DOC. NO.: X06-UWY-CV-23-5032685-S	:	SUPERIOR COURT
V.V., ET AL.	:	JUDICIAL DISTRICT OF WATERBURY
v.	:	COMPLEX LITIGATION DOCKET
META PLATFORMS, INC., ET AL.	:	FEBRUARY 16, 2024

MEMORANDUM OF DECISION RE MOTION TO STRIKE #143

In this matter, the plaintiffs, V.V. and E.Q., individually and as next friends to the minor C.O., have brought suit against Snap, Inc., Snapchat, LLC (collectively, the defendants),[1] Reginald Sharp, and Eddie Rodriguez.[2] As alleged in the plaintiffs' complaint, the plaintiffs V.V. and E.Q. are the parents and guardians of C.O. At the time of the commencement of this lawsuit, C.O. was a fifteen-year-old girl. The defendants own and operate the Snapchat social media platform, which is distributed and widely available to users in the state of Connecticut. Originally developed in 2011, Snapchat allows individuals to form groups and share posts known as "Snaps" that disappear after being viewed by the recipients. This feature was developed, in part, to make users feel more comfortable sharing nude photographs. The application also allows for text and video chat conversations. By 2015, Snapchat had over 75 million monthly active users and was the most popular social media application with American teenagers. Indeed, since its creation, Snapchat's leadership team has specifically designed new product features to increase its popularity among the teenage demographic. In particular, the self-destructing content portion of Snapchat is popular with teenagers because it makes it more difficult for

[1] As Snap, Inc. and Snapchat, LLC are the parties to the motion to strike that is currently before the court, they will collectively be known as "the defendants." Sharp and Rodriguez will be referred to by their surnames.

[2] When originally commenced, Meta Platforms, Inc. was also named as a defendant in this case. The plaintiffs withdrew their claims against Meta Platforms, Inc. on December 28, 2023. Accordingly, the court need not consider any of the plaintiffs' allegations against this former defendant.

parents to monitor their social media activity. At the same time, however, this attribute of the Snapchat application makes it easier for sexual predators to communicate with minors. Over the years, the defendants have received multiple reports of child abuse and bullying occurring through the Snapchat application, but the defendants have not altered their extremely lucrative business model. By 2021, Snapchat had collected $4.12 billion in revenue and had 347 million daily active users worldwide.

Specifically, the plaintiffs allege that Snapchat utilizes a user recommendation technology called Quick Add that selects and sends recommendations to the user regarding people with whom they should connect. These algorithms function by taking user data such as age, gender, on and off-platform activities, usage history, habits, and interactions to formulate these recommendations. According to the plaintiffs, these technologies function in a manner that "reward" users who have historically targeted young women by increasing the number of suggested connections from the same age and gender demographic. Snapchat further has implemented product designs that allow a user's followers to enable the sharing of their location and identify friends of friends who are physically near them. Moreover, Snapchat utilizes technologies such as push notifications, Snap Streak, and photo decoration functions in order to facilitate young people to become addicted to the application and maximize the number of viewing sessions. Despite knowing that Snapchat is addictive, especially with respect to developing adolescent brains, the defendants have actively concealed this fact from governments around the world. Additionally, although the Snapchat application is free to use, the defendants, unbeknownst to the users, are still making money through advertisers that are targeted to specific demographics.

When she was twelve years old, C.O. opened her first Snapchat account without her parents' knowledge or consent. Even though Snapchat's terms of service purport to prohibit an

individual from having multiple personal accounts, the defendants have chosen not to use available technologies to enforce these terms. C.O. eventually opened multiple Snapchat accounts, so that when her parents eventually realized she was using these products, she was able to hide her continued usage. The defendants assist minors and other predatory users in creating multiple accounts because they do not verify the individuals' phone numbers, e-mail addresses, or inconsistent birthdates. Shortly after opening her Snapchat accounts, C.O. began having trouble sleeping, and eventually experienced anxiety, depression, and moodiness. Snapchat further inundated C.O. with harmful social media content that encouraged disordered eating and self-harm. C.O. was also subjected to highly sexualized content. Furthermore, other children began to bully C.O. through Snapchat's direct messaging feature. Thereafter, C.O. began to experience personality changes and her grades at school began slipping. Despite all of these negative consequences from using Snapchat, C.O. could not stop utilizing the application because she was addicted to it. After she opened her own account, C.O. began receiving unsolicited pictures of male genitalia. C.O. reported these incidents to Snapchat and stated that she did not want these strangers to harass her further. Despite these complaints, the defendants did nothing to block these individuals from sending her inappropriate photographs.

On July 15, 2019, when C.O. was only twelve[3] years old, Snapchat directed her to the defendant Sharp. This individual was a registered sex offender using the profile name JASONMORGAN5660. Sharp quickly began messaging C.O. sexually inappropriate comments and he offered her money in exchange for C.O. sending him sexually explicit photographs. After C.O. acquiesced to Sharp's requests, he threatened to post the photographs to Snapchat unless

[3] At various points, the complaint alleges that C.O. was both twelve and thirteen years old at the time of this incident. This decision will assume that C.O. was twelve years old at the time of the 2019 sexual assault because the plaintiffs also allege that C.O. was fourteen in 2021 and fifteen when this lawsuit was commenced in January, 2023.

she had sex with him. On July 23, 2019, Sharp coerced C.O. into sneaking out of her home in the middle of the night in order to meet him. At that time, Sharp raped C.O. The following day, C.O.'s mother immediately knew something was wrong, and the incident was reported to the police, who were quickly able to discover Sharp was the individual behind the fake profile. Despite Sharp's subsequent arrest and incarceration, and Snapchat's knowledge of same, Sharp's Snapchat account was still active as of December 10, 2022.

