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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

DAWN DANGAARD, *et al.*,

Plaintiffs,

v.

INSTAGRAM, LLC, *et al.*,

Defendants.

CASE NO. 3:22-cv-01101-WHA

META DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Complaint Filed Date:	September 28, 2022
Judge:	William Alsup
Hearing Date:	April 4, 2024

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that on April 4, 2024, at 8:00 a.m., the undersigned will appear before the Honorable William Alsup of the United States District Court for the Northern District of California in Courtroom 12, 19th Floor, at the San Francisco Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, and shall then and there present defendants Instagram, LLC, Facebook Operations, LLC, and Meta Platforms, Inc.'s Motion for Summary Judgment. Counsel is aware that Your Honor typically hears civil motions on the second and fourth Thursday of every month, but Defendants respectfully request as early of a hearing date as the Court can accommodate and therefore has noticed this motion for April 4, 2024. Counsel for Defendants are available to appear for this motion any time between March 29 and April 8, 2024, or on April 11 or April 12, 2024.

The Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Supporting Declaration of Devin S. Anderson ("Anderson Decl.") and exhibits attached thereto, the pleadings and other papers on file in this action, any oral argument, and any other evidence the Court may consider in hearing this Motion.

RELIEF REQUESTED

Instagram, LLC, Facebook Operations, LLC, and Meta Platforms, Inc. (collectively, "Meta") request that the Court grant summary judgment pursuant to Federal Rule of Civil Procedure 56.

STATEMENT OF THE ISSUES TO BE DECIDED

Plaintiffs are adult entertainers whose admitted business model is to use Meta's services to link to pornographic content in violation of Meta's policies. Plaintiffs' operative complaint alleges that entities associated with OnlyFans bribed Meta employees to misuse certain terrorism-related tools to "blacklist" or remove, block, and otherwise reduce the visibility of plaintiffs' posts and accounts on social media. Plaintiffs bring claims for tortious interference with contract, tortious interference with business relationships, and a violation of California's Unfair Competition Law (UCL), Business and Professions Code, § 17200 *et seq.* Meta's motion for summary judgment raises the following issues:

1. Whether Meta's motion for summary judgment should be granted under Federal Rule of Civil Procedure 56, because:

(a) Plaintiffs have not shown any factual basis to their allegations showing entitlement to relief.

(b) Plaintiffs' claims are barred by Section 230 of the Communications Decency Act and the First Amendment of the U.S. Constitution.

(c) Plaintiffs have failed to show that the elements of their causes of action are met.

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INTRODUCTION

Plaintiffs are adult entertainers. They want to use Meta's services to drive traffic to pornographic websites, on which plaintiffs post pornographic content. Doing so violates Meta's policies. Plaintiffs nevertheless filed this lawsuit and spun a lurid yarn in which content removal was occurring because high-ranking Meta executives purportedly took bribes from OnlyFans to "blacklist" adult entertainers who did not use OnlyFans. Plaintiffs claimed that Meta secretly placed them on Meta's Dangerous Organizations and Individuals (DOI) list and that their content was hashed into Meta's Threat Exchange platform, which is a database that is used to share terrorism-related content with other websites through the Global Internet Forum to Combat Terrorism (GIFCT). Plaintiffs alleged that the success of OnlyFans could ***only*** be explained by the misuse of these terrorism-related tools to target non-conforming adult entertainers. Plaintiffs claimed to have whistleblowers, bank records, and hundreds of pages of internal Meta documents that substantiated these bribes-for-blacklisting allegations. These allegations were so startling that the Court allowed the case to proceed past a motion to dismiss.

The Court was sold a bill of goods. Not a single piece of this purported scheme is supported by evidence. There were no bribes. There is no evidence any terrorism-related tools were misused. And plaintiffs produced no verifiable records or internal Meta documents supporting their far-fetched theories. The actual facts are far more mundane: Meta engaged in normal-course enforcement of its policies, which sometimes involve removing or reducing the visibility of content of people like plaintiffs, whose entire business model is built on driving traffic to pornographic websites. OnlyFans is not somehow immune from Meta's policies. Instead, it is treated similarly to other similar websites [redacted] And Meta ***has*** [redacted]

With no evidence of the purported scheme, plaintiffs' case is in reality an attack on classic content-moderation activity that is protected twice over by both the Communications Decency Act (CDA) § 230 and the First Amendment. As plaintiffs readily admitted in their depositions, their disagreement is with how Meta is applying its policies concerning what content is and is not allowed on Meta's services. Plaintiffs therefore seek to hold Meta liable for decisions to remove certain content from its services,

which is protected under section 230(c)(1) of the CDA. *See, e.g.*, *Fyk v. Facebook, Inc.*, 808 F. App'x 597, 598 (9th Cir. 2020); *Sikhs for Just. "SFJ", Inc. v. Facebook, Inc.*, 144 F. Supp. 3d 1088, 1092–96 (N.D. Cal. 2015). Moreover, section 230(c)(2) of the CDA independently protects from civil liability good-faith action "to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable." One of Congress's express purposes in enacting the CDA was to ***encourage*** websites to remove obscene material. Actions to prevent plaintiffs from linking to websites with names like Chaturbate, SextPanther, and AmateurPorn readily qualify for protection. For similar reasons, decisions to remove or deprioritize content posted by others are also protected by Meta's First Amendment right to exercise editorial discretion over its online services.

Throughout the more than two years that this case has been pending, plaintiffs have talked a big game. But when the Court gave plaintiffs the opportunity to take discovery, they balked and utterly failed to build any factual basis for allowing this case to proceed past summary judgment. No documents support plaintiffs' fanciful theories. There is no evidence that any bribes were paid or any terrorism databases misused. Following the initial bribery-related discovery, plaintiffs took no depositions ***at all*** of any Meta witnesses, uncovered no evidence supporting their claims in documentary discovery, and did not bother to update an expert report they served with their complaint over two years ago. Plaintiffs' lack of diligence in discovery suggests that they have never believed their own claims. This is a case that should never have been brought, and it is time to put an end to plaintiffs' prejudicial and categorically false allegations. Plaintiffs have not established any dispute of material fact, and the Court should grant summary judgment.

If there were any doubts about the appropriateness of bringing this case to an immediate end, plaintiffs dispelled them with their actions today. On March 11, 2024, hours before Meta filed its Motion for Summary Judgment, plaintiffs filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction, claiming that they have insufficient evidence to certify any class and that the Court therefore lacks jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d). ECF No. 228. Meta will respond to that motion in due course. But for purposes of Meta's Motion for Summary Judgment, plaintiffs' eleventh-hour filing makes clear that plaintiffs know that there is no evidence whatsoever to support their claims and that they cannot survive summary judgment. Plaintiffs began this case with inflammatory and

prejudicial allegations against Meta and its employees. These claims were baseless, and plaintiffs have used every effort to delay the time when they would need to defend them on the merits. Now that the time has finally come, rather than stand behind their accusations or admit that they have no case, plaintiffs have attempted to flee the field. Summary judgment should be awarded to Meta on all claims.

BACKGROUND

Meta is a provider of online services with the goal to "help people connect" while at the same time "keeping people safe and making a positive impact." Anderson Decl. Ex. 1. Plaintiffs Dawn Dangaard, Kelly Gilbert, and Jennifer Allbaugh are adult entertainers who seek to use Meta's services to promote pornography and other sexual content. *See id.* Ex. 2 ¶¶ 3-5; Ex. 3 ¶¶ 3-5; Ex. 4 ¶¶ 3-4; Second Am. Compl. (ECF No. 74) ("SAC") ¶¶ 13–15, 36, 101. Plaintiffs' admitted business model is to use posts on online services like Instagram to drive traffic to known pornographic websites, such as Cams.com, Chaturbate, SextPanther, and Kelly's Dream House. *See* SAC ¶¶ 71, 106, 109; Anderson Decl. Exs. 5-7. Plaintiffs post pornography on these sites, ranging from live masturbation to sexual intercourse to playing video games topless. *Id.* Ex. 9 ("Dangaard Dep.") at 111:7-12; *id.* Ex. 8 ("Gilbert Dep.") at 161:14-162:9; *id.* Ex. 10 ("Allbaugh Dep.") at 58:5-14. The content on these sites is generally very apparent from their landing pages. *See, e.g.*, www.cams.com; www.chaturbate.com; www.sextpanther.com; www.kellysdreamhouse.com; www.justforfans.com. Meta's policies forbid depictions of "sexual activity," as well as offers or requests for "sex or sexual partners, sex chat or conversations, or nude photos," whether explicit or implicit. *Id.* Exs. 11-12. Plaintiffs' posts have been subject to removal or actioning from time to time, including under the Sexual Solicitation policy. *E.g., id.* Exs. 13-17.

