STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

DIONA PATTERSON, individually and as Adminsitrator of the ESTATE OF HEYWARD PATTERSON, J.P., a minor; BARBARA MAPPS, Individually and a Executrix of the ESTATE OF KATHERINE MASSEY; SHAWANDA ROGERS, Individually and as Administrator of the ESTATE OF ANDRE MACKNEIL; A.M., a minor; and LATISHA ROGERS,

Plaintiffs,

vs.

DECISION AND ORDER
Re: Motions #12, 13, 14, 15, 16 and 19
Index No. 805896/2023

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 ARAMENT; VINTAGE FIREARMS; MEAN LLC.; PAUL GENDRON; PAMELA GENDRON,

Defendants.

HON. PAULA L. FEROLETO, J.S.C.

Appearances: Mathew P. Bergman, Esq., Madeline F. Basha, Esq. and
Kristen Elmore-Garcia, Esq., Attorneys for Diona Patterson, et al.
Jacob Heath, Esq., Attorney for META Platforms, Inc.
Jonathan P. Schneller, Esq., Attorney for Snap, Inc.
Brian Willen, Esq., Attorney for Alphabet, Inc., Google, LLC and YouTube, LLC
Joseph Alexander Lawrence, Esq., Attorney for Discord, Inc.
Ryan T. Mrazik, Esq., Attorney for Reddit, Inc.
Moez M. Kaba, Esq., Attorney for Amazon.com, Inc.
Ross B. Hofherr, Esq. Attorney for 4Chan Community Support, LLC

DECISION AND ORDER

Defendants META Platforms; Snap, Inc.; Alphabet, Inc.; Google, LLC; YouTube, LLC; Discord, Inc; Reddit, Inc; Amazon.com, Inc. and 4Chan Community Support, LLC (hereinafter the social media/internet defendants) have brought Motions to Dismiss pursuant to CPLR §3211(a)(7) [Motions numbered 12, 13, 14, 15, 16 and 19 in NYSCEF]. The supporting documents filed on the motions are NYSCEF documents 119-121; 123-127; 129-131; 133-138; 140-146; and 167-175. In addition to filing individual motions, the social media/internet defendants have submitted a joint memorandum of law in support of their motions NYSCEF document 112. Plaintiffs filed an amended consolidated memorandum of law, affidavits of counsel and exhibits in opposition at documents 283-331. Defendants' reply memorandums are documents 352, 371-374 and 384. All papers have been reviewed and considered by the court as has the Summons and Complaint (NYSCEF Doc. 1).

On May 14, 2022, Tops Friendly Markets supermarket on the East Side of Buffalo was the site of a horrifying racially motivated killing motivated by white supremacist, white replacement ideology as outlined at ¶¶ 78 - 89 of the Complaint (NYSCEF Doc. 1). The shooter Payton Gendron sought out a historically Black neighborhood and drove hundreds of miles from his home to commit this atrocious attack. According to comments from Gendron's criminal attorney, "The racist hate that motivated this crime was spread through on-line platforms . . ." (NYSCEF Doc. 1 ¶ 4).

The plaintiffs assert multiple causes of action against the social media/internet defendants including strict products liability for defective design and failure to warn; negligence, negligent failure to warn, invasion of privacy, negligent and intentional infliction of emotional distress and

unjust enrichment (NYSCEF Doc. 1). Not all of these causes of action are asserted against all of the social media/internet defendants.

The core issue regarding the social media/internet defendants motions to dismiss pursuant to CPLR 3211(a)(7) is how the Court views/treats the claims raised by plaintiffs. It is essentially undisputed that the horrific acts perpetrated by Gendron on May 14, 2022 were motivated by the concept of "white replacement theory." That fact is not based upon conjecture or speculation, but comes from the words of Gendron himself that are cited in the Complaint. Further, the Complaint states that Gendron became aware of this concept from information and posts on defendants platforms. Defendants would contend that this "theory" is third-party content/speech and as a result, Section 230 of the Communications Decency Act (CDA) and the First Amendment preclude the plaintiffs' claims for damages. Plaintiffs acknowledge the protections afforded to the defendants by the CDA and the First Amendment and instead contend the defendants' platforms are negligently, defectively and harmfully designed "products" that drove Gendron to the materials and they are therefore liable based on product liability theories.

First, on the instant motions pursuant to 3211(a)(7) the Court must assume as true the facts alleged in the complaint because, "[o]n a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88, [citation omitted]). As such, when the Court analyzes whether this case deals with third-party content/speech or a defectively designed product it must do so in the framework of whether the facts alleged support a viable cause of action.

The defendants contend that no matter how the plaintiffs frame their complaint the only conceivable actionable activity of the defendants is the hosting of third-party content on their platforms. If that is the case, even plaintiffs would acknowledge the third-party content would make the defendants immune from suit due to the CDA. However, plaintiffs contend the defendants' platforms are more than just message boards containing third-party content. They allege they are sophisticated products designed to be addictive to young users and they specifically directed Gendron to further platforms or postings that indoctrinated him with "white replacement theory."

