

No. \_\_\_\_\_

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In The  
**Supreme Court of the United States**

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BOB LEWIS,

*Petitioner,*

vs.

GOOGLE INC. and YOUTUBE LLC,

*Respondents.*

—◆—  
**On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit**

—◆—  
**PETITION FOR A WRIT OF CERTIORARI**

—◆—  
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**QUESTIONS PRESENTED**

1. Does this Court’s holding in *Packingham v. North Carolina*, 137 S. Ct. 1730, at 1736-1736, 198 L. Ed. 2d 273 (2017) that First Amendment protections apply to social media platforms override 47 U.S.C. § 230’s civil liability indemnification for censorship of constitutionally protected speech?
2. Does the Petitioner, whose constitutionally protected speech was censored and lost revenues as a direct result of the Respondents’ claim he violated their “hate speech” policies, lack standing to challenge the constitutionality of 47 U.S.C. § 230 when the Respondents employ it as a liability defense?
3. Does 47 U.S.C. § 230 allow private third parties the unrestricted ability to regulate protected speech in violation of the United States Constitution’s bar on Congress enacting laws that indirectly regulate protected speech in an unrestricted fashion?
4. Does the government’s participation and encouragement of social media censorship based on “hate speech” transform the Respondents into joint-enterprise state actors when they censor the Petitioner’s protected speech on their social media platforms in response?
5. Because 47 U.S.C. § 230 relies on vague language and/or does not define its terms to provide indemnification from civil liability for censoring constitutionally protected speech, is it itself unconstitutional?

**LIST OF PARTIES BELOW  
PURSUANT TO RULE 14.1(B)**

The Parties to the Ninth Circuit Court action below were, Bob Lewis, Google Inc., a for-profit corporation that is a wholly owned subsidiary of Alphabet Inc., and YouTube LLC a for-profit limited liability company that is wholly owned by Google Inc.

**RELATED CASES**

*Trump v. Facebook Inc. and Mark Zuckerberg*, filed in Federal District Court S.D. of Florida, #1:21-cv-22440.

*Trump v. YouTube LLC and Sunda Pichai*, filed in Federal District Court S.D. of Florida, #1:21-cv-22445.

*Trump v. Twitter Inc. and Jack Dorsey*, filed in Federal District Court S.D. of Florida, #1:21-cv-22441.

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## PETITION FOR WRIT OF CERTIORARI

The Petitioner, Bob Lewis, respectfully prays that a writ of certiorari be issued to review the ruling of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on April 15, 2021 for the reasons set forth below.



## OPINIONS BELOW

The Judgment and Opinion of the United States Court of Appeals for the Ninth Circuit is reported as *Lewis v. Google LLC*, 851 Fed. Appx. 723, 2021 U.S. App. LEXIS 10782, 2021 WL 1423118 and is designated as not for publication. (**App. 1-7**). The United States District Court for the Northern District of California is reported as *Lewis v. Google LLC*, 461 F. Supp. 3d 938, 2020 U.S. Dist. LEXIS 150603, 2020 WL 2745253 is designated as published. (**App. 8-53**).



## JURISDICTION

Pursuant to the Court's COVID related order that allows petitions seeking review of orders within 150-day filing deadline for cases where a relevant judgment was issued prior to July 19, 2021, per Order 594, issued by the Court on July 19, 2021. Therefore this Court has jurisdiction to review the aforementioned Ninth Circuit Court of Appeals ruling pursuant to 28 U.S.C. § 1254.



## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, First Amendment which states as follows: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

47 U.S.C. § 230(c), which states as follows in pertinent part: (c) Protection for “Good Samaritan” blocking and screening of offensive material.

- (1) Treatment of publisher or speaker. No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.
- (2) Civil liability. No provider or user of an interactive computer service shall be held liable on account of—
  - (A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or
  - (B) any action taken to enable or make available to information content providers or others the technical means to

restrict access to material described in paragraph (1) [subparagraph (A)].

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### STATEMENT OF THE CASE

As a result of the Respondents censoring the Petitioner's protected speech on their platform YouTube.com for violating their hate speech policies, Then they unilaterally cancelled their revenue sharing agreement with the Petitioner under the pretext that advertisers are adverse to advertising on channels such as the Petitioner's because of his alleged hate speech violations. However, even today, the Respondents run advertisements during the Petitioner's videos, which undermines their claims. Then, the Petitioner started receiving reports from his subscribers that YouTube was not only refusing to notify them of his newly published videos, but also that the Respondents were actively unsubscribing them from his channel. All these things caused potentially irreparable brand damage to the Petitioner.

In August of 2019, Lewis filed the underlying suit in Colorado that led to this writ. In response, the Respondents filed a motion to dismiss based on § 230's indemnification clause. This led to the Lewis challenging the constitutionality of § 230, which is the core of this suit.

Then the underlying case was transferred to California and the California Federal Court dismissed the suit, inaccurately finding the Lewis never pled any

injury in fact. When the Ninth Circuit finally issued its ruling, it admitted that while Lewis did suffer injury, it was not due to § 230. It's important to note the Appellate ruling offered no meaningful explanation as to why § 230 wasn't necessarily implicated.

This writ followed.



## REASONS FOR GRANTING THE WRIT

### I. THIS COURT HAS HELD FIRST AMENDMENT PROTECTIONS APPLY TO SOCIAL MEDIA PLATFORMS

In 2017, this Court extended First Amendment protections to social media websites such as the YouTube.com platform owned and operated by Google, by designating them “digital public squares.” *Packingham v. North Carolina*, 137 S. Ct. 1730, at 1736-1736, 198 L. Ed. 2d 273 (2017).

Yet, this fact has been ignored by both the Federal District Court of Northern California and the 9th Circuit Court of Appeals in this case by virtue of failing to apply the *Packingham* Standard to social media platform YouTube.com. (**App. 1-53**).

Therefore, because the Courts below refuse to follow the direction of this Court provided in *Packingham*, this writ should be granted.

## II. CENSORSHIP CONFERS STANDING TO CHALLENGE § 230

To have standing to challenge § 230, Lewis must demonstrate three elements: (1) he suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of Google in the Court below, and (3) that it is likely to be redressed by a favorable judicial decision. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, at 1547-1548, 194 L. Ed. 2d 635 (2016).

Lewis must also show he suffered an invasion of a legally protected interest that's "concrete and particularized" that is actual or imminent, not conjectural or hypothetical. For an injury to be "particularized," it must affect Lewis in a personal and individual way. Thus, standing requires that Lewis demonstrate he's personally suffered an actual or threatened injury. Particularization is necessary to establish injury in fact, but it is not sufficient by itself. An injury in fact must also be "concrete." A "concrete" injury must actually exist. When the U.S. Supreme Court has used the adjective "concrete," they mean the usual meaning of the term: "real," and not "abstract." Further, "concrete" is not always synonymous with "tangible." Although tangible injuries are easier to perceive, the U.S. Supreme Court confirmed that, in many cases, intangible injuries are also concrete. *Spokeo, Inc. v. Robins*, at 1548-1549.

More to the point, Lewis' § 230 constitutional challenge should not be lightly dismissed for lack of justiciable controversy since the normal injury in fact

standard for standing is to be relaxed in cases alleging facial overbreadth of a statute because of the danger of tolerating the existence of statutes susceptible to improper censorship in violation of the First Amendment, such as the case at bar. *Red Bluff Drive-In, Inc. v. Vance*, 648 F.2d 1020, 1025 n.1 (5th Cir. 1981).

Further, Lewis is claiming § 230 creates an acceptable species of censorship because it expressly allows censorship based on unconstitutionally vague terms such as, “obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable . . .” which constitute a form of impermissible censorship. *Interstate Circuit, Inc. v. Dallas*, 390 U.S. 676, 88 S. Ct. 1298, 20 L. Ed. 2d 225 (1968).

In Lewis’ response to Google’s motion to dismiss, Lewis attached and incorporated his second amended complaint (“SAC”) as Exhibit 1 (**App. 54-142**). Thus, it’s consideration was mandated by both Courts below, yet there is no indication in either order that they did so in any meaningful way.

In the SAC, the following injuries were pled: (1) Lewis’ revenue contract was cancelled; (2) Lewis’ videos were censored in a variety of ways; and (3) his video channel’s reach was severely limited by Google. These acts combined caused Lewis brand damage and directly impacted revenues he previously received from the YouTube.com platform. (**App. 95-108**).

The District Court’s order inaccurately stated these injuries never were pled. (**App. 26**). The Court of

Appeals claimed that while Lewis' censorship was an injury . . . it didn't apply to § 230, even though the District Court below dismissed all Lewis' claims based on § 230 protections after Google deployed it as an indemnification defense. (**App. 2**).

At best, the only conclusion any reasonable person can draw from these orders is that the District Court made its decision with its head in the sand, completely ignoring the record properly before it. Then, the Appellate Court, while admitting Lewis suffered injuries as a result of Google's censorship, stated those injuries didn't implicate § 230, even though Google employed it as a liability defense for censorship of Lewis.

Both rulings, in this regard, defy any rational or legal reasoning . . . which explains why both decisions related to this contain neither citations to the record, nor apply any relevant case precedent.

What makes these rulings even more egregious is that there is no indication in either the District Court's order, or in the Appellate Ruling that either court analyzed the facts in the underlying case below in the light most favorable to Lewis. *Sanders v. 11 Kennedy*, 794 F.2d 478, 481 (9th Cir. 1986).

Were they afraid of a home visit from Antifa or BLM? If so, succumbing to this sort of fear constitutes a "heckler's veto" and only leads to the death of our constitutional republic.

Therefore, because the Courts below not only failed to view the facts in a light most favorable to

Lewis and ignored not only well-settled case precedent, but also ignored the undisputed facts related to Lewis' injuries as a result of Google's unconstitutional censorship, this writ should be granted.

### **III. § 230 IMPROPERLY DELEGATES THE REGULATION OF SPEECH TO PRIVATE PARTIES**

When Congress enacted § 230, it delegated its authority to regulate speech to private parties. In doing so, when a private party, in this case Google, uses § 230 as a liability defense to claims of First Amendment infringement, it *de facto* regulates speech on behalf of Congress by definition.

Yet, the Courts have previously held that Congress cannot pass a law that allows them to indirectly do what it may not do directly. Therefore, because the First Amendment bars Congress from enacting laws that allow the unrestrained censorship of protected expression, it also cannot enact laws that allow third parties or private parties to censor free speech in an unrestrained fashion either, which is exactly what § 230 does and is exactly the reason Lewis was censored by Google. This is because Google knew that § 230 would indemnify them for their First Amendment infringements on Lewis' protected speech . . . which is an express clause in § 230. *Elrod v. Burns*, 427 U.S. 347, 359 (1976); *Speiser v. Randall*, 357 U.S. 513, 526 (1958).



Further, Google admitted in both Courts below they've censored Lewis based on violations of their policies . . . specifically, their hate speech policy. Yet, this Court has repeatedly and consistently ruled hate speech is protected speech under the First Amendment. *Matal v. Tam*, 137 S. Ct. 1744 at 1751, 198 L. Ed. 2d 366 (2017).

Therefore, because § 230 improperly delegates authority to unconstitutionally regulate censorship of Lewis' Speech to Google, this writ should be accepted.

#### **IV. GOOGLE AND YOUTUBE ARE JOINT-ENTERPRISE STATE ACTORS**

It's important to note that since this case was originally filed in August 2019, many sitting members of Congress and many other elected and unelected federal government officials have not only sanctioned Google's censorship, they have actively encouraged it. To that end, many in government have and continue to make public admissions of this and these admissions have been reported all over the media for at least two years.

In the case at bar, Lewis perceives the relevant state-actor test is the nexus test. Under this test, the Google's actions constitute state action when there's sufficiently close nexus between the state and the challenged action of the regulated entity so that the Google's actions may be fairly treated as those of the state itself. *Lansing v. City of Memphis*, 202 F.3d 821, at 830 (6th Cir. 2000).

Previously, the Northern District of California Federal District Court stated that a finding of state action through a joint-enterprise is appropriate where the defendant and the state engage in a joint enterprise with respect to the private party's challenged actions. In this case, the challenged action is the Google's regulation and censorship of Lewis' protected speech pursuant to § 230, the regulation of which is the purview of the State. *Quigley v. Yelp, Inc.*, 2017 U.S. Dist. LEXIS 103771.

Additionally, a private party's joint participation with the state in the seizure of disputed property interest is sufficient to characterize that party as a state actor. Lewis has a property interest in his protected speech and in Google continuing their revenue-sharing contract, free from discrimination. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 941, 102 S. Ct. 2744, 73 L. Ed. 2d 482 (1982).

Further, private parties, jointly engaged with the state in prohibited action, are acting "under color" of law. To act "under color" of law does not require that the accused be an officer of the State. It is enough that the party is a willful participant in joint activity with the State or its agents. *Id.* at 941.

While normally private parties cannot be held as state actors, there are exceptional circumstances in which there is a constitutional right to protection. Such a right may arise if a "special relationship" exists between the state and the private party. *Sargi v. Kent City Bd. Of Educ.*, 70 F.3d 907, 910-13 (6th Cir. 1995).

To reiterate, the joint-action test to determine when a private party can be considered a state actor is also present if a private party is a willful participant in joint action with the State or its agents, such as the case at bar. *Gallagher v. Neil Young Freedom Concert*, 49 F.3d 1442 (10th Cir. 1995).

In *Jackson v. Curry County*, that Court dealt with a case very similar to the case at bar regarding a private party acting in a state capacity. In that case, the Court found the private party's action constituted state action. The Court applied the nexus test from the *Gallagher* Court stating: In *Gallagher*, the Tenth Circuit explained that under the nexus test, a plaintiff must demonstrate that "there is a sufficiently close nexus" between the government and the challenged conduct such that the conduct may be fairly treated as that of the State itself. *Gallagher*, 49 F.3d at 1448. Specifically, under the nexus test, a state normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State, such as the case herein. *Gallagher*, 49 F.3d at 1448. Further, the "required inquiry" under the nexus test "is fact-specific." *Gallagher*, 49 F.3d at 1448. *Jackson v. Curry Cty.*, 343 F. Supp. 3d 1103, 1110 (D.N.M. 2018).

In 2017, the U.S. Supreme Court in *Lewis v. Clarke* considered private parties acting on behalf of foreign sovereigns on American soil as state actors. In that case, the state actor in question was an employee and a member of an Indian Tribe, sued in his personal

capacity. Like the case at bar, the foreign sovereign was never named as a party. In that case, the Court stated that a state actor of a foreign sovereign could be held accountable for torts committed on U.S. soil. *Lewis v. Clarke*, 137 S. Ct. 1285, 197 L. Ed. 2d 631 (2017).

To reiterate, Google not only has censored Lewis, in part, as the result of encouragement from government officials, but they've also publicly admitted that they employ government officials, both domestic and foreign, as "trusted flaggers" to bring content to Google's attention for censorship. (**App. 10-11**).

Therefore, because § 230 transforms Google into a joint enterprise state actor who acts on the encouragement of government officials, this writ should be granted.

## **V. § 230 IS UNCONSTITUTIONALLY OVER-BROAD**

Since § 230 allows content-based speech restriction, it can stand only if it satisfies strict scrutiny. If a statute allows the regulation of speech based on content, it must be narrowly tailored to promote a compelling state interest. If a less restrictive alternative would serve the states purpose, Congress must use that alternative. To do otherwise would be to restrict speech without adequate justification, a course the First Amendment does not permit. *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803 at 813, 120 S. Ct. 1878, 146 L. Ed. 2d 865, 2000 WL 646196 (U.S. 2000).

The First Amendment of the U.S. Constitution states in pertinent part: “Congress shall make no law abridging the freedom of speech, or of the press.”

Although § 230 would normally enjoy the presumption of constitutionality, this does not apply when there’s a question of improper infringement on First Amendment rights. *Citizens for Better Environment v. Schaumburg*, 590 F.2d 220 (7th Cir. 1978), *aff’d*, 444 U.S. 620, 100 S. Ct. 826, 63 L. Ed. 2d 73 (1980).

When measuring § 230’s constitutionality, free speech is always the preferred position. *Prince v. Massachusetts*, 321 U.S. 158, 165, 64 S. Ct. 438, 88 L. Ed. 645 (1944), *Marsh v. Alabama*, 326 U.S. 501, 66 S. Ct. 276, 90 L. Ed. 265 (1946).

To that end, Courts should generously interpret First Amendment guarantees. *Baxley v. United States*, 134 F.2d 937 (4th Cir. 1943); *Jones v. Moultrie*, 196 Ga. 526, 27 S.E.2d 39 (1943).

Further, this Court has held that the proper focus of any First Amendment analysis is the harm inflicted on the U.S. citizen, in this case Lewis. *Heffernan v. City of Paterson, New Jersey*, 136 S. Ct. 1412, 1418 (2016).

Additionally, when considering the constitutionality of § 230, which allows censorship, a system of censorship, or classification which places prior restraint upon expression there’s a heavy presumption that it’s unconstitutional. *Kingsley Books, Inc. v. Brown*, 354 U.S. 436, 77 S. Ct. 1325, 1 L. Ed. 2d 1469, 1 Media L. Rep. (BNA) 1111 (1957).

Also, when considering whether § 230 is unconstitutionally overbroad or vague, the danger that § 230 allows the silencing of some speakers whose messages may be protected under the First Amendment provides more reason for requiring a statute not be overly broad. § 230's burden on protected speech cannot be justified if the burden could be avoided by a more carefully drafted statute. *Reno v. ACLU*, 521 U.S. 844, 872, 117 S. Ct. 2329, 138 L. Ed. 2d 874 (1997).

Further, the test of § 230's overbreadth turns on the extent to which it lends itself to improper applications to protected conduct, not whether it explicitly refers to speech or religion. *People v. Fogelson*, 21 Cal. 3d 158, 145 Cal. Rptr. 542, 577 P.2d 677 (Cal. 1978).

As previously stated, the First Amendment does not permit the government to do indirectly what it may not do directly, which in the case at bar, is privatize and empower Google to censor Lewis' protected speech. *Elrod v. Burns*, at 359; *Speiser v. Randall*, at 513, 526; *Federal Election Comm'n v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 256, 107 S. Ct. 616, 93 L. Ed. 2d 539 (1986).

In this analysis, § 230 is void upon its face, irrespective of its application in a particular case, because it does not aim specifically at evils within allowable areas of state control, but, on the contrary, sweeps within its purview other activities that in ordinary circumstances constitute the exercise of protected expression . . . then delegates this unconstitutional authority to private parties. *Thornhill v. Alabama*, 310 U.S. 88, 60

S. Ct. 736, 84 L. Ed. 1093, 6 L.R.R.M. (BNA) 697, 2 Lab. Cas. (CCH) ¶17059 (1940).

To be clear, § 230 is void upon its face where sweeping, vague, and inexact terms of the statute are a threat to freedom of speech inherent in its existence. *Carlson v. California*, 310 U.S. 106, 84 L. Ed. 1104, 60 S. Ct. 746 (1940).

Thus, under First Amendment overbreadth doctrine, Lewis (whose own protected expression was censored) has standing and is permitted to challenge § 230 on its face because it also threatens others not before court. *Board of Airport Comm'rs v. Jews for Jesus, Inc.*, 482 U.S. 569, 107 S. Ct. 2568, 96 L. Ed. 2d 500 (1987).

To this end, speech is not to be selectively permitted or proscribed according to official preference. *Child Evangelism Fellowship v. Anderson Sch. Dist. Five*, 470 F.3d 1062 (4th Cir. 2006).

In fact, the First Amendment exists to prohibit improper restraints on voluntary public expression of ideas. It shields Lewis who wants to speak or publish when Google wishes him silent; *Bartnicki v. Vopper*, 532 U.S. 514, 121 S. Ct. 1753, 149 L. Ed. 2d 787 (2001).

Also, the First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic, which is what § 230 allows. *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 107 S. Ct. 1722, 95 L. Ed. 2d 209, 13 Media L. Rep. (BNA) 2313 (1987).

To that end, Free Speech also includes the right to persuade others to change their views and cannot be censored simply because the speech is offensive. *Hill v. Colorado*, 530 U.S. 703, 120 S. Ct. 2480, 147 L. Ed. 2d 597 (2000).

Therefore, for purposes of determining the validity of § 230's limit on speech under the Constitution's First Amendment, there is no *de minimis* exception for a speech restriction that lacks sufficient tailoring or justification. *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 541, 121 S. Ct. 2404, 150 L. Ed. 2d 532 (2001).

However, when Congress enacted 47 U.S.C. § 230 into law and included the following clause: "No provider or user of an interactive computer service shall be held liable on account of: (A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected . . ." they passed a law so unconstitutionally vague and overbroad that it allows Google to regulate Lewis' constitutionally protected speech without liability, transforming them into joint-enterprise state actors. Since Google finds "hate speech" objectionable, they use this clause to corrupt § 230 to censor Lewis' protected expression on that basis as well. (**App. 15-18, App. 49-51**).

So we're clear, Lewis is not the Google's only victim, tens of millions of other Americans have had their



protected expression censored as well. This has been widely reported in the news and is common knowledge. Those censored under § 230's "otherwise objectionable" "hate speech" pretext for exercising protected expression include: pundits, government officials, political commentators, journalists, and active political candidates. In U.S. law, there's no "hate speech" exception to free speech protections and speech may not be banned on the ground that it expresses ideas that offend. *Matal v. Tam* at 1751.

The fact that § 230 allows any private party or online computer service to regulate protected speech, for any reason under the "otherwise objectionable" standard shocks the conscience and strikes at the heart of First Amendment overbreadth doctrine.

§ 230 isn't narrowly tailored limit censorship to target specific evils and doesn't define its terms. Further, because it privatizes government regulation of speech, which is barred by the Constitution and well-settled case precedent, it's unconstitutional on its face.

§ 230 allows Google to censor Lewis whenever and however they want, without consequence. So, even though the *Packingham* Court found that social media sites like YouTube.com are digital public squares where speech enjoys constitutional protections under the First Amendment, § 230, as written, allows Google to ignore U.S. Supreme Court decisions and void Lewis' protected speech, and is therefore overbroad on those grounds as well. *Packingham v. North Carolina* at 1736-1736.

To be potentially constitutional, § 230 should be narrowed in scope by removing the clause: “. . . otherwise objectionable, whether or not such material is constitutionally protected.” These clauses allow censorship of speech based on an unlawful and constitutionally indefensible “hate speech” standard by virtue of this language when combined with the “otherwise objectionable” pretext.

The First Amendment’s bar on enacting laws that allow the abridgment of Free Speech doesn’t exempt laws that allow censorship delegated by Congress to private actors. So, even if this Court determines Google is a private party, that’s irrelevant to whether or not § 230 is unconstitutional and void on its face, because § 230 transforms Google into joint-enterprise state actors, by virtue of empowering them to regulate and censor protected expression.

For these reasons, this writ should be granted and § 230 should be found unconstitutional and struck down.



**CONCLUSION**

For the reasons set forth herein, the Petitioner respectfully requests this Honorable Court grant the petition for a writ of certiorari.

Respectfully submitted this 13th day of September, 2021

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App. 1

**NOT FOR PUBLICATION**  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

BOB LEWIS,  
Plaintiff-Appellant,

v.

GOOGLE LLC, A Delaware  
Corporation; YOUTUBE,  
LLC, A Delaware Limited  
Liability Company,  
Defendants-Appellees.

