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META PLATFORMS, INC.

12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN JOSE DIVISION**

16 JOHN STOSSEL, an individual,)
)
17 Plaintiff,)
)
18 v.)
)
19 FACEBOOK, INC., a Delaware corporation;)
SCIENCE FEEDBACK, a French non-profit)
20 organization; and CLIMATE FEEDBACK, a)
French non-profit organization,)
21 Defendants.)
)
22)
)
23 Hon. Virginia K. DeMarchi)
Courtroom 2 – 5th floor)
Date: March 8, 2022)
24 Time: 10:00 AM)
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20

21 *RLI Insurance Co. v. Langan Engineering, Environmental, Surveying and*
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17 **OTHER AUTHORITIES**

18 Press Release, House Committee on Energy and Commerce, *E&C Committee*
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NOTICE OF MOTION AND MOTION TO DISMISS

PLEASE TAKE NOTICE THAT, on March 8, 2022, at 10:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 2 of the United States District Court for the Northern District of California, San Jose Division, this Motion to Dismiss will be heard. Meta Platforms, Inc. (“Meta”) moves (1) to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) (the “Motion to Dismiss”); and (2) to strike the claims asserted against Meta pursuant to California’s anti-SLAPP statute, section 425.16 *et seq.* of the California Code of Civil Procedure (the “Anti-SLAPP Motion”).¹ Both the Motion to Dismiss and the Anti-SLAPP Motion are based on this Notice of Motion and the Memorandum of Points and Authorities.

STATEMENT OF REQUESTED RELIEF

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Meta requests that the Court dismiss the Complaint with prejudice. In addition, pursuant to California’s anti-SLAPP statute, section 425.16 *et seq.* of the California Code of Civil Procedure, Meta requests that the Court strike the Complaint and award Meta its attorneys’ fees for work associated with this motion.

MEMORANDUM OF POINTS AND AUTHORITIES

Meta relies on independent third-party fact-checkers to identify, rate, and analyze potential misinformation on the Facebook platform. The independence of the fact checkers is a deliberate feature of Meta’s fact-checking program, designed to ensure that Meta does not become the arbiter of truth on its platforms. Though Meta identifies potential misinformation for fact-checkers to review and rate, it leaves the ultimate determination whether information is false or misleading to the fact-checkers. And though Meta has designed its platforms so that fact-checker ratings appear next to content that the fact-checkers have reviewed and rated, it does not contribute to the substance of those ratings.

Stossel ignores this reality and instead simply claims that undifferentiated “Defendants” (two fact-checking entities and Meta itself) defamed him. But the distinction between defendants is critical here, not in the least because Section 230 of the Communications Decency Act protects

¹ Defendant Facebook, Inc. recently changed its name to Meta Platforms, Inc.

1 Meta from liability for material posted to the Facebook platform by third parties. Stossel
2 accordingly must show that Meta somehow contributed to the defamatory nature of the content at
3 issue. He has not and cannot do so.

4 Beyond this threshold Section 230 problem, the complaint also fails to state a claim for
5 defamation. For one, Stossel fails to plead facts establishing that Meta acted with actual malice—
6 which, as a public figure, he must. For another, Stossel’s claims focus on the fact-check articles
7 written by Climate Feedback, not the labels affixed through the Facebook platform. The labels
8 themselves are neither false nor defamatory; to the contrary, they constitute protected opinion.
9 And even if Stossel could attribute Climate Feedback’s separate webpages to Meta, the challenged
10 statements on those pages are likewise neither false nor defamatory. Any of these failures would
11 doom Stossel’s complaint, but the combination makes any amendment futile.

12 Finally, the claim runs afoul of California’s anti-SLAPP statute, which the Ninth Circuit
13 has held applies to state-law claims brought in federal court. California enacted its anti-SLAPP
14 law to reduce the proliferation of “lawsuits brought primarily to chill the valid exercise of the
15 constitutional rights of freedom of speech.” Cal. Civ. Proc. Code § 425.16(a). Stossel’s
16 defamation claim takes direct aim at Meta’s First Amendment rights by challenging its editorial
17 decision to publish fact-checks. As numerous courts have recognized, “Facebook [has a] First
18 Amendment right to decide what to publish and what not to publish on its platform.” *La'Tiejira v.*
19 *Facebook, Inc.*, 272 F. Supp. 3d 981, 991 (S.D. Tex. 2017). And for the reasons explained above,
20 Stossel cannot show a reasonable probability of prevailing on his defamation claim, as the anti-
21 SLAPP law requires.

22 None of these defects can be cured by further amendment. Prior to filing this motion, Meta
23 identified each defect in a letter urging Stossel to drop this lawsuit or, if he believes these defects
24 could somehow be cured, to come forward with proposed amendments that would address them.
25 *See Jennings Decl. Ex. 1.* Rather than add any allegations to attempt to cure those problems,
26 Stossel chose to stand on his original complaint. Given that choice, and because Section 230 is
27 meant to protect defendants against “protracted legal battles,” *Fair Housing Council v.*
28

1 *Roommates.com, LLC*, 521 F.3d 1157, 1175 (9th Cir. 2008), dismissal should be with prejudice,
2 and Meta should be awarded attorneys' fees associated with this motion.

3 **BACKGROUND**

4 **A. Third-Party Fact-Checkers Identify Misinformation On The Facebook** 5 **Platform**

6 Meta operates the Facebook platform, an online social network service with 2.8 billion
7 users worldwide. Compl. ¶ 24. As part of its “commit[ment] to fighting the spread of
8 misinformation,” Meta has developed a fact-checking program to help identify false or misleading
9 information on Facebook. Compl. ¶ 29; *see also* Jennings Decl. Ex. 2, at 1.² Meta relies on
10 “independent, third-party fact-checking organizations” to “review content, check its facts, and rate
11 its accuracy.” Compl. ¶ 32; Jennings Decl. Ex. 2, at 1-2. This process “happens independently
12 from Facebook, and may include calling sources, consulting public data, authenticating videos and
13 images, and more.” Jennings Decl. Ex. 2, at 2. These independent, third-party fact-checkers “are
14 certified through the non-partisan International Fact-Checking Network (IFCN).” *Id.* at 1.

