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12 Lindsay Amer

13

14

UNITED STATES DISTRICT COURT

15

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

16

17 DIVINO GROUP LLC, a California limited  
liability company, CHRIS KNIGHT, an  
18 individual, CELSO DULAY, an individual,  
CAMERON STIEHL, an individual,  
19 BRIAANDCHRISSY LLC, a Georgia limited  
liability company, BRIA KAM, an individual,  
20 CHRISSY CHAMBERS, an individual,  
CHASE ROSS, an individual, BRETT  
21 SOMERS, an individual, and LINDSAY  
AMER, and individual,

22

Plaintiffs,

23

vs.

24

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

26

Defendants.

27

28

Case No.

**CLASS ACTION COMPLAINT FOR  
DAMAGES, INJUNCTIVE RELIEF,  
RESTITUTION, AND DECLARATORY  
JUDGMENT**

**JURY TRIAL DEMANDED**

Action Filed:

Trial Date: None Set

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1 Plaintiffs Divino Group LLC d/b/a GlitterBombTV.com, which produces the online show  
2 “GNews!;” Chris Knight, Celso Dulay, Cameron Stiehl, BriaAndChrissy LLC d/b/a  
3 “BriaAndChrissy,” which owns the channel youtube.com/BriaAndChrissy; Bria Kam, Chrissy  
4 Chambers, Chase Ross, sole proprietor of youtube.com/upercaseCHASE1; Brett Somers, sole  
5 proprietor of youtube.com/Watts The Safeword; and Lindsey Amer, sole proprietor of  
6 queerkidstuff.com, (collectively the “LGBTQ+ Plaintiffs”) bring this Complaint for damages, and  
7 equitable and declaratory relief, individually, and on behalf of all persons similarly situated,  
8 against Defendant YouTube, LLC (“YouTube”) and its parent company, Google LLC (“Google”)   
9 (collectively referred to as “Google/YouTube” or “Defendants,” unless otherwise specified).

10 **I. INTRODUCTION AND STATEMENT OF THE CASE**

11 1. The LGBTQ+ Plaintiffs are Lesbian, Gay, Bisexual, Transgender, Transsexual or  
12 Queer content creators, viewers, users, and/or online consumers of YouTube who bring this  
13 lawsuit to redress Defendants Google/YouTube’s discrimination, fraud, unfair and deceptive  
14 business practices, unlawful restraint of speech, and breach of consumer contract rights on behalf  
15 of themselves and other Lesbian, Gay, Bisexual, Transgender, Transsexual, or Queer persons  
16 (collectively referred to as the “LGBTQ+ Community”) who use the global social media site  
17 known as “YouTube.”

18 2. Google/YouTube control and regulate more than 95% of the public video-based  
19 content and communications in the world. By controlling and regulating virtually all of the public  
20 video content in the United States and the rest of the world, Google/YouTube operate YouTube as  
21 the largest for-profit forum dedicated to free speech and expression in the history of the world. It  
22 is estimated that Defendants reap more than \$25 billion in annual revenues and profits solely by  
23 regulating, distributing, and monetizing the free speech and expression of the estimated 2.3 billion  
24 people who use YouTube.

25 3. The business model is simple enough: solicit and induce the public to post, view,  
26 and communicate through video content on the YouTube platform by inviting the public to use  
27 YouTube as a place to engage in “**Freedom of Expression,**” “**Freedom of Information,**”  
28

1 **“Freedom of Opportunity,”** and **“Freedom to Belong.”**<sup>1</sup> Defendants further represent that all  
2 persons who use the site are accorded the status of “members” of a public “YouTube Community”  
3 who are subject to viewpoint-neutral, content-based regulations that Defendants designate as  
4 “Community Guidelines.” Google/YouTube represent and warrant that these freedoms apply to  
5 all Community Members and shall be exercised by and protected for each and every user. Indeed,  
6 in sworn testimony to the U.S. Congress, Google/YouTube warrant that “everyone’s voice” will  
7 be heard, subject only to viewpoint-neutral, content-based rules and filtering under rules that  
8 “apply equally,” to all members of the YouTube Community, regardless of the individual user’s  
9 particular viewpoint or identity.

10 4. In return, Defendants monetize the video content of YouTube’s users through a  
11 variety of means, including, but not limited to, selling online advertising space to third-party  
12 advertisers; selling consumers video reach and distribution products; collecting, mining, and  
13 selling the personal information or “data” of anyone who uses the site, entering into lucrative deals  
14 with third-party fact checkers and content curators who are authorized to flag and proscribe  
15 content that they and Defendants dislike; and, more recently, creating, producing, marketing,  
16 distributing and monetizing Defendants’ own video content, or monetizing content creation,  
17 marketing, and distribution through deals with large media conglomerates like FOX News, the  
18 NFL, HBO, and PBS (to name but a few).

19 5. When it comes to the LGBTQ+ members of the YouTube Community, Defendants  
20 have not kept their end of the bargain. Internal documents suggest that YouTube was never a truly  
21 free and open platform in accordance with the free speech and viewpoint-neutral promises given to  
22 consumers. Indeed, Defendants now describe themselves as a “Good Censor.”<sup>2</sup> Rather than being  
23 free and open to all, Defendants have abandoned YouTube’s mission as a viewpoint-neutral video  
24 hosting platform and are increasingly engaged in a discriminatory and fraudulent profit scheme in  
25

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26 <sup>1</sup> See <https://www.youtube.com/yt/about/>.

27 <sup>2</sup> See “Google, Facebook, Twitter Shifted to Censorship From Free Speech, According to Leaked  
28 Google Document,” The Epoch Times, October 10, 2018  
([https://www.theepochtimes.com/google-facebook-twitter-shifted-from-free-speech-to-censorship-according-to-leaked-google-document\\_2686124.html](https://www.theepochtimes.com/google-facebook-twitter-shifted-from-free-speech-to-censorship-according-to-leaked-google-document_2686124.html)).

1 which Community Members are now subjected to discriminatory, animus-based and content-based  
2 regulations and restrictions, designed to maximize Defendants’ financial and political interests.  
3 As such, the fundamental bargain upon which YouTube was built has now been broken.  
4 LGBTQ+ users, like the LGBTQ+ Plaintiffs who built the YouTube platform, are now being  
5 subjected to unlawful content regulation, distribution, and monetization practices that stigmatize,  
6 restrict, block, demonetize, and financially harm the LGBTQ+ Plaintiffs and the greater LGBTQ+  
7 Community.

8           6.       Since 2016, Defendants have exercised unfettered and absolute discretion to  
9 control, regulate, restrict, and manipulate the public video content and viewership of consumers on  
10 YouTube, based not on the content of the video, but Defendants’ subjective animus, dislike, or  
11 commercial bias with respect to the viewpoint and/or the identity of the content creator and/or the  
12 intended audience, including content that Defendants identify as being posted by or expressing a  
13 viewpoint of an LGBTQ+ user. In the exercise of that discretion, Defendants brand LGBTQ+  
14 content as “shocking,” “offensive,” and/or “sexually explicit” not because of the video’s content,  
15 but either because the viewpoints expressed involve what a senior Google/YouTube content  
16 curator dubbed the “gay thing,” or because the content was posted by or viewed by YouTube  
17 Community members who identify as “gay.” At the same time, in direct violation of their  
18 Community Guidelines and monetization rules, Defendants use their absolute power and  
19 discretion over content regulation and monetization to promote, sponsor, and profit from violent,  
20 obscene, and threatening hate speech and online bullying directed at and against the LGBTQ+  
21 Community, including the LGBTQ+ Plaintiffs.

22           7.       Defendants effectuate their unlawful discriminatory, fraudulent, anticompetitive,  
23 and unlawful attack on the rights of the LGBTQ+ Plaintiffs and the LGBTQ+ Community by  
24 utilizing a complex and clandestine web of broad, overlapping, vague, discriminatory, and  
25 unlawful content-based speech regulations, filtering practices, data and information collection and  
26 surveillance, video monetization, and third-party advertising and content production schemes.  
27 Defendants use this speech regulation scheme as a pretext to engage in unlawful practices that  
28 restrain and harm the LGBTQ+ Plaintiffs and the greater LGBTQ+ Community, by insisting that

1 animus-based speech regulation and discrimination against the LGBTQ+ Community and/or what  
2 Defendants refer to as the “gay thing,” is necessary for “keeping [their] popular online video  
3 service safe and enjoyable for users.”

4 8. Google/YouTube is engaged in discriminatory, anticompetitive, and unlawful  
5 conduct that harms a protected class of persons under California law. And Defendants’ animus-  
6 based content regulations and discriminatory filtering practices certainly have not made YouTube  
7 any safer. Defendants’ control and regulation of speech on YouTube has resulted in a chaotic  
8 cesspool where popular, compliant, top quality, and protected LGBTQ+ content is restricted,  
9 stigmatized, and demonetized as “shocking,” “inappropriate,” “offensive,” and “sexually explicit,”  
10 while homophobic and racist hatemongers run wild and are free to post vile and obscene content  
11 on the pages and channels of the LGBTQ+ Plaintiffs and other LGBTQ+ content creators. That  
12 should not come as a surprise because, as the record developed to date in this case and other legal  
13 proceedings, Congressional testimony, and news reports show, Defendants are engaged in a  
14 discriminatory and fraudulent scheme to profit from the unlawful and fraudulent regulation of  
15 speech on the platform in which compliant and quality LGBTQ+ content is restrained and  
16 demonetized, while vile and dangerous homophobic hate speech is monetized and promoted to  
17 further Google/YouTube’s corporate profits and market power.

18 9. Each LGBTQ+ Plaintiff in this case is a victim of one or more of Defendants’  
19 systemic and pervasive discriminatory, anticompetitive, and unlawful practices that have caused  
20 substantial reputational and financial harm to each of them.

21 10. Defendants continue to threaten and harm the entire LGBTQ+ YouTube  
22 Community by using their unprecedented power over free speech and expression as a pretext to  
23 systematically target, suppress, stigmatize, terrorize, steal, and financially harm the video content  
24 created or viewed by the LGBTQ+ Community, including, but not limited to:

25 a. Failing to apply content-based regulations and filtering “equally to all,” as  
26 provided for in Defendants’ form consumer contract and promises to the LGBTQ+ Plaintiffs and  
27 the LGBTQ+ Community;

28 b. Arbitrarily, capriciously, and unfairly censoring, removing, suspending,

1 restraining, suppressing and/or demonetizing the speech, video content or channels of LGBTQ+  
2 YouTubers solely because they are “lesbian,” “gay,” “bisexual,” “transgender,” or “queer,”  
3 because they identify as such, because they address issues of interest to the LGBTQ+ Community  
4 or because they use tag words related to the LGBTQ+ Community in association with their  
5 content to make it easier for viewers to locate their content;

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

11 d. Enforcing what Defendants stated was a “company policy” of prohibiting  
12 “gay” users from advertising their content on YouTube because of the “gay thing” and using that  
13 “policy” to stigmatize LGBTQ+ YouTubers and their content as “shocking” and “sexually  
14 explicit” solely because the users identify as “gay” or LGBTQ+;

15 e. Demonetizing the content of the LGBTQ+ Plaintiffs and the LGBTQ+  
16 Class, including LGBTQ+ YouTubers who operate and publish content on some of the most  
17 popular channels on the YouTube platform;

18 f. Promoting, monetizing, profiting, and distributing online hate speech,  
19 including homophobic slurs, threats of violence and death; theft and destruction of LGBTQ+  
20 content; homophobic, obscene and threatening video comments that appear in connection with the  
21 channels’ video content (as recommended videos and as advertisements), all of which violate  
22 Defendants’ regulations, policies, and contracts with their consumers, and none of which are  
23 protected by the California or federal law, or even by Defendants’ own published guidelines;

24 g. Promoting individuals and groups with anti-LGBTQ+ messages by selling  
25 advertisements which undermine, criticize, disparage, or belittle members of the LGBTQ+  
26 Community, and running those advertisements that violate the law and Defendants’ regulations  
27 and contracts with consumers, immediately before the videos of the LGBTQ+ Plaintiffs, thereby  
28 discouraging viewers from going forward with the viewing of the LGBTQ+ Plaintiffs’ videos ;



1           h.       Promoting YouTubers with anti-LGBTQ+ messages or with hate speech  
2 videos by recommending such videos to the LGBTQ+ Plaintiffs’ viewers in YouTube’s “Up  
3 Next” list of recommended videos which appears on the screen when the LGBTQ+ Plaintiffs’  
4 videos are played;

5           i.       Replacing the LGBTQ+ Plaintiffs’ customized “thumbnail” graphic images  
6 of individual videos, which serve as mini-advertisements that appear in YouTube search results,  
7 with Defendants’ own generic thumbnails, consisting of a screenshot taken at random from the  
8 individual video;

9           j.       Arbitrarily, capriciously, and unfairly removing individual subscribers from  
10 the list of those viewers who have intentionally applied to be affiliated with the respective  
11 YouTube channels of LGBTQ+ YouTubers, without notice to the LGBTQ+ creators or to the  
12 individual subscribers;

13          k.       Unilaterally changing the procedure for new video notifications to be sent to  
14 individual subscribers of the LGBTQ+ creators’ channels, without giving notice to the subscribers  
15 or to the LGBTQ+ creators, resulting in hundreds of thousands of subscribers not receiving notices  
16 as new content is uploaded by LGBTQ+ creators;

17          l.       Stealing, copying, altering, and or violating the property rights appurtenant  
18 to the content of the LGBTQ+ Plaintiffs, and then using the content of the LGBTQ+ Plaintiffs to  
19 produce and promote content that Google/YouTube own, or in which they have a financial  
20 interest, and that directly competes with the original content stolen from the LGBTQ+ Plaintiffs;

21          m.       Arbitrarily, capriciously, and unfairly excluding LGBTQ+ creators’ original  
22 videos from Google/YouTube’s “Up Next” video recommendations, which appear on the screen  
23 whenever videos are played; while at the same time recommending hate speech or disparaging  
24 reaction videos which steal, copy, or alter the very same original videos upon which they are  
25 based;

26          n.       Fraudulently and deceptively inducing LGBTQ+ YouTubers and the public  
27 to use YouTube by promising the LGBTQ+ Plaintiffs and the public that YouTube is (i) a “Public  
28 Forum” (ii) dedicated to Four Freedoms - Expression, Information, Opportunity, and Belonging,

1 and (iii) a “Community” where “everyone’s voice” may be heard subject only to (iv) viewpoint-  
2 and identity-neutral, content-based regulations that apply equally to everyone, and then breaching  
3 those obligations in a way that financially injures and causes other reputational harms to LGBTQ+  
4 YouTubers and consumers.

5 11. This is not the first time that Defendants have been accused of, and admitted to  
6 LGBTQ+ discrimination and malfeasance, by improperly manipulating content and user  
7 regulations to suppress the content and rights of LGBTQ+ members of the “YouTube  
8 Community.” As early as 2016, Defendants admitted that their restraints unfairly discriminated  
9 against LGBTQ+ users like Plaintiffs, hiding from view videos that reference same-sex  
10 relationships, and other videos focusing on “pop culture from a feminist and queer perspective.”  
11 When these restraints were exposed, YouTubers like Tyler Oakley, Gigi Gorgeous and others  
12 “blasted the platform for bias.”

13 12. Google/YouTube publicly admitted that using their Restricted Mode filtering, they  
14 improperly censored videos that were posted or produced by members of the LGBTQ+  
15 Community based upon the identity and orientation of the speaker, rather than upon the content of  
16 the video. In response to complaints from the LGBTQ+ Community and other civil rights critics,  
17 Google/YouTube promised to remove all restricted filtering on videos posted or produced by  
18 LGBTQ+ members and groups, and to change their policy, filtering algorithm, and manual review  
19 policies to ensure that videos posted by LGBTQ+ vloggers were not being censored solely  
20 because of the identity of the speaker. Google/YouTube admitted that they wrongly censored  
21 videos posted by members of the LGBTQ+ Community, blaming a purported engineering problem  
22 with filtering tools that targeted video content from LGBTQ+ users, or targeted users who  
23 discussed topics and perspectives regarding LGBTQ+ issues. Google/YouTube agreed to  
24 investigate the claims of LGBTQ+ users and dispatch a team of senior managers, including  
25 YouTube’s CEO Susan Wojcicki, to meet with LGBTQ+ representatives to consider revising their  
26 policies and review protocols, correcting the filtering tools, and rewriting guidelines that “clarify  
27 its position by specifically allowing personal accounts from victims of discrimination or violent  
28 hate crimes, as long as they don’t contain graphic language or content.”

1           13.     On April 27, 2017, Johanna Wright, Vice President of Product Management for  
2 Google/YouTube, promised LGBTQ+ YouTubers that Defendants would ensure that “Restricted  
3 Mode” should not filter out content belonging to individuals or groups based on certain attributes  
4 like gender, gender identity, political viewpoints, race, religion or sexual orientation.” And while  
5 Defendants admitted that “Restricted Mode will never be perfect, [Google/YouTube] hope to build  
6 on [their] progress so far to continue making [their] systems more accurate and the overall  
7 Restricted Mode experience better over time.”

8           14.     But the LGBTQ+ YouTubers who met with Defendants, all of whom were forced  
9 to execute non-disclosure agreements regarding the substance of their discussions with  
10 Defendants, now believe that Defendants’ promises were nothing more than “lip service” made  
11 solely for public relations purposes and now believe that Ms. Wojcicki and Defendants had no  
12 intention of keeping their promises.

13           15.     Instead of taking LGBTQ+ reports of viewpoint discrimination and selective  
14 restrictions on LGBTQ+ content seriously, Ms. Wojcicki spent some of her “personal vacation”  
15 time doing carefully scripted PR or “selfie” interviews with selected YouTubers, and other media  
16 outlets, in which she boasts that all is well at YouTube, especially with the LGBTQ+ members of  
17 the YouTube Community.<sup>3</sup> In one interview, posted only days before the filing of this Complaint,  
18 YouTube’s CEO Susan Wojcicki confirmed the importance of and Defendants’ adherence to the  
19 “Four Freedoms” of expression, describing those promises to consumers as the “Pillars” of the  
20 YouTube platform and global Community it serves. When the interviewer is prompted to ask her  
21 scripted questions about reports and concerns of viewpoint- or animus-based censorship and the  
22 use of content-based restrictions, Wojcicki pleads executive ignorance of systemic complaints and  
23 harms caused by viewpoint bias or animus-based content regulation, filtering tools, monetization  
24 restrictions, and promotion of LGBTQ+ harassment and hate speech for profit.

25           16.     While YouTube’s CEO and other senior executives of the global video  
26 communication monopoly continue to double down on their promises of free speech, viewpoint  
27

28 <sup>3</sup> See <https://www.youtube.com/watch?v=gMINAiDWI6g>.

1 neutrality, and equal application of rules, the allegations of these LGBTQ+ Community members  
2 show in specific and painstaking detail that systemic speaker, topic, or viewpoint-biased and  
3 animus-based regulation, restraint, and disparate treatment of LGBTQ+ videos, LGBTQ+ creators  
4 and LGBTQ+ audiences is rampant on the platform. As the experience of these Plaintiffs shows,  
5 Defendants use machines to flag, identify, and restrict LGBTQ+ content that human or “customer  
6 service” reviewers pretend to justify after the fact, under the pretext of “a company policy” of  
7 absolute discretion to take users down for discussing any topic, viewpoint, or identifying as  
8 LGBTQ+ which Google/YouTube consider to be “Offensive,” “Inappropriate,” or “Otherwise  
9 Objectionable,” for “any reason, no reason,” whether for “altruism or profit,” or, as in the case of  
10 these Plaintiffs simply because they identify as “gay,” or their content mentions or discusses any  
11 topic or viewpoint that is “about the gay thing.”

12           17.     The LGBTQ+ Plaintiffs do not seek to interfere with YouTube’s Mission of  
13 providing a forum for global YouTube Community to engage in and experience “Four Freedoms  
14 of Expression” or Pillars when creating, posting, distributing, viewing, and engaging with other  
15 Community members through video content and communications. LGBTQ+ Plaintiffs understand  
16 and support effective, but lawful viewpoint-neutral content-based regulations on the platform. But  
17 that is not how these Defendants have been operating YouTube during the relevant time period of  
18 this lawsuit. Defendants have brazenly abandoned YouTube’s Four Freedoms and hijacked the  
19 YouTube Community and the Mission that defines that Community, by continuing to engage in  
20 and defend identity, viewpoint, discriminatory, and illegal content-based regulation, distribution  
21 and monetization policies that harm YouTube’s LGBTQ+ Community and other YouTube  
22 Community members. Requests by the LGBTQ+ Plaintiffs to address these allegations and  
23 concerns have been made to Defendants, but not only have these requests fallen on deaf ears, but  
24 in the past several weeks, they have been the subject of outright false denials by YouTube’s CEO.

