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11 Attorneys for Plaintiffs

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13 **UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 **SAN JOSE DIVISION**

15 THE INFORMED CONSENT ACTION
16 NETWORK, and DEL BIGTREE,

17 Plaintiffs,

18 v.

19 YOUTUBE LLC and FACEBOOK, INC.,

20 Defendants.
21

Civil Action No.:

COMPLAINT FOR:

- 21 **1. BIVENS VIOLATIONS; AND**
- 22 **2. BREACH OF THE COVENANT OF**
- 23 **GOOD FAITH AND FAIR DEALING**

JURY TRIAL DEMANDED

23 Plaintiffs the Informed Consent Action Network (“ICAN”) and Del Bigtree (collectively
24 “Plaintiffs”), by their attorneys Siri & Glimstad LLP, as for their Complaint allege on personal
25 information as to themselves and on information and belief as to all other things the following claims
26 against YouTube LLC, (“YouTube”) and Facebook, Inc. (“Facebook”) (collectively “Defendants”):
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1 **INTRODUCTION**

2 1. One of the fundamental tenants of our democracy is that the First Amendment prohibits
3 government officials from censoring speech they dislike or disagree with. For this principal to have
4 meaning, a government official cannot use a private actor as a cat’s paw to censor speech they dislike
5 or disagree with. Nevertheless, this matter presents just such a situation, where government actors used
6 threats to Defendants’ businesses to force them to censor speech that the government actors knew they
7 were prohibited from censoring directly.
8

9 2. In the early days of the internet, Congress included in the Communications Decency Act
10 of 1996 a provision at Section 230 that says that **“No provider or user of an interactive computer
11 service shall be treated as the publisher or speaker of any information provided by another
12 information content provider”** (47 U.S.C. § 230). Put simply, this provision protects online hosting
13 and social media companies, like Defendants, against a range of laws that might otherwise be used to
14 hold them legally responsible for what their users say and do. This provision has been called “the most
15 important law protecting internet speech”¹ and is credited with allowing social media to thrive online as
16 forums for users to share ideas faster and more efficiently than ever before.
17

18 3. Nevertheless, after the 2016 election, government officials were concerned with potential
19 foreign influence in that election through misuse of Defendants’ platforms. As such, members of
20 Congress, such as Chairman Adam Schiff, actively took measures to respond to the threat and launched
21 a series of investigations to prevent the election process from being compromised in the future. These
22 measures included requiring social media companies, including Defendants, to share information they
23 possessed with law enforcement agencies and to collaborate with these agencies to prevent a repeat of
24 the Russian interference. In connection with the threats and investigations, Congress also openly
25

26 _____
27 ¹ <https://www.eff.org/issues/cda230> (last visited Dec. 21, 2020).
28

1 questioned whether to eliminate Section 230 in order to make companies like Defendants more
2 “accountable” for what users put on their sites.

3 4. Typically, social media companies like Defendants thrive on user traffic. The more
4 people who come to the sites, the more advertising the companies can sell. This business model, coupled
5 with protection from Section 230, meant that before 2016 there was little incentive for Defendants to
6 censor their users’ free speech. Even if the Defendants disliked or disagreed with postings – like efforts
7 to influence an election – the Defendants still could make money selling ads on those disfavored
8 postings. Nonetheless, the threats by members of Congress against Defendants were successful because
9 if Defendants lost the protection from Section 230, they would be forced to significantly censor their
10 users’ postings (which would decrease traffic) or risk enormous liability from defamation actions. As
11 such, they made the pragmatic decision that censoring some illegal speech like that which influenced
12 the 2016 election was preferable to losing Section 230. Thus, Defendants complied with the
13 Congressional demands and took active steps to rid their platforms of fake profiles and to make their
14 political ad sale model more transparent. These efforts were rightfully applauded because the alleged
15 foreign interference was illegal and an appropriate target for government action.

16 5. However, having found a tool in Defendants to limit speech for a justifiable purpose,
17 Chairman Schiff decided to use this same tool to limit other speech that, while not illegal, he did not
18 like. Chairman Schiff considered so called “vaccine misinformation” to be dangerous. Therefore, he
19 wrote letters to Defendants probing into the steps taken by Defendants to combat what he defined as
20 “vaccine misinformation.”

21 6. Plaintiff ICAN, a non-profit entity, and its founder, Mr. Bigtree, are committed to
22 providing the public with accurate information about health-related issues in order to allow citizens to
23 make informed medical decisions. Since 2016 they have carried out their mission through, among other
24 things, posting episodes of their internet talk show, “The HighWire with Del Bigtree” (“The
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1 HighWire”), on channels or pages on Defendants’ platforms. Since the beginning of the COVID-19
2 pandemic, ICAN has gathered and disseminated medical opinions by scientists, doctors, and other
3 industry professionals in order to shine a light on the different perspectives through which the public
4 can understand the pandemic. It has also submitted numerous FOIA requests for information regarding
5 potential vaccines and disseminated that information widely. At times, the information that ICAN
6 disseminates contradicts the government orthodoxy or policy, and that is how ICAN found itself a target
7 in Chairman Schiff’s war on disfavored speech.
8

9 7. Despite ICAN having posted on Defendants’ platforms for years, soon after Chairman
10 Schiff issued his threatening letters concerning vaccine information, Defendants terminated or greatly
11 restricted ICAN’s ability to post information on their networks. On July 29, 2020, YouTube terminated
12 ICAN’s channel, “The HighWire,” stating that the content on the channel violated YouTube’s Terms of
13 Service (“YouTube’s Terms”). This termination was not preceded with any warnings or, as YouTube’s
14 Terms refer to them, “strikes.”
15

16 8. Similarly, Facebook started by removing several videos from Plaintiffs’ Facebook page,
17 “The HighWire with Del Bigtree” and on November 21, 2020, Facebook, terminated this page
18 altogether.
19

20 9. The loss of these two platforms for ICAN cannot be understated. As the recent anti-trust
21 suit against Facebook brought by the federal government and 48 states demonstrates, Defendants control
22 an enormous percentage of the social media market. If ICAN is prevented from posting on Defendants’
23 websites, it is losing its ability to reach billions of potential viewers.
24

25 10. In moving from safeguarding our elections from foreign interference, to limiting
26 information regarding vaccines, Chairman Schiff crossed an important line. He moved from trying to
27 block foreign enemies of the United States from using false information to damage our ability to hold
28

1 free and fair elections, to trying to stop American citizens from speaking their mind simply because he
2 did not agree with what they are saying.

3 11. In a famous unused preface to his seminal work *Animal Farm*, George Orwell wrote: “If
4 liberty means anything at all, it means the right to tell people what they do not want to hear[.]” This is
5 a bedrock of free speech, it is how generations of American journalists have held the government to
6 account when it has done things it would rather the public not know about. Chairman Schiff’s campaign
7 against what he considered vaccine misinformation was clearly an attempt to restrict Americans’ speech
8 based on the content of that speech, and if he had tried to pass a law to enforce such a restriction, the
9 courts would have quickly struck it down as a prior content-based restraint on speech. Instead he used
10 the leverage he had over Defendants through their reliance on Section 230 in order to have them do the
11 dirty work he could not.