No. 20-16073

D.C. No. 3:20-cv-00085-SK

MEMORANDUM\*

(Filed Apr. 15, 2021)

Appeal from the United States District Court  
for the Northern District of California  
Sallie Kim, Magistrate Judge, Presiding

Submitted February 5, 2021\*\*  
San Francisco, California

Before: RAWLINSON and BUMATAY, Circuit Judges,  
and S. MURPHY,\*\*\* District Judge.

Concurrence by Judge RAWLINSON

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Stephen J. Murphy, III, United States District Judge for the Eastern District of Michigan, sitting by designation.

## App. 2

Bob Lewis (“Lewis”), an author, journalist, pundit, and political commentator, sued Google, LLC and YouTube, LLC on several claims surrounding Lewis’s YouTube channel, *Misandry Today*. The district court dismissed each claim, and we affirm.

First, the district court dismissed for lack of standing Lewis’ claims that § 230 of the Communications Decency Act (“CDA”) was unconstitutional and that YouTube did not meet the “good faith” requirement of § 230(c)(2). We review questions of standing *de novo* but review the “underlying factual findings . . . for clear error.” *McCormack v. Herzog*, 788 F.3d 1017, 1024 (9th Cir. 2015).

Constitutional standing requires a plaintiff to show (1) an “injury in fact” that is “concrete and particularized,” “actual or imminent”; (2) that the injury is “fairly traceable to the challenged actions of the defendant”; and (3) that it is “likely” “that the injury will be redressed by a favorable decision.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992) (simplified). The standing analysis is claim specific. *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650 (2017).

None of the alleged injuries in Lewis’ challenge to the CDA’s constitutionality are fairly traceable to the application of § 230 of the CDA. First, the district court found that Lewis lacked standing to challenge the constitutionality of § 230. Lewis’s alleged injuries—removing videos, cancelling advertisement sharing, and so-called “shadow banning”—all arose from the actions

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of YouTube, a private entity,<sup>1</sup> as it enforced its own standards. Section 230 does not apply to Lewis’s conduct or provide a mechanism for sanctions that could affect Lewis; instead, it provides immunity to “providers of interactive computer services against liability arising from content created by third parties.”<sup>2</sup> *Fair Hous. Council of San Fernando Valley v. Roomates.com, LLC*, 521 F.3d 1157, 1162 (9th Cir. 2008) (en banc)). Lewis has therefore failed to show an injury that is fairly traceable to the CDA.

The district court next found that Lewis lacked standing to challenge the application of the “good faith” requirement in § 230(c)(2)(a) of the CDA. But Lewis raised no arguments on appeal that specifically challenged the determination. And YouTube never relied on the specific subdivision of § 230 in the motion to dismiss or the immunity arguments under the CDA. Because no party invoked § 230(c)(2)(a), the provision did not harm Lewis, and no injury was traceable to it.

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<sup>1</sup> “The Free Speech Clause of the First Amendment prohibits the government—not a private party—from abridging speech.” *Prager Univ. v. Google LLC*, 951 F.3d 991, 996 (9th Cir. 2020). As “a private entity,” although YouTube provides a forum for speech, it is not “transform[ed] into a state actor. *Id.* at 996-97.

<sup>2</sup> Lewis’ overbreadth argument facially challenging the CDA fails. Only “an individual whose own speech or conduct may be prohibited is permitted to challenge a statute on its face[.]” *Bd. of Airport Comm’rs of City of L.A. v. Jews for Jesus, Inc.*, 482 U.S. 569, 574 (1987). Section 230 does not prohibit any speech. And Lewis’ challenge does not fall under the category of persons “whose own speech or conduct” may be prohibited.

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Without an injury, the district court did not err in finding Lewis lacked standing to bring the claim.

The district court also found that Lewis failed to allege sufficient facts to state a claim on his remaining claims. We review de novo a district court's dismissal for failure to state a claim under Rule 12(b)(6). *Curtis v. Irwin Indus., Inc.*, 913 F.3d 1146, 1151 (9th Cir. 2019). We accept "all factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party." *Rowe v. Educ. Credit Mgmt. Corp.*, 559 F.3d 1028, 1029-30 (9th Cir. 2009).

Only a person "acting under color of state law" can commit a First Amendment violation actionable under 42 U.S.C. § 1983. *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). Here, Lewis sued private entities and asserted no actions that occurred under color of state law. *See Prager Univ.*, 951 at 996 ("YouTube is a private entity."). YouTube committed no § 1983 violation here.

First, Lewis brought a claim under Title II of the Civil Rights Act, 42 U.S.C. § 2000a(a), which provides for "full and equal enjoyment" of the goods and services of "any place of public accommodation." But YouTube's websites are not a "place of public accommodation." *Id.* Title II "covers only places, lodgings, facilities[,] and establishments," and the statute itself is devoid of language which would "indicate congressional intent to regulate anything other than public facilities." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 755-56 (9th Cir.

1994). To conclude Google or YouTube were places of public accommodation under Title II “would obfuscate the term ‘place’ and render nugatory the examples Congress provides to illuminate the meaning of that term.” *Id. at 755*. The district court did not err in dismissing Lewis’s Title II claim.

Next, Lewis asserted a claim under the Lanham Act for false advertising, 15 U.S.C. § 1125(a)(1)(B). To sue under § 1125(a), “a plaintiff must allege an injury to a commercial interest in reputation or sales,” and thus, a consumer cannot bring a claim under the Lanham Act. *Lexmark Int’l v. Static Control Components, Inc.*, 572 U.S. 118, 131-32 (2014). Lewis asserted claims as a consumer on the Google platform and not as a competitor with a commercial interest in reputation or sales. Accordingly, the district court properly dismissed Lewis’s Lanham Act claim for failure to state a claim.

Lewis also brought a claim for fraud by omission. Under California law, a claim of fraud by omission requires a showing of “(1) the concealment or suppression of material fact, (2) a duty to disclose the fact to the plaintiff, (3) intentional concealment with intent to defraud, (4) justifiable reliance, and (5) resulting damages.” *Mui Ho v. Toyota Motor Corp.*, 931 F. Supp. 2d 987, 999 (N.D. Cal. 2013) (citation omitted). Lewis did not allege any facts that asserted YouTube had a duty to disclose to Lewis. Lewis’s allegations did not show any alleged concealment of a material fact or reasonable reliance even as Lewis purported that YouTube failed to disclose that they censor hate speech.



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And, under California law, a plaintiff cannot demonstrate reasonable reliance on an alleged omission of information when the purportedly omitted information is disclosed in a contract. *Davis v. HSBC Bank Nev., N.A.*, 691 F.3d 1152, 1163-64 (9th Cir. 2012). YouTube disclosed that it reviews flagged content to determine whether it violates the Community Guidelines, which in turn prohibit “Hateful content.” YouTube’s monetization policies elaborate that “Hateful content” is ineligible for monetization. Thus, Plaintiff’s fraud allegation fails to state a claim.

Lewis next asserted a claim for breach of implied covenant of good faith and fair dealing. “[U]nder California law, all contracts have an implied covenant of good faith and fair dealing.” *In re Vylene Enters., Inc.*, 90 F.3d 1472, 1477 (9th Cir. 1996) (citation omitted). Lewis alleged that his contract gave YouTube *unilateral* discretion to remove, restrict, demonetize, or demote his content. And YouTube’s terms and Guidelines explicitly authorized YouTube to remove or demonetize content on its platform that violated its policies, including “Hateful content.” Thus, YouTube’s removal or demonetization of Lewis’s videos, when YouTube determined them to violate the Guidelines, cannot support a claim for breach of the implied covenant of good faith and fair dealing. See *Carma Devs. (Cal.), Inc. v. Marathon Dev. Cal., Inc.*, 2 Cal. 4th 342, 374 (1992) (en banc) (“[I]f defendants were given the right to do what they did by the express provisions of the contract there can be no breach[.]”) (internal quotation marks omitted).

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Finally, Lewis brought a state law claim of tortious interference with prospective economic advantage. The first element of a tortious interference claim requires the existence of “an economic relationship between the plaintiff and some third party, with the possibility of future economic benefit to the plaintiff.” *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1153 (2003). Lewis failed to allege, and the complaint cannot be read to find, that he had an economic relationship with a third party. And California law requires that YouTube knew of the third-party economic relationship. *Id.* But Lewis failed to show that YouTube was aware of any third party. The district court properly dismissed the claim.

The district court properly found Lewis lacked standing to bring two claims, and we find after de novo review that he failed to adequately plead the remainder.

**AFFIRMED.**

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***Lewis v. Google*, Case No. 20-16073  
Rawlinson, Circuit Judge, concurring:**

I concur in the result.

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BOB LEWIS,  
Plaintiff,  
v.  
GOOGLE LLC, et al.,  
Defendants.

Case No. 20-cv-00085-SK  
**ORDER ON MOTION  
TO DISMISS**  
Regarding Docket  
Nos. 23, 24, 27  
(Filed May 20, 2020)

This matter comes before the Court upon consideration of the motion to dismiss filed by Defendants Google Inc. and YouTube, LLC (collectively, “Defendants”). Having carefully considered the parties’ papers, relevant legal authority, and the record in the case, the Court hereby GRANTS Defendants’ motion for the reasons set forth below. Also pending is a motion for a temporary restraining order and preliminary injunction and a motion for expedited discovery, both filed by Plaintiff Bob Lewis. The Court DENIES Plaintiffs motions as MOOT.

**BACKGROUND**

Plaintiff “is a societal, cultural, and political commentator who owns and operates the website located at internet DNS address: MisandryToday.com, operates the YouTube Channel Misandry Today, and is the author of The Feminist Lie, It Was Never About Equality.” (Dkt. No. 19 (Second Amended Complaint), ¶ 16.)

Plaintiff Bob Lewis posts content on YouTube and brings this action to challenge Defendants' treatment of his posted content. (*Id.*) He alleges that Defendants are censoring and demonetizing his videos because of Defendants' opposition to Plaintiffs Christian religious affiliation, "national origin as a patriotic American citizen who supports American tradition and culture," and for exercising his First Amendment rights. (*Id.*, ¶ 1.)

YouTube has a program which enables participants to receive a share of advertising revenue generated from advertisements posted on videos, which the parties label as "monetization." If YouTube determines that certain content is not suitable for advertisement, YouTube may restrict the advertisement, and that action is referred to as "demonetization."

**A. State Actor Allegations.**

Plaintiff alleges that Defendants are agents of and are "joint enterprise state actors on behalf of the nations of The Peoples Republic of China, the EU, and the signatory governments of the Christchurch Call agreement." (*Id.*, ¶ 2.) Defendants allegedly enforce Chinese, EU, and Christchurch Call signatory government laws within the United States by criminalizing "hate speech" in violation of the United States Constitution. (*Id.*)

### **1. China.**

Defendants, along with other technology leaders, meet with the President of China in Seattle in September 2015. (*Id.*, ¶ 20.) Defendants have at least four offices in China staffed with hundreds of employees and, therefore, are required by the 2017 Chinese National Intelligence Law to “function as a joint enterprise collaborator and agent of the Chinese government.” (*Id.*, ¶ 27.)

Until at least July 2019, Defendants worked on developing a search engine called Project Dragonfly for China that would be compatible with China’s state sponsored censorship and intelligence activities. (*Id.*, ¶¶ 28, 30, 31.)

### **2. European Union.**

In 2012, Defendants created a “Trusted Flagger” program. (*Id.*, ¶ 37.) On September 22, 2016, Defendants made the following statement:

Back in 2012, we noticed that certain people were particularly active in reporting Community Guidelines violations with an extraordinarily high rate of accuracy. From this insight, the Trusted Flagger program was born to provide more robust tools for people or organizations who are particularly interested in and effective at notifying us of content that violates our Community Guidelines.

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As part of this program, Trusted Flaggers receive access to a tool that allows for reporting multiple videos at the same time.

Our Trusted Flaggers' results around flagging content that violates our Community Guidelines speak for themselves: their reports are accurate over 90% of the time. This is three times more accurate than the average flagger.

*(Id.)* Ninety percent of the time a Trusted Flagger flags a video for removal, that video is taken offline. *(Id.)* One news outlet reported that British authorities are among the Trusted Flaggers. The report stated that of the 200 people and organizations included in the pool of Trusted Flaggers, ten slots were filled by governmental agencies. *(Id., ¶ 38.)*

Another news organization reported that Defendants, along with Facebook, Twitter and Microsoft were working with the European Union to fight hate speech. *(Id., ¶ 39.)* Google's public policy and government relations director made the following public statement: "we have always prohibited illegal hate speech on our platforms . . . We are pleased to work with the Commission to develop co-and self-regulatory approaches to fighting hate speech online." *(Id.)*

Defendants signed the European Union's Code of Conduct Agreement in which they committed to removing illegal hate speech. *(Id., ¶ 41.)* Defendants are abiding by the European Union's Code of Conduct and have been expanding the censorship of hate speech into the United States. *(Id., ¶ 45.)*

### **3. Christchurch Call Agreement.**

A news organization reported that multiple governments, including Britain, Canada, Australia, Jordan, Senegal, Indonesia, Norway and Ireland, and big technology companies, including Defendants, pledged to tackle terrorist and extremist violence online in response to the attack on the Christchurch mosque. (*Id.*, ¶ 52.) The United States refused to sign on due to freedom of speech concerns. (*Id.*, ¶ 53.)

Defendants committed to sharing information with other online service providers and foreign governments and notifying each other when they take down online content they disagree with. (*Id.*, ¶ 55.) Online service providers, including Defendants, also agreed to work with the signatory governments to shut down accounts. (*Id.*, ¶ 56.)

### **4. Google's Interactions with the United States Government.**

Google won an exclusive, no-bid \$27 million contract to provide the National Geospatial-Intelligence Agency with geospatial visualization services. (*Id.*, ¶ 196.)

Additionally, news organizations have reported that the Pentagon, the Census Bureau, and intelligence agencies are working with Google and other large technology companies on the Pentagon's artificial intelligence and to fend off "fake news" and online disinformation campaign: (*Id.*, ¶¶ 197-199.)

**B. Defendants' Conduct in the United States.**

Defendants operate the largest publicly accessible commercial website for people to purchase, rent, and view videos, movies and television shows in the United States. (*Id.*, ¶ 64.)

All registered users of YouTube.com are required to sign YouTube's Terms of Service. (*Id.*, ¶ 81.) YouTube's Terms of Service require users to stipulate they will not submit any content or material contrary to YouTube's Guidelines, or contrary to local, national, or international laws and regulations. (*Id.*, ¶ 84.)

**C. Defendants' Conduct Towards Plaintiff.**

Plaintiff joined YouTube as a registered user on August 13, 2016. (*Id.*, ¶ 118.) Plaintiff created a channel called "Misandry Today" and online he used the name of DDJ. (*Id.*, ¶ 119.) Plaintiff published his first YouTube video, a commercial for his book *The Feminist Lie, It Was Never About Equality*, on May 29, 2017. (*Id.*, ¶ 120.) Plaintiff published a video commentary entitled, "The Social Media Constitutional Crisis" on YouTube.com on October 28, 2017. (*Id.*, ¶ 121.) Plaintiff published a video commentary entitled, "The Feminist & SJW Treason" on YouTube.com on November 3, 2017. (*Id.*, ¶ 122.) Plaintiff published a video commentary entitled, "The Legal Controversies Surrounding Social Media Companies" on YouTube on March 20, 2018. (*Id.*, ¶ 123.)



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Starting on October 28, 2017, YouTube demonetized many of Plaintiff's videos. (*Id.*, 124.) Plaintiff filed appeals with YouTube. He won many of his appeals, but he lost 19. (*Id.*, 124.) For the appeals he won, YouTube did not compensate Plaintiff for the revenue he lost from the demonetization. (*Id.*) YouTube also restricted and removed some of Plaintiff's videos. (*Id.*, ¶¶ 163, 165-169.)

YouTube maintains at least one, and possibly more, blacklists. (*Id.*, ¶ 171.) Defendants also created at least two programming frameworks which enable Defendants to "shadow ban," conceal, demote, or censor videos and other online content. (*Id.*, ¶¶ 172, 174.)

YouTube allows content creators to share advertisement revenue in return for posting video content, which is known as monetization and is part of Google's AdSense program. (*Id.*, ¶ 193.) Website owners can join Google's AdSense program and get paid for advertisements on their websites. (*Id.*, ¶ 194.) Google also runs an auction which allows advertisers to bid on ad placement. (*Id.*, ¶ 195.)

**D. YouTube’s Terms and Guidelines.<sup>1</sup>**

To participate in YouTube’s partner program and receive a share of advertising revenue generated from advertisements posted on videos (“monetization”), participants must agree to YouTube’s Partner Program Terms. (Dkt. No. 28, ¶ 4, Ex. A.) The Partner Program Terms incorporate the YouTube’s Terms of Service and YouTube’s Partner Program Policies (now referred to as the “YouTube Monetization Policies”), which refer to YouTube’s Advertiser-Friendly Content Guidelines. (*Id.*, ¶¶ 5, 8, 10, 11, Exs. A, C, D.) YouTube’s Terms of Service incorporates YouTube’s Community Guidelines. (*Id.*, ¶ 9, Ex. B.)

YouTube’s Partner Program Terms provide in relevant part that “YouTube is not obligated to display any advertisements alongside your videos and may

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<sup>1</sup> Courts may consider documents on a motion to dismiss where “the complaint necessarily relies upon a document or the contents of the document are alleged in a complaint, the document’s authenticity is not in question and there are no disputed issues as to the document’s relevance.” *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010). In his operative complaint, Plaintiff repeatedly refers to his contracts with Defendants. (*See, e.g.*, Dkt. No. 19, ¶¶ 13, 81-84 (referring to YouTube’s Terms of Service), ¶ 234 (referring to YouTube’s Terms of Service and community guidelines), ¶ 245.) Plaintiff attached YouTube’s Terms of Service as Exhibit S to his original complaint. (Dkt. No. 1.) The Terms of Service states that YouTube’s Community Guidelines are incorporated by reference. (*Id.*) In a declaration in support of Defendants’ motion to dismiss, Jorge Blanco Cano explains what contracts entities must agree to in order to post on YouTube’s video-sharing website and to participate in YouTube’s Partner Program to monetize posted videos. (Dkt. No. 28, ¶¶ 3-5.)

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determine the type and format of ad available on the YouTube Service.” (*Id.*, Ex. A, ¶ 1.1.) YouTube’s Community Guidelines state:

If you think content is inappropriate, use the flagging feature to submit it for review by our YouTube staff. Our staff carefully reviews flagged content 24 hours a day, 7 days a week to determine whether there’s a violation of our Community Guidelines.

(*Id.*, Ex. B at p.1.) The Community Guidelines then lists several categories of prohibited material including “Hateful content.” The “Hateful content” section states:

Our products are platforms for free expression. But we don’t support content that promotes or condones violence against individuals or groups based on race or ethnic origin, religion, disability, gender, age, nationality, veteran status, caste, sexual orientation, or gender identity, or content that incites hatred on the basis of these core characteristics.

(*Id.*, Ex. B.) YouTube’s monetization policy provides, in pertinent part:

If you’re in the YouTube Partner Program, it’s important to follow the YouTube monetization policies, which include YouTube’s Community Guidelines, Terms of Service, and Google AdSense program policies. These policies apply to anyone in the YouTube Partner Program. If you want to monetize videos with ads, they

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must also meet our Advertiser-friendly content guidelines.

If you violate any of these policies, YouTube may take some or all of the following actions:

- Disabling ads from your content
- Disabling your AdSense account
- Suspending your participation in the YouTube Partner Program
- Suspending or even terminating your YouTube channel

...

Content that violates YouTube's Community Guidelines is not eligible for monetization and will be removed from YouTube. . . .

Content that violates YouTube's Community Guidelines includes: . . . Hateful content. . . .

(*Id.*, Ex. C.) YouTube's Advertiser-friendly content guidelines provides "examples of content not suitable for ads, which will result in a 'limited or no ads' monetization state[,]" as well as topics that are "not advertiser-friendly[,]" such as: "Hateful content[,]" "Incendiary and demeaning[,]" and "Controversial issues and sensitive events[.]" (*Id.*, Ex. D.) "Hateful content" is further defined as:

Content that incites hatred against, promotes discrimination, disparages, or humiliates an individual or group of people based on the following is not suitable for advertising:

- Race
- Ethnicity or ethnic origin
- Nationality
- Religion
- Disability
- Age
- Veteran status
- Sexual orientation
- Gender identity
- Any other characteristic associated with systemic discrimination or marginalization

*(Id.)*

**E. Plaintiff's Claims.**

**1. 42 U.S.C. § 1983—First Amendment Violation.**

Plaintiff alleges that Defendants are state actors based on their relationship with China, the European Union, and the signatory countries of the Christchurch Call Agreement. (*Id.*, ¶ 208.) Defendants enforce the hate speech and other censorship laws of these countries within the United States, including against Plaintiff. (*Id.*, ¶ 212.) Plaintiff further alleges that even if Defendants are not agents of a foreign government,

they are pervasively intertwined with the United States government. (*Id.*, ¶ 217.)

**2. National Origin Discrimination Under 42 U.S.C. § 2000a.**

Plaintiff alleges that Defendants are an online theater and/or place of public exhibition or entertainment under 42 U.S.C. § 2000a. (*Id.*, ¶ 221.)

YouTube allegedly discriminated against Plaintiff on the basis of his national origin when YouTube demonetized many of his videos and then his entire channel, restricted, and removed hi videos because he “is a patriotic American citizen who promotes Constitutional rights of Americans, Christian beliefs and American laws and culture. (*Id.*, ¶ 225.)

**3. 47 U.S.C. § 230 Claims.**

Under his third claim, Plaintiff alleges that that the Communications Decency Act, 47 U.S.C. § 230 is unconstitutional because it allows Defendants to censor without liability and because the statute is vague, overbroad, and internally inconsistent. (*Id.*, ¶¶ 94, 95, 229-31.) In his eighth claim, Plaintiff brings a claim to challenge Defendants’ ability to assert 47 U.S.C. § 230 as a defense, asserting that Defendants do not meet the good faith requirements of the statute. (*Id.*, ¶ 263.)

#### **4. Lanham Act.**

Plaintiff alleges that YouTube “markets itself as website that promotes free speech and freedom of expression free from censorship” and points to the following statement from YouTube on its website:

Our Mission is to give everyone a voice and show them the world. We believe that everyone deserves to have a voice, and that the world is a better place when we listen, share and build community through our stories.

Our values are based on four essential freedoms that define who we are.

##### Freedom of Expression:

We believe people should be able to speak freely, share opinions, foster open dialogue, and that creative freedom leads to new voices, formats, and possibilities.

##### Freedom of Information

We believe everyone should have easy, open access to information and that video is a powerful force for education, building understanding, and documenting world events, big and small.

##### Freedom of Opportunity:

We believe everyone should have a chance to be discovered, build a business and succeed on their own terms, and that people-not gatekeepers-decide what’s popular.

##### Freedom to Belong:

We believe everyone should be able to find communities of support, breakdown barriers,

transcend borders and come together around shared interests.

(*Id.*, ¶ 65.) Plaintiff alleges that Defendants falsely advertise as a forum for open and intellectually diverse expression and misrepresent the nature of its services “as an equal, open and diverse public forum committed to American style free speech.” (*Id.*, ¶ 259.)

Plaintiff alleges that he has been harmed by lower and diverted viewership, decreased and lost ad revenue, a reduction in advertisers, and damage to his brand, reputation and goodwill. (*Id.*, ¶ 260.)

