

Amended pursuant to the Order of Mr. Justice Tammen  
made on December 8, 2023.

Amended pursuant to Rule 6-1(1)(a) on November 16,  
2022. Original filed April 11, 2022.

ACTION NO. 223013  
VANCOUVER REGISTRY

SUPREME COURT  
OF BRITISH COLUMBIA  
VANCOUVER REGISTRY

DEC 18 2023  
EITWELL

IN THE SUPREME COURT OF BRITISH COLUMBIA

~~BY HER LITIGATION GUARDIAN, C.D. and AMBER RUTHERFORD, INFANT, BY~~  
HER LITIGATION GUARDIAN, WINTER SPROWL

PLAINTIFFS

AND:

**FACEBOOK, INC. (NOW KNOWN AS META PLATFORMS INC.), FACEBOOK  
CANADA LTD, INSTAGRAM INC. AND INSTAGRAM, LLC**

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**FRESH AS SECOND AMENDED NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.**

**Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

**CLAIM OF THE PLAINTIFFS****Part 1: STATEMENT OF FACTS****The Defendants' Product**

1. The Defendants—Meta Platforms Inc. and three wholly-owned subsidiaries—designed, built, and operate Instagram and Facebook: integrated suites of social media products and services used daily by millions of Canadians (the “**Product**”).<sup>1</sup> Motivated by their interest in boosting advertising revenues by prolonging users' time on the Product, the Defendants used the Product to deliberately expose children in Canada to images, videos and other content which they knew to cause or exacerbate psychological and physical harms, including eating disorders, anxiety, depression, and self-harm.

**Background to the Claim**

2. The Defendants offer users access to the Product free of charge. The Defendants' primary source of revenue is advertising sales.

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<sup>1</sup> The Product is comprised of two branded platforms—Instagram and Facebook—each offered to users through websites and related software applications for users' mobile and other devices.

3. To the extent that it relies on advertising revenue to provide users a nominally free service, the Defendants' business model is not novel or dissimilar to that of a radio station, community newspaper, or any one of hundreds of other online services.
4. But the Product has a novel characteristic which gives rise to this claim. Traditional advertisers reached audiences by selling communal spaces—on magazine pages, billboards and airwaves. The Defendants, by contrast, display messages directly and distinctly to each of their hundreds of millions of unique users. The access advertisers purchase from the Defendants is individual and actual, rather than collective and potential. The Defendants collect data generated by user engagement, and use that data to increase user engagement. Increased user engagement generates more data, which allows the Defendants to target advertisements more effectively. The longer someone uses the Product, the more targeted ads are displayed to them, and the more revenue they generate for the Defendants.
5. Where a traditional advertiser's interest was in finding more and better ad spaces to sell, the Defendants' interest is in finding ways to extend the time users stay on the Product.
6. Early versions of the Product offered users a chronological stream of updates from other users to whom they'd subscribed—friends and family, politicians, athletes, musicians, etc.—interspersed with paid advertising. Users' time spent on the Product was limited by the number of accounts they followed and the frequency with which those accounts produced new content. The stream could run dry and the user would log off.
7. To encourage users to linger, the Defendants injected a third type of content into the stream: messages selected by the Defendants to engage that individual user. The Defendants' common goal was to extend each user's session on the Product by determining what might most effectively provoke them to comment, share or react. The Defendants designed software algorithms to identify which content was

most likely to engage a user, provoke a response and prolonged use of the Product, maximizing the ad revenue the Defendants derived from the user's presence (the "**Algorithms**"). What had been a finite, chronological stream of content curated by the user themselves was broadened into a limitless flow of information selected and sorted by the Defendants.

8. The Algorithms that the Defendants designed and deployed proved enormously successful at identifying and pushing to an individual user whatever was most likely to engage them, provoke a response, and keep them online. It was content-neutral: what it promoted could be misleading, disturbing or dangerous, so long as it provoked a reaction and prolonged use of the Product. And by continuously monitoring that individual's particular use of the Product and combining it with demographics and other data, the Algorithms continuously refined their ability to show each user precisely what would keep them online.
9. In addition to designing the Algorithms to deliver the Harmful Content, the Defendants designed and implemented other features to enhance the addictive potential of the Product and its user interface (the "**Addictive Features**"), including:
  - Features using the psychological principle of intermittent variable rewards, a method used to promote the addictiveness of an activity (e.g., slot machines) by refining the timing of bursts and gaps of stimuli which release dopamine in the user's brain. The Defendants adopted this technique into the design of the Product by, for example, replacing a steady drip of real-time notifications of others' reactions (comments and "likes") on a user's posts with intermittent floods of neurochemical reward.
  - Features using the psychological principle of social reciprocity, for example to develop features to encourage users to remain on the Product while exchanging messages, rather than logging off and returning later as one might to an email inbox. Such features include notifications to indicate when someone is drafting a message to you, which encourage users to

wait for the message to arrive, and notifications to indicate that a message has been read by the recipient—a feature intended to encourage recipients to respond immediately.

10. The Defendants' Algorithms and Addictive Features were designed to, and did, maximize the amount of time users spend on the Product.