Plaintiffs nevertheless alleged that they were subject to a scheme in which plaintiffs, or entities they associate with, were secretly placed into a "database . . . intended to flag and remove content produced by terrorists and related 'Dangerous Individuals and Organizations' to curtail the spread of terrorism and violent extremism online." SAC ¶ 8. Plaintiffs claim that this led in some "automated" way to plaintiffs' information being designated (using "'hashes,' or unique digital fingerprints") within Facebook's "Threat Exchange" as terrorist content subject to automatic takedown. *Id.* ¶¶ 7-8, 41-54. Plaintiffs then claim that this false designation was spread to other online services through the "GIFCT Hash Sharing Database."

Id. ¶ 47. The complaint alleges that these tools "were the only data sharing systems in existence that would have been capable of creating this observed effect." *Id.* ¶ 41.

Plaintiffs claim that Meta misused these terrorism-related tools to target plaintiffs at the behest of OnlyFans, which had allegedly sent bribes to offshore bank accounts associated with three named Meta executives. *Id.* ¶¶ 72-86. Plaintiffs' complaint attached what they claimed to be wire-transfer records of these illicit payments. *Id.* Ex. D (redacted). Plaintiffs alleged that the purpose and effect of this scheme was to give OnlyFans a competitive advantage by "blacklisting" adult entertainers who did not work exclusively with OnlyFans. *Id.* ¶¶ 8-10. Again, plaintiffs emphasized that the DOI list and GIFCT "were the only" tools "capable of the broad blacklisting [of] competitors of OnlyFans, and the AE Providers who had ever promoted them"—"[n]o other tool then in existence could have produced this effect." *Id.* ¶¶ 61, 62. Plaintiffs claimed to have 200 pages of internal Facebook documents and whistleblowers who could support the existence of this bribes-for-blacklisting scheme. *Id.* ¶ 2(d).

The Court denied Meta's motion to dismiss. The Court held that plaintiffs stated plausible claims for relief, and specifically cited the wire transfers that plaintiffs attached to their claim as "support[ing] plaintiffs' allegation that Meta defendants' employees accepted bribes from Fenix defendants in late 2018 to blacklist competitors of OnlyFans." ECF No. 101 at 4. The Court also cited a purported whistleblower report that appeared to "corroborate plaintiffs' allegations." *Id.* at 4–5. The Court referenced the complaint's allegations about a decrease in traffic to "competitors of OnlyFans . . . while OnlyFans experienced a significant increase in traffic." *Id.* Given these factual allegations of a scheme to suppress competition, the Court found that neither the CDA nor the First Amendment applied. *Id.* at 6–11. In structuring discovery for this case, the Court emphasized that the "bribe was a big deal. The alleged bribe . . . got them past the 12(b)(6)." ECF No. 144 at 61:21–62:5; 63:17–23 ("THE COURT: . . . [Y]ou, yourself, made the bribe [the] centerpiece of your case.").

At the Court's direction, the parties first conducted targeted discovery concerning the supposed wire transfers and plaintiffs' allegations of bribery. ECF No. 65. Plaintiffs subpoenaed journalists for documents and testimony, deposed the Meta executives and employees in question, and sought documents from the Federal Reserve and two banks. ECF No. 166 at 4–5. Plaintiffs sought no documents from Meta at this stage. This process yielded no evidence supporting the claims that anybody at Meta received bribes

from OnlyFans or anyone else. In both declarations and deposition testimony, each of the Meta executives named in the complaint flatly denied the allegations of bribery, blacklisting, and favoring OnlyFans. Anderson Decl. Ex. 33; Ex. 34; Ex. 35; Ex. 18 at 60:22–61:10, 62:8–16; 111:21–24; *id.* Ex. 19 at 42:7–15, 50:4–6, 42:17–23, 40:21–22, 73:3–17; *Id.* Ex. 20 at 36:11–37:10, 34:9–23, 32:2–16. The third-party discovery also came up empty. *Id.* Ex. 21; *id.* Ex. 22 at 164:1–164:11, 165:3–8. After discovery closed on the bribery claims, plaintiffs filed a notice that purported to "withdraw" their bribery allegations from the complaint and "any statements that appear in briefs they have filed, or that were made during oral arguments, that advocated on the basis of the withdrawn allegations." ECF No. 172.

The case then moved to full merits discovery. At a case management conference, the Court emphasized to Meta that "you're the one that ought to know whether this kind of gimmick, this *quid pro quo* went on and your records ought to show it…. But if this turns out to be a wild goose chase and there's nothing really there, I mean, there never was any such foul play, then you should win your summary judgment motion." ECF No. 203 at 9:20-10:3.

The parties engaged in several months of fact discovery. Although the Court advised plaintiffs to depose the relevant Meta employees with responsibility for the allegedly misused terrorism databases, plaintiffs ***took no depositions at all***. Meta undertook a search to determine whether plaintiffs (and others mentioned in the complaint) were on Meta's DOI list. *They were not. See* Anderson Decl. Ex. 23 ¶4; *Id*. Ex. 5; *Id*. Ex. 6; *Id*. Ex. 7. Meta invited plaintiffs to submit examples of content that they claim were inappropriately actioned so that Meta could conduct a reverse-hashing analysis to determine whether plaintiffs' content had been hashed into the Threat Exchange platform. ***Plaintiffs did not do so***. *Id.* Ex. 26 at No. 16; *id.* Ex. 28; *id.* Ex. 29. Meta also produced comprehensive reports (nearly 200,000 pages) showing the plaintiffs' content histories on Instagram, thousands of documents found through custodial searches for several disclosed custodians, internal and external documents related to Meta's policies, documents showing the history of links blocked under Meta's sexual solicitation and related policies, and documents showing how Meta approaches content on OnlyFans and other similar websites, among many others.

Plaintiffs, meanwhile, produced very little information. Plaintiffs did not produce any of the sensational documents they had referenced in their complaint, like the "200 pages of internal Facebook

documents," nor did they identify any of the purported whistleblowers who had supplied information. SAC ¶¶ 2(b), 2(d); 72. Instead, plaintiffs produced some email correspondence with Meta and screenshots of various social-media posts. No documents provided by plaintiffs substantiated any claimed misuse of terrorism-related tools.

When the time came for plaintiffs to serve "full expert reports under FRCP 26(a)(2) as to any issue on which [they] ha[ve] the burden of proof" by February 12, 2024, ECF No. 199 ¶ 4, plaintiffs served no expert reports. Instead, plaintiffs merely "refer[red]" Meta to the declarations that Jonathan Hochman provided with the 2022 complaint and in support of personal jurisdiction over the Fenix defendants, and also provided additional declarations from named plaintiffs Dangaard and Gilbert supposedly containing "both personal information and expert knowledge on various subjects." Anderson Decl. Ex. 30. None of these declarations contains analysis of the evidence produced by Meta in discovery. By contrast, Meta's opposition expert reports analyze the evidence in discovery and conclude that plaintiffs' allegations are not plausible, that Meta's content actioning appears far more consistent with Meta's enforcement of its user policies, and that plaintiffs have not provided information required to reliably calculate their economic losses. *Id.* Ex. 31 ("Bania Report"); Ex. 32 ("Bronars Report"). The reports served by Meta went unrebutted, as the deadline for reply reports came and went without plaintiffs serving anything.

LEGAL STANDARD

"Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Only the named plaintiffs are before the Court, and so Meta's motion for summary judgment is directed against the named plaintiffs' claims. *Corbin v. Time Warner Ent.-Advance/Newhouse P'ship*, 821 F.3d 1069, 1085 (9th Cir. 2016); *Mario V. v. Armenta*, 2021 WL 1907790, at *4 (N.D. Cal. May 12, 2021).

