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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

DIVINO GROUP LLC, a California limited liability company, CHRIS KNIGHT, an individual, CELSO DULAY, an individual, CAMERON STIEHL, an individual, BRIAANDCHRISSY LLC, a Georgia limited liability company, BRIA KAM, an individual, CHRISSY CHAMBERS, an individual, CHASE ROSS, an individual, BRETT SOMERS, an individual, LINDSAY AMER, an individual, STEPHANIE FROSCH, an individual, SAL CINQUEMANI, an individual, TAMARA JOHNSON, an individual, and GREG SCARNICI, an individual,

Plaintiffs,

vs.

GOOGLE LLC, a Delaware limited liability company, YOUTUBE, LLC, a Delaware limited liability company, and DOES 1-25,

Defendants.

Case No. 5:19-cv-04749-VKD

**PLAINTIFFS' CORRECTED  
FOURTH AMENDED CLASS ACTION  
COMPLAINT**

Judge: Hon. Virginia DeMarchi  
Crtrm.: 2

**JURY TRIAL DEMANDED**

Action Filed: August 13, 2019  
Trial Date: None Set

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1 Plaintiffs Divino Group LLC, Chris Knight, Celso Dulay, and Cameron Stiehl, which own  
 2 GlitterBombTV.com and produce the online show “GNews!”; BriaAndChrissy LLC (d/b/a  
 3 “BriaAndChrissy”), Bria Kam, and Chrissy Chambers, which produce the YouTube channels  
 4 “BriaAndChrissy” and “WonderWarriors”; Chase Ross, who produces the YouTube channel  
 5 “uppercaseCHASE1”; Brett Somers, who produces the YouTube channel “WattsTheSafeword”;  
 6 Lindsey Amer, who produces the YouTube channel “QueerKidStuff”; Stephanie Frosch, who  
 7 produces the YouTube channels “ellosteph” and “ellostephextras”; Sal Cinequemani (a.k.a “Sal  
 8 Bardo”), who produces the YouTube channel “salbardo”; Tamara (Sheri) Johnson, owner of  
 9 SVTVNetwork.com, who produces the YouTube channel “SVTVNetwork”; and Greg Scarnici,  
 10 owner of gregscarnici.com, who produces the YouTube channel “GregScarnici” (collectively  
 11 referred to as “Plaintiffs”), respectfully file this [Corrected](#) Fourth Amended Complaint for  
 12 damages, and equitable and declaratory relief (the “FAC”), individually, and on behalf of all  
 13 persons similarly situated, against Defendants YouTube, LLC (“YouTube”), and its parent  
 14 company, Google LLC (“Google”) (collectively referred to as “Google/YouTube” or  
 15 “Defendants,” unless otherwise specified), in the above captioned lawsuit (the “Action”).

# 16 **I. INTRODUCTION AND PREFATORY STATEMENT OF THE CASE**

17 1. On August 13, 2019, Plaintiffs filed this Action to redress Defendants  
 18 Google/YouTube’s unlawful use of their identities to classify them, and other similarly situated  
 19 users and consumers of YouTube, based on gender, sexual identity, sexual orientation, or other  
 20 legally protected classifications, including the “gay thing,”<sup>1</sup> to deny them benefits under and in  
 21 violation of a consumer contract.

22 2. On September 30, 2022, this Court found that Plaintiffs allegations, as set forth in  
 23 the Third Amended Complaint (“TAC”), filed in the Action, were sufficient to establish claims for  
 24 relief under sections 51, *et seq.* of the California Civil Code (the “Unruh Act”), and sections 17200,  
 25 *et seq.* of the California Business and Professions Code (“UCL”). Specifically, the Court found  
 26 that allegations of intentional LGBTQ+ discrimination and classifications to deny Plaintiffs rights

27 <sup>1</sup> Unless otherwise specified, the term “including” means including, but not limited to.  
 28

1 and benefits under YouTube’s form contracts with consumers were sufficient to preclude dismissal  
 2 on the merits under Rule 12(b)(6) of the Federal Rules of Civil Procedure, and, if true, would  
 3 entitle Plaintiffs to relief under both the Unruh Act and UCL. *See* Dkt. No. 107, “Order Dismissing  
 4 TAC With Limited Leave to Amend” (“Order”), 18:9-18; 19:12-19.

5         3. Despite its finding that Defendants were intentionally discriminating against  
 6 Plaintiffs under a consumer contract, the Court dismissed those two claims with prejudice because  
 7 it found, as a matter of law, that Plaintiffs Unruh Act and UCL claims were barred by the liability  
 8 protection and immunity provisions of section 230(c) of the Communications Decency Act (CDA),  
 9 47 U.S.C. § 230(c) (1) and (2). Specifically, the Court found that intentional LGBTQ+  
 10 discrimination under a consumer services form contract between an Internet Service Provider (ISP)  
 11 and an Internet consumer (User) is the type of conduct “that fall[s] within a publisher’s traditional  
 12 functions” and, consequently, Defendants are “perforce immune” from liability for intentional  
 13 LGBTQ+ discrimination under § 230(c)(1). Order, 28:6-29:5; 30:12-13.<sup>2</sup>

14         4. The Court, however, did not enter a final, appealable judgment in the Action as to  
 15 any of the dismissed claims. Instead, it granted Plaintiffs leave to amend their fifth claim for relief  
 16 for Breach of the Implied Covenant of Good Faith and Fair Dealing Under Contract. Specifically it  
 17 ordered Plaintiffs to refile those claims, “in order to identify which Terms of Service (“TOS”), and  
 18 “other agreement(s)” and “other contract(s)” form the basis for their claim.” Order 24:1-11 (Dkt.  
 19 No. 67 ¶¶ 1, 10, 13-16, 18, 26.a., 26.o., 72, 74, 79, 113, 132-133, 137, 220, 225, 232, 307).<sup>3</sup>

20 \_\_\_\_\_  
 21 <sup>2</sup> On November 9, 2022, Plaintiffs filed motions (i) for reconsideration of this portion of the  
 22 Court’s Order under Civil Local Rule of Court 7-9(a) and (b)(2) based on a change in the law  
 23 under *Henderson, et al. v. The Source for Public Data L.P.*, U.S. Court of Appeal for the Fourth  
 24 Circuit Appeal No. 21-1678 (4th Cir. 11/3/2022) (*Henderson*) and (ii) for entry of judgment under  
 25 Rule 54(b) of the Federal Civil Rules of Civil Procedure to allow for an expedited appeal of the  
 26 Court’s novel finding that § 230(c) applied both on its face and constitutionally to bar claims of  
 intentional LGBTQ discrimination under a consumer services contract. On November 14, 2022,  
 the Court granted Plaintiffs motion for leave to file for reconsideration. *See* Dkt. No. 111. Thus,  
 as of the time of the filing of this FAC, Plaintiffs motions for reconsideration and for entry of  
 Final Judgment under Rule 54(b) are now pending before this Court, *See* Dkt. No. 112.

27 <sup>3</sup> In complying with the Court’s Order to amend this claim, Plaintiffs neither concede nor  
 28 otherwise waive, but expressly reserve, their right to challenge and argue on any appeal that (1)

1           5. As this Court found, Defendants have and continue to profile and use information  
 2 about Plaintiffs' protected legal identities or traits, including classifying Plaintiffs as LGBTQ+ or  
 3 the "gay thing" to deny them services and benefits on YouTube. These services include the  
 4 contractual right of each Plaintiff to: (a) promote, reach and engage with other users on YouTube  
 5 through the posting of online video content; (b) monetization of videos that allows YouTube  
 6 consumers to earn and share in revenues from their YouTube channels and video content that  
 7 appear on YouTube; (c) advertise, seek advertising for, promote their channels to YouTube's  
 8 advertisers; and (d) obtain other services and benefits offered to all users on YouTube.

9           6. That is not only unlawful intentional LGBTQ+ discrimination under YouTube's  
 10 form consumer contracts, but it also gives rise to actionable violations and breaches of the  
 11 contractual terms, promises, and obligations in those contracts by Defendants, including what this  
 12 Court previously stated was Defendants obligation to determine access to services on YouTube  
 13 subject to specific content based rules that are to be applied without reference or consideration of  
 14 the user's identity or viewpoints.

15           7. Plaintiffs, therefore, respectfully file this FAC to further identify which TOS and  
 16 "other agreement(s)" and "other contract(s)" form the basis for their [implied breach] claim,"  
 17 including further identifying the specific contractual terms that Defendants have and continue to  
 18 breach by classifying and discriminating against them as LGBTQ+ or the "gay thing" to deny them  
 19 benefits and access to services on YouTube.

20 \_\_\_\_\_  
 21 the allegations in the TAC properly, clearly, and sufficiently identify the basis for Plaintiffs'  
 22 contract and claims regardless of which version of the contract was operable, (2) the allegations  
 23 supporting the Fifth Claim for Relief are not "exceedingly vague," and fully comply with Rules 8  
 24 and 12 of the Federal Rules of Civil Procedure, and (3) that any difficulty regarding which  
 25 version(s) of Defendants' contracts (and unilateral term changes therein), neither results nor  
 26 relates to any failure on the part of Plaintiffs. Defendants have unilaterally changed the contract  
 27 and its terms during the relevant period of this lawsuit on at least three separate occasions, with no  
 28 notice or insufficient notice to Plaintiffs, other consumers, or the Court, and did so in direct  
 response to Plaintiffs allegations in prior pleadings in this case, and its companion case, *Newman*  
*v. Google*, 3:20-cv-04011 VC. *See, Newman*, Dkt. No.131, Fourth Amended Complaint, ¶¶ 44-56;  
*see also* Dkt. No. 133, Minute Order taking Case under Submission (10-27-22); Dkt. Nos. 135,  
 137 Minute Expedited Transcript Orders (10/31/22 and 11/7/22) (discussing and acknowledging  
 the clarity and specificity of Plaintiffs contract claims).

8. Finally, in the event that the Court finds that classifying Plaintiffs based on their identities or viewpoints to deny them benefits and services on YouTube violates Defendants TOS, Advertising, Partners Program, and other content based contract service terms, Plaintiffs will seek leave to add breach of contract, promissory estoppel, accounting, conversion, and other legal and equitable grounds for relief based on the substantially similar, if not identical, allegations to those averred in the FAC.

## **II. PARTIES**

9. Plaintiff Divino Group LLC (“Divino”) is a limited liability company formed and doing business in the State of California. Divino is co-owned, managed and operated by a married gay couple, Celso Dulay and Chris Knight, both of whom reside and are domiciled in San Francisco, California. Divino owns a news-based media company, “GlitterBombTV.com,” the producer of GNews!. Its principal place of business is located in San Francisco, California. Divino produces and distributes online, video-based news programs that report on, and discuss current events and issues, involving or affecting the LGBTQ+ persons and community. Divino’s news programs are written, produced, promoted, and distributed by Messrs. Knight and Dulay. Since February 6, 2014, Divino has used YouTube as a hosting platform to advertise, distribute, and reach the viewing public in connection with 132 episodes of GNews!.

10. Plaintiff Cameron Stiehl is an individual who resides and is domiciled in San Francisco, California. Ms. Stiehl regularly appears on GNews! as a co-host and contributes to its content.

11. Plaintiff BriaAndChrissy LLC is a Georgia Limited Liability Company. BriaAndChrissy LLC is owned and managed by Bria Kam and Chrissy Chambers, who reside and are domiciled in the State of Washington. Because of harassment they have received, these Plaintiffs should be contacted through their attorneys of record. BriaAndChrissy LLC does business as “BriaAndChrissy” and produces and distributes a variety of original videos that feature music, skits, day-in-the-life presentations, and discussions of mental health issues, healthy lifestyles, recommendations, and LGBTQ+-related issues. Since 2012, BriaAndChrissy LLC has



1 uploaded more than 1000 videos to its two YouTube channels: BriaAndChrissy, which has 849,000  
2 subscribers, and WonderWarriors, which has 195,000 subscribers.

3 12. Plaintiff Chase Ross is an individual who is a Canadian citizen who resides in  
4 Montreal, Quebec, Canada. Mr. Ross produces and distributes a series of original educational and  
5 day-in-the-life videos about the transgender experience and products, as well as discussions of  
6 issues pertinent to LGBTQ+ persons and community. Since 2010, Mr. Ross has uploaded 723  
7 videos to his “uppercaseCHASE1” YouTube channel, which has more than 163,000 subscribers.

8 13. Plaintiff Brett Somers is an individual who resides and is domiciled in San  
9 Francisco, California. Mr. Somers produces and distributes original sexual education and product  
10 review videos, with a focus on non-traditional sexual activities. Since 2014, he has uploaded 227  
11 videos to his “Watts The Safeword” YouTube channel, which has more than 193,000 subscribers.

12 14. Lindsay Amer is an individual who resides and is domiciled in Maine. Because of  
13 harassment and threats they have received, Mx. Amer should be contacted through their attorneys  
14 of record. Mx. Amer produces and distributes original educational videos for children aged 3-17,  
15 parents, and educators regarding LGBTQ+ issues. Since 2016, Mx. Amer has uploaded 94 videos  
16 to their YouTube channel “Queer Kid Stuff,” which has more than 15,000 subscribers.

17 15. Plaintiff Stephanie Frosch is an individual who resides in New York, New York, but  
18 is domiciled in Florida. Since October 5, 2009, Ms. Frosch has produced and distributed 189  
19 original videos focused on lifestyle topics, advice, interview and/or mini documentaries, which  
20 present her experiences as a lesbian, or present and discuss issues which affect members of the  
21 lesbian community. The videos are intended for a target audience 13 years and older. She operates  
22 two YouTube channels: “ElloSteph” and “StephFrosch.” The ElloSteph channel has 376,000  
23 subscribers and 36.5 million views. She also operates a merchandise store at  
24 www.districtlines.com/ellosteph. Stephanie Frosch is a LGBTQ internet activist who has appeared  
25 as a speaker at conventions and has been interviewed on MTV and the mainstream media regarding  
26 her YouTube experience and treatment at the hands of YouTube.

27 16. Plaintiff Sal Cinquemani is an individual who resides and is domiciled in Los  
28 Angeles, California. Mr. Cinquemani owns and operates salbardo.com. He is an independent film



1 maker who directs and produces films for audiences under the name “Sal Bardo.” Since March 27,  
 2 2011, Mr. Cinquemani has operated the YouTube channel “Sal Bardo,” uploading videos  
 3 consisting of original short films, film trailers, interviews of actors, and out-takes from films for  
 4 purposes of promoting his independent films. The Sal Bardo YouTube channel has approximately  
 5 38,000 subscribers and 24.1 million views.

6 17. Plaintiff Tamara (Sheri) Johnson is an individual who resides and is domiciled in  
 7 Columbus, Georgia and does business in Atlanta, Georgia. Ms. Johnson owns and is the CEO of  
 8 SVTVNetwork.com. Since May 30, 2012, she has operated the YouTube channel “SVTV  
 9 Network,” writing, developing, taping and producing short videos, original web series, animated  
 10 series and feature length films for her audience. SVTV Network has 114,000 subscribers and  
 11 generated five million views. In the fall of 2016, she launched an internet on-demand network  
 12 dedicated to content specifically designed for LGBTQ+ audiences. For the past three years, Ms.  
 13 Johnson has been uploading her own independently produced original video webseries and  
 14 licensing the original independently produced videos of others on the internet in direct competition  
 15 with Defendants.

16 18. Plaintiff Greg Scarnici is an individual who resides and is domiciled in Brooklyn,  
 17 New York. Mr. Scarnici owns and operates gregscarnici.com. He is a comedic writer, director,  
 18 producer and performer who currently works as an Associate Producer for “Saturday Night Live,”  
 19 with more than 25 years of experience working in television and comedy. He has appeared in  
 20 films, on television, and in numerous internet uploads and posts. Since September 14, 2007, Mr.  
 21 Scarnici has operated the YouTube channels “Greg Scarnici” and “Undercover Music,” uploading  
 22 videos consisting of short films, comedic sketches, parodies, and music videos for the audience.  
 23 The Greg Scarnici YouTube channel has approximately 9,600 subscribers and 8.9 million views.

24 19. Defendant Google LLC is a for-profit, limited liability company organized under the  
 25 laws of the State of Delaware, with its principal place of business in Mountain View, California; it  
 26 regularly conducts business throughout California, including Santa Clara County. Plaintiffs are  
 27 informed and believe, and thereon allege that, at all relevant times, Defendant Google LLC has  
 28

1 acted as an agent of Defendant YouTube, LLC, and controls or participates in censoring and  
 2 restricting speech on the YouTube service or platform.

3 20. Defendant YouTube, LLC is a for-profit limited liability corporation, wholly owned  
 4 by Google LLC, and organized under the laws of the State of Delaware. YouTube's principal place  
 5 of business is Mountain View, California and it regularly conducts business throughout California,  
 6 including Santa Clara County, California. Defendant YouTube, LLC operates the largest and most  
 7 popular Internet video viewer site, platform, and service in California, the United States, and the  
 8 world and holds itself out as one of the most important and largest public forums for the expression  
 9 of ideas and exchange of speech available to the public. Plaintiffs are informed and believe that at  
 10 all relevant times Defendant YouTube, LLC acts as an agent of Defendant Google LLC and uses,  
 11 relies on, and participates with Defendant Google LLC in restricting speech on the YouTube site,  
 12 platform, or service.

13 21. The true names and capacities, whether individual, corporate, associate, or  
 14 otherwise, of Defendants Does 1 through 100, inclusive, are presently unknown to Plaintiffs, and  
 15 for that reason these defendants are sued by such fictitious names. Plaintiffs are informed and  
 16 believe and thereon allege that each of the Doe Defendants are in some way legally responsible for  
 17 the violations of law, injuries, and harm caused, as alleged herein. If, and when appropriate,  
 18 Plaintiffs will seek leave of the Court to amend this Complaint when the true names and capacities  
 19 of said defendants are known.

### 20 **III. JURISDICTION AND VENUE**

#### 21 **A. The Court Has Jurisdiction Under Class Action Fairness Act, 28 U.S.C.** 22 **§1332(d) ("CAFA")**

23 22. On September 30, 2022, the Court found that these allegations were sufficient to  
 24 establish federal jurisdiction over all claims in this Action under CAFA because, "even assuming  
 25 that the alleged improper restriction of users' videos occurred only once with respect to fewer than  
 26 half of the members of the putative YouTube Community Class, and further assuming minimal  
 27 damages of \$1 per class member, the collective damages alleged in the TAC would exceed the \$5  
 28 million CAFA threshold." Order: 12:3-9

23. The matter in controversy exceeds the sum or value of Five Million Dollars (\$5,000,000), exclusive of interest and costs; moreover, the claims for relief seek, among other things statutory damages, compensatory damages, restitution, and other equitable relief that substantially exceed One Billion Dollars (\$1,000,000,000);

24. The case is a class action that seeks relief on behalf of a putative class composed of at least 200 million (200,000,000) users of YouTube (the “YouTube Community Class”). According to Defendants and other marketing and statistical sources, more than two-thirds of the YouTube Community Class reside outside California and Delaware but in one of the other 50 United States or territories and are subject to the choice-of-law and venue provisions set forth in Defendants’ TOS.

25. The case consists of a subclass that seeks relief on behalf of a putative subclass, which, according to Defendants and marketing and statistical other sources, is composed of at least 9.33 million users who identify as LGBTQ+ (the “LGBTQ+ Subclass”). According to those same sources, at least 85% or about eight million members of the LGBTQ+ Subclass reside in states or territories subject the choice-of-law and venue provisions set forth in Defendants’ TOS.

26. Seven representative class Plaintiffs, Bria Kam (Washington), Chrissy Chambers (Washington), Chase Ross (Canada), Lindsay Amer (Maine), Stephanie Frosch (Florida), Tamara Johnson (Georgia) and Greg Scarnici (New York), and more than two-thirds of the persons who come within the YouTube Community Class and the LGBTQ+ Subclass (hereinafter the “Putative Classes” unless otherwise specified), are citizens of a “Foreign State” that is different from the state that Defendants are citizens of.

27. All of the elements required to confer federal jurisdiction under §1332(d)(2) exist because:

(a) This is a class action in which more than two-thirds of the aggregate members of all putative plaintiff classes are not citizens of California, the State in which the action was originally filed;

(b) The claims asserted involve matters of national or interstate interests;

(c) Each of the claims asserted is not governed exclusively by California, the State

1 in which the action was originally filed, or by the laws of other States;

2 (d) The class action has been pleaded in a manner that does not seek to “avoid”  
3 federal jurisdiction but expressly asserts and invokes federal jurisdiction;

4 (e) The action was filed in a forum expressly mandated by Defendants’ contractual  
5 venue and forum selection clause and, as a result, has a distinct nexus with the class  
6 members, the alleged harm, and/or the Defendants; and

7 (f) As a result of Defendants’ forum and venue selection, Plaintiffs are not aware  
8 of one or more other class actions asserting the same or similar claims on behalf of the  
9 same or other persons filed or pending in any other court or jurisdiction at this time.

10 **B. Venue In This Court Is Proper Under 28 U.S.C. §1391**

11 28. Venue in this Court is proper because Defendants reside and/or transact business in  
12 the County of Santa Clara and are within the jurisdiction of this Court for purposes of service of  
13 process.

14 29. Venue is also proper because Defendants’ TOS expressly provides that Plaintiffs’  
15 Action must be filed in a court of competent jurisdiction located within Santa Clara County.

16 **IV. FACTS COMMON TO ALL CLAIMS**

17 30. Plaintiffs specifically reallege, incorporate, and adopt each and every allegation set  
18 forth and averred in ¶¶ 64-268 of the TAC, Dkt No. 67 in the Action.

19 **A. Defendants Discriminate And Classify Users To Deny Them Benefits Under**  
20 **And In Violation Of Consumer Contracts**

21 31. Defendants unlawfully discriminate against consumers on YouTube by profiling and  
22 classifying consumers on YouTube based on who they are, not what they post.

23 32. Defendants obtain and use cradle-to-grave profiles of YouTube consumers and  
24 users.

25 33. Defendants associate the data collected from Internet users including Plaintiffs with  
26 specific and unique user profiles through Google Analytics User-ID.

27 34. Defendants use a combination of the unique identifier of the user it collects from  
28 Websites, and Google Cookies that it collects across the internet on the same user. Google also

1 supplements its profiles with the X-Client Data Header, fingerprinting techniques, system data, and  
2 geolocation data.

3 35. These cradle to grave profiles collect and contain comprehensive personal data  
4 about the user. The information collected is vast and comprehensive and spans all aspects of an  
5 Internet user's most personal traits and characteristics. It includes Plaintiffs' dating history, sexual  
6 interests and/or orientation, political or religious views, travel plans, and even the user's plans for  
7 the future purchases.

8 36. Defendants surreptitiously use of scripts (e.g., Javascript), to send secret, separate  
9 messages to Defendants' servers in code to a complex web of automated, computer driven content  
10 filtering and review tools, systems, and manual review practices that determine who and what gets  
11 access to services on YouTube.

12 37. In other words, Defendants use personal data about YouTubers, including Plaintiffs,  
13 that they collect and sell to advertisers to also classify Internet consumers as LGBTQ+, the "gay  
14 thing," and/or some other invidious identity based classification. Defendants uses that information  
15 to classify Plaintiffs and other similarly situated YouTubers as LGBTQ+, the "gay thing," and  
16 other identity based categories to make what are supposed to be identity and viewpoint neutral  
17 content based decisions about what video content is, and is not, eligible for full audience reach,  
18 advertising, monetization, and other revenue based services.

19 38. Substantial and robust empirical evidence obtained by experts and computer  
20 information scientists also shows that Defendants use personal data about the racial, sexual, gender,  
21 religious, ethnic, age, and political classifications of users to digitally redline Plaintiffs and other  
22 similar users on YouTube.

23 39. According to experts, "the power of algorithms in the age of neoliberalism and the  
24 ways those digital decisions reinforce oppressive social relationships and enact new modes of racial  
25 profiling," which have been termed "technological redlining" is pervasive at Google/YouTube.  
26 "The near-ubiquitous use of algorithmically driven software, both visible and invisible to everyday  
27 people," results in the practice of racial redlining by Defendants that has been traditionally  
28 associated with "real estate and banking circles, creating and deepening inequalities by race, such

1 that, for example, people of color are more likely to pay higher interest rates or premiums just  
 2 because they are Black or Latino.” Safiya Umoja Noble, “Algorithms of Oppression.” Apple  
 3 Books; <https://books.apple.com/us/book/algorithms-of-oppression/id1327926683>.

4 40. Defendants use all of their aggregated data about the race, ethnicity, and national  
 5 origin of Plaintiffs to make decisions about access to the YouTube platform and services based on  
 6 what are supposed to be specific “neutral” content based rules, including YouTube’s ever changing  
 7 Community Guidelines, that Defendants testified under oath to Congress, apply equally to all users  
 8 without regard to their identity or political viewpoints.

9 41. That aggregated data is then embedded in computer code and algorithms, including  
 10 artificial intelligence technologies, that results in racial or LGBTQ+ bias and discrimination by  
 11 Defendants. Safiya Umoja Noble, “Algorithms of Oppression.” Apple Books.  
 12 <https://books.apple.com/us/book/algorithms-of-oppression/id1327926683>.

13 42. According to the evidence obtained by expert researchers and computer scientists,  
 14 Defendants use of classifications like LGBTQ+ or the “gay thing,” is standard protocol for  
 15 organizing behavior on the web for these Defendants.

16 43. Consequently, the intentional LGBTQ+ discrimination alleged and found by the  
 17 Court in this Action operates in the same formats, runs the same scripts over and over, and,  
 18 according to at least one researcher even when “tweaked to be context specific,” is all part of the  
 19 “the same source code.” Safiya Umoja Noble, “Algorithms of Oppression.” Apple Books.  
 20 <https://books.apple.com/us/book/algorithms-of-oppression/id1327926683>.

21 44. A transparent inspection of that source code, therefore, is essential to determining  
 22 and confirming the extent to which Defendants have discriminated, and continue to discriminate,  
 23 against Plaintiffs and other similarly situated YouTubers on the basis of the “gay thing,” LGBTQ+,  
 24 or other invidious or unlawful identity based classifications. According to one prominent  
 25 researcher and scientist: “To be specific, knowledge of the technical aspects of search and retrieval,  
 26 in terms of critiquing the computer programming code that underlies the systems, is absolutely  
 27 necessary to have a profound impact on these systems.” Safiya Umoja Noble, “Algorithms of  
 28

1 Oppression,” Apple Books; [https://books.apple.com/us/book/algorithms-of-](https://books.apple.com/us/book/algorithms-of-oppression/id1327926683)  
 2 [ppression/id1327926683](https://books.apple.com/us/book/algorithms-of-oppression/id1327926683). )

3 45. Experts are not the only ones with evidence of unlawful discrimination.

4 46. On April 27, 2017, Johanna Wright, Vice President of Product Management for  
 5 Google/YouTube, in direct response to protests by the members of the LGBTQ+ YouTube  
 6 Community, including some of the Plaintiffs in this case, publicly promised the global “YouTube  
 7 Community” that Defendants would ensure that “Restricted Mode” would not “filter out content  
 8 belonging to individuals or groups based on “gender, race, religion, or sexual orientation.”

9 47. On September 14, 2017, YouTube convened a meeting of approximately 15  
 10 aggrieved YouTube creators, including one of the Plaintiffs in this case, on Defendants’ premises  
 11 to discuss and explain YouTube’s inherent bias and classification of video content filtering based  
 12 on identity with respect to Defendants’ decisions regarding monetization, payments for clicks per  
 13 minute (“CPM”) advertising, and applying “Restricted Mode.”

