No. _____

In the Supreme Court of the United States

JOHN DOE 1 AND JOHN DOE 2,
Petitioners,

v.

X CORP., FKA TWITTER, INC.,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Communications Decency Act encourages "Good Samaritan" acts to keep objectionable content off the internet. 47 U.S.C. §230(c). The Act states internet platforms are not liable for "good faith" acts to remove such content. §230(c)(2)(A). It clarifies that platforms may exercise that editorial control without being "treated as the publisher or speaker." §230(c)(1).

The Ninth Circuit construed that Act to immunize an internet platform's knowing and deliberate decision to keep child pornography *on* the internet—a federal crime so damaging that Congress expressly allows victims to seek civil penalties. In response to repeated alerts that child pornography involving Petitioners was on its platform, Twitter asked for John Doe 1's ID, verifying he was a minor. Twitter, in its own words, "reviewed the content" showing coerced sex acts. But Twitter decided "no action will be taken." The video proliferated, and Twitter profited, until a Department of Homeland Security official intervened. The victims sued. Twitter claimed immunity. The Ninth Circuit agreed §230 precludes federal civil penalties for that knowing sexual exploitation of children.

The questions presented are:

1. Whether §230's Good Samaritan immunity applies to the knowing possession and distribution of child pornography.

2. Whether §230's Good Samaritan immunity applies to knowingly benefiting from a sex-trafficking venture.

PARTIES TO THE PROCEEDING

Petitioners are John Doe 1 and John Doe 2. Petitioners were plaintiffs-appellants below.

Respondent is X Corp., the successor in interest to Twitter, Inc., and was the defendant-appellee below.

RELATED PROCEEDINGS

The proceedings below are:

United States District Court (N.D. Cal.):

Doe v. Twitter, Inc., No. 21-cv-00485-JCS (Aug. 19, 2021) (order granting in part and denying in part defendant's motion to dismiss)

Doe v. Twitter, Inc., No. 21-cv-00485-JCS (Oct. 26, 2021) (order granting certification of interlocutory appeal)

Doe v. Twitter, Inc., No. 21-cv-00485-JCS (Dec. 11, 2023) (order granting defendant's motion to dismiss)

United States Court of Appeals (9th Cir.):

Doe 1 v. Twitter, Inc., Nos. 22-15103, 22-15104 (May 3, 2023) (order on interlocutory appeal and cross appeal)

Doe 1 v. Twitter, Inc., No. 24-177 (Aug. 1, 2025) (opinion)

Petitioners are unaware of any other related cases.

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INTRODUCTION

John Doe 1 and John Doe 2 were just 13–14 years old when sex traffickers, posing as teenage girls, lured them to send nude photos and videos of themselves. Then the traffickers turned to blackmail. They threatened to send the photos and videos to the boys' parents, coach, pastor, and others if the boys did not "perform[] sexual acts" and record them for the traffickers. App.179a-80a. The threats worked; the boys complied. App.180a. It all became public anyway. In January 2020, they learned a video was circulating on Twitter that compiled the images and recorded sex acts extorted by the traffickers. App.181a.

What makes this case different than others is that Twitter *knew* that criminal content involving John Doe 1 and John Doe 2 was proliferating on its platform. John Doe 1 himself told Twitter repeatedly. His mom told Twitter repeatedly. Twitter asked for his ID. He provided it and confirmed the boys were minors. Twitter's response? "We've reviewed the content, and didn't find a violation of our policies, so no action will be taken at this time." App.188a. John Doe 1 responded immediately: "What do you mean you don't see a problem? … We both were 13 years of age" and "threatened." App.191a. Still, Twitter made the knowing and deliberate decision to keep the criminal content on its platform. One post amassed more than 160,000 views and many thousands of re-tweets and "likes." Commenters posted, "Is that kid a minor?" Others responded, "[T]hey both are" and worse. App.189a-90a. Twitter changed course and removed the criminal content only after a Department of Homeland Security official intervened.

Knowingly possessing and distributing child pornography and knowingly benefiting from a sex-trafficking venture are federal crimes. Congress empowered victims of those crimes to seek civil remedies. The boys did so. Twitter responded that it was immune, invoking §230 of the Communications Decency Act. The Ninth Circuit sided with Twitter. It concluded knowingly and deliberately keeping criminal content on Twitter was "perforce immune." App.10a (quotation marks omitted). That decision cannot be reconciled with §230's plain text. Reading §230 to cloak knowing criminal wrongdoing with impunity puts that federal statute "at war" with itself and other federal laws. *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 502 (2018).

This case is the right case to begin to address "whether social-media platforms—some of the largest and most powerful companies in the world—can be held responsible for their own misconduct." *Doe v. Snap, Inc.*, 144 S. Ct. 2493, 2493 (2024) (Thomas, J., joined by Gorsuch, J., dissenting from the denial of cert.). This case does not require the Court to exhaust all instances in which §230 applies. It requires answering only this exceptionally important question: Does knowingly possessing, distributing, and profiting from child pornography fall within §230's immunity for "Good Samaritan" acts?

OPINIONS BELOW

The Ninth Circuit's opinion is reported at 148 F.4th 635 and is reproduced at App.1a-21a. That opinion was preceded by the Northern District of California's opinion available at 2023 WL 8568911 and

reproduced at App.30a-50a. The Ninth Circuit's earlier interlocutory decision is available at 2023 WL 3220912 and is reproduced at App.24a-29a. That earlier decision was preceded by the Northern District of California's opinion reported at 555 F.Supp.3d 889 and reproduced at App.53a-144a.

JURISDICTION

The Ninth Circuit entered judgment on August 1, 2025, and denied a petition for rehearing en banc on September 9, 2025. Justice Kagan extended the time to file this petition until February 6, 2026. *See Doe v. Twitter, Inc.*, No. 25A631 (Dec. 1, 2025). This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

The full text of §230 of the Communications Decency Act is codified at 47 U.S.C. §230 and reproduced at App.215a-21a.

The full text of the relevant title 18 provisions are codified at 18 U.S.C. §§1591, 1595, 2252A, 2255 and reproduced at App.222a-38a.

STATEMENT OF THE CASE

I. Factual Background

A. In 2017, John Doe 1 and his classmate, John Doe 2, began interacting on Snapchat with a girl at their school. App.179a. Or so they thought. They sent nude photos and videos at her request. App.179a. She was not who she said she was. She was in fact one or more sex traffickers. App.179a. The boys were just 13–14 years old. App.179a.

Once the traffickers realized that they had ensnared two young boys, they convinced them to send more explicit videos. App.179a. They escalated to blackmail, demanding that the boys record sexually graphic videos and perform sexual acts. *Id.* In exchange, the traffickers promised not to distribute the photos and videos to the boys' parents, coach, pastor, and others in the community. *Id.* Trapped, the boys did as the traffickers demanded. App180a. The traffickers attempted to meet John Doe 1 in person. *Id.* When he tried to block further communications, they said "he had made a big mistake." *Id.*

B. Three years later—John Doe 1 and John Doe 2 still minors—their worst nightmare became reality. A compilation video depicting the images and recorded sex acts—criminal child pornography—became public on Twitter (now X).[1] It was posted, re-posted, and "liked" thousands of times. App.183a, 191a. As it spread among their peers at school, the boys were bullied. App.183a. John Doe 1 considered taking his own life. *Id*. John Doe 2 stopped attending school. *Id*.

When John Doe 1 turned to his parents for help, his mother immediately contacted school officials, law enforcement, and Twitter. App.184a. John Doe 1 also repeatedly contacted Twitter. App.184a. And so began a back-and-forth that resulted in Twitter's knowing and deliberate decision to keep the criminal child pornography on its platform.

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[1] Twitter is now X Corp. Petitioners refer to it as Twitter for continuity with the proceedings below.

First on January 21, 2020, John Doe 1 alerted Twitter to the criminal child pornography, victimizing him specifically, on its platform. App.183a-84a. Twitter asked John Doe 1 to confirm his identity. App.184a-85a. He provided his drivers' license the same day. App.185a. He again told Twitter that he and John Doe 2 "are both minors," that they were "threatened," and that there was "a police report for the situation." *Id.*

The next day, John Doe 1's mother submitted two more reports to Twitter. App.186a. Twitter initially responded with mere automated messages. App.186a-87a. After waiting four days, she again reported the illegal content and reminded Twitter what was at stake: "You [have allowed] child pornography to be [on] your [website] for over a week now. … We want them removed immediately." App.187a-88a. Another two days passed. App.188a-89a.

All the while, the criminal content amassed tens of thousands of views and thousands of re-postings. Two days after John Doe 1 contacted Twitter, one post had been viewed 167,000 times; it was "re-tweeted" 2,223 times and "liked" 6,640 times. App.191a. The criminal content remained live for another week, resulting in many more views and retweets. App.192a, 194a. Even the most cursory glance confirmed its criminal nature. Commenters on one thread posted, "Is that kid a minor?," "they both are," "it sure is," "Is there a continuation for this," "Nice boys," while others labeled the videos "twinks." App.189-90a, 192a.

Finally on January 28, 2020, Twitter responded by email to John Doe 1. App.188a-89a. Despite taking steps to verify he was the minor in the video, this was Twitter's response:

> We've reviewed the content, and didn't find a violation of our policies, so no action will be taken at this time.

Id. The same day, John Doe 1 implored Twitter to reconsider:

> What do you mean you don't see a problem? We both are minors right now and were minors at the time these videos were taken. We both were 13 years of age. We were baited, harassed, and threatened to take these videos.

App.191. And still, Twitter made the knowing and deliberate decision to let the criminal child pornography proliferate on its platform. Twitter also failed to report it to the National Center for Missing & Exploited Children as federal law required. App.188a-89a, 192a; *see* 18 U.S.C. §2258A.

John Doe 1's mother turned to a DHS official for help. App.192a. The official lodged a complaint with Twitter. *Id*. Only then did Twitter remove the criminal content. *Id.* By this point, nine days had passed since John Doe 1 alerted Twitter. App.184a, 192a. Even after removing that content, Twitter did not block the IP address or take other actions against the user who brought it to Twitter. The user was still posting criminal content one year later. App.193a.

C. As detailed in the complaint, Twitter financially benefited by allowing the criminal content to proliferate on its platform. Twitter earns nearly all its revenue from advertising. App.153a-61a. It draws advertisers with its detailed knowledge of users' activities, which allows advertisers to target ads to particular users. App.160a. As long as content on Twitter's platform remains live, Twitter earns money from it, whether legal or illegal. App.165a.

As alleged, Twitter monetizes large amounts of human trafficking and commercial sexual exploitation material on its platform. App.170a, 172a. Despite the site's stated "zero-tolerance child sexual exploitation policy," the facts of this case illuminate that the platform is popular among those wishing to view, buy, sell, or trade child pornography and other sexual exploitation. App.166a-68a, 172a. The complaint alleged that the popularity of these criminal practices on its platform have resulted in significant revenue. App.165a.

II. Procedural History

John Doe 1 and John Doe 2 brought this action against Twitter. Counts 2 and 4 of their amended complaint sought congressionally authorized civil remedies for victims of child sex abuse, including children harmed by those who knowingly possess, distribute, and profit from child pornography. *See* App.195a-97a, 198a-200a.

A. Count 2 sought congressionally authorized civil penalties for knowingly benefiting from a sex-trafficking venture. *See* 18 U.S.C. §§1591(a)(2), 1595. The complaint alleged Twitter had actual knowledge that

it was continuing to distribute criminal content—recordings that "depicted a sex act" with children—and that the content was "the result of extortive threats." App.196a. Twitter "knowingly benefited," the complaint alleged, including financially. *Id.*

The district court initially denied Twitter's motion to dismiss Count 2. App.143a. Twitter took an interlocutory appeal. App.25a, 52a. The Ninth Circuit remanded for further proceedings to consider, *inter alia*, whether Twitter had "a more active degree of participation" beyond a "continuous business relationship" with "users." App.28a (quotation marks omitted). After further proceedings, the district court dismissed Count 2, and the Ninth Circuit affirmed. App.50a, App.21a.

The Ninth Circuit held §230 barred Count 2 because it would require Twitter to "remove third-party posts—a quintessential publishing activity." App.10a. The court rejected Petitioners' narrower framing—that their complaint concerned only posts "already on Twitter's radar" and thus did not impose any "monitoring duty." *Id.* Putting its own spin on Petitioners' "theory for liability," the court concluded Petitioners' claims necessarily imposed "a monitoring obligation" if the only way to avoid monetizing content was to remove it. *Id.*

The Ninth Circuit further held that Count 2 did not fall within §230's clarification, added in 2018, that it does not immunize platforms that financially benefit from online sex-trafficking ventures. App.10a-13a; *see* 47 U.S.C. §230(e)(5). The court agreed that

"Twitter's review of the challenged videos that were posted by a trafficker establishes its knowledge that the videos contained child pornography." App.11a-12a. Still, that was not enough because "Twitter's failure to respond to demands to remove the videos is not the type of affirmative conduct" that the court deemed the relevant statutes to require. *Id.* And the "revenue-generating" nature of that content, even though Twitter made the deliberate decision to leave it on its platform, was not enough of a "knowing benefit." App.12a.

B. Count 4 sought congressionally authorized civil penalties for knowingly receiving, possessing, and distributing child pornography. *See* 18 U.S.C. §2252A(a), (f), §2255(a). The complaint alleged that Twitter had actual knowledge of the criminal content depicting John Doe 1 and John Doe 2 "as minors on its platform" yet "still knowingly received, maintained, and distributed this child pornography." App.199a.

The district court dismissed that claim, and the Ninth Circuit affirmed. App.143a, 29a, 21a. The Ninth Circuit held that claim also "boiled down to deciding whether to exclude material that third parties seek to post online" and so must be dismissed as "perforce immune under section 230." App.29a (quotation marks omitted). When Petitioners asked the Ninth Circuit to

revisit that holding, the court declined. App.10a, 20a-21a.[2]

C. Also relevant, the complaint raised two state-law claims that the Ninth Circuit concluded did *not* implicate §230. The reasons why should have been just as applicable to Petitioners' federal claims. The court reasoned one product-liability theory (Count 5)—challenging Twitter's deficient tools to report child pornography—did "not seek to hold Twitter responsible as a publisher or speaker." App.15a. Likewise the court reasoned that the complaint's negligence *per se* theory (Count 8)—arising from Twitter's breach of various duties including failing to report the child pornography to the National Center for Missing and Exploited Children—did not implicate §230. App.18a-20a. The court observed Twitter's "*actual knowledge*" of the criminal content triggered "a legal duty to promptly report that content to NCMEC." App.20a (emphasis in original). The court reasoned that reporting duty was sufficiently distinct from any duty "associated with publication." *Id*. Section 230, so interpreted by the Ninth Circuit, did not reach a platform's knowing reporting failure because the platform could report the content without removing it—that is,

[2] The Ninth Circuit first addressed Count 4 in the earlier interlocutory appeal. Petitioners cross-appealed the dismissal of Count 4 in response to Twitter's interlocutory appeal regarding Count 2. *See* App.25a, 28a-29a. After the Ninth Circuit remanded for further proceedings on Count 2, Petitioners sought reconsideration of Count 4, and the Ninth Circuit re-affirmed the dismissal of that count. App.21a. Petitioners now bring all issues to this Court "'in a single appeal.'" *Microsoft Corp. v. Baker*, 582 U.S. 23, 36 (2017); *see Goldstein v. Cox*, 396 U.S. 471, 478 (1970) ("[P]iecemeal appellate review is not favored.").

the platform could continue to knowingly distribute criminal child pornography. *Id.*

The Ninth Circuit denied the petition for panel rehearing and rehearing en banc on September 9, 2025. App.22a-23a.

REASONS FOR GRANTING THE PETITION

The Court should hear this case because it involves "an important question of federal law that has not been, but should be, settled by this Court." S. Ct. R. 10(c). The decision below puts §230 at war with itself and other federal statutes integral to protecting children from sex crimes. This case is the right vehicle to begin to address the limits of §230(c) immunity for "Good Samaritan" acts. Knowingly possessing, distributing, and profiting from child pornography are not immune acts. Victims can recover civil penalties for that criminal wrongdoing as Congress authorized.

I. Section 230's scope is exceptionally important and warrants review.

A. Social-media sites including Twitter (now X) are "the modern public square." *Packingham v. North Carolina*, 582 U.S. 98, 107 (2017). In the span of 30 years, social-media companies "have gone from unheard-of to inescapable," creating both "unparalleled opportunities and unprecedented dangers." *Moody v. NetChoice, LLC*, 603 U.S. 707, 716 (2024).

Congress anticipated those dangers from the beginning and enacted the Communications Decency Act to protect minors from harmful content on the internet. *See Reno v. ACLU*, 521 U.S. 844, 849 (1997). In

§230, Congress struck a particularly worded balance to immunize some "Good Samaritan" acts by internet platforms, but not all acts. 47 U.S.C. §230(c); *see Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 475 n.4 (2025) ("Congress thereby aimed to spur the development and use of filtering technology so that parents could prevent their children from accessing sexually explicit content online."). The courts' role is to "enforce" that statutory language "according to its terms," *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009), "'in their context and with a view to their place in the overall statutory scheme,'" *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000).

But for §230, the lower courts have all but rewritten Congress's enacted text. Certiorari is warranted to return to the words Congress chose for a statute that governs some of the country's largest companies and the billions who use them. *See, e.g.*, *Stevens v. Dep't of Treasury*, 500 U.S. 1, 5 (1991) ("We granted certiorari over respondents' opposition because of what appeared to us to be a clear misreading by the lower courts of the applicable and important federal statute."). That much-needed course correction would not mean plaintiffs, often harmed children, always win. "It simply would give plaintiffs a chance to raise their claims in the first place." *Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13, 18 (2020) (Thomas, J., respecting the denial of cert.).

1. The version of §230 that Congress enacted goes as follows. The provision expresses a stated "policy" to incentivize "the development and utilization of blocking and filtering technologies that empower parents to

restrict their children's access to objectionable or inappropriate online material." 47 U.S.C. §230(b)(4). Titled "Protection for 'Good Samaritan' Blocking and Screening of Offensive Material," §230(c) provides that incentive.

Section 230(c) begins with a clarification. Section 230(c)(1) is "definitional." *Malwarebytes*, 141 S. Ct. at 14 (Thomas, J.). It states that an "interactive computer service"—*e.g.*, Twitter and other social-media companies—shall not "be treated as the publisher or speaker of any information provided by another information content provider," §230(c)(1)—*e.g.*, tweets if Twitter is not "responsible, in whole or in part, for the[ir] creation or development," §230(f)(3). Detailed below (*infra*, II.B.1), the phrase "treated as the publisher or speaker" had a recognizable common-law meaning for defamation and other torts when Congress enacted §230. *See Malwarebytes*, 141 S. Ct. at 14-15 (Thomas, J.). In short, §230(c)(1) means internet companies may exercise editorial control over content on their platforms without being strictly liable for everything posted, modestly departing from common-law default rules for publishers. *Id.*; *see* Michael L. Rustad & Thomas H. Koenig, *Rebooting Cybertort Law*, 80 Wash. L. Rev. 335, 369 (2005) (discussing common-law publisher liability).

The statute's next subpart is what "provides direct immunity from *some* civil liability." *See Malwarebytes*, 141 S. Ct. at 14 (Thomas, J.) (emphasis added). Section 230(c)(2) states internet providers are not "liable" for "any action voluntarily taken in good faith *to restrict access to* or availability of material that the

provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected," §230(c)(2)(A) (emphasis added), or making available the "technical means to restrict access" to such material, §230(c)(2)(B).

That text was not enacted in isolation and must be construed in view of the whole Communications Decency Act. *See Graham Cnty. Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 559 U.S. 280, 290 (2010) (Courts "'construe statutes, not isolated provisions.'"). The Act was a response to dangers that the internet posed to minors. *See Reno*, 521 U.S. 844. Indeed, the Act so aggressively attempted to protect minors that this Court enjoined enforcement of other provisions as unconstitutional. *Id.* at 849, 859-60.

2. The lower courts' version of so-called "§230 immunity" goes far beyond that text. They misread §230(c) to "confer sweeping immunity," shielding "*any* decision to edit or remove content." *Malwarebytes*, 141 S. Ct. at 13, 17 (Thomas, J.). They deem companies immune from suits challenging their own "egregious, intentional acts." *Snap,* 144 S. Ct. at 2494 (Thomas, J.). Bucking common-law background principles, they dismiss suits "even when a company distributes content that it *knows* is illegal." *Malwarebytes*, 141 S. Ct. at 15 (Thomas, J.) (citing *Zeran v. America Online, Inc.*, 129 F.3d 327, 331-34 (4th Cir. 1997)). As those decisions have proliferated, social-media companies have "increasingly used §230 as a get-out-of-jail free card." *Snap*, 144 S. Ct. at 2494

(Thomas, J.). Discussed below (*infra*, II.B), that broad immunity cannot be reconciled with §230's text, covering "Good Samaritan" acts taken in "good faith," and the background common-law rules against which Congress legislated. *See Snap*, 144 S. Ct. at 2493-94 (Thomas, J.); *Malwarebytes*, 141 S. Ct. at 14-16 (Thomas, J.).

A "growing chorus" of judges and scholars from diverse perspectives agree that the lower courts have stretched §230 immunity too far and have asked this Court to intercede. *Gonzalez v. Google LLC*, 2 F.4th 871, 913 (9th Cir. 2021) (Berzon, J., concurring), *vacated and remanded*, 598 U.S. 617 (2023); *see, e.g.*, *Doe v. Snap, Inc.,* 88 F.4th 1069, 1069-72 (5th Cir. 2023) (Elrod, J., joined by Smith, Willett, Duncan, Engelhardt, Oldham, and Wilson, J.J., dissenting from denial of rehearing en banc) (discussing "atextual transformation of Section 230"); *Force v. Facebook, Inc.*, 934 F.3d 53, 79-80 (2d Cir. 2019) (Katzmann, C.J., concurring in part and dissenting in part); Adam Candeub, *Reading Section 230 as Written*, 1 J. of Free Speech L. 139, 141 (2021); Rustad & Koenig, 80 Wash. L. Rev. at 374; Danielle Keats Citron & Benjamin Wittes, *The Internet Will Not Break: Denying Bad Samaritans §230 Immunity*, 86 Fordham L. Rev. 401, 408 (2017).

B. Members of this Court have joined that growing chorus. *See Snap*, 144 S. Ct. 2493 (Thomas, J., joined by Gorsuch, J.); *Doe v. Facebook, Inc.,* 142 S. Ct. 1087 (2022) (Thomas, J., respecting the denial of cert.); *Malwarebytes*, 141 S. Ct. 13 (Thomas, J.).

Whether §230 shields internet platforms for their own knowing and deliberate acts "warrants the Court's review." *Snap*, 144 S. Ct. at 2494 (Thomas, J.). Affecting "some of the largest and most powerful companies," the issue is undoubtedly important. *Id.* at 2493. Social-media companies play an outsized role in the lives of hundreds of millions of Americans. *See Moody*, 603 U.S. at 716. When States have attempted to regulate, those companies have claimed such regulations offend the First Amendment because of the control the companies have over users' content. *Snap*, 144 S. Ct. at 2494 (Thomas, J.); *see Moody*, 603 U.S. 707. But when named as a defendant in this lawsuit or others, they "argue the opposite," claiming §230 immunity from "any suit implicating users' content." *Snap*, 144 S. Ct. at 2494 (Thomas, J.).

Extending §230(c) so far beyond its text has had "serious consequences." *Malwarebytes,* 141 S. Ct. at 18 (Thomas, J.); *Snap*, 144 S. Ct. at 2494 (Thomas, J.) ("[T]here is danger in delay."). The notion that social-media companies may claim immunity from civil penalties for knowingly and deliberately possessing and distributing criminal child pornography on their platforms incentivizes a lawless and dangerous "public square," *Packingham*, 582 U.S. at 107. That came at great cost to Petitioners. They could not convince Twitter to remove criminal videos even after John Doe 1 verified his identity and emphasized repeatedly that he and John Doe 2 were minors and had gone to the police. App.185a. In response, Twitter said it "reviewed the content" but would take "no action." App.188a-89a. That criminal wrongdoing was so destructive that John Doe 1 considered ending his life.

App.183a. It took a DHS official to convince Twitter to change course. The tragic exploitation of children that occurred here will continue to repeat itself without this Court's review. *See Facebook*, 142 S. Ct. at 1088 (Thomas, J.).

This Court has warned about the dangers of child sex abuse, observing "[t]he prevention of exploitation and abuse of children constitutes a government objective of surpassing importance." *New York v. Ferber*, 458 U.S. 747, 757 (1982). This Court has refused to "second-guess" severe punishments for knowing distributors of child pornography. *Id.* at 758-60. Congress, like state legislatures nationwide, has recognized the damage child pornography wreaks on its victims. *See* Pub. L. No. 109-248, §501(1)(A), 120 Stat. 587, 623. Social media has "greatly increas[ed] the interstate market in child pornography." *Id*. And Congress has responded to such internet harms, including in the Communications Decency Act itself. *See, e.g.*, 18 U.S.C. §§1591(a)(2), 1595, 2252A(a), 2255(a); 47 U.S.C. §§223, 230(a)-(b) .

Courts must enforce those statutes as written. *Jimenez*, 555 U.S. at 118. As this Court observed, lawmakers are generally "better positioned than courts" when it comes to regulating such dangers on the internet. *Moody*, 603 U.S. at 716. It's time to bring that wisdom to bear for §230.

II. The decision below is wrong.

A. The Ninth Circuit's rule, disregarding knowing criminal wrongdoing, is overbroad.

The decision below follows a string of Ninth Circuit decisions interpreting §230(c) to confer "broad immunity" for claims against social-media companies "for publishing content provided primarily by third parties." *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1123 (9th Cir. 2003). The court's rule is that "any activity that can be boiled down to deciding whether to exclude material that third parties seek to post online is perforce immune under section 230." *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1170-71 (9th Cir. 2008). It does not matter if the platform has actual knowledge that the material is criminal and deliberately distributes it. What matters is "if the means to avoid liability requires the defendant to act as a publisher." App.8a. With that as the rule, §230 extends far beyond Good Samaritan acts. Even when platforms engage in "egregious, intentional acts," they may "wield[] §230 as a shield against suit." *Snap,* 144 S. Ct. at 2494 (Thomas, J.).

The Ninth Circuit applied that broad rule to dismiss Petitioners' federal claims at step-one of their case. The court was agnostic to the knowing and deliberate nature of Twitter's acts—*i.e.*, its actual knowledge that the boys were minors, its affirmative representation that it "reviewed the material" showing coerced sexual acts involving those minors, and its deliberate decision to continue distributing that

criminal content. App.11a-12a. With respect to Count 2 (knowingly benefitting from a sex-trafficking venture), the Ninth Circuit deemed it irrelevant that "Twitter knew that the images at issue were child pornography." App.10a. What mattered was that the claim challenged "quintessential publishing activity" insofar as it would require Twitter "to remove third-party posts" to avoid liability. *Id.* (citing *Roommates.com*, 521 F.3d at 1170-71). With respect to Count 4 (knowingly possessing and distributing child pornography), the court did not grapple with Twitter's actual knowledge before concluding that claim must be dismissed since it "'boiled down to deciding whether to exclude material that third parties seek to post.'" App.29a (quoting *Roommates.com*, 521 F.3d at 1170-71); *see* App.20a-21a (re-affirming that holding).

The Ninth Circuit's treatment of Petitioners' separate state-law claims further illustrates how its rule is a poor fit for §230's text. The court concluded a design-defect claim ("mak[ing] it too difficult to report child pornography") was beyond §230(c) because it did not "turn[] on … publication of any content." App.14a-15a. Similarly, the court concluded the negligence *per se* claim (breaching the duty to report child pornography to NCMEC) did not challenge Twitter's "role as a publisher." App.20a. Unlike its treatment of the federal claims, the court accounted for Twitter's "actual knowledge," which it said distinguished the negligence claim from one requiring Twitter to "scour its platform." App.20a. The reporting duty was triggered only once Twitter represented "it had 'reviewed the content.'" *Id*. Moreover, it was only a "reporting duty," meaning Twitter did not have to "take any action

associated with publication (e.g., removal)," even once it knew it was distributing child pornography. App.20a. In other words, platforms need only *report* child pornography but—invoking §230—may continue to possess, distribute, and profit from it with impunity.

The Ninth Circuit's approach, simply asking whether a claim would require an internet platform "to take any action associated with publication (e.g. removal [of criminal content])," *id.*, is not the §230 inquiry. It gets the problem solved by §230(c) exactly backwards and disregards knowing criminal wrongdoing. Neither §230's text nor the common-law background principles against which it was enacted purport to immunize such conduct.

B. Section 230 does not immunize knowing wrongdoing.

Nothing in §230 immunizes an internet platform's knowing and deliberate decision to keep child pornography *on* the internet. Quite the opposite—the statute is best understood as an invitation for internet companies to exercise editorial control and clean up their platforms. Section 230(c) provides that incentive. Section 230(c)(1) codifies a modest departure from existing common-law strict-liability rules that would otherwise attach for exercising such editorial control. *Infra*, II.B.1. Section 230(c)(2) confirms that internet platforms will not face liability for *removing* content. *Infra*, II.B.2. To conclude otherwise puts §230 at war with itself and other federal laws. *Infra*, II.B.3.

1. Section 230(c)(1) is a "definitional" provision that is best understood as clarifying where internet platforms fit within common-law default rules. *Malwarebytes*, 141 S. Ct. at 14 (Thomas, J.). It says internet platforms shall not "be treated as the publisher or speaker" of their users' posts. 47 U.S.C. §230(c)(1). That phrase—"treated as the publisher or speaker"—refers to a recognizable common-law default rule preexisting §230's enactment. This Court presumes Congress used that phrase consistent with that common-law understanding. *See Sekhar v. United States*, 570 U.S. 729, 732-33 (2013).

The phrase "treated as the publisher or speaker," §230(c)(1), refers to the common-law rule that publishers (such as newspapers) were strictly liable for publishing unlawful content, even if they published without knowing it was unlawful. *See Malwarebytes*, 141 S. Ct. at 14 (Thomas, J.). Because publishers exercise editorial control over what to publish, the common law treated a publisher who exercised that editorial control to publish a speaker's defamatory or otherwise unlawful speech as the though the publisher was the speaker herself. *See Cianci v. New Times Publ'g Co.*, 639 F.2d 54, 61 (2d Cir. 1980) (Friendly, J.) (citing Restatement (Second) of Torts §578 (1977)). But for distributors (such as booksellers), liability rules "were different." *Malwarebytes*, 141 S. Ct. at 14 (Thomas, J.). Unlike publishers, a bookseller was not presumed to have "'ma[de] himself aware of the contents of every book in his shop.'" *Smith v. California*, 361 U.S. 147, 152-53 (1959). But that is not to say that booksellers or other distributors were entirely immune at common law. Distributors still faced liability for

distributing content that they "knew (or constructively knew)" was unlawful. *Malwarebytes*, 141 S. Ct. at 14 (Thomas, J.); *see also, e.g.*, *Cubby, Inc. v. CompuServe, Inc.*, 776 F. Supp. 135, 139-40 (S.D.N.Y. 1991).

A paradigmatic example of that common-law default rule for publishers is the case that prompted §230(c). *See Free Speech Coal.*, 606 U.S. at 475 n.4. An early website functioning as a virtual bulletin board, Prodigy, had a well-meaning policy of screening posts and removing those that were not "family oriented." *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, 1995 WL 323710, at *2 (N.Y. Sup. Ct. May 24, 1995). Because Prodigy screened *some* content, it became liable for *all* content as a "publisher." *Id.* at *3. Accordingly, when another user posted defamatory content that slipped through Prodigy's screening, Prodigy was strictly liable for it. *Id*. But perversely, had the website not screened for offensive content, it would have been deemed a mere distributor and thus not liable unless it "knew or had reason to know of the defamatory statement at issue." *Id.* (distinguishing rejected defamation claims in *Cubby*, 776 F. Supp. 135, because the internet provider was just a "passive conduit" without "editorial control").

These common-law rules posed a problem for reining in the dangers of the developing internet. Platforms were better off letting dangerous material proliferate on their sites because any Good Samaritan acts to remove it "would subject the service provider to publisher liability." Rustad & Koenig, 80 Wash. L. Rev. at 342 n. 24.

Congress solved that problem with §230(c)(1). The provision eschews *Stratton Oakmont*'s perverse outcome with this modest departure from the common law: Internet platforms may exercise editorial control, removing offensive content, without being "treated as the publisher or speaker." §230(c)(1). That is, they may remove offensive content without saddling themselves with the strict liability that publishers faced at common law, presuming knowledge of all content. Congress thus invited internet providers to exercise some editorial control and clean up their platforms.

But nothing in that modest departure from strict-liability rules for publishers further immunizes internet platforms' *knowing* wrongdoing, and certainly not knowing criminal-level wrongdoing. Not even distributors were immune at common law for knowing wrongdoing. *See Malwarebytes*, 141 S. Ct. at 15-16 (Thomas, J.); *Doe v. Am. Online, Inc.*, 783 So. 2d 1010, 1019 (Fla. 2001) (Lewis, J., dissenting) (discussing how majority rule "ignores the common law underpinnings" and "fails to accommodate the traditional distinction between publishers and distributors"); *Smith*, 361 U.S. at 153 n.9 (describing "scienter" requirement for "[c]ommon-law prosecutions for the dissemination of obscene matter"); *see, e.g.*, *Cubby*, 776 F. Supp. at 139, 141 (treating internet provider as a distributor and rejecting that the provider had sufficient "knowledge" for distributor liability); *Bohin v. State*, 274 S.E.2d 592, 593 (Ga. Ct. App. 1980) (affirming distributors' convictions for knowing distribution of obscene materials).

Section 230(c)(1)'s gloss on these common-law default rules is far more modest. If an internet platform exercises editorial control, which would make it a publisher at common law, but "*unknowingly* leaves up illegal third-party content, it is protected from publisher liability," even though a traditional publisher would not be. *Malwarebytes*, 141 S. Ct. at 15 (Thomas, J.) (emphasis added). But *knowing* acts have always been on different footing. And the phrase "treated as the publisher or speaker" did not create a liability-free zone for internet platforms with actual knowledge of criminal content on their platforms. *See id.*; *Snap*, 144 S. Ct. at 2494 (Thomas, J.). After all, the same Congress in another section of the same Communications Decency Act attempted to prohibit "knowingly … display[ing]" obscene material to children, "even if a third party created that content"—*i.e.*, distributor liability. *See Malwarebytes*, 141 S. Ct. at 15 (Thomas, J.) (quoting 47 U.S.C. §223(d), later enjoined as unconstitutional). And Congress elsewhere has broadly prohibited the knowing possession and distribution of child pornography including by "computer." 18 U.S.C. §2252A(a); *infra*, II.B.3.

The decision below cannot be reconciled with that understanding of §230(c)(1). The Ninth Circuit disregarded allegations of a platform's knowing criminal-level wrongdoing. Reading the word "publisher" in isolation, the court misinterpreted §230 as a hall-pass to knowingly possess, distribute, and profit from criminal content. The court's summation of its rule—that platforms are immune from claims if avoiding liability would require them "to act as a publisher" and remove criminal content, App.8a, 18a—gets §230 backwards.

Described above, §230 *invites* internet platforms to exercise editorial control by clarifying in §230(c)(1) that they may do so without then being "treated" as publishers—*i.e.*, presumed knowledgeable of all content and thus strictly liable for any of it. Put another way, §230(c)(1) nowhere says not to "*act* as a publisher." *Contra* App.8a, 18a (emphasis added). It simply says platforms will not be "*treated*" as such for billions of posts that they could not possibly review. §230(c)(1) (emphasis added).

Section 230(c)(1) does not put internet platforms above the law, cloaking them with immunity despite knowingly possessing, distributing, and profiting from child pornography. Yet, that is exactly what the Ninth Circuit posited: Twitter cannot be required to "take any action associated with publication (e.g., removal)," even "once it learns of the objectionable content." App.20a. For child pornography, that is a crime with congressionally authorized civil penalties. It works the utmost perversion of federal law to declare a company "immune" from those civil penalties for its own knowing acts.

2. Section 230(c)'s other provisions confirm that knowingly and deliberately keeping criminal content *on* a platform is not immune.

Section 230(c)(2) extends immunity to a social-media company's exercise of editorial control for purposes of *removing* content from their platforms. It is not a "get-out-of-jail free card" for knowing federal offenses. *Snap*, 144 S. Ct. at 2494 (Thomas, J.); *see Malwarebytes*, 141 S. Ct. at 14 (Thomas, J.) (describing

§230's "limited protection" that allows platforms to remove obscene content "without worrying about legal reprisal"). Section 230(c)(2) does not purport to shield companies from "any action" but more specifically "any action voluntarily taken in good faith to restrict access to or availability of material" that, in their subjective view, "the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected." §230(c)(2)(A). Likewise, the provision says liability will not attach for technologies the platform develops "to restrict access" to such materials. §230(c)(2)(B). The immunity applied here—to dismiss claims that a platform had actual knowledge of criminal content and deliberately distributed it despite the victim's pleas—is nowhere in that text. A platform's knowingly culpable conduct to keep criminal content *on* the internet is the opposite of a "good faith" act to "restrict access." §230(c)(2)(A).

Section 230(c)'s heading also confirms that the provision covers "Good Samaritan" acts, not all acts. Congress itself titled §230(c) "Protection for 'Good Samaritan' Blocking and Screening of Offensive Material." Pub. L. No. 104-104, §509, 110 Stat. 56, 137 (Feb. 8, 1996). That title well captures Congress's desire to invite internet platforms to voluntarily exercise editorial control to block obscene or objectionable material. *See, e.g.*, §230(b)(4). Just as the common law extended immunity to Good Samaritans who acted in "good faith" to render care or assistance to others in emergencies, 4 American Law of Torts §15:3, Congress extended §230 immunity for companies who acted in

"good faith" to clean up their platforms, §230(c)(2)(A). And just as Good Samaritan immunity would not extend to "intentional misconduct," *e.g.*, *Bunting v. United States*, 884 F.2d 1143, 1146 (9th Cir. 1989), nothing in §230 purports to immunize the knowing and deliberate distribution of criminal content, *supra*, II.B.1. While "not commanding," that heading is a telling "cue[]" regarding §230(c)'s modest scope. *Yates v. United States*, 574 U.S. 528, 539-40 (2015). The knowing criminal acts alleged here are the opposite of "'Good Samaritan' Blocking and Screening of Offensive Material." Nothing in §230(c)(2) precludes victims' suits for congressionally authorized civil penalties for such knowing criminal wrongdoing.

3. That reading of §230(c) is "harmonious" with other federal laws, while the lower court's more sweeping immunity puts them "at war with one another." *Epic Sys.*, 584 U.S. at 502.

Congress has actively legislated to prohibit the knowing distribution of materials harmful to children—chief among them, material depicting the sexual abuse of children themselves. Other provisions of the Communications Decency Act attempted to broadly prohibit the "knowing[]" distribution of obscene materials to minors. 47 U.S.C. §223(a), (d); *see generally Reno*, 521 U.S. 844 (enjoining enforcement of portions of the Act). In title 18, Congress provided civil remedies for victims harmed by those who knowingly possess and distribute child pornography by "computer," 18 U.S.C. §2252A(a), (f); §2255(a), and those who knowingly benefit, including financially, from a sex-trafficking venture, §§1591(a)(2), 1595.

The growing internet spurred Congress to *expand* those civil remedies, not to limit them. *See* Pub. L. No. 110-457, §221, 122 Stat. 5044, 5067 (Dec. 23, 2008).

Yet when Petitioners sought those congressionally authorized civil remedies here, the Ninth Circuit held §230 works an unspoken exception for internet platforms, even when knowingly and deliberately possessing, distributing, and profiting from criminal content. It does not. Congress spoke to such circumstances in title 18. Anyone who "knowingly … distributes" or "possesses" child pornography is liable, including for civil penalties. 18 U.S.C. §2252A(a)-(b), (f); §2255(a). Once an internet platform has actual knowledge of criminal child pornography on its platform, who created it becomes irrelevant. *See, e.g.*, *United States v. Waguespack*, 935 F.3d 322, 326-27 (5th Cir. 2019) (affirming conviction where defendant downloaded but did not create child pornography). Likewise, in response to the growing epidemic of sex trafficking on the internet, Congress authorized civil penalties against "whoever" knowingly benefits from a sex-trafficking venture, not sex traffickers alone. *See* Pub. L. No. 110-457, §221, 122 Stat. at 5067 (codified at 18 U.S.C. §1595(a)).

Because §230(c) can be read as a "harmonious whole" with these civil penalties for knowing criminal wrongdoing, *Epic Sys.*, 584 U.S. at 502, there is no "permissible justification for a repeal by implication," *Morton v. Mancari*, 417 U.S. 535, 550 (1974). Section 230 addresses *unknowing* conduct and "good faith" acts, *supra*, II.B.1-2, nothing like the knowing acts alleged here. Twitter did not "unknowingly leave[] up

illegal third-party content." *Malwarebytes*, 141 S. Ct. at 15 (Thomas, J.). The complaint alleges actual knowledge. App.184a-192a. Twitter had actual knowledge that Petitioners were only "13 years of age," that they were "threatened" and "harass[ed]," that they were victims of "sex abuse" and "child pornography," and that the police were involved. *Id.* Twitter "reviewed the content" showing coerced sexual acts extorted by sex traffickers. App.188a. And Twitter deliberately continued to possess, distribute, and profit from that content even after John Doe 1 and his mother repeatedly implored Twitter to remove it. App.188a-191a. Whatever the outermost limits of §230 immunity might be, those allegations put Petitioners' claims well beyond them.