12
13
14 12. Even though Defendants’ motivations in succumbing to government pressure may be
15 understandable, their actions cannot be condoned. To allow such actions to proceed will give
16 government actors a powerful tool to limit speech on the most popular form of media today. ICAN now
17 brings this action to defend itself against a governmental over-reach, accomplished through coercing
18 Defendants into cooperation. As a result, it seeks injunctive relief to remedy the continuing wrongs
19 committed by Defendants that they have taken to satisfy the demands of Chairman Schiff and others
20 like him in the government.

21 **PARTIES AND PERSONAL JURISDICTION**

22
23 13. Plaintiff, the Informed Action Consent Network (“ICAN”), is a Texas based non-profit
24 with 26 U.S.C. § 513(c)(3) tax-exempt status whose mission is to raise awareness about public health
25 safety and provide the public with accurate information so that citizens may give informed consent
26 regarding related health interventions. As part of its mission, ICAN investigates and disseminates
27 information regarding public health safety issues, including through its website (available at <https://>
28

1 www.icandecide.org), postings on social media, press events and releases. Most importantly, ICAN
2 carries out its activities through a rapidly growing internet-based talk show called “the HighWire with
3 Del Bigtree” (the “HighWire”).

4 14. ICAN has been instrumental in challenging governmental narratives regarding vaccines
5 and drugs through various successful lawsuits against government agencies such as FDA, HHS, CDC
6 and NIH as well as filing hundreds of FOIA requests to seek additional insight into the decision-making
7 processes of these agencies. Through its HighWire show, ICAN sheds light on governmental oversight
8 in the area of vaccine and drug development, produces reports from leading experts from the scientific
9 community, disseminates the information it obtains through its legal actions, and solicits donations to
10 fund its charitable activities.

11
12 15. Beginning in 2017, ICAN broadcasted live episodes of the HighWire through a YouTube
13 channel until YouTube terminated ICAN’s account. ICAN also maintained a Facebook page named
14 “the HighWire with Del Bigtree” to broadcast weekly episodes of its show until Facebook terminated
15 that page in November 2020.

16
17 16. Plaintiff Del Bigtree is the executive founder of ICAN and is the host of the HighWire.
18 His Facebook page has over 250,000 followers and a 4.4 out of 5 rating from users. Mr. Bigtree is one
19 of the most sought-after public speakers in the natural health arena, often gathering audiences in the
20 thousands who travel from around the world to hear his unique blend of passion and scientific expertise.
21 He is a long-time producer and the recipient of multiple awards including an Emmy Award, Best Drama
22 at the New York Television Festival, and the Health Freedom Hero Award from the National Health
23 Freedom Federation, the oldest natural health organization in America. Mr. Bigtree resides in Austin,
24 Texas.

25
26 17. Defendant YouTube LLC is a Limited Liability Company incorporated in Delaware with
27 its principal place of business in San Bruno, California.

1 18. In 2017, ICAN created a channel on YouTube and executed its terms of agreement as
2 contained in YouTube’s Terms pursuant to which ICAN and YouTube consented to the personal
3 jurisdiction of the courts in this District. *YouTube Terms of Service, About this Agreement, Governing*
4 *Law* (available at <https://www.youtube.com/static?template=terms>) (last visited Dec. 21, 2020).

5
6 19. Defendant Facebook, Inc. (“Facebook”) is a corporation incorporated in the state of
7 Delaware with its principal place of business in Menlo Park, California.

8 20. Sometime in 2017, ICAN created a Facebook page and executed its terms of agreement,
9 as contained in Facebook’s Terms of Service (“Facebook’s Terms”) pursuant to which ICAN and
10 Facebook consented to the personal jurisdiction of the courts in this District. *Facebook, Terms of*
11 *Service*, ¶4(4) (available at https://www.facebook.com/legal/terms/plain_text_terms) (last visited Dec.
12 21, 2020).

13 **SUBJECT MATTER JURISDICTION AND VENUE**

14
15 21. This Court has subject matter jurisdiction over the present case pursuant to
16 28 U.S.C. § 1331 (federal question), § 1332 (complete diversity of parties, and the amount in
17 controversy exceeds \$75,000). This case asserts an actual controversy arising out of continuing
18 violations of the First Amendment and the relevant contracts. Further, the Court has supplemental
19 jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C. § 1367(a), since these claims are so
20 related to claims within its original jurisdiction that they form part of the same case or controversy.

21 22. The venue is proper in this District under 28 U.S.C. § 1391(b) because Defendants
22 transacted a substantial portion of their business in this District that gave rise to Plaintiffs’ claim.
23 Further, pursuant to YouTube’s Terms as executed between YouTube and ICAN, and Facebook’s Terms
24 as executed between Facebook and ICAN, all disputes between ICAN and Defendants have to be
25 resolved in the courts of this District and California law applies to the interpretation of these terms.
26 *YouTube Terms of Service, About this Agreement, Governing Law* (available at <https://>
27

1 www.youtube.com/static?template=terms) (last visited Dec. 21, 2020); *Facebook, Terms of Service*,
2 ¶4(4) (available at https://www.facebook.com/legal/terms/plain_text_terms) (last visited Dec. 21,
3 2020).

4 STATEMENT OF MATERIAL FACTS

5 **A. Congress Grants Social Media Companies Immunity under Section 230 of the** 6 **Communications Decency Act**

7 23. In 1996, Congress enacted § 230 of the Communications Decency Act (“CDA”).
8 47 U.C.S. § 230. This unique provision shields the provider of an “interactive computer service” from
9 liability by stating that such person shall not be “treated as the publisher or speaker of any information
10 provided by another information content provider.” 47 U.C.S. § 230(c)(1). The CDA grants “protection
11 for ‘Good Samaritan’ blocking and screening of offensive material.” 47 U.C.S. § 230(c)(2). In effect,
12 it grants immunity from civil liability to a provider of interactive computer services for “any action
13 voluntarily taken in good faith to restrict access to or availability of material that [they consider] to be
14 [...] objectionable.” 47 U.C.S. § 230(c)(2)(A). However, 9th Circuit courts have held that this immunity
15 does not apply to a constitutional challenge. Nor does the immunity bar suits arising under the service
16 contract between the interactive computer service and its users.
17

18 24. The importance of this provision of law for the survival and continual growth of social
19 media networks such as Defendants’ networks cannot be overstated. This piece of legislation was
20 enacted “to promote the continued development of the Internet and other interactive computer services
21 and other interactive media” and “to preserve the vibrant and competitive free market that presently
22 exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.”
23 47 U.C.S. § 230(b)(1) and (2). In the words of Facebook’s Head of Security Policy, Nathaniel Gleicher,
24 § 230 is the “shield” that is “absolutely essential for [Facebook] to do [its] work.” House Intelligence
25 Committee Hearing, June 2020 (<https://www.youtube.com/watch?v=iYrpyCcVnmg>) (last visited Dec.
26
27
28

1 21, 2020). In the absence of this legislation, social media companies and the internet that we know
2 today could not exist.