### **The Defendants' Product is Harmful to Children**

11. In developing their novel advertising product the Defendants became aware that aspects of its design made the Product harmful to children.
12. The Algorithms' content-neutral design identified and delivered to children whatever content most effectively increased their use of the Product, including content that was harmful to children. The content included images, videos, and text messages—including advertisements and content from other users or "influencers"—which promoted high-risk behavior, such as risky challenges or extreme dieting, as well as health misinformation and content which caused or aggravated psychological insecurities, including anxiety about body image (the "**Harmful Content**").
13. The Defendants were aware that displaying the Harmful Content to children—particularly repeatedly and for prolonged periods—caused and exacerbated serious mental health conditions, including eating disorders, depression, anxiety, self-harm, and suicidal ideation or attempts.
14. The Defendants knew that the Product was not reasonably safe for ordinary use by children but did not fix its defective design. Viable alternative designs—in particular, of the Algorithms and the Addictive Features—were available and known to the Defendants. These alternatives would have substantially reduced the risks and harms to children and could have been implemented at negligible cost to the Defendants.

15. The Defendants failed to warn users, including children and their parents, adequately or at all about the risks and harms which arise from ordinary and foreseeable use of the Product. These risks and harms were known to the Defendants but not known, or fully appreciated, by the users of the Product, particularly children and their parents. In particular, the Defendants failed to warn users about specific risks associated with the Product and defects in its design, including that:

- (a) the Algorithm's engagement-based ranking system amplified negative, controversial or emotive content, and promoted the creators of such content;
- (b) the Addictive Features were known to enhance the Product's addictive potential, aggravating the risks posed by the Harmful Content;
- (c) certain functions, such as those using face-tracking and augmentation technology (image and video filters), were known to cause and exacerbate depression and anxiety, particularly among female children, by imposing unrealistic and harmful standards of physical attractiveness or beauty, and misleading representations of users' peers; and
- (d) children were particularly vulnerable to the hazards posed by the Harmful Content and were known to be more likely to suffer harm as a result of exposure to it.

(collectively, the "**Omissions**")

16. While failing to warn users of the known risks of using the Product, the Defendants represented to the public that using the Product was safe, that it promoted healthy and appropriate content for young users, and that long-term, frequent, prolonged use of it was harmless (collectively, the "**Representations**").

17. The Defendants derived financial benefit from the continued use of the Algorithms and the Addictive Features —and the continued delivery of the Harmful Content

to children—because it substantially prolonged users’ time on the Product and proportionately increased the Defendants’ ad revenue.

18. The Defendants receive substantial ad revenue from their promotion of content to children in Canada. Instagram is used by approximately 655,000 children in Canada and 4.1 million young adults; Facebook, by 1.2 million children and 5.2 million young adults.<sup>2</sup>

19. The Harmful Content has been promoted to children in Canada by the Defendants’ Algorithms since at least as early as April 9, 2012, and continuing to the present (the “Class Period”).

### **The Defendants’ Corporate Structure and Factual Basis for Joint Liability**

20. The Defendants are Meta Platforms Inc. and its subsidiaries, a corporate structure which owns and operates the integrated suite of Facebook-branded and Instagram-branded online services and goods which collectively comprise the Product.

21. The Defendant, Meta Platforms Inc. (“**Meta Platforms**”) is a Delaware company with an address for service c/o Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808, USA. Its principal place of business is located at 1 Hacker Way, Menlo Park, CA 94025, USA.

22. Meta Platforms has three wholly-owned subsidiaries:

- a. Facebook Canada Ltd. is a wholly-owned Canadian subsidiary of Meta Platforms, with its head office located at 661 University Avenue, Suite 1201, 12<sup>th</sup> floor, Toronto, Ontario M5G 1M1, and other offices around the country.
- b. Instagram, Inc. is another wholly-owned subsidiary of Meta Platforms. It is a Delaware company with an address for service c/o Incorporating Services,

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<sup>2</sup> As of June 2021 and June 2022, respectively. “Young adults” refers to users 18-24 years old.

Ltd., 3500 South DuPont Highway, Dover, DE 19901, and a principal place of business at 1 Hacker Way, Menlo Park, CA 94025, USA.

- c. Instagram, Inc., in turn, owns and controls a Delaware limited liability company—the defendant Instagram, LLC—which has an address for service c/o Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808.

23. Meta Platforms Inc. designed, developed and operates both the Facebook-branded platform and and the Instagram-branded platform. In addition:

- a. The Instagram-branded platform is also designed, developed and operated through, and by means of agreements with, Meta Platforms Inc.'s wholly-owned subsidiaries, the defendants Instagram, Inc. and Instagram, LLC.
- b. The Facebook-branded platform is also designed, developed and operated through, and by means of agreements with, Meta Platforms Inc.'s wholly-owned subsidiary, the defendant Facebook Canada, Ltd.

24. Collectively, Defendants form an inextricably interwoven corporate structure designed to advance their common advertising business by offering the Product as an integrated suite of online goods and services comprised of the Instagram-branded and Facebook-branded social media platforms and their associated software apps and web domains. In particular, at all material times:

- a. Each Defendant was an agent of the others, acting within the scope of that agency relationship and ratifying the others' acts.
- b. Each Defendant provided the others substantial assistance in performing acts which furthered a common design to enhance the addictive characteristics of the Product and deliver the Harmful Content to their users, including the Plaintiffs and members of the proposed class, and misrepresent the known risks and alleged benefits of the Product.

