

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

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Diona Patterson, individually and as Administrator of the ESTATE OF HEYWARD PATTERSON; J.P., a minor; Barbara Mapps, Individually and as Executrix of the ESTATE OF KATHERINE MASSEY; Shawanda Rogers, Individually and as Administrator of the ESTATE OF ANDRE MACKNIEL; A.M., a minor; and LATISHA ROGERS,

Plaintiffs,

against

META PLATFORMS, INC., formerly known as FACEBOOK, INC.; SNAP, INC.; ALPHABET, INC.; GOOGLE, LLC; YOUTUBE, LLC; DISCORD, INC.; REDDIT, INC.; AMAZON.COM, INC.; 4CHAN, LLC; 4CHAN COMMUNITY SUPPORT, LLC; GOOD SMILE COMPANY, INC.; GOOD SMILE COMPANY US, INC; GOOD SMILE CONNECT, LLC; RMA ARMAMENT; VINTAGE FIREARMS; MEAN L.L.C.; PAUL GENDRON; PAMELA GENDRON,

Defendants.

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TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this Action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance on the Plaintiff's attorneys within twenty (20) days after this service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is completed if this Summons is not personally delivered to you within the State of New York); and in the case of your failure to Appear or Answer, judgment will be taken against you by default for the relief demanded in the Complaint.

DATED: Buffalo, New York
May 12, 2023

LAW OFFICE OF JOHN V. ELMORE, P.C.

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Index No.:

VERIFIED COMPLAINT

Plaintiffs,

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META PLATFORMS, INC., formerly known as FACEBOOK, INC.; SNAP, INC.; ALPHABET, INC.; GOOGLE, LLC; YOUTUBE, LLC; DISCORD, INC.; REDDIT, INC.; AMAZON.COM, INC.; 4CHAN, LLC; 4CHAN COMMUNITY SUPPORT, LLC; GOOD SMILE COMPANY, INC.; GOOD SMILE COMPANY US, INC; GOOD SMILE CONNECT, LLC; RMA ARMAMENT; VINTAGE FIREARMS; MEAN L.L.C.; PAUL GENDRON; PAMELA GENDRON,

Defendants.

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Plaintiffs, above named, by their attorneys, JOHN V. ELMORE, P.C.; SOCIAL MEDIA VICTIMS LAW CENTER; BELLUCK & FOX; and GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE, for their Complaint against the defendants, allege:

I. INTRODUCTION

1. On May 14, 2022, ten Black citizens were murdered and three wounded at Tops Friendly Market in Buffalo, New York.

2. The murderer, Payton Gendron ("Gendron"), was an 18-year-old white male who meticulously planned the horrific attack and drove over two hundred miles to Buffalo with the explicit goal of killing as many Black people as possible.

3. Gendron was not raised by a racist family, did not live in a radically polarized

community, and had no personal history of negative interactions with Black people. Rather, Gendron was motivated to commit his heinous crime by racist, antisemitic, and white supremacist propaganda recommended and fed to him by the social media companies whose products he used.

4. Gendron explicitly acknowledged that the racist, antisemitic, and violence-promoting material he encountered on social media caused his radicalization, motivated him to commit racial violence and provided the training, equipment, and expertise to plan and implement the massacre of May 14, 2022. In the words of Gendron's attorney, "The racist hate that motivated this crime was spread through on-line platforms..."¹

5. Gendron's radicalization on social media was neither a coincidence nor an accident; it was the foreseeable consequence of the defendant social media companies' conscious decision to design, program, and operate platforms and tools that maximize user engagement (and corresponding advertising revenue) at the expense of public safety.

6. The worldwide epidemic of racist and antisemitic mass shootings did not begin with the advent of the internet in the late 1990s, but rather, with the proliferation of social media after 2010.

7. The social media products that Gendron used come equipped with sophisticated algorithms designed to addict young users by taking advantage of their susceptibility to dopaminergic reinforcement. Teenagers like Gendron are not only more vulnerable to social media addiction, but are more susceptible to the racist, antisemitic, and conspiracy theories that proliferate online.

8. The social media companies clearly understand the revenue and growth potential presented by young users like Gendron, as well as their vulnerabilities. They have purposefully and methodically exploited those vulnerabilities in adolescent and young adult psychology to addict children, teenagers, and young adults and maximize their time and engagement. Facebook's first President, Sean Parker, summed up the devastating impact of these types of product designs in a 2017 interview:

¹ Plea Tr. 47:6-7.

God only knows what it's doing to our children's brains. The thought process that went into building these applications, Facebook being the first of them, ... was all about: 'How do we consume as much of your time and conscious attention as possible?' And that means that we need to sort of give you a little dopamine hit every once in a while, because someone liked or commented on a photo or a post or whatever. And that's going to get you to contribute more content, and that's going to get you ... more likes and comments. It's a social-validation feedback loop ... exactly the kind of thing that a hacker like myself would come up with, because you're exploiting a vulnerability in human psychology. The inventors, creators — it's me, it's Mark [Zuckerberg], it's Kevin Systrom on Instagram, it's all of these people — understood this consciously. And we did it anyway.²

9. Motivated by financial gain, these social media companies' algorithms maximized Gendron's engagement by introducing him to extreme and inherently harmful content, even when he was not searching for it, then pushing him to progressively more extreme content over time. Gendron remained locked-in to their products most hours of the day and night, as intended, while Defendants overwhelmed him with an endless feed of videos and imagery promoting racism, antisemitism, and gun violence.

10. The defendant social media companies drew Gendron down a rabbit hole of increasingly racist and antisemitic sites, indoctrinating him in white supremacist replacement theory and violent accelerationism. This also was no coincidence. White supremacist organizations rely on the dangerously defective and unreasonably dangerous design of social media platforms to recruit teenagers like Gendron to their evil cause, inculcate them in racist ideology, and motivate them to commit unspeakable acts of racist and antisemitic violence.

11. Gendron became obsessed with white supremacist ideology and felt inspired by recent incidents of racist mass shootings. He was exposed to and studied racist murderers' social media postings, as well as livestream videos of racist massacres readily available on Defendants' social media platforms.

12. Gendron used Defendants' social media products to plan his terrorist attack, select other Defendants' body armor and weaponry, and train himself on how to access the Tops store and murder as many Black people as possible. Gendron's implementation of his murderous plan

² Mike Allen, *Sean Parker unloads on Facebook: "God only knows what it's doing to our children's brains,"* Axios (Nov. 9, 2017), <https://www.axios.com/2017/12/15/sean-parker-unloads-on-facebook-god-only-knows-what-its-doing-to-our-childrens-brains-1513306792>.

was facilitated by the defective and unreasonably dangerous design of the Social Media Defendants' defective products, the incendiary advertising for the tactical gear he used, and the negligent entrustment of his parents and firearms dealer.

13. Gendron livestreamed his murderous rampage on Twitch with the goal of inspiring future acts of mass violence, and later acknowledged that his ability to livestream the attack motivated him to follow through with the massacre. He wrote how livestreaming the attack would help him overcome his fear and any lingering sympathy for human life that could dampen his murderous intent.

It is very difficult for a normal person even with all the information to carry out an attack that will kill another human being, or the fact that you may die that day. . . . I think that live steaming this attack gives me some motivation in the way that I know that some people will be cheering for me.³

14. The defendant social media companies allowed Gendron's livestream video to broadcast for twenty-four minutes – twenty-two minutes of preparation and discussion of his plan, including showing viewers his weapons, and two minutes of active shooting and murder. The livestream massacre was posted on both fringe and mainstream social media platforms and has been viewed by over 3 million people; but also, in the one year since the Tops massacre, additional killers have livestreamed mass shootings just like Gendron did.

15. Shooters radicalized by social media continue to brutalize racial, religious, and ethnic minorities throughout the world, leaving behind broken families, devastated loved ones and shattered communities. Until social media companies redesign their products to prioritize community safety over advertising revenue, teenagers like Gendron will continue to be radicalized on their platforms and the endless cycle of racist and antisemitic carnage pulverizing our society will continue unabated.

16. Plaintiffs bring this action to hold Defendants accountable for the foreseeable and tragic consequences of their intentional design, programming, and distribution decisions in hopes that this lawsuit will force the change necessary to spare other families the loss, devastation, and despair that Plaintiffs experience every day and will continue to experience for the rest of their

³ Gendron Statement at p.61.

days.

II. PARTIES AND JURISDICTION

A. Plaintiffs



Heyward Patterson

17. Heyward Patterson was a sixty-seven-year-old retired security guard, formerly employed by Tops Supermarket, and longtime resident of Erie County. Mr. Patterson was an active Deacon at State Tabernacle Church of God and spent his Saturdays volunteering and driving people to the grocery store. He was a son, father, and friend, known as a faithful, hard-working, generous, well-dressed man. Plaintiff Diona Patterson is Heyward's daughter and the Administrator of his Estate.

18. J.P. is the 15-year-old son of Heyward Patterson.



Katherine Massey

19. Katherine (“Kat”) Massey was a seventy-two-year-old retired teacher, community activist, and lifetime resident of Erie County. She was a daughter, sister, aunt, and friend, and would do anything for anybody at any time.⁴ Kat was a teacher and protector who viewed all school children in Buffalo as her own. She was an activist known for her elegance, sincerity, thoughtfulness, and honesty. Plaintiff Barbara Mapps is Kat’s sister and the Administrator of her Estate.

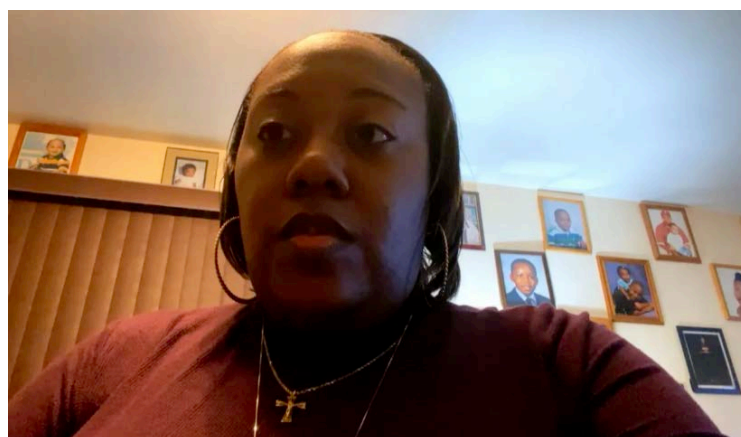
⁴ Plea Tr. 17.



Andre MacKniel

20. Andre MacKniel was a fifty-three-year-old resident of Cayuga County. He was a son, brother, uncle, father to five of children, and fiancé to Tracey Maciulewicz. On May 14, 2022, Andre went to Tops Supermarket to buy a birthday cake for his three-year-old son's birthday party. Plaintiff Shawanda Rogers is Andre's daughter and the Personal Representative of his Estate.

21. A.M. is the 4-year-old son of Andre MacKniel.



Latisha Rogers

22. Plaintiff Latisha Rogers is 34 years old, a resident of Erie County, and was the assistant manager of Tops Friendly Market in Buffalo. Nearly twelve years ago, Ms. Rogers

survived another mass shooting in Buffalo in which her brother was killed. She was working at the Tops supermarket on May 14, 2022, when the horrific mass shooting occurred, and while she was fortunate enough to survive and avoid serious physical injury, her life was irrevocably changed that day. Over the last year, Ms. Rogers has suffered serious trauma, Post Traumatic Stress Disorder, emotional pain, severe disruption to her personal and professional life, and functional impairment to activities of daily living.

B. Defendants

23. Defendant Meta Platforms, Inc. (“Meta”) is a Delaware corporation and multinational conglomerate with its principal place of business in Menlo Park, California. Meta owns, operates, controls, produces, manufactures, designs, maintains, manages, develops, inspects, tests, labels, markets, advertises, promotes, supplies, and distributes digital products available through mobile- and desktop-based applications (“apps”), including Instagram, Facebook, Messenger, Messenger Kids, Marketplace, and Workplace. Meta has purposefully availed itself of New York law by transacting business in this State, it profits from Facebook and Instagram’s activities in the State of New York, and Plaintiffs’ injuries arise out of and relate to Meta’s purposeful availment. New York’s assertion of personal jurisdiction over Meta therefore is consistent with historic notions of fair play and substantial justice.

24. Defendant Snap, Inc. (“Snap”) is a Delaware corporation with its principal place of business in Santa Monica, California. Snap owns, operates, controls, produces, manufactures, designs, maintains, manages, develops, inspects, tests, labels, markets, advertises, promotes, supplies, and distributes the Snapchat social media product. Snapchat is widely available to consumers throughout the United States. Snap has purposefully availed itself of New York law by transacting business in this State, it profits from Snapchat’s activities in the State of New York, and Plaintiffs’ injuries arise out of and relate to Snap’s purposeful availment. New York’s assertion of personal jurisdiction over Snap therefore is consistent with historic notions of fair play and substantial justice.

25. Defendant Alphabet, Inc. (“Alphabet”) is a Delaware corporation with its principal place of business in Mountain View, California. Google LLC (“Google”) is a wholly owned

subsidiary of Alphabet with its principal place of business is in Mountain View, California. YouTube, LLC (“YouTube”) is a wholly owned subsidiary of Google incorporated in Delaware and doing business in San Bruno, California. Alphabet, Google and YouTube have purposefully availed themselves of New York law by transacting business in this State, they profit from Google and YouTube’s activities in the State of New York, and Plaintiffs’ injuries arise out of and relate to the purposeful availment of Alphabet, Google, and YouTube. New York’s assertion of personal jurisdiction over Alphabet, Google, and YouTube therefore is consistent with historic notions of fair play and substantial justice.

26. Defendant Discord, Inc. (“Discord”) is a privately held California corporation with its principal place of business in San Francisco, California. Discord operates the Discord social media platform. Discord has purposefully availed itself of New York law by transacting business in this State, profits from Discord’s activities in the State of New York, and Plaintiffs’ injuries arise out of and relate to Discord’s purposeful availment. New York’s assertion of personal jurisdiction over Discord therefore is consistent with historic notions of fair play and substantial justice.

27. Defendant Reddit, Inc. (“Reddit”) is a privately held California corporation with its principal place of business in San Francisco, California. Reddit operates the Reddit social media platform. Reddit has purposefully availed itself of New York law by transacting business in this State, profits from Reddit’s activities in the State of New York, and Plaintiffs’ injuries arise out of and relate to Reddit’s purposeful availment. New York’s assertion of personal jurisdiction over Reddit therefore is consistent with historic notions of fair play and substantial justice.

28. Defendant Amazon.com, Inc. (“Amazon”) is a Delaware corporation with its principal place of business in Seattle, Washington. Amazon wholly owns its subsidiary Twitch Interactive Inc. (“Twitch”), which operates the Twitch video live streaming service. Amazon has purposefully availed itself of New York law by transacting business in this State, profits from Twitch’s activities in the State of New York, and Plaintiffs’ injuries arise out of and relate to Amazon’s purposeful availment. New York’s assertion of personal jurisdiction over Amazon therefore is consistent with historic notions of fair play and substantial justice.

29. Defendant 4chan, LLC is a Delaware corporation headquartered in Los Angeles and registered to transact businesses in New York, Virginia, and Ohio. 4chan LLC has purposefully availed itself of New York law by transacting business in this State, profits from 4chan's activities in the State of New York, and Plaintiffs' injuries arise out of and relate to 4chan's purposeful availment. New York's assertion of personal jurisdiction over 4chan therefore is consistent with historic notions of fair play and substantial justice.

30. Defendant 4chan Community Support LLC, is a Delaware corporation headquartered in Los Angeles and listed as the owner on the 4chan website. 4chan Community Support LLC has purposefully availed itself of New York law by transacting business in this State, profits from 4chan's activities in the State of New York, and Plaintiffs' injuries arise out of and relate to 4chan Community Support's purposeful availment. New York's assertion of personal jurisdiction over 4chan Community Support therefore is consistent with historic notions of fair play and substantial justice.

31. Defendant Good Smile Company, Inc. ("Good Smile Japan") is a Japanese company with a principal place of business in Japan as well as an office in Los Angeles, California. It was registered to do business with the California Secretary of State back in 2012 but filed a Surrender statement on October 1, 2019. Good Smile Japan has purposefully availed itself of New York law and Plaintiffs' injuries arise out of and relate to Good Smile Japan's purposeful availment. New York's assertion of personal jurisdiction over Good Smile Japan therefore is consistent with historic notions of fair play and substantial justice.

32. Defendant Good Smile Company U.S., Inc. ("Good Smile US") is a California corporation formerly known as Crooked Smile Holdings, Inc., and has its principal place of business in Los Angeles County California. On information and belief, Good Smile US is wholly owned and/or managed by Good Smile Japan. Good Smile US has purposefully availed itself of New York law and Plaintiffs' injuries arise out of and relate to Good Smile US's purposeful availment. New York's assertion of personal jurisdiction over Good Smile US therefore is consistent with historic notions of fair play and substantial justice.

33. Defendant Good Smile Connect LLC ("Good Smile Delaware") is a Delaware

limited liability company with its principal place of business in Los Angeles, California. On information and belief, Good Smile Delaware is wholly owned and/or managed by Good Smile US which is, in turn, wholly owned by Good Smile Japan. Good Smile Delaware has purposefully availed itself of New York law and Plaintiffs' injuries arise out of and relate to Good Smile Delaware's purposeful availment. New York's assertion of personal jurisdiction over Good Smile Delaware therefore is consistent with historic notions of fair play and substantial justice.

34. Defendant RMA Armament ("RMA") is an Iowa based body armor manufacturer founded in 2013. RMA sells hardened ceramic body armor through its website and through third-party dealers to civilians. RMA has purposefully availed itself of New York law by manufacturing and selling body armor that is sold in this State and Plaintiffs' injuries arise out of and relate to RMA's purposeful availment. New York's assertion of personal jurisdiction over RMA therefore is consistent with historic notions of fair play and substantial justice.

35. Defendant Vintage Firearms is a retail gun store located in Endicott, New York. Upon information and belief, the Bushmaster XM15-E2S rifle that Gendron used in the shooting at Tops on May 14, 2022, was purchased from Vintage Firearms.

36. Defendant MEAN L.L.C. ("Mean Arms") is a Woodstock, Georgia based manufacturer formed in 2012 that sells the MEAN MA Lock and other products through its website and through third-party dealers to civilians. Mean Arms has purposefully availed itself of New York law by manufacturing and selling locks and other products that are sold in this State and Plaintiffs' injuries arise out of and relate to Mean Arms' purposeful availment. New York's assertion of personal jurisdiction over Mean Arms therefore is consistent with historic notions of fair play and substantial justice.

37. Defendants Paul Gendron and Pamela Gendron are a married couple who reside in Conklin, New York and are the parents of Payton Gendron.

38. This Court has personal jurisdiction over Defendants Meta Platforms, Snap, Alphabet, Google, YouTube, Discord, Reddit, Amazon, Good Smile, and 4chan (collectively, the "Social Media Defendants") as well as Defendants RMA and Mean Arms because they each purposefully availed themselves of New York law, Plaintiffs' injuries arise out of and relate to

such purposeful availment, and the exercise of jurisdiction by this Court is consistent with historic notions of fair play and substantial justice. This Court has personal jurisdiction over Vintage Firearms, Paul Gendron, and Pamela Gendron because each is a resident of the State of New York. Venue is proper because Plaintiff-Decedents were all residents of Erie County and the violent acts giving rise to their claims occurred here.

III. GENERAL ALLEGATIONS

A. Payton Gendron Murdered Ten Innocent Buffalo Citizens Because They Were Black

39. On May 14, 2022, 18-year-old Payton Gendron planned and carried out a murderous rampage fueled by white supremacist ideology at the Tops Market in Buffalo, New York. In just over two minutes, Gendron, with the specific intent to kill as many Black people as he could, murdered ten innocent Buffalo residents and attempted to kill three others.

40. Gendron “methodologically planned, researched, [and] conducted recognizance” prior to executing his hateful crimes.⁵ Prior to the shooting, he went to Tops on at least two separate occasions, and created multiple handwritten sketches of its interior.⁶ He also put his plan to murder Black people in writing on his Discord account, including an in-depth analysis of the weapon and other equipment he would use for the attack.⁷ Gendron chronicled the progress and development of his plan on Discord in the months leading up to the attack.

41. Gendron documented in detail in his writing the reasons he selected specific brands of firearms, body armor, accessories, and ammunition.

42. Gendron’s motive for targeting and attacking Black shoppers and employees was clear. The assault weapon used in the attack, and the shotgun and rifle recovered from his vehicles, were marked with phrases and symbols commonly used by white supremacists. His writings also included names of mass murders who had committed similar acts of terrorism and mass shootings.

43. On May 14, 2022, shortly before 2:00 p.m., Gendron invited several other Discord users to a chat room on the Discord platform, where he posted a link to a livestream, and the

⁵ Plea Tr. 56:4-6.

⁶ Crim. Compl. ¶¶ 15, 18.

⁷ Crim. Compl. ¶ 16.

contents of a personal statement he had written to justify his violence and inspire future shootings, and a personal diary.

44. On the day of the attack, Gendron wore a sonnenrad, a symbol appropriated by the Nazi Party and widely used by modern white supremacists. The weapons he brought to the crime scene include a bolt-action rifle, a shotgun, and an AR-15 rifle.

45. Then, at approximately 2:08 p.m., Gendron began livestreaming on Twitch using a GoPro video camera attached to his helmet. The livestream showed him driving to Tops with his bolt action rifle, visible in the passenger seat, and his ballistic helmet, visible in the rearview mirror. As he arrived in the Tops parking lot, Gendron told his streaming audience, “I just gotta go for it right? It’s the end, right here, I’m going in.”

46. Just before 2:30 p.m., approximately 22 minutes into the Twitch livestream – which was still broadcasting – and empowered by the knowledge that other users were watching him in real time, Payton Gendron stepped out of his car and began shooting. He exited his vehicle wearing a helmet, body armor, and fatigues and armed with a Bushmaster XM15-E2S that he illegally modified to accept large capacity magazines.

47. His attack was captured on the store’s surveillance video and on a camera attached to the helmet he was wearing, which footage further confirms the racist and extremist motives behind his attack.

48. First, Gendron shot 32-year-old Roberta Drury, who was walking in the parking lot, twice in the head. Gendron murdered Roberta Drury because she was Black.



Roberta Drury
August 11, 1989 – May 14, 2022

49. Seconds later, Gendron shot sixty-seven-year-old Heyward Patterson, who was standing by the trunk of a vehicle, multiple times in the torso and right arm. Gendron murdered Heyward Patterson because he was Black.



Heyward Patterson
December 22, 1954 – May 14, 2022

50. Gendron then made his way toward the store and shot twenty-year-old Zaire Goodman, a Tops employee who had been collecting shopping carts and was near the front doors, in the neck. Gendron shot Zaire Goodman because he was Black.

51. As he walked toward the store, Gendron shot one of his fallen victims in the head to ensure that they were dead, just as he threatened to do in his online posting. Zaire Goodman lay motionless and pretended to be dead, escaping only after Gendron entered Tops.

52. Moving closer to the store's entrance, Gendron encountered customers and Tops personnel. Their screams of fear and confusion were heard on the Gendron's livestream video.

53. Gendron then shot seventy-seven-year-old Pearl Young, who was just outside the entrance of the store, multiple times, including fatal shots to her head. Gendron murdered Pearl Young because she was Black.



Pearl Young
February 23, 1945 – May 14, 2022

54. During the attack, Tops employees and customers hid wherever they could—in a stock room, conference room, freezer, and dairy cooler. Some were able to flee through the store's rear door. Tops cashier Fragrance Harris Stanfield recalls not knowing where she was running at first while trying to escape. She remembers getting “knocked to the side by a customer.” Taisiah Stewart recalls losing his sandal as he ran barefoot out of the back exit and almost three-quarters of a mile to escape the shooting.

55. Ruth Whitfield and Celestine Chaney were standing by a wall display between the front door and the registers. Gendron shot eighty-six-year-old Ruth Whitfield multiple times in the torso. Gendron murdered Ruth Whitfield because she was Black.



Ruth Whitfield
April 7, 1936 – May 14, 2022

56. Gendron then shot sixty-five-year-old Celestine Chaney multiple times in the head and torso. Gendron murdered Celestine Chaney because she was Black.



Celestine Chaney
May 6, 1957 – May 14, 2022

57. At this point, Gendron encountered fifty-five-year-old Aaron Salter, Jr., a retired Buffalo Police Officer who was working as the store's armed security guard. Though Salter had only a nine-millimeter pistol, he returned fire on Gendron. Gendron retreated for cover and reloaded his weapon before shooting Aaron Salter multiple times about the body and head. Gendron murdered Aaron Salter because he was Black. But Aaron Salter's bravery confronting and temporarily pinning down the shooter allowed time for other customers and staff to flee for safety.



Aaron Salter
September 22, 1966 – May 14, 2022

58. As Gendron proceeded through the front of the store, he shot and attempted to kill two other people. Jennifer Warrington, a pharmacist who was working in the store's pharmacy at the time was shot and injured, and Christopher Braden, who was the store manager near the registers, was also shot and seriously injured.

59. Gendron then closed in on Christopher Braden, who was laying on the floor badly wounded. He pointed his gun at Christopher but did not shoot him again. Instead, and upon realizing that Christopher was not Black, Gendron said "I'm sorry" – further confirming the racially motivated nature of his May 14, 2022 attack.

60. Gendron then moved quickly and methodically through the store, exactly as he planned. He shot fifty-three-year-old Andre MacKniel, who was hiding underneath a register, in the head, neck, and torso. Gendron murdered Andre MacKniel because he was Black.



Andre MacKniel
March 8, 1969 – May 14, 2022

61. Gendron then shot fifty-two-year-old Margus Morrison, who was in a store aisle running from Gendron, multiple times in the torso. Gendron murdered Margus Morrison because he was Black.



Margus Morrison
February 2, 1970 – May 14, 2022

62. Gendron then shot seventy-two-year-old Kat Massey in the head. Gendron

murdered Kat Massey because she was Black.



Kat Massey
July 30, 1949 – May 14, 2022

63. Gendron then shot sixty-two-year-old Geraldine Talley, who was in a store aisle, in the head. Gendron murdered Geraldine Talley because she was Black.



Geraldine Talley
June 3, 1959 – May 14, 2022

64. Plaintiff Latisha Rogers was working as assistant manager at Tops on the day of the shooting. She was standing behind the customer service counter when she heard the first shots. In her own words:

I look up out the window and I saw this customer, this lady with her shopping cart — she just stopped — and she just had this really funny look on her face and then she just turned to run. Next thing you know, you just keep hearing boom, boom, boom. All we could do was just drop to the ground.⁸

65. Too far from an exit, Ms. Rogers took cover behind the counter, praying that Gendron didn't see her. She grabbed her phone, dialed 911 and whispered to the dispatcher, "Please send help, there's a person in the store shooting." Ms. Rogers switched her phone to silent in case someone tried to reach her during the incident and then called her boyfriend and told him — also in a whisper — to call 911 to report the shooting.

66. The gunfire soon ended, and Ms. Rogers recalled that the store went "dead silent." Still hidden behind the counter, she described "a complete, eerie, creepy silence in the store and you can hear him walking around. It just sounded like he was walking like on glass, you could

⁸ Yaron Steinbuch, *Buffalo Tops worker who called 911 also survived another shooting* New York Post (May 20, 2022)

hear it crunching under his feet.”

67. Gendron attempted to make his way out of the store, where he was confronted by uniformed Buffalo Police Officers in the front foyer. Gendron was still in possession of his weapon, wearing his body armor and helmet with camera attached. The officers took him into custody.

68. Ballistics evidence recovered at Tops indicates that Gendron fired 60 shots during the attack, which lasted approximately 2 minutes.⁹

69. The FBI recovered a signed, handwritten note in Gendron’s bedroom, addressed to his family, and that apologized to his family for committing “this attack” but stated that he “had to commit this attack” because he cares “for the future of the [w]hite race.”¹⁰



A. The Livestreamed Massacre Was Viewed by Over 3 Million People.

70. Twitch broadcast Gendron’s livestream for approximately 24 minutes, and it was viewed by roughly two dozen other Twitch users during that time. Twitch eventually stopped the livestream, but only after Gendron’s massacre was mostly complete.

71. While only a small number of people viewed the livestream in real time, video of the massacre (the “murder video”) was subsequently posted and amplified online via numerous social media platforms, starting with 4chan. For example, approximately four minutes after the

⁹ Crim. Compl. ¶ 13.

¹⁰ Crim Compl. ¶ 15.

link was first posted to 4chan, a user posted it to another fringe site, kiwifarms.net. Shortly thereafter, the link began appearing on mainstream social products, including on Twitter within 17 minutes and on Reddit within an hour. In the following days, the murder video was posted and reposted on these and other social media platforms thousands of times.

72. On information and belief, some of these social media companies designed, programmed, and utilized their products in a manner that amplified the murder video, ensuring that it reached far more users than it otherwise would have – including users that did not search for, request, or want to see this horrific, violent, and racially motivated massacre. Also on information and belief, at least some of these users are vulnerable children, teenagers, and/or young adults, who are suffering serious and permanent emotional harms now and as a direct result of the aforementioned technologies and programming decisions.

73. Copies of the murder video also spread rapidly. For example, within 30 minutes of the link's first appearance on 4chan, another 4chan user had downloaded it, uploaded it to a video sharing platform, and posted a link to that other video sharing platform on 4chan. Similarly, a condensed version of the murder video was uploaded and made available on Reddit less than an hour and a half later. Links to these and other copies of the murder video similarly spread, virtually unchecked, and were amplified by mainstream and alternative social media products.

74. Copies of the murder video were posted to Facebook, and Facebook displayed them next to advertisements. The New York Times reported that, on Facebook, “searches for terms associated with footage of the shooting have been accompanied by ads for a horror film, clothing companies and video streaming services.”¹¹ In some cases, Facebook even recommended certain search terms to users relating to the murder video, noting that they were “popular now” on the platform. Facebook admitted that, in the days immediately after the massacre, ads may have been shown on the same page as the murder video (specifically, where it had not been flagged for removal).¹²

¹¹ Ryan Mac, *Facebook Has Been Monetizing Searches for the Buffalo Shooting Video*, N.Y. Times (May 19, 2022), <https://www.nytimes.com/2022/05/19/technology/buffalo-shooting-facebook-ads.html>.

¹² See Amanda Silberling, *Facebook and Twitter Still Can't Contain the Buffalo Shooting Video*, TechCrunch (May 17, 2022), <https://techcrunch.com/2022/05/17/buffaloshooting-footage-facebook-twitter-moderation>.

75. While Facebook eventually turned off banner advertising for searches related to the Buffalo shooting, the murder video continued to circulate on Facebook and, on information and belief, Facebook's algorithms continued to recommend it to users – including users that did not search for, request, or want to see this horrific, violent, and racially motivated massacre.

76. According to the New York Times, the murder video was viewed more than 3 million times.

77. Meta earned advertising revenue from its hosting and amplification of Gendron's murder video on Facebook. On information and belief, Alphabet, Reddit, and 4chan also earned advertising revenue from the hosting and amplifying the video on their platforms.

B. White Replacement Theory Caused Payton Gendron to Murder Ten Innocent Black People



78. On the rifle used to carry out the massacre, Gendron painted “The Great Replacement”¹³ and the names of white supremacist killers such as “Jon [sic] Earnest,” who in April 2019 opened fire on a Poway synagogue, “Anders Breivik,” who murdered 77 people in Norway in July 2011, “Robert Bowers,” who killed 11 worshipers at the Tree of Life Synagogue in Pittsburgh, Pennsylvania on October 27, 2018, and “Dylann Roof,” who composed a white supremacist screed before he killed 9 parishioners at the Emanuel AME in Charleston, South

¹³ Crim. Compl. ¶ 13.

Carolina on June 17, 2015.¹⁴

79. Also written on Gendron's rifle was "buck status: broken" referring to "buck breaking," the use of brutal sexual violence by slave owners as punishment against enslaved Black men.¹⁵ He also wrote "#BLM mogged." Mogged is an internet slang term meaning to assert dominance. Writing above the trigger of the gun he used to kill 10 Black people, Gendron wrote "James Watson," the Nobel Prize-winning scientist who was stripped of his honorary titles in 2019 for advocating that Blacks are genetically inferior to Whites intellectually. Also written on the stock of the rifle was phrase "here's your reparations!" This refers to the call for reparations for descendants of slaves in America.

