IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ALEX BERENSON,

Plaintiff,

v.

JOSEPH R. BIDEN, JR., President of the United States, in his official capacity;

ANDREW M. SLAVITT, Senior Advisor to the COVID-19 Response Coordinator, in his official capacity, and in his individual capacity;

ROBERT FLAHERTY, Director of Digital Strategy at the White House, in his official capacity, and in his individual capacity;

VIVEK MURTHY, M.D., Surgeon General of the United States, in his official capacity, and in his individual capacity;

SCOTT GOTTLIEB, M.D., former FDA Commissioner and Member of the Board of the Directors of Pfizer, Inc.; and

ALBERT BOURLA, PH.D., D.V.M., Chief Executive Officer of Pfizer, Inc.,

Defendants.

Case No.: _____

COMPLAINT

Jury Trial Demanded

INTRODUCTION

1. In 2017, a well-known politician defended free speech: "The First Amendment is one of the defining features of who we are in the Bill of Rights," he said. "And to shut it down in the name of what is appropriate is simply wrong. It's wrong." Ultimately, "if your idea is big enough it should be able to compete." National Agenda Speaker Series, Univ. of Delaware, Oct. 17, 2017, at 41-42, https://tinyurl.com/4tns8rw3.

2. If President Biden's deeds had matched his words, this lawsuit would be unnecessary. Instead, members of his administration engaged in a nearly unprecedented conspiracy to suppress Mr. Berenson's First Amendment rights. Through 2021, they—and a senior board member at Pfizer, Inc. which has made more than $70 billion selling COVID-19 vaccines—worked together to pressure Twitter to suspend Mr. Berenson's account and mute his voice as a leading COVID-19 vaccine skeptic. The White House and the Biden Administration did this at the same time government officials promoted their views on the necessity of COVID-19 vaccination on Twitter, effectively blocking Mr. Berenson from commenting on their own statements or making his own.

3. In August 2021, after months of public and secret pressure, Defendants succeeded. Twitter banned Mr. Berenson. The censorship harmed both Mr. Berenson and a clearly identifiable class of nearly 100 million Americans whose interests he helped represent—Americans who either had questions about the vaccine or did not want to be forced to take a shot that they feared had been rushed through development and lost its ability to prevent COVID-19 infections within months.

4. These allegations may sound extraordinary, but the conspirators' own words, documents from Twitter and the government, and discovery from federal officials in a lawsuit filed by the States of Missouri and Louisiana, detail their efforts.

5. As the conspirators knew, Twitter was and remains a vital platform for journalism and debate. The government Defendants, including President Biden, use Twitter as a public forum "as an important tool of governance and executive outreach." *Knight First Amend. Inst. at Columbia Univ. v. Trump*, 928 F.3d 226, 236 (2d Cir. 2019), *cert. granted, judgment vacated sub nom. Biden v. Knight First Amend. Inst. at Columbia Univ.*, 141 S. Ct. 1220 (2021). These

efforts were particularly the case with respect to the federal government's attempts to persuade and then coerce Americans to receive a COVID-19 vaccine. President Biden even used Twitter to announce his Administration's COVID-19 vaccine mandate.

6. Meanwhile, through his Twitter account, Mr. Berenson was a highly visible obstacle to their efforts. His Twitter feed received more than 1 billion impressions in 2021, and its popularity increased as the year progressed. President Biden himself was aware of and supportive of his Administration's efforts to force the platforms to act against vaccine skeptics like Mr. Berenson.

7. Only days after President Biden's inauguration in January 2021, federal officials began to press Twitter to remove posts that raised questions about the safety of the mRNA shots. But their specific animus against Mr. Berenson went further. In a secret White House meeting in April 2021, the conspirators—led by Andrew Slavitt, Senior Advisor to the White House's COVID-19 Response Coordinator—specifically targeted Mr. Berenson for removal. The conspirators did not simply ask Twitter to remove a specific post Mr. Berenson made. Rather they pushed Twitter to ban him entirely, an unconstitutional prior restraint on his speech.

8. But Mr. Slavitt and the other conspirators did not count on Twitter's reluctance to suspend Mr. Berenson. Their initial pressure campaign failed. After repeated internal reviews, Twitter found that Mr. Berenson had not violated the platform's rules about COVID-19. During the spring of 2021, Twitter told both the conspirators and Mr. Berenson himself that he had done nothing wrong.

9. Twitter's judgment was correct. Throughout the period in which the conspirators demanded his removal, Mr. Berenson provided links to articles in reputable scientific journals and commentary on them. He was among the first American journalists to note the potential link

between the mRNA shots and myocarditis, a connection health authorities have now acknowledged. *See, e.g.*, CDC, *Clinical Considerations: Myocarditis and Pericarditis after Receipt of mRNA COVID-19 Vaccines Among Adolescents and Young Adults*, https://www.cdc.gov/vaccines/covid-19/clinical-considerations/myocarditis.html (last updated Sept. 29, 2022).

10. Throughout this period, Mr. Berenson was careful not to attack the mRNA vaccines as wrong for older Americans at the highest risk from COVID-19. In an article published in April 2021, he recommended them for people over 70 and said that people between 50 and 70 should decide for themselves based "on personal risk factors." Many European countries now make similar recommendations. In January 2023, for example, the United Kingdom prospectively barred healthy adults under 50 from receiving a COVID-19 vaccine without a specific recommendation from a medical professional. Joe Pinkstone, *Covid-19 booster jab offer set to end*, The Telegraph, Jan. 25, 2023, https://archive.is/3a86q#selection-1617.0-1617.136.

11. Dr. Anthony Fauci himself has now expressed concerns over the effectiveness of the COVID-19 vaccines. In an article he co-authored in January 2023, Dr. Fauci claimed that the "SARS-CoV-2 vaccines saved innumerable lives and helped to achieve early partial pandemic control," but that as variants emerged "deficiencies" in the COVID-19 vaccines "reminiscent of influenza vaccines have become apparent." David M. Morens, Jeffrey K. Taubenberger & Anthony S. Fauci, *Rethinking next-generation vaccines for coronaviruses, influenzaviruses, and other respiratory viruses*, 31 Cell Host & Microbe 146, 146 (2023), *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9832587/pdf/main.pdf. Regarding flu shots, Dr.