Subsequently, in October, 2021, C.O. connected her with the defendant Rodriguez, a former police officer and sex offender. Rodriguez used Snapchat to obtain C.O.'s phone number and address, and he began sending her sexually explicit messages and photographs. One morning in October, 2021, Rodriguez convinced C.O. to meet him in-person, and Rodriguez offered to give C.O. a ride to school. When C.O. entered Rodriguez's car, he sexually assaulted her. Like Sharp, Rodriguez is also currently incarcerated. Following these incidents, C.O. has been hospitalized and in counseling. She suffers from anxiety and depression and has had thoughts of self-harm and suicide.

In their complaint, the plaintiffs allege the following causes of action against the defendants: (1) count one—strict product liability (design defect); (2) count two—strict product liability (failure to warn); (3) count three—negligence; (4) count four—violations of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110g et seq.; (5) count five—unjust enrichment; (6) count six—invasion of privacy; (7) count seven—negligence (arising out of the Quick Add feature); (8) count eight—assault and battery (as to Sharp) and (9) count nine—assault and battery (as to Rodriguez).[4]

[4] It appears that counts one through seven are brought against Snap, Inc. and Snapchat, LLC, whereas counts eight and nine state claims against Sharp and Rodriguez, respectively.

On September 14, 2023, the defendants filed a motion to strike all counts of the plaintiffs' complaint on a plethora of different grounds along with a memorandum of law in support of their motion. The plaintiffs filed a memorandum of law in opposition to the motion to strike on October 26, 2023. On November 16, 2023, the plaintiffs filed their reply memorandum.[5] The court heard oral argument on the motion to strike and the opposition thereto on January 8, 2024.

"The purpose of a motion to strike is to contest . . . the legal sufficiency of the allegations of any complaint . . . to state a claim upon which relief can be granted." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC* v. *Alves*, 262 Conn. 480, 498, 815 A.2d 1188 (2003). "The role of the trial court in ruling on a motion to strike is to examine the [complaint], construed in favor of the [plaintiff], to determine whether the [pleading party has] stated a legally sufficient cause of action." (Internal quotation marks omitted.) *Coe* v. *Board of Education*, 301 Conn. 112, 117, 19 A.3d 640 (2011). "If any facts provable under the express and implied allegations in the plaintiff's complaint support a cause of action . . . the complaint is not vulnerable to a motion to strike." *Bouchard* v. *People's Bank*, 219 Conn. 465, 471, 594 A.2d 1 (1991). Nevertheless, "[a] motion to strike admits all *facts* well pleaded; it does not admit *legal conclusions or the truth or accuracy of opinions* stated in the pleadings." (Emphasis in original; internal quotation marks omitted.) *Faulkner* v. *United Technologies Corp.*, 240 Conn. 576, 588, 693 A.2d 293 (1997). "A motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." (Internal quotation marks omitted.) *Santorso* v. *Bristol Hospital,* 308 Conn. 338, 349, 63 A.3d 940 (2013).

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[5] Following the reply memorandum, the parties have also filed multiple pleadings that contain both copies of unreported cases and substantive argument. As indicated during the January 8, 2024 oral argument, the court will only consider the cases that counsel have attached and not the arguments set forth in those documents.

First, the defendants move to strike all of the counts asserted against them on the ground of improper joinder. According to the defendants, the plaintiffs' complaint impermissibly combines the assault and battery causes of action brought as to Sharp and Rodriguez with claims against them that are different and factually distinct. Specifically, the defendants contend that: (1) the plaintiffs' claims do not affect all of the parties to this action; (2) the causes of action alleged against them and Sharp/Rodriguez do not arise out of the same transaction or occurrence; and (3) the claims against the two groups cannot be conveniently heard together. In response, the plaintiffs argue that each of the defendants are properly joined. The plaintiffs contend that the present action falls squarely within the statutory requirements for joinder. Furthermore, the plaintiffs assert that this case involves identical claims of injury and damage as between all the defendants. Therefore, the plaintiffs believe that each of the parties are affected because they will inevitably blame each other for C.O.'s injuries at trial. Finally, the plaintiffs contend that equitable considerations favor trying this matter in one case because there will be substantial overlap in the evidence that will be presented against the various defendants.

Our Supreme Court has determined that "in this state . . . joinder of claims and of remedies is permissive rather than mandatory." (Internal quotation marks omitted.) *Beaudoin* v. *Town Oil Co., Inc.*, 207 Conn. 575, 584, 542 A.2d 1124 (1988). Indeed, the provision of the rules of practice governing joinder "by its terms spells out when certain separate causes of action may be joined in one complaint. It does not purport to mandate when they must be so joined." *Danbury* v. *Dana Investment Corp.*, 249 Conn. 1, 26, 730 A.2d 1128 (1999). Nevertheless, "[t]he public has an interest in the prevention of unnecessary litigation, both because of the burden it places on the [s]tate and the resulting crowding of the dockets of the courts. This procedure of trying cases together, which has long been the established practice in this state, assists in expediting business without doing anyone an injustice." (Internal quotation marks

omitted.) *DiBella* v. *Greenwich*, Superior Court, judicial district of Stamford-Norwalk, Complex Litigation Docket, Docket No. X08-CV-09-5012500-S (May 22, 2012, *Brazzel-Massaro, J.*). Under our rules of practice, "[t]he exclusive remedy for misjoinder of parties is by motion to strike." (Internal quotation marks omitted.) *Costello* v. *Goldstein & Peck, P.C.*, 187 Conn. App. 486, 497, 203 A.3d 611, cert. denied, 331 Conn. 908, 202 A.3d 1023 (2019). See also Practice Book § 11-3.[6] Therefore, a motion to strike is the correct procedure mechanism to determine if defendants are properly joined.

