To be Argued by:
ERIC A. SHUMSKY
(Time Requested: 30 Minutes)

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Appellate Division–Fourth Department Docket Nos. CA 24-00513, CA 24-00524, CA 24-01447, CA 24-01448

Court of Appeals

of the

State of New York

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-Appellants,

(For Continuation of Caption See Inside Cover)

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(For Continuation of Appearances See Inside Cover)

Completed: June 8, 2026

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– 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 COMMUNITY SUPPORT, LLC,

Defendants-Respondents.

– and –

4CHAN, 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-Appellants,

– against –

META PLATFORMS, INC., f/k/a Facebook, Inc., INSTAGRAM LLC, REDDIT, INC, AMAZON.COM, INC., TWITCH INTERACTIVE, INC., ALPHABET, INC., GOOGLE, LLC, YOUTUBE, LLC, DISCORD INC., SNAP, INC. and 4CHAN COMMUNITY SUPPORT, LLC,

Defendants-Respondents

– and –

4CHAN, LLC, GOOD SMILE COMPANY, INC., GOOD SMILE COMPANY U.S., INC., GOOD SMILE CONNECT, LLC, RMA ARMAMENT, INC. d/b/a RMA, BLAKE WALDROP, CORY CLARK, VINTAGE FIREARMS, LLC, JIMAY'S FLEA MARKET, INC., JIMAYS LLC, MEAN ARMS LLC d/b/a Mean Arms, PAUL GENDRON and PAMELA GENDRON,

Defendants.

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Plaintiff-Appellant,

– against –

MEAN LLC, VINTAGE FIREARMS, LLC, RMA ARMAMENT, INC., 4CHAN, LLC, 4CHAN COMMUNITY SUPPORT, LLC, PAUL GENDRON and PAMELA GENDRON,

Defendants,

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ALPHABET INC., GOOGLE, LLC, YOUTUBE, LLC, REDDIT, INC.,

Defendants-Respondents.

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Plaintiffs-Appellants,

– against –

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Court of Appeals Rules 500.1(f) and 500.13(a), Defendants-Respondents Meta Platforms, Inc. ("Meta") and Instagram LLC ("Instagram") state that Meta is a publicly traded company with no parent corporation. No publicly traded company holds 10% or more of Meta's stock. Instagram is a wholly owned subsidiary of Meta.

Defendants-Respondents Alphabet Inc. ("Alphabet"), Google LLC ("Google"), and YouTube, LLC ("YouTube") state that YouTube is a subsidiary of Google. Google is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet, a publicly traded company. No publicly traded company holds more than 10% of Alphabet's stock.

Defendant-Respondent Reddit, Inc. ("Reddit") states that Reddit is a publicly traded corporation listed on the New York Stock Exchange that is duly incorporated in Delaware. Reddit has no parent company and has no subsidiaries that have issued shares to the public. Advance Publications, Inc. is an affiliate of Reddit and owns shares that constitute 50% of the voting power of the Reddit stock.

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PRELIMINARY STATEMENT

These consolidated cases stem from a horrific crime. In May 2022, a white supremacist named Payton Gendron killed ten people in a racially motivated mass shooting. Plaintiffs, survivors of the attack and family members of victims, contend that Internet-Defendants—Meta, Google, Reddit, Discord, Snap, Twitch, and Amazon, all operators of online services that disseminate content created by their users—should be held liable for Gendron's crimes.[1] Their theory is that Gendron committed his crimes because of racist speech, created and posted by other people, that he encountered online.

The ideology that motivated Gendron's attack is abhorrent. But the question before this Court is whether publishers of third-party speech are liable when a reader of that speech commits a crime. And courts across the country have uniformly rejected efforts to hold online services liable for violent acts committed by extremists—just as they long have rejected claims seeking to hold creators and publishers liable for violent reactions to other media, from books to video games. The Fourth Department correctly applied this Court's longstanding

[1] Meta, Google, and Reddit are the signatories to this brief. Amazon, Twitch, Snap, and Discord have incorporated this brief by reference in their individual briefs.

precedent in reaching the same conclusion. That ruling neither creates "unbounded super-immunity" for Internet-Defendants nor provides them with a "categorical shield from any liability." SalterBr.1, 3. Online services are not always or automatically immune from liability. But when they are sued for the purported effects of third-party information they publish, Section 230 and the First Amendment foreclose liability, and New York law independently does the same.

First, as this Court recognized in *Shiamili v. Real Estate Group of New York*, 17 N.Y.3d 281 (2011), Section 230 prohibits holding online services liable for their exercise of traditional publishing functions, including deciding whether and how to present content created by others. Plaintiffs seek to do just that—to hold Internet-Defendants liable for publishing objectionable third-party content to Gendron. Although some Plaintiffs now assert otherwise, their Complaints at every turn proclaim an overtly content-based theory: that Gendron was "fed a steady stream of racist and white supremacist propaganda" by Internet-Defendants' services and thereby "became radicalized by overexposure to fringe, racist ideologies." R.2664-65(¶3). Section 230's core protections do not disappear merely because Plaintiffs label their

theory a product-liability claim, or because they have made claims about supposed "addiction"; indeed, Plaintiffs' theory why certain design features are "defective" is that they purportedly promote exposure to harmful third-party content. As the Fourth Department recognized, "Plaintiffs do not allege, and could not plausibly allege, that the shooter would have murdered Black people had he become addicted to anodyne content, such as cooking tutorials." R.6622.

Second, the First Amendment bars Plaintiffs' claims because they seek to hold Internet-Defendants responsible for the content and the viewpoint of the speech they published. That some Internet-Defendants use algorithms to curate and publish this speech does not remove First Amendment protection for their choices about what speech to publish and how, as the Supreme Court confirmed in *Moody v. NetChoice*, 603 U.S. 707 (2024). To avoid *Moody*, Plaintiffs say Internet-Defendants presented Gendron with content *he* wanted to see, not content they chose. Factually, this argument cannot be squared with the Complaints; legally, nothing in the First Amendment allows a publisher to be held liable for the content of protected speech it recommends merely because the recommendation engages or interests someone else.

Third, this Court also can affirm because Plaintiffs fail to plead multiple essential elements of their claims under New York law.

All of Plaintiffs' claims fail because, as a matter of law, Internet-Defendants owe no duty of care to third-party non-users of their services. For decades, and in the context of numerous types of media, courts have declined to impose a duty on publishers to protect third parties from acts of violence committed by people who consumed media they disseminated. Those precedents foreclose doing so here. As to Plaintiffs' negligence claims, Internet-Defendants had no special relationship of control over Gendron, as is required to impose liability for failing to prevent him from committing intentional crimes. As to strict product liability, non-users of a product can bring such claims only when their injuries result directly from someone's use of a defective product—not, as here, from the intentional, wrongful conduct of someone who previously used it.

Next, it is clear from the pleadings that Plaintiffs' claims fail for lack of proximate causation. The already-attenuated causal chain between (a) Internet-Defendants publishing third-party content and (b) Plaintiffs' tragic injuries was broken as a matter of law by the

extraordinary intervening event of Gendron's carefully planned, cold-blooded murders. Courts have repeatedly recognized that treating publishers as having caused every act an individual takes after viewing content on their services would destroy any notion of proximity and generate limitless liability. And that problem would become even more acute if the Court accepted the *Salter* Plaintiffs' invitation to ignore the Complaints and re-construe their claims as arising solely from allegations that Gendron was addicted to Internet-Defendants' services—such that the content he viewed is irrelevant. As the Fourth Department recognized, that is not a viable theory of causation.

Finally, Plaintiffs' product-liability claims fail because the law of product liability does not govern the dissemination of speech or the individualized, intangible services that Plaintiffs target. This Court should reject Plaintiffs' attempt to extend the strict-liability regime of products law to the realm of publishing ideas and information, where it has never applied and does not belong.

Plaintiffs repeatedly emphasize the early stage of this litigation. But there is nothing unusual or unfair about resolving claims on the pleadings when, taking the allegations as true, the claims fail as a

matter of law. This, in fact, is exactly "how motions to dismiss work" (SalterBr.1), and the sheer length of the Complaints (PattersonBr.2) does not mean they state a viable claim. Plaintiffs would have no claim if they had sued the third parties whose writings allegedly radicalized or motivated Gendron. The result is no different merely because Plaintiffs instead sued the online services who published those third-party writings. No discovery is needed to see why this is so; indeed, the First Amendment and Section 230 require early resolution to avoid the chilling effect that prolonged litigation necessarily has on speech.

QUESTIONS PRESENTED

1. Did the Fourth Department correctly hold that Section 230 precludes Plaintiffs' tort claims because they seek to hold Internet-Defendants liable for publishing, arranging, and displaying such user content? *Yes.*

2. Did the Fourth Department correctly hold that the First Amendment protects online services from liability for the speech they disseminate and present to users? *Yes.*

3. Do Plaintiffs fail to plead that Internet-Defendants owed them, as members of the general public, a duty to protect them from the

intentional off-line criminal conduct of users of Internet-Defendants' services? *Yes.*

4. Do Plaintiffs fail to plead that Internet-Defendants' conduct in publishing third-party content to the internet proximately caused their injury as a matter of law? *Yes.*

5. Do Plaintiffs fail to state a product-liability cause of action based on the allegation that an online service was defective because of the content of information distributed using the service? *Yes.*

STATEMENT OF THE CASE

A. Gendron plans and commits a hate crime.

On May 14, 2022, 18-year-old Payton Gendron perpetrated a racially motivated attack at Tops Friendly Market in Buffalo, murdering ten people and wounding many others. R.129(¶¶1-2); R.2664(¶1); R.5027(¶1); R.6115(¶¶1-2).[2] Gendron spent "months" in planning. R.140(¶40); *see* R.2702(¶166); R.5038(¶55); R.6152(¶164). He painstakingly researched firearms, ammunition, and body armor. R.140(¶41); R.217(¶¶391-92); R.2724-25(¶¶243-46, 249); R.5045-51(¶¶81-103); R.6153-58(¶¶165-87). He twice drove to Tops—over 200

[2] Because the factual allegations in all four cases are substantially similar, subsequent sections of this brief cite only illustrative allegations.

miles away—to canvass the store. R.129(¶2); R.140(¶40); R.2664(¶1); R.2702-03(¶167). And on the day of the shooting, Gendron livestreamed his attack and posted links to his 700-page diary and "manifesto" purporting "to justify his violence." R.217(¶¶390-93); *see* R.141(¶45); R.2690-91(¶¶126-28); R.5043(¶77 n.4); R.6151(¶161 n.12).

Gendron's writings explained his motive: He believed in white replacement theory, a "conspiracy theory that posits … a deliberate effort by 'elites' to replace the white population of Europe and North America with non-white immigrants." R.2695-96(¶145); *see* R.155(¶91); R.5043-44(¶¶76-77); R.6151(¶¶160-61). Gendron "decide[d] to carry out the attack … [t]o 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." R.154(¶85); *see* R.130(¶4); R.2664-65(¶¶3-4).

Plaintiffs allege that Gendron's motivation sprang from "racist, antisemitic, and white supremacist propaganda" that third parties posted online. R.129-31(¶¶3-4, 10); R.172-74(¶¶171-78); *see* R.2664-65(¶3); R.2720(¶¶221-25); R.2763(¶¶409-10); R.5043-45(¶¶76-77, 80); R.6151-52(¶¶160-61, 164). According to Plaintiffs, racists spread "white supremacist and white nationalist group imagery, content, and memes"

"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." R.131(¶10); R.157(¶¶100-01); R.215(¶¶384-87); R.2713-14(¶¶204-06); *see* R.2749-50(¶¶375-76); R.6214(¶401). Gendron allegedly embraced these theories, drawing inspiration from other mass shooters, including "videos of racist massacres." R.131(¶11); R.175(¶180); *see* R.2704(¶¶173-74); R.2723-24(¶241); R.5092(¶244); R.6197(¶328).

B. Plaintiffs allege Internet-Defendants caused Gendron's crimes by making third-party content available to him.

Internet-Defendants operate online services that host user-created content such as text, photos, video, and livestreaming. *E.g.*, R.183(¶¶228-29). These services allow users "to engage in a wide array of protected First Amendment activity on topics 'as diverse as human thought.'" *Packingham v. North Carolina*, 582 U.S. 98, 105 (2017).

Following Gendron's attack, four groups of Plaintiffs sued Internet-Defendants; the website 4chan, an online forum that submitted its own briefs on appeal; Gendron's parents; and companies from which Gendron purchased weapons and gear and their employees.

As to Internet-Defendants, Plaintiffs asserted claims for product liability (under theories of design defect and failure to warn), negligence, unjust enrichment, invasion of privacy, and public nuisance. As discussed in detail below (at 17-22), their theories center on online content that, they allege, inspired Gendron to act. Plaintiffs' claims are premised on the particular content—indeed the specific ideology and factual information—that Gendron allegedly absorbed from the third-party content displayed on Internet-Defendants' services.[3] Plaintiffs do not allege Internet-Defendants *created* that content; they acknowledge that "white supremacists" did. R.131(¶10); R.157(¶100); *see* R.2713-14(¶¶204-06); R.5043-45(¶¶76-77, 80); R.6151-52(¶¶160-61, 164). And Plaintiffs expressly premise their tort theories on Internet-Defendants' alleged dissemination of content. *Infra* § I.A.1 (discussing each claim).

C. The Fourth Department holds that Plaintiffs' claims are barred for three reasons.

Internet-Defendants filed motions to dismiss each action, which the trial court denied.

[3] Gendron allegedly viewed the most extreme content on 4chan (not one of Internet-Defendants), where he interacted with "hate groups and racist[] conspiracy mongers." R.173-74(¶175); *see* R.2722(¶238); R.5104(¶287); R.5110-11(¶¶316-21); R.6214-15(¶¶399-404).

The Fourth Department reversed in full. First, it held that Section 230 bars all of Plaintiffs' claims. It rejected Plaintiffs' argument that Section 230 does not apply because they seek to hold Internet-Defendants "liable as product designers, not as publishers of third-party content." R.6616. On the contrary, "the complaints, from beginning to end, explicitly seek to hold [Internet-Defendants] liable for the racist and violent content displayed to the shooter." R.6622. The court explained that Plaintiffs' claims are not "based merely on the shooter's [alleged] addiction" to the services, or on content-neutral design features; they "rest[] on the premise that the" services "were defectively designed because they failed to filter, prioritize, or label content in a manner that would have prevented the shooter's radicalization." *Id.* Such claims are "inextricably intertwined with [Internet-Defendants'] role as publishers of third-party content." *Id.*

Next, the court held that Plaintiffs' claims are barred by the First Amendment. The court explained that "the complaints here allege that [Internet-Defendants] served the shooter material that *they chose* for him for the purpose of maximizing his engagement with their" services. R.6620 (emphasis added). Internet-Defendants therefore "are entitled to

First Amendment protection" for their "expressive activity" in determining what content to display. *Id.*

Finally, the court noted that, even "[i]f plaintiffs' causes of action were based merely on the shooter's addiction to [the services], which they are not, they would fail on causation grounds." R.6622. It cannot "reasonably be concluded that the allegedly addictive features of the" services, separate from the "white supremacy content," "caused the shooter to commit mass murder." R.6622-23.

Two Justices dissented. Like the trial court, they believed that Plaintiffs' assertion of product-liability claims rendered Section 230 and the First Amendment inapplicable. R.6624-25.