25. Senior executives and employees of each of the Defendants engaged in communications and attended meetings with senior executives and employees of each of the other Defendants at times and places—some of which are unknown to the Plaintiffs—as a result of which the Defendants unlawfully conspired or agreed to adopt product designs and implement strategies to increase users' time on the Product, including by means of torts against the Plaintiffs and Class Members and breaches of statute and the common law as particularized below.

### **The Defendants Failed to Protect a Vulnerable and Identifiable Class of Users**

26. Among the Defendants' users are millions of children, including in British Columbia and across Canada. As children's brains are not yet fully developed in regions related to risk evaluation, emotional regulation, and impulse control, they are more likely to suffer harm as a result of viewing or engaging with the Harmful Content.

27. The Defendants knew or ought to have known about the increased vulnerability of children to the known risks of using the Product but did not design adequate safeguards to either make the Product reasonably safe for children or prevent access to it by young children for whom it was not, or could not be made, reasonably safe. This included failing to develop, implement or enforce adequate age-verification protocols to prevent children 12 years and under from using the Product and being exposed to the Harmful Content.

28. The Defendants intentionally designed their Product to be as addictive as possible. The Defendants' Algorithms and Addictive Features have caused users, in particular children and teenagers, to become addicted to their Products.

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

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

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

### **Whistleblower Document Leaks and Defendant's Knowledge of Harm**

30. In mid-late 2021, a former Facebook employee disclosed several internal Facebook documents and communications to the media.

31. These documents shed light on the extent of the Defendants' knowledge of the risks posed to users by their Product, and in particular, by the Algorithms that promote the Harmful Content and the Addictive Features.

32. The documents revealed that during and in advance of the proposed Class Period:

- a. The Defendants' researchers have been studying for years how its photo-sharing app affects millions of young users. Repeatedly, Facebook found that Instagram is harmful for a sizable percentage of them, most notably teenage girls, more so than other social media platforms;
- b. For years Facebook has been laying plans to attract preteens and other young users, viewing these children as "a valuable but untapped audience";
- c. Facebook researchers have found that 1 in 8 of the app's users report engaging in compulsive use of social media that affects their sleep, work, parenting or relationships, and the problems were perceived by users to be worse on Facebook than any other major social media platform;
- d. Facebook is aware of a study that found that 13.5% of U.K. teen girls in one survey say their suicidal thoughts became more frequent after starting on Instagram;
- e. Facebook is aware of a study that found that 17% of teen girls say their eating disorders got worse after using Instagram;
- f. Facebook's researchers found that about 32% of teen girls said that when they felt bad about their bodies, Instagram made them feel worse;
- g. Facebook's research indicates that "Teens blame Instagram for increases in the rate of anxiety and depression ... This reaction was unprompted and consistent across all groups";
- h. Facebook research indicates that "Users experience of downward spiral is exacerbated by our platform", that aspects of

Instagram “exacerbate each other to create a perfect storm”, and that “Mental health outcomes related to this can be severe”, including in relation to eating disorders, body dysmorphia, body dissatisfaction, depression and loneliness;

- i. Instagram’s research indicates that Instagram makes body image issues worse for 1 in 3 teen girls;
- j. Instagram’s research indicates that more than one third (37%) of teen girls reported that they feel worse about their bodies or appearances after seeing Instagram posts;
- k. Instagram’s research suggests that by age 30, the role of Instagram in body appearance comparison and related concerns diminish; because of this, Instagram believed it should focus its efforts on teens and younger adults;
- l. 66% of teen girls and 46% of teen boys have experienced negative social comparison on Instagram;
- m. 13.5% of teen girl Instagram users say the platform makes thoughts of suicide and self-injury worse; and
- n. Instagram users are twice as likely to develop an eating disorder as those who don’t use social media.

33. The Defendants knew of these and other specific harms associated with the use of the Product as they evaluated its development and design—including the Addictive Features and the Algorithms which identified and delivered the Harmful Content—and represented to the public that the Product was reasonably safe for children to use.

34. The Defendants chose to maximize their profits and growth rather than implement changes to the Algorithms or the Addictive Features so as to reduce or eliminate the Harmful Content.

## The Plaintiffs

### The Plaintiff C.D.

35. The Plaintiff, ~~A.B., an infant, through her litigation guardian,~~ C.D., has an address for service of Suite 820 – 980 Howe Street, in the City of Vancouver, in the Province of British Columbia (the "Plaintiff C.D.").

36. The Plaintiff C.D. brings this action on her own behalf and on behalf of all persons resident in Canada who were under the age of majority on or after April 29, 2012 when they acquired and used a Facebook or Instagram account (the "Class Members"), and/or their parents/guardians, and/or their beneficiaries pursuant to the *Family Compensation Act*, R.S.B.C. 1996, c. 126 and comparable legislation in the other Provinces and Territories, ~~to be further~~ as defined in the Plaintiff's application for class certification.

37. The Plaintiff C.D.'s daughter, A.B., was born in 2003.

38. When ~~the Plaintiff~~ A.B. was only 12 or 13 years old, she acquired an Instagram account.

39. In 2016, ~~the Plaintiff~~ A.B. first viewed the Harmful Content on Instagram and Facebook.

40. ~~The Plaintiff~~ A.B. continues to view the Harmful Content on the Defendants' social media platforms. She finds it is difficult to stop viewing the Harmful Content and finds that the continued viewing of the Harmful Content makes her feel worse about herself and her body.