General Statutes § 52-97 provides in relevant part: "In any civil action the plaintiff may include in his complaint both legal and equitable rights and causes of action . . . but, if several causes of action are united in the same complaint, they shall all be brought to recover . . . (2) for injuries, with or without force, to person and property, or either, including a conversion of property to the defendant's use . . . . or (7) upon claims, whether in contract or tort or both, arising out of the same transaction or transactions connected with the same subject of action. *The several causes of action so united shall all belong to one of these classes, and*, except in an action for the foreclosure of a mortgage or lien, *shall affect all the parties to the action*, and not require different places of trial, and shall be separately stated; and, *in any case in which several causes of action are joined in the same complaint*, or as matter of counterclaim or set-off in the answer, *if it appears to the court that they cannot all be conveniently heard together, the court may order a separate trial of any such cause of action or may direct that any one or more of*

[6] Practice Book § 11-3 provides: "The exclusive remedy for misjoinder of parties is by motion to strike. As set forth in Section 10-39, the exclusive remedy for nonjoinder of parties is by motion to strike."

them be expunged from the complaint or answer."[7] (Emphasis added.) See also Practice Book § 10-21 (setting forth substantially similar language.)

There is a dearth of appellate authority interpreting the scope § 52–97 and its Practice Book equivalent. Nevertheless, according the statutory text, "a plaintiff is permitted to bring several causes of action in a single complaint if: (I) the causes of action belong to one of the classes described in General Statutes § 52–97 and Practice Book § 10–21; (ii) the causes of action affect all the parties to the action; and (iii) if the causes of action are joined, the court deems it convenient to hear the causes of action together." *Ocasio* v. *Buchanan*, Superior Court, judicial district of Hartford, Docket No. CV-15-6059597-S (January 13, 2016, *Dubay, J.*) (61 Conn. L. Rptr. 624, 626).

The plaintiffs rely on §§ 52-97 (2) and (7) in support of their position that the claims against the corporate and individual defendants are properly joined. By its plain language, the plaintiffs appear to satisfy § 52-97 (2) in that they allege injury "to person." See, e.g., *Persaud* v. *Harris*, Superior Court, judicial district of Hartford, Docket No. CV-18-6092289-S (September 6, 2018, *Noble, J.*) (67 Conn. L. Rptr. 31, 32) (stating that "both claims qualify as a cause of action for injury to person thus falling within the ambit of § 52-97 (2) . . . ."). The court also concludes that the language of § 52-97 (7) is applicable here because the plaintiffs allege causes of action sounding in contract or tort that arise out of the same transaction. For the purposes of the law governing joinder, our courts have determined that "[a] transaction is something which has taken place whereby a cause of action has arisen. It must therefore consist of an act or agreement, or several acts or agreements having some connection with each other . . . ." (Internal quotation marks omitted.) *Collazo* v. *Hamilton Street Enterprises, LLC*, Superior

[7] The plaintiffs in this matter only rely on General Statutes §§ 52-97 (2) and (7). The other subsections of § 52-97 clearly do not apply to the facts alleged in this case.

Court, judicial district of New Haven, Docket No. CV-16-6060339-S (December 27, 2016, *Wilson, J.*) (63 Conn. L. Rptr. 613, 614), quoting, *Craft Refrigerating Machine Co.* v. *Quinnipiac Brewing Co.*, 63 Conn. 551, 560, 29 A. 76 (1893). In the present case, the plaintiffs allege that C.O. was injured when Sharp and Rodriguez contacted her by using the social media application owned and operated by the defendants. Sharp and Rodriguez then subsequently sexually assaulted C.O. If construed in a manner most favorable to the pleader, the court determines that all these alleged acts occurred as part of the same transaction.

With respect to the second prong of the joinder test, "[t]here is a split of opinion among judges of the [S]uperior [C]ourt regarding the interpretation of the phrase 'shall affect all the parties to the action,' employed in both § 52-97 and Practice Book § 10-21. Some courts adopt a strict interpretation of the phrase, holding that there must be a 'commonality' between all parties such that the existence of different defendants, as is the case here, defeats joinder. Other courts construe the phrase more liberally and only require joined parties to have an interest in the outcome of each claim." (Internal quotation marks omitted.) *Gabel* v. *Guay*, Superior Court, judicial district of New Haven, Docket No. CV-21-6111322-S (January 14, 2022, *Abrams, J.*). One group of cases, relying primarily on a quote from 1 Stephenson's Connecticut Civil Procedure (3rd Ed., 1997) § 47 (c), has determined that "[i]n addition to the requirement that all claims must fall within a single one of the categories listed, the rule of joinder of actions requires that all plaintiffs and all defendants must be common to all the claims and that all counts be triable at the same place under the rules as to venue." (Internal quotation marks omitted.) *Ciamciolo* v. *Musumano*, Superior Court, judicial district of Waterbury, Docket No. CV-08-5008286-S (August 12, 2008, *Alvord, J.*). Nevertheless, "[o]ther courts have concluded that 'shall affect all the parties' does not require that all parties must be common to all the causes of action, but rather that 'affect' only requires joined parties to have an interest in the outcome of

each claim. . . . This is because each party to [the] action is affected by each claim in the fundamental sense that, there being injuries of the same nature (with other injuries) to both plaintiffs . . . the extent of negligence of each party claimed to have contributed to the plaintiff's injuries is determined by the trier of fact." (Citations omitted; internal quotation marks omitted.) *Rivera* v. *Schwager*, Superior Court, judicial district of New Britain, Docket No. CV-166033541-S (February 6, 2017, *Wiese, J.*) (63 Conn. L. Rptr. 395, 397).