3 25. In the early 2000s, social media websites and platforms began to facilitate sharing of
4 information, ideas, and other forms of expression. YouTube, now a wholly-owned Google subsidiary,
5 was founded in 2004 with the same premise: to provide a platform to the public to share information via
6 video clips. Facebook was also founded in 2004, originally as a platform for students to connect, but
7 later became a global platform with billions of users.
8

9 26. Section 230 enabled social media networks to expand their reach globally at an
10 unprecedented rate without fear that they could be held liable for what their users post. Millions of
11 people in this country (billions globally) use social media, specifically Facebook and YouTube, on a
12 daily basis to exercise and enjoy their free speech rights. Facebook and YouTube have become the
13 modern-day equivalent of newspapers, libraries, and the public square. Their users rely on these
14 platforms to access and to disseminate information.
15

16 27. Upon Google's acquisition of YouTube, YouTube formally defined the four key "values"
17 it is based upon, which include:

- 18 • "Freedom of Expression – We believe people should be able to speak freely, share
19 opinions, foster open dialogue, and that creative freedom leads to new voices, formats
20 and possibilities"
- 21 • "Freedom of Information – We believe everyone should have easy, open access to
22 information and that video is a powerful force for education, building understanding, and
23 documenting world events, big and small."
24

25 *YouTube About Page* (available at <https://www.youtube.com/about/>) (last visited Dec. 21, 2020).

26 28. Facebook started with the mission "to give people the power to build community and
27 bring the world closer together. People use Facebook to stay connected with friends and family, to
28

1 discover what’s going on in the world, and to share and express what matters to them.” *Facebook*
2 *Investor Relations, FAQs* (available at <https://investor.fb.com/resources/default.aspx>) (last visited
3 Dec. 21, 2020)

4 29. In order to further these missions, Facebook and YouTube originally had relatively
5 permissive views on free speech and censorship. As their missions indicated they were focused on the
6 free exchange of ideas, and this led them to a policy that took a light hand to the content their users
7 posted. While they always retained certain rights to prevent users from using their sites for violations
8 of the company’s policies, in practice these were largely limited to true violations of law (e.g., child
9 pornography, copyright violations, or clearly libelous statements). In social media’s new market-place
10 of ideas users lived by the idea that more speech was a good thing and when there was a free flow of
11 ideas good ideas, truthful ideas, would naturally rise. In fact, YouTube never had anything in its terms
12 of use banning so called “misinformation” until March of 2020 when it added the “COVID
13 Misinformation” category. *See* EXHIBIT A.

16 **B. Russian Actors Abuse Social Media to Spread Election Misinformation**

17 30. During the 2016 Presidential election, social media platforms including YouTube and
18 Facebook emerged as an extensively used and relied upon political news and information tools. A
19 Russian intelligence agency called the Internet Research Agency (“IRA”) allegedly took advantage of
20 Defendants’ platforms to harm the campaign of then Presidential Candidate, Hillary Clinton. *Report On*
21 *The Investigation Into Russian Interference In The 2016 Presidential Election Vol. I*, Released by the
22 Department of Justice, March 2019 (the “Mueller Report”), (available at [https://www.justice.gov/](https://www.justice.gov/storage/report.pdf)
23 [storage/report.pdf](https://www.justice.gov/storage/report.pdf)) (last visited Dec. 21, 2020). According to the Mueller Report, the IRA commenced
24 organizing its efforts of sabotaging the 2016 election as early as 2014 with its focus on Facebook,
25 YouTube, and Twitter. *Id.* The IRA subsequently expanded its operations to include Instagram and
26 Tumblr. *Id.* The IRA was allegedly responsible for creating fake Facebook profiles purporting to be
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1 U.S. persons and fake Facebook groups which falsely claimed to be affiliated with U.S. political
2 organizations. *Id.* IRA’s sabotage campaign also included purchases of false advertisements on
3 Facebook that promoted IRA groups on U.S. residents’ newsfeeds, and which endorsed President
4 Trump’s presidential campaign. *Id.*

5
6 31. As a result of the social media platforms’ failure to contain the illegal abuse of their
7 services, Defendants’ businesses faced immense scrutiny from Congress, law enforcement authorities,
8 and the public in the United States. Congress launched multiple investigations to assess the role played
9 by Defendants’ platforms in the Russian interference, wherein numerous public and closed hearings
10 were held, some with top executives of Google and Facebook testifying that they had failed to take
11 adequate security measures. Most of the investigations scrutinized Defendants’ systems in order to
12 assess how Defendants could enhance the security and transparency of their platforms to ensure that
13 such foreign involvement and national security breaches do not occur again.

14
15 32. Members of Congress debated enacting legislation to make Defendants’ businesses more
16 accountable in case they did not act on their own to contain illegal threats to our democracy. This
17 included open discussions about legislation that would eliminate the § 230 immunity along with other
18 measures.

19
20 33. Specifically, on June 13, 2019, the House Intelligence Committee, chaired by Chairman
21 Schiff, held a hearing on the risks posed by synthetic media, artificial technologies, and “deepfake”
22 videos (which utilize artificial intelligence to create fake videos that appear to show individuals saying
23 and doing things that those individuals never did or said). During the Committee’s hearing, Chairman
24 Schiff openly challenged the continued appropriateness of § 230 immunity as regards social media
25 networks and stated that “it [was] time [Congress does] away with the immunity so that the platforms
26 are required to maintain a certain standard of care.” ([https://www.youtube.com/watch?
27 v=tdLS9MIWOk](https://www.youtube.com/watch?v=tdLS9MIWOk)) (last visited Dec. 21, 2020). Chairman Schiff also told reporters that, “If the social
28

1 media companies can't exercise a proper standard of care when it comes to a whole variety of fraudulent
2 or illicit content, then we have to think about whether that immunity still makes sense. These are not
3 nascent industries or companies that are struggling for viability — they're now behemoths, and we need
4 them to act responsibly.” ([https://www.axios.com/social-media-immunity-section-230-f15ac071-32e9-
5 4e33-81e6-4c7ebadaea5e.html](https://www.axios.com/social-media-immunity-section-230-f15ac071-32e9-4e33-81e6-4c7ebadaea5e.html)) (last visited Dec. 21, 2020).

6
7 34. The president-elect, Joe Biden, has also openly criticized the § 230 immunity granted to
8 the Social Media Networks. He asserted that the immunity should be “revoked” for “propagating
9 falsehoods they know to be false.” [https://www.theverge.com/2020/1/17/21070403/
10 joe-biden-president-election-section-230-communications-decency-act-revoke](https://www.theverge.com/2020/1/17/21070403/joe-biden-president-election-section-230-communications-decency-act-revoke) (last visited Dec. 21,
11 2020).

12
13 35. The reason Chairman Schiff held the House Intelligence Committee hearings on § 230
14 of the CDA, and why Vice President Biden spoke out against immunity is crystal clear: the social media
15 companies such as YouTube and Facebook were put on notice by these government officials that unless
16 they stop illegal interference by a foreign country in the American election process, Congress would
17 take legislative action to repeal their cherished immunity under the CDA § 230. *See* [https://
18 abcnews.go.com/Politics/adam-schiff-accuses-social-media-companies-misinformation-negligence/
19 story?id=71517306](https://abcnews.go.com/Politics/adam-schiff-accuses-social-media-companies-misinformation-negligence-story?id=71517306) (last visited Dec. 21, 2020) (“When asked what could be done to prevent social
20 media misinformation and influencing the 2020 election, Chairman Schiff hinted at removing
21 ‘immunity’ granted to social media platforms under Section 230 of the Communications Decency
22 Act.”).