ARGUMENT

Plaintiffs' lawsuit accuses Meta of receiving bribes from OnlyFans to engage in "intentional suppression of competition" by falsely classifying the named plaintiffs and the adult entertainment ("AE") platforms they use as "terrorist" content or "Dangerous Organizations and Individuals" to benefit

OnlyFans and harm its purported competitors. SAC ¶¶ 11, 8. No evidence supports any component of this scheme: there were no bribes, there is no evidence of misuse of terrorism-related tools, and OnlyFans does not receive a free pass. Instead, the undisputed facts in the record show that Meta strives to apply its content policies consistently and in good faith, with no thumb on the scale. Under both CDA § 230 and the First Amendment, such actions cannot be the basis for civil liability. And even if they could, plaintiffs have failed to make out even the basic elements of their causes of action. Summary judgment is warranted on all of plaintiffs' claims because they have failed to raise a genuine dispute as to any material fact.

I. Plaintiffs Have Failed to Establish a Genuine Dispute of Material Fact Regarding the Scheme They Alleged

Discovery has not yielded "one scintilla" of evidence to support plaintiffs' claims that Meta accepted bribes to misuse terrorism-related tools in a scheme to harm OnlyFans' competitors. *Boon Rawd Trading Int'l. Co. v. Paleewong Trading Co. Inc.*, 2011 WL 1627981, at *3 (N.D. Cal. Apr. 29, 2011) (Alsup, J.) (noting that court had granted summary judgment because plaintiff had "not proffered one scintilla of admissible evidence" on a critical issue on which it "bore the ultimate burden of proof"). Instead, the undisputed facts show that Meta engaged only in ordinary-course content moderation. Plaintiffs have "failed to make a sufficient showing on an essential element of [their] case with respect to which [they have] the burden of proof," and summary judgment is warranted. *Celotex*, 477 U.S. at 323.

A. There is No Evidence of Bribery or Anything "Close to Bribery"

The Court previously denied Meta's motion to dismiss based on plaintiffs' "allegation that Meta defendants' employees accepted bribes from Fenix defendants in late 2018 to blacklist competitors of OnlyFans." ECF No. 101 at 3–4. The Court then instructed the parties to engage in targeted discovery to determine if plaintiffs could put forward "a plausible case for a bribe" that they made the "centerpiece of [their] case." ECF No. 144 at 60:12–15, 63:17–23.

Discovery quickly debunked plaintiffs' allegation of any bribe. Plaintiffs deposed the three individuals who were alleged to have received payments from OnlyFans—Sir Nicholas Clegg, Lady Nicola Mendelsohn, and Cristian Perrella. Each of them categorically denied the accusations. Sir Clegg testified that he has never communicated with anyone from OnlyFans and has not discussed the activity of any adult performer or adult platform on the Meta services outside this litigation. Anderson Decl. Ex.

18 at 60:22–61:10, 62:8–16. When asked about the purported wire transfer records, Sir Clegg explained, "[n]ot a single word or number in this [the purported wire transfer records] is recognizable to me or conceivable." *Id.* at 109:11–110:2, 111:21–24. Lady Mendelsohn likewise testified that she has no knowledge of the alleged wire transfers and has never had any communications with anyone from OnlyFans. *Id.* Ex. 19 42:7–15, 50:4–6. Mr. Perrella also flatly denied any knowledge of the alleged wire transfers and testified that he has never communicated with anyone from OnlyFans. *Id.* Ex. 20 at 36:11–37:10. These witnesses signed sworn declarations flatly denying that they ever accepted bribes or took any actions to favor OnlyFans or disadvantage plaintiffs. *Id.* Ex. 33; Ex. 34; Ex. 35.

Plaintiffs also served deposition subpoenas on *WIRED* magazine, which had published an article discussing an "anonymous whistleblower tip" about alleged bribery. SAC Ex. M. The depositions of the author of the article, Dell Cameron, and his editor, Andrew Couts, did not provide any testimony supporting the bribery allegations, either. *See, e.g.*, Anderson Decl. Ex. 36 at 11:11–14; 12:11–13; Ex. 22 at 127:8–13. In response to plaintiffs' request for "documents relating to bribery of any kind . . . related to the" allegations in this case, *WIRED* stated that it had no responsive information. *Id.* Ex. 21. Plaintiffs also served subpoenas on the Federal Reserve, HSBC Bank, and other banks involved in the chain of the alleged bribes. ECF No. 143. This discovery likewise yielded nothing to support plaintiffs' allegations. In addition, Meta served document requests on plaintiffs seeking any evidence supporting their bribery allegations. Anderson Decl. Ex. 37. Plaintiffs produced 13 documents, none of which contained any actual evidence that anyone at Meta received bribes. *Id.* Ex. 38. Seeing the writing on the wall, plaintiffs purported to "withdr[a]w" these bribery allegations and any argument based on them in July 2023, telling the Court that they "can no longer certify" that these bribery allegations "will likely have evidentiary support after a reasonable opportunity for further investigation or discovery." ECF No. 172.

At subsequent status conferences in August and October 2023, plaintiffs made a last-ditch effort to salvage their case by requesting discovery on some other, unspecified "*quid pro quo* between Fenix [the owner of OnlyFans] and Meta." ECF No. 203 at 11:4-7. As the Court summarized plaintiffs' new position, "you're not saying bribery anymore, but you are saying something close to bribery." ECF No. 186 at 11:11-14. Plaintiffs agreed this question of a *quid pro quo* was "the key issue" remaining in the case. ECF No. 203 at 11:5-8. Once again, however, plaintiffs' theory did not survive contact with reality.

Despite months of additional discovery, plaintiffs have not come forth with any admissible evidence establishing any alternative *quid pro quo* between the Fenix Defendants and Meta. There is no disputed question of fact as to this allegation, and summary judgment is warranted.

B. There is No Evidence of Any Misuse of Anti-Terrorism or DOI Tools

Although plaintiffs' claims have been vague and shifting in many respects, it has always been clear that the scheme they allege is based on misuse of databases for "terrorist content" or "dangerous organizations." SAC ¶¶ 43, 49. Indeed, plaintiffs allege that these "anti-terrorism and anti-DIO tools" were "the *only* ones capable of the broad blacklisting competitors of OnlyFans, and the AE Providers who had ever promoted them, experienced in 2018 and 2019." *Id.* ¶ 62 (emphasis added); *see also id.* ¶ 61 ("No other tool then in existence could have produced this effect."); ECF No. 45 at 14 ("The crux of Plaintiffs' Complaint is that Fenix Defendants colluded to destroy OnlyFans' competitors' platforms and performers that used those platforms by manipulating a shared hash database."). Deposition testimony from the named plaintiffs confirmed that their claims "pertain to misuse of terrorism-related databases." Dangaard Dep. at 39:18-21; Allbaugh Dep. at 46:10-13.

There is no evidence that the DOI or GIFCT tools were misused against plaintiffs. Indeed, the way plaintiffs conducted discovery has made clear they had no faith in these allegations to begin with. Nearly a year ago, plaintiffs pleaded with the Court to allow depositions of "three or four" Meta engineers to discover whether the alleged wrongdoing occurred. ECF No. 144 at 61:21–62:5; *see also id.* at 54:6-8 ("[L]et's start with the engineers."). Yet when plaintiffs were given permission to take full merits discovery, they elected to take ***no depositions at all***. *See G & G Closed Cir. Events, LLC v. Liu*, 45 F.4th 1113, 1117 (9th Cir. 2022) (affirming grant of summary judgment where plaintiff had "ample opportunity to pursue additional discovery" but "sat on its hands" and had "no evidence" to support its claims).

Meta also has provided substantial evidence rebutting plaintiffs' allegations. To test plaintiffs' claims that they were placed on the DOI List, Patrick James, a Public Policy Manager in Dangerous Organizations at Meta, "conducted a review to determine whether any of the named plaintiffs . . . or any Instagram handles associated with them currently appear on the DOI List." Anderson Decl. Ex. 23 ¶ 4. Mr. James determined that "***They do not***." *Id.* (emphasis added). To test plaintiffs' allegation that Meta added AE Platforms that compete with OnlyFans to the DOI List, Mr. James also "conducted a review to

determine whether any of the adult entertainment platforms listed in Exhibit C"—which lists the AE Platforms that plaintiffs claim were targeted—"currently appear on the DOI List." *Id.* ¶ 5; SAC ¶ 68 (alleging that "discovery will demonstrate this [Exhibit C] list to be the AE Platforms that had been targeted by the scheme"). Again, Mr. James determined that "***They do not***." Anderson Decl. Ex. 23 ¶ 5 (emphasis added).

