IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MUSLIM ADVOCATES, *Plaintiff,* v. **MARK ZUCKERBERG, et al.,** *Defendants*.	**Case No.: 2021 CA 001114 B** Judge Anthony C. Epstein

PLAINTIFF MUSLIM ADVOCATES' OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO DISMISS

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INTRODUCTION

Facebook and its executives repeatedly misled the public and their users about the company's content moderation practices to fend off adverse regulation, ameliorate users' concerns, and win the support of civil rights groups—all with the ultimate aim of growing Facebook's user base and protecting its financial position. Now, faced with an action to hold it accountable for its deception, one of the world's largest companies has filed a special motion to dismiss under the Anti-Strategic Lawsuits Against Public Participation Act, a law designed to ensure that the threat of litigation does not chill contributions to public debate.

The Act cannot apply here, however, because it is invalid. D.C.'s Home Rule Act requires the Superior Court to apply the Federal Rules of Civil Procedure (or modify those Rules itself). But the Anti-SLAPP Act pursues its purpose of discouraging frivolous lawsuits by changing the procedural rules governing litigation so that they conflict with the Federal and Superior Court Rules. It therefore conflicts with the Home Rule Act and is void.

Even if the Anti-SLAPP Act is valid, Facebook's misleading statements do not fall within the scope of the Act's protections because the statements were intended to advance Facebook's private commercial interests and promote the use of Facebook's commercial services. The statements, thus, either fall outside the definition of speech on "issues of public interest" that the Act covers or within the Act's commercial speech exemption.

Although the Court need not reach the merits of the Anti-SLAPP motion, Muslim Advocates meets the evidentiary burden the Act imposes. The deceptive statements underlying this case, the context in which they were uttered, and Muslim Advocates' reliance on them are all easily proven via public records, correspondence between the parties, and declarations from Muslim Advocates' staff. For this reason, Facebook's Anti-SLAPP motion largely parrots its motion to dismiss and offers no evidence to rebut the complaint's allegations. And the one new argument

raised—that there is no evidence of fraudulent intent—fails. A reasonable jury could easily conclude that Defendants fraudulently intended to induce reliance on their congressional testimony and private communications based on the combination of these statements with evidence of Facebook's knowledge of falsity and commercial motive to deceive.

ARGUMENT

I. The Anti-SLAPP Act is invalid and therefore cannot be applied here.

In the Home Rule Act, Congress barred the D.C. Council from "[e]nact[ing] any act, resolution, or rule with respect to any provision of Title 11 (relating to organization and jurisdiction of the District of Columbia courts)." D.C. Code § 1-206.02(a)(4). This limitation on the Council's power is designed to "preserv[e] the organization and structure" of D.C.'s courts. *Woodroof v. Cunningham*, 147 A.3d 777, 784 (D.C. 2016). The Council, consequently, runs afoul of the Home Rule Act when it enacts laws "directly contrary to the terms of Title 11." *Id.* For example, in *Capitol Hill Restoration Soc'y, Inc. v. Moore*, the Court of Appeals refused to apply a law that allowed it to directly review "noncontested" administrative cases because Title 11 only gave the Court of Appeals direct-review jurisdiction over "contested" cases. 410 A.2d 184, 187–88 (D.C. 1979).

The Anti-SLAPP Act is invalid under the Home Rule Act because, in two ways, it violates Title 11's command that "[t]he Superior Court *shall* conduct its business according to the Federal Rules of Civil Procedure" (unless the Superior Court modifies those Rules and the Court of Appeals approves the modification). D.C. Code § 11-946 (emphasis added). First, the Act narrows the class of cases that can proceed to trial by displacing the gatekeeping regime that the Federal Rules establishes and the Superior Court follows. Federal and Superior Court Rule 56 allow a claim to proceed to trial unless the defendant establishes there is no disputed issue of material fact at summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). In contrast, the Anti-SLAPP Act establishes a special "likely to succeed" standard that the *plaintiff* must satisfy at the

threshold of a case. D.C. Code § 16-5502(b). This "burden-shifting" standard enables a defendant, "by filing a special motion to dismiss," to "require the plaintiff to put his evidentiary cards on the table and makes the plaintiff liable for the defendant's costs and fees if the motion succeeds." *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1232, 1238 (D.C. 2016). The result is that the Anti-SLAPP Act bars some cases that would ordinarily proceed through discovery and trial.

Second, the Anti-SLAPP Act alters the ordinary discovery regime. Normally, discovery may begin at any time. Super. Ct. Civ. R. 26, cmt. Once started, discovery is conducted under a "liberal" standard, *Roberts-Douglas v. Meares*, 624 A.2d 405, 428 (D.C. 1992); a party may obtain anything that is relevant so long as it is proportional to the needs of the case. Super. Ct. Civ. R. 26(b)(1). Under this procedure, a motion to dismiss does not stay discovery automatically. *See, e.g.*, *People With Aids Health Grp. v. Burroughs Wellcome Co.*, 1991 WL 221179, at *1 (D.D.C. Oct. 11, 1991). To obtain a stay, a defendant bears the burden of showing good cause. *Id.*

In contrast, once an Anti-SLAPP motion is filed, discovery "shall be stayed," D.C. Code § 16-5502(c), unless a plaintiff can identify discovery that is "targeted" *and* "likely" to defeat the motion if obtained. *Fridman v. Orbis Bus. Intel. Ltd.*, 229 A.3d 494, 513 (D.C. 2020). A plaintiff "must show more than 'good cause.'" *Id.* As the D.C. Circuit has explained, these differences "foreclose[] th[e] argument" that the Act's discovery procedures comport with the Federal Rules, which the Superior Court Rules track. *See Tah v. Glob. Witness Publ'g, Inc.*, 991 F.3d 231, 239 (D.C. Cir. 2021). Each of these differences—the "likely to succeed" standard and the discovery procedure—render the Act void under the Home Rule Act.[1]

[1] Muslim Advocates anticipates that the Defendants will argue that, if the Court grants the motion, it must dismiss the case with prejudice under § 16-5502(b) of the Anti-SLAPP Act. To the extent the Court agrees, the Act also contradicts Superior Court Rule 15, which allows leave to amend.

