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| STATE OF NORTH CAROLINA<br><br>WAKE COUNTY | IN THE GENERAL COURT OF JUSTICE<br>SUPERIOR COURT DIVISION<br>24CV032063-910 |

STATE OF NORTH CAROLINA, ex rel. JOSHUA H. STEIN, ATTORNEY GENERAL,

Plaintiff,

v.

TIKTOK INC.; TIKTOK U.S. DATA SECURITY INC.; TIKTOK LLC; TIKTOK PTE. LTD.; TIKTOK, LTD.; BYTEDANCE INC.; AND BYTEDANCE LTD.,

Defendants.

**BRIEF IN SUPPORT OF DEFENDANTS' MOTIONS TO DISMISS**

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## INTRODUCTION[1]

The State of North Carolina has sued Defendants, alleging the TikTok platform violates North Carolina's Unfair and Deceptive Trade Practices Act ("UDTPA"). The State's central theory is that certain "design features" the platform uses to select, organize, and present third-party user-generated speech on the platform are harmful to younger users because they allegedly make viewing this speech "addictive." In other words, the State contends that the TikTok platform is unlawful because the manner in which it publishes content makes it too "engaging" for younger users. The State further alleges that Defendants have deceived users by inadequately and inaccurately describing these "risks." The State's claims fail as a matter of law, and its Complaint should be dismissed with prejudice.

As a threshold matter, this Court has no power to adjudicate the State's claims because it lacks personal jurisdiction over Defendants. Defendants are not at home in North Carolina, and North Carolina is not the focal point of any suit-related conduct. The State's assertion of personal jurisdiction is based primarily on the fact that the platform was available in North Carolina, and that North Carolina users were allegedly harmed by viewing content on the platform. But as courts have widely held, personal jurisdiction is not triggered merely because a globally accessible online platform is made available to residents of the forum state. The State alleges two other connections to North Carolina—marketing of the TikTok

[1] All emphasis has been added to, and all citations, internal quotation marks, alterations, and brackets have been omitted from, the quoted material.

platform, and contacts with North Carolina parent-teacher associations and schools. But North Carolina was not the focal point of any of that alleged conduct. Instead, these connections arose incidentally from conduct that was nationwide in scope.

The State's claims suffer from additional defects. Section 230 of the Communications Decency Act immunizes online platforms from liability as "publishers" of third-party content. But publishing activities are what the State targets. The "design features" the State challenges are the means by which user-generated content is selected, organized, and presented—i.e., published—on the platform. Moreover, the U.S. Supreme Court recently confirmed in *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024), that these online publishing activities are inherently expressive activities that are entitled to First Amendment protection. And the State's deception claims are further barred by the First Amendment because they seek to compel the platform to speak by mandating warnings about the alleged risks of user-generated content on the platform.

The State also fails to plead the elements of its UDTPA claims. The platform, as designed, is not an unfair business practice. The State's attempt to use consumer-protection law to impose liability against an online platform for being "too engaging" has no support in North Carolina law. Likewise, the State alleges no deceptive practices. The State's deception claims are based on nonactionable opinion and aspirational statements about the platform's general priorities and goals, none of which is objectively verifiable as true or false.

## BACKGROUND

The TikTok platform is an online entertainment platform that allows users to

create, share, and comment on videos. Complaint (ECF No. 3) ¶ 33. In this lawsuit, the State alleges that certain platform features cause younger users to suffer from mental health and other harms. The State asserts two claims under the UDTPA. *Id.* ¶¶ 218-19. The claims are based on two theories: an unfairness theory and a deception theory.

**Unfairness**. Count 1 alleges that the platform, as currently designed, is "unfair" because certain features cause user-generated content on the platform to become "addict[ive]," leading younger users to engage with too much content. *Id.* ¶¶ 57-113 The State challenges the following features as unfair:

1. **Recommendation engine.** The State alleges that the platform uses "algorithms" to provide users with videos it "predicts will keep them on the app for longer." *Id.* ¶¶ 57-68.

2. **Creator Funds.** The State alleges that, to increase user engagement, Defendants paid content creators to make videos that appealed to younger users. *Id.* ¶¶ 54-68.

3. **Autoplay.** The State alleges that the platform "automatically" begins to play videos in a user's feed when users open the application. *Id.* ¶ 70.

5. **Infinite scroll**. The State alleges that the platform "endlessly and seamlessly" loads new videos for the user to view as the user scrolls through their For You Page. *Id.* ¶ 71-72.

6. **TikTok Stories and TikTok LIVE** The State challenges TikTok "Stories," which allow users to post videos that remain visible on the platform for 24 hours. *Id.* ¶ 73, 74, 77. The State also challenges TikTok "LIVE," a feature that allows users to livestream videos. *Id.* ¶¶ 73, 75-76, 77.

7. **Push notifications.** The State challenges the use of "push notifications," which notify users of app updates "to lure them back" when they are "away from the platform." *Id.* ¶¶ 78-85.

8. **Likes, comments, and other interactions.** The State challenges features that allow users to interact with each other, such as "lik[ing]" or

"comment[ing]" on videos. *Id.* ¶ 86-92.

9. **Filters and effects.** The State alleges that the platform has "filters" or "[e]ffects," which allow user-creators to edit how their videos appear. *Id.* ¶¶ 93-101. The State claims that these features harm young users by negatively affecting their "self-esteem" and "body image." *Id.* ¶ 93

**Deception**. The State also claims that Defendants inadequately and inaccurately described the alleged risks and harms of using the platform. *Id.* ¶¶ 219d; *see also id.* ¶ 129-86. The State's deception claims allege misrepresentations concerning the following topics:

- **Safety of platform design features.** The State alleges that Defendants misrepresented and concealed that platform features "foster[] excessive, compulsive, and addictive use" by younger users. *Id.* ¶¶ 1, 129-85.

- **Enforcement of content-moderation features.** The State alleges that Defendants "misrepresent . . . how they apply and enforce" the platform's content-moderation policies. *Id.* ¶¶ 186-216. The State contends that, as a result of Defendants' inconsistent enforcement, younger users could still view violative content on the platform. *Id.* ¶¶ 190, 195-97, 199-200.

- **Efficacy of content-moderation features.** The State alleges that Defendants misrepresent the efficacy of safety features, including content-moderation features and screentime management features. *Id.* ¶¶ 146-85. The State alleges that these features "do not work as advertised." *Id.* ¶ 134.

## PROCEDURAL HISTORY

The State initiated this action on October 8, 2024. On October 28, 2024, Defendants made limited appearances for the purpose of filing a motion to dismiss for lack of personal jurisdiction. The next day, the Wake County Superior Court entered a consent briefing order allowing Defendants until January 10, 2025 to "file any Rule 12(b)(6) motions and file opening briefs and any accompanying affidavits in support of all Rule 12 motions." ECF No. 11.

On November 12, the case was designated a complex business case and assigned to this Court by the Chief Justice. ECF No. 2.

## ARGUMENT

The Court must dismiss a complaint if the plaintiff fails to allege facts establishing that "the exercise of jurisdiction over defendants would be []appropriate," *M Series Rebuild, LLC v. Town of Mount Pleasant, Inc.*, 222 N.C. App. 59, 63 (2012), or if the plaintiff "fails to allege sufficient facts to assert a viable claim." *Eastway Wrecker Serv., Inc. v. City of Charlotte*, 165 N.C. App. 639, 645 (2004), *aff'd*, 360 N.C. 167 (2005). Both defects exists here.

### A. The Court should dismiss the state's claims for lack of personal jurisdiction.

North Carolina courts may exercise personal jurisdiction over nonresidents like Defendants only to the extent "authorized by N.C.G.S. § 1-75.4, [North Carolina's] long-arm statute," and only to the extent jurisdiction would not "violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution." *Skinner v. Preferred Credit*, 361 N.C. 114, 119 (2006). When "evaluating the existence of personal jurisdiction" pursuant to the long-arm statute, "the question of statutory authorization collapses into the question of whether" due process requirements have been met. *Bruggeman v. Meditrust Acquisition Co.*, 138 N.C. App. 612, 617 (2000).

The State contends that this Court can exercise specific personal jurisdiction

over Defendants. ECF No. 3, ¶ 26.[2] The Due Process Clause permits specific jurisdiction only when the defendant has "minimum contacts" with the forum, such that jurisdiction does not "offend traditional notions of fair play and substantial justice." *Skinner*, 361 N.C. at 122. To satisfy this "minimum contacts" test, the State must establish that its claims result from alleged injuries that "arise out of activities [the] defendant 'purposefully directed' toward [North Carolina's] residents." *Stetser v. Tap Pharm. Prods., Inc.*, 162 N.C. App. 518, 521 (2004).