23
24 36. It is amply clear that Defendants understand that these officials hold the proverbial Sword
25 of Damocles over the social media companies’ heads, and if the companies did not comply with the
26 demands made by the government officials with regard to foreign interference, they would lose the
27 current legal regime that they deem essential to their continued growth.
28

1 **C. Government Actors Coerce Social Media to Censor Protected Speech**

2 37. The Government’s intervention with Defendants’ businesses to curtail election
3 disinformation was justified because that speech was illegal. As stated in the Mueller Report,

4 The United States has a compelling interest . . . in limiting the participation of
5 foreign citizens in activities of democratic self-government, and in thereby
6 preventing foreign influence over the U.S. political process.’ *Bluman v. FEC*, 800
7 F. Supp. 2d 281, 288 (D.D.C. 2011) (Kavanaugh, J., for three-judge court), *aff’d*,
8 565 U.S. 1104 (2012). To that end, federal campaign- finance law broadly
9 prohibits foreign nationals from making contributions, donations, expenditures,
or other disbursements in connection with federal, state, or local candidate
elections, and prohibits anyone from soliciting, accepting, or receiving such
contributions or donations.

10 *Mueller Report* at 184.

11 38. With the victory in getting Facebook and YouTube to crack down on illegal interference
12 by Russian agents into American elections, Congressional members leading that charge had found a tool
13 to limit speech. They discovered that the social media companies had a clear pressure point, Section
14 230, and that they would bend to any request if they thought that Section 230 was in danger.
15

16 39. However, the Congressional members then decided to take this tool and use it not to
17 compel social media companies to censor *illegal* speech, but rather to compel those social media
18 companies to censor speech that Congressional members disagreed with – speech that was legal and
19 protected by the First Amendment.

20 40. On February 14, 2019, a year before the COVID-19 pandemic, Chairman Schiff wrote a
21 letter to Mr. Sundar Pichai, Chief Executive Officer of Google, seeking “additional information” on the
22 steps Google was taking to curb vaccine “misinformation.” What Chairman Schiff deemed
23 “misinformation” was not outright falsehoods, but rather any information that questioned the orthodoxy
24 regarding vaccine safety promoted by the federal government’s health agencies. Chairman Schiff stated
25 the following:
26

27 YouTube is surfacing and recommending messages that discourage
28

1 parents from vaccinating their children, a direct threat to public health ...
2 There is strong evidence to suggest that at least part of the source of this
3 trend is the degree to which medically inaccurate information about
4 vaccines surface on the websites where many Americans get their
5 information, among them YouTube ... As a Member of Congress who is
6 deeply concerned about declining vaccination rates around the nation, I
7 ... encourage further action [] be taken related to vaccine misinformation
8 ... As more Americans rely on your services as their primary source of
9 information, it is vital that you take your responsibility with the
10 seriousness it requires.

11 *Schiff Sends Letter to Google, Facebook Regarding Anti-Vaccine Misinformation* (Feb. 14,
12 2019) (available at [https://schiff.house.gov/news/press-releases/schiff-sends-letter-to-google-facebook-
13 regarding-anti-vaccine-misinformation](https://schiff.house.gov/news/press-releases/schiff-sends-letter-to-google-facebook-regarding-anti-vaccine-misinformation)) (last visited Dec. 21, 2020).

14 41. On the same day, Chairman Schiff sent a similar letter to Mr. Mark Zuckerberg,
15 Chairman and Chief Executive Officer of Facebook, wherein Chairman Schiff expressed his “concern”
16 that “Facebook accepts paid advertising that contains deliberate misinformation about vaccines.”
17 Chairman Schiff urged Facebook to take more active steps to curb vaccine “misinformation” on its
18 platform. *Schiff Sends Letter to Google, Facebook Regarding Anti-Vaccine Misinformation* (Feb. 14,
19 2019) (available at [https://schiff.house.gov/news/press-releases/schiff-sends-letter-to-google-facebook-
20 regarding-anti-vaccine-misinformation](https://schiff.house.gov/news/press-releases/schiff-sends-letter-to-google-facebook-regarding-anti-vaccine-misinformation)) (last visited Dec. 21, 2020).

21 42. Chairman Schiff’s letters did not reference Section 230 directly, but after the pressure
22 applied following the Russia scandal, he did not need to. These companies knew what the potential
23 consequences of ignoring these requests could be. These pressure tactics to compel YouTube and
24 Facebook to censor vaccine related speech were successful. On February 14, 2019, Facebook told media
25 publishing companies that it would be exploring the removal of “anti-vaccine” information from its
26 software systems that recommend related content on the site. See Sarah Frier, *Facebook, Facing
27 Lawmaker Questions, Says It May Remove Anti-Vaccine Recommendations*, Bloomberg (Feb. 14, 2019)
28 (available at <https://www.bloomberg.com/news/>

1 [articles/2019-02-14/facebook-says-it-may-remove-anti-vaccine-recommendations\)](https://www.washingtonpost.com/news/health/wp/2019/02/14/facebook-says-it-may-remove-anti-vaccine-recommendations/) (last visited Dec.
 2 21, 2020). To solidify the new policies, on March 7, 2019, Chairman Schiff revealed in a press release
 3 the responses he received to his letters described above:

4 “We have put a lot of effort into curbing misinformation in our products
 5 – from better Search ranking algorithms, to improving our ability to
 6 surface authoritative content, to tougher policies against monetization of
 7 harmful or dangerous content. Under YouTube’s Advertiser-Friendly
 8 Content Guidelines, we are and have been demonetizing anti-vaccination
 9 content under our longstanding harmful or dangerous advertising policy,”
 10 wrote Karan Bhatia, Vice President of Global Public Policy and
 11 Government Affairs at Google.

12 “Our approach ... is to reduce the spread of inaccurate information about
 13 vaccines by reducing its distribution in News Feed, removing groups and
 14 pages that promote misinformation from recommendation surfaces, and
 15 providing authoritative information to people who might encounter it,”
 16 wrote Kevin Martin, Vice President of U.S. Public Policy at Facebook.

17 *Schiff Receives Official Responses from Google, Facebook Regarding Anti-Vaccine*
 18 *Misinformation* (March 7, 2019) (available at [https://schiff.house.gov/news/press-releases/schiff-](https://schiff.house.gov/news/press-releases/schiff-receives-official-responses-from-google-facebook-regarding-anti-vaccine-misinformation)
 19 [receives-official-responses-from-google-facebook-regarding-anti-vaccine-misinformation](https://schiff.house.gov/news/press-releases/schiff-receives-official-responses-from-google-facebook-regarding-anti-vaccine-misinformation)) (last visited
 20 Dec. 21, 2020). Chairman Schiff also publicly stated on his Twitter account that he had received
 21 responses from the social media companies to his February letters and that the “[t]he ultimate test will
 22 be if these measures reduce the spread of anti-vaccine content on their platforms, to the benefit of public
 23 health.” [https://twitter.com/RepAdamSchiff/status/1103747416065478657?ref_src=twsrc%5Etfw](https://twitter.com/RepAdamSchiff/status/1103747416065478657?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1103747416065478657&ref_url=about%3Asrcdoc)
 24 [%7Ctwcamp%5Etweetembed%7Ctwterm%5E1103747416065478657&ref_url=about%3Asrcdoc](https://twitter.com/RepAdamSchiff/status/1103747416065478657?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1103747416065478657&ref_url=about%3Asrcdoc) (last
 25 visited Dec. 21, 2020).

