COURT FILE NUMBER KBG-RG-02611-2022

COURT OF KING'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE REGINA

PLAINTIFFS TYSON PETERS, INFANT, BY HIS LITIGATION GUARDIAN, STACY BERGER

DEFENDANTS BYTEDANCE LTD.; TIKTOK TECHNOLOGY CANADA INC.; TIKTOK LTD; TIKTOK LLC; TIKTOK INC; TIKTOK PTE LTD.

Brought under *The Class Actions Act*

NOTICE TO DEFENDANT

1 The plaintiff may enter judgment in accordance with this Statement of Claim or the judgment that may be granted pursuant to *The Queen's Bench Rules* unless, in accordance with paragraph 2, you:

(a) serve a Statement of Defence on the plaintiff; and
(b) file a copy of it in the office of the local registrar of the Court for the judicial centre named above.

2 The Statement of Defence must be served and filed within the following period of days after you are served with the Statement of Claim (excluding the day of service):

(a) 20 days if you were served in Saskatchewan;
(b) 30 days if you were served elsewhere in Canada or in the United States of America;
(c) 40 days if you were served outside Canada and the United States of America.

3 In many cases a defendant may have the trial of the action held at a judicial centre other than the one at which the Statement of Claim is issued. Every defendant should consult a lawyer as to his or her rights.

4 This Statement of Claim is to be served within 6 months from the date on which it is issued.

5 This Statement of Claim is issued at the above-named judicial centre on the 7th day of November, 2022.

J. LEZON
DY. LOCAL REGISTRAR

Local Registrar

STATEMENT OF CLAIM

Part 1: STATEMENT OF FACTS

The Parties

1) TikTok Inc. is an American company incorporated in Delaware, with an address for service c/o Harvard Business Services, Inc, 16192 Coastal HWY, Lewes, Delaware 19958 USA. TikTok Inc. is a wholly-owned subsidiary of ByteDance Ltd. TikTok Inc operates a video social networking application, originally named *Musical.ly* and currently named *Tiktok* (the "App"). TikTok Inc. carries on business worldwide, including in Saskatchewan and Canada, by making the App available to Canadian users and selling advertising to Canadian businesses.

2) ByteDance Ltd. is a company incorporated in the Cayman Islands with a principal place of business at Xueyan S Rd, Shuangyushu, Haidian District, China, 100080, and an address for service at PO Box 31119, Grand Pavilion Hibiscus Way, 802 West Bay Road, Grand Cayman, KY1-1205, Cayman Islands. ByteDance Ltd is the management entity for the TikTok app. ByteDance Ltd carries on business worldwide, including in Saskatchewan and Canada, by making the App available to Canadian users and selling advertising to Canadian businesses.

3) TikTok Ltd is a company incorporated in the Cayman Islands, with subsidiaries in the United States and elsewhere. TikTok Ltd is a wholly-owned subsidiary of ByteDance Ltd, and has an address for service at PO Box 31119, Grand Pavilion Hibiscus Way, 802 West Bay Road, Grand Cayman, KY1-1205, Cayman Islands. TikTok Ltd carries on business worldwide, including in Saskatchewan and Canada, by making the App available to Canadian users and selling advertising to Canadian businesses.

4) TikTok LLC is an American limited liability corporation registered in the state of Delaware, with an address for service c/o Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808 USA. TikTok LLC is a wholly-owned subsidiary of TikTok Ltd. TikTok LLC carries on business worldwide, including in Saskatchewan and Canada, by making the App available to Canadian users and selling advertising to Canadian businesses.

5) TikTok Pte Ltd is a company incorporated pursuant to the laws of Singapore with an address at 8 Marine View, #43-00, Asia Square Tower 1, Singapore 018960. TikTok Pte Ltd is a wholly owned subsidiary of TikTok Ltd, and

carries on worldwide, including in Saskatchewan and Canada, by making the App available to Canadian users and selling advertising to Canadian businesses.

6) TikTok Technology Canada Inc. is a wholly-owned Canadian subsidiary of ByteDance Ltd. with its address for service at 1700 – 777 Dunsmuir Street, Vancouver, British Columbia and other offices around the country. TikTok Technology Canada Inc. carries on business worldwide, including in Saskatchewan and Canada, by making the App available to Canadian users and selling advertising to Canadian businesses.

7) Together, the related family of companies ByteDance Ltd, TikTok Ltd, TikTok LLC, TikTok Inc, TikTok Pte Ltd, and TikTok Technology Canada Inc. are the "Defendants". Each of the Defendants was an agent of the other for the purposes of developing, distributing and operating the App. All the Defendants participated in the provision of the App to users and advertisers in Canada and the collection of user data, as set out below. The precise roles of each of the Defendants are well known to them.

8) At all material times, each of the Defendants hereinabove was the agent, servant, employee, partner, alter ego, co-conspirator, aider and abettor and/or joint venturer of the other Defendant named herein and each was at all times operating and acting within the purpose and scope of said agency, service, employment, partnership, and/or joint venture, and each Defendant has ratified and approved the acts of the other named Defendant.

9) The business of each of the Defendants is inextricably interwoven with that of the other and each is the agent of the other for the purpose of design, testing, marketing, and/or providing the App to users in Canada for the common purpose of generating profit for the Defendants, as a group and/or individually.

10) The Defendants own and operate the App which is available to users in Canada.

11) The App is a social media platform that persons can sign up for at www.tiktok.com, via the Apple App Store, or by other methods. The App is a world leading social networking platform. At the time this claim is filed, the App had roughly 1.2 billion annual active users, including millions in Canada.

12) The Defendants carry on business worldwide, including in Saskatchewan and Canada.

Introduction

13) Over the last two decades, more and more of our lives have moved onto social media platforms and other digital public spaces. In this vast, still largely unregulated universe of digital public spaces, which are privately owned and primarily run for profit, there exists tension between what is best for the technology company and what is best for the individual user and for society. The Defendants' business models are built around maximizing user engagement as opposed to ensuring that users engage with the platform and one another in safe and healthy ways.