80. Writing on Gendron's bolt-action rifle includes similar white supremacist references such as "stand up and be counted" and "white lives matter—give them hell."¹⁶ "Stand up and be counted" was taken from a Johnny Rebel song titled "Birth of a Nation," which is popular among white supremacists. "White lives matter" is a white supremacist phrase that originated in early 2015. It became popular in white supremacist spaces as a racist response to the Black Lives Matter movement and advocates for raising "white racial consciousness."

81. The phrase "you wait for a signal, whilst your people wait for you" also appears on Gendron's bolt-action rifle. This is the title to a section of an online post by the perpetrator of a mass shooting at two mosques in Christchurch, New Zealand, which caused more than 61 deaths. The Christchurch killer intended the phrase to serve as a call to action to defend the white race.

82. Calligraphy on the shotgun includes the names "Travis McMichael" and "Gregory McMichael," both convicted of murdering Ahmaud Arbery in a 2020 hate crime.

83. On his shotgun, Gendron painted a round Celtic Cross symbol, one of the most important and commonly used white supremacist symbols. The Celtic Cross is used by neo-Nazis, racist skinheads, the Ku Klux Klan, and virtually every other white supremacist group. It has also achieved notoriety as part of Stormfront, the largest white supremacist website in the world.¹⁷

¹⁴ ADL *Buffalo Shooters Weapons Covered in White Supremacist Messaging* (May 26, 2022)

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

84. Gendron's white supremacist motivation is not simply expressed in the slogans and names written on his weapons but was revealed in a 120-page written statement, incorrectly referred to as a "manifesto,"¹⁸ he released on the day of the shooting and in 700-pages of ruminations he posted to Discord well in advance.

85. Gendron explained the motive for his attack as follows:

Why did you decide to carry out the attack?

To show to the replacers that as long as the White man lives our land will never be theirs and they will never be safe from us.

To directly reduce immigration rates to European lands by intimidating and physically removing the replacers themselves.

To intimidate the replacers already living in our lands to emigrate back to their home countries.

To agitate the political enemies of my people into action, to cause them to overextend their own hand and experience the eventual and inevitable backlash as a result.

To incite violate, retaliation and farther divide between the European people and the replacers currently occupying European soil.¹⁹

86. Two months prior to the massacre, Gendron had explained on Discord the motivating role of the replacement theory in his impending attack:

I dislike that I will be giving all this up and I wish I could keep it. But I know the replacement of Whites will result in the end of this life for all people. I will have to show courage I don't have to combat this replacement. It would be incredibly

¹⁸ The Encyclopedia Britannica defines a manifesto as follows:

A manifesto advances a set of ideas, opinions, or views, but it can also lay out a plan of action. While it can address any topic, it most often concerns art, literature, or politics. Manifestos are generally written in the name of a group sharing a common perspective, ideology, or purpose rather than in the name of a single individual.

Gendron's written statement is a disjointed screed of racist, antisemitic and nativist tropes, text cut and pasted from writings of other mass shooters, articles from white supremacist journals and derogatory and sinister imagines of Blacks, Jews and other minorities. It is historically and factually inaccurate (as well as highly insensitive) to dignify Gendron's statement as a "manifesto." Instead, the document will be identified as "Gendron Statement" throughout this Complaint. <https://www.britannica.com/topic/manifesto>.

¹⁹ Gendron Statement at 4.

selfish if I decide that I would rather continue my life as normal and ignore the cries of help from my race. I have to commit this attack, if I don't who will? We have to fight The Great Replacement or it will end us all.²⁰

87. Indeed, the most prominent theme in Gendron's writings concerns the supposed decline of the white race and its replacement by other demographic groups—what he called “white genocide.” He explicitly referenced his fear of “ethnic replacement,” “cultural replacement,” and “racial replacement” based on a combination of declining white birth rates and “[m]ass immigration and higher fertility rates of immigrants.”

88. Like many “white genocide” conspiracy theorists, Gendron portrayed Jewish people as ultimately responsible for white decline: “The real war I’m advocating for is the gentiles vs the Jews.”²¹ Yet, he wrote that targeting Black people is more urgent because of their perceived high fertility rates: “[Jews] can be dealt with in time, but the high fertility replacers will destroy us now, it is a matter of survival we destroy them first.”²²

89. Gendron hoped his attack would inspire others to commit similar acts of racist mass murder and that his followers would have an easier time doing so by following his detailed writing. He was both inspired by and counting on Defendants’ social media products – with their dangerously defective designs – to help him accomplish his murderous objective.

C. Replacement Theory is a Product of Social Media

90. The meteoric rise of the “great replacement” theory in the second decade of the 21st Century is tied directly to the advent of social media during the same period of time.

91. The term “great replacement” was first coined by the racist French author Renaud Camus in his 2011 book *Le Grand Remplace*.²³ Camus saw non-white immigration to France from the decolonized Middle East and Africa as an attempt by a sinister “replacist” elite to destroy native French demographics and culture. An extension of colonialist theory, replacement theory is predicated on the notion that white women are not having enough children and that falling birthrates will lead to white people around the world being replaced by nonwhite people.

²⁰ Discord Diary at 254.

²¹ Gendron Statement at 24.

²² *Id.* at 12.

²³ Jacob Davey and Julie Ebner ‘*The Great Replacement: The Violent Consequences of Mainstreamed Extremism*’ Institute for Strategic Dialogue (2019).

92. Proponents of replacement theory draw on conspiracy theories to amplify their messaging, suggesting that progressive politicians, the media, and globalists are working concertedly, actively, and purposively to destroy native Europeans and their culture. They often paint Muslim communities as implicit in these plans because of the perception that they innately desire to destroy Western civilization. Proponents of replacement theory frequently overlay it with anti-Semitic theories as well, blaming ‘globalist Jewish elites’ for mass migration.

93. Camus’ racist theory metastasized throughout social media and directly influenced the growth of the far-right, anti-immigrant identarian movement worldwide. In the United States, members of Identity Evropa, an American offshoot of the identarian movement, were prominent participants in the deadly 2017 “Unite the Right” rally in Charlottesville, Virginia. In 2017, white supremacists bearing tiki torches shouted in Charlottesville, Virginia that “Jews will not replace us,” the slogan of the neo-Nazi Identity Evropa.

94. The term ‘white genocide’ was first popularized in the late 20th Century by white supremacist David Lane, who argued that white populations are being replaced through immigration, integration, abortion, and violence against white people.²⁴ It differs from the great replacement theory in that it is often tied explicitly to antisemitic conspiracy theories – for example, suggesting that Jews deliberately orchestrate population change.

95. In more recent times, a formulation of white extinction anxiety known as “white genocide” has circulated broadly on the far right and was included in Gendron’s propaganda post alongside the “great replacement” narrative.

96. The great replacement theory is effective because it creates a sense of urgency by pointing to the imminent extinction of white people and the demise of European culture. This is often emphasized through video footage of urban areas with large populations of people from minority ethnic backgrounds, designed to demonstrate the lack of white people.

97. Replacement theory proponents rely heavily on social media – and the tools and features the Social Media Defendants utilize to increase their own engagement – to promote racist ideology to young and impressionable adherents. Through these products, they are served up and

²⁴ <https://www.splcenter.org/hatewatch/2022/05/17/racist-great-replacement-conspiracy-theory-explained?>

provided unfettered access to young and impressionable male recruits, who they then engage emotionally around questions of fertility and anxieties about male others. They fear that others will overproduce children compared to white males, thereby and eventually eliminating them.

98. The birthrate conversation has become a key recruitment tool for white supremacists. It is often the first political point of agreement a white supremacist recruiter online will find with a target, especially a young target. Recruiters often focus on teenagers with unmyelinated prefrontal cortices, who are experiencing insecurities and have already been exposed to some of these ideas online. Frequently, once a group of people in an online forum agree that declining white birthrates are an existential threat, the conversation turns to policies and actions.

99. Extreme-right communities use a range of methods to broadcast the replacement theory, including dehumanizing racist memes, distorting and misrepresenting demographic data, and using debunked science. Replacement propagandists have found ways to co-opt the grievances of different fringe communities on the internet by connecting anti-migration, anti-LGBTQ, anti-abortion, and anti-establishment narratives.

100. Analyses of interviews with right-wing extremists demonstrate that communication over the internet provides an effective networking method amongst their supporters.²⁵ These groups use the internet to identify and obtain access to potential new recruits, convey their racist messages, and adapt communication strategies that are appealing to youth – including the use of images, videos, music, and online games.²⁶

101. Social media has been integral to the rise of the replacement theory and the proliferation of the racist violence perpetrated in service of its cause.

102. To be clear, the availability of online forums, by itself, is not what enabled, aided, and facilitated these extreme-right communities. If that had been the case, the rise would have coincided with the advent of the internet, and not the advent of social media products. Instead, social media companies designed and chose to program, distribute, and operate their products in a

²⁵ Bliuc A.-M., Faulkner N., Jakubowicz A., McGarty C. *Online networks of racial hate: A systematic review of 10 years of research on cyber-racism*. Comput. Hum. Behav. 2018;87:75–86. doi: 10.1016/j.chb.2018.05.026.

²⁶ Gerstenfeld P.B., Grant D.R., Chiang C.-P. *Hate online: A content analysis of extremist Internet sites*. Anal. Soc. Issues Public Policy. 2003;3:29–44. doi: 10.1111/j.1530-2415.2003.00013.x.

manner that prioritizes engagement over and even at the cost of user safety.

103. The Social Media Defendants and the products they are designing and distributing to young Americans, including and especially minors, are actively encouraging, assisting, and facilitating the spread of terrorist propaganda, despite the foreseeable and catastrophic harms occurring as a result.

D. Replacement Theory Causes Violence and Mass Murder

104. Replacement theory inspires extreme and violent action by drawing on a range of these crisis narratives, and proponents also encourage accelerationist views. Accelerationism is a theory that technological and social advance should be sped up to increase instability and result in revolutionary political change. Groups endorse the view that there should be faster polarization to bring about a race war, which they deem to be both inevitable and desirable.

105. Accelerationist communities have been growing on social media in recent years. These communities glorify acts of violence and “canonize” white extremist killers.²⁷ For example, after police identified the suspect in the August 2019 Walmart shooting in El Paso, members of online communities referred to him as a “Saint.”

106. Accelerationists hope to encourage future acts of white supremacist violence. That is the primary reason they promote and disseminate the writings of white supremacist killers, which have inspired copycat attacks throughout the world with increasing frequency since 2011. Again, social media is the primary vehicle through which these killers’ writings are propagated and amplified.

107. On July 22, 2011, Anders Breivik set off a car bomb in Oslo, Norway that killed eight people and injured at least 209 others. Two hours later, at a summer camp on the island of Utøya, Breivik opened fire on the young participants, killing 67 and injuring 32. His attack was the deadliest in Norway since World War II.

108. Breivik acknowledged that he was responsible for both the bomb and the shooting, but denied culpability, claiming that his actions were “atrocious but necessary.”

²⁷ Jonathan Lewis, Joshua Molloy & Graham Macklin, *The Lineage of Violence: Saints Culture and Militant Accelerationist Terrorism*, The Global Network on Extremism and Technology (April 27, 2023).

109. Ninety minutes before the bomb blast in Oslo, he sent a 1,518-page document he had authored and entitled 2083: A European Declaration of Independence to 1,003 email addresses. The compendium contains his militant far-right ideology, anti-immigration, anti-Islamism, and xenophobic worldview.

110. Shortly before Breivik's deadly rampage began, he checked in one last time with his friends on Facebook. He posted his 1,518-page document and a link to the video on YouTube, encouraging his more than 7,000 Facebook friends to use his statement as a blueprint for action and counting on the Facebook product to spread his message.

111. A video Breivik released on YouTube 6 hours before the attack advocated violence towards leftists and Muslims who reside in Western Europe.

112. On June 17, 2015, 21 year old Dylann Roof murdered nine Black church members in Charleston, South Carolina during a Bible study at the Emanuel African Methodist Episcopal Church. Emanuel AME is one of the oldest Black churches in the United States, and it has long been a center for civil rights organizing. Roof had attended the Bible study before opening fire and targeted members of this church because of its history and status.²⁸

113. Roof espoused racial hatred in a website writing he published before the shooting. Roof's website was last modified the day of the shooting, when Roof noted, "[A]t the time of writing I am in a great hurry."²⁹

114. On his website, Roof posted photos of emblems which are associated with white supremacy and his Facebook page included an image of Roof wearing a jacket decorated with two emblems popular among American white supremacists. Roof also had a website called "The Last Rhodesian," which included what appeared to be an unsigned manifesto containing Roof's opinions of "Blacks," "Jews," "Hispanics," and "East Asians," as well a cache of photos including an image of Roof posing with a handgun and a Confederate Battle Flag.

115. Prosecutors determined that Roof was radicalized online, instead of adopting his white supremacist ideology "through his personal associations or experiences with white

²⁸ Bill Morlin, *Dylann Roof's plan was simple. The 21-year-old wanted to start a race war, following the same demented path as infamous white supremacists before him*. SPLC (Dec. 19, 2016).

²⁹ Frances Robles, *Dylann Roof Photos and a Manifesto Are Posted on Website*, New York Times (June 20, 2015).

supremacist groups or individuals or others.”³⁰ In his writings, Roof says that he searched for “Black on White [sic] crime” on Google and was directed to the website of the Council of Conservative Citizens, where he read “pages upon pages” of cases involving white people murdering Black people. Roof wrote that he had “never been the same since that day.”

116. On October 27, 2018, Robert Bowers killed eleven people and wounded six, including several Holocaust survivors, at a Shabbat morning service at Tree of Life Synagogue in Pittsburgh, Pennsylvania.

117. In the weeks before the shooting, Bowers uploaded antisemitic posts on social media directed at the Hebrew Immigrant Aid Society. He claimed Jews were aiding members of Central American caravans moving toward the United States border and referred to those migrants as “invaders.”³¹ Shortly before the attack, Bowers posted on Gab, a social media platform, that “HIAS likes to bring invaders in that kill our people. I can’t sit by and watch my people get slaughtered. Screw your optics, I’m going in.” Bowers also denounced Black people with racial slurs and images related to lynching.

118. In the years leading up to his deadly attack, Bowers became radicalized by white nationalism and “aggressive online provocateurs of the right wing’s fringe.” He was deeply involved in posting comments on social media websites such as Gab and promoted antisemitic conspiracy theories on them. Bowers published posts that supported the white genocide conspiracy theory, such as one that said, “Daily Reminder: Diversity means chasing down the last white person.”

119. On March 15, 2019, 28-year-old Brenton Tarrant carried out consecutive mass shootings on two mosques in Christchurch, New Zealand.³² The attacks, carried out during Friday prayer, began at the Al Noor Mosque in the suburb of Riccarton at 1:40 pm and continued at the Linwood Islamic Centre at 1:52 pm.

120. Tarrant murdered 44 people at the Al Noor Mosque and 7 at the Linwood Islamic

³⁰ Mark Berman, *Prosecutors say Dylann Roof ‘self radicalized’ online, wrote another manifesto in jail*, Washington Post (April 22, 2016).

³¹ Alex Amend, *Media Manifesto: The Pittsburgh Synagogue Shooter’s Posts on Gab*, SPLC (Oct. 28, 2018).

³² <https://shorthand.radionz.co.nz/NZ-DARKEST-DAY/index.html>.

Centre, and his victims ranged from 3 to 77 years old.

121. Minutes before his attack, Tarrant emailed a 74-page writing entitled The Great Replacement, a reference to the replacement and “white genocide” conspiracy theories, to several media outlets and shared links on Twitter and 8chan. He wrote that he planned the attacks two years prior and selected the location three months prior. Tarrant cited Norwegian terrorist Anders Behring Breivik, Dylann Roof, and others, as inspiration. He said that he hoped mass shootings would cause conflict over gun control in the United States, and potentially lead to civil war.

122. Tarrant’s evil hope was realized on April 27, 2019, when 19 year old John Timothy Ernest entered the Chabad of Poway synagogue on the last day of Passover and fatally shot one woman and injured three others, including the synagogue’s rabbi.³³ Ernest posted an antisemitic and racist open letter on 8chan shortly before the shooting, stating that Jewish people were preparing a “meticulously planned genocide of the European race,” a white genocide conspiracy theory. He cited shooters Brenton Tarrant and Robert Bowers for their involvement in the Christchurch Mosque shooting and the Pittsburgh synagogue shooting, respectively, as inspirations. Ernest also claimed responsibility for a March 2019 fire, which was extinguished with only minor damage to the building and no injuries, and graffiti left in the parking lot referred to the earlier Christchurch shooting in New Zealand.

123. On August 3, 2019, twenty-one-year-old Patrick Crusius walked into a Walmart in El Paso, Texas and killed 22 people with more than 20 others injured.³⁴ The shooter drove more than 9 hours to target a heavily Hispanic shopping center that he believed would be full of Mexican nationals. Shortly before the shooting took place, a four-page writing appeared online, and was reported by multiple outlets as belonging to the shooter. The online document contained white nationalist language “demographic displacement,” “white genocide,” and “illegal immigration,” along with references to the Christchurch massacre from earlier that year.

124. In the wake of the Christchurch massacres, the Institute for Strategic Dialogue (ISD) investigated the prevalence, scale, and nature of the ideologies and narratives that motivated

³³ <https://www.npr.org/2019/04/27/717849871/injuries-reported-in-shooting-at-california-synagogue>.

³⁴ <https://www.elpasotimes.com/story/news/crime/2019/08/03/el-paso-police-report-shooter-walmart-ciello-vista-mall/1910012001/>.

the attack³⁵. The report explored the origins of “great replacement” and “white genocide” and the dynamics and platforms that allowed the ideas to spread.

125. Using quantitative and qualitative analysis across mainstream and alternative social media channels, ISD found significant mainstream of extreme right narratives across social media platforms. From the time of the publication of Renaud Camus’ *Le Grand Remplace* in 2011 – between April 2012 and April 2019 – there were 1.5 million tweets referencing the great replacement theory in English, French, and German. The volume of tweets steadily increased in the seven years leading up to the Christchurch attack, with the number of tweets mentioning the theory nearly tripling in four years from just over 120,000 in 2014 to just over 330,000 in 2018.

126. ISD found that YouTube, Facebook, and Twitter were particularly important platforms for spreading propaganda to sympathizers and new audiences. While white supremacist groups proliferate on fringe sites like 4chan and 8chan, mainstream social media plays an integral role in promoting replacement theory and the racist violence it represents:

Although extreme-right-wing communities use fringe social media platforms to share material, mainstream social media platforms such as YouTube, Twitter and Facebook remain important avenues for disseminating material on the Great Replacement theory. These mainstream platforms are also beneficial as they provide the opportunity to reach and radicalize new audiences. Extreme-right commentators have explicitly referenced the need to weaponize internet culture so that younger generations can be radicalized more effectively.³⁶

127. On May 6, 2023, just six days ago, Mauricio Garcia entered Allen Premium Outlets in Allen, Texas with an AR-15 rifle and murdered 8 people in the second-deadliest mass killing of 2023. The murder victims ranged in age from 3 to 37 and included three family members, a pair of sisters, a security guard, and an engineer. Garcia injured seven people before a police officer who happened to be at the mall on an unrelated call fatally shot him.

128. Garcia had multiple weapons on him and five additional guns in his car nearby. He wore tactical vest packed with ammunition magazines indicating just how much carnage he hoped to inflict.

³⁵ Jacob Davey and Julie Ebner, ‘*The Great Replacement: The Violent Consequences of Mainstreamed Extremism*’ Institute for Strategic Dialogue (2019).

³⁶ *Id.* at 25.

129. In the weeks before the attack, Garcia posted more than two dozen photos of Allen Premium Outlets, and surrounding areas, including several screenshots of Google location information, seemingly monitoring the mall at its busiest times.

130. Garcia had fantasized about race wars on social media. His violent social media posting referenced “the noble war” — a phrase used by white supremacists to describe their belief that a race war is coming. His social media page also included rants against Jews, women, and racial minorities.

131. In another post, Garcia commented about what makes a mass shooting “important” and praised the shooter who killed six people, including three children, at a school in Nashville, Tennessee on March 27, 2023. He also posted photos of a flak vest emblazoned with patches, one of them with the initials for “Right Wing Death Squad,” a popular meme among far-right extremist groups. Another post included a series of shirtless pictures with visible white power tattoos, including SS lightning bolts and a swastika.

132. Electronic receipts posted on Garcia’s social media account appear to show he spent more than \$3,200 on three types of firearms he bought in June through a Dallas gun distributor.

E. Livestreaming Inspires and Facilitates Mass Shootings

133. More recently, social media platforms changed the playbook in new, deadlier ways, with introduction of the livestream product – and the Christchurch shooter took full advantage.

134. In addition to posting his racist ideology on the internet, on March 15, 2019, Brenton Tarrant live-streamed his massacre for 17 minutes on Facebook Live, starting with the drive to the Al Noor mosque. Live streamed video of the attack showed him firing at worshippers in the prayer hall from close range, shooting many multiple times.

135. Live streamed video then showed Tarrant going outside where he killed another man, retrieved another weapon from his car, then shot several more people in the mosque’s parking lot. He could then be seen reentering the mosque and firing on already-wounded people in the prayer hall before going outside again where he killed a woman. Live streamed video showed Tarrant driving off for five minutes, arriving at the Linwood Islamic Centre, and firing at more people and cars through the windshield and window of his own car.

136. At 1:51 pm, on March 15, 2019, the Facebook livestream ended; however, the GoPro device attached to Tarrant's helmet continued recording until he was apprehended by police eight minutes later.

137. Tarrant sought to create an online footprint he hoped would be galvanizing and instructional to fellow right-wing extremists, which opportunity the livestream product provided. About two hundred people watched the livestream in real time, and copies of the murder video quickly spread on both mainstream and fringe social media sites.

138. Facebook removed 1.5 million uploads of the video within the first 24 hours, and the video was altered at least 800 times, however, these efforts were unsuccessful in abating the video's gruesome online presence.

139. As Tarrant's livestream murder video went viral, he was lauded as a cult hero in online right-wing extremist forums. Users in 8chan's /pol/ board praised and quoted Tarrant's livestream murder video and his writings, and many created memes and images celebrating the shooting. Many also likened the perpetrator to a religious figure, creating memes that transposed his face onto images of medieval saints and referring to him as a saint.

140. In its analysis of the Christchurch massacre, ISD grimly predicted that the livestreaming product would become an important vehicle to foster future violence.

141. Three years before Gendron launched his attack on Tops' Grocery with a GoPro video camera attached to his helmet, ISD predicted that livestreaming, when harnessed to mainstream social media, would encourage more racist killings.

The use of livestream can be characterized as a pragmatic way of ensuring that as much of an attack would be broadcast as possible. However, it also mirrors a pattern of interplay between fringe and mainstream platforms, whereby extreme-right communities rapidly produce large amounts of propagandist material which can then be widely spread throughout broader digital ecosystems. They primarily use larger platforms such as Facebook, YouTube, and Twitter as avenues through which to disseminate propaganda material to broader audiences, while fringe platforms remain safe havens for the initiated to radicalize further.³⁷

142. ISP's prediction proved prescient. On August 26, 2018, 22-year-old David Katz

³⁷ *Id.*

entered the Good Luck, Have Fun Game Bar with two pistols and began shooting indiscriminately into the crowd of 150. Katz fired 12 shots, killing two people and wounding ten others, then ended his life by suicide. The shooting was livestreamed on Twitch and later uploaded to YouTube.³⁸

143. On October 9, 2019, 27-year-old Stephan Balliet killed two people while attempting to attack a synagogue in Halle, Germany on Yom Kippur.³⁹ German investigators determined that Balliet had almost certainly been motivated by the Christchurch killings. Like Tarrant, Balliet livestreamed the attack from the action camera on his helmet. The livestreamed video showed Balliet displaying his weapons and speaking extreme antisemitic content in English. It also showed Balliet denying that the Holocaust had happened, claiming feminism led to fewer births, leading to mass immigration, and blaming “the Jew” for this reduction.

144. In addition to the livestreamed video, Balliet posted a written statement expressing his intention to “Kill as many anti-Whites as possible, Jews preferred.” The statement, steeped in antisemitic and neo-Nazi messages, contained photos and descriptions of his homemade weapons arsenal and information about his intentions. Balliet claimed to have chosen the Halle synagogue as the target because it was the closest place where he could find “the Jew.”

145. Twitch livestreamed Balliet’s attack for 35 minutes.⁴⁰ While only five viewers are believed to have watched the video while it was broadcasting live, Twitch automatically generated and displayed a recording after the livestream ended, which was then viewed by 2,200 more people in the 30 minutes that Twitch continued to make it available prior to its removal. Twitch’s creation of the Halle shooting recording, after the livestream ended, and continued showing of that video, directly influenced and encouraged Gendron and his decision to utilize the livestream product in connection with his attack on May 14, 2022.⁴¹

146. On August 19, 2021, a 15-year-old student, Hugo Jackson, armed with four knives and two fake pistols entered a school in Eslöv, Sweden and stabbed a teacher to death. Jackson

³⁸ Alan Blinder, Christopher Mele & Patricia Mazzei, *Shooting at Jacksonville Gaming Tournament Leaves 3 Dead, Including Gunman*, New York Times (Aug. 26, 2018).

³⁹ <https://apnews.com/article/ap-top-news-germany-yom-kippur-international-news-shootings-1ffa8eb5cbb244f3bab1444bfabb9a66>.

⁴⁰ Discord Diary at 318, March 11, 2022.

⁴¹ *Id.*

livestreamed his attack on Twitch⁴² and, according to police, had an interest in white supremacy, Nazism, school shootings, and instances of right-wing terrorism.⁴³

147. On April 10, 2023, 25-year-old Connor Sturgeon opened fire on employees of Old National Bank in Louisville, Kentucky. Sturgeon livestreamed his attack on Instagram, murdering five people and injuring nine before being killed by Metro Police.

F. Teenagers Are Particularly Susceptible to Social Media Addiction and Online Radicalization

148. The human brain is still developing during adolescence in parallel to adolescents' psychosocial development. Adolescents' brains are not yet fully developed in regions related to risk evaluation, emotional regulation, and executive functioning, inhibitory mechanisms.

149. The frontal lobes - and in particular the prefrontal cortex - of the brain play an essential part in higher-order cognitive functions, impulse control, and executive decision making. These regions of the brain are central to the process of planning, decision-making, and impulse inhibition, including the evaluation of future consequences and the weighing of risk and reward. They also are essential to the ability to control emotions and inhibit impulses. MRI studies have shown that the prefrontal cortex is one of the last regions of the brain to mature.

150. During childhood and adolescence, the brain is maturing in at least two major ways. First, the brain undergoes myelination, the process through which the neural pathways connecting different parts of the brain become insulated with white fatty tissue called myelin. Second, during childhood and adolescence, the brain is undergoing "pruning" – the paring away of unused synapses, leading to more efficient neural connections. Through myelination and pruning, the brain's frontal lobes change to help the brain work faster and more efficiently, improving the "executive" functions of the frontal lobes, including impulse control and risk evaluation. This shift in the brain's composition continues throughout adolescence and continues into young adulthood.

151. In late adolescence, important aspects of brain maturation remain incomplete,

⁴² Julia Kupper, Tanya Karoli Christensen, Dakota Wing, Marlon Hurt, Matthew Schumacher and Reid Meloy, *The Contagion and Copycat Effect in Transnational Far-right Terrorism*, Perspectives on Terrorism at 6 (August 2022).

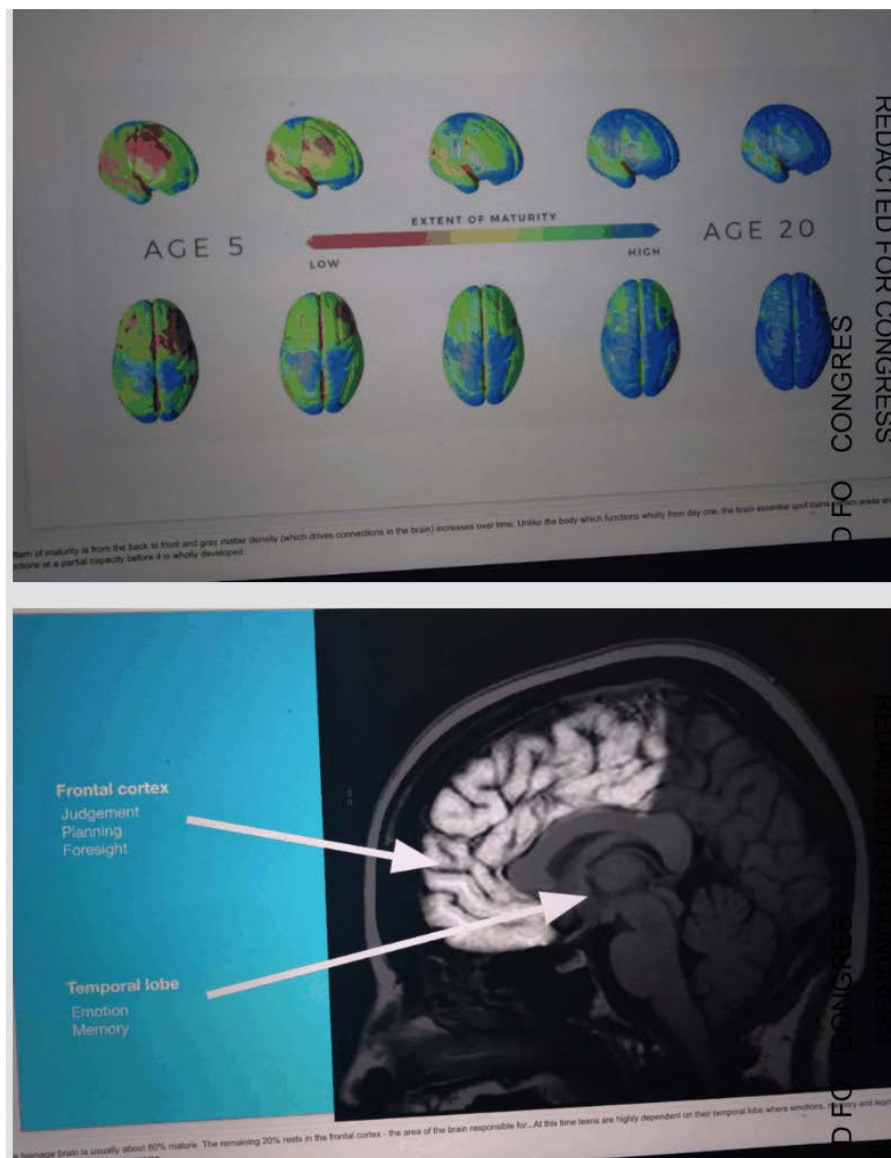
⁴³ *Id.*

particularly those involving the brain's executive functions and the coordinated activity of regions involved in emotion and cognition. As such, the part of the brain that is critical for control of impulses and emotions and mature, considered decision-making is still developing during adolescence and young adulthood consistent with the demonstrated behavioral and psychosocial immaturity of juveniles.

152. The Social Media Defendants are not only aware of these vulnerabilities in their young users but have business models expressly predicated on exploiting them. For example, in a 2020 marketing document entitled "The Power of Identities," Meta observes that "the underlying focus of teens and young adult lives is identity development."⁴⁴ The following illustrations from the internal Meta teen marketing strategy presentation illustrates this process.⁴⁵

⁴⁴ https://www.documentcloud.org/documents/23322855-copy-of-copy-of-why-teens-and-young-adults-choose-insta_sanitized at pages 50-56.

⁴⁵ *Id.*



G. Social Media Products Deluge Young Users with Violent Content

153. The Social Media defendants expose and target children, teenagers, and young adults with excessively violent content on their platforms. Data gathered from a 2014 demographically balanced sample of over a thousand youth in the United States showed that approximately half of them, within a study period of three months, experienced exposure to hateful material while online.⁴⁶

154. A 2022 survey carried out in the UK on behalf of the Youth Endowment Fund

⁴⁶ Hawdon J., Ryan J., Lucht M., editors. *The Causes and Consequences of Group Violence: From Bullies to Terrorists*. Lexington Books; London, UK: 2014. pp. 165–182.

found that 55 percent of young people aged 13 to 17 have seen real-life violence on social media in the past 12 months including fighting, threats, and sexual assaults.⁴⁷ The survey also found that 24 percent had seen another child carrying a weapon online. About two thirds of the children surveyed, 1,377 out of 2,025, answered a question about committing violence themselves, and 19 percent of those who answered said that they had committed violence themselves in the past year.