26 43. On the same day, Facebook Vice President, Global Policy Management, Monika Bickert,
 27 issued the following online press release:

28 We are working to tackle vaccine misinformation on Facebook by
 reducing its distribution and *providing people with authoritative*
information on the topic. We are starting by taking a series of steps:

1 We will reduce the ranking of groups and Pages that spread
2 misinformation about vaccinations in News Feed and Search. These
3 groups and Pages will not be included in recommendations or in
4 predictions when you type into Search.

5 When we find ads that include misinformation about vaccinations, we will
6 reject them. We also remove related targeting options, like “vaccine
7 controversies.” For ad accounts that continue to violate our policies, we
8 may take further action, such as disabling the ad account.

9 We won’t show or recommend content that contains misinformation
10 about vaccinations on Instagram Explore or hashtag pages.
11 We are exploring ways to share educational information about vaccines
12 when people come across misinformation on this topic.

13 **Update on April 26, 2019 at 10AM PT:** We may also remove access to
14 our fundraising tools for Pages that spread misinformation about
15 vaccinations on Facebook.

16 How This Will Work

17 Leading global health organizations, such as the World Health
18 Organization and the US Centers for Disease Control and Prevention,
19 have publicly identified verifiable vaccine hoaxes. If these vaccine hoaxes
20 appear on Facebook, we will take action against them.

21 For example, if a group or Page admin posts this vaccine misinformation,
22 we will exclude the entire group or Page from recommendations, reduce
23 these groups and Pages’ distribution in News Feed and Search, and reject
24 ads with this misinformation.

25 We also believe in providing people with additional context so they can
26 decide whether to read, share, or engage in conversations about
27 information they see on Facebook. We are exploring ways to give people
28 more accurate information from expert organizations about vaccines at
the top of results for related searches, on Pages discussing the topic, and
on invitations to join groups about the topic. We will have an update on
this soon.

We are fully committed to the safety of our community and will continue
to expand on this work.

Combatting Vaccine Misinformation, FACEBOOK, available at (<https://about.fb.com/news/2019/03combatting-vaccine-misinformation>) (last visited Dec. 21, 2020) (emphasis added).

1 44. Chairman Schiff’s pressure tactics did not end with “encouraging” Facebook and
2 YouTube to “curb vaccine misinformation” on the internet. With the coronavirus pandemic rapidly
3 spreading in the United States, on April 29, 2020, after his previous letter to key YouTube and Facebook
4 executives, Chairman Schiff once again applied governmental pressure and wrote to the social media
5 companies, this time expanding his censorship of “vaccine misinformation” to also include “coronavirus
6 misinformation.” Chairman Schiff’s letter reminded the platforms that the best practice is to “remove
7 or [downgrade] all harmful content before users engage with it” and urged them to adopt policies similar
8 to that of Facebook to tackle coronavirus misinformation. *Schiff Urges Google, YouTube, Twitter to*
9 *Inform Users Who Interact With Coronavirus Misinformation* (April 30, 2020) (available at [https://](https://schiff.house.gov/news/press-releases/schiff-urges-google-youtube-twitter-to-inform-users_who-interact-with-coronavirus-misinformation)
10 [schiff.house.gov/news/press-releases/schiff-urges-google-youtube-twitter-to-inform-users_who-](https://schiff.house.gov/news/press-releases/schiff-urges-google-youtube-twitter-to-inform-users_who-interact-with-coronavirus-misinformation)
11 [interact-with-coronavirus-misinformation](https://schiff.house.gov/news/press-releases/schiff-urges-google-youtube-twitter-to-inform-users_who-interact-with-coronavirus-misinformation)) (last visited Dec. 21, 2020).

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13
14 45. Thus, now in the name of his view of public health, Chairman Schiff pushed the boundary
15 further to silence speech concerning one of the largest and most important public issues of the last
16 decade. At the time, the COVID-19 pandemic was in its early phase. There was no clear scientific
17 consensus on every aspect of the virus and the government’s response. In fact, it was a hot-button
18 political issue as well with Democrats and Republicans viewing the issue differently. These are
19 precisely the kinds of public debates that the First Amendment was designed to foster, where policy
20 makers and the public are groping to understand an issue and all sides must be heard to ensure that good
21 decisions can be made based on all the facts and opinions.

22
23 46. Again, Chairman Schiff’s pressure worked, and he was able to use Defendants as his tool
24 to stifle opinions and information he disagreed with. After Chairman Schiff’s April 29th letter, YouTube
25 CEO, Susan Wojcicki, responded explaining YouTube’s coronavirus “misinformation” policies:

26 We also partner closely with researchers and elected officials from around
27 the world to better understand the challenges of online misinformation
28 and take their recommendations for improvement seriously. *We are*

1 *committed to working with Members of Congress* as well as health experts
2 around the world to better understand these challenges as we continue
3 developing robust policy and product improvements that help keep people
4 safe. I hope you will continue to share with me your views about our work.

5 *Schiff Receives Responses from YouTube and Twitter Regarding Coronavirus Misinformation*
6 (May 28, 2020) (available at [https://schiff.house.gov/news/press-releases/schiff-receives-responses-](https://schiff.house.gov/news/press-releases/schiff-receives-responses-from-youtube-and-twitter-regarding-coronavirus-misinformation)
7 [from-youtube-and-twitter-regarding-coronavirus-misinformation](https://schiff.house.gov/news/press-releases/schiff-receives-responses-from-youtube-and-twitter-regarding-coronavirus-misinformation)) (last visited Dec. 21, 2020).

8 47. The looming threat of removing Section 230 immunity, first wielded for an acceptable
9 purpose of compelling social media companies to prevent *illegal* actions was now being wielded to
10 compel social media companies to censor *legal and protected* speech with which certain government
11 officials disagreed.

12 **D. Facebook and YouTube Succumb to the Pressure and Adopt New “Misinformation”**
13 **Policies**

14 48. YouTube and Facebook’s determinations of what is considered “misinformation” is
15 based exclusively on what the government and supra-governmental authorities tell them to allow.
16 Defendants perceive “vaccine misinformation” or “coronavirus misinformation” as anything that does
17 not serve the government’s goals of increasing vaccine uptake (what they might call “anti-vaccine”) or
18 any theory that is not advanced by the government. They claim to rely on governmental and supra-
19 governmental authorities such as the CDC and the WHO to determine which medical information
20 concerning vaccines or the coronavirus pandemic is “misinformation.” In the process, the companies
21 use information supplied by these organizations as authoritative, and established facts. *See Facebook*
22 *Update, Keeping People Safe and Informed About the Coronavirus* (“In several countries we are
23 directing people to their local ministry of health. For example, in the US we are directing people to
24 information from the Centers for Disease Control and Prevention (CDC)” (available at [https://](https://about.fb.com/news/2020/10/coronavirus/)
25 about.fb.com/news/2020/10/coronavirus/) (last visited Dec. 21, 2020); *YouTube COVID-19 Medical*
26 *Misinformation Policy* (“YouTube doesn't allow content that spreads medical misinformation that
27 28

1 contradicts local health authorities’ or the World Health Organization’s (WHO) medical information
2 about COVID-19.”) (available at [https://support.google.com/youtube/answer/9891785?hl=en&hl](https://support.google.com/youtube/answer/9891785?hl=en&hl=en&ref_topic=9282436)
3 [=en&ref_topic=9282436](https://support.google.com/youtube/answer/9891785?hl=en&ref_topic=9282436)) (last visited Dec. 21, 2020). In effect, this made the CDC and WHO similar
4 to the Ministry of Truth,² defining what the official truth was for the masses, and any information that
5 runs contrary to their word is suppressed by the governments’ agents in YouTube and Facebook.