14) The Defendants focus on maximizing time spent, not time well spent. Digital technologies, particularly social media, can do significant harm to the mental health and wellbeing of adolescents. Among other harms, the Defendants' social media platforms facilitate cyberbullying, contribute to obesity and eating disorders, instigate sleep deprivation to achieve around-the-clock engagement, encourage or counsel high-risk behaviour, encourage children to negatively compare themselves to others and develop a broad discontentment for life, and have been connected to depression, anxiety, self-harm, and ultimately suicidal ideation and attempts.

15) The Defendants knowingly exploited their most vulnerable users—children throughout the world—to drive corporate profit. A user does not have to pay to create an account. Instead of charging account holders to access the platform, the Defendants profit from the sale of advertisement placements to marketers across their various platforms and applications. The Defendants can generate such revenues by marketing their user base to advertisers. The Defendants collect and analyse data to assemble virtual dossiers on their users, covering hundreds if not thousands of user-specific data segments. This data collection and analysis allows advertisers to micro-target advertising and advertising dollars to very specific categories of users, who can be segregated into pools or lists using the Defendants' data segments.

16) Only a fraction of these data segments come from content that is explicitly designated by users for publication or explicitly provided by users in their account profiles. Many of these data segments are collected by the Defendants through surveillance of each user's activity on and off their platforms, including behavioral surveillance that users are not even aware of, like navigation paths, watch time, and hover time. The larger the Defendants' user database grows, the more time the users spend on the database, and the more detailed information that the Defendants can extract from their

users, the more money the Defendants make.

17) The Defendants have intentionally designed their products to maximize users' screen time, using complex algorithms designed to exploit human psychology and driven by advanced computer algorithms and artificial intelligence available to the largest technology companies in the world. The Defendants have progressively modified their products to promote problematic and excessive use that they know threatens the actuation of addictive and self-destructive behavioural patterns.

18) The Defendants' products and/or services, including the www.tiktok.com website and respective interrelated App, rank among the most popular social networking products, with more than one billion combined users worldwide. It is estimated that nine out of ten teens use social media platforms, with the average teen using the platforms roughly three hours per day. Given the delicate, developing nature of the teenage brain and the Defendants' creation of social media platforms designed to be addictive, a generation of children has been physiologically entrapped by products the effects of which collectively result in a long-lasting adverse impact on their rapidly evolving and notoriously precarious mental health.

19) A user's "feed" on the App is comprised of an endless series of videos and comments posted by accounts that the user follows, along with advertising and content specifically selected and promoted by the Defendants.

20) The App also features a "For You" page where a user is shown an endless feed of content that is selected by an algorithm designed by the Defendants based upon the users' data profile: demographics, prior activity in the platform, and other data points.

21) The App also promotes the use of auto-playing short videos.

22) The App notifies users through text and email of activity in which they might be interested, which is designed to and does prompt users to open the App and be exposed to content selected by the platforms to maximize the length of time and amount of content viewed by the user. The App includes many other harm causing features, as discussed below.

23) The Plaintiff brings claims based upon the Defendants' defective design of the App that renders the product not reasonably safe for ordinary consumers in general and minors in particular. It is technologically feasible to design social media products that substantially decrease the incidence and magnitude of

harm to ordinary consumers and minors arising from their foreseeable use of the Defendants' App with a negligible increase in production cost.

24) The Plaintiff also brings claims based on Defendants' failure to provide adequate warnings to minor users and their parents of the danger of mental, physical, and emotional harms arising from the foreseeable use of their App.

25) The Plaintiff also brings claims for negligence arising from the Defendants' unreasonably dangerous App and their failure to warn of such dangers. The Defendants knew or, in the exercise of ordinary care, should have known that their App was harmful to a significant percentage of their minor users and failed to re-design the App to ameliorate these harms or warn minor users and their parents of dangers arising out of the foreseeable use of the App. The Defendants intentionally created an attractive nuisance to children, but simultaneously failed to provide adequate safeguards from the harmful effects they knew were occurring.

26) The addictive qualities of the Defendants' App and its harmful algorithms are not fully known or appreciated by minor users or their parents. Like others, the Plaintiff only recently learned about the increasingly detrimental effect of social media platforms on teenagers when a former Facebook employee turned whistleblower came forward with internal documents showing that its companies were aware that their platforms and products cause significant harm to its users, especially children.

27) In March 2022, a nationwide group of state attorneys general in the United States announced an investigation into the App's impact on young persons.

28) Rather than making meaningful changes to safeguard the health and safety of their adolescent users, the Defendants have consistently chosen to prioritize profit over safety by continuing to implement product components that increase the frequency and duration of users' engagement, resulting in the pernicious harms described in greater detail below.

Overview

29) This action concerns the Defendants' social media content which targets children and young adults with harmful advertisements and other content designed to amplify their vulnerabilities and foster continued engagement online.

30) More specifically, the Defendants' social media algorithms promote harmful

content to young vulnerable users based on user engagement - including images, advertisements, and accounts promoting high-risk behaviour or constant unrealistic images of the 'perfect' life and seemingly 'perfect' bodies that can result in body image issues and other mental injuries especially among teenagers and other young users (the "Harmful Content").

31) The Defendants derive financial benefit from user clicks and engagement with advertisements posted on the App, which they intentionally sought to increase via the Harmful Content.

32) The algorithms operate on "engagement-based ranking" preferences, which choose content based on a user's prior clicks or engagements, in addition to their age. The algorithms are designed to prolong the user's time spent on the Defendants' App. When a post receives comments, "likes" and other interactions, the algorithms cause it to be spread more widely and featured more prominently, instead of just featuring posts in chronological order.

33) The algorithms amplify young users' insecurities in particular around body image issues, by repeatedly promoting the Harmful Content to young users who are vulnerable to these issues, thereby exploiting young users for the sole financial benefit of the Defendants.

34) The Harmful Content has been promoted by the Defendants' algorithms since a date currently unknown to the Plaintiff, and continuing to the present (referred to herein as the "Class Period").

35) At all material times, the Defendants developed, designed, prepared and tested various algorithms on the App which promoted the Harmful Content in Canada. The Harmful Content was viewed by millions of young Canadians.

36) The Defendants' wrongful acts violated the *Infants Act*, RSBC, c. 223, and related enactments in the other Provinces and Territories, and unjustly enriched the Defendants at the expense of the Plaintiff and Class Members.

