

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE**

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,

v.

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.

Index No. 805896/2023

**REPLY BRIEF IN FURTHER SUPPORT OF THE GOOD SMILE PARTIES' MOTION
TO DISMISS PURSUANT TO NEW YORK CIVIL PRACTICE RULES AND LAWS
SECTIONS 3211(a)(7)****SAUL EWING LLP**

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INTRODUCTION

In response to Plaintiffs' sprawling 715-Paragraph Complaint against Payton Gendron's parents, a gun store, a body armor manufacturer, and a myriad of social media defendants, while only making a scant thirteen (13) *total* factual averments specific to any of the Good Smile Parties, the Good Smile Parties filed two (2) distinct motions to dismiss squarely addressing the procedural and legal deficiencies with the Plaintiffs' non-viable Complaint.¹ With the first motion, the Good Smile Parties filed a Consolidated Motion To Dismiss For Lack of Proper Service and Personal Jurisdiction Pursuant to New York Civil Practice Rules and Laws Section 3211(a)(8) (Motion Seq. #10), which detailed how the Plaintiffs failed to: (i) properly serve Good Smile Japan - - a Japanese anime collectible figurine company with a principal place of business in Japan; and (ii) plead any facts supporting the exercise of personal jurisdiction in New York over any Good Smile entity. This motion was extensively supported by sworn affidavits and relevant exhibits.

With the second motion, the Good Smile Parties filed a Consolidated Motion To Dismiss Pursuant to New York Civil Practice Rules and Laws Section 3211(a)(7) (Motion Seq. #11), which detailed the Plaintiffs' fundamental failure to plead specific facts as to each Good Smile Party that were essential to asserting viable legal claims and the controlling law that mandated dismissal of the Complaint under Section 230 of the Communications Decency Act ("CDA"), New York tort law, and recent U.S. Supreme Court precedence.

Rather than opposing these motions, the Plaintiffs have done something rather remarkable. They tellingly chose not to oppose the Good Smile Parties' motions. In fact, they filed no opposition whatsoever to the Good Smile Parties' motion to dismiss for lack of personal jurisdiction, which is now uncontested. Similarly, the Plaintiffs' omnibus opposition brief, while

¹ The Good Smile Parties refer to Good Smile Company, Inc. ("Good Smile Japan"), Good Smile Company US, Inc. ("Good Smile US"), and Good Smile Connect, LLC ("Good Smile Connect").

lumping the Good Smile Parties within their definition of the “Social Media Defendants,” fails to address any of the arguments and pleading deficiencies specific to each Good Smile Party. Indeed, the Plaintiffs’ omnibus opposition brief fails to even reference or mention the Good Smile Parties anywhere, except in the caption. Moreover, the opposition brief specifically asserts that it is in response to “Mot. Seq. #012; #013; #014; #015; #016; and #019,” but fails to reference that it is response to the Good Smile Parties’ motion to dismiss, which is Motion Sequence #11.²

On October 24, 2023, the Court removed the Good Smile Parties from the hearing calendar on November 16 and 17 for this case due to the Plaintiffs’ failure to oppose the Good Smile Parties’ Motion to Dismiss (Motion Seq. #10), with the Clerk inviting the parties to “consider circulating an agreed upon or stipulated Order that can be uploaded and signed by the Court prior to the Motion dates above.” See Exhibit A. That same day, counsel for the Good Smile Parties emailed a proposed stipulation of discontinuance to Plaintiffs’ counsel and counsel for defendants who had asserted common law claims of contribution and indemnification against all the other defendants in this matter. See Exhibit B.

However, to date, Plaintiffs’ counsel has not responded to either Mr. Caywood’s email or the Good Smile Parties’ proposed stipulation. As a result, given the deadline for filing reply briefs and given Plaintiffs’ attempt to nominally include the Good Smile Parties within their definition of Social Media Defendants in their omnibus opposition brief, the Good Smile Parties in an abundance of caution file this reply brief to highlight the factual and legal deficiencies relating

² The Good Smile Parties note that the 22 NYCRR. § 130-1.1 provides that: “[t]he court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court, except where prohibited by law, costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney’s fees, resulting from frivolous conduct as defined in this Part. In addition to or in lieu of awarding costs, the court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct as defined in this Part.” The Good Smile Parties submit not only that Plaintiffs did not have a basis to bring this lawsuit against the Good Smile Parties, but that by failing to oppose the Good Smile Parties’ Motions To Dismiss, Plaintiffs conceded that they have no basis to maintain this Action against the Good Smile Parties, and Plaintiffs’ failure to summarily dismiss, with prejudice, the Good Smile Parties constitutes frivolous conduct.

specifically to the Good Smile Parties that the Plaintiffs failed to address, much less contest, and to address the general arguments that Plaintiffs make in their omnibus opposition brief to the extent that they have some applicability to the Good Smile Parties. As a result of the numerous procedural and legal deficiencies with Plaintiffs' claims, the Good Smile Parties are entitled to the immediate dismissal of the claims against them.

