

# 23-1233

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In the **United States Court of Appeals**  
for the **Second Circuit**

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JAMES PAPPAS,

*Lead Plaintiff-Appellant,*

STEVEN BURNHAM, Individually and On Behalf of All Others Similarly  
Situating,

*Plaintiff,*

v.

HOWARD BROWN, individually and on behalf of all others similarly situated,

*Consolidated Plaintiff,*

v.

QUTOUTIAO INC., JINGBO WANG, XIAOLU ZHU, SHAOQING JIANG,  
JIANFEI DONG, OLIVER YUCHENG CHEN, CITIGROUP GLOBAL  
MARKETS INC., DEUTSCHE BANK SECURITIES INC., LEI LI, CHINA  
MERCHANTS SECURITIES (HK) CO., LTD., UBS SECURITIES LLC,  
KEYBANC CAPITAL MARKETS INC., ERIC SILIANG TAN, YONGBO  
DAI, JAMES JUN PENG, FENG LI, CLSA LIMITED, HAITONG  
INTERNATIONAL SECURITIES COMPANY LIMITED, JEFFERIES  
GROUP LLC, LIGHTHOUSE CAPITAL INTERNATIONAL INC.,

*Defendants-Appellees.*

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On Appeal from the United States District Court for the Southern District of  
New York, Case No. 20-cv-6707, Judge Sidney H. Stein

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**APPELLANT'S OPENING BRIEF & SPECIAL APPENDIX**

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**RULE 26.1 DISCLOSURE STATEMENT**

Lead Plaintiff James Pappas (“Plaintiff”) is an individual, not a corporation or other entity mentioned in Fed. R. App. P. 26.1, and thus he has nothing to disclose.

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## JURISDICTIONAL STATEMENT

This appeal is from an August 3, 2023 final judgment of the District Court that disposed of all claims in their entirety. This Court, therefore, has jurisdiction under 28 U.S.C. § 1291. The District Court had subject matter under 28 U.S.C. § 1331, federal question because the Consolidated Class Action Complaint for Violations of the Federal Securities Laws (A-14) (“Complaint”)<sup>1</sup> raised claims under the federal securities laws, 15 U.S.C. §§ 77a *et seq.* Plaintiff’s notice of appeal was filed on September 1, 2023, which was within 30 days of the judgment and so is timely, Fed. R. App. P. 4(a)(1).

## STATEMENT OF ISSUES

1) Did the District Court err by judging Plaintiff’s 1933 Securities Act (“Securities Act” or “1933 Act”) claims under Federal Rule of Civil Procedure (“Rule”) 9(b)’s fraud standard because they “sounded in fraud,” even though the Complaint expressly disclaimed reliance on fraud and affirmatively pled distinct negligence and strict liability claims?

2) If yes, does the Complaint state actionable 1933 Act claims under Rule 8’s “short and plain statement” standard, or if no, under the Rule 9(b) standard?

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<sup>1</sup> References to the Appendix herein are denoted with the abbreviation “A”. Unless otherwise noted, all emphasis has been added, and internal citations have been omitted. Citations to “¶” refer to the Complaint, and capitalized terms that are not defined have the meanings ascribed in the Complaint.

3) In any event, did the District Court err by failing to afford Plaintiff an opportunity to amend the Complaint, even though leave to amend was explicitly requested and amendment would not be futile, as demonstrated by the attached proposed amended complaint (“Proposed Amended Complaint”)?<sup>2</sup>

### STATEMENT OF THE CASE

Plaintiff filed the Complaint alleging federal securities law violations against the Chinese company Qutoutiao Inc. (“QTT”), several of its insiders/directors (the “Individual Defendants”), and the underwriters of QTT’s two public offerings (the “UW Defendants”).<sup>3</sup> On Defendants’ Rule 12(b)(6) motions to dismiss for failure to state a claim, Judge Sidney H. Stein dismissed the case in its entirety. *In re Qutoutiao, Inc. Sec. Litig.*, No. 20-CV-6707 (SHS), 2023 WL 4977499 (S.D.N.Y. Aug. 3, 2023). Although the Complaint alleged both 1) material misstatements and omissions under §§ 11, 12(a)(2), and 15 of the 1933 Act and 2) securities fraud under SEC Rule 10b-5 and §§ 10(b) and 20(a) of the 1934 Securities Exchange Act (the “1934 Act”), Plaintiff appeals only the dismissal of the 1933 Act claims.<sup>4</sup>

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<sup>2</sup> Proposed Amended Complaint attached hereto in the Addendum.

<sup>3</sup> The Individual Defendants include the Director Defendants and the Insider Defendants, except for Xiaolu Zhu.

<sup>4</sup> For ease of reference, Plaintiff has attached the Complaint striking out all paragraphs and allegations not incorporated in the 1933 Act claims hereto in the Addendum.

## **Introduction**

QTT makes money by selling advertisements on its mobile applications, including its flagship QTT App, which is used by millions of people across China. Capturing investors' attention, Defendants reported "rapidly increasing" revenue growth from those sales. To explain that success, they described to investors QTT's lucrative advertising strategy of targeting users in rural, provincial Chinese cities who were starting to earn and spend more disposable income. Defendants assured investors that QTT had robust and effective compliance measures to prevent illicit advertisements "with a high degree of accuracy"—*i.e.*, measures to block ads for unsubstantiated breast or height enhancement products, ads with links to gambling sites, and other ads that violated Chinese laws and regulations and would subject QTT to fines and other penalties that, in turn, would endanger QTT's business model and revenue growth.

QTT's representations proved to be highly convincing to investors, particularly as they were buoyed by the "due diligence" of the UW Defendants, as they contributed to a successful Initial Public Offering ("IPO") in 2018, and a Secondary Public Offering ("SPO") just seven months later. QTT raised \$85.8 million in the IPO and \$31 million in the SPO, and the UW and Individual Defendants made tens of millions of dollars.

However, the IPO and SPO were successful only because the Offering Documents contained 1) numerous statements that were false and misleading and 2) material omissions and half-truths. By the start of this action, QTT's securities had closed at \$2.42 a share on September 17, 2020 – a 65.43% decline from the \$7.00 per share IPO price and a 75.8% decline from the \$10.00 per share SPO price. This was because, notwithstanding Defendants' representations of QTT's obligations to monitor and its measures to prevent illicit advertisements “with a high degree of accuracy,” illegal ads appeared on the QTT App and its other apps. While QTT targeted users in smaller, provincial Chinese cities who were starting to have more disposable income, advertisers selling illicit advertisements knew those users were also less aware of their rights and less likely to report such advertisements. In addition, just months before the IPO, QTT had replaced the ad screening services of the respected Baidu (the Chinese version of Google) by acquiring those of Dianguan, a start-up founded by a related party. This may have “enhance[d QTT's] platform's monetization capabilities,” as Defendants told investors, but it also resulted in an increased failure to censor risky and illegal content from “unqualified” advertisers who had no basis for making health-related and other illicit claims.

QTT's revenue growth could last only as long as Chinese regulators did not detect the illicit advertisements. By July 15, 2020, China's state-controlled

broadcaster had detected and publicly revealed some of the illicit advertisements on QTT's App, and because of those advertisements, by December 16, 2020, QTT was forced to implement "remedial measures ... such as removing misleading or inappropriate advertisements from [its] applications" and reveal that those measures had led its revenues to plummet nearly 20%. These revelations of the truth erased over 80% of QTT's market value, causing investors to lose millions of dollars.

### **Alleged Facts Supporting the 1933 Act Claims**

#### **I. Overview of QTT and Advertising in China**

QTT, the self-proclaimed "No. 2 mobile content aggregator in China," operates the QTT App, which aggregates "articles and short videos from professional media and freelancers" and presents those "customized feeds to users" for free. ¶3. The Company makes money "by providing advertising services" and pushing those advertisements to the users consuming the aggregated content. *Id.*

QTT's proclaimed strategy is to target the "underserved market" of users in smaller, provincial cities. ¶6. Those users purportedly "have a slower pace of life and spend more time on the Internet," all while "enjoy[ing] fast increasing disposable income and lower financial pressures thanks to lower housing prices."

*Id.*

Under Chinese laws and regulations, QTT must “monitor the advertising content shown on [its] mobile applications to ensure that such content is true, accurate and in full compliance with applicable laws and regulations.” ¶11. Otherwise, the Company could be subject to “penalties, including fines, confiscation of [its] advertising income, orders to cease dissemination of the advertisements and orders to eliminate the effect of illegal advertisement.” *Id.*

Before going public, QTT appeared to have an extremely successful business model – rapidly growing its revenues while purportedly making effective efforts to comply with the applicable laws and regulations. The Company’s revenue spiked from \$8.8 million in 2016 to \$78.1 million in 2017 and \$439.6 million in 2018. ¶4.

## **II. QTT’s successful IPO and SPO**

On September 14, 2018, QTT announced the pricing of its IPO, with Underwriter Defendants Citigroup, Deutsche, China Merchants, and UBS as the “joint bookrunners” for the offering, and Underwriter Defendant KeyBanc as the co-manager. ¶316. That same day, QTT filed its IPO Prospectus with the SEC, which prominently displayed the Underwriter Defendants on the first page. ¶¶51, 316.

Then, on March 29, 2019, QTT announced a follow-on SPO with Underwriter Defendants Citigroup, Deutsche, CLSA, Jefferies, Haitong and

Lighthouse as the “joint bookrunners” for the offering. ¶317. On April 3, 2019, QTT filed its SPO Prospectus with the SEC, which again prominently displayed the Underwriter Defendants on the first page. ¶¶51, 317.

The Underwriter Defendants, who are primarily investment banks specializing in underwriting public offerings of securities, served as financial advisors for QTT and the Individual Defendants in the Offerings. ¶¶46, 49. They assisted in preparing and disseminating the Offering Documents, including meeting with potential investors and presenting them information about QTT – its business, products, plans, assets, and financial prospects. ¶¶46, 50. They also purportedly conducted an adequate and reasonable investigation into QTT’s business, operations, products, assets, and plans, also known as a “due diligence” investigation. ¶51. They agreed to and did purchase QTT shares and sold them to the investing public. ¶319. For their efforts, the Underwriter Defendants earned lucrative underwriting fees. ¶49.

The Underwriter Defendants, along with the Defendants who participated in preparing and signing (or authorizing the signing of) the Offering Documents, possessed the power and authority to control the contents of the Offering Documents. ¶¶29, 36, 51. Based on the Offering Documents, QTT was able to raise \$85.8 million from the IPO and \$31.0 million in the SPO. ¶315.

### III. The Alleged Actionable Statements.

The Offering Documents represented that from its inception, QTT “strategically targeted” users who lived in Chinese regions that advertisers previously overlooked—provincial cities labeled as “tier-3 and below.” ¶321. This was “because of the enormous opportunities in this underserved market,” comprised of users who had a “slower pace of life and spen[t] more time on the Internet given limited offline entertainment venues” and “often enjoy[ed] fast increasing disposable income and lower financial pressures . . .” *Id.* These factors drove a “significant need for mobile entertainment content” and created a “strong monetization potential.” *Id.*

The Offering Documents further touted that, while targeting users in tier-3 and below cities and obliged to be “in full compliance with applicable laws and regulations,” QTT’s “net revenues have increased rapidly.” ¶¶323, 331. To do so, the Offering Documents claimed that the Company relied on “artificial intelligence,” “deep learning methods,” and “big data and continuous training,” which enabled it to accurately “monitor and identify objectionable visual content” and “automatically decline[] content” that did not meet the applicable standards. ¶¶13, 328. Therefore, the Offering Documents conveyed to investors that QTT had crafted a viable, profitable, and legally compliant strategy to earn ongoing profits from the underserved users in tier-3 and lower cities across China. *See,*

e.g., ¶¶4-7, 321.

The Offering Documents also represented that QTT bolstered its lucrative advertising strategy by acquiring Shanghai Dianguan Internet Technology Co. Ltd. (“Dianguan”) in February 2018 to serve as its in-house advertising agent. ¶¶12-13, 323. Shifting from QTT’s previous reliance on Baidu—a third-party Chinese search engine giant (like Google) with an advertising platform—Defendants represented that Dianguan, which operated a “programmatic advertising system,” had been acquired “[t]o enhance [QTT’s] platform’s monetization capabilities” and reduce its reliance on Baidu. *Id.* As conveyed to investors, “[i]n 2017 and the six months ended June 30, 2018, 26.2% and 78.2% of [QTT’s] net revenues, respectively, were generated through this advertising agent.” ¶¶323, 333.

In sum, the Offering Documents portrayed QTT as a well-oiled advertising machine with a proprietary strategy supporting growing, sustainable revenues. *See e.g.*, ¶¶4-7. The Company purportedly had identified and tapped into a growing and increasingly wealthy market of underserved users who wanted, but previously were not receiving, the legitimate advertisements sold by QTT. ¶¶6, 321, 337.

#### **IV. The Alleged Misrepresentations and Omissions.**

In reality, the Offering Documents’ negligent representations about QTT’s business model and compliance safeguards were materially false and/or

misleading and omitted material facts needed to give investors the complete picture. As revealed through a series of partial disclosures, QTT did not have sufficient policies and procedures in place to ensure that third-party advertisements complied with Chinese law and regulations, and thus, illicit advertisements had become common on the QTT App. ¶¶9, 15.

Due to the risk of lower-level “employees responsible for reviewing advertisements” allowing noncompliant advertisements to materialize, advertisers were able to get illicit advertisements to “underserved” users in the lower-tier cities where detection by regulators was less likely. ¶¶10, 321-22, 331-32, 337-38. Those regulators were more lenient, and those users were less aware of their rights, so QTT was less likely to get reported and then dinged for illicit advertisements. ¶¶57, 322, 338. The Company’s strategy of targeting users in lower-tier cities was well-publicized, as was the possibility that lower-level employees might be letting illicit advertisements on the QTT App, so advertisers with risky advertisements could ensure that any that got through QTT’s screening process would only appear in lower-tier cities. ¶¶321, 331, 337.

Furthermore, third-party behemoth Baidu (China’s Google) was being transitioned out as QTT’s primary advertising agent. ¶12. In that role, Baidu sold QTT’s advertising space to advertisers seeking to place advertisements on QTT’s platform. *Id.* Baidu then passed that revenue (minus Baidu’s commission) to QTT.

*Id.* The arrangement had worked well, with Baidu’s sales accounting for 69.9% and 43.7% of QTT’s net revenues in 2016 and 2017, respectively. ¶¶323, 339. Baidu also provided oversight over the content and quality of advertisements placed on the QTT App to ensure compliance with Chinese law. ¶12. In place of Baidu and “other third-party advertising agents,” Defendants acquired an unproven four-month-old start-up, Dianguan, founded and run by Xiang Liang (“Liang”), a close business associate of Defendant Tan. ¶¶12, 108-11. But Liang and Tan’s relationship was so intertwined that Dianguan would have been prevented from “fully pursuing its own separate interest,” including having its team limit sales from the profitable stream of risky advertisements to limit the risk of regulatory scrutiny. ¶¶12, 111.

In addition to not disclosing illegal advertisements, the Offering Documents failed to report a host of related-party transactions that should have been disclosed pursuant to Generally Accepted Accounting Principles (“GAAP”). ¶¶98-106, 336, 350. As noted above, QTT’s co-founder and CEO, Defendant Tan was closely connected to Dianguan. ¶¶107-11. Tan had a close business relationship with Dianguan’s founder, Liang, the investment director of a company majority-owned by Tan who, within a month of the Dianguan acquisition, became an investment director of another company majority-owned by Tan. *See* ¶¶109-10. Tan also had significant ties with QTT’s major advertisers

Mengtui, Fangce, and Shihui Miao. ¶¶112-15. But the Dianguan acquisition and advertiser contracts were not disclosed as related-party transactions in the IPO or the SPO.

In sum, the Offering Documents did not disclose that:

- A material amount of QTT's revenue growth came from illicit advertisements;
- Dianguan was a related party acquired by QTT, and its replacement of the independent, established Baidu and its effective compliance program led to a material increase in illicit advertisements;
- Dianguan's team dealing with unqualified advertisers allowed advertisements on the QTT App which skirted or violated Chinese laws or regulations; and,
- QTT failed to disclose several material related-party transactions. *See* ¶¶107-20, 336, 350.

#### **V. As the Truth Leaked Out, Investors Were Increasingly Damaged.**

On July 15, 2020, investors began learning about the illicit advertisements on the QTT App. The hosts of China's state-controlled broadcaster, CCTV, made an example of QTT at its annual consumer rights gala. ¶15. They revealed that the Company had allowed advertisers to publish improper advertisements on the QTT App. *Id.* The markets reacted accordingly; by the end of the week, the price of

QTT's American Depository Shares ("ADSs") had dropped over 24%. *Id.*

Further, the CCTV exposé forced QTT to enact remedial measures to halt risky advertisements. *Id.* As a result, QTT's revenues plummeted from \$204 million in 2Q20 to just \$166.5 million in 3Q20 – over 18% in a single quarter. ¶¶9, 15. Furthermore, for the first time in its existence, QTT's revenues decreased year-over-year – dropping 19.7% with a remarkable 23.1% drop in advertising revenue. ¶15. When the market learned of the Company's first-ever revenue decline on December 16, 2020, QTT's ADS price fell another 24%. *Id.* These financial results confirmed how critical illicit advertisements had been to QTT's revenue growth. *Id.*

The sharp decrease in revenue was not a one-off event stemming from the two-week ban of the QTT App from Chinese app stores. *Id.* QTT itself admitted that the 3Q20 revenue drop was due to “the remedial measures undertaken by us in response to the report by China Central Television on certain advertisements.” *Id.*

In sum, the Offering Documents contained materially false and/or misleading statements and omissions which caused investors tens of millions in losses as the truth became known. ¶¶2, 318. No defendant conducted a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the IPO and/or SPO Documents were accurate and complete in all

material respects. ¶¶378, 388. Had Defendants exercised reasonable care, they would have known of the material misstatements and omissions alleged herein. ¶378. To recover his and other investors' losses, Plaintiff is pursuing this class action case against Defendants.

### **Proceedings Below**

This case began in August 2020 when Stephen Burnham filed a class action complaint against QTT and other defendants. In September 2020, a similar suit was filed by Harold Brown. Four members of the putative class, including James Pappas, moved to consolidate the two cases and be appointed lead plaintiff. The District Court granted Mr. Pappas's motion and appointed him lead plaintiff on November 4, 2020. A-56.

Mr. Pappas thereafter filed a consolidated complaint. A-61. The Complaint sought damages for violations of the federal securities laws on behalf of anyone who purchased or otherwise acquired (a) QTT ADSs pursuant or traceable to its September 2018 IPO; (b) QTT ADSs pursuant or traceable its April 2019 SPO; and/or (c) QTT securities between September 14, 2018 and December 16, 2020 (the "Class Period"). The Complaint alleged 1) material misstatements and omissions in violation of §§ 11, 12(a)(2), and 15 of the 1933 Act and 2) securities fraud under SEC Rule 10b-5 and §§ 10(b) and 20(a) of the 1934 Act.

All defendants responded with Rule 12(b)(6) motions to dismiss for failure

to state a claim. ECF Nos. 49, 53. After oral argument, the District Court granted the motions and dismissed Plaintiff's case in its entirety, without granting leave to amend the Complaint. SPA-20.<sup>5</sup>

Judge Stein's opinion found that the 1934 Act counts failed to state any actionable "misstatements or omissions of material fact" with the specificity required by Rule 9(b) and the pleading requirements of the Private Securities Litigation Reform Act. Opinion ("Opinion" or "Op.") at SPA-5-15. Plaintiff is not appealing this ruling.

With respect to the 1933 Act counts, the Court acknowledged that "[i]ssuers are subject to virtually absolute liability under [§] 11, and plaintiffs alleging violations of [§§] 11 and 12(a)(2) not need plead 'scienter, reliance, or loss causation.'" SPA-18 (*quoting Hutchison v. Deutsche Bank Sec. Inc.*, 647 F.3d 479, 484 (2d Cir. 2011)). The Court further noted that Rule 8's notice-pleading standard governs §§ 11 and 12(a)(2) negligence and strict liability claims, not Rule 9(b)'s fraud standard, and thus such claims need not be pled with particularity. SPA-16.

However, despite the 1933 Act counts of the Complaint disclaiming any intent to allege fraud and scienter, not incorporating by reference the fraud

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<sup>5</sup> References to the Special Appendix herein shall be denoted with the abbreviation "SPA".

allegations of the 1934 Act counts, and affirmatively pleading negligence and strict liability, Judge Stein ruled that the 1933 Act counts “manifestly sound[ed] in fraud” and therefore had to be pled with Rule 9(b) particularity. SPA-16-17. The Court then found that the 1933 Act counts “fail[ed] to plead facts with particularity as to each defendant.” SPA-18-19.

Although Plaintiff expressly requested leave to amend the Complaint to the extent the Court granted Defendants’ motions (A-436), the Court did not grant leave to amend and ordered the consolidated cases closed. SPA-20. Moreover, the Court did not mention the request for leave at all in its Opinion, and did not find or imply that any amendment would be futile.

### **SUMMARY OF ARGUMENT**

The District Court incorrectly found that the Rule 9(b) fraud standard applies to the Complaint’s 1933 Act claims on the grounds that they “sound in fraud.” These claims are based on negligence and strict liability and do not sound in fraud, thus the Rule 8 “short and plain statement” standard governs. Even if a complaint includes fraud allegations, the Rule 8 standard applies where, as here, the non-fraud claims are segregated, and negligence is expressly pled. The federal rules expressly allow pleading in the alternative.

Under the Rule 8 standard, and even under the Rule 9(b) standard, the Complaint plausibly states viable 1933 Act claims. Such claims do not require

allegations of scienter, reliance, or loss causation. All that is required are plausible allegations that a registration statement, prospectus, or oral communication contains (1) an untrue statement of a material fact, (2) an omission of a material fact required to be stated therein, or (3) the omission of information necessary to make the statements therein not misleading. *Set Cap. LLC v. Credit Suisse Grp. AG*, 996 F.3d 64, 84 (2d Cir. 2021).

The Complaint plausibly alleges such untrue statements and omissions. There are three separate categories of alleged falsity.

*First*, the Complaint sets forth facts showing that Defendants' statements and omissions created the false impression that QTT had effective measures to screen out illegal advertisements. Defendants assured investors that QTT had robust compliance measures to prevent illicit advertisements that violated Chinese regulations and would endanger QTT's business model and revenues, but in truth, QTT's compliance measures were completely ineffective.

*Second*, the Complaint alleges that Defendants' statements and omissions misled investors into believing that QTT's revenue growth arose from a sustainable, legitimate business model when, in truth, QTT's "rapidly increasing" growth relied on revenue from illicit advertisements. Defendants told investors that QTT's strong revenue growth arose from strategic "target[ing of] users from tier-3 and below cities in China" and acquiring an advertising agent to "enhance

our platform’s monetization capabilities” and to reduce reliance on Baidu (the Chinese version of Google). But Defendants completely failed to disclose that a substantial portion of QTT’s “rapidly” increasing revenue came from illegal advertisements.

*Third*, the Complaint alleges that QTT’s 1) acquisition of Dianguan and 2) transactions with Mengtui, Fangce, and Shihui Miao were non-disclosed related-party transactions. The Dianguan acquisition was a related-party transaction because Dianguan, a recently formed start-up, was founded and run by a man with close business ties with Defendant Tan, QTT’s co-founder and executive chairman. And QTT’s admitted related-party transactions with Mengtui, Fangce, and Shihui Miao began before the 2018 IPO, but were not disclosed until April 2020.

Finally, if for any reason the Complaint is deemed inadequate (it should not be so deemed), Plaintiff is at least entitled to leave to amend. If a 1933 Act claim “sounds in fraud” and does not satisfy the Rule 9(b) standard, a court “should dismiss and permit counsel to offer an amended claim that either pleads with the requisite particularity or drops the defective allegations and still states a claim.” *Rombach v. Chang*, 355 F.3d 164, 176 (2d Cir. 2004). That is exactly what should have been done here upon deeming the Complaint defective. Despite an explicit request and the ease of amending the Complaint to allege a single theory of

liability, the District Court did not give Plaintiff a chance to amend or explain the denial of leave.

The judgment below should be reversed, and the Complaint's 1933 Act allegations should be held entirely sufficient. At the very least, Plaintiff should be granted leave to file the Proposed Amended Complaint. *See* Add. 1-49.

### ARGUMENT

This Court “review[s] *de novo* the grant of a motion to dismiss for failure to state a claim under [Rule] 12(b)(6), ‘accepting all factual allegations in the complaint as true, and drawing all reasonable inferences in the plaintiff’s favor.’” *IWA Forest Indus. Pension Plan v. Textron Inc.*, 14 F.4th 141, 145 (2d Cir. 2021) (quoting *Miller v. Metro. Life Ins. Co.*, 979 F.3d 118, 121 (2d Cir. 2020)). On *de novo* review, this Court should conclude that Plaintiff has pled actionable 1933 Act claims in the Complaint, or at the very least, in the Proposed Amended Complaint.

#### **I. The Rule 8 Standard Applies Because the 1933 Act Claims Do Not “Sound in Fraud”**

The District Court incorrectly found that the Rule 9(b) standard applies to the 1933 Act claims on the grounds that these claims “sound in fraud.” In the first place, the Complaint is adequate even under the stricter Rule 9(b) standard. But

more importantly, these claims are based on negligence and strict liability and do not sound in fraud, so the Rule 8 “short and plain statement” standard governs.

The District Court ignored the fact that the 1933 Act sections of the Complaint do not allege fraud or intentional misconduct, explicitly disclaim reliance on scienter, and do not incorporate by reference the portions of the Complaint that do allege scienter in connection with the 1934 Act claims (which does not pertain to this appeal). The Court nevertheless cited allegations in the 1934 Act sections to conclude that the 1933 Act claims sound in fraud, because some 1933 Act allegations “mirror” or are “similar” to those in the 1934 Act section. SPA-17.

The federal rules specifically allow alternative allegations. Fed. R. Civ. P. 8(d). “The flexibility of alternative pleading is a touchstone of twentieth century legal practice.” *In re Ionosphere Clubs, Inc.*, 142 B.R. 645, 649 (S.D.N.Y. 1992). Although the District Court acknowledged that “plaintiffs can use the same factual circumstances to plead [§] 11 and [§] 10(b) claims in the alternative,” SPA-16, its holding would effectively subject every § 11 claim to the Rule 9(b) standard if the complaint also includes a 1934 Act or other fraud-based claim. This is wholly inconsistent with the federal pleading rules, under which “knew or should have known” allegations are standard in almost every case. *See In re Atlas Air Worldwide Holdings, Inc. Sec. Litig.*, 324 F. Supp. 2d 474, 502 (S.D.N.Y. 2004)

(a “knew or should have known” allegation “is often the only method by which the plaintiffs may establish that certain optimistic forward looking statements were false when made”).

The case law is contrary to the District Court’s decision. Several cases have held that Rule 9(b) is inapplicable to 1933 Act claims, even if a complaint also includes fraud allegations, where, as here, the non-fraud claims are segregated, and negligence is expressly pled. “[P]laintiffs ... do not merely disavow already-pled allegations of fraud in connection with their [§] and [§] 12(a)(2) claims, leaving the court to sift through those allegations in search of some lesser included claim of strict liability. Rather, both plaintiffs have expressly pled negligence in connection with their [§] 11 and 12(a)(2) claims. We regard this difference in pleading as dispositive.” *In re Suprema Specialties, Inc. Sec. Litig.*, 438 F.3d 256, 272 (3d Cir. 2006). “Indeed, it is clear that plaintiffs believe that Refco and various persons associated with it, including most, if not all, defendants, were engaged in a massive fraud. This fact, however, does not take away plaintiffs’ right to plead in the alternative that defendants violated provisions requiring only negligence.” *In re Refco, Inc. Sec. Litig.*, 503 F. Supp. 2d 611, 632 (S.D.N.Y. 2007). “The Court does not read that allegation to imply that every allegedly false statement in the registration statement and prospectus was made with an intent to deceive and, therefore, applies the usual standard of ‘ordinary notice pleading.’” *Jiang v.*

*BlueCity Holdings Ltd.*, No. 21-CV-4044-FB-CLP, 2023 WL 5412891, at \*3 (E.D.N.Y. Aug. 22, 2023).

Even where “the allegations supporting plaintiffs’ [§] 11 claim are exactly the same as those supporting their [§] 10(b) claim,” the Rule 8 standard applies to the § 11 claim if a complaint “simply pleads [§] 10(b) fraud and [§] 11 negligence as alternatives,” because “nothing in *Rombach* or Rule 9(b) forecloses that pleading strategy.” *In re IAC/InterActiveCorp Sec. Litig.*, 695 F. Supp. 2d 109, 116–17 (S.D.N.Y. 2010). *Accord*, e.g., *In re Livent, Inc. Noteholders Sec. Litig.*, 151 F. Supp. 2d 371, 430 (S.D.N.Y. 2001) (Rule 8 standard applies even if “the predominant theory the complaint expresses is one of fraud”). As long as plaintiffs go “beyond the mere inclusion of a pro forma repudiation of a fraud theory” and “frame[] their allegations with regard to the Securities Act counts in terms of negligence,” the alternative pleadings rule dictates that the Rule 8 standard applies. *City of Roseville Employees’ Ret. Sys. v. EnergySolutions, Inc.*, 814 F. Supp. 2d 395, 424–25 (S.D.N.Y. 2011).<sup>6</sup>

In other words, Rule 8 applies as long as plaintiffs go beyond “nominal efforts” to “distinguish their fraud allegations from their strict liability and

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<sup>6</sup> In *Rombach*, 355 F.3d 164, the plaintiffs “[did] not assert any claim of negligence ... nor ... specify any basis for such a claim.” *EnergySolutions*, 814 F. Supp. 2d at 425.

negligence allegations.” *Fresno Cnty. Employees’ Ret. Ass’n v. comScore, Inc.*, 268 F. Supp. 3d 526, 558 (S.D.N.Y. 2017). Courts “have consistently held” that 1933 Act claims “are subject to notice pleading where, as here, the division between the [1933 Act and 1934 Act] claims is clear.” *Id.* Rule 9(b) applies only if the fraud and non-fraud claims are pled “so poorly that a court is unable to figure out which allegations are intended to support which claim.” *Gordon v. Tencent Music Ent. Grp.*, No. 19CV5465LDHPK, 2021 WL 9183821, at \*2 n.3 (E.D.N.Y. Mar. 31, 2021).<sup>7</sup>

Courts permit alternative pleading like this because “that a fact was known and not disclosed does not mean, as a matter of law, that the circumstances of the resulting omission sound in fraud.” *Wallace v. IntraLinks*, No. 11 CV 8861 TPG, 2013 WL 1907685, at \*11–12 (S.D.N.Y. May 8, 2013) (quotation omitted). Thus, “Plaintiffs may plead [§] 10(b) fraud and [§] 11 negligence claims as alternatives, as long as the complaint is organized in a way that allows the court to determine which allegations support which claim.” *In re OSG Sec. Litig.*, 971 F. Supp. 2d 387, 396–97 (S.D.N.Y. 2013) (quotation omitted).

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<sup>7</sup> Even where, unlike here, a complaint is not “carefully structured” and “does not once use the word negligence,” the Rule 8 standard applies as long as plaintiffs “have attempted to separate their Securities Act claims and employ language that is at least evocative of negligence,” such as “reasonable diligence” and “reasonable care.” *Altayyar v. Etsy, Inc.*, 242 F. Supp. 3d 161, 185 (E.D.N.Y. 2017), *aff’d*, 731 F. App’x 35 (2d Cir. 2018).

As in the above cases, the Complaint in this case 1) sets forth the 1933 Act claims in separate sections that are distinct from the 1934 Act sections and do not incorporate the fraud allegations by reference, 2) disclaims fraud, and 3) expressly pleads negligence and strict liability, all set forth in a manner that easily “allows the court to determine which allegations support which claim.” *In re OSG*, 971 F. Supp. 2d at 396–97. See ¶56 (“The 1933 Act claims arise out of negligently made materially false and misleading statements and omissions in the Offering Documents issued in connection with the Company’s IPO and SPO”); *id.* (“Lead Plaintiff’s 1933 Act claims are not based on any allegation of deliberate or intentional misconduct, and Lead Plaintiff expressly disclaims any reference or reliance upon fraud allegations for such claims”); ¶57 (“each of the Defendants named under the 1933 Act claims negligently made materially false and misleading public statements and omissions in the Offering Documents”); ¶320 (“the Offering Documents were negligently prepared and, as a result, contained untrue statements of material fact or omitted to state other facts necessary to make the statements made not misleading”); ¶51 (“the Underwriters were negligent for stating that the Offering Documents were prepared accurately and in accordance with the rules and regulations governing their preparation”).

The District Court found (SPA-17) that the 1933 Act claims “sound in fraud” based on allegations in ¶¶64 and 79 of the Complaint, which explicitly

*were not* incorporated by reference in the 1933 Act claims, *see* ¶324.<sup>8</sup> The Court also cited allegations in ¶¶321, 324, 329, 333-34, 339, 340 and 344-45, but nothing in these paragraphs alleges fraud, intentional misconduct, or other language “classically associated with fraud.” SPA-17. For example, the Court italicized the allegation in ¶321 that QTT’s statements “contained multiple material misstatements regarding the Company’s *strategy of targeting users* in lower tier cities in China,” but this just summarized a direct quote from QTT’s Registration Statement and Prospectus issued in connection with its September 2018 initial public offering (“IPO Documents”). *See id.* (“Since our inception, we have strategically targeted users from tier-3 and below cities in China because of the enormous opportunities in this underserved market.”)

Next, while ¶¶324, 334, 340 and 345 allege that Defendants omitted that the Dianguan acquisition allowed QTT “to avoid the oversight that Baidu had been providing,” nowhere does Plaintiff allege that Defendants knew that any of the alleged misstatements were false or misleading. *See In re CitiGroup Inc. Bond Litig.*, 723 F. Supp. 2d 568, 587 (S.D.N.Y. 2010) (finding § 11 claims negligence-based where “the complaint does not allege that any of the statements were *knowingly* false or misleading but instead alleges that defendants ‘did not make a

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<sup>8</sup> Paragraph 64 is in Part VI.A of the Complaint and ¶79 is in Part VI.B. As set forth in ¶314, the 1933 Act claims incorporate only Parts II, III, IV, V, and VI.C.

reasonable investigation or possess reasonable grounds to believe that those statements were true and that there were no omissions of any material fact.”) (emphasis in original).

And the allegation in ¶322 that QTT’s statements “contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading” simply tracks the language of § 11, 15 U.S.C. § 77k(a), and thus does not “sound in fraud.” *In re OSG*, 971 F. Supp. 2d at 405 n.129; *Wallace*, 2013 WL 1907685, at \*11.

Even if the 1933 Act allegations are deemed unclear, they need not be a “model of clarity” and are adequate as long as they give defendants “fair notice of the claim asserted.” *Simmons v. Abruzzo*, 49 F.3d 83, 86 (2d Cir. 1995); *Zabit v. Brandometry, LLC*, 540 F. Supp. 3d 412, 422 (S.D.N.Y. 2021).

The 1933 Act claims allege Defendants’ failure to investigate before publishing the alleged misstatements, which gives rise to 1933 Act liability and does not sound in fraud. *Wallace, supra* at \*11–12 (“claims that defendants negligently failed in their duty to investigate and ensure the truth of statements in the registration and prospectus” do not sound in fraud); *Wang v. Cloopen Grp. Holding Ltd.*, No. 21-CV-10610 (JGK), 2023 WL 2534599, at \*7 n.4 (S.D.N.Y. Mar. 16, 2023) (claim did not sound in fraud where plaintiff “framed [the] allegations with regard to the Securities Act in terms of negligence, claiming that

the various defendants had a duty to investigate and ensure the truth of the statements in the Registration Statement”); *Peifa Xu v. Gridsum Holding Inc.*, No. 18 CIV. 3655 (ER), 2020 WL 1508748, at \*7 (S.D.N.Y. Mar. 30, 2020) (general allegations that no defendant “made a reasonable investigation or possessed reasonable grounds for the belief’ that the 2015 financials were not false or misleading” did not sound in fraud); *EnergySolutions*, 814 F. Supp. 2d at 424 (same). See ¶¶378 (defendants failed to use reasonable care and breached their duty to conduct a “reasonable and diligent investigation of the statements contained in the IPO and/or SPO Documents”), 388-89, 51, 277, 282, 289.

As such, applying Rule 9(b) to the 1933 Act claims against the UW Defendants was clear error. Judge Stein relied heavily on *Rombach v. Chang*, 355 F.3d 164, 171–72 (2d Cir. 2004), where the Second Circuit **affirmed** the lower court’s holding that Rule 9(b) did **not** apply to the 1933 Act claims against the underwriters, because those claims did not “sound in fraud.” Where, as here, underwriters are alleged to have exercised insufficient due diligence, the claims do not sound in fraud. *In re Ultrafem Inc. Sec. Litig.*, 91 F. Supp. 2d 678, 691 (S.D.N.Y. 2000); *Plymouth Cnty. Ret. Ass’n v. Array Techs., Inc.*, No. 21 CIV. 4390 (VM), 2023 WL 3569068, at \*18 (S.D.N.Y. May 19, 2023). See ¶51 (“A reasonable investigation into the truthfulness and accuracy of the Offering Documents, including the statements incorporated by reference, would have

revealed that the Offering Documents contained false and/or misleading statements and/or omissions”); ¶289 (“the Underwriter Defendants ... were on notice and had a duty to conduct a due diligence investigation on the ads QTT was running”); ¶378 (no underwriter “made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the IPO and/or SPO Documents were accurate and complete in all material respects. Had they exercised reasonable care, they would have known of the material misstatements and omissions alleged herein”).

In view of the foregoing, Plaintiff’s claims under the 1933 Act do not “sound in fraud,” so this Court should reverse the trial court’s conclusion that the Rule 9(b) standard applies to these claims.

## **II. The Applicable Pleading Standards**

### **A. Pleading Under Rule 8 Versus Under Rule 9(b)**

The liberal Rule 8 “short and plain statement” or “notice pleading” standard requires only that a complaint contain “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009). Even if the allegations are inartful, a complaint is sufficient if it gives the defendants “fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Mayle v. Felix*, 545 U.S. 644, 655 (2005).

In considering a Rule 12(b)(6) motion to dismiss, the court must accept the factual allegations in the complaint as true and draw all reasonable inferences in favor of the plaintiff. *Lundy v. Cath. Health Sys. of Long Island Inc.*, 711 F.3d 106, 113 (2d Cir. 2013). A plausible complaint survives a Rule 12(b)(6) motion to dismiss even if a court deems “actual proof” of the alleged facts to be “improbable,” or “that a recovery is very remote and unlikely.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007); *see also Wikimedia Found. v. Nat’l Sec. Agency*, 857 F.3d 193, 208 (4th Cir. 2017) (court cannot “favor[ ] its perception of the relevant events over the narrative offered by the complaint”).

Even under Rule 9(b), which requires that “fraud or mistake” (and nothing else) be pled with particularity, a plaintiff is “not required to plead evidence,” and may allege facts on “information and belief” as to “matters peculiarly within the opposing party’s knowledge.” *Schlick v. Penn-Dixie Cement Corp.*, 507 F.2d 374, 379 (2d Cir. 1974); *see United States ex rel. Chorchos for Bankr. Est. of Fabula v. Am. Med. Response, Inc.*, 865 F.3d 71, 83 (2d Cir. 2017) (Rule 9(b) satisfied based on plausible “information and belief” allegations regarding facts within defendant’s “knowledge and control”); *Credit & Fin. Corp. v. Warner & Swasey Co.*, 638 F.2d 563, 566 (2d Cir. 1981) (“evidence need not be pleaded”).

B. Pleading the Elements of a 1933 Act Claim

Section 11 of the 1933 Act, 15 U.S.C. § 77k(a), provides a cause of action

to persons who acquire a security if “any part” of the security’s registration statement “contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading.” Section 12(a)(2) of the 1933 Act, 15 U.S.C. § 77l(a)(2), provides a similar cause of action to those who acquire a security if a “prospectus or oral communication” contained a material misrepresentation or omission. Section 15 of the same act, 15 U.S. Code § 77o, provides liability for “controlling persons” of those who violate § 11 or 12(a)(2).

*1. Scier, Reliance, and Loss Causation Not Required*

“Unlike claims brought under [§] 10(b), a plaintiff bringing a claim under [§] 11 need not allege scier, reliance, or loss causation. Instead, [§] 11 imposes absolute liability on the issuer of a registration statement if: (1) the statement ‘contained an untrue statement of a material fact, (2) the statement omitted to state a material fact required to be stated therein, or (3) the omitted information was necessary to make the statements therein not misleading.’ *Set Cap.*, 996 F.3d at 84 (quotations and footnotes omitted). *Accord*, *New Jersey Carpenters Health Fund v. Royal Bank of Scotland Grp., PLC*, 709 F.3d 109, 120 (2d Cir. 2013); *Litwin v. Blackstone Grp., L.P.*, 634 F.3d 706, 715–16 (2d Cir. 2011); *In re Morgan Stanley Info. Fund Sec. Litig.*, 592 F.3d 347, 359 (2d Cir. 2010).

Under the securities laws, even “a statement which is literally true, if susceptible to quite another interpretation by the reasonable investor, may properly be considered a material misrepresentation.” *Kleinman v. Elan Corp., plc*, 706 F.3d 145, 153 (2d Cir. 2013); *accord, SEC v. Gabelli*, 653 F.3d 49, 57 (2d Cir. 2011) (literally true statements actionable if they “create a materially misleading impression”).

2. *Statements and Omissions Judged by How a “Reasonable Investor” Plausibly Could Have Interpreted Them*

Where, as here, defendants dispute whether a particular statement or omission is materially misleading, courts “are required to credit the plaintiffs’ plausible theory when evaluating a Rule 12(b)(6) motion,” and defendants’ “contrary and competing” explanations are “entitled to little weight.” *Textron*, 14 F.4th at 146. For 1933 Act purposes, a representation or omission is “misleading” if “a reasonable investor plausibly could have interpreted” it in a manner that rendered it materially false. *SEC v. Syron*, 934 F. Supp. 2d 609, 626 (S.D.N.Y. 2013). *See In re AppHarvest Sec. Litig.*, No. 21-CV-7985 (LJL), 2023 WL 4866233, at \*35 (S.D.N.Y. July 31, 2023) (denying dismissal of the complaint because it was “plausible that a reasonable investor could interpret [defendant’s] comment to specifically convey that AppHarvest had no issues”); *Skiadas v. Acer Therapeutics Inc.*, No. 1:19-CV-6137-GHW, 2020 WL 4208442, at \*3 (S.D.N.Y.

July 21, 2020) (where challenged statements are “susceptible of two different meanings,” Rule 12(b)(6) motion must be denied if plaintiff “has plausibly alleged that on one reading of Defendants’ statements, their statements were false or misleading”). Plausibility is enough; a plaintiff need not show his interpretation of defendant’s statement is superior to defendant’s “benign” interpretation. *Textron*, 14 F.4th at 147; *Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC*, 797 F.3d 160, 175–76 (2d Cir. 2015).

Thus, for example, in *Textron*, the issue was whether defendant’s 2018 statement that it had reduced “older” or “aged” inventory was misleading because the inventory of 2017 models had not been reduced. This Court held that, although defendant’s claim that this statement did not include the 2017 model year was “reasonable,” it was inconsistent with “plaintiffs’ plausible theory” that a reasonable investor could interpret it as including 2017 models. Therefore, the dismissal of the complaint was reversed. *Textron*, 14 F.4th at 146-47.

Similarly, in another case, the defendants said that “the FDA agreed” that “additional clinical development is not needed and stated that we may submit a 505(b)(2) NDA for EDSIVO for the treatment of vEDS.” Defendants argued that a reasonable investor would have understood these statements to concern only whether Acer could *submit* an NDA, while plaintiff contended that a reasonable investor could have understood these statements to represent that the FDA agreed

that no additional clinical development was necessary for the FDA to *approve* the EDSIVO NDA. Judge Woods denied defendants’ motion to dismiss, because although a “reasonable investor might have interpreted them to refer to either submission or approval,” plaintiff had “plausibly alleged that on one reading of Defendants’ statements, their statements were false or misleading.” *Skiadas*, 2020 WL 4208442, at \*3. *Accord, e.g., Syron*, 934 F. Supp. 2d at 626 (although there was “support for each side’s interpretation,” Rule 12(b)(6) motion was denied because “a reasonable investor plausibly could have interpreted” the subject language under plaintiff’s version); *SEC v. Mudd*, No. 11 CIV. 9202 (PAC), 2016 WL 815223, at \*5 (S.D.N.Y. Feb. 29, 2016) (even if “literally accurate,” jury could find statements were materially misleading).

3. *Materiality Sufficiently Alleged Unless Statements and Omissions Are “So Obviously Unimportant to a Reasonable Investor that Reasonable Minds Could Not Differ”*

A misleading statement is “material” if “a reasonable investor would have considered [it] significant in making investment decisions.” *Ganino v. Citizens Utilities Co.*, 228 F.3d 154, 161 (2d Cir. 2000). A plaintiff need only allege that “there is a substantial likelihood that a reasonable shareholder would consider [the statement or omission] important in deciding how to act.” *IBEW Loc. Union No. 58 Pension Tr. Fund & Annuity Fund v. Royal Bank of Scotland Grp., PLC*, 783 F.3d 383, 389 (2d Cir. 2015).

On a Rule 12(b)(6) motion, a complaint may not be properly dismissed unless the alleged misstatements or omissions are “so obviously unimportant to a reasonable investor that reasonable minds could not differ on the question of their importance.” *Id.* at 390. At the pleading stage, a plaintiff usually satisfies the materiality requirement simply “by alleging a statement or omission that a reasonable investor would have considered significant in making investment decisions.” *Ganino*, 228 F.3d at 161.

### **III. Under the Applicable Rule 8 Standard, and Even Under the Rule 9(b) Standard, the Complaint States Viable 1933 Act Claims**

As the Complaint alleges, Defendants misled investors into believing that QTT’s revenue growth arose from a sustainable, legitimate business model when, in reality, QTT’s apparent success was substantially the product of revenue from illicit advertisements. Defendants assured investors that QTT had robust compliance measures to prevent the types of illicit advertisements—*e.g.*, for unsubstantiated breast or height enhancement products or linking to gambling sites—that violated Chinese regulations and would endanger QTT’s business model and revenues, but in reality, QTT’s compliance measures were utterly ineffective. Defendants also failed to disclose related-party transactions that damaged QTT’s business. The Complaint’s allegations are more than adequate to state actionable misrepresentations and omissions that give rise to 1933 Act

liability.

A. Defendants' Statements and Omissions Created the False Impression that QTT Had Effective Measures to Screen Out Illegal Advertisements

While noting as a “Risk Factor” that the presence of illegal advertisements on QTT’s apps could subject the Company to fines and other “severe penalties,” ¶331, Defendants assured investors that QTT used “artificial intelligence” and other “deep learning methods” to screen out “objectionable visual content with a high degree of accuracy”:

*Our text screening system screens information based on pre-set keywords. We utilize artificial intelligence to identify inappropriate or objectionable content from images, speeches and videos, significantly increasing efficiency over manual review. We also apply deep learning methods to analyze complex visual content. Through big data and continuous training, our system is able to monitor and identify objectionable visual content with a high degree of accuracy. The screening system automatically declines content that did not meet the standards of our platform and flags suspicious content for manual review by our content management team.*

¶328.

What investors understood, as again stated by Defendant Tan during the second quarter 2019 earnings call on September 5, 2019, was that “[w]e have one of the best track records in compliance among all the sizeable newsfeed players in the space as *we have put in significant efforts from the very beginning in*

*building our content compliance teams and capabilities.”* ¶205.<sup>9</sup>

As the Complaint alleges, the statements in ¶328 were materially false and misleading. QTT’s system did not screen out illegal ads “with a high degree of accuracy” and, to whatever extent QTT made efforts to build “content compliance teams and capabilities,” the efforts were ineffective. ¶¶329-34. Similarly, to whatever extent the “screening system” was detecting suspicious advertising content, the “content management team” was able to allow, and did allow, the ads to run anyway. ¶329. By the time of the IPO, the risk of delivering illegal ads had already materialized, and the resulting fines and penalties were only a matter of when, not if. ¶¶330, 332.

For 1933 Act purposes, it is irrelevant whether Defendants knew that its screening system was ineffective and/or that illegal ads were running on QTT’s platforms, because scienter is not required. *Set Cap.*, 996 F.3d at 84; *Royal Bank*, 709 F.3d at 120. And it is certainly plausible, indeed highly probable, that a reasonable investor would have considered this information “significant in making investment decisions.” *Ganino*, 228 F.3d at 162; *Textron*, 14 F.4th at 146-47. Once Defendants opted to speak about this topic, they were obliged “to tell

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<sup>9</sup> See The Motley Fool, Qutoutiao Inc. (QTT) Q2 2019 Earnings Call Transcript (Sep. 5, 2019), <https://www.fool.com/earnings/call-transcripts/2019/09/05/qutoutiao-inc-qtt-q2-2019-earnings-call-transcript.aspx>.

the whole truth.” *Meyer v. Jinkosolar Holdings Co., Ltd.*, 761 F.3d 245, 250-51 (2d Cir. 2014) (“when an offering participant makes a disclosure about a particular topic, whether voluntary or required, the representation must be complete and accurate”). The Complaint, therefore, pleads actionable 1933 Act claims based on Defendants’ misrepresentations and omissions regarding QTT’s screening of illegal advertisements.

Based solely on an unsupported statement in Defendants’ reply brief, the District Court found that the “artificial intelligence” and “high degree of accuracy” statements were not actionable misrepresentations because they “are not about *advertising* regulations at all—they relate to Qutoutiao’s compliance with PRC regulations that govern *content*, such as news articles.” SPA-9-10 (quoting QTT Reply, A-443) (emphasis in original). With respect, this is entirely wrong.

First, the statement says QTT uses artificial intelligence and other means to screen for illegal “content” with a high degree of accuracy. The ordinary definition of “content” certainly includes advertising content on QTT’s web platform, because “content” is defined to include “All that is contained in something; everything inside.” Webster’s New World College Dictionary 321 (5th ed. 2014). “Content” means “information, images, video, etc. that are included as part of something *such as a website.*”

<https://dictionary.cambridge.org/us/dictionary/english/content>. Neither the District Court nor the defendants have cited anything suggesting “content” excludes “advertising.”

Indeed, Defendants themselves repeatedly include “advertising” as “content” in QTT’s 2020 Annual Report on Form 20-F, the only document they cite that purportedly “separate[s]” advertising and content regulation. A-446-0447 (citing A-459). In this Annual Report, QTT expressly states that “we are obligated to monitor the *advertising content* shown on our mobile applications” and that, even if its employees misunderstand the relevant laws, “we may still be held responsible for noncompliant *advertising content*.” A-464-0465. QTT refers to its “advertising content” no less than six times in this Annual Report.<sup>10</sup>

In light of the dictionary definition of “content” and Defendants’ own references to “advertising content,” Plaintiff submits that Judge Stein’s interpretation of Defendants’ “artificial intelligence” and “high degree of accuracy” statements is not even plausible, let alone so compelling that Plaintiff’s interpretation must be rejected as a matter of law. For Rule 12(b)(6) purposes,

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<sup>10</sup> See A-465 (“*advertising content* deemed as obscene ... or otherwise inappropriate ... may also subject us to Penalties;” “*advertising content* shown on [another] platform was deemed to be offensive and disrespectful;” advertisers may attempt to “evade our monitoring” with “webpages that feature noncompliant *advertising content*;” our contracts require that “all *advertising content*” comply with law.)

Plaintiff need only allege that a reasonable investor could have plausibly interpreted Defendants' statements to mean that QTT was screening out illegal advertising content "with a high degree of accuracy," *Textron*, 14 F.4th at 146-4; *Syron*, 934 F. Supp. 2d at 626, and Plaintiff's allegations far exceed that undemanding threshold.

The District Court also concluded that these allegations were not viable because "investors were warned of the risks" of possible illegal ads. SPA-10. In so finding, Judge Stein did not mention the well-settled rule that "cautionary words about future risk cannot insulate from liability an issuer's failure to disclose that the risk has, in fact, materialized in the past and is virtually certain to materialize again." *Set Cap.*, 996 F.3d at 85. There is a "critical distinction between disclosing the risk a future event might occur and disclosing actual knowledge that the event will occur"—particularly where that distinction holds "enormous significance" for investors. *Id. Accord, e.g., Wilson v. Merrill Lynch & Co.*, 671 F.3d 120, 130 (2d Cir. 2011); *Slayton v. Am. Exp. Co.*, 604 F.3d 758, 770 (2d Cir. 2010); *Rombach*, 355 F.3d at 173.

Indeed, risk warnings are themselves actionable half-truths where, as here, they do not disclose that the purported "risk" has already occurred. *Set Cap.*, 996 F.3d at 85. This is because warnings of financial risks from legal violations that fail to disclose ongoing current violations "would cause a reasonable investor to

make an overly optimistic assessment of the risk. A generic warning of a risk will not suffice when undisclosed facts on the ground would substantially affect a reasonable investor's calculations of probability." *Jinkosolar*, 761 F.3d at 251.

The Complaint plainly alleges that, at the time Defendants disclosed the "risks" of illegal ads, QTT's platforms were already running illegal ads, such ads were not being screened out "with a high degree of accuracy," and sanctions were purely a matter of when, not if. ¶¶329-34. Again, for 1933 Act purposes, it is not at all relevant whether Defendants knew that the risk of illegal ads had already materialized, because allegations of scienter are not required. *Set Cap.*, 996 F.3d at 84; *Royal Bank*, 709 F.3d at 120. For Rule 12(b)(6) purposes, the Complaint's allegations are entirely sufficient to state plausible 1933 Act claims based on the misleading misrepresentations and omissions regarding illegal ads.

B. Defendants' Statements and Omissions Misled Investors to Believe that QTT's Revenue Growth Arose from a Sustainable, Legitimate Business Model When, in Reality, QTT's Growth Relied on Illicit Advertisements

While publicly identifying specific factors that supposedly drove QTT's increasing revenues, Defendants failed to disclose that illicit advertising was a key driver of the Company's increasing revenues. *See* ¶¶321-27. This omission is actionable under the 1933 Act, because liability arises where, as here, "a corporation puts the reasons for its success at issue, but fails to disclose that a

material source of its success is the use of improper or illegal business practices.”

*In re Teva Sec. Litig.*, No. 3:17-CV-00558 (SRU), 2023 WL 3186407, at \*42 (D. Conn. May 1, 2023), and cases discussed therein.

Here, Defendants told investors that “net revenues ha[d] increased rapidly” from 2016 to 2018. Defendants added that the rapid increases were due to the fact that QTT “strategically targeted users from tier-3 and below cities in China” because such users “spend more time on the Internet” and enjoy “fast increasing disposable income and lower financial pressures.” ¶321. Those revenue increases resulted primarily from advertising revenue, and Defendants represented that QTT had acquired an “advertising agent” to “enhance our platform’s monetization capabilities” and to reduce reliance on Baidu (the Chinese version of Google). ¶323. Defendants further explained that with the acquisition, QTT would be “strengthening the performance of [its] proprietary programmatic advertising system,” which “aims to maximize [its] revenue potential by rewarding the more relevant advertisements with a more prominent position.” ¶¶325-36.

When making those statements, Defendants did not disclose that a substantial portion of QTT’s “rapidly” increasing revenue was derived from illegal advertisements. ¶324. Nor did Defendants disclose that QTT’s “reduced reliance” on Baidu, which had an effective, established advertisement oversight program, in favor of an acquired “advertising agent” that was a recently formed

startup with close ties to insiders and no established compliance program, rendered the presence of illegal ads even more likely. *Id.*

Plaintiff alleges (§320) that Defendants did not even disclose that the replacement of Baidu with Dianguan created uncertainty over whether illegal ads would continue to be effectively screened out, in violation of SEC rules and regulations. In particular, Item 303 of SEC Regulation S-K, 17 C.F.R. § 229.303(a)(3)(ii), required QTT to “[d]escribe any known trends or uncertainties ... that the registrant reasonably expects will have a material ... unfavorable impact on ... revenues or income from continuing operations.” *See, e.g., Panther Partners Inc. v. Ikanos Commc’ns, Inc.*, 681 F.3d 114, 120 (2d Cir. 2012) (uncertainty regarding defect rate should have been disclosed).

Thus, as in *In re Teva*, Defendants’ statements about QTT’s business model and success were misleading and actionable half-truths. *Accord, e.g., In re Braskem S.A. Sec. Litig.*, 246 F. Supp. 3d 731, 759–60 (S.D.N.Y. 2017) (finding a “classic half-truth” where defendant gave investors a “selective portrait,” crediting low supplier prices on “benign factors” while omitting that the low price was actually due to bribery). If a company “puts the topic of the cause of its financial success at issue, then it is obligated to disclose information concerning the source of its success, since reasonable investors would find that such information would significantly alter the mix of available information.” *Gagnon*

*v. Alkermes PLC*, 368 F. Supp. 3d 750, 768 (S.D.N.Y. 2019) (actionable omission where the company stated benign reasons for success but omitted material information regarding the role misleading “intense lobbying and marketing efforts played in Vivitrol’s financial success”).

Although this Court has held that “companies do not have a duty to disclose uncharged, unadjudicated wrongdoing,” *City of Pontiac Policemen’s & Firemen’s Ret. Sys. v. UBS AG*, 752 F.3d 173, 184 (2d Cir. 2014), numerous district courts in this district have uniformly held that there is an exception to this rule where, as here, the defendant company has put “the reasons for its success at issue” without disclosing that illegal or improper conduct materially contributed to that success. In addition to *In re Teva*, *In re Braskem*, and *Gagnon, supra*, this exception was applied in *Rosi v. Aclaris Therapeutics, Inc.*, No. 19-CV-7118 (LJL), 2021 WL 1177505, at \*16 (S.D.N.Y. Mar. 29, 2021) (statements that drug’s success was due to factors “such as patient and physician satisfaction with the product” held plausibly false due to failure to disclose misrepresentations in marketing campaign); *Washington State Inv. Bd. v. Odebrecht S.A.*, 461 F. Supp. 3d 46, 74 (S.D.N.Y. 2020) (“an ordinary investor would be misled by the company’s failure to disclose that an additional reason for its success was its illegal bribery scheme”); *In re Van der Moolen Holding N.V. Sec. Litig.*, 405 F. Supp. 2d 388, 401 (S.D.N.Y. 2005) (statements concerning the sources and

significance of the company's revenue actionable due to non-disclosure of illegal trading practices). There are many similar cases,<sup>11</sup> and no court has rejected or even questioned this well-reasoned principle.

Judge Stein did not take issue with or even mention this rule. Instead, applying the Rule 9(b) standard, the Court found only (SPA-8-9) that the Complaint's allegations that revenue from illicit ads "was a substantial share of QTT's revenues" were "wholly conclusory," did not "offer any indication as to the magnitude of the allegedly illicit advertising activity," and did "not indicate that illegal advertising comprised any more than -- at most -- a nominal share of QTI's revenues." The Court added (SPA-9) that "Plaintiff's counsel presented no information to contradict defense counsel's assertion that the revenue drop was

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<sup>11</sup> *E.g., In re Henry Schein, Inc. Sec. Litig.*, No. 18-CV-01428 (MKB), 2019 WL 8638851, at \*15 (E.D.N.Y. Sept. 27, 2019) (actionable omission where company claimed success based on value-added services but failed to mention success was based in part by alleged price-fixing agreement); *In re Virtus Inv. Partners, Inc. Sec. Litig.*, 195 F. Supp. 3d 528, 537 (S.D.N.Y. 2016) (statement that investors' decisions to purchase fund shares were "driven largely by the portfolio managers' investment performance" held plausibly misleading due to omission of back-dated performance history); *DoubleLine Cap. LP v. Odebrecht Fin., Ltd.*, 323 F. Supp. 3d 393, 444 (S.D.N.Y. 2018) (where company attributed success due to factors such as "its engineering capabilities and experience," an "ordinary investor would be misled by the company's failure to disclose that an additional reason for its success was its illegal bribery scheme"); *In re Par Pharm., Inc. Sec. Litig.*, 733 F. Supp. 668, 677-78 (S.D.N.Y. 1990) (projections made by defendants were false and misleading because they were based on illegal activities which could not be sustained once the illegal scheme was uncovered").

due to QTT's significant remedial efforts after the CCTV reports aired and that in fact the illegal advertisements made up only a very small percentage of QTT's overall advertising." These conclusions should not be allowed to stand.