Vulnerabilities of Teenagers with respect to Excessive Social Media Use

37) Emerging research shows that the human brain is still developing during adolescence in ways consistent with adolescents demonstrated psychosocial immaturity. Specifically, adolescents' brains are not yet fully developed in regions related to risk evaluation, emotional regulation, and impulse control. The Defendants know or ought to have known about these risks at all times material to this claim.

38) Because adolescence is the period when sophisticated, essential inhibitory control functions are being established, the onset of prolonged exposure to toxic content during adolescence is particularly concerning. The extended development of the prefrontal cortex results in an adolescent brain that is largely undeveloped, highly malleable, and overwhelmingly vulnerable to long term, irremediable effects of adverse influences, including addiction and a fractured psychological well-being.

39) The algorithms in the App exploit minor users' diminished decision-making capacity, impulse control, emotional maturity, and psychological resiliency caused by users' incomplete brain development. The Defendants know or should have known that because their minor users' frontal lobes are not fully developed, such users are much more likely to sustain serious physical and psychological harm through their social media use than adult users. Nevertheless, the Defendants have failed to design the App with any protections to account for and ameliorate the psychosocial immaturity of their minor users.

40) The Defendants' App addicts minors in the following manner: When minors use design features such as "likes" it causes their brains to release euphoria causing dopamine. However, as soon as dopamine is released, their euphoria is countered by dejection: minor users' brains adapt by reducing or "downregulating" the number of dopamine receptors that are stimulated. In normal stimulatory environments, neutrality is restored after this dejection abates. However, the Defendants' algorithms are designed to exploit users' natural tendency to counteract dejection by going back to the source of pleasure for another dose of euphoria.

41) Eventually, as this pattern continues over a period of days, weeks, and months, the neurological base line to trigger minor users' dopamine responses increases. Minors then continue to use the App, not for enjoyment, but simply to feel normal. When minor users attempt to stop using the App, they experience the universal symptoms of withdrawal from any addictive substance including anxiety, irritability, insomnia, and craving.

42) Addictive use of social media by minors is psychologically and neurologically analogous to addiction to internet gaming disorder. Gaming addiction is a recognized in the American Psychiatric Association's 2013 Diagnostic and Statistical Manual of Mental Disorders (DSM-5) (used by mental health professionals to diagnose mental disorders) and is a recognized mental health disorder by the World Health Organization and International

Classification of Diseases. The diagnostic symptoms of social media addiction among minors are the same as the symptoms of addictive gaming promulgated in DSM-5 and include:

- Preoccupation with social media and withdrawal symptoms (sadness, anxiety, irritability) when device is taken away or use is not possible (sadness, anxiety, irritability).
- Tolerance, the need to spend more time using social media to satisfy the urge.
- Inability to reduce social media usages, unsuccessful attempts to quit.
- Giving up other activities, loss of interest in previously enjoyed activities due to social media usage.
- Continuing to use social media despite problems.
- Deceiving family members or others about the amount of time spent on social media.
- The use of social media to relieve negative moods, such as guilt or hopelessness; and
- Jeopardizing school or work performance or relationships due to social media usage.

43) The Defendants' advertising profits are directly tied to the amount of time that their users spend online. Thus, the Defendants enhance advertising revenue by maximizing users' time online through a product design that addicts them to the platform, in part by directing them to content that is progressively more and more stimulative. However, reasonable minor users and their parents do not expect that on-line social media platforms are psychologically and neurologically addictive.

44) The Defendants' App could feasibly report the frequency and duration of their minor users' screen time to their parents at negligible cost. This would enable parents to track the frequency, time, and duration of their minor child's social media, identify and address problems arising from such use, and better exercise their rights and responsibilities as parents.

45) The dangers associated with children's proclivity to engage in protracted upward social comparison while on social media is compounded by the

Defendants' deft and discreet construction of an atmosphere capable of exploiting the impulse control issues of even the most mature adults, thereby rendering a product that is predictably highly addictive, which encourages bullying and promotes conflict. Some of the Defendants' key features that make the App highly addictive include the use of intermittent variable rewards and its Facial Recognition System ("FRS").

46) Intermittent variable rewarding ("IVR") is a method used to addict a user to an activity by spacing out dopamine triggering stimuli with dopamine gaps. The Defendants space out notifications of likes and comments into multiple bursts, rather than notifying users in real time, to maximize the platforms' addictiveness.

47) The App is engineered to meet the evolving demands of the "attention economy," a term used to describe the supply and demand of a person's attention, which is a highly valuable commodity for internet websites. The Defendants' most conspicuous form of IVR is its "Like" button that came ready-made with a like function shaped as a heart. Additional features of the App's IVR include its delay-burst notification system, comments, posts, shares, and other dopamine-triggering content. These designs, and further designs that are presently unknown to the Plaintiff, take advantage of users' dopamine-driven desire for social validation and optimizes the balance of negative and positive feedback signals to addict users.

48) In sum, this perilous amalgamation of intense psychological vulnerability and targeted exploitation foreseeably results in a variety of harms for today's youth, including, but not limited to, social media addiction, withdrawal—from friends, family, and social and academic advancement—lack of focus, anxiety, body dysmorphia, eating disorders, death resulting from eating disorders, depression, difficulty sleeping, fatigue, headaches, migraines, loss of vision, eye strain, self-harm, and suicide among other harms.

The Defendants Knowingly Exploit Teenage Vulnerabilities for Unjust Gain

49) The Defendants state that children under the age of thirteen are prohibited from having accounts on the App, but the Defendants' App knowingly lacks effective age-verification protocols.

50) The Defendants do not charge their users to use the App, but instead receive money from advertisers who pay a premium to target advertisements to specific categories of people as studied and sorted by the Defendants' algorithms. Thus, the Defendants generate revenue based upon the total time

spent on the App, which directly correlates with the number of advertisements that can be shown to each user.

51) Equipped with ample information about the risks of social media, the ineffectiveness of their age-verification protocols, and the mental processes of teens, the Defendants have expended significant effort to attract preteens to the App, including substantial investments in designing products that would appeal to children ages 10-to-12.