Specifically defendants point to Section 230 of the Communications Decency Act, 47 U.S.C. § 230 ("CDA" or § 230) as requiring dismissal of the plaintiffs' complaint. The CDA was passed in 1996 by Congress to address and promote the "rapidly developing array of Internet and other interactive computer services available to individual Americans"(CDA [a][1]) while at the same time removing "disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material" (CDA [b][4]) and "maximiz[ing] user control over what information is received by individuals, families, and schools" (CDA [b][3]). In doing so, Section 230 indicated "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider" (CDA [c][1]), and that "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section" (CDA [e][3]). In other words, Internet services would be immune from liability for publishing material, so long as the information is provided by another party. Conversely, an interactive computer service provider will be liable for

its own speech (*Universal Communication Sys. v. Lycos*, 478 F.3d 413, 419-20 [2007]), or for its material contribution to the content of a third party's statement (*see Fair Hous. Council of San Fernando Val. v, Roommates Com*, 521 F.3d 1157 [2008]). In New York, the Court of Appeals followed other Courts interpretations of the CDA in *Shiamili v. Real Estate Group of New York, Inc.* (17 NY3d 281 [2011]). The Court found determining immunity from state law liability under Section 230 of the CDA requires the Court to take into consideration, "if (1) [defendant] is a provider or user of an interactive computer service; (2) the complaint seeks to hold the defendant liable as a publisher or speaker; and (3) the action is based on information given by another information content provider" (*Shiamili* at 286-287).

On the other hand, plaintiffs contend the defendants platforms should be considered "products" which makes Section 230 irrelevant. Under that premise, what constitutes a product under New York law is not confined to tangible chattels. (Restatement (Third) of Torts, Prods. Liab. § 19, cmt. a (1998) ("[a]part from statutes that define 'product' for purposes of determining products liability, in every instance it is for the court to determine as a matter of law whether something is, or is not, a product")). New York has expressly rejected a bright-line rule for the application of product liability law (*See Matter of Eighth Jud. Dist. Asbestos Litig. v Beazer*, 33 N.Y.3d 488, 499-500 [2019]; *see also Espinal v. Melville Snow Contractors, Inc.*, 98 N.Y.2d 136, 139 (2002) (describing the Court's rejection of open-ended tort liability, but acknowledging the 'policy-laden' nature of duty and liability which then precludes the use of bright-line rules). Further, *In the Matter of Eighth Jud. Dist. Asbestos Litig*., the New York Court of Appeals analyzed the definition of a product within a broader context of common-law duty, stating: the court's overarching concern in assigning a duty to warn is to "settle upon the most reasonable

allocation of risks, burdens and costs among the parties and within society, accounting for the economic impact of a duty, pertinent scientific information, the relationship between the parties, the identity of the person or entity best positioned to avoid the harm in question, the public policy served by the presence or absence of a duty and the logical basis of a duty." 33 N.Y.3d 488, 495-96) (*quoting In re New York City Asbestos Litig.*, 27 N.Y.3d 765, 788). The Court of Appeals also emphasized the following factors in determining whether an item is a product: (1) a defendant's control over the design and standardization of the product, (2) the party responsible for placing the product into the stream of commerce and deriving a financial benefit, and (3) a party's superior ability to know—and warn about—the dangers inherent in the product's reasonably foreseeable uses or misuses. *Id.* (*citing In re New York City Asbestos Litig.*, 27 N.Y.3d at 793, 800–01).

As noted above, for the Court to dismiss the complaint on a motion pursuant to CPLR 3211(a)(7) defendants must show that plaintiffs complaint fails to state a viable cause of action. The court must accept all the alleged facts in the complaint as true and draw all inferences in favor of the plaintiffs to determine "whether the facts as alleged fit within any cognizable legal theory." *Cerciello v. Admiral Ins. Brokerage Corp.*, 90 A.D.3d 967, 967 (2d Dep't 2011). When doing so in this case, plaintiffs have set forth sufficient facts with regard to each defendant to allege viable causes of action under a products liability theory. Contrary to the assertions of the defendants, the factual allegations as a whole in the 715 paragraphs of the complaint are sufficient to allege viable causes of action against each of the social media/internet defendants.

Many of the social media/internet defendants have attempted to establish that their platforms are mere message boards and/or do not contain algorithms subjecting them to the

protections of the CDA and/or First Amendment. This may ultimately prove true. In addition, some defendants may yet establish that their platforms are not products or that the negligent design features plaintiffs have alleged are not part of their platforms. However, at this stage of the litigation the Court must base its ruling on the allegations of the complaint and not "facts" asserted by the defendants in their briefs or during oral argument and those allegations allege viable causes of action under a products liability theory.

Causal Chain/Proximate Cause

As has been noted by the Court in its prior decisions, there were many events and actions that took place between the shooter beginning and ending his plan to commit a mass shooting which included criminal acts. The Complaint sets forth in detail the development of the plan culminating in the shootings (NYSCEF Doc. 1). Part of social media/internet defendants' argument is that the criminal actions of the shooter break the chain of causation between his use of their platforms and the ensuing shooting.

