**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**JACKSONVILLE DIVISION**

| | | |
|---|---|---|
| T.V., as executor,<br><br>Plaintiff,<br><br>vs.<br><br>GRINDR, LLC.,<br><br>Defendant. | ) | **Case No. 3:22-CV-864-MMH-PDB** |

**GRINDR'S FRCP 72(b)(2) OBJECTIONS**

Acknowledging its decision conflicts with uniform authority, including in the Eleventh Circuit, the Report and Recommendation ("R&R") concludes that Plaintiff T.V. may sue Defendant Grindr LLC for publishing a profile on its adults-only dating application that her son, A.V., created by lying about his age, as well as messages A.V. exchanged with adult users. T.V. claims Grindr is responsible for A.V.'s subsequent sexual activity with adults and his suicide—even though she does not allege Grindr knew A.V. was underage, or that he and his assailants were misusing Grindr, whose policies Plaintiff admits prohibit users under 18.

Although the facts T.V. alleges amount to a tragedy, Grindr—which strives assiduously to screen and block unauthorized underage accounts—is not legally responsible. The Communications Decency Act, 47 U.S.C. § 230(c)(1), forbids imposing liability on services for harms that stem from allegedly failing to monitor, block, or remove content created by users—here, A.V.'s profile and messages with his assailants. The reason for this rule is plain: at common law, a service could be liable

for screening user content imperfectly, but *not* for failing to screen content at all. Section 230 was designed to eliminate this deterrent to publication and moderation.

The R&R relies on dissenting and concurring opinions criticizing existing law; infers allegations not pled; and misreads or unabashedly overextends the cases it does apply. Grindr respectfully asks the Court to reject the R&R as to Counts II-VIII.

## ARGUMENT

This Court reviews Grindr's objections de novo. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). It has broad discretion to reject a recommendation and must do so where it is clearly erroneous or contrary to law, 28 U.S.C. § 636(b)(1).

### I. Section 230 Bars All of Plaintiff's Claims

The Eleventh Circuit has, through its cases, joined the "majority of federal circuits" finding Section 230 "establish[es] broad federal immunity to any cause of action that would make service providers liable for information originating with a third-party." *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006) (internal quotation marks and citation omitted); *see, e.g., McCall v. Zotos*, 2023 WL 3946827, at *2 (11th Cir. 2023) (Amazon immune from claims based on allegedly libelous review); *Dowbenko v. Google Inc.*, 582 F. App'x 801, 804-05 (11th Cir. 2014) (Google immune for allegedly manipulating search results to defame plaintiff).

Section 230 applies when (1) a defendant provides an interactive computer service, and (2) a claim seeks to hold the defendant liable for publishing information (3) provided by a third party. *See McCall*, 2023 WL 3946827, at *1-3. Section 230 "protect[s] websites not merely from ultimate liability, but from having to fight costly

and protracted legal battles." *L.H. v. Marriott Int'l, Inc.*, 604 F. Supp. 3d 1346, 1364 (S.D. Fla. 2022) (citation omitted).

The R&R does not apply this test. It disregards the Eleventh Circuit's Section 230 jurisprudence; dismisses as unpersuasive the overwhelming weight of nationwide authority because it "arguably fail[s] to apply the plain language" of Section 230, D62 at 113; and relies on criticisms of existing law. The Court should correct these errors.

**A. Grindr Provides An Interactive Computer Service**

The R&R does not address this element, but Plaintiff concedes and courts have held that Grindr provides an interactive computer service. *See* D22 at 5-6; D32 at 3-7.

**B. Plaintiff's Claims Would Hold Grindr Liable For Publishing Activity**

A claim implicates a defendant's role as a publisher if it involves "exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone, or alter content." *McCall*, 2023 WL 3946827, at *3 (quotation omitted); *accord Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1102 (9th Cir. 2009) (same). Thus, "any activity… that can be boiled down to deciding whether to exclude material that third parties seek to post online is perforce immune under section 230." *Fair Hous. Council of San Fernando Valley v. Roommates.com LLC*, 521 F.3d 1157, 1170-71 (9th Cir. 2008). "[W]hat matters" is the nature of "the duty that the plaintiff alleges the defendant violated[.]" *Barnes*, 570 F.3d at 1102 (examining statute's plain language); *see Montano v. Wash. Dep't of Health*, 2024 WL 3029155, at *14 (S.D. Fla. 2024).

Plaintiffs' claims—which would hold Grindr liable for failing to stop A.V. from posting a profile and communicating with adults, *see* D9 ¶¶ 24-26, 58-63, 78-81, 90-91,

100-03, 114-16, 124-27, 139-44, 154-59—are inextricably tied to Grindr's role as a publisher because they would require Grindr to screen voluminous third-party content and remove anything harmful. "[F]ailing to take down" third-party content "is exactly the kind of claim that is immunized by the CDA." *McCall*, 2023 WL 3946827, at *3.