52) The Defendants' App prioritizes Meaningful Social Interactions, or "MSI," which emphasizes users' connections' interactions, e.g., likes and comments, and gives greater significance to the interactions of connections that appeared to be the closest to users. To effectuate this objective, the Defendants' developed and employed an "amplification algorithm" to execute engagement-based ranking, which considers a post's likes, shares, and comments, as well as a respective user's past interactions with similar content, and exhibits the post in the user's newsfeed if it otherwise meets certain benchmarks. The algorithm covertly operates on the proposition that intense reactions invariably compel attention. As it measures reactions and contemporaneously pushes users to the most reactive content, and negative content routinely elicits passionate reactions, the algorithm effectively works to steer users toward the most negative content.

53) The algorithm controls what appears in each user's "For You" feed and promotes content that is objectionable and harmful to many users. The Defendants' motive in designing its algorithm was to increase users' interaction with the platform, leading to more engagement, which, in turn, helped the Defendants sell more of the digital ads that generate most of its revenue. All told, the Defendants' algorithm optimizes for angry, divisive, risk-promoting and polarizing content because it will increase its number of users and the time users stay on the App per viewing session, which thereby increases its appeal to advertisers, thereby increasing its overall value and profitability.

54) The Defendants are aware that teens often lack the ability to self-regulate. The Defendants are further aware that, despite the App's adverse impact to teenage users' well-being, the absence of impulse control often renders teens powerless to oppose the platforms' allure. The Defendants are conscious of the fact that the App dramatically exacerbates bullying and other difficulties prevalent within the high school experience, as the reach of the same now affects users within the ideally otherwise safe confines of the home. The

advent of social media largely occurred after today's parents became adults, the consequence being a large swath of parents that lack the context needed to appreciate the contemporary perils of the Defendants' App, who are likewise ill-equipped to offer advice sufficient to effectively mitigate against it.

55) Excessive screen time is harmful to adolescents' mental health, sleep patterns, emotional well-being. The Defendants' App lacks any warnings that foreseeable product use can disrupt healthy sleep patterns, or specific warnings to parents when their child's product usage exceeds healthy levels or occurs during sleep hours, rendering the platforms unreasonably dangerous. Reasonable and responsible parents are not able to accurately monitor their child's screen time because most adolescents own or can obtain access to mobile devices and engage in social media use outside their parents' presence.

56) The Defendants profess to have implemented protective measures to counteract the well-established dangers of its platforms' customized Harmful Content; however, its protocols apply only to content conveyed in English and removes only three-to-five percent of Harmful Content. The Defendants know their quality-control and age-verification protocols are woefully ineffective, but the Defendants are either unwilling or incapable of properly managing the App. This is consistent with their established pattern of recognizing, and subsequently ignoring, the needs of their underage users and their obligation to create a suitable environment accessible only by their age-appropriate users, all in the interest of reaping obscene profit.

57) The Defendants have represented to the Plaintiff and others, *inter alia*, the following:

- That the App is safe and promotes healthy ideas and content for young users;
- That long-term, frequent, prolonged use of the App was harmless;
- "Tiktok – Make Your Day. Trends start here. On a device or on the web, viewers can watch and discover millions of personalized short videos...Join the millions of viewers and creators on the fastest growing video...";
- "Our Mission: Tiktok is the leading destination for short-form mobile video. Our mission is to inspire creativity and bring joy";

- "Creating a welcoming environment where everyone feels safe and comfortable is our highest priority. Our app settings help you manage your account, content, and privacy settings, including who can see, like, or comment on your videos. Learn more about the settings that let you control your TikTok experience.";

- "The safety and wellbeing of our TikTok community members is our top priority. We all have a role to help each other stay safe and supported during mental health struggles.";

- That the App increased social connectivity, rather than causing feelings of isolation; and

- Inaccurate and misleading portrayals of the App's mental and physical health impacts.

(collectively, the "Representations").

58) The Defendants chose to omit to tell the Plaintiff or Class Members information about the risk of the Harmful Content, despite their young age and vulnerabilities, and despite the Defendants' knowledge of the harm the Harmful Content can cause. The Defendants chose to omit to tell the Plaintiff or Class Members information they had obtained through their own research and internal documents about the harmful effects of the App, detailed above.

59) The Defendants also chose to omit to tell the Plaintiff or Class Members the following:

- Engagement-based ranking and intermittent variable rewards are;
    - highly addictive;
    - promote harmful social comparison;
    - promote negative, controversial, and/or emotionally activating content;
    - promote negative, harmful, and/or dangerous interest groups and/or content creators;
    - encourage bullying, conflict, and high-risk behaviours;
    - can trap users in a cycle of viewing content that is innately harmful

or in a manner that is harmful, such as content related to eating disorders, depression, or self-harm; and

    - present a false reality (regarding one's comparative status to their peers, and/or the general state of world or political affairs);

- Face tracking and augmentation (image and video filters);
    - inflict unrealistic and racially biased beauty standards upon users and;
    - cause harmful social comparison based on a misleading curation of peers' appearances and success, especially among teenage female users;
- The App causes the mental and physical health harms listed above;
- The likelihood of these harms and likely severity for these harms are even greater for the developing brains of minors;
- The likelihood and intensity of these harmful effects are exacerbated by the interaction of these features; and
- The likelihood and intensity of these harmful effects are increased by other features and innerworkings of the App which are currently publicly unknown and hidden from users and governments

(collectively, the "Omissions").

60) The Defendants have continued to utilize algorithms on the App to promote the Harmful Content, despite their knowledge of the risk of harm the Harmful Content can cause, generating huge profits as a result of their continued proliferation online.

The Plaintiff

61) The Plaintiff, Tyson Peters, an infant, through his litigation guardian, Stacy Berger, is a resident of Saskatchewan and has an address for service of Suite 820 – 980 Howe Street, in the City of Vancouver, in the Province of British Columbia.

62) The Plaintiff brings this action on his own behalf and on behalf of all persons resident in Canada who were under the age of majority when they acquired a

TikTok account, their parents/guardians, and their beneficiaries.

63) The Plaintiff was born in 2008.

64) When the Plaintiff was only 11 or 12 years old, he acquired a TikTok account.

65) In 2019, the Plaintiff first viewed the Harmful Content on the App.

