To be Argued by:
MATTHEW P. BERGMAN
(Time Requested: 20 Minutes)

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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,

– 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.

(For Continuation of Caption See Inside Cover)

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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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*APL-2025-00158, APL 2025-00165, APL 2025-00169, APL 2025-00170 will be heard together for oral argument

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INTRODUCTION

Fifteen years ago in *Shiamili v. Real Estate Group of N.Y.*, this Court properly held that a Section 230 analysis focuses on (1) whether the *duty* the defendant allegedly breached arises from "a publisher's traditional editorial functions" and (2) whether the defendant is "responsible in part" for the creation of the tortious material to *itself* be deemed a "content provider." 17 N.Y.3d 281 (2011). In this case, the Court should reaffirm these bedrock principles—under an entirely diametric set of facts—and apply Section 230's statutory language and legislative intent to distinguish between publishers' traditional editorial functions which are preempted Section 330 and Respondents' design of addictive and dangerous social media products that foreseeably and proximately caused Plaintiffs' injuries.

Despite Respondents' protestations and attempts to self-servingly characterize the robust and meticulous allegations in Plaintiffs' Complaint, the question properly before this Court is not whether social media platforms are liable when one of their users commits a crime. Rather, the narrow and fact-specific question is whether Respondents may be held accountable for their knowing misconduct and dangerously defective design where the foreseeable harm is a horrific mass shooting resulting from those very defects in their products.

As with all products liability claims, Plaintiffs plead a limited, yet reasonable, set of facts where Respondents may be liable in a manner that neither impinges upon

Section 230 nor the First Amendment. First, Respondents addicted Payton Gendron to their apps with AI-driven recommendation algorithms optimized for engagement that bombarded him with material he did not seek but from which he could not look away and then maintained his addiction through design components like infinite scroll, notifications, and social validation features. Second, once addicted, Gendron was goaded into planning and ultimately executing his crimes using the uniquely dangerous designs of Discord, Reddit, 4chan, and Twitch. Each of these acts was *a* proximate cause of Plaintiffs' injuries.

Because Respondents could have satisfied their duty to design reasonably safe apps without altering or removing a single piece of abhorrent content, none of Plaintiffs' claims rely on treating them as speakers or publishers of third-party content. Force-feeding a captive audience unsolicited material is neither a traditional editorial function nor protected First Amendment speech. Instead, as the Dissent below recognized, the claims apply long-settled negligence and product liability principles under New York law arising from Respondents' conduct as product manufacturers, choosing which features to include and in what manner they should be designed. Whether the risks of Respondents' design features outweigh their products' utility is a fact-specific analysis that does not fall within the ambit of Section 230 or the First Amendment.

Recent well-publicized verdicts and decisions against some of the exact same Respondents in coordinated litigation at both state and federal courts demonstrate that both courts and juries find these theories of liability well-supported by the law and the evidence. This Court should join its sister jurisdictions and conclude that New York law provides no less protection for its own citizens, and Plaintiffs here should have the opportunity to conduct discovery and advance their case to trial.

ARGUMENTS IN REPLY

I. RESPONDENTS ASK THIS COURT TO JETTISON THE BEDROCK PRINCIPLES FOR DECIDING A MOTION TO DISMISS

Though Respondents inundate the Court with five separate briefs totaling 296 pages of argument, they never address the Majority's failure to construe Plaintiffs' complaint liberally, accept the pleaded facts as true, and accord every favorable inference therefrom to the plaintiff under C.P.L.R. § 3211(a)(7). Instead, Respondents go to extraordinary lengths to recast and mischaracterize Plaintiffs' underlying factual allegations upon which liability is premised. They single out select allegations that support their narrative, ignore those that do not and construe all possible inferences in their favor.

Respondents insist, for example, that Plaintiffs' claims "seek to hold [them] liable for the content they published," Meta Br. at 17, while ignoring the express language of the Complaint stating otherwise. R.241 (¶530) (disclaiming all claims arising from Defendants' publishing third-party content); R.241 (¶532)

(Respondents liable for "their own operations, conduct, and products—not for the speech or content of others or . . . content moderation decisions"). Respondents claim they merely "made content available" to Gendron, Meta Br. at 9-10, 63, ignoring Plaintiffs' allegations that Respondents force-fed him unsolicited material as a result of the inherent design of their products.[1] R.168, 173, 252 (¶¶153, 172, 596). Finally, Respondents assertion that, "[t]o avoid liability, [they] would have had to remove content or disseminate different material," Meta Br. at 24, 38, is b elide by the very face of the Complaint. *See* R.241–42 (¶533) (Respondents could design safe social media products and provide adequate warnings "without altering, deleting, or modifying the content of a single third-party post or communication.").