## **5. Declaratory Relief Claim.**

Plaintiff also seeks declaratory relief on all of his federal claims. (*Id.*, ¶ 270.)

## **6. State-Law Claims.**

### **i. Fraud.**

Plaintiff alleges that Defendants publicly presents YouTube as a free speech platform, free from unlawful censorship. (Dkt. No. 19, ¶ 233.) Defendants do not disclose the identity of their trusted flaggers, including that they use foreign governmental entities or agencies as flaggers. (*Id.*, ¶ 234.) Defendants also fail to disclose that American registered users could be censored or demonetized if a foreign government objects to it. (*Id.*, ¶¶ 235, 236.)



Plaintiff further alleges that Defendants failed to disclose they: (1) adopted a “more censored European/Chinese ideological perspective” over “American Constitutional style free speech,” (2) maintained blacklists of words, websites, users, and/or other material and content, and (3) used algorithm censorship and blacklists, such as Twiddler, Adscorer and other internal tools, to artificially promote and demote websites, YouTube channels, and other online material. (*Id.*, ¶¶ 237, 239.)

Plaintiff alleges that he relied on these misrepresentations and/or omissions and was damaged by the demonetization of his channel and censorship of his videos. (*Id.*, ¶ 243.)

**ii. Breach of Implied Covenant of Good Faith and Fair Dealing.**

Plaintiff alleges that he entered into contracts with Defendants for their services and that the contracts give Defendants unilateral discretion to remove, restrict, demonetize or demote his content. (*Id.*, ¶ 245.) The contracts also allow Defendants to change the terms at any time without notice. (*Id.*)

Plaintiff further alleges none of his demonetized or restricted videos violated the letter or spirit of their contracts. (*Id.*, ¶ 247.) Plaintiff contends that, pursuant to the contracts, he was entitled to a wide audience and to some portion of the ad revenue profits that Defendants earned from hosting Plaintiff’s content. (*Id.*, ¶ 248.) Defendants breached the covenant of good faith

and fair dealing by unfairly and unlawfully interfering with his rights to receive the benefits of the contracts. (*Id.*)

**iii. Tortious Interference with Economic Advantage.**

Plaintiff alleges that Defendants discriminates, demonetizes, and/or otherwise censors him “as part of an ongoing pattern and practice to silence American citizens on behalf of foreign government trust flaggers and/or other agents.” (*Id.*, ¶ 265.) Defendants intentionally and maliciously interfered with Plaintiff’s business interests by censoring and demonetizing him on their websites and platforms. (*Id.*, 267.)

**ANALYSIS**

**A. Applicable Legal Standard on Motion to Dismiss.**

A motion to dismiss is proper under Federal Rule of Civil Procedure 12(b)(6) where the pleadings fail to state a claim upon which relief can be granted. On a motion to dismiss under Rule 12(b)(6), the Court construes the allegations in the complaint in the light most favorable to the non-moving party and takes as true all material allegations in the complaint. *Sanders v. Kennedy*, 794 F.2d 478, 481 (9th Cir. 1986). Even under the liberal pleading standard of Rule 8(a)(2), “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of

a cause of action will not do.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). Rather, a plaintiff must instead allege “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570.

“The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully. . . . When a complaint pleads facts that are merely consistent with a defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 557) (internal quotation marks omitted). If the allegations are insufficient to state a claim, a court should grant leave to amend, unless amendment would be futile. *See, e.g. Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990); *Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv., Inc.*, 911 F.2d 242, 246-47 (9th Cir. 1990).

As a general rule, “a district court may not consider material beyond the pleadings in ruling on a Rule 12(b)(6) motion.” *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994), *overruled on other grounds, Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002) (citation omitted: However, documents subject to judicial notice, such as matters of public record, may be considered on a motion to dismiss. *See Harris v. Cnty of Orange*, 682 F.3d 1126, 1132 (9th Cir. 2011). In doing so, the Court does not convert a motion to dismiss to one for summary judgment. *See Mack v. S. Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986), *overruled*

on other ground by *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104 (1991). The district court may also consider documents attached to and/or incorporated by reference in the complaint without converting the motion to dismiss into a motion for summary judgment. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). “The court need not . . . accept as true allegations that contradict matters properly subject to judicial notice. . . .” *Sprewell v. Golden State Warriors*, 266 F. 3d 979, 988 (9th Cir. 2001).

## **B. Defendants’ Motion to Dismiss.**

Defendants move to dismiss all of Plaintiffs claims, except for his third and eighth claims, on the grounds that § 230 of the Communications Decency Act (the “CDA”) immunizes them from Plaintiff’s claims.<sup>3</sup>

### **1. Plaintiff’s Third and Eighth Claims Regarding the CDA.**

In anticipation of Defendants’ defenses, Plaintiff brings two claims challenging the CDA—Plaintiff’s third claim alleging § 230 of the CDA is unconstitutional and Plaintiff’s eighth claim alleging Defendants do not meet the “good faith” requirement of § 230(c)(2). Defendants argue that Plaintiff lacks standing to bring

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<sup>3</sup> In his opposition brief, Plaintiff concedes that he cannot state an affirmative claim that Defendants’ terms and conditions are unconscionable. Therefore, the Court grants Defendants’ motion as to Plaintiff’s sixth claim as unopposed.

both of these claims because the CDA is a statute that which merely provides *Defendants* with a defense to liability.

Standing is a constitutional requirement of all federal courts, requiring plaintiffs to “demonstrate a personal stake in the outcome” in order to establish jurisdiction. *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983) (citing *Baker v. Carr*, 369 U.S. 186, 204 (1962)). Where a plaintiff lacks standing, a federal court “lacks subject matter jurisdiction over the suit.” *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004). To satisfy the Constitution’s standing requirements, a plaintiff must show (1) he has suffered an “injury in fact” that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury must be fairly traceable to the challenged action of the defendant; and (3) it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). “[A] plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought.” *Town of Chester, N.Y. v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650 (2017) (quoting *David v. Federal Election Comm’n*, 554 U.S. 724, 734 (2008)).

Here, Plaintiff has not alleged any facts to show he has suffered an injury in fact. Plaintiffs asserted injury depends upon his valid claim and Defendants’ assertion of a defense provided by 47 U.S.C. § 230. Plaintiff will not suffer an injury unless and until Plaintiff pleads a valid claim, which, as discussed in

this Order, he has not done, and until Defendants assert a defense to liability provided by 47 U.S.C. § 230. Therefore, the Court finds that Plaintiff lacks standing to bring his third and eighth claims challenging 47 U.S.C. § 230 and grants Defendants' motion on this ground.

**2. Defendants' Ability to Assert Section 230 as a Defense to Liability.**

Although Plaintiff cannot bring an independent claim to challenge the constitutionality of Section 230 of the CDA, the Court will address Plaintiff's argument raised in his third claim because Defendants assert this statute as a ground for dismissing Plaintiffs claims. Plaintiff argues that Section 230 violates the First Amendment because it restricts his speech. (Dkt. No. 32 (Plaintiff's Opp.) at 15.) In his SAC, Plaintiff alleges that § 230 is unconstitutional "because the statute doesn't define any of the terms included under §[230](c)(2)(A), such as: 'harassing, obscene, lewd, lascivious, filthy, excessively violent, objectionable.'" (Dkt. No. 19, ¶ 229.) It appears as though Plaintiff contends that § 230(c)(2) is unconstitutional. However, as discussed below, the Court finds that Plaintiffs claims are barred based on § 230(c)(1), not subdivision (c)(2). Moreover, to the extent Plaintiff argues that subdivision (c)(1) violates the First Amendment, it is not clear how. Section 230(c)(1) provides: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C.A.

§ 230(c)(1). This provision does not ban or restrict any speech. *Cf. Green v. Am. Online (AOL)*, 318 F.3d 465, 472 (3d Cir. 2003) (rejecting claim that Section 230(c)(2) contravenes the First Amendment because it merely immunizes internet service providers of internet from liability: “Section 230(c)(2) does not *require* AOL to restrict speech; rather it allows AOL to establish standards of decency without risking liability for doing so.”) (emphasis in original).

Plaintiff’s other argument regarding the CDA in his eighth claim also applies only to subdivision (c)(2). Plaintiff alleges that Defendants have not meet the “good faith” requirement under the statute (Dkt. No. 19, ¶ 263), but only subdivision (c)(2), not subdivision (c)(1), requires any “good faith.”<sup>3</sup> Therefore, Plaintiff has not shown that that Defendants are precluded from raising § 230(c)(1) as a defense to Plaintiff’s claims.

### **3. The CDA Bars Plaintiff’s Remaining Claims.**

Section 230 of the CDA “immunizes providers of interactive computer services against liability arising from content created by third parties.” *Fair Hous. Council of San Fernando Valley v. Roommates.com*,

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<sup>3</sup> Subdivision (c)(2) provides: “No provider or user of an interactive computer service shall be held liable on account of . . . any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected[.]” 47 U.S.C.A. § 230(c)(2).

*LLC*, 521 F.3d 1157, 1162 (9th Cir. 2008) (*en banc*). “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.” *Id.* at 1170-71. Immunity under Section 230 “protect[s] websites not merely from ultimate liability, but [also] from having to fight costly and protracted legal battles.” *Id.* at 1175. “[C]ourts have treated § 230(c) immunity as quite robust, adopting a relatively expansive definition of ‘interactive computer service’ and a relatively restrictive definition of ‘information content provider.’” *Carafano v. Metrosplash*, 339 F.3d 1119 1123 (9th Cir. 2003); *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 18 (1st Cir. 2016) (“There has been near-universal agreement that section 230 should not be construed grudgingly.”) “[C]lose cases . . . must be resolved in favor of immunity.” *Roommates.Com*, 521 F.3d at 1174. “When a plaintiff cannot allege enough facts to overcome Section 230 immunity, a plaintiff’s claims should be dismissed.” *See Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1097 (9th Cir. 2019). “Section 230 immunity extends to causes of action under both state and federal law.” *Fed. Agency of News LLC v. Facebook, Inc.*, \_\_\_ F. Supp. 3d \_\_\_, 2020 WL 137154, at \*5 (N.D. Cal. Jan. 13, 2020) (citing *Roommates*, 521 F.3d at 1164, 1169 n. 24).

Subsection (c)(1) of the CDA protects from liability (1) a provider or user of an interactive computer service (2) whom a plaintiff seeks to treat as a publisher or speaker (3) of information provided by another



information content provider. *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 110001 (9th Cir. 2009).

**i. Interactive Computer Service.**

An “interactive computer service” is defined under the CDA as “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.” 47 U.S.C. § 230(f)(2). There does not appear to be any dispute that YouTube and Google are providers of an interactive computer service. *See Bennett v. Google, LLC*, 882 F.3d 1163, 1167 (D.C. Cir. 2018) (“as many other courts have found, Google qualifies as an ‘interactive computer service’ provider because it ‘provides or enables computer access by multiple users to a computer server.’”); *see also Black v. Google Inc.*, 2010 WL 3222147, at \*2 (N.D. Cal. Aug. 13, 2010) (finding Google immune under § 230), *aff’d* by 457 Fed. Appx. 622 (9th Cir. 2011); *Gonzalez v. Google, Inc.*, 282 F. Supp. 3d 1150, 1163 (N.D. Cal. 2017) (holding Google was an interactive computer service provider and dismissing claims based on YouTube postings); *Lancaster v. Alphabet Inc.*, 2016 WL 3648608, at \*3 (N.D. Cal. July 8, 2016) (“The Court finds . . . that YouTube and Google are ‘interactive computer services.’”).

**ii. Treating Defendants as a Publisher or Speaker.**

In his claims, Plaintiff charges Defendants with wrongfully demonetizing, censoring, restricting and removing his videos. The Ninth Circuit has made clear that removing or restricting postings falls within a publisher's traditional functions. *Barnes*, 570 F.3d at 1101 (citing *Zeran v. Amer. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)) (listing "deciding whether to publish, withdraw, postpone or alter content" as examples of "a publisher's traditional editorial functions"); see also *Ebeid v. Facebook, Inc.*, 2019 WL 2059662, at \*5 (N.D. Cal. May 9, 2019) ("defendant's decision to remove plaintiff's posts undoubtedly falls under 'publisher' conduct"). "Subsection (c)(1), by itself, shields from liability all publication decisions, whether to edit, to remove, or to post, with respect to content generated entirely by third parties." *Barnes*, 570 F.3d at 1105; see also *Roommates.Com*, 521 F.3d at 1171 ("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.").

Defendants argue and the Court agrees that their alleged demonetization of Plaintiff's postings also constitutes a publishing function under § 230. Courts have broadly interpreted what it means to be acting as a publisher under the CDA. *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 19 (1st Cir. 2016) ("The broad construction accorded to section 230 as a whole has resulted in a capacious conception of what it means to treat a website operator as the publisher or

speaker of information provided by a third party.”). In *Backpage.com*, the First Circuit held that choices that the defendant made about the posting standards for advertisements, such as rules for what terms were allowed in postings and the acceptance of anonymous payments, fell within publisher functions. *Id.* at 20; *see also id.* at 21 (“Features such as these, which reflect choices about what content can appear on the website and in what form, are editorial choices that fall within the purview of traditional publisher functions.”); *cf. Stewart v. Rolling Stone LLC*, 181 Cal App. 4th 664, 691 (2010) (First Amendment protections for newspapers as publishers has been extended to the content and placement of advertisements). Deciding whether to limit advertising on a posting is not different in nature from removing a post altogether. Both fall under the rubric of publishing activities. *See Barnes*, 570 F.3d at 1102 (“publication involves reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content”). Thus, the Court finds that Plaintiff treats Defendants as a publisher in his allegations.

**iii. Provided by Another Information Content Provider.**

Plaintiff’s videos, and the advertisements from other third parties, constitute “information provided by another information content provider” under § 230. *Riggs v. MySpace, Inc.*, 444 F. App’x 986, 987 (9th Cir. 2011) (defendant’s decision to delete plaintiffs profile from its social networking site was precluded by

section 230(c)(1) of the CDA) (citing *Roommates.Com*, 521 F.3d at 1170-71) (“[A]ny 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.”); *see also Ebeid v. Facebook, Inc.*, 2019 WL 2059662, at \*5 (N.D. Cal. May 9, 2019) (rejected argument that posts were not “information provided by another information content provider” because plaintiff himself—not some other third-party—provided the information and applied (c)(1) immunity to Facebook’s decision to remove plaintiffs posts); *Lancaster*, 2016 WL 3648608, at \*3 (applied (c)(1) immunity to YouTube’s decision to remove plaintiffs videos from its site). As the court explained in *Ebeid*, “information provided by another information content provider” applies to an: content that is “created entirely by individuals or entities other than the interactive computer service provider.” *Ebeid*, 2019 WL 2059662, at \*4.

Because the Court finds that Defendants provide an interactive computer service and that Plaintiff, through his first, second, fourth, fifth, seventh, ninth, and tenth claims, is seeking to hold Defendants liable as a publisher of information provided by another content provider, § 230(c)(1) bars these claims.

#### **4. Failure to State Claims.**

Additionally, the Court finds that Plaintiff’s claims independently should be dismissed because he fails to allege sufficient facts to state his claims.

**i. Plaintiff’s Section 1983 Claim Premised on the First Amendment.**

Plaintiffs first claim is under 42 U.S.C. § 1983 for alleged violations of the First Amendment. To state a claim under Section 1983, a plaintiff must plead: “(1) a violation of right; protected by the Constitution or created by federal statute, (2) proximately caused (3) by conduct of a ‘person’ (4) acting under color of state law.” *Crampton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). Here, Plaintiff is only suing private entities. *See Prager Univ. v. Google LLC*, \_\_\_ F.3d \_\_\_, 2020 WL 913661, \*2, 3 (9th Cir. Feb. 26, 2020) (“YouTube is a private entity. . . . “[I]t is not transformed into a state actor solely by providing a forum for speech”) (internal brackets, quotation marks and citation omitted). Plaintiff does not dispute that “normally private parties cannot be held as state actors.” (Dkt. No. 32 at 4.) Instead, Plaintiff seeks to hold Defendants liable as “state” actors by connecting them to alleged conduct by the United States government and by foreign governments. However, even if Plaintiff’s allegations were sufficient to hold Plaintiffs liable for conduct by the federal and by foreign governments, such allegations do not allege conduct under color of *state* law.

A defendant acts “under color of state law” where he, she, or it “exercised power possessed by virtue of *state law* and made possible only because the wrongdoer is clothed with the authority of state law.” *West v. Atkins*, 487 U.S. 42, 49 (1988) (emphasis added). “[F]ederal officials who violate federal rights protected by § 1983 generally do not act under ‘color of state

law.’” *Kali v. Bowen*, 854 F.2d 329, 331 (9th Cir. 1988) (citation omitted) (where plaintiffs did not allege that federal and state officials conspired, federal officials’ actions could not be deemed to have been under “color of state law”); *see also Cabrera v. Martin*, 973 F.2d 735, 742 (9th Cir. 1992) (“[f]ederal officials acting under federal authority are generally not considered to be state actors, [but] they may be liable under § 1983 if they are found to have conspired with or acted in concert with state officials to some substantial degree.”). Similarly, acts by a foreign government and its officials “cannot constitute conduct under color of state law” under Section 1983. *Kimbell v. Benner*, 2018 WL 1135389, at \*3 (C.D. Cal. Feb. 26, 2018) (citing *Gerritsen v. de la Madrid Hurtado*, 819 F.2d 1511, 1515 (9th Cir. 1987)); *cf. Ohno v. Yasuma*, 723 F.3d 984, 995 (9th Cir. 2013) (“state actor’ means an actor for whom a domestic governmental entity is in some sense responsible”). Accordingly, Plaintiff fails to state a claim under Section 1983 premised on the First Amendment.

**ii. Plaintiff’s Claim of Discrimination under Title II of the Civil Rights Act.**

Under Title II of the Civil Rights Act “[a]ll persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation . . . without discrimination or segregation on the ground of race, color, religion, or national origin.” 42 U.S.C. § 2000a. Defendants argue that Plaintiff’s Title II claim fails on the following three separate,

independent grounds: (1) YouTube is not a place of public accommodation; (2) Plaintiff does not sufficiently allege facts to show intentional discrimination; and (3) Plaintiff failed to provide written notice. Because the Court finds that YouTube is not a place of public accommodation under the statute, Plaintiff's Title II claim fails, and the Court need not address Defendants' other grounds.

The statute defines "place of public accommodation" to mean:

- (1) any inn, hotel, motel, or other establishment which provides lodging to transient guests . . . ;
- (2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises . . . ;
- (3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and
- (4) any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

42 U.S.C.A. § 2000a(b).

Title II of the Civil Rights Act "covers only places, lodgings, facilities and establishments." *Clegg v. Cult*

*Awareness Network*, 18 F.3d 752, 756 (9th Cir. 1994) (holding that a national organization was not sufficiently connected to a “place” open to the public). Construing the statutory language, the Ninth Circuit noted “[n]owhere does the statute . . . indicate congressional intent to regulate anything other than public facilities.” *Id.* at 755. The court further found:

Congress’ intent in enacting Title II was to provide a remedy only for discrimination occurring in facilities or establishments serving the public: to conclude otherwise would obfuscate the term “place” and render nugatory the examples Congress provides to illuminate the meaning of that term.

*Id.*; see also *Noah v. AOL Time Warner, Inc.*, 261 F. Supp. 2d 532, 541 (E.D. Va. 2003) (“as the relevant case law and an examination the statute’s exhaustive definition make clear, ‘places of public accommodation’ are limited to actual, physical places and structures, and thus cannot include chat rooms, which are not actual physical facilities but instead are virtual forums for communication”), *aff’d sub nom. Noah v. AOL-Time Warner, Inc.*, 2004 WL 602711 (4th Cir. Mar. 24, 2004)); *Ebeid v. Facebook, Inc.*, 2019 WL 2059662, at \*6 (N.D. Cal. May 9, 2019) (finding services provided by Facebook’s online platform were “unconnected to entry into a public place or facility and therefore the plain language of Title II [made] the statute inapplicable”) (citing *Clegg*, 18 F.3d at 756).

Plaintiff’s reliance on cases interpreting the American’s with Disabilities Act is misplaced. The



ADA is different statute with different statutory language that defines places of public accommodation. *See, e.g., Ramirez v. Petrillo*, 2012 WL 12887630, at \*2 (D. Or. Sept. 19, 2012) (noting the important differences between the ADA and the Civil Rights Act, including that “the ADA has a more expansive definition of ‘place of public accommodation,’ than the Civil Rights Act) (internal quotation marks and citation omitted). “The ADA’s more expansive definition of ‘place of public accommodation’ is not transferable to the Civil Rights Act: The Civil Rights Act expressly limits its scope to places of public accommodation “as defined in this section.” *Id.*

Additionally, the Court notes that Ninth Circuit case upon which Plaintiff relies, *Robles v. Domino’s Pizza, LLC*, expressly relies on the nexus between the company’s website and its physical restaurants to find that the plaintiff could state a claim under the ADA:

The alleged inaccessibility of Domino’s website and app impedes access to the goods and services of its physical pizza franchise—which are places of public accommodation. . . . Customers use the website and app to locate a nearby Domino’s restaurant and order pizzas for at-home delivery or in-store pickup. This nexus between Domino’s website and app and physical restaurants—which Domino’s does not contest—is critical to our analysis.

913 F.3d 898, 905 (9th Cir. 2019).

Because Title II of the Civil Rights Act applies only to physical facilities, the Court grants the motion to dismiss as to this claim.

**iii. Lanham Act.**

To state a claim under the Lanham act for false advertising under 15 U.S.C. § 1125(a)(1)(B), Plaintiff must allege: “a ‘false or misleading representation of fact’ in commercial advertising or promotion’ that ‘misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person’s goods, services, or commercial activities.’” *Prager Univ. v. Google LLC*, 951 F.3d 991, 999 (9th Cir. Feb. 26, 2020) (quoting *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1139 & n. 2 (9th Cir. 1997)).

Defendants make two arguments against Plaintiff’s claim under the Lanham Act. First, they argue that Plaintiff lacks standing because he complains of a harm he incurred as a consumer from his use of YouTube, not as a competitor. Second, Defendants argue that the statements Plaintiff alleges as misrepresentations are non-actionable “puffery.”

**a. Whether Plaintiff Alleges an Actionable Injury.**

A plaintiff has a cause of action under a statute only if his or her interests “fall within the zone of interests protected by the law.” *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 129

(2014) (internal quotation marks and citation omitted). “[T]o come within the zone of interests in a suit for false advertising under § 1125(a), a plaintiff must allege an injury to a commercial interest in reputation or sales.” *Id.* at 131-32. A consumer cannot bring a claim under the Lanham Act. *Id.* at 132. Additionally, a plaintiff must show proximate causation. “[T]hus . . . a plaintiff suing under § 1125(a) ordinarily must show economic or reputational injury flowing directly from the deception wrought by the defendant’s advertising; and that that occurs when deception of consumers causes them to withhold trade from the plaintiff.” *Id.* at 133.

Plaintiff argues in opposition to the motion that he is both a consumer of, and a competitor with, Defendants because YouTube also creates and publishes videos. However, Plaintiff does not actually allege that he competes with YouTube. Moreover, even if Plaintiff did or could allege that he is a competitor with YouTube, the harm of which he complains stems from his relationship with YouTube as a consumer. The statements Plaintiff alleges which caused him harm relate to the type of forum Defendants provide, not the videos or content they create. (Dkt. No. 19, ¶ 65 (alleging YouTube “markets itself as website that promotes free speech and freedom of expression free from censorship”), ¶ 259 (alleging Defendants “advertise themselves . . . as a forum for open and intellectually diverse expression” and advertise their services “as an equal, open and diverse public forum committed to American style free speech”).)