66) The Plaintiff continued to view the Harmful Content on the App until 2022 when his parents deleted the App from his phone. He found it is difficult to stop viewing the Harmful Content.

67) As a result of his exposure to the Harmful Content, the Plaintiff has sustained damages including, but not limited to, the following:

a. Anxiety;

b. Depression;

c. Attention Deficit Hyperactivity Disorder;

d. Obsessive Compulsive Disorder;

e. Weight loss;

f. Social media addiction;

g. Suicidal ideation; and

h. Such other injuries as shall be proven at trial,

all of which injuries have caused and continue to cause the Plaintiff pain, suffering, loss of enjoyment of life, permanent disability, loss of earnings, past and prospective, loss of income earning capacity, loss of opportunity to earn income and loss of housekeeping capacity, past and prospective.

68) The Plaintiff would not have acquired a TikTok account, nor would he have viewed the Harmful Content had he or his parents been adequately informed of the risks of viewing and engaging with the Harmful Content and the cycle of addictive and harmful behaviour that the Defendants' algorithms create, or if the Defendants had implemented effective age-verification protocols on the App.

69) As a result of the Defendants' negligence and the Harmful Content, the

Plaintiff has incurred damages including:

a) General damages;

b) Personal injury including social media addiction and prolonged and serious mental distress;

c) Special damages for the cost of medical monitoring and medical tests incurred to the date of trial and future care costs for ongoing medical monitoring and medical tests;

d) Damages in accordance with s. 36 of the *Competition Act*, RSC 1985, c. C-34 for a breach of s. 52; and

e) Such further and other damages as shall be proven at trial.

Part 2: RELIEF SOUGHT

70) The Plaintiff claims, on his own behalf, and on behalf of a class of similarly situated persons resident in Canada, as follows:

(a) An order certifying this action as a class proceeding and appointing the Plaintiff as a representative Plaintiff under *The Class Actions Act,* SS 2001, c C-12.01;

(b) A declaration that it is not in the interests of justice to require that notice be given of claims pursuant to provincial consumer protection legislation and waiving any such notice requirements;

(c) General damages;

(d) Special damages;

(e) In trust claims for parents and/or guardians of Class Members;

(f) Punitive damages;

(g) A declaration that any agreements between the Defendants and the Plaintiff and Class Members are unenforceable under the BC *Infants Act*, s. 19, and analogous Provincial and Territorial legislation;

(i) Relief pursuant to *The Consumer Protection and Business Practices Act*, SS 2013, c. C-30.2, and analogous legislation in the other Provinces and Territories;

(j) Relief pursuant to the *Competition Act*, RSC c. C-34;

(k) Recovery of health care costs incurred by the Ministry of Health Services on their behalf pursuant to *The Health Administration Act,* R.S.S. 1978 c H-0.0001, and analogous legislation in the other provinces and territories;

(l) Costs;

(m) Interest pursuant to *The Pre-judgment Interest Act*, SS 1984-85-86, c. P 22.2; and

(n) Such further and other relief this Honourable Court may deem just.

Part 3: LEGAL BASIS

Breaches of the Age of Majority Act

71) Persons under the age of majority are afforded special protection in Saskatchewan and elsewhere in Canada. Contracts made with minors are unenforceable by operation of *The Age of Majority Act,* RSS 1978, c A-6 and analogous legislation in other provinces and territories in Canada.

72) Infants are entitled to compensation under the *Infants Act*, RSBC 1996, c. 223, s. 20, if a contract is unenforceable.

Negligence

73) As the designers, marketers, developers, promoters and/or distributors of the algorithms that promote the Harmful Content on the App, the Defendants were in such a close and proximate relationship to the Plaintiff, and other Class Members, as to owe them a duty of care. They caused the Harmful Content to be introduced into digital public spaces in Canada, and they knew that any dangers or adverse effects related to the Harmful Content would cause foreseeable injury to the Plaintiff and Class Members.

74) The Defendants owed a duty to the Plaintiff and Class Members to exercise reasonable care when designing, testing, and developing the algorithms and marketing, promoting, and distributing the Harmful Content on the App.

75) The Defendants owed a duty of care to the Plaintiff and Class Members to ensure that the App's algorithms promoted social media content that was appropriate and safe in particular for younger users. Particulars of the

Defendants' negligence include:

(a) Supplying an unsafe product to young consumers;

(b) Failing to implement appropriate testing and designing of the App's algorithms;

(c) Employing inadequately trained personnel in the design, development, testing and/or quality control of the algorithms;

(d) Placing algorithms in the App when they knew or ought to have known the Harmful Content they were promoting had potential risks that outweighed its potential benefits;

(e) Designing, developing and/or marketing a product that they knew, or ought to have known, was addictive and had an unreasonably high risk of causing harm to young users;

(f) Failing to implement timely changes to the App's algorithms to reduce and or eliminate the Harmful Content once the risks were known to them;

(g) Failing to advise young users about the risks associated with the App's algorithms and the Harmful Content once those risks were known to them;

(h) Designing and developing algorithms and/or continuing to promote the Harmful Content for viewing and engagement by young users when the Defendants knew or ought to have known that the Harmful Content was unsuitable and dangerous for young users due to the elevated risk of causing harm to young users because of their age and inherent vulnerabilities;

(i) Failing to utilize cost effective, reasonably feasible alternative designs to minimize the effects of the Harmful Content, such as by *inter alia*, limiting the duration of login sessions, and/or by designing products without the harm causing features listed above, that were less addictive and less likely to cause mental health harms, while still providing an optimal social media experience and facilitating social connection; and

(j) Such further and other particulars of negligence as will be alleged at trial.

Consumer Protection and Business Practices Act

76) The Defendants' solicitations, offers, advertisements, and promotions of the Harmful Content for personal use by the Plaintiff and by Class Members, including the Representations and Omissions as described above in paragraphs 57-59 were "transactions" within the meaning of *The Consumer Protection and Business Practices Act*, SS 2013, c. C-30.2 ("CPBPA"). With respect to those transactions, the Plaintiff and Class Members who viewed the Harmful Content are "consumers" and the Defendants were "suppliers" within the meaning of the CPBPA.

