

1 SHOOK HARDY & BACON LLP  
Jessica L. Grant (CA SBN 178138)  
2 555 Mission Street Suite 2300  
San Francisco, California 94105  
3 Telephone: 415.544.1900

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Superior Court of California,  
County of Los Angeles  
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David W. Slayton,  
Executive Officer/Clerk of Court,  
By S. Trinh, Deputy Clerk

4 MORRISON & FOERSTER LLP  
Michael Burshteyn (CA SBN 295320)  
5 Ernesto Rojas Guzman (CA SBN 339964)  
Justin Kareem Rezkalla (CA SBN 347603)  
6 Marcus Kennedy-Grimes (CA SBN 349912)  
425 Market Street  
7 San Francisco, California 94105-2482  
Telephone: 415.268.7000

8 MORRISON & FOERSTER LLP  
9 J. Alexander Lawrence (CA SBN 208715)  
Tamara Wiesebron (CA SBN 338967)  
10 250 West 55th Street  
New York, New York 10019-9601  
11 Telephone: 212.468.8000

12 Attorneys for Defendant  
SNAP INC.

13  
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF LOS ANGELES**

16 AMY NEVILLE; AARON NEVILLE; JAIME  
PUERTA; MARIAM HERNANDEZ; CINDY  
17 CRUZ-SARANTOS; BRIDGETTE  
NORRING; JAMES MCCARTHY;  
18 KATHLEEN MCCARTHY; SAMANTHA  
MCCARTHY; MATTHEW CAPELOUTO;  
19 CHRISTINE CAPELOUTO; PERLA  
MENDOZA; SAMUEL CHAPMAN; DR.  
20 LAURA ANN CHAPMAN BERMAN;  
JESSICA DIACONT; E.B.; AND P.B.,

21 Plaintiffs,

22 v.

23 SNAP INC.,

24 Defendant.

Case No. 22STCV33500

**DEFENDANT SNAP INC.'S NOTICE OF  
MOTION AND MOTION FOR  
SANCTIONS PURSUANT TO  
C.C.P. § 128.7; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

Judge: Hon. Lawrence P. Riff  
Date Action Filed: October 13, 2022

Date: October 18, 2023  
Time: 3:00 p.m.  
Department: 7  
Trial Date: Not Yet Set

1 **TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that at 3:00 p.m. on October 18, 2023, in Department 7 of the  
3 above-captioned court, before the Honorable Judge Lawrence P. Riff, Defendant Snap Inc.  
4 (“Snap”) will move this Court pursuant to California Code of Civil Procedure § 128.7 seeking  
5 sanctions for baseless allegations in the Second Amended Complaint (“SAC”), the falsity of  
6 which would have been readily apparent to Plaintiffs’ counsel had they conducted the required  
7 reasonable inquiry pre-filing and which Plaintiffs’ counsel nonetheless refused to address after  
8 the falsity of the statements was brought to their attention. Snap requests the Court issue the  
9 following sanctions:

10 1. An order that Plaintiffs’ SAC is dismissed and that Plaintiffs remove the  
11 sanctionable allegations in the following paragraphs of the SAC before refile: 49, 134, 135,  
12 157, 160, 162, 163, 164, 166, 264, 276, 277, 307, 349, 382, 410, 411, 413, 414, 442, 444, 496,  
13 529, 568, 597, 603, 628, 636, 643, 713, 723, 725, 789, 885, 933, 935, 942, 963; and

14 2. Any other sanctions that the Court deems appropriate.

15 This Motion is based upon this Notice of Motion and the concurrently filed Memorandum  
16 of Points & Authorities; the Declarations of J. Alexander Lawrence, Nikesh Srivastava, Alex  
17 Farivar, Marc Brown, Althea Tupper, and Rachel Hochhauser; the files and records of this Court;  
18 and any and all other materials submitted to the Court on or before the time of its decision on this  
19 matter.

20 Pursuant to C.C.P. § 128.7, Snap served this Motion on Plaintiffs’ counsel on August 30,  
21 2023. Snap now files this Motion with the Court because Plaintiffs have not withdrawn or  
22 otherwise corrected the SAC within the 21-day period provided by C.C.P. § 128.7.

23  
24 Dated: September 25, 2023

SHOOK HARDY & BACON LLP

25  
26 By:   
27 Jessica L. Grant

28 *Attorneys for Defendant*  
SNAP INC.

1 SHOOK HARDY & BACON LLP  
Jessica L. Grant (CA SBN 178138)  
2 555 Mission Street Suite 2300  
San Francisco, California 94105  
3 Telephone: 415.544.1900

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Justin Kareem Rezkalla (CA SBN 347603)  
6 Marcus Kennedy-Grimes (CA SBN 349912)  
425 Market Street  
7 San Francisco, California 94105-2482  
Telephone: 415.268.7000

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Tamara Wiesebron (CA SBN 338967)  
10 250 West 55th Street  
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11 Telephone: 212.468.8000

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19 CHRISTINE CAPELOUTO; PERLA  
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22 v.

23 SNAP INC.,

24 Defendant.

Case No. 22STCV33500

**MEMORANDUM OF POINTS &  
AUTHORITIES IN SUPPORT OF  
DEFENDANT SNAP INC.'S MOTION  
FOR SANCTIONS PURSUANT TO  
C.C.P. § 128.7**

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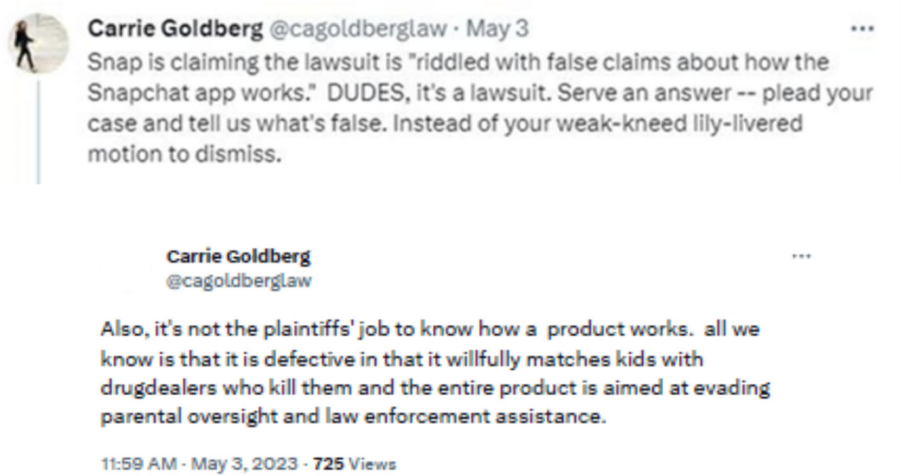
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1           **I. INTRODUCTION**