ARGUMENT

I. Plaintiffs' Claims Are Barred By Section 230 Of The Communications Decency Act.

The Fourth Department correctly held that Section 230 forecloses Plaintiffs' claims. As this Court explained in *Shiamili*, "Section 230 establishes that '[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' (47 U.S.C. § 230[c][1]), and it preempts any state law—including imposition of tort liability—

inconsistent with its protections (*see* 47 U.S.C. § 230[e][3])." 17 N.Y.3d at 286. Thus, a defendant is "immune from state-law liability" when (1) the defendant is a "provider … of an interactive computer service"; and (2) the plaintiff's claims treat the defendant as the "publisher or speaker" of (3) content "provided by another information content provider." *Id.*; 47 U.S.C. § 230(c)(1).[4]

Congress enacted this protection "to maintain the robust nature of Internet communication." 17 N.Y.3d at 287; *compare* SalterBr.4-5, 8 (mistakenly asserting that Section 230 was intended solely to police online expression). Congress was specifically concerned with "the threat that tort-based lawsuits"—like this one—"pose to freedom of speech" on the internet. 17 N.Y.3d at 287. Like other courts, therefore, this Court has "interpreted Section 230 immunity broadly, so as to effectuate Congress's policy choice not to deter harmful online speech through the route of imposing tort liability on companies that serve as intermediaries for other parties' potentially injurious messages." *Id.* at 288 (citation modified). The decision below was a straightforward

[4] Only the *Patterson* Plaintiffs suggest that some separate preemption analysis is required. PattersonBr.34-35. On the contrary, *Shiamili* holds that Section 230 preempts state law when its three elements are met.17 N.Y.3d at 286-87.

application of this holding, as each of Plaintiffs' claims would impose liability on Internet-Defendants "for third-party content" by treating them as "'publisher[s] or speaker[s]' of objectionable material" created by others. *Id.* at 289.

That is why the *Salter* Plaintiffs, effectively admitting the weakness of their position, now ask this Court to overrule its own precedent. SalterBr.27-29. Yet they have not remotely met the criteria for doing so, particularly in a context—statutory interpretation—where stare decisis is at its peak. Moreover, accepting Plaintiffs' invitation would render this Court a sole outlier among courts nationwide. The decision below, far from being "extraordinary," SalterBr.1, reflects a "national consensus," *Shiamili*, 17 N.Y.3d at 288. Indeed, for over "a quarter of a century," courts "address[ing] highly analogous claims by victims of terrorist violence … inflicted by actors who accessed and consumed hate material on social media sites … have been in general agreement that the text of Section 230 should be construed broadly in favor of immunity." *M.P. ex rel. Pinckney v. Meta Platforms*, 692 F. Supp. 3d 534, 537-38 (D.S.C. 2023) (citing *Force v. Facebook*, 934 F.3d 53, 64 (2d Cir. 2019)), *aff'd*, 127 F.4th 516 (4th Cir. 2025).

Under these established principles, Section 230 bars Plaintiffs' claims because they would impermissibly treat Internet-Defendants as publishers of content created by others. Each claim is explicitly predicated on content that allegedly inspired Gendron's acts. § I.A.

Plaintiffs argue that Section 230 does not apply because they brought product-liability claims. The Fourth Department correctly recognized that there is no product-liability exception to Section 230. § I.B.1. Plaintiffs' further argument that they are pursuing a "content neutral" theory (that Gendron's addiction was caused by "design features" of Internet-Defendants' services) ignores the Complaints' actual allegations, which make clear that the purported "product defects" concern how Internet-Defendants publish content. § I.B.2.

Internet-Defendants also meet the remaining elements of Section 230: They are providers of interactive computer services, and they did not provide the content at issue. § I.C.

Finally, this Court should decline the *Salter* Plaintiffs' invitation to overturn *Shiamili* and to adopt a reading of Section 230 that no court ever has accepted. § I.D.

A. Plaintiffs' claims impermissibly treat Internet-Defendants as publishers of third-party content.

Plaintiffs focus on the second prong of the Section 230 test—whether the claims treat Internet-Defendants as publishers or speakers of third-party content. A claim impermissibly does so when "the duty underlying [the] cause of action … 'derives from the defendant's status or conduct as a publisher or speaker.'" *Estate of Bride v. Yolo Techs.*, 112 F.4th 1168, 1176 (9th Cir. 2024). As *Shiamili* explains, Section 230 bars "lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content." 17 N.Y.3d at 289. "Notably, the statute does not differentiate between 'neutral' and selective publishers" and thus protects publishers who take an "aggressive role" in promoting content. *Id*.

Plaintiffs' Complaints treat Internet-Defendants as the publishers of the third-party content upon which their claims are premised. As the Fourth Department explained, the allegations in the Complaints—as opposed to how counsel recharacterize them on appeal—are premised from start to finish on third-party content that allegedly radicalized Gendron. R.6622. In short, Plaintiffs would hold Internet-Defendants

liable for "disseminating 'improper content'"—the core publishing activity that Section 230 protects. *M.P.*, 127 F.3d at 525; *accord Force*, 934 F.3d at 67 ("actively bringing Hamas' message to interested parties" "falls within the heartland of what it means to be the 'publisher' of information"); *Klayman v. Zuckerberg*, 753 F.3d 1354, 1359 (D.C. Cir. 2014) ("the very essence of publishing is making the decision whether to print or retract a given piece of content").

1. Plaintiffs' Complaints seek to hold Internet-Defendants liable for the content they published.

As noted, some Plaintiffs seek to avoid Section 230 by denying that their "allegations … implicate content at all," SalterBr.30-31, and others seek to minimize their content-based allegations as being merely "in the causal chain" leading to their injuries, PattersonBr.40. It therefore is critical to begin by cataloguing Plaintiffs' actual allegations, which belie these assertions. The Complaints repeatedly and pervasively allege that Gendron committed his crime because of the specific content published to him, and they assert that Internet-Defendants should be held liable because they allegedly published that material in ways that brought this content to Gendron's attention.

As a threshold matter, Plaintiffs frame their case as a whole by

alleging that "Gendron was motivated to commit his heinous crime by racist, antisemitic, and white supremacist propaganda recommended and fed to him by" unspecified Internet-Defendants, R.130(¶3), and that he was "radicalized by overexposure to fringe, racist ideologies," R.2664-65(¶3); *accord* R.5043(¶75) (alleging Internet-Defendants "systematically promot[ed] extreme and harmful content" that gave Gendron "the mindset, knowledge, and motivation he needed to commit his racist attack"); R.173(¶171) (Internet-Defendants "directed Gendron to progressively more extreme" content); *see also* R.131(¶10); R.158(¶103); R.162(¶126); R.173(¶173); R.174(¶177); R.204(¶323); R.222(¶415); R.2696(¶148); R.2721(¶233); R.5043(¶75); R.5043-44(¶77); R.5103-04(¶286); R.6151(¶161); R.6208(¶370); R.2753(¶¶385-86); R.2763(¶406); R.2766(¶423); R.2775(¶¶456-57).

This content-based theory explicitly underlies each of Plaintiffs' claims:

Product liability (Design Defect). Plaintiffs allege that Internet-Defendants' services are defectively designed because they "direct[]" minors to "racist, antisemitic, and violence provoking content" without adequate safeguards. R.242-47(¶¶534-60); *see, e.g.*, R.168-

69(¶¶153-55); R.249-50(¶¶573-82); R.2795-99(¶¶552-69); R.2806-08(¶¶605-20); R.5133-37(¶¶434-53); R5140-42 (¶¶473-89); R.6239-44(¶¶547-66); R.6246-49(¶¶586-602). Their theory is that Internet-Defendants' services are "defective" and "dangerous" *precisely because of* the content of the third-party speech that Internet-Defendants allegedly showed Gendron. *See* R.5103(¶¶284-86) (alleging harm from allowing "extreme videos" to "remain[] on [Internet-Defendants' platforms]" and not removing them).

There also is nothing content-agnostic about the product-liability allegations concerning certain Internet-Defendants' alleged use of algorithms. To the contrary, the Complaints allege that Internet-Defendants' algorithms are "defective" because of the objectionable content they recommend: According to Plaintiffs, the algorithms are "design[ed]" to direct users to "hate speech" and "hateful and violent messaging." R.2803(¶588f-g); *see also* R.199(¶297) (algorithms are "successful in getting users to view recommended content"); R.202-03(¶¶315-22); R.2717-19(¶¶214-18); R.5086-88(¶¶220-26); R.5098-99(¶¶268-271); R.5139(¶¶466-67); R.6191-92(¶¶304-07); R.6203-

05(¶¶352-55); R.6245(¶¶579-80).[5]

Plaintiffs further allege that, as "a foreseeable result" of their "defective" design, the algorithms directed Gendron to "progressively more extreme" content, where third parties "promoted racism, antisemitism, and gun violence." R.172-74(¶¶171-76); *see* R.2721-23(¶¶229-39); R.5091(¶¶239-43); R.5102-04(¶¶283-86, 288-91); R.5106-09(¶¶298-302, 309); R.6195-97(¶¶316-29); R.6207-08(¶¶367-69, 371-72); R.6210-13(¶¶381-82, 385-86, 392). These algorithms allegedly "addicted" Gendron to racist "conspiracy theories" and "material regarding gun violence." R.5074(¶181); *see* R.244(¶546); R.2796(¶558); R.5042-43(¶¶73-75); R.6150-51(¶¶157-59). That material then allegedly radicalized Gendron into committing murder. R.129-30(¶¶3-4); R.2664-65(¶¶2-3); R.2723-24(¶241); R.5028(¶7); R.6115-16(¶5).

Product Liability (Failure to Warn). This claim similarly characterizes Internet-Defendants as publishers of third-party content. Plaintiffs allege Internet-Defendants "failed to warn minor users or parents that their children would be inundated with racist, antisemitic and violent material." R.248(¶564); *see also, e.g.*, R.250-52(¶¶584-94);

[5] Moreover, Plaintiffs do not adequately allege that all Internet-Defendants' services used such algorithms. *See, e.g.*, Discord Response Br.

R.2802-04(¶¶583-93); R.2808-10(¶¶622-34); R.5137-40 (¶¶454-72); R.5142-44(¶¶490-502); R.6244-46(¶¶567-85); R.6249-51(¶¶603-15).

Negligence. Plaintiffs' negligence claims allege that Internet-Defendants violated "a duty to protect young users engaging on their platform(s) from exposure to *extremist and racist views*." R.2806(¶609) (emphasis added); *see* R.5140(¶478); R.2808(¶617).

Unjust Enrichment. Plaintiffs' unjust enrichment claims seek to recover proceeds from the tortious publication of third-party content. Plaintiffs allege that certain Internet-Defendants financially "benefited from the time Payton Gendron spent on their services viewing racist, antisemitic, and violence promoting material," and from the attack video's circulation. R.252(¶598); R.255(¶¶616-20); *see* R.2810-11(¶¶635-46); R.5147(¶¶516-22); R.6255-56(¶¶643-49). Specifically, Plaintiffs say, "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." R.252(¶597); *accord* R.252(¶¶596, 599); R.5147(¶518); R.2811(¶637).

Invasion of Privacy. Certain Plaintiffs allege that some Internet-Defendants' failed to prevent the attack video from being

posted, or to remove it quickly enough. R.254(¶¶607-14); R.256(¶¶625-28); R.2804-05(¶¶594-603); R.2812-13(¶¶647-55). Again, this claim focuses on what content was published or removed.

Public Nuisance. Finally, the *Salter* Plaintiffs allege that certain Internet-Defendants created a public nuisance by exposing Gendron to "extremist and racist content," thereby "creat[ing] a condition that permanently injured Plaintiffs, causing lasting interference with their health, safety, [and] welfare." R.2799(¶572); R.2800(¶575); R.5144-46(¶¶503-15); R.6253-55(¶¶630-42).

2. Plaintiffs' efforts to rewrite their Complaints fail both factually and legally.

This catalogue of Plaintiffs' actual allegations forecloses any suggestion that the third-party content that was published is irrelevant to, or merely a but-for cause of, Plaintiffs' claims. SalterBr.30; PattersonBr.40. As the Fourth Department explained, R.6618, it is clear that each claim would hold Internet-Defendants liable for "deciding … to publish" and promote specific third-party content, *Shiamili*, 17 N.Y.3d at 289. This is heartland publisher liability—and exactly what Section 230 prohibits, as every court to have considered similar allegations has held. *Doe 1 v. Meta Platforms*, 174 F.4th 1159, 1170 (9th

Cir. 2026); *M.P.*, 127 F.4th at 525; *Force*, 934 F.3d at 65; *Dyroff v. Ultimate Software Grp.*, 934 F.3d 1093, 1097-98 (9th Cir. 2019).

Indeed, the Fourth Circuit in *M.P.* squarely rejected the very argument that Plaintiffs make here: that claims seeking to hold online services liable for design choices that allegedly "facilitate radicalization and compulsive use" do not treat defendants as publishers. 127 F.4th at 524. At issue there, just like here, were claims that an online service "radicalized" a teenager into racially motivated killings. *Id.* at 521. The court explained that such claims (including product-liability claims) do not treat publication as a mere "but-for" cause of the injury, but are "inextricably intertwined with Facebook's role as a publisher of third-party content." *Id.* at 525. That is because there, again like here, the plaintiffs sought to hold Facebook "liable for disseminating 'improper content.'" *Id.* There was no way to show that the services were "designed in a manner that was unreasonably dangerous … without also demonstrating that … [the services] prioritize[d] the dissemination of one type of content over another." *Id.*

This case is indistinguishable. As in *M.P.*, Plaintiffs' Complaints take "issue with the fact that [Internet-Defendants] allow[] racist,

harmful content to appear on [their] platform[s] and direct[] that content to likely receptive users." *Id.* This is not a theory that publishing is incidental, or liability is content-agnostic—Plaintiffs' claims are explicitly premised on the particular third-party content that Internet-Defendants published. To avoid liability, Defendants would have had to remove content or disseminate different material.

The cases highlighted by Plaintiffs—where third-party content was merely somewhere in the but-for causal chain—reflect the unremarkable principle that online publishers may owe duties that do not arise from publishing activity. In *Erie Insurance v. Amazon.com*, the plaintiff sued Amazon for selling a headlamp containing an allegedly defective battery. 925 F.3d 135, 137 (4th Cir. 2019), *cited at* PattersonBr.41. Although Amazon published third-party speech in marketing the lamp, "the plaintiff's claim was not based on 'the content of [that] speech,'" but instead on Amazon's duties as the seller of a physical product. *M.P.*, 127 F.4th at 525 (distinguishing *Erie Insurance*). Publishers may also owe legal duties not to breach binding promises. *See Barnes v. Yahoo!*, 570 F.3d 1096, 1109 (9th Cir. 2009) (promissory estoppel), *cited at* PattersonBr.36-37; *Calise v. Meta*

Platforms, 103 F.4th 732, 743 (9th Cir. 2024) (breach of contract), *cited at* PattersonBr.39; SalterBr.42.[6]

This case is entirely different. Plaintiffs do not claim Internet-Defendants owed them any contractual duty or seek to hold Internet-Defendants liable as sellers of defective third-party goods. Rather, Plaintiffs assert that Internet-Defendants breached a duty to them by selecting and displaying to others content that (Plaintiffs believe) should not have been displayed. Such "decisions about what third-party content is disseminated are quintessentially the province of a publisher, triggering § 230 immunity." *Doe 1 v. Twitter*, 148 F.4th 635, 645-46 (9th Cir. 2025); *see supra* 16-22.