When determining which side of this split of authority the court agrees with, the court is guided by the persuasive historical analysis found in *Vrenezi* v. *Louzada*, Superior Court, judicial district of Danbury, Docket No. CV-20-6036141-S (December 9, 2020, *Kowalski, J.*). In *Vrenezi*, the court stated that "the broad interpretation of the statute is consistent with the maxim that statutes that abrogate the common law must be constructed strictly and not enlarged beyond the scope of the text. . . . At common law, 101 causes of action properly pleadable under the same writ could be joined as separate counts in one action, whether or not they had any other relationship or similarity. . . . The common law tradition of little restriction on joinder was replaced by the Practice Act of 1879, which today is codified in General Statutes § 52-97 and Practice Book § 10-21. . . . The statute limited the use of joinder to instances when the specific requirements of the statute are met. So when interpreting the statute, it must be interpreted it in a way that does not further enlarge the abrogation of common law joinder. If the phrase 'shall affect all parties' is construed narrowly with the requirement that the parties be common to all claims, it would enlarge the statute's encroachment against the common law rule because it would further limit the use of joinder. Contrastingly, a broad interpretation that requires only that the parties have an interest in the outcome of the claims would not enlarge the statute's encroachment against the common law because this interpretation is more favorable to allowing joinder." (Citations omitted; internal quotation marks omitted.) Id., quoting 1 E. Stephenson,

Connecticut Civil Procedure (3d Ed. 1997), § 47 (a), p. 145 and § 47 (b), p. 146. This interpretation also more closely tracks the plain meaning of the applicable statutory and Practice Book provisions. "The use of 'shall affect' rather than a more specific phrase, such as 'shall include' or 'shall be parties to' suggests such a broader meaning. Therefore, the better view is that 'affect' merely requires joined parties to have an interest in the outcome of each claim." (Internal quotation marks omitted.) *Tigre* v. *Espinal-Baez*, Superior Court, judicial district of Waterbury, Docket No. CV-22-6065344-S (October 14, 2022, *D'Andrea, J.*).

The court's decision in *Mills* v. *Rita H. Carver Revocable Trust*, Superior Court, judicial district of New London, Docket No. CV-12-6015038-S (February 19, 2013, *Devine, J.*) (55 Conn. L. Rptr. 605) is illustrative of the broad interpretation of the "shall affect all the parties to the action" language. *Mills* involved a plaintiff who brought suit against one group of defendants for a slip and fall and another group of defendants for a car accident that occurred on different dates. The various defendants filed motions to strike claiming improper joinder. When concluding that the plaintiff's action satisfied the "shall affect all the parties to the action" requirement, the *Mills* court stated that "the plaintiff alleges that the collision exacerbated injuries to the cervical and lumbar areas of her spine, which were originally caused by the slip and fall, and further that both incidents resulted in head, neck, back, and lower extremity injuries and shock to her nervous system. This is the type of case where medical testimony will be necessary to determine which injuries were caused by which incidents. In addition, each defendant will try to claim that the other incident was the primary cause of the worst injuries." Id., 607.

The *Mills* court relied, in part, on *Card* v. *State*, 57 Conn. App. 134, 747 A.2d 32 (2000) to support its interpretation of General Statutes § 52-97 and Practice Book § 10-21. In *Card*, the Appellate Court implicitly approved the consolidation of multiple cases for the purpose of trial

because "[t]he trier of fact's responsibility in cases involving injuries sustained in successive accidents is to apportion the damages among the parties whose negligence caused the plaintiff's injuries." Id., 145. "Although joinder was not the issue on appeal, *Card* is helpful [in considering a motion to strike for misjoinder] in that it resulted in approval of a single [jury] hearing the claims against multiple defendants notwithstanding the unique circumstances creating liability on each of their parts." (Internal quotation marks omitted.) *Swaney* v. *Estrella*, Superior Court, judicial district of New London, Docket No. CV-15-6023670-S (October 27, 2015, *Cole-Chu, J.*) (61 Conn. L. Rptr. 175, 176). *Card*, therefore, provides further support for the conclusion that the more lenient interpretation of the second joinder element is the correct one.

When applying this standard to the present case, it becomes apparent that both sets of defendants will have an interest in the outcome of each claim. In this matter, the plaintiffs allege that C.O. suffered injuries arising out of the individual defendants' alleged misuse of the Snapchat social media platform. At trial, there will no doubt be testimony from medical experts regarding C.O.'s injures, and the fact finder will have to determine which damages are properly attributable to which set of defendants. Moreover, as correctly noted by the plaintiffs in their memorandum of law in opposition, "[w]hile apportionment of liability under [General Statutes §] 52-102b may not strictly apply, there is little doubt that as a practical matter of trial tactics, defendants will seek to foist ultimate blame for C.O.'s injuries on each other."[8] Accordingly, the court determines that this matter satisfies the second prong of the requirements for joinder.

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[8] Under Connecticut law, apportionment of damages between the defendants and Sharp/Rodriguez will be legally impermissible because "the apportionment principles of [General Statutes] § 52–572h do not apply where the purported apportionment complaint rests 'on any basis other than negligence,' and that these other bases include, without limitation, 'intentional, wanton or reckless misconduct, strict liability or liability pursuant to any cause of action created by statute . . . .'" *Allard* v. *Liberty Oil Equipment Co., Inc.*, 253 Conn. 787, 801, 756 A.2d 237 (2000). Simply put, as a general rule, "[t]he liability of intentional tortfeasors may

The court will now turn to the third element of the legal test for joinder, i.e., whether it would be convenient to hear the various legal claims together. "In line with this provision, courts often determine whether to allow joinder based on a variety of equitable considerations, such as whether judicial economy would be served by joining or consolidating the causes of action." (Internal quotation marks omitted.) *Moulter* v. *Pina*, Superior Court, judicial district of New Haven, Docket No. CV-19-6094952-S (December 13, 2019, *Wilson, J.*). "Other courts have referenced the general policy in favor of joinder stated by the Supreme Court in the early case of *Evergreen Cemetery* [*Assn.*] v. *Beecher*, 53 Conn. 551, 552, 5 A. 353 (1886), wherein the Supreme Court stated that allowing joinder is 'in harmony with our practice in analogous proceedings . . . [if] it promotes speedy, complete, and inexpensive justice, without placing any obstruction in the way of any defendant in protecting his rights.'" (Internal quotation marks omitted.) Id. "Still other cases have extrapolated from the holding of *Card* v. *State*, [supra,] 57 Conn. App. [144] . . . in which three automobile accidents were consolidated for trial so that damages could be fairly apportioned. There, the Appellate Court stated that '[i]n the rare case where damages cannot be apportioned between two or more accidents, the plaintiff who can prove causation should not be left without a remedy. One judicial response to situations in which a jury is unable to make even a rough apportionment of damages is to apportion damages equally among the various accidents.'" (Internal quotation marks omitted.) Id.