2           The underlying facts of this case are tragic. Criminal drug dealers sold fentanyl-laced  
3 pills that poisoned Plaintiffs’ family members. Plaintiffs claim that Snap is responsible for their  
4 deaths and injuries. Given the seriousness of the allegations, California Civil Procedure § 128.7’s  
5 requirement that counsel conduct a reasonable inquiry into the factual basis of their allegations is  
6 critical. The Second Amended Complaint (“SAC”), however, is filled with baseless allegations  
7 about how the Snapchat app works and how Snap interfaces with law enforcement, all of which  
8 are provably false.<sup>1</sup>

9           Plaintiffs’ counsel has publicly stated that it is not their responsibility to conduct a  
10 reasonable inquiry prior to filing their case or after they are alerted to the falsehoods it contains.<sup>2</sup>



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19           Plaintiffs’ counsel is wrong. Under C.C.P. § 128.7, when making allegations about how Snapchat  
20 works or how Snap conducts its business, Plaintiffs’ counsel has an obligation to ensure that their  
21 allegations are based in fact, and a continuing obligation to correct allegations that they initially  
22 pleaded in good faith but later learn to be false. Because Plaintiffs have failed to comply with  
23 their obligations here, Snap requests sanctions under C.C.P. § 128.7, including ordering removal  
24 of the false statements in the SAC.

25  
26  
27 <sup>1</sup> The paragraphs and allegations at issue are set forth in Appendix A hereto.

28 <sup>2</sup> The excerpted Tweet was available at the following link as of the date of this filing:  
<https://twitter.com/cagoldberglaw/status/1653791502500343809?s=20>

1                   **II.     RELEVANT BACKGROUND**

2                   **A.     Despite Having Years to Craft the SAC, It Contains Numerous False**  
3                   **Allegations.**

4                   This is not a case in which Plaintiffs lacked sufficient time to conduct an investigation  
5 before filing their complaint. In a December 2021 pre-filing demand letter, Plaintiffs’ counsel  
6 gave notice of these claims. Ten months later, in October 2022, Plaintiffs filed their initial  
7 Complaint. Following the initial status conference in January 2023, the Court gave Plaintiffs  
8 until April 2023—a full three months—to file the First Amended Complaint (“FAC”). In May  
9 2023, Snap sent a letter to Plaintiffs’ counsel identifying false allegations within the FAC and  
10 providing an opportunity to withdraw the allegations to avoid this motion practice. (Declaration  
11 of J. Alexander Lawrence ¶ 2, Ex. A.) Plaintiffs’ counsel responded by letter, refusing to make  
12 corrections except with respect to one of the issues raised. (Lawrence Decl. ¶ 3, Ex. B.) In a  
13 further attempt to avoid motion practice, Snap’s counsel subsequently met and conferred with  
14 Plaintiffs’ counsel by telephone about these topics. (*Id.* ¶ 3.)

15                   After a federal district court dismissed with prejudice a complaint based on similar  
16 theories—and criticized plaintiff’s counsel for making similarly unfounded allegations about the  
17 operation of Snapchat, *see L.W. v. Snap Inc.*, 2023 WL 3830365 (S.D. Cal. June 5, 2023)—Snap  
18 brought this to Plaintiffs’ counsels’ attention so that changes could be made before Snap was  
19 forced to file another motion for sanctions based on false allegations. (Lawrence Decl. ¶ 4, Ex.  
20 C.) Plaintiffs’ counsel then provided a proposed SAC addressing some of their false allegations;  
21 but the proposed amendments doubled down on most of the false allegations, while also  
22 proposing to add ten pages of extraneous and irrelevant allegations. (Lawrence Decl. ¶ 5, Ex. D.)  
23 Snap’s counsel alerted Plaintiffs’ counsel that because of this, the proposed SAC would still  
24 necessitate a motion for sanctions. (Lawrence Decl. ¶ 6, Ex. E.) Nevertheless, recognizing the  
25 judicial policy in favor of liberally permitting amendments to pleadings at early stages of  
26 litigation, Snap agreed to join Plaintiffs in stipulating to the filing of the SAC. (*Id.* ¶ 9.)

26                   **B.     False Allegations in the Complaint Warrant Sanctions**

27                   Despite Plaintiffs having ample time to make a reasonable inquiry into their claims, the  
28

1 SAC is replete with false allegations. The basis of this motion focuses on five false allegations:  
2 (1) Snap fails to cooperate with law enforcement, (2) Snap advertises illegal drugs to minors,  
3 (3) Snapchat’s Quick Add feature “affirmatively connects” minors to drug dealers because they  
4 frequented the same locations and based on shared interests and search history, (4) Snapchat’s  
5 Snap Map feature does the same by providing drug dealers with minor users’ locations, and  
6 (5) that Snapchat’s My Eyes Only feature can “effectively self-destruct” user content. (*See*  
7 Appendix A.) As detailed below, each of these allegations is provably false.

8 The truth or falsity of the allegations have no impact on Snap’s Demurrer. Taking all of  
9 the allegations as true, Plaintiffs’ SAC should be dismissed under the law. Nonetheless, seeking  
10 to cast Snap as a bad actor, Plaintiffs’ recently-filed Opposition to the Demurrer doubles down on  
11 these false and inflammatory allegations, including that “Snap actively interfered with law  
12 enforcement,” and that “Snapchat’s artificial intelligence targets young users with drug  
13 advertisements.” Breaking the bounds of zealous advocacy, Plaintiffs go so far as to claim that  
14 “Snap encouraged and enabled these crimes, then drove the metaphorical getaway car.”

15 Plaintiffs’ counsels’ refusal to correct their complaint after the falsity of these allegations  
16 were brought to their attention is troubling, and their continued reliance on the allegations even  
17 more so. Snap served this Motion on August 30, 2023. (Lawrence Decl. ¶ 10, Exs. G, H.)  
18 Pursuant to C.C.P. § 128.7, Plaintiffs had 21 days to withdraw the false and unsubstantiated  
19 allegations at issue. Because they did not, Snap had no choice but to file this Motion.