B. Plaintiffs cannot circumvent Section 230 by asserting a product-liability theory that online services addicted Gendron.

Plaintiffs concede that Section 230 precludes holding Internet-Defendants "liable merely because the shooter was motivated by racist and violent third-party content [they] published." R.6616; *see* SalterBr.31; PattersonBr.41. But Plaintiffs seek to accomplish the same thing by suing Internet-Defendants "as product designers" of allegedly

[6] Even further afield is *Webber v. Armslist*, which did not address whether Section 230 applied. 70 F.4th 945, 967 n.8 (7th Cir. 2023), *cited at* PattersonBr.38-39.

addictive products. R.6616 (summarizing Plaintiffs' arguments); *see, e.g.*, SalterBr.38-39. Every court to consider a case like this has rejected such claims as an end-run around Section 230. Instead, they correctly have held, Section 230 applies when the "features" challenged as "product defects" are methods of publishing content or the claims turn on the nature of the content that was published. § B.1. And here, the "features" that Plaintiffs attack as addictive or otherwise defective are at the heart of publishing the content at issue. § B.2.

1. Section 230 precludes product-liability claims aimed at the publication of third-party content.

Section 230 does not turn "on the name given to a cause of action but instead on whether a plaintiff's 'theory of liability would treat a defendant as a publisher or speaker of third-party content.'" R.6618 (quoting *Calise*, 103 F.4th at 740); *accord Barnes*, 570 F.3d at 1101-02; *Henderson v. Source for Pub. Data*, 53 F.4th 110, 124 (4th Cir. 2022) (court applying Section 230 must "look beyond the claim's formal elements").

For that reason, courts repeatedly have rejected efforts to "plead around Section 230 immunity by asserting product liability claims." *M.P.*, 692 F. Supp. 3d at 538. As the numerous cases cited in the

footnote make clear, Section 230 bars "claims alleging that defectively designed internet products allowed for transmission of harmful third-party communications." *In re Facebook*, 625 S.W.3d 80, 94 (Tex. 2021).[7] Such claims are barred unless the allegedly defective feature (or feature purportedly requiring a warning) is "independent of [the defendant's] role as a facilitator and publisher of third-party content." *Doe v. Grindr*, 128 F.4th 1148, 1153 (9th Cir. 2025); *accord Herrick v. Grindr*, 765 F. App'x 586, 590-91 (2d Cir. 2019); *Bride*, 112 F.4th at 1179-80.

Thus, the fact that Plaintiffs "explicitly characterize [Internet-Defendants] as manufacturers" (PattersonBr.43) is immaterial. Plaintiffs likewise are incorrect that, "in adjudicating a motion to dismiss," the Court must accept their "disclaim[ers]" of any content-

[7] *See also, e.g.*, *Doe 1 v. Meta*, 174 F.4th at 1168 ("Calling Facebook a 'product' rather than a publication platform only obscures the point that Meta 'published user-generated speech that was harmful' to Plaintiffs."); *Bride*, 112 F.4th at 1179-80 (product-liability claims that online service's design "made it uniquely dangerous to minors" barred by Section 230; they are "attempt[s] to hold [the online service] responsible for users' speech or [its] decision to publish it"); *Herrick v. Grindr*, 765 F. App'x 586, 590 (2d Cir. 2019) (rejecting "manufacturing and design defect claims" that would impose liability for "failure to combat or remove offensive third-party content"); *Lama v. Meta Platforms*, 732 F. Supp. 3d 214, 222 (N.D.N.Y. 2024) (product-defect claims "treat Defendants as the publishers" of third-party information where the alleged design flaws were "allow[ing] users to post [harmful] content"); *Daniel v. Armslist*, 926 N.W.2d 710, 725-27 (Wis. 2019) (barring negligence, emotional distress, and public nuisance claims arising from mass shooting); *Wozniak v. YouTube*, 100 Cal. App. 5th 893, 912-15 (2024), *as modified on denial of reh'g* (Apr. 2, 2024) (negligent design and failure-to-warn claims "predicated" on third-party videos treated YouTube as a publisher).

based theory. PattersonBr.14-15. Section 230 requires courts to look beyond labels to the substance of the claims. New York law similarly provides that Plaintiffs' "allegations consisting of bare legal conclusions" need not be "assumed to be true" on a CPLR § 3211 motion. *Simkin v. Blank*, 19 N.Y.3d 46, 52 (2012).[8]

And here, far from targeting "duties that have nothing to do with publisher liability," SalterBr.23, Plaintiffs' product-liability claims are "inextricably intertwined" with third-party content that Internet-Defendants allegedly published. *M.P.*, 127 F.4th at 525. Plaintiffs expressly allege that Internet-Defendants' services were defectively designed because of the content they published, and that content's effect on Gendron. *Supra* 18-21. *Lemmon v. Snap*, discussed at SalterBr.39-41; PattersonBr.41-43, only confirms that Plaintiffs' claims are barred. That case involved a "speed filter" created by the defendant that indicated to the user how fast they were travelling and that allegedly

[8] Plaintiffs assert in passing that discovery is required before resolving Section 230. PattersonBr.41, SalterBr.24. On the contrary, Section 230 is a threshold issue requiring resolution "at the earliest possible stage." *Nemet Chevrolet v. Consumeraffairs.com*, 591 F.3d 250, 255 (4th Cir. 2009); *Word of God Fellowship v. Vimeo*, 205 A.D.3d 23, 29 (1st Dep't 2022); *Commonwealth v. Meta Platforms*, 277 N.E.3d 166, 176 n.11 (Mass. 2026); (collecting cases). *Shiamili* itself was resolved on CPLR § 3211(a)(7) motion. That is because the text of Section 230 "conveys an intent to shield Internet intermediaries from the burdens associated with defending against [barred] state-law claims." *Hassell v. Bird*, 420 P.3d 776, 791 (Cal. 2018).

induced users to drive recklessly. 995 F.3d 1085, 1088-89 (9th Cir. 2021). The key to *Lemmon* was that the plaintiffs' "claim did 'not depend on what messages, if any, a Snapchat user employing the Speed Filter actually sends.'" *Bride*, 112 F.4th at 1180. Indeed, the Ninth Circuit made clear that those plaintiffs "would not be permitted under § 230(c)(1) to fault Snap for publishing other [third-party] Snapchat-user content (*e.g.*, snaps of friends speeding dangerously) that may have incentivized … dangerous behavior." *Lemmon*, 995 F.3d at 1093 n.4. That type of content-based claim is precisely what the Complaints allege here.

2. Plaintiffs' allegations target features of Internet-Defendants' services that are ways to publish user content.

Plaintiffs contend that their product-liability claims escape Section 230 because they concern the "underlying design, programming, and engineering of [Defendants'] platforms," R.241-42(¶¶530-33); *see* SalterBr.33, 44; PattersonBr.43. In particular, they say, certain Internet-Defendants' services use algorithms that are "addictive" and lack effective control mechanisms and warnings. But the features that Plaintiffs challenge are simply "tools meant to facilitate the

communication and content of others," which fall squarely within Section 230. *Dyroff*, 934 F.3d at 1098.

a. Allegedly addictive recommendation algorithms

In arguing that Internet-Defendants' services are defectively designed, Plaintiffs focus on some Internet-Defendants' use of algorithms that allegedly displayed to Gendron "racist, antisemitic, and violence-promoting" content created by other users. R.221-22(¶¶414-15); *supra* 19-20. Plaintiffs say these algorithms do not implicate Section 230 because they involve no "editorial judgment" and do not "accomplish a traditional publishing function" but instead select and promote content "to maximize user engagement" to the point of "addiction." PattersonBr.17; *see also* SalterBr.47. These arguments ignore Section 230's text and contravene established law.

Section 230 broadly protects against liability for "any information provided by another information content provider"—it does not invite an inquiry into the provider's criteria for selecting or prioritizing such third-party information. That is because Congress "made a … policy choice by providing immunity even where the interactive service provider has an *active, even aggressive role* in making available content

prepared by others." *Shiamili*, 17 N.Y.3d at 289 (emphasis added). Section 230 protects "editorial choices" about "where … content should reside and to whom it should be shown"—including whether to "target the third-party content displayed to users." *Force*, 934 F.3d at 66-67; *accord M.P.*, 127 F.4th at 526 ("acts of arranging and sorting content are integral to the function of publishing"); *Doe 1 v. Twitter*, 148 F.4th at 646 ("claim treated the website as a publisher of third-party content, even if the website's tools helped disseminate and promote that content"); *Dyroff*, 934 F.3d at 1098 (defendant "acting as a publisher" by "recommending user groups and sending email notifications"). Indeed, in defining the kinds of providers that are protected by Section 230, the statute expressly covers "tools" that "filter," "pick," "choose," "digest," and "organize" content. 47 U.S.C. § 230(f)(4)(A)-(C).

That is what algorithms do. They facilitate online services' ability to "select[] and rank[]" content for users to view, based on a variety of factors, including "on a user's expressed interests and past activities." *Moody*, 603 U.S. at 734-35. Courts therefore have repeatedly held that an online service acts as a publisher of third-party information under Section 230 "when it uses tools such as algorithms that are designed to

match that information with a consumer's interests." *Force*, 934 F.3d at 66; *accord Doe 1 v. Meta*, 174 F.4th at 1170 ("recommend[ing] content to users to maximize engagement … is publishing conduct"); *M.P.,* 127 F.4th at 526; *Gonzalez v. Google*, 2 F.4th 871, 896 (9th Cir. 2021), *vacated on other grounds*, 598 U.S. 617 (2023); *Dyroff*, 934 F.3d at 1098; *Marshall's Locksmith Serv. v. Google*, 925 F.3d 1263, 1270-71 (D.C. Cir. 2019).[9] "[C]ontent-recommendation algorithms are simply tools used …to accomplish a traditional publishing function" at "the scale at which [Internet-Defendants] operate." R.6621 (citation modified).

The Fourth Circuit in *M.P.* rejected a similar effort to evade Section 230 with allegations of "defective" algorithms. In *M.P.*, as here, the plaintiffs alleged that "to maximize viewer engagement, Facebook, through its content-sorting algorithm, promotes" "divisive" content and that "'repeated exposure to [such] inflammatory [content] result[s] in

[9] The only outlier is *Anderson v. TikTok*, 116 F.4th 180 (3d Cir. 2024). Plaintiffs do not rely on it for this proposition, *cf.* PattersonBr.46 (citing *Anderson* in passing), with good reason. As the Fourth Department explained, *Anderson* misapprehends the relationship between Section 230 and the First Amendment, which "are not mutually exclusive." R.6621. The fact that a decision to publish third-party content receives First Amendment protection, *see infra* 53, does not transform the third-party content into the publisher's own. R.6619-20. The Supreme Court's decision in *Moody* (which did not address Section 230) did not suggest otherwise. Of course, even if *Anderson's* theory were correct, all it would mean here is that Internet-Defendants prevail under the First Amendment. *See infra* 44 n.18.

emotional desensitization" and "radicalization." 127 F.4th at 521. They argued that these claims were not barred by Section 230 because they "centered on Facebook's 'own design.'" *Id.* at 524. The Fourth Circuit rejected that argument for the same reasons the Appellate Division did in this case: In challenging Facebook's algorithms, the plaintiff was challenging "acts of arranging and sorting content [that] are integral to the function of publishing." *Id.* at 526.

As in *M.P.*, Plaintiffs' allegations about algorithms are "explicitly" content-based: They "seek to hold the [Internet-Defendants] liable for the racist and violent content displayed to the shooter." R.6622; *supra* 19-20. The Complaints allege that "it is feasible … to design recommendation algorithms that do not affirmatively direct teenage users to racist, antisemitic, and violent *content*." R.201(¶¶307-08) (emphasis added). And they assert that a "safer design" would not direct users "to unwanted and escalating racist, antisemitic, and violence-provoking *content*." R.242(¶535) (emphasis added); R.5134(¶444); *see also* R.5101(¶275); R.6206(¶359); R.2796(¶561).

Plaintiffs' appellate briefs confirm their real objection: that Internet-Defendants' "algorithms are prone to recommending harmful

content." PattersonBr.8; PattersonBr.9 ("addictive features … facilitate the spread of racist, antisemitic, and terrorist propaganda" posing a "significant radicalization risk"); SalterBr.47 ("the result of that algorithm turns out to be that it spews violent, racist content"). Because those allegations seek to hold Internet-Defendants liable for publishing material created and posted by others, they are barred by Section 230.

The result would be no different even if, as Plaintiffs contend, the use of these publishing tools is engaging to the point of "addiction." *E.g.*, SalterBr.23, 30-31, 32-34; PattersonBr.4, 16.[10] Publishing decisions do not cease to be publishing decisions simply because they have "a goal [of] increasing consumer engagement." *M.P.*, 127 F.4th at 526.[11] Just as "newspaper editors choose what articles merit inclusion on their front

[10] While focusing on algorithms, Plaintiffs also allege that certain Internet-Defendants' services contain other addictive features, such as the ability to "like" (or "upvote" or "downvote") content; make content private; receive a "karma" score based on the user's participation; receive notifications when content is posted, and post content that disappears after some time. *E.g.*, R.183-84(¶¶229-32); R.187 (¶245); R.197(¶¶286-87); R.212(¶368); R.213(¶372); R.215(¶¶382-83); R.218(¶397); R.219(¶404); R.2717(¶215); R.2747(¶370); R.2771(¶439); R.2773-75(¶¶450-55); R.2779-80(¶471); R.5087(¶222); R.6192(¶306). But Plaintiffs do not allege that Gendron used those features or that they have anything to do with his attack.

[11] The *Salter* Plaintiffs argue (Br.47) that *M.P.* is distinguishable because it did not involve alleged addiction. In fact, the allegations in *M.P.* included the identical theory that the algorithm at issue radicalized the shooter by "addicting him to the content it delivers." Complaint ¶61, *M.P. ex rel. Pinckney v. Meta Platforms*, No. 2:22-cv-3830-RMG (D.S.C. Nov. 2, 2022), ECF No. 1; *id.* ¶¶76-77, 111, 115, 172.

page" with the "goal [of] increasing consumer engagement," the use of "an algorithm to achieve the same result … does not change the underlying nature of the act that it is performing": publishing. *Id.* As the Second Circuit observed, "it would turn Section 230(c)(1) upside down to hold that Congress intended that when publishers of third-party content become especially adept at performing the functions of publishers, they are no longer immunized from civil liability." *Force*, 934 F.3d at 67.

Finally, Plaintiffs cite cases that raised a very different "addiction" theory (e.g., Patterson Br.23)—namely, that "psychological harm allegedly caused *to users* not, as here, harm caused *by* addicted users *to third parties*." R.6623 (decision below; emphasis added). But even in assessing such a theory, courts have not allowed plaintiffs to assert claims against online services for how or what they publish.[12] Courts permit such claims to proceed only when, unlike here, "the published information itself is not the source of the harm alleged" and

[12] *E.g.*, *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d 809, 833 (N.D. Cal. 2023) ("[T]o the extent plaintiffs challenge defendants' use of algorithms to determine whether, when, and to whom to publish third-party content, Section 230 immunizes defendants."); *Arlington v. TikTok*, 2024 WL 4003712, at *9 (Cal. Super. Ct. July 19, 2024).

the claims are truly "independent of the [third-party] content" published.[13] This case is fundamentally different. Plaintiffs allege that they were injured by Gendron's addiction because it transformed him into a murderous white supremacist. *Supra* 17-20; *e.g.*, R.200(¶305); R.204(¶326) (algorithms created "addict[ion] *to* extreme content," and posed undisclosed risks of "addiction and radicalizing exposure to racist[], antisemitic, and violent content"). That theory is necessarily premised on the third-party content that Gendron viewed and it impermissibly treats Internet-Defendants as publishers of that material.[14]

b. Lack of safety measures and failure to warn

Plaintiffs also allege that Internet-Defendants' services are defective for failing to prevent Gendron from consuming harmful user-provided content. *E.g.*, R.244(¶544) ("lack of parental controls"). They further claim Internet-Defendants failed to warn "minor users or

[13] *Commonwealth*, 277 N.E.3d at 187; *id.* at 188 (distinguishing that case from *Force*, 934 F.3d 53, and *Dyroff*, 934 F.3d 1093). As it is irrelevant to the content-based claims here, this brief does not address whether those courts otherwise erred in permitting those claims to proceed.