Fauci argued those vaccines have "rates of effectiveness… [that] would be inadequate for licensure for most other vaccine-preventable diseases." *Id.*

12. In fact, the conspirators targeted Mr. Berenson precisely *because* he was not making bizarre accusations about the vaccines. Their own internal discussions reveal they were more concerned about plausible skepticism like his than unlikely theories, like the charge that the vaccines somehow contained "microchips."

13. In July 2021, the conspiracy to censor Mr. Berenson took on new urgency. The Biden Administration and Pfizer became aware the mRNA vaccines were losing their efficacy against infection far more quickly than they had expected, raising the likelihood that additional "booster" shots and vaccine mandates would soon be required. The White House knew many Americans would dislike those measures, particularly mandates—which President Biden previously said would not be imposed.

14. So the conspirators redoubled their efforts to force Twitter to censor Mr. Berenson. Mr. Slavitt was at the center of the conspiracy. In June, Mr. Slavitt had left his federal position as senior advisor for the COVID-19 response, but he remained close to White House officials, including then White House Chief of Staff Ron Klain, as well as public health officials like Surgeon General Dr. Vivek Murthy. Mr. Slavitt also had a close relationship with Dr. Gottlieb, who was not merely a senior board member at Pfizer Inc. but the former commissioner of the Food and Drug Administration. Mr. Slavitt and Dr. Gottlieb had authored papers together, and Dr. Gottlieb was repeatedly a guest on Mr. Slavitt's podcast, which Mr. Slavitt broadcast before and after working in the White House. But Mr. Slavitt's connection to Pfizer did not end there. Pfizer was a sponsor of Mr. Slavitt's podcast, and Mr. Slavitt interviewed Pfizer Chief Executive Officer Albert Bourla on the podcast in late July 2021.

15. During this period, the conspiracy had both public and private arms. Mr. Slavitt secretly and repeatedly urged Twitter to act against Mr. Berenson. Publicly, Mr. Slavitt and the other conspirators generally avoided mentioning Mr. Berenson by name, but they harshly attacked Twitter and other platforms for allowing skepticism about the COVID-19 vaccines, which they labeled "misinformation."

16. On July 15 and 16, 2021, the White House press secretary publicly demanded social media companies take aggressive action against COVID-19 vaccine skeptics. On July 16 President Biden himself said social media platforms, including Twitter, were "killing people" by allowing users to publish COVID-19 vaccine skepticism. Within *hours* of President Biden's comments, Twitter for the first time took public action against Mr. Berenson, locking him out of his account. In late July, Twitter suspended Mr. Berenson's account twice more, putting him at risk of permanent suspension if he received one more "strike."

17. On August 6, 2021, Twitter restored Mr. Berenson's access to his account. Throughout August, he publicized data showing the vaccines were losing their effectiveness against COVID-19 infection. His tweets received millions of views a day, about 200 million for the month. Yet Twitter took no action against him, frustrating the conspirators. Then Dr. Gottlieb stepped in. On August 24, he complained secretly to Twitter about Mr. Berenson. Notably, Dr. Gottlieb complained not to Pfizer's typical contacts at Twitter but to Todd O'Boyle, a Twitter lobbyist in Washington—the *same* Twitter executive that Mr. Slavitt and other White House officials had contacted about Mr. Berenson.

18. Twitter responded to Dr. Gottlieb with alacrity, scheduling a conference call on August 27, where Dr. Gottlieb pressed the company about Mr. Berenson's continued access to the platform. The next day, August 28, Dr. Gottlieb again contacted Twitter and Mr. O'Boyle,

this time over a tweet from Mr. Berenson that began, "It doesn't stop infection. Or transmission," and ended, "And we want to mandate it? Insanity."

19. Finally, the conspirators forced Twitter's hand. A few hours after Dr. Gottlieb's complaint, Twitter banned Mr. Berenson permanently and told media outlets he had committed "repeated violations of our COVID-19 misinformation rules."

20. Twitter itself has now admitted Mr. Berenson did not violate its rules. In July 2022—*before* Elon Musk took over Twitter—the same Twitter executives who had banned him settled a lawsuit he had filed against the company by restoring his account without conditions and acknowledging publicly that his "tweets should not have led to his suspension." Twitter has also removed misleading labels it affixed to Mr. Berenson's 2021 tweets. But the damage has already been done—to Mr. Berenson and millions of Americans who shared his concerns about the vaccines.

21. In September 2021, just days after Mr. Berenson lost his voice on Twitter, the Biden Administration imposed several workplace vaccine mandates. The broadest mandate forced tens of millions of adult Americans to take COVID-19 vaccines or risk losing their jobs before the Supreme Court struck it down four months later. Banned from Twitter, Mr. Berenson was unable to report and comment on the mandate to his followers, and those to whom they would have forwarded his tweets.

22. Dr. Gottlieb and Pfizer Chief Executive Officer Albert Bourla had financial incentives to silence Mr. Berenson. The Biden Administration had even larger political incentives. Government officials painted vaccination against COVID-19 as a life-and-death issue. To them, Mr. Berenson's constitutional and legal rights to petition the government, speak freely, and report were mere inconveniences.

23. The First Amendment prohibits governmental conspiracies like this. COVID-19 did not suspend the Constitution or the rights it enumerates for Americans. As the Supreme Court put it more than 150 years ago, confronting the crisis of a civil war, "[t]he Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government." *Ex Parte Milligan*, 71 U.S. 2, 120-21 (1866).

24. Similarly, 42 U.S.C. § 1985(3), a federal law that dates to the Reconstruction era, prohibits private and governmental actors from working together to violate the constitutional rights of Americans. This lawsuit seeks to hold *all* the conspirators accountable for their censorship—which both damaged Mr. Berenson personally and helped rig the debate over the Biden Administration's illegal workplace vaccine mandates.

