim treats Zillow as a “publisher or speaker.” 7

12 3. “Another . . . content provider” supplied the information..... 10

13 B. The complaint has failed to plausibly allege negligence..... 11

14 1. Zillow had no legal duty to protect Bel Air from third parties..... 12

15 2. The complaint contradicts its own allegations of a breach. 14

16 3. Bel Air’s allegations of causation are conclusory. 16

17 4. Bel Air’s alleged harm is too speculative..... 18

18 V. CONCLUSION..... 19

19

20

21

22

23

24

25

26

27

28

TABLE OF AUTHORITIES

Page(s)

Cases

AF Holdings, LLC v. Doe,
 No. 12-2048, 2012 WL 4747170 (N.D. Cal. Oct. 3, 2012)..... 13

Andrews v. Wells,
 204 Cal. App. 3d 533 (1988) 13, 14

Anthony v. Yahoo! Inc.,
 421 F. Supp. 2d 1257 (N.D. Cal. 2006)..... 10

Artiglio v. Corning Inc.,
 18 Cal. 4th 604 (1998)..... 12

Ashcroft v. Iqbal,
 556 U.S. 662 (2009).....*passim*

Barnes v. Yahoo!, Inc.,
 570 F.3d 1096 (9th Cir. 2009) 6, 7, 8, 9

Bell Atl. Corp. v. Twombly,
 550 U.S. 544 (2007)..... 5, 16, 18

Carafano v. Metrosplash.com, Inc.,
 339 F.3d 1119 (9th Cir. 2003) 6, 10

Caviness v. Horizon Cmty. Learning Ctr., Inc.,
 590 F.3d 806 (9th Cir. 2010) 5, 16

Daniels-Hall v. Nat’l Educ. Ass’n,
 629 F.3d 992 (9th Cir. 2010) 15, 17

Doe v. MySpace, Inc.,
 528 F.3d 413 (5th Cir. 2008) 9

Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC,
 521 F.3d 1157 (9th Cir. 2008) 7, 8, 10, 11

Gardner v. Health Net, Inc.,
 No. 10-2140, 2010 WL 11597979 (C.D. Cal. Aug. 12, 2010)..... 18, 19

1 *Herman v. U.S. Bank Nat’l Ass’n*,
 2 No. 13-233, 2013 WL 12147582 (C.D. Cal. Apr. 2, 2013)..... 5

3 *Howard v. Johnson*,
 4 No. 13-4929, 2014 WL 1246140 (C.D. Cal. Jan. 10, 2014) 15

5 *Kimzey v. Yelp! Inc.*,
 6 836 F.3d 1263 (9th Cir. 2016)*passim*

7 *Lawrence v. La Jolla Beach & Tennis Club, Inc.*,
 8 231 Cal. App. 4th 11 (2014) 16, 17, 18

9 *Mardirosian v. Nationwide Credit, Inc.*,
 10 No. 12-4342, 2012 WL 13035476 (C.D. Cal. Oct. 10, 2012) 18

11 *Melton v. Boustred*,
 12 183 Cal. App. 4th 521 (2010) 13, 14

13 *Niece v. Elmview Grp. Home*,
 14 929 P.2d 420 (Wash. 1997) 12

15 *Pedroza v. Bryant*,
 16 677 P.2d 166 (Wash. 1984) 12

17 *Pirozzi v. Apple Inc.*,
 18 913 F. Supp. 2d 840 (N.D. Cal. 2012)..... 13, 14

19 *Pour v. Ocwen Mortg. Servicing, Inc.*,
 20 No. 17-4141, 2017 WL 10523525 (C.D. Cal. Nov. 29, 2017)..... 11, 12

21 *Rutman Wine Co. v. E. & J. Gallo Winery*,
 22 829 F.2d 729 (9th Cir. 1987) 11

23 *Sentry Ins. v. U.S. Reports, Inc.*,
 24 No. 05-6174, 2007 WL 9725017 (C.D. Cal. June 13, 2007) 12

25 *Ukiru v. Fed. Home Loan Mortg. Corp.*,
 26 No. 12-1667, 2013 WL 12058066 (C.D. Cal. Apr. 1, 2013)..... 5

27 **Statutes**

28 Communications Decency Act, 47 U.S.C. § 230*passim*

1 **Other Authorities**

2 Fed. R. Civ. P. 12(b)(6)*passim*

3 *Zillow Terms of Use*, <https://www.zillow.com/corp/Terms.htm> (last
4 visited Apr. 12, 2019) 11

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on June 24, 2019, at 1:30 PM, or as soon
3 thereafter as this matter may be heard, in Courtroom 5D of the above-titled court,
4 located at 350 West 1st Street, Los Angeles, California 90012, the Honorable Judge
5 Otis D. Wright II presiding, Defendants Zillow Group, Inc. and Zillow, Inc.
6 (collectively, “Zillow”) will and hereby do move the Court pursuant to Rule 12(b)(6)
7 of the Federal Rules of Civil Procedure to dismiss the complaint with prejudice for
8 failure to state a claim upon which relief can be granted.

9 Specifically, Zillow seeks dismissal of the complaint on the grounds that
10 Plaintiff’s negligence claim is barred by the immunity provisions of the
11 Communications Decency Act. It also fails on the merits to state a plausible claim of
12 negligence, as (1) Zillow owed no legal duty to Plaintiff under the circumstances,
13 (2) the exhibits attached to the complaint contradict its allegations of a breach, (3) the
14 complaint’s allegations of causation are bald and conclusory, and (4) its allegations of
15 harm are too speculative to support a claim for relief.

16 The motion is based upon this notice, the accompanying Memorandum of Points
17 and Authorities, and the record in this action. The motion is made following a
18 conference of counsel, *see* L.R. 7-3, which took place on April 9, 2019.