C. Even if §230 immunizes some knowing wrongdoing, it does not immunize knowing criminal wrongdoing.

1. Section 230(c) does not reach the knowing and deliberate possession and distribution of child pornography, just as it would not reach a platform's knowing possession and distribution of illegal drugs, guns, or any other criminal contraband. The statute says an internet platform will not be liable for "*restrict*[*ing*] access to" certain content—*e.g.*, *removing* it. 47 U.S.C. §230(c)(2)(A) (emphasis added). It says nothing about deliberate refusals to remove content, especially not *criminal* content. *Supra*, II.B.2. If there were any doubt on that score, the statute elsewhere clarifies it shall not "be construed to impair the enforcement of section … 110 (relating to the sexual exploitation of children) of title 18." §230(e)(1). Read together, there

is no reason to read §230 to preclude this action for civil penalties enacted as part of "the enforcement" mechanism for the cited section of title 18, §230(e)(1), when this action has nothing to do with "good faith" acts to "restrict access" to content exploiting children and everything to do with deliberate acts to distribute it, §230(c)(2)(A).

Yet here, despite that text, the Ninth Circuit read §230 to preclude congressionally authorized civil penalties for those crimes relating to the sexual exploitation of children. There was no reason to read §230(c) at war with those civil penalties. *Supra*, II.B.3. Criminal content sexually exploiting children is in a category of its own because it is "intrinsically related to the sexual abuse of children." *Ferber*, 458 U.S. at 759. Congress and all States prohibit it, creating every incentive for knowing "possessors of these materials to destroy them," *Osborne v. Ohio*, 495 U.S. 103, 110-11 (1990)—internet platforms included.

2. Finally, even if §230(c) were broad enough to immunize the knowing possession and distribution of child pornography, it still does not immunize Count 2 of Petitioners' complaint. In response to the sweeping immunity conferred by lower courts, Congress removed all doubt that sex-abuse victims may seek civil remedies from anyone benefitting from a sex-trafficking venture. *See* 47 U.S.C. §230(e)(5). And still, the Ninth Circuit decided Petitioners could not even pursue those civil remedies past the motion-to-dismiss stage. App.10a-13a.

Congress authorized those civil remedies for minors caused to engage in "commercial sex act[s]." 18 U.S.C. §§1591(a)(2), 1595. As dangers grew on the developing internet, Congress expanded those civil remedies—allowing actions against not just direct perpetrators but also against "*whoever* knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in" trafficking. Pub. L. No. 110-457, §221, 122 Stat. at 5067 (codified at 18 U.S.C. §1595(a)) (emphasis added). Applied here, once Twitter obtained actual knowledge that it was hosting criminal content showing two minors engaged in commercial sex acts, Twitter was obligated to refrain from knowingly benefitting—*i.e.*, financially benefiting from the tens of thousands of views and re-postings. *See* 18 U.S.C. §1591(a)(2); *see also, e.g., United States v. Tollefson*, 367 F. Supp. 3d 865, 879 (E.D. Wis. 2019) (discussing how §1591 applies to sexual extortion of minors on the internet).

When the First Circuit deemed internet platforms immune from those civil penalties, *see Jane Doe No. 1 v. Backpage.com*, 817 F.3d 12 (1st Cir. 2016), Congress responded by enacting the Allow States and Victims to Fight Online Sex Trafficking Act (or FOSTA) in 2018. Pub. L. No. 115-164, 132 Stat. 1253 (codified at 47 U.S.C. §230(e)(5)). FOSTA amended §230 to confirm it should not have been "construed to impair or limit" civil actions "brought under section 1595 of title 18, if the conduct underlying the claim constitutes a violation of section 1591," or state criminal prosecutions for such offenses. *Id.*

But here, the Ninth Circuit held that "carveout" did not apply because Petitioners "did not sufficiently allege" that "Twitter itself violated §1591," App.11a, collapsing liability for direct perpetrators, 18 U.S.C. §1591(a)(1), and the broader class of those who "benefit[]," §1591(a)(2). The Ninth Circuit did not quibble with Twitter's knowledge: "Twitter's review of the challenged videos that were posted by a trafficker establishes its knowledge that the videos contained child pornography." *Id.* Nor did it quibble with the connection to sex trafficking, stating "we understand the logic of Plaintiffs' argument that continuing to make available known child pornography is tantamount to facilitating sex trafficking." App.12a. And yet, that knowing distribution of child pornography was not enough for the court. Affirmatively rejecting "demands to remove the videos"—that is, affirmatively distributing them on the platform—is not "'affirmative conduct' that constitutes 'assistance, support, or facilitation' of sex trafficking," the court held. App.11a-12a. The "knowing benefit," reduced to "[g]eneric advertising revenue schemes" in the court's words, was also not enough. App.12a. The court equated Twitter's deliberate distribution to "turning a blind eye to illegal revenue-generating content," *id.*, even though moments before it agreed Twitter had actual "knowledge" and let the criminal child pornography proliferate anyway. App.11a.

By reducing the complaint to turning a "blind eye" and "[g]eneric advertising revenue schemes," App.12a, the Ninth Circuit failed to read the complaint as a whole in the light most favorable to Petitioners. *See NRA v. Vullo*, 602 U.S. 175, 195 (2024).

Petitioners did not allege that Twitter reaped passive revenue, unaware of what was taking place on its site. Petitioners alleged that they made Twitter specifically aware of the criminal content. When Twitter obtained actual knowledge that the boys were minors and "reviewed" the content showing their coerced sexual acts and labeling them "twinks," Twitter likewise obtained actual knowledge that it was generating revenue from that rapidly proliferating content specifically. App.184a-192a. And still, Twitter took "no action," continuing to generate revenue, until a DHS official intervened. *Id.* Twitter also maintained a search-suggestion feature to help users find that criminal content. App.177a-78a. And it worked. Just one post was viewed more than 167,000 times, commented on 10 times, retweeted 2,223 times, and "liked" 6,640 times—with every such user interaction having monetary significance for Twitter. App.191a.

Those allegations are more than enough to allow Petitioners' case to proceed past the motion-to-dismiss stage. Their claim was not that Twitter was required to monitor billions of posts. *Contra* App.11a-12a. It was that once Twitter was made specifically aware of criminal content showing coerced sex acts, federal law prohibited its deliberate decision to continue benefiting financially by allowing that content to rapidly proliferate. App.184a-192a. Nothing in §230 precludes Petitioners from developing that claim in further proceedings. *See Malwarebytes*, 141 S. Ct. at 18 (Thomas, J.) ("Paring back the sweeping immunity … would not necessarily render defendants liable" and "simply would give plaintiffs a chance to raise their claims in the first place."). Section 230 never immunized that

knowing violation of federal law, and Congress made that doubly clear with FOSTA. *See G.G. v. Salesforce*, 76 F.4th 544, 567 (7th Cir. 2023) (explaining a platform's "duty not to benefit knowingly … does not depend in any way on [its] supposed 'status or conduct as a 'publisher or speaker'"); *In re Apple Inc. App Store Simulated Casino-Style Games Litig.*, 625 F. Supp. 3d 971, 992 (N.D. Cal. 2022) ("[S]ection 230 does not apply to a platform's *own* bad acts.").

III. This case is the right vehicle to begin clarifying §230's scope.

A. This case is an excellent vehicle, allowing the Court to make an important inroad clarifying §230's scope without biting off too much. The case turns on actual knowledge. The allegations are those of a platform's own criminal-level wrongdoing. It allows the Court to start with the easy question: Can an internet platform claim "Good Samaritan" immunity after it obtains actual knowledge that it is possessing, distributing, and profiting from child pornography—federal crimes—and makes the deliberate decision to keep that criminal content *on* its platform? The Court can leave for another day more difficult questions that might arise in future cases about only tortious conduct or a *mens rea* short of Twitter's "*actual knowledge*" that even the Ninth Circuit did not dispute. App.20a. This is the future opportunity to begin addressing §230 that members of this Court have anticipated. *Snap*, 144 S. Ct. at 2494 (Thomas, J.) ("Although the Court denies certiorari today, there will be other opportunities in the future.").

B. Unlike this case, recently denied petitions raising §230 questions had arguable vehicle problems. In *Doe v. Facebook,* the case was in a mandamus posture. 142 S. Ct. 1087. There was not yet a "[f]inal judgment[] or decree[]" required to review state-court decisions. 28 U.S.C. §1257(a); *see Facebook*, 142 S. Ct. at 1088 (Thomas, J.). Similarly, *Malwarebytes* was the rare case that "*den[ied]* immunity." 141 S. Ct. at 13-14 (Thomas, J.). And in *Reddit*, petitioners waived the threshold argument that §230(c) did not cover the platform's conduct. *Does 1-6 v. Reddit, Inc.*, 51 F.4th 1137, 1141 (9th Cir. 2022) ("Both parties agree that section 230 immunity applies to the claims against Reddit."), *cert. denied*, 143 S. Ct. 2560 (2023). While in other cases, addressing §230 would not have been outcome determinative because plaintiffs' complaints would have been dismissed even without §230 immunity. *See, e.g.*, *M.P. v. Meta Platforms Inc.*, 127 F.4th 516, 523 (4th Cir. 2025) (holding petitioner did not state a plausible claim for relief under South Carolina law), *cert. denied*, 146 S. Ct. 287 (2025); *Planet Green Cartridges, Inc. v. Amazon.com, Inc.*, No. 23-4434, 2025 WL 869209, at *2 (9th Cir. Mar. 20, 2025) (assuming that even if claims survived §230(c), plaintiffs failed to allege plausible claims), *cert. denied*, No. 24-1299, 2025 WL 3198575 (U.S. Nov. 17, 2025); *see also Gonzalez v. Google LLC*, 598 U.S. 617, 622 (2023) ("[P]laintiffs' complaint—independent of §230—states little if any claim for relief.").

And unlike this case, others did not involve the sort of actual knowledge alleged here, or otherwise turned on technologically complex theories regarding complicated algorithms and features to promote or

demote content. *See, e.g.*, *Daniel v. Armslist, LLC*, 926 N.W.2d 710, 715-16 (Wis. 2019) (allegations based on "website's design features" and lacking "restrictions"), *cert. denied*, 589 U.S. 1080 (2019); *Backpage.com,* 817 F.3d at 16 (describing allegations about how Backpage's "rules and processes … are designed to encourage sex trafficking"), *cert. denied*, 580 U.S. 1083 (2017); *Doe v. Grindr Inc.*, 128 F.4th 1148, 1155 (9th Cir. 2025) (describing "Grindr's *constructive* knowledge of child sexual abuse on its platform" (emphasis added)), *cert. denied*, 146 S. Ct. 319 (2025); *see also, e.g.*, Tr. of Oral Argument, *Gonzalez v. Google LLC*, No. 21-1333 (Feb. 21, 2023) (referring 93 times to YouTube "algorithm[s]").

C. This case is free of the foregoing obstacles. The facts could not be more straightforward. And the implications of the decision below—excepting internet platforms from civil penalties for the knowing sexual exploitation of children—could not be more important.

1. The Ninth Circuit affirmed that §230 compelled the dismissal of all of Petitioners' federal claims and stated that was "the end of the matter." App.21a.

All that remains of Petitioners' federal case are state-law claims, which is to say nothing may remain of their federal case. Where, as here, only state-law claims remain, federal district courts "may decline to exercise supplemental jurisdiction." 28 U.S.C. §1367(c)(3). In the Ninth Circuit, district courts ordinarily dismiss the remaining state-law claims. *See Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 561 (9th

Cir. 2010); *accord Vasquez v. City of San Jose*, 634 F. Supp. 3d 712, 732 (N.D. Cal. 2022).

2. Addressing §230 will be outcome determinative. Whether Petitioners may press their claims past the motion-to-dismiss stage turns entirely on §230's scope. There were no alternative holdings to justify dismissal. *See* App.8a-13a, 28a-29a.

3. Finally, this case turns on Twitter's actual knowledge of criminal contraband on its platform. The facts could not be more straightforward. Twitter verified John Doe 1 was a minor. App.185a. Twitter "reviewed the content" showing coerced sexual acts. App.188a. And still Twitter made the deliberate decision to allow that criminal content to proliferate until a DHS official intervened. App.192a. In this motion-to-dismiss posture, those allegations must be accepted as true. *See Vullo*, 602 U.S. at 194-95. The Court need only decide whether §230's "Good Samaritan" immunity applies to such acts.

The implications of the decision below, putting companies' knowing possession and distribution of child pornography above the law, could not be more important. This petition allows this Court the opportunity to do what it could not in previous cases and squarely address §230's scope. *See Snap,* 144 S. Ct. at 2494 (Thomas, J.). Whatever the outermost limits of that "Good Samaritan" immunity, it cannot be weaponized to preclude this suit for civil penalties for the criminal sexual exploitation of children.

CONCLUSION

This Court should grant the petition for writ of certiorari.

Respectfully submitted,

February 6, 2026

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED AUGUST 1, 2025

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-177
D.C. No. 3:21-cv-00485-JCS

JOHN DOE 1; JOHN DOE 2,

Plaintiffs-Appellants,

v.

TWITTER, INC.; X CORP.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of California
Joseph C. Spero, Magistrate Judge, Presiding

Argued and Submitted February 3, 2025
San Francisco, California

August 1, 2025, Filed

Before: M. Margaret McKeown, Danielle J. Forrest, and Gabriel P. Sanchez, Circuit Judges.

Opinion by Judge Forrest.

Appendix A

OPINION

FORREST, Circuit Judge:

We are once again confronted with the scope of an interactive computer service provider's liability for hosting illegal content—namely, child pornography. A trafficker coerced Plaintiffs—two minor boys—into producing pornographic[1] content that the trafficker then posted on Twitter. Plaintiffs sued Twitter after it slow-walked its response to reports about this content and did not immediately take it off the platform. In their 13-count complaint, Plaintiffs advanced numerous claims, all of which the district court dismissed, primarily based on immunity provided under § 230 of the Communications Decency Act of 1996.

Though expansive, there is nuance to § 230 immunity. Here, we conclude that Twitter is immune from liability on Plaintiffs' claim that it knowingly benefitted from sex trafficking and on their product-defect claim based on Twitter's failure to remove posts under review as being child pornography and its creation of search features that amplify child-pornography posts. These claims hinge on Twitter's role as a publisher of third-party content, which triggers § 230. But Plaintiffs' claims for negligence per se and their product-liability theory based on defective

1. Plaintiffs refer to "child pornography" as "child sexual abuse material" to "better capture[] the harmful nature of the material." Their point is well taken. Nonetheless, we employ the language of the relevant statutes, which refer to "child pornography." *See, e.g.*, 18 U.S.C. § 2252A.

reporting-infrastructure design are not barred by § 230 immunity because they do not arise from Twitter's role as a publisher. Thus, we affirm in part, reverse in part, and remand.

BACKGROUND

I. Section 230 Immunity

Congress enacted § 230 to protect internet-based publishers of third-party content from liability. *See* 47 U.S.C. § 230(a)-(b) (enumerating Congress's objectives); *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1162-63 (9th Cir. 2008) (en banc) (recounting the legislative backdrop). The law reads: "No provider . . . of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). Based on this text, § 230 immunity protects only: "(1) a provider or user of an interactive computer service (2) whom a plaintiff seeks to treat . . . as a publisher or speaker (3) of information provided by another information content provider." *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100-01 (9th Cir. 2009).

A "publisher" is someone who "reviews material submitted for publication, perhaps edits it for style or technical fluency, and then decides whether to publish it." *Id.* at 1102. A claim that "obliges the defendant to 'monitor third-party content'" to avoid liability also treats the defendant as a publisher. *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 742 (9th Cir. 2024) (citing *HomeAway.*

com, Inc. v. City of Santa Monica, 918 F.3d 676, 682 (9th Cir. 2019)).

These functions contrast with those undertaken by an "information content provider," who "is responsible, in whole or in part, for the creation or development of information provided." 47 U.S.C. § 230(f)(3). Thus, if an interactive computer service provider is disseminating content that it created, it is functioning as a "content provider," not a publisher, and has no immunity under § 230. *Roommates.com*, 521 F.3d at 1162-63 (citing 47 U.S.C. § 230(f)(3)). But if the provider is disseminating content created by others, it is functioning as a publisher and is immune from liability related to that content. *Id.* Of course, an interactive computer service provider can function as both a publisher and a content provider. Therefore, courts must carefully consider which status any given claim derives from. *Barnes*, 570 F.3d at 1102.

II. Plaintiffs' Allegations

Because this appeal arises from an order granting Twitter's motion to dismiss, we accept the Plaintiffs' allegations as true. *See id.* at 1098 n.1.

When Plaintiff John Doe #1 was 13 years old, he communicated on Snapchat with an individual who Doe #1 thought was his classmate. The Snapchat user requested nude images from Doe #1 and his friend, Plaintiff John Doe #2, who both complied. In reality, the Snapchat user was a child-pornography trafficker who used the images to blackmail Plaintiffs into producing additional pornographic images.

Eventually, Plaintiffs cut off communication with the trafficker. But a video of the compiled images that they sent to the trafficker later appeared on Twitter, which Plaintiffs learned about when the video circulated around their high school. Doe #1 and his mother then began efforts to convince Twitter to remove the video.

Doe #1 filed a complaint through Twitter's content-reporting interface, and Twitter instructed him to send a copy of his identification to confirm he was the person in the reported video. He sent his ID and reiterated that the video depicted him and his friend, both minors. Doe #1's mother also reported the posts to Twitter the following day. A few days later, having received nothing but an initial automated response, Doe #1's mother followed up with Twitter to protest its inaction. A couple days after that, Twitter informed Doe #1 that it reviewed the posts, found no policy violations, and would take no further action. In the meantime, the posts received over 150,000 views and 2,000 retweets. Ultimately, nine days after Doe #1's initial report to Twitter, and only at the prompting of the Department of Homeland Security, Twitter removed the posts, suspended the posters' accounts, and reported the content to the National Center for Missing and Exploited Children (NCMEC).

Plaintiffs allege that this episode was not aberrant. Despite developing a variety of tools to monitor and remove content on the platform and having a zero-tolerance policy for child exploitation, Twitter, according to the complaint, is a significant repository for child pornography. Plaintiffs allege Twitter both underutilizes the tools it has developed to curb the spread of this illegal

content and has passed on opportunities to develop better tools, despite the inadequacy of its existing infrastructure. Finally, given Twitter's business model, it receives significant advertising revenue from hosting sought-after or popular posts, including those that depict pornographic content featuring minors.

III. Procedural History

Plaintiffs filed a 13-count complaint against Twitter. Twitter moved to dismiss for failure to state a claim, primarily asserting that it is immune from liability under § 230. The district court dismissed 12 counts, including, as relevant here, Count 4 (possession and distribution of child pornography in violation of 18 U.S.C. §§ 2252A and 2255), Count 5 (products liability), and Count 8 (negligence per se). The district court concluded that because these counts sought to treat Twitter as a publisher of third-party content—child pornography generally, and the video of Plaintiffs specifically—Twitter was immune under § 230 and Plaintiffs could not state a claim for relief.

At the same time, the district court declined to dismiss Count 2, which alleges that Twitter knowingly benefitted from a sex-trafficking venture in violation of 18 U.S.C. § 1591, giving rise to civil liability under 18 U.S.C. § 1595. Section 230(e)(5)(A), enacted in 2018 as part of the Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA), withdraws § 230(c) immunity for "any claim in a civil action brought under [18 U.S.C. § 1595], if the conduct underlying the claim constitutes a violation of [18 U.S.C.

§ 1591]." 47 U.S.C. § 230(e)(5)(A). The district court found that Plaintiffs stated such a claim.

The district court certified Twitter's request for an interlocutory appeal of the decision on Count 2, and we accepted Plaintiffs' cross-appeal as to Count 4. *See Doe #1 v. Twitter, Inc.*, No. 22-15103, 2023 U.S. App. LEXIS 10808, 2023 WL 3220912, at *1 (9th Cir. May 3, 2023). While the first appeal in this case was pending, we addressed for the first time the legal standards governing FOSTA's § 230(e)(5)(A) immunity exception. *See Does 1-6 v. Reddit, Inc.*, 51 F.4th 1137 (9th Cir. 2022). Following *Reddit*, we reversed as to Count 2 and remanded for the district court to apply our newly articulated standards. *Doe #1*, 2023 U.S. App. LEXIS 10808, 2023 WL 3220912, at *2. We also affirmed the dismissal of Count 4. *Id.* Because Plaintiffs' allegations that Twitter possessed and distributed child pornography "targets 'activity that can be boiled down to deciding whether to exclude material that third parties seek to post online,' such activity 'is perforce immune under section 230.'" *Id.* (quoting *Roommates.com*, 521 F.3d at 1170-71).

On remand, the district court dismissed Count 2 with prejudice because it concluded that Plaintiffs' claim that Twitter was a beneficiary of sex trafficking did not trigger § 230(e)(5)(A)'s immunity carveout, as interpreted by *Reddit*. Plaintiffs now appeal that decision and the district court's prior dismissal of their design-defect and negligence per se claims. They also ask us to revisit our prior decision affirming the dismissal of their claim for possession and distribution of child pornography.

Appendix A

DISCUSSION

We review de novo a district court's dismissal under Federal Rule of Civil Procedure 12(b)(6). *Lathus v. City of Huntington Beach*, 56 F.4th 1238, 1240 (9th Cir. 2023). Twitter bears the burden of establishing that it is immune under § 230. *See Calise*, 103 F.4th at 738 n.1.

As explained above, there are three elements to § 230(c)(1) immunity. *Barnes*, 570 F.3d at 1100-01. The second element, addressing whether the plaintiff seeks to hold the defendant liable "as a publisher or speaker," is often the most difficult. A defendant is not immune from liability simply because its status as a publisher is a "but-for" cause of a plaintiff's injuries. *HomeAway.com*, 918 F.3d at 682. Rather, as discussed above, we inspect the alleged legal duty underlying a plaintiff's claim. First, we examine the "'right' from which the duty springs." *Calise*, 103 F.4th at 742. If it springs "from the defendant's status as a publisher," or if the means to avoid liability requires the defendant to act as a publisher, immunity applies. *Id.* Otherwise, immunity is off the table. *Id.*

I. Beneficiary of Sex Trafficking

As part of the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA), Congress criminalized sex trafficking, 18 U.S.C. § 1591, and created a civil action for victims to recover damages for criminal violations, *id.* § 1595. Section 1591 punishes anyone who "knowingly" "benefits, financially or by receiving anything of value, from participation in a venture which has engaged

in" a sex-trafficking activity. *Id.* § 1591(a). One participates in a sex-trafficking venture by "knowingly assisting, supporting, or facilitating a" prohibited sex-trafficking act, including child sex trafficking. *Id.* § 1591(e)(4). There are two layers of knowledge required: the defendant must "*knowingly* benefit from *knowingly* participating in child sex trafficking." *Reddit*, 51 F.4th at 1145 (emphasis added).

Plaintiffs seek to hold Twitter liable for knowingly benefitting from a sex-trafficking venture under § 1595 by receiving financial gain or other benefit from maintaining exploitive images of Plaintiffs on its platform. Plaintiffs argue that their TVPRA claim does not treat Twitter as a publisher and, even if it does, FOSTA's carveout to § 230 immunity applies. These arguments run headlong into our decisions in *Reddit* and *Doe v. Grindr Inc.*, 128 F.4th 1148 (9th Cir. 2025).

A. Does § 230 Immunity Apply?

Plaintiffs contend that Twitter's duty not to "knowingly benefit" from participation in a sex-trafficking venture does not spring from Twitter's function as a publisher and that Twitter has multiple means to avoid such benefit that do not involve monitoring third-party content. *See* 18 U.S.C. §§ 1591, 1595; *Calise*, 103 F.4th at 742.[2] That is

2. We reject Twitter's contention that the law of the case and law of the circuit foreclose Plaintiffs' argument that § 230(c) does not apply. As to law of the case, the applicability of § 230(c) was not one of the limited questions certified by the district court and accepted by this court for interlocutory review, nor was it a necessary predicate to the issue we decided there. *Doe #1*, 2023 U.S. App. LEXIS 10808,

particularly so here, Plaintiffs argue, because Twitter knew that the images at issue were child pornography. Plaintiffs' thinking is there can be no monitoring duty if the posts are already on Twitter's radar. But contrary to Plaintiffs' reasoning, their theory for liability imposes a monitoring obligation. Plaintiffs allege that, given Twitter's advertising structure and other revenue-generating activities, "[a]s long as content on Twitter's platform remains live, Twitter monetizes that content." With that alleged one-to-one relationship between posted content and Twitter monetizing that content, the only way for Twitter to avoid the unlawful benefit from hosting child pornography would be to remove third-party posts—a quintessential publishing activity. *See Roommates.com*, 521 F.3d at 1170-71. As we explained in *Roommates.com*, "any activity that can be boiled down to deciding whether to exclude material that third parties seek to post online is perforce immune under section 230." *Id.* Accordingly, § 230 immunity applies, absent the FOSTA exception.

B. Does FOSTA's Exception to Immunity Apply?

FOSTA displaces § 230 immunity for civil actions brought under 18 U.S.C. § 1595 "if the conduct underlying the claim" violates 18 U.S.C. § 1591. 47 U.S.C. § 230(e)(5)

2023 WL 3220912, at *1. And regarding law of the circuit, in *Reddit* the parties agreed that § 230(c) applied and so we had no occasion to analyze that question. 51 F.4th at 1141; *see Webster v. Fall*, 266 U.S. 507, 511, 45 S. Ct. 148, 69 L. Ed. 411 (1925) ("Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.").

(A). For that carveout to apply, Plaintiffs "must plausibly allege that [Twitter's] own conduct violated section 1591." *Reddit*, 51 F.4th at 1141. It is not enough to allege "[m]ere association with sex traffickers" or "trafficking by the website's users—without the participation of the website." *Id.* at 1142, 1145. Here, the district court concluded that Plaintiffs did not sufficiently allege an underlying § 1591 violation because they did not allege that Twitter itself violated § 1591. We agree.

Reddit involved similar allegations. Parents of minors whose pictures were posted on Reddit's website alleged that Reddit made it dangerously easy for users to share child pornography, highlighted subsections of its platform that contained child pornography to gain advertising revenue, and failed to remove child pornography when it was reported, including by the plaintiffs in that case. *Id.* at 1145. We held that these allegations did not state a § 1591 sex-trafficking violation. *Id.* at 1145-46. Alleging that the defendant "merely turn[ed] a blind eye to the source of their revenue" was insufficient to allege Reddit "actively participated in sex trafficking." *Id.* at 1145 (citation modified). But that was as far as the plaintiffs' allegations went.

Plaintiffs argue that Twitter cannot claim that it merely turned a blind eye because Twitter confirmed that it reviewed Plaintiffs' reports and the flagged posts. While Twitter's review of the challenged videos that were posted by a trafficker establishes its knowledge that the videos contained child pornography, Twitter's failure to respond to demands to remove the videos is not the type

of "affirmative conduct" that constitutes "assistance, support, or facilitation" of sex trafficking for which § 1591 attaches criminal (and, correspondingly, civil) liability. *See id.* That is, Twitter did not "actually engage[] in some aspect of the sex trafficking," as a legal matter, by failing to remove known child pornography from its platform. *Grindr*, 128 F.4th at 1155 (quoting *Reddit*, 51 F.4th at 1145). While we understand the logic of Plaintiffs' argument that continuing to make available known child pornography is tantamount to facilitating sex trafficking, that reasoning fails under our prior holding that merely turning a blind eye to illegal revenue-generating content does not establish criminal liability under § 1591. *Reddit*, 51 F.4th at 1145.

In any event, Plaintiffs rely on the same causal theory that we held insufficient in *Reddit* and *Grindr*. *See Reddit*, 51 F.4th at 1145-46; *Grindr*, 128 F.4th at 1155. We require "a causal relationship between affirmative conduct furthering the sex-trafficking venture and receipt of a benefit." *Reddit*, 51 F.4th at 1145 (citation omitted). Generic advertising revenue schemes that apply sitewide do not satisfy that causal demand. *See id.* at 1145-46 (concluding that the allegation "that Reddit makes money from advertising on all popular subreddits" did not establish the requisite causal nexus); *Grindr*, 128 F.4th at 1155-56 (holding that allegations of Grindr "generally receiving advertising revenues" did not "causally connect Grindr's advertising revenues with any affirmative conduct by Grindr that furthered the sex-trafficking venture"). But that is Plaintiffs' theory of knowing benefit here: Twitter profits from all the posts on its website, it knew the posts

at issue here contained child pornography, and therefore it knowingly benefited from a child-pornography trafficking venture. Under our precedents, that simply does not suffice to state a claim.[3] We therefore affirm the district court's dismissal of Count 2.

II. Design Defect

Plaintiffs allege that Twitter has design defects that violate California's products-liability law. The alleged deficiencies fall into three categories: (1) Twitter lacks a mechanism allowing users to report child pornography easily, (2) Twitter does not block reported child pornography pending review of a complaint, and (3) Twitter's search feature that includes search suggestions and hashtags amplifies the reach of child pornography once this content is posted. We take each alleged defect in turn.

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3. Plaintiffs also argue that the district court erred by analyzing only whether Twitter had acted with knowledge that a minor was induced to engage in a commercial sex act when § 1591 also criminalizes acting with "reckless disregard." *See* 18 U.S.C. § 1591(a)(2). Even if Plaintiffs were correct, this alleged mens rea error would not impact the outcome here because Plaintiffs' pleading deficiencies concerning Twitter's affirmative conduct and causation remain. *Cf. M.H. ex rel. C.H. v. Omegle.com LLC*, 122 F.4th 1266, 1275 (11th Cir. 2024) (characterizing FOSTA's mens rea standard as a "slightly different question" than that addressed in *Reddit*: "to whose conduct does FOSTA refer . . . ?"). Thus, we express no opinion on whether the district court misapplied § 1591's mens rea requirement.

Appendix A

A. Reporting Infrastructure

Plaintiffs allege that Twitter makes it too difficult to report child pornography that is posted on Twitter. For example, someone wishing to report this content cannot use Twitter's "easily-accessible" general report function, but must instead locate a separate form that is unique to reporting child pornography. And that form has disadvantages: it does not allow a user to report child pornography sent via private messaging, it requires reporters to supply an email address, and it requires a person to have and be logged into a Twitter account. According to Plaintiffs, child-protection watchdogs have faulted Twitter's process, opining that it lags behind Twitter's peers.

This aspect of Plaintiffs' design-defect claim relates solely to product design, and in that way, is analogous to the products-liability claim that we allowed to proceed in *Lemmon v. Snap, Inc.*, 995 F.3d 1085 (9th Cir. 2021). The plaintiffs in *Lemmon* challenged a Snapchat filter that showed the speed a user was traveling, which the plaintiffs alleged encouraged reckless driving. *Id.* at 1088-89. When a young driver used the speed filter shortly before a fatal crash, his parents sued for negligent design. *Id.* at 1088, 1091-92. We allowed the claim to proceed, reasoning that it turned on Snap's design architecture rather than the publication of any content. *Id.* at 1092-93. We underscored that the plaintiffs' claim treated Snap as a "product designer" rather than a "publisher or speaker" because "Snap could have satisfied its 'alleged obligation' . . . without altering the content that Snapchat's users generate." *Id.* at 1092 (citation omitted).

So too here. Twitter could fulfill its purported duty to cure reporting infrastructure deficiencies without monitoring, removing, or in any way engaging with third-party content. *See id.* This claim thus does not seek to hold Twitter responsible as a publisher or speaker. *Id.* Increased removal of third-party content may well be the outcome of a more robust reporting structure. But a claim alleging a duty that does not treat a defendant as a publisher is not barred by § 230, even if that legal duty "might lead a company to respond with monitoring or other publication activities." *HomeAway.com*, 918 F.3d at 682. "We look instead to what the duty at issue *actually requires*: specifically, whether the duty would necessarily require an internet company to monitor third-party content." *Id.* (emphasis added). Here, Twitter's improvement of its reporting mechanism—for example, by allowing people to report child pornography sent via private messaging—would not necessarily require Twitter to monitor third-party content. Accordingly, Twitter is not immune from liability on this claim.

B. Removal Pending Review

Plaintiffs also complain that Twitter "failed to block reported [child pornography] while [it] was investigated and enabled reported [child pornography] to continue to be massively disseminated." This product-defect theory is barred by § 230. Plaintiffs are attempting to hold Twitter liable for its failure to remove (even if automatically) harmful third-party content. As we have previously recognized, decisions about what third-party content is disseminated are quintessentially the province of a publisher, triggering § 230 immunity. *See Roommates.*

com, 521 F.3d at 1174 (explaining that § 230 was "enacted to protect websites against the evil of liability for failure to remove offensive content."); *Barnes*, 570 F.3d at 1102 ("[P]ublication involves . . . deciding whether to publish or to withdraw from publication third-party content.").

C. Amplification

Finally, Plaintiffs allege that Twitter designed an unreasonably dangerous product that allows "search features and hashtags that are specifically for the purpose of searching, finding, and sharing [child pornography]." They allege Twitter owes a duty to design a reasonably safe product that prevents its search feature from responding to hashtags used solely to identify child pornography and from providing search suggestions that enable users to find such content. As we understand it, Plaintiffs take no issue with the general interaction between the hashtag and search functions when put to lawful ends. For example, to highlight posts that are tagged #ParisOlympics when a user searches "Olympics." Rather, they allege that sex traffickers create and use certain hashtags to signal child pornography. Plaintiffs allege that Twitter's search function defectively responds to these nefarious hashtags, aiding consumers of child pornography in finding the illegal content that they are looking for.

We have been skeptical of similar efforts to hold internet content providers liable for developing "content-neutral tools used to facilitate communications." *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1096 (9th Cir. 2019). In *Roommates.com*, we predicted that "ordinary

search engines" like Google and Yahoo! would be entitled to § 230 immunity. 521 F.3d at 1167. To permit liability for generic search functions, we explained, "would defeat the purposes of section 230 by swallowing up every bit of the immunity that the section otherwise provides." *Id.*

Accordingly, in *Dyroff*, we allowed § 230 immunity for a website whose machine-learning algorithms and facially neutral features like interest-driven groups and notifications promoted illegal-drug posts to someone who had previously sought out such content. 934 F.3d at 1095-96, 1098. We concluded that the plaintiff's claim treated the website as a publisher of third-party content, even if the website's tools helped disseminate and promote that content. *Id.* at 1098-99; *accord M.P. ex rel. Pinckney v. Meta Platforms Inc.*, 127 F.4th 516, 521, 523-27 (4th Cir. 2025) (barring claims that "attack the manner in which Facebook's algorithm sorts, arranges, and distributes third-party content"). So, too, when the victims of terrorist attacks alleged Google's algorithm promoted terrorist content on YouTube. *See Gonzalez v. Google LLC*, 2 F.4th 871, 881-82, 892-96 (9th Cir. 2021), *vacated*, 598 U.S. 617, 143 S. Ct. 1191, 215 L. Ed. 2d 555 (2023) (per curiam) ("[A] website's use of content-neutral algorithms, without more, does not expose it to liability for content posted by a third-party."). And in *Grindr*, we held that immunity applied to a claim alleging that a neutral romantic-matching tool was negligently designed because it created opportunities for sexual abuse. 128 F.4th at 1152-53.

Against this backdrop, we hold that Twitter is immune from liability for the alleged third-party abuses of its

hashtag and search functions. Distinguishing between innocent #ParisOlympics-type hashtags and the more nefarious ones would require Twitter to act as a publisher. Notwithstanding Plaintiffs' allegation that "Twitter has the ability to, and in fact does, block certain hashtags," deciding when to take that step is a publisher decision. *See Roommates.com*, 521 F.3d at 1174 (clarifying that removal decisions are publisher decisions). Otherwise, upon designing neutral hashtag and search tools, Twitter would be required to monitor and act when its users adapt them to illicit ends.

III. Negligence Per Se

Plaintiffs also allege that Twitter was negligent per se because it did not promptly report the exploitive video of them to NCMEC, in violation of 18 U.S.C. § 2258A.[4] The district court held that § 230 barred this claim, along with Plaintiffs' negligence and gross negligence counts.

At the outset, Twitter argues that Plaintiffs waived their ability to treat negligence per se as "a viable, standalone claim" by telling the district court that it "should treat the negligence per se claim as a support to, and part of" their negligence and gross-negligence counts. To be sure, Plaintiffs could have been clearer in developing their negligence per se claim. But they insisted, in their opposition to Twitter's motion to dismiss, that this

4. The complaint also alleges negligence per se premised on violations of 18 U.S.C. §§ 1591 and 1595, California Civil Code § 1708.85, and California Penal Code § 311.1. On appeal, Plaintiffs focus exclusively on 18 U.S.C. § 2258A's reporting requirement.

claim was "not duplicative" of their negligence and gross-negligence counts. And even if Plaintiffs had waived this claim below, we would exercise our discretion to consider it on appeal. *See Hoffmann v. Pulido*, 928 F.3d 1147, 1150 (9th Cir. 2019).

Our waiver rules in this context exist in large part to ensure that the parties, and we, do not sandbag the district court once it has committed to a course of action in response to the issues and arguments the parties presented. *See Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510, 515 (9th Cir. 1992). But here, the district court did not rely on Plaintiffs' supposed concession that Twitter highlights. That statement arose in response to Twitter's argument that negligence per se is not an independent cause of action under California law.[5] The district court expressly reserved judgment on that state-law argument because it concluded that Twitter was immune under § 230.

We reverse that § 230 holding. Under 18 U.S.C. § 2258A(a)(1)(A)(i), electronic-communication services are required to file a report with NCMEC "as soon as

5. Twitter continues to press that argument on appeal, along with its contention that this is not one of the limited circumstances in which California allows recovery for nonfeasance rather than misfeasance. Although "we may affirm based on any ground supported by the record," *Johnson v. Riverside Healthcare Sys. LP*, 534 F.3d 1116, 1121 (9th Cir. 2008), we typically leave merits arguments for remand when we reverse a district court's conferral of § 230 immunity, *e.g.*, *Lemmon*, 995 F.3d at 1094-95; *Calise*, 103 F.4th at 743 n.5. We follow that usual course here.

reasonably possible after obtaining actual knowledge of" violations of criminal sex-trafficking laws involving child pornography. Twitter argues that its reporting duty arises because its platform allows third parties to upload content. That may well be true. Twitter "is an internet publishing business" and "publishing content is 'a but-for cause of just about everything' [Twitter] is involved in." *Lemmon*, 995 F.3d at 1092-93 (citation omitted). But that is not the test. *Id.* And the facts alleged here, coupled with the statutory "actual knowledge" requirement, separates the duty to report child pornography to NCMEC from Twitter's role as a publisher.

Plaintiffs do not claim that Twitter must scour its platform for content triggering its NCMEC-reporting duty. They do not even claim that Twitter must review reported child pornography. Rather, they allege that once Twitter has obtained *actual knowledge* of such content, as evidenced by its representation that it had "reviewed the content," it had a legal duty to promptly report that content to NCMEC. Because that duty neither requires Twitter to monitor content nor take any action associated with publication (e.g., removal) once it learns of the objectionable content, § 230 does not immunize Twitter from Plaintiffs' negligence per se claim.

IV. Possession and Distribution of Child Pornography

Finally, Plaintiffs appeal the district court's dismissal of their claim alleging that Twitter possessed and distributed child pornography in violation of 18 U.S.C. § 2255. We have already affirmed that dismissal. *Doe #1*,

2023 U.S. App. LEXIS 10808, 2023 WL 3220912, at *2. That is the end of the matter. *See Gonzalez v. Arizona*, 677 F.3d 383, 389 n.4 (9th Cir. 2012).

CONCLUSION

For the foregoing reasons, we affirm the district court's dismissal of Count 2 (TVPRA), Count 4 (18 U.S.C. § 2255), and Count 5 (California Products Liability) as relates to Plaintiffs' removal and amplification design-defects theories; reverse the district court's dismissal of Count 5 as relates to Plaintiffs' defective-reporting-infrastructure theory and Count 8 (negligence per se); and remand for further proceedings consistent with this opinion.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.[6]

6. Each party is to bear its own costs.

APPENDIX B — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED SEPTEMBER 9, 2025

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-177
D.C. No. 3:21-cv-00485-JCS
Northern District of California, San Francisco

JOHN DOE 1 AND JOHN DOE 2,

Plaintiffs-Appellants,

v.

TWITTER, INC. AND X CORP.,

Defendants-Appellees.

Filed September 9, 2025

ORDER

Before: McKEOWN, FORREST, and SANCHEZ, Circuit Judges.

The panel has unanimously voted to deny the petition for panel rehearing. Dkt. 52. Judge Forrest and Judge Sanchez voted to deny the petition for rehearing en banc, Dkt. 52, and Judge McKeown so recommended. The full court has been advised of the petition for rehearing en banc

and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40. The petitions for panel rehearing and rehearing en banc are denied.

APPENDIX C — MEMORANDUM OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED MAY 3, 2023

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 22-15103
D.C. No. 3:21-cv-00485-JCS

JOHN DOE #1; JOHN DOE #2,

Plaintiffs-Appellees,

v.

TWITTER, INC.,

Defendant-Appellant.

No. 22-15104
D.C. No. 3:21-cv-00485-JCS

JOHN DOE #1; JOHN DOE #2,

Plaintiffs-Appellants,

v.