[14] As discussed below, even if it were Plaintiffs' theory that Gendron had a "content-neutral" addiction to the services—which, again, is decidedly not the theory alleged in the Complaints—it would fail for lack of proximate causation. *Infra* § III.B.2.

parents" about objectionable third-party content on their services. R.247-49(¶¶561-71); *see* R.250-52(¶¶583-94).

Plaintiffs say that these claims would require Internet-Defendants only to adopt "safety measures," PattersonBr.31, not to alter or remove content, PattersonBr43, SalterBr.42. But here too, the Complaints directly target whether and how content is published—for instance, seeking to "prevent" the type of content that Gendron viewed or posted "from being uploaded" (R.256(¶627)), to "restrict[] … the length" of use or "end a user's session or feed" (R.5135(¶445)), or to impose a "time delay" (R.2770(¶436)). The Complaints repeatedly allege that Internet-Defendants are liable for failing to limit access to objectionable third-party content. *E.g.*, R.188(¶249) (failure to "protect te[e]ns from disturbing content"); R.2796(¶561) (failure to "limit[] [young users'] overexposure to extremist, racist, antisemitic, violent, and hate oriented views"); R.201(¶¶308-10) ("fail[ure] to include design alternations that would protect young users from malign content"); R.243(¶539).

In short, the "safety measures" that Plaintiffs demand are changes to how and what Internet-Defendants publish. Courts have consistently "rejected claims that attempt to hold website operators liable for failing

to provide sufficient protections to users from harmful content." *Jane Doe No. 1 v. Backpage.com*, 817 F.3d 12, 21 (1st Cir. 2016); *see Grindr*, 128 F.4th at 1152 (Section 230 bars claims alleging that "safer alternative designs were feasible."); *Doe v. MySpace,* 528 F.3d 413, 419-20 (5th Cir. 2008) (alleging a "failure to implement basic safety measures" is "merely another way of claiming that [the defendant] was liable for publishing the communications" between users).[15]

Plaintiffs' failure-to-warn claims suffer from the same flaw. *E.g.*, R.248(¶564); *see supra* 20-21. The *Salter* Plaintiffs contend that these claims "just require the companies to provide warnings," not "edit or remove" content. SalterBr.46. But "a warning about third-party content is a form of editing, just as much as a disclaimer printed at the top of a page of classified ads in a newspaper would be." *In re Facebook*, 625 S.W.3d at 94. Indeed, Plaintiffs' theory is that the *content* is the danger and that Internet-Defendants have failed to nullify that danger by

[15] *Accord In re Facebook*, 625 S.W.3d at 94 (allegations about a "lack of safety features" would impermissibly hold the defendant "liable for its failure to combat" third-party content); *Doe II v. MySpace*, 175 Cal. App. 4th 561, 573 (2009) ("That appellants characterize their complaint as one for failure to adopt reasonable safety measures does not avoid the immunity granted by section 230."); *Wozniak*, 100 Cal. App. 5th at 912-13 (claims regarding "security protocols" are "predicated on [] third-party content"); *Nasca v. ByteDance*, 2025 WL 2163048, at *3 (N.Y. Sup. Ct. Suffolk Cty. Apr. 15, 2025) (claims regarding exposure to dangerous content).

removing it. *See supra* 20-21. That being so, "[t]he warnings Plaintiffs seek would only be necessary because of [Defendants'] allegedly inadequate policing of third-party content transmitted via its platforms." *In re Facebook*, 625 S.W.3d at 94; *accord Bride*, 112 F.4th at 1180 (a "failure to warn claim … fault[s] [the online service] for not moderating content"); *Grindr*, 128 F.4th at 1154 (Section 230 barred claim based on alleged duty to warn about the risks of child sexual exploitation on defendant's app); *Wozniak*, 100 Cal. App. 5th at 914-15 (rejecting argument that "would allow essentially every state cause of action otherwise immunized by section 230 to be pleaded as a failure to warn of such information published by a defendant").

Plaintiffs' reliance on *Doe v. Internet Brands* to defend their failure-to-warn claim is misplaced. 824 F.3d 846 (9th Cir. 2016) (*cited at* SalterBr.42-43; PattersonBr.37-38). *Internet Brands* involved an off-platform rape scheme where no content posted on the defendant's website was at issue. *Id.* at 848-49. Section 230 therefore did not apply because the plaintiff's claim was that the defendant had "failed to warn of a known conspiracy operating independent of the site's publishing function." *Bride*, 112 F.4th at 1181. The Ninth Circuit itself has rejected

reliance on *Internet Brands* in cases involving failure-to-warn claims that "essentially fault[] [the defendant] for not moderating content in some way." *Id.* at 1180; *accord Grindr*, 128 F.4th at 1154 (distinguishing *Internet Brands*; applying Section 230 to bar failure-to-warn claim). Plaintiffs' claims do just that, and they too are barred.

C. Internet-Defendants provide interactive computer services, and they did not provide the content at issue.

The first and third prongs of Section 230 also are met. *See supra* 13 (describing elements). As to the first prong, it is "undisputed" that each Internet-Defendant is a "provider" of an "interactive computer service." R.6618; *see, e.g.*, *Force*, 934 F.3d at 64; *Does 1-6 v. Reddit*, 51 F.4th 1137, 1139 (9th Cir. 2022).

Plaintiffs only briefly dispute the third prong: whether the content at issue was "provided by *another* information content provider" who was "responsible, in whole or part, for [its] creation or development." 47 U.S.C. § 230(c)(1), (f)(3) (emphasis added). That element is satisfied because the Complaints repeatedly allege that third-party users (not Internet-Defendants) created and provided the content that allegedly radicalized Gendron. *Supra* 8-9. Those allegations are dispositive: "A

Web site is generally not a 'content provider' with respect to [content] posted by third-party users." *Shiamili*, 17 N.Y.3d at 290.

Nonetheless, Plaintiffs argue that Internet-Defendants are content providers because they offer content-editing features or display third-party content in ways that render content "addictive." SalterBr.51; PattersonBr.45. The Fourth Department rejected this argument, *see* R.6619, which the *Salter* Plaintiffs did not even make below and which neither the dissent nor the trial court credited. And properly so. Interactive computer service providers do not lose the protection of Section 230 any time they do more than "simply repost[]" (PattersonBr.45) or "passively display[] content" (SalterBr.49). On the contrary, a publisher may "active[ly]" and "aggressive[ly]" make user content available—and even "augment[]" the content itself—without becoming the content's provider. *Shiamili*, 17 N.Y.3d at 289-90.[16] Instead, a publisher becomes liable as a content provider *only* when its interventions "contribute[] materially to the alleged illegality" of the

[16] *See id.* at 285, 292-93 (website's elevation of discussion from "comment to a standalone-post" did not make it a content creator); *Force*, 934 F.3d at 70 (making "content more 'visible,' 'available,' and 'usable' … does not amount to 'developing' that information within the meaning of Section 230"); *Kimzey v. Yelp!*, 836 F.3d 1263, 1271 (9th Cir. 2016) ("proliferation and dissemination of content does not equal creation or development of content").

user's "content." *Id.* at 293; *accord Fair Hous. Council of San Fernando Valley v. Roommates.Com*, 521 F.3d 1157, 1167-68 (9th Cir. 2008) (en banc); *Henderson*, 53 F.4th at 128.

The *Patterson* Plaintiffs contend that some Internet-Defendants "co-created" user content by offering features such as stickers, filters, music, and editing functions. PattersonBr.45. But these features are just "tools meant to facilitate the communication and content of others." *Dyroff*, 934 F.3d at 1098; *supra* § I.B.2. An online service "does not create or develop content when it merely provides a neutral means by which third parties can post information of their own independent choosing online." *Klayman*, 753 F.3d at 1358. And Plaintiffs do not allege that these features "materially contribute[d]" to making unlawful any content that Gendron viewed (or indeed that the features were even ones that impacted Gendron). *Shiamili*, 17 N.Y.3d at 293.[17]

The *Salter* Plaintiffs argue that these features materially

[17] Plaintiffs do not allege Gendron was radicalized by, for example, viewing "stickers" or "emojis." PattersonBr.45. They assert Facebook "auto-generate[s]" pages (without supplying any basis for this claim, *see* R.2418), but they do not allege Gendron viewed (much less was radicalized by) auto-generated pages. PattersonBr.45. The same is true of Reddit's "unique templates" (which actually are "Brand Guidelines" governing third-party use of its IP); they do not claim Gendron viewed or used those purported "templates" or explain how they could have contributed to the alleged harm even if Gendron had viewed or used them, and the Complaints (as opposed to Plaintiff's brief) do not even mention them.

contributed to the purported addictiveness, thus making the third-party content unlawful in how it was presented, if not unlawful in and of itself. SalterBr.50-51. But providing notifications and displays is an integral part of the core publishing function of determining how and where to display content. *See Force*, 934 F.3d at 66-67; *Dyroff*, 934 F.3d at 1098 (addressing notifications). And providing tools that "pick, choose, analyze, or digest content," or that "transmit" or "organize" it, is part of the statute's very definition of a covered provider, so it would make no sense to say that those same tools *remove* Section 230 protection. 47 U.S.C. § 230(f)(2), (4).

Plaintiffs' cases, *Henderson* and *Roommates.com*, do not hold otherwise. There, the online services themselves either altered the meaning of content or forced users to submit illegal content. SalterBr.49-50 (citing *Henderson*, 53 F.4th at 128-29 (online service generated "inaccurate" and "misleading" summaries of criminal history); *Roommates.com*, 521 F.3d at 1172 (online services' content-submission form required users to submit discriminatory housing listings and developed "discriminatory questions, discriminatory answers and [a] discriminatory search mechanism" that allegedly

violated housing law)). Here, by contrast, there is no allegation that Internet-Defendants' tools or features change the substance of any third-party content or compel users to post anything unlawful. Plaintiffs merely allege that those tools make user content more available or more engaging. Putting aside that doing so is not illegal (*supra* 34-35), that simply describes ordinary publishing activity—not content creation or development. Plaintiffs cite no case holding an online service liable for "materially contributing" to the "illegality" of content by using tools that curate or promote otherwise-lawful content.[18]

D. In asking this Court to overrule *Shiamili*, Plaintiffs do not remotely satisfy the standard for overcoming statutory stare decisis.

Throughout this litigation, Plaintiffs have argued that their

[18] If the speech were Internet-Defendants' own, then that would make the First Amendment violation all the greater. *Infra* § II. As the Fourth Department explained: "Either the social media defendants are immune from civil liability under section 230 on the theory that their content-recommendation algorithms do not deprive them of their status as publishers of third-party content …, or they are protected by the First Amendment on the theory that the algorithms create first-party content." R.6621. Plaintiffs take issue with the Fourth Department's use of the phrase "Heads I Win, Tails You Lose," but this characterization merely recognizes that federal law has robust and overlapping protections for the publication of speech. *Backpage.com*, 817 F.3d at 29 ("First Amendment values … drive" Section 230). In short, the Fourth Department was correct that "section 230 immunity and First Amendment protection are not mutually exclusive," and that Internet-Defendants "are protected by both. Under no circumstances are they protected by neither." R.6621.

Section 230 arguments are fully consistent with *Shiamili*. Now, effectively acknowledging that *Shiamili* dooms their claims, the *Salter* Plaintiffs take the extraordinary step of suggesting *Shiamili* should be overruled. SalterBr.27, 29. They say that *Shiamili* erred in following "the national consensus" in interpreting Section 230 "as encompassing both publisher and distributor liability." 17 N.Y.3d at 288.

Plaintiffs bear a heavy burden in seeking to overturn *Shiamili*. "Even under the most flexible version of [stare decisis] applicable to *constitutional* jurisprudence," a prior decision will "not be overruled unless a 'compelling justification' exists." *State Farm Mut. Auto. Ins. v. Fitzgerald*, 25 N.Y.3d 799, 819 (2015) (emphasis added); *see also People v. Rios*, __ N.Y.3d __, 2026 N.Y. Slip Op. 00963, at *5-6 (N.Y. Feb. 19, 2026) (Rivera, J., concurring) (discussing critical values underlying stare decisis). "[A]n even more extraordinary and compelling justification is needed to overturn precedents involving statutory interpretation." *State Farm*, 25 N.Y.3d at 819-20. "Such a compelling justification may arise when the Court's prior holding" is "unworkable," conflicts with "a prior doctrine more … verified by experience," or "no longer … withstands the cold light of logic." *People v. Peque*, 22 N.Y.3d

168, 194 (2013). Plaintiffs do not even address stare decisis, let alone satisfy those criteria. SalterBr.25-27.

First, Plaintiffs claim *Shiamili* contravenes congressional intent. SalterBr.27. In fact, Congress has effectively ratified the settled understanding of Section 230 reflected in *Shiamili*. There is "overwhelming federal precedent" adopting that understanding, and Congress has amended Section 230 repeatedly without modifying the relevant text. *In re Facebook*, 625 S.W.3d at 84 (declining to "put the Texas court system at odds with overwhelming federal precedent"); *see id.* at 99-101 (discussing amendments to Section 230). When, as here, "the Courts of Appeal ha[ve] reached a consensus interpretation," Congress's decision to "amend[] [the statute] without changing the relevant provision" shows that Congress finds that construction "acceptable." *Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project*, 576 U.S. 519, 537 (2015). Here, moreover, "subsequent legislative history contains explicit support" for the proposition that Section 230 "does not permit Internet service providers or users to be sued as 'distributors.'" *Barrett v. Rosenthal*, 146 P.3d 510, 523, 529 (Cal.

2006).[19]

Second, Plaintiffs deride *Shiamili* as having merely followed the "lead" of the Fourth Circuit in *Zeran* without engaging in independent "analysis." SalterBr.27. On the contrary, *Shiamili* undertook a thorough analysis of state and federal cases across the country, 17 N.Y.3d at 286-90, which themselves evaluated the issue in detail before rejecting Plaintiffs' proposed distinction between "publisher" and "distributor" liability. *E.g.*, *Barrett*, 146 P.3d at 515-26. Indeed, overturning *Shiamili* in the way Plaintiffs urge would put this Court in conflict with every appellate court to consider a case like this. *Supra* 14.

Third, it is Plaintiffs' own theory that lacks foundation. Plaintiffs purport to identify a sharp common-law distinction between publishers, who "could be strictly liable for transmitting illegal content," and distributors, who could be held liable only if "they knew or had reason to know that they were distributing unlawful content." SalterBr.6-7, 25-

[19] The *Salter* Plaintiffs' policy argument that Congress intended Section 230 merely to "ensur[e] that internet companies aren't dissuaded from removing offensive content," SalterBr.4-8, is similarly incorrect. One of the statute's stated purposes was to "preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." 47 U.S.C. § 230(b)(2). In short, Section 230 was enacted just as much "to promote the free exchange of information and ideas over the Internet" as to "encourage voluntary monitoring for offensive or obscene material." *Barnes*, 570 F.3d at 1099-1100.