14 48. At that meeting on September 14, 2017, Defendants representatives stated that:

15 a. There are too many videos on the YouTube platform to be reviewed  
 16 manually by human beings;

17 b. Advertisers want demographic information, including race, gender, and  
 18 sexual identity and orientation, so that they can identify and target specific audiences based on  
 19 demographic information about the video creators and their viewers;

20 c. YouTube uses algorithms and automated filtering tools and computerized  
 21 systems to get the information that advertisers want in order to gather and analyze information  
 22 about creators and viewers based on Plaintiffs’ Identities, and that Defendants also use that same  
 23 information to make decisions about viewing restrictions and monetization that turn on who the  
 24 users and viewers are rather than what is actually in the video content.

25 d. Defendants’ algorithms and computerized filtering tools discriminate and  
 26 “target” users like Plaintiffs and others who identify with marginalized groups when making  
 27 decisions regarding which videos to monetize, pay CPM, and apply “Restricted Mode” to, based  
 28 on the identities of the video creators and their viewers.



1           e. Defendants’ algorithms and source code profiles and considers the race,  
2 ethnicity, national origin, gender and sexual identity, disability, religion, political affiliations, and  
3 commercial status of both the video creator and its intended audiences and viewers.

4           f. And, by way of example only, when applied to a chef’s channel that posted  
5 cooking videos that had many “gay” subscribers who also accessed other LGBTQ related videos  
6 were tagged as “gay” for purposes of “Restricted Mode” and monetization – regardless of the  
7 content of the videos on the channel. The same is true with respect to Defendants’ targeting of  
8 Plaintiffs and other LGBTQ+ consumers who use YouTube.

9           49. At the meeting, Defendants’ representatives promised that they were working on a  
10 “fix.” But when the creators pushed these representatives on an estimated timeline for correcting  
11 and stopping the acknowledged identity based “targeting” problems that pervaded its content  
12 review systems, Defendants’ employees declined to answer or were unable provide and information  
13 or commitment.

14           50. Furthermore, Plaintiffs have a recorded phone call in which Defendants admitted  
15 that they classified Plaintiff Divino Group as the “gay thing” and used that classification to deny it  
16 ad services and benefits that it had paid for under a consumer contract with Defendants for  
17 advertising services.

18           51. During the week before the Christmas Holidays in 2017, Plaintiff Divino Group  
19 purchased and advertisement from Defendants to promote a Holiday Special about events for  
20 LGBTQ+ persons on Christmas eve and day. Defendants failed to run the ad. On or about January  
21 3, 2018, Divino contacted Defendants to inquire what happened to its paid ad and why it had not  
22 run as promised. After Divino declined initial solicitations by the customer service representative  
23 to purchase additional ads to “drive more traffic” to its channel, Divino interrupted the solicitation  
24 to explain that it was not calling about a new ad but simply inquiring as to why they had paid for an  
25 ad that did not run. The customer service representative then transferred the call to someone  
26 Divino understood to be a content review supervisor. The supervisor, after taking considerable  
27 time to review, and initially indicating that he did not know why the ad had not run, came back on  
28 the line and told Divino that its “holiday special” video was not eligible for advertising services

1 because the video contained “shocking” and “sexually explicit” content that was prohibited from  
 2 advertising on YouTube. When Divino repeatedly pushed the supervisor to identify what part of its  
 3 “holiday special” video contained “shocking” and “explicit” content, the supervisor returned to his  
 4 computer and then informed Divino that the “company’s” filtering tools had identified it as being  
 5 part of “the gay thing.” When Divino accused the supervisor of discriminating against it, the  
 6 supervisor responded that the “company”, not him, was discriminating and that the filtering  
 7 algorithm determined that the video contained “shocking” or “sexually explicit” content, not  
 8 because of any actual material in the video, but because the “gay thing” triggered Defendants’  
 9 content based prohibition on providing advertising services to promote “shocking” or “sexually  
 10 explicit” video content.

11 52. Sometime, in late January, 2018, weeks after the holidays had passed, Defendants  
 12 claim to have admitted that a “mistake” had been made and purportedly ran the ad. Since that  
 13 admission, however, Defendants continue to block ads purchased by Divino in 2018 on at least 4  
 14 subsequent occasions.

15 53. In response, in the late spring or early summer of 2019, Plaintiff Divino requested a  
 16 meeting with Defendants in the hope that Defendants would look into the issue and resolve the  
 17 problem informally. Defendants rejected Divino’s overture to informally resolve the problem and,  
 18 and in no uncertain terms, told Divino to go ‘pound sand’ and litigate their claims.

19 54. As alleged in more detail below and in the TAC, the allegations of which are  
 20 expressly adopted and incorporated into the FAC, Defendants’ conduct and admissions of  
 21 LGBTQ+ discrimination are not merely one off or isolated “mistakes” or “errors” as initially  
 22 claimed by Defendants’ in this and related cases.

23 55. As Defendants have known and admitted since at least 2017, systematic  
 24 discriminatory classifications pervade their content curation tools, source code, and review  
 25 practices. Those known defects result in Defendants’ imposition of false and erroneous denials or  
 26 restrictions on Plaintiffs’ content reach and other services on YouTube. These erroneous and false  
 27 restrictions and denials of rights and services imposed on Plaintiffs and other similarly situated  
 28

1 consumers violate and breach Defendants obligations and promises in their consumer service  
 2 contracts with Plaintiffs and other YouTubers, including:

3           **a.**       Failing to apply content-based regulations and filtering “equally to all,” as  
 4 provided for in Defendants’ form consumer contract and Defendants’ promises to Plaintiffs and  
 5 the Community;

6           **b.**       Falsely representing to the viewing public and potential advertisers that  
 7 video content created and posted to YouTube by Plaintiffs contains discussions about drug use or  
 8 abuse or drinking alcohol; overly detailed conversations about or depictions of sexual activity;  
 9 graphic depictions of violence, violent acts, natural disasters or tragedies or violence in the news;  
 10 specific details about events related to terrorism, war, crime and political conflicts that resulted in  
 11 death or serious injury even if no graphic imagery is shown, inappropriate language, including  
 12 profanity; and/or content that is gratuitously incendiary, inflammatory, or demeaning toward an  
 13 individual or group;

14           **c.**       Arbitrarily, capriciously, and unfairly censoring, removing, suspending,  
 15 restraining, suppressing and/or demonetizing the speech, video content or channels of YouTubers  
 16 solely because they are “lesbian,” “gay,” “bisexual,” “transgender,” or “queer,” or because they  
 17 identify as such, or because they address issues of interest to the Community associated with their  
 18 content or use tag words related to that Community in order to make it easier for viewers to locate  
 19 their content;

20           **d.**       Exercising unfettered and absolute discretion to selectively apply and  
 21 enforce content-based regulations, content filtering tools, and monetization schemes in a manner  
 22 that promotes Defendants’ own content or content in which Defendants have a direct financial  
 23 interest, including obscene, violent, and/or homophobic bullying and hate speech that Defendants  
 24 not only fail to regulate or restrict, but from which they monetize and profit;

25           **e.**       Enforcing what Defendants stated was a “company policy” of prohibiting  
 26 “gay” users from advertising their content on YouTube because of the “gay thing” and using that  
 27 “policy” to stigmatize Plaintiffs and their content as “shocking” and “sexually explicit” solely  
 28 because they identify as “gay”;

1           **f.**       Demonetizing the content of Plaintiffs and the Class, including YouTubers  
2 who operate and publish content on some of the most popular channels on the YouTube platform;

3           **g.**       Promoting, monetizing, profiting, and distributing online hate speech,  
4 including homophobic slurs, threats of violence and death; theft and destruction of content;  
5 homophobic, obscene and threatening video comments that appear in connection with the  
6 channels' video content (as recommended videos and as advertisements), all of which violate  
7 Defendants' regulations, policies, and contracts with their consumers, and none of which are  
8 protected by California or federal law, nor even by Defendants' own published guidelines;

9           **h.**       Promoting individuals and groups with anti-LGBTQ+ or homophobic  
10 messages by selling advertisements which undermine, criticize, disparage, or belittle members of  
11 the Community, and running those advertisements that violate the law and Defendants' regulations  
12 and contracts with consumers, immediately before the videos of Plaintiffs, thereby discouraging  
13 viewers from going forward with the viewing of Plaintiffs' videos;

14           **i.**       Promoting YouTubers with anti-LGBTQ+ or homophobic messages or with  
15 hate speech videos by recommending such videos to Plaintiffs' viewers in YouTube's "Up Next"  
16 list of recommended videos which appears on the screen when Plaintiffs' videos are played;

17           **j.**       Replacing Plaintiffs' customized "thumbnail" graphic images of individual  
18 videos, which serve as mini-advertisements that appear in YouTube search results, with  
19 Defendants' own generic Thumbnails, consisting of a screenshot taken at random from the  
20 individual video;

21           **k.**       Arbitrarily, capriciously, and unfairly removing individual subscribers from  
22 the list of those viewers who have intentionally applied to be affiliated with the respective  
23 YouTube channels of YouTubers, without notice to the creators or to the individual subscribers;

24           **l.**       Unilaterally changing the procedure for new video notifications to be sent to  
25 individual subscribers of the creators' channels, without giving notice to the subscribers or to the  
26 creators, resulting in hundreds of thousands of subscribers not receiving notices as new content is  
27 uploaded by creators;

28           **m.**       Stealing, copying, altering, and/or violating the property rights appurtenant

1 to the content of Plaintiffs, and then using the content of Plaintiffs to produce and promote content  
 2 that Defendants own, or in which they have a financial interest, and that directly competes with the  
 3 original content stolen from Plaintiffs;

4           **n.**       Arbitrarily, capriciously, and unfairly excluding creators' original videos  
 5 from YouTube's "Up Next" video recommendations, which appear on the screen whenever videos  
 6 are played; while at the same time recommending hate speech or disparaging reaction videos  
 7 which steal, copy, or alter the very same original videos upon which they are based. *See also* TAC  
 8 ¶¶ 90-139 expressly adopted incorporated by reference into the FAC.

9           56.       It is estimated that YouTube applies these defective tools and systems to review,  
 10 filter, and curate 1 billion hours of video content per day.

11           **B.       The Digital Consumer Form Agreements**

12           57.       The digital consumer form contracts between Plaintiffs and other similarly situated  
 13 users, on the one hand, and Defendants, on the other, are adhesive form contracts that Plaintiffs are  
 14 deemed to have executed simply by clicking on the site to access any aspect of YouTube's services.

15           58.       These contracts, which Defendants now contend are subject to limitation of liability  
 16 and other repugnant provisions designed to permit unlawful activity, like intentional LGBTQ+  
 17 discrimination are both procedurally and substantively unconscionable and unenforceable.

18           59.       The contracts are also illusory. Regardless of any of the specific promises or other  
 19 consideration Defendants offer consumers in the contracts regarding content, services, and access  
 20 on YouTube, according to Defendants, those promises are subsumed and meaningless when it  
 21 comes to the intentional LGBTQ+ discrimination in this Action because, according to Defendants,  
 22 they reserve the unilateral right to deny service, and/or filter, block, and remove the content of  
 23 Plaintiffs and similarly situated users "for any reason or no reason, whether based on profit or  
 24 discriminatory animus" even when the decision has absolutely no bearing on the material but is  
 25 based on the "gay thing."

1                   **1. Defendants Unilaterally Change Their Form Contracts With No Notice**  
 2                   **To The Consumer**

3           60. As the Court has found, Defendants contracts are not a beacon of clarity and  
 4 simplicity. This is not an accident, but a means to further allow Defendants to discriminate and  
 5 otherwise deny consumers their rights and benefits.

6           61. One of the reasons for this is that Defendants routinely change or alter the contract  
 7 documents and terms, with little or no notice to consumers.

8           62. In this Action, Defendants changed their contract as a means to fend off allegations  
 9 by these Plaintiffs, and others, that Defendants continually breach and violate their legal obligations  
 10 to consumers.

11           63. On no less than seven times over the past 12 years, Defendants have unilaterally  
 12 changed the TOS and documents incorporated by reference therein without any warning or advance  
 13 notice to consumers.

14           64. From June 9, 2010, through May 24, 2018, Defendants utilized and relied on the  
 15 same TOS. In that contract, Defendants designate YouTube as a “passive website,” that is open to  
 16 the public. Each person who “uses or visits” the YouTube website or any of YouTube’s Services,  
 17 agrees to be governed by the TOS, Community Guidelines and Google’s Privacy Policy.  
 18 Defendants’ agreement is a “take it or leave it” standardized digital consumer form contract that is  
 19 not subject to negotiation.

20           65. On May 25, 2018, seven months after Prager University sued Defendants for similar  
 21 identity based profiling, Defendants revised their TOS to expand categories of prohibited content.

22           66. On December 10, 2019, just four months after other users sued Defendants for  
 23 similar identity based profiling of LGBTQ+ users on YouTube, Defendants again revised the TOS  
 24 to add numerous overlapping Safety and Copyright Policies to the TOS, and further expand the  
 25 categories of prohibited content.

26           67. While archived versions of the TOS are available online, the other documents  
 27 incorporated and hyperlinked to the TOS, however, are not. For the archived TOS, the hyperlinks  
 28 lead to current webpages for Community Guidelines; Policies; “Advertising on YouTube Policies;”

1 “Monetization Policies;” and “Advertiser-Friendly Content Guidelines.” Defendants have refused  
2 to provide a complete set of TOS and incorporated hyperlinked documents.

3 68. To access the TOS, and the incorporated hyperlinked documents, Plaintiffs must  
4 navigate a labyrinth of layers of digital webpages and websites starting with the YouTube website.  
5 By clicking on a hyperlink to the TOS, Plaintiffs arrive at the YouTube TOS webpage. Then,  
6 Plaintiffs must click on the individual hyperlinks to the Community Guidelines and Google’s  
7 Privacy Policy (and after December 2019, the Policies).

8 a. Each of the Community Guidelines includes hyperlinks which leads to other  
9 webpages consisting of a series of “policies,” “FAQs,” “Q&As,” and “articles,” as well as  
10 additional hyperlinks to other webpages. Identifying all the contract terms requires a deep dive  
11 into the nested layers of hyperlinked webpages.

12 b. The current Policies include 24 separate hyperlinks, each of which leads to  
13 individual webpages, which in turn contain two to eight additional hyperlinks that lead to a series  
14 webpage with videos, “policies,” “FAQs,” “Q&As,” and “articles,” as well as, more hyperlinks.  
15 In all, Plaintiffs must access 120 different webpages to open each of the so called “policies.” Each  
16 of the Community Guidelines has a title that is similar or identical to one of the 120 “policies.”  
17 Plaintiffs would have to download or print each of the 24 Guidelines, locate the similarly titled  
18 “policy,” and do a line by line comparison to determine whether they are identical or different.

19 69. Every time Plaintiffs access YouTube, Plaintiffs and Defendants digitally “execute”  
20 an electronic binding contract governing their respective rights and obligations. To obtain a copy  
21 of that contract Plaintiffs can: (a) save a lengthy series of screenshots; (b) use the Microsoft copy  
22 function, to copy and then paste the text of each operative document into a new document; (c) print  
23 each webpage to .pdf; or (d) save each of the webpages electronically. Only saving the  
24 Defendants’ webpages electronically preserves all the visible information. Screenshots, copying  
25 and pasting text, and printing to .pdf, do not capture all of Defendants’ graphics or embedded  
26 hyperlinks to “Our mission,” “Our commitments,” “User settings,” “Rules and policies,” or  
27 “Resources,” which appeared on Defendants’ website and webpages for the TOS, Community  
28 Guidelines, and Policies since before 2016 through, at least, the summer of 2021.



1           70. Accordingly, the Defendants' online digital consumer contracts are virtually  
 2 impossible to copy or download, much less to copy or download each time Plaintiffs access  
 3 YouTube. Defendants do not provide a copy of the executed contract, a digital receipt, notice or  
 4 email confirmation. Defendants alone know the dates each user executed the contracts, and the full  
 5 text of the contract is operative as of that date.

6           71. Consequently, the governing TOS and its contractual provisions are needlessly  
 7 complex, overlapping, inconsistent, ambiguous, and difficult, if not impossible for consumers to  
 8 follow, track and understand.

9           72. Nonetheless, pursuant to the Court's Order, each Plaintiff, and other similarly  
 10 situated consumers, entered into several or more of the following form agreements with Defendants  
 11 (collectively unless otherwise specified as the "Form Agreements"):

12                           **a.       The Terms Of Service (TOS)**

13           73. Each of the Plaintiffs entered into a Terms of Service contract(s) with Defendants  
 14 consisting of the following:

15                   **a.**       YouTube's TOS dated June 9, 2010, incorporating Google's Privacy Policy  
 16 [Exhibit 7] and YouTube's Community Guidelines. [Exhibit 1].

17                   **b.**       YouTube's TOS dated May 25, 2018, incorporating Google's Privacy  
 18 Policy [Exhibit 7] and YouTube's Community Guidelines. [Exhibit 2].

19                   **c.**       YouTube's TOS dated December 10, 2019, incorporating YouTube's  
 20 Community Guidelines, and YouTube's "Policy, Safety and Copyright Policies," and "Advertising  
 21 on YouTube Policies." Google's Terms of Service are also required for everyone posting content  
 22 on the platform. [Exhibit 3].

23                   **d.**       YouTube's TOS dated November 18, 2020, incorporating YouTube's  
 24 Community Guidelines, "Policy, Safety and Copyright Policies;" and Advertising on YouTube  
 25 Policies. Google's Terms of Service are required to post content. [Exhibit 4].

26                   **e.**       YouTube's TOS dated March 17, 2021, incorporating YouTube's  
 27 Community Guidelines [Exhibit 8], "Policy, Safety and Copyright Policies" [Exhibit 9], and  
 28

1 “Advertising on YouTube Policies.” [Exhibit 10]; Google’s Terms of Service are required to post  
2 content. [Exhibit 5].

3 f. YouTube’s TOS dated January 5, 2022, incorporating YouTube’s  
4 Community Guidelines, “Policy, Safety and Copyright Policies,” and “Advertising on YouTube  
5 Policies.” Google’s Terms of Service are required to post content [Exhibit 11]. [Exhibit 6].

6 74. From June 9, 2010, to December 9, 2019, the TOS Rules and Google’s Privacy  
7 Policy [Exhibit 7] formed an electronic uniform consumer service contract executed by every use  
8 upon digitally accessing the website. After December 10, 2019, Defendants expanded the  
9 Community Guidelines, removed Google’s Privacy Policy, and replaced it with the YouTube’s  
10 lengthy and confusing “Policy, Safety and Copyright Policies” (hereinafter, the “Policies”) [Exhibit  
11 9 is the 2021 version] and “Advertising on YouTube Policies” [Exhibit 10 is the 2021 version]  
12 (collectively referred to as the “TOS Rules”).

13 **b. The YouTube Partner Program And Other Service Agreements**

14 75. Each of the Plaintiffs is also a party to YouTube’s Partner Program [Exhibit 12],  
15 incorporating YouTube’s Monetization Policies [Exhibit 13] and YouTube’s Advertisers-Friendly  
16 Content Guidelines. [Exhibit 14]. The Partner Program requires all users to “follow all the  
17 YouTube channel monetization policies” and “to potentially earn money on YouTube.” [Exhibit  
18 13 at p. 991]. The Partner Program also requires creators to create an AdSense account [Exhibit 12  
19 at p. 980], which is governed by Google’s AdSense Online Terms of Service. [Exhibit 15].

20 76. The YouTube Partner Program [Exhibit 12], incorporates the Google AdSense  
21 Online Terms of Service [Exhibit 15], and the Google AdSense Online Terms of Service [Exhibit  
22 15] and the Google Ads Terms & Conditions. [Exhibit 16]. The AdSense Program Policies apply  
23 to everyone who publishes monetized content. [See Exhibit 9, Exhibit 13 at pp. 984-987, Exhibit  
24 14 at pp. 1034, 1070, 1110].

25 77. **Also relevant to the respective rights and obligations of Plaintiffs and**  
26 **Defendants are the terms and provisions set forth in the following documents:**

27 **a. YouTube’s Four Essential Freedom Statements, 2017, [Exhibit 17];**  
28

1 **b. How YouTube Works – Our Mission, 11-16-2021, [Exhibit 18];**

2 **c. YouTube’s Commitments, undated, [Exhibit 21];**

3 **2. The Relevant General Provisions**

4 78. For the period 2010 to present, the following general provisions apply to the Form  
5 Agreements:

6 **a.** YouTube’s California choice of law clause.

7 **b.** YouTube’s integration clause identifies the operative agreement between  
8 the Parties.

9 **c.** YouTube’s license provisions that grant Defendants “a worldwide, non-  
10 exclusive, royalty-free, sublicenseable and transferable license to use, reproduce, distribute,  
11 prepare derivative works of, display and perform” any Content the user uploads “in connection  
12 with the Service and YouTube’s business,” including YouTube’s right to “retain, but not display,  
13 distribute, or perform, server copies of [users’] videos that have been removed or deleted.” The  
14 licenses are “perpetual and irrevocable.”

15 (1) The license includes a grant to other YouTube “users” a  
16 “non-exclusive, royalty-free license to access” content, to “reproduce, distribute, prepare  
17 derivative works, display, and perform it . . . as enabled by a feature of the Service.”

18 (2) This license also includes the right to post and monetize  
19 Plaintiffs’ “[c]ontent or other material” that makes Plaintiffs (i) “solely responsible for” the  
20 content and its “consequences,” including (ii) all intellectual property rights and restrictions on the  
21 video content, and (iii) not posting content or seeking access to services in a manner that is  
22 “contrary to the YouTube Community Guidelines.”

23 **d.** YouTube’s requirement that users comply with all applicable “local,  
24 national and international laws and regulations.”

25 **e.** YouTube’s requirement that users agree to Google’s Privacy Policy and  
26 give Defendants access to their personal digital data.

27 **f.** YouTube’s prohibition against the use of “third party copyrighted material,  
28 or material that is subject to other third party proprietary rights,” unless users have permission or

1 “are otherwise legally entitled to post the material.” Users’ accounts can be terminated for  
 2 copyright infringement. Each of the relevant TOS also expressly refers to, and relies upon, United  
 3 States copyright law and specifies a procedure for notifying Defendants of Content that constitutes  
 4 a copyright violation and a procedure for appealing YouTube’s removal of, or limitations imposed  
 5 on Content on grounds of copyright violation.

6 **g.** YouTube’s requirement that all Content uploaded to the platform conform  
 7 with the TOS and Community Guidelines. Commencing on December 10, 2019, YouTube also  
 8 required Content to conform with the Policies.

9 **h.** YouTube’s reservation of “the right to decide whether Content violates  
 10 these TOS for reasons other than copyright infringement,” including, “but not limited to,  
 11 pornography, obscenity, or excessive lengthy,” and that YouTube “may at any time, without prior  
 12 notice and in its sole discretion, remove such Content and/or terminate a user’s account for  
 13 submitting such material in violation of these TOS.”

14 **i.** YouTube’s reservation of the “right to discontinue any aspect of the Service  
 15 at any time;” including the right to “suspend or stop a Service altogether;” and the “right to refuse  
 16 or limit [users’] access” to ads, ad accounts and to withhold ad revenue “at any time, without  
 17 providing a warning or prior notice.”

18 **j.** YouTube’s right to “modify or revise” the TOS and incorporated  
 19 agreements “at any time” in its “sole discretion” without paying any additional consideration;  
 20 including the right to “update” or “modify” the Community Guidelines.

21 **k.** YouTube’s express disclaimer of any warranty and a statement that use of  
 22 the Services “shall be at your sole risk, to the fullest extent permitted by law;” and further states  
 23 that YouTube “assumes no liability or responsibility” for “personal injury or property damage, of  
 24 any nature whatsoever, resulting from your access to and use of our services.”

25 **l.** YouTube’s “limitation of liability” clause exempting YouTube from  
 26 “direct, indirect, incidental, special, punitive or consequential damages” related to use of the  
 27 Services.”  
 28

### 3. Defendants' Specific Content Based Rules And Provisions

#### a. Community Guidelines

79. The Community Guidelines that “set out what’s allowed and not allowed” [Exhibit 8 at 249, 256], and the Policy, Safety and Copyright Policies that identify what “content” is not allowed or eligible for “Restricted Mode” [Exhibit 9 at 403].

80. The Community Guidelines prohibit the following content:

- **Spam & deceptive practices.** [Exhibit 8 at pp.267-294].
- **Nudity and sexual content.** [Exhibit 8 at pp.295-301]; *see also* [Exhibit 9 at pp.523-524].
- **Harassment and cyberbullying.** [Exhibit 8 at pp. 355-363]; *see also* [Exhibit 9 at pp. 550-552].
- **Harmful or dangerous content.** [Exhibit 8 at pp. 323-330].
- **Hate speech.** [Exhibit 8 at pp. 346-354]; *see also* [Exhibit 9 at pp. 547-549].
- **Violent or graphic content.** [Exhibit 8 at pp. 331-338]; *see also* [Exhibit 9 at pp. 542-544].
- **Firearms.** [Exhibit 8 at p. 371]; [Exhibit 9 at pp. 554-556].
- **COVID-19 medical misinformation.** [Exhibit 8 at 392]; [Exhibit 9 pp. 562-564].

#### b. Policies

81. Commencing December 10, 2019, YouTube’s Policies and “Advertising on YouTube Policies” prohibited the same content proscribed by the Community Guidelines, as well as the following content:

- **Privacy Guidelines.** [Exhibit 9 at pp.450-456].
- **Vulgar language.** [Exhibit 9 at pp. 533-538].
- **Impersonation of another.** [Exhibit 9 at pp. 269-274, *see also* [pp 513-514].

- 1           •       **Previously removed content or content from terminated or restricted**
- 2                   **creators.** [Exhibit 9 at p. 519].
- 3           •       **Trademarked intellectual property of others.** [Exhibit 9 at pp. 571-576,
- 4                   728].

5           82.     The Policies also added articles, Frequently Asked Questions, recommendations and  
6 instructions for navigating YouTube services and features:

- 7           •       **Protecting your identity.** [Exhibit 9 at pp. 616-621].
- 8           •       **Change video privacy settings.** [Exhibit 9 at pp. 628-633].
- 9           •       **Reporting inappropriate content.** [Exhibit 9 at pp. 665-675].
- 10          •       **Reporting channel or privacy violation.** [Exhibit 9 at p. 680].
- 11          •       **Reporting a YouTube search prediction.** [Exhibit 9 at pp. 676-680].
- 12          •       **Your content & restricted mode.** [Exhibit 9 at pp. 706-708].
- 13          •       **Appeal Community Guidelines actions.** [Exhibit 9 at pp. 717-718].
- 14          •       **Channel or account terminations.** [Exhibit 9 at p.721].
- 15          •       **Creative commons.** [Exhibit 9 at pp. 759-784].
- 16          •       **Copyright fair use.** [Exhibit 9 at pp. 785-805].

#### 17           4.       **Defendants' Missing Provisions**

18           83.     These provisions contain no references to classifying users as LGBTQ+, the “gay  
19 thing,” or other invidious discriminatory or identity based classifications. Nor do these provisions  
20 claim the right or authority to discriminate or otherwise notify consumers that Defendants can  
21 apply and use these guidelines to deny them bargained for benefits and rights to content and user  
22 access based on LGBTQ+ or other discriminatory classifications of who the user is, not what the  
23 user posts on YouTube.