### 20 **III. LEGAL STANDARD**

21 California law imposes a responsibility on attorneys to ensure that a complaint’s  
22 allegations have or are likely to have evidentiary support. C.C.P. § 128.7(a)(3) provides that by  
23 “signing, filing, submitting, or later advocating . . . a pleading,” an attorney is certifying to have  
24 made a “reasonable inquiry.” This inquiry is meant to ensure that “[t]he allegations and other  
25 factual contentions have evidentiary support or, if specifically so identified, are likely to have  
26 evidentiary support after a reasonable opportunity for further investigation or discovery.” *Id.*

27 A court may impose sanctions if a pleading is without legal basis or “not well grounded in  
28



1 fact.” *Peake v. Underwood*, 227 Cal. App. 4th 428, 440 (2014) (quoting *Guillemin v. Stein*,  
2 104 Cal. App. 4th 156, 167 (2002); C.C.P. § 128.7(c).) In the face of contrary evidence, “a  
3 plaintiff’s attorney cannot ‘just cling tenaciously to the investigation [] done at the outset of the  
4 litigation and bury [their] head in the sand.’” *See, e.g., Bucur v. Ahmad*, 244 Cal. App. 4th 175,  
5 190 n.18 (2016) (noting that the “attorney must take into account the adverse party’s evidence”  
6 encountered after filing). California courts have held that “even though an action may not be  
7 frivolous when it is filed, it may become so if later-acquired evidence refutes the findings of a  
8 prefiling investigation and the attorney continues to file papers supporting the client’s claims.”  
9 *Peake*, 227 Cal. App. 4th at 441 (citing *Childs v. State Farm Mut. Auto. Ins. Co.*, 29 F.3d 1018,  
10 1025 (5th Cir. 1994)).<sup>3</sup>

11 If a reasonable attorney would agree that an allegation is “totally and completely without  
12 merit,” it is “objectively unreasonable” and consequently sanctionable pursuant to C.C.P. § 128.7.  
13 *Peake*, 227 Cal. App. 4th at 440. Bad faith is not required. *Guillemin*, 104 Cal. App. 4th at 167.  
14 Where submitted papers are factually or legally frivolous, sanctions are warranted. *Id.*

#### 15 IV. ARGUMENT

##### 16 A. The SAC’s Baseless Allegations Warrant C.C.P. § 128.7 Sanctions.

##### 17 1. Allegations About Snapchat’s Supposed Lack of Cooperation with 18 Law Enforcement Are False.

19 Plaintiffs allege that Snap has failed to cooperate with law enforcement and leaves no  
20 evidence of drug transactions. (SAC ¶¶ 164, 264, 277, 942.) These allegations are not only  
21 inflammatory, they are also false.

22 Snap expends significant resources in its efforts to keep Snapchat users safe on the  
23 platform. (Declaration of Rachel Hochhauser ¶ 2.) It takes a proactive role in engaging and  
24 cooperating with law enforcement, including working with law enforcement to respond to legal  
25 process seeking information, educating law enforcement officers on the data and tools Snap has

---

26  
27 <sup>3</sup> Because C.C.P. § 128.7 is modeled after Rule 11 of the Federal Rules of Civil Procedure,  
28 “federal case law construing revised rule 11 is persuasive authority with regard to the meaning of  
section 128.7.” *Cromwell v. Cummings*, 65 Cal. App. 4th Supp. 10, 14 n.6 (1998).

1 available to them, and proactively referring drug-related content and accounts to law enforcement  
2 or prosecutors' offices. (*Id.* ¶ 3.) Snap actively educates law enforcement on the tools and data  
3 Snap makes available to them. (*Id.* ¶ 9-10.) Snap does this by publishing a comprehensive Law  
4 Enforcement Guide detailing information available to law enforcement, Snap's notice policies,  
5 and even sample language for legal process requests and by hosting an annual summit catered to  
6 training law enforcement on how to effectively use Snap's tools to catch drug dealers and bring  
7 them to justice. (*Id.*) In the case of proactive referrals, Snap's Trust and Safety team conducts a  
8 thorough review of offending content on Snapchat, and where Snap's team identifies illicit  
9 content that warrants elevating to the Drug Enforcement Agency's (DEA) attention, it preserves  
10 the associated accounts' records and forms detailed reports that it then shares with the DEA. (*Id.*  
11 ¶ 11.)

12 Plaintiffs' suggestions that Snap frustrates law enforcement efforts, or that it deletes all  
13 evidence of crimes, are baseless. Snap routinely provides law enforcement valuable data and  
14 information for solving crimes upon receipt of valid legal process. (*Id.* ¶¶ 5-6.) While private  
15 messages sent through Snapchat are ephemeral by default, other user information can be helpful  
16 evidence for criminal investigations. Upon the issuance of valid legal process compliant with  
17 applicable laws, including the Stored Communications Act, law enforcement can obtain account  
18 information, communications metadata, geolocation content, and other preserved information that  
19 can be key evidence in the prosecution of drug dealers. (*Id.*)

20 Public records in connection with several of opposing counsels' own clients show the  
21 types of information that Snap makes available to law enforcement. (*See* Lawrence Decl. ¶¶  
22 12-15, Exs. I-L.) In each of those instances, Snap responded to law enforcement requests for  
23 information by providing data that proved critical to criminal investigations of drug dealers. (*Id.*).  
24 Public records reveal many more examples where Snap-provided data helped law enforcement  
25 secure an arrest or conviction.<sup>4</sup>

26 \_\_\_\_\_  
27 <sup>4</sup> *See, e.g.,* Lawrence Decl. ¶¶ 16-18, Exs. M-O, *Damning Snapchat video shows Alex Murdaugh*  
28 *wearing different clothes one hour before murders of wife and son*, THE INDEPENDENT (Feb. 2,  
2023); Marlene Lenthang, *Son of controversial Florida data scientist charged with making*

1                                   **2.       Allegations About Snapchat Advertising Are False.**

2           Plaintiffs falsely allege that Snap directs and recommends drug advertising to minor users.  
3 (SAC ¶¶ 157, 307, 349, 382, 410, 411, 413, 414, 442, 444, 496, 529, 568, 597, 603, 628, 636,  
4 643, 713, 935, 942, 963.)