25. In the case that is the closest immediate precedent to this one, this Court found that President Donald Trump could not block Twitter users from seeing or commenting on his *private* Twitter account. By using the account to make official pronouncements, President Trump turned it into a public forum, and his "blocking of the plaintiffs based on their political speech constitutes viewpoint discrimination that violates the First Amendment." *Knight First Amend. Inst. at Columbia Univ. v. Trump*, 302 F. Supp. 3d 541, 549 (S.D.N.Y. 2018).

26. Similarly, on March 20, a federal district court in Louisiana allowed another lawsuit related to federal efforts to suppress dissenting views around COVID-19 to move ahead. As the Court explained in refusing to grant defendants' motion to dismiss the lawsuit, "Government action, aimed at the suppression of particular views on a subject which

discriminates on the basis of viewpoint, is presumptively unconstitutional." *Missouri v. Biden*, Case No. 3:22-cv-01213-TAD-KDM, ECF No. 224, at 69 (W.D. La. Mar. 20, 2023). "Viewpoint discrimination is an egregious form of content discrimination," the district court noted. *Id.* "When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant." *Id.* (quoting *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995)). Further, "[t]hreatening penalties for future speech goes by the name of 'prior restraint,' and a prior restraint is the quintessential first-amendment violation." *Id.* (internal quotation marks omitted).

27. Here, President Biden, Mr. Slavitt, and the other actors in this conspiracy used their Twitter accounts to make official pronouncements encouraging vaccination. Mr. Berenson sought to respond by using Twitter to engage in protected speech, including *directly* criticizing President Biden, Mr. Slavitt, their tweets, and their efforts to encourage vaccination. In Mr. Slavitt's case, Mr. Berenson's comments occurred only a few weeks before Mr. Slavitt first used his position at the White House try to force Twitter to block him.

28. The pressure exerted on Twitter by Mr. Slavitt and the other defendants to force Twitter to protect their accounts from Mr. Berenson's questions by blocking him was thus a prima facie First Amendment violation. "The irony in all of this is that we write at a time in the history of this nation when the conduct of our government and its officials is subject to wide-open, robust debate," the Second Circuit noted in affirming this Court's decision in *Knight*. 928 F.3d at 240. "This debate encompasses an extraordinarily broad range of ideas and viewpoints and generates a level of passion and intensity the likes of which have rarely been seen. This debate, as uncomfortable and as unpleasant as it frequently may be, is nonetheless a good thing," the court observed, before "remind[ing] the litigants and the public that if the First Amendment

means anything, it means that the best response to disfavored speech on matters of public concern is more speech, not less." *Id.* This case is about reminding Defendants, including President Biden, of that seemingly forgotten lesson.

PARTIES, JURISDICTION, AND VENUE

29. Independent journalist Alex Berenson is a best-selling author. Mr. Berenson wrote the book *Pandemia* regarding the public policy response to the COVID-19 pandemic. He publishes his journalism on Substack.com under the name *Unreported Truths* and on Twitter at @AlexBerenson. Mr. Berenson is a resident of the State of New York.

30. Joseph R. Biden, Jr., is the President of the United States. He is sued in his official capacity.

31. Andrew (Andy) Slavitt is a resident of the State of California. From January through June 2021, Mr. Slavitt served as President Biden's White House Senior Advisor for the COVID-19 response. He is the author of a book on the COVID-19 pandemic called *Preventable*, which he marketed and promoted on Twitter. He is sued in both his official and individual capacity.

32. Rob Flaherty is the Director of Digital Strategy at the White House. Mr. Flaherty is sued in his official capacity and in his individual capacity.

33. Vivek Murthy, M.D., is the Surgeon General of the United States. Dr. Murthy is sued in his official capacity and in his individual capacity.

34. Scott Gottlieb, M.D., is a resident of the State of Connecticut. From 2017 to 2019, he served as Commissioner of the Food and Drug Administration. He currently serves on Pfizer's Board of Directors and is the author of a book on the COVID-19 pandemic called *Uncontrolled Spread*.

35. Albert Bourla, Ph.D., D.V.M., is a resident of the State of Connecticut. Dr. Bourla is the Chief Executive Officer of Pfizer, manufacturer of one of the COVID-19 vaccines.

36. Defendants are properly joined in this action under Fed. R. Civ. P. 20.

37. While employed by the federal government, President Biden, Mr. Slavitt, Mr. Flaherty, and Dr. Murthy violated the rights of a resident of this forum. Upon leaving the federal government, Mr. Slavitt worked as the general partner of a private equity fund based in New York, New York. Mr. Slavitt has traveled to New York to speak on COVID-19-related matters. In June 2021, St. Martin's Press—a publisher based in this forum—published Mr. Slavitt's book *Preventable: The Inside Story of How Leadership Failures, Politics, and Selfishness Doomed the U.S. Coronavirus Response*.

38. Dr. Gottlieb routinely conducts business in this forum as a contributor to CNBC and as a sitting board member of Pfizer, a company which has a principal place of business in New York, New York. In September 2021, HarperCollins—a publisher based in this forum – published Dr. Gottlieb's book *Uncontrolled Spread*. Dr. Bourla similarly engages in business in this forum, including serving as Chief Executive Officer of Pfizer in the company's New York, New York headquarters. In March 2022, New York-based HarperCollins published Dr. Bourla's book *Moonshot: Inside Pfizer's Nine-Month Race to Make the Impossible Possible*. Aware Mr. Berenson is a resident of this forum, Defendants engaged in tortious conduct to harm Mr. Berenson's relationship with Twitter.

39. This Court has personal jurisdiction over Defendants under both the Due Process Clause of the Constitution and New York's Long-Arm Statute.

40. This Court has subject matter jurisdiction under 28 U.S.C. § 1331. This Court has supplemental jurisdiction over Mr. Berenson's state law claims under 28 U.S.C. § 1367.