TWITTER, INC.,

Defendant-Appellee.

Appendix C

Filed May 3, 2023

Appeal from the United States District Court
for the Northern District of California
Joseph C. Spero, Magistrate Judge, Presiding

Argued and Submitted April 20, 2023
San Francisco, California

MEMORANDUM[*]

Before: VANDYKE and SANCHEZ, Circuit Judges, and S. MURPHY,[**] District Judge.

On interlocutory cross-appeals, Plaintiffs John Doe #1 and John Doe #2 and Defendant Twitter, Inc. challenge the district court's order granting in part and denying in part Twitter's motion to dismiss the Plaintiffs' complaint. Specifically, Plaintiffs challenge the district court's dismissal of Counts 1 and 4 of their complaint. Count 1 asserts that Twitter is liable under the Trafficking Victims Protection Act (TVPRA), 18 U.S.C. §§ 1591(a)(1), 1595(a), for directly violating the TVPRA's prohibition on sex trafficking by providing, obtaining, or maintaining child sexual abuse material (CSAM) depicting them on its platform. Count 4 asserts that

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

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

Twitter is liable for possessing, receiving, maintaining, and distributing child pornography depicting them in violation of 18 U.S.C. §§ 2252A, 2255. Defendant challenges the denial of its motion to dismiss Count 2 of the complaint. Count 2 asserts that Twitter is liable under the TVPRA, 18 U.S.C. §§ 1591(a)(2), 1595(a), for benefitting from third-party trafficking activities that its platform allegedly facilitated. We have jurisdiction under 28 U.S.C. § 1292(b), and we affirm the dismissal of Counts 1 and 4 and reverse the district court's denial of dismissal of Count 2. We assume familiarity with the underlying facts and arguments in these cross-appeals.

"We review de novo both a district court order dismissing a plaintiff's claims pursuant to Federal Rule of Civil Procedure 12(b)(6) and questions of statutory interpretation." *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1096 (9th Cir. 2019). Only a complaint that states a plausible claim for relief may survive a motion to dismiss. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Section 230 of the Communications Decency Act states that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). Our court has held that section 230 "provides broad immunity" for claims against interactive computer service providers "for publishing content provided primarily by third parties." *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1123 (9th Cir. 2003). And "any activity that can be boiled down to deciding whether to exclude material that third parties seek to post online is perforce immune under section 230." *Fair*

Appendix C

Housing Council of San Fernando Valley v. Roommates. Com, LLC, 521 F.3d 1157, 1170-71 (9th Cir. 2008).

The district court granted Twitter's motion for certification of an interlocutory appeal as to Count 2. Specifically, Twitter sought certification of the following two questions:

> (1) whether the immunity carve-out in Section 230(e)(5)(A) requires that a plaintiff plead a violation of Section 1591; and
>
> (2) whether "participation in a venture" under Section 1591(a)(2) requires that a defendant have a "continuous business relationship" with the traffickers in the form of business dealings or a monetary relationship.

With respect to Count 2, the legal standard applicable to that issue has now been decided by *Jane Does 1-6 v. Reddit, Inc.*, 51 F.4th 1137 (9th Cir. 2022), *petition for cert. filed*, ___ U.S.L.W. ___ (U.S. Jan. 25, 2023) (No. 22-695). *Reddit* answered the first certified question in the affirmative: "[F]or a plaintiff to invoke FOSTA's immunity exception, she must plausibly allege that the website's own conduct violated section 1591." 51 F.4th at 1141. *Reddit* answered the second question in the negative: "In a sex trafficking beneficiary suit *against a defendant-website*, the most important component is the *defendant website's* own conduct—its 'participation in the venture.'" *Id.* at 1142. "A complaint against a website that merely alleges trafficking by the website's users—without the participation of the website—would not survive." *Id.* The

term "'[p]articipation in a venture,' in turn, is defined as 'knowingly assisting, supporting, or facilitating' sex trafficking activities. [18 U.S.C.] § 1591(e)(4). Accordingly, establishing criminal liability requires that a defendant knowingly benefit from knowingly participating in child sex trafficking." *Id.* at 1145. *Reddit* therefore requires a more active degree of "participation in the venture" than a "continuous business relationship" between a platform and its users. Because these questions certified for interlocutory appeal are controlled by *Reddit*, the district court's contrary holding is reversed.

Regarding Count 1, the district court correctly ruled that Plaintiffs failed to state a claim for direct sex trafficking liability under the TVPRA, 18 U.S.C. §§ 1591(a)(1) and 1595(a). Section 1591(a)(1) creates a direct liability claim for "[w]hoever knowingly . . . recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means *a person*." 18 U.S.C. § 1591(a)(1) (emphasis added).[1] Because Plaintiffs nowhere allege in their complaint that Twitter "provided," "obtained," or "maintained" *a person*, the district court correctly concluded that Twitter's alleged conduct relates only to CSAM depicting Plaintiffs, not to their persons (as required to implicate a direct violation of the TVPRA).

Finally, as to Count 4, the district court correctly ruled that section 230 precluded Plaintiffs from stating

1. Plaintiffs expressly disclaimed before the district court that Twitter "advertised" them (or CSAM content depicting them) in violation of section 1591(a)(1), so they are estopped from alleging to the contrary on appeal. *See United States v. Ibrahim*, 522 F.3d 1003, 1009 (9th Cir. 2008).

a viable claim for possession and distribution of child pornography under 18 U.S.C. §§ 2252A and 2255. Because the complaint targets "activity that can be boiled down to deciding whether to exclude material that third parties seek to post online," such activity "is perforce immune under section 230." *Roommates.Com*, 521 F.3d at 1170-71. And although section 230(e)(1) exempts from immunity the enforcement of criminal laws under Chapter 110 of Title 18 (which contains sections 2252A and 2255), our court has "consistently held that § 230(e)(1)'s limitation on § 230 immunity extends only to criminal prosecutions, and not to civil actions based on criminal statutes." *Gonzalez v. Google, LLC*, 2 F.4th 871, 890 (9th Cir. 2021), *cert. granted*, 143 S. Ct. 80-81 (Mem) (U.S. Oct 3, 2022) (Nos. 21-1333, 21-1496).[2]

Accordingly, the district court's order is **AFFIRMED** as to Counts 1 and 4, but because the holding of the district court regarding Count 2 is contrary to our court's *Reddit* decision, the order is **REVERSED** with respect to Count 2 and **REMANDED** for further proceedings to be conducted in a manner consistent with this court's *Reddit* decision.

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2. We recognize that a petition for certiorari in *Reddit* is pending, and that the Supreme Court also has before it two related cases, the disposition of which could affect our court's *Reddit* precedent. *See Gonzalez v. Google LLC*, No. 21-1333 (argued Feb. 21, 2023), and *Twitter, Inc. v. Taamneh*, No. 21-1496 (argued Feb. 22, 2023). To the extent developments in any of those cases might affect our court's holding in *Reddit*, the district court is well-equipped to address such arguments in the first instance.

APPENDIX D — ORDER GRANTING MOTION TO DISMISS OF THE UNITED STATES COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, FILED DECEMBER 11, 2023

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 21-cv-00485-JCS
Re: Dkt. No. 117

JOHN DOE, *et al.*,

Plaintiffs,

v.

TWITTER, INC., *et al.*,

Defendants.

Filed December 11, 2023

ORDER GRANTING MOTION TO DISMISS

I. INTRODUCTION

Following an interlocutory appeal of this Court's August 19, 2021 order granting in part and denying in part Defendant's motion to dismiss, dkt. no. 69 ("August 19 Order"), one claim remains in this case. Presently before the Court is Defendant X Corp.'s Motion to Dismiss Plaintiffs' First Amended Complaint, dkt. no.

117 ("Motion"), in which it contends this remaining claim must be dismissed under *Does 1-6 v. Reddit, Inc.*, 51 F.4th 1137, 1139 (9th Cir. 2022), cert. denied sub nom. *Does v. Reddit, Inc.*, 143 S. Ct. 2560 (2023).[1] The Court finds that the Motion is suitable for determination without oral argument and therefore vacates the hearing scheduled for December 15, 2023. The Case Management Conference scheduled for the same date is also vacated. For the reasons stated below, the Motion is GRANTED.[2]

II. BACKGROUND

A. The First Amended Complaint[3]

Plaintiffs' First Amended Complaint ("FAC"), which is the operative complaint, contains detailed allegations describing: 1) Twitter's platform, business model and content moderation policies and practices (FAC ¶¶ 23-51); 2) the ways Twitter allegedly permits and even aids in the distribution of child pornography on its platform and profits from doing so (FAC ¶¶ 52-84); 3) how pornographic content featuring John Doe #1 and John Doe #2 was created and eventually ended up on Twitter's platform

1. Although Twitter, Inc. has now merged into X Corp., Defendant continues to refer to itself and its platform as "Twitter" for the purposes of this case "for the sake of clarity and simplicity." Motion at 1 n. 1. The Court does the same.

2. The parties have consented to the jurisdiction of a United States magistrate judge pursuant to 28 U.S.C. § 636(c).

3. This section is taken verbatim from the Court's August 19 Order. It is repeated here for the convenience of the reader.

(FAC ¶¶ 85-100); and 4) Twitter's response to requests that the pornographic photos and videos containing Plaintiffs' images be removed from Twitter (FAC ¶¶ 101-132).

Based on these allegations, Plaintiffs assert the following claims:

1) violation of the Trafficking Victims Protection Reauthorization Act ("TVPRA"), 18 U.S.C. §§ 1591(a)(1) and 1595(a) based on the allegation that "Twitter knew, or was in reckless disregard of the fact, that through monetization and providing, obtaining, and maintaining [child sexual abuse material ("CSAM")] on its platform, Twitter and Twitter users received something of value for the video depicting sex acts of John Doe #1 and John Doe #2 as minors." FAC ¶¶ 133-143 (Claim One);

2) violation of the TVPRA, 18 U.S.C. §§ 1591(a)(2) and 1595(a), based on the allegation that Twitter "knowingly benefited, or should have known that it was benefiting, from assisting, supporting, or facilitating a violation of 1591(a)(1)." FAC ¶¶ 144-155 (Claim Two);

3) violation of the duty to report child sexual abuse material under 18 U.S.C. §§ 2258A and 2258B. FAC ¶¶ 156-163 (Claim Three);

4) civil remedies for personal injuries related to sex trafficking and receipt and distribution of child pornography under 18 U.S.C. §§ 1591, 2252A, and 2255, based on the allegations that Twitter was "notified of the CSAM material depicting John Doe #1 and John Doe #2

as minors on its platform and still knowingly received, maintained, and distributed this child pornography after such notice[,]" causing Plaintiffs to suffer "serious harm and personal injury, including, without limitation, physical, psychological, financial, and reputational harm." FAC ¶¶ 164-176 (Claim Four);

5) California products liability based on the allegedly defective design of the Twitter platform, which is "designed so that search terms and hashtags utilized for trading CSAM return suggestions for other search terms and hashtags related to CSAM" and through use of "algorithm(s), API, and other proprietary technology" allows "child predators and sex traffickers to distribute CSAM on a massive scale" while also making it difficult for users to report CSAM and not allowing for immediate blocking of CSAM material once reported pending review. FAC ¶¶ 177-190 (Claim Five);

6) negligence based on allegations that Twitter had a duty to protect Plaintiffs, had actual knowledge that CSAM containing their images was being disseminated on its platform and failed to promptly remove it once notified. FAC ¶¶ 191-197 (Claim Six);

7) gross negligence based on the same theory as Plaintiffs' negligence claim. FAC ¶¶ 198-203 (Claim Seven);

8) negligence per se based on the allegation that Twitter's conduct violated numerous laws, including 18 U.S.C. §§ 1591 and 1595 (benefiting from a sex trafficking

venture), 18 U.S.C. § 2258A (failing to report known child sexual abuse material), 18 U.S.C. § 2552A (knowingly distributing child pornography), Cal. Civ. Code § 1708.85 (intentionally distributing non-consensually shared pornography), and Cal. Penal Code § 311.1 (possessing child pornography). FAC ¶¶ 204-26 (Claim Eight);

9) negligent infliction of emotional distress. FAC ¶¶ 207-212 (Claim Nine);

10) distribution of private sexually explicit materials, in violation of Cal. Civ. Code § 1708.85, based on the allegation that "[b]y refusing to remove or block the photographic images and video depicting him after Plaintiff John Doe #1 notified Twitter that both he and John Doe #2 were minors, Twitter intentionally distributed on its online platform photographic images and video of the Plaintiffs." FAC ¶¶ 213-218 (Claim Ten);

11) intrusion into private affairs, based on the allegation that "Twitter intentionally intruded into Plaintiffs' reasonable expectation of privacy by continuing to distribute the photographic images and video depicting them after John Doe #1 notified Twitter that Plaintiffs were minors and the material had been posted on its platform without their consent." FAC ¶¶ 219-223 (Claim Eleven);

12) invasion of privacy under the California Constitution, Article 1, Section 1. FAC ¶¶ 224-228 (Claim Twelve); and

13) violation of California Business and Professions Code § 17200 ("UCL") based on allegations that "Twitter utilized and exploited Plaintiffs for its own benefit and profit" and "Plaintiffs, to their detriment, reasonably relied upon Twitter's willful and deceitful conduct and assurances that it effectively moderates and otherwise controls third-party user content on its platforms." FAC ¶¶ 229-234 (Claim Thirteen).

Plaintiffs seek compensatory and punitive damages, injunctive relief, restitution, disgorgement of profits and unjust enrichment and attorneys' fees and costs.

B. The August 19 Order

As relevant here, the Court found in its August 19 Order that Plaintiffs' TVPRA claim for direct sex trafficking in violation of U.S.C. §§ 1591(a)(1) and 1595(a) (Claim One) and for possessing, receiving, maintaining, and distributing child pornography in violation of 18 U.S.C. §§ 2252A, 2255 (Claim Four) failed to state a claim. With respect to the former, the Court reasoned that the verbs in Section 1591(a)(1) relate to a "person" and that here, Twitter's alleged conduct related not to a person but to the videos of Plaintiffs that were posted on the Twitter platform. August 19 Order at 33. As to Claim Four, the Court found that Section 230(c) of the Communications Decency Act ("CDA") precluded Plaintiffs from stating a viable claim for possession and distribution of child pornography because that claim was aimed at Twitter's failure to remove content from its platform, thus treating Twitter as a traditional publisher. *Id.* at 49-52.

On the other hand, the Court rejected Twitter's argument that Plaintiffs' TVPRA claim for beneficiary liability under 18 U.S.C. §§ 1591(a)(2) and 1595(a) (Claim Two) ("beneficiary liability claim") failed to state a claim. Acknowledging that the case law addressing the interplay between these two provisions in the context of interactive computer service ("ICS") providers and third-party content was scant, the Court addressed three questions: 1) "[H]ow stringent is the *mens rea* requirement as to Twitter's knowledge of whether Plaintiffs were victims of sex trafficking[?]"; 2) [W]hat must be alleged to show that Twitter participated in a 'venture[?]'"; and 3) "[W]hat must be alleged to show that Twitter received a benefit from the sex trafficking venture and that the benefit motivated its conduct." *Id.* at 33-47.

With respect to the first question, the Court concluded that where a plaintiff seeks to impose civil liability under Section 1595 based on a violation of Section 1591(a)(2), the constructive knowledge language in Section 1595 ("knew or should have known") applies rather than the actual knowledge standard of Section 1591(a)(2). *Id.*

The Court further found that to meet the "participation in a venture" requirement, a plaintiff is not required to meet the stringent requirements that apply to criminal liability under Section 1591, namely, actual knowledge of the sex trafficking and some overt act that furthered the sex trafficking aspect of the venture. *Id.* Instead, the Court found that it was sufficient to allege a continuous business relationship between the sex trafficker and the

defendant such that it would appear that the trafficker and the defendant had a tacit agreement. *Id.*

Finally, the Court found that a plaintiff seeking to impose beneficiary liability under Section 1595 and 1591(a)(2) does not need to allege facts establishing that the "benefit" in these sections derived directly from—and was knowingly received in exchange for—participating in a sex-trafficking venture. *Id.* Instead, the Court concluded that a plaintiff must establish only that the defendant knowingly received a financial benefit from its relationship with the sex trafficker. *Id.*

With respect to the exemption from CDA § 230 immunity adopted under FOSTA (codified at 47 U.S.C. § 230(e)(5)), the Court concluded that that exemption was not limited to claims that meet the stringent criminal law standards applicable to claims asserted under Section 1591, relying on FOSTA's remedial purpose and the broader framework of the TVPRA. *Id.*

Applying these standards, the Court found that the allegations in the FAC were sufficient to state a claim for beneficiary liability under the TVPRA and therefore, that Claim Two was sufficiently pled.

For reasons that are not relevant here, the Court dismissed Plaintiffs' remaining claims (Claim Three and Claims Five through Thirteen) with prejudice. Plaintiffs did not challenge the Court's dismissal of those claims on appeal.

C. The *Reddit* Decision

On August 24, 2022, while the interlocutory appeal in this case was pending, the Ninth Circuit decided *Does 1-6 v. Reddit, Inc.*, 51 F.4th 1137, 1139 (9th Cir. 2022), cert. denied sub nom. *Does v. Reddit, Inc.*, 143 S. Ct. 2560 (2023) ("*Reddit*"). In that case, users of the social media platform Reddit "posted and circulated sexually explicit images and videos of minors online" and "the victims, or their parents, sued Reddit pursuant to 18 U.S.C. § 1595." 51 F.4th at 1139. The court held, as a matter of first impression, that FOSTA's immunity exception to CDA § 230 in this context is "contingent upon a plaintiff proving that a defendant-website's own conduct—rather than its users' conduct—resulted in a violation of 18 U.S.C. § 1591." *Id.* In particular, the court found that "FOSTA requires that a defendant-website violate the criminal statute by directly sex trafficking or, with actual knowledge, 'assisting, supporting, or facilitating' trafficking, for the immunity exception to apply." *Id.* at 1145.

The court in *Reddit* went on to hold that on the facts of that case, the plaintiffs failed to state a claim for beneficiary liability under the TVPRA. *Id.* at 1146. In reaching this conclusion, the court reasoned that the allegations did not meet the requirement that Reddit must have "participat[ed] in a venture" under § 1591(a)(2) because they did not establish that Reddit "knowingly benefit[ted] from knowingly participating in child sex trafficking." *Id.* at 1145. This requirement, the court stated, "requires actual knowledge and a causal relationship between affirmative conduct furthering the sex-trafficking

venture and receipt of a benefit." *Id.* (internal quotation and citation omitted). The court explained:

> In this case, the plaintiffs have not alleged that Reddit knowingly participated in or benefitted from a sex trafficking venture. They allege that Reddit provides a platform where it is easy to share child pornography, highlights subreddits that feature child pornography to sell advertising on those pages, allows users who share child pornography to serve as subreddit moderators, and fails to remove child pornography even when users report it, as the plaintiffs did in this case. Together, they say, this amounts to knowing participation in a sex trafficking venture.
>
> Taken as true, these allegations suggest only that Reddit "turned a blind eye" to the unlawful content posted on its platform, not that it actively participated in sex trafficking. *See Afyare*, 632 F. App'x at 286. Moreover, the plaintiffs have not alleged a connection between the child pornography posted on Reddit and the revenue Reddit generates, other than the fact that Reddit makes money from advertising on all popular subreddits. *See Noble*, 335 F. Supp. 3d at 524 (finding insufficient connection between general benefits defendant received from working for individual who perpetrated sex trafficking and the perpetrator's conduct toward the victim). Plaintiffs who have successfully

> alleged beneficiary liability for sex trafficking have charged defendants with far more active forms of participation than the plaintiffs allege here. *See, e.g.*, *Canosa v. Ziff*, No. 18 CIV. 4115 (PAE), 2019 WL 498865, at *23-24 (S.D.N.Y. Jan. 28, 2019) (denying motion to dismiss beneficiary liability claims where plaintiffs alleged affiliates of Harvey Weinstein lured victims "through the promise of production deals," provided Weinstein "medications he required to perform sexual acts," and "cleaned up after his sexual assaults"). As such, the plaintiffs have failed to state a claim that Reddit violated 18 U.S.C. § 1591.

Id. at 1145-46.

D. The Ninth Circuit's Opinion

On appeal, Plaintiffs challenged the Court's dismissal of Claims One and Four. The court of appeals affirmed this Court's dismissal of those claims. *Doe #1 v. Twitter, Inc.*, No. 22-15103, 2023 WL 3220912, at *2 (9th Cir. May 3, 2023). Twitter challenged the Court's denial of its motion to dismiss as to Claim Two, certifying the following questions for interlocutory appeal: "1) whether the immunity carve-out in Section 230(e)(5)(A) requires that a plaintiff plead a violation of Section 1591; and 2) whether 'participation in a venture' under Section 1591(a)(2) requires that a defendant have a 'continuous business relationship' with the traffickers in the form of business dealings or a monetary relationship." *Id.* at *1. The court

of appeals reversed this Court's holding as to Claim Two, finding that it was contrary to *Reddit* on the two questions that were certified for interlocutory appeal as to this claim. *Id.*

The Court of Appeals explained its holding as to Claim Two as follows:

> With respect to Count 2, the legal standard applicable to that issue has now been decided by *Jane Does 1-6 v. Reddit, Inc.*, 51 F.4th 1137 (9th Cir. 2022), petition for cert. filed, ___ U.S.L.W. ___ (U.S. Jan. 25, 2023) (No. 22-695). *Reddit* answered the first certified question in the affirmative: "[F]or a plaintiff to invoke FOSTA's immunity exception, she must plausibly allege that the website's own conduct violated section 1591." 51 F.4th at 1141. *Reddit* answered the second question in the negative: "In a sex trafficking beneficiary suit against a defendant-website, the most important component is the defendant website's own conduct—its 'participation in the venture.'" *Id.* at 1142. "A complaint against a website that merely alleges trafficking by the website's users—without the participation of the website—would not survive." *Id.* The term "'[p]articipation in a venture,' in turn, is defined as 'knowingly assisting, supporting, or facilitating' sex trafficking activities. [18 U.S.C.] § 1591(e)(4). Accordingly, establishing criminal liability requires that a defendant knowingly benefit from knowingly

> participating in child sex trafficking." *Id.* at 1145. *Reddit* therefore requires a more active degree of "participation in the venture" than a "continuous business relationship" between a platform and its users. Because these questions certified for interlocutory appeal are controlled by *Reddit*, the district court's contrary holding is reversed.

Id. Accordingly, the court of appeals reversed this Court's order with respect to Claim Two and remanded "for further proceedings to be conducted in a manner consistent with this court's *Reddit* decision." *Id.* at *2.

E. Contentions of the Parties

In the Motion, Twitter contends the rule announced in *Reddit* supports the same conclusion in this case as the court reached in *Reddit* with respect to Plaintiffs' beneficiary liability claim because the facts alleged in the FAC match the facts in *Reddit.* Motion at 5-8. In particular, Twitter argues:

> As in *Reddit*, the Plaintiffs allege that Twitter did not adequately police unlawful content on its platform. FAC ¶ 61; *cf. Reddit*, 51 F.4th at 1139 ("The plaintiffs allege that the presence of child pornography on Reddit is blatant, but Reddit has done little to remove the unlawful content or prevent it from being posted, because it drives user traffic and revenue."). As in *Reddit*, the Plaintiffs allege that such content generates

> advertising revenue. FAC ¶ 54; *cf. Reddit*, 51 F.4th at 1139 ("Plaintiffs allege that Reddit earns substantial advertising revenue from subreddits that feature child pornography."). And as in *Reddit*, the Plaintiffs allege that Twitter allowed explicit images of them to remain on Twitter after the Plaintiffs reported them. FAC ¶¶ 124, 152; *cf. Reddit*, 51 F.4th at 1139 (noting that "Reddit sometimes—though not always—removed the content" of which the plaintiffs complained).

Id. at 1; *see also* Reply at 9-10 (summarizing allegations in the operative complaint in *Reddit*, No. 8:21-CV-00768-JVS-KES, ECF No. 39 (First Am. Compl.) (filed July 7, 2021) ("*Reddit* FAC")). Consequently, Twitter asserts, Plaintiffs' beneficiary liability claim fails for the same reason the beneficiary liability claim asserted in *Reddit* failed, namely, because they have not alleged facts establishing that the Twitter "knowingly participated in or benefited from a sex trafficking venture." *Id.*

Plaintiffs contend *Reddit* is distinguishable and therefore, that it does not bar their beneficiary liability claim because this case, unlike *Reddit*, is an "actual knowledge" case. Opposition at 1, 12-13. In particular, Plaintiffs contend, their FAC alleges that Twitter "knew that child sexual abuse material ('CSAM') presenting two 13-year-old boys engaged in sex acts was on their servers and was being widely distributed on their platform[;]" "knew that this CSAM was created through an act of sex trafficking, and that the sex trafficking was ongoing on

its platform, as thousands of users interacted with and received value for the CSAM[; and] deliberately refused to remove the CSAM, instead choosing to leave the material on its platform and affirmatively electing not to report it to the National Center of Missing and Exploited Children[.]" *Id.* at 1. In contrast, Plaintiffs assert, "the platform in *Reddit* was not aware of the ages of the child victims, did not confirm its review of their specific CSAM and the associated user interaction, and did not write to the victims telling them that the CSAM would remain on the platform." *Id.*

Plaintiffs contend Twitter's Motion should be denied because: 1) they have plausibly alleged a claim for beneficiary liability; 2) their claim meets the standards set forth in *Reddit* for the FOSTA exemption to CDA § 230 immunity to apply; and 3) their beneficiary-liability claim does not treat Twitter as a "publisher" or "speaker" and therefore falls outside the scope of CDA § 230. *Id.* at 1-2.

III. ANALYSIS

A. Legal Standards Under Rule 12(b)(6)

A complaint may be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim on which relief can be granted. "The purpose of a motion to dismiss under Rule 12(b)(6) is to test the legal sufficiency of the complaint." *N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). Generally, a plaintiff's burden at the pleading stage is relatively light. Rule 8(a) of the Federal Rules of Civil Procedure states

that a "pleading which sets forth a claim for relief . . . shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a).

In ruling on a motion to dismiss under Rule 12(b)(6), the court analyzes the complaint and takes "all allegations of material fact as true and construe[s] them in the light most favorable to the non-moving party." *Parks Sch. of Bus. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). Dismissal may be based on a lack of a cognizable legal theory or on the absence of facts that would support a valid theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A complaint must "contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 562 (2007) (citing *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984)). "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555). "[C]ourts 'are not bound to accept as true a legal conclusion couched as a factual allegation.'" *Twombly*, 550 U.S. at 555 (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557) (alteration in original). Rather, the claim must be "'plausible on its face,'" meaning that the plaintiff must plead sufficient factual allegations to "allow[] the court to draw the reasonable inference that the defendant is

liable for the misconduct alleged." *Id.* (quoting *Twombly*, 550 U.S. at 570).

B. Discussion

The Ninth Circuit remanded this case for consideration of whether the FOSTA exemption from CDA § 230 immunity applies in this case under the standards set forth in *Reddit.* The Court finds that it does not.[4]

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4. The Court rejects Plaintiffs' assertion that Claim Two should be permitted to go forward because it does not treat Twitter as a publisher and therefore falls outside of Section 230 immunity altogether. In its August 19 Order, this Court assumed Plaintiffs' beneficiary liability claim treated Twitter as a publisher but did not decide that question. *See* August 19 Order at 38 ("The hotel line of cases, however, does not answer the question of whether the same standards apply where a civil claim is asserted under Section 1591(a)(2) against an ICS provider and thus (arguably) falls within the ambit of Section 230 immunity."). The Ninth Circuit, however, explicitly held that "[b]ecause the complaint targets 'activity that can be boiled down to deciding whether to exclude material that third parties seek to post online,' such activity 'is perforce immune under section 230.'" 2023 WL 3220912, at *2 (quoting *Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1170-1171 (9th Cir. 2008)). While that statement was made in the context of discussing Claim Four, it is broad enough to encompass the conduct that is at issue in Claim Two as well. It is also consistent with the Ninth Circuit's holding in *Reddit* to the extent the Court found in that case that the plaintiffs' beneficiary liability claim based on Reddit's alleged failure to remove child pornography treated Reddit as a "publisher or speaker" under Section 230. Therefore, the Court concludes that this question has already been decided by the Court of Appeals, both in this case and under *Reddit.*

The principal teaching of *Reddit* is that in order for Plaintiffs to invoke FOSTA's exemption to CDA § 230, they must show that Twitter's own conduct violated Section 1591. *See* 51 F.th at 1142. The court in *Reddit* made clear that "[a] complaint against a website that merely alleges trafficking by the website's users—without the participation of the website—would not survive." *Id.* Plaintiffs argue that they have met the *Reddit* standard because they have alleged facts showing Twitter had "actual knowledge" that the photos were the product of child sex trafficking and affirmatively refused to remove them. The material facts alleged by Plaintiffs, however, are essentially the same as the ones alleged in *Reddit* as to the website's awareness of and participation in alleged sex trafficking and that were found to be insufficient by the Ninth Circuit.[5]

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5. Plaintiffs contend that their allegations are similar to the ones in *Doe v. Mindgeek USA Inc.*, 558 F.Supp.3d 828, 837 (C.D. Cal. 2021), in which the court found that a plaintiff could sue a pornographic website operator under the TVPRA based on allegations that the operator knowingly posted, enabled posting of, and profited from pornographic videos featuring persons under the age of 18. The facts of that case are distinguishable, however, in that the website operator in that case affirmatively encouraged the posting of CSAM in various ways, including using video playlists and tags highlighting that the videos featured minors, directing posters to a "How to Succeed" page encouraging them them to use tags such as "teen" and "school" and suggesting search terms to their users, such as "young girls," "middle school girls," "middle school sex," "middle schools," and "middle student." 558 F.Supp. 3d at 832. *Mindgeek* also does not shed light on the application of the *Reddit* standard because it was decided before the Ninth Circuit decided *Reddit* and moreover, it relied on the reasoning of this Court in the opinion that the Ninth Circuit has now reversed. *Id.* at 836.

Appendix D

In *Reddit*, as in this case, the plaintiffs alleged that the website had both general knowledge that child sexual abuse material ("CSAM") proliferated on its platform and specific knowledge that CSAM depicting the plaintiffs was being posted and shared on it. *See*, *e.g. Reddit* FAC ¶¶ 4 (despite Reddit's "ability to enforce" its policy banning child pornography "and awareness of the continued prevalence of child pornography on its websites, Reddit continues to serve as a safe haven for such content."), 5 ("Reddit has taken no real action to prevent users from uploading child pornography in the first place."), 53 ("Reddit famously refuses to take down content, including content that violates its no child pornography policy, largely because Reddit benefits financially from the user traffic these posts drive to the site, not to mention because Reddit receives advertising revenue by maintaining controversial yet popular content on the subreddits.).

Further, in *Reddit*, as in this case, the plaintiffs alleged that at least in some instances, Reddit affirmatively "refused" to remove "child pornography" containing sexually explicit images and video of the plaintiffs when they or their parents alerted Reddit of the child pornography. *Reddit* FAC ¶ 53 ("Despite repeated requests, in many instances, it took weeks, if not months, for Reddit to take down illegal videos and images depicting Plaintiffs (and/or their daughters) in a sexually explicit manner. *In other instances, Reddit refused to remove the images*, or simply failed to respond to the requests. This was despite Plaintiffs' repeated outreach to individual moderators, as well as Reddit administrators, informing them of the fact that there was child pornography on

their subreddits.") (emphasis added). The Ninth Circuit in *Reddit* alludes to this allegation when it states in the fact section of its opinion that "[i]n response [to requests to remove explicit images and videos of plaintiffs], Reddit sometimes—*though not always*—removed the content." 51 F.4th at 1139 (emphasis added).

Plaintiffs attempt to distinguish *Reddit* on the basis that Reddit "used non-employee, volunteer moderators to supervise the subreddits" where CSAM proliferated, Opposition at 12, but the plaintiffs in *Reddit* alleged—and the Ninth Circuit recognized—that requests to remove the offensive posts were also made directly to Reddit employees, just as the requests in this case are alleged to have been made directly to Twitter. *See* 51 F.4th at 1139 ("Each plaintiff tells a similar story: after discovering explicit images or videos of their children (or themselves) posted to one or more subreddits, they immediately reported the content to the subreddit moderators *and to Reddit employees.*"). Therefore, the Court concludes that under *Reddit*, the conduct alleged in this case amounts to "turning a blind eye" rather than "active participation" in sex trafficking and therefore does not amount to a criminal violation of section 1591(a)(2) as is required to fall outside of the immunity established under CDA § 230.[6]

6. The Court need not reach Twitter's argument that Plaintiffs' beneficiary liability claim fails for the separate reason that the CSAM of Plaintiffs is not alleged to have been uploaded by the same individuals who allegedly engaged in sex trafficking three years earlier, when the original images were procured. The Court notes, however, that the allegations on that question are unclear. Although Plaintiffs do not explicitly allege that the images

IV. CONCLUSION

The Court finds that Plaintiffs' beneficiary liability claim fails under the standard set forth in *Reddit*. Further, Plaintiffs have not pointed to any way they can salvage this claim by amendment. Therefore, the Court GRANTS Twitter's Motion and dismisses Plaintiffs' remaining claim with prejudice and without leave to amend. The Clerk is instructed to enter judgment in favor of Twitter and close the case.

IT IS SO ORDERED.

Dated: December 11, 2023

s/ Joseph C. Spero
JOSEPH C. SPERO
United States Magistrate Judge

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were uploaded to Twitter by the same individuals who are alleged to have procured the explicit content, they do suggest that it could have been the same individuals when they allege that "[a]t some point in 2019, those saved images and videos appeared in a compilation video surfaced on Twitter" FAC ¶ 99, and that "[t]he fact that the CSAM images and video appeared outside of the Snapchat platform shows that the Traffickers saved copies of the images and videos." FAC ¶ 100.

APPENDIX E — ORDER OF THE UNITED STATES DISTRICT COURT IN THE NORTHERN DISTRICT OF CALIFORNIA, FILED OCTOBER 26, 2021

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN DOE, *et al.*,

Plaintiffs,

v.

TWITTER, INC.,

Defendant.

Case No. 21-cv-00485-JCS

ORDER RE: 1) MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, MOTION FOR AN ORDER PERMITTING INTERLOCUTORY APPEAL PURSUANT TO 28 U.S.C. § 1292(B); 2) MOTION FOR STAY; AND 3) ADMINISTRATIVE MOTION TO ENLARGE TIME TO RESPOND TO DISCOVERY REQUESTS

Re: Dkt. Nos. 80, 81, 82

Twitter has requested leave to file a motion for reconsideration of the Court's August 19, 2021 order denying in part Twitter's motion to dismiss (Dkt. 69)

("Order") or, in the alternative, an order certifying the Order for interlocutory appeal pursuant to 28 U.S.C. § 1292(b). The Court GRANTS the request for certification of an interlocutory appeal. A district court may certify an order for interlocutory appeal under § 1292(b) if it: (1) involves "a controlling question of law"; (2) on which there is "substantial ground[s] for difference of opinion"; and (3) "an immediate appeal from the order may materially advance the ultimate termination of the litigation . . . ." 28 U.S.C. § 1292(b); *see In re Cement Antitrust Litig.*, 673 F.2d 1020, 1026 (9th Cir. 1981). The Court finds that all three requirements are met here. Therefore, the Court certifies the Order for interlocutory appeal. The Court GRANTS Twitter's Motion for Stay and therefore STAYS ALL PROCEEDINGS in this case pending resolution of any appeal that may be taken up by the Ninth Circuit. The Court DENIES the Administrative Motion to Enlarge Time on the basis that it is moot. The motion hearing set for **November 19, 2021** is VACATED.

The parties shall notify the Court within fourteen days of the final resolution of Twitter's appeal.

IT IS SO ORDERED.

Dated: October 26, 2021

/s/ Joseph C. Spero
JOSEPH C. SPERO
Chief Magistrate Judge

APPENDIX F — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, FILED AUGUST 19, 2021

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN DOE, *et al.*,

Plaintiffs,

v.

TWITTER, INC.,

Defendant.

Case No. 21-cv-00485-JCS

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS FIRST AMENDED COMPLAINT

Re: Dkt. No. 48

I. INTRODUCTION

Plaintiffs John Doe #1 and John Doe #2 allege that when they were thirteen years old they were solicited and recruited for sex trafficking and manipulated into providing to a third-party sex trafficker pornographic videos ("the Videos") of themselves through the social media platform Snapchat. A few years later, when

Plaintiffs were still in high school, links to the Videos were posted on Twitter. Plaintiffs allege that when they learned of the posts, they informed law enforcement and urgently requested that Twitter remove them but Twitter initially refused to do so, allowing the posts to remain on Twitter, where they accrued more than 167,000 views and 2,223 retweets. According to Plaintiffs, it wasn't until the mother of one of the boys contacted an agent of the Department of Homeland Security, who initiated contact with Twitter and requested the removal of the material, that Twitter finally took down the posts, nine days later.

Plaintiffs assert state and federal claims against Twitter based on its alleged involvement in and/or enabling of sex trafficking and the distribution of the child pornography containing their images. Twitter, however, contends that even after Congress's enactment of the Fight Online Sex Trafficking Act and Stop Enabling Sex Traffickers Act in 2018, the conduct alleged by Plaintiffs is shielded from liability under Section 230 of the Communications Decency Act ("CDA"). Thus, Twitter brings a Motion to Dismiss First Amended Complaint ("Motion") seeking dismissal of all of Plaintiffs' claims on the basis that it is immune from liability under the CDA. In the Motion, Twitter also contends Plaintiffs fail to state viable claims as to many of their claims. A hearing on the Motion was held on August 6, 2021. For the reasons stated below, the Motion is GRANTED in part and DENIED in part.[1]

1. The parties have consented to the jurisdiction of a United States magistrate judge pursuant to 28 U.S.C. § 636(c).

Appendix F

II. BACKGROUND

A. First Amended Complaint

Plaintiffs' First Amended Complaint ("FAC"), which is the operative complaint, contains detailed allegations describing: 1) Twitter's platform, business model and content moderation policies and practices (FAC ¶¶ 23-51); 2) the ways Twitter allegedly permits and even aids in the distribution of child pornography on its platform and profits from doing so (FAC ¶¶ 52-84); 3) how pornographic content featuring John Doe #1 and John Doe #2 was created and eventually ended up on Twitter's platform (FAC ¶¶ 85-100); and 4) Twitter's response to requests that the pornographic photos and videos containing Plaintiffs' images be removed from Twitter (FAC ¶¶ 101-132).

Based on these allegations, Plaintiffs assert the following claims:

1) violation of the Trafficking Victims Protection Reauthorization Act ("TVPRA"), 18 U.S.C. §§ 1591(a)(1) and 1595(a) based on the allegation that "Twitter knew, or was in reckless disregard of the fact, that through monetization and providing, obtaining, and maintaining [child sexual abuse material ("CSAM")] on its platform, Twitter and Twitter users received something of value for the video depicting sex acts of John Doe #1 and John Doe #2 as minors." FAC ¶¶ 133-143 (Claim One);

2) violation of the TVPRA, 18 U.S.C. §§ 1591(a)(2) and 1595(a), based on the allegation that Twitter "knowingly benefited, or should have known that it was benefiting, from assisting, supporting, or facilitating a violation of 1591(a)(1)." FAC ¶¶ 144-155 (Claim Two);

3) violation of the duty to report child sexual abuse material under 18 U.S.C. §§ 2258A and 2258B. FAC ¶¶ 156-163 (Claim Three);

4) civil remedies for personal injuries related to sex trafficking and receipt and distribution of child pornography under 18 U.S.C. §§ 1591, 2252A, and 2255, based on the allegations that Twitter was "notified of the CSAM material depicting John Doe #1 and John Doe #2 as minors on its platform and still knowingly received, maintained, and distributed this child pornography after such notice[,]" causing Plaintiffs to suffer "serious harm and personal injury, including, without limitation, physical, psychological, financial, and reputational harm." FAC ¶¶ 164-176 (Claim Four);

5) California products liability based on the allegedly defective design of the Twitter platform, which is "designed so that search terms and hashtags utilized for trading CSAM return suggestions for other search terms and hashtags related to CSAM" and through use of "algorithm(s), API, and other proprietary technology" allows "child predators and sex traffickers to distribute CSAM on a massive scale" while also making it difficult for users to report CSAM and not allowing for immediate blocking of CSAM material once reported pending review. FAC ¶¶ 177-190 (Claim Five);

6) negligence based on allegations that Twitter had a duty to protect Plaintiffs, had actual knowledge that CSAM containing their images was being disseminated on its platform and failed to promptly remove it once notified. FAC ¶¶ 191-197 (Claim Six);

7) gross negligence based on the same theory as Plaintiffs' negligence claim. FAC ¶¶ 198-203 (Claim Seven);

8) negligence per se based on the allegation that Twitter's conduct violated numerous laws, including 18 U.S.C. §§ 1591 and 1595 (benefiting from a sex trafficking venture), 18 U.S.C. § 2258A (failing to report known child sexual abuse material), 18 U.S.C. § 2252(a) (knowingly distributing child pornography), Cal. Civ. Code § 1708.85 (intentionally distributing non- consensually shared pornography), and Cal. Penal Code § 311.1 (possessing child pornography). FAC ¶¶ 204-26 (Claim Eight);

9) negligent infliction of emotional distress. FAC ¶¶ 207-212 (Claim Nine);

10) distribution of private sexually explicit materials, in violation of Cal. Civ. Code § 1708.85, based on the allegation that "[b]y refusing to remove or block the photographic images and video depicting him after Plaintiff John Doe #1 notified Twitter that both he and John Doe #2 were minors, Twitter intentionally distributed on its online platform photographic images and video of the Plaintiffs." FAC ¶¶ 213-218 (Claim Ten);

11) intrusion into private affairs, based on the allegation that "Twitter intentionally intruded into Plaintiffs' reasonable expectation of privacy by continuing to distribute the photographic images and video depicting them after John Doe #1 notified Twitter that Plaintiffs were minors and the material had been posted on its platform without their consent." FAC ¶¶ 219- 223 (Claim Eleven);

12) invasion of privacy under the California Constitution, Article 1, Section 1. FAC ¶¶ 224-228 (Claim Twelve); and

13) violation of California Business and Professions Code § 17200 ("UCL") based on allegations that "Twitter utilized and exploited Plaintiffs for its own benefit and profit" and "Plaintiffs, to their detriment, reasonably relied upon Twitter's willful and deceitful conduct and assurances that it effectively moderates and otherwise controls third-party user content on its platforms." FAC ¶¶ 229-234 (Claim Thirteen).