19 Dated: April 19, 2019

WINSTON & STRAWN LLP

21 By: /s/ Sean D. Meenan
22 Sean D. Meenan
23 Heather Lamberg (*pro hac vice*)
Lev Tsukerman

24 Attorneys for Defendants
25 ZILLOW GROUP, INC. and
26 ZILLOW, INC.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This suit alleges that Plaintiff has been unable to sell a \$150 million mega-mansion in the prestigious Bel Air neighborhood because Zillow Group, Inc. and Zillow, Inc. (collectively, “Zillow”) negligently published inaccurate information posted by a third party on its webpage—namely, that the property sold below list price. Plaintiff’s negligence claim suffers from at least two fatal flaws.

First, the immunity provisions of the federal Communications Decency Act (“CDA”), which were designed to shield website operators from liability for user-generated content too voluminous to review manually, bar state-law claims just like this one. In essence, the CDA immunizes online services that host or publish third-party user-generated content from laws (such as negligence claims) that might otherwise hold those services liable for things their users have said. The Ninth Circuit and district courts have repeatedly dismissed claims—based on the CDA—where a website user posted false information. Plaintiff’s allegations are no different from those cases and fall squarely within CDA immunity.

Second, even if the CDA’s immunity does not apply, Plaintiff’s negligence claim fails on several other grounds: (1) Zillow owes no legal duty to protect Plaintiff from the fraudulent acts of third parties, (2) the complaint’s exhibits contradict its allegations of a breach, (3) the complaint contains no facts to support its conclusory allegation of causation, and (4) its allegations of harm are too speculative to satisfy the federal pleading standard.

For these reasons, Plaintiff’s complaint should be dismissed with prejudice for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

II. RELEVANT ALLEGATIONS

Seattle-based Zillow operates an online database of real estate and rental properties alleged to be “the leading real estate and rental marketplace.” Compl. ¶¶ 5–6, 11 (quoting *What Is Zillow?*, <https://www.zillow.com/corp/About.htm> (last visited Apr.

1 11, 2019)), ECF No. 1. To further its mission of “empowering consumers with data,
2 inspiration and knowledge around the place they call home,” Zillow’s website publishes
3 informational pages (called “Residence Pages” in the complaint) about more than 110
4 million homes. *Id.* ¶¶ 9–10. Each Residence Page displays data about a given resi-
5 dence, such as its school district, “lot dimensions,” and “price and tax history.” *Id.* ¶ 10.

6 One such Residence Page lies at the center of this case. It features a residential
7 property located in the “prestigious” Bel Air section of Los Angeles and developed in
8 2016 by Bruce Makowsky, “one of Los Angeles’s most prolific home builders,” who
9 owns the property through a California-based single-member entity called 924 Bel Air
10 Road, LLC (plaintiff here, referred to as “Bel Air” for short). *Id.* ¶¶ 4, 12–13, 16; *id.* at
11 20.¹ The property features a four-level, 38,000-square-foot single-family home with 31
12 bathrooms, 5 bars, and amenities such as a “massage studio,” a bowling alley, a fully-
13 stocked “auto gallery,” a 40-seat theater, and a “candy wall.” *Id.* at 20. Makowsky has
14 touted the home as his “greatest masterpiece” and “[t]he pinnacle of splendor and
15 luxury,” with its “ultra-exclusive” location and “breathtaking” ocean views. *Id.* ¶¶ 12,
16 15. Currently for sale through two brokers, it comes with an equally “breathtaking”
17 price tag: \$150,000,000. *Id.* ¶ 12.

18 Perhaps not surprisingly at this price point, a buyer has proven elusive since the
19 home was placed on the market more than two years ago. It was first listed in January
20 2017 for \$250,000,000. *Id.* at 17. It was taken off the market five months later, only to
21 be relisted in April 2018 at \$188,000,000, a reduction of almost 25 percent. *Id.* In mid-
22 January 2019, the price was reduced another 20 percent, to \$150 million. *Id.*

23 The events that gave rise to this litigation took place three weeks later. An
24 investigation later conducted by Zillow revealed that on February 6, a person referred
25 to as “User X,” who was unknown to both Bel Air and Zillow, misused the website’s
26 “claim your home” feature, which allows property owners or their representatives to

27 _____
28 ¹ Citations to pages of the complaint (as opposed to paragraph numbers) refer to the page numbers in
the header applied by the CM/ECF system, not to the pages of the original document.

1 add or clarify information on the property’s Residence Page. *Id.* at 36. Specifically,
2 User X violated Zillow’s terms by using a qq.com email address, a phone number with
3 a false area code (177), and an IP address originating from China to fraudulently “claim”
4 the home and post false information on its Residence Page. *Id.* at 34–36.

5 On or about February 6, User X first stated that the Bel Air had property sold on
6 February 5 for \$110,000,000. *Id.* at 32, 36. On February 7, one of Bel Air’s brokers
7 used the Residence Page to make their own edits to the listing. *Id.* at 32. Then, on
8 February 10, User X again published false information about the Bel Air property,
9 claiming it sold for \$90,540,000 on February 9. *Id.* at 32, 36–37. Shortly afterward,
10 User X represented for the third time that the home had sold, this time on February 10
11 for \$94,300,000. *Id.* ¶ 17(d); *id.* at 37. In fact, the home had not sold; it was still for
12 sale for \$150,000,000. *Id.* ¶¶ 12, 18.

13 At some point before 9 a.m. on February 7, 2019, Bel Air learned that the first of
14 these supposed “sales” (the one for \$110 million) was showing on the property’s
15 Residence Page. *See id.* ¶ 17(a); *id.* at 28. A Zillow Help Center representative
16 responded that afternoon and explained that technicians were “actively working towards
17 a resolution.” *Id.* at 27. On February 9, Bel Air’s counsel notified Zillow of the second
18 false “sale,” for \$90.54 million. *Id.* ¶ 17(c); *id.* at 26. On February 12, Zillow confirmed
19 that “[t]he erroneous sold transaction ha[d] been removed.” *Id.* at 26.

20 Despite Zillow promptly investigating and removing the incorrect information
21 from the website, Bel Air began threatening legal action on February 12. *Id.* at 42–43.
22 Zillow again quickly responded that it was “diligently looking into th[e] issue,” and all
23 incorrect sale information was removed from the Residence Page. *Id.* at 37, 41. On
24 February 14, Zillow informed Bel Air of the preliminary results of its investigation into
25 the matter (discussed above). *Id.* at 32, 36. Although Zillow could not verify the source
26 of one other posting Bel Air had challenged, an advertisement about an open house that
27 counsel claims was not accurate, Zillow noted that it coincided with edits made by Bel
28 Air’s broker on February 7. *See id.* ¶ 17(b); *id.* at 31–32.