Notably, in considering whether to apply the Anti-SLAPP Act in federal court, the D.C. Circuit has held that the Act is incompatible with the Federal Rules. *Tah*, 991 F.3d at 238–39. When sitting in diversity, federal courts do not apply state procedural rules that contradict the Federal Rules. *Abbas v. Foreign Policy Grp., LLC*, 783 F.3d 1328, 1334 (D.C. Cir. 2015). After considering the Anti-SLAPP Act's burden-shifting approach and discovery constraints, the D.C. Circuit held the Act "conflicts with the Federal Rules" and thus cannot be applied in federal court. *Tah*, 991 F.3d at 238.[2] Although *Tah* conducted its inquiry in a different context, the question it asked—does the Anti-SLAPP Act conflict with the Federal Rules—is no different than the one this Court must answer in evaluating whether the Anti-SLAPP Act complies with the Home Rule Act.

The Council's characterization of the Anti-SLAPP Act in a Committee Report—as providing "substantive rights" to defendants—does not mitigate this incompatibility or the violation of the Home Rule Act. *See* Report on Bill 18–893, at 1. Notwithstanding the terminology in the legislative history, the Act's text only provides defendants with *procedural* tools—of particular relevance here, the "burden-shifting *procedure*" that requires plaintiffs to establish, without ordinary discovery, that a jury could rule in its favor—*Mann*, 150 A.3d at 1232, 1238 n.32 (emphasis added)—not by limiting any substantive causes of action or creating a new affirmative defense. For these reasons, the D.C. Attorney General warned of this very conflict with the Federal Rules and the Home Rule Act before the Anti-SLAPP Act was passed. Report on Bill 18–893, at 23.[3]

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[2] Multiple federal courts of appeals have reached the same conclusion when considering various states' Anti-SLAPP laws based on similar reasoning. *See, e.g.*, *La Liberte v. Reid*, 966 F.3d 79 (2d Cir. 2020); *Klocke v. Watson*, 936 F.3d 240 (5th Cir. 2019); *Carbone v. Cable News Network, Inc.*, 910 F.3d 1345 (11th Cir. 2018); *Los Lobos Renewable Power, LLC v. Americulture, Inc.*, 885 F.3d 659 (10th Cir. 2018); *Intercon Sols., Inc. v. Basel Action Network*, 791 F.3d 729 (7th Cir. 2015). Although some courts, like the Ninth Circuit, have reached contrary conclusions, that has generated vigorous dissents. *See, e.g.*, *Makaeff v. Trump Univ., LLC*, 736 F.3d 1180, 1188 (9th Cir. 2013) (Watford, J., dissenting).

[3] The Court of Appeals' determination that the denial of an Anti-SLAPP Act is subject to interlocutory appeal—since it "protects the right not to stand trial," *Mann*, 150 A.3d at 1229–30

Nor does the Court of Appeals' decision in *Mann*—interpreting the "likelihood of success" standard—cure the conflict with the Home Rule Act. *Mann* explained that the standard bears some similarities to Rule 56, *see id.* at 1238 n.32, but also confirmed that the standard is "different from," and "not redundant" of, the Federal Rules. *Id.* at 1238, 1238 n.32. The Court of Appeals later reaffirmed the gap, explaining that "[t]he anti-SLAPP special motion to dismiss is essentially an expedited summary judgment motion, *albeit with procedural differences.*" *Am. Stud. Ass'n v. Bronner*, 259 A.3d 728, 740 (D.C. 2021) (emphasis added). And after *Mann*, the D.C. Circuit expressly considered whether *Mann*'s interpretation of the Anti-SLAPP Act undermined earlier federal case law finding a conflict with the Federal Rules and concluded that the conflict "remains." *Tah*, 991 F.3d at 239 (discussing *Abbas*, 783 F.3d at 1334). Because the Superior Court Rules have not been modified by the Court to depart from the Federal Rules, the conflict remains here, too.

II. Even if the Anti-SLAPP Act is valid, it does not apply to the facts here.

But the Court need not rule on the Anti-SLAPP Act's validity, since the Act does not apply here. The D.C. Council enacted the Anti-SLAPP Act to limit "strategic" litigation used to "chill[]" "public policy debate." Report on Bill 18–893, at 1. It thus designed the Act around the "typical[]" case: where litigation is used to silence "grassroots activism." *Id.* at 3. Facebook now seeks to co-opt this statute—aimed at preserving space for debate on matters of public concern—and turn it into a shield for a corporate behemoth doing no more than advancing its commercial interests.

The Council, however, carefully crafted the Act to prevent this type of maneuver. The Act is triggered solely by speech on "issues of public interest," which excludes "statements directed

—also does not mitigate the conflict with the Rules. Again, the Act implements that "right not to stand trial" by changing the procedural mechanisms governing litigation. In this way, the Act is different from qualified immunity, which protects the same right, but does so by demanding an inquiry into the substance of "clearly established" law or whether a constitutional violation is so obvious that there is no immunity even in the absence of such case law. Those are substantive requirements akin to an affirmative defense, not mere procedural changes.

primarily toward protecting the speaker's commercial interests." D.C. Code §§ 16-5501(1), (3). But protecting Facebook's commercial interests is what this case concerns. And, even if the Defendants' speech fell within the statutory definition of "issues of public interest," this case would still be outside the Act's scope as it falls within an exemption that excludes commercial speech.

A. Facebook's speech was not about an "issue of public interest."

Because the Anti-SLAPP Act was enacted to foster public debate, it applies only to claims "arising from an act in furtherance of the right of advocacy on issues of public interest." D.C. Code § 16-5502(a). The key phrase "issues of public interest" is defined to mean:

> an issue related to health or safety; environmental, economic, or community well-being; the District government; a public figure; or a good, product, or service in the market place. The term "issue of public interest" *shall not be construed to include private interests*, such as statements *directed primarily toward protecting the speaker's commercial interests* rather than toward commenting on or sharing information about a matter of public significance.

D.C. Code § 16-5501(3) (emphasis added).