155. Not surprisingly, the more time young users spend on social media the more likely they are to be exposed to hate. In a 2020 cross-disciplinary study researchers gathered data from students aged between 14 and 19 years old.⁴⁸ Respondents were asked to report how frequently they had come across insulting verbal or written expressions against a specific group because of their race, religion, disability, sexual orientation, ethnicity, gender, or gender identity. Respondents were also asked if, in the same period, they encountered someone trying to convince them of racist views. Fifty-seven percent of students reported having been exposed to hate messages on social media or on a website in the two months prior to the survey, and twelve percent reported having encountered someone online that tried to convince them of racist views during the same time period. Teens that spent three or more hours a day online had 2.4 times the odds of reporting exposure to hate messages compared to those who spent less than 3 hours a day online. The odds of reporting exposure to hate messages among those who communicated with someone on social media that they had not met in person were 1.7 times that of those who had not done so.

H. Addictive Social Media Use Causes Young Users to Adopt Racist and Antisemitic Conspiracy Theories

156. The fluctuating neurological development of adolescents, teenagers, and young adults not only makes them ideal targets for the Social Media Defendants' algorithms; it also makes them particularly susceptible to conspiracy theories and radicalization.

157. In March 2023, a respected non-profit organization conducted a scientific survey

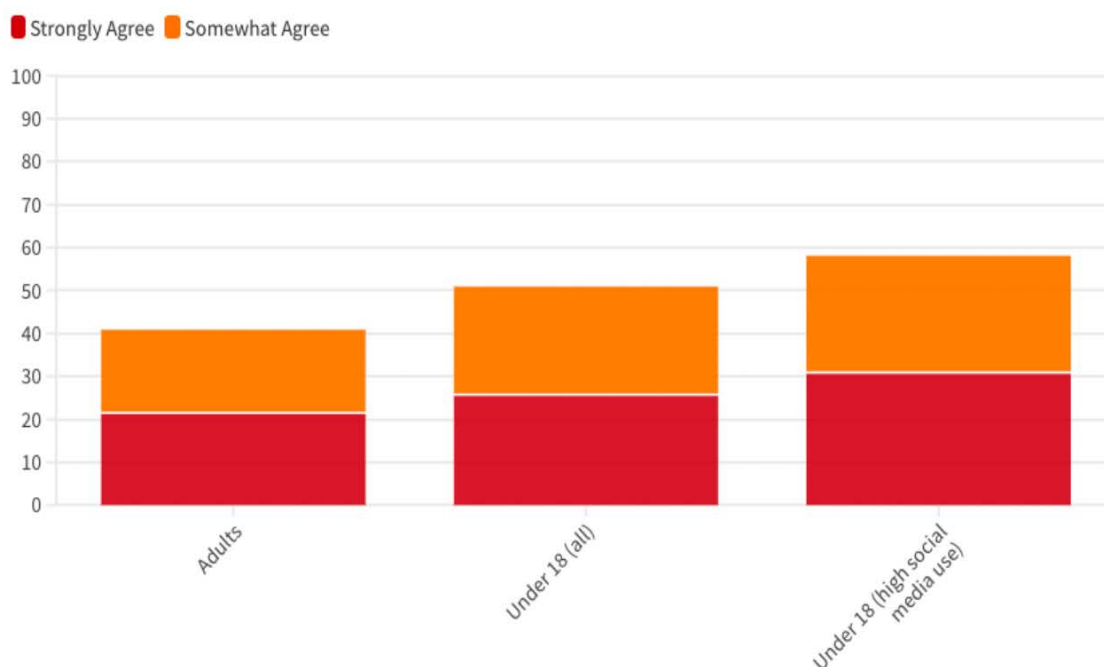
⁴⁷ Margaret Davis, *More than half of teens aged 13-17 have seen violence on social media survey*, The Independent (Nov. 14, 2022).

⁴⁸ Nighel Harriman, Neil Shortland, Max Su, Tyler Cote, Marcia Testa & Elena Savoia, *Youth Exposure to Hate in the Online Space: An Exploratory Analysis*, International Journal of Environmental Research and Public Health (Nov. 17 2020).

to determine the impact of age and social media usage on racist, antisemitic and beliefs. Survey participants were asked to indicate the extent to which they agreed with several statements that captured different conspiracy beliefs. Among adults, the average percentage of people who agreed or strongly agreed with a statement was 40.89% while, among 13 to 17-year-olds, this number rose to 50.93%.

158. The survey then looked at 13 to 17-year-olds who indicated that they used at least one mainstream social media platform⁴⁹ for 4 or more hours a day. An astonishing 53.37% of the sample met this criterion, and among this group of minors, average agreement across all statements increased to 58.09%.

Percent Agreement With Conspiracy Theories

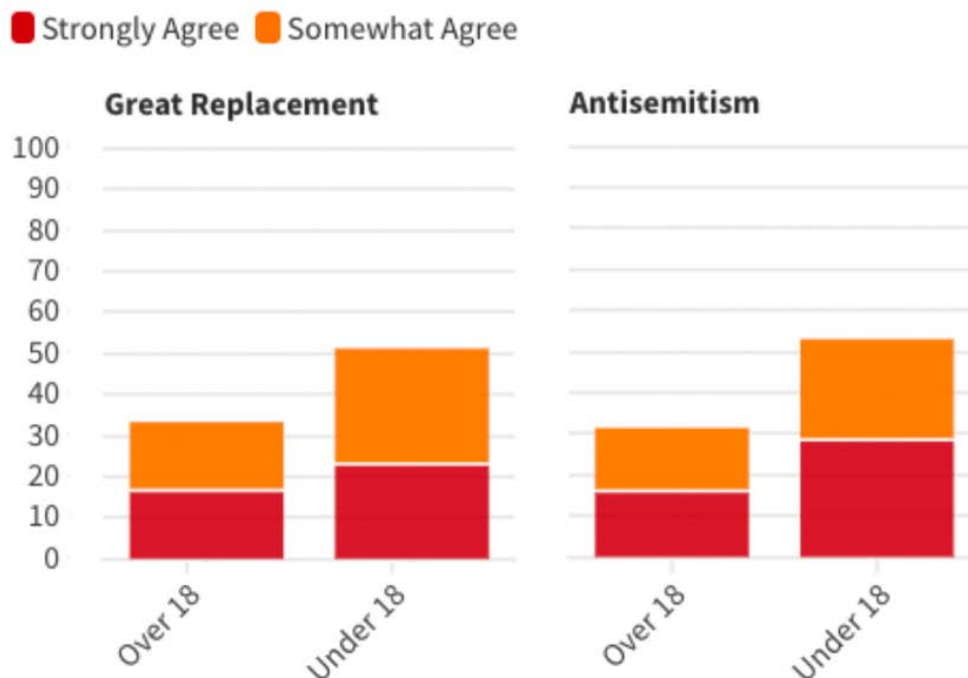


159. This disparity was even more striking with respect to racist and antisemitic beliefs. Over 50 percent of minors with high social media usage agreed with the statements that “Mass migration of people into the western world is a deliberate policy of multiculturalism and part of a scheme to replace white people” and “Jewish people have a disproportionate amount of control

⁴⁹ Facebook, Instagram, TikTok, YouTube, Twitter, Twitch, Snapchat, LinkedIn, BeReal, Reddit.

over the media, politics and the economy.”

Percent Agreement With Racist & Antisemitic Statements



160. These findings suggest that Defendants’ design decisions have reversed the generational trend in which young people manifest less racial and religious prejudice than older people. In 2019, Harvard researchers found that both conscious and unconscious bias regarding race and sexual orientation declined significantly between 2007 and 2016, and that this decline was driven largely by Millennials, not by Baby Boomers or members of Generation X.⁵⁰ In sharp contrast, the more recent 2023 findings suggest that over 50 percent of young users who spend more time on social media hold racist and antisemitic views.

161. This evidence belies the hope that American society will gradually become less racially biased, suggesting instead that, unless social media companies are forced to make their products less addictive and radicalizing in connection with young users, racism and antisemitism will increase among future generations of Americans – and the types of horrific, mass murders

⁵⁰ Tessa Charlesworth & Mahzarin Banaji, *Patterns of Implicit and Explicit Attitudes: I. Long-Term Change and Stability From 2007 to 2016*, Sage Journals (January 3, 2019).

described in this Complaint will continue and multiply.

I. Gendron Was Addicted to Defendants' Social Media Products

162. Gendron began using Instagram, YouTube, and Snapchat in his early teens and Reddit, Discord, and 4chan in his late teens.

163. Because of the dangerously defective and unreasonably dangerous algorithms powering Instagram, YouTube, and Snapchat, Gendron quickly became a problematic user of these Social Media Defendants' products. He accessed his social media accounts multiple times per hour and at all hours of the night.

164. On information and belief, at all times relevant herein, Gendron spent excessive amounts of time thinking about social media and/or planning how to use it.

165. On information and belief, at all times relevant herein, Gendron spent excessive amounts of time using social media in order to forget about personal problems.

166. On information and belief, at all times relevant herein, Gendron tried to cut back, reduce, and/or eliminate his use of social media without success.

167. On information and belief, at all times relevant herein, Gendron became restless or troubled when he was prevented from using social media.

168. On information and belief, at all times relevant herein, Gendron used social media to the point that it had a negative impact on his work, studies, relationships, and other important aspects of his life.

J. Gendron Was Radicalized by Defendants' Social Media Products

169. Gendron did not grow up in a racially prejudiced household or a racially polarized community.

170. Before Gendron began using and became dependent on the Social Media Defendants' products, he did not hold racist beliefs. He wrote that "when I was like 12, that was when I didn't dislike American blacks and liked listening to black music . . . I remember I listened to Kyle a lot."⁵¹

171. On information and belief, while using Instagram, YouTube, and Snapchat in his

⁵¹ Discord Diary at 306, excerpt from March 9, 2022 post.

early teens, these social media products directed Gendron to progressively more extreme and psychologically discordant content. They did this through the dangerously defective and unreasonably dangerous algorithms designed, programmed, and operated by them as part of the Instagram, YouTube, and Snapchat products.

172. Defendants designed and have chosen to operate the Instagram, YouTube, and Snapchat algorithms to maximize engagement of users like Gendron, not by showing them content they request or want to see, but rather, by showing them and otherwise recommending content from which they cannot look away.

173. Taking full advantage of the incomplete development of Gendron's frontal lobe, Instagram, YouTube, and Snapchat maintained his product engagement by targeting him with increasingly extreme and violent content and connections which, upon information and belief, promoted racism, antisemitism, and gun violence. Because the Instagram, YouTube, and Snapchat algorithms were designed with the singular goal of maximizing Gendron's product engagement over his psychological, emotional, and ethical well-being, they directed him to sites and other users promoting hate and violence. These products were functioning as designed and intended.

174. From his early teens, Gendron was a frequent user of YouTube and, by 2022, was viewing hundreds of YouTube videos promoting racism, antisemitism, and racial violence. On information and belief, Gendron did not begin his YouTube experience by watching hateful and violent videos, but rather, YouTube's defective and unreasonably dangerous algorithms progressively recommended and directed him to such malign content. In other words, in the beginning, this was not content Gendron searched for, sought out, or even wanted to see – instead, it was content YouTube chose for Gendron.

175. On information and belief, Gendron was directed to 4chan by the racist and violent content and connections Instagram, YouTube, and Snapchat directed to him. On 4chan, Gendron was further radicalized through exposure to the hate groups and racists conspiracy mongers who flourish on the platform due to its unique design that facilitated violence-promoting activities. On 4chan Gendron found a community of fellow racists urging him to move forward. He noted that:

Knowing that so many other attackers like myself are out there rooting for me gives me quite a bit of confidence. Every single White man has everything to lose by doing nothing, and everything to gain by taking action. Yes I do find inspiration from other attackers.⁵²

176. The videos and related content that triggered dopamine extrusion from the ventral tegmental area of Gendron's brain to his frontal cortex steadily lost their physiologic effect due to satiation. In order to maintain Gendron's level of engagement--and the resulting advertising revenue--the algorithms driving Defendants' social media products selected progressively more violent, racist, and graphic material to overcome the satiation effect and trigger a dopamine response in Gendron's adolescent brain.

177. The racist and violent material to which Gendron was directed by the algorithms in Defendants' social media products cauterized his empathetic responses and desensitized him to the human suffering they depicted. Gendron's progression to livestream videos of mass shootings and other extreme depictions of violence occurred because his dopamine response mechanism had become satiated to less violent material. The neurological satiation process occurring in Gendron's brain paralleled the growing depravity of his soul as he became more and more desensitized to the murderous carnage he was viewing. The erosion of Gendron's moral conscience and his desensitization to acts of murderous violence was the foreseeable consequence of the design and operation of Defendants' social media products.

178. During his sentencing on March 13, 2023, Gendron confirmed the radicalizing role social media played in transforming him from a kid who liked black people and enjoyed listening to the rapper Kyle into one of the most heinous racist murderers in American history.

I'm very sorry for all the pain I caused the victims and their families to suffer through. I'm very sorry for stealing the lives of your loved ones. I cannot express how much I regret all the decisions I made leading up to my actions on May 14th. I did a terrible thing that day. I shot and killed people because they were black. Looking back now, I can't believe I actually did it. I believed what I read on-line and acted out of hate. I know I can't take it back but I wish I could, and I don't want anyone to be inspired by me and what I did.⁵³

⁵² Discord Diary at 394, March 9, 2022.

⁵³ Sentencing Transcript at 48.

K. Livestreaming Caused Gendron to Implement His Murderous Plan

179. Being able to live stream his murders was central to Gendron's decision to carry them out.

180. In his Discord writing, Gendron described the impact that the Christchurch livestream had on his radicalization:

Is there a particular person that radicalized you the most?

Yes and his name is Brenton Harrison Tarrant. Brenton's livestream started everything you see here.⁵⁴

181. With haunting insight, Gendron explained how livestreaming the Christchurch massacre increased the power of Brenton Tarrant's racist message exponentially as compared to the written statement released by Charleston shooter Dylann Roof.

Dylann Roof's manifesto is not that bad Livestreaming this attack makes a 1000x greater impact I most likely wouldn't even know about the real problems in the world if Brenton Tarrant didn't livestream his attack.⁵⁵

182. Gendron wrote that livestreaming the attack would help him overcome his fear and any lingering sympathy for human life that could dampen his murderous intent.

It is very difficult for a normal person even with all the information to carry out an attack that will kill another human being, or the fact that you may die that day. I don't think there really is a way to train for this, but confidence in your goals and equipment may ease them. I think that live steaming this attack gives me some motivation in the way that I know that some people will be cheering for me.⁵⁶

183. In her report on the role of online platforms in the Buffalo shooting, the New York State Attorney General Letitia James concluded as follows:

Livestreaming requires a special mention for its repeated use by hate-fueled mass shooters to broadcast their massacres. Livestreaming undoubtedly has many legitimate use cases, at the same time, the future of livestreaming needs to grapple with how this service has been used to broadcast these acts of terror, becoming an extension of the criminal act, further terrorizing the targeted community and serving to promote the shooter's ideology. . . [T]he Buffalo shooter considered the instantaneous transmission of video available through livestreaming to be a centrally motivating factor in his shooting, both because of the intangible support

⁵⁴ Gendron Statement at p.61.

⁵⁵ Discord Diary at 146

⁵⁶ Gendron Statement at 61

he felt he would receive through it and because he hoped it would inspire other, just as he had been inspired by a video of the Christchurch shooter. Although Twitch stopped the Buffalo shooter's livestream within two minutes of the first gunshot, an improvement over Facebook's response to the Christchurch shooter's livestream, two minutes is still too much. Even a short video of a mass shooting can be used to incite others to engage in copycat crimes and serve the criminal goals of the perpetrator.⁵⁷

L. Gendron's Chosen Weapon

184. Gendron used an AR-15 weapon, the Bushmaster XM15-E2S, to carry out his murderous attack.

185. The AR-15 rifle was originally designed for combat soldiers in the 1950s.⁵⁸ Developed by the Armalite company and described as an "outstanding weapon with phenomenal lethality," the AR-15 was designed to fire small bullets at very fast speeds, which was desirable for a military rifle.⁵⁹

186. The destructive power of the AR-15 has been documented in graphic detail—with one headline stating, "This is how bullets from an AR-15 blow the body apart" with "brutal efficiency."⁶⁰ Quoting a trauma surgeon at Johns Hopkins Hospital, the article continues, "It literally can pulverize bones, it can shatter your liver and it can provide this blast effect . . . [During surgery, body tissue] literally just crumbled in your hands."⁶¹

187. AR-15s have been used in a majority of the deadliest mass shootings in the United States since 2012.⁶²

188. AR-15s were used to perpetrate, among other crimes, the mass shootings in Newtown, Connecticut; Parkland, Florida; Aurora, Colorado; Las Vegas, Nevada; and Sutherland Springs, Texas.

189. The dominance of the AR-15 in America today is the product of intentional and sustained marketing efforts by the firearms industry, including Bushmaster. Bushmaster has

⁵⁷ Attorney General Report.

⁵⁸ <https://www.washingtonpost.com/nation/interactive/2023/ar-15-america-gun-culture-politics/>.

⁵⁹ *Id.*

⁶⁰ <https://www.washingtonpost.com/nation/interactive/2023/ar-15-damage-to-human-body/>.

⁶¹ *Id.*

⁶² <https://www.washingtonpost.com/nation/interactive/2023/ar-15-america-gun-culture-politics/>.

advertised the XM15-E2S with the slogan, “military-proven performance.” For one civilian AR-15 rifle, Bushmaster advertised the weapon as “the uncompromising choice when you demand a rifle as mission-adaptable as you are.” For another, Bushmaster’s catalogue proclaimed, “When you need to perform under pressure, Bushmaster delivers,” accompanying an image of soldiers.

190. Bushmaster advertises these “civilian” rifles as “the ultimate combat weapons system.” Invoking the deadly power of their AR-15 rifles shown in the accompanying catalog image, the company proclaims, “Forces of opposition, bow down. You are single-handedly outnumbered.”

191. Since the Newtown massacre in 2012, more than 13.7 million AR-15s have been manufactured, generating approximately \$11 billion in revenue between 2012 and 2020.⁶³

192. On March 26, 2018, Remington Outdoor Company, which controlled Bushmaster at the time, sought Chapter 11 bankruptcy protection.

193. On February 5, 2020, Remington Outdoor Company stated that Bushmaster products would no longer be manufactured.⁶⁴

194. On July 28, 2020, Remington Outdoor Company filed for Chapter 11 bankruptcy protection for a second time.

195. On September 29, 2020, Bushmaster’s trademarks were approved to be sold to Franklin Armory Holdings. Inc.

196. Bushmaster filed for bankruptcy in 2021.

197. After exiting bankruptcy the following year, Bushmaster issued a press release on its website, proclaiming that “Bushmaster Firearms is Back!” Nearly concurrently, as early as August 15, 2021, Bushmaster website’s “About Us” section described the XM15-E2S as a “workhorse of reliability.”⁶⁵

198. The same “About Us” section declared, “Bushmaster™ proudly defends freedom, as we are Proven™ in the most severe conditions. It will always be our mission to push the limits

⁶³ *Id.*

⁶⁴ <https://web.archive.org/web/20200218052926/https://www.thetruthaboutguns.com/is-remington-leaving-the-msr-market-dpms-bushmaster-and-tapco-sites-are-shuttered/>.

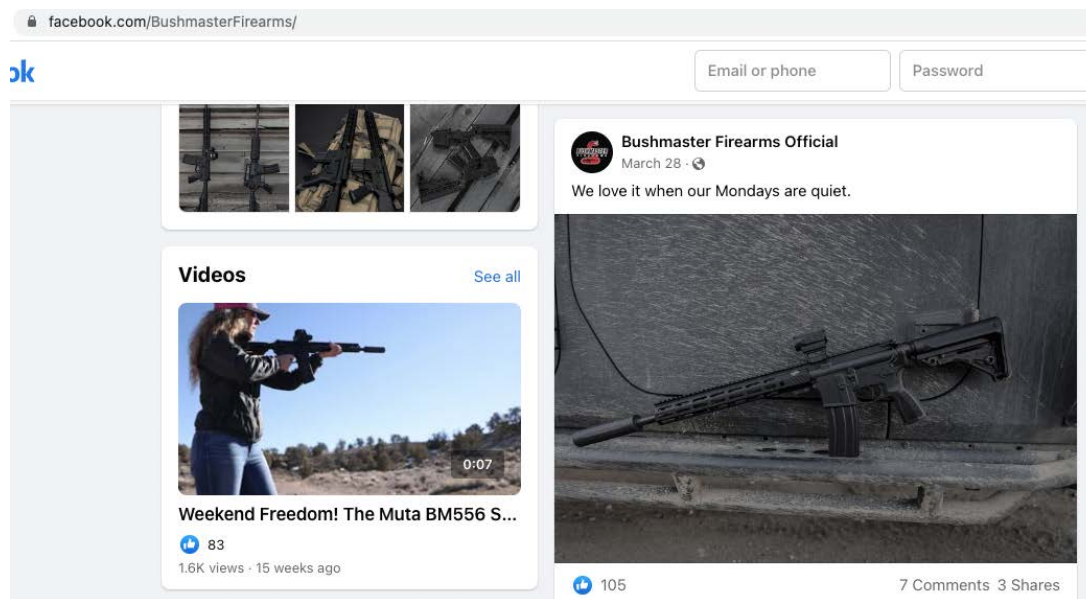
⁶⁵ <https://www.bushmaster.com/about-us/>; <https://web.archive.org/web/20210815042119>.

of performance, so that you can push yours. Bushmaster™. PROVEN™.”⁶⁶



199. In the months leading up to the mass shooting at Tops supermarket in Buffalo, Bushmaster marketed its firearms on social media. On March 28, 2022, “Bushmaster Firearms Official” posted on Facebook, “We love it when our Mondays are quiet.”

⁶⁶ <https://www.bushmaster.com/blog/bushmaster-firearms-is-back-/>; <https://www.bushmaster.com/about-us/>; <https://web.archiveorg/web/20210815042119>.



200. Gendron agreed with and fully accepted how Bushmaster positioned itself.

201. The name of the Bushmaster brand appears ten times in Gendron's writings.

202. When meticulously selecting a firearm for his own despicable "mission," Gendron touted, "there are very few weapons that are easier to use and more effective at killing than firearms, especially the Bushmaster XM-15 I will be using."⁶⁷

203. When showing a photo of his weapon in his writings, he proudly pointed to his Bushmaster XM-15, and told his anticipated audience, "[t]hat's right, I used the dreaded military grade rifle-15 as my main firearm for this attack."⁶⁸ He added additional praise for Bushmaster, almost mirroring their advertising copy: "Bushmaster already has quite a nice quality control for their firearms anyways, that's been proven throughout the years, and so far after testing the parts I am impressed with their quality."⁶⁹

204. Gendron chose a Bushmaster XM15-E2S to use in his attack on Tops because of its features and efficiency at killing. He wrote that, "The AR-15 and its variants are very deadly when used properly. Which is the reason why I picked one. . . Plus, the media loves to hate on the AR-15, which may increase media coverage and public outlash."⁷⁰

⁶⁷ Manifesto, p.5.

⁶⁸ Manifesto, p.61.

⁶⁹ Manifesto, p.70.

⁷⁰ *Id.* at p.58.

IV. DEFENDANT SPECIFIC ALLEGATIONS

A. Factual Allegations as to Paul and Pamela Gendron

205. In May 2022, Gendron resided in his parents' home and was under their care, custody, and control.

206. Prior to May 14, 2022, there were numerous signs that should have alerted Paul and Pamela Gendron that their son was planning a violent attack.

207. When Gendron was 16 years old, Paul Gendron bought him a Savage Axis XP bolt-action hunting rifle. On information and belief, this is the same rifle found in Gendron's car on May 14, 2022, with "you wait for a signal, whilst your people wait for you" written on it.

208. Gendron's father took him shooting in the Skyline Drive State Forest near Kirkland, New York. Gendron would later return to this very location to rehearse his planned attack in Buffalo.

209. In June 2021, Gendron posted in on online forum for a high school that he planned to commit "murder/suicide." Gendron underwent a psychiatric evaluation and New York State police visited his home after this threat.

210. In other words, in June 2021, Paul and Pamela Gendron had actual knowledge that their son was contemplating murder and that he owned multiple guns. Nevertheless, and even though Gendron lived in his parents' home and was under their care, custody, and control, on information and belief, they did nothing to restrict or deny his access to firearms or otherwise remove such dangerous instrumentalities from his possession.

211. Paul and Pamela Gendron entrusted Payton Gendron with a dangerous instrument which caused harm to a third party that was plainly foreseeable.

212. As the date Payton Gendron had selected for his attack grew closer, he started to purchase equipment and tactical gear. He spent over \$1,000 on body armor and medical supplies. At least some of these orders were delivered to his parents' home address, where Gendron resided at the time of the attack.

213. On information and belief, Gendron's stockpiling of combat equipment was obvious to Paul and Pamela Gendron and provided them with constructive notice that he was

contemplating an act of violence.

214. Gendron stored his tactical gear, and his Bushmaster XM15-E2S in Paul and Pamela Gendron's house. He tried on and took numerous selfies over a period of months wearing his tactical gear, including body armor, combat equipment, and ballistic goggles, in one of the bathrooms in Paul and Pamela Gendron's house.

215. On information and belief this activity was obvious to Paul and Pamela Gendron and provided them with constructive notice that he was contemplating an act of violence.

216. On March 8, 2022, Gendron received a speeding ticket from Groveland, New York while returning from Buffalo to scope out the location of the attack. When the citation arrived in the mail, on or about March 26, 2022, Paul Gendron became aware that his son was hours away from the college that he had told his parents he was attending, yet did not question him about this oddity, despite Payton Gendron's well-founded concerns that his father would. As Payton Gendron described on Discord, "I'm compromised guys! I got mail in saying I was speeding in Groveland and now my dad knows I was hours away doing something I shouldn't have. I wish I finished my manifesto and finished everything so I start the attack today. I need to destroy all evidence of my physical notes[.] Shits about to get real."⁷¹

217. On March 25, 2022, less than two months before his attack, Gendron brutally killed and dismembered a cat. He had found a feral cat attacking his own cat, then spent over an hour repeatedly stabbing the cat with a knife, smashing its head on a concrete slab, and chopping off its head with a hatchet. He proceeded to post a photo of the cat's decapitated body on Discord, with the caption "I called my mom and she gave me a box and I dug a shallow grave in the backyard. Honestly right now I don't even feel anything about killing that cat. I thought I would be in pain but I literally just feel blank."⁷²

218. Animal cruelty is a major warning sign of an individual's propensity to violence. Yet Pamela Gendron failed to act, warn authorities or even medical professionals of what transpired, or remove the guns that she knew Gendron had in his room.

⁷¹ Discord Diary at 382.

⁷² *Id.* at 376-379.

219. On February 20, 2022, Pamela Gendron picked up and laundered the liner of Gendron's combat helmet. Following his dismemberment of the feral cat, Gendron posted a photo on Discord that shows him with blood splatters on his face and military style glasses.⁷³ This is another example of Pamela Gendron being aware that her son was accumulating tactical combat equipment.

220. Gendron's possession of a ballistic helmet, in conjunction with the State Police investigation and psychological evaluation arising out of his threat to engage in "murder/suicide" the previous year, provided Paul and Pamela Gendron with constructive notice that he was contemplating an act of violence.

221. At no point did either Paul or Pamela Gendron alert authorities to the suspicious and concerning behaviors of their son – a son that previously made public statements that he planned to commit "murder/suicide."

222. Paul and Pamela Gendron failed to respond to clear red flags that their son was planning to carry out an act of gun violence. Paul and Pamela Gendron's actions and inactions were inexorably intertwined with their son's actions.

223. Prior to the Tops shooting on May 14, 2023, Paul and Pamela Gendron were aware that Payton Gendron (a) had multiple firearms in his possession including a semi-automatic rifle; (b) was engaging in combat themed target practice; (c) had posted online that he planned to commit "murder suicide"; (d) had undergone a psychiatric examination; (e) that police investigated his threats; (f) that with a part time job he purchased over \$1,000 worth of tactical combat equipment; (g) took selfies of himself donning tactical gear; (h) had driven to Buffalo where he had no connections and when he claimed to be in school hours away; and (i) had callously and unemotionally killed and dismembered a cat, only to then report having no remorse for his actions. Given those facts, it was reasonably foreseeable that Payton Gendron posed a significant danger to others and was contemplating an act of gun violence.

224. Paul and Pamela Gendron took no steps to follow up on their son's violent behavior, remove his access to firearms, take away his body armor, seek a second mental health evaluation,

⁷³ *Id.* at 379.

or alert law enforcement or mental health professionals.

225. Paul and Pamela Gendron's actions and inactions were inexorably intertwined with Payton Gendron's actions. This connection exists not simply because of the parent-child relationship, but also because Paul and Pamela Gendron were actively involved in Payton Gendron's mental state remaining undertreated, they provided him with a firearm, and they neglected to take away the firearms and tactical equipment, which led directly to the shootings.

226. Paul and Pamela Gendron's negligence was a contributory cause and substantial factor in producing the harm that Plaintiffs have sustained.

B. Factual Allegations as to Meta

1. Background and overview of Meta's Facebook and Instagram products.

227. Meta operates and designs Facebook and Instagram, two of the world's most popular social media products.

228. In 2022, two billion users worldwide were active on Instagram each month, and almost three billion were monthly active users of Facebook.⁷⁴ Instagram has become the most popular photo-sharing social media product among teenagers and young adults in the United States, with over 57 million users below the age of eighteen. 72% of America's young people use Instagram.⁷⁵

229. In June 2015, Meta opened Instagram to all advertisers, weaving advertisements into users' Feeds. In February 2016, with the popularity of video content rising on Instagram, Meta added view counts to videos, allowing users to see how many times users had viewed their posts. Later that year, in December 2016, Instagram added the ability to "like" comments to posts (symbolized by a heart emoji). Both features became a source of additional motivation by users to seek social acceptance and validation.

230. In August 2016, Meta introduced Instagram Stories, another feature intended to

⁷⁴ <https://www.bloomberg.com/news/articles/2022-10-26/meta-s-instagram-users-reach-2-billion-closing-in-on-facebook>.

⁷⁵ Piper Sandler Survey of U.S. Teens, as reported by Businesswire. <https://www.businesswire.com/news/home/20200408005477/en/>. The 2021 report says Instagram monthly use is at 81%. https://piper2.bluematrix.com/docs/pdf/3bad99c6-e44a-4424-8fb1-0e3adfcdbd1d4.pdf?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axiosam&stream=top.

compete against Snapchat. Meta has admitted that the feature was copied from a Snapchat feature popular with children called “Snapchat Stories.”

231. Later that year, in November 2016, Meta introduced another feature, Instagram Live, designed to compete with Snapchat’s ephemeral, disappearing posts; and also added Periscope, a popular live video streaming product.

232. Live permitted users to live stream video, which disappeared as soon as the live stream stopped. Under the leadership of Adam Mosseri—current head of Instagram, and former Facebook executive—Meta has rolled out new product features focused on teenage engagement on Instagram. Meta has expressly sought to maximize metrics like “teen time spent” on the Instagram product.

2. Instagram and Facebook are Products.

233. Meta designed, coded, engineered, manufactured, produced, assembled, and placed Facebook and Instagram into the stream of commerce. Facebook and Instagram are made and distributed with the intent to be used or consumed by the public as part of the regular business of Meta, the seller or distributor of Facebook and Instagram. Facebook and Instagram are uniform and generally available to consumers. An unlimited number of copies can be obtained in Apple and Google stores.

234. Facebook and Instagram are mass marketed. They are designed to be used and are used by over a billion consumers worldwide and in fact would have little value if used by one or only a few individuals. They are advertised in a variety of media in a way that is designed to appeal to the general public and in particular adolescents.

235. Facebook and Instagram are akin to tangible products for purposes of product liability law. When installed on a consumer’s device, they have a definite appearance and location and are operated by a series of physical swipes and gestures. They are personal and moveable. Downloadable software such as Facebook and Instagram are “goods” and are therefore subject to the Uniform Commercial Code despite not being tangible. They are not simply “ideas” or “information.” The public has an interest in the health and safety of widely used and distributed products such as those promoted by Meta. This is because Meta invites the public, especially

minors, to use Instagram and Facebook.