41. This Court also has subject matter jurisdiction under 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy is greater than $75,000.

42. Venue is proper in this forum under 28 U.S.C. § 1391.

FACTUAL BACKGROUND

I. Independent journalist Alex Berenson and his critical coverage of the pharmaceutical industry and Pfizer.

43. Alex Berenson is an independent journalist, former *New York Times* reporter, and best-selling author. After graduating from Yale University, Mr. Berenson started his journalism career at *The Denver Post* before joining TheStreet.Com, a groundbreaking financial news website. In 1999, Mr. Berenson joined *The New York Times*, where he reported on the pharmaceutical industry and other topics.

44. In late December 2006, Mr. Berenson reported for the *Times* how Eli Lilly had downplayed the risks of its blockbuster schizophrenia drug Zyprexa. Mr. Berenson reported on internal Eli Lilly documents showing the company knew "the drug might cause unmanageable weight gain or diabetes." Alex Berenson, *Eli Lilly Said to Play Down the Risk of Top Pill*, N.Y. Times, Dec. 17, 2006, at A1. Mr. Berenson's reporting kicked off an investigation that ultimately led to the Indianapolis-based drug maker paying $1.415 billion as part of a settlement to resolve claims regarding off-label promotion. Eli Lilly and Company Agrees to Pay $1.415 Billion to Resolve Allegations of Off-label Promotion of Zyprexa, U.S. Dep't of Justice, Jan. 15, 2009, https://www.justice.gov/archive/opa/pr/2009/January/09-civ-038.html.

45. Mr. Berenson brought this same rigor to his coverage of Pfizer for the *Times*. In 2004, he reported on Pfizer's decision to "immediately stop advertising Celebrex, its best-selling arthritis pain reliever, to consumers after a study showed that high doses were associated with an

increased risk of heart attacks." Alex Berenson, *Pfizer to Halt Advertising of Celebrex to Consumers*, N.Y. Times, Dec. 20, 2004. Mr. Berenson also covered Pfizer whistleblowers and changes in the company's management team. *E.g.*, Alex Berenson, *A Long Shot Becomes Pfizer's Latest Chief Executive*, N.Y. Times, July 29, 2006; Alex Berenson, *Pfizer Fires a Vice President Who Criticized the Company's Sales Practices*, N.Y Times, Dec. 2, 2005.

46. Upon information and belief, long before the COVID-19 pandemic, Pfizer was aware of Mr. Berenson, his reporting on the company, and his reputation as a credible and critical investigative reporter with a demonstrated history of making complex pharmaceutical industry issues accessible to general readers.

II. As a twenty-first century public square with hundreds of millions of users, many of them influential, Twitter is the world's premier outlet for journalism. Defendants used the platform to push Americans to take the COVID-19 vaccines, converting Twitter into a public forum.

47. Twitter's "social media platform . . . allows its users to electronically send messages of limited length to the public." *Knight*, 928 F.3d at 230. A Twitter "user can post their own messages (referred to as tweeting)" and "may also respond to the messages of others (replying), republish the messages of others (retweeting), or convey approval or acknowledgement of another's message by 'liking' the message." *Id.*

48. Twitter is the world's premier forum for journalism and conversation. Twitter reaches hundreds of millions of people. Twitter reported that "[i]n the three months ended December 31, 2021, [the company] had 217 million average mDAU, which represents an increase of 13% from the three months ended December 31, 2020." Twitter, Annual Report (Form 10-K), at 42 (Feb. 16, 2022). Related, according to a 2022 survey, "[a]round one-in-five U.S. adults say they use Twitter." Meltem Odabas, *10 facts about Americans and Twitter*, Pew Res. Ctr., May 5, 2022, https://www.pewresearch.org/fact-tank/2022/05/05/10-facts-about-

americans-and-twitter/. Most respondents (fifty-seven percent) reported they consume news on Twitter, with a significant percentage of those adults indicating the platform "increased how much they know about celebrities and public figures." *Id.*

49. Twitter was well aware of its importance in making journalism accessible globally and hosting dissenting views—its role as a modern "public square" open to all voices. Former Twitter CEO Jack Dorsey testified under oath to Congress that "we," meaning Twitter, "believe the people use Twitter as they would a public square." *Jack Dorsey: Twitter users consider it a public square*, CNBC, Sept. 5, 2018, https://www.cnbc.com/video/2018/09/05/jack-dorsey-twitter-users-consider-it-a-publicsquare.htm.

50. Twitter's current owner, industrialist Elon Musk, has framed the platform's significance in nothing short of civilizational terms. In this regard, Mr. Musk wrote that he acquired the company "because it is important to the future of civilization to have a common digital town square, where a wide range of beliefs can be debated in a healthy manner, without resorting to violence." Elon Musk (@ElonMusk), Twitter (Oct. 27, 2022, 9:08 AM), https://twitter.com/elonmusk/status/1585619322239561728.

51. Defendants in this case recognize Twitter's critical importance. President Biden maintains two accounts, @JoeBiden and @POTUS, which have 37 and 30 million followers, respectively. Scott Gottlieb's account, @ScottGottliebMD, has more than 587,000 followers. Andrew Slavitt maintains a Twitter account under the handle @ASlavitt, with 665,000 followers. Rob Flaherty operates @RFlaherty46 with more than 30,000 followers. Surgeon General Murthy's Twitter accounts, @vivek_murthy and @Surgeon_General, have more than 128,000 and 1.1 million followers, respectively. Albert Bourla's account, @AlbertBourla, has nearly 60,000 followers.

52. Defendants in this case have publicly acknowledged the importance of social media, including Twitter. Rob Flaherty, the White House Director of Digital Strategy, recently wrote that "Twitter's value has always been that it's the railroad junction between media, politics, and culture." Rob Flaherty (@Rob_Flaherty), Twitter (Dec. 18, 2022, 3:58 PM), https://twitter.com/Rob_Flaherty/status/1604581777292525569.