Plaintiffs seek compensatory and punitive damages, injunctive relief, restitution, disgorgement of profits and unjust enrichment and attorneys' fees and costs.

B. Statutory Background

1. The CDA

The CDA was enacted as part of the Telecommunications Act of 1996. It contains a "Good Samaritan" provision that

immunizes interactive computer service ("ICS") providers from liability for restricting access to certain types of materials or giving users the technical means to restrict access to such materials, providing as follows:

> (c) **Protection for "Good Samaritan" blocking and screening of offensive material**
>
> (1) Treatment of publisher or speaker
>
> No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.
>
> (2) Civil liability
>
> No provider or user of an interactive computer service shall be held liable on account of—
>
> (A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

> (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

47 U.S.C. § 230(c).

"This grant of immunity dates back to the early days of the internet when concerns first arose about children being able to access online pornography." *Enigma Software Grp. USA, LLC v. Malwarebytes, Inc.*, 946 F.3d 1040, 1046 (9th Cir. 2019), cert. denied, 141 S. Ct. 13, 208 L. Ed. 2d 197 (2020). At that time, "[p]arents could not program their computers to block online pornography, and this was at least partially due to a combination of trial court decisions in New York that had deterred the creation of online-filtration efforts." *Id.* Under the New York cases, "if a provider remained passive and uninvolved in filtering third-party material from its network, the provider could not be held liable for any offensive content it carried from third parties." *Id.* (citing *Cubby, Inc. v. CompuServe, Inc.*, 776 F. Supp. 135, 139-43 (S.D.N.Y. 1991)). On the other hand, "once a service provider undertook to filter offensive content from its network, it assumed responsibility for any offensive content it failed to filter, even if it lacked knowledge of the content." *Id.* (citing *Stratton Oakmont, Inc. v. Prodigy Services Co.*, 1995 N.Y. Misc. LEXIS 229, 1995 WL 323710, *5 (N.Y. Sup. Ct. May 24, 1995)). "The *Stratton Oakmont* decision, along with the increasing public concern about pornography on the internet, served as catalysts" for the enactment of the CDA. *Id.*

Appendix F

The Ninth Circuit has interpreted CDA § 230 broadly: so long as an interactive computer service provider is not also an "information content provider," that is, someone who is "responsible, in whole or in part, for the creation or development of" the offending content, it is immune from liability arising from content created by third parties. *Fair Hous. Council of San Fernando Valley v. Roommates. Com, LLC*, 521 F.3d 1157, 1162 (9th Cir. 2008) (citing 47 U.S.C. §§ 230(c), (f)). Thus, a defendant is entitled to immunity under the CDA if: 1) it is a "provider or user of an interactive computer service," 2) the information for which the plaintiff seeks to hold the defendant liable was "information provided by another information content provider," and 3) the complaint seeks to hold the defendant liable as the "publisher or speaker" of that information. *Klayman v. Zuckerberg*, 753 F.3d 1354, 1357, 410 U.S. App. D.C. 187 (D.C. Cir. 2014) (citing 47 U.S.C. § 230(c)(1)); *see also Pennie v. Twitter, Inc.*, 281 F. Supp. 3d 874, 890 (N.D. Cal. 2017) (finding that under Section 230 Twitter was immune from claims based on theory that third-party content Twitter allowed to be posted on its platform led to plaintiff's injury because the claim sought to hold Twitter liable as a publisher).[2]

As expressly stated in Section 230, the policies underlying the enactment of that section

> (1) United States District Court Northern District of California are:

2. Here, it is undisputed that Twitter is an interactive computer service provider and that the Videos were provided by another information content provider.

(2) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(3) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(4) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(5) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

(6) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

47 U.S.C. § 230(b).

Section 230 expressly states that it has "[n]o effect on criminal law[,]" providing that "[n]othing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110

(relating to sexual exploitation of children) of Title 18, or any other Federal criminal statute." 47 U.S.C. § 230(e)(1). It expressly preempts all state laws that are inconsistent with Section 230's grant of immunity. 47 U.S.C. § 230(e)(3) ("No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.").

2. The TVPRA

In 2000, Congress enacted the TVPRA, which criminalized sex trafficking. When it enacted the TVPRA, "Congress declared that the purposes of the [TVPRA] are to 'combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.'" *Ditullio v. Boehm*, 662 F.3d 1091, 1094 (9th Cir. 2011) (quoting Pub.L. No. 106-386, § 102, 114 Stat. 1488 (2000) (codified as amended at 18 U.S.C. § 1589 *et seq.*)). In 2003, the law was expanded to provide a private right of civil action for victims of sex trafficking, codified at 18 U.S.C. § 1595. *Id.* "The version of § 1595 enacted in 2003 limited the civil remedy to victims of three specific trafficking acts (including sex trafficking of minors), and did not expressly permit recovery against individuals who benefit from participation in a trafficking venture." *Id.* n. 1 (citing Pub.L. 108-193, § 4(a)(4)(A), 117 Stat. 2878 (2003)). "In the [TVPRA's] 2008 reauthorization, Congress deleted those limitations." *Id.* (citing Pub.L. 110-457, Title II, § 221(2), 122 Stat. 5067 (2008)).

Appendix F

In its current form, the TVPRA makes it a crime to engage in direct sex trafficking or to benefit financially from sex trafficking, providing as follows:

> (a) Whoever knowingly—
>
> (1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or
>
> (2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),
>
> knowing, or, except where the act constituting the violation of paragraph (1) is advertising, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

18 U.S.C. § 1591(a). Section 1591(e) further provides that "[in] this section . . . [t]he term 'participation in a venture' means knowingly assisting, supporting, or facilitating a violation of subsection (a)(1)." 18 U.S.C. § 1591(e)(4).

The civil liability provision in its current form provides that "[a]n individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees." 18 U.S.C. § 1595(a).

3. FOSTA

In 2018, the CDA was amended by the Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Pub. L. No. 115-164, 132 Stat. 1253 (2018) ("FOSTA"), which inserted a new provision in CDA § 230 specifically addressing the application of that section in the context of sex trafficking law. *See* 47 U.S.C. § 230(e)(5). " 'Congress passed [FOSTA] to narrow Section 230's scope and provide prosecutors with new tools to combat the sex trafficking of both minors and adults.'" *J.B. v. G6 Hosp., LLC*, No. 19-CV-07848-HSG, 2020 U.S. Dist. LEXIS 151213, 2020 WL 4901196, at *4 (N.D. Cal. Aug. 20, 2020) (quoting *Woodhull Freedom Found. v. United States*, 948 F.3d 363, 368, 445 U.S. App. D.C. 111 (D.C. Cir. 2020)); *see also* 164 Cong. Rec. S1849-08, 164 Cong. Rec. S1849-08, S1849 (reflecting that FOSTA was enacted in response to

an increase in sex trafficking resulting from "the presence of [sex trafficking] organizations online that are using the ruthless efficiency of the internet to sell women and children"). The legislative history reflects that one of the websites of particular concern to Congress was a sex trafficking website called "Backpage," which knowingly trafficked in young women and children. *See* 164 Cong. Rec. S1849-08, 164 Cong. Rec. S1849-08, S1854 ("Why is this law so important? If I am looking at this through a prosecutor's lens, now all of the prosecutors in the country can go after anyone who knowingly facilitates sex trafficking online. I am not saying when it is by accident, and I am not saying when it has slipped through and they don't know it; I am talking about to knowingly facilitate, which is what [B]ackpage was doing.") (Senator McCaskill).

FOSTA's amendment of the CDA consisted of adding Section 230(e)(5):

> (5) No effect on sex trafficking law
>
> Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit—
>
> (A) any claim in a civil action brought under section 1595 of Title 18, if the conduct underlying the claim constitutes a violation of section 1591 of that title;
>
> (B) any charge in a criminal prosecution brought under State law if the conduct underlying

> the charge would constitute a violation of section 1591 of Title 18; or
>
> (C) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 2421A of Title 18, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted.

47 U.S.C. § 230(e)(5). " 'FOSTA narrowed the scope of immunity for interactive computer service providers, by providing that Section 230 has "[n]o effect on sex trafficking law," and shall not "be construed to impair or limit" civil claims brought under TVPRA Section 1595 or criminal charges brought under state law if the underlying conduct would constitute a violation of TVPRA Sections 1591 or 2421A.'" *J. B. v. G6 Hosp., LLC*, 2020 U.S. Dist. LEXIS 151213, 2020 WL 4901196, at *4 (quoting *Woodhull Freedom Found. v. United States*, 948 F.3d at 368) (quoting 132 Stat. at 1254).

C. Contentions of the Parties

1. Motion

Twitter argues in the Motion that it is immune under CDA § 230 as to all of Plaintiffs' claims. Motion at 2. According to Twitter, the amendment of Section 230 under FOSTA, permitting sex trafficking victims to pursue

civil claims under 18 U.S.C. § 1595 against an interactive computer service provider where the provider violates 18 U.S.C. § 1591, created only a narrow exception to the immunity afforded under Section 230 that was "carefully targeted to remove civil immunity for the few criminal websites that, unlike Twitter here, were deliberately and knowingly assisting and profiting from reprehensible crimes." *Id.* Twitter contends, "FOSTA's language, its legislative history, and the pre-existing case law on Section 1591 all point to the same conclusion: civil claims can only proceed against sex traffickers and those who knowingly benefit from their affirmative participation in a sex trafficking venture." *Id.*

Twitter argues that here, Plaintiffs have failed to allege facts showing that the exception to immunity created under FOSTA applies because the FAC: 1) "lacks any facts showing that Twitter affirmatively participated in any kind of venture with the Perpetrators, let alone a sex trafficking venture"; 2) "does not allege, as required to establish a violation of Section 1591, any facts establishing that Twitter knew that Plaintiffs were victims of sex trafficking or that the Videos were evidence of this crime"; and 3) does not "allege any connection between the Perpetrators and Twitter or that Twitter received any benefits because of the Videos." *Id.* Twitter further asserts that CDA § 230 protects it from liability because "Twitter did remove the Videos and suspend the accounts that had posted them" and it cannot be held liable under "any applicable law" simply because it did not take the videos down immediately. *Id.*

Appendix F

Twitter represents that it "vigorously combats [child sexual exploitation material ("CSE")] through a combination of methods, including review of user reports and the use of proprietary technology to proactively identify and remove such material" but that "given the sheer volume of Tweets posted every day on Twitter's platform (hundreds of millions of Tweets posted by over 190 million daily users), it is simply not possible for Twitter - or the individuals who enforce its Rules and policies - to find and remove all offending content immediately or accurately in all cases." *Id.* at 1. Twitter points to its zero-tolerance policy for child sexual exploitation materials, which is set forth in its Rules - to which users must agree when they create a Twitter account. *Id.* at 6. According to Twitter, it also "utilizes multiple tools, including reports by the public . . . , moderators who review reports of abuse and CSE content, innovative technology and algorithms that proactively identify abusive content, and online education and information sharing to combat online abuse." *Id.* (citing FAC ¶¶ 42-43, 55-57; Wong Decl., Exs. 1 (news article entitled "Twitter says it's getting better at detecting abusive tweets without your help"), 2 (a blog post by Twitter entitled "A healthier Twitter: Progress and more to do")). According to Twitter, in enacting FOSTA, Congress did not intend "for online platforms like Twitter that proactively act against such activity to be sued for their inadvertent failure to remove content." *Id.* at 2.

The purpose of CDA § 230, according to Twitter, was "to ensure that interactive computer service ('ICS') providers would never have to choose 'between taking responsibility for all messages and deleting no messages

at all,' which presents such providers a 'grim' and illusory choice." *Id.* at 3 (quoting *Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1162-63 (9th Cir. 2008)). To achieve that purpose, it asserts, "§ 230 creates broad immunity for claims against ICS providers based on content created by users: 'No provider . . . of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.'" *Id.* (quoting 47 U.S.C. § 230(c)(1)). Twitter contends this provision "bars all causes of action that seek to hold ICS providers like Twitter liable for not removing content created by a third-party." *Id.* (citing *Igbonwa v. Facebook, Inc.*, 2018 U.S. Dist. LEXIS 173769, 2018 WL 4907632, at *5-7 (N.D. Cal. Oct. 9, 2018), aff'd, 786 F. App'x 104 (9th Cir. 2019)).

Twitter asserts that FOSTA created only a narrow exception to the immunity afforded under CDA § 230, permitting a victim of sex trafficking to bring a civil action under § 1595, but only " 'if the conduct underlying the claim constitutes a violation of [S]ection 1591,' the criminal statute prohibiting sex trafficking." *Id.* at 4 (citing 47 U.S.C. § 230(e)(5)(A); *Doe v. Kik Interactive*, 482 F.Supp.3d 1242, 1251 (S.D. Fla. 2020) ("FOSTA permits civil liability for websites only if the conduct underlying the claim constitutes a violation of section 1591.")). This limitation is important, it contends, because "Section 1591 has more stringent *mens rea* and required elements to meet than Section 1595." *Id.* Thus, Twitter argues, the FOSTA exception only applies to "openly malicious actors" and does not otherwise change the scope of immunity

under CDA § 230. *Id.* at 5 (citing *Kik*, 482 F.Supp.3d at 1249-51); *see also id.* at 3. According to Twitter, this is apparent from the legislative history. *Id.* (citing 164 Cong. Rec., at S1860-62 (statement of Senator Durbin ("[FOSTA] is a narrowly crafted bill that would ensure that Section 230 . . . does not provide legal immunity to websites like Backpage that knowingly facilitate sex trafficking")); *id.* (statement of Senator Schumer ("Key to my support is my understanding that this legislation would not allow nuisance lawsuits against technology companies.")).

Here, Twitter asserts, it meets all the requirements for establishing immunity under CDA § 230, namely, that (1) it is an ICS provider; (2) Plaintiffs' claims treat Twitter as the publisher or speaker of the content in question; and (3) someone other than Twitter provided or created the content at issue. *Id.* at 8-11. Twitter argues further that the FAC does not allege facts that would establish that any exemption to CDA § 230 applies, including the FOSTA exception that allows for the imposition of liability where the ICS itself violates Section 1591, either as a "primary violator" or a "secondary participant" that 'knowingly . . . benefits, financially or by receiving anything of value, from participation in a venture' with a primary violator." *Id.* (quoting 18 U.S.C. § 1591(a)). *Id.* at 11-12.

With respect to Plaintiffs' claim that Twitter was a primary participant in sex trafficking under Section 1591(a)(1), Twitter contends Plaintiffs' allegations fall short because "[t]o plead a primary violation, a plaintiff must allege that the defendant 'provide[d], obtain[ed], [and] maintain[ed] . . . a **person**" knowing that he or

she "will be . . . cause[d]" to engage in a commercial sex act." *Id.* at 12 (quoting 18 U.S.C. § 1591(a)(1)) (emphasis added by Twitter). Twitter contends "Plaintiffs allege only that 'Twitter knowingly provided, obtained, and maintained the **Videos**,' not Plaintiffs" and therefore they fail to allege a primary violation. *Id.* (quoting FAC ¶ 141) (emphasis added by Twitter). Twitter also argues that as to Plaintiffs' claims under both Section 1591(a)(1) and Section 1591(a)(2), those claims fall short for the additional reason that Section 1591 "requires a defendant to know that the victim 'will in the future [be] cause[d] . . . to engage in prostitution.'" *Id.* at 12 n. 10 (citing *United States v. Todd*, 627 F.3d 329, 334 (9th Cir. 2010)). According to Twitter, "Plaintiffs cannot plead that Twitter had such knowledge as the FAC alleges that Plaintiffs had cut off contact with the Perpetrators before the Videos were posted on Twitter's platform." *Id.* (citing FAC ¶¶ 94-96).

Twitter contends Plaintiffs also fail to allege that it was a secondary participant under Section 1591(a)(2). *Id.* at 12-19. According to Twitter, to establish that it is a secondary participant, Plaintiffs must "plead that Twitter 'knowingly . . . benefit[ed] . . . from participation in a venture which has engaged in [sex trafficking] in violation of [Section 1591(a)(1)].'" *Id.* (quoting 18 U.S.C. § 1591(a)(2)). It further asserts that Section 1591 was amended by FOSTA to define "[p]articipation in a venture" as "**knowingly** assisting, supporting, or facilitating" a primary violation. *Id.* at 12 (quoting 18 U.S.C. § 1591(e)(4)) (emphasis added by Twitter)). Twitter argues that neither of the grounds upon which Plaintiffs rely to establish that Twitter was a secondary participant - "(i) Twitter's initial

failure to find a violation of its policies after reviewing the Video, or (ii) Twitter's nine-day delay in removing the Videos" - establishes it was a secondary participant for three reasons. *Id.*

"First, Plaintiffs do not allege the existence of any type of venture between Twitter and any party that has a common purpose, much less facts suggesting 'that [Twitter] actually participated in a *sex-trafficking venture*' that had the common purpose of trafficking Plaintiffs." *Id.* at 12 (quoting *United States v. Afyare*, 632 F. App'x 272, 283-86 (6th Cir. 2016) (emphasis in original); and citing *B.M. v. Wyndham Hotels & Resorts, Inc.*, 2020 U.S. Dist. LEXIS 135494, 2020 WL 4368214, at *3 (N.D. Cal. July 30, 2020) (purportedly analyzing the elements of a Section 1591 violation and following *Afyare*)); *see also id.* at 13-15 (arguing that Plaintiffs have not alleged any "venture" or any "active participation" in a venture).

"Second, there are no facts indicating Twitter received a benefit 'because of' the alleged sex trafficking venture, let alone that Twitter knowingly received it." *Id.* at 12 (citing *Geiss v. Weinstein Co. Holdings LLC*, 383 F. Supp. 3d 156, 169 (S.D.N.Y. 2019)); *see also id.* at 15-17 (arguing that Plaintiffs have not alleged "a causal relationship between affirmative conduct furthering the sex-trafficking venture and receipt of a benefit, with actual . . . knowledge of that causal relationship") (citing *Geiss*, 383 F.Supp.3d at 169; *Kolbek v. Twenty First Century Holiness Tabernacle Church, Inc.*, 2013 U.S. Dist. LEXIS 180463, 2013 WL 6816174, at *16 (W.D. Ark. Dec. 24, 2013)). In particular, Twitter asserts that

the FAC contains no factual allegations that it monetized or benefited from the Videos, instead containing only conclusory allegations that it did so, which are insufficient. *Id.* at 16 (citing *Jabagat v. Lombardi*, 2015 U.S. Dist. LEXIS 178762, 2015 WL 11004900, at *4 (S.D. Miss. Jan. 30, 2015)). Twitter further contends the FAC does not plausibly allege that it knowingly generated revenue "because of" its alleged failure to remove the Videos. *Id.* at 16 (citing *Geiss*, 383 F.Supp.3d at 169-170).

"Third, the FAC does not contain any allegation that Twitter had actual knowledge that Plaintiffs were victims of sex trafficking or that it knew the Videos contained evidence of this." *Id.* at 12 (citing FAC ¶¶ 152-54; *Noble v. Weinstein*, 335 F.Supp.3d 504, 523-24 (S.D.N.Y. 2018)); *see also id.* at 17-19. According to Twitter, Plaintiffs "must show that Twitter knew specifically that Plaintiffs had been sex trafficked, and deliberately assisted the sex trafficking." *Id.* at 17 (citing *Kik*, 482 F.Supp.3d at 1251). They do not satisfy this requirement, Twitter asserts, because "[t]he FAC . . . contains no facts plausibly alleging that Twitter had actual knowledge of Plaintiffs' prior interactions with the Perpetrators" or that it *knew* the perpetrators were sex traffickers or that the videos related to commercial sex. *Id.* at 18-19 (citing *Noble*, 335 F.Supp.3d at 524; *Lawson v. Rubin*, 2018 U.S. Dist. LEXIS 71582, 2018 WL 2012869, at *12-14 (E.D.N.Y. Apr. 29, 2018); *A.B. v. Hilton Worldwide Holdings Inc.*, 484 F.Supp.3d 921, 940 (D. Or. Sept. 8, 2020); *Woodhull Freedom Found. v. United States*, 334 F.Supp.3d 185, 203 (D.D.C. 2018), rev'd on other grounds, 948 F.3d 363, 445 U.S. App. D.C. 111 (D.C. Cir. 2020)).

Twitter argues that even if it is not immune under CDA § 230, Plaintiffs fail to state a claim under Section 1595. *Id.* at 19-21. First, it argues that Plaintiffs fail to allege that Twitter is a perpetrator and therefore cannot establish liability on the basis of primary liability. *Id.* at 19. To the extent that Plaintiffs assert their claim under Section 1595 on a "beneficiary" theory the claim also fails, Twitter asserts, because Plaintiffs have not alleged that Twitter participated in a venture with the perpetrators or that Twitter should have known of Plaintiffs' alleged sex trafficking. *Id.* at 19-21.

Twitter further asserts that even if Plaintiffs' Section 1595 claim is not subject to immunity under CDA § 230, their remaining claims are nonetheless barred because FOSTA removes immunity *only* for claims asserted under Section 1595. *Id.* at 21-22 (citing *Kik*, 482 F.Supp.3d at 1249; *M. L. v. Craigslist Inc.*, 2020 U.S. Dist. LEXIS 166836, 2020 WL 6434845, at *9-10 (W.D. Wash. Apr. 17, 2020); *Doe v. Bates*, 2006 U.S. Dist. LEXIS 93348, 2006 WL 3813758, at *18-20 (E.D. Tex. Dec. 27, 2006); *M.A. ex rel. P.K. v. Vill. Voice Media Holdings, LLC*, 809 F. Supp. 2d 1041, 1054-55 (E.D. Mo. 2011); Cal. Civ. Code § 1708.85(h); *J.B. v. G6 Hospitality, LLC*, 2020 U.S. Dist. LEXIS 151213, 2020 WL 4901196, at *7 (N.D. Cal. Aug. 20, 2020); *Riggs v. MySpace, Inc.*, 2009 WL 10671689, at *3 (C.D. Cal. Sept. 17, 2009), reversed in part on other grounds, 444 Fed. Appx. 986 (9th Cir. 2011); *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1125 (9th Cir. 2003); *Caraccioli v. Facebook, Inc.*, 700 Fed. Appx. 588, 590 (9th Cir. 2017); *Doe II v. MySpace Inc.*, 175 Cal. App. 4th 561, 575, 96 Cal. Rptr. 3d 148 (2009); *Ripple Labs Inc.*

v. YouTube LLC, 2020 U.S. Dist. LEXIS 218207, 2020 WL 6822891, at *6 (N.D. Cal. Nov. 20, 2020)).

Twitter argues further that Plaintiffs fail to state viable claims under 18 U.S.C. §§ 2258A & 2258B, California products liability law, as to any of their negligence claims, under Cal. Civ. Code § 1708.85, or under Cal. Bus. & Prof. Code § 17200. *Id.* at 22-25. Twitter contends there is no private right of action as to18 U.S.C. §§ 2258A & 2258B. *Id.* at 22 (citing *Abcarian v. Levine*, 972 F.3d 1019, 1025-26 (9th Cir. 2020)). It challenges the California product liability claim on the grounds that Plaintiffs "do not allege physical injury or property damage resulting from their use of a defective product" or even identify any product that is defective. *Id.* at 22 (citing *Hernandez v. Avis Budget Grp., Inc.*, 2017 U.S. Dist. LEXIS 206835, 2017 WL 6406838, at *5 (E.D. Cal. Dec. 15, 2017); *Griff v. Woejeckloski*, 2017 U.S. Dist. LEXIS 222114, 2017 WL 8185857, at *3 (C.D. Cal. March 20, 2017)). Twitter further asserts that to the extent Plaintiffs base that claim on defective platform design, it fails because product liability law is "geared to the tangible world." *Id.* at 23 (citing *Winter v. G.P. Putnam's Sons*, 938 F.2d 1033, 1034-35 (9th Cir. 1991); *Intellect Art Multimedia Inc. v. Milewski*, 899 N.Y.S.2d 60, at *7, 24 Misc. 3d 1248[A], 2009 NY Slip Op 51912[U] (2009); *Brooks v. Eugene Burger Management Corp.*, 215 Cal. App. 3d 1611, 1624-25, 264 Cal. Rptr. 756 (1989); *Wilson v. Midway Games, Inc.*, 198 F.Supp.2d 167, 172-73 (D. Conn. 2002)).

With respect to Plaintiffs' negligence claims (Claims Six through Nine), Twitter challenges the negligence per

se and negligent infliction of emotional distress claims (Claims Eight and Nine) on the basis that they are not independent causes of action. *Id.* at 23 (citing *J.B. v. G6 Hospitality LLC*, 2020 U.S. Dist. LEXIS 151213, 2020 WL 4901196, at *11; *Sinclair for Tucker v. Twitter, Inc.*, 2019 U.S. Dist. LEXIS 234164, 2019 WL 10252752, at *7 (N.D. Cal. Mar. 20, 2019)). As to the two remaining negligence claims (Claims Six and Seven), Twitter argues that they fail because Plaintiffs have not alleged that Twitter owed them any duty. *Id.* (citing *Worldwide Media, Inc. v. Twitter, Inc.*, 2018 U.S. Dist. LEXIS 182700, 2018 WL 5304852, at *8-9 (N.D. Cal. Oct. 24, 2018)). According to Twitter, Plaintiffs' allegations that "Twitter had a duty to protect" them because it knew of the Videos and failed to take them down (FAC ¶¶ 112, 128, 194-95) are insufficient because a defendant can only be liable for negligence based on failure to act where there is a special relationship between the parties and Plaintiffs have not alleged such a relationship. *Id.* at 24.

Twitter contends Plaintiffs' claim under California Civil Code section 1708.85, which creates a private right of action against a person "who intentionally distributes" private sexually explicit materials "without consent" fails to state a claim because "the FAC alleges no facts from which the Court could infer that Twitter 'intentionally distribute[d]' the Videos; rather, it makes a conclusory allegation that '[b]y refusing to remove or block [the Videos], Twitter intentionally distributed' them" *Id.* (citing FAC ¶ 214). It argues further that "liability is precluded if the 'material was previously distributed by another person,' Cal. Civ. Code § 1708.85(c)(6), and here, the Videos

were distributed first on a different platform—Snapchat—by two individuals (whom Plaintiffs do not allege were the individual(s) who trafficked them) months before Twitter ever became aware of the Videos—@StraightBross and @fitmalesblog." *Id.* (citing FAC ¶¶ 87-89, 99, 100.)

Finally, Twitter argues that Plaintiffs' UCL claim is insufficiently pled because Plaintiffs have not alleged any economic injury and therefore, they do not have standing to assert the claim. *Id.* at 24 (citing *Huynh v. Quora, Inc.*, 2019 U.S. Dist. LEXIS 235733, 2019 WL 11502875, at *7 (N.D. Cal. Dec. 19, 2019)). Twitter further contends Plaintiffs have not alleged an unfair business practice because: 1) they have not pled any statutory violation and therefore have not alleged an unlawful act by Twitter; and 2) "To the extent Plaintiffs' claim is premised on an alleged misrepresentation (¶ 230), it fails to meet Rule 9(b) because Plaintiffs do not allege with particularity a misrepresentation by Twitter." *Id.* (citing *Letizia v. Facebook Inc.*, 267 F. Supp. 3d 1235, 1244 (N.D. Cal. 2017)). Twitter also argues that the claim fails because Plaintiffs have not alleged actual reliance, having failed to allege that they "ever used Twitter, saw or read its policies, or that seeing those policies resulted in an economic injury." *Id.*

2. Opposition

In their Opposition, Plaintiffs reject Twitter's challenges under CDA § 230, arguing that the claims in this case are based on just the sort of knowing conduct that Congress intended to exempt from Section 230 when

it enacted FOSTA. Opposition at 1. In particular, they assert that Twitter knew that the Videos were being widely distributed on its platform and that they contained child pornography created as a result of sex trafficking and deliberately allowed the posts to remain on Twitter. *Id.*

First, Plaintiffs argue that they have sufficiently alleged their claims under the TVPRA, which FOSTA exempts from CDA § 230, both on the basis of direct sex trafficking under Section 1591(a)(1) and as a beneficiary of sex trafficking under Section 1591(a)(2). *Id.* at 3. With respect to direct sex trafficking, Plaintiffs point to the language of Section 1591(a)(1), providing for liability for a perpetrator who "knowingly . . . recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits *by any means* a person," while "knowing, or . . . in reckless disregard of the fact . . . that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act[.]" *Id.* (quoting 18 U.S.C. § 1591(a)) (emphasis added). According to Plaintiffs, "the phrase 'by any means' is not defined and contains no exception for electronic or virtual actions." *Id.* Further, they assert, while the statute does not define the words "provide[]," "obtain[ ]," or "maintain[ ]," their ordinary meaning as evidenced by dictionary definitions - upon which the Ninth Circuit has relied to define other undefined terms of the TVPRA -support the conclusion that Plaintiffs' allegations are sufficient as to the first part of Section 1591(a)(1) (establishing liability as to a defendant that "knowingly . . . recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person"). *Id.* at 3-4. In particular,

Plaintiffs contend they have satisfied this requirement by alleging that "Twitter made them available, as depicted in a CSAM compilation video, to users on Twitter, having gained or attained Plaintiffs by the same electronic means, and having kept them in the same existing state, all despite Plaintiffs' own reports and objections." *Id.* at 4 (citing *United States v. Love*, 743 F. App'x 138, 139 (9th Cir. 2018) (using Webster's dictionary to define "force" in § 1591(a)(1) charge against sex trafficker)).

Plaintiffs further assert that child pornography can be the basis for a TVPRA claim under Section 1591(a)(1), including in cases where the perpetrator procures pornographic material without having direct contact with the child or paying money for the material. *Id.*at 4-5 (citing *United States v. Flanders*, 752 F.3d 1317, 1330 (11th Cir. 2014); *United States v. Tollefson*, 367 F. Supp. 3d 865, 878-880 (E.D. Wis. 2019)).

Plaintiffs argues further that their allegations are sufficient as to the second phrase of Section 1591(a)(1), requiring that the conduct that is the basis for the claim must have been "knowing, or . . . in reckless disregard of the fact . . . that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act[.]" *Id.* at 5-6. According to Plaintiffs, a "commercial sex act" is defined under the TVPRA as " 'any sex act, on account of which anything of value is given to or received by any person[.]'" *Id.* at 6 (quoting 18 U.S.C. § 1591(e)(3)). Here, they contend, they have alleged "actual knowledge" in that they "alleged that they reported child sexual abuse material featuring them to Twitter, depicting them

engaged in sexual acts due to extortion and blackmail (that is, in exchange for 'something of value')." *Id.* (citing FAC ¶¶ 112, 114, 123). They also point to their allegation that "John Doe 1 provided proof of his age to Twitter, that numerous users commented on their belief that videos featured minors and that one disseminating account had already been reported to Twitter for CSAM." *Id.* (citing FAC ¶¶ 101-102, 114, 121-122). Plaintiffs argue that "[t]aken together, these allegations are more than sufficient to indicate that Twitter knew, or at least was in reckless disregard of, Plaintiffs' status as minors when engaging in the commercial sex acts at issue." *Id.* at 5-6.

Plaintiffs also argue that they state a claim on the basis of beneficiary liability under Section 1595(a) and Section 1591(a)(2), addressing the requirements of both provisions; according to Plaintiffs, Sections 1591(a)(2) and 1595(a) "have similar provisions for those who benefit financially, and distinct requirements for participation in a venture and the requisite level of knowledge." *Id.* at 6.

With respect to whether Plaintiffs have alleged that Twitter knowingly "benefited financially or by receiving anything of value," Plaintiffs contend they have satisfied this requirement by alleging that Twitter both monetizes the CSAM on its platform and gains more viewers from CSAM, which makes the platform more popular and attracts advertisers. *Id.* at 6-7. In support of this argument, it points to *B.M. v. Wyndham*, 2020 U.S. Dist. LEXIS 135494, 2020 WL 4368214, at *4 (N.D. Cal. July 30, 2020). *Id.* According to Plaintiffs, in that case the Court rejected the defendant's argument that a plaintiff

asserting a claim under Sections 1591(a)(2) and 1595(a) was required to show that the financial benefit "must [have] derive[d] directly from, and [been] knowingly received in exchange for, participation in a sex trafficking venture." *Id.* at 7 (quoting *B.M.*, 2020 U.S. Dist. LEXIS 135494, 2020 WL 4368214, at *4 (internal citations omitted) (alterations added)). Instead, Plaintiffs assert, the court in *B.M.* found "that § 1595 claims could not be subjected to the same knowledge standard as § 1591 without undermining the 'should have known' language, and the Court concluded that it was sufficient to allege that the hotels knowingly received revenue from room rentals." *Id.* (citing *B.M.*, 2020 U.S. Dist. LEXIS 135494, 2020 WL 4368214, at *4) (internal citations omitted).

Plaintiffs reject Twitter's argument that "any benefit [it] receives must have a causal relationship to the sex trafficking[,]" arguing that the cases upon which it relies - *Geiss v. Weinstein Co. Holdings LLC*, 383 F.Supp. 3d 156, 169 (S.D.N.Y. 2019) and *Kolbek v. Twenty First Century Holiness Tabernacle Church, Inc.*, 2013 U.S. Dist. LEXIS 180463, 2013 WL 6816174, at *16 (W.D. Ark. Dec. 24, 2013) - are not on point. *Id.* at 8 (citing Motion at 13, 15). Even if Twitter is correct, Plaintiffs contend, they have demonstrated such a connection through the allegations in the FAC. *Id.* at 8-10. Plaintiffs argue that many of Twitter's assertions as to their allegations are contradicted by the FAC and provide a list of examples comparing specific claims about the allegations made by Twitter with the actual allegations in the FAC. *Id.*

Next, Plaintiffs address whether they have adequately alleged that Twitter participated in what it knew or should have known was a sex trafficking venture. *Id.* at 10-16. According to Plaintiffs, Sections 1591(a)(2) and 1595 contain distinct requirements. *Id.* at 10. "Participation in a venture" for the purposes of Section 1591(a)(2) means "knowingly assisting, supporting, or facilitating a violation of subsection (a)(1)." *Id.* (quoting 18 U.S.C. § 1591(e)(4)). Plaintiffs contend they have alleged a violation of subsection (a)(1) for the reasons discussed above and therefore have satisfied that aspect of the definition of "participation in a venture" under Section 1591(a)(2). *Id.* at 11. Further, they reject Twitter's arguments that it did not participate in a venture that it knew was sex trafficking, which they characterize are as follows: "(1) Twitter did not have a common purpose with the initial sex traffickers, (2) Twitter was at most a passive beneficiary of sex trafficking profits, and (3) Twitter does not know what sex trafficking is." *Id.*

As to the "common purpose" argument, Plaintiffs contend Twitter relies on cases interpreting the Racketeer Influenced and Corrupt Organizations Act ("RICO") in support of such a requirement, but that these cases have no bearing on Plaintiffs' TVPRA claims. *Id.* (citing Motion at 13 (citing *United States v. Turkette*, 452 U.S. 576, 101 S. Ct. 2524, 69 L. Ed. 2d 246 (1981); *Washington v. Deleon*, 2019 U.S. Dist. LEXIS 236640, 2019 WL 11691424 (N.D. Cal. July 9, 2019)).

Plaintiffs argue that Twitter's passive beneficiary argument also fails because it's reliance on *Afyare*, 632

F. App'x at 286, is misplaced. *Id.* at 11-12. According to Plaintiffs, in *Afyare* the court offered an analogy "that a defendant who joins a soccer team whose members include sex traffickers who sponsor the team financially, does not violate § 1591(a)(2) unless that defendant commits 'some overt act' that 'furthers the sex trafficking aspect of the venture.'" *Id.* at 11 (quoting Motion at 14). Plaintiffs argue that Twitter's reliance on that analogy to argue that there must be "some overt act that furthers the sex trafficking aspect of the venture" should be rejected because "[t]he decision's logic doesn't apply where the beneficiary defendant is engaging in illegal acts." *Id.* at 12. In particular, they assert, while playing soccer is a lawful venture, "CSAM possession and distribution are not." *Id.* (citing 18 U.S.C. § 2252A). Thus, Plaintiffs assert, they *have* alleged that Twitter engaged in overt acts that further the sex trafficking venture "[b]y knowingly hosting, possessing, and distributing the CSAM of Plaintiffs, as Plaintiffs have alleged." *Id.*

Next, Plaintiffs reject Twitter's claims that it "did not know of the alleged sex trafficking" (Motion at 17), that "there is no allegation that any of these submissions informed Twitter that Plaintiffs were victims of sex trafficking" (Motion at 18), that "none of the reports or emails sent to Twitter about the videos indicated that Plaintiffs had been sex trafficked or that they involved commercial sex acts" (Motion at 21), and that Plaintiffs did not allege "that the videos would have, on their face, indicated to Twitter (or a reasonable viewer) that Plaintiffs had been trafficked and the videos involved commercial sex" (Motion at 18). *Id.* at 12. Plaintiffs argue

that these claims are "misleading and meritless" in light of the allegations in the FAC. *Id.* at 12-13 (citing FAC ¶¶ 52-53, 57, 101-102, 112, 114, 121-123, 196). Likewise, they argue that Twitter's suggestion that their claims are merely about "delay," implying that it acted in good faither in eventually taking action to remove the Videos rather than doing so in response to an intervening event (a request from the federal government that it take action) after refusing to take action, is misleading. *Id.* at 12 n. 26. According to Plaintiffs, "unless the charge is advertising, § 1591(a), nowhere does the TVPRA require that the defendant actually knew that someone was a sex trafficking victim to be liable. Reckless disregard or constructive knowledge suffice for civil liability." *Id.* (citing 18 U.S.C. §§ 1591(a), 1595(a)). Thus, they contend, their allegations are sufficient to establish knowledge of their sex trafficking. *Id.*

Plaintiffs also point to Section 1595, which they contend under *B.M.* requires that they "allege that Twitter (1) 'knowingly benefit[ted] financially or by receiving anything of value'; (2) from participation in a venture; (3) that they 'knew or should have known [had] engaged in' sex trafficking.'" *Id.* at 14 (quoting *B.M.*, 2020 U.S. Dist. LEXIS 135494, 2020 WL 4368214, at *4). They contend, "[t]he *B.M.* court determined, as most courts have, that the plaintiff 'is not required to allege an overt act in furtherance of or actual knowledge of a sex trafficking venture in order to sufficiently plead her section 1595 civil liability claim[.]'" *Id.* (quoting *B.M.*, 2020 U.S. Dist. LEXIS 135494, 2020 WL 4368214, at *4 and citing *S.Y. v. Wyndham Hotels & Resorts, Inc. & Laxmi of Naples,*

LLC, No. 2:20-CV-619-JES-MRM, 2021 U.S. Dist. LEXIS 86849, 2021 WL 1814651, at *4-5 (M.D. Fla. May 6, 2021); *E.S. v. Best W. Int'l, Inc.*, 510 F. Supp. 3d 420, 2021 WL 37457, at *3-4 (N.D. Tex. 2021); *M.A. v. Wyndham Hotels & Resorts, Inc.*, 425 F. Supp. 3d at 968-71 (S.D. Ohio 2019); *S.J. v. Choice Hotels Int'l, Inc.*, 473 F.Supp.3d 147, 152-54 (E.D.N.Y. 2020); *Doe S.W. v. Lorain-Elyria Motel, Inc.*, Case No. 2:19-cv-1194, 2020 U.S. Dist. LEXIS 44961, 2020 WL 1244192, *6-7 (S.D. Ohio Mar. 16, 2020)). Plaintiffs note that *Afyare*, upon which Twitter relies to assert that an overt act is required, was a criminal action, in contrast to *B.M.*, and argue that under *B.M.* Plaintiffs are not required to plead a § 1595 claim under a § 1591 standard. *Id.* (citing *B.M.*, 2020 U.S. Dist. LEXIS 135494, 2020 WL 4368214, at *3; *J.C. v. Choice Hotels Int'l, Inc.*, No. 20-CV-00155-WHO, 2020 U.S. Dist. LEXIS 201073, 2020 WL 6318707, at *7 (N.D. Cal. Oct. 28, 2020)). Plaintiffs also argue that Twitter's reliance on *M.A. v. Wyndham Hotels & Resorts, Inc.*, 425 F. Supp. 3d 959, 966 (S.D. Ohio 2019) is misplaced because is mischaracterizes the facts and holding of that case. *Id.* at 14-15. According to Plaintiffs, they have "sufficiently alleged that Twitter had constructive and actual knowledge of Plaintiffs' sex trafficking, which it could see for itself; the main crime happened in plain sight." *Id.* at 16.