Although not relevant to the named plaintiffs' claims, Meta also investigated whether *other* AE performers appear on the DOI list. Meta sought to discuss with plaintiffs an efficient and effective method to conduct such a review, but plaintiffs refused to meaningfully engage on the issue. *See* Anderson Ex. 26 at 7-8; *id.* Ex. 28. To move discovery forward, Meta conducted a review of 50 randomly chosen accounts from a list produced by plaintiffs of "performers who were complaining about improper shadow bans and bans on social media." SAC Ex. B ("Hochman Decl.") ¶ 87 (describing this "Union Complaint List"). As Mr. James explained, he "conducted a review of a sample of 50 randomly selected adult entertainment providers listed in the Union Complaint List to determine whether any of the sample currently appear on the DOI List." Anderson Decl. Ex. 24 ¶ 6. Mr. James determined that "***No names*** from the randomized sample appeared on the DOI list on the day that I conducted the review." *Id.* ¶ 7 (emphasis added).

The DOI List is a living document, and thus Mr. James's reviews were necessarily done as of the dates on which he conducted the searches. Meta undertook a reasonable, search-term based review of documents to determine whether either the named plaintiffs or the Exhibit C platforms had been nominated for inclusion on the DOI list (as all additions to the list must be) during the relevant time. *See* Anderson Decl. Ex. 26 at 13-14. This review yielded no evidence that this occurred for any of the named plaintiffs or referenced platforms.

Meta also sought to test plaintiffs' allegation that their content had been hashed in Meta's Threat Exchange and shared with other social media services through GIFCT. *See* SAC ¶ 41. Previously, the plaintiffs had begged the Court for permission to take such discovery, saying, "this is a very simple thing to do, . . . let's get our plaintiffs . . . to submit images; we're going to have that hashed; we'll relationally compare it against the database." ECF No. 67 at 14:21-23. Meta offered to do just that—conduct a "reverse hashing" process to determine whether unique identifiers associated with plaintiffs' content match those in the GIFCT hashing banks—and asked plaintiffs to "submit images" or provide links to content on which

the analysis could be performed. *Id.*; Anderson Decl. Ex. 27. Despite follow-up, plaintiffs did not provide such content, making a reverse-hashing analysis infeasible. *Id.* Ex. 29. Not a single document, discovery response, or deposition has yielded any support whatsoever for plaintiffs' allegation that terrorism-related tools were misused.

C. None of the "Evidence" Alleged in the Complaint Materialized

Plaintiffs' complaint cited several pieces of supposed "evidence" of their allegations, and the Court cited this alleged evidence as the basis for its denial of Meta' motion to dismiss. ECF. No. 101 at 3-6. Discovery revealed these to be red herrings.

Wire-transfer documents: Plaintiffs relied on documents supposedly showing wire transfers in which persons associated with OnlyFans sent bribes to Meta employees. SAC Ex. D. These documents were critical to plaintiffs surviving a motion to dismiss. ECF No. 101 at 3-4; ECF 144 at 61:21–62:5 ("[T]he bribe was a big deal. The alleged bribe . . . got them past the 12(b)(6)."). These documents were never authenticated, the banks in question produced no information validating these transfers, and the employees in question categorically denied having received such wire transfers. *See supra* § I.A. The wire-transfer documents therefore appear to be fabrications.

***Web-traffic data*:** Plaintiffs survived a motion to dismiss in part based on an allegation that "starting in late 2018, competitors of OnlyFans experienced significant drops in web traffic while OnlyFans experienced a significant increase in traffic." ECF No. 101 at 4 (citing SAC ¶¶ 94–96; *id.* Ex. B at 31–32). Plaintiffs made no showing to support this assertion. Although plaintiffs attached a "declaration" from expert Jonathan Hochman to their complaint, Mr. Hochman never reviewed any of the record evidence in this case. Instead, when it came time to disclose expert reports, plaintiffs merely "refer[red]" Meta to the declarations that Mr. Hochman served long ago at the pleadings stage and in connection with personal jurisdiction issues. Anderson Decl. Ex. 30. Mr. Hochman's earlier declarations looked at a small set of cherry-picked data obtained from plaintiffs going back only to June 2019—more than six months after the scheme allegedly began. Hochman Decl. ¶¶ 80, 82. Mr. Hochman stated that he did not conduct his own review "because it would be prohibitively expensive (tens of thousands of dollars) and take too much time for me to acquire the data myself directly." *Id.* ¶ 82.

Meta's expert Doug Bania *did* spend the money and time to conduct his own analysis, which covered a wider range of websites, including those used by the named plaintiffs. Bania Report ¶ 56. This analysis "show[ed] that 58% of the 12 Competing AE Platforms achieved an ***increase*** in search traffic during the 21 months after the alleged scheme purportedly started." *Id.* ¶ 58. Even the most basic premise of plaintiffs' claim—that competitors of OnlyFans experienced a widespread drop in traffic—proved to be false. Mr. Bania's evidence is unrebutted, as plaintiffs did not serve any report or evidence in response.

As for OnlyFans' alleged increase in traffic, plaintiffs provided no reason to connect this to any action by Meta, let alone any wrongdoing. Instead, as Mr. Bania explains, OnlyFans' increased popularity was closely correlated with "a surge in individuals' inclination towards experimenting with online interaction and entertainment" caused by the COVID-19 pandemic, as well as several significant celebrities referencing or joining the platform. Bania Report ¶¶ 68-76 (noting, for example, that OnlyFans' web traffic increased by almost 12 million when singer Beyoncé mentioned the platform in a hit single).

"Whistleblower" report: Plaintiffs' complaint cited and attached a document supposedly from a "whistleblower" with accusations "overlap[ping] with some of the allegations alleged herein." SAC ¶ 2(f). The Court also cited this alleged evidence in denying the motion to dismiss. ECF No. 101 at 4-5. Discovery yielded no support for the accusations reflected in this document, nor did it even reveal who had made them. Gilbert Dep. at 126:8-12; Dangaard Dep. at 68:1-7, 238:23-25; Allbaugh Dep. at 40:12-42:6.

21K list: In the complaint, plaintiffs alleged that they received an email containing a document with the heading, "20k+ ig users that FB labeled 'dangerous individuals' because they used sites that competed with onlyfans…most pages either deleted or shadow banned." SAC ¶¶ 2(g), 67. In discovery, plaintiffs did not produce the email in which they allegedly received this 21K List or identify the sender, let alone provide evidence that this "list" actually represented "an accurate list of names that Meta had labeled as 'Dangerous Individuals'." SAC ¶ 67; Anderson Decl. Ex. 39; *id.* Ex. 40 at 3-4. This failure was no surprise—the claim was wildly implausible in the first place. The list includes both Instagram's own account (@instagram) and OnlyFans' own account (@onlyfans), as well as celebrities such as Taylor Swift (@taylorswift), so the idea that it represents "users that FB labeled 'dangerous individuals' because they used sites that competed with onlyfans" was and is absurd. SAC ¶ 67; *id.* Ex. B at 8 n.5. What's more, Mr. James's search of 50 randomly chosen accounts also included some accounts on the 21k List.

Compare James 2024 Decl. Ex. A *with* Anderson Decl. Ex. 41 at 25, 54 (showing "finafoxy" and "ninakayy1" on both lists). Mr. James's search yielded *no* hits on the current DOI list, further debunking plaintiffs' claims. Whatever this unauthenticated 21K List represents—whether it is a "recent creation," a "forgery," or something else—there is no evidence that it is "an accurate list of names that Meta had labeled as 'Dangerous Individuals'." SAC ¶ 67.

200 Pages of Documents: Plaintiffs' complaint also referred to "more than 200 pages of internal Facebook documents concerning an inquiry into possible abuse of the shared hash database of the GIFCT." SAC ¶ 2(d). Meta requested production of these documents, but plaintiffs never produced them in discovery, let alone provided evidence to authenticate them.