As a general proposition the issue of proximate cause between the defendants' alleged negligence and the plaintiffs' injuries is a question of fact for a jury to determine. *Oishei v. Gebura* 2023 NY Slip Op 05868 (4th Dept 2023). Part of the argument is that the criminal acts of the third party, break any causal connection, and therefore causation can be decided as a matter of law. There are limited situations in which the New York Court of Appeals has found intervening third party acts to break the causal link between parties. These instances are where "only one conclusion may be drawn from the established facts and where the question of legal cause may be decided as a matter of law." *Derdiarian v Felix Contr. Corp*., 51 NY2d 308 at 315 (1980). These exceptions involve independent intervening acts that do not flow from the

original alleged negligence. *Id.*

At this juncture of the litigation it is far too early to rule as a matter of law that the actions, or inaction, of the social media/internet defendants through their platforms require dismissal on proximate cause. The facts alleged do not show "only one conclusion" that could be made as to the connection between these defendants' alleged negligence and the plaintiffs' injuries (quoting *Derdiarian* 51 NY2d). The acts of the third party, even though criminal, do not necessarily transform the inquiry into a question of law (*See Oishei v. Gebura*, 2023 NY Slip Op 05868, 221 A.D.3d 1529 (4th Dept.), holding the intervening criminal act did not amount to an exception to the general rule of allowing the fact finder to determine proximate cause).

Duty

The social media/internet defendants argue plaintiffs have failed to allege negligence-based claims against them because plaintiffs cannot allege the social media/internet defendants owe them a cognizable duty of care. Duty is "a legal term by which we express our conclusion that there can be liability." *DeAngelis v. Lutheran Med. Center*, 58 N.Y.2d 1053, 1055 (1983). It requires a person "to conform to a certain standard of conduct, for the protection of others against unreasonable risks." Prosser and Keeton, Torts §§ 30 & 53, at 164, 356 (5th ed.). It is a "policy-laden" analysis (*Espinal v. Melville Snow Contrs.*, 98 N.Y.2d 136, 139 (2002)), requiring the balancing of interests, including the wrongfulness of the defendant's actions and the reasonable expectation of care owed. *Palka v. Servicemaster Mgt. Servs. Corp.*, 83 N.Y.2d 579 (1994); *Turcotte v. Fell*, 68 N.Y.2d 432, 437 (1986).

It is long-established in New York products liability jurisprudence that a manufacturer of a defective product is liable to "any person" injured from the product. See *McLaughlin v. Mine*

Safety Appliances Co., 11 N.Y.2d 62, 68 (1962). In fact, a manufacturer is liable even where its defective product injures an innocent bystander not using or working with the product. See, e.g., *Ciampichini v. Ring Bros., Inc.*, 40 A.D.2d 289 (4th Dep't 1973). Contrary to the defense assertions, at this stage of the proceedings, the plaintiffs' allegations concerning products liability establish a basis for "duty" to these plaintiffs. As such, based on the facts alleged in the complaint it is pre-mature to dismiss the plaintiffs' causes of action against the social media/internet defendants under CPLR § 3211(a)(7).

As noted, a motion to dismiss pursuant to CPLR 3211(a)(7) for failure to state a cause of action will be denied if, from the four corners of the pleadings, there are factual allegations which "manifest any cause of action cognizable at law." *Maldonado v. Olympia Mechanical Piping & Heating Corp.*, 8 AD3d 348, 350 (2004); *See also, Rinaldo v. Casale*, 13 AD3d 603, 604 (2004). Here, as set forth above, the Court has determined the complaint sufficiently pleads viable causes of action. However, where defendants' motions address each of the claims set forth, the court will treat that motion "as applying to each individual cause of action alleged ." *Gamiel v. Curtis & Riess–Curtis, P.C.*, 16 AD3d 140, 141 (2005). The Court notes defendants have asserted that other causes of action alleged by the plaintiffs are either damages claims and not separate causes of action (i.e - Emotional Distress, Loss of Parental Guidance, etc.) or not factually supported (i.e.- Unjust Enrichment and Invasion of Privacy). The Court agrees that many of the "causes of action" asserted in the Complaint are merely damages claims that will be consolidated at the appropriate time, if necessary. In addition, the Unjust Enrichment (NYSCEF Doc. 1, ¶¶ 595-600) and Invasion of Privacy (NYSCEF Doc. 1, ¶¶ 607-614) "causes of action" although tenuous are sufficiently pled at this time. After sufficient discovery is completed, the parties may

renew their arguments in a motion for summary judgment pursuant to CPLR § 3212.

The remaining arguments raised by the individual defendants have been addressed above or are without merit at this stage of the litigation.

THEREFORE, IT IS HEREBY

ORDERED, the Social Media/Internet Defendants motions to dismiss are denied in their entirety. This constitutes the Decision and Order of this court. Submission of an Order by the parties is not necessary. Receipt of notice of the uploading of this Decision and Order by the court to NYSCEF shall not constitute notice of entry.

Signed this 18th day of March, 2024, at Buffalo, New York.

PAULA L. FEROLETO, J.S.C.