Plaintiffs strenuously disagree with Twitter's characterization of the legislative history of FOSTA and its argument that Congress intended to create only a narrow exception for bad actors like Backpage. *Id.* at 16-19. Plaintiffs argue that in any event, they have alleged conduct that is sufficient to fall within the exception,

and the question of "how Twitter's actions compare to Backpage is a factual question that cannot be resolved at this stage of the litigation." *Id.*

Plaintiffs also argue that even apart from FOSTA, CDA § 230 was "never intended to immunize conduct that entails both criminal and civil liability." *Id.* (citing *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1164 (9th Cir. 2008) ("The Communications Decency Act was not meant to create a lawless no-man's-land on the Internet.")). In particular, they argue that the plain language of Section 230(c) requires that an interactive service provider "**take action** in good faith to restrict access to material, which is the opposite of what Twitter did in the instant case." *Id.* at 20 (emphasis in original). Plaintiffs concede that "[s]ome Ninth Circuit decisions have interpreted the liability shield in CDA 230 to cover not just the removal of objectionable content, but the decision whether to remove the content." *Id.* (citing *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1102 (9th Cir. 2009), as amended (Sept. 28, 2009) (citing *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1170-71 (9th Cir. 2008)). According to Plaintiffs, "[t]his interpretation is not consistent with the plain language of § 230(c)(2), which only limits liability for 'any action . . . to restrict access' to harmful content[,]" but these cases do not apply here because "they do not hold that CDA 230 immunizes a knowing decision to possess and distribute CSAM and Twitter has pointed to no controlling authority for such a proposition." *Id.* at 21.

Further, Plaintiffs assert, the stated purpose for CDA § 230 is inconsistent with Twitter's argument that it creates "immunity for all third-party content, even contraband - specifically, child pornography[.]" *Id.* The title of Section 230 - "Protection for private blocking and screening of offensive material" - supports this conclusion, Plaintiffs assert. *Id.* Likewise, the policies stated in Section 230 indicate that it was enacted "to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material," and "to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer." *Id.* (quoting 47 U.S.C.A. § 230(b)(4)-(5)). Twitter's position would undermine these policies rather than advance them, Plaintiffs assert. *Id.*

Plaintiffs also argue that CDA § 230 does not apply to their claim under 18 U.S.C. § 2252A and 2255 that Twitter knowingly possessed and distributed child pornography (Claim Four) because "CSAM material is not lawful 'information provided by another information content provider'" but rather is illegal contraband, stemming from the sexual abuse of a child, and wholly outside any protection or immunity under the law, to include CDA 230.'" *Id.* at 22. Plaintiffs' further assert that "CDA 230 was enacted to incentivize internet service providers ("ISP's") to protect children, not immunize them for intentionally or recklessly harming them." *Id.*

Appendix F

Plaintiffs argue that the Court should decline to follow the case cited by Twitter, *Doe v. Bates*, 2006 U.S. Dist. LEXIS 93348, 2006 WL 3813758 (E.D. Tex., Dec. 27, 2006), which is a "non-binding, first of its kind, federal decision extending CDA immunity to a civil suit alleging receipt and possession of child pornography." *Id.* at 23. According to Plaintiffs, neither of the cases upon which the Texas district court relied, *Zeran v. Am. Online, Inc.*, 129 F.3d 327 (4th Cir. 1997) and *Noah v. AOL Time Warner, Inc.*, 261 F. Supp. 2d 532, 537 (E.D. Va. 2003), aff'd, No. 03-1770, 2004 U.S. App. LEXIS 5495, 2004 WL 602711 (4th Cir. Mar. 24, 2004), involved child pornography. *Id.* They also contend the reasoning of the Texas case is wrong to the extent it treats child pornography in the same way courts have treated defamatory statements instead of treating it as contraband. *Id.* at 23-24.

According to Plaintiffs, given that Congress made clear that the protection of children was paramount when Section 230 was enacted, as is evidenced by the policies stated in subsection (b) and the exemption for "'chapter . . . 110 of title 18 (relating to sexual exploitation of children),' which includes §§ 2252A and 2255[,]" "[i]t is untenable . . . to assert that CDA 230 immunizes platforms from knowingly possessing and distributing child sexual exploitation material." *Id.* at 24. Moreover, Plaintiffs assert, Twitter does not dispute that they have adequately alleged the elements of claim under 18 U.S.C. § 2252A. *Id.* at 25.

Plaintiffs also challenge Twitter's argument that their claims under 18 U.S.C. § 2258A(a)(1) and (a)(2) fail because

those provisions do not create a civil cause of action. *Id.* (citing Motion at 22). According to Plaintiffs, "Congress intended to make deliberate and reckless violations of 2258A privately enforceable" and that is what they allege here. *Id.* (citing 18 U.S.C. § 2258B(b)). Plaintiffs argue further that "the standards of misconduct in paragraph (b) of 2258(B) establish the duty of care that Twitter owes Plaintiffs" for the purposes of their negligence claims and thus establish liability under both federal and state law. *Id.* at 25-26.

Next, Plaintiffs argue that CDA § 230 does not give rise to immunity as to their state law products liability claim based on negligent design. *Id.* According to Plaintiffs, this is because their claim "does not attempt to treat Twitter as the 'publisher or speaker' of information." *Id.* at 26. Instead, "it seeks to hold Twitter accountable for failing in its 'duty to exercise due care in supplying products that do not present an unreasonable risk of injury or harm to the public.'" *Id.* (quoting *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 2021 WL 1743576, at *4 (9th Cir. 2021)). Plaintiffs contend that the distinction drawn by the Ninth Circuit in *Lemmon*, in which the court "rejected a social media platform's attempt to argue that CDA 230 applied because the platform allowed its users to transmit user-generated content to one another. . . .[,]'" also applies here, supporting the conclusion that Section 230 does not apply to this claim. *Id.* at 26-27. To the extent Twitter argues that Plaintiffs have not clearly identified what aspect of its platform is the "product," Plaintiffs contend this is just semantics. *Id.* at 27. They also reject Twitter's argument that product liability law applies only to the "tangible"

world, arguing that the Ninth Circuit's holding in *Lemmon* shows that Twitter is incorrect. *Id.*

Finally, Plaintiffs argue that their state law claims are adequately alleged and should be allowed to proceed. As to the negligence claims, they assert that it is apparent from the FAC that these claims are based on different theories and California's Civil Jury Instructions treat them as separate causes of action. *Id.* at 28. To the extent negligence per se operates as a presumption to establish a duty of care rather than a separate claim, Plaintiffs argue, "that simply means that Plaintiffs' allegations of Twitter's multiple violations of its statutory duties should be read in tandem with its negligence claims." *Id.* (citing *Tinoco v. San Diego Gas & Elec. Co.*, No. 17-CV 2433-BAS-JLB, 2018 U.S. Dist. LEXIS 163523, 2018 WL 4562479, at *2 (S.D. Cal. Sept. 21, 2018)). Plaintiffs also argue that they state a claim for violation of California's UCL based on "unlawful" conduct because "Twitter's criminal, aiding and abetting conduct is actionable under § 17200." *Id.* at 29 (citing *Chetal v. Am. Home Mortg.*, No. C 09-02727 CRB, 2009 U.S. Dist. LEXIS 77806, 2009 WL 2612312, at *4 (N.D. Cal. Aug. 24, 2009); *Plascencia v. Lending 1st Mortg.*, 583 F. Supp. 2d 1090, 1098 (N.D. Cal. 2008)). Twitter's argument that Plaintiffs do not have standing on this claim because they cannot seek "the full spectrum of damages" also falls short, Plaintiffs contend, as "the availability of a certain remedy is not relevant to a determination of standing to assert the claim." *Id.* (citing *Finelite, Inc. v. Ledalite Architectural Prods.*, No. C-10-1276 MMC, 2010 U.S. Dist. LEXIS 88041, 2010 WL 3385027, at *2 (N.D. Cal. Aug. 26, 2010)).

3. Reply

In its Reply, Twitter reiterates its arguments that it cannot be held liable as either a perpetrator of sex trafficking under Section 1591(a)(1) or a criminal beneficiary of sex trafficking under Section 1591(a)(2). Reply at 1-10. As to Plaintiffs' direct sex trafficking claim under Section 1591(a)(1), Twitter rejects Plaintiffs' interpretation of the provision, again pointing to the words "a person" in the provision to argue that the prohibited conduct applies to an *individual. Id.* at 2. Twitter argues that Plaintiffs' "novel" interpretation of the provision as also encompassing a video depicting a person is not supported by any authority. *Id.* Twitter points to other uses of the word "person" in Section 1591 to support its argument that this word cannot be read to mean a depiction of a person under Section 1591(a)(1). *Id.* at 3 (citing 18 U.S.C. § 1591(a)(2) ("person has not attained the age of 18"); 18 U.S.C. § 1591(e)(2) ("coercion" is "threats of serious harm to or physical restraint against any person")).

Twitter argues further that the cases cited by Plaintiffs in support of their reading of Section 1591(a)(1), *United States v. Flanders*, 752 F.3d 1317, 1330 (11th Cir. 2014) and *United States v. Tollefson*, 367 F. Supp. 3d 865, 878-80 (E.D. Wis. 2019), are not on point because in those cases, the court "determined that each defendant violated Section 1591(a)(1) because they procured a person for commercial sex using electronic means, i.e., they used the internet to communicate with the victims and to pay them to engage in recorded sex acts, similar to what the

Perpetrators did here." *Id.* at 3 (citing *Flanders*, 752 F.3d at 1330; *Tollefson*, 367 F. Supp. 3d at 878-80). According to Twitter, *Flanders* and *Tollefson* "revolved around whether Section 1591 covered situations in which the defendant was not physically present during the alleged sex trafficking, not whether the challenged conduct could apply to an object (such as a video) instead of a person." *Id.*

Twitter also repeats its argument that Plaintiffs, by their own admission, cannot satisfy the requirement under Section 1591(a) that a defendant must have known that a victim "will in the future [be] cause[d]" to engage in a commercial sex act given that Plaintiffs' allegations establish that "the venture was over at the time Twitter allegedly refused to remove the Videos from its platform, . . . making it impossible for Twitter to know that its alleged failure to act would likely cause Plaintiffs to engage in commercial sex acts in the future." *Id.*

Twitter also rejects Plaintiffs' arguments as to their claim that Twitter is liable as a beneficiary of sex trafficking under Section 1591(a)(2). *Id.* at 3-10. It again argues that it did not participate in any "venture" for the purposes of this subsection because it was not "associated in fact" with the perpetrators. *Id.* at 4. Twitter acknowledges that this term is not defined under Section 1591 but argues it is reasonable to look to the RICO cases cited in the Motion to understand its meaning. *Id.* Twitter reiterates its argument that these cases support the conclusion that to be engaged in a "venture" under Section 1591 the participants must have a common purpose, which Plaintiffs fail to allege. *Id.* Twitter notes that "[t]his

construction of 'venture' is implicit to the *Afyare* court's holding that Section 1591(a)(2) requires proof of a sex trafficking venture and that '[t]wo or more people who engage in sex trafficking together are a sex-trafficking venture.'" *Id.* n. 4 (quoting *United States v. Afyare*, 632 F. App'x 272, 279-86 (6th Cir. 2016)).

Moreover, Twitter contends, under Section 1591 the common purpose that is alleged must involve the *particular* sex trafficking venture involving the plaintiff. *Id.* at 4-5 (citing *S.J. v. Choice Hotels Int'l*, 473 F. Supp. 3d 147, 154 (E.D.N.Y. 2020); *Doe v. Kik*, 482 F. Supp. 3d 1242, 1251 (S.D. Fla. 2020); *J.B. v. G6 Hospitality, LLC*, 2020 U.S. Dist. LEXIS 151213, 2020 WL 4901196, at *10 (N.D. Cal. Aug. 20, 2020)). Plaintiffs fail to meet this requirement as well, Twitter argues. *Id.* at 5. Twitter argues further that "[f]inding a venture between Twitter and the Perpetrators based on a standard platform-user relationship also makes no sense considering Twitter's userbase, which numbers in the hundreds of millions." *Id.* at 6 (citing FAC ¶ 23; *J.B.*, 2020 U.S. Dist. LEXIS 151213, 2020 WL 4901196, at *10 ("Craigslist cannot be deemed to have participated in all ventures arising out of each post on its site.")).

Twitter also asserts that Plaintiffs' claim under Section 1592(a)(2) fails because the FAC does not allege any "active participation" by Twitter, arguing again that Plaintiffs must allege overt acts by Twitter in furtherance of the venture. *Id.* According to Twitter, Plaintiffs do not dispute that this is a requirement but instead argue, without authority, that its denial of the requests to

remove the Videos was an affirmative act that satisfies this requirement. *Id.* (citing Opposition at 12). Twitter contends this argument "conflicts with the FAC itself, which is clear that Plaintiffs were allegedly harmed by the failure to immediately remove the Videos." *Id.* (citing FAC ¶¶ 124- 25). In any event, they assert, Plaintiffs' argument fails because "'Twitter's failing to act is not 'affirmative conduct'" and "the nine-day removal time frame is not tantamount to an affirmative act on Twitter's part." *Id.* (citing Motion at 14-15 (quoting *Geiss v. Weinstein Co. Holdings LLC*, 383 F. Supp. 3d 156, 169 (S.D.N.Y. 2019)); *Bradley Bergeron v. Monex Deposit Co.*, 2020 U.S. Dist. LEXIS 210652, 2020 WL 6468457, at *6-7 (C.D. Cal. Aug. 18, 2020); *Gressett v. Contra Costa Cty.*, 2013 U.S. Dist. LEXIS 70667, 2013 WL 2156278, at *17 (N.D. Cal. May 17, 2013)). Even if Twitter's inaction were deemed an overt act, it argues, it would still be insufficient because it did not further the sex trafficking venture. *Id.* at 6 n. 6 (citing *Kik*, 482 F. Supp. 3d at 1251).

Twitter reiterates its argument that Plaintiffs' claim under Section 1591(a)(2) also fails because the FAC does not plead that Twitter knowingly benefited from its participation in Plaintiffs' alleged sex trafficking. *Id.* at 7-8. Twitter rejects Plaintiffs' attempt to distinguish *Geiss* and *Kolbek*, cited in the Motion, arguing that "the specific procedural posture and facts of those cases are irrelevant to the legal holding about what the statute requires." *Id.* at 7.

More importantly, Twitter argues, "the Opposition never explains how Twitter could have received a benefit

from Plaintiffs' alleged sex trafficking when none of the broad allegations regarding how Twitter makes money are connected to what happened to them." *Id.* Twitter contends the "FAC does not allege that there were any advertisements, or promoted Tweets associated with the Videos, nor does it allege that Twitter obtained (let alone licensed) any data related to the Videos." *Id.* Moreover, it argues, the allegations that Twitter " 'continued to distribute the CSAM that it had monetized after' John Doe #1 and his mother reported it" are not supported by any specific facts and therefore do not raise a plausible inference that Twitter received a benefit from the Videos. *Id.* at 7-8 (citing Opposition at 8-10 (citing FAC ¶¶ 52-54)).

Twitter argues further that the Opposition also "does not provide any other facts that would establish the 'causal relationship' between receipt of a benefit and Twitter's 'actual knowledge of that causal relationship.'" *Id.* at 8. Twitter rejects Plaintiffs' argument that it has satisfied this requirement by alleging that Twitter's conduct was motivated by the fact that "CSE content is 'highly sought-after' on Twitter and Twitter 'makes significant revenue from the presence, searches, connections, and interactions of such illegal and dangerous material.'" *Id.* at 8 (quoting Opposition at 9 (citing ¶¶ 37, 71, 84))). According to Twitter, "these allegations are not only incorrect, they are conclusory and unsupported." *Id.* And to the extent that Plaintiffs point to allegations citing statements about how it monetizes its platform, these allegations are insufficient, Twitter asserts, because they do not establish that Twitter monetizes *all* public posts and interactions. *Id.* n. 8 (citing Opposition at 8-9; FAC ¶ 33).

Next, Twitter rejects Plaintiffs' argument that they have satisfied the "actual knowledge" requirement of Section 1591(a)(2) by alleging facts showing "reckless disregard or constructive knowledge." *Id.* at 9. Twitter argues that this standard is incorrect and that "[c]ourts have repeatedly held that Section 1591(a)(2) requires a defendant to have actual knowledge of the sex trafficking venture involving the plaintiff to constitute a criminal violation suffices for a Section 1591(a)(2) violation." *Id.* at 9 (citing *Kik*, 482 F. Supp. 3d at 1251). Twitter contends Plaintiffs also fail to establish in the Opposition that it had actual knowledge as the allegations they point to do not "demonstrate that Twitter understood that Plaintiffs were the victims of sex trafficking and the acts depicted in the Videos were commercial sex acts." *Id.* (citing Opposition at 5, 12-14).

Twitter concedes that Plaintiffs allege "that John Doe #1 emailed saying Plaintiffs 'were baited, harassed, and threatened to take these videos,'" but contends "that is simply insufficient to establish Twitter's actual knowledge of the alleged sex trafficking" because "[f]rom John Doe #1's email Twitter cannot tell whether Plaintiffs were harassed and baited by friends or an adult, for example, and Twitter cannot tell whether the harassment caused them to engage in the sex acts, film them, or share the Videos with others." *Id.* at 9-10 (citing Opposition at 13 (citing FAC ¶ 123)).

Twitter reiterates its arguments that Congress intended only to create a narrow exception to Section 230 when it enacted FOSTA. *Id.* at 10-12. That exception,

it contends, was to allow for the imposition of liability on "websites that '*have done nothing to prevent the trafficking of children.*'" *Id.* at 12 (quoting Opposition at 17-18 (emphasis in Opposition)). Twitter argues that "even according to Plaintiffs' own allegations, Twitter plainly is not one of those websites." *Id.* (citing FAC ¶¶ 42-43, 55-58, 60, 64-65, 128-29).

Twitter also rejects Plaintiffs' argument that CDA § 230 only provides immunity where an ICS *removes* offensive content, arguing that it is well settled in the Ninth Circuit that Section 230 applies whenever a claim is based on an ICS's decision to publish or remove third-party content. *Id.* at 12-13 (citing *Fair Hous. Council of San Fernando Valley* v. Roommates.Com, *LLC*, 521 F.3d 1157, 1170-71 (9th Cir. 2008); *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1103 (9th Cir. 2009); *Jones v. Dirty World Ent. Recordings LLC*, 755 F.3d 398, 406-07 (6th Cir. 2014)). This immunity applies even when an ICS has received notice of the offensive content, Twitter contends. *Id.* at 14 (citing *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 333 (4th Cir. 1997); *Doe v. Bates*, 2006 U.S. Dist. LEXIS 93348, 2006 WL 3813758, at *18 (E.D. Tex. Dec. 27, 2006); *Igbonwa v. Facebook, Inc.*, 2018 U.S. Dist. LEXIS 173769, 2018 WL 4907632, at *1, *5-7 (N.D. Cal. Oct. 9, 2018), aff'd, 786 F. App'x 104 (9th Cir. 2019)).

Twitter argues that even if Plaintiffs' claim under Section 1595 is not barred under CDA § 230, it fails to state a claim because Plaintiffs have not alleged all the required elements, namely, "that Twitter participated in a venture with the Perpetrator or should have known

about Plaintiffs' alleged sex trafficking." *Id.* at 14-16. According to Twitter, Plaintiffs' argument that the FAC is not required to allege a "conspiracy" between Twitter and the sex traffickers is a "red herring." *Id.* at 15 (citing Opposition at 14-15). Rather, Twitter contends, its argument is that "pleading a 'venture' under Section 1595 required Plaintiffs to allege facts demonstrating 'a continuous [] relationship between the trafficker and the [defendant] such that it would appear that the trafficker and the [defendant] have established a pattern of conduct or could be said to have a tacit agreement.'" *Id.* (quoting *J.B.*, 2020 U.S. Dist. LEXIS 151213, 2020 WL 4901196, at *9 (citing *M.A.*, 425 F. Supp. 3d at 970)). Here, Twitter asserts, the FAC does not allege facts establishing such a continuous relationship. *Id.*

Twitter argues further that "the FAC alleges no facts showing that Twitter 'should have known' that the Videos involved sex trafficking conduct - *i.e.*, the exploitation of children for commercial sex purposes," despite the arguments in the Opposition to the contrary. *Id.* at 15-16 (citing Motion at 20-21; Reply at 9-10; Opposition at 15). According to Twitter, "[t]he Opposition's reliance on Twitter's alleged 'general knowledge' of CSE content on its platform also fails because such knowledge does not demonstrate Twitter should have known of what specifically happened to Plaintiffs." *Id.* at 16 (citing *A.B. v. Hilton Worldwide Holdings Inc.*, 484 F. Supp. 3d 921, 937-38 (D. Oregon 2020)).

Twitter reiterates it position that all of Plaintiffs' remaining claims are barred under CDA § 230. *Id.* at 16-

18. Twitter contends Plaintiffs "do not disagree save for their products liability claim." *Id.*

As to Twitter's arguments that Plaintiffs have failed to state viable state law claims, Twitter notes that Plaintiffs did not address its arguments related to California Civil Code section 1708.85 and contends this claim should therefore be dismissed. *Id.* at 19.

Twitter argues as to the products liability claim that Plaintiffs' reliance on *Lemmon v. Snap* to argue that CDA § 230 does not immunize Twitter from their products liability claim is misplaced because in that case, the plaintiffs' claims were based on the use of a "speed filter" and did not, as here, treat the defendant as a publisher of information. *Id.* at 19-20 (citing 995 F.3d at 1087-88).

Twitter argues that Plaintiffs' Opposition fails to establish that they have viable negligence claims because if does not address Twitter's argument that it owed Plaintiffs no duty. *Id.* at 20 (citing Motion at 23-24; *GN Resound A/S v. Callpod, Inc.*, 2013 U.S. Dist. LEXIS 40402, 2013 WL 1190651, at *5 (N.D. Cal. Mar. 21, 2013)). Nor have Plaintiffs "established that Twitter violated any law or statute that would give rise to a presumption of negligence," Twitter contends, "and Plaintiffs' own authority agrees that negligence per se is not an independent claim." *Id.*

Finally, Twitter argues that the Opposition fails to establish that Plaintiffs have standing on their UCL claim. *Id.* at 20-21. First, to the extent that the Opposition

"seemingly argues that Plaintiffs have standing to bring a UCL claim because they suffered economic injury as a result of the 'monetization and dissemination of Plaintiffs' images and likenesses' by Twitter[,]" Twitter rejects that argument. *Id.* (citing Opposition at 29-30 (citing *Fraley v. Facebook, Inc.*, 830 F. Supp. 2d 785, 811 (N.D. Cal. 2011))). According to Twitter, *Fraley* does not support Plaintiffs' position because in that case, the "plaintiffs alleged that Facebook 'fail[ed] to compensate them for their valuable endorsement of third-party products and services' when it took their image and name to create 'Sponsored Stories.'" *Id.* (quoting 830 F. Supp. 2d at 790). Twitter contrasts the allegations in the FAC, which "alleges that advertisements or promoted Tweets are 'displayed intermixed between tweets'" but does not allege "that Plaintiffs' image or name was used to endorse any product or used in any advertisement." *Id.* at 20-21.

Twitter also rejects Plaintiffs' reliance on its alleged "criminal, aiding and abetting conduct" in support of UCL standing, arguing that this theory (which was raised for the first time in the Opposition) fails because "[a]iding and abetting requires not only knowledge [of the complained of act], but 'substantial assistance o[r] encouragement' of another's tort." *Id.* at 21 (citing Opposition at 29; quoting *Chetal v. Am. Home Mortg.*, 2009 U.S. Dist. LEXIS 77806, 2009 WL 2612312, at *4 (N.D. Cal. Aug. 24, 2009)). Plaintiffs have not alleged such facts, Twitter asserts. *Id.*

For these reasons, Twitter asks the Court to dismiss all of Plaintiffs' claims with prejudice. *Id.*).

4. Amicus Brief

In addition to the briefing supplied by the parties, a group of anti-trafficking organizations have submitted an amicus brief addressing Congress's intent in enacting FOSTA. These organizations contend Congress intended to afford greater protection to victims of online sex trafficking by abrogating the broad immunity afforded under CDA § 230 and urge the Court to reject Twitter's assertion that it is immune from Plaintiffs' claims in this case.

III. ANALYSIS

A. Legal Standards Under Rule 12(b)(6)

A complaint may be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim on which relief can be granted. "The purpose of a motion to dismiss under Rule 12(b)(6) is to test the legal sufficiency of the complaint." *N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). Generally, a plaintiff's burden at the pleading stage is relatively light. Rule 8(a) of the Federal Rules of Civil Procedure states that a "pleading which sets forth a claim for relief . . . shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a).

In ruling on a motion to dismiss under Rule 12(b)(6), the court analyzes the complaint and takes "all allegations of material fact as true and construe[s] them in the light most favorable to the non-moving party." *Parks Sch. of*

Bus. v. Symington, 51 F.3d 1480, 1484 (9th Cir. 1995). Dismissal may be based on a lack of a cognizable legal theory or on the absence of facts that would support a valid theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A complaint must "contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 562, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (citing *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984)). "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Twombly*, 550 U.S. at 555). "[C]ourts 'are not bound to accept as true a legal conclusion couched as a factual allegation.'" *Twombly*, 550 U.S. at 555 (quoting *Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L. Ed. 2d 209 (1986)). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557) (alteration in original). Rather, the claim must be " 'plausible on its face,'" meaning that the plaintiff must plead sufficient factual allegations to "allow [] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (quoting *Twombly*, 550 U.S. at 570).

B. The TVPRA Claims (Claims One and Two)

Plaintiffs assert two claims against Twitter under the TVPRA - a claim for direct sex trafficking and a claim for

beneficiary liability. For the reasons set forth below, the Court finds that Plaintiffs fail to state a claim for direct sex trafficking and therefore does not reach the question of whether that claim is barred under CDA § 230. On the other hand, the Court finds that Plaintiffs state a claim for beneficiary liability under the TVPRA and that Section 230 does not apply to that claim.

1. Direct Sex Trafficking

Both sides rely on the plain language of Section 1591(a)(1) in support of their arguments relating to the sufficiency of Plaintiffs' allegations that Twitter engaged in direct sex trafficking in violation of the TVPRA. Twitter argues that the series of verbs in the provision relate to a "person" and that here, Twitter's alleged conduct relates not to a person but to the Videos. Plaintiffs, on the other hand, points to the words "by any means" in Section 1591(a)(1) in support of their reading of the provision. The Court finds Twitter's argument more persuasive.

Section 1591(a)(1) contains a series of verbs, all of which relate to a "person." One of the verbs - the word "advertises" - might plausibly be read to fit the allegations in the FAC as a video posted on Twitter could, at least as a matter of grammar, advertise a "person" but Plaintiffs don't claim that Twitter "advertised" them. The verbs on which Plaintiffs rely ("provides", "obtains" and "maintains"), on the other hand, do not lend themselves to the reading Plaintiffs suggest and Plaintiffs have pointed to no authority that supports their interpretation of Section 1591(a)(1).

Plaintiffs' reliance on *United States v. Tollefson*, 367 F. Supp. 3d 865, 878-80 (E.D. Wis. 2019) to support their reading of Section 1591(a)(1) is misplaced. In that case, the defendant was criminally charged under Section 1591(a)(1) on the basis that he had "*solicited*" a child using an online chat, which he used to communicate with the victim and to persuade her to create and send him pornographic content using her phone. 367 F. Supp. 3d at 867-68. Section 1591(a)(1) expressly allows for criminal liability where a defendant "solicits by any means a person" and the conduct at issue in that case falls comfortably within that language. Plaintiffs here do not, however, allege any solicitation by Twitter. Therefore, the Court finds that Plaintiffs do not state a claim for direct sex trafficking under Section 1591(a)(1) and does not reach the question of Section 230 immunity as to that claim.

2. Beneficiary Liability

The more difficult issue is whether Plaintiffs have stated a claim under Section 1591(a)(2) and, if they have, whether Twitter is immune from liability under Section 230 on that claim. To decide these questions, the Court must grapple with three primary issues. First, how stringent is the *mens rea* requirement as to Twitter's knowledge of whether Plaintiffs were victims of sex trafficking. Second, what must be alleged to show that Twitter participated in a "venture." Finally, what must be alleged to show that Twitter received a benefit from the sex trafficking venture and that the benefit motivated its conduct. As to all three questions, Twitter urges the Court to adopt the stringent requirements for establishing

a criminal violation under Section 1591(a). The Court concludes, however, that Twitter's arguments are at odds with the plain language of FOSTA and the case law addressing the requirements for establishing civil liability under Section 1595.

Although the post-FOSTA case law addressing the requirements of Section 1595 and 1591(a)(2) as they relate to third-party content and ICS providers is scant, a series of cases in which victims of sex trafficking have sought to impose civil liability against hotel chains shed light on the pleading requirements for such claims in other contexts. In those cases, courts have addressed the significance of the fact that the "language of § 1591 differs from the language of § 1595" in that "the former does not have a constructive knowledge element manifested by 'should have known' language." *M.A. v. Wyndham Hotels & Resorts, Inc.*, 425 F. Supp. 3d 959, 969 (S.D. Ohio 2019). In *M.A.*, and in a number of cases that have adopted the reasoning of that case, the court "rejected the application of the criminal definition to civil claims under the TVPRA." *A.B. v. Hilton Worldwide Holdings Inc.*, 484 F. Supp. 3d 921, 937 (D. Or. 2020) (citing *M.A.* 425 F. Supp. 3d at 969 (S.D. Ohio 2019); *A.B. v. Marriott Int'l, Inc.*, 455 F.Supp.3d 171, 186-88 (E.D. Pa. 2020); *B.M. v. Wyndham Hotels & Resorts, Inc.*, 2020 U.S. Dist. LEXIS 135494, 2020 WL 4368214 at *3 (N.D. Cal. July 30, 2020)).

In *M.A.*, the plaintiff was a victim of sex trafficking that occurred at hotels owned by the defendant and she sued under Sections 1595 and 1591(a)(2). Her claims were based on the theory that the hotel chain benefited from the

rental of the rooms where she was trafficked and knew or should have known that trafficking was occurring there based on various signs of sex trafficking that should have been obvious to hotel staff. 425 F. Supp. 3d at 962. The court found that the plaintiff adequately alleged that the hotel chain benefited from the sex trafficking based on the rental of its rooms. *Id.* at 965. It further found that she alleged sufficient facts to show that it "knew or should have known" that the venture was engaged in sex trafficking, applying the looser knowledge requirement of Section 1595 rather than the knowledge requirement that applies to criminal claims under Section 1591(a)(2). *Id.* at 968. It cited both to allegations that there were obvious signs of sex trafficking that hotel staff should have recognized and that the hotel chain was "on notice about the prevalence of sex trafficking generally at their hotels and failed to take adequate steps to train staff in order to prevent its occurrence." *Id.* at 969.

Next, the *M.A.* court addressed what the plaintiff was required to allege to meet the "participation in a venture" requirement of Section 1595. Like Twitter here, the defendant in *M.A.* "rel[ied] extensively on *United States v. Afyare*, 632 F. App'x 272 (6th Cir. 2016), which addresses the meaning of 'participation in a venture' under § 1591." *Id.* at 968. As the *M.A.* court explained, "[i]n *Afyare*, a panel of the Sixth Circuit affirmed the district court's finding that § 1591(a)(2) 'require[s] that a defendant actually participate and commit some 'overt act' that furthers the sex trafficking aspect of the venture.'" *Id.* (quoting *Afyare*, 632 F. App'x at 286). Thus, under Section 1591, "the venture had to be a sex-trafficking venture and

the 'participation' had to be an 'overt act' that furthers the sex trafficking aspect of the venture.'" *Id.* (quoting *Afyare*, 632 F. App'x at 286). Further, *Afyare* held that under Section 1591 a defendant had to be " 'associated for the purpose of furthering the sex trafficking.'" *Id.* The court in *M.A.* found, however, that this criminal standard did not apply to the plaintiff's civil claim under Section 1595, concluding that a defendant "need not have actual knowledge of the sex trafficking in order to have participated in the sex trafficking venture for civil liability under the TVPRA, otherwise the 'should have known' language in § 1595(a) would be meaningless." *Id.* at 971. It further found that the alleged acts and omissions of the hotel chain in that case were sufficient to allege "participation in a venture" under Section 1595. *Id.*

The *M.A.* court's interpretation of Section 1595 and the meaning of "participation in a venture" under that section was based on the following statutory analysis:

> Some Defendants have relied on the definition of "participation in a venture" supplied in § 1591(e)(4). Generally, "there is a natural presumption that identical words used in different parts of the same act are intended to have the same meaning." *Atlantic Cleaners & Dyers v. United States*, 286 U.S. 427, 433, 52 S.Ct. 607, 76 L.Ed. 1204 (1932). But this presumption does not apply where "there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with

different intent." *Id.* Here, § 1591(e) purports to only apply to "this section," i.e., § 1591. *See, e.g., Gilbert v. United States Olympic Committee*, No. 18-cv-00981-CMA-MEH, 2019 U.S. Dist. LEXIS 35921, 2019 WL 1058194, at *9, *10 (D. Colo. Mar. 6, 2019) (noting that "there are persuasive reasons to conclude ... that the term 'venture' is defined differently in § 1591(a)(2) than it is in § 1589(b)" and "neither §§ 1589 nor 1595 define 'venture'").

In addition to the language in § 1591(e) limiting the definitions to that section, applying the definition of "participation in a venture" provided for in § 1591(e) to the requirements under § 1595 would void the "known or should have known" language of § 1595. Such a construction would violat[e] the " 'cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be construed so that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" *TRW Inc. v. Andrews*, 534 U.S. 19, 31, 122 S.Ct. 441, 151 L.Ed.2d 339 (2001) (quoting *Duncan v. Walker*, 533 U.S. 167, 174, 121 S.Ct. 2120, 150 L.Ed.2d 251 (2001)). Section 1591(e)(4) provides the following definition of "participation in a venture": "knowingly assisting, supporting, or facilitating a violation of subsection (a)(1)." The term "participation in a venture" in § 1591 thus imports a state of mind requirement—the participation must

> be "knowing." Although § 1591(a)(2) also criminalizes some action taken with less than actual knowledge, that is, "reckless disregard, such "reckless disregard" provision applies only to the requirement "that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act." § 1591 (a). It does not lessen the scienter requirement of actual knowledge as to participation or the venture's true ends.

425 F. Supp. 3d 959, 969-70. The court therefore concluded that " 'participation' under § 1595 does not require actual knowledge of participation in the sex trafficking itself." *Id.* at 970.

The court in *M.A.* went on to find that "[i]n the absence of a direct association, "the plaintiff could adequately allege participation under Section 1595 only by alleging facts showing "a continuous business relationship between the trafficker and the hotels such that it would appear that the trafficker and the hotels have established a pattern of conduct or could be said to have a tacit agreement." *Id.* The court found that the plaintiff met this requirement by alleging that the defendant rented rooms to people it knew or should have known were engaged in sex trafficking. *Id.*

District courts, including in this district, have found the statutory analysis in *M.A.* supporting its interpretation of Section 1595 to be persuasive. In *B.M. v. Wyndham Hotels & Resorts, Inc.*, Judge Freeman stated, "The Court agrees with the statutory construction analysis in *M.A. v. Wyndham Hotels & Resorts, Inc.*, 425 F. Supp. 3d 959, 969 (S.D. Ohio 2019), adopted by Judge Orrick in *J.C. v. Choice Hotels Int'l, Inc.*, No. 20-CV-00155-WHO, 2020 U.S. Dist. LEXIS 99252, 2020 WL 3035794, at *1, n. 1 (N.D. Cal. June 5, 2020) that applying the 'participation in a venture' definition from the criminal liability section of the TVPRA to the civil liability section of the TVPRA, 'would void the "should have known" language in the civil remedy' and '[t]his violates the "cardinal principle of statutory construction that a statute ought, upon the whole, to be construed so that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." '" No. 20 CV-00656-BLF, 2020 U.S. Dist. LEXIS 135494, 2020 WL 4368214, at *3 (N.D. Cal. July 30, 2020) (quoting *J.C. v. Choice Hotels Int'l, Inc.*, 2020 U.S. Dist. LEXIS 99252, 2020 WL 3035794, at *1, n. 1 (quoting *M.A. v. Wyndham Hotels & Resorts, Inc.*, 425 F. Supp. 3d at 969)).[3] Thus, in *B.M.*, the court concluded

3. Twitter misrepresents the holding of *B.M.* when it states in its briefs that the court in that case followed *Afyare*. *See* Motion at 13 (citing *B.M.* with parenthetical stating that the case "analyz[ed] the elements of a Section 1591 violation and follow[ed] *Afyare*"); *see also* Reply at 6 n. 5 (stating that "*Afyare* is the seminal decision interpreting the term 'participation in a venture' under Section 1591(a)(2) and its reasoning has been cited approvingly by numerous courts, including this Court" and citing *B.M.*). In *B.M.*, Judge Freeman expressly held that while the prosecution in a *criminal* case brought under Section 1591(a)(2) must under *Afyare* "prove that the defendant actually participated in a sex-trafficking venture[,]" the standard from criminal cases does not apply to civil claims under Section 1595.

that the plaintiff was "not required to allege an overt act in furtherance of or actual knowledge of a sex trafficking venture in order to sufficiently plead her section 1595 civil liability claim" based on beneficiary liability under Section 1591(a)(2) against parent companies that owned hotels where the plaintiff was the victim of sex trafficking. *Id.*

The undersigned also finds the reasoning and analysis of *M.A.* to be persuasive and therefore concludes that as a general matter, where a plaintiff seeks to impose civil liability under Section 1595 based on a violation of Section 1591(a)(2), not only does the "known or should have known" language of Section 1595 apply (rather than the actual knowledge standard of Section 1591(a)) but such a claim also does not require that a plaintiff demonstrate an overt act that furthered the sex trafficking aspect of the venture in order to satisfy the "participation in a venture" requirement.

The hotel line of cases, however, does not answer the question of whether the same standards apply where a civil claim is asserted under Section 1591(a)(2) against an ICS provider and thus (arguably) falls within the ambit of Section 230 immunity. This issue was recently addressed in *Doe v. Kik Interactive, Inc.*, 482 F. Supp. 3d 1242, 1244 (S.D. Fla. 2020), on which Twitter relies. In that case, the defendant was a web-based interactive service called Kik that offered a messaging service that was marketed to teens and young adults. The plaintiff alleged that numerous adult male users of Kik "solicited her and convinced her to take and send them sexually graphic pictures of herself using Kik"; that these adult

males sent her sexually explicit photographs via Kik"; that "her father found the photographs on her cellphone and computer tablet and reported the incidents to the police"; that there had been "multiple instances where adult users of Kik ha[d] used the service to contact and solicit sexual activity with minors, with some of those contacts resulting in death of the minors"; and that the defendants knew "that sexual predators use[d] its service to prey on minors but have failed to provide any warnings or enact policies to protect minors from such abuses." *Kik*, 482 F. Supp. 3d at 1244. The plaintiff sued Kik's owner, seeking to impose beneficiary liability under Section 1595 based on alleged violations of Section 1591(a)(2) and the defendant brought a motion to dismiss asserting that it was immune under CDA § 230 and that the plaintiff failed to state a claim under Section 1595(a). *Id.* at 1244-1245.

In addressing what the plaintiff was required to allege to fall under the FOSTA exemption to CDA § 230, the court in *Kik* acknowledged that in the context of sex trafficking at hotels, courts have found that plaintiffs need not satisfy the definitions that apply to criminal prosecutions under Section 1591(a) to establish civil liability under Section 1595(a) but concluded that under FOSTA, a plaintiff who asserts such a claim against an interactive computer service *is* required to satisfy those more demanding requirements. *Id.* at 1248-51.

The court in *Kik* reasoned as follows:

> Significantly, because the hotel defendants were not interactive computer service providers,

neither FOSTA nor CDA immunity were considered. The present case presents a different scenario, because Congress - in balancing the needs of protecting children and encouraging "robust Internet communication" - enacted a statute protecting interactive computer service providers from liability for their users' content and conduct. If it were not for FOSTA, Defendants in this case would be completely immune from liability under the CDA. 47 U.S.C. § 230(c)(5); *MySpace*, 528 F.3d 413.

To resolve Defendants' Motion to Dismiss, this Court must consider the extent to which FOSTA has affected the immunity provided by the CDA. Again, FOSTA states that "[n]othing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit ... any claim in a civil action under section 1595 of Title 18, *if the conduct underlying the claim constitutes a violation of section 1591 of that title*." 47 U.S.C. § 230(e)(5)(A) (emphasis added). Plaintiff argues that as a result of FOSTA, "the exacting standard of 'actual knowledge' and 'overt act' employed in a criminal prosecution under § 1591 is replaced by [a] 'constructive knowledge' standard when a civil recovery is sought under the TVPA." (DE [29], p. 21). But this argument would have the Court disregard the plain language and structure of FOSTA. "A statute should be interpreted so that no words

shall be discarded as meaningless, redundant, or mere surplusage." *United States v. DBB, Inc.*, 180 F.3d 1277, 1285 (11th Cir. 1999) (quotation omitted).