25           18.     Enough is enough. The LGBTQ+ Plaintiffs in this case have summoned the  
26 courage to challenge the world’s largest corporate conglomerate and regulator of free speech by  
27 invoking their right to petition the courts to enforce the antidiscrimination, free speech, and  
28 consumer fraud laws, to require Defendants to honor their promises and their legal obligations to

1 LGBTQ+ YouTubers and YouTube consumers. Specifically, the LGBTQ+ Plaintiffs, in their  
2 individual and representative capacities, bring this lawsuit to force Google/YouTube to comply  
3 with their legal obligations under federal and California law, including: (i) Article One, Section 2  
4 of the California Constitution (the “Liberty of Speech Clause”); (ii) the Unruh Civil Rights Act,  
5 Section 51, et seq. of the California Civil Code (the “Unruh Act”); (iii) the Unfair Competition  
6 Laws, Section 17200, et seq. of the California Business and Professions Code (the “UCL”); (iv) the  
7 Lanham Act, 15 U.S.C. sections 1125, et seq.; and (v) Defendants’ Terms of Service, “Community  
8 Guidelines,” and other purportedly content-neutral filtering representations (the “Contract  
9 Claim”). The LGBTQ+ Plaintiffs seek damages for financial, reputational, and other cognizable  
10 harms and injuries to themselves and to other LGBTQ+ members of the YouTube Community  
11 who compose the putative class or subclasses in this case. The LGBTQ+ Plaintiffs also seek  
12 individual and class-wide relief for restitution and disgorgement of Defendants’ ill-gotten or  
13 unlawfully obtained profits, injunctive relief, and a declaratory judgment that Google and  
14 YouTube violate the legal and equitable rights of LGBTQ+ members of the YouTube Community.

15 **II. PARTIES**

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

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

28 21. Plaintiff BriaAndChrissy LLC, is a Georgia Limited Liability Company.

1 BriaAndChrissy LLC is owned and managed by Bria Kam and Chrissy Chambers, who reside in  
2 the state of Washington. Because of harassment they have received, these Plaintiffs should be  
3 contacted through their attorneys of record. BriaAndChrissy LLC does business as  
4 “BriaAndChrissy;” it produces and distributes a variety of original videos that feature music, skits,  
5 day-in-the-life presentations, and discussions of mental health issues, healthy lifestyles  
6 recommendations and LGBTQ+-related issues. Since 2012, BriaAndChrissy LLC has uploaded  
7 more than 1000 videos to its two YouTube channels, BriaAndChrissy, which has 849,000  
8 subscribers, and WonderWarriors, which has 195,000 subscribers.

9         22. Plaintiff Chase Ross is an individual who resides in Montreal, Quebec, Canada.  
10 Mr. Ross produces and distributes a series of original educational and day-in-the-life videos about  
11 the transgender experience and products, as well as discussions of LGBTQ+ issues. Since 2010,  
12 Mr. Ross has uploaded 723 videos to his “uppercaseCHASE1” YouTube channel, which has more  
13 than 163,000 subscribers.

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

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

23         25. Defendant Google LLC is a for-profit, limited liability company organized under  
24 the laws of the State of Delaware, with its principal place of business in Mountain View,  
25 California; it regularly conducts business throughout California, including Santa Clara County.  
26 The LGBTQ+ Plaintiffs are informed and believe, and thereon allege that, at all relevant times,  
27 Defendant Google LLC has acted as an agent of Defendant YouTube, LLC, and controls or  
28 participates in censoring and restricting speech on the YouTube service or platform.

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

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

18 **III. JURISDICTION AND VENUE**

19           28. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§  
20 1331, and 1337(a), because the Complaint includes Federal questions, and the amount in  
21 controversy arising from the claims asserted on behalf of the LGBTQ+ Plaintiffs exceeds \$5  
22 million, exclusive of interest and costs.

23           29. Venue is proper in the Northern District of California (San Jose Division) under 28  
24 U.S.C. § 1391. Defendants reside and/or transact business in the County of Santa Clara, and are  
25 within the jurisdiction of this Court for purposes of service of process. Defendants’ Terms of  
26 Service expressly provide that the LGBTQ+ Plaintiff’s lawsuit be filed in a court of competent  
27 jurisdiction located within Santa Clara County.

28

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

2 **A. The YouTube Platform**

3 30. YouTube is the largest video-sharing platform in the world, accessible via  
4 computer browsers and mobile telephone applications. YouTube was founded in 2005 in San  
5 Bruno, California.

6 31. In 2006, Defendant Google bought YouTube for \$1.65 billion and operates  
7 YouTube as a Google subsidiary. The current value of Google's YouTube subsidiary has been  
8 estimated to exceed \$160 billion.

9 32. The YouTube platform functions by allowing users to upload, view, rate, share, add  
10 to favorites, report, comment on videos, and subscribe to the channels of other users. Available  
11 content includes video clips, TV show clips, music videos, short and documentary films, audio  
12 recordings, movie trailers, live streams, and other content such as video blogging, short original  
13 videos, and educational videos.

14 33. It is the content and audiences of YouTubers like the LGBTQ+ Plaintiffs and other  
15 members of the Proposed LGBTQ+ Community Class that have made the platform one of the top  
16 four most visited Internet websites in the world. It is estimated that more than *one-third* of the  
17 world's Internet users use YouTube, to post, view, and communicate through videos. Eighty-five  
18 percent of the U.S. Internet audience watches videos online, including on YouTube. A billion  
19 hours of videos are watched on YouTube each day. More video content has been uploaded to  
20 YouTube by public users than that created by the major U.S. television networks in 30 years. The  
21 average number of mobile YouTube views is estimated to be about 1 billion per day. YouTube  
22 videos can be navigated in at least 80 different languages, and the platform has launched in more  
23 than 91 countries around the globe.

24 34. Most of the video content on YouTube is created and uploaded by YouTubers like  
25 the members of the Proposed Class, but larger media corporations including CBS, the BBC, Vevo,  
26 and Hulu also offer some of their content via YouTube as part of the Google/YouTube partnership  
27 program.

28 35. Defendants monetize speakers' intellectual property and viewers' interests by



1 selling advertisements; some of those advertisements come from the speakers themselves, who  
2 pay for their videos or channels to be “featured” or publicized. In addition, Defendants offer  
3 subscriptions through which people pay ongoing fees to view videos on YouTube without  
4 advertisements.

5 36. In total, Google’s subsidiary YouTube earned \$9 billion in revenue in 2015 –  
6 primarily by selling advertisements; and will earn \$27 billion annually by 2020.

7 **B. YouTube Holds Itself Out As A Quintessential Forum for Freedom of**  
8 **Expression**

9 37. Much of YouTube’s success can be attributed to Defendants’ representations that  
10 YouTube is, has been and will remain the premier space for freedom of expression in video  
11 content on the Internet – representations that were made with the intent of inducing more  
12 consumers like LBGTQ+ Plaintiffs to become YouTubers.

13 38. More specifically, Defendants expressly solicit and invite the general public to use  
14 YouTube as a hosting platform to engage in “freedom of expression” by posting, viewing,  
15 promoting, and interacting with third-party video content, subject only to viewpoint-“neutral”  
16 content-based regulations that apply equally to everyone.

17 39. Consistent with their express “mission [] to organize the world’s information and  
18 make it universally accessible and useful,” Google/YouTube invite the public, including original  
19 content creators like the LBGTQ+ Plaintiffs, viewers, and advertisers large and small, to connect  
20 with, inform, and inspire others across the globe by using YouTube as a distribution platform for  
21 freedom of expression through videos. Google/YouTube claim to be the largest public forum for  
22 video-based speech in California, the United States, and the world, where, based on the number of  
23 views, likes, and subscriptions to uploaded video content, new celebrities emerge and new ideas  
24 are popularized. In so doing, Google/YouTube emphatically declare that their “mission” is to  
25 “give people a voice” in a “place to express yourself” and in a “community where everyone’s  
26 voice can be heard.” Defendants further brag that YouTube is “one of the largest and most diverse  
27 collections of self-expression in history,” giving “people opportunities to share their voice and  
28 talent no matter where they are from or what their age or point of view.” *See, e.g.,*

1 <https://youtube.googleblog.com/> (YouTube Official Blog: Broadcast Yourself). Each of these  
2 disclosures, including the Community Guidelines and promises of “neutral” content filtering “*are*  
3 *also incorporated . . . by reference*” into YouTube’s Terms of Service.

4 40. Defendants expressly represent to consumers that YouTube is designated as a  
5 public place for free speech “define[d]” by “four essential freedoms” that govern the public  
6 consumer’s use of the platform: “**Freedom of Expression,**” “**Freedom of Information,**”  
7 “**Freedom of Opportunity,**” and “**Freedom to Belong.**”<sup>4</sup> Defendants further induce the public to  
8 provide, view, and communicate with video content on the YouTube hosting platform by  
9 promising users that “everyone’s voice” will be heard subject only to neutral, content-based rules  
10 and filtering which “apply equally to all,” regardless of the viewpoint, identity, or source of the  
11 speaker.

12 41. These lofty representations have been repeated in sworn testimony to Congress.  
13 On January 17, 2018, Defendants, through YouTube’s Assistant General Counsel, Juniper Downs,  
14 confirmed to Congress that YouTube’s mission remains unchanged and the platform is designated  
15 and operates as a “public forum” for free speech and expression subject only to viewpoint-neutral,  
16 content-based regulations:

17 **Senator Cruz:** Thank you Mr. Chairman. Welcome to each of the  
18 witnesses. I’d like to start by asking each of the company  
19 representatives a simple question, which is: do you consider your  
20 companies to be neutral public fora?

21 \* \* \* \*

22 **Senator Cruz:** I’m just looking for a yes or no whether you  
23 consider yourself to be a neutral public forum.

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

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

28 **Senator Cruz:** So, you’re saying you do consider YouTube to be a  
neutral public forum?

**Ms. Downs:** *Correct.* We enforce our policies in a politically neutral  
way. Certain things are prohibited by our Community Guidelines,

<sup>4</sup> See <https://www.youtube.com/yt/about/>.

1 which are spelled out and provided publicly to all of our users.

2 [02:28:30 – 02:29:36 of the full hearing recording.]

3 \* \* \* \*

4 **Senator Cruz:** What is YouTube’s policy with respect to Prager  
5 University and the allegations that the content Prager University is  
6 putting out are being restricted and censored by YouTube?

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

11 **C. Defendants Flout The Fundamental “Free Expression” Bargain They Made**  
12 **With YouTubers**

13 42. It is now clear that the lofty “Freedom of Expression” promises and representations  
14 made to consumers like the LGBTQ+ Plaintiffs and other members of the Proposed LGBTQ+  
15 Class are nothing but outright falsehoods.

16 43. In or about March 2018, Defendants distributed an internal memo and presentation  
17 entitled “The Good Censor: How can Google reassure the world that it protects users from harmful  
18 content while supporting free speech.” The Memo sets forth in detail the bait-and-switch fraud  
19 which Defendants seek to perpetrate against the more than 2.3 billion consumers who built  
20 YouTube into the global speech giant and profit machine that it is today.

21 44. In the Memo, which is purportedly based on “layers of research” and in reliance on  
22 “some leading thinkers in this space” Defendants, concede that since the 2016 U. S. presidential  
23 elections, Defendants’ have sought to secretly and deceptively “migrate” away from a hosting  
24 platform that solicits the public and consumers to provide YouTube with content based on the  
25 express promise that YouTube operates as a viewpoint-neutral and politically neutral place for free  
26 speech and “an open market place of ideas,” where the public is invited to engage in freedom of  
27 expression speech. Rather, Defendants now seek to use the site to curate and restrict content in  
28

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

1 order to further profit and monetize its 2.3 billion users, by promoting Defendants’ own, or their  
2 preferred content through the exercise of unfettered discretion to censor and curate otherwise  
3 public content. In other words, Defendants admit that they are now acting as “censors,” who  
4 regulate and curate online speech and content for their own gain, after promising consumers that  
5 YouTube exists and is designated for open, viewpoint-neutral, third-party communications and  
6 free speech.

7 45. This is a classic bait-and-switch fraud perpetrated by Defendants on the 2.3 billion  
8 users who built YouTube into what it is today. According to Defendants “[t]his free speech ideal  
9 was instilled in the DNA of the Silicon Valley startups [including YouTube] that now control the  
10 online conversations.” In the case of YouTube, that ideal provided Defendants with a marketing  
11 and business model which monetized the public speech of its consumers by inviting them to use  
12 YouTube as a forum for free speech, where the public is invited to post video content, regardless  
13 of identity and viewpoint, subject to “content-neutral” rules that apply equally to everyone.

14 46. Now that YouTube is globally saturated, with 2.3 billion users and their content,  
15 Defendants seek to exploit their control over more than 90% of the world’s video-based  
16 communications, by secretly seizing control over the platform’s content, so that they, not the  
17 users, control and decide who gets to speak, what is said, and who is listening. As Defendants  
18 admit, they do so by discriminating and censoring compliant third-party content in favor of  
19 Defendants’ own content, or that of preferred users, for financial gain and enhanced political  
20 power at the expense of, and to the detriment of third-party users like the LGBTQ+ Plaintiffs.

21 47. Defendants admit that platform “migration” creates “an unresolved tension” on  
22 social media sites like YouTube because “[t]he platforms have to deny that they’re media  
23 companies in order to retain their immunity from liability” and “at the same time, they’re  
24 exercising more influence as media companies... than CBS News did in its heyday, and  
25 therefore, in order for democratic values to flourish, they need to embrace free speech  
26 standards.” See “The Good Censor” Memo, at page 10 of 85 (quoting Jeffrey Rosen, Professor  
27 of Law at The George Washington University and legal affairs editor of The New Republic)

28

1 (internal quotes omitted, bold in original).<sup>6</sup> Defendants have continued to use animus-based  
2 censorship and content regulation to perpetrate religious, political, sexual orientation and gender,  
3 and ethnic discrimination for profit and financial gain to the harm of the public and consumers.

4 48. Putting these “Good Censor” principles into practice, Defendants have unlawfully  
5 employed a series of content-based distribution and monetization policies and procedures that  
6 form a single, interrelated, uniform, and comprehensive content-based regulation and control  
7 scheme that empowers Defendants unilaterally to control and restrain all consumer speech and  
8 content that appears on YouTube.

9 **D. Defendants Begin To Compete With YouTubers In The Proposed Class**

10 49. Defendants have a strong financial motive to disregard the principles of free  
11 expression upon which YouTube was founded. Specifically, beginning around 2016, Defendants  
12 began to use, operate, and profit from YouTube -- not as a hosting platform for the video content  
13 of its public users and consumers, but as a means for producing, distributing, and profiting from its  
14 own video content, or that of its financial partners.

15 50. Following the trend of other hosting networks, Defendants sought to use the  
16 worldwide consumer audience of YouTube users as a means for monetizing their own content, not  
17 merely as a hosting platform for the Public. Recognizing that they now controlled more than 90  
18 percent of all video communications, Defendants sought to secure for themselves a market share  
19 of the production- and distribution-based revenues that previously had been reserved for  
20 YouTube’s users and consumers.

21 51. Having induced consumers to create video content and an audience in excess of  
22 two billion people by promising to neutrally host and regulate the video content of others,  
23 Defendants commenced a plan to recapture revenues from third-party producers and distributors  
24 by using their unlawful content regulation system to promote and monetize their own content by  
25

26 <sup>6</sup> See [https://www.google.com/search?client=firefox-b-1-](https://www.google.com/search?client=firefox-b-1-d&ei=9u_iXNjkEYi6_wTgj5m4Dg&q=the+good+censor+google+rosen&oq=the+good+censor+g)  
27 [d&ei=9u\\_iXNjkEYi6\\_wTgj5m4Dg&q=the+good+censor+google+rosen&oq=the+good+censor+g](https://www.google.com/search?client=firefox-b-1-d&ei=9u_iXNjkEYi6_wTgj5m4Dg&q=the+good+censor+google+rosen&oq=the+good+censor+g)  
28 [oogle+rosen&gs\\_l=psy-ab.3..33i160l3.1304.2502..3431...0.0..0.100.472.5j1.....0....1..gws-](https://www.google.com/search?client=firefox-b-1-d&ei=9u_iXNjkEYi6_wTgj5m4Dg&q=the+good+censor+google+rosen&oq=the+good+censor+g)  
[wiz.....0i71j0i22i30j33i22i29i30.rvL00PLfyos](https://www.google.com/search?client=firefox-b-1-d&ei=9u_iXNjkEYi6_wTgj5m4Dg&q=the+good+censor+google+rosen&oq=the+good+censor+g) .

1 unlawfully restricting third-party content and reach. Because Defendants obtained control over  
2 nearly all of the world’s public video content by falsely inducing consumers to use YouTube,  
3 Defendants used their monopoly power over content regulation to selectively apply their rules and  
4 restrictions in a manner that allowed them to gain an unfair advantage over YouTubers, to profit  
5 from their own content to the detriment of its consumers. Consequently, the public, third-party  
6 content of YouTube’s loyal consumers and users was not only being subjected to animus-based,  
7 discriminatory content regulations and restrictions, but Defendants exempted their own content  
8 from those regulations to gain an anticompetitive edge and to create unlawful distribution scheme  
9 in which its loyal consumers unwittingly became the largest captive video communications  
10 audience, or cash cow in the history of the world.

11       52.     Among other things, Defendants announced that “[t]he company has partnered with  
12 its top content creators who wanted to charge a subscription rental or purchase fees for their  
13 content and made their uploaded content as paid content which requires users to pay for a  
14 subscription or purchase fees to access the content of the channel.” Furthermore,  
15 Google/YouTube partners with “affiliates” whose “related product” advertisements are placed  
16 with some videos on YouTube. These products link to the affiliate partners, which pays a  
17 commission to Google/YouTube if their products are purchased.<sup>7</sup>

18       53.     In recent years, Defendants have expanded their business from operating YouTube  
19 only as a hosting platform for third-party users, to become a production and media company that  
20 produces its own content or partners with other large video, TV, and film producers, including Bill  
21 Maher, major sports teams, and large entertainment networks and companies, including HBO,  
22 Fox, PBS, NBA, ABC, and CBS, to name a few.

23       54.     Just like other large global social media platforms, including Facebook,  
24 Defendants understand that the YouTube platform has reached its saturation point in the  
25 monetization of third-party users’ content. Consequently, Defendants have decided to compete  
26 directly with third-party content providers like the LGBTQ+ Plaintiffs. In addition to their own  
27

28 <sup>7</sup> See <https://www.feedough.com/youtube-business-model-how-does-youtube-make-money/> .

1 video channels on YouTube, Defendants have entered the digital TV market, and are trying to  
2 induce consumers to purchase their TV and entertainment services from Defendants directly, by  
3 advertising and offering a product called YouTube TV.

4 55. Defendants compete for that public audience or viewership unfairly and unlawfully,  
5 in a manner which gives their “preferred content” a competitive advantage, by among other things,  
6 using their filtering tools and criteria to restrict the access and reach of the smaller third-party  
7 users it hosts on YouTube. Thus, under the pretext of making the site safe for their users,  
8 Defendants arbitrarily, capriciously, and deceptively restrict access and reach to speech and  
9 content of their competitors on the platform, like the LGBTQ+ Plaintiffs, while at the same time  
10 allowing their own content to avoid those same restrictions and restraints -- even when that  
11 content violates their own guidelines. In so doing, Defendants effectively clear space on the  
12 platform for content which they, or their preferred users supply, to better reach the sites’ 2.3  
13 billion users by censoring the content of their competitors.

14 **E. Defendants’ Tool Kit Of Unlawful Speech Suppression**

15 56. Defendants employ a number of tools to unlawfully restrict the expression of their  
16 users in violation of principles of law and contrary to their agreements with users, all of which are  
17 an interrelated part of Defendants’ unlawful scheme.

18 **1. Restricted Mode**

19 57. One of the Defendants’ primary tools is “Restricted Mode.” According to  
20 Defendants, Restricted Mode is a viewpoint- and identity-neutral, content-based restriction  
21 intended to limit viewer access by younger, sensitive audiences to video content that discusses  
22 “mature” topics.

23 58. “Restricted Mode” is intended “to help institutions like schools as well as people  
24 who wanted to better control the content they see on YouTube with an option to choose an  
25 intentionally limited YouTube experience.”

26 59. Viewers can choose to turn on Restricted Mode for their personal accounts, but it  
27 may also be activated by system administrators to restrict all access on computer networks to all  
28 users and machines, including viewers who seek to access video content in public libraries,

1 schools, and other institutions or work places.

2           60.     When a network administrator or an individual viewer activates "Restricted Mode,"  
3 for each video that Defendants deem to have violated their guidelines, the name, creator or subject  
4 of the video, as well as its content, comments about the video, or any other information related to  
5 the video are blocked, as if the video did not exist on the YouTube platform.

6           61.     According to Alice Wu, a Senior Manager of Trust & Safety at YouTube, LLC,  
7 Defendants estimate that about 1.5 percent of YouTube's daily views (or approximately 75 million  
8 of the nearly 5 billion views every single day) come from people who have activated Defendants'  
9 Restricted Mode. Defendants assert, however, that Restricted Mode is not "about numbers," but  
10 "about the principle of anyone having access to important content and different points of view."

11           62.     Defendants claim to restrict content in Restricted Mode based upon certain  
12 "Restricted Mode Guidelines." The Guidelines ensure that videos containing potentially mature  
13 content will not be shown to viewers who have Restricted Mode turned on. Defendants purport to  
14 use six criteria for determining whether such content warrants exclusion from Restricted Mode:  
15 (1) Talking about drug use or abuse, or drinking alcohol in videos; (2) Overly detailed  
16 conversations about or depictions of sex or sexual activity; (3) Graphic descriptions of violence,  
17 violent acts, natural disasters and tragedies, or even violence in the news; (4) Videos that cover  
18 specific details about events related to terrorism, war, crime, and political conflicts that resulted in  
19 death or serious injury, even if no graphic imagery is shown; (5) Inappropriate language, including  
20 profanity; and (6) Video content that is gratuitously incendiary, inflammatory, or demeaning  
21 towards an individual or group.