ARGUMENT

I. THE COURT MUST DISMISS PLAINTIFFS' COMPLAINT AGAINST THE GOOD SMILE PARTIES SINCE PLAINTIFFS ELECTED NOT TO OPPOSE THE MOTIONS TO DISMISS

Even before the Court addresses the numerous pleading and legal deficiencies with Plaintiffs' Complaint as it relates to the Good Smile Parties, dismissal is mandated given the numerous uncontested procedural deficiencies with Plaintiffs' lawsuit.

A. The Court Must Dismiss Good Smile Japan As Plaintiffs Have Failed To Oppose Its Motion To Dismiss For Lack of Proper Service And Otherwise Failed Their Burden Of Establishing Proper Service

Given that Plaintiffs have completely failed to oppose Good Smile Japan's motion to dismiss for failure to properly effect service on Good Smile Japan under the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the "Convention") (Motion Seq. No. 10), or otherwise establish proper service on a foreign corporation with no agents for service of process in the United States, the Court must dismiss the Complaint against Good Smile Japan. See CPLR §306-b; In re Delaware Operations Assocs. LLC v. New York State Dep't of Health, 187 A.D.3d 1560, 1561 (4th Dep't 2020) (affirming dismissal for failure to timely serve); Arbeeney v. Kennedy Exec. Search, Inc., 31 Misc.3d 494, 501-02 (N.Y. Sup. Ct., N.Y. County 2011).

B. The Court Must Dismiss The Complaint Against Each Good Smile Entity For Lack of Personal Jurisdiction As Plaintiffs Have Failed To Oppose The Good Smile Parties' Motion to Dismiss And Otherwise Failed Their Burden of Proof

Upon being challenged, it was Plaintiffs' burden to prove personal jurisdiction by a preponderance of the evidence. Serov ex rel. Serova v. Kerzner Int'l Resorts, Inc., No. 162184/2015, 2016 WL 4083725, at *2 (N.Y. Sup. Ct., N.Y. County July 26, 2016) ("The burden of proving jurisdiction is upon the party asserting it, and when challenged...such party must sustain that burden by preponderating proof"); Serota v. Cooper, 216 A.D.3d 1019, 1020 (2d Dep't 2023) (dismissing action for lack of personal jurisdiction, stating "When a defendant objects to the court's exercise of personal jurisdiction, the ultimate burden of proof rests upon the plaintiff"); Mejia-Haffner v. Killington, Ltd., 119 A.D.3d 912, 914 (2d Dep't 2014) (dismissing action for lack of personal jurisdiction, stating "where jurisdiction is contested, the ultimate burden of proof rests upon the plaintiff").

Here, Plaintiffs failed to meet their burden by opposing the Good Smile Parties' Motion To Dismiss For Lack of Proper Service and Personal Jurisdiction, or otherwise establishing personal jurisdiction as to each Good Smile Party. As a result, the Court must dismiss the Plaintiffs' Complaint.

II. THE COURT MUST DISMISS PLAINTIFFS' COMPLAINT AGAINST THE GOOD SMILE PARTIES DUE TO THE NUMEROUS PLEADING DEFICIENCIES AND LEGAL DEFICIENCIES MANDATING DISMISSAL

A. The Court Must Dismiss Plaintiffs' Complaint Against The Good Smile Parties Due To The Uncontested Numerous Pleading Deficiencies Mandating Dismissal

As set forth in the Good Smile Parties' Motion to Dismiss, Plaintiffs' fundamental failure to plead essential facts as to each of the Good Smile Parties renders Plaintiffs' claims against the Good Smile Parties for (i) Strict Product Liability – Design Defect (Count I); (ii) Strict Product Liability – Failure to Warn (Count II); (iii) Negligence (Count III); (iv) Negligent Failure to Warn

(Count IV); (v) Unjust Enrichment (Count V); (vi) Infliction of Emotional Distress (Count VI); (vii) Wrongful Death (Count XXII); (viii) Loss of Parental Guidance (Count XIII); (ix) Personal Injuries (Count XXIII); and (x) Joint and Several Liability (Count XXIV) completely non-viable. And, in their omnibus opposition brief, Plaintiffs fail to contest this fundamental failure as it relates to the Good Smile Parties. This includes failing to even address the fact that:

- Plaintiffs *entirely* fail to plausibly plead *any* facts as to Good Smile US (other than its corporate existence);
- Plaintiffs *entirely* fail to plausibly plead *any* facts as to Good Smile Connect (other than its corporate existence);
- Good Smile US and Good Smile Connect *did not* invest in 4chan Community Support;
- Plaintiffs *entirely* fail to plausibly plead that Good Smile Japan played *any role* in the management of 4chan Community Support;
- Plaintiffs fail to plead that any of the Good Smile Parties knew Gendron, knew about his apparent racism, had advance notice of his criminal plan, or even had any interaction with him;
- Plaintiffs fail to plead that any of the Good Smile Parties knowingly provided Gendron with any assistance whatsoever.

