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 ANDREW 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.

INDEX NO. 805896/2023

DEFENDANT 4CHAN COMMUNITY SUPPORT, LLC'S REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO CPLR 3211(a)(7)

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PRELIMINARY STATEMENT

Defendant 4chan Community Support, LLC ("4chan CS" or "Defendant") respectfully submits this Memorandum of Law in Further Support of its Partial Joinder to the Joint Motion to Dismiss Plaintiffs' Complaint pursuant to CPLR 3211(a)(7) (the "Joint Motion") (NYSCEF Doc. 112), because Plaintiffs have failed to state a valid cause of action as to 4chan CS.

As set forth in 4chan CS's Partial Joinder and the Joint Motion, Plaintiffs claim that the Social Media Defendants' online platforms allegedly used "recommendation" and "engagement" algorithms that purportedly recommended and delivered "racist, antisemitic, and violence-promoting content" to the shooter (Payton Gendron). See Plaintiffs' Verified Complaint (the "Complaint"), ¶¶ 246, 176. Plaintiffs' entire liability theory against the Social Media Defendants is inapplicable to 4chan CS, which is an online bulletin board platform that does not use the referenced algorithms (and there is no allegation that it does). 4chan CS's online publication of exclusively third-party content falls squarely under the federal statutory immunity of Section 230 of the Communications Decency Action ("CDA"), 47 U.S.C. § 230, which, again, Plaintiffs concede: "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." See Complaint, ¶ 530.

In Opposition, Plaintiffs do not even attempt to refute that their product liability theory is inapplicable to the 4chan website, which does not use content-promoting algorithms. In fact, Plaintiffs fail to mention 4chan CS in the entirety of their Opposition, with the exception of one section with new speculative arguments that 4chan CS participated in the creation of objectionable advertising content on its website. As discussed below, this argument fails for several reasons, not the least of which because it is not alleged in the Complaint that Gendron viewed advertising

banners on the 4chan website prior to the shooting. Plaintiffs use the example of an advertisement on the 4chan website *today* (which Gendron could not have possibly consumed prior to his criminal acts) linking to objectionable content not only created by a third-party, but located on a *third-party website*. The Opposition further argues that standardized fonts and colors on the 4chan website rendered 4chan a "content provider" no longer subject to Section 230 immunity. Yet New York courts interpreting this identical issue have found this argument to be entirely without merit.

By distinguishing and disassociating 4chan CS from the remaining Social Media Defendants, Plaintiffs abandon their product liability claims against 4chan, realizing that the lack of algorithm is fatal to their theory (which itself fails as to the remaining Social Media Defendants), and fail to establish that 4chan CS created or provided content posted to the 4chan website that Gendron consumed and which contributed to his radicalization and criminal acts. As such, Plaintiffs have failed to set forth a cognizable legal claim against 4chan CS. It is therefore respectfully submitted that all claims against 4chan CS should be dismissed.

ARGUMENT

In its Partial Joinder to the Joint Motion, 4chan CS established that Plaintiffs' Complaint fails to plead actionable individual conduct as to 4chan CS. Plaintiffs' claims against the so-called Social Media Defendants center on the allegation that their online platforms used **"recommendation" and "engagement" algorithms** that purportedly recommended and delivered harmful and inflammatory content to Gendron, radicalizing him and allegedly causing him to commit the atrocities of May 14, 2022. See Partial Joinder, p. 1, Complaint ¶¶ 249, 176. That allegation forms the basis of Plaintiffs' improper attempt to plead around CDA Section 230 by arguing that content-promoting algorithms on social media platforms are "products" subject to product liability law – even though courts in New York (or elsewhere) have never applied product

liability theories to the dissemination of free speech. See Partial Joinder, pp. 6-7, Joint Motion, Section III.C. This flimsy pleading strategy fails as to all Social Medial Defendants, but in particular as to 4chan CS, which undisputedly does not employ content-promoting algorithms on its website.