22           63.     When the Restricted Mode is applied by Defendants to a specific video, any viewer  
23 who has activated the Restricted Mode filter on their device and who searches for video content on  
24 YouTube will see a message on their screen stating: "Some results are hidden because Restricted  
25 Mode is turned on."

26           64.     According to Defendants, Restricted Mode can be applied to videos in two ways.

27           a.       First, Defendants examine certain "signals" like the video's metadata, title,  
28 and the language used in the video. These certain "signals" are used by Defendants to find bogus



1 rules violations that serve as a pretext for Defendants to segregate disfavored content using  
2 Restricted Mode, regardless of whether the content is protected speech or is otherwise compliant  
3 with Defendants’ regulations.

4           b.       Second, Defendants use Restricted Mode to passively restrict a video if it is  
5 “flagged” as “inappropriate” by anyone, or by what Defendants refer to as the YouTube  
6 “community.” So-called “flagged” videos are reviewed by a “team” of human reviewers for  
7 “violations” of Community Guidelines.”

8           65.       Restricted Mode operates in tandem with separate, more stringent “Age Based  
9 Restriction” filtering criteria, intended to block all mature content to viewers under the age of 18.  
10 Age Based Restrictions provide Defendants with the ability to protect younger, sensitive audiences  
11 from mature content without any need to employ Restricted Mode. When evaluating whether  
12 content is appropriate for all ages, Defendants restrict: (1) “Vulgar language” involving sexually  
13 explicit language or excessive profanity in the video or associated metadata; (2) Violence and  
14 disturbing imagery whether real, dramatized or fake violence that may not be suitable for all ages;  
15 (3) Nudity and sexually suggestive content containing nudity or dramatized sexual conduct may be  
16 age-restricted when the context is appropriately educational, documentary, scientific or artistic,  
17 and content featuring individuals in minimal or revealing clothing may also be age-restricted if  
18 intended to be sexually provocative, but are not explicit in content; and (4) Portrayal of harmful or  
19 dangerous activities involving content that intends to incite violence or encourage dangerous or  
20 illegal activities that have an inherent risk of serious physical harm or death.

21           66.       As Defendants admit, Restricted Mode is entirely duplicative of Age Based  
22 Restrictions with one important exception. Age Based Restrictions block access to any viewer  
23 under the age of 18, while **Restricted Mode blocks access to all viewers**, regardless of the age or  
24 purported sensitivity of the viewer. Thus, Restricted Mode can be, and is utilized by Defendants  
25 to block access to content by all viewers, regardless of age or sensitivity, even where the content  
26 fully complies with YouTube’s Community Guidelines or its Age Based Restriction Criteria.

27           67.       This is precisely how Defendants have utilized Restricted Mode as a pretext to  
28 unlawfully block all viewer access to vast numbers of the LGBTQ+ Plaintiffs’ videos and those of

1 other members of the Proposed LGBTQ+ Class, despite the fact that the videos are in full  
2 compliance with Defendants’ Age Based Restriction criteria and Community Guidelines. Indeed,  
3 Defendants use Restricted Mode to censor content even though that video content has never been  
4 found to violate Defendants’ Age Restrictions or Community Guidelines.

5 68. The truth is that Defendants utilize Restricted Mode not to further any legitimate  
6 interest in protecting younger or sensitive audiences from inappropriate content, but as a pretext to  
7 unlawfully restrict and restrain the LGBTQ+ Plaintiffs’ speech through the use of broad, circular,  
8 vague, self-serving, subjective, and/or meaningless criteria and procedures which give Defendants  
9 unfettered discretion to censor or restrain speech as they see fit (for any reason or no reason --  
10 whether lawful, irrational, or not). Defendants have even restricted the LGBTQ+ Plaintiffs’  
11 videos recommending tea drinking or other self-care practices, each of which is entirely  
12 inoffensive and complies with all of Defendants’ Community Guidelines.

13 69. Defendants themselves admit that they repeatedly make “mistakes in understanding  
14 context and nuances when it assesses which videos to make available in Restricted Mode.” On  
15 May 19, 2017, Defendants admitted that the Restricted Mode “feature isn’t working the way it  
16 should and we’re going to fix it.” For instance, Defendants admit that they got “it wrong” when  
17 they censored videos like Ash Hardell’s “Her Vows,” Calum McSwiggan’s “Coming Out To  
18 Grandma,” Jono and Ben’s “Woman interrupted during BBC interview,” and Tegan and Sara’s  
19 “BWU [OFFICIAL MUSIC VIDEO].”

## 20 2. Advertising Restrictions

21 70. Arbitrary and capricious advertising restrictions are another example of the vague,  
22 ambiguous, and arbitrary criteria and anticompetitive filtering schemes Defendants utilize to  
23 suppress speech and to capriciously and discriminatorily restrict users like the LGBTQ+ Plaintiffs  
24 from monetizing or boosting the reach or viewer distribution of their videos.

25 71. Defendants impose these restrictions to justify anticompetitive and unlawful actions  
26 intended to gain a competitive advantage for their own video content and/or to ensure that their  
27 sponsored creators, content partners, and advertisers have an unfair competitive advantage in the  
28 YouTube video market. By placing no restrictions on the monetization of their own videos or

1 those of Defendants’ sponsored creators, content partners and preferred advertisers, Defendants  
2 gain a competitive advantage by restricting the financial reach of the LGBTQ+ Plaintiffs and other  
3 disfavored users, while simultaneously ensuring that their own video content (and those of their  
4 sponsored creators, content partners and preferred advertisers) are not subjected to the same (or  
5 any) Advertising Restrictions.

6 72. Defendants have sold advertisements to the LGBTQ+ Plaintiffs in connection with  
7 videos which were posted on YouTube for months, without restriction and were fully monetized.  
8 Having sold the ads, after receiving partial payment for the ads, Defendants then applied the  
9 Restricted Mode classification to the videos, pulled the advertisements stating that videos subject  
10 to the Restricted Mode classification cannot be advertised, and thereafter Defendants retained the  
11 money they had charged the LGBTQ+ Plaintiffs for the advertisements of the now restricted  
12 videos.

13 73. The sole basis for this restraint is the identity or viewpoint of the consumer seeking  
14 to boost the reach and distribution of the video, and has nothing to do with the actual content of  
15 the video.

16 74. This, however, is not what Defendants publicly state. According to Google, “[t]he  
17 purpose” of these restrictions “is to keep Google’s content and search networks safe and clean for  
18 our advertisers, users, and publishers. We hope that all publishers participating in AdSense have a  
19 long and successful partnership with Google. To understand why we need policies and the role  
20 they play in the ads eco-system you can [watch this video](#). For that to happen, it’s important that  
21 you familiarize yourself with the AdSense program policies. It’s important to make sure visitors  
22 to your pages are not misled and avoid any deceptive implementation that may bring accidental  
23 clicks. For more details, please check out our [ad implementation policies](#).”<sup>8</sup>

24 75. Defendants’ actual practices tell a very different story, and are yet another example  
25 of Defendants saying one thing to members of the Proposed LGBTQ+ Class, and doing something  
26 very different. Not only is the “safe and clean” determination not based upon the actual content of  
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28 <sup>8</sup> See [https://support.google.com/adsense/answer/3394713?hl=en&ref\\_topic=1250104](https://support.google.com/adsense/answer/3394713?hl=en&ref_topic=1250104).

1 users' videos, but the Defendants' "inappropriate" designation precludes the LGBTQ+ Plaintiffs  
2 and other members of the Proposed LGBTQ+ Class from receiving any revenue from  
3 advertisements that would otherwise accompany content not designated as "inappropriate."  
4 Moreover, such practices unlawfully provide Defendants with monopoly power over the video  
5 posting and viewership market, and the ability to manipulate, bully, and falsely denigrate  
6 legitimate political and educational speakers by subjectively designating their speech as  
7 "inappropriate," solely because Defendants do not like or agree with the speakers' political  
8 identity or point of view.

9 **3. AI Filtering Under Restricted Mode And Advertising Restrictions**

10 76. Another tool in Defendants' speech-censoring "kit" is electronic artificial  
11 intelligence or "A.I." algorithms that review and regulate video content. Defendants *claim* that  
12 these algorithms are viewpoint- and identity-neutral, and that they ensure that the "same standards  
13 apply equally to all" when it comes to the content regulation of speech on YouTube. Defendants  
14 claim that their employees conduct "manual reviews" to supplement the electronic filtering and  
15 regulation of video content.

16 77. But the evidence, including statements by Defendants' employees familiar with  
17 both electronic and manual filtering and regulation of speech that takes place on the YouTube  
18 platform, suggests that Defendants' representations of neutral viewpoint and identity-based  
19 content regulation are *also* false. The A.I. and algorithmic filtering tools are embedded with code  
20 that regulates content based on purely subjective, viewpoint, topic, and identity animus, and other  
21 unlawful criteria. Even before October 2016, Defendants' engineers began making changes to the  
22 code and operations of the algorithms and filtering tools in order to ensure that Defendants could  
23 filter videos and regulate access to video content based upon overt discrimination of sexual or  
24 gender orientation, ethnic, political or religious animus, as well for financial and/or  
25 anticompetitive purposes.

26 78. Similarly, Defendants' viewpoint bias, animus, and discrimination towards the  
27 user's identity or viewpoint is institutionally and culturally rampant in Defendants' work place and  
28 employment practices. Among other things, Defendants operate and administer Restricted Mode

1 through employees, including engineers and content reviewers, who work in what has been widely  
2 reported and acknowledged as a dysfunctional work environment.

3 79. Internal emails by and between Defendants' employees show that many employees  
4 are routinely subjected to harassment, threats, blacklisting, discipline, and hazing based on their  
5 political or religious viewpoints and identity. The dysfunction and viewpoint bias emanates from,  
6 and is enforced at, the highest ranks of Defendants' upper management, and drives the actions of  
7 employee supervisors, co-workers, third-party affiliates, and advertisers.

8 80. Consequently, even when manual employee reviews of video content are used to  
9 check and audit restrictions on content based upon the electronic filtering algorithms, Defendants  
10 use Restricted Mode and other discretionary and vague content-based restriction criteria to restrict  
11 access to the LGBTQ+ Plaintiffs' videos under vague and undefined terms such as "mature" or  
12 "sensitive" for certain audiences, solely because the video discusses a topic involving "LGBTQ+,"  
13 "lesbian," "gay," "bisexual," "transgender," or "queer" issues, or the video merely mentions these  
14 trigger words. The result is censorship, restraint of speech, and discrimination based, not upon  
15 content which might violate a narrow, neutral, objective, and specifically verifiable criteria that  
16 furthers a compelling and legitimate public interest, but upon Defendants' animus or dislike for  
17 the identity or viewpoint of the speaker.

18 81. Defendants also admit that decisions to restrict access to videos are routinely made  
19 or influenced by third-party NGO affiliates and advertisers who dislike the political or religious  
20 identity or viewpoint of the user. According to Defendants, "YouTube receives significant  
21 pressure from governments and social interest groups around the world to remove or restrict  
22 access to content that those groups find harmful, dangerous, or offensive. For example, Germany's  
23 *Netzwerkdurchsetzungsgesetz* (network enforcement law or NetzDG) requires any Internet  
24 platform with more than 2 million users to implement more efficient ways to report and delete  
25 potentially illegal content, such as slander and hate speech. Platforms which fail to remove such  
26 content within 24 hours (or within 7 days for more legally complex content), will be subject to  
27 fines of up to 50 million euros." These groups constantly pressure Defendants to apply access  
28 restriction criteria to users whose political or religious viewpoint does not comport with that of an

1 advertiser or third-party NGO.

2 **4. Deletion Of LGBTQ+ Content Thumbnail Images**

3 82. Thumbnails are small square images or tiles which appear in the lists of YouTube  
4 search results (“Thumbnails”). For channels with fewer than 15,000 subscribers, Thumbnails  
5 consist of a single still photo which Defendants generate from the uploaded video, or which  
6 Defendants capture with a digital camera. For those channels with 15,000 subscribers or more,  
7 Defendants allow the creators to craft unique Thumbnails with titles using customized lettering  
8 and graphics. The LGBTQ+ Plaintiffs and other YouTubers who are part of the LGBTQ+  
9 Community who generate the minimum subscriber numbers required by Defendants are  
10 authorized to upload such customized Thumbnails to attract viewers. Using custom Thumbnails is  
11 a visual way of signaling to new viewers that the related content is professionally prepared and  
12 superior in quality to most of the content from less popular, amateur creators which populate most  
13 of YouTube’s channels. Custom Thumbnails are so effective at attracting new viewers that these  
14 creators actually plan new videos around specific Thumbnail concepts, generating the Thumbnail  
15 in advance of the video.

16 83. Without any notice or explanation, Defendants have and continue to delete the  
17 custom Thumbnails of the LGBTQ+ Plaintiffs and Community, and replace those custom  
18 Thumbnails with Defendants’ own generic Thumbnails, which typically results in reduced  
19 numbers of click-throughs and views. The unlawful and anticompetitive practice of replacing the  
20 LGBTQ+ Plaintiffs’ custom Thumbnails allows Defendants to further denigrate, stigmatize, and  
21 harm the LGBTQ+ Plaintiffs’ respective brand, reputation, goodwill, and ability reach intended  
22 audiences.

23 **5. Cancelling And Stopping New Video Notifications**

24 84. Another unlawful practice used by Defendants to harm the LGBTQ+ Plaintiffs and  
25 LGBTQ+ Community involves the cancelling or cessation of electronic notifications that are sent  
26 automatically to subscribing viewers to apprise them that the LGBTQ+ Plaintiffs have uploaded a  
27 new video to their channels or to the YouTube platform. Defendants cancelled the existing  
28 subscribers’ notifications of new video content without providing any notice to the LGBTQ+

1 Plaintiffs or YouTube consumers. As a result, existing subscribers and followers of the LGBTQ+  
2 Plaintiffs' channels must now re-subscribe and click on a bell icon in order to receive electronic  
3 notifications when the channels post any new videos. Consequently, not only do the LGBTQ+  
4 Plaintiffs' subscribers not get notifications that new material has posted, the LGBTQ+ Plaintiffs'  
5 existing subscribers and audience have no way of knowing that a new video from any LGBTQ+  
6 Plaintiff even exists, or is available for viewing. By utilizing this bait-and-switch notification  
7 practice, Defendants ensure that the LGBTQ+ Plaintiffs' ability to generate interest among and to  
8 reach existing and new viewers is retarded, and declines to a degree that makes it impossible to  
9 generate sufficient views to meet Defendants' monetization requirements, causing the LGBTQ+  
10 Plaintiffs to lose substantial revenue to Defendants.

11 **6. Excluding LGBTQ+ Related Content From The "Up Next"**  
12 **Recommended Application**

13 85. Defendants generally exclude LGBTQ+ related content from the YouTube  
14 recommended content on the "Up Next," application for the channels, which appears on the screen  
15 whenever viewers play the LGBTQ+ Plaintiffs' videos. As a practical matter, Defendants refuse  
16 to recommend to viewers or advertisers video content which includes tag words like "LGBTQ+,"  
17 "lesbian" "gay," bisexual," "transgender," or "queer." Google/YouTube does so, despite the fact  
18 that it recommends reaction videos that are based upon the very same non-recommended videos  
19 uploaded by LGBTQ+ Plaintiffs. As a result, creators like BriaAndChrissy and Chase Ross must  
20 self-censor and refrain from using such tag words for their videos to avoid Defendants' censorship  
21 practices, if they are to generate any advertising revenues from their posted videos. Such self-  
22 censorship makes it harder for members of the LGBTQ+ Community (the intended audience for  
23 the two channels) to find content which is designed to support, educate and entertain them.

24 **7. Recommending Anti-LGBTQ+ Hate Speech In The "Up Next"**  
25 **Application Alongside The LGBTQ+ Plaintiffs' Videos**

26 86. While Defendants exclude LGBTQ+-related content from the YouTube  
27 recommended content on the "Up Next," application, Defendants recommend and include on the  
28 "Up Next" application both reaction videos which copy, pirate or parody the LGBTQ+ Plaintiffs'  
original content, and original videos which include obscene, homophobic, violent, threatening or

1 disparaging anti-LGBTQ+ content. These “Up Next” videos which Defendants are  
2 recommending to the LGBTQ+ Plaintiffs’ subscribers and viewers appear on the same screen,  
3 alongside the LGBTQ+ Plaintiffs’ videos. Defendants also monetize many anti-LGBTQ+ hate  
4 speech videos, ensuring that both Defendants and their preferred creators are making money from  
5 the LGBTQ+ Plaintiffs’ original content, all the while discouraging, offending, and even  
6 frightening the intended audience for the LGBTQ+ Plaintiffs’ videos.

7 87. Defendants’ practice of recommending hate speech videos in conjunction with the  
8 displaying of LGBTQ+ related videos discourages and even prevents members of the LGBTQ+  
9 Community from accessing video content which is designed to support, educate and entertain  
10 them. While the LGBTQ+ Plaintiffs in this case support the right of all persons to express their  
11 viewpoints, Defendants may not restrain, censor, or prevent the LGBTQ+ Community from  
12 expressing their viewpoints, especially where Defendants promise everyone a level playing field  
13 where the rules apply equally to all.

14 **8. Playing Anti-LGBTQ+ Related Advertisements Immediately Before**  
15 **The LGBTQ+ Plaintiffs’ Videos**

16 88. Defendants have sold YouTube advertisements to users who have strong anti-  
17 LGBTQ+ messages, and play those advertisements so that they directly precede the LGBTQ+  
18 Plaintiffs’ videos . Accordingly, viewers who played video content by BriaAndChrissy, and  
19 WonderWarriors were forced to view advertisements with anti-LGBTQ+ messages before viewing  
20 the videos which they desired to watch. Defendants’ practice of running anti-LGBTQ+  
21 advertisements before playing videos by the LGBTQ+ Plaintiffs offends their intended audience,  
22 and discourages viewers from watching the LGBTQ+ Plaintiffs’ videos, by forcing them to first  
23 listen to doctrinal advertisements that criticize, belittle, or disparage the viewers’ beliefs and  
24 lifestyles, resulting in fewer views per video, lower subscriber numbers and less income to the  
25 LGBTQ+ Plaintiffs. While the LGBTQ+ Plaintiffs in this case support the right of all persons to  
26 express their viewpoints, Defendants may not restrain, censor, or prevent the LGBTQ+  
27 Community from expressing their viewpoints, especially where Defendants promise everyone a  
28 level playing field where the rules apply equally to all.




1                                   **9. Including Anti-LGBTQ+ Hate Speech In The Comments Section**  
2                                   **Appearing On The Same Screen As The LGBTQ+ Plaintiffs' Videos**




3           89. YouTube has come a long way from days when it was credited as providing the  
4 resources to disenfranchised persons in the Middle East that fueled the Arab Spring. Instead of  
5 treating everyone equally Google/YouTube, now finds it politically and financially expeditious to  
6 restrain and disenfranchise LGBTQ+ users, while promoting institutional racism, ethnic violence,  
7 and homophobia around the world. In a recent investigative report sponsored by the New York  
8 Times and the FX network entitled “What Is YouTube Pushing You To Watch Next,”<sup>9</sup> several  
9 well respected investigative journalists report that YouTube assists, and is the weapon of choice  
10 for anti-LGBTQ+, gay bashing dictators, politicians and advocates around the world, including the  
11 current President of Brazil, Jair Bosanaro. The report describes YouTube as the single most  
12 powerful catalyst in the world for disrupting societies and does so by reaching more people than  
13 any private or government controlled TV communication network in history. The report  
14 concludes that YouTube exercises “extraordinary influence” over hate-based, ethnic violence, and  
15 totalitarian ethnic cleansing, including the horrific events in Myanmar, Sri Lanka, Germany, the  
16 Philippines, and Brazil.

17           90. One of the principal ways of gaining new viewers and subscribers on the YouTube  
18 platform is to generate favorable comments and/or healthy discussion in the “Comments Section,”  
19 which appears when videos are played. Favorable comments can generate thousands of additional  
20 views for a video. Comments regarding video content can generate even more views where the  
21 viewers have differing opinions and perspectives. Defendants allow, and refuse to filter out from  
22 the LGBTQ+ Plaintiffs’ channels and video comments sections those comments with obscene,  
23 homophobic, violent, threatening hate speech. Accordingly, viewers who play educational video  
24 content by QueerKidStuff designed for young viewers, supportive video content by  
25 BriaAndChrissy, and WonderWarriors designed for adolescents to young adults, and educational  
26 and supportive video content designed for adults by GNews! and uppercaseChase1, are exposed to  
27 vile hate speech when they view the videos uploaded by these LGBTQ+ Plaintiffs:

28 <sup>9</sup> See <https://www.nytimes.com/2019/08/09/the-weekly/youtube-brazil-far-right.html> .


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 Huurduur Excuse • 2 months ago  
Go to hell, whore. Jesus washed away your sin with his blood by being pierced through his heart by a spear after his crucifixion on the cross accomplished by Roman soldiers and yet you rejected him and offended him. So fuck you.