15 One of these independent fact-checkers is Climate Feedback, which has a team of scientists
16 dedicated to “sorting fact from fiction in climate change media coverage.” Compl. ¶ 26; *see also*
17 Jennings Decl. Ex. 3, at 1 (listing latest claim reviews including one on Facebook).³ Climate
18 Feedback, in turn, allegedly operates under Science Feedback, “a worldwide network of scientists
19 sorting fact from fiction in science based on media coverage.” Compl. ¶¶ 25, 26.

20 Facebook provides the third-party fact-checkers with a fact-checking system that permits
21 them to independently rate and review posts identified as potentially containing misinformation.
22 Compl. ¶¶ 34-35; Jennings Decl. Exs. 2, 4.⁴ A fact-checker can, for example, tag a piece of content
23

24 ² The Complaint incorporates the webpage titled “Fact-Checking on Facebook” by reference.
25 That webpage can be considered in deciding the Motion to Dismiss and the Anti-SLAPP Motion.
26 *See* Compl. n.3; *Knivel v. ESPN*, 393 F.3d 1068, 1076-1077 (9th Cir. 2005) (considering website
under “‘incorporation by reference’ doctrine”).

27 ³ The Complaint (at footnote 1) incorporates this webpage by reference. *See supra* n.1.

28 ⁴ The Complaint (at footnote 4) incorporates this webpage by reference. *See supra* n.1.

1 as “Altered,” “Missing Context,” “False,” or “Partly False.” Jennings Decl. Ex. 4, at 1-2. If a fact-
 2 checker determines that content is altered, missing context, false, or partly false, Facebook then
 3 applies a label to the content so that other users can read additional details about the fact-check.
 4 Compl. ¶ 34; Jennings Decl. Ex. 2, at 2. The label is placed on top of the flagged content and
 5 states the independent fact-checker’s rating, for example, “Missing Context” or “Partly False.”
 6 Compl. ¶¶ 45, 83. The label also contains a button stating, “See Why.” Compl. ¶¶ 45, 83. Clicking
 7 on the “See Why” button brings up a text box that shows (1) the caption of the fact-checker’s
 8 review, (2) a summary of the fact-checker’s rating, and (3) a link to a webpage describing
 9 Facebook’s fact-checking process. Compl. ¶¶ 46, 84. If a user further clicks on the text box, they
 10 are directed to the third-party fact-checker’s website for more details about the fact-checker’s
 11 review and ultimate rating of the content. Compl. ¶¶ 47, 85.

12 **B. Facebook Labeled Stossel’s Videos Identified By Third-Party Fact-Checker**
 13 **Climate Feedback As Missing Context Or Containing False Information**

14 Stossel “publishes short weekly news videos on social media, primarily on Facebook,
 15 where he has over one million followers.” Compl. ¶ 23. At issue are two videos he made and
 16 posted to his Facebook page.

17 The first video, which Stossel calls the “Fire Video,” is titled “Government Fueled Fires.”
 18 Jennings Decl. Ex. 5.⁵ The video contained clips from an interview Stossel conducted of author
 19 Michael Shellenberger to promote Shellenberger’s book titled “Apocalypse Never: Why
 20 Environmental Alarmism Hurts Us All.” *Id.* Stossel’s video stitched his own commentary with
 21 different video clips, including those from the Shellenberger interview. *Id.* For example, the video
 22 contained the following statements from Shellenberger, cut together with commentary from
 23 Stossel:

24 Shellenberger: Climate change is . . . not the end of the world. It’s not our most serious
 25 environmental problem—

26 Stossel: *And* it’s not the main cause of the California fires.

27
 28 ⁵ The Complaint (at footnote 5) incorporates this video by reference. *See supra* n.1.

1 ...

2 Stossel: If not climate change, what is to blame?

3 [Cartoon clip of Smokey the Bear]

4 Stossel: Foolish policies. . . .

5 ...

6 Stossel (in a voice over): Climate has made things worse. California has warmed 3 degrees
7 over 50 years. *But—*

8 Shellenberger: You could have had this amount of warming and not had these fires. . . .

9 *Id.* at 2:17-21, 3:10-14, 3:25-4:4 (emphasis added).

10 Climate Feedback rated the “Fire Video” as “missing context.” Compl. ¶¶ 46-47.
11 Accordingly, Meta affixed a label to the video stating, “Missing Context: Independent fact-
12 checkers say this information could mislead people.” Compl. ¶ 45. The label contains a “See
13 Why” button, which, when clicked, generates a text box reiterating that “[i]ndependent fact-
14 checkers say this information is missing context and could mislead people.” Compl. ¶ 46. The
15 text box contains the title of Climate Feedback’s fact-check review (“Climate change, forest
16 management and several other causes contribute to wildfire severity and total area burned in the
17 western United States.”), Compl. ¶ 46, as well as a link to the page on Climate Feedback’s website
18 that contains Climate Feedback’s full review, Compl. ¶ 47. The full review explains why the claim
19 that “[f]orest fires are caused by poor management[,] [n]ot by climate change” is misleading.
20 Compl. ¶ 47; Jennings Decl. Ex. 6, at 1.⁶

21 The second video, which Stossel calls the “Alarmism Video,” is titled “Are We Doomed?”
22 Jennings Decl. Ex. 7.⁷ This video relies heavily on clips from a panel Stossel moderated at the
23 Heartland Institute. Compl. ¶ 47. Although Stossel set up the event as a “debate,” “many
24 individuals invited as counterpoints ... refused to attend,” leaving the discussion one-sided.
25 Compl. ¶ 80. The panelists expressed skepticism that hurricanes are getting stronger and “pointed
26

27 ⁶ The Complaint (at footnote 6) incorporates this webpage by reference. *See supra* n.1.

28 ⁷ The Complaint (at footnote 9) incorporates this video by reference. *See supra* n.1.

1 out that even if the planet warms by five degrees, humans can adjust.” Jennings Decl. Ex. 7, at
 2 4:25-5:1. Stossel used clips from this one-sided panel to debunk various “myths,” including that
 3 “government action today can save us” and “carbon dioxide is carbon pollution, that just does
 4 harm and threatens food supply.” *Id.* at 6:6-7; 6:19-21. At the end of the video, he says, “I wish
 5 there were a real debate. Why won’t the other side debate?” *Id.* at 7:22-23.