Respondents' characterization of the allegations and their attempts to resolve perceived discrepancies therein are incompatible with both the allegations themselves and how this Court must view them. Rather than make any effort to defend the Majority's own "reading of the complaints," R.6618, Respondents double-down on their attempt at factual adjudication at the pre-answer stage.[2]

[1] 4chan on the other hand, acknowledges that Gendron was force-fed malign material but incredibly suggests that coercing someone to view such vitriol is a "core editorial prerogative." 4chan Br. at 27-28.

[2] For example, in blithe disregard of the proper standard for a motion to dismiss Defendant Snap accuses the *Patterson* Plaintiffs of "falsely alleg[ing] that Snapchat algorithmically promotes hate speech." Snap Br. at 5

II. SECTION 230 DOES NOT IMMUNIZE RESPONDENTS FOR DEFECTIVE PRODUCT DESIGNS

A. The Court is Not Constrained by Intermediate Appellate Courts' Erroneous Application of Publisher Immunity and Should Conduct a Fresh Analysis of Section 230's Requirements

Seldom in American jurisprudence have courts interpreted a statute so far afield from its statutory language and legislative intent as with Section 230. As Justice Thomas observed, "the arguments in favor of broad immunity under § 230 rest largely on 'policy and purpose,' not on the statute's plain text." *Doe v. Facebook, Inc*., 142 S.Ct. 1087, 1088, 212 L. Ed. 2d 244 (2022). While Section 230's language does not17 N.Y.3d 281 (2011) once contain the word "immunity," courts have interpreted the statute to imbue social media companies with absolute immunity for facilitating, by design, a host of malign activities on their platforms. Though Congress expressly enacted Section 230 to "maximize user control over what information is received by individuals, families, and schools," 47 U.S.C. § 230(b)(3), courts have dismissed parents' claims for social media companies' failure to implement basic safety measures such as age verification to protect minors from online sexual predators, *see Doe v. MySpace*, *Inc*., 528 F.3d 413, 419 (5th Cir. 2008), and their failure to properly report known child sex abuse material on their platforms, *see In re Soc. Media Adolescent Addiction/Pers. Injury Products Liab. Litig*., 777 F. Supp. 3d 1016, 1033 (N.D. Cal. 2025). Despite Section 230's explicit statutory purpose to "empower parents to restrict their children's access to objectionable or

inappropriate online material," 47 U.S.C. § 230(b)(3), courts have held social media companies immune for connecting minor victims to adult pedophiles. *Doe v. Grindr Inc*., 128 F.4th 1148 (9th Cir.), *cert. denied* 146 S. Ct. 319, 223 L.Ed.2d 134 (2025). And though Congress sought "to ensure vigorous enforcement of Federal criminal laws," courts have interpreted Section 230 to confer absolute immunity on social media platforms that "knowingly aid facilitate and assist sex traffickers," *Facebook, Inc. v. Doe*, 650 S.W.3d 748, 758 (Tex. App. 2022); *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 16 (1st Cir. 2016); facilitate heroin distribution, *Dyroff v. Ultimate Software Group, Inc*., 934 F.3d 1093, 1097 (9th Cir. 2019); recruit international terrorists, *Force v. Facebook, Inc.*, 934 F.3d 53 (2019); foment racial genocide, *Doe 1 v. Meta Platforms, Inc*., 174 F.4th 1159 (9th Cir. 2026); and radicalize racist mass murderers, *M.P. by & through Pinckney v. Meta Platforms Inc*., 127 F.4th 516 (4th Cir. 2025), *cert. denied sub nom. M.P. By & Through Pin v. Meta Platforms Inc.*, 146 S. Ct. 287 (2025).

Courts have interpreted § 230 "to confer sweeping immunity on some of the largest companies in the world," through a "capacious conception of what it means to treat a website operator as [a] publisher or speaker," *Malwarebytes, Inc. v. Enigma Software Group USA, LLC*, 141 S.Ct. 13, 17 (2020) (statement of Thomas, J. respecting denial of certiorari). This expansive interpretation of the term "publisher" is not only untethered from Section 230's statutory language; it is unsupported in the

legislative history, which "shout[s] to the rafters Congress's focus on reducing children's access to adult material." *Force v. Facebook, Inc*., 934 F.3d 53, 88 (2019) (Katzmann, C.J. dissenting in part). Tellingly, the sole reference to "publisher" appears in the section entitled "Protection for 'Good Samaritan' blocking and screening of offensive material." 47 U.S.C.A. § 230(c). Yet rather than interpret this provision consistent with legislative intent and statutory purpose, "Courts have discarded the longstanding distinction between 'publisher' liability and 'distributor' liability," *Malwarebytes*, 141 S. Ct. at 15, and "stretched the term 'publisher' in Section 230 past the point of recognition … bar[ring] claims even tangentially related to online speech" so as to "include what traditionally was never considered publishing conduct." *Doe 1 v. Meta Platforms, Inc*., 174 F.4th 1159 (9th Cir. 2026) (Barzon, J., concurring).