Of course, under the applicable Rule 8 standard, an allegation that the illicit revenue was "substantial" is completely acceptable. *Iqbal*, 556 U.S. at 677-78 (Rule 8 requires only that a complaint contain "sufficient factual matter" to state a claim "that is plausible on its face").<sup>12</sup> And even under the Rule 9(b) standard, Plaintiff was not obliged to plead the "magnitude" of the illicit advertising revenue, particularly since such information is within Defendants' exclusive "knowledge and control." *Est. of Fabula*, 865 F.3d at 83; *Alix v. McKinsey & Co.*, 23 F.4th 196, 209 (2d Cir.), *cert. denied*, 143 S. Ct. 302 (2022); *see also United States v. Strock*, No. 15-CV-0887-FPG, 2021 WL 1110411, at \*4 (W.D.N.Y. Mar. 23, 2021), and cases cited therein (Rule 9(b) does not require that damages be pled with particularity). Plaintiff simply has to plead, which he has done, that illegal advertisements contributed to QTT's revenue growth and that their omission was material to investors. *See Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 47 (2011) (Where the company "told the market that revenues were

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<sup>12</sup> A complaint fails to satisfy Rule 8 only where, unlike here, it contains only "labels and conclusions" or "a formulaic recitation of the elements of a cause of action" or tenders "naked assertion[s]" devoid of "further factual enhancement." *Iqbal*, 556 U.S. at 678.

going to rise 50 and then 80 percent [but] had information indicating a significant risk to its leading revenue-generating product” being able to continue generating revenue, those facts “were material facts ‘necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.’”).

As for the finding that Plaintiff “presented no information to contradict defense counsel’s assertion” regarding QTT’s revenue drop, the District Court “appears to suggest that Plaintiffs have some sort of burden on a Rule 12(b)(6) motion to respond to or rebut Defendant’s version of the facts,” which “runs counter to the law regarding the applicable standard in determining a Rule 12(b)(6) motion.” *Pearson v. Gage*, No. 3:22-CV-2597-K, 2023 WL 6149155, at \*6 (N.D. Tex. Sept. 19, 2023). *See Williams v. City of Mount Vernon*, 428 F. Supp. 2d 146, 155 (S.D.N.Y. 2006) (on a Rule 12(b)(6) motion, the “court cannot take into account assertions by [defendant] that contradict the plaintiff’s allegations”); *Gee v. Pacheco*, 627 F.3d 1178, 1187 (10th Cir. 2010) (district court improperly “adopted Defendants’ version of the facts in concluding that Mr. Gee did not state a claim”). Indeed, the filing of a Rule 12(b)(6) motion “including the defendant’s version of the facts ... as if those facts were in the complaint” subjects movant’s counsel to potential Rule 11 sanctions. *Murray v. N. Carolina Dep’t of Pub. Safety*, No. 1:14-CV-985, 2015 WL 11089742, at \*2 (M.D.N.C. Feb. 19, 2015),

*aff'd*, 611 F. App'x 166 (4th Cir. 2015).<sup>13</sup>

Nonetheless, contrary to Defendants' narrative which compartmentalizes the illegal advertisements from the resulting remedial measures, Plaintiff alleges that the remedial efforts had resulted *from* QTT's illegal advertisements and, thus, the entire 3Q20 revenue drop is attributable to the illegal advertisements. ¶15. As such, these allegations follow the Supreme Court's guidance that to be actionable, they must "suffice to 'raise a reasonable expectation that discovery will reveal evidence' satisfying the materiality requirement, *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007), and to 'allo[w] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged,' *Iqbal*, 556 U.S., at [678]." *Matrixx*, 563 U.S. at 46.

In view of these authorities and the Complaint's well-pled allegations, which must be accepted as true, the District Court's Rule 12(b)(6) dismissal should be reversed. The Complaint adequately alleges plausible 1933 Act claims

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<sup>13</sup> See also, e.g., *Flores v. City of Farmington*, No. 1:18-CV-00402 WJ-KBM, 2019 WL 498354, at \*4 (D.N.M. Feb. 8, 2019) ("At the Fed. R. Civ. P. 12(b)(6) stage, the Court does not consider Defendants' version of the facts"); *Shelton v. McMahon*, No. EDCV1400711JGBSPX, 2015 WL 13919124, at \*7 (C.D. Cal. Apr. 28, 2015) ("it is the FAC's allegations that control in a motion under Rule 12(b)(6), not Defendants' interpretation of them or Defendants' alternative version of the events in question").

based on Defendants' misleading representations concerning the source of QTT's success.

C. Defendants Failed to Disclose Related Party Transactions

It is undisputed that Defendants' disclosures were misleading if they failed to disclose material related party transactions as required by GAAP and SEC Regulation S-X and the Financial Accounting Standards Board Accounting Standards Codification ("ASC"). SPA-11-12; ¶¶98-106; 17 C.F.R. § 210.4-01 (financial statements not prepared in compliance with GAAP are presumed "misleading or inaccurate"). The Complaint plausibly alleges that QTT's 1) acquisition of Dianguan and 2) transactions with Mengtui, Fangce, and Shihui Miao were undisclosed related-party transactions.

1. *The Dianguan Acquisition Is Plausibly Alleged to be a Related Party Transaction*

The District Court erred in finding as a matter of law (SPA-13) that Dianguan was not a related party on the grounds that "the simple presence of a business relationship" does not trigger a duty to disclose. Obviously, parties are not related simply because they have a "business relationship," but the related party definition broadly includes anyone who "can significantly influence the management or operating policies of the transacting parties ... to an extent that

one or more of the transacting parties might be prevented from fully pursuing its own separate interests.” ASC 850-10-20.

Four months before the QTT acquisition, Liang founded start-up Dianguan and served as its director and legal representative. ¶108. At the same time, Liang was the investment director of a company controlled by Defendant Tan, QTT’s co-founder and executive chairman. Within weeks of QTT acquiring Dianguan, Tan became the majority owner of another company whose executive partner employed Liang as the director of domestic development. ¶¶109-10. The Complaint plausibly alleges that Liang and Tan’s intertwined business relationship enabled QTT to significantly influence Dianguan and prevent Dianguan from fully pursuing its own separate interests. ¶111. Whether this is so is a question of fact. *Garcia v. J2 Glob., Inc.*, No. 220CV06096FLAMAAX, 2021 WL 1558331, at \*13 (C.D. Cal. Mar. 5, 2021); *Snellink v. Gulf Res., Inc.*, 870 F. Supp. 2d 930, 939 (C.D. Cal. 2012).

The District Court acknowledged (SPA-13) that the Complaint alleges that Liang and Tan had a “close business relationship” and that disclosure was required if the relationship could “significantly influence the management or operating policies of the transacting parties.” This is because close business relationships can trigger the disclosure obligation. *E.g., Turner Ins. Agency, Inc. v. Farmland Partners Inc.*, No. 18-CV-02104-DME-NYW, 2019 WL 2521834,

at \*3 (D. Colo. June 18, 2019) (consultant for defendant plausibly alleged to be related party); *In re LendingClub Sec. Litig.*, 254 F. Supp. 3d 1107, 1118 (N.D. Cal. 2017) (parties were adequately alleged to be related because one extended a credit-support agreement to the other); *In re Tel-Save Sec. Litig.*, No. 98 CV 3145, 1999 WL 999427, at \*4 (E.D. Pa. Oct. 19, 1999) (loans to defendant's telemarketing service company adequately alleged to be related-party transactions).

*Tabor v. Bodisen Biotech, Inc.*, 579 F. Supp. 2d 438 (S.D.N.Y. 2008) is the **only** case cited by the District Court and Defendants in support of the notion that the Dianguan acquisition was not a related party transaction as a matter of law. However, the only issue in *Tabor* was whether the allegedly related party was a “promoter” within the meaning of the regulatory definition; plaintiff there did “not allege,” as Plaintiff does here, that the defendant “significantly influenced the management or operating procedures” of the alleged related company. *Id.* at 450–51. Thus, *Tabor* does not support dismissal at all.

The District Court also stated that Plaintiff did not “elaborate” on why the Liang-Tan relationship might prevent Dianguan from “fully pursuing its own separate interests,” but Rule 8 does not require such specifics. The allegations more than suffice to provide Defendants with “fair notice of what the plaintiff's claim is and the grounds upon which it rests.” *Mayle*, 545 U.S. at 655. And even

Rule 9(b) does not require the pleading of evidence. *Credit & Fin. Corp.*, 638 F.2d at 566.

The Complaint alleges that Liang sold his newly founded start-up company Dianguan to QTT while the investment director of a Tan company, and within weeks of the sale, Tan became the majority investor in the executive partner of another company at which Liang was an investment director. Liang's dependence on Tan for his livelihood plausibly suggests that Tan had the ability to "significantly influence" Liang's management of Dianguan – particularly because Liang had no educational or professional background in digital marketing, only investment management.<sup>14</sup> Thus, Defendants plausibly are liable under the 1933 Act for failing to disclose the Dianguan acquisition as a related-party transaction.

2. *QTT's admitted related-party transactions with Mengtui, Fangce, and Shihui Miao Were Not Timely Disclosed.*

As the District Court stated (SPA-13), Defendants admit that QTT's transactions with Mengtui, Fangce, and Shihui Miao are related-party transactions. Defendants only contend, which the District Court adopted, that these transactions were not actionable because they were "disclosed in QTT's 2019 annual report -- the first annual report after these alleged related-party

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<sup>14</sup> Liang Xiang, Venture capital figures, IT Orange, <https://www.itjuzi.com/person/42044> (last visited Dec. 19, 2023). (Google trans.).

transactions took place.”

The Complaint, however, alleges that these related-party transactions began occurring prior to the September 2018 IPO. ¶336. The District Court apparently concluded that these related-party transactions first “took place” after the IPO and SPO based on Defendants’ totally incorrect assertion (A-246) that the Complaint only alleges that these related-party transactions occurred on or after September 12, 2019. Defendants’ contention is based on the date on which Wolfpack Research conducted its “most recent” survey of advertisements on the QTT App. *See* A-349. Neither Wolfpack nor the Complaint even remotely suggests that this was the first date of these related-party transactions. The Complaint alleges that they began prior to the IPO and SPO and they, in fact, did begin prior to the IPO. Defendants may not contradict such allegations on a Rule 12(b)(6) motion.

QTT’s related-party transactions with these entities began before the 2018 IPO, yet were not disclosed in the IPO nor the April 2019 SPO. ¶¶335-36, 349-50. QTT’s 2019 annual report, on which the District Court relied, was not released until April 23, 2020.<sup>15</sup> As the disclosures were highly untimely, the decision below on this issue should be reversed.

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<sup>15</sup> A-459.

#### **IV. At Minimum, Plaintiff Should Have Been Allowed to Amend the Complaint**

Plaintiff expressly requested leave to amend to the extent Defendants' motions to dismiss were granted. A-436. The District Court nevertheless simply dismissed the Complaint with prejudice after granting Defendants' motions without addressing the amendment request or finding amendment futile. With respect to the 1933 Act claims, amendment would not be futile because Plaintiff can easily delete allegations deemed to "sound in fraud" and plead claims grounded solely in strict liability and negligence, as he has in the Proposed Amended Complaint. *See* Add. 1-49.

In *Rombach*, this Court agreed with the lower court's finding that the 1933 Act claims against the individual defendants sounded in fraud and thus had to meet the Rule 9(b) standard. However, the Court noted that, but for the fact that the 1933 Act claims were barred on other grounds, it would have "affirm[ed] the dismissal with a direction to the district court to entertain a motion to re-plead in terms of negligence." 355 F.3d at 176. If a 1933 Act claim "sounds in fraud" and does not satisfy the Rule 9(b) standard, a court "should dismiss and permit counsel to offer an amended claim that either pleads with the requisite particularity or drops the defective allegations and still states a claim." *Id.* (quotation omitted). That is exactly what should be done here, if the present complaint is deemed

defective.

Rule 15(a), requires that “leave [to amend] shall be freely given when justice so requires.” *See Foman v. Davis*, 371 U.S. 178, 182 (1962). “[O]utright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.” *Id. See Ronzani v. Sanofi S.A.*, 899 F.2d 195, 198 (2d Cir. 1990) (reversing dismissal with prejudice where “the district court did not mention Ronzani’s offer to amend and gave no reason for denying it”). *See also* 3 Moore’s Federal Practice ¶15.10, at 15–104 (courts should freely allow amendments “if it appears at all possible that the plaintiff can correct the defect”). This Court should follow *Foman* and *Ronzani* and allow an amendment here.<sup>16</sup>

The Proposed Amended Complaint deletes all fraud-related allegations and pleads only negligence/strict liability 1933 Act claims. Plaintiff submits that the present complaint adequately alleges 1933 Act claims, but if the Court disagrees, Plaintiff should at least be allowed to file the amended version.

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<sup>16</sup> Denial of leave to amend is permissible only where, unlike here, there is a finding of “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.” *Ruotolo v. City of New York*, 514 F.3d 184, 191 (2d Cir. 2008). Moreover, leave to amend should be granted even where, unlike here, the plaintiff “never asked for leave to amend the complaint” in the lower court. *Oliver Sch., Inc. v. Foley*, 930 F.2d 248, 253 (2d Cir. 1991)

## CONCLUSION

For the reasons set forth above, the judgment below should be reversed to the extent it dismissed the 1933 Act claims. The Complaint plainly sets forth plausible §§ 11, 12(a)(2), and 15 claims under the applicable Rule 8 “short and plain statement” standard, and even under the stricter Rule 9(b) standard.<sup>17</sup> In the alternative, Plaintiff should be allowed to file the Proposed Amended Complaint, which is based entirely on strict liability and negligence allegations, with no mention of any fraud-like conduct.

Dated: January 3, 2024

Respectfully submitted,

/s/ Ivy T. Ngo

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<sup>17</sup> Because the District Court held that Plaintiff had failed to state a claim under §§ 11 & 12(a)(2), it further dismissed the § 15 control person claim. If this Court reverses or vacates the decision with respect to the claims under §§ 11 & 12(a)(2), it should do the same for the “decision to dismiss the claims under § 15.” *Royal Bank*, 709 F.3d at 120 n.4.

## CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of Local Rule 32.1(a)(4)(A) because, excluding the portions exempted by Fed. R. App. P. 32(f), this brief contains 12,381 words. This brief also complies with the typeface requirements of Fed. R. App. P. 32 (a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

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## CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2024, this brief was filed electronically with the Clerk of the Court for the United States Court of Appeals for the Second Circuit through the Court's CM/ECF system. All participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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## **ADDENDUM**

**CASE NO. 23-1233**

**ADDENDUM**

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re QUTOUTIAO, INC. SECURITIES  
LITIGATION

Master File No.: 1:20-cv-06707 (SHS)

CLASS ACTION

JURY TRIAL DEMANDED

This Document Relates To :

ALL ACTIONS.

**[PROPOSED] AMENDED CONSOLIDATED CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL SECURITIES LAWS**

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Lead Plaintiff James Pappas (“Lead Plaintiff” or “Mr. Pappas”), by his attorneys, brings this class action alleging violations of the federal securities laws on behalf of himself and all other similarly situated investors against Qutoutiao, Inc. (“Qutoutiao,” “QTT”, or the “Company”), various Individual Defendants (as defined below) currently or formerly with the Company, and the Company’s Underwriters (as defined below) (collectively, “Defendants”). Lead Plaintiff alleges the following based upon personal knowledge as to his own acts and on information and belief as to all other matters based on his counsel’s investigation, which included, *inter alia*, a review and analysis of: U.S. Securities and Exchange Commission (“SEC”) filings by QTT; State Administration for Market Regulation (“SAMR”), the successor of SAIC (“State Administration for Industry and Commerce in China”) and the State Food and Drug Administration, filings by QTT’s subsidiaries and other entities in China; press releases, analyst reports, public statements, news articles and other publications disseminated by or concerning QTT in the U.S. and in China; independent interviews with former QTT employees in China conducted by investigators on behalf of Plaintiff; a consultant regarding the accounting of publicly traded companies; and other publicly available information. Counsel’s investigation is ongoing and many relevant facts are known only to Defendants or are exclusively within their custody or control. Lead Plaintiff believes that substantial additional evidentiary support exists for the allegations set forth herein after a reasonable opportunity for discovery.

## **I. SUMMARY OF THE ACTION**

1. This is a federal securities class action on behalf of all persons or entities who purchased or otherwise acquired QTT American Depositary Shares (“ADSs”) pursuant or traceable to the Registration Statement and Prospectus issued in connection with the Company’s September 2018 initial public offering (“IPO”) (collectively, “IPO Documents”) and/or April 2019 secondary public offering (“SPO”) (collectively, “SPO Documents”) (together with the IPO Documents,

“Offering Documents”), alleging strict liability-based claims under the Securities Act of 1933 (“1933 Act”) (15 U.S.C. §§ 77k, 77l, and 77o).

2. Qutoutiao means “fun headlines” in Chinese. Yet for investors who purchased in QTT’s IPO and SPO (“Offerings”), headlines generated by the Company’s crashing share price have been anything but fun. Shares in the IPO were priced at \$7 each, ultimately raising approximately \$85.8 million for the Company. When QTT announced its SPO just seven months later, it priced 3.3 million additional shares at \$10 per share. Unbeknownst to investors, the Offering prices were artificially inflated from the outset due to the materially false and/or misleading statements described below. Consequently, when the truth about those statements was revealed to the market (detailed below), QTT’s share price declined precipitously – dropping to less than \$2/share by the end of 2020. At the commencement of this action, QTT ADSs closed at \$2.42 per share on September 17, 2020, a fraction of the artificially inflated Offering prices. As a result, the Class lost hundreds of millions of dollars.

3. QTT’s collapse is hardly surprising given the facts unearthed by Lead Plaintiff’s investigation. QTT touts itself as the “No. 2 mobile content aggregator in China.” The smartphone application Qutoutiao (“QTT App”) aggregates “articles and short videos from professional media and freelancers” and presents those “customized feeds to users.” QTT makes money “by providing advertising services” and pushing those advertisements to individuals consuming the aggregated content.

4. In the Offering Documents, Defendants painted a rosy picture of QTT’s business model, which featured fast-growing revenue derived almost entirely from advertising sales. Those representations were materially false and misleading, so investors who purchased QTT shares reasonably relying on those misrepresentations did so to their detriment.

5. The Offering Documents described QTT as having “rapidly” increasing net revenues. Specifically, the Company’s revenues had increased from \$8.8 million in 2016 to \$78.1 million in 2017 to \$439.6 million in 2018. In short, QTT was a company on the move, with revenue-generating “success” attributable to numerous “key competitive strengths.”

6. According to the Offering Documents, the secret sauce for QTT’s success was its strategic targeting of consumers who lived in “tier-3 and below cities in China because of the enormous opportunities in the underserved market.”<sup>1</sup> These users were key to the Company’s success because they “have a slower pace of life and spend more time on the Internet,” while at the same time “enjoy[ing] fast increasing disposable income and lower financial pressures thanks to lower housing prices.” The Offering Documents claimed that QTT was able to capture this lucrative and growing market because the QTT App’s “light entertainment-oriented and easily digestible content is designed to resonate with such users and provides us with a significant advantage to capture this underserved market.”

7. The proprietary business model being touted and the resulting revenue growth were vital to QTT’s future. At the time of the IPO and thereafter, the Company was spending significant sums of money. Indeed, it conducted a secondary follow-on offering (the SPO) to raise capital just seven months later. Nonetheless, its lucrative advertising model was generating substantial revenue growth, demonstrating its ability to expend capital effectively and reach long-term, sustainable profitability.

8. But the Offering Documents’ statements were materially false and/or misleading. QTT’s momentous year-over-year revenue growth did not arise solely from a strategy of aggregating content that uniquely appealed to an underserved but growing user base living in lower-tier Chinese

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<sup>1</sup> Third- and fourth-tier cities are typically smaller, provincial cities in China.

cities. Rather, the Company was also growing its revenue by serving the high number of unqualified advertisers who wanted to run ads in those cities because regulators were more lenient and users were less aware of their rights as consumers. Because those advertisers' advertisements were illegal under Chinese laws, they were an untenable revenue source. The meteoric revenue growth being touted to investors was unsustainable. The prospect of long-term profitability, as signaled by the revenue growth, was illusory. And Defendants would have learned the truth if they had simply conducted an adequate and reasonable investigation before making the alleged misstatements in the IPO and SPO Documents, but they did not.

9. In July 2020, China's state TV called attention to QTT's illegal advertisements on an annual television broadcast, and regulators forced the Company to improve its oversight of advertisements to eliminate illegal ones. The effects were drastic. QTT's revenue immediately fell for the first time ever – plummeting more than 18% from \$204 million in the second quarter of 2020 to just \$166.5 million in the third quarter of 2020.

10. Thus, as described herein, the Offering Documents misled investors into believing that QTT had come up with a genius business model that was driving remarkable revenue growth. In truth, the Company's success arose largely from skirting Chinese government-imposed regulations regarding permissible advertisements. QTT had not just tapped into an underserved market of consumers who lived in lower-tier cities. It had also tapped into an underserved market of illegal ad placements.

11. As the Offering Documents made clear, compliance with Chinese advertising laws was critical: "Under PRC [People's Republic of China] advertising laws and regulations, we are obligated to monitor the advertising content shown on our mobile applications to ensure that such content is true, accurate and in full compliance with applicable laws and regulations." The Offering

Documents even noted that violating Chinese advertising law could subject QTT to “penalties, including fines, confiscation of our advertising income, orders to cease dissemination of the advertisements and orders to eliminate the effect of illegal advertisement.” But the Offering Documents described the placement of uncompliant advertising content on QTT’s platform as a risk factor it was working to mitigate.

12. In reality, at the time of its Offerings, what QTT was doing was ineffective as its employees were able to actively place non-compliant advertising content on the QTT App, thereby having the accompanying revenue streams flow into the Company’s financials:

- QTT initially used Baidu (China’s version of Google) as its advertising agent to place advertisements on its platform. Baidu was an unrelated third-party who provided oversight of the content and quality of advertisements to ensure compliance with Chinese law. In February 2018, just months before the IPO, QTT replaced Baidu with a 4-month old in-house “advertising agent” called Shanghai Dianguan Internet Technology Co. Ltd. (“Dianguan”). Dianguan employees did not provide the same level of oversight of the content, quality, and legal compliance of the advertisements as Baidu had provided. As a result, more advertisements that did not comply with Chinese government regulations appeared on QTT’s platform.
- Dianguan employed two different teams to manage the advertising content that could be placed on the QTT App and served to consumers. One team dealt with established and compliant advertisers (*i.e.*, legal advertisements) such as Tencent, Alibaba and Jinri. The second team dealt with unqualified advertisers whose advertisements skirted or violated Chinese regulations (*i.e.*, illegal advertisements).
- As acknowledged in the Offering Documents, QTT targeted consumers from third and fourth-tier Chinese cities (smaller, provincial cities). But in addition to targeting these consumers because they spent more “time on the Internet” or enjoyed “fast increasing disposable income,” QTT targeted these consumers because advertisements in third- and fourth-tier cities were not subject to the same regulatory scrutiny as in the larger cities. This lack of regulatory scrutiny allowed QTT to bombard mobile users in lower-tier cities with non-compliant and illegal advertisements, significantly adding to the Company’s revenue stream.

13. The Offering Documents did not explain or otherwise reveal the increased placement of nonconforming advertisements. Rather, the Offering Documents were larded with

materially false and/or misleading statements:

- The Offering Documents stated that QTT targeted mobile users in third- and fourth-tier Chinese cities because they spent more time on the Internet and had increasing amounts of disposable income. This was materially misleading because these users were also targeted due to the lack of regulatory scrutiny in those cities, allowing QTT employees to push more nonconforming and illegal advertisements onto its platform.
- The Offering Documents stated that QTT's use of Dianguan (as opposed to Baidu) would allow it to "enhance [its] platform's monetization capabilities." In reality, the "enhanced" monetization depended on Dianguan, as an internal ad placement service controlled by QTT, to allow the placement of the illegal and nonconforming advertisements that Baidu had restricted.
- As part of the risk factor analysis, the Offering Documents told investors that QTT could be subject to penalties and "other administrative actions" through the placement of illegal or nonconforming advertisements. But Defendants assured investors that the Company's proprietary "artificial intelligence" could "monitor and identify objectionable visual content with a high degree of accuracy" and flag "suspicious content for manual review." This assurance was highly misleading because the employees who were responsible for flagging suspicious ads had the ability to and did manually place such ads on the QTT App.<sup>2</sup>

14. On July 15, 2020, China's state-controlled broadcaster, CCTV, aired a television show highlighting the use of improper ads on QTT's platform (the "CCTV Exposé").<sup>3</sup> On this revelation, the price of QTT's ADSs fell more than 24%. The CCTV Exposé also resulted in the temporary suspension of the QTT App from Chinese app stores for two weeks until July 31, 2020, and QTT enacting remedial measures to halt its illegal advertisements, thereby reducing the

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<sup>2</sup> Beyond screening out illegal advertisements, QTT's Offering Documents misled investors as to the source of its revenue growth and certain transactions which in reality, involved related parties. These issues are discussed below.

<sup>3</sup> As part of its repertoire, CCTV produces "investigative" programs that are in the public interest. One major instance of these CCTV programs is China's annual consumer rights gala, *i.e.*, the CCTV Exposé. In 2020, the COVID-19 pandemic caused the gala to be delayed from March 15 (World Consumer Rights Day in China) to July 15. Sarah Cook, *China Central Television: A Long-standing Weapon in Beijing's Arsenal of Repression*, THE DIPLOMAT (Sept. 25, 2019), <https://thediplomat.com/2019/09/china-central-television-a-long-standing-weapon-in-beijings-arsenal-of-repression/>.

Company's sales of those advertisements. As a result, on December 16, 2020, QTT had to report that its revenue for the third quarter of 2020 had *plummeted*, dropping 19.7% year-over-year with a remarkable 23.1% drop in advertising revenue. The year-over-year growth justifying investors' interest was gone, replaced with a revenue decline. As QTT conceded, this significant revenue drop, which caused the ADS price to fall by another 24%, was due to the “**remedial measures undertaken by [QTT] in response to the report by [CCTV] on certain advertisements.**” And the stark drop in revenue following the Company's corrective actions unequivocally confirms that—contrary to its Offering Documents statements—the use of nonconforming advertisements had been central to its revenue growth. This revelation of the truth caused a significant decline in the value of QTT securities and resulted in millions of dollars in losses to investors.

15. Lead Plaintiff now asserts strict liability, non-fraud claims under §§ 11, 12(a)(2) and 15 of the 1933 Act arising out of the negligently made materially false and misleading statements and omissions in the Offering Documents issued in connection with QTT's IPO and SPO. Lead Plaintiff's 1933 Act claims are not based on any allegation of deliberate or intentional misconduct, and Lead Plaintiff expressly disclaims any reference or reliance upon fraud allegations for such claims.

16. As set forth herein, each Defendant negligently made materially false and misleading public statements and omissions in the Offering Documents that: (i) mischaracterized QTT's targeting of users in Tier-3 and Tier-4 cities as due to them having more time and disposable income to spend on the internet when in fact, unqualified advertisers wanted to run their ads in those cities because regulators were more lenient and users were less aware of their rights in those cities; (ii) inaccurately described the benefits of, and reasons for, replacing QTT's third-party advertising agent, Baidu, with Dianguan by not disclosing that the change reduced the amount of oversight over

the content of ads and increased the sales of non-compliant ads; (iii) misleadingly touted QTT's advertising revenue without disclosing that a significant number of ads made claims that could not be substantiated and thus were considered false advertisements under applicable regulations or provided links to illegal online gambling platforms; (iv) negligently promoted QTT's ability to monetize user traffic without disclosing that such monetization included selling users non-compliant ads; and (v) failed to adequately warn investors that certain "Risk Factors" listed in the Offering Documents had already materialized at the time of the Offerings as QTT was violating the applicable advertising laws and regulations by running non-compliant ads so it would inevitably face increasing regulatory scrutiny and penalties, reputational harm, and decreased revenue when the truth became known.

## **II. JURISDICTION AND VENUE**

16. Counts One, Two, and Three arise under §§ 11, 12(a)(2), and 15 of the 1933 Act, 15 U.S.C. § 77k(a), 77o(a).

17. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, § 22 of the 1933 Act, 15 U.S.C. § 77v, because this is a civil action arising under U.S. laws.

18. Venue is proper in this District pursuant to § 22 of the 1933 Act, 15 U.S.C. § 77v, and 28 U.S.C. § 1391(b). Specifically, substantial events giving rise to the claims alleged herein occurred in this District, including: (i) many of the false and misleading statements were made in or issued from this District; (ii) many of the acts alleged herein, including the preparation and dissemination of materially false and/or misleading information, were made or issued from this District; and (iii) QTT contracted with an ADS Depository with headquarters in this District to effectuate the registration and delivery of QTT ADSs on the NASDAQ.

19. In connection with the acts, conduct, and other wrongs alleged herein, Defendants,

directly and/or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the U.S. mail, interstate telephone communications and the facilities of the national securities exchanges.

### **III. PARTIES**

#### **A. Lead Plaintiff**

20. Mr. Pappas purchased Qutoutiao ADSs pursuant or traceable to the Company's false and/or misleading IPO Documents and was damaged thereby.

#### **B. Defendants**

##### 1. Qutoutiao

21. Defendant Qutoutiao is incorporated under the laws of the Cayman Islands, with its principal executive offices located in Shanghai, China. Qutoutiao ADS shares trade on the NASDAQ exchange under the symbol "QTT." Formerly known as Qtech Ltd., the Company changed its name to Qutoutiao Inc., in July 2018, just months before its IPO.

##### 2. The Individual Defendants

22. Defendant Eric Tan ("Tan") is the co-founder of Qutoutiao and has served as its Chief Executive Officer ("CEO") since May 20, 2019. On or about February 13, 2019, Tan filed a Form 13G with the SEC, indicating that he owned more than 27 million Class B ordinary shares of QTT (approximately 38.1% of the Company's total outstanding ordinary shares). At all relevant times, Tan was the Executive Chairman of Qutoutiao's Board of Directors. He signed and/or had ultimate authority over the Company's IPO Documents filed with the SEC.

23. Defendant Lei Li ("L. Li") is the co-founder of Qutoutiao and was its CEO and a director until May 2019, when Defendant Tan announced Li's resignation during the Company's May 20, 2019 earnings investor conference call. Li signed and/or had ultimate authority over the Company's IPO Documents and SPO Documents filed with the SEC.

24. Defendant Jingbo Wang (“Wang”) was a director and Qutoutiao’s Chief Financial Officer (“CFO”) until January 22, 2020, at which time the Company announced Wang would be stepping down for “personal reasons.” Wang signed and/or had ultimate authority over the Company’s IPO Documents and SPO Documents filed with the SEC.

25. Defendant Shaoqing Jiang (“Jiang”) was a director of Qutoutiao, and a member of its Audit Committee and Compensation Committee until he resigned as of September 13, 2019. Jiang signed or authorized the signing of the Company’s Offering Documents filed with the SEC.

26. Defendant Jianfei Dong (“Dong”) was, at all relevant times, a director and Co-President of Qutoutiao. Dong signed or authorized the signing of the Company’s Offering Documents filed with the SEC.

27. Defendant Oliver Yucheng Chen (“Chen”) was, at all relevant times, a director of Qutoutiao. Chen also served as its Chief Strategy Officer from August 2018 to February 2020. Chen signed or authorized the signing of the Company’s Offering Documents filed with the SEC.

28. Defendant Yongbo Dai (“Dai”) was a director of Qutoutiao beginning in November 2018. Dai signed or authorized the signing of its SPO Documents filed with the SEC.

29. Defendant James Jun Peng (“Peng”) was, at all relevant times, a director of Qutoutiao. Peng was a member of its Audit Committee and Nominating and Corporate Governance Committee, and Chair of the Compensation Committee. Peng signed or authorized the signing of the Company’s SPO Documents filed with the SEC.

30. Defendant Feng Li (“F. Li”) was, at all relevant times, a director of Qutoutiao. F. Li was a member of its Compensation Committee and Nominating and Corporate Governance Committee and Chair of the Audit Committee. F. Li signed or authorized the signing of the Company’s SPO Documents filed with the SEC.

31. The Defendants named in this section (collectively, the “Individual Defendants”), each participated in the preparation of, and signed and/or authorized the signing of, the Company’s IPO and/or SPO Documents. Defendant Qutoutiao and the Individual Defendants are strictly liable for the materially false and/or misleading statements and/or omissions in or incorporated into the Offering Documents. They each failed to investigate whether the omitted information alleged herein would be considered material and thus required to be disclosed pursuant to the 1933 Act.

3. The Underwriter Defendants

32. Defendant Citigroup Global Markets Inc. (“Citigroup”) is a multinational investment bank and financial services corporation that provides a broad range of financial services to consumers and corporate customers. Citigroup is incorporated under the laws of Delaware and maintains its principal executive offices at 388 Greenwich Street, New York, NY 10013. Citigroup served as an underwriter for Qutoutiao’s IPO and SPO.

33. Defendant Deutsche Bank Securities Inc. (“Deutsche”) is a financial services institution which provides a wide array of commercial and investment banking services to corporate and institutional clients along with private and business clients. Services include sales, trading, and origination of debt and equity; mergers and acquisitions; risk management products, such as derivatives; corporate finance, wealth management, retail banking, brokerage and research, fund management, and transaction banking. Deutsche is incorporated under the laws of Germany and maintains its U.S. corporate headquarters at 60 Wall Street, New York, NY 10005. Deutsche served as an underwriter for Qutoutiao’s IPO and SPO.

34. Defendant China Merchants Securities (HK) Co., Ltd. (“China Merchants”) is a China-based financial services company offering securities brokerage, securities investment consulting, securities underwriting, and other services, including investment management. China

Merchants maintains its principal executive offices at 48/F, One Exchange Square, Central, Hong Kong. China Merchants served as an underwriter for Qutoutiao's IPO.

35. Defendant UBS Securities LLC ("UBS") provides investment banking services worldwide, including equities sales and trading, fixed-income products, and treasury products; UBS offers financial services to individual and institutional investors. UBS is incorporated under the laws of Delaware and maintains its principal executive offices at 1285 Avenue of the Americas, New York, NY 10019. UBS served as an underwriter for Qutoutiao's IPO.

36. Defendant Keybank Capital Markets, Inc. ("Keybank") provides investment advisory services, including investment advice, portfolio management, securities, and other financial services. KeyBank is incorporated under the laws of Ohio and maintains its principal executive offices at 127 Public Square, 4th Floor Cleveland, OH 44114. KeyBank served as an underwriter for Qutoutiao's IPO.

37. Defendant CLSA Limited ("CLSA") is a capital markets and investment group focused on alternative investment, asset management, corporate finance and capital markets, securities and wealth management for corporate and institutional clients around the world. CLSA was founded in Hong Kong and maintains its principal executive offices at 18/F, One Pacific Place, 88 Queensway, Hong Kong. CLSA served as an underwriter for Qutoutiao's SPO.

38. Defendant Haitong International Securities Company Limited ("Haitong") is an international financial institution providing a full spectrum of financial products and services as corporate finance, wealth management, asset management, institutional client services and investment business for corporate, institutional retail and high-net-worth clients worldwide. Haitong was founded in Hong Kong and maintains its principal executive offices at 22/F Li Po Chun Chambers, 189 Des Voeux Road Central, Hong Kong. Defendant Haitong served as an underwriter

for Qutoutiao's SPO.

39. Defendant Jefferies Group LLC ("Jefferies") is an investment banking firm, providing equity capital markets, debt capital markets, mergers and acquisitions, restructuring and recapitalization, and other strategic advisory services to customers worldwide. Jefferies is incorporated under the laws of Delaware and maintains its principal executive offices at 520 Madison Avenue, New York, NY 10022. Jefferies served as an underwriter for Qutoutiao's SPO.

40. Defendant Lighthouse Capital International Inc. ("Lighthouse"), also known as Guangyuan Capital or Guangyuan Ziben, operates as a boutique investment bank. Lighthouse is a China-based company that maintains its principal executive offices at Room 3801, China Life Finance Centre, No. 88 Yincheng Rd., Shanghai, 200120. Lighthouse served as an underwriter for Qutoutiao's SPO.

41. Each Underwriter Defendant agreed to purchase Qutoutiao securities (*see infra*) and was given the option to purchase up to an aggregate of 1,800,000 additional ADSs in the IPO and 1,500,000 ADSs in the SPO. The Underwriter Defendants each served as a financial advisor for and assisted in the preparation and dissemination of the Company's materially false and/or misleading Offering Documents.

42. The below chart sets forth the number of securities the Underwriter Defendants agreed to purchase in the IPO:

<b>Underwriters</b>	<b>Number of ADSs</b>
Citigroup Global Markets Inc.	3,945,000
Deutsche Bank Securities Inc.	5,745,000
China Merchants Securities (HK) Co., Ltd.	525,000
UBS Securities LLC	1,485,000
KeyBanc Capital Markets Inc.	300,000
<b>Total</b>	<b>12,000,000</b>

43. The below chart sets forth the number of securities the Underwriter Defendants

agreed to purchase in the SPO:

<b>Underwriters</b>	<b>Number of ADSs</b>
Citigroup Global Markets Inc.	4,000,000
Deutsche Bank Securities Inc.	4,300,000
CLSA Limited	600,000
Haitong International Securities Company Limited	100,000
Jefferies LLC	900,000
Lighthouse Capital International Inc.	100,000
<b>Total</b>	<b>10,000,000</b>

44. The Underwriter Defendants are primarily investment banks which specialize, *inter alia*, in underwriting public offerings of securities. As the underwriters of the IPO and/or SPO, the Underwriter Defendants earned lucrative underwriting fees for their participation.

45. In addition, the Underwriter Defendants met with potential investors and presented highly favorable but materially false and/or misleading information about the Company, its business, products, plans, assets, and financial prospects, or omitted to disclose material information required to be disclosed under the 1933 Act.

46. The Underwriter Defendants served as financial advisors, assisted Qutoutiao and the Individual Defendants in preparing and disseminating the IPO and/or SPO Documents, and had ultimate authority over the content of the Offering Documents. The Underwriter Defendants' names were prominently displayed on the first page of the IPO and/or SPO prospectus. As a result, the Underwriters were negligent in stating that the Offering Documents were prepared accurately and in accordance with the rules and regulations governing their preparation. They also purported to conduct an adequate and reasonable investigation into the business, operations, products, assets, and plans of the Company, an undertaking known as a "due diligence" investigation. During their due diligence, the Underwriter Defendants had continual access to confidential corporate information concerning the Company's business, financial condition, products, plans, assets, and growth prospects. A reasonable investigation into the truthfulness and accuracy of the Offering Documents,

including the statements incorporated by reference, would have revealed that the Offering Documents contained false and/or misleading statements and/or omissions, as alleged herein. None of the Underwriter Defendants made a reasonable investigation into the truthfulness and accuracy of the IPO and/or SPO Documents.

#### **IV. THE OFFERING DOCUMENTS VIOLATED GAAP AND MISLED INVESTORS**

##### **A. Accounting Policies and Principles Applicable to QTT**

47. Generally Accepted Accounting Principles (“GAAP”) are the principles recognized by the accounting profession as the conventions, rules, and procedures necessary to define accepted accounting practices at a particular time, against which financial presentations should be measured. As the official accounting standards, GAAP have been codified and are primarily promulgated by the Financial Accounting Standards Board (“FASB”).

48. The SEC requires that public companies present financial statements in accordance with GAAP. SEC Regulation S-X (17 C.F.R. § 210.4-01(a)(1)) states that financial statements filed with the SEC that are not prepared in compliance with GAAP are presumed to be misleading and inaccurate, despite footnotes and other disclosures.

49. As a publicly traded company, SEC Staff Accounting Bulletin No. 99 – Materiality (“SAB 99”) guides Qutoutiao’s application of materiality. Materiality is based on whether a reasonable person’s decision-making process, relying upon Qutoutiao’s public statements, would have been changed or influenced by the inclusion or correction of the information at issue. According to SAB 99, qualitative and quantitative factors should be considered in determining materiality.

50. The FASB Amendments to Statements of Financial Accounting Concepts No. 9 (“Concept No. 9”) issued in August 2018 clarified the concept of materiality. Concept No. 9 states that “[t]he omission or misstatement of an item in a financial report is material if, in light of

surrounding circumstances, the magnitude of the item is such that it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced by the inclusion or correction of the item.”

51. Qutoutiao was required, under GAAP and SEC Regulation S-X, to make specific disclosures pertaining to related-party transactions because they are material.

52. SEC Regulation S-X requires:

(1) Related party transactions...should be [identified and the amounts] stated on the face of the balance sheet, statement of comprehensive income, or statement of cash flows.

(2) In cases where separate financial statements are presented for the registrant, certain investees, or subsidiaries, any intercompany profits or losses resulting from transactions with related parties and not eliminated and the effects thereof shall be disclosed.

17 C.F.R. § 210.4-08(k).<sup>4</sup>

53. In addition, FASB Accounting Standards Codification (“ASC”) 850 applies to related parties.<sup>5</sup> Related parties cannot be presumed to be acting at arm’s length because of the special inherent relationship between them. *See* ASC 850-10-50-5. Because this special relationship can create a conflict of interest that can benefit related parties, withholding information about material related-party transactions makes financial statements unreliable and prevents the true picture of an

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<sup>4</sup> Unless otherwise noted, internal citations are omitted and emphasis is added throughout.

<sup>5</sup> According to GAAP, related parties include the following:

- Affiliates of the entity;
- Principal owners of the entity and members of their immediate families;
- Management of the entity and members of their immediate families;
- Other parties with which the entity may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests;
- Other parties that can significantly influence the management or operating policies of the transacting parties or that have an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests. (ASC 850-10-20).

entity from being represented. Thus, “[i]nformation about transactions with related parties that would make a difference in decision making shall be disclosed so that users of the financial statements can evaluate their significance.” (ASC 850-10-10-1).

54. FASB ASC 850, requires companies to disclose the following for related party transactions:

- The nature of the relationships involved;
- A description of the transactions, including transactions where no amounts or nominal amounts are involved, for each of the reporting periods where income statements are presented; additionally, other information deemed necessary to gain an understanding of the effects of the transactions on the financial statements should be disclosed;
- The dollar amounts of the transactions for each of the reporting periods where income statements are presented along with the effects of any change in the method of establishing the terms of the transactions when compared to the method used in the preceding reporting period; and
- Amounts due to or from related parties as of each financial statement date and, if not otherwise apparent, the terms and manner of settlement related to those amounts.

55. Furthermore, when a “reporting entity and one or more other entities are under common ownership or management control and the existence of that control could result in operating results or financial position of the reporting entity significantly different from those that would have been obtained if the entities were autonomous,” ASC 850 requires companies to disclose “the nature of the control relationship ... even though there are no transactions between the entities.” (850-10-50-6).

**B. Dianguan Should Have Been Disclosed as Controlled by or Affiliated with Defendant Tan Because its Founder had a Special Relationship with Him**

56. In February 2018, QTT purchased Dianguan for CNY 15 million.<sup>6</sup> QTT’s IPO and

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<sup>6</sup> Qutoutiao Inc., Annual Report (Form 20-F) (Apr. 11, 2019).

SPO Prospectuses each had an entire section of “Related Party Transactions,” which included “Transactions with Companies Controlled by or Affiliated with Mr. Tan.” However, they neglected to also list Dianguan, QTT’s advertising agent, as a related party prior to the acquisition.

57. Xiang “Sean” Liang (“Liang”) had founded Dianguan just four months prior its acquisition by QTT, was its director on record from February 13, 2018 through December 29, 2018, and was its legal representative through December 29, 2018. But Liang had no educational or professional experience in digital marketing.<sup>7</sup> His master’s degrees were in business administration, and mechanical design and theory, and he had previously only worked in investment management. *Id.*

58. What Liang did have was a close business relationship with Defendant Tan, the co-founder and executive chairman of QTT. Beginning in 2016, Liang was the investment director of a company which Defendant Tan owned 99% of: Shanghai Taiyun Investment Management Co. Ltd. (branded as “Taiyun Capital”).<sup>8</sup> Tan’s sister, Tan Siping (“Siping”), owned the remaining 1%, and according to SAMR records, is a legal representative and director of Taiyun Capital. Liang is still listed as an investment assistant on Taiyun Capital’s page on ITJuzi, a Chinese website that tracks technology companies. *Id.* And in July 2018, Defendant Tan simultaneously held the positions of business consultant for Taiyun Capital and chairman of QTT.<sup>9</sup>

59. Within weeks of the Dianguan Acquisition, Defendant Tan invested in a company which was the executive partner of another company at which Liang was the director of domestic

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<sup>7</sup> Liang Xiang, Taiyun Capital, Investment Associate, IT ORANGE, <https://www.itjuzi.com/person/42044>.

<sup>8</sup> *Introduction and Contact Information for Taiyun Capital*, IT ORANGE, <https://www.itjuzi.com/investfirm/1938> (last visited Jan. 5, 2021).

<sup>9</sup> *Want to make money from news? You might regret*, SOHU (Jul. 17, 2018), [https://www.sohu.com/a/241611324\\_100116800](https://www.sohu.com/a/241611324_100116800).

investment. Specifically, Liang was the Director of Domestic Investment at Nantong Woofoo Jinxin Investment Management Co. Ltd, whose executive partner was Nantong WooFoo Jinxin Equity Investment Fund Partnership (“Woofoo Equity”). Tan began holding 64.5% of the equity in Woofoo Equity on February 26, 2018.<sup>10</sup>

60. Accordingly, because Liang and Tan’s business relationship was so intertwined that Dianguan would have been prevented from “fully pursuing its own separate interest” such as not selling illegal advertisements and risking regulatory scrutiny and penalties, Dianguan and QTT were related parties. This relationship, which would have shed light on revenues generated from transactions with Dianguan prior to its acquisition and the reasons for acquiring Dianguan and replacing Baidu, required disclosure to the Company’s investors, but it was not.

**C. Transactions with Mengtui, Fangce, and Shihui Miao Should Have Been Disclosed as Related to and Benefitting Defendant Tan.**

61. QTT also failed to disclose that one of its top advertisers, Mengtui (“Meng Push” or “Mengtui App”), is a party related to Tan.<sup>11</sup> Specifically, the copyright and website operating licenses for the Mengtui App are held by Shanghai Tujin Network Technology Co. Ltd. (“Tujin”). Tujin’s 80% shareholder is Shanghai Bimeng Information Technology Co. Ltd. (“Bimeng”), of which Tan’s sister, Siping, was the legal representative and director until October 23, 2018. Bimeng is also wholly owned by Shanghai Bige Information Technology Co. Ltd. (“Bige”), of which Tan is

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<sup>10</sup> Investment Team, WOOFoo CAPITAL, <http://www.woofocapital.com/#page3> (last visited Jan. 11, 2021).

<sup>11</sup> According to QTT: Fake Revenue, Non-Existent Cash, Undisclosed Related Parties, WOLFPACK RESEARCH (Dec. 10, 2019) (the “Wolfpack Report”), <https://wolfpackresearch.com/research/qttfakevenues-fakecash-undisclosedrelatedparties>, approximately 26.2% of the advertisements on QTT that they analyzed originated with the Mengtui App.

the 99% owner and his wife, He Yuning, is the 1% owner.<sup>12</sup> Further, Bige's official company website as listed on Qichacha, [www.bigbaser.com](http://www.bigbaser.com), leads to a venture capital website that lists Tan as Bige's founder and Bige's CEO, Liu Hui, holds positions at several other companies controlled by Tan.<sup>13</sup> The website also lists Mengtui, Shihui Miao, and Qujianpan (Qu Keyboard) among QTT's products. Furthermore, other media outlets, including Eastmoney Finance, place Mengtui under the category of QTT's official products.<sup>14</sup>

62. QTT also failed to disclose that the advertising income it received from Publisher Shanghai Fangce Network Technology Co. Ltd. ("Fangce"), is related-party income from companies related to Tan as it is managed and substantially owned by one of his close business associates, Liu Hiu.<sup>15</sup> Specifically, Liu Hiu is Fangce general manager and owns 65% of Fangce's parent company, Tianjin Yingnuo Asset Management Co. Ltd. ("Yingnuo"). Liu Hui is also a director of Shenzhen Falide Technology Co. Ltd. ("Foodleader"), where Tan serves as chairman and owns a 53.8% stake through Taiyun Capital's ownership of Foodleader.

63. QTT further failed to disclose that the advertising income it received from Shihui Miao ("Shihui Miao App") is related-party income from companies related to Tan as its licenses and rights are owned by companies that he owns and his sister represents.<sup>16</sup> Specifically, its website operating licenses and software authorship rights are owned by Shanghai Xihu Culture

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<sup>12</sup> See Wutong Holding Group Co., Ltd.- Brief report on changes in equity, CNINF (Nov. 30, 2018), <https://q.stock.sohu.com/newpdf/201833723048.pdf>.

<sup>13</sup> Team Page, BIGBASER.COM, <https://www.bigbaser.com/#/about/team> (last visited Jan. 7, 2021).

<sup>14</sup> *Qu Toutiao President Liu Anyi: The value of Qu Toutiao is underestimated*, TIMES FINANCE, (Dec. 4, 2019), <http://finance.eastmoney.com/a/201912041312870921.html>.

<sup>15</sup> According to the Wolfpack Report, approximately 0.3% of the advertisements on QTT that it analyzed originated with Fangce.

<sup>16</sup> According to the Wolfpack Report, approximately 3.0% of the advertisements on QTT that it analyzed originated with the Shihui Miao App.

Communications Co. Ltd. (“Xihu”), which is 100% owned by Bige, which, as noted above, is 100% owned by Tan and his wife. Further, Tan’s sister, Siping, is Xihu’s legal representative and its current supervisor on record, Xia Biyun (“Xia”), is also the current supervisor on record at Tan’s companies Bige and Bimeng. This was partially disclosed in the 2018 F-1 Registration Statement as a 20% equity interest in Shanghai Jifen Culture Communication Co. Ltd (“Jifen”), one of Qutoutiao’s Chinese entities. Xihu also developed the Shihui Miao App.<sup>17</sup>

64. Both the Mengtui App and Shihui Miao App are part of QTT’s product matrix and while they “have different relationships with the main [QTT App]” to attract traffic and maintain a high level of user activity, they are both so intertwined with the QTT App that they were not likely to grow at a sustainable rate on their own.<sup>18</sup> Accordingly, the Company’s transactions with the Mengtui App and the Shihui Miao App should have been disclosed due to the intertwined nature of their relationship with the QTT App and the financial benefit that Defendant Tan ultimately derived from them.

## V. THE 1933 ACT CLAIMS

65. Lead Plaintiff asserts strict liability claims under §§ 11, 12(a)(2) and 15 of the 1933 Act against Qutoutiao, the Individual Defendants, and the Underwriter Defendants who signed and/or had authority over the contents of the Offering Documents issued in connection with the Company’s Offerings. Lead Plaintiff’s 1933 Act claims are not based on any allegation of deliberate or intentional misconduct, and Lead Plaintiff expressly disclaims any reference or reliance upon fraud allegations for such claims.

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<sup>17</sup> Ma Cheng, *Giants’ “Sinking Anxiety”*: After Tencent and Ali entered the game, JD.com bought into QuTouTiao, ALL WEATHER TMT (Apr. 25, 2019), <https://awtmt.com/articles/3518477>.

<sup>18</sup> Han Zhipeng, *The original funny headline “Life Renewal” game*, SOHU (Oct. 11, 2019), [https://www.sohu.com/a/346169737\\_118788](https://www.sohu.com/a/346169737_118788).

66. The 1933 Act Claims arise out of Qutoutiao's approximately \$85.8 million IPO of 13.8 million ADSs at \$7.00 per share and approximately \$31.0 million SPO of 3.3 million ADSs at \$10 per share.

67. On September 11, 2018, Qutoutiao filed its final amendment to the IPO Registration Statement with the SEC on Form F-1/A. The Company's IPO Registration Statement was declared effective on September 13, 2018. On September 14, 2018, Qutoutiao issued a press release announcing the pricing of its IPO and that Defendants Citigroup, Deutsche, China Merchants, and UBS would be acting as "joint bookrunners" for the Offering, and Defendant KeyBanc would be acting as co-manager.<sup>19</sup> That same day, Qutoutiao filed its IPO Prospectus on Form 424B4 with the SEC (collectively, the "IPO Documents").

68. On March 29, 2019, Qutoutiao issued a press release announcing its proposed follow-on SPO, and named Defendants Citigroup, Deutsche, CLSA, Jefferies, Haitong and Lighthouse as "joint bookrunners" for the Offering.<sup>20</sup> On April 1, 2019, the Company filed its first and final amendment to its SPO Registration Statement on Form F-1/A. The SPO Registration Statement was declared effective shortly thereafter. On April 3, 2019, Qutoutiao filed its SPO Prospectus on Form 424B4 with the SEC.

69. By the commencement of this action, QTT ADSs closed at \$2.42 per share on September 17, 2020, representing a 65.43% decline from the \$7.00 per share IPO price and a 75.8% decline from the \$10.00 per share SPO price. And on January 15, 2021, the QTT ADSs closed at

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<sup>19</sup> News Release, Qutoutiao Inc. Announces Pricing of Initial Public Offering, GLOBE NEWSWIRE (Sept. 14, 2018), <https://ir.qutoutiao.net/news-releases/news-release-details/qutoutiao-inc-announces-pricing-initial-public-offering>.

<sup>20</sup> News Release, Qutoutiao Inc. Announces Proposed Follow-on Public Offering of American Depositary Shares, GLOBE NEWSWIRE (Mar. 29, 2019), <https://ir.qutoutiao.net/news-releases/news-release-details/qutoutiao-inc-announces-proposed-follow-public-offering-american>.

\$2.14 per share.

70. Each of the Offerings was a firm-commitment offering, in which the Underwriter Defendants purchased shares of Qutoutiao and sold them to the investing public.

71. Under applicable SEC rules and regulations, including Item 303 of SEC Regulation S-K, 17 C.F.R. § 229.303(a)(3)(ii) (“Item 303”), the Offering Documents were required to disclose known trends, events, or uncertainties that Qutoutiao was having, and was reasonably likely to have, and their impact on its continuing operations. The Offering Documents did not do so. For this and other reasons, the statements contained in ¶¶ 72, 74, 77-78, 80, 83, 85, 87, 89, 91, 93, 95, 97, 99-100, 102 *infra*, were materially false and misleading. Because Defendants’ negligent preparation of the Offering Documents caused them to contain untrue statements of material fact and omit other facts necessary to make the statements made not misleading, and not be prepared in accordance with the rules and regulations governing their preparation, Defendants are liable under the 1933 Act.

**A. Materially False and Misleading Statements and Omissions in the IPO Documents.**

72. The IPO Documents contained multiple material misstatements regarding the Company’s strategy of targeting users in lower-tier cities in China, stating in relevant part that:

***Since our inception, we have strategically targeted users from tier-3 and below cities in China because of the enormous opportunities in this underserved market.*** As of the end of 2017, tier-3 and below cities had a population of 1,027 million each owning 0.5 mobile device on average (compared to a population of 363 million each owning 1.3 mobile devices on average in tier-1 and 2 cities), suggesting significant potential for further mobile penetration, according to the Analysys [sic] Report. ***Mobile users in tier-3 and below cities tend to have a slower pace of life and spend more time on the Internet given limited offline entertainment venues. Moreover, they often enjoy fast increasing disposable income and lower financial pressures thanks to lower housing prices. These factors contribute to a significant need for mobile entertainment content while also create strong monetization potential.***

73. However, the statements contained in ¶ 72 *supra* contained untrue statements of

material facts and omitted material facts necessary to make the statements made therein not misleading because, the “enormous opportunities” and “strong monetization potential” in Tier-3 and Tier-4 cities also had to do with the high number of unqualified advertisers who wanted to run non-compliant ads in those cities as regulators were more lenient and users were less aware of their rights as consumers in those cities.

74. The IPO Documents also stated that Qutoutiao’s “*net revenues have increased rapidly*” from RMB58.0 million (US\$8.8 million) in 2016 to RMB517.1 million (US\$78.1 million) in 2017, and further from RMB107.3 million (US\$16.2 million) in the six months ended June 30, 2017 to RMB717.8 million (US\$108.5 million) in the same period in 2018.” Most of this revenue was derived from advertising, as the Company explained in the IPO Documents:

Baidu, which is our largest customer and operates a third-party advertising platform, contributed 69.9%, 43.7%, 75.8% and 12.1% of our net revenues in 2016 and 2017 and the six months ended June 30, 2017 and 2018, respectively. Baidu also accounted for 92.6%, 59.8% and 30.5% of our accounts receivable as of December 31, 2016 and 2017 and June 30, 2018, respectively. ***To enhance our platform’s monetization capabilities, we acquired an advertising agent in February 2018 that operates a programmatic advertising system. We expect this system will allow us to reduce our reliance on third-party advertising platforms such as Baidu.*** Prior to our acquisition of this advertising agent in February 2018, we engaged such advertising agent to serve as our sales agent in selling our advertising solutions to other second-tier advertising agents and end advertisers. In 2017 and the six months ended June 30, 2018, 26.2% and 78.2% of our net revenues, respectively, were generated through this advertising agent. ***These second-tier advertising agents and end advertisers are our customers as they select our mobile applications to place their advertisements and our performance obligation is to provide the underlying advertising display services to them.***

75. The statements contained in ¶ 74 *supra* contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading by: (i) touting the Company’s “rapidly” increased revenues without disclosing that a significant number of the advertisements that contributed to this revenue growth (a) could not be substantiated and thus were considered false advertisements under applicable Chinese regulations, or (b) provided links to

illegal online gambling platforms; (ii) noting the “programmatic advertising system” of Dianguan as a benefit of, and reason for, replacing the Company’s established third-party advertising agent, Baidu, without disclosing that the change reduced the amount of oversight over the content of ads and increased the sales of non-compliant ads; (iii) explaining the Company’s ability to monetize user traffic, as enhanced by its programmatic advertising system, without disclosing that the enhancement also related to its increased ability to sell non-compliant ads; and (iv) describing the Company’s “performance obligation” to its end-advertiser customers without disclosing that that obligation included displaying more non-compliant and illegal ads resulting from its now separate teams with different processes and procedures for qualified versus unqualified advertisers.

76. In addition, Item 303 required the IPO Documents to “[d]escribe any known trends or uncertainties that have had or that are reasonably likely to have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations.” Defendants’ failure to disclose the full impact of replacing Baidu with Dianguan on QTT’s sales violated Item 303 because there were known trends and uncertainties related to Dianguan being a start-up and related party that were likely to, and did, have a material unfavorable impact on the Company’s revenues.

77. Next, the IPO Documents note that the Company “currently generate[s] most of [its] revenue from advertising,” so to “Enhance [the Company’s] Monetization Capabilities”:

*We intend to enhance our advertising solutions by strengthening the performance of our proprietary programmatic advertising system.* We believe our strategic move to reduce the utilization of third-party advertising platforms and focus on expanding our advertising customer base and advertising agents directly will further boost our advertising revenue.

78. Regarding “Monetization,” the IPO Documents specifically stated that:

*Our advertising technology aims to maximize our revenue potential by rewarding the more relevant advertisement with a more prominent position, despite the potentially lower price bid of such advertisement.* We actively monitor the advertisements placed to help ensure their relevance.

Customers for our programmatic advertising system are comprised of advertising agents and end advertisers. *We have our own sales personnel who are responsible to support and monitor the performances of advertising agents and to attract advertising customers to use our programmatic advertising system directly.* We enter into standard agreements with advertising agents generally for a term of one year. Our advertising agents are responsible for identifying end advertisers, confirming payments and setting up accounts on our programmatic advertising system for advertising customers. We provide ongoing training to advertising agents to familiarize them with the functionalities and capabilities of our programmatic advertising system. *These advertising agents are responsible for collecting and submitting the relevant documentation and licenses from advertising customers for our approval to open an account on our programmatic advertising system, and are also liable for any infringement of third-party rights or violation of regulatory requirements caused by advertisements placed by their end advertisers.*

79. The statements contained in ¶¶ 77-78 *supra* contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading by: (i) detailing how the Company was enhancing or maximizing its ability to monetize user traffic, without disclosing that the enhancement also related to its increased ability to sell non-compliant ads after replacing Baidu with Dianguan in February 2018; (ii) describing the Company’s sales personnel’s responsibilities versus those of the third-party advertising agents without disclosing that it had set up separate teams within QTT with different processes and procedures for qualified versus unqualified advertisers which led to more sales of non-compliant ads; and (iii) claiming that third-party advertising agents are liable for any ads that violate Chinese regulatory requirements without disclosing that the Company would also face increasing regulatory scrutiny and reputational harm.

80. The IPO Documents specifically tout Qutoutiao’s mission “to deliver quality and relevant content to users, and content sourcing, management and recommendation” as “core focuses of [its] operations,” including with regard to advertising and content screening technology:

- **Advertising.** *Our advertising technology enables advertising customers to bid for audience and automatically deliver relevant, targeted promotional links to users.* Our system rewards more relevant advertisements with more prominent positions, despite the potentially lower priced bids of such advertisements. Our audience segmentation technology helps ensure the relevance of advertisements shown to users by analyzing their interests through browsing activity, viewed content and commenting history. In addition, we have the ability to predict

click-through rates for advertisements using logistic regression, gradient boosting decision tree and linear and nonlinear modeling algorithms. Enhanced precision of these click-through rate projections can help maximize the cost effectiveness of customers' advertising budgets.