41. As a result of her exposure to the Harmful Content, ~~the Plaintiff~~ A.B. has sustained damages including, but not limited to, the following:

- a. Social Media Addiction;
- b. Anxiety;

- c. Depression;
- d. Attention Deficit Hyperactivity Disorder;
- e. Obsessive Compulsive Disorder;
- f. Weight loss;
- g. Eating Disorder;
- h. Suicidal ideation; and
- i. Such other injuries as shall be proven at trial,

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

42. ~~The Plaintiff~~ A.B. would not have acquired an Instagram or Facebook account, nor would she have viewed the Harmful Content had the Defendants not:

- a. designed the Algorithms to deliver the Harmful Content to her and similarly situated underage users;
- b. failed to warn users and the public about the known and substantial risks associated with using the Product and being exposed to the Harmful Content;
- c. failed to warn users and the public about the known addictive potential of the Product, including the Addictive Features in its design; or
- d. failed to design or implement effective age-verification protocols to prevent use of the Product by young children for whom it was not reasonably safe.

43. As a result of the Defendants' conduct, ~~the Plaintiff~~ A.B. has incurred damages including:

- (a) General damages;
- (b) Personal injury including prolonged and serious mental distress;
- (c) Special damages for the cost of medical monitoring and medical tests incurred to the date of trial and future care costs for ongoing medical monitoring and medical tests;
- (d) Damages in accordance with s. 36 of the *Competition Act*, RSC 1985, c. C-34 for a breach of s. 52; and
- (e) Such further and other damages as shall be proven at trial.

44. As A.B.'s parent, C.D. has provided care and services to A.B. as a consequence of A.B.'s social media addiction and resulting injuries. C.D. has sustained direct economic loss because of the time and effort that went into performing those duties.

#### **The Plaintiff Amber**

45. The Plaintiff, Amber Rutherford, an infant, through her litigation guardian, Winter Sprowl, has an address for service of Suite 820 – 980 Howe Street, in the City of Vancouver, in the Province of British Columbia (the "Plaintiff Amber").

46. The Plaintiff Amber brings this action on her own behalf and on behalf of all persons resident in Canada who were under the age of majority on or after April 29, 2012 when they acquired and used a Facebook or Instagram account (the "Class Members"), and/or their parents/guardians, and/or their beneficiaries pursuant to the *Family Compensation Act*, R.S.B.C. 1996, c. 126 and comparable legislation in the other Provinces and Territories, as defined in the Plaintiff's application for class certification.

47. When the Plaintiff Amber was roughly 9 years old in 2016, she acquired an Instagram account.

48. When the Plaintiff Amber was roughly 12 years old in 2019, she acquired a Facebook account.

49. In 2016, the Plaintiff Amber first viewed the Harmful Content on Instagram.

50. In 2019, the Plaintiff Amber first viewed the Harmful Content on Facebook.

51. The Plaintiff Amber continues to view the Harmful Content on the Defendants' social media platforms. She finds it is difficult to stop viewing the Harmful Content and finds that the continued viewing of the Harmful Content makes her feel worse about herself and her body.

52. As a result of her exposure to the Harmful Content, the Plaintiff Amber has sustained damages including, but not limited to, the following:

- j. Social Media Addiction;
- k. Anxiety;
- l. Depression;
- m. Post-Traumatic Stress Disorder;
- n. Obsessive Compulsive Disorder;
- o. Eating Disorder; and
- p. Such other injuries as shall be proven at trial.

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

53. The Plaintiff Amber would not have acquired an Instagram or Facebook account, nor would she have viewed the Harmful Content had the Defendants not:

- a. designed the Algorithms to deliver the Harmful Content to her and similarly situated underage users;
- b. failed to warn users and the public about the known and substantial risks associated with using the Product and being exposed to the Harmful Content;
- c. failed to warn users and the public about the known addictive potential of the Product, including the Addictive Features in its design; or
- d. failed to design or implement effective age-verification protocols to prevent use of the Product by young children for whom it was not reasonably safe.

54. As a result of the Defendants' conduct, the Plaintiff Amber has incurred damages including:

- (f) General damages;
- (g) Personal injury including prolonged and serious mental distress;
- (h) Special damages for the cost of medical monitoring and medical tests incurred to the date of trial and future care costs for ongoing medical monitoring and medical tests;
- (i) Damages in accordance with s. 36 of the *Competition Act*, RSC 1985, c. C-34 for a breach of s. 52; and
- (j) Such further and other damages as shall be proven at trial.