Applying this logic, *four* courts have dismissed analogous claims *against Grindr.* Judge Antoon II dismissed materially identical negligence-based claims. *See Doe v. Grindr, LLC*, 2023 WL 7053471, at *1 (M.D. Fla. 2023) ("*Grindr I*"). So did a federal court in California. *See Doe v. Grindr Inc.*, 709 F. Supp. 3d 1047, 1055 (C.D. Cal. 2023) ("*Grindr II*"). Two other courts dismissed claims also seeking to hold Grindr liable for failing to screen and block profiles or messages. *See Herrick Grindr LLC*, 765 F. App'x 586, 590-91 (2d Cir. 2019) (negligence, product liability, failure to warn); *Saponaro v. Grindr, LLC*, 93 F. Supp. 3d 319, 323 (D.N.J. 2015) (alleged failure to prevent assault).

These cases accord with nearly uniform law dismissing claims against online services for harms allegedly caused by connecting users. *See, e.g.*, *Doe v. MySpace, Inc.*, 528 F.3d 413, 416, 419-20 (5th Cir. 2008) (no liability where 13-year-old lied to create profile and meet assailant on service); *Doe ex rel. Roe v. Snap, Inc.*, 2023 WL 4174061, at *1 (5th Cir. 2023) (teacher's messages using service to student he sexually assaulted); *In re Facebook, Inc.*, 625 S.W.3d 80, 93-94 (Tex. 2021) (sex trafficking victims who met assailants); *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 19 (1st Cir. 2016) (sex trafficking victims advertised by others); *Doe II v. MySpace, Inc.*, 175 Cal. App. 4th 561,

568-69, 572-73 (2009) (victims who met assailants).[1]

The R&R reasons these cases "arguably fail to apply" Section 230's "plain language" and need not be followed because they are "non-binding" and, in the Eleventh Circuit, unpublished. D62 at 102-03, 113. But unpublished Circuit decisions are persuasive authority. *United States v. Rodriguez-Lopez*, 363 F.3d 1134, 1138 n.4 (11th Cir. 2004) (citing 11th Cir. R. 36-2); *e.g.*, *Essex Ins. Co. v. H & H Land Dev. Corp.*, 525 F. Supp. 2d 1344, 1353 (M.D. Ga. 2007) ("impossible to ignore" on-point decisions). District courts may not "lightly cast aside" even Circuit dicta. *In re Checking Account Overdraft Litig.*, 2016 WL 5848729, at *3 (S.D. Fla. 2016). And absent Circuit cases, courts "consider decisions from other circuits as persuasive authority." *Roe v. Michelin N. Am., Inc.*, 613 F.3d 1058, 1062 (11th Cir. 2010). The R&R's refusal to do so is error.

Worse, the R&R relies on dissenting and concurring opinions criticizing the prevailing interpretation of Section 230's "publisher" prong. *See* D62 at 108-13. But these opinions underscore that the "consensus approach" requires dismissal here. *Doe v. Facebook, Inc.*, 142 S. Ct. 1087, 1088 (2022) (Mem.) (Thomas, J., statement); *see also Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13, 15 (2000) (Thomas, J., statement) ("prevail[ing]" approach "grant[s] sweeping protection").[2] Even so, the

[1] District courts, including many in this Circuit, have done the same. *See e.g.*, *Rodriguez v. OfferUp, Inc.*, 2019 WL 13247290, at *3 (M.D. Fla. 2019); *M.H. v. Omegle.com, LLC*, 2022 WL 93575, at *5-6 (M.D. Fla. 2022); *L.H.*, 604 F. Supp. 3d at 1364-66; *Doe v. Kik Interactive, Inc.*, 482 F. Supp. 3d 1242, 1249, 1252 (S.D. Fla. 2020); *F.T.C. v. Match Grp., Inc.*, 2022 WL 877107, at *10 (N.D. Tex. 2022); *Lee v. OfferUp, Inc.*, 2018 WL 4283371, at *4 (E.D. La. 2018) (same); *Doe v. Friendfinder Network, Inc.*, 540 F. Supp. 2d 288, 295 (D.N.H. 2008); *L.W. v. Snap Inc.*, 2023 WL 3830365, at *1, *3-6 (S.D. Cal. 2023).

[2] The only other case the R&R relies on, *A.M. v. Omegle.com, LLC*, 614 F. Supp. 3d 814 (D. Or. 2022) (D62 at 113), is an outlier that misreads precedent in its own circuit and conflicts with every other

R&R fails to explain how—should the Court accept these dissenting viewpoints over the uniform authority—the outcome in this case would be any different.

