STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

WAYNE JONES, Individually and as Administrator of the Estate of CELESTINE CHANEY,

Plaintiff,

-vs-

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

Defendant.

Hon. Paula L. Feroleto

Index No. 810316/2023

REDDIT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ..... iii-ix

I. INTRODUCTION 1

II. FACTUAL BACKGROUND 2

III. ARGUMENT 6

A. Section 230 of the Communications Decency Act Bars All of Plaintiffs' Claims 6

1. Reddit Is an Interactive Computer Service and the Content at Issue Was Provided by Third Parties 7

2. Plaintiffs' Claims Treat Reddit as a Publisher 8

B The First Amendment and the Free Speech Clause of the New York Constitution Also Bar All of Plaintiffs' Claims 13

1. Plaintiffs' Claims Target the Dissemination of Speech, Not Conduct 14

2. The First Amendment Precludes Tort Liability for Speech 16

3. The First Amendment Also Bars Claims That Would Hold Reddit Liable for Presenting and Disseminating Its Users' Speech 18

C. Plaintiffs Have Failed to and Cannot Sufficiently Allege Required Elements of Their Claims Against Reddit 21

1. Plaintiffs Do Not Plead Viable Strict Product Liability Claims 21

2. Plaintiffs' Negligence-Based Claims Fail Because Reddit Does Not Owe Plaintiffs a Duty of Care 25

3. In *Stanfield*, Plaintiffs Fail to Adequately Plead a Claim for Negligent Infliction of Emotional Distress....28

D. Plaintiffs Have Failed to and Cannot Sufficiently Allege Legal Causation 30

1. Plaintiffs' Alleged Chain of Causation Is Too Attenuated....31

2. The Unforeseeable, Intervening Criminal Acts of a Third Party Break Any Causal Connection 33

IV. CONCLUSION 35

TABLE OF AUTHORITIES

CASES: PAGE

Abraham v. Entrepreneur Media, Inc., No. 09-CV-2096
2009 WL 4016515, at *1 (E.D.N.Y. Nov. 17, 2009) 28

Anderson v. TikTok, Inc., 637 F. Supp. 3d 276,
280, 282 (E.D. Pa. 2022) 13, 25

Armstrong v. Simon & Schuster, Inc.,
85 N.Y.2d 373, 379 (1995) 14

Ashcroft v. Free Speech Coal., 535 U.S. 234, 253 (2002) 16

Barnes v. Yahoo!, Inc., 570 F.3d 1096, 1101–1102
(9th Cir. 2009) 8

Beasock v. Dioguardi Enter's, Inc., 494 N.Y.S.2d 974,
978 (1985) 24

Beckman v. Match.com, LLC, 743 F. App'x 142, 143
(9th Cir. 2018) 27

Bibicheff v. PayPal, Inc., 844 F. App'x 394, 395–396
(2d Cir. 2021) 27

Biro v. Conde Nast, 883 F. Supp. 2d 441, 457
(S.D.N.Y. 2012) 14

Bland v. Roberts, 730 F.3d 368, 385-386 (4th Cir. 2013),
as amended (Sept. 23, 2013) 15, 25

Brown v. Ent. Merchs. Ass'n, 564 U.S. 786,
790-791, 798 (2011) 16, 17, 20, 21

Brandenburg v. Ohio, 395 U.S. 444, 446 (1969) 16

Buckley v. Am. Const. Law Found., Inc.,
525 U.S. 182, 199–200 (1999) 20

Chen Through Chen v. Albany Unified Sch. Dist.,
56 F.4th 708 (9th Cir. 2022) 15

Colombini v. Westchester County Health Care Corp.,
899 N.Y.S.2d 58, at *15 (200) 29

Crosby v. Twitter, Inc., 921 F.3d 617, 625 (6th Cir. 2019) 32, 35

Davidson v. Time Warner, Inc., No. Civ.A V-94-006,
1997 WL 405907, at *22 (S.D. Tex. Mar. 31, 1997) 17

Derdiarian v. Felix Contr. Corp., 51 N.Y.2d 308, 316 (1980) 32

Doe v. GTE Corp., 347 F.3d 655, 661 (7th Cir. 2003) 26

Does 1-6 v. Reddit, Inc., 51 F.4th 1137, 1139 (9th Cir. 2022) 7

Dyer v. Norstar Bank, N.A., 186 A.D.2d 1083, 1083
(4th Dep't 1992) 31, 32, 35

Dyroff v. Ultimate Software Group, Inc., 934 F.3d 1093,
1098, 1101 (9th Cir. 2019) 12, 27

Eberhart v. Amazon.com, Inc., 325 F. Supp. 3d 393,
397–400 (S.D.N.Y. 2018) 22

Einhorn v. Seeley, 136 A.D.2d 122, 126 (1st Dep't 1988) 26

Estate of B.H. v. Netflix, Inc., No. 4:21-cv-06561-YGR,
2022 WL 551701, at *1, *3 (N.D. Cal. Jan. 12, 2022) 23, 24

Estate of Morgan v. Whitestown Am. Legion Post No. 1113,
309 A.D.2d 1222, 1222 (4th Dep't 2003) 25-26

Fields v. Twitter, Inc., 881 F.3d 739, 749–750 (9th Cir. 2018) 35

Force v. Facebook, Inc., 934 F.3d 53, 70–71 (2d Cir. 2019) 9

Gonzalez v. Google, Inc., 335 F. Supp. 3d 1156, 1178
(N.D. Cal. 2018) *aff'd*, 2 F.4th 871, 896 (9th Cir. 2021),
vacated on other grounds, 143 S. Ct. 1191 (2023),
598 U.S. 617 (2023) 12, 35

Gorran v. Atkins Nutritionals, Inc., 464 F. Supp. 2d 315,
324-325 (S.D.N.Y. 2006), *aff'd,* 279 F.App'x 40
(2d Cir. 2008) 22-24

Green v. Miss USA, LLC, 52 F.4th 773, 780
(9th Cir. 202) 14

Hain v. Jamison, 28 N.Y.3d 524, 528–530 (2016) 30, 31, 34

Hamilton v. Beretta U.S.A. Corp., 96 N.Y.2d 222,
232, 233 (2001) 25, 26

Herrick v. Grindr LLC, 765 F.App'x 586, 591
(2d Cir. 2019) 6

Herrick, 306 F. Supp. 3d 579, 585-587, 598–599
(S.D.N.Y. 2018) 27, 28

Hess v. Indiana, 414 U.S. 105, 108 (1973)(*per curiam*) 16

Holmes v. Sec. Inv. Prot. Corp., 503 U.S. 258, 268 (1992) 32

Immuno AG. v. Moor-Jankowski,
77 N.Y.2d 235, 248–249 (1991) 13

Ingrassia v. Lividikos, 54 A.D.3d 721, 724 (2d Dep't 2008) 34

Intellect Art Multimedia, Inc. v. Milewski,
24 Misc.3d 1248(A),2009 N.Y. Slip. Op. 51912(U),
at *7 (Sup. Ct. N.Y. Cty. Sept. 11, 2009) 22

In re Facebook, Inc., 625 S.W.3d 80, 94 (Tex. 2021) 9

Jacobs v. Meta Platforms, Inc., No. 22CV005233,
2023 WL 2655586, at *4 n.4
(Cal. Super. Mar. 10, 2023). 23

James v. Meow Media, Inc., 300 F.3d 683, 687, 695, 701
(6th Cir. 2002) 17, 23, 24, 28

Jane Doe No. 1 v. Backpage.com, LLC, 817 F.3d 12, 21
(1st Cir. 2016). 11

Kimzey v. Yelp! Inc., 836 F.3d 1263, 1266 (9th Cir. 2016) 10

Klayman v. Zuckerberg, 753 F.3d 1354, 1359–1360
(D.C.C. 2014) 27

Kriz v. Schum, 75 N.Y.2d 25, 34 (1989). 31

Ladue v. Gilleo, 512 U.S. 43, 55 (1994). 15

Lauer v. City of New York, 95 N.Y.2d 95, 100 (2000) 26

Lipshie v. Lipshie, 2005 N.Y. Slip Op. 30489(U),
at *6 (Sup. Ct. N.Y. Cty. Apr. 19, 2005). 29

L.W. v. Snap, Inc., 22-c-v619-LAB-MDD, 2023 WL 3830365,
at *5 (S.D. Cal. June 5, 2023). 12

Martinez v. Lazaroff, 48 N.Y.2d 819, 820 (1979). 33

Matter of Eighth Jud. Dist. Asbestos Litig.,
33 N.Y.3d 488, 494 (2019)). 22

McCollum v. CBS, Inc., 202 Cal. App. 3d 989, 1003 (1988). 18

McMillan v. Togus Regional Off., Dept. of Veterans Affairs,
120 F.App'x 849, 852 (2d Cir. 2005). 28

M.P. by and through Pinckney v. Meta Platforms, Inc.,
2:22-CV-3830-RMG, 2023 WL 5984294, at *3–4
(D.S.C. Sept. 14, 2023). 7, 12

Million Youth March, Inc. v. Safir, 63 F. Supp. 2d 381, 391
(S.D.N.Y. 1999). 16

Moody v. Netchoice, LLC, No. 22-277, 2023 WL 6319654
(U.S. Sept. 29, 2023)....18

Moore v. Shah, 90 A.D.2d 389, 390 (3d Dep't 1982). 31

N.A.A.C.P. v. Claiborne Hardware Co.,
458 U.S. 886, 927 (1982). 16

Nat'l Rifle Ass'n of Am. v. Cuomo, 350 F. Supp. 3d 94, 112
(N.D.N.Y. 2018). 16

NetChoice, LLC v. Att'y Gen., Fla., 34 F.4th 1196,
1210, 1213 (11th Cir. 2022), *cert. granted in part sub nom.* 18, 20

Netchoice v. Moody, No. 22-393, 2023 WL 6377782
(U.S. Oct. 2, 2023), *cert. granted in part sub nom.*. 18

New York Times v. Sullivan, 376 U.S. 254, 266, 277 (1964)....18, 19

O'Handley v. Padilla, 579 F. Supp. 3d 1163, 1188
(N.D. Cal. 202), *aff'd*, 62 F.4th 1145 (9th Cir. 2023). 20, 21

Olivia N. v. Nat'l Broad. Co., 126 Cal. App. 3d 488,

494–497 (1981). 17, 20

Pasternack v. Lab. Corp. of Am. Holdings,
27 N.Y.3d 817, 825 (2016). 25

Pennie v. Twitter, Inc., 281 F. Supp. 3d 874, 888 (N.D. Cal. 2017). 35

People v. Marquan M., 24 N.Y.3d 1, 7 (2014). 16

Perry v. Rochester Lime Co., 219 N.Y. 60, 63–64 (1916). 32, 33

Peter T. v. Children's Vil., Inc., 819 N.Y.S.2d 44, 47 (2006). 29

Pingtella v. Jones, 305 A.D.2d 38, 42–44 (4th Dep't 2003) 26

Project Veritas v. Schmidt, 72 F.4th 1043, 1064
(9th Cir. 2023) 19

Purdy v. Public Adm'r of County of Westchester,
72 N.Y.2d 1, 8–9 (1988). 26

Quinteros v. InnoGames, No. C19-1402RSM,
2022 WL 898560, at *1, *7
(W.D. Wash. Mar. 28, 2022). 24