In sum, the evidence that plaintiffs cited in their complaint got them past a motion to dismiss, but it has all fallen apart in discovery. Such unauthenticated and unproduced "evidence" of unknown and undisclosed provenance cannot be considered on a motion for summary judgment. *Veloz v. Pac. Gas & Elec. Co.*, 2014 WL 1865786, at *13 (N.D. Cal. May 8, 2014) (Alsup, J.) ("We have repeatedly held that unauthenticated documents cannot be considered in a motion for summary judgment.") (quoting *Orr v. Bank of Am.*, 285 F.3d 764, 773 (9th Cir. 2002)); *Varela v. San Francisco*, 2007 WL 205069, at *2 (N.D. Cal. Jan. 25, 2007) (Alsup, J.) (same); *Moore v. Thomas*, 653 F. Supp. 2d 984, 991 (N.D. Cal. 2009) ("Unauthenticated documents and hearsay . . . may not be considered on summary judgment.").

D. Meta Treats [redacted]

Instead of validating plaintiffs' salacious conspiracy theory, discovery revealed something much more ordinary: Meta does its best to take down content that violates its policies and leave up content that does not. The evidence adduced in discovery confirmed that Meta strives to apply its content moderation policies to links to OnlyFans in the same way it applies them to links to other similar websites [redacted] In contrast, [redacted] Although perfection is impossible, Meta strives to apply these policies even-handedly and in good faith. As a matter of law, this cannot be a basis for liability. *See infra* § IV.C.

In general, Meta's policies prohibit content containing nudity, sexual activity, or sexually explicit language that may lead to sexual solicitation. At all times relevant to this action, Meta's Adult Nudity and

Sexual Activity policy restricted content depicting "sexual activity" or, in most situations, "real nude adults." *Id.* Ex. 11. Meta's Adult Sexual Solicitation and Sexually Explicit Language policy during the relevant period restricted "[a]ttempted coordination of or recruitment for adult sexual activities," as well as both ***explicit*** and ***implicit*** sexual solicitation." *Id.* Ex. 12. Explicit sexual solicitation covers content that offers or asks for sex or sexual partners, sexual conversations, or nude images. *Id.* Implicit sexual solicitation covers content that contains ***both*** (1) "an implicit offer or ask," including any "sharing . . . of contact information"; and (2) "a sexually suggestive element, such as sexual slang, mentions or depictions of sexual activity, or sexual poses." *Id.* Ex. 25 ("Reddy Decl.") ¶ 5.

Meta applies these policies to all forms of content, including content containing a link to an external website.[1] [redacted] *Id.* Ex. 26 at No. 4; *id.* Ex. 42. [redacted] Anderson Decl. Ex. 26 at No. 4. [redacted] . Reddy Decl. ¶ 5. [redacted] *Id.*; Anderson Decl. Ex. 43 [redacted]

Meta's treatment of OnlyFans is a straightforward application of these principles. As plaintiffs admit, OnlyFans' landing page is neutral and non-pornographic. *Id.* Ex. 44; Allbaugh Dep. at 56:20-24 ("[E]ven if I were to provide my OnlyFans link on my Instagram, . . . there's no way for them to just click and have that be pornography"); 246:2-7 ("You can't see anything . . . [u]nless you subscribe[.]"). OnlyFans is also not exclusively pornographic. *Id.* Ex. 44. One of the named plaintiffs admitted that even she frequently uses OnlyFans to post benign content. Allbaugh Dep. at 54:12-17 ("My meager fan following is very excited that I'm going to college. And so . . . I post my test scores and stuff like that."). Therefore, [redacted]

[1] On Instagram, [redacted] Anderson Decl. Ex. 56 Nos 5-7. Nevertheless, [redacted] *Id.* Ex. 42.

[redacted]

OnlyFans is far from unique in this respect. Many other websites [redacted] Like a link to OnlyFans, a link to one of these websites [redacted] Reddy Decl. ¶ 5

Contrary to plaintiffs' allegation, OnlyFans does not get a free pass or preferential treatment when [redacted] *id*. Ex. 50 (finding content with OnlyFans links violating); *id*. Ex. 51 at p. 26,873 (reflecting deletion of Gilbert post referencing OnlyFans). In fact, Meta's expert Doug Bania analyzed data from December 2017 to January 2024 and found that [redacted] Bania Report ¶ 85 (emphasis added). Far from receiving special treatment, OnlyFans URLs "accounted for [redacted] *Id.* ¶ 84. This directly rebuts plaintiffs' claim that OnlyFans enjoys some sort of "protected status." SAC ¶¶ 59.

[2] [redacted]

In contrast, most of the websites used by plaintiffs, including Sextpanther, Chaturbate, Streamate, and Cams.com, are plainly pornographic on their landing pages. *See* www.sextpanther.com; www.chaturbate.com; www.streamate.com; www.cams.com; *see also* Allbaugh Dep. at 245:16-22; Gilbert Dep. Tr. at 210:15-211:4; Dangaard Dep. at 250:14-20. Allbaugh testified that "if you go to SextPanther.com . . . it [is] clear from the front page of that website that it is . . . adult material." Allbaugh Dep. at 245:16-19. She admitted the same is true of NiteFlirt and IMLive. *Id.* at 245:20-246:1. As plaintiffs know, links to such websites violate Meta's policies. *Id.* at 247:14-16 ("[W]e knew that adult sites were against Meta's policies. We knew that."). Similarly, Gilbert's posts, which included phrases like "Sext me now sextkelly.com" and "$3.00 PER MESSAGE . . . #4 PORN STAR," routinely violated Meta's explicit and implicit sexual solicitation policies. Anderson Decl. Exs. 14, 52.[3] Plaintiffs have engaged in similar violations of content rules on other online services—including services like TikTok that do not even use the GIFCT hash-sharing database—and their posts and accounts have been restricted. *Id.* Ex. 6 at No. 5; *id.* Ex. 7 at No. 5; Allbaugh Dep. at 195:11-198:15 (admitting she posted a non-consensual intimate photo on Twitter as revenge); Anderson Decl. Ex. 53 (listing GIFCT members, which do not include TikTok).

Meta has a balanced policy towards sexual solicitation. Although Meta's enforcement is not error-free, it uses good faith to apply its policies consistently. Discovery revealed only content moderators doing their best to apply these policies. Links to OnlyFans are removed, and often blocked, when moderators determine they violate applicable policies. When moderators determine they do not violate those policies, they are allowed to remain. The same is true for plaintiffs.[4] None of this suggests any scheme to benefit OnlyFans at its competitors' expense, nor does it provide the basis for civil liability against Meta.

[redacted]

[3] Plaintiffs allege "[o]n information and belief" that Meta invented a "new sexual solicitation category" as an "attempted coverup" of the alleged scheme. SAC ¶ 2(e). Discovery revealed absolutely no evidence of this, and it makes no sense as sexual solicitation has existed as a policy category throughout the relevant period. Anderson Decl. Ex. 60.

[4] Plaintiffs have violated other policies beyond those related to nudity and sexual solicitation. For instance, on January 9, 2021, Plaintiff Gilbert posted photos of the terrorist group ISIS, without explanation of her intended meaning. Anderson Decl. Ex. 61. Meta's public policy on content related to such organizations says, "We . . . require people to clearly indicate their intent when creating or sharing such content. If a user's intention is ambiguous or unclear, we default to removing content." *Id.* Ex.

Plaintiffs have had a full and fair opportunity to test their claims. As the Court predicted, it has "turn[ed] out to be a wild goose chase." ECF No. 203 at 10:1-3. At the end of this long process, plaintiffs have come forward with no evidence whatsoever, let alone "significant probative evidence tending to support their complaint." *City Sols., Inc. v. Clear Channel Commc'ns, Inc.*, 201 F. Supp. 2d 1035, 1039 (N.D. Cal. 2001) (Alsup, J.). "Summary judgment is, as some courts have put it, the time to 'put up or shut up.'" *Wright v. Emps. Reinsurance Corp.*, 2005 WL 756618, at *8 (N.D. Cal. Mar. 31, 2005) (quoting *Weinstock v. Columbia Univ.*, 224 F.3d 33, 41 (2d Cir. 2000)). Plaintiffs have "put up" nothing at all and have not established any dispute of material fact. Summary judgment is warranted on all of their claims.