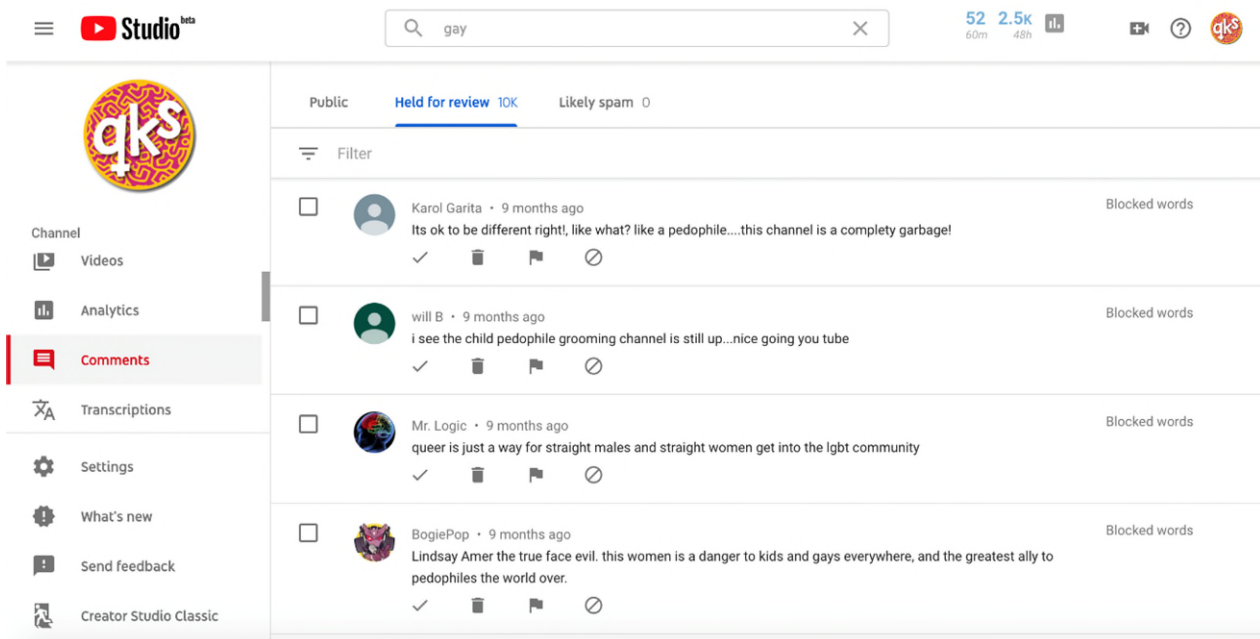
 kennybros Hernandez • 2 weeks ago  
I wish gay people died

 ChiefRighteousFilms • 1 year ago  
Yeah pride...one of the 7 sins! What a bunch of assholes! I just want to see someone getting run over while the government give a reward to the person that runover these assholes!

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[VIEW REPLY](#)



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12           91.     LGBTQ+ Plaintiffs generally must spend substantial time and energy attempting to  
13 use Defendants’ word filters for the Comments Section application to remove the hate speech  
14 comments. LGBTQ+ creators often are unable to capture all of the different misspellings used in  
15 the hate speech to avoid Defendants’ word filters. GNews! devotes significant resources to  
16 filtering and deleting hate speech which appears in its comments sections. For new videos, hate  
17 speech trolls flood the Comments Section of the LGBTQ+ Plaintiffs’ channels so that each  
18 positive comment is pushed down in the queue of comments and is not visible unless the viewers  
19 scroll through dozens of hate filled comments. QueerKidStuff has been forced to disable the  
20 Comments Section to protect its young viewers and their parents from such hate speech  
21 comments. In doing so, QueerKidStuff generates less buzz for new content, fewer views per video  
22 uploaded, fewer subscribers, and barely any revenue from its videos.

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92.     The LGBTQ+ Plaintiffs strongly support the right of free Speech and expression  
for all Community Members. That right does not extend to Defendants’ promotion of anti-  
LGBTQ+ hate speech, speech which also violates Defendants’ own purportedly neutral content-  
based rules -- especially when Defendants unlawfully use those rules as pretext to censor, restrain,  
demonetize, silence, and squelch the engagement and distribution of LGBTQ+ video content or  
viewership. Such, actions unlawfully interfere with the express rights of LGBTQ+ Community

1 Members to protect themselves by speaking out against hate and homophobia on a level playing  
2 field, as provided by Defendants’ representations and warranties that the rules apply equally to all  
3 on YouTube.

4 **10. Other Unlawful Speech-Restricting Tools**

5 93. Defendants have even more tools in their toolkit to unlawfully restrict the  
6 expression of YouTubers like the LGBTQ+ Plaintiffs in the Proposed Class. These tools include,  
7 but are not limited to:

- 8 a. Removing the comments section entirely for videos, without a request by  
9 the LGBTQ+ creator, and without giving the creator notice as to why the  
10 action was taken or an opportunity to respond, thereby depriving creators of  
11 the opportunity to generate buzz by having viewers post favorable  
12 comments and recommend content to others;
- 13 b. Content production, “fact checking,” and political partnerships with large  
14 third-party media conglomerates, advertisers, or non-Governmental  
15 organizations (NGO’s) who work with Defendants as a pretext to restrain  
16 users and viewpoints that Defendants and their partners dislike;
- 17 c. A global network of content review and call center locations and teams who  
18 interact with consumers to flag and restrict disfavored producers or  
19 viewpoints; and
- 20 d. Terms of Service contracts with consumers that contain a catchall provision  
21 that Defendants contend grants them unfettered and absolute discretion to  
22 restrain speech for “any reason or no reason.”

23 94. Despite the number, complexity, and interrelation of each of these (and other)  
24 content regulation policies and practices, each serves as part of a uniform, single, simplistic, and  
25 unlawful content-based scheme to control, regulate, restrain, and harm protected speech. The  
26 common thread or core aspect of this scheme is simple: use and apply vague, subjective, and  
27 meaningless content-based criteria with unfettered and absolute discretion to restrict the  
28 viewership, reach, and monetization of videos on YouTube, based not on content, but upon the

1 sexual identity, political affinity, religious affiliation, ethnic identity, or commercial affiliation of  
2 the speaker or the listener, or upon other animus or bias.

3 **F. Defendants Were Caught Censoring LGBTQ+ Users In 2017**

4 95. On March 19, 2017, Defendants publicly admitted that they improperly censored  
5 videos using their Restricted Mode filtering that were posted or produced by members of the  
6 LGBTQ+ Community, based upon the identity and orientation of the speaker, rather than upon the  
7 content of the video. In response to complaints from the LGBTQ+ Community and other civil  
8 rights critics, Defendants removed all restricted filtering on videos posted or produced by  
9 LGBTQ+ members and groups, and changed their policy, filtering algorithm, and manual review  
10 policies purportedly to ensure that videos posted by LGBTQ+ vloggers were not being censored  
11 solely because of the identity of the speaker.

12 96. Defendants also admitted that they wrongly censored videos posted by members of  
13 the LGBTQ+ Community blaming a purported engineering problem with filtering tools that  
14 targeted video content from LGBTQ+ users, or targeted users who discussed topics and  
15 perspectives on LGBTQ+ issues. Subsequent to that admission, Defendants agreed to investigate  
16 the claims of LGBTQ+ users. Defendants dispatched a team of senior managers, including  
17 YouTube’s CEO Susan Wojcicki, to meet with LGBTQ+ representatives to consider revising their  
18 policies and review protocols, correcting the filtering tools, and rewriting guidelines that “clarify  
19 its position by specifically allowing personal accounts from victims of discrimination or violent  
20 hate crimes, as long as they don’t contain graphic language or content.”

21 97. On April 27, 2017, Johanna Wright, Vice President of Product Management for  
22 YouTube, stated that Defendants wanted to “clarify that Restricted Mode should not filter out  
23 content belonging to individuals or groups based on certain attributes like gender, gender identity,  
24 political viewpoints, race, religion or sexual orientation.” Wright further promised users that  
25 while “Restricted Mode will never be perfect, [Defendants] hope to build on [their] progress so far  
26 to continue making [their] systems more accurate and the overall Restricted Mode experience  
27 better over time.”

28 98. This was another false promise by Defendants. On at least five occasions, after

1 promising to stop discriminating against LGBTQ+ users, Defendants denied an LGBTQ+ news  
2 organization the right to advertise and boost viewership on YouTube. In one instance, Defendants  
3 denied Divino an ad seeking to promote a Christmas Holiday video solely because the speakers  
4 and organization producing and promoting the video were identified and expressed viewpoints  
5 which Defendants stigmatized as “shocking” and “sexually explicit,” solely because the user  
6 identified and expressed viewpoints that were “gay.” After the LGBTQ+ user repeatedly  
7 complained and sought an explanation, the LGBTQ+ user got a customer service person to  
8 escalate the complaint. Whereupon, two different employees at two different locations were  
9 unable to provide an explanation of the denial to this user other than to say that the video had been  
10 flagged as “shocking content.” When the LGBTQ+ consumer further escalated the complaint, a  
11 person identified as an “expert” and senior supervisor, expressly informed the consumer that the  
12 ad was being denied because the video it was promoting contained “shocking” and “sexually  
13 explicit” content solely because the consumer was “gay” and that “company policy” deemed  
14 LGBTQ+ content as shocking and “sexually explicit,” solely because of the video involved “the  
15 gay thing.”

16 99. Defendants subsequently apologized to the LGBTQ+ client for what they contend  
17 was a misunderstanding and eventually agreed to run the ad. But they did so **more than three**  
18 **weeks after the Christmas holiday had passed.** Subsequent to their apology, Defendants  
19 declined at least four additional ad requests from the same video channel with little, or no,  
20 explanation.

21 **G. YouTube’s Promises To the LGBTQ+ YouTubers Were “Lip Service”**

22 100. Whatever promises, apologies, and misunderstanding explanations  
23 Google/YouTube has given to the LGBTQ+, they were and continue to be “lip service” as  
24 described by one LGBTQ+ YouTuber following his meeting with YouTube’s management in  
25 2017. Instead of fixing the problems, Defendants Google/YouTube have doubled down on their  
26 anti-LGBTQ+ animus and discrimination that now pervades the platform.

27  
28

1           101. In an article headlined “How YouTube Radicalized Brazil,”<sup>10</sup>an investigative report  
2 written by journalists Max Fisher and Amanda Taub, released by the New York Times on August  
3 11, 2019, YouTube’s animus-based content regulation and distribution system was dubbed the  
4 political “Party” behind Jair Bolsonaro, who, courtesy of YouTube content filtering and  
5 distribution control, is now the President of Brazil. Bolsonaro is arguably the most powerful anti-  
6 LGBTQ+, homophobic bigot and hatemonger in the world. According to the article, “YouTube  
7 had recently installed a powerful new artificial intelligence system that learned from user behavior  
8 and paired videos with recommendations for others.” This system, embedded in YouTube’s  
9 content regulation schemes and practices, made “Jair Bolsonaro, then a marginal figure in national  
10 politics,” a “star in YouTube’s far-right community in Brazil, where the platform has become  
11 more widely watched than all but one TV channel.”

12           102. The “investigation in Brazil found that, time and again, videos promoted by the site  
13 have upended central elements of daily life,” including those of children, who YouTube  
14 hypocritically exploits to impose content-based restrictions for its own financial and political gain.  
15 According to the New York Times, “[t]eachers describe classrooms made unruly by students who  
16 quote from YouTube conspiracy videos or who, encouraged by right-wing YouTube stars, secretly  
17 record their instructors.”

18           103. Thus, contrary to Defendants repeated promises that the “system” is viewpoint-  
19 neutral and does “not favor any political ideology,” the Times’ report found that YouTube  
20 “directs users to extreme content,” while, as alleged here, restricting compliant and quality  
21 LGBTQ+ content intended for younger audiences. According to Defendants, this system “now  
22 drives 70 percent of total time on the platform.” While that is good news for YouTube “as  
23 viewership skyrockets globally,” and YouTube brings “in over \$1 billion a month,” it is bad news  
24 for the LGBTQ+ Plaintiffs and the members of the YouTube Community: as Zeynep Tufekci, a  
25 social media scholar, has stated, YouTube is “one of the most powerful radicalizing instruments of  
26 the 21st century.”

27  
28 <sup>10</sup> See <https://www.nytimes.com/2019/08/11/world/americas/youtube-brazil.html> .

1           **H.     Defendants Have And Continue To Violate The Rights Of The LGBTQ+ Plaintiffs And The LGBTQ+ Community**

2           104. Defendants’ 2017 promises and claims that the bias “problems” identified by  
3 members of the LGBTQ+ Community are now resolved, is simply not true. Indeed, as the  
4 allegations and claims of the LGBTQ+ Plaintiffs demonstrate, things are getting worse, not better.  
5 What Defendants previously characterized as incidental or unintentional “problems” in properly  
6 regulating and protecting LGBTQ+ expression have become part of an unlawful scheme by  
7 defendants to restrain, deceive, discriminate, and violate the legal rights of the LGBTQ+ Plaintiffs  
8 and the putative class members of the LGBTQ+ Community that the LGBTQ+ seek to represent in  
9 this lawsuit.

10                           **1.     Divino (GlitterBombTV.com’s GNews!)**

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

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

23           107. Commencing in March of 2014, in reliance on its YouTube Partnership Program  
24 agreement with Defendants, in order to secure additional partner benefits, Divino undertook  
25 efforts to increase its number of views per video, and its number of subscribers, by purchasing  
26 from Defendants a series of advertisements. Between March 9, 2014 and October 1, 2018, Divino  
27 paid to Defendants \$14,542.94 for advertisements relating to its GNews! videos.  
28



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

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

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

20           111.    On or about January 17, 2018, Defendants again unilaterally changed the YouTube  
21 Partnership Program requirements so that only creators with channels that “have accumulated  
22 4,000 hours of watchtime within the past 12 months, and have at least 1,000 subscribers” would  
23 qualify for the program. By that time, Defendants had spent thousands of dollars in an effort to  
24 boost their subscriber numbers, and had been refused opportunities to purchase other  
25 advertisements. Because Divino had not reached the new 1,000 minimum number of subscribers,  
26 Defendants removed Divino from the YouTube Partnership Program, and stripped Divino of the  
27 ability to monetize its videos. In doing so, Defendants further repudiated the agreement with  
28 Divino.

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

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

11           114.    A representative screenshot from an episode of GNews! is below:



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

25           116.    Relying on the truth of Defendants’ representations that YouTube is, had been, and  
26 would remain a viewpoint-neutral forum for free expression, Divino and other members of the  
27 Proposed LGBTQ+ Class were further induced to purchase ad products from Defendants.

28           117.    YouTubers like Divino, who initially attempted to rely on social media and word of

1 mouth to increase viewership for their video content, often find that the only effective way to  
2 increase views of GNews! and to grow subscribers is to purchase ad products from Defendants to  
3 increase their reach. This appears to be the result of a deliberate and fraudulent effort by  
4 Defendants to increase their profits through the sale of advertisements.

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

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

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

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

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

23 122. GNews! Episode 60 included an image of Bryan Hawn’s bare buttocks.  
24 Defendants applied “Restricted Mode” to the video *solely because of the image of Mr. Hawn’s*  
25 *bare buttocks*. However, Defendants routinely allow their favored creators to post similar images  
26 on his videos which are not posted in Restricted Mode, age-gated or demonetized. In spring of  
27 2019, Google/YouTube’s sponsored creator, James Charles, uploaded a video depicting his dress  
28 at the Coachella Music Festival which include lengthy video segments depicting Mr. Charles’s

1 bare buttocks. Mr. Charles’ video which is not age restricted, appears when viewers apply  
2 Restricted Mode, and appears to be fully monetized by Defendants.

3 123. Consistent with what has happened to members of the Proposed Class who have  
4 dared to question Defendants’ blacklisting, when Divino’s representatives sought clarification as  
5 to what content in the news show constituted “shocking content,” Defendants were initially unable  
6 to point to anything. When Divino escalated the inquiry, their call was transferred to a person  
7 working for Defendants in South Asia identified as a senior content regulator and Defendants’  
8 “call center” head. After taking some time to view the GNews! content in question, the employee  
9 informed Divino that the content of the show violated the company’s prohibition against  
10 “shocking” and “sexually explicit” content *because* of what he stated was Defendants’ “*company*  
11 *policy*” of banning content that related to the “*gay thing*” and because Divino’s representatives  
12 identified as LGBTQ+ and are “*gay*.”

13 124. The call thus confirms what the LGBTQ+ Plaintiffs and other YouTubers in the  
14 Proposed LGBTQ+ Class have long known to be true: the soaring rhetoric of Defendants’  
15 professed commitments to values of freedom of expression is nothing more than a smokescreen  
16 covering a rotting corporate culture that uses overseas call center workers in a scheme to suppress  
17 speech and violate established antidiscrimination protections.

18 125. Defendants’ discretionary, discriminatory, viewpoint-based, and unlawful content-  
19 based speech regulation system was, is, and continues to be used to discriminate against and  
20 financially harm YouTube consumers. Indeed, every YouTube consumer or user is an unwitting  
21 victim of Defendants’ discriminatory and fraudulent scheme to use unlawful and discriminatory  
22 content-based speech regulations, policies, and practices to obtain illegal financial and political  
23 gain at the expense, and to the detriment of the users’ free speech and consumer rights.

24 126. Instead of correcting their behavior and bringing their filters and regulations of  
25 speech into compliance with California’s free speech, antidiscrimination, consumer fraud, and  
26 contract laws, Defendants continue to maintain and apply arbitrary, capricious, discriminatory and  
27 deceptive regulations to restrict speech on YouTube.

28 127. In short, Defendants are engaged in a global fraud on YouTube’s users and

1 consumers. YouTube consumers, like the LGBTQ+ Plaintiffs, are promised a video hosting  
2 platform that operates without regard to a user's identity or viewpoints subject only to neutral,  
3 narrowly tailored, non-discretionary content-based rules and restrictions that serve to further a  
4 legitimate public interest, such as public safety or national security. In reality, however,  
5 Defendants deliver a platform where YouTube consumers are subject to, vague, discretionary, and  
6 meaningless rules, regulations, and practices to discriminate against and financially harm  
7 disfavored third-party speakers and viewers, as a pretext to further Defendants' purely selfish,  
8 corporate interests of maximizing financial gain, political power, and consolidating control over  
9 the public speech and content of its consumers and the public.

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

23 129. Such a censorship regime cannot pass muster under California law. Among other  
24 things, it provides Google/YouTube with unfettered and unbridled discretion to impose their own  
25 political views and values upon speakers, without any objective criteria for evaluating what is and  
26 is not appropriate, and thereby censors speech, based on animus towards the speaker's political  
27 viewpoint, rather than on the appropriateness of the video content. It also constitutes intentional  
28 discrimination by Defendants based upon the religious beliefs, political identity, or sexual

1 orientation of the speaker. Moreover, it allows Defendants unfettered authority to regulate,  
2 restrain, and censor speech as an unfair, unlawful and deceptive business practice designed to  
3 inflict harm upon their competitors and to promote their own video content at the expense of the  
4 smaller third-party users, on whose backs the YouTube platform was built. Furthermore, it  
5 violates the warranty of good faith and fair dealing implied in the Defendants’ Terms of Service,  
6 and the video posting guidelines and policies to which the LGBTQ+ Plaintiffs were required to  
7 agree, in order to use the YouTube platform. Defendants do all of this as part of their control and  
8 management of what is arguably the largest public forum for expression and the exchange of ideas  
9 that has ever been available to the public in California, the United States, and ultimately the  
10 world—one to which Google/YouTube invite the public to express themselves in all manner of  
11 speech, and to engage with such speech through viewing and commenting.

12           130. Until recently, all of Divino’s subscribers had been receiving electronic  
13 notifications from YouTube whenever Divino uploaded new video content. In the past year,  
14 Divino’s subscribers have been complaining that they no longer receive YouTube notifications for  
15 new Divino video content. YouTube did not announce or notify Divino of any change to the  
16 existing notification system. In discontinuing their practice of notifying existing Divino  
17 subscribers regarding new posted content, Defendants have effectively nullified the benefits of the  
18 \$14,000 worth of advertisements Divino had purchased to boost subscriber numbers: existing  
19 subscribers will not continue to watch Divino’s videos when they believe Divino has stopped  
20 posting new materials, and Divino cannot possibly generate the minimum 4,000 annual hours of  
21 viewer watchtime required to requalify for the YouTube Partner Program if existing subscribers  
22 were not watching new videos.

23                           **2. BriaAndChrissy LLC (BriaAndChrissy)**

24           131. Plaintiff BriaAndChrissy LLC a limited liability company created under the laws of  
25 the state of Georgia, and is wholly owned by Bria Kam and Chrissy Chambers, a married lesbian  
26 couple and the creators of BriaAndChrissy, and WonderWarriors (formerly known as  
27 “OurLesbianLove”), two popular LGBTQ+ video content channels on the YouTube platform.  
28 Bria is a professional musician, and Chrissy is an actress. They use their creative talents to

1 support and entertain young adult members of the LGBTQ+ Community.