Tellingly, Plaintiffs' Opposition concedes that 4chan is in a different category from the Social Media Defendants that employ algorithms – eliminating 4chan CS entirely from its argument that "Plaintiffs Allege Viable New York State Product Liability Claims." See Opposition, pp. 16-21. The Opposition details Plaintiffs' allegations that the social media applications of Facebook, Instagram, YouTube, Twitch, Snapchat, Discord, and Reddit are all "products" under New York Law. See Id. at p. 18, without even attempting to make a comparable argument as to 4chan CS. Indeed, the Complaint itself makes no specific allegation that 4chan CS's website is a "product" subject to product liability law, as it does with respect to each of the other Social Media Defendants. This is because 4chan CS's bulletin board style forum, using no algorithms to promote specific content to users, cannot be considered a product even under Plaintiffs' strained, invented liability framework.

Acknowledging this, Plaintiffs' Opposition pivots as to 4chan CS and invents entirely new speculative allegations that are nowhere to be found in the Complaint: that "4chan creates or materially contributes to malign third party content in its advertising campaigns." See Opposition, p. 48. Indeed, this brand new argument is the only section mentioning 4chan CS in Plaintiffs' 79 page Opposition. Plaintiffs argue that this supposed "content creation" in the form of advertising banners on the 4chan website defeats CDA Section 230 immunity, which protects providers of "interactive computer services" against claims seeking to hold them liable as the publishers of third-party content (not content they participated in creatin). See Opposition, p. 37, Partial Joinder,

p. 3, Joint Motion, Section III.A. As discussed below, this position fails. Plaintiffs' opposition argument that 4chan CS participated in the creation of content on the 4chan website is not only wholly speculative and self-serving (and a blatant attempt to plead around Section 230 immunity), but also dismisses the sworn client affidavit submitted with 4chan CS's Partial Joinder. Moreover, and even more essentially, there is no allegation that **any** content 4chan CS supposedly participated in creating was actually viewed by Gendron and contributed to his radicalization. Therefore, there is no causal connection – even an alleged causal connection – to Gendron's criminal acts.

Specifically, there is no allegation in the Complaint that Gendron viewed or was radicalized by advertising banners (the focus of Opposition) on the 4chan website, much less the irrelevant examples provided in the Opposition. The Complaint specifically alleges that Gendron viewed the "/k/" and "Politically Incorrect" boards on the 4chan website prior to the attack. See Complaint, ¶¶ 426-427. It makes no mention of "malign third party content" located in "banner advertisements," a concept introduced for the first time in Plaintiffs' Opposition without factual basis. See Opposition, p. 48. New allegations invented in an opposition brief are insufficient to defeat a motion to dismiss, which is decided based on the pleading itself.

The Opposition provides the wholly irrelevant example of an advertising banner allegedly on 4chan's main homepage within the past month: "At the time of the filing of this brief, 4chan's main homepage banner advertisement markets a novel cryptocurrency…Upon interacting with the advertisement, 4chan links the user to the cryptocurrency's promotional website…the content on the third-party cryptocurrency website [is] astonishingly racist…" See Opposition, p. 49. Counsel further makes the entirely baseless assertion that "[i]t is upon information and belief that 4chan created and displayed advertising campaigns of equal character throughout the time the shooter interacted and used its product." See Opposition, 50. This is a pure act of speculation on the part

of counsel and is an irresponsible attempt to confuse the legal issues: the example of the cryptocurrency advertisement was: (1) many years after the shooting, and thus could not possibly have been viewed by Gendron and influenced his actions, (2) pure third-party content by the cryptocurrency company, subject to Section 230 as respects the online publisher, 4chan CS, and (3) a link to an entirely separate website (belonging to the cryptocurrency company) where the allegedly harmful content was located.