II. Meta's Content Moderation is Protected by Section 230 of the Communications Decency Act

With no evidentiary support for their allegations about misuse of terrorism-related tools, plaintiffs are left with what they have described as "'standard fare' where plaintiffs are unhappy about user postings, or removals, and they contend that the interactive computer service engaged in unfair business practices by exercising its discretion to allow or remove the user postings." ECF No. 86 at 12. Plaintiffs' claims are barred by Section 230 of the Communications Decency Act ("CDA"). 47 U.S.C. § 230. Congress enacted Section 230 "for two basic policy reasons: to promote the free exchange of information and ideas over the Internet and to encourage voluntary monitoring for offensive or obscene material." *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1122 (9th Cir. 2003). These policies are reflected in Section 230(c)(1) and Section 230(c)(2), respectively. Plaintiffs' claims fail under both subsections.

Section 230(c)(1). Meta's enforcement of its policies against sexual solicitation is a classic example of an activity that is protected under section 230(c)(1) of the CDA. Section 230(c)(1) protects from civil liability "(1) a provider or user of an interactive computer service (2) whom a plaintiff seeks to treat, under a state law cause of action, as a publisher or speaker (3) of information provided by another information content provider." *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100–01 (9th Cir. 2009).

The Court has already held the first two prongs are met. ECF No. 101 at 6-7. The third prong has also been met, as the content Meta is alleged to have wrongfully removed is content created by plaintiffs themselves, who qualify as "'another information content provider' within the meaning of Section 230."

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62 at 3. Gilbert's post was taken down, with an indicated violation type of "ORGANIZED_HATEGROUPS" and "OTHERCRIMINAL_ORGS." *Id.* Exs. 57; 63-64.

Fyk v. Facebook, Inc., 2019 WL 11288576, at *2 (N.D. Cal. June 18, 2019), *aff'd*, 808 F. App'x 597 (9th Cir. 2020) (quoting 47 U.S.C. § 230(c)(1)); *Ebeid v. Facebook, Inc.*, 2019 WL 2059662, at *3–5 (N.D. Cal. May 9, 2019); *Sikhs for Justice "SFJ"*, 144 F. Supp. 3d at 1094. Regardless of how plaintiffs characterize their claims, at bottom their case depends on alleged harm from Meta removing or deprioritizing the content plaintiffs posted on Meta's services. *See* SAC ¶ 118(e) (alleging that a critical issue in the case is "[w]hether Defendants . . . cause[d] Facebook, Instagram, or Meta to remove, filter, moderate, or perform other content actioning on" OnlyFans competitors); *id.* ¶ 7 (alleging "[t]he deletion and hiding of posts"); *id.* ¶ 8 (social media services "suspend[ed] or delete[d] [plaintiffs'] accounts or otherwise reduce[d] their visibility"); *id.* ¶¶ 33, 40–41, 56, 60, 92, 95 (similar). In other words, plaintiffs' case is fundamentally about Meta's "decision to publish, or not publish, material" on its website, which the CDA makes "immun[e] from civil liability." *See, e.g.*, *Fyk v. United States*, 2023 WL 3933719, at *4 (D.D.C., 2023) (citing *Marshall's Locksmith Serv. Inc. v. Google, LLC*, 925 F.3d 1263, 1267 (DC Cir. 2019)); *Sikhs for Justice "SFJ", Inc.*, 144 F. Supp. 3d at 1094; *Ebeid,* 2019 WL 2059662, at *5; *Calise v. Meta Platforms, Inc.*, 2022 WL 1240860, at *2, *4 (N.D. Cal. Apr. 27, 2022); *Caraccioli v. Facebook, Inc.*, 700 F. App'x 588, 590 (9th Cir. 2017).[5]

The Court previously denied Meta's motion to dismiss under Section 230(c)(1), holding that the third prong was not met due to plaintiffs' allegation that this case really focuses on "offending content" that Meta "create[d]"—specifically, filtering systems "purposefully designed . . . in an anticompetitive manner" to falsely designate plaintiffs and their posts as associated with terrorism or other "dangerous" organizations. ECF No. 101 at 7. The Court stated that "Meta defendants cannot help OnlyFans violate laws of general applicability" and thus plaintiffs' allegation that Meta "configure[d] Facebook and Instagram to filter posts and accounts (and accept bribes from OnlyFans to do so) so that neither platform yields posts favorable to OnlyFans' competitors" fell outside the protection of Section 230(c)(1). *Id.* at 9.

[5] Plaintiffs' assertion that this publication decision was accomplished through "clandestine filtering tools" and algorithms that "embed metadata" is both unsupported and irrelevant. *Prager Univ. v. Google LLC*, 85 Cal. App. 5th 1022, 1034 & n.5 (2022), *review denied* (Mar. 15, 2023) ("[D]efendants' use of algorithms" did not "render them providers of information content"). Meta is entitled to decide whether to publish plaintiffs' or anyone else's content; whether that decision is effectuated by a human or by software does not affect that right. *Force v. Facebook, Inc.*, 934 F.3d 53, 69 (2d Cir. 2019) (Section 230(c)(1) protects use of an "algorithm" that "does not materially alter . . . the underlying information provided by the third parties").

Even if this principle justifies an exception to Section 230(c)(1) liability in some case, it has no application here. As discussed above, discovery has yielded ***zero*** evidence that "Meta . . . purposefully designed their platforms to filter posts and accounts in an anticompetitive manner." ECF No. 101 at 7. Because there is no evidence that Meta has "directly participate[d] in developing the alleged illegality," the third prong of Section 230(c)(1) is met. *Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1174 (9th Cir. 2008). With plaintiffs' accusations of an anti-competitive conspiracy debunked, plaintiffs' case amounts to a complaint about "activity that can be boiled down to deciding whether to exclude material that third parties seek to post online," which is "immune under section 230." *Id.* at 1170–71; *see also, e.g.*, *Calise*, 2022 WL 1240860 at *3; *Ebeid,* 2019 WL 2059662, at *5; *Murphy v. Twitter, Inc.*, 60 Cal. App. 5th 12 at *26 (2021); *Lewis v. Google LLC*, 461 F. Supp. 3d 938, 954 (N.D. Cal. 2020).

Section 230(c)(2). Meta's enforcement against the named plaintiffs' accounts is also a paradigmatic example of activity that is immune under section 230(c)(2) of the CDA. Section 230(c)(2) protects from civil liability "any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected[.]" 47 U.S.C. § 230(c)(2)(A). Plaintiffs are "adult entertainment" providers who wish to use Meta's services to promote sexual content to the public and to drive viewers to websites like "Sextpanther," "Amateurporn," "Anything XXX cams," and "Wankz VR." SAC Ex. C. They seek to hold Meta civilly liable for preventing them from doing so, and they invoke this Court's equitable powers to force Meta to disseminate sexual content ***more*** widely online. If Section 230(c)(2) has any function at all, it is to stop lawsuits like this one. *See e360Insight, LLC v. Comcast Corp.*, 546 F. Supp. 2d 605, 609 (N.D. Ill. 2008) ("To force a provider . . . to litigate the question of whether what it blocked was or was not [objectionable] would render § 230(c)(2) nearly meaningless.").

As discussed above, Meta makes a good-faith effort to apply its policies to identify and remove content it considers objectionable. Nothing more is required; Section 230(c)(2) "does not require that the material actually be objectionable; rather, it affords protection for blocking material 'that the provider or user considers to be objectionable.'" *Domen v. Vimeo, Inc.,* 433 F. Supp. 3d 592, 603-04 (S.D.N.Y. 2020)

(quoting *Zango, Inc. v. Kaspersky Lab, Inc.*, 2007 WL 5189857, at *4 (W.D. Wash. Aug. 28, 2007), *aff'd*, 568 F.3d 1169 (9th Cir. 2009)); *Barnes*, 570 F.3d at 1105 ("[E]ven those who cannot take advantage of subsection (c)(1), perhaps because they developed, even in part, the content at issue, *see Roommates*, 521 F.3d at 1162–63, can take advantage of subsection (c)(2) if they act to restrict access to the content because they consider it obscene or otherwise objectionable."). As this Court has explained, Section 230(c)(2) "precludes liability for removing content and preventing content from being posted that ***the platform finds*** would cause its users harm[.]" *Berenson v. Twitter, Inc.*, 2022 WL 1289049, at *2 (N.D. Cal. Apr. 29, 2022) (Alsup, J.) (emphasis added). This is true even if those judgments are ultimately "mistaken" by some measure. *e360Insight*, 546 F. Supp. 2d at 609.