24           84.     Defendants know this. They have never included, expressly or otherwise, any  
25 identity based classifications, practices, or rules in the TOS, including:

- 26           a.       Language authorizing Defendants to employ A.I., algorithms, filters, or
- 27                   automated systems that use or take into consideration information regarding Plaintiffs' Identities
- 28                   to filter, restrict or curate users' accounts, channels, content, or access to services.

1                   b.       Language immunizing Defendants for filtering, restricting, or curating  
 2 content on the platform, much less immunity under the Communications Decency Act 47 U.S.C.  
 3 §230(c).<sup>4</sup>

4                   c.       Language prohibiting any individual, organization or entity, or category or  
 5 class of individuals, organizations, or entities from accessing, posting content, or monetizing  
 6 content on YouTube.

7                   **C.       YouTube Is Not A Free Service**

8                   85.       Under the express provisions of the form agreements identified above, YouTube is  
 9 NOT a free service.

10                  86.       Under these licensing provisions, Defendants have acquired the licensing rights to  
 11 95% of the world's public video content and the personal data and revenues derived from that  
 12 content via self-executing, digital contract(s) with Plaintiffs and other consumers. Under these  
 13 form contracts, Defendants acquire the license rights to all of Plaintiffs and other users' video  
 14 content, personal data, and monetization rights in exchange for valuable consideration. That  
 15 consideration expressly includes the right of Plaintiffs and the other user licensors to receive equal  
 16 access to YouTube and all its audience reach, advertising, and monetization services, subject only  
 17 to specific content based rules that Defendants promise are both identity and viewpoint "neutral."  
 18 Every time a consumer uses YouTube, the consumer digitally consents to all TOS terms and related  
 19 service provisions.

20                  87.       In exchange for access to YouTube and Google's global video posting, viewing,  
 21 advertising, and monetization services, 2.3 billion consumers, including Plaintiffs, must grant  
 22 Defendants an irrevocable and perpetual license to collect, use, and monetize their personal data,  
 23 videos and content, and the data and information of their subscribers and viewers, in order to access  
 24 the YouTube platform or any of the services that Defendants offer on that platform.

25 \_\_\_\_\_  
 26 <sup>4</sup> The current agreement contains two references to the Communications Decency Act, 47 U.S.C.  
 27 §230(c) solely with respect to Content that a user views as defamatory. In two places, the  
 28 agreement advises users that YouTube will not make any determination regarding material that is  
 defamatory or remove such Content.



1           88. Under its contracts with Plaintiffs and other users, Defendants collect, store,  
 2 analyze, and organize the personal, financial, political, posting, viewing and subscriber data.  
 3 Defendants use and sell that data to third parties for profit. It is estimated that Defendants generate  
 4 more than \$1M in annual revenue from *each* person who accesses the service, including millions of  
 5 dollars from the personal data and video content obtained from each of the Plaintiffs in this  
 6 Lawsuit.

7           89. Under the licensing agreement and other contract provisions, moreover, Defendants'  
 8 have obtained control and regulation of global speech, expression, and communication. It is  
 9 estimated that Defendants control over 95% of all publicly available video content in the world.  
 10 And according to the Ninth Circuit, Defendants' control of the publicly available video content in  
 11 the world is "ubiquitous."

12           **D. Defendants Apply Their Contracts In Bad Faith**

13           90. Defendants also apply and leverage their contracts and licensing monopoly over  
 14 global video content in bad faith, in an anti-competitive manner, that harms Plaintiffs and other  
 15 similarly situated consumers on YouTube.

16           91. Defendants create, produce, post, and advertise a significant percentage of their own  
 17 online video content on YouTube.

18           92. Defendants compete directly with Plaintiffs and other third-party consumers for  
 19 audiences and revenues on YouTube.

20           93. Defendants use the licensing and other provisions to exploit their dual roles as a host  
 21 and curator of content on YouTube on one hand, and a creator, producer creator, and purveyor of  
 22 their own content on the other, to unfairly compete with Plaintiffs and users for the same access,  
 23 audience reach, viewership, advertising, marketing, and revenue generating services on YouTube  
 24 that are supposed to be equally available to all.

25           94. Defendants compete directly with Plaintiffs for audience views, advertising, and  
 26 other revenue stream on YouTube by posting content produced or created by Defendants or by  
 27 partnering with large, mainstream media or other creators including PBS, MSNBC, ESPN, MLB,  
 28 the NFL, the NBA, the NHL, HBO, CNN, CBS, ABC, Fox News and other large news, sports, and

entertainment companies, as well as celebrities and their favorite creators (collectively “Preferred Creators”). Such arrangements allow Defendants to charge a subscription rental or purchase fees for content and obtain additional advertising revenues. In its capacity as a content host and regulator, Defendants use automated, computer based filtering tools and systems to make decisions regarding user access, audience reach, monetization, advertising, and other related services.

95. Defendants refuse to comply and honor their express promises of neutral content based access to all YouTube Services, including all of the representations made in Defendants’ Mission Statement as expressly incorporated into the Form Agreements.

96. That is both a breach of contract on its face and it is also bad faith. Defendants must “enforce these Community Guidelines...and apply them to everyone equally—regardless of the subject or the creator’s background, political viewpoint, position, or affiliation.” FAC; [Ex.8 at 249] (emphasis added). Until 2021, the contracts were linked to “Our Mission” [Exhibit 18 at 143 144] and “Our Commitments” [Exhibit 19 at 1146 1154] webpages.

97. YouTube was founded, built, and operates as an “open” internet platform for profit. Based on YouTube’s Mission Statement, Terms Of Service, marketing, advertising, solicitations, and representations to consumers, Defendants solicit and induce the public to post, view, and communicate through video content on the YouTube platform by inviting the public to use YouTube as a place to engage in “Freedom of Expression,” “Freedom of Information,” “Freedom of Opportunity,” and “Freedom to Belong.” Everyone who use the YouTube Platform is accorded the status of “members” of a public “YouTube Community,” whose use and access to the platform is governed by viewpoint-neutral, content-based rules which Defendants refer to as “Community Guidelines.” Defendants represent and warrant that these freedoms apply to all Community Members and shall be exercised by and protected for each and every user. According to Defendants, the public is entitled to post, view, communicate, and share information and ideas through video content, subject only to viewpoint-neutral, content-based filtering rules and restraints that “apply equally to everyone.” Defendants represent these rules are based only on the content of the video, NOT the personal identity or viewpoint of the video’s creator or its viewer.

1           98. “Our Mission” promised that “everyone should have easy, open access to  
2 information,” and “everyone should have a chance to be discovered, build a business, and succeed  
3 on their own terms, and that people – not gatekeepers – decide what’s popular.” [Exhibit 17 at  
4 1135, 1138 1139; see also Exhibit 18 at 1143 1144; Exhibit 19 at 1147-1149] (these “policies  
5 explain what you can and cannot do while you’re there, so everyone plays by the same rules”)  
6 (emphasis added). “Our Mission” and “Our Commitments” appeared at least four times whenever  
7 a user viewed or downloaded the contracts. See FAC at ¶¶63 65; [Exhibit 8 at 248, 255-259;  
8 Exhibit 9 at 402-403, 836; Exhibit 16 at 983].

9           99. Defendants’ bad faith conduct in refusing to honor and seeking to avoid its promises  
10 of open, neutral content based access to YouTube is now on full display. After this Action was  
11 filed in 2019, Defendants with no adequate notice to Plaintiffs or other consumers, modified the  
12 contracts to exclude linked information, making it “informational.” FAC at ¶66; see also [Exhibit 4  
13 at 142]. In so doing, Defendants admit the obvious: “Our Mission” and “Our Commitments” were  
14 contractual at the time Plaintiffs filed this Action. As Defendants admit, the 2019 modifications  
15 made by Defendants to make the Mission Statement and other promised extra-contractual were  
16 made to remove these promises and obligations from the contract terms at issue *after* Plaintiffs  
17 sued Defendants for violating their terms in this Action.

18           100. Defendants’ statements made under oath to Congress on January 17, 2018, confirm  
19 that YouTube is a “neutral public forum,” and enforces “policies in a politically neutral way,”  
20 where certain content is “prohibited by [its] Community Guidelines, which are spelled out and  
21 provided publicly to all.” FAC at ¶69; see also *id.*, at ¶68 (YouTube “would ensure that ‘Restricted  
22 Mode’ would not ‘filter out content belonging to individuals or groups based on’ ‘gender,’ ‘race,  
23 religion or sexual orientation’”); [Exhibit 19 at 1147-1149] (YouTube is “committed” to “[r]emove  
24 content that violates our policies;” and our “policies explain what you can and cannot do while  
25 you’re there, so everyone plays by the same rules”). At that hearing, YouTube’s Assistant General  
26 Counsel, Juniper Downs, confirmed to Congress that YouTube’s mission remains unchanged and  
27 the platform is designated and operates as a “public forum” for free speech and expression subject  
28 only to viewpoint-neutral, content-based regulations:

1 **Senator Cruz:** Thank you Mr. Chairman. Welcome to each of the  
 2 witnesses. I'd like to start by asking each of the company  
 3 representatives a simple question, which is: do you consider your  
 4 companies to be neutral public forums?

5 \* \* \* \*

6 **Senator Cruz:** I'm just looking for a yes or no whether you  
 7 consider yourself to be a neutral public forum.

8 **Senator Cruz:** Ms. Downs?

9 **Ms. Downs:** Yes, our goal is to design products for everyone,  
 10 subject to our policies and the limitations they impose on the types  
 11 of content that people may share on our products.

12 **Senator Cruz:** So, you're saying you do consider YouTube to be a  
 13 neutral public forum?

14 **Ms. Downs: *Correct.*** We enforce our policies in a politically neutral  
 15 way. Certain things are prohibited by our Community Guidelines,  
 16 which are spelled out and provided publicly to all of our users.

17 [02:28:30 – 02:29:36 of the full hearing recording.]

18 \* \* \* \*

19 **Senator Cruz:** What is YouTube's policy with respect to Prager  
 20 University and the allegations that the content Prager University is  
 21 putting out are being restricted and censored by YouTube?

22 **Ms. Downs: *As I mentioned, we enforce our policies in a***  
 23 ***politically neutral way.*** In terms of the specifics of Prager  
 24 University, it's a subject of ongoing litigation so I'm not free to  
 25 comment on the specifics of that case.<sup>5</sup>

26 See [https://www.c-span.org/video/?439849-1/facebook-twitter-youtube-officials-testify-](https://www.c-span.org/video/?439849-1/facebook-twitter-youtube-officials-testify-combating-extremism)  
 27 [combating-extremism](https://www.c-span.org/video/?448566-1/house-judiciary-committee-examines-social-media-filtering-practices) and [https://www.c-span.org/video/?448566-1/house-judiciary-committee-](https://www.c-span.org/video/?448566-1/house-judiciary-committee-examines-social-media-filtering-practices)  
 28 [examines-social-media-filtering-practices](https://www.c-span.org/video/?448566-1/house-judiciary-committee-examines-social-media-filtering-practices) at 02:34:28 – 02:35:29 of the full hearing recording  
 (emphasis added).

<sup>5</sup> See [https://www.c-span.org/video/?439849-1/facebook-twitter-youtube-officials-testify-](https://www.c-span.org/video/?439849-1/facebook-twitter-youtube-officials-testify-combating-extremism)  
[combating-extremism](https://www.c-span.org/video/?448566-1/house-judiciary-committee-examines-social-media-filtering-practices) and [https://www.c-span.org/video/?448566-1/house-judiciary-committee-](https://www.c-span.org/video/?448566-1/house-judiciary-committee-examines-social-media-filtering-practices)  
[examines-social-media-filtering-practices](https://www.c-span.org/video/?448566-1/house-judiciary-committee-examines-social-media-filtering-practices) at 02:34:28 – 02:35:29 of the full hearing recording  
 (emphasis added).

1           101. Thus according to Defendants, any conduct that denies equal application of the  
 2 content based guidelines and rules to consumers, including intentionally discriminating against  
 3 Plaintiffs and similarly situated Internet users by classifying them as LGBTQ+ or under the “gay  
 4 thing,” violates the terms of the Form Agreements and constitutes bad faith application of those  
 5 terms to deny Plaintiffs their rights and benefits under the Form Agreements between the parties.

6           **E. Defendants’ Breaches of Contract**

7           102. In addition to their bad faith, Defendants intentional LGBTQ+ discrimination and  
 8 other bad faith conduct breaches and violates the express terms set forth in the Form Agreements.

9           103. Using Identities to classify consumers in order to filter, restrict, remove, demonetize,  
 10 suspend, terminate, and deny access, services, and benefits (collectively “Service Access”) violates  
 11 the Form Agreements.

12           104. It violates Defendants’ express promise that access to content and services on  
 13 YouTube is subject only to neutral content based rules that apply equally to all. FAC at ¶¶2,4, 23,  
 14 38, 42, 43, 67-69, 97, 100, 118, 195, 203, 208; [Exhibit 1 at 94, 99; Exhibit 2 at 101-102, 113;  
 15 Exhibit 3 at 116, 121-123; Exhibit 4 at 139-140, 142-144; Exhibit 5 at 161-162, 164-166; Exhibit 6  
 16 at 183, 185-187]. In using Plaintiffs’ identity or otherwise classifying consumers as LGBTQ+ or  
 17 the “gay thing,” Defendants breach their express promises that users are entitled to “‘equal’  
 18 content, access, and benefits to services on YouTube,” where rules apply “to everyone equally -  
 19 regardless of the creator’s background.” FAC at ¶¶99; [Exhibit 8 at 249].

20           105. FAC at ¶¶2,4, 23, 38, 42, 43, 67-69, 97, 100, 118, 195, 203, 208; [Exhibit 1 at 94,  
 21 99; Exhibit 2 at 101-102, 113; Exhibit 3 at 116, 121-123; Exhibit 4 at 139-140, 142-144; Exhibit 5  
 22 at 161-162, 164-166; Exhibit 6 at 183, 185-187]. It also violates promises that users are entitled to  
 23 “‘equal’ content, access, and benefits to services on YouTube,” where rules apply “to everyone  
 24 equally - regardless of the creator’s background.” FAC at ¶¶99; [Exhibit 8 at 249].

25           106. Making decisions that use identity based classifications to deny Plaintiffs and other  
 26 similarly situated users about access to services on YouTube based on Identities violates and  
 27 breaches the contracts in at least three other ways.

## 1                                    1.        Defendants Breach By Wrongfully Removing Content

2            107. Defendants wrongly remove Plaintiffs' content purportedly for including hate  
3 speech and cyberbullying (FAC at ¶122 (quoting Exhibit 8 at 346-347; Exhibit 9 at 547-548, 883));  
4 or threats (FAC at ¶123 (citing Exhibit 8 at 355-357; Exhibit 9 at 550-551)) when it does not. FAC  
5 at ¶124. They remove content for violating intellectual property rights (FAC at ¶58(f); Exhibit 1  
6 at 96; Exhibit 2 at 106-107; Exhibit 3 at 117, 127; Exhibit 4 at 140, 148; Exhibit 5 at 162, 170;  
7 Exhibit 6 at 183, 190), trademarks (FAC at ¶158 (quoting Exhibit 8 at 269-270)), and  
8 copyrights (FAC at ¶58(h); *see also* Exhibit 1 at 96; Exhibit 2 at 107; Exhibit 3 at 130; Exhibit 4 at  
9 151; Exhibit 5 at 173) when it does not. FAC at ¶¶127-129. They promise to allow fair use of  
10 copyrighted materials (FAC at ¶125) but remove Plaintiffs' materials. FAC at ¶¶126-128. They  
11 remove content for including vulgar language and nudity (FAC ¶130 (quoting Exhibit 8 at 294-296;  
12 Exhibit 9 at 523-524); ¶146 (quoting Exhibit 9 at 523-524; 533; Exhibit 8 at 295-296)) when it  
13 does not. FAC at ¶131. They remove content for having COVID-19 misinformation (FAC at  
14 ¶132 (quoting Exhibit 9 at 562-564)) when it does not. FAC at ¶133. They also remove content for  
15 having firearm sales and instruction (FAC at ¶134 (quoting Exhibit 9 at 554-555)) when it does not.  
16 FAC at ¶135.

## 17                                    2.        Defendants Breach by Wrongfully Restricting Content

18            108. Defendants restrict content with "potentially mature," or "objectionable" material  
19 (Exhibit 9 at 622-623, 647), including discussions of drugs or alcohol; "overly detailed" sexual  
20 discussions; "[g]raphic descriptions of violence...natural disasters and tragedies;" "terrorism, war,  
21 crime, and political conflicts" involving death or serious injury; "[i]nappropriate language;" and  
22 "content that is gratuitously incendiary, inflammatory, or demeaning." Exhibit 9 at 706).  
23 "Restricted Mode" uses "signals—such as video title, description, metadata, Community  
24 Guidelines reviews, and age restrictions—to identify and filter out potentially mature content."  
25 (Exhibit 9 at 623.) Though Defendants promised to not "filter out content belonging to individuals  
26 or groups based on "gender, race, religion or sexual orientation" (FAC at ¶68); that "[s]haring  
27 stories about facing discrimination...and confronting or overcoming discrimination is what makes  
28 YouTube great," and they would "make sure those stories are included in Restricted Mode" (FAC

at ¶107; Exhibit 9 at 706); Defendants automatically restricted Plaintiffs’ content wherever the title, tags, or audio refer to race related subjects. FAC at ¶110. They wrongly restricted hundreds of Plaintiffs’ videos—which do not contain “mature” or “adult” content.

### 3. Defendants Breach By Wrongfully Demonetizing Content

Once eligible for monetization, Plaintiffs must comply with the Monetization Contracts, including the Advertiser-Friendly Guidelines. FAC at ¶117; Exhibit 13 at 984. These describe “which individual videos on your channel are suitable for advertisers” (Exhibit 14 at 999), and exclude: “Inappropriate language;” “Firearms;” “Violence;” “Controversial issues;” “Adult content;” “Sensitive events;” “Shocking content;” “Incendiary and demeaning;” “Harmful or dangerous acts;” “Tobacco-related content;” “Hateful & derogatory content;” “Adult themes in family content;” and “Recreational drugs” and related content. *Id.*, at 999-1000.

109. Making monetization decisions based on Identities, rather than the enumerated exclusions, breaches Plaintiffs’ rights to audience reach and promotion services, and it harms Plaintiffs by wrongly demonetizing videos that contain no excluded material.

## V. CLASS ALLEGATIONS

110. Plaintiffs bring this lawsuit on behalf of themselves and a putative class of similarly situated persons (the “Class”).

111. Plaintiffs bring this action on behalf of themselves and the putative Classes of YouTube users and consumers who are similarly situated under Rules 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure.

112. Each and every claim alleged in this case is alleged on behalf of every member of the Class.

113. Each and every member of the Class seeks both monetary damages under Rule 23(b)(3) of the Federal Rules of Civil Procedure and/or injunctive and equitable relief, including restitution and disgorgement of unlawfully obtained profits, under Rule 23(b)(2) of the Federal Rules of Civil Procedure.

114. The Putative Classes seek monetary damages and injunctive relief on behalf of the following class of YouTube consumers and users:



1           115. **The YouTube Community Class Is Defined As:** All persons or entities in the  
 2 United States who entered into and/or are parties to the Form Agreements by accessing YouTube,  
 3 including uploading, posting, or viewing video content on YouTube or related to the YouTube  
 4 Platform on or after January 1, 2015 and continuing through to the present (the “Class Period”) for  
 5 whom Defendants consider, use or classify, based on personal data or other information related to a  
 6 person’s personal identity trait or characteristic protected under law, or commercial status or  
 7 political viewpoint, to make decisions about access to content or services offered on YouTube  
 8 under the Form Agreements.

9           116. Excluded from the YouTube Community Class are Defendants and their employees,  
 10 affiliates, parents, subsidiaries, and co-conspirators, whether or not named in this Complaint, and  
 11 the United States government.

12           117. **The LGBTQ+ Subclass Is Defined As:** All persons or entities in the United States  
 13 who entered into and/or are parties to the Form Agreements by accessing YouTube, including  
 14 uploading, posting, or viewing video content on YouTube or related to the YouTube Platform ~~on or~~  
 15 ~~after January 1, 2015, and continuing through to~~ during the ~~present (the “Class Period”)~~ for whom  
 16 Defendants consider, use or classify based on personal data or other information related to a  
 17 person’s personal about the person’s gender, sexual orientation, sexual or gender identity,  
 18 LGBTQ+ identity, or the “gay thing,” to make decisions about access to content or services offered  
 19 on YouTube.

20           118. Excluded from the LGBTQ+ Subclass are Defendants and their employees,  
 21 affiliates, parents, subsidiaries, and co-conspirators, and any YouTube users who create, post,  
 22 distribute, promote or engage in video or communications on the YouTube Platform that is directed  
 23 against Plaintiffs or Community and is objectively violent, obscene, threatening, or homophobic as  
 24 alleged in the Complaint.

25           119. According to statements about Defendants analytics and scale, Plaintiffs estimate  
 26 that there are over 200 million members of the YouTube Community Class and at least 9.33 million  
 27 members of LGBTQ+ Subclass as defined and described above in the Complaint. The exact  
 28 number and identities of the Putative Classes are known by Defendants, and the number of persons

1 who fall within the definitions of the Class and/or Subclass are so numerous and geographically  
 2 dispersed so as to make joinder of all members of the Class or Subclass in their individual  
 3 capacities impracticable, inefficient, and unmanageable so as to effectively deny each Putative  
 4 Class or Subclass member his, her, or their rights to prosecute and obtain legal and equitable relief  
 5 based on the claims and allegations averred in this Complaint.

6 120. There are questions of law and fact common to the Putative Class that relate to,  
 7 and/or are dispositive of the nature and allegations of unlawful conduct alleged in the Complaint,  
 8 and the nature, type and common pattern of injury and harm caused by that unlawful conduct and  
 9 sustained by the putative members of the Class and Subclass including, but not limited to:

10 a. Whether Defendants' regulations and content-based restrictions violate the  
 11 free speech, antidiscrimination, consumer fraud and unfair competition, and contractual rights of  
 12 the members of the Putative Class;

13 b. Whether Defendants concealed, misrepresented or omitted to disclose  
 14 material policies and practices regarding the unlawful regulation of video content, advertising,  
 15 distribution, monetization, contractual obligations, and characteristics of the YouTube Platform to  
 16 the members of the YouTube Community Class and/or LGBTQ+ Subclass;

17 c. Whether Defendants use unlawful, discriminatory, anticompetitive and  
 18 fraudulent, deceptive, unfair, and/or bad faith filtering tools and practices, in the code and  
 19 operation of their machine based, algorithmic, or A.I. filtering tools, and/or other practices and  
 20 procedures to review, regulate, and restrict content, and/or regulate and restrict the advertising,  
 21 monetization, distribution, and property rights of the Putative Classes

22 d. Whether Defendants are engaged in discriminatory practices against the  
 23 members of the Putative Classes based on protected characteristics;

24 e. Whether Defendants' breached their form consumer contracts and  
 25 obligations to the Putative Classes;

26 f. Whether Defendants are engaged in unlawful, deceptive, unfair, or  
 27 anticompetitive practices that violate Federal or California law, and harmed and injured the  
 28 YouTube Community Class and/or the LGBTQ+ Subclass;

1           **g.**       Whether the conduct of Defendants, as alleged in this Complaint, caused  
2 injury to the business and property of Plaintiffs and the members of the Putative Classes;

3           **h.**       Whether Defendants' alleged regulations, practices, and conduct has caused  
4 or threatens to cause harm to the speech of the YouTube Community Class or the LGBTQ+  
5 Subclass to warrant the ordering of temporary, preliminary and/or final injunctive relief and  
6 corresponding declaratory relief with respect to the legal rights of Plaintiffs and the Putative  
7 Classes;

8           **i.**       The scope, nature, substance, and enforcement of injunctive and equitable  
9 relief sought by the Putative Classes;

10          **j.**       Whether Defendants were unjustly enriched or obtained profits or ill-gotten  
11 financial gains as a result of the unlawful, discriminatory, deceptive, unfair, or anticompetitive  
12 practices perpetrated against Plaintiffs, the Putative Classes;

13          **k.**       Whether Defendants breached their contractual obligations and/or implied  
14 duty of good faith and fair dealing under the consumer form contracts entered into during the  
15 Class Period between Defendants and Plaintiffs, the Putative Classes;

16          **l.**       Whether Defendants' content-based regulations and filtering practices, on  
17 their face and/or as applied, violate the free speech rights of Plaintiffs and the Putative Classes;  
18 and

19          **m.**       whether Defendants' assertion of immunity from liability under the §230  
20 with respect to any of the claims or allegations asserted by Plaintiffs, the YouTube Community  
21 Class, and/or the LGBTQ+ Subclass operates as an unlawful prior restraint of speech in violation  
22 of the First Amendment of U.S. Constitution.

23       121.   During the Class Period, Plaintiffs uploaded one or more videos to YouTube and  
24 Plaintiffs Divino and Brett Somers each purchased Google Ads products in reliance on the  
25 representations and failures to disclose alleged above. At least some of that video content uploaded  
26 by Plaintiffs was subjected to one or more human or algorithmic restriction tools. The interests of  
27 Plaintiffs are coincident with, and not antagonistic to those of the other members of the Putative  
28 Classes.

1           122. Each of Plaintiffs is a member of the Putative Classes.

2           123. The claims of Plaintiffs are typical of the claims of the Putative Class members, and  
3 Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs are  
4 represented by counsel who are competent and experienced in the prosecution and defense of  
5 similar claims and litigation, including class actions filed, prosecuted, defended, or litigated in  
6 under California and Federal law, in California and Federal Courts, in connection with claims and  
7 certification of consumer and civil rights classes composed of members who reside in California  
8 and/or the United States.

9           124. The prosecution of separate actions by individual members of the Putative Classes  
10 would create a risk of inconsistent or varying adjudications.

11           125. The questions of law and fact common to the members of the Putative Classes  
12 predominate over any questions of law or fact affecting only individual members of the Class or  
13 Subclass, including legal and factual issues relating to liability and the nature of the harm caused by  
14 Defendants' unlawful actions.

15           126. A class action is superior to other available methods for the fair and efficient  
16 adjudication of this controversy. Treatment as a class action will permit a large number of  
17 similarly situated persons to adjudicate their common claims in a single forum simultaneously,  
18 efficiently and without the duplication of effort and expense that numerous individual actions  
19 would engender.

20           127. The Putative Classes are readily definable and are categories for which records  
21 should exist in the files of Defendants, and prosecution as a class action will eliminate the  
22 possibility of repetitious litigation. Class treatment will also permit the adjudication of relatively  
23 small claims by many members of the LGBTQ+ Subclass who otherwise could not afford to litigate  
24 claims such as those asserted in this Complaint

25           128. Certification of the Class is also superior to other available methods for the fair and  
26 efficient adjudication of this controversy because all claims in this Lawsuit must be brought and  
27 venued in a court of competent jurisdiction located in Santa Clara County under Defendants'  
28 contract(s).

1           129. The Class is readily definable and as defined, constitutes categories for which  
2 records should and do exist in the files of Defendants.

3           130. The prosecution as a class action will eliminate repetitious litigation.