53. Andrew Slavitt went so far as to analogize social media to a weapon of mass destruction, calling it "less like a game of telephone and more like a nuclear arsenal that you can weaponize if you want to mislead the public." Andrew Slavitt, *Exposing the Biggest Vaccine Lies and Liars (with Surgeon General Vivek Murthy)*, July 19, 2021, https://lemonadamedia.com/podcast/exposing-the-biggest-vaccine-lies-and-liars-with-surgeon-general-vivek-murthy/.

54. Dr. Scott Gottlieb previously wrote that as "the FDA commissioner" he would "use Twitter as a way to draw attention to actions that were frustrating our public health goals," and that he "saw Twitter as way to instigate steps by others that were important to us achieving our mission." Scott Gottlieb, *Uncontrolled Spread*, at 129 (2021). Dr. Gottlieb described how he repeatedly used the platform to "call on" regulated industry to take certain actions. *Id.*

55. Defendants employed by the federal government routinely use Twitter to communicate regarding policy issues. These Defendants repeatedly took to Twitter to advocate for Americans to take COVID-19 vaccines, including, Pfizer's shot. In April 2021, from his account marked as "United States government official," President Biden tweeted "Get vaccinated, America." President Joe Biden (@JoeBiden), Twitter (Apr. 25, 2021, 5:05 PM), https://twitter.com/JoeBiden/status/1386426190861197313. Less than a month later, from his official @POTUS account, President Biden tweeted that "[t]he rule is now simple: get

vaccinated or wear a mask until you do." President Joe Biden (@POTUS), Twitter (May 13, 2021, 4:12 PM), https://twitter.com/POTUS/status/1392935847863934987. "The choice is yours," President Biden advised. *Id.*

56. President Biden, again utilizing his @POTUS account, later told Americans to "[g]et vaccinated folks. It's free, it's effective, and it's never been easier or more important." President Joe Biden (@POTUS), Twitter (July 11, 2021, 10:47 AM), https://twitter.com/POTUS/status/1414235008408162309. "My message to unvaccinated Americans is this," President Biden tweeted in September 2021, "[w]hat more is there to wait for? What more is there to see?" President Joe Biden (@POTUS), Twitter (Sept. 10, 2021, 12:32 PM), https://twitter.com/POTUS/status/1436366944886837260. "Do the right thing," President Biden told 100 million Americans. *Id.* President Biden later used Twitter to announce his Administration's plan to use the Occupational Safety and Health Administration to issue a rule requiring 100 Americans to receive a COVID-19 vaccination. President Joe Biden (@JoeBiden), Twitter (Nov. 4, 2021, 12:03 PM), https://twitter.com/POTUS/status/1456291123547316224.

57. President Biden took to Twitter again to criticize unvaccinated Americans in late December 2021. "We know that vaccines are working," he wrote. "If you are boosted with Pfizer and Moderna, you have a high degree of protection against severe illness with Omicron. If you're an adult choosing to be unvaccinated, you will face an extremely difficult winter for your family and community." President Joe Biden (@POTUS), Twitter (Dec. 20, 2021, 8:46 PM), https://twitter.com/POTUS/status/1473107461548687360. In January 2022, President Biden again sounded moral themes, tweeting that getting a COVID-19 vaccine "saves lives," while referring to receiving the vaccinations as "your patriotic duty." President Joe Biden (@POTUS), Twitter (Jan. 3, 2022), https://twitter.com/potus/status/1478110255653564416.

58. President Biden's COVID-19 aide, Mr. Slavitt, also used Twitter to promote the COVID-19 vaccines. "Keep getting vaccinated," Mr. Slavitt tweeted from his government account in May 2021, noting a fall in COVID-19 deaths. Andy Slavitt (@ASlavitt46), Twitter (May 21, 2021, 12:28 AM), https://mobile.twitter.com/aslavitt46/status/1395597443639779329. "Get vaccinated to crush the virus," Mr. Slavitt tweeted on May 31, 2021. Andy Slavitt (@ASlavitt), Twitter (May 31, 2021, 4:08 PM), https://twitter.com/ASlavitt/status/1399457782689112064. After leaving the government, Mr. Slavitt tweeted about how "[t]he increasingly assertive position of requiring vaccinations has clear moral grounds," echoing President Biden. Andy Slavitt (@ASlavitt), Twitter (Aug. 3, 2021, 10:10 PM), https://twitter.com/ASlavitt/status/1422741799710322690. "More than ever, get vaccinated. Get boosted," Mr. Slavitt tweeted in November 2021. Andy Slavitt (@ASlavitt), Twitter (Nov. 28, 2021, 3:08 PM), https://twitter.com/ASlavitt/status/1465049947695423495.

59. Surgeon General Murthy used his Twitter account to promote Pfizer's COVID-19 vaccine. "Last week, the FDA and CDC gave us one more tool to protect the health of Americans during the #COVID19 pandemic: a Pfizer vaccine booster shot for people in three high risk groups," he tweeted. Surgeon General Vivek Murthy (@Surgeon_General), Twitter (Sept. 29, 2021, 1:01 PM), https://twitter.com/Surgeon_General/status/1443259579001888775. "Starting this week, 12- to 15-year-olds are eligible for the Pfizer #COVID19 vaccine," Dr. Murthy wrote. Surgeon General Vivek Murthy (@Surgeon_General), Twitter (May 14, 2021, 6:54 PM), https://twitter.com/Surgeon_General/status/1393338988749021185. "This is a big moment." *Id.*

III. In early 2020, Alex Berenson emerged as a leading critic of the public policy response to COVID-19, utilizing Twitter as the primary outlet for his reporting. Even though influential third parties complained about his reporting, Twitter resisted censorship calls and kept Mr. Berenson's voice on the platform, at least initially.

60. After he left *The New York Times*, Mr. Berenson continued to cover health care issues. In January 2019, Mr. Berenson published a book called *Tell Your Children*, in which he reported on marijuana use and mental illness. Mr. Berenson spoke before professional medical societies and even testified in front of Congress about the potential harms of cannabis. Like so many other authors and journalists, Mr. Berenson used Twitter to promote his journalism and *Tell Your Children*.