There is ***zero*** evidence that Meta was not acting in good faith—*i.e.*, that it was acting for some reason other than a determination that the content at issue was objectionable under Meta's own standards. *See Daniels v. Alphabet Inc.*, 2021 WL 1222166, at *12 (N.D. Cal. 2021) (holding that Section 230(c)(2) immunity applied when there was no indication that "YouTube did not consider the content . . . objectionable and/or contrary to its stated policies and guidelines"). There is no evidence of any bribery or other *quid pro quo*, of any misuse of terrorism designations or the DOI List, or of any anticompetitive intent.[6] *See supra* § I. Instead, the undisputed facts in the record are "consistent with [Meta's] good faith effort to respond to clearly objectionable content posted by users on its platform." *Berenson*, 2022 WL 1289049, at *2. Section 230(c)(2) therefore bars all of plaintiffs' claims. *See Asurvio LP v. Malwarebytes Inc.*, 2020 WL 1478345, at *4 (N.D. Cal. Mar. 26, 2020).

It is hard to imagine claims more repugnant to the policy of the CDA than those plaintiffs have brought. Congress passed the CDA to "remove disincentives for the development and utilization of blocking and filtering technologies" and "to deter and punish trafficking in obscenity," among other things. 47 U.S.C. § 230(b)(4)-(5). To allow plaintiffs' claims in this case would be to turn this purpose on its head—punishing Meta for the very conduct the CDA encourages, while enlisting the powers of the Court to force Meta to promote the very content the CDA seeks to deter. *Id.* If Meta were held civilly

[6] Additionally, although *Enigma Software Group USA, LLC v. Malwarebytes, Inc.*, 946 F.3d 1040, 1045 (9th Cir. 2019), recognized a limitation on Section 230(c)(2) immunity when certain anticompetitive conduct was involved, that is only when "the parties are direct competitors." *Asurvio LP*, 2020 WL 1478345, at *5; *see also Divino Group LLC v. Google LLC*, 2022 WL 4625076, at *18 (N.D. Cal. 2022). Not only is there no anticompetitive intent, but the parties are not direct competitors.

liable because its "filtering technologies" removed too much sexual content, the predictable effect would be that online services would use such technologies less, and sexual content would proliferate. 47 U.S.C. § 230(b)(4). The policy of the CDA is best served by granting summary judgment.

III. Meta's Actions are Protected by the First Amendment

Meta's decision whether to remove or deprioritize plaintiffs' content is also protected by the First Amendment. It is well established that private parties' editorial rights to choose whether and how to disseminate speech, including speech generated by others, are protected. *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1926 (2019); *Ark. Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 674 (1998). Such choices—"whether fair or unfair—constitute the exercise of editorial control and judgment" protected by the First Amendment. *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 258 (1974).

Especially now that plaintiffs' allegations of an anticompetitive scheme have fallen apart in discovery, it is clear that Meta's content moderation choices, embodied in its user policies and their application to plaintiffs' content, are editorial choices protected by the First Amendment. Plaintiffs' case is, at bottom, that Meta removed content from its services that plaintiffs believe should have remained up. SAC ¶¶ 7-8, 33, 40–41, 56, 60, 92, 95. But an online service's decision to moderate content, including labeling, restricting, and removing content, imposing strikes, and removing user accounts, is an expressive act protected by the First Amendment. *O'Handley v. Padilla*, 579 F. Supp. 3d 1163, 1186 (N.D. Cal. 2022). Whether "motivated by profit or altruism," whether "fair or unfair," such decisions "constitute the exercise of editorial control and judgment" and cannot be the basis for civil liability. *See e-ventures Worldwide, LLC v. Google, Inc.*, 2017 WL 2210029, at *4 (M.D. Fla. 2017); *Tornillo*, 418 U.S. at 258; *see also NetChoice, LLC v. Att'y Gen., Fla.*, 34 F.4th 1196, 1210 (11th Cir. 2022) ("The Supreme Court has repeatedly held that a private entity's choices about whether, to what extent, and in what manner it will disseminate speech—even speech created by others—constitute 'editorial judgments' protected by the First Amendment."); *cf. NetChoice, L.L.C. v. Paxton*, 49 F.4th 439, 494 (5th Cir. 2022) (disagreeing with aspects of the Eleventh Circuit decision and denying preliminary injunction against Texas statute).[7]

[7] Both the Eleventh Circuit and Fifth Circuit *NetChoice* cases are currently pending before the U.S. Supreme Court. *See Moody v. NetChoice, LLC*, 144 S. Ct. 478 (2023) (granting certiorari on certain questions presented in Eleventh Circuit case); *NetChoice, LLC v. Paxton*, 144 S. Ct. 477 (2023) (granting *certiorari* on certain questions presented in Fifth Circuit case).

In short, "Facebook has, as a private entity, the right to regulate the content of its platforms as it sees fit." *Davison v. Facebook, Inc.*, 370 F. Supp. 3d 621, 629 (E.D. Va. 2019), *aff'd*, 774 F. App'x 162 (4th Cir. 2019); *see also La'Tiejira v. Facebook, Inc.*, 272 F. Supp. 3d 981, 991 (S.D. Tex. 2017). Applying these principles, courts have routinely rejected challenges to Meta's content-moderation decisions under the First Amendment. *See, e.g., Cross v. Facebook, Inc.*, 14 Cal. App. 5th 190, 202 (2017); *La'Tiejira*, 272 F. Supp. 3d at 991; *Davison*, 370 F. Supp. 3d at 629. The Court should do the same here.

IV. The Elements of Plaintiffs' Claims are Not Met

Even if Meta's conduct were not immunized by two separate prongs of Section 230, plaintiffs' claims would still fail because they have not provided evidence for the elements of their causes of action.

A. Intentional Interference with Contract and Business Relationships

Plaintiffs assert claims for intentional interference with contract and business relationships. *See Rondberg v. McCoy*, 2009 WL 3017611, at *9 (S.D. Cal. Sept. 21, 2009) (equating the latter with "intentional interference with prospective economic advantage"). The elements for these claims are similar. Plaintiffs must prove (1) a valid contract or existing economic relationship with a third party; (2) Meta's knowledge of this contract or relationship; (3) intentional, wrongful acts designed to induce a breach or disruption; (4) actual breach or disruption; and (5) resulting damage." *United Nat. Maint., Inc. v. San Diego Convention Ctr., Inc.*, 766 F.3d 1002, 1006 (9th Cir. 2014) (interference with contract); *Roy Allan Slurry Seal, Inc. v. Am. Asphalt South, Inc.*, 2 Cal. 5th 505, 512 (2017) (interference with prospective economic advantage). Plaintiffs have no evidence to support *any* of these elements.

No Valid Contractual or Economic Relationship. Plaintiffs did not provide evidence of valid contracts at the relevant time.[8] Dangaard produced no contracts at all. Dangaard Dep. at 104:6-105:12. Gilbert produced two contracts dating from 2011-2012, long before the relevant period. *See* SAC Ex. H-1-A; Anderson Decl. Ex. 54. Allbaugh produced one contract from long after the scheme began, and she redacted crucial monetary terms. *Id.* Ex. 3 ¶ 3; *id.* Ex. 3 at Ex. A. Plaintiffs also provided no evidence of any "existing relationship with a particular third party"—in this case, any particular customer who would

[8] In their depositions, both Allbaugh and Dangaard suggested that Meta somehow interfered with their contracts ***with OnlyFans***. Allbaugh Dep. at 235:12-14; Dangaard Dep. at 194:5-195:13. Because the scheme they allege was one to "benefit OnlyFans," SAC ¶ 63, plaintiffs obviously cannot prove any intentional act by Meta to disrupt this relationship.

have continued paying for plaintiffs' services absent Meta's alleged actions. *Westside Ctr. Assocs. v. Safeway Stores 23, Inc.*, 42 Cal. App. 4th 507, 518 (1996); *see* SAC ¶ 36. Instead, plaintiffs have only speculated vaguely about potential customers they might have gained. *E.g.*, Allbaugh Dep. at 110:12-17; *id*. at 227:3-6. Their claims therefore fail. *See Lease Outlet, Inc. v. U.S. Bank*, 2011 WL 13175978, at *2 (C.D. Cal. Jan. 19, 2011); *AlterG, Inc. v. Boost Treadmills LLC*, 388 F. Supp. 3d 1133, 1151 (N.D. Cal. 2019); *Westside Ctr. Assocs.*, 42 Cal. App. 4th at 524; *Infectolab Americas LLC v. ArminLabs GmbH*, 2021 WL 292182, at *4 (N.D. Cal. 2021).