## **Part 2: RELIEF SOUGHT**

55. The Plaintiffs claims, on ~~her~~ their own behalf, and on behalf of the Class Members, as follows:

- (a) An order certifying this action as a class proceeding and appointing the Plaintiffs as a representative Plaintiffs under the *Class Proceeding Act*;
- (b) A declaration that it is not in the interests of justice to require that notice be given pursuant to section 18(15) of the *Consumer Protection Act*, RSO 1990, c. C.31 (and any parallel provisions of other provincial consumer protection legislation) and waiving any such notice requirements;
- (c) General damages;
- (d) Special damages;
- (e) In trust claims for parents and/or guardians of Class Members;
- (f) Punitive damages;
- (g) Disgorgement of the benefits gained by the Defendants as a result of their wrongdoing against the Plaintiffs and Class Members;
- (h) A declaration that any agreements between the Defendants and the Plaintiffs and Class Members are unenforceable under the *Infants Act*, s. 19;
- (i) Statutory compensation under the *Infants Act*, s. 20 and related enactments;
- (j) Relief pursuant to the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, and comparable legislation in the other provinces and territories;
- (k) Relief pursuant to the *Competition Act*, RSC c. C-34;

- (l) Recovery of health care costs incurred by the Ministry of Health Services on their behalf pursuant to the *Health Care Cost Recovery Act*, S.B.C. 2008, c.27, and comparable legislation in the other provinces and territories;
- (m) Costs;
- (n) Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (o) Such further and other relief this Honourable Court may deem just.

### **Part 3: LEGAL BASIS**

#### ***Negligent Design***

45. As the manufacturers, designers, marketers, developers, promoters and/or distributors of the Product, and in particular the Addictive Features and the Algorithms that promote the Harmful Content, the Defendants were in such a close and proximate relationship to the Plaintiffs, and other Class Members, as to owe them a duty of care.
46. The Defendants owed a duty to the Plaintiffs and Class Members to exercise reasonable care when manufacturing, designing, testing, and developing the Product, including the Algorithms and the Addictive Features.
47. The Defendants were aware that the Algorithms and the Addictive Features were designed to and did prolong and maximize individuals' use of the Product, and thereby increase their exposure to the Harmful Content. The Defendants were also aware that displaying the Harmful Content to children—particularly repeatedly and for prolonged periods—caused and exacerbated social media addiction and serious mental health disorders, including eating disorders, depression, anxiety, self-harm, and suicidal ideation or attempts.

48. The Defendants knew that the Product was not reasonably safe for ordinary use by children but did not fix its defective design. Viable alternative designs—in particular, of the Algorithms and the Addictive Features—were available and known to the Defendants. These alternatives would have substantially reduced the risks and harms to children and could have been implemented at negligible cost to the Defendants.

***Failure to Warn***

49. As the manufacturers of the Product, the Defendants had an ongoing duty to warn the Plaintiffs and the Class Members of any dangers inherent in the use of the Product.

50. The Defendants failed to warn users, including children and their parents, adequately or at all about the risks and harms which arise from ordinary and foreseeable use of the Product. These risks and harms were known to the Defendants but not known, or fully appreciated, by the users of the Product, particularly children and their parents. In particular, the Defendants failed to warn users about specific risks associated with the Product and defects in its design, including the Omissions.

51. While failing to warn users of the known risks of using the Product, the Defendants represented to the Plaintiffs and other users that the Product was safe, that it promoted healthy and appropriate content for young users, and that long-term, frequent, prolonged use of it was harmless (as defined above, the Representations).

***Negligent and Fraudulent Misrepresentation***

52. As the manufacturers, designers, marketers, developers, promoters and/or distributors of the Product, the Defendants are in a special relationship with the Plaintiffs and Class Members. The Defendants have knowledge and information about the Addictive Features and the Algorithms that promote the Harmful Content that is not available to the Plaintiffs or the public. It was reasonably foreseeable

that the Plaintiffs would rely on the Defendants' representations about the Product—including the Representations and Omissions - in considering whether and how to use the Product.

53. The Defendants owed the Plaintiffs and Class Members a duty of care arising from this special relationship.

54. The Representations and Omissions were false or misleading.

55. The Defendants knew, or ought to have known, that the Representations and Omissions were false or misleading, or were reckless as to their truth.

56. The Defendants made the Representations and Omissions with the intention that the Plaintiffs and the Class Members would rely on them to conclude that use of the Defendants' Product was safe. The Defendants wanted the Plaintiffs and the Class Members to use their Product so that the Defendants could monetize the Plaintiffs and the Class Members' data and time spent using its Product.

57. The Plaintiffs and Class Members reasonably relied on the Representations and Omissions and understood at all material times that the Product was reasonably safe and not harmful.

58. This reliance has been detrimental to the Plaintiffs and Class Members, who have suffered psychological and physical harm as a result of their use of the Defendants' Product, and in particular the Algorithms and Addictive Features, which were designed to and did increase their exposure to the Harmful Content.

59. The Defendants received a massive financial gain as a result of their fraudulent misrepresentations to the Plaintiffs and Class Members, in the form of billions of dollars of revenue from the sale of advertisements.

### ***Intentional Infliction of Mental Distress***

60. The Defendants' conduct in designing and supplying the Product and the Algorithms and Addictive Features which exposed children to the Harmful Content:

- a. was calculated to harm the Plaintiffs and Class Members;
- b. was flagrant and outrageous; and
- c. caused the Plaintiffs and Class Members to suffer mental and emotional distress, anxiety, depression, physical injury, and other losses and damages.