1 In addition to removing the posts, Zillow blocked User X’s email address as a
2 precaution. *Id.* at 37. And after another unknown email address tried to claim the home,
3 Zillow blocked that address as well and ensured that Bel Air “claimed” the home in the
4 system so that no other user would be able to claim it. *Id.* at 30–31. Even though Zillow
5 had complied with Bel Air’s requests and had taken prompt (and successful) action to
6 remove the information User X had posted, *see id.* at 31–32, Bel Air filed the instant
7 complaint in this Court on February 24.²

8 The complaint advances a single claim of negligence. Compl. 8–9. Bel Air
9 contends that Zillow “owed [it] a duty of due care because it was foreseeable that [it]
10 would be harmed by [the] publication of false information” supplied by User X, and
11 Zillow “should have known that the information was false” and lacked “safeguards as
12 to who can falsely report this information.” *Id.* at 8 ¶¶ 2, 3, 9. Bel Air claims that it
13 “was harmed as a proximate result,” it “ha[s] not been able to sell the Property,” and
14 the listing price has been “corrupt[ed] . . . dramatically.” *Id.* at 9 ¶¶ 10–11. In support
15 of these allegations, Bel Air attached an exhibit three times the length of the complaint,
16 containing printouts of the relevant Residence Page as well as the exchanges discussed
17 above between its counsel and Zillow. *See id.* at 12–43.

18 Neither the allegations of Bel Air’s complaint nor its attachments, however, state
19 a negligence claim that satisfies the federal pleading standard—its claims are both
20 legally flawed and factually deficient. Because the complaint “fail[s] to state a claim
21 upon which relief can be granted,” Zillow now moves to dismiss. Fed. R. Civ.
22 P. 12(b)(6).

23 **III. LEGAL STANDARD**

24 To survive a Rule 12(b)(6) motion to dismiss, “a complaint must contain
25 sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on
26

27 ² In addition to Zillow, Bel Air has also named individual “Defendants 1 through 10.” Compl. ¶ 7.
28 Because all of the complaint’s allegations apply to these individuals “in the same fashion as” they
apply to Zillow, *id.*, this analysis covers both.

1 its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v.*
2 *Twombly*, 550 U.S. 544, 570 (2007)). A plaintiff must plead enough facts to support
3 “the reasonable inference that the defendant is liable for the misconduct alleged,” *Iqbal*,
4 556 U.S. at 678, and “raise a right to relief above the speculative level,” *Twombly*, 550
5 U.S. at 555. “[A] formulaic recitation of the elements of a cause of action,” *id.*,
6 consisting of “[t]hreadbare recitals of the elements . . . supported by mere conclusory
7 statements, do[es] not suffice.” *Iqbal*, 556 U.S. at 678; *see also Caviness v. Horizon*
8 *Cnty. Learning Ctr., Inc.*, 590 F.3d 806, 812 (9th Cir. 2010).

9 If the complaint does not meet this standard, leave to amend is not warranted
10 when amendment would be futile. *Herman v. U.S. Bank Nat’l Ass’n*, No. 13-233, 2013
11 WL 12147582, at *2 (C.D. Cal. Apr. 2, 2013). Amendment is futile when “no set of
12 facts would entitle [the plaintiff] to relief.” *See Ukiru v. Fed. Home Loan Mortg. Corp.*,
13 No. 12-1667, 2013 WL 12058066, at *6 (C.D. Cal. Apr. 1, 2013).

14 As discussed below, Bel Air cannot meet this standard. And because amendment
15 would be futile, leave to amend should be denied.

16 **IV. ARGUMENT**

17 Bel Air’s complaint must be dismissed. This negligence suit is barred by the
18 Communications Decency Act, which immunizes an internet provider like Zillow from
19 state-law claims directed toward its role as a “publisher or speaker” of content devel-
20 oped by third parties. Even if this Court did reach the merits, dismissal is still appro-
21 priate, as Bel Air has failed to state a plausible claim of negligence under Rule 12(b)(6).

22 **A. The Communications Decency Act bars this suit.**

23 Bel Air concedes in its complaint that “Congressional laws . . . immunize
24 websites who allow users to publish information,” but argues that those “laws” are
25 “outdated.” Compl. ¶ 19. To the contrary: in the absence of any action by Congress,
26 § 230 of the CDA, which indeed “immunizes providers of interactive computer services
27 against liability arising from content created by third parties,” is very much alive and
28 well. *See Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1265 (9th Cir. 2016).

1 Section 230 is clear that “[n]o provider or user of an interactive computer service
2 shall be treated as the publisher or speaker of any information provided by another
3 information content provider,” 47 U.S.C. § 230(c)(1), and “[n]o cause of action may be
4 brought and no liability may be imposed under any State or local law that is inconsistent
5 with this section,” *id.* § 230(e)(3). This subsection thus “creates a baseline rule: no
6 liability for publishing or speaking the content of other information service providers.”
7 *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1108 (9th Cir. 2009), *as amended* (Sept. 28,
8 2009). Consequently, “Internet services [are] immun[e] from liability for publishing
9 false or defamatory material so long as the information was provided by another party.”
10 *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1122 (9th Cir. 2003).

11 Bel Air’s claim that Zillow is liable for false statements published by a third party
12 about the property is precisely the type of cause of action barred by the CDA.
13 Section 230(c)(1)’s immunity provision applies to “(1) a provider or user of an
14 interactive computer service (2) whom a plaintiff seeks to treat, under a state law cause
15 of action, as a publisher or speaker (3) of information provided by another information
16 content provider.” *Kimzey*, 836 F.3d at 1268 (quoting *Barnes*, 570 F.3d at 1100–01).
17 “[R]eviewing courts have treated § 230(c) immunity as quite robust, adopting a
18 relatively expansive definition of ‘interactive computer service’ and a relatively
19 restrictive definition of ‘information content provider.’” *Carafano*, 339 F.3d at 1123
20 (footnote omitted) (quoting 47 U.S.C. § 230(f)(2)–(3)). Based on the allegations set
21 forth in the complaint, Zillow satisfies each of these three criteria and thus is immunized
22 from Bel Air’s negligence claim.