No Knowledge by Meta. Plaintiffs also have no evidence that Meta ever knew of any contracts. Allbaugh frankly admitted this—when asked whether "Meta ha[d] any way of knowing you had a contract with any of those companies," she said, "***I don't think so***." Allbaugh Dep. at 259:20-23 (emphasis added). Gilbert and Dangaard also offered no evidence that Meta had such knowledge. Dangaard Dep. at 180:5-10 (expressing uncertainty whether she even had a written contract with CAM4); Gilbert Dep. at 356:25-357:12 (admitting she sometimes joined a site without reading the terms of the contracts).

No Interference or Disruption. Because each of the contracts produced by plaintiffs is terminable at will, their contract interference claim could succeed only if Meta engaged in "an independently wrongful act" that caused breach or disruption. *Ixchel Pharma, LLC v. Biogen, Inc.*, 9 Cal. 5th 1130, 1139 (2020); Anderson Decl. Ex. 54 at '388; *id.* Ex. 55; SAC Ex. I at Ex. A p. 3. An independently wrongful act is also required for ***all*** claims of interference with business relationships. *See Eco Elec. Sys., LLC v. Reliaguard, Inc.*, 2022 WL 1157481, at *9 (N.D. Cal. Apr. 19, 2022) (Alsup, J.). Plaintiffs have not even identified any "independently wrongful act"—*i.e.*, one that is "proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard"—let alone proved that it occurred. *Id.* (quoting *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1159 (2003)). As discussed above, the evidence shows that the only "act" by Meta was enforcement of its terms of service. *See supra* § IV.B. This is "justified" conduct that cannot constitute intentional interference under any circumstances. *Meta Platforms, Inc. v. BrandTotal Ltd.*, 605 F. Supp. 3d 1218, 1274-76 (N.D. Cal. 2022).

No Damages. Plaintiffs have provided no expert testimony, no financial projections, and no other cognizable evidence of damages. *See* Bronars Report at 11-17; Allbaugh Dep. at 240:14-16 (admitting she has only "speculation" about how much more money she would have made); Dangaard Dep. at 95:17-22;

Gilbert Dep. at 75:6-12. This failure dooms their claims. *Sebastian Int'l., Inc. v. Russolillo*, 2005 WL 1323127, at *7 (C.D. Cal. 2005) (granting summary judgment on intentional interference claim).

B. Unfair Competition Law

Plaintiffs also assert a claim under California's Unfair Competition Law ("UCL"), Business and Professions Code section 17200 *et seq.*, based on the allegation that Meta "classif[ied] . . . AE Provider content as originating from terrorists, terrorist sympathizers, or a DIO" or "falsely represent[ed] AE Provider content as originating from terrorists, terrorist sympathizers, or otherwise a DIO to other social media platforms." SAC ¶ 136. Plaintiffs have not clarified which prong of the UCL they are suing under, but their allegation of "false[] representation[]" suggests it is the fraudulent prong. To succeed under this prong, a plaintiff must prove that the defendant made misrepresentations that are likely to deceive the public. *Davis v. HSBC Bank Nev., N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012). Even if plaintiffs' accusations in this case were true, they would not meet this standard. Plaintiffs allege at most that Meta made incorrect "terrorist" designations ***internally*** that may also have been used by a limited number of other social media services. They do not claim that Meta ever represented to the ***public*** that plaintiffs were associated with terrorists. More fundamentally, plaintiffs' accusations are simply not true. As discussed in detail above, despite ample opportunity for discovery, plaintiffs came up with ***zero*** evidence that Meta has engaged in any false "classif[ication]" or "represent[ation]" that plaintiffs' social media content as being associated with terrorists or similar "dangerous" organizations. SAC ¶ 136.

It is unclear whether plaintiffs assert that this conduct also violates the "unlawful" or "unfair" prongs. Even if they did, it would add nothing to the analysis. Plaintiffs allege one undifferentiated course of conduct, and thus both prongs rise and fall with the fraudulent prong and plaintiffs' other claims.[9] *See Cel-Tech Commc'ns Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999); *Knowles v. Arris Int'l PLC*, 2019 WL 3934781, at *17 (N.D. Cal. Aug. 20, 2019), *aff'd*, 847 F. App'x 512 (9th Cir. 2021);

[9] Even if plaintiffs had tried to make out a separate claim under the unfairness prong based on anticompetitive conduct, this too would have failed. Any plaintiff attempting to make out a UCL claim for "unfairness to competitors" must show "conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition." *Gutierrez v. Wells Fargo & Co.*, 622 F. Supp. 2d 946, 953–54 (N.D. Cal. 2009). Among other things, this requires proof of a well-defined "product market, market power, [and a] basis for an exception to the usual rule that the antitrust laws permit market participants to refuse to deal with their competitors." *Meta Platforms, Inc. v. BrandTotal Ltd.*, 605 F. Supp. 3d 1218, 1247 (N.D. Cal. 2022). Plaintiffs have provided no such proof.

ConsumerDirect Inc. v. Pentius, LLC, 2023 WL 6173472, at *7 (C.D. Cal. Aug. 17, 2023) (summary judgment on UCL "unlawful" and "unfair" claims because claims for intentional interference failed).

Plaintiffs' UCL claim also fails in light of the "basic doctrine of equity jurisprudence that courts of equity should not act . . . when the moving party has an adequate remedy at law." *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 844 (9th Cir. 2020). Because plaintiffs' UCL claim "relies upon the same factual predicates as [their] legal causes of action, it is not a true alternative theory of relief but rather is duplicative of those legal causes of action." *In re Ford Tailgate Litig.*, 2014 WL 1007066, at *5 (N.D. Cal. Mar. 12, 2014). This is true even though plaintiffs' legal claims fail on the merits. *Munning v. Gap, Inc.*, 238 F. Supp. 3d 1195, 1203 (N.D. Cal. 2017). Summary judgment is therefore warranted. *Guzman v. Polaris Indus. Inc.*, 49 F.4th 1308, 1311, 1313 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 2612 (2023).

Plaintiffs also lack standing to bring their UCL claim. The UCL allows suits only by a plaintiff who has "'lost' money" in the sense that he "has parted, deliberately or otherwise, with some identifiable sum formerly belonging to him." *Claridge v. RockYou, Inc.*, 785 F. Supp. 2d 855, 862 (N.D. Cal. 2011) (quoting *Silvaco Data Sys. v. Intel Corp.*, 184 Cal. App. 4th 210, 244 (2010)); *see also* Cal. Bus. & Prof. Code § 17204; *Kwikset Corp. v. Superior Ct.*, 51 Cal. 4th 310, 322 (2011). "[L]oss of a business 'opportunity,' or lost profits" does not fit the bill, because "[i]t does not represent money the plaintiff ever parted with." *Lee v. Luxottica Retail N. Am., Inc.*, 65 Cal. App. 5th 793, 803 (2021); *see also Eco Elec. Sys., LLC, Inc.*, 2022 WL 1157481, at *10; SAC ¶¶ 129, 138.

Finally, "the presumption against extraterritoriality applies to the UCL in full force." *Sullivan v. Oracle Corp.*, 51 Cal. 4th 1191, 1207 (2011). Plaintiffs Allbaugh and Gilbert are not California residents, and even if Meta merely "oversaw" content moderation from California, that would be insufficient for the UCL to apply. *Young v. ByteDance Inc.*, 2023 WL 3484215, at *7 (N.D. Cal. May 15, 2023); *Prager Univ.*, 85 Cal. App. 5that 1033, *review denied* (Mar. 15, 2023); SAC ¶¶ 14-15.

CONCLUSION

The Court should grant summary judgment for Meta.

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/s/ Devin S. Anderson

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