- **Content Screening Technology.** Our text screening system screens information based on pre-set keywords. *We utilize artificial intelligence to identify inappropriate or objectionable content from images, speeches and videos, significantly increasing efficiency over manual review. We also apply deep learning methods to analyze complex visual content. Through big data and continuous training, our system is able to monitor and identify objectionable visual content with a high degree of accuracy. The screening system automatically declines content that did not meet the standards of our platform and flags suspicious content for manual review by our content management team.*

81. The statements contained in ¶ 80 *supra* contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading by touting the Company's (i) advertising technology without disclosing that misleading or illegal ads were being delivered as part of the "relevant, targeted promotional links to users" and (ii) content screening technology without disclosing that different processes and procedures were being applied to advertising content and that any declined ads could be manually allowed on the QTT App. What investors understood, as a September 5, 2019 statement by Defendant Tan confirmed, was that "[w]e have one of the best track records in compliance among all the sizeable newsfeed players in the space as **we have put in significant efforts from the very beginning in building our content compliance teams and capabilities.**"

82. Furthermore, while Defendants list numerous "Risk Factors" in the IPO Documents, they failed to adequately warn investors that certain "Risk Factors" had already materialized at the time of the IPO.

83. First, the IPO Documents warned that "[a]dvertisements on our mobile applications may subject us to penalties and other administrative actions":

Under PRC advertising laws and regulations, we are obligated to monitor the advertising content shown on our mobile applications to ensure that such content is true, accurate and in full compliance with applicable laws and regulations. . . . However, *for the determination of the truth and accuracy of the advertisements,*

*there are no implementing rules or official interpretations, and such a determination is at the sole discretion of the relevant local branch of the State Administration for Market Regulation, or the SAMR (successor of SAIC and the State Food and Drug Administration), which results in uncertainty in the application of these laws and regulations. . . .*

We cannot assure you that all the advertisements shown on our mobile applications are true, accurate, appropriate and in full compliance with applicable laws and regulations. For example, *advertisers on our mobile applications, or their agents, may use measures that are designed to evade our monitoring, such as providing inauthentic material that does not match the actual advertisement, or supplying advertising which is superficially compliant but nevertheless is linked to one or more webpages that feature noncompliant advertising content. In addition, our employees responsible for reviewing advertisements may not fully understand the relevant laws and regulations or may be inappropriately influenced by the advertisers. In each case, we may still be held responsible for noncompliant advertising content.* We include clauses in most of our advertising contracts requiring that all advertising content provided by advertising customers must comply with relevant laws and regulations. Pursuant to the contracts between us and the relevant advertising agents or advertising customers, they are liable for all damages to us caused by their breach of such representations. However, there can be no assurance that we will be able to successfully enforce our contractual rights.

*Violation of these laws and regulations may subject us to penalties, including fines, confiscation of our advertising income, orders to cease dissemination of the advertisements and orders to eliminate the effect of illegal advertisement. If an illegal advertisement featured on our mobile applications were to have excessive negative effects, our brand and reputation may be harmed, and PRC governmental authorities may pursue more severe penalties and administrative actions against us. PRC governmental authorities may even force us to terminate our advertising operation or revoke our licenses in circumstances involving serious violations. Such penalties may have a material and adverse effect on our business, results of operations and financial condition.*

84. The statements contained in ¶ 83 *supra* contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading by: (i) declaring that how advertising laws and regulations are applied to ads is uncertain without disclosing that advertisers were capitalizing on that uncertainty and relying on regulators to not pay attention to non-compliant ads in Tier-3 and Tier-4 cities; (ii) explaining how advertisers could evade the Company's monitoring or how the Company's employees could unwittingly overlook a non-compliant ad without disclosing that it had set up separate teams with different processes and

procedures for qualified versus unqualified advertisers which led to more sales of non-compliant ads; and (iii) warning of the possible ramifications of violating the applicable advertising laws and regulations without disclosing that the Company was already violating them and thus the ramifications were not a matter of if, but when.

85. Second, the IPO Documents warned that because “[w]e generate a substantial majority of our revenues from advertising[,] [a] decline in our advertising revenue could harm our business”:

We generated almost all of our revenues from advertising services in 2016, 2017, and the six months ended June 30, 2018. When we first commenced our business, we collaborated with various third-party advertising platforms to place advertisements on our mobile applications. ***To enhance our platform’s monetization capabilities, we acquired an advertising agent in February 2018 that operates a programmatic advertising system. This system will serve to power our advertising solutions while reducing the use of third-party advertising platforms.*** In 2017 and the six months ended June 30, 2018, 26.2% and 78.2%, respectively, of our net revenues were generated through this advertising agent. We have limited experience in operating the programmatic advertising system and in acquiring our own advertising agents and advertising customers. We may not be able to establish our own sales personnel to effectively and efficiently acquire and retain advertising agents and advertising customers. The effectiveness of our programmatic advertising system may not perform as expected and achieve widespread acceptance by advertising customers.

Our advertising customers for our programmatic advertising system are comprised of advertising agents and end advertisers. ... ***If we fail to retain existing advertising customers or ensure that their advertising spend with us remains at similar or increased levels or attract new advertising customers to advertise on our platform, our business, results of operations and financial condition may be materially and adversely affected.***

86. The statements contained in ¶ 85 *supra* contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading: (i) noting the “programmatic advertising system” of the Company’s acquired advertising agent as a benefit of, and reason for, replacing its third-party advertising platforms without disclosing that the change to the start-up reduced the amount of oversight over the content of ads and increased the sales of non-compliant ads; (ii) explaining the Company’s ability to “enhance” its monetization

capabilities without disclosing that the enhancement was also related to its increased ability to sell non-compliant ads; and (iii) warning of material and adverse effects on the Company if existing customers are lost or their advertising spend decreases without disclosing that many of its customers were unqualified advertisers who were purchasing non-compliant ads and thus the revenue generated from them inevitably would decrease when regulators cracked down on them.

87. Lastly, regarding the “Transactions with Companies Controlled by or Affiliated with Mr. Tan,” the IPO Documents disclosed that:

***In 2016, we paid RMB5.0 million (US\$0.8 million) to Youxuan Information Technology (Shanghai) Co., Ltd., a company controlled by Mr. Eric Siliang Tan, our co-founder and executive chairman, to cooperate on a potential business project.*** Such project was subsequently canceled and the entire amount was refunded back to us in 2017.

***We paid Shanghai Yinnuo Management Consulting Co., Ltd., or Yinuo Management, a company controlled by Mr. Eric Siliang Tan, service fees in the amount of RMB3.0 million (US\$0.5 million), RMB16.8 million (US\$2.5 million) and RMB6.9 million (US\$1.0 million) in 2016, 2017 and the six months ended June 30, 2017, respectively.*** Such service fees relate to costs charged by Yinuo Management to provide us with financial accounting support, office space and certain other administrative support. Amounts due to Yinuo Management in connection with these service fees as of December 31, 2016 was RMB3.0 million (US\$0.5 million). No amount was due to Yinuo Management in connection with these service fees as of December 31, 2017. We have since developed all relevant functions internally and leased office space for our operations that were previously provided by Yinnuo Management and we currently do not expect to pay service fees to Yinuo Management for such functions or office space in the future.

***We received RMB5.3 million (US\$0.8 million) in service fees from AdIn Media (Shanghai) Co., Ltd., or AdIn Media, a company in which Mr. Eric Siliang Tan indirectly owns a minority interest and in which he is a key management personnel, in the six months ended June 30, 2018.*** Such fees related to agent and platform service provided to AdIn Media by facilitating advertising customers to display advertisements with AdIn Media. As of June 30, 2018, an amount of RMB6.7 million (US\$1.0 million) was due to AdIn Media in connection with such services provided, which represent the service fee collected from advertising customers but not yet paid to AdIn Media.

***We also received RMB1.2 million (US\$0.2 million) in service fees from AdIn Media in the six months ended June 30, 2018 relating to advertising serviced provided by us to AdIn Media.*** As of June 30, 2018, the remaining balance of such service fees

was RMB0.9 million (US\$0.1 million).

88. The statements contained in ¶ 87 *supra* contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading: (i) the transactions with companies controlled by or affiliated with Tan also include transactions involving the Mengtui App, Fangce and the Shihui Miao App based on Tan's ownership stakes in Taiyun Capital and Bige and (ii) the Dianguan Acquisition should have been listed as a related-party transaction based on Tan's special relationship with Dianguan's founder, Liang through Taiyun Capital, in which Tan is a majority investor or owner.

**B. Materially False and Misleading Statements and Omissions in the SPO Documents.**

89. The SPO Documents contained multiple material misstatements regarding the Company's strategy of targeting users in lower-tier cities in China, stating in relevant part:

*Since our inception, we have strategically targeted users from lower tier cities in China because of the enormous opportunities in this underserved market.* As of the end of 2017, lower tier cities had a population of 1,027 million each owning 0.5 mobile device on average (compared to a population of 363 million each owning 1.3 mobile devices on average in tier-1 and 2 cities), suggesting significant potential for further mobile penetration, according to the Analysys Report. *Mobile users in lower tier cities tend to have a slower pace of life and spend more time on the Internet given limited offline entertainment venues. Moreover, they often enjoy fast increasing disposable income and lower financial pressures due to lower housing prices. These factors have given rise to a significant need for mobile entertainment content while also creating high monetization potentials.* Users from lower tier cities tend to have different interests and preferences in comparison to users from tier-1 and tier-2 cities. Qutoutiao's light entertainment-oriented and easily digestible content is designed to resonate with such users and provides us with a significant advantage to capture this underserved market.

90. However, the statements contained in ¶ 89 *supra* contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading because, the "enormous opportunities" and "high monetization potentials" in lower-tier cities also had to do with the high number of unqualified advertisers who wanted to run non-

compliant ads in those cities as regulators were more lenient and users were less aware of their rights as consumers in those cities.

91. The SPO Documents also touted that the Company’s “*net revenues have increased rapidly*” from RMB58.0 million (US\$8.8 million) in 2016 to RMB517.1 million (US\$78.1 million) in 2017, and further to RMB3,022.1 million (US\$439.6 million) in 2018.” The majority of the Company’s revenue came from advertising, as the SPO Documents stated, in relevant part:

Baidu, which used to be our largest customer and operates a third-party advertising platform, contributed 69.9%, 43.7% and 4.2% of our net revenues in 2016, 2017 and 2018, respectively. Baidu also accounted for 59.8% and 8.8% of our accounts receivable as of December 31, 2017 and 2018, respectively. *To enhance our platform’s monetization capabilities, we acquired an advertising agent in February 2018 that operates a programmatic advertising system. We expect this system will allow us to reduce our reliance on third-party advertising platforms such as Baidu.* Prior to our acquisition of this advertising agent in February 2018, we engaged such advertising agent to serve as our sales agent in selling our advertising and marketing solutions to other second-tier advertising agents and end advertisers. *These second-tier advertising agents and end advertisers are our customers as they select our mobile applications to place their advertisements and our performance obligation is to provide the underlying advertising display services to them.*

92. The statements contained in ¶ 91 *supra* contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading by: (i) touting the Company’s “rapidly” increased revenues without disclosing that (a) a significant number of ads whose claims could not be substantiated and thus were considered false advertisements under applicable regulations, or (b) provided links to illegal online gambling platforms; (ii) noting the “programmatic advertising system” of Dianguan as a benefit of, and reason for, replacing the Company’s third-party established advertising agent, Baidu, without disclosing that the change reduced the amount of oversight over the content of ads and increased the sales of non-compliant ads; (iii) explaining the Company’s ability to monetize user traffic, as enhanced by its programmatic advertising system, without disclosing that the enhancement was also related to its increased ability

to sell non-compliant ads; and (iv) describing the Company’s “performance obligation” to its end advertiser customers without disclosing that that obligation included displaying more non-compliant and illegal ads resulting from its now separate teams with different processes and procedures for qualified versus unqualified advertisers.

93. In addition, Defendants’ continued failure to disclose the full impact of replacing Baidu with Dianguan on QTT’s sales violated Item 303 because there were known trends and uncertainties related to Dianguan being a start-up and related party that were likely to, and did, have material unfavorable impact on the Company’s revenues.

94. The SPO Documents contained substantially the same statements as the IPO Documents about the Company’s abilities to “Enhance [its] Monetization Capabilities” and plans to achieve such improved “Monetization” through advertising, which are quoted more fully in ¶¶ 77-78. These statements remained materially false or misleading for the reasons discussed in ¶ 79.

95. The SPO Documents also contained substantially the same statements as the IPO Documents about Qutoutiao’s mission “to deliver quality and relevant content to users, and content sourcing, management and recommendation” as “core focuses of [its] operations,” as related to advertising and content screening technology, which are quoted more fully in ¶ 80. These statements remained materially false or misleading for the reasons discussed in ¶ 81.

96. Furthermore, while Defendants again list numerous “Risk Factors” in the SPO Documents, they continued to fail to adequately warn investors that certain “Risk Factors” had already materialized at the time of the SPO.

97. First, the SPO Documents warned that because “[w]e generate a substantial majority of our revenues from advertising and marketing[,] [a] decline in our advertising and marketing revenues could harm our business”:

We generated a substantial majority of our revenues from advertising and marketing services in 2016, 2017 and 2018. When we first commenced our business, we collaborated with various third-party advertising platforms to place advertisements on our mobile applications. ***To enhance our platform’s monetization capabilities, we acquired an advertising agent in February 2018 that operates a programmatic advertising system. This system will serve to power our advertising and marketing solutions while reducing the use of third-party advertising platforms.*** We have limited experience in operating the programmatic advertising system and in acquiring our own advertising agents and advertising customers. We may not be able to establish our own sales personnel to effectively and efficiently acquire and retain advertising agents and advertising customers. The effectiveness of our programmatic advertising system may not perform as expected and achieve widespread acceptance by advertising customers.

Our advertising customers for our programmatic advertising system are comprised of advertising agents and end advertisers. ... ***If we fail to retain existing advertising customers or ensure that their advertising spend with us remains at similar or increased levels or attract new advertising customers to advertise on our platform, our business, results of operations and financial condition may be materially and adversely affected.***

98. The statements contained in ¶ 97 *supra* contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading: (i) noting the “programmatic advertising system” of the Company’s acquired advertising agent as a benefit of, and reason for, replacing its third-party advertising platforms without disclosing that the change to the start-up reduced the amount of oversight over the content of ads and increased the sales of non-compliant ads; (ii) explaining the Company’s ability to monetize user traffic, as enhanced by its programmatic advertising system, without disclosing that the enhancement also related to its increased ability to sell non-compliant ads; and (iii) warning of material and adverse effects on the Company if existing customers are lost or their advertising spend decreases without disclosing that many of its customers were unqualified advertisers who were purchasing non-compliant ads and thus the revenue generated from those customers inevitably would decrease when the non-compliant ads became public.

99. Second, the SPO Documents contained substantially the same statement as the IPO

Documents regarding Qutoutiao’s warning that “[a]dvertisements on [its] mobile applications may subject us to penalties and other administrative actions,” which is quoted more fully in ¶ 83. This statement remained materially false or misleading for the reasons discussed in ¶ 84.

100. Third, the SPO Documents warned that “[n]on-compliance with law on the part of third parties with which we conduct business could disrupt our business and adversely affect results of our operation and financial condition”:

Third parties with which we conduct business, such as content providers, advertising agents, advertising customers and merchandise suppliers, may be subject to regulatory penalties or punishments because of their regulatory compliance failures or may be infringing upon other parties’ legal rights, which may, directly or indirectly, disrupt our business. *Although we conduct review of legal formalities and certifications before entering into contractual relationships with third parties, and take measures to reduce the risks that we may be exposed to in case of any non-compliance by third parties, we cannot be certain whether such third party has violated any regulatory requirements* or infringed or will infringe any other parties’ legal rights. For example, content providers may submit copyrighted content that they have no right to distribute. While our content management system screens content for potential copyright infringements, we may not be able to identify all instances of copyright infringement. In the event we deliver content that violates the copyrights of a third party, we may be required to pay damages to compensate such third party. Even though we have the contractual right to seek indemnification from the relevant content provider for such payment, there can be no assurance that we will be able to enforce such right. As a result, our business, results of operations and financial condition could be materially and adversely affected. Similarly, *advertising content of advertising customers may also not be in full compliance with applicable laws and regulations that may have an adverse effect as to our business, results of operations and financial condition.* See “— Advertisements on our mobile applications may subject us to penalties and other administrative actions.”

101. The statements contained in ¶ 100 *supra* were materially false and misleading because: (i) the measures the Company had taken to reduce its risk also included setting up separate teams with different processes and procedures for qualified versus unqualified advertisers and placing riskier ads in lower tier cities where there was less regulatory scrutiny; (ii) even though the Company had measures in place to decline non-compliant ads, the advertiser or QTT employees who were responsible for those ads could contact the reviewing department for a second manual review

and allow them on the QTT App manually; and (iii) the Company failed to adequately vet unqualified advertisers and screen out non-compliant or illegal ads, and thus failed to discover if they had or were violating regulatory requirements. Until July 2020, investors were in the dark about the substantial amount of QTT's revenue being generated from ads by unqualified advertisers which did not comply with the applicable Chinese regulations or that QTT employees were managing the risk of losing that revenue by reducing the chance that they would get caught by state regulators, rather than by simply not putting risky advertisements on the QTT App.

102. Lastly, when acknowledging the Company's related party transactions, the SPO Documents disclosed with regard to "Transactions with Companies Controlled by or Affiliated with Mr. Tan":

***In 2016, we paid RMB5.0 million (US\$0.8 million) to Youxuan Information Technology (Shanghai) Co., Ltd., a company controlled by Mr. Eric Siliang Tan, our co-founder and executive chairman, to cooperate on a potential business project.*** Such project was subsequently canceled and the entire amount was refunded back to us in 2017.

***We paid Shanghai Yinnuo Management Consulting Co., Ltd., or Yinnuo Management, a company controlled by Mr. Eric Siliang Tan, service fees in the amount of RMB3.0 million and RMB16.8 million in 2016 and 2017, respectively.*** Such service fees relate to costs charged by Yinnuo Management to provide us with financial accounting support, office space and certain other administrative support. Amounts due to Yinnuo Management in connection with these service fees as of December 31, 2016 was RMB3.0 million. No amount was due to Yinnuo Management in connection with these service fees as of December 31, 2017. We have since developed all relevant functions internally and leased office space for our operations that were previously provided by Yinnuo Management and we currently do not expect to pay service fees to Yinnuo Management for such functions or office space in the future.

***We received RMB29.6 million (US\$4.3 million) in service fees from AdIn Media (Shanghai) Co., Ltd., or AdIn Media, a company in which Mr. Eric Siliang Tan indirectly owns a minority interest and in which he is a key management personnel, in 2018.*** Such fees related to agent and platform service provided to AdIn Media by facilitating advertising customers to display advertisements with AdIn Media. We also received fees in the amount of RMB4.5 million (US\$0.6 million) for providing advertising services to AdIn Media in 2018. As of December 31, 2018, Mr. Tan was no longer a key management personnel of AdIn Media, and thus AdIn Media ceased

to be our related party.

103. The statements contained in ¶ 102 *supra* contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading: (i) the transactions with companies controlled by or affiliated with Tan also include transactions involving the Mengtui App, Fangce and the Shihui Miao App based on Tan's ownership stakes in Taiyun Capital and Bige; and (ii) the Dianguan Acquisition should have been listed as a related party transaction based on Tan's special relationship with Dianguan's founder, Liang, through Taiyan Capital, in which Tan is a majority investor or owner.

## **VI. CLASS ALLEGATIONS**

104. Lead Plaintiff brings this action as a class action, pursuant to Federal Rules of Civil Procedure ("Rules") 23(a) and 23(b)(3), on behalf of a class consisting of all person and entities that purchased, or otherwise acquired, Qutoutiao securities, pursuant or traceable to the IPO and/or SPO and were damaged by the conduct asserted herein. Defendants and their immediate families and legal representatives, heirs, successors or assigns and any entity in which the Defendants named herein have, or had, a controlling interest, are excluded from the Class.

105. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. While the exact number of Class members is unknown to Lead Plaintiff at this time, and can only be ascertained through appropriate discovery, Lead Plaintiff believes that there are hundreds, if not thousands, of members in the proposed Class.

106. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class that predominate over questions that may affect individual class members include whether:

- (a) Defendants violated the 1933 Act;
- (b) Defendants omitted and/or misrepresented material facts;
- (c) Defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- (d) The price of Qutoutiao securities was artificially inflated; and
- (e) The extent of damage sustained by Class members and the appropriate measure of damages.

107. Lead Plaintiff's claims are typical of those of other Class members because he was similarly damaged by Defendants' wrongful conduct in violation of the 1933 Act.

108. Lead Plaintiff will fairly and adequately protect the interests of the Class members and has retained counsel who is experienced in securities class action litigation. Lead Plaintiff has no interests that conflict with those of the Class.

109. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Lead Plaintiff knows of no difficulties in the management of this action that would preclude its maintenance as a class action.

## **VII. CLAIMS FOR RELIEF**

### **COUNT I**

#### **Violations of § 11 of the 1933 Act (Against QTT, the Individual Defendants, and the Underwriter Defendants)**

110. Lead Plaintiff repeats and realleges every allegation contained above as if fully alleged in this Count.

111. This claim is brought pursuant to § 11 of the Securities Act, 15 U.S.C. § 77k, against Qutoutiao, the Individual Defendants (with respect to Offering Documents they signed, or approved the signing of), and the Underwriter Defendants (with respect to Offering Documents they underwrote), on behalf of all persons and entities who purchased or acquired Qutoutiao securities

pursuant or traceable to the IPO and/or SPO Documents and were damaged by the conduct alleged herein. Lead Plaintiff asserts only strict liability and negligence claims and expressly disclaims any claim of fraud or intentional misconduct. This Count does not sound in fraud. Lead Plaintiff does not allege liability arises from any scienter or fraudulent intent, which are not elements of a § 11 claim. Any inferences of fraud or fraudulent conduct and/or motive are specifically excluded from this Count.

112. As part of the Offering Documents, Qutoutiao registered and sold approximately 15.3 million securities in the closing of the IPO and SPO, collectively. Qutoutiao was the issuer of its securities pursuant to the Offering Documents within the meaning of § 11 of the 1933 Act.

113. The Defendants named in this Count had ultimate control and/or authority over the contents and dissemination of the IPO and/or SPO Documents. Further, the Individual Defendants each signed the IPO and/or SPO Documents.

114. Qutoutiao securities were issued and sold pursuant to the Offering Documents. All purchases or acquisitions of Qutoutiao securities by shareholders in the IPO or SPO were a result of the issuance of the Offering Documents and the shares registered thereunder. Each security sold to investors by Qutoutiao and the Underwriter Defendants at the time of the closing of the IPO and/or SPO is traceable to the Offering Documents.

115. As alleged in this Complaint, the Offering Documents contained untrue statements of material fact and omitted to state material facts required to be stated therein or necessary to make the statements therein not misleading. The facts misstated and omitted in the Offering Documents were material.

116. As the issuer and registrant, Qutoutiao is strictly liable for the untrue statements of material fact. The Defendants named in this Count owed to Lead Plaintiff and the other Class

members, the duty to make a reasonable and diligent investigation of the statements contained in the IPO and/or SPO Documents, to ensure that the statements contained or incorporated by reference therein were true, and that there was no omission to state a material fact required to be stated to make the statements contained therein not misleading. No Defendant named under this Count made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the IPO and/or SPO Documents were accurate and complete in all material respects. Had Defendants exercised reasonable care, they would have known of the material misstatements and omissions which were required to be disclosed, as alleged herein.

117. Lead Plaintiff and the other Class members did not know, nor in the exercise of reasonable diligence could they have known, that the Offering Documents contained untrue statements of material fact and omitted to state material facts required to be stated or necessary to make the statements identified herein not misleading when they purchased or acquired Qutoutiao securities pursuant or traceable to the IPO and/or SPO Documents.

118. As a direct and proximate result of the conduct and omissions of the Defendants named in this Count, Lead Plaintiff and the other Class members suffered substantial damages in connection with their purchase(s) of Qutoutiao securities pursuant or traceable to the IPO and/or SPO Documents.

119. This claim is brought within one year of discovery of the untrue statements and omissions in the Offering Documents and within three years of their effective dates. By reason of the foregoing, the Defendants named in this Count are liable to Lead Plaintiff and the Class under § 11 of the 1933 Act.

## COUNT II<sup>21</sup>

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<sup>21</sup> Lead Plaintiff did not buy in the IPO or SPO directly from Defendants, but he asserts claims in this section on behalf of class members who did. Lead Plaintiff has brought these claims because his

**Violations of § 12(a)(2) of the 1933 Act  
(Against Qutoutiao and the Underwriter Defendants)**

120. Lead Plaintiff repeats and realleges every allegation contained in ¶¶1-109 as if fully alleged in this Count.

121. This claim is brought against Qutoutiao and the Underwriter Defendants (with respect to Offering Documents they underwrote), pursuant to § 12(a)(2) of the 1933 Act, 15 U.S.C. § 771(a)(2), on behalf of all persons who purchased or acquired Qutoutiao securities pursuant to the IPO and/or SPO Documents and were damaged by the conduct alleged herein. Lead Plaintiff asserts only strict liability and negligence claims and expressly disclaims any claim of fraud or intentional misconduct. This Count does not sound in fraud. Lead Plaintiff does not allege liability arises from any scienter or fraudulent intent, which are not elements of a § 12(a)(2) claim. Any inferences of fraud or fraudulent conduct and/or motive are specifically excluded from this Count.

122. The Defendants in this Count solicited, offered and/or sold Qutoutiao securities using means or instruments of transportation or communication in interstate commerce or the mail.

123. Qutoutiao and the Underwriter Defendants were sellers, offerors, or solicitors of purchasers of the shares offered pursuant to the IPO and/or SPO Documents.

124. As alleged herein, the Offering Documents contained untrue statements and/or omissions of material fact or facts necessary to make the statements, in light of the circumstances under which they were made, not misleading.

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own personal claims mean that he “possess[es] the same interest and suffered the same injury” as those class members who bought directly from Defendants, he therefore has “the same necessary stake in litigating” the falsity of Defendants statements, and this therefore “gives the named plaintiff a sufficient stake in the outcome of her putative class members’ cases” to assert these claims. *See Langan v. Johnson & Johnson Consumer Companies, Inc.*, 897 F.3d 88, 94 (2d Cir. 2018) (internal quotations and modification omitted); *but see Yi Xiang v. Yi Xiang v. Inovalon Holdings, Inc.*, 327 F.R.D. 510, 519–21 (S.D.N.Y. 2018).

125. Qutoutiao securities were issued and sold pursuant to the Offering Documents. All purchases or acquisitions of Qutoutiao securities by shareholders in the IPO or SPO were a result of the issuance of the Offering Documents and the shares registered thereunder. Each security sold to investors by Qutoutiao and the Underwriter Defendants at the time of the closing of the IPO and/or SPO is traceable to the Offering Documents.

126. As the issuer of the registered securities, Qutoutiao is strictly liable for the materially false and misleading statements and/or omissions of material facts, as described herein. Qutoutiao never made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the prospectuses were accurate and complete in all material respects.

127. Nor did any of the Underwriter Defendants conduct a reasonable investigation or possess reasonable grounds for the belief that the statements contained in the Offering Documents were accurate and complete in all material respects. Had they exercised reasonable care, the Underwriter Defendants would have known of the material misstatements and/or omissions which were required to be disclosed, as alleged herein.

128. Investors were solicited, offered, and sold Qutoutiao securities in the IPO and/or SPO pursuant to the Offering Documents that, as alleged herein, contained materially false and misleading statements and/or omissions of material facts therein and were damaged thereby. Moreover, these investors did not know, nor in the exercise of reasonable diligence could they have known, of the untrue statements of material facts or omissions of material facts in the Offering Documents when they purchased or acquired their Qutoutiao securities.

129. The Class members who purchased or otherwise acquired Qutoutiao securities pursuant to the IPO and/or SPO from Qutoutiao or the Underwriter Defendants have sustained damages as a result of the materially false and misleading statements and/or omissions in the Offering

Documents.

130. This Count is brought within one year of the discovery of, or reasonably could have discovered, the facts upon which this Count is based and within three years of the date that the securities upon which this Count is brought were sold to the public.

131. By reason of the foregoing, Qutoutiao and the Underwriter Defendants are liable for violation of § 12(a)(2) of the 1933 Act to Class members who purchased securities sold pursuant to the IPO and/or SPO Documents. These Class members also have the right to rescind and recover the consideration paid for these securities upon tender of their ADSs to the Underwriter Defendants, and to recover rescissory damages to the extent they have already sold the securities.

**COUNT III**  
**Violations of § 15 of the 1933 Act**  
**(Against the Individual Defendants)**

132. Lead Plaintiff repeats and realleges every allegation contained above as if fully alleged in this Count.

133. This claim is brought pursuant to § 15 of the Securities Act, 15 U.S.C. § 77o, against the Individual Defendants (with respect to Offering Documents they signed or approved the signing of), on behalf of all persons and entities who purchased or acquired Qutoutiao securities pursuant or traceable to the IPO and/or SPO Documents. Lead Plaintiff asserts only strict liability and negligence claims and expressly disclaims any claim of fraud or intentional misconduct. This Count does not sound in fraud. All inferences of fraud or fraudulent conduct and/or motive are specifically excluded from this Count. Lead Plaintiff does not allege that liability arises from any scienter or fraudulent intent, which are not elements of a § 15 claim.

134. At all relevant times, the Individual Defendants were “controlling persons” of Qutoutiao within the meaning of § 15 of the 1933 Act.

135. Qutoutiao is strictly liable under §§ 11 and 12(a)(2) for the materially false and

misleading statements and/or omissions in the Offering Documents.

136. The Individual Defendants violated § 11 by issuing the IPO and/or SPO Documents, which included materially untrue statements of fact and omitted to state material facts requires to be stated therein or necessary to make the statements therein not misleading. Each of the Defendants in this Count was controlling persons of Qutoutiao when the IPO and/or SPO Documents were filed and became effective due to their: (i) senior executive positions; (ii) positions on Qutoutiao's Board of Directors; (iii) direct involvement in Qutoutiao's day-to-day operations and in the review and approval of the IPO and/or SPO Documents; (iv) solicitation of Qutoutiao's stockholders' votes in favor of the issuance of Qutoutiao securities; and (v) participation in and preparation of the IPO and/or SPO Documents.

137. By virtue of their exercise of control over Qutoutiao, the Individual Defendants had the power to influence and control, and did influence and control, directly or indirectly, the decision-making of the Company, including the content of Qutoutiao's IPO and/or SPO Documents and did not make a reasonable investigation or possess reasonable grounds for the belief that the IPO and/or SPO Documents were accurate and complete in all material respects. Had the Defendants in this Count exercised reasonable care, they would have known of the material misstatements and omissions which were required to be disclosed, as alleged herein.

138. This claim is brought within one year of discovery of the untrue statements and omissions in the Offering Documents and within three years of their effective dates. By reason of the foregoing, under § 15 of the 1933 Act, the Individual Defendants are liable to all persons and entities who purchased or acquired Qutoutiao securities pursuant or traceable to the IPO and/or SPO Documents.

#### **VIII. PRAYER FOR RELIEF**

WHEREFORE, Lead Plaintiff's pray for relief and judgment, as follows:

**A.** Declaring this action to be a proper class action pursuant to Rules 23(a) and 23(b)(3) on behalf of the Class defined herein;

**B.** Awarding Lead Plaintiff and the other Class members compensatory damages against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' conduct, in an amount to be proven at trial, including interest thereon;

**C.** Awarding Lead Plaintiff and the Class pre- and post-judgment interest, as well as reasonable attorneys' fees, expert witness fees, and other costs; and

**D.** Awarding such other equitable/injunctive or further relief as this Court may deem just and proper.

**IX. JURY TRIAL DEMANDED**

Lead Plaintiff hereby demands a trial by jury.

DATED: January 3, 2024

Respectfully Submitted,

**FREEDMAN NORMAND FRIEDLAND LLP**

*s/ Ivy T. Ngo*

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*Additional Counsel for Lead Plaintiff James Pappas*

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury that on January 3, 2024, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record.

s/ Ivy T. Ngo  
Ivy T. Ngo

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re QUTOUTIAO, INC. SECURITIES  
LITIGATION

Master File No.: 1:20-cv-06707 (SHS)

CLASS ACTION

This Document Relates To :

JURY TRIAL DEMANDED

ALL ACTIONS.

**CONSOLIDATED AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS  
OF THE FEDERAL SECURITIES LAWS**

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“. . . and so, the China Hustle continues. . .”<sup>1</sup>

## I. SUMMARY OF THE ACTION

1. Lead Plaintiff James Pappas (“Lead Plaintiff” or “Mr. Pappas”) brings this federal securities action on behalf of himself and as a class action on behalf of all persons or entities who (a) purchased or otherwise acquired Qutoutiao, Inc. (“Qutoutiao,” “QTT” or the “Company”) American Depositary Shares (“ADSs”) pursuant or traceable to the Registration Statement and Prospectus issued in connection with the Company’s September 2018 initial public offering (“IPO”) (collectively, “IPO Documents”); (b) purchased or otherwise acquired Qutoutiao ADSs pursuant or traceable to Registration Statement and Prospectus issued in connection with the Company’s April 2019 secondary public offering (“SPO”) (collectively, “SPO Documents”) (together with the IPO Documents, “Offering Documents”); ~~and/or (c) purchased or otherwise acquired Qutoutiao securities between September 14, 2018 and December 16, 2020, both dates inclusive (the “Class Period”),~~ against Qutoutiao, various corporate individual Insider Defendants and Director Defendants (as defined below), and the Company’s Underwriters (as defined below) (collectively, “Defendants”), alleging ~~fraud-based claims under the Securities Exchange Act of 1934 (the “1934 Act”) and, entirely separately,~~ strict liability-based claims under the Securities Act of 1933 (the “1933 Act”).

2. Qutoutiao means “fun headlines” in Chinese. Yet for investors who purchased shares of QTT, headlines generated by the Company’s crashing share price have been anything but fun. At the time of QTT’s IPO, shares were priced at \$7 each and the Company raised approximately \$85.8 million. The share price, ~~which~~ had been artificially inflated from the outset

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<sup>1</sup> QTT: Fake Revenue, Non-Existent Cash, Undisclosed Related Parties, WOLFPACK RESEARCH (December 10, 2019) (the “Wolfpack Report”), <https://wolfpackresearch.com/research/qtt-fakerevenues-fakecash-undisclosedrelatedparties/>.

due to ~~the fraud and/or~~ false statements described below, ~~quickly increased to more than \$15 per share~~. And when QTT announced its SPO just seven months later, it priced 3.3 million additional shares at \$10 per share. Subsequently, when the truth about Defendants' materially false, misleading, and incomplete statements (detailed below) was revealed to the market, QTT's share price declined precipitously – dropping to less than \$2/share by the end of 2020. By the commencement of this action, Qutoutiao's ADSs closed at \$2.42 per share on September 17, 2020, ~~a fraction of the artificially inflated price during the Class Period~~. As a result, the Class lost hundreds of millions of dollars.

3. Qutoutiao's collapse is hardly surprising given the facts unearthed by Lead Plaintiff's investigation. Qutoutiao touts itself as the "No. 2 mobile content aggregator in China." The smartphone application Qutoutiao ("QTT App") aggregates "articles and short videos from professional media and freelancers" and presents those "customized feeds to users." Qutoutiao makes money "by providing advertising services" and pushing those advertisements to individuals consuming the aggregated content.

4. In the Offering Documents ~~and throughout the Class Period~~, Defendants painted a rosy picture of Qutoutiao's business model which featured fast growing revenue derived almost entirely from advertising sales. Those representations were materially false and misleading, and investors purchasing QTT shares reasonably relied on these misrepresentations to their detriment.

5. The Offering Documents described Qutoutiao as having "rapidly" increasing net revenues. The Company's revenues increased from \$8.8 million in 2016 to \$78.1 million in 2017 to \$439.6 million in 2018. In short, QTT was a company on the move, with revenue-generating "success" that was attributable to numerous "key competitive strengths."

6. According to Defendants, the secret sauce for QTT's success was the Company's

strategic targeting of consumers who lived in “tier-3 and below cities in China because of the enormous opportunities in the underserved market.”<sup>2</sup> These users, the Company claimed, were key to the Company’s success because they “have a slower pace of life and spend more time on the Internet,” while at the same time “enjoy fast increasing disposable income and lower financial pressures thanks to lower housing prices.” The Offering Documents claimed the Company was able to capture this lucrative and growing market because the QTT App’s “light entertainment-oriented and easily digestible content is designed to resonate with such users and provides us with a significant advantage to capture this underserved market.”

7. The proprietary business model QTT touted and the resulting revenue growth were vital to the Company’s future. At the time of the IPO and thereafter, QTT was spending significant sums of money. The Company even conducted a secondary follow-on offering (the SPO) to raise capital just seven months after its IPO. Nonetheless, QTT’s lucrative advertising model was generating substantial revenue growth that demonstrated the Company’s ability to expend capital effectively and reach long-term, sustainable profitability.

8. But Defendants’ statements to investors were false. Qutoutiao’s momentous year-over-year revenue growth did *not* arise from a strategy of aggregating content that uniquely appealed to an underserved but growing user base living in lower tier Chinese cities. Rather, Qutoutiao was generating its enormous revenue by serving those consumers with advertisements that were *illegal* under Chinese law. Because the advertisements were illicit, they were an untenable revenue source supporting a doomed business model. The meteoric revenue growth that QTT touted to investors was unsustainable. The prospect of long-term profitability, as signaled by the revenue growth, was illusory. ~~Indeed, the Company’s placement of illegal advertisements on~~

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<sup>2</sup> Third and fourth-tier cities are typically smaller, provincial cities in China.

~~the QTT App was not an unintended consequence of an otherwise successful and sustainable business model. Rather, the placement of these illegal advertisements was QTT's business model.~~

9. In July 2020, an annual television broadcast on Chinese state TV called attention to QTT's illegal advertisements. That scrutiny forced the Company to curtail its illicit practices. The effects were drastic. Qutoutiao's revenue immediately plummeted from \$204 million in the second quarter of 2020 to just \$166.5 million in the third quarter of 2020 – a drop of more than 18% over a single quarter.

10. Thus, as described herein, Defendants duped investors into believing that QTT had come up with a genius business model that was driving remarkable revenue growth. In reality, Qutoutiao's success arose largely from skirting Chinese government-imposed regulations regarding permissible advertisements. QTT had not tapped into an underserved market of consumers who lived in lower-tier cities. It had tapped into an underserved market of illegal ad placements.

11. As the Offering Documents made clear, compliance with Chinese advertising laws was critical: “Under PRC [People's Republic of China] advertising laws and regulations, we are obligated to monitor the advertising content shown on our mobile applications to ensure that such content is true, accurate and in full compliance with applicable laws and regulations.” The Offering Documents even noted that violation of Chinese advertising law could subject QTT to “penalties, including fines, confiscation of our advertising income, orders to cease dissemination of the advertisements and orders to eliminate the effect of illegal advertisement.” But QTT's Offering Documents explained that the placement of uncompliant advertising content on the Company's platform was a risk factor that QTT was working to *mitigate*.

12. In reality, at the time of its Offerings ~~and throughout the Class Period~~, QTT was

doing the exact opposite of what had been promised to investors. Despite the significant risks posed, the Company was actively *integrating* noncompliant advertising content, and the accompanying revenue streams, into its business:

- QTT initially used Baidu (China’s version of Google) as its advertising agent to place advertisements on QTT’s platform. Baidu was an unrelated third-party and provided oversight of the content and quality of the advertisements to ensure compliance with Chinese law. In February 2018, just months before the IPO, QTT replaced Baidu with an in-house “advertising agent” called Shanghai Dianguan Internet Technology Co. Ltd. (“Dianguan”). As it was controlled by QTT, Dianguan allowed QTT to bypass third-party oversight of the content, quality, and legal compliance of the advertisements. QTT then freely placed on its platform more advertisements that did not comply with Chinese government regulations.
- Dianguan employed two different teams to manage the advertising content that would be placed on the QTT App and served to consumers. One team dealt with established and compliant advertisers (*i.e.* legal advertisements) such as Tencent, Alibaba and Jinri. The second team dealt with unqualified advertisers whose advertisements would skirt or violate Chinese regulations (*i.e.* illegal advertisements).
- As acknowledged in the Offering Documents, Qutoutiao targeted consumers from third and fourth-tier Chinese cities (smaller, provincial cities). But contrary to Defendants’ statements in the Offering Documents, the Company did not target these consumers because they spent more “time on the Internet” or because these consumers enjoyed “fast increasing disposable income.” Rather, QTT targeted these consumers because the third and fourth-tier cities were not subject to the same regulatory scrutiny of advertisements that occurred in the larger cities. This lack of regulatory scrutiny allowed QTT to bombard mobile users in the lower tier cities with non-compliant and illegal advertisements, which significantly added to the Company’s revenue stream.

~~Those significant and active steps to add noncompliant advertisements to QTT’s platform confirms that this improper conduct was purposeful, not a mistake.~~

13. Of course, the Offering Documents did not explain or otherwise reveal Qutoutiao’s steps to increase the placement of non-conforming advertisements. Rather, the Offering Documents were larded with false and misleading statements:

- The Offering Documents stated that QTT targeted mobile users in third and fourth-tier Chinese cities because these users spent more time on the Internet and had increasing amounts of disposable income. This was false: as described, these users were targeted because of the lack of regulatory scrutiny in those regions, which allowed QTT to push nonconforming and illegal advertisements onto their phones.

- The Offering Documents stated that QTT’s use of Dianguan (as opposed to Baidu) would allow it to “enhance [its] platform’s monetization capabilities.” In reality, the “enhanced” monetization depended on Dianguan, as an internal ad placement service controlled by QTT, allowing the placement of the illegal and nonconforming advertisements that Baidu had restricted.
- As part of the risk factor analysis, the Offering Documents told investors that QTT could be subject to penalties and “other administrative actions” through the placement of illegal or nonconforming advertisements. But Defendants assured investors that the Company’s proprietary “artificial intelligence” could “monitor and identify objectionable visual content with a high degree of accuracy” and flag “suspicious content for manual review.” This assurance was highly misleading ~~and disingenuous~~, because either the advertiser or the QTT employee who was responsible for the flagged ad had the ability to and did manually place the ad on the QTT App.<sup>3</sup>

~~14. Defendants continued these material misrepresentations, half truths, and omissions throughout the Class Period:~~

- ~~In its 2018 20-F annual report, filed on April 11, 2019, the Company reiterated that it was targeting users in “lower tier cities” because they tend to have a “slower pace of life and spend more time on the Internet.” The Company made similar statements in its 2019 20-F annual report, filed on April 23, 2020. As explained above, QTT targeted those users because of the ability to evade regulatory scrutiny in those regions.~~
- ~~In its September 4, 2019 announcement of its second quarter 2019 (“2Q19”) financial results, the Company stated that its ad revenue dramatically increased because of its ability to “monetize user traffic,” amongst other reasons. The Company neglected to mention that this monetization arose from its placement of illegal advertisements.~~
- ~~On June 4, 2020, the Company released its first quarter 2020 (“1Q20”) financial results, which touted that net revenues had increased “26.2% year-over-year.” While the announcement quoted Defendant Tan as explaining that this growth occurred because of the Company’s “ongoing effort in enhancing the core capabilities of [its] advertising platform,” just one month later, the revenue growth was revealed to be a lie (as described below).~~

15. On July 15, 2020, China’s state-controlled broadcaster, CCTV, aired a television show documenting the use of improper ads on QTT’s platform (the “CCTV Exposé”).<sup>4</sup> The CCTV

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<sup>3</sup> Beyond the placement of illegal advertisements, the Company’s Offering Documents also ~~misstated the amount of total revenue received by the Company and failed to fully disclose the Company’s transactions with related parties.~~ These issues are discussed below.

<sup>4</sup> As part of its repertoire, CCTV produces “investigative” programs that cater to the public interest. One major instance of these CCTV programs is China’s annual consumer rights gala, *i.e.* the

Exposé resulted in the temporary suspension of the QTT App from Chinese app stores. On these revelations, the price of QTT's ADSs fell more than 24%. Further, the CCTV Exposé forced QTT to finally come clean and enact remedial measures to halt its illegal practices. As a result, on December 16, 2020, QTT had to report that its revenue for the third quarter of 2020 had *plummeted*, dropping 19.7% year-over-year with a remarkable 23.1% drop in advertising revenue. The year-over-year growth justifying investors' interest was gone, replaced with a revenue decline. As QTT conceded, this significant revenue drop, which caused the ADS price to fall by another 24%, was due to the **“remedial measures undertaken by [QTT] in response to the report by [CCTV] on certain advertisements.”** ~~Simply put, Qutoutiao had been caught with its hand in the cookie jar.~~ And the stark drop in revenue following the Company's corrective actions unequivocally confirms that—contrary to its Offering Documents ~~and other Class Period~~ statements—the use of non-conforming advertisements had been central to QTT's ~~plan for~~ revenue growth. Defendants' false and material misstatements caused a significant decline in the value of QTT's securities and resulted in millions of dollars in losses to investors.

## II. STATEMENT REGARDING PLAINTIFF'S INVESTIGATION

16. Mr. Pappas, by his attorneys, on behalf of himself and on behalf of all others similarly situated, makes these allegations based upon personal knowledge as to his own acts and on information and belief as to all other matters. Lead Plaintiff bases this information and belief on, among other things, the investigation conducted by counsel, which includes a review and analysis of: U.S. Securities and Exchange Commission (“SEC”) filings by QTT; State

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CCTV Exposé. In 2020, the COVID-19 pandemic caused the gala to be delayed from March 15 (world consumer rights day in China) to July 15. Sarah Cook, *China Central Television: A Long-standing Weapon in Beijing's Arsenal of Repression*, THE DIPLOMAT (Sept. 25, 2019), <https://thediplomat.com/2019/09/china-central-television-a-long-standing-weapon-in-beijings-arsenal-of-repression/>.

Administration for Market Regulation (“SAMR”), the successor of SAIC (“State Administration for Industry and Commerce in China”) and the State Food and Drug Administration, filings by QTT’s subsidiaries and other entities in China; press releases, analyst reports, public statements, news articles and other publications disseminated by or concerning QTT in the U.S. and in China; independent interviews with former QTT employees in China conducted by investigators on behalf of Plaintiff; a consultant regarding the accounting of publicly traded companies; and other publicly available information. Counsel’s investigation into the matters alleged herein is ongoing and many relevant facts are known only to Defendants or are exclusively within their custody or control. Lead Plaintiff’s investigation indicates substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### III. JURISDICTION AND VENUE

17. ~~Counts One and Two arise under §§ 10(b), 20(a) of the 1934 Act, 15 U.S.C. § 78j(b), § 78t(a); Rule 10b-5, promulgated thereunder by the SEC, 17 C.F.R. § 240.10b-5~~

18. Counts Three, Four and Five arise under §§ 11, 12(a)(2), and 15 of the 1933 Act, 15 U.S.C. §§ 77k(a), 77o(a).

19. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, Section 22 of the 1933 Act, 15 U.S.C. § 77v, ~~and Section 27 of the 1934 Act, 15 U.S.C. § 78aa~~, because this is a civil action arising under the laws of the United States.

20. Venue is proper in this District pursuant to Section 22 of the 1933 Act, 15 U.S.C. § 77v, ~~Section 27 of the 1934 Act, 15 U.S.C. § 78aa~~, and 28 U.S.C. § 1391(b). Specifically, substantial events giving rise to the claims alleged herein occurred in this District, including: (i) many of the false and misleading statements were made in or issued from this District; (ii) many of the acts alleged herein, including the preparation and dissemination of materially false and/or misleading information, were made or issued from this District; and (iii) the Company contracted

with an ADS Depository with headquarters in this District to effectuate the registration and delivery of Qutoutiao ADSs on the NASDAQ.

21. In connection with the acts, conduct and other wrongs alleged herein, Defendants, directly and/or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mail, interstate telephone communications and the facilities of the national securities exchanges.

#### **IV. PARTIES**

##### **A. Lead Plaintiff**

22. ~~Mr. Pappas purchased or acquired Qutoutiao securities at artificially inflated prices during the Class Period and suffered damages as a result of the federal securities law violations alleged herein. In addition,~~ Mr. Pappas purchased Qutoutiao ADSs pursuant or traceable to the Company's false and/or misleading IPO Documents and was damaged thereby.

##### **B. Defendants**

###### **1. Qutoutiao**

23. Defendant Qutoutiao is incorporated under the laws of the Cayman Islands with its principal executive offices located in Shanghai, China. Qutoutiao's ADS shares trade on the NASDAQ exchange under the symbol "QTT." Formerly known as Qtech Ltd., the Company changed its name to Qutoutiao Inc., in July 2018, just months before its IPO.

###### **2. The Insider Defendants**

24. Defendant Eric Tan ("Tan") is the co-founder of Qutoutiao and has served as the Company's Chief Executive Officer ("CEO") since May 20, 2019. On or about February 13, 2019, Tan filed a Form 13G with the SEC, indicating that he owned more than 27 million Class B ordinary shares of QTT (approximately 38.1% of the Company's total outstanding ordinary shares).

25. At all relevant times, Defendant Tan was the Executive Chairman of the Board of Directors. ~~During the Class Period~~, Defendant Tan signed and/or had ultimate authority over the Company's: (i) IPO Documents filed with the SEC; (ii) ~~third quarter 2018 earnings release ("3Q18 Earnings Release") exhibited to a Form 6-K filed with the SEC;~~ (iii) ~~fourth quarter 2018 earnings release ("4Q18 Earnings Release") exhibited to a Form 6-K filed with the SEC;~~ (iv) SPO Documents filed with the SEC; (v) ~~2018 annual report filed with the SEC on Form 20-F ("2018 20-F");~~ (vi) ~~first quarter 2019 earnings release ("1Q19 Earnings Release") exhibited to a Form 6-K filed with the SEC;~~ (vii) ~~second quarter 2019 earnings release ("2Q19 Earnings Release") exhibited to a Form 6-K filed with the SEC;~~ (viii) ~~third quarter 2019 earnings release ("3Q19 Earnings Release") exhibited to a Form 6-K filed with the SEC;~~ ~~fourth quarter 2019 earnings release ("4Q19 Earnings Release") exhibited to a Form 6-K filed with the SEC;~~ (ix) ~~2019 annual report filed with the SEC on Form 20-F ("2019 20-F");~~ (x) ~~first quarter 2020 earnings release ("1Q20 Earnings Release") exhibited to a Form 6-K filed with the SEC;~~ and (xi) ~~second quarter 2020 earnings release ("2Q20 Earnings Release") exhibited to a Form 6-K filed with the SEC.~~ Defendant Tan also ~~participated in and made statements during the Company's Class Period earnings conference calls.~~

26. Defendant Lei Li ("L. Li") is the co-founder of Qutoutiao and was a director and CEO of the Company until May 2019, when Defendant Tan announced Defendant Li's resignation during the Company's May 20, 2019 earnings investor conference call. Defendant Li signed and/or had ultimate authority over the Company's: (i) IPO Documents filed with the SEC; (ii) SPO Documents filed with the SEC; ~~and (iii) 2018 20-F filed with the SEC.~~

27. Defendant Jingbo Wang ("Wang") was a director and the Company's Chief Financial Officer ("CFO") until January 22, 2020, at which time Qutoutiao announced Wang

would be stepping down for “personal reasons.” ~~During the Class Period,~~ Defendant Wang signed and/or had ultimate authority over the Company’s: (i) IPO Documents filed with the SEC; (ii) ~~3Q18 Earnings Release exhibited to a Form 6-K filed with the SEC;~~ (iii) ~~4Q18 Earnings Release exhibited to a Form 6-K filed with the SEC;~~ (iv) SPO Documents filed with the SEC; (v) ~~2018 20-F filed with the SEC;~~ (vi) ~~1Q19 Earnings Release exhibited to a Form 6-K filed with the SEC;~~ and (vii) ~~2Q19 Earnings Release exhibited to a Form 6-K filed with the SEC.~~ Defendant Wang also ~~participated in and made statements during the Company’s Class Period earnings conference calls.~~

28. ~~Defendant Xiaolu Zhu (“Zhu”) has been the Company’s CFO since January 22, 2020. During the Class Period, Defendant Zhu, signed and/or had ultimate authority over the Company’s: (i) 3Q19 Earnings Release exhibited to a Form 6-K filed with the SEC; (ii) 4Q19 Earnings Release exhibited to a Form 6-K filed with the SEC; (iii) 2019 20-F filed with the SEC; (iv) 1Q20 Earnings Release exhibited to a Form 6-K filed with the SEC; and (v) 2Q20 Earnings Release exhibited to a Form 6-K filed with the SEC. Also, as CFO, Defendant Zhu participated in and made statements during the Company’s 2020 earnings conference calls.~~

29. ~~The Insider Defendants, because of their positions with the Company, possessed the power and authority to control the contents of all filings Qutoutiao made with the SEC, as well as the press releases and presentations to securities analysts, money and portfolio managers and institutional investors, i.e., the market. The Insider Defendants were provided with copies of the Company’s reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, the Insider Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were~~

~~then materially false and/or misleading. The Insider Defendants are liable for the false statements pleaded herein.~~

### **3. The Director Defendants**

30. Defendant Shaoqing Jiang (“Jiang”) was a director of the Company, and a member of the Audit Committee and Compensation Committee until September 2019 when Qutoutiao announced his resignation in a September 16, 2019 press release exhibited to a Form 6-K filed with the SEC. Defendant Jiang signed or authorized the signing of the Company’s Offering Documents filed with the SEC.

31. Defendant Jianfei Dong (“Dong”) was, at all relevant times, a director and Co-President of the Company. Defendant Dong signed or authorized the signing of the Company’s Offering Documents filed with the SEC.

32. Defendant Oliver Yucheng Chen (“Chen”) was, at all relevant times, a director of the Company. Chen also served as the Company’s Chief Strategy Officer from August 2018 to February 2020. Defendant Chen signed or authorized the signing of the Company’s Offering Documents filed with the SEC.

33. Defendant Yongbo Dai (“Dai”) was a director of the Company beginning in November 2018. Dai signed or authorized the signing of the Company’s SPO Documents filed with the SEC.

34. Defendant James Jun Peng (“Peng”) was, at all relevant times, a director of the Company. Peng was a member of the Company’s Audit Committee, Nominating and Corporate Governance Committee, and Chair of the Compensation Committee. Defendant Peng signed or authorized the signing of the Company’s SPO Documents filed with the SEC.

35. Defendant Feng Li (“F. Li”) was, at all relevant times, a director of the Company. F. Li was Chair of the Audit Committee, and a member of the Company’s Compensation

Committee and Nominating and Corporate Governance Committee. Defendant F. Li signed or authorized the signing of the Company's SPO Documents filed with the SEC.

36. The Defendants named in this section, in addition to Defendants Tan, L. Li, and Wang (collectively, "the Director Defendants"), each participated in the preparation of, and signed and/or authorized the signing of, the Company's IPO and/or SPO Documents. Defendant Qutoutiao and the Director Defendants are strictly liable for the materially false and/or misleading statements and/or omissions in or incorporated into the Offering Documents.

#### **4. The Underwriter Defendants**

37. Defendant Citigroup Global Markets Inc. ("Citigroup") is a multinational investment bank and financial services corporation that provides a broad range of financial services to consumers and corporate customers. Citigroup is incorporated under the laws of the State of Delaware and maintains its principal executive offices at 388 Greenwich Street, New York, NY 10013. Defendant Citigroup served as an underwriter for the Company's IPO and SPO.

38. Defendant Deutsche Bank Securities Inc. ("Deutsche") is a financial services institution which provides a wide array of commercial and investment banking services to corporate and institutional clients along with private and business clients. Services include sales, trading, and origination of debt and equity; mergers and acquisitions; risk management products, such as derivatives; corporate finance, wealth management, retail banking, brokerage and research, fund management, and transaction banking. Deutsche is incorporated under the laws of Germany and maintains its United States corporate headquarters at 60 Wall Street, New York, NY 10005. Defendant Deutsche served as an underwriter for the Company's IPO and SPO.

39. Defendant China Merchants Securities (HK) Co., Ltd. ("China Merchants") is a China-based company, principally engaged in financial services. China Merchants offers securities brokerage, securities investment consulting, securities underwriting, and other services, including

investment management. China Merchants maintains its principal executive offices at 48/F, One Exchange Square, Central, Hong Kong. Defendant China Merchants served as an underwriter for the Company's IPO.

40. Defendant UBS Securities LLC ("UBS") provides investment banking services worldwide, including equities sales and trading, fixed income products, and treasury products; UBS offers financial services to individual and institutional investors. UBS is incorporated under the laws of the State of Delaware and maintains its principal executive offices at 1285 Avenue of the Americas, New York, NY 10019. Defendant UBS served as an underwriter for the Company's IPO.

41. Defendant Keybank Capital Markets, Inc. ("Keybank") provides investment advisory services. KeyBank offers investment advice, portfolio management, securities, and other financial services. Defendant KeyBank is incorporated under the laws of the State of Ohio and maintains its principal executive offices at 127 Public Square, 4<sup>th</sup> Floor Cleveland, OH 44114. Defendant KeyBank served as an underwriter for the Company's IPO.

42. Defendant CLSA Limited ("CLSA") is a capital markets and investment group focused on alternative investment, asset management, corporate finance and capital markets, securities and wealth management for corporate and institutional clients around the world. CLSA was founded in Hong Kong and maintains its principal executive offices at 18/F, One Pacific Place, 88 Queensway, Hong Kong. Defendant CLSA served as an underwriter for the Company's SPO.

43. Defendant Haitong International Securities Company Limited ("Haitong") is an international financial institution providing a full spectrum of financial products and services as corporate finance, wealth management, asset management, institutional client services and investment business for corporate, institutional retail and high-net worth clients worldwide.

Haitong was founded in Hong Kong and maintains its principal executive offices at 22/F Li Po Chun Chambers, 189 Des Voeux Road Central, Hong Kong. Defendant Haitong served as an underwriter for the Company's SPO.

44. Defendant Jefferies Group LLC ("Jefferies") operates as an investment banking firm, servicing customers worldwide. Jefferies provides equity capital markets, debt capital markets, mergers and acquisitions, restructuring and recapitalization, and other strategic advisory services. Defendant Jefferies is incorporated under the laws of the State of Delaware and maintains its principal executive offices at 520 Madison Avenue, New York, NY 10022. Defendant Jefferies served as an underwriter for the Company's SPO.

45. Defendant Lighthouse Capital International Inc. ("Lighthouse"), also known as Guangyuan Capital or Guangyuan Ziben, operates as a boutique investment bank. Lighthouse is a China-based company that maintains its principal executive offices at Room 3801, China Life Finance Centre, No. 88 Yincheng Rd., Shanghai, 200120. Defendant Lighthouse served as an underwriter for the Company's SPO.

46. Each Underwriter Defendant agreed to purchase Qutoutiao securities (*see infra*) and was given the option to purchase up to an aggregate of 1,800,000 additional ADSs in the IPO and 1,500,000 ADSs in the SPO. The Underwriter Defendants each served as a financial advisor for and assisted in the preparation and dissemination of the Company's materially false and/or misleading Offering Documents.

47. The below chart sets forth the number of securities the Underwriter Defendants agreed to purchase in the IPO:

<b>Underwriters</b>	<b>Number of ADSs</b>
Citigroup Global Markets Inc.	3,945,000
Deutsche Bank Securities Inc.	5,745,000
China Merchants Securities (HK) Co., Ltd.	525,000
UBS Securities LLC	1,485,000
KeyBanc Capital Markets Inc.	300,000
<b>Total</b>	<b><u>12,000,000</u></b>

48. The below chart sets forth the number of securities the Underwriter Defendants agreed to purchase in the SPO:

<b>Underwriters</b>	<b>Number of ADSs</b>
Citigroup Global Markets Inc.	4,000,000
Deutsche Bank Securities Inc.	4,300,000
CLSA Limited	600,000
Haitong International Securities Company Limited	100,000
Jefferies LLC	900,000
Lighthouse Capital International Inc.	100,000
<b>Total</b>	<b><u>10,000,000</u></b>

49. The Underwriter Defendants are primarily investment banks which specialize, *inter alia*, in underwriting public offerings of securities. As the underwriters of the IPO and/or SPO, the Underwriter Defendants earned lucrative underwriting fees for their participation.

50. In addition, the Underwriter Defendants met with potential investors and presented highly favorable but materially false and/or misleading information about the Company, its business, products, plans, assets, and financial prospects, or omitted to disclose material information required to be disclosed under the federal securities laws and applicable regulations promulgated under those laws.