The Opposition then moves to an even flimsier argument regarding 4chan CS's role as a supposed "content creator" (as opposed to a "publisher" subject to Section 230 protection) – that it provided specific fonts and other formatting elements to advertisers on its website. Plaintiffs argue "4chan is further a content creator with respect to its platform layout, design, typeface, text and color. The sandy colored background, signature green text, and four-leaf clover design…are markers used to identify 4chan content across the internet…" See Opposition, p. 50.

Yet New York Courts addressing this very question have found that formatting or stylistic changes on the part of the online publisher do not constitute a material contribution to the content itself, and do not defeat Section 230 immunity for publication of third-party content. In Shiamili v. Real Estate Group of NY, Inc., 17 N.Y.3d 281, 290-291 (2011), the Court of Appeals of New York held: "Defendants appear to have been 'content providers' with respect to the **heading, subheading, and illustration that accompanied the reposting. That content, however, is not defamatory as a matter of law**. The complaint does not allege that the heading and subheading are actionable, but only that they 'preceded' and 'prefaced' the objectionable commentary." (emphasis added). The court found that the plaintiff, Shiamili, "therefore failed to state a viable cause of action against defendants, as his claims for defamation and unfair competition by disparagement are clearly barred by the CDA and were properly dismissed below." Id. at 293. The

"content" contributed by the defendants in Shiamili, in that instance a heading, subheading, and illustration, was not in itself actionable, even though accompanied by objectionable third-party content. Similarly, here, whatever "platform layout, design, typeface, text and color" 4chan CS may have contributed to third-party content is not in itself actionable, however objectionable the third-party content may have been.

Accordingly, Plaintiffs have identified no independently viable causes of action against 4chan CS, and the claims against them should be dismissed in their entirety.

CONCLUSION

For the foregoing reasons, 4chan Community Support, LLC respectfully requests that the Court enter an Order granting the Joint Motion as to 4chan CS.

Dated: October 31, 2023
New York, New York

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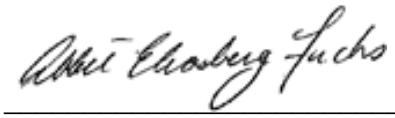
WORD COUNT CERTIFICATION

I, Abbie Eliasberg Fuchs, certify that the total word count in my Memorandum of Law is 1,675 words and it complies with the 2,000-word limit set by the parties' Stipulation in this matter. NYSCEF Doc. No. 45.

Dated: October 31, 2023



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SUPREME COURT OF THE STATE OF NEW YORK
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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 ANDREW MACKNIEL; A.M., a minor; and LATISHA ROGERS,

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DEFENDANT 4CHAN COMMUNITY SUPPORT, LLC'S REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION TO DISMISS PLAINTIFFS' COMPLAINT FOR LACK OF PERSONAL JURISDICTION PURSUANT TO CPLR 3211(a)(8)

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PRELIMINARY STATEMENT

Defendant 4chan Community Support, LLC ("4chan CS" or "Defendant"), by counsel, respectfully submits this Memorandum of Law in Further Support of its Motion to Dismiss Plaintiffs' Complaint for Lack of Personal Jurisdiction Pursuant to CPLR 3211(a)(8) (the "Motion"), because 4chan CS is not subject to personal jurisdiction in New York for the claims in the Complaint.

As set forth in the Motion, Plaintiff's Complaint fails to assert a valid basis for jurisdiction over 4chan CS. Plaintiffs do not address general jurisdiction in opposition, so that point is no longer at issue. There can be no finding of specific jurisdiction because Plaintiffs do not allege any actions of 4chan CS directed towards New York, and the only alleged contacts with New York are those of a third party (Payton Gendron) who happened to access the 4chan website from New York.

Plaintiff argues that that the acts of the Gendron should determine whether 4chan CS is subject to specific jurisdiction. This is not the applicable standard in New York. Rather, the acts of 4chan CS are determinative of whether there are sufficient ties to assert specific jurisdiction, and Plaintiffs' allegations are insufficient to support such a finding.

Notably, Plaintiffs did not address any of the legal citations in the Motion. Instead, Plaintiffs rely on inapposite authorities holding that non-residents can be subject to specific jurisdiction in New York based on products shipped to, and used in, New York, which do nothing to refute the arguments made in the Motion.