R.A.V. v. St. Paul, 505 U.S. 377, 386 (1992). 17

Reno v. Am. Civil Liberties Union, 521 U.S. 844, 870
(1997) 20

Rivera v. New York City Tr. Auth., 77 N.Y.2d 322, 329
(1991) 31

Rivoli v. Gannett Co., 327 F. Supp. 2d 233, 241
(W.D.N.Y. 2004) 18

Rodgers v. Christie, 795 F. App'x 878, 879–880
(3d Cir. 2020) 24

Sanders v. Acclaim Entm't, Inc., 188 F. Supp. 2d 1264,
1268–1269, 1276 (D. Colo. 2002). 17, 18, 24, 34

Shen v. Albany Unified Sch. Dist.,No. 3:17-CV-02478-JD,
2017 WL 5890089, at *5 (N.D. Cal. Nov. 29, 2017),
aff'd sub nom 15

Shiamili v. Real Estate Group of New York,
17 N.Y.3d 281, 286, 289-291 (2011).....6, 7, 9, 10, 12

Snyder v. Phelps, 562 U.S. 443, 451 (2011).....16

Sorrell v. IMS Health Inc., 564 U.S. 552,
570, 577, 578 (2011).....18, 19, 20

Spitzer v. Sturm, Ruger & Co., 309 A.D.2d 91, 103–104
(1st Dep't 2003).....31, 34

Taylor v. Bedford Check Cashing Corp., 8 A.D.3d 657, 657
(2d Dep't 2004).....31, 34

Tennant v. Lascelle, 161 A.D.3d 1565, 1566
(4th Dep't 2018).....35

Themed Restaurants, Inc. v. Zagat Survey, LLC,
4 Misc.3d 974, 2003 N.Y. Slip Op. 24299, at *6
(Sup. Ct. N.Y. Cty. Aug. 19, 2004),
aff'd 21 A.D.3d 826 (1st Dep't 2005).....14

Telescope Media Grp. v. Lucero, 936 F.3d 740, 752
(8th Cir. 2019).....19

Trombetta v. Conkling, 82 N.Y.2d 549, 554 (1993).....29

Twitter, Inc. v. Taamneh, 598 U.S. 471, 480, 501 (2023).....28, 35

Universal Commc'n Sys., Inc. v. Lycos, Inc.,
478 F.3d 413, 420 (1st Cir. 2007).....11

Ventricelli v. Kinney Sys. Rent A Car, 45 N.Y.2d 950,
951–952 (1978).....31

Volokh v. James, 22-CV-10195 (ALC), 2023 WL 1991435,
at *6, *9 (S.D.N.Y. Feb. 14, 2023).....18, 20

Walter v. Bauer, 439 N.Y.S.2d 821, 822–823 (1981).....24

Watters v. TSR, Inc., 715 F. Supp. 819, 822(W.D. Ky. 1989),
aff'd, 904 F.2d 378-381, 383 (6th Cir. 1990).....18, 20, 28

Way v. Boy Scouts of Am., 856 S.W.2d 230,
232, 238 (Tex. App. 1993).....24

Wilson v. Midway Games, Inc., 198 F. Supp. 2d 167,
174, 178–179, 182 (D. Conn. 2002) 16, 17, 20, 24

Winter v. G.P. Putnam's Sons, 938 F.2d 1033, 1034
1037 (9th Cir. 1991).....23, 25

Zamora v. Columbia Broad. Sys., 480 F. Supp. 199-202, 206
(S.D. Fla. 1979).....17, 20, 28

Zhang v. Baidu.com Inc., 10 F. Supp. 3d 433,
441–442 (S.D.N.Y. 2014).....19

STATUTES AND REGULATIONS

47 U.S.C. § 230, Communications Decency Act
("CDA").....2, 6-10, 12-13, 35-36

OTHER AUTHORITIES

U.S. Constitution, 1st Amendment 2, 6, 13-21, 23, 36

N.Y. Const., art. I, § 8.....13

2 Owen & Davis on Prod. Liab. § 17:28 (4th ed. 2023).....24

Restatement (Third) of Torts: Products Liability (hereinafter
"Restatement") § 19 cmt. a (Am. L. Inst. 1998).....22, 23

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I. INTRODUCTION

These two cases[1] are brought by survivors, family members, and estate administrators of the victims of the horrific and racist mass shooting committed by Payton Gendron in Buffalo, New York on May 14, 2022. While Plaintiffs do not seek recovery from Gendron himself, they name a wide range of other defendants. They sue the businesses that sold Gendron his firearm, ammunition, and body armor. They sue Gendron's parents for failing to prevent him from committing this mass murder. And they sue YouTube, alleging that Gendron spent significant amounts of time watching videos and interacting with content on YouTube, and that its AI-powered recommendation algorithms and autoplay function fed him increasingly racist and violent content, resulting in his addiction, radicalization and commission of the mass murder.

Plaintiffs also name Reddit, a service that hosts online communities created and organized by its users. Plaintiffs allege that Gendron read material posted to Reddit by third-party users to gain information about hateful, extremist theories and the firearm and body armor he used in his attack. Then, painting Reddit as just another YouTube, Plaintiffs make sweeping and conclusory allegations against it, vaguely referencing "algorithms" and asserting that Reddit's service contributed to Gendron's "radicalization" and ultimate crime. But Reddit simply does not fit Plaintiffs' theory of the case because it is *not* just another YouTube, as Plaintiffs' own allegations concede. Reddit users themselves seek out and self-select into communities devoted to their shared interests, and users' votes on each others' content determine which content rises in prominence on the platform. Indeed, by Plaintiffs' own allegations, Gendron

[1] For convenience of the Court, the parties, and counsel, and pursuant to stipulation, Reddit files the same brief in support of its motions to dismiss in both *Jones v. Mean LLC*, No. 810316/2023 (Sup Ct, Erie Cty. 2023, Feroleto, J.) and *Stanfield v. Mean LLC*, No. 810317/2023 (Sup Ct, Erie Cty. 2023, Feroleto, J.).

encountered content on Reddit *not* because it was algorithmically targeted and served to him, but because he actively sought it out at times despite it having been banned for violating Reddit's rules.

And, ultimately, even if Plaintiffs' claims *did* fit Reddit, as a matter of law, they are all clearly foreclosed by Section 230 of the federal Communications Decency Act, the First Amendment, and established New York state law. Courts have rejected such theories and claims time and time again because the law foreclosing such liability is so clear. This Court should therefore dismiss the three claims Plaintiffs assert against Reddit with prejudice.

II. FACTUAL ALLEGATIONS REGARDING REDDIT

Reddit is a platform that hosts online communities akin to message boards, in which users (called "Redditors") engage in conversations about shared interests. Jones Complaint ¶ 221 (NYSCEF Doc. No. 2) (hereinafter "Jones Compl."); Stanfield Complaint ¶ 282 (NYSCEF Doc. No. 2) (hereinafter "Stanfield Compl."). Each community (called a "subreddit") is created and organized by Reddit users around a particular topic. Jones Compl. ¶ 221; Stanfield Compl. ¶ 282.

Plaintiffs' specific factual allegations as to Reddit are sparse, but generally include the following:

First, Plaintiffs allege that Gendron read content posted by other users on Reddit that increased, amplified, and/or led him to embrace white supremacist conspiracy theories, and to be willing to use violence in support of his racist ends. Jones Compl. ¶¶ 61, 72, 74, 78–80, 226–228, 232–233, 236; Stanfield Compl. ¶¶ 123, 128, 130, 134–136, 287–289, 293–294, 297. For example, Plaintiffs allege that Gendron was "influence[d]" by certain subreddits that mocked political correctness and posted racist, xenophobic, and misogynist content. Jones Compl. ¶ 227; Stanfield Compl. ¶ 288. Plaintiffs also allege that the "racist and violent *content* and connections" that Gendron saw on Reddit "directed" him "to the fringe website 4chan," where he

was further radicalized. Jones Compl. ¶ 228 (emphasis added); Stanfield Compl. ¶ 289. Plaintiffs allege that Gendron was "addict[ed] to Reddit" and "los[t] touch with reality, bec[a]me obsessed with his online existence, and [was] mentally conditioned" to carry out his "heinous criminal act." Jones Compl. ¶ 232; Stanfield Compl. ¶ 293. Plaintiffs also allege, again without further factual basis, that the anonymous nature of Reddit "fuels use of the platform by racists and extremists." Jones Compl. ¶ 224; Stanfield Compl. ¶ 285.

Second, Plaintiffs allege that Gendron read content posted by other users on Reddit that gave him information about the types of weapons and body armor that he ultimately purchased and used in his attack, including information about where he could purchase them. Jones Compl. ¶¶ 71, 78, 80–81, 98, 133, 172–174, 229–236; Stanfield Compl. ¶¶ 127, 134, 136–137, 154, 194, 233–235, 290–297. For example, Plaintiffs allege that Gendron "frequented Reddit communities dedicated to military and combat-style armaments to prepare for the shooting[,]" and that in the "r/TacticalGear" subreddit Gendron "met Cory Clark, the RMA Armament representative who helped him select and purchase the combat-style body armor that he used for his attack at Tops and which allowed him to withstand defensive fire from the store's security guard." Jones Compl. ¶¶ 229–230; Stanfield Compl. ¶¶ 290–291.

Third, without any articulated factual basis, Plaintiffs allege that Reddit's service "algorithmically rewards increasingly radical and hateful behavior and facilitates interpersonal networking among many extremists." Jones Compl. ¶ 233; Stanfield Compl. ¶ 294. In this vein, piggybacking off of the far more detailed allegations made against YouTube, Plaintiffs make sweeping and conclusory assertions, largely "upon information and belief," about Reddit's use of "algorithms." For example, Plaintiffs allege that "*like the YouTube Defendants*," Reddit's "features, including its algorithm, promoted extreme content" to Gendron. Jones Compl. ¶ 61

(emphasis added); *see also id.* ¶¶ 71 ("Algorithms and design features used *by the YouTube Defendants and* Reddit . . . .") (emphasis added), 222 ("*Like YouTube,* Reddit has designed a proprietary algorithm . . . .") (emphasis added); Stanfield Compl. ¶¶ 123, 127, 283.