2 132. On the BriaAndChrissy and WonderWarriors channels, BriaAndChrissy LLC  
3 uploads videos that document and describe the experiences of the same sex couple, including the  
4 struggles, and mental and physical health issues which affect same sex couples who are constantly  
5 confronted with homophobic hate speech, bigotry, attacks, and institutional bias against LGBTQ+  
6 persons. Since 2012, BriaAndChrissy LLC has been uploading videos featuring the original  
7 material and covers of the work of the couple, and of other artists, as well as skits, interviews, and  
8 editorial commentary on issues of the day, such as homophobic celebrities.

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

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

20 135. On or about June of 2013, the BriaAndChrissy channel was so popular with  
21 viewers that Defendants invited the couple to create and post a video titled “Proud to Love” on the  
22 channel. No sooner had these Plaintiffs agreed to Defendants’ invitation to create and post “Proud  
23 to Love,” than Defendants demonetized the “Proud to Love” video and refused to re-monetize it.  
24 Defendants only re-monetized the video after Bria Kam appealed to BriaAndChrissy fans on  
25 Twitter, where the video received significant additional attention. As a result of Defendants’  
26 monetization treatment of the “Proud to Love” video, “ BriaAndChrissy LLC lost substantial  
27 revenue and earnings from this popular video.

28 136. In February 2016, Defendants then invited BriaAndChrissy LLC to pitch and

1 produce an LGBTQ+ documentary program featuring the couple travelling throughout the United  
2 States and interviewing members of the LGBTQ+ Community about their personal experiences.  
3 The concept was to document LGBTQ+-related issues of local importance, and broader LGBTQ+  
4 issues of national importance which affect LGBTQ+ persons, their families and friends in  
5 different communities around the United States. To Plaintiff's surprise, Defendants subsequently  
6 turned down the project under the pretext that they were no longer interested in the concept.  
7 Unbeknownst to the Plaintiff, and without its permission or any legal rights to the unique content,  
8 Defendants sponsored an identical show hosted by a former Google/YouTube employee. In  
9 brazen disregard and violation of BriaAndChrissy LLC's intellectual property rights, Defendants  
10 stole and plagiarized Plaintiff's concept and content, and profited from that theft by promoting and  
11 posting a show on YouTube which was a complete rip off of BriaAndChrissy LLC's concept and  
12 content, keeping all of the monetary and distribution value for themselves, to the financial  
13 detriment of BriaAndChrissy LLC, Defendants' direct competitor.

14 137. In furtherance of their anticompetitive and discriminatory attack on this LGBTQ+  
15 Plaintiff, Defendants also engaged in "unsubscribing" viewers who had existing subscriptions to  
16 the BriaAndChrissy and Wonder Warrior channels. Specifically, Defendants began deleting  
17 longstanding subscriptions of viewers who watch Plaintiff's content, making those subscriptions  
18 disappear without warning. Because many of its subscribers and audience were deterred by  
19 having to constantly re-subscribe to BriaAndChrissy LLC's channels over and over again, this  
20 Plaintiff's viewership and subscription rates were fraudulently and unfairly reduced to levels well  
21 below the level which had existed prior to Defendants' unlawfully unsubscribing of viewers to  
22 BriaAndChrissy and/or WonderWarriors. As a result of this unlawful conduct, Defendants caused  
23 this Plaintiff to lose its substantial viewer base and revenues derived from an audience that  
24 BriaAndChrissy LLC alone, had built up over the past seven years.

25 138. Defendants also unilaterally cancelled or stopped sending electronic notifications of  
26 new videos that Plaintiff BriaAndChrissy LLC had uploaded to its channels, without providing  
27 any notice to Plaintiff, its subscribers, or YouTube consumers. As a result of this practice, not  
28 only do BriaAndChrissy LLC's LGBTQ+ subscribers and loyal viewers not get notifications that

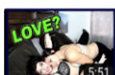


1 new material has posted, but neither this Plaintiff, its subscribers nor its audience have any way of  
 2 knowing whether a new video from BriaAndChrissy LLC exists and is now available for viewing.  
 3 By utilizing this bait-and-switch notification practice, Defendants harmed BriaAndChrissy LLC's  
 4 ability to generate interest among its subscribers, and to reach existing and new viewers, which  
 5 caused BriaAndChrissy LLC's numbers of subscribers and views to decline to a degree that made  
 6 it impossible for BriaAndChrissy LLC to generate sufficient views to meet Defendants'  
 7 monetization requirements and, consequently, caused this Plaintiff to lose substantial revenue to  
 8 Defendants.

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

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

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

<input type="checkbox"/>	Video	Visibility	Monetization	Date	Views	Comments	Likes (vs. dislikes)
<input type="checkbox"/>	 10 Ways To Know You're In LOVE! (Do you ... DO YOU WANT A BABY? Huge thank you to XYTEX for sponsoring this, and YOU can have ...	Public	\$ Limited Not suitable for m... Under review	Aug 8, 2019 Published	1,297	17	97.0% 164 likes

25  
 26  
 27  
 28 Just hours later on the same day, the video appeared fully monetized.

1           142. Defendants also exclude LGBTQ+ related content from the “Up Next,” application  
2 that appears on the BriaAndChrissy and WonderWarriors channels. Defendants refuse to  
3 recommend or to promote video content that is associated with tag words like “LGBTQ+,”  
4 “lesbian,” “gay,” “bisexual,” “transgender,” or “queer,” or content that is associated with titles or  
5 descriptions using such terms. **Defendants engage in this discriminatory, anticompetitive, and**  
6 **unlawful practice, while simultaneously promoting and recommending reaction videos by**  
7 **other creators which are based upon videos uploaded by BriaAndChrissy or**  
8 **WonderWarriors which Defendants restrict or demonetize.** As a result, LGBTQ+ creators  
9 like BriaAndChrissy LLC must self-censor and refrain from using such words for videos to avoid  
10 running afoul of Defendants’ subjective and unlawful censorship practices. Such self-censorship  
11 forced upon BriaAndChrissy LLC is yet another unfair and unlawful tactic that discriminates  
12 against, and makes it harder for members of the LGBTQ+ Community to find LGBTQ+-related  
13 content intended to support, educate and entertain LGBTQ+ consumers on YouTube.

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

26           144. Defendants also misapply age restrictions to this LGBTQ+ Plaintiff, limiting  
27 BriaAndChrissy LLC’s videos to viewers 18 years of age or older, regardless of the actual content  
28 of the video. As they do in applying their Restricted Mode, Defendants use A.I. and other

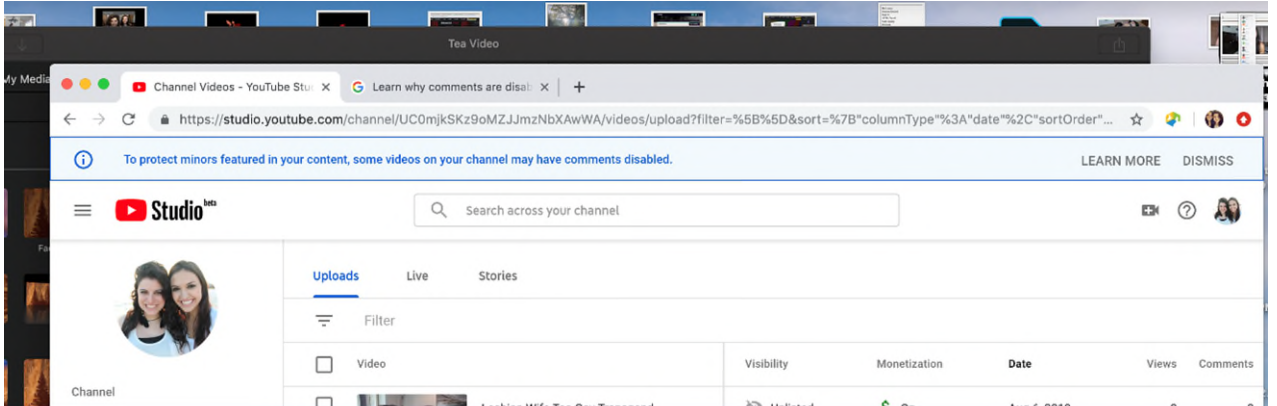
1 machine-based filtering tools to flag tags, titles, descriptions, or content that Defendants deem to  
2 be “LGBTQ+,” “lesbian,” “gay,” “bisexual,” “transgender,” or “queer.” As a result, many of the  
3 videos created by BriaAndChrissy LLC to support younger members of the LGBTQ+ Community  
4 who are experiencing bullying, persecution and/or abuse, many of whom reside in rural areas  
5 where mental health and social services are hard to access, cannot view the very materials  
6 designed to provide them with support and educate them about resources where help may be  
7 obtained.

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

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

28 147. Finally, in August 2019, Defendants commenced disabling the comments sections

1 for a number of BriaAndChrissy videos. Plaintiffs BriaAndChrissy LLC, Bria Kam and Chrissy  
2 Chambers have been informed by Defendants and believe and thereon allege that Defendants have  
3 disabled comments sections because they believe that they are “protecting minors.”



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11 It is unclear from Defendants’ message whether the comments sections are being disabled because  
12 third parties have posted hate speech and anti-gay comments, or to prevent minors themselves  
13 from posting comments and generating hate speech and anti-gay comments, or to prevent minors  
14 from encouraging other minors from viewing the video content. The affected videos do not depict  
15 children or minors in the video content, and have not generated the kind of inappropriate  
16 comments about small children which prompted Google/YouTube to remove the comments  
17 sections from creators’ channels posting videos of young children engaged in gymnastics or  
18 swimming practice and/or competitions. The disabling of the comments sections for the new  
19 videos prevents the new content from generating favorable comments which amplify the reach of  
20 the video beyond BriaAndChrissy’s subscribers, and cause videos to go viral, thereby substantially  
21 reducing the potential for generating revenue for the affected videos.

22         148. Defendants’ unlawful and anticompetitive attack on LGBTQ+ Plaintiff  
23 BriaAndChrissy LLC has achieved its intended result of reducing monthly revenues that had  
24 previously been available in the amount of \$ 3,500 to less than \$400-500 per month, to this  
25 popular LGBTQ+ content creator who directly competes with Defendants for LGBTQ+ audiences  
26 and viewers in the YouTube Community. Additionally, for two years, this Plaintiff was  
27 generating up to \$8,000 for each of its sponsored videos, but now receives on average only \$800  
28 per sponsored video. BriaAndChrissy LLC is offered less for each performance and appearance,

1 and has been offered fewer travel opportunities. Defendants' conduct has not only deprived this  
2 LGBTQ+ Plaintiff of being able to monetize its content at levels that permit continued  
3 reinvestment in new content production but ensures that Defendants can increase their own share  
4 of corporate revenues and profits from the LGBTQ+ Plaintiffs' content, or from content which  
5 Defendants sponsor in direct competition with the LGBTQ+ Plaintiffs.

6 **3. Chase Ross**

7 149. Plaintiff Chase Ross is the creator and owner of UppercaseCHASE1, a YouTube  
8 channel created to support members of the LGBTQ+ Community in general and transgender  
9 people specifically by uploading sexual education, transgender education, and transgender product  
10 review videos, as well as allies, who are supporting members of the non-LGBTQ+ Community  
11 who have relatives and family dealing with transgender issues. Mr. Ross has a degree in  
12 sociology and a minor in interdisciplinary studies of sexuality; he also received a master's degree  
13 in sociology in 2018. Starting in 2006, Mr. Ross created video content that was posted on  
14 YouTube in various names, including "ellendegeneres26," "ChaseRoss73," "FTMTranstastic,"  
15 "MightTMenFTM," "MightierMenFTM," and "itsTtime2010." Commencing in 2010, Mr. Ross  
16 started uploading video content on the UppercaseCHASE1 YouTube channel, with new content  
17 posting each month, and over the years increasing to weekly or bi-weekly depending on his  
18 available time and the subject matter of the video content. In 2017, Mr. Ross created the "Trans  
19 101" series of videos designed to educate the public, including transgender individuals, about  
20 issues confronting transgender individuals. UppercaseCHASE1 has uploaded 753 videos in all,  
21 generating 20.2 million total views with 163,000 subscribers. By 2019, UppercaseCHASE1 was  
22 generating between 20 and 50,000 views for each new video uploaded to the channel, and  
23 generating \$10,800 Canadian dollars annually in revenue. Earnings for this year are projected to  
24 be \$400-\$1,000 range.

25 150. Commencing within the past two years, Defendants have harmed  
26 UppercaseCHASE1 by employing many of the same strategies applied to BriaAndChrissy, and  
27 WonderWarriors:

28 151. Mr. Ross is a victim of "unsubscribing" existing subscriptions to

1 UppercaseCHASE1. Subscribers have informed Mr. Ross via Twitter and email that their existing  
2 subscriptions have disappeared without notification or explanation, forcing fans to re-subscribe.

3 152. Defendants also deleted and/or failed to provide content notifications for Mr. Ross'  
4 subscribers of his channel and intended audiences. Specifically, Defendants imposed these  
5 restrictions on UppercaseCHASE1 by requiring existing subscribers to specifically click on a bell  
6 icon in order to receive electronic notifications when UppercaseCHASE1 posts new videos which  
7 has adversely affected the channel's view numbers. And, UppercaseCHASE1 has received  
8 complaints via Twitter and email from former subscribers who no longer receive Defendants'  
9 notifications for new content uploaded to the UppercaseCHASE1 channel. The new practice has  
10 substantially reduced the views per new posted video on the UppercaseCHASE1 channel,  
11 resulting in reduced revenues.

12 153. Defendants also engage in stripping UppercaseCHASE1's custom Thumbnails  
13 from search results for many of the channel's subscribers and for new viewers. Some viewers  
14 report as few as 20% of the videos for the UppercaseCHASE1 channel have visible custom  
15 Thumbnails.

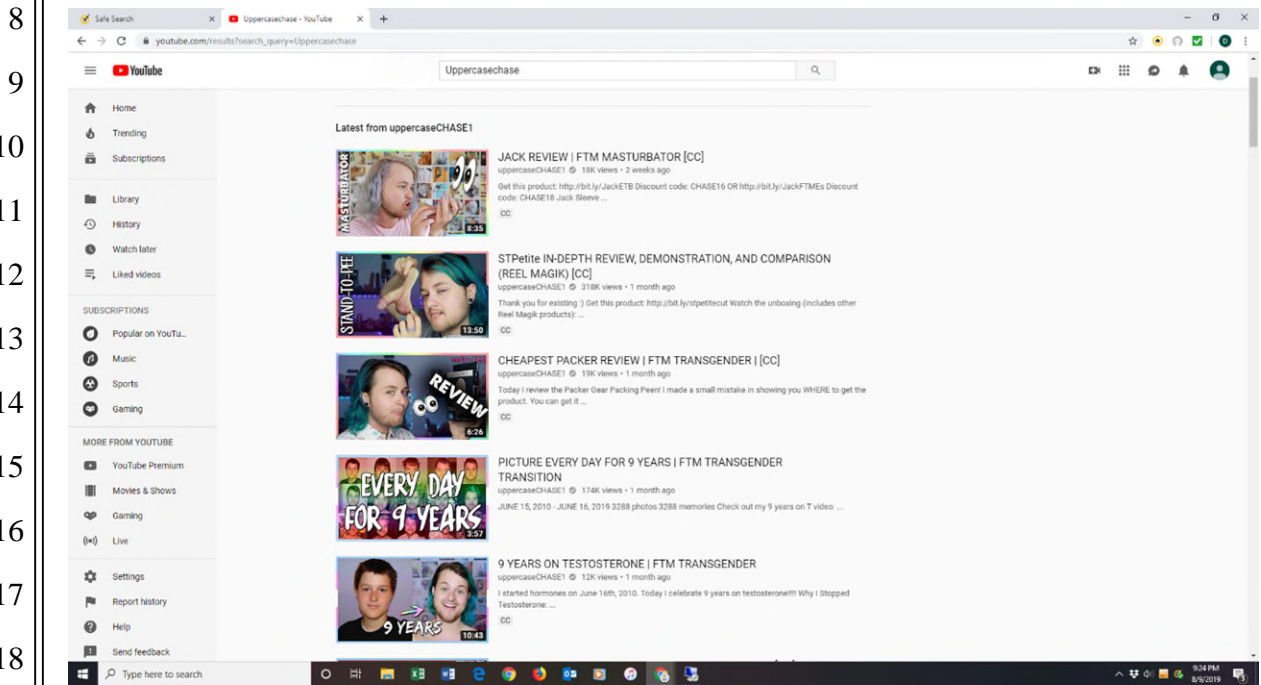
16 154. Defendants have also "Demonetized " many UppercaseCHASE1's videos under the  
17 discriminatory, fraudulent, and unlawful pretext that the content violates YouTube's Community  
18 Guidelines or other vague, overly broad, subjective, or meaningless content-based regulations.  
19 And despite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

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

26 156. And, as it does to other members of the LGBTQ+ YouTube Community,  
27 Defendants indiscriminately apply the "Restricted Mode" limitations for "sensitive viewers," to  
28 many of UppercaseCHASE1's videos, regardless of whether the actual content includes graphic

1 sexual images or content, or discussions regarding transgender issues. For example, videos  
2 consisting of Mr. Ross engaging in editorial comment in front of a blank wall discussing events,  
3 festivals or conventions have been restricted and do not appear in searches performed in  
4 “Restricted Mode,” despite the fact that there is no sexual content and no discussion of transgender  
5 issues.

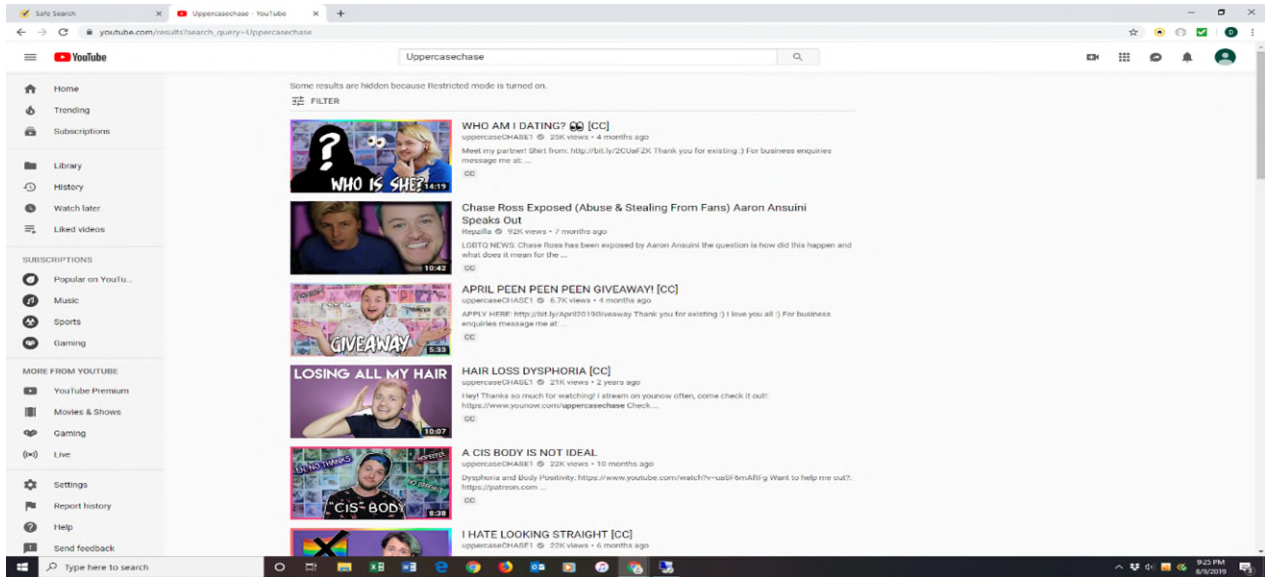
6 a. Viewers enabling the “Restricted Mode,” conducting searches for  
7 UppercaseCHASE1 videos see this :



19 Only 2 of the UppercaseCHASE1 videos posted in the past year appear in searches where  
20 “Restricted Mode,” is enabled.

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

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11 Nineteen (19) of the UppercaseCHASE1 videos posted in the past year appear in searches where  
12 “Restricted Mode,” is not enabled.

13           157. Many videos are restricted regardless of content merely because of Mr. Ross’  
14 identity as a transgender individual. The Defendants’ “Restricted Mode” filters generally appear  
15 the first weekday after a new video is uploaded to the UppercaseCHASE1 channel. By employing  
16 “Restricted Mode,” Defendants have successfully limited viewer access to the general public to  
17 each of the new videos which UppercaseCHASE1 has posted in 2019. Defendants have even  
18 applied the “Restricted Mode,” to a video which features Mr. Ross doing nothing more than  
19 drinking tea and endorsing tea for self-care and stress reduction.