6 Climate Feedback reviewed the Alarmism Video and rated it as “partly false.” Compl.
 7 ¶¶ 83-84. Meta accordingly affixed a “Partly False Information” label to the video. Compl. ¶ 83.
 8 Like the Fire Video label, the Alarmism Video label contains a “See Why button,” which, if
 9 clicked, brings up a text box that says “[i]ndependent fact-checkers say this information has some
 10 factual inaccuracies” and includes a link to Climate Feedback’s website. Compl. ¶ 84. The text
 11 box similarly contains the title of Climate Feedback’s fact-check review and is further linked to
 12 Climate Feedback’s website. Compl. ¶ 84. The linked page on Climate Feedback’s website, titled
 13 “Video promoted by John Stossel for Earth Day relies on incorrect and misleading claims about
 14 climate change,” then explains that “speakers in the video rely on several inaccurate claims and
 15 use imprecise language that misleads viewers about the scientific understanding of climate
 16 change.” Compl. ¶ 85; Jennings Decl. Ex. 8, at 2.⁸

17 **C. Stossel Files This Lawsuit**

18 In response to the fact-checks of his two videos, Stossel filed a single-count complaint
 19 against Meta, Science Feedback, and Climate Feedback, contending that “Defendants”—in the
 20 aggregate—defamed him. *See, e.g.*, Compl. ¶¶ 116, 122, 124, 131. In particular, Stossel alleges
 21 that two statements are defamatory. First, he challenges what he calls the “False Attribution”—
 22 that is, “Defendant[s’] state[ment] by implication that in Stossel’s Fire Video, Stossel” claimed
 23 that “‘forest fires are caused by poor management. Not by climate change’”—a statement that
 24 Stossel alleges “he did not make.” Compl. ¶ 116. Second, Stossel challenges the statement that
 25 the Alarmism Video “had been subjected to a ‘fact-check’ that had determined that the Alarmism
 26 Video contained ‘factual inaccuracies’ and was ‘partly false.’” Compl. ¶ 125.

27
 28 ⁸ The Complaint (at footnote 10) incorporates this webpage by reference. *See supra* n.1.

ARGUMENT

I. STOSSEL CANNOT STATE A VIABLE DEFAMATION CLAIM

To survive a motion under Rule 12(b)(6), “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Instead, Plaintiffs must allege “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* The Court is not required to “assume the truth of legal conclusions merely because they are cast in the form of factual allegations.” *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (citation omitted). Nor should the Court accept allegations that contradict documents attached to the Complaint or incorporated by reference, *Gonzalez v. Planned Parenthood of L.A.*, 759 F.3d 1112, 1115 (9th Cir. 2014), or that rest on “unwarranted deductions of fact, or unreasonable inferences,” *In re Gilead Sciences Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008).

A. Section 230 Of The Communications Decency Act Bars Stossel’s Claim

Defamation claims against online service providers like Meta fall within the heartland of Section 230’s broad protection. Section 230 was enacted in large part to respond to a state court decision which held an internet service provider liable for defamation. *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1101 (9th Cir. 2009). Accordingly, defamation is “[t]he cause of action most frequently associated with ... section 230.” *Id.*

Stossel’s defamation claim is no exception. Subsection 230(c)(1)—which this court has described as “quite robust,” *Daniels v. Alphabet, Inc.*, 2021 WL 1222166, at *12 (N.D. Cal. Mar. 31, 2021)—bars any claim that would treat a “provider” of an “interactive computer service” as the “publisher” of content “provided by another information content provider.” 47 U.S.C. § 230(c)(1); *see also Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1097 (9th Cir. 2019). Because Stossel’s claim seeks to impose liability on Meta for making available content created by third parties (i.e., the fact-checks performed by Climate Feedback), Section 230(c)(1) bars it.

1 1263, 1271 (D.C. Cir. 2019) (use of “automated algorithms” to convert “third party indicia of
 2 location into pictorial form” did not make Google the partial creator of resulting “map pinpoints”).
 3 It is instead analogous to Yelp’s translation of user ratings into its proprietary star-rating system,
 4 which the Ninth Circuit has held does “not amount to content development.” *Kimzey*, 836 F.3d at
 5 1270 (quoting *Fair Housing Council v. Roommates.com, LLC*, 521 F.3d 1157, 1172 (9th Cir.
 6 2008)). There, as here, Yelp’s stars do “absolutely nothing to enhance the defamatory sting of
 7 the message beyond the words offered by the user.” *Id.* To take another example, eBay’s
 8 development of its “safety program,” through which eBay buyers can rate sales transactions on the
 9 platform, did not “place eBay outside the immunity for service providers,” because eBay “did not
 10 create or develop the underlying misinformation.” *Gentry v. eBay, Inc.*, 99 Cal. App. 4th 816,
 11 833-834 (2002). As with Yelp and eBay, all Meta has done here is provide a rating tool that fact-
 12 checkers like Climate Feedback used. Holding Meta liable for the resulting labels and fact-checks
 13 would impermissibly impose liability for publishing content created by third parties.

14 2. Stossel cannot circumvent Section 230 immunity through various state-law
 15 theories

16 Stossel attempts to bypass Section 230 under various sparsely pleaded state-law theories.
 17 *See* Compl. ¶ 108 (contractual relationship), ¶ 109 (agency and ratification), ¶¶ 110-114
 18 (conspiracy). None have merit.

19 *First*, Stossel alleges that Meta should be liable for the statements at issue because
 20 Facebook “contracts with [Climate Feedback and Science Feedback] ‘to fact-check’ content posted
 21 by Facebook users.” Compl. ¶ 108. Not so. Merely paying someone to create content does not
 22 strip an interactive service provider of Section 230’s protection. *See Blumenthal v. Drudge*, 992
 23 F. Supp. 44, 51-52 (D.D.C. 1998) (AOL not liable for an allegedly defamatory story authored by
 24 someone else even though AOL had contracted with the author to provide the specific “kind of
 25 material”); *Ben Erza, Weinstein, & Co. v. Am. Online*, 206 F.3d 980 (10th Cir. 2000) (AOL not
 26 liable for allegedly false stock information even though AOL had contracted with two entities for
 27 the information). And Stossel does not allege anything more than that—he does not, for example,
 28 allege that Meta contracted with Climate Feedback or Science Feedback specifically to defame

1 Stossel. As Stossel himself concedes, Meta has developed the fact-checking program for the
2 Facebook platform “to fight[] the spread of misinformation” and relies on “independent, third-
3 party fact-checking organizations” to “review content, check its facts, and rate its accuracy,”
4 Compl. ¶¶ 29, 32, not to defame Stossel.