Defendants argue that the Congressional history of FOSTA shows that Congress only intended to create a narrow exception to the CDA for "openly malicious actors such as Backpage where it was plausible for a plaintiff to allege actual knowledge and overt participation." (DE [33], p. 5) and that a finding of actual knowledge and overt participation in a venture of sexual trafficking is required to defeat CDA immunity. This is consistent with the language of FOSTA. By its terms, FOSTA did not abrogate CDA immunity for all claims arising from sex trafficking; FOSTA permits civil liability for websites only "if the conduct underlying the claim constitutes a violation of section 1591." And section 1591 requires knowing and active participation in sex trafficking by the defendants. *Afyare*, 632 Fed. Appx. at 286; *see also Geiss v. Weinstein Co. Holdings, LLC*, 383 F. Supp. 3d 156, 169 (S.D. N.Y. 2019) ("aiders and abettors of sex trafficking are liable under the TVPA only if they knowingly 'benefit[ ], financially or by receiving anything of value from participating in a venture which has engaged in' sex trafficking") (quoting 18 U.S.C. § 1591(a)); *Noble v. Weinstein*, 335 F. Supp. 3d 504, 524 (S.D. N.Y. 2018) ("Plaintiff

> must allege specific conduct that furthered the sex trafficking venture. Such conduct must have been undertaken with the knowledge, or in reckless disregard of the fact, that it was furthering the alleged sex trafficking venture. In other words, some participation in the sex trafficking act itself must be shown.").

Id. at 1250-51 (emphasis in original). The court went on to conclude that the plaintiff in that case had not pled a violation under Section 1591(a)(2) under the definitions and requirements that apply to criminal claims and therefore, that her claim did not fall within FOSTA's exemption to Section 230 immunity. *Id.* at 1251.

The undersigned respectfully disagrees with the *Kik* court's analysis. In construing a statute, the Court starts with the language of the statute. *Bailey v. United States*, 516 U.S. 137, 145, 116 S. Ct. 501, 133 L. Ed. 2d 472 (1995) ("We start, as we must, with the language of the statute."). The Supreme Court has instructed, however, that context also matters and therefore, courts should "consider not only the bare meaning of the word but also its placement and purpose in the statutory scheme." *Id.* Further, where a statute is "remedial," it "should be liberally construed." *Peyton v. Rowe*, 391 U.S. 54, 65, 88 S. Ct. 1549, 20 L. Ed. 2d 426 (1968). There is no question that FOSTA is a remedial statute in that it carves out exceptions to CDA § 230 immunity, thereby affording remedies to victims of sex trafficking that otherwise would not have been available. Moreover, the broader statutory framework suggests that the *Kik* court's reading of FOSTA improperly adopted the

most restrictive possible reading of that provision when there is an equally (or more) plausible reading of the plain language of FOSTA.

FOSTA consists of two clauses, with the first clause ("[n]othing in this section . . . shall be construed to impair or limit . . . any claim in a civil action under section 1595 of Title 18") modified by the second clause ("if the conduct underlying the claim constitutes a violation of section 1591 of that title"). 47 U.S.C. § 230(e)(5)(A). The *Kik* court concluded that the second clause, on its face, not only limits civil claims that fall outside of CDA § 230 immunity to claims asserted under Section 1591 but that it *also* allows for liability on only a *subset* of the civil claims that may be brought under Sections 1595 and 1591, namely, those that can meet the more stringent burden that applies to criminal prosecutions under Section 1591. The implication of this reading is that a sex trafficking victim who seeks to impose civil liability on an ICS provider on the basis of beneficiary liability faces a higher burden than a victim of sex trafficking who seeks to impose such liability on other types of defendants. Had Congress intended such a limitation on Section 1595 liability as applied to interactive computer services, it could have clearly stated as much, but it did not do so.

Furthermore, the more natural reading of the second phrase of Section 230(e)(5)(A) is simply that it creates an exemption to Section 230 immunity for civil sex trafficking claims under Section 1591 and *not* as to other sections of Title 18 that can give rise to civil liability under Section 1595. In particular, Section 1595 is found

in Chapter 77 of Title 18, entitled "Peonage, Slavery, and Trafficking in Persons," and creates civil liability for "[a]n individual who is a victim of a violation of *this chapter*." 18 U.S.C. § 1595(a) (emphasis added). As the title of the chapter suggests, it prohibits a host of conduct including "hold[ing] or return[ing] any person to a condition of peonage" (§ 1581), "[e]nticement into slavery" (§ 1583), and "benefit[ing], financially or . . . receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of [forced] labor" (§ 1589). This more straightforward reading does not limit FOSTA's exemption to a narrow subset of civil sex trafficking claims but rather, makes available to victims of sex trafficking the same civil remedies against an ICS provider under Section 1591(a)(2) as are available in cases involving other types of defendants. The Court finds that this reading is consistent with the broad language used in the first clause of FOSTA as well as the remedial purpose of FOSTA.[4]

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4. At oral argument, Twitter argued, for the first time, that the narrow interpretation of FOSTA adopted in *Kik* is also consistent with 47 U.S.C. § 230(e)(5)(B), which provides that Section 230 should not be construed to "impair or limit . . . any charge in a criminal prosecution brought under State law *if the conduct underlying the charge would constitute a violation of section 1591 of Title 18*." 47 U.S.C. § 230(e)(5)(B) (emphasis added). The emphasized phrase mirrors the one used in 47 U.S.C. § 230(e)(5)(A), permitting claims under Section 1595 "if the conduct underlying the claim constitutes a violation of section 1591 of that title." According to Twitter, to the extent that subsection (B) presumably was intended to exempt state law criminal prosecutions only if the higher *mens rea* requirement of Section 1591 is satisfied, the same meaning must be given to this phrase in subsection (A). Thus, Twitter contends, subsection (A) must limit civil liability under Section 1595 to claims that meet the requirements for criminal liability under Section 1591. The Court does not

Nor does the undersigned find persuasive the *Kik* court's finding that the legislative history supports its interpretation of FOSTA. The two isolated statements cited by the *Kik* court provide little guidance as to the very specific question of statutory interpretation presented here. Further, the parties and amici have pointed to numerous statements in the legislative history, often seeming to support conflicting conclusions, highlighting the risks of relying on statements made prior to passage of a bill to interpret the statute that was actually enacted. Here, the Court concludes that this issue is better resolved on the basis of the language of FOSTA as it fits with the broader statutory framework of the TVPRA.

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find this argument persuasive. First, the Court notes that the *Kik* court did not rely on this line of reasoning. More importantly, there is no authority one way or the other as to whether subsection (B) permits a state law criminal prosecution for sex trafficking to be brought against an ICS provider under a statute with a less stringent *mens rea* requirement than has been found to apply to Section 1591(a) claims. Thus, the language of subsection (B) provides little guidance in resolving the proper construction of subsection (A). Finally, as the court in *M.A.* explained, there are exceptions to the general presumption that words have the same meaning in a statute. 425 F. Supp. 3d at 969 ("[T]his presumption does not apply where 'there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent.'"(*quoting Atlantic Cleaners & Dyers v. United States*, 286 U.S. 427, 433, 52 S. Ct. 607, 76 L. Ed. 1204 (1932)). Even assuming that subsection (B) was not intended to allow state sex trafficking prosecutions of an ICS provider under state statutes with a lower *mens rea* requirement than exists for federal criminal prosecutions, that is a very different matter than allowing civil claims for sex trafficking under a *federal* law, namely, Section 1595, that expressly lowered the *mens rea* requirement for such claims. Therefore, the Court rejects Twitter's reliance on subsection (B) in support of its restrictive reading of FOSTA.

For these reasons, the Court concludes that Plaintiffs' Section 1595 claim against Twitter based on alleged violation of Section 1591(a)(2) is not subject to the more stringent requirements that apply to criminal violations of that provision. Having reached that conclusion, the Court now must address whether Plaintiffs have adequately alleged: 1) that Twitter knowingly participated in a venture; 2) that it received a benefit from its participation; and 3) it knew or should have known that Plaintiffs were victims of sex trafficking.

a. Participation in a Venture

A "venture" is defined as "any group of two or more individuals associated in fact." 18 U.S.C. § 1591(e)(6). As discussed above, Plaintiffs are not required to allege an "overt act" of participation in the sex trafficking itself. Nor does " 'participation' under § 1595 . . . require actual knowledge of participation in the sex trafficking itself." *M.A.*, 425 F. Supp. 3d at 970. Nonetheless, to the extent that Plaintiffs allege that Twitter has participated in a sex trafficking venture "by allowing Twitter to become a safe haven and a refuge for, 'minor attracted people,' human traffickers, and discussion of 'child sexual exploitation as a phenomenon,' to include trade and dissemination of sexual abuse material[,]" FAC ¶ 9, they must "allege at least a showing of a continuous business relationship between the trafficker and [Twitter] such that it would appear that the trafficker and [Twitter] have established a pattern of conduct or could be said to have a tacit agreement." *Id.* Thus, for example, in *M.A.*, this element was sufficiently alleged because the plaintiff alleged "that Defendants

rented rooms to people it knew or should have known were engaged in sex trafficking." *Id.*[5]

The Court concludes that Plaintiffs' allegations are sufficient to meet this requirement. In addition to the general allegations that Twitter enables sex trafficking on its platform, *see, e.g.*, FAC ¶¶ 58-59 (alleging Twitter makes it hard for users to report CSAM and has received a lower rating than other platforms for its reporting structure); 61 ("Twitter permits large amounts of human trafficking and commercial sexual exploitation material on its platform, despite having both the ability to monitor it, and actual and/or constructive knowledge of its posting on the platform"); ¶¶ 64-69 (alleging that the number of reports by Twitter to the National Center on Missing and Exploited Children ("NCMEC") of apparent child sexual abuse material on its platform is low compared to what other platforms report); ¶¶ 74-79 (alleging that Twitter hashtags help users find CSAM and that it rarely removes hashtags it knows are associated with CSAM); ¶¶ 80-84 (alleging that Twitter's search suggestion feature makes it easier for users to find CSAM), Plaintiffs also include specific allegations that support an inference that Twitter participated in a "venture" involving these Plaintiffs.

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5. In the Motion, Twitter misstates the facts of *M.A.*, stating that in that case "the court found a 'venture' because the plaintiff alleged she saw the beneficiary defendant and her trafficker exchanging high-fives . . . while speaking about 'getting this thing going again.'" Motion at 13. Actually, these are the facts of *Ricchio v. McLean*, 853 F.3d 553 (1st Cir. 2017), a case which the court in *M.A.* found was consistent with its own conclusions.

In particular, the FAC alleges that Twitter was specifically alerted that the Videos contained sexual images of children obtained without their consent on several occasions but either failed or refused to take action. First, John Doe # 1 and his mother both allegedly reported the CSAM through Twitter's content reporting interface. FAC ¶¶ 110, 112. Further, when Twitter responded to John Doe #1's complaint by asking for further information, John Doe #1 sent Twitter a copy of his driver's license (reflecting that he was a minor) and stated in his responses that the Videos had been taken three years before "from harassment and being threatened" and that a police report had been filed. FAC ¶ 114. John Doe #1's mother allegedly made two more complaints, including one specifically complaining about the user account @StraightBross, which was one of the accounts that provided links to the videos." FAC ¶ 115. Subsequently, after receiving only form responses, John Doe #1's mother emailed Twitter to inquire about the status of the complaints. FAC ¶ 119.

Two days later, Twitter allegedly sent John Doe #1 a response stating, "We've reviewed the content, and didn't find a violation of our policies, so no action will be taken at this time." *Id.* ¶ 120. John Doe #1 allegedly responded as follows:

> What do you mean you don't see a problem? We both are minors right now and were minors at the time these videos were taken. We both were 13 years of age. We were baited, harassed, and threatened to take these videos that are now

> being posted without our permission. We did not authorize these videos AT ALL and they need to be taken down. We have a case number with the [Law Enforcement Agency] for these videos and this incident. Please remove this video ASAP and any videos linked to this one. There is a problem with these videos and they are going against my legal rights and they are again at (sic) the law to be on the internet. (capitalized emphasis in original).

FAC ¶ 123. The Videos allegedly remained on Twitter another seven days. FAC ¶ 124. Notably, Plaintiffs also allege that the user account @StraightBross, one of the accounts that allegedly posted the Videos, had been the subject of a citizen complaint in December 2019 alerting Twitter that this account carried links to "OBVIOUS CHILD PORN" but no action was taken on that complaint. FAC ¶ 101.

The Court finds that these allegations are sufficient to allege an ongoing pattern of conduct amounting to a tacit agreement with the perpetrators in this case to allow them to post videos and photographs it knew or should have known were related to sex trafficking without blocking their accounts or the Videos. Therefore, Plaintiffs have adequately alleged participation in a venture under Section 1595 in support of their beneficiary liability claim against Twitter.[6]

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6. The Court rejects Twitter's argument that the venture was already over when the Videos were posted on Twitter and therefore Plaintiffs have not adequately alleged that Twitter knew that Plaintiffs would, in the

b. Receipt of a Benefit

"To state a claim under a section 1595(a) beneficiary theory," Plaintiffs "must allege facts from which the Court can reasonably infer that" Twitter "knowingly benefit[ted] financially or by receiving anything of value[.]" *B.M.*, 2020 U.S. Dist. LEXIS 135494, [WL] at *4. In *B.M.*, the court rejected the defendant's argument that the " 'benefit' must derive directly from, and be knowingly received in exchange for, participating in a sex-trafficking venture[,]" finding that this approach improperly "reads a requirement for 'actual knowledge' of criminal sex trafficking into the civil statute, [and] read[s] out the 'should have known' language." *Id.* Instead, the court found that "[t]he 'knowingly benefit' element of section 1595 'merely requires that Defendant knowingly receive a financial benefit'" from its relationship with the sex trafficker. *Id.* (citing *H.H. v. G6 Hosp.*, LLC, No. 2:19-CV-755, 2019 U.S. Dist. LEXIS 211090, 2019 WL 6682152, at *2 (S.D. Ohio Dec. 6, 2019). The undersigned agrees that this is the correct standard and finds that Plaintiffs' allegations are sufficient as to this requirement.

First, contrary to Twitter's repeated assertions, the FAC contains detailed allegations about how Twitter

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future, be victims of sex trafficking as a result of Twitter's conduct. At oral argument, Twitter conceded that the posting of child pornography is a commercial sex act. Thus, regardless of when the Videos were created, the allegations that the Videos were being retweeted on a massive scale while they remained on the Twitter platform raise a plausible inference that Twitter's failure to remove the Videos would result in *future* commercial sex trafficking.

monetizes content, including CSAM, through advertising, sale of access to its API, and data collection. FAC ¶¶ 25, 30-41, 50-54. It further alleges that searching for hashtags that are known to relate to CSAM brings up promoted links and advertisements, offering a screenshot of advertising that appeared in connection with one such hashtag. FAC ¶ 76. Plaintiffs also specifically allege that the Videos of Plaintiffs were "monetized by Twitter and it receive financial benefit from [their] distribution on its platform." FAC ¶ 196. While Twitter dismisses this allegation as conclusory, it is supported by allegation that the Videos were "viewed at least 167,000 times and retweeted 2,220 times for additional views," FAC ¶195, and that "[t]he videos remained live approximately another seven days, resulting in substantially more views and retweets." FAC ¶ 125. Read together, these allegations support a plausible inference that the Videos of Plaintiffs generated advertising and attracted users, both of which benefited Twitter.

The Court is not persuaded that either *Geiss* or *Kolbek*, cited by Twitter, requires a contrary result. In *Geiss*, the court concluded that officers who worked at the company of film producer Harvey Weinstein could not be held liable on the basis of beneficiary liability under Section 1591(a)(2) simply because they received a benefit from working for the company where that benefit was unrelated to any conduct that facilitated the alleged sex trafficking by Weinstein. 383 F. Supp. 3d 156, 169 (S.D.N.Y. 2019). The court reasoned that "there must be a causal relationship between affirmative conduct furthering the sex-trafficking venture and receipt of a benefit, with actual

or, in the civil context, constructive knowledge of that causal relationship." *Id.* Here, Plaintiffs allege that the benefit - increased advertising revenue and users - was the result of allowing the Videos to remain on Twitter, allowing for tens of thousands of views and retweets of the Videos. Therefore, *Geiss* is not on point.

Twitter's reliance on *Kolbek v. Twenty First Century Holiness Tabernacle Church, Inc.*, No. 10-CV-4124, 2013 U.S. Dist. LEXIS 180463, 2013 WL 6816174, at *16 (W.D. Ark. Dec. 24, 2013) is also misplaced. In that case, the plaintiffs had been forced as children to become "spiritual wives" of a church leader and brought claims against various defendants, including the church, for sex trafficking in violation of Section 1595, alleging that they had benefited from the sex trafficking under Section 1591(a)(2). The court concluded that there was no evidence that the defendants were compensated for the sexual abuse and therefore, that plaintiffs failed to establish that they were the victims of "commercial sex trafficking" based on the definition of the term "commercial sex act" in Section 1591(e)(3). 2013 U.S. Dist. LEXIS 180463, 2013 WL 6816174, at *16 (citing 18 U.S.C. § 1591(e)(3) (defining "commercial sex act" as "any sex act, on account of which anything of value is given to or received by any person.")). Like the court in *Geiss*, the court in *Kolbek* found that to establish sex trafficking, there "needs to be a causal relationship between the sex act and an exchange of an item of value." *Id.* Yet the only alleged financial benefit any of the defendants received was payment of the victim's living expenses by the perpetrator when they were on out-of-state trips. *Id.* The court concluded that

these payments were not causally related to the sexual abuse and therefore did not establish commercial sex trafficking. *Id.* In contrast to the facts of *Kolbek*, the benefit Twitter is alleged to have received here was the result of the proliferation of retweets and large number of account users who viewed the Videos, as discussed above. Moreover, Twitter conceded at oral argument that the tweeting and retweeting of child pornography is a "commercial sex act" under the TVPRA.

Therefore, the Court concludes that Plaintiffs' have adequately alleged receipt of a benefit for the purposes of their claim for beneficiary liability.

c. Knew or Should Have Known the Venture Was Engaged in Trafficking

While Twitter need not have actual knowledge of the sex trafficking in order to have participated in the sex trafficking venture for the purposes of Section 1595, Plaintiffs must allege at least that Twitter knew or should have known that Plaintiffs were the victims of sex trafficking at the hands of users who posted the content on Twitter. *See B.M.*, 2020 U.S. Dist. LEXIS 135494, 2020 WL 4368214, at *5. Twitter contends it had no way of knowing that the Videos might have been evidence of commercial sex trafficking, but this argument is hard to square with Plaintiffs' allegations that they alerted Twitter that the Videos were created under threat when Plaintiffs were children and provided evidence of John Doe #1's age in response to Twitter's request for further information. Plaintiffs also allege that other Twitter

users used the word "twinks" to describe the children in the Videos, which was "another indication that Plaintiffs were minors, and that this fact was evident from their appearance in the Videos. FAC ¶ 37. According to FAC, that term is used to describe "young boys or men" with "certain boyish characteristics such as 'little to no body or facial hair; a slim to average build; and a youthful appearance.'" *Id.* (quoting Wikipedia). Therefore, the Court concludes this requirement is sufficiently alleged.

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In sum, the Court finds that Plaintiffs have stated a claim for civil liability under the TVPRA on the basis of beneficiary liability and that the claim falls within the exemption to Section 230 immunity created by FOSTA.

C. Whether the FOSTA Exemption is Limited to Claims Asserted under Sections 1591 and 1595

Before addressing Plaintiffs' remaining claims, the Court addresses Twitter's argument that when Congress enacted FOSTA, it intended to exempt from Section 230 immunity *only* claims asserted under Sections 1591 and 1595. This was the conclusion of the court in *Kik*, which found that the "plain language of [FOSTA] removes immunity only for conduct that violates 18 U.S.C. § 1591." 482 F. Supp. 3d at 1249. Similarly, the court in *M. L. v. Craigslist Inc.*, held that because "FOSTA contains no language about whether it amends the CDA to preclude immunity for state law civil actions" it exempts Section 1595 claims but not state law claims. No. C19-6153 BHS-

TLF, 2020 U.S. Dist. LEXIS 166836, 2020 WL 6434845, at *9 (W.D. Wash. Apr. 17, 2020), report and recommendation adopted, No. C19-6153 BHS-TLF, 2020 U.S. Dist. LEXIS 166334, 2020 WL 5494903 (W.D. Wash. Sept. 11, 2020). In *J. B. v. G6 Hosp., LLC*, Judge Gilliam reached the same conclusion based on the plain language of FOSTA and further addressed the legislative history, concluding that even if it were appropriate to look beyond the words of the statute to discern Congress's intent, "it is not clear that Congress was concerned specifically with permitting civil claims under state law." No. 19-CV-07848-HSG, 2020 U.S. Dist. LEXIS 151213, 2020 WL 4901196, at *6 (N.D. Cal. Aug. 20, 2020). The Court agrees that based on the plain language of FOSTA, it exempts only claims under Sections 1595 and 1591. Therefore, to the extent that Plaintiffs' remaining claims fall within the ambit of Section 230 immunity, FOSTA does not exempt Twitter from immunity as to those claims.

D. Claim Three (18 U.S.C. §§ 2258A and 2258B)

Section 2258A establishes a duty on the part of electronic communication service providers to report to the National Center for Missing & Exploited Children ("NCMEC") "facts or circumstances from which there is an apparent violation of section 2251 , 2251A, 2252, 2252A, 2252B, or 2260 that involves child pornography." 18 U.S.C. § 2258A; *see also* 18 U.S.C. § 2258E (defining "provider", "NCMEC"). Section 2252A, in turn, makes it a criminal offense to, *inter alia*, knowingly mail or transport, receive, distribute or reproduce child pornography. (As discussed above, Claim Four is based, in part, on Twitter's alleged

violation of that provision.) Section 2258B bars the imposition of liability on a provider in connection with its performance of the duty established under Section 2258A except where the provider "(1) engaged in intentional misconduct; or (2) acted, or failed to act-- (A) with actual malice; (B) with reckless disregard to a substantial risk of causing physical injury without legal justification; or (C) for a purpose unrelated to the performance of any responsibility or function under [Section 2258B], sections 2258A, 2258C, 2702, or 2703." 18 U.S.C. § 2258B.

Although Section 2258A establishes a duty to report under criminal law, that section does not purport to establish a private right of action. Rather, it provides that "knowing and willful failure" to make a report will result in the imposition of fines on the provider of up to $300,000. *See* 18 U.S.C. 2258A(e). Section 2258B creates a safe harbor that prohibits the imposition of criminal or civil liability based on failure to report unless the failure was the result of intentional or reckless conduct. Based on their plain language, neither of these provisions reflects a clear intent on the part of Congress to establish a private right of action to enforce the reporting requirement found in Section 2258A. *See Abcarian v. Levine*, 972 F.3d 1019, 1025 (9th Cir. 2020 ("a cause of action may now be recognized under a statute only where the language Congress used displays an intent to create not just a private right but also a private remedy.") (internal quotation and citation omitted). Nor have Plaintiffs pointed to any authority suggesting that there is private right of action under Section 2258A. For this reason, the Court concludes that Plaintiffs' claim under this section fails to state a claim and does not reach the question of immunity under CDA § 230.

E. Claim Four (Personal Injuries Related To Sex Trafficking And Receipt And Distribution Of Child Pornography Under 18 U.S.C. §§ 2252A, and 2255)[7]

Section 2255 creates a civil remedy for violations of certain sections of the criminal code, including Sections 2252A, providing as follows:

> **(a) In general**. Any person who, while a minor, was a victim of a violation of section 1589, 1590, 1591, 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title and who suffers personal injury as a result of such violation, regardless of whether the injury occurred while such person was a minor, may sue in any appropriate United States District Court and shall recover the actual damages such person sustains or liquidated damages in the amount of $150,000, and the cost of the action, including reasonable attorney's fees and other litigation costs reasonably incurred. The court may also award punitive damages and such other preliminary and equitable relief as the court determines to be appropriate.

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7. Although the FAC also relies on 18 U.S.C. § 1591 in support of Claim Four, Plaintiffs addressed Twitter's argument only with respect to the alleged violation of 18 U.S.C. § 2252A. Therefore, the Court understands this claim to be based only on Sections 2252A and not on section 1591.

18 U.S.C. § 2255(a). Twitter does not argue that Plaintiffs have failed to allege a violation of Section 2252A but contend this claim is barred by CDA § 230 immunity. The Court agrees.

While there is not a great deal of authority on this question, at least two courts have concluded that under Section 230, ICSs are immune from civil liability under 2252A and 2255. *See Doe v. Bates*, No. 5:05-CV-91-DF-CMC, 2006 U.S. Dist. LEXIS 93348, 2006 WL 3813758, at *4 (E.D. Tex. Dec. 27, 2006); *M.A. ex rel. P.K. v. Vill. Voice Media Holdings, LLC*, 809 F. Supp. 2d 1041, 1051 (E.D. Mo. 2011). The *Bates* court relied on the reasoning in *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 329 (4th Cir. 1997), explaining:

> The *Zeran* court . . . noted the Congressional purpose of removing disincentives to self-regulation by internet service providers. If internet service providers such as Yahoo! could be liable for reviewing materials but ultimately deciding to allow them, they would likely chose not to regulate at all. Further, even simply responding to notices of potentially obscene materials would not be feasible because the sheer number of postings on interactive computer services would create an impossible burden in the Internet context. To the extent an internet service provider actually makes choices about its content, without immunity they would be faced with ceaseless choices of suppressing controversial speech or sustaining prohibitive

> liability. While the facts of a child pornography case such as this one may be highly offensive, Congress has decided that the parties to be punished and deterred are not the internet service providers but rather are those who created and posted the illegal material[.]

2006 U.S. Dist. LEXIS 93348, 2006 WL 3813758, at *4 (internal quotations and citations omitted). Thus, in *Bates*, the court concluded that while the exemption in Section 230(e)(1) does not prohibit the government from prosecuting an ICS provider under 18 U.S.C. § 2252A (which is found in chapter 110 of Title 18, the section of Title 18 that is expressly carved out from Section 230 under subsection (e)(1)), the exemption does not extend to civil claims asserted under that section. 2006 U.S. Dist. LEXIS 93348, [WL] at *4-5; *see also M.*A, 809 F. Supp. 2d at 1055 (holding that plaintiff's claim seeking to impose civil liability on internet service based on alleged violation of 18 U.S.C. § 2252A was barred by Section 230 immunity).

In *Zeran*, the plaintiff sued AOL based on its alleged delay in taking down offensive posts by an unknown third party that included the plaintiff's telephone number and were resulting in the plaintiff being harassed and receiving death threats. 129 F.3d at 329. The plaintiff alleged that he repeatedly called AOL requesting that the posts be removed and was told that they would be, but that AOL failed to take them down for many days. *Id.* AOL asserted that it was immune from the plaintiff's claims under Section 230 and the court agreed, rejecting the plaintiff's argument that the fact that AOL *knew*

about the offending posts deprived AOL of immunity. *Id.* at 332-33. The court reasoned:

> [O]nce a computer service provider receives notice of a potentially defamatory posting, it is thrust into the role of a traditional publisher. The computer service provider must decide whether to publish, edit, or withdraw the posting. In this respect, Zeran seeks to impose liability on AOL for assuming the role for which § 230 specifically proscribes liability—the publisher role.

Id.

Plaintiffs argue that *Bates* was wrongly decided because *Zeran* involved defamatory speech rather than child pornography. According to Plaintiffs, unlike defamatory speech, child pornography "is at once contraband, beyond the covering of First Amendment speech protection, evidence of criminal child abuse, and an ongoing sexual crime against a child" and therefore, requiring ICS providers to remove pornography does not require them to exercise "traditional editorial functions." Opposition at 23. While this argument has some force, it does not square with Ninth Circuit authority, which has found that "[t]o avoid chilling speech, Congress 'made a policy choice . . . not to deter harmful online speech through the separate route of imposing tort liability on companies that serve as intermediaries for other parties' potentially injurious messages.'" *Gonzalez v. Google LLC*, 2 F.4th 871, 886 (9th Cir. 2021) (*citing Carafano* v. Metrosplash.com, *Inc.*, 339 F.3d 1119, 1123 (9th Cir. 2003)

(quoting *Zeran*,129 F.3d at 330)). In *Carafano*, for example, the third-party content was not only defamatory but also included the creation of a fake profile that resulted in threats to the plaintiff and her son. 339 F.3d at 1122. The Ninth Circuit recognized that the plaintiff had been the victim of a "cruel and sadistic identity theft" but concluded, "despite the serious and utterly deplorable consequences that occurred in this case, . . . that Congress intended that service providers such as Matchmaker be afforded immunity from suit." *Id.* at 1121, 1125.[8]

The undersigned therefore finds the reasoning and holding of *Bates* and *M.A. ex rel. P.K. v. Vill. Voice Media Holdings* on this question to be in line with Ninth Circuit authority and concludes that immunity under Section 230

8. Plaintiffs also point to CDA § 230(e)(1) in support of their argument that their claim under Section 2255 is exempt from immunity. Opposition at 24. As discussed above, that section provides that the immunity established under subsection (a) "shall [not] be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of Title 18, or any other Federal criminal statute." While Section 2255, which created civil liability for certain criminal offenses, is contained in chapter 110, it was enacted two years after Section 230. Thus, at the time Congress enacted Section 230(e)(1), the exemption it created in that section applied only to *criminal* enforcement of the provisions in chapter 110. Further, while Plaintiffs suggest that the bill adopting section 2255, the Protection of Children from Sex Predators Act of 1998, PL 105-314, 112 Stat 2974 (1998), reflected an intent on the part of Congress to abrogate Section 230 immunity as to ICS providers with respect to civil claims asserted under Section 2255, they have pointed to no language in Section 2255 or any specific legislative history to support that conclusion. Therefore, the Court concludes that CDA § 230(e)(1) does not exempt Plaintiffs' claim under Section 2255 from immunity under Section 230.

is not defeated by the fact that the third-party content at issue is illegal child pornography. Therefore, the Court concludes that this claim fails under Section 230.

F. Plaintiffs' State Law Claims

1. Claim Five (California Products Liability)

Plaintiffs' products liability claim is based on the theory that Twitter's platform is unreasonably dangerous and therefore defective because it is designed so as to make it easy for child predators and sex traffickers to quickly disseminate CSAM on a wide scale while making it difficult to report or block the dissemination of such material. Plaintiffs attempt to avoid Section 230 on the ground that the claim is not based on Twitter's conduct as a publisher of information but instead, on a defective product, citing *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1090 (9th Cir. 2021) in support of their position. That case is distinguishable from the facts here, however.

In *Lemmon v. Snap*, the plaintiffs were parents of two boys who were killed in a high speed car accident where it was alleged that a speed-filter offered by the defendant's smartphone application, Snapchat, played a role in the accident. 995 F.3d at 1087-90. The speed filter allowed Snapchat users to superimpose a filter over photos or videos captured through Snapchat recording their real-life speed, and it was alleged that the speed filter incentivized young drivers to drive at high speeds because it was suspected by Snapchat users that logging a speed of over 100 MPH in a user video would result in

"rewards" from Snapchat. *Id.* at 1088-89. It was further alleged that the defendant was aware of the danger of the speed filter because there had been a "series of news articles about this phenomenon; an online petition that 'called on Snapchat to address its role in encouraging dangerous speeding'; at least three accidents linked to Snapchat users' pursuit of high-speed snaps; and at least one other lawsuit against Snap based on these practices." *Id.* at 1089-90.

The plaintiffs in *Lemmon* brought a products liability claim based on negligent design against Snap, the company that owns Snapchat, and Snap asserted that it was entitled to immunity under Section 230. *Id.* at 1090. The district court agreed but the Ninth Circuit reversed, finding that the plaintiffs' claims did not treat the defendant as a publisher or speaker. *Id.* at 1091. The court reasoned as follows:

> It is . . . apparent that the Parents' amended complaint does not seek to hold Snap liable for its conduct as a publisher or speaker. Their negligent design lawsuit treats Snap as a products manufacturer, accusing it of negligently designing a product (Snapchat) with a defect (the interplay between Snapchat's reward system and the Speed Filter). Thus, the duty that Snap allegedly violated "springs from" its distinct capacity as a product designer. *Barnes*, 570 F.3d at 1107. **This is further evidenced by the fact that Snap could have satisfied its "alleged obligation"—to take reasonable measures**

> **to design a product more useful than it was foreseeably dangerous—without altering the content that Snapchat's users generate**. *Internet Brands*, 824 F.3d at 851. Snap's alleged duty in this case thus "has nothing to do with" its editing, monitoring, or removing of the content that its users generate through Snapchat. *Id.* at 852. . . . That Snap allows its users to transmit user-generated content to one another does not detract from the fact that the Parents seek to hold Snap liable for its role in violating its distinct duty to design a reasonably safe product. . . . Though publishing content is "a but-for cause of just about everything" Snap is involved in, that does not mean that the Parents' claim, specifically, seeks to hold Snap responsible in its capacity as a "publisher or speaker."

Id. at 1092 (emphasis added).

Here, as in *Lemmon*, Plaintiffs' products liability claim is based on the allegation that the design of the Twitter platform is unreasonably dangerous. The facts here differ, however, from those in *Lemmon* because the nature of the alleged design flaw in this case - and the harm that is alleged to flow from that flaw - is directly related to the posting of third-party content on Twitter. In particular, Plaintiffs allege that Twitter's design, which is aimed at "enabling its users to disseminate information very quickly to large numbers of people" through such features as hashtags and algorithms, also enables "sex

traffickers to distribute CSAM on a massive scale." FAC ¶¶ 179-181. Conversely, they allege, Twitter is *not* "designed to enable its users to easily report CSAM, nor is it designed so that CSAM is immediately blocked pending review when reported." *Id.* ¶ 182. Nor does Twitter "consistently deploy IP blocking, or other measures, to prevent users suspended by Twitter for disseminating CSAM from opening new accounts under different names[,]" Plaintiffs allege. These flaws, in essence, seek to impose liability on Twitter based on how well Twitter has designed its platform to prevent the posting of third-party content containing child pornography and to remove that content after it is posted. In other words, to meet the obligation Plaintiffs seek to impose on Twitter on this claim, Twitter would have to alter the content posted by its users, in contrast to the design defect alleged in *Lemmon*. Therefore, the Court concludes that *Lemmon* is not on point and that Plaintiffs' products liability claim fails on the basis that Twitter is entitled to immunity as to that claim under Section 230 immunity.[9]

2. Claims Six through Nine (Negligence Claims)

Twitter challenges all of Plaintiffs' negligence claims on the grounds that it is immune from liability on those claims under Section 230. It further asserts that the negligence per se and negligent infliction of emotional distress claims (Claims Eight and Nine) are not independent causes of action and that the remaining

9. The Court assumes without deciding that Plaintiffs' products liability claim is otherwise adequately alleged.

negligence claims (Claims Six and Seven) fail because Twitter does not owe Plaintiffs any duty. The Court finds that these claims fall within the scope of Section 230 and therefore does not reach Twitter's remaining arguments.

The essence of these claims is that Twitter breached a duty to Plaintiffs - and violated various criminal statutes -by failing to remove the Videos after being notified of them and instead allowing them to be broadly disseminated on Twitter. These claims seek to treat Twitter as a publisher of information, which is prohibited under Section 230. *See In re Facebook, Inc., 625 S.W.3d 80, 2021 WL 2603687*, at *9 (Tex. 2021) (finding that negligence claims against Facebook based on its failure to protect plaintiffs from sex traffickers who used its platform were barred under Section 230). Therefore, the Court finds that Plaintiffs' negligence claims fail under Section 230.

3. Claim Ten (Distribution of Private, Sexually Explicit Material Under Cal. Civ. Code section 1708.85)

California Civil Code section 1708.85(a) provides:

> A private cause of action lies against a person who intentionally distributes by any means a photograph, film, videotape, recording, or any other reproduction of another, without the other's consent, if (1) the person knew that the other person had a reasonable expectation that the material would remain private, (2) the distributed material exposes an intimate

> body part of the other person, or shows the other person engaging in an act of intercourse, oral copulation, sodomy, or other act of sexual penetration, and (3) the other person suffers general or special damages as described in Section 48a.

Cal. Civ. Code section 1708.85(a). Section 1708.85 exempts from liability, however, a "person distributing material under subdivision (a)" where "[t]he distributed material was previously distributed by another person." Cal. Civ. Code section 1708.85(c)(6). Based on the plain language of these provisions, the Court concludes Plaintiffs have failed to state a claim.

Liability under section 1708.85(a) requires that Twitter *intentionally* distributed the Videos. Even assuming that Twitter's conduct amounted to intentional distribution once it was put on notice of the Videos, the allegations in the FAC make clear that at that point these Videos had already been posted by "another person," namely, the owners of the user handles @StraightBross and @fitmalesblog. *See* FAC ¶¶ 89, 91, 99. Plaintiffs have not cited any contrary authority or even addressed Twitter's argument in their Opposition. Therefore, the Court concludes that Plaintiffs fail to state a claim under section 1708.85(a). Further, to the extent that this claim seeks to hold Twitter liable for failing to remove third-party content from its platform, the Court concludes that the claim is barred under CDA § 230 because it treats Twitter as a publisher.

4. Claim Eleven (Intrusion Into Private Affairs)

The tort of intrusion into private affairs has two elements: "(1) intrusion into a private place, conversation or matter, (2) in a manner highly offensive to a reasonable person." *Shulman v. Group W Productions, Inc.*, 18 Cal. 4th 200, 231, 74 Cal. Rptr. 2d 843, 955 P.2d 469 (1998), as modified on denial of reh'g (July 29, 1998). Twitter does not argue in the Motion that Plaintiffs fail to state a claim for intrusion into private affairs and therefore, the Court assumes that Plaintiffs adequately allege such a claim. Nonetheless, the basis for this claim is Twitter's "role as a 'republisher' of material posted by a third party," and therefore, the claim is barred by CDA § 230. *Caraccioli v. Facebook, Inc.*, 700 F. App'x 588, 590 (9th Cir. 2017) (holding that claim against Facebook for intrusion into private affairs based on Facebook's refusal to remove private photos and videos of the plaintiff from Facebook was barred under Section 230).

5. Claim Twelve (Invasion of Privacy Under California Constitution)

To establish an invasion of privacy claim under the California Constitution, a plaintiff must demonstrate three elements: "(1) a legally protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by defendant constituting a serious invasion of privacy." *Hill v. Nat'l Collegiate Athletic Ass'n*, 7 Cal.4th 1, 39-40, 26 Cal. Rptr. 2d 834, 865 P.2d 633 (1994). Again, Twitter has not argued that Plaintiffs fail to state

a claim as to this claim and the Court assumes that their claim is sufficiently alleged, but like the claim for intrusion into private affairs, this claim is based on Twitter's role as a "republisher" of third-party content and therefore is barred under CDA § 230.

6. Claim Thirteen (UCL Claim)

Twitter asserts that Plaintiffs do not have standing to assert their UCL claim and that they fail to state a claim because they have not alleged any statutory violation or, to the extent the claim is based on alleged misrepresentations by Twitter, any reliance on those misrepresentations. It also contends the claim is barred by CDA § 230. The Court assumes without deciding that Plaintiffs have adequately alleged standing. It also finds that Plaintiffs have adequately alleged an "unlawful" practice under the UCL for the same reasons it finds that Plaintiffs have stated a claim for beneficiary liability under Section 1595 and 1591(a)(2). The gravamen of the UCL claim, however, is that Twitter engaged in an unlawful and unfair practice by failing to ensure that the Videos were blocked from Twitter or at least, removed promptly. As such, this claim seeks to impose liability on Twitter as a publisher of third-party content and is therefore barred by Section 230.

IV. CONCLUSION

For the reasons stated below, the Motion is DENIED as to Plaintiffs' TVPRA claim based on beneficiary liability (Claim Two). The Motion is GRANTED as to Plaintiffs' remaining claims, which are dismissed with prejudice.

Appendix F

IT IS SO ORDERED.

Dated: August 19, 2021

/s/ Joseph C. Spero
JOSEPH C. SPERO
Chief Magistrate Judge

APPENDIX G — FIRST AMENDED COMPLAINT OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, FILED APRIL 7, 2021

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 3:21-cv-00485-JCS

JOHN DOE #1 AND JOHN DOE #2,

Plaintiffs,

vs.

TWITTER, INC.,

Defendant.