5           Snap does not advertise illegal drugs to any Snapchat users, let alone to minors.  
6 (Declaration of Althea Tupper ¶ 5.) Snap’s publicly available advertising policies “prohibit the  
7 depiction of illegal drug use or the recreational use of pharmaceuticals” in its advertising. (*Id.* ¶  
8 ¶ 6.) To enforce this prohibition, Snap’s advertisement review process includes both a machine  
9 and manual review of *all* proposed advertisements on Snapchat before they are ever posted. (*Id.* ¶  
10 7.) If Snap’s advertising team detects an advertisement submission that violates this policy, they  
11 reject the advertisement and it is never seen by a user. (*Id.*)

12           Plaintiffs purposefully mischaracterize third party users’ content as Snap “advertising.”  
13 After Snap informed Plaintiffs of the falsity of these allegations on advertising, Plaintiffs revised  
14 a single allegation in paragraph 157 to define the word “advertisement” to refer to “Snapchat drug  
15 dealer menus and related Stories,” not Snap’s formal advertising. (SAC ¶ 157.). But this  
16 definition is nonsensical, and a reader at paragraphs 713 or 963, for example, cannot be expected  
17 to remember the word “advertisement” or “ad” refers to the incomprehensible definition tucked  
18 away in a description hundreds of paragraphs earlier in the SAC. While some Snapchat users will  
19 post illicit drug content to their own private stories or solicit the purchase of illegal drugs in  
20 violation of Snap’s policies, this is no basis to allege that *Snap* advertises or promotes  
21 drug-related content. Any suggestion that Snap is paid to “advertise” illegal drugs or uses its  
22 advertising tools in connection with the promotion of illegal drug-related content is false.  
23 Plaintiffs clearly seek to make the SAC read as if Snap permits such illicit advertisements (and  
24 profits from them) while skirting sanctions from plainly making that knowingly false allegation.  
25 That cannot stand and these mischaracterizations should be removed from the SAC.

26  
27 \_\_\_\_\_  
28 *alleged school threats*, NBC NEWS (Apr. 7, 2023); Gabi Rodriguez, *Pompano Beach Man Arrested on Child Porn Charges After Tips From Snapchat*, NBC MIAMI (Apr. 26, 2023).



1 Instagram, Twitter, etc.). (*Id.* ¶ 11.)

2 Beyond misrepresenting the purpose of Quick Add, Plaintiffs’ complaint makes a number  
3 of false statements about how Quick Add actually works. First, Plaintiffs allege that Quick Add  
4 recommends users based on “similar interests” or “followed . . . accounts,” and that Snap used  
5 “geographical or gender and age demographics” to make friend recommendations.” (SAC ¶ 135.)  
6 This is wrong. At all times relevant to this action, Quick Add did not enable users to find minors  
7 they do not know through age, list of interests, location, hometown, pictures, or other  
8 demographics. (Srivastava Decl. ¶¶ 11, 14-15.) Thus, contrary to the suggestion in the SAC, a  
9 drug dealer cannot stand in front of a high school and use Quick Add to get friend suggestions for  
10 the students inside. (*Id.* ¶ 14.)

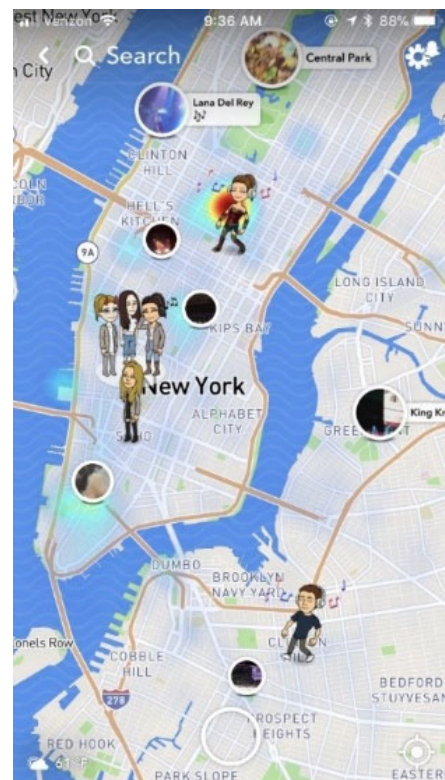
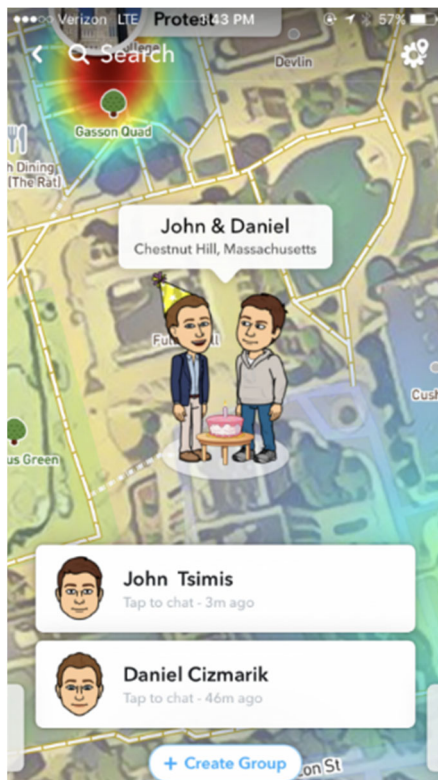
11 Plaintiffs are also wrong when they allege that Snap uses a Snapchat user’s search terms  
12 to make Quick Add friend suggestions. (*Id.* ¶ 16; SAC ¶¶ 275-76.) Snap search enables users to  
13 search for other users to add as friends, find places of interest, explore Snapchat lenses to overlay  
14 on their snaps, and discover more content and features within the app. (Srivastava Decl. ¶ 16.)  
15 Snap does not make Quick Add friend suggestions based on users’ search terms (whether  
16 drug-related searches or any other searches).<sup>6</sup> (*Id.*) So again, the allegation that a drug dealer  
17 could express a shared interest in a popular teen pop star with the hopes of connecting with  
18 teenagers is false. (*Id.* ¶ 15.) Nor is it correct that Snapchat users who express interest in drugs  
19 on Snapchat are then recommended to drug dealers or other Snapchat users who express a similar  
20 interest; Snapchat profile pages do not even contain a section for users to list their interests. (*Id.*  
21 ¶¶ 15-16.) Earlier this year, a federal judge found similar allegations about Snapchat’s Quick  
22 Add tool to be “tenuous and confounding,” in another lawsuit that was subsequently dismissed.  
23 *L.W. v. Snap Inc.*, 2023 WL 3830365, at \*10.