Plaintiff alleges he has been injured by lower and diverted viewership, decreased and lost ad revenue, a reduction in advertisers, and damage to his brand, reputation and goodwill. (*Id.*, ¶ 260.) It is not clear how Defendants' statements about hosting an open forum, as opposed to YouTube's censorship or demonetization of his videos, caused Plaintiff any reputational harm. Even if Plaintiff could allege facts to show that Defendants' statements about the openness of its forum caused Plaintiff some loss to his commercial interest or reputational harm, the harm occurred by YouTube's enforcement of its policies to those who post on its website. In other words, it is a harm Plaintiff incurred by interacting with YouTube as a consumer, not as a competitor. Therefore, Plaintiff lacks standing to bring a claim under the Lanham Act.

**b. Whether Plaintiff Alleges an Actionable Statement.**

Additionally, Defendants argue that Plaintiff's claim fails for the independent reason that Plaintiffs alleged statements are mere "puffery." Statements are "considered puffery if the claim is extremely unlikely to induce consumer reliance. *Newcal Indus., Inc. v. Ikon Office Sol.*, 513 F.3d 1038, 1053 (9th Cir. 2008); *see also Coastal Abstract Serv. Inc. v. First Am. Title Ins. Co.*, 173 F.3d 725, 731 (9th Cir. 1999) (statements that are so vague they are not "capable of being proved false" are non-actionable). "Ultimately, the difference between a statement of fact and mere puffery rests in the specificity or generality of the claim." *Newcal Indus.*,

513 F.3d at 1053. A statement that is “quantifiable, that makes a claim as to the ‘specific or absolute characteristics of a product,’ may be an actionable statement of fact while a general subjective claim about a product is non-actionable puffery.” *Id.* (quoting *Cook*, 911 F.2d at 246).

In *Prager University*, the Ninth Circuit held that a claim against YouTube failed because the plaintiff’s alleged statements, including that “everyone deserves to have a voice” and “people should be able to speak freely . . . ” as Plaintiff also alleges here,<sup>4</sup> were not

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<sup>4</sup> Plaintiff alleges that Defendants made the following statement:

Our Mission is to give everyone a voice and show them the world. We believe that everyone deserves to have a voice, and that the world is a better place when we listen, share and build community through our stories.

Our values are based on four essential freedoms that define who we are.

Freedom of Expression:

We believe people should be able to speak freely, share opinions, foster open dialogue, and that creative freedom leads to new voices, formats, and possibilities.

Freedom of Information

We believe everyone should have easy, open access to information and that video is a powerful force for education, building understanding, and documenting world events, big and small.

Freedom of Opportunity:

We believe everyone should have a chance to be discovered, build a business and succeed on their own terms, and that people-not gatekeepers-decide what’s popular.

actionable under the Lanham Act. *Prager University*, 951 F.3d at 1000. The Ninth Circuit explained that:

YouTube’s braggadocio about its commitment to free speech constitutes opinions that are not subject to the Lanham Act. Lofty but vague statements like “everyone deserves to have a voice, and that the world is a better place when we listen, share and build community through our stories” or that YouTube believes that “people should be able to speak freely, share opinions, foster open dialogue, and that creative freedom leads to new voices, formats and possibilities” are classic, non-actionable opinions or puffery.

*Id.* (citing *Newcal Indus., Inc. v. Ikon Office Sol.*, 513 F.3d 1038, 1053 (9th Cir. 2008)). Defendants’ statement about providing a voice and freedom of expression is the only statement Plaintiff alleges. To the extent Plaintiff includes a larger excerpt of Defendants’ statement, including opinions on the freedom of information, of opportunity, and to belong, it is of a similar “[l]ofty but vague” nature, and thus, are similarly non-actionable opinions. *Prager University*, 951 F.3d at 1000.

Plaintiff also generally alleges that Defendants falsely advertise as a forum for open and intellectually

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Freedom to Belong:

We believe everyone should be able to find communities of support, breakdown barriers, transcend borders and come together around shared interests.

(Dkt. No. 19, ¶ 65.)

diverse expression and falsely advertise their services “as an equal, open and diverse public forum committed to American style free speech.” (*Id.*, ¶ 259.) It is not clear if Plaintiff is drawing that conclusion from the statement it quotes in paragraph 65 of its operative complaint, or if he is relying on additional statements. To the extent Plaintiff is merely drawing that conclusion from the statements quoted in paragraph 65, as stated above, the Ninth Circuit held that these statements are non-actionable puffery. To the extent Plaintiff is drawing this conclusion from other statements, Plaintiff’s claim fails for not identifying the specific statements. Therefore, the Court grants Defendants’ motion as to Plaintiff’s claim under the Lanham Act for this additional reason.

#### **iv. Fraud.**

To plead a claim for fraud based on an omission, Plaintiff must allege the following: “(1) the concealment or suppression of material fact, (2) a duty to disclose the fact to the plaintiff, (3) intentional concealment with intent to defraud, (4) justifiable reliance, and (5) resulting damages.” *Mui Ho v. Toyota Motor Corp.*, 931 F. Supp. 2d 987, 999 (N.D. Cal. 2013); *see also Tenet Healthsystem Desert, Inc. v. Blue Cross of Cal.*, 245 Cal. App. 4th 821, 844 (2016). “[T]he elements of fraud and deceit based on concealment are the same as for intentional fraud, with the additional requirement that the plaintiff allege that the defendant concealed or suppressed a material fact in a situation in which the defendant was under a duty to disclose that

material fact.” *Tenet Healthsystem Desert*, 245 Cal. App. 4th at 844. Where, as here, the transactions do not involve fiduciary or confidential relationships, a duty to disclose arises when:

- (1) the defendant makes representations but does not disclose facts which materially qualify the facts disclosed, or which render his disclosure likely to mislead;
- (2) the facts are known or accessible only to defendant, and defendant knows they are not known to or reasonably discoverable by the plaintiff; [or]
- (3) the defendant actively conceals discovery from the plaintiff.

*Id.*

Plaintiff fails to allege facts sufficient to support a duty to disclose. Additionally, Plaintiff fails to allege concealment of any material facts or any reasonable reliance on the purported omissions in light of YouTube’s disclosures in its terms and guidelines. A plaintiff cannot demonstrate reasonable reliance on an alleged omission when the purportedly omitted fact is disclosed in the contract. *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1163-64 (9th Cir. 2012) (finding plaintiff could not demonstrate justifiable reliance on purported failure to disclose annual fee because fee was disclosed in terms to which plaintiff agreed); *Circle Click Media LLC v. Regus Mgmt. Grp. LLC*, 2013 WL 57861, at \*11 (N.D. Cal. Jan. 3, 2013) (same); *cf. Woods v. Google, Inc.*, 889 F. Supp. 2d 1182, 1195-96 (N.D. Cal. 2012) (finding that plaintiff could not reasonably rely



on statements that contradicted the clear language of an advertising agreement).

In essence, Plaintiff alleges that Defendants wrongfully censor hate speech and do so at the behest of foreign governments in contravention of “American Constitutional style free speech.” (Dkt. No. 19, ¶ 237.) In their fraud claim, Plaintiff alleges that Defendants failed to disclose that they wrongfully censor hate speech and do so at the behest of foreign governments in contravention of American Constitutional free speech. However, YouTube discloses that it reviews flagged content to determine whether it violates its Community Guidelines, which in turn state that “Hateful content” is prohibited. (Dkt. No. 28, Ex. B.) YouTube further discloses in its monetization policies that videos with ads must meet its Advertiser-friendly content guidelines and that content, including “Hateful content,” which violates its Community Guidelines is not eligible for monetization. (*Id.*, Ex. C.) YouTube’s Advertiser-friendly content guidelines provides “examples of content not suitable for ads, which will result in a ‘limited or no ads’ monetization state[,]” as well as topics that are “not advertiser-friendly[,]” such as: “Hateful content[.]” (*Id.*, Ex. D.)

In light of these disclosures, the Court finds that Plaintiff fails to plead facts to show an omission which contradicts the terms of YouTube’s terms and guidelines, which are incorporated by reference into Plaintiff’s operative complaint. Additionally, the Court finds that any reliance on the alleged omissions would not be reasonable in light of these disclosures. To the

extent Plaintiff alleges that blocking or demonetizing videos which violate YouTube's terms and guidelines is wrongful because it is done at the behest of foreign governments, Plaintiff has not alleged any facts to show how such an omission would be material.

Plaintiff also alleges that Defendants maintained "blacklists" and failed to disclose that they did so. (Dkt. No. 19, ¶¶ 171, 180, 238, 239.) However, Plaintiff fails to allege that he was on an alleged blacklist and/or what the blacklist was for or how Defendants used the blacklists. In the absence of such allegations, Plaintiff fails to state a claim for fraud.

**v. Breach of Implied Covenant of Good Faith and Fair Dealing.**

"[U]nder California law, all contracts have an implied covenant of good faith and fair dealing." *In re Vylene Enterprises, Inc.*, 90 F.3d 1472, 1477 (9th Cir. 1996) (citing *Harm v. Frasher*, 181 Cal. App. 2d 405, 417 (1960)). The covenant "exists merely to prevent one contracting party from unfairly frustrating the other party's right to receive the benefits of the agreement actually made." *Guz v. Bechtel Nat. Inc.*, 24 Cal. 4th 317, 349 (2000). However, the covenant "cannot impose substantive duties or limits on the contracting parties beyond those incorporated in the specific terms of their agreement." *Id.* Thus, to the extent a plaintiff seeks to impose limits "beyond those to which the parties actually agreed, the [implied covenant] claim is invalid. To the extent the implied covenant claim seeks simply to

invoke terms to which the parties *did* agree, it is superfluous.” *Id.* at 352 (emphasis in original). “The central teaching of *Guz* is that in most cases, a claim for breach of the implied covenant can add nothing to a claim for breach of contract.” *Lamke v. Sunstate Equipment Co., LLC.*, 387 F. Supp. 2d 1044, 1047 (N.D. Cal. 2004). Nevertheless, a plaintiff may bring implied covenant claim where the plaintiff alleges that the defendant acted in bad faith to frustrate the contract’s benefits. *See Guz*, 24 Cal. 4th at 353 n.18 (acknowledging that “the covenant might be violated if termination of an at-will employee was a mere pretext to cheat the worker out of another contract benefit to which the employee was clearly entitled. . . .”).

It is well established that “the scope of conduct prohibited by the covenant of good faith is circumscribed by the purposes and express terms of the contract.” *Carma Developers (Cal.), Inc. v. Marathon Dev. California, Inc.*, 2 Cal. 4th 342, 373 (1992). “The implied covenant of good faith and fair dealing rests upon the existence of some specific contractual obligation.” *Racine & Laramie, Ltd. v. Dept of Parks & Recreation*, 11 Cal. App. 4th 1026, 1031 (1992) (citing *Foley v Interactive Data Corp.*, 47 Cal. 3d 654, 683-84, 689-90 (1988)). “The covenant of good faith is read into contracts in order to protect the express covenants or promises of the contract, not to protect some general public policy interest not directly tied to the contract’s purpose.” *Foley*, 47 Cal. 3d at 690.

Here, Plaintiff alleges that he entered into contracts with Defendants for their services and that the

contracts give Defendants unilateral discretion to remove, restrict, demonetize or demote his content. (Dkt. No. 19, ¶ 245.) The contracts also allow Defendants to change the terms at any time without notice. (*Id.*) Plaintiff further alleges none of his demonetized or restricted videos violated the letter or spirit of their contracts. (*Id.*, ¶ 247.) Plaintiff contends that, pursuant to the contracts, he was entitled to a wide audience and to some portion of the profits from advertisements that Defendants earned from hosting Plaintiff's content. (*Id.*, ¶ 248.) Defendants breached the covenant of good faith and fair dealing by unfairly and unlawfully interfering with his rights to receive the benefits of the contracts. (*Id.*)

As Plaintiff alleges, the contracts he had with Defendants authorized them to remove, restrict and demonetize his posted videos unilaterally, at their discretion. (*Id.*, ¶ 245.) As YouTube's terms and guidelines state: "YouTube is not obligated to display any advertisements alongside your videos and may determine the type and format of ads available on the YouTube Service." (Dkt. No. 28, Ex. A, ¶ 1.1.) YouTube's Community Guidelines lists several categories of prohibited material, including "Hateful content." (*Id.*, Ex. B.) YouTube's monetization policies provide that videos will only be "monetized" if they comply with YouTube's Advertiser-friendly content guidelines and that content that violates its Community Guidelines, including "Hateful content," is not eligible for monetization and will be removed from YouTube. (*Id.*, Ex. C.) YouTube's Advertiser-friendly content guidelines provides

“examples of content not suitable for ads, which will result in a ‘limited or no ads’ monetization state[,]” as well as topics that are “not advertiser-friendly[,]” such as “Hateful content.” (*Id.*, Ex. D.)

Plaintiff repeatedly complains in his operative complaint that Defendants are wrongfully censoring his hate speech. (Dkt. No. 19, ¶ 39 (alleging Defendants have been involved with the European Union in launching an online “code of conduct” aimed at fighting hate speech), ¶ 41, ¶ 45 (Google enforces the European Union’s hate speech laws online), ¶ 60 (same regarding Christchurch call agreement), ¶ 76 (Google abandoned free speech by demonetizing videos with hateful content), ¶¶ 210-211, ¶ 212 (Defendants violated Plaintiff’s First Amendment rights by censoring and demonetizing his hate speech), ¶ 215 (Defendants knowingly enforced foreign governments’ hate speech and censorship laws against him), ¶ 272 (a controversy exists between Plaintiff and Defendants regarding Defendants’ hate speech policies).) However, as Plaintiff concedes, YouTube’s terms and guidelines explicitly authorize YouTube to remove or demonetize content that violate its policies, including “Hateful content.” Therefore, Defendants’ removal or demonetization of Plaintiff’s videos with “Hateful content” or hate speech was authorized by the parties’ agreements and cannot support a claim for breach of the implied covenant of good faith and fair dealing. *Carma Developers*, 2 Cal. 4th at 374 (“if defendants were given the right to do what they did by the express provisions of the contract there can be no breach”); see also *Ebeid v. Facebook, Inc.*,

2019 WL 2059662, at \*8 (N.D. Cal. May 9, 2019) (finding that plaintiff’s breach of implied covenant of good faith and fair dealing claim failed because plaintiff conceded that Facebook had the contractual right to remove or disapprove any post or ad at Facebook’s sole discretion). Thus, Plaintiff fails to state a claim for breach of the implied covenant of good faith and fair dealing.

**vi. Tortious Interference with Economic Advantage.**

In order to state a claim for tortious interference with prospective economic advantage, Plaintiff must allege: “(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant’s knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant.” *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1153 (2003) (internal quotations and citations omitted). Additionally, a plaintiff must plead “that the defendant’s interference was wrongful ‘by some measure beyond the fact of the interference itself.’” *Della Penna v. Toyota Motor Sales, USA, Inc.*, 11 Cal. 4th 376, 393 (1995). “[A]n act is independently wrongful if it is unlawful . . . if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard.”

*Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1159 (2003).

Plaintiff has not alleged an economic relationship that he has with a third party or that Defendant knew of any such relationship. Thus, Plaintiff fails to state a claim for tortious interference with prospective economic advantage. Additionally, Plaintiff fails to allege that Defendants' alleged interference was wrongful "by some measure beyond the fact of the interference itself." *Della Penna*, 11 Cal. 4th at 393. Accordingly, Plaintiff fails to allege facts sufficient to state a claim for tortious interference with prospective economic advantage.

#### **vii. Declaratory Relief.**

Plaintiff seeks declaratory relief on his federal claims. Because Plaintiff fails to allege facts sufficient to state these claims against Defendants, this claim fails as well.

### **CONCLUSION**

Therefore, for the foregoing reasons, the Court GRANTS Defendants' motion to dismiss and dismisses all of Plaintiff's claims. This dismissal is with prejudice because granting leave would be futile. Additionally, because the Court dismisses all of Plaintiff's claims with prejudice the Court DENIES Plaintiff's motions for temporary restraining order and preliminary injunction and for expedited discovery as MOOT.

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The Court will issue a separate judgment in favor of Defendants. The Clerk is instructed to close the file.

**IT IS SO ORDERED.**

Dated: May 20, 2020

/s/ Sallie Kim  
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SALLIE KIM  
United States Magistrate Judge

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

BOB LEWIS,	)	Case No.: 1:19-cv-02387
Plaintiff,	)	
vs.	)	<b>SECOND AMENDED</b>
Google, INC, A Delaware	)	<b>COMPLAINT FOR</b>
Corporation YouTube LLC,	)	<b>DAMAGES, RELIEF,</b>
A Delaware Limited	)	<b>DECLARATORY</b>
Liability Company	)	<b>JUDGMENT</b>
Defendant(s)	)	<b><u>JURY TRIAL</u></b>
	)	<b><u>DEMANDED</u></b>
	)	(Filed Nov. 13, 2019)
	)	Trial Date: None Set

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The Plaintiff, Bob Lewis (PLAINTIFF LEWIS) brings this complaint for actual, compensatory and punitive damages, declaratory judgment, and other equitable relief against Defendants YouTube LLC (YOUTUBE) and its parent company Google, Inc (GOOGLE), in their individual capacity, as joint enterprise state actors and/or agents of China, The EU, and multiple other foreign governments, collectively referred to as GOOGLE unless otherwise specified.

## I. INTRODUCTION

1. The Plaintiff, Bob Lewis, brings this lawsuit to stop GOOGLE to stop unlawfully discriminating against him by virtue of censoring and demonetizing his videos because of GOOGLE's opposition to PLAINTIFF LEWIS' Christian religious affiliation, national origin as a patriotic American citizen who supports American tradition and culture, and for lawfully exercising his Constitutionally protected First Amendment rights. GOOGLE has a well-established history of discriminatorily censoring those that promote Christian beliefs, patriotic American culture and laws, and constitutionally protected First Amendment free speech rights. GOOGLE does this specifically by arbitrarily and maliciously demonetizing LEWIS' videos, algorithmic limiting the discovery of LEWIS' channel and videos on their platform, and deleting LEWIS' YouTube channel, Misandry Today.

2. Private company Defendants GOOGLE function as *de facto* and/or *de jure* agents and as joint enterprise state actors on behalf of the nations of The Peoples Republic of China, the EU, and the signatory governments of the Christchurch Call agreement. As *de facto* and/or *de jure* agents and as joint enterprise state actors, GOOGLE enforces Chinese, EU, and Christchurch Call signatory government laws within the United States, against law abiding United States citizens, in violation of the United States Constitution. Specifically, these foreign countries criminalize hate speech, while United States laws and federal courts recognize no hate-speech exception under the United

States Constitution's First Amendment protections that American citizens enjoy.

3. This action, while filed on behalf of LEWIS, personally and as an individual, is a case of extreme national importance to the American people. On information and belief, GOOGLE knowingly and actively foments insurrection against the United States government by: (1) funding non-profit organizations like the Southern Poverty Law Center, which directly provides material aid and funding domestic terrorists such as Antifa; (2) creating and maintaining company sponsored employee "Resist" protest groups which protest, sometimes violently, against the American Federal government and American citizens who promote and/or speak out in support of the American tradition, and the American way of life; (3) by directly and indirectly, funding Anti-American and sometimes illegal causes, such as open borders, and aiding and abetting the federal crime of illegal immigration.

4. On information and belief, GOOGLE CEO Sundar Pichai, (Pichai), in an apparent effort to conceal the true extent of GOOGLE'S foreign collaboration and foreign interference with American citizen's constitutionally protected free speech rights, misrepresented material facts while under oath when he testified to the United States Congress in 2018. Under U.S. federal law, willfully misrepresenting material facts under oath to Congress is a crime pursuant to 18 U.S. Code § 1621 and/or 18 U.S. Code § 1001. Pichai did this when he denied, under oath, that GOOGLE/YOUTUBE

maintained blacklists and manually manipulated content on their websites and/or platforms.

5. On information and belief, on behalf of the aforementioned foreign governments, GOOGLE uses its global market dominance and massive monopoly power to unlawfully and/or unethically coerce other big tech companies and others to collaborate with GOOGLE to knowingly, unethically, unlawfully, and maliciously silence, censor, and demonetize and/or deplatform American citizens who speak in support of Christian beliefs, American values, laws, and traditions. Further, GOOGLE coerces other big tech companies to become *de facto* and/or *de jure* agents and joint enterprise collaborators with foreign governments to enforce foreign law on United States citizens, on American soil, including the PLAINTIFF LEWIS. GOOGLE's actions may very well violate the Sherman Act, the Lanham act, in addition to aiding and abetting violations of federal criminal law, as well as constitute insurrection against the United States government and American people.

6. GOOGLE's bad faith censorship, silencing American's free speech, national origin discrimination, and religious discrimination, in addition to other damages caused to PLAINTIFF LEWIS, constitute a direct domestic threat to the Constitution of the United States; represent a clear and present danger to the integrity of the United States electoral system and the American way of life as well as represent a clear and present danger to law abiding American patriots and citizens.

## II. JURISDICTION AND VENUE

7. PLAINTIFF LEWIS alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 6.

8. This Court has original subject matter jurisdiction pursuant to 28 U.S. Code § 1331 over the PLAINTIFF's Free Speech Discrimination, Religious Discrimination, and National Origin Discrimination claims pursuant to 42 U.S. Code § 1983 and 42 U.S. Code § 2000a, as well as other applicable federal civil rights law.

9. This Court also has original subject matter jurisdiction pursuant to 28 U.S. Code § 1331 over the PLAINTIFF's constitutional challenge claims regarding 47 U.S. Code § 230.

10. This Court has personal jurisdiction over GOOGLE because the defendant maintains a significant presence in Colorado state by virtue of maintaining a \$130 million dollar, 200,000+ square foot office complex that employs in excess of 800 workers located in the city of Boulder Colorado.

11. This Court has personal jurisdiction over the PLAINTIFF LEWIS as he resides in Colorado.

12. Additionally, this Court has diversity jurisdiction pursuant to 28 U.S. Code § 1332, as PLAINTIFF LEWIS has no connection to GOOGLE's headquarters located in the State of California and the Plaintiff's damages to exceed \$75,000.

13. Additionally, this Court has original jurisdiction because, as described herein, GOOGLE's Terms of Service constitutes an adhesion contract and is unconscionable and unenforceable as a matter of law.

14. Venue is proper in this District under 28 U.S.C. §§ 1391 for the reasons set forth in statements 10, 11, and/or 13.

### **III. THE PARTIES**

15. PLAINTIFF LEWIS alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 14.

16. PLAINTIFF LEWIS, is a societal, cultural, and political commentator who owns and operates the website located at internet DNS address: MisandryToday.com, operates the YouTube Channel Misandry Today, and is the author of The Feminist Lie, It Was Never About Equality.

17. DEFENDANT GOOGLE Inc. is a for profit, public corporation incorporated under the laws of the State of Delaware, with its principal place of business in Mountain View, California and regularly conducts business throughout the state of Colorado and globally. On information and belief, at all relevant times, Defendant GOOGLE acts as an agent of Defendant YOUTUBE and controls and/or participates in controlling/directing discriminatory practices as related to restricting constitutionally protected speech, religious discrimination, and national origin discrimination, as well as

other causes of action alleged in this complaint regarding the YouTube.com website and/or platform.