4           131. Class treatment will also permit the adjudication of smaller claims by Class  
5 members who otherwise could not afford to litigate or assert the claims asserted by Plaintiffs in this  
6 Lawsuit.

## 7 **VI. INDIVIDUAL CAUSES OF ACTION**

8           132. Plaintiffs re-allege and incorporate by reference in whole or in part the allegations  
9 alleged in paragraphs 1 through 130.

10          133. Under the Court's Order, leave was only granted to plead claims for relief arising  
11 from Defendants' breaches of the implied covenants of good faith under the Form Agreements.

12          134. If given the opportunity, Plaintiffs would and could allege related contract and  
13 equitable claims for breach of contract, promissory estoppel, unjust enrichment/ disgorgement  
14 unlawfully obtained profits, conversion, and for an accounting of monies paid and owed by  
15 Defendants to Plaintiffs under the Form Agreements.

### 16 **FIRST CLAIM FOR RELIEF**

#### 17 **Breach Of Implied Covenant Of Good Faith And Fair Dealing**

#### 18 **(On Behalf Of Plaintiffs And The YouTube Community Class)**

19          135. Plaintiffs re-allege and incorporate herein by reference, as though set forth in full,  
20 each of the allegations set forth in paragraphs 1 through 133 above.

21          136. Under California law, every contract "imposes upon each party a duty of good faith  
22 and fair dealing in its performance and its enforcement." *McClain v. Octagon Plaza, LLC*, 159  
23 Cal.App.4th 784, 798 (2008) (quoting *Carma Developers (Cal.), Inc. v. Marathon Dev. Cal., Inc.*, 2  
24 Cal.4th 342, 371-372 (1992)).

25          137. Five factual elements are required to establish a breach of the covenant of good faith  
26 and fair dealing: (1) the parties entered into a contract; (2) the plaintiff fulfilled his obligations  
27 under the contract; (3) any conditions precedent to the defendant's performance occurred; (4) the  
28

1 defendant unfairly interfered with the plaintiff's rights to receive the benefits of the contract; and  
2 (5) the plaintiff was harmed by the defendant's conduct.

3 138. Plaintiffs and Defendants have entered into Form Agreements, including the TOS  
4 Rules, Google's Privacy Policy, and related agreement(s) governed by and under California law.

5 139. Plaintiffs have performed and fulfilled their obligations, including any, and all,  
6 conditions precedent. This includes complying with YouTube's viewpoint-neutral, content-based  
7 access rules and granting Defendants an irrevocable and perpetual license to their video content and  
8 any personal information and data derived from Plaintiffs' use or content on YouTube, and paying  
9 Defendants other consideration for services and access.

10 140. Defendants unfairly interfered with Plaintiffs' rights by profiling and using their  
11 race, gender, sexual and/or personal identity or viewpoint to deny them equal access to YouTube  
12 and its related services based on conduct that that is prohibited by and not permitted under  
13 California or federal law.

14 141. Defendants have breached their promises to provide Plaintiffs with a forum for  
15 freedom of expression, information, opportunity and belonging, including equal access to content,  
16 audiences, and services, subject only to content based rules that are identity and viewpoint neutral  
17 and apply "equally to all."

18 142. Defendants have also interfered with Plaintiffs' contractual rights and benefits to  
19 equal to YouTube and related services, including: (a) filtering and automated systems that  
20 aggregate data regarding Plaintiffs' Identities across Defendants' platforms; (b) making  
21 determinations regarding monetization, audience reach, and access to Defendants' services, based  
22 at least in part on Plaintiffs' Identities; (c) denying monetization and unrestricted audience reach to  
23 Plaintiffs' videos which fully comply with TOS Rules, based at least in part on Plaintiffs'  
24 Identities, and that of their subscribers and viewers; and (d) denying Plaintiffs and the Class  
25 subscriber services, including the opportunity to comment on videos, subscribe to channels and  
26 obtain timely notices of new content, and effectively support channels to which they subscribe by  
27 making monetary contributions through third parties.

28

1           143. Defendants filter and restrict content and access to services based on Plaintiffs’  
 2 Identities where Defendants have restricted and limited monetization of many third party videos,  
 3 while at the same allowing Preferred Creators to post full copies of those videos without permission  
 4 of the creator but allowing their Preferred Creators to post without any restrictions and eligible full  
 5 monetization. Allowing other users to post and monetize Plaintiffs’ previously blocked and  
 6 restricted videos is, and can only be, the direct and proximate result of Defendants’ unlawful use of  
 7 Plaintiffs’ identity to deny them “equal” content, access, and benefits to services on YouTube.

8           144. Defendants also treat similar videos differently based on the Plaintiffs’ Identities.  
 9 Defendants admit that Plaintiffs were denied services and benefits under the Form Agreement  
 10 because Defendants classified them as part of the “gay thing” and used that classification, rather  
 11 than any material or content in a posted video, to declare their content “shocking,” and “sexually  
 12 explicit.”

13           145. Defendants also use computers, algorithms, A.I., and other machine and manual  
 14 filtering tools that profile and use their personal data to classify and discriminate against Plaintiffs  
 15 and members of the Putative Classes because of who they are, not what they say or post in video  
 16 content.

17           146. Defendants have admitted that they were filtering and restricting Plaintiffs’ content  
 18 and access to YouTube based on their Identities, not their content, including admissions that:

19                   a. There are too many videos on the YouTube platform to be reviewed  
 20 manually by human beings;

21                   b. Advertisers want demographic information, including race, so that they can  
 22 identify and target specific audiences based on demographic information about the video creators  
 23 and their viewers;

24                   c. YouTube uses algorithms and automated filtering tools and computerized  
 25 systems to get the information that advertisers want in order to gather and analyze information  
 26 about creators and viewers based on Plaintiffs’ Identities, and that Defendants also use that same  
 27 information to make decisions about viewing restrictions and monetization that turn on who the  
 28 users and viewers are rather than what is actually in the video content.



1           **d.** Defendants’ algorithms and computerized filtering tools discriminate or  
 2 “target” users like Plaintiffs and others who identify with marginalized groups when making  
 3 decisions regarding which videos to monetize, pay CPM revenues and royalties, and apply  
 4 “Restricted Mode” to, based on the identities of the video creators and their viewers.

5           **e.** Defendants’ algorithms and source code profiles and considers the race,  
 6 ethnicity, national origin, gender and sexual identity, disability, religion, political affiliations, and  
 7 commercial status of both the video creator and its intended audiences and viewers.

8           **f.** Defendants algorithms when applied to a chef’s channel that posted cooking  
 9 videos that had many “gay” subscribers who also accessed other LGBTQ related videos were  
 10 tagged as “gay” for purposes of “Restricted Mode” and monetization – regardless of the content of  
 11 the videos on the channel. The same is true with respect to Defendants’ targeting of African  
 12 Americans, Hispanics, and other users who identify with marginalized ethnicities or national  
 13 origins.

14           **A. Divino (GlitterBombTV.com’s GNews!)**

15           147. Divino Group LLC is owned and managed by Chris Knight and Celso Dulay. Mr.  
 16 Knight and Mr. Dulay are members of the LGTBQ+ Community who write, produce and upload to  
 17 the YouTube Platform video content intended for the LGTBQ+ Community under the  
 18 GlitterBombTV.com name as GNews!. Cameron Stiehl is a regular co-host and contributor to  
 19 GNews! and Glitter Bomb TV.

20           148. Plaintiffs Divino, Chris Knight and Celso Dulay are informed and believe and  
 21 thereon allege that sometime in late 2013 or early 2014, Divino entered an agreement with  
 22 Defendants to become YouTube partners by joining the YouTube Partnership Program. As part of  
 23 the YouTube Partnership Program, Defendants gave Divino a number of special benefits, such as  
 24 the opportunity to prepare custom Thumbnail images for each video it uploaded to YouTube, and  
 25 to monetize its videos. YouTube promised additional benefits to Divino if it succeeded in  
 26 obtaining 1,000 or more subscribers to its YouTube channel.

27           149. Commencing in March of 2014, in reliance on its YouTube Partnership Program  
 28 agreement with Defendants, in order to secure additional partner benefits, Divino undertook efforts

1 to increase its number of views per video, and its number of subscribers, by purchasing from  
 2 Defendants, a series of advertisements. Between March 9, 2014, and October 1, 2018, Divino paid  
 3 to Defendants \$14,542.94 for advertisements relating to its GNews! videos.

4 150. However, Defendants refused to sell Divino all of the advertisements it applied to  
 5 purchase: on at least eight separate occasions, after November 2016, Google/YouTube barred  
 6 Divino from purchasing ads or monetizing its news and event show, GNews!, because Defendants  
 7 had determined in their discretion that the content of a show violated Defendants' policy against  
 8 promoting "shocking" "offensive," and "sexually explicit" content.

9 151. Around April 2017, after Divino had purchased numerous advertisements in an  
 10 effort to secure the minimum 1,000 subscribers to qualify for the next level of Defendants'  
 11 enhanced video creator benefits, Defendants unilaterally changed the YouTube Partnership  
 12 Program requirements so that only video creators with "10,000 lifetime views" would qualify to be  
 13 partners. In unilaterally changing the terms of the YouTube Partnership Program, Defendants  
 14 repudiated the agreement with Divino.

15 152. On December 24, 2017, Plaintiff Divino was prohibited from advertising a holiday  
 16 special news and events show created for persons in the San Francisco Bay Area and beyond,  
 17 because Defendants labeled the GNews! video as "shocking content." When Plaintiff Divino  
 18 inquired as to what portion, if any, of the video content on a holiday event show was inappropriate  
 19 for advertising, an employee of Google AdWords stated that video content that discusses or  
 20 expresses the "gay thing" or is created by a YouTuber who Defendants Classify as LGBTQ+ or the  
 21 "gay thing" violates "company policy" against the advertising or monetizing of "shocking" and  
 22 "sexually explicit" content.

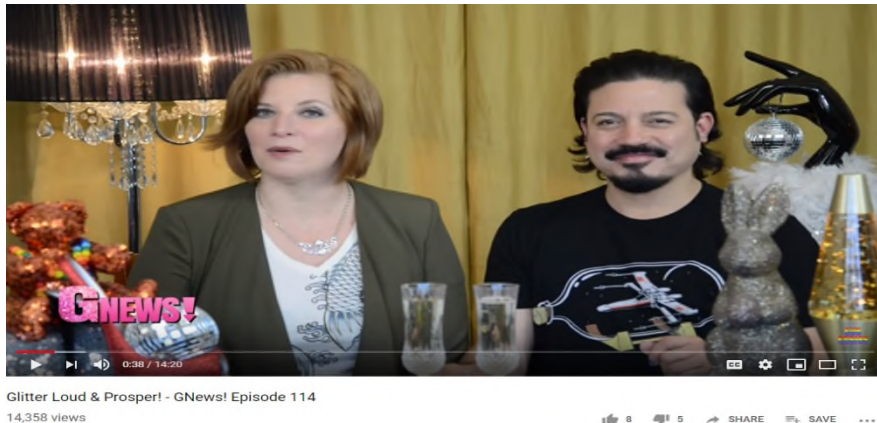
23 153. On or about January 17, 2018, Defendants again unilaterally changed the YouTube  
 24 Partnership Program requirements so that only creators with channels that "have accumulated 4,000  
 25 hours of watch time within the past 12 months, and have at least 1,000 subscribers" would qualify  
 26 for the program. By that time, Defendants had spent thousands of dollars in an effort to boost their  
 27 subscriber numbers, and had been refused opportunities to purchase other advertisements. Because  
 28 Divino had not reached the new 1,000 minimum number of subscribers, Defendants removed

1 Divino from the YouTube Partnership Program, and stripped Divino of the ability to monetize its  
2 videos. In doing so, Defendants further repudiated the agreement with Divino.

3 154. Since February 6, 2014, Divino has produced 132 episodes of GNews!, an online  
4 news show co-produced by Divino's principals, Celso Dulay and Chris Knight. In reliance on  
5 Defendants' assurances of viewpoint-neutrality and free expression discussed above, Divino  
6 decided to produce and distribute each such episode through the YouTube Platform.

7 155. GNews! is and has always been intended to be a positive and affirming news source  
8 for members of the Community. Labeled "Where You Get All Your Gay in a Day," Dulay and his  
9 revolving line-up of co-hosts cover a variety of topics of interest to the global Community – from  
10 Hollywood, the music charts, pop culture, celebrities, politics, news of top interest to the  
11 community, local and international events, their "Crush of the Week" and more.

12 156. A representative screenshot from an episode of GNews! is below:



20 157. Inasmuch as GNews! is subject to the same criteria that governs all YouTubers (and  
21 there is nothing in any GNews! episode that violates any provision of law or any legitimate  
22 provision of YouTube's or Google's terms of service), GNews! is typical of YouTube content  
23 produced and uploaded by other YouTuber members of the putative Class as alleged in this  
24 Action.

25 158. Relying on the truth of Defendants' representations that YouTube is, had been, and  
26 would remain a viewpoint-neutral forum for free expression, Divino and other members of the  
27 Putative Classes were further induced to purchase ad products from Defendants.

28

1           159.    YouTubers like Divino, who initially attempted to rely on social media and word of  
 2 mouth to increase viewership for their video content, often find that the only effective way to  
 3 increase views of GNews! and to grow subscribers is to purchase ad products from Defendants to  
 4 increase their reach. This appears to be the result of a deliberate and fraudulent effort by  
 5 Defendants to increase their profits through the sale of advertisements.

6           160.    Specifically, when videos like Divino’s GNews! episodes are uploaded to the  
 7 “YouTube Creator’s Studio,” there appears a direct link via pull-down menu to promote the  
 8 episodes via Google Ads (formerly called Google AdWords). YouTubers who select the  
 9 “promote” option via pull-down menu are immediately directed to a Google Ads landing page that  
 10 states - as of May 5th, 2019:

11                   You’ll promote your video using Google Ads. Like millions of other  
 12                   creators and businesses, you’ll use the Google Ads platform to run  
 13                   and manage your video as an ad on YouTube. With video ads, you  
                     can expand your audience and pay only for views that count. You’ll  
                     now be redirected to sign into or create a Google Ads account.

14           161.    Neither Divino, nor any other member of the Proposed Class would have spent  
 15 money on such products, if they had been aware of the true facts underlying Defendants’  
 16 representations.

17           162.    For example, between August 2015 and May 2018, GNews! ads purchased by  
 18 Divino on the strength of the above-referenced representations were “disapproved” (YouTube-  
 19 speak for “blocked”) no fewer than 11 times based on increasingly vague and nonsensical reasons.

20           163.    Between September 2015 and March 2018, two GNews! episodes were subject to  
 21 “Restricted Mode,” thus restricting significant portions of Gnews! potential audience from viewing  
 22 the content.

23           164.    Consistent with what has happened to members of the Proposed Class who have  
 24 dared to question Defendants’ blacklisting, when Divino’s representatives sought clarification as to  
 25 what content in the news show constituted “shocking content,” Defendants were initially unable to  
 26 point to anything. When Divino escalated the inquiry, their call was transferred to a person  
 27 working for Defendants in South Asia identified as a senior content regulator and Defendants’ “call  
 28 center” head. After taking some time to view the Gnews! content in question, the employee

1 informed Divino that the content of the show violated the company’s prohibition against  
 2 “shocking” and “sexually explicit” content because of what he stated was Defendants’ “company  
 3 policy” of banning content that related to the “gay thing” and because Divino’s representatives  
 4 identified as, and are “gay.”

5 165. The call thus confirms what Plaintiffs and other YouTubers in the Proposed Class  
 6 have long known to be true: the soaring rhetoric of Defendants’ professed commitments to values  
 7 of freedom of expression is nothing more than a smokescreen covering a rotting corporate culture  
 8 that uses overseas call center workers in a scheme to suppress speech and violate established  
 9 antidiscrimination protections.

10 166. Defendants’ discretionary, discriminatory, viewpoint-based, and unlawful content-  
 11 based speech regulation system was, is, and continues to be used to discriminate against, and  
 12 financially harm YouTube consumers. Indeed, every YouTube consumer or user is an unwitting  
 13 victim of Defendants’ discriminatory and fraudulent scheme to use unlawful and discriminatory  
 14 content-based speech regulations, policies, and practices to obtain illegal financial and political  
 15 gain at the expense, and to the detriment of the users’ free speech and consumer rights.

16 167. Instead of correcting their behavior and bringing their filters and regulations of  
 17 speech into compliance with California’s free speech, antidiscrimination, consumer fraud, and  
 18 contract laws, Defendants continue to maintain and apply arbitrary, capricious, discriminatory and  
 19 deceptive regulations to restrict speech on YouTube.

20 168. In short, Defendants are engaged in a global fraud on YouTube’s users and  
 21 consumers. YouTube consumers, like Plaintiffs, are promised a video hosting platform that  
 22 operates without regard to a user’s identity or viewpoints subject only to neutral, narrowly tailored,  
 23 non-discretionary content-based rules and restrictions that serve to further a legitimate public  
 24 interest, such as public safety or national security. In reality, however, Defendants deliver a  
 25 platform where YouTube consumers are subject to, vague, discretionary, and meaningless rules,  
 26 regulations, and practices to discriminate against, and financially harm, disfavored third-party  
 27 speakers and viewers, as a pretext to further Defendants’ purely selfish, corporate interests of  
 28

1 maximizing financial gain, political power, and consolidating control over the public speech and  
 2 content of its consumers and the public.

3 169. Not only is Defendants' censorship not based upon the express content of Plaintiffs'  
 4 videos and those of others in the Proposed Class, but Defendants' "inappropriate" designation,  
 5 falsely and unfairly stigmatizes Plaintiffs. The designation renders prospective viewers ineligible  
 6 to watch Plaintiffs' programming from many public, as well as private workplace or home  
 7 computer stations. It prevents access to educational content by students whose computer use may  
 8 be subject to parental controls, intended to shield the student from truly inappropriate material, not  
 9 to exclude political or educational discourse of current or historical events. It precludes Plaintiffs  
 10 from receiving any revenue from advertisements that would otherwise accompany content not  
 11 designated as "inappropriate." Moreover, it gives Defendants a virtual monopoly over the video  
 12 posting and viewership market, and authority to manipulate, bully, and falsely denigrate legitimate  
 13 political and educational speakers by subjectively designating their speech as "inappropriate,"  
 14 solely because Defendants do not like or agree with the users' political identity or point of view.

15 170. Such a censorship regime cannot pass muster under California law. Among other  
 16 things, it provides Google/YouTube with unfettered and unbridled discretion to impose their own  
 17 political views and values upon speakers, without any objective criteria for evaluating what is and  
 18 is not appropriate, and thereby censors speech, based on animus towards the speaker's political  
 19 viewpoint, rather than on the appropriateness of the video content. It also constitutes intentional  
 20 discrimination by Defendants based upon the religious beliefs, political identity, or sexual  
 21 orientation of the speaker. Moreover, it allows Defendants unfettered authority to regulate,  
 22 restrain, and censor speech as an unfair, unlawful and deceptive business practice designed to  
 23 inflict harm upon their competitors and to promote their own video content at the expense of the  
 24 smaller third-party users, on whose backs the YouTube Platform was built. Furthermore, it violates  
 25 the Warranty of Good Faith and Fair Dealing implied in the Defendants' Terms of Service, and the  
 26 video posting guidelines and policies to which Plaintiffs were required to agree, in order to use the  
 27 YouTube Platform. Defendants do all of this as part of their control and management of what is  
 28 arguably the largest public forum for expression and the exchange of ideas that has ever been



1 available to the public in California, the United States, and ultimately the world—one to which  
 2 Google/YouTube invite the public to express themselves in all manner of speech, and to engage  
 3 with such speech through viewing and commenting.

4 171. Until recently, all of Divino’s subscribers had been receiving electronic notifications  
 5 from YouTube whenever Divino uploaded new video content. In the past year, Divino’s  
 6 subscribers have been complaining that they no longer receive YouTube notifications for new  
 7 Divino video content. YouTube did not announce or notify Divino of any change to the existing  
 8 notification system. In discontinuing their practice of notifying existing Divino subscribers  
 9 regarding new posted content, Defendants have effectively nullified the benefits of the \$14,000  
 10 worth of advertisements Divino had purchased to boost subscriber numbers: existing subscribers  
 11 will not continue to watch Divino’s videos when they believe Divino has stopped posting new  
 12 materials, and Divino cannot possibly generate the minimum 4,000 annual hours of viewer watch  
 13 time required to requalify for the YouTube Partner Program if existing subscribers were not  
 14 watching new videos.

15 **B. BriaAndChrissy LLC (BriaAndChrissy)**

16 172. Plaintiff BriaAndChrissy LLC a limited liability company created under the laws of  
 17 the State of Georgia, and is wholly owned by Bria Kam and Chrissy Chambers, a married lesbian  
 18 couple and the creators of BriaAndChrissy, and WonderWarriors (formerly known as  
 19 “OurLesbianLove”), two popular video content channels on the YouTube Platform. Bria is a  
 20 professional musician, and Chrissy is an actress. They use their creative talents to support and  
 21 entertain young adult members of the Community.

22 173. On the BriaAndChrissy and WonderWarriors channels, BriaAndChrissy LLC  
 23 upload videos that document and describe the experiences of the same sex couple, including the  
 24 struggles, and mental and physical health issues which affect same sex couples who are constantly  
 25 confronted with homophobic hate speech, bigotry, attacks, and institutional bias against persons.  
 26 Since 2012, BriaAndChrissy LLC has been uploading videos featuring the original material and  
 27 covers of the work of the couple, and of other artists, as well as skits, interviews, and editorial  
 28 commentary on issues of the day, such as homophobic celebrities.



1           174. On the WonderWarriors channel, BriaAndChrissy LLC created a popular “Day-in-  
2 the-Life” video-log that chronicles the couple’s lives, and encourages LGBTQ+ persons to live a  
3 healthy lifestyle through fitness, creativity, responsible ethical conduct and supportive  
4 relationships.

5           175. In 2017, the BriaAndChrissy channel had 850,000 subscribers with 380 million  
6 views. WonderWarriors had 200,000 additional subscribers with 60 million views. The two  
7 channels averaged 15,000 new subscribers per month, 10 million views per month for each new  
8 video uploaded, and generated on average \$3,500 per month. And as any objective or reasonable  
9 viewer can see, the video content that appears on BriaAndChrissy and WonderWarriors complies  
10 with YouTube’s Community Guidelines and other content-based regulations used by Defendants to  
11 regulate free expression and speech on the YouTube Platform.

12           176. On or about June of 2013, the BriaAndChrissy channel was so popular with viewers  
13 that Defendants invited the couple to create and post a video titled “Proud to Love” on the channel.  
14 No sooner had these Plaintiffs agreed to Defendants’ invitation to create and post “Proud to Love,”  
15 that Defendants demonetized the “Proud to Love” video and refused to re-monetize it. Defendants  
16 only re-monetized the video after Bria Kam appealed to BriaAndChrissy fans on Twitter, where the  
17 video received significant additional attention. As a result of Defendants’ monetization treatment  
18 of the “Proud to Love” video, “ BriaAndChrissy LLC lost substantial revenue and earnings from  
19 this popular video.

20           177. In February 2016, Defendants then invited BriaAndChrissy LLC to pitch and  
21 produce a documentary program featuring the couple travelling throughout the United States and  
22 interviewing members of the Community about their personal experiences. The concept was to  
23 document LGBTQ+related issues of local importance, and broader issues of national importance  
24 which affect persons, their families and friends in different communities around the United States.  
25 To Plaintiffs’ surprise, Defendants subsequently turned down the project under the pretext that they  
26 were no longer interested in the concept. Unbeknownst to the Plaintiffs, and without their  
27 permission or any legal rights to the unique content, Defendants sponsored an identical show  
28 hosted by a former Google/YouTube employee. In brazen disregard and violation of

1 BriaAndChrissy LLC's intellectual property rights, Defendants stole and plagiarized Plaintiffs'  
 2 concept and content, and profited from that theft by promoting and posting a show on YouTube  
 3 which copied and utilized the ideas and proprietary information belonging to BriaAndChrissy  
 4 LLC's concept and content, keeping all of the monetary and distribution value for themselves, to  
 5 the financial detriment of BriaAndChrissy LLC, Defendants' direct competitor.

6 178. In furtherance of their anticompetitive and discriminatory attack on this Plaintiff,  
 7 Defendants also engaged in "unsubscribing" viewers who had existing subscriptions to the  
 8 BriaAndChrissy and Wonder Warrior channels. Specifically, Defendants began deleting  
 9 longstanding subscriptions of viewers who watch Plaintiffs' content, making those subscriptions  
 10 disappear without warning. Because many of its subscribers and audience were deterred by having  
 11 to constantly re-subscribe to BriaAndChrissy LLC's channels over and over again, this Plaintiffs'  
 12 viewership and subscription rates were fraudulently and unfairly reduced to levels well below the  
 13 level which had existed prior to Defendants' unlawfully unsubscribing of viewers to  
 14 BriaAndChrissy and/or WonderWarriors. Many subscribers have continued to complain  
 15 throughout September and October that Google/YouTube are deleting their subscriptions to the  
 16 channel and not allowing them to re-subscribe. Other subscribers are complaining that when they  
 17 visit the BriaandChrissy channel, they cannot find new videos which were uploaded, and even  
 18 when they learn through other social media platforms that new BriaAndChrissy videos have been  
 19 posted to the channel, the videos do not appear on the channel or in YouTube searches. As a result  
 20 of this unlawful conduct, Defendants caused this Plaintiff to lose its substantial viewer base and  
 21 revenues derived from an audience that BriaAndChrissy LLC alone, had built up over the past  
 22 seven years.

23 179. Defendants also unilaterally cancelled or stopped sending electronic notifications of  
 24 new videos that Plaintiff BriaAndChrissy LLC had uploaded to its channels, without providing any  
 25 notice to Plaintiff, its subscribers, or YouTube consumers.

26 180. As a result of Google/YouTube's ever changing new video notification practices,  
 27 BriaAndChrissy LLC's existing subscribers and loyal viewers do not receive new video  
 28 notifications no matter how many times that they succeed in learning about Google/YouTube's

1 secret new procedures and comply: Defendants just change the process again. Defendants' bait-  
 2 and-switch notification practices, harmed BriaAndChrissy LLC's ability to generate continued  
 3 interest among its existing subscribers, prevented them from reaching new viewers who would be  
 4 attracted by video comments posted by subscribers. Defendants' conduct has caused  
 5 BriaAndChrissy LLC's numbers of subscribers and views to decline to a marked degree.  
 6 Defendants' practices are making it is impossible for BriaAndChrissy LLC to consistently generate  
 7 sufficient views per video to meet Defendants' monetization requirements and, consequently,  
 8 caused this Plaintiff to lose substantial revenue to Defendants.

9 181. Beginning in or around 2017, without any notice or explanation, Defendants deleted  
 10 many of Plaintiffs' customized Thumbnails identifying BriaAndChrissy LLC's channels and  
 11 content, and replaced them with Defendants' own generic Thumbnails that harm and stigmatize  
 12 Plaintiffs' brand and content by giving viewers the impression that the video uploaded was of poor  
 13 quality and/or posted by someone who does not have the following, goodwill, and quality  
 14 associated with BriaAndChrissy LLC's reputation and content quality.