This definition imposes not only a subject matter requirement (the first sentence) but also a purpose requirement (the second sentence) that speech must satisfy to qualify as about an "issue of public interest." *Cf. Doe No. 1 v. Burke*, 91 A.3d 1031, 1043 (D.C. 2014) (describing the private-interest limitation as applying to speech made with a "commercial motivation"); *Saudi Am. Pub. Relations Affs. Comm. v. Inst. for Gulf Affairs*, 242 A.3d 602, 613 (D.C. 2020) (speech is not about a private interest when "*fueled* by differing *policy views*") (emphasis added). The definition thus ensures that the Anti-SLAPP Act's benefits are not misused to shield commercially-motivated speech not *primarily* intended to contribute to public debate. For example, if a hedge fund with a stake in Ford's gasoline-powered vehicles (falsely) stated that Tesla's electric vehicles cause more pollution than Ford's ordinary trucks, the fund could not claim Anti-SLAPP Act protection. Certainly, the speech touches on "environmental . . . well-being" and a "good . . . in the market place." D.C. Code § 16-5501(3). But it is *primarily* aimed at "protecting" the hedge fund's private commercial interests. *Id.*

The speech out of which Muslim Advocates' claims arise similarly fails the purpose prong and thus is unprotected speech about a "private interest." Facebook's leaders made the relevant false statements about the measures the company takes to eliminate harmful content in the context of accelerating regulatory scrutiny of its practices and global scandals. The Cambridge Analytica scandal, for example, loomed over Zuckerberg's House and Senate testimony in April 2018. *See* Exs. 25-26.[4] As Facebook's financial disclosures explain, regulation of its content moderation "could adversely affect [Facebook's] financial results." Ex. 22. And a review of the relevant statements, in context, reveals they were made with the plain purpose of convincing regulators and consumers that Facebook adequately policed itself so greater regulation contrary to Facebook's interests was unnecessary. Ex. D, Yeomans Decl. ¶ 11. Tellingly, they spoke solely in their capacities as Facebook executives and were identified as Facebook leaders, not as public policy experts interested in assisting Congress. *See* Exs. 25-34. In this context, it is clear their statements were "primarily" aimed to "protect[] [Facebook's] commercial interests." D.C. Code § 16-5501(3).

The idea that senior executives testify to Congress only when it is in their company's economic interest isn't new. It reflects the fiduciary obligations the law imposes on corporate officers. And it has ample precedent: When tobacco executives falsely testified that nicotine is not addictive, their primary purpose was clearly to defend commercial interests by staving off tobacco regulation, not to contribute to public debate. The product here is different, but the motive is not.

In arguing that its speech satisfies the definition of an "issue of public interest"—and triggers the Anti-SLAPP Act's application—Facebook largely ignores the "private interest" limitation. In a footnote, it makes the undisputed, but irrelevant, observation that speech "intermixing public and private interests" may fall within the scope of the Act. Mot. at 10 n.5. But

[4] All exhibits referenced in this brief, other than declarations, are attached to Exhibit A, the declaration of Stephanie Correa. The submitted declarations are Exhibits A through E.

Muslim Advocates does not contend the statements at issue here fall outside the Act's scope simply because there is a private interest. Rather, consistent with the Act's statutory text, Muslim Advocates asserts that the Defendants' statements are not protected by the Act because they were "*primarily*" directed at commercial interests. Just as the Act's protections are not automatically denied when private interests are mixed in, they are not automatically extended because speech relates to a "matter of public significance." D.C. Code § 16-5501(3). To hold otherwise would ignore the statutory directive to focus on the interest to which the speech is "primarily" directed.

Facebook makes a second argument why the Act should apply. It says speech automatically constitutes an "act in furtherance of the right of advocacy on issues of public interest" under the Act when made "in connection with an issue under consideration" by a "legislative . . . body." D.C. Code § 16-5501(1)(A)(i). It contends this is so, regardless of whether the statements are "issues of public interest." Mot. at 10. The D.C. Court of Appeals rejected this argument in *Close It! Title Servs., Inc. v. Nadel*, 248 A.3d 132 (D.C. 2021). There, a lawyer, who was sued for defamation after commenting on a pending court case, argued his speech was an "act in furtherance of the right of advocacy" solely because the issue was considered by a "judicial body." *Id.* at 145 (citing D.C. Code § 16-5501(1)(A)(i)). This argument rested on the same provision Facebook invokes, which refers to both matters considered by a "legislative body" and those reviewed by a "judicial body." D.C. Code § 16-5501(1)(A)(i). The Court rebuffed this attempted workaround, explaining that a party invoking the Act must still show that speech satisfies the "issues of public interest" definition:

> If, as appellees contend, the only requirement for an issue of "public interest" were to be its consideration "by a legislative, executive, or judicial body," . . . —thus leaving wide open how "public interest" is to be defined—then subsection (3) of the Act, which comprehensively defines (and thus limits) an "issue of public interest," would be "redundant or superfluous," an untenable situation. Accordingly, we cannot agree that [§ 16-5501(1)(A)(i)], standing alone, add[s] any substance to the meaning of "public interest"; they do not independently justify a conclusion that [the lawyer's] statements were made "in furtherance of the right" of public interest advocacy. Rather, those subsections necessarily incorporate the "public interest" criteria specified in § 16-5501(3).

Id. at 145. Because there is no basis to treat a "legislative body" differently than a "judicial body" under this provision, Facebook's argument fails.

B. Facebook's statements constitute "commercial speech" under the Act.

Even if the definition of "issues of public interest" were met, the Defendants' speech still would not be protected: A separate "commercial speech" exemption applies when, as here, a speaker is primarily engaged in the business of selling goods or services and a claim arises from:

> (1) A representation of fact made for the purpose of promoting, securing, or completing sales or leases of, or commercial transactions in, the person's goods or services; and
>
> (2) The intended audience is an actual or potential buyer or customer.

D.C. Code § 16-5505.

Facebook's speech falls within this exemption. *First*, Facebook's speech was plainly made to "promot[e]" transactions on Facebook. To "promote" a service is "to contribute to the growth or prosperity of" that service.[5] *See Providence Hosp. v. D.C. Dep't of Emp. Servs.*, 855 A.2d 1108, 1111 (D.C. 2004) ("[I]t is axiomatic that the words of the statute should be construed according to their ordinary sense and with the meaning commonly attributed to them."). Here, Facebook's speech tried to persuade not only Congress, but also ordinary actual and potential users that Facebook is safe, so that they would remain on, increase use of, or join the platform. Facebook even livestreamed the testimony to its users.[6] The statements were thus made to "contribute to the growth or prosperity" of Facebook's business by increasing the number of transactions Facebook has with its customers and, in turn, grow its revenues and profit. *Cf.* Yeomans Decl. ¶ 11.[7]

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[5] Merriam Webster Online Dictionary, *Promote*, perma.cc/J93S-7US3 (last visited Nov. 16, 2021).
[6] Elizabeth Dwoskin and Craig Timberg, Washington Post, *Apologies were once staples after Facebook scandals. Now the company offers defiance.*, Oct. 4, 2021, perma.cc/BR3X-RLJQ.
[7] Facebook argues its speech was not made to "secure" any "commercial transaction." Mot. at 11. That is dubious—the speech served to secure future user transactions and advertiser revenue—but the Court need not resolve the issue because it is enough that the speech "promoted" transactions.