18. DEFENDANT YOUTUBE, LLC is a for profit limited liability corporation, wholly owned by GOOGLE, and organized under the laws of the State of Delaware. YOUTUBE's principal place of business is Mountain View, California and it regularly conducts business throughout Colorado. Defendant YOUTUBE operates the largest and most popular internet video viewer site, platform, and service in the world and holds itself out as one of the most important and largest public forums for the expression of ideas and exchange of speech available to the public. On information and belief, at all relevant times Defendant YOUTUBE acts as an agent of GOOGLE. and uses, relies on, and participates with GOOGLE in restricting speech on the YOUTUBE website, platform, or service.

#### **IV. FACTS RELEVANT TO ALL CLAIMS**

19. PLAINTIFF LEWIS alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 18.

##### **4.1: GOOGLE is a Chinese State Actor**

20. In September 2015, Chinese President Xi Jinping arrived in Seattle and met with tech leaders. GOOGLE executives were invited to this private meeting between tech leaders and the Chinese President.

21. In June 2017, The People's Republic of China passed a National Intelligence Law. On information and belief, a true and correct translated copy was obtained and downloaded by Brown University on or about March 2019 and, at the time this pleading was prepared, is located online at the following website:

[http://cs.brown.edu/courses/csci1800/sources/2017\\_PRC\\_NationalintelligenceLaw.pdf](http://cs.brown.edu/courses/csci1800/sources/2017_PRC_NationalintelligenceLaw.pdf)

(Incorporated and attached herein as ***Exhibit A***)

22. The People's Republic Of China National Intelligence Law in June 2017, Article 7 states in pertinent part:

Any organization or citizen shall support, assist and cooperate with the state intelligence work in accordance with the law. (Article 7, ***Exhibit A***)

23. Article 12 of China's 2017 National Intelligence Law states:

State intelligence work organization may, in accordance with relevant state regulations, establish cooperative relations with relevant individuals and organizations and entrust relevant work (Article 12, ***Exhibit A***)

24. Article 16 of China's 2017 National Intelligence Law states, in pertinent part:

When the staff of the state intelligence work organization performs tasks according to law, in accordance with the relevant provisions of the State, after obtaining the corresponding



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documents, they may enter the relevant areas and places that restrict access and may understand and ask relevant information to relevant organs, organizations and individuals.

(Article 16, *Exhibit A*)

25. Article 17 of China's National Intelligence Law states, in pertinent part:

According to the needs of the work, according to the relevant national regulations, the staff of the national intelligence work agency may preferentially use or legally requisition the . . . communication tools, sites and buildings of relevant organs, organizations and individuals, and if necessary, may set relevant workplaces and equipment . . .

(Article 17, *Exhibit A*)

26. Article 28 of China's National Intelligence Law states, in pertinent part:

Whoever violates the provisions of this law and obstructs the state intelligence work organization and its staff from carrying out intelligence work according to the law shall be recommended by the state intelligence work agency to be dismissed by the relevant units or be warned by the state security organs or public security organs . . . Detained, if it constitutes a crime, criminal responsibility shall be investigated according to law.

(Article 28, *Exhibit A*)

27. In January 2018, news website *Engadget* reported GOOGLE maintains at least four offices in China located in Hong Kong, Shenzhen, Beijing, and Shanghai staffed with hundreds of employees. On information and belief, GOOGLE operates in China, as an organization, thus is required by the 2017 National Intelligence Law to function as a joint enterprise collaborator and agent of the Chinese government. (See: <https://www.engadget.com/2018/01/17/google-shenzhen-office/>, attached and incorporated herein by reference as ***Exhibit B***)

28. In August 2018, the *Intercept* published an article outlining GOOGLE's secret joint enterprise agreement with the Chinese government to develop a search engine designed to be compatible with China's state sponsored censorship and intelligence activities. This search engine project was called Project Dragonfly. Project Dragonfly, during development, had hundreds of GOOGLE employees assigned to work on it.

(See: <https://theintercept.com/2018/08/01/google-china-search-engine-censorship/>, attached and incorporated herein by reference as ***Exhibit C***)

29. The *Intercept* reported GOOGLE CEO Sundar Pichai met with a top Chinese government official as part of an effort to re-enter China in December 2017. (***Exhibit C***)

30. According to the Intercept, GOOGLE's Project Dragonfly will filter websites blocked by the Chinese government's great firewall. This includes but is not limited to information about political opponents, free

speech, news organizations, and academic studies. Project Dragonfly's censorship will apply across the platform. (*Exhibit C*)

31. On information and belief, despite public outcry from the American people and GOOGLE's own employees, GOOGLE continued development of Project Dragonfly on behalf of the Chinese government until, at least, July 2019.

32. On information and belief, GOOGLE willingly collaborates and operates as a joint-enterprise state actor with the Chinese government's national intelligence service and works to keep this relationship a secret. The only reason these facts are publicly known to the Intercept is because this information was leaked by a GOOGLE employee.

33. PLAINTIFF LEWIS has been very public and vocal regarding his support of Constitutional First Amendment Free Speech Rights, Second Amendment right to bear arms, The sanctity of the U.S. electoral System, his support of American tradition and culture, as well as his firm opposition to communist and socialist enemies of the United States concept of capitalism.

34. On information and belief, GOOGLE Subsidiary YOUTUBE uses censorship techniques associated with Project Dragonfly against PLAINTIFF LEWIS to discriminate against him based on his national origin as a patriotic American, silence his constitutionally protected Freedom of Speech regarding as values as an American citizen and his religion as a Christian.

35. In 2018, The Electronic Frontier Foundation criticized GOOGLE for its lack of transparency related to its willingness to work for the People's Republic of China regarding creation Project Dragonfly on behalf of the Chinese government. (See Electronic Frontier Foundation Article: *Google Needs to Come Clean About Its Chinese Plans*, published August 15, 2018 and attached and incorporated herein as ***Exhibit D***)

**4.2: GOOGLE Operates As EU State Actor**

36. PLAINTIFF LEWIS alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 35.

37. In or about 2012, DEFENDANT YOUTUBE created its "Trusted Flagger" program. On an Official YouTube Blog Post from September 22, 2016 states in pertinent part:

Back in 2012, we noticed that certain people were particularly active in reporting Community Guidelines violations with an extraordinarily high rate of accuracy. From this insight, the Trusted Flagger program was born to provide more robust tools for people or organizations who are particularly interested in and effective at notifying us of content that violates our Community Guidelines.

As part of this program, Trusted Flaggers receive access to a tool that allows for reporting multiple videos at the same time.

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Our Trusted Flaggers' results around flagging content that violates our Community Guidelines speak for themselves: their reports are accurate over 90% of the time. This is three times more accurate than the average flagger.

(See: <https://youtube.googleblog.com/2016/09/growing-our-trusted-flagger-program.html>, attached and incorporated herein at *Exhibit E*)

On information and belief, YOUTUBE Trusted Flaggers get videos pulled offline three times more often than an average flagger. In other words, 90% of the time when a Trusted Flagger flags a video for removal, that video is taken offline.

38. Online News Outlet The Verge reported on March 17, 2014, that the British Government and other government agencies are YOUTUBE Trusted Flaggers. They state, in pertinent part:

A report from The Financial Times last week revealed that **British authorities are among these super niggers**, and they're constantly scouring the video site for extremist propaganda.

Roughly 200 people and organizations are included in the pool of trusted flaggers, the Journal says, and **less than 10 of those slots are filled by government agencies**.

And that power shouldn't be underestimated: more often than not, flags from participants spell doom for videos that receive them.

(See: <https://www.theverge.com/2014/3/17/5519542/youtube-super-flaggers-elite-group-hunts-and-kills-content>, attached and incorporated herein as **Exhibit F**)

39. On or about May 31, 2016 The Guardian Reported in Pertinent Part:

An online “code of conduct” aimed at fighting hate speech has been launched by the European Union in conjunction with four of the world’s biggest internet companies.

Facebook, Twitter, YOUTUBE and Microsoft have all been involved in the creation of the code . . .

. . . It establishes “public commitments” for the companies, including the requirement to review the “majority of valid notifications for removal of illegal hate speech” in less than 24 hours, and to make it easier for law enforcement to notify the firms directly.

GOOGLE’s public policy and government relations director, Lie Junius, said “We’re committed to giving people access to information through our services, but we have always prohibited illegal hate speech on our platforms . . . We are pleased to work with the Commission to develop co-and self-regulatory approaches to fighting hate speech online.”

(See: <https://www.theguardian.com/technology/2016/may/31/facebook-youtube-twitter-microsoft-eu-hate-speech-code>, Attached and incorporated herein as **Exhibit G**)

40. The text of European Union's Code of Conduct agreement with Facebook, Microsoft, Twitter, and YOUTUBE/GOOGLE can be downloaded here:

[https://ec.europa.eu/newsroom/document.cfm?doc\\_id=40573](https://ec.europa.eu/newsroom/document.cfm?doc_id=40573), (Attached and incorporated herein as ***Exhibit II***)

41. GOOGLE is a joint enterprise and/or pervasively intertwined state actor by virtue of signing the European Union Code of Conduct Agreement, which states in pertinent part:

The IT Companies support the European Commission and EU Member States in the effort to respond to the challenge of ensuring that online platforms do not offer opportunities for illegal online hate speech to spread virally.

“the Commission will intensify work with IT companies, notably in the EU Internet Forum, to counter terrorist propaganda and to develop by June 2016 a code of conduct against hate speech online”

In order to prevent the spread of illegal hate speech, it is essential to ensure that relevant national laws transposing the **Council Framework Decision 2008/913/JHA** are fully enforced by Member States in the online as well as the in the offline environment.

The IT Companies underline that the present code of conduct 3 is aimed at guiding their own activities as well as sharing best

practices with other internet companies, platforms and social media operators.

The IT Companies, taking the lead on countering the spread of illegal hate speech online, have agreed with the European Commission on a code of conduct setting the following public commitments:

- The IT Companies to have in place clear and effective processes to review notifications regarding illegal hate speech on their services so they can remove or disable access to such content. The IT companies to have in place Rules or Community Guidelines clarifying that they prohibit the promotion of incitement to violence and hateful conduct.
- Upon receipt of a valid removal notification, the IT Companies to review such requests against their rules and community guidelines and where necessary national laws transposing the Framework Decision 2008/913/JHA, with dedicated teams reviewing requests.
- The IT Companies to review the majority of valid notifications for removal of illegal hate speech in less than 24 hours and remove or disable access to such content, if necessary.
- In addition to the above, the IT Companies to educate and raise awareness with their users about the types of content not permitted under their rules and community guidelines. The notification system could be used as a tool to do this.



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- The IT companies to provide information on the procedures for submitting notices, with a view to improving the speed and effectiveness of communication between the Member State authorities and the IT Companies, in particular on notifications and on disabling access to or removal of illegal hate speech online. The information is to be channelled through the national contact points designated by the IT companies and the Member States respectively. This would also enable Member States, and in particular their law enforcement agencies, to further familiarise themselves with the methods to recognise and notify the companies of illegal hate speech online.
- The IT Companies to encourage the provision of notices and flagging of content that promotes incitement to violence and hateful conduct at scale by experts, particularly via partnerships with CSOs (*civil society organizations*), by providing clear information on individual company Rules and Community Guidelines and rules on the reporting and notification processes. The IT Companies to endeavour to strengthen partnerships with CSOs by widening the geographical spread of such partnerships and, where appropriate, to provide support and training to enable CSO partners to fulfill the role of a “**trusted reporter**” or equivalent, with due respect to the need of maintaining their independence and credibility.

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- The IT Companies rely on support from Member States and the European Commission to ensure access to a representative network of CSO partners and “**trusted reporters**” in all Member States to help provide high quality notices. IT Companies to make information about “trusted reporters” available on their websites.
- The IT Companies to provide regular training to their staff on current societal developments and to exchange views on the potential for further improvement.
- The IT Companies to intensify **cooperation between themselves and other platforms and social media companies** to enhance best practice sharing.
- The IT Companies and the European Commission, recognising the value of independent counter speech against hateful rhetoric and prejudice, aim to continue their work in identifying and promoting independent counter-narratives, new ideas and initiatives and supporting educational programs that encourage critical thinking.
- The IT Companies to intensify their work with CSOs to deliver best practice training on countering hateful rhetoric and prejudice and increase the scale of their proactive outreach to CSOs to help them deliver effective counter speech campaigns. The European Commission, in cooperation with Member States, to contribute to this endeavour by taking steps

to map CSOs' specific needs and demands in this respect.

- The European Commission in coordination with Member States to promote the adherence to the commitments set out in this code of conduct also to other relevant platforms and social media companies.

(See: *Exhibit H*)

42. In December 2016 The EU Commissioner for Justice, Consumers and Gender Equality, Vera Jourova, released a report from the EU Commission entitled Code of Conduct On Countering Illegal Hate Speech Online: First Results of Implementation. (EU Justice Commission Hate Speech 2016 Report)

(See: [http://ec.europa.eu/infonnation\\_society/newsroom/image/document/2016-50/factsheetcode-conduct-8\\_40573.pdf](http://ec.europa.eu/infonnation_society/newsroom/image/document/2016-50/factsheetcode-conduct-8_40573.pdf) attached and incorporated herein as *Exhibit I*)

43. The position of EU Commissioner for Justice, Consumers and Gender Equality is the person who is responsible for overseeing the Commission department responsible for EU policy on justice, consumer rights and gender equality.

44. Framework Decision 2008/913/JHA Council Framework Decision 2008/913/JHA of the Acts Adopted Under Title VI of the **EU Treaty** of November 28, 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

(See: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:328:0055:0058:en:PDF>, attached and incorporated herein as *Exhibit J*)

45. On information and belief, GOOGLE is abiding by and expanding to U. S. markets, the online enforcement of “hate speech” laws promulgated by the European Union. Framework Decision 2008/913/JHA requires EU Member States to enact criminal penalties for racism and other forms of hate speech. (Pg 3, Article 3: Criminal Penalties, *Exhibit J*)

46. The EU Justice Commission Hate Speech 2016 Report notes that the grounds for reporting hate speech were the following: race, color, national origin, ethnic origin, decent, religion, anti-Muslim hatred, antisemitism, sexual orientation or gender-related hatred. (Pg. 3 of EU Justice Commission Hate Speech 2016 Report, *Exhibit I*)

47. The EU Justice Commission Hate Speech 2016 Report also notes that of the 600 notifications that were made, 270 were made by EU sanctioned “**Trusted Flaggers**” (Pg. 4, EU Justice Commission Hate Speech 2016 Report, *Exhibit I*)

48. The ERDi, (European Digital Rights) an association of civil and human rights organizations across Europe, in opposition to the Defendants’ Code of Conduct agreement with the European Union, stated, in pertinent part:

Firstly, the code recognises that the companies are “taking the lead on countering the

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spread of illegal hate speech online.” It seems peculiar that either the European Commission or the EU Member States should not to take the lead.

In a society based on the rule of law, private companies should not take the lead in law enforcement, theirs should always have only a supporting role – otherwise this leads to arbitrary censorship of our communications.

This creates a problem because internal rules are mixed together with legal obligations, with no clear distinction between them – it then becomes unclear what is against the law and what is not, what is legitimate speech and what is not.

In the code of conduct, there is not a single mention about the essential role of judges in our democratic societies. There is no mention about the enforcement of the law by public authorities. At each crucial point where law should be mentioned, it is not.

The European Union is founded on crucial human rights principles, including that restrictions should be provided for by law. Giving private companies the “lead” role in dealing with a serious societal problem and replacing the law with arbitrary implementation of terms of service is not a durable answer to illegal hate speech. Ignoring the risk of counterproductive impacts is reckless. At the same time as not solving the problems that this code was created to address, it undermines fundamental freedoms.

(See: <https://edri.org/guide-code-conduct-hate-speech/>, attached and incorporated herein as ***Exhibit J***)

49. *Article 19*, a multi-national organization that monitors the freedom of expression, also weighed in on the EU Justice Commissions Code of Conduct Agreement. In their June 2016 report, “EU: European Commission’s Code of Conduct for Countering Illegal Hate Speech Online and the Framework Decision,” they conclude in pertinent part:

ARTICLE 19 is deeply concerned that, despite its non-binding character, the Code will lead to more censorship by private companies – and therefore a chilling effect on freedom of expression on the platforms they run. This is especially so in the absense of any independent or meaningful commitment to protect freedom of expression.

The Code of Conduct is likely to be trumpeted by governments and companies alike as a milestone in the fight against “illegal hate speech.” ARTICLE 19 believes however that it is misguided policy on the part of governments, one that undermines the rule of law. For companies, it is likely to amount to no more than a public relations exercise. In the meantime, freedom of expression online is likely to be greatly diminished.

(See: <https://www.article19.org/data/files/medialibrary/38430/EU-Code-of-conduct-analysis-FINAL.pdf> attached and incorporated herein as ***Exhibit K***)

50. The European Code of Conduct joint enterprise agreement signed by the EU government and GOOGLE remains in force at the time of this filing.

**4.3: GOOGLE Operates As  
A Multi-National State Actor**

51. Plaintiff Lewis alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 50.

52. On May 15, 2019, The Guardian reported that multiple governments and big tech companies entered into an agreement called the Christchurch call. They report in pertinent part:

World leaders and heads of global technology companies have pledged at a Paris summit to tackle terrorist and extremist violence online in what they described as an “unprecedented agreement”.

Known as the Christchurch Call, it was organised by New Zealand’s prime minister, Jacinda Ardern, and the French president, Emmanuel Macron, in response to the attack on the Christchurch mosque on 15 March in which 51 people were killed.

Macron and Ardern met ministers from G7 nations and leaders of internet companies including GOOGLE, Facebook, Microsoft and Twitter. Facebook’s CEO, Mark Zuckerberg, did not attend.

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The initiative calls on signatory nations to bring in laws that ban offensive material and to set guidelines on how the traditional media report acts of terrorism. However, as a voluntary initiative it is for individual countries and companies to decide how to honour their pledge.

Britain, Canada, Australia, Jordan, Senegal, Indonesia, Norway and Ireland signed the pledge, along with the European commission, Amazon, Facebook, GOOGLE, Microsoft, Twitter, YOUTUBE, Daily Motion and Quant.

(See: <https://www.theguardian.com/world/2019/may/15/jacinda-ardern-emmanuel-macronchristchurch-call-summit-extremist-violence-online>, attached and incorporated herein as ***Exhibit L***)

53. Then the Guardian goes on to state:

The US has reportedly refused to sign up because of concerns about freedom of speech.

***(Exhibit L)***

54. On May 16, 2019, The New Zealand Herald reiterated that the United States refused to enter into this agreement because of concerns over the Constitutional protections on Free Speech. They report:

The White House will not sign an international agreement to combat online extremism brokered between French and New Zealand officials and top social media companies, amid US concerns that it clashes with constitutional protections for free speech.



(See: [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12231363](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12231363), attached and incorporated herein as ***Exhibit M***)

55. On information and belief, as part of their agreement under the Christchurch Call, online service providers, including GOOGLE committed to sharing information with other online service providers and foreign governments, including the expansion and use of shared databases, URLs (websites) and notifying each other when they take down online content they disagree with. This also includes working within a multi-company and multi-government stake holder process and for companies to work together in a coordinated fashion.

(Pg. 2 ChristChurch Call Agreement, See: <https://www.christchurchcall.com/christchurchcall.pdf>, attached and incorporated herein as ***Exhibit N***)

56. Additionally, on information and belief, online service providers, including GOOGLE, agreed to work with the signatory governments to shut down accounts. (Pg. 2, ***Exhibit N***)

57. On information and belief, online service providers, including GOOGLE, also agreed to use their algorithms to promote alternatives to promote counter-narratives that oppose any content the Christchurch call signatory governments and tech companies disagree with. There is nothing in this agreement that requires signatory online service providers, including GOOGLE, to ensure that any counter narrative promulgated be based in fact. (Pg. 2, ***Exhibit N***)

58. On information and belief, the Christchurch call signatory online service providers, including GOOGLE, also commit to the signatory governments to redirect online users from what they frame as extremist content as well as develop technical solutions to remove extremist content quickly and to work together with the other signatory companies and governments to share these censorship technologies with each other. (Pg. 2, ***Exhibit N***)

59. On information and belief, the Christchurch call also calls for online service providers, including GOOGLE, to prevent online content they define as extremist from impacting offline activity as well. (Pg. 2, ***Exhibit N***)

60. On information and belief, the Christchurch call signatory governments and online service providers, including GOOGLE, agree to work with and cooperate with signatory governments law enforcement agencies to investigate and prosecute illegal online activity. On information and belief, for the countries that criminalize hate speech, this includes online hate speech as well. (Pgs 2-3, ***Exhibit N***)

61. Not only do the Christchurch call agreement signatory online service providers agree to work with signatory countries law enforcement, they also agree to to work with partner countries to develop best practices to remove content they disagree with, through direct operational coordination and trusted information exchanges. In other words, on information and belief, the signatory online service providers, including

Defendants YouTube/Google agree to share internal information with other signatory tech companies and signatory governments. (Pg. 3, *Exhibit N*)

62. The Christchurch also has a website located at: [www.christchurchcall.com](http://www.christchurchcall.com) where in their supporters section they list the following tech companies as signatory supporters: Amazon.com; dailymotion; Facebook; GOOGLE; Microsoft; Qwant; Twitter; YOUTUBE. (Attached and incorporated herein as *Exhibit O*)

**4.4: GOOGLE Enforces Foreign  
Hate Speech Laws & Opposes Free  
Speech In the United States**

63. PLAINTIFF LEWIS alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 62.

64. DEFENDANTS GOOGLE and YOUTUBE operate largest publicly accessible commercial video website for the general public to purchase, rent, and otherwise view videos, movies, and TV shows in the United States and the world. YOUTUBE's website also provides the largest publicly accessible commercial online public forum for paid customers and nonpaying users alike to express and exchange speech online. YOUTUBE's website is the largest online public forum in the history of the world for TV show rentals, movie rentals, TV show purchases, movie purchases, and video based speech expression available to the general public in the history of the world. The total number of monthly active users on YOUTUBE, as of May 2019 is

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2 billion, which represents almost half of the 4.4 billion internet users in the world. This means that 45% of the world's population online uses YOUTUBE. YOUTUBE is locally available in 91 countries, and accessible in 80 different languages. 73% of United States adults use YOUTUBE. Alexa website ranking service ranks YOUTUBE's website as number 2 in the world. YOUTUBE is also the second largest social media platform in the world behind Facebook by user count. Globally, YOUTUBE users watch 1 billion hours of content everyday. 500 hours of video content is uploaded to YOUTUBE every minute.

65. YOUTUBE markets itself as website that promotes free speech and freedom of expression free from censorship. YOUTUBE's about page specifically states:

Our Mission is to give everyone a voice and show them the world. We believe that everyone deserves to have a voice, and that the world is a better place when we listen, share and build community through our stories.

Our values are based on four essential freedoms that define who we are.

### Freedom of Expression:

We believe people should be able to speak freely, share opinions, foster open dialogue, and that creative freedom leads to new voices, formats, and possibilities.

### Freedom of Information

We believe everyone should have easy, open access to information and that video is a

powerful force for education, building understanding, and documenting world events, big and small.

Freedom of Opportunity:

We believe everyone should have a chance to be discovered, build a business and succeed on their own terms, and that people-not gate-keepers-decide what's popular.

Freedom to Belong:

We believe everyone should be able to find communities of support, break down barriers, transcend borders and come together around shared interests.