The State cannot make that showing. The State alleges that North Carolina residents were harmed because they used the TikTok platform, a globally accessible online platform, and that Defendants marketed the TikTok platform in North Carolina online and through in-person outreach. First, well-established authority holds that merely providing a generally available online platform that is accessible to a state's residents does not subject a defendant to personal jurisdiction in that state. Second, the State either fails to allege, or Defendants' evidence rebuts, that any marketing in North Carolina was specifically targeted toward North Carolina as required to establish personal jurisdiction. *See* Ex. A, Declaration of Samantha Kersul in Support of Defendants' Motions to Dismiss ("Kersul Decl."). These contacts therefore do not establish jurisdiction.

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[2] The State correctly forgoes any claim that Defendants are subject to general personal jurisdiction in North Carolina. *See* ECF No. 3, ¶¶ 12-18. A corporate entity is subject to general personal jurisdiction only where it is incorporated or maintains a principal place of business. *See Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). No Defendant here is incorporated or maintains its principal place of business in North Carolina. *See* ECF No. 3, ¶¶ 12-18.

### 1. Defendants have not purposefully directed activity toward North Carolina.

A court may exercise specific jurisdiction over a nonresident defendant only if the defendant "purposefully directed" conduct to "forum residents." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-73, 477 (1985); *see Stetser*, 162 N.C. App. at 521. To determine whether conduct was "purposefully directed" toward a forum, courts apply the "effects test" adopted in *Calder v. Jones*, 465 U.S. 783 (1984). *Mucha v. Wagner*, 378 N.C. 167, 175 (2021). Under the effects test, jurisdiction is appropriate only where the defendant "expressly aim[ed]" conduct at North Carolina, the defendant knew that the conduct was likely to have a significant impact in the forum, and North Carolina was "the focal point" of the conduct and the harm of defendants' alleged tortious activity. *Id.*; *Saxon v. Smith*, 125 N.C. App. 163, 172 (1997). The forum state, in other words, must be the "focal point" of the defendant's alleged conduct. *Calder*, 465 U.S. at 788-89.

The State alleges two bases for personal jurisdiction: (1) that North Carolina residents used and were allegedly injured by the TikTok platform, and (2) that Defendants marketed and promoted the platform in North Carolina, including through online marketing and outreach to parent-teacher associations and schools in the state. None of this alleged conduct establishes jurisdiction.

**Alleged harm to North Carolina platform users**. The State alleges that Defendants' "business model harmed young users," particularly because the platform "harms minor users' mental health." *E.g.*, ECF No. 3, ¶¶ 114, 123, 133. But Defendants allegedly do these things solely by maintaining a *globally* accessible

online platform that is accessible to users in all 50 states, including North Carolina. *See id.* ¶ 30. The State does not allege that any of the design features that allegedly render the platform unfair were developed in North Carolina or were used to single out North Carolina residents in particular for special treatment. *See id.* ¶¶ 49-113. Nor does the State allege that any of the challenged statements underlying its deception claims—i.e., statements on a generally accessible website or to the U.S. Congress, *id.* ¶¶ 114-216—were specifically aimed at North Carolina as opposed to the general public at large. Instead, the State insists jurisdiction is proper merely because Defendants made a platform available to the general public, and made statements about that platform to the general public, that allegedly caused harm to users, some of which reside in North Carolina.

Of course, "mere injury to a forum resident is not a sufficient connection to the forum" to ground personal jurisdiction. *Walden v. Fiore*, 571 U.S. 277, 290 (2014). Nor is a statement made to the general public. *See Fastpath, Inc. v. Arbela Techs. Corp.*, 760 F.3d 816, 824 (8th Cir. 2014) (holding that Iowa lacked jurisdiction over a defendant who hosted a virtual conference attended by an Iowan because conference did not "exclusively, or even predominantly[,] target[] . . . Iowa customers").

And as many courts have held, merely maintaining a website generally accessible to users worldwide—and, by extension, users in the forum state—does not amount to the kind of targeted, forum-specific conduct that is necessary to establish "purposeful direction." *See Rosenthal v. Bloomingdales.com, LLC*, 101

F.4th 90, 97-98 & n.1 (1st Cir. 2024) ("[A] website operator does not necessarily purposefully avail itself of the benefits and protections of every state in which its website is accessible."); *Hasson v. FullStory, Inc.*, 114 F.4th 181, 188-92 (3d Cir. 2024) (filtering restaurants using website's search filter and operating restaurants in forum state insufficient to establish jurisdiction); *Johnson v. TheHuffingtonPost.com, Inc.*, 21 F.4th 314, 320 (5th Cir. 2021) (forum residents "clicking ads and buying things" on website insufficient to establish jurisdiction); *XMission, L.C. v. Fluent LLC*, 955 F.3d 833, 844-45 (10th Cir. 2020) (forum residents' ability to post on a website insufficient to establish jurisdiction); *AMA Multimedia, LLC v. Wanat*, 970 F.3d 1201, 1211 (9th Cir. 2020) (defendant's use of online advertisements tailored to the forum's geographical location insufficient to establish jurisdiction); *Adv. Tactical Ordinance Sys., LLC v. Real Action Paintball, Inc.*, 751 F.3d 796, 803 (7th Cir. 2014), *as corrected* (May 12, 2014) (forum residents' receipt of company emails and access to website insufficient to establish jurisdiction); *be2 LLC v. Ivanov*, 642 F.3d 555, 556, 558-59 (7th Cir. 2011) (no targeting of forum state when defendant merely operated "interactive" website).

The rationale for these decisions is straightforward. A website operator cannot be said to have "purposefully directed" conduct toward a forum state if it "simply wants as many responses as possible *but* is indifferent to the physical location of the responder." *XMission*, 955 F.3d at 847; *see Doshier v. Twitter, Inc.*, 417 F. Supp. 3d 1171, 1178 (E.D. Ark. 2019) (no jurisdiction over Twitter because online platform "is accessible nationwide" and does not "specific[ally] target[]" forum

state). If "accessibility" of a website "alone" were enough to establish jurisdiction, then "jurisdiction would have no limit." *Johnson*, 21 F.4th at 320. Every state where an online platform "is accessed" could assert jurisdiction over the platform, and "the defense of personal jurisdiction . . . would no longer exist." *XMission*, 955 F.3d at 844-45. Likewise, if public statements were enough to establish jurisdiction, anyone who presents at a conference, testifies before a legislature, or speaks in front of a national audience would be subject to jurisdiction in all 50 states—an absurd result that would also bring about the "demise of all restrictions on the personal jurisdiction of state courts." *Hanson v. Denckla*, 357 U.S. 235, 251 (1958).

These principles resolve this case at the threshold. Defendants cannot be subject to personal jurisdiction merely because the State alleges that North Carolina residents suffered harm. And the conduct the State challenges—the provision of a generally accessible online platform and statements to the general public about that platform—was not targeted at this State, and thus cannot give rise to jurisdiction.

**Marketing and outreach to North Carolina residents.** The State alleges that Defendants have marketed the TikTok platform in North Carolina and promoted the platform through outreach to North Carolina schools and parent-teacher associations. None of these alleged contacts establishes jurisdiction.

First, the State alleges that Defendants have spent significant resources "to advertise the platform directly to North Carolinians." ECF No. 3, ¶¶ 42-43. The Complaint also alleges that Defendants "have promoted their platform to North

Carolinians" via advertisements on other social media platforms that "were served to minors in North Carolina." *Id.* ¶ 44. Notably absent, however, is any allegation that Defendants "expressly aim[ed]" any marketing or advertising at users in North Carolina. *Mucha*, 378 N.C. at 175. General advertising that is not "purposefully directed" at North Carolina is insufficient to establish jurisdiction. North Carolina courts cannot exercise personal jurisdiction "over a defendant who directed marketing and sales efforts at the United States without engaging in conduct purposefully directed at the forum state." *Id*. at 173.

The State also alleges that as part of a collaboration with the National Parent Teacher Association ("PTA") and National Parent Teacher Student Association ("PTSA"), Defendants "specifically prioritized" North Carolina parents, schools, and parent-teacher association chapters for outreach about the TikTok platform. ECF No. 3, ¶¶ 45-47, 132, 162. This outreach, too, was not specifically targeted at North Carolina. As Defendants' evidence shows, outreach related to the platform's partnership with PTA reaches North Carolina schools only because it reaches schools across the country. *See* Ex. A, ¶¶ 6-7, 12, 14; Ex. A to Kersul Decl., TikTok Guide for Parents. TTI provides funding to PTA for a grant program that supports schools in educating their students about online safety, including safety on the TikTok platform. Ex. A ¶ 5. The program awards funds to schools to host programming and create resources about online safety, and in some cases provides

on-site support for in-person events. *Id.*[3] PTA has exclusive control over administering the program, soliciting applications, and deciding which schools, in which states, will receive funding or other support. *Id.* ¶ 7. No Defendant plays any role in administering the funds, which are distributed to schools and PTA chapters across the country, or in deciding which schools receive support. *Id.* ¶ 8. Any connection to North Carolina is only through the "affirmative actions of an intermediary," which courts have refused to "impute" to defendants "for purposes of establishing personal jurisdiction." *Peter Millar, LLC v. Shaw's Menswear, Inc.*, 274 N.C. App. 383, 394 (2020).