51. The Underwriter Defendants served as financial advisors, assisted Qutoutiao and

the Director Defendants in preparation and dissemination of the IPO Documents and/or SPO Documents and had ultimate authority over the content of the Offering Documents. The Underwriter Defendants' names were prominently displayed on the first page of the IPO prospectus and/or the SPO prospectus. As a result, the Underwriters were negligent for stating that the Offering Documents were prepared accurately and in accordance with the rules and regulations governing their preparation. They also purported to conduct an adequate and reasonable investigation into the business, operations, products, assets, and plans of the Company, an undertaking known as a "due diligence" investigation. During their due diligence, the Underwriter Defendants had continual access to confidential corporate information concerning the Company's business, financial condition, products, plans, assets, and growth prospects. A reasonable investigation into the truthfulness and accuracy of the Offering Documents, including the statements incorporated by reference, would have revealed that the Offering Documents contained false and/or misleading statements and/or omissions, as alleged herein. None of the Underwriter Defendants made a reasonable investigation into the truthfulness and accuracy of the IPO and/or SPO Documents.

#### V. CLAIMS ASSERTED IN THIS COMPLAINT

~~52. As discussed in detail below, Lead Plaintiff asserts two separate sets of claims.~~

~~53. Counts One and Two assert securities fraud based claims under §§ 10(b) and 20(a) of the 1934 Act and SEC Rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated thereunder. In addition to Qutoutiao, the 1934 Act Defendants include the Insider Defendants and the Underwriter Defendants (collectively, the "1934 Act Defendants").~~

~~54. Lead Plaintiff's 1934 Act claims arise out of a fraudulent or deliberately reckless course of business conduct whereby, throughout the Class Period, the 1934 Act Defendants knew or recklessly disregarded that: (i) the statements and omissions they made, as alleged herein, were~~

~~materially false and misleading; (ii) their statements would adversely affect the integrity of the market for Qutoutiao securities; and (iii) their statements would deceive investors into purchasing shares of Qutoutiao securities at artificially inflated prices, including in the Company's \$85 million IPO which closed on September 18, 2018 and \$31 million SPO which closed on April 5, 2019.~~

55. ~~Specifically, the 1934 Act Defendants knowingly or recklessly made materially false and misleading public statements and omissions that: (i) concealed the fact that Qutoutiao was not able to generate sufficient revenue to meet its revenue targets unless it allowed unqualified advertisers to advertise on the QTT App, which it accomplished by broadcasting advertisements to consumers from lower tier Chinese cities; (ii) misstated the true benefits of, and reasons for, replacing the Company's third party advertising agent, Baidu, with a related party, Dianguan, and that the reason for bypassing that third party's oversight of the content and quality of advertisements was to generate revenue from risky advertisements; (iii) failed to disclose that the Company had created two separate teams for dealing with advertisers: one team dealt with qualified advertisers (whose advertisements were largely compliant with applicable Chinese regulations and thus low risk), and a second team dealt with unqualified advertisers. The team reviewing the unqualified advertisers (which was disbanded after the July 2020 CCTV Exposé) outsourced nearly all of its advertisement screening to contractors who conducted minimal due diligence on their clients; (iv) as a result, the Company placed on the QTT App risky advertisements whose claims could not be substantiated and thus were considered false advertisements under applicable regulations or which linked to illegal online gambling platforms; (v) as a result, the Company would face increasing regulatory scrutiny and reputational harm; (vi) as a result, the Company's advertising revenue was reasonably likely to decline; (vii) the Company reported RMB 620 million more in consolidated revenue to the SEC than its subsidiaries did in~~

~~total to the SAMR; and (viii) as a result of the foregoing, Defendants' positive statements about the Company's business, operations and prospects, were materially misleading and/or lacked a reasonable basis.~~

56. Counts Three, Four, and Five assert strict liability, non-fraud claims, under §§ 11, 12(a)(2) and 15 of the 1933 Act. The 1933 Act claims arise out of negligently made materially false and misleading statements and omissions in the Offering Documents issued in connection with the Company's IPO and SPO (the "Offerings"). Lead Plaintiff's 1933 Act claims are not based on any allegation of deliberate or intentional misconduct, and Lead Plaintiff expressly disclaims any reference or reliance upon fraud allegations for such claims. In addition to Qutoutiao, the 1933 Act Defendants include the Director Defendants and the Underwriter Defendants (collectively, the "1933 Act Defendants").

57. As set forth herein, each of the Defendants named under the 1933 Act claims negligently made materially false and misleading public statements and omissions in the Offering Documents that: (i) mischaracterized Qutoutiao's targeting of users in Tier-3 and Tier-4 cities as due to their having more time and disposable income to spend on the internet when in fact, advertisers wanted to run non-compliant ads in those cities because regulators were more lenient and users were less aware of their rights in those cities; (ii) inaccurately described the benefits of, and reasons for, replacing the Company's third-party advertising agent, Baidu, with Dianguan by not disclosing that the change allowed the Company to avoid the oversight Baidu had been providing which had prevented it from selling more non-compliant ads; (iii) misleadingly touted the Company's advertising revenue without disclosing that a significant number of ads whose claims could not be substantiated and thus were considered false advertisements under applicable regulations or provided links to illegal online gambling platforms; (iv) ~~misleadingly touted the~~

~~Company's 2017 and 2018 revenue without disclosing that the aggregate revenue of its subsidiaries was at least RMB 187.6 million and RMB 620 million less, respectively; (v) negligently promoted the Company's ability to monetize user traffic without disclosing that such monetization required it to set up separate teams with different processes and procedures for qualified versus unqualified advertisers in order to sell non-compliant ads; and (vi) failed to adequately warn investors that certain "Risk Factors" listed in the Offering Documents had already materialized at the time of the Offerings as the Company was violating the applicable advertising laws and regulations by running non-compliant ads so it would inevitably face increasing regulatory scrutiny, reputational harm and decreased revenue when the truth became known.~~

## **VI. DEFENDANTS' ILLEGAL ACTS**

### **A. Relevant Background Concerning Qutoutiao**

~~58. Founded in 2016, Qutoutiao operates mobile platforms that distribute and share entertainment content in China. In June 2016, the Company launched its flagship product, the mobile application Qutoutiao ("fun headlines" in Chinese) (the "QTT App"), which aggregates articles and videos from content providers, including professional media and freelancers, and presents these customized feeds to users in the application. The Company also offers Midu (first launched in 2018 as Midu Novels and a year later as Midu Lite), a mobile literature application that offers users free literature that is paid for by advertisements.<sup>5</sup>~~

~~59. As explained in the Company's IPO Prospectus, since its inception, Qutoutiao has strategically targeted users from smaller, more provincial cities in China (third or fourth tier cities), purportedly because they tend to spend more time on the Internet (given limited offline entertainment options), and have interests and content preferences that differ with users located in~~

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<sup>5</sup> ~~Corporate Profile, QUTOUTIAO INC., <https://ir.qutoutiao.net/corporate-profile> (last visited Jan. 4, 2021).~~

~~first-tier and second-tier cities. Qutoutiao claims that these factors have given rise to significant demand by consumers who live in these third and fourth-tier cities for the Company's mobile entertainment content, which has contributed to the Company's explosive revenue growth.~~

~~60. To entice individuals to use its application, which competes with other mobile applications such as ByteDance and TikTok, Qutoutiao created a program that rewards users with points (convertible into cash) in exchange for consuming more content and helping to expand the application's user base. In short, the more content that an application user consumes, the more that user is paid by the Company; likewise, the user is paid if the user convinces his or her friends to use the application.<sup>6</sup>~~

~~61. The success of QTT has always depended on its ability to collect advertising revenue. As the Company explained in its IPO Prospectus: "We currently generate revenue primarily by providing advertising services. We plan to explore additional monetization opportunities as we grow our user base and introduce additional content formats, such as literature, casual gaming and live streaming." To that end, the Company noted that its revenues, the vast majority of which were advertising revenues, had increased rapidly in the years prior to the IPO, going from \$8.8 million in 2016 to \$78.1 million in 2017, and from \$12.6 million in the six months ending June 30, 2017 to \$108.5 million during the same period in 2018. During this same time period, net losses also increased, going from \$4.3 million in the six months ending June 30, 2017 to \$49.7 million in the six months ending June 30, 2018.~~

~~62. On September 11, 2018, Qutoutiao filed its final amendment to the Registration Statement with the SEC on Form F-1/A, which forms part of the IPO Documents. The Company's~~

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~~<sup>6</sup> Rita Liao, *China's Qutoutiao is burning millions of dollars to take on TikTok parent*, TECHCRUNCH (Mar. 12, 2019, 7:20 AM), <https://techcrunch.com/2019/03/12/qutoutiao-takes-on-tiktok/>.~~

~~IPO Registration Statement was declared effective on September 13, 2018, and the next day the Company filed its Prospectus on Form 424B4 with the SEC. During the IPO, the Company sold 13.8 million ADSs at a price of \$7.00 per share. The Company received proceeds of approximately \$85.8 million from the IPO, net of underwriting discounts and commissions. The proceeds from the IPO were purportedly to be used for expanding and enhancing the Company's content offerings, for product development and technology infrastructure, and for general corporate purposes, including marketing and promotion of its products and branding and potential acquisitions and investments.~~

~~63. Due, at least in part, to the picture of rapidly increasing growth painted in the Offering Documents, Qutoutiao's IPO in September 2018 ended up as the best performing IPO of the year as its ADSs more than doubled in value from their offering price on its first trading day on September 14, 2018. After pricing its ADSs at \$7, the Company's ADSs closed at \$15.97 on their first trading day the Class Period high. This 128% surge in QTT shares "minted a new billionaire from" China Defendant Tan.<sup>7</sup>~~

~~64. Just seven months later, on March 29, 2019, Qutoutiao announced a SPO of its ADSs, representing Class A ordinary shares, pursuant to a Registration Statement on Form F-1, under which the public would be able to purchase 10,000,000 of Qutoutiao ADSs at an artificially inflated price. On April 1, 2019, the Company filed its first and final amendment to its SPO Registration Statement, Form F-1/A, which forms part of the SPO Documents. The SPO Registration Statement was declared effective shortly thereafter. On April 3, 2019, Qutoutiao filed~~

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<sup>7</sup> Russell Flannery, *China Mobile Content Aggregator Qutoutiao's IPO Mints New Billionaire*, FORBES (Sept. 16, 2018, 11:48 PM EDT), <https://www.forbes.com/sites/russellflannery/2018/09/16/china-mobile-content-aggregator-qutoutiaos-ipo-mints-new-billionaire/?sh=59743e814923>.

~~its SPO Prospectus on Form 424B4 with the SEC. Qutoutiao closed its SPO on April 5, 2019.~~

~~65. During this secondary offering, the Company sold 3.3 million ADSs, while several Principal Shareholders sold nearly 6.7 million ADSs, at a price of \$10 per share. The Company received proceeds of approximately \$31.0 million from the SPO, net of underwriting discounts, commissions, and estimated offering expenses, with the remaining monies from the sale of 6.7 million shares going to the Principal Shareholders. The proceeds from the SPO were purportedly to be used for general corporate purposes.~~

~~66. Notably, while the Company's IPO offering materials contained a 180-day lock-up provision prohibiting Qutoutiao officers, directors and major shareholders from selling any shares until March 13, 2019, the Company conducted its SPO almost immediately after the lock-up period ended such that Principal Shareholders were able to sell their shares at prices which, as set forth below, had been inflated due to the fraud set forth in the Company's Offering Documents. This enabled the Principal Shareholders to pocket proceeds of nearly \$67 million. None of this money went to QTT.<sup>8</sup>~~

~~**B. Qutoutiao Sold Advertisements that Were Illegal under Chinese Law, which Propelled Company Revenues and the ADS Price Higher; this Fraud Was Not Disclosed to Investors.**~~

~~**1. Qutoutiao depended on advertising revenue to fuel its growth and artificially lift its ADS price.**~~

~~67. At the time of its IPO, and for the remainder of the Class Period, Qutoutiao was not a profitable company. In fact, QTT's net losses were rapidly increasing. Accordingly, the promise~~

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~~<sup>8</sup> While QTT is not required to disclose which insiders sold shares because it is a foreign private issuer exempt from Section 16(b) of the Securities Act, in 2019 Defendant Tan purchased a home for \$37 million in Orange County, California. See James McClain, *Chinese Tech Billionaire Buys \$37 Million Newport Harbor Mansion*, VARIETY (Oct. 30, 2019, 5:29 AM PT), <https://variety.com/2019/dirt/moguls/chinese-tech-billionaire-buys-37-million-newport-harbor-mansion-1203388732/>.~~

~~of QTT, and the reason that investors purchased the ADSs during the Class Period (as described in more detail below), was because of the Company's rapid revenue growth, which, investors believed, would eventually lead to profits. As described above, QTT's offering documents make clear that the majority of the Company's revenues come from advertising. In fact, of the \$108 million in revenues earned by QTT in the first half of 2018, \$101 million came from advertising.~~

~~68. QTT recognized the risks that were inherent from the fact that nearly all of its revenue came from advertising. As QTT noted in its IPO Prospectus, a "decline in [QTT's] advertising revenue could harm [QTT's] business." Further, the Prospectus noted, Chinese law imposed special obligations on QTT to monitor the advertisements placed on its platform. QTT was obligated "to monitor the advertising content shown on our mobile applications to ensure that such content is true, accurate and in full compliance with applicable laws and regulations." Any "advertisement that contains false or misleading information to deceive or mislead consumers shall be deemed false advertising." Violations of China's laws and regulations could subject QTT to "penalties, including fines," and other punishment, which would have a "material and adverse effect on [QTT's] business, results of operations and financial condition."~~

~~69. China is particularly wary of advertisements targeting what it calls the "Black Five." Article 19 of the Advertising Law of the People's Republic of China states that certain advertising platforms "shall not publish advertisements for medical treatment, drugs, medical devices, and health food in disguised form of introducing health and health knowledge." Such advertisements are considered the "black five types of advertisements" ("Black Five"), and typically include breast enhancement products, weight loss products, and height enhancement~~

~~products that represent them as health information.<sup>9</sup> Likewise, the 2016 Interim Administrative Measures for Internet Advertising stipulates that “[a]dvertisements for special commodities or services that are subject to examination [] according to laws and administrative regulations, such as medical, pharmaceuticals and health food, shall not be published without examination. Internet advertising should be identifiable and marked as ‘advertising’ so that consumers can identify it as advertising. Users shall not be deceived to click on the advertising content.”~~

~~70. During the Class Period QTT was even warned by Chinese regulators about its purported placement of illegal advertisements. In that regard, Chinese regulators will, at times, summon business executives or department heads to a regulator’s office for a meeting, remind them of particular regulations, and criticize specific behavior. This is known as “having a talk” (yuotan, 约谈). While these “talks” may remain private for minor issues, for issues that are more serious or that attract the attention of the regulator’s national office, the regulator will sometimes publicize the meeting after the fact to “name and shame” the company as well as warn other companies about illegal behavior. Written rectification orders or other penalties may or may not accompany these “talks.”~~

~~71. On June 18, 2019, just months into the Class Period, the Shanghai Municipal Market Supervision Bureau (“Shanghai Regulator”) summoned Qutoutiao and another online news aggregator “for a talk,” stating that a preliminary investigation had found “severely illegal advertisements” on their platforms, and “sternly warned” the companies about their behavior.<sup>10</sup> Specifically, the Shanghai Regulator found multiple instances of “seductive headlines” such as~~

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<sup>9</sup> ~~Advertising Law of the People’s Republic of China, CHINESE GOVERNMENT NETWORK (Apr. 25, 2015, 8:20 AM), [http://www.gov.cn/zhengce/2015-04/25/content\\_2853642.htm](http://www.gov.cn/zhengce/2015-04/25/content_2853642.htm).~~

<sup>10</sup> ~~Shanghai Municipal Market Supervision Bureau interviewed Qutoutiao, Huitoutiao and related advertising alliances, CHINA CONSUMER NETWORK (June 24, 2019), [https://www.nenews.com.cn/xfzpt/zhyw/201906/t20190624\\_1446925.html](https://www.nenews.com.cn/xfzpt/zhyw/201906/t20190624_1446925.html).~~

~~“Lose 90 jin [45 kilograms]! Watch oils drain away before your eyes! Try for free,” that led to landing pages with much more modest claims as well as of the unauthorized use of famous brand names in China, such as the names of Alipay or WeChat, or the use of celebrities’ names to lend credibility to advertisements. The Shanghai Regulator demanded a stricter pre-advertisement review process to better prevent false and illegal advertisements on its platform, requiring Qutoutiao to strengthen its examination and regulation of advertisements before they were published and to work to “earnestly safeguard the legitimate rights and interests of consumers.”~~

~~72. In short, the need to comply with Chinese legal regulations for advertisements was a well-recognized risk factor for the Company.~~

~~2. **Instead of complying with Chinese law and preventing the placement of nonconforming advertisements, QTT actively took steps to evade government regulations and encouraged the placement of illegal ads on its platform.**~~

~~73. Instead of complying with Chinese government regulations, as it was required to do in order to operate a legal business, the Company actively sought to evade Chinese restrictions by: 1) using its own in-house advertising agent (Dianguan) that could allow QTT to completely control the placement of advertisements on its software and 2) intentionally targeting consumers in lower tier, provincial Chinese cities because it knew that regulators were less likely to scrutinize advertisements for compliance that were targeted to those end-users.~~

~~i. **The Replacement of Baidu with Dianguan, QTT’s internal ad placement service.**~~

~~74. From the Company’s inception, Baidu, a Chinese internet giant that is similar to Google, was Qutoutiao’s primary advertising agent, meaning that Baidu sold advertising on QTT to other companies, and provided QTT with the resultant revenue from those advertisement sales. Baidu accounted for 69.9% and 43.7% of QTT’s net revenues in 2016 and 2017, respectively.~~

~~75. However, as of December 31, 2017, the Company terminated its agreements with~~

~~Baidu and “other third party advertising agents.”<sup>11</sup> This was done under the pretext of decreasing costs and “enhance[ing] [its] platform’s monetization capabilities,” as the Company articulated in its Prospectus. To replace Baidu, Qutoutiao acquired Dianguan, which allegedly operated a “programmable advertising system.” According to QTT, this acquisition allowed it to reduce its “reliance on third party advertising platforms such as Baidu.”<sup>12</sup>~~

~~76. However, by terminating its relationship with Baidu, QTT now had the ability to control the placement of advertisements on its platform. Baidu, as a third party advertising agent, had control over the distribution of advertising traffic on its clients’ platforms, and it used its algorithms to ensure that the advertisements it places on applications such as QTT are compliant with Chinese regulations.<sup>13</sup> By replacing Baidu with Dianguan, QTT could now bypass those controls and decide for itself what advertisements it would accept on its platform. In short, by acquiring Dianguan, QTT was no longer bound by Baidu’s controls, and instead could decide for itself what advertisements it would display to users.~~

~~77. Further confirming that the only real value that the Dianguan acquisition had for QTT was the ability to control the placement of ads, was the fact that Dianguan’s *only* customer prior to the acquisition was QTT. In addition, Dianguan had been formed just four months prior to its acquisition by QTT and, as discussed below, Dianguan’s owner was a party related to Defendant Tan, who controlled QTT.<sup>14</sup>~~

~~78. On the surface, the Dianguan acquisition appeared to yield positive results for QTT: Dianguan accounted for 78.2% of Qutoutiao’s revenue in the first six months of 2018, which had~~

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<sup>11</sup> ~~Qutoutiao Inc., Annual Report (Form 20-F), p. 57, F-17 (Apr. 11, 2019).~~

<sup>12</sup> ~~Qutoutiao Inc., Registration Statement, (Form F-1), p. 83 (August 17, 2018).~~

<sup>13</sup> ~~Qutoutiao Inc., Annual Report (Form 20-F), p. F-17 (Apr. 11, 2019).~~

<sup>14</sup> ~~Business Information, Shanghai Dianguan Network Technology Co., Ltd., TIANYANCHI, <https://www.tianyancha.com/company/3095343408> (last visited Jan. 15, 2021).~~

~~increased to \$108.5 million, a 569% increase from 2017 the same period in 2017.<sup>15</sup> However, it is clear that this revenue explosion was due primarily to increased placement of illegal ads by QTT which, as described below, fueled its revenue growth.~~

~~**ii. QTT placed illegal and non-conforming ads on its mobile applications.**~~

~~79. Central to QTT's strategy of rapidly growing its revenues was the intentional placement of non-conforming, and, in many cases, illegal advertisements on its mobile applications.~~

~~80. *First*, a former employee who was a content editor at Qutoutiao from April 2017 to May 2018 ("Former Content Editor") told investigators that the Company's advertisement screening procedure was not very strict, so that even if advertisements contained some unhealthy content, e.g. ads that contained "softcore pornography" (软色情) or "played edge ball" (打擦边球) meaning that the advertisements challenged existing rules while seeking to avoid punishment,<sup>16</sup> they would not be screened out of QTT's platform as long as they were not, on their face, illegal or violate state policy. The Former Content Editor also stated that from the early stages of Qutoutiao's expansion in 2016 until it was added to a Cyberspace Administration of China ("CAC") watchlist in or about May 2018, the Company had taken some "extreme" measures to attract traffic, including using vulgar or "controversial content" or "softcore pornography."~~

~~81. *Second*, a former Qutoutiao employee who was a sales director of Dianguan from March 2019 to May 2020 (the "Former Sales Director") told investigators that the Company employed two different teams to manage its advertising content. These teams operated~~

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~~<sup>15</sup> "RMB" refers to Chinese Yuan.~~

~~<sup>16</sup> The term "playing edge ball" is often used to connote people (or companies) who try to gain profit at the edge of the law or regulation while avoiding punishment.~~

~~independently. While one team mainly dealt with well-known and qualified advertisers like Tencent, Alibaba, and Jinri Toutiao, who were largely compliant and provided low-risk advertisements, the other team mainly dealt with unqualified advertisers whose advertisements were “risky” (有一定风险). This second team was disbanded after the Company’s practice of promoting illegal advertisements was exposed on Chinese state TV in July 2020, as described below. While the Former Sales Director did not deal with unqualified advertisers, the Former Sales Director learned about how the Company dealt with those advertisers from co-workers while still working for the Company. Most of the time, the team dealing with unqualified advertisers did not screen or scrutinize the content of advertisements before they were published, and instead outsourced that due diligence to outside contractors. The Former Sales Director explained that Qutoutiao outsourced riskier advertisements to approximately 40-50 other contractors, who often immediately opened accounts for any advertiser without conducting the proper due diligence.~~

~~82. The Former Sales Director stated that the risky advertisements included gambling and fraudulent investment scheme advertisements, whereby users were led to WeChat groups that directly defrauded its victims—commonly known as a “pig slaughter” (杀猪局) scam in China, which refers to a scam whereby a victim at first successfully wins money through gambling, and then, once the victim gains confidence and bets a larger amount, the victim is defrauded. Another type of risky advertisement was for “three no” products (三无产品), which refer to products, such as health supplements, whose packaging does not include the name of the manufacturer, the production date, or a quality certification. Other types of illicit products that were advertised on QTT include games without proper copyright.~~

~~83. Critically, according to the Former Sales Director, from the time the Company was founded to at least when the Former Sales Director left in May 2020, Qutoutiao altered its~~

~~advertisements based on different regions so as to avoid regulation. For example, the Company mainly directed risky advertisements to consumers in fourth-tier cities or even smaller places, as locals were less aware of their rights as consumers, and state regulators lived in first or second-tier cities, and were thus stricter in those more populous locales.<sup>17</sup>~~

~~84. Corroborating the Former Sales Director is the interview of a manager at Guangzhou Tiantuo Network Technology Co. Ltd. (one of Qutoutiao's advertising agents) who, in a July 16, 2020 Chinese television article, confirmed that advertisers on the QTT App could limit the locations of where their advertisements could appear in order to evade regulators.<sup>18</sup> Advertisers thus could and did choose to not show their risky advertisements in first-tier cities, where regulators were more stringent.~~

~~85. *Third*, according to a channel manager at Dianguan from June 2019 to September 2020 ("Former Channel Manager"), since the Company's inception, while Qutoutiao used artificial intelligence to first screen advertisements — if an ad containing content that "played edge ball" (打擦边球) was screened out, either the advertiser or the employees who were responsible for those~~

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<sup>17</sup> ~~QTT was not the only content aggregator that specifically targeted consumers in lower-tier Chinese cities to evade regulators. In March 2018, the People's Daily, the Chinese Communist Party's leading newspaper, reported that a whistleblower had accused aggregator Jinri Toutiao (a competitor of QTT) of "false advertising" that would "specifically target" second and third-tier cities because regulators there were more lenient. See, "Today's Toutiao" is finally on "Toutiao"! Ignoring the supervision and starting this "black business"! 240 million users, CCTV FINANCE (Mar. 29, 2018, 11:02 PM), <http://finance.people.com.cn/n1/2018/0329/c1004-29897407.html>. And in September 2018, Fengyu Network Technology had noted that "Black Five advertisements" on iQiyi, one of the largest online video sites in the world, were most common and often only shown in third-tier cities. Flower Zijian, *Iqiyi has a large number of black five types of ads: visible to users in cities below the third tier*, PHOENIX TECHNOLOGIES (Sept. 14, 2018, 12:04 PM), <https://www.ithome.com/html/it/383152.htm>.~~

<sup>18</sup> ~~"Qutoutiao" repeatedly appeared illegal advertisements, and the black industry chain of "set of households" surfaced, CCTV FINANCE (July 16, 2020, 9:58 PM), <http://news.cctv.com/2020/07/16/ARTIDLkFhXoaiBPgP2SjKH4E200716.shtml>.~~

~~ads were able to employ a second manual review, which would allow those non-conforming advertisements to be put onto the platform. The Former Channel Manager explained that ads that “played edge ball” included ones containing “softcore pornography” or pictures of people in strapless tops or hotpants as well as online novels that were being used without permission.~~

**~~3. In July 2020, Qutoutiao’s use of illegal advertisements is confirmed; as a result, the Company’s revenues plummeted in 3Q20.~~**

~~86. Confirming that QTT’s business model relied on the placement of illegal non-conforming advertisements is the fact that after Chinese television exposed QTT’s unscrupulous practices on national Chinese TV, QTT was forced to crack down and eliminate non-conforming advertisements from its platform. This resulted in a massive decrease in advertising revenue.~~

~~87. On April 24, 2020, in response to the growing number of sensationalized media posts about the COVID-19 pandemic, the Cyberspace Administration of China (CAC) announced that it was cracking down on the proliferation of illegal and misleading information on media aggregation platforms.<sup>19</sup> The CAC specifically named Qutoutiao as an offender but stated that the Company had begun the self-examination and self-correction process. The CAC also announced that, effective immediately, it was implementing a rectification campaign focused on eliminating “malicious online marketing accounts” and it was dealing with any websites that had a substantial negative impact on society.~~

~~88. On July 15, 2020, China Central Television (CCTV), China’s state-controlled broadcaster, aired its annual high-profile consumer rights show. That evening, the hosts of the CCTV Exposé told viewers that Qutoutiao had allowed unqualified companies to publish advertisements on its platform that were illegal under Chinese law, including medical~~

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~~<sup>19</sup> The Cyberspace Administration of China launched a special rectification action to crack down on malicious online marketing accounts, CHINA NETCOM (Apr. 24, 2020, 3:25 PM), [http://www.cac.gov.cn/2020-04/24/e\\_1589274589221739.htm](http://www.cac.gov.cn/2020-04/24/e_1589274589221739.htm).~~

~~advertisements that exaggerated treatment effects such as an advertisement offering free weight-loss products valued at \$14,300 that would help users lose more than 30 pounds a month. In addition, links in some of the Company's advertisements directed users to illegal online gambling platforms. Due to this exposure, major Android app stores in China quickly removed the QTT App from the stores. In addition, it was reported that the Apple app store had placed the QTT App under revision and that it was temporarily unavailable for download.<sup>20</sup> On this news, Qutoutiao's share price fell over 24% to close at \$2.79 per share on July 17, 2020, after two days of unusually heavy trading. By July 18, 2020, 228 complaints had been filed on Black Cat Complaints—a Chinese consumer rights protection group—regarding the proliferation of false advertisements on the QTT App.<sup>21</sup> The QTT App was not restored to major Android-based app stores until July 31, 2020.~~

~~89. As Jeremy Bowman at The Motley Fool pointed out in a July 16, 2020 article, the price of Qutoutiao ADSs “fell after it was accused of running improper ads,” including “misleading ads on its site.”<sup>22</sup> While the Company immediately apologized and promised to do a better job of screening ads on its platform, it assured investors that the Company's fundamentals were still sound—including its positive revenue growth.~~

~~90. On December 16, 2020, the bottom fell out for QTT. QTT reported its third quarter 2020 (“3Q20”) financial results, which incorporated the time period including and after the CCTV Exposé on QTT's unscrupulous practices. The results were devastating. While the company had reported net revenues of \$204 million in the second quarter of 2020 (\$195.1 million from~~

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~~<sup>20</sup> Qu Toutiao has been removed from the Android App Store. Apple App Store is temporarily not available for download, SINA TECHNOLOGY (July 17, 2020, 9:03 AM), <http://www.techweb.com.cn/cloud/2020-07-17/2797437.shtml>.~~

~~<sup>21</sup> Fan Mei Ge, Qutoutiao's advertising chaos was exposed by CCTV 315, NEW INVESTOR NETWORK (July 18, 2020, 8:13 AM), <http://stock.eastmoney.com/a/202007181560759458.html>.~~

~~<sup>22</sup> Jeremy Bowman, Why Qutoutiao Stock Tumbled Today, THE MOTLEY FOOL (July 16, 2020, 2:21 PM), <https://www.fool.com/investing/2020/07/16/why-qutoutiao-stock-tumbled-today.aspx>.~~

~~advertising), net revenues in the third quarter were only \$166.4 million (\$156.5 million from advertising). On a year-over-year comparison with 3Q19, net revenues had fallen a remarkable 19.7%, and advertising revenues had fallen 23.1%. In addition, the number of consumers using QTT's application had also fallen. Combined monthly average users (MAUs) was 120.5 million in 3Q20, while it was 136.5 million in 2Q20. Combined daily average users (DAUs) was 39.7 million in 3Q20, while it was 43 million in 2Q20. In short, revenues had plummeted, and the number of individuals using the platform had fallen as well. For a company that never turned a profit, these results were highly problematic.~~

91. ~~As QTT readily admitted, the reason for the stunning revenue drop was because QTT had been complicit in allowing illegal advertisements to be placed on its website: "The year-over-year decrease in our advertising and marketing revenues was primarily due to the remedial measures undertaken by us in response to the report by China Central Television on certain advertisements placed by third-party advertising agents on [the QTT App], such as removing misleading or inappropriate advertisements from our applications, and the temporary removal of [the QTT App] from several major Android-based app stores in China from July 16, 2020 to July 31, 2020, which caused decreases in our average MAUs, average DAUs and average daily time spent by DAU." The Company also predicted that revenue would continue to decrease: "For the fourth quarter of 2020, the Company currently expects net revenues to be between RMB1,230 million and RMB1,250 million, representing a decrease of 25% to 26% year-over-year." As the market absorbed this news, the Company's share price fell 24% to close at \$1.90 per share on December 22, 2020, after four days of unusually heavy trading volume.~~

92. ~~Mr. Bowman at the Motley Fool noted on December 17, 2020 that QTT "has been struggling to recover after [CCTV] accused Qutoutiao of selling suspicious ads with false~~

~~information at a high-profile consumer rights show back in July” and that the removal of the QTT App “from several major Android app stores for two weeks in July, in the aftermath of CCTV’s accusations...led to a sharp downturn in the business during the July through September quarter.”<sup>23</sup>~~

~~93. In sum, QTT’s business model had been predicated on the placement of illegal advertisements, which fueled rapid revenue growth and enticed investors to purchase its ADS. After QTT was publicly shamed in July 2020, it finally clamped down on its unscrupulous practices, losing valuable revenue. But until December 2020, Defendants never disclosed to investors that a substantial amount of QTT’s revenue was generated from illegal advertisements paid for by shady unqualified advertisers which did not comply with applicable Chinese regulations and that they were managing the risk of losing that revenue by reducing the chance of getting caught by state regulators by placing those advertisements in lower tier Chinese cities.~~

~~**4. Investors purchased QTT because of its rapid revenue growth, which was a façade.**~~

~~94. QTT has never been profitable. However, QTT has reported net revenues that increased (year-over-year (“YOY”)) every quarter from its inception through 2Q20:~~

<del>Date</del>	<del>Quarter</del>	<del>QTT Revenue Guidance Range</del>	<del>Actual Revenue</del>	<del>Percentage Change YOY</del>
<del>11/12/18</del>	<del>3Q18</del>	<del>RMB 1,200 to RMB 1,250 billion</del>	<del>RMB 997.3M</del>	<del>+520.3%</del>
<del>03/05/19</del>	<del>4Q18</del>	<del>RMB 1,100 to RMB 1,120 million</del>	<del>RMB 1,327.0M</del>	<del>+426.1%</del>
<del>05/20/19</del>	<del>1Q19</del>	<del>RMB 1,380 to RMB 1,420 million</del>	<del>RMB 1,118.8M</del>	<del>+373.3%</del>
<del>09/04/19</del>	<del>2Q19</del>	<del>RMB 1,380 to RMB 1,420 million</del>	<del>RMB 1,385.9M</del>	<del>+187.9%</del>
<del>12/03/19</del>	<del>3Q19</del>	<del>RMB 1,600 to RMB 1,620 million</del>	<del>RMB 1,406.9M</del>	<del>+44.0%</del>
<del>03/18/20</del>	<del>4Q19</del>	<del>RMB 1,400 to RMB 1,420 million</del>	<del>RMB 1,658.4M</del>	<del>+25.0%</del>
<del>06/04/20</del>	<del>1Q20</del>	<del>RMB 1,410 to RMB 1,430 million</del>	<del>RMB 1,411.8M</del>	<del>+26.2%</del>
<del>09/21/20</del>	<del>2Q20</del>	<del>RMB 1,130 to RMB 1,150 million</del>	<del>RMB 1,441.0M</del>	<del>+4.0%</del>
<del>12/16/20</del>	<del>3Q20</del>	<del>RMB 1,230 to RMB 1,250 million</del>	<del>RMB 1,130.0M</del>	<del>-19.7%<sup>24</sup></del>

~~<sup>23</sup> Jeremy Bowman, *Why Qutoutiao Stock Dipped Today*, THE MOTLEY FOOL (Dec. 17, 2020, 4:47 PM), <https://www.fool.com/investing/2020/12/17/why-qutoutiao-stock-dipped-today/>.~~

~~<sup>24</sup> Press Release, Qutoutiao Inc. Reports Third Quarter 2018 Unaudited Financial Results, GLOBE NEWSWIRE (Nov. 12, 2018). Press Release, Qutoutiao Inc. Reports Fourth Quarter and Fiscal Year~~

95. ~~Analysts covering QTT relied on this remarkably strong revenue growth to recommend the purchase of QTT ADS. As the website “Simply Wall Street” wrote on August 21, 2020: “Qutoutiao isn’t currently profitable, so most analysts would look to revenue growth to get an idea of how fast the underlying business is growing. Shareholders of unprofitable companies usually expect strong revenue growth.... In the last year Qutoutiao saw its revenue grow by 50%. That’s well above most other pre-profit companies.”~~<sup>25</sup>

96. ~~Indeed, until the third quarter of 2020, analysts following Qutoutiao focused on the Company’s revenue increases despite having high losses every quarter and missing other financial metrics:~~

- ~~11/12/18: “Qutoutiao misses by \$0.31, beats on revenue”~~<sup>26</sup>
- ~~3/5/19: “Qutoutiao misses by \$0.03, beats on revenue”~~<sup>27</sup>
- ~~5/20/19: “Qutoutiao misses by \$0.02, beats on revenue”~~<sup>28</sup>

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~~2018 Unaudited Financial Results, GLOBE NEWSWIRE (Mar. 5, 2019). Press Release, Qutoutiao Inc. Reports First Quarter 2019 Unaudited Financial Results, GLOBE NEWSWIRE (May 20, 2019). Press Release, Qutoutiao Inc. Reports Second Quarter 2019 Unaudited Financial Results, GLOBE NEWSWIRE (Sept. 4, 2019). Press Release, Qutoutiao Inc. Reports Third Quarter 2019 Unaudited Financial Results, GLOBE NEWSWIRE (Dec. 3, 2019). Press Release, Qutoutiao Inc. Reports Fourth Quarter and Fiscal Year 2019 Unaudited Financial Results, GLOBE NEWSWIRE (Mar. 18, 2020). Press Release, Qutoutiao Inc. Reports First Quarter 2020 Unaudited Financial Results, GLOBE NEWSWIRE (June 4, 2020). Press Release, Qutoutiao Inc. Reports Second Quarter 2020 Unaudited Financial Results, GLOBE NEWSWIRE (Sept. 21, 2020). Press Release, Qutoutiao Inc. Reports Third Quarter 2020 Unaudited Financial Results, GLOBE NEWSWIRE (Dec. 16, 2020).~~

~~<sup>25</sup> *Qutoutiao (NASDAQ:QTT) Share Prices Have Dropped 42% In The Last Year*, SIMPLY WALL ST. (Aug. 21, 2020), <https://simplywall.st/stocks/us/media/nasdaq-qtt/qutoutiao/news/qutoutiao-nasdaqqtt-share-prices-have-dropped-42-in-the-last-year>.~~

~~<sup>26</sup> Mamta Mayani, *Qutoutiao misses by \$0.31, beats on revenue*, SEEKING ALPHA (Nov. 12, 2018, 5:36 AM ET), [https://seekingalpha.com/news/3408367-qutoutiao-misses-0\\_31-beats-on-revenue](https://seekingalpha.com/news/3408367-qutoutiao-misses-0_31-beats-on-revenue).~~

~~<sup>27</sup> Jignesh Mehta, *Qutoutiao misses by \$0.03, beats on revenue*, SEEKING ALPHA (Mar. 5, 2019, 4:04 PM ET), [https://seekingalpha.com/news/3439969-qutoutiao-misses-0\\_03-beats-on-revenue](https://seekingalpha.com/news/3439969-qutoutiao-misses-0_03-beats-on-revenue).~~

~~<sup>28</sup> Jignesh Mehta, *Qutoutiao misses by \$0.02, beats on revenue*, SEEKING ALPHA (May 20, 2019, 4:06 PM ET), [https://seekingalpha.com/news/3465437-qutoutiao-misses-0\\_02-beats-on-revenue](https://seekingalpha.com/news/3465437-qutoutiao-misses-0_02-beats-on-revenue).~~

- ~~9/4/19: “Qutoutiao EPS misses by \$0.05, beats on revenue”<sup>29</sup>~~
- ~~12/3/19: “Qutoutiao EPS misses by \$0.14, beats on revenue”<sup>30</sup>~~
- ~~3/18/20: “Qutoutiao EPADS beats by \$0.03, beats on revenue”<sup>31</sup>~~
- ~~6/4/20: “Qutoutiao EPS beats by \$0.03, beats on revenue”<sup>32</sup>~~
- ~~9/21/20: “Qutoutiao EPS beats by \$0.02, beats on revenue”<sup>33</sup>~~

97. ~~Yet these revenue increases, as reflected in the documents filed with the SEC, were a façade because they incorporated illegal advertisement revenue and therefore the growth was not real, organic growth. As explained above, the Company knowingly sold advertisements that were illegal under Chinese law. The revenue that the Company obtained from these illegal advertisements was material, as it allowed the Company to claim that revenues were rapidly growing. Investors relied on this purported revenue growth in making decisions on whether or not to purchase QTT. Yet the statements put out by QTT, which touted this revenue growth, were false and materially misleading because they failed to disclose that the revenue growth included, and was in fact contingent upon, the knowing placement of illegal advertisements, which constituted a significant portion of its revenues. Once forced to disclose this to investors in December 2020, it~~

<sup>29</sup> ~~Pranav Ghumatkar, *Qutoutiao EPS misses by \$0.05, beats on revenue*, SEEKING ALPHA (Sept. 4, 2019, 4:15 PM ET), [https://seekingalpha.com/news/3497124-qutoutiao-eps-misses-0\\_05-beats-on-revenue](https://seekingalpha.com/news/3497124-qutoutiao-eps-misses-0_05-beats-on-revenue).~~

<sup>30</sup> ~~Mamta Mayani, *Qutoutiao EPS misses by \$0.14, beats on revenue*, SEEKING ALPHA (Dec. 3, 2019, 6:02 AM ET), [https://seekingalpha.com/news/3523246-qutoutiao-eps-misses-0\\_14-beats-on-revenue](https://seekingalpha.com/news/3523246-qutoutiao-eps-misses-0_14-beats-on-revenue).~~

<sup>31</sup> ~~Nilofer Shaikh, *Qutoutiao EPADS beats by \$0.03, beats on revenue*, SEEKING ALPHA (Mar. 18, 2020, 5:44 AM ET), [https://seekingalpha.com/news/3552784-qutoutiao-epads-beats-0\\_03-beats-on-revenue](https://seekingalpha.com/news/3552784-qutoutiao-epads-beats-0_03-beats-on-revenue).~~

<sup>32</sup> ~~Nilofer Shaikh, *Qutoutiao EPS beats by \$0.03, beats on revenue*, SEEKING ALPHA (June 4, 2020, 5:36 AM ET), [https://seekingalpha.com/news/3580311-qutoutiao-eps-beats-0\\_03-beats-on-revenue](https://seekingalpha.com/news/3580311-qutoutiao-eps-beats-0_03-beats-on-revenue).~~

<sup>33</sup> ~~Manshi Mamtara, *Qutoutiao EPS beats by \$0.02, beats on revenue*, SEEKING ALPHA (Sept. 21, 2020, 4:14 PM ET), [https://seekingalpha.com/news/3615907-qutoutiao-eps-beats-0\\_02-beats-on-revenue](https://seekingalpha.com/news/3615907-qutoutiao-eps-beats-0_02-beats-on-revenue).~~

~~became apparent that QTT's legitimate revenue stream, and its accompanying growth, was non-existent. Because of that, QTT's ADS price fell dramatically.~~

**C. Defendants' Class-Period Financial Statements Violated GAAP and Obscured Qutoutiao's True Financial Performance and Prospects.**

**1. Accounting policies and principles applicable to Qutoutiao**

98. Generally Accepted Accounting Principles ("GAAP") are the principles recognized by the accounting profession as the conventions, rules, and procedures necessary to define accepted accounting practices at a particular time, against which financial presentations should be measured. GAAP are the official accounting standards and have been codified and are primarily promulgated by the Financial Accounting Standards Board ("FASB").

99. The SEC requires that public companies present financial statements in accordance with GAAP. SEC Regulation S-X (17 C.F.R. § 210.4-01(a)(1)) states that financial statements filed with the SEC that are not prepared in compliance with GAAP are presumed to be misleading and inaccurate, despite footnotes and other disclosures.

100. As a publicly traded company, SEC Staff Accounting Bulletin: No. 99 – Materiality ("SAB 99") guides Qutoutiao's application of materiality. Materiality is based on whether a reasonable person's decision-making process, relying upon QTT's public statements, would have been changed or influenced by the inclusion or correction of the information at issue. According to SAB 99, qualitative and quantitative factors should be considered in determining materiality.

101. The FASB Amendments to Statements of Financial Accounting Concepts No. 9 ("Concept No. 9") issued in August 2018 clarified the concept of materiality. Concept No. 9 states that "[t]he omission or misstatement of an item in a financial report is material if, in light of surrounding circumstances, the magnitude of the item is such that it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced by the

inclusion or correction of the item.”

102. Qutoutiao was required, under GAAP and SEC Regulation S-X, to make specific disclosures pertaining to related party transactions because they are material.

103. SEC Regulation S-X requires:

**(1) Related party transactions...*should be [identified and the amounts] stated on the face of the balance sheet, statement of comprehensive income, or statement of cash flows.***

(2) In cases where separate financial statements are presented for the registrant, certain investees, or subsidiaries, any intercompany profits or losses resulting from transactions with related parties and not eliminated and the effects thereof shall be disclosed.

17 C.F.R. § 210.4-08(k).<sup>34</sup>

104. In addition, FASB Accounting Standards Codification (“ASC”) 850 applies to related parties.<sup>35</sup> Related parties cannot be presumed to be acting at arm’s length because of the special inherent relationship between them. See ASC 850-10-50-5. Because this special relationship can create a conflict of interest that can benefit related parties, withholding information about material related party transactions makes financial statements unreliable and prevents the true picture of an entity from being represented. Thus, “[i]nformation about

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<sup>34</sup> Unless otherwise noted, internal citations are omitted and emphasis is added throughout.

<sup>35</sup> According to GAAP, related parties include the following:

- Affiliates of the entity.
- Principal owners of the entity and members of their immediate families.
- Management of the entity and members of their immediate families.
- Other parties with which the entity may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.
- Other parties that can significantly influence the management or operating policies of the transacting parties or that have an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests. (ASC 850-10-20).

transactions with related parties that would make a difference in decision making shall be disclosed so that users of the financial statements can evaluate their significance.” (ASC 850-10-10-1).

105. FASB ASC 850, requires companies to disclose the following for related party transactions:

- The nature of the relationships involved;
- A description of the transactions, including transactions where no amounts or nominal amounts are involved, for each of the reporting periods where income statements are presented; additionally, other information deemed necessary to gain an understanding of the effects of the transactions on the financial statements should be disclosed;
- The dollar amounts of the transactions for each of the reporting periods where income statements are presented along with the effects of any change in the method of establishing the terms of the transactions when compared to the method used in the preceding reporting period; and
- Amounts due to or from related parties as of each financial statement date and, if not otherwise apparent, the terms and manner of settlement related to those amounts.

106. Furthermore, when a “reporting entity and one or more other entities are under common ownership or management control and the existence of that control could result in operating results or financial position of the reporting entity significantly different from those that would have been obtained if the entities were autonomous,” ASC 850 requires companies to disclose “the nature of the control relationship ... even though there are no transactions between the entities.” (850-10-50-6).

**2. Dianguan Acquisition benefitted Liang who had a special relationship with Defendant Tan and should have been disclosed.**

107. In February 2018, Qutoutiao purchased Dianguan for CNY 15 million.<sup>36</sup> QTT’s IPO Prospectus, SPO Prospectus, ~~2018 20-F~~, and ~~2019 20-F~~ each had an entire section of “Related Party Transactions,” which included “Transactions with Companies Controlled by or Affiliated with Mr. Tan.” However, these filing neglected to note that Dianguan, QTT’s advertising agent,

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<sup>36</sup> Qutoutiao Inc., Annual Report (Form 20-F) (Apr. 11, 2019).

was a related party prior to its acquisition by QTT.

108. Xiang “Sean” Liang (“Liang”) had founded Dianguan four months prior to the acquisition by QTT, was its director on record from February 13, 2018 through December 29, 2018, and was its legal representative through December 29, 2018.

109. At the same time, Liang also had a close business relationship with Defendant Tan, the co-founder and executive chairman of QTT. In addition to his role at Dianguan, Liang was also the director of domestic investment at a company which was the executive partner of a company that Defendant Tan has been the majority investor in since February 26, 2018. Specifically, Tan holds 64.5% of the equity in Nantong WooFoo Jinxin Equity Investment Fund Partnership (“Woofoo Equity”) and Liang was the Director of Domestic Investment at its executive partner, Nantong Woofoo Jinxin Investment Management Co. Ltd.<sup>37</sup>

110. In addition, in 2016 Liang was the investment director of another company that Defendant Tan held 99% of the equity of (Tan’s sister held the other 1% equity): Shanghai Taiyun Investment Management Co. Ltd. (branded as “Taiyun Capital”).<sup>38</sup> Liang is still listed as an investment assistant on Taiyun Capital’s page on ITJuzi, a Chinese website that tracks technology companies.<sup>39</sup> In fact, in July 2018, Defendant Tan simultaneously held the positions of business consultant for Taiyun Capital and chairman of Qutoutiao.<sup>40</sup> According to SAMR records, Tan’s sister, Tan Siping (“Siping”) is a legal representative and director of Taiyun Capital.

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<sup>37</sup> Investment Team, WOOFoo CAPITAL, <http://www.woofocapital.com/#page3> (last visited Jan. 11, 2021).

<sup>38</sup> *Introduction and Contact Information for Taiyun Capital*, IT ORANGE, <https://www.itjuzi.com/investfirm/1938> (last visited Jan. 5, 2021).

<sup>39</sup> *Id.*

<sup>40</sup> *Want to make money from news? You might regret*, SOHU (July 17, 2018, 9:16 AM) [https://www.sohu.com/a/241611324\\_100116800](https://www.sohu.com/a/241611324_100116800).

111. Accordingly, because Liang and Tan's business relationship was so intertwined such that Dianguan would have been prevented from "fully pursuing its own separate interest," Dianguan and QTT were related parties. This relationship, which would have shed light on revenues generated from transactions with Dianguan prior to its acquisition and the reasons for acquiring Dianguan and replacing Baidu, required disclosure to the Company's investors, but it was not.

**3. Transactions involving Mengtui, Fangce, and Shihui Miao should have been disclosed as related to and benefitting Defendant Tan.**

112. QTT also failed to disclose that one of its top advertisers, Mengtui ("Meng Push" or "Mengtui App"), is a party related to Tan.<sup>41</sup> Specifically, the copyright and website operating licenses for the Mengtui App are held by Shanghai Tujin Network Technology Co. Ltd. ("Tujin"). Tujin's 80% shareholder is Shanghai Bimeng Information Technology Co. Ltd. ("Bimeng"). Siping was the legal representative and director of Bimeng until October 23, 2018. Bimeng is also wholly owned by Shanghai Bige Information Technology Co. Ltd. ("Bige"), of which Tan is the 99% owner and his wife, He Yuning is the 1% owner.<sup>42</sup> Further, Bige's official company website as listed on Qichacha, [www.bigbaser.com](http://www.bigbaser.com), leads to a venture capital website that lists Tan as Bige's founder and Bige's CEO, Liu Hui, holds positions at several other companies controlled by Tan.<sup>43</sup> The website also lists Mengtui, Shihui Miao, and Qujianpan (Qu Keyboard) among QTT's products. Furthermore, other media outlets, including Eastmoney Finance, place Mengtui under the category of Qutoutiao's official products.<sup>44</sup>

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<sup>41</sup> According to the Wolfpack Report, approximately 26.2% of the advertisements on QTT that they analyzed originated with the Mengtui App.

<sup>42</sup> See Wutong Holding Group Co., Ltd.- Brief report on changes in equity, CNINF (Nov. 30, 2018), <https://q.stock.sohu.com/newpdf/201833723048.pdf>.

<sup>43</sup> Team Page, BIGBASER.COM, <https://www.bigbaser.com/#/about/team> (last visited Jan. 7, 2021).

<sup>44</sup> *Qu Toutiao President Liu Anyi: The value of Qu Toutiao is underestimated*, TIMES FINANCE, (Dec. 4, 2019, 4:25 PM), <http://finance.eastmoney.com/a/201912041312870921.html>.

113. QTT also failed to disclose that the advertising income it received from Publisher Shanghai Fangce Network Technology Co. Ltd. (“Fangce”), is related party income from companies related to Tan as it is managed and substantially owned by one of Tan’s close associates, Liu Hiu.<sup>45</sup> Specifically, Liu Hiu is Fangce general manager and owns 65% of Fangce’s parent company, Tianjin Yingnuo Asset Management Co. Ltd. (“Yingnuo”). Liu Hui is also a director of Shenzhen Falide Technology Co. Ltd. (“Foodleader”), where Tan serves as chairman and owns a 53.8% stake through Taiyun Capital’s ownership of Foodleader.

114. QTT further failed to disclose that the advertising income it received from Shihui Miao (“Shihui Miao App”) is related party income from companies related to Tan as its licenses and rights are owned by companies that Tan owns and that his sister represents.<sup>46</sup> Specifically, its website operating licenses and software authorship rights are owned by Shanghai Xihu Culture Communications Co. Ltd. (“Xihu”), which is 100% owned by Bige, which, as noted above, is 100% owned by Tan and his wife. Further, Siping is Xihu’s legal representative and its current supervisor on record, Xia Biyun (“Xia”), is also the current supervisor on record at Tan’s companies Bige and Bimeng. This was partially disclosed in the 2018 F-1 Registration Statement as a 20% equity interest in Shanghai Jifen Culture Communication Co. Ltd (“Jifen”), one of Qutoutiao’s Chinese entities. Xihu also developed the Shihui Miao App.<sup>47</sup>

115. The Mengtui App and the Shihui Miao App are both part of QTT’s product matrix and while they “have different relationships with the main [QTT App]” in order to attract traffic

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<sup>45</sup> According to the Wolfpack Report, approximately 0.3% of the advertisements on QTT that they analyzed originated with Fangce.

<sup>46</sup> According to Wolfpack Report, approximately 3.0% of the advertisements on QTT that they analyzed originated with the Shihui Miao App.

<sup>47</sup> Ma Cheng, *Giants’ “Sinking Anxiety”: After Tencent and Ali entered the game, JD.com bought into QuTouTiao*, ALL WEATHER TMT (Apr. 25, 2019, 9:52 AM), <https://awtmt.com/articles/3518477>.

and maintain a high level of user activity, they are both so intertwined with the QTT App that they were not likely to grow at a sustainable rate on their own.<sup>48</sup> Accordingly, the Company's transactions with the Mengtui App and the Shihui Miao App should have all been disclosed due to the intertwined nature of their relationship with the QTT App and the financial benefit that Defendant Tan ultimately derived from them.

**~~4. QTT's 2017 and 2018 consolidated revenues in its SEC filings are materially higher than the total 2017 and 2018 revenues its subsidiaries reported in their SAMR filings.~~**

~~116. In the IPO Documents, the 2018 20-F and the 2019 20-F, Defendants reported 2017 and 2018 consolidated revenue of RMB 517.1 million and RMB 3.02 billion, respectively. But the Company's wholly owned subsidiaries and other consolidated entities in China—its only entities which generate revenue—reported revenue totaling only RMB 329.5 million for 2017 and RMB 2.4 billion for 2018 based on the face of their SAMR filings with the Chinese government. Nowhere in Qutoutiao's SEC filings are these differences (RMB 187.6 million for 2017 and RMB 620 million for 2018) explained.~~

~~117. The SAMR is the Chinese government registrar for official documents like articles of incorporation, legal persons, registered capital, and company ownership. Qutoutiao's Chinese subsidiaries and other consolidated entities must annually file with the SAMR a "Company Annual Inspection Report," which includes financial statements such as balance sheets and income statements. Companies must file this report in order to renew their annual business licenses. The SAMR is the Chinese government registrar for official documents like articles of incorporation, legal persons, registered capital, and company ownership. SAMR filings only reflect business in activities in mainland China (PRC), they do not include revenue that is generated overseas or assets~~

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<sup>48</sup> Han Zhipeng, *The original funny headline "Life Renewal" game*, SOHU (Oct. 11, 2019, 9:09 AM), [https://www.sohu.com/a/346169737\\_118788](https://www.sohu.com/a/346169737_118788).