15 182. In 2017, Defendants also demonetized individual videos posted by BriaAndChrissy  
 16 LLC, such as <http://youtube.com/watch?v=yIDaCdjDodM>, a video about being comfortable in your  
 17 own skin. In 2018, Defendants demonetized the entire WonderWarriors channel without any  
 18 notice, explanation or an opportunity to respond and fix the monetization issues, if any. In so  
 19 doing, Defendants harmed the ability of BriaAndChrissy LLC and other creators to generate a  
 20 financial return on their videos and unlawfully restrained, if not eliminated entirely, the ability of  
 21 BriaAndChrissy LLC to earn revenue on content associated with its channels.

22 183. Defendants also exclude related content from the "Up Next," application that  
 23 appears on the BriaAndChrissy and WonderWarriors channels. Defendants refuse to recommend  
 24 or to promote video content that is associated with tag words like "lesbian," "gay," "bisexual,"  
 25 "transgender," or "queer," or content that is associated with titles or descriptions using such terms.  
 26 Defendants engage in this discriminatory, anticompetitive, and unlawful practice, while  
 27 simultaneously promoting and recommending reaction videos by other creators which are based  
 28 upon or copy videos uploaded by BriaAndChrissy or WonderWarriors which Defendants have

1 restricted or demonetized. As a result, creators like BriaAndChrissy LLC must self-censor and  
2 refrain from using such words for videos to avoid running afoul of Defendants' subjective and  
3 unlawful censorship practices. Such self-censorship forced upon BriaAndChrissy LLC is yet  
4 another unfair and unlawful tactic that discriminates against, and makes it harder for members of  
5 the Community to find related content intended to support, educate and entertain consumers on  
6 YouTube.

7 184. And as they do to many of their competitors, Defendants indiscriminately and  
8 unlawfully apply the "Restricted Mode" limitations for "sensitive viewers," to BriaAndChrissy  
9 LLC's videos, as well as to videos of many other LGBTQ+ members of the YouTube Community,  
10 solely because LGBTQ+ content creators discuss viewpoints or topics that Defendants' filtering  
11 tools and practices "flag" or classify as "LGBTQ+" "lesbian," "gay," "bisexual," "transgender," or  
12 "queer." As is Defendants' continuing custom, practice, and policy, Google/YouTube "flag"  
13 LGBTQ+ content as "inappropriate," even though the actual content does not violate YouTube's  
14 Community Guidelines, Restricted Mode criteria, or any other content-based regulations. Thus,  
15 Defendants stigmatize many of BriaAndChrissy LLC's videos, including content which addresses  
16 suicide prevention, addiction treatment, bullying, or healthy lifestyles, as "inappropriate" for what  
17 Defendants call "sensitive audiences," merely because BriaAndChrissy LLC's owners identify as a  
18 legally married lesbian couple.

19 185. Defendants also misapply age restrictions to this Plaintiff, limiting BriaAndChrissy  
20 LLC's videos to viewers 18 years of age or older, regardless of the actual content of the video. As  
21 they do in applying their Restricted Mode, Defendants use A.I. and other machine-based filtering  
22 tools to flag tags, titles, descriptions, or content that Defendants classify as "LGBTQ+" "lesbian,"  
23 "gay," "bisexual," "transgender," or "queer." As a result, many of the videos created by  
24 BriaAndChrissy LLC to support younger members of the Community who are experiencing  
25 bullying, persecution and/or abuse, many of whom reside in rural areas where mental health and  
26 social services are hard to access, cannot view the very materials designed to provide them with  
27 support and educate them about resources where help may be obtained.

28

186. Defendants also engage in advertising practices which are designed to discourage more sensitive members of the Community from viewing the videos posted on BriaAndChrissy or WonderWarriors. Among other practices, Defendants sell and profit from ads sponsored by extremist groups who viciously and violently target gay marriage and the Community in general. Defendants permit these hate mongers to display these obscene ads before content of creators like BriaAndChrissy LLC is played in order to scare and threaten viewers and intended audiences from watching BriaAndChrissy LLC's videos. Such gay bashing ads effectively negate any positive message embodied in the video by turning away the LGBTQ+ audience before they view the video. When BriaAndChrissy posted a video addressing the anti-gay agenda of Chick-fil-A, Defendants began loading anti-LGBTQ+ Chick-fil-A ads which played before BriaAndChrissy videos.

187. Defendants' monetization treatment of BriaAndChrissy's videos is haphazard at best. Most recently, when BriaAndChrissy's video "Ten Ways To Know You're In Love," was uploaded, Defendants immediately demonetized the video.



Just hours later on the same day, the video appeared fully monetized.

188. As demonstrated below, Google/YouTube subject many of BriaAndChrissy videos to censorship resulting in reduced advertising revenue being produced by each video, compared with similar videos uploaded by creators who are do not identify as part of Community, despite the fact that the videos do not include scenes of graphic violence, graphic sexual content, nudity, or descriptions of sexual acts.

Plaintiffs' Videos	YouTube Status	Comparable Videos By Others	YouTube Status
"Lesbian Condom Challenge," posted May 2017; generated 90,000 views; <a href="https://www.youtube.com/watch?v=kUiELFvLPyM">https://www.youtube.com/watch?v=kUiELFvLPyM</a>	Age Restricted; Limited Monetization	"The Ultimate Condom Test," posted August 2016, generated 7.5 million views; <a href="https://www.youtube.com/watch?v=ZULIT2YDu_E">https://www.youtube.com/watch?v=ZULIT2YDu_E</a>	No Restrictions; Full Monetization
"Sexy Athletes," posted June 2014; generated 157,000 views; <a href="https://www.youtube.com/watch?v=yTCAO3dmOjU">https://www.youtube.com/watch?v=yTCAO3dmOjU</a>	Age Restricted; Limited Monetization	"The Hottest Female Athletes 2019," posted April 2019, generated 318,000 views;	No Restrictions; Full Monetization

1	Plaintiffs' Videos	YouTube Status	Comparable Videos By Others	YouTube Status
2			<a href="https://www.youtube.com/watch?v=ppf6qp3bVb8">https://www.youtube.com/watch?v=ppf6qp3bVb8</a>	
3	"Confronting My Bully," posted March	Limited Monetization	"Confronting Online	Full
4	2019, generated 27,000 views;		Bullies Face To Face,"	Monetization
5	<a href="https://www.youtube.com/watch?v=Xq-P64GAXY8">https://www.youtube.com/watch?v=Xq-P64GAXY8</a>		posted September 2019,	
6			generated 193,000 views;	
7			<a href="https://www.youtube.com/watch?v=t4bNGLE5De4">https://www.youtube.com/watch?v=t4bNGLE5De4</a>	
8	"Revenge Porn And Lawsuit Impact	Limited Monetization	"Revenge porn' site	Full
9	Statement," posted February 2019,		founder defends site,	Monetization
10	generated 9 views;		posted April 2012,	
11	<a href="https://www.youtube.com/watch?v=1Fv9BuwLijo">https://www.youtube.com/watch?v=1Fv9BuwLijo</a>		generated 22,000 views;	
12			<a href="https://www.youtube.com/watch?v=mO_o1FBK8qI">https://www.youtube.com/watch?v=mO_o1FBK8qI</a>	
13	"The Gross Tongue Challenge," posted	Restricted Mode;	"Tongue Kissing Make	Full
14	December 2018, generated 102,000 views;	Limited Monetization	Out Challenge w/ Jordyn	Monetization
15	<a href="https://www.youtube.com/watch?v=Hsdz1Gy22bQ">https://www.youtube.com/watch?v=Hsdz1Gy22bQ</a>		Jones & Josh Killacky,"	
16			posted October 2018,	
17			generated 580,000 views;	
18			<a href="https://www.youtube.com/watch?v=BVG03kHgvTU">https://www.youtube.com/watch?v=BVG03kHgvTU</a>	
19	"I Almost Died My Side of the Story,"	Limited Monetization	"I almost Died Last	Full Monetization
20	posted August 2018, 165,000 views;		Night," posted June 2019,	
21	<a href="https://www.youtube.com/watch?v=05dvHnDhLz0">https://www.youtube.com/watch?v=05dvHnDhLz0</a>		generated 2.1 million	
22			views;	
23			<a href="https://www.youtube.com/watch?v=IFiqD9coEDU">https://www.youtube.com/watch?v=IFiqD9coEDU</a>	
24				
25	"10 Worst Kisses," posted June 2018,	Limited Monetization	"Couples Try Kissing	Full Monetization
26	generated 1.7 million views;		With Their Eyes Open,"	
27	<a href="https://www.youtube.com/watch?v=QbLMHb_CQAA">https://www.youtube.com/watch?v=QbLMHb_CQAA</a>		posted 2017, generated 2.9	
28			million views;	
			<a href="https://www.youtube.com/watch?v=fFHAB82u-nQ">https://www.youtube.com/watch?v=fFHAB82u-nQ</a>	
	"I got My First tattoo," posted September	Limited Monetization	"Pewdiepie Butt Tattoo	Full Monetization
	2017, generated 132,000 views;		Reaction," posted January	
	<a href="https://www.youtube.com/watch?v=WsSIBIEiQRo">https://www.youtube.com/watch?v=WsSIBIEiQRo</a>		2016, generated 11.5	
			million views;	
			<a href="https://www.youtube.com/watch?v=r-bd7iDnE6M">https://www.youtube.com/watch?v=r-bd7iDnE6M</a>	
	"We don't Like To Kiss," posted March	Limited Monetization	"Guys Kiss Guys for the	Full Monetization
	2017, generated 25,000 views;		First Time," posted	
	<a href="https://www.youtube.com/watch?v=_hESANEM-Sk">https://www.youtube.com/watch?v=_hESANEM-Sk</a>		December 2014, generated	
			9.7 million views;	
			<a href="https://www.youtube.com/watch?v=d5ci_VIRcig&amp;t=1s">https://www.youtube.com/watch?v=d5ci_VIRcig&amp;t=1s</a>	

Plaintiffs' Videos	YouTube Status	Comparable Videos By Others	YouTube Status
"10 Lesbian Nightmares," posted January 2017, generated 87,000 views; <a href="https://www.youtube.com/watch?v=lEgEDasPips">https://www.youtube.com/watch?v=lEgEDasPips</a>	Limited Monetization	"My First Time Putting on a Condom," posted September 2019, generated 267,000 views; <a href="https://www.youtube.com/watch?v=nYluufoCIO8">https://www.youtube.com/watch?v=nYluufoCIO8</a>	Full Monetization
"Touch My Body Challenge," posted January 2017, generated 743,000 views; <a href="https://www.youtube.com/watch?v=skf33gjLef0">https://www.youtube.com/watch?v=skf33gjLef0</a>	Limited Monetization	"Wild Touch My Body Challenge With Girlfriend," posted June 2019, generated 152,000 views; <a href="https://www.youtube.com/watch?v=PN0oYzD8_zg">https://www.youtube.com/watch?v=PN0oYzD8_zg</a>	Full Monetization
"I have PTSD," posted July 31, 2016, generated 189,000 views; <a href="https://www.youtube.com/watch?v=fokQral-HTU">https://www.youtube.com/watch?v=fokQral-HTU</a>	Limited Monetization	"COMPLEX PTSD - Post-Traumatic Stress Disorder," posted April 2015, generated 237,000 views; <a href="https://www.youtube.com/watch?v=_qIAZcOryl4">https://www.youtube.com/watch?v=_qIAZcOryl4</a>	Full Monetization
"Men French Kiss Men For First Time," posted September 6, 2016, generated 4.6 million views; <a href="https://www.youtube.com/watch?v=ETwZ74337Kg">https://www.youtube.com/watch?v=ETwZ74337Kg</a>	Limited Monetization	"Guys Kiss Guys for the First Time," posted December 2014, generated 9.7 million views; <a href="https://www.youtube.com/watch?v=d5ci_VIRcig&amp;t=1s">https://www.youtube.com/watch?v=d5ci_VIRcig&amp;t=1s</a>	Full Monetization
"Most Homophobic Celebrities," posted June 2015, generated 204,000 views; <a href="https://www.youtube.com/watch?v=O6wGBnY9gTA">https://www.youtube.com/watch?v=O6wGBnY9gTA</a>	Limited Monetization	"Alec Baldwin -- Homophobic Rant #73," posted June 30, 2013, generated 35,000 views; <a href="https://www.youtube.com/watch?v=faqPP1X5kzc">https://www.youtube.com/watch?v=faqPP1X5kzc</a>	Full Monetization
"Buzzfeeds already done it," posted March 2015, generated 179,000 views; <a href="https://www.youtube.com/watch?v=rPO0ekLHvOs">https://www.youtube.com/watch?v=rPO0ekLHvOs</a>	Limited Monetization	"10 Creators Who Had Their Content Stolen By Buzzfeed," posted June 2019, generated 64,000 views; <a href="https://www.youtube.com/watch?v=2aekPAwUhzo">https://www.youtube.com/watch?v=2aekPAwUhzo</a>	Full Monetization
"Shocking Super Bowl Commercial 2015 (GAY KISS)," posted January 2015, generated 6.8 million views; <a href="https://www.youtube.com/watch?v=-aMixRk1ZY">https://www.youtube.com/watch?v=-aMixRk1ZY</a>	Limited Monetization	"Banned Carl's Jr Superbowl Commercial (Parody)," posted February 2014, generated 166,000 views;	Full Monetization



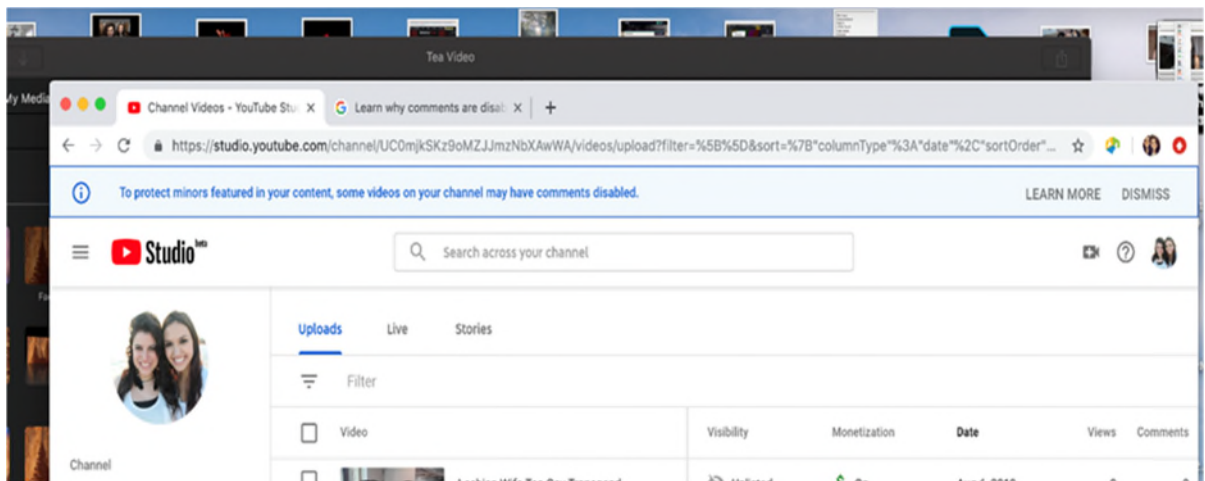
1	Plaintiffs' Videos	YouTube Status	Comparable Videos By Others	YouTube Status
2			<a href="https://www.youtube.com/watch?v=8_ux5T-3GpI">https://www.youtube.com/watch?v=8_ux5T-3GpI</a>	
3				
4	"I hate Fags," posted June 2014, generated 249,000 views;	Demonetized	"God Hates a Fag Music Video HD," posted	Full Monetization
5	<a href="https://www.youtube.com/watch?v=5XJM2eFxAgg">https://www.youtube.com/watch?v=5XJM2eFxAgg</a>		August 2009, generated 225,000 views;	
6			<a href="https://www.youtube.com/watch?v=BREvUu4wI-4">https://www.youtube.com/watch?v=BREvUu4wI-4</a>	
7	"Couples Therapy," posted November 2014, generated 119,000 views;	Demonetized	"When couples therapy Gets REAL," posted	Full Monetization
8	<a href="https://www.youtube.com/watch?v=CwPmtcd9KL4">https://www.youtube.com/watch?v=CwPmtcd9KL4</a>		December 2018, generated 2.6 million views;	
9			<a href="https://www.youtube.com/watch?v=Ycjtow-INA4">https://www.youtube.com/watch?v=Ycjtow-INA4</a>	
10				
11	"How Couples really Act," posted June 2014, generated 2.6 million views;	Demonetized	"Weird Things All Couples Do," posted	Full Monetization
12	<a href="https://www.youtube.com/watch?v=rUamtkf4ixg">https://www.youtube.com/watch?v=rUamtkf4ixg</a>		August 2014, generated 6 million views;	
13			<a href="https://www.youtube.com/watch?v=HFQBIK__X14">https://www.youtube.com/watch?v=HFQBIK__X14</a>	
14				
15	"10 Worst Kisses," posted April 2014, generated 25.5 million views;	Demonetized	"The 10 Worst Kisses in the Universe," posted	Full Monetization
16	<a href="https://www.youtube.com/watch?v=bwMQI-pvLsO4">https://www.youtube.com/watch?v=bwMQI-pvLsO4</a>		April 2013, generated 9.9 million views;	
17			<a href="https://www.youtube.com/watch?v=tKvHQ518iXw">https://www.youtube.com/watch?v=tKvHQ518iXw</a>	
18				
19	"10 worst Hugs," posted May 2014, generated 10.5 million views;	Demonetized	"Worst Hug Ever," posted	Full Monetization
20	<a href="https://www.youtube.com/watch?v=eS-XiPeJQTc">https://www.youtube.com/watch?v=eS-XiPeJQTc</a>		June 2019, generated 385,000 views;	
21			<a href="https://www.youtube.com/watch?v=xeNz0uaxia8">https://www.youtube.com/watch?v=xeNz0uaxia8</a>	
22				
23				
24	"I hate Gays Dear FireFox," posted April 2014, generated 108,000 views;	Demonetized	"Eddie Murphy: Fag and HIV jokes," posted March	Full Monetization
25	<a href="https://www.youtube.com/watch?v=0eV_ddXgg38">https://www.youtube.com/watch?v=0eV_ddXgg38</a>		2009, generated 45,285 views;	
26			<a href="https://www.youtube.com/watch?v=c1x0MBLKLrk">https://www.youtube.com/watch?v=c1x0MBLKLrk</a>	
27				
28				
	"50 Facts (100th video)," posted March 2014, generated 196,678 views;	Demonetized	"50 Facts About Us: Cody & Lexy," posted	Full Monetization
	<a href="https://www.youtube.com/watch?v=pYQEaz1td0U">https://www.youtube.com/watch?v=pYQEaz1td0U</a>		February 2018, generated 178,000 views;	
			<a href="https://www.youtube.com/watch?v=RrT911ulMvI">https://www.youtube.com/watch?v=RrT911ulMvI</a>	
	"Cotton Ball Challenge," posted September 2013, generated 71,000 views;	Demonetized	"Family Cotton Ball Challenge," posted	Full Monetization

1	<b>Plaintiffs' Videos</b>	<b>YouTube Status</b>	<b>Comparable Videos By Others</b>	<b>YouTube Status</b>
2	<a href="https://www.youtube.com/watch?v=yTQN7l5vf_o">https://www.youtube.com/watch?v=yTQN7l5vf_o</a>		November 2016, generated 780,000 views; <a href="https://www.youtube.com/watch?v=Ab_220M5EVo">https://www.youtube.com/watch?v=Ab_220M5EVo</a>	
3				
4	"10 Things Lesbians are Afraid of," posted August 2013, generated 7.6 million views; <a href="https://www.youtube.com/watch?v=V9VA Bvh7kRw">https://www.youtube.com/watch?v=V9VA Bvh7kRw</a>	Demonetized	"Condom Challenge," posted January 2016, generated 1.4 million views; <a href="https://www.youtube.com/watch?v=vy6Vak6OPII">https://www.youtube.com/watch?v=vy6Vak6OPII</a>	Not Restricted; Full Monetization
5				
6				
7				
8	"Picking up a Stranger Prank," posted July 2013, generated 147,000 views; <a href="https://www.youtube.com/watch?v=5p2KZ UoC7FI">https://www.youtube.com/watch?v=5p2KZ UoC7FI</a>	Demonetized	"Picking Up Strangers Girlfriends in Front of Their Boyfriends," posted April 2019, generated 37,000 views; <a href="https://www.youtube.com/watch?v=zWHMZZkZ1bk">https://www.youtube.com/watch?v=zWHMZZkZ1bk</a>	Full Monetization
9				
10				
11				
12	"Lesbian Q&A Part 3," posted May 2013, generated 195,000 views; <a href="https://www.youtube.com/watch?v=FcCQ2cocF0w">https://www.youtube.com/watch?v=FcCQ2cocF0w</a>	Demonetized	"Q&A with my Boyfriend," posted July 2019, generated 161,000 views; <a href="https://www.youtube.com/watch?v=h2-u7S2khTY">https://www.youtube.com/watch?v=h2-u7S2khTY</a>	Full Monetization
13				
14				
15	"11 Crazy Youtube Challenges," posted May 2013, generated 398,000 views; <a href="https://www.youtube.com/watch?v=Nntzx3GpuQk">https://www.youtube.com/watch?v=Nntzx3GpuQk</a>	Limited Monetization	"I tried 10 Crazy Challenges for 10 Million Subscribers," posted September 2019, generated 3.6 million views; <a href="https://www.youtube.com/watch?v=qnqknRJ3WPs">https://www.youtube.com/watch?v=qnqknRJ3WPs</a>	Full Monetization
16				
17				
18				
19				
20	<b>Plaintiffs' Videos</b>	<b>YouTube Status</b>	<b>Comparable Videos By Others</b>	<b>YouTube Status</b>
21	"The Girlfriend Tag," posted April 2013, generated 224,000 views; <a href="https://www.youtube.com/watch?v=1DaTezPKwm0">https://www.youtube.com/watch?v=1DaTezPKwm0</a>	Limited Monetization	"Boyfriend vs. Girlfriend Tag," posted April 2017, generated 3.5 million views; <a href="https://www.youtube.com/watch?v=8jinyoofAeM">https://www.youtube.com/watch?v=8jinyoofAeM</a>	Full Monetization
22				
23				
24				
25	"Our Bullying Story," posted January 2013, generated 105,000 views; <a href="https://www.youtube.com/watch?v=Zv0mZ43wtxs">https://www.youtube.com/watch?v=Zv0mZ43wtxs</a>	Limited Monetization	"Confronting Internet Bully Cody Ko," posted May 2019, generated 4.3 million views; <a href="https://www.youtube.com/watch?v=xf7vX3D8_ME">https://www.youtube.com/watch?v=xf7vX3D8_ME</a>	Full Monetization
26				
27				
28				

Plaintiffs' Videos	YouTube Status	Comparable Videos By Others	YouTube Status
"Stop Birthing Gays Song," posted January 2013, generated 164,000 views: <a href="https://www.youtube.com/watch?v=PvIAAd0Rkiyk">https://www.youtube.com/watch?v=PvIAAd0Rkiyk</a>	Limited Monetization	"Christian vs. Westboro Baptist 'God Hates Fags,'" posted May 2012, generated 300,000 views; <a href="https://www.youtube.com/watch?v=ehjWWgdrY_Q">https://www.youtube.com/watch?v=ehjWWgdrY_Q</a>	Full Monetization

189. Defendants also engage in outright censorship of LGBTQ+ content, including that of BriaAndChrissy LLC. On June 21, 2015, Defendants censored a video on the BriaAndChrissy channel which discussed the actions and statements of celebrities who expressed homophobic views or slurs, without providing any notice, explanation or opportunity to address any concern that Defendants might have. And like the other Plaintiffs, BriaAndChrissy LLC support the right of free speech and expression for all Community Members, as long as that right is not co-extensive with the promotion of anti-hate speech for profit in violation of Community Guidelines or other rules on YouTube, nor is it a basis for using those same rules to censor, restrain, demonetize, and/or squelch content or engagement on the platform.

190. Finally, in August 2019, Defendants commenced disabling the comments sections for a number of BriaAndChrissy videos. Plaintiffs BriaAndChrissy LLC, Bria Kam and Chrissy Chambers have been informed by Defendants and thereon allege that Defendants have disabled comments sections because they believe that they are "protecting minors."



It is unclear from Defendants' message whether the comments sections are being disabled because third parties have posted hate speech and anti-gay comments, or to prevent minors themselves

1 from posting comments and generating hate speech and anti-gay comments, or to prevent minors  
 2 from encouraging other minors from viewing the video content. The affected videos do not depict  
 3 children or minors in the video content, and have not generated the kind of inappropriate  
 4 comments about small children which prompted Google/YouTube to remove the comments  
 5 sections from creators' channels posting videos of young children engaged in gymnastics or  
 6 swimming practice and/or competitions. The disabling of the comments sections for the new  
 7 videos prevents the new content from generating favorable comments which amplify the reach of  
 8 the video beyond BriaAndChrissy's subscribers, and cause videos to go viral, thereby substantially  
 9 reducing the potential for generating revenue for the affected videos.

10 191. Defendants' unlawful and anticompetitive attack on Plaintiff BriaAndChrissy LLC  
 11 has achieved its intended result of reducing monthly revenues of \$3,500 that had generated in 2016,  
 12 to \$809 in July, \$694 in August, \$462 in September and \$423 in October of 2019 for this popular  
 13 content creator who directly competes with Defendants for subscribers and viewers on the  
 14 YouTube Platform.

15 192. Additionally, for two years, this Plaintiff was generating up to \$8,000 for each of its  
 16 sponsored videos, but now receives on average only \$800 per sponsored video. BriaAndChrissy  
 17 LLC is offered less for each performance and appearance, and has been offered fewer travel  
 18 opportunities. Not only are the revenues generated by sponsored videos reduced, but fewer and  
 19 fewer companies are offering sponsorships and brand deals due to depressed viewer numbers.  
 20 Defendants' conduct has not only deprived this Plaintiff of being able to monetize its content at  
 21 levels that permit continued reinvestment in new content production but ensures that Defendants  
 22 can increase their own share of corporate revenues and profits from Plaintiffs' content, or from  
 23 content which Defendants sponsor in direct competition with Plaintiffs.

24 **C. Chase Ross**

25 193. Plaintiff Chase Ross is the creator and owner of UppercaseCHASE1, a YouTube  
 26 channel created to support members of the Community in general and transgender people  
 27 specifically by uploading sexual education, transgender education, and transgender product review  
 28 videos, as well as allies, who are supporting members of the non-binary or transgender Community

1 who have relatives and family who are non-binary or transgender. Mr. Ross has a degree in  
 2 sociology and a minor in interdisciplinary studies of sexuality; he also received a master's degree in  
 3 sociology in 2018. Starting in 2006, Mr. Ross created video content that was posted on YouTube  
 4 in various names, including "ellendegeneres26," "ChaseRoss73," "FTMTranstastic,"  
 5 "MightTMenFTM," "MightierMenFTM," and "itsTtime2010." Commencing in 2010, Mr. Ross  
 6 started uploading video content on the UppercaseCHASE1 YouTube channel, with new content  
 7 posting each month, and over the years increasing to weekly or bi-weekly depending on his  
 8 available time and the subject matter of the video content. In 2017, Mr. Ross created the "Trans  
 9 101" series of videos designed to educate the public, including transgender individuals, about  
 10 issues confronting transgender individuals. UppercaseCHASE1 has uploaded 753 videos in all,  
 11 generating 20.2 million total views with 163,000 subscribers. By 2019, UppercaseCHASE1 was  
 12 generating between 20 and 50,000 views for each new video uploaded to the channel, and  
 13 generating \$10,800 Canadian dollars annually in revenue. Earnings for this year are projected to be  
 14 \$400-\$1,000 range.