(See: <https://www.youtube.com/yt/about/> Also attached and incorporated herein as ***Exhibit P***)

66. On March 14, 2018, GOOGLE Insights published an internal research document called "The Good Censor" (Hereafter referred to as The Good Censor) that was leaked and published by Breitbart News (Attached and incorporated herein as ***Exhibit Q***).

67. GOOGLE publicly confirmed this document's legitimacy to The Verge. (<https://www.theverge.com/2018/10/10/17961806/google-leaked-research-good-censor-censorship-freedom-of-speech-research-china>, attached and incorporated at ***Exhibit R***)

68. GOOGLE admits that GOOGLE is one of the three Big Tech companies that "control" the majority of online conversations around the world. Notice how GOOGLE didn't state they facilitate the majority of online conversations, they state they control them.

This isn't a semantic difference, it's a factual one. (Pg 14, ***Exhibit Q***)

69. GOOGLE admits social media was a major influence in the outcome of the 2016 election that put President Donald Trump in the White House. While GOOGLE blames Russian interference for this, thanks to the Mueller investigation, we now know that the Russian Interference narrative was not credible. (See Pg 19, ***Exhibit #Q***)

70. GOOGLE Stipulates the “We’re not responsible for what happens on our platforms Defense” is no longer credible or viable. (Pg. 22, ***Exhibit Q***)

71. GOOGLE admits that one of the reasons users behave badly online is because “everyone has a voice” which, according to GOOGLE, means:

The ‘little guys and girls’ can now be heard - emerging talent., revolutionaries, whistleblowers and campaigners. But ‘everyone else’ can shout loudly too - including terrorists, racists, misogynists and oppressors. And because “everything looks like the New York Times” on the net, it’s harder to separate fact from fiction, legitimacy from illegitimacy, novelty from history, and positivity from destructivity. When consumers/producers feel like they ‘own’ their media platforms, their experiences of free speech and censorship feel more personal too. They increasingly value their ability to speak freely, but also feel personally assaulted when confronted through their own

channels, lashing out more violently when their voice and opinions are threatened.

(Pg. 32, **Exhibit Q**)

72. GOOGLE admits that China's government is the most opposed to Free Speech on the internet and political interference is increasing. (Pgs. 35-39, **Exhibit Q**)

73. GOOGLE admits that governments are attempting to control political discourse online by asking GOOGLE to censor more and more content. GOOGLE even admits that 56% of these government censorship requests relate to YOUTUBE. GOOGLE does not disclose which governments are making these censorship requests. (Pg. 43, **Exhibit Q**)

74. GOOGLE even admits that tech firms have mismanaged this situation, they state:

In a global world, the platforms' status as bastions of free speech is hugely undermined by their willingness to bend to requirements of foreign repressive governments. When platforms compromise their public-facing values in order to maintain a global footprint, it can make them look bad elsewhere.

(Pg 47, **Exhibit Q**)

75. GOOGLE states that governments of other countries are attempting to assert power over global policy. They state:

As the tech companies have grown more dominant on the global stage, their intrinsically American values have come into conflict with

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some of the values and norms of other countries.

Now, governments are seeking to balance their national values with those of the tech giants through increasingly strong measures. And because the internet is a global platform, many want those nationally-desired protections to be enacted globally – influencing how the entire internet functions.

(Pg. 56, *Exhibit Q*)

76. On information and belief, GOOGLE chose to abandon free speech. They state:

Recognising the anxiety of users and governments, tech companies are adapting their stance towards censorship, and changing their terms of service to reflect the current mood. This could mean taking a more hard-line approach to hateful content, as Twitter has done, or preventing the monetization of questionable videos, as YouTube has done.

Whatsmore, companies are publicly declaring these new values, making them as intrinsic to the platforms' identities as their unwavering support of freedom of expression once was.

(Pg.62, *Exhibit Q*)

77. Additionally, GOOGLE admits it abandoned passive facilitation of online content to actively curating content. In other words, GOOGLE admits it now acts as a publisher.



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Following a series of public and media outcries around problematic content online, such as the ‘Peppa Pig scandal’, tech companies are slowly stepping into the role of moderator – one which they have long sought to avoid because of the associated responsibilities.

Specifically, platforms are significantly amping up the number of moderators they employ – in YouTube’s case increasing the number of people on the lookout for inappropriate content to more than 10,000. With Perspective, an API that uses machine learning to spot abuse and harassment online, Google’s Jigsaw initiative is also “studying how computers can learn to understand the nuances and context of abusive language at scale” and fording ways to “help moderators sort comments more effectively”.

(Pg. 63-64, *Exhibit Q*)

78. GOOGLE admits American tradition prioritizes Free Speech for effective democracy. They state:

100% commit to the American tradition that prioritises free speech for democracy, not civility. By creating spaces where all values, including civility norms, are always open for debate.

(Pg. 66, *Exhibit Q*)

79. On information and belief, GOOGLE again admits it abandoned the American tradition of Freedom of Speech in favor of a European view that, in GOOGLE’s words, they now strive to:

Create well-ordered spaces for safety and civility. 100% commit to the European tradition that favors dignity over liberty, and civility over freedom. By censoring racial and religious hatred, even when there's no provocation of violence.

(Pg. 66-85, *Exhibit Q*)

**4.5: GOOGLE's Contracts Are Unconscionable**

80. PLAINTIFF LEWIS alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 79.

81. All registered users of YouTube.com are required to agree to YOUTUBE's Terms of Service. (Attached and incorporated herein at *Exhibit S*)

82. YOUTUBE's contracts, including but not limited to, are non-negotiable and by definition makes it an adhesion contract.

83. YOUTUBE's Terms of Service allow it, in YOUTUBE's sole discretion, to change the terms of service at any time, in any way. Registered YOUTUBE users, per the terms of service, are required to agree, in advance, to be bound to any changes YOUTUBE makes, regardless of what they may be. YOUTUBE States:

YouTube, in its sole discretion, may modify or revise these Terms of Service, and policies at any time, and you agree to be bound by such modifications, or revisions.

(Section 1(b) *Exhibit S*)

84. YOUTUBE's Terms of Service require users to agree to stipulate they will not submit any content or material contrary to YOUTUBE's Guidelines, or contrary to local, national, or international laws and regulations. However, YOUTUBE's Terms of Service never mentions what nations laws its referring to. They state:

You further agree that you will not submit to the Service any Content or other material that is contrary to the YouTube Community Guidelines, currently found at: [https://youtube.com/t/community\\_guidelines](https://youtube.com/t/community_guidelines), which may be updated from time to time, or contrary to applicable local, national, and international laws or regulations.

(Section 6(e) *Exhibit S*)

85. One of YOUTUBE's competitor's MetaCafe also has a Terms & Conditions Adhesion Contract that allows it to change modify the Terms of Service at any time, without notice. They state:

Metacafe reserves the right to amend these Terms & Conditions at any time and without notice, and it is your responsibility to review these Terms & Conditions for any changes.

(Pg. 5, General Section: Metacafe Terms & Conditions, attached and incorporated herein as *Exhibit T*)

86. Another YOUTUBE competitor Twitch.tv also has a Terms of Service adhesion contract that allows it to change the terms at any time without notice. They state:

Twitch may amend any of the terms of these Terms of Service by posting the terms. Your continued use of the Twitch Services after the effective date of the revised Terms of Service constitutes your acceptance of the terms.

(Pg. 4, Section 6, Twitch.tv Terms of Service, attached and incorporated herein as ***Exhibit U***)

87. Another YOUTUBE competitor, Daily Motion also has a Terms of Use adherence contract that allows it to change the terms at any time without notice. They state:

DailyMotion may, in its sole discretion, modify these Terms from time to time and You agree to be bound by such modifications.

(Pg. 2, Section 2.3 Daily Motion Terms of Use, attached and incorporated herein as ***Exhibit V***)

88. When it comes to YOUTUBE and its closest competitors, PLAINTIFF LEWIS has no meaningful choice as to whether or not to do business with YOUTUBE, as YOUTUBE has the largest video platform in the world, and YOUTUBE's competitors, like YOUTUBE, require contracts of adherence that allow YOUTUBE's competition to change the terms at any time, without any notice to the PLAINTIFF LEWIS.

89. YOUTUBE's contracts, including their Terms of Service, which allows it to change its terms, at its sole discretion, without notice to PLAINTIFF LEWIS, at any time, constitutes unfair surprise. This is especially true because YOUTUBE, at all times, advertises itself

as a Free Speech platform, but its own internal documents and the way it enforces its content policies demonstrate it's exactly the opposite of a Free Speech platform on behalf of multiple foreign governments. YOUTUBE never disclosed these facts to PLAINTIFF LEWIS. PLAINTIFF LEWIS only discovered these facts after they were leaked to the press and after YOUTUBE wrongfully, maliciously and unlawfully retaliated and discriminated against PLAINTIFF LEWIS for exercising his First Amendment right to Freedom of Speech, his religious affiliation, and his national origin as a patriotic American citizen.

90. GOOGLE never disclosed to PLAINTIFF LEWIS that it was acting as a joint enterprise state actor of the Chinese government to create and implement a highly censored search engine, Project Dragonfly. PLAINTIFF LEWIS only discovered these facts after they were leaked to the press by a GOOGLE employee.

91. On information and belief, YOUTUBE's adhesion contract, in the aforementioned areas addressed in statements 80 to 90 mirrors GOOGLE's terms of service.

#### **4.6: 47 U.S. Code § 230 is Unconstitutional**

92. PLAINTIFF LEWIS alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 91.

93. 47 U.S. Code § 230 allows interactive computer services, including, but not limited to GOOGLE, to

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knowingly and willfully censor American citizens for any material they submit to these services, even if American citizens submit material that is constitutionally protected under the United States Constitution.

94. 47 U.S. Code § 230 doesn't define the terms: "harassing" or "otherwise objectionable." In fact, these terms aren't defined anywhere in 47 U.S.C. Part I, Common Carrier Regulation.

95. In 47 U.S. Code § 230 Congress made the following findings, in pertinent part:

(a)(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(a)(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

Then, 47 U.S. Code § 230 appears to be internally inconsistent at (c)(2)(A) by allowing interactive computer services, like GOOGLE, to knowingly censor American's constitutionally protected speech, free from any civil liability whatsoever under 42 U.S. Code § 1983 or 42 U.S. Code § 2000a.

96. The United States Constitution's First Amendment states in pertinent part: "Congress shall make no law . . . abridging the freedom of speech . . ." On

information and belief, 47 U.S. Code § 230 allows interactive computer services, including but not limited to, GOOGLE, to abridge freedom of speech free from civil liability.

97. In the United States, there is no hate speech exception under U.S. law that allows an American citizen to be censored for promulgating hateful rhetoric. U.S. Courts have completely and repeatedly rejected the idea that American citizens' constitutionally protected Free Speech rights should be abridged because of hate speech.

98. GOOGLE stipulates its hate speech policies run counter to American tradition, in the Good Censor internal research document, as stated earlier in this complaint. GOOGLE's hate speech policies also run counter to well-settled United States law and chill online free speech.

**4.7: YouTube.com is a Place of Public Accommodation Per 42 U.S.C. § 2000a**

99. PLAINTIFF LEWIS alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 98.

100. YOUTUBE's website, YouTube.com and its mobile Apps allow registered users to pay for premium video access through their subscription service YouTube Red.

101. YOUTUBE rents and sells movies and TV shows to registered users.

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102. YOUTUBE allows registered users to view videos as well as critique and comment on videos, through their comment system and their like/dislike system.

103. YOUTUBE allows registered users to create their own videos, films, and documentaries and YouTube hosts this content on their website.

104. If a registered YOUTUBE user obtains over 100,000 subscribers to their YOUTUBE channel, YOUTUBE provides these users access to their video production studios to assist them in creating video content for YOUTUBE's platform.

105. YOUTUBE allows registered users to contribute money to registered YOUTUBE video content creators directly, through a system known as "Superchats."

106. YOUTUBE also maintains contracts with advertisers and shows those advertiser ads on videos on their platform. A portion of YOUTUBE's advertising revenue is shared with registered users who create videos hosted on YOUTUBE's website YouTube.com.

107. If the YOUTUBE registered user's ad revenue reaches a certain threshold in the United States, YOUTUBE issues the registered user an I-9 tax form for income earned.

108. An American citizen must be a registered user on YOUTUBE to purchase, rent, comment, rate, or subscribe to their video service YouTube Red.



109. YOUTUBE's website's primary purpose is to sell, rent, and host movies, TV shows, and the independently created videos of its registered users.

110. YOUTUBE only operates this service on the internet and their website is accessed through desktop computers, laptop computers, TVs, and mobile phones. YOUTUBE doesn't maintain brick and mortar locations to view their videos, TV shows, and movies.

111. YOUTUBE's address in cyberspace is YouTube.com

112. On information and belief, YOUTUBE is primarily both a digital theater and a place of exhibition or entertainment.

113. On information and belief, YOUTUBE provides closed captioning of videos hosted on its website for the hearing impaired.

114. On information and belief, YOUTUBE's android mobile app works with android accessibility features for access support for blind and low vision users by virtue of the talkback and BrailleBack applications and other special accessibility features.

115. In a letter to Congress dated September 25, 2018, The United States Department of Justice Office of the Attorney General stated that the Department of Justice considers websites to be places of public accommodation, when they stated in pertinent part:

The department first articulated its interpretation that the ADA applies to 'public

accommodations' websites over 20 years ago. This interpretation is consistent with the ADA's Title III requirement that the goods, services, privileges, or activities provided by places of public accommodation be equally accessible to people with disabilities.

(See Letter from the Office of the Assistant Attorney General to Congress, dated September 25, 2018, attached and incorporated herein as ***Exhibit W***)

116. On information and belief, YOUTUBE's and GOOGLE's terms of service and community guidelines were created, in large part, to protect users on the basis of race, color, religion, or national origin, as described by 42 U.S.C. § 1983 and 42 U.S.C. § 2000a.

**4.8: Facts Related To GOOGLE's  
Adverse Actions Against PLAINTIFF**

117. PLAINTIFF LEWIS alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 116.

118. LEWIS joined YOUTUBE as a registered user on or about August 13, 2016.

119. LEWIS created a channel called, "Misandry Today" and went by the online name of DDJ.

120. LEWIS published his first YouTube video, a commercial for his book *The Feminist Lie, It Was Never About Equality*, on or about May 29, 2017.

121. LEWIS published a video commentary entitled, "The Social Media Constitutional Crisis" on YouTube.com on or about October 28, 2017.

(See: <https://www.bitchute.com/video/BffZys8xmL4/> attached and incorporated herein by reference as ***Exhibit X***)

122. LEWIS published a video commentary entitled, "The Feminist & SJW Treason" on YouTube.com on or about November 3, 2017.

(See: <https://www.bitchute.com/video/tupmlwMrJVI/>, attached and incorporated herein by reference as ***Exhibit Y***)

123. LEWIS published a video commentary entitled, "The Legal Controversies Surrounding Social Media Companies" on YouTube.com on or about March 20, 2018.

(See: <https://www.bitchute.com/video/Nsw1bKoXrjw/>, attached and incorporated herein by reference as ***Exhibit Z***)

124. From October 28, 2017 forward, YOUTUBE demonetized many of LEWIS' videos requiring him to file an internal YOUTUBE appeal. On information and belief, YOUTUBE provides only one mechanism for demonetization appeal, and that mechanism consists of clicking an appeal button. On information and belief, YOUTUBE demonetization appellants, including LEWIS, have no ability to submit written facts, attach files, or submit any other type of information to allow YOUTUBE to conduct any good faith meaningful

inquiry or make a good faith informed decision about demonetization. Further, this has been exactly LEWIS' experience in attempting to appeal YOUTUBE Demonetization. While LEWIS won many of these demonetization appeals, at least 19 appeals were lost. Of the YOUTUBE appeals LEWIS won, he was never compensated for lost revenue for YOUTUBE's wrongful demonetization of his videos.

125. LEWIS published a video commentary entitled, "YouTube Demonetizes Videos During Upload" on YouTube.com on or about June 9, 2018. In this 13 minute video, LEWIS demonstrates, with images and descriptions, that YOUTUBE demonetized the LEWIS' video during the upload process, before the upload and internal processing was finished and before it ever went live. (See: [https://www.bitchute.com/video/PpuNRGN\\_dxe](https://www.bitchute.com/video/PpuNRGN_dxe), attached and incorporated herein by reference as **Exhibit AA**)

126. On or about December 4, 2018, LEWIS published the video on YouTube.com, "Overthrowing Democracy By Any Means Necessary" Shortly after upload, YOUTUBE demonetized this video. (See: <https://www.bitchute.com/video/50JrLcz6H0g/>, attached and incorporated herein by reference as **Exhibit AB**)

127. LEWIS appealed and on December 6, 2018, YOUTUBE emailed LEWIS to notify him that the demonetization of his video, "Overthrowing Democracy By Any Means Necessary" will remain. (See email from YouTube dated December 6, 2018, attached and incorporated herein as **Exhibit AC**)

128. On or about December 7, 2018, LEWIS published the video on YouTube.com, "The SPLC Finances Terrorists." Shortly after upload, YOUTUBE demonetized this video. (See: <https://www.bitchute.com/video/IsKlbxp3iIBw/>, attached and incorporated herein by reference as ***Exhibit AD***)

129. LEWIS appealed and on December 10, 2018, YOUTUBE emailed LEWIS to notify him that the demonetization of his video, "The SPLC Finances Terrorists." will remain. (See email from YouTube dated December 10, 2018, attached and incorporated herein as ***Exhibit AE***)

130. On or about December 17, 2018, LEWIS published the video on YouTube.com, "American Values Are Haram" Shortly after upload, YOUTUBE demonetized this video. (See: <https://www.bitchute.com/video/nGOL5VwoPxa6/>, attached and incorporated herein by reference as ***Exhibit AF***)

131. LEWIS appealed and on December 20, 2018, YOUTUBE emailed LEWIS to notify him that the demonetization of his video, "American Values Are Haram" will remain. (See email from YouTube dated December 20, 2018, attached and incorporated herein as ***Exhibit AG***)

132. On or about December 21, 2018, LEWIS published the video on YouTube.com, "Antifa Exposed: Identification & Tactics (Part 2/5)" Shortly after upload, YOUTUBE demonetized this video. (See: <https://www.bitchute.com/video/YdLRKIFvoMQK/>, attached and incorporated herein by reference as ***Exhibit AH***)

133. LEWIS appealed and on December 23, 2018, YOUTUBE emailed LEWIS to notify him that the demonetization of his video, "Antifa Exposed: Identification & Tactics (Part 2/5)" will remain. (See email from YouTube dated December 23, 2018, attached and incorporated herein as **Exhibit AI**)

134. On or about December 22, 2018, LEWIS published the video on YouTube.com, "Antifa Exposed: Astroturf Activism & Infiltration of Silicon Valley, DOJ & White House (Part 3/5)" Shortly after upload, YOUTUBE demonetized this video. (See: <https://www.bitchute.com/video/di65GKuNvswE/>, attached and incorporated herein by reference as **Exhibit AJ**)

135. LEWIS appealed and on December 25, 2018, YOUTUBE emailed LEWIS to notify him that the demonetization of his video, "Antifa Exposed: Astroturf Activism & Infiltration of Silicon Valley, DOJ & White House (Part 3/5)" will remain. (See email from YouTube dated December 25, 2018, attached and incorporated herein as **Exhibit AK**)

136. On or about December 28, 2018, LEWIS published the video on YouTube.com, "The Roy Moore Story Is A Symptom Of A Larger Fraud" Shortly after upload, YOUTUBE demonetized this video.

(See: <https://www.bitchute.com/video/Ldg3jabZLQk/>, attached and incorporated herein by reference as **Exhibit AL**)

137. While YOUTUBE never emailed LEWIS that he won the demonetization appeal on his, "The Roy Moore

Story Is A Symptom Of A Larger Fraud” video, this video was re-monetized the following day, December 29, 2018.

138. Shortly after LEWIS uploaded “The Roy Moore Story Is A Symptom Of A Larger Fraud” to YouTube.com, he noticed that his video appeared to be getting very few views compared to some of his other videos in the same type of subject matter. Then, in the comments section of this video, LEWIS observed comments from, at least, three viewers inform him YOUTUBE never notified them of the video, “The Roy Moore Story Is A Symptom Of A Larger Fraud” or other recent uploads to his YouTube channel. (See Comments from viewers, attached and incorporated herein as ***Exhibit AM***)

139. On or about December 28, 2018, shortly after the, “The Roy Moore Story Is A Symptom Of A Larger Fraud” video was published on YouTube.com, in response to his concerns over algorithm censorship, LEWIS published the video on YouTube.com, “Did I get Algo Censored For My Roy Moore Research?” (See: <https://www.bitchute.com/video/x354fr9HJ6Q/>, attached and incorporated herein by reference as ***Exhibit AN***)

140. In the comments section of the “Did I get Algo Censored For My Roy Moore Research?” video, LEWIS noticed a comment from a viewer that stated he that YOUTUBE unsubscribed this viewer from LEWIS’ YouTube channel more than once. (See Comment from Did I get Algo Censored For My Roy Moore Research?” video, attached and incorporated herein as ***Exhibit AO***)

141. On or about December 30, 2018, LEWIS published the video, "Is Google An Agent Of The Chinese Government?" to YouTube.com.

(See <https://www.bitchute.com/video/PeyOYCF-CxA/>, attached and incorporated herein by reference as ***Exhibit AP***)

142. On or about January 2, 2019, LEWIS published the video, "Is Google's Empire Built On Fraud?" to YouTube.com.

(See [https://www.bitchute.com/video/Z\\_VxHvwgMVE/](https://www.bitchute.com/video/Z_VxHvwgMVE/), attached and incorporated herein by reference as ***Exhibit AQ***)

143. On May 22, 2018, LEWIS published the video, "The Beginning and End of a Life" to YouTube.com. This video outlines LEWIS' opposition to abortion.

(See: <https://www.bitchute.com/video/t9Iyc2nlaz0/>, attached and incorporated herein by reference as ***Exhibit AR***)

144. On or about December 16, 2018, LEWIS published the video, "Google Values Aren't American Values" to YouTube.com.

(See: <https://www.bitchute.com/video/cJgrqQsfEueX/>, attached and incorporated herein by reference as ***Exhibit AS***)

145. On or about January 7, 2019, LEWIS published the video, "Youtuber Law, Antitrust, & Discrimination Against Americans" to YouTube.com.



(See: <https://www.bitchute.com/video/s01hRWOLoc/>, attached and incorporated herein by reference as ***Exhibit AT***)

146. On or about January 15, 2019, LEWIS published the video, "The Truth Behind The Steve King Witchhunt: Targeting Trump" to YouTube.com. Shortly after upload, YOUTUBE demonetized this video.

(See: [https://www.bitchute.com/video/V\\_uQNTBwqQk/](https://www.bitchute.com/video/V_uQNTBwqQk/), attached and incorporated herein by reference as ***Exhibit AU***)

147. LEWIS appealed and on January 18, 2019, YOUTUBE emailed LEWIS to notify him that the demonetization of his video, "The Truth Behind The Steve King Witchhunt: Targeting Trump" will remain. (See email from YouTube dated January 18, 2019, attached and incorporated herein as ***Exhibit AY***)

148. On or about January 21, 2019, LEWIS published the video, "Antifa Now Targets Children" to YouTube.com. Shortly after upload, YOUTUBE demonetized this video. (See: <https://www.bitchute.com/video/v-vj6WPCqr0/>, attached and incorporated herein by reference as ***Exhibit AW***)

149. LEWIS appealed and on January 24, 2019, YOUTUBE emailed LEWIS to notify him that the demonetization of his video, "Antifa Now Targets Children" will remain. (See email from YouTube dated January 24, 2019, attached and incorporated herein as ***Exhibit AX***)

150. On or about January 28, 2019, LEWIS published the video, "Necessary Medicine is A Bitter Pill To Swallow" to YouTube.com. Shortly after upload, YOUTUBE demonetized this video.