But importantly, the underlying factual assertions made by Plaintiffs regarding the display of content on Reddit differ from (and are far fewer than) those they make against YouTube. This is as it must be, because the platforms operate very differently. YouTube is alleged in great detail to have incorporated an AI-powered recommendation algorithm and autoplay features to target specific content to specific users and increase time spent on its platform. *See, e.g.*, Jones Compl. ¶¶ 181 (YouTube's "specific, carefully calibrated features that are known and intended to exploit users' mental processes"), 182 (YouTube "employs a powerful algorithm that leverages detailed user information to recommend and send large volumes of carefully targeted video content to each user"), 187 (YouTube "identifies additional videos to play" and uses "an 'autoplay' function that automatically starts playing other videos as soon as the consumer finishes watching one video[]"); Stanfield Compl. ¶¶ 242, 243, 248.

In contrast, Plaintiffs acknowledge that the display and selection of content on Reddit is determined primarily by the human judgments of Reddit users themselves through their self-sorting into communities of shared interests, and their use of Reddit's voting function. Specifically, Plaintiffs allege that subreddits "categorize content into specialized areas of interest," with each subreddit having its own "front page[]." Jones Compl. ¶ 221; Stanfield Compl. ¶ 282. Reddit users serving as volunteer moderators "establish the purpose of [each] subreddit." Jones Compl. ¶ 174; Stanfield Compl. ¶ 235. After vaguely referencing Reddit's "proprietary algorithm" and how it "populates" feeds on Reddit, Plaintiffs allege: "The system of upvoting and 'karma' scores used by Reddit fosters users' sense of validation and engagement,

creating a feedback loop that encourages users to spend more time on the platform to accumulate points and social recognition." Jones Compl. ¶ 222; Stanfield Compl. ¶ 283. This alleged "system of upvoting" refers to the fact that any Reddit user can "upvote" or "downvote" a post or comment on Reddit, reflecting their assessment of the quality and relevance of that content.[2] Upvoted content rises to the top of individual subreddit pages and home feeds, while significantly downvoted content is ultimately collapsed from view altogether. "Karma" reflects how well-regarded a user is by fellow users based on how the Reddit community responds to the user's content (again, as reflected in their votes). *See* Jones Compl. ¶¶ 222–224; Stanfield Compl. ¶¶ 283–285.

Thus, by Plaintiffs' own allegations—and in contrast to those they make against YouTube—Reddit's "algorithm" simply sorts content in accordance with Reddit *users'* own upvoting and downvoting, not a centralized calculation by Reddit designed to target particular types of content to particular users. And, indeed, as alleged, Gendron himself *sought out* the content that is the subject of Plaintiffs' claims. Jones Compl. ¶¶ 227 n.83 (referencing Gendron's diary entry in which he stated that, even after Reddit banned and removed certain violative content from its platform, he continued to seek it out on Reddit and other platforms), 229 (alleging that Gendron "frequented Reddit communities dedicated to military and combat-style armaments[,]" not that Reddit chose to target him with this content), 231 & n.84 (quoting his diary statement, "'I'm trying to find info on other mass shooters . . . .'"), 233 (referencing Gendron's "*search for*" violent content) (emphasis added); Stanfield Compl. ¶¶ 288 n.89, 290, 292 & n.90, 294.

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[2] *See* Reddit, *Reddit 101: How Reddit Works*, https://www.redditinc.com/assets/partnerships/guides/reddit_101-one-sheet-20170905.pdf (last visited Nov. 8, 2023).

III. ARGUMENT

Plaintiffs assert three causes of action against Reddit: (1) strict products liability (Jones Claim XIV, Stanfield Claim XVIII), (2) negligence (Jones Claim XV, Stanfield Claim XIX), and (3) negligent infliction of emotional distress (Stanfield Claim XX). All three of these claims are barred by Section 230 of the Communications Decency Act. All three are also barred by the First Amendment and the New York Constitution's free speech clause. And, even if the claims were not otherwise so barred, all three fail to and cannot state a claim under settled New York law, and fail to and cannot allege legal causation.

A. Section 230 of the Communications Decency Act Bars All of Plaintiffs' Claims

All of Plaintiffs' claims are barred by Section 230 of the Communications Decency Act ("CDA"), 47 U.S.C. § 230, because each of them (1) is asserted against Reddit, an "interactive computer service," and (2) unquestionably and by Plaintiffs' own factual allegations treats Reddit as a "publisher," of (3) content provided by third parties, i.e., other users. Numerous courts, including the New York Court of Appeals, confronting similar cases and similar theories of liability have uniformly dismissed such cases at the pleading stage because the law foreclosing such liability is so clear. *See, e.g.*, *Shiamili v. Real Estate Group of N.Y., Inc.*, 17 N.Y.3d 281, 286 (2011) (affirming dismissal of complaint on CDA grounds and deeming discovery "unnecessary" because defendants were not alleged to have "authored the defamatory content," only to have "published and edited it").

Indeed, prior cases have held that the three specific causes of action alleged by Plaintiffs against Reddit are correctly dismissed under Section 230 when asserted against an interactive service provider. *Herrick v. Grindr LLC*, 765 F.App'x 586, 591 (2d Cir. 2019) (affirming dismissal of strict product liability claim asserted against interactive service provider because of

Section 230); *M.P. by and through Pinckney v. Meta Platforms, Inc.*, 2:22-CV-3830-RMG, 2023 WL 5984294, at *3–4 (D.S.C. Sept. 14, 2023) (dismissing negligence and negligent infliction of emotional distress claims, among others, asserted against interactive service provider because of Section 230).

1. Reddit Is an Interactive Computer Service and the Content at Issue Was Provided by Third Parties

It is undisputed that the first element of CDA immunity, whether Reddit is an interactive computer service, is met. *See* Jones Compl. ¶ 221 ("Reddit is an online social networking and news site."); Stanfield Compl. ¶ 282; *Does 1-6 v. Reddit, Inc.*, 51 F.4th 1137, 1139 (9th Cir. 2022) (Reddit is an "interactive computer service" for purposes of Section 230).

The third element of CDA immunity, whether a third party provided the content in question, is also met. *See Shiamili*, 17 N.Y.3d at 290 ("[a] Web site is generally not a 'content provider' with respect to [content] posted by third-party users"). Plaintiffs do not allege that Reddit—as opposed to third-party users of its service—actually generated any of the objectionable content that is the subject of their suit. Instead, they allege that third-party users (including Gendron) provided the content. *See* Jones Compl. ¶¶ 61 ("Reddit offered a specialized forum . . . where [Gendron] discussed and acquired combat gear for his offensive attack"), 133 (alleging users discussed the MEAN Arms Lock in "a Reddit thread for New York State gun owners" (r/NYguns)), 174 (alleging Gendron visited the subreddit r/TacticalGear, which had a Reddit user serving as a volunteer moderator who could "delete content, ban users, and establish the purpose of the subreddit"), 221 ("The front page of Reddit's website lists posts and links uploaded *by users*.") (emphasis added), 222 (alleging Reddit has a "system of upvoting and 'karma' scores" for its users), 224–232 (content that allegedly radicalized Gendron consists of

other users' posts and communications with Gendron); Stanfield Compl. ¶¶ 123, 194, 235, 282, 283, 294, 285–293.

2. Plaintiffs' Claims Treat Reddit as a Publisher

Thus, the application of Section 230 to Plaintiffs' claims turns on the second prong, whether the claims treat Reddit as a "publisher." They unquestionably do, and Plaintiffs' transparent attempts to plead around this reality fail.

Under Section 230, "what matters is not the name of the cause of action," but "whether the cause of action inherently requires the court to treat the defendant as the 'publisher or speaker' of content provided by another." *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1101–1102 (9th Cir. 2009). Plaintiffs' legal theories and causes of actions all attempt to hold Reddit liable by treating it as publisher of third-party content that allegedly helped radicalize Gendron into harming Plaintiffs and helped him acquire knowledge about the weapon and body armor he ultimately used during the attack. Jones Compl. ¶¶ 221–236; Stanfield Compl. ¶¶ 282–297.

In making these allegations, Plaintiffs themselves cannot help but include allegations that make crystal clear that Plaintiffs' concern is with the effects and impacts of *third-party content* that Reddit *published on its service*. For example, Plaintiffs allege that Gendron frequented a number of far-right subreddits and was influenced by their "racist, xenophobic, and misogynist memes" and posts. Jones Compl. ¶ 227; Stanfield Compl. ¶ 288. Plaintiffs also allege that such content served to "affirmatively connect users—including minors—to racist, antisemitic, violent, and extreme information[,]" resulting in Plaintiff's "addiction" to and "overuse of Reddit." Jones Compl. ¶¶ 382, 385; Stanfield Compl. ¶¶ 480, 483. Similarly, Plaintiffs allege that "Gendron frequented Reddit communities dedicated to military and combat-style armaments to prepare for the shooting," and that in the "r/TacticalGear" subreddit Gendron "met Cory Clark, the RMA Armament representative who helped him select and purchase the combat-style body armor that

he used for his attack at Tops and which allowed him to withstand defensive fire from the store's security guard." Jones Compl. ¶¶ 229–230; Stanfield Compl. ¶¶ 290–291. And Plaintiffs allege that the "racist and violent content and connections" he encountered on Reddit directed Gendron *off of the Reddit platform* and "to the fringe website 4chan," where he "was further radicalized through exposure to the hate groups and racist conspiracy mongers who flourish on that platform." Jones Compl. ¶ 228; Stanfield Compl. ¶ 289.

Each of Plaintiffs' claims treats Reddit as publisher of user-provided content because any liability would be based on the alleged existence of this type of content on Reddit—and thus Reddit's decision "to publish, withdraw, postpone, or alter" the underlying content. *Shiamili*, 17 N.Y.3d at 289 (citation omitted); *Force v. Facebook, Inc.*, 934 F.3d 53, 70–71 (2d Cir. 2019) ("Plaintiffs' suggestion that publishers must have no role in organizing or distributing third-party content in order to avoid 'develop[ing]' that content is both ungrounded in the text of Section 230 and contrary to its purpose.").

True, Plaintiffs attempt to "disclaim" seeking to hold Reddit liable as a publisher, Jones Compl. ¶ 379; Stanfield Compl. ¶ 477, and they characterize their claims as "design defect" claims. But these efforts do not change the fact that the claims treat Reddit as a publisher. *See, e.g.*, *In re Facebook, Inc.*, 625 S.W.3d 80, 94 (Tex. 2021) (describing "unanimous view" of courts that Section 230 bars "claims alleging that defectively designed internet products allowed for transmission of harmful third-party communications"). The purported "defects" are really just the ways Reddit publishes user content. For example, Plaintiffs' claims of harm stemming from Reddit's alleged unsafe decisions regarding "the underlying design, programming, and engineering of Reddit," and "Reddit's own statements and actions," Jones Compl. ¶¶ 379–382; Stanfield Compl. ¶¶ 477–480, are inextricable from Plaintiffs' claims of harm from the third-

party content with which Gendron allegedly engaged. *See, e.g.* Jones Compl. ¶¶ 224 (citing a study which "found that mere *exposure to content* from certain subreddits led users to 'adopt extremist beliefs'") (emphasis added), 227 (alleging that Gendron was influenced by "racist, xenophobic, and misogynist memes" and posts in certain subreddits), 231 (alleging that Gendron "received guidance on Reddit that helped him plan his attack[]"), 233 (alleging Gendron's "desensitization to, and *search for, violent content*") (emphasis added), 234 (alleging that Reddit's "design and algorithm directed [Gendron] to posts instructing him on combat-style tactical gear and illegal gun modification[]"); Stanfield Compl. ¶¶ 285, 288, 292, 294, 295. Indeed, there could be no alleged harm if the user-provided content related to benign topics, like gardening or chess.