Finally, the R&R asserts in a single sentence that existing cases "involve allegations or facts different from the allegations T.V. includes." D62 at 113. The R&R does not identify those facts, except to point to Grindr's alleged "introduction of the 'Tribes,'" affinity labels Grindr users can affix to their profiles. *Id.* The R&R does not explain how these labels distinguish this case, nor do they. *Infra* at 7-8.[3]

### C. Plaintiff's Claims Target Grindr's Publication of Third-Party Content

Section 230 protects online services from "claim[s]… based on content provided by *another* information content provider." *McCall*, 2023 WL 3946827, at *2. Plaintiff's claims are based on such content, as they seek to hold Grindr liable for publishing profiles and messages that allegedly "result[ed] in A.V. being exposed to and engaged in sexual relationships" with adults. *See* D9 ¶¶ 18, 58-61, 75-80, 88-90, 100-01, 113-14, 125, 137-39, 154-58. "At bottom," Grindr's "role in the alleged wrongdoing was publishing" user content "[s]o Section 230 bars Plaintiffs' claims." *Couture v. Noshirvan*, 2023 WL 8280955, at *2 (M.D. Fla. 2023) (dismissing claims) (citing *McCall*, 2023 WL 43946827, at *3); *e.g.*, *Grindr I*, 2023 WL 7053471, at *3 (plaintiff failed to allege Grindr "contributed to the illegality" of content). "Merely providing the forum where harmful

---

decision, including an opinion from a court in this district. *See M.H.*, 2022 WL 93575, at *1; *see Grindr II*, 2023 WL 9066310, at *7 n.4 (refusing to apply *A.M.*). Further, *A.M.* concerns a service that matched users with one another, whereas Grindr provides neutral tools that enable users to contact other users.

[3] *See* Am. Compl., *Doe v. Grindr, Inc.*, No. 2:23-cv-2093, ECF No. 36 ¶ 30 (C.D. Cal.); Am. Compl., *Herrick v. Grindr LLC*, No. 1:17-cv-932, ECF No. 34 ¶ 32 (S.D.N.Y.).

conduct took place cannot … impose liability[.]" *M.H.,* 2022 WL 93575, at *5 (citation omitted); *see also Matter of Chaves*, 2024 WL 718033, at *5-6 (S.D. Fla. 2024) (dismissal where service "was merely a conduit" for communication).

The R&R concludes, however, that this case fails prong three because Grindr (i) allows users to identify with and filter profiles by "Tribe," (ii) describes its app as a "safe space," and (iii) provides the "geolocation interface" through which users can find each other. D62 at 107. None of these preclude a finding of immunity.

***Tribes and filtering.*** The R&R repeatedly relies on the existence of two "Tribes"—"Twinks," which it defines as "a gay man, [especially] one considered to be affected, flamboyant, or feminine" who is "young" with a "slim, boyish appearance"; and "Daddy," "a masculine older man; [specifically] one who is romantically or sexually interested in younger partners." D62 at 7 n.9, 10. The R&R posits that "Twink" makes minors "feel welcome" and "Daddy" suggests "relationships between minors and adults." D62 at 73. Even if the R&R's definitions were correct (they are not), the implication that a gay man who describes himself as a "Daddy" preys on minors is as baseless and troubling as suggesting a straight woman who describes herself as a "cougar" has sex with children. Regardless, even this speculation does not change application of the law.

First, Plaintiff does not allege A.V. used the "Tribe" function at all, let alone to describe himself as a "Twink"; that A.V.'s assailant described himself as a "Daddy"; or that the "Tribes" feature led to their encounter in any other way. There is thus no allegation supporting the claim that Grindr itself contributed to the content in this case.

Second, providing tools that allow users to classify and filter content does not render a service an "information content provider." *See Roommates.com*, 521 F.3d at 1172 (fact that service "classifies user characteristics does not transform it into a developer of the underlying misinformation") (cleaned up); *e.g.*, *Couture*, 2023 WL 8280955, at *2 ("providing neutral tools to carry out what may be unlawful or illicit content does not amount to development of that content") (citing same) (internal quotation marks and citation omitted); *L.H.*, 604 F. Supp. 3d at 1364 ("classifications of user-created information" do "nothing to enhance" or contribute to the alleged "unlawfulness of the message") (internal quotation marks and citations omitted).

Thus, this Court, relying on the very body of law the R&R rejects, refused to find the website "ripoffreport.com" responsible for the content of allegedly defamatory reviews, even though the site had created "con artist" and "corrupt companies" categories. *Whitney Info. Network, Inc. v. Xcentric Ventures, LLC*, 2008 WL 450095, at *10 (M.D. Fla. 2008) (Howard, J.); *see also, e.g., Herrick*, 306 F. Supp. 3d at 589 (Grindr's "[c]ategorization features" and "algorithmic filtering, aggregation, and display functions" protected). So too, in *L.H.*, another Florida federal court found the creation of categories like "erotic services" and "casual encounters" did not render classified ad website Craigslist responsible for the plaintiff's sex trafficking, because "[n]one of those categories, just by their existence, *required* or *induced* [C]raigslist users to post unlawful content." 604 F. Supp. 3d at 1364-65. Indeed, there, as here, the plaintiff admitted that the platform's "published policies affirmatively *prohibit* such content." *Id.*; *see* D9 ¶ 24 (Grindr is adults-only).