(See: <https://www.bitchute.com/video/gjegxRY5baU/>, attached and incorporated herein by reference as ***Exhibit AY***)

151. LEWIS appealed and on January 30, 2019, YOUTUBE emailed LEWIS to notify him that the demonetization of his video, "Necessary Medicine is A Bitter Pill To Swallow" will remain. (See email from YouTube dated January 30, 2019, attached and incorporated herein as ***Exhibit AZ***)

152. On or about January 27, 2019, LEWIS published the video, "A Deep Dive Into YouTube's New Edicts & Their Far Reaching Implications" to YouTube.com. Shortly after upload, YOUTUBE demonetized this video.

(See: <https://www.bitchute.com/video/iYORmTnRyF4/>, attached and incorporated by reference herein as ***Exhibit BA***)

153. LEWIS appealed and on January 31, 2019, YOUTUBE emailed LEWIS to notify him that the demonetization of his video, "A Deep Dive Into YouTube's New Edicts & Their Far Reaching Implications" will remain. (See email from YouTube dated January 31, 2019, attached and incorporated herein as ***Exhibit BB***)

154. On or about February 5, 2019, LEWIS published the video, "Outrage Mob Finally Gets Held Accountable: Gavin McInness Lawsuit (1/3)" to YouTube.com. Shortly after upload, YOUTUBE demonetized this video.

(See: <https://www.bitchute.com/video/aYSNFS1cLhhM/>, attached and incorporated by reference herein as **Exhibit BC**)

155. LEWIS appealed and on February 7, 2019, YOUTUBE emailed LEWIS to notify him that the demonetization of his video, "Outrage Mob Finally Gets Held Accountable: Gavin McInness Lawsuit (1/3)" will remain. (See email from YouTube dated February 7, 2019, attached and incorporated herein as **Exhibit BD**)

156. On or about February 10, 2019 LEWIS published the video, "Her Story: Elizabeth Warren – A Case Study In Integrity" to YouTube.com.

(See: <https://www.bitchute.com/video/oAvoHBC1C30/>, attached and incorporated by reference herein as **Exhibit BE**)

157. On or about February 20, 2019, LEWIS published the video, "Her Story: Why Wouldn't The Husband Pay?" to YouTube.com. Shortly after upload, YOUTUBE demonetized this video. (See: <https://www.bitchute.com/video/xkVNgSSKwoo/>, attached and incorporated herein by reference as **Exhibit BF**)

158. LEWIS appealed and on February 23, 2019, YOUTUBE emailed LEWIS to notify him that the

demonetization of his video, "Her Story: Why Wouldn't The Husband Pay?" will remain. (See email from YouTube dated February 23, 2019, attached and incorporated herein as **Exhibit BG**)

159. On or about January 23, 2019, LEWIS published the video "A Scorched Earth Case Study" to YouTube.com. YOUTUBE Demonetized this video.

(See: <https://www.bitchute.com/video/oJhov3luE08/>, attached and incorporated herein by reference as **Exhibit BH**)

160. On or about March 11, 2019 LEWIS published the video "The Smollet Case: What Everyone Missed" to YouTube.com. YOUTUBE Demonetized this video.

(See: <https://www.bitchute.com/video/tzcoZHTa-hY/>, attached and incorporated by reference herein as **Exhibit BI**)

161. LEWIS appealed and on March 19, 2019, YOUTUBE emailed LEWIS to notify him that the demonetization of his videos, "A Scorched Earth Case Study" and "The Smollet Case: What Everyone Missed" will remain. (See email from YouTube dated March 19, 2019, attached and incorporated herein as **Exhibit BJ**)

162. On or about March 16, 2016 LEWIS published the video, "The NZ Shooting Smells Like A False Flag" on YouTube.com.

(See: <https://www.bitchute.com/video/PviQrUMGZw/>, attached and incorporated herein by reference as ***Exhibit BK***)

163. On or about March 17, 2019, YOUTUBE emailed LEWIS and informed him that his video, “The NZ Shooting Smells Like A False Flag” was placed in restricted mode. In its email, YOUTUBE admits that this video doesn’t violate YouTube’s Community Guidelines, but YOUTUBE chose to restrict anyway. LEWIS appealed and won. YOUTUBE unrestricted the video.

(See March 17, 2019 email from YouTube, attached and incorporated as ***Exhibit BL***)

164. In addition to restricting the video, “The NZ Shooting Smells Like A False Flag”, YOUTUBE also demonetized this video. LEWIS also appealed this decision. On or About March 17, 2019, YOUTUBE emailed LEWIS and informed him that his demonetization appeal lost. (See March 17, 2019 email from YouTube, attached and incorporated as ***Exhibit BM***)

165. On or about March 18, 2019 YOUTUBE again emailed LEWIS regarding his video, “The NZ Shooting Smells Like A False Flag”, and again restricted it. LEWIS immediately appealed again and won. YOUTUBE unrestricted the video. (See March 18, 2019 email from YouTube, attached and incorporated as ***Exhibit BN***)

166. On or about March 20, 2019 YOUTUBE again emailed LEWIS regarding his video, “The NZ Shooting Smells Like A False Flag” to inform him that

YOUTUBE removed this video. YOUTUBE alleged it violated YouTube's Community Guidelines. LEWIS immediately appealed and won. (See March 20, 2019 email from YouTube, attached and incorporated as ***Exhibit BO***)

167. On or about March 21, 2019, YOUTUBE again emailed LEWIS regarding his video, "The NZ Shooting Smells Like A False Flag" and again removed it. YOUTUBE again alleged it violated YouTube's Community Guidelines. LEWIS, once again, immediately appealed and this time lost and YOUTUBE gave LEWIS' channel a Community Guidelines warning. (See March 21, 2019 email from YouTube, attached and incorporated as ***Exhibit BP***)

168. On or about March 21, 2019, when YOUTUBE removed LEWIS' video, "The NZ Shooting Smells Like A False Flag", YOUTUBE also demonetized LEWIS' entire YouTube channel with no opportunity to appeal. (See Channel Status, attached and incorporated herein as ***Exhibit BQ***)

169. On information and belief, YOUTUBE removed LEWIS's video, "The NZ Shooting Smells Like A False Flag" is because in the video, LEWIS cited the New Zealand mass shooter's manifesto in which the shooter stated "The Nation with the closest political and social values to my own is the People's Republic of China." This statement, by itself, debunks much of the left wing media narrative. New Zealand criminalized citing the manifesto itself or even reading it. YOUTUBE censored this video on behalf of China because it paints

them in a negative light and demonstrates the New Zealand mass shooter was a communist leftist, not a rightwing extremist, as many left leaning online sources associated with GOOGLE were falsely reporting the shooter as a right wing extremist. (See, Pg. 21, New Zealand Mass Shooter Manifesto entitled: “The Great Replacement,” attached and incorporated herein as ***Exhibit BR***)

#### **4.9: GOOGLE Project Veritas Leaks & Fraud**

170. On or about August 14, 2019 Project Veritas published approximately 950 pages of leaks from GOOGLE provided to them by former GOOGLE employee, Zachary Vorhies.

(See: <https://www.projectveritas.com/2019/08/14/google-machine-learning-fairness-whistleblower-goes-public-says-burden-lifted-off-of-my-soul/>, attached and incorporated herein by reference as ***Exhibit BS***)

171. On Information and belief, YOUTUBE maintains at least one, possibly more blacklists, internally referred to as Twiddler blacklists. (See Project Veritas Leak, YouTube Twiddler Blacklist, attached and incorporated as ***Exhibit BT***)

172. On information and belief, according to the Project Veritas Leaks GOOGLE created and maintains at least two programming frameworks called Twiddler and Ascorer that allows GOOGLE and YOUTUBE to shadow ban or otherwise censor video and other online content. (See Project Veritas Leak, GOOGLE

Supen-oot Twiddler Quick Start Guide, attached and incorporated as **Exhibit BU**)

173. On information and belief, Twiddler allows GOOGLE and YOUTUBE to boost online content. Thus, GOOGLE and YOUTUBE can unethically and falsely boost video or a website post go viral and increase its visibility and discoverability. (Pg. 4, **Exhibit BT**)

174. On information and belief, Twiddler allows GOOGLE and YOUTUBE to filter online content. In other words, this tool allows GOOGLE and YOUTUBE to shadow ban, demote and conceal content without the need to outright remove it. This includes, but is not limited to LEWIS videos. (Pg. 4, **Exhibit BT**)

175. On information and belief, Twiddler also allows GOOGLE and YOUTUBE to set the order of search results of websites and videos, including limiting the maximum placement a video or website can show up in a search. (Pg. 4, **Exhibit BT**)

176. On information and belief, GOOGLE uses Twiddler to wrongfully and unethically boost and increase ad revenue of YouTube videos and Adsense enabled websites, since ad revenues are earned through Ad-sense and YouTube monetization are based on views.

177. On information and belief, GOOGLE uses Twiddler to unethically and wrongfully demote and conceal YouTube videos and Adsense enabled websites to defraud Video content creators, including, but not limited to LEWIS, of ad revenue.



178. On information and belief, GOOGLE uses Twid-  
dler to overcharge advertisers by virtue of artificially  
boosting videos, wrongfully causing advertisers to pay  
more product placement.

179. On information and belief, GOOGLE enables  
page level domain restrictions to unethically and  
wrongfully conceal content it doesn't like. (See Project  
Veritas Leak, Page Level Domain Restriction, attached  
and incorporated herein as ***Exhibit BV***)

180. On information and belief, GOOGLE maintains  
website blacklists for news sites. (See Project Veritas  
Leak, News Black List Site For Google, attached and  
incorporated herein as ***Exhibit BW***)

181. On information and belief, GOOGLE can boost  
website and links in real time using a software frame-  
work called Realtime Boost (See Project Veritas Leak,  
Realtime Boost, attached and incorporated herein as  
***Exhibit BX***)

182. On information and belief, GOOGLE sees itself  
as the arbiter of Truth. (see Project Veritas Leak, Fake  
News-Letter, attached and incorporated herein as ***Ex-***  
***hibit BY***)

183. On or about January 23, 2019 online news web-  
site Newsbusters, GOOGLE pays its employees to  
work with partnered non-profit groups. Southern Pov-  
erty Law Center is one of GOOGLE's non-profit part-  
ners.

(See: <https://www.newsbusters.org/blogs/techwatch/corinne-weaver/2019/01/23/google-fundsanti-conservative-hate-group-southern-poverty>, attached and incorporated by reference herein as ***Exhibit BZ***)

184. Southern Poverty Law Center is a YOUTUBE trusted flogger.

See: <https://dailycaller.com/2018/03/01/splc-youtube-google-trusted-flaggers/>, attached and incorporated herein by reference as ***Exhibit CA***)

185. According to GOOGLE, since 2016, GOOGLE has donated at least \$250,000 to The Southern Poverty Law Center.

(See: <https://wwu-wmic/inclusion/>, attached and incorporated by reference as ***Exhibit CB***)

186. In his December 7, 2018 video, “The SPLC Funds Terrorists” LEWIS demonstrates the Southern Poverty Law Center funds Antifa group By Any Means Necessary (BAMN). On information and belief, BAMN and other associated Antifa groups are responsible for numerous acts of political violence against law abiding patriotic American citizens within the United States.

187. Political violence is the dictionary definition of terrorism.

188. On information and belief, BAMN and its Antifa affiliates are terrorists funded, aided, and abetted, both directly and indirectly by GOOGLE.

189. On information and belief, GOOGLE knowingly and willingly sponsors, pays, and trains its employees

to protest against the lawfully elected President, Donald Trump and the United States government as part of the publicly well-known “RESIST” movement. (See Project Veritas Leak, Beginners Guide to Protesting, Sponsored by [Resist@Google.com](mailto:Resist@Google.com), Attached and incorporated herein as **Exhibit CC**)

190. On information and belief, GOOGLE’s sponsored “RESIST” group is affiliated with at least one, possibly more, Antifa Groups.

191. On information and belief, GOOGLE sponsored and paid for an employee protest against the Trump Administration over immigration policies/laws on or about January 30, 2017. Over 2000 employees participated in the event. Sergey Brin and Sundar Pichai spoke in support of protesting Trump’s Immigration policies.

(See: <https://www.theverge.com/google/2017/1/30/14446466/google-immigration-protestwalkout-trump-googlers-unite>, attached and incorporated herein by reference as **Exhibit CD**)

192. On or about August 16, 2019, GOOGLE Employees circulated a petition urging GOOGLE to resist support for ICE. Over 3,000 employees signed the petition. (See: <https://www.theguardian.com/technology/2019/aug/16/hundreds-of-google-employeesurge-company-to-resist-support-for-ice>, attached and incorporated by reference herein as **Exhibit CE**)

193. YOUTUBE allows content creators to share ad revenue in return for posting video content on its

website. This process is known as monetization and, on information and belief, operates as part of GOOGLE's adsense program.

See: <https://support.google.com/youtube/answer/72857?hl=en>, attached and incorporated herein by reference as *Exhibit CF*)

194. GOOGLE allows website owners to join their adsense program which allows website owners to get paid for advertisements on their websites.

(See: <https://www.google.com/adsense/start/>, attached and incorporated herein by reference as *Exhibit CG*)

195. GOOGLE also runs an adsense ad auction, which allows advertisers to bid on ad placement. On information and belief, GOOGLE conceals how different ads are valued for purposes of the auction. GOOGLE refuses to provide any legitimate transparency regarding any aspect of its ad auction process. GOOGLE, using Twiddler and other tools, can overvalue certain ads, by artificially boosting the websites/YouTube channels traffic, which can and does artificially increase/inflate marketing costs to advertisers.

#### **4.10 GOOGLE IS PERVASIVELY INTERTWINED WITH THE U.S. GOV'T**

196. On or about December 20, 2018, The Guardian reported: "Google had integrated with US intelligence agencies, it won an exclusive, no-bid \$27m contract to provide the NGA with "geospatial visualisation

services”, effectively making the company the “eyes” of America’s defence and intelligence apparatus. Competitors criticised the NGA for not opening the contract to the customary bidding process, but the agency defended its decision, saying it had no choice: it had spent years working with Google on secret and top-secret programmes to build Google Earth technology according to its needs, and could not go with any other company.”

(See Guardian News article entitled: Google’s Earth: How the tech giant is helping the state spy on us, published December 20, 2018, attached and incorporated herein by reference as **Exhibit CH**: <https://www.theguardian.com/news/2018/dec/20/googles-earth-how-the-tech-giant-is-helping-the-state-spy-on-us>)

197. On or about February 12, 2019 Wired reported: “A new Defense Department strategy calls for rapid adoption of AI across the military, and Google, Oracle, IBM, and SAP have signaled interest in a partnership. The plan depends on the Pentagon working closely with the tech industry to source the algorithms and cloud computing power needed to run AI projects. Federal contracting records indicate that Google, Oracle, IBM, and SAP have signaled interest in working on future Defense Department AI projects. The heart of the Pentagon AI strategy published Tuesday is a unit established in June last year called the Joint Artificial Intelligence Center, known as the JAIC. It will function as a hub of AI expertise to support military branches, and vet all Defense Department AI projects larger than \$15 million. The JAIC will also develop its own AI

projects in a similar vein to Project Maven, including by tapping tech company algorithms and AI tools.”

(See Wired News article entitled: The Pentagon Doubles Down on AI – and Wants Help from Big Tech, published on or about February 12, 2019, attached and incorporated herein by reference as **Exhibit CI**: <https://www.wired.com/story/pentagon-doubles-down-ai-wants-help-big-tech/>)

198. On or about March 27, 2019 Reuters reported: “The U.S. Census Bureau has asked tech giants Google, Facebook and Twitter to help it fend off “fake news” campaigns it fears could disrupt the upcoming 2020 count, according to Census officials and multiple sources briefed on the matter. . . . Ron Jarmin, the Deputy Director of the Census Bureau, confirmed the bureau was anticipating disinformation campaigns, and was enlisting the help of big tech companies to fend off the threat. Census Bureau officials have held multiple meetings with tech companies since 2017 to discuss ways they could help, including as recently as last week, Jarmin said. So far, the bureau has gotten initial commitments from Alphabet Inc’s Google, Twitter Inc and Facebook Inc to help quash disinformation campaigns online, according to documents summarizing some of those meetings reviewed by Reuters.”

(See Reuters News article entitled: Exclusive: Fearful of fake news blitz, U.S. Census enlists help of tech giants, published March 27, 2019, attached and incorporated herein by reference as **Exhibit CJ**: <https://www.reuters.com/article/us-usa-census-fakenews-exclusive/>)

exclusive-fearful-of-fake-newsblitz-u-s-census-enlists-help-of-tech-giants-idUSKCN1R812S)

199. On or about September 4, 2019 Engadget reports: Both intelligence agencies and tech companies are gearing up to secure the 2020 US election, and that apparently includes some heart-to-heart conversations between the two. Bloomberg sources have learned that Facebook, Google, Microsoft and Twitter are meeting members of the FBI, Homeland Security and the Office of the Director of National Intelligence to discuss the industry's security strategy. This reportedly includes plans for tighter coordination between tech and government, as well as curbing disinformation campaigns.

(See Engadget article entitled: Facebook, Google meet intelligence agencies to talk 2020 election security, published on or about September 9, 2019, attached and incorporated herein by reference as **Exhibit CK**: <https://www.engadget.com/2019/09/04/facebook-google-meet-us-intelligence-for-2020-election-security/>)

200. On information and belief, LEWIS contends the DEFENDANTS work with and/or are pervasively intertwined with the United States government.

#### **4.11 YOUTUBE RETALIATES AGAINST PETITIONER VIA CONTRACT CHANGES**

201. On or about November 9, 2019, YOUTUBE emailed LEWIS to notify him of upcoming contract changes to its terms of service. As part of the upcoming

contractual changes YOUTUBE states: “YouTube may terminate your access, or your Google account’s access to all or part of the Service if YouTube believes, in its sole discretion, that provision of the Service to you is no longer commercially viable.” These changes are set to take effect on or about December 10, 2019. (See YouTube’s Updated Terms of Service, Effective Dec. 10, 2019, attached and incorporated herein by reference as **Exhibit CL**: <https://www.youtube.com/t/terms?preview=20191210#main>)

202. On information and belief, LEWIS perceives these changes were implemented to shut down LEWIS’ channel partly for retaliatory purposes in response to LEWIS filing this suit against the defendants.

## **V. LEGAL CLAIMS**

### **FIRST CAUSE OF ACTION**

#### **(First Amendment of the U.S. Constitution Pursuant to 42 U.S.C. § 1983)**

203. PLAINTIFF LEWIS alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 193.

204. This case is a case of first impressions for the reasons set forth below.

205. In, *Matal v. Tam*, United States Supreme Court Justice Alito stated in pertinent part:

“Speech may not be banned on the ground that it expresses ideas that offend.



Speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful . . . but the proudest boast of our free speech jurisprudence is that we protect the freedom to express ‘the thought that we hate.’

206. In *Packingham V North Carolina*, United States Supreme Court Justice Kennedy stated in pertinent part:

“A fundamental principle of the First Amendment is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more. The United States Supreme Court has sought to protect the right to speak in this spatial context. A basic rule, for example, is that a street or a park is a quintessential forum for the exercise of First Amendment rights. Even in the modern era, these places are still essential venues for public gatherings to celebrate some views, to protest others, or simply to learn and inquire. While in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace – the vast democratic forums of the Internet in general, and social media in particular. Social media offers relatively unlimited, low-cost capacity for communication of all kinds, and social media users employ various websites to engage in a wide array of protected First Amendment activity on topics as diverse as human thought.

The nature of a revolution in thought can be that, in its early stages, even its participants may be unaware of it. And when awareness comes, they still may be unable to know or foresee where its changes lead. The American war is over; but this is far from being the case with the American revolution. On the contrary, nothing but the first act of the great drama is closed. So too here. While we now may be coming to the realization that the Cyber Age is a revolution of historic proportions, we cannot appreciate yet its full dimensions and vast potential to alter how we think, express ourselves, and define who we want to be. The forces and directions of the Internet are so new, so protean, and so far reaching that courts must be conscious that what they say today might be obsolete tomorrow.

This case is one of the first this Court has taken to address the relationship between the First Amendment and the modern Internet. As a result, the Court must exercise extreme caution before suggesting that the First Amendment provides scant protection for access to vast networks in that medium.”

207. It is well-settled in United States Courts that a required element for a successful cause of action pursuant to 42 U.S.C. § 1983 is that a defendant be a “state” actor in order to be liable. However, the statute itself doesn’t define the term “state.” Therefore, pursuant to the rules of statutory construction, LEWIS contends the Court adopt the plain meaning of the term of

“state.” Black’s Law Dictionary 5th Edition defines state, in pertinent part, as follows:

A people permanently occupying a fixed territory bound together by common-law habits and custom into one body politic exercising, through the medium of an organized government, independent the sovereignty and control over all persons and things within its boundaries, capable of making war and other peace and of entering into international relations with other communities of the globe.

A territorial unit with a distinct general body of law. The term may refer either to a body politic of a nation or to an individual governmental unit of such a nation.

208. Pursuant to the Black’s Law Dictionary plain meaning of the term, “State”, LEWIS contends that, as a matter of law, the People’s Republic of China, The European Union and the signatory countries of the Christchurch Call agreement qualify as states for purposes of 42 U.S.C. § 1983.

209. It’s also well settled that a private company merely contracting with a state does not automatically transform that private company into a state actor. That is not the case here. In the current case at bar, GOOGLE not only contracted with multiple foreign states, but GOOGLE also knowingly and willfully acted in join-enterprise and their conduct is pervasively intertwined with China by virtue of duties conferred on GOOGLE pursuant to China’s 2017 National

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Intelligence Law and Google's presence in China, working for the Chinese government.

210. GOOGLE also acts in joint enterprise and is pervasively intertwined with the European Union, The United Kingdom and other European countries. GOOGLE has appointed the United Kingdom government and other governments' agencies (and their agents) as trusted flaggers on GOOGLE and YOUTUBE. Further, GOOGLE and YOUTUBE assisted the European Union in the creation of the European Code of Conduct agreement they signed with the European Union that empowers GOOGLE and YOUTUBE to enforce European Union adopted hate speech laws on their websites and/or platforms.

211. GOOGLE also acts in joint enterprise and is pervasively intertwined with the signatory governments of the Chirstchurch call agreement as well. This is because they agreed to share their internal information with these governments and notify them when they take down online content that violates these government's hate speech laws.

212. GOOGLE/YOUTUBE, in their individual capacity, under color of these state's laws, knowingly, un-ethically, maliciously, and in violation of well-settled United States civil rights law, as *de facto* and/or *de jure* state actors, enforce hate speech and other censorship laws within the United States on American citizens, including LEWIS as alleged above, by virtue of, including but not limited to, algorithm censorship (Twiddler shadow banning), purposefully failing to notify video

subscribers of videos, purposefully unsubscribing viewers from his YouTube channel, demonetization, restricting videos, and removing videos. These are a violations of LEWIS constitutional rights of Free Speech.