This Court is uniquely positioned to heed the "growing chorus of voices calling for a more limited reading of the scope of section 230 immunity." *Gonzalez v. Google LLC*, 2 F.4th 871, 913 (9th Cir. 2021) (Berzon, J., concurring), *vacated*, 598 U.S. 617, 143 S.Ct. 1191, 215 L.Ed.2d 555 (2023). Although bound by the United States Supreme Court's interpretations of federal statutes and the federal constitution, the Court is not bound by the decisions of intermediate and lower federal courts. *People v. Kin Kan*, 78 N.Y.2d 54, 59, 571 N.Y.S.2d 436 (1991); *Flanagan v. Prudential–Bache Sec*., 67 N.Y.2d 500, 506, 495 N.E.2d 345 (1986);

Alvez v. American Export Lines, 46 N.Y.2d 634, 638–639, 389 N.E.2d 461 (1979), *aff'd* 446 U.S. 274, 100 S.Ct. 1673, 64 L.Ed.2d 284. In the 30 years since Section 230's enactment, the United States Supreme Court has declined to address its scope and purpose, let alone endorse the unbounded interpretation of the term "publisher" urged upon this Court by Respondents herein. *See Gonzalez*, *supra* at 622 ("We ... decline to address the application of § 230 to a complaint that appears to state little, if any, plausible claim for relief."); *Malwarebytes*, *supra* at 18 (statement of Thomas, J., respecting denial of certiorari) ("[W]e need not decide today the correct interpretation of § 230. But in an appropriate case, it behooves us to do so."); *Doe v. Facebook*, *supra* at 1089 (statement of Thomas, J., respecting denial of certiorari) ("We should ... address the proper scope of immunity under § 230 in an appropriate case."). The Court should therefore chart an independent course in interpreting Section 230 publisher immunity unconstrained by prior determinations intermediate courts, including the Second Circuit majority in *Force*. *See Matter of Seltzer v. New York State Democratic Comm*., 293 A.D.2d 172, 174, 743 N.Y.S.2d 565 (2002).

Although some Courts have construed publishing to encompass AI driven algorithmic recommendations of malign material, *see Force*, *supra* at 67, this Court should adopt Judge Katzmann's view that "it strains the English language to say that in targeting and recommending ... writings to users" social media companies are "acting as 'the *publisher* of ... information provided by another information content

provider.'" *Id.* at 88 (Katzmann, C.J. dissenting in part) (quoting 47 U.S.C. § 230(c)(1)) (emphasis in original). And while some courts have concluded that Section 230—which predated the advent of social media by decades—was intended to immunize social media platforms for designing platforms that radicalize young men to commit heinous acts of racist violence, *see Pinckney*, *supra* at 523-24, this Court should take a different path and conclude that "Congress could not have anticipated the pernicious spread of hate and violence that the rise of social media likely has since fomented." *Force*, 934 F.3d at 88 (Katzman, C.J., dissenting in part). This case provides the Court with an opportunity to realign Section 230 with its statutory language and Congressional intent and reaffirm dual sovereignty principles between federal and New York law. The Court should seize this historic mantle.

B. Plaintiffs' Claims are Consistent with this Court's Holding in *Shiamili* and, by Factual Juxtaposition, Fall Outside the Ambit of Section 230

Respondents' argument that "there is no product-liability exception to Section 230" (Meta Br. at 15) flips this issue on its head. Section 230, by its very language, states that "[n]othing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section." 47 U.S.C. § 230(e)(3). Both *Shiamili* and recent sister-state authorities support the conclusion that Section 230 does not bar *all* possible tort claims, let alone all possible products liability claims. *See Shiamili, supra* at 286 (acknowledging that Section 230 only preempts

state tort law that is "inconsistent with its protections"); *Commonwealth v. Meta Platforms, Inc.*, 497 Mass. 384 (Mass. 2026) (Section 230 does not bar deceptive business practices claims); *TikTok, Inc. v. Eighth Judicial District Court in and for County of Clark*, 578 P.3d 640 (Nev. 2025) (same).

In deciding *Shiamili*, this Court read Section 230 as "generally immunizing Internet service providers from liability for third-party content wherever such liability *depends on* characterizing the provider as a 'publisher or speaker' of objectionable material." *Shiamili*, *supra* at 289 (emphasis supplied). It cited to decisional law finding immunity where the provider's role was merely to "mak[e]" the content "available." *Id.* Rather than espousing an automatic rule that Section 230 preempts entire categories of tort claims, as Respondents suggest, *Shiamili* demands a fact-specific inquiry into whether the claim hinges upon Respondents' being deemed the publisher of the content, i.e., whether their role was merely to "mak[e] available [the] content." *Id.*

Through the Court's reliance on *Barnes v. Yahoo*, 570 F.3d 1096 (9th Cir. 2009), *Shiamili* recognized that individuals may owe numerous different duties at once, and Section 230 only immunizes platforms from publisher liability. New York products liability law arises from the duty to design reasonably safe products, while Section 230 addresses duties arising from conduct as a publisher or speaker of third-party content. To this end, *Shiamili* is legally sound but factually distinguishable.