24  
25  
26 <sup>6</sup> Nor does Snap use drug-related searches to suggest drug-related material to users. On the  
27 contrary, Snap blocks search results for drug keywords and slang. And if a user searches for  
28 drug-related content, Snap displays educational anti-drug and mental wellness content developed  
by expert organizations instead. (Srivastava Decl. ¶ 16.) It does not, as Plaintiffs falsely allege,  
recommend drug-related content and connections to searchers. (*See* SAC ¶¶ 273-76.)

1                                   **4. Allegations About Snapchat’s “Snap Map” Feature Are False.**

2                                   Plaintiffs similarly make false statements about Snapchat’s “Snap Map” feature. Snap  
3 Map gives users the ability to share their location with friends, save favorite locations, and view  
4 posted snaps from other users that are tagged at specific events or locations. (Declaration of Alex  
5 Farivar ¶ 3.) The SAC alleges that Snap Map “affirmatively connects” predatory drug dealers to  
6 minor-aged children. (SAC ¶¶ 49, 160, 162, 163, 166.) This is baseless.

7                                   By default, Snap Map will *not* share a user’s location at all; instead, to share such  
8 information, users have to *affirmatively* elect to share their location in two instances: (1) by  
9 affirmatively sharing their location with the Snapchat app through their device location sharing  
10 settings and (2) by *affirmatively* choosing to share their location with their friends, or a subset of  
11 friends, in the Snapchat app. (*Id.* ¶ 4.) Snap does *not even provide the option* for users to share  
12 their location with strangers. (*Id.* ¶ 10.) Only if a user consents to share their location with a  
13 friend can that friend can see the user’s last active location, or the location from which they were  
14 last actively using Snapchat, and the time that has elapsed from when the user’s location was last  
15 updated. (*Id.* ¶¶ 4-6.)



1 A user cannot, and has never been allowed to, share their location with everyone on  
2 Snapchat. (*Id.*) Rather, Snap limits location-sharing services to people who fall within the  
3 category of (“My Friends,”) or the more narrow subsets of (“My Friends Except”) and (“Only  
4 These Friends.”) (*Id.* ¶ 5.) Even the most permissive sharing setting allows users to share their  
5 location only with their existing bi-directional friends. (*Id.*) Indeed, location sharing on Snap  
6 Map can *enhance* user safety, such as by letting friends confirm that another friend got to their  
7 destination safely. (*Id.* ¶ 7.)

8 Snap Map contains other safety features as well. Even if a user decides to post and tag a  
9 snap to a general location such as a sporting event or concert, Snap conducts an automated  
10 quality-review process for illicit content. (*Id.* ¶ 8.) If this review discovers illicit content, the  
11 snap is not posted to Snap Map. (*Id.*) Users can also report inappropriate content, which results  
12 in an automated and manual review. (*Id.*) Material that violates Snap’s Terms of Service or  
13 Community Guidelines discovered through this reporting process is taken down. (*Id.*)

14 Finally, Snapchat does not enable dealers to find minor users through Stories posted to  
15 Snap Map. (*Id.* ¶ 10.) Snapchat does not disclose usernames associated with Stories on Snap  
16 Map unless the user has created a Public Profile, and Snap does not permit users under 18 to  
17 create a Public Profile. (*Id.* ¶ 9.) This means *that any snap posted to Snap Map by a user under*  
18 *18 is necessarily anonymous.* (*Id.*) Snap Map therefore cannot be used by a stranger to either  
19 identify the username of another Snapchat user under 18 or reach out to another user under 18  
20 directly.<sup>7</sup> (*Id.* ¶¶ 9, 11 n.3.) Even for adults, usernames associated with snaps posted to Snap  
21 Map are not viewable by all users unless the user has a Public Profile, and, by default, Snapchat  
22 profiles are set to “Non-Public.”<sup>8</sup> (*Id.*) All these facts about Snap Map are verifiable by using  
23 Snapchat and viewing Snap’s website at <https://map.snapchat.com/>. (*Id.* ¶ 11.)

24 \_\_\_\_\_  
25 <sup>7</sup> It is possible that some Snapchat users with Non-Public Profiles could take intentional actions to  
26 share their own usernames by, for example, typing their own username as text on one of their  
27 snaps, but simply posting a snap without taking such intentional actions will not attribute the snap  
28 to a particular user, display their username, or provide the ability for strangers to communicate  
with them or add them as a friend. (Farivar Decl. ¶ 12 n.3.)

<sup>8</sup> To date, only around 5% of all accounts on Snapchat have opted for a Public Profile. (*Id.* ¶ 9  
n.1.)

1                                   **5. Plaintiffs’ Allegation That Snapchat’s “My Eyes Only” Feature**  
2                                   **Self-Destructs Unless Users Share Their Passcodes Is False.**

3                                   Plaintiffs falsely allege that Snapchat’s “My Eyes Only” feature will “effectively  
4 self-destruct” if a user does not tell their parents or others their access code. (SAC ¶ 933.)

5                                   The My Eyes Only feature is an encrypted photo/video vault that gives users the option to  
6 store photos and videos in a passcode-protected storage space on Snapchat. (Brown Decl. ¶ 2.)  
7 My Eyes Only is designed to provide users with the option of increased privacy and data security.  
8 (Brown Decl. ¶ 3.) In practice, the feature provides added protection from unwanted third parties  
9 who may gain access to a user’s account without authorization (such as by obtaining their  
10 credentials, taking their phone without permission, or otherwise hacking their account). (*Id.* ¶ 3.)  
11 In such scenarios, users’ most private snaps and stories would be protected by the My Eyes Only  
12 feature. (*Id.*) My Eyes Only is not enabled by default; a user must affirmatively enable it and  
13 create a passcode to use the feature. (*Id.* ¶ 4.)

14                                   Snap does not affirmatively destroy any data in My Eyes Only. A user does not  
15 “effectively self-destruct” their My Eyes Only data by not telling others their access code. There  
16 is no function, initiated by the user, Snap, or any other, by which data in a user’s My Eyes Only is  
17 deleted as a product of the user’s failure to share their passcode with others. Of course, if a user  
18 forgets their My Eyes Only passcode, they will not be able to access the content inside. (*Id.* ¶ 6.)  
19 The user can choose to create a new passcode. (*Id.*) A user who forgets his or her password, and  
20 then completes all the necessary steps to create a new passcode and reset their My Eyes Only will  
21 affirmatively delete the contents of their My Eyes Only. (*Id.*) Users are made aware of this and  
22 must affirmatively consent before doing so. (*Id.*) The reason Snap cannot help users recover  
23 passwords is because it cannot access the content within the feature due to its encrypted nature,  
24 not for any nefarious purpose. (*Id.* ¶ 5.) All of this can be verified by simply using Snapchat.  
25 (*Id.* ¶ 8.)