Second, Facebook's intended audience included actual and potential customers. Again, the company livestreamed the testimony on its platform, and thus directly communicated with its own users. Facebook even admits it sought to reach the general public. Mot. at 9. This is standard corporate practice in testifying before Congress: companies communicate not only with legislators, but also with customers, members, and interest groups. *See* Yeomans Decl. ¶ 10.

Facebook argues that this element of the exemption is not satisfied based on the conclusory assertion that its intended audience was "the public," not "customer[s]." Mot. at 11. This asks the Court to embrace the implausible premise that the "public" excludes Facebook's "customers." Because most Americans are Facebook users,[8] however, it is literally impossible for Facebook to speak to the public without reaching its customers—to say nothing of its livestreaming the testimony directly to users on its own platform.

Facebook also appears to argue it is not "primarily engaged in the business of selling or leasing goods or services," as the exemption requires, as it offers a "free service." Mot. at 11 (citing *Cross v. Facebook, Inc.*, 14 Cal. App. 5th 190, 203 (2017)). That is wrong. While Facebook does not charge customers money, it is not "free." Users must tender their personal data to get Facebook's services. *See* Exs. 11-12. "You can't really stop Facebook from collecting this information—it's the deal you make when you sign up."[9] This suffices to satisfy the requirement that the speaker be in the business of "selling . . . services." D.C. Code § 16-5505. The primary definition of to "sell" is "to give up (property) to another for something of value (such as money)."[10] "Money" is only one example of consideration that can be offered in a sale. Here, users' data is the "something of value."

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[8] Pew Research Center, 10 facts about Americans and Facebook (June 1, 2021), https://perma.cc/6JUP-7X2T.
[9] David Nield, *All the Ways Facebook Tracks You—and How to Limit It*, Wired (Jan. 12, 2020), https://perma.cc/EZ7S-XME3.
[10] Merriam Webster Online Dictionary, *Sell*, perma.cc/K4M5-GJZ6 (last visited Nov. 16, 2021).

Facebook's argument ultimately rests on the flawed implied premise that a sales contract requires consideration in the form of cash. But it would make no sense for the D.C. Council to exclude companies, including some of the largest technology companies (like Facebook, Google, and Twitter), who take data rather than money, as payment for their services. Facebook's view would also exclude from the exemption a range of other businesses that receive non-cash payment for their services, like firms that offer services in exchange for intellectual property rights.[11]

III. Muslim Advocates is likely to succeed on the merits.

Even assuming the Anti-SLAPP Act applies, it cannot justify dismissal. Facebook's motion does not include any evidence purporting to refute the allegations in the complaint. Rather, it repeats the same legal arguments from its motion to dismiss; challenges Muslim Advocates to offer evidence supporting the allegations that those arguments address; and asserts—in Facebook's only new contention—that there is no evidence that the Defendants acted with fraudulent intent.

For the reasons explained in the opposition to the motion to dismiss, Facebook's legal arguments lack merit. And through declarations and documents submitted with this opposition, Muslim Advocates provides evidentiary support for the allegations of the complaint sufficient "to permit a reasonable jury to find" in its favor. *Mann*, 150 A.3d at 1252.

A. Muslim Advocates has standing to sue.

Muslim Advocates has standing for two reasons. *See* Opp. to Mot. to Dismiss ("Opp.") at 7-12.

First, because Muslim Advocates is a public interest organization it has standing to bring its CPPA claim. D.C. Code § 28-3905(k)(1)(D). This requires Muslim Advocates to show it promotes

[11] Facebook points to *Cross v. Facebook, Inc.*, 14 Cal. App. 5th 190 (2017). But *Cross'* wafer-thin analysis does not aid Facebook. There, the plaintiff did "not allege[]" that Facebook was engaged in selling services, so the issue was undisputed, and the Court engaged in no analysis at all in declaring that Facebook is a free service. *Id.* at 203.

the interests of consumers; it has a nexus to the interests of consumers affected by Facebook's deception; and the consumers could bring suit on their own. *Animal Legal Def. Fund v. Hormel Foods Corp.*, 258 A.3d 174, 185 (D.C. 2021). As to the first two requirements, declarations attached to this brief detail the organization's consumer-oriented mission and its nexus to the consumer injury here. This mission is exemplified in the extensive work Muslim Advocates has undertaken to enhance the experience of Facebook (and other social media) users and, in particular, protect them from anti-Muslim hate speech. Ex. B, Naing Decl. ¶ 6; Ex. C, Ahussain Decl. ¶¶ 4, 23, 25. As to the third requirement, a consumer could sue over Facebook's misrepresentations: Facebook's services are used for personal use and its misrepresentations are deceptive trade practices. *See* Ex. 61 (describing Facebook as a product that "helps you connect with friends, family and communities"); D.C. Code § 28-3901(a) (defining a "consumer" who may sue to include a person who receives or provides demand for services used for "personal, household, or family purposes").

Second, as Muslim Advocates has Article III standing, it has standing to bring its CPPA claims as a nonprofit organization and to pursue its fraud and negligent misrepresentation claims. Facebook's misrepresentations induced Muslim Advocates to provide valuable services to Facebook, resulting in harms that can be redressed with damages. Opp. at 9-12; Naing Decl. ¶¶ 12-14; Ahussain Decl. ¶¶ 7, 13, 14, 26. Facebook contends this injury is not traceable to Facebook's representations. But declarations attached here foreclose that argument. They describe how Muslim Advocates relied on Facebook's statements and would not have provided services in the absence of them. *See* Naing Decl. ¶¶ 12-14; Ahussain Decl. ¶¶ 13, 14, 26.

B. The Defendants violated the CPPA.

The Defendants violated the CPPA when they falsely and repeatedly represented that Facebook removes hate speech and other content that violates the community standards of which

the company is aware. *See* AC ¶ 196; D.C. Code §§ 28-3904(a), (d), (e). Their arguments to fend off CPPA liability are no more persuasive in the anti-SLAPP motion than in the Rule 12 motion.

First, as explained in the opposition to the motion to dismiss, the Defendants' statements are actionable representations. Opp. at 13-15. The statements are attached here. *See* Exs. 25-35. That they are statements of fact, not reflections on a "goal," is reinforced by evidence of the context in which they arose—with Facebook under intense regulatory scrutiny and engaging in an ongoing dialogue with legislators and Muslim Advocates. *See* Ex. 25-34, 38-40, 44-51, 83. In these contexts, no reasonable listener would understand Facebook's statements to be mere assertions of ambition.

