

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

FRAGRANCE HARRIS STANFIELD; YAHNIA BROWN-MCREYNOLDS; TIARA JOHNSON; SHONNELL HARRIS-TEAGUE; ROSE MARIE WYSOCKI; CURT BAKER; DENNISJANEE BROWN; DANA MOORE; SCHACANA GETER; SHAMIKA MCCOY; RAZZ'ANI MILES; PATRICK PATTERSON; MERCEDES WRIGHT; QUANDRELL PATTERSON; VON HARMON; NASIR ZINNERMAN; JULIE HARWELL, individually and as parent and natural guardian of L.T., a minor; LAMONT THOMAS, individually and as parent and natural guardian of L.T., a minor; LAROSE PALMER; JEROME BRIDGES; MORRIS VINSON ROBINSON-MCCULLEY; KIM BULLS; CARLTON STEVERSON; and QUINNAE THOMPSON

Index No.: 810317/2023

Plaintiffs,

v.

MEAN LLC; VINTAGE FIREARMS, LLC; RMA ARMAMENT, INC.; ALPHABET INC., GOOGLE, LLC, YOUTUBE, LLC,; REDDIT, INC.; PAUL GENDRON; and PAMELA GENDRON,

Defendants.

AFFIRMATION OF THOMAS S. LANE, ESQ.

THOMAS S. LANE, an attorney duly admitted to practice law before the Courts of the State of New York, affirms the following, under penalties of perjury:

1. I am a Partner in the law firm Webster Szanyi LLP, attorneys for Defendants Alphabet Inc., Google LLC, and YouTube, LLC (collectively "YouTube") in this matter. As such, I have knowledge of the facts and circumstances of this litigation, including the facts referenced in this Affirmation.

2. This Affirmation is submitted in support of YouTube's Motions to Dismiss all claims against it asserted in the Complaint in *Jones v. MEAN LLC*, Case No. 810316/2023 ("*Jones*") (*Jones* NYSCEF Doc. No. 1) and the Amended Complaint in *Stanfield v. MEAN LLC*, Case No. 810317/2023 ("*Stanfield*") (*Stanfield* NYSCEF Doc. No. 3) for failure to state a cause of action pursuant to CPLR 3211(a)(7).

3. Because the Plaintiffs in *Jones* and *Stanfield* are represented by the same attorneys and allege identical claims against YouTube based on materially identical allegations (except for an additional negligent infliction of emotional distress claim in *Stanfield*), YouTube submits this single cross-case Attorney Affirmation, and a single cross-case Memorandum of Law, in support of its Motions to Dismiss the operative complaints in both cases. *See* Stipulation, *Jones* NYSCEF Doc. No. 27 at 1 and *Stanfield* NYSCEF Doc. No. 30 at 2.

FACTUAL BACKGROUND

4. On May 14, 2022, Payton Gendron committed heinous crimes when he killed ten people in a racist mass shooting at Tops Friendly Markets supermarket.

5. On August 15, 2023, following two similar cases pending before this Court (*Patterson v. Meta Platforms Inc.*, Case No. 805896/2023 and *Salter v. Meta Platforms Inc.*, Case No. 808604/2023), Plaintiffs filed these two cases against YouTube, Reddit, Inc., and other defendants.

6. *Jones*, brought on behalf of the estate of Celestine Chaney and her surviving son Wayne Jones, asserts causes of action against YouTube for strict liability (Count 12) and negligence (Count 13) under product liability theories for defective design in YouTube's "recommendation algorithm and other product features." *Jones* ¶¶349-77.

7. *Stanfield* asserts the same strict liability and negligence claims under the same theories of product liability (Counts 15 and 16 respectively). *Stanfield* ¶¶435-61. The *Stanfield* plaintiffs—surviving Tops employees and shoppers—also bring a claim for negligent infliction of emotional distress (“NIED”) (Count 17). *Stanfield* ¶¶462-75.

8. Plaintiffs’ theories are not viable as a matter of law. Similar claims raised by victims of other criminal acts of violence have been uniformly rejected by courts throughout the United States.

9. In this instance, the New York Attorney General’s Office investigated Gendron’s use of online services and concluded that YouTube likely cannot be held liable. *See Investigative Report on the Role of Online Platforms in the Tragic Mass Shooting in Buffalo on May 14, 2022* (Oct. 18, 2022), <https://ag.ny.gov/sites/default/files/buffaloshooting-onlineplatformsreport.pdf> (“Report”) (Attached as Exhibit A). This publicly available government report is already before the Court in *Patterson and Salter*, and it can similarly be considered by the Court here, including through judicial notice.