236. Meta has repeatedly and consistently acknowledged that its social media platforms are “products.” For example, Meta’s 2021 Annual Report states as follows:

“All of our products, including our apps, share the vision of helping to bring the metaverse to life. . . . Our products include . . . Facebook. . . . Instagram. . . .”⁷⁶

Meta’s Annual Report further acknowledges that “[w]e are subject to a variety of laws and regulations in the United States and abroad that involve matters central to our business” which “involve matters including . . . product liability . . .”⁷⁷

237. Meta’s leadership have repeatedly and consistently described the company as a builder of consumer products. On a February 1, 2023 call to investors, Meta CEO Mark Zuckerberg described the company focus as follows:

I do think that our philosophy of building these consumer products, focusing on getting them to hundreds of millions or billions of people and then focusing on monetization beyond that and bringing that in as the balance is the right approach. It’s served us well. You can expect us to continue doing that on future things that we do, including some -- hopefully, some of the new generative AI products or some of the new Metaverse stuff that we’re doing. We’re going to take the same approach there as well.⁷⁸

238. Justice requires that losses related to the use of Facebook and Instagram be borne by Meta, the manufacturer and creator of the product. Meta is the only entity with the ability to spread the cost of losses associated with the use of Instagram and Facebook among those advertisers who benefit from the public’s use of the product. Facebook and Instagram brand themselves as product and are treated as products by ordinary consumers.

3. Meta Actively Promotes its Products to Teenagers to Increase Revenue.

239. Facebook and Instagram owe their financial success to their defective design, including their underlying computer code and algorithms, and to Meta’s failure to warn teenagers and their parents that its products present serious safety risks. Meta’s tortious conduct begins before a user has viewed, let alone posted, a single scrap of content.

⁷⁶ Meta Platforms, Inc. Form 10-K (Feb. 2, 2022) at 7.

⁷⁷ *Id.* at 8.

⁷⁸ Meta Platforms, Inc. Fourth Quarter Results Conference Call (February 1, 2023), https://s21.q4cdn.com/399680738/files/doc_financials/2022/q4/META-Q4-2022-Earnings-Call-Transcript.pdf.

240. Meta does not make money by charging users a fee to access or subscribe to its products. Instead, Meta monetizes its users and their data by selling ad placements to marketers. Meta generated \$113 billion from advertising in 2022.⁷⁹ Given its business model, Meta has every incentive to—and knowingly does—addict teenagers with un-myelinated cortices to Facebook and Instagram. It accomplishes this through the algorithms that power its apps and other extended use designs, which are designed to induce compulsive and continuous scrolling for hours on end.⁸⁰

241. Meta’s collection and analysis of user data allows it to assemble virtual dossiers on its users, covering hundreds if not thousands of user-specific data segments. This, in turn, allows advertisers to micro-target marketing and advertising dollars to very specific categories of users, who can be segregated into pools or lists using Meta’s data segments. Only a fraction of these data segments come from content knowingly designated by users for publication or explicitly provided by users in their account profiles. Many of these data segments are collected by Meta through covert surveillance of each user’s activity while using the product and when logged off the product, including behavioral surveillance that users are unaware of, like navigation paths, watch time, and hover time. Essentially, the larger Meta’s user database grows, the more time the users spend on the database, and the more detailed information that Meta can extract from its users, the more money it makes.

242. Tellingly, many tech leaders, including individuals with inside knowledge of the defects of Meta’s social media products, either ban or severely limit their children’s access to screen time and social media.⁸¹

243. Such leaders in the field include Tim Cook and former Facebook executives Tim Kendall and Chamath Palihapitiya.⁸²

⁷⁹ <https://www.cnn.com/2020/06/30/tech/facebook-ad-business-boycott>;
<https://www.statista.com/statistics/544001/facebooks-advertising-revenue-worldwide-usa/>.

⁸⁰ <https://www.statista.com/statistics/271258/facebooks-advertising-revenue-worldwide/> (“One technique used to prolong usage time in this context is the endless scrolling/streaming feature.”); *see also* <https://journals.sagepub.com/doi/10.1177/0163443720939454>.

⁸¹ <https://www.theguardian.com/technology/2018/jan/19/tim-cook-i-dont-want-my-nephew-on-a-social-network>;
<https://www.theverge.com/2017/12/11/16761016/former-facebook-exec-ripping-apart-society>; *The Social Dilemma*.

⁸² *Id.*

4. Meta Intentionally Designed Product Features to Addict Teens.

244. Meta designed Facebook and Instagram with harmful defects that promote addictive use by teenagers which include but are not limited to: (a) recommendation algorithms, fueled by extensive data collection, which Meta designs and programs to promote use in quantities and frequency harmful to adolescents; (b) features that prey upon young users' desire for validation and need for social comparison; (c) product features Meta designed to create harmful loops of repetitive and excessive product usage; (d) the lack of effective mechanisms, despite having the ability to implement them, to restrict minors' usage of the product; (d) inadequate parental controls, and the facilitation of unsupervised use of the products; and (e) intentionally placed obstacles to discourage cessation of use of the products.

245. Instagram and Facebook deprive young users of sleep both through the extended use design products and algorithms described above, but also, by sending push notifications and messages throughout the night, prompting children to re-engage with the apps when they should be sleeping.

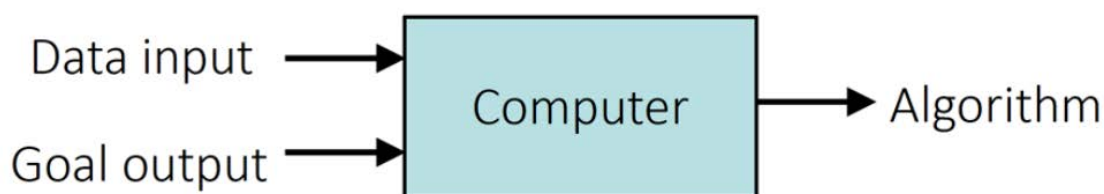
246. Disturbed and insufficient sleep is associated with poor mental health.⁸³

247. Through Facebook's and Instagram's recommendation algorithm, Meta intentionally supplants the content that users have elected to see with content that it believes will drive more user use and engagement. Thus, the products that Meta touts as "Giv[ing] people the power to build community and bring[ing] the world closer together," are actually designed in a way that prioritizes use and engagement over connection at all costs, even to the detriment of the health and safety of young people.

248. The result, for Meta, is an increase in its bottom line. The result, for teenage users, is a product that is so addictive that they return again and again, even when it is pushing and exposes them to subject matters in which they are not actually interested.

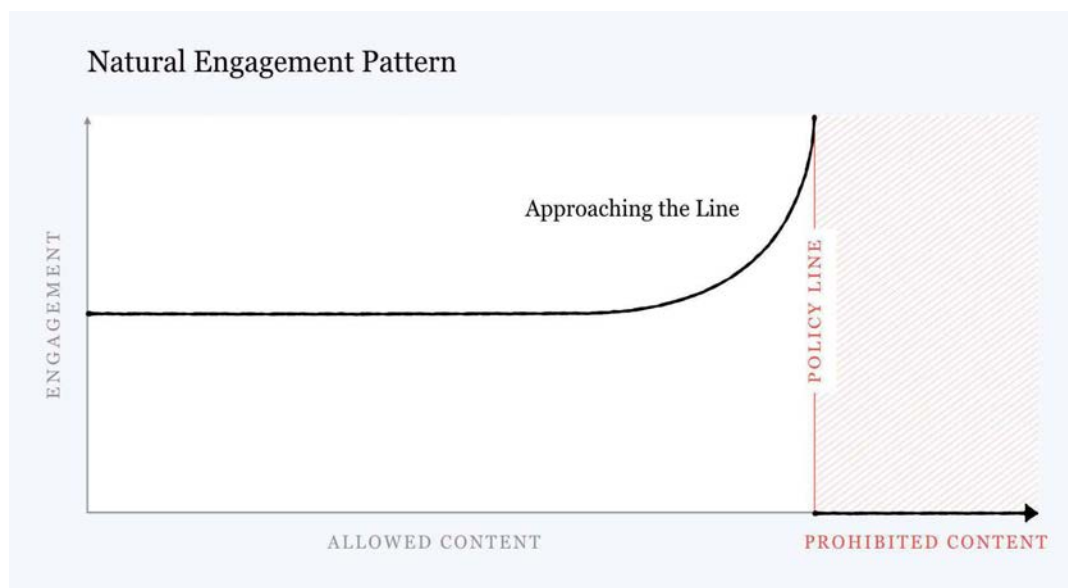
⁸³ National Institute of Mental Health. 2016. The teen brain: 6 things to know, *available at* <https://www.nimh.nih.gov/health/publications/the-teen-brain-still-under-construction/index.shtml>; R. Sather & A. Shelat, *Understanding the teen brain*, *available at* <https://www.urmc.rochester.edu/encyclopedia/content.aspx?ContentTypeID=1&ContentID=3051>; National Sleep Foundation, *Teens and sleep*, <https://sleepfoundation.org/sleep-topics/teensand-sleep>.

249. As demonstrated by the diagram below, recommendation algorithms and user feeds are designed to advance the specific goals of the particular social media organization. Algorithmically generated user feeds are designed with the primary goal of maximizing user engagement. It is feasible to design recommendation algorithms that do not affirmatively direct minor users to psychologically discordant content however, such an improvement in user safety would reduce user engagement. Meta's recommendation algorithms were intentionally designed to prioritize user engagement over user well-being by failing to include design alterations that would protect users from disturbing content at the expense of their engagement with Meta's product.



250. Engagement-based algorithms are designed to select content that triggers intense reactions in users. This propels users into the most reactive experiences, favoring posts that generate engagement because they are extreme in nature. Meta CEO Mark Zuckerberg publicly recognized this in a 2018 post, in which he demonstrated the correlation between engagement and sensational content that is so extreme that it impinges upon Meta's own ethical limits, with the following chart:⁸⁴

⁸⁴ Mark Zuckerberg, *A Blueprint for Content Governance and Enforcement*, FACEBOOK, <https://www.facebook.com/notes/751449002072082/> (last visited January 8, 2022).



251. Alarming, Meta is aware that its recommendation algorithms “are prone to recommending harmful content.”⁸⁵ In one experiment from 2019, Facebook tested its recommendation algorithm and created an account for a test user. The experiment found that in just 3 weeks by following just this *recommended* content, the test user’s News Feed had become a near constant barrage of polarizing nationalist content, misinformation, and violence.

252. Meta’s decision to addict teenage users has not aged well for all of its former employees. Chamath Palihapitiya, the former Vice President of User Growth at Facebook, admitted that he feels “tremendous guilt” about his contributions to social media, saying “[t]he short-term, dopamine-driven feedback loops that we have created are destroying how society works.”⁸⁶

253. Meta has failed to adequately warn teenage users and their parents about the physical and mental health risks its products pose. These risks include a plethora of mental health disorders like addiction, anxiety, depression, insomnia, and political radicalization.

⁸⁵ Jacob Kastrenakes, *Facebook will reduce reach of ‘sensationalist and provocative’ content*, The Verge (Nov. 15, 2018).

⁸⁶ Amy B. Wang, *Former Facebook VP says social media is destroying society with ‘dopamine-driven feedback loops’*, Wash. Post (Dec. 12, 2017), <https://www.washingtonpost.com/news/the-switch/wp/2017/12/12/former-facebook-vp-says-social-media-is-destroying-society-with-dopamine-driven-feedback-loops/>.

5. Meta Knew its Livestream Feature Would Promote Mass Murder and Suicide but Released it Anyway for Financial Gain

254. On September 21, 2017, in response to a Pro Publica report that Facebook enabled advertisers to target users with offensive terms like “Jew hater” and Facebook CEO Sheryl Sandberg’s subsequent statement that “[w]e never intended or anticipated this functionality being used this way,” New York Times technology columnist Kevin Roose wrote that it represented Facebook’s Frankenstein Moment.⁸⁷

255. Roose saw Sandberg’s statement analogous to the scientist Victor Frankenstein’s realization that his cobbled-together creature has gone rogue. He argued that Facebook had created harms that it had not anticipated and that it could not control.

Facebook was simply not built to handle problems of this magnitude. It’s a technology company, not an intelligence agency or an international diplomatic corps. Its engineers are in the business of building apps and selling advertising, not determining what constitutes hate speech in Myanmar. And with two billion users, including 1.3 billion who use it every day, moving ever greater amounts of their social and political activity onto Facebook, it’s possible that the company is simply too big to understand all of the harmful ways people might use its products.⁸⁸

256. Roose’s column triggered a crisis of conscience expressed in a September 2017 email thread among Facebook senior leadership regarding the safety of Facebook product features and the moral imperative to act proactively to prevent public harms before they occur.⁸⁹

257. The following exchange took place between Facebook Director of Content Policy Kaitlin Sullivan and Craig Mullaney, founder Facebook’s Global Executive Program regarding the known hazards of Facebook’s livestreaming feature.

Sullivan: I work on the Content Policy team, our job is to think of the worst of the worst ways people will behave and express themselves on our platform, and we’re increasingly partnering with new products on their rules and systems pre-launch. But the MOST frustrating thing is not being listened to and then hearing these stories come out. My team consulted for Live, not only did we anticipate murders and suicides on Live, we anticipated far worse (all of one of our top 5 predictions have played out). But it still took over a year to

⁸⁷ Kevin Roose *Facebook’s Frankenstein Moment* New York Times (Sept. 21, 2017)

⁸⁸ *Id.*

⁸⁹ https://www.documentcloud.org/documents/23322867-copy-of-facebook_s-frankenstein-moment_sanitize_opt.

post-launch (after these horrible incidents happened) to get most of the tools we were begging for from the start to incorporate. And all along we kept hearing that no one could have anticipated . .

And once the fire happens we're encouraged to just solve the problem and look forward, not to look backward and point fingers. But doesn't looking backward just a bit help us figure out how not to do this again next time?

Mullaney: Not only did you predict the Live issue, but you backed them up with examples from multiple Live platforms preceding Facebook. I'd rather we were just honest and could say, if only to ourselves, that we took a calculated risk because of the upside was more important to us.

258. Nancy Kubitz, Senior Director of Product Marketing, expressed similar frustration, and rallied her colleagues to speak up and be heard on product safety issues.

I'm sure those who know me know I've felt this way a long time. And have forever been "that person" that keeps pointing out flaws and risks. To various degrees of success. It's a bit of a running joke that we can't just "dust off my desk from X years ago and take action." This threat is amazing because it unites what my [kind] manager calls "divergent thinkers."

We see the car crashes before they happen, we care about system fundamentals to avoid risk. I am 100% aware that many of us saw (and reported) these problems WAY before they happened; many examples are on this thread. So I have to ask that "everyone" (each of you) rally now to fix these issues "all hands on deck" style and that "no one" let these issue fade from focus without resolution.

259. Another employee observed that Sandberg's statement that she had not anticipated the antisemitic and malign applications of Facebook's advertising technology reflected more failure to heed skeptical voices in the company than any actual absence of knowledge.

We do hire people who don't look at the whole world through rose colored "everything is awesome and this could literally not go wrong" glasses. We have lots of people who have a more realistic (darker, pessimistic, whatever you want to all it) view of the world. We just don't tend to listen to them.

In security, hiring people who do nothing but ask how something could be misused, abused or fail is essential enough it should probably be officially part of the interview process. But outside that small bubble, we almost fanatically assume only the good things will happen and we're surprised when the opposite happens.

Elsewhere he observed,

I think we should absolutely aggressively test concepts but get feedback early and often on how its failing just as much as how it's succeeding. And we don't push to

the public if we haven't either addressed the employees feedback or written down why we're taken the risk of ignoring it.

260. Another senior manager expressed skepticism over Sandberg's statement that she did not anticipate malign product uses.

[I]f I read one more article saying we "failed to anticipate" something . . . argh. We have entire security teams dedicating to understanding and raising these type of issues over and over again, to predicting how our platform will be used subversively to tracking how and when it happens. The information just doesn't always resonate well so it's also up to us to figure out how to communicate.

Later she observed how Facebook's focus on financial metrics discourages handling product risks.

I have some thoughts on how our culture actually discourages this type of risk analysis and forecasting. I can rattle off several uncomfortable examples. Usually it comes down to "measure it" (which is hard if its an emergent threat or we don't know how to measure it yet . . .) or if it doesn't fit nicely into extant models of well-trodden and accepted principles, its not often consider as serious. "Low prevalence, high impact" threats are often left to the investigators and analysts, but often these very teams don't speak the same language as the larger product or eng teams.

261. Several high-level personnel expressed that Facebook's Performance Summary Cycle (PSC) through which employees were evaluated and compensated operated to desensitize proactive handling of product safety concerns.

At the risk of being called a cynic, I worry our PSC may optimize us away from proactive fixes. This is completely my own perspective from what I've gathered from listing to other people on the infra and product teams talk about PSC. I hope its completely wrong in practice and in theory but I'm not expecting it to be far off from actual practice.

If I see something is going to break and I fix it, I may get a little clap. If I hang on to it until there's a SEV⁹⁰ and save the day, I reap big impact for the same work. And if I ship a product in a known broken state (but not too badly) I get the impact for shipping it and for fixing it later.

Elsewhere he observes that,

There is by definition no metric to measure what may have happened. And if there is no definable metric, or at least something with a number that has previously proven benefit, it basically doesn't count at PSC time.

Instead,

⁹⁰ At Meta severe situations are identified as "SEV" with SEV3 being lowest severity and SEV1 being the highest

our PSC structure doesn't allow for these proactive fixes as long as there's another new product to ship. Which is a huge failing of PSC. It's hard to blame people for optimizing their own PSC rating, which has monetary benefit tied to it. Maybe that's another conversation we need to be having?

262. Despite concerns over the malign uses of Facebook product features raised at the highest company levels, in the ensuing four and a half years *before* Payton Gendron arrived at Tops Supermarket with a camara attached to his helmet, Meta made no material changes in its livestream product feature.

C. Factual Allegations as to Alphabet

263. YouTube is a product built for addiction. Eric Schmitt, the former CEO of Google, YouTube's corporate parent, explained it well. Social media products are about "maximizing revenue," Mr. Schmitt said, and the best way to maximize revenue is to "maximize engagement." As Mr. Schmitt candidly acknowledged, Alphabet purposefully designed its product to maximize engagement by "play[ing] into the addiction capabilities of every human."⁹¹

264. YouTube includes specific, carefully calibrated features that are known and intended to exploit the mental processes of behavior and reward of its users to keep them engaged for as long, as frequently, and with as much intense engagement as possible. Minors who use the YouTube product are particularly susceptible to these defective product features.

1. Background and Overview of YouTube

265. YouTube is an online video-sharing product that allows users to consume countless hours of video content about virtually any topic imaginable.

266. Users may post their videos and share, view, and comment on videos shared by the product's billions of other users.

267. The YouTube product allows users to search for specific video content. It also employs a powerful algorithm that leverages detailed user information to recommend and send large volumes of carefully targeted video content to each user.

268. A group of design experts and computer scientists created YouTube and launched

⁹¹ Issie Lapowsky, *Eric Schmidt: Social Media Companies 'Maximize Outrage' for Revenue*, Protocol (Jan. 6, 2022), <https://www.protocol.com/bulletins/eric-schmidt-youtube-criticism>.

the product for public use in December 2005.

269. YouTube primarily generates revenue by selling advertising. The more people who use YouTube and the more time they spend on the site, the more ads YouTube can sell.

270. By 2012, YouTube users were watching close to four billion hours of video every month. Yet, the average YouTube user spent just fifteen minutes a day engaged with the product.⁹² Users “were coming to YouTube when they knew what they were coming to look for.”⁹³ They employed the product to identify and watch certain video content, and then they were done.

271. To drive greater revenue, “YouTube . . . set a company-wide objective to reach one billion hours of viewing a day[.]”⁹⁴

272. As Susan Wojcicki, YouTube’s CEO, explained, the goal of a “billion hours of daily watch time gave our tech people a North Star.”⁹⁵

273. Alphabet decided that “the best way to keep eyes on the site” was to introduce a feature that would “recommend[] videos, alongside a clip [that was playing] or after one was finished.”⁹⁶

274. That new product feature uses a recommendation algorithm to identify additional videos to play, then presents them through an auto play process like that employed by other social media products.

275. Alphabet has now met and surpassed their North Star. Today, YouTube “has over 2 billion monthly logged-in users.”⁹⁷ And that 2 billion figure does not capture all product usage since YouTube, by design, allows users to consume videos without logging in or registering an account.

⁹² John Seabrook, *Streaming Dreams: YouTube Turns Pro*, New Yorker (Jan. 16, 2012), <https://www.newyorker.com/magazine/2012/01/16/streaming-dreams>.

⁹³ Casey Newton, *How YouTube Perfected the Feed*, Verge (Aug. 30, 2017), <https://www.theverge.com/2017/8/30/16222850/youtube-google-brain-algorithm-video-recommendation-personalized-feed>.

⁹⁴ *Id.*

⁹⁵ Mark Bergen, *YouTube Executives Ignored Warnings, Letting Toxic Videos Run Rampant*, Bloomberg (Apr. 2, 2019), <https://www.bloomberg.com/news/features/2019-04-02/youtube-executives-ignored-warnings-letting-toxic-videos-run-rampant>.

⁹⁶ *Id.*

⁹⁷ *YouTube for Press*, YouTube, <https://blog.youtube/press/> (last visited Jan. 15, 2023).

2. YouTube is a Product

276. Google designed, coded, engineered, manufactured, produced, assembled, and placed YouTube into the stream of commerce. YouTube is made and distributed with the intent to be used or consumed by the public as part of the regular business of Google, the seller or distributor of the YouTube. YouTube is uniform and generally available to consumers. An unlimited number of copies can be obtained in Apple and Google stores. It can be accessed on the internet without an account.

277. YouTube is mass marketed. It is designed to be used and is used by hundreds of millions of consumers and in fact would have little value if used by one or only a few individuals. It is advertised in a variety of media in a way that is designed to appeal to the general public and in particular adolescents.

278. YouTube is akin to a tangible product for purposes of product liability law. When installed on a consumer's device, it has a definite appearance and location and is operated by a series of physical swipes and gestures. It is personal and moveable. Downloadable software such as YouTube is a "good" and is therefore subject to the Uniform Commercial Code despite not being tangible. It is not simply an "idea" or "information." The copies of YouTube available to the public are uniform and not customized by the manufacturer in any way.

279. Google admits that YouTube as a product in its communications to the public, jobseekers, and investors. YouTube brands itself as a product and is treated as a product by ordinary consumers. Google had repeatedly and consistently acknowledged that its social media platforms are "products." For example, Alphabet's 2022 Annual Report states as follows:

We have always been a company committed to building helpful products that can improve the lives of millions of people. Our product innovations have made our services widely used, and our brand one of the most recognized in the world. Google Services' core products and platforms include ads, Android, Chrome, hardware, Gmail, Google Drive, Google Maps, Google Photos, Google Play, Search, and YouTube, each with broad and growing adoption by users around the world.⁹⁸

280. During a February 1, 2023, earning call, Alphabet and Google CFO Ruth Porat

⁹⁸ Alphabet, Inc. 10-K (Feb 1, 2022) at 5.

stated that “In YouTube, we are prioritizing continued growth in Shorts engagement and monetization, while also working on other initiatives across our ad-supported products.”⁹⁹

281. The public has an interest in the health and safety of widely used and distributed products such as the YouTube. This is because Google invites the public, especially children and teenagers, to use YouTube. Justice requires that losses related to the use of YouTube be borne by Google, the manufacturer and creator of the product. Google is the only entity with the ability to spread the cost of losses associated with the use of the YouTube among those advertisers who benefit from the public’s use of the product.

3. Alphabet intentionally encourages young users to use its product and then leverages that use to increase its revenue.

282. Alphabet knows that children, teens, and young adults use its product in greater proportion than older demographics. Their product now ranks as the world’s most popular social media product for teenagers. According to one recent report, more than 95% of teens ages 13-17 have used YouTube.¹⁰⁰ Nearly 20 percent of teens use YouTube almost constantly.¹⁰¹

283. Among children who regularly use social media, 32 percent “wouldn’t want to live without” YouTube.¹⁰²

284. Rather than ensuring minors are not inappropriately or excessively consuming YouTube content, Alphabet has sought to expand and further entrench its youth user base.

4. Alphabet intentionally designed product features to addict teenagers.

285. Alphabet uses a series of interrelated design features that exploit known cognitive processes to induce YouTube’s users to use the product more frequently, for more extended periods, and with more intensity (i.e., providing more comments and likes). Alphabet knows that children, teens, and young adults are particularly susceptible to these addictive methods.

⁹⁹ Alphabet Q 4 Earnings Call (Feb. 2, 2023) at 10.

https://abc.xyz/investor/static/pdf/2022_Q4_Earnings_Transcript.pdf?cache=c632791

¹⁰⁰ Emily Vogels et al., *Teens, Social Media and Technology 2022*, Pew Rsch. Ctr. (Aug. 10, 2022), <https://www.pewresearch.org/internet/2022/08/10/teens-social-media-and-technology-2022>.

¹⁰¹ *Id.*

¹⁰² Victoria Rideout et al., *Common Sense Census: Media Use by Tweens and Teens, 2021* at 31, Common Sense Media (2022), https://www.commonsensemedia.org/sites/default/files/research/report/8-18-census-integrated-report-final-web_0.pdf.

286. Alphabet designed its product so that when teenagers use it, they are inundated with interface design features specifically designed to repeatedly be exposed to positively reinforcing stimuli. Like the other Defendants, Alphabet utilizes operant conditioning to maximize the time users spend using their product.¹⁰³ Operant conditioning causes YouTube content creators and consumers to use the product habitually and excessively. That is, Alphabet designed its product to allow users to like, comment, and share videos, as well as subscribe to channels. These gamified features psychologically reward creators who upload videos to YouTube. As explained above, for example, receiving a “like” shows others’ approval and activates the brain’s reward region.¹⁰⁴ Thus, users’ ability to like content encourages creators to use the product compulsively, seeking additional pleasurable experiences.

287. Alphabet incentivizes teenagers to view content. For example, Alphabet allows users to “subscribe” to another user’s channel. When they do, they receive push notifications prompting them to open YouTube and watch the video.¹⁰⁵

288. Another YouTube defect is its panel of recommended videos. YouTube recommends videos both on the home page and on each video page in the “Up Next” panel.¹⁰⁶ This panel is an endless stream of videos that YouTube’s algorithm selects and “suggests” keeping users watching by teasing a pipeline of upcoming content.

289. The auto play feature complements the Up Next panel, seamlessly guiding users through that list of upcoming videos without users having to affirmatively click on or search for other videos. This constant video stream—comprised of videos recommended by YouTube’s algorithm—is the primary way Alphabet increases the time users spend using their product.

¹⁰³ Julian Morgans, *The Secret Ways Social Media Is Built for Addiction*, Vice (May 17, 2017), <https://www.vice.com/en/article/vv5jkb/the-secret-ways-social-media-is-built-for-addiction>.

¹⁰⁴ See, e.g., Lauren E. Sherman et al., *The Power of the Like in Adolescence: Effects of Peer Influence on Neural and Behavioral Responses to Social Media*, 27(7) Psych. Sci. 1027–35 (July 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5387999/>.

¹⁰⁵ Manage YouTube Notifications, YouTube, <https://support.google.com/youtube/answer/3382248?hl=en&co=GENIE.Platform%3DDesktop> (last visited Jan. 15, 2023).

¹⁰⁶ Recommended Videos, YouTube, <https://www.youtube.com/howyoutubeworks/product-features/recommendations/> (last visited Jan. 15, 2023).

5. Alphabet's defective algorithms are designed to maximize engagement.

290. Alphabet uses algorithms to recommend videos to users. These algorithms select videos that populate the YouTube homepage, rank results in user searches, and suggest videos for viewers to watch next.

291. Alphabet designed its algorithms to manipulate young users and addict them to YouTube. Former YouTube engineer Guillaume Chaslot explained that when he designed YouTube's algorithm, Alphabet wanted to optimize for "watch time."¹⁰⁷ Chaslot elaborated that "[i]ncreasing users' watch time is good for YouTube's business model" because it increases advertising revenue.¹⁰⁸

292. In 2012, Eric Meyerson, YouTube Head of Content Creator Communications, similarly explained: "When we suggest videos, we focus on those that increase the amount of time that the viewer will spend watching videos on YouTube, not only on the next view, but also successive views thereafter."¹⁰⁹

293. The current algorithm uses deep-learning neural networks, a type of software that retunes outputs based on data fed into it.¹¹⁰ Goodrow explained that it is "constantly evolving, learning every day from over 80 billion pieces of information [Alphabet] call signals." Those signals include "watch and search history . . . , channel subscriptions, clicks, watch time, survey responses, and sharing, likes, and dislikes." They also include user demographic information like age and gender.

294. Alphabet's algorithm also "uses data from your Google Account activity to

¹⁰⁷ William Turton, *How YouTube's Algorithm Prioritizes Conspiracy Theories*, Vice (Mar. 5, 2018), <https://www.vice.com/en/article/d3w9ja/how-youtubes-algorithm-prioritizes-conspiracy-theories>.

¹⁰⁸ Jesselyn Cook & Sebastian Murdock, *YouTube Is a Pedophile's Paradise*, Huffington Post (Mar. 20, 2020), https://www.huffpost.com/entry/youtube-pedophile-paradise_n_5e5d79d1c5b6732f50e6b4db.

¹⁰⁹ Eric Meyerson, *YouTube Now: Why We Focus on Watch Time*, YouTube (Aug. 10, 2012), <https://blog.youtube/news-and-events/youtube-now-why-we-focus-on-watch-time/>.

¹¹⁰ Alexis C. Madrigal, *How YouTube's Algorithm Really Works*, Atlantic (Nov. 8, 2018), <https://www.theatlantic.com/technology/archive/2018/11/how-youtubes-algorithm-really-works/575212/>; Paul Covington et al., *Deep Neural Networks for YouTube Recommendations*, Google (2016), <https://storage.googleapis.com/pub-tools-public-publication-data/pdf/45530.pdf>.

influence your recommendations.”¹¹¹

295. The algorithm “develops dynamically” to discern an individual user’s preferences. That is, it can also determine which “signals” are more important to individual users. For example, if a user shares every video they watch, including those they rate low, the algorithm learns to discount the significance of the user’s shares when recommending content.¹¹²

296. Besides the algorithm’s self-learning capability, Alphabet also consistently refines the algorithm, updating it “multiple times a month.”¹¹³

297. Over time, the algorithm became increasingly successful in getting users to view recommended content. By 2018, YouTube Chief Product Officer Neal Mohan said that the YouTube algorithm was responsible for more than 70% of users’ time using the product.¹¹⁴ That is, more than 70% of the content users watch was recommended to them by Alphabet’s algorithm rather than users independently searching for and identifying the content they watch.

298. The algorithm also keeps users watching for longer periods. For instance, Mohan explained that mobile device users watch for more than 60 minutes on average per session “because of what our recommendations engines are putting in front of [them].”¹¹⁵

299. The algorithm is particularly effective at addicting young users to the YouTube product. In 2022, Pew Research Center found that 95 percent of American teenagers used YouTube. “About three-quarters of teens visit YouTube daily, including 19 percent who report using the site or app almost constantly.”

6. YouTube’s Algorithm Directs Teens to Psychological Discordant Videos.

300. For the same reason that the videos promoted by YouTube algorithm are more likely to be addictive, they are also more likely to be harmful.

¹¹¹ Manage Your Recommendations and Search Results, Google, <https://support.google.com/youtube/answer/6342839?hl=en&co=GENIE.Platform%3DAndroid> (last visited Jan. 15, 2023).

¹¹² *Id.*

¹¹³ Nilay Patel, *YouTube Chief Product Officer Neal Mohan on The Algorithm, Monetization, and the Future for Creators*, Verge (Aug. 3, 2021), <https://www.theverge.com/22606296/youtube-shorts-fund-neal-mohan-decoder-interview>.

¹¹⁴ Joan E. Solsman, *YouTube’s AI Is the Puppet Master over Most of What You Watch*, CNET (Jan. 20, 2018), <https://www.cnet.com/tech/services-and-software/youtube-cs-2018-neal-mohan/>.

¹¹⁵ *Id.*

301. For example, “fear-inducing videos cause the brain to receive a small amount of dopamine,” which acts as a reward and creates a desire to do something over and over.¹¹⁶ That dopaminergic response makes it more likely that a user will watch the harmful video, which the algorithm interprets as signaling interest and preference.

302. Former Google engineers told the Wall Street Journal that “[t]he algorithm doesn’t seek out extreme videos . . . but looks for clips that data shows are already drawing high traffic and keeping people on the site. Those videos often tend to be sensationalist and on the extreme fringe.”¹¹⁷ An investigation by Bloomberg put it simply: “In the race to one billion hours, a formula emerged: Outrage equals attention.”

303. After watching harmful or violent videos, Alphabet’s algorithm makes it more likely for teenagers to encounter harmful content by pushing them down “rabbit holes,” which “lead[] viewers to incrementally more extreme videos or topics, which . . . hook them in.”¹¹⁸ For example, a user might “[w]atch clips about bicycling, and YouTube might suggest shocking bike race crashes.”¹¹⁹

304. In this way, the algorithm makes it more likely that youth will encounter content that is violent, sexual, or encourages self-harm, among other types of harmful content.