As to the State's allegation that Defendants "specifically prioritized" North Carolina, the Complaint overstates the matter. Approximately half of U.S. states are prioritized for grants, Ex. A, ¶ 8, meaning North Carolina is hardly a "focal point." *See Mucha*, 378 N.C. at 175. In any event, the list has no direct bearing on how PTA selects schools or local PTA chapters to receive funds or program support, Ex. A, ¶ 8, meaning any connection to North Carolina remains through PTA as the "intermediary." *Peter Millar, LLC*, 274 N.C. App. at 394.

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[3] The State also alleges that as part of the PTA collaboration, Defendants established a COVID-19 relief grant program that prioritized North Carolina recipients. ECF No. 3, ¶ 47. The State does not allege that its claims arise out of these grants or that they relate to the State's claims in any way. *See Stetser*, 162 N.C. App. at 521. They did not. The COVID-19 relief grant program pledged $50 million in grants to educators, professional experts, and nonprofits to support accessible, distance learning during the COVID-19 lockdown. Ex. A, ¶ 14. Though North Carolina educators may have received some of these funds, it was part of a national program, not targeted at North Carolina recipients, and did not relate to safety on the TikTok platform. *Id.*

For these reasons, the Court should dismiss this case for lack of personal jurisdiction.

### B. The State seeks to impose liability for conduct protected by federal law.

The State asserts that the platform, as designed, is unfair because the manner in which it selects and presents user-generated content causes younger users to spend too much time engaging with that content on the platform. ECF No. 3, ¶ 219a. And the State contends that Defendants misrepresented the alleged risks of those features. *Id.* ¶ 219b-d. These claims are barred by Section 230 of the Communications Decency Act and the First Amendment because they seek to impose liability based on protected publishing conduct. Under Section 230, Defendants cannot be held liable for harms that users supposedly suffer because of the way third-party user-generated content is published on the platform. And under the First Amendment, Defendants cannot be held liable for the exercise of editorial discretion in selecting, organizing, and displaying—i.e., publishing—user-generated content. The First Amendment further bars the State's deception claims because they seek to compel speech.

#### 1. Section 230 bars the State's claims.

Section 230 provides that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider," and it preempts any state law inconsistent with that provision. 47 U.S.C. § 230(c), (e)(3). These provisions foreclose liability against online platforms for any harms arising out of "reviewing, editing, and

deciding whether to publish or to withdraw from publication third-party content." *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1102 (9th Cir. 2009); *see Zeran v. Am. Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997); *Winter v. Facebook, Inc.*, No. 4:21-CV-01046 JAR, 2021 WL 5446733, at *3 (E.D. Mo. Nov. 22, 2021) (collecting cases).

Section 230's protections extend to "causes of action of all kinds," *Marshall's Locksmith Serv. Inc. v. Google, LLC*, 925 F.3d 1263, 1267 (D.C. Cir. 2019), ranging from claims arising from a provider's "exercise of its editorial and self-regulatory functions," *Zeran*, 129 F.3d at 331, to claims arising from providing users with "a forum with[in] which to communicate" and "failure to delete content," *Force v. Facebook, Inc.*, 934 F.3d 53, 65 (2d Cir. 2019). To avoid chilling the expressive activity that online platforms facilitate, courts "agree" that "close cases . . . must be resolved in favor of" protecting online platforms. *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1174 (9th Cir. 2008) (en banc). And courts should apply Section 230 at the pleading stage because the statute protects online platforms not only "from ultimate liability," but also "from having to fight costly and protracted legal battles," *id.* at 1174-75; *see, e.g.*, *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 738 (9th Cir. 2024).

For purposes of Section 230, the TikTok platform indisputably constitutes "an interactive computer service." *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1097 (9th Cir. 2019). Section 230 thus "mandates dismissal" so long as two other elements are met: the claims seek to hold Defendants liable for "information provided by another information content provider," and (2) Defendants allegedly

acted as the "publisher or speaker" of that information. *Klayman v. Zuckerberg*, 753 F.3d 1354, 1357 (D.C. Cir. 2014) (quoting 47 U.S.C. § 230(c)(1)); *see Hill v. StubHub, Inc.*, 219 N.C. App. 227, 236-37 (2012). The State's claims satisfy both elements.

**a. The State's claims arise from third-party content on the platform.**

The State's claims turn on harms allegedly caused by viewing content provided by third-party "information content provider[s]," i.e., third-party users who "creat[e]" and "develop[]" content on the TikTok platform. 47 U.S.C. § 230(f)(3).

**Unfairness**. The unfairness claim asserts that the platform's features are "addictive," by which the State means that the features entice younger users into spending too much time viewing too much content on the platform. Paragraph after paragraph of the Complaint describes the content itself as harmful—i.e., videos depicting subject matter that is "harmful" for younger users such as sex, violence, drug and alcohol abuse, and other dangerous behaviors. *See, e.g.*, ECF No. 3, ¶¶ 187, 189-90, 195-96, 199, 209, 213. And the State makes clear that it is third-party users—not Defendants—who generate this content. *See id.* ¶ 33. Section 230 provides immunity where, as here, the "claims arise from and depend on the actual content" of the third-party content a defendant publishes. *Palmer v. Savoy*, No. 2020CVS94, ECF No. 109 at 14 (N.C. Super. Ct. July 28, 2021) (unpublished).

The State tries to circumvent Section 230 immunity by suggesting that users suffer harms not from the content itself, but from "design features" that determine which videos to display, how to display them, and how users can interact with them. *Id.* ¶¶ 1, 182, 189. But the State's theory is clear: the harm alleged is that viewers

become "addicted" to *viewing content*, because the platform's features make viewing videos "too engaging." *See id.* ¶¶ 1, 53-56, 62-63, 70, 71-72, 73, 78, 85, 87, 94, 133, 145. The State does not allege that younger users become "addicted to" an algorithm's "mathematical or logical operations" or other design features *themselves*. *Force*, 934 F.3d at 58. The features are relevant only because they make viewing and interacting with videos appealing. The appealing third-party content is thus "an essential component of each and all of the [State's] claims," *Jane Doe No. 1 v. Backpage.com*, 817 F.3d 12, 22 (1st Cir. 2016)—it is the whole reason viewers allegedly engage, and engagement with that third-party content is the whole reason they are allegedly harmed. *Id.* Put differently, the platform's design features could cause no harm independent of the third-party content they publish to viewers. "Without the content," in short, "there would be no claim." *Estate of B.H. v. Netflix, Inc.*, No. 4:21-CV-06561-YGR, 2022, 2022 WL 551701, at *3 (N.D. Cal. Jan. 12, 2022).

**Deception**. The State's deception claims are also predicated on harms arising from third-party content on the platform. According to the State, Defendants misrepresented and failed to disclose the degree to which the platform is "addictive." ECF No. 3, ¶ 7. But the sole reason the platform is allegedly "addictive" and harmful is that it provides a third-party content viewing experience that users allegedly find to be too engaging.

Specifically, the State alleges that Defendants misrepresented how they enforce the platform's content-moderation policies and, as a result, the platform

exposed users to allegedly "violative" content. *Id.* ¶¶ 187-216, 219c. In other words, the State alleges that Defendants "fail[ed] to" adequately "detect and remove" harmful third-party content—exactly "the kind of activity for which Congress intended to grant absolution" under Section 230. *Roommates.com, LLC*, 521 F.3d at 1171-72; *see Doe v. Grindr Inc.*, 709 F. Supp. 3d 1047, 1054 (C.D. Cal. 2023) ("Had third parties . . . refrained from sharing [content], the claims that [defendant-platform] failed to warn users of the risk of [the platform] or negligently misrepresented the [platform's] safety would not be cognizable"). As these allegations make clear, the State's theory is simply that users could view allegedly harmful third-party content despite the existence of certain safety features. Again, "[w]ithout the content, there would be no claim." *Estate of B.H.*, 2022 WL 551701, at *3.

**b. The claims seek to treat Defendants as publishers of third-party content.**

Section 230 bars "lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions." *Zeran*, 129 F.3d at 330. These "protected" functions encompass *any* "activity that can be boiled down to deciding whether to exclude material that third parties seek to post online." *Roommates.com, LLC*, 521 F.3d at 1170-71. This includes "reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content," *Barnes*, 570 F.3d at 1102; providing "neutral" "tools" through which third-party users can "generate" their own content (whether "lawful or unlawful"), *Hill*, 219 N.C. App. at 241; and engaging in "editorial decisions and functions ancillary to the

decision to make content available," *In re Soc. Media Adolescent Addiction/Personal Injury Prods. Liab. Litig.*, 702 F. Supp. 3d 809, 827 (N.D. Cal. 2023).