~~that are held outside PRC. SAMR filings also reflect stand alone balances for each entity and employ different accounting principles than U.S. GAAP, so it is not uncommon to have differences between a company's SAMR and SEC filings. GAAP requires intercompany transactions to be eliminated. Therefore, to the extent any intercompany revenues were included in any of the SAMR filings, they would be eliminated in preparing QTT's consolidated financial statements and thus could only result in a further reduction of the total revenues reported in the SAMR filings.~~

~~118. Although Qutoutiao is incorporated in the Cayman Islands, it does not appear to generate revenue outside of mainland China. Accordingly, the revenue presented in its subsidiaries' SAMR filings is all the revenue that can be reported in its consolidated financial statements filed with the SEC. Those subsidiaries include Jifen, Shanghai Big Rhinoceros Horn Information Technology Co. Ltd. ("Big Rhino"), Shanghai Tuile Information Technology Co. Ltd. ("Tuile"), Shanghai Xike Information Technology Service Co. Ltd. ("Xike"), Dianguan, Shanghai Zhicao Information Technology Co. Ltd. ("Zhicao"), Shanghai Quyun Internet Technology Co. Ltd. ("Qyun"), Shanghai DragonS Information Technology Co. Ltd. ("DragonS"), Beijing Supreme Pole International Sports Promotion Co. Ltd. ("Supreme Pole"), Beijing Churun Internet Technology Co. Ltd. ("Churun"), Beijing Qukandian Internet Technology Co. Ltd. ("Qukandian"), Tianjin Quwen Internet Technology Co. Ltd. ("Quwen"), and Anhui Zhangduan Internet Technology Co. Ltd. ("Zhangduan") (collectively, "Chinese Subsidiaries").~~

~~119. The total revenue from these Chinese Subsidiaries, based on the face of their SAMC Filings, is RMB 2.40 billion. However, RMB 308.01 million in revenue that Dianguan earned from Jifen (its only customer during 2018) and possibly other intra-company revenue should be deducted (i.e., eliminated) as an intercompany transaction. In addition, RMB 43.43 million should be deducted to eliminate revenues recorded by the consolidated entities (QTT VIEs and~~

~~subsidiaries) with the parent company during 2018. Accordingly, the total revenue from the Chinese Subsidiaries is RMB 329.5 million for 2017 and RMB 2.05 billion for 2018.~~

~~120. Qutoutiao reported consolidated revenue of RMB 517.1 million for 2017 and RMB 3.02 billion for 2018 in its SEC filings, leaving RMB 187.6 million (or 36% of the reported revenue) unaccounted for in 2017 and RMB 970.67 million (or 32% of the reported revenue) unaccounted for in 2018, respectively.~~

~~**5. QTT failed to disclose contingent liabilities from its violation of China's laws and regulations related to the placement of illegal ads on its platform.**~~

~~121. As stated above, instead of complying with Chinese government regulations, the Company actively sought to evade Chinese restrictions and run illegal advertisements. The Company's actions exposed it to possible substantial fines and penalties in the future, when its conduct would become known. GAAP defines such a circumstance as a loss contingency, which is "[a]n existing condition, situation, or set of circumstances involving uncertainty as to possible loss to an entity that will ultimately be resolved when one or more future events occur or fail to occur." (ASC 450-20-20).~~

~~122. Because there was "at least a reasonable possibility" that fines and penalties may have been incurred, GAAP required QTT to disclose the nature of the aforementioned loss contingency and provide "[a]n estimate of the possible loss or range of loss or a statement that such an estimate cannot be made" in the notes to its financial statements. (450-20-50-3-4). QTT did not do that in its financial statements.~~

~~**VII. THE 1934 ACT CLAIMS**~~

~~123. Lead Plaintiff asserts securities fraud-based claims under §§ 10(b) and 20(a) of the 1934 Act and SEC Rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated thereunder, against the 1934 Act Defendants.~~

124. ~~Throughout the Class Period, the 1934 Act Defendants knowingly or recklessly made materially false and misleading public statements and omissions that: (i) Qutoutiao was not able to generate sufficient revenue to meet its targets unless it allowed unqualified advertisers to advertise on the QTT App, which it accomplished by targeting consumers who lived in lower tier Chinese cities; (ii) the true benefits of, and reasons for, replacing the Company's third-party advertising agent, Baidu, with a related party, Dianguan, and bypassing that third-party's oversight of the content and quality of advertisements was to generate revenue from risky advertisements; (iii) the Company had created separate teams for dealing with qualified advertisers, whose advertisements were largely compliant with applicable Chinese regulations and thus low risk, and unqualified advertisers, and that the "high-risk" team (which was disbanded after the CCTV Exposé) outsourced nearly all of its advertisement screening to contractors who conducted minimal due diligence on their clients; (iv) as a result, the Company would place on the QTT App, risky advertisements whose claims could not be substantiated and thus were considered false advertisements under applicable regulations or which linked to illegal online gambling platforms; (v) as a result, the Company would face increasing regulatory scrutiny and reputational harm; (vi) as a result, the Company's advertising revenue was reasonably likely to decline; (vii) the Company was reporting RMB 620 million more in revenue to the SEC than its subsidiaries did in aggregate to the SAMR; and (viii) as a result of the foregoing, Defendants' positive statements about the Company's business, operations and prospects, were materially misleading and/or lacked a reasonable basis.~~

~~**A. Materially False and Misleading Statements and Omissions During the Class**~~

Period<sup>49</sup>**1. Initial Public Offering (September 14, 2018).**

~~125. On September 14, 2018, Qutoutiao issued a press release announcing the pricing of its IPO and that Defendants Citigroup, Deutsche, China Merchants and UBS would be acting as “joint bookrunners” for the Offering, and Defendant KeyBanc would be acting as co-manager. That same day, Qutoutiao filed its IPO Prospectus on Form 424B4 with the SEC (together with the IPO Registration Statement, forming the IPO Documents). The Insider Defendants signed and/or authorized the signing of the IPO Documents.~~

~~126. The IPO Documents contained multiple material misstatements regarding the Company’s strategy of targeting users in lower tier cities in China, stating in relevant part that:~~

~~*Since our inception, we have strategically targeted users from tier-3 and below cities in China because of the enormous opportunities in this underserved market. As of the end of 2017, tier-3 and below cities had a population of 1,027 million each owning 0.5 mobile device on average (compared to a population of 363 million each owning 1.3 mobile devices on average in tier-1 and 2 cities), suggesting significant potential for further mobile penetration, according to the Analysys [sic] Report. Mobile users in tier-3 and below cities tend to have a slower pace of life and spend more time on the Internet given limited offline entertainment venues. Moreover, they often enjoy fast increasing disposable income and lower financial pressures thanks to lower housing prices. These factors contribute to a significant need for mobile entertainment content while also create strong monetization potential.*~~

~~127. The statements contained in ¶ 126 supra were materially false and misleading because the “enormous opportunities” and “strong monetization potential” in Tier-3 and lower cities had much less to do with the high number of users in those cities having more time and disposable income to spend on the internet and far more to do with the high number of unqualified advertisers who wanted to run non-compliant ads in those cities because regulators were more lenient and users were less aware of their~~

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<sup>49</sup> ~~The particular portions of the statements alleged to be false or misleading are bold and italicized herein.~~

~~rights as consumers in those cities.~~

~~128. The IPO Documents also touted that the Company's "*net revenues have increased rapidly*" from RMB58.0 million (US\$8.8 million) in 2016 to RMB517.1 million (US\$78.1 million) in 2017, and further from RMB107.3 million (US\$16.2 million) in the six months ended June 30, 2017 to RMB717.8 million (US\$108.5 million) in the same period in 2018." The majority of this revenue was derived from advertising, as the Company stated in the IPO Documents:~~

~~Baidu, which is our largest customer and operates a third-party advertising platform, contributed 69.9%, 43.7%, 75.8% and 12.1% of our net revenues in 2016 and 2017 and the six months ended June 30, 2017 and 2018, respectively. Baidu also accounted for 92.6%, 59.8% and 30.5% of our accounts receivable as of December 31, 2016 and 2017 and June 30, 2018, respectively. *To enhance our platform's monetization capabilities, we acquired an advertising agent in February 2018 that operates a programmatic advertising system. We expect this system will allow us to reduce our reliance on third-party advertising platforms such as Baidu.* Prior to our acquisition of this advertising agent in February 2018, we engaged such advertising agent to serve as our sales agent in selling our advertising solutions to other second-tier advertising agents and end advertisers. *In 2017 and the six months ended June 30, 2018, 26.2% and 78.2% of our net revenues, respectively, were generated through this advertising agent. These second-tier advertising agents and end advertisers are our customers as they select our mobile applications to place their advertisement and our performance obligation is to provide the underlying advertising display services to them.*~~

~~129. The statements contained in ¶ 128 *supra* were materially false and misleading because:~~

~~(i) the increase in net revenues, specifically advertising and marketing revenues, was primarily due to the increase in ads whose claims could not be substantiated and thus were considered false advertisements under applicable regulations or provided links to illegal online gambling platforms;~~

~~(ii) the Company acquired an advertising agent in February 2018 to reduce the oversight Baidu had been providing which had prevented non-compliant ads from running;~~

~~(iii) any enhancement in the Company's ability to monetize user traffic was actually primarily related to its increased ability to sell non-compliant ads;~~

~~(iv) in order to meet the Company's "performance obligation" to~~

~~its end advertiser customers, it set up separate teams with different processes and procedures for qualified versus unqualified advertisers in order to sell non-compliant ads; and (v) the Company materially misrepresented the strength of its business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. Even after the Company's risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its "remedial measures" which included "removing misleading or inappropriate" ads from the QTT App.~~

130. In addition, the IPO Documents note that the Company "currently generate[s] most of [its] revenue from advertising," so to "Enhance [its] Monetization Capabilities:"

~~*We intend to enhance our advertising solutions by strengthening the performance of our proprietary programmatic advertising system.* We believe our strategic move to reduce the utilization of third party advertising platforms and focus on expanding our advertising customer base and advertising agents directly will further boost our advertising revenue.~~

131. With regard to "Monetization," the IPO Documents specifically state that:

~~*Our advertising technology aims to maximize our revenue potential by rewarding the more relevant advertisement with a more prominent position, despite the potentially lower price bid of such advertisement.* We actively monitor the advertisements placed to help ensure their relevance.~~

~~Customers for our programmatic advertising system are comprised of advertising agents and end advertisers. *We have our own sales personnel who are responsible to support and monitor the performances of advertising agents and to attract advertising customers to use our programmatic advertising system directly.* We enter into standard agreements with advertising agents generally for a term of one year. *Our advertising agents are responsible for identifying end advertisers, confirming payments and setting up accounts on our programmatic advertising system for advertising customers. We provide ongoing training to advertising agents to familiarize them with the functionalities and capabilities of our programmatic advertising system. These advertising agents are responsible for collecting and submitting the relevant documentation and licenses from advertising customers for our approval to open an account on our programmatic*~~

~~advertising system, and are also liable for any infringement of third-party rights or violation of regulatory requirements caused by advertisements placed by their end-advertisers.~~

132. ~~The statements contained in ¶¶ 130-131 *supra* were materially false and misleading because: (i) the Company's enhancing or maximizing of its ability to monetize user traffic was actually primarily related to its increased ability to sell non-compliant ads after replacing Baidu with Dianguan in February 2018; (ii) the Company's sales personnel's responsibilities were different for qualified versus unqualified advertisers in order to be able to sell non-compliant ads; (iii) regardless of the terms of its agreements with advertising agents, the Company would also face increasing regulatory scrutiny and reputational harm from any ads that violated the relevant regulatory requirements; and (iv) Qutoutiao materially misrepresented the strength of its business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. Even after the Company's risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its "remedial measures" which included "removing misleading or inappropriate" ads from the QTT App.~~

133. ~~The IPO Documents specifically tout Qutoutiao's mission "to deliver quality and relevant content to users, and content sourcing, management and recommendation" as "core focuses of [its] operations," including with regard to advertising and content screening technology:~~

- ~~• **Advertising.** *Our advertising technology enables advertising customers to bid for audience and automatically deliver relevant, targeted promotional links to users.* Our system rewards more relevant advertisements with more prominent positions, despite the potentially lower priced bids of such advertisements. Our audience segmentation technology helps ensure the relevance of advertisements shown to users by analyzing their interests through browsing activity, viewed content and commenting history. In addition, we have the ability to predict click-through rates for advertisements using logistic~~

~~regression, gradient boosting decision tree and linear and nonlinear modeling algorithms. Enhanced precision of these click-through rate projections can help maximize the cost effectiveness of customers' advertising budgets.~~

- ~~• **Content Screening Technology.** Our text screening system screens information based on pre-set keywords. *We utilize artificial intelligence to identify inappropriate or objectionable content from images, speeches and videos, significantly increasing efficiency over manual review. We also apply deep learning methods to analyze complex visual content. Through big data and continuous training, our system is able to monitor and identify objectionable visual content with a high degree of accuracy. The screening system automatically declines content that did not meet the standards of our platform and flags suspicious content for manual review by our content management team.*~~

~~134. The statements contained in ¶ 133 *supra* were materially false and misleading because: (i) misleading or illegal ads were being delivered as part of the “relevant, targeted promotional links to users;” (ii) different processes and procedures were being applied to advertising content such that any declined ads could be manually allowed on the QTT App; and (iii) Qutoutiao materially misrepresented the strength of its business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. Even after the Company’s risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its “remedial measures” which included “removing misleading or inappropriate” ads from the QTT App.~~

~~135. Furthermore, while the 1934 Act Defendants list numerous “Risk Factors” in the IPO Documents, they failed to adequately warn investors that certain “Risk Factors” had already materialized at the time of the IPO.~~

~~136. First, the IPO Documents warned that “[a]dvertisements on our mobile applications may [] subject us to penalties and other administrative actions:”~~

~~Under PRC advertising laws and regulations, we are obligated to monitor the advertising content shown on our mobile applications to ensure that such content is true, accurate and in full compliance with applicable laws and regulations. . . . However, *for the determination of the truth and accuracy of the advertisements, there are no implementing rules or official interpretations, and such a determination is at the sole discretion of the relevant local branch of the State Administration for Market Regulation, or the SAMR (successor of SAIC and the State Food and Drug Administration), which results in uncertainty in the application of these laws and regulations.*~~

~~\* \* \*~~

~~We cannot assure you that all the advertisements shown on our mobile applications are true, accurate, appropriate and in full compliance with applicable laws and regulations. *For example, advertisers on our mobile applications, or their agents, may use measures that are designed to evade our monitoring, such as providing inauthentic material that does not match the actual advertisement, or supplying advertising which is superficially compliant but nevertheless is linked to one or more webpages that feature noncompliant advertising content. In addition, our employees responsible for reviewing advertisements may not fully understand the relevant laws and regulations or may be inappropriately influenced by the advertisers. In each case, we may still be held responsible for noncompliant advertising content.* We include clauses in most of our advertising contracts requiring that all advertising content provided by advertising customers must comply with relevant laws and regulations. *Pursuant to the contracts between us and the relevant advertising agents or advertising customers, they are liable for all damages to us caused by their breach of such representations. However, there can be no assurance that we will be able to successfully enforce our contractual rights.*~~

~~*Violation of these laws and regulations may subject us to penalties, including fines, confiscation of our advertising income, orders to cease dissemination of the advertisements and orders to eliminate the effect of illegal advertisement. If an illegal advertisement featured on our mobile applications were to have excessive negative effects, our brand and reputation may be harmed, and PRC governmental authorities may pursue more severe penalties and administrative actions against us. PRC governmental authorities may even force us to terminate our advertising operation or revoke our licenses in circumstances involving serious violations. Such penalties may have a material and adverse effect on our business, results of operations and financial condition.*~~

~~137. The statements contained in ¶ 136 *supra* were materially false and misleading because the Company: (i) had set up separate teams with different processes and procedures for qualified versus unqualified advertisers in order to be able to sell non-compliant ads; (ii) was~~

~~already violating the applicable advertising laws and regulations and thus the ramifications were not a matter of if, but when; and (iii) materially misrepresented the strength of its business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company's risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its "remedial measures" which included "removing misleading or inappropriate" ads from the QTT App.~~

~~138. Second, the IPO Documents warned that because "[w]e generate a substantial majority of our revenues from advertising[,] [a] decline in our advertising revenue could harm our business:"~~

~~We generated almost all of our revenues from advertising services in 2016, 2017, and the six months ended June 30, 2018. When we first commenced our business, we collaborated with various third-party advertising platforms to place advertisements on our mobile applications. *To enhance our platform's monetization capabilities, we acquired an advertising agent in February 2018 that operates a programmatic advertising system. This system will serve to power our advertising solutions while reducing the use of third-party advertising platforms.* In 2017 and the six months ended June 30, 2018, 26.2% and 78.2%, respectively, of our net revenues were generated through this advertising agent. We have limited experience in operating the programmatic advertising system and in acquiring our own advertising agents and advertising customers. We may not be able to establish our own sales personnel to effectively and efficiently acquire and retain advertising agents and advertising customers. The effectiveness of our programmatic advertising system may not perform as expected and achieve widespread acceptance by advertising customers.~~

~~Our advertising customers for our programmatic advertising system are comprised of advertising agents and end advertisers. . . . *If we fail to retain existing advertising customers or ensure that their advertising spend with us remains at similar or increased levels or attract new advertising customers to advertise on our platform, our business, results of operations and financial condition may be materially and adversely affected.*~~

~~139. The statements contained in ¶ 138 *supra* were materially false and misleading~~

~~because: (i) the Company acquired an advertising agent in February 2018 to reduce the oversight Baidu had been providing which had prevented non-compliant ads from running; (ii) any enhancement in the Company's ability to monetize user traffic was actually primarily related to its increased ability to sell non-compliant ads; and (iii) a material number of the Company's customers were unqualified advertisers who were purchasing non-compliant ads and thus the revenue generated from those customers inevitably would decrease when, not if, the non-compliant ads became public.~~

~~140. Lastly, with regard to the Company's related party transactions, the IPO Documents disclosed with regard to the "Transactions with Companies Controlled by or Affiliated with Mr. Tan:"~~

~~*In 2016, we paid RMB5.0 million (US\$0.8 million) to Youxuan Information Technology (Shanghai) Co., Ltd., a company controlled by Mr. Eric Siliang Tan, our co-founder and executive chairman, to cooperate on a potential business project.* Such project was subsequently canceled and the entire amount was refunded back to us in 2017.~~

~~*We paid Shanghai Yinnuo Management Consulting Co., Ltd., or Yinnuo Management, a company controlled by Mr. Eric Siliang Tan, service fees in the amount of RMB3.0 million (US\$0.5 million), RMB16.8 million (US\$2.5 million) and RMB6.9 million (US\$1.0 million) in 2016, 2017 and the six months ended June 30, 2017, respectively.* Such service fees relate to costs charged by Yinnuo Management to provide us with financial accounting support, office space and certain other administrative support. Amounts due to Yinnuo Management in connection with these service fees as of December 31, 2016 was RMB3.0 million (US\$0.5 million). No amount was due to Yinnuo Management in connection with these service fees as of December 31, 2017. We have since developed all relevant functions internally and leased office space for our operations that were previously provided by Yinnuo Management and we currently do not expect to pay service fees to Yinnuo Management for such functions or office space in the future.~~

~~*We received RMB5.3 million (US\$0.8 million) in service fees from AdIn Media (Shanghai) Co., Ltd., or AdIn Media, a company in which Mr. Eric Siliang Tan indirectly owns a minority interest and in which he is a key management personnel, in the six months ended June 30, 2018.* Such fees related to agent and platform service provided to AdIn Media by facilitating advertising customers to display advertisements with AdIn Media. As of June 30, 2018, an amount of~~

~~RMB6.7 million (US\$1.0 million) was due to AdIn Media in connection with such services provided, which represent the service fee collected from advertising customers but not yet paid to AdIn Media.~~

~~*We also received RMB1.2 million (US\$0.2 million) in service fees from AdIn Media in the six months ended June 30, 2018 relating to advertising serviced provided by us to AdIn Media. As of June 30, 2018, the remaining balance of such service fees was RMB0.9 million (US\$0.1 million).*~~

~~141. The statements contained in ¶ 140 *supra* were materially false and misleading because: (i) the transactions with companies controlled by or affiliated with Tan also include transactions involving the Mengtui App, Fangee and the Shihui Miao App based on Tan's ownership stakes in Taiyun Capital and Bige; and (ii) the Dianguan Acquisition should have been listed as a related party transaction based on Liang's special relationship with Tan through companies in which Tan is a majority investor or owner, including Woofoo Equity and Taiyun Capital.~~

## ~~2. Third Quarter 2018 Financial Results (November 12, 2018).~~

~~142. On November 12, 2018, Qutoutiao announced its third quarter 2018 financial results in a press release ("3Q18 Earnings Release"), that was later filed as Exhibit 99.1 to a Form 6-K signed by Defendant Wang, touting its revenue growth:~~

- ~~• *Net revenues increased by 520.3% to RMB977.3 million (US\$142.3million) from RMB157.6 million in the third quarter of 2017, and by 103.0% from RMB481.4 million in the previous quarter.*~~

~~\*\*\*~~

~~*Advertising revenues were RMB896.5 million (US\$130.5 million) in the third quarter of 2018, an increase of 472.3% from RMB156.7 million in the same period of 2017, primarily due to increases in the Company's average DAUs, average daily time spent per DAU and the Company's ability to monetize user traffic.*~~

~~143. The statements contained in ¶ 142 *supra* were materially false and misleading because: (i) the increase in net revenues, specifically advertising and marketing revenues, was primarily due to the increase in ads whose claims could not be substantiated and thus were considered false~~

~~advertisements under applicable regulations or provided links to illegal online gambling platforms; (ii) the Company's increased ability to monetize user traffic was primarily related to its increased ability to sell non-compliant ads after replacing Baidu with Dianguan in February 2018; and (iii) Qutoutiao and Wang materially misrepresented the strength of the Company's business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company's risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its "remedial measures" which included "removing misleading or inappropriate" ads from the QTT App.~~

~~144. The 3Q18 Earnings Release also quoted Defendant Tan:~~

~~*Average DAUs increased 229.0% year-over-year to 21.3 million in the quarter, which demonstrates our ability to attract and serve users, especially those from lower tier cities in China.*~~

~~*We see significant potential in this market and our goal is to become a major gateway to the mobile internet for users from lower tier cities and a key access point for businesses that want to tap into such users. To achieve this goal, we will continue to improve the quality and breadth of our content, refine our content recommendation technology and selectively expand into new content formats that appeal to our target users, all with the aim of enhancing our user experience.*~~

~~145. Later that same day, the Company held its third quarter 2018 financial earnings conference call ("3Q18 Earnings Call") to discuss its quarterly results with analysts. During the call, Defendant Tan again reassured participating analysts of Qutoutiao's ability to sustainably grow, stating that:~~

~~*We continue to see strong growth in mobile users from lower tier cities in China with our innovative business model and extensive experience in this market segment. At year end [ph] we are well positioned to capitalize on such growth. Our goal is to become a major gateway to the mobile internet for users*~~

~~from lower-tier cities and the key access point for businesses that want to tap into these users.~~

~~In the fourth quarter of 2018 *we will continue to focus on improving the quality and breadth of our content...and selectively expanding into new content categories to further enhance the user experience.*~~

146. ~~Defendant Wang also touted the Company's revenue growth during the 3Q18 Earnings Call, stating, in relevant part:~~

~~[Qutoutiao's] *net revenue has grown more than 100% from Q1 to Q2 and grew more than 100% gain from Q2 to Q3* reaching RMB977 million. *This was driven by both DAU growth and improved monetization efficiency.* Our net revenues for DAU per day or ARPU grew from RMB0.23 in Q1 to RMB0.43 in Q2 and further to RMB0.50 in Q3. *Thanks to our high-quality traffic and increasing sophistication of our proprietary advertising platform.*<sup>50</sup>~~

147. ~~An Investor Relations Officer speaking on behalf of Qutoutiao added during the 3Q18 Earnings Call, “[o]f the net revenues [Qutoutiao's] *Advertising revenues* were RMB896.5 million *an increase of 472.3%* from RMB156.7 million *in the same period of 2017 primarily due to the increases in our average DAUs, average daily time spent per DAU and our ability to monetize our traffic.*”~~

148. ~~The statements contained in ¶¶ 144-147 *supra* were materially false and misleading because: (i) the “significant potential” in lower-tier cities was primarily due to the high number of unqualified advertisers who wanted to run non-compliant ads in those cities as a result of regulators being more lenient and users being less aware of their rights as consumers in those cities; (ii) Qutoutiao prioritized the “businesses that want to tap into” users from lower-tier cities over the users and the “user experience” as demonstrated by its creation of separate teams specifically to deal with qualified versus unqualified advertisers, the latter of which was disbanded after the CCTV Exposé, and its selling of ads which were misleading consumers or sending them to illegal gambling~~

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<sup>50</sup> ~~Qutoutiao defines ARPU as net revenues per DAU per day.~~

~~platforms; (iii) the increase in net revenues, specifically advertising revenues, was due to the increase in ads whose claims could not be substantiated and thus were considered false advertisements under applicable regulations or provided links to illegal online gambling platforms, not the “high quality traffic and increasing sophistication of our proprietary advertising platform;” (iv) the Company’s increased ability to monetize user traffic was primarily related to its increased ability to sell non-compliant ads after replacing Baidu with Dianguan in February 2018; and (v) Qutoutiao, Tan and Wang materially misrepresented the strength of the Company’s business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company’s risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its “remedial measures” which included “removing misleading or inappropriate” ads from the QTT App.~~

~~149. In response to a question from Citigroup analyst Alicia Yap regarding the potential effects of China’s macroeconomic on Qutoutiao’s advertising customer budgets, Defendant Tan stated:~~

~~So we do see a slowdown of the macroeconomics in China as indicated by many of our peers as well. However, we are less impacted by that while ***we are less impacted than many of our peers because our traffic focus on lower tier city audiences which is in high demand as many of our peers are trying to penetrate this specific segment.***~~

~~***We also do see more and more advertisers, spending their marketing and advertising dollar in this segment.***~~

~~150. Defendant Tan further stated in response to a question from TH Capital analyst Tian Hou about which part of the economy Qutoutiao is providing advertising to, and whether it is a growing or declining part of China’s economy responded:~~

~~{O}ur advertisers are performance advertisers who are looking to reach the lower tier city users. Right? So even though the macro economy doesn't seem to be very positive, currently **these performance advertisers are still looking to spend advertising budget if they can obtain the ROI that they are seeking.** And also know that, this group of people, tier 3 and below city users continue to be very strong...So overall given that ecommeree sector is one of our largest advertiser spend category **this is also helping us in terms of achieving our growth as well.**~~

151. Defendant Wang stated in response to a question from Deutsche Bank analyst Hanjoon Kim regarding Qutoutiao's ability to monetize its users and the Company's expected revenue per DAU and the growth of its ARPU curve:

~~3Q the ARPU was already up quite a bit from Q2 of 0.43, Q3 was 0.50 and we do expect Q4 to be generally in line with Q3 in terms of ARPU and I think given the macro backdrop as many of you already mentioned this is in my view pretty positive result **and this was achieved through, number one more advertisers bidding here** and number two the addition of newer advertisement format as you've mentioned, we do apps and also interactive apps.~~

~~And **lastly also because more and more businesses are realizing the value of lower tier city population and they are trying to tap into this group of users,** and that's why we feel that we are less impacted by this general macro slowdown than many of our peers, so we still feel pretty comfortable of our guidance for Q4.~~

152. The statements contained in ¶¶ 149-151 *supra* were materially false and misleading because: (i) the Company's "performance advertisers" included unqualified advertisers who wanted to run non-compliant ads in lower tier cities because regulators were more lenient and users were less aware of their rights as consumers in those cities; (ii) the fact that "more advertisers" were trying to spend more in lower tier cities was primarily due to unqualified advertisers wanting to run non-compliant ads in those cities because regulators were more lenient and users were less aware of their rights as consumers in those cities; and (iii) Qutoutiao, Tan and Wang materially misrepresented the strength of the Company's business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations despite the slowing macroeconomy in China. After the Company's risky advertisements came to light

during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its “remedial measures” which included “removing misleading or inappropriate” ads from the QTT App.

### **3. Fourth Quarter 2018 Financial Results (March 5-6, 2019).**

153. On March 5, 2019, Qutoutiao announced its fourth quarter 2018 financial results in a press release (“4Q18 Earnings Release”), that was later filed as Exhibit 99.1 to a Form 6-K signed by Defendant Wang, touting its revenue growth:

- *Net revenues increased 426.1% year-over-year to RMB1,327.0 million (US\$193.0 million), exceeding the high end of the Company’s guided range at RMB1,250.0 million.*

\* \* \*

*Advertising and marketing revenues were RMB1,247.9 million (US\$181.5 million) in the fourth quarter of 2018, an increase of 399.4% from RMB249.9 million in the same period of 2017, primarily due to increases in the Company’s user base, time spent and ability to monetize user traffic.*

154. The statements contained in ¶ 153 *supra* were materially false and misleading because: (i) the increase in net revenues, specifically advertising and marketing revenues, was primarily due to the increase in ads that could not be substantiated and thus were considered false advertisements under applicable regulations or provided links to illegal online gambling platforms; (ii) the Company’s increased ability to monetize user traffic was primarily related to its increased ability to sell non-compliant ads after replacing Baidu with Dianguan in February 2018; and (iii) Qutoutiao and Wang materially misrepresented the strength of the Company’s business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company’s risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did

~~not grow YOY for the first time in its history as a result of its “remedial measures” which included “removing misleading or inappropriate” ads from the QTT App.~~

~~155. The following day, on March 6, 2019, the Company held its fourth quarter 2018 financial earnings conference call (“4Q18 Earnings Call”) to discuss its quarterly results with analysts. During the call, Defendant Tan addressed Qutoutiao’s monetization capabilities, stating, in relevant part, “*the quality of our advertisers has consistently improved since we went public.*”~~

~~156. In addition, when analyst Alicia Yap of Citigroup noted that “the ARPU per DAU per day declined sequentially” and asked “how is the ARPU per day per DAU on the Qutoutiao app given your time spent actually is improving from the 56 minutes to 63 minutes” later during the 4Q18 Earnings Call, Defendant Wang responded, in relevant part:~~

~~On the technical side, number of advertisers, the algorithm, the effect of the algorithm, marketing engine, that’s all improving. But *on the regulation side and also on the internal quality control side, we are now much more strict in terms of the quality of advertisers and also the quality of the promotional materials.* So that kind of balances out the improvements on the technical side and resulted in a stable ARPU.~~

~~157. The statements contained in ¶¶ 155-156 *supra* were materially false and misleading because: (i) that “the quality of advertisers” and “promotional materials” improved did not stop the Company from running non-compliant ads on advertisers’ behalf in lower tier cities because regulators were more lenient and users were less aware of their rights as consumers in those cities; (ii) Qutoutiao managed the risk of getting caught selling ads which were misleading consumers or sending them to illegal gambling platforms by having separate teams deal with qualified versus unqualified advertisers, the latter of which was disbanded after the CCTV Exposé; and (iii) Qutoutiao, Tan and Wang materially misrepresented the strength of the Company’s business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company’s risky advertisements came to light~~

~~during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its “remedial measures” which included “removing misleading or inappropriate” ads from the QTT App.~~

~~158. Then, in response to a question from analyst Zesheng Lu of UBS inquiring as to whether the slowdown of the advertising market posed any threat to Qutoutiao’s revenue growth in the first half of the year during the 4Q18 Earnings Call, Defendant Tan stated that:~~

~~[W]e do see some macro headwind in 2019 advertising market, especially on the brand advertisers side. In particular, the consumer brands especially foreign brands are more affected.~~

~~However, brand advertisers only account for about 5% of the total advertising revenue. So we are less affected on that front. *The vast majority of our advertisers are performance advertisers. When the economy is under challenge, they actually need to sell more, so they have more sales budget to spend* so we think their situation is slightly different.~~

~~On the macro side, we, as we said, we see some challenges for the full year. But recently, we have also seen some improving signs, for example, subscriber environment and the capital markets, including and also consumer spending in China.~~

~~So for us, we only account for about 1% of total advertising market in China, and *we are growing very rapidly*. So we believe that we are relatively insulated from the top-down factors.~~

~~159. The statements contained in ¶ 158 *supra* were materially false and misleading because: (i) the ads that the Company’s advertisers needed to sell more of primarily were ads whose claims could not be substantiated and thus were considered false advertisements under applicable regulations or provided links to illegal online gambling platforms; (ii) the Company’s “performance advertisers” included unqualified advertisers who wanted to run non-compliant ads in lower tier cities because regulators were more lenient and users were less aware of their rights as consumers in those cities; (iii) the Company’s rapid growth was primarily related to its increased~~

~~ability to sell non-compliant ads after replacing Baidu with Dianguan in February 2018; and (iv) Qutoutiao, Tan and Wang materially misrepresented the strength of the Company's business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations despite the slowing macroeconomy in China. After the Company's risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its "remedial measures" which included "removing misleading or inappropriate" ads from the QTT App.~~

#### ~~4. Secondary Public Offering (April 3, 2019).~~

~~160. On March 29, 2019, Qutoutiao issued a press release announcing its proposed follow-on SPO, and named Defendants Citigroup, Deutsche, CLSA, Jefferies, Haitong and Lighthouse as "joint bookrunners." On April 3, 2019, Qutoutiao filed its SPO Prospectus on Form 424B4 with the SEC (together with the SPO Registration Statement, forming the SPO Documents). The Insider Defendants signed and/or authorized the signing of the SPO Documents.~~

~~161. The SPO Documents contained multiple material misstatements regarding the Company's strategy of targeting users in lower tier cities in China, stating in relevant part:~~

~~*Since our inception, we have strategically targeted users from lower tier cities in China because of the enormous opportunities in this underserved market. As of the end of 2017, lower tier cities had a population of 1,027 million each owning 0.5 mobile device on average (compared to a population of 363 million each owning 1.3 mobile devices on average in tier-1 and 2 cities), suggesting significant potential for further mobile penetration, according to the Analysys [sic] Report. Mobile users in lower tier cities tend to have a slower pace of life and spend more time on the Internet given limited offline entertainment venues. Moreover, they often enjoy fast increasing disposable income and lower financial pressures due to lower housing prices. These factors have given rise to a significant need for mobile entertainment content while also creating high monetization potentials.* Users from lower tier cities tend to have different interests and preferences in comparison to users from tier-1 and tier-2 cities. Qutoutiao's~~

~~light entertainment-oriented and easily digestible content is designed to resonate with such users and provides us with a significant advantage to capture this underserved market.~~

~~162. The statements contained in ¶¶160-161 *supra* were materially false and misleading because the “enormous opportunities” and “high monetization potentials” in lower tier cities had much less to do with the high number of users in those cities having more time and disposable income to spend on the internet and far more to do with the high number of unqualified advertisers who wanted to run non-compliant ads in those cities because regulators were more lenient and users were less aware of their rights as consumers in those cities.~~

~~163. The SPO Documents also touted that the Company’s “*net revenues have increased rapidly* from RMB58.0 million [(US\$8.8 million)] in 2016 to RMB517.1 million [(US\$78.1 million)] in 2017, and further to RMB3,022.1 million (US\$439.6 million) in 2018.” The majority of the Company’s revenue came from advertising, as the SPO Documents stated, in relevant part:~~

~~Baidu, which used to be our largest customer and operates a third party advertising platform, contributed 69.9%, 43.7% and 4.2% of our net revenues in 2016, 2017 and 2018, respectively. Baidu also accounted for 59.8% and 8.8% of our accounts receivable as of December 31, 2017 and 2018, respectively. *To enhance our platform’s monetization capabilities, we acquired an advertising agent in February 2018 that operates a programmatic advertising system. We expect this system will allow us to reduce our reliance on third party advertising platforms such as Baidu.* Prior to our acquisition of this advertising agent in February 2018, we engaged such advertising agent to serve as our sales agent in selling our advertising and marketing solutions to other second-tier advertising agents and end advertisers. *These second-tier advertising agents and end advertisers are our customers as they select our mobile applications to place their advertisement and our performance obligation is to provide the underlying advertising display services to them.*~~

~~164. The statements contained in ¶ 163 *supra* were materially false and misleading because: (i) the increase in net revenues, specifically advertising and marketing revenues, was primarily due to the increase in ads whose claims could not be substantiated and thus were considered false advertisements under applicable regulations or provided links to illegal online gambling platforms;~~

~~(ii) the Company acquired an advertising agent in February 2018 to reduce the oversight Baidu had been providing which had prevented non-compliant ads from running; (iii) any enhancement in the Company's ability to monetize user traffic was actually primarily related to its increased ability to sell non-compliant ads; (iv) in order to meet the Company's "performance obligation" to its end advertiser customers, it set up separate teams with different processes and procedures for qualified versus unqualified advertisers in order to sell non-compliant ads; and (v) the Company materially misrepresented the strength of its business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. Even after the Company's risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its "remedial measures" which included "removing misleading or inappropriate" ads from the QTT App.~~

~~165. Further, the SPO Documents contained substantially the same statements as the IPO Documents about the Company's abilities to "Enhance [its] Monetization Capabilities" and how Qutoutiao plans to achieve such improved "Monetization" through advertising, which are quoted more fully in ¶ 128. These statements remained materially false or misleading for the reasons discussed in ¶ 129. The SPO Documents also contained substantially the same statements as the IPO Documents about Qutoutiao's mission "to deliver quality and relevant content to users, and content sourcing, management and recommendation" as "core focuses of [its] operations," as related to advertising and content screening technology, which are quoted more fully in ¶ 133. These statements remained materially false or misleading for the reasons discussed in ¶ 134.~~

~~166. Furthermore, while the 1934 Act Defendants list numerous "Risk Factors" in the~~

~~SPO Documents, they failed to adequately warn investors that certain “Risk Factors” had already materialized at the time of the SPO.~~

~~167. First, the SPO Documents warned that because “[w]e generate a substantial majority of our revenues from advertising and marketing[,] [a] decline in our advertising and marketing revenues could harm our business:”~~

~~We generated a substantial majority of our revenues from advertising and marketing services in 2016, 2017 and 2018. When we first commenced our business, we collaborated with various third-party advertising platforms to place advertisements on our mobile applications. *To enhance our platform’s monetization capabilities, we acquired an advertising agent in February 2018 that operates a programmatic advertising system. This system will serve to power our advertising and marketing solutions while reducing the use of third-party advertising platforms.* We have limited experience in operating the programmatic advertising system and in acquiring our own advertising agents and advertising customers. We may not be able to establish our own sales personnel to effectively and efficiently acquire and retain advertising agents and advertising customers. The effectiveness of our programmatic advertising system may not perform as expected and achieve widespread acceptance by advertising customers.~~

~~Our advertising customers for our programmatic advertising system are comprised of advertising agents and end advertisers. . . . *If we fail to retain existing advertising customers or ensure that their advertising spend with us remains at similar or increased levels or attract new advertising customers to advertise on our platform, our business, results of operations and financial condition may be materially and adversely affected.*~~

~~168. The statements contained in ¶ 167 *supra* were materially false and misleading because: (i) the Company acquired an advertising agent in February 2018 to reduce the oversight Baidu had been providing which had prevented non-compliant ads from running; (ii) any enhancement in the Company’s ability to monetize user traffic was actually primarily related to its increased ability to sell non-compliant ads; and (iii) a material number of the Company’s customers were unqualified advertisers who were purchasing non-compliant ads and thus the revenue generated from those customers inevitably would decrease when, not if, the non-compliant ads became public.~~

~~169. Second, the SPO Documents contained substantially the same statement as the IPO Documents regarding the Company's warning that "[a]dvertisements on [the Company's] mobile applications may subject us to penalties and other administrative actions[,]" which is quoted more fully in ¶ 136. This statement remained materially false or misleading for the reasons discussed in ¶ 137.~~

~~170. Third, the SPO Documents warned that "[n]on-compliance with law on the part of third parties with which we conduct business could disrupt our business and adversely affect results of our operation and financial condition:"~~

~~Third parties with which we conduct business, such as content providers, advertising agents, advertising customers and merchandise suppliers, may be subject to regulatory penalties or punishments because of their regulatory compliance failures or may be infringing upon other parties' legal rights, which may, directly or indirectly, disrupt our business. *Although we conduct review of legal formalities and certifications before entering into contractual relationships with third parties, and take measures to reduce the risks that we may be exposed to in case of any non-compliance by third parties, we cannot be certain whether such third party has violated any regulatory requirements or infringed or will infringe any other parties' legal rights.* For example, content providers may submit copyrighted content that they have no right to distribute. While our content management system screens content for potential copyright infringements, we may not be able to identify all instances of copyright infringement. In the event we deliver content that violates the copyrights of a third party, we may be required to pay damages to compensate such third party. Even though we have the contractual right to seek indemnification from the relevant content provider for such payment, there can be no assurance that we will be able to enforce such right. As a result, our business, results of operations and financial condition could be materially and adversely affected. Similarly, advertising content of advertising customers may also not be in full compliance with applicable laws and regulations that may have an adverse effect as to our business, results of operations and financial condition. See "— Advertisements on our mobile applications may subject us to penalties and other administrative actions."~~

~~171. The statement contained in ¶ 170 *supra* was materially false and misleading because:~~

~~(i) the measures the Company had taken to reduce its risk included setting up separate teams with different processes and procedures for qualified versus unqualified advertisers and placing riskier~~

~~ads in lower tier cities where there was less regulatory scrutiny; (ii) even though the Company had measures in place to decline non-compliant ads, the advertiser or the employees who were responsible for those ads could contact the reviewing department for a second manual review and allow the ads on the QTT App manually; and (iii) the Company was already aware or recklessly disregarded that certain advertisers had already violated regulatory requirements or infringed other parties' legal rights. Until July 2020, investors were in the dark about a substantial amount of Qutoutiao's revenue that was being generated from ads by unqualified advertisers which were not compliant with the applicable Chinese regulations or that they were managing the risk of losing that revenue by reducing the chance that they would get caught by state regulators, rather than by simply not putting risky advertisements on the QTT App.~~

~~172. When acknowledging the Company's related party transactions, the SPO Documents stated with regard to the "Transactions with Companies Controlled by or Affiliated with Mr. Tan:"~~

~~***In 2016, we paid RMB5.0 million (US\$0.8 million) to Youxuan Information Technology (Shanghai) Co., Ltd., a company controlled by Mr. Eric Siliang Tan, our co-founder and executive chairman, to cooperate on a potential business project.*** Such project was subsequently canceled and the entire amount was refunded back to us in 2017.~~

~~***We paid Shanghai Yinnuo Management Consulting Co., Ltd., or Yinnuo Management, a company controlled by Mr. Eric Siliang Tan, service fees in the amount of RMB3.0 million and RMB16.8 million in 2016 and 2017, respectively.*** Such service fees relate to costs charged by Yinnuo Management to provide us with financial accounting support, office space and certain other administrative support. Amounts due to Yinnuo Management in connection with these service fees as of December 31, 2016 was RMB3.0 million. No amount was due to Yinnuo Management in connection with these service fees as of December 31, 2017. We have since developed all relevant functions internally and leased office space for our operations that were previously provided by Yinnuo Management and we currently do not expect to pay service fees to Yinnuo Management for such functions or office space in the future.~~

~~***We received RMB29.6 million (US\$4.3 million) in service fees from AdIn Media (Shanghai) Co., Ltd., or AdIn Media, a company in which Mr. Eric Siliang***~~

~~Tan indirectly owns a minority interest and in which he is a key management personnel, in 2018.~~ Such fees related to agent and platform service provided to AdIn Media by facilitating advertising customers to display advertisements with AdIn Media. We also received fees in the amount of RMB4.5 million (US\$0.6 million) for providing advertising services to AdIn Media in 2018. As of December 31, 2018, Mr. Tan was no longer a key management personnel of AdIn Media, and thus AdIn Media ceased to be our related party.

173. The statements contained in ¶ 172 ~~supra~~ were materially false and misleading because: (i) the transactions with companies controlled by or affiliated with Tan also include transactions involving the Mengtui App, Fangee and the Shihui Miao App based on Tan's ownership stakes in Taiyun Capital, and Bige; and (ii) the Dianguan Acquisition should have been listed as a related party transaction based on Liang's special relationship with Tan through companies in which Tan is a majority investor or owner, including Woofoo Equity and Taiyun Capital.

#### **5. Fiscal Year 2018 Financial Results (April 11, 2019).**

174. On April 11, 2019, Qutoutiao filed with the SEC its annual report for its fiscal year of 2018 on Form 20-F (~~"2018 20-F"~~). The 2018 20-F was signed by Defendant Tan certifying that "[Qutoutiao] meets all of the requirements for filing its annual report on Form 20-F and that it has duly caused and authorized [Defendant Tan] to sign this annual report on its behalf."

175. The Company's 2018 20-F made materially false and/or misleading statements and omissions about its strategy of targeting users in lower tier cities in China, stating in relevant part:

~~Since our inception, we have strategically targeted users from lower tier cities in China because of the enormous opportunities in this underserved market with significant potential for further mobile penetration. Mobile users in lower tier cities tend to have a slower pace of life and spend more time on the Internet given limited offline entertainment venues. Moreover, they often enjoy fast increasing disposable income and lower financial pressures due to lower housing prices. These factors have given rise to a significant need for mobile entertainment content while also creating high monetization potentials.~~ Users from lower tier cities tend to have different interests and preferences in comparison to users from tier-1 and tier-2 cities. Qutoutiao's light entertainment-oriented and easily digestible content is designed to resonate with such users and provides us

~~with a significant advantage to capture this underserved market.~~

~~\*\*\*~~

~~***Our rapidly increasing and engaged user base has provided us with strong monetization potentials.*** We currently generate revenue primarily by providing advertising and marketing services. We place advertisements on the main pages, topic pages as well as content pages of our mobile applications. When we first commenced our business, we collaborated with various third party advertising platforms to place advertisements on our mobile applications. We later engaged an advertising agent who operates a programmatic advertising system to serve as our sales agent in selling our advertising and marketing solutions to other advertising agents and end advertisers. ***To enhance our platform's monetization capabilities, we acquired the advertising agent in February 2018. We will utilize the programmatic advertising system of such advertising agent to power our advertising and marketing solutions.***~~

~~176. The statements contained in ¶¶ 174-175 *supra* were materially false and misleading because: (i) the “enormous opportunities” and “high” or “strong,” “monetization potentials” in lower tier cities had much less to do with the high number of users in those cities having more time and disposable income to spend on the internet and far more to do with the high number of unqualified advertisers who wanted to run non-compliant ads in those cities because regulators were more lenient and users were less aware of their rights as consumers in those cities; (ii) detailing how the Company was enhancing its ability to monetize user traffic, without disclosing that any enhancement was actually primarily related to its increased ability to sell non-compliant ads after replacing Baidu with Dianguan in February 2018; and (iii) Qutoutiao materially misrepresented the strength of its business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company's risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its “remedial measures” which included “removing misleading or inappropriate” ads from the QTT App.~~

~~177. The 2018 20-F also touted that the Company's "*net revenues ha[d] increased rapidly*" from RMB58.0 million in 2016 to RMB517.1 million in 2017, and further to RMB3,022.1 million (US\$439.6 million) in 2018." The majority of this revenue derived from advertising as the Company stated in the 2018 20-F:~~

~~Baidu, which used to be our largest customer and operates a third-party advertising platform, contributed 69.9%, 43.7% and 4.2% of our net revenues in 2016, 2017 and 2018, respectively. Baidu also accounted for 59.8% and 8.8% of our accounts receivable as of December 31, 2017 and 2018, respectively. *To enhance our platform's monetization capabilities, we acquired an advertising agent in February 2018 that operates a programmatic advertising system. We expect this system will allow us to reduce our reliance on third-party advertising platforms such as Baidu.* Prior to our acquisition of this advertising agent in February 2018, we engaged such advertising agent to serve as our sales agent in selling our advertising and marketing solutions to other second-tier advertising agents and end advertisers. *These second-tier advertising agents and end advertisers are our customers as they select our mobile applications to place their advertisement and our performance obligation is to provide the underlying advertising display services to them.*~~

~~178. The statements contained in ¶ 177 *supra* were materially false and misleading because (i) the Company's "rapidly" increased revenues were based on a significant number of ads whose claims could not be substantiated and thus were considered false advertisements under applicable regulations or provided links to illegal online gambling platforms; (ii) the Company acquired an advertising agent, Dianguan, to reduce the oversight Baidu had been providing which had prevented non-compliant ads from running; (iii) any enhancement in the Company's ability to monetize user traffic was actually primarily related to its increased ability to sell non-compliant ads; (iv) in order to meet the Company's "performance obligation" to its end advertiser customers, it set up separate teams with different processes and procedures for qualified versus unqualified advertisers in order to sell non-compliant ads; and (v) Qutoutiao materially misrepresented the strength of its business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company's risky~~

~~advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its “remedial measures” which included “removing misleading or inappropriate” ads from the QTT App.~~

~~179. With regard to the Company’s “Monetization” capabilities, the 2018 20-F further stated, in relevant part:~~

~~When we first commenced our business, we collaborated with various third-party advertising platforms to fill advertisement space on our mobile applications. We later engaged advertising agents to serve as our sales agents in selling our advertising and marketing solutions to other advertising agents and end advertisers. *To enhance our platform’s monetization capabilities, we acquired an advertising agent in February 2018 that operates a programmatic advertising system. This system will serve to power our advertising and marketing solutions while reducing the use of third-party advertising platforms.*~~

~~Our programmatic advertising system utilizes a bidding system for advertising customers to bid for the targeted audience on our platform. *Our programmatic advertising system considers a wide range of parameters to determine which advertisement to show, including price bid, predicted click-through rate and content relevance, to dynamically maximize our revenue potential. Our advertising technology aims to maximize our revenue potential by rewarding the more relevant advertisement with a more prominent position, despite the potentially lower price bid of such advertisement.* We actively monitor the advertisements placed to help ensure their relevance.~~

~~Customers for our programmatic advertising system are comprised of advertising agents and end advertisers. *We have our own sales personnel who are responsible to support and monitor the performances of advertising agents and to attract advertising customers to use our programmatic advertising system directly.* We enter into standard agreements with advertising agents generally for a term of one year. *Our advertising agents are responsible for identifying end advertisers, confirming payments and setting up accounts on our programmatic advertising system for advertising customers. We provide ongoing training to advertising agents to familiarize them with the functionalities and capabilities of our programmatic advertising system. These advertising agents are responsible for collecting and submitting the relevant documentation and licenses from advertising customers for our approval to open an account on our programmatic advertising system, and are also liable for any infringement of third-party rights*~~

~~*or violation of regulatory requirements caused by advertisements placed by their end advertisers.*~~

180. ~~The statements contained in ¶¶178-179 *supra* were materially false and misleading because: (i) the Company's enhancing or maximizing of its ability to monetize user traffic was actually primarily related to its increased ability to sell non-compliant ads after replacing Baidu with Dianguan in February 2018; (ii) the Company's sales personnel's responsibilities were different for qualified versus unqualified advertisers in order to be able to sell non-compliant ads; (iii) regardless of the terms of its agreements with advertising agents, the Company would also face increasing regulatory scrutiny and reputational harm from any ads that violated the relevant regulatory requirements; and (iv) Qutoutiao materially misrepresented the strength of its business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company's risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its "remedial measures" which included "removing misleading or inappropriate" ads from the QTT App.~~

181. ~~The 2018 20-F specifically touted Qutoutiao's mission "to deliver quality and relevant content to users, and content sourcing, management and recommendation" as "core focuses of [its] operations," including with regard to advertising and content screening technology:~~

- ~~**Advertising.** *Our advertising technology enables advertising customers to bid for audience and automatically deliver relevant, targeted promotional links to users.* Our system rewards more relevant advertisements with more prominent positions, despite the potentially lower priced bids of such advertisements. Our audience segmentation technology helps ensure the relevance of advertisements shown to users by analyzing their interests through browsing activity, viewed content and commenting history. In addition, we have the ability to predict click-through rates for advertisements using logistic regression, gradient boosting decision tree and linear and nonlinear modeling~~

~~algorithms. Enhanced precision of these click-through rate projections can help maximize the cost effectiveness of customers' advertising budgets.~~

- ~~• **Content Screening Technology.** Our text screening system screens information based on pre-set keywords. *We utilize artificial intelligence to identify inappropriate or objectionable content from images, speeches and videos, significantly increasing efficiency over manual review. We also apply deep learning methods to analyze complex visual content. Through big data and continuous training, our system is able to monitor and identify objectionable visual content with a high degree of accuracy. The screening system automatically declines content that did not meet the standards of our platform and flags suspicious content for manual review by our content management team.*~~

~~182. The statements contained in ¶ 181 *supra* were materially false and misleading because: (i) misleading or illegal ads were being delivered as part of the “relevant, targeted promotional links to users;” (ii) different processes and procedures were being applied to advertising content such that any declined ads could be manually allowed on the QTT App; and (iii) Qutoutiao materially misrepresented the strength of its business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company's risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its “remedial measures” which included “removing misleading or inappropriate” ads from the QTT App.~~

~~183. Lastly, the 2018 20-F disclosed the “Transactions with Companies Controlled by or Affiliated with Mr. Tan” as follows:~~

~~*In 2016, we paid RMB5.0 million (US\$0.8 million) to Youxuan Information Technology (Shanghai) Co., Ltd., a company controlled by Mr. Eric Siliang Tan, our co-founder and executive chairman, to cooperate on a potential business project. Such project was subsequently canceled and the entire amount was refunded back to us in 2017.*~~

~~*We paid Shanghai Yinnuo Management Consulting Co., Ltd., or Yinnuo Management, a company controlled by Mr. Eric Siliang Tan, service fees in the*~~

~~amount of RMB3.0 million and RMB16.8 million in 2016 and 2017, respectively. Such service fees relate to costs charged by Yinnuo Management to provide us with financial accounting support, office space and certain other administrative support. Amounts due to Yinnuo Management in connection with these service fees as of December 31, 2016 was RMB3.0 million. No amount was due to Yinnuo Management in connection with these service fees as of December 31, 2017. We have since developed all relevant functions internally and leased office space for our operations that were previously provided by Yinnuo Management and we currently do not expect to pay service fees to Yinnuo Management for such functions or office space in the future.~~

~~We received RMB29.6 million (US\$4.3 million) in service fees from AdIn Media (Shanghai) Co., Ltd., or AdIn Media, a company in which Mr. Eric Siliang Tan indirectly owns a minority interest and in which he is a key management personnel, in 2018. Such fees related to agent and platform service provided to AdIn Media by facilitating advertising customers to display advertisements with AdIn Media. We also received fees in the amount of RMB4.5 million (US\$0.6 million) for providing advertising services to AdIn Media in 2018. As of December 31, 2018, Mr. Tan was no longer a key management personnel of AdIn Media, and thus AdIn Media ceased to be our related party.~~

~~184. The statements contained in ¶ 183 supra were materially false and misleading because: (i) the transactions with companies controlled by or affiliated with Tan also include transactions involving the Mengtui App, Fangee and the Shihui Miao App based on Tan's ownership stakes in Taiyun Capital, and Bige; and (ii) the Dianguan Acquisition should have been listed as a related party transaction based on Liang's special relationship with Tan through companies in which Tan is a majority investor or owner, including Woofoo Equity and Taiyun Capital.~~

~~185. Furthermore, while the 2018 20-F discussed several "Risk Factors," the 1934 Act Defendants failed to adequately warn investors that certain "Risk Factors" had already materialized at the time of the annual report.~~

~~186. First, the 2018 20-F warned that "[a]dvertisements on our mobile applications may subject us to penalties and other administrative actions:"~~

~~We cannot assure you that all the advertisements shown on our mobile applications are true, accurate, appropriate and in full compliance with applicable~~

~~laws and regulations. For example, advertisers on our mobile applications, or their agents, may use measures that are designed to evade our monitoring, such as providing inauthentic material that does not match the actual advertisement, or supplying advertising which is superficially compliant but nevertheless is linked to one or more webpages that feature noncompliant advertising content. In addition, our employees responsible for reviewing advertisements may not fully understand the relevant laws and regulations or may be inappropriately influenced by the advertisers. In each case, we may still be held responsible for noncompliant advertising content. We include clauses in most of our advertising contracts requiring that all advertising content provided by advertising customers must comply with relevant laws and regulations. Pursuant to the contracts between us and the relevant advertising agents or advertising customers, they are liable for all damages to us caused by their breach of such representations. However, there can be no assurance that we will be able to successfully enforce our contractual rights.~~

~~187. The statements contained in ¶ 186 supra were materially false and misleading because the Company: (i) had set up separate teams with different processes and procedures for qualified versus unqualified advertisers in order to be able to sell non-compliant ads; (ii) was already violating the applicable advertising laws and regulations and thus the ramifications were not a matter of if, but when; and (iii) materially misrepresented the strength of its business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company's risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its "remedial measures" which included "removing misleading or inappropriate" ads from the QTT App.~~

~~188. Second, the 2018 20-F warned that because "[w]e generate a substantial majority of our revenues from advertising and marketing[,] [a] decline in our advertising and marketing revenue could harm our business:"~~

~~We generated a substantial majority of our revenues from advertising and marketing services in 2016, 2017 and 2018. When we first commenced our business, we collaborated with various third-party advertising platforms to place~~

~~advertisements on our mobile applications. **To enhance our platform's monetization capabilities, we acquired an advertising agent in February 2018 that operates a programmatic advertising system. This system will serve to power our advertising solutions while reducing the use of third-party advertising platforms.** We have limited experience in operating the programmatic advertising system and in acquiring our own advertising agents and advertising customers. We may not be able to establish our own sales personnel to effectively and efficiently acquire and retain advertising agents and advertising customers. The effectiveness of our programmatic advertising system may not perform as expected and achieve widespread acceptance by advertising customers.~~

~~Our advertising customers for our programmatic advertising system are comprised of advertising agents and end advertisers. . . . **If we fail to retain existing advertising customers or ensure that their advertising spend with us remains at similar or increased levels or attract new advertising customers to advertise on our platform, our business, results of operations and financial condition may be materially and adversely affected.**~~

~~189. The statements contained in ¶ 188 *supra* were materially false and misleading because: (i) the Company acquired an advertising agent in February 2018 to reduce the oversight Baidu had been providing which had prevented non-compliant ads from running; (ii) any enhancement in the Company's ability to monetize user traffic was actually primarily related to its increased ability to sell non-compliant ads; and (iii) a material number of the Company's customers were unqualified advertisers who were purchasing non-compliant ads and thus the revenue generated from those customers inevitably would decrease when, not if, the non-compliant ads became public.~~

~~190. Third, the 2018 20-F warned that "[n]on-compliance with law on the part of third parties with which we conduct business could disrupt our business and adversely affect results of our operation and financial condition:"~~

~~Third parties with which we conduct business, such as content providers, advertising agents, advertising customers and merchandise suppliers, may be subject to regulatory penalties or punishments because of their regulatory compliance failures or may be infringing upon other parties' legal rights, which may, directly or indirectly, disrupt our business. **Although we conduct review of legal formalities and certifications before entering into contractual relationships with third parties, and take measures to reduce the risks that we may be exposed**~~

~~to in case of any non-compliance by third parties, we cannot be certain whether such third party has violated any regulatory requirements or infringed or will infringe any other parties' legal rights.~~

~~191. The statement contained in ¶ 190 *supra* was materially false and misleading because: (i) the measures the Company had taken to reduce its risk included setting up separate teams with different processes and procedures for qualified versus unqualified advertisers and placing riskier ads in lower tier cities where there was less regulatory scrutiny; (ii) even though the Company had measures in place to decline non-compliant ads, the advertiser or the employees who were responsible for those ads could contact the reviewing department for a second manual review and allow the ads on the QTT App manually; and (iii) the Company was already aware or recklessly disregarded that certain advertisers had already violated regulatory requirements or infringed other parties' legal rights. Until July 2020, the 1934 Act Defendants never disclosed to investors that a substantial amount of Qutoutiao's revenue was being generated from ads by unqualified advertisers which were not compliant with the applicable Chinese regulations or that they were managing the risk of losing that revenue by reducing the chance that they would get caught by state regulators, rather than by simply not putting risky advertisements on the QTT App.~~

~~192. Additionally, the 2018 20-F included certifications under Section 302 of the Sarbanes-Oxley Act of 2002 ("SOX") by Defendants Wang and L. Li that: (1) "~~*this report does not contain any untrue statement of a material fact or omit to state material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;*~~" (2) "~~*the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of, and for, the periods presented in this report;*~~" and (3) that these Defendants were "responsible for~~

~~establishing and maintaining disclosure controls and procedures.”~~

~~193. The 2018 20-F also included certifications under Section 906 of SOX by Defendants Wang and L. Li that, “*the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.*”~~

~~194. The statements contained in ¶¶ 192-193 *supra* were materially false and misleading because: (i) Qutoutiao was not able to generate sufficient revenue to meet its targets unless it allowed unqualified advertisers to advertise on the QTT App due to its strategy of targeting lower tier cities in China; (ii) the true benefits of, and reasons for, replacing the Company’s third party advertising agent with a related party, Dianguan, and bypassing that third party’s oversight of the content and quality of advertisements was to generate revenue from risky advertisements; (iii) the Company had created separate teams for dealing with qualified advertisers, whose advertisements were largely compliant with applicable Chinese regulations and thus low-risk, and unqualified advertisers, and that the “high-risk” team (which was disbanded after the CCTV Exposé) outsourced nearly all of its advertisement screening to contractors who conducted minimal due diligence on their clients; (iv) as a result, the Company would place on the QTT App, risky advertisements whose claims could not be substantiated and thus were considered false advertisements under applicable regulations or which linked to illegal online gambling platforms; (v) as a result, the Company would face increasing regulatory scrutiny and reputational harm; (vi) as a result, the Company’s advertising revenue was reasonably likely to decline; (vii) the Company was reporting RMB 620 million more in revenue to the SEC than its subsidiaries did in aggregate to the SAMR; and (viii) as a result of the foregoing, Defendants’ positive statements about the Company’s business, operations and prospects, were materially misleading and/or lacked a reasonable basis. After the Company’s risky advertisements came to light during the CCTV~~

~~Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its “remedial measures” which included “removing misleading or inappropriate” ads from the QTT App.~~

**~~6. First Quarter 2019 Financial Results (May 20-21, 2019).~~**

~~195. On May 20, 2019, Qutoutiao announced its first quarter 2019 financial results in a press release (“1Q19 Earnings Release”), that was later filed as Exhibit 99.1 to a Form 6-K signed by Defendant Wang, touting its revenue growth:~~

- ~~• Net revenues increased 373.3% year-over-year to RMB1,118.8 million (US\$166.7 million), within the Company’s guided range between RMB1,100.0 million and RMB1,120 million.~~

~~\* \* \*~~

~~Advertising and marketing revenues were RMB1,087.2 million (US\$162.0 million) in the first quarter of 2019, a significant increase of 371.3% from RMB230.7 million in the first quarter of 2018, primarily due to increases in the Company’s user base, time spent and ability to monetize user traffic.~~

~~196. The statements contained in ¶ 195 supra were materially false and misleading because:~~

~~(i) the increase in net revenues, specifically advertising and marketing revenues, was primarily due to the increase in ads whose claims could not be substantiated and thus were considered false advertisements under applicable regulations or provided links to illegal online gambling platforms;~~

~~(ii) the Company’s increased ability to monetize user traffic was primarily related to its increased ability to sell non-compliant ads after replacing Baidu with Dianguan in February 2018; and (iii) Qutoutiao and Wang materially misrepresented the strength of the Company’s business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company’s risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue~~

~~was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its “remedial measures” which included “removing misleading or inappropriate” ads from the QTT App.~~

~~197. In addition, the 1Q19 Earnings Release quoted Defendant Tan as stating, “[f]or Qutoutiao, *one of our initiatives to further differentiate content is the ‘Trusted Source Program’ that offers high quality and reliable information on health-related topics.*”~~

~~198. The statement contained in ¶ 197 *supra* was materially misleading because the Company’s “Trusted Source Program” lulled users into trusting content on the QTT App, particularly health-related content, leading them to click on misleading and non-compliant health-related ads. Qutoutiao was thus materially misrepresenting the strength of its business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company’s risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its “remedial measures” which included “removing misleading or inappropriate” ads from the QTT App.~~

~~199. The following day, May 21, 2019, the Company held its first quarter 2019 financial earnings conference call (“1Q19 Earnings Call”) to discuss its quarterly results with analysts. During the call, in response to a question by analyst Zhijing Liu of UBS regarding revenue guidance and competition, Defendant Wang stated, in relevant part:~~

~~[O]n the revenue guidance, I’d like to say that so far in 2019 in terms of the advertising market, the demand side has been a little soft and given the overall macro environment. On the other hand there has been a lot of incremental supply from various companies and therefore putting a lot of pressure on pricing. For the rest of 2019 I think there is still a lot of uncertainty on the overall in terms of the overall market condition. *But we are pretty sure that our own operating efficiency*~~

~~was steadily improved on the video platform side and also on the algorithm side. That will mitigate some of the pricing pressure.~~

~~200. In addition, in response to a question by analyst Xucru Zhang of 86Research about QTT's key advertising categories, Defendant Tan stated during the 1Q19 Earnings Call:~~

~~Comparatively e-commerce has been stronger but the overall market pricing is still under a lot of pressure overall for all categories. So I think what we can do is really on the platform side, **so we cannot control the market pricing but what we can do is to improve our own billing platform and also the targeting algorithm.** In that regard we think we are in a better position compared with many competitors exactly because we are a younger platform. For a more mature platform they have been operating for a very long time. All the internal optimization has been pushed to the limit. So what affects their pricing is really the market. **For us the optimization is far from perfect and therefore we think on optimization in the coming months we'll make up a lot of shortfall from the market pricing pressure.**~~

~~201. The statements contained in ¶¶ 199-200 *supra* were materially misleading because despite the Company's steadily improving "operating efficiency" and optimization of its platform and targeting algorithm, a material number of risky ads were still being placed on the QTT App manually. Qutoutiao and Tan were thus materially misrepresenting the strength of the Company's business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company's risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its "remedial measures" which included "removing misleading or inappropriate" ads from the QTT App.~~

~~7. **Second Quarter 2019 Financial Results (September 4-5, 2019).**~~

~~202. On September 4, 2019, Qutoutiao announced its second quarter 2019 financial results in a press release ("2Q19 Earnings Release"), that was later filed as Exhibit 99.1 to a Form 6-K signed by Defendant Wang, touting its revenue growth:~~

- ~~Net revenues increased 187.9% year-over-year to RMB1,385.9 million (US\$201.9 million), within the Company's guided range between RMB1,380 million and RMB1,420 million.~~

~~\*\*\*~~

~~Advertising and marketing revenues were RMB1,358.0 million (US\$197.8 million) in the second quarter of 2019, a significant increase of 209.2% from RMB439.2 million in the second quarter of 2018, primarily due to increases in the Company's user base, time spent and ability to monetize user traffic.~~

203. ~~The statements contained in ¶ 202 supra were materially false and misleading because:~~