305. Those who get pushed down rabbit holes then become models for the algorithm; and the algorithm consequently emphasizes that harmful content, disproportionately pushing it to more users. That is, because Alphabet designed the algorithm to “maximize engagement” its disproportionally engaged users—who are more often addicted to extreme content—become “models to be reproduced.”¹²⁰ Thus, the algorithms will “favor the content of such users.”¹²¹

306. Moreover, the YouTube algorithm is defective in that it solicits and encourages the

¹¹⁶ Josephine Bila, *YouTube’s Dark Side Could be Affecting Your Child’s Mental Health*, CNBC (Feb. 13, 2018), <https://www.cnn.com/2018/02/13/youtube-is-causing-stress-and-sexualization-in-young-children.html>.

¹¹⁷ *Id.*

¹¹⁸ Max Fisher & Amanda Taub, *On YouTube’s Digital Playground, an Open Gate for Pedophiles*, NY Times (June 3, 2019), <https://www.nytimes.com/2019/06/03/world/americas/youtube-pedophiles.html>.

¹¹⁹ *Id.*

¹²⁰ Guillaume Chaslot, *The Toxic Potential of YouTube’s Feedback Loop*, Wired (Jul. 13, 2019), <https://www.wired.com/story/the-toxic-potential-of-youtubes-feedback-loop/>.

¹²¹ *Id.*

creation of illegal and dangerous content.

307. Recommendation algorithms and user feeds are designed to advance the specific goals of the particular social media organization. YouTube's algorithmically generated user feeds are designed with the primary goal of maximizing user engagement. It is feasible for Google to design recommendation algorithms that do not affirmatively direct teenage users to racist, antisemitic, and violent content, however, such an improvement in user safety would reduce user engagement.

308. YouTube's recommendation algorithms were intentionally designed to prioritize user engagement over user well-being by failing to include design alterations that would protect young users from malign content at the expense of their engagement with Google's product.

309. A former YouTube employee revealed that YouTube's recommendation algorithm was actively promoting problematic content because it was more engaging, and in turn helped increase advertising revenues, and Alphabet rebuked internal attempts to mitigate these harms to its young users.¹²²

310. Other reports have confirmed that YouTube's algorithm pushes users towards harmful conduct. In 2021, the Mozilla Foundation studied 37,000 YouTube users, finding that 71% of all reported negative user experiences came from videos recommended to users by Alphabet's algorithm. And users were 40% more likely to report a negative experience from a video recommended by YouTube's algorithm than from one they searched for. Importantly, videos that elicited those negative experiences "acquired 70% more views per day than other videos watched by [study] volunteers."¹²³

¹²² Paul Lewis and Erin McCormick. *How an ex-YouTube insider investigated its secret algorithm*. The Guardian. <https://www.theguardian.com/technology/2018/feb/02/youtube-algorithm-election-clinton-trump-guillaume-chaslot>, 2018; Sam Harnett. *Ex-Employee Says YouTube's Algorithm Favors Conspiracy Theory Videos*. KQED. <https://www.kqed.org/news/11663508/ex-employee-says-youtubes-algorithm-favors-conspiracy-theory-videos>, 2018.

¹²³ YouTube Regrets: *A Crowdsourced Investigations into YouTube's Recommendation Algorithm*, Mozilla Foundation 13 (July 2021), https://assets.mofoprod.net/network/documents/Mozilla_Youtube_Regrets_Report.pdf.

7. YouTube Radicalizes its Users.

311. YouTube's advertising-powered business model is geared towards user engagement, which is maximized by triggering users' preexisting biases in video recommendations. YouTube's recommendation algorithm is designed to optimize user activity and engagement on the platform by personalizing recommendations based on users' past exposures and content viewed or shared by other similar users. However, in the case of political content, YouTube's algorithmic recommendations reinforce users' political biases, ultimately leading to radicalization.

312. Users with certain beliefs tend to interact with social media content that is consistent with those beliefs. Users are more likely to select content that aligns with their preexisting beliefs than otherwise. This tendency may polarize people's attitudes and generate hostility toward different racial, ethnic, religious groups, and social and political ideologies.

313. In 2022, ADL's Center for Technology & Society conducted a nationally representative survey of YouTube users measuring demographic characteristics and political attitudes such as age, race, education, partisanship, ideology, political knowledge, and interest.¹²⁴ In addition to survey data, the study monitored participants' browser history and activity data.

314. Using comprehensive individual-level behavioral data, ADL found that exposure to alternative YouTube channels can serve as gateways to extremist or white supremacist channels, which are disturbingly common among a group of Americans.

315. ADL found that exposure to videos from extremist or white supremacist channels on YouTube was very common.

316. Approximately one in ten participants viewed at least one video from an extremist channel (9.2%) and approximately two in ten (22.1%) viewed at least one video from an alternative channel. When participants watched extreme videos, they were more likely to see and follow recommendations to similar extremist videos. A third (29%) of YouTube recommendations accompanying videos from extremist channels were to other videos of the same type.

¹²⁴ Annie Y. Chen, Brendan Nyhan, I Jason Reifler, I Ronald E. Robertson, Christo Wilson, *Exposure to Alternative & Extremist Content on YouTube*, ADL (2022).

317. As a result, many racially resentful people are not only watching large numbers of videos from alternative or extremist channels, but also are shown recommendations for more such videos when they do so, furthering their progression to extremism.

318. ADL's findings demonstrate that YouTube plays an important role in exposing people to extremist content.

319. ADL's survey-based determination that YouTube radicalizes right-leaning users is consistent with computer science research at the University of California Davis. Researchers there conducted a systematic audit of YouTube's recommendation system using a 100,000 proxy accounts with different ideological profiles to determine the presence of ideological bias and radicalization in which recommendations progressively more extreme.¹²⁵ Researchers reviewed 15,323,930 YouTube videos spanning 111,715 unique channels, and they found that YouTube's recommendations do in fact direct users – especially right-leaning users – to ideologically biased and increasingly radical content on both homepages and in up-next recommendations.

320. The UC Davis researchers found that YouTube's homepage recommendation provided viewers with right leaning profiles more right-leaning recommendations than centrist viewers received centrist recommendations. This demonstrates that the recommendations for the right leaning viewer are not only significantly different from the center baseline but are even more ideologically biased than the recommendations of the other viewers.

321. Similar radicalization tendencies were found in YouTube's Up Next Recommendations. Researchers found increased ideological bias in the up-next recommendation trials compared to the homepage. The prior ideological bias of the You Tube user influences influence their up-next recommendations which increases the chances that the user will continue watching ideologically biased content.

322. The Davis researchers demonstrating that over time YouTube's algorithms direct users to progressively more ideologically radical and extreme videos in their YouTube sessions.

¹²⁵ Muhammad Haroon, Anshuman Chhabra, Xin Liu, Prasant Mohapatra, Zubair Shafiq, Magdalena Wojcieszak *YouTube, The Great Radicalizer? Auditing and Mitigating Ideological Biases in YouTube Recommendations* arXiv:2203.10666v2 [cs.CY] 25 Mar 2022.

8. Gendron Was Radicalized by YouTube

323. YouTube's algorithms directed Gendron to progressively more radical, racist, and violent videos which effectuated his transition from innocuous adolescent to racist mass murderer.

324. In the two weeks before his murderous attack, Gendron continued to draw inspiration from material on YouTube:

I've just been sitting around watching youtube and shit for the last few days. I think this is the closest I'll ever be to being ready. I literally can't wait another week to do this. I'm not sure if I'm expecting any real change in the world after I do the attack It is certain my life will be changed. It all comes back to the saying that inaction is sure to end in defeat.¹²⁶

9. Alphabet failed to adequately warn young users or their parents of YouTube's programmed and designed radicalization tendency.

325. Since YouTube's inception, Alphabet has failed to adequately warn young users or their parents about the mental and physical risks its products pose.

326. These risks include, but are not limited to, product abuse and addiction and radicalizing exposure to racists, antisemitic, and violent content.

D. Factual Allegations as to Amazon

1. Background on Twitch

327. Twitch is a livestreaming platform founded by Justin Kan in 2011, originally as a spin-off of Justin.tv. The latter started life in 2007 as a single channel, broadcasting Kan's life live around the clock, pioneering the concept of 'lifecasting'.¹²⁷

328. In 2014, Amazon purchased Twitch for \$1 billion.

329. Traffic continued to grow in the ensuing decade with 1.5 million broadcasters and 100 million monthly viewers in 2015, rising to 2.2 million broadcasters and 15 million daily viewers in 2018. Average concurrent viewers climbed to over 2 million in 2021.¹²⁸

330. Today, Twitch is the world's most popular live streaming platform and has 140

¹²⁶ Discord Diary, April 27, 2022.

¹²⁷ <https://www.businessofapps.com/data/twitch-statistics/>.

¹²⁸ *Id.*

million active users¹²⁹ and 2.58 million concurrent viewers.¹³⁰

331. Amazon earns money by selling advertising on Twitch and lauds the impact of advertising to potential investors as follows.

With users tuning in from around the world from more than 230 countries, Twitch reaches a large global audience. The Twitch community is composed primarily of adult Gen Zers and Millennials. Of all Twitch users, 64% purchase products recommended by influencers. These viewers are also open to advertising, as 56% of users tend to buy brands they see advertised. This goes well beyond just gaming, too. Art, beauty, food and drink, music, and Just Chatting content continues to see growing interest from viewers. Over the last 3 years, non-gaming content on Twitch has quadrupled.¹³¹

332. Twitch earned \$2.8 billion revenue in 2022 on 22.4 billion hours of content consumed on its platform.¹³²

2. Twitch is a Product

333. Amazon designed, coded, engineered, manufactured, produced, assembled, and placed Twitch into the stream of commerce.

334. Twitch is made and distributed with the intent to be used or consumed by the public as part of the regular business of Amazon, the seller or distributor of the Twitch. Twitch is uniform and generally available to consumers.

335. Twitch is mass marketed. It is designed to be used and is used by hundreds of millions of consumers and in fact would have little value if used by one or only a few individuals. It is advertised in a variety of media in a way that is designed to appeal to the general public and in particular teenagers.

336. Twitch is akin to a tangible product for purposes of product liability law. When installed on a consumer's device, it has a definite appearance and location and is operated by a series of physical swipes and gestures. It is personal and moveable. Downloadable software such

¹²⁹<https://www.nspcc.org.uk/keeping-children-safe/online-safety/online-safety-blog/is-twitch-safe-for-children/#pageref60321>.

¹³⁰ <https://www.businessofapps.com/data/twitch-statistics/>.

¹³¹ <https://advertising.amazon.com/library/guides/twitch-ads#:~:text=Twitch%20only%20serves%20advertising%20on,of%20Service%20and%20Community%20Guidelines>. (Accessed April 30, 2023).

¹³² <https://www.businessofapps.com/data/twitch-statistics/>.

as Twitch is a “good” and is therefore subject to the Uniform Commercial Code despite not being tangible. It is not simply an “idea” or “information.” The copies of YouTube available to the public are uniform and not customized by the manufacturer in any way.

337. Amazon represents to the public, jobseekers, and investors that intangible video services only available online are nevertheless products. Amazon’s 2022 Annual Report explains that “online store” sales,

Includes product sales and digital media content where we record revenue gross. We leverage our retail infrastructure to offer a wide selection of consumable and durable goods that includes media products available in both a physical and digital format, such as books, videos, games, music, and software. These product sales include digital products sold on a transactional basis. Digital product subscriptions that provide unlimited viewing or usage rights are included in “Subscription services.”¹³³

338. Amazon had repeatedly and consistently acknowledged that Twitch is a “product” For example, in 2023, Twitch recently reported “two product updates” “to Streamline the Reporting and Appeals Process on Twitch”¹³⁴ Twitch is currently posting the following advertisement for “Product Marketing Manager” on LinkedIn,¹³⁵



339. In the LinkedIn posting for Twitch’s “Chief Product Officer,” Tom Verilli describes the position as follows,

¹³³ Amazon 2022 Annual Report to Shareholders 66.

¹³⁴ https://safety.twitch.tv/s/article/Two-New-Products-to-Streamline-the-Reporting-and-Appeals-Process-on-Twitch?language=en_US (captured April 27, 2023).

¹³⁵ https://www.linkedin.com/jobs/twitch-jobs-worldwide?f_C=2320329&trk=top-card_top-card-primary-button-top-card-primary-cta&position=1&pageNum=0 (accessed April 30, 2023).

Experience



Twitch

6 years 4 months

- Chief Product Officer

Jun 2021 - Present · 1 year 11 months

Product, Engineering and Applied Science for all Community (Consumer) products at Twitch.

We grow Twitch by enabling creation (streamer tools), helping viewers find streamers (search and discovery), interact (chat, messaging and engagement) and ensure our community is healthy (trust and safety).

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3. Twitch Has Exclusive Possession of Content Livestreamed on its Platform.

340. When a livestream is shared on Twitch, Twitch has exclusive ownership of the content for the 24-hour period that follows. This contracting of an exclusive ownership right is unique to Twitch.

341. The right to exclusive possession is the most important stick in the bundle of property rights. For the first 24 hours after content is uploaded on its platform, Twitch is the exclusive owner of that content during this period of exclusivity. And as a non-exclusive licensee of uploaded content after 24 hours, Twitch remains a co-owner of such conduct.

342. At the time audio video content is livestreamed on Twitch, Amazon is the sole owner of such content. Users who watch livestream video on Twitch are therefore not viewing third party content but rather content that (at least for the first 24 hours) belongs to Twitch.

4. Twitch Targets Teens.

343. On March 23, 2023, the British Office of Communications reported that 58 percent of all children and 80 percent of 16- to 17-year-olds view livestream content online.¹³⁷

344. Twitch is popular among young people with 35 percent of users between 16 and 24 and 32 percent between 25 and 34.¹³⁸ More than 70 percent Twitch viewers are between the ages

¹³⁶ <https://www.linkedin.com/in/tom-robertson-042?trk=org-employees> (Accessed April 30, 2023).

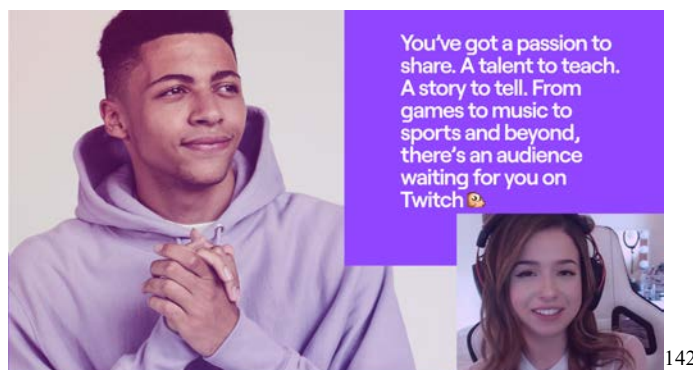
¹³⁷ Ofcom *Children and Parents, Media Use and Attitudes Report 2022* (March 23, 2023).

¹³⁸ <https://www.streamscheme.com/twitchstatistics/#:~:text=Average%20Age,%2Dyear%2Dolds%3A%2015.33%25>.

of 18 and 34.¹³⁹ Across all age cohorts, 83 percent of Twitch uses are male.¹⁴⁰

345. The average number teens broadcasting live on Twitch doubled between July 2021 and 2022.¹⁴¹

346. As indicated by the advertisements from the Twitch web site, Twitch actively promotes its platforms to teenagers and young adults.



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5. Amazon Knows that Twitch is Often used to Livestream Murders, Suicides and Racist Violence.

347. The growing use of livestreaming to broadcast to murders, suicide, and acts of sexual violence in real time has been widely reported for over 15 years.

348. For example, in 2016 *Vice Magazine* reported that since 2008 when a college student took his life on livestream, “murders, assaults, and other violent acts—seem to be occurring more frequently.”¹⁴³ Three months earlier, *Vice Magazine* had reported livestream being used to film the rape of a 17-year-old girl.¹⁴⁴

349. Amazon is a very sophisticated consumer of news has owned the *Washington Post*

¹³⁹<https://twitchadvertising.tv/audience/#:~:text=Twitch's%20global%20community%20of%20streamers%20broadcast%20live%20content%20in%2035%20languages.&text=%E2%80%8B%E2%80%8B%E2%80%8B%E2%80%8B,ages%20of%2018%20and%2034>.

¹⁴⁰<https://www.streamscheme.com/twitchstatistics/#:~:text=Average%20Age,%20Dyear%20Dolds%3A%2015.33%25>.

¹⁴¹ Cecilia D’Anastasio, *Child Predators Use Twitch to Systematic Track Kids Livestreaming*, Bloomberg (Oct 19 2022).

¹⁴² <https://www.twitch.tv/p/en/stream/> (accessed April 30, 2023).

¹⁴³ Diana Tourjée, *When People Live-Stream Murder and Suicide, Who Watches?* Vice (June 26, 2016).

¹⁴⁴ Cole Kazdin, *Psychologists Weigh In on the Teen Who Live-Streamed Her Friend's Rape*, Vice, April 25, 2016.

since 2013. Amazon is therefore well-aware of the propensity of murderers, racists, and suicide victims to broadcast their acts on livestream.

350. On information and belief, at the time it acquired Twitch in 2014, Amazon knew that the product was used by criminals to livestream criminal activity and that the ability to livestream acts of violence and self-harm on Twitch motivates both criminals and suicide victims to follow through with their plans.

351. On information and belief, since 2014, Amazon has documented or otherwise recorded the incidents where Twitch has been used to livestream acts of violence or self-harm and engaged in internal discussions at senior company levels regarding implementation of product design changes that would mitigate this risk.

6. Twitch is Defectively Designed and Unreasonably Dangerous.

352. There are few barriers to prevent teenagers from livestreaming on Twitch. Whereas some other livestream platforms require a waiting period, new Twitch users can begin livestreaming immediately.¹⁴⁵

353. Twitch is inherently dangerous because there is no way the product, as currently designed, can prevent the livestream broadcast of mass shootings which have been proven to motivate future acts of mass terror. No content moderation technology exists that can detect violence in time for Twitch to shut down the broadcast before it is seen by anyone.

354. While Amazon lauds itself for shutting down the livestreaming of Gendron's murderous rampage two minutes after the shooting started, in fact, it allowed the livestream video for a total of approximately twenty-four minutes – including twenty-two minutes of explicit planning – and his murder video has been viewed by over three million people and continues to proliferate online. Gendron's murder video that was livestreamed on Twitch is widely viewed and glorified by violent white supremacist groups throughout the world to this day, and provides technical training and motivation for deranged souls contemplating future acts racist and antisemitic violence.

¹⁴⁵ Cecilia D'Anastasio *Child Predators Use Twitch to Systematic Track Kids Livestreaming* Bloomberg (Oct 19 2022).

355. If Twitch designed and implemented a time lapse between a user's filming an action or event and the dissemination of the content to Twitch viewers, content moderators, aided by artificial intelligence, would be able to identify acts of livestreamed violence, notify law enforcement, and prevent public viewing of criminal violence. Such a design change would significantly benefit public safety by 1) removing livestreaming as a motivating force for individuals contemplating acts of criminal violence or self-harm; and 2) prevent the creation additional videos that motivate future acts of mass violence.

356. This public safety benefit resulting from this risk reduction would far outweigh any reduction product utility arising from a short delay.

357. If Amazon conducted a reasonable background investigation of persons seeking the ability to livestream content on Twitch harnessing artificial intelligence with the individual user data to which Amazon already has access, it would be possible to identify individuals who exhibit a propensity to commit violent acts and restrict their access to livestream.

358. This public safety benefit resulting from this risk reduction would far outweigh any reduction product utility arising from a few disgruntled users.

359. On information and belief, the reason Amazon has failed to implement these and other design changes that would make Twitch safer to the public is that such improvements could reduce the advertising and subscription revenue it earns from the product. Amazon has therefore superordinated its financial interests over the public's interest in reducing epidemic of mass violence in their communities.

E. Factual Allegations as to Snap

360. Snap is a self-proclaimed camera company.¹⁴⁶ Its flagship product, Snapchat, is a feature-packed photographic and social media app that allows users to send text, picture, and video messages called "snaps" that disappear after being viewed by the recipients.

361. Snapchat was created by three college students in 2011 and first released for

¹⁴⁶ Snap Inc. Form S-1 Registration Statement (*hereafter* "Form S-1") at 1 (Feb. 2, 2017), <https://www.sec.gov/Archives/edgar/data/1564408/000119312517029199/d270216ds1.htm>. *See also*, *Snap – Who We Are*, <https://careers.snap.com/en-US> ("We believe that reinventing the camera represents our greatest opportunity to improve the way people live and communicate.").

iPhones in September 2011. Snapchat quickly evolved from its origin as a disappearing-message chat application after Snap's leadership made design changes and rapidly developed new product features. Snapchat quickly became wildly popular among teen users.

1. Snapchat is a Product.

362. Snap designed, coded, engineered, manufactured, produced, assembled, and placed Snapchat into the stream of commerce. Snapchat is made and distributed with the intent to be used or consumed by the public as part of the regular business of Snap, the seller or distributor of Snapchat. Snapchat is uniform and generally available to consumers. An unlimited number of copies can be obtained in Apple and Google stores, and it is available on the internet.

363. Snapchat is mass marketed. Snapchat is designed to be used and is used by hundreds of millions of consumers and in fact would have little value if used by one or only a few individuals. It is advertised in a variety of media in a way that is designed to appeal to the general public and in particular adolescents.

364. Snapchat is akin to a tangible product for purposes of product liability law. When installed on a consumer's device, it has a definite appearance and location and is operated by a series of physical swipes and gestures. It is personal and moveable. Downloadable software such as Snapchat is a "good" and is therefore subject to the Uniform Commercial Code despite not being tangible. It is not simply an "idea" or "information." The copies of Snapchat available to the public are uniform and not customized by the manufacturer in any way.

365. The public has an interest in the health and safety of widely used and distributed products such as Snapchat. This is because Snap invites the public, especially adolescents, to use Snapchat. Justice requires that losses related to the use of Snapchat be borne by Snap, the manufacturer and creator of the product. Snap is the only entity with the ability to spread the cost of losses associated with the use of Snapchat among those advertisers who benefit from the public's use of the product.

366. Snapchat brands itself as product and is treated as a product by ordinary consumers. Snap had repeatedly and consistently acknowledged that Snapchat is a "product." For example, Snap's 2022 Annual Report states as follows:

Snap Inc. is a technology company. We believe the camera presents the greatest opportunity to improve the way people live and communicate. . . Our flagship product, Snapchat, is a visual messaging application that enhances your relationships with friends, family, and the world.¹⁴⁷

367. In public statements, Snap founder Evan Spiegel has referred to Snapchat as a product as well: “In terms of the execution, we have to continue to evolve and iterate the product to get the result we are looking for.”¹⁴⁸

2. Snap intentionally encourages youth to use its products and then leverages that usage to increase its revenue.

368. Snap marketed Snapchat as “temporary social media” that would allow users to show a more authentic, unpolished, and spontaneous side of themselves.¹⁴⁹ Because of its brand identity among millennials as the original ephemeral messaging app, Snapchat almost immediately became known as the “sexting” app.

369. In 2014, Snap began running advertisements on Snapchat.¹⁵⁰ Since then, Snapchat’s business model has revolved around its advertising revenue. According to internal company records, advertisements were pervasive on Snapchat by 2015 and, by 2018, 99% of Snap’s total revenue came from advertising. By 2021, global advertising revenue surpassed \$4 billion;¹⁵¹ last year, it was projected to reach close to \$5 billion.¹⁵²

370. Snap specifically markets Snapchat to children, teens, and young adults because they are uniquely engageable around instant gratification processes for the benefit of Snap’s advertising business.

371. Nearly every feature incorporated into Snapchat is designed to increase and extend

¹⁴⁷ Snap, Inc. Form 10-K at 6.

¹⁴⁸ <https://www.vox.com/2018/5/30/17397120/snap-ceo-evan-spiegel-transcript-code-2018>, last accessed February 2, 2023.

¹⁴⁹ Jenna Wortham, *A Growing App Lets You See It, Then You Don’t*, New York Times (Feb. 9, 2013), https://www.nytimes.com/2013/02/09/technology/snapchat-a-growing-app-lets-you-see-it-then-you-dont.html?_r=0.

¹⁵⁰ Angela Moscaritolo, *Snapchat Adds ‘Geofilters’ in LA*, New York, PC Mag. (July 15, 2014), <https://www.pcmag.com/news/snapchat-adds-geofilters-in-la-new-york>.

¹⁵¹ S. Dixon, *Snap worldwide annual revenue 2015-2021*, Statista (Feb. 15, 2022), <https://www.statista.com/statistics/552702/snapchat-annual-revenue/>. See also, Bhanvi Staija, *TikTok’s ad revenue to surpass Twitter and Snapchat combined in 2022*, Reuters (Apr. 11, 2022).

¹⁵² Bhanvi Staija, *TikTok’s ad revenue to surpass Twitter and Snapchat combined in 2022*, Reuters (Apr. 11, 2022), <https://www.reuters.com/technology/tiktoks-ad-revenue-surpass-twitter-snapchat-combined-2022-report-2022-04-11/>.

user engagement, ensuring users—in many case minors with developing prefrontal cortices—continue using the product for ever longer periods of time. Simply put, Snapchat’s features drive addiction to the product.

372. Snapchat also is designed to manipulate users by activating the psychological principle of reciprocity.¹⁵³ Because snaps typically disappear within ten seconds of being viewed, users feel compelled to reply immediately. Snapchat also tells users each time they receive a snap by pushing a notification to the recipient’s device. These notifications are designed to prompt users to open Snapchat repetitively, increasing the overall time spent on the app.

373. Recommendation algorithms and user feeds are designed to advance the specific goals of the particular social media organization. Snap’s algorithmically generated user feeds are designed with the primary goal of maximizing user engagement. It is feasible for Snap to design recommendation algorithms and user feeds that do not affirmatively direct minor users to harmful content or connect them with the predatory adults, however, such an improvement in user safety would reduce user engagement. Snap’s recommendation algorithms and user feeds were intentionally designed to prioritize user engagement over user safety by failing to include design alterations that would protect children from harmful content and predatory adults at the expense of their engagement with Snap’s product.

374. Since Snap’s inception, it has failed to warn teenage users about its products’ physical and mental health risks. These risks include, but are not limited to, dissociative behavior, social isolation, and an array of mental health disorders like body dysmorphia, anxiety, depression, and insomnia.

F. Factual Allegations as to Defendant Discord

1. Background on Discord.

375. Discord is an instant messaging social platform that was originally designed to help video gamers communicate with each other in real time.¹⁵⁴

376. Discord was launched in 2015 and, by 2020, had 150 million monthly active users

¹⁵³ Nir Eyal, *The Secret Psychology of Snapchat*, Nir & Far (Apr. 14, 2015), <https://www.nirandfar.com/psychology-of-snapchat/>.

¹⁵⁴ Attorney General Report at 20.

globally.

2. Discord is a Product.

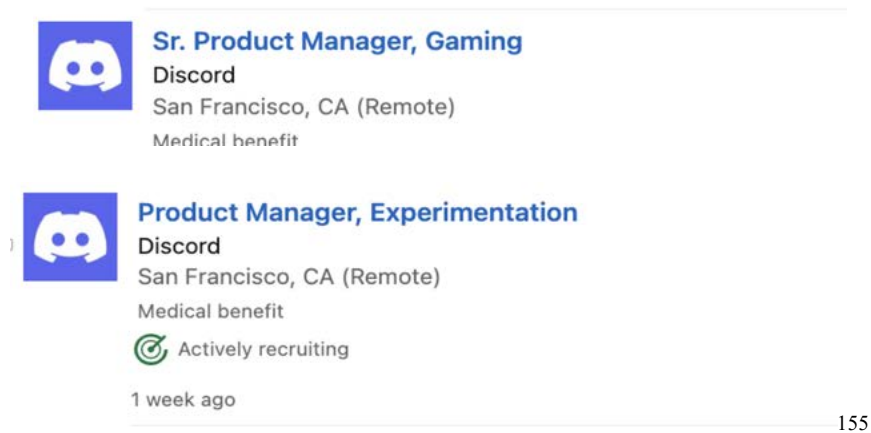
377. Discord, Inc. designed, coded, engineered, manufactured, produced, assembled, and placed Discord into the stream of commerce. Discord is made and distributed with the intent to be used or consumed by the public as part of the regular business of Discord, Inc., the seller or distributor of Discord. Discord is uniform and generally available to consumers.

378. Discord is mass marketed. Discord is designed to be used and is used by hundreds of millions of consumers and in fact would have little value if used by one or only a few individuals. It is advertised in a variety of media in a way that is designed to appeal to the general public and in particular adolescents.

379. Discord is akin to a tangible product for purposes of product liability law. When installed on a consumer's device, it has a definite appearance and location and is operated by a series of physical swipes and gestures. It is personal and moveable. Downloadable software such as Discord is a "good" and is therefore subject to the Uniform Commercial Code despite not being tangible. It is not simply an "idea" or "information." The copies of Discord available to the public are uniform and not customized by the manufacturer in any way.

380. The public has an interest in the health and safety of widely used and distributed products such as Discord. This is because Discord invites the public, especially adolescents, to use Discord. Justice requires that losses related to the use of Discord be borne by Discord, Inc., the manufacturer and creator of the product. Discord, Inc. is the only entity with the ability to spread the cost of losses associated with the use of Discord among those advertisers who benefit from the public's use of the product.

381. Discord, Inc. has repeatedly and consistently acknowledged that Discord is a "product." For example, Discord places the following advertisements for "Product Managers" on LinkedIn:



3. Discord's Product Design Promotes Radicalization.

382. Discord's users engage in public and private chats or channels, called servers, on varying topics. The vast majority are private, invite-only spaces with fewer than 10 people. All servers are private by default, and only channels with more than 200 members are discoverable in its search tool.

383. Teens on Discord can connect with people they don't know if the stranger was invited by someone else in the room or if the channel link is dropped into a public group that the user accessed. By default, all users – including teens – can receive friend invitations from anyone in the same server, which then opens up the ability for them to send private messages.

384. Discord in particular is popular for communities of neo-Nazis and white supremacists to socialize, share hateful memes, boost the ideas that undergird their movements, inculcate strangers, and plan activities that take place elsewhere online.

385. BuzzFeed News reported on a chat server called “/pol/Nation” where more than 3,000 users participate in a rolling multimedia chat extravaganza of Hitler memes, white nationalist revisionist history, and computer game strategy.¹⁵⁵ In a voice-over-IP chatroom within the server, users keep up a steady chatter about the same subjects. A separate server called “Thunderdome” hosts the enthusiastic staff and fans of the *Daily Stormer*, a neo-Nazi website.

386. Slate was able to join more than 20 communities on Discord in a single afternoon

¹⁵⁵ [https://www.linkedin.com/jobs/search/?currentJobId=3532249353&keywords=discord product manager](https://www.linkedin.com/jobs/search/?currentJobId=3532249353&keywords=discord%20product%20manager) (accessed 4/20/23)

¹⁵⁶ Joseph Bernstein, *A Thriving Chat Startup Braces For The Alt-Right*, BuzzFeed News (Jan. 23 2017).

that were either directly about Nazism or white supremacy or reveled in sharing anti-Semitic and racist memes and imagery.¹⁵⁷ Slate noted that Discord differs from other social media platforms in that chats are entirely opt-in, meaning that the potential for unsolicited public harassment is significantly lower. Slate concluded that this design feature, in addition to the anonymity in Discord’s design makes, it an ideal recruitment tool for white supremacists to attract followers to their racist ranks.

Unlike Stormfront—where people who are obviously interested in hate groups go—on Discord a lot of the participation comes from people who are mostly hoping to find an abasing joke or chat about violent video games safely without fear of offending someone. And that makes Discord an ideal place for far-right recruitment. Its spaces provide room for people to socialize in hate—to forge connections from which social beliefs can grow. If you hang out with Nazis and racists long enough, what begins as cruel humor can give way to a set of convictions, one that doesn’t need to be approached with a layer of irony.

387. On August 18, 2017, more than 500 white supremacists, Klansmen, neo-Nazis, and members of the alt-right participated in the “Unite the Right” rally in Charlottesville, Virginia. Motivated by replacement theory, the group chanted “Jews will not replace us” and carried weapons, Confederate battle flags, and Nazi and neo-Nazi symbols. In the afternoon, self-identified white supremacist James Alex Fields Jr. deliberately drove into a crowd of counter-protesters, killing Heather Heyer and injuring 35 other people. Because the Unite the Right rally promoted a message of racism and anti-Semitism, the leaders didn’t do the bulk of their logistical planning in any kind of public forum or open Facebook group. Instead, they used Discord.