15 194. Commencing within the past two years, Defendants have harmed  
 16 UppercaseCHASE1 by employing many of the same strategies applied to BriaAndChrissy, and  
 17 WonderWarriors:

18 195. Mr. Ross is a victim of "unsubscribing" existing subscriptions to  
 19 UppercaseCHASE1. Subscribers have informed Mr. Ross via Twitter and email that their existing  
 20 subscriptions have disappeared without notification or explanation, forcing fans to re-subscribe.

21 196. Defendants also deleted and/or failed to provide content notifications for Mr. Ross'  
 22 subscribers of his channel and intended audiences. Specifically, Defendants imposed these  
 23 restrictions on UppercaseCHASE1 by requiring existing subscribers to specifically click on a bell  
 24 icon in order to receive electronic notifications when UppercaseCHASE1 posts new videos which  
 25 has adversely affected the channel's view numbers. And, UppercaseCHASE1 has received  
 26 complaints via Twitter and email from former subscribers who no longer receive Defendants'  
 27 notifications for new content uploaded to the UppercaseCHASE1 channel. The new practice has  
 28

1 substantially reduced the views per new posted video on the UppercaseCHASE1 channel, resulting  
2 in reduced revenues.

3 197. Defendants also engage in stripping UppercaseCHASE1's custom Thumbnails from  
4 search results for many of the channel's subscribers and for new viewers. Some viewers report as  
5 few as 20% of the videos for the UppercaseCHASE1 channel have visible custom Thumbnails.

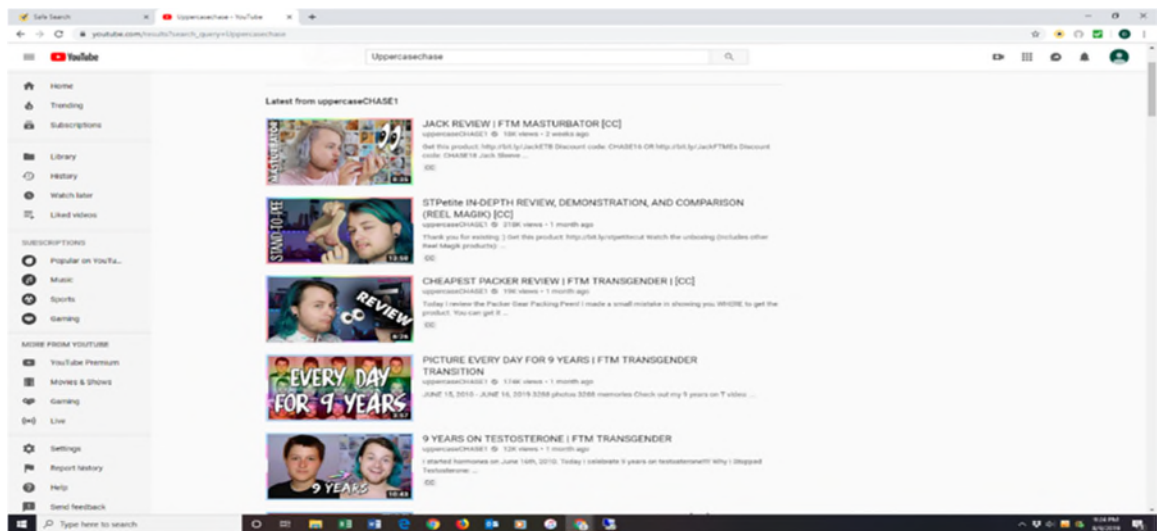
6 198. Defendants have also "Demonetized" many UppercaseCHASE1's videos under the  
7 discriminatory, fraudulent, and unlawful pretext that the content violates YouTube's Community  
8 Guidelines or other vague, overly broad, subjective, or meaningless content-based regulations.  
9 And despite Mr. Ross' appeals and repeated requests for more guidance regarding the bases of its  
10 decisions to demonetize specific videos, Defendants have provided no reasonable response or basis  
11 for their decisions.

12 199. Defendants also exclude UppercaseCHASE1's content from the Defendants'  
13 recommended content on the "Up Next," application for the channel for no viable reason, while  
14 allowing the content of other creators, as well as that content created or financially preferred by  
15 Defendants, to appear, including homophobic and anti-LGBTQ+ content.

16 200. And, as it does to other members of the YouTube Community, Defendants  
17 indiscriminately apply the "Restricted Mode" limitations for "sensitive viewers," to many of  
18 UppercaseCHASE1's videos, regardless of whether the actual content includes graphic sexual  
19 images or content, or discussions regarding transgender issues. For example, videos consisting of  
20 Mr. Ross engaging in editorial comment in front of a blank wall discussing events, festivals or  
21 conventions have been restricted and do not appear in searches performed in "Restricted Mode,"  
22 despite the fact that there is no sexual content and no discussion of transgender issues.

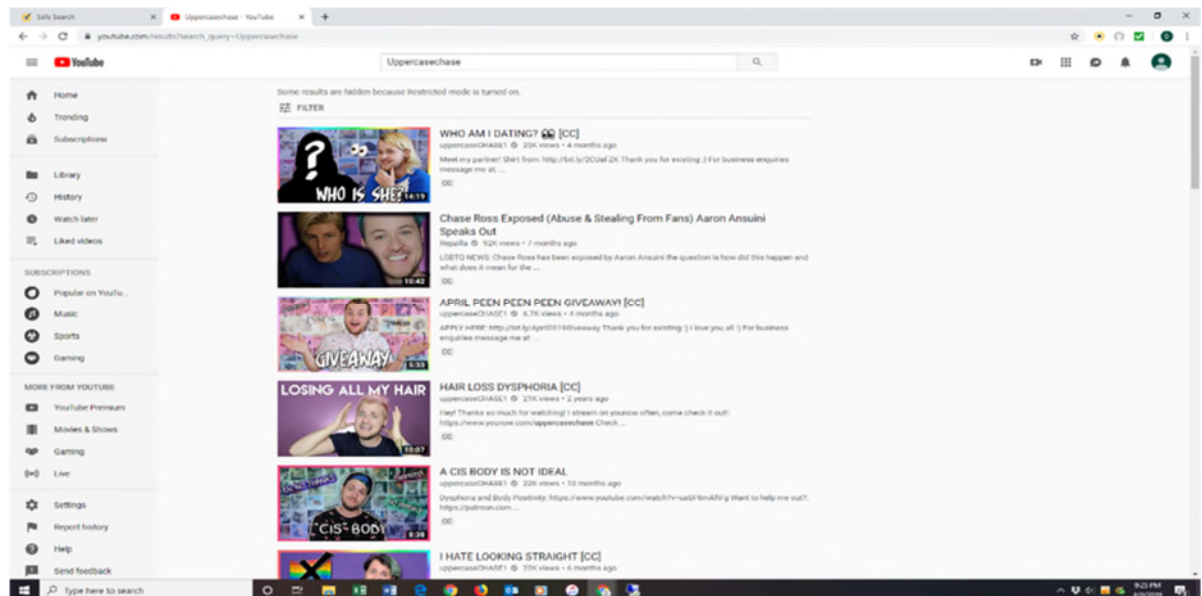
23 a. Viewers enabling the "Restricted Mode," conducting searches for  
24 UppercaseCHASE1 videos see this :





Only two of the UppercaseCHASE1 videos posted in the past year appear in searches where “Restricted Mode,” is enabled.

b. Viewers who do not enable the “Restricted Mode,” when searching for UppercaseCHASE1 videos see this:



201. Many videos are restricted regardless of content merely because of Mr. Ross’ identity as a transgender individual. The Defendants’ “Restricted Mode” filters generally appear



1 the first weekday after a new video is uploaded to the UppercaseCHASE1 channel. By employing  
 2 “Restricted Mode,” Defendants have successfully limited viewer access to the general public to  
 3 each of the new videos which UppercaseCHASE1 has posted in 2019. Defendants have even  
 4 applied the “Restricted Mode,” to a video which features Mr. Ross doing nothing more than  
 5 drinking tea and endorsing tea for self-care and stress reduction.

6           **a.**       In the first video (which can be viewed by using the link:  
 7 <https://youtu.be/rccjNF3dEpA>), Mr. Ross appears seated on the screen with a black mug and a  
 8 white cat in the foreground, and a kitchen scene in the background. In the video Mr. Ross extolls  
 9 the virtues of drinking tea for LGBTQ “self-care,” and explains that LGBTQ includes “lesbian,”  
 10 “gay,” “bisexual,” “transgender,” and “queer.” There is no sexual, political or obscene or vulgar  
 11 content in the video at all. When he uploaded the video, Mr. Ross did so “unlisted,” so that it does  
 12 not appear on UppercaseCHASE1 channel. Mr. Ross tagged the video with the terms “LGBTQ,”  
 13 “lesbian,” “gay,” “bisexual,” “transgender,” and “queer.” He used these terms in the description  
 14 and used “LGBTQ” in the title.

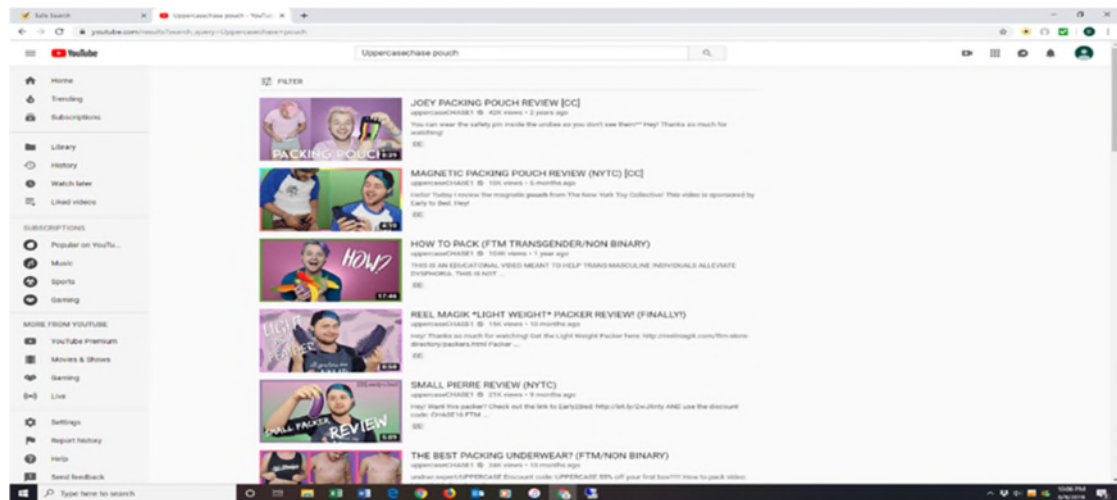
15           **b.**       In the second video (which can be viewed by using the link:  
 16 [https://youtu.be/qfFIl\\_ECxnI](https://youtu.be/qfFIl_ECxnI)), the identical video content appears. When the second video is  
 17 uploaded, it is loaded as “unlisted,” and does not appear on the UppercaseCHASE1 channel. Mr.  
 18 Ross tagged this video only with the terms “product review,” and “tea.” The description is “tea  
 19 product review.” Only the title includes “LGBTQ.”

20           **c.**       Though the videos consists solely of a monologue about tea by Mr. Ross, he  
 21 says the terms “LGBTQ,” “lesbian,” “gay,” “bisexual,” “transgender,” and “queer.” The use of  
 22 these words in the video content appear to be sufficient to prevent the videos from being viewed  
 23 when “Restricted Mode” is engaged.

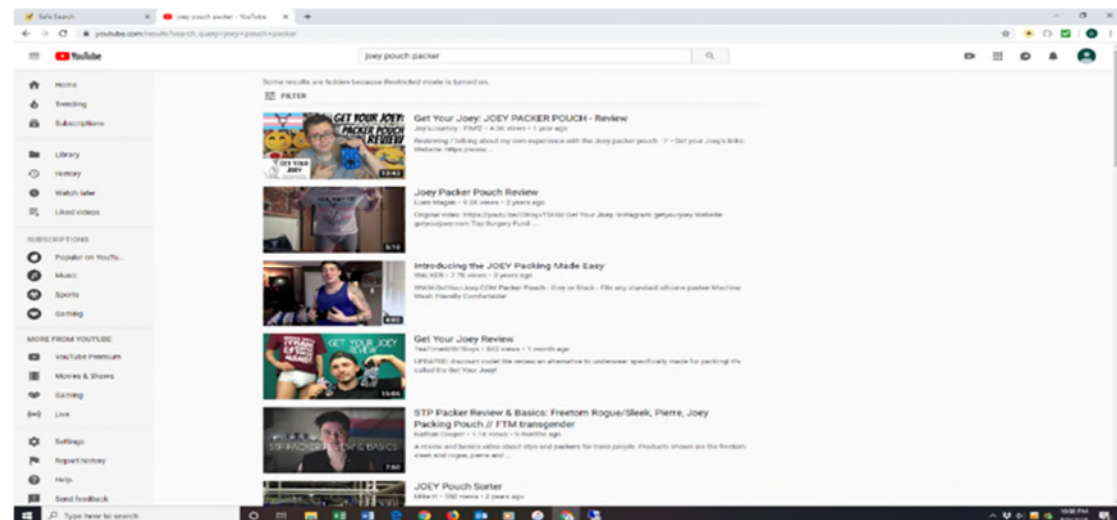
24           202. Mr. Ross produces videos consisting of product reviews intended for a transgender  
 25 audience featuring products which are especially relevant to his audience. Mr. Ross has reviewed a  
 26 number of prosthetic devices created for individuals suffering from gender dysphoria, which  
 27 resemble male genitalia, along with “pouches” used to hold the prosthetics in place against the  
 28

body. These pouches range from simple fabric pockets with strings to tie them into place, to more elaborate underwear styled models with pockets for the prosthetic devices.

a. Defendants routinely censor UppercaseCHASE1's product reviews of "pouches" whether they are simple fabric pouches or more elaborate modified undergarments so that they do not appear in "Restricted Mode." Viewers searching for "UppercaseCHASE1 pouches" with Restricted Mode engaged will see only:



b. Viewers searching for UppercaseCHASE1 pouches" without enabling



"Restricted Mode" will see product reviews which include the entire range of products reviewed by Mr. Ross.

c. Defendants do not censor other transgender pouch product reviews posted by other video creators in the same way. Viewers searching for “Pouch Packers,” with Restricted Mode enabled will see:



Viewers searching for “Pouch Packers” will see the Thumbnail for a DIY pouch packer (which can be viewed using the link <https://www.youtube.com/watch?v=kid7Ull6DgE>), and a Thumbnail for a Joey Pouch Packer (which can be viewed using the link <https://www.youtube.com/watch?v=QtLBCHoBqTs>), each of which includes images of prosthetics and the use of fabric pouches that are similar to those appearing in Mr. Ross’ videos which Defendants routinely censor when Restricted Mode is enabled.

203. Defendants also misapplied YouTube’s age restrictions policy to UppercaseCHASE1’s videos, limiting videos to viewers 18 years of age or over, regardless of the content. While many videos on the channel dealing with product reviews for prosthetics, or frankly discussing sexual issues experienced by transgender individuals, are not suitable for younger audiences, Defendants have applied age restrictions to videos which do nothing more than illustrate a piece of fabric, without context or reference to the function or prospective use.

204. Defendants also censored UppercaseCHASE1’s -related content by removing videos from its platform without explanation and imposing use restrictions on the channel. In one instance, Defendants removed a video which had been uploaded for six years without issue, for which no age restriction had been imposed, and which was fully monetized. Mr. Ross was unable

1 to post new content, livestream or use the account for a month before Defendants addressed his  
 2 complaints. It was only after Mr. Ross took to Twitter complaining about the removal of the video  
 3 that Defendants addressed his complaints. Within two weeks of posting his complaints on Twitter,  
 4 YouTube reinstated the account, released the video, and admitted that it had taken the adverse  
 5 action in error. However, in mid-July of 2019, Defendants again suspended the account merely for  
 6 posting a link to “Gendercat.com” in violation of YouTube’s community guidelines. Again, in  
 7 response to Mr. Ross’ complaints, Defendants admitted they had acted in error and assured Mr.  
 8 Ross that it would not happen again.

9       205. Like other Plaintiffs and members of the Community, UppercaseCHASE1 has been  
 10 the victim of numerous disparaging and hate speech-filled reaction videos which appear when  
 11 viewers search for “UppercaseCHASE1,” videos. These hate speech reaction videos also appear  
 12 in the Defendants’ recommended videos in the “Up Next” application for the UppercaseCHASE1  
 13 channel. Some of the reaction videos appear to be monetized, despite the fact that  
 14 UppercaseCHASE1’s video has been demonetized by Defendants, resulting in hate speech which  
 15 copies the original video of UppercaseCHASE1 generating money, while at the same time,  
 16 Defendants refuse to allow the creator himself from realizing any financial gain from his own  
 17 work.

18       206. As averred above, Mr. Ross and Plaintiffs support the right of Free Speech and  
 19 expression for all YouTube Community Members, but that right does not mean that Defendants get  
 20 to promote anti- hate speech by exempting it from the same content-based restrictions and  
 21 distribution restraints that are used to suppress the rights of the Community to speak back and  
 22 distribute content on a level and equal playing field. And it certainly does not give Defendants  
 23 carte blanche discretion to censor, restrain, demonetize, or otherwise squelch Community content  
 24 and engagement that is compliant with Defendants’ content-based regulations and practices.

25       **D. Brett Somers a/k/a AMP (Watts The Safeword)**

26       207. Plaintiff Brett Somers, also known as AMP, is the creator and owner of Watts The  
 27 Safeword, a YouTube channel dedicated to developing and posting sexual education materials  
 28 which include both traditional and non-traditional practices, as well as discussing events,

1 conventions, and issues relevant to the Community. Mr. Somers has a degree in art design, and is  
2 trained to use video and photographic software applications, as well as to create computer code for  
3 gaming, which he did professionally for a number of years.

4 208. On May 25, 2014, Mr. Somers started the Watts The Safeword channel on  
5 YouTube. A week or two later, he uploaded the first video. Thereafter, on average, Mr. Somers  
6 uploaded a new video on a bi-weekly basis. As of last year, Mr. Somers had uploaded 227 videos  
7 to the Watts The Safeword channel on YouTube; had generated 1.3 million views, and had 193,000  
8 subscribers. Watts The Safeword generated \$5,751.00 in just one month, November 2018.  
9 However, since that highpoint, as a result of Defendants' strategies, Watts The Safeword generates  
10 only \$200-\$300 monthly from YouTube. This Plaintiff's channel no longer is able to generate  
11 30,000 – 40,000 new subscriptions on a regular basis, as it did in 2018. Watts The Safeword's  
12 views have become sporadic, inconsistent, and unpredictable.

13 209. Commencing within the past two years, Defendants harmed, and continue to harm  
14 Watts The Safeword by employing many of the same strategies it has applied to other Plaintiffs and  
15 putative members of the Community Class.

16 210. Defendants have been, and continue to strip Watts The Safeword's custom  
17 Thumbnails from search results for most of its videos. This strategy is not applied based upon the  
18 content of the videos, because Mr. Somers often collaborates with other creators and has seen  
19 collaborative videos posted to the collaborator's channel bearing the custom Thumbnails, while the  
20 identical video posted to Watts The Safeword's channel have had the custom Thumbnails stripped  
21 by Defendants.

22 211. Defendants have, and continue to "demonetize" many of Watts The Safeword's  
23 videos on grounds that they purportedly fail to comply with community standards, and have refused  
24 to reverse their decisions despite Mr. Somers's appeals and repeated requests for more guidance  
25 regarding the basis of their decisions to demonetize specific videos.

26 212. Defendants indiscriminately use their "Restricted Mode" filters and limitations and  
27 place nearly all of Watts The Safeword's videos into that viewer restraint. Defendants do this for  
28 arbitrary, capricious, discriminatory anticompetitive, and other unlawful reasons by restricting Mr.

1 Somers' videos regardless of whether the actual content violates Defendants' Community  
 2 Guidelines or other content-based regulations or standards. For example, videos consisting of Mr.  
 3 Somers discussing his experience traveling to events, festivals or conventions have been restricted  
 4 and do not appear in searches performed in "Restricted Mode," despite the absence of any content  
 5 involving sexually explicit, practices, or activities. Like the other Plaintiffs, Mr. Somers Watts The  
 6 Safeword's videos are restricted regardless of content merely because Mr. Somers' expresses  
 7 viewpoints, discusses topics, or affiliates with the members of the Community. In August 2019,  
 8 Defendants restricted videos of Mr. Somers doing nothing more than drinking tea and  
 9 recommending tea for self-care, while leaving unrestricted countless videos posted by other  
 10 YouTube creators doing the very same thing.

11 213. Defendants also misapplied age restrictions to Watts The Safeword's videos,  
 12 limiting videos to viewers 18 years of age or over, regardless of the actual content of the video.  
 13 While many videos on the channel dealing with sex and include graphic sexual images are not  
 14 suitable for younger audiences, Defendants have applied age restrictions as a one-size-fits-all,  
 15 eschewing their contractual and legal obligations to review the content of each and every video so  
 16 that travel videos about public events and issues, festivals and conventions are not stigmatized and  
 17 restricted as inappropriate merely because they discuss or mention LGBTQ+ persons or topics.

18 214. Google/YouTube's censorship tools treat videos, like those posted by Watts The  
 19 Safeword more harshly, resulting in its videos generating far fewer views than similar videos  
 20 posted by creators who Defendants do not classify as LGBTQ+ or the "gay thing." As a result of  
 21 the more stringent censorship applied to members of the LGBTQ+ Community, videos posted by  
 22 Watts The Safeword generate far less revenue than those videos posted by creators who Defendants  
 23 do not classify as LGBTQ+ to restrict or block a user's content or access to YouTube or their  
 24 preferred creators who they exempt from their content curation review, restrictions, and blocking  
 25 tools and protocols.

<b>Plaintiff's video</b>	<b>YouTube Status</b>	<b>Comparable videos</b>	<b>You Tube Status</b>
"Kinky Wish Shopping Haul," posted September 2018; generated 1.3 million views <a href="https://www.youtube.com/watch?">https://www.youtube.com/watch?</a>	Age Restricted; Limited Monetization	"Fiance Rates My Very Extra Wish Clothing," posted March 2019; generated 1.5 million views <a href="https://www.youtube.com/watch?v=S8k">https://www.youtube.com/watch?v=S8k</a>	Unrestricted; Limited Monetization;



1	v=Ppk9Ms1SfIE&t=134s		w9t7qf6c "Mini Dress Try On," posted October 2018; generated 3.5 million views https://www.youtube.com/watch?v=Xgw4qHFwffl	Unrestricted; Limited Monetization
2				
3				
4	"Kinky Wish Shopping Haul 2" posted April 2019; generated 305,000 views; https://www.youtube.com/watch?v=8c9oXDCDuYc&t=728s	Age Restricted; Limited Monetization	"Trying on Bikinis from Wish Under \$10," posted August 2019; generated 891,000 views https://www.youtube.com/watch?v=S7Ro5MallFc	Unrestricted; Full Monetization
5				
6				
7				
8	"Mermaid Tie," posted October 2019 featuring a how to tie legs together; generated 27,474 views https://www.youtube.com/watch?v=QZDGgaAghR4&t=10s	Age Restricted on the day after it was posted; Demonetized without explanation despite YouTube representatives having stated that the video was monetized after conducting a manual review.	https://www.youtube.com/watch?v=6l-JuZx0070	Unrestricted; Full Monetization
9				
10				
11				
12				
13	"Wish Halloween Try On Haul," posted October 2019; generated 30,014 views https://www.youtube.com/watch?v=9ZuwMlgtlmk	Not Age Restricted; Restricted Mode; Limited Monetization	"AMI Clubwear Sexy Halloween Costume Try On Haul," posted October 2018; generated 1.2 million views https://www.youtube.com/watch?v=1CNei4QdACE&t=224s	Not Age Restricted; Full Monetization
14				
15				
16	<b>Plaintiff's video</b>	<b>YouTube Status</b>	<b>Comparable videos</b>	<b>You Tube Status</b>
17			"Boyfriend Reacts to my Halloween Costumes," posted October 2019 by a creator whose channel describes her as a 15 year old; generated 782,000 views https://www.youtube.com/watch?v=XQsiqXLGOJQ&t=1s	Not Age Restricted; Full Monetization
18				
19				
20			"Boyfriend and his Friends Rater my Halloween Costumes," posted October 2019 by a creator whose channel describes her as a 15 year old; generated 394,000 views https://www.youtube.com/watch?v=UWiFTAINq0	Not Age Restricted; Full Monetization
21				
22				
23				
24			"New Hot Halloween Costume Try-On Haul," posted October 2019; generated 169,000 views https://www.youtube.com/watch?v=vFRW9vahDS0	Not Age Restricted; Full Monetization
25				
26				

215. Defendants have also engaged in outright censorship of Watts The Safeword's -  
 28 related content by removing videos from its platform without explanation and imposing age

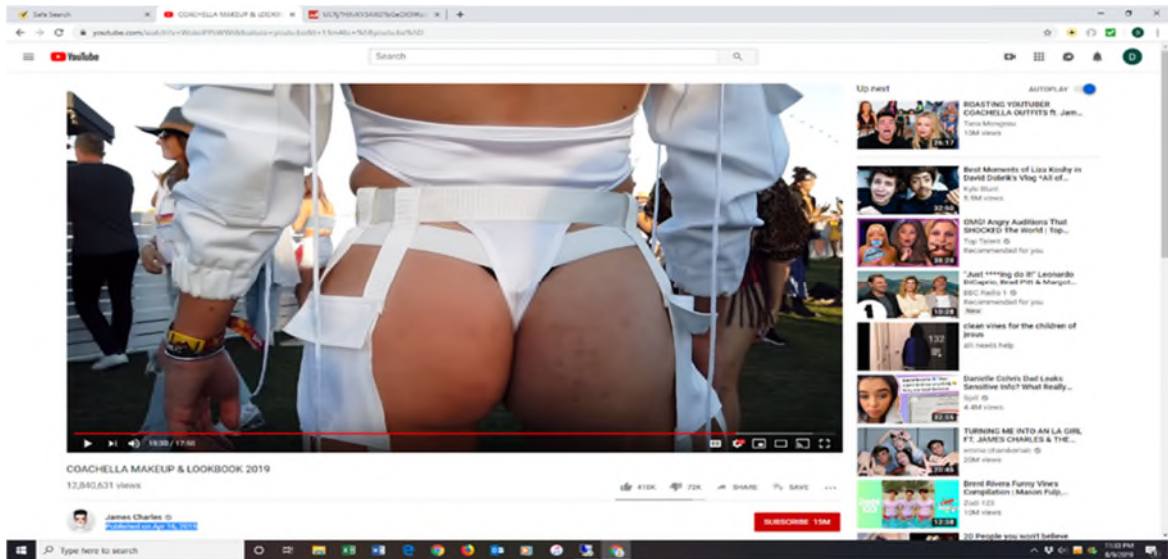


1 restrictions on the channel without regard to the content of the video uploaded. In one instance,  
2 Defendants imposed age restrictions on Watts The Safeword's video featuring Mr. Somers talking  
3 about traveling to a convention while seated in a car. The video contains no sexual graphics or  
4 content at all. But Defendants did not restrict videos of the actual convention, featuring sex toys  
5 and other sexual content when posted by other creators, that were fully monetized for profit by  
6 Defendants.