27. For this reason, Plaintiffs say, the reference to "publisher" liability in Section 230(c)(1) means that Section 230 forecloses only strict-liability claims. SalterBr.27.

But, even were this distinction implicated, "every existing judicial decision" to consider a supposed distributor-liability exception to Section 230 has rejected it. *See In re Facebook*, 625 S.W.3d at 91; *Barrett*, 146 P.3d at 518 (collecting cases); *e.g.*, *Barnes*, 570 F.3d at 1104-05; *Zeran v. Am. Online*, 129 F.3d 327, 331-34 (4th Cir. 1997); *Doe v. Am. Online*, 783 So. 2d 1010, 1017 (Fla. 2001). That is because Plaintiffs' argument misunderstands both Section 230 and the common law. The text of "section 230(c)(1) precludes courts from treating internet service providers as publishers not just for the purposes of defamation law, with its particular distinction between primary and secondary publishers, but in general." *Barnes*, 570 F.3d at 1104. After all, Section 230 states that a provider "shall [not] be treated as [a] publisher or speaker" of "*any information*" provided by a third party. 47 U.S.C. § 230(c)(1) (emphasis added). That broad language contains no exception for (as Plaintiffs would have it) distributing content that the provider *knows* to be illegal. Plaintiffs' argument also ignores the

statute's prohibition against treating the provider as a "speaker" of the information. A speaker is a speaker regardless of whether they know that the content they are speaking is unlawful. Recognizing a knowledge exception to Section 230 ignores this statutory language.

Nor does reading Section 230 through a common-law lens justify a "distributor" exception. At common law, "[p]ublishing" historically encompassed everyone in the chain of conveying information to the public, including "distributors." *Prosser & Keeton on the Law of Torts* § 113, at 799 (5th ed. 1984). When third-party distributors like booksellers and libraries faced defamation liability, they were treated as the "secondary *publisher*" of the content, not in some separate distributor-only category. *Id.* at 803; *see* Restatement (Second) of Torts § 577 ("publication" required for liability, including for distributors). Distributor liability was therefore "merely a subset, or a species, of publisher liability," not a different category of liability altogether. *Zeran*, 129 F.3d at 332 (collecting authorities).

It therefore makes no sense to read Section 230's prohibition against "treat[ing]" a provider "as a publisher" to exclude liability theories that would have applied to distributors, a subset of

"publishers." For that same reason, it makes no difference that (according to Plaintiffs, SalterBr.7-8), distributors were liable only when they acted with knowledge. When Congress prohibited treating online services as publishers, it necessarily precluded liability for theories of knowing distribution, a long-established subset of publisher liability. *See Zeran*, 129 F.3d at 333 ("Because the probable effects of distributor liability on the vigor of Internet speech and on service provider self-regulation are directly contrary to § 230's statutory purposes, we will not assume that Congress intended to leave liability upon notice intact."); *Barrett*, 146 P.3d at 525 (explaining "the problems that would attend notice-based liability for service providers").

A proposed federal statutory interpretation rejected by Congress and every court to consider it, based on a misreading of the statutory text and the background common law, offers no justification for disturbing stare decisis, let alone an extraordinary and compelling one. Under *Shiamili* and established law, Section 230 bars Plaintiffs' claims.

II. The First Amendment Bars Plaintiffs' Causes of Action.

The First Amendment bars Plaintiffs' claims, as the Fourth Department correctly held. As noted, the First Amendment provides

protection that overlaps with but is independent from Section 230. *Supra* 44 n.18. Here, the First Amendment bars Plaintiffs' claims because they impermissibly seek to hold Internet-Defendants liable for their alleged activities in curating, compiling, and displaying third-party content. That result does not change because certain Internet-Defendants allegedly publish this speech using "AI-driven" tools, PattersonBr.49, or "engagement-driven algorithms," SalterBr.52. Plaintiffs' theory is just the latest variation on a decades-old contention that the First Amendment does not protect new technologies, whether allegedly addictive television shows or violent video games. Courts have uniformly rejected such efforts, and Plaintiffs' claims likewise fail as a matter of law under foundational First Amendment principles.

A. Plaintiffs' claims impermissibly seek to impose liability for First Amendment-protected speech.

1. The First Amendment prohibits tort liability for disseminating and curating third-party speech.

Before turning to Plaintiffs' allegations, we start with three critical legal principles that Plaintiffs ignore.

First, "[t]he Free Speech Clause of the First Amendment … can serve as a defense in state tort suits." *Snyder v. Phelps*, 562 U.S. 443,

451 (2011); *accord Stepanov v. Dow Jones*, 120 A.D.3d 28, 36 (1st Dep't 2014). This is hardly the first case seeking to hold publishers of expressive media liable in tort for acts of violence by members of their audience. For decades, plaintiffs have tried to use tort law (product liability, negligence, and failure to warn, just as here) to assert that TV networks, movie houses, videogame developers, and music producers should be liable when young viewers, allegedly under the influence of violent content, harm themselves or others. But nearly all of those cases, both state and federal, have been dismissed at the pleading stage, with courts consistently applying the First Amendment to hold that such claims fail as a matter of law.[20]

[20] *E.g.*, *Wilson v. Midway Games*, 198 F. Supp. 2d 167, 182 (D. Conn. 2002) (violent video game allegedly caused teen to commit fatal stabbing); *Sanders v. Acclaim Ent.*, 188 F. Supp. 2d 1264, 1268-69, 1279-82 (D. Colo. 2002) (movies, videogames, and websites inspired Columbine school shooting); *James v. Meow Media*, 90 F. Supp. 2d 798, 800 (W.D. Ky. 2000), *aff'd*, 300 F.3d 683 (6th Cir. 2002) (school shooting allegedly caused by distribution of movie, video games, and internet materials); *Davidson v. Time Warner*, 1997 WL 405907 (S.D. Tex. Mar. 31, 1997) (violent song lyrics allegedly caused driver to kill state trooper); *Watters v. TSR*, 715 F. Supp. 819, 820 (W.D. Ky. 1989), *aff'd*, 904 F.2d 378 (6th Cir. 1990) (suicide allegedly caused by playing the game Dungeons & Dragons); *McCollum v. CBS*, 202 Cal. App. 3d 989, 1003 (1988) (listening to song allegedly caused suicide); *Herceg v. Hustler Mag.*, 814 F.2d 1017, 1019 (5th Cir. 1987) (suicide; article about autoerotic asphyxiation); *DeFilippo v. NBC*, 446 A.2d 1036, 1038 (R.I. 1982) (claiming death caused by teen imitating dangerous stunt from *The Tonight Show*); *Bill v. Super. Ct.*, 137 Cal. App. 3d 1002, 1005 (1982) (shooting allegedly provoked by violent movie); *Olivia N. v. NBC*, 126 Cal. App. 3d 488, 494-97 (1981) (claiming sexual assault inspired by movie); *Zamora v. CBS*, 480 F. Supp. 199, 206 (S.D. Fla. 1979) (murder allegedly caused by viewing violent television content).

Second, in addition to protecting the *creation* of speech, the First Amendment protects *publishing* and *disseminating* the speech of others. *Sorrell v. IMS Health*, 564 U.S. 552, 557 (2011); *Bartnicki v. Vopper*, 532 U.S. 514, 527 (2001) ("acts of 'disclosing' and 'publishing' information" are "speech"); *Smith v. California*, 361 U.S. 147, 150 (1959) ("publication and dissemination of books … furnish very familiar applications of these constitutionally protected freedoms"). Thus, it "makes no difference" for First Amendment purposes whether a claim targets "creating, distributing, or consuming speech." *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 792 n.1 (2011).

Third, and relatedly, the First Amendment protects the *curation* of third-party speech. *Moody*, 603 U.S. at 738; *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos*, 515 U.S. 557, 575 (1995) (publisher's "decisions made as to … content … constitute the [protected] exercise of editorial control and judgment") (citation modified); *Miami Herald Publ'g v. Tornillo*, 418 U.S. 241, 255 (1974). This protection applies to online services that curate personalized feeds for users by using algorithms to combine "'multifarious voices' to create a distinctive expressive offering." *Moody*, 603 U.S. at 734-35, 738.

2. Plaintiffs seek to hold Internet-Defendants liable for First Amendment-protected activity.

Plaintiffs' effort to impose liability on Internet-Defendants for having made third-party speech available to Gendron flouts the "most basic" principle of First Amendment jurisprudence: that the law may not be used to "restrict expression because of its message, its ideas, its subject matter, or its content." *Brown*, 564 U.S. at 790-91. Plaintiffs' claims plainly are content-based—they "target speech based on its communicative content." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015); *accord City of Cincinnati v. Discovery Network*, 507 U.S. 410, 428 (1993) (evaluating efforts to control how speech is distributed as a content-based regulation). The animating principle of Plaintiffs' claims is that Gendron acted because of "racist, antisemitic, and white supremacist propaganda" that Internet-Defendants allegedly published to him. R.130(¶3); *supra* 8-9; *e.g.*, R.131(¶10); R.217(¶391); R.222(¶418-19); R.227-28(¶¶453-57); R.2695-703(¶¶145-70); R.2779-80(¶¶470-71); R.2782-83(¶¶485-86). Those claims impermissibly take aim at "particular speech because of the topic discussed" and "message expressed." *Reed*, 576 U.S. at 163.

"[T]he violation of the First Amendment is all the more blatant"

because Plaintiffs' allegations also are *viewpoint*-based. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). The Complaints base their theory on Internet-Defendants' alleged publication to Gendron of third-party material advancing specific ideological messages, particularly the "white replacement theory." R.152(¶78) (capitalization modified); *supra* 17-22; R.131(¶10); R.152-55(¶¶78-89); R.158-63(¶¶104-32); R.2695-703(¶¶145-70); R.2720(¶¶222-24); R.2737-38(¶307); R.2779-80(¶¶470-71); R.2782-83(¶¶485-86); R.5089-90(¶¶230-231); R.6195(¶¶314-15). It is the *viewpoint* of the speech that allegedly links Gendron's time using Defendants' services to the manifesto he wrote and the racialized attack he carried out. But the First Amendment forbids Plaintiffs from using state law to "discriminate against speech based on the ideas or opinions it conveys." *Iancu v. Brunetti*, 588 U.S. 388, 393-94 (2019).

Nor does the third-party speech that Internet-Defendants allegedly published to Gendron, however abhorrent, fall into any of the "well-defined and narrowly limited classes of speech" (like obscenity or true threats) that are unprotected by the First Amendment. *United States v. Stevens*, 559 U.S. 460, 468-69 (2010). Indeed, Plaintiffs have

never argued otherwise, *see* SalterBr.48 (admitting that the content is "not unlawful"), nor could they. The material that allegedly inspired Gendron to act comprised inflammatory postings about racist conspiracies and factual information about firearms and body armor. *Supra* 7-9. But it is a "bedrock First Amendment principle" that "[s]peech may not be banned on the ground that it expresses ideas that offend." *Matal v. Tam*, 582 U.S. 218, 223 (2017). The First Amendment bars tort claims that arise from exposure to hate speech, even when it inflicts "great pain." *Snyder*, 562 U.S. at 448, 461; *accord Brandenburg v. Ohio*, 395 U.S. 444, 446 (1969) (First Amendment protects racist speech). And there is no constitutional basis to impose tort liability for republishing it here.

B. Plaintiffs' efforts to circumvent the First Amendment all fail.

1. Plaintiffs' product-liability and addiction allegations do not bring their claims outside the First Amendment.

Plaintiffs argue that the First Amendment does not apply because Internet-Defendants' dissemination of speech to Gendron constituted "conduct" rather than "speech." PattersonBr.48-49. The Supreme Court in *Moody* rejected this same argument, holding that the First

Amendment protects social-media services' "choices about what third-party speech to display and how to display it." 603 U.S. at 716; *see* R.6620. And the Court rejected the argument that "the content choices the major platforms make for their main feeds are 'not speech' at all." 603 U.S. at 726. That is because "expressive activity" includes "compiling and curating others' speech." *Id*. at 731. The actions that Plaintiffs characterize as "conduct" are in fact editorial choices about what speech to publish and how to arrange and present it to particular users—precisely "the kind of 'speech' that the First Amendment protects." *Bartnicki*, 532 U.S. at 527.

Plaintiffs directly target this expressive activity by seeking to hold Defendants liable for disseminating third-party speech that communicated particular messages. For that reason, Plaintiffs' cases involving *incidental* burdens on speech (*cited at* PattersonBr.48) are beside the point. *Rumsfeld v. FAIR* addressed a statute that "d[id] not dictate the content of … speech at all." 547 U.S. 47, 62 (2006). Here, by contrast, Plaintiffs would impose liability on online publishing services for the effects of the third-party speech they communicate to their users. *Cohen v. Cowles Media* held reporters could be subject to

promissory-estoppel claims based on their promises to sources, 501 U.S. 663, 665 (1991); this case involves no contract or promise-based liability. And *Zacchini v. Scripps-Howard Broadcasting* expressly limited its holding to the unique context of right-of-publicity claims, where "the only question is who gets to do the publishing," and it distinguished such claims from tort claims like Plaintiffs', which "attempt to minimize publication" of content. 433 U.S. 562, 573 (1977).

Next, Plaintiffs assert they have stated a "cognizable products liability claim[]"—which, they suggest, takes them outside the First Amendment. PattersonBr.17. But even if they had sufficiently stated such causes of action, *but see infra* § III, that does not mean their claim concerns "conduct" rather than speech, or that the First Amendment does not apply. On the contrary, the First Amendment regulates tort claims that would impose liability for disseminating speech. *Supra* 51-52. Courts have consistently applied First Amendment protections when, as here, an alleged product defect concerns tools that communicate objectionable speech, or when an allegedly missing warning concerns the possibility of being exposed to harmful speech. *E.g.*, *Bill*, 137 Cal. App. 3d at 1014 (claims seeking to hold producers of

violent film liable for failing to warn about risks of attending screening where violence occurred).[21] In short, when a "generally applicable regulation of conduct" (like these tort claims) is triggered by conduct that "consists of communicating a message" (which forms the basis of Plaintiffs' allegations here), the First Amendment fully applies. *Holder v. Humanitarian Law Project*, 561 U.S. 1, 28 (2010).

Nor is the analysis different because the complained-of speech is allegedly "addictive" (PattersonBr.51, SalterBr.48) or because Internet-Defendants supposedly tried to facilitate greater "engagement" (SalterBr.48) with particular speech. That those who publish speech want to claim people's attention is a *premise* of the First Amendment, not a basis for withdrawing its protection. The First Amendment protects "interactive" forms of media that make speech more potent and encourage audiences to engage further with that media—be it attention-grabbing headlines, cliffhanger endings, or other techniques (old and new). *Brown*, 564 U.S. at 797-98; *Angelilli v. Activision*

[21] *See also Wilson*, 198 F. Supp. 2d at 182 (product-liability claim targeting video game); *Sanders*, 188 F. Supp. 2d at 1279 (same); *James*, 90 F. Supp. 2d at 811, 819 (product-liability claim targeting movie); *Olivia N.*, 126 Cal. App. 3d at 493-97 (failure-to-warn claim regarding television broadcast); *Watters*, 715 F. Supp. at 822 n.1 (defendant "cannot constitutionally be required to warn its readers of possible consequences of reading or playing the game materials").