77) The Defendants' conduct in their solicitations, offers, advertisements, and promotions of the Harmful Content including the Representations and Omissions as described above in paragraphs 57-59 had the capability, tendency, or effect of deceiving or misleading consumers regarding the safety of the Harmful Content. The Defendants' conduct in their solicitation, offers, advertisements, and promotion of the Harmful Content, including as described above in paragraphs 57-59, were unfair practices contrary to s. 6 of the CPBPA. The Defendants' unfair practices included the Representations and Omissions and the failure to properly disclose all material facts regarding the risks of viewing and engaging with the Harmful Content.

78) The Defendants' conduct in their solicitations, offers, advertisements, and promotion of the Harmful Content, including the Representations and Omissions as described above in paragraphs 57-59, were unfair practices contrary to s. 6 of the CPBPA. The Defendants' unfair practices included *inter alia* the Defendants' advertisements and promotion of the Harmful Content which took advantage of the Plaintiff's and Class Members' inability or incapacity to reasonably protect his or her own interests because of the Plaintiff's and Class Members' ignorance, age, and inability to understand the nature of the consumer transaction. The material facts are pleaded in paragraphs 57-59.

79) In particular, the Defendants failed to disclose the extraordinarily harmful quality of the Harmful Content when viewed repeatedly by young, vulnerable persons, given the Defendants' own research and knowledge of the risks the Harmful Content was capable of causing.

80) Further, the Defendants' conduct was unfair due to the age of the consumers they were targeting. The Defendants knew or ought to have known the following:

- That the Plaintiff and Class Members were unable to protect their own interests because of ignorance;
- That the Plaintiff and Class Members would not and could not reasonably protect their interests by conducting adequate testing or research of the Harmful Content prior to viewing and engaging with it; and
- That the Plaintiff and Class Members would rely on the Defendants' Representations and Omissions to their detriment.

81) As a result of the Defendants' unfair practices, the Plaintiff and Class Members relied on the Representations and Omissions to their detriment and have suffered loss and damages.

82) The Defendants' unfair practices were made for the purpose of promoting, directly or indirectly, the Harmful Content or for the purpose of promoting, directly or indirectly, the business interests of the Defendants. The unfair practices were made knowingly and recklessly. The unfair practices were made to the public, to the Plaintiff, and to the Class Members. The unfair practices were false and/or misleading in a material respect, namely as to the dangers and addictiveness of the Harmful Content. The Defendants knowingly accepted the benefits of their deceptive conduct in the form of profits from the promotion of the Harmful Content online.

83) The Plaintiff and Class Members claim against each of the Defendants for contravention of consumer protection legislation and remedies as follows:

a) A declaration that the Defendants' conduct in their solicitations, advertisements, and promotions of the Harmful Content to young users were "unfair practices" contrary to s. 6 of the CPBPA and an order pursuant to s. 36 of the CPBPA that the Plaintiff and Class Members are entitled to damages under s. 36 of the CPBPA;

b) A declaration that the Defendants' conduct in their characterization of the Harmful Content as safe for viewing by young people, rather than content that is highly harmful with long-term health effects and the Defendants' specific targeting of young consumers constitutes "unfair practices" contrary to s. 6 of the CPBPA and an order pursuant to s. 36 of the CPBPA that the Plaintiff and Class Members are entitled to damages under s. 36 of the CPBPA;

c) The Plaintiff and Class Members seek injunctive relief and declaratory

relief and damages and statutory compensation pursuant to ss. 35 and 36 of the CPBPA on his own behalf and on behalf of class members who viewed and engaged with Harmful Content. Such relief includes the disgorgement of the profits or revenues received by the Defendants from the promotion of the Harmful Content in Canada.

d) The declaratory and injunctive relief sought by the Plaintiff and Class Members in this case includes an order under s. 93 of the CPBPA that the Defendants advertise any judgment against them and that they properly inform consumers of the risks of the Harmful Content.

84) For reasons that are identical to the above noted breaches of the CPBPA, the Plaintiff and Class Members also advance a claim pursuant to analogous legislation in the other Provinces and Territories, including any rights of rescission, damages, injunctive or declaratory relief, disgorgement or equitable relief under each Act, including:

(a) The *Consumer Protection Act*, R.S.A. 2000, c. C-26.3, including, without limitation, ss. 6, 7, 7.2, 7.3, and 13;

(b) The *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, including, without limitation, ss. 4-5, 8-9 and 171-172;

(c) *The Business Practices Act*, S.M. 1990-1991, c. 6 as amended, including, without limitation, ss. 2-3, 5, and 23;

(d) The *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c. C-18.1, including, without limitation, ss. 10, 11, 15, and 27;

(e) The *Consumer Protection Act*, R.S.N.S. 1989, c. 92, including, without limitation, ss. 16 and 26(3)(d)-(f) and (h);

(f) The *Business Practices Act*, R.S.P.E.I. 1988, c. B-7, as amended, including, without limitation, ss. 2, 3 and 4;

(g) The *Consumer Protection and Business Practices Act*, S.N.L. 2009, c. C-31.1, including, without limitation, ss. 7, 8, 9 and 10;

(h) The *Consumer Protection Act 2002*, S.O. 2002, c. 30, as amended, including, without limitation, ss. 9(2), 14-15, 17 and 18;

(i) The *Consumer Protection Act*, C.Q.L.R. c. P-40.1, including, without limitation, ss. 37, 41, 219-221, 228, and 272;

(j) The *Consumers Protection Act*, RSY 2002, c 40, including, without limitation, ss. 58(e) and (h);

(k) The *Consumer Protection Act*, RSNWT 1988, c C-17, including, without limitation, ss. 70(e)and (h); and

(l) Section 70 of the *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17, including, without limitation, ss. 70(e)and (h).

85) With respect to Alberta, British Columbia, and Ontario, the plaintiffs seek waiver of any notice requirements, particularly since the Defendants have concealed the actual state of affairs from Class Members.

Breaches of the *Competition Act*

86) As a result of their Representations and Omissions, the Defendants breached section 52 and 52.01 of the *Competition Act*, RSC c C-34 (the "*Competition Act*") and committed an unlawful act because their Representations and Omissions:

(a) were made for the purpose of promoting, directly or indirectly, the increased and unhealthy use of their social media platforms;

(b) were made for the purpose of promoting indirect or directly, any business interests of the Defendants;

(c) were made to the public;

(d) were made knowingly and recklessly; and

(e) were false and misleading in a material respect.