26                                   **B. Plaintiffs’ Counsel Did Not Conduct an Objectively Reasonable Inquiry**  
27                                   **Before Making the False Allegations.**

28                                   Plaintiffs’ counsels’ failure to conduct a “reasonable inquiry” before signing and filing the



1 SAC violates C.C.P. § 128.7. *See, e.g., Peake*, 227 Cal. App. 4th at 441, 449 (finding sanctions  
2 properly imposed against plaintiff who brought claims “without any reasonable belief” that they  
3 were factually supported). Counsel failed to conduct such an inquiry and/or failed to take into  
4 account Snap’s evidence with respect to each category of allegations referenced in Argument  
5 sections A(1) - (5) above:

6 **Snap’s Cooperation with Law Enforcement.** In addition to Plaintiffs’ counsel having  
7 evidence of Snap’s cooperation with law enforcement in their own clients’ cases (*see* Lawrence  
8 Decl. ¶¶ 12-15, Exs. I-L), a reasonable inquiry into Snap’s website, which Plaintiffs cite  
9 throughout the SAC,<sup>9</sup> would provide clear descriptions of Snap’s robust efforts to cooperate with  
10 law enforcement. (Hochhauser Decl. ¶¶ 4-5, 9-10.) And a simple web search would have  
11 unearthed the many instances where Snap-provided data helped law enforcement obtain an arrest  
12 or conviction. Either Plaintiffs’ counsel chose not to inquire into these, or they did and filed their  
13 false allegations about Snap’s lack of law enforcement cooperation regardless.

14 **Snapchat Advertising.** Reviewing advertising on Snapchat for any amount of time  
15 shows that Snap does not recommend drug-related advertisements to its users. And had  
16 Plaintiffs’ counsel reviewed Snap’s public advertising policies or viewed advertisements on  
17 Snapchat, they would see that Snap prohibits advertisement of illegal drugs on its platform.  
18 (Tupper Decl. ¶¶ 6, 8.)

19 **Quick Add.** Had they conducted a reasonable inquiry, Plaintiffs’ counsel would have  
20 been on notice that Quick Add has never allowed adults to target or connect with minors based on  
21 geographic location (i.e. because they visit the same locations), shared interests, or the results of  
22 searches.<sup>10</sup> Plaintiffs’ counsels’ recent “tests” do not show otherwise.<sup>11</sup> Moreover, Plaintiffs’  
23 reliance on answers to questions posed to the My AI chatbot on Snapchat do not provide support.

24 \_\_\_\_\_  
25 <sup>9</sup> *See, e.g., SAC* ¶¶ 172 n.65, 255 n.102, 285 n.115.

26 <sup>10</sup> Plaintiffs’ continued blind reliance on factually unsupported blog posts, despite Snap bringing  
27 the falsity of such claims to Plaintiffs’ attention (*see* Lawrence Decl. ¶ 2, Ex. A, ¶ 6, Ex. E), is  
28 both unreasonable and sanctionable. (*See SAC* ¶¶ 134 n.53, 135 n.54.)

<sup>11</sup> Snap has not been able to replicate the results shown by Plaintiffs’ “test.” Snap twice requested  
Plaintiffs provide the usernames of the “test” accounts so that Snap could investigate how they  
obtained the stated results, but Plaintiffs refused to provide them. (Lawrence Decl. ¶ 8, Ex. F.)

1 (SAC ¶¶ 139-40.) As attorneys should know by now, it is not reasonable to rely on chatbots for  
2 accurate information.<sup>12</sup> If that was not already clear, Snap warns users that no one should rely on  
3 the answers provided by the My AI chatbot.<sup>13</sup> Even Plaintiffs’ counsels’ *own website* recognizes  
4 that the Snapchat chatbot cannot be relied upon to provide accurate answers to questions.<sup>14</sup>

5 **Snap Map.** Had Plaintiffs’ counsel properly inspected Snap Map, they would have seen  
6 that Snap Map does not allow users to share their locations with anyone outside of their friends.  
7 And had Plaintiffs’ counsel simply browsed Snap Map for even a brief time, they would have also  
8 seen that Snap does not affirmatively identify the usernames of posters without Public Profiles  
9 (which, as Snap’s public policies clearly describe, are not granted to users under the age of 18)  
10 and that a user cannot simply add the poster as a friend or message them.

11 **My Eyes Only.** Testing Snapchat’s My Eyes Only feature makes clear that Snap does not  
12 “incinerate” their content. Plaintiffs’ counsel mischaracterized this feature as a “self-destructing”  
13 data vault, casting blame on Snap for a user’s own decision to erase their content. (SAC ¶ 933.)

14 **C. Plaintiffs’ Counsel Further Refused to Withdraw Allegations After Being Put**  
15 **on Notice of Their Falsity.**

16 Even if Plaintiffs’ counsel were unaware of these falsehoods at the time they filed the SAC,  
17 C.C.P. § 128.7 imposes a continuing duty to withdraw or amend these false allegations upon  
18 discovery of their falsity. *See, e.g., Peake*, 227 Cal. App. 4th at 441; *Murphy v. Yale Materials*  
19 *Handling Corp.*, 54 Cal. App. 4th 619, 622 23 (1997). This includes information received from  
20 Snap. And even if the SAC mixes false allegations with those that have some reasonable basis, this  
21 does not excuse Plaintiffs’ counsel from sanctions. *See Townsend v. Holman Consulting Corp.*,

22  
23 <sup>12</sup> *See Mata v. Avianca, Inc.*, 2023 WL 4114965 (S.D.N.Y. June 22, 2023) (sanctioning attorney  
for reliance on ChatGPT in connection with legal submissions).

24 <sup>13</sup> *See* Lawrence Decl. ¶ 21, Ex. R, What is My AI on Snapchat and how do I use it? (“My AI’s  
25 responses may include biased, incorrect, harmful, or misleading content. Because My AI is an  
evolving feature, you should always independently check answers provided by My AI before  
26 relying on any advice.”).