Notably, Facebook does not contend that the statements at issue were true. For good reason. Voluminous evidence shows that Facebook's standard conduct does not match its words. *See, e.g.*, Exs. 39 (explaining that posts reported to Facebook by Representative Ilahn Omar's staff where "the wording of the post mimics wording in Facebook's own examples of prohibited speech" were not taken down), 52, 55-60, 62-67; Ex. E, Squire Decl. ¶¶ 7-17. Recent reporting confirms the falsehood. An internal Facebook report on content moderation and enforcement of the community standards recognized, "We are not actually doing what we say we do publicly." Ex. 2.

Second, while Facebook contends its statements were not directed to consumers, the evidence shows otherwise. Facebook livestreamed its testimony to users and concedes it tried to reach "the public." *See* Mot. at 2; *supra* 9 at n.6. As explained by Professor William Yeomans, who has served as a chief counsel on the Senate Judiciary Committee, a senior Justice Department official, a legislative process professor, and non-profit director, it is standard practice for companies to speak with the intent to reach customers when testifying in Congress. Yeomans Decl. ¶¶ 9-10.

Third, there is no requirement that a defendant collect money in exchange for services to fall within the scope of the CPPA. It is enough that Facebook "transferred" services to consumers. *See* Opp. at 17-18. To the extent that a sale is required, that is satisfied because consumers provide

data in return for Facebook's services. Ex. 11. *Fourth*, the individual Defendants may be held liable under the CPPA. All four participate in the sale or transfer of Facebook's services in the ordinary course of business. D.C. Code § 28-3901(e) (defining "merchant"). Each of their high-level positions involves them in the design, operation, marketing, and sale of Facebook's services, as illustrated by their role in the subject matter of this lawsuit. *See* Correa Decl. ¶¶ 6-9, 34-37, 41-46.

Finally, there is sufficient evidence of Martin and Kaplan's involvement to hold them liable. (Zuckerberg and Sandberg do not argue that they did not personally participate in a violation of the CPPA.) Martin made a false statement directly to Muslim Advocates. Ex. 40. And a jury could conclude that both played integral roles shaping Zuckerberg's and Sandberg's testimony that is at issue here. They occupy positions within the company that are ordinarily responsible for crafting testimony. *See* Yeomans Decl. ¶ 13. And both accompanied Zuckerberg or other senior Facebook officials when they testified before Congress, suggesting that both played major roles in crafting the testimony at issue. Exs. 2, 24. Notably, neither Martin nor Kaplan submitted a declaration in support of their motion denying involvement in crafting Zuckerberg and Sandberg's testimony or, more generally, coordinating the consistent false messaging at issue.[12]

C. Muslim Advocates has presented evidence to support its fraud and negligent misrepresentation claims.

The Defendants challenge only three elements of Muslim Advocates' fraud and negligent misrepresentations claims: (1) that the statements at issue are actionable statements of fact, (2) that Muslim Advocates reasonably relied on those statements, and (3) that Facebook, Zuckerberg, and Sandberg acted with fraudulent intent.[13] The same evidence described above that shows

[12] They should not be permitted to do so in their reply brief, either. Doing so would prejudice Muslim Advocates by barring it from seeking targeted discovery designed to test the declarations.
[13] Facebook does not challenge that it owed Muslim Advocates a duty not to make false statements. That concession makes good sense, as the two entities had an ongoing relationship and Facebook

Facebook's statements were actionable for purposes of a CPPA claim supports that they are actionable for fraud and negligent misrepresentation claims. And, as explained next, Muslim Advocates has presented sufficient evidence of reasonable reliance and fraudulent intent.

Reliance. Proof of reliance requires actual reliance that is reasonably justified. Multiple declarations attest that Muslim Advocates did, in fact, rely on the misrepresentations and would have stopped providing services to Facebook had it known the truth (or had Facebook never made the misrepresentations). Ahussain Decl. ¶¶ 13-15, 26; Naing Decl. ¶ 12. And, as explained in the opposition to the Rule 12 motion, the context in which Facebook's statements arose—not just the congressional testimony but an ongoing dialogue through which Facebook repeatedly tried to engage Muslim Advocates as a partner[14]—renders Muslim Advocates' reliance reasonable. That is only further supported by the declaration of Professor Yeomans, who explains that it is commonly understood that consumers and interest groups (like Muslim Advocates) will rely on statements made under these circumstances. Yeomans Decl. ¶ 10.

Fraudulent intent. A reasonable jury could easily conclude that Facebook and the individual defendants intended to induce Muslim Advocates' reliance because of the context in which the statements arose. *See Consumers United Ins. Co. v. Smith*, 644 A.2d 1328, 1358 (D.C. 1994) (intent may be proven through circumstantial evidence). The vast majority were made during congressional hearings conducted to elicit facts to allow Congress and the viewing public, including Muslim Advocates, to shape a response. In those circumstances, Facebook's intent to induce

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solicited services from Muslim Advocates. Nor does Facebook contest materiality and damages. Materiality is clear given Facebook's and the public's frequent focus on its content moderation policies. And damages can be easily calculated because Muslim Advocates can account for staff time and be compensated for the value of it. *See, e.g.*, Ahussain Decl. ¶¶ 18-22.

[14] *See, e.g.*, Ex. 44 (email from Facebook "writing to solicit [Muslim Advocates'] insight on how we address hateful stereotypes" and to seek thoughts on ideas put forward by academics); Ex. 50 (email from Zuckerberg thanking Muslim Advocates for its partnership); Ex. 51 (same from Sandberg).

reliance can't possibly be doubted (and at most would be a disputed fact for jurors to decide). That is especially true given that the subject of the false statements—hate speech and other dangerous content—was a key area of concern for Congress, the public, and Muslim Advocates, a fact reflected in the frequency with which the topic came up. Encouraging listeners to tailor subsequent conduct to the purported facts Facebook conveyed was the entire point of the testimony.