87) The Plaintiff and the Class Members suffered damages as a result of the Defendants' unlawful breach of section 52 and 52.01 of the *Competition Act*. Those damages include:

(a) Personal injury from viewing and engaging with the Defendants' algorithms and the Harmful Content on the App when they would not have otherwise done so; and

(b) other losses incidental to their harms caused by their viewing and engagement with the Defendants' algorithms and the Harmful Content.

88) The Representations and Omissions made by the Defendants include both

express misrepresentations to the Plaintiff and Class Members regarding the safety and appropriateness of their social media content as well as misrepresentations by omission.

89) The Defendants should have known that statements regarding the safety and appropriateness of the App were untrue. The Defendants were or should have been aware that the App's content, including the Harmful Content and the algorithms that promote the Harmful Content, materially increase the risk of injury to young users including the Plaintiff.

90) If the Plaintiff or Class Members had been informed of these risks, they would not have viewed or engaged with the Harmful Content.

91) The Plaintiff and Class Members also seek their costs of investigation, pursuant to section 36 of the *Competition Act*.

Unjust Enrichment

92) As a result of the Defendants' design of their algorithms and their solicitations, offers, advertisements, including the Representations and Omissions, and promotion of the Harmful Content to the Plaintiff and Class Members, the Defendants were unjustly enriched and benefited therefrom. The material facts are pleaded in paragraphs 57-59.

93) As a result of the Defendants' promotion of the Harmful Content, the Plaintiff and Class Members suffered a corresponding deprivation.

94) There is no juristic reason why the Defendants' enrichment should be permitted, including at equity, under contract or pursuant to any statutory obligations.

95) The Defendants have accordingly been unjustly enriched to the extent of those amounts received by the Defendants as a result of the Plaintiff's and Class Members' viewing and engagement with the Harmful Content.

Civil Fraud and Conspiracy

96) The Defendants' solicitations, offers, advertisements, and promotion of Harmful Content included false representations to the Plaintiff and Class Members including, *inter alia*, the Representations and Omissions with respect to the harmful effects of the Harmful Content and the addictive qualities the Defendants' App. The material facts are pleaded in paragraphs 57-59.

97) The Defendants knew or were reckless as to their knowledge of the falsehood of these representations.

98) The Defendants' false representations caused the Plaintiff and Class Members to view and engage with the Harmful Content on the App.

99) The Plaintiffs' and Class Members' viewing and engagement with the Harmful Content resulted in losses and damages.

100) The Defendants conspired with one another, and other entities not presently known to the Plaintiff and Class Members, to addict their users to continued and prolonged viewing and engagement with the Harmful Content on the App and ultimately to cause harm to their users. The predominant purpose of the conduct of the Defendants and their co-conspirators was to cause injury to the Plaintiff and similarly situated persons and to addict them to continued and prolonged use of their platforms, so as to increase profits.

101) Further, or in the alternative, the conduct of the Defendants and their co-conspirators was unlawful, by virtue of being either contrary to consumer protection legislation and/or Provincial and Territorial legislation relating to infant incapacity to enter into contracts, and the Defendants and their co-conspirators should have known in the circumstances that injury to the Plaintiff and similarly situated persons would be likely to result.

102) Particulars of the loss and damage suffered by the Plaintiff and Class Members which were caused or materially contributed to by the aforementioned fraudulent representations and conspiratorial acts of the Defendants include:

- Personal injury;
- Special damages for medical expenses and out-of-pocket expenses;
- Loss of both past and prospective income; and
- Cost of future care.

Intentional / Negligent Misrepresentation

103) As the suppliers of the App, the Defendants are in a special relationship with the Plaintiff and Class Members. The Defendants have knowledge and information about the App not available to the Plaintiff or the public at large. It was reasonably foreseeable that the Plaintiff would rely on the Defendants'

Representations and Omissions concerning the safety of the App in signing up for and using the App.

104) Based on this special relationship, the Defendants owed the Plaintiff and Class Members a duty of care.

105) The Representations and Omissions are false, inaccurate, or misleading for the reasons pleaded herein.

106) The Defendants knew, or in the alternative ought to have known, that the Representations and Omissions were false, inaccurate, or misleading, or were reckless as to their truth.

107) The Defendants made the Representations and Omissions with the intention that the Plaintiff and Class Members would rely upon those Representations and Omissions in concluding that the App was in fact safe. The Defendants wanted the Plaintiff and indeed all users to rely upon the Representations and Omissions so that they would sign up for and use the App, and the Defendants could monetize the Plaintiff's data and presence on the App.

108) The Plaintiff and Class Members reasonably relied on the Representations and Omissions in using the App. The Plaintiff and all users understood at all times that the App was safe and not harmful, and were therefore content to use the App.

109) This reliance has been detrimental to the Plaintiff and all Class Members, who have suffered psychological and/or physical harm as a result of using the App.

Breach of the Duty to Warn

110) The Defendants are the designers, developers and operators of the App.

111) The App poses an inherent risk of psychological harm to individuals who use the App in the intended or a reasonably foreseeable manner.

112) The Defendants knew or ought to have known of this danger.

113) The Defendants had an ongoing duty to warn prospective and current App users of this danger. The Defendants breached this duty by failing to provide an adequate warning of this risk.

114) The Plaintiff and all users suffered psychological and physical injuries as a result of the Defendants' failure to provide an adequate warning.

115) The Plaintiff and all users would have heeded an adequate warning by not commencing use of the App in the first place, or by eliminating or limiting their use of the App.

Causation and Damages

116) As a result of the Defendants' negligence and the Defendants' breach of the CPBPA, and/or other similar legislation in the other provinces and territories, the Plaintiff and Class Members have suffered and will continue to suffer loss and damage. Such loss and damage were foreseeable by the Defendants. Particulars of the loss and damage suffered by the Plaintiff and Class Members which were caused or materially contributed to by the aforementioned acts of the Defendants include:

(a) Personal injury;

(b) Special damages for medical expenses and out of pocket expenses;

(c) Loss of both past and prospective income; and

(d) Cost of future care.