GROUND FOR DISMISSAL OF YOUTUBE

10. Dismissal of these actions against YouTube is warranted on several grounds. As set forth more fully in the accompanying Memorandum of Law, these grounds include the following.

11. *First*, Plaintiffs’ claims are barred by Section 230 of the Communications Decency Act, 47 U.S.C. § 230, a federal statute that immunizes providers of interactive computer services, such as YouTube, from claims that treat it, or seek to hold it liable, as a publisher of third-party content. *See* YouTube Memorandum of Law at pp. 7-14.

12. *Second*, Plaintiffs' claims are barred by the First Amendment to the United States Constitution. Established First Amendment principles prohibit the imposition of tort liability on YouTube for the alleged consequences of disseminating protected speech to the public—including the offensive speech at issue here. *Id.* at pp. 15-25.

13. *Third*, Plaintiffs' product-liability claims are not viable under New York law because YouTube's services are not "products" as a matter of law, and because product-liability causes of action cannot be asserted against intangible ideas or information. *Id.* at pp. 25-30.

14. *Fourth*, Plaintiffs cannot establish that YouTube owes them a duty of care, a fundamental element of their negligence-based claims. YouTube does not owe a duty of care to the general public to prevent violent crimes committed by third parties after viewing information created or posted by other users of its services. And Plaintiffs do not (and cannot) bring claims on behalf of Gendron for his own "radicalization" and criminal acts, so any purported duty to protect Gendron as a YouTube user is irrelevant and cannot support a negligence claim. *Id.* at pp. 30-33.

15. *Fifth*, the Complaints fail to assert that YouTube's services, or any other alleged conduct by YouTube, are the legal cause of Plaintiffs' injuries, including because Gendron's intentional criminal acts are unforeseen intervening events that break any potential causal chain. *Id.* at pp. 33-38.

16. *Sixth*, the *Stanfield* Plaintiffs' claim for NIED fails because Plaintiffs do not identify an independent basis for liability from their other tort claims, and because Plaintiffs do not allege sufficient family relationships or proximity to the attack to qualify for recovery under any theory of liability. *Id.* at pp. 38-40.

17. *Finally* Alphabet, Inc. cannot be held liable for the alleged wrongdoing of its subsidiary, YouTube. Plaintiffs only allege facts as to YouTube and make no direct allegations

against Alphabet, Inc. Accordingly, Alphabet, Inc. should be dismissed from these actions. *Id.* at p. 41.

EXHIBITS

18. The following exhibits are attached and submitted for the Court's consideration of this motion and discussed in more detail in the accompanying Memorandum of Law.

Exhibit A: *Investigative Report on the Role of Online Platforms in the Tragic Mass Shooting in Buffalo on May 14, 2022* (Oct. 18, 2022), originally published at <https://ag.ny.gov/sites/default/files/buffaloshooting-onlineplatformsreport.pdf>;

Exhibit B: *Hate speech policy*, YouTube Help, published at https://support.google.com/youtube/answer/2801939?hl=en&ref_topic=9282436;

and

Exhibit C: *Violent or graphic content policies*, YouTube Help, published at https://support.google.com/youtube/answer/2802008?hl=en&ref_topic=9282436.

CONCLUSION

19. Although the underlying events are tragic, established law precludes Plaintiffs from seeking to hold YouTube liable for Gendron's criminal acts, which were allegedly influenced by third-party speech on its service. For these reasons, and for those set forth in the accompanying Memorandum of Law, the motions to dismiss the *Jones* and *Stanfield* Complaints against YouTube should be granted.

Dated: Buffalo, New York
November 9, 2023

s/ Thomas S. Lane

Thomas S. Lane, Esq.

WORD COUNT LIMIT CERTIFICATION

I hereby certify pursuant to 22 NYCRR §202.8-b that the foregoing Attorney Affirmation was prepared on a computer using Microsoft Word.

Type. A proportionally spaced typeface was used, as follows:

Name of typeface: Times New Roman

Point size: 12

Line Spacing: Double

Word Count. The total number of words in this Affirmation, exclusive of the caption, signature block, and this Statement, is 1053 words.

Dated: November 9, 2023

s/ Thomas S. Lane

Thomas S. Lane, Esq.