Once again, the court's discussion in *Vrenezi* v. *Louzada*, supra, Superior Court, Docket No. CV-20-6036141-S, is helpful here. In *Vrenezi*, the court stated that "trying the claims before

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not be apportioned between parties liable for negligence." *Maza* v. *Montes-Vazquez*, Superior Court, judicial district of Waterbury, Docket No. CV-17-6033664-S (June 26, 2023, *Massicotte, J.*). Although apportionment (in the strict legal sense) may be prohibited between the two groups of defendants in this case by the governing statutory and case law, the fact still remains, as a practical matter, that each set of defendants will be affected by the disposition of the claims asserted against the other.

separate juries could result in inconsistent verdicts that drastically undercompensate the plaintiff, or even overcompensate the plaintiff. Overcompensation could result if each jury blames the defendant before it for the majority of the injuries. Contrastingly, the joinder of the two claims maximizes the likelihood of complete and consistent verdicts. The jury will be able to consider the actions of both defendants, evaluate all the injuries, and determine the extent of liability for each defendant according to the evidence. Splitting the case before separate juries would be inefficient because it would force the plaintiff to proffer much of the same evidence, including expert medical testimony, twice. This would impose an additional expense upon the plaintiff, and an added burden for courts to have hear the same evidence before two different juries. . . . Having two jury trials would require the court to assemble two venire panels, and have two juries sit for two trials where duplicative evidence is presented. Conducting two trials instead of one would also delay the start of evidence in another case that is ready for trial. . . . [Therefore,] the remaining equitable considerations overwhelmingly favor the joinder of the claims by the plaintiff against the defendants." Id. The court agrees with this analysis of the relevant equitable factors, and it determines that the same result is mandated here with respect to the third prong of the joinder test.

Accordingly, the court denies the motion to strike on the ground of improper joinder.

Next, the defendants move to strike each of the counts asserted against them on the ground that all the claims are barred by the federal Communications Decency Act of 1996 (CDA), 47 U.S.C. § 230 et seq. According to the defendants, the CDA immunizes interactive computer service providers from liability for causes of action that treat them as the publisher of third-party user content. The defendants assert that all the plaintiffs' claims arise out of allegations that they acted as the publisher or speaker of content provided by someone else. As the defendants' alleged conduct fits within the ambit of the protections afforded by the CDA and

that immunity has been construed broadly by the courts, the defendants argue that the plaintiffs' claims are legally insufficient. In opposition, the plaintiffs assert that the defendants' arguments are misplaced because they have not engaged in a proper preemption analysis. As argued by the plaintiffs, federal preemption of state law is generally disfavored, and there is no irreconcilable conflict between the CDA and Connecticut law. The plaintiffs assert that the CDA is not a comprehensive grant of immunity for third-party content, and as result, the CDA does not mandate a "but-for" test that would provide immunity. Rather, the appropriate focus is whether the defendant at issue was acting as a publisher or speaker. According to the plaintiffs, none of their claims seek to treat the defendants as publishers or speakers, and therefore, CDA immunity does not apply here. The plaintiffs assert that this fact is especially true with respect to their claims sounding in product liability. Finally, the plaintiffs argue that the authorities relied upon by the defendants are unpersuasive and distinguishable.

As explained by the Appellate Court, "Congress enacted the CDA as Title V of the Telecommunications Act of 1996 . . . primarily to protect minors from exposure to obscene and indecent material on the Internet." (Citation omitted; internal quotation marks omitted.) *Vazquez* v. *Buhl*, 150 Conn. App. 117, 123, 90 A.3d 331 (2014). "At the same time, however, Congress was also concerned with ensuring the continued development of the Internet. See 47 U.S.C. § 230 (b). Section 230 . . . was enacted based on a congressional concern that treating providers of computer services the same way as traditional publishers would impede the development of the Internet. Accordingly, Congress, [w]hether wisely or not . . . made the legislative judgment to effectively immunize providers of interactive computer services from civil liability in tort with respect to material disseminated by them but created by others." (Internal quotation marks omitted.) Id.

The text of the CDA provides in relevant part that: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230 (c) (1). The term "interactive computer service" is defined to mean "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions." 47 U.S.C. § 230 (f) (2). "Information content provider" is statutorily defined to mean "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service." 47 U.S.C. § 230 (f) (3). Importantly, the CDA provides that "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." 47 U.S.C. § 230 (e) (3). At the same time, under the CDA: "Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section." 47 U.S.C. § 230 (e) (3). "Taken together, these provisions bar state-law plaintiffs from holding interactive computer service providers legally responsible for information created and developed by third parties. . . . Congress thus established a general rule that providers of interactive computer services are liable only for speech that is properly attributable to them. . . . State-law plaintiffs may hold liable the person who creates or develops unlawful content, but not the interactive computer service provider who merely enables that content to be posted online." (Citations omitted.) *Nemet Chevrolet, Ltd.* v. *Consumeraffairs.com, Inc.*, 591 F.3d 250, 254 (4th Cir. 2009).