The "ordinary meaning" of "publisher" includes an online platform's use of "tools such as algorithms that are designed to match [third-party] information with a consumer's interests." *Force*, 934 F.3d at 66. After all, a key function of an online platform is to decide what content to select, how to organize it, and how to present it to users. Decisions that are "part and parcel of [a website's] overall design and operation"—and that "reflect choices about what content can appear on the website and in what form"—"fall within the purview of traditional publisher functions." *Fields v. Twitter, Inc.*, 217 F. Supp. 3d 1116, 1124 (N.D. Cal. 2016).

**Unfairness**. The design features the State challenges are all publishing activities:

- **Recommendation system.** "[A]lgorithm[ic]" recommendation systems organize, present, and recommend content, and thus are publishing operations protected under Section 230. *See Dyroff*, 934 F.3d at 1098; *Force*, 934 F.3d at 65-66, 70.

- **Filters and effects.** "Effects" "facilitate the communication and content of others," and a platform "act[s] as a publisher" when using them. *Dyroff*, 934 F.3d at 1098.

- **Autoplay and infinite scroll.** These alleged features determine the manner in which users receive videos. Section 230 protects them because altering them would "require defendants to publish less third-party content." *In re Soc. Media*, 702 F. Supp. 3d at 831 & n.16 (dismissing challenges to "endless scroll" and "auto-play" features); *see Force*, 934 F.3d at 65-66, 70.

- **TikTok Stories and LIVE.** These features allow for "ephemeral" content and thus are editorial tools used to "review[], edit[], and decid[e] whether to publish or to withdraw from publication third-party content." *Barnes*, 570 F.3d at 1102.

- **Push notifications.** These "notifications" are "tools meant to facilitate the communication and content of others," and a platform "act[s] as a publisher of others' content" when using them. *Dyroff*, 934 F.3d at 1098.

- **Likes, comments, and other interactions.** These features are simply a way for users to communicate about another user's content, which falls squarely within Section 230. *See id.* at 1097 (enabling users to "post comments and respond to comments posted by others" is "[t]he prototypical service qualifying for immunity").

**Deception**. The State's deception claims also challenge publishing activities. The gravamen of these claims is that, for the platform's statements about its features, user-generated content, and their alleged risks to have been truthful, the platform was required to "do more to protect [its] users" from "objectionable" content. *In re Facebook*, 625 S.W.3d 80, 83 (Tex. Sup. Ct. June 25, 2021); *see* ECF No. 3, ¶¶ 187-216, 219c. This theory turns on the State's contention that the platform "did not do enough to block or remove content." *Gonzalez v. Google*, 2 F.4th 871, 891 (9th Cir. 2021), *rev'd on other grounds*, 598 U.S. at 471. Section 230 bars claims challenging the alleged failure to remove harmful content from a platform. *See Force*, 934 F.3d at 65; *Klayman*, 753 F.3d at 1359. Indeed, Congress enacted Section 230 to bar this kind of second-guessing. For good reason: a contrary rule would disincentivize platforms from developing content-moderation standards and developing tools to empower users to self-control what they see on a platform.

Although the State clothes its claims in the garb of "deception," the substance of the claims is nearly identical to that asserted in *Stratton Oakmont, Inc. v. Prodigy Services Co.*, No. 31063/94, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995), where a platform "was held liable . . . because it attempted to *remove* some

problematic content from its website, but didn't remove enough," *Roommates.com, LLC*, 521 F.3d at 1170. Congress enacted Section 230 to overrule *Stratton*, *id.* at 1163, and immunize interactive computer services like the TikTok platform from claims that seek to hold them liable for "failing to detect and remove" third-party content, *id.* at 1172.

Thus, numerous courts have held that Section 230 bars claims seeking to hold platforms liable for not removing third-party content as aggressively as their own policies allegedly require. This is true no matter how the claim is styled—including when the plaintiff styles the claim as one challenging "deceptive" acts or practices or the "failure to disclose." *See Wozniak v. YouTube, LLC*, 100 Cal. App. 5th 893, 918, 920 (2024) (similar); *Beckman v. Match.com*, 668 F. App'x 759, 759 (9th Cir. 2016) (similar); *Errato v. Am. Express Co.*, No. 3:18-CV-1634 (VAB), 2022 WL 17737285, at *6-7 (D. Conn. Dec. 16, 2022) (similar). What matters is not "the name of the" claim, but whether *in substance* the claim "requires the court to treat the defendant as the 'publisher or speaker' of content provided by another." *Barnes*, 570 F.3d at 1102.

No matter how pled, the State's deception claims target publishing conduct because they demand stricter adherence to the platform's own alleged policies for publishing third-party content and greater disclosure of the risks allegedly associated with the manner in which that content is published. Because these claims "implicitly require[] recourse to [third-party] profiles themselves and the traditional function of a publisher," they are barred. *Herrick v. Grindr, LLC*, 306 F.

Supp. 3d 579, 591 (S.D.N.Y. 2018).

**2. The First Amendment bars the State's claims.**

The First Amendment also bars the State's claims. *First*, the U.S. Supreme Court recently confirmed that the longstanding First Amendment protections that apply to traditional publishers apply equally to the features that online platforms use to select, organize, and display user-generated content. *Second*, the State's deception claims are barred because the First Amendment prohibits states from compelling the kind of speech the State here wants to compel.

**a. The State challenges the exercise of editorial discretion.**

The State's claims impermissibly attack the platform's "exercise of editorial control and judgment" in selecting content for publication and the speech on the platform itself. *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 258 (1974). As the Supreme Court confirmed in *Moody*, the First Amendment's longstanding protections for expressive editorial judgments made by traditional publishing entities apply equally to online platforms that disseminate and make expressive choices about how to display third-party content. A platform's choices about "which third-party content" an online platform's viewer feed "will display"—"or how the display will be ordered and organized"—are what "give the feed a particular expressive quality." *Moody*, 603 U.S. at 737-38. The First Amendment prohibits a state's attempt to regulate or "alter[]" how an online platform chooses "the views [it] will, and will not, convey." *Id.* at 737. The State's claims violate these protections, because they seek to "regulate" and "alter[]" the "editorial choices" that the platform makes in providing a third-party content viewing experience. *Id.* at 739-40.

**Unfairness**. The State's unfairness claims violate the First Amendment twice-over. For one, the claim seeks to impose liability for editorial features that curate and disseminate speech on the platform. These features are how the platform exercises its "[t]raditional publish[ing] and edit[ing]" discretion to "select and shape other parties' expression into [its] own curated speech products." *Id.* at 717. Moreover, the claims seek to impose liability because the platform's design features publish content that viewers find overly engaging. The Supreme Court has, however, made clear that the First Amendment bars a state from imposing liability simply because protected speech is too "catchy." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 577-78 (2011). Indeed, an attack on content as too catchy is a facially content-based challenge long deemed "presumptively unconstitutional." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

**Deception**. The State's deception claims are also barred. According to the State, the platform's safety-related representations are false because the platform uses "ineffective" content-moderation and other safety tools and practices. ECF No. 3, ¶¶ 9, 126(b), 131. But those claims attack the platform's editorial choices about what content its content-moderation standards will "include and exclude" on users' feeds, how it applies those "content-moderation standards to remove, alter, organize, [and] prioritize" content, *Moody*, 603 U.S. at 718, and how other platform features "creat[e] and disseminat[e] . . . information." *Sorrell*, 564 U.S. at 570. Although the State styles its claims as challenging "deceptive" acts, it effectively seeks an "order telling [the platform] what content-moderation policies to adopt and

how to enforce those policies," *O'Handley v. Padilla*, 579 F. Supp. 3d 1163, 1186-88 (N.D. Cal. 2022) ("Twitter has important First Amendment rights that would be jeopardized by a Court order telling Twitter what content-moderation policies to adopt and how to enforce those policies."), *aff'd*, 62 F.4th 1145 (9th Cir. 2023).

Even worse, the State seeks judicial supervision of how the TikTok platform moderates and displays content, to eliminate content the State deems "too engaging" or otherwise objectionable to younger users. No matter how artfully the State may plead its deception claims, they inescapably target both the content itself and the platform's curation, moderation, and publication of that content. But the government cannot "regulat[e] the content-moderation policies" and other expressive choices that an online platform "use[s] for [its] feed[]" in an attempt to "change the speech that will be displayed there." *Moody*, 603 U.S. at 743. To the contrary, the First Amendment bars the State from "interfer[ing] with [the platform's] editorial choices" as to what content-moderation policies to adopt, and from attempting to "alter[] the content of [its] compilation." *Id.* at 731-32.