Filed April 7, 2021

FIRST AMENDED COMPLAINT FOR:

(1) VIOLATION OF THE TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT, 18 U.S.C. §§ 1591(a)(1) and 1595;

(2) BENEFITING FROM A SEX TRAFFICKING VENTURE IN VIOLATION OF THE TRAFFICKING VICTIMS PROTECTION ACT, 18 U.S.C. §§ 1591(a)(2) and 1595;

(3) VIOLATION OF DUTY TO REPORT CHILD SEXUAL ABUSE MATERIAL, 18 U.S.C. §§ 2258A and 2258B;

(4) CIVIL REMEDIES FOR PERSONAL INJURIES RELATED TO SEX TRAFFICKING AND RECEIPT AND DISTRIBUTION OF CHILD PORNOGRAPHY, 18 U.S.C. §§ 1591, 2252A and 2255;

(5) CALIFORNIA PRODUCTS LIABILITY;

(6) NEGLIGENCE;

(7) GROSS NEGLIGENCE;

(8) NEGLIGENCE PER SE;

(9) NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS;

(10) DISTRIBUTION OF PRIVATE SEXUALLY EXPLICIT MATERIALS, CAL. CIV. CODE § 1708.85;

(11) INTRUSION INTO PRIVATE AFFAIRS;

(12) INVASION OF PRIVACY UNDER THE CALIFORNIA CONSTITUTION, ARTICLE I, SECTION I; and

(13) VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200

Appendix G

JURY TRIAL DEMANDED

COMPLAINT

This is a civil action for damages under the federal Trafficking Victims' Protection Reauthorization Act ("TVPRA"), 18 U.S.C. §§ 1591 and 1595, Failure to Report Child Sexual Abuse Material, 18 U.S.C. §§ 2258A, 2258B, Civil Remedy for Personal Injuries related to Sex Trafficking and Receipt and Distribution of Child Pornography, 18 U.S.C. §§ 1591, 2252A, and 2255, and related state law claims arising from Defendant's conduct when it knowingly hosted sexual exploitation material, including child sex abuse material (referred to in some instances as child pornography), and allowed human trafficking and the dissemination of child sexual abuse material to continue on its platform, therefore profiting and receiving value from the harmful and exploitive material and the traffic it draws.

INTRODUCTION

1. Sex trafficking is a form of slavery that illegally exists in this world – both throughout the United States and globally—and traffickers have been able to operate under cover of the law through online platforms. Likewise, those platforms have profited from the posting and dissemination of trafficking and the exploitative images and videos associated with it.

2. The dissemination of child sexual abuse material ("CSAM") has become a global scourge since the explosion

of the internet, which allows those that seek to trade in this material to equally operate under cover of the law through online platforms.

3. This lawsuit seeks to shine a light on how Twitter has enabled and profited from CSAM on its platform, choosing profits over people, money over the safety of children, and wealth at the expense of human freedom and human dignity.

4. With over 330 million users, Twitter is one of the largest social media companies in the world. It is also one of the most prolific distributors of material depicting the sexual abuse and exploitation of children.

5. Twitter is not a passive, inactive, intermediary in the distribution of this harmful material; rather, Twitter has adopted an active role in the dissemination and knowing promotion and distribution of this harmful material. Twitter's own policies, practices, business model, and technology architecture encourage and profit from the distribution of sexual exploitation material.

6. Plaintiffs John Doe #1 and John Doe #2 were solicited and recruited for sex trafficking as minors. After they escaped from the manipulation, child sexual abuse material depicting them was disseminated on Twitter. When Twitter was first alerted to this fact and the ages of the children, Twitter refused to remove the illegal material and instead continued to promote and profit from the sexual abuse of the children.

7. In 1996, Congress passed the Communications Decency Act of 1996 ("CDA of 1996") which included Section 230 ("CDA 230").[1] Congress intended the CDA to accomplish several things, including: (1) to promote the free exchange of information and ideas over the Internet and (2) to encourage voluntary monitoring for offensive or obscene material.[2]

8. In 2018, in a direct response to online platforms knowingly allowing human trafficking to occur and both promoting and profiting from it, Congress passed a bill known as Fight Online Sex Trafficking Act (FOSTA) and Stop Enabling Sex Traffickers Act (SESTA) (collectively, "FOSTA/SESTA"). As part of this amendment to CDA 230, Congress stated "It is the sense of Congress that –

> (1) section 230 of the Communications Act of 1934 (47 U.S.C. 230; commonly known as the 'Communications Decency Act of 1996') was never intended to provide legal protection to websites that unlawfully promote and facilitate prostitution and websites that facilitate traffickers in advertising the sale of unlawful sex acts with sex trafficking victims;
>
> (2) websites that promote and facilitate prostitution have been reckless in allowing the sale of sex trafficking victims and have done

1. 47 U.S.C. § 230.

2. *See Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119 (9th Cir. 2003). *See also Batzel v. Smith*, 333 F.3d 1018 (9th Cir. 2003).

> nothing to prevent the trafficking of children and victims of force, fraud, and coercion; and
>
> (3) clarification of such section is warranted to ensure that such section does not provide such protection to such websites.[3]

9. Defendant has benefited financially and/or received something of value from participation in one or more sex trafficking ventures by allowing Twitter to become a safe haven and a refuge for, "minor attracted people,"[4] human traffickers, and discussion of "child sexual exploitation as a phenomenon,"[5] to include trade and dissemination of sexual abuse material.

JURISDICTION AND VENUE

10. This Court has diversity subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and the parties have complete diversity, insofar as John Doe #1 and John Doe #2 reside in Florida, and Defendant is a business with its main headquarters and operations in California.

11. This Court has federal question subject-matter jurisdiction pursuant to 28 U.S.C. § 1331, because this

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3. Pub. L. 115–164, §2, Apr. 11, 2018, 132 Stat. 1253

4. Twitter, Inc., Twitter Child Sexual Exploitation Policy of March 2019 (Attached as Exhibit A).

5. *Id.*

action is brought under 18 U.S.C. § 1595(a), 18 U.S.C. § 2258A, 18 U.S.C. § 2252A and 18 U.S.C. 2255.

12. This Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 because all the other claims are related to the claims with original jurisdiction and form part of the same case or controversy.

13. Venue is proper in this District under 28 U.S.C. § 1391(b)(2), because the Defendant business is headquartered in and operates out of San Francisco, which is located in this District. Venue is also proper in this District under 28 U.S.C. § 1391(b)(3) because Defendant conducted substantial activities in this District and is subject to personal jurisdiction in this District.

PARTIES

A. Plaintiffs

14. Jane Doe is the parent and legal guardian of Plaintiff John Doe #1, and at the time of the filing of the initial complaint served as his Next Friend in order to bring this action. In order to preserve the anonymity of her son, Jane Doe requested and received leave of Court to proceed in this action pseudonymously. Pl's. Ex Parte Appl. for Prot. Order and Leave to Proc. Anon. (ECF No. 9).

15. Plaintiff John Doe #1 is a resident of Florida and was a minor child at all times relevant to the allegations contained herein.

16. John Doe #1 has reached the age of majority. Accordingly, Jane Doe will be withdrawing from this action and no longer be serving as his next friend and the action will be maintained directly by John Doe #1 himself.

17. Plaintiff John Doe #2 is a resident of Florida and was a minor child at all times relevant to the allegations contained herein. He is now a legal adult.

18. Both Plaintiffs seek to proceed in this action pseudonymously because the subject matter of the allegations is of a sensitive and highly personal nature.

19. Both Plaintiffs are particularly vulnerable because of the trauma they have endured, combined with the fact that at the time of the events at issue, they were minors.

20. The Court has granted John Doe #1's motion to proceed pseudonymously. Pl's. Ex Parte Appl. for Prot. Order and Leave to Proc. Anon. (ECF No. 9). Plaintiffs will be filing a motion to proceed Anonymously for John Doe #2 as well.

B. Defendant

21. Defendant Twitter is a privately-owned, Delaware corporation with its principal office or place of business at 1355 Market Street, Suite 900, San Francisco, CA 94103.

22. Defendant hosts the social media platform, www.twitter.com.

FACTS

THE TWITTER PLATFORM, BUSINESS MODEL, AND CONTENT MODERATION POLICIES AND PRACTICES

23. Twitter is one of the most popular social media platforms in the world, with over 330 million users who send an average of 500 million tweets each day.[6]

24. Twitter is also a large and profitable company, with around 4,900 employees[7] and a current market capitalization of $40 billion.[8]

25. Over 80% of Twitter's revenue comes from advertising. In the third quarter of 2020, Twitter received an estimated $936 million in revenue, of which $808 million

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6. Review 42, *Crucial Twitter Statistics, Facts and Predictions in 2020*, https://review42.com/twitter-statistics/ (last viewed on December 20, 2020).

7. Twitter, Inc., Annual Report (Form 10-K) at 9 (Feb. 18, 2020), https://d18rn0p25nwr6d.cloudfront.net/CIK-0001418091/ecd49924-133d-4b2d-ae29-2f066ac39863.pdf.

8. Macrotrends, *Twitter Market Cap 2011-2020*, https://www.macrotrends.net/stocks/charts/TWTR/twitter/market-cap (Last visited Jan. 12, 2021).

was from advertising services and $127 million of which was from data licensing.[9]

26. Twitter enables users to communicate online in brief posts that are called "tweets." Tweets are limited to 280 characters. Twitter also allows photos, videos, GIFs, voice, and extra characters.

27. When a Twitter user reposts another user's tweet it is known as "retweeting." Retweeting is a popular feature because it allows users to spread information at a high speed and on a broad scale.

28. Twitter users may also send direct messages to other users, or follow other users on the platform.

29. Twitter has been succinctly described as "a blend of instant messaging, blogging, and texting, but with concise content and a broad audience."[10]

30. Twitter monetizes its platform by selling advertisements, selling access to its API, and through data licensing.

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9. Twitter, Inc., Quarterly Report (Form 10-Q) at 14 (Oct. 30, 2020), https://d18rn0p25nwr6d.cloudfront.net/CIK-0001418091/cb1d93d5-13d2-4d03-96b4-c90efe5ac5fc.pdf.

10. Lifewire, *What is Twitter and How Does It Work?*, https://www.lifewire.com/what-exactlyis-twitter-2483331 (last visited on December 15, 2020).

31. Twitter explains how it makes money from advertising services as follows:

> We generate most of our advertising revenue by selling our Promoted Products. Currently, our Promoted Products consist of the following:
>
> • Promoted Tweets. Promoted Tweets, which are labeled as "promoted," appear within a timeline, search results or profile pages just like an ordinary Tweet regardless of device, whether it be desktop or mobile. Using our proprietary algorithms and understanding of the interests of each account, we can deliver Promoted Tweets that are intended to be relevant to a particular account. We enable our advertisers to target an audience based on an individual account's interest graph. Our Promoted Tweets are pay-for-performance or pay-for-impression delivered advertising that are priced through an auction. Our Promoted Tweets include objective-based features that allow advertisers to pay only for the types of engagement selected by the advertisers, such as Tweet engagements (e.g., Retweets, replies and likes), website clicks, mobile application installs or engagements, obtaining new followers, or video views.
>
> • Promoted Accounts. Promoted Accounts, which are labeled as "promoted," provide a way for our advertisers to grow a community

> of people who are interested in their business, products or services. Our Promoted Accounts are pay-for-performance advertising priced through an auction.
>
> • Promoted Trends. Promoted Trends, which are labeled as "promoted," appear at the top of the list of trending topics or timeline for an entire day in a particular country or on a global basis. We sell our Promoted Trends on a fixed-fee-per-day basis.
>
> While the majority of the Promoted Products we sell to our advertisers are placed on Twitter, we also generate advertising revenue by placing advertising products that we sell to advertisers on third-party publishers' websites, applications or other offerings.[11]

32. Twitter explains how advertisements work on its platform as follows:

> Your activity on Twitter, the information you provide to Twitter, and our relationships with ad partners all help make promoted content more relevant for you.
>
> When you use Twitter to follow, Tweet, search, view, or interact with Tweets or Twitter accounts, we may use these actions to customize

11. Twitter, Inc., *supra* note 9, at 35.

> Twitter Ads for you. For example, if you search for a specific term, we may show you promoted content related to that topic. We also might customize ads using other information about you, such as your profile information; your mobile device location (if location features are turned on); your IP address; or the apps installed on your device. This helps us show you local ads and other ads that you might prefer.
>
> Twitter may also personalize ads based on information that Twitter and our affiliates collect and that our ad partners share with us, such as a hashed email address, a mobile device identifier, or browser-related information (a browser cookie ID).
>
> This helps Twitter display ads about things you've already shown interest in from brands and businesses that you may like. For example, you could receive a Promoted Ad about a deal or promotion from a business whose website you frequent, or email newsletter you subscribe to. You could also see this business as a Follower Ad in one of your "Who to Follow" suggestions.[12]

33. Twitter explains how it receives revenue from data licensing as follows:

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12. Twitter, Inc., How Twitter Ads work, https://business.twitter.com/en/help/troubleshooting/how-twitter-ads-work.html (last visited March 23, 2021).

> We generate data licensing and other revenue by (i) offering data products and data licenses that allow our data partners to access, search and analyze historical and real-time data on our platform (which consists of public Tweets and their content), and (ii) providing mobile advertising exchange services through our MoPub exchange. Our data partners generally purchase licenses to access all or a portion of our data for a fixed period. We recognize data licensing revenue as our data partners consume and benefit from their use of the licensed data. In addition, we operate a mobile ad exchange and receive service fees from transactions completed on the exchange. Our mobile ad exchange enables buyers and sellers to purchase and sell advertising inventory and matches buyers and sellers. We have determined we are not the principal as it relates to the purchase and sale of advertising inventory in transactions between third-party buyers and sellers on the exchange. Therefore, we report revenue related to our ad exchange services on a net basis.[13]

34. The data Twitter collects on its users includes IP addresses, browser types, operating systems, locations, mobile carriers, device information, search terms, and cookies.

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13. *Id*. at 36.

35. Twitter uses a web-based Application Program Interface ("API"), which defines the interaction between the software components that make up its platform. Here is Twitter's explanation of the function of APIs:

> To facilitate the fast global dissemination of Tweets to people around the world, we use technology like application programming interfaces (APIs) and embeds to make that information available to websites, apps, and others for their use – for example, displaying Tweets on a news website or analyzing what people say on Twitter.
>
> We generally make this content available in limited quantities for free and charge licensing fees for large-scale access.[14]

36. Twitter's API must be accessed by making requests over the internet to services that Twitter hosts. With a web-based API such as Twitter's, an application sends an HTTP request, just like a web browser does. But instead of the response being delivered as a webpage for human understanding, it is returned in a format that applications can easily parse.

37. Twitter offers access to its API in the marketplace. Ultimately, Twitter maintains control over which individuals and organizations it will grant access to its API.

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14. Twitter, Inc., Privacy Policy at ¶ 1.2, https://twitter.com/en/privacy (Last accessed Jan. 12, 2021) (Attached as Exhibit B).

38. Having access to Twitter's API is tremendously advantageous for understanding the activity and usage patterns of Twitter's users.

39. Twitter has detailed knowledge of the activities of its user base on its platform. It uses that knowledge to provide insight to its advertising and data-services costumers as to how effective purchases are of reaching active Twitter users.

40. For example, Twitter has pioneered and implemented a detailed tracking statistic known as "monetizable daily active usage."[15]

41. Twitter describes its "monetizable daily active usage" statistic as follows:

> Twitter defines monetizable daily active usage or users (mDAU) as people, organizations, or other accounts who logged in or were otherwise authenticated and accessed Twitter on any given day through twitter.com or Twitter applications that are able to show ads. Average mDAU for a period represents the number of mDAU on each day of such period divided by the number of days for such period. Changes in mDAU are a measure of changes in the size of our daily logged in or otherwise authenticated

15. Robert Williams, Marketing Dive, *Twitter debuts 'monetizable' metric for its 126m users*, https://www.marketingdive.com/news/twitter-debuts-monetizable-metric-and-reveals-it-has126m-users/547990/ (last visited March 24, 2021).

> active total accounts. To calculate the year-over-year change in mDAU, we subtract the average mDAU for the three months ended in the previous year from the average mDAU for the same three months ended in the current year and divide the result by the average mDAU for the three months ended in the previous year. Additionally, our calculation of mDAU is not based on any standardized industry methodology and is not necessarily calculated in the same manner or comparable to similarly titled measures presented by other companies. Similarly, our measures of mDAU growth and engagement may differ from estimates published by third parties or from similarly titled metrics of our competitors due to differences in methodology.[16]

42. Twitter moderates and otherwise controls third-party user content on its platforms.

43. Twitter has a variety of mechanisms used to moderate content on the platform. Upon information and belief, Twitter uses software and algorithms to ensure tweets reach a smaller audience, block users from tweeting, hide tweets from users in a specific country, hide user profiles, convert users into read-only mode,

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16. Twitter, Inc., Q4 and Fiscal Year 2020 Letter to Shareholders (Feb. 9, 2021), https://s22.q4cdn.com/826641620/files/doc_financials/2020/q4/FINAL-Q4'20-TWTRShareholder-Letter.pdf (last visited March 24, 2021).

temporarily lock users out of their account until account verification, and permanently suspend accounts.[17]

44. Rather than act decisively by banning certain types of behavior and allowing others, Twitter's policy and engineering teams sometimes de-emphasize content and allow users to hide content that may be offensive but not explicitly against the platform's terms of service.

45. Twitter's "hateful conduct policy" provides, in relevant part:

> You may not promote violence against or directly attack or threaten other people on the basis of race, ethnicity, national origin, caste, sexual orientation, gender, gender identity, religious affiliation, age, disability, or serious disease. . . .
>
> We recognise that if people experience abuse on Twitter, it can jeopardize their ability to express themselves. Research has shown that some groups of people are disproportionately targeted with abuse online. This includes; women, people of color, lesbian, gay, bisexual, transgender, queer, intersex, asexual individuals, marginalized and historically underrepresented communities. For those who identity with multiple underrepresented

17. Online Censorship.Org, https://onlinecensorship.org/resources/how-to-appeal (last visited December 15, 2020).

> groups, abuse may be more common, more severe in nature and have a higher impact on those targeted. . . .
>
> We are committed to combating abuse motivated by hatred, prejudice or intolerance, particularly abuse that seeks to silence the voices of those who have been historically marginalized. For this reason, we prohibit behavior that targets individuals with abuse based on protected category.[18]

46. Twitter specifically notes a "zero tolerance policy against violent threats. Those deemed to be sharing violent threats will face immediate and permanent suspension of their account."[19]

47. Twitter also bans wishing someone harm that does not rise to the level of a specific violent threat: "We prohibit content that wishes, hopes, promotes, or expresses a desire for death, serious and lasting bodily harm, or serious disease against an entire protected category and/or individuals who may be members of that category."[20]

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18. Twitter, Inc., *Twitter Hateful Conduct Policy of November 2019*, https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy (Attached as Exhibit C).

19. *Id.*

20. Id.

48. And Twitter additionally bans slurs, epithets, and "sexist tropes, or other content that degrades someone."

49. Yet despite Twitter's stated policy, numerous women – especially, women's rights advocates and sexual exploitation survivors – face harassment, doxxing, other abuse, and threats of violence, including murder and rape, on Twitter's platform.[21]

50. Twitter does not deploy its extensive content moderation capacities to prevent or significantly reduce this abuse, even though it violates Twitter's own policies on hateful conduct. Rather, upon information and belief, Twitter selectively removes or prevents some content on its platform, and selectively chooses not to remove or prevent other content.

51. On January 13, 2021, Jack Dorsey, the Chief Executive Officer of Twitter, Inc. tweeted the following:

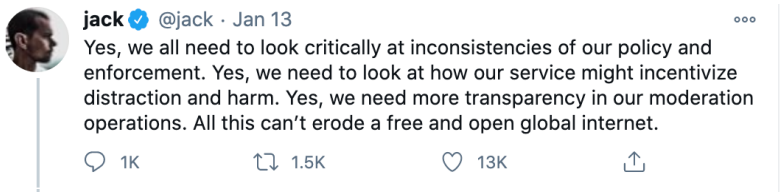


21. *See, e.g.*, Amnesty International, *Toxic Twitter, A Toxic Place for Women*, https://www.amnesty.org/en/latest/research/2018/03/online-violence-against-women-chapter1/ (last viewed on December 15, 2020).

Appendix G



In the same thread, or series of tweets, Mr. Dorsey added:



TWITTER AND SEXUAL EXPLOITATION MATERIAL

52. As described above, Twitter monetizes its platform through advertisements, sale of access to its API, and data collection.

53. As long as content on Twitter's platform remains live, Twitter monetizes that content regardless of whether it is contrary to Twitter's own policies or promotes illegal conduct.

54. Twitter thus profits from content on its platform that depicts rape, sex trafficking, child sexual abuse, and other illegal activity.

55. As of November 2019, Twitter's "sensitive media" policy provides, in relevant part:

> We prohibit violent sexual conduct to prevent the normalization of sexual assault and non-consensual violence associated with sexual acts . . . You can share graphic violence and consensually produced adult content within your Tweets, provided that you mark this media as sensitive.[22]

56. As of March 2019, Twitter avers that it had a "zero-tolerance child sexual exploitation policy," and forbids the following:

> Any content that depicts or promotes child sexual exploitation including, but not limited to:
>
> - visual depictions of a child engaging in sexually explicit or sexually suggestive acts;
>
> - illustrated, computer-generated or other forms of realistic depictions of a human child in a sexually explicit context, or engaging in sexually explicit acts;
>
> - sexualized commentaries about or directed at a known or unknown minor; and

22. Twitter, Inc., *Twitter Child Sensitive Media Policy of November 2019*, https://help.twitter.com/en/rules-and-policies/media-policy (Attached as Exhibit D).

- links to third-party sites that host child sexual exploitation material.

The following behaviors are also not permitted:

- sharing fantasies about or promoting engagement in child sexual exploitation;

- expressing a desire to obtain materials that feature child sexual exploitation;

- recruiting, advertising or expressing an interest in a commercial sex act involving a child, or in harboring and/or transporting a child for sexual purposes;

- sending sexually explicit media to a child;

- engaging or trying to engage a child in a sexually explicit conversation;

- trying to obtain sexually explicit media from a child or trying to engage a child in sexual activity through blackmail or other incentives; and

- identifying alleged victims of childhood sexual exploitation by name or image.[23]

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23. Twitter, Inc., Twitter Child Sexual Exploitation Policy of March 2019 (Attached as Exhibit A).

57. Twitter's March 2019 policy also asserts that it will usually permanently suspend accounts with child sexual abuse material, and report any such material to the National Center for Missing & Exploited Children:

> In the majority of cases, the consequence for violating our child sexual exploitation policy is **immediate and permanent suspension**. In addition, violators will be prohibited from creating any new accounts in the future. Note: when we're made aware of content depicting or promoting child sexual exploitation, including links to third party sites where this content can be accessed, they will be removed without further notice and reported to the National Center for Missing & Exploited Children (NCMEC).[24]

58. Yet Twitter makes it hard for users to report CSAM. A recent report by the Canadian Centre for Child Protection® found that Twitter's platform made it "extremely difficult" to report CSAM, specifically:

> • Twitter does not allow users to report a tweet for CSAM "through the easily-accessible report function"; one "must first locate the child sexual exploitation report form."
>
> • Twitter does not allow people to "report an image or video sent within a DM on Twitter as CSAM.

24. *Id.* (emphasis added).

> The child sexual exploitation report form will not accept the URL from an image within a DM."
>
> • Twitter requires an email address for submitting CSAM reports.
>
> • Even though tweets can be viewed without being logged in, Twitter requires a person to be logged in (and therefore have a Twitter account) in order to report CSAM.[25]

59. Twitter received the lowest overall rating, compared to other platforms – including Bing, Facebook, Pornhub, and XVideos – by the Canadian Centre for Child Protection® for its CSAM reporting structure.

60. Twitter is also a signatory to the Five Country Ministerial's Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse. Two of these Principles are as follows:

> Principle 1: Companies seek to prevent known child sexual abuse material from being made available to users or accessible on their platforms and services, take appropriate action under their terms of service, and report to appropriate authorities.

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25. Canadian Centre for Child Protection, "Reviewing Child Sexual Abuse Reporting Functions on Popular Platforms" at 15 (December 2020) https://protectchildren.ca/pdfs/C3P_ReviewingCSAMMaterialReporting_en.pdf.

Appendix G

> Principle 2: Companies seek to identify and combat the dissemination of new child sexual abuse material via their platforms and services, take appropriate action under their terms of service, and report to appropriate authorities.[26]

61. Notwithstanding its stated policy, Twitter permits large amounts of human trafficking and commercial sexual exploitation material on its platform, despite having both the ability to monitor it, and actual and/or constructive knowledge of its posting on the platform.

62. Twitter also contains significant pornographic content, including illegal child sexual abuse content. Upon information and belief, Twitter does not have adequate systems in place to detect, remove, and/or report this material.

63. Upon information and belief, Twitter has not adequately used the technology that is within its power and control to effectively remove CSAM from its platform.

64. The National Center on Missing and Exploited Children ("NCMEC") reported that in 2020 it received

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26. U.S. Dep't of Just., *Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse*, https://www.justice.gov/opa/press-release/file/1256061/download (last visited January 20, 2021).

65,062 reports from Twitter of apparent child sexual abuse material on its platform.[27]

65. In 2019, the number of reports from Twitter to NCMEC of apparent child sexual abuse material on its platform were 45,726.[28]

66. These numbers are extremely low for the size of Twitter's platform. For example, its competitor Facebook, had over 20 million reports to NCMEC in 2020, and 15 million in 2019.[29]

67. Upon information and belief, Twitter fails to report to NCMEC and/or law enforcement every instance

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27. Nat'l Ctr. for Missing and Exploit. Child., *2019 Reports by Electronic Service Providers (ESP)*, https://www.missingkids.org/content/dam/missingkids/gethelp/2020-reports-byesp.pdf (last visited March 23, 2021)

28. Nat'l Ctr. for Missing and Exploit. Child., *2019 Reports by Electronic Service Providers (ESP)*, https://www.missingkids.org/content/dam/missingkids/gethelp/2019-reports-byesp.pdf (last visited March 23, 2021).

28 *See generally*, 18 U.S.C. § 2252A *and* Cal. Penal Code § 311.1 (West 2020).

28 47 U.S.C. § 230.

28 *See Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119 (9th Cir. 2003). *See also Batzel v. Smith*, 333 F.3d 1018 (9th Cir. 2003).

28 Pub. L. 115–164, §2, Apr. 11, 2018, 132 Stat. 1253

29. Nat'l Ctr. for Missing and Exploit. Child., *2019 Reports by Electronic Service Providers (ESP)*, https://www.missingkids.org/content/dam/missingkids/gethelp/2019-reports-byesp.pdf (last visited March 31, 2021).

of CSAM brought to their attention, even when they take action on the content by removing it or suspending the account.

68. Upon information and belief, a child protection agency approached Twitter and offered its services to scan and remove known, or "hashed", CSAM from Twitter's site using its API.

69. Upon information and belief, Twitter denied this offer and refused the child protection agency access to its API despite selling access to its API to advertisers for profit and not having an adequate in-house system in place to identify and remove CSAM.

Child Pornography or Child Sexual Abuse Material

70. Twitter permits numerous profiles, posts, comments, and other content either advertising, soliciting, or depicting CSAM.

71. CSAM and sex trafficking are highly sought-after content on Twitter. This means that those wishing to view, buy, sell or trade images or videos of the sexual exploitation of others, to include children, have a platform that allows them to conduct this illegal activity. Furthermore, Twitter makes significant revenue from the presence, searches, connections, and interactions of such illegal and dangerous material.

72. The Twitter platform has a feature known as "hashtags." Twitter has explained hashtags as follows:

> On Twitter, adding a "#" to the beginning of an unbroken word or phrase creates a hashtag. When you use a hashtag in a Tweet, it becomes linked to all of the other Tweets that include it. Including a hashtag gives a Tweet context and can give a conversation longevity.[30]

73. Twitter has explained the utility and function of hashtags as follows:

> Are you Tweeting about a conversation that's happening more broadly (a relevant cultural movement or topical news story)? If so, adding that topic's hashtag will connect your Tweet to the broader conversation. By adding the hashtag, it increases the chance someone interested in the event will engage with your Tweet and discover your business.[31]

74. Twitter generates, originates, or otherwise edits suggested search terms and hashtags associated with tweets posted onto its platform. Hashtags are used to assist in optimizing search features on the Twitter website, which ultimately helps to increase views, shares, and the success of targeted advertising. Many hashtags and search suggestions that have been reviewed, categorized, created and/or edited by Twitter ultimately

---

30. Twitter, Inc., *How to create and use hashtags*, https://business.twitter.com/en/blog/how-tocreate-and-use-hashtags.html (last visited March 22, 2021).

31. *Id.*

help users locate the type of content they are searching for, including CSAM.

75. To take one prominent example, searching the hashtag #megalinks on Twitter brings up users commenting on CSAM, openly soliciting for and offering to trade CSAM, and encouraging communication by direct message where CSAM can be illegally distributed and exchanged.[32]

76. A search of the hashtag #megalinks on Twitter also brings up promoted tweets or advertisements, which are displayed intermixed between tweets that include the hashtag and overwhelmingly pertain to CSAM. Here is an example of advertising on Twitter featuring content relating to children that Twitter placed in Twitter's search results for the #megalinks hashtag and solicitation for CSAM using "c*p" to describe "child porn":

32. *See generally*, NBC News, *Child sexual abuse images and online exploitation surge during pandemic*, https://www.nbcnews.com/tech/tech-news/child-sexual-abuse-images-onlineexploitation-surge-during-pandemic-n1190506 (noting the use of the #megalinks hashtag on Twitter)(last viewed December 15, 2020).

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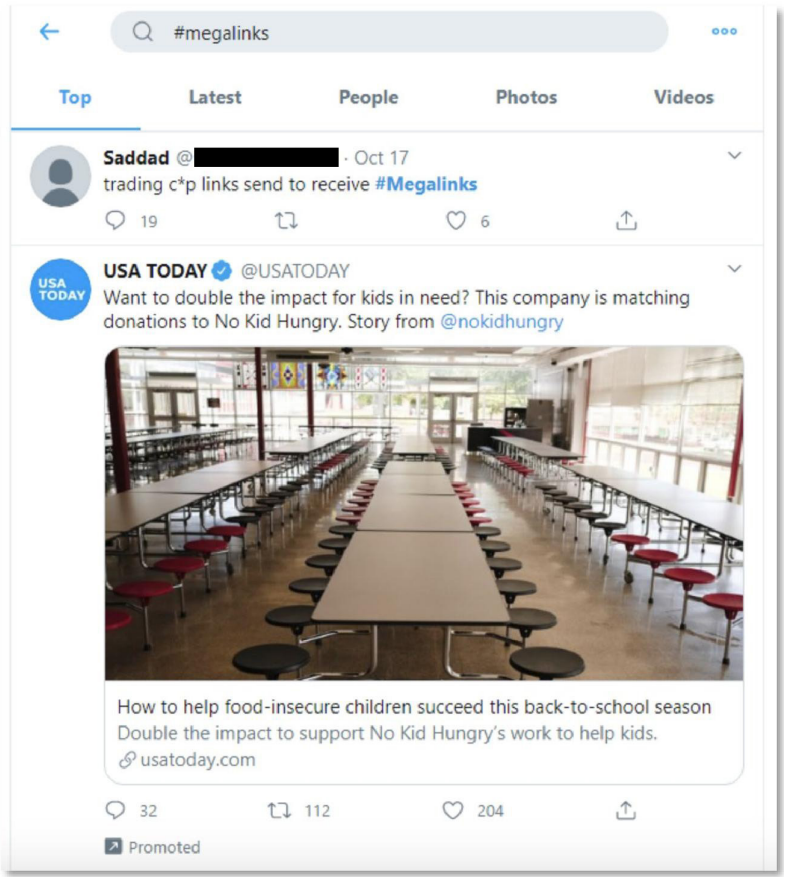

77. The hashtag #megalinks is one example of many well-known hashtags associated with the dissemination of CSAM. Other hashtags that are commonly used to trade and distribute CSAM include #s2r, which stands for "send to receive" and hashtags including the term "dropbox." Here are examples of those hashtags used in tweets soliciting "young" and specific age ranges of children in sexually graphic images:

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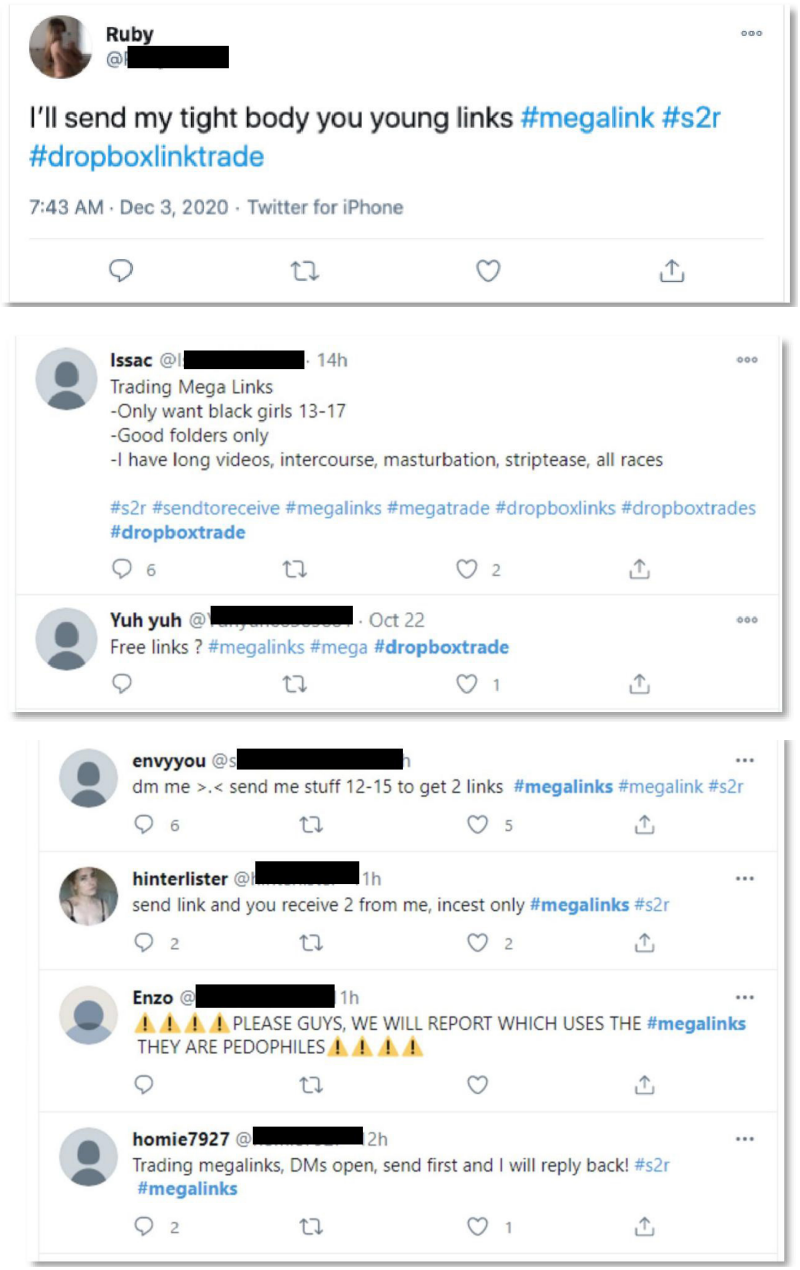
Ruby
@[redacted]
I'll send my tight body you young links #megalink #s2r #dropboxlinktrade
7:43 AM · Dec 3, 2020 · Twitter for iPhone
Issac @[redacted] · 14h
Trading Mega Links
-Only want black girls 13-17
-Good folders only
-I have long videos, intercourse, masturbation, striptease, all races
#s2r #sendtoreceive #megalinks #megatrade #dropboxlinks #dropboxtrades #dropboxtrade
6
2
Yuh yuh @[redacted] · Oct 22
Free links ? #megalinks #mega #dropboxtrade
1
envyyou @[redacted]
dm me >.< send me stuff 12-15 to get 2 links #megalinks #megalink #s2r
6
5
hinterlister @[redacted] 1h
send link and you receive 2 from me, incest only #megalinks #s2r
2
2
Enzo @[redacted] 1h
⚠⚠⚠⚠ PLEASE GUYS, WE WILL REPORT WHICH USES THE #megalinks THEY ARE PEDOPHILES ⚠⚠⚠⚠
homie7927 @[redacted] 2h
Trading megalinks, DMs open, send first and I will reply back! #s2r #megalinks
2
1

78. Twitter has the ability to, and in fact does, block certain hashtags. For example, the hashtag #savethechildren has been blocked by Twitter for being associated with the group "QAnon." Meanwhile, the aforementioned hashtags known for primarily trading in CSAM and sex trafficking material have not been banned by Twitter.

79. Instead, Twitter's algorithm assists and enables pedophiles, collectors, and distributors of CSAM to find each other and increase their engagement with one another. In effect, Twitter has created the meeting place and the marketplace for a community that is generating content which Twitter is monetizing at the expense of exploited children.

Twitter's Search-Suggestion Feature

80. Twitter also includes a search-suggestion feature in its platform. This feature reads what the user enters into Twitter's search bar and makes suggestions for other searches that the user might consider.

81. When a user searches for CSAM on the Twitter platform, the platform will make search suggestions designed to help the user find the illegal, CSAM.

82. Twitter's software is designed so that a search for the #megalinks hashtag returns suggestions for other hashtags that are related to CSAM and users that use the #megalinks hashtag to discuss or distribute CSAM.

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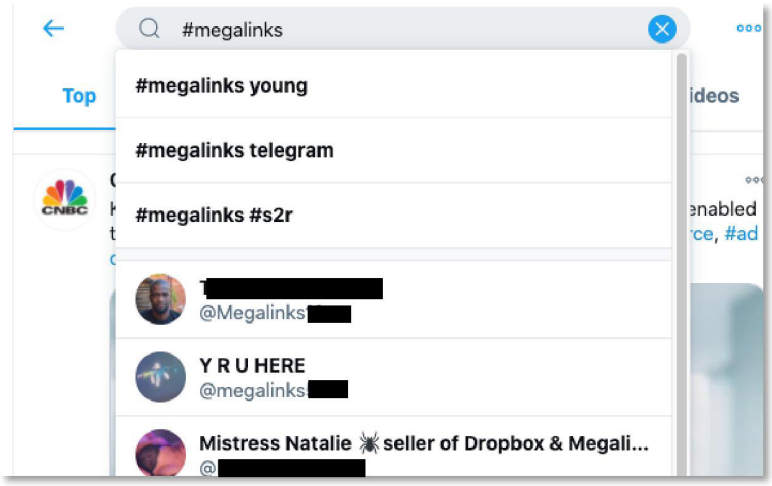

83. Twitter has been made aware of these hashtags on many occasions but continues to index them and utilize them for advertising revenue.

84. Thus, while Twitter claims that it has a "zero-tolerance policy" for CSAM, its platform not only allows the distribution of CSAM, but its platform architecture also aids in the distribution of CSAM, and Twitter profits from it through advertisements.

THE TRAFFICKING OF JOHN DOE #1 AND JOHN DOE #2

85. Plaintiff John Doe #1 was a minor at the inception of this lawsuit; however, he is presently 18 years old. He is currently a student in high school.

86. Plaintiff John Doe #2 is presently 18 years old. He is currently a student in high school.

87. In 2017, when John Doe #1 was 13-14 years old, he began interacting with someone he thought was an individual person on the communications application Snapchat.[33] That person or persons ("Traffickers") represented to John Doe #1 that "she" was a 16-year-old female and John Doe #1 believed that person went to his school.

88. John Doe #1 was communicating with the Traffickers on Snapchat while he was in the presence of his friend, John Doe #2. When the Traffickers realized that both John Doe #1 and John Doe #2 were present together, they suggested that they exchange nude photos and/or videos.

89. John Doe #1 and John Doe #2 both exchanged nude photos and/or videos with the Traffickers on Snapchat. The Traffickers sent a photo of what appeared to be teen girls and John Doe #1 and John Doe #2 responded with photo(s) of themselves.

90. After they did so, the correspondence changed to blackmail. Now the Traffickers wanted more sexually graphic pictures or videos of John Doe #1 and John Doe #2, and recruited, enticed, threatened and solicited them by threatening them that if they did not provide this

33. Snapchat is a messaging app that originated in 2011 and allows users to send photos, videos, and texts that will self-destruct shortly after all recipients have viewed message. Messages on Snapchat are known as "snaps." *See* Christina Newberry, How to Use Snapchat: A Guide for Beginners. https://blog.hootsuite.com/how-to-use-snapchat-beginners-guide/ (last viewed April 1, 2021).

material, then the images/videos that they had already sent would be sent to their parents, coach, pastor, and others in their community.

91. Initially John Doe #1 and John Doe #2 complied with the Traffickers' demands. They were told to provide pictures and/or videos of themselves performing sexual acts and they did so.

92. The pictures and videos constitute CSAM and sex trafficking because John Doe #1 and John Doe #2 were minors at the time the CSAM was produced, it was produced by the minors after the Traffickers threatened, defrauded, and solicited the images/videos from the minors, and the images/videos contained lewd and/or pornographic material.

93. Messaging him on his phone, the Traffickers also attempted to meet with John Doe #1 in person. Fortunately, an in-person meeting never took place.

94. Eventually John Doe #1 resolved to break free from the control of the Traffickers and attempted to block them on Snapchat.

95. The Traffickers messaged John Doe #1 under another account, stating that he had made a big mistake in blocking them.

96. Although afraid, John Doe #1 continued to attempt to avoid the Traffickers and eventually the communications ceased.

97. Plaintiffs each received something of value in exchange for the images and videos of the sexual acts. They were threatened with reputational harm and provided the images/videos in exchange for preventing the images and/or videos sent to others.

98. Traffickers received something of value when they received the CSAM images from John Doe #1 and John Doe #2.[34] Upon information and belief, the Traffickers' value in such images would have included using the images for personal sexual gratification, collection, distribution, or sale of the CSAM images.

99. At some point in 2019, those saved images and videos appeared in a compilation video surfaced on Twitter, showing multiple CSAM images/videos depicting John Doe #1 and John Doe #2. This compilation video was posted by the Twitter user handles @StraightBross and @fitmalesblog. It was also retweeted (i.e. reposted through the Twitter platform) by numerous Twitter users.