***Business Practices and Consumer Protection Act***

61. The Defendants' supply of the Product to the Plaintiffs and the Class Members for purposes that were primarily personal, family or household were "consumer transactions" within the meaning of s.1 of the Business Practices and Consumer Protection Act, SBC 2004, c.2 ("*BPCPA*"). Instagram and Facebook are "goods" or "services" within the meaning of s.1 of the *BPCPA*. The Defendants conducted business with the Plaintiffs and the Class Members by supplying goods or services in exchange for payment in the form of the Plaintiffs and the Class Members' personal data.
62. The Defendants' Representations and Omissions, including Representations made in the Terms of Use of Facebook and Instagram, had the capability, tendency, or effect of deceiving or misleading consumers regarding the safety of Facebook and Instagram. The Defendants' conduct including the Representations and Omissions and the failure to properly disclose all material facts regarding the known and foreseeable risks of viewing and engaging with the Harmful Content, were deceptive acts and practices contrary to s.4 of the *BPCPA*.
63. The Defendants' conduct including making the Representations and Omissions, and using the Algorithms and Addictive Features to maximize users' exposure to Harmful Content were "unconscionable acts or practices" contrary to s. 8 of the *BPCPA*.

64. Further, the Defendants' conduct was unconscionable due to the age of the consumers they were targeting. The Defendants knew or ought to have known that the Plaintiffs and Class Members:

- a. were members of a recognized and identifiable class of vulnerable consumers who receive certain protections by statute;
- b. were, by virtue of their age, less able to protect their own interests and in particular, would not and could not do so by conducting adequate testing or research; and
- c. were likely to rely on the Defendants' Representations and Omissions and were at risk of suffering harm as a result.

65. As a result of the Defendants' deceptive and unconscionable acts and practices the Plaintiffs and Class Members have suffered loss and damages.

66. The Plaintiffs and Class Members claim against each of the Defendants for contravention of consumer protection legislation and remedies as follows:

- a. A declaration that the Defendants' conduct constitutes "unconscionable acts or practices" contrary to s. 8 of the *BPCPA* and an order pursuant to s. 172(3) of the *BPCPA* that the Plaintiffs and Class Members are entitled to damages under s. 171 of the *BPCPA*;
- b. A declaration that the Defendants' conduct constitutes "deceptive acts or practices" contrary to s. 4 of the *BPCPA* and an order pursuant to s. 172(3) of the *BPCPA* that the Plaintiffs and Class Members are entitled to damages under s. 171 of the *BPCPA*;

67. The Plaintiffs and Class Members seek injunctive relief and declaratory relief and damages and statutory compensation pursuant to ss. 171 and 172 of the *BPCPA*. Such relief includes the disgorgement of the profits or revenues received by the Defendants from the promotion of the Harmful Content in Canada.

68. The declaratory and injunctive relief sought by the Plaintiffs and Class Members in this case includes an order under s. 172 of the *BPCPA* that the Defendants advertise any judgment against them and that they properly inform consumers of the risks of using Facebook and Instagram, and in particular, of viewing or engaging with the Harmful Content.
69. For reasons that are identical to the above noted breaches of the *BPCPA*, the Plaintiffs and Class Members also advance a claims pursuant to analogous legislation in the other Provinces and Territories, including any rights of rescission, damages, disgorgement or equitable relief under each Act, including:
- a. The *Consumer Protection Act*, R.S.A. 2000, c. C-26.3, including, without limitation, ss. 6, 7, 7.2, 7.3, and 13;
  - b. The *Consumer Protection and Business Practices Act*, S.S. 2014, c. C-30.2, including, without limitation, ss. 6-8, 19(d)-(e) and 93;
  - c. The *Business Practices Act*, S.M. 1990-1991, c. 6 as amended, including, without limitation, ss. 2-3, 5, and 23;
  - d. The *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c. C-18.1, including, without limitation, ss. 10, 11, 15, and 27;
  - e. The *Consumer Protection Act*, R.S.N.S. 1989, c. 92, including, without limitation, ss. 16 and 26(3)(d)-(f) and (h);
  - f. The *Business Practices Act*, R.S.P.E.I. 1988, c. B-7, as amended, including, without limitation, ss. 2, 3 and 4;
  - g. The *Consumer Protection and Business Practices Act*, S.N.L. 2009, c. C-31.1, including, without limitation, ss. 7, 8, 9 and 10;
  - h. The *Consumer Protection Act 2002*, S.O. 2002, c. 30, as amended, including, without limitation, ss. 9(2), 14-15, 17 and 18;

- i. The *Consumer Protection Act*, C.Q.L.R. c. P-40.1, including, without limitation, ss. 37, 41, 219-221, 228, and 272;
- j. The *Consumers Protection Act*, RSY 2002, c 40, including, without limitation, ss. 58(e) and (h);
- k. The *Consumer Protection Act*, RSNWT 1988, c C-17, including, without limitation, ss. 70(e) and (h); and
- l. Section 70 of the *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17, including, without limitation, ss. 70(e) and (h).

70. With respect to Alberta, British Columbia, and Ontario, the Plaintiffs seeks waivers of any notice requirements, particularly since the Defendants have concealed the actual state of affairs from Class Members.

71. The Defendants' Algorithms and promotion of the Harmful Content constituted latent defect in the Product that formed the objects of contracts that Class Members entered into with Defendants and the defect was one which Class Members could not have discovered by ordinary examination and/or there was a lack of instructions necessary for the protection of the Plaintiffs and Class Members against the risk or danger posed by the defect, of which the Plaintiffs and Class Members were otherwise unaware. As such, Class Members in Quebec also advance consumer claims against the Defendants pursuant to s. 53 of the Quebec *Consumer Protection Act*, C.Q.L.R. c. P-40.1.