That case involved a largely static website, with a non-curated comment section, and a plaintiff that *chose* to read a comment posted by a third party. *Id.* at 290. Here, by contrast, Plaintiffs' claims do not seek to hold Respondents liable for simply making content available to Gendron. Plaintiffs' extensive and detailed factual allegations challenge the architecture of the Defendants' apps together with specific design features that, in this particular factual circumstance, created a foreseeable risk of violence that came to fruition. These features cannot be analogized to how a publisher chooses to allow the viewing of content or makes a compilation of information, but rather are based on harm caused by design features that affected how Gendron, specifically, interacted with the apps. Plaintiffs' theories of liability are therefore fully compatible with the Court's holding in *Shiamili.*

C. Respondents Gravely Mischaracterize Plaintiffs' Product Defect Claims

Respondents and the Majority below examine just one of the features Plaintiffs allege to be defective-- recommendation algorithms--while ignoring that the addictive design of these social media apps is the result of numerous component features working together to ensure that young users like Gendron never look away.[3] *Compare* Meta Resp. at 30-35, *with* R.188, 196-97, 212-13 (¶¶244-45, 285-87, 368-73). Moreover, Respondents' milquetoast depiction of their algorithms as simply

[3] The Fourth Department also largely ignored Plaintiffs' platform design allegations for Discord, 4Chan, Reddit, and Twitch as well, leading these Respondents to inaccurately conclude that only claims of addictive design are at issue.

implementing "editorial choices" to "select and rank" content bears no resemblance to addictive and radicalizing algorithms alleged in Plaintiffs' Complaint.

It should be axiomatic that not all algorithms are the same. *See Moody v. Netchoice*, 603 U.S. 708, 736 n.5 (2024) ("We … do not deal here with 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."). In *Moody,* Justice Barrett touched on this very issue, hypothesizing that *some* algorithms are programed to carry out the editorial preferences of their designers while other algorithms rely on AI to operate independently with no expressive intent. *Id.* 745–46 (Barrett, J. concurring). Although raised in the context of a First Amendment analysis (*see infra*), the inquiry applies to the Section 230 analysis here because the algorithms alleged in Plaintiffs' Complaint play no role in Respondents' "editorial choices" and certainly bear no resemblance to "traditional editorial functions, such as deciding whether to publish, withdraw, postpone, or alter content." *Shiamili*, *supra* at 281.

Because AI-driven algorithms designed to engender addictive use in minor users do not implement expressive intent or editorial choices, product defect claims based on such algorithms do not rest on the "objectionable" nature of the content they recommend. Meta Br. at 19. Consequently, while the type of content force-fed to teenage users by engagement algorithms is relevant to the foreseeability of the

harm under *MacPherson v. Buick Motor Co.*, 217 N.Y. 382, 390 (1916), and its progeny, it cannot be said that Plaintiffs' claims are "inextricably intertwined with [Defendants'] role as a publisher of third-party content." Meta Br. at 23.

Respondents repeat the Majority's misplaced syllogism that because Plaintiffs would not have a lawsuit if their apps had force fed Gendron "anodyne content" such as cooking tutorials, their product claims are premised on content, not design. Meta Br. at 3, 88. However, a defective design that force fed cooking tutorials to unsuspecting users would not give rise to an actionable claim because there is no risk of harm outweighing the app's utility and no injury. *See Hoover v. New Holland North America, Inc.*, 23 N.Y.3d 41, 53–54 (2014) (defining a defective product in terms of a risk-utility analysis and then discussing resulting injury). The fact that Plaintiffs' harms arose out of the violent content that Gendron viewed does not mean that their product defect claims are content based. See *Barnes*, *supra* at 1096 (broken promise to take down harmful third-party content from web site, though quintessential publisher conduct, did not alter contractual source of legal duty); *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 741 (9th Cir. 2024) (same).

D. Respondents' Augmentations of Third-Party Content Made Them Content Providers

Section 230 does not impose immunity on content creators or co-creators. 47 USC § 230 (f)(3) (defining "information content provider" as "any person or entity that is responsible, in whole or in part, for the creation or development of

information…"); *Shiamili, supra* at 289 ("It follows that if a defendant service provider is itself the "content provider," it is not shielded from liability."). Here, Plaintiffs alleged that Respondents routinely augmented the third-party content at issue in this case, adding stickers, music options, filters, unique templates, and even fully autogenerating webpages, such that they can be deemed co-creators of the content. R.1492-93, 1508-11, 1677, 1724.

Respondents baldly insist that these augmentations were simply "tools meant to facilitate the communication and content of others." Meta Br. at 42 (quoting *Dyroff*, *supra* at 1098). The allegations state otherwise; these augmentations were included primarily to enhance the addictive nature of the content—e.g., to more likely ensure that Gendron could not look away, even if it foreseeably meant he would become radicalized and commit a mass murder. In this way, Respondents' augmentations materially contributed to the tortious (addictive) nature of the content, making Respondents co-creators and placing them outside the protections of Section 230.