***Safe space description.*** Grindr's aspiration to "provide[] a safe space" for *adults* to "discover, navigate, and interact with others," D9 ¶ 42(a), does not make Grindr a provider of the content Plaintiff claims harmed him. *See McCall*, 2023 WL 3946827, at *3 (Amazon not liable for reviews, despite having rules for user feedback); *Hopkins v. Doe*, 2011 WL 5921446, at *2 (N.D. Ga. 2011) (dismissing claim site "fraudulently violated its own policies by not policing its content"); *Rodriguez*, 2019 WL 13247290, at *3 (rejecting "attempts to plead around" Section 230 by alleging "failure to warn and fraud"); *Beckman v. Match.com, LLC*, 668 F. App'x 759, 759 (9th Cir. 2016) (misrepresentation); *L.W.*, 675 F. Supp. 3d at 1098; *Grindr II*, 2023 WL 9066310, at *5-6; *Great N. Ins. Co. v. Amazon.com, Inc.*, 524 F. Supp. 3d 852, 860 (N.D. Ill. 2021).

Grindr's endeavor to provide a safe and welcoming community for LGBTQ *adults* does not, as Plaintiff suggests, impose a legal duty to screen and block content or profiles by third parties.

***Geolocation interface.*** Grindr's tools enabling users to message with others nearby does not make it responsible for user content. *See Roommates.com*, 521 F.3d at 1172 (discussing "tools specifically designed to match romantic partners depending on their voluntary inputs"). As Plaintiff alleges, Grindr "allows users to share" their location, *see* D9 ¶ 27(b), which Grindr "publicizes … on its platform." D9 ¶ 48(a). *See Herrick*, 765 F. App'x at 590 (Section 230 bars claims based on Grindr's geolocation function); *Grindr II*, 2023 WL 9066310, at *5 (same). The R&R ignores these admissions, erroneously stating the court would need to "presume or guess" more

information, *cf.* D62 at 114, to conclude users do not provide location information.

### D. Applying Section 230 Supports Congressional Policy

The R&R suggests its approach better serves Congress's intent because existing law "construe[s]" Section 230 to protect "internet development and self-policing," not "minors from online content." *See* D62 at 96-98, 113.

The R&R's premise is wrong. The parts of the Communications Decency Act of 1996 intended to protect children were held invalid in *Reno v. ACLU*, 521 U.S. 844 (1997). Section 230(c)(1) "had a different objective: To preserve the vibrant and competitive free market that presently exists for the Internet…, unfettered by… regulation." *FTC v. LeadClick Media , LLC*, 838 F.3d 158, 173 & n.6 (2d Cir. 2016) (internal quotation marks omitted). Far from sanitizing the internet for minors, Section 230 shields "platforms from liability for failing to perfectly screen unlawful content." *See* Br. of Sen. Wyden & Former Rep. Cox as Amici Curiae, *Gonzalez v. Google LLC*, 2023 WL 373840, at *10 (U.S. filed Jan. 19, 2023) (Section 230 authors).

That policy is served by dismissal. Grindr undisputedly takes steps to screen and prevent underage users from posting profiles and exchanging messages, but seeks to hold it liable for failing to do so perfectly. *See* D9 ¶¶ 24-26, 58-63, 78-81, 90-91, 100-103, 114-16, 124-27, 139-44, 154-59. If Plaintiff was right, Grindr could avoid liability only by *not* monitoring at all or doing so without any errors, generating the very dilemma Section 230 aims to prevent. *See Roommates.com*, 521 F.3d at 1163-64.

Congress "twice *expanded*" Section 230 knowing its "prevailing judicial

understanding." *In re Facebook*, 625 S.W.3d at 92. This suggests agreement. *See Lorillard v. Pons,* 434 U.S. 575, 581 (1978). Congress only limited Section 230 once to carve out a criminal claim Plaintiff cannot allege. *See* D62 at 21-26; *accord* D22 at 11-16.

## II. Plaintiff's Claims Fail for Independent Reasons

The R&R also concludes Plaintiff adequately states a claim for Counts 2-8. *See* D62 at 26-87. These conclusions, too, are clearly erroneous and contrary to law.