5 *Second*, Stossel asserts that Climate Feedback and Science Feedback acted as Meta’s
6 agents. Compl. ¶ 109. This bare legal conclusion is insufficient to survive a motion to dismiss, *In*
7 *re Gilead*, 536 F.3d at 1055, and the complaint is devoid of any factual allegations to support any
8 required element of an agency relationship. Courts routinely dismiss claims based on such scanty
9 allegations. For example, “conclusory allegations [that] fail to demonstrate the necessary
10 understanding between [defendants]” or to “establish how [the alleged principal] was in control”
11 are insufficient. *United Energy Trading, LLC v. Pacific Gas & Electric Co.*, 146 F. Supp. 3d 1122,
12 1141 (N.D. Cal. 2015). So too are allegations that “[do] not proffer any factual basis to suggest
13 that authority, either actual or apparent, existed.” *Kreiser v. Asset Mgmt. Grp., Inc.*, 2021 WL
14 3579414, at *3-4 (C.D. Cal. Apr. 23, 2021).

15 Even worse, the factual allegations that Stossel *does* offer contradict any assertion that an
16 agency relationship existed. For an agency relationship to exist between Meta and Climate
17 Feedback or Science Feedback, Meta must have either actually assented to the Feedback entities
18 acting on its behalf or have held them out as authorized to act on Meta’s behalf. *See Mavrix*
19 *Photographs, LLC v. LiveJournal, Inc.*, 873 F.3d 1045, 1054 (9th Cir. 2017). Meta’s public
20 identification of the fact-checkers, including Climate Feedback and Science Feedback, as
21 “independent,” *see* Compl. ¶¶ 29, 45-46, 83-84, without more, defeats any inference that Meta
22 assented to either Feedback entity acting on its behalf, *see In Gilead*, 536 F.3d at 1055. Those
23 same statements contradict any conclusion that Meta held the Feedback entities out as authorized
24 to act on its behalf. The Court therefore need not credit this conclusory theory (and indeed, should
25 dismiss it with prejudice). *See Meeks v. Buffalo Wild Wings, Inc.*, 2018 WL 1524067, at *6 (N.D.

1 Cal. Mar. 28, 2018) (denying plaintiff’s request seeking leave to amend the complaint where
2 complaint alleged facts that directly contradicted an agency relationship).⁹

3 *Last*, Stossel’s conspiracy theory also fails. Courts across the country routinely reject
4 plaintiffs’ attempts to use conspiracy liability to hold online service providers liable for third-party
5 content posted to their platforms, because doing so would improperly circumvent Section 230’s
6 protections. For example, in *J.B. v. G6 Hospitality*, another court in this district dismissed with
7 prejudice a conspiracy claim that sought to hold Craigslist liable for sex-trafficking related posts
8 to its platform. 2020 WL 4901196, at *4 (N.D. Cal. Aug. 20, 2020). That claim, like Stossel’s,
9 “point[ed] directly to [the defendant’s] role as a publisher of the advertisements,” and thus fell
10 within Section 230(c)(1). *Id.* Similarly, in *Winter v. Bassett*, the Middle District of North Carolina
11 rejected a conspiracy claim against Yahoo for including websites that criticized the plaintiff as
12 results in its search engine, reasoning that “[a]ny action against Yahoo for civil conspiracy ...
13 would hold Yahoo liable for its editorial decisions involving the content of third parties.” 2003
14 WL 27382038, at *7 (M.D.N.C. Aug. 22, 2003); *see also, e.g., Jones v. Twitter, Inc.*, 2020 WL
15 6263412, at *3-4 (D. Md. Oct. 23, 2020) (section 230 immunity extended to conspiracy claims
16 that “clearly seek to hold Twitter liable as a publisher of third-party content”). Because Stossel’s
17 conspiracy theory similarly seeks nothing more than to hold Meta liable for publishing content
18 created by Climate Feedback, it should be rejected.

19 In any event, the complaint does not plausibly allege that Meta conspired with either
20 Climate Feedback or Science Feedback to publish the allegedly defamatory statements. To survive
21 a motion to dismiss with a claim predicated on conspiracy liability, a plaintiff must allege that the
22 defendant “agreed to an *unlawful* plan”—that is, that the conspiring defendant had “actual
23 knowledge that a tort is planned and concur[red] in the tortious scheme with knowledge of its
24 unlawful purpose.” *Resolute Forest Prods., Inc. v. Greenpeace Int’l*, 2019 WL 281370, at *15
25 (N.D. Cal. Jan. 22, 2019) (citation omitted). Stossel has not so pleaded. The complaint claims
26

27 ⁹ To the extent Stossel separately attempts to plead a ratification theory, *see* Compl. ¶ 109,
28 that theory would fail for the same reasons at the agency theory. Ratification is only effective if
an agency relationship exists. *Batzel*, 333 F.3d at 1036 & n.23 (citing California law).

1 only that Meta engaged Climate Feedback to “fact-check” content posted by Facebook users, and
2 that Meta knew or should have known that the specific content at issue was false or defamatory.
3 Compl. ¶¶ 114, 122, 130. It therefore does not contain “enough fact to raise a reasonable
4 expectation that discovery will reveal evidence of *illegal* agreement.” *Bell Atl. Corp. v. Twombly*,
5 550 U.S. 544, 556 (2007) (emphasis added).