~~(i) the increase in net and advertising revenues was primarily due to the increase in ads whose claims could not be substantiated and thus were considered false advertisements under applicable regulations or provided links to illegal online gambling platforms; (ii) the Company's increased ability to monetize user traffic was primarily related to its increased ability to sell non-compliant ads after replacing Baidu with Dianguan in February 2018; and (iii) Qutoutiao and Wang materially misrepresented the strength of the Company's business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company's risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its "remedial measures" which included "removing misleading or inappropriate" ads from the QTT App.~~

204. ~~In addition, the 2Q19 Earnings Release quoted Defendant Tan as stating, "[o]n the Qutoutiao side, we continue to improve our content quality and enhance our compliance standards and capabilities which are well recognized by regulators."~~

205. ~~Defendant Tan expanded on his statements about compliance the following day, September 5, 2019, during the Company's second quarter 2019 financial earnings conference call ("2Q19 Earnings Call") with analysts:~~

~~As we all know, compliance requirements for Internet content have tightened up considerably this year. We have one of the best track records in compliance among all the sizeable newsfeed players in the space as we have put in significant efforts from the very beginning in building our content compliance teams and capabilities.~~

~~Last month, we expanded our compliance personnel by adding a team based in Tianjin, which will strengthen our content review and monitoring. We have recently been granted the Internet news license, which is the first for a nonstate-owned company since 2017 and the first and only one in Shanghai, representing an official recognition of our efforts in content quality and compliance as well as our leading market position.~~

206. ~~The statements contained in ¶¶ 204-205 supra were materially false and misleading because: (i) any enhancement or strengthening of the Company's "compliance standards and capabilities" did not include disbanding the team dealing with unqualified advertisers or stopping the manual override of ads being flagged and rejected as non-compliant that allowed such ads to still be placed on the QTT App; (ii) from its inception, the Company's "content compliance teams" had been allowing non-compliant ads to run and had only begun tightening its control of ad screening and removing some vulgar content after the state-run media outlet, The Paper, became a shareholder in July 2019; and (iii) that the Company was granted an Internet news license that had to do with The Paper becoming a shareholder and the improvements it agreed to make with regard to its complaint, not based on its prior efforts in compliance. Until July 2020, the 1934 Act Defendants never disclosed to investors that a substantial amount of Qutoutiao's revenue was being generated from ads by unqualified advertisers which were not compliant with the applicable Chinese regulations or that they were managing the risk of losing that revenue by reducing the chance that they would get caught by state regulators, rather than by simply not putting risky advertisements on the QTT App.~~

207. ~~Defendant Tan also discussed Qutoutiao's growth and the optimization of its ad platform during the 2Q19 Earning Call:~~

~~The overall digital advertising market is experiencing weakness this year due to the supply/demand imbalance and the weak macro conditions. Despite a much tougher operational environment, **we're delivering one of the fastest growth rates in the industry.**~~

~~We continue to diversify our monetization avenues by growing contributions from casual games and live streaming, which have been increasing their share of group revenues.~~

~~**Looking longer term, as we are far from realizing our monetization potential, our focus undoubtedly continues to be optimizing the efficiency of our ad platform,** which will drive structurally higher ARPU.~~

~~208. Defendant Wang added:~~

~~**We have significant potential to further drive our monetization by improving the efficiency of our proprietary advertising platform, which we built last year.**~~

~~As the business grows, which diversifies our advertising inventories through the investment in technology and the accumulation of data, we will be able to enhance the bidding system and the targeting algorithms to close that gap between us and the established players.~~

~~**In the meantime, we are deepening our existing customer relationships as we build better understanding of our customers and deliver better results as well as expanding into more advertiser industries to better match the ever-diversifying ad inventories that are being added onto our platform.**~~

~~209. The statements contained in ¶¶ 207-208 *supra* were materially false and misleading because: (i) the Company's fast growth was primarily due to its increased ability to sell non-compliant ads after replacing Baidu with Dianguan in February 2018; (ii) despite optimizing the efficient of the Company's ad platform, a material number of risky ads were still being placed on the QTT App manually; and (iii) Qutoutiao, Tan and Wang materially misrepresented the strength of the Company's business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations despite the slowing macroeconomy in China. After the Company's risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its "remedial measures" which included~~

~~“removing misleading or inappropriate” ads from the QTT App.~~

~~8. Third Quarter 2019 Financial Results (December 3, 2019).~~

~~210. On December 3, 2019, Qutoutiao announced its third quarter 2019 financial results in a press release (“3Q19 Earnings Release”), that was later filed as Exhibit 99.1 to a Form 6-K signed by Defendant Zhu, touting its revenue growth:~~

- ~~• *Net revenues increased 44.0% year-over-year to RMB1,406.9 million (US\$196.8 million), compared to RMB1,385.9 million in the previous quarter, and were above the Company’s guidance.*~~

~~\*\*\*~~

~~*Advertising and marketing revenues were RMB1,381.6 million (US\$193.3 million) in the third quarter of 2019, an increase of 54.1% from RMB896.5 million in the third quarter of 2018, primarily due to increases in the Company’s user base, time spent and ability to monetize user traffic, and, to a lesser extent, the launch of our new integrated and customized marketing solution services to our customer.*~~

~~211. Defendant Tan provided additional detail about the Company’s new marketing solutions services as “stepping up the monetization efficiency of [its] proprietary advertising platform” later that day during its third quarter 2019 financial earnings conference call (“3Q19 Earnings Call”) with analysts, stating, in relevant part:~~

~~*We’re also stepping up the monetization efficiency of our proprietary advertising platform by transitioning into an OCPC system, which is supported by strong AI and data capabilities as well as close partnerships with our customers, built on mutual trust and our consistent delivery of value added services.* In comparison to the traditional CPC system, it has the benefit of further de-risking advertising customers budgeting process by offering more precise and tailored traffic allocations taking into account customers overall return requirements.~~

~~*This allows customers to increase spending with even better results and allows us to accelerate the evolution of our ad tech, as we keep optimizing the process, enhancing our core competitive advantage and deepening our client relationships over time.*~~

~~212. Following Defendant Tan’s remarks, Defendants Wang and Zhu added with regard to the Company’s growth and ability to monetize, “[s]equentially, however, *we have seen growth*~~

~~*on a like-for-like basis, consistent with seasonal tailwinds and structural improvement in our ability to monetize.”*~~

213. ~~The statements contained in ¶¶ 210-212 *supra* were materially false and misleading because: (i) the increase in net and advertising revenues and “growth on a like-for-like basis” was primarily due to the increase in ads whose claims could not be substantiated and thus were considered false advertisements under applicable regulations or provided links to illegal online gambling platforms; (ii) the Company’s increased ability to monetize user traffic was primarily related to its increased ability to sell non-compliant ads after replacing Baidu with Dianguan in February 2018; (iii) the Company’s “stepping up [of] the monetization efficiency of [its] proprietary advertising platform” simply allowed more risky ads to be placed on the QTT App as more users deemed the risky ads to be relevant by clicking on them; and (iv) Qutoutiao, Tan, Zhu and Wang materially misrepresented the strength of the Company’s business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company’s risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its “remedial measures” which included “removing misleading or inappropriate” ads from the QTT App.~~

~~**9. Fourth Quarter 2019 Financial Results (March 18, 2020)**~~

214. ~~On March 18, 2020, Qutoutiao announced its fourth quarter 2019 financial results in a press release (“4Q19 Earnings Release”), that was later filed as Exhibit 99.1 to a Form 6-K signed by Defendant Zhu, touting its revenue growth:~~

- ~~*Net revenues increased 25.0% year-over-year to RMB1,658.4 million (US\$238.2 million), compared to RMB1,406.9 million in the previous quarter, and were above the high end of the Company’s guided range.*~~

~~\*\*\*~~

~~Advertising and marketing revenues were RMB1,588.5 million (US\$228.2 million) in the fourth quarter of 2019, an increase of 27.3% from RMB1,247.9 million in the fourth quarter of 2018, primarily due to increases in the Company's user base and ability to monetize user traffic.~~

~~215. Defendant Tan is quoted in the 4Q19 Earnings Release as saying, "[w]e closed fiscal year 2019 with a strong fourth quarter with *all key operating metrics trending in the positive direction on a quarter-to-quarter basis.*"~~

~~216. The statements contained in ¶¶ 214-215 *supra* were materially false and misleading because: (i) the increase in net and advertising revenues, a key operating metric, was primarily due to the increase in ads whose claims could not be substantiated and thus were considered false advertisements under applicable regulations or provided links to illegal online gambling platforms; (ii) the Company's increased ability to monetize user traffic was primarily related to its increased ability to sell non-compliant ads after replacing Baidu with Dianguan in February 2018; and (iii) Qutoutiao and Zhu materially misrepresented the strength of the Company's business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company's risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its "remedial measures" which included "removing misleading or inappropriate" ads from the QTT App.~~

~~217. Later that day, the Company held its fourth quarter 2019 financial earnings conference call ("4Q19 Earnings Call") to discuss its quarterly results with analysts. During the call, Defendant Tan touted the Company's revenue growth and enhanced monetization efficiency:~~

~~*In the fourth quarter our revenues grew by 25% year-on-year* despite marked headwinds and the negative impact of media suspension, which monthly~~

~~hurt the third quarter of 2019, but lasted into the first half of the first quarter. The gradual recovery from the suspension was partly by choice as we had taken the law as an opportunity to revamp product design and upgrade content, while recalibrating the long-term strategy.~~

~~***Driving the growth was not just expanded user growth, user base, but also crucially an enhanced monetization engine as we have observed better ad conversion metrics which are structural in nature. The sequential improvement in ARPU was also reflective of the enhanced monetization efficiency.*** Most of our adverts are performance based, which are better positioned as a subsector than the traditional brand based or impression based segments.~~

218. ~~Defendant Zhu similarly touted Qutoutiao's revenue growth and enhanced monetization efficiency during the 4Q19 Earnings Call:~~

~~***Our revenues grew by 25% year-on-year*** during the quarter to reach RMB 1,660 million which is also an 18% sequential improvement from the third quarter of 2019. ~~***The growth has been driven by enhanced monetization efficiency*** and the user base expansion with DAU averaging over 45 million during the quarter representing a 48% increase year-on-year.~~~~

~~\*\*\*~~

~~First, we expect monetization efficiency to further improve as our ongoing efforts and investments bear fruit. ***Upgraded algorithms and OCTC offerings which as Eric [Tan] mentioned are some of the key step ups we achieved, which will enable us to increase the sophistication and the value add of our service to our advertising customers, aided by deeper understanding of our users and the availability of richer advertising content formats, through our various different product offerings.***~~

219. ~~Defendant Tan similarly stated in response to a question from Nelson Cheung acting on behalf of analyst Alicia Yap of Citigroup during the question-and-answer portion of the 4Q19 Earnings call regarding the Company's revenue guidance:~~

~~***So as long as we can offer superior ROIs for our customers' investment, the natural result would be increased budget on Qutoutiao. So we have seen healthy trends in terms of revenue growth and better monetization efficiency, starting from the latter half of Q4 2019 and this trend continued in Q1 before the coronavirus outbreak.***~~

220. ~~The statements contained in ¶¶ 217-219 *supra* were materially false and misleading because: (i) the revenue growth was primarily due to the increase in ads whose claims could not be~~

~~substantiated and thus were considered false advertisements under applicable regulations or provided links to illegal online gambling platforms; (ii) the Company's "enhanced" or "better" monetization efficiency simply allowed more risky ads to be placed on the QTT App as more users deemed the risky ads to be relevant by clicking on them; and (iii) Qutoutiao and Tan materially misrepresented the strength of the Company's business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations despite the slowing macroeconomy in China. After the Company's risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its "remedial measures" which included "removing misleading or inappropriate" ads from the QTT App.~~

~~**10. Fiscal Year 2019 Financial Results (April 23, 2020).**~~

~~221. On April 23, 2020, Qutoutiao filed with the SEC a form 20-F, reporting its fiscal year 2019 earnings ("2019 20-F"). The 2019 20-F was signed by Defendant Tan certifying that "[Qutoutiao] meets all of the requirements for filing its annual report on Form 20-F and that it has duly caused and authorized [Defendant Tan] to sign this annual report on its behalf."~~

~~222. The Company's 2019 20-F made materially false and/or misleading statements and omissions about its strategy of targeting users in lower tier cities in China, stating in relevant part:~~

~~*Since our inception, we have strategically targeted users from lower tier cities in China because of the enormous long-term growth opportunities in this underserved market, given the significant underpenetration of mobile phones as well as the significant under-usage of mobile applications. We believe that mobile users in lower tier cities tend to have a slower pace of life and spend more time on the Internet given limited offline entertainment venues. Moreover, they enjoy rapidly growing disposable income and bear much lower financial burden due to lower housing prices and living expenses. These factors have given rise to a significant need for mobile entertainment while also creating high monetization*~~

~~potentials. Users from lower tier cities tend to have different interests and preferences in comparison to users from tier-1 and tier-2 cities. Qutoutiao's light entertainment-oriented and easily digestible content is designed to resonate with such users and provides us with a significant advantage to capture this underserved market.~~

~~\* \* \*~~

~~***Our rapidly increasing and engaged user base has provided us with strong monetization potentials.*** We currently generate revenue primarily by providing advertising and marketing services. We place advertisements on the main pages, topic pages as well as content pages of our mobile applications. When we first commenced our business, we collaborated with various third-party advertising platforms to place advertisements on our mobile applications and derived a large percentage of our revenues from a limited number of customers. ***To reduce the concentration risk and to build our in-house advertising platform which was becoming necessary in order to support the rapid growth of our business, we acquired an advertising agent in February 2018 that operated a programmatic advertising system. Upon full integration with our internal resources and with continuous R&D investments, we have developed it into a technology driven system that has powered our advertising solutions while reducing the use of third-party advertising platforms.***~~

~~223. The statements contained in ¶¶ 221-222 *supra* were materially false and misleading because: (i) the “enormous long-term growth opportunities” and “high” or “strong,” “monetization potentials” in lower tier cities had much less to do with the high number of users in those cities having more time and disposable income to spend on the internet and far more to do with the high number of unqualified advertisers who wanted to run non-compliant ads in those cities because regulators were more lenient and users were less aware of their rights as consumers in those cities; (ii) detailing how the Company needed an “in-house advertising platform...to support the rapid growth of [its] business,” without disclosing that the need was actually primarily related to the high number of advertisers it could sell non-compliant ads to after replacing Baidu with Dianguan in February 2018; and (iii) Qutoutiao materially misrepresented the strength of its business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company's risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation~~

~~and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its “remedial measures” which included “removing misleading or inappropriate” ads from the QTT App.~~

~~224. The 2019 20-F also touted that the Company’s “*net revenues had] increased rapidly* from RMB517.1 million in 2017 to RMB3,022.1 million in 2018, and further to RMB5,570.1 million (US\$800.1 million) in 2019.” The majority of this revenue derived from advertising as the Company stated in the 2019 20-F:~~

~~*After acquiring an advertising agent in February 2018 that operated a programmatic advertising system and developing it into our proprietary technology driven advertising platform through internal integration and continuous R&D investment, we managed to considerably reduce our reliance on third-party advertising platforms such as Baidu.* Prior to our acquisition of this advertising agent in February 2018, we engaged this advertising agent to serve as our sales agent in selling our advertising and marketing solutions to other second-tier advertising agents and end advertisers. *These second-tier advertising agents and end advertisers were and still are our customers as they have chosen our mobile applications to place their advertisement, and our performance obligation has been to provide the underlying advertising display services to them.*~~

~~225. The statements contained in ¶ 224 *supra* were materially false and misleading because: (i) the Company’s “rapidly” increased revenues were based on a significant number of ads whose claims could not be substantiated and thus were considered false advertisements under applicable regulations or provided links to illegal online gambling platforms; (ii) the Company acquired an advertising agent in February 2018 to reduce the oversight Baidu had been providing which had prevented non-compliant ads from running; (iii) in order to meet the Company’s “performance obligation” to its end advertiser customers, it set up separate teams with different processes and procedures for qualified versus unqualified advertisers in order to sell non-compliant ads; and (iv) Qutoutiao materially misrepresented the strength of its business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company’s risky advertisements came to light during the~~

~~CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its “remedial measures” which included “removing misleading or inappropriate” ads from the QTT App.~~

226. ~~With regard to the Company’s “Monetization” capabilities, the 2019 20-F stated, in relevant part:~~

~~As our business grew rapidly and substantially, it made perfect sense to start building our own distribution capabilities, i.e., an in-house advertising platform. ***The benefit of owning an in-house advertising platform is not only enhanced monetization efficiency as we can improve advertising technology for better matching of supply and demand which results in higher average revenue per user (ARPU), it also allows our business to become independent and obtain long-term viability.***~~

~~The opportunity came in February 2018 when an advertising agent which operated a programmatic advertising system became available for sale, and we successfully acquired this agent. Before the acquisition in February 2018, the Group engaged certain advertising customers through this third-party advertising agent. At the time of acquisition, it had built up a good technical base as it owned several intellectual properties, which were valuable assets for us to further develop our proprietary advertising platform related technology. ***By integrating this system with our internal resources and continuous R&D investments, we have developed it into a fully fledged and technology driven advertising exchange capable of not only monetizing internet media traffic generated in-house but also that originating from third-party media platforms.***~~

~~Currently, our programmatic advertising system utilizes a bidding system for advertising customers to bid for the targeted audience on mainly our platform. ***Our programmatic advertising system considers a wide range of parameters to determine which advertisement to show, including price bid, predicted click-through rate, predicted user conversion metrics and content relevance, to dynamically maximize our advertising customer’s return on investment (ROI) as well as our revenue potential. Our advertising technology aims to maximize our revenue potential by rewarding the more relevant advertisement with a more prominent position, despite the potentially lower price bid of such advertisement.*** We actively monitor the advertisements placed to help ensure their relevance.~~

~~Customers for our programmatic advertising system are comprised of advertising agents and end advertisers. ***We have our own sales personnel who are responsible for supporting and monitoring the performance of advertising agents and to attract advertising customers to use our programmatic advertising system directly.*** We enter into standard agreements with advertising agents generally for a~~

~~term of one year. Our advertising agents are responsible for identifying end advertisers, confirming payments and setting up accounts on our programmatic advertising system for advertising customers. We provide ongoing training to advertising agents to help them become familiarised [sic] with the functionalities and capabilities of our programmatic advertising system. These advertising agents are responsible for collecting and submitting the relevant documentation and licenses from advertising customers for our approval to open accounts on our programmatic advertising system, and are also liable for any infringement of third-party rights or violation of regulatory requirements caused by advertisements placed by their end advertisers.~~

~~227. In addition, the 2019-20 F noted with regard to the Company's ability to monetize in the "Key Factors Affecting [the Company's] Results of Operations," in relevant part:~~

~~Our expanding user base, which has been attracting an increasing number of advertising agents and advertising customers, has provided a solid basis for us to achieve a high monetization capability. To endeavor towards such a goal, we have taken concrete steps, such as improving the efficiency of our platform, to drive advertising conversion, which involves algorithm improvement driven by data collection and analytics and conversion to an oCPC system over the course of 2019.~~

~~228. The statements contained in ¶¶ 226-227 supra was materially false and misleading because: (i) the Company's enhancing or maximizing of its ability to monetize user traffic was actually primarily related to its increased ability to sell non-compliant ads after acquiring an advertising agent, Dianguan, to replace Baidu in February 2018; (ii) the Company's sales personnel's responsibilities were different for qualified versus unqualified advertisers in order to be able to sell non-compliant ads; (iii) regardless of the terms of its agreements with advertising agents, the Company would also face increasing regulatory scrutiny and reputational harm from any ads that violated the relevant regulatory requirements; and (iv) Qutoutiao materially misrepresented the strength of its business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company's risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the~~

~~Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its “remedial measures” which included “removing misleading or inappropriate” ads from the QTT App.~~

~~229. The 2019 20-F specifically touted Qutoutiao’s mission “to deliver quality and relevant content to users, and content sourcing, management and recommendation” as “core focuses of [its] operations,” including with regard to advertising and content screening technology:~~

- ~~• **Advertising.** *Our advertising technology enables advertising customers to bid for audience and automatically deliver relevant, targeted promotional links to users.* Our system rewards more relevant advertisements with more prominent positions, despite the potentially lower priced bids of such advertisements. Our audience segmentation technology helps ensure the relevance of advertisements shown to users by analyzing their interests through browsing activity, viewed content and commenting history. In addition, we have the ability to predict click-through rates for advertisements using logistic regression, gradient boosting decision tree and linear and nonlinear modeling algorithms. Enhanced precision of these click-through rate projections can help maximize the cost effectiveness of customers’ advertising budgets. Our oCPC system further takes into consideration customers’ overall return requirements by assessing their desired end results in the context of their budgets and the availabilities of relevant advertising inventories, providing a wholistic solution to their marketing needs rather than a simple product amid their marketing strategy.~~
- ~~• **Content Screening Technology.** Our text screening system screens information based on pre-set keywords. *We utilize artificial intelligence to identify inappropriate or objectionable content from images, speeches and videos, significantly increasing efficiency over manual review. We also apply deep learning methods to analyze complex visual content. Through big data and continuous training, our system is able to monitor and identify objectionable visual content with a high degree of accuracy. The screening system automatically declines content that does not meet the standards of our platform and flags suspicious content for manual review by our content management team.*~~

~~230. The statements contained in ¶ 229 *supra* were materially false and misleading because: (i) misleading or illegal ads were being delivered as part of the “relevant, targeted promotional links to users;” (ii) different processes and procedures were being applied to advertising content such that any declined ads could be manually allowed on the QTT App; and~~

~~(iii) Qutoutiao materially misrepresented the strength of its business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company's risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its "remedial measures" which included "removing misleading or inappropriate" ads from the QTT App.~~

~~231. Lastly, the 2019 20-F disclosed the "Transactions with Companies Controlled by or Affiliated with Mr. Tan" as follows:~~

~~*We paid Shanghai Yinnuo Management Consulting Co., Ltd., or Yinnuo Management, a company controlled by Mr. Eric Siliang Tan, service fees in the amount of RMB16.8 million in 2017.* Such service fees related to costs charged by Yinnuo Management for financial accounting support, office space and certain other administrative support provided to us. No amount was due to Yinnuo Management in connection with these service fees as of December 31, 2017. We have since developed all relevant functions internally and leased office space for our operations that were previously provided by Yinnuo Management and we currently do not expect to pay service fees to Yinnuo Management for such functions or office space in the future.~~

~~*We received RMB29.6 million in service fees from AdIn Media (Shanghai) Co., Ltd., or AdIn Media, a company in which Mr. Eric Siliang Tan indirectly owns a minority interest and in which he was a key management personnel, in 2018.* Such fees related to agent and platform service provided to AdIn Media by facilitating advertising customers to display advertisements with AdIn Media. We also received fees in the amount of RMB4.5 million for providing advertising and marketing services to AdIn Media in 2018. As of September 30, 2018, Mr. Tan was no longer a key management personnel of AdIn Media, and thus AdIn Media ceased to be our related party.~~

~~*We provided advertising and marketing services to several companies controlled by Mr. Eric Siliang Tan, mainly Shanghai Tujin Internet Technology Co., Ltd., and charged service fees of RMB473.2 million (US\$68.0 million) in the fiscal year ended December 31, 2019.*~~

~~*We entered into a cost-per-impression (CPM) arrangement for advertisement placement by our advertising customers with Shanghai Mengjia Internet Technology Co., Ltd., or Shanghai Mengjia, a media platform company controlled by Mr. Eric Siliang Tan, in 2019.* The total service fee charged by~~

~~Shanghai Mengjia amounted to RMB35.6 million (US\$5.1 million) for the fiscal year ended December 31, 2019.~~

~~*We entered into a game cooperation agreement with Shanghai Ruiti Internet Technology Co., Ltd., or Shanghai Ruiti, a game developing company in which Mr. Eric Siliang Tan's controlled entity has significant influence on. The total service fee we paid to Shanghai Ruiti in relation to the arrangement amounted to RMB6.8 million (US\$1.0 million) for the fiscal year ended December 31, 2019.*~~

~~232. The statements contained in ¶ 231 *supra* were materially false and misleading because: (i) the transactions with companies controlled by or affiliated with Tan also include transactions involving the Mengtui App, Fangce and the Shihui Miao App based on Tan's ownership stakes in Taiyun Capital, and Bige; (ii) while the 2019 20-F disclosed that the Company "provided advertising and marketing services" to multiple "companies controlled by" Tan, only Tujin is identified without reference to the Mengtui App; and (iii) the Dianguan Acquisition should have been listed as a related party transaction based on Liang's special relationship with Tan through companies in which Tan is a majority investor or owner, including Woofoo Equity and Taiyun Capital.~~

~~233. Furthermore, while the 2019 20-F discussed several "Risk Factors," the 1934 Act Defendants failed to adequately warn investors that certain "Risk Factors" had already materialized at the time of the annual report.~~

~~234. First, the 2019 20-F warned that "[a]dvertisements on our mobile applications may subject us to penalties and other administrative actions:"~~

~~We cannot assure you that all the advertisements shown on our mobile applications are true, accurate, appropriate and in full compliance with applicable laws and regulations. *For example, advertisers on our mobile applications, or their agents, may use measures that are designed to evade our monitoring, such as providing inauthentic material that does not match the actual advertisement, or supplying advertising which is superficially compliant but nevertheless is linked to one or more webpages that feature noncompliant advertising content. In addition, our employees responsible for reviewing advertisements may not fully understand the relevant laws and regulations or may be inappropriately*~~

~~*influenced by the advertisers. In each case, we may still be held responsible for noncompliant advertising content. We include clauses in most of our advertising contracts requiring that all advertising content provided by advertising customers must comply with relevant laws and regulations. Pursuant to the contracts between us and the relevant advertising agents or advertising customers, they are liable for all damages to us caused by their breach of such representations. However, there can be no assurance that we will be able to successfully enforce our contractual rights.*~~

235. ~~The statements contained in ¶ 234 *supra* were materially false and misleading because the Company: (i) had set up separate teams with different processes and procedures for qualified versus unqualified advertisers in order to be able to sell non-compliant ads; (ii) was already violating the applicable advertising laws and regulations and thus the ramifications were not a matter of if, but when; and (iii) materially misrepresented the strength of its business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company's risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its "remedial measures" which included "removing misleading or inappropriate" ads from the QTT App.~~

236. ~~Second, the 2019 20-F warned that because "[w]e generate a substantial majority of our revenues from advertising and marketing[,] [a] decline in our advertising and marketing revenue could harm our business":~~

~~We generated a substantial majority of our revenues from advertising and marketing services in 2017, 2018 and 2019. When we first commenced our business, we collaborated with various third-party advertising platforms to place advertisements on our mobile applications, and derived a large percentage of our revenues from a limited number of customers. *To reduce the concentration risk and to build our in-house advertising platform which was becoming necessary in order to support the rapid growth of our business, we acquired an advertising agent in February 2018 that operated a programmatic advertising system. Upon full integration with our internal resources and with continuous R&D investments, we have developed it into a technology driven system that has*~~

~~powered our advertising solutions while reducing the use of third-party advertising platforms. Given our short history, we have limited experience in operating the programmatic advertising system and in acquiring our own advertising agents and advertising customers. We may not be able to recruit sufficient sales personnel to effectively and efficiently acquire and retain advertising agents and advertising customers. The effectiveness of our programmatic advertising system may not perform as expected and achieve widespread acceptance by advertising customers.~~

~~Our advertising customers for our programmatic advertising system are comprised of advertising agents and end advertisers. . . . ***If we fail to retain existing advertising customers or ensure that their advertising spend with us remains at similar or increased levels or attract new advertising customers to advertise on our platform, our business, results of operations and financial condition may be materially and adversely affected.***~~

~~237. The statements contained in ¶ 236 *supra* were materially false and misleading because: (i) the Company acquired an advertising agent in February 2018 to reduce the oversight Baidu had been providing which had prevented non-compliant ads from running; (ii) any enhancement in the Company's ability to monetize user traffic was actually primarily related to its increased ability to sell non-compliant ads; and (iii) a material number of the Company's customers were unqualified advertisers who were purchasing non-compliant ads and thus the revenue generated from those customers inevitably would decrease when, not if, the non-compliant ads became public.~~

~~238. Third, the 2019-20 F warned that "[n]on-compliance with law on the part of third parties with which we conduct business could disrupt our business and adversely affect results of our operation and financial condition."~~

~~Third parties with which we conduct business, such as content providers, advertising agents, advertising customers and merchandise suppliers, may be subject to regulatory penalties or punishments because of their regulatory compliance failures or may be infringing upon other parties' legal rights, which may, directly or indirectly, disrupt our business. ***Although we conduct review of legal formalities and certifications before entering into contractual relationships with third parties, and take measures to reduce the risks that we may be exposed to in case of any non-compliance by third parties, we cannot be certain whether such third party has violated any regulatory requirements or infringed or will***~~

~~*infringe any other parties' legal rights.*~~

~~239. The statement contained in ¶ 238 *supra* was materially false and misleading because: (i) the measures the Company had taken to reduce its risk included setting up separate teams with different processes and procedures for qualified versus unqualified advertisers and placing riskier ads in lower tier cities where there was less regulatory scrutiny; (ii) even though the Company had measures in place to decline non-compliant ads, the advertiser or the employees who were responsible for those ads could contact the reviewing department for a second manual review and allow the ads on the QTT App manually; and (iii) the Company was already aware or recklessly disregarded that certain advertisers had already violated regulatory requirements or infringed other parties' legal rights. Until July 2020, the 1934 Act Defendants never disclosed to investors that a substantial amount of Qutoutiao's revenue was being generated from ads by unqualified advertisers which were not compliant with the applicable Chinese regulations or that they were managing the risk of losing that revenue by reducing the chance that they would get caught by state regulators, rather than by simply not putting risky advertisements on the QTT App.~~

~~240. Fourth, the 2019 20-F warned that "[n]egative publicity about us, our services, operations and our management has adversely affected and may adversely affect our reputation and business in the future:"~~

~~We have from time to time received negative publicity, including negative Internet and blog postings about us, our services, operations and our management. For example, a short seller recently published a report on December 10, 2019 with certain negative opinions on us, such as, our related party transactions, our products, our financial conditions and our acquisition decision, which could have a negative impact on our reputation, despite the fact *that the short seller's claims were based on factual errors and misunderstanding of business and accounting rules, which we subsequently explained in a detailed public response.* On January 18, 2020, the same short seller published another report on us, containing mostly the same negative opinions regarding us, and *we have reported in detail the unfounded allegations in this report to the audit committee of our board of directors.* Negative publicity could be the result of malicious intentions, direct or~~

~~indirect anti-competitive behaviours or, as in the above-mentioned case, agendas of short sellers. We may even be subject to government or regulatory investigation as a result of such third party conduct or misconduct and may be required to spend significant time and incur substantial costs to defend ourselves against such third party conduct or misconduct, and we may not be able to conclusively refute each of the allegations within a reasonable period of time, or at all. ***Our brand and reputation may be materially and adversely affected as a result of any negative publicity, which in turn may cause us to lose market share, users, advertising customers and other third parties we conduct business with. As a result, our financial position or operating results may be adversely affected and the price of the ADSs may decline.***~~

~~241. The statements contained in ¶ 240 *supra* was materially false and misleading because: (i) not all of the claims in either of the Wolfpack Report were based on factual errors, a misunderstanding of the Company's business, or were unfounded, as subsequently demonstrated by the CCTV Exposé and the Company's disastrous 3Q20 financial results; (ii) the truth about the Company's actions that allowed misleading or illegal ads on the QTT App would have a greater materially adverse effect on the Company's brand and reputation than any negative publicity would; and (iii) the Company's inability to sell non-compliant ads after the CCTV Exposé would cause more lost customers, a greater adverse effect on the Company's financial position and operating results, and a larger decline in the price of the Company's ADSs than any negative publicity would.~~

~~242. Additionally, the 2019 20-F included certification under Section 302 of SOX by Defendants Tan and Zhu that: (1) "***this report does not contain any untrue statement of a material fact or omit to state material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;***" (2) "***the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of, and for, the periods presented in this report;***"~~

~~and (3) that these Defendants were “responsible for establishing and maintaining disclosure controls and procedures.”~~

~~243. The 2019 20-F also included certification under Section 906 of SOX by Defendants Tan and Zhu that, “*the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.*”~~

~~244. The statements contained in ¶¶ 242-243 *supra* were materially false and misleading because: (i) Qutoutiao was not able to generate sufficient revenue to meet its targets unless it allowed unqualified advertisers to advertise on the QTT App due to its strategy of targeting lower tier cities in China; (ii) the true benefits of, and reasons for, replacing the Company’s third party advertising agent with a related party, Dianguan, and bypassing that third party’s oversight of the content and quality of advertisements was to generate revenue from risky advertisements; (iii) the Company had created separate teams for dealing with qualified advertisers, whose advertisements were largely compliant with applicable Chinese regulations and thus low risk, and unqualified advertisers, and that the “high-risk” team (which was disbanded after the CCTV Exposé) outsourced nearly all of its advertisement screening to contractors who conducted minimal due diligence on their clients; (iv) as a result, the Company would place on the QTT App, risky advertisements whose claims could not be substantiated and thus were considered false advertisements under applicable regulations or which linked to illegal online gambling platforms; (v) as a result, the Company would face increasing regulatory scrutiny and reputational harm; (vi) as a result, the Company’s advertising revenue was reasonably likely to decline; (vii) the Company was reporting RMB 620 million more in revenue to the SEC than its subsidiaries did in aggregate to the SAMR; and (viii) as a result of the foregoing, Defendants’ positive statements about the Company’s business, operations and prospects, were materially misleading and/or lacked a~~

~~reasonable basis. After the Company's risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its "remedial measures" which included "removing misleading or inappropriate" ads from the QTT App.~~

~~**11. First Quarter 2020 Financial Results (June 4, 2020).**~~

~~245. On June 4, 2020, Qutoutiao announced its first quarter 2020 financial results in a press release ("1Q20 Earnings Release"), that was later filed as Exhibit 99.1 to a Form 6-K signed by Defendant Zhu, touting its revenue growth:~~

- ~~• *Net revenues increased 26.2% year-over-year* to RMB1,411.8 million (US\$199.4 million), *within the Company's guided range* of RMB1,400 million and RMB1,420 million.~~

~~\*\*\*~~

~~*Advertising and marketing revenues* were RMB 1,364.0 million (US\$192.6 million) in the first quarter of 2020, an *increase of 25.5%* from RMB1,087.2 million *in the first quarter of 2019, primarily due to increases in the Company's user base, time spent and ability to monetize user traffic.*~~

~~246. The 1Q20 Earnings Release also quoted Defendant Tan as stating:~~

~~*We executed strongly in the first quarter of 2020 by growing our revenues over 26% year on year, this is a strong testament to our commitment and ongoing effort in enhancing the core capabilities of our advertising platform, especially given the unprecedented challenges facing our economy and the industry.*~~

~~247. The statements contained in ¶¶ 245-246 *supra* were materially false and misleading because: (i) the increase in net revenues, specifically advertising and marketing revenues, was primarily due to the increase in ads whose claims could not be substantiated and thus were considered false advertisements under applicable regulations or provided links to illegal online gambling platforms; (ii) the Company's increased ability to monetize user traffic was primarily related to its increased ability to sell non-compliant ads after replacing Baidu with Dianguan in~~

~~February 2018; (iii) any enhancement to “the core capabilities of [the Company’s] advertising platform” simply allowed more risky ads to be placed on the QTT App as more users deemed the risky ads to be relevant by clicking on them; and (iv) Qutoutiao, Zhu and Tan materially misrepresented the strength of the Company’s business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company’s risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its “remedial measures” which included “removing misleading or inappropriate” ads from the QTT App.~~

~~248. Later that day, the Company held its first quarter 2020 financial earnings conference call (“1Q20 Earnings Call”) to discuss its quarterly results with analysts. During the call, Defendant Zhu similarly touted Qutoutiao’s revenue growth:~~

~~*Our net revenues grew 26% year-on-year during the quarter* and reached RMB 1.410 billion, the exact figure of which is slightly *above the midpoint of our guided range*. The growth can be broken down to a 22% user base expansion in terms of DAU, which grew from 38 million to 46 million and a 4% improvement in monetization in terms of ARPU, which increased from RMB0.33 to RMB0.34.~~

~~Given the extraordinary environment we are in this year, what we have achieved so far has not come easily. As Eric has already explained, *the increase in ARPU during these trying times are a testament to the investment that we have made in advancing our technological capabilities. This has given us an edge in delivering better results to our customers at a time when everyone is taking a more cautious approach towards marketing and are actively looking for more measurable advertising channels.*~~

~~249. Later during the 1Q20 Earnings Call, Defendant Zhu reiterated the Company’s technological edge with performance advertisers in response to a question analyst Vicky Wei of Citigroup regarding the Company’s guidance and ability to capture advertising dollars that was different from its competitors:~~

~~So but as we have said before, **our strength in performance-based ads will help us to get through difficult times as our customers are increasingly looking for direct and more measurable results.**~~

~~250. Defendant Tan detailed for the market precisely what the Company's technological edge was during the 1Q20 Earnings Call, stating in relevant part:~~

~~Since we established our proprietary machine learning platform, we have been able to accelerate R&D on algorithms, which are fundamental to improving both user experience and monetization. **Being able to process and test large quantities of data has meant a steepening of the learning curve for task-specific algorithms, which lead to much better tailored push of high-quality content as well as adverts.**~~

~~**This enables an overall upgrade of user experience because if both the actual content and the adverts can be interesting and relevant for the user and the interchange between the two is seamless and well-timed,** the whole experience can feel very smooth and enjoyable as opposed to feeling intruded or interrupted. This makes a material difference in today's world where competition for Internet users' attention and time spent is fierce. Machine learning capabilities also underpin the development of our OCPC system which relies on the ability to estimate and manage performance metrics along the ad conversion value chain.~~

~~**In an OCPC system where the customer bids for results further downstream, taking on less ad performance risk, the full capability of the system is to translate the bid into variables further upstream and leverage the intelligence gathered from large quantities of data to more precisely allocate ad inventories to where they can deliver maximum ultimate utility. For the system to do a good job, it needs to be capable of analyzing and understanding each and every piece of ad inventory as well as follow intermediary links and steps leading to the fulfillment of the end-customer request.**~~

~~**Essentially, the OCPC system plays the role of a super agent bidding on behalf of advertising customers, delivering optimal end results at lower and more stable costs. We have driven deeper coverage of customer spending with second degree OCPC realization which is now at 50% plus in comparison to 30% earlier this year.**~~

~~251. The statements contained in ¶¶ 248-250 *supra* were materially false and misleading because: (i) the increase in net revenues was primarily due to the increase in ads whose claims could not be substantiated and thus were considered false advertisements under applicable regulations or provided links to illegal online gambling platforms; (ii) any advancement of the Company's "technological capabilities" simply allowed more risky ads to be placed on the QTT~~

~~App as more users clicked on such ads, deeming them relevant to the Company's proprietary machine learning advertising platform; and (iv) Qutoutiao, Zhu and Tan materially misrepresented the strength of the Company's business model and ability to generate growing, sustainable revenues without selling risky advertisements that violated applicable Chinese regulations. After the Company's risky advertisements came to light during the CCTV Exposé in July 2020, it still did not acknowledge just how much its reputation and revenue was impacted until the end of the Class Period, when it was forced to disclose that its revenue did not grow YOY for the first time in its history as a result of its "remedial measures" which included "removing misleading or inappropriate" ads from the QTT App.~~

~~**12. Second Quarter 2020 Financial Results (September 21-22, 2020).**~~

~~252. On September 21, 2020, Qutoutiao announced its second quarter 2020 financial results in a press release ("2Q20 Earnings Release"), that was later filed as Exhibit 99.1 to a Form 6-K signed by Defendant Zhu, touting its revenue growth:~~

- ~~• *Net revenues increased 4.0% year-over-year* to RMB1,441.0 million (US\$204.0 million), compared to RMB1,411.8 million in the first quarter of 2020, *above the high end of the Company's guided range* of RMB1,410 million and RMB1,430 million.~~

~~\* \* \*~~

~~*Advertising and marketing revenues* were RMB1,378.1 million (US\$195.1 million) in the second quarter of 2020, an increase of 1.5% from RMB1,358.0 million in the second quarter of 2019, *primarily due to an increase in the Company's average DAUs, partially offset by a decrease in average daily time spent by DAUs.*~~

~~253. The following day, September 22, 2020, the Company held its second quarter 2020 financial earnings conference call ("2Q20 Earnings Call") to discuss its quarterly results with analysts. During the call, Defendant Zhu reiterated the Company's revenue growth:~~

~~*Our revenues for the second quarter* was RMB1,441 million, which *represents an increase of 4% year-on-year and some moderate sequential growth as well. This has been driven by user base expansion* as our DAU has increased~~

~~by 11% year-on-year, albeit partially offset by the weaker ARPU which saw a 6% decline reflecting the difficult advertising markets and the generally weaker economy in the second quarter.~~

~~254. Defendant Tan also assured investors of the strength of the Company's monetization efficiency and financial performance during the 2Q20 Earnings Call:~~

~~*We see enhanced monetization efficiency* which has allowed us to drive down using engagement costs while increasing ARPU. We feel encouraged by the strategic progress we have been making especially with respect to content and technology and we expect them to be the key pillars supporting our future developments.~~

~~*Our financial performance is also trending in the right direction* which keeps us further confident that we are taking the right steps.~~

~~255. Next, Defendant Tan fielded a question by analyst Vicky Wei of Citigroup regarding how long the CCTV impact will last:~~

~~[T]he CCTV Reports caused the Qutoutiao application to be taken off the App stores for about two weeks. We have observed negative impacts on our business operations and financial performance due to this in Q3 and we are still evaluating the extent of such impacts. But as we have said, *we have already seen a trend of recovery and we are seeing the growth and recovery will continue in Q4.*~~

~~256. The statements contained in ¶¶ 252-255 *supra* were materially false and misleading because Qutoutiao, Zhu and Tan continued to materially misrepresent: (i) the strength of the Company's business model and ability to generate growing, sustainable revenues despite no longer being able to sell risky advertisements that violated applicable Chinese regulations; and (ii) the extent to which the CCTV Exposé would continue to impact the Company's business operations and financials.~~

~~257. Next, Defendant Tan addressed the CCTV Exposé during the 2Q20 Earnings Call by stating, in relevant part:~~

~~On July 16, 2020, China Central Television ("CCTV") reported in its Annual Consumer Rights Show ("3.15 Consumer Night") that certain advertisements placed by third-party advertising agents on Qutoutiao exaggerated the health benefits of certain food and diet products and promoted activities that~~

~~may involve online gambling (the “CCTV Report”, or “the Report”).~~

~~*In response to the issues raised by the Report, the Company promptly took appropriate measures such as immediate suspension of all employees involved in these advertisements, including the person in charge of advertising operations, stricter management of all third-party advertising agents, enhancement of content management capabilities in identifying misleading or inappropriate advertisements, and the launch of an easy-to-use and easy-to-find complaint channel on the home screen of Qutoutiao so that users can file their complaints with us on any advertisement placed on our app.*~~ The Qutoutiao app was temporarily removed from several major Android-based app stores in China after the CCTV Report but was reinstated on July 31, 2020.

~~*The Company has observed negative impacts on its business operation and financial performance due to the above incidents in the third quarter of 2020 and is still evaluating the extent of such impacts. The Company highly appreciates the importance of strict compliance with all applicable laws and regulations and believes the measures taken by the Company are critical to protect the interests of its users and investors in the long term.*~~

~~258. Defendant Tan further stated during the 2Q20 Earnings Call:~~

~~It is our commitment to bring real value to our users and it is against our that less than 100% compliant content should appear. The adding of these comes with some inherent risks that the player has to manage and which we are also truly aware of. *We have always closely followed rules and regulations of the industry and the country.*~~

~~259. And during the question and answer portion of the 2Q20 Earnings Call, Defendant Tan responded to a question from analyst Hans Chung of KeyBanc about the cause of the Company’s materially lower revenue guidance by stating:~~

~~So, regarding your first question on Q3 guidance, I think, as we have said in the prepared remarks, *both us and our advertising partners are quite cautious about the CCTV Reports and we took extraordinary measures to make sure that our content ads are compliant.*~~ I would say that ~~*we went above and beyond with the laws and regulations as well as industry practice would normally require in China.*~~

~~260. The statements contained in ¶¶ 257-259 *supra* were materially false and misleading because: (i) the Company was aware of the misleading or illegal ads long before the CCTV Exposé yet failed to disclose them to investors and took no “extraordinary” or just “appropriate” measures until CCTV outed them at its 3.15 Consumer Night; (ii) the Company failed to disclose that it was~~

~~not just suspending random, unconnected employees who were involved with misleading or illegal ads but an entire team known within the Company as focusing on unqualified advertisers with its own established processes and procedures for vetting ads that was different than those of the team focusing on qualified advertisers; (iii) Defendants were well aware but failed to disclose the extent of the impact on the Company's business operation and financial performance of disbanding the entire team dealing with unqualified advertisers and losing that revenue stream; and (iv) that the Company "highly appreciates the importance of strict compliance with all applicable laws and regulations" did not stop the Company from previously failing to strictly comply until finally forced to do so.~~

**~~B. Additional Allegations of Scienter~~**

**~~1. Qutoutiao and the Insider Defendants~~**

~~261. As alleged herein, Qutoutiao and the Insider Defendants acted with scienter in that they either knew or recklessly disregarded the fact that the public documents and statements issued or disseminated in the name of the Company to the investing public were materially false and misleading, and that they substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, the Insider Defendants, by virtue of their receipt of information reflecting the true facts regarding Qutoutiao, their control over, and/or receipt and/or modification of Qutoutiao's allegedly materially misleading misstatements and/or their associations with the Company, which made them privy to confidential proprietary information concerning Qutoutiao, participated in the fraudulent scheme alleged herein.~~

~~262. Indeed, the Offering Documents themselves stated that: "[the Company's] visionary and experienced management team has been essential in driving the growth of [its] business. [Qutoutiao's] co-founder and executive chairman, [Defendant Tan], together with [its]~~

~~co-founder, director and chief executive officer, [Defendant L. Li], are the foundational pillars of [the] company and have delivered strong business results leveraging their over 20 years of combined Internet industry experience. Other members of [the Company's] senior management team are also instrumental in growing [the Company's] business with their proven track record in their areas of expertise. Co-founders and majority of the senior management team members have worked together previously, further enhancing the stability and consistency of [Qutoutiao's] vision."~~

~~263. As part of Qutoutiao's "visionary and experienced management team," the Insider Defendants failed to set an appropriate "tone at the top" of the Company to prevent non-compliant ads from being run on the QTT App, which led to increasing regulatory scrutiny during the Class Period and which then caused Qutoutiao reputational harm as well as a material decline in advertising revenue. According to the Former Channel Manager, the Company's culture under Defendant Tan's leadership was "aggressive," and had a "wolf spirit culture" (狼性文化) in which employees had aggressive targets and overtime work was considered normal. Similarly, the Former Sales Director described Tan's leadership style as "pursuing profits" (要求赚钱) and "aggressive" (激进) and the Company's performance evaluation system as consisting of "you can reach it if you jump goals" (正常指标), which were reachable but still challenging goals, and "leap goals" (跳一跳指标), which were nearly impossible to reach.~~

~~264. Thus, given this aggressive, profit-driven culture, Qutoutiao and the Insider Defendants had actual knowledge or were reckless in not knowing that the Company was allowing non-compliant ads to run on the QTT App, and that as a result, the Company would face increasing regulatory scrutiny and reputational harm.~~

~~265. For example, as discussed previously, public scrutiny of QTT and its competitors~~

~~due to its targeting of consumers in lower tier Chinese cities to evade regulators was evident from the beginning. In March 2018, the People's Daily reported that Jinri Toutiao, a competitor of Qutoutiao, had been accused of targeting second and third tier cities with false advertising because regulators there were more lenient.<sup>51</sup> Likewise, on September 14, 2018, (the first day of the Class Period) Fengyu Network Technology ("Fengyu") received a citizen report that Black Five advertisements had been spotted on iQiyi, one of the largest online video sites in the world, but only in third tier cities.<sup>52</sup> Fengyu also noted that Black Five advertisements had been seen on Qutoutiao "mostly placed in third tier cities and below."~~

~~266. Just a little over two months into the Class Period, on November 28, 2018, a CCTV reporter accused Qutoutiao of encouraging users to "surf the news and earn coins" while showing numerous advertisements containing vulgar content.<sup>53</sup> Specifically, Qutoutiao and other media platforms were not strictly adhering to the guidelines regarding advertiser quality and content in the 2016 "Interim Measures for the Administration of Internet Advertising," which states that certain special products and services may not be published without review, and that internet advertisements should be easily identifiable and clearly labeled so as not to trick users.<sup>54</sup>~~

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~~<sup>51</sup> "Today's Toutiao" is finally on "Toutiao"! Ignoring the supervision and starting this "black business"! 240 million users, CCTV FINANCE (Mar. 29, 2018, 11:02 PM), [http://finance.people.com.cn/n1/2018/0329/c1004\\_29897407.html](http://finance.people.com.cn/n1/2018/0329/c1004_29897407.html).~~

~~<sup>52</sup> Flower Zijian, Iqiyi has a large number of black five types of ads: visible to users in cities below the third tier, PHOENIX TECHNOLOGIES (Sept. 14, 2018, 12:04 PM), <https://www.ithome.com/html/it/383152.htm>. Black five advertisements are advertisements concerning pharmaceuticals, medical devices, breast enhancement products, weight loss products, and height enhancement products. Pursuant to Article 19 of the Advertising Law of China, it is illegal to run advertisements for these products "in disguised form such as introducing health or health knowledge." represent the information as "health information."~~

~~<sup>53</sup> Xibei, What's the crux of the stubborn disease and cancerous "five black" advertising headlines?, SOHU (July 19, 2020, 11:37 PM), [https://www.sohu.com/a/408546792\\_99986883](https://www.sohu.com/a/408546792_99986883).~~

~~<sup>54</sup> Platform to make money by brushing news: interesting headlines articles with vulgar content and eyeballs, SOHU (Nov. 29, 2018, 4:31 PM), [https://www.sohu.com/a/278591460\\_223764](https://www.sohu.com/a/278591460_223764).~~

~~Subsequently, the Internet Society of China, a non-governmental organization that is supported by several Chinese government ministries and functions as a self-regulatory organization for internet firms, reprimanded Qutoutiao and urged it to make rectifications.~~

~~267. Then, in a lawsuit filed by Yang Bin (“Yang”) in January 2019 against Qutoutiao’s Chinese entity Jifen, it came to light that Qutoutiao had begun displaying gambling advertisements on its platform at least two years prior.<sup>55</sup> Yang alleged that from clicking on a link found on Qutoutiao’s platform, he spent CNY 1.15 million after entering a gambling website. The case was ultimately dismissed by the Chengdu Intermediate People’s Court after Jifen successfully argued that, while it was Qutoutiao’s network service provider, advertisements were automatically pushed out based on big data analyses, and due to the volume of advertisements, it could not review all advertisements before they were released.<sup>56</sup>~~

~~268. On May 15, 2019, the Xinhua News Agency accused Qutoutiao and other online earning information applications of not having the proper internet news information services qualifications and criticized the platforms for primarily providing “news” that was curiosity-seeking, gossip, and other spam and that the platforms’ approach to capturing users by claiming “watching the news can make money” was just an advertising stunt.<sup>57</sup>~~

~~269. Then on June 18, 2019, the Shanghai Municipal Market Supervision Bureau (“Shanghai Regulator”) summoned Qutoutiao and another online news aggregator “for a talk,”~~

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~~<sup>55</sup> Jiang Yuqing, *The funny headline that relies on “poisonous blood” to continue life is different from Pinduoduo. Why is the fate different?*, BT FINANCE (July 20, 2020, 9:57 AM), <https://tech.sina.com.cn/i/2020-07-20/doc-iiwhuipn4001538.shtml>.~~

~~<sup>56</sup> Civil Judgment of the First Instance of the Internet Infringement Liability Dispute between Yang Bin and Shanghai Jifen, *Yang Bin v. Shanghai Jifen Culture Comme’n Co., Ltd.* Chuan 0107 Minchu No. 6651 (Aug. 15, 2019), <https://www.qixin.com/lawsuit/d27a20dd-8114-420d-924e-bdd1e083ec2e/5e170b10cbf5516e5400f411>.~~

~~<sup>57</sup> Xibei, *What’s the crux of the stubborn disease and cancerous “five black” advertising headlines?*, SOHU (July 19, 2020, 11:37 PM), [https://www.sohu.com/a/408546792\\_99986883](https://www.sohu.com/a/408546792_99986883).~~

~~stating that a preliminary investigation had found “severely illegal advertisements” on their platforms, and “sternly warned” the companies about their behavior.<sup>58</sup> The Shanghai Regulator demanded a stricter pre-advertisement review process to better prevent false and illegal advertisements on its platform, requiring Qutoutiao to strengthen its examination and regulation of advertisements before they were published and to work to “earnestly safeguard the legitimate rights and interests of consumers.”~~

~~270. In addition, the Insider Defendants had actual knowledge or were reckless in not knowing that there were two separate and independent teams managing the Company’s advertising content, one of which dealt with qualified advertisers who were largely compliant and ran low-risk advertisements and one of which dealt with unqualified advertisers whose advertisements were “risky.” This is particularly true here because the team dealing with risky advertisements was disbanded by the Company after the July 2020 CCTV Exposé.~~

~~271. Notably, while investors like Lead Plaintiff have suffered substantial damages as a result of the fraud alleged herein, Defendant Tan was able to purchase a \$37 million mansion on Harbor Island in Newport Beach, CA in October 2019—mere months after Principal Shareholders were able to sell their shares in the SPO at artificially inflated prices, pocketing proceeds of nearly \$67 million.<sup>59</sup>~~

## ~~2. The Underwriter Defendants~~

~~272. It is well understood within the investment banking and financial communities that an underwriter’s role (and duty) is to ensure that all material information is included in the offering~~

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<sup>58</sup> ~~Shanghai Municipal Market Supervision Bureau interviewed Qutoutiao, Huitoutiao and related advertising alliances, CHINA CONSUMER NETWORK (June 24, 2019), [https://www.nenews.com.cn/xfzpt/zhyw/201906/t20190624\\_1446925.html](https://www.nenews.com.cn/xfzpt/zhyw/201906/t20190624_1446925.html).~~

<sup>59</sup> ~~James McClain, Chinese Tech Billionaire Buys \$37 Million Newport Harbor Mansion, VARIETY (Oct. 30, 2019, 5:29 AM PT), <https://variety.com/2019/dirt/moguls/chinese-tech-billionaire-buys-37-million-newport-harbor-mansion-1203388732/>.~~

~~documents and that no material information is omitted that is needed to make the information provided therein not misleading. Moreover, that underwriter has an express duty to perform a reasonable due diligence investigation of the company for which they are selling securities, and to verify the accuracy of disclosure concerning the company's securities offerings.~~

~~273. Further, the underwriter controls what information is in the Prospectus and it controls the dissemination of that information to potential investors. Thus, an underwriter such as the Underwriter Defendants named in this action, has ultimate control over the contents and dissemination of the disclosure document, *i.e.* the Prospectus. It must either make full disclosure or not underwrite the offering if full disclosure is not provided.~~

~~274. Any underwriter, such as the Underwriter Defendants named in this action, must know that investors expect the investment banks, whose names appear on the Prospectus, to perform a reasonable due diligence investigation of the issuing entity to ensure, to the best of their ability, that the Prospectus does not include any false or misleading statements of material information, nor omits any material information. The investment banks, by putting their names on the Prospectus, are communicating to investors that they have in fact undertaken a reasonable due diligence investigation and are making full disclosure of all material information in the Prospectus. Indeed, without having performed a reasonable due diligence investigation of the issuer, it would not be possible to make full disclosure.~~

~~275. If an investment bank, based on its due diligence investigation of the issuer, believes that any of the information in the Prospectus is false or misleading, or omits material information, it has the authority and affirmative obligation to change the information, or if others refuse to change the information, then it should not underwrite the offering. But, if the investment bank allows its name (or names) to appear on the cover of the Prospectus, then it is communicating~~

~~to potential investors that it is satisfied, based on its reasonable due diligence investigation, that the Prospectus is accurate and not misleading.~~

~~276. The Underwriter Defendants that underwrote the Company's IPO and/or SPO had control over the contents and dissemination of the IPO Prospectus and/or the SPO Prospectus. Their names are prominently featured on the cover of the Prospectus. The co-managing underwriters actively participated in creating the Prospectus, and investors expected that the Underwriter Defendants ensured that the Prospectus provided appropriate disclosure of all material information.~~

~~277. The Underwriter Defendants had a duty to independently conduct a due diligence investigation of Qutoutiao for the Offerings. All of the Underwriter Defendants claim to have special expertise relevant to the underwriting of the Company's Offerings and investors reasonably relied upon such expertise to ensure that a thorough due diligence investigation of Qutoutiao was conducted and full disclosure of all material information was made in the Offering Documents.~~

~~278. Specifically, the information the Underwriter Defendants provide to the public emphasizes their purported high standards and generally assures investors about the quality of their work. For example, Defendant Citigroup's website boasts:~~

~~We provide world-class solutions that are as diverse as the needs of the corporates, institutions, governments, and individual investors we serve in 160 countries and territories. The breadth, depth, and strength of our underwriting, sales and trading, and distribution capabilities span asset classes and currencies, sectors and industries, covering a vast array of products.~~

~~On trading floors located in over 80 countries, we work around the clock to enrich the relationships, products, liquidity, and technology that define our market-making presence in North America, Asia, Europe, the Middle East, Africa and Latin America.~~

~~Our research and analysis offer the highest-quality corporate, sector, economic, and geographical insights – from equity and fixed income research to market and product analysis – helping individual and institutional clients navigate a complex~~

~~global marketplace.~~<sup>60</sup>

~~279. Similarly, Defendant Deutsche addresses its researching responsibilities claiming its “mission is to deliver high quality, independent analysis that helps investors understand markets.”<sup>61</sup> Defendant Keybanc touts its successes as an investment bank, highlighting its “highly regard[ed] research” and “IPO specialization.” Further, discussing Keybanc’s researching strengths, its website states:~~

~~Keybanc [], one of the nation’s leading providers of investment research, combines deep domain expertise with an interconnected research approach to identify dynamic companies capitalizing on opportunities in changing industries. By bringing multiple points of view to a company, industry and thematic shift, clients benefit through early identification, deeper insights and better investment decisions. Additionally, we go beyond traditional fundamental equity research, and augment our differentiated channel checks and industry contacts with deep quantitative analysis.~~<sup>62</sup>

~~280. Defendant Jefferies touts its relevant success stating that, “[s]ince 2016, Jefferies acted as bookrunner in one in every five IPOs priced in the U.S.” and “[s]ince 2016, Jefferies has book-run over 175 IPOs raising over \$55 billion in proceeds.”<sup>63</sup> Defendant Jefferies’ website goes on to highlight the company’s expertise, commitment and capabilities related to investment banking:~~

#### ~~Sector Expertise~~

- ~~• Deep sector knowledge in investment banking that enables us to:
 
  - ~~= Best position our clients’ investment thesis to achieve the optimal valuation on their equity offerings~~~~

<sup>60</sup> About Us, CITIGROUP INC., <https://www.citi.com/mss/about/> (last visited Jan. 15, 2021).

<sup>61</sup> Our mission, DEUTSCHE BANK AG, [https://www.dbresearch.com/PROD/RPS\\_EN\\_PROD/Our\\_mission/RPS\\_MISSION.alias](https://www.dbresearch.com/PROD/RPS_EN_PROD/Our_mission/RPS_MISSION.alias) (last visited Jan. 15, 2021).

<sup>62</sup> Businesses & Institutions, KEYBANC CAPITAL MARKETS INC., <https://www.key.com/businesses-institutions/solutions/capital-markets/institutional-equities/equity-research.jsp> (last visited Jan. 15, 2021).

<sup>63</sup> What We Deliver, JEFFERIES FINANCIAL GROUP INC., <https://www.jefferies.com/InvestmentBanking/Restructuring-Advisors/2/284> (last visited Jan. 15, 2021).

- ~~= Best position our clients' credit profile to achieve the lowest yield on their debt offerings~~
- ~~= Demonstrate the most in-depth knowledge of potential buyers to maximize sale value for our clients~~

#### ~~Senior Level Attention on Transactions~~

- ~~• Senior level commitment to our clients' transactions that enables us to:
  - ~~= Bring extensive experience in structuring our clients' transactions~~
  - ~~= Bring extensive experience to the advice we give our clients~~
  - ~~= Maximize the likelihood that transactions are completed flawlessly~~~~

~~281. Further, Defendant Jefferies boasts about its abilities in investment banking research stating, in relevant part, "[s]ince the beginning of 2016, Jefferies has executed over 620 non-U.S. book-run financings and advisory transactions for clients based in 50 countries. Each region has its own unique mix of developed and emerging markets and Jefferies has built long-standing relationships with partners throughout the Americas, EMEA and Asia-Pacific."<sup>64</sup>~~

~~282. Defendants UBS, CLSA, China Merchants, Haitong, and Lighthouse claim a special expertise with respect to offerings of this nature, which would cause an investor to reasonably believe that based on such expertise a due diligence investigation of Qutoutiao was conducted and full disclosure of all material information was made in the Offering Documents.~~

~~283. Defendant UBS prides itself as "the first foreign invested securities firm in China with full licenses to conduct businesses including securities brokerage, securities investment consultancy, financial advisory related to securities trading and securities investment activities, securities underwriting and sponsoring, securities proprietary trading, securities asset management and distributing financial products."<sup>65</sup> UBS addresses its key focus as an investment bank and the~~

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<sup>64</sup> Global Reach, JEFFERIES FINANCIAL GROUP INC., <https://www.jefferies.com/InvestmentBanking/Investment-Banking-Global/2/942> (last visited Jan. 15, 2021).