27 <sup>14</sup> *See* Lawrence Decl. ¶ 22, Ex. S, Social Media Victims Law Center, Is Snapchat Safe for Kids?  
28 (“Snapchat’s AI has raised a series of concerns for parents and users. . . . AI sounds incredibly  
realistic and trustworthy. . . . It cannot, however, reliably provide accurate information. . . . It  
may make up facts, particularly statistics, or provide biased information.”).

1 929 F.2d 1358, 1363 (9th Cir. 1990) (noting that a pleader does not avoid sanctions where the  
2 complaint contains a mix of frivolous and non-frivolous allegations).

3 Here, counsel for Snap alerted Plaintiffs’ counsel to the falsity of their allegations by letter  
4 on May 22, 2023. (Lawrence Decl. ¶ 2.) Snap’s counsel then met and conferred with Plaintiffs’  
5 counsel and requested the false allegations be withdrawn or amended. (*Id.* ¶ 3.) Plaintiffs’ counsel  
6 declined to do so. Plaintiffs’ counsel responded with a proposed SAC doubling down on most of  
7 the FAC’s false allegations and proposing an additional ten pages of extraneous and irrelevant  
8 allegations. (*Id.* ¶ 5.) Plaintiffs filed the SAC on July 20, 2023. As required by statute, Snap then  
9 provided this motion and accompanying declarations to Plaintiff and provided them the requisite  
10 safe harbor period. Plaintiffs again chose not to make any changes to their Complaint. Plaintiffs’  
11 continued refusal to revise their allegations despite multiple opportunities to do so justifies C.C.P.  
12 § 128.7 sanctions. *See, e.g., Bucur*, 244 Cal. App. 4th at 190 n. 18 (allegations may become  
13 frivolous if “later acquired evidence refutes” them and plaintiffs “must take into account the adverse  
14 party’s evidence”).

15 **D. The Court Should Issue Sanctions, Including Dismissal of the SAC.**

16 The Court has “broad discretion” to impose nonmonetary sanctions. *See* C.C.P. § 128.7,  
17 subd. (d); *Peake*, 227 Cal. App. 4th 428 at 441 (affirming trial court’s grant of nonmonetary  
18 sanctions per Section 128.7 under abuse of discretion standard); *see e.g., Sepulveda Inv. Servs. v.*  
19 *Butler*, 2019 WL 2178536, at \*4 (Cal. Super. May 13, 2019); *The Inland Oversight Committee v.*  
20 *Yates*, 2015 WL 13692246, at \*11 (Cal. Super. Oct. 2, 2015). The circumstances here warrant  
21 sanctions.

22 The Court should order Plaintiffs to remove the false allegations from the SAC. *See*  
23 *Peake*, 227 Cal. App. 4th 428 at 441 (affirming trial court’s order dismissing frivolous claims  
24 under Section 128.7); *Carter v. Indy Mac Bank FSB*, 2013 WL 12140538, at \*6 (Cal. Super. Feb.  
25 1, 2013) (“Directives of a nonmonetary nature’ may include striking the offending pleading[.]”);  
26 *see also Hunt v. Sunny Delight Beverages Co.*, 2018 WL 6786265, at \*4 (C.D. Cal. Dec. 18,  
27 2018) (“Striking the entire First Amended Complaint is appropriate because [p]laintiffs’  
28

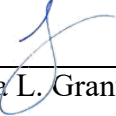
1 sanctionable misrepresentations taint the entire pleading”).

2 **V. CONCLUSION**

3 For the foregoing reasons, the Court should issue C.C.P. § 128.7 sanctions, dismiss the  
4 SAC, require that Plaintiffs correct the false allegations Snap identifies in this Motion in any  
5 subsequent complaint.

6  
7 Dated: September 25, 2023

SHOOK HARDY & BACON LLP

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9 By:   
10 \_\_\_\_\_  
11 Jessica L. Grant  
12 *Attorneys for Defendant*  
13 SNAP INC.

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**Appendix A**

**FALSE ALLEGATIONS AT ISSUE:**

<b>CITATION</b>	<b>ALLEGATION</b>
SAC ¶ 49	<ul style="list-style-type: none"><li>• Snap’s Quick Add and Snap Map features affirmatively connect and assist in the facilitation of connections between minors and predatory adults . . . .</li></ul>
SAC ¶ 134	<ul style="list-style-type: none"><li>• For example, and according to at least one third-party source, criteria Snap uses to connect its users includes . . . If you constantly post Stories about a particular topic, [Snapchat] will recommend adding users who are interested in the same thing.</li><li>• For example, and according to at least one third-party source, criteria Snap uses to connect its users includes . . . Assuming you’ve allowed access to your location, [Snapchat] could suggest people you might’ve met at places you frequent.</li></ul>
SAC ¶ 135	<ul style="list-style-type: none"><li>• At all times relevant, Quick Add also employed an algorithm to make additional friend recommendations. As third-party sources explain, the Quick-Add algorithm would recommend and connect strangers if, for example, it detected that the two users had similar interests or followed the same accounts.</li><li>• Likewise, Snap is alleged to have utilized data it collects, such as geographical or gender and age demographics, to make a “friend” recommendations to its users as well.</li></ul>
SAC ¶ 157	<ul style="list-style-type: none"><li>• Though, on information and belief, Snap likewise and at times relevant to this Complaint was targeting young users – including Plaintiffs’ children, all of whom were minors when their Snapchat use began – with paid advertisements promoting harmful, substance-related products, such as e-cigarettes.</li></ul>
SAC ¶ 160	<ul style="list-style-type: none"><li>• Snap added a feature to Snapchat called “Snap Map,” which allows users to share their location with their followers (and the public) on an activity-level-based, color-coded heatmap. At all times relevant, the Snap Map product was available to all users, including minors.</li></ul>
SAC ¶ 162-63	<ul style="list-style-type: none"><li>• For example, Snap Map allows drug dealers to find young users in their vicinity through Stories on the Snap Map and reach out directly, as described above. If a Snapchat Drug Dealer is in a particular area, the drug dealer can identify Stories that correspond with their target customers (i.e. users who post and appear from their post and/or Bitmoji to be young). Plaintiffs tested these allegations, and the user easily was able to locate minor users via Snap Map in this manner, identify them from their Story as minors, obtain their Snapchat usernames via text overlay, search for the username, and have Snap direct them to a screen that would have then allowed them to try to add the minors as a “friend”</li><li>• Moreover, because of Snap’s products, designs, and programming decisions, these new accounts can then not only identify these users</li></ul>