6 Section 230 protects defendants not merely from ultimate liability, but also from
7 “protracted legal battles.” *Roommates.com*, 521 F.3d at 1175. And courts have repeatedly
8 cautioned against allowing “creative” pleading to circumvent Section 230’s broad protection. *See*
9 *Kimzey*, 836 F.3d at 1266; *Fields v. Twitter, Inc.*, 217 F. Supp. 3d 1116, 1126 (N.D. Cal. 2016).
10 Accordingly, where Section 230 applies, it requires not only dismissal, but dismissal with
11 prejudice. *See, e.g., Caraccioli v. Facebook, Inc.*, 167 F. Supp. 3d 1056, 1067 (N.D. Cal. 2016)
12 (dismissing with prejudice claims “barred as a matter of law by § 230(c)”). Dismissal with
13 prejudice is appropriate here.

14 **B. Stossel Has Not Stated, And Cannot State, A Claim For Defamation Against**
15 **Meta**

16 Stossel’s defamation claim also fails on its own terms as Stossel has failed to state a
17 defamation claim against Meta.

18 1. Stossel has not pled actual malice

19 Stossel is a public figure. “[A] plaintiff [may] be deemed an all-purpose public figure,”
20 where there is “clear evidence of general fame or notoriety in the community, and pervasive
21 involvement in the affairs of society.” *Stolz v. KSFM 102 FM*, 30 Cal. App. 4th 195, 203 (1994)
22 (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 352 (1974)). Stossel admits that he meets this
23 test. *See* Compl. ¶ 23 (touting Stossel’s achievements and fame). Accordingly, Stossel bears the
24 burden to prove, by clear and convincing evidence, that any allegedly defamatory statement was
25 made with “actual malice”—that is, “with knowledge that it was false or with reckless disregard
26
27
28

1 of whether it was false or not.” *Reader’s Digest Ass’n v. Superior Court*, 690 P.2d 610, 613 (Cal.
2 1984) (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-280 (1964)).¹⁰

3 The actual-malice requirement exists to encourage heartland First Amendment activity,
4 like Facebook’s editorial decisions to append third-party facts check to posts on its platform. *See*
5 *infra* pp. 20-21. This rule “is not simply premised on common-law tradition, but on the unique
6 character of the interest protected by the actual-malice standard.” *Harte-Hanks Communications,*
7 *Inc. v. Connaughton*, 491 U.S. 657, 685-686 (1989). “Our profound national commitment to the
8 free exchange of ideas, as enshrined in the First Amendment, demands that the law of libel carve
9 out an area of ‘breathing space’ so that protected speech is not discouraged.” *Id.* at 686 (quoting
10 *Gertz*, 418 U.S. at 342). Accordingly, a defamation claim must be dismissed when the complaint
11 fails to plead actual malice with the requisite specificity. *Resolute Forest Prods., Inc. v.*
12 *Greenpeace Int’l*, 302 F. Supp. 3d 1005, 1018-1019 (N.D. Cal. 2017); *see also Barry v. Time, Inc.*,
13 584 F. Supp. 1110, 1113 (N.D. Cal. 1984).

14 In light of the important purposes it serves, the standard to show actual malice is high: the
15 public-figure plaintiff must “sho[w] that the allegedly false statement was made with knowledge
16 that it was false or with reckless disregard of whether it was false or not.” *Reed v. Gallagher*, 248
17 Cal. App. 4th 841, 861 (2016). At minimum, “[t]here must be sufficient evidence to permit the
18 conclusion that the defendant in fact entertained serious doubts as to the truth of his publication
19 The evidence must be so clear as to leave no substantial doubt.” *Id.* Moreover, Stossel must
20 allege “that *each* defendant had actual malice when it published, or had responsibility for the
21 publication of, a defamatory statement.” *Resolute Forest Prods.*, 2019 WL 281370, at *8
22 (emphasis added); *see also Murray v. Bailey*, 613 F. Supp. 1276, 1281 (N.D. Cal. 1985). It is not
23
24

25 ¹⁰ At minimum, Stossel is a “limited purpose” public figure to whom the actual malice
26 standard applies—i.e., an individual who “voluntarily injects himself or is drawn into a particular
27 public controversy and thereby becomes a public figure for a limited range of issues.” *Stolz*, 30
28 Cal. App. 4th at 203 (quoting *Gertz*, 418 U.S. at 352). The Complaint establishes that Stossel
has injected himself into the ongoing public debate surrounding climate change. *See Compl.*
¶¶ 37-44, 78-81.

1 enough to allege actual malice generally, on behalf of all Defendants—rather, Stossel must plead
2 that Meta itself acted with actual malice.

3 Stossel falls far short of satisfying this demanding requirement for either of the allegedly
4 defamatory statements. To begin, “[w]hen there are multiple actors involved in an organizational
5 defendant’s publication of a defamatory statement, the plaintiff must identify the individual
6 responsible for the publication of a statement, and it is that individual the plaintiff must prove acted
7 with actual malice.” *Resolute Forest Prods.*, 302 F. Supp. 3d at 1019 (internal quotation marks
8 omitted). All Stossel has done is baldly attribute actual malice to Meta generally; he has made no
9 attempt to identify any specific actor at Meta who knew or should have known the claimed
10 defamatory statements were false. (Indeed, given that the fact-check labels are applied to content
11 automatically once content is rated by a fact-checker, without intervention by individual actors at
12 Meta, it is hard to imagine that Stossel could identify any such person.) That alone compels
13 dismissal of the defamation claim against Meta. *Id.*

14 Even if generally pleading that Meta acted with actual malice (without identifying any
15 individual at Meta who was responsible for the publication of the alleged defamatory statements)
16 could suffice, Stossel has not done so. The complaint simply states that Meta (as one of the
17 “Defendants”) “knew, or should have known” that the two allegedly defamatory statements were
18 false. Compl. ¶¶ 122, 131. Again, that is insufficient. “[C]ourts have found that general
19 allegations that a defendant should have known or should have investigated the truth of his or her
20 statements do not adequately plead actual malice.” *Wynn v. Chanos*, 75 F. Supp. 3d 1228, 1239
21 (N. D. Cal. 2014). And Stossel does not provide “any specific allegations that would support a
22 finding that [Meta] harbored serious subjective doubts as to the validity of his assertions.” *Id.*

23 These threadbare allegations are particularly unavailing in light of Stossel’s allegation that
24 Meta relied on Climate Feedback’s review and rating of the two videos it allegedly defamed. That,
25 too, precludes a finding of actual malice, because “[a] publisher does not have to investigate
26 personally, but may rely on the investigation and conclusion of reputable sources.” *Reader’s*
27 *Digest Ass’n*, 690 P.2d at 619. So, for example, the Ninth Circuit has held that a book publisher
28 who republished a *New Yorker* story later claimed to be libelous lacked actual malice; the publisher

1 “was entitled to rely on the investigation of the matter previously conducted by The New Yorker,”
 2 particularly given “[t]he magazine’s sterling reputation for accuracy.” *Masson v. New Yorker*
 3 *Magazine, Inc.*, 960 F.2d 896, 902 (9th Cir. 1992). Meta’s alleged reliance on independent,
 4 certified non-partisan third-party fact-checkers like Climate Feedback therefore confirms that
 5 Stossel has not, and cannot, plead actual malice.