### A. Plaintiff Fails To Plead Proximate Causation

Courts may dismiss for lack of proximate cause on the pleadings. *See, e.g., Sparks v. Medtronic, Inc.*, 2021 WL 2649235, at *2 (M.D. Fla. 2021) (product liability); *Rinker v. Carnival Corp.*, 753 F. Supp. 2d 1237, 1242 (S.D. Fla. 2010) (negligence); *Kaufman v. Pfizer Pharms., Inc.*, 2010 WL 9438673, at *8-9 (S.D. Fla. 2010) (IIED); *Colon v. Twitter, Inc.*, 2020 WL 11226013, at *6 (M.D. Fla. 2020) (NIED); *Bailey v. Janssen Pharma., Inc.*, 2006 WL 3665417, at *7 (S.D. Fla. 2006) (negligent misrepresentation).

Plaintiff alleges only three facts arguably related to causation: A.V. (1) lied about his age to use Grindr (D9 ¶ 17); (2) engaged in sexual relationships with adult users (D9 ¶ 18); and (3) died by suicide (D9 ¶ 19). These allegations describe a tragedy but are insufficient to allege proximate causation. *See, e.g., Sparks*, 2021 WL 2649235, at *2 (claim that mesh caused injury inadequate where plaintiff failed to "allege any facts to support his assertion" and "did not attempt to explain why the mesh was a more likely cause … than other possible causes"); *Rinker*, 753 F. Supp. 2d at 1242 (no allegations explaining how cruise ship's alleged mistreatment of plaintiff's illness caused injuries); *Kaufman*, 2010 WL 9438673, at *8 (similar).

The R&R largely does not try to distinguish the case law Grindr cites. *See* D62 at 30. Instead, it (i) relies on news reports about other times teenagers allegedly misused Grindr to meet adults and (ii) states that Grindr, by allowing A.V. to post a profile, "served as the meeting place" for A.V. and his assailants. *See* D62 at 26-30. But articles about other incidents do not show Grindr caused A.V.'s injuries. *See Gilliam v. U.S. Dep't of Veterans Affs.*, 822 F. App'x 985, 990 (11th Cir. 2020) (similar claims against same defendant insufficient to show causation). Nor does the fact A.V. met his assailants on Grindr. Otherwise, any website—not to mention scores of physical places—could be liable for providing "meeting places" where users engage in misconduct. *See Roland v. Letgo, Inc.*, 2024 WL 372218, at *4-5 (10th Cir. 2024) (no proximate cause where defendant provided forum for decedent to meet murderer); *Fields v. Twitter, Inc.*, 881 F.3d 739, 749-50 (9th Cir. 2018) (failure to remove terrorist content insufficient to show Twitter proximately caused terrorist attack); *Crosby v. Twitter, Inc.*, 921 F.3d 617, 625-26 & 625 n.4 (6th Cir. 2019) (similar).

**B. Grindr Is Not A "Product" or "Unreasonably Dangerous"**

Plaintiff's product liability claims fail because the Florida Supreme Court has expressly limited product liability to tangible goods, *West v. Caterpillar Tractor Co.*, 336 So. 2d 80, 87 (Fla. 1976) (citing Restatement (Second) of Torts § 402A, cmt. d (1965)), and Florida courts have accordingly refused to apply product liability to the content of books, *Cardozo v. True*, 342 So. 2d 1053, 1056 (Fla. 2d DCA 1977); or the provision of services, *Porter v. Rosenberg*, 650 So. 2d 79, 80 (Fla. 4th DCA 1995); *Lalonde v. Royal Caribbean Cruises, Ltd.*, 2019 WL 144129, at *2 (S.D. Fla. 2019). Other courts have

applied these principles to digital services like Grindr.[4]

The R&R sidesteps this authority and instead relies on an unpublished trial court decision holding that a ridesharing app was a product. *Brookes v. Lyft Inc.*, 2022 WL 19799628, at *3-5 (Fla. Cir. Ct. 2022). But the claim in that case was that the app's physical operation distracted drivers, *not* that the app's content was harmful. So, too, in *In re Social Media Adolescent Addiction*, D62 at 40, the court found certain features of social media platforms could be products, but only those unrelated to communication. 702 F. Supp. 3d 809, 849-54 (N.D. Cal. 2023). Plaintiff's claims, however, are premised on content: the profile he posted and messages he exchanged.

Even if Grindr could be a "product," Plaintiff's claim fails because Grindr is not "unreasonably dangerous." D62 at 49-51. A danger is not unreasonable if it is an obvious risk of misusing the defendant's product. *See, e.g., Cook v. MillerCoors, LLC*, 829 F. Supp. 2d 1208, 1216-18 (M.D. Fla. 2011); *Gibbs v. Republic Tobacco, L.P.*, 119 F. Supp. 2d 1288, 1295 (M.D. Fla. 2000) (citing Restatement (Second) of Torts § 402A); *see* D22 at 20-21. Grindr is an adults-only forum whose core function Plaintiff admits is to enable interactions between adults. *See* D9 ¶ 24. Misusing the app by creating an underage account presents an obvious risk of adult encounters. *See* D62 at 51.