100. The fact that the CSAM images and video appeared outside of the Snapchat platform shows that the Traffickers saved copies of the images and videos. Snapchat is designed so that snaps will self-destruct after they have been viewed by all recipients. It is possible to save videos and images before they disappear, but it would require an affirmative act on the part of the Traffickers to save each image and video.

---

34. The CSAM images/videos were of John Doe #1 as an individual, and also with John Doe #1 and John Doe #2 depicted together.

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CSAM DEPICTING JOHN DOE #1 AND JOHN DOE #2 IS DISTRIBUTED ON TWITTER

101. On December 25, 2019, Twitter was alerted by a concerned citizen through its content-reporting interface that the user account @StraightBross was posting CSAM. Here is an excerpt of that report that was sent to Twitter:

12/25/2019 Report a child sexual exploitation issue. | Help Center

Re: CSE Report to Twitter 12-25-19 and Cybertipline Report

The following accounts were reported individually to Twitter via https://help.twitter.com/forms/cse . They all Retweeted and/or Liked one or more of the following child porn pictures or videos. This is OBVIOUS CHILD PORN!!! It's the reason they were reported. Most of these pedophiles have shared much more than just the one link but this should be sufficient evidence to warrant further investigation and referral to ICAC for possible Child Porn Possession.

https://twitter.com/ StraightBross/status/1205557682654109696
https://twitter.com/ StraighterBross/status/1207298223926382596
https://twitter.com/ wanghuangdaily1/status/1179399976314650626
https://twitter.com/ crazyboombaya19/status/1189077730882543616
https://twitter.com/ Haektormai/status/1160787988260909057
https://twitter.com/ macsy21301613/status/1208584279799681024
https://twitter.com/ Jush69/status/1206597689007202306

These links are all GRAPHIC CHILD PORN!!!

Twitter's Child Sexual Exploitation Policy states "We have a zero-tolerance child sexual exploitation policy on Twitter. Twitter has zero tolerance towards any material that features or promotes child sexual exploitation, one of the most serious violations of the Twitter Rules. This may include media, text, illustrated, or computer-generated images. Regardless of the intent, viewing, sharing, or linking to child sexual exploitation material contributes to the re-victimization of the depicted children. This also applies to content that may further contribute to victimization of children through the promotion or glorification of child sexual exploitation. For the purposes of this policy, a minor is any person under the age of 18."

These accounts are in CLEAR VIOLATION of this policy. There is ABSOLUTELY NO case to be argued to the contrary. Use the link addresses provided here to verify that they have retweeted and/or liked one or more of these links and thus, the media is displayed somewhere on their timeline or under the users Likes.

Twitter's TOS also states "In the majority of cases, the consequence for violating our child sexual exploitation policy is immediate and permanent suspension." These accounts qualify

102. Twitter assigned the report claim number 0136403334. It did not take action against the @ StraightBross account.

103. John Doe #1 was 16 years old and attending high school in January of 2020.

104. John Doe #2 was 16 years old and attending high school in January of 2020.

105. On or about January 19 or 20, 2020, John Doe #1 became aware of the posts when he learned from his classmates that CSAM videos of him and another minor were on Twitter and that many students in the school had viewed them.

106. Due to the circulation of these videos, John Doe #1 suffered severe anguish and embarrassment; he faced teasing, harassment, vicious bullying, and became suicidal.

107. In January of 2020, John Doe #2 became aware of the Twitter posts featuring CSAM depicting him and John Doe #1. He was attending the same high school as John Doe #1, where the Twitter posts were being circulated and discussed among the students.

108. The circulation of these videos cause John Doe #2 severe anguish and embarrassment as well. John Doe #2 refused to go to school for multiple weeks.

109. John Doe #1 spoke to his parents about what was happening and sought their help.

110. John Doe #1's mother took immediate action to have the CSAM removed. She contacted school officials, local law enforcement, and reached out directly to Twitter through its content-reporting interface.

111. John Doe #1 attempted to contact the Twitter users who had posted the CSAM video depicting him, informed them that the video was of him, that he was a minor in the video, and asked them to remove the posts. One of these Twitter users removed the post, however, the other ignored John Doe #1's request and kept the video live.

112. On January 21, 2020, John Doe #1 made a complaint to Twitter through its content-reporting interface about the CSAM depicting himself that was posted by the Twitter user @fitmalesblog. He received a response from Twitter, which assigned his complaint the case number 0139512883.

113. Twitter's response to John Doe #1's report on January 21, 2020, read:

> Hello,
>
> Thanks for reaching out. As the next step of our review, we need to confirm your identity that you're the person in the photo you've reported.
>
> Please use this link to send us a copy of your valid government-issued photo ID, like a driver's license, passport, or school ID.

> This helps to prevent false or unauthorized reports. Your information will remain private and be deleted once we've reviewed it.
>
> We appreciate your help.
>
> Thanks,
>
> Twitter

114. John Doe #1 submitted a picture of his drivers' license to Twitter proving that he is a minor. He emailed back the same day, alerting Twitter to both accounts, and saying:

> • Yes these tweets are videos of me and a friend taken from 3 years ago. these videos were taken from harassment and being threatened. It is now spreading around school and we need them taken down as we are both minors and we have a police report for the situation. https://twitter.com/fitmalesblog/status/1213751523097886720
>
> https://twitter.com/straightbross/status/1214673411689140224?s=2 1
>
> • These are spreading around school and is causing many issues. the police and parents are both aware of it.
>
> • These videos were taken 3 years ago but are now being resurfaced. It started about a week ago going around school.

> • Me, [Name Redacted – John Doe #1] and also [Name Redacted – John Doe #2] are in these videos.

115. On January 22, 2020, the mother of John Doe #1 made two complaints to Twitter through its content-reporting interface about the CSAM depicting her son, one for each link of which she was aware. The first complaint was filed against the Twitter user account @ StraightBross. The second complaint was filed against the Twitter user account @fitmalesblog.

116. Twitter responded to both complaints with an automatic message. The first automated message, which was for CSAM posted by user @StraightBross, assigned the case number 0139729198 and read as follows:

> Hello,
>
> Thanks for bringing this to our attention. We don't tolerate child sexual exploitation on Twitter. Through our partnership with the National Center for Missing and Exploited Children (NCMEC), we ensure that appropriate law enforcement agencies are notified when such content is located. We'll review the content you've reported as soon as possible. Please be aware that removed content may remain visible to you until you've refreshed your browser or cleared your browser history or cache.

> If you have further information on the content you've reported, you can send it to NCMEC directly through this link: https://report.cybertip.org/. If you are seeing the content on other websites potentially hosted outside the United States, you can report it to the International Association of Internet Hotlines website here: http://www.inhope.org.
>
> For more information on Twitter's policy on child sexual exploitation, please visit: https://support.twitter.com/articles/37370.
>
> Thank you,
>
> Twitter

117. The second automated message, which was for CSAM posted by user @fitmalesblog, was assigned the case number 0139730675 and included the same message as the auto message to the first complaint.

118. John Doe #1 and his mother also reported the situation to a local law enforcement agency and provided Twitter with the report number for that agency.

119. On January 26, 2020, John Doe #1's mother followed up with email to Twitter after a week of inactivity and lack of response by Twitter that read as follows:

> Hello there my name is [Name Redacted]
> i'm [John Doe #1's] mother. I sent two complains
> in case #0139730675
> case #0139729198
>
> without responses from you. He had been a victim in a sex abuse situation. No one gave permissions for these [videos] to be on your site. You are allowing child pornography to be in your web site for over a week now after my compliant on Jan 22nd 2020. The police case [redacted Police Report case number and jurisdiction]. We want them removed immediately.
> [Name Redacted]

120. On January 28, 2020, Twitter sent John Doe #1 an email that read as follows:

> Hello,
>
> Thanks for reaching out. We've reviewed the content, and didn't find a violation of our policies, so no action will be taken at this time.
>
> If you believe there's a potential copyright infringement, please start a new report.
>
> If the content is hosted on a third-party website, you'll need to contact that website's support team to report it.

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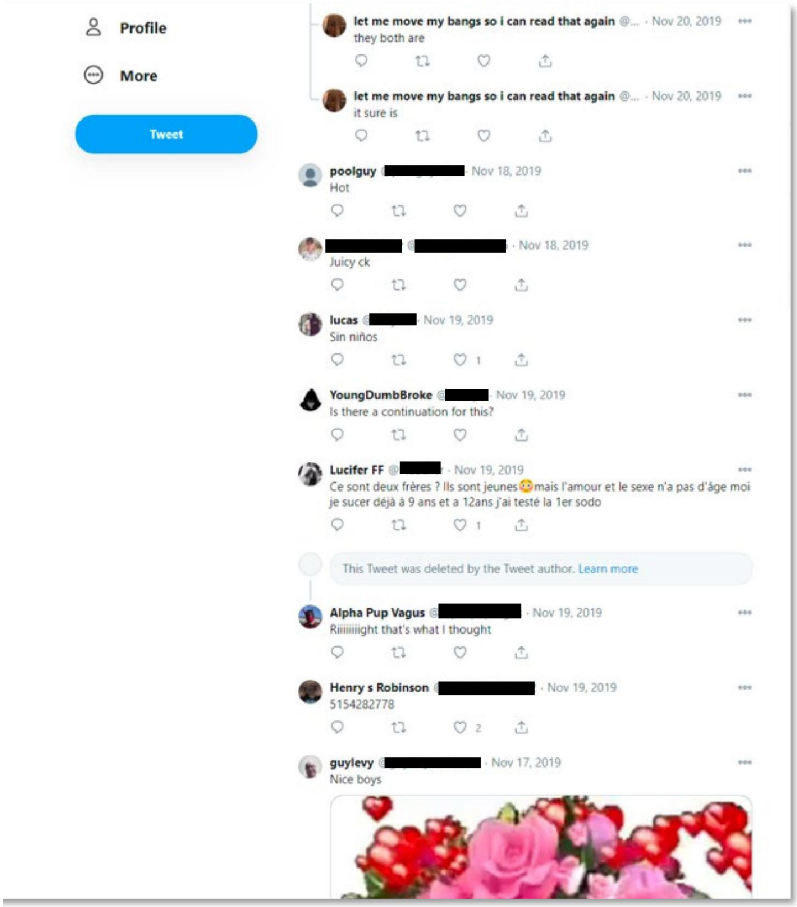
> Your safety is the most important thing, and if you believe you are in danger, we encourage you to contact your local authorities. Taking screenshots of the Tweets is often a good idea, and we have more information available for law enforcement about our policies.
>
> Thanks,
>
> Twitter

121. Here is a thread in which users commented on the CSAM depicting John Doe #1 and John Doe #2:



Appendix G



122. If Twitter had reviewed the material as they claimed in their response to John Doe #1, they would have seen the comments above, which clearly acknowledge that the material was depicting minors. At the very least, they would have seen that it was sexually explicit and matched John Doe #1's government issued driver's license identifying him as a minor and confirming that the material was CSAM, or child pornography.

123. On January 28, 2020, John Doe #1 responded to Twitter's message as follows:

> What do you mean you don't see a problem? We both are minors right now and were minors at the time these videos were taken. We both were 13 years of age. We were baited, harassed, and threatened to take these videos that are now being posted without our permission. We did not authorize these videos AT ALL and they need to be taken down. We have a case number with the [Law Enforcement Agency] for these videos and this incident. Please remove this video ASAP and any videos linked to this one. There is a problem with these videos and they are going against my legal rights and they are again at (sic) the law to be on the internet. (capitalized emphasis in original)

124. Twitter ignored John Doe #1's final plea and the illegal videos depicting CSAM remained live on Twitter. Just two days after John Doe #1 first contacted Twitter, the videos had accrued over 167,000 views and 2,223 retweets. Here is an image captured from one of those retweets.



125. The videos remained live approximately another seven days, resulting in substantially more views and retweets. Each viewing is a harmful act to John Doe #1 and John Doe #2.

126. Additionally, the word "twinks" was used to describe the children in the videos which is a term used to describe young boys or men as having certain boyish characteristics such as "little to no body or facial hair; a slim to average build; and a youthful appearance"[35]— another indication that they were minors, and that this fact was evident from their appearance.

127. Twitter still did not report the CSAM to NCMEC after being contacted by John Doe #1 and his mother.

128. Eventually, through a mutual contact, John Doe #1's mother was able to connect with an agent of the U.S. Department of Homeland Security. The federal agent also initiated contact with Twitter and at the request of the U.S. federal government, the CSAM was finally removed from Twitter on or about January 30, 2020.

129. Only after this take-down demand from a federal agent did Twitter suspend the user accounts that were distributing the CSAM and report the CSAM to NCMEC as required by law. This is directly in contrast to what their automated reply message and User Agreement state they will do to protect children.

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35. 35 *Twink*, *Wikipedia.org*, https://en.wikipedia.org/wiki/Twink_(gay_slang) (last visited Apr. 1, 2021).

130. One of the Twitter user accounts that posted the CSAM depicting Plaintiffs—@StraightBross—had already been reported to Twitter for posting CSAM.

131. On information and belief, Twitter did not block IP addresses, or take other measures, allowing the person or persons behind the @StraightBross account to continue distributing sexually exploitive material on the Twitter platform from other user accounts. As of the filing of the initial Complaint, @StraightBross had opened a new account @BrossStraight in which he identified himself as "Straight Bross."[36]

132. Defendant's conduct has caused Plaintiffs serious and long-term, if not permanent harm, including, without limitation, psychological, financial, and reputational harm.

CLAIMS ALLEGED

COUNT I

VIOLATION OF THE TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT, 18 U.S.C. §§ 1591(A)(1) AND 1595

133. Plaintiffs reallege and incorporate by reference all prior and subsequent paragraphs as if fully incorporated herein.

134. Defendant knowingly used the instrumentalities and channels of interstate and foreign commerce to

36. Complaint (ECF No. 1) at ¶100.

facilitate violations of 18 U.S.C. §§ 1591(a)(1) and 1595(a), occurring within the territorial jurisdiction of the United States.

135. Defendant's conduct was in or affected interstate and/or foreign commerce.

136. Plaintiffs were minors during all relevant time periods pertinent to this lawsuit.

137. Twitter knew, or was in reckless disregard of the fact, that John Doe #1 and John Doe #2 had not attained the age of 18.

138. Extortive threats made against John Doe #1 and his family compelled him to create CSAM material featuring both himself, as well as John Doe #2, engaging in sex acts.

139. Both Plaintiffs received from the Traffickers something of value for engaging in sex acts.

140. The Traffickers received something of value for the images and/or video of the sex acts.

141. Twitter knowingly provided, obtained, and maintained CSAM depicting John Doe #1 individually, as well as John Doe #1 and John Doe #2 together.

142. Twitter knew, or was in reckless disregard of the fact, that through monetization and providing, obtaining, and maintaining CSAM on its platform, Twitter

and Twitter users received something of value for the video depicting sex acts of John Doe #1 and John Doe #2 as minors.

143. Twitter's conduct has caused John Doe #1 and John Doe #2 serious harm including, without limitation, physical, psychological, financial, and reputational harm.

COUNT II

BENEFITING FROM A SEX TRAFFICKING VENTURE IN VIOLATION OF THE TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT, 18 U.S.C. §§ 1591(A)(2) AND 1595

144. Plaintiffs reallege and incorporate by reference all prior and subsequent paragraphs as if fully incorporated herein.

145. Defendant knowingly used the instrumentalities and channels of interstate and foreign commerce to facilitate violations of 18 U.S.C. §§ 1591(a)(2) and 1595(a), occurring within the territorial jurisdiction of the United States.

146. Defendant's conduct was in or affected interstate and/or foreign commerce.

147. Plaintiffs were minors during all relevant time periods pertinent to this lawsuit.

148. Twitter knew, or was in reckless disregard of the fact, that John Doe #1 and John Doe #2 had not attained the age of 18.

149. The Traffickers made extortive threats against John Doe #1 that compelled him to create CSAM material featuring both himself and John Doe #2 engaging in sex acts.

150. Both Plaintiffs received from the Traffickers something of value for engaging in sex acts.

151. The Traffickers received something of value for the images and/or video of the sex acts.

152. Twitter was notified that (a) the CSAM depicting John Doe #1 and John Doe #2 was the result of extortive threats; (b) that John Doe #1 and John Doe #2 were children; (c) that the video and/or images of John Doe #1 and John Doe #2 depicted a sex act; and (d) that the CSAM depicting John Doe #1 and John Doe #2 was continuing to be distributed on its platform.

153. Defendant knowingly benefited, or should have known that it was benefiting, from assisting, supporting, or facilitating a violation of 1591(a)(1).

154. Defendant knowingly benefited from such participation by receiving financial compensation and/or something of value for its participation in the venture.

155. Twitter's conduct has caused John Doe #1 and John Doe #2 serious harm including, without limitation, physical, psychological, financial, and reputational harm.

COUNT III

VIOLATION OF DUTY TO REPORT CHILD SEXUAL ABUSE MATERIAL,18 U.S.C. §§ 2258A AND 2258B

156. Plaintiffs reallege and incorporate by reference all prior and subsequent paragraphs as if fully incorporated herein.

157. As an "electronic communication service provider," Twitter is a "provider" under 18 U.S.C. §§ 2258E(6) and 2258A.

158. Defendant obtained actual knowledge that there was online sexual exploitation material of children being published on its platform, which was an apparent violation of 18 U.S.C. § 2252A.

159. Defendant's conduct for violating 18 U.S.C. § 2258A is eligible for civil claims for relief pursuant to paragraph (b) of 18 U.S.C. § 2258B.

160. Twitter knowingly engaged in intentional misconduct by ignoring clear notice of the presence of actual online sexual exploitation material of children. 18 U.S.C. § 2258B(b)(1).

161. Twitter's conduct constitutes a failure to act with reckless disregard to a substantial risk of causing physical injury without legal justification. 18 U.S.C. § 2258B(b)(2)(B).

162. Twitter's conduct constitutes a failure to act for a purpose unrelated to the performance of any responsibility or function under 18 U.S.C. §§ 2258B(b)(2)(C).

163. Twitter's conduct has caused John Doe #1 and John Doe #2 serious harm including, without limitation, physical, psychological, financial, and reputational harm.

COUNT IV

CIVIL REMEDIES FOR PERSONAL INJURIES RELATED TO SEX TRAFFICKING AND RECEIPT AND DISTRIBUTION OF CHILD PORNOGRAPHY (18 U.S.C. §§ 1591, 2252A, AND 2255)

164. Plaintiffs reallege and incorporate by reference all prior and subsequent paragraphs as if fully incorporated herein.

165. Plaintiffs were minors during all relevant time periods pertinent to this lawsuit.

166. Plaintiffs were victims of sex trafficking and distribution of child pornography as set forth in 18 U.S.C. §§ 1591 and 2252A.

167. Defendant knowingly used the instrumentalities and channels of interstate and foreign commerce to facilitate violations of 18 U.S.C. §§ 1591 and 2252A, occurring within the territorial jurisdiction of the United States.

168. Defendant's conduct was in or affected interstate and/or foreign commerce.

169. As previously alleged in Counts I and II, Defendants have violated 18 U.S.C. § 1591.

170. Twitter knowingly and intentionally offers, operates, maintains, and advertises on its platform. Twitter also knowingly and intentionally encourages traffic on its platform and encourages advertisers to purchase advertisement space on its platform.

171. Twitter has created a process for users of its platform to notify it of violations of Twitter's policies, to include the posting of illegal material and child exploitation material.

172. Twitter was so notified of the CSAM material depicting John Doe #1 and John Doe #2 as minors on its platform and still knowingly received, maintained, and distributed this child pornography after such notice.

173. As a proximate result of Twitter's violation of 18 U.S.C. § 2252A, John Doe #1 and John Doe #2 suffered serious harm and personal injury, including,

without limitation, physical, psychological, financial, and reputational harm.

174. 18 U.S.C. § 2255 provides that any person who is a victim of a violation of one of several federal laws prohibiting sexual offenses against children, including 18 U.S.C. §§ 1591 and 2252A, and who suffers personal injury as a result of such violation shall recover the actual damages such person sustains or liquidated damages in the amount of $150,000, and the cost of the action, including reasonable attorney's fees and other litigation costs reasonably incurred.

175. Additionally, § 2255 authorizes the award of "punitive damages and such other preliminary and equitable relief as the court determines to be appropriate."

176. Both John Doe #1 and John Doe #2 have suffered personal injury as a result of Twitter's violations of the federal laws listed in paragraph (a) of 18 U.S.C. § 2255.

COUNT V

CALIFORNIA PRODUCTS LIABILITY

177. Plaintiffs reallege and incorporate by reference all prior and subsequent paragraphs as if fully incorporated herein.

178. Twitter created its platform, API, and related products, and distributes them and has placed these products into commerce.

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179. Twitter is designed to enable its users to disseminate information very quickly to large numbers of people.

180. Twitter is designed so that search terms and hashtags utilized for trading CSAM return suggestions for other search terms and hashtags related to CSAM.

181. Twitter's algorithm(s), API, and other proprietary technology are used by child predators and sex traffickers to distribute CSAM on a massive scale. Additionally, this technology is used by pedophiles to find each other via hashtags and search terms and used by sex traffickers to find their customers and advertise via Twitter's platform.

182. Twitter is not designed to enable its users to easily report CSAM, nor is it designed so that CSAM is immediately blocked pending review when reported.

183. On information and belief, Twitter does not consistently deploy IP blocking, or other measures, to prevent users suspended by Twitter for disseminating CSAM from opening new accounts under different names.

184. While third parties posted CSAM of John Doe #1 and John Doe #2 on Twitter's platform, due to the structure of the platform, including Twitter's capacity to monitor, block, or delete content on the platform, the product in question never left Twitter's possession.

185. After the third parties posted CSAM of John Doe #1 and John Doe #2 on Twitter's platform, Twitter refused to remove the CSAM when John Doe notified them, allowing and monetizing at least 167,000 views and 2,220 retweets of the CSAM depicting the Plaintiffs.

186. John Doe #1 and John Doe #2 were additionally harmed by having at least 167,000 people view their abuse and 2,220 retweet it, compounding the views, consistent with how Twitter designed its platform to facilitate swift and broad distribution of CSAM, but without sufficient safeguards so that CSAM is removed and reported quickly.

187. Twitter's products are defective because they do not perform as safely as an ordinary consumer would expect them to perform when used in an intended or reasonably foreseeable way.

188. Twitter is a product about which consumers should be able to have reasonable minimum safety expectations; namely, that a mainstream, general social media platform will not serve as a mass distribution channel for CSAM.

189. Having insufficient features to prevent the Twitter platform from being used as a mass distribution channel for CSAM is a defect in the design of the Twitter platform.

190. Plaintiffs were harmed by these defects in Twitter's products and the products' failure to perform

safely is a substantial factor in causing the harm to Plaintiffs.

COUNT VI

NEGLIGENCE

191. Plaintiffs reallege and incorporate by reference all prior and subsequent paragraphs as if fully incorporated herein.

192. The possession and distribution of child pornography (i.e. CSAM) is illegal under both federal law and the laws of California.[37] Additionally, CSAM is illegal in every other state in the United States as well as across the world where Twitter does business.

193. The CSAM depicting Plaintiffs John Doe #1 and John Doe #2 was a violation of Twitter's own policies and terms of service.

194. Twitter had a duty to protect John Doe #1 and John Doe #2. Twitter had actual knowledge that Plaintiffs John Doe #1 and John Doe #2 were minors, and that CSAM depicting them was being distributed on its platform, in violation of both the law and Twitter's own policies.

195. Twitter breached that duty and continued to disseminate the unlawful CSAM causing it to be viewed

37. *See generally*, 18 U.S.C. § 2252A *and* Cal. Penal Code § 311.1 (West 2020).

at least 167,000 times and retweeted 2,220 times for additional views.

196. The distribution of the CSAM depicting John Doe was monetized by Twitter and it receive financial benefit from its distribution on its platform.

197. Twitter's broad distribution of the CSAM depicting John Doe #1 and John Doe #2 has caused them severe harm, including physical, emotional, reputational, and financial harm.

COUNT VII

GROSS NEGLIGENCE

198. Plaintiffs reallege and incorporate by reference all prior and subsequent paragraphs as if fully incorporated herein.

199. Twitter had a duty to protect John Doe #1 and John Doe #2. Twitter had actual knowledge that Plaintiffs John Doe #1 and John Doe #2 were minors, and that CSAM depicting them was being distributed on its platform, in violation of both the law and Twitter's own policies.

200. Twitter breached that duty and continued to disseminate and profit from the unlawful CSAM, causing it to be viewed at least 167,000 times and retweeted 2,223 times for additional views.

201. By permitting the CSAM depicting Plaintiffs to remain on its platform after it was notified of the material's presence by members of the public, by John Doe #1, and by John Doe's mother, Twitter exhibited a lack of any care.

202. Twitter's conduct is an extreme departure from what a reasonably careful person would do in the same situation to prevent harm to others.

203. As a direct result of Twitter's conduct, John Doe #1 and John Doe #2 have suffered severe harm, including physical, emotional, reputational, and financial harm.

COUNT IIX

NEGLIGENCE PER SE

204. Plaintiffs reallege and incorporate by reference all prior and subsequent paragraphs as if fully incorporated herein.

205. Twitter's conduct with respect to Plaintiffs violated numerous laws including but not limited to 18 U.S.C. §§ 1591 and 1595 (benefiting from a sex trafficking venture), 18 U.S.C. § 2258A (failing to report known child sexual abuse material), 18 U.S.C. § 2552A (knowingly distributing child pornography), Cal. Civ. Code § 1708.85 (intentionally distributing non- consensually shared pornography), and Cal. Penal Code § 311.1 (possessing child pornography).

206. Twitter's violation of numerous laws was a substantial factor in bringing about harm to Plaintiffs and as a consequence Twitter is negligent.

COUNT IX

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

207. Plaintiffs reallege and incorporate by reference all prior and subsequent paragraphs as if fully incorporated herein.

208. Twitter's conduct in refusing or failing to remove the CSAM depicting Plaintiffs John Doe #1 and John Doe #2 was outrageous, due to the extreme illegality and abusive nature of the content and Twitter's large distribution potential.

209. Severe emotional distress is typical for sexual abuse and human trafficking victims, and it is magnified when depictions of the abuse are made public, especially to large numbers of people.

210. Twitter acted with reckless disregard of the probability that John Doe #1 and John Doe #2 would suffer emotional distress from Twitter's continued distribution of sexual abuse material depicting them.

211. Plaintiffs suffered severe emotional distress and mental anguish due the public depiction of their abuse, which proliferated as Twitter refused to remove it.

212. Twitter's conduct was both the cause and a substantial factor in causing Plaintiffs' severe emotional distress and mental anguish.

COUNT X

DISTRIBUTION OF PRIVATE SEXUALLY EXPLICIT MATERIALS, CAL. CIV. CODE § 1708.85

213. Plaintiffs reallege and incorporate by reference all prior and subsequent paragraphs as if fully incorporated herein.

214. By refusing to remove or block the photographic images and video depicting him after Plaintiff John Doe #1 notified Twitter that both he and John Doe #2 were minors, Twitter intentionally distributed on its online platform photographic images and video of the Plaintiffs.

215. Plaintiffs John Doe #1 and John Doe #2 did not consent to the online distribution of the photographic images and video depicting them.

216. Twitter knew that Plaintiffs had a reasonable expectation that the photographic images and video depicting them would remain private.

217. The photographic images and video exposed intimate body parts of John Doe #1 and John Doe #2.

218. Plaintiffs were harmed by Twitter's knowing and intentional distribution of the photographic images

and video and Twitter's conduct was a substantial factor in cause the harm to Plaintiffs.

COUNT XI

INTRUSION INTO PRIVATE AFFAIRS

219. Plaintiffs reallege and incorporate by reference all prior and subsequent paragraphs as if fully incorporated herein.

220. Twitter knew that Plaintiffs had a reasonable expectation that the photographic images and video depicting him would remain private.

221. Twitter intentionally intruded into Plaintiffs' reasonable expectation of privacy by continuing to distribute the photographic images and video depicting them after John Doe #1 notified Twitter that Plaintiffs were minors and the material had been posted on its platform without their consent.

222. Twitter's intentional intrusion into Plaintiffs' reasonable expectation of privacy would be highly offensive to a reasonable person.

223. Plaintiffs were harmed by Twitter's knowing and intentional distribution of the photographic images and video and Twitter's conduct was a substantial factor in cause the harm to Plaintiffs.

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COUNT XII

INVASION OF PRIVACY UNDER THE CALIFORNIA CONSTITUTION, ARTICLE I, SECTION I

224. Plaintiffs reallege and incorporate by reference all prior and subsequent paragraphs as if fully incorporated herein.

225. Plaintiffs had a legally protected right to privacy under California law. Article I, Section I of the California Constitution states: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

226. Twitter knew that Plaintiffs had a reasonable expectation that the photographic images and video depicting them would remain private.

227. Twitter intentionally intruded into Plaintiffs' reasonable expectation of privacy by continuing to distribute the photographic images and video depicting him after John Doe #1 notified Twitter that he was a minor and the material had been posted on its platform without his consent.

228. Twitter's intentional intrusion into Plaintiffs' reasonable expectation of privacy would be highly offensive to a reasonable person and was a violation of Plaintiffs' right to privacy as set forth in Article I, Section

I of the California Constitution. Plaintiffs were harmed by Twitter's knowing and intentional distribution of the photographic images and video and Twitter's conduct was a substantial factor in cause the harm to John Doe #1 and John Doe #2.

COUNT XIII

VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200

229. Plaintiffs reallege and incorporate by reference all prior and subsequent paragraphs as if fully incorporated herein.

230. At all times mentioned herein, Twitter utilized and exploited Plaintiffs for its own benefit and profit. Plaintiffs, to their detriment, reasonably relied upon Twitter's willful and deceitful conduct and assurances that it effectively moderates and otherwise controls third-party user content on its platforms. Specifically, Plaintiffs relied on Twitter's "zero tolerance policy against violent threats," "zero-tolerance child sexual exploitation policy," and its banning of slurs, epithets, and "sexist tropes, or other content that degrades someone." These policies were not properly implemented or enforced.

231. The aforementioned acts and omissions of Defendant, as herein alleged, constitute unfair business practices in that they were unlawful in violation of various statutes and were unfair and/or fraudulent within the meaning of California Business and Professions Code Sections 17200, *et seq.*

232. As a result of Twitter's actions, inactions, and policies, Plaintiffs suffered harm.

233. As a direct and proximate result of the willful, deceitful, unlawful, and unfair business practices of Defendant, Plaintiffs John Doe #1 and John Doe #2 have incurred injuries and damages, including but not limited to, physical, psychological, financial, and reputational harm, in an amount to be proven at trial.

234. Accordingly, Plaintiffs John Doe #1 and John Doe #2 seek restitution, pursuant to Business and Professions Code Section 17203, of all amounts to which Twitter has been unjustly enriched as a result of its unlawful, unfair, and/or fraudulent acts.

235. WHEREFORE, Plaintiffs pray for judgment for damages as hereinafter set forth.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment in their favor, and against the Defendant, and grant the following relief:

A. That the Court grant preliminary and permanent injunctive relief to prohibit Defendant from continuing to engage in the unlawful acts and practices described herein;

B. That the Court award Plaintiffs compensatory, consequential, general,

and nominal damages in an amount to be determined at trial;

C. Requiring restitution and disgorgement of all profits and unjust enrichment obtained as a result of Defendant's unlawful conduct;

D. That the Court award punitive or exemplary damages in an amount to be determined at trial;

E. That the Court award to Plaintiffs the costs and disbursements of the action, along with reasonable attorneys' fees, costs, and expenses;

F. That the Court award statutory damages and penalties;

G. That the Court award pre- and post judgment interest at the maximum legal rate;

H. Other equitable relief as the Court may deem just and proper; and

I. That the Court retain jurisdiction of this matter to ensure all forms of relief it deems appropriate.

Appendix G

JURY DEMAND

Plaintiffs demand a trial by jury on all claims so triable.

Dated: April 7, 2021 By: /s/ *Paul A. Matiasic*

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[CERTIFICATE OF SERVICE
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APPENDIX H — RELEVANT STATUTORY PROVISIONS

47 U.S.C. § 230. Protection for private blocking and screening of offensive material

Effective: April 11, 2018

(a) Findings

The Congress finds the following:

(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

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

(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

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

(b) Policy

It is the policy of the United States--

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

(c) Protection for "Good Samaritan" blocking and screening of offensive material

(1) Treatment of publisher or speaker

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) Civil liability

No provider or user of an interactive computer service shall be held liable on account of--

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).[1]

(d) Obligations of interactive computer service

A provider of interactive computer service shall, at the time of entering an agreement with a customer for

1. So in original. Probably should be "subparagraph (A)".

the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

(e) Effect on other laws

(1) No effect on criminal law

Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of Title 18, or any other Federal criminal statute.

(2) No effect on intellectual property law

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) State law

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section.

No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

(4) No effect on communications privacy law

Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

(5) No effect on sex trafficking law

Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit--

(A) any claim in a civil action brought under section 1595 of Title 18, if the conduct underlying the claim constitutes a violation of section 1591 of that title;

(B) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 1591 of Title 18; or

(C) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 2421A of Title 18, and promotion or facilitation of prostitution is illegal in the jurisdiction where

the defendant's promotion or facilitation of prostitution was targeted.

(f) Definitions

As used in this section:

(1) Internet

The term "Internet" means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) Interactive computer service

The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) Information content provider

The term "information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

(4) Access software provider

The term "access software provider" means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

(A) filter, screen, allow, or disallow content;

(B) pick, choose, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

* * *

Appendix H

18 U.S.C. § 1591. Sex trafficking of children or by force, fraud, or coercion

Effective: December 21, 2018

(a) Whoever knowingly--

> **(1)** in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or
>
> **(2)** benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing, or, except where the act constituting the violation of paragraph (1) is advertising, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

(b) The punishment for an offense under subsection (a) is--

(1) if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, obtained, advertised, patronized, or solicited had not attained the age of 14 years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life; or

(2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, obtained, advertised, patronized, or solicited had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title and imprisonment for not less than 10 years or for life.

(c) In a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained, maintained, patronized, or solicited, the Government need not prove that the defendant knew, or recklessly disregarded the fact, that the person had not attained the age of 18 years.

(d) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined under this title, imprisoned for a term not to exceed 25 years, or both.

(e) In this section:

(1) The term "abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term "coercion" means--

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of law or the legal process.

(3) The term "commercial sex act" means any sex act, on account of which anything of value is given to or received by any person.

(4) The term "participation in a venture" means knowingly assisting, supporting, or facilitating a violation of subsection (a)(1).

(5) The term "serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

(6) The term "venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

* * *

Appendix H

18 U.S.C. § 1595. Civil remedy

Effective: January 5, 2023

(a) An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, or attempts or conspires to benefit, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.

(b)(1) Any civil action filed under subsection (a) shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim.

(2) In this subsection, a "criminal action" includes investigation and prosecution and is pending until final adjudication in the trial court.

(c) No action may be maintained under subsection (a) unless it is commenced not later than the later of--

(1) 10 years after the cause of action arose; or

(2) 10 years after the victim reaches 18 years of age, if the victim was a minor at the time of the alleged offense.

(d) In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person who violates section 1591, the attorney general of the State, as parens patriae, may bring a civil action against such person on behalf of the residents of the State in an appropriate district court of the United States to obtain appropriate relief.

* * *

Appendix H

18 U.S.C. § 2252A. Certain activities relating to material constituting or containing child pornography

Effective: December 23, 2024

(a) Any person who--

(1) knowingly mails, or transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, any child pornography;

(2) knowingly receives or distributes--

(A) any child pornography using any means or facility of interstate or foreign commerce or that has been mailed, or has been shipped or transported in or affecting interstate or foreign commerce by any means, including by computer; or

(B) any material that contains child pornography using any means or facility of interstate or foreign commerce or that has been mailed, or has been shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;

(3) knowingly--

(A) reproduces any child pornography for distribution through the mails, or using any means

or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer; or

(B) advertises, promotes, presents, distributes, or solicits through the mails, or using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains--

(i) an obscene visual depiction of a minor engaging in sexually explicit conduct; or

(ii) a visual depiction of an actual minor engaging in sexually explicit conduct;

(4) either--

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the United States Government, or in the Indian country (as defined in section 1151), knowingly sells or possesses with the intent to sell any child pornography; or

(B) knowingly sells or possesses with the intent to sell any child pornography that has been mailed,

or shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;

(5) either--

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the United States Government, or in the Indian country (as defined in section 1151), knowingly possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography; or

(B) knowingly possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography that has been mailed, or shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or

transported in or affecting interstate or foreign commerce by any means, including by computer;

(6) knowingly distributes, offers, sends, or provides to a minor any visual depiction, including any photograph, film, video, picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, where such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct--

(A) that has been mailed, shipped, or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer;

(B) that was produced using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer; or

(C) which distribution, offer, sending, or provision is accomplished using the mails or any means or facility of interstate or foreign commerce, for purposes of inducing or persuading a minor to participate in any activity that is illegal; or

(7) knowingly produces with intent to distribute, or distributes, by any means, including a computer, in or affecting interstate or foreign commerce, child

pornography that is an adapted or modified depiction of an identifiable minor.[1]

shall be punished as provided in subsection (b).

(b)(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), (3), (4), or (6) of subsection (a) shall be fined under this title and imprisoned not less than 5 years and not more than 20 years, but, if such person has a prior conviction under this chapter, section 1591, chapter 71, chapter 109A, or chapter 117, or under the Uniform Code of Military Justice or the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 40 years.

(2) Whoever violates, or attempts or conspires to violate, subsection (a)(5) shall be fined under this title or imprisoned not more than 10 years, or both, but, if any image of child pornography involved in the offense involved a prepubescent minor or a minor who had not attained 12 years of age, such person shall be fined under this title and imprisoned for not more than 20 years, or if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under the Uniform Code of Military Justice or the laws of any State relating to

1. So in original. The period probably should be a comma.

aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.

(3) Whoever violates, or attempts or conspires to violate, subsection (a)(7) shall be fined under this title or imprisoned not more than 15 years, or both.

(c) It shall be an affirmative defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) that--

> **(1)(A)** the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct; and
>
> **(B)** each such person was an adult at the time the material was produced; or
>
> **(2)** the alleged child pornography was not produced using any actual minor or minors.

No affirmative defense under subsection (c)(2) shall be available in any prosecution that involves child pornography as described in section 2256(8)(C). A defendant may not assert an affirmative defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) unless, within the time provided for filing pretrial motions or at

such time prior to trial as the judge may direct, but in no event later than 14 days before the commencement of the trial, the defendant provides the court and the United States with notice of the intent to assert such defense and the substance of any expert or other specialized testimony or evidence upon which the defendant intends to rely. If the defendant fails to comply with this subsection, the court shall, absent a finding of extraordinary circumstances that prevented timely compliance, prohibit the defendant from asserting such defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) or presenting any evidence for which the defendant has failed to provide proper and timely notice.

(d) Affirmative defense.--It shall be an affirmative defense to a charge of violating subsection (a)(5) that the defendant--

(1) possessed less than three images of child pornography; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof--

(A) took reasonable steps to destroy each such image; or

(B) reported the matter to a law enforcement agency and afforded that agency access to each such image.

(e) Admissibility of evidence.--On motion of the government, in any prosecution under this chapter or section 1466A, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography shall not be admissible and may be redacted from any otherwise admissible evidence, and the jury shall be instructed, upon request of the United States, that it can draw no inference from the absence of such evidence in deciding whether the child pornography depicts an actual minor.

(f) Civil remedies.--

(1) In general.--Any person aggrieved by reason of the conduct prohibited under subsection (a) or (b) or section 1466A may commence a civil action for the relief set forth in paragraph (2).

(2) Relief.--In any action commenced in accordance with paragraph (1), the court may award appropriate relief, including--

(A) temporary, preliminary, or permanent injunctive relief;

(B) compensatory and punitive damages; and

(C) the costs of the civil action and reasonable fees for attorneys and expert witnesses.

Appendix H

(g) Child exploitation enterprises.--

(1) Whoever engages in a child exploitation enterprise shall be fined under this title and imprisoned for any term of years not less than 20 or for life.

(2) A person engages in a child exploitation enterprise for the purposes of this section if the person violates section 1591, section 1201 if the victim is a minor, or chapter 109A (involving a minor victim), 110 (except for sections 2257 and 2257A), or 117 (involving a minor victim), as a part of a series of felony violations constituting three or more separate incidents and involving more than one victim, and commits those offenses in concert with three or more other persons.

* * *

Appendix H

18 U.S.C. § 2255. Civil remedy for personal injuries

Effective: September 16, 2022

(a) In general.--Any person who, while a minor, was a victim of a violation of section 1589, 1590, 1591, 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title and who suffers personal injury as a result of such violation, regardless of whether the injury occurred while such person was a minor, may sue in any appropriate United States District Court and shall recover the actual damages such person sustains or liquidated damages in the amount of $150,000, and the cost of the action, including reasonable attorney's fees and other litigation costs reasonably incurred. The court may also award punitive damages and such other preliminary and equitable relief as the court determines to be appropriate.

(b) Statute of limitations.--There shall be no time limit for the filing of a complaint commencing an action under this section.

(c) Venue; service of process.--

> **(1) Venue.**--Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28.

(2) Service of process.--In an action brought under subsection (a), process may be served in any district in which the defendant--

(A) is an inhabitant; or

(B) may be found.