4. Discord Facilitated Gendron’s Radicalization

388. Gendron used Discord to keep a private journal for months where he wrote down his hateful beliefs and developed specific plans for equipping himself and perpetrating his massacre.¹⁵⁸ He kept a diary on a personal server and restricted it so that he was the only person who could view. By restricting access to the Discord server until shortly before the attack, he ensured that his postings would not be impeded by Discord’s content moderation.¹⁵⁹

¹⁵⁷ April Glasser *White Supremacists Still Have a Safe Space Online*, Slate (Oct 9, 2018).

¹⁵⁸ Attorney General Report at 3.

¹⁵⁹ *Id.* at 27.

389. Though Discord does maintain a Community Guidelines policy, which prohibits users from making threats of violence or harm, without users or moderators being able to view Gendron's Diary, no reports could be made.

390. Gendron's diary contained approximately 700 pages of original posts written by Gendron, links to outside content, and memes.¹⁶⁰ He outlined the many details he was considering for his attack. He envisioned his diary coupled with his manifesto as a manual for future mass shooters. His diary on Discord included raciest charts, graphs, and memes, which Gendron believed as proof of white genocide.¹⁶¹

391. Gendron's Discord logs reflect months of research he conducted on body armor, helmets, and rifles in order to "kill as many blacks as possible" and "avoid dying."¹⁶²

392. Though much of Gendron's use of Discord was in his private diary, between August 1, 2020 and January 1, 2021, he posted at least 83 messages on the channel "#bag-general." Many of those messages were about specific types of body armor and tactical gear.¹⁶³

393. Shortly before 2:00 p.m. on May 14, 2022, Gendron invited several users to a chat room on Discord where he posted a link to the Twitch livestream and the contents of his manifesto and his diary that he had written to justify his violence and inspire future shootings.¹⁶⁴

394. When the Twitch livestream was taken down 24 minutes after its start (and approximately 2 minutes into the shooting), the link through Discord was automatically taken down as well.

395. The livestream of the shooting, which has been circulated throughout the internet, was recorded by one of the Discord users Gendron invited to view the livestream.¹⁶⁵

396. Between May 14, 2022 and July 8, 2022, links to Gendron's Discord diary were

¹⁶⁰ *Id.* at 21.

¹⁶¹ Discord Diary at 33, May 5, 2022,

¹⁶² Attorney General Report at 28.

¹⁶³ Dan Feidt, *Buffalo Mass Shooter Likely Sought Combat Gear Advice on Online Chats*, Unicorn Riot (May 14, 2022),

<https://unicornriot.ninja/2022/buffalo-mass-shooter-likely-sought-combat-gear-advice-on-online-chats/>.

¹⁶⁴ Attorney General Report at 11.

¹⁶⁵ *Id.* at 34.

posted 53 times on 4chan.¹⁶⁶

G. Factual Allegations as to Defendant Reddit

1. Background

397. Reddit is a social networking platform and news website. On Reddit, users of the site can share links to content online, and also post their own unique content directly to the site. Other users can then up-vote or down-vote this content and leave comments. Political actors use Reddit to promote their content and increase the visibility of their ideologies.

398. Reddit's website has a front page that lists links posted by other users. The website also contains subreddits, which further categories content into areas of interest. Each subreddit has its own front page too. Having a link feature on the front page of Reddit provides maximum visibility. Many Reddit users aim to get their link posted on the front page.

399. Reddit has a front page in which certain submissions are featured, thanks to different algorithms. This front page has different tabs. If a user is not registered, the default tab is "Hot," which is basically a view of the submissions with the highest scores over a period of time. The score is determined by subtracting the downvotes from the upvotes. As people upvote or downvote your posts and comments, these get added to your "karma." The higher karma you have, the better regarded you may be by the community.

400. Reddit's algorithms are written in Python and the sorting algorithms are executed in Pyrex. Reddit has a story algorithm that it always uses, which is called the Reddit hot ranking. With the Reddit story algorithm, the number of votes and the submission time of a link have the largest effect on where a story will rank.

401. Reddit implements a logarithm function in its algorithm. With this type of algorithm, the first votes on a link are more valuable than later votes on a link. For example, the first 10 up-votes will have the same value as the next 100 and so on. This means that as a link gets older, its ranking will slowly degrade, as the impact of the up-votes it gets becomes less significant. Conversely, it is also important to get some initial traction on a submission in order to give it early visibility.

¹⁶⁶ *Id.* at 37.

402. Reddit ranks an item by calculating the number of votes a link has and then subtracting points based on how old that link is. This means that newer links generally rank higher than older links. This keeps the front page fresh and ensures that links with thousands of up-votes aren't stuck on the front page for weeks or months at a time. Stories that get a more equal range of up-votes and down-votes will generally be ranked lower than stories that have a larger percentage of up-votes.

403. For comments, Reddit uses a different algorithm. For comments, it is most logical to list the best rated comments prominently, rather than giving precedence to the older comments. Instead of using the hot ranking algorithm, Reddit uses a confidence sort algorithm based on the Wilson score interval for its comments.

404. With a confidence sort algorithm, the best rated comments that the system has the most data for will be ranked the highest. For example, a comment with ten up-votes and 1 down vote will rank higher than a comment with only 1 up-vote and no down-votes, even though the latter comment has a 100% up-vote rate. The comments are ranked by data sampling and the date the comments are submitted isn't an active factor. Reddit is a large group of forums in which registered users can talk about specific topics. Those specialized forums are called "subreddits," which are referred to as *r/ "topic"*. There are more than 130,000 active subreddits. Users can read and participate in subreddits except private subreddits, which require an admission process. Users can also subscribe to the subreddits, so their most popular posts appear on their personalized Reddit front page.

405. In October 2021 there were 430 million active Reddit unique users each month, which made it the No. 7 most-visited site in the United States and No. 19 in the world.

2. Reddit is a Product

406. Reddit designed, coded, engineered, manufactured, produced, assembled, and placed Reddit into the stream of commerce. Reddit is made and distributed with the intent to be used or consumed by the public as part of the regular business of Reddit, Inc., the seller or distributor of Reddit. Reddit is uniform and generally available to consumers.

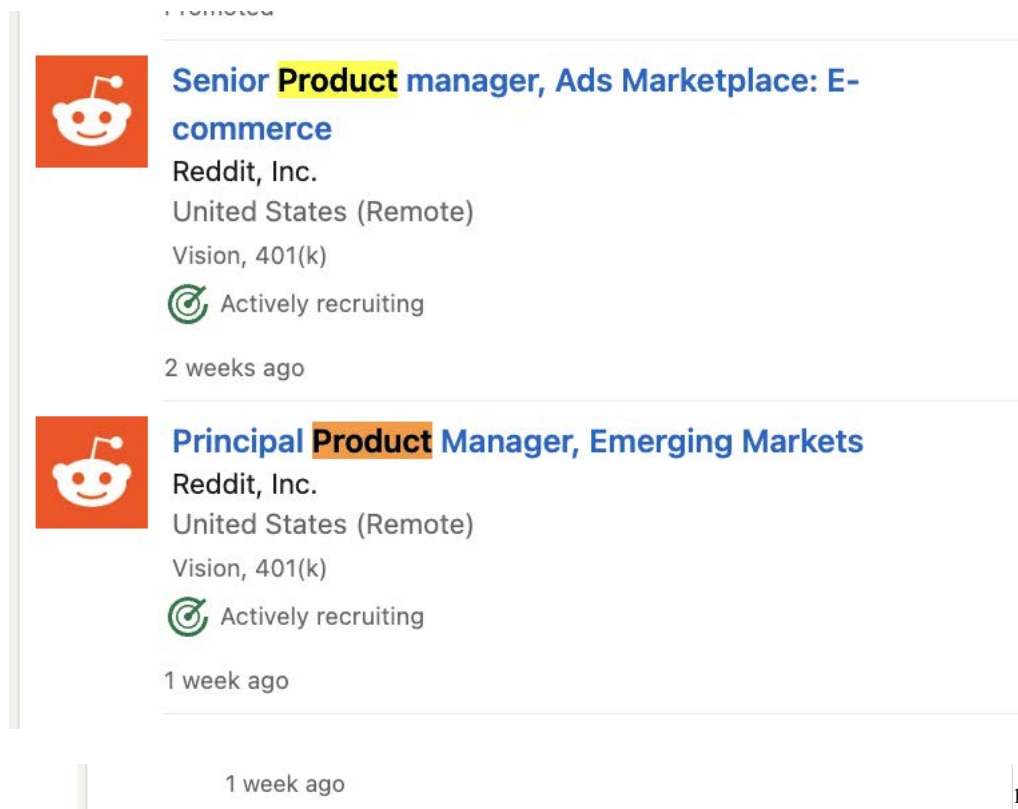
407. Reddit is mass marketed. Reddit is designed to be used and is used by hundreds of

millions of consumers and in fact would have little value if used by one or only a few individuals. It is advertised in a variety of media in a way that is designed to appeal to the general public and in particular adolescents.

408. Reddit is akin to a tangible product for purposes of product liability law. When installed on a consumer's device, it has a definite appearance and location and is operated by a series of physical swipes and gestures. It is personal and moveable. Downloadable software such as Reddit is a "good" and is therefore subject to the Uniform Commercial Code despite not being tangible. It is not simply an "idea" or "information." The copies of Reddit available to the public are uniform and not customized by the manufacturer in any way.

409. The public has an interest in the health and safety of widely used and distributed products such as Reddit. This is because Reddit invites the public, especially adolescents, to use Reddit. Justice requires that losses related to the use of Reddit be borne by Reddit, Inc., the manufacturer and creator of the product. Reddit, Inc. is the only entity with the ability to spread the cost of losses associated with the use of Reddit among those advertisers who benefit from the public's use of the product.

410. Reddit, Inc. has repeatedly and consistently acknowledged that Reddit is a "product." For example, Reddit, Inc. places the following advertisements for "Product Managers" on LinkedIn:



3. Reddit promotes extremist content.

411. Reddit had no moderation policy until 2020 and moderation is currently conducted through administrators enforcing the conduct policy, and moderators who patrol individual subreddits and enforce the rules specific to those communities.¹⁶⁷ The majority of the moderation is performed by volunteer users.

412. Reddit's design attracts extremist organizations and promotes racist, antisemitic, and violent content. As designed, the subreddits provide an optimal platform for replacement theory practitioners to recruit new adherents by escalating online hate.

413. On information and belief, as designed, the algorithm driving front pages ranking on Reddit and Subreddits prioritizes extremist content and elevates racists, antisemitic and violence-promoting postings.

414. On information and belief, as designed, the algorithm driving comments on Reddit

¹⁶⁷https://www.linkedin.com/jobs/search/?currentJobId=3547286659&f_C=150573&geoId=103644278&keywords=product%20manager&location=United%20States&refresh=true (accessed 4/20/23).

¹⁶⁸ See Reddit, 2021 Transparency Report 4-8 (April 16, 2022) <https://www.redditinc.com/policies/transparency-report-2021>.

and Subreddits prioritizes extremist content by directing unwanted racist, antisemitic, and violence-promoting postings to viewers.

415. On information and belief, as designed, the algorithm driving Reddit's comment feature promotes extremist content by elevating incendiary and hateful comments and images over positive and uplifting ones. This design feature works to radicalize youth by promoting racist, antisemitic, and violence-advocating communications.

416. The video of Gendron's livestream appeared on Reddit within an hour of the shooting.¹⁶⁹ Attorney General James' investigation revealed that Reddit was an outlier in how long it took the company to remove posts linking to the graphic video of the Buffalo shooting, even after the Attorney General alerted the site by submitting user reports.¹⁷⁰

417. The Attorney General found 17 instances of content containing videos from the shooting, and 19 instances of Gendron's writing appearing on Reddit,¹⁷¹ and it took Reddit an average of eight days to respond to requests to take down such content.¹⁷²

4. Reddit facilitated Gendron's radicalization.

418. Gendron's indoctrination into white supremacy and belief in white genocide was furthered by his activity on Reddit by browsing within certain subreddits and fueled by his research on eugenics, the great replacement theory, and other longstanding race theories.¹⁷³

419. On January 30, 2022, Gendron wrote in his Discord diary that "many of my beliefs came from reddit too. Many subreddits I joined have been banned but they show up on r/AgainstHateSubreddits all the time." Gendron was active in subreddits dedicated to discussion of tactical gear and ammunition, all while planning his attack.¹⁷⁴ One comment made on one of these subreddits gear asks, "in low light situations such as before dusk after dawn and at nighttime it would prove good camouflage, also maybe it would be also good for blending in a city?"¹⁷⁵

¹⁶⁹ *Id.* at 36.

¹⁷⁰ Attorney General Report at 28.

¹⁷¹ *Id.* at 38.

¹⁷² *Id.*

¹⁷³ Gendron Statement at 166.

¹⁷⁴ Attorney General Report at 32.

¹⁷⁵ *Id.*

H. Factual Allegation as to Defendants 4Chan, LLC and 4Chan Community Support LLC

420. 4chan is a social media site where anyone can post comments and share images. 4chan was founded by Christopher Poole in October 2003, when he was still a teenager using translated source code from the Japanese social media site 2chan. On September 21, 2015, Poole announced that he had sold 4chan to 2chan founder Nishimura Hiroyuki.

421. Since 2003 4chan has evolved from a forum for anime fans to a safe haven for child pornographers, racists, and neo-Nazis who lionize mass shooters and whose threats have triggered law enforcement investigations throughout the world.

422. 4chan is an anonymous online forum organized by “boards,” each covering a topic area. Posts on 4chan are collected into “threads,” from which users may reply to the original post.

423. 4chan receives advertising revenue, primarily for pornography, cryptocurrency, non-fungible tokens, and online video games. 4chan also sells “4chan Passes” to users.

424. Unlike most bulletin board systems, 4chan was designed without a registration system. Users are given the option to enter a name when posting a reply but need not do so; the default username given to any post where the poster has not entered a name is “Anonymous.” The result of 4chan’s deliberate design decision to promote anonymity provides racist and antisemitic hate groups a safe space to indoctrinate follower’s and plan violent acts without fear of law enforcement.

425. On information and belief, 4chan was designed with the purpose of facilitating criminal activity and hate speech.

426. As designed, the board entitled “Politically Incorrect” provides a safe haven for white supremacists to recruit teenage adherents by indoctrinating them in racist, antisemitic, and white supremacist ideologies.

427. As designed, the 4chan board dedicated to weapons referred to as “/k/” provides inspiration and instruction to white supremacists’ organizations and individuals on how to equip themselves to carry out terrorist attacks.

428. Each board contains ten pages of threads. Threads are “bumped” to the top of the

board when a reply is made, unless the thread has reached a set “bump limit.” The time is set by 4chan differently for each board. Threads on “politically incorrect” are deleted after 72 hours whereas discussion of video games, are deleted after 170 hours. This design feature, together with 4chan’s nearly complete anonymity facilitates the posting of hate speech, inculcation of white supremacist replacement theory and the recruitments of young adherents to commit acts of racist violence.

I. Factual Allegations as to Defendant Good Smile Japan; Good Smile US and Good Smile Delaware

429. Good Smile Japan manufactures pop culture toys including the popular line of nendoroids.

430. Good Smile produces licensed content for a variety of major brands, from major manga series like *Attack on Titan* to video games like *Assassin’s Creed* and movies like *The Matrix*.

431. Good Smile’s largest licensor is Disney. The company markets dozens of toys and figurines from Disney properties, like Spider-Man, Buzz Lightyear, and Mickey Mouse.

432. Good Smile also has contracted with Marvel, DC Comics, Nintendo, Disney, and Netflix for licensed products (such as Batman, Sonic the Hedgehog and Winnie the Pooh figures) that are sold in Target, Walmart, and Best Buy.

433. With annual sales of \$200 million, Good Smile has diversified well beyond just toys. It has branched out into animation, e-commerce, and music production. It even has a subsidiary, Good Smile Partners, tasked with acquiring companies based on “interestingness” and “synergy,” according to translations of the company’s website.

434. In 2022, *Wired* reported that Good Smile was involved in the 2015 sale of 4chan from Poole to Nishimura. *Wired* obtained documents detailing to an agreement involving 4chan owner Nishimura, Good Smile, and Tokyo-based telecommunications firm Dwango.¹⁷⁶ The three parties, the document said, were in talks to acquire 4chan. In December, *The New York*

¹⁷⁶ Justin Ling, *Who Owns 4chan?* *Wired* (March 26, 2022).

Times confirmed that Nishimura purchased 4chan with funding from three Japanese partners.¹⁷⁷

435. Documents obtained by the New York Attorney General in the Buffalo shooting investigation shows that, in the 2015 acquisition, Nishimura used \$800,000 of his own money and \$4.8 million from a major Japanese telecommunications company, and that Good Smile Company acquired a 30 percent share in 4chan for its \$2.4 million investment.¹⁷⁸

436. On information and belief, Good Smile's involvement with 4chan is not that of a passive investor but is actively involved in the management of the social media site.

437. Details of Good Smile's active involvement with 4chan emerged in a lawsuit filed by Good Smile against three former Los Angeles-based employees in Los Angeles County.¹⁷⁹ In the lawsuit, Good Smile alleged that the former employees were actively competing with the company, in violation of their contracts. The former employees countersued, alleging, among other things, that Good Smile has a close financial relationship with 4chan that it had not disclosed.¹⁸⁰

438. In formal court pleadings, Good Smile's former employees alleged that they were told by Enna Hozumi, the vice president responsible for Good Smile's American operations, that Good Smile Japan's CEO "provided, directly or indirectly, funding for 4Chan." The lawsuit alleges that, during the visit, Hozumi admitted that Good Smile Japan "had 'acquired' the website 4Chan and it was being managed on the 3rd floor of its Tokyo, Japan headquarters."¹⁸¹ Hozumi instructed the American employees "not to disclose to any licensors or employees of Good connection to 4Chan and all discussions about the infamous platform were held in person orally and behind closed doors."¹⁸²

439. The two former employees alleged that they "forward articles to Hozumi pertaining to 4Chan," specifically about its connections to white supremacy and neo-Nazis and domestic

¹⁷⁷ Ben Dooley & Hisako Ueno, *In the U.S., His Site Has Been Linked to Massacres. In Japan, He's a Star*, New York Times (Dec. 18, 2022).

¹⁷⁸ Justin Ling, *How a Major Toy Company Kept 4chan Online*, Wired (March 29, 2023).

¹⁷⁹ Second Amended Complaint *Good Smile Connect, LLC v. imaginary People, Inc., et al.* LA County No. 20STCV44737 (Second Amended Complaint July 14, 2021).

¹⁸⁰ Cross-Complaint of James Youngsuk, Brand MF, Inc. and Imaginary People, Inc., *Good Smile Connect, LLC v. Imaginary People, Inc., et al.*, LA County No. 20STCV44737 (Sept. 1., 2021)

¹⁸¹ *Id.* at ¶ 61.

¹⁸² *Id.* at ¶ 65.

terrorism, “to express their ongoing and increasing concern and discomfort with the association. Hozumi never responded to any of these written communications.”¹⁸³

J. Factual Allegations as to Defendant RMA Armament

440. Body armor is intended to protect the wearer from gunfire. It is generally worn by users who expect or anticipate the possibility of being part of a violent encounter — and being shot at, in particular.

441. Many body armor manufacturers have a stated policy of only providing their products to individuals whose employment places them at heightened risk of coming under gunfire: licensed security, law-enforcement, corrections, and military personnel.

442. But body armor has also been worn by mass shooters in at least 17 mass shootings since 2009, including the attack in Sutherland Springs, Texas, that killed 26 people in 2017, and the attack in San Bernadino, California, that killed 14 people in 2015.¹⁸⁴

443. Gendron was aware of these mass shootings, and that the perpetrators protected themselves with body armor. Like other ideologically inspired shooters who meticulously plan their attacks, Gendron chose to protect himself with body armor as well.¹⁸⁵

444. Gendron sought out a body armor company that gleefully marketed its military-grade wares to civilian buyers for years: RMA Armament.

445. RMA Armament chose to market and sell its body armor directly to members of a fringe online community—members of the r/tacticalgear subreddit. The r/tacticalgear subreddit brought together individuals obsessed with purchasing military-style weapons, armor, clothing, and related items.

446. R/tacticalgear was first created on December 14, 2012—the date of the Sandy Hook school shooting.

447. Many posts and materials available through the r/tacticalgear subreddit describe or encourage the use of military-style items for violent assaults. The r/tacticalgear subreddit includes

¹⁸³ *Id.* at ¶ 19.

¹⁸⁴ https://buffalonews.com/news/local/crime-and-courts/company-that-sold-tops-gunman-body-armor-left-controversial-digital-trail/article_72cf1846-02d7-11ed-a47e-2b25c4e67f57.html.

¹⁸⁵ <https://www.npr.org/2022/05/20/1100263364/buffalo-shooter-body-armor-fewer-regulations-than-guns>.

a “Wiki” webpage with links to “Introductory Guides” and “Reference Information.” Included among the “Introductory Guides” is a statement by a subscriber to the r/tacticalgear subreddit titled: “Open Letter to the Sub & Guide by aviator94.”

448. This “Open Letter” states that “[t]actical gear implies more than a simple home defense situation,” which “calls for a quick reaction and good weapon.” Instead, the letter explains, “[t]actical gear implies some sort of prolonged or premediated [sic] scenario.”

449. Gendron developed a close personal relationship with an RMA Armament customer service representative, Cory Clark, a/k/a “shorta07” (“Clark”), who, beginning in 2019, promoted RMA Armament online in his official capacity, frequenting the same Reddit and forum hangouts that Gendron did. All of Clark’s acts and omissions set forth herein were performed in the furtherance of his employment duties for the benefit of his employer, RMA Armament.

450. Prior to 2019, Clark worked on the production floor at RMA Armament. In 2019, RMA Armament promoted Clark to a marketing role after they discovered that his Reddit posts had driven increased direct sales of body armor.

451. RMA Armament authorized and encouraged Clark to post on r/tacticalgear as u/shorta07 as part of his job responsibilities in his marketing role.

452. As a frequent visitor to the r/tacticalgear subreddit, Clark was aware of the r/tacticalgear community’s obsessions with military-style items and violence.

453. Clark joked about how body armor would make it easier for members of the r/tacticalgear community to commit violent acts. For example, on February 14, 2021, Clark posted an image of RMA Armament body armor with the caption: “Stopping holes so you can knock some skulls.”

454. Many of Clark’s posts advised members of the r/tacticalgear community in which specific types of bullets body armor manufactured by RMA Armament would protect against—including bullets used by law enforcement and military personnel. For example, on June 4, 2020, Clark posted a link to a YouTube video by an influencer named “Buffman” and titled: “RMA 1092 III+ RF2 torture test – Buffman-Range.” Clark commented on the post documenting the results of the “torture test” with different types of bullets and ammunition.

455. Other of Clark's posts sought to stoke potential buyers' fears so that they would purchase RMA Armament body armor. For example, on July 23, 2020, a Reddit user posted on r/tacticalgear questioning why civilians would need body armor. Clark commented in response: "A.) Because of freedom B.) Because of hobbies C.) Because of home defense D.) Because have you seen 2020 so far?" In August 2020, Clark stated in a comment that members of r/tacticalgear should purchase body armor because "my gut feeling tells me in November during the [U.S. presidential] election, it's going to be BAD no matter which way the election goes."

456. On information and belief, Gendron interacted directly with Clark on at least four occasions.

457. On information and belief, these interactions caused Clark to become aware of Gendron's obsession with military-style items and violence.

458. Gendron valued the information he received from Mr. Clark. In August 2021, he stated in a post on r/tacticalgear that RMA Armament was his "go to for armor plates." Clark responded by commenting that he appreciated Gendron. On information and belief, Clark later deleted this comment.

459. On January 8, 2022, Gendron wrote on Discord, "Talked with shorta with RMA armament today, RMA is quite based in the fact that they sell cheap plates that are actually useable."¹⁸⁶ "Based" is a slang term that has been appropriated by racist white nationalists to show praise.

460. On March 16, 2022, Gendron described a conversation he had with Clark regarding RMA's plates.¹⁸⁷

461. Clark noted that RMA Armament was one of "very few manufacturers" to sell directly to the product to ordinary civilians nowhere near a battlefield.¹⁸⁸

462. Mr. Clark's personal Reddit posts—directly engaging with Gendron and participating in those spaces—drove sales of RMA Armament products; he openly identified as a

¹⁸⁶ Discord Diary, p.42.

¹⁸⁷ Discord Diary, p.357.

¹⁸⁸ https://buffalonews.com/news/local/crime-and-courts/company-that-sold-tops-gunman-body-armor-left-controversial-digital-trail/article_72cf1846-02d7-11ed-a47e-2b25c4e67f57.html.

representative of the company online, and promoted the products, sales, and discounts.¹⁸⁹

463. Increased civilian purchases was part of RMA Armament's sales strategy. Clark noted on Reddit that during one five-day period in October 2020, RMA Armament sold more than 1,200 sets of one type of armor plate in direct sales to civilian consumers.¹⁹⁰

464. Clark specifically advised Reddit users on types of body armor that protect against military bullets.¹⁹¹

465. RMA Armament also works with online influencers as affiliate marketers, whose content satirizes killing federal agents ("stacks" of "fed boys").¹⁹²

466. Furthermore, RMA Armament's questionable marketing practices continued with Clark, who encouraged customers on Reddit to "ship to the state next to them" in order to subvert state body armor restrictions and encouraged Reddit users to purchase body armor before the 2020 presidential election.¹⁹³

467. Mr. Clark's posts on r/tacticalgear echoed marketing messages that RMA Armament used on its official website. For example, on November 13, 2021, RMA Armament published a blog post on its official website titled: "Bugout or Bug In? Have a Plan! Armor Upgrades, Loadouts, and More for Domestic Contingencies." The term "bugout" refers to a situation in which residents are forced to evacuate their homes during a catastrophic breakdown of civil society.

468. On January 7, 2022, RMA Armament published a blog post on its official website titled: "Bulletproof Vests: Do You Need One"? The post includes a section on "Tactical Considerations," which advises on the need for lightweight body armor "to preserve your ability to move, shoot, and communicate." Another section, on "Civilians," states: "If you're preparing for the collapse of the US dollar, political revolution, secession feuds, or any other dangerous situation for yourself and your family, remember you don't need to be involved in the creation of

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

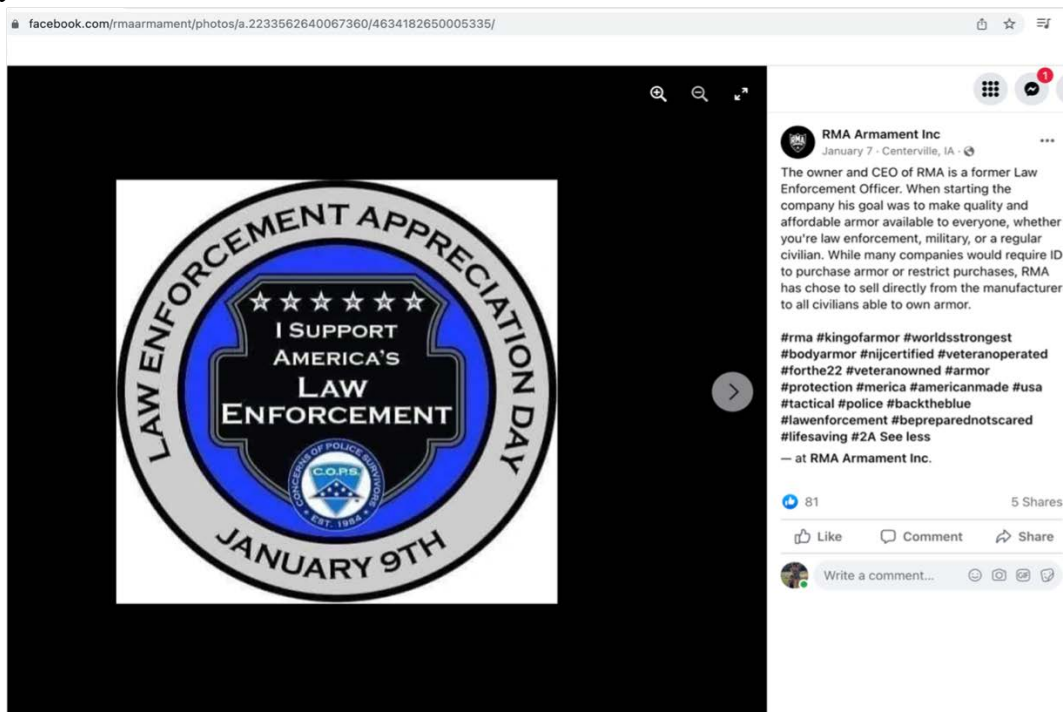
¹⁹¹ *Id.*

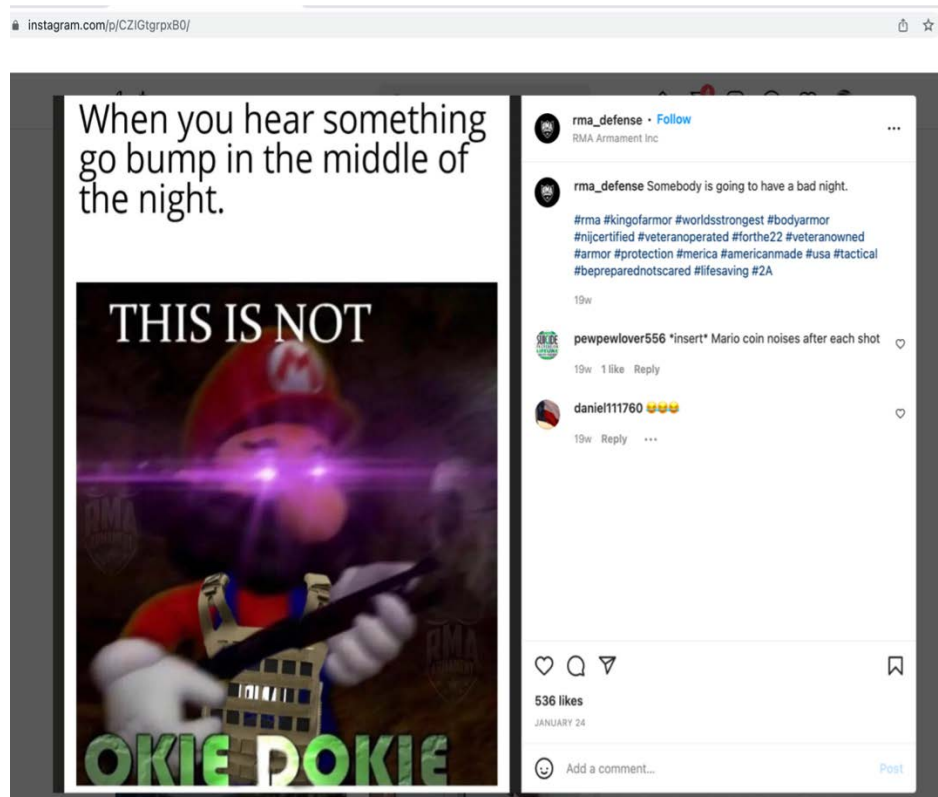
¹⁹² *Id.*

¹⁹³ *Id.*

the problem for it to become a problem.”

469. On social media platforms, RMA Armament’s postings in the months leading up to the Tops shooting were similarly provocative, as seen in the following examples. The first notes that RMA Armament’s founder’s goal in starting the company was to make body armor available to anyone, “whether you’re law enforcement, military, or a regular civilian,” and that while “many companies would require ID to purchase armor or restrict purchases, RMA has chose [sic] to sell directly from the manufacturer to all civilians.”





470. Chillingly, days before the Tops massacre, RMA Armament posted to Twitter, “Does villainous look good on us?”



471. Gendron wanted body armor to protect himself while he attacked Black people at Tops. He wrote about this in his manifesto at numerous occasions. For example:

- “To minimize the chance of instant death from a CCW holder, police, or general armed citizen, body armor and ballistic helmet that will stop the intended threat will be needed.”¹⁹⁴
- “Top’s Market has 1 or 2 armed security guards with full size glocks, IIIA armor will stop their ammunition.”¹⁹⁵
- “I will be wearing decent body armor and a helmet to protect from other people’s firearms.”¹⁹⁶

¹⁹⁴ Gendron Statement at p.58.

¹⁹⁵ *Id.* at p.59.

¹⁹⁶ *Id.* at p.59.