23 **1. Zillow is an “interactive computer service.”**

24 Zillow “is plainly a provider of an ‘interactive computer service,’ a term that [is]
25 interpret[ed] ‘expansive[ly]’ under the CDA.” *See Kimzey*, 836 F.3d at 1268 (third
26 alteration in original) (citation omitted) (quoting *Carafano*, 339 F.3d at 1123); *see also*
27 47 U.S.C. § 230(f)(2) (defining “interactive computer service” as “any information
28 service, system, or access software provider that provides or enables computer access

1 by multiple users to a computer server”). “[T]he most common interactive computer
 2 services are websites.” *Kimzey*, 836 F.3d at 1268 (quoting *Fair Hous. Council of San*
 3 *Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1162 n.6 (9th Cir. 2008) (en
 4 banc)); *see, e.g., id.* at 1162 & n.6 (online review site); *Roommates*, 521 F.3d at 1162
 5 (roommate-matching website); *Barnes*, 570 F.3d at 1098, 1101 & n.5 (web service and
 6 search engine). Zillow, “an online residential real estate database” that hosts member
 7 profiles, reviews, and search capabilities, falls within this definition. *See* Compl. ¶ 9.

8 2. Bel Air’s claim treats Zillow as a “publisher or speaker.”

9 The second element is established here because Bel Air seeks to “treat [Zillow],
 10 under a state law cause of action, as a publisher or speaker.” *See Kimzey*, 836 F.3d at
 11 1268 (quoting *Barnes*, 570 F.3d at 1100–01). “[W]hat matters is not the name of the
 12 cause of action—defamation versus negligence versus intentional infliction of
 13 emotional distress—what matters is whether the cause of action inherently requires the
 14 court to treat the defendant as the ‘publisher or speaker’ of content provided by
 15 another.” *Barnes*, 570 F.3d at 1101–02; *see also id.* at 1102 (“[P]ublication involves
 16 reviewing, editing, and deciding whether to publish or to withdraw from publication
 17 third-party content.” (citing *Roommates*, 521 F.3d at 1170–71)). The key question is
 18 therefore “whether the duty that the plaintiff alleges the defendant violated derives from
 19 the defendant’s status or conduct as a ‘publisher or speaker.’ If it does, section 230(c)(1)
 20 precludes liability.” *Id.* at 1102. Here, there is no doubt that Bel Air seeks to hold
 21 Zillow liable for allowing a third party to publish incorrect information on its website—
 22 whether it is the publication itself or the allegation of inadequate safeguards to protect
 23 against false publication. *See* Compl. at 9 ¶ 9.

24 *Barnes* is materially analogous to the facts at hand. In that case, a jilted boyfriend
 25 used Yahoo’s member-profile function to impersonate his ex-girlfriend and create a
 26 fake profile to use against her for “revenge-porn” purposes, humiliating her by soliciting
 27 unsuspecting men and posting nude photographs. *Barnes*, 570 F.3d at 1098. Unlike
 28 Zillow in this case, though, Yahoo did not take prompt action to address the problem;

1 it left the fake profiles up for months, until after the girlfriend sued. *Id.* at 1098–99. As
2 relevant here, one of her claims alleged “a species of negligence” in which Yahoo,
3 having undertaken a service that it “should [have] recognize[d w]as necessary for [her]
4 protection,” was liable for harms “resulting from [its] failure to exercise reasonable
5 care,” which “increase[d] the risk of such harm.” *Id.* at 1099, 1102.

6 The plaintiff argued that, because Yahoo’s failure to protect her from the harmful
7 posts—“not the publishing or failure to withdraw from publication”—was “the source
8 of liability,” her negligence claim fell outside the scope of § 230. *Id.* at 1102. The
9 Ninth Circuit was “not persuaded.” *Id.* The conduct the plaintiff contended was
10 negligent was “quintessentially that of a publisher,” and, accordingly, “the duty that
11 [she] claims Yahoo violated derives from Yahoo’s conduct as a publisher.” *Id.* at 1103.
12 The court “insisted that section 230 protects from liability ‘any activity that can be
13 boiled down to deciding whether to exclude material that third parties seek to post
14 online.’” *Id.* (quoting *Roommates*, 521 F.3d at 1170–71); *see also id.* at 1101 (citing
15 *Doe v. MySpace, Inc.*, 528 F.3d 413, 420 (5th Cir. 2008) (holding that CDA barred
16 negligence claims by teenage assault victim and her parents “notwithstanding
17 [plaintiffs’] assertion that they only seek to hold MySpace liable for its failure to
18 implement measures that would have prevented [the victim] from communicating with
19 [her abuser, who had contacted her through the site]. Their allegations are merely
20 another way of claiming that MySpace was liable for publishing the communications
21 and they speak to MySpace’s role as a publisher of online third-party-generated
22 content.”). The Ninth Circuit thus reiterated that “determin[ing] whether or not to
23 prevent [the] posting” of information was “precisely the kind of activity for which
24 section 230 was meant to provide immunity.” *Roommates*, 521 F.3d at 1170.