20           a. In the first video, (which can be viewed by using the link:

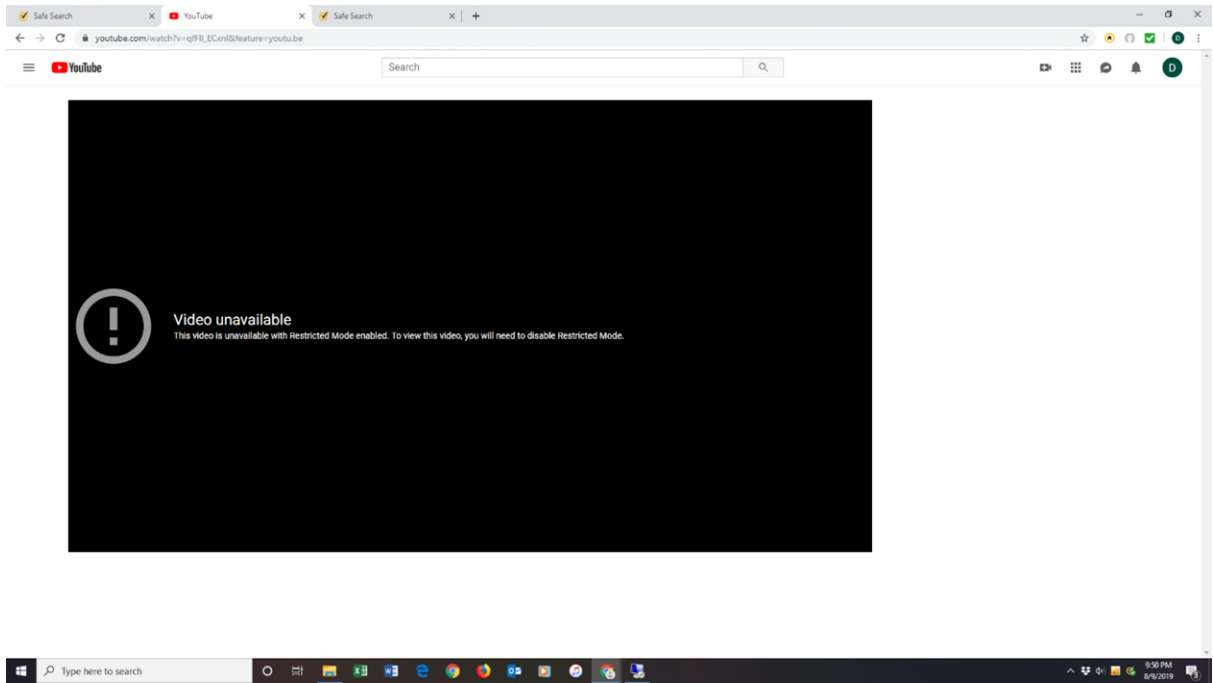
21 <https://youtu.be/rccjNF3dEpA>) Mr. Ross appears seated on the screen with a black mug  
22 and a white cat in the foreground, and a kitchen scene in the background. In the video Mr.  
23 Ross extolls the virtues of drinking tea for LGBT “self-care,” and explains that LGBT  
24 includes “lesbian,” “gay,” “bisexual,” “transgender,” and “queer.” There is no sexual,  
25 political or obscene or vulgar content in the video at all. When he uploaded the video, Mr.  
26 Ross did so “unlisted,” so that it does not appear on UppercaseCHASE1 channel. Mr.  
27 Ross tagged the video with the terms “LGBT,” “lesbian,” “gay,” “bisexual,” “transgender,”  
28 and “queer.” He used these terms in the description and used “LGBT” in the title.



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

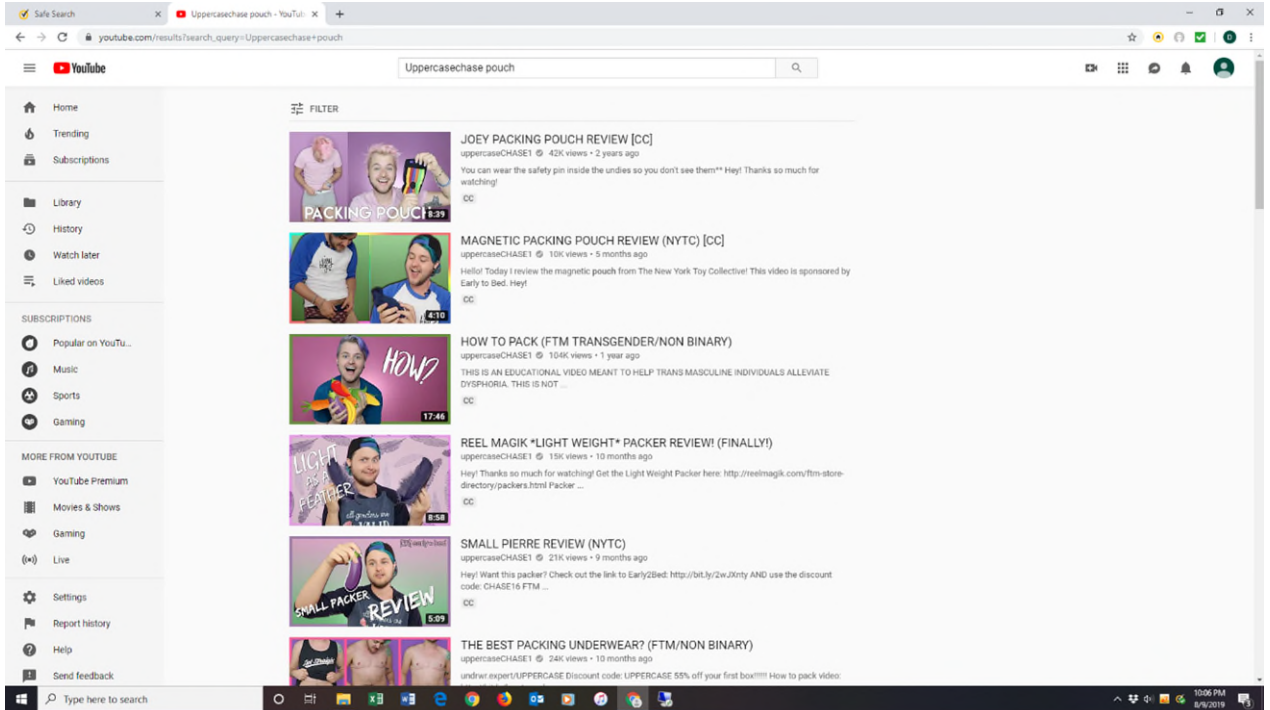
Though the videos consists solely of a monologue about tea by Mr. Ross, he says the terms “LGBT,” “lesbian,” “gay,” “bisexual,” “transgender,” and “queer.” The use of these words in the video content appear to be sufficient to prevent the videos from being viewed when “Restricted Mode” is engaged. If viewers engage “Restricted Mode” and attempt to access the videos using the links, YouTube will display this message:



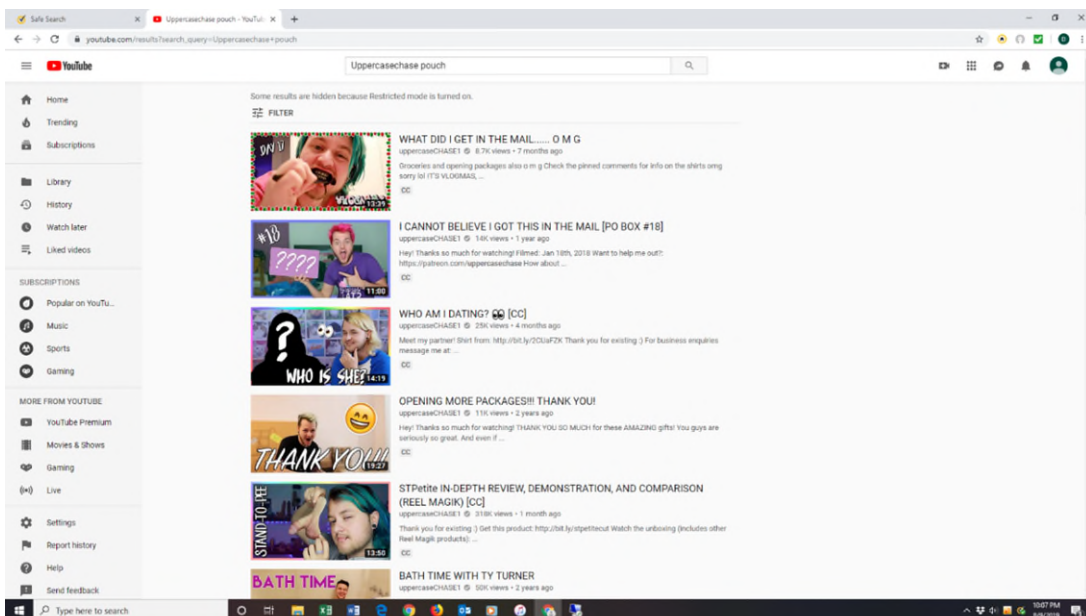
158. Mr. Ross produces videos consisting of product reviews intended for a transgender audience featuring products which are especially relevant to his audience. Mr. Ross has reviewed a number of prosthetic devices created for individuals suffering from gender dysphoria, which resemble male genitalia, along with “pouches” used to hold the prosthetics in place against the body. These pouches range from simple fabric pockets with strings to tie them into place, to more elaborate underwear styled models with pockets for the prosthetic devices.

a. Defendants routinely censor UppercaseCHASE1’s product reviews of

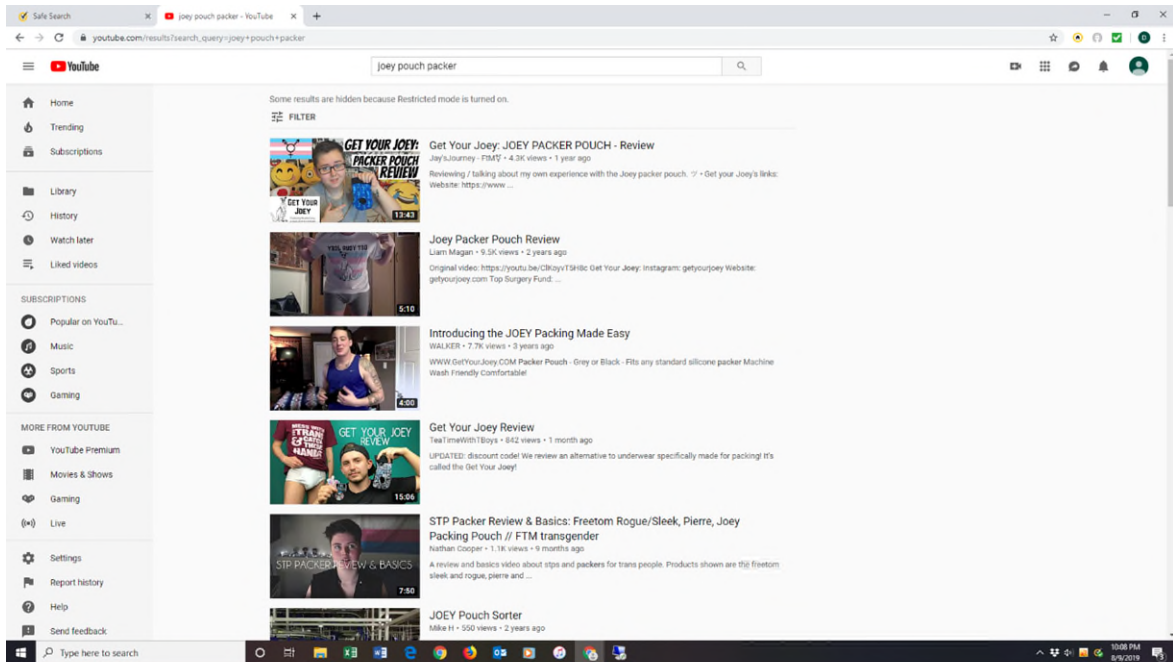
1 “pouches” whether they are simple fabric pouches or more elaborate modified undergarments so  
2 that they do not appear in “Restricted Mode.” Viewers searching for “UppercaseCHASE1  
3 pouches” with Restricted Mode engaged will see only:



16 b. Viewers searching for UppercaseCHASE1 pouches” without enabling  
17 “Restricted Mode” will see product reviews which include the entire range of products reviewed  
18 by Mr. Ross.



1  
2 c. Defendants do not censor other transgender pouch product reviews posted  
3 by other video creators in the same way. Viewers searching for “Pouch Packers,” with Restricted  
4 Mode enabled will see:



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

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

28 160. Defendants also censored UppercaseCHASE1’s LGBTQ+-related content by

1 removing videos from its platform without explanation and imposing use restrictions on the  
2 channel. In one instance, Defendants removed a video which had been uploaded for six years  
3 without issue, for which no age restriction had been imposed, and which was fully monetized. Mr.  
4 Ross was unable to post new content, livestream or use the account for a month before Defendants  
5 addressed his complaints. It was only after Mr. Ross took to Twitter complaining about the  
6 removal of the video that Defendants addressed his complaints. Within two weeks of posting his  
7 complaints on Twitter, YouTube reinstated the account, released the video, and admitted that it  
8 had taken the adverse action in error. However, in mid-July of 2019, Defendants again suspended  
9 the account merely for posting a link to “Gendercat.com” in violation of YouTube’s community  
10 guidelines. Again, in response to Mr. Ross’ complaints, Defendants admitted they had acted in  
11 error and assured Mr. Ross that it would not happen again.

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

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

1                   **4.       Brett Somers a/k/a AMP (Watts The Safeword)**

2           163.   Plaintiff Brett Somers, also known as AMP, is the creator and owner of Watts The  
3 Safeword, a YouTube channel dedicated to developing and posting sexual education materials  
4 which include both LGBTQ+ and non-traditional practices, as well as discussing events,  
5 conventions, and issues relevant to the LGBTQ+ Community. Mr. Somers has a degree in art  
6 design, and is trained to use video and photographic software applications, as well as to create  
7 computer code for gaming, which he did professionally for a number of years.

8           164.   On May 25, 2014, Mr. Somers started the Watts The Safeword channel on  
9 YouTube. A week or two later, he uploaded the first video. Thereafter, on average, Mr. Somers  
10 uploaded a new video on a bi-weekly basis. As of last year, Mr. Somers had uploaded 227 videos  
11 to the Watts The Safeword channel on YouTube; had generated 1.3 million views, and had  
12 193,000 subscribers. Watts The Safeword generated \$5,751.00 in just one month, November  
13 2018. However, since that highpoint, as a result of Defendants’ strategies, Watts The Safeword  
14 generates only \$200-\$300 monthly from YouTube. This Plaintiff’s channel no longer is able to  
15 generate 30,000 – 40,000 new subscriptions on a regular basis, as it did in 2018. Watts The  
16 Safeword’s views have become sporadic, inconsistent, and unpredictable.

17           165.   Commencing within the past two years, Defendants harmed and continue to harm  
18 Watts The Safeword by employing many of the same strategies it has applied to other LGBTQ+  
19 Plaintiffs and putative members of the LGBTQ+ Community Class.

20           166.   Defendants have been and continue to strip Watts The Safeword’s custom  
21 Thumbnails from search results for most of its videos. This strategy is not applied based upon the  
22 content of the videos, because Mr. Somers often collaborates with other LGBTQ+ creators and has  
23 seen collaborative videos posted to the collaborator’s channel bearing the custom Thumbnails,  
24 while the identical video posted to Watts The Safeword’s channel have had the custom  
25 Thumbnails stripped by Defendants.

26           167.   Defendants have and continue to “Demonetize” many of Watts The Safeword’s  
27 videos on grounds that they purportedly fail to comply with community standards, and have  
28 refused to reverse their decisions despite Mr. Somers’s appeals and repeated requests for more

1 guidance regarding the bases of their decisions to demonetize specific videos.

2 168. Defendants indiscriminately use their “Restricted Mode” filters and limitations and  
3 place to nearly all of Watts The Safeword’s videos into that viewer restraint. Defendants do this  
4 for arbitrary, capricious, discriminatory anticompetitive, and other unlawful reasons by restricting  
5 Mr. Somers’ videos regardless of whether the actual content violates Defendants’ Community  
6 Guidelines or other content-based regulations or standards. For example, videos consisting of Mr.  
7 Somers discussing his experience traveling to events, festivals or conventions have been restricted  
8 and do not appear in searches performed in “Restricted Mode,” despite the absence of any content  
9 involving sexually explicit, practices, or activities. Like the other LGBTQ+ Plaintiffs, Mr. Somers  
10 Watts The Safeword’s videos are restricted regardless of content merely because Mr. Somers’  
11 expresses viewpoints, discusses topics, or affiliates with the members of the LGBTQ+  
12 Community. In August 2019, Defendants restricted videos of Mr. Somers doing nothing more  
13 than drinking tea and recommending tea for self-care, while leaving unrestricted countless videos  
14 posted by other YouTube creators doing the very same thing.

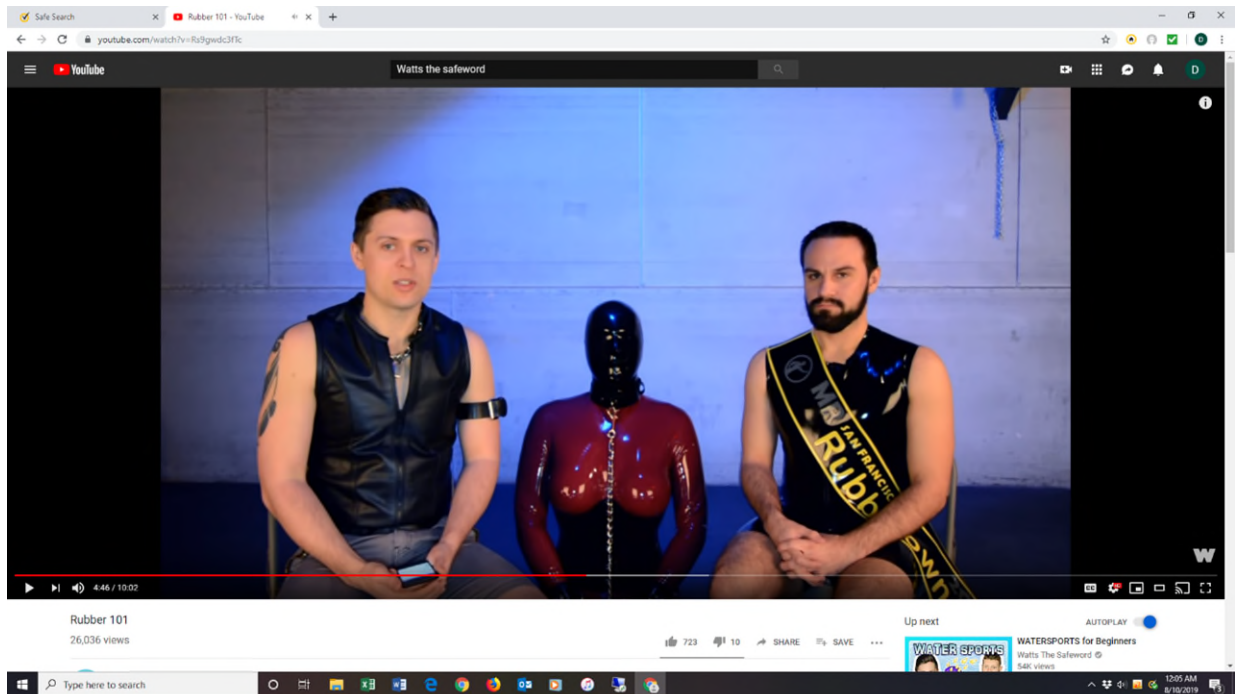
15 169. Defendants also misapplied age restrictions to Watts The Safeword’s videos,  
16 limiting videos to viewers 18 years of age or over, regardless of the actual content of the video.  
17 While many videos on the channel dealing with sex and include graphic sexual images are not  
18 suitable for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

23 170. Defendants have also engaged in outright censorship of Watts The Safeword’s  
24 LGBTQ+-related content by removing videos from its platform without explanation and imposing  
25 age restrictions on the channel without regard to the content of the video uploaded. In one  
26 instance, Defendants imposed age restrictions on Watts The Safeword’s video featuring Mr.  
27 Somers talking about traveling to a convention while seated in a car. The video contains no sexual  
28 graphics or content at all. But Defendants did not restrict videos of the actual convention,

1 featuring sex toys and other sexual content when posted by other creators, that were fully  
2 monetized for profit by Defendants.

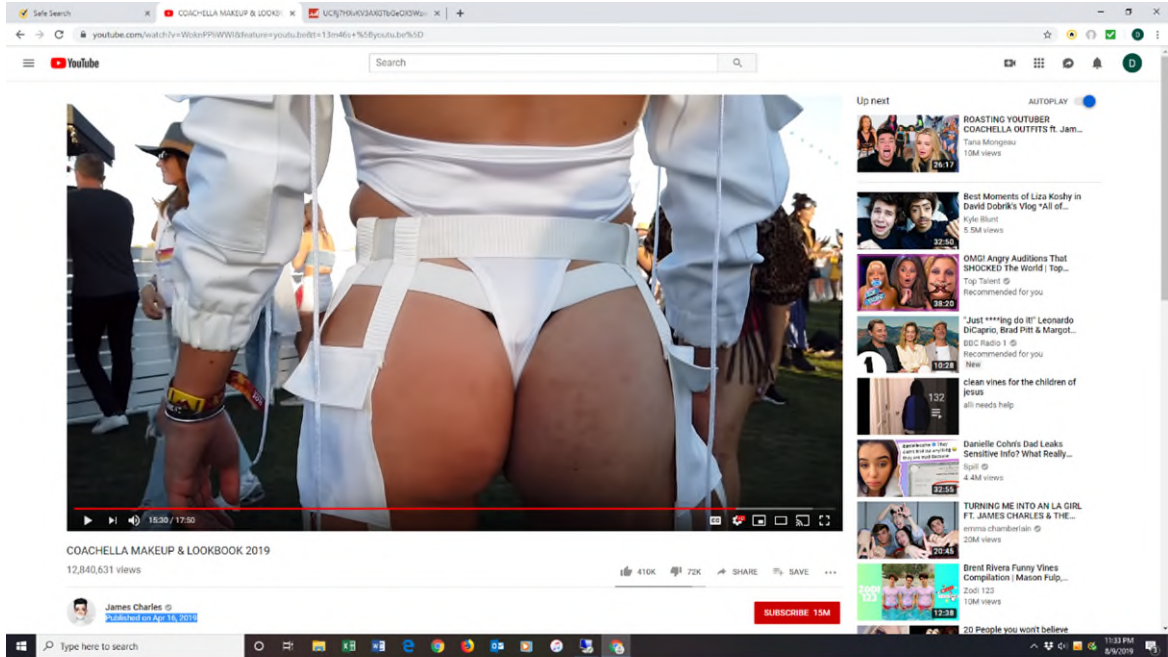
3 171. Even when Defendants allow Watts The Safeword's videos to remain on the  
4 platform, Google/YouTube prevent those videos from appearing in response to searches  
5 performed by both subscribers and the public at large. And like other LGBTQ+ Plaintiffs, Mr.  
6 Somers has received comments and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

8 172. Defendants continue to restrain the innocuous travel videos of Watts The Safeword  
9 under its Restricted Mode, age restrictions, and demonetization rules and practices, while allowing  
10 objectively and sexually explicit content that Google/YouTube sponsor and/or profit from to run  
11 unrestricted on the YouTube platform. For example, Defendants apply the Restricted Mode filter  
12 to Watts The Safeword's video depicting rubber garments, where no bare buttocks are exposed at  
13 all.