"In applying the statute, courts have broken [it] down into three component parts, finding that [i]t shields conduct if the defendant (1) is a provider or user of an interactive computer service, (2) the claim is based on information provided by another information content provider

and (3) the claim would treat [the defendant] as the publisher or speaker of that information." (Internal quotation marks omitted.) *Desilet* v. *East Hartford Police Officers Assn.*, Superior Court, judicial district of Hartford, Docket No. CV-21-6146962-S (December 27, 2022, *Rosen, J.*), citing *Poole* v. *Tumblr, Inc.*, 404 F. Supp. 3d 637, 641 (D. Conn. 2019). "There is general consensus among the [federal] circuits that the CDA should be construed broadly in favor of immunity . . . ." (Internal quotation marks omitted.) *Brodie* v. *Green Spot Foods, LLC*, 503 F. Supp. 3d 1, 11 (S.D.N.Y. 2020). Accordingly, the court may appropriately determine whether a defendant is entitled to immunity under the CDA within the context of a motion to strike. *Vazquez* v. *Buhl*, supra, 150 Conn. App. 128.

The parties do not dispute that the defendants, as the operator of a social media application, qualify as a "provider . . . of an interactive computer service." See, e.g., *Thomas* v. *Twitter Corporate Office*, United States District Court, Docket No. 22 Civ. 5341 (KPF) (S.D.N.Y. December 6, 2023) ("[c]ourts have repeatedly concluded that . . . social media sites qualify as 'interactive computer services'"); *Jackson* v. *Airbnb, Inc.*, United States District Court, Docket No. CV 22-3084 DSF (JCx) (C.D. Cal. November 2, 2022) (stating that "Snap is clearly 'a provider of an interactive computer service.'"). Nor do the plaintiffs explicitly argue in their written submissions that the harmful content at issue was not provided to Snapchat by a third-party users acting as an "information content provider."[9] See, e.g., *L.W.* v. *Snap, Inc.*, United States District Court, Docket No. 22CV619-LAB-MDD (S.D. Cal. June 5, 2023) (wherein the court determined that CDA immunity applied when "the harm animating [p]laintiffs' claims is directly related to the posting of third-party content on [Snapchat]").

[9] The plaintiffs' counsel did make clear at oral argument that he is not "conceding" this element. Nevertheless, it is apparent that the harms alleged in this case arise out of communications that originated from third parties.

The more difficult question, however, is whether the plaintiffs' claims would require the defendants to be considered the publisher or speaker of the speech at issue. "By its plain language, § 230 creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service. Specifically, § 230 precludes courts from entertaining claims that would place a computer service provider in a publisher's role. Thus, lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred." (Internal quotation marks omitted.) *Doe One* v. *Oliver*, 46 Conn. Supp. 406, 410, 755 A.2d 1000 (2000), aff'd, 68 Conn. App. 902, 792 A.2d 911, cert. denied, 260 Conn. 911, 796 A.2d 556 (2002). "[W]hat matters is not the name of the cause of action . . . what matters is whether the cause of action inherently requires the court to treat the defendant as the 'publisher or speaker' of content provided by another." *Barnes* v. *Yahoo!, Inc.*, 570 F.3d 1096, 1101-02 (9th Cir. 2009). Indeed, § "230 (c) (1) is implicated not only by claims that explicitly point to third party content but also by claims which, though artfully pleaded to avoid direct reference, implicitly require recourse to that content to establish liability or implicate a defendant's role, broadly defined, in publishing or excluding third party [c]ommunications." *Cohen* v. *Facebook, Inc.*, 252 F. Supp. 3d 140, 156 (E.D.N.Y. 2017), aff'd in relevant part sub nom., 934 F.3d 53 (2d Cir. 2019), cert. denied, 140 S. Ct. 2761, 206 L. Ed. 2d 936 (2020).

According to the plaintiffs, they are not attempting to hold the defendants liable for the publication of material from third parties.[10] Rather, the plaintiffs assert that "claims that [the]

[10] On page forty-nine of their complaint, the plaintiffs allege that they "Expressly Disclaim Any and All Claims Seeking to Hold Defendants Liable as the Publisher or Speaker of Any Content Provided, Posted, or Created by Third Parties." Despite this attempt to plead around any potential CDA immunity, the court will read the allegations of the complaint as a whole to determine if the plaintiffs are actually alleging that the defendants were acting as a "publisher or speaker." In any event, such an allegation is a legal conclusion, and it is the court's role to analyze the legal soundness of the allegations of a complaint, construed in a manner most

[d]efendants violated their duties as publishers are distinct from [the] [p]laintiffs' allegations in this case that [the] [d]efendants breached their duty as manufacturers to design a reasonably safe product." As framed in the parties' briefs, the plaintiffs allege the following categories of product defects: (1) user recommendation technologies (specifically, design features that facilitated connecting adult sexual predators with vulnerable minors); (2) lack of identify and age verification; (3) recommendation algorithms that are designed to make children addicted; (4) "other design features" such as push notifications and (5) failure to warn users and/or parents of the addictive design defects in Snapchat.