Blizzard, 781 F. Supp. 3d 691, 701-02 (N.D. Ill. 2025) ("First Amendment protections do not disappear simply because expression is impactful").

That is why, as noted above (at 52), courts have consistently applied the First Amendment to dismiss claims alleging that expressive media led to violence by incorporating addiction-promoting technology. *E.g.*, *Courtright v. Epic Games*, 795 F. Supp. 3d 1156, 1167 (W.D. Mo. 2025) (First Amendment bars claims that "video games are designed to create addiction"); *accord Angelilli*, 781 F. Supp. 3d at 702; *Wilson*, 198 F. Supp. 2d at 182; *Watters*, 715 F. Supp. at 820; *Zamora*, 480 F. Supp. at 200. As these cases also confirm, Plaintiffs' passing references to protecting minors (PattersonBr.8) do not change the analysis. *See Brown*, 564 U.S. at 794 ("No doubt a State possesses legitimate power to protect children from harm, … but that does not include a free-floating power to restrict the ideas to which children may be exposed.").

2. Plaintiffs cannot evade the First Amendment by alleging that certain Internet-Defendants used algorithms to disseminate or recommend speech.

As in the context of Section 230, Plaintiffs seek to reframe this case as being about the First Amendment implications of "AI"

(PattersonBr.49-50) or "engagement-driven algorithms" (SalterBr.51-54). Their arguments depart from settled law and the actual allegations of the Complaints.

a. The First Amendment protects the use of algorithms to disseminate speech.

The allegation that some Internet-Defendants use algorithms to help curate and recommend content for users does not deprive them of First Amendment protection. The First Amendment protects the "prioritization of content" on online speech platforms, even if it is "achieved through the use of algorithms." *Moody*, 603 U.S. at 734.

Moody addressed feeds from two Internet-Defendants—the "personalized collection" of stories delivered by Facebook and the "individualized list of video recommendations" provided by YouTube. *Id.* The Court explained that the "selection and ranking" within these feeds "is most often based on a user's expressed interests and past activities" but that "it may also be based on more general features of the communication or its creator." *Id.* at 734-35. Because these algorithmically curated feeds are the "product of a wealth of choices about whether—and, if so, how—to convey posts having a certain content or viewpoint," they "receive First Amendment protection." *Id.* at

738, 740; *see also, e*.g., *Angelilli*, 781 F. Supp. 3d at 702 ("Given that the algorithms of which Plaintiffs complain were developed by humans and generated words and images its human creators intended, the First Amendment applies."); *Jian Zhang v. Baidu.com*, 10 F. Supp. 3d 433, 438 (S.D.N.Y. 2014) (same as to algorithmically generated search-engine results). Thus, the Fourth Department held that, "per *Moody*, [Internet-Defendants] are entitled to First Amendment protection for third-party content recommended to the shooter by algorithms." R.6620.

The *Salter* Plaintiffs question whether these principles apply, and say that factual development is needed, because a footnote in *Moody* reserved judgment on whether the First Amendment applies to "feeds whose algorithms respond *solely* to how users act online—giving them the content they appear to want, *without any regard to independent content standards*." *Moody*, 603 U.S. at 736 n.5 (emphases added) (*cited at* SalterBr.51). This argument fails for several reasons.

First, no factual development is needed to see that the curated feeds at issue here do not fall within the narrow *Moody* footnote. Plainly that footnote could not have been referring to Facebook and YouTube feeds, given the plurality's holding that those very feeds are

protected by the First Amendment. 603 U.S. at 740. And, as the Fourth Department recognized, Plaintiffs "do not allege that the algorithms of the social media defendants are based 'solely' on the shooter's online actions." R.6620. Far from alleging that Internet-Defendants' algorithms only "giv[e] [users] the content they appear to want," *Moody*, 603 U.S. at 736 n.5, Plaintiffs' Complaints emphasize that Defendants recommended content to Gendron that he was *not* seeking out, did not want, and that was dissimilar to what he began viewing. *E.g.*, R.2703(¶169); R.2722(¶¶235-36) ("Gendron did not begin by watching racist videos …. Rather, Gendron was pushed by YouTube's [algorithm]."); R.2759(¶398) (YouTube's algorithm "doesn't necessarily reflect what the user wants"); R.131(¶9) (Defendants' "algorithms … introduce[ed] [Gendron] to extreme and inherently harmful content, even when he was not searching for it"); R.173(¶172) ("Defendants['] … algorithms … maximize engagement … not by showing [users] content they request or want to see"); R.173(¶174) ("this was not content Gendron searched for, sought out, or even wanted to see"); R.187(¶247).

Instead, the Complaints allege, Internet-Defendants chose to "prioritize" content to Gendron because it "generates high levels of

intense emotion" and increases "engagement." *E.g.*, R.2803(¶588(f)); R.2703(¶169); R.200(¶¶302-04) (algorithm "looks for clips that data shows are already drawing high traffic"); R.2756(¶390) (algorithm looks at "video features" in addition to "watch history"); R.2759(¶¶397-98) ("'[e]ngaging content' is recommended by YouTube based upon watch time"); R.6192(¶306) ("[s]ocial media algorithms are designed to prioritize content that generates high levels of user engagement"); R.6150-51(¶159); R.6195(¶320) ("algorithms … promoted and showed content that was more and more extreme"); R.6196(¶326); R.6202-03(¶350); R.6207(¶367). The First Amendment protects such "user-agnostic judgments about what kinds of speech" are "worthy" of promotion. *Moody*, 603 U.S. at 736 n.5.[22]

[22] In addition to seeking discovery based on the *Moody* footnote for the first time, Plaintiffs argue more broadly that discovery is needed to resolve the First Amendment's application. PattersonBr.51-55; SalterBr.53-54. On the contrary, there is "particular value" in deciding First Amendment matters on the pleadings "so as not to protract litigation through discovery and trial and thereby chill the exercise of constitutionally protected freedoms." *Dfinity Found. v. N.Y. Times*, 702 F. Supp. 3d 167, 173 (S.D.N.Y. 2023) (quoting *Armstrong v. Simon & Schuster*, 85 N.Y.2d 373, 379 (1995)); *McCollum*, 202 Cal. App. 3d at 1008 ("Because unnecessarily protracted litigation would have a chilling effect upon the exercise of First Amendment rights, speedy resolution of cases involving free speech is desirable."); *supra* 52 n.20 (collecting dismissals of cases seeking to hold publishers of expressive media liable in tort for acts of violence). Here, the First Amendment's protections are clear from the face of the Complaints. Because Plaintiffs impermissibly seek to hold Internet-Defendants liable for the content of protected speech they allegedly published, the factual details of how Defendants disseminate that speech are beside the point.

Second, even if algorithmic feeds based solely on a user's past preferences were at issue, *Moody* merely left unresolved whether such algorithms are protected by the First Amendment; it did not hold that they are unprotected. And it would not make sense to draw a constitutional distinction between content recommendations that reflect the recommender's personal preferences and those that anticipate someone else's preference. The decision to give someone content based on their individual preferences is itself an expressive choice. A librarian makes an editorial judgment by suggesting books similar to those that a patron previously checked out—no less so than by recommending books that the *librarian* or *other* readers liked. Similarly, making a playlist of a friend's favorite songs involves "[d]eciding on the third-party speech that will be included or excluded" just as much as compiling one's own favorite songs. *Moody*, 603 U.S. at 731.

Here, likewise, there is no reason why the First Amendment would protect algorithms that suggest "trending" or "recent" content but not algorithms suggesting content similar to what a user previously viewed. For example, search engines use algorithms to "retrieve relevant information from the vast universe of data on the internet and

to organize it in a way that would be most helpful to the searcher." *Zhang*, 10 F. Supp. 3d at 438-39. While such algorithms give users what they are looking for, they are constitutionally protected because they "were written by human beings, and they inherently incorporate the search engine company engineers' judgments about what material users are most likely to find responsive to their queries." *Id.*

Plaintiffs cite nothing to the contrary. They offer a single district court decision concerning artificial intelligence, but that had nothing to do with disseminating human speech. *See Garcia v. Character Techs.*, 785 F. Supp. 3d 1157 (M.D. Fla. 2025) (*cited at* PattersonBr.51). It involved text generated by AI chatbots, which allegedly caused a minor to commit suicide, *id.* at 1165-69, and even then, the court (1) reserved judgment on whether such AI-generated output was protected speech, and (2) distinguished that scenario from recommendation algorithms used to curate feeds of human speech. *Id.* at 1177 (explaining that *Moody* "recogniz[ed] that editorial functions of social media sites receive First Amendment protections").

b. Plaintiffs' claims impermissibly target protected speech.

Even if algorithms relying exclusively on a user's own preferences

were constitutionally unprotected, and even if the Complaints actually alleged that Internet-Defendants' algorithms rely exclusively on a user's preferences, the First Amendment still would bar Plaintiffs' claims. That is because Plaintiffs' objection is to the "radical" or "extreme" content that those algorithms allegedly recommended to Gendron, which is human speech protected by the First Amendment. Plaintiffs cannot hold Internet-Defendants liable for distributing that speech, regardless of the particular technology they used to do so.

The First Amendment forecloses imposing liability not just on those who create speech, but for all actors in the chain of publishing, disseminating, or consuming it. That is because "[p]reservation of freedom of expression requires protection of the means of disseminating expression." *Genusa v. City of Peoria*, 619 F.2d 1203, 1218 (7th Cir. 1980) (citing *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938) ("Liberty of circulating is as essential to that freedom as liberty of publishing.")). Thus, in *Brown*, the Supreme Court rejected a constitutional distinction between "prohibition[s] of printing or selling books" and prohibitions on "the writing of them." 564 U.S. at 793 n.1 ("Whether government regulation applies to creating, distributing, or consuming speech makes

no difference."); *accord Griswold v. Connecticut*, 381 U.S. 479, 482 (1965) ("The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read...."); *Buehrle v. City of Key West*, 813 F.3d 973, 977 (11th Cir. 2015) ("The First Amendment protects the artist who paints a piece just as surely as it protects the gallery owner who displays it, the buyer who purchases it, and the people who view it…").

Here, because Plaintiffs cannot impose liability on the people who created the speech that Gendron viewed, they also cannot impose downstream liability on Internet-Defendants for disseminating or recommending that speech. That is so regardless of whether each particular act or tool used to communicate the speech was itself expressive. For instance, although there is nothing expressive about "distribut[ing] and circulat[ing] newspapers through the use of newsracks," doing so "is protected by the first amendment." *Sentinel Commc'ns v. Watts*, 936 F.2d 1189, 1196-97 (11th Cir. 1991). Likewise, if someone sued a store for selling the game *Dungeons and Dragons* because a user engaged in violence after playing it, the legal inquiry would not be whether the act of selling the game was itself expressive.

Rather, the First Amendment would apply because a bookstore cannot be liable for a game's content any more than the creator of the game. *See Watters*, 715 F. Supp. 2d at 821.

Plaintiffs' arguments about whether Defendants' algorithms themselves are expressive are therefore beside the point. Because Plaintiffs' claims depend on the content and message of protected human speech, the First Amendment protects Internet-Defendants from liability for disseminating that material.

III. The Complaints Do Not Plead Any Viable Cause of Action.

Beyond these foundational federal protections, this Court can affirm because Plaintiffs have no viable claim under New York law.

First, Plaintiffs' causes of action fail for lack of a relevant legal duty. Plaintiffs have no viable negligence claim because Internet-Defendants have no control over or special relationship with Gendron, and therefore no duty to prevent his intentional crimes. Similarly, Plaintiffs cannot assert viable product-liability claims because they did not use Internet-Defendants' services, and they were neither harmed by the services directly nor as immediate bystanders to someone using them. Courts have uniformly rejected the idea that publishers owe a

duty to protect third parties against violent acts committed by those who consume the media they publish, and this Court should not create such a novel duty here. § III.A.

Second, Plaintiffs' causes of action fail for lack of proximate cause. Gendron's unforeseeable act of racist terror breaks any causal chain as a matter of law. Holding that an online service proximately causes any act an individual might take after viewing content on their service would create just the sort of limitless liability that is anathema to the notion of *proximate* cause. That is true of the actual theory asserted in the Complaints (premised on Gendron's radicalization from exposure to speech on Internet-Defendants' services)—and, as the Fourth Department recognized, the causation problems are even more acute as to the *Salter* Plaintiffs' (unpleaded) theory that their claims have nothing to do with the content Gendron viewed. § III.B.

Third, Plaintiffs' product-liability claims separately fail because they impermissibly seek to extend the law governing defective *products* to the dissemination of allegedly dangerous ideas and information by online *services*. § III.C.

A. Plaintiffs' causes of action fail because Plaintiffs do not and cannot allege a legally adequate relationship between themselves and Internet-Defendants.

The Court can affirm because neither negligence nor product-liability law permits members of the public at large to sue Internet-Defendants for the criminal conduct of their users. Plaintiffs' negligence claims fail for lack of duty because Internet-Defendants had no relationship with Plaintiffs, who were not users of Internet-Defendants' services and had no duty to control Gendron's conduct. § A.1.a. This Court should not depart from the long line of authority declining to create a duty to protect third parties from consumers of allegedly violence-inspiring media. § A.1.b. Similarly, Plaintiffs may not bring strict product-liability claims when they are neither users of a product nor bystanders near its intended use. § A.2.

1. Plaintiffs' negligence claims fail because New York does not impose a duty on Internet-Defendants to protect non-user Plaintiffs from Gendron's criminal conduct.

a. There is no special relationship between Internet-Defendants and either Gendron or Plaintiffs.

A threshold requirement of a negligence claim is that the defendant owed a duty of care to the plaintiff. *Espinal v. Melville Snow*

Contractors, 98 N.Y.2d 136, 138 (2002). For reasons of "public policy," courts define duties of care "to limit the legal consequences of wrongs to a controllable degree, … and to protect against crushing exposure to liability." *Strauss v. Belle Realty*, 65 N.Y.2d 399, 402-03 (1985); *see also Eiseman v. State*, 70 N.Y.2d 175, 188 (1987). Consistent with those principles, a party generally owes no "duty to control the conduct of third persons" in order "to prevent them from causing injury to others." *Purdy v. Public Adm'r of Westchester Cnty.*, 72 N.Y.2d 1, 8 (1988). This Court recognizes such a duty only when (1) the defendant "has [the] authority to control" the actions of the third-party tortfeasor, or (2) "a relationship between the defendant and plaintiff requir[es] defendant to protect the plaintiff from the conduct of others." *Id.*; *Eiseman*, 70 N.Y.2d at 188; *Pulka v. Edelman*, 40 N.Y.2d 781, 784 (1976). Whether such an exception applies is "a question of law for the courts." *Purdy*, 72 N.Y.2d at 8.

Plainly the latter category of special relationship is not present; Plaintiffs do not allege *any* relationship between themselves and Internet-Defendants. Accordingly, any "duty on defendants would have to arise" from the first exception—that is, some special relationship

between defendants and" Gendron "that would require them to control" Gendron's "conduct for the benefit of … member[s] of the general public." *Purdy*, 72 N.Y.2d at 8-9.