<sup>65</sup> Media, UBS SECURITIES CO., LTD., <https://www.ubs.com/global/en/media/archive/news-archive-ndp/en-20140217-b.html> (last visited Jan. 15, 2021).

~~quality of its services, stating in relevant part:~~

~~[W]e work with our clients to understand their business needs and provide ideas that help power growth. We recognize that our clients have an intimate understanding of their own business. We complement their insights by offering them access to some of the best minds in capital markets, financing and restructuring, as well as transactional expertise.~~

~~[W]e apply the right research instruments for new evidence to deliver clear insights. Our team of economists, strategists and analysts provide the breadth, depth and originality of investment thinking.<sup>66</sup>~~

284. Defendant CLSA pointedly claims to be “a leading provider of corporate finance and capital markets services in Asia.” For example, CLSA’s website states:

~~Leveraging its unrivalled Asian network and direct links to China, CLSA’s corporate finance and capital markets team...support the ambitions of Chinese corporates looking for offshore financing or acquisitions and global corporates seeking access to capital or assets in Asia.~~

~~CLSA helps public and private corporations, financial institutions and government agencies strengthen their balance sheets and fund future growth while maximizing value for investors.<sup>67</sup>~~

285. Defendant China Merchants tout their relevant achievements, stating:

~~[It] has achieved stunning progress in capital markets []. In terms of IPO underwriting amount from 2016 to 2018, [China Merchants] ranked top 3 among Chinese securities firms and top 5 overall in the market, and furthermore, [it] has established the first mover advantage and dominant position in the “New Economy” companies’ [Hong Kong] IPO market.<sup>68</sup>~~

286. Defendant Haitong “boasting its well-established businesses” states:

~~Haitong International is capable of providing great potentialities and a better platform for the development of equity research. Starting from 2019, the equity research of Haitong International has been fully interlinked with that of Haitong Securities and the research reports are published bilingually. The research coverage comprises nearly 200 Chinese concept stocks, 800 A stocks and 200 Taiwanese, Japanese, Indian and South Korean stocks. Its team is committed to providing~~

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<sup>66</sup> ~~Our business, UBS SECURITIES CO., LTD., <https://www.ubs.com/global/en/investment-bank/about-us/business-areas.html> (last visited Jan. 15, 2021).~~

<sup>67</sup> ~~Corporate Finance & Capital Markets, CLSA, <https://www.elsa.com/services/corporate-finance/> (last visited Jan. 15, 2021).~~

<sup>68</sup> ~~Company Profile, CHINA MERCHANTS SECURITIES INTERNATIONAL COMPANY LIMITED, <http://www.emschina.com.hk/en/AboutUs/Info> (last visited Jan. 15, 2021).~~

~~services catering to clients' needs as practicable as possible and excelling in terms of coverage, responsiveness and depth of contents. Based in China, Haitong International has invited 10 and 20 local analysts on board in Tokyo and Mumbai respectively who possess full knowledge of the local regulations, sectors and backgrounds of enterprises. In this way, Haitong International is strong to serve the local investors in the overseas markets and, through its engagement in Chinese, Japanese and Indian markets, it can provide better cross-border investment services in China.~~

~~Haitong International's analysts have been being granted awards from time to time by a number of authoritative institutions at home and abroad including Institutional Investor, Asiamoney and New Fortune. With its content focus philosophy, the equity research team strives to provide timeliness and hands on research to clients.<sup>69</sup>~~

~~287. Defendant Lighthouse claims to be "China's leading new economy boutique investment bank, focusing on the new economy field, and is committed to becoming a partner of the top 1% new economy entrepreneurs' strategy and capital."<sup>70</sup> Lighthouse also touts its innovative abilities stating, in relevant part, "[i]t is neither afraid of complex competitive situations nor adheres to the usual universal understanding. Instead, through research in the spirit of disruptive innovation, it obtains an understanding of the nature of the business, market trends, key success factors and competition patterns, supplemented by strong execution, thus helping Customers break through the competitive situation and achieve leaps and bounds." Lighthouse's website provides transaction successes, boasting it provided "exclusive financial advisory services" leading to "Qutoutiao successful[] IPO."<sup>71</sup>~~

~~288. As alleged herein, the Underwriter Defendants acted with scienter in that they either~~

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<sup>69</sup> Business Overview, HAITONG INTERNATIONAL SECURITIES GROUP LIMITED, <https://www.htisee.com/en-us/global-equities> (last visited Jan. 15, 2021).

<sup>70</sup> Company Profile, LIGHTHOUSE CAPITAL RECORD, <http://lighthouse.hfsxw.cn/index.php?m=content&c=index&a=lists&catid=2> (last visited Jan. 15, 2021).

<sup>71</sup> *Qu Toutiao successfully IPO, Light Source Capital provides exclusive financial advisory services*, LIGHTHOUSE CAPITAL RECORD (Sept. 15, 2018), <http://lighthouse.hfsxw.cn/index.php?m=content&c=index&a=show&catid=147&id=302>.

~~knew or recklessly disregarded the fact that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading, that such statements or documents would be issued or disseminated to the investing public, and the Underwriter Defendants substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, the Underwriter Defendants, by virtue of their receipt of information reflecting the true facts regarding Qutoutiao, their control over, and/or receipt and/or modification of Qutoutiao's allegedly materially misleading misstatements and/or their associations with the Company, which made them privy to confidential proprietary information concerning Qutoutiao, participated in the fraudulent scheme alleged herein.~~

~~289. Additionally, the Underwriter Defendants knew or recklessly disregarded that QTT ran false or misleading advertising specifically targeting lower tier cities because regulators were more lenient in those cities, and as result would face increasing regulatory scrutiny and reputational harm. As discussed in ¶¶ [263-264], the Underwriter Defendants (who served as an underwriter for the IPO) were on notice and had a duty to conduct a due diligence investigation on the ads QTT was running. Likewise, as discussed in ¶¶ [263-265], the Underwriter Defendants (who served as an underwriter for the SPO) were on notice and had a duty to conduct a due diligence investigation on the ads QTT was running.~~

~~C. **Loss Causation**~~

~~290. The five declines in Qutoutiao's share price during the Class Period as alleged herein are actionable. The timing and magnitude of the Company's share price declines on each of those days negates any inference that the losses suffered by Lead Plaintiff and the Class was caused by changed market conditions, macroeconomic or industry factors or Qutoutiao-specific facts unrelated to Qutoutiao, the Insider Defendants and the Underwriter Defendants' fraudulent~~

~~conduct. The economic loss, i.e., damages, suffered by Plaintiff and other Class members was a direct result of Qutoutiao and the Insider Defendants' fraudulent statements and the corresponding artificial inflation in Qutoutiao's securities prices and the subsequent significant decline in the value of Qutoutiao's securities when Qutoutiao and the Insider Defendants' prior acts of misconduct were revealed.~~

~~291. At all relevant times, Qutoutiao, the Insider Defendants, and the Underwriter Defendants' materially false and misleading statements or omissions alleged herein directly or proximately caused the damages suffered by the Plaintiff and the putative Class. Those statements were materially false and misleading by their failure to disclose a true and accurate picture of Qutoutiao's ability to monetize user traffic and sell compliant advertisements. Throughout the Class Period, Defendants publicly issued materially false and misleading statements and omitted material facts necessary to make Defendants' statements not false or misleading, causing Qutoutiao securities to be artificially inflated. Plaintiff and other Class members purchased and/or acquired Qutoutiao securities at those artificially inflated prices, causing them to suffer the damages complained of herein.~~

~~292. Qutoutiao, the Insider Defendants, and the Underwriter Defendants were deliberately reckless in not knowing or turning a blind eye to the fact that the Company's business model was not sustainable as it was struggling to compete for advertisers. Nonetheless, Qutoutiao, the Insider Defendants, and the Underwriter Defendants made materially false and misleading public statements that provided false information to investors about the Company's capabilities and success. Thus, shares of the Company's ADSs continued to trade at levels artificially inflated by Qutoutiao, the Insider Defendants, and the Underwriter Defendants' misleading justifications for the negative information was revealed on March 29, 2019, April 3, 2019, December 10, 2019,~~

~~March 18, 2020 and July 15, 2020 which maintained the artificial inflation in the Company's share price until it was finally fully removed on December 16, 2020.~~

~~**1. Qutoutiao's March 29 and April 3, 2019 Partial Disclosures**~~

~~293. After the stock market closed on March 29, 2019, and just months after the IPO, the Company announced a follow-on SPO to sell new shares and raise additional capital. On April 3, 2019, the Company announced the pricing of the SPO. As the market absorbed the Company's need for a cash infusion so soon after its IPO, the Company's share price fell over 17% to close at \$9.50 per share on April 4, 2019, on unusually heavy trading volume.~~

~~294. According to Keith Noonan of The Motley Fool in an article entitled "Why Qutoutiao Stock Plummeted 42.8% in April" on May 10, 2019, the Company's "stock fell early in April following news that the Chinese internet company would raise money through a new share offering, and continued to trend lower as the month progressed."<sup>72</sup> Mr. Noonan explained that "[r]aising funds through another share offering is dilutive, meaning it will reduce the earning power of the shares that had previously been on the market because there are more components among which to split profits." But he also noted that "[e]ntertainment content consumption continues to rise in China and around the globe, and there's considerable growth potential for product categories like curated news feeds and short-video platforms" which explains why "Qutoutiao has been posting some strong growth, nearly quadrupling its monthly active users to reach 93.8 million in the third quarter and boosting sales by 426% to hit \$193 million."~~

~~**2. The December 10, 2019 Wolfpack Report Partial Disclosure**~~

~~295. The truth was further revealed on December 10, 2019 through a report published~~

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<sup>72</sup> Keith Noonan, *Why Qutoutiao Stock Plummeted 42.8% in April*, THE MOTLEY FOOL (May 10, 2019, 9:13 AM), <https://www.fool.com/investing/2019/05/10/why-qutoutiao-stock-plummeted-428-in-april.aspx>.

~~by Wolfpack Research entitled “QTT: Fake Revenue, Non-Existent Cash, Undisclosed Related Parties.” The Wolfpack Report alleged, among other things, that (1) Qutoutiao’s “revenue is generated solely by the accounting department” so only RMB 798 million of its RMB 3.02 billion reported revenue is actual revenue and (2) the Company “exists to enrich its Founder and CEO, Eric Tan, and promote his VC fund’s other ventures by creating its own in-house ‘advertising agent’ in order to direct significant amounts of ad traffic to undisclosed related parties owned by Tan” and remove restrictions that had been preventing the Company from doing so, thereby “perpetrat[ing] the unmitigated ad fraud that [Wolfpack] observed in [its] sample.” On this news, the Company’s share price fell 4% to close at \$2.86 per share on December 11, 2019, on heavy trading volume.~~

~~296. Qutoutiao responded to the Wolfpack Report on December 27, 2019, assuring investors that, among other things, the “statements in the Report are based on numerous factual errors and an overall misunderstanding of the Company’s business” and “arrived at false conclusions after misquoting by a wide margin our publicly disclosed financial figures and making a series of unsubstantiated claims some of which can easily be proven to be fabrications” (“QTT Response”).<sup>73</sup>~~

~~297. Wolfpack Research published another report on January 17, 2020 to take into account certain claims in the QTT Response, recalculating the Company’s actual revenue to be RMB 2.09 billion of the RMB 3.02 billion reported revenue.<sup>74</sup>~~

### ~~3. Qutoutiao’s March 18, 2020 Partial Disclosure~~

~~298. The façade of a sustainable business model continued to crumble with the release~~

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~~<sup>73</sup> *Qutoutiao Inc. Responds to the False and Misleading Report by Wolfpack Research*, QUTOUTIAO INC. (Dec. 27, 2019, 7:30 ET), <http://www.globenewswire.com/news-release/2019/12/27/1964629/0/en/Qutoutiao-Inc-Responds-to-the-False-and-Misleading-Report-by-Wolfpack-Research.html>.~~

~~<sup>74</sup> *QTT’s Top 12 Lies and Omissions for the New Year*, WOLFPACK RESEARCH (Jan. 17, 2020), <https://wolfpackresearch.com/qtt-top-12-lies-and-omissions-for-the-new-year/>.~~

~~of the Company's financial reports for the fourth quarter and fiscal year ended December 31, 2019 ("4Q19") before the market opened on March 18, 2020 which revealed 40% higher net losses for the quarter (\$79.2 million) than the fourth quarter of the prior year (\$56.47 million). Investors at least found solace in the Company's revenue increasing to \$238.2 million, up 25% YOY, driven by its advertising revenue of \$228.2 million, up 27% YOY. Defendants claimed this revenue growth was due to its customer base improving, allowing the Company to monetize user traffic. On this news, the Company's share price fell nearly 23% to close at \$3.29 per share on March 20, 2020, after two days of heavy trading.~~

#### ~~4. The July 15, 2020 CCTV Exposé Partial Disclosure~~

~~299. However, the truth about the Company's revenue was revealed on July 15, 2020 when CCTV, China's state-controlled broadcaster, aired its high-profile annual show aimed at protecting consumers. That evening, the hosts of the CCTV Exposé stated that Qutoutiao had allowed unqualified institutions to push medical advertisements that exaggerated treatment effects, including, for example, an advertisement offering free weight-loss products valued at \$14,300 that would help users lose more than 30 pounds a month. In addition, links in some of the Company's advertisements directed users to illegal online gambling platforms. Major Android app stores in China quickly removed the QTT App following the CCTV Exposé. On this news, Qutoutiao's share price fell over 24% to close at \$2.79 per share on July 17, 2020, after two days of unusually heavy trading volume.~~

~~300. As Jeremy Bowman at The Motley Fool pointed out on July 16, 2020, the price of Qutoutiao ADSs "fell after it was accused of running improper ads," including "misleading ads on its site."<sup>75</sup> While the Company immediately apologized and promised to do a better job of~~

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~~<sup>75</sup> Jeremy Bowman, *Why Qutoutiao Stock Tumbled Today*, THE MOTLEY FOOL (July 16, 2020, 2:21 PM), <https://www.fool.com/investing/2020/07/16/why-qutoutiao-stock-tumbled-today.aspx>.~~

~~screening ads on its platform, the damage was done to the Company's reputation and ADS price.~~

#### ~~5. Qutoutiao's December 16, 2020 Class Period Ending Disclosure~~

~~301. The truth was fully revealed after the market closed on December 16, 2020 when Qutoutiao reported disappointing 3Q20 financial results, including a YOY 19.7% drop in revenue and a 23.1% drop in advertising revenue "primarily due to the remedial measures undertaken by us in response to the report by China Central Television on certain advertisements placed by third-party advertising agents on [the QTT App], such as removing misleading or inappropriate advertisements from our applications, and the temporary removal of [the QTT App] from several major Android-based app stores in China from July 16, 2020 to July 31, 2020, which caused decreases in our average MAUs, average DAUs and average daily time spent by DAU." As the market absorbed this news, the Company's share price fell 24% to close at \$1.90 per share on December 22, 2020, after four days of unusually heavy trading volume. This was a significant decline from QTT's IPO price of \$7 per share and SPO price of \$10 per share,~~

~~302. Mr. Bowman at the Motley Fool noted on December 17, 2020 that the Company "has been struggling to recover after [CCTV] accused Qutoutiao of selling suspicious ads with false information at a high-profile consumer rights show back in July" and that the removal of the QTT App "from several major Android app stores for two weeks in July, in the aftermath of CCTV's accusations...led to a sharp downturn in the business during the July through September quarter."<sup>76</sup>~~

### ~~VIII. PRESUMPTION OF RELIANCE – FRAUD ON THE MARKET~~

~~303. Lead Plaintiff will rely upon the presumption of reliance established by the fraud-on-the-market doctrine in that, among other things: (a) Defendants made public misrepresentations~~

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<sup>76</sup> Jeremy Bowman, *Why Qutoutiao Stock Dipped Today*, THE MOTLEY FOOL (Dec. 17, 2020, 4:47 PM), <https://www.fool.com/investing/2020/12/17/why-qutoutiao-stock-dipped-today/>.

~~or failed to disclose material facts; (b) the omissions and misrepresentations were material; (c) the Company's ADSs traded in an efficient market; (d) the misrepresentations alleged would tend to induce a reasonable investor to misjudge the value of the Company's ADSs; and (e) Lead Plaintiff and the other members of the Class purchased Qutoutiao securities between the time Defendants misrepresented or failed to disclose material facts and the time the true facts were disclosed, without knowledge of the misrepresented or omitted facts.~~

~~304. At all relevant times, the market for Qutoutiao securities was efficient for the following reasons, among others: (a) Qutoutiao's securities met the requirements for listing, and were listed and actively traded on the NASDAQ, a highly efficient market; (b) during the Class Period, shares of Qutoutiao's ADSs were actively traded, demonstrating a strong presumption of efficiency; (c) as an SEC regulated issuer, Qutoutiao filed with the SEC periodic public reports; (d) Qutoutiao regularly communicated with public investors, including through regular disseminations of press releases on the major newswire services and other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and (e) unexpected material news about Qutoutiao was rapidly reflected in and incorporated into Qutoutiao's ADSs price during the Class Period.~~

~~305. As a result, the market for Qutoutiao securities promptly digested current information regarding the Company from all publicly available sources and reflected such information in the prices of Qutoutiao's ADSs. Under these circumstances, all purchasers or acquirers of Qutoutiao securities during the Class Period suffered similar injury through their purchase or acquisition of Qutoutiao securities at artificially inflated prices, and a presumption of reliance applies.~~

~~306. In addition, Lead Plaintiff is entitled to a presumption of reliance under *Affiliated*~~

~~Ute Citizens of Utah v. United States, 406 U.S. 128 (1972), because the claims asserted herein are predicated in part upon material omissions of fact that Defendants had a duty to disclose.~~

#### ~~IX. INAPPLICABILITY OF SAFE HARBOR~~

~~307. The statutory safe harbor provided for forward looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. All of the specific statements pleaded herein were not identified as, and/or were not “forward-looking statements” when made. To the extent there were any forward looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward looking statements pleaded herein, the Company, the Insider Defendants, and the Underwriter Defendants are liable for those false forward looking statements because at the time each of those forward looking statements was made, the particular speaker knew that the particular forward looking statement was false, and/or the forward looking statement was authorized and/or approved by an executive officer of Qutoutiao named under the 1934 Act who knew that those statements were materially false and misleading when made.~~

#### ~~X. CLASS ALLEGATIONS~~

~~308. Lead Plaintiff brings this action as a class action, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3), on behalf of a class consisting of all person and entities that purchased, or otherwise acquired, Qutoutiao securities during the Class Period, and were damaged by the conduct asserted herein. Defendants and their immediate families and legal representatives, heirs, successors or assigns and any entity in which the Defendants named herein have, or had, a controlling interest, are excluded from the Class.~~

~~309. The members of the Class are so numerous that joinder of all members is~~

impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. While the exact number of Class member is unknown to Lead Plaintiff at this time, and can only be ascertained through appropriate discovery, Lead Plaintiff believes that there are hundreds, if not thousands, of members of the proposed Class. ~~Throughout the Class Period, between approximately 71.2 and 72.5 million shares of Qutoutiao securities were outstanding, owned and/or publicly traded on the NASDAQ by hundreds, if not thousands, of persons.~~

310. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class that predominate over questions that may affect individual class members include whether:

- (a) Defendants violated the federal securities laws;
- (b) Defendants omitted and/or misrepresented material facts;
- (c) Defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- (d) ~~With respect to Lead Plaintiff's 1934 Act claims, the Company, the Insider Defendants and the Underwriter Defendants, with deliberate recklessness, disregarded or turned a blind eye toward the fact that their Class Period statements were false and misleading;~~
- (e) The price of Qutoutiao securities was artificially inflated; and
- (f) The extent of damage sustained by Class members and the appropriate measure of damages.

311. Lead Plaintiff's claims are typical of those of the Class members because they each were similarly damaged by Defendants' wrongful conduct in violation of the federal securities laws.

312. Lead Plaintiff will fairly and adequately protect the interests of the Class members and has retained counsel who are experienced in securities class action litigation. Lead Plaintiff has no interests that conflict with those of the Class.

313. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Lead Plaintiff knows of no difficulties in the management of this action that would preclude its maintenance as a class action.

#### **XI. THE 1933 ACT CLAIMS**

314. Lead Plaintiff asserts strict liability claims under §§ 11, 12(a)(2) and 15 of the 1933 Act against Qutoutiao, the Director Defendants, and the Underwriter Defendants (the “1933 Act Defendants”), who signed and/or had authority over the contents of the Offering Documents issued in connection with the Company’s Offerings. Lead Plaintiff’s 1933 Act claims are not based on any allegation of deliberate or intentional misconduct, and Lead Plaintiff expressly disclaims any reference or reliance upon fraud allegations for such claims ~~and these claims are entirely separate and distinct from the 1934 Act Claims asserted above.~~ The 1933 Act Claims incorporate by reference Sections II (Statement Regarding Plaintiff’s Investigation), III (Jurisdiction and Venue), IV (Parties), V (Claims Asserted), VI.C. (Defendants’ ~~Class Period~~ Financial Statements Violated GAAP and Obscured Qutoutiao’s True Financial Performance and Prospects), and X (Class Allegations) of this omnibus Complaint.

315. The 1933 Act Claims arise out of Qutoutiao’s approximately \$85.8 million IPO of 13.8 million ADSs at \$7.00 per share and approximately \$31.0 million SPO of 3.3 million ADSs at \$10 per share.

316. On September 11, 2018, Qutoutiao filed its final amendment to the IPO Registration Statement with the SEC on Form F-1/A. The Company’s IPO Registration Statement was declared effective on September 13, 2018. On September 14, 2018, Qutoutiao issued a press release

announcing the pricing of its IPO and that Defendants Citigroup, Deutsche, China Merchants, and UBS would be acting as “joint bookrunners” for the Offering, and Defendant KeyBanc would be acting as co-manager.<sup>77</sup> That same day, Qutoutiao filed its IPO Prospectus on Form 424B4 with the SEC, (collectively, the “IPO Documents”).

317. On March 29, 2019, Qutoutiao issued a press release announcing its proposed follow-on SPO, and named Defendants Citigroup, Deutsche, CLSA, Jefferies, Haitong and Lighthouse as “joint bookrunners” for the Offering.<sup>78</sup> On April 1, 2019, the Company filed its first and final amendment to its SPO Registration Statement on Form F-1/A. The SPO Registration Statement was declared effective shortly thereafter. On April 3, 2019, Qutoutiao filed its SPO Prospectus on Form 424B4 with the SEC, (collectively, the “SPO Documents”).

318. By the commencement of this action, Qutoutiao’s ADSs closed at \$2.42 per share on September 17, 2020, representing a 65.43% decline from the \$7.00 per share IPO price and a 75.8% decline from the \$10.00 per share SPO price. And on January 15, 2021, the QTT ADSs closed at \$2.14 per share.

319. Each of the Offerings was a firm-commitment offering, in which the Underwriter Defendants purchased shares of Qutoutiao and sold them to the investing public.

320. Under applicable SEC rules and regulations, the Offering Documents were required to disclose known trends, events or uncertainties that they were having, and were reasonably likely to have, and their impact on Qutoutiao’s continuing operations. The statements contained in ¶¶

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<sup>77</sup> News Release, *Qutoutiao Inc. Announces Pricing of Initial Public Offering*, GLOBE NEWSWIRE (Sept. 14, 2018, 6:40 AM EDT), <https://ir.qutoutiao.net/news-releases/news-release-details/qutoutiao-inc-announces-pricing-initial-public-offering>.

<sup>78</sup> News Release, *Qutoutiao Inc. Announces Proposed Follow-on Public Offering of American Depositary Shares*, GLOBE NEWSWIRE (Mar. 29, 2019, 5:42 PM EDT), <https://ir.qutoutiao.net/news-releases/news-release-details/qutoutiao-inc-announces-proposed-follow-public-offering-american>.

321, 323, 325, 326, *infra*, were materially false and misleading because the Offering Documents were negligently prepared and, as a result, contained untrue statements of material fact or omitted to state other facts necessary to make the statements made not misleading and were not prepared in accordance with the rules and regulations governing its preparation, thereby rendering the 1933 Act Defendants liable pursuant to the federal securities laws.

A. **Materially False and Misleading Statements and Omissions in the IPO Documents.**

321. The IPO Documents contained multiple material misstatements regarding the Company's strategy of targeting users in lower tier cities in China, stating in relevant part that:

*Since our inception, we have strategically targeted users from tier-3 and below cities in China because of the enormous opportunities in this underserved market.* As of the end of 2017, tier-3 and below cities had a population of 1,027 million each owning 0.5 mobile device on average (compared to a population of 363 million each owning 1.3 mobile devices on average in tier-1 and 2 cities), suggesting significant potential for further mobile penetration, according to the Analysys [sic] Report. *Mobile users in tier-3 and below cities tend to have a slower pace of life and spend more time on the Internet given limited offline entertainment venues. Moreover, they often enjoy fast increasing disposable income and lower financial pressures thanks to lower housing prices. These factors contribute to a significant need for mobile entertainment content while also create strong monetization potential.*

322. However, the statements contained in ¶ 321 supra contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading because, the “enormous opportunities” and “strong monetization potential” in Tier-3 and Tier-4 cities had much less to do with the high number of users in those cities having more time and disposable income to spend on the internet and far more to do with the high number of unqualified advertisers who wanted to run non-compliant ads in those cities because regulators were more lenient and users were less aware of their rights as consumers in those cities.

323. The IPO Documents also stated that the Company's “*net revenues have increased rapidly* from RMB58.0 million (US\$8.8 million) in 2016 to RMB517.1 million (US\$78.1 million)

in 2017, and further from RMB107.3 million (US\$16.2 million) in the six months ended June 30, 2017 to RMB717.8 million (US\$108.5 million) in the same period in 2018.” The majority of this revenue was derived from advertising, as the Company explained in the IPO Documents:

Baidu, which is our largest customer and operates a third-party advertising platform, contributed 69.9%, 43.7%, 75.8% and 12.1% of our net revenues in 2016 and 2017 and the six months ended June 30, 2017 and 2018, respectively. Baidu also accounted for 92.6%, 59.8% and 30.5% of our accounts receivable as of December 31, 2016 and 2017 and June 30, 2018, respectively. ***To enhance our platform’s monetization capabilities, we acquired an advertising agent in February 2018 that operates a programmatic advertising system. We expect this system will allow us to reduce our reliance on third-party advertising platforms such as Baidu.*** Prior to our acquisition of this advertising agent in February 2018, we engaged such advertising agent to serve as our sales agent in selling our advertising solutions to other second-tier advertising agents and end advertisers. ***In 2017 and the six months ended June 30, 2018, 26.2% and 78.2% of our net revenues, respectively, were generated through this advertising agent. These second-tier advertising agents and end advertisers are our customers as they select our mobile applications to place their advertisement and our performance obligation is to provide the underlying advertising display services to them.***

324. The statements contained in ¶ 323 *supra* contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading by: (i) touting the Company’s “rapidly” increased revenues without disclosing that a significant number of the advertisements that contributed to this revenue growth could not be substantiated and thus were considered false advertisements under applicable Chinese regulations or provided links to illegal online gambling platforms; (ii) noting the “programmatic advertising system” of Dianguan as a benefit of, and reason for, replacing the Company’s third-party advertising agent, Baidu, without disclosing that the Company was seeking to avoid the oversight Baidu had been providing which had prevented non-compliant ads from running; (iii) explaining the Company’s ability to monetize user traffic, as enhanced by its programmatic advertising system, without disclosing that any enhancement was actually primarily related to its increased ability to sell non-compliant ads;

and (iv) describing the Company's "performance obligation" to its end advertiser customers without disclosing that it set up separate teams with different processes and procedures for qualified versus unqualified advertisers in order to sell non-compliant and illegal ads.

325. In addition, the IPO Documents note that the Company "currently generate[s] most of [its] revenue from advertising," so to "Enhance [the Company's] Monetization Capabilities":

*We intend to enhance our advertising solutions by strengthening the performance of our proprietary programmatic advertising system.* We believe our strategic move to reduce the utilization of third-party advertising platforms and focus on expanding our advertising customer base and advertising agents directly will further boost our advertising revenue.

326. With regard to "Monetization," the IPO Documents specifically stated that:

*Our advertising technology aims to maximize our revenue potential by rewarding the more relevant advertisement with a more prominent position, despite the potentially lower price bid of such advertisement.* We actively monitor the advertisements placed to help ensure their relevance.

Customers for our programmatic advertising system are comprised of advertising agents and end advertisers. *We have our own sales personnel who are responsible to support and monitor the performances of advertising agents and to attract advertising customers to use our programmatic advertising system directly.* We enter into standard agreements with advertising agents generally for a term of one year. *Our advertising agents are responsible for identifying end advertisers, confirming payments and setting up accounts on our programmatic advertising system for advertising customers. We provide ongoing training to advertising agents to familiarize them with the functionalities and capabilities of our programmatic advertising system. These advertising agents are responsible for collecting and submitting the relevant documentation and licenses from advertising customers for our approval to open an account on our programmatic advertising system, and are also liable for any infringement of third-party rights or violation of regulatory requirements caused by advertisements placed by their end advertisers.*

327. The statements contained in ¶¶ 325-326 *supra* contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading by: (i) detailing how the Company was enhancing or maximizing its ability to monetize user traffic, without disclosing that any enhancement was actually primarily related to its increased

ability to sell non-compliant ads after replacing Baidu with Dianguan in February 2018; (ii) describing the Company's sales personnel's responsibilities versus those of the third-party advertising agents without disclosing that it set up separate teams within QTT with different processes and procedures for qualified versus unqualified advertisers in order to be able to sell non-compliant ads; and (iii) claiming that the third-party advertising agents are liable for any ads that violate Chinese regulatory requirements without disclosing that the Company would also face increasing regulatory scrutiny and reputational harm.

328. The IPO Documents specifically tout Qutoutiao's mission "to deliver quality and relevant content to users, and content sourcing, management and recommendation" as "core focuses of [its] operations," including with regard to advertising and content screening technology:

- **Advertising.** *Our advertising technology enables advertising customers to bid for audience and automatically deliver relevant, targeted promotional links to users.* Our system rewards more relevant advertisements with more prominent positions, despite the potentially lower priced bids of such advertisements. Our audience segmentation technology helps ensure the relevance of advertisements shown to users by analyzing their interests through browsing activity, viewed content and commenting history. In addition, we have the ability to predict click-through rates for advertisements using logistic regression, gradient boosting decision tree and linear and nonlinear modeling algorithms. Enhanced precision of these click-through rate projections can help maximize the cost effectiveness of customers' advertising budgets.
- **Content Screening Technology.** Our text screening system screens information based on pre-set keywords. *We utilize artificial intelligence to identify inappropriate or objectionable content from images, speeches and videos, significantly increasing efficiency over manual review. We also apply deep learning methods to analyze complex visual content. Through big data and continuous training, our system is able to monitor and identify objectionable visual content with a high degree of accuracy. The screening system automatically declines content that did not meet the standards of our platform and flags suspicious content for manual review by our content management team.*

329. The statements contained in ¶ 328 *supra* contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading by

touting (i) the Company's advertising technology without disclosing that misleading or illegal ads were being delivered as part of the "relevant, targeted promotional links to users" and (ii) the Company's content screening technology without disclosing that different processes and procedures were being applied to advertising content such that any declined ads could be manually allowed on the QTT App.

330. Furthermore, while the 1933 Act Defendants list numerous "Risk Factors" in the IPO Documents, they failed to adequately warn investors that certain "Risk Factors" had already materialized at the time of the IPO.

331. First, the IPO Documents warned that "[a]dvertisements on our mobile applications may be subject us to penalties and other administrative actions":

Under PRC advertising laws and regulations, we are obligated to monitor the advertising content shown on our mobile applications to ensure that such content is true, accurate and in full compliance with applicable laws and regulations. . . . However, *for the determination of the truth and accuracy of the advertisements, there are no implementing rules or official interpretations, and such a determination is at the sole discretion of the relevant local branch of the State Administration for Market Regulation, or the SAMR (successor of SAIC and the State Food and Drug Administration), which results in uncertainty in the application of these laws and regulations. . . .*

We cannot assure you that all the advertisements shown on our mobile applications are true, accurate, appropriate and in full compliance with applicable laws and regulations. *For example, advertisers on our mobile applications, or their agents, may use measures that are designed to evade our monitoring, such as providing inauthentic material that does not match the actual advertisement, or supplying advertising which is superficially compliant but nevertheless is linked to one or more webpages that feature noncompliant advertising content. In addition, our employees responsible for reviewing advertisements may not fully understand the relevant laws and regulations or may be inappropriately influenced by the advertisers. In each case, we may still be held responsible for noncompliant advertising content.* We include clauses in most of our advertising contracts requiring that all advertising content provided by advertising customers must comply with relevant laws and regulations. *Pursuant to the contracts between us and the relevant advertising agents or advertising customers, they are liable for all damages to us caused by their breach of such representations. However, there*

*can be no assurance that we will be able to successfully enforce our contractual rights.*

*Violation of these laws and regulations may subject us to penalties, including fines, confiscation of our advertising income, orders to cease dissemination of the advertisements and orders to eliminate the effect of illegal advertisement. If an illegal advertisement featured on our mobile applications were to have excessive negative effects, our brand and reputation may be harmed, and PRC governmental authorities may pursue more severe penalties and administrative actions against us. PRC governmental authorities may even force us to terminate our advertising operation or revoke our licenses in circumstances involving serious violations. Such penalties may have a material and adverse effect on our business, results of operations and financial condition.*

332. The statements contained in ¶ 331 *supra* contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading: (i) declaring that how advertising laws and regulations are applied to ads is uncertain without disclosing that the Company was capitalizing on that uncertainty and relying on regulators not paying attention to non-compliant ads in Tier-3 and Tier-4 cities; (ii) explaining how advertisers could evade the Company's monitoring or how the Company's employees could unwittingly overlook a non-compliant ad without disclosing that it set up separate teams with different processes and procedures for qualified versus unqualified advertisers in order to be able to sell non-compliant ads; and (iii) warning of the possible ramifications of violating the applicable advertising laws and regulations without disclosing that the Company was already violating them and thus the ramifications were not a matter of if, but when.

333. Second, the IPO Documents warned that because “[w]e generate a substantial majority of our revenues from advertising[,] [a] decline in our advertising revenue could harm our business:”

We generated almost all of our revenues from advertising services in 2016, 2017, and the six months ended June 30, 2018. When we first commenced our business, we collaborated with various third-party advertising platforms to place advertisements on our mobile applications. *To enhance our platform's*

*monetization capabilities, we acquired an advertising agent in February 2018 that operates a programmatic advertising system. This system will serve to power our advertising solutions while reducing the use of third-party advertising platforms. In 2017 and the six months ended June 30, 2018, 26.2% and 78.2%, respectively, of our net revenues were generated through this advertising agent.* We have limited experience in operating the programmatic advertising system and in acquiring our own advertising agents and advertising customers. We may not be able to establish our own sales personnel to effectively and efficiently acquire and retain advertising agents and advertising customers. The effectiveness of our programmatic advertising system may not perform as expected and achieve widespread acceptance by advertising customers.

Our advertising customers for our programmatic advertising system are comprised of advertising agents and end advertisers. . . . *If we fail to retain existing advertising customers or ensure that their advertising spend with us remains at similar or increased levels or attract new advertising customers to advertise on our platform, our business, results of operations and financial condition may be materially and adversely affected.*

334. The statements contained in ¶ 333 *supra* contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading: (i) noting the “programmatic advertising system” of the advertising agent that the Company acquired as a benefit of, and reason for, replacing its third-party advertising platforms without disclosing that it was seeking to avoid the oversight third-parties like Baidu had been providing which had prevented non-compliant ads from running; (ii) explaining the Company’s ability to monetize user traffic, as enhanced by its programmatic advertising system, without disclosing that any enhancement was actually primarily related to its increased ability to sell non-compliant ads; and (iii) warning of material and adverse effects on the Company if existing customers are lost or their advertising spend decreases without disclosing that many of its customers were unqualified advertisers who were purchasing non-compliant ads and thus the revenue generated from those customers inevitably would decrease when the non-compliant ads became public.

335. Lastly, with regard to the “Transactions with Companies Controlled by or Affiliated with Mr. Tan,” the IPO Documents disclosed that:

***In 2016, we paid RMB5.0 million (US\$0.8 million) to Youxuan Information Technology (Shanghai) Co., Ltd., a company controlled by Mr. Eric Siliang Tan, our co-founder and executive chairman, to cooperate on a potential business project.*** Such project was subsequently canceled and the entire amount was refunded back to us in 2017.

***We paid Shanghai Yinnuo Management Consulting Co., Ltd., or Yinuo Management, a company controlled by Mr. Eric Siliang Tan, service fees in the amount of RMB3.0 million (US\$0.5 million), RMB16.8 million (US\$2.5 million) and RMB6.9 million (US\$1.0 million) in 2016, 2017 and the six months ended June 30, 2017, respectively.*** Such service fees relate to costs charged by Yinuo Management to provide us with financial accounting support, office space and certain other administrative support. Amounts due to Yinuo Management in connection with these service fees as of December 31, 2016 was RMB3.0 million (US\$0.5 million). No amount was due to Yinuo Management in connection with these service fees as of December 31, 2017. We have since developed all relevant functions internally and leased office space for our operations that were previously provided by Yinnuo Management and we currently do not expect to pay service fees to Yinuo Management for such functions or office space in the future.

***We received RMB5.3 million (US\$0.8 million) in service fees from AdIn Media (Shanghai) Co., Ltd., or AdIn Media, a company in which Mr. Eric Siliang Tan indirectly owns a minority interest and in which he is a key management personnel, in the six months ended June 30, 2018.*** Such fees related to agent and platform service provided to AdIn Media by facilitating advertising customers to display advertisements with AdIn Media. As of June 30, 2018, an amount of RMB6.7 million (US\$1.0 million) was due to AdIn Media in connection with such services provided, which represent the service fee collected from advertising customers but not yet paid to AdIn Media.

***We also received RMB1.2 million (US\$0.2 million) in service fees from AdIn Media in the six months ended June 30, 2018 relating to advertising serviced provided by us to AdIn Media.*** As of June 30, 2018, the remaining balance of such service fees was RMB0.9 million (US\$0.1 million).

336. The statements contained in ¶ 335 *supra* contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading: (i) the transactions with companies controlled by or affiliated with Tan also include transactions involving the Mengtui App, Fangce and the Shihui Miao App based on Tan's ownership stakes in Taiyun Capital, and Bige and (ii) the Dianguan Acquisition should have been listed as a related party transaction based on Liang's special relationship with Tan through companies in which Tan

is a majority investor or owner, including Woofoo Equity and Taiyun Capital.

**B. Materially False and Misleading Statements and Omissions in the SPO Documents.**

337. The SPO Documents contained multiple material misstatements regarding the Company's strategy of targeting users in lower tier cities in China, stating in relevant part:

*Since our inception, we have strategically targeted users from lower tier cities in China because of the enormous opportunities in this underserved market.* As of the end of 2017, lower tier cities had a population of 1,027 million each owning 0.5 mobile device on average (compared to a population of 363 million each owning 1.3 mobile devices on average in tier-1 and 2 cities), suggesting significant potential for further mobile penetration, according to the Analysys Report. *Mobile users in lower tier cities tend to have a slower pace of life and spend more time on the Internet given limited offline entertainment venues. Moreover, they often enjoy fast increasing disposable income and lower financial pressures due to lower housing prices. These factors have given rise to a significant need for mobile entertainment content while also creating high monetization potentials.* Users from lower tier cities tend to have different interests and preferences in comparison to users from tier-1 and tier-2 cities. Qutoutiao's light entertainment-oriented and easily digestible content is designed to resonate with such users and provides us with a significant advantage to capture this underserved market.

338. However, the statements contained in ¶ 337 *supra* contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading because, the "enormous opportunities" and "high monetization potentials" in lower tier cities had much less to do with the high number of users in those cities having more time and disposable income to spend on the internet and far more to do with the high number of unqualified advertisers who wanted to run non-compliant ads in those cities because regulators were more lenient and users were less aware of their rights as consumers in those cities.

339. The SPO Documents also touted that the Company's "*net revenues have increased rapidly* from RMB58.0 million (US\$8.8 million) in 2016 to RMB517.1 million (US\$78.1 million) in 2017, and further to RMB3,022.1 million (US\$439.6 million) in 2018." The majority of the Company's revenue came from advertising, as the SPO Documents stated, in relevant part:

Baidu, which used to be our largest customer and operates a third-party advertising platform, contributed 69.9%, 43.7% and 4.2% of our net revenues in 2016, 2017 and 2018, respectively. Baidu also accounted for 59.8% and 8.8% of our accounts receivable as of December 31, 2017 and 2018, respectively. ***To enhance our platform’s monetization capabilities, we acquired an advertising agent in February 2018 that operates a programmatic advertising system. We expect this system will allow us to reduce our reliance on third-party advertising platforms such as Baidu.*** Prior to our acquisition of this advertising agent in February 2018, we engaged such advertising agent to serve as our sales agent in selling our advertising and marketing solutions to other second-tier advertising agents and end advertisers. ***These second-tier advertising agents and end advertisers are our customers as they select our mobile applications to place their advertisement and our performance obligation is to provide the underlying advertising display services to them.***

340. The statements contained in ¶ 339 *supra* contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading by: (i) touting the Company’s “rapidly” increased revenues without disclosing that a significant number of ads whose claims could not be substantiated and thus were considered false advertisements under applicable regulations or provided links to illegal online gambling platforms; (ii) noting the “programmatic advertising system” of Dianguan as a benefit of, and reason for, replacing the Company’s third-party advertising agent, Baidu, without disclosing that the Company was seeking to avoid the oversight Baidu had been providing which had prevented non-compliant ads from running; (iii) explaining the Company’s ability to monetize user traffic, as enhanced by its programmatic advertising system, without disclosing that any enhancement was actually primarily related to its increased ability to sell non-compliant ads; and (iv) describing the Company’s “performance obligation” to its end advertiser customers without disclosing that it had to set up separate teams with different processes and procedures for qualified versus unqualified advertisers in order to sell non-compliant ads.

341. The SPO Documents contained substantially the same statements as the IPO Documents about the Company’s abilities to “Enhance [its] Monetization Capabilities” and how

Qutoutiao plans to achieve such improved “Monetization” through advertising, which are quoted more fully in ¶ 333. These statements remained materially false or misleading for the reasons discussed in ¶ 334.

342. The SPO Documents also contained substantially the same statements as the IPO Documents about Qutoutiao’s mission “to deliver quality and relevant content to users, and content sourcing, management and recommendation” as “core focuses of [its] operations,” as related to advertising and content screening technology, which are quoted more fully in ¶ 328. These statements remained materially false or misleading for the reasons discussed in ¶ 329.

343. Furthermore, while the 1933 Act Defendants list numerous “Risk Factors” in the SPO Documents, they failed to adequately warn investors that certain “Risk Factors” had already materialized at the time of the SPO.

344. First, the SPO Documents warned that because “[w]e generate a substantial majority of our revenues from advertising and marketing[,] [a] decline in our advertising and marketing revenues could harm our business:”

We generated a substantial majority of our revenues from advertising and marketing services in 2016, 2017 and 2018. When we first commenced our business, we collaborated with various third-party advertising platforms to place advertisements on our mobile applications. *To enhance our platform’s monetization capabilities, we acquired an advertising agent in February 2018 that operates a programmatic advertising system. This system will serve to power our advertising and marketing solutions while reducing the use of third-party advertising platforms.* We have limited experience in operating the programmatic advertising system and in acquiring our own advertising agents and advertising customers. We may not be able to establish our own sales personnel to effectively and efficiently acquire and retain advertising agents and advertising customers. The effectiveness of our programmatic advertising system may not perform as expected and achieve widespread acceptance by advertising customers.

Our advertising customers for our programmatic advertising system are comprised of advertising agents and end advertisers. . . . *If we fail to retain existing advertising customers or ensure that their advertising spend with us remains at similar or increased levels or attract new advertising customers to advertise on our platform, our business, results of operations and financial condition may be*

*materially and adversely affected.*

345. The statements contained in ¶ 344 *supra* contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading: (i) noting the “programmatically advertising system” of the advertising agent that the Company acquired as a benefit of, and reason for, replacing its third-party advertising platforms without disclosing that it was seeking to avoid the oversight third-parties like Baidu had been providing which had prevented non-compliant ads from running; (ii) explaining the Company’s ability to monetize user traffic, as enhanced by its programmatically advertising system, without disclosing that any enhancement was actually primarily related to its increased ability to sell non-compliant ads; and (iii) warning of material and adverse effects on the Company if existing customers are lost or their advertising spend decreases without disclosing that many of its customers were unqualified advertisers who were purchasing non-compliant ads and thus the revenue generated from those customers inevitably would decrease when the non-compliant ads became public.

346. Second, the SPO Documents contained substantially the same statement as the IPO Documents regarding the Company’s warning that “[a]dvertisements on [the Company’s] mobile applications may subject us to penalties and other administrative actions,” which is quoted more fully in ¶ 331. This statement remained materially false or misleading for the reasons discussed in ¶ 332.

347. Third, the SPO Documents warned that “[n]on-compliance with law on the part of third parties with which we conduct business could disrupt our business and adversely affect results of our operation and financial condition:”

Third parties with which we conduct business, such as content providers, advertising agents, advertising customers and merchandise suppliers, may be subject to regulatory penalties or punishments because of their regulatory compliance failures or may be infringing upon other parties’ legal rights, which

may, directly or indirectly, disrupt our business. *Although we conduct review of legal formalities and certifications before entering into contractual relationships with third parties, and take measures to reduce the risks that we may be exposed to in case of any non-compliance by third parties, we cannot be certain whether such third party has violated any regulatory requirements or infringed or will infringe any other parties' legal rights.* For example, content providers may submit copyrighted content that they have no right to distribute. While our content management system screens content for potential copyright infringements, we may not be able to identify all instances of copyright infringement. In the event we deliver content that violates the copyrights of a third party, we may be required to pay damages to compensate such third party. Even though we have the contractual right to seek indemnification from the relevant content provider for such payment, there can be no assurance that we will be able to enforce such right. As a result, our business, results of operations and financial condition could be materially and adversely affected. Similarly, advertising content of advertising customers may also not be in full compliance with applicable laws and regulations that may have an adverse effect as to our business, results of operations and financial condition. See “— Advertisements on our mobile applications may subject us to penalties and other administrative actions.”

348. The statement contained in ¶ 347 *supra* was materially false and misleading because:

(i) the measures the Company had taken to reduce its risk included setting up separate teams with different processes and procedures for qualified versus unqualified advertisers and placing riskier ads in lower tier cities where there was less regulatory scrutiny; (ii) even though the Company had measures in place to decline non-compliant ads, the advertiser or the employees who were responsible for those ads could contact the reviewing department for a second manual review and allow the ads on the QTT App manually; and (iii) the Company was already aware or recklessly disregarded that certain advertisers had already violated regulatory requirements or infringed other parties' legal rights. Until July 2020, investors were in the dark about a substantial amount of Qutoutiao's revenue was being generated from ads by unqualified advertisers which were not compliant with the applicable Chinese regulations or that they were managing the risk of losing that revenue by reducing the chance that they would get caught by state regulators, rather than by simply not putting risky advertisements on the QTT App.

349. Lastly, when acknowledging the Company's related party transactions, the SPO Documents disclosed with regard to "Transactions with Companies Controlled by or Affiliated with Mr. Tan:"

*In 2016, we paid RMB5.0 million (US\$0.8 million) to Youxuan Information Technology (Shanghai) Co., Ltd., a company controlled by Mr. Eric Siliang Tan, our co-founder and executive chairman, to cooperate on a potential business project.* Such project was subsequently canceled and the entire amount was refunded back to us in 2017.

*We paid Shanghai Yinnuo Management Consulting Co., Ltd., or Yinnuo Management, a company controlled by Mr. Eric Siliang Tan, service fees in the amount of RMB3.0 million and RMB16.8 million in 2016 and 2017, respectively.* Such service fees relate to costs charged by Yinnuo Management to provide us with financial accounting support, office space and certain other administrative support. Amounts due to Yinnuo Management in connection with these service fees as of December 31, 2016 was RMB3.0 million. No amount was due to Yinnuo Management in connection with these service fees as of December 31, 2017. We have since developed all relevant functions internally and leased office space for our operations that were previously provided by Yinnuo Management and we currently do not expect to pay service fees to Yinnuo Management for such functions or office space in the future.

*We received RMB29.6 million (US\$4.3 million) in service fees from AdIn Media (Shanghai) Co., Ltd., or AdIn Media, a company in which Mr. Eric Siliang Tan indirectly owns a minority interest and in which he is a key management personnel, in 2018.* Such fees related to agent and platform service provided to AdIn Media by facilitating advertising customers to display advertisements with AdIn Media. We also received fees in the amount of RMB4.5 million (US\$0.6 million) for providing advertising services to AdIn Media in 2018. As of December 31, 2018, Mr. Tan was no longer a key management personnel of AdIn Media, and thus AdIn Media ceased to be our related party.

350. The statements contained in ¶ 349 *supra* contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading: (i) the transactions with companies controlled by or affiliated with Tan also include transactions involving the Mengtui App, Fangce and the Shihui Miao App based on Tan's ownership stakes in Taiyun Capital, and Bige; and (ii) the Dianguan Acquisition should have been listed as a related party transaction based on Liang's special relationship with Tan through companies in which Tan

is a majority investor or owner, including Woofoo Equity and Taiyun Capital.

## XII. CLAIMS FOR RELIEF

### COUNT I

~~Violations of § 10(b) of the 1934 Act and  
Rule 10b-5 Promulgated Thereunder  
(Against Qutoutiao, the Insider Defendants, and the Underwriter Defendants)~~

~~351. Lead Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein. This claim is brought pursuant to § 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10(b)-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, against Qutoutiao, the Insider Defendants, and the Underwriter Defendants.~~

~~352. The Defendants in this Count, carried out a plan, scheme, and course of conduct which was intended to, and did: (a) deceive the investing public, including Lead Plaintiff and the other Class members, as alleged herein; and (b) cause Lead Plaintiff and the other members of the Class to purchase Qutoutiao securities at artificially inflated prices. In furtherance of this unlawful scheme, plan, and course of conduct, Qutoutiao, the Insider Defendants, and the Underwriter Defendants took the actions set forth herein.~~

~~353. During the Class Period, Qutoutiao, the Insider Defendants, and the Underwriter Defendants participated in the preparation of and/or disseminated or approved the false statements specified above, which they knew, or deliberately disregarded as or turned a blind eye to being misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.~~

~~354. The Defendants in this Count: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statement made, in light of the circumstances under which they were made, not~~

~~misleading; and (c) engaged in acts, practices, and a course of business that operated as a fraud and deceit upon the purchasers or acquirers of Qutoutiao securities in an effort to maintain artificially high market prices for Qutoutiao securities in violation of § 10(b) of the 1934 Act and Rule 10b-5, promulgated thereunder.~~

~~355. Qutoutiao, the Insider Defendants, and the Underwriter Defendants, individually and together, directly and indirectly, by the use, means, or instrumentalities of interstate commerce and/or the mails, engaged and participated in a continuous course of conduct to conceal the truth and/or adverse material information about the business, operation, and future prospects of Qutoutiao as specified herein.~~

~~356. Qutoutiao, the Insider Defendants, and the Underwriter Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Qutoutiao's value and performance and continued substantial growth, which included the preparation of and/or dissemination or approval of untrue statements of material facts and/or omitting to state material facts necessary in order to make statements made about Qutoutiao and its business operations and further prospects, in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and course of business which operated as a fraud and deceit upon the purchasers and acquirers of Qutoutiao securities during the Class Period.~~

~~357. Qutoutiao, the Insider Defendants, and the Underwriter Defendants had motive and opportunity to perpetrate the fraudulent scheme and course of conduct described herein. Qutoutiao and the Underwriter Defendants prepared and disseminated the fraudulent Offering Documents. The Underwriter Defendants delivered the Offering Documents to investors. Representatives of~~

~~the Underwriter Defendants had ultimate authority and provided final approval for the contents of the Offering Documents before they were filed with the SEC and issued to the public.~~

~~358. The Insider Defendants were the most high-level executives and/or directors at Qutoutiao and members of the Company's management team or had control thereof. By virtue of their responsibilities and activities as a senior officer, the Individual Defendants were: (i) privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections, and/or reports; (ii) engaged in significant personal conduct and familiarity with the other defendants and were advised of, and had access to, other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iii) aware of and/or participated in the issuing of statements and press releases on behalf of the Company, and each made false statements concerning the Company's abilities and had the opportunity to commit the fraud alleged.~~

~~359. Qutoutiao, the Insider Defendants, and the Underwriter Defendants had actual knowledge of the misrepresentations and/or omissions of material fact set forth herein or acted with reckless disregard for the truth in that they failed to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether the statements alleged herein, were false and/or misleading, or turned a blind eye toward the true facts that were available to them. The material misrepresentations and/or omissions of the Defendants in this Count were done knowingly or recklessly and for the purpose and effect of concealing the Company's true prospects from the investing public and supporting the artificially inflated price of Qutoutiao securities.~~

~~360. As demonstrated by Qutoutiao's, the Insider Defendants', and the Underwriter Defendants' misstatements and/or omissions of the Company's business, operations, financial well-being, and prospects throughout the Class Period, these defendants, if they did not have actual~~

~~knowledge of the misrepresentations and/or omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading, or turning a blind eye toward the true facts that were available to them.~~

~~361. As a result of the dissemination of the materially false and/or misleading information and failure to disclose material facts, as set forth herein, the market price of Qutoutiao securities was artificially inflated. In ignorance of the fact that market prices of Qutoutiao securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by these Defendants, or upon the integrity of the market in which the securities trade, and/or on the absence of material adverse information that was known to, or recklessly disregarded, but these Defendants, but not disclosed in public statements by Defendants, Lead Plaintiff and the other Class members acquired Qutoutiao securities at artificially high prices and were, or will be, damaged thereby.~~

~~362. At the time of said misrepresentation and omissions, Lead Plaintiff and the other Class members were ignorant of their falsity and believed them to be true. Had Lead Plaintiff and the other members of the Class, and the marketplace known the truth regarding the Company's business, which was not disclosed by Defendants, Lead Plaintiff and the other member of the Class would not have purchased or acquired Qutoutiao securities, or if they had acquired such securities, they would not have done so at the artificially inflated prices that they paid.~~

~~363. By virtue of the foregoing, the Defendants in this Count have violated § 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder.~~

~~364. As a direct and proximate result of Qutoutiao's, the Insider Defendants', and the Underwriter Defendants' wrongful conduct, Lead Plaintiff and the other members of the Class~~

~~suffered damages in connection with their purchase or acquisition of Qutoutiao securities during the Class Period.~~

~~365. This action was filed within two years of discovery of the fraud and within five years of Lead Plaintiff's purchase of securities giving rise to the cause of action.~~

~~**COUNT II**  
**Violations of § 20(a) of the 1934 Act**  
**(Against the Insider Defendants)**~~

~~366. Lead Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein. As members of Qutoutiao's executive team and/or the Company's Board of Directors, the Insider Defendants acted as controlling persons of Qutoutiao within the meaning of § 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).~~

~~367. By virtue of their high-level positions, agency, ownership and contractual rights, and participation in and/or awareness of Qutoutiao's operations and/or intimate knowledge of the false information and disseminated to the investing public, the Insider Defendants had the power to influence and control, and did influence and control, directly or indirectly, the decision-making of Qutoutiao, including the content and dissemination of the various statements that Lead Plaintiff contends are false and misleading. The Insider Defendants were provided with, or had unlimited access to Qutoutiao's reports, press releases, public filings and other statements, alleged by Lead Plaintiff to have been misleading, prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or to cause the statements to be corrected.~~

~~368. In particular, each of the Insider Defendants had direct and supervisory involvement in the day-to-day operation of the Company and, therefore, are presumed to have had the power to control and/or influence the particular transactions giving rise to the securities violations, as alleged herein, and exercised the same.~~

~~369. As set forth above, Qutoutiao and the Insider Defendants each violated § 10(b) and Rule 10b-5, promulgated thereunder, by their acts and omissions as alleged in this Complaint and the Class was damaged thereby. By virtue of their positions as controlling persons, the Insider Defendants are liable pursuant to § 20(a) of the 1934 Act.~~

~~370. As a direct and proximate result of the Insider Defendants' wrongful conduct, Lead Plaintiff and the other members of the Class suffered damages in connection with their purchase or acquisition of Qutoutiao securities during the Class Period.~~

~~371. This action was filed within two years of discovery of the fraud and within five years of Lead Plaintiff's purchase of securities giving rise to the cause of action.~~

### **COUNT III**

#### **Violations of § 11 of the 1933 Act**

#### **(Against Qutoutiao, the Director Defendants and the Underwriter Defendants)**

372. Lead Plaintiff repeats and realleges every allegation contained in Sections II through V, X and XI above as if fully alleged in this Count, only to the extent, however, that the allegation does not allege fraud, scienter, or the intent of the Defendants to defraud Lead Plaintiff or the other members of the Class.

373. This claim is brought pursuant to § 11 of the Securities Act, 15 U.S.C. § 77k, against Qutoutiao, the Director Defendants (with respect to Offering Documents signed, or approved the signing of, by them), and the Underwriter Defendants (with respect to Offering Documents underwritten by them), on behalf of all persons and entities who purchased or acquired Qutoutiao securities pursuant or traceable to the IPO and/or SPO Documents and were damaged by the conduct alleged herein. Lead Plaintiff asserts only strict liability and negligence claims and expressly disclaims any claim of fraud or intentional misconduct. This Count does not sound in fraud. Lead Plaintiff does not allege liability under this Count arises from any scienter or fraudulent

intent, which are not elements of a § 11 claim. All of the proceeding allegations of fraud or fraudulent conduct and/or motive are specifically excluded from this Count.

374. As part of the Offering Documents, Qutoutiao registered and sold approximately 15.3 million securities in the closing of the IPO and SPO, collectively. Qutoutiao was the issuer of its securities pursuant to the Offering Documents within the meaning of § 11 of the 1933 Act.

375. The Defendants named in this Count had ultimate control and/or authority over the contents and dissemination of the IPO and/or SPO Documents. Further, the Director Defendants each signed the IPO and/or SPO Documents.

376. Qutoutiao securities were issued and sold pursuant to the Offering Documents. All purchases or acquisitions of Qutoutiao securities by shareholders in the IPO or SPO were a result of the issuance of the Offering Documents and the shares registered thereunder. Each security sold to investors by Qutoutiao and the Underwriter Defendants at the time of the closing of the IPO and/or SPO are traceable to the Offering Documents.

377. As alleged in this Complaint, the Offering Documents contained untrue statements of material fact and omitted to state material facts required to be stated therein or necessary to make the statements therein not misleading. The facts misstated and omitted in the Offering Documents were material.

378. As the issuer and registrant, Qutoutiao is strictly liable for the untrue statements of material fact. The Defendants named in this Count owed to Lead Plaintiff and the other Class members, the duty to make reasonable and diligent investigation of the statements contained in the IPO and/or SPO Documents, to ensure that the statements contained or incorporated by reference therein were true, and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. None of the Defendants named

under this Count made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the IPO and/or SPO Documents were accurate and complete in all material respects. Had they exercised reasonable care, they would have known of the material misstatements and omissions alleged herein.

379. Lead Plaintiff and the Class members did not know, nor in the exercise of reasonable diligence could they have known, that the Offering Documents contained untrue statements of material fact and omitted to state material facts required to be stated or necessary to make the statements identified herein not misleading when they purchased or acquired Qutoutiao securities pursuant or traceable to the IPO and/or SPO Documents.

380. As a direct and proximate results of the conduct and omissions of the Defendants named in this Count, Lead Plaintiff and the other Class members suffered substantial damages in connection with their purchase of Qutoutiao securities pursuant or traceable to the IPO and/or SPO Documents.

381. This claim is brought within one year of discovery of the untrue statements and omissions in the Offering Documents and within three years of their effective dates. By reason of the foregoing, the Defendants named in this Count are liable to Lead Plaintiff and the Class under § 11 of the 1933 Act.