Similarly, in their opposition brief:

- Plaintiffs *fail* to identify *any* plausibly plead facts supporting their position that they have plead any veil piercing as and between any of the Good Smile Parties and 4chan Community Support;
- Plaintiffs *fail* to identify *any* plausibly plead facts supporting their position that 4chan Community Support employs any “dangerous algorithm” or that any Good Smile Party designed any algorithm for any website;
- Plaintiffs *fail* to identify *any* plausibly plead facts supporting their position that the Good Smile Parties manufacture, produce or distribute any of the social media products at issue in this Action;
- Plaintiffs *fail* to identify *any* plausibly plead facts supporting their position that there exists a safer alternative design any aspect of the 4chan Community Support website;

- Plaintiffs *fail* to identify *any* plausibly plead facts supporting their position that the Good Smile Parties (or even the Social Media Defendants) could have provided warnings that would have prevented Gendron's intentional acts of mass violence;
- Plaintiffs *fail* to identify *any* plausibly plead facts supporting their position that the Good Smile Parties owe a duty of care to the public at large;
- Plaintiffs *fail* to identify *any* plausibly plead facts supporting their position that the Good Smile Parties undertook *any* conduct that was remotely offensive, much less beyond the bounds of decency in a civilized society, much less *any* conduct directed at the Plaintiffs in any way, rendering their infliction of emotional distress claim non-viable;
- Plaintiffs *fail* to identify *any* plausibly plead facts supporting their position that, even if the Good Smile Parties somehow owe a duty of care to the public at large, Gendron's intentional acts of mass violence somehow do not break any causal connection as a matter of law;
- Plaintiffs *fail* to identify *any* plausibly plead facts supporting their position that the Good Smile Parties have a relationship with either Gendron or the Plaintiffs, rendering their unjust enrichment claim non-viable;
- Plaintiffs *fail* to address that they have failed to plausibly plead their claim for wrongful death because it is premised upon Plaintiffs' nonviable claims for products liability and negligence against the Good Smile Parties;
- Plaintiffs *fail* to address that they have failed to plausibly plead their remaining "claims" because those remaining claims *are not* legal causes of actions, but are instead types of damages and apportionment of damages.

Based on the above, the Good Smile Parties' Motion To Dismiss should be granted because the Good Smile Parties *are not* subject to personal jurisdiction in New York, Plaintiffs' Complaint fails to state *any* viable claim against the Good Smile Parties, and Plaintiffs fundamentally *failed* to oppose either of the Good Smile Parties' Motion(s).

B. The Court Must Also Dismiss Plaintiffs' Complaint Against The Good Smile Parties Because The CDA Bars Their Claims

In their omnibus opposition brief, the Plaintiffs address the applicability of the CDA which generally applies to the Good Smile Parties based on the Plaintiffs' allegations. Recognizing that

the CDA bars Plaintiffs' Complaint because it seeks to hold the Good Smile Parties liable for third-party content posted to the 4chan Community Support website, Plaintiffs' Opposition argues that their Complaint is really about the Social Media Defendants' "dangerous algorithms" as opposed to the third-party content posted on social media. Plaintiffs' argument is meritless on its face, and particularly meritless as it relates to the Good Smile Parties.

First, Plaintiffs' argument ignores their own extensive allegations in their own Complaint dedicated to Plaintiffs' theory that it was the supposedly hateful third-party *speech or content* on social media platforms that radicalized Gendron into committing acts of murder. See, e.g., Compl. ¶¶3-5, 15, 115, 118, 126, 141, 148-162, 169-177, 323-324, 388-396, 418-419, 420-428. Indeed, Plaintiffs go out of their way to allege that:

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.

Compl. ¶3 (emphasis added). Put bluntly, Plaintiffs make it expressly clear in the complaint in paragraph after paragraph that it was third-party speech that Gendron was supposedly exposed to that caused him to be converted into a violent killer. The CDA bars precisely these types of claims. See 47 U.S.C. § 230(e)(3) ("No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section"); Force v. Facebook, Inc., 934 F.3d 53, 63-64 (2d Cir. 2019) (affirming dismissal of claims seeking to hold Facebook liable for terrorist acts on the theory that it gave Hamas a forum to communicate and promote its message of hate); Zeran v. Am. Online, Inc., 129 F.3d 327, 330 (4th Cir. 1997) ("Congress recognized the threat that tort-based lawsuits pose to freedom of speech in the new and burgeoning Internet medium.").