As such, 4chan CS is not subject to personal jurisdiction.

ARGUMENT

In opposition to the Motion, Plaintiffs have not even attempted to refute 4chan CS's lack of contacts with New York. Instead, Plaintiffs focus on third party Payton Gendron's contacts with New York, which are completely irrelevant to this analysis. There is no dispute that Gendron was able to access any public website, including the 4chan website, from his residence in New York. Similarly, there is no dispute that Gendron committed his heinous acts of violence in New York. While tragic, those factual allegations are all irrelevant to the lack of personal jurisdiction over non-domiciliary 4chan CS. See Abad v. Lorenzo, 163 A.D.3d 903, 905 (2d Dep't 2018) (granting CPLR 3211(a)(8) motion and dismissing Dram Shop claims against non-resident corporate entities); All Parts, Inc. v. U-Haul Metro, No. 15269/10, 2011 N.Y. Misc. LEXIS 287, at *16 (Sup. Ct., Nassau County Jan. 27, 2011) (dismissing non-resident, foreign headquartered franchisor for lack of personal jurisdiction despite allegations of financial transactions).

Similarly, Plaintiffs do not even argue that 4chan CS is subject to general jurisdiction in New York, as any such argument would be completely without merit. However, Plaintiffs' only remaining jurisdictional theory fails as well because 4chan CS is not subject to specific jurisdiction.

A. No Specific Jurisdiction

There can be no finding of jurisdiction under New York's long-arm statute (CPLR 302(a)) because 4chan CS did not enter into any transaction in New York or take any action to purposefully avail itself of the laws of New York. Plaintiffs have not identified a single transaction that 4chan CS had in New York that could possibly have caused Plaintiffs' injuries. The Complaint merely alleges that third party Gendron interacted with other unknown third parties using the 4chan website from New York, not that 4chan purposefully directed any of its activities towards New

York or any New York resident. Plaintiffs cannot credibly argue that every interaction with a party in New York should be considered a transaction in New York for the purposes of personal jurisdiction.

Similarly, 4chan CS has done nothing to purposely avail itself of the benefits of New York to be subject to personal jurisdiction for what is clearly a non-New York transaction. See BRG Corp. v. Chevron U.S.A., Inc., 163 A.D.3d 1495, 1495 (4th Dep't 2018) ("It is undisputed that defendant, a foreign corporation with no present contacts in this State, is not subject to personal jurisdiction in New York under either CPLR 301 or 302(a)"); Goulds Pumps, Inc. v. Mazander Engineered Equip. Co., 217 A.D.2d 960, 961 (4th Dep't 1995) ("The record does not support plaintiff's contention that defendant engaged in sufficient purposeful activity in New York to confer personal jurisdiction over defendant"); Symenow v. State Street Bank and Trust Co., 244 A.D.2d 880, 880-881 (4th Dep't 1997) (holding the court lacked personal jurisdiction over a defendant who did not transact any business in New York or have a contract with the plaintiff).

If Gendron accessing the 4chan website from New York were to confer personal jurisdiction on 4chan CS, every single website accessible from New York would be subject to personal jurisdiction. That would produce an absurd result. Jurisdiction for 4chan CS must be based on purposeful activities on the part of 4chan CS towards New York, which have not been alleged.

Plaintiffs argue that 4chan CS should be subject to jurisdiction because certain advertisers on the 4chan website (also third parties) sell products in New York. While this argument may confer jurisdiction on those third party advertisers, it is not enough to confer jurisdiction on 4chan CS, particularly without any allegation tying Gendron's conduct to viewing such advertisements.

B. Due Process Mandates Dismissal

The exercise of jurisdiction over 4chan CS would also offend traditional notions of justice and should be rejected.