25 Here, too, Bel Air’s negligence claim—whether characterized as the reporting of
26 false information or the failure to prevent the reporting of the false information in the
27 first place—is ultimately “directed against [Zillow] in its capacity as a publisher or
28 speaker.” *See Kimzey*, 836 F.3d at 1268 (citing *Barnes*, 570 F.3d at 1102). Although

1 Bel Air punctuates its complaint with a few attempts, as in *Barnes* and *Doe*, to reposition
 2 its negligence claim as an attack on Zillow’s “careless business practices,” Compl. ¶ 23,
 3 and lack of “safeguards” against the reporting of false information, *id.* ¶ 19, these are
 4 the same arguments rejected by the Ninth Circuit in *Barnes*, where the court held that
 5 allegations concerning the negligent publication “necessarily involve[] treating the
 6 liable party as a publisher.” 570 F.3d at 1103. The language of Bel Air’s allegations
 7 leaves no doubt that this case concerns “publication”:

- 8 • “publicly available” database (Compl. ¶ 9); “reported this false information to the
 9 public” (*id.* ¶ 18);
- 10 • “publishes information” (*id.* ¶ 10); “published false information” (*id.* ¶ 16); “false
 11 publications” (*id.*); “published . . . the following false statements” (*id.* ¶ 17);
 12 “published this false information” (*id.* ¶ 18); “publishing false information” (*id.*
 13 ¶ 22); “publication of false information” (*id.* ¶ 27); “publication of false
 14 information” (*id.* at 8 ¶ 2); “publishing inaccurate information”; “publishing false
 15 information” (*id.* at 8 ¶ 3);
- 16 • “post the false information” (*id.* ¶ 22); “post false information” (*id.* ¶¶ 22–23);
 17 “post false information” (*id.* at 8 ¶ 4); “posting false information” (*id.* at 8 ¶ 5);
 18 “fake posting” (*id.* at 9 ¶ 7);
- 19 • “false reporting” (*id.* ¶¶ 18, 24); “falsely report this information” (*id.* ¶ 24);
 20 “falsely reported numerous sales” (*id.* ¶ 26); “negligently reported this false
 21 information” (*id.* at 9 ¶ 9); “who can falsely report this information” (*id.*);
- 22 • “disseminating misleading, false, and inaccurate information” (*id.* ¶ 18);
 23 “disseminating false and misleading information” (*id.* ¶ 25);
- 24 • “continued to publish false information” (*id.* ¶ 19); “remove the false postings”
 25 (*id.* ¶ 20); “take down the false information” (*id.*); “did not immediately remove
 26 the false postings” (*id.* ¶ 26).

27 Bel Air might have “hoped to plead around the CDA to advance the same basic
 28 argument that the statute plainly bars: that [Zillow] published user-generated speech

1 that was harmful to [Bel Air].” *See Kimzey*, 836 F.3d at 1266. But its own allegations
2 are clear: Bel Air’s claim is “directed against [Zillow] in its capacity as a publisher or
3 speaker,” and thus this requirement is also satisfied. *Id.* at 1268.

4 3. “Another . . . content provider” supplied the information.

5 Zillow also satisfies the final requirement—that the false Bel Air information was
6 “provided by another information content provider.” *Id.* (quoting *Barnes*, 570 F.3d at
7 1101). “[A]n ‘information content provider[]’ . . . is defined as someone who is
8 ‘responsible, in whole or in part, for the creation or development of’ the offending
9 content.” *Roommates*, 521 F.3d at 1162 (quoting 47 U.S.C. § 230(f)(3)). A website is
10 a covered “service provider” that retains its immunity for publishing third-party content
11 if it merely acts as a “passive conduit” for that content. *Id.* at 1168, 1172 (making clear
12 that a website is only liable for “develop[ing] unlawful content . . . if it contributes
13 materially to the alleged illegality of the conduct”); *see also Kimzey*, 836 F.3d at 1270
14 (Yelp’s star-rating system was “the kind of ‘neutral tool[]’ operating on ‘voluntary
15 inputs’ that . . . did not amount to content development or creation”); *Carafano*, 339
16 F.3d at 1125 (internet dating service that “transmitted unaltered [third-party content] to
17 profile viewers” was immune because it “did not play a significant role in creating,
18 developing or ‘transforming’ the relevant information”).

19 Courts have recognized a difference between creating content and “merely
20 fail[ing] to delete” it. *See, e.g., Anthony v. Yahoo! Inc.*, 421 F. Supp. 2d 1257, 1262
21 (N.D. Cal. 2006). The failure to delete information is immune under § 230 even if the
22 content disseminated by the third party (and not prevented by the website) is illegal.
23 *See Roommates*, 521 F.3d at 1169 (“website operator who edits user-created content—
24 such as by correcting spelling, removing obscenity or trimming for length—*retains his*
25 *immunity for any illegality in the user-created content*, provided that the edits are
26 unrelated to the illegality” and the edits do not “contribute[] to the alleged illegality”).
27 “Simply put, proliferation and dissemination of content does not equal creation or
28 development of content.” *Kimzey*, 836 F.3d at 1271.

1 The “other provider” requirement is satisfied here. Bel Air has alleged that
 2 User X, not Zillow, was solely responsible for creating the allegedly-false sale price
 3 information. *See* Compl. at 36–37. Zillow did not “creat[e] or develop[]” that
 4 information. *See Roommates*, 521 F.3d at 1162. Accordingly, Zillow has satisfied all
 5 three requirements for immunity under § 230.

6 * * *

7 In Paragraph 19 of the complaint, Bel Air all but concedes that Zillow falls within
 8 the CDA’s immunity, but hopes to sidestep that reality by criticizing the CDA as
 9 “outdated,” and by carving out an exception for “brazen attacks” that the text does not
 10 support, and this Circuit’s precedent forecloses. Compl. ¶ 19. This is a classic case of
 11 CDA immunity, warranting dismissal with prejudice on this basis alone. *See Rutman*
 12 *Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) (“Denial of leave
 13 to amend is not an abuse of discretion where the pleadings before the court demonstrate
 14 that further amendment would be futile.”).