**b. The State seeks to compel speech.**

The First Amendment bars the State's deception claims for another reason: they seek to compel the platform to speak by warning users about alleged "risks" of the platform, its features, and third-party content on the platform. That relief is not permitted under the First Amendment.

*NetChoice, LLC v. Bonta*, 113 F.4th 1101 (9th Cir. 2024), is illustrative. There, the Ninth Circuit agreed that the First Amendment barred a California law

requiring online businesses to create reports identifying any risk of harm to children arising from data management practices. The court confirmed that states cannot require providers of third-party speech on online platforms to warn about the alleged risks those platforms might pose to younger users, for two reasons. *Id.* at 1117. First, the law's disclosure requirements were not "commercial speech," and thus triggered heightened scrutiny. *Id.* at 1119-20. Requiring businesses to "opine on and mitigate the risk that children are exposed to harmful content online" could not survive that standard. *Id.*[4] Second, requiring businesses to speak "at all," let alone to issue specific warnings, was "clearly" compelled speech in violation of the First Amendment. *Id.* at 1117; *see also Nat'l Ass'n of Manufacturers v. S.E.C.*, 800 F.3d 518, 530 (D.C. Cir. 2015) ("[r]equiring a company to publicly condemn itself" violates First Amendment).

The Court should reach the same result here. The State seeks to impose liability and obtain an injunction (ECF No. 3, at 52) because Defendants allegedly failed to warn that the platform was addictive and harmed to young users. Forcing Defendants to condemn the TikTok platform in that way is an improper attempt to

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[4] Courts do not typically apply tiers of constitutional scrutiny where, as here, the State seeks to impose tort-like liability in violation of the First Amendment. *See Snyder v. Phelps*, 562 U.S. 443, 451-52 (2011); *James v. Meow Media, Inc.*, 300 F.3d 683, 696-97 (6th Cir. 2002). In the event the Court does apply a level of scrutiny, the State's content- and viewpoint-based attack on the platform's user-generated content and the platform's exercise of editorial discretion as to that content requires strict scrutiny—which the State cannot meet. Although the State cites a general interest in protecting minors from content it deems objectionable (*see* ECF No. 3, ¶ 9), that "free-floating" interest in "restrict[ing] the ideas to which [minors] may be exposed" cannot satisfy strict (or even intermediate) scrutiny, *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 794 (2011).

compel speech barred by the First Amendment.

### C. The State fails to allege a violation of the UDTPA.

The State also fails to plead a UDTPA claim. *First*, the State fails to allege that the platform is unfair. *Second*, the State alleges no actionable deception.

#### 1. The State has not alleged unfair act or practice.

The State's unfairness claim asserts that the design features comprising the platform are unfair because they "encourage compulsive and excessive use among young users" in a way that is "harmful" to these users. ECF No. 3, ¶ 219(a), (d). In other words, the State claims that the platform *itself*, as currently designed, is unfair. To Defendants' knowledge, no North Carolina court has ever held that an otherwise lawful good or service itself constitutes an unfair act or practice.

The North Carolina Supreme Court has long held that a business practice is unfair within the meaning of the UDTPA when it "offends established public policy as well as when the practice is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers." *Johnson v. Phoenix Mut. Life Ins. Co.*, 300 N.C. 247, 263 (1980) (citing *Federal Trade Comm'n v. Sperry & Hutchinson Co.*, 405 U.S. 233 (1972)); *see also Bumpers v. Cmty. Bank of N. Virginia*, 367 N.C. 81, 91 (2013). Typically, these factors will not support liability when the challenged conduct is a lawful good or service itself, which explains why no North Carolina court has ever declared such a good or service to be unfair. In any event, if there were ever a case where a lawful good or service could be judicially declared unfair, this would not be it.

To start, offering a good or service to the public generally cannot offend public

policy absent an express prohibition. Finding that a good or service itself is "unfair" under the UDTPA means that it is unlawful for the defendant to offer that good or service to the public. But if the Legislature intended to make a good or service legally unavailable to residents of North Carolina, it can and should do so expressly. The State should not be permitted to seize upon a vaguely worded prohibition on "unfairness" to deny North Carolina residents access to "goods or services" that the Legislature itself has elected not to prohibit. Such legislation-by-litigation undermines both liberty and democratic accountability.

Indeed, if the State's theory were correct—that a platform is unfair because it is "too engaging"—there would be no limit to the range of everyday goods and services that could be deemed unfair. On the State's theory, virtually every company doing business in North Carolina—including businesses as benign as coffee shops—could be held liable for consumer-protection violations.

The State identifies nothing that authorizes a judicial ban on online entertainment platforms that are "too engaging." The State's theory of unfairness instead boils down to the simple fact that it does not like the platform and would prefer that younger users spend more time doing other things. In the State's view, younger users should not "spend[] numerous hours a day mindlessly swiping," on the platform. ECF No. 3, ¶ 1. But our laws presume that people are able to choose for themselves (or in the case of minors, in connection with their parents) whether, when, and how to engage with third-party speech—even speech that the State may find "too engaging," "catchy," or otherwise objectionable.

That brings us to the second factor: whether a good or service can itself be deemed "immoral, unethical, oppressive [or] unscrupulous." *Bumpers*, 367 N.C. at 91. To give meaning to this otherwise decidedly vague factor, courts analyzing analogous state consumer-protection statutes focus on consumer choice—the conduct must be "so oppressive [that it] leave[s] the consumer with little alternative except to submit to it." *Phillips v. Double Down Interactive LLC*, 173 F. Supp. 3d 731, 743 (N.D. Ill. 2016). But consumers always have a choice whether to "submit" to a good or service that is available in the market. If a good or service is so manifestly harmful that (in the State's view) it is unfair to offer it for public consumption at all—even though the Legislature has not seen fit to ban it—then consumers can use their own agency and decide not to use it. A consumer who "could have picked other forms of entertainment" has made a free choice, and cannot be said to have been "oppressed." *Id.* For example, two federal courts have rejected claims challenging allegedly "addictive" online games under analogous consumer-protection statutes because—notwithstanding allegations that the games "exploit[ed] . . . psychological triggers"—there was nothing to prevent the users from "opt[ing] for alternative entertainment." *Id.*; *see Ristic v. Mach. Zone, Inc.*, No. 15-CV-8996, 2016 WL 4987943, at *4 (N.D. Ill. Sept 19, 2016) ("[W]hile any type of addiction is unfortunate, this Court . . . does not read [Illinois's consumer-protection statute] to protect [plaintiff] from his own decision to play the [game].").

All of that is true here. No one forces users to download the platform. It is well known that the features the State attacks as allegedly "addictive"—such as

algorithm-based recommendation systems, push notifications, and visual effects—are standard features of many popular online platforms, including Facebook, Snapchat, and YouTube. *See In re Soc. Media*, 702 F. Supp. 3d at 819-21. Indeed, the State admits that the challenged platform features and alleged harms have been well publicized and common knowledge for years. ECF No. 3, ¶¶ 52, 54, 91, 146, 148. North Carolina users can decide for themselves whether to download the platform.

Finally, the "substantial injury" factor does not support liability for goods or services—or for the platform in this case. This factor requires a substantial injury to consumers which *is not reasonably avoidable by consumers themselves*. *See Exclaim Marketing, LLC v. DirecTV, LLC*, 134 F. Supp. 3d 1011, 1025 (E.D.N.C. 2015), *aff'd*, 674 F. App'x 250 (4th Cir. 2016). To make this determination, courts consider whether the defendant's conduct "amount[ed] to an inequitable assertion of its power or position." *Se. Shelter Corp. v. BTU, Inc.*, 154 N.C. App. 321, 330 (2002). In other words, "[a]n injury is reasonably avoidable if consumers have reason to anticipate the impending harm and the means to avoid it, or if consumers are aware of, and are reasonably capable of pursuing, potential avenues toward mitigating the injury after the fact." *Davis v. HSBC Bank Nev., N.A.*, 691 F.3d 1152, 1168-69 (9th Cir. 2012). But consumers always (or almost always) can reasonably avoid injuries from a service by not using it. Again, North Carolina users can decide for themselves whether to download the platform. *See Phillips*, 173 F. Supp. 3d at 743; *Ristic*, 2016 WL 4987943, at *4.

In short, there is no basis in North Carolina law to hold that goods or services that the Legislature has elected not to prohibit can nonetheless be "unfair." But even if the UDTPA could, in theory, be stretched that far, the State has not alleged unfairness here.

**2. The State has not alleged deceptive conduct.**

The State's deception claims also fail. *First*, the State's allegations fail to satisfy North Carolina's' heightened pleading requirements for fraud. *Second*, even when the State does specifically identify alleged misrepresentations, such representations are not actionable representations of fact. *Last*, the State's own pleadings undercut the suggestion that Defendants made any misrepresentations. Together, these principles negate any deception claims.