6 Finally, to the extent Stossel intends to attribute Climate Feedback’s alleged actual malice
 7 to Stossel through an agency theory, that also fails because he has not alleged that Climate
 8 Feedback acted as Meta’s agent. *See supra* pp. 10-11.

9 As a matter of law, the complaint does not contain sufficient facts to permit the court to
 10 infer that Meta acted with actual malice. *See Resolute Forest Prods.*, 302 F. Supp. 3d at 1027-
 11 1028. The complaint fails on this independent basis.

12 2. Stossel has not pleaded that any action Meta took with regard to either video
 13 amounted to defamation

14 Even beyond Stossel’s failure to plead actual malice, his defamation theories fail on other
 15 grounds. He identifies two purportedly defamatory statements: (1) the allegedly “false
 16 attribution” to him of certain statements from the Fire Video and (2) the allegedly inaccurate
 17 statement that the Alarmism Video had been subjected to a fact-check that determined that the
 18 Alarmism Video contained factual inaccuracies and was partly false. Neither claim identifies
 19 defamatory activity by either Meta or Climate Feedback.

20 a) *No action Meta took with regard to the “Fire Video” amounted to*
 21 *defamation*

22 With regard to the “Fire Video,” Stossel claims to have been injured by the allegedly false
 23 attribution to him, “by implication,” of the statement that “forest fires are caused by poor
 24 management. Not by climate change.” Compl. ¶ 116. That “implication” is entirely the result of
 25 Climate Feedback’s fact-check—which is not attributable to Meta. *See supra* pp. 9-12. The only
 26 action Meta is alleged to have taken is restating Climate Feedback’s rating as a label and affixing
 27 that label to the Fire Video. Stossel does not challenge the content of that label as defamatory. It
 28

1 is not. And, even if Climate Feedback’s separate article could be attributed to Meta, the
2 “implication” Stossel complains of is neither false nor defamatory.

3 *First*, Meta is alleged only to have superimposed a fact-check label on the Fire Video,
4 describing Climate Feedback’s conclusion that the video was “missing context.” Stossel does not
5 claim that label is actionably false—presumably because it is protected opinion. The conclusion
6 that the video was “missing context” is necessarily a judgment call, one that is “not capable of
7 verification or refutation by means of objective proof.” *Phantom Touring, Inc. v. Affiliated*
8 *Publications*, 953 F.2d 724, 728 n.7 (1st Cir. 1992). And it is undisputed that Meta shared the
9 basis for the “missing context” label alongside the rating by linking to Climate Feedback’s fact
10 check. “A statement of opinion based on fully disclosed facts can be punished only if the stated
11 facts are themselves false and demeaning.” *Standing Committee on Discipline of U.S. Dist. Ct. v.*
12 *Yagman*, 55 F.3d 1430, 1439 (9th Cir. 1995). For example, where an author describes general
13 events and offers a personal perspective about ambiguities or disputed facts associated with those
14 events, that opinion is protected under the First Amendment. *Partington v. Bugliosi*, 56 F.3d 1147,
15 1153 (9th Cir. 1995). So too here: Meta provided a link to a detailed description of the basis for
16 the “missing context” label (i.e., Climate Feedback’s webpage).

17 *Second*, the Fire Video itself makes clear that the “implication” Stossel complains of is not
18 false. “A ‘public-figure plaintiff must show the falsity of the statements at issue in order to prevail
19 in a suit for defamation.’” *Stolz*, 30 Cal. App. 4th at 202 (quoting *Philadelphia Newspapers, Inc.*
20 *v. Hepps*, 475 U.S. 767, 775 (1986)); *Brown v. Kelly Broadcasting Co.*, 771 P.2d 406, 433 n.37
21 (Cal. 1989)). Stossel claims that Climate Feedback’s description of the Fire Video is false because
22 it attributed to him a claim that “climate change doesn’t cause forest fires.” Compl. ¶¶ 48-53. But
23 that does not accurately describe Climate Feedback’s description of the video. All Climate
24 Feedback’s webpage says is that “[t]he claim that the forest fires currently burning in the western
25 United States are caused by poor forest management and not climate change appeared in multiple
26 Facebook posts published in September 2020,” and “[w]hile forest management practices,
27 specifically fire suppression, have increased the fuel load, scientific evidence also links climate
28 change to hotter and drier conditions.” Jennings Decl. Ex. 6, at 2. It does not specifically attribute

1 that claim to Stossel, as opposed to the people he interviewed in his video. Indeed, Stossel’s video
2 *did* include a claim by Shellenberger that California’s recent wildfires were caused by forest
3 management. Jennings Decl. Ex. 5, at 3:10-13; 4:3-4 (“Stossel: ‘If not climate change, what is to
4 blame? Foolish policy.’ ... Shellenberger: ‘You could have had this amount of warming and not
5 had these fires.’”). There was therefore nothing false about the statement on Climate Feedback’s
6 webpage.