72. Further, in light of the Defendants' failure to develop, implement or enforce adequate age-verification protocols to prevent children 12 years and under from using the Product and being exposed to the Harmful Content, the Defendants breached ss. 248 and 249 of the Quebec *Consumer Protection Act* which prohibit commercial advertising directed at persons under thirteen years of age, and the Plaintiffs and Class Members claim damages, including punitive damages, pursuant to s. 272 of the Quebec *Consumer Protection Act*.

***Breaches of the Competition Act***

73. The Defendants breached section 52 of the *Competition Act*, RSC c C-34 (the "*Competition Act*") and committed an unlawful act because they made the Representations and Omissions:

- (a) were made for the purpose of promoting, directly or indirectly, the increased and unhealthy use of their social media platforms;
- (b) were made for the purpose of promoting indirect or directly, any business interests of the Defendants;
- (c) were made to the public;
- (d) were made knowingly and recklessly; and
- (e) were false and misleading in a material respect.

74. The Defendants breached section 52.01(2) of the *Competition Act* and committed an unlawful act because for the purposes of promoting, directly or indirectly, the supply or use of the Product and their other business interests, the Defendants knowingly or recklessly caused representations to be sent in electronic messages—including the Representations and Omissions—that were false or misleading in a material respect.

75. The Plaintiffs and the Class Members suffered damages as a result of the Defendants' unlawful breach of section 52 and 52.01 of the *Competition Act*.

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

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

***Unjust Enrichment***

78. The Defendants have been unjustly enriched by the unlawful conduct described above. The enrichment is in the form of revenue that the Defendants would not have received but for their unlawful conduct. As a result of the Defendants' unlawful conduct, the Plaintiffs and Class Members suffered a corresponding deprivation. The Class Members' personal data, time and attention were given to the Defendants, and directly monetized by the Defendants.
79. As a result of the Defendants' unlawful conduct, the Plaintiffs and Class Members suffered a corresponding deprivation. The Class Members' personal data, time and attention were given to the Defendants, and directly monetized by the Defendants.
80. There is no juristic reason why the Defendants' enrichment should be permitted, including at equity, under contract or pursuant to any statutory obligations.
81. The Class Members are entitled to restitution or disgorgement of the Defendants' profit generated from their use of the Product. The restitution or disgorgement is appropriately assessed on an aggregate basis.

### ***Disgorgement***

82. The Plaintiffs and Class Members are entitled to disgorgement of all of the Defendants' profits resulting from the Plaintiffs and the Class Members' use of the Product.
83. The Defendants' unlawful and wrongful conduct conferred a benefit on the Defendants in the form of profits that they would not have received but for their unlawful and wrongful conduct.
84. The Defendants' unlawful and wrongful conduct was intentional, deceptive, and has been ongoing for more than a decade. The Defendants knew they were causing significant harm to the Plaintiffs and the Class Members, and repeatedly chose to prioritize their profits over the health and safety of the Plaintiffs and the Class Members.

85. The Plaintiffs and the Class Members have a legitimate interest in preventing the Defendants from using their personal data to generate profits, as this data was obtained as a result of the Defendants' false and misleading Representations and Omissions and other wrongful conduct, at the expense of and risk to the Plaintiffs and the Class Members' health and well-being.

86. An award of compensatory damages would not be an adequate remedy and would fail to deter the Defendants, who have demonstrated that they have and will continue to harm users of their Product, including children, in order to maximize their profits.

### ***Civil Conspiracy***

87. The Defendants conspired with one another, and other entities not presently known to the Plaintiffs and Class Members, to addict their users to continued and prolonged viewing and engagement with the Harmful Content on their platforms and ultimately to cause harm to their users. The Defendants' actions were directed at the Plaintiffs and Class Members who were users of their Product. They knew that their conspiracy would increase use of the Product and were aware of the dangers of such use, particularly for children. They knew, or ought to have known, that the Plaintiffs and Class Members would be harmed as a result of their conspiracy.

88. The predominant purpose of the conduct of the Defendants and their co-conspirators was to cause injury to the Plaintiffs and similarly situated persons and to addict them to continued and prolonged use of their platforms, so as to increase profits.

89. Further, or in the alternative, the Defendants sought to advance their conspiracy by various unlawful means, as particularized above, which constituted torts against the Plaintiffs and Class Members and breaches of the *Competition Act*.

***Causation and Damages***

90. As a result of the Defendants' unlawful conduct, including their tortious conduct and breaches of the *Competition Act*, and/or other similar legislation in the other provinces and territories, the Plaintiffs and Class Members have suffered and will continue to suffer loss and damage. Such loss and damage were foreseeable by the Defendants. Particulars of the loss and damage suffered by the Plaintiffs and Class Members which were caused or materially contributed to by the aforementioned acts of the Defendants include:

- (a) psychological and physical injuries;
- (b) medical expenses and other out of pocket expenses;
- (c) loss of earnings and earning capacity; and
- (d) cost of future care; and
- (e) Such other losses and damages as will be proven at the trial of this action.