15 **B. The complaint has failed to plausibly allege negligence.**

16 Even if Bel Air’s negligence claim could escape the Act, it would still fail on the
 17 merits. Negligence is “a failure to exercise the degree of care in a given situation that
 18 a reasonable person under similar circumstances would employ to protect others from
 19 harm.” *Pour v. Ocwen Mortg. Servicing, Inc.*, No. 17-4141, 2017 WL 10523525, at *6
 20 (C.D. Cal. Nov. 29, 2017). In California,³ a valid negligence claim has four familiar
 21 elements: “(1) duty; (2) breach; (3) causation; and (4) damages.” *Sentry Ins. v. U.S.*
 22 *Reports, Inc.*, No. 05-6174, 2007 WL 9725017, at *2 (C.D. Cal. June 13, 2007) (citing
 23

24 ³ Although Bel Air does not specify which state’s law governs its negligence claim, it suggests that
 25 California law applies. *See* Compl. ¶¶ 3, 12. According to section 17 of Zillow’s terms of use,
 26 however, Washington law applies to all disputes, claims, and actions arising from Zillow’s services.
 27 *Zillow Terms of Use*, <https://www.zillow.com/corp/Terms.htm> (last visited Apr. 12, 2019). Because
 28 this case is controlled by general negligence principles common to both states, the Court need not
 decide this issue, and Zillow will, for the purpose of argument, apply California law here. *See, e.g.,*
Niece v. Elmview Grp. Home, 929 P.2d 420, 423 (Wash. 1997); *Pedroza v. Bryant*, 677 P.2d 166, 168
 (Wash. 1984).

1 *Ileto v. Glock, Inc.*, 349 F.3d 1191, 1203 (9th Cir. 2003)).

2 Bel Air has failed to plausibly allege any of these elements: (1) Zillow did not
3 owe a legal duty to protect Bel Air from the misconduct of third parties; (2) Bel Air’s
4 own attachments undercut its allegations of a breach, (3) the complaint contains no facts
5 to support a causal connection between the information Zillow is alleged to have
6 published and the harm Bel Air claims to have suffered, and (4) that harm is too
7 speculative to satisfy the federal pleading standard. Each of these deficiencies is an
8 independent ground for dismissal.

9 **1. Zillow had no legal duty to protect Bel Air from third parties.**

10 The threshold element of a negligence claim is the existence of a legal duty.
11 *Artiglio v. Corning Inc.*, 18 Cal. 4th 604, 614 (1998). If the defendant owes the plaintiff
12 no duty, there can be no negligence. *Pour*, 2017 WL 10523525, at *6. Whether a legal
13 duty exists “is a matter of law to be determined by the court.” *Id.*

14 Bel Air argues that Zillow “owed [it] a duty of due care because it was foreseeable
15 that [it] would be harmed by [Zillow’s] publication of false information.” Compl. at 8
16 ¶ 2; *see also id.* ¶ 9 (“Defendants breached the duty of care.”). But this phrasing misses
17 the point—what Bel Air alleges is that Zillow had a duty to protect Bel Air not from its
18 own false reporting, but from false reporting *by a third party*. *See id.* ¶ 9 (“Zillow does
19 not have safeguards as to who can falsely report this information.”). This matters,
20 because the duty to protect another from the acts of a third party requires a different
21 (and more stringent) legal analysis than a general legal duty to exercise care with respect
22 to one’s *own* acts.

23 When analyzing duty in the context of third-party acts, California courts
24 distinguish between “misfeasance” and “nonfeasance.” *Melton v. Boustred*, 183 Cal.
25 App. 4th 521, 531 (2010). A defendant has a legal duty to avoid misfeasance, *i.e.*,
26 performing an “affirmative act[]” that worsens a plaintiff’s position. *Id.*; *see also*
27 *Andrews v. Wells*, 204 Cal. App. 3d 533, 539 (1988) (misfeasance involves creating a
28 risk of harm through affirmative acts). But in the case of *nonfeasance*—a mere failure

1 to act or aid—there is generally “no duty to act to protect others from the conduct of
2 third parties.” *Melton*, 183 Cal. App. 4th at 531; *see Pirozzi v. Apple Inc.*, 913 F. Supp.
3 2d 840, 851 (N.D. Cal. 2012) (“A defendant generally owes no duty to protect another
4 from the conduct of third-parties.”).

5 California law will not impose a legal duty to protect a plaintiff from third-party
6 acts unless the facts of the case fit squarely into a recognized exception to that general
7 rule. *Melton*, 183 Cal. App. 4th at 531. In practice, such liability is “largely limited”
8 to the context of the special relationship doctrine, *Wells*, 204 Cal. App. 3d at 539, which
9 establishes a legal duty to protect only if there is a “special relationship” between the
10 parties. *Melton*, 183 Cal. App. 4th at 532; *accord AF Holdings, LLC v. Doe*,
11 No. 12-2048, 2012 WL 4747170, at *5 (N.D. Cal. Oct. 3, 2012) (“[A] defendant has no
12 duty in situations of nonfeasance unless there exists a special relationship that would
13 give rise to such a duty.”). Such relationships have been found in cases involving
14 proprietors of traditional brick-and-mortar businesses “such as shopping centers,
15 restaurants, and bars, and their tenants, patrons, or invitees,” as well as other contexts
16 that inherently require a higher level of care: “(i) common carriers and passengers,
17 (ii) innkeepers and their guests, and (iii) mental health professionals and their patients.”
18 *Melton*, 183 Cal. App. 4th at 535.

19 *Pirozzi v. Apple Inc.* is instructive. In *Pirozzi*, a class of cellphone purchasers
20 alleged that Apple was negligent for failing to prevent third-party software applications
21 from acquiring their personal information and “failing to remove privacy-violating apps
22 from the App Store.” 913 F. Supp. 2d at 851. The purchasers’ claims ultimately failed,
23 because the court, having found no applicable special relationship between the parties,
24 concluded that Apple owed no recognized, independent legal duty to protect its
25 customers’ personal information from third-party software developers. *Id.* at 852.

26 Bel Air’s complaint has the same fatal flaw. *See Melton*, 183 Cal. App. 4th at
27 536. Its negligence claim also falls into the nonfeasance category, because it has alleged
28 that Zillow “create[d] a risk of harm” not “by any affirmative action” but by omission.

1 See *Wells*, 204 Cal. App. 3d at 539; compare *Melton*, 183 Cal. App. 4th at 531 (“[O]ne
2 who has not created a peril is not liable in tort merely for failure to take affirmative
3 action to assist or protect another from the acts of a third party.” (internal quotation
4 marks omitted)), with Compl. ¶ 22 (“Defendants were negligent in that they *do not have*
5 *safeguards* in place to prevent internet trolls, criminals, or *persons designed to commit*
6 *illegal acts* from logging into their system to post the false information.” (emphasis
7 added)). Zillow thus had no general legal duty to protect Bel Air from the acts of third
8 parties like User X. Compare *Pirozzi*, 913 F. Supp. 2d at 851, with Compl. ¶ 23
9 (“[Zillow’s] system should not allow a fake user to commandeer someone else’s home
10 and post false information, thereby causing damage.”).

