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SAN DIEGO, CALIFORNIA – On October 26, 2020, fifteen YouTube content creators filed a federal lawsuit against Google and YouTube, alleging in seventeen claims for relief, that Google and YouTube breached the Terms of Service and violated their First Amendment rights, when they summarily de-platformed the Plaintiffs’ channels and removed their content from YouTube without advance notice.

The Plaintiffs are the creators of YouTube channels, including: JustInformed Talk, SGT Report, X22 Report, SpaceShot 76, TruReporting, RedPill78, Edge of Wonder, Praying Medic, Amazing Polly, Woke Societies, Daniel Lee, Deception Byes, InTheMatrixxx, Destroying the Illusion and Sarah Westall. Together, their news and social commentary channels have reached more than 800 million views and together they had more YouTube subscribers than many legacy news channels, such as C-SPAN, The New York Times, and NBC News. Plaintiffs cite a recent study by the Pew Research Center that concludes that many Americans get their news from independent YouTube channels along the same metrics as legacy or traditional news sources.

YouTube and Google are expected to defend the case and claim that Section 230 of the Communications Decency Act provides them immunity for the actions they took against conservative commentators, just 19 days before the November 3 Presidential Election. However, the Ninth Circuit has recently issued an opinion, retreating from the broad interpretation of the immunity that social media has used for years to defend lawsuits from its contract partners and users. The Section 230 immunities were provided by Congress as a means to give internet providers an ability to remove content that was considered “obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.” *Enigma Software Group USA LLC. V. Malwarebytes, Inc.*, No. 17-17351 (Opinion filed September 12, 2019). The Ninth Circuit Court of Appeals found persuasive the notion that the “unbounded reading” of Section 230 previously employed by social media giants such as YouTube would allow a content provider to “block content for anticompetitive purposes or merely at its malicious whim.”

The Plaintiffs allege that YouTube removed their channels without giving them notice or without cause under the Terms of Service that YouTube itself drafted and imposed on the Plaintiffs. The Plaintiffs allege that YouTube also violated the First Amendment rights of the Plaintiffs, and the public they serve through their social commentary, news and information channels. Although many courts have rejected the notion that YouTube is subject to the First Amendment, concluding that YouTube is a private party, the Complaint alleges that YouTube acted at the behest, was encouraged by and coerced by Congress, Speaker of the House Nancy Pelosi and Representative Adam Schiff. The Plaintiffs attach to the Complaint letters that Representative Schiff published on Congressional letterhead that urged that content be removed and replaced. The Plaintiffs also reference the House’s recent action by the House, in passing House Resolution 1154, which condemned certain content and specifically mentioned social media. In direct response to Representative Schiff’s published letter demanding censorship, YouTube Chief Executive Officer Susan Wojcicki responded by Tweet: “Thanks for reaching out, we’re working every day to protect people from misinformation and help them find authoritative information. We appreciate your partnership and will continue to consult with Members of Congress as we address

the evolving issues around #COVID19.” The Plaintiffs allege that under Supreme Court precedent, if a private party acts when it is encouraged or coerced by the government or its agents, then the state action theory applies and the First Amendment rights should be protected, particularly from viewpoint discrimination.

This lawsuit follows the filing of a massive antitrust action against Google by the Department of Justice and eleven states.

The “state action” theory was previously raised in by Armenta & Sol, on behalf of an African-American conservative commentator, Young Pharaoh, in July 2020 also against Google and YouTube. Although the Defendants in that case filed a Motion to Dismiss and oral argument was held, Magistrate Judge Virginia DeMarchi has not yet issued a decision.

The lawsuit will be served on Google and YouTube today.

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The Plaintiffs are represented by attorneys M. Cris Armenta and Credence Sol. Both were previously affiliated with Skadden Arps Slate Meagher & Flom LLP. Both are former federal law clerks; Ms. Armenta in the Central District of California, and Ms. Sol in the Ninth Circuit Court of Appeals. Ms. Armenta has been named one of the top 100 female attorneys in California and is on the peer-reviewed SuperLawyers list for civil litigation. Ms. Armenta is a former member of the Board of Directors of the American Civil Liberties Union in Los Angeles. Ms. Armenta’s law practice focuses on civil litigation, entertainment, real estate, and the recovery of abducted children. Ms. Sol’s practice focuses on civil litigation and intellectual property, in which she has a Ph.D; she has published several articles on Internet law and international freedom of speech issues. Both Ms. Armenta and Ms. Sol have previously litigated against Google.