**No particularity**. Because the State's deception claims sound in fraud, the Complaint must "state with particularity the circumstances constituting fraud or mistake." *Cross v. Ciox Health, LLC*, 438 F. Supp. 3d 572, 584 (E.D.N.C. 2020) (applying Rule 9(b) to UDTPA deception claim). To do so, the State must allege "the time, place and contents of the fraudulent representation, the identity of the person making the representation and what was obtained by the fraudulent acts or representations." *Terry v. Terry*, 302 N.C. 77, 85 (1981); *see Cross*, 438 F. Supp. 3d at 584.

Many of the State's allegations fail this requirement. The State repeatedly fails to allege specific facts regarding who misrepresented or omitted particular risks, when and where that person supposedly engaged in such deception, or even whether any user in North Carolina was supposedly exposed to the alleged

misrepresentations. For example, the State vaguely asserts—with no supporting details—that Defendants "misrepresent many of the supposed safety features" on the platform, deceptively reassure the TikTok platform audience that minor safety is a top priority, and cultivate the misleading impression that platform features work to actually reduce teen screen time when they do not. ECF No. 3, ¶¶ 131-33, 173. As another example, the State vaguely alleges that Defendants "know" that its "beauty filters" and other "Effects" are dangerous, but that Defendants have kept them on the platform, and continue offering them to minors, because they increase usage. *Id.* ¶¶ 93-101. And the State largely relies on broad allegations that Defendants misrepresent the platform's safety "in numerous ways," without connecting these allegations with any alleged specific statements, or to specific allegations of fact regarding who made those statements, when they made those statements, or where. *See id.* ¶ 219(a)-(d). For these reasons, the State does not state a claim for deceptive conduct.

**No representation of fact**. To be actionable under the UDTPA, a statement must allege that Defendants misrepresented "ascertainable facts, as distinguished from a matter of opinion or representation relating to future prospects." *Ragsdale v. Kennedy*, 286 N.C. 130, 139 (1974). Statements that "amount[] to nothing more than . . . opinion" are insufficient. *Rel. Ins., Inc. v. Pilot Risk Mgmt. Consulting, LLC*, No. 22-CVS-4285, 2024 WL 3549145, at *68 (N.C. Super. July 12, 2024), *opinion clarified,* (N.C. Super. Ct. 2024). Statements that are vague, general, subjective, or that are not verifiable or testable fail this standard. *See B&D Software Holdings,*

*LLC v. Infobelt, Inc.*, No. 22-CVS-14885, 2024 WL 3665774, at *14 (N.C. Super. Ct. Aug. 1, 2024).

The core of the State's deception claims is that Defendants allegedly misrepresented platform safety. ECF No. 3, ¶ 219b-d. These claims challenge statements about how TikTok prioritizes the safety and well-being of teens. *Id.* ¶ 164. But concepts like treating "safety" as a "priority" are hardly self-defining when used to describe speech—they are quintessentially "vague and indefinite" in this context. *B&D Software Holdings, LLC*, 2024 WL 3665774, at *14. Indeed, such statements are exactly the kind of subjective characterizations that courts across the country[5] have repeatedly held to be mere puffing.

The State's feature-specific allegations fail for similar reasons. For example, the State criticizes "Restricted Mode," which "limits the appearance of content that may not be appropriate for all audiences." ECF No. 3, ¶ 179. The State claims Defendants misrepresented "Restricted Mode" as an "appropriate experience" to the platform's "family-oriented partners" like the National Parent Teacher Association. *Id.* ¶ 181. But whether a particular feature provides an "appropriate" user

[5] *See In re Lyft Inc. Sec. Litig.*, 484 F. Supp. 3d 758, 770-71 (N.D. Cal. 2020) (statements about company's "commitment to safety" and "safety measures"); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752, 2017 WL 3727318, at *26 (N.D. Cal. Aug. 30, 2017) (statement that "protecting our systems and our users' information is paramount"); *Greater Houston Transp. Co. v. Uber Techs., Inc.*, 155 F. Supp. 3d 670, 683 (S.D. Tex. 2015) (statement that car service was "safest ride on the road"); *Leonard v. Abbott Lab'ys, Inc.*, No. 10-CV-4676 ADS WDW, 2012 WL 764199, at *22 (E.D.N.Y. Mar. 5, 2012) ("[g]eneral statements" about "compliance with safety and quality standards").

experience is a vague, general, subjective, and nonactionable opinion. *See B&D Software Holdings, LLC*, 2024 WL 3665774, at *14.

The same is true of alleged statements about "Refresh," a feature that allows users to "reset" their feed and "start fresh on" the platform. *See* ECF No. 3, ¶¶ 146-59. The State challenges the platform's use of phrases like "fresh start" when describing the "Reset" feature (*id.* ¶ 152), because they "gave the impression that the Refresh feature would result in a completely new feed" (*id.* ¶ 154). But phrases like "fresh start" are too vague and general—no one can take away the specific impression from those phrases that Refresh "result[s] in a completely new feed."

For these reasons, the State does not allege actionable deception.

**No misrepresentation**. To be actionable, a representation must be "deceptive." N.C. Gen. Stat. § 75-1.1. Many of the State's allegations fail this test, as the State's own pleadings undercut its allegations that any Defendant misrepresented the platform or its features.

For example, the State alleges that Defendants misrepresent that they remove content that violates content-moderation policies like the TikTok platform's Community Guidelines. *See* ECF No. 3, ¶¶ 189, 195, 197, 199-200. The State also alleges that the platform does not, in practice, prohibit certain violative content, such as "sexually suggestive" content, gore, and illegal drugs. *Id.* ¶¶ 189, 195-96. But the May 17, 2024 Community Guidelines state not only that such content is prohibited, but also that the platform "cannot guarantee that all content shared on

TikTok complies with our Terms of Service or Community Guidelines."[6] That important qualification is consistent with other public statements about safety features cited in the Complaint, none of which guarantees that these features will prevent younger users from ever seeing violative content. The statements indicate only that such tools are part of the platform's ongoing efforts to prioritize the safety and well-being of teens. Compl. ¶ 164; *see also id.* ¶¶ 177, 184. They do not represent that the platform has implemented a definitive, perfect solution.

Nor could they. It is simply implausible to assert that an online platform can guarantee it can remove each and every instance of violative content—no reasonable user would believe it. As one court acknowledged, "[i]t would be impossible . . . to screen each of [the] millions of postings for possible problems." *Zeran*, 129 F.3d at 331. Thus, courts consistently hold that a platform cannot be held liable for alleged deception about its content moderation policies where, as here, the platform expressly discloses that it cannot ensure all violative content is removed. *See Green v. Am. Online (AOL)*, 318 F.3d 465, 471 (3d Cir. 2003); *Herrick*, 306 F. Supp. 3d at 596.

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[6] TikTok.com, *Community Guidelines*, https://www.tiktok.com/community-guidelines/en (last accessed Jan. 10, 2025); TikTok.com, *Community Guidelines: Enforcement*, https://www.tiktok.com/community-guidelines/en/enforcement (last accessed Jan. 10, 2025). The Court may consider the Community Guidelines and other platform-related documents because they are incorporated by reference into the Complaint. *See* ECF No. 3, ¶¶ 133, 186, 187, 189, 195, 199-200; *Wilson v. SunTrust Bank*, 257 N.C. App. 237, 244 (2017) ("[T]he trial court can reject allegations that are contradicted by the documents . . . specifically referred to . . . in the complaint.").

The same is true for the State's other challenges to platform safety. Take, for example, the State alleges that although Defendants market tools like "Family Pairing" and "Restricted Mode" to help parents limit their children's content access, those tools do not work as advertised. ECF No. 3, ¶¶ 178, 182-84. But the State does not (and could not) allege that Defendants ever represented that these tools would prevent minors from ever seeing mature or inappropriate content. Rather, on the State's own allegations, Family Pairing allows parents to "customize their safety settings based on individual needs," and Restricted Mode "limits the appearance of content that may not be appropriate for all audiences." *Id.* ¶¶ 175, 179. These tools thus do exactly what Defendants says they do—help parents "manage a number of safety controls for their teens' account." *Id.* ¶¶ 175, 183.

Or take the State's allegations that Defendants deceived users about screentime management tools. The State challenges a March 2023 post stating that the platform would implement a "screentime management tool" that provides younger "users with a '60-minute daily screen time limit." *Id.* ¶ 136. According to the State, "this tool does not actually impose a screen time limit," and teens "can simply enter a very basic passcode . . . and continue scrolling." *Id.* ¶ 139. But that same March 2023 post discloses this: "If the 60-minute limit is reached, teens will be prompted to enter a passcode in order to continue watching, requiring them to make an active decision to extend that time."[7] The State also takes issue with the

[7] TikTok.com, *New features for teens and families on TikTok* (last accessed Jan. 10, 2025), https://newsroom.tiktok.com/en-us/new-features-for-teens-and-families-on-tiktok-us; *see* ECF No. 3, ¶ 136 (referencing same).

fact that this tool supposedly ended up having only a negligible impact on usage. *Id.* ¶ 145. Again, just because a safety tool does not work the way that the State believes it should does not mean Defendants' representations about the tool are false.