Facebook does not seriously contest that it intended to induce reliance, but instead asserts that its statements were "directed to Members of Congress, not to Plaintiff." Mot. at 21. This contradicts Facebook's prior acknowledgement that its testimony was intended to reach not just legislators but also "the public." Mot. at 2. And, given Facebook's interactions with Muslim Advocates over the years, a jury could easily conclude both that the company expected Muslim Advocates to be among the listening public and that Facebook intended Muslim Advocates to act (or refrain from acting) based on the testimony. Indeed, it is the standard practice, purpose, and expectation when a leader of a major company or organization testifies in Congress for the speaker to deliver testimony with a message specifically crafted and intended for interest groups and consumers. *See* Yeomans Decl. ¶ 10. Thus, when such testimony is delivered, those targets *do* rely on the testimony in deciding how they will respond going forward. *See id.* This further supports that Facebook surely intended to reach Muslim Advocates.

A reasonable jury could also conclude that Facebook intended to induce Muslim Advocates' reliance when sending it letters and emails directly. For instance, in the March 17, 2020, letter, Mr. Martin made a series of representations—including that Facebook does not allow "hate groups"—designed to assuage Muslim Advocates' criticisms and concluded the letter by stating that Facebook "hope[s] to continue to engage with you and your organization." Ex. 40. In that context, a jury could infer that Mr. Martin intended his representation to persuade Muslim Advocates to continue work with Facebook, *i.e.*, to induce reliance.

The same is true of the emails of Sandberg and Monique Dorsainvil, a Facebook Public Policy Director. The representations in those emails paralleled ones in Mr. Martin's letter as part of a single coordinated effort to engage Muslim Advocates as a partner and to bolster Facebook's public image. This included consistent outreach from Facebook employees and leaders, including Zuckerberg and Sandberg, and over a dozen meetings with civil rights groups and Congressional staffers. Exs. 38-40. From this, a jury could reasonably infer that Sandberg and Dorsainvil intended to induce Muslim Advocates to continue to partner with Facebook when they represented (falsely) that Facebook removes content that violates its community standards when it learns of that content.

Facebook also had a strong commercial motive to deceive. Divisive speech drives engagement and revenues on the platform,[15] even as it risks public backlash and the threat of further regulation. Facebook could get the best of both worlds—high engagement with reduced scrutiny—by claiming to remove non-compliant speech while actually leaving it untouched.

Finally, evidence that Facebook, Zuckerberg, and Sandberg knew of the falsity of their representations—an element of Muslim Advocates' claim that they do not contest—further supports that they acted with fraudulent intent. Zuckerberg and Sandberg personally involved themselves in Facebook's decision-making about what content to remove from the platform, with Mr. Zuckerberg pledging that he would "stay close to the work." Ex. 50; *see also* Ex. 54 (detailing Zuckerberg's heavy involvement in content moderation). Sandberg's emails with Muslim Advocates reflect that she did the same, reviewing individual decisions to allow content to remain on the platform. Exs. 38-39. Public reporting further supports that Zuckerberg and Sandberg carefully monitored and personally participated in decisions not to remove violative content. *See* Ex. 52. Neither has denied knowledge of an internal Facebook program called "Cross Check" that

[15] *See* Lake Munn, *Angry by design: toxic communication and technical architectures*, Humanities & Social Sciences Communications Vol. 7 (2020), https://perma.cc/NE8U-BG5Q.

exempted millions of prominent individuals from the ordinary content moderation policies. *See* Ex. 2. And their knowledge—as well as the knowledge of other employees that non-compliant content remained on the platform—is imputed to Facebook. *See, e.g.*, *Diamond Serv. Co. v. Utica Mut. Ins. Co.*, 476 A.2d 648, 653 n.10 (D.C. 1984). Thus, a jury could consider this evidence of knowledge to conclude that the Defendants acted with fraudulent intent.

IV. The defendants lack Section 230 immunity for their false statements.

In both its motion to dismiss and Anti-SLAPP motion, Facebook makes an unprecedented argument for its purported immunity under 47 U.S.C. § 230(c)(1) ("§ 230"): that Facebook and its executives enjoy immunity for *false oral* statements made *offline*, and even in the halls of Congress. But no case stands for this radical and absurd proposition. Oral statements delivered in real life never qualify for § 230 immunity. But even if they could, Facebook would lack immunity. Here, the legal violations arise from the Defendants' own false statements and promises about Facebook's business practices, not from third-party content provided to Facebook. The D.C. Circuit recently rejected the "remarkable suggestion" that online platforms like Facebook "enjoy immunity even if they did in fact entirely" create the statements that give rise to liability. *Marshall's Locksmith Serv. Inc. v. Google, LLC*, 925 F.3d 1263, 1271 (D.C. Cir. 2019). Facebook's claim for immunity is even more untethered to § 230 as the statements here were not even made first online. And it would nullify a century of laws that bar dishonest corporate leaders from misleading consumers and investors.

A. Section 230 does not apply to oral statements delivered offline.

Nearly all of the statements that create liability in this case are oral ones that do not qualify for immunity. *See* AC ¶¶ 53-71. As an early § 230 decision explained, Congress enacted the law to protect websites for "material disseminated through their [online] medium," unlike "newspapers, magazines or television and radio stations" who would still "be held liable for publishing or distributing . . . material written or prepared by others." *Blumenthal v. Drudge*, 992 F. Supp. 44, 49

(D.D.C. 1998). Section 230's limited application to online materials is embodied in its requirement that the "information" at issue must be "*provided by* another information content provider" to the computer service that seeks immunity. 47 U.S.C. § 230(c)(1) (emphasis added). For "information" to be "provided by another information content provider," it must be "provided for publication on the Internet" by a *third party*. *Batzel v. Smith*, 333 F.3d 1018, 1033-35 (9th Cir. 2003). Thus, if a website receives "snail mail" from a third party and decides to publish the material online, it lacks immunity. *Id.* at 1033; *Elliott v. Donegan*, 469 F. Supp. 3d 40, 58 (E.D.N.Y. 2020). A fortiori, when an executive orally promises a user his or her online platform will remove harmful content, the oral promise gets no immunity. *Barnes v. Yahoo*, 570 F.3d 1096, 1098–99, 1108–09 (9th Cir. 2009).

The same is true of the oral statements Facebook's executives delivered to Congress, civil rights groups, and consumers. They were not information "provided by" a third party to Facebook for online publication. Rather, *Facebook's leaders* made them for Congress and the public to hear in person. Extending § 230 immunity to tech executives' oral statements—in Congress, on the radio, or investor calls—would expand immunity to a medium in two ways Congress did not contemplate or cover, by applying it to offline speech and to speech not provided by a third party.

B. Facebook cannot satisfy two of three elements of Section 230 immunity.

Even if § 230 did extend to oral statements, it could not immunize the claims at issue here.