6
7 49. Criticizing the government is a core function of the free press in a democracy, it is how
8 we ensure truth and honesty from the government. Contrary to Defendants’ core values or mission
9 statements, their policies, enacted at Chairman Schiff’s request, fail to recognize that members of the
10 public are entitled to differ from the CDC or the WHO in their views and express those different views.
11 Critically, different than tackling false information or hoaxes, Defendants’ broad construction of the
12 phrase “misinformation” – to include anything they deem “anti-vaccine” regardless of its veracity – at
13 the behest of Chairman Schiff and his congressional colleagues impinges upon the free speech rights of
14 Plaintiffs.
15

16 50. YouTube’s Terms and Community Guidelines (a set of rules in addition to the Terms of
17 Service which permits users to ascertain what content is allowed and what content is disallowed from
18 the website) (“YouTube’s Community Guidelines”) provide for a “three strike” system. ([https://](https://support.google.com/youtube/answer/2802032?hl=en&ref_topic=9387060)
19 support.google.com/youtube/answer/2802032?hl=en&ref_topic=9387060) (last visited Dec. 21, 2020).
20 If a user violates YouTube’s policies, YouTube issues strikes to warn the user of the breach of terms.
21 *Id.* Upon receiving three strikes, YouTube reserves the right to terminate the services of the user, while
22 the user reserves the right to appeal all of YouTube’s decisions. *Id.*
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27 ² See Ministry of Truth, Ministries of *Nineteen Eighty-Four*, Wikipedia,
28 https://en.wikipedia.org/wiki/Ministries_of_Nineteen_Eighty-Four#Ministry_of_Truth (Last visited
December 21, 2020).

1 51. On or about March 20, 2020, YouTube updated its Community Guidelines, to include
2 policies specifically targeting some coronavirus information. ([https://support.google.com/youtube/
3 answer/9891785](https://support.google.com/youtube/answer/9891785)) (last visited Dec. 21, 2020). Accordingly, “[i]f [a user’s] content violates this policy,
4 [YouTube will] remove the content.” *Id.* However, in response to the COVID-19 pandemic, YouTube
5 suspended the three strikes system for removed content “unless YouTube’s systems have high
6 confidence that it violates [their] policies.” ([https://www.youtube.com/watch?v=i352PxWf_3M&
7 feature=youtu.be](https://www.youtube.com/watch?v=i352PxWf_3M&feature=youtu.be)) (last visited Dec. 21, 2020). This policy allegedly allowed content providers – or at
8 least certain content providers – to upload videos “without worrying about hitting three strikes” which
9 would result in a permanent account termination.
10

11 52. Much like YouTube, Facebook also updated its “misinformation” policies in April 2020,
12 contained in its Community Standards (a set of rules in addition to the Terms of Service which permits
13 users to ascertain what content is allowed and what content is disallowed from the website) (“Facebook’s
14 Community Standards”) to specifically tackle coronavirus misinformation. As part of these new
15 policies, Facebook claimed that it partnered with more fact checkers to increase its fact checking
16 capabilities. <https://about.fb.com/news/2020/04/covid-19-misinfo-update/> (last visited Dec. 21, 2020).
17 These fact checkers were also paid by Facebook. *Id.* Facebook further stated that “once a piece of
18 content is rated false by fact-checkers, [it] reduce[s] its distribution and show[s] warning labels with
19 more context.” *Id.*
20

21 53. To reaffirm its stance, Facebook adopted another policy in October 2020, whereby it
22 prohibited ads that discouraged vaccines. *See* [https://about.fb.com/news/2020/10/supporting-public-
23 health-experts-vaccine-efforts/](https://about.fb.com/news/2020/10/supporting-public-health-experts-vaccine-efforts/) (last visited Dec. 21, 2020). However, even in this policy, Facebook did
24 not adopt an outright ban on “anti-vaccine” content or groups.
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1 **E. YouTube Shuts Down The HighWire’s Page Without Warning**

2 54. In 2017, ICAN started the internet talk-show the HighWire to disseminate the latest
3 medical news and information in the area of human health and to provide a platform for scientists and
4 experts to debate and express their opinions. In order to broadcast the show, ICAN created a YouTube
5 channel in 2017 by executing the website’s terms of service. From 2017 through July 2020, ICAN
6 maintained its YouTube channel by broadcasting a new live video every Thursday. ICAN also actively
7 used the HighWire episodes to solicit donations from its viewers to raise funds to carry out its not-for-
8 profit operations. The HighWire’s popularity was increasing rapidly and by 2020 ICAN’s YouTube
9 page boasted over 250,000 subscribers worldwide.
10

11 55. ICAN always abided by YouTube’s Terms and YouTube’s Community Guidelines.
12 Given its importance in disseminating information, ICAN valued its YouTube Channel. Thus, prior to
13 July 2020, when Chairman Schiff sent his letter, ICAN never received a single complaint or “strike”
14 from YouTube regarding any of its videos.
15

16 56. Despite its policy change to its “three strike” system, on July 3, 2020, YouTube
17 commenced its systematic attack against Plaintiffs’ channel, The HighWire. YouTube took down a
18 video featuring a doctor discussing hydroxychloroquine, stating that this video violated YouTube’s
19 community guidelines. However, YouTube informed The HighWire that this removal “ha[d] not”
20 resulted in a strike against the channel. Over the following four weeks, YouTube took down seven other
21 videos on The HighWire, each time notifying The HighWire that the removals “ha[d] not” resulted in a
22 strike against the channel. Yet, on Wednesday, July 29, 2020, YouTube terminated Plaintiffs’ channel
23 “The HighWire” without any warnings, alleging that “the activity in [The HighWire’s] account violates
24 [YouTube’s] terms of service.” All notifications received by Plaintiffs from YouTube are attached as
25 EXHIBIT B.
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27
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1 57. YouTube’s termination of ICAN’s channel was in bad faith since it was without cause
2 and was not accompanied with a fair warning. Further, the termination was not in accordance with
3 YouTube’s Terms of Service since Plaintiffs had not repeatedly or materially breached the Agreement
4 with YouTube; there was no legal requirement or court order with which YouTube had to comply by
5 suspending or terminating ICAN’s channel; and YouTube did not believe there was conduct that created
6 or could create liability or harm to any user or third party, YouTube or its affiliates. *See YouTube’s*
7 *Terms, “Account Suspension and Termination.”*
8