- He listed as “100% guaranteed” he would encounter “Police handgun threats with duty ammo” and that his “Solution” was “NIJ certified II or IIIa armor for helmet and vest.”¹⁹⁷ He also stated as “100% Guaranteed” “CCW threats, same as police threats. This is Buffalo after all so I am expecting some boys to be packing. At Top’s [sic] there seems to be a security station at the front of the store, and they are armed with full size glocks. I will have to kill them first,” and his “Solution” as “NIJ certified II or IIIa armor for helmet and vest.”¹⁹⁸

472. Gendron was clearly enamored with RMA Armament, in particular.

473. In his writing, Gendron spent 37 pages discussing recommended body armor for future mass shooters, and specifically recommended nearly a dozen different RMA products for purchase.¹⁹⁹

474. Regarding RMA Armament, he specifically wrote, “RMA is a mostly reliable body armor manufacturer these days and I trust that they will protect me from my expected threats. These plates should stop all expected handgun threats and even the unexpected rifle threats.”²⁰⁰

475. Gendron purchased body armor directly from RMA Armament, and Clark represented RMA Armament to Payton Gendron on at least four occasions.²⁰¹

476. When he placed his \$607.00 order for the body armor that he wore while carrying out the Tops massacre, he credited his Reddit contact, Mr. Clark, adding on the order form “It’s recommended to give Corey [sic] a bonus.”²⁰²

477. Gendron later wrote that he got “confirmation I can advertise RMA plates,” confirming that RMA Armament was comfortable being associated with Gendron.²⁰³

478. RMA Armament plates provided Gendron with the confidence he needed to overcome his reluctance carry out his murderous attack.

¹⁹⁷ *Id.* at p.80.

¹⁹⁸ *Id.* at p.81.

¹⁹⁹ *Id.* at pp.105-142.

²⁰⁰ *Id.* at p.105.

²⁰¹ https://buffalonews.com/news/local/crime-and-courts/company-that-sold-tops-gunman-body-armor-left-controversial-digital-trail/article_72cf1846-02d7-11ed-a47e-2b25c4e67f57.html.

²⁰² *Id.*

²⁰³ *Id.*

It is very difficult for a normal person even with all the information to carry out an attack that will kill another human being, or the fact that you may die that day. I don't think there really is a way to train for this, but confidence in your goals and equipment may ease them. . . . I am also decently protected by my armor so that gives me some confidence as well.²⁰⁴

479. On information and belief, if Gendron had not been equipped with RMA Armor he would not have committed his horrific crimes on May 14, 2022.

480. On information and belief, if Gendron had not been equipped with RMA Armor during his May 14, 2022, attack, Aaron Stalter would have been able to stop his murderous rampage. However, because he was protected with RMA Armor, Gendron was able to overcome Aaron Stalter's resistance, kill Aaron Stalter, and go on to murder Andre MacKniel, Margus Morrison, Kat Massey, and Geraldine Talley.

K. Factual Allegations as to Defendant Vintage Firearms

481. Vintage Firearms is located at 120 Nanticoke Avenue in Endicott, New York.

482. The store's Facebook page describes itself as a "Dealer in collectable firearms and ammunitions. Approximately 100 guns in stock. CASH FOR GUNS: indi."²⁰⁵

483. A banner photo on the store's Facebook page shows windows advertising "Buy-Sell-Trade" and "Revolvers-Pistols-Military Rifles."²⁰⁶

484. Gendron was a frequent customer of Vintage Firearms in 2021 and 2022 and had an affinity for the store.

485. On December 21, 2021, Gendron wrote on Discord that he "went to Vintage Firearms and bought some 2 boxes of some old 12 gauge game ammo."²⁰⁷

486. Upon information and belief, at some point between December 21, 2021 and January 11, 2022, Gendron identified the Bushmaster XM15-E2S that he would later purchase.

487. On January 11, 2022, Gendron observed that a YouTube video demonstrated the "Same fixed mag release at vintage firearms, says you have to trill to get it out."²⁰⁸

²⁰⁴ Gendron Statement at p.61.

²⁰⁵ <https://www.facebook.com/people/Vintage-Firearms-LLC/100049045226470/>.

²⁰⁶ *Id.*

²⁰⁷ Discord Diary at 17.

²⁰⁸ *Id.* at 44.

488. That same day, Gendron wrote on Discord that he “investigated the AR at vintage firearms more.”²⁰⁹

489. As part of his “investigation” of the Bushmaster XM15-E2S at Vintage Firearms, Gendron writes that he “learned that I can take the fixed mag out if I get a screw extraction kit. Then I will have to replace it with a regular mag button and spring.”²¹⁰

490. On January 14, 2022, Gendron wrote on Discord that he “decided I was going to buy the [AR-15] at Vintage Firearms instead, so I asked about parts and bought a lower receiver parts kit from Anderson Manufacturing.”²¹¹

491. On January 18, 2022, Gendron wrote on Discord, “That bushmaster at Vintage Firearms will do very nicely, it has no muzzle device and one can’t be threaded on, fixed stock and rear sight, and has the mean arms fixed mag release. Plus it’s a rifle instead of a carbine.”²¹²

492. On January 19, 2022, Gendron wrote on Discord, “I went to Vintage Firearms and investigated the AR they had very closely” and that he “bought it + a sling + 20 rounds of M194 for \$960.”²¹³

493. Gendron was gleeful about the horrific damage that the weapon Vintage Firearms sold him could do, writing on Discord, “This is what God thought of when he sent Eugene Stoner to design and manufacture the M16 and AR-15. This will be VERY effective when I pair it with M193 ammo.”²¹⁴

494. After purchasing his murder weapon at Vintage Firearms, Gendron continued to loyally patronize the store, and find camaraderie there.

495. On February 23, 2022, Gendron wrote on discord “I went to Vintage Firearm’s [sic.] and looked around and talked to the guy. What was strange was when I was telling the guy (Chuck?) about Matt and I’s shooting experience with the bushmaster I bought from him, he was smiling, like he wasn’t completely disgusted with my presence. I was able to get 4 5.56 clips and

²⁰⁹ *Id.* at 45.

²¹⁰ *Id.* at 45.

²¹¹ *Id.* at 52.

²¹² *Id.* at 64.

²¹³ *Id.* at 64.

²¹⁴ *Id.* at 64.

1 of the mag loaders for my magazines from him for free.”²¹⁵

496. On March 3, 2022, Gendron wrote on Discord that he purchased some ammunition from Vintage Firearms, noting, “It is way more than what I wanted to pay but I like the guy at Vintage Firearms. He’s quite a nice guy. So I was willing to help him out a bit by buying this . . . If he’s still around after the attack promise me you’ll buy something off him?”²¹⁶

497. The day after the Tops massacre, the proprietor of Vintage Firearms told the New York Times that he could not recall any details about Gendron: “he didn’t stand out—because if he did, I would’ve never sold him the gun.”²¹⁷

498. Upon information and belief, prior to the Tops massacre, Gendron had made purchases at Vintage Firearms on six separate occasions.

499. Upon information and belief, Gendron discussed his Bushmaster XM15-E2S with employees at Vintage Firearms after having modified the weapon.

500. Upon information and belief, Gendron revered Vintage Firearms employees to the point of encouraging others to purchase from the store after his massacre.

501. Upon information and belief, prior to the Tops massacre, Gendron had discussed the lock on the Bushmaster XM15-E2S with Vintage Firearms employees.

502. On May 15, 2022, the proprietor of Vintage Firearms told the New York Times, “Even with all of those safety features on it—which is the only way I sell it—any gun can be easily modified if you really want to do it.”²¹⁸

L. Factual Allegations as to Defendant Mean Arms

503. New York’s assault weapon law prohibits manufacturing, transporting, disposing of, or possessing an assault weapon in the state.²¹⁹ An assault weapon is defined in part as a semi-

²¹⁵ *Id.* at 192.

²¹⁶ *Id.* at 230.

²¹⁷ <https://www.nytimes.com/live/2022/05/15/nyregion/shooting-buffalo-ny?smid=url-copy#the-suspect-bought-his-weapon-without-leaving-an-impression-a-gun-store-owner-said>.

²¹⁸ *Id.*

²¹⁹ N.Y. Penal Law §§ 265.02(7), 265.10.

automatic rifle that has an ability to accept a detachable magazine and has at least one of a number of enumerated characteristics.²²⁰

504. New York State guidance to gun owners has made clear that compliance with the law requires that modifications to a firearm removing features that would otherwise be characteristic of an illegal assault weapon “must be permanent” and a “change that cannot be reversed through reasonable means.”²²¹

505. Gendron’s AR-15 rifle was purchased with an easily removable firearms lock designed and sold by Mean Arms that purported to modify the rifle so that its magazine would not be detachable.

506. Mean Arms claims on its website that “installing the MA Lock makes AR firearms legal and complaint, leaving all your favorite tactical features in place. Installation of the MA Lock provides a true solution to fixed magazine laws . . .”²²²

507. Despite manufacturing locks that are advertised to render firearms complaint for sale in states like New York, Mean Arms openly opposes the gun safety laws that create the market for its product.

508. On its website product page, Mean Arms criticizes states with gun safety laws, proclaiming the accessory to be “[d]eveloped for states with intrusive laws.”²²³ (emphasis added).

509. In its patent application for a firearms lock, Mean Arms refers to states with “anti-firearm laws.”²²⁴ (emphasis added).

510. Mean Arms advertises on its website to potential purchasers that the regarding the MA Lock, “[o]nce installed, it cannot be removed with a tool, which satisfies CA and NY state law.”²²⁵

511. At the same time, Mean Arms also emphasizes to potential customers that their lock is fully removable, advertising, “our MA Lock device will be removable WITH disassembly of

²²⁰ N.Y. Penal Law § 265.00(22).

²²¹ <https://safeact.ny.gov/resources-gun-owners>.

²²² <https://www.meanarms.com/products/detail/ma-lock>.

²²³ *Id.*

²²⁴ <https://patents.google.com/patent/US20200292263A1/en?q=US+20200292263A1>.

²²⁵ <https://www.meanarms.com/faqs>.

the action which is a required action to maintain legality in some states. This process will in no way harm your rifle.”²²⁶

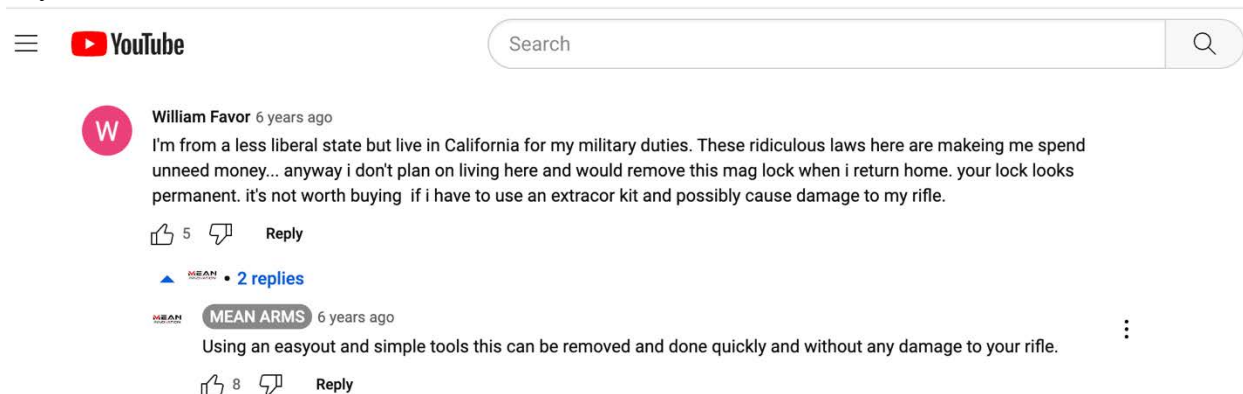
512. Customers of Mean Arms have picked up on the impermanent nature of the lock. As one Reddit user noted, they “hold a pretty good argument for it being a permanent lock,” but “[t]he recommended removal method is to get a specific drill bit designed to drill into stripped screws that will drill in and pull the screw/lock out.”²²⁷

513. On its website, Mean Arms includes a link to a YouTube video titled “MEAN MA Lock Installation Video” uploaded by its company account, @MEANARMS.²²⁸ The video has approximately 53,000 views, and was uploaded to YouTube on March 29, 2017. The @MEANARMS YouTube account has 824,616 views.

514. Within the MEAN MA Lock Installation Video, the presenter states “with the installation of the MA Lock, your firearm is now complaint with fixed legislation requirements.”

515. The MEAN MA Lock Installation Video also prominently features a placard displaying Mean Arms’s logo, a QR code, and the statement “Fixed Magazine Solution.”

516. In comments on the MEAN MA Lock Installation Video, @MEANARMS wrote, “Using an easyout and simple tools this can be removed and done quickly and without any damage to your rifle.”

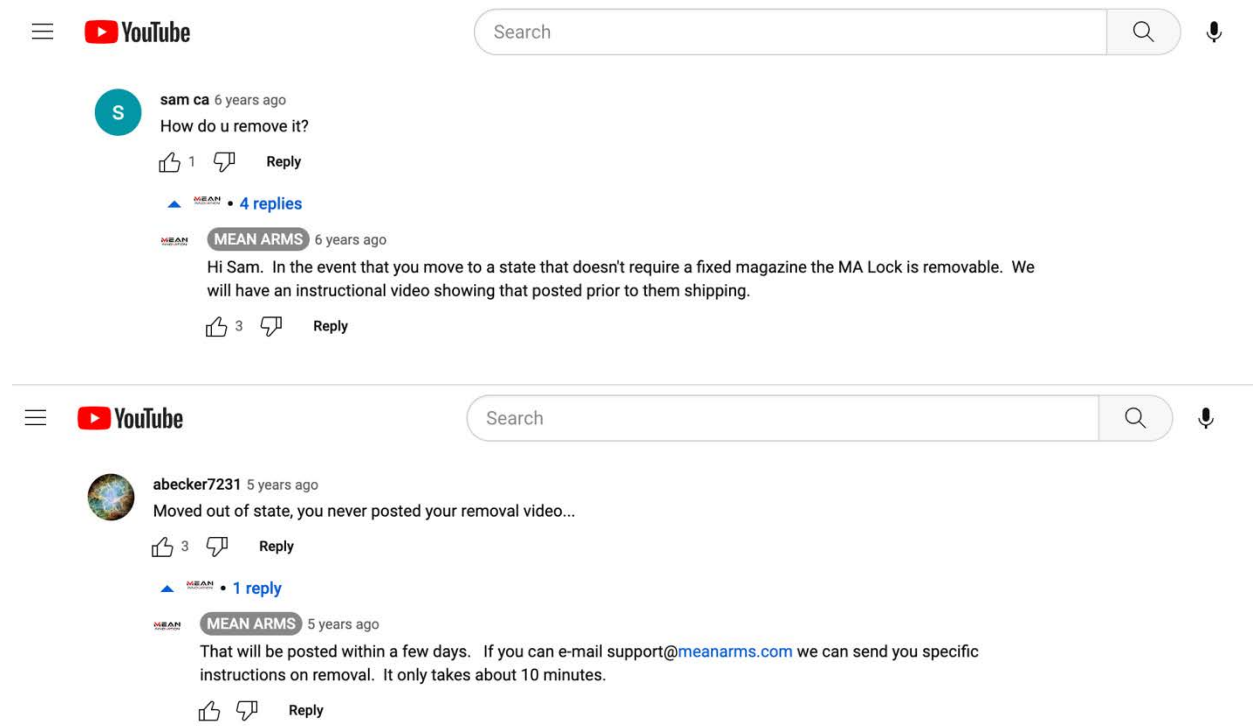


²²⁶ *Id.*

²²⁷ https://www.reddit.com/r/NYguns/comments/a985q9/best_fixed_mag_kit_for_ar15/

²²⁸ The YouTube video, titled “MEAN MA Lock Installation Video,” viewable at <https://www.youtube.com/watch?v=EjJdMfuH9q4>, is embedded in the webpage <https://www.meanarms.com/products/detail/ma-lock>.

517. In several comments on the same YouTube video, @MEANARMS promised that it would be uploading a removal video.



518. In response to one user comment, @MEANARMS promised that removal “**only takes about 10 minutes.**” (emphasis added).

519. Gendron similarly documented the ease with which he removed the Mean Arms device in his writings and on Discord.

520. On January 11, 2022, Gendron pasted a YouTube video link on Discord, noting, “[s]ame fixed mag release at vintage firearms, says you have to drill it out to get it.”²²⁹ Gendron added, “[s]peedout drill bit on hole and it will come right out.”²³⁰

521. That same day, Gendron also included in his Discord a photo of the back of a Mean Arms MA Lock package.²³¹ The packaging included four simple instructions for removing the lock:

1. Make sure the firearm chamber is CLEAR, UNLOADED and POINTED IN A SAFE DIRECTION!

²²⁹ Discord Diary at 44.

²³⁰ *Id.* at 44.

²³¹ *Id.* at 45.

2. Use any brand of screw extractor from your local hardware store (some brands may work better than others. We prefer a #2 Speed out).
3. To remove the threaded portion of the shear nut left in the MA LOCK sleeve, place the screw extractor into the center of the threaded portion of the shear nut and remove counter clockwise (Please refer to the screw extractor's instructions for best use).
4. Now you may remove the MA LOCK SLEEVE.

522. Also on January 11, 2022, Gendron wrote on Discord, "I investigated the AR at vintage firearms more and learned that I can take the fixed mag out if I get a screw extraction kit. Then I will have to replace it with a regular mag button and spring."²³²

523. In an interview with the New York Times after the Tops shooting, the proprietor of Vintage Firearms who sold Gendron the rifle said, "[e]ven with all of those safety features on it – which is the only way I sell it – any gun can be easily modified if you really want to do it."²³³

524. In his writing, Gendron summarized, "[t]he person who had this before me installed a Mean Arms magazine lock, which fixed a 10 round magazine (higher capacity magazines are also illegal) to the gun. . . . I used a Cobalt Speedout #2 drillbit and my dad's power drill to take out the magazine lock, which I then replaced . . ."²³⁴

525. Gendron followed Mean Arms's explicit lock removal instructions, doing just as the company recommended. He used a #2 Speed out screw extractor, and was as a result easily able to remove the lock and use removable magazines in the Bushmaster XM15-E2S that he purchased at Vintage Firearms. Just as the proprietor of Vintage Firearms stated, the Mean Arms lock was "easily modified." Mean Arms provided instructions in connection with advertising its product that enabled the Buffalo shooter to simply and confidently remove the lock so that the Bushmaster XM15-E2S could accept removable magazines.

526. As recently as May 1, 2023, Mean Arms was shipping its MA Lock to New York. On or before May 10, 2023, Mean Arms added a banner to its website stating it would no longer ship the MA Lock to New York.

527. On May 11, 2023, Attorney General James filed a lawsuit against Mean Arms for

²³² *Id.*

²³³ <https://www.nytimes.com/2022/05/15/nyregion/gunman-buffalo-shooting-suspect.html>.

²³⁴ Gendron Statement at 61-62.

aiding the illegal possession of assault weapons in New York, including the weapon used in the mass shooting in Buffalo in May 2022.²³⁵

528. The AG's lawsuit recognizes that Gendron was able to "simply" remove the Mean Arms MA lock from the Bushmaster XM-15 he used, and alleges that "Mean Arms designed the MA Lock to be easily removable" in violation of New York law.

V. CLAIMS FOR RELIEF

FOR THE FIRST CAUSE OF ACTION STRICT PRODUCT LIABILITY (Design Defect) Against the Social Media Defendants

529. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set forth herein.

1. Plaintiffs Product Liability Claims Do Not Arise from Defendants' Publication of Third-Party Content

530. Plaintiffs expressly disclaim any and all claims seeking to hold the Social Media Defendants liable as the publisher or speaker of any content provided, posted, or created by third parties. Rather, Plaintiffs seek to hold Social Media Defendants accountable for their own acts and omissions. Plaintiffs' claims arise from the Social Media Defendants' status as designers and marketers of a social media products that were not reasonably safe, as well as their own statements and actions, and are not based on their status as the speaker or publisher of third-party content.

531. The Social Media Defendants underlying design, programming, and engineering of their platforms were and are inherently and purposely defective, which forms a predicate for the claims asserted against them.

532. Plaintiffs' claims seek to hold the Social Media Defendants accountable for their own, operations, conduct, and products – not for the speech or content of others or for Defendants' content moderation decisions.

533. The Social Media Defendants could manifestly fulfill their legal duty to design a reasonably safe social media products and furnish adequate warnings of foreseeable dangers

²³⁵ <https://ag.ny.gov/sites/default/files/court-filings/Mean%20Arms%20Lawsuit.pdf>.

arising out of the use of their products without altering, deleting, or modifying the content of a single third-party post or communication.

2. The Social Media Defendants' Products are Defectively Designed

534. A high probability existed that, as designed, the Social Media Defendants' products posed a likelihood of causing injury to minors.

535. A safer design and programming exist, by which minor users would not be directed to unwanted and escalating racist, antisemitic, and violence provoking content, but the Social Media Defendants chose to ignore or disregard it, or purposefully chose to implement and maintain their defective design to attain higher profits.

536. As a minor, Payton Gendron had in no instance the ability to discern the Social Media Defendants' products' potential for radicalization and the instigation of racist, antisemitic, and violent behavior. Defendants' products were unreasonably dangerous because they contained numerous design characteristics that are not necessary for the utility provided to the user but are unreasonably dangerous and implemented solely to increase the profits they derive from each additional user and the length of time they can keep each user dependent on their product.

537. The Social Media Defendants' products are defective and not reasonably safe because there was a substantial likelihood that they would cause harm and it was feasible to design the products in a safer manner. The foreseeable risks of harm posed by the social media products' design could have been reduced or avoided by the adoption of a reasonable alternative design and the omission of the alternative design renders the products not reasonably safe. If the design defects in the Social Media Defendants products were known at the time of manufacture and distribution, a reasonable person would conclude that the utility of their products did not outweigh the risk inherent in designing them in that manner.

538. Plaintiffs acknowledge that moderate and judicious use of Social Media Defendants' products have utility to both the public and individual users. However, there is a substantial likelihood that their products – as currently designed, distributed, and operated by them – will cause injury both to a significant number of individual users and the public. The risk of such injuries occurring can be substantially reduced through implementation of readily available design

changes that will not adversely impact the functionality of Social Media Defendants' products' or unreasonably impact their price. Finally, the degree of awareness of the potential dangers arising from Social Media Defendants' products cannot be reasonably attributed to injured users and, Defendants have the ability to spread the cost of safety-related design changes among the hundreds of millions of users of their social media products.

3. Inadequate Safeguards from Harmful and Exploitative Accounts

539. As designed and distributed in the United States, Social Media Defendants' recommendation and other product features are not reasonably safe because they affirmatively connect minor users to racist, antisemitic, and violent malefactors while failing to deploy feasible safeguards to protect vulnerable teens from such harmful contacts. It is feasible to design a social media product that substantially distinguishes between harmful and innocuous users and protects minor users from being exposed to harmful users without altering, modifying, or deleting any third-party content posted on the Social Media Defendants' products. It is likewise feasible to design social media products that do not operate recommendation features at all and/or operates them in a manner that prioritizes user safety over engagement and revenue. The cost to the Social Media Defendants of designing and/or programming these products to incorporate these safeguards would be negligible while benefit would be high in terms of reducing hatred and violence.

540. The Social Media Defendants know that these product features cause significant risks to their minor users to be radicalized and violent.

541. Reasonable users and parents would not expect that the Social Media Defendants' products would knowingly connect them to such dangerous individuals and/or would direct them to harmful accounts at all, much less in the manipulative and coercive manner that they do.

4. Inadequate Parental Control and Monitoring

542. The Social Media Defendants have intentionally designed their products to frustrate the exercise of parental responsibility. Parents have a right to monitor their children's social media activity to protect them from harm. The Social Media Defendants' products are designed in a manner that makes it difficult, if not impossible, for parents to exercise parental responsibility.

543. It is feasible to design a social media product that requires parental consent for users under the age of 18.

544. The Social Media Defendants products are also defective for lack of parental controls, permission, and monitoring capability available on many other devices and applications, and lack of notifications to parents when minors are engaged in inherently harmful activities.

545. The Social Media Defendants products are designed with specific product features intended to prevent and/or interfere with parents' reasonable and lawful exercise of parental control, permission, and monitoring capability available on many other devices and applications.

5. Design of Addictive Social Media Products

546. As designed, the Social Media Defendants' products are addictive to teenage users. Addiction is not restricted to substance abuse disorders. Rather, the working definition of addiction promulgated in the seminal article Addictive behaviors: Etiology and Treatment published by the American Psychological Association in its 1988 Annual Review of Psychology defines addiction as,

a repetitive habit pattern that increases the risk of disease and/or associate personal and social problems. Addictive behaviors are often experienced subjectively as 'loss of control' – the behavior contrives to occur despite volitional attempts to abstain or moderate use. These habit patterns are typically characterized by immediate gratification (short term reward), often coupled with delayed deleterious effects (long term costs). Attempts to change an addictive behavior (via treatment or self-initiation) are typically marked with high relapse rate.²³⁶

547. Addiction researchers agree that addiction involves six core components: (1) salience—the activity dominates thinking and behavior; (2) mood modification—the activity modifies/improves mood; (3) tolerance—increasing amounts of the activity are required to achieve previous effects; (4) withdrawal—the occurrence of unpleasant feelings when the activity is discontinued or suddenly reduced; (5) conflict—the activity causes conflicts in relationships, in work/education, and other activities; and (6) relapse—a tendency to revert to earlier patterns of the activity after abstinence or control.

²³⁶ G A Marlatt J S Baer, D M Donovan, D R Kivlahan, *Addictive behaviors: etiology and treatment*, Annu Rev Psychol 1988 39:223-52.

548. Social media addiction has emerged as a problem of global concern, with researchers all over the world conducting studies to evaluate how pervasive the problem is. Addictive social media use is manifested when a user (1) becomes preoccupied by social media (salience); (2) uses social media in order to reduce negative feelings (mood modification); (3) gradually uses social media more and more in order to get the same pleasure from it (tolerance/craving); (4) suffers distress if prohibited from using social media (withdrawal); (5) sacrifices other obligations and/ or causes harm to other important life areas because of their social media use (conflict/functional impairment); and (6) seeks to curtail their use of social media without success (relapse/loss of control).

549. The Bergen Facebook Addiction Scale (BFAS) was specifically developed by psychologists to assess subjects' social media use using the aforementioned addiction criteria and is by far the most widely used measure of social media addiction.²³⁷ Originally designed for Facebook, BFAS has since been generalized to all social media. BFAS has been translated into dozens of languages, including Chinese, and is used by researchers throughout the world to measure social media addiction.

550. BFAS asks subjects to consider their social media usage with respect to the six following statements and answer either (1) very rarely, (2) rarely, (3) sometimes, (4) often, or (5) very often,

- a. You spend a lot of time thinking about social media or planning how to use it.
- b. You feel an urge to use social media more and more.
- c. You use social media in order to forget about personal problems.
- d. You have tried to cut down on the use of social media without success.
- e. You become restless or troubled if you are prohibited from using social media.

²³⁷ Schou Andreassen C, Billieux J, Griffiths MD, Kuss DJ, Demetrovics Z, Mazzoni E, et al. *The relationship between addictive use of social media and video games and symptoms of psychiatric disorders: a largescale cross-sectional study.* *Psychol Addict Behav.* 2016;30:252–262.

- f. You use social media so much that it has had a negative impact on your job/studies.

Subjects who score a “4” or “5” on at least 4 of those statements are deemed to suffer from social media addiction.

551. The Social Media Defendants’ advertising profits are directly tied to the quantity of its users’ online time and engagement, and its product features are designed to maximize the time users spend using the product through product designs that addict them to the platform. Reasonable teenage users and their parents do not expect that online social media platforms are psychologically and neurologically addictive.

552. It is feasible for the Social Media Defendants to make products that are not addictive to minor users by turning off or even simply slowing recommendation technologies, limiting the frequency and duration of access, and suspending service during sleeping hours. Designing software that limits the frequency and duration of minor users’ screen use and suspends service during sleeping hours could be accomplished at negligible cost; whereas the benefit of minor users maintaining healthy sleep patterns would be a significant reduction in depression, attempted and completed suicide, and other forms self-harm among this vulnerable age cohort.

5. Inadequate Notification of Parents of Dangerous and Problematic Social Media Usage by Minor Users

553. Payton Gendron became addicted to Defendants’ social media products when he was a minor under his parents’ legal control.

554. The Social Media Defendants’ products are not reasonably safe as designed because they do not include any safeguards to notify users and their parents of usage that the Social Media Defendants know to be problematic and likely to cause radicalization and violent behavior among minor users.

555. It is reasonable for teenage users and parents to expect that social media products that actively promote their platform to minors and young adults will undertake reasonable efforts to notify users and, in the case of minors, their parents when such use becomes excessive or harmful. It is feasible for Social Media Defendants to design a product that identifies a significant

percentage of its youngest users who are using the product more than three hours per day or using it during sleeping hours or otherwise are being exposed to hateful, racist, antisemitic, and violent accounts at negligible cost.

556. The Social Media Defendants' products are not reasonably safe as designed because, despite numerous reported instances of directing minors to racist, antisemitic, and violent accounts Defendants have not undertaken reasonable design changes to protect its users from these harms, including changing its recommendation technologies programming, restricting its collection and/or use of personal information and data with regard to minor accounts, or notifying parents of such harmful accounts and problematic use by a minor user.

557. It is reasonable for parents to expect that social media platforms that actively promote their services to minors will undertake reasonable efforts to protect such users from known harms, and implement technological safeguards to notify parents by text, email, or other reasonable means that their child is in danger.

558. As a proximate result of these dangerous and defective design attributes of Social Media Defendants' products, Payton Gendron was radicalized and motivated to commit the horrific act of May 14, 2022.

559. As a result of these dangerous and defective design attributes of the Social Media Defendants products, Plaintiffs suffered emotional distress, physical harm and/or death, and pecuniary loss.

560. The Social Media Defendants are further liable to Plaintiffs for punitive damages based upon the willful and wanton design of its product that was intentionally marketed and sold to underage users, whom it knew would be seriously harmed through their use of their products.

**AND FOR A SECOND CAUSE OF ACTION
STRICT PRODUCT LIABILITY (Failure to Warn)
(Against the Social Media Defendants)**

561. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set forth herein.

562. The Social Media Defendants' products are defective because of inadequate instructions or warnings because the foreseeable risks of harm posed by this product could have

been reduced or avoided by the provision of reasonable instructions or warnings by the Social Media Defendants and the omission of the instructions or warnings renders their products not reasonably safe.

563. The Social Media Defendants' products are defective and not reasonably safe because they contain no adequate warning to minor users or parents regarding their addictive design and propensity to promote radicalization and violence.

564. The Social Media Defendants failed to warn minor users or parents that their children would be inundated with racist, antisemitic and violent material which the Social Media Companies selected and sent even when such account was not requested or wanted by the minor user.

565. The Social Media Defendants had actual knowledge of these product hazards.

566. The Social Media Defendants' products are unreasonably dangerous because they lack any warnings that foreseeable product use can disrupt healthy sleep patterns or specific warnings to parents when their child's product usage exceeds healthy levels, involves material from harmful accounts, or occurs during sleep hours. Excessive screen time is harmful to adolescents' mental health and sleep patterns and emotional well-being.

567. It is feasible for the Social Media Defendants to provide warnings and to make other product related modifications that would prevent many of these hazards at negligible cost.

568. The Social Media Defendants knew about these hazards, knew that its users and their parents would not be able to safely use their products without warnings, and failed to provide warnings that were adequate to make the product reasonably safe during ordinary and foreseeable use by children.

569. As a result of Defendant's failure to warn, Payton Gendron was radicalized and motivated to commit the horrific crimes of May 14, 2022. The failure to adequately warn was a proximate cause of Payton Gendron's crimes of May 14, 2022.

570. As a result of Social Media Defendants' failure to warn, Plaintiffs have suffered emotional distress, physical harm and/or death, and pecuniary loss.

571. The Social Media Defendants are further liable to Plaintiffs for punitive damages

based upon their willful and wanton failure to warn of known dangers of their products, which were deliberately marketed and sold to minor users, whom they knew would be seriously harmed through their use.

**AND FOR A THIRD CAUSE OF ACTION
NEGLIGENCE
(Against the Social Media Defendants)**

572. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set forth herein.

573. At the time Payton Gendron became addicted to and radicalized by the Social Media Defendants' social media products he was a minor.

574. At all relevant times, the Social Media Defendants had a duty to exercise reasonable care and caution to design and operate their platforms to prevent young users from becoming radicalized and committing violent acts through their engagement with Defendants' platforms.