213. GOOGLE/YOUTUBE, in their individual capacity, as a state actor, also discriminatorily censored LEWIS because of his vocal support of American traditions, American conservative political groups, support of Americans Constitutional Right to Free Speech, opposition to abortion, and support of Christian values, violating LEWIS' Constitutional Free Speech right to affiliate with and speak in support of such causes and groups as alleged earlier in this complaint.

214. GOOGLE/YOUTUBE's censorship is a case of public interest as a matter of public policy. Since the 2016 Presidential Election of Donald Trump, The United States government and the American people have been deeply concerned that foreign countries have interfered in United States electoral system, manipulated public opinion, and stifled political speech, which is a direct threat to American sovereignty, American culture, and the American way of life.

215. GOOGLE/YOUTUBE, in their individual capacity, as state actors, have knowingly, willfully, and maliciously enforced foreign governments hate speech and censorship laws, not just on LEWIS, but on United States elected government officials, on news outlets, and on American citizens by the tens of millions.

216. GOOGLE/YOUTUBE's actions were taken with malice and/or arbitrary and capricious, as part of GOOGLE/YOUTUBE's normal course of business as alleged herein.

217. Even if GOOGLE Wasn't an agent of a Foreign government, GOOGLE AND YOUTUBE are pervasively intertwined with the U.S. Government, and thus, in their individual capacity, can be sued as government actors.

## **SECOND CAUSE OF ACTION**

### **(National Origin Discrimination Pursuant to 42 U.S.C. § 2000a)**

218. PLAINTIFF LEWIS alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 206.

219. This is a case of first impressions in the District of Colorado and is unsettled law nationally for the reasons set forth below.

220. This cause of action is of public policy and national public interest.

221. LEWIS contends GOOGLE/YOUTUBE, as alleged above, is primarily an online theater and/or a place of public exhibition or entertainment as defined by 42 U.S.C. § 2000a. They sell, rent and/or exhibit movies, TV shows, and other videos on their website YouTube.com.

222. The United States Department of Justice, Office of the Assistant Attorney General, in a September 2018 letter to congress, discloses the D.O.J. has long considered websites to be places of public accommodations for ADA purposes.

223. YOUTUBE, de facto stipulates/admits it's a place of public accommodation for ADA purposes, by virtue of its closed captioning and other technical accommodations it implements to provided Americans with disabilities access to its video services.

224. GOOGLE and YOUTUBE de facto stipulates/admits its a place of public accommodation for purposes of civil rights, including but not limited to, on the basis of race, color, religion, and/ or national origin, by virtue of implementing community guidelines and other technical tools that provide an inclusive environment for YouTube users who belong to any of these groups. GOOGLE/YOUTUBE is very vocal in its marketing and other messaging in confirming the existence of these civil rights based public accommodations.

225. YOUTUBE discriminates against LEWIS on the basis of his national origin, by virtue of YOUTUBE first demonetizing many of his videos, then demone-tizing his entire channel, limiting video discovery for videos he publishes to his YouTube channel, unsub-scribing his YouTube channel subscribers, restricting his videos, and removing videos because LEWIS is a patriotic American citizen who promotes Constitu-tional rights of Americans, Christian beliefs, and Amer-ican laws and culture.

**THIRD CAUSE OF ACTION**

**(47 U.S.C. § 230 Is Unconstitutional)**

226. PLAINTIFF LEWIS alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 213.

227. This cause of action is a case of first impressions.

228. This cause of action is of public policy and national public interest.

229. 47 U.S.C. § 230 is facially unconstitutional and/or unconstitutional as applied to PLAINTIFF LEWIS for vagueness, because the statute doesn't define any of the terms included under § (c)(2)(A), such as: "harassing, obscene, lewd, lascivious, filthy, excessively violent, objectionable." Normally this wouldn't merit or sustain either a facial or "as applied" constitutional challenge. This is because pursuant to well settled rules of statutory construction, one could use the plain meaning of these words to define them. However, § (c)(2)(A) expressly allows providers of interactive computer services, including but not limited to GOOGLE and YOUTUBE to define these terms any way they like when the statute states, in pertinent part:

No provider or user of an interactive computer service shall be held liable on account of any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable . . .



Further, providers of interactive computer services, including GOOGLE and YOUTUBE, under § 230, could initially adopt one definition for these terms, then at a later date, redefine these terms to mean something entirely different without incurring any civil liability. Even worse, they could redefine these terms as many times as they wanted without any threat of civil liability.

230. 47 U.S.C. § 230 is facially unconstitutional and/or unconstitutional as applied to PLAINTIFF LEWIS because it is over-broad. The United States Constitution's First Amendment states in pertinent part: "Congress shall make no law . . . abridging the freedom of speech." Yet, this is exactly what 47 U.S.C. § 230(c)(2)(A) does, by virtue of allowing interactive computer service providers, including GOOGLE and YOUTUBE, at will, to restrict access to or availability of interactive computer services they provide, "whether or not such material is constitutionally protected." GOOGLE and YOUTUBE have knowingly, expressly, maliciously, and capriciously restricted LEWIS access YouTube.com by virtue of censoring his videos from his subscriber base, new potential viewers, and barring him from earning Ad revenue in retaliation for exercising his Constitutionally protected right to freedom of speech and freedom of association under the First Amendment of the Constitution of the United States. PLAINTIFF LEWIS isn't the only victim of GOOGLE and YOUTUBE's unconstitutional censorship pursuant 47 U.S.C. § 230. Many elected United States officials, and millions of American citizens have also been silenced and/or

otherwise unconstitutionally censored by GOOGLE and YOUTUBE acting under the protection of 47 U.S.C. § 230.

231. 47 U.S.C. § 230 is facially unconstitutional and/or unconstitutional as applied to PLAINTIFF LEWIS because it is internally inconsistent. When reviewing the statute §(a) and §(b) it appears Congresses legislative intent in the creation of this statute was to increase availability of online content and interactive media regardless of whether its political, educational, cultural or for the pure entertainment value. Yet, §(c)(2)(A) does the exact opposite, by allowing interactive computer services, including GOOGLE and YOUTUBE to restrict this content, thus making the statute itself internally inconsistent pursuant to the rules of statutory construction.

#### **FOURTH CAUSE OF ACTION**

##### **(Fraud)**

232. PLAINTIFF LEWIS alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 219.

233. GOOGLE/YOUTUBE, at all times publicly presents itself as a free speech platform, free from unlawful censorship.

234. YOUTUBE/GOOGLE, in its terms of service, community guidelines, or anywhere on its websites YouTube.com or Google.com or by any other direct means, never discloses to YouTube/ Google American

citizen registered users that it employs and/or assigns foreign government entities and/or agencies as trusted flaggers. GOOGLE/YOUTUBE actively conceals the identities of its trusted flaggers.

235. YOUTUBE/GOOGLE never discloses to American citizen registered users that their Constitutionally protected right to free speech could be silenced and/or censored if a foreign government objects to it.

236. YOUTUBE/GOOGLE never discloses to American citizen registered users that any monetization from ad revenue that they may be entitled to, could be suspended, restricted, or ended, if a foreign government objects to it.

237. YOUTUBE/GOOGLE never disclosed to American citizen registered users that it abandoned its original principles of American Constitutional style free speech in favor of a more censored European/Chinese ideological perspective.

238. YOUTUBE/GOOGLE never disclosed to American citizen registered users that it maintained blacklists of words, websites, users, and/or other material/content.

239. YOUTUBE/GOOGLE never disclosed to American citizen registered users and advertisers that through algorithm censorship and blacklists, such as Twiddler, Adscorer and other internal tools, it artificially promoted (increasing traffic) and demoted (decreasing traffic) websites, YouTube channels, and other online material. By doing this, YOUTUBE/GOOGLE

artificially increased ad revenue for YOUTUBE/GOOGLE and the organizations and individuals promoted, while at the same time artificially decreasing ad revenue for organizations and individuals demoted.

240. At all times, GOOGLE/YOUTUBE was aware they were misleading American citizen registered users, as described above, including but not limited to, through falsely claiming they maintained no blacklists and didn't shadow ban or otherwise wrongfully censor legal content from their platforms.

241. GOOGLE, in their ongoing effort to conceal these and other facts proving GOOGLE's malfeasance from American people, GOOGLE CEO, Sundar Pichai, knowingly, purposefully, and maliciously lied to the United States Congress when forthrightly and expressly asked about these issues. This is a violation of United States Federal Law.

242. PLAINTIFF LEWIS, as well as the American public, generally, was ignorant of the fact that GOOGLE/YOUTUBE misrepresented/concealed the facts contained in statements 1 thru 242. At all times, GOOGLE/YOUTUBE, purposefully and with willful intent, expected their misrepresentations/omissions be acted upon, by PLAINTIFF LEWIS specifically and the American people, generally.

243. LEWIS, because he relied on misrepresentations and/or omissions of DEFENDANTS was damaged as described in statements 1 thru 227 herein, including but not limited to, having his channel demonetized, having his videos censored in a variety of

ways, and being discriminated against based on his national origin as a patriotic American citizen, his Christian beliefs, thru censoring his Constitutionally protected right to free speech and freedom to associate.

**FIFTH CAUSE OF ACTION**  
**(Breach of Implied Covenant of  
Good Faith and Fair Dealing)**

244. PLAINTIFF LEWIS alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 231.

245. LEWIS and GOOGLE/YOUTUBE entered into written contracts in which GOOGLE/YOUTUBE agreed to provide access to GOOGLE services, YouTube access, hosting, streaming, advertising and/or ad revenue share services to LEWIS. Those contracts give GOOGLE/YOUTUBE unilateral discretion to remove, restrict, demonetize or demote (decrease traffic) LEWIS' content as they see fit. It also allow GOOGLE/YOUTUBE to change their contractual terms at any times, without notice to LEWIS, and requires LEWIS to stipulate to agreeing to any changes, whatever they may be.

246. Implied in those contracts is the implied covenant of good faith and fair dealing. This is especially true since these contracts are, by definition, are contracts of adhesion, and provide GOOGLE/YOUTUBE unilateral and unfettered discretionary control over literally every aspect of their contractual relationship

with LEWIS. YOUTUBE/GOOGLE have exercised this control, repeatedly, and without any meaningful notice to LEWIS, and without any meaningful negotiation, discussion, or credible/meaningful appeal. To the extent GOOGLE/YOUTUBE's discretionary authority under these contracts is valid, they are obliged to exercise them fairly and in good faith.

247. LEWIS, for his part, substantially performed all significant duties required of him under his written agreements with GOOGLE/YOUTUBE and/or was excused from those duties and/or activities. None of LEWIS' demonetized and/or restricted videos violates the letter or spirit of any term in GOOGLE/YOUTUBE's contracts with LEWIS.

248. GOOGLE/YOUTUBE was bound by the implied covenant of good faith and fair dealing in their agreements, terms, and other policies, not to engage in any acts, conduct, or omissions that would impair or diminish LEWIS' rights and benefits of the parties' agreements, United States Law, or lawful rights provided to LEWIS under the United States Constitution. Pursuant to the terms of those agreements, LEWIS was to have equal and organic access to a wide audience to promote his messages, and it was in reliance on GOOGLE/YOUTUBE's representations to: "help you grow . . . discover what works best for you . . . give you tools, insights, and best practices for using your voice and videos." This is the reason LEWIS chose YouTube as the main host of his videos. Also, pursuant to those agreements, LEWIS was entitled to some portion of ad revenue profits that GOOGLE/YOUTUBE earned as a

direct result of hosting LEWIS' content. However, GOOGLE/YOUTUBE have, by acts and omissions alleged herein, intentionally and tortiously breached the implied covenant of good faith and fair dealing by unfairly, unlawfully, and discriminatorily, interfering with LEWIS' rights to receive benefits of those contracts.

249. GOOGLE/YOUTUBE willfully engaged in the forgoing acts and omissions with full knowledge that they were bound to act consistently with the covenant of good faith and fair dealing. Those acts and omissions were not only failures to act fairly, and in good faith, but they were acts of oppression, discrimination, fraud, and actual malice.

250. As a direct and proximate result of the aforementioned conduct of GOOGLE/YOUTUBE LEWIS suffered and continues to suffer, immediate and irreparable injury in fact, including lost income, reduced viewership, and damage to his brand, reputation, and goodwill, for which there exists no adequate remedy at law.

### **SIXTH CAUSE OF ACTION**

#### **(GOOGLE/YOUTUBE's Contracts Are Unconscionable)**

251. PLAINTIFF LEWIS alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 228.

252. GOOGLE/YOUTUBE's adhesion contracts with LEWIS are unconscionable because of unequal bargaining power as alleged earlier in this complaint. GOOGLE/YOUTUBE not only have majority market penetration in the United States, but are in fact a monopoly. Whereas, LEWIS is an individual with nowhere near the influence, net worth, or global impact of GOOGLE.YOUTUBE.

253. GOOGLE/YOUTUBE's adhesion contractual provision that allows them to change any of the terms at any time, at will, without notice to LEWIS, and also requires him to pre-stipulate to any of these "at will" changes without no notice or negotiation whatsoever, constitutes unfair surprise to LEWIS, which is unconscionable.

254. The adhesion contractual term that allows GOOGLE/YOUTUBE to "at will" make changes to any and all terms of the agreement, as also been adopted by GOOGLE/YOUTUBE's main competition, thus LEWIS has no meaningful choice of whether or not to publish videos on YOUTUBE's platform, because most if not all, of their main competitors have either the same or constructively similar terms within their agreements and YOUTUBE has the most market penetration/ market power/ monopoly power of any company that offers the same or a constructively similar service.

255. The ability to make "at will" changes provision of GOOGLE/YOUTUBE's contracts, when combined with the requirement for LEWIS to pre-stipulate to



any “at will” changes DEFENDANTS make, potentially forces LEWIS to unknowingly pre-waive his legal and constitutional rights. This constitutes unfair surprise and renders any contract with the ability to make “at will” changes unconscionable, on its face.

256. GOOGLE/YOUTUBE, as previously alleged herein, has knowingly, maliciously, and willfully, used this and other unconscionable clauses within its contracts to oppress, discriminate, and otherwise maliciously harm LEWIS by forcing him to lose income, reputation, damage to hi-brand, reduced viewership and other damages as alleged herein.

### **SEVENTH CAUSE OF ACTION**

#### **(Lanham Act- 15 U.S.C. §1125 et seq.)**

257. PLAINTIFF LEWIS alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 242.

258. GOOGLE/YOUTUBE are engaged in interstate commerce and competition through hosting, creating, advertising, and soliciting and receiving revenue for advertising, video streaming, services on the YouTube.com website. GOOGLE/YOUTUBE competes with video producers like LEWIS in the market of online video streaming/viewing by creating, hosting, and promoting their own online video content.

259. GOOGLE/YOUTUBE engage in an ongoing pattern and practice of knowingly and willfully misleading and deceptive advertisement and unfair

competition. GOOGLE/YOUTUBE advertise themselves as a word, term, name, symbol, and device, as a forum for open and intellectually diverse expression by a variety of speakers/registered users across the globe. GOOGLE/YOUTUBE actively, unfairly, knowingly and deceptively misrepresent the nature, characteristics, and qualities of GOOGLE/YOUTUBE's services and other commercial activities as an equal, open and diverse public forum committed to American style free speech. GOOGLE/YOUTUBE unfairly enhance their image and goodwill of their content, while degrading/demoting/restricting LEWIS and his videos by suggesting LEWIS and his speech are offensive, hateful and/or otherwise inappropriate and/or objectionable.

260. GOOGLE/YOUTUBE's false representations and unfair competition deceived, and had a tendency to deceive, substantial segments of GOOGLE/YOUTUBE's audience, including video producers like LEWIS, viewers, and advertisers, who rely on those misrepresentations and are wrongfully induced to traffic and/or otherwise do business with YOUTUBE, and to view/not view particular videos. As a direct and proximate consequence of GOOGLE/YOUTUBE's actions as alleged in this complaint, LEWIS has suffered and continues to suffer immediate and irreparable injury in fact, including, but not limited to, lower viewership, decreased/lost ad revenue, a potential reduction in advertisers willing to purchase advertisements that were previously shown on LEWIS's videos, diverted viewership, and damage to LEWIS' brand, reputation, and goodwill.

261. GOOGLE/YOUTUBE's wrongful acts were taken with oppression, discriminatory intent, fraud and/or actual malice. LEWIS attempted to remedy the situation through YouTube's internal appeals process, which is the only mechanism available to LEWIS. GOOGLE/YOUTUBE repeatedly refused to uncensor his videos and restore his ad revenue and/or cease other forms of discrimination against LEWIS alleged herein. GOOGLE/YOUTUBE has yet to articulate any credible or otherwise meaningful for their differential treatment of LEWIS. GOOGLE/YOUTUBE treats video producers like LEWIS the same as part of their normal pattern and practice in the course of their daily business activities, by virtue of their internal algorithm censorship through Twiddler and other internal tools, internal blacklists, foreign government/agency trusted flaggers, and other forms of bad faith conduct alleged herein.

### **EIGHTH CAUSE OF ACTION**

#### **(GOOGLE doesn't meet the "Good Faith" Requirements of 47 U.S.C. § 230)**

262. PLAINTIFF LEWIS alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 247.

263. If the Court determines that 47 U.S.C. § 230 is constitutional, then LEWIS contends that based on the allegations included herein, GOOGLE/YOUTUBE deserves no civil immunity from liability, because, as previously stated herein, DEFENDANTS have not met

the “good faith” requirement for immunity from civil liability as required under to 47 U.S.C. § 230.

**NINTH CAUSE OF ACTION**

**(Tortious Interference  
with Economic Advantage)**

264. PLAINTIFF LEWIS alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 249.

265. GOOGLE/YOUTUBE discriminates, demonetizes, and/or otherwise censors (as alleged herein) LEWIS as part of an ongoing pattern and practice to silence American citizens on behalf of foreign government trust flaggers and/or other agents.

266. LEWIS’s YouTube channel, brand, and reputation, prior to GOOGLE/YOUTUBE’s knowingly unlawful and unethical interference, was growing significantly.

267. GOOGLE/YOUTUBE intentionally and maliciously interfered with LEWIS’ business interests by the conduct set forth above, specifically, without limitation, in its role as censoring LEWIS on their websites and platforms, from which he has been algorithm censored and demonetized.

268. LEWIS has suffered. Unless enjoined by this Court, will continue to suffer financial and other damage as a direct and proximate result of GOOGLE/

YOUTUBE's wrongful, discriminatory, and malicious conduct. LEWIS has no adequate remedy at law.

**TENTH CAUSE OF ACTION**

**(Request For Declaratory Relief)**

269. PLAINTIFF LEWIS alleges and incorporates all preceding allegations as fully set forth above in paragraphs 1 through 254.

270. An actual controversy exists between LEWIS and GOOGLE/YOUTUBE as to whether GOOGLE/YOUTUBE's policies, procedures and their pattern and practice as applied and alleged herein violate 42 U.S.C. § 1983, 42 U.S.C. § 2000a, 15 U.S.C. § 1125, the constitutionality of 47 U.S.C. § 230, and (if the court determines 47 U.S.C. § 230 is constitutional) whether or not GOOGLE/YOUTUBE meet the good faith requirements for immunity from civil liability under 47 U.S.C. § 230. Further, an actual controversy exists as to whether or not GOOGLE/YOUTUBE's contracts with LEWIS are unconscionable.

271. A public policy and national public interest controversy also exists between LEWIS and GOOGLE/YOUTUBE as to whether or not GOOGLE/YOUTUBE operates on within the United States against United States citizens as a joint enterprise pervasively intertwined agent of foreign governments.

272. Another public policy and national public interest controversy exists between LEWIS and GOOGLE/YOUTUBE regarding "hate speech" policies. In the

United States, neither Congress, nor the Courts have ever recognized “hate speech” as a valid and/or credible reason to silence and/or otherwise censor American citizens constitutionally protected right to free speech.

273. Unless the Court issues an appropriate declaration of rights, the parties and the American people will not know whether GOOGLE/YOUTUBE’s policies, procedures and normal pattern and practice regarding the DEFENDANT’s conduct comply with applicable State and Federal law, including but not limited to, United States Constitutional protections of American citizens. If the Court fails to issue an appropriate declaration of rights there will continue to be public policy and national public interest disputes and controversy surrounding GOOGLE/YOUTUBE’s policies, procedures, and application of them.

## **VI. PRAYER FOR RELIEF**

WHEREFORE, PLAINTIFF LEWIS respectfully prays for relief and judgment as follows:

274. For Declaratory Judgments as follows:

- A) GOOGLE/YOUTUBE are joint-interest and pervasively intertwined state actors/agents of foreign governments pursuant to 42 U.S.C. § 1983 and, in their individual capacity, violated and continue to violate LEWIS’ First Amendment rights to Free Speech and Freedom of Affiliation under color of foreign law.

- B) GOOGLE/YOUTUBE websites Google.com and YouTube.com are places of public accommodation, as online theaters and/or places of public exhibition within the meaning of 42 U.S.C. § 2000a and that DEFENDANTS discriminated against LEWIS because of his religion and national origin as a patriotic Christian and American citizen.
- C) GOOGLE/YOUTUBE's hate speech polices used to censor American citizens, on their face, are un-American and serve to chill LEWIS' free speech rights, and constitute an unconscionable contract clause as a matter of Constitutional law, public policy, and national public interest.
- D) GOOGLE/YOUTUBE's contractual clause allowing them to alter the terms of their contracts "at will" without notification and forcing to LEWIS to pre-stipulate to any and all of GOOGLE/YOUTUBE's contractual alterations constitutes an unconscionable contract clause and are unenforceable as a matter of law and public policy interest.
- E) 47 U.S.C. § 230, facially and/or "as applied" to LEWIS is unconstitutional due to being overbroad, vague, and/or internally inconsistent.
- F) In the alternative, GOOGLE/YOUTUBE doesn't meet the "good faith" requirement for immunity to civil liability pursuant to 47 U.S.C. § 230.
- G) GOOGLE/YOUTUBE committed Fraud by misrepresenting to LEWIS and the American

people that they don't maintain blacklists or artificially promote/demote content of users.

- H) Any other judgments the Court deems appropriate, based on the facts alleged herein.

275. For an injunction requiring GOOGLE/YOUTUBE to:

- A) cease and desist from capriciously restricting, demonetizing, or otherwise censoring of any videos or other content of LEWIS and American Citizens on either YouTube.com or any other website created, administered or run by DEFENDANTS.
- B) Cease and desist enforcement of "Hate Speech" policies against LEWIS or any other American citizen.
- C) Publicly disclose which foreign governments or agencies (including their agents, public and private) work with DEFENDANTS as trusted flaggers or in any other capacity.
- D) Cease and desist artificially promoting and demoting videos and/or any other content on its platforms.

276. For actual, compensatory, special, and statutory damages in an amount to be proven at trial.

277. For punitive damages no less than \$5 billion dollars.

278. For restitution of financial losses or harm caused by DEFENDANTS conduct and in an amount to be proven at trial.



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- 279. Attorneys fees and costs of suit.
- 280. For prejudgment and post judgment interests.
- 281. For any and all other additional relief the Court deems appropriate, just, and proper.

**JURY DEMAND**

PLAINTIFF demands trial by jury on all issues of law or fact so triable

DATED: November 10, 2019

Respectfully Submitted

Andrew Martin Esq.

By: /s/ Andrew Martin

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Andrew Martin  
Attorney for Plaintiff,  
Bob Lewis

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