It appears that the precise questions raised in this motion to strike have yet to be squarely adjudicated by any Connecticut state court. Nevertheless, similar issues have been addressed by the Second Circuit Court of Appeals. In *Force* v. *Facebook, Inc.*, 934 F.3d 53 (2d Cir. 2019), cert. denied, 140 S. Ct. 2761, 206 L. Ed. 2d 936 (2020), the plaintiffs, legal representatives of victims of terrorist attacks perpetrated by Hamas in Israel, brought suit against Facebook and alleged "that Hamas used Facebook to post content that encouraged terrorist attacks in Israel during the time period of the attacks in this case." Id., 59. According to the plaintiffs in *Force*, "Facebook ha[d] allegedly failed to remove the 'openly maintained' pages and associated content of certain Hamas leaders, spokesmen, and other members. . . . It [was] also alleged that Facebook's algorithms directed such content to the personalized newsfeeds of the individuals who harmed the plaintiffs." (Citation omitted.) Id. In an opinion authored by Judge Droney, the Second Circuit Court of Appeals determined that Facebook was shielded from liability under the protections of the CDA. The court stated that it "disagree[d] with plaintiffs' contention that Facebook's use of algorithms renders it a non-publisher. First, we find no basis in the ordinary

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favorable to the pleader, and not necessarily accept the plaintiffs' characterization of their own allegations.

meaning of 'publisher,' the other text of Section 230, or decisions interpreting Section 230, for concluding that an interactive computer service is not the 'publisher' of third-party information when it uses tools such as algorithms that are designed to match that information with a consumer's interests." Id., 66. "Like the decision to place third-party content on a homepage, for example, Facebook's algorithms might cause more such 'matches' than other editorial decisions. But that is not a basis to exclude the use of algorithms from the scope of what it means to be a 'publisher' under Section 230 (c) (1)." Id., 67. According to the *Force* court, the "alleged conduct by Facebook falls within the heartland of what it means to be the 'publisher' of information under Section 230 (c) (1)." Id., 65. The court reached this determination because "[a]ll of [Facebook's] decisions, like the decision to host third-party content in the first place, result in 'connections' or 'matches' of information and individuals, which would have not occurred but for the internet services' particular editorial choices regarding the display of third-party content." Id., 67.

The court finds this discussion in *Force* to be persuasive,[11] and concludes that the fact that an interactive computer service allegedly created user recommendation technologies and algorithms that operate to connect users together does not change the computer service's status as a publisher.[12] See, e.g., *L.W.* v. *Snap, Inc.*, supra, Docket No. 22CV619-LAB-MDD (wherein the court specifically held that Snapchat's "Quick Add" feature "more closely implicate[s] a

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[11] Although technically not binding on this court, "[i]t is well established that when Connecticut courts interpret federal statutes, [t]he decisions of the Second Circuit Court of Appeals carry particularly persuasive weight . . . ." (Internal quotation marks omitted.) *Modzelewski's Towing & Recovery, Inc.* v. *Commissioner of Motor Vehicles*, 322 Conn. 20, 32, 139 A.3d 594 (2016), cert. denied, 580 U.S. 1216, 137 S. Ct. 1396, 197 L. Ed. 2d 554 (2017). Accordingly, this court relies on the precedent of cases from the Second Circuit Court of Appeals when they are applicable.

[12] Notably, at oral argument, the plaintiffs' counsel essentially admitted that the court would have to rule in favor of the defendants, at least with respect to the Quick Add feature, if it followed the reasoning of the *Force* case.

publication function than a design or development function."). Nor do allegations of an application's lack of identify and age verification remove the "publisher" designation. See, e.g., *Mother Doe* v. *Grindr, LLC*, United States District Court, No. 5:23-CV-193-JA-PRL (M.D. Fla. October 26, 2023) (appeal filed) (stating that a claim raising "failure to implement basic safety measures to protect minors . . . treat[s] [d]efendants as a publisher of information . . . [because it] is 'inextricably linked' to [d]efendants' publication of [the individual who sexually assaulted the minor's] messages to [the victim]"). Similarly, allegations of failure to warn of an application's potential danger do not remove the "publisher" status. See, e.g., *Herrick* v. *Grindr, LLC*, 306 F. Supp. 3d 579, 588 (S.D.N.Y. 2018), aff'd, 765 Fed. Appx. 586 (2d Cir.), cert. denied, 140 S. Ct. 221, 205 L. Ed. 2d 135 (2019) (stating that "[t]o the extent [the plaintiff] has identified a defect in Grindr's design or manufacture or a failure to warn, it is inextricably related to Grindr's role in editing or removing offensive content—precisely the role for which Section 230 provides immunity").

In an attempt to avoid this result, the plaintiffs cite to a number of different cases. Almost all of them are distinguishable from the present matter. For example, in *Lemmon* v. *Snap, Inc.*, 995 F.3d 1085 (9th Cir 2021), the parents of children who died in a high-speed automobile accident brought suit after their decedents used a Snapchat filter to determine how fast they were going. The plaintiff parents alleged that Snapchat's filter encouraged the decedents to drive at over 100 miles per hour, and thus it incentivized them to drive at too fast of a speed. The Ninth Circuit Court of Appeals determined that "[i]t is . . . apparent that the [p]arents' amended complaint does not seek to hold Snap liable for its conduct as a publisher or speaker. Their negligent design lawsuit treats Snap as a products manufacturer, accusing it of negligently designing a product (Snapchat) with a defect (the interplay between Snapchat's reward system and the Speed Filter). Thus, the duty that Snap allegedly violated springs from its

distinct capacity as a product designer. . . . This is further evidenced by the fact that Snap could have satisfied its alleged obligation—to take reasonable measures to design a product more useful than it was foreseeably dangerous—without altering the content that Snapchat's users generate. . . . Snap's alleged duty in this case thus has nothing to do with its editing, monitoring, or removing of the content that its users generate through Snapchat." (Citations omitted; internal quotation marks omitted.) Id., 1092. The result in *Lemmon* makes sense, of course, because the plaintiffs there did not attempt to hold the defendant liable for publication of third-party content. Rather, the case rested solely on an alleged defect in the Snapchat application that did not involve statements made by third parties when using Snapchat.[13] Another factually similar case cited by the plaintiffs is *Maynard* v. *Snapchat, Inc.*, 870 S.E. 2d 739 (Ga. 2022). *Maynard*, however, does not even analyze the potential relevancy of the CDA. That case, therefore, is also not helpful for the plaintiffs.