***Punitive Damages***

91. For profit and by unlawful means, the Defendants knowingly exposed children to content which they knew would, or was likely to, cause mental distress and other harm. Repeatedly, and over more than a decade, the Defendants have prioritized their profits over the mental and physical health of children. This conduct is deserving of condemnation and calls for an award of punitive damages to express society's condemnation of corporate conduct that prioritizes profit over the health and safety of children, and to achieve both specific and general deterrence in the interests of protecting children from future harm.

***Health Care Cost Recovery***

92. The Plaintiffs and Class Members rely upon health and hospital insurance legislation in British Columbia and similar legislation elsewhere and claim health care costs incurred by themselves and Class Members and paid by provincial and territorial governments as a result of the wrongdoing of the Defendants:

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

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

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

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

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

f. On behalf of the Government of Yukon, and the Ministers of Health of the Northwest Territories and Nunavut, the Plaintiffs claim the cost of providing "insured services", including in-patient and out-patient services under *Hospital Insurance Services Act*, RSY 2002, c 112, ss 1 and 10-11 and *Yukon Hospital Insurance Services Regulations*, YCO 1960/35, s 2; *Hospital Insurance and Health and Social Services Administration Act*, and RSNWT 1988, c T-3, ss 1 and 19-20 and *Hospital Insurance Regulations*, RRNWT 1990, c T-12, s 1.

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

### ***Breaches of the Infants Act***

93. In recognition of their vulnerability, persons under the age of majority are afforded special protection in contractual relationships in British Columbia and elsewhere in Canada. Contracts made with minors are unenforceable by operation of the *Age of Majority Act*, RSBC 1996, c. 7 and the *Infants Act*, RSBC 1996, c. 223, s. 19(1) and related enactments in other provinces and territories in Canada.

### ***Limitation Period***

94. The Defendants willfully concealed their knowledge of the risks of serious injury caused by the viewing of and engagement with the Harmful Content from young users, including the Plaintiffs and Class Members (and their parents and/or guardians). The Plaintiffs and Class Members rely on the doctrine of fraudulent concealment and *Pioneer Corp. v. Godfrey*.
95. In addition, the Plaintiffs and Class Members could not reasonably have known that loss or damage had occurred, that it was caused or contributed to by actions or inactions of the Defendants, or that a court proceeding would be an appropriate means to seek to remedy the injury until this action was filed.
96. The Plaintiffs and Class Members rely on the doctrines of postponement and discoverability to postpone the running of the limitation period until 2022.
97. The Plaintiffs and Class Members plead and rely on and the *Limitation Act*, SBC 2012, c 13, and in particular ss 8, 21(3). In the alternative, or in addition, the Plaintiffs and Class Members rely on the *Limitation Act*, SBC 2012, c 13, s 30 and the *Limitation Act*, RSBC 1996, c 266. In addition, the Plaintiffs and Class Members plead and rely on the *Emergency Program Act*, Ministerial Order No. M089 and related enactments to suspend the running of the limitation period from March 26, 2020.

### ***Jurisdiction***

98. The Plaintiffs and Class Members rely on ss. 13, 7 and 10 of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28 and plead that there is a real and substantial connection between the subject matter of this action and the Province of British Columbia for the following reasons:
- (a) The Defendants' Algorithms promoted the Harmful Content which was viewed by and engaged with by the Plaintiffs and Class Members in British Columbia;

- (b) The Defendants engaged in a conspiracy that resulted in harm to persons in British Columbia;
- (c) The subject matter of the claim includes restitutionary remedies claimed on behalf of persons in British Columbia;
- (d) This claim pleads breaches of the *BPCPA* and the *Competition Act*;
- (e) The Defendants carry on business in British Columbia;
- (f) The Plaintiffs resides in British Columbia; and
- (g) The Plaintiffs' damages were sustained in British Columbia.

Form 11 (Rule 4-5 (2))

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Plaintiffs claim the right to serve this pleading/petition on the Defendants outside British Columbia on the ground that:

The Plaintiffs haves at all material times have been a residents of British Columbia and haves suffered loss in British Columbia. The Supreme Court of British Columbia has jurisdiction with respect to this matter and the Plaintiffs plead the *Court Jurisdiction and Proceedings Transfer Act*, 2003, SBC Chapter 28 and amendments thereto.

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	<b>CFM LAWYERS LLP</b> 400-856 Homer Street Vancouver, BC V6B 2W5
Fax number address for service (if any):	(604) 682-0587

E-mail address for service (if any):	Nil
Place of trial:	Vancouver
The address of the registry is:	800 Smithe Street, Vancouver

Date: 11/APR/2022

\_\_\_\_\_  
 Counsel for the Plaintiffs,  
 Anthony Leoni  
 John M. Rice, K.C.  
 Reidar Mogerman K.C.  
 Jen Winstanley

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record

## Appendix

### Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

A claim for negligence, failure to warn, conspiracy, breach of consumer protection legislation, and *inter alia*, disgorgement at common law for unjust enrichment arising from the proliferation of harmful social media content that the Defendants knew or ought to have known was associated with harm to young persons, with injury, loss and damages to the Plaintiffs and a class of similarly situated persons resident in Canada.

### Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

### Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

**Part 4:**

1. Class Proceedings Act, R.S.B.C. 1996, c. 50;
2. Health Care Cost Recovery Act, S.B.C. 2008, c. 27
3. Business Practices and Consumer Protection Act, S.B.C. 2004, c. 2