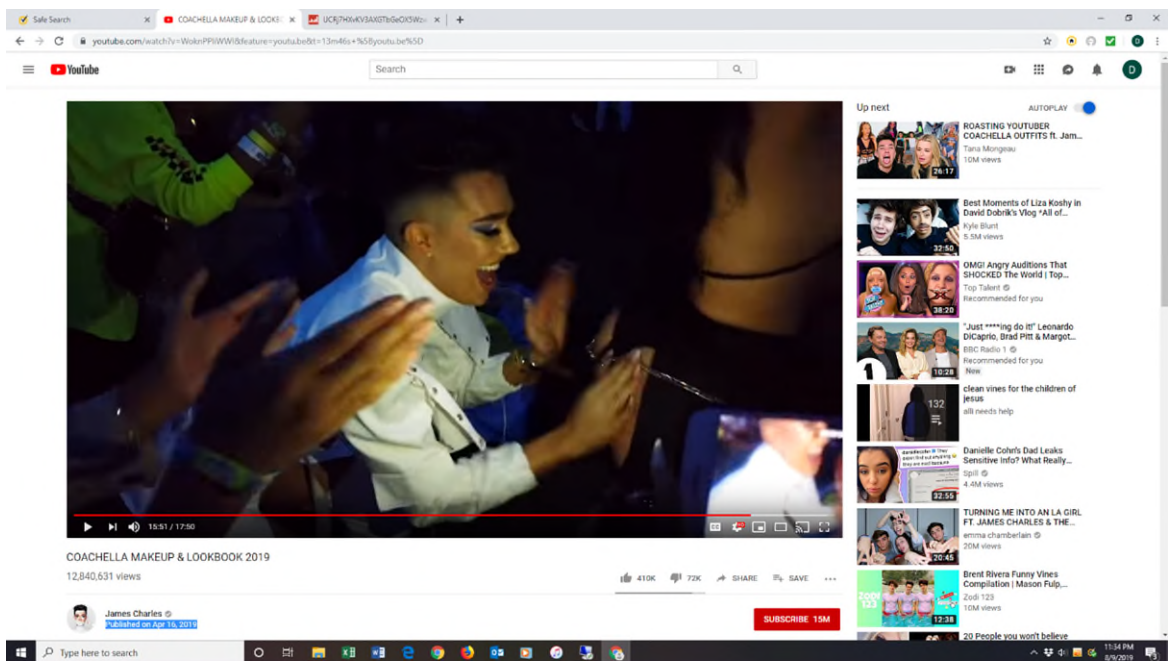


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25 Nonetheless, Defendants sponsor and monetize explicit and sexualized video content depicting  
26 bare buttocks, without any restrictions on a YouTube channel known as the James Charles  
27 Channel. The James Charles content depicts a sexually ambiguous young man who creates and  
28 uploads videos demonstrating female-styled make-up techniques, nail care demonstrations, and

1 recommendations for make-up and personal care products. One recent video even features Mr.  
2 Charles at the Coachella Music Festival, acting as a “make-up guru.” Mr. Charles is wearing a  
3 white G-string and chaps which cover his genitals but expose his bare buttocks.



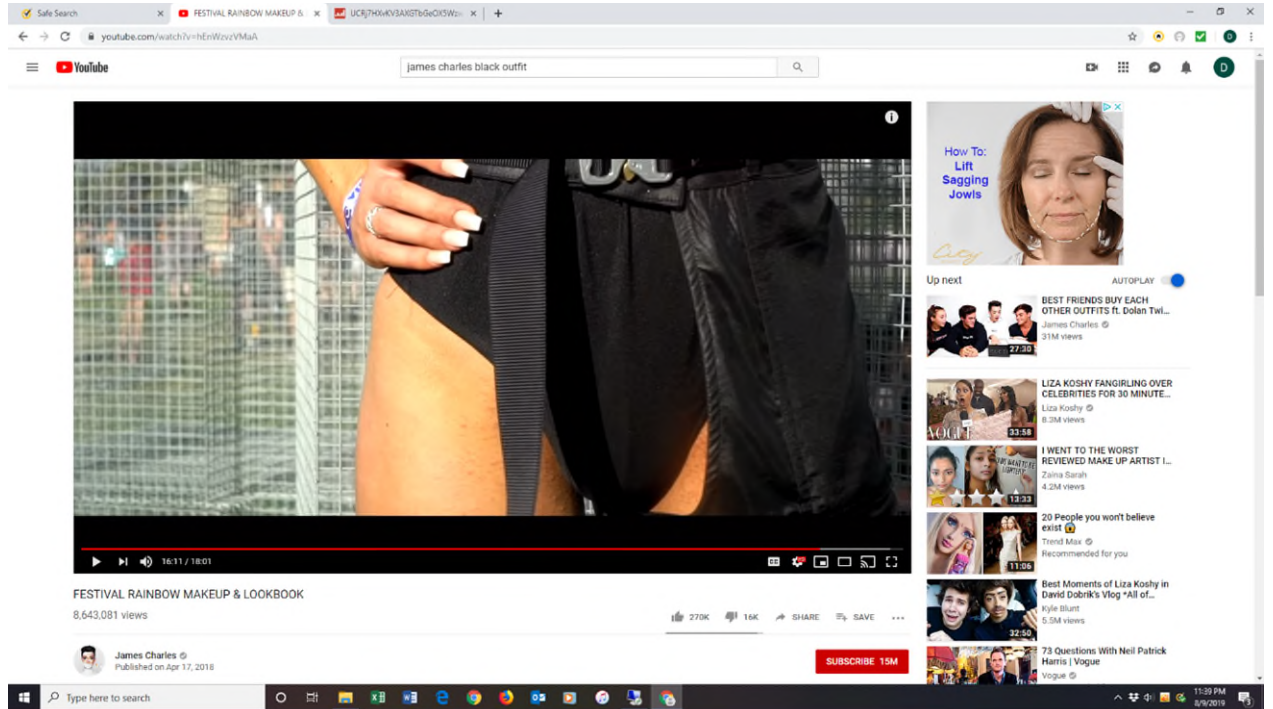
15 The video also depicts Mr. Charles spanking the bare buttocks of another other festival attendee,  
16 who is wearing a similar G-string and chaps in black.



28 A second video from the Coachella Music Festival depicts Mr. Charles wearing a black G-string



1 with pubic hairs visible.



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

### 19 5. Lindsay Amer (Queer Kid Stuff)

20 173. Plaintiff Lindsay Amer is the creator and owner of Queer Kid Stuff, a YouTube  
21 educational channel created to serve as a support for LGBTQ+ parents, LGBTQ+ children  
22 between the ages of 3 and 17, who have questions or face bullying for perceived LGBTQ+ status,  
23 and librarians and educators seeking assistance with respect to how to field questions about  
24 LGBTQ+ issues and support children affected by LGBTQ+ issues. Mx. Amer has an  
25 undergraduate degree in gender studies and theater; and a graduate degree in performance studies.

26 174. In 2015, they created the Queer Kid Stuff channel as a vehicle to upload their  
27 original video content. On May10, 2016, Mx. Amer uploaded the first Queer Kid Stuff education  
28 video. Initially, the video was shared and received roughly 2,000 views without negative

1 comments or reaction videos. Within months of the uploading of the first video, the Huffington  
2 Post published a favorable article discussing the video.

3 175. On June 23, 2016, The Daily Stormer, a Neo Nazi website on that appears on  
4 Defendant Google’s search engine site published a commentary by Andrew Anglin entitled, “Sick  
5 Dyke Creates Educational Program to Brainwash Children Into the Homosexual Lifestyle,” which  
6 quotes from the Huffington Post article, and bashes both Queer Kid Stuff and Ms. Amer:

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

17 The article included a link to the Queer Kid Stuff Twitter account and Mx. Amer’s personal  
18 profile.

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

26 177. As with the other the LGBTQ+ Plaintiffs in this case, Mx. Amer supports the right  
27 of all to express their viewpoints in a civil and protected manner. But Mx. Amer, and the other  
28 LGBTQ+ Plaintiffs take serious issue with Defendants systematic efforts to restrain or financially  
harm Mx. Amer’s content and their ability to defend and protect themselves on a platform that  
promises to treat everyone equally. That is not the case here, because Defendants selectively  
apply their content-based regulations and filtering to promote and profit from homophobic  
hatemongers who are allowed to inundate Mx. Amer and other LGBTQ+ channels when their

1 content directly and objectively violates Defendants content-based rules that they claim exist only  
2 to “keep the platform safe” for all of the YouTube Community, including Mx. Amer and the other  
3 LGBTQ+ members of that Community.

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

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

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

24 “I’m really glad that I ran into your channel today, as I found the  
25 videos to be easy enough for my 5 year old to enjoy and understand  
26 the content. This really is a godsend for me, a trans demi girl who  
has major problems with panic attacks just trying to address the  
subject with them.

27 The only thing that I wish would get addressed with your channel  
28 would be doing something with the comments section. While it’s  
great that there are some positive encouragement from some

1 viewers, others turn it into a dumpster fire dipped in cancer. I'm  
2 glad that my child can't read well enough to understand the  
3 comments, but I think other children will inherently get exposed to  
transphobic, ableist, and queerphobic nonsense that may undermine  
the positive message of the videos."

4 Another parent wrote:

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

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

20 182. The obscene, hate speech filled reaction videos, many of which were spawned by  
21 The Daily Stormer article, also appear in searches for Queer Kid Stuff on YouTube, and appear in  
22 "Up Next," recommendations on the screen whenever viewers watched Queer Kid Stuff videos,  
23 thereby exposing LGBTQ+ parents and children to inappropriate hurtful material. Mx. Amer  
24 repeatedly complained to Google/YouTube about the hate speech reaction videos which appear in  
25 the recommended "Up Next" material, and in the search results for "Queer Kid Stuff," but  
26 Defendants refused to subject that content to their Community Guidelines and other speech  
27 regulations, or to prevent reaction video creators from posting links to the Queer Kid Stuff channel  
28 on the reaction videos.

1 183. In all, Queer Kid Stuff has uploaded more than 100 videos, of which Defendants  
2 have only allowed 94 to remain accessible to viewers; the channel has more than 2 million views  
3 and more than 15,000 subscribers. Queer Kid Stuff’s growth has been substantially stymied by  
4 Defendants’ selected, discriminatory, anticompetitive and unlawful use of its content regulation  
5 and monetization policies and practices, and has generated less than \$500 per year. Defendants  
6 should be ashamed of themselves for promising LGBTQ+ consumers that the same rules apply  
7 equally to everyone and then singling out the LGBTQ+ Plaintiffs, like Mx. Amer, and the greater  
8 LGBTQ+ Community for content and monetization violations while promoting and profiting from  
9 homophobic hate speech that threatens violence and goes unregulated on the YouTube platform.

10 **V. CLASS ACTION ALLEGATIONS**

11 184. The LGBTQ+ Plaintiffs bring this action on behalf of themselves and a putative  
12 YouTube Community Class and an LGBTQ+ Community Subclass of YouTube users and  
13 consumers who are similarly situated under Rules 23(a), (b)(2) and (b)(3) of the Federal Rules of  
14 Civil Procedure. The YouTube Community Class and LGBTQ+ Community Class seeking  
15 monetary damages and injunctive relief on behalf of the following class of YouTube consumers  
16 and users:

17 **The YouTube Community Class Is Defined As:**

18 All persons or entities in the United States who are or were  
19 members, users and or consumers of YouTube who uploaded,  
20 posted, or viewed video content on YouTube subject to  
21 Google/YouTube’s Terms of Service, Mission Statement,  
22 Community Guidelines, and/or any other content-based filtering,  
monetization, distribution , personal data use policies, advertising or  
regulation and practices any other regulations or practices that are  
related to the YouTube Platform on or after January 1, 2015 and  
continuing through to December 31, 2019 (the “Class Period”).

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

26 **The LGBTQ+ Community Subclass Is Defined As:**

27 All persons or entities in the United States who (a) are or were  
28 members, users and or consumers of YouTube who uploaded,  
posted, or viewed video content on YouTube subject to  
Google/YouTube’s Terms of Service, Mission Statement,

1 Community Guidelines, and/or any other content-based filtering,  
2 monetization, distribution , personal data use policies, advertising or  
3 regulation and practices any other regulations or practices that are  
4 related to the YouTube Platform and (b) are part of protected class  
5 of persons under the California or Federal law because of sexual  
6 orientation, gender identity, or gender or (c) create, post, distribute,  
7 monetize, or advertise video content on the YouTube Platform that  
8 discusses or relates to topics, issues or viewpoints that advocate for,  
9 are of interest to, or are intended for LGBTQ+ audiences, on or after  
10 January 1, 2015 and continuing through to December 31, 2019 (the  
11 “LGBTQ+ Subclass Period”).

12 Excluded from the LGBTQ+ Community Subclass are Defendants  
13 and their employees, affiliates, parents, subsidiaries, and co-  
14 conspirators, and any YouTube users who create, post, distribute,  
15 promote or engage in video or communications on the YouTube  
16 Platform that is directed against the LGBTQ+ Plaintiffs or LGBTQ+  
17 Community and is objectively violent, obscene, threatening, or  
18 homophobic as alleged in the Complaint.

19 185. The LGBTQ+ Plaintiffs believe that there are over 200 million members of the  
20 YouTube Community Class and hundreds of thousands of members of LGBTQ+ Community  
21 Subclass as defined and described above in the Complaint. The exact number and identities of the  
22 YouTube Community Class and LGBTQ+ Community Subclass are known by Defendants, and  
23 the number of persons who fall within the definitions of the Class and/or Subclass are so  
24 numerous and geographically dispersed so as to make joinder of all members of the Class or  
25 Subclass in their individual capacities impracticable, inefficient, and unmanageable so as to  
26 effectively deny each putative Class or Subclass member his, her, or their rights to prosecute and  
27 obtain legal and equitable relief based on the claims and allegations averred in this Complaint.

28 186. There are questions of law and fact common to the YouTube Community Class and  
the LGBTQ+ Community Subclass that relate to and/or are dispositive of the nature and  
allegations of unlawful conduct alleged in the Complaint, and the nature, type and common pattern  
of injury and harm caused by that unlawful conduct and sustained by the putative members of the  
Class and Subclass including, but not limited to:

- a. Whether Defendants’ regulations and content-based restrictions violate the  
free speech, antidiscrimination, consumer fraud and unfair competition, and  
contractual rights of the members of the YouTube Community Class and/or  
the LGBTQ+ Community Subclass;

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- b. Whether Defendants concealed, misrepresented or omitted to disclose material policies and practices regarding the unlawful regulation of video content, advertising, distribution, monetization, contractual obligations, and characteristics of the YouTube platform to the members of the YouTube Community Class and/or LGBTQ+ Community Subclass;
- c. Whether Defendants use unlawful, discriminatory, anticompetitive and fraudulent, deceptive, unfair, and/or bad faith filtering tools and practices, in the code and operation of their machine based, algorithmic, or A.I. filtering tools, and/or other practices and procedures to review, regulate, and restrict content, and/or regulate and restrict the advertising, monetization, distribution, and property rights of the YouTube Community Class and LGBTQ+ Community Subclass;
- d. Whether Defendants are engaged in discriminatory practices against the members of the LGBTQ+ Community Subclass based on protected characteristics;
- e. Whether Defendants’ breached their form consumer contracts and obligations to the YouTube Community Class and LGBTQ+ Community Subclass;
- f. Whether Defendants are engaged in unlawful, deceptive, unfair, or anticompetitive practices that violate federal or California law, and harmed and injured the YouTube Community Class and/or the LGBTQ+ Community Subclass;
- g. Whether the conduct of Defendants, as alleged in this Complaint, caused injury to the business and property of the LGBTQ+ Plaintiffs and the members of the YouTube Community Class and LGBTQ+ Community Subclass;
- h. Whether Defendants’ alleged regulations, practices, and conduct has caused or threatens to cause harm to the speech of the YouTube Community Class

1 or the LGBTQ+ Community Subclass to warrant the ordering of temporary,  
2 preliminary and/or final injunctive relief and corresponding declaratory  
3 relief with respect to the legal rights of the LGBTQ+ Plaintiffs and the  
4 YouTube Community Class and LGBTQ+ Community Subclass;

5 i. The scope, nature, substance, and enforcement of injunctive and equitable  
6 relief sought by the YouTube Community Class and LGBTQ+ Community  
7 Subclass;

8 j. Whether Defendants were unjustly enriched or obtained profits or ill-gotten  
9 financial gains as a result of the unlawful, discriminatory, deceptive, unfair,  
10 or anticompetitive practices perpetrated against the LGBTQ+ Plaintiffs, the  
11 YouTube Community Class, and the LGBTQ+ Community Subclass;

12 k. Whether Defendants breached their contractual obligations and/or implied  
13 duty of good faith and fair dealing under the consumer form contracts  
14 entered into during the Class Period between Google/YouTube and the  
15 LGBTQ+ Plaintiffs, the YouTube Community Class, and the LGBTQ+  
16 Community Subclass;

17 l. Whether Defendants' content-based regulations and filtering practices, on  
18 their face and/or as applied, violate the free speech rights of the LGBTQ+  
19 Plaintiffs and the YouTube Community Class and the LGBTQ+  
20 Community Subclass; and

21 m. whether Defendants' assertion of immunity from liability under the  
22 Community Decency Act 15 U.S.C. § 230 (c) (the "CDA") with respect to  
23 any of the claims or allegations asserted by the LGBTQ+ Plaintiffs, the  
24 YouTube Community Class, and/or the LGBTQ+ Community Subclass  
25 operates as an unlawful prior restraint of speech in violation of the First  
26 Amendment of U.S. Constitution.

27 187. During the Class Period, the LGBTQ+ Plaintiffs uploaded one or more videos to  
28 YouTube and Plaintiffs Divino and Brett Somers each purchased Google Ads products in reliance



1 on the representations and failures to disclose alleged above. At least some of that video content  
2 uploaded by LGBTQ+ Plaintiffs was subjected to one or more human or algorithmic restriction  
3 tools. The interests of the LGBTQ+ Plaintiffs are coincident with, and not antagonistic to those of  
4 the other members of the YouTube Community Class and the LGBTQ+ Community Subclass.

5 188. Each of the LGBTQ+ Plaintiffs is a member of the YouTube Community Class and  
6 LGBTQ+ Community Subclass class.

7 189. The claims of the LGBTQ+ Plaintiffs are typical of the claims of YouTube  
8 Community Class and LGBTQ+ Community Subclass members, and the LGBTQ+ Plaintiffs will  
9 fairly and adequately protect the interests of the members of the LGBTQ+ Class. The LGBTQ+  
10 Plaintiffs are represented by counsel who are competent and experienced in the prosecution and  
11 defense of similar claims and litigation, including class actions filed, prosecuted, defended, or  
12 litigated in under California and federal law, in California and federal courts, in connection with  
13 claims and certification of consumer and civil rights classes composed of members who reside in  
14 California and/or the United States.

15 190. The prosecution of separate actions by individual members of the YouTube  
16 Community Class and LGBTQ+ Community Subclass would create a risk of inconsistent or  
17 varying adjudications.

18 191. The questions of law and fact common to the members of the YouTube Community  
19 Class and the LGBTQ+ Community Subclass predominate over any questions of law or fact  
20 affecting only individual members of the Class or Subclass, including legal and factual issues  
21 relating to liability and the nature of the harm caused by Defendants' unlawful actions.

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

27 193. The YouTube Community Class and the LGBTQ+ Community Subclass are  
28 readily definable and are categories for which records should exist in the files of Defendants, and

1 prosecution as a class action will eliminate the possibility of repetitious litigation. Class treatment  
2 will also permit the adjudication of relatively small claims by many members of the LGBTQ+  
3 Community Subclass who otherwise could not afford to litigate claims such as those asserted in  
4 this Complaint.