61. Mr. Berenson joined Twitter in November 2009. The company verified his account in or around 2014, affixing a blue check mark to his account, acknowledging him as a noteworthy member of the Twitter community. As of January 2020, Mr. Berenson had approximately 7,000 Twitter followers, many of whom were drawn to *Tell Your Children* and his previous work in the *Times*.

62. Starting in March 2020, Mr. Berenson's attention turned to COVID-19. This was as governments around the world, including state and local governments here in the United States, issued far-reaching, and in many ways unprecedented, lockdown orders as part of an effort to "flatten the curve" of viral spread and transmission.

63. In late March 2020, Mr. Berenson reported on revised epidemiology models published by Professor Neil Ferguson of Imperial College London. In a six-tweet thread published on March 26, 2020, Mr. Berenson discussed Dr. Ferguson's revised mortality estimates, calling them a "remarkable turn" for an academic who had earlier forecast that 500,000 people would die from COVID-19 in the United Kingdom.

64. The Imperial College London, the recipient of millions of dollars in taxpayer-financed grants from the National Institutes of Health, objected to Mr. Berenson's reporting on Dr. Ferguson. Instead of publicly engaging Mr. Berenson's reporting, the College privately took its concerns to Twitter. On March 28, two days after Mr. Berenson's tweet, the college's Director of Media Relations, Andrew Scheuber, sent an e-mail to Twitter titled "Misinformation on Covid-19 – Imperial College London." "I wanted to make sure you are looking at this extremely popular and dangerously misleading thread," Mr. Scheuber wrote, linking to the tweet above, "among other recent tweets by Alex Berenson." Mr. Scheuber continued, "[t]hese claims, which begun on Twitter, have now become influential elsewhere with widespread misrepresentation of Neil Ferguson's important findings ultimately putting lives at risk." Mr. Scheuber's entire March 28, 2020 e-mail is shown below.

Von: **Scheuber, Andrew P** <a.scheuber@imperial.ac.uk>
Date: Sa., 28. März 2020, 05:18
Subject: Misinformation on Covid-19 - Imperial College London
To: [redacted]twitter.com [redacted]@twitter.com>

Hello,

I wanted to make sure you are looking at this extremely popular and dangerously misleading thread https://twitter.com/alexberenson/status/1243133211011690499?s=21 am ong other recent tweets by Alex Berenson.

As the FT reports and explains the claims are "utterly false" http://ftalphaville.ft.com/2020/03/26/1585245384000/Let-s-flatten-the-coronavirus-confusion-curve/

These claims, which begun on twitter, have now become influential elsewhere with widespread misrepresentation of Neil Ferguson's important findings ultimately putting lives at risk. The Washington Post reports on this https://www.washingtonpost.com/health/2020/03/27/coronavirus-models-politized-trump/

Please could you delete Berenson's tweets or at least flag them for making false claims. They are being amplified by influential voices like Elon Musk.

Best wishes,

Andrew Scheuber

Director of Media Relations
Imperial College London

Tel: +44 (0)20 7594 8197 / +44 (0)7748 272 171

Email: a.scheuber@imperial.ac.uk
www.imperial.ac.uk

65. In response to Mr. Scheuber's request, Twitter "reviewed the thread and the context surrounding it," and concluded that the company "will not take action on this thread,"

meaning Mr. Berenson's March 25 tweets, "at this time as it does not violate the COVID-19 misleading information policy."

66. Twitter's refusal to censor Mr. Berenson's journalism in March 2020 was consistent with the company's then commitment to free speech and its approach to so-called COVID-19 misinformation. In a March 4, 2020 blog post, the company pledged its support for "[p]rotecting the conversation." In a separate blog post co-authored by Twitter's then Head of Trust and Safety Vijaya Gadde, which was originally published on March 16, 2020, and then updated on April 1, 2020, Twitter unveiled its approach to content moderation. The company announced it was "[b]roadening our definition of harm to address content that goes directly against guidance from authoritative sources of global and local public health information." Vijaya Gadde & Matt Derella, *An update on our continuity strategy during COVID-19*, Twitter (Mar. 16, 2020, updated Apr. 1, 2020), https://blog.twitter.com/en_us/topics/company/2020/An-update-on-our-continuity-strategy-during-COVID-19.

67. On May 11, 2020, Twitter announced further action on COVID-19 information. In another blog post, the company explained it "may use labels and warning messages to provide additional explanations or clarifications in situations." Yoel Roth & Nick Pickles, *Updating our approach to misleading information*, Twitter (May 11, 2020), https://blog.twitter.com/en_us/topics/product/2020/updating-our-approach-to-misleading-information. Nowhere in the blog post did Twitter bar discussion or analysis of clinical data, government information, or research articles.

68. Twitter gave personal assurances to Mr. Berenson regarding the company's commitment to debate and free speech. In response to Twitter's new labeling policy, Mr. Berenson tweeted about his concerns about what the new rules might mean for free speech on the

platform. A few hours after Mr. Berenson's tweet, Twitter's then-CEO Jack Dorsey followed his account, meaning Twitter's leadership at the highest level was fully aware of Mr. Berenson and his reporting.

69. The same day Mr. Dorsey followed Mr. Berenson, Brandon Borrman, who then served as Twitter's Vice President of Global Communications, contacted Mr. Berenson about censorship issues. "I work at Twitter and saw your Tweets today," Mr. Borrman said. "Would you be open to having a discussion so I can hear you out? I think you have some nuanced points that could be helpful as [sic] try to move ahead."

70. Mr. Berenson responded, acknowledging Twitter's legitimate interest in reducing the visibility of claims "that the virus is not real, or that it's part of a UN conspiracy to sterilize America, or similar nonsense." Mr. Berenson summarized his approach to reporting on COVID-19 as follows:

> I am trying to raise serious, data-driven questions, based wherever possible on government data or peer-reviewed/preprint papers—I think my most recent tweets tonight capture the flavor. Does universal masking work as a broad policy mandate? The truth is the evidence is pretty weak—not that sick people shouldn't wear them, or maybe that people in confined public transportation (aka NY subways) shouldn't, but what states like NY and CA are saying and doing right now far outruns the evidence.