Twitch was also "responsible ... in part" under § 230 (f)(3) for the development of Gendron's murder video. When Gendron broadcast his livestream, Twitch had exclusive ownership of the content for a 24-hour period pursuant to the terms of the product's user agreement. R.1510. This feature is unique to Twitch and prohibits users from distributing content they create outside of the Twitch platform.

During the crucial 24-hour period when Gendron's murder video was uploaded onto Twitch and proliferated onto other platforms, Twitch was the co-owner of this content and as such was itself an "information content provider" under Section 230. *See Shiamili*, *supra* at 289.

With the benefit of a developed evidentiary record, a factfinder might agree with Respondents' characterization that addictive content is merely "more engaging." Meta Br. at 44. But at this pre-answer stage, the Majority should have accepted Plaintiffs' factual allegations as true and rejected Respondents' disputed, unsubstantiated, and self-serving characterizations regarding their status as a content provider under § 230 (f)(3).

III. RESPONDENTS' FIRST AMENDMENT ARGUMENTS REST ON DISPUTED FACTS

Respondents argue that Plaintiffs' claims are barred by the First Amendment because their allegedly tortious conduct amounts to "editorial choices about what speech to publish and how to arrange and present it to particular users." Meta Br. at 57. Yet they cannot point to any allegation in the Complaint suggesting that the incendiary material Gendron encountered on their platforms resulted from their "editorial choices." Meta Br. at 57 (quoting *Bartnicki v. Vopper*, 532 U.S. 514, 527 (2001)). Nor can they point to any factual allegation that their algorithmic recommendations are based solely on a "user's own preferences." Meta Br. at 66-67. Instead, Respondents brazenly ask the Court to accept their unsubstantiated

factual narrative of how recommendation algorithms operate over the express allegations in Plaintiffs' Complaint while simultaneously insisting that "factual details of how Respondents disseminate that speech are beside the point." Meta Br. at 31-32, 64 n.22.

Respondents further argue that the First Amendment applies to recommendation algorithms that "give users what they are looking for." Meta Br. at 66. However, the allegations here are that the algorithms at issue do quite the opposite: they ignore or significantly deprioritize a user's actual interests, choosing instead to feed the user videos most likely to maximize screentime based on data metrics. The Fourth Department Majority erred in crediting Respondents' factual assertions over the express, contradictory allegations found on the face of the Complaint.

IV. RESPONDENTS IMPROPERTY SEEK TO ADJUDICATE PLAINTIFFS' PRODUCTS LIABILITY CLAIMS AT THE PRE-ANSWER STAGE

A. The "Sweeping New Duty" Decried by Respondents is the Same Old Duty to Design Reasonably Safe Products

Respondents describe Plaintiffs' theories of liability as calling for a "novel third-party duty to the public at large" that would lead to "broad, insurer-like liability." Meta Br. at 77. In support of this grave mischaracterization, Respondents again advance their hackneyed assertion that Plaintiffs' claims seek to hold

Respondents accountable for "the ideas and images conveyed" rather than their deliberate design choices as applied to the specific facts at bar. *Id.*

In so arguing, Respondents fail to address any of the fundamental precepts of a duty analysis, to wit, that a duty extends to "third persons exposed to a foreseeable and unreasonable risk of harm by the failure to warn," that the determination of what constitutes a "product" is intertwined with the duty question, that the party in the best position to prevent the harm owes a duty, that this is an "inherently fact-sensitive" analysis, and that it is *Respondents*' burden to prove there is no duty owed as a matter of law. *See generally Matter of the Eighth Judicial Dist. Asbestos Litig. [Terwilliger]*, 33 N.Y.3d 488, 494, 495-98, 502 (2019). Incredibly, Respondents claim that they did not even own *Gendron* a duty of any kind. Meta Br. at 79. That is contrary to every New York precedent fixing products liability duties that is cited by both sides. *See, e.g., Codling v. Paglia*, 32 N.Y.2d 330, 342 (1973) (duty owed to "*any person* injured or damaged if the defect was a substantial factor in bringing about his injury or damages") (emphasis supplied). Contrary to Respondents' assertion, the phrase "any person" has never been limited to bystanders (Meta Br. at 82). *See McLaughlin v. Mine Safety Appliances Co.*, 11 N.Y.2d 62, 68 (1962) (duty extends to any "third persons exposed to a foreseeable and unreasonable risk of harm").

Further incredible is Respondents' assertion that *Hamilton v. Beretta U.S.A.*, 96 N.Y.2d 222, 233 (2001), is dispositive. Meta Br. at 73. That case involved a negligent distribution claim regarding the placement of thousands of guns into the marketplace, rather than a products liability claim tied to a specific user of the product. In any event, as to a general duty, even *Hamilton* provides that if the defendant's relationship with the person that caused harm places it in the best position to stop that harm, a duty is owed. *Id.* at 233. Respondents are therefore correct that *Hamilton* is dispositive—just not in the way they envision.