9 58. This abrupt and unexpected termination caused ICAN to lose all of its 250,000
10 subscribers who regularly watched the weekly episodes. The termination also left ICAN with less than
11 24 hours to find alternative avenues to broadcast the next episode of its show on July 30, 2020. ICAN
12 further lost all its historical analytical data and videos uploaded on YouTube since 2017. ICAN and its
13 viewers were effectively locked out of viewing any content it had ever uploaded on YouTube and all
14 data associated with such content. Since the termination, ICAN has had to raise and expend thousands
15 of dollars to get its own website up and running and re-upload all the previous episodes and other
16 educational materials it routinely provides its viewers. The termination not only impacted ICAN, but
17 other medical professionals as well who appeared on the show and used ICAN’s YouTube links on their
18 own individual websites and social media to help disseminate educational materials.
19

20 59. ICAN followed YouTube’s appeals mechanisms to no avail.
21

22 **F. Facebook Takes Down ICAN’s Videos and Then Shuts Down The HighWire’s Page**
23 **Without Warning**

24 60. ICAN maintains two pages on Facebook, one under the name of “Informed Action
25 Consent Network” and the other “The HighWire with Del Bigtree” (“ICAN’s Facebook Pages”). ICAN
26 used the HighWire page for the same purposes it used the YouTube channel prior to its termination, that
27
28

1 is, to make available weekly episodes of the HighWire for its viewers. The HighWire Facebook page
2 had a following of over 360,000 users with over 30 million views on its videos.

3 61. On or about July 7, 2020, Facebook took down one of the HighWire’s videos from its
4 page stating that, “[the] post goes against [Facebook’s] Community Standards on misinformation that
5 can cause physical harm.” Several videos were removed thereafter with similar vague explanations
6 from Facebook.
7

8 62. On November 21, 2020, Facebook joined YouTube in de-platforming ICAN by
9 “unpublishing” the HighWire Facebook page. This purge was not preceded by any warning, nor was it
10 supported by adequate reasoning by specification of a particular violation. All notifications received
11 from Facebook are attached as EXHIBIT C.

12 63. ICAN always abided by Facebook’s Terms and Facebook’s Community Standards.
13 Given its importance in disseminating information, ICAN valued its Facebook page. Thus, prior to July
14 2020, ICAN never received a single complaint from Facebook regarding any of its videos.
15

16 64. Facebook’s removal of ICAN’s videos and unpublishing HighWire’s Facebook Page
17 were actions taken in bad faith since they were without cause and were not accompanied with a fair
18 warning. Further, the termination was not in accordance with Facebook’s Terms since Plaintiffs had
19 not seriously or repeatedly breached Facebook’s Terms or Community Standards; Plaintiffs did not
20 repeatedly infringe other people’s intellectual property rights; nor was Facebook required to terminate
21 the HighWire’s page for legal reasons. *See Facebook’s Terms*, ¶4.2.
22

23 65. Facebook’s actions have caused ICAN to lose its 360,000 followers on Facebook and all
24 its analytical data pertaining to all videos uploaded since 2017. Facebook’s actions have severely
25 curtailed ICAN’s ability to reach its followers and raise funds to carry out its charitable mission.

26 66. It is apparent that YouTube and Facebook took the actions of removing the HighWire’s
27 videos from their platforms after succumbing to the pressure created by certain governmental officials
28

1 abusing their authority. YouTube and Facebook arguably have some rights to moderate content on their
2 platforms, however, in the present case, the actions taken by Defendants are illegal because they were
3 taken in bad faith and came as the result of governmental pressure on the companies. Such actions,
4 therefore, violated the company's terms of service and Plaintiffs' First Amendment rights.

5
6 67. Before this pressure was applied, Defendants had never removed ICAN's content. On
7 information and belief, in the absence of governmental pressure, Defendants would not have purged The
8 HighWire's platforms. Indeed, on July 27, 2020, a video made by several practicing doctors treating
9 COVID-19 patients began circulating on YouTube and Facebook. Facebook let the video circulate for
10 five hours before it was removed, during which time the video had over 20 million views and received
11 100 thousand comments. Similarly, YouTube took the video down only after it had already reached
12 over 200,000 views. Facebook and YouTube clearly saw a business incentive in leaving the video up
13 for some time although it allegedly violated the Companies' Community Standards, Terms of Service,
14 and Misinformation Policies.
15

16 **G. Government Officials Call Out Defendants for Violating the First Amendment**

17 68. On May 28, 2020, President Trump – obviously taking issue with improper censorship –
18 introduced an executive order seeking clarifications as to the scope of immunity under § 230 of the
19 CDA. <https://www.whitehouse.gov/presidential-actions/executive-order-preventing-online-censorship/>
20 (last visited Dec. 21, 2020). The President said the social media companies “have had unchecked power
21 to censor, restrict, edit, shape, hide, alter any form of communication between private citizens or large
22 public audiences...We are fed up with it.” President Trump further said he was taking the action to
23 “defend free speech from one of the gravest dangers it has faced in American history.” [https://](https://www.msn.com/en-us/news/politics/coronavirus-government-response-updates-trump-gives-first-reaction-to-100000-deaths/ar-BB14IudM)
24 [www.msn.com/en-us/news/politics/coronavirus-government-response-updates-trump-gives-first-](https://www.msn.com/en-us/news/politics/coronavirus-government-response-updates-trump-gives-first-reaction-to-100000-deaths/ar-BB14IudM)
25 [reaction-to-100000-deaths/ar-BB14IudM](https://www.msn.com/en-us/news/politics/coronavirus-government-response-updates-trump-gives-first-reaction-to-100000-deaths/ar-BB14IudM) (last visited Dec. 21, 2020).
26
27
28

1 69. Other politicians who have not agreed with the censorship occurring, unlike Chairman
2 Schiff and his congressional colleagues, have recognized and called out Defendants’ incessant
3 censorship of differing views as unconstitutional. In the July 29, 2020 Antitrust Sub-Committee
4 Hearing, Reps. Jim Sensenbrenner, Greg Steube, and Jim Jordan recognized that Social Media Networks
5 have been baselessly censoring views and taking advantage of the immunity § 230 of the CDA provides.
6 <https://www.youtube.com/watch?v=WBFDQvIrWYM&t=15783s> (last visited Dec. 21, 2020).
7

8 70. The Department of Justice (“**DOJ**”) has also identified four “ripe” areas for reforms to
9 § 230 of the CDA. ([https://www.justice.gov/ag/department-justice-s-review-section-230-
10 communications-decency-act-1996?utm_medium=email&utm_source=govdelivery](https://www.justice.gov/ag/department-justice-s-review-section-230-communications-decency-act-1996?utm_medium=email&utm_source=govdelivery)) (last visited Dec.
11 21, 2020). One of those areas is “promoting open discourse and greater transparency.” *Id.* The DOJ
12 recommends that “the vague catch-all ‘otherwise objectionable’ language in § 230(c)(2) [should be
13 replaced] with ‘unlawful’ and ‘promotes terrorism.’” *Id.* The objective of “[t]his reform [is to] focus
14 the broad blanket immunity for content moderation decisions on the core objective of Section 230—to
15 reduce online content harmful to children—while limiting a platform’s ability to remove content
16 arbitrarily or in ways inconsistent with its terms or service simply by deeming it ‘objectionable.’” *Id.*
17 Second, the DOJ “proposes adding a statutory definition of ‘good faith,’ which would limit immunity
18 for content moderation decisions to those done in accordance with plain and particular terms of service
19 and accompanied by a reasonable explanation, unless such notice would impede law enforcement or
20 risk imminent harm to others. Clarifying the meaning of ‘good faith’ should encourage platforms to be
21 more transparent and accountable to their users, rather than hide behind blanket Section 230
22 protections.” *Id.*
23
24

25 71. Defendants market their online platforms as public forums intended to protect free speech
26 and spheres where people can exchange ideas and express their views and opinions freely. According
27 to YouTube, “voices matter” and YouTube is “committed to fostering a community where everyone’s
28

1 voice can be heard.” Similarly, Facebook views itself as a virtual sphere where people can “talk openly
2 about the issues that matter to them, even if some may disagree or find them objectionable.” Yet, they
3 have bent to government officials to censor views these government officials do not agree with.