Second, as detailed in the Good Smile Parties' Motion (and the Common Brief), the Second Circuit has already rejected Plaintiffs' "dangerous algorithm" theory which is based on social media platforms elevating or curating certain third-party content. See Force, 934 F.3d at 58–59, 63–71. The Second Circuit's decision in Force is, of course, consistent with the Supreme Court's recent analysis in Twitter, Inc. v. Taamneh, 598 U.S. 471, 498, 503 (2023) (reversing denial of motion to dismiss attempting to hold social media entities liable for terrorist acts that killed 38 people because they allegedly knew that terrorists were using social media platforms to recruit, radicalize and train bad actors), on remand, 71 F.4th 1200 (9th Cir. 2023). In that case, the Supreme Court rejected the plaintiffs' attempt to create aiding and ability tort liability for terrorist attacks based on Twitter's algorithms:

All the content on their platforms is filtered through these algorithms, which allegedly sort the content by information and inputs provided by users and found in the content itself. As presented here, the algorithms appear agnostic as to the nature of the content, matching any content (including ISIS' content) with any user who is more likely to view that content. The fact that these algorithms matched some ISIS content with some users thus does not convert defendants' passive assistance into active abetting....

To show that defendants' failure to stop ISIS from using these platforms is somehow culpable with respect to the Reina attack, a strong showing of assistance and scienter would thus be required. Plaintiffs have not made that showing.

Id. at 499-500 (emphasis added).

Third, Plaintiffs' "dangerous algorithm" theory is particularly baseless as to the Good Smile Parties given that Plaintiffs *make no allegations* that any Good Smile Party was involved in any algorithm design or implementation, dangerous or otherwise, for any website, much less for 4chan Community Support. Moreover, given that the 4chan Community Support website was a bulletin board style website, it had no curating or elevating algorithms. As a result, Plaintiffs' claims must be dismissed.

C. **The Court Must Dismiss Plaintiffs' Negligence-Based Claims**

In addition to the reasons set forth in the Good Smile Parties' motion to dismiss, Plaintiffs' negligence-based claims against the Good Smile Parties also fail due to Plaintiffs' failure to plead proximate causation as to each Good Smile entity. Specifically, as detailed in the Common Brief, Plaintiffs' Complaint is subject to dismissal because the "causal connection between" Plaintiffs' injuries and *any* Good Smile Party action is separated by multiple steps rendering it too attenuated as a matter of law to satisfy legal causation. As further detailed in the Common Brief, it is well understood that "[a] defendant cannot be held liable where the chain of events between [the] alleged conduct and the plaintiff's injuries includes an intervening act by a third party – especially a criminal act – that "is extraordinary under the circumstances, not foreseeable in the normal course of events, or independent of or far removed from the defendant's conduct." Hain v. Jamison, 28 N.Y.3d 524, 529 (2016). See also, Tennant v. Lascelle, 161 A.D.3d 1565, 1566 (4th Dep't 2018) (finding no proximate cause where third party murdered the victim, despite defendant's negligence in supervising victim.); See Common Brief at 33. Simply, Gendron's *intentional, criminal acts* broke *any* chain of causation.

In their omnibus opposition brief, Plaintiffs attempt to stave off dismissal by pointing to a single conclusory allegation: "Plaintiffs alleged that Payton Gendron's murderous rampage was the foreseeable consequence of the Social Media Defendants' conscious design to design, program, and operate platforms and tools that maximize user engagement (and corresponding advertising revenue) at the expense of public safety." See Opposition at 29. However, Plaintiffs' Complaint is entirely devoid of a single allegation that *any* Good Smile Party could have foreseeably known that Gendron would go on to commit acts of mass violence. Indeed, as Plaintiffs concede in their complaint, no one would know from reviewing messages/posts if Gendron was even posting or

reviewing specific messages because 4chan Community Support is a bulletin board style online forum where anyone can post comments and share images and those posting are completely anonymous. See Compl. ¶¶422, 424, 428. As a result, Plaintiffs do not make any allegations regarding any specific message that Gendron posted or even reviewed, much less any posts that a Good Smile Party reviewed at any time.

CONCLUSION

For the reasons set forth above and given Plaintiffs' failure to voluntarily dismiss the Good Smile Parties, despite the Court's guidance that they do so, the Court should add the Good Smile Parties' back onto this Court's oral argument schedule for November 16 and 17 so that the Court may consider each of the Good Smile Parties' motion to dismiss and then dismiss Plaintiffs' claims against each Good Smile Party in their entirety, with prejudice.

Respectfully Submitted,

**GOOD SMILE CO., INC., GOOD SMILE US,
INC., and GOOD SMILE CONNECT, LLC,**

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