CITATION	ALLEGATION
	as young children but can essentially find out where they have been and, in some cases, how to find them in real life. Further, after identifying a potential customer, the drug dealer can simply send a friend request or message directly with the user and advertise through Snap’s other tools (and with Snap’s recommendation technologies promoting such posts to increase engagement).
SAC ¶ 164	<ul style="list-style-type: none"> <li>[A] dealer will post a story and then tag the story to a specific location on Snap Map which typically includes a menu of available drugs and prices. Snapchat users can then view the story—including ones that are not already “friends” with the dealer. The Story will often include the Snapchat drug dealers QR code, so the viewer can instantly add the dealer as a friend. After the user sends a friend request, the dealer and the user can communicate one-on-one via direct message—and both the original Story and the direct message will disappear within 24 hours, leaving no evidence of the transaction.</li> </ul>
SAC ¶ 166	<ul style="list-style-type: none"> <li>In short, the Snap Map product also allows drug dealers, once connected to a minor user, to verify and find that user’s location, making drop-offs and pick-ups simple, convenient, and most importantly, difficult to trace.</li> </ul>
SAC ¶ 264	<ul style="list-style-type: none"> <li>On information and belief, Snap was not reasonably cooperating with law enforcement or making such cooperation its top priority.</li> </ul>
SAC ¶ 276	<ul style="list-style-type: none"> <li>Based upon Kurt’s unsolicited contact from a drug dealer, Plaintiffs allege and believe that when a Snapchat user searches for drug related terms, Snap’s technologies are collecting and using the fact and/or subject matter of the search to increase engagement. Further, Snap facilitates these drug dealer matches in the case of minor users.</li> </ul>
SAC ¶ 277	<ul style="list-style-type: none"> <li>At all times relevant, Snap engaged in activities that frustrated law enforcement’s efforts to prosecute individuals who utilize Snapchat to sell illegal drugs. First, as evidenced by Snap’s Transparency Reports, told to parents during the April 2021 meeting with Snap executives, and reported by law enforcement in discussions with other parents, Snap at one point was notifying drug dealers when Snap received a subpoena or other legal requests for the drug dealer’s account information, giving them time to alter their actions.</li> </ul>
SAC ¶ 307	<ul style="list-style-type: none"> <li>Snap was directing and recommending drug advertisements to [decedent Neville and other minors]</li> </ul>
SAC ¶ 349	<ul style="list-style-type: none"> <li>Snap was directing and recommending drug advertisements to [decedent Puerta and other minors]</li> </ul>
SAC ¶ 382	<ul style="list-style-type: none"> <li>Snap was directing and recommending drug advertisements to [decedent Johnston and other minors]</li> </ul>
SAC ¶¶ 410,	<ul style="list-style-type: none"> <li>Snap was directing and recommending drug advertisements to</li> </ul>

CITATION	ALLEGATION
411, 413, 414	[decedent Sarantos and other minors]
SAC ¶¶ 442, 444	<ul style="list-style-type: none"> <li>• Snap was directing and recommending drug advertisements to [decedent Norring and other minors]</li> </ul>
SAC ¶ 496	<ul style="list-style-type: none"> <li>• Snap was directing and recommending drug advertisements to [decedent McCarthy and other minors]</li> </ul>
SAC ¶ 529	<ul style="list-style-type: none"> <li>• Snap was directing and recommending drug advertisements to [decedent Capelouto and other minors]</li> </ul>
SAC ¶ 568	<ul style="list-style-type: none"> <li>• Snap was directing and recommending drug advertisements to [decedent Figueroa and other minors]</li> </ul>
SAC ¶¶ 597, 603	<ul style="list-style-type: none"> <li>• Snap was directing and recommending drug advertisements to [decedent Chapman and other minors]</li> </ul>
SAC ¶¶ 628, 636, 643	<ul style="list-style-type: none"> <li>• Snap was directing and recommending drug advertisements to [decedent Robertson and other minors]</li> </ul>
SAC ¶ 713	<ul style="list-style-type: none"> <li>• Snap was directing and recommending drug advertisements to [decedent A.B. and other minors]</li> </ul>
SAC ¶ 723	<ul style="list-style-type: none"> <li>• Snap defectively designed the Snapchat product to . . . connect minor and young adult users to predatory adult users as means of increasing Snap’s engagement and revenue....</li> </ul>
SAC ¶ 725	<ul style="list-style-type: none"> <li>• Snapchat affirmatively connect[s] children to predatory, adult users . . . .</li> </ul>
SAC ¶ 789	<ul style="list-style-type: none"> <li>• [Snapchat’s] product features . . . actively recommended and connected [drug dealers] to particularly susceptible young users (potential new customers, hand selected by Snap itself).</li> </ul>
SAC ¶ 885	<ul style="list-style-type: none"> <li>• Snap connected and helped dealers find vulnerable young customers . . . .</li> </ul>
SAC ¶ 933	<ul style="list-style-type: none"> <li>• Snap doubled down with its “My Eyes Only” product, which serves as a hidden and/or hard to find data vault, which a user can effectively self-destruct by simply not telling their parents and/or law enforcement their access code. This is a product Snap’s social media competitors – companies like Meta, TikTok, and YouTube – have not copied, likely due to the high risk of harm and corresponding lack of public benefit or utility.</li> </ul>
SAC ¶ 935	<ul style="list-style-type: none"> <li>• At all times relevant, Snap knew or should have known of its role and provision of assistance in these illegal drug distribution and advertising activities.</li> </ul>
SAC ¶ 942	<ul style="list-style-type: none"> <li>• Snap was still utilizing its own user recommendation and similar technologies to affirmatively make connections between young users and drug dealers . . . .</li> </ul>

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CITATION	ALLEGATION
	<ul style="list-style-type: none"><li>• [Snap] was not consistently and/or full cooperating with law enforcement, was deleting critical evidence as a matter of product design and routine policy before law enforcement could request it . . .</li><li>• October 26, 2021, Snap testified under oath before Congress that its product is safe and that “the content that appears in Snapchat is appropriate for an age group that is 13 and above,” even though Snap was still directing drug advertisements to children.</li></ul>
SAC ¶ 963	<ul style="list-style-type: none"><li>• [Snapchat’s features connected children] to drug dealers and drug advertisements.</li></ul>