7 *Third*, the challenged implication is not defamatory. Defamatory words are those which
8 “expose[] any person to hatred, contempt, ridicule, or ... which cause[] [the speaker] to be shunned
9 or avoided.” Cal. Civ. Code § 45; *see also Bartholomew v. YouTube, LLC*, 17 Cal. App. 5th 1217,
10 1233 (2017) (holding statements not defamatory because they did not subject the plaintiff to
11 “hatred, contempt, ridicule, or obloquy, or cause her to be shunned or avoided” or tend to “injure
12 her in occupation” (quotation marks omitted)); *Hayes v. Facebook*, 2019 WL 5088805, at *7 (N.D.
13 Cal. Aug. 15, 2019) (Facebook notice identifying an internet link as malicious “is not
14 defamatory”). Science Feedback’s description of Stossel’s video as including a claim that
15 California wildfires were caused by forest management does not question *Stossel’s* honesty,
16 credibility, or reputation. Indeed, its description did not mention Stossel at all. That description
17 therefore cannot support a defamation claim. For instance, in *Polygram Records, Inc. v. Superior*
18 *Court*, the court held that a false statement indicating that plaintiff’s business goods “were of
19 inferior quality” did not “accuse plaintiff of dishonesty, lack of integrity or incompetence” and
20 therefore was not defamatory. 170 Cal. App. 3d 543, 550 (1985). Similarly, in *Hayes*, “statements
21 [that plaintiff’s website link was malicious] were at most a commentary on an internet link” and
22 “[n]o reasonable person would interpret those statements as being about [plaintiff] personally.”
23 2019 WL 5088805, at *7 (dismissed with prejudice). For similar reasons, statements about
24 Stossel’s *videos* do not rise to the level of defamation.¹¹

25
26 ¹¹ Climate Feedback’s comments on the Fire Video did not even mention Stossel by name.
27 “The [allegedly] defamatory statement must specifically refer to, or be ‘of and concerning,’ the
28 plaintiff.” *John Doe 2 v. Superior Court*, 1 Cal. App. 5th 1300, 1312 (2016). That requirement
also is not met here. *See Hayes*, 2019 WL 5088805, at *7 (Facebook’s notice identifying an
internet link as malicious “is not about [plaintiff] personally”).

1 opinion, and there is no allegation that the facts Climate Feedback relied on to determine that the
2 Alarmism Video was partly false were themselves inaccurate.

3 Finally, as with Climate Feedback’s review and rating of the Fire Video, Climate
4 Feedback’s statements about the Alarmism Video are not defamatory. Climate Feedback’s
5 comments about the Alarmism Video are about the contents of the video, not Stossel himself. *See*
6 *supra* pp. 16-17.

7 **II. THE COURT SHOULD STRIKE THE COMPLAINT UNDER CALIFORNIA’S** 8 **ANTI-SLAPP STATUTE**

9 California’s anti-SLAPP statute “provides for early dismissal” of “strategic lawsuits
10 against public participation.” *Navellier v. Sletten*, 52 P.3d 702, 706 (Cal. 2002) (internal quotation
11 marks omitted). It mandates that any “cause of action against a person arising from any act of that
12 person in furtherance of the person’s right of petition or free speech under the U.S. or California
13 Constitution in connection with a public issue shall be subject to a special motion to strike,” unless
14 the plaintiff establishes a probability that it will prevail on the claim. Cal. Civ. Proc. Code.
15 § 425.16(b)(1); *see also Hilton v. Hallmark Cards*, 599 F.3d 894, 902-903 (9th Cir. 2010). The
16 anti-SLAPP statute applies to state-law claims brought in federal court under diversity jurisdiction.
17 *Id.* at 900 n.2.

18 To determine whether to grant an anti-SLAPP motion, the court performs a two-part
19 inquiry. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1110 (9th Cir. 2003). First, the court
20 must assess whether the defendant has made a prima facie showing that “the plaintiff’s suit arises
21 from an act in furtherance of the defendant’s rights of petition or free speech” in connection with
22 a public issue. *Id.*; *see also Equilon Enterprises v. Consumer Cause, Inc.*, 52 P.3d 685, 693-694
23 (Cal. 2002). If the defendant makes this showing, then “the burden shifts to the plaintiff to
24 demonstrate a probability of prevailing on the challenged claims.” *Vess*, 317 F.3d at 1110 (internal
25 quotation marks omitted). Courts “‘construe[] the anti-SLAPP statute broadly’” to fully effectuate
26 the statute’s purpose: preventing litigants from abusing the judicial process to chill the exercise
27 of First Amendment rights. *Herring Networks, Inc. v. Maddow*, 8 F.4th 1148, 1155 (9th Cir. 2021)
28 (quoting Cal. Civ. Proc. Code. § 425.16(a)).

1 Stossel’s defamation claim satisfies both prongs of the anti-SLAPP statute and should be
2 struck.

3 **A. Stossel’s Defamation Claim Arises From Meta’s First Amendment Protected**
4 **Activity On A Matter Of Public Interest**

5 At the first step of the anti-SLAPP analysis, “the critical consideration is whether the
6 [plaintiff’s] cause of action is based on the defendant’s protected free speech or petitioning
7 activity” or on any action taken in furtherance of those rights. *Navellier*, 52 P.3d at 709 (emphasis
8 omitted). “[A] court focuses its anti-SLAPP analysis on the specific conduct that the claim is
9 challenging.” *Jordan-Benel v. Universal City Studios, Inc.*, 859 F. 3d 1184, 1190 (9th Cir. 2017);
10 *see Bonni v. St. Joseph Health Sys.*, 491 P.3d 1058, 1065–1066 (Cal. 2021) (“[C]ourts are to
11 ‘consider the elements of the challenged claim and what actions by the defendant supply those
12 elements and consequently form the basis for liability.’”). Once the court determines that a cause
13 of action is based on protected activity, the court must then determine whether that activity
14 occurred “in connection with a public issue.” *Hilton*, 599 F.3d at 904-905 (quotation marks
15 omitted). Both requirements are satisfied here.

16 1. The Fact-Check Labels Are Protected Free Speech Activity

17 Stossel challenges Meta’s decision to affix fact-check labels to two videos on his Facebook
18 page. Compl. ¶¶ 116, 125; *see also* Compl. ¶¶ 45-47, 83-85. That decision indisputably represents
19 constitutionally protected speech, squarely in the heartland of the anti-SLAPP statute’s concern.