**COUNT IV<sup>79</sup>**  
**Violations of § 12(a)(2) of the 1933 Act**  
**(Against Qutoutiao and the Underwriter Defendants)**

382. Lead Plaintiff repeats and realleges every allegation contained in Sections II through V, X and XI above as if fully alleged in this Count, only to the extent, however, that the allegation does not allege fraud, scienter, or the intent of the Defendants to defraud Lead Plaintiff or the other members of the Class.

383. This claim is brought against Qutoutiao and the Underwriter Defendants (with respect to Offering Documents underwritten by them), pursuant to § 12(a)(2) of the 1933 Act, 15 U.S.C. § 771(a)(2), on behalf of all persons who purchased or acquired Qutoutiao securities pursuant to the IPO and/or SPO Documents and were damaged by the conduct alleged herein. Lead Plaintiff asserts only strict liability and negligence claims and expressly disclaims any claim of fraud or intentional misconduct. This Count does not sound in fraud. Lead Plaintiff does not allege liability under this Count arises from any scienter or fraudulent intent, which are not elements of a § 12(a)(2) claim. All of the proceeding allegations of fraud or fraudulent conduct and/or motive are specifically excluded from this Count.

384. The Defendants in this Count solicited, offered and/or sold Qutoutiao securities using means or instruments of transportation or communication in interstate commerce or the

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<sup>79</sup> Lead Plaintiff did not buy in the IPO or SPO directly from Defendants, but he asserts claims in this section on behalf of class members who did. Lead Plaintiff has brought these claims because his own personal claims mean that he “possess[es] the same interest and suffered the same injury” as those class members who bought directly from Defendants, he therefore has “the same necessary stake in litigating” the falsity of Defendants statements, and this therefore “gives the named plaintiff a sufficient stake in the outcome of her putative class members’ cases” to assert these claims. *See Langan v. Johnson & Johnson Consumer Companies, Inc.*, 897 F.3d 88, 94 (2d. Cir. 2018) (internal quotations and modification omitted); *but see Yi Xiang v. Inovalon Holdings, Inc.*, No. 16-CV-4923-VM, 327 F.R.D. 510, 519-21 (S.D.N.Y. 2018)

mails.

385. Qutoutiao and the Underwriter Defendants were sellers, offerors, or solicitors of purchasers of the shares offered pursuant to the IPO and/or SPO Documents.

386. As alleged herein, the Offering Documents contained untrue statements and/or omissions of material fact or facts necessary in order to make the statements, in light of the circumstances under which they were made, not misleading.

387. Qutoutiao securities were issued and sold pursuant to the Offering Documents. All purchases or acquisitions of Qutoutiao securities by shareholders in the IPO or SPO were a result of the issuance of the Offering Documents and the shares registered thereunder. Each security sold to investors by Qutoutiao and the Underwriter Defendants at the time of the closing of the IPO and/or SPO are traceable to the Offering Documents.

388. As the issuer of the registered securities, Qutoutiao is strictly liable for the materially false and misleading statements and/or omissions of material facts, as described herein. Qutoutiao never made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the prospectuses were accurate and complete in all material respects.

389. Nor did any of the Underwriter Defendants conduct a reasonable investigation or possess reasonable grounds for the belief that the statements contained in the Offering Documents were accurate and complete in all material respects. Had they exercised reasonable care, the Underwriter Defendants would have known of the material misstatements and/or omissions, as alleged herein.

390. Investors were solicited, offered and sold Qutoutiao securities in the IPO and/or SPO pursuant to the Offering Documents that, as alleged herein, contained materially false and

misleading statements and/or omissions of material facts therein and were damaged thereby. Moreover, these investors did not know, nor in the exercise of reasonable diligence could they have known, of the untrue statements of material facts or omissions of material facts in the Offering Documents when they purchased or acquired their Qutoutiao securities.

391. The Class members who purchased or otherwise acquired Qutoutiao securities pursuant to the IPO and/or SPO from Qutoutiao or the Underwriter Defendants have sustained damages as a result of the materially false and misleading statements and/or omissions in the Offering Documents.

392. This Count is brought within one year of the discovery of, or reasonably could have discovered, the facts upon which this Count is based and within three years of the date that the securities upon which this Count is brought were sold to the public.

393. By reason of the foregoing, Qutoutiao and the Underwriter Defendants are liable for violation of § 12(a)(2) of the 1933 Act to Class members who purchased securities sold pursuant to the IPO and/or SPO Documents. These Class members also have the right to rescind and recover the consideration paid for these securities upon tender of their ADSs to the Underwriter Defendants, and to recover rescissory damages to the extent they have already sold the securities.

**COUNT V**  
**Violations of § 15 of the 1933 Act**  
**(Against the Director Defendants)**

394. Lead Plaintiff repeats and realleges every allegation contained in Sections II through V, X and XI above as if fully alleged in this Count, only to the extent, however, that the allegation does not allege fraud, scienter, or the intent of the Defendants to defraud Lead Plaintiff or the other members of the Class.

395. This claim is brought pursuant to § 15 of the Securities Act, 15 U.S.C. § 77o, against the Director Defendants (with respect to Offering Documents signed, or approved the signing of, by them), on behalf of all persons and entities who purchased or acquired Qutoutiao securities pursuant or traceable to the IPO and/or SPO Documents. For purposes of this claim, Lead Plaintiff asserts only strict liability and negligence claims and expressly disclaims any claim of fraud or intentional misconduct. This Count does not sound in fraud. All of the proceeding allegations of fraud or fraudulent conduct and/or motive are specifically excluded from this Count. For purposes of this Count, Lead Plaintiff does not allege that liability under this Count arises from any scienter or fraudulent intent, which are not elements of a § 15 claim.

396. At all relevant times, the Director Defendants were “controlling persons” of Qutoutiao within the meaning of § 15 of the 1933 Act.

397. Qutoutiao is strictly liable under §§ 11 and 12(a)(2) for the materially false and misleading statements and/or omissions in the Offering Documents.

398. The Director Defendants violated § 11 by issuing the IPO and/or SPO Documents, which included materially untrue statements of fact and omitted to state material facts requires to be stated therein or necessary to make the statements therein not misleading. Each of the Defendants in this Count were controlling persons of Qutoutiao when the IPO and/or SPO Documents were filed and became effective due to their: (i) senior executive positions; (ii) positions on Qutoutiao’s Board of Directors; (iii) direct involvement in Qutoutiao’s day-to-day operations and in the review and approval of the IPO and/or SPO Documents; (iv) solicitation of Qutoutiao’s stockholders’ votes in favor of the issuance of Qutoutiao securities; and (v) participation in and preparation of the IPO and/or SPO Documents.

399. By virtue of their exercise of control over Qutoutiao, the Director Defendants had

the power to influence and control, and did influence and control, directly or indirectly, the decision-making of the Company, including the content of Qutoutiao's IPO and/or SPO Documents and did not make a reasonable investigation or possess reasonable grounds for the belief that the IPO and/or SPO Documents were accurate and complete in all material respects. Had the Defendants in this Court exercised reasonable care, they would have known of the material misstatements and omissions alleged herein.

400. This claim is brought within one year of discovery of the untrue statements and omissions in the Offering Documents and within three years of their effective dates. By reason of the foregoing, under § 15 of the 1933 Act, the Director Defendants are liable to all persons and entities who purchased or acquired Qutoutiao securities pursuant or traceable to the IPO and/or SPO Documents.

### **XIII. PRAYER FOR RELIEF**

WHEREFORE, Lead Plaintiff's pray for relief and judgment, as follows:

**A.** Declaring this action to be a proper class action pursuant to Rule 23(a) and Rule 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Class defined herein;

**B.** Awarding Lead Plaintiff and the members of the Class compensatory damages against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' conduct, in an amount to be proven at trial, including interest thereon;

**C.** Awarding Lead Plaintiff and the Class pre-judgment and post-judgment interest, as well as reasonable attorneys' fees, expert witness fees and other costs; and

**D.** Awarding such other equitable/injunctive or further relief as this Court may deem just and proper.

### **XIV. JURY TRIAL DEMANDED**

Lead Plaintiff hereby demands a trial by jury.

DATED: January 15, 2021

Respectfully Submitted,

**ROCHE CYRULNIK FREEDMAN LLP**

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**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury that on January 15, 2021, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record.

/s/ Constantine P. Economides  
Constantine P. Economides

## **SPECIAL APPENDIX**

**CASE NO. 23-1233**

**SPECIAL APPENDIX**  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re QUTOUTIAO, INC. SECURITIES  
LITIGATION

20-cv-6707 (SHS)

OPINION & ORDER

SIDNEY H. STEIN, U.S. District Judge.

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Lead Plaintiff James Pappas brought this securities class action against defendant Qutoutiao Inc. (“QTT”), a Chinese news-aggregation app, its directors and officers, and its corporate underwriters. In his Consolidated Amended Class Action Complaint (“the Complaint”) Lead Plaintiff alleges claims under the Securities Act of 1933 and the Securities Exchange Act of 1934 relating to QTT’s initial public offering (“IPO”) and secondary public offering (“SPO”).

QTT and one of its directors, Oliver Yucheng Chen, have moved for dismissal of the Complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim (“the QTT Motion”). Underwriter Defendants similarly moved for dismissal, joining the arguments set forth in the QTT Motion and asserting additional grounds.

For the reasons set forth below, the Court grants both motions.

## I. BACKGROUND

### A. QTT

QTT operates mobile platforms that distribute and share entertainment content in China. The QTT app aggregates articles and videos from content providers and presents customized feeds to app users. QTT generates the majority of its revenue through advertising. (Compl. ¶¶ 58, 61.)

On September 14, 2018, QTT announced its IPO of 12,000,000 American Depositary Shares (“ADS”) at a price of \$7 per share. In connection with the IPO, QTT filed with the Securities and Exchange Commission (“SEC”) its third and final amendment to its previously filed—but not yet effective—registration statement on Form F-1 that took effect on September 13. On September 14, QTT filed its prospectus on Form 424B4 (“IPO Prospectus,” and together with the IPO Registration Statement, the “IPO Offering Documents”). The IPO closed on September 18, 2018. (Compl. ¶ 62.)

On March 29, 2019, QTT announced an SPO of 10,000,000 QTT ADSs at a price of \$10 per share. In connection with the SPO, QTT filed with the SEC its only amendment to the previously filed—but not yet effective—registration statement on Form F-1 that took effect on April 2. On April 3, QTT filed its prospectus on Form 424B4 (the “SPO Prospectus”). The SPO closed on April 5, 2019. (Compl. ¶ 64.)

QTT reported third quarter 2020 financials on December 16, 2020 that allegedly triggered a significant share price decline. (Compl. ¶ 90.) Consequently, Lead Plaintiff argues that the relevant class period for this action is between September 14, 2018 and December 16, 2020. (*Id.* ¶ 1.)

### B. Parties

Lead Plaintiff purchased QTT securities during the class period and alleges that he suffered damages arising from federal securities law violations. (Compl. ¶ 22.)

The Complaint names four classes of defendants. The first is QTT itself. The Complaint then lists four Insider Defendants: Eric Tan (“Tan”), the co-founder of QTT and the Company’s Chief Executive Officer (“CEO”) since May 20, 2019; Lei Li, the co-founder of QTT and director

and CEO of the Company until May 2019 ; Jingbo Wang, a director and QTT's Chief Financial Officer ("CFO") until January 22, 2020; and Xiaolu Zhu, the Company's CFO since January 22, 2020 (collectively, "the Insider Defendants"). (*Id.* ¶¶ 24-29.)

Next, the Complaint names six Director Defendants: Shaoqing Jiang, a director and a member of QTT's Audit Committee and Compensation Committee until September 2019; Jianfei Dong, at all relevant times a director and co-president; Oliver Yucheng Chen, at all relevant times a director and the Chief Strategy Officer from August 2018 to February 2020; Yongbo Dai, a director beginning in November 2018; James Jun Peng, at all relevant times a director of the company; and Feng Li, at all relevant times a director and a previous Chair of the Audit Committee (collectively, "the Director Defendants"). (*Id.* ¶¶ 30-35.)

Finally, the Complaint lists nine Underwriter Defendants: Citigroup Global Markets Inc.; Deutsche Bank Securities Inc.; China Merchants Securities (HK) Co., Ltd., a China-based company principally engaged in financial services; UBS Securities LLC; Keybanc Capital Markets, Inc.; CLSA Limited; Haitong International Securities Company Limited; Jefferies Group LLC; and Lighthouse Capital International Inc., also known as Guangyuan Capital or Guangyuan Ziben, a China-based company that operates as a boutique investment bank (collectively, "the UW Defendants"). (*Id.* ¶¶ 37-45.)

### C. Claims

Lead Plaintiff's claims arise out of the 1934 Exchange Act and the 1933 Securities Act. The 1934 Exchange Act claims pertain to QTT, the Insider Defendants, and the UW Defendants (collectively, the "1934 Exchange Act Defendants") (Compl. ¶ 53), and the 1933 Securities Act claims pertain to QTT, the Director Defendants, and the UW Defendants (collectively, the "1933 Securities Act Defendants") (Compl. ¶ 56).

Count I alleges that QTT, the Insider Defendants, and the UW Defendants committed securities fraud by violating Section 10(b) of the Securities Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated thereunder. Count II alleges that the Insider Defendants are liable for securities fraud as controlling persons pursuant to Section 20(a) of the Securities Exchange Act, 15 U.S.C. § 78t(a). Count III alleges that QTT, the Director Defendants, and the UW Defendants made materially false or misleading statements in violation of Section 11 of the 1933 Securities Act. Count IV alleges that QTT and the UW defendants violated Section 12(a)(2) of the Securities Act, which makes liable any person who offers a security by means of a "prospectus ... which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77l(a)(2). Finally, Count V alleges that Director Defendants violated Section 15 of the Securities Act, which makes "controlling persons" or entities jointly and severally liable for any violations of Sections 11 and 12 committed by those within their charge. 15 U.S.C. § 77o.

## II. DISCUSSION

### A. 1934 Exchange Act Claims

Lead Plaintiff pleads securities fraud-based claims under sections 10(b) and 20(a) of the 1934 Exchange Act and SEC Rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated thereunder, against the 1934 Exchange Act Defendants (Compl. ¶ 123), accusing them of knowingly or recklessly making materially false and misleading public statements and omissions. The Complaint contends that:

- Qutoutiao was not able to generate sufficient revenue to meet its revenue targets unless it allowed unqualified advertisers to advertise on the QTT App, which it accomplished by targeting consumers who lived in lower-tier Chinese cities;
- The true reason why QTT replaced its advertising agent, Baidu, with a related party, Dianguan, was to bypass Baidu's oversight of the content and quality of advertisements and thereby generate increased revenue from risky advertisements;
- QTT had created separate teams for 1) dealing with qualified advertisers, whose advertisements were largely compliant with applicable Chinese regulations and thus low risk, and 2) dealing with unqualified advertisers, and that the "high-risk" team (which was disbanded after an exposé by the China Central Television "CCTV" network) outsourced nearly all of its advertisement screening to contractors who conducted minimal due diligence on their clients;
- As a result, QTT would place risky advertisements on the QTT App whose claims could not be substantiated and thus were considered false advertisements under applicable regulations or which were linked to illegal online gambling platforms;
- As a result, QTT faced increasing regulatory scrutiny and reputational harm;
- As a result, QTT's advertising revenue was reasonably likely to decline;
- QTT was reporting RMB 620 million more in revenue to the SEC than its subsidiaries did in aggregate to the Chinese government's State Administration for Market Regulation ("SAMR");
- As a result of the foregoing, defendants' positive statements about QTT's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

(Compl. ¶ 124.)

#### 1. *Motion to Dismiss*

In evaluating a motion to dismiss a complaint pursuant to Rule 12(b)(6), the Court must accept the truth of the facts alleged in the complaint and draw all reasonable inferences in favor of the plaintiff. *Global Network Commc'ns, Inc. v. City of New York*, 458 F.3d 150, 154 (2d Cir. 2006). A complaint should be dismissed if it fails to set forth "enough facts to state a claim for relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility

that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 556).

Here, the Court “may consider ‘any written instrument attached to [the Complaint] as an exhibit or any statements or documents incorporated in it by reference, as well as public disclosure documents required by law to be, and that have been, filed with the SEC, and documents that the plaintiffs either possessed or knew about and upon which they relied in bringing the suit.’” *City of Pontiac Policemen’s & Firemen’s Ret. Sys. v. UBS AG*, 752 F.3d 173, 179 (2d Cir. 2014) (quoting *Rothman v. Gregor*, 220 F.3d 81, 88 (2d Cir. 2000)).

## 2. Standard of Review

A complaint alleging securities fraud is subject to two heightened pleading standards. First, the complaint must satisfy Rule 9(b), which requires that it “state with particularity the circumstances constituting fraud.” Fed. R. Civ. P. 9(b); see *ATSI Commc’ns., Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 99 (2d Cir. 2007). Second, the complaint must meet the pleading requirements of the Private Securities Litigation Reform Act (“PSLRA”), 15 U.S.C. § 78u-4(b), which “insists that securities fraud complaints ‘specify’ each misleading statement; that they set forth the facts ‘on which [a] belief’ that a statement is misleading was ‘formed’; and that they ‘state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.’” *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 345 (2005) (quoting 15 U.S.C. §§ 78u-4(b)(1), (2)).

### a. Count I: Section 10(b) Claims Under the 1934 Exchange Act

To state a claim for securities fraud pursuant to Section 10(b) and Rule 10b-5, “a plaintiff must allege that [each] defendant (1) made misstatements or omissions of material fact, (2) with scienter, (3) in connection with the purchase or sale of securities, (4) upon which the plaintiff relied, and (5) that the plaintiff’s reliance was the proximate cause of its injury.” *Ind. Pub. Ret. Sys. v. SAIC, Inc.*, 818 F.3d 85, 93 (2d Cir. 2016) (quoting *ATSI Commc’ns, Inc.*, 493 F.3d at 105). All elements are necessary. To be material within the meaning of Section 10(b), “the alleged misstatement must be sufficiently specific for an investor to reasonably rely on that statement as a guarantee of some concrete fact or outcome which, when it proves false or does not occur, forms the basis for a § 10(b) fraud claim.” *City of Pontiac Policemen’s & Firemen’s Ret. Sys. v. UBS AG*, 752 F.3d 173, 185 (2d Cir. 2014).

Defendants maintain that this count should be dismissed because 1) it fails to allege actionable misstatements or omissions, and 2) it inadequately alleges that defendants acted with scienter.

#### i. Misstatements or Omissions of Material Fact

A plaintiff may bring a claim pursuant to Section 10(b) and Rule 10b-5 based on either affirmative misstatements or omissions of material fact. “A securities fraud complaint based on misstatements must (1) specify the statements that the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why

the statements were fraudulent.” *ATSI Commc’ns.*, 493 F.3d at 99 (citing *Novak v. Kasaks*, 216 F.3d 300, 306 (2d Cir. 2000)). A securities fraud complaint based on omissions must allege that “the corporation is subject to a duty to disclose the omitted facts.” *In re Optionable Sec. Litig.*, 577 F. Supp. 2d 681, 692 (S.D.N.Y. 2008) (quoting *In re Time Warner Inc. Sec. Litig.*, 9 F.3d 259, 267 (2d Cir. 1993)). A corporation is “not required to disclose a fact merely because a reasonable investor would very much like to know that fact.” *Id.* (quoting *In re Time Warner*, 9 F.3d at 267).

Nevertheless, a “duty to disclose ‘arises when disclosure is necessary to make prior statements not misleading.’” *Beleson v. Schwartz*, 599 F. Supp. 2d 519, 525 (S.D.N.Y. 2009) (quoting *In re Time Warner*, 9 F.3d at 268). “Even when there is no existing independent duty to disclose information, once a company speaks on an issue or topic, there is a duty to tell the whole truth.” *Meyer v. Jinkosolar Holdings Co.*, 761 F.3d 245, 250 (2d Cir. 2014).

“‘The test for whether a statement is materially misleading under Section 10(b) is not whether the statement is misleading in and of itself, but ‘whether the defendants’ representations, taken together and in context, would have misled a reasonable investor.’” *In re Vivoendi, S.A. Sec. Litig.*, 838 F.3d 223, 250 (2d Cir. 2016) (quoting *Rombach v. Chang*, 355 F.3d 164, 172 n.7 (2d Cir. 2004)). “[T]he lack of an independent duty is not . . . a defense to . . . liability because upon choosing to speak, one must speak truthfully about material issues.” *Caiola v. Citibank, N.A.*, 295 F.3d 312, 331 (2d Cir. 2002).

The alleged misstatement or omission must also have been material. “At the pleading stage, a plaintiff satisfies the materiality requirement of Rule 10b-5 by alleging a statement or omission that a reasonable investor would have considered significant in making investment decisions.” *Ganino v. Citizens Utils. Co.*, 228 F.3d 154, 161 (2d Cir. 2000). “Because materiality is a mixed question of law and fact, in the context of a Fed. R. Civ. P. 12(b)(6) motion, ‘a complaint may not properly be dismissed . . . on the ground that the alleged misstatements or omissions are not material unless they are so obviously unimportant to a reasonable investor that reasonable minds could not differ on the question of their importance.’” *ECA & Local 134 IBEW Joint Pension Trust of Chicago v. JP Morgan Chase Co.*, 553 F.3d 187, 197 (2d Cir. 2009) (quoting *Ganino*, 228 F.3d at 162).

Because the Court finds that the Complaint fails to adequately plead the first prong of the Section 10(b) standard—that defendants made misstatements or omissions of material fact—it declines to address the remaining requirements to state a Section 10(b) claim. The Court will address each of the alleged misstatements or omissions of material fact raised in the Complaint in turn.

a) QTT’s Strategy of Rapidly Growing Revenues Through Intentional Placement of Illegal Advertisements

Lead Plaintiff contends that “[c]entral to QTT’s strategy of rapidly growing its revenues was the intentional placement of non-conforming, and, in many cases, illegal advertisements on its mobile applications.” (Compl. ¶ 79.) The Complaint avers that QTT’s “fraud was not disclosed to investors” (Compl. at 23) and that “QTT actively took steps to evade government regulations and encouraged the placement of illegal ads on its platform.” (Compl. at 26.)

Specifically, Lead Plaintiff claims that “[d]efendants’ statements about QTT’s business model and success were misleading and actionable half-truths.” (Plaintiff’s Opp. at 15.)

The Complaint alleges that QTT's publicly stated reasons for acquiring advertising agent Dianguan were false or misleading because "the Company acquired an advertising agent [Dianguan] in February 2018 to reduce the oversight that Baidu had been providing which had prevented non-compliant ads from running." (Compl. ¶ 129.) Lead Plaintiff further urges that "other than eliminating oversight, the replacement of Baidu with Dianguan made no sense. Baidu was reputable, stable, and lucrative; Dianguan was a startup that had been formed just four months before its acquisition by QTT" and that "[d]efendants knew they could flood the QTT App with a continuous, profitable stream of illegal advertisements that Dianguan would not censor." (Plaintiff's Opp. at 7.)

QTT Defendants, however, note that SEC Form 20-F Annual Report for FY 2019 shows that "Qutoutiao made detailed disclosures regarding the business reasons for acquiring Dianguan, such as enhanced monetization efficiency and long-term business independency." (QTT Mot. at 13 & n.11.) QTT Defendants contend that "the Complaint includes no well-pleaded factual allegation that contradicts these disclosures." (*Id.*)

The QTT Defendants are correct. Plaintiff has not pled non-conclusory facts, if accepted as true, that would suggest that QTT's motivation for acquiring Dianguan was anything other than what QTT publicly disclosed in its SEC filings. Plaintiff has therefore failed to make an adequate showing that any of the defendants made a misstatement or omission of material fact regarding QTT's motivation for acquiring Dianguan.

The Complaint also states that QTT had "separate teams" for qualified versus unqualified advertisers, but its sole factual support for this allegation comes from a confidential witness (a former QTT Sales Director) who claims that during his fourteen months of employment in 2019-2020, there were two teams that "operated independently": one team worked with "well-known and qualified advertisers, who were largely compliant" and the second team "mainly dealt with unqualified advertisers whose advertisements were 'risky.'" (Compl. ¶ 81.) The former Sales Director says that he "did not deal with unqualified advertisers" and does not claim that he ever supervised any employees who dealt with unqualified advertisers. (*Id.*)

The Complaint lacks specificity in its factual assertion that the "second team was disbanded after the Company's practice of promoting illegal advertisements was exposed on Chinese state-TV in July 2020." (*Id.*) Although the Complaint states multiple times that QTT "disbanded" the second advertising team (*id.* ¶¶ 55, 124, 148, 157, 194, 206, 244, 260, 270), Lead Plaintiff's counsel could offer no factual support for this assertion at oral argument.

When asked at oral argument to point to specific allegations that QTT had developed a strategy to increase the placement of illegal ads, counsel for Lead Plaintiff responded that "it's part and parcel of the totality of the circumstances. There is no specific allegation that says, in this meeting, these defendants came together with a strategy ..." (ECF No. 102, at 11.) Therein lies the problem. Claims arising under Section 10(b) cannot be supported by a mere "totality of the circumstances" argument; the Complaint must include facts supporting the allegation that there was a strategy to intentionally place illegal advertisements.

Because Lead Plaintiff has not stated with particularity the circumstances constituting fraud, the Complaint fails to state a Section 10(b) claim grounded in the assertion that QTT had

a strategy of rapidly growing revenue by intentionally placing illegal ads on its app and failed to disclose that strategy.

b) QTT's Failure to Disclose Knowledge of Illicit Advertising as a Key Driver of Revenue Growth

Plaintiff also argues that "while publicly identifying specific factors that supposedly drove QTT's revenues, Defendants failed to disclose that illicit advertising was a key driver of the Company's increasing revenues." (Plaintiff's Opp. at 15.)

Specifically, the Complaint alleges that QTT's public statements contained in ¶¶ 128, 142, 144-147, 153, 163, 195, 202, 210-12, 214-15, 217-19, 245-46, 248-50 were "materially false and misleading" because any increase in advertising revenue "was primarily due to" or "due to" "the increase in ads whose claims could not be substantiated and thus were considered false advertisements under applicable regulations or provided links to illegal online gambling platforms." (Compl. ¶¶ 129, 143, 148, 154, 164, 196, 203, 213, 216, 220, 247, 251.)

The Complaint similarly contends that several statements (Compl. ¶¶ 138, 167, 188, 236) were false and misleading because "a material number of the Company's customers were unqualified advertisers who were purchasing non-compliant ads" (Compl. ¶¶ 139, 168, 237), without ever alleging, even approximately, how many of QTT's customers were unqualified advertisers or what portion of QTT's revenues were derived from such advertisers. Relatedly, the Complaint contends that "until December 2020, Defendants never disclosed to investors that a substantial amount of QTT's revenue was generated from illegal advertisements paid for by shady unqualified advertisers which did not comply with applicable Chinese regulations and that they were managing the risk of losing that revenue by reducing the chance of getting caught by state regulators by placing those advertisements in lower tier Chinese cities." (Compl. ¶ 93.)

The Complaint therefore avers that QTT (i) had full knowledge of the scale of illicit activity, (ii) knew that the illicit activity was a substantial share of QTT's revenues, and (iii) had a duty to disclose this fact but failed to do so.

However, the Complaint's factual assertions do not offer any indication as to the magnitude of the allegedly illicit advertising activity. For instance, although the Complaint seeks to rely on confidential witness accounts, these do not indicate that illegal advertising comprised any more than—at most—a nominal share of QTT's revenues. The Complaint cites to a November 28, 2018 CCTV claim that QTT violated advertising guidelines related to "vulgar content" and to a June 18, 2019 Shanghai Municipal Market Supervision Bureau ("Shanghai Regulator") preliminary investigation finding of "severely illegal advertisements" on QTT and related platforms. (Compl. ¶¶ 266, 269.) These public reports, as well as the other incidents cited by the Complaint, fail to support an inference that QTT would have had knowledge that illicit advertisements contributed to more than a nominal amount of QTT's revenue *prior* to the July 15, 2020 CCTV report. (See Compl. ¶ 88.)

When asked to clarify this point at oral argument, Lead Plaintiff's counsel cited the 20 percent revenue drop QTT suffered after the CCTV report regarding illegal advertisements was aired. However, this percentage does not represent the percentage of illegal advertisements

contributing to QTT's revenue. The Complaint provides no support for its assertion that "a substantial amount" of revenue came from illegal advertisements. Furthermore, Lead Plaintiff's counsel presented no information to contradict defense counsel's assertion that the revenue drop was due to QTT's significant remedial efforts after the CCTV reports aired and that in fact the illegal advertisements made up only a very small percentage of QTT's overall advertising. (ECF No. 102, at 3-7.)

All of the Complaint's related factual assertions are wholly conclusory. Because the Complaint does not plausibly allege that a significant share of QTT's advertising revenue was tied to illicit advertisements, the Complaint offers no support for the claim that the 1934 Exchange Act Defendants "failed to adequately warn investors that certain 'Risk Factors' had already materialized at the time of the IPO" (Compl. ¶ 135), the SPO (*id.* ¶ 166), the 2018 20-F annual report (*id.* ¶ 185), and the 2019 20-F annual report (*id.* ¶ 233).

The Complaint offers limited factual support for QTT's evolving knowledge of suspected illicit advertisements on its platform. Namely, the Complaint notes that by July 18, 2020, "228 complaints had been filed on Black Cat Complaints—a Chinese consumer rights protection group—regarding the proliferation of false advertisements on the QTT App." The Complaint offers no such data as to the number of complaints *prior* to the major CCTV report that could plausibly indicate greater QTT awareness of illicit advertisements on its platform prior to July 2020.

Because Lead Plaintiff does not adequately allege the scale of illicit advertising activity and does not sufficiently allege QTT's knowledge of illicit advertisements on its platform, the Complaint fails to state a Section 10(b) claim grounded in this factual assertion.

#### c) QTT's Statements Regarding Screening of Illegal Advertisements

Plaintiff contends that "to further mislead investors about QTT's reliance on revenue from illegal advertisements, Defendants created the false impression that QTT successfully screened out illegal advertisements." (Plaintiff's Opp. at 15, citing Compl. ¶¶ 68, 130, 133, 136, 170, 181, 229.) Lead Plaintiff notes that this occurred both in QTT's SEC filings as well as through defendant Tan's statements. (*Id.* at 16.)

Lead Plaintiff's arguments here take two forms: first, that QTT actively misled investors on the nature of its screening technology to prevent illicit advertisements (which all parties agree were a risk to QTT) and second, that Tan made affirmative statements touting QTT's screening capacity while aware that QTT's controls were at the time of his statements ineffective at ensuring compliance with Chinese law.

Indeed, in QTT's IPO Offering Documents, its 2018 20-F, and its 2019 20-F, the Company states that "[w]e actively monitor the advertisements placed to help ensure their relevance." (Comp. ¶¶ 131, 179, 226.) Plaintiff urges that QTT held itself out as providing superb ability to screen out illicit advertisements, including through the use of proprietary "artificial intelligence" that could "monitor and identify objectionable visual content with a high degree of accuracy" and flag "suspicious content for manual review." (Compl. ¶ 13.)

However, as QTT Defendants observe, QTT's reference to "artificial intelligence" referred to QTT's core content to consumers, not to the advertisements that generated its revenue. "The disclosures Plaintiff attacks are not about *advertising* regulations at all—they relate to Qutoutiao's compliance with PRC regulations that govern *content*, such as news articles." (QTT Reply, ECF No. 62, at 1.)

Furthermore, even if QTT's statements led an investor to believe that the company manually reviewed each advertisement to ensure that there was zero risk of placing an illicit advertisement on its platform, QTT's disclosure documents leave no doubt that investors were warned of the risks. The IPO Offering Documents stated that "our employees responsible for reviewing advertisements may not fully understand the relevant laws and regulations or may be inappropriately influenced by the advertisers" and the 2018 20-F warned that "advertisers on our mobile applications, or their agents, may use measures that are designed to evade our monitoring, such as providing inauthentic material that does not match the actual advertisement . . ." (See Compl. ¶ 136, 186.) Elsewhere, QTT discloses that it "cannot assure you that all the advertisements shown on our mobile applications are true, accurate, appropriate and in full compliance with applicable laws and regulations." (*Id.*)

Finally, Lead Plaintiffs also cite to Tan's assertion on a September 5, 2019 financial earnings call that "[w]e have one of the best track records in compliance among all the sizeable newsfeed players in the space as we have put in significant efforts from the very beginning in building our content compliance teams and capabilities." (Compl. ¶ 205.)

Lead Plaintiff argues that Tan's statements were classically violative of the Second Circuit standard set forth in *Meyer v. Jinkosolar Holdings Co., Ltd.*, 761 F.3d 245, 251 (2d Cir. 2014), in that they wrongly "gave comfort to investors that reasonably effective steps were being taken" even though QTT failed to disclose that its measures "were then failing to prevent substantial violations of the Chinese regulations." (Plaintiff's Opp. at 16.)

Yet for reasons substantially similar to those set forth above, Lead Plaintiff has not plausibly alleged that Tan or QTT had awareness as of September 5, 2019 that QTT was "then failing to prevent substantial violations of the Chinese regulations." Moreover, the Complaint does not offer factual pleadings to indicate that QTT's competitors had better "track records" in that regard.

The Complaint also alleges that Tan's statements in a 4Q18 Earnings Call that "the quality of our advertisers has consistently improved since we went public" were materially false or misleading. But this statement and its ilk are best construed as inactionable puffery. See *In re Banco Bradesco S.A. Sec. Litig.*, 277 F. Supp. 3d 600, 647 (S.D.N.Y. 2017).

Moreover, the Complaint mischaracterizes QTT's public statements to suggest that QTT somehow promised to "stop the Company from running non-compliant ads on advertisers' behalf in lower tier cities" (Compl. ¶ 157); in fact, as described above, QTT had repeatedly disclosed the risk that unlawful advertisements could appear on its platform.

The Complaint further alleges that Tan's September 22, 2020 statements on a 2Q20 Earnings Call, including that "we have already seen a trend of recovery and we are seeing the growth and recovery will continue in Q4" were materially false and misleading. (Compl. ¶¶ 255-56.) Specifically the Complaint alleges that "Tan continued to materially

misrepresent . . . the extent to which the CCTV Exposé would continue to impact the Company's business operations and financials." (Compl. ¶ 256.)

While Tan's assertion that "we are seeing the growth and recovery will continue in Q4" could suggest that the CCTV reports would not have had a major impact on QTT's financial performance, Tan immediately thereafter used far more cautionary language about his expectations, including that QTT is "still evaluating the extent of such impacts." (Compl. ¶ 257.) This cautionary language from Tan would preclude a reasonable investor from basing an investment decision on Tan's vague and highly optimistic statement that "we are seeing the growth and recovery will continue in Q4." (Compl. ¶ 255.)

Last, Tan's statement on the 2Q20 Earnings Call that "[w]e have always closely followed rules and regulations of the industry and the country" is best construed as inactionable puffery. *See Singh v. Cigna Corp.*, 918 F.3d 57, 63 (2d Cir. 2019) ("We have observed that general statements about reputation, integrity, and compliance with ethical norms are inactionable 'puffery,' meaning that they are too general to cause a reasonable investor to rely upon them.") This statement would not reasonably be seen as providing an investor with assurances that QTT had never engaged in conduct that might even unintentionally violate U.S. securities law or what the parties agree is China's complex and unpredictable enforcement regime.

Because the Complaint fails to adequately allege that QTT or Tan misled investors through its statements concerning internal QTT screening of content and advertisements, the Complaint fails to state a Section 10(b) claim grounded in this factual assertion.

#### d) QTT's Failure to Disclose Related-Party Transactions

Lead Plaintiff also argues that defendants failed to disclose related-party transactions as required under Generally Accepted Accounting Principles ("GAAP") and SEC Regulation S-X (Compl. ¶¶ 102-3) and the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 850, (Compl. ¶ 104). Examples of related parties under FASB ASC 850 include:

- Affiliates of the entity.
- Principal owners of the entity and members of their immediate families; management of the entity and members of their immediate families.
- Other parties with which the entity may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.
- Other parties that can significantly influence the management or operating policies of the transacting parties or that have an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

Compl. ¶ 104 n.35 (quoting ASC 850-10-20).

Lead Plaintiff alleges that QTT made omissions of material facts in the IPO Prospectus, the SPO Prospectus, the 2018 20-F, and the 2019 20-F in regard to disclosing related-party

transactions. (Compl. ¶ 107.) First, plaintiff contends that because Dianguan's founder, Liang, had "a close business relationship with Tan (Compl. ¶ 109), QTT's acquisition of Dianguan was a related-party transaction that was not properly disclosed. (Compl. ¶¶ 107-10.) Second, Lead Plaintiff contends that "Defendants failed to disclose that Mengtui, Fangce, and Shihui Miao—advertisers who appear to generate about 30% of the advertisements on the QTT App—were related parties benefitting Defendant Tan." (Plaintiff's Opp. at 17, citing Compl. ¶¶ 112-15.) Lead Plaintiff contends that such disclosures were "material related-party transactions" that QTT was obligated to disclose.

The QTT IPO Prospectus, SPO Prospectus, 2018 20-F, and 2019 20-F each included a section entitled "Related Party Transactions," including a subsection labelled "Transactions with Companies Controlled by or Affiliated with Mr. Tan." (Compl. ¶ 107.) The below analysis first considers the claim regarding Dianguan, and then turns to the claims regarding Mengtui, Fangce, and Shihui Miao.

### 1) Dianguan

According to the Complaint, Xiang "Sean" Liang ("Liang") founded Dianguan a mere four months before QTT acquired it in February 2018 and was its director and legal representative at that time. (Compl. ¶ 108.) The Complaint argues that Dianguan "would have been prevented from 'fully pursuing its own separate interest'" (*id.* ¶ 111), on account of Tan's alleged ability to "significantly influence the management or operating policies of [Dianguan, through Tan's influence on Liang] . . . to the extent that [Dianguan] *might* be prevented from fully pursuing its own separate interests." (*Id.* ¶ 104 n.35, quoting ASC 850-10-20) (emphasis added).

The Complaint offers two factual assertions to support its contention that Liang was a related party at the time QTT acquired Dianguan. First, Liang was "the director of domestic investment in a company," which "was the executive partner of a company that Defendant Tan had been the majority investor in since February 26, 2018." Compl. ¶ 109 (noting Tan held 64.5% of equity in the Nantong WooFoo Jinxin Equity Investment Fund Partnership and that Liang was the director of domestic investment at Nantong WooFoo Jinxin Investment Management Co. Ltd.) Yet because QTT acquired Dianguan on February 2, 2018, *see* Qutoutiao Inc., Annual Report (Form 20-F), at F-8 (Apr. 11, 2019), Lead Plaintiff's factual assertion does not suggest that Tan's involvement with Nantong WooFoo Jinxin Equity Investment Fund Partnership (commencing February 26) preceded QTT's acquisition of Dianguan (on February 2).

Second, during 2016, Liang was the investment director of Shanghai Taiyun Investment Management Co. Ltd. ("Taiyun Capital"), a company in which Tan held 99% of the equity and Tan's sister held the remaining 1% equity interest. (Compl. ¶ 110.) Lead Plaintiff further notes that in July 2018 (months after the February 2018 acquisition of Dianguan), Tan held a position of "business consultant" for Taiyun Capital. (Compl. ¶ 110.) Last, Lead Plaintiff states that Tan's sister is listed as a legal representative and director of Taiyun Capital and that Liang is still listed as an investment assistant for Taiyun Capital on a Chinese website that tracks technology companies. (Compl. ¶ 110.) Taken together, Lead Plaintiff's factual assertions are designed to

imply that Tan (or his sister) has exercised some element of control over Liang from 2016 through at least QTT's acquisition of Dianguan in February 2018.

Although Lead Plaintiff has demonstrated a likelihood that "Liang had a close business relationship with Defendant Tan" (Compl. ¶ 109), he does not elaborate on how their "business relationship was so intertwined such that Dianguan would have been prevented from 'fully pursuing its own separate interests' and that disclosure would have 'shed light on revenues generated from transactions with Dianguan prior to its acquisition and the reasons for acquiring Dianguan and replacing Baidu.'" (Compl. ¶ 111.) Lead Plaintiff's suggestion that Tan has all-purpose control over Liang is quite speculative. The simple presence of a business relationship between Tan and Liang is insufficient to trigger a duty to disclose. *See Tabor v. Bodisen Biotech, Inc.*, 579 F. Supp. 2d 438, 450–51 (S.D.N.Y. 2008).

Because the Complaint fails to adequately plead that the relationship between Dianguan and Tan was so intertwined that Dianguan might have been prevented from fully pursuing its own interests, it cannot support its contention that QTT failed to report its acquisition of Dianguan as a related-party transaction and thereby fails to state a Section 10(b) claim grounded in this factual assertion.

## 2) Mengtui, Fangce, and Shihui Miao

Plaintiff urges that QTT failed to disclose related-party transactions involving three advertisers: (i) one of QTT's top advertisers Mengtui, who has "the copyright and website operating licenses . . . held by Shanghai Tujin Network Technology Co. Ltd., (ii) Publisher Shanghai Fangce Network Technology Co. Ltd. ("Fangce"), and (iii) Shihui Miao, whose "website operating licenses and software authorship rights are owned by Shanghai Xihu Culture Communications Co. Ltd." (Compl. ¶¶ 112-14.)

Although defendants do not contest that QTT's transactions with Mengtui, Fangce, and Shihui Miao were related-party transactions, these transactions *were* disclosed in QTT's 2019 annual report—the first annual report after these alleged related-party transactions took place. (ECF No. 102, at 42.) Counsel for Lead Plaintiff cited no requirement that companies disclose related-party transactions in real time and the Court has found none.

For these reasons the Complaint fails to adequately plead that QTT did not disclose related-party transactions at the appropriate time and thereby fails to state a Section 10(b) claim grounded in this factual assertion.

## e) QTT's Inflation of Revenue for U.S. Filings

Lead Plaintiff contends that QTT's 2017 and 2018 consolidated revenues in its SEC filings are materially higher than the 2017 and 2018 revenues reported to SAMR. (Compl. ¶ 116.)

However, as the Complaint itself recognizes, "SAMR filings . . . employ different accounting principles than U.S. GAAP, so it is not uncommon to have differences between a company's SAMR and SEC filings." (Compl. ¶ 117.) Courts in this district have found that in these instances the plaintiff "must allege at least some fact to support that (1) the SEC figures, and not the [other] filings, are false, and (2) any variation is not attributable to variations in

reporting rules or accounting standards.” *In re China Valves Tech. Sec. Litig.*, 2012 WL 4039852, at \*6 (S.D.N.Y. Sept. 12, 2012).

Lead Plaintiff urges that the discrepancy between the Chinese and U.S. filings are *not* due to differences in Chinese and U.S. accounting standards and claims that QTT “does not appear to generate revenue outside of mainland China” and “[le]ft] RMB 187.6 million (or 36% of the reported revenue) unaccounted for in 2017 and RMB 970.67 million (or 32% of the reported revenue) unaccounted for in 2018, respectively.” (Compl. ¶ 120.)

The claim that QTT “does not appear to generate revenue outside of mainland China” is not a factual allegation. Because Lead Plaintiff alleges no facts to support a finding that the SEC figures, rather than the SAMR figures, are false, and does not allege sufficiently that any variation between the two is not simply attributable to conceded variations in accounting standards, the Complaint fails to state with particularity circumstances constituting fraud and thereby fails to state a Section 10(b) claim grounded in this factual assertion.

#### f) QTT’s Failure to Disclose Contingent Liabilities

The Complaint also alleges that QTT’s failure to disclose a loss contingency in its financial reports violated GAAP, and thus was an actionable omission. The Complaint notes that GAAP defines a loss contingency as “[a]n existing condition, situation, or set of circumstances involving uncertainty as to possible loss to an entity that will ultimately be resolved when one or more future events occur or fail to occur,” Compl. ¶ 121 (citing ASC 450-20-20), and argues that “[b]ecause there was ‘at least a reasonable possibility’ that fines and penalties may have [] incurred, GAAP required QTT to disclose the nature of the aforementioned loss contingency and provide ‘[a]n estimate of the possible loss or range of loss or a statement that such an estimate cannot be made’ in the notes to its financial statements.” Compl. ¶ 122 (citing 450-20-50-3-4).

However, the Complaint does not allege any actual government investigation that is likely to result in a material fine. Furthermore, the mere “potential for investigation does not give rise to a ‘probability of impairment,’ the standard the GAAP uses when determining whether disclosure is necessary.” *Zaluski v. United Am. Healthcare Corp.*, 527 F.3d 564, 577 (6th Cir. 2008)).

Lead Plaintiff responds that the contingent liability was required to be disclosed because “QTT was on notice that Chinese regulators were scrutinizing its misconduct.” (Plaintiff’s Opp. at 15 n.15.) However, regulatory scrutiny by itself does not automatically mandate that a subject company account for loss contingency in its financials (which could impliedly require it to disclose uncharged wrongful conduct). See *City of Pontiac Policemen’s & Firemen’s Ret. Sys. v. UBS AG*, 752 F.3d 173, 184 (2d Cir. 2014) (under sections 11 and 12(a)(2) of the Securities Act, “companies do not have a duty ‘to disclose uncharged, unadjudicated wrongdoing’”).

Because the Complaint does not allege the existence of any government investigation whatsoever that is likely to result in a material fine, the Complaint fails to state a Section 10(b) claim grounded in this factual assertion.

In sum, Lead Plaintiff's Complaint fails to allege a single misstatement or omission of material fact that could give rise to a Section 10(b) claim. Count I is therefore dismissed in its entirety.

*b. Count II: Section 20(a) Claims Under the 1934 Exchange Act*

Section 20(a) of the Securities Exchange Act creates a cause of action against defendants alleged to have been "control persons" of those engaged in the primary securities fraud. That section provides that:

Every person who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

15 U.S.C. § 78t(a).

"To state a claim of control person liability under section 20(a), 'a plaintiff must show (1) a primary violation by the controlled person, (2) control of the primary violator by the defendant, and (3) that the defendant was, in some meaningful sense, a culpable participant in the controlled person's fraud.'" *Carpenters Pension Tr. Fund of St. Louis v. Barclays PLC*, 750 F.3d 227, 236 (2d Cir. 2014) (quoting *ATSI Commc'ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 108 (2d Cir. 2007)).

Because the Court has found that the Complaint did not adequately allege an actionable primary violation of Section 10(b), Count II must be dismissed.

## **B. 1933 Securities Act Claims**

Lead Plaintiff also asserts strict liability claims under sections 11, 12(a)(2), and 15 of the 1933 Securities Act against the 1933 Securities Act Defendants (Compl. ¶ 314) arising out of QTT's IPO and SPO (Compl. ¶¶ 315-17). Lead Plaintiff alleges that the IPO documents "contained multiple material misstatements regarding the Company's strategy of targeting users in lower tier cities in China" (*id.* ¶ 321), "omitted material facts necessary to make the statements made therein not misleading" (*id.* ¶ 322), failed to disclose related party transaction information "involving the Mengtui App, Fangce and the Shihui Miao App based on Tan's ownership stakes in Taiyun Capital, and Bige" and "Dianguan Acquisition . . . based on Liang's special relationship with Tan through companies in which Tan is a majority investor or owner, including Woofoo Equity and Taiyun Cap" (*id.* ¶ 336), and made "untrue statements of material facts and omitted material facts necessary" related to net revenue data and reasons for replacing the Company's third-party advertising agent, Baidu, with Dianguan (*id.* ¶ 339-340). Lead Plaintiff makes nearly identical allegations relating to the SPO Documents.

Sections 11, 12, and 15 of the Securities Act "impose liability on certain participants in a registered security offering when the publicly filed documents used during the offering contain material misstatements or omissions." *In re Morgan Stanley Info. Fund Sec. Litig.*, 592 F.3d 347, 358 (2d Cir. 2010). Section 11 applies to "registration statement[s]," Section 12 covers any

“prospectus or oral communication,” and Section 15 imposes liability on individuals or entities that “control[] any person liable” under Sections 11 or 12. 15 U.S.C. § 77k(a), l (a)(2), o. Liability pursuant to Section 15 thus requires, as a preliminary matter, a demonstration of liability under either Section 11 or Section 12. *In re Morgan Stanley Info. Fund*, 592 F.3d at 358.

### 1. *Standard of Review*

In considering Section 11 and Section 12(a)(2) claims under the 1933 Securities Act, the Court must “conduct a preliminary inquiry into whether plaintiffs’ allegations are premised on fraud, or merely on negligence, to determine the appropriate pleading standard.” *City of Pontiac Policemen’s & Firemen’s Ret. Sys. v. UBS AG*, 752 F.3d 173, 183 (2d Cir. 2014) (quoting *Hutchison v. Deutsche Bank Sec. Inc.*, 647 F.3d 479, 484 (2d Cir. 2011)).

Courts have offered varying guidance on a plaintiff’s burden to differentiate a Section 11 Securities Act claim based in negligence from a fraud-based 1934 Exchange Act claim. The Second Circuit in *Rombach v. Chang* noted that a complaint’s statement that a claim does not sound in fraud and therefore is not subject to the requirements of Rule 9(b) is simply not sufficient. 355 F.3d 164, 172 (2d Cir. 2004) (citing *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1405 (9th Cir. 1996) (“[Plaintiff] argues that it specifically disclaimed any allegations of fraud with respect to its Section 11 claims. These nominal efforts are unconvincing where the gravamen of the complaint is plainly fraud and no effort is made to show any other basis for the claims levied at the Prospectus.”)). A complaint’s articulation of the basis for a negligence claim would help to differentiate a 1933 Securities Act claim from the 1934 Exchange Act claim. *See In re Refco, Inc. Sec. Litig.*, 503 F. Supp. 2d 611, 633 (S.D.N.Y. 2007); and *In re Ultrafem Inc. Sec. Litig.*, 91 F. Supp. 2d 678, 691 (S.D.N.Y. 2000). Compartmentalizing the fraud and non-fraud claims can also be a factor in distinguishing a 1933 Securities Act claim from any fraud-based claims. *In re Jumei Int’l Holding Ltd. Sec. Litig.*, No. 14CV9826, 2017 WL 95176, at \*3 (S.D.N.Y. Jan. 10, 2017) (“Plaintiffs have sufficiently compartmentalized the claims into two discrete theories— negligence under the Securities Act, and fraud under the Exchange Act, with specified factual allegations supporting each. . . . Accordingly, the notice-pleading standard of Rule 8 applies to Plaintiffs’ Securities Act claims.”).

Here the Complaint attempts to differentiate the 1934 Exchange Act fraud claims from the 1933 Securities Act claims and disclaims a theory of fraud for its 1933 Securities Act claims (“Lead Plaintiff expressly disclaims any reference or reliance upon fraud allegations for such claims and these claims are entirely separate and distinct from the 1934 Act Claims.”). (Compl. ¶ 314.) The Court recognizes that although the Complaint’s 1933 Securities Act arguments (Compl. § XI) center on statements that the Complaint had earlier alleged were made fraudulently (Compl. § VII), plaintiffs *can* use the same factual circumstances to plead Section 11 and Section 10(b) claims in the alternative. *See In re IAC/InterActiveCorp Sec. Litig.*, 695 F. Supp. 2d 109, 116 (S.D.N.Y. 2010).

However, the Complaint’s 1933 Securities Act arguments manifestly sound in fraud and thereby trigger the heightened Rule 9(b) pleading standard. *City of Pontiac Policemen’s & Firemen’s Ret. Sys. v. UBS AG*, 752 F.3d 173, 183 (2d Cir. 2014). And the Complaint’s disclaimer of fraud cannot by itself avoid the requirements of Rule 9(b). *See In re JP Morgan Chase Sec. Litig.*,

363 F. Supp. 2d at 635.); *see also In re Alcatel Sec. Litig.*, 382 F. Supp. 2d 513, 530 (S.D.N.Y. 2005). The language used throughout the 1933 Securities Act section of the Complaint in many instances mirrors exactly the language used throughout the section on the 1934 Exchange Act claims.

In an early section of the Complaint labeled “Defendant’s Illegal Acts,” which comes before any breakdown between the 1934 Exchange Act claims and 1933 Securities Act claims, Lead Plaintiff refers to the “fraud set forth in the Company’s Offering Documents” and claims that “[c]entral to QTT’s strategy of rapidly growing its revenues was the intentional placement of non-conforming, and, in many cases, illegal advertisements on its mobile applications.” (Compl. ¶¶ 66, 79.) The Complaint alleges that QTT’s IPO and SPO statements on revenue “contained multiple material misstatements regarding the Company’s *strategy of targeting users* in lower tier cities in China” and “contained untrue statements of material facts and omitted material facts necessary to make the statements made therein not misleading by . . . [not] disclosing that the Company was seeking to avoid the oversight Baidu had been providing which had prevented non-compliant ads from running; . . . and [] describing the Company’s ‘performance obligation’ to its end advertiser customers without disclosing that it set up separate teams with different processes and procedures for qualified versus unqualified advertisers in order to sell non-compliant and illegal ads.” (Compl. ¶¶ 321, 324, 339, 340.)

The Complaint uses a similar “avoid the oversight” assertion for the IPO’s and SPO’s disclosures of risk (*id.* ¶¶ 333-34, 344-45). It alleges that “different processes and procedures were being applied to advertising content such that any declined ads could be manually allowed on the QTT app.” (Compl. ¶ 329.) These claims simply do not sound in negligence. Thus, “[n]otwithstanding the Plaintiffs’ fraud disclaimer, the Section 11 claims in this case are peppered with” language “classically associated with fraud.” *In re Elan Corp.*, No. 02CIV.865(RMB)(FM), 2004 WL 1305845, at \*7 (S.D.N.Y. May 18, 2004).

Because the Complaint’s 1933 Securities Act claims sound in fraud, they are subject to the Rule 9(b) heightened pleading standards.

*a. Count III: Section 11 Claims*

*i. Standing*

QTT Defendants argue that Lead Plaintiff “lacks standing to bring a Section 11 claim with regard to the SPO. . . . [because] he cannot trace his shares to the SPO” and that he “lacks standing to assert the Section 12(a)(2) claim, for either himself or the putative class” because Lead Plaintiff had not “purchased the security directly from the defendants through the public offering at issue.” (QTT Mot., at 23-24.) This argument is unpersuasive.

The Complaint states that Lead Plaintiff did not buy ADSs in the IPO or SPO directly from defendants, but that “his own personal claims mean that he ‘possess[es] the same interest and suffered the same injury’ as those class members who bought directly from Defendants” and that Lead Plaintiff “has ‘the same necessary stake in litigating’ the falsity of Defendants statements, and this therefore ‘gives the named plaintiff a sufficient stake in the outcome of her putative class members’ cases’ to assert these claims.” (Compl. n.79) (citing *Langan v. Johnson & Johnson Consumer Companies, Inc.*, 897 F.3d 88, 94 (2d Cir. 2018)).

Lead Plaintiff persuasively contends that “*Langan* demonstrates that Mr. Pappas—who clearly has standing to bring Exchange Act claims, as well as § 11 claims as to the IPO—also has standing to bring the remaining Securities Act claims involving substantially the same materially false and misleading statements” (Plaintiff’s Opp. at 43.) Lead Plaintiff argues that (i) “Plaintiff has alleged an injury caused by Defendants, as their conduct caused monetary losses capable of redress under §§ 10(b) and 20(a) of the Exchange Act and §§ 11 and 15 of the Securities Act (as to the IPO)” (Plaintiff’s Opp. at 43); (ii) “the alleged injury is of the same general character as the injuries Defendants caused under § 12(a)(1) (as to the IPO and SPO) and § 11 (as to the SPO)” because “Plaintiff and the absent class members suffered monetary losses in connection with substantially similar false and misleading statements and omissions in Defendants’ Offering Documents” (Plaintiff’s Opp. at 43); and (iii) “Plaintiff and the absent class members have the same necessary stake to litigate those issues against Defendants [and] Plaintiff intends to prove that Defendants’ statements were false and misleading and to recover on behalf of himself and the Class” (citing Compl. ¶¶ 310-12).

ii. Analysis

Section 11 prohibits materially false or misleading statements or omissions in registration statements, and requires a plaintiff to show (1) that it purchased a registered security, (2) the defendant participated in the offering in a manner sufficient to give rise to liability under Section 11, and (3) the registration statement “contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading.” 15 U.S.C. § 77k(a); *In re Morgan Stanley Info. Fund*, 592 F.3d at 358–59; *In re Initial Public Offerings Sec. Litig.*, 471 F.3d 24, 43 (2d Cir. 2006).

“Issuers are subject to virtually absolute liability under section 11,’ and plaintiffs alleging violations of Sections 11 and 12(a)(2) not need plead ‘scienter, reliance, or loss causation.’” *Hutchison v. Deutsche Bank Sec. Inc.*, 647 F.3d 479, 484 (2d Cir. 2011) (quoting *In re Morgan Stanley Info. Fund Sec. Litig.*, 592 F.3d 347, 359 (2d Cir. 2010)). Non-issuer “potential defendants under sections 11 and 12(a)(2) may be held liable for mere negligence.” *In re Morgan Stanley Info. Fund Sec. Litig.*, 592 F.3d at 359.

The definition of “materiality” for a Section 11 claim is identical to the definition for a Section 10(b) claim under the 1934 Exchange Act. *See In re Morgan Stanley Info. Fund Sec. Litig.*, 592 F.3d 347 at 360.

As explained above, Lead Plaintiff’s 1933 Securities Act claims under Section 11 sound in fraud as to QTT, the Director Defendants, and the UW Defendants and therefore are subject to the heightened pleading standard of Rule 9(b) and the PSLRA. Perhaps because the Complaint expressly disclaims that “liability under this Count arises from any scienter or fraudulent intent” (Compl. ¶ 373), it fails to plead facts with particularity as to each defendant. (Compl. § XI.) Accordingly, Lead Plaintiff’s Section 11 claims under the 1933 Securities Act cannot survive QTT Defendants’ motion to dismiss.

b. *Count IV: Section 12(a)(2) Claim*

Sections 11 and 12(a)(2) are “Securities Act siblings” with “roughly parallel elements.” *In re Morgan Stanley Info. Fund*, 592 F.3d at 359. Section 12(a)(2) prohibits materially untrue or misleading statements or omissions in any prospectus or oral communication used to solicit the sale of a registered security and requires a plaintiff to establish that (1) the defendant is a “seller” as defined by Section 12, (2) the sale was effectuated “by means of a prospectus or oral communication,” and (3) the prospectus or oral communication “include[d] an untrue statement of material fact or omit[ted] to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading.” 15 U.S.C. § 771 (a)(2); *In re Morgan Stanley Info. Fund*, 592 F.3d at 359.

Lead Plaintiff’s claim alleging Section 12(a)(2) violations under the 1933 Securities Act must be dismissed for the same reasons set forth above regarding the Section 11 claims. This claim also concerns QTT’s offering documents and sounds in fraud, but fails to plead facts with particularity as to each defendant. (Compl. § XI.) Accordingly, Lead Plaintiff’s Section 12(a)(2) claims under the 1933 Securities Act must be dismissed.

c. *Count V: Section 15 Claim*

In order to establish a prima facie case of controlling-person liability a plaintiff “must show a primary violation by the controlled person.” *SEC v. First Jersey Secs., Inc.*, 101 F.3d 1450, 1472–73 (2d Cir. 1996). “Section 15 requires only that a plaintiff plead that the relevant defendant controlled the primary violator, and control for purposes of Section 15 entails only “the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.” *In re CitiGroup Inc. Bond Litig.*, 723 F. Supp. 2d 568, 595 (S.D.N.Y. 2010) (quoting *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1472–73 (2d Cir. 1996)).

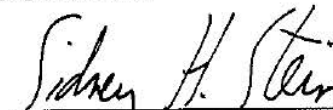
Because Lead Plaintiff’s Section 11 and Section 12(a)(2) claims for primary liability under the 1933 Securities Act fail, the Section 15 control person claims must be dismissed. *See In re Morgan Stanley Info. Fund Sec. Litig.*, 592 F.3d 347, 358 (2d Cir. 2010); *SEC v. First Jersey Secs., Inc.*, 101 F.3d 1450 at 1472–73. (“In order to establish a prima facie case of controlling-person liability, a plaintiff must show a primary violation by the controlled person.”).

### III. CONCLUSION

For the reasons set forth above, defendants’ motions to dismiss the Consolidated Amended Class Action Complaint are granted in full.

Dated: New York, New York  
August 3, 2023

SO ORDERED:

  
\_\_\_\_\_  
Sidney H. Stein, U.S.D.J.

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re QUTOUTIAO, INC. SECURITIES  
LITIGATION

20 CIVIL 6707 (SHS)  
20 CIVIL 7717 (SHS)

**JUDGMENT**

-----X

It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Opinion & Order dated August 3, 2023, defendants' motions to dismiss the Consolidated Amended Class Action Complaint are granted in full. (And as further set forth herein). Accordingly, the cases are closed.

**Dated:** New York, New York

August 3, 2023

**RUBY J. KRAJICK**  
Clerk of Court

**BY:**



\_\_\_\_\_  
**Deputy Clerk**