Similarly, Respondents continue their conclusory contentions by demanding that they "exercised no control over Gendron…." Meta Br. at 75. But Plaintiffs allege that they did (R.168, 173, 252 (¶¶153, 172, 596)), such that compelling Gendron to view unsolicited content until he reached the point to act upon it means that Defendants both affirmatively "create a peril" to the limited number of persons that interacted with Gendron thereafter (*Davis v. S. Nassau Communities Hosp.*, 26 N.Y.3d 563, 577 (2015)) and was in the best position to prevent such harm. *See Hamilton, supra.* In this context, there is no legal distinction in terms of a duty owed between physically administering a mind-altering substance (*see Davis, supra*) and Respondents imposing, by design, a mind-altering addiction upon Gendron. Meta Br. at 75.

Respondents' authorities are inapposite for multiple reasons. First, *none* of its New York citations involved products liability claims. *Compare* Meta Br. at 78-81, *with* Opening Br. at 26-29. Second, Respondents' cases involved defendants that clearly had no control over the assailant. *See, e.g., Oddo v. Queens Vill. Comm. for Mental Health for Jamaica Cmty. Adolescent Program*, Inc., 28 N.Y.3d 731 (2017) (defendant had no control over assailant where it had discharged him for violating facility policies); *Schrempf v. State*, 66 N.Y.2d 289 (1985) (medical malpractice claim against hospital where psychiatric outpatient committed assault).

With respect to Respondents' out-of-state authorities, this Court has explicitly noted, in addressing a duty question, that New York products liability law differs markedly from other states like California. *In re New York City Asbestos Litig. [Dummitt]*, 27 N.Y.3d 765, 798 (2016). This alone renders Respondents citations distinguishable. Nonetheless, none of cases cited involved claims of product liability arising from deliberate design decisions. Meta Br. at 77-78 (citing *James v. Meow Media*, 300 F.3d, 683, 687 (6th Cir. 2002); *Sanders v. Acclaim Ent.*, 188 F.Supp.2d 1264, 1272-76 (D. Colo. 2002); *McCollum v. CBS*, 202 Cal. App. 3d 989, 1004-06 (1988); *Bill v. Super. Ct.*, 137 Cal. App. 3d 1002, 1014 (1982); *Pahler v. Slayer*, 2001 WL 1736476, at *6 (Cal. Super. Ct. Oct. 29, 2001); *Zamora v. CBS*, 480 F. Supp. 199, 201 (S.D. Fla. 1979)). Ultimately, Respondents fail to address Plaintiffs'

limiting factors that cabin the products liability duty owed here to fact-specific circumstances. *See* Opening Br. at 46-47.

Grasping further, Respondents next argue that liability is foreclosed because Gendron was not actively using their products (apart from Twitch) at the exact moment of the shooting. Meta Br. at 82 (citing *Codling*, 32 N.Y.2d at 342). This improperly seeks a bright line rule based on flimsy semantics. Not all product injuries occur instantaneous, and it is a core principle that injuries caused by latent harm are actionable. *See, e.g., Telcide v American Honda Motor Co., Inc.*, 2018 WL 1627241, at *2 (Sup. Ct., N.Y. Cnty., Mar. 30, 2018) (finding a duty owed when the product released a toxin that was taken home on the product user's clothes, causing injury to a spouse at home *well after* the product was used) (*citing In re New York City Asbestos Litig. [Holdampf]*, 5 N.Y.3d 486, 492 n.4 (2005) (noting that a landowner owed no duty in garden variety negligence to the spouse of an employee, but that rule did not apply to a manufacturer of the product). The implications of Respondents' mechanical "only during use" rule would be far-reaching and inexorably lead to absurd results. *See Hoover, supra* at 59 (proposed rule "would lessen the manufacturer's duty to design effective safety devices that make products safe for their intended purpose and 'unintended yet reasonably foreseeable use'").

B. Discord's Absence of Algorithms Does Not Negate Plaintiffs' Claims

Discord quotes selectively from Plaintiffs' 140-page Complaint, suggesting

that Plaintiffs' allegations against Discord "were far more limited" and arguing that the lack of algorithmic recommendation on its platform categorically exclude it from products liability claims. Discord Br. at 2, 5, 10 But algorithmic recommendations have never been the factual predicate for Plaintiffs' Discord claims. Rather, Plaintiffs allege that Discord was deliberately designed to foster radicalization through its unique features, including its private, invite-only chat rooms with no centralized moderation that were intended to function as recruitment tools and to spur violence rather than just ideology, and that it did so specifically with Gendron. R.215 (¶ 384) R.215-216 (¶ 386). Since Discord was designed to allow users to strictly control access, neither other users *nor Discord's own moderators* were able to view Gendron's journal, and thus no reports could have been made. R.217 (¶ 389). None of the authorities cited by Discord address whether designing an impenetrable digital chat room amounts to "editorial judgments and publishing functions" under Section 230. Discord Br. at 14 n.5 (citing *Doe v. Grindr Inc*., *supra* at 1153; *Doe v. MySpace Inc*., *supra* at 419-22; *Herrick v. Grindr LLC*, 765 F. App'x 586, 590 (2d Cir. 2019); *Dyroff*, *supra* at 1095-96; *Gonzalez*, *supra* at 880, *rev'd on other grounds sub nom. Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023); *Force*, *supra* at 66-67). Discord's design features made all the foregoing possible, and at this stage, should not be subject to judgment as a matter of law.