Further, and importantly, the "features" that Plaintiffs claim render Reddit "unsafe"—subreddits, voting, and karma—*are themselves third-party content*. Jones Compl. ¶¶ 221–222; Stanfield Compl. ¶¶ 282–283. Subreddits are created and organized by users, not Reddit; it is users who determine the particular topic of any subreddit (e.g., body armor) and the types of content that may be posted or discussed within it (so long as it complies with Reddit's site-wide Content Policy rules). Jones Compl. ¶ 221; Stanfeld Compl. ¶ 282. Likewise, upvoting, downvoting, and "karma" features are expressions by Reddit *users* of their support for (or disapproval of) content. Jones Compl. ¶¶ 221–222; Stanfield Compl. ¶¶ 282–283; *see Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1266 (9th Cir. 2016) (allowing users to "post comments and respond to comments posted by others," is "[t]he prototypical service qualifying for [Section 230] immunity"); *see also Shiamili*, 17 N.Y.3d at 291 (stating that "[r]eposting content created and initially posted by a third party is well within 'a publisher's traditional editorial functions'" and does not remove the defendant from Section 230 protection).

Plaintiffs also suggest that anonymity on Reddit "fuels use of the platform by racists and extremists." Jones Compl. ¶ 224; Stanfield Compl. ¶ 285. This decision about "Reddit's design," Jones Compl. ¶ 224; Stanfield Compl. ¶ 285, is an "editorial choice[] that fall[s] within the purview of traditional publisher functions." *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 21 (1st Cir. 2016). Courts have found similar features such as permitting users to register under multiple usernames or allowing anonymized email addresses are protected publisher conduct under the CDA. *Id.* at 20; *Universal Commc'n Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 420 (1st Cir. 2007). The CDA therefore fully applies as to Reddit's choice to allow people to use its service anonymously.

Plaintiffs' vague and sweeping references to "algorithms" also do not mean that Reddit is acting other than as a publisher. First, as set forth above, by Plaintiffs' own allegations, *users* (not some sort of black-box algorithm) control how and where user-generated content like posts, comments, and media appear in subreddits and on the Reddit platform overall. *See* Jones Compl. ¶ 221 (alleging that the "[f]ront page" of "Reddit's website" and "subreddits," which are created by users and "categorize content into specialized areas of interest," both "list[] posts and links uploaded *by users*.") (emphasis added); Stanfield Compl. ¶ 282; *see also* Jones Compl. ¶ 174 (Reddit users serving as volunteer moderators "establish the purpose of [each] subreddit"); Stanfield Compl. ¶ 235.[3] This is a far cry from the allegations against YouTube, which Plaintiffs allege used an AI-powered centralized algorithm to "recommend" types of content to Gendron based on Gendron's personal information on a repeated basis via its "'autoplay' function that automatically start[ed] playing other videos as soon as [Gendron] finishe[d] watching one video." Jones Compl. ¶ 187; Stanfield Compl. ¶ 248; *see also, e.g.*, Jones Compl. ¶ 215

[3] *See* n.2, *supra.*

("YouTube's algorithm detected the Shooter's interest in firearms and directed him to more 'hard core' gun videos concerning illegal modification of firearms, assault weapons banned under New York law, federally prohibited machineguns, and even instructional videos on conducting military-style assault operations with military-grade firearms, shooting through bulletproof glass, and winning gunfights."); Stanfield Compl. ¶ 276; *see also* Jones Compl. ¶¶ 180–220; Stanfield Compl. ¶¶ 241–281.

But second, regardless of the fact that Plaintiffs' own allegations undercut their claim of a Reddit-controlled algorithm serving up detrimental content, even if that *were* the allegation, algorithmically determined sorting, display, and recommendations all fall squarely within publisher conduct protected by Section 230. *See, e.g.*, *M.P.*, 2023 WL 5984294, at *3; *Dyroff v. Ultimate Software Group, Inc.*, 934 F.3d 1093, 1098 (9th Cir. 2019); *Gonzalez v. Google LLC*, 2 F.4th 871, 896 (9th Cir. 2021), *vacated on other grounds*, 143 S. Ct. 1191 (2023); *L.W.v. Snap, Inc.*, 22cv619-LAB-MDD, 2023 WL 3830365, at *5 (S.D. Cal. June 5, 2023). As the New York Court of Appeals has explained, Section 230 "does not differentiate between 'neutral' and selective publishers," and 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 (citation omitted).

Similarly, Plaintiffs cannot evade Section 230 by framing their claims as challenging the alleged "addictive[ness]" of Reddit's services. Jones Compl. ¶ 226; Stanfield Compl. ¶ 287. The alleged "addiction" is to viewing content provided by third parties on Reddit's services. *See, e.g.*, Jones Compl. ¶¶ 226–236 (describing Gendron's addiction to, "and search for, violent content" on various subreddits); Stanfield Compl. ¶¶ 287–297. Regardless of whether Plaintiffs allege Reddit used its voting and karma features and "algorithms" to "addict" users to the content, they

"premise[] . . . claims on the 'defective' manner in which [Reddit] *published* a third party's dangerous content[,]" and courts "have repeatedly held" such alleged "'action' taken through . . . algorithm[s] . . . are the actions of a publisher" protected by Section 230. *Anderson v. TikTok, Inc.*, 637 F. Supp. 3d 276, 280 (E.D. Pa. 2022) (collecting cases) (emphasis in original) (citation omitted). In short, Plaintiffs' "addiction" allegations impermissibly target the means by which Reddit facilitates the creation, dissemination, and viewing of user-generated content, which is barred under Section 230. *See id.*

For these reasons, Plaintiffs' claims based on the existence of allegedly objectionable content on Reddit, and the ways in which Reddit sorts and displays user content, all target protected publisher conduct and must be dismissed under Section 230 of the CDA.

B. The First Amendment and the Free Speech Clause of the New York Constitution Also Bar All of Plaintiffs' Claims

The First Amendment to the U.S. Constitution, as well as Article 1, § 8 of the New York Constitution,[4] independently bar all of Plaintiffs' claims against Reddit, which seek to hold Reddit liable for the way information and content on Reddit allegedly influenced Gendron's mind and actions. Jones Compl. ¶¶ 78, 388–389, 397, 402, 406; Stanfield Compl. ¶¶ 134, 485–486, 493, 497, 500. Holding a defendant liable for the influence that writings and other content

[4] The free speech protection afforded by the New York Constitution is broader than that of the federal constitution. "It has long been recognized that matters of free expression in books, movies and the arts generally, are particularly suited to resolution as a matter of State common law and State constitutional law, the Supreme Court under the Federal Constitution fixing only the minimum standards applicable throughout the Nation, and the State courts supplementing those standards to meet local needs and expectations. . . . This State, a cultural center for the Nation, has long provided a hospitable climate for the free exchange of ideas . . . That tradition is embodied in the free speech guarantee of the New York State Constitution, beginning with the ringing declaration that '[e]very citizen may freely speak, write and publish . . . sentiments on all subjects.' . . . Those words, unchanged since the adoption of the constitutional provision in 1821, reflect the deliberate choice of the New York State Constitutional Convention not to follow the language of the First Amendment, ratified 30 years earlier, but instead to set forth our basic democratic ideal of liberty of the press in strong affirmative terms . . . . Thus, whether by the application of 'interpretive' (e.g., text, history) or 'noninterpretive' (e.g., tradition, policy) . . . factors, the protection afforded by the guarantees of free press and speech in the New York Constitution is often broader than the minimum required by the Federal Constitution." *Immuno AG. v. Moor-Jankowski*, 77 N.Y.2d 235, 248–249 (1991) (quoting N.Y. Const., art. I, § 8) (other internal quotation marks and citations omitted).

distributed by that defendant had on a reader is flatly prohibited under settled First Amendment law. And when First Amendment protections are implicated, "[t]he New York Court of Appeals has explained that there is 'particular value' in resolving [such free speech] claims at the pleading stage, 'so as not to protract litigation through discovery and trial and thereby chill the exercise of constitutionally protected freedoms.'" *Biro v. Conde Nast*, 883 F. Supp. 2d 441, 457 (S.D.N.Y. 2012) (quoting *Armstrong v. Simon & Schuster, Inc.*, 85 N.Y.2d 373, 379 (1995)); *Themed Restaurants, Inc. v. Zagat Survey, LLC*, 4 Misc.3d 974, 2003 N.Y. Slip Op. 24299, at *6 (Sup. Ct. N.Y. Cty. Aug. 19, 2004), *aff'd* 21 A.D.3d 826 (1st Dep't 2005) (explaining the "mere pendency" of an action can inhibit speech).

1. Plaintiffs' Claims Target the Dissemination of Speech, Not Conduct

Plaintiffs attempt to avoid the First Amendment by asserting that their claims seek to hold Reddit liable for its "acts and omissions," rather than for disseminating the speech that allegedly radicalized Gendron and gave him information used to plan and conduct his crime. Jones Compl. ¶¶ 379 ("Plaintiffs expressly disclaim any and all claims seeking to hold Defendant Reddit liable as a publisher or speaker of content posted by third parties. Rather, Plaintiffs seek to hold Defendant Reddit liable for its own acts and omissions."), 400 (Reddit "was negligent . . . in designing and distributing Reddit . . ."); Stanfield Compl. ¶¶ 477, 495.

But simply describing speech as "'something other than speech does not make it so.'" *Green v. Miss USA, LLC*, 52 F.4th 773, 780 (9th Cir. 2022) (citation omitted). The Complaints indisputably premise liability on the third-party speech that Gendron allegedly viewed on Reddit: It is the *speech* of other Reddit users, and the viewpoints expressed, that Gendron allegedly saw and read, and that allegedly influenced and motivated him. *See, e.g.*, Jones Compl. ¶¶ 74 (he "ascribed his adherence to this and many other white supremacist and anti-government conspiracy theories to material he started consuming online, including on Reddit . . . ."), 75

("Increasingly isolated, alone, and obsessed with white supremacist online content, the Shooter developed plans for a violent, racist attack using detailed information he obtained from social media sources."), 79 ("Over time, as a result of his exposure to violent and hateful content, the Shooter became a racist who was desensitized to the human suffering and death depicted in the materials he viewed on these platforms. This facilitated his attack."); Stanfield Compl. ¶¶ 130, 131, 135.