A different group of cases relied on by the plaintiffs is also inapposite. In both *Bolger* v. *Amazon.com, LLC*, 53 Cal. App. 5th 431, 267 Cal. Rptr. 3d 601 (2020) and *Erie Ins. Co.* v. *Amazon.com, Inc.,* 925 F.3d 135 (4th Cir. 2019), the plaintiffs sued an online marketplace for selling them an allegedly defective product. The *Bolger* and *Erie* courts rejected the

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[13] One of the cases cited by the plaintiffs is *A.M.* v. *Omegle.com, LLC*, 614 F. Supp. 3d 814 (D. Or. 2022). In *A.M.*, the minor plaintiff brought a product liability claim against an online chat room that randomly paired her with a much older man who proceeded to sexually abuse her online. The *A.M.* court denied the defendant's Fed R. Civ. P. 12 (b) (6) motion to dismiss and stated that the "[p]laintiff does not seek to treat [the defendant] as a publisher of information under Section 230 of the CDA under *Lemmon*." Id., 820. The court acknowledges that this case does support the arguments advanced by the plaintiffs in this matter. Nevertheless, in the court's view, if *A.M.* would have been decided in accordance with Second Circuit precedent, the result may have been different. Similarly, in the California trial-level decision recently submitted by the plaintiffs, *Neville* v. *Snap, Inc.*, California Superior Court, Los Angeles County, Docket No. 22STCV3500 (January 2, 2024), the court acknowledged the existence of *Force* v. *Facebook, Inc.*, supra, 934 F.3d 53, but it chose not to follow that case. Indeed, the *Neville* court quoted the *Force* concurring and dissenting opinion at length instead of the majority opinion. Therefore, *Neville* is of little persuasive value to this court.

applicability of CDA immunity because the "products liability claims . . . are not based on the publication of another's speech. The underpinning of [the plaintiff's] claims is its contention that Amazon was the seller of the [product] and therefore was liable as the seller of a defective product. There is no claim made based on the content of speech published by Amazon — such as a claim that Amazon had liability as the publisher of a misrepresentation of the product or of defamatory content." (Emphasis omitted.) Id., 139-40. Unlike *Bolger* and *Erie*, there is no allegation here that C.O. actually purchased any product from the defendants. Therefore, *Bolger* and *Erie* are not persuasive precedent in support of the plaintiffs' arguments.

Accordingly, the court determines that the allegations of this case fall squarely within the ambit of the immunity afforded to "an interactive computer service" that acts as a "publisher or speaker" of information provided by another "information content provider." 47 U.S.C. § 230 (c) (1). The plaintiffs clearly allege that the defendants failed to regulate content provided by third parties such as Sharp and Rodriguez when they were using the defendants' service. Therefore, as recently held by a federal district court judge when analyzing similar claims against the dating application Grindr, "as [the plaintiffs'] claims in essence seek to impose liability on Grindr for failing to regulate third-party content, they require that the [c]ourt treat Grindr as a publisher or speaker." *Doe* v. *Grindr, Inc.*, United States District Court, Docket No. 2:23-CV-02093-ODW (PDx) (C.D. Cal. December 28, 2023) (appeal filed) (dismissing plaintiff's claims sounding in defective product design, defective product manufacturing, defective product warning, negligence and negligent misrepresentation). As each of the plaintiffs' causes of action arise out of this same factual background, the court is compelled to conclude that all of the plaintiffs' claims are legally insufficient.[14] Moreover, as the plain

[14] Notably, the plaintiffs make no written argument that certain of their causes of action may not be covered by CDA immunity. Rather, in the section of their memorandum of law that discusses the applicability of the CDA, there is no attempt by the plaintiffs to differentiate between their

language of the CDA "preempts any state law that is inconsistent with its protections," the court must strike all of the counts of the plaintiffs' complaint. [15] *Baiqiao Tang* v. *Wengui Guo*, United States District Court, Docket No. 17 Civ. 9031 (JFK) (S.D.N.Y. November 2, 2020).

As previously noted by the First Circuit Court of Appeals when ruling on a case that raised similar issues: "This is a hard case—hard not in the sense that the legal issues defy resolution, but hard in the sense that the law requires that [the court] . . . deny relief to plaintiffs whose circumstances evoke outrage. The result [the court] must reach is rooted in positive law. Congress addressed the right to publish the speech of others in the Information Age when it enacted the [CDA] . . . ." *Jane Doe No. 1* v. *Backpage.com, LLC*, 817 F.3d 12, 15 (1st Cir. 2016), cert. denied, 580 U.S. 1083, 137 S. Ct. 622, 196 L. Ed. 2d 579 (2017). It is the court's function to apply the law in its current form. As stated by our Appellate Court when previously ruling on a case involving the CDA, matters such as this one "can make faithful interpretation of statutes difficult. Without further legislative action, however, there is little [this court can] do in [its] limited role but join with other courts and commentators in expressing [its] concern with the statute's broad scope." *Vacquez* v. *Buhl*, supra, 150 Conn. App. 133 n.8.

For the foregoing reasons, the court grants the defendants' motion to strike in its entirety.

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various claims. Moreover, as the court has concluded that it must strike all of the plaintiffs' causes of action, it need not examine the myriad of other arguments raised by the defendants in support of striking each of the individual counts.

[15] The court need not engage in the extensive preemption analysis urged by the plaintiffs because "when a federal law contains an express preemption clause, [the court] focus[es] on the plain wording of the clause, which necessarily contains the best evidence of Congress' preemptive intent. . . . [A court] do[es] not invoke any presumption against pre-emption when a statute contains an express-preemption clause." (Citations omitted; internal quotation marks omitted.) *Buono* v. *Tyco Fire Products, LP*, 78 F.4th 490, 495 (2d Cir. 2023). According to its plain text, the CDA clearly preempts state law claims are that inconsistent with its protections.

Bellis, J.