575. The Social Media Defendants owed a heightened duty of care to minor and young adult users of their products because adolescents' brains are not fully developed which results in a diminished capacity to make responsible decisions regarding social media use, eschew violent behaviors.

576. The Social Media Defendants owe young users who use their platforms and from whom they derive billions of dollars per year in advertising revenue a duty of ordinary care substantially similar to that owed by physical business owners to its business invitees.

577. The Social Media Defendants were negligent, grossly negligent, reckless and/or careless in that they failed to exercise ordinary care and caution to protect to prevent children and young adults from being radicalized and violent through their use of the Social Media Defendants' products. The Social Media Defendants were negligent in failing to conduct adequate testing and failing to allow independent academic researchers to adequately study the effects of their products in radicalizing and promoting violence use among minor and young adult users. The Social Media Defendants know that their products are harmful and promote violence.

578. The Social Media Defendants were negligent in failing to provide users and parents the tools to ensure their social media products are used in a limited and safe manner by underage

users.

579. The Social Media Defendants easily could have but to this day have failed to implement safety measures that would mitigate, reduce, and/or eliminate the above-described hazards.

580. As a direct and proximate result of the Social Media Defendants' negligence, Payton Gendron was radicalized to commit the horrific crimes of May 14, 2022.

581. As a direct and proximate result of the Social Media Defendants' negligence, Plaintiffs suffered emotional distress, physical harm and/or death, and pecuniary loss which harms were foreseeable.

582. The Social Media Defendants' conduct was carried on with a willful and conscious disregard for the safety of Plaintiffs and similarly situated members of racial and ethnic minorities. The Social Media Defendants knew about the radicalization and violence promoting propensities associated with their products yet chose to ignore those risks, downplay any safety issues in public statements, conceal knowledge relating to its product and associated harms, fail to warn minors and their parents, and delay implementation of feasible product safety features. The Social Media Defendants' decision to prioritize profits over life, safety and health is outrageous and justifies an award of exemplary damages in such a sum that will serve to deter the Social Media Defendants from similar conduct in the future.

**AND FOR A FOURTH CAUSE OF ACTION
NEGLIGENT FAILURE TO WARN
(Against the Social Media Defendants)**

583. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set forth herein.

584. The Social Media Defendants are responsible for the design, manufacture, and marketing of their products.

585. The Social Media Defendants knew or reasonably should have known that their products can cause radicalization and violent behavior in pre-teens, teens, and young adult users when used in its intended or reasonably foreseeable manner. The Social Media Defendants also knew or reasonably should have known that ordinary users of their products including pre-teens,

teens, and young adults, would not appreciate those dangers.

586. The Social Media Defendants had a duty to exercise ordinary care in the design, marketing, and sale of their products, including a duty to warn users and, in the case of minor users, to warn their parents about the many hazards they knew to be present, but not obvious.

587. The Social Media Defendants breached their duty by failing to warn users or their parents of the risks of radicalization and violence presented by their products. The Social Media Defendants have not posted and, to this day, still does not post any warnings that minors' use of their can lead to violence.

588. The Social Media Defendants do not post or display warnings that their products include features that are addictive and promote violent behavior among minor users; that the Social Media Defendants collect and utilize user data to make their products progressively more addictive; that the Social Media Defendants have designed their products such that it makes parental supervision impossible; that the Social Media Defendants' products are not suitable for children under 18 without parental supervision; and that the Social Media Defendants have inadequate reporting mechanisms, and will not notify parents in the event that their child is engaging in harmful use of its social media product.

589. A reasonable company in the position of the Social Media Defendants' would have warned minor users and their parents about their products' risk of radicalizing and promoting violence among young users and would have instituted safety measures years ago to protect the public from the known propensity for violence arising out of their marketing decisions and product design.

590. The Social Media Defendants were negligent in failing to provide adequate warnings about the dangers associated with the use of its their social media products and in failing to advise users and the general public (including parents) of propensity for violence arising out of their products' features.

591. As a direct and proximate result of the Social Media Defendants' negligence, Payton Gendron was radicalized to commit the horrific crimes of May 14, 2022.

592. As a direct and proximate result of the Social Media Defendants' negligence,

Plaintiffs suffered emotional distress, physical harm and/or death, and pecuniary loss.

593. The Social Media Defendants' conduct was performed with a willful and conscious disregard for the safety of their users and the public. The Social Media Defendants knew or should have known about the risks of radicalization and violence associated with their products, yet they chose to ignore those risks, downplay any safety issues in public statements, conceal knowledge relating to their products and associated hazards, fail to warn minors, their parents, and the public, and delay implementation of feasible product safety features.

594. The Social Media Defendants' decision to prioritize profits over public safety is outrageous and justifies an award of exemplary damages in such a sum that will serve to deter Social Media Defendants from similar conduct in the future.

**AND FOR A FIFTH CAUSE OF ACTION
UNJUST ENRICHMENT
(Against the Social Media Defendants)**

595. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set forth herein.

596. Social Media Defendants' advertising profits are directly tied to level of user engagement on their platforms. When a users' engagement is maximized by racist, antisemitic, and violent material, the algorithms driving Social Media Defendants' platform direct such malign material to the user. The Social Media Defendants consequently profit from the racist, antisemitic, and violent material displayed on their platforms to maximize user engagement.

597. On information and belief, in the years leading up to the Tops massacre, there were over 50 million displays of racist, antisemitic, and violence promoting material on the Social Media Defendants' platforms resulting in millions of dollars in advertising revenue.

598. The Social Media Defendants benefited from the time Payton Gendron spent on their platforms viewing racist, antisemitic, and violence promoting material.

599. It would be unjust and inequitable for the Social Media Defendants to retain advertising revenues earned through the display of the racist, antisemitic and violence promoting materials on their platforms when such material created the conditions that led to Gendron's radicalization.

600. Accordingly, Plaintiffs seek damages in an amount to be proven at trial.

**AND FOR A SIXTH CAUSE OF ACTION
INFLECTION OF EMOTIONAL DISTRESS
(Against Social Media Defendants)**

601. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set forth herein.

602. The Social Media Defendants owed a duty to exercise reasonable care and caution for the minors and young adults using their product and the public at large, and breached their duty to exercise reasonable care through its negligent design of their products, failure to warn users or their parents of any of the safety risks caused by use of their products, and their calculated cost-benefit decisions to not fix, restrict, or remove those dangerous product features and to not even act on instances of actual knowledge of the harms its product was causing.

603. As a direct and proximate result of the Social Media Defendants' negligence, Heyward Patterson, Kat Massey, and Andre MacKniel suffered serious emotional distress prior to their deaths.

604. As a direct and proximate result of the Social Media Defendants' negligence, the statutory beneficiaries of Heyward Patterson, Kat Massey, and Andre MacKniel—who died because of the Social Media Defendants' decisions, failures to warn, and refusals to act – suffered serious emotional distress.

605. The Social Media Defendants are further liable to Plaintiffs for punitive damages based upon their extreme departure from the ordinary standard of conduct and reckless or deliberate disregard for the wellbeing of minor users and the public. The Social Media Defendants acted with reckless and extreme conduct, disregarding the substantial probability that harm would result from their conduct. The Social Media Defendants' actions are morally blameworthy, given their knowledge of how their products are designed and operated and that they are directing inherently violent, dangerous, and otherwise harmful content to American youth who do not actually request or even want the content and connections the Social Media Defendants have chosen for them, and their failure to make social media platforms safer to avoid the harm to Plaintiffs that they knew was foreseeable. Punitive damages should be awarded to prevent future

harm from the Social Media Defendants' negligence.

606. At best, the Social Media Defendants chose to prioritize profits over children's safety and health. At worst, they acted with actual knowledge that they were harming American youth and endangering the public and did so with intent. In either scenario, the Social Media Defendants' decisions were outrageous and justify an award of exemplary damages, in such a sum that will serve to deter the Social Media Defendants from similar conduct in the future.

**AND FOR A SEVENTH CAUSE OF ACTION
INVASION OF PRIVACY
(Against Defendants Amazon, Meta, Alphabet, and Reddit)**

607. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set forth herein.

608. Gendron's livestreamed video depicted the murder of Plaintiffs Heyward Patterson, Kat Massey, and Andre MacKniel being murdered in cold blood.

609. On information and belief, Gendron's murder video has been viewed by hundreds of thousands of people and viewed on millions of occasions.

610. Gendron's ability to create a permanent video of his murders resulted from Amazon's defective and unreasonably dangerous design of Twitch.

611. Neither Heyward Patterson, Kat Massey, and Andre MacKniel, nor their estates granted permission for their video images have been publicly displayed.

612. Amazon, Meta, Alphabet, and Reddit have earned advertising revenue from the showing of Gendron's murder video on their platforms.

613. Amazon, Meta, Alphabet, and Reddit are using the video images of Heyward Patterson, Kat Massey, and Andre MacKniel within the State of New York for advertising purposes or the purpose of trade without having obtained written consent, in violation of NY Civil Rights Law Section 50, et seq.

614. Plaintiffs' privacy, and the privacy of their Estates, has been invaded.

**AND FOR AN EIGHTH CAUSE OF ACTION
UNJUST ENRICHMENT
(Against Defendants Amazon, Meta, and Reddit)**

615. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set

forth herein.

616. Gendron's ability to create a permanent video of his murders resulted from Amazon's defective and unreasonably dangerous design of Twitch.

617. Gendron's murder video was posted on Facebook and Reddit and has been viewed on multiple occasions by hundreds of thousands of users.

618. Meta posted advertisements on its platform in proximity to Gendron's murder video and earned advertising revenue through viewers who watched the carnage.

619. On information and belief, Reddit also posted advertisements on its platform in proximity to Gendron's murder video and earned advertising revenue through viewers who watched the carnage.

620. Justice requires that Amazon, Meta, and Reddit not profit from criminal acts.

**AND FOR A NINTH CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(Against Amazon)**

621. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set forth herein.

622. By the time Payton Gendron carried out his attack on May 14, 2022, Twitch had been used to livestream mass shootings on numerous occasions. Amazon knew, or should have known, that Twitch would continue to be used to livestream acts of mass violence in the future. Nevertheless, Amazon continued to make Twitch available to the public without implementing any product safeguards to reduce the ease with which malign actors could use the platform to livestream acts of violence.

623. The video depicting the murder of Heyward Patterson, Kat Massey, and Andre MacKniel that was originally broadcast live on Twitch continues to circulate on social media and has been viewed by hundreds of thousands of individuals, which continues to cause Plaintiffs severe emotional distress.

624. Plaintiffs' emotional distress was and continues to be proximately caused by Amazon's intentional decision provide Twitch to the public without adequate product safeguards.

**AND FOR A TENTH CAUSE OF ACTION
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(Against Amazon, Meta, Reddit, and 4chan)**

625. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set forth herein.

626. The video depicting the murder of Heyward Patterson, Kat Massey, and Andre MacKniel that was originally broadcast live on Twitch continues to circulate on Facebook, 4chan, and Reddit and has been viewed by hundreds of thousands of individuals on these platforms, which continues to cause Plaintiffs severe emotional distress.

627. On information and belief, Twitch, Meta, Reddit, and 4chan have failed to exercise reasonable care to implement feasible technology to prevent Gendron's murder video from being uploaded on their platforms.

628. Plaintiffs emotional distress was and continues to be proximately caused by the lack of reasonable care manifested by Amazon, Meta, Reddit, and 4chan.

**AND FOR AN ELEVENTH CAUSE OF ACTION
DESIGN DEFECT
(Against Amazon)**

629. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set forth herein.

630. By 2022, it was known that mass shooters livestream their rampages on Twitch and that these the livestreaming of such crimes on Twitch inspires future shootings.

631. It is not possible for Twitch to shut down livestreamed acts of violence quickly enough to prevent the crimes to from being seen by viewers. Nor is it possible to prevent individuals who view livestreamed violence on Twitch from copying the video and posting it on social media.

632. The ability to livestream his crime on Twitch caused Gendron to execute his plan to commit mass murder at Tops Market and he chose Twitch because he knew the livestream would not be shut down before his murders were publicly disseminated.

633. Twitch is not reasonably safe because there was a substantial likelihood that the product's livestreaming feature would encourage and facilitate future mass shootings and it was

feasible to implement design changes to Twitch that would prevent mass shootings from being livestreamed and prevent individuals with a propensity to commit acts of violence from gaining livestream access. The utility of Twitch's livestream feature did not outweigh the risk that livestreaming will encourage and facilitate future mass shootings.

634. Twitch's design defect was a proximate cause of Plaintiffs' injuries.

AND FOR A TWELVTH CAUSE OF ACTION

NEGLIGENCE

(Against Amazon)

635. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set forth herein.

636. By 2022, Amazon knew or should have known that future mass shooters would livestream their rampages on Twitch and that the livestreaming of such crimes on Twitch would inspire future shootings.

637. Because of how it designs and operates the Twitch product, it not possible for Twitch to shut down livestreamed acts of violence quickly enough to prevent the crimes from being seen by viewers. Nor is it possible to prevent individuals who view livestreamed violence on Twitch from copying the video and posting it on social media.

638. The ability to livestream his crime on Twitch caused Gendron to execute his plan to commit mass murder at Tops Market and he chose Twitch because he knew the livestream would not be shut down before his murders were publicly disseminated.

639. It was feasible to implement design changes to Twitch that would prevent mass shootings from being livestreamed and prevent individuals with a propensity to commit acts of violence from gaining livestream access.

640. Amazon failed to exercise reasonable care in failing to modify Twitch to make is less likely to facilitate future acts of violence. Plaintiffs' injuries were proximately caused by Amazon's negligence.

AND FOR A THIRTEENTH CAUSE OF ACTION

LOSS OF PARENTIAL GUIDANCE

(Against All Defendants)

641. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set forth herein.

642. Decedent Andre Mackneil maintained an exceptionally close relationship with his 3-year-old son A.M., who he provided with nurture and care, and physical, moral, and intellectual training.

643. Decedent Heyward Patterson maintained an exceptionally close relationship with his 14-year-old son J.P., who he provided with nurture and care, and physical, moral, and intellectual training.

644. As a proximate result of Defendants' tortious conduct, A.M. and J.P. have been deprived of their fathers' parental guidance and support and have suffered pecuniary loss in an amount to be proven at trial.

**AND FOR A FOURTEENTH CAUSE OF ACTION
COMMON LAW NEGLIGENT ENTRUSTMENT
(Against RMA Armament)**

645. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set forth herein.

646. RMA Armament knew, or should have known, all of the information alleged at herein. RMA Armament therefore knew or should have known permitting Payton Gendron to obtain their product would result in unreasonable danger due to the use of their product.

647. Payton Gendron purchased body armor directly from RMA Armament. Before selling Payton Gendron body armor, RMA Armament had a duty to use reasonable safeguards to prevent its customers from obtaining a product that would result in unreasonable danger due to use of their product.

648. RMA Armament breached this duty by entrusting its body armor to Payton Gendron. RMA Armament failed to properly vet Payton Gendron prior to accepting the sale.

649. RMA Armament knew or should have known that the sale of body armor to an 18-year-old civilian posed an unreasonable and egregious risk of physical injury to others. A mass casualty event, such as the shooting at Tops, was within the scope of the risk created by RMA Armament's marketing and sale of body armor to the civilian market, particularly in light of the

extensive personal communications between RMA Armament's representative and Payton Gendron.

650. During the Tops supermarket attack, the store's security guard, retired Buffalo police lieutenant Aaron Salter, engaged the shooter. Mr. Salter shot and hit Payton Gendron but was thwarted by the shooter's RMA Armament body armor.²³⁸ The shooter then murdered Mr. Salter, and six additional people at Tops.

651. Multiple casualties occurred after RMA Armament's body armor blocked the security guard's bullet, protecting Payton Gendron, and enabling him physically and mentally to kill others. After the massacre, Buffalo Police Commissioner, Joseph Gramaglia described it as a "pretty one-sided fight there with the armor that he had. . . . Again, keep in mind, he was heavily armed. He had metal plating, armor plating vests on. . ." ²³⁹

652. RMA Armament's marketing contemplated a civilian "mission" like Payton Gendron's. RMA Armament also had reason to know that their products have been used repeatedly by mass shooters for protection, just like Payton Gendron did at Tops. And their company representative engaged with Payton Gendron directly, giving him confirmation that he could "advertise RMA plates," promoted RMA Armament's product as purchasable by civilians, and even promoted the product to individuals who wished to purchase body armor in contravention of public safety laws in their states.

653. RMA Armament knew or should have known that Payton Gendron was likely to use their body armor to engage in unreasonably dangerous activity. RMA Armament's negligent entrustment of body armor to Payton Gendron was a substantial factor resulting in the injuries, suffering, and deaths of Andre MacKniel, Kat Massey, and Heyward Patterson.

**AND FOR A FIFTEENTH CAUSE OF ACTION
NEGLIGENT ENTRUSTMENT
(Against Vintage Firearms)**

654. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set forth herein.

²³⁸ <https://www.rev.com/blog/transcripts/buffalo-mayor-byron-brown-news-conference-day-after-deadly-mass-shooting-5-15-22-transcript>

²³⁹ *Id.*

655. Vintage Firearms therefore knew or should have known permitting Payton Gendron to obtain a Bushmaster XM15-E2S would result in unreasonable danger due to the use of the product.

656. Payton Gendron purchased a Bushmaster XM15-E2S rifle directly from firearms dealer Vintage Firearms to attack Tops patrons and employees.

657. New York Common Law requires gun sellers like Vintage Firearms to take the appropriate steps considering red flags indicating that the purchaser may use the weapon in a dangerous or illegal way.

658. There were numerous “red flags” surrounding Payton Gendron’s interactions with others overall. Payton Gendron behaved suspiciously in his daily life, at school, and online. He made zero attempts to hide his deeply held beliefs about his plan, or adoration of white supremacist mass shooters. He also had extensive knowledge of firearms preferable for mass shootings at the tip of his tongue. In short, he was not the average profile of a Vintage Firearms customer.

659. Payton Gendron also spent significant time at Vintage Firearms and upon information and belief was known to employees of Vintage Firearms.

660. Payton Gendron sought a weapon that could be modified to accept high-capacity magazines and noted his interest in purchasing a “dreaded military grade” Bushmaster XM-15.²⁴⁰

661. After modifying the Bushmaster XM15-E2S that he purchased from Vintage Firearms, Payton Gendron continued to patronize Vintage Firearms, and on at least on occasion discussed a shooting outing he had undertaken with his modified firearm, which elicited a smile from the Vintage Firearm employee present at that time.

662. Having interacted with Payton Gendron on numerous occasions, Vintage Firearms should have been aware of the warning signs and risks of selling a high-powered rifle to Payton Gendron, who would use the weapon for illicit and harmful purposes. In light of this behavior, Vintage Firearms also had a duty to inquire, and should have asked Payton Gendron how he planned to store the weapon, and his training to use it. The dealer’s obligation was not merely to

²⁴⁰ Gendron Statement at 61.

observe whether Payton Gendron “stood out.”²⁴¹

663. Vintage Firearms had or should have had a sufficient degree of knowledge concerning the shooter’s propensity to use the Bushmaster XM15-E2S improperly.

664. Plaintiffs seek relief against Vintage Firearms jointly, severally, or in the alternative to the relief sought against the other Defendants in this case. Plaintiffs’ claims against Vintage firearms arise out of the same transaction, occurrence, or series of transactions or occurrences as their claims against the other Defendants named in this matter. Vintage Firearms’ tortious acts concurred with the tortious conduct of the other Defendants in producing the injuries giving rise to this case which are incapable of any reasonable or practicable division and allocation between Defendants.

**AND FOR A SIXTEENTH CAUSE OF ACTION
VIOLATION OF G.B.L. § 898-b(1) & 898-e
(Against Vintage Firearms)**

665. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set forth herein.

666. G.B.L. § 898-b(1) prohibits gun industry members “by conduct either unlawful in itself or unreasonable under all the circumstances” from “knowingly or recklessly creat[ing], maintain[ing] or contribut[ing] to a condition in New York state that endangers the safety or health of the public through the sale, manufacturing, importing or marketing of a qualified product.”

667. Vintage Firearms is a gun industry member.

668. Vintage Firearms contributed to a condition that endangered the New York state public through its sale of a Bushmaster XM15-E2S to Gendron.

669. It was unreasonable for Vintage Firearms to sell an AR-15 to Gendron.

670. It was unreasonable for Vintage Firearms to entertain conversations regarding how Gendron might modify the weapon he purchased at Vintage Firearms, and to discuss the modified weapon with Gendron after he had modified the weapon and was training for the Tops massacre.

²⁴¹ <https://www.nytimes.com/2022/05/15/nyregion/gunman-buffalo-shooting-suspect.html>.

**AND FOR THE SEVENTEENTH CAUSE OF ACTION
VIOLATION OF G.B.L. § 898-b(2) & 898-e
(Against Vintage Firearms)**

671. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set forth herein.

672. G.B.L. § 898-b(2) requires “All gun industry members who manufacture, market, import or offer for wholesale or retail sale any qualified product in New York state shall establish and utilize reasonable controls and procedures to prevent its qualified products from being possessed, used, marketed or sold unlawfully in New York state.”

673. Vintage Firearms is a gun industry member.

674. Vintage Firearms failed to establish reasonable controls to prevent the sale, possession, and illegal use of its Bushmaster XM15-E2S rifle.

**AND FOR THE EIGHTEENTH CAUSE OF ACTION
VIOLATION OF G.B.L. § 350 & § 898-e
(Against Mean Arms)**

675. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set forth herein.

676. G.B.L. § 350 protects consumers from false advertising, stating that “[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful.”²⁴²

677. G.B.L. § 350-a(1) defines false advertising to include advertising that is “misleading in a material respect.”

678. Mean Arms has engaged in consumer-oriented conduct, by making its lock available for sale on its website and through affiliate retailers.

679. Mean Arms’s consumer-oriented conduct was materially misleading, deceptive, and inaccurate.

680. Mean Arms purports to provide a “true solution” to “fixed magazine laws,” emphasizing to potential purchasers that their lock “cannot be removed with a tool, which satisfies CA and NY state law.”

²⁴² <https://www.nysenate.gov/legislation/laws/GBS/350>.

681. At the same time, Mean Arms knew that its lock was fully removable and designed the product for it to be removable without “harm[ing]” the consumer’s rifle. Mean Arms included on the lock’s packaging four instructions for simple lock removal and advised customers via its YouTube account that removal “only takes about 10 minutes.”

682. Plaintiffs were injured as a result of Mean Arms’ deceptive conduct.

683. If Mean Arms had not falsely advertised its product as suitable for rendering AR firearms compliant with New York State law, Vintage Firearms would not have been able to sell Gendron a Bushmaster XM15-E2S firearm with an easily removable lock such that he could use removable magazines to fire approximately 60 shots in approximately two minutes, killing Andre MacKniel, Kat Massey, and Heyward Patterson.

684. Mean Arms knew or should have known that promoting its lock as New York compliant while simultaneously telling consumers it was easily removable was likely to encourage consumers like Gendron to follow Mean Arms’ instructions and remove the lock. Gendron’s ability to use removable magazines was a substantial factor resulting in the injuries, suffering, and deaths of Andre MacKniel, Kat Massey, and Heyward Patterson.

**AND FOR A NINETEENTH CAUSE OF ACTION
VIOLATION OF G.B.L. § 349
(Against Mean Arms)**

685. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set forth herein.

686. G.B.L. § 349(a) declares unlawful “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state”²⁴³

687. Mean Arms has engaged in consumer-oriented conduct, by making its lock available for sale on its website and through affiliate retailers.

688. Mean Arms’ consumer-oriented conduct was materially misleading, deceptive, and inaccurate.

689. Mean Arms purports to provide a “true solution” to “fixed magazine laws,” emphasizing to potential purchasers that their lock “cannot be removed with a tool, which satisfies

²⁴³ <https://www.nysenate.gov/legislation/laws/GBS/349>.

CA and NY state law.”

690. At the same time it engaged in such marketing, Mean Arms knew that its lock was fully removable and designed the product for it to be removable without “harm[ing]” the consumer’s rifle. Mean Arms included on the lock’s packaging four instructions for simple lock removal, and advised customers via its YouTube account that removal “only takes about 10 minutes.”

691. Plaintiffs were injured as a result of Mean Arms’ deceptive conduct.

692. If Mean Arms had not falsely advertised its product as suitable for rendering AR firearms complaint with New York State law, Vintage Firearms would not have been able to sell Gendron a Bushmaster XM15-E2S firearm with an easily removable lock such that he could use removable magazines to fire approximately 60 shots in approximately two minutes, killing Andre MacKniel, Kat Massey, and Heyward Patterson.

693. Mean Arms knew or should have known that promoting its lock as New York complaint, while telling consumers on the side it was easily removable was likely to encourage consumers like Gendron to following Mean Arms’ instructions and remove the lock. Gendron’s ability to use removable magazines was a substantial factor resulting in the injuries, suffering, and deaths of Andre MacKniel, Kat Massey, and Heyward Patterson.

**AND FOR A TWENTIETH CAUSE OF ACTION
NEGLIGENCE
(Against Paul and Pamela Gendron)**

694. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set forth herein.

695. Plaintiffs seek relief against Paul and Pamela Gendron jointly, severally, or in the alternative to the relief sought against the other Defendants in this case. Plaintiffs’ claims against Paul and Pamela Gendron arise out of the same transaction, occurrence, or series of transactions or occurrences as their claims against the other Defendants named in this matter. Paul and Pamela Gendron’s negligent acts concurred with the tortious conduct of the other Defendants in producing the injuries giving rise to this case which are incapable of any reasonable or practicable division and allocation between Defendants.

**AND FOR A TWENTY FIRST CAUSE OF ACTION
NEGLIGENT ENTRUSTMENT
(Against Paul and Pamela Gendron)**

696. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set forth herein.

697. Paul Gendron entrusted his son with a rifle, a dangerous instrument that was among the weapons Gendron took to the Tops shooting on May 14, 2022.

698. Paul and Pamela Gendron had constructive possession of all of the firearms that Gendron kept at their house whether they purchased the weapons or not. They allowed Gendron to keep firearms in their home after he had expressed murderous intent and exhibited violent behavior, and effectively entrusted the guns to him.

699. Paul and Pamela Gendron knew or should have known of Gendron's propensity to use the firearms entrusted to him to cause harm to others.

700. Paul and Pamela Gendron failed to exercise reasonable care by entrusting their son with firearms and such negligence was a proximate cause of Plaintiffs' harms.

**AND FOR A TWENTY SECOND CAUSE OF ACTION
WRONGFUL DEATH
(Against All Defendants)**

701. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set forth herein.

702. On May 14, 2022, Heyward Patterson, Kat Massey, and Andre MacKniel died as a proximate result of injuries that they sustained due to the negligence and product liability of the defendants herein.

703. The decedent plaintiffs sustained injuries which caused death by reasons of the actions of the defendants herein alleged and was caused to sustain wrongful death as so defined and pecuniary damages including loss of decedent's support, inheritance, care, and assistance; have incurred medical, funeral, and other expenses; and have suffered the loss of decedents' advice, guidance, counsel, and consortium.

704. That as a result of the negligence and product liability of Defendants as aforesaid, Diona Patterson, Barbara Mapps, and Shawanda Rogers, as the Administrators of the Estates of

Heyward Patterson, Kat Massey, and Andre MacKniel, sustained damages in an amount exceeding the jurisdictional limits of all the Lower Courts.

**AND FOR A TWENTY THIRD CAUSE OF ACTION
PERSONAL INJURIES
(Against All Defendants)**

705. Plaintiffs reallege each of the allegations in the preceding paragraphs as if fully set forth herein.

706. The above referenced occurrence caused decedent plaintiffs Heyward Patterson, Kat Massey, and Andre MacKniel to sustain sever personal injuries, severe conscious pain, suffering, and terror which resulted in their death on May 14, 2022.

707. That as a result of the negligence acts of defendants, the decedent plaintiffs Heyward Patterson, Kat Massey, and Andre MacKniel sustained serious injuries and endured great pain, conscious pain, and suffering which resulted in their deaths on May 14, 2022

708. That as a result of the defendant's negligence as aforesaid, the decedent plaintiff Heyward Patterson, Kat Massey, and Andre MacKniel sustained conscious pain, suffering, and pre-impact terror/death thereby sustaining damages in an amount exceeding the jurisdictional limits of all of the Lower Courts.

**AND FOR A TWENTY FOURTH CAUSE OF ACTION
JOINT AND SEVERAL LIABILITY
(Against All Defendants)**

709. Plaintiffs repeat and reiterate the prior allegations of this complaint as if alleged more fully below.

710. The limitations on liability set forth in NY Civ. Prac. L. Art. 16 §1601 do not apply because the following exemptions apply.

711. Plaintiffs have sustained "grave injury" as defined in §11 of the workers' compensation law. *See* NY Civ. Prac. L. Art. 16 §1602(4).

712. Plaintiffs allege a cause of action requiring proof of intent. *See* NY Civ. Prac. L. Art. 16 §1602(5).

713. Defendants acted with reckless disregard for the safety of others. *See* NY Civ. Prac. L. Art. 16 §1602(7).

714. Plaintiffs bring a products liability claim, the manufacturer of the product is not a party to the action and jurisdiction over the manufacturer could not with due diligence be obtained and that if the manufacturer were a party to the action, liability for claimant's injury would have been imposed upon said manufacturer by reason of the doctrine of strict liability, to the extent of the equitable share of such manufacturer. *See* NY Civ. Prac. L. Art. 16 §1602(10).

715. Defendants acted knowingly or intentionally, and in concert, to cause the acts or failures upon which liability is based. *See* NY Civ. Prac. L. Art. 16 §1602(11).

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against all defendants for relief as follows:

1. Past physical and mental pain and suffering of Heyward Patterson, Kat Massey and Andre MacKniel, and Latisha Roberts in an amount to be more readily ascertained at the time and place set for trial;
2. Future Past physical and mental pain and suffering of Latisha Roberts in an amount to be more readily ascertained at the time and place set for trial;
3. Loss of enjoyment of life, in an amount to be more readily ascertained at the time and place set for trial;
4. Past and future impairment to capacity to perform everyday activities;
5. Pecuniary loss and loss of Heyward Patterson, Kat Massey, and Andre MacKniel's services, comfort, care, society, and companionship to their statutory beneficiaries;
6. Loss of future income and earning capacity of Heyward Patterson, Kat Massey and Andre MacKniel;
7. Punitive damages;
8. Injunctive relief, including, but not limited to, ordering Social Media Defendants to stop the harmful conduct alleged herein, remedy the unreasonably dangerous recommendation technologies in their social media products, and provide warnings to minor users their parents and

that Defendants' social media products are addictive to minor users and pose a clear and present danger of radicalization and violence to the public;

9. Reasonable costs and attorney and expert/consultant fees incurred in prosecuting this action; and

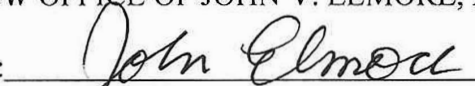
10. Such other and further relief as this Court deems just and equitable.

WHEREFORE, plaintiffs, Diana Patterson, Barbara Mapps, and Shawanda Rogers, as the Administrators of the Estates of Heyward Patterson, Kat Massey, and Andre MacKniel, and J.P. and A.M., the minor children of Heyward Patterson and Andre MacKniel, respectively, demand judgment both compensatory and exemplary in an amount exceeding the jurisdictional limits of all lower Courts on all causes of action, together with attorney's fees and the costs and disbursements of this action.

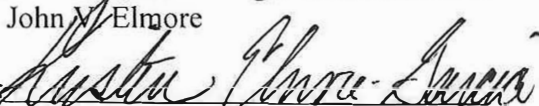
DATED: Buffalo, New York
May 12, 2023

LAW OFFICE OF JOHN V. ELMORE, P.C.

By:


John V. Elmore

By:


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ATTORNEY VERIFICATION

STATE OF NEW YORK)
)
 COUNTY OF ERIE)

JOHN ELMORE, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:


I am the attorney for the Plaintiff in the above entitled-action. I have read the foregoing **VERIFIED COMPLAINT** and know the contents thereof, and upon information and belief, affirmant believes after an inquiry reasonable under the circumstances the matters alleged herein to be true, and that the contentions herein are not frivolous, as that term is defined in part 130.

The reason this verification is made by affirmant and not by Plaintiff is that some of the Plaintiff herein resides in a County other than the County in which I maintain my offices.

The source of affirmant's information and the grounds of his belief are communications, papers, reports and investigations contained in the file maintained by this office.

Dated: Buffalo, New York
 May 12, 2023

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