For these reasons, the State cannot state a claim for deceptive acts or practices.

## CONCLUSION

The Complaint should be dismissed with prejudice.

Dated: January 10, 2025

Respectfully submitted by:

/s/ *Eric M. David*

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## RULE 7.8 WORD COUNT CERTIFICATION

Pursuant to BCR 7.8 and the Court's Order on Consent Motion for Expansion of Word Limits (ECF No. 33), the undersigned hereby certifies that the foregoing brief is 10,000 words or less (excluding caption, any index, table of contents, table of authorities, signature blocks, and any required certificates) as reported by word-processing software.

/s/ *Eric M. David*
Eric M. David

## CERTIFICATE OF SERVICE

This certifies that I have this day electronically filed the foregoing document with the North Carolina Business Court, which will serve all counsel of record in accordance with BCR 3.9(a).

This is the 10th day of January, 2024.

/s/ *Eric M. David*
Eric M. David

STATE OF NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV032063-910

STATE OF NORTH CAROLINA, ex rel. JOSHUA H. STEIN, ATTORNEY GENERAL,

Plaintiff,

v.

TIKTOK INC.; TIKTOK U.S. DATA SECURITY INC.; TIKTOK LLC; TIKTOK PTE. LTD.; TIKTOK, LTD.; BYTEDANCE INC.; AND BYTEDANCE LTD.,

Defendants.

**INDEX OF EXHIBITS TO DEFENDANTS' BRIEF IN SUPPORT OF DEFENDANTS' MOTIONS TO DISMISS**

| **Exhibits** | **Document** |
|---|---|
| Ex. A | Declaration of Samantha Kersul In Support Of Defendants' Motions To Dismiss ("Kersul Decl.") |
| Ex. A to Kersul Decl. | TikTok Guide for Parents |

# Exhibit A

STATE OF NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV032063-910

STATE OF NORTH CAROLINA, ex rel. JOSHUA H. STEIN, ATTORNEY GENERAL,

Plaintiff,

v.

TIKTOK INC.; TIKTOK U.S. DATA SECURITY INC.; TIKTOK LLC; TIKTOK PTE. LTD.; TIKTOK, LTD.; BYTEDANCE INC.; AND BYTEDANCE LTD.,

Defendants.

**DECLARATION OF SAMANTHA KERSUL IN SUPPORT DEFENDANTS' MOTIONS TO DISMISS**

I, Samantha Kersul, declare as follows:

1. I am over the age of 18, have personal knowledge of the matters set forth herein, and am otherwise competent to testify.
2. I am a Manager of State Government Affairs at TikTok Inc. ("TTI"). I am located in Seattle, Washington. I submit this declaration in support of Defendants' Motions to Dismiss.
3. Exhibit A to this declaration is a true and correct copy of the TikTok Guide for Parents created in collaboration with the National Parent Teacher Association.
4. TTI has an ongoing collaboration with the National Parent Teacher Association ("PTA") and the National Parent Teacher Student Association ("PTSA"). This collaboration generally includes three categories of activities:

awarding grant funding to local PTA chapters and schools, providing support for events about online safety for teens and their parents, and creating online safety resources. Defendants' involvement in these activities is limited as described below. None of these activities are specifically targeted toward North Carolina residents.

5. *First*, the collaboration includes a grant program called PTA Connected: Create With Kindness ("Create With Kindness"). Through Create With Kindness, TTI provides funding to PTA to award grants to local PTA chapters and schools to create programming and resources to empower families, teachers, and schools to take ownership of their teens' safety on the TikTok platform.
6. Create With Kindness is a national grant program. PTA advertises Create With Kindness nationally and encourages PTA chapters and schools nationwide to apply for grant funding.
7. PTA has full discretion and control over the program, including soliciting applications from PTA chapters and schools, reviewing applications, and deciding which PTA chapters and schools will receive grants. The program awards grants to schools and PTA chapters nationwide, and is not specifically targeted at North Carolina residents or schools.
8. Approximately half of U.S. states, including North Carolina, are prioritized for grants, but Defendants do not have any say in determining whether Create With Kindness grants are awarded to PTA chapters and schools in

these states on a priority basis (or at all). PTA is the sole administrator of the program and sole decisionmaker about which PTA chapters and schools, in which states, will receive grants.

9. *Second*, TTI collaborates with PTA to provide support, funding, and resources for PTA Connected events. PTA hosts these events at schools across the country to empower families, teachers, and schools to take ownership of their teens' safety on the TikTok platform. As with the Create With Kindness grant program, PTA retains full control over PTA Connected programming, including deciding where to host events, in collaboration with which PTA chapters or schools, in which states. PTA hosts PTA Connected events at schools nationwide.

10. TTI's involvement in these events is limited. First, TTI provides funding to PTA. PTA has full discretion to allocate the funds with no involvement from TTI. Second, TTI creates written and online resources about TikTok platform safety and online safety generally, which PTA may use at the events. These resources are designed for a general audience and are not targeted in North Carolina in any way.

11. Defendants' employees have never attended or participated in any PTA Connected events in North Carolina.

12. *Third*, TTI collaborates with PTA to create online resources about the TikTok platform and online safety. One example is the TikTok Guide for Parents, a true and correct copy of which is attached as Exhibit A to this declaration.

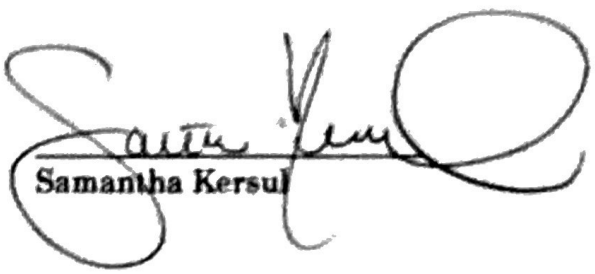
These resources are publicly available online and do not target North Carolina in any way.

13. Defendants do not contract or communicate directly with the North Carolina PTA, or with local North Carolina PTA chapters or schools.

14. I understand that in 2020, as part of early COVID-19 relief efforts, TTI pledged $50 million in grants to educators, professional experts, and nonprofits to support accessible, distance learning. Though North Carolina educators may have received some of these funds, it was part of a national program, not targeted at North Carolina recipients. This grant program did not relate to safety on the TikTok platform.

**I declare under penalty of perjury under the laws of North Carolina that the foregoing is true and correct. Executed on January 10, 2025.**

**DATED: January 10, 2025**



**Samantha Kersul**

# Exhibit A to Kersul Declaration

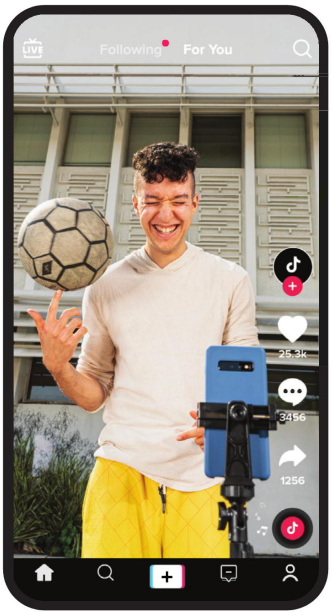
# TikTok Guide for Parents

TikTok

In consultation with
National PTA®
everychild. onevoice.®
National PTA does not endorse any commercial product, service or entity. No endorsement of TikTok is implied.

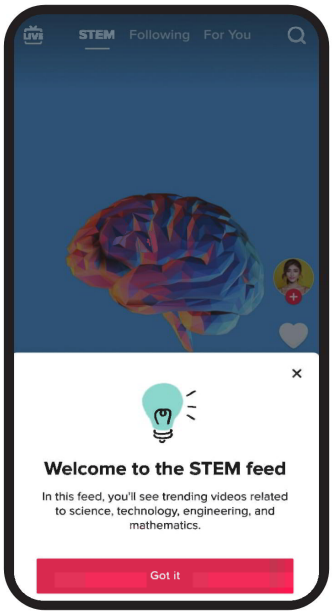
# TikTok 101

TikTok is a short-form video platform that offers in-app editing, effects, and sounds to help people develop imaginative videos and creative content. Our mission is to inspire creativity and bring joy. TikTok enables everyone to be a creator and share their passion and creative expression through their videos.