Moreover, even the service features (subreddit creation, upvotes, and downvotes) that Plaintiffs attempt to characterize as conduct by Reddit rather than speech, are themselves also user speech. *See, e.g.*, *Shen v. Albany Unified Sch. Dist.*, No. 3:17-CV-02478-JD, 2017 WL 5890089, at *5 (N.D. Cal. Nov. 29, 2017), *aff'd sub nom. Chen Through Chen v. Albany Unified Sch. Dist.*, 56 F.4th 708 (9th Cir. 2022) (explaining that likes on Instagram posts are "broadcasts the user's expression of agreement, approval, or enjoyment of the post, which is clearly speech protected by the First Amendment") (citing *Bland v. Roberts*, 730 F.3d 368, 386 (4th Cir. 2013), *as amended* (Sept. 23, 2013) ("liking" Facebook political campaign page is substantive speech); *Ladue v. Gilleo*, 512 U.S. 43, 55 (1994) (displaying signs is substantive speech even though it "may not afford the same opportunities for conveying complex ideas as do other media")).

Put another way, had Reddit removed (or removed more quickly) all the objectionable content that Gendron allegedly saw, or had it hosted and displayed in the exact same way only content discussing cute pets, Plaintiffs would have no conceivable basis to seek liability. Thus, Plaintiffs' claims on their face seek to hold Reddit liable for speech on its platform, i.e., for the particular *messages* and *viewpoint* allegedly communicated by the speech Gendron viewed. *See, e.g.*, Jones Compl. ¶ 79 ("Over time, as a result of his exposure to *violent and hateful content*, [Gendron] became a racist . . . .") (emphasis added); Stanfield Compl. ¶ 135.

2. The First Amendment Precludes Tort Liability for Speech

The First Amendment bars tort liability for protected speech, including hateful or offensive speech. *Snyder v. Phelps*, 562 U.S. 443, 451 (2011); *accord Wilson v. Midway Games, Inc.*, 198 F. Supp. 2d 167, 178–179 (D. Conn. 2002). These established protections bar Plaintiffs' claims, which seek to hold Reddit liable for disseminating speech—in particular, (1) third-party speech regarding extremist ideologies that Gendron allegedly viewed on Reddit and that purportedly caused him to commit his horrific attack, Jones Compl. ¶¶ 72–75 (describing Gendron's adherence to various extremist viewpoints and conspiracy theories "that [are] amplified and promoted on sites such as Reddit[,]" including "the Great Replacement" theory); Stanfield Compl. ¶¶ 128–131, and (2) third-party speech on Reddit that allegedly "provided [Gendron] with knowledge regarding the tools, products, and skills he needed" to carry out his attack. Jones Compl. ¶ 7; *see also* Stanfield Compl. ¶ 123 (Reddit "provided [Gendron] with the know-how and extremist encouragement he needed to commit the attack[,]" including "a specialized forum relating to tactical gear").[5]

[5] The alleged speech does not fall into any of the narrow categories of speech that are unprotected by the First Amendment. *See Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 791 (2011); *People v. Marquan M.*, 24 N.Y.3d 1, 7 (2014) (other than "fighting words, true threats, incitement, obscenity, child pornography, fraud, defamation or statements integral to criminal conduct . . . speech is presumptively protected and generally cannot be curtailed by the government"). "Even hateful, racist, and offensive speech . . . is entitled to First Amendment protection." *Million Youth March, Inc. v. Safir*, 63 F. Supp. 2d 381, 391 (S.D.N.Y. 1999); *see also Brandenburg v. Ohio*, 395 U.S. 444, 446 (1969). The same is true of speech about guns and use of guns. *See, e.g.*, *Nat'l Rifle Ass'n of Am. v. Cuomo*, 350 F. Supp. 3d 94, 112 (N.D.N.Y. 2018) ("However controversial it may be, 'gun promotion' advocacy is core political speech entitled to constitutional protection."); *see also N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886, 927 (1982) ("mere advocacy of the use of force or violence does not remove speech from the protection of the First Amendment"). The alleged speech also is not "incitement," because Plaintiffs allege that Gendron's attack was caused by years of gradual radicalization, "[b]eginning in 2020[.]" Jones Compl. ¶ 72; Stanfield Compl. ¶ 128. "Incitement" is limited to speech intentionally "directed to inciting or producing" and "likely to incite or produce . . . . imminent lawless action." *Brandenburg*, 395 U.S. at 447–448 (emphasis added). "The government may not prohibit speech because it increases the chance an unlawful act will be committed 'at some indefinite future time.'" *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 253 (2002) (quoting *Hess v. Indiana*, 414 U.S. 105, 108 (1973) (*per curiam*)).

Plaintiffs' attempt to impose liability on Reddit for the ideas expressed by users runs afoul of the "most basic" First Amendment rule—that the government may not "restrict expression because of its message, its ideas, its subject matter, or its content." *Brown*, 564 U.S. at 790–91; *R.A.V. v. St. Paul*, 505 U.S. 377, 386 (1992) (government may not regulate "based on hostility—or favoritism—towards the underlying message expressed").

Recognizing that "attaching tort liability to the effect that such ideas have on a criminal actor would raise significant constitutional problems under the First Amendment," *James v. Meow Media, Inc.*, 300 F.3d 683, 695 (6th Cir. 2002), courts have repeatedly rejected civil claims—including claims based on product liability theories—for exposing the public to protected speech that allegedly led to violence. For example, in a case arising from the Columbine High School shooting, the plaintiffs claimed the teenaged shooters "were avid, fanatical and excessive consumers of violent . . . video games," which allegedly precipitated their shooting by making "violence pleasurable" and "train[ing]" them "how to point and shoot a gun effectively." *Sanders v. Acclaim Entm't, Inc.*, 188 F. Supp. 2d 1264, 1268–1269 (D. Colo. 2002). The court dismissed product liability and negligence claims against the games' distributors as barred by the First Amendment. *Id.* at 1279–1281; *accord Wilson*, 198 F. Supp. 2d at 182 (First Amendment a "complete bar" to negligence claims alleging that addictive and violent video games caused stabbing); *Olivia N. v. Nat'l Broad. Co.*, 126 Cal. App. 3d 488, 494–497 (1981) (same for negligence claims alleging that broadcast of movie depicting sexual assault inspired assault); *Davidson v. Time Warner, Inc.*, No. Civ.A V-94-006, 1997 WL 405907, at *22 (S.D. Tex. Mar. 31, 1997) (claims against distributors of rap album that allegedly inspired listener to kill police officer); *Zamora v. Columbia Broad. Sys.*, 480 F. Supp. 199, 206 (S.D. Fla. 1979) (negligence claims alleging television programming led minor to kill neighbor).

The rule applied in these cases—prohibiting tort claims for disseminating even violent and offensive speech—protects against tort liability's "devastatingly broad chilling effect" on speech. *Watters v. TSR, Inc.*, 715 F. Supp. 819, 822 (W.D. Ky. 1989), *aff'd*, 904 F.2d 378 (6th Cir. 1990); *accord McCollum v. CBS, Inc.*, 202 Cal. App. 3d 989, 1003 (1988). Indeed, the "fear of damage awards" can "be markedly more inhibiting than the fear of prosecution," *New York Times v. Sullivan*, 376 U.S. 254, 277 (1964), making courts "particularly wary of governmental restrictions [on speech] . . . that rest 'on a common law concept of the most general and undefined nature,'" *Sanders*, 188 F. Supp. 2d at 1281 (citation omitted).

3. The First Amendment Also Bars Claims That Would Hold Reddit Liable for Presenting and Disseminating Its Users' Speech

What Plaintiffs characterize as Reddit's "conduct" are in fact Reddit's choices about what speech to publish and how to present it—i.e., editorial judgments that are themselves protected by the First Amendment. Both "creation and dissemination of information are speech within the meaning of the First Amendment." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011). And "[i]t is well-established that a private entity has an ability to make 'choices about whether, to what extent, and in what manner it will disseminate speech . . . ' These choices constitute 'editorial judgments' which are protected by the First Amendment." *Volokh v. James*, 22-CV-10195 (ALC), 2023 WL 1991435, at *6 (S.D.N.Y. Feb. 14, 2023) (quoting *NetChoice, LLC v. Att'y Gen., Fla.*, 34 F.4th 1196, 1210 (11th Cir. 2022), *cert. granted in part sub nom. Moody v. Netchoice, LLC*, No. 22-277, 2023 WL 6319654 (U.S. Sept. 29, 2023), *and cert. denied sub nom. Netchoice v. Moody*, No. 22-393, 2023 WL 6377782 (U.S. Oct. 2, 2023)); *Rivoli v. Gannett Co.*, 327 F. Supp. 2d 233, 241 (W.D.N.Y. 2004) ("'the act of publication and the exercise of editorial discretion concerning what to publish are protected by the First Amendment'") (citation omitted). Labeling these quintessential publication and curatorial functions as "conduct" does not

remove them from First Amendment protection any more than "publishing a newspaper is conduct because it depends on the mechanical operation of a printing press." *Telescope Media Grp. v. Lucero*, 936 F.3d 740, 752 (8th Cir. 2019) ("Speech is not conduct just because the government says it is."); *accord Zhang v. Baidu.com Inc.*, 10 F. Supp. 3d 433, 441–442 (S.D.N.Y. 2014) (rejecting similar argument that online search engine "'is not speaking,' but rather 'engaging in discriminatory conduct'" by arranging and delivering search results to users).

Thus, even to the extent Plaintiffs' claims are based on Reddit's *method* of disseminating third-party content, the First Amendment still applies. In particular, the way Reddit hosts and displays user speech (in part based on downvotes and upvotes), is a quintessential editorial choice protected by the First Amendment.[6] Any attempt to impose liability on Reddit because of allegations that the display of content on its service "affirmatively connect[ed] users—including minors—to racist, antisemitic, violent, and extreme information[,]" Jones Compl. ¶ 382; Stanfield Compl. ¶ 480, would "shackle the First Amendment in its attempt to secure the 'widest possible dissemination of information from diverse and antagonistic sources.'" *Sullivan*, 376 U.S. at 266 (citation omitted). State law cannot be used to limit speech by imposing liability on features that make constitutionally protected speech possible or more likely. *Sorrell*, 564 U.S. at 577 ("In an attempt to reverse a disfavored trend in public opinion, a State could not ban campaigning with slogans, picketing with signs, or marching during the daytime."); *cf. Project Veritas v. Schmidt*, 72 F.4th 1043, 1064 (9th Cir. 2023) ("[A] regulation that forecloses an entire medium of public expression" fails because it "infringe[s]" the First Amendment). And,

[6] As noted above, Plaintiffs' allegations regarding Reddit's content sorting "algorithms" boil down to the fact that Reddit users' upvotes and downvotes determine content sorting on the site. But even if Plaintiffs did allege the use of some sort of centralized algorithm like YouTube's, the use of algorithms to make editorial judgments changes nothing. *See, e.g.*, *Zhang*, 10 F. Supp. 3d at 441–442 (rejecting similar argument that online search engine "'is not speaking,' but rather 'engaging in discriminatory conduct'" by arranging and delivering search results to users).

anonymous speech, even if it "fuels use of the platform by racists and extremists," Jones Compl. ¶ 224; Stanfield Compl. ¶ 285, is protected by the First Amendment: Even odious online speech is generally constitutionally protected, and this constitutional right includes the right to engage in that speech anonymously online. *See Buckley v. Am. Const. Law Found.*, 525 U.S. 182, 199–200 (1999); *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 870 (1997).