5 **FIRST CAUSE OF ACTION**

6 **(California Constitution Article I, section 2)**

7 **(On Behalf Of The LGBTQ+ Plaintiffs Individually And The YouTube Community Class)**

8 194. The LGBTQ+ Plaintiffs re-allege and incorporate herein by reference, as though set  
9 forth in full, each of the allegations set forth in paragraphs 1 through 193 above.

10 195. Article I, section 2 of the California Constitution protects the liberty of speech and  
11 association, especially in public, quasi-public, and limited public spaces.

12 196. In YouTube, Defendants created and maintain a public forum, or its functional  
13 equivalent. First, Defendants solicit the general public to use YouTube by representing that its  
14 purpose, and primary use, is a place dedicated to free speech. Second, Defendants expressly invite  
15 the public to visit YouTube to engage in freedom of expression. Third, the size and reach of  
16 YouTube’s dominance over the expression and exchange of video-based speech is unparalleled.  
17 Fourth, the relationship between the ideas sought to be presented and the function or purpose of  
18 the property are those of a “public forum,” the cyber-equivalent of a town square where citizens  
19 exchange ideas on matters of public interest or concern. Given these factors, Defendants’  
20 regulation of speech is supposed to be viewpoint-neutral, and the same rules should apply equally  
21 to all.

22 197. Defendants describe YouTube as a “service that enables more than a billion users  
23 around the world to upload” videos, where users are urged to “Broadcast Yourself,” “promote  
24 yourself” or “do the broadcasting yourself.” Furthermore, in YouTube’s Terms of Service,  
25 Defendants state that YouTube is not legally or otherwise responsible for any third-party content:  
26 YouTube is not “responsible for the accuracy, usefulness, safety, or intellectual property rights of  
27 or relating to such Content”; responsibility for the “**FOREGOING RESTS ENTIRELY WITH**  
28 **YOU [THE USER].**” These are not the statements of a publisher who tells the public they only

1 print news “fit to print.” Defendants do not merely sell edited news content to users; they monetize  
2 third-party public speech inviting “everyone” to “express themselves” on a “nearly limitless range  
3 of topics.”

4 198. Under California law, Defendants’ regulation of speech on YouTube is state action  
5 because Defendants perform an exclusively and traditionally public function: the regulation of  
6 speech within a designated public forum. Accordingly, speech cannot be arbitrarily, unreasonably,  
7 or discriminatorily excluded, regulated, or restricted on the basis of viewpoint or the identity of the  
8 speaker and any such regulations must fully comply with protections afforded free speech and  
9 expression under the Liberty of Speech Clause and the long established jurisprudence governing  
10 the Clause’s application.

11 199. Videos of the Proposed Class constitute expressive speech and activity protected by  
12 Article I, section 2 of the California Constitution.

13 200. Defendants have restricted the speech and expressive conduct of the Proposed  
14 Class based upon subjective, vague, and overbroad criteria that give Defendants unfettered and  
15 unbridled discretion to censor speech for any reason, or no reason at all, no matter how arbitrary or  
16 capricious. Those criteria further fail to convey a sufficiently definite warning to the LGBTQ+  
17 Plaintiffs or to the public as to what is prohibited or restricted. Defendants’ adoption and  
18 application of those criteria on its face violates the Proposed LGBTQ+ Class’ right to free speech  
19 as guaranteed by Article I, section 2 of the California Constitution. Further, that invidious  
20 potential has been borne out and evidenced by Defendants’ application of those policies and  
21 procedures to censor the LGBTQ+ Plaintiffs.

22 201. Defendants also apply their censorship criteria, including the Terms of Service and  
23 Community Guidelines, as a pretext to censor and restrict the LGBTQ+ Plaintiffs’ speech, based  
24 not upon the content of the speech, but rather, upon the identity and political viewpoints of the  
25 LGBTQ+ Plaintiffs. Defendants’ application of criteria and corresponding restraints on the  
26 LGBTQ+ Plaintiffs’ speech is arbitrary and capricious and/or is based upon political, religious, or  
27 other animus towards the identity and viewpoints of the speaker, not the actual content of the  
28 speech.

1           202. Further, because the LGBTQ+ Plaintiffs are so restrained and punished because of  
2 the speakers featured in its videos, as well as those speakers' opinions, Defendants' actions  
3 impinge on and violate LGBTQ+ Plaintiff's right to free association and assembly. Defendants'  
4 actions also violate LGBTQ+ Plaintiff's right to free association and assembly, by blocking  
5 viewers' access to videos and comments.

6           203. No compelling, significant, or legitimate reason justifies Defendants' actions. Even  
7 if such interests did exist to justify Defendants' restriction and demonetization rules generally, the  
8 restrictions imposed on the LGBTQ+ Plaintiffs' speech, are not narrowly or reasonably tailored to  
9 further such interests, because they sweep within their ambit inoffensive and non-graphic  
10 discussions intended and designed for educational purposes. Given Defendants' monopolistic  
11 control over search results, including video search results, as well as online video streaming, the  
12 LGBTQ+ Plaintiffs have no alternative affording it a reasonable opportunity to reach their full  
13 intended audience.

14           204. Defendants' discriminatory policies and application of those policies are not  
15 viewpoint-neutral, are unreasonable in time, place, and manner, and are unreasonable in relation to  
16 the nature, purpose, and use of the forum. They impose an unreasonable prior restraint on the  
17 LGBTQ+ Plaintiffs' protected political speech, motivated by impermissible discrimination against  
18 Plaintiffs' identity and viewpoint.

19           205. Defendants' wrongful actions were taken with oppression, fraud, malice and/or are  
20 arbitrary and capricious, and as part of Defendants' normal course of business, effectuated through  
21 both algorithms, as well as through human agents. And Defendants' actions were done with the  
22 intent to deprive the LGBTQ+ Plaintiffs and their viewers of their rights under the California  
23 Constitution.

24           206. As a direct and proximate result of Defendants' violations of clearly established  
25 law regarding public fora, LGBTQ+ Plaintiffs have suffered, and continue to suffer, immediate  
26 and irreparable injury in fact, including lost income, reduced viewership, and damage to brand,  
27 reputation, and goodwill, for which there exists no adequate remedy at law.

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1 **SECOND CAUSE OF ACTION**

2 **(California Unruh Civil Rights Act—Civil Code §§ 51, et seq.)**

3 **(On Behalf Of The LGBTQ+ Plaintiffs And The YouTube Community Class)**

4 207. The LGBTQ+ Plaintiffs re-allege and incorporate herein by reference, as though set  
5 forth in full, each of the allegations set forth in paragraphs 1 through 206 above.

6 208. Defendants Google and YouTube host business establishments under the Unruh  
7 Civil Rights Act, California Civil Code § 51 et seq. Defendants grant the public unrestricted  
8 access to YouTube for commercial reasons that are at the core of their business model and the  
9 source of virtually all of their revenue.

10 209. Despite their promises of neutrality and a diversity of viewpoints, Defendants  
11 engage in a pattern and practice of intentional discrimination in the provision of their services,  
12 including discriminating against and censoring of the LGBTQ+ Plaintiffs’ speech, based not upon  
13 the content of speech, but on its sexual orientation and political identity and viewpoint. Through  
14 the acts complained of herein, Defendants intentionally denied, and aided or incited in denying,  
15 the LGBTQ+ Plaintiffs full and equal accommodations, advantages, privileges, and services, by  
16 discriminating against it in demonetizing the LGBTQ+ Plaintiffs’ content, and by placing its  
17 videos in Restricted Mode.

18 210. A substantial motivating reason for Defendants’ conduct is Defendants’ subjective  
19 perception of the LGBTQ+ Plaintiffs’ political identity, viewpoints, and religious and sexual  
20 orientation, as well as those of others with whom the LGBTQ+ Plaintiffs are associated.  
21 Defendants’ restrictions on the LGBTQ+ Plaintiffs’ video content is the result of arbitrary,  
22 capricious, invidious, and pretext-based discrimination against the LGBTQ+ Plaintiffs’ political  
23 and religious identity and sexual orientation and viewpoints. It is also wholly without any  
24 legitimate, reasonable business interest, as the content of the restricted and demonetized the  
25 LGBTQ+ Plaintiffs’ videos are completely compliant with the letter and spirit of Defendants’  
26 Terms of Service and Community Guidelines, including satisfying and complying with all of  
27 Defendants’ criteria and rules for reaching younger and “sensitive” audiences. In sum, Defendants  
28 are censoring and treating the LGBTQ+ Plaintiffs and their videos differently from Defendants’

1 own or preferred content, solely because of discriminatory animus towards the LGBTQ+  
2 Plaintiffs' identities and views.

3 211. Defendants' wrongful actions were taken with oppression, fraud and/or malice,  
4 effectuated through both the Google/YouTube algorithms, as well as manual human review of the  
5 LGBTQ+ Plaintiffs' videos and appeals.

6 212. As a direct and proximate result of Defendants' unlawful discriminatory actions,  
7 the LGBTQ+ Plaintiffs suffered, and continue to suffer, irreparable injury in fact, including, but  
8 not limited to: lower viewership, lost advertising opportunities otherwise available to other  
9 nonprofits, decreased ad revenue, and reputational damage, for which there exists no adequate  
10 remedy at law.

11 213. Defendants' violations of the Unruh Act further entitle the LGBTQ+ Plaintiffs to  
12 recover statutory damages of up to three times the amount of actual damages in an amount to be  
13 proven at trial, or a minimum of \$4,000 per violation.

14 **THIRD CAUSE OF ACTION**

15 **(California Business and Professions Code §§ 17200, et seq.)**

16 **(On Behalf Of The LGBTQ+ Plaintiffs And The YouTube Community Class)**

17 214. The LGBTQ+ Plaintiffs re-allege and incorporate herein by reference, as though set  
18 forth in full, each of the allegations set forth in paragraphs 1 through 213 above.

19 215. Defendants have committed acts of unfair competition, as defined by California  
20 Business and Professions Code § 17200, by engaging in the practices described above.

21 216. Defendants' policies and practices, and their application of the same to the  
22 LGBTQ+ Plaintiffs, constitute unlawful, unfair or fraudulent business acts or practices within the  
23 meaning of California Business and Professions Code § 17200. Defendants' policies, as well as  
24 their application, violate the policy and spirit of the Unruh Act, the Lanham Act, the California  
25 Constitution, and prior court decisions. In addition, Defendants compete with third-party content  
26 providers like the LGBTQ+ Plaintiffs, and Defendants' arbitrary and capricious restrictions on  
27 their competitors' speech and content significantly threatens or harms competition. Those actions  
28 are likely to mislead the public, and do mislead the public, about YouTube, Defendants' videos,

1 the LGBTQ+ Plaintiffs, and the LGBTQ+ Plaintiffs' videos. Content creators, advertisers, and  
2 viewers trust and rely on Defendants for an open marketplace of ideas and expression, and further  
3 that when videos are restricted or demonetized, that those videos are truly, and in good faith,  
4 deemed inappropriate for viewing by minors or sensitive viewers.

5 217. There is no utility to the public for Defendants' actions, where those restrictions  
6 treat the LGBTQ+ Plaintiffs and others similarly situated differently, simply because of their  
7 perceived politics and the identity of their speaker. To the extent that Defendants' arbitrarily and  
8 discriminatorily-applied policies have any utility whatsoever, that utility is significantly  
9 outweighed by the harm which they impose on consumers and the public. Defendants have  
10 alternatives to this conduct that would be less harmful to consumers, but do not adopt or apply  
11 them because of their bias against the LGBTQ+ Plaintiffs and others similarly situated.

12 218. As a direct and proximate result of the aforementioned acts, the LGBTQ+ Plaintiffs  
13 have suffered, and continue to suffer, immediate and irreparable injury in fact, including lost  
14 income, reduced viewership, and damage to brand, reputation, and goodwill, for which there exists  
15 no adequate remedy at law.

16 219. Defendants' wrongful actions were taken with oppression, fraud and/or malice.

17 **FOURTH CAUSE OF ACTION**

18 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

19 **(On Behalf Of The LGBTQ+ Plaintiffs And The YouTube Community Class)**

20 220. The LGBTQ+ Plaintiffs re-allege and incorporate herein by reference, as though set  
21 forth in full, each of the allegations set forth in paragraphs 1 through 219 above.

22 221. The LGBTQ+ Plaintiffs and Defendants entered into written contracts in which  
23 Defendants agreed to provide YouTube access, hosting, streaming, and advertising services to the  
24 LGBTQ+ Plaintiffs. Those contracts give Google/YouTube vague, unfettered, and unilateral  
25 discretion to remove, restrict, demonetize, or de-emphasize content as Defendants see fit.

26 222. Implied in those contracts is the implied covenant of good faith and fair dealing.  
27 This is particularly true because, in those contracts, Defendants assumed for themselves unilateral  
28 and unfettered discretionary control over virtually every aspect of their relationship with the

1 LGBTQ+ Plaintiffs—control that Defendants have exercised at their whim, repeatedly and  
2 without notice to the LGBTQ+ Plaintiffs, and without an opportunity for meaningful discussion or  
3 appeal. To the extent that those discretionary powers are valid, Defendants are obligated to  
4 exercise them fairly and in good faith.

5         223. The LGBTQ+ Plaintiffs did all or substantially all of the significant things required  
6 of them under their agreements with Defendants, or were excused from having to do those things.

7         224. Defendants are bound by the implied covenant of good faith and fair dealing in  
8 their agreements, terms, and policies, not to engage in any acts, conduct, or omissions, which  
9 would impair or diminish the LGBTQ+ Plaintiffs’ rights and benefits under the parties’  
10 agreements. Pursuant to the terms of those agreements, the LGBTQ+ Plaintiffs were supposed to  
11 have equal access to a wide audience to promote its messages, and it was in reliance on  
12 Defendants’ representations they chose YouTube as the host of their videos. Also pursuant to  
13 those agreements, the LGBTQ+ Plaintiffs are entitled to some portion of the profits that  
14 Defendants were making from the LGBTQ+ Plaintiffs’ video content. Instead, Defendants have,  
15 by the acts and omissions complained of herein, intentionally and tortiously breached the implied  
16 covenant of good faith and fair dealing by unfairly interfering with Plaintiffs’ rights to receive the  
17 benefits of those contracts.

18         225. The foregoing acts and omissions were engaged in by Defendants with the  
19 knowledge that they were bound to act consistently with the covenant of good faith and fair  
20 dealing. Those acts and omissions were not only failures to act fairly and in good faith, but they  
21 were acts of oppression, fraud, and malice.

22         226. As a direct and proximate result of the aforementioned conduct of Defendants, the  
23 LGBTQ+ Plaintiffs have suffered, and continue to suffer, immediate and irreparable injury in fact,  
24 including lost income, reduced viewership, and damage to brand, reputation, and goodwill, for  
25 which there exists no adequate remedy at law.

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1 **FIFTH CAUSE OF ACTION**

2 **(Lanham Act—15 U.S.C. § 1125 et seq.)**

3 **(On Behalf Of The LGBTQ+ Plaintiffs And The YouTube Community Class)**

4 227. The LGBTQ+ Plaintiffs re-allege and incorporate herein by reference, as though set  
5 forth in full, each of the allegations set forth in paragraphs 1 through 226 above.

6 228. Google/YouTube are engaged in interstate commerce and competition through  
7 hosting, creating, advertising, and soliciting and receiving revenue for advertising, and video  
8 streaming services on YouTube.com. In addition, Google/YouTube compete with content creators  
9 such as the LGBTQ+ Plaintiffs in the market of online video streaming by creating, hosting, and  
10 promoting their own video content, and the video content of a hand-picked cadre of creators with  
11 whom they partner or whom they sponsor.

12 229. Defendants engage in a pattern and practice of knowingly misleading and deceptive  
13 advertisement, and unfair competition. Defendants advertise YouTube, as a word, term, name,  
14 symbol, device, and/or product or service as place for freedom of expression where the rules apply  
15 equally to everyone who uses the site. Defendants unfairly and deceptively misrepresent the  
16 nature, characteristics, and qualities of YouTube’s services and commercial activities as  
17 viewpoint-neutral public forum where content-based regulations, rules, and monetization policies  
18 and practices apply equally to all users.

19 230. In direct violation of these regulations and promises, as well as by deception, fraud,  
20 and other anticompetitive practices, Defendants unlawfully enhance the image and goodwill of  
21 their own content, and that of their partners and/or sponsored creators, while falsely degrading and  
22 stigmatizing the LGBTQ+ Plaintiffs and their videos, including labeling their content as  
23 “shocking,” “inappropriate,” “offensive,” “sexually explicit,” “obscene,” unfit for minors, or the  
24 “gay thing” under the pretext of keeping the platform safe for users.

25 231. Defendants’ false representations and unfair competition both deceived, and had a  
26 tendency to deceive, substantial segments of Defendants’ audiences, including content creators  
27 like the LGBTQ+ Plaintiffs, subscribers, viewers, and advertisers, who are induced to traffic and  
28 do business with YouTube, and to view (or not view) particular videos. As a direct and proximate

1 result of Defendants' actions complained of herein, the LGBTQ+ Plaintiffs have suffered, and  
2 continue to suffer, immediate and irreparable injuries in fact, including injuries in the form of  
3 fewer subscribers to their respective YouTube channels, fewer viewers of their videos, particularly  
4 by isolated and vulnerable LGBTQ+ viewers who would benefit from the video content, fewer  
5 notifications to subscribers regarding their posting of new video content, fewer or no  
6 recommendations of their videos to viewers from Defendants, decreased ad revenue, a reduction in  
7 advertisers willing to purchase advertisements shown on the LGBTQ+ Plaintiffs' videos, diverted  
8 viewership, and damage to their respective brands, reputations and goodwill.

9           232. Defendants' wrongful actions were taken with oppression, fraud and/or malice.  
10 The LGBTQ+ Plaintiffs have repeatedly attempted to remedy the situation, and Defendants have  
11 repeatedly refused to un-restrict or re-monetize the LGBTQ+ Plaintiffs' videos. Defendants have  
12 attempted to justify their differential treatment of the LGBTQ+ Plaintiffs and their respective  
13 videos as necessary to protect sensitive viewers throughout the world, or as a response to an report  
14 that video content was offensive received from someone located somewhere in the world.  
15 Defendants' treatment of LGBTQ+ creator videos like those of the LGBTQ+ Plaintiffs is part of  
16 their normal course of business, effectuated through both the Google/YouTube algorithms, as well  
17 as through their agents manually reviewing Plaintiffs' videos and conducting appeals.

### **PRAYER FOR RELIEF**

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19           1. For a declaratory judgment that Defendants have violated and continue to violate  
20 the LGBTQ+ Plaintiffs' free speech rights, both facially and as applied, under Article I, section 2  
21 of the California Constitution, the Unruh Civil Rights Act, the UCL Law, the express terms and  
22 implied convent of good faith and fair dealing in the contract or contracts between Defendants and  
23 the LGBTQ+ Plaintiffs, and the Lanham Act. An actual controversy exists between the LGBTQ+  
24 Plaintiffs and Defendants as to whether Defendants' policies, practices, and procedures, and their  
25 application thereof, violate the California Constitution, the Unruh Civil Rights Act, the UCL, the  
26 express terms and implied convent of good faith and fair dealing in the contract or contracts  
27 between Defendants and the LGBTQ+ Plaintiffs, and the Lanham Act. The correct interpretation  
28 is that Defendants' policies and procedures violate both on their face and as applied, these

1 constitutional protections and laws, and that a declaration of the parties' respective legal rights and  
2 obligations by the Court will clarify the extent to which Defendants' policies and procedures, and  
3 Defendants' application of their policies and procedures, violate California and federal law; and  
4 will resolve most of the disputes and controversy that now exist because of the policies, practices,  
5 and procedures of Defendants and their application to the LGBTQ+ Plaintiffs and other members  
6 of the YouTube Community as alleged in this Complaint;

7 2. For an injunction requiring Defendants to:

8 a. Cease and desist from capriciously restricting, demonetizing, or otherwise  
9 censoring any content of videos uploaded to the YouTube site in violation of federal and  
10 California law; and

11 b. Cease and desist from censoring, restricting, restraining, or regulating  
12 speech based on the discretionary use or application of discriminatory, animus-based, arbitrary,  
13 capricious, vague, unspecified, or subjective criteria, rules, guidelines, and/or practices;

14 3. For compensatory, special, and statutory damages in an amount to be proven at  
15 trial, including statutory damages pursuant to, *inter alia*, Civil Code § 51, 51.5, 52, Civil  
16 Procedure Code § 1021.5, 15 U.S.C. § 1117, 42 U.S.C. §§ 1981, 1983;

17 4. A civil penalty of \$2,500 for each violation pursuant to Business and Professions  
18 Code §§ 17200, 17206, and 17536;

19 5. For punitive damages and exemplary damages in an amount to be proven at trial;

20 6. For restitution of financial losses or harm caused by Defendants' conduct and ill-  
21 gotten gains, and disgorgement of profit obtained from all unlawful conduct in an amount to be  
22 proven at trial;

23 7. Attorney's fees and costs of suit;

24 8. For prejudgment and post-judgment interest; and

25 9. For any and all other relief that the Court deems just and proper.

### 26 **JURY DEMAND**

27 The LGBTQ+ Plaintiffs demand trial by jury on all issues of law so triable.

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DATED: August 13, 2019

Respectfully submitted,

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By:           /s/ Peter Obstler            
Peter Obstler

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