As the Defendants agree (Mot. to Dismiss at 12), they must establish each of three factors to obtain immunity: "(i) [Facebook] is a provider or user of an interactive computer service (ii) the information for which [the plaintiff] seeks to hold [the defendant] liable was information provided by another information content provider, and (iii) the complaint seeks to hold [Facebook] liable as the publisher or speaker of that information." *Marshall's Locksmith*, 925 F.3d at 1267 (cleaned up). But the Defendants cannot possibly satisfy the second or third factor of this standard.

1. Section 230 does not apply because Facebook's executives created the misrepresentations that give rise to liability.

As to the second factor, § 230 does not immunize information created solely or partly by a platform or its executives. *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1093 (9th Cir. 2021); *Marshall's Locksmith*, 925 F.3d at 1271; *Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1164 (9th Cir. 2008) (*en banc*). Here, Facebook's executives created the misrepresentations that give rise to liability. So, they and Facebook lack immunity.

Because § 230 immunity "only applies when the information that forms the basis for the state law claim has been provided by '*another* information content provider,'" a platform lacks immunity when *the platform* creates the information and thus becomes an information content provider *itself*. *Pace v. Baker-White*, 432 F. Supp. 3d 495, 507 (E.D. Pa. 2020) (quoting *Universal Comm. Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 419 (1st Cir. 2007), and citing *Huon v. Denton*, 841 F.3d 733, 742 (7th Cir. 2016)); *accord Anthony v. Yahoo Inc.*, 421 F. Supp. 2d 1257, 1262–63 (N.D. Cal. 2006); *Klayman v. Zuckerberg*, 753 F.3d 1354, 1358–59 (D.C. Cir. 2014); *Mann*, 150 A.3d at 1250-51 (citing *Roommates.com* and *Klayman* for the proposition that a website operator lacks immunity if it creates the content that gives rise to liability and, thus, becomes an information content provider).

Just as here, courts have easily concluded that platforms are information content providers without immunity when the "words" at issue were "authored by" the platforms or their employees. *See, e.g.*, *Pace*, 432 F. Supp. 3d at 507; *Roommates.com*, 521 F.3d at 1164; *Marshall's Locksmith*, 925 F.3d at 1271; *Fraley v. Facebook, Inc.*, 830 F. Supp. 2d 785, 801 (N.D. Cal. 2011); *Fed. Trade Comm'n v. LeadClick Media, LLC*, 838 F.3d 158, 176 (2d Cir. 2016).

This is especially true where, again as here, a tech company is sued for false or misleading statements. Courts have routinely held that there is no immunity where liability stems from the misrepresentations made by a platform or its employees, including under consumer fraud laws like

the CPPA. For example, in *Demetriades v. Yelp, Inc.*, a restaurant operator alleged that Yelp falsely represented that a filter on its platform weeded out untrustworthy reviews to ensure that users only saw reliable reviews. 228 Cal. App. 4th 294, 300-02 (2014). Like Muslim Advocates here, the restaurant operator requested an order enjoining Yelp from continuing to make false statements about its filter, but did not seek a remedy for the harm caused by third parties' reviews. *Id.* at 302. The court rejected Yelp's claim for § 230 immunity because the restaurant operator did not "seek to enjoin or hold Yelp liable for the statements of third parties (i.e., reviewers) on its Web site. Rather, plaintiff seeks to hold Yelp liable for its own statements regarding the accuracy of its filter." *Id.* at 313. Likewise, in *Anthony v. Yahoo Inc.*, there was no immunity for fraud and negligent misrepresentation claims, as Yahoo, via its own words and actions, made "misrepresentations" about the authenticity of dating profiles. 421 F. Supp. 2d 1257, 1263 (N.D. Cal. 2006).

Facebook argues that allowing users to post content, adopting content moderation policies, and making decisions under those policies "does not make Facebook an 'information content provider.'" Mot. to Dismiss at 13. Muslim Advocates agrees. But this misses the point: Muslim Advocates does not assert that Facebook is liable for publishing users' hate speech. Instead, it asserts that Facebook's executives are liable for *misrepresenting* Facebook's actual practices on hate speech when they tell the public that Facebook removes all content that violates its standards when it learns of the violations, even though they know that Facebook routinely does not do so. *See* AC ¶¶ 90–97. Thus, as in *Demetriades*, Muslim Advocates does not "seek to enjoin or hold" Facebook "liable for the statements of third parties," only "for its own statements." 228 Cal. App. 4th at 313.

This could not be more different than a plaintiff who claims liability solely based on "information" on a Facebook page "provided by third party users, not Facebook itself," *Klayman,* 753 F.3d at 1358. For example, in *Bennett v. Google, LLC*, 882 F.3d 1163 (D.C. Cir. 2018), the only case Facebook cites for the "information content provider" factor, the plaintiff did not bring a

claim against Google for Google's own statements. *See id.* at 1167. Instead, she sued Google for defamation because it published a third-party's blog post about her. *Id.* at 1164-65. There, because "only [the blogger]—and not Google—created the offensive content on the blog," the blogger was the only information content provider. *Id.* at 1167 (rejecting the plaintiff's bizarre argument that Google somehow created the third-party's blog post by adopting and enforcing a Blogger Content Policy, a claim that Muslim Advocates does not make here).

2. As the claims don't seek to hold Facebook liable as a publisher of third-party content, the Defendants also lack immunity.

Facebook cannot satisfy the third prong of § 230 either, as Plaintiffs' claims do not "seek[] to hold [Facebook] liable as the 'publisher or speaker'" of a third-party's information. *Marshall's Locksmith*, 925 F.3d at 1268. That's because when a legal claim turns on a platform's own misrepresentation or false promise, it does not treat the platform as a publisher of third-party content, even if the platform's statements might relate to third party content. *See HomeAway.com, Inc v. City of Santa Monica*, 918 F.3d 676, 682 (9th Cir. 2019); *Barnes*, 570 F.3d at 1107.

Facebook asserts that for this factor "'what matters is whether the cause of action inherently requires the court to treat the defendant as the 'publisher or speaker of content provided by another,'" and that "'removing content is something publishers do.'" Mot. to Dismiss at 14 (quoting *Barnes*, 570 F.3d at 1101–03). But this again misconstrues Muslim Advocates' claims, which are based on the duty to not make misleading statements, not on a duty to publish content. And it misunderstands what it means to treat a defendant as a publisher under § 230.