It makes no difference that Plaintiffs allege that Reddit's features "addict[]" some users to speech. Jones Compl. ¶ 385; Stanfield Compl. ¶ 483. "Addictive" speech is not exempt from the First Amendment, *see Brown*, 564 U.S. at 798 (rejecting argument that the "interactive" and immersive nature of video games took them outside the First Amendment), nor is the "force of speech" a permissible basis for "attempts to stifle it," *Sorrell*, 564 U.S. at 577–578 (state cannot regulate "catchy jingles"). Indeed, courts have repeatedly rejected similar efforts to impose tort liability on the creation or distribution of speech because it supposedly "addicted" people, leading them to engage in violent or illegal acts. *See Zamora*, 480 F. Supp. at 200–201; *Olivia N.*, 126 Cal. App. 3d at 496; *Watters*, 715 F. Supp. at 380, 383; *Wilson*, 198 F. Supp. 2d at 182. Far from avoiding the First Amendment, therefore, Plaintiffs' speech-addiction theory only underscores that their claims are barred.

When services "deliver[] curated compilations of speech created, in the first instance, by others," they "exercise editorial judgment that is inherently expressive." *NetChoice*, 34 F.4th at 1213. Such "decisions about what speech to permit, disseminate, prohibit, and deprioritize . . . fit comfortably within the Supreme Court's editorial-judgment precedents." *Id.* at 1214; *accord Volokh*, 2023 WL 1991435, at *9 ("Social media websites are publishers and curators of speech, and their users are engaged in speech by writing, posting, and creating content."); *O'Handley v. Padilla*, 579 F. Supp. 3d 1163, 1188 (N.D. Cal. 2022) ("Twitter has important First Amendment

rights that would be jeopardized by a Court order telling Twitter what content-moderation policies to adopt and how to enforce those policies."), *aff'd*, 62 F.4th 1145 (9th Cir. 2023). In short, "[w]hether government regulation applies to creating, distributing, or consuming speech makes no difference." *Brown*, 564 U.S. at 792 n.1. Just as Plaintiffs could not pursue tort claims against third parties who created the racist speech that allegedly shaped Gendron's ideology, the Constitution does not allow them to pursue such claims against Reddit for allegedly disseminating or making that user-provided speech available to the public.

Indeed, Plaintiffs' theory of liability is that Reddit features are tortious precisely because they were allegedly designed to drive engagement with speech and purportedly delivered specific content and viewpoints that allegedly influenced Gendron's worldview. Jones Compl. ¶ 78 ("Upon information and belief, Reddit's defective and unreasonably dangerous functionality progressively recommended and directed him to disturbing and extreme content and fostered his connections with individuals that supplied him with combat gear for use in an offensive attack."); Stanfield Compl. ¶ 134. These claims seek to hold Reddit liable for speech regardless of how Plaintiffs phrase their allegations.

For these reasons, Plaintiffs' claims seek to impose liability for the content of speech and must be dismissed under the First Amendment and Article 1, § 8 of the New York Constitution.

C. Plaintiffs Have Failed to and Cannot Sufficiently Allege Required Elements of Their Claims Against Reddit

1. Plaintiffs Do Not Plead Viable Strict Product Liability Claims

Plaintiffs seek to expand New York's strict product liability law in an unprecedented way by seeking to hold Reddit, a provider of intangible, online services, liable for harm arising from the ideas and content conveyed on those services. Jones Compl. ¶¶ 378–394; Stanfield Compl. ¶¶ 476–490. No New York court has applied strict product liability law to services like those

offered by Reddit—much less to the dissemination of intangible ideas. Accordingly, Jones Claim XIV and Stanfield Claim XVIII must be dismissed.

Product liability law provides redress only for injuries from tangible goods and products. To state a claim, a plaintiff's "complained-of injury" must be "caused by a defect in something within" the "definition of 'product.'" Restatement (Third) of Torts: Products Liability (hereinafter "Restatement") § 19 cmt. a (Am. L. Inst. 1998); *Matter of Eighth Jud. Dist. Asbestos Litig.*, 33 N.Y.3d 488, 494 (2019) (quoting Restatement § 19 cmt. a: "[I]n every instance it is for the court to determine as a matter of law whether something is, or is not, a product."). Product liability law focuses on "the tangible world." *Gorran v. Atkins Nutritionals, Inc.*, 464 F. Supp. 2d 315, 324 (S.D.N.Y. 2006), *aff'd*, 279 F.App'x 40 (2d Cir. 2008) (citation omitted). A "product" is "tangible personal property distributed commercially for use or consumption." Restatement § 19(a). Conversely, "[s]ervices, even when provided commercially, are not products." *Id.* § 19(b); cmt. F.6.

Here, Plaintiffs' strict product liability claims fail because Reddit's interactive communication service is not a tangible good or product. New York courts repeatedly have declined to apply product liability law to online services, like those offered by Reddit. *See, e.g.*, *Eberhart v. Amazon.com, Inc.*, 325 F. Supp. 3d 393, 397–400 (S.D.N.Y. 2018) (Amazon is not a product subject to product liability law); *Intellect Art Multimedia, Inc. v. Milewski*, 24 Misc.3d 1248(A), 2009 N.Y. Slip. Op. 51912(U), at *7 (Sup. Ct. N.Y. Cty. Sept. 11, 2009) ("[T]his court is not persuaded that this website in the context of plaintiff's claims is a 'product' which would otherwise trigger the imposition of strict liability.").

Notwithstanding this clear authority, Plaintiffs try to recharacterize Reddit's service as a "product" simply by calling it one. *See, e.g.*, Jones Compl. ¶¶ 43, 379, 402; Stanfield Compl. ¶¶

92, 477, 497. But merely labeling something a "product" does not make it so. *Cf. Jacobs v. Meta Platforms, Inc.*, No. 22CV005233, 2023 WL 2655586, at *4 n.4 (Cal. Super. Mar. 10, 2023) (explaining "[t]he term 'product' for purposes of whether a products liability action may be maintained is separate from the vernacular use or even in a legal ruling"); Restatement § 19(b).

Further, Plaintiffs' efforts are undercut by their own allegations that Gendron's interactions with Reddit consisted of him seeking out and viewing intangible information and ideas on the Reddit platform, which is squarely outside the reach of product liability law. *See, e.g.*, Jones Compl. ¶¶ 74 (he "ascribed his adherence to this and many other white supremacist and anti-government conspiracy theories to material he started consuming online, including on Reddit . . . ."), 75 ("Increasingly isolated, alone, and obsessed with white supremacist online content, the Shooter developed plans for a violent, racist attack using detailed information he obtained from social media sources."), 79 ("Over time, as a result of his exposure to violent and hateful content, the Shooter became a racist who was desensitized to the human suffering and death depicted in the materials he viewed on these platforms. This facilitated his attack."); Stanfield Compl. ¶¶ 130, 131, 135. Because the "purposes served by products liability law . . . are focused on the tangible world," this body of law does not apply to "the unique characteristics of ideas and expression." *Winter v. G.P. Putnam's Sons*, 938 F.2d 1033, 1034 (9th Cir. 1991). This limitation helps ensure that product liability law does not create "significant constitutional problems under the First Amendment." *James*, 300 F.3d at 695; *see, e.g.*, *Estate of B.H. v. Netflix, Inc.*, No. 4:21-cv-06561-YGR, 2022 WL 551701, at *3 (N.D. Cal. Jan. 12, 2022) (product liability law does not extend to "books, movies, or other forms of media").

For this reason, courts consistently reject product liability claims against publishers, authors, distributors, and others involved with media and expressive content. *See Gorran*, 464 F.

Supp. 2d at 324–325 (no product liability claim for following ideas from a diet book); *Walter v. Bauer*, 439 N.Y.S.2d 821, 822–823 (1981) (no product liability claim for performing experiment described in a science textbook); *see also Beasock v. Dioguardi Enter's, Inc.*, 494 N.Y.S.2d 974, 978 (1985) (defendant's "publications themselves" could not "serve as the basis for the imposition of liability under a theory of . . . strict products liability"); *Way v. Boy Scouts of Am.*, 856 S.W.2d 230, 232, 238 (Tex. App. 1993) (no product liability claim for allegations that "ideas and information contained in the magazine encouraged children to engage in activities that were dangerous"); 2 Owen & Davis on Prod. Liab. § 17:28 (4th ed. 2023) (courts have "unanimously opposed extending products liability law to . . . 'intangible thoughts, ideas, and messages contained within games, movies, and website materials'") (citation omitted).

That same rationale bars product liability claims for intangible ideas conveyed by software and online technologies like video games, internet transmissions, computer source code, video streaming, and online services. *See, e.g.*, *Rodgers v. Christie*, 795 F. App'x 878, 879–880 (3d Cir. 2020) (dismissing product liability claim against creator of algorithm used to generate information about whether to release criminal defendants prior to trial); *Quinteros v. InnoGames*, No. C19-1402RSM, 2022 WL 898560, at *1, *7 (W.D. Wash. Mar. 28, 2022) (dismissing product liability claim against creator of allegedly "psychologically addictive" mobile app); *James*, 300 F.3d at 701 (dismissing product liability claim against video game developer); *Wilson*, 198 F. Supp. 2d at 174 (dismissing product liability claim against creator of allegedly addictive and violent video game); *Estate of B.H.*, 2022 WL 551701, at *1 (dismissing product liability claim regarding allegedly harmful Netflix video streaming show); *Sanders*, 188 F. Supp. 2d at 1268–1269 (dismissing product liability claim against video game makers and movie producers alleging that violent movie and video games were cause of mass shooting).