11 Nevertheless, Bel Air alleges a general duty of care premised upon foreseeability,
12 and attempts to overcome that shortcoming by arguing that public policy “clearly
13 supports” a duty because “consumers rely on [Zillow] for real estate information.” See
14 Compl. at 8 ¶ 2. This, however, is not the law in California. These conclusory and
15 normative allegations do not fit within any of the recognized exceptions to the general
16 rule, and Bel Air has not alleged—nor can it—any facts that would support the existence
17 of a special relationship between Bel Air and Zillow. If anything, the facts alleged in
18 the complaint establish the opposite: Bel Air’s property is one of more than *110 million*
19 contained in Zillow’s database. See Compl. ¶ 10. Bel Air also offers (without further
20 factual detail) that “consumers rely on [Zillow] for real estate information”—but this
21 goes to Zillow’s relationship with those consumers, not Bel Air. See Compl. at 8 ¶¶ 2-3.

22 Absent any facts alleging a special relationship between Bel Air and Zillow, there
23 was no legal duty under these circumstances. And without such a duty, Bel Air’s
24 negligence claim must be dismissed.

25 2. The complaint contradicts its own allegations of a breach.

26 Assuming for the purpose of argument that Zillow did owe Bel Air such a duty,
27 the complaint’s allegations of a breach of that duty are contradicted by its own exhibits.
28 Bel Air alleges that Zillow was “negligent in that [it] did not immediately take down

1 the false information after [Bel Air] complained to Zillow.” Compl. ¶ 20; *see also id.*
2 ¶ 26 (“Zillow did not immediately remove the false postings after Plaintiff notified
3 Defendants of the fraud because they only have an email address or an online complaint
4 form.”).

5 The exhibits Bel Air attached to the complaint, however, tell a different story.
6 Bel Air first messaged Zillow just before 9 a.m. on February 7, 2019. Compl. at 28. A
7 Zillow representative responded that afternoon—and by that time, its technical staff was
8 already “working towards a resolution.” *See id.* at 27. Similarly, when Bel Air’s
9 counsel contacted Zillow at 7 a.m. on February 12, he received a response before noon,
10 and the investigation had already begun. *Id.* at 42–43. By the end of the day, all of
11 User X’s allegedly-incorrect sale information had been removed. *See id.* at 32; *see also*
12 *id.* at 37 (“[W]e immediately looked into this issue and removed the sales information
13 from February 9th.”).

14 Because Bel Air’s allegations that Zillow was negligently unresponsive are
15 contradicted by the exhibits attached to the complaint, this Court is not required to
16 accept them as true. *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir.
17 2010); *see also, e.g., Howard v. Johnson*, No. 13-4929, 2014 WL 1246140, at *5 n.1
18 (C.D. Cal. Jan. 10, 2014) (“Moreover, when [attached] documents contain statements
19 that contradict allegations in a complaint, the documents control and a court need not
20 ‘[a]ccept as true allegations that contradict matters properly subject to judicial notice or
21 by exhibit.’” (quoting *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.
22 2001))), *report and recommendation adopted sub nom. Howard v. Rush*, 2014 WL
23 1246198 (C.D. Cal. Mar. 24, 2014).

24 To the extent that Bel Air relies on its allegations that Zillow was not responsive
25 to establish a breach, in the face of the contrary exhibits, the allegations must be ignored.
26 Without a breach of a legal duty, there can be no negligence, and Bel Air’s claim must
27 be dismissed.
28

1 **3. Bel Air’s allegations of causation are conclusory.**

2 Bel Air’s negligence claim also fails on the independent ground that it does not
3 plausibly allege causation. California applies the “substantial factor” test to causation
4 determinations: “if a defendant’s negligence was a substantial factor in causing the
5 plaintiff’s harm, then the defendant is responsible for the harm.” *Lawrence v. La Jolla*
6 *Beach & Tennis Club, Inc.*, 231 Cal. App. 4th 11, 33 (2014).

7 In an attempt to establish causation, Bel Air makes a series of conclusory
8 allegations—none of which can support a plausible, non-speculative negligence claim:

- 9 • “As a result of Zillow’s publication of false information, Plaintiffs have been
10 injured.” Compl. ¶ 27.
- 11 • “Plaintiff was harmed as a proximate result of the breach of duty.” *Id.* at 9 ¶ 10.
- 12 • “As a direct and proximate result of Defendants’ negligent conduct, Plaintiffs
13 have not been able to sell the Property. Nor can Plaintiff properly market and
14 advertise the Property. Additionally, by labeling the Property sold numerous
15 times millions of dollars below the listing price corrupts the listing price
16 dramatically.” *Id.* at 9 ¶ 11.

17 These “[t]hreadbare recitals of the [causation] element[] . . . supported by mere
18 conclusory statements, do not suffice” under Rule 12(b)(6). *Iqbal*, 556 U.S. at 678; *see*
19 *also Twombly*, 550 U.S. at 555 (“formulaic recitation[s] of the elements” do not meet
20 the pleading standard). In its evaluation of the legal sufficiency of Bel Air’s negligence
21 claim, this Court is “not bound to accept as true a legal conclusion couched as a factual
22 allegation”—and, surely, none of the bald allegations of causation above should count.
23 *Caviness*, 590 F.3d at 812.

24 The complaint’s lone attempt to scrounge together facts to connect Zillow’s
25 alleged publication of erroneous information to Bel Air’s claims of tens of millions of
26 dollars in damages does not pass muster, either. According to Paragraph 26,

27 Plaintiff has been unable to sell the Property. Potential buyers believe that
28 the Property in fact was sold and the market is now permanently infected
with false information that the property sold below \$100M, \$60M under

1 the listing price. It is a very small market in this space. For the Property
2 to be labeled sold numerous times million [sic] of dollars below the listing
price corrupts the listing price dramatically.