20 As the Ninth Circuit has explained, “where ... an action directly targets the way a content
21 provider chooses to deliver, present, or publish news content on matters of public interest, that
22 action is based on conduct in furtherance of free speech rights and must withstand scrutiny under
23 California’s anti-SLAPP statute.” *Greater L.A. Agency on Deafness, Inc. v. Cable News Network,*
24 *Inc.*, 742 F.3d 414, 424-425 (9th Cir. 2014). Just as courts have applied this type of reasoning to
25 strike claims arising from news organizations’ exercise of editorial control and judgment in print
26 or on air, *see Wilson v. Cable News Network, Inc.*, 444 P.3d 706, 721–723 (Cal. 2019), so too have
27 they done so for content providers in the Internet context, *see Greater L.A. Agency on Deafness,*
28 *at 422-425* (concerning news organization’s editorial decision to not use closed captioning for

1 videos on its website). As in those cases, Meta’s decisions to place fact-check labels on two of
 2 Stossel’s videos represent protected activity.

3 2. The Fact-Check Labels Are Speech In Connection With An Issue Of Public
 4 Interest

5 Meta’s labels are also speech “in connection with a public issue.” Cal. Civ. Proc. Code
 6 § 425.16(b)(1); *see id.* § 425.16, (e)(3), (e)(4). “An issue of public interest is any issue in which
 7 the public is interested.” *Kieu Hoang v. Phong Minh Tran*, 60 Cal. App. 5th 513, 528 (2021)
 8 (quotation marks and emphasis omitted). “Like the SLAPP statute itself, the question whether
 9 something is an issue of public interest must be construed broadly.” *Id.* (quotation marks omitted).

10 As a general matter, the public undoubtedly has a stake in Meta’s content moderation
 11 decisions. Given the billions of people who use Facebook, Compl. ¶ 24, “[Meta]’s ability to
 12 decisively police the integrity of its platform is without question a pressing public interest.”
 13 *Stackla, Inc. v. Facebook, Inc.*, 2019 WL 4738288, at *6 (N.D. Cal. Sept. 27, 2019). Meta’s fact-
 14 checking is even a matter of Congressional concern. *E&C Committee Announces Hearing With*
 15 *Tech CEOs On The Misinformation Plaguing Online Platforms*, House Committee on Energy and
 16 Commerce, Feb. 18, 2021, <https://tinyurl.com/36vfrbz5>.¹² Given the intense public interest in
 17 Meta’s steps to identify and flag potential viral misinformation, the anti-SLAPP’s public interest
 18 requirement is satisfied.

19 Moreover, Stossel essentially concedes that the fact-check labels at issue in this case satisfy
 20 the requirement. As he explains, “the Fire Video had nearly 1.2 million views,” Compl. ¶ 104,
 21 and that video involved “a complex topic of scientific debate” on the effect of climate change on
 22 forest fires, Compl. ¶ 52. The Alarmism Video similarly contained “a debate of opposing
 23 hypotheses regarding the effects of climate change.” Compl. ¶ 80. Climate change indisputably
 24 represents a topic of national and global significance: “California courts have acknowledged that
 25 _____

26 ¹² The Court may take judicial notice of this official government website. *See Daniels–Hall*
 27 *v. Nat’l Educ. Assoc.*, 629 F.3d 992, 998-999 (9th Cir. 2010) (taking judicial notice of
 28 information on the websites of two school districts because they were government entities);
County of Santa Clara v. Astra USA, Inc., 401 F. Supp. 2d 1022, 1024 (N.D. Cal. 2005) (taking
 judicial notice of information posted on a Department of Health and Human Services website).

1 environmental harm is a matter of public interest for the purposes of anti-SLAPP.” *Resolute Forest*
2 *Prods.*, 302 F. Supp. 3d at 1026; *see also Wong v. Jing*, 189 Cal. App. 4th 1354, 1366 (2010)
3 (matters that “can affect many people [are] generally deemed to involve an issue of public interest
4 for purposes of the anti-SLAPP statute”). Prominent online discourse on the topic—here, publicly
5 accessible web videos that reached millions of viewers and concerned the environmental impact
6 of rising temperatures and sea levels—therefore qualifies as a quintessential matter of public
7 interest. *See Cross v. Facebook*, 14 Cal. App. 5th 190, 200 (2017) (topic with “millions of results”
8 on Google is matter of public concern).

9 **B. Stossel Has No Chance of Success On The Merits**

10 Under the second prong of the anti-SLAPP statute, a plaintiff must “demonstrate a
11 probability of prevailing on the challenged claims.” *Vess*, 317 F.3d at 1110. Where, as here, “an
12 anti-SLAPP motion to strike challenges only the legal sufficiency of a claim, a district court should
13 apply the Federal Rule of Civil Procedure 12(b)(6) standard and consider whether a claim is
14 properly stated.” *Planned Parenthood Fed’n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828,
15 834 (9th Cir. 2018). In other words, if Stossel “cannot plead a plausible action under the FRCP
16 12(b)(6) standard, then [he] cannot as a matter of law cannot meet the probability of success on
17 the merits standard.” *Resolute Forest Prods.*, 302 F. Supp. 3d at 1026; *see also Niantic, Inc. v.*
18 *Global++*, 2020 WL 1548465, at *7-8 (N.D. Cal. Jan. 30, 2020).

19 For the reasons explained above, Stossel cannot satisfy the Rule 12(b)(6) standard. His
20 defamation claim should be struck, and Meta should be awarded its fees and costs associated with
21 litigating this motion. Cal. Civ. Proc. Code § 425.16(c); *see Moore v. Liu*, 69 Cal. App. 4th 745,
22 752 (1999) (“Persons who threaten the exercise of another’s constitutional rights to speak freely
23 . . . should be adjudicated to have done so, not permitted to avoid the consequences of their actions
24 by dismissal of the SLAPP suit when a defendant challenges it.”).

25 **CONCLUSION**

26 The Complaint should be dismissed with prejudice.
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Respectfully submitted,

Dated: November 29, 2021

WILMER CUTLER PICKERING, HALE
AND DORR LLP

By: /s/ Sonal N. Mehta
SONAL N. MEHTA

Attorney for Defendant Meta Platforms, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2021, I electronically filed the above document with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to all registered counsel.

Dated: November 29, 2021

By: /s/ Sonal N. Mehta
Sonal N. Mehta