71. Mr. Borrman responded the following day. "We are trying to take a more nuanced approach to this that recognizes that there is a huge amount of emotion and vitriol [on] all sides of the issue," Mr. Borrman explained. "We're trying to make sure that factual debate finds a way through the emotion, but we're obviously not successful all the time."

72. Bolstered by Twitter's assurances, Mr. Berenson continued to report on COVID-19. In November 2020, for example, Mr. Berenson not only presented critical analysis of lockdowns and mask mandates, but also questioned other non-pharmaceutical interventions such

as contact tracing, saying advice from public health experts had "proven useless." That tweet, which garnered more than 4,700 likes and 1,000 retweets, is shown below.

73. Third parties continued to complain about Mr. Berenson's reporting, but Twitter took no action against Mr. Berenson's account, and he continued to use the platform to report on and analyze data.

IV. After the COVID-19 vaccines receive regulatory authorization, Twitter issues a new COVID-19 misleading information policy, reviews Mr. Berenson's account in March 2021, and concludes he had not violated the company's rules.

74. On November 9, 2020, Pfizer and BioNTech announced positive clinical trial results regarding their COVID-19 vaccine. Far from being "anti-vax," having taken vaccines himself and allowing his children to be vaccinated, Mr. Berenson tweeted that while "more safety data" is needed, "this is legitimately good news," arguing that the emergence of a COVID-19 vaccine might offer a pathway out of the pandemic.

75. One week later, on November 16, Moderna released clinical trial results regarding its vaccine candidate. Mr. Berenson again reacted positively, tweeting that the development was "[m]ore good topline vaccine news," while linking to an article in the *Washington Post* with the headline "Moderna's coronavirus vaccine found to be nearly 95 percent effective in a preliminary analysis."

76. In December 2020, Twitter announced a new policy regarding misleading COVID-19 vaccine information. Twitter Safety, *COVID-19: Our approach to misleading vaccine information*, Twitter (Dec. 16, 2020), https://blog.twitter.com/en_us/topics/company/2020/covid19-vaccine. The company announced it would start to "remove Tweets which advance harmful or misleading narratives about COVID-19 vaccinations, including" the following:

- False claims that suggest immunizations and vaccines are used to intentionally cause harm to or control populations, including statements about vaccines that invoke a deliberate conspiracy;
- False claims which have been widely debunked about the adverse impacts or effects of receiving vaccinations; or
- False claims that COVID-19 is not real or not serious, and therefore that vaccinations are unnecessary.

Id. Twitter explained "we may label or place a warning on Tweets that advance unsubstantiated rumors, disputed claims, as well as incomplete or out-of-context information." *Id.* The company simultaneously promulgated a new COVID-19 misleading information policy, which specifically addressed the COVID-19 vaccines. *COVID-19 misleading information policy*, Twitter (Dec. 16, 2020), https://web.archive.org/web/20201216200114/https://help.twitter.com/en/rules-and-policies/medical-misinformation-policy.

77. In the new policy, Twitter again broadcast its relationship with governments. Twitter explained that "we are enforcing this policy *in close coordination with trusted partners*, including public health authorities, NGOs and *governments*, and continue to use and consult with information from those sources when reviewing content." *Id.* (emphasis added).

78. Mr. Berenson was concerned that the new policies indicated Twitter might start censoring his journalism. Mr. Berenson contacted Twitter executive Brandon Borrman on

December 17, the day after Twitter released its new policy, looking for assurances that Twitter would continue to allow his reporting on COVID-19 vaccines. Many "people [are] complaining I'm raising questions about the vaccine," Mr. Berenson wrote to Mr. Borrman. "So you know, there's no conspiracy theory nonsense," rather "[e]verything I point to about safety comes from the clinical trial data," and "my broader point is simply that we shouldn't be mandating this for adults."

79. Mr. Borrman responded less than four hours later to reassure Mr. Berenson. "The points you're raising should not be an issue at all," Mr. Borrman wrote. "The policy is designed to allow debate and discussion, but to discourage conspiracy theories, etc. Please let me know if you run into any issues."

80. In the winter of 2021, Mr. Berenson continued to tweet skeptically about the vaccines, for example pointing to outbreaks in Israel that had followed the first dose of Pfizer's mRNA shot to raise questions whether the vaccines were working as well as authorities suggested. Twitter took no action against these tweets.

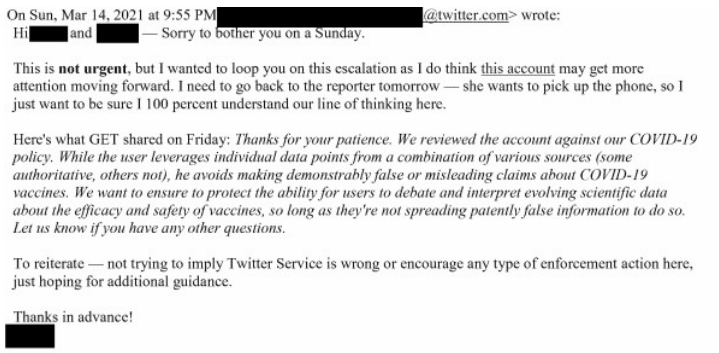
81. On March 1, 2021, Twitter announced a new five-strike policy as part of the company's bar on medical misinformation. *COVID-19 misleading information policy*, Twitter (Mar. 1, 2021), https://web.archive.org/web/20210827062904/https://help.twitter.com/en/rules-and-policies/medical-misinformation-policy. Accounts that committed "[r]epeated violations of this policy" are subject to increasing levels of discipline, up to and including permanent suspension for five or more violations. *Id.*

82. The day after Twitter announced the five-strike policy, Mr. Berenson again contacted the company, seeking assurances he could continue reporting on COVID-19 using the platform:

> Just following up on this in the wake of Twitter's announcement yesterday. I intend to continue to write about the vaccines—as always, with a heavy reliance on governmental data (whether from Israel, the US, or elsewhere) and published studies. I appreciate the fact that Twitter has allowed me to provide a risk-benefit analysis that people are generally not seeing elsewhere and I respect that you do not want conspiracy theories, etc, on the site. If your fact-checkers do have questions about something I've written, I hope you will let me know and give me a chance to respond to it before taking any action.