4 **FIRST CAUSE OF ACTION**

5 **FIRST AMENDMENT OF THE U.S. CONSTITUTION – BIVENS VIOLATIONS**

6 **Against Defendants YouTube and Facebook**

7 72. Plaintiffs restate and reallege paragraphs 1-71 of this Complaint and incorporate them
8 herein by reference.

9 73. Plaintiffs have brought this private damage action to seek redress for violation of their
10 First Amendment rights under *Bivens*. See *Bivens v. Six Unknown Named Agents of Fed. Bureau of*
11 *Narcotics*, 402 U.S. 388 (1971) (holding that there exists an implied private damage remedy against
12 state agents acting under the color of law for violating the Fourth Amendment rights of the plaintiff).

13 74. Plaintiffs’ videos on their YouTube channel and Facebook pages were designed to
14 educate and disseminate medically relevant information to the American public and were thus,
15 constitutionally protected speech under the First Amendment.

16 75. Governmental actors misused the power of their position and coerced private entities to
17 do their bidding. Defendants’ businesses are premised on making things go viral in order to reach
18 maximum viewers, and then selling advertising to those viewers. As a result, Defendants have little
19 economic incentive to engage in censorship of content that the public finds appealing, because doing so
20 runs contrary to their economic interests. When viewed in light of Defendants’ business models, it is
21 clear that Defendants would not have taken the decision to censor Plaintiffs’ protected speech absent
22 coercion or significant encouragement from key government officers.

23 76. Defendants, thus, should be treated as state actors because they acted based on the
24 encouragement, coercion, and/or threats of powerful government officials.

1 77. Defendants’ restriction of Plaintiffs’ speech is both content and viewpoint based since
2 Defendants are targeting vaccine related speech and seek to suppress viewpoints the government
3 officials they serve do not agree with, in violation of the First Amendment.

4 78. The publicly available information stated above shows the existence of interdependence
5 between Chairman Schiff and the Defendants. YouTube and Facebook willfully participated with
6 Chairman Schiff and public health authorities such as the CDC to frame their policies surrounding so
7 called “vaccine misinformation” or “coronavirus misinformation” and take the action of censoring
8 Plaintiffs’ content on Defendants’ platforms. Any further information that may be relevant to
9 sufficiently prove the existence of such interdependence is within the private control of Chairman Schiff
10 and Defendants, and which can only be revealed through discovery.

11 79. Plaintiffs have suffered and continue to suffer an immediate and irreparable injury as a
12 direct and proximate result of Defendants’ arbitrary and capricious actions. Plaintiffs injuries include
13 loss of revenue, loss of viewership, damage to Plaintiffs’ goodwill and reputation, for which there exists
14 no adequate remedy at law.
15

16
17 **SECOND CAUSE OF ACTION**

18 **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

19 **Against Defendant YouTube**

20 80. Plaintiffs restate and reallege paragraphs 1-79 of this Complaint and incorporate them
21 herein by reference.

22 81. Plaintiffs entered into a contract with Defendant YouTube consisting of YouTube’s
23 Terms.
24

25 82. Pursuant to this contract, YouTube consented to ICAN’s use of its platform for uploading
26 its videos, so long as they did not violate YouTube’s Terms. At all times relevant here, Plaintiffs
27 complied with and did all or substantially all of the things required of them under YouTube’s Terms.
28

1 83. Like every contract, YouTube's Terms included an implied obligation on the part of both
2 parties to act in good faith and of fair dealing, this included an obligation for YouTube to exercise in
3 good faith any discretion granted it under the contract.

4 84. YouTube unfairly and in bad faith interfered with Plaintiffs' right to receive the benefits
5 of the contract by, *inter alia*, taking down ICAN's channel without cause or notice for the unlawful
6 purpose of stifling Plaintiffs' free speech rights at the behest of powerful government officials.

7 85. YouTube, thus, breached this contract's implied covenant of good faith and fair dealing
8 when it terminated ICAN's channel without cause.

9 86. YouTube's breach of this covenant has caused Plaintiffs damages in an amount
10 exceeding \$75,000 that will be proved at trial.

11
12 **THIRD CAUSE OF ACTION**

13 **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

14 **Against Defendant Facebook**

15 87. Plaintiffs restate and reallege paragraphs 1-86 of this Complaint and incorporate them
16 herein by reference.

17 88. Plaintiffs entered into a contract with Facebook consisting of Facebook's Terms.

18 89. Pursuant to this contract, Facebook consented to ICAN's use of its platform for uploading
19 its videos, so long as they did not violate Facebook's Terms. At all times relevant here, Plaintiffs
20 complied with and did all or substantially all of the things required of them under Facebook's Terms.

21 90. Like every contract, Facebook's Terms included an implied obligation on the part of both
22 parties to act in good faith and of fair dealing, this included an obligation for Facebook to exercise in
23 good faith any discretion granted it under the contract.

24 91. Facebook unfairly and in bad faith interfered with Plaintiffs' right to receive the benefits
25 of the contract by, *inter alia*, taking down Plaintiffs' videos and the HighWire's page without cause or
26

1 notice for the unlawful purpose of stifling Plaintiffs' free speech rights at the behest of powerful
2 government officials.

3 92. Facebook, thus, breached this contract's implied covenant of good faith and fair dealing
4 when it removed ICAN's videos without cause.

5 93. Facebook's breach of this covenant has caused Plaintiffs damages in an amount
6 exceeding \$75,000 that will be proved at trial.
7

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs respectfully request the Court to enter Judgment against YouTube
10 and Facebook as follows:

- 11 1. An order directing YouTube to restore ICAN's YouTube channel to the state it was on
12 July 29, 2020;
- 13 2. An order directing Facebook to restore ICAN's and the HighWire's Facebook Page to
14 the state they were in on July 7, 2020;
- 15 3. An order enjoining Defendants from restricting Plaintiffs' speech as set forth in this
16 Complaint;
- 17 4. An award for damages against YouTube for breach of the implied covenant of good faith
18 and fair dealing;
- 19 5. An award for damages against Facebook for breach of the implied covenant of good faith
20 and fair dealing;
- 21 6. An award for Plaintiffs' reasonable attorney fees, costs and expenses; and
- 22 7. Such other and further relief as this Court should find just and proper
23
24

25 **DEMAND FOR JURY TRIAL**

26 Plaintiffs demand a trial by jury.
27
28

1 Dated: December 30, 2020
2

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