As the Supreme Court has held "our 'minimum contacts' analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there. Walden v. Fiore, 571 U.S. 277, 285, 134 S. Ct. 1115, 1122 (2014) citing International Shoe Co. v. Washington, 326 U. S. 310, 319, 66 S. Ct. 154, 90 L. Ed. 95 (1945).

Plaintiffs' entire theory of jurisdiction is based on the acts of third parties (advertisers, Gendron, or other users of the 4chan website). 4chan CS's "contacts" here are far too remote to constitute an "articulable nexus or substantial relationship" between 4chan CS's alleged New York contacts and the Plaintiffs' claims. See Avilon Auto. Grp. v. Leontiev, 2020 N.Y. Misc. LEXIS 1285, at *28 (Sup. Ct.). Gendron could have accessed the exact same content on the 4chan website from anywhere in the world – the fact that he happened to be in New York is insufficient to demonstrate the minimum contacts necessary under the Fourteenth Amendment and Walden.

C. Plaintiffs Cannot Rely on Inadmissible Hearsay

Plaintiffs inappropriately introduce inflammatory and prejudicial news articles purportedly quoting 4chan CS's CEO, Hiroyuki Nishimura, for the first time in Opposition to the Motion. These articles are inadmissible hearsay that cannot be considered by the Court.

Pursuant to CPLR 3211(c) "Upon the hearing of a motion made under subdivision (a) or (b), either party may submit any evidence that could properly be considered on a motion for summary judgment." Seiler v. Ricci's Towing Servs., 210 A.D.2d 972, 973 (App. Div. 4th Dept. 1994) (rejecting the use of an accident report submitted in opposition to a motion to dismiss); Bakery Salvage Corp. v. Maple Leaf Foods, 195 A.D.2d 954, 955 (App. Div. 4th Dept. 1993)

(rejecting attempt to use newspaper article to show minimum contacts in opposition to a motion to dismiss because article was "double hearsay").

Accordingly, the articles submitted by Plaintiffs are inadmissible hearsay and cannot be considered in connection with the Motion.

D. Discovery is Not Warranted

Plaintiffs argue that discovery is needed to determine whether 4chan CS is subject to specific jurisdiction, presumably with the hope that Plaintiffs could find some possible way to salvage their defective pleading. However, Plaintiffs have failed to establish that discovery would likely produce facts to demonstrate personal jurisdiction. Seiler, 210 A.D.2d 972, 973.

To support this argument, Plaintiffs cite to discovery demands propounded on 4chan CS right before the Motion was filed, and before Plaintiffs could possibly have known of 4chan CS's jurisdictional arguments. A review of the discovery demands themselves show that Plaintiffs are seeking information completely unrelated to 4chan CS's jurisdictional arguments and that Plaintiffs appear to be using this litigation to conduct a fishing expedition into other unrelated claims being pursued by Plaintiffs' counsel on behalf of other plaintiffs. Plaintiffs' purported need for jurisdictional discovery is belied by the fact that 4chan CS has none of the jurisdictional factors considered under controlling New York caselaw, as sworn to in the affidavit of Hiroyuki Nishimura ("Nishimura Aff."), ¶¶ 3-10 (affirming that 4chan CS has no physical offices, personnel, mailing addresses, real estate, bank accounts, tax filings, or operations tied to New York, and has never registered to conduct business in the State of New York).

The only possible basis for conducting jurisdictional discovery would be if Plaintiffs had some credible reason why this Court should disregard the sworn statements in the Nishimura Aff.

Plaintiffs have not made such an allegation, or even tried to articulate what they expect to learn in discovery that could impact the jurisdictional analysis.

CONCLUSION

For the foregoing reasons, 4chan Community Support, LLC respectfully requests that the Court enter an Order granting the Motion in its entirety.

Dated: October 31, 2023
New York, New York

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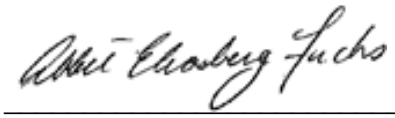

Abbie Eliasberg Fuchs, Esq.