There is no such special relationship that would impose a duty on Internet-Defendants to protect the general public from intentional torts committed by one of their millions of users. PattersonBr.20, 29. *Hamilton v. Beretta U.S.A.* is dispositive. 96 N.Y.2d 222 (2001). In *Hamilton*, this Court rejected imposing a "general duty of care" on firearms manufacturers to prevent the illegal sale of firearms used in crime. *Id.* at 231, 236. There was no special relationship between the manufacturers and their customers because the manufacturers lacked "actual control of the [customers'] actions." *Id.* at 233. And whereas the "specter of limitless liability is not present" in a true special relationship "because the class of potential plaintiffs to whom the duty is owed is circumscribed by the relationship," to hold manufacturers liable for the intentional tortious acts of their customers would create an unreasonably large "pool of possible plaintiffs." *Id.*; *see Waters v. N.Y.C. Hous. Auth.*, 69 N.Y.2d 225, 230 (1987) (duty of landlords to "maintain secure premises" runs to tenants, not to "the millions of

individuals who use the sidewalks of New York City each day and are thereby exposed to the dangers of street crime"); *Matter of N.Y.C. Asbestos Litig.*, 5 N.Y.3d 486, 498 (2005).

This case is also like *Pulka*, which held that a parking garage operator owed no duty to prevent its customers from injuring pedestrians while exiting the garage because it had no special relationship with its customers—they were outside of its control. 40 N.Y.2d at 784-86. As this Court "stressed[,] not all relationships give rise to a duty. One should not be held legally responsible for the conduct of others merely because they are within our sight or environs. Neither should one be answerable merely because there are others whose activities are such as to cause one to envision damages or injuries as a consequence of those activities." *Id.* at 785-86.

Plaintiffs' cases do not hold otherwise. Rather, the limited duty recognized in *Davis v. South Nassau Communities Hospital* highlights the unmanageable breadth of the duty Plaintiffs propose to create. 26 N.Y.3d 563 (2015) (*cited at* PattersonBr.28). *Davis* held that an emergency physician owed a duty to warn their patient that the "drugs administered to her impaired her ability to safely operate an

automobile" while that medication was in her system. 26 N.Y.3d at 577. That duty makes sense; in administering a mind-altering substance, a physician effectively controls her patient's ability to safely operate an automobile. *Id.* at 573; *see also Doe v. Langer*, 206 A.D.3d 1325, 1329 (3d Dep't 2022) (the physician in *Davis* had "sufficient authority and ability to control" the patient's conduct).

Notably, this Court recognized only a narrow duty that applies to a doctor who "*administers* to a patient medication that … could impair" her safe operation of an automobile—not to a doctor who merely *prescribes* medication to be taken in the future. 26 N.Y.3d at 579; *see Purdy*, 72 N.Y.2d at 6. And further, this duty ran only to the motorists in the patient's vicinity during her drive home from the hospital—not to any motorist the patient might someday encounter in the future.

These cases show that there is no duty here. Internet-Defendants exercised no control over Gendron comparable to that of a doctor who administers prescription drugs to a patient, and the broad duty to the general public that Plaintiffs would impose is utterly unlike the circumscribed duty (covering the patient's drive home from the hospital) recognized in *Davis*.

Indeed, this Court has declined to find a special relationship in situations involving significantly greater control than allegedly was present here. *Schrempf v. State* involved a suit against a mental facility that had released the eventual tortfeasor from residential treatment and was still treating him as an outpatient. 66 N.Y.2d 289, 291-92 (1985). Even though the facility "had reason to believe that" the tortfeasor "was not taking his medication as prescribed," it owed no "duty to prevent him from harming others" because, as an outpatient, he was not sufficiently under the facility's control. *Id.* at 293, 296. If Internet-Defendants had *any* control over Gendron, it was far less than the mental health providers in *Cardenas v. Rochester Regional Health*, 192 A.D.3d 1543 (4th Dep't 2021) (mental health provider not liable for failing to prevent patient from injuring patient's child), and *Pingtella v. Jones*, 305 A.D.2d 38 (4th Dep't 2003) (similar).

The relationship of general-use online services to their users is far more attenuated, and it involves nothing like the control in these doctor-patient relationships that itself was legally insufficient. Plaintiffs point to no case in which a New York court ever has found that an online service owes duties to anyone who uses them, let alone to

members of the general public with whom their users interact. Indeed, courts applying New York law have rejected such theories. *E.g.*, *He v. Apple*, 189 A.D.3d 1984, 1986 (3d Dep't 2020) (Apple lacks "control" over scammers using iTunes sufficient to give rise to duty to protect third-parties from scammers); *Herrick v. Grindr*, 306 F. Supp. 3d 579, 599 (S.D.N.Y. 2018) (online dating service did not have "special relationship" even with direct user).

b. This Court should not recognize a novel third-party duty to the public at large.

Ultimately Plaintiffs' argument is not for this Court to apply an existing legal duty but to create a sweeping new one. This Court should decline that invitation, which would create unprecedentedly broad, insurer-like liability contrary to core principles of New York law.

As an initial matter, imposing a novel duty would be particularly inappropriate in these cases because the alleged harm arises directly out of publishing third-party speech. Courts consistently have rejected the claim that publishers of allegedly harmful media owe a duty of care to persons injured by tortfeasors allegedly inspired or influenced by the published speech. *E.g.*, *James*, 300 F.3d at 687, 699 ("Attaching such tort liability to the ideas and images conveyed by the video games, the

movie, and the internet sites, however, raises grave constitutional concerns that provide yet an additional policy reason not to impose a duty of care between the defendants and the victims in this case."); *Sanders*, 188 F. Supp. 2d at 1272-76 (publishers owed no duty to prevent Columbine shooting); *McCollum*, 202 Cal. App. 3d at 1004-06 ("[I]t is simply not acceptable to a free and democratic society to impose a duty … in order to avoid the dissemination of ideas in artistic speech which may adversely affect emotionally troubled individuals."); *Bill*, 137 Cal. App. 3d at 1014 ("there exist significant practical obstacles in the imposition of a duty to warn" that would require "predicting when, or where, individuals or groups might react violently to the showing of a particular movie"); *Pahler v. Slayer*, 2001 WL 1736476, at *6 (Cal. Super. Ct. Oct. 29, 2001) (band owed no duty to protect victim from crime allegedly inspired by the band's lyrics); *Zamora*, 480 F. Supp. at 201 (no duty "to avoid making 'violent' shows available for voluntary consumption"). Indeed, a recent decision applying New York law makes clear that an online gaming platform does not owe a duty even to its own customers "to prevent addicted gamblers from using its platform or to protect those that do." *De Leon v. DraftKings*, 2025 WL 3551627, at

*10 (S.D.N.Y. Dec. 11, 2025). Given that there is no duty to the users themselves, *a fortiori* there is no duty to third parties whom the user harms.

Nor does anything in this Court's precedents support creating Plaintiffs' proposed duty. In determining whether to recognize a new tort duty, this Court weighs factors like "the proliferation of claims" and "the likelihood of unlimited or insurer-like liability." *Hamilton*, 96 N.Y.2d at 232 (quoting *Palka v. Servicemaster Mgmt. Servs.*, 83 N.Y.2d 579, 586 (1994)); *supra* 72. This Court therefore has repeatedly refused to create a "duty to the community at large." *Eiseman*, 70 N.Y.2d at 188; *see Hamilton*, 96 N.Y.2d at 236; *Waters*, 69 N.Y.2d at 230.

Thus, in *Strauss v. Belle Realty*, this Court held that ConEd was not liable for personal injuries to non-customers caused by the 1977 New York City blackout—a holding that was necessary "to contain liability to manageable levels." 65 N.Y.2d at 404-05; *see also 532 Madison Ave. Gourmet Foods v. Finlandia Ctr.*, 96 N.Y.2d 280, 290-91 (2001) (duty to "entire urban neighborhood" unmanageable); *On v. BKO Express*, 148 A.D.3d 50, 57 (1st Dep't 2017) (duty to "the general public with whom [a] cab might come into contact" would be "unwieldy").

Similarly, in *Oddo v. Queens Village Committee for Mental Health for Jamaica Community Adolescent Program*, this Court refused to impose a duty on a residential treatment facility to protect the general public from a former resident because it is "difficult, if not impossible, to determine" when such a duty "would end." 28 N.Y.3d 731, 737 (2017). And in *Peralta v. Henriquez*, this Court refused to impose "a general duty of care requiring landowners to illuminate their property during all hours of darkness" because doing so "would produce an indeterminate class of plaintiffs without any reasonable limitations on liability." 100 N.Y.2d 139, 145 (2003).

The duty that Plaintiffs propose would be even more expansive. Under Plaintiffs' theory, any information service could be liable for any crime committed by any former user, so long as the victim alleges that the wrongdoer's use of the service negatively affected his mental state. This raises the specter of "limitless liability to an indeterminate class of persons." *Eiseman*, 70 N.Y.2d at 188. Given the vast number of users of services like Internet-Defendants', Plaintiffs would make them universal insurers. That is precisely when this Court has declined to find new duties: when "[t]he possibilities for injury—and consequently,

for liability—are limitless, and the expectation that [Internet-Defendants] control the conduct of third persons is unrealistic." *Haymon v. Pettit*, 9 N.Y.3d 324, 329-30 (2007).

This newfound duty also would be unworkable because it would afford no "principled basis for reasonably apportioning liability." *532 Madison Avenue*, 96 N.Y.2d at 292. In a case like this, liability would have to be apportioned among all of the services that allegedly exposed the wrongdoer to hateful content, along with other companies that may be contributorily negligent (e.g., manufacturers of video games the wrongdoer may have used) as well as individuals who may have influenced the wrongdoer (parents, teachers, counselors, and the like). The resulting and unwieldy "proliferation of claims" would threaten crushing liability. *Cf. In re Sept. 11 Litig.*, 280 F. Supp. 2d 279, 293 (S.D.N.Y. 2003) (landlord's duty to provide safe egress to World Trade Center tenants did not risk a proliferation of claims because the universe of claimants, while large, was "known and circumscribed").

Plaintiffs' tragic loss does not justify creating an unprecedented duty for online services to protect the general public from intentional torts committed by others.

2. Plaintiffs' product-liability claims fail because Plaintiffs are not bystanders harmed by the use of Internet-Defendants' services.

Similar to Plaintiffs' negligence claims, their product-liability claims fail because Plaintiffs are not among the class of people who may sue a product manufacturer or seller. To state a product-liability claim, a plaintiff must allege that, "*at the time of the occurrence*, the product [was] being used (whether by the person injured or damaged or by a third person) for the purpose and in the manner normally intended." *Codling v. Paglia*, 32 N.Y.2d 330, 342 (1973) (emphasis added); *see also Amatulli ex rel. Amatulli v. Delhi Constr.*, 77 N.Y.2d 525, 532 (1991).

Plaintiffs do not contend Gendron was using Internet-Defendants' services at the time of the shooting (aside from Twitch, which Amazon addresses separately) and do not allege that any services were being used at the time for the purpose and in the manner normally intended. Plaintiffs instead allege that the supposed defects in Internet-Defendants' services indirectly caused their injuries by *earlier* radicalizing Gendron and inspiring his criminal acts. *See supra* 18-21. But Plaintiffs do not cite any case excusing the contemporaneous-use requirement or extending *Codling* to a third-party injury caused by the

acts—much less *intentional* torts—of a person who previously used the defendant's product. Rather, in each of Plaintiffs' cases (PattersonBr.27), the injury was caused by the product itself at the time it was being used. *Codling*, 32 N.Y.2d at 335 (defective steering mechanism caused car accident); *Gebo v. Black Clawson*, 92 N.Y.2d 387, 390 (1998) (plaintiff injured while using an industrial embossing machine); *McLaughlin v. Mine Safety Appliances*, 11 N.Y.2d 62 (1962) (first responders injured patient with defendants' defective equipment); *Ciampichini v. Ring Bros.*, 40 A.D.2d 289, 290 (4th Dep't 1973) (defendant's defective trailer hitch caused trailer to detach and collide fatally with plaintiff).

B. Plaintiffs' claims all fail because Internet-Defendants' conduct was not a legal cause of Plaintiffs' injuries.

This Court can also affirm because all Plaintiffs' causes of action fail for lack of legally sufficient allegations of causation. Plaintiffs' theory is that Internet-Defendants caused their injuries by exposing Gendron to third-party speech that radicalized him into committing his premeditated, intentional tort. *Supra* 17-22. But no New York authority permits tort claims to proceed based on such an attenuated connection between the services and Plaintiffs' injuries, especially given Gendron's

intervening criminal act. And as the Fourth Department correctly recognized, the *Salter* Plaintiffs' new, addiction-only theory—which would hold Internet-Defendants liable for Gendron's crimes because they allegedly contributed to his social-media addiction—would worsen Plaintiffs' proximate-cause failing.

1. Both Plaintiffs' negligence and product-liability claims require them to show that Internet-Defendants' services proximately caused their injuries under New York's substantial-factor test. *See Voss v. Black & Decker Mfg.*, 59 N.Y.2d 102, 109 (1983) (product liability); *Turturro v. City of New York*, 28 N.Y.3d 469, 484 (2016) (negligence). Under that test, "[a]n intervening act may break the causal nexus when it is extraordinary under the circumstances, not foreseeable in the normal course of events, or independent of or far removed from the defendant's conduct." *Maheshwari v. City of New York*, 2 N.Y.3d 288, 295 (2004) (holding "criminal assault broke the causal nexus"). "This is true regardless of whether an action is pleaded as products liability … or negligence." *Mrakovcic v. Rose Art Indus.*, 26 A.D.3d 316, 317 (2d Dep't 2006). A defendant cannot be deemed a cause of a third party's intentional act unless the act was a "reasonably foreseeable"

consequence of the defendant's conduct. *Turturro*, 28 N.Y.3d at 484.

For example, when a defendant rented a "vehicle with a defective trunk lid," it was "not foreseeable" that a third-party driver would hit plaintiff while he stood behind the parked car, fixing the trunk. *Ventricelli v. Kinney Sys. Rent A Car*, 45 N.Y.2d 950, 952 (1978). The defective trunk "served to place the injured party at the site of the accident," but the "intervening act"—the negligent driving of the second vehicle—"was divorced from and not the foreseeable risk associated with the original negligence." *Derdiarian v. Felix Contracting*, 51 N.Y.2d 308, 315-16 (1980) (discussing *Ventricelli*); *see also Tennant v. Lascelle*, 161 A.D.3d 1565, 1565-66 (4th Dep't 2018) ("intentional murder" was not a foreseeable consequence of leaving a child in neighbor's care).

Under these principles, Gendron's heinous crimes break the causal chain as a matter of law. Plaintiffs try to draw an attenuated line from the publication of third-party content on Internet-Defendants' services, to Gendron's engagement with that content, to Gendron's extensive planning and ultimate travel to engage in a mass shooting that injured Plaintiffs. But Gendron's premeditated murder of ten

strangers—a calculated decision he made after months of research, purchasing weapons and gear, and documenting his hateful beliefs, *supra* 7-9—was not "the foreseeable risk associated with" publishing third-party speech to billions of people worldwide. *Derdiarian*, 51 N.Y.2d at 315-16.

That is particularly true because the harm to Plaintiffs "would not have occurred absent any injury" to Gendron. As a result, "there can be no direct link between the alleged misconduct of Defendants and the" injury to Plaintiffs, which is "remote, indirect, and derivative of third parties." *E. States Health & Welfare Fund v. Philip Morris Int'l*, 188 Misc. 2d 638, 645 (2000); *Fields v. Twitter*, 881 F.3d 739, 750 (9th Cir. 2018) (terrorist organizations' use of online service to communicate in advance of attack does not establish proximate causation between online service and terrorist attack).