117) The Plaintiff and Class Members have suffered injuries which are permanent and lasting in nature, including diminished enjoyment of life, as well as the need for lifelong medical monitoring and/or treatment.

118) The conduct of the Defendants warrants a claim for punitive damages. They have conducted themselves in a high-handed, wanton, and reckless manner, and without regard to public safety.

119) This case raises issues of general deterrence. A punitive damage award in this case is necessary to express society's condemnation of conduct such as the Defendants', to advance public safety and to achieve the goal of both specific and general deterrence.

Health Care Cost Recovery

120) The Plaintiff and Class Members rely upon health and hospital insurance legislation in Saskatchewan and similar legislation elsewhere and claim health care costs incurred by themselves and Class Members and paid by provincial and territorial governments as a result of the wrongdoing of the Defendants:

a) On behalf of Her Majesty the Queen in right of the Province of Saskatchewan, the Plaintiffs claim the costs of "health services" under *The Health Administration Act,* R.S.S. 1978 c.D-17.

b) On behalf of Her Majesty the Queen in right of the Province of New Brunswick, the Plaintiffs claim the cost of "entitled services" under *Health Services Act*, SNB 2014, c 112, ss 1 and 3 and *General Regulation*, NB Reg 84-115, s 2 and Schedule II.

c) On behalf of the government of British Columbia, the Plaintiffs claim the past and future cost of providing "health care services" under the *Health Care Costs Recovery Act*, SBC 2008, c 27, ss 1-3 and 7 and the *Health Care Costs Recovery Regulation*, BC Reg 397/2008, s 3.

d) On behalf of Her Majesty in right of Alberta and the Minister of Health of Saskatchewan, the Plaintiffs claim the direct and indirect costs of past and future "health services" under the *Crown's Right of Recovery Act*, SA 2009, c C-35, ss 1, 2(1) and 38 and the *Crown's Right of Recovery Regulation*, Alta Reg 87/2012, s 3; and *The Health Administration Act*, RSS 1978, c H-0.0001, s 19.

e) On behalf of the Minister of Health of Manitoba, the Plaintiffs claim the past and future cost of "insured hospital, medical, and other services under *The Health Services Insurance Act*, RSM 1987, c H35, ss 2, 97 and T*he Medical Services Insurance Regulation*, Man Reg 49/93, s 1.

f) On behalf of Her Majesty in right of the Province of Nova Scotia, the Plaintiffs claim the past and future cost of "insured hospital services", and other care, services, and benefits under the *Health Services and Insurance Act*, RSNS 1989, c 197, ss 2 and 18.

g) On behalf of the Government of Yukon, and the Ministers of Health of the Northwest Territories and Nunavut, the Plaintiffs claim the cost of providing "insured services", including in-patient and out-patient

services under the *Hospital Insurance Services Act*, RSY 2002, c 112, ss 1 and 10-11, the *Yukon Hospital Insurance Services Regulations*, YCO 1960/35, s 2, the *Hospital Insurance and Health and Social Services Administration Act*, RSNWT 1988, c T-3, ss 1 and 19-20, and the *Hospital Insurance Regulations*, RRNWT 1990, c T-12, s 1.

h) On behalf of the Ontario Health Insurance Plan, the province of Quebec, the Minister of Health and Wellness of Prince Edward Island, and the Crown in right of Newfoundland and Labrador, the Plaintiffs claim the cost of "insured services" under the *Health Insurance Act*, RSO 1990, c H.6, ss 1, 11.2, and 30-31 and General, RRO 1990, Reg 552; the *Hospital Insurance Act*, CQLR c A-28, ss 1 and 10 and *Regulation respecting the application of the Hospital Insurance Act*, CQLR c A-28, r 1, s 3 and the *Health Insurance Act*, CQLR A-29, ss 1, 3, and 18; the *Hospital and Diagnostic Services Insurance Act*, RSPEI 1988, c H-8, ss 1 and 14 and General Regulations, PEI Reg EC539/63, s 1; and the *Medical Care and Hospital Insurance Act*, SNL 2016, c M-5.01, ss. 41-42 and 44, and *Hospital Insurance Regulations*, CNLR 742/96, s 2 and Schedule.

Limitation Period

121) The Defendants willfully concealed their knowledge of the risks of serious injury through the viewing of and engagement with the App's Harmful Content from young users, including the Plaintiff and Class Members (and their parents and/or guardians). The Plaintiff and Class Members rely on the doctrine of fraudulent concealment and *Pioneer Corp. v. Godfrey.*

122) In addition, the Plaintiff and Class Members could not reasonably have known that loss or damage had occurred, that it was caused or contributed to by actions or inactions of the Defendants, or that a court proceeding would be an appropriate means to seek to remedy the injury until this action was filed.

123) The Plaintiff and Class Members rely on the doctrines of postponement and discoverability to postpone the running of the limitation period until 2022.

124) The Plaintiff and Class Members plead and rely on and *The Limitations Act*, SS 2004, c L-16.1, and in particular ss 6, 8(1)(a). In the alternative, or in addition, the Plaintiffs and Class Members rely on the *The Limitations Act*, SS 2004, c L-16.1, s 17.

Jurisdiction

125) The Plaintiff and Class Members rely on ss. 4, 9 and 10 of the *Court Jurisdiction and Proceedings Transfer Act*, S.S. 1997, c. c.41.1 and plead that there is a real and substantial connection between the subject matter of this action and the Province of Saskatchewan for the following reasons:

a) The Defendants' algorithm promoted the Harmful Content on the App which was viewed by and engaged with by the Plaintiff and Class Members in Saskatchewan;

b) The Defendants engaged in a conspiracy that resulted in harm to persons in Saskatchewan;

c) The subject matter of the claim includes restitutionary remedies claimed on behalf of persons in Saskatchewan;

d) This claim pleads breaches of the CPBPA and the *Competition Act*;

e) The Plaintiff resides in Saskatchewan; and

f) The Plaintiff's damages were sustained in Saskatchewan.

DATED at Regina, Saskatchewan, this 7th day of November, 2022.

RICE HARBUT ELLIOT LLP
WILLOWS WELLSCH ORR & BRUNDIGE LLP

Anthony Leoni and Sean Watson
Solicitor for the Plaintiffs and Class

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