3 Compl. ¶ 26. But these allegations still do not allow “the court to draw the reasonable
4 inference that the defendant is liable for the misconduct alleged.” *See Iqbal*, 556 U.S.
5 at 678.

6 In fact, such an inference would be *unreasonable*. Critically, Bel Air does not
7 allege anywhere in the complaint that any potential buyer—let alone a willing and able
8 buyer with \$150,000,000 to spend and the immediate need for a helipad and “three
9 gourmet kitchens,” *see* Compl. at 12, 20—saw the erroneous information during the
10 period of time in which it was allegedly viewable. Nor does it plausibly allege that any
11 buyers were discouraged from purchasing the property as a result of that information.

12 Indeed, the implication that a potential buyer in this “very small market” would
13 decide whether or not to make a \$150,000,000 financial investment based on a brief
14 review of a Zillow listing stretches the word “plausibility” beyond its limits. *See id.*
15 ¶ 26. Even if an interested buyer or agent *had* seen the information at issue here, a
16 series of three purported “sales” in just a few days, *see id.* at 32, 36–37, would have at
17 least signaled to the type of sophisticated purchaser or agent in the market for such a
18 property that something was amiss and further investigation was warranted. *See, e.g.,*
19 *id.* ¶¶ 14 (builder “sold the highest priced home ever”), 15 (home is in an “ultra-
20 exclusive” area), 26 (there is a “very small market” for such a property).

21 Again, Bel Air’s exhibits to the complaint fly in the face of its allegations, *see*
22 *Daniels-Hall*, 629 F.3d at 998, lending support to the position that Zillow was *not*, in
23 fact, a “substantial factor in causing the plaintiff’s harm.” *See Lawrence*, 231 Cal. App.
24 4th at 33. The Bel Air property had already remained unsold for more than two years
25 before User X allegedly posted erroneous information on Zillow—and in that time, it
26 had been de-listed and re-listed, and had undergone two massive price drops totaling
27 \$100,000,000. Compl. at 17. Bel Air does not allege that any of *that* information is
28

1 incorrect, nor does it make any allegation that the property was even close to selling in
2 the three weeks between the most recent price reduction (to \$150,000,000) and User X’s
3 first contact.

4 Plausibility requires “more than a sheer possibility that a defendant has acted
5 unlawfully.” *Iqbal*, 556 U.S. at 678. Bel Air’s allegations of causation do not even get
6 that far, let alone support a reasonable inference that Zillow’s listings were a substantial
7 factor in the purported harm Bel Air alleges. *See Lawrence*, 231 Cal. App. 4th at 33.

8 **4. Bel Air’s alleged harm is too speculative.**

9 Bel Air’s allegations of harm do not satisfy Rule 12(b)(6) either. Because
10 “[a]ppreciable, nonspeculative, present harm is an essential element of a negligence
11 cause of action,” an alleged “breach of a duty causing only speculative harm or the
12 threat of future harm is generally insufficient.” *Gardner v. Health Net, Inc.*,
13 No. 10-2140, 2010 WL 11597979, at *3 (C.D. Cal. Aug. 12, 2010) (citing *Aas v. Super.*
14 *Ct.*, 24 Cal. 4th 627, 646 (2000), *superseded by statute on other grounds as stated in*
15 *Rosen v. State Farm Gen. Ins. Co.*, 70 P.3d 351, 357–58 (Cal. 2003), and *Jordache*
16 *Enters., Inc. v. Brobeck, Phleger & Harrison*, 18 Cal. 4th 739 (1998)). “Negligence is
17 only actionable when an actual loss has occurred. “[N]ominal damages, speculative
18 harm, and the mere threat of future harm are not actual injury.” *Mardirosian v.*
19 *Nationwide Credit, Inc.*, No. 12-4342, 2012 WL 13035476, at *4 (C.D. Cal. Oct. 10,
20 2012) (quoting *Jordache*, 18 Cal. 4th at 743).

21 Bel Air’s allegations of harm, like its causation allegations, fail to “raise a right
22 to relief above the speculative level”—or even approach that level. *See Twombly*, 550
23 U.S. at 555. It seeks the difference between the list price and the lowest erroneously-
24 reported sale price—essentially writing off \$60 million, as if the home had actually been
25 sold at that price. *See Compl.* ¶ 25; *id.* at 10. It also relies on speculative and conclusory
26 assertions that the market for the property has been “corrupt[ed]” and “permanently
27 infected” because there “is a very small market in this space,” without offering
28 additional facts or details. *Compl.* ¶ 26.

1 Not only are these allegations substantively deficient—“nonspeculative, present
2 harm is an essential element of a negligence cause of action,” *Gardner*, 2010 WL
3 11597979, at *3—these “‘naked assertion[s]’ devoid of ‘further factual enhancement’”
4 do not satisfy Rule 12(b)(6). *Iqbal*, 556 U.S. at 678 (alteration in original) (quoting
5 *Twombly*, 550 U.S. at 557). Because Bel Air has “failed to sufficiently allege that [it
6 has] suffered any damages,” dismissal is appropriate. *See Gardner*, 2010 WL
7 11597979, at *4.

8 **V. CONCLUSION**

9 Because Bel Air’s negligence claim is barred by the Communications Decency
10 Act and, in any event, has failed to satisfy Rule 12(b)(6), Bel Air’s complaint must be
11 dismissed. And because amendment would be futile, the Court need not grant leave to
12 amend.

13
14 Dated: April 19, 2019

WINSTON & STRAWN LLP

15 By: /s/ Sean D. Meenan
16 Sean D. Meenan
17 Heather Lamberg (*pro hac vice*)
Lev Tsukerman

18 Attorneys for Defendants
19 ZILLOW GROUP, INC. and ZILLOW,
20 INC.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed with the Court’s CM/ECF system, which will provide notice to all counsel deemed to have consented to electronic service. All other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing document by mail on this day.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Date: April 19, 2019

WINSTON & STRAWN LLP

By: /s/ Sean D. Meenan
Sean D. Meenan

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28