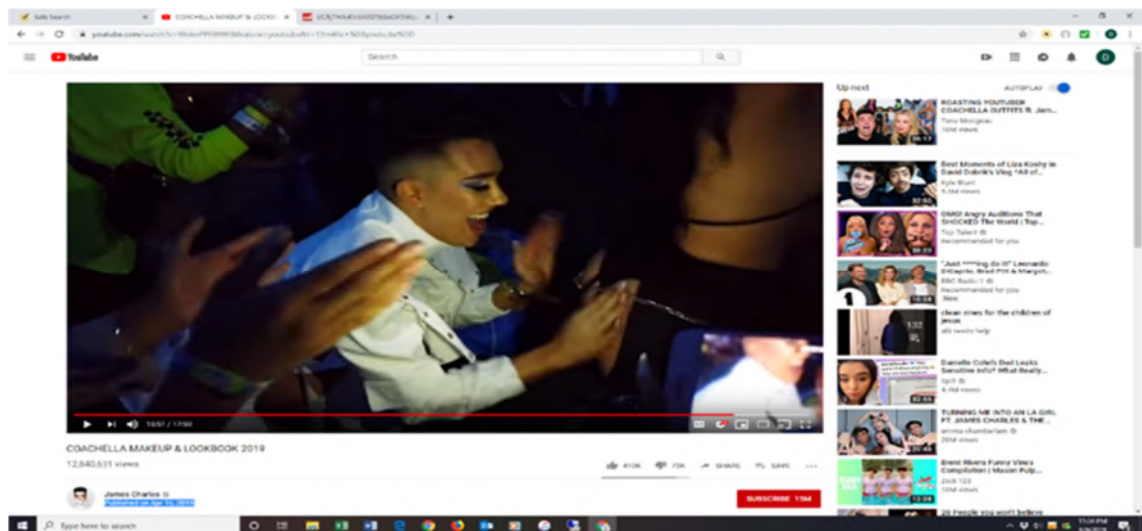
7       216. Even when Defendants allow Watts The Safeword's videos to remain on the  
8 platform, Google/YouTube prevent those videos from appearing in response to searches performed  
9 by both subscribers and the public at large. And like other Plaintiffs, Mr. Somers has received  
10 comments and tweets on the Twitter platform from viewers who have been unable to find content  
11 uploaded by Watts The Safeword using the Defendants' search application.

12       217. Defendants continue to restrain the innocuous travel videos of Watts The Safeword  
13 under its Restricted Mode, age restrictions, and demonetization rules and practices, while allowing  
14 objectively and sexually explicit content that Google/YouTube sponsor and/or profit from, to run  
15 unrestricted on the YouTube Platform. For example, Defendants apply the Restricted Mode filter  
16 to Watts The Safeword's video depicting rubber garments, where no bare buttocks are exposed at  
17 all. Nonetheless, Defendants sponsor and monetize explicit and sexualized video content depicting  
18 bare buttocks, without any restrictions on a YouTube channel known as the James Charles  
19 Channel. The James Charles content depicts a sexually ambiguous young man who creates and  
20 uploads videos demonstrating female-styled make-up techniques, nail care demonstrations, and  
21 recommendations for make-up and personal care products. One recent video even features Mr.  
22 Charles at the Coachella Music Festival, acting as a "make-up guru." Mr. Charles is wearing a  
23 white G-string and chaps which cover his genitals but expose his bare buttocks.

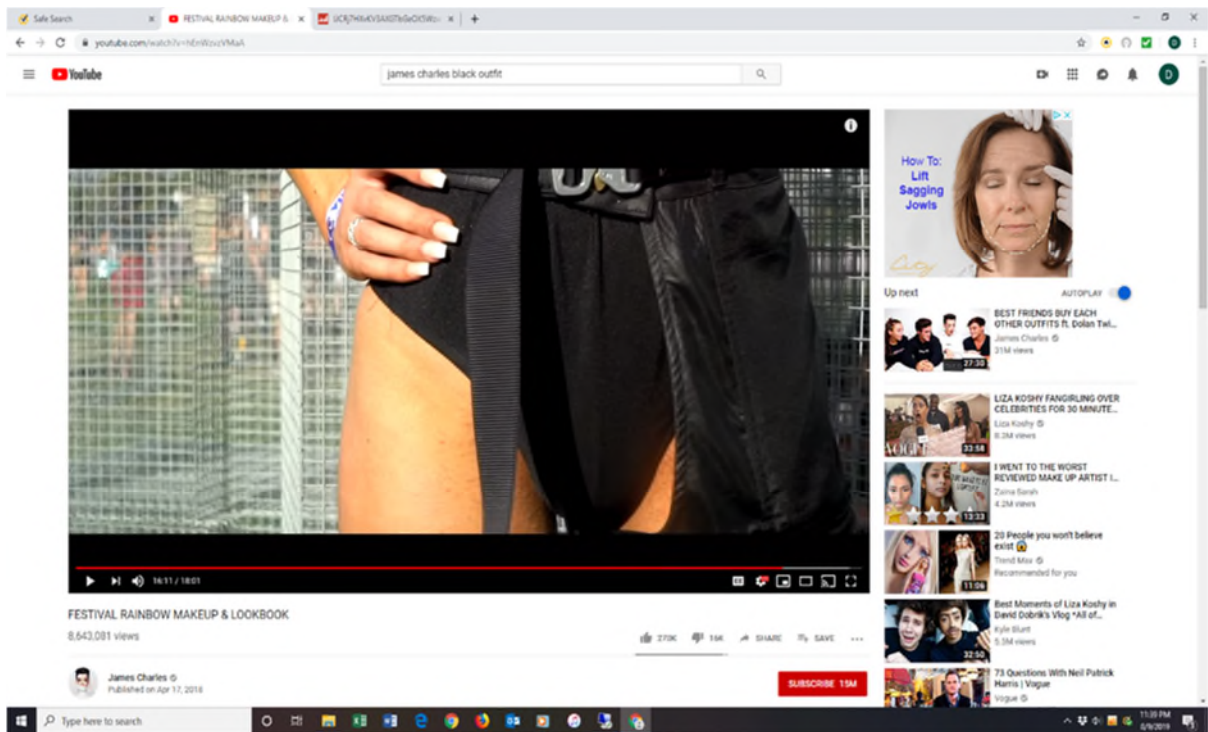
24  
25  
26  
27  
28



The video also depicts Mr. Charles spanking the bare buttocks of another other festival attendee, who is wearing a similar G-string and chaps in black.



1 A second video from the Coachella Music Festival depicts Mr. Charles wearing a black G-string  
 2 with pubic hairs visible.



15 While Plaintiffs take no issue and offer no view as to whether Defendants should or can regulate  
 16 Mr. Charles' content, what Defendants cannot do is use their unfettered and absolute discretion to  
 17 apply purportedly neutral viewpoint regulations that apply equally all users of YouTube as a  
 18 discriminatory, fraudulent, anticompetitive, and unlawful pretext to promote content of  
 19 Google/YouTube sponsors and restrict and harm that of its competitor, Mr. Somers.

#### 20 **E. Lindsay Amer (Queer Kid Stuff)**

21 218. Plaintiff Lindsay Amer is the creator and owner of Queer Kid Stuff, a YouTube  
 22 educational channel created to serve as a support for parents, children between the ages of 3 and 17,  
 23 who have questions or face bullying because they are perceived to identify as or are LGBTQ+, and  
 24 librarians and educators seeking assistance with respect to how to field questions about issues and  
 25 support children affected by LGBTQ+ animus, bias, prejudice, hate speech, discrimination, or  
 26 violence.

1           219. Mx. Amer has an undergraduate degree in gender studies and theater; and a graduate  
2 degree in performance studies.

3           220. In 2015, they created the Queer Kid Stuff channel as a vehicle to upload their  
4 original video content. On May 10, 2016, Mx. Amer uploaded the first Queer Kid Stuff education  
5 video. Initially, the video was shared and received roughly 2,000 views without negative  
6 comments or reaction videos. Within months of the uploading of the first video, the Huffington  
7 Post published a favorable article discussing the video.

8           221. On June 23, 2016, The Daily Stormer, a Neo Nazi website on that appears on  
9 Defendant Google's search engine site published a commentary by Andrew Anglin entitled, "Sick  
10 Dyke Creates Educational Program to Brainwash Children Into the Homosexual Lifestyle," which  
11 quotes from the Huffington Post article, and bashes both Queer Kid Stuff and Mx. Amer:

12                   "Lindsey Amer is a twisted lesbo who is obsessed with  
13 psychologically abusing children, and has created an entire  
14 'educational' program to teach children to become homosexual  
15 perverts. . . . [Homos] are always pushing for the ability to recruit  
16 younger and younger victims into their sex-cult, and now, our  
17 jewed-out society has reached the point where we are ready to show  
18 their recruitment propaganda to pre-schoolers – in order to prove  
19 we're not haters, of course. . . . Please visit this creature on Twitter  
20 and let her know what you think of her plot. . . . Oh, and ask her if  
21 she's Jewish." A Anglin, Daily Stormer, June 23, 2016.

22           The article included a link to the Queer Kid Stuff Twitter account and Mx. Amer's personal  
23 profile.

24           222. The Daily Stormer commentary generated an avalanche of hate speech directed at  
25 Mx. Amer and the Queer Kid Stuff channel. The hate speech involved vicious and obscene anti-  
26 Semitic, misogynist, and homophobic content, as well as other obscene material, and culminated in  
27 a death threat against Mx. Amer. Defendants permitted all of that hate speech to appear directly in  
28 the comment section of Mx. Amer's Queer Kid Stuff channel. And although Defendant Google  
finally removed The Daily Stormer from their platform in the fall of 2017, the hate speech directed  
at Mx. Amer continued unabated on the channel.

29           223. As with the other Plaintiffs in this case, Mx. Amer supports the right of all to  
express their viewpoints in a civil and protected manner. But Mx. Amer, and the other Plaintiffs

1 take serious issue with Defendants systematic efforts to restrain or financially harm Mx. Amer's  
 2 content and their ability to defend and protect themselves on a platform that promises to treat  
 3 everyone equally. That is not the case here, because Defendants selectively apply their content-  
 4 based regulations and filtering to promote and profit from homophobic hatemongers who are  
 5 allowed to inundate Mx. Amer and other channels when their content directly and objectively  
 6 violates Defendants content-based rules that they claim exist only to "keep the platform safe" for  
 7 all of the YouTube Community, including Mx. Amer and the other members of that Community.

8       224. On September 14, 2016, four months after Mx. Amer uploaded the first video to the  
 9 Queer Kid Stuff channel, they uploaded the second video. The four month delay between the first  
 10 and second video was the direct result of the fear and chilling affect that the hate speech allowed  
 11 and/or promoted by Defendants had on Mx. Amer. Mx. Amer was, and continues to be unable to  
 12 remove that hate speech using Defendants' available filter tool. Repeated attempts to handle the  
 13 tidal waves of hate speech that Defendants continue to allow to be directed at the Queer Kid Stuff  
 14 channel has also interfered with Mx. Amer's ability to reach and engage with their intended  
 15 audience.

16       225. In total, Queer Kid Stuff published 12 new videos between September 14, 2016 and  
 17 January 27, 2017. With the uploading of each new video, a new wave of hate speech filled the  
 18 comments section of the channel. For every positive comment that appeared, dozens of hate-filled  
 19 comments appeared and pushed the positive comment down the queue so that viewers would only  
 20 see hate-filled comments when they watched Queer Kid Stuff content.

21       226. Despite repeated complaints to Defendants about the hate speech comments, and  
 22 after devoting considerable efforts to reconfigure the Defendants' filters to screen them, a number  
 23 of members of Queer Kid Stuff's intended audience, including parents, wrote to Mx. Amer  
 24 complaining about the obscene hateful comments posted on the Queer Kid Stuff channel and  
 25 informing Mx. Amer, that despite their approval of the intended content on the channel, these  
 26 parents could not share the quality videos with their children, because it would expose the children  
 27 to content which they deemed harmful and injurious. One parent wrote:

28               "T'm really glad that I ran into your channel today, as I found the



1 videos to be easy enough for my 5 year old to enjoy and understand  
 2 the content. This really is a godsend for me, a trans demi girl who  
 3 has major problems with panic attacks just trying to address the  
 4 subject with them.

5 The only thing that I wish would get addressed with your channel would be doing  
 6 something with the comments section. While it's great that there are some positive  
 7 encouragement from some viewers, others turn it into a dumpster fire dipped in  
 8 cancer. I'm glad that my child can't read well enough to understand the comments,  
 9 but I think other children will inherently get exposed to transphobic, ableist, and  
 10 queerphobic nonsense that may undermine the positive message of the videos."

11 Another parent wrote:

12 "My 7 year old son (who self-identifies as queer) is home from school today. . . We  
 13 love your channel . . . I wanted to reach out because even though we watch your  
 14 videos, I have a strict policy against reading YouTube comments. YouTube  
 15 suggested a bunch of hateful anti-queer videos in response to our watching yours,  
 16 and as I went through the list to tell YouTube I am not interested in any of these, I  
 17 ended up reading some of the comments. How disheartening. Talk about  
 18 homophobia. I am literally crying right now at some of these and am quite glad my  
 19 son is in the other room, since I'm not sure I'm emotionally up to explain it to him  
 20 right now. . . ."

21 227. Because Defendants failed to regulate or filter the hate speech directed to the Queer  
 22 Kid Stuff channel between 2016 and 2018, Mx. Amer was forced to disable the comments section  
 23 to the channel in the fall of 2018 and to forego the ability to fully engage with and reach Queer Kid  
 24 Stuff's intended audience with its content. In the process, however, Mx. Amer noticed the  
 25 hatemongers had started to upload and copy portions of or entire Queer Kid Stuff videos that they  
 26 then displayed on the platform with disparaging, obscene, and hateful content, including fake  
 27 voiceovers, or with the commentator inserted into a frame in the corner of the Queer Kid Stuff  
 28 videos. Most of the reaction videos include links to the Queer Kid Stuff channel which acted as an  
 29 amplifier for generating hate speech comments.

30 228. The obscene, hate speech filled reaction videos, many of which were spawned by  
 31 The Daily Stormer article, also appear in searches for Queer Kid Stuff on YouTube, and appear in  
 32 "Up Next," recommendations on the screen whenever viewers watched Queer Kid Stuff videos,  
 33 thereby exposing parents and children to inappropriate hurtful material. Mx. Amer repeatedly  
 34 complained to Google/YouTube about the hate speech reaction videos which appear in the  
 35 recommended "Up Next" material, and in the search results for "Queer Kid Stuff," but Defendants  
 36 refused to subject that content to their Community Guidelines and other speech regulations, or to

1 prevent reaction video creators from posting links to the Queer Kid Stuff channel on the reaction  
2 videos.

3 229. Despite extended discussions with Google/YouTube representatives, who assured  
4 Mx. Amer that Queer Kid Stuff would be eligible for uploading to the new YouTube Kids channel,  
5 Queer Kid Stuff remains excluded from that children's programming venue.

6 230. In all, Queer Kid Stuff has uploaded more than 100 videos, of which Defendants  
7 have only allowed 94 to remain accessible to viewers; the channel has more than two million views  
8 and more than 15,000 subscribers. Queer Kid Stuff's growth has been substantially stymied by  
9 Defendants' selected, discriminatory, anticompetitive and unlawful use of its content regulation and  
10 monetization policies and practices, and has generated less than \$500 per year. Defendants should  
11 be ashamed of themselves for promising consumers that the same rules apply equally to everyone  
12 and then singling out Plaintiffs, like Mx. Amer, and the greater LGBTQ+ Community for content  
13 and monetization violations while promoting and profiting from homophobic hate speech that  
14 threatens violence and goes unregulated on the YouTube Platform.

15 **F. Stephanie Frosch (ElloSteph, ElloStephExtras and StephFrosch)**

16 231. Plaintiff Stephanie Frosch is the creator and owner of ElloSteph, ElloStephExtras  
17 and StephFrosch, YouTube channels dedicated to developing and uploading video content for the  
18 LGBTQ+ Community. Ms. Frosch is an LGBTQ internet activist who has appeared as a speaker at  
19 conventions, and she has been interviewed on MTV and the main stream media regarding her  
20 YouTube experience and treatment at the hands of YouTube. Beginning on October 5, 2009, Ms.  
21 Frosch has been creating and uploading original videos to her YouTube channels. In 2009, Ms.  
22 Frosch earned approximately \$23,000 from ad revenue generated by her channels. In addition, she  
23 earned money from the sale of merchandise and from separate brand sponsorship agreements  
24 connected with videos posted on her channels. As of today, she has created and uploaded 189  
25 different videos for audiences 13 years and older. ElloSteph has 376,000 subscribers and 36.5  
26 million views. ElloStephExtras has an additional 6,980 subscribers and an additional 134,858  
27 views. She also operates a merchandise store at [www.districtlines.com/ellosteph](http://www.districtlines.com/ellosteph).



232. ElloSteph proved to be a popular and very successful YouTuber channel until 2017 when Google/YouTube employed many of the same strategies they have applied to other Plaintiffs and putative members of the Community Class.

a. Many of Ms. Frosch's videos are not available when Restricted Mode is activated, regardless of whether the video itself contains no nudity, profanity, sexual conduct, or discussions of sexual activities. Despite the fact that Ms. Frosch's videos are not viewable when Restricted Mode is activated, some of those same videos were copied by other YouTubers and posted on their channels, where they can be viewed when Restricted Mode is activated.

b. Many of Ms. Frosch's videos are not fully monetized despite the fact that they do not include graphic images of violence or sexuality, include no nudity, profanity, sexual conduct, or discussions of sexual activities.

c. Google/YouTube has removed many of the customized Thumbnail images Ms. Frosch crafted for each of her videos uploaded to her channels. For example the customized Thumbnail images were removed for (1.) "A Gay Cooking Show With My Girlfriend;" (2.) "Day in the Life;" (3.) "Coming Out (Again);" (4.) "Life in Transit;" (5) "Teaching Kids How to Be Gay!;" (6.) "The Greatest Day of My Young Life;" (7.) "I got a Secret Package in the Mail;" and (8.) "Why I left YouTube/The Future of my Channel."

d. Hate speech, including obscene, violent, or threatening language regularly appear in the comments sections of Ms. Frosch's videos.

e. YouTube has allowed other creators to copy Ms. Frosch's video content and pays those creators revenue for their posting of Ms. Frosch's video content.

f. Commencing in late 2017, Google/YouTube started to remove longtime subscribers to ElloSteph and ElloStephExtras. Subscribers communicating with Ms. Frosch on other social media platforms complained that their subscriptions had been dropped, and though they attempted to re-subscribe to Ms. Frosch's channels, they could not do so. The dropped subscribers no longer received new video notifications, and were not aware when Ms. Frosch posted new videos. As a result of Defendants' practice, Ms. Frosch has lost many longstanding subscribers who have been unable to re-subscribe to these channels and must search for Ms.

1 Frosch's channels and review the long list of her videos in order to identify new content.  
2 YouTube has made it harder for these viewers to find Ms. Frosch's new videos resulting in  
3 diminished viewing numbers for new content.

4       233. In 2017, Ms. Frosch was one of a group of the creators who approached  
5 Google/YouTube and complained about how Google/YouTube's recent changes to the algorithm  
6 had disproportionately affected the LGBTQ+ YouTube creators and viewers. In order to  
7 participate in direct discussions with Google/YouTube regarding the nature of the problems being  
8 experienced, and possible solutions, Google/YouTube required Ms. Frosch to sign a Non-  
9 Disclosure Agreement which prevents her from disclosing what Google/YouTube said during those  
10 discussions. MTV interviewed Ms. Frosch regarding the Defendants' discrimination and other  
11 problems that LGBTQ+ YouTubers face on the platform. ElloSteph is active on Twitter, Tumblr,  
12 Facebook, and Instagram.

13       234. Despite having made her best efforts to work with Google/YouTube to resolve the  
14 algorithm related issues with Google/YouTube, Ms. Frosch was unable to resolve any of those  
15 issues. Commencing in 2017, to avoid the censorship and filtering tools, Ms. Frosch engaged in  
16 self-censoring and avoided using LGBTQ+ related terms in the titles, descriptions and tags for her  
17 videos.

18       235. The situation deteriorated further in 2018. A large number of existing subscribers to  
19 ElloSteph and ElloStephExtras, who for years had been automatically receiving notices from  
20 YouTube when new video content was posted to the channels, stopped receiving notices from  
21 YouTube. For a period of years, YouTube automatically sent new video notices to all of the  
22 subscribers of YouTube channels. Neither Ms. Frosch, nor the subscribers to her channels,  
23 received any notice from YouTube regarding the cessation of new video notices for existing  
24 subscribers, nor the need for new subscribers to affirmatively request that new video notices be sent  
25 to them. YouTube's cessation of sending new video notices to existing subscribers has forced  
26 existing subscribers to regularly check Ms. Frosch's channels to identify new content. Here too,  
27 YouTube has made it harder for Ms. Frosch's longstanding subscribers to locate and view new  
28 videos on the channels resulting in diminished viewing numbers for new content.

236. Because of Google/YouTube's conduct censoring and restricting access to ElloSteph's videos, and demonetizing large numbers of posted videos, the channel ad revenues fell to \$12,000 in 2016; \$5,000 in 2017, \$3,500 in 2018 and \$1,800 to date in 2019. Ms. Frosch has lost revenue from merchandise sales and from brand contracts which are tied to the channel. In 2019, she had to work twice as hard to fulfill her brand contracts because of falling views for videos posted to the channel. Recently, Ms. Frosch was forced to "make good" by creating and posting a second video to fulfill her Audible contract because the 7,500 views generated by the first video fell far short of the required 50,000 views.

237. Such falling revenues and doubling workloads for sponsored brands have forced Ms. Frosch to stop working as a fulltime YouTube creator, and to obtain other full time employment elsewhere. On February 3, 2018, Ms. Frosch created and posted a video explaining her reasons reducing her commitment to YouTube <https://www.youtube.com/watch?v=wCIG3AoF12g>. Defendants are effectively pushing Ms. Frosch from the platform. Defendants' censorship, filtering and practices have decimated Ms. Frosch's revenues and caused harm to her and her brand.

**G. Sal Cinquemani (SalBardo)**

238. Plaintiff Sal Cinquemani owns and operates salbardo.com. He is an independent film maker who writes, directs and produces films about LGBTQ+ experiences and persons for audiences under the name "Sal Bardo." Mr. Cinquemani is an award-winning writer-director. Mr. Cinquemani's movies and music videos often tackle issues affecting the LGBTQ+ communities. Since March 27, 2011, Mr. Cinquemani has operated the YouTube channel [youtube.com/user/salbardo](https://www.youtube.com/user/salbardo), uploading videos consisting of original short films, film trailers, interviews of actors, and out-takes from films for purposes of promoting his independent films. The Sal Bardo YouTube channel has approximately 38,000 subscribers and 24.1 million views.

a. His video, "It Gets Better," was posted July 11, 2011. The video was created as part of the fundraising campaign for the production of "Sam." The video relates Mr. Cinquemani's experience coming out as a gay man, and features him talking to the camera. The video was intended to support gay children, and features a photo of two men kissing which appeared on the television show "Will and Grace." The video does not depict anything with

1 graphic violence, graphic sexual content, nudity, profanity, or discussion of detailed sexual nature.  
 2 Commencing in early 2017, Google/YouTube applied the Restricted Mode to “It Gets Better,” so  
 3 that it cannot be viewed by the children it was intended to support. “It Gets Better,” remains  
 4 inaccessible in Restricted Mode to this day.

5           **b.**       His movie “Sam,” which debuted in 2013, is a short film about a child  
 6 confronting issues of gender identity and LGBTQ bullying. “Sam” depicts no profanity, no  
 7 graphic violence, no sexual conduct, nor discussions of sexual conduct. “Sam” has generated 7.3  
 8 million views on YouTube. “Sam,” has been screened in classrooms by teachers of middle school  
 9 and high school students throughout the United States.

10           **c.**       His music video “Paper Ring – Great Escape,” debuted in 2015 and depicts  
 11 an elderly woman leaving her husband for a woman she had met decades earlier. “Paper Ring –  
 12 Great Escape,” has generated 53,000 views on YouTube.

13           **d.**       His movie, “Pink Moon” is a gay short film which debuted in 2015, has  
 14 15.4 million views on YouTube.

15           239.     Since March 27, 2011, Mr. Cinquemani has operated the YouTube channel  
 16 youtube.com/user/salbardo, principally as a promotional tool for his independent films -- uploading  
 17 videos consisting of film trailers, interviews of actors, and out-takes from films. Mr. Cinquemani,  
 18 using the name Sal Bardo, is active on Twitter, Vimeo and Facebook.

19           240.     The Sal Bardo YouTube channel proved to be successful and popular between 2011  
 20 and 2016. The channel has approximately 38,000 subscribers and has generated a total of 24.1  
 21 million views on YouTube. Despite its enormous popularity given the relatively modest number of  
 22 videos posted on the channel, in 2017 the SalBardo YouTube channel began to suffer from the  
 23 same censorship which plagued other LGBTQ+ YouTube creators and users.

24           241.     Commencing in 2017, Mr. Cinquemani noticed that YouTube had made all but one  
 25 of the videos uploaded to the SalBardo YouTube channel unavailable when Restricted Mode was  
 26 activated. Google/YouTube made “Sam,” and videos like the “The Sam Trailer” and the  
 27 “Welcome” video inaccessible under Restricted Mode. In March 2017, Mr. Cinquemani contacted  
 28 YouTube and asked why his videos, which were specifically directed to LGBTQ youth audiences,

1 had been made inaccessible under Restricted Mode. YouTube's representative agreed to look into  
2 the matter.

3       242. In July 2017, Mr. Cinquemani's video "Requited Trailer," which had been posted on  
4 the SalBardo channel since 2011 was flagged and removed from the channel by YouTube  
5 purportedly for violating YouTube's community standards. Mr. Cinquemani appealed the decision,  
6 and "Requited Trailer" was reinstated to the SalBardo channel within a week.

7       243. Commencing in October 2017, "Sam," which had been generating an average of  
8 4,000 views per day started generating only 30 views per day.

9       244. By December 2017, most of Mr. Cinquemani's videos remained inaccessible in  
10 "Restricted Mode; moreover, YouTube had deemed the videos, including "Sam," to be "not  
11 suitable for most advertisers," rendering the videos demonetized. When Mr. Cinquemani contacted  
12 YouTube's representative, she informed him that the reduced views generated by "Sam" was likely  
13 caused by YouTube's new policy to deter child predators from posting/viewing/engaging with  
14 videos that depict children. "Sam" was being shadow banned; the video no longer appeared as a  
15 video on the SalBardo channel, in response to searches by title or subject, and if viewers could find  
16 "Sam" on YouTube, the comments application had been disabled so that viewers could no longer  
17 make comments which might generate additional views. Mr. Cinquemani explained that the videos  
18 which had been demonetized did not involve materials that would appeal to child abusers, but were  
19 sensitive treatments of issues facing members of the LGBTQ community. YouTube's  
20 representative agreed to look further into the demonetization of the SalBardo videos.