The fact that plaintiffs in other cases have made such *allegations* does not change this analysis, nor does the fact that some of these services' countless users inevitably will commit crimes. By Plaintiffs' logic, a public library that stocked literature espousing extremist ideologies, or a bookstore that sold a manifesto later cited by a criminal,

could be held liable for the criminal's acts on the theory that providing access to the material caused the violence. No court has ever imposed such liability. On the contrary, every court addressing Plaintiffs' causal theory has held that publishing allegedly provocative content cannot proximately cause an audience member to commit violent crimes. *See, e.g.*, *Sanders*, 188 F. Supp. 2d at 1276; *James*, 300 F.3d at 699-700; *Zamora*, 480 F. Supp. at 202-03. And courts have consistently rejected the notion that online services that offer access to massive amounts of content could "proximately cause everything that an individual may do after viewing this endless content," particularly their "independent criminal acts." *Crosby v. Twitter*, 921 F.3d 617, 625 & n.4 (6th Cir. 2019) (collecting cases).

Were the rule otherwise, online services "would become liable for seemingly endless acts of modern violence simply because the individual viewed relevant social media content before deciding to commit the violence." *Id.* at 625. That result would vitiate the doctrine of proximate cause, which is designed to "place manageable limits upon … liability." *Hain v. Jamison*, 28 N.Y.3d 524 (2016) (quotation marks omitted); *Dyer v. Norstar Bank*, 186 A.D.2d 1083, 1083 (4th Dep't 1992)

(quoting *Ventricelli*, 45 N.Y.2d at 952); *see also Fields*, 881 F.3d at 749 (noting the "boundless litigation risks" of weakening causation requirements as to "[c]ommunication services").

2. As noted above (at 34-36), seeking to evade Section 230 and the First Amendment, the *Salter* Plaintiffs now argue that the sole tortious conduct was to addict Gendron to social media, entirely apart from the content he viewed. As the Fourth Department recognized, R.6622-23, this argument fails on causation grounds because there is no conceivable nexus between supposed content-neutral addiction and Plaintiffs' injuries. The chasm that separates "spending too much time on one's phone" from "planning and committing a mass shooting" becomes even wider when the *Salter* Plaintiffs seek to remove the allegedly radicalizing content. "Plaintiffs do not allege, and could not plausibly allege, that the shooter would have murdered Black people had he become addicted to anodyne content, such as cooking tutorials or cat videos." R.6603. While addiction allegedly causes low self-esteem, social isolation, and impulse control, R.2710-12(¶¶197-200), it is not foreseeable that allegedly addictive technological features like "infinite scroll," "upvoting," and "push notifications" would cause a mass murder.

R.2749(¶373), R.2771(¶439), R.2779(¶469), R.187(¶245).[23]

Plaintiffs cite no case that supports anything like this theory. Instead, they rely on cases (SalterBr.34-37) in which foreseeability existed (and thus proximate cause) because the "very same risk that rendered negligent" the defendants' conduct "was, in fact, the risk that came to fruition." *Hain*, 28 N.Y.3d at 533. In *Hain*, the plaintiff was struck by a car while trying to remove the defendant farm's calf from a rural road. *Id.* at 527. The risk of a car collision is exactly why it is negligent to allow farm animals to wander onto roadways; they "present a reasonably foreseeable danger to motorists due to their potential to interfere with traffic." *Id.* at 534. And in *Bonsignore v. City of New York*, the risk that a mentally unstable police officer would shoot a family member is precisely the harm that NYPD "could reasonably have

[23] Plaintiffs cite social media addiction cases (PattersonBr.23), but as discussed above (at 35-36), and as the Fourth Department explained, those cases "involve psychological harm allegedly caused *to users*, not, as here, harm caused by addicted users to third parties." R.6623. Courts regularly reject product-liability claims on the basis of such a mismatch between the alleged defect and the plaintiff's injuries. *E.g.*, *Berkovich v. Judlau Contracting*, 238 A.D.3d 441, 442 (1st Dep't 2025) (where technician was injured by "ghost start" while repairing an escalator, the alleged defective design of the maintenance pit making it "difficult to enter and exit the pit safely" was "not a substantial factor in causing the injuries"); *Nitz v. Gusmer*, 245 A.D.2d 929, 931 (3d Dep't 1997) (where plaintiff was thrown by his brother into a mixing machine, that "altercation … was the sole proximate cause of [his] injuries," so "any alleged defect in the … machine was not a substantial factor"); *La Platney v. Whitmore*, 111 A.D.2d 1002, 1004 (3d Dep't 1985) (similar).

anticipated … would result" from its negligent failure to "identify officers who were unfit to carry guns." 683 F.2d 635, 638 (2d Cir. 1982). That tight nexus is absent here. The foreseeable risk of allegedly addictive service features—without regard to content—is excessive app usage, not racist mass violence.[24]

C. New York product-liability law does not regulate harms allegedly caused by distributing ideas on individualized, intangible services.

Finally, in addition to the problems with Plaintiffs' product-liability claims discussed above, those claims fail because New York's product-liability doctrine does not apply to harms allegedly arising from ideas and information distributed through individualized services.

The law of product liability is designed to allocate the risks to consumers from products sold in commerce that are standardized and tangible. Because such claims address "the economics of production and distribution" in an era of "mass production, mass advertising, [and] mass distribution," *Codling*, 32 N.Y.2d at 341, they "impose[] a duty

[24] In Plaintiffs' other cases, foreseeability (and thus proximate cause) was established by a special relationship between the defendant and the plaintiff. *See Derdiarian*, 51 N.Y.2d at 312 (employer-employee); *Scurry v. N.Y.C. Hous. Auth.*, 39 N.Y.3d 443, 449 (2023) (landlord-tenant); *In re Sept. 11 Litig.*, 280 F. Supp. 2d at 299 (landlord-tenant); *see also Turturro*, 28 N.Y.3d at 474 (duty of municipality to road users in designing safe roadways). Here, Plaintiffs and Defendants have no such relationship.

upon a manufacturer whose wares serve a standardized purpose," *Matter of Eighth Jud. Dist. Asbestos Litig.* ("*Terwilliger*"), 33 N.Y.3d 488, 494 (2019). It is standardization that makes manufacturers well-positioned to identify physical defects in their tangible products, and the doctrine incentivizes them to do so by "requiring [their] goods to match a standard of safety defined in terms of conditions that create unreasonable risks of harm"—and then holding them strictly "liable for physical injuries caused by defects." *Bellevue S. Assocs. v. HRH Constr.*, 78 N.Y.2d 282, 291 (1991).

Plaintiffs seek something radically different, which no New York appellate court has ever done: to apply product-liability law to publication *services* that present a distinct mix of *intangible speech* to every user. The Third Restatement (which Plaintiffs ask the Court to adopt, PattersonBr.20) is clear that "[a] product is tangible personal property distributed commercially for use or consumption." Restatement (Third) of Torts: Prod. Liab. § 19. Conversely, "[s]ervices, even when provided commercially, are not products." *Id.* Consistent with that bedrock principle, courts have consistently rejected efforts to extend product-liability law to intangible software or online services.

E.g., *Intellect Art Multimedia v. Milewski*, 2009 N.Y. Slip Op. 51912(U) (Sup. Ct. N.Y. Cty. Sept. 11, 2009) (website providing a "forum for third-party expression" is a "service" and not a "product"); *Rodgers v. Christie*, 795 F. App'x 878, 880 (3d Cir. 2020) (AI risk-assessment tool "is neither 'tangible personal property' nor remotely 'analogous to' it"); *Addiction Litig.*, 702 F. Supp. 3d at 844-45 ("defendants' platforms are [not] akin to tangible personal property such that they are products").[25]

But even if New York product-liability law might apply to some dangers from software in some circumstances, it could not extend to Plaintiffs' claims here for two independent reasons.

First, Plaintiffs' theories, as actually alleged, are not cognizable as product-liability claims because the claimed "defect" is Internet-Defendants' publication of objectionable content. Plaintiffs allege Internet-Defendants' services are defective because they "recommend,"

[25] Plaintiffs' lead case, *People v. Aleynikov*, 31 N.Y.3d 383 (2018), is not to the contrary. It is a criminal case that holds merely that a person violates the statute that prohibits making a "tangible reproduction or representation of … secret scientific material by means of … mechanically or electronically reproducing or recording," N.Y. Penal Law § 165.07, when they copy electronic data to a private server, as opposed to loading the data onto physical media like a CD. 31 N.Y.3d at 386. That is because data uploaded to a server is "tangible in the sense of 'material' or 'having physical form.'" *Id.* at 399. *Aleynikov* has no bearing on product-liability law, and it does nothing to suggest that consumer-facing websites disseminating third-party speech in electronic form are tangible products.

"prioritize," "elevate," and "direct minor users to" harmful third-party speech, including "extreme and violent content," content that "promoted racism, antisemitism, and gun violence," "harmful or violent videos," "content that is violent, sexual, or encourages self-harm," and "racist[], antisemitic, and violence-promoting postings." R.173(¶173); R.188(¶249); R.200(¶¶303-04); R.204(¶323); R.221(¶¶412-13); R.2798(¶567); *see supra* 18-21.

But "intangible thoughts, ideas, and expressive content are not 'products'" or defects subject to strict liability; they are speech. *Sanders*, 188 F. Supp. 2d at 1279. Relying heavily on New York authority, the seminal decision *Winter v. G.P. Putnam's Sons* explained that "[a] book … consists of two parts, the material and print therein, and the ideas and expression thereof. The first may be a product, but the second is not." 938 F.2d 1033, 1034 (9th Cir. 1991). Entertaining strict liability for speech would hamper the "unfettered exchange of ideas" because the "threat of liability without fault" for "words and ideas … could seriously inhibit those who wish to share thoughts and theories." *Id.* at 1035 (citing *Walter v. Bauer*, 109 Misc. 2d 189, 191 (Sup. Ct. Erie Cty. 1981), *aff'd in part and rev'd in part on other grounds*, 88 A.D.2d 787 (4th

Dep't 1982)). Courts accordingly have rejected the idea that a book can be treated as a product, or that those involved in disseminating it can be held liable for product-liability claims when the alleged harm arises from the ideas communicated. *See Walter*, 109 Misc. 2d at 191; *Gorran v. Atkins Nutritionals*, 464 F. Supp. 2d 315, 324-25 (S.D.N.Y. 2006); *Lacoff v. Buena Vista Publ'g*, 183 Misc. 2d 600, 611 (Sup. Ct. N.Y. Cty. 2000).

Indeed, courts have uniformly rejected the same product-liability theory that Plaintiffs advance. In *James*, the Sixth Circuit rejected a product-liability claim about video games and websites that allegedly "desensitized [a viewer] to violence and caused him to kill" his classmates, reasoning that the "words and images … are not sufficiently 'tangible' to constitute products in the sense of their communicative content." 300 F.3d at 687, 701. In *Sanders*, the court dismissed Columbine shooting victims' claims against video game and movie producers because "intangible thoughts, ideas, and expressive content are not 'products.'" 188 F. Supp. 2d at 1279. And in *Wilson*, the court dismissed claims against the maker of a videogame that inspired a boy to stab his friend, because a "pictorial representation that evokes the

viewer's response" is not a product. 198 F. Supp. 2d at 169, 174. Plaintiffs' theory is indistinguishable from those rejected in these and similar decisions.[26]

Second, the services Plaintiffs challenge are not sufficiently uniform or standardized for strict product liability to apply. Strict liability rests on the premise that the manufacturer of "products that ha[ve] predictable, uniform characteristics" is "in the better position to avoid harm" from "unanticipated harmful product defect[s]." *Social Media Cases*, 2023 WL 6847378, at *15-16 (Cal. Super. Ct. Oct. 13, 2023). In determining whether an item is a product subject to strict liability, this Court therefore considers the product's "standardization." *Terwilliger*, 33 N.Y.3d at 496. Here, however, Plaintiffs allege neither standardized products nor standardized "latent dangers." To the contrary, they allege that Internet-Defendants' services are defective *precisely because* they offer a user-specific mix of content which (they

[26] *E.g.*, *Watters*, 904 F.2d at 381 (book publisher not strictly liable for reader's suicide because strict liability cannot be "extended to words or pictures"); *Davidson*, 1997 WL 405907, at *1, *14 (record company not strictly liable for police officer's murder because product liability applies only to the "physical properties of the audio tape," not "the ideas contained in the recording").

say) may be harmful to particular users. *Supra* 18-21; *e.g.*, R.174(¶176); R.187 (¶¶244-48).

For similar reasons, courts recently and repeatedly have rejected the argument that product-liability law applies to online services, including when they are alleged to be addictive or to have inspired violence. *See, e.g.*, *Social Media Cases*, 2023 WL 6847378, at *15-19; *Addiction Litig.*, 702 F. Supp. 3d at 844-45; *see also Doe 1 v. Meta*, 174 F.4th at 1174 (Nelson, J., concurring); *Ziencik v. Snap*, 2023 WL 2638314, at *4 (C.D. Cal. Feb. 3, 2023); *Jacobs v. Meta Platforms*, 2023 WL 2655586, at *4 (Cal. Super. Ct. Mar. 10, 2023); *Grossman v. Rockaway Twp.*, 2019 WL 2649153, at *4 (N.J. Super. Ct. Law Div. June 10, 2019). Again, that is because whereas "manufacturing processes place[] into general circulation products that ha[ve] predictable, uniform characteristics," these services are not "product[s] that all consumers *experience* in a uniform manner." *Social Media Cases*, 2023 WL 6847378, at *15-16. Instead, they allegedly "are intended to and do tailor the user's experience to the individual consumer." *Id.* at *16. Such intangible services, which take vastly different forms for each of hundreds of millions of users, do not "serve a

standardized purpose, such that [their] latent dangers, if any, are known, or should be known, from the time [they] leave[] the [Internet Defendants'] hands." *Terwilliger*, 33 N.Y.3d at 494.

These shortcomings each foreclose Plaintiffs' product claims, and their cumulative effect would distort product-liability doctrine beyond recognition. Strict liability is workable when a standardized, tangible product's malfunction causes physical injury: If a power saw injures a user, a jury can "balanc[e[the product's risks against its utility and cost" across millions of units sold because both the risk (a physical wound) and the utility (ease of use) are uniform, fixed, and objectively measurable. *Voss*, 59 N.Y.2d at 109. The manufacturer can protect against liability by addressing a tangible, identifiable defect—"extending the [saw's] movable guard." *Id.* at 105.

By contrast, jurors cannot balance the intangible and varying benefits that hundreds of millions of users derive from customized information and ideas on Internet-Defendants' services against the risk of intangible psychological harms some users may allege—much less against the risk of rare downstream crimes others may trace to such content. Service providers would therefore have no means to protect

against strict liability. So long as Internet-Defendants' services are engaging, they will be susceptible to claims that they are *too* engaging, leaving Internet-Defendants subject to a jury's balancing of inherently subjective, incommensurate risks and benefits. Such limitless and unprincipled liability lacks any basis in New York product-liability law.

CONCLUSION

For the foregoing reasons, the decision below should be affirmed.

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Respectfully submitted,

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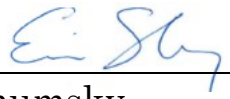
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CERTIFICATE OF COMPLIANCE

Pursuant to the Rules of Practice of the New York Court of Appeals (22 N.Y.C.R.R.) § 500.13(c)(1), I hereby certify that the total word count for all printed text in the body of the brief is 19,433 words, excluding parts identified as common requirements by § 500.13(c)(3), in accordance with the Court's direction granting leave for up to 20,000 words for this brief.



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