The R&R concludes Grindr may be unreasonably dangerous because its risks

[4] *See, e.g., James v. Meow Media, Inc.*, 300 F.3d 683, 695 (6th Cir. 2002) (videogames); *Jackson v. Airbnb, Inc.*, 2022 WL 16752071, at *9 (C.D. Cal. 2022) (Airbnb); *Ziencik v. Snap, Inc.*, 2023 WL 2638314, at *1, *4 (C.D. Cal. 2023) (Snap); *B.H. v. Netflix, Inc.*, 2022 WL 551701, at *3 (N.D. Cal. 2022) (Netflix); *Social Media Cases*, 2023 WL 6847378, at *14-19 (Cal. Super. 2023) (social media); *Intellect Art Multimedia, Inc. v. Milewski*, 2009 WL 2915273, at *7 (N.Y. Sup. Ct. 2009) ("forum for third-party expression").

outweigh its benefits. *See* D62 at 49-51. But the Florida Supreme Court disfavors the risk/utility test. *See Aubin v. Union Carbide Corp.*, 177 So. 3d 489, 511 (Fla. 2015). And Plaintiff makes only a single naked assertion that "the danger in the design outweighed the benefits." *See* D9 ¶ 79. Such a "formulaic recitation" of "labels and conclusions" "will not do." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).

### C. Plaintiff Fails To Allege An Actionable Duty In Negligence

A court may dismiss claims where the complaint fails to allege facts supporting a legal duty of care. *See Jackson Hewitt, Inc. v. Kaman*, 100 So. 3d 19, 27-28 (Fla. 2011); *McCain v. Fla. Power Corp.*, 593 So. 2d 500, 502 (Fla. 1992); *see also* DE 22 at 21-22; DE 42 at 10-13. A plaintiff seeking to hold a defendant liable for another's actions owes such a duty where (i) the defendant and victim have a special relationship, or (ii) the defendant's conduct created a foreseeable risk of the third-party misconduct. *See United States v. Stevens*, 994 So. 2d 1062, 1067 (Fla. 2008). The R&R "[a]ssum[es] without deciding" a failure to allege a special relationship, but concludes that a duty arises from Grindr's own conduct. *See* D62 at 66. This was error.

Florida courts have never imposed such a duty, and other courts have rejected it, holding that where a communications provider's "services are put to lawful use by the great majority of its customers," the provider has no obligation to monitor the services for misuse. *Doe v. GTE Corp.*, 347 F.3d 655, 661 (7th Cir. 2003); *see, e.g.*, *Doe v. MySpace, Inc.*, 474 F. Supp. 2d 843, 851 (W.D. Tex. 2007), *aff'd*, 528 F.3d 413 (5th Cir. 2008); *Vesely v. Armslist LLC*, 2013 WL 12323443, at *2-3 (N.D. Ill. 2013), *aff'd*, 762 F.3d 661 (7th Cir. 2014); *Jane Doe No. 1 v. Uber Techs., Inc.*, 79 Cal. App. 5th 410,

427 (2022); *Ziencik*, 2023 WL 2638314, at *5; *M.L. v. Craigslist Inc.*, 2020 WL 6434845, at *13, *report and recommendation adopted,* 2020 WL 5494903 (W.D. Wash. 2020).

The R&R would extend *Stevens* beyond what courts allow. 994 So. 2d at 1069-70 (discussed D62 at 61). In *Stevens*, a lab manufacturing "ultrahazardous material," like anthrax, owed a duty to prevent that material's unauthorized interception. *Id.* at 1070. *Stevens* turned on the material's "virtually unparalleled risk of injury to the general public" and "virtual impossibility of potential victims to protect themselves" once it is released. *Id.* at 1070-71. Courts have refused to apply *Stevens* in other contexts, even to the sale of firearms. *See*, *e.g.*, *Abad v. G4S Secure Sols. (USA), Inc.*, 293 So.3d 26, 30 (Fla. 4th DCA 2020); *Cook*, 829 F.Supp.2d at 1217-18.[5]

**D. Plaintiff Fails To Allege IIED**

An IIED plaintiff must allege a defendant's conduct (i) directed at a plaintiff (ii) was "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Anderson v. Rossman & Baumberger, P.A.*, 440 So. 2d 591, 592 (Fla. Dist. Ct. App. 1983). Such claims survive "in extremely rare circumstances." *Jimenez de Ruiz v. United States*, 231 F. Supp. 2d 1187, 1199 (M.D. Fla. 2002), *aff'd*, 378 F.3d 1229 (11th Cir. 2004). Those circumstances are not present here.