21       245. Between July 2017 and January 2018, SalBardo generated no revenues whatsoever,  
22 and nearly all of the channel's videos remained inaccessible when Restricted Mode was activated.  
23 Unable to persuade YouTube to change its treatment of the videos or to remonetize them, Mr.  
24 Cinquemani wrote an article discussing issues affecting YouTube's LGBTQ creators. The article  
25 was published in the Huffington Post on January 17, 2018,

26 [https://www.huffpost.com/entry/youtube-continues-to-restrict-lgbtq-content b](https://www.huffpost.com/entry/youtube-continues-to-restrict-lgbtq-content-b5a5e6628e4b03ed177016e90)  
27 [5a5e6628e4b03ed177016e90](https://www.huffpost.com/entry/youtube-continues-to-restrict-lgbtq-content-b5a5e6628e4b03ed177016e90).

1           246. Two days after the Huffington Post published the article, YouTube’s representative  
 2 informed Mr. Cinquemani that “Sam” had been restored to the SalBardo channel, and was  
 3 searchable; but that YouTube was having technical difficulties remonetizing the video. As a result  
 4 of the application of Restricted Mode filters and the shadow ban, the views for “Sam” never  
 5 recovered to the levels they were before October 2017 when YouTube censored the video.  
 6 YouTube did not remonetize “Sam” until February of 2018.

7           247. Late in January 2018, Google/YouTube notified Mr. Cinquemani that his videos  
 8 “Chaser Trailer,” and “Pink Moon Trailer” had finally been reviewed by YouTube and deemed  
 9 “not suitable for most advertisers.” Both videos contain content which is similar to other fully  
 10 monetized videos on other YouTube channels.

11           248. In early 2018, YouTube briefly reversed its application of Restricted Mode to most  
 12 of the SalBardo videos, except for the “Chaser Trailer” and “Pink Moon Trailer.” [By late 2019,  
 13 those videos were again inaccessible under Restricted Mode.] However, the channel’s videos  
 14 remained demonetized. YouTube’s representative was unable to explain why the videos remained  
 15 demonetized. Where Google/YouTube has applied the Restricted Mode filter to “Chaser Trailer,”  
 16 and demonetized the video, Google/YouTube has fully monetized several versions of the “Fifty  
 17 Shades Darker Trailer” which include highly sexualized scenes.

18           249. By April 2018, YouTube had again notified Mr. Cinquemani that a number of the  
 19 SalBardo videos, including “Sam,” were deemed “not suitable for most advertisers.” Eventually  
 20 some of the videos were remonetized. However, “Pink Moon Trailer,” which has been under  
 21 YouTube review since January 2018, remains “under review,” and demonetized. However,  
 22 Google/YouTube has fully monetized the “I, Tonya Trailer, which though is subject to Restricted  
 23 Mode, is fully monetized. the “I, Tonya Trailer,” contains scenes with graphic violence, profanity  
 24 and a derogatory LBGT epithet.

25           250. On May 16, 2018, the SalBardo video “Gay short film – Pink Moon” which had  
 26 generated on averaged 15,000 views per day, suddenly stopped generating views. The number of  
 27 daily views generated for this video dropped from an all-time high exceeding 50,000 views per day  
 28 to just several hundred views per day. YouTube had shadow banned this film, and it no longer was

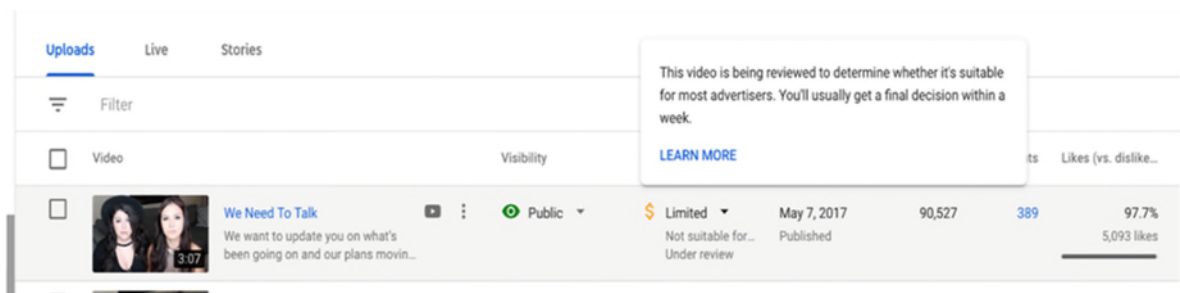
1 appearing in search results, appearing in the “Up Next” or recommended videos which appear  
2 when SalBardo videos or similar videos were played.

3 251. By late December 2018, “Gay short film – Pink Moon” remained subject to a  
4 shadow ban, but was generating 1,500 views per day – one-tenth of what it was generating seven  
5 months before YouTube’s censorship. Sometime in 2019, YouTube lifted the shadow ban, but the  
6 video has generated a fraction of the views that would have generated had YouTube not censored  
7 it.

8 252. On September 16, 2019, YouTube demonetized the entire SalBardo channel and  
9 sent him this notice:

10 During a recent review, our team of policy specialists carefully looked over the  
11 videos you’ve uploaded to your channel Sal Bardo. we found that a significant  
12 portion of your channel is not in line with our YouTube Partner Program Policies.  
13 **As of today, your channel is not eligible to monetize and you will not have  
14 access to monetization tools and features. Please go to your monetization page  
15 to read more about the specific policy our specialists flagged.**

16 We know this is tough news, and sometimes we have to make difficult decisions.  
17 we have a responsibility to ensure our community is safe for creators, viewers and  
18 advertisers. At the same time, we understand that you may have unintentionally  
19 made mistakes. **That’s why you’ll be able to reapply for the YouTube Partner  
20 Program in 30 days.** This 30-day time period allows you to make changes to  
21 your channel to make sure it’s in line with our policies.



22 Mr. Cinquemani appealed the decision at the first opportunity, after YouTube required him to wait  
23 30 days. On October 19, 2019, the channel was remonetized following his appeal, despite the fact  
24 that Mr. Cinquemani had not removed or altered any of the video content on the channel. The  
25 demonetization caused the SalBardo channel to lose one full month of revenues.

26 253. As a direct result of YouTube’s repeated and improper application of Restricted  
27 Mode filters, demonetization and shadow bans, revenue generated by the SalBardo channel has  
28



1 dropped from \$200 per month in 2016, to \$40 per month in 2019, with some months earning  
2 absolute nothing at all because the entire channel was demonetized.

3 **H. Tamara Johnson (SVTV Network)**

4 254. Plaintiff Tamara (Sheri) Johnson owns and is the CEO of SVTV Network.com.  
5 Since May 30, 2012, she has operated the YouTube channel StudvilleTV. This channel was  
6 renamed in 2016 to SVTV Network. At that time, SVTV Network had uploaded approximately  
7 300 original videos. By 2016, the channel had generated more than 5 million views. The SVTV  
8 Network YouTube channel is devoted to writing, developing, taping and producing short videos,  
9 original web series, animated series and feature length films for the LGBTQ audience 13 years of  
10 age and older. The original videos uploaded to the channel do not include scenes of graphic  
11 violence, graphic sexual conduct, nudity, or detailed descriptions of sexual conduct, and the videos  
12 are suitable for teenagers. SVTV Network now posts only 140 original videos, has 114,000  
13 subscribers and generates 3.3 million views.

14 255. Commencing in 2016, the StudvilleTV channel began to experience  
15 Google/YouTube censorship similar to that experienced by other LGBTQ creators:

16 **a.** Google/YouTube made numerous videos inaccessible by applying  
17 Restricted Mode filters despite the absence of video content that depicted graphic scenes of  
18 violence, graphic sexual conduct, nudity or detailed descriptions of sexual conduct. While  
19 Google/YouTube restricted public access to StudvilleTV's videos, similar videos depicting similar  
20 plots, scenes, and dramatic twists posted by heterosexual YouTube creators were allowed to be  
21 posted widely, were accessible in Restricted Mode, and were fully monetized. On many  
22 occasions, Ms. Johnson appealed the demonetization decisions as they were made, but  
23 Google/YouTube remonetized only a handful of such videos, leaving the majority of the channel's  
24 videos demonetized.

25 **b.** Google/YouTube demonetized other videos claiming that the video content  
26 was not suitable for their advertisers.

27 **c.** Over Ms. Johnson's objections, Google/YouTube allowed third party  
28 YouTube creators to copy StudvilleTV's original videos and post them to other channels which

1 were unrestricted and fully monetized, allowing third parties to generate revenue from Ms.  
 2 Johnson's copyrighted videos while they prohibited her from doing so herself. For the past two  
 3 years, third-party creators have been posting and exploiting Ms. Johnson's videos and generating  
 4 revenue for themselves. Google/YouTube has prevented Ms. Johnson from earning money from  
 5 those same videos. Ignoring Ms. Johnson's objections regarding the copyright infringement,  
 6 Google/YouTube allows the third-party creators to continue to exploit the SVTV Network videos.

7           **d.** Google/YouTube offers a music library application to creators who have a  
 8 certain minimum number of viewers. Use of music library content in videos carries with it certain  
 9 requirements regarding monetization, affording credits, and use. SVTV Network only used music  
 10 content from the Google/YouTube music library which required attribution, but had no restrictions  
 11 regarding monetization, and could be used in videos that were fully monetized and generating  
 12 funds for SVTV Network. Recently, Google/YouTube has started notifying SVTV Network that  
 13 music used in videos created and posted since 2012 is generating "copyright strikes," resulting in  
 14 all of the revenues generated by the video in which the music appears being redirected to the  
 15 music copyright owner. This unannounced change in use of music library content has further  
 16 demonetized SVTV Networks videos, by depriving it of revenue that it should be earning for older  
 17 videos on its channel.

18           256. As a direct and proximate result of Google/YouTube's application of filtering tools,  
 19 Restricted Mode, and demonetization, StudvilleTV lost significant revenues and was unable to pay  
 20 for the production costs and residual fees for the ongoing webseries. In order to avoid further  
 21 demonetization, and to ensure the widest possible audience for the StudvilleTV videos, Ms.  
 22 Johnson started to self-censor and remove LGBTQ+ related words from video titles, descriptions  
 23 and tags which are used to assist subscribers and viewers in finding the StudvilleTV video content.  
 24 Despite best efforts to avoid censorship, eventually most of the videos posted on StudvilleTV were  
 25 demonetized.

26           257. When self-censorship proved inadequate to address Google/YouTube's censorship  
 27 activities, Ms. Johnson contracted with Google/YouTube to sell unlimited views of individual  
 28 videos to subscribers on a payment per video basis, where Google/YouTube collected payments

1 from StudvilleTV viewers in exchange for the right to view an individual video for as many times  
2 as wanted without a time limit for viewing, and StudvilleTV would receive 45% of the gross  
3 revenues generated by sales. In a single month, Google/YouTube generated \$100,000 selling  
4 access to one episode of StudvilleTV's popular webseries "Studville TV – Episode 10" of season 3.  
5 Google/YouTube kept \$55,000 of the sales proceeds.

6       258. The following month, without notice to StudvilleTV or the viewers who had paid for  
7 access to the video episode 10 of season three; and without offering to refund to subscribers the  
8 monies which Google/YouTube charged to StudvilleTV's viewers, Google/YouTube suspended the  
9 video sales on the YouTube Platform, and made all of the StudvilleTV videos available to the  
10 public free of charge. Google/YouTube thereby deprived StudvilleTV of any opportunity to  
11 generate revenue from any its original videos. Those viewers who had paid for unlimited access to  
12 the episode 10 of season three demanded refunds of the video access charges from StudvilleTV.  
13 Google/YouTube pocketed the full \$55,000 and never refunded any of that money though they  
14 alone were responsible for denying the viewers access to the video for which they had paid.  
15 Viewers complained on various social media platforms that they wanted their money back, and did  
16 not get refunds. Google/YouTube's conduct has deprived SVTV Network of the ability to pay  
17 actors residuals for episode 10 of season three.

18       259. In the fall of 2016, unable to make any money from popular videos and unable to  
19 pay residuals due to actors for the videos which were still on the StudvilleTV channel, Ms. Johnson  
20 launched an internet on-demand monthly subscription network <https://www.svtvnetwork.com/>  
21 dedicated to original content specifically designed for LGBTQ audiences. For the past three years,  
22 Ms. Johnson has been uploading her own independently produced original video webseries, and  
23 licensing the original independently produced videos of others on her internet platform in direct  
24 competition with Google/YouTube.

25       260. In all, SCTV Network lost approximately \$100,000 in 2016 as a result of  
26 Google/YouTube's censorship tools and improper application of Restricted Mode and monetization  
27 criteria; in addition to breaching the agreement with the StudvilleTV channel to sell individual  
28 videos.

261. Since the launch of SVTVNetwork.com, Ms. Johnson uploaded season four of the Studville TV webseries onto her platform. The highly anticipated season four launched in 2017, and generated 15,000 subscribers who each paid \$4.99 to watch the webseries. Had Google/YouTube fulfilled their agreement to sell individual episodes of the Studville TV webseries on the YouTube Platform, Ms. Johnson believes that she would have generated at least \$500,000 in viewer subscriptions for individual episodes. Google/YouTube's breach of the agreement with the Studville TV channel has deprived Ms. Johnson of substantial additional revenues and has damaged the Studville TV brand.

262. The StudvilleTV channel, renamed SVTV Network, now serves principally as a promotional site for SVTV Network.com (Ms. Johnson's platform), and currently has uploaded 140 videos, consisting of video teasers, trailers, interviews with cast members and celebrities, advertisements for movies, and bloopers and outtakes from the Studville TV webseries.

263. Google/YouTube has imposed a minimum requirement for \$100 in ad revenues before it will pay a channel for fully monetized videos. As a result of this policy, and ongoing problems with Google/YouTube's filtering and Restricted Mode censorship, SVTV Network is struggling to generate any revenues from the SVTV Network channel.

#### **I. Greg Scarnici (GregScarnici and Undercover Music)**

264. Plaintiff Greg Scarnici is a comedic writer, director, producer and performer who currently works as an Associate Producer at "Saturday Night Live," with over 25 years of experience working in television and comedy. He has appeared in films, on television and in numerous internet uploads and posts. Since September 14, 2007, Mr. Scarnici has operated the YouTube channels youtube.com/user/Greg Scarnici and youtube.com/user/Undercover Music, uploading videos consisting of short films, comedic sketches, parodies, and music videos for the LGBTQ audience aged 13 and older. Videos posted to the two channels did not include graphic violence, graphic sexuality, nudity, or detailed discussions of sexual topics; however, many of the videos did depict members of the LGBTQ+ Community and portray scenes and discussion of issues important to the LGBTQ+ Community. The Greg Scarnici YouTube channel currently has posted 127 videos, with approximately 9,600 subscribers and has generated 8.9 million views.

265. As an early YouTube creator, Mr. Scarnici devoted substantial efforts and resources to building up his YouTube channel and amassing millions of views. Videos posted to Mr. Scarnici's two channels would routinely generate from 2,000 to 50,000 views. The music video parody videos were well received by viewers and profitable for Mr. Scarnici.

266. In late 2016 or early 2017, the GregScarnici channel started to suffer from Google/YouTube's same improper censorship activities as those suffered by other LGBTQ+ creators:

**a.** Initially, Google/YouTube informed Mr. Scarnici that specific videos posted on this channels were "not appropriate for all audiences" and were demonetized. Mr. Scarnici attempted to dispute Google/YouTube's determination that the videos were "not appropriate for all audiences" and filed several appeals. However, Google/YouTube did not respond to Mr. Scarnici's appeals or attempts to communicate with YouTube representatives.

**b.** For some videos, Google/YouTube informed Mr. Scarnici that another YouTube creator owned the copyrights to the videos which were posted on one of Mr. Scarnici's channels:

**i.** Mr. Scarnici created and uploaded the original "Fergalicious Parody" video on September 3, 2007. Google/YouTube informed Mr. Scarnici that the parody violated an original copyright for another artist. Mr. Scarnici wrote a detailed defense of his original music video parody in an attempt to appeal the decision, but YouTube ignored his letter. Ultimately, the "Fergalicious Parody" was removed from his channel. Though Mr. Scarnici removed the video, incredibly, another YouTuber copied Mr. Scarnici's original parody to the Johndeere93 channel, where it has generated more than 336,000 views and remains visible to this day: <https://www.youtube.com/watch?v=kPSnwDdR27w>.

**ii.** Mr. Scarnici created and uploaded the original "Ring the Alarm parody" on September 16, 2007. Again, Google/YouTube informed Mr. Scarnici that this parody violated an original copyright for another artist, and insisted that the video be removed. Mr. Scarnici complied with YouTube's request. However, the very same video was posted on

1 Rappers' YouTube channel where it has generated 195,612 views, and to this day remains posted  
 2 for viewing: [https://www.youtube.com/watch?v=eY\\_mrU8MPfI](https://www.youtube.com/watch?v=eY_mrU8MPfI).

3 **iii.** The very same thing happened with the "Madonna Medley" parody  
 4 which Mr. Scarnici created and uploaded on September 24, 2007. Mr. Scarnici removed this  
 5 video from his channel at the insistence of Google/YouTube. However, the very same video was  
 6 posted on Tolichon's YouTube channel where it has generated 8,657 views. Thus on at least three  
 7 separate occasions, Google/YouTube forced Mr. Scarnici to remove his original parody videos on  
 8 grounds of copyright infringement, but allowed – and continues to allow third parties who have  
 9 YouTube channels to post copies of Mr. Scarnici's original parody videos, in violation of Mr.  
 10 Scarnici's copyrights for these videos.

11 **c.** Google/YouTube has allowed third-party YouTubers to post and generate  
 12 revenues from Mr. Scarnici's original videos, to which he owns all rights over Mr. Scarnici's  
 13 express objection. Live Nation Video Network asserted a copyright claim for Mr. Scarnici's "Top  
 14 Top (Gay TV Show Parody)." Mr. Scarnici disputed Live Nation Video Network's claim and  
 15 explained that he owned all rights to this original video which he wrote, directed, produced and  
 16 appears in. Without responding to Mr. Scarnici's communications or requiring Live Nation Video  
 17 Network to provide proof that it owned the copyright to the video, on December 13, 2017,  
 18 Google/YouTube informed Mr. Scarnici that "Live Nation Video Network has decided that their  
 19 copyright claim is still valid" and refused to pay Mr. Scarnici for ad revenue generated by his  
 20 video. To avoid generating more revenue to the interloper, Mr. Scarnici privatized the video.

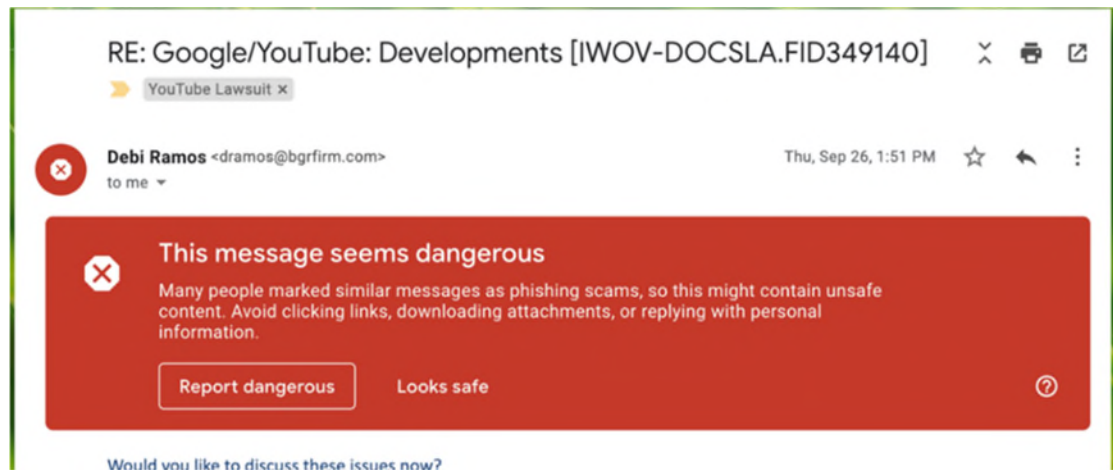
21 **d.** By 2017, any new videos posted on Mr. Scarnici's two channels were  
 22 generating as few as 300 views in all. The channels were effectively demonetized and generating  
 23 no revenue.

24 **e.** By 2018, frustrated with Google/YouTube's repeated censorship, Restricted  
 25 Mode filters, demonetization and refusal to respect this copyright, Mr. Scarnici decided to reduce  
 26 his further YouTube efforts and presence. He posted on the GregScarnici channel:

27 Sorry I haven't been creating videos on YouTube lately. With the algorithm changes, the  
 28 recent crackdown on videos tagged #LGBT, which both caused an insane viewer drop-off  
 and YouTube taking away monetization on my account, I have obviously not been inspired

1 to create content no one will see. Instead, I've been focusing on live performance again,  
 2 and will be performing this show in NYC, San Francisco and LA this summer. I hope to  
 3 see you there! Tickets and more info: [www.gregscarnici.com](http://www.gregscarnici.com).  
<https://www.youtube.com/user/gregscarnici/community>.

4 f. In addition to harassing Mr. Scarnici and preventing him from generating  
 5 revenues from videos posted to the YouTube Platform, Google has begun to interfere with Mr.  
 6 Scarnici's ability to communicate with Plaintiffs' counsel. Commencing in early September of  
 7 2019, Mr. Scarnici began communicating with counsel for Plaintiffs using a Gmail account. After  
 8 receiving at least nine different email communications from Plaintiffs' attorneys' BGRfirm.com  
 9 server, on September 26, 2019 at 1:51 p.m., Mr. Scarnici received a phishing warning from  
 10 Google's Gmail server:



18 Mr. Scarnici clicked on the "Looks Safe" link on the warning. Despite having done so, two more  
 19 identical phishing warnings were sent to Mr. Scarnici by Google's Gmail server at 4:30 p.m. and  
 20 4:41 p.m. Additional warnings were sent in response to emails from Plaintiffs' counsel from the  
 21 BGRfirm.com server to Mr. Scarnici's Gmail account on October 23, 2019, and October 25, 2019.

22 267. As a direct and proximate result of Defendants' breach, Plaintiffs have suffered  
 23 monetary damages and other financial harms and losses in excess of \$500.00 per year, plus other  
 24 lost revenues, including the monetary value of unlawfully acquired property and license rights to  
 25 Plaintiffs' content and the personal data and information derived from Plaintiffs and their  
 26 subscribers and viewers, the total amount of which will be determined at trial.  
 27  
 28



268. As a direct and proximate result of Defendants' breach, Plaintiffs have also suffered irreparable harm to their contractual based rights by denying, and continuing to deny them valuable benefits and rights based on Defendants bad faith and unlawful use of identity based classifications like LGBTQ+ and the "gay thing," to discriminate against them in violation of viewpoint-neutral, content-based rules and terms as set forth in the express and implied provisions of the Form Agreements.

## VII. PRAYER FOR RELIEF

WHEREFORE, the individual named Plaintiffs and all members of the Class request that the Court grant the following relief:

1. Compensatory damages in excess of \$1 billion sufficient to compensate Plaintiffs, the Putative Classes for the financial harms and injuries caused by Defendants breaches of the implied covenant of good faith and fair dealing as alleged herein in an amount to be proven at trial;

2. Punitive damages and exemplary damages in an amount to be proven at trial based on;

3. A declaratory judgment remedy under 28 U.S.C §2201 that Defendants have:

a. violated and continue to violate their covenant of good faith and fair dealing and interfere with the rights of Plaintiffs, the Putative Classes to access and post content and services on YouTube equally available to all, subject only to neutral application of the specific content based rules and restrictions incorporated into the contact and service agreement with Plaintiffs and the Class; or in the alternative,

b. a declaratory judgment that the contracts and service agreement between Plaintiffs, the Putative Classes, on the one hand, and Defendants, on the other, are null, void and unenforceable because they are illusory adhesive consumer form contracts that are procedurally and substantively unconscionable and used by Defendants to discriminate against LGBTQ+ and other YouTuber consumers in direct contravention of the consumers' reasonable expectations.

3. A Court Order requiring Defendants to:

a. Cease and desist from using the identity of, or otherwise classifying

1 Plaintiffs and all members of the YouTube Community and LGBTQ+ Subclass based on their  
 2 identity or viewpoints, in any way, to review, filter, block, restrict, censor, demonetize or make  
 3 any decision limiting or deny them access to services, benefits, and rights that are offered equally  
 4 to all under the Form Agreements

5           b. Cease and desist from censoring, restricting, restraining, or regulating  
 6 speech based on the discretionary use of user identity or the pretextual application of vague,  
 7 unspecified, or subjective criteria, rules, guidelines, and/or practices to effectuate identity based  
 8 filtering;

9           c. Cease and desist from employing, using, or applying automated machine or  
 10 computerized content curation filtering tools, systems, or practices, including any A.I., algorithms,  
 11 filters and automated computer systems or manual review practices that consider or use, in part or  
 12 in whole, the users' aggregated personal information or data indicating the race, ethnicity, gender,  
 13 sexual identity, religion, political affiliation or view, commercial or consumer status, or any other  
 14 personal trait to make any decision regarding a users' access to content or services on YouTube;

15           d. Return and provide each of the Plaintiffs, and each member of the Putative  
 16 Classes with an electronic digital copy of (i) any videos that were uploaded and either removed or  
 17 confiscated by Defendants on YouTube, and (ii) each video that Plaintiffs, the YouTube  
 18 Community member, or Subclass member were unable to copy of because Defendants access  
 19 restrictions or removals from each YouTube the channel where the video was uploaded; and, to  
 20 the extent that Defendants are unable to provide a copy of electronic digital version of the  
 21 removed or confiscated video,

22           e. Reimburse Plaintiffs, and all members of the Putative Classes in an amount  
 23 to be determined at trial, for the reasonable value of a copy of (i) each video that was uploaded and  
 24 subsequently removed by Defendants from YouTube, and (ii) each video which Plaintiffs were  
 25 unable to copy of because Defendants either terminated access to YouTube or removed the  
 26 channel where the video was uploaded;

27           4. Restitution of the licenses obtained by YouTube to the original content, aggregated  
 28 personal digital data, the value of the sale of their personal digital data for the period since each

1 Plaintiff, YouTube Community Class member, or LGBTQ+ Subclass member first entered into a  
2 contract with Defendants, including restitution of the financial losses or harm caused by  
3 Defendants' conduct and ill-gotten gains, and disgorgement of all profits Defendants obtained  
4 from their unlawful conduct in an amount to be proven at trial;

5         5.         Award Plaintiffs their attorneys' fees and costs of suit, prejudgment and post-  
6 judgment interest on the amount of any damages or restitution awarded; and

7         6.         Any and all other relief that the Court deems just and proper.

8 **VIII. JURY TRIAL DEMAND**

9                 Plaintiffs Divino Group LLC, Chris Knight, Celso Dulay, Cameron Stiehl,  
10 BriaandChrissy LLC, Bria Kam, Chrissy Chambers, Chase Ross, Brett Somers, Lindsay Amer,  
11 Stephanie Frosch, Sal Cinquemani, Tamara Johnson, and Greg Scarnici, on behalf of themselves,  
12 and in their representative capacity on behalf of all similarly situated consumers as defined in the  
13 Putative Classes, respectfully demand a trial by jury on all issues of law so triable.

14 DATED: November 15, 2022

Respectfully submitted,

15 ELLIS GEORGE CIPOLLONE

16 O'BRIEN ANNAGUEY LLP

Peter Obstler

17 Eric M. George

18 Dennis E. Ellis

19 By:           /s/ Peter Obstler          

20 Peter Obstler

21 Attorneys for LGBTQ+ Plaintiffs