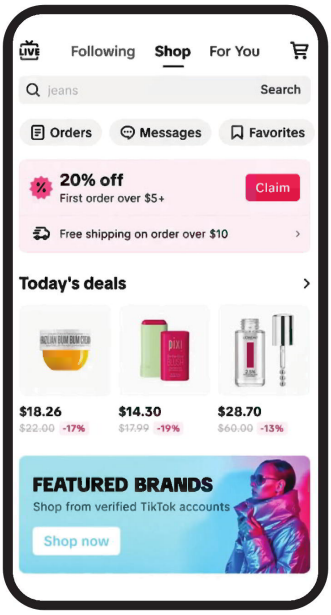

The **For You feed** is a central part of the TikTok experience.

It recommends videos to you based on content you've engaged with, such as videos you have viewed, liked, or shared.




We also have the **STEM feed**, which is turned on by default for teens under 18.

Here you can explore a wide range of entertaining, and enriching videos related to science, technology, engineering, and math.

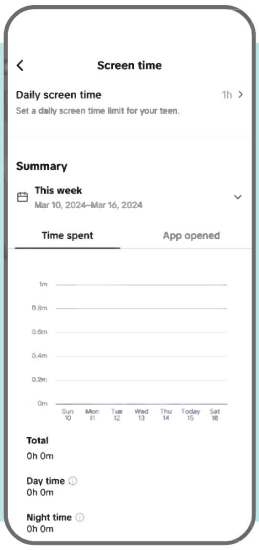



**TikTok Shop** is an e-commerce platform where parents can shop with confidence directly for whatever they need, for themselves or their family.

TikTok Shop has policies to protect shoppers and promote a trustworthy shopping environment. TikTok Shop is only available to people aged 18 and over.

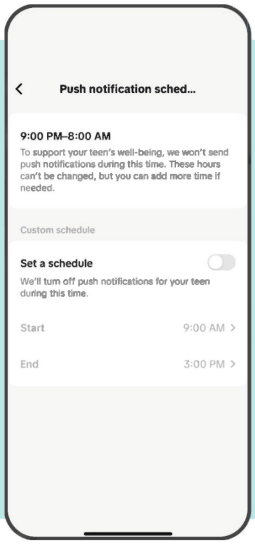
# Tools for Families

When enabled, our Family Pairing feature lets parents link their TikTok account to their teen's to choose a variety of content, privacy, and well-being settings.



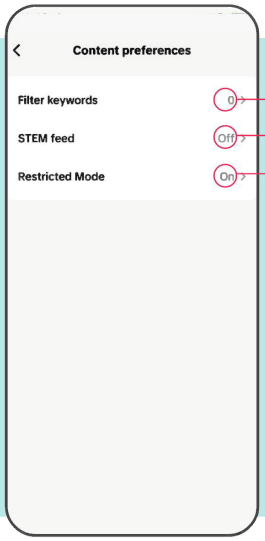

**Screen time**

Work with your teen to choose how much time your teen can spend on TikTok each day and get insights into their time spent through a screen time dashboard.



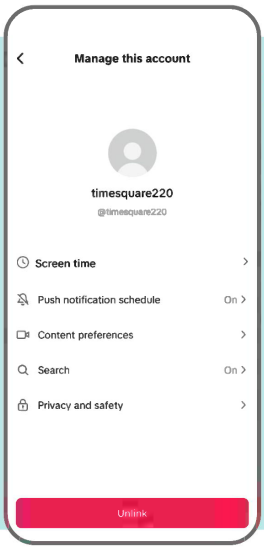

**Push notification schedule**

Mute your teen's push notifications during scheduled times.



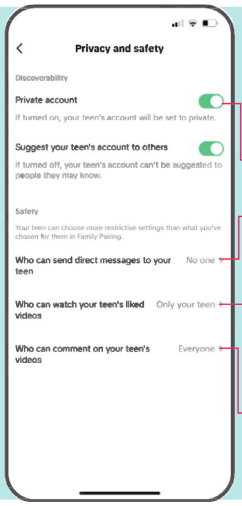

**Content preferences**

- Add hashtags or key words you prefer your teen to not see in their For You feed.
- Ensure that the STEM feed is enabled on your teen's account. Note: This feed is enabled by default for teens under 18.
- Limit exposure to content that may not be appropriate or suitable for them.



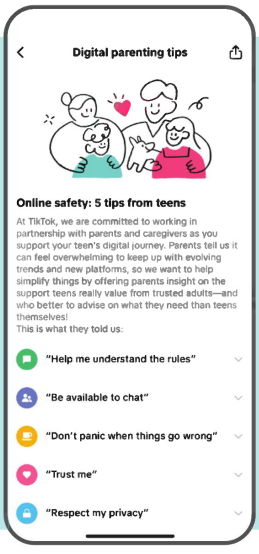

**Search**

Choose to restrict your teen's ability to search for content.




**Privacy and safety**

- Set your teen's account toprivate or public.
- Restrict who, if anyone, can send direct messages to your teen if they are 16+.
- Select who can view your teen's liked videos.
- Restrict who can comment on your teen's videos.



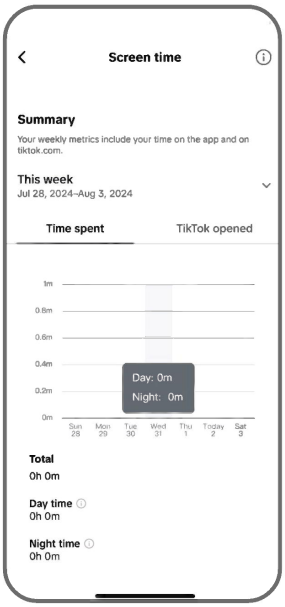

**Digital Parenting Tips**

We also hear from teens that they want their voices to be listened to. Parent or guardian accounts who link to their teen's account via Family Pairing will receive a notification prompting them to find out more about the support teens would like from the trusted adults in their lives.

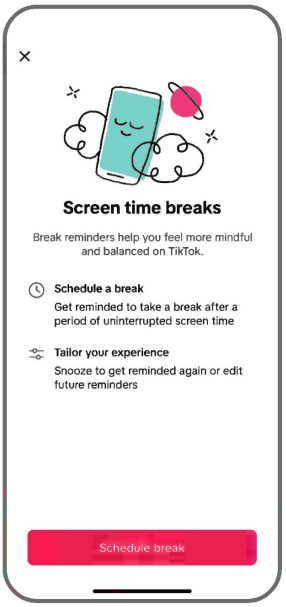
You can visit TikTok's Guardian's Guide for more information on the tools and controls available to promote an age-appropriate TikTok experience for your teen.

# Screen Time Management

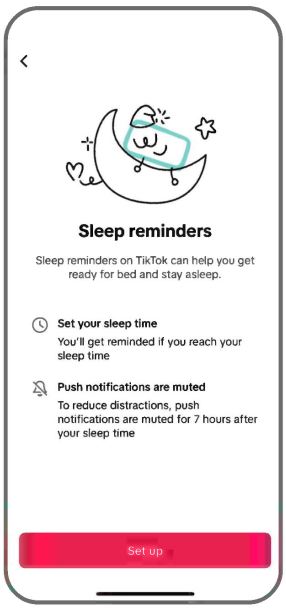
Even without Family Pairing enabled, you can help your teens enable our app's Screen Time offerings, which are available to all members of our community.



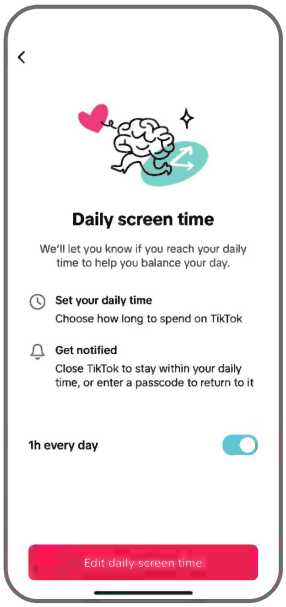

**Screen time dashboard:** get insight into how and when you're using TikTok




**Screen time breaks:** get nudged to take a break from the app after a period of uninterrupted screen time




**Sleep reminders:** set a reminder to log off at a certain time of day




**Daily screen time:** set limits on how much time you can spend on the app each day

# Teen safety by design

As a platform for ages 13+, we consider the unique developmental needs of teens and strive to create age-appropriate experiences for teens of different ages.

**To support our efforts to provide your teen with an age-appropriate experience, encourage your teen to enter their birthdate accurately at set up.**

**Teen accounts under 16:**

- **PRIVATE** by default
- **ONLY FRIENDS** can comment on videos
- **NO** downloading their TikToks
- **NO** Direct Messaging
- **NO** Duet and Stitch

**Teen accounts under 18:**

- **Daily screen** time set to **60 minutes by default.**
- **NO** virtual gifts
- **NO** going LIVE
- **NO** push notifications at night