This principle forecloses Plaintiffs' product liability claims. Plaintiffs allege that *writings* on Reddit's service that Gendron *read* were objectionable and harmful information and ideas, which "transformed" Gendron so that he was able to commit a heinous, racist criminal act that, in turn, caused harm to Plaintiffs. *See, e.g.*, Jones Compl. ¶¶ 69, 72, 73–75, 78; Stanfield Compl. ¶¶ 125, 128, 129–131, 134. Such claims impermissibly seek to hold Reddit liable for intangible ideas and information. Moreover, Plaintiffs cannot rescue their product liability claims by alleging that certain user-engagement features on Reddit are purportedly "defective" products, or by alleging Reddit uses algorithms, because such features *themselves* are merely further intangible features and aspects. On Reddit, upvoting, downvoting, and "karma" features are communications from one user to another that express users' support for content. Jones Compl. ¶ 222; Stanfield Compl. ¶ 283; *see Bland v. Roberts*, 730 F.3d 368, 385–386 (4th Cir. 2013) (Facebook "likes" are both "pure speech" and "symbolic expression"); *Anderson*, 637 F. Supp. 3d at 282 (an "algorithm [i]s a way to bring [content] to the attention of those likely to be most interested in it").

Because Plaintiffs' product liability claims are based on Reddit's "role in bringing ideas and information to the public," *Winter*, 938 F.2d at 1037 n.8, the Court must dismiss Jones Claim XIV and Stanfield Claim XVIII.

2. Plaintiffs' Negligence-Based Claims Fail Because Reddit Does Not Owe Plaintiffs a Duty of Care

Plaintiffs' negligence-based claims against Reddit fail to state a claim because Plaintiffs do not and cannot plausibly allege Reddit owes them a cognizable duty of care.

The existence of a duty of care is an element of all negligence-based claims. *Pasternack v. Lab. Corp. of Am. Holdings*, 27 N.Y.3d 817, 825 (2016); *Hamilton v. Beretta U.S.A. Corp.*, 96 N.Y.2d 222, 232 (2001); *see also Estate of Morgan v. Whitestown Am. Legion Post No. 1113*,

309 A.D.2d 1222, 1222 (4th Dep't 2003) (reversing denial of motion to dismiss negligence claim because plaintiff failed to plead a cognizable legal duty). "[A] defendant generally has no duty to control the conduct of third persons so as to prevent them from harming others." *Hamilton*, 96 N.Y.2d at 233 (citation omitted); *Einhorn v. Seeley*, 136 A.D.2d 122, 126 (1st Dep't 1988). A duty arises in such cases only "where there is a relationship either between defendant and a third-person tortfeasor that encompasses defendant's actual control of the third person's actions, or between defendant and plaintiff that requires defendant to protect plaintiff from the conduct of others." *Hamilton*, 96 N.Y.2d at 233; *see also Pingtella v. Jones*, 305 A.D.2d 38, 42–44 (4th Dep't 2003) (granting motion to dismiss). Special relationships of this nature are rare and limited to, for example, principal/agent, parent/child, employer/employee, owners/occupiers of premises, and common carriers/patrons. *Einhorn*, 136 A.D.2d at 126; *Hamilton*, 96 N.Y.2d at 233. To establish such a special relationship, the injured party must show that a defendant owed not merely "a general duty to society, but a specific duty to him"—"a duty running directly to the injured person." *Lauer v. City of New York*, 95 N.Y.2d 95, 100 (2000) (citation omitted).

Plaintiffs do not allege that they have a special relationship that required Reddit to protect them from criminal conduct by third parties. And Plaintiffs cannot plead, as required for a special relationship duty to arise, that Reddit had a relationship with Gendron that gave it actual control of his actions. *See Purdy v. Public Adm'r of County of Westchester*, 72 N.Y.2d 1, 8–9 (1988) (requiring "sufficient authority and ability to control the conduct of third persons"); *see also Doe v. GTE Corp.*, 347 F.3d 655, 661 (7th Cir. 2003) ("Plaintiffs do not cite any case in any jurisdiction holding that a [web] service provider must take reasonable care to prevent injury to third parties."). Plaintiffs' allegations are in fact to the contrary, making clear that there was no

such relationship between Reddit and Gendron. *See, e.g.*, Jones Compl. ¶¶ 395–410; Stanfield Compl. ¶¶ 491–503.

Instead, Plaintiffs assert that Reddit owed a general duty "to . . . minors and teenagers" to prevent them from "becoming addicted, radicalized, and committing violent acts[,]" Jones Compl. ¶ 397; Stanfield Compl. ¶¶ 493, 506, a "duty . . . to prevent users . . . from becoming addicted, radicalized and committing violent acts . . . ," Jones Compl. ¶ 397; Stanfield Compl. ¶¶ 493, 506, and a "general duty imposed on all persons and entities to act reasonably not to expose others to reasonably foreseeable risks of injury," Jones Compl. ¶ 396; Stanfield Compl. ¶¶ 492, 505.

But these assertions are insufficient, because courts consistently hold that providers of internet services do not owe a legal duty of care to their users. *See, e.g.*, *Bibicheff v. PayPal, Inc.*, 844 F. App'x 394, 395–396 (2d Cir. 2021) (affirming dismissal of negligence-based claim because PayPal did not have a special relationship with its users: "New York courts generally do not impose a duty on businesses to protect their customers from the acts of third parties absent special circumstances not alleged here"); *Herrick*, 306 F. Supp. 3d 579, 598–599 (S.D.N.Y. 2018) (granting motion to dismiss negligence-based claim because social networking application did not have a special relationship with its users); *Dyroff*, 934 F.3d at 1101 ("No website could function if a duty of care was created when a website facilitates communication, in a content-neutral fashion, of its users' content."); *Beckman v. Match.com, LLC*, 743 F. App'x 142, 143 (9th Cir. 2018) (affirming dismissal of negligence-based claim because plaintiff "failed sufficiently to allege a special relationship between her and [online dating website]"); *Klayman v. Zuckerberg*, 753 F.3d 1354, 1359–1360 (D.C.C. 2014) (no special relationship between Facebook and its users).

More specifically, online platforms do not have a duty to prevent users from publishing or consuming objectionable content. *See, e.g.*, *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 501 (2023) (Twitter did not have a duty to remove terrorist content posted by ISIS); *Herrick*, 306 F. Supp. 3d at 585–587, 599 (social networking application did not have a duty to prevent publication of allegedly dangerous and harassing content). These cases are consistent with long-established New York law declining to extend tort duties to publishers of other types of media. *See, e.g.*, *Abraham v. Entrepreneur Media, Inc.*, No. 09-CV-2096, 2009 WL 4016515, at *1 (E.D.N.Y. Nov. 17, 2009) ("[U]nder New York law, a magazine publisher owes no duty of care to subscribers or readers . . . ."); *McMillan v. Togus Regional Off., Dept. of Veterans Affairs*, 120 F.App'x 849, 852 (2d Cir. 2005). The law in other jurisdictions is in accord. *See, e.g.*, *Watters v. TSR, Inc.*, 904 F.2d 378, 379, 381 (6th Cir. 1990) (rejecting argument that video game manufacturer had a "duty to warn that the game could cause psychological harm in fragile-minded children"); *James*, 300 F.3d at 687 (rejecting argument that defendants owed a duty to victims of school shooting where the shooter was allegedly "desensitized" to violence by defendants' video games, movies, and websites); *Zamora*, 480 F. Supp. at 202 (rejecting argument that television networks owed a duty to shooting victim where the shooter allegedly became addicted and desensitized to violence by watching defendants' television shows).

Because Plaintiffs cannot allege any cognizable legal duty, the Court must dismiss Jones Claim XV and Stanfield Claims XIX and XX.

3. In *Stanfield*, Plaintiffs Fail to Adequately Plead a Claim for Negligent Infliction of Emotional Distress

Plaintiffs in the *Stanfield* Complaint also assert a claim against Reddit for negligent infliction of emotional distress. This claim fails for several reasons.

First, such a claim requires Plaintiffs to identify some independent basis for liability, which they have not done. A cause of action for infliction of emotional distress "is not allowed if essentially duplicative of tort [] causes of action." *Lipshie v. Lipshie*, 2005 N.Y. Slip Op. 30489(U), at *6 (Sup. Ct. N.Y. Cty. Apr. 19, 2005). Here, the allegations do just that: repackage existing negligence and product liability claims. *Compare* Stanfield Compl. ¶¶ 483–484 (alleging design defects as a product liability claim) *with id.* ¶¶ 510–511 (alleging same negligent product features); *compare id.* ¶¶ 492–494 (alleging the same breach of duty as a negligence claim) *with id.* ¶¶ 505–507 (alleging same breach of duty). Further, because tortious conduct, product liability, and negligence that are alleged as the basis for the negligent infliction of emotional distress claim fail for the reasons discussed above, so too does any claim based upon them. *See Colombini v. Westchester County Health Care Corp.*, 899 N.Y.S.2d 58, at *15 (2009) (rejecting the claim for negligent infliction of emotional distress because no duty owed to deceased).

Second, the Stanfield Plaintiffs are not proper plaintiffs to bring this claim. "[T]he circumstances under which recovery may be had for purely emotional harm are extremely limited[.]" *Peter T. v. Children's Vil., Inc.*, 819 N.Y.S.2d 44, 47 (2006) (citations omitted). A plaintiff can only recover for emotional damages without physical injury if the plaintiff is a bystander within the "zone of danger" who witnessed the death or serious bodily injury of an immediate family member. *Trombetta v. Conkling*, 82 N.Y.2d 549, 554 (1993) (claim for negligent suffering of emotional distress was properly dismissed because plaintiff was not "immediate family" of the deceased).

As pled, none of the *Stanfield* Plaintiffs fall within these limited circumstances such that they can bring a claim of negligent infliction of emotional distress against Reddit. While the alleged experiences of the *Stanfield* Plaintiffs are undoubtedly horrific, they do not fall within the

legally defined "zone of danger" as articulated in prior New York case law. While Fragrance Harris Stanfield and YAHnia Brown-McReynolds are mother and daughter, there are no allegations that either suffered physical injury or death. Stanfield Compl. ¶¶ 7–15. Mercedes Wright's daughter was in the store but she did not suffer physical injury or death. Stanfield Compl. ¶ 57. Of the other Plaintiffs who allegedly saw bodily injury or death at the scene, none are alleged to have a familial relationship, let alone an immediate one, with those injured. Stanfield Compl. ¶¶ 35 (Mr. Moore describes seeing "a woman" and "[a]nother person" lying dead), 45 (Ms. McCoy saw "a dead body" but does not allege a familial relationship with the deceased), 53 (Mr. Patrick Patterson "saw a dead body" but does not allege any familial relationship with the deceased). Only Quandrell Patterson is alleged to have seen a family member's death or serious bodily injury. Stanfield Compl. ¶ 60. But, while Mr. Patterson saw the body of his cousin, New York has not recognized "immediate family" to include cousins. *See, e.g.*, *Trombetta*, 82 N.Y.2d at 551 (holding that a niece could not recover damages for negligent infliction of emotional distress for witnessing the death of her aunt, despite close, maternal relationship).

Because the *Stanfield* Plaintiffs do not allege any separate conduct as the basis of this claim and in any event are not in the "zone of danger" as recognized by numerous courts, the Court must dismiss Stanfield Claim XX.