Far from going "beyond all possible bounds of decency," operating a content-

[5] The R&R cites *Shurben v. Dollar Rent-A-Car*, 676 So. 2d 467 (Fla. 3d DCA 1996) (D62 at 62), but that case concerns a special relationship. *See Lee v. Huffmaster Crisis Response, LLC*, 466, F. App'x 822, 835 (11th Cir. 2012).

moderated, adults-only forum is common and legal. *Cf. King v. Facebook, Inc.*, 572 F. Supp. 3d 776, 786 (N.D. Cal. 2021) (harm from content moderation practices insufficient to state IIED claim under California law). The R&R reasons that the "Twink" and "Daddy" "Tribes" facilitate relationships between minors and adults. *See* D62 at 73. Plaintiff did not allege this, and it is baseless, uninformed, and biased speculation. *Cf.* D9 ¶¶ 124-25 (alleging it was "outrageous" to prevent A.V. from lying about his age to access it). Courts may not "conjure up unpleaded facts [to] turn a frivolous claim" into a substantial one. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 562 (2007) (citation omitted). Grindr is undisputedly a service "for adults and adults only," D9 ¶ 24, and these classifications—common in mainstream gay culture—are options Grindr provides *adult* users. *Id.* ¶ 31. The R&R's supposition that these classifications are "utterly intolerable in a civilized community" traffics in troubling stereotypes. And they are nothing like the criminal conduct—to cover up homicide; threaten rape and murder; and extort the bereaved—the R&R cites. *Cf.* D62 at 73.

The IIED claim also fails because Plaintiff fails to allege facts showing that Grindr directed any conduct toward A.V. in particular. *See Gomez v. City of Miami*, 696 F. Supp. 3d 1176, 1196 (S.D. Fla. 2023) (dismissing IIED claim on this basis). The R&R's conclusion that Grindr "directed" its conduct at A.V. by offering adult users the "Twink" tribe classification is erroneous (and troubling) for the same reason. *See* D62 at 74-76. No content on Grindr could have been "directed" at A.V. because Grindr's terms *prohibited* A.V. from using the app, and there is no allegation A.V. even used "Tribes." *See* D9 ¶ 24. The R&R cites no allegation averring that Grindr intended

to provide these categories for minors, much less to A.V. *See* D22 at 22-23; D42 at 20.

**E. Plaintiff Fails To Allege NIED**

"A claim for negligent infliction of emotional distress ('NIED') requires an adequately pled underlying claim of negligence." *Parkey v. Carter*, 702 F. Supp. 3d 1253, 1261 (S.D. Fla. 2023) (citation omitted). Because Plaintiff fails to allege a duty supporting his negligence claim, his NIED claim fails. *See, e.g.*, *Muir v. United States*, 2023 WL 6049814, at *3 (M.D. Fla. 2023) (dismissing NIED claim for this reason).

**F. Negligent Misrepresentation**

A negligent misrepresentation claim requires alleging (1) a defendant made a false statement of material fact, (2) knew or should have known it was false, (3) intended to induce plaintiff to rely on that statement, and (4) plaintiff was injured by acting in justifiable reliance on the statement. *Collins v. Countrywide Home Loans, Inc.*, 680 F. Supp. 2d 1287, 1292-93 (M.D. Fla. 2010). The R&R concludes that Plaintiff adequately pleads a claim based on Grindr's statement that it "provides a safe space where users can discover, navigate, and interact with others in the Grindr Community." D62 at 79-87. This was clear error.

***First***, Plaintiff does not and cannot allege facts indicating Grindr intended that A.V. rely on the statement. A plaintiff my allege a negligent misrepresentation claim only if he falls within the "limited group of persons for whose benefit and guidance" the information was intended. *See Gilchrist Timber Co. v. ITT Rayonier, Inc.*, 696 So. 2d 334, 337 (Fla. 1997) (citing Restatement (Second) of Torts § 552). A.V. undeniably was not within this limited group, as Grindr's statement was intended only for *adults*.

D9 ¶ 24; *see also* D22 at 2 (Grindr's terms: "YOU MUST BE A LEGAL ADULT…. YOU … REPRESENT… THAT... YOU ARE CURRENTLY EIGHTEEN (18) YEARS OF AGE"). A.V.'s reliance is not justifiable, any more than a 13-year-old could drive a car relying on the manufacturer's assurances of safety.

The R&R concludes that justifiable reliance is a jury question, but that is true only where a plaintiff could have discovered the alleged falsity through more investigation. *See Newbern v. Mansbach*, 777 So. 2d 1044, 1046 (Fla. 1st DCA 2001); *Lorber v. Passick as Tr. of Sylvia Passick Revocable Tr.*, 327 So. 3d 297, 307 (Fla. 4th DCA 2021); *Specialty Marine & Indus. Supplies, Inc. v. Venus*, 66 So. 3d 306, 311 (Fla. 1st DCA 2011). Here, the Terms state that Grindr is an adults-only service, rendering A.V.'s alleged reliance unjustified as a matter of law. *See* D9 at ¶ 24; D22 at 2 (quoting Terms). The R&R states that unsophisticated parties should be held to a different standard, but Grindr's terms are clear to any reader (and certainly a teenager), *see* D62 at 85, and the R&R cites no authority for this proposition.