C. Plaintiffs' Claims Do Not Require Any "Special Relationship" With Gendron

For similar reasons, Respondents' argument that they had no "special relationship" with Gendron giving rise to a duty to control his actions misses the point. New York products liability does not require any "special relationship" with the user of a defective product for liability to arise. It does not require "privity." *Gebo v. Black Clawson Co.*, 92 N.Y.2d 387, 392 (1988). Even Respondents implicitly recognize this, as they acknowledge that a products liability duty is owed to mere bystanders, who neither used the product nor had *any* relationship with the manufacturer. Meta Br. at 69, 71, 82.

Unsurprisingly, none of the cases relied upon by Respondents for their "special relationship" argument involve claims of products liability. In *Purdy v. Public Administrator of County of Westchester*, the plaintiff sought to hold a nursing home liable for a motor vehicle collision caused by one of the nursing home's elderly residents. 72 N.Y.2d 1 (1988). In *Eiseman v. State of New York*, a college student sought to hold the state liable for harm caused by an ex-felon who had been accepted into a special State college program. 70 N.Y.2d 175 (1987). And in *Strauss v. Belle Realty Co.*, the plaintiff sought to impose liability on an electric company for injuries caused in the common area of an apartment during a power failure. 65 N.Y.2d 399 (1985).

D. Defendants' Products Were a Proximate Cause of Their Injuries

Respondents next argue that the harm here was not a "foreseeable risk" of their design decisions and that Gendron's conduct "break[s] the causal chain as a matter of law." Meta Br. at 85-86. Yet full adjudication of these inherently fact-specific issues should not be resolved on the pleadings, particularly where the well-pleaded facts of the Complaint allege both foreseeability of the risk and that Gendron's conduct flowed directly and naturally from Respondents' defective products. R.130 (¶5), 132(¶16), 173 (¶172), 174 (¶177), 247 (¶558). As the Dissent below recognized, Gendron "all but admitted those facts to be true." R.6624. Quite the opposite of breaking a causal connection, Gendron did exactly what Respondents' defective products compelled him to do.

In fact, Plaintiffs alleged that Respondents had *actual knowledge* of the risks of mass violence caused by their apps' product features. Facebook's Director of Content Policy once stated of the risks of livestreaming: "not only did we anticipate murders and suicides on Live, we anticipated far worse (all of one of our top 5 predictions have played out)." R. 190 (¶ 257). The founder of Facebook's Global Executive Program responded, saying, "I'd rather we were just honest and could say, if only to ourselves, that we took a calculated risk because of the upside was more important to us." R.191 (¶ 257). Numerous news outlets, including BuzzFeed News and Slate, have reported on the prevalence of hate groups and violent extremists

using Discord as "the ideal place for far-right recruitment." R.215-16 (¶¶ 385-86). And since 2014, Amazon is alleged to have documented or otherwise recorded incidents where Twitch has been used to livestream acts of violence or self-harm. R.209 (¶ 351).

Under this Court's precedents, since Gendron's intentional acts were "itself the foreseeable harm that shapes the duty imposed," Respondents' "fail[ure] to guard against such conduct will not []relieve [them] of liability when that act occurs." *Kush v. City of Buffalo*, 59 N.Y.2d 26, 33 (1983). Indeed, "[b]y its very definition, any breach of this duty that leads to injury will involve an intentional, unauthorized" act that causes harm. *Id. See McCarville v. Burke*, 255 A.D.2d 892 (4th Dep't 1998) (risk that intervenor would intentionally injure plaintiff was created by defendants' negligence); *Green v. Tanyi*, 238 A.D.2d 954 (4th Dep't 1997) (same).

Respondents do not grapple with these precepts at all. Instead, they deflect, citing only to cases in which the intervenor was a random third party and the defendant had no role at all in spurring on that intervenor's conduct. *See, e.g., Ventricelli v. Kinney Sys. Rent A Car, Inc.*, 45 N.Y.2d 950 (1978) (random motorist caused the injury, whose negligence was completely divorced from rental company's leasing of car with a faulty trunk) (Meta Br. at 85). Moreover, those cases were decided post-trial or at the summary judgment stage. *Id.*

Respondents wholly ignore New York law that a substantial factor need only be more than a "slight or trivial" cause of the injury (*see* P.J.I. 2:70 Proximate Cause In General), and that proximate cause determinations turn on issues of foreseeability, which is the subject of varying inferences based on "the unique nature of the inquiry in each case." *Derdiarian v. Felix Contr. Corp*., 51 N.Y.2d 308, 315 (1980). This failing also pervades the arguments of the individual Defendants.