D. Plaintiffs Have Failed to and Cannot Sufficiently Allege Legal Causation

Even if they could state a claim, Plaintiffs' claims against Reddit must also be dismissed for the independent reason that Plaintiffs cannot establish Reddit's conduct was the legal cause of Plaintiffs' injuries. "The overarching principle governing determinations of proximate cause"—i.e., legal causation—is that "a proximate cause [must be] 'a substantial cause of the events which produced the injury.'" *Hain v. Jamison*, 28 N.Y.3d 524, 528–529 (2016) (citation

omitted). "[T]he chain of causation must have an endpoint in order 'to place manageable limits upon the liability that flows from negligent conduct.'" *Id.* at 528 (citation omitted).

Lack of legal causation may be determined on the pleadings. *See, e.g.*, *Ventricelli v. Kinney Sys. Rent A Car*, 45 N.Y.2d 950, 951–952 (1978) (affirming dismissal of complaint for failure to allege proximate cause due to intervening and unforeseen act); *Dyer v. Norstar Bank, N.A.*, 186 A.D.2d 1083, 1083 (4th Dep't 1992) (reversing denial of dismissal and finding lack of proximate cause); *Moore v. Shah*, 90 A.D.2d 389, 390 (3d Dep't 1982) (affirming dismissal for lack of legal causation). Indeed, cases involving third-party intervening acts, and especially criminal acts, are often dismissed on the pleadings for lack of proximate cause. *E.g.*, *Spitzer v. Sturm, Ruger & Co.*, 309 A.D.2d 91, 103–104 (1st Dep't 2003); *Taylor v. Bedford Check Cashing Corp.*, 8 A.D.3d 657, 657 (2d Dep't 2004).

1. Plaintiffs' Alleged Chain of Causation Is Too Attenuated

Accepting all of Plaintiffs' allegations as true, it was simply not foreseeable to Reddit that Gendron would commit his horrific crime. "'[A] variety of factors may be relevant in assessing legal cause' . . . includ[ing], among other things: the foreseeability of the event resulting in injury; the passage of time between the originally negligent act and the intervening act; . . . whether and, if so, what other forces combined to bring about the harm; as well as public policy considerations regarding the scope of liability." *Hain*, 28 N.Y.3d at 530 (citations omitted). Of these factors, foreseeability is often the "most significant." *Id.* at 530; *accord Kriz v. Schum*, 75 N.Y.2d 25, 34 (1989).

The Complaints fail to allege that Plaintiffs' injuries were within the range of reasonably foreseeable consequences of Reddit's provision of online services to its "hundreds of millions" of users around the world. Jones Compl. ¶ 223; Stanfield Compl. ¶ 284; *see Rivera v. New York City Tr. Auth.*, 77 N.Y.2d 322, 329 (1991) ("Whether [a] defendant legally caused [plaintiff]'s

injury and death depends upon whether they were reasonably foreseeable risks stemming from defendant's conduct."). That an outcome may be conceivable does not make it foreseeable. *Dyer*, 186 A.D.2d at 1083; *see also Perry v. Rochester Lime Co.*, 219 N.Y. 60, 63–64 (1916) (alleged harm must be "probable" or "within the range of reasonable expectation," not merely "possible"); *Derdiarian v. Felix Contr. Corp.*, 51 N.Y.2d 308, 316 (1980); *accord Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992) (requiring "some direct relation between the injury asserted and the injurious conduct alleged").

As alleged, Gendron's activities on Reddit could not have led Reddit to know what he was about to do. According to Plaintiffs, Gendron "frequented Reddit communities dedicated to military and combat-style armaments[,]" "was directed to . . . 4chan[,]" "noted the influence of certain subreddits" (some of which have since been banned), encountered a user purporting to be a "RMA Armament representative" within one of Reddit's subreddits, and "received guidance" from other Reddit users regarding "combat-style tactical gear and illegal gun modification." Jones Compl. ¶¶ 227 n.83 (referencing Gendron's diary entry in which he stated that, even after Reddit banned and removed certain violative content from its platform, he continued to seek it out on Reddit and other platforms), 228–231, 234; Stanfield Compl. ¶¶ 288 n.89, 289–292, 295. There is no allegation that there was any indication, based on his activities on Reddit, that he was planning a mass shooting or otherwise engaging in problematic behavior.

Rather, Plaintiffs' theory appears to be that the mere alleged existence of extremist and weapons-related content on Reddit in and of itself makes Gendron's ultimate criminal conduct foreseeable to Reddit. But this strains credulity and flies in the face of settled law. *See, e.g.*, *Crosby v. Twitter, Inc.*, 921 F.3d 617, 625 (6th Cir. 2019) (internet services cannot "foresee how

every viewer will react to third party content on their platforms" and "do not proximately cause everything that an individual may do after viewing this endless content").

In fact, the Complaints themselves allege a "series of new and unexpected causes" *separate and apart from Reddit* that intervened to ultimately cause Plaintiffs' injuries. *Perry*, 219 N.Y. at 64. For example, the Complaints allege Plaintiffs' injuries were caused by: the negligent entrustment and conduct of Gendron's parents; the alleged mental health issues Gendron suffered; the alleged conduct of the firearms dealer; the alleged conduct of the body armor seller; the alleged conduct of the firearms lock designer; and, most critically, the extraordinary and horrific conduct of Gendron himself. Jones Compl. ¶¶ 58–59, 62, 120–146, 147–152, 153–155, 237–243; Stanfield Compl. ¶¶ 120–21, 124, 176–207, 208–213, 214–216, 298–304. None of these alleged facts and events were within the "range of reasonable expectation" to be foreseeable to Reddit. *Perry*, 219 N.Y. at 64 (no proximate cause where child's death was caused by intervening events not "within the range of reasonable expectation" of defendant's alleged conduct). Gendron's murder of his victims is "entirely different in character from any [harm] that would have resulted" foreseeably from Reddit's provision of its service. *Martinez v. Lazaroff*, 48 N.Y.2d 819, 820 (1979).

Without any plausible allegations of foreseeability, or the other elements of causation, Jones Claims XIV and XV and Stanfield Claims XVIII–XX fail.

2. The Unforeseeable, Intervening Criminal Acts of a Third Party Break Any Causal Connection

Proximate cause is also lacking here because Gendron's extraordinary criminal acts were an unforeseeable intervening act that severed any chain of causation. Jones Compl. ¶¶ 113–119; Stanfield Compl. ¶¶ 169–175; *see also* Stanfield Compl. ¶¶ 2–4. A defendant cannot be held liable if the chain of events between the alleged conduct and the plaintiff's injuries includes an

intervening act by a third party—especially a criminal act—that "is extraordinary under the circumstances, not foreseeable in the normal course of events, or independent of or far removed from the defendant's conduct." *Hain*, 28 N.Y.3d at 529 (citation omitted); *see also Ingrassia v. Lividikos*, 54 A.D.3d 721, 724 (2d Dep't 2008) (no proximate cause when intervening criminal acts were "extraordinary and unforeseeable" as a matter of law); *Sturm*, 309 A.D.2d at 103 (no proximate cause between defendants' manufacture of handguns and harm caused directly by intervening criminal activity).

The "unusual circumstances" presented by the "intervening, intentional, and criminal act of [a] third-party gunman" is the paradigm example of an unforeseeable intervening act that severs the causal chain. *Taylor*, 8 A.D.3d at 657. In *Taylor*, two men entered a check-cashing establishment where they fired shots, causing confusion which resulted in injury to the plaintiff. *Id.* As *Taylor* explained, that criminal act and the ensuing crowd confusion "were not normal or foreseeable consequences of any situation created by the defendant," who owned the check-cashing business. *Id.* "Rather, the sequence of events leading to the plaintiff's injuries was so extraordinary and far removed from any alleged breach of the defendant's duty of care as to be unforeseeable as a matter of law." *Id.*

Here, it is difficult to conceive of conduct of a more extraordinary nature than Gendron's on May 14, 2022, or an event more "far removed" from Reddit's conduct. *See* Jones Compl. ¶¶ 113–119; Stanfield Compl. ¶¶ 169–175; *see also* Stanfield Compl. ¶¶ 2–4; *Taylor*, 8 A.D.3d at 657; *see also Sanders*, 188 F. Supp. 2d at 1276 ("Harris' and Klebold's intentional violent acts were the superseding cause of Mr. Sanders' death" and "were not foreseeable"). New York courts have held that criminal acts—especially those involving violence—that directly inflicted plaintiffs' injuries, subsequent to the conduct of the defendant, are extraordinary and

unforeseeable intervening acts that break the chain of causation as a matter of law. *See, e.g.*, *Dyer*, 186 A.D.2d at 1083 (reversing and dismissing complaint for no proximate cause where plaintiff sued bank for injuries sustained during a robbery); *Tennant v. Lascelle*, 161 A.D.3d 1565, 1566 (4th Dep't 2018) (no proximate cause where third party murdered the victim, despite defendant's negligence in supervising victim). Gendron's criminal acts similarly broke any chain of causation here.

In the context of services like Reddit, where the "amount of content" available is "staggering," *Taamneh*, 598 U.S. at 480, courts have repeatedly concluded that defendants cannot "foresee how every viewer will react to third party content on their platforms." *Crosby*, 921 F.3d at 625 (internet services "do not proximately cause everything that an individual may do after viewing this endless content"). "This is especially true where independent criminal acts . . . are involved." *Id.* Courts confronting similar cases brought against online service providers by victims of terrorist and other violent attacks have therefore consistently found no legal causation. *See, e.g.*, *id.* at 624–626 (Google, Facebook, and Twitter did not proximately cause terrorist attack where shooter was allegedly "self-radicalized" online); *Fields v. Twitter, Inc.*, 881 F.3d 739, 749–750 (9th Cir. 2018) (ISIS attack in Jordan); *Gonzalez v. Google, Inc.*, 335 F. Supp. 3d 1156, 1178 (N.D. Cal. 2018) (ISIS terrorist attacks in Paris), *aff'd*, 2 F.4th 871 (9th Cir. 2021), *vacated on other grounds*, 598 U.S. 617 (2023); *Pennie v. Twitter, Inc.*, 281 F. Supp. 3d 874, 888 (N.D. Cal. 2017) (mass shooting in Dallas). The same is true here. Jones Claims XIV and XV and Stanfield Claims XVIII–XX should be dismissed for lack of legal causation.

IV. CONCLUSION

For the foregoing reasons, Reddit respectfully requests that the Court dismiss all of Plaintiffs' claims against it with prejudice. Plaintiffs have failed to plead and cannot plead sufficient facts to state a claim or to plead legal causation, and Section 230 of the

Communications Decency Act as well as the First Amendment and Article 1, § 8 of the New York Constitution, foreclose all claims against Reddit in any event.

Dated: Buffalo, New York
November 9, 2023

Yours, etc.,

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