***Second***, the Amended Complaint does not allege A.V. even read, much less actually relied, on any alleged misrepresentation. *See* D22 at 25 n.7; D42 at 16. "Actual reliance is a necessary element of a negligent misrepresentation claim." *Scala v. Eisai, Inc.*, 2021 WL 5935588, at *4 (M.D. Fla. 2021). The R&R disregards this defect, asserting Grindr raised it only on reply. *See* D62 at 84 n.30. Not so. *See* D22 at 25 n.7.

***Third***, Grindr's statement is non-actionable opinion, or puffery, because it is too "generalized, non-verifiable" and "vaguely optimistic" to represent a material fact or

induce reliance "as a matter of law." *Zhang v. Royal Caribbean Cruises, Ltd.*, 2019 WL 8895223, at *6 (S.D. Fla. 2019) (statement that service is "safe" to consumers "not actionable") (citing cases); *TocMail Inc. v. Microsoft Corp.*, 2020 WL 9210739, at *5 (S.D. Fla. 2020) ("general claim" that cybersecurity service was "safe"); *Gibson v. NCL (Bahamas) Ltd.*, 2012 WL 1952667, at *6 (S.D. Fla. 2012) (safety representation). The R&R asserts but does not explain why Plaintiff's allegations "involve different circumstances." D62 at 83. Courts reject similar claims premised on statements in terms of service. *See, e.g.*, *Prager Univ. v. Google LLC*, 951 F.3d 991, 1000 (9th Cir. 2020) (statements YouTube enables users to "speak freely" and "build community"); *XYZ Two Way Radio Serv., Inc. v. Uber Techs., Inc.*, 214 F. Supp. 3d 179, 184 (E.D.N.Y. 2016) (safety and screening of Uber drivers); *Greater Houston Transp. Co. v. Uber Techs., Inc.*, 155 F. Supp. 3d 670, 684 (S.D. Tex. 2015) (same).

***Finally***, Plaintiff's negligent misrepresentation claim fails to satisfy Rule 9(b), which requires alleging "(1) the precise statements, documents, or misrepresentations made; (2) the time, place and person responsible for the statement; (3) the content and manner in which these statements misled [him]." *Wilding v. DNC Servs. Corp.*, 941 F.3d 1116, 1128 (11th Cir. 2019). The R&R suggests Plaintiff need not "cit[e] to the section of Grindr's own documents nor an exact date of reliance." D62 at 86-87. But Plaintiff did need to allege "with particularity the manner in which [A.V] relied," *Wilding*, 941 F.3d at 1128 (dismissing absent particularized reliance allegations), to make Grindr "aware of the particular circumstances for which [it] will have to prepare a defense."

*Gose v. Native Am. Servs. Corp.*, 109 F.4th 1297, 1318 (11th Cir. 2024) (cited D62 at 86).

## III. The R&R Improperly Declined to Consider Grindr's Terms of Service

Although not necessary to dismiss, the R&R also erred by declining to consider excerpts of Grindr's Terms quoted in its motion. *See* D62 at 14-18.

A document is incorporated by reference and can be considered on a motion to dismiss if it is (1) central to the claims and (2) undisputedly authentic. *See Johnson v. City of Atlanta*, 107 F.4th 1292, 1300 (11th Cir. 2024). Here, the Terms are central to Plaintiff's claims: one claim concerns representations in the Terms (*see* D9 ¶151), on which the R&R itself relies. *See* D62 at 79-87. And Plaintiff *does not challenge* the Terms' authenticity. The R&R's uncertainty about the version of terms in force is irrelevant: all the terms before court contain the same relevant language. *See* D42 at 18.

## CONCLUSION

Grindr respectfully requests an order granting its Motion with prejudice.

Dated: September 17, 2024

DAVIS WRIGHT TREMAINE LLP

*s/ Ambika Kumar*

Ambika Kumar (admitted *pro hac vice*)
920 Fifth Avenue, Suite 3300
Seattle, Washington 98104-1610
Telephone: (206) 757-8039
ambikakumar@dwt.com

WALTERS LAW GROUP
Lawrence G. Walters (Bar #0776599)
195 W. Pine Ave.
Longwood, FL 32750-4104
Telephone: (407) 957-9150
Email: larry@firstamendment.com

*Attorneys for Defendant Grindr LLC*

## CERTIFICATE OF SERVICE

The foregoing was filed via CM/ECF, which will serve a copy on all counsel.

*s/ Ambika Kumar*
Ambika Kumar