4Chan played an integral role in promoting racist violence through its automatic deletion of posts combined with users' complete anonymity. R.162, 223-24 (¶¶126, 426, 428). Discord's impenetrably private server design allowed Gendron to exhaustively plan and execute his attack. And the Twitch platform, in its current design, is inherently dangerous because it was designed without any feature to reduce the risk of livestream broadcast of violence, which has been proven to motivate future acts of mass terror. R.209 (¶353).

Discord further attempts to escape liability by arguing that Plaintiffs failed to allege that Gendron "was exposed to third-party content on Discord specifically, became addicted to Discord specifically, or became radicalized because of Discord specifically." Discord Br. at 17. But this was never the basis of Plaintiffs' claims against Discord. Rather, Plaintiffs alleged that Discord's impenetrably private server design, which promotes radicalization, enhanced Gendron's radicalization and empowered him to plan and ultimately carry out his attack. R.215-18 (¶¶382-396).

Certainly, Gendron availed himself of Discord's design features only after other Respondents had addicted and initially radicalized him, but a causal chain may have numerous links. Tortious conduct appearing later in the chain, by itself, does not "defeat[] proximate causation as to Discord." Discord Br. at 17.

In the case of Twitch, nothing in Defendant's cited authorities suggests that a product enabling livestreaming cannot itself be held to the duty to design reasonable products. Plaintiffs' basic contention is that it would be "feasible to design the products [at issue] in a safer manner." R.242 (¶537). A Twitch platform that includes basic screening mechanisms and safety features would preserve the product's core function—streaming videos to users—while reducing the proven, demonstrable risks of mass violence inspired by an instantaneous audience. Defendant decries these proposals as unreasonable, Amazon Br. at 28-29, but it is for the jury, not the court, to determine whether such basic safety features would impair the function of the Twitch platform, particularly where the content and details of all expressive communications would remain entirely unchanged. *SUEZ Water New York Inc. v. E.I. du Pont de Nemours & Co.*, 578 F. Supp. 3d 511, 560 (S.D.N.Y. 2022) ("Generally, 'it will be for the jury to decide whether a product was not reasonably safe in light of all of the evidence presented by both the plaintiff and defendant.'").

E. Respondents' Platforms Are Products, Not Services

Finally, Respondents insist that Plaintiffs' products liability claims must fail because their platforms are services, not products. Of course, this argument has been repeatedly rejected by numerous courts, including the federal multi-district litigation in which the New York Attorney General is actively seeking to hold the same Respondents liable under theories of products liability. *In re Social Media Adolescent Addiction/Pers. Inj. Prod. Liab. Litigation* (MDL No. 3047), 22-MD-3047-YGR (N.D. Cal). Even Respondents themselves internally acknowledge that their platforms constitute products, not services. *See* R.185 (¶236) ("Our products include … Facebook … Instagram"); R.195 (¶279) ("Google Services' core products and platforms include … YouTube"); R.206 (¶¶337-38) (describing "product updates" to Twitch); R.211-12 (¶366) ("Our flagship product, Snapchat …"); R.214 (¶381) (Discord seeking "Product Managers" for its platform); R.220-221 (¶410) (same).

Against this, Respondents advance the same faulty arguments. The defect at issue is not their "publication of objectionable content." Meta Br. at 92. It is the addictive design features, including but not limited to the engagement-optimizing algorithm, infinite scroll, notifications, and social validation metrics. Contrary to their bald assertion (Meta Br. at 95), these defective product features do operate in a standardized manner, and *every* user is subjected to them. R.213, 244-46, 252

(¶¶373, 546–52, 596). This, in part, makes these apps "products" under New York law, and Respondents wholly failed to meet their motion burden of establishing otherwise as a matter of law.

CONCLUSION

For the foregoing reasons, the Order of the Fourth Department should be reversed and Respondents' motions to dismiss should be denied.

Dated: New York, New York
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Respectfully submitted,

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AFFIRMATION OF COMPLIANCE

Pursuant to 22 N.Y.C.R.R. § 500.13(c)(1) & (3), the undersigned, as attorney for Plaintiffs-Appellants, hereby certifies and affirms that according to the word count feature of the word processing program used to prepare this brief, the brief contains 6,428 words, which complies with the limitations stated in § 500.13(c)(1).

Dated: July 1, 2026



Seth A. Dymond

STATE OF NEW YORK	)		**AFFIDAVIT OF SERVICE BY**
	)	ss.:	**ELECTRONIC MAIL UPON**
COUNTY OF NEW YORK	)		**CONSENT OF ALL PARTIES**

I, Tyrone Heath, 1702 Clay Avenue, Apt 11, Bronx, New York 10457, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above.

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