Under *Barnes* and its progeny, "courts must ask whether the duty the plaintiff alleges the defendant violated derives from the defendant's status or conduct as a 'publisher or speaker.' If it does, section 230(c)(1) precludes liability," but if it does not there is no immunity. 570 F.3d at 1102. Thus, a claim that Yahoo negligently failed to remove defamatory content derived from its status

as a publisher, as "removing content is something publishers do," *id.* at 1103. But a promissory estoppel claim—based on Yahoo's oral promise that it would remove non-consensual pictures of Barnes—did "not seek to hold Yahoo liable as a publisher or speaker of third-party content, but rather as the counter-party to a contract, as a promisor who has breached." *Id.* at 1107.

Adopting this test, courts have repeatedly rejected Facebook's apparent argument that platforms have immunity whenever the claim has *any* relation to online content. "It is not enough that third-party content is involved," *HomeAway.com*, 918 F.3d at 682. Such a "'but for' test" would wrongly "provide immunity . . . solely because a cause of action would not otherwise have accrued but for the third-party content." *Id.* (citation omitted). For internet companies like Facebook "publishing content is a but-for cause of just about everything" they are "involved in," but § 230 does not cover everything they do. *Lemmon*, 995 F.3d at 1092–93 (cleaned up). Courts "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," irrespective of promises or statements a platform makes about its business. *HomeAway.com*, 918 F.3d at 682.

Thus, in *HomeAway.com*, an ordinance requiring rental properties to be registered did not treat vacation rental companies like Airbnb as publishers since the law did "not require [the companies] to review the content provided by the hosts of [property] listings on their websites," or "proscribe, mandate, or even discuss the content of the listings that the Platforms display on their websites." *Id.* at 683. Likewise, in *Lemmon*, Snap, another social media platform, was not treated as a publisher when it violated its "duty to design a reasonably safe product," as that duty was "fully independent of Snap's role in monitoring or publishing third-party content." 995 F.3d at 1093.

Applying the same test and logic, courts have readily and repeatedly concluded that misrepresentation, breach of contract, and promissory estoppel claims do not treat a platform as a publisher of third-party content, since the underlying duty of those claims is to not make false or

misleading statements or promises, even if those statements might relate to a platform's content moderation or other practices. *See, e.g.*, *Barnes*, 570 F.3d at 1107 (no immunity for promissory claim based on platform's promise to remove offending content); *Moving & Storage, Inc. v. Panayotov*, 2014 WL 949830, at *3 (D. Mass. Mar. 12, 2014) (no immunity for false advertising claims based on defendants' own misrepresentations about their online business); *Levitt v. Yelp! Inc.*, 2011 WL 5079526, at *9 (N.D. Cal. Oct. 26, 2011), *aff'd*, 765 F.3d 1123 (9th Cir. 2014) (stating Yelp! would lack immunity for "[c]laims of misrepresentation, false advertising, or other causes of action based . . . on [Yelp!'s] representations" regarding its "purported neutrality of Yelp's service) (citing *Anthony*, 421 F. Supp. 2d at 1263, and *Barnes*, 570 F.3d at 1108–09).[16]

As in these cases, here Facebook violated a duty to not make false or misleading representations about its services. *See, e.g.*, D.C. Code § 28-3904(a), (d), (e). That duty does not stem from its role as a publisher, but from consumers' "right to truthful information from merchants about consumer goods and services . . . received in [D.C.]" *Id.* 28-§ 3901(c). And Facebook can simply comply with that duty by not making false or misleading statements about its services without changing its underlying practices or decisions about what to publish. Tellingly, in its prayer for relief, Muslim Advocates does not ask for any content to be removed, but instead only requests that Facebook be enjoined from misleading users and the public about its practices. AC at 63.

[16] *See also Enhanced Athlete Inc. v. Google LLC*, 2020 WL 4732209, at *3–4 (N.D. Cal. Aug. 14, 2020) (no immunity where plaintiff alleged Google breached implied covenant of good faith by applying its "community guidelines" in arbitrary way); *Cox v. Twitter, Inc.*, 2019 WL 2513963, at *4 (D.S.C. Feb. 8, 2019) (no immunity where plaintiff alleged Twitter breached terms of service by requiring plaintiff to delete content to regain access to account because the "contract generat[ed] a legal duty distinct from [Twitter's] conduct as a publisher"); *Darnaa, LLC v. Google, Inc.*, 2016 WL 6540452 at *8 (N.D. Cal. Nov. 2, 2016) (refusing to dismiss implied covenant claim based on removal of plaintiff's content in violation of terms of service); *Teatotaller, LLC v. Facebook, Inc.*, 173 N.H. 442, 452 (2020) (no immunity for breach of contract for removal of Instagram account if "claim is based upon specific promises that Facebook made in its Terms of Use").

C. Granting immunity here would have absurd real-world consequences and undermine Section 230's purpose of encouraging self-regulation.

Embracing Facebook's sweeping claim to immunity for its executives to make false statements about their practices would yield absurd consequences. It would nullify a century of federal and state laws commanding corporate leaders to be honest with customers and investors. Laws like the Federal Trade Commission Act of 1914, the Securities Act of 1933, and dozens of state securities, consumer fraud, and false advertising laws would be mute when it comes to some of the largest companies in the world lying about central aspects of their businesses. Facebook could safely misrepresent what measures it takes to make its products safe—on calls with investors, who are entitled to rely on their oral representations; in SEC filings; in public testimony; and via oral statements in the media. It could spend hundreds of millions of dollars on TV and radio ads that repeat the same falsehoods. This would be no different than giving executives the freedom to lie to Congress, investors, and consumers about the safety of tobacco or the airbags in our cars.

It is unthinkable that Congress intended to immunize a company's own statements intended to deceive and defraud customers. Section 230's goal of encouraging platforms to self-regulate is in no way advanced by letting platforms blatantly lie about whether they are, in fact, policing harmful content. Facebook wants to have its cake and eat it too: It seeks credit for the very self-regulation it's not doing, and then bizarrely claims immunity to lie about this failure. Section 230 does not allow Facebook to have it both ways. Facebook can choose not to police its platform, but it can't lie about doing so and then claim immunity for its lies.

CONCLUSION

For the foregoing reasons, the motion to dismiss should be denied in its entirety.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November 2021, I caused a copy of the foregoing Plaintiff's Opposition to Defendants' Special Motion To Dismiss to be served by the Court's electronic filing system (CaseFileXpress) on all counsel of record.

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