83. Mr. Borrman responded the same day, *again* reassuring Mr. Berenson that his work was not being targeted under Twitter's policies. "I will say that your name has never come up in the discussions around these policies," Mr. Borrman said. "If it does I will try to ensure you're given a heads up before an action is taken, but I am not always made aware of them before they're executed. If something happens, please let me know."

84. Meanwhile, third party pressure to censor Mr. Berenson continued, leading Twitter to examine his account and find it compliant with the company's rules. In mid-March 2021, Twitter passed an inquiry from a journalist to its Global Escalation Team (GET) unit, which handles complaints about tweets. One Twitter employee quoted the unit's conclusions regarding Mr. Berenson's account. GET had "reviewed [Mr. Berenson's] account against our COVID-19 policy," and found that "[*w*]*hile the user leverages individual data points from a combination of various sources (some authoritative, others not), he avoids making demonstrably false or misleading claims about COVID-19 vaccines.*" (Emphasis in original.) The internal Twitter e-mail containing the conclusions, which are italicized, is shown below.



On Sun, Mar 14, 2021 at 9:55 PM [redacted]@twitter.com> wrote:
Hi [redacted] and [redacted] — Sorry to bother you on a Sunday.

This is **not urgent**, but I wanted to loop you on this escalation as I do think this account may get more attention moving forward. I need to go back to the reporter tomorrow — she wants to pick up the phone, so I just want to be sure I 100 percent understand our line of thinking here.

Here's what GET shared on Friday: *Thanks for your patience. We reviewed the account against our COVID-19 policy. While the user leverages individual data points from a combination of various sources (some authoritative, others not), he avoids making demonstrably false or misleading claims about COVID-19 vaccines. We want to ensure to protect the ability for users to debate and interpret evolving scientific data about the efficacy and safety of vaccines, so long as they're not spreading patently false information to do so. Let us know if you have any other questions.*

To reiterate — not trying to imply Twitter Service is wrong or encourage any type of enforcement action here, just hoping for additional guidance.

Thanks in advance!
[redacted]

85. As shown below, the next day, on March 15, 2021, another Twitter employee confirmed that the above-discussed response was the product of a "**deep dive** [(emphasis added)] on Alex Berenson's account." Again confirming the platform's support for debate, the employee wrote that "it's important to leave room for discussion around the evolving science around vaccines and to allow folks to explore skepticism as long as they are not making demonstrably false or misleading claims." The employee noted that Twitter flagged as misleading one of Mr. Berenson's tweets that the vaccines on the traditional childhood vaccination schedule are "nothing like the mRNA/LNP biotechnology, which is more properly described as a gene therapy than a vaccine," but the company gave Mr. Berenson no notice that this was a "strike" under the policy, and the tweet did not lead to him being locked out of his account.

On Mon, Mar 15, 2021 at 10:36 AM [redacted]@twitter.com> wrote:
Hi [redacted].

On Friday, [redacted] and I with the help of GET did a deep dive on Alex Berenson's account and worked with GET to provide that response. Berenson often cites (at times outdated) studies to piece together his arguments against the use of vaccines. One of the things we'd like to avoid from a policy perspective is wading into the nuances of scientific arguments about the vaccine. That's when we get into tricky territory from a policy perspective and it's something we want to avoid weighing in on. I would flag the "Public debate about the advancement of COVID-19 science and research" section of the COVID-19 help center article. From our perspective, it's important to leave room for discussion around the evolving science around vaccines and to allow folks to explore skepticism as long as they are not making demonstrably false or misleading claims about the vaccine.

However, last night we did take action on one of Berenson's tweets that has been consistent with our past enforcements of the policy. His claim suggests that the mRNA vaccine is gene therapy and thus the vaccine would alter genetic code, which has been debunked by the CDC. I understand that Berenson has provided other documentation, including a Moderna filing and older articles that reference mRNA vaccines generally as associated with gene therapy and an article with the headline "COVID-19 vaccine candidates show gene therapy is a viable strategy". In our assessment neither of those shared references conclude that the mRNA vaccines being administered today are associated with what he referenced as "gene therapy". Our assessment of labeling that particular tweet will remain the same.

Please let me know if you have any further questions or if I can provide more information or clarity. I understand this can be a particularly tricky space, so I want to provide as much as I can from our perspective on this one.

V. Seeing Americans' decision whether to get a COVID-19 vaccine as a life-and-death choice, the Biden Administration directly pressures Twitter to censor Alex Berenson's reporting on the vaccines.

A. "A Case of Life and Death" in a "Wartime Effort": The Biden Administration's View of the COVID-19 Vaccines

86. Even before he took office, President-elect Biden cast Americans' decision on whether to get a COVID-19 shot as a life-and-death choice. President Biden promised to "confront this historical challenge with the full strength of the federal government." *Id.* Then he

outlined the stakes: "The health and economic security of our nation depend on it." *Id.* Fact Sheet: President-elect Biden Outlines COVID-19 Vaccination Plan, Jan. 15, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/15/fact-sheet-president-elect-biden-outlines-covid-19-vaccination-plan/.

87. Less than a week into his Administration, President Biden called the COVID-19 vaccination campaign "a wartime effort; it's not hyperbole." Remarks by President Biden on the Fight to Contain the COVID-19 Pandemic, Jan. 26, 2021, https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/01/26/remarks-by-president-biden-on-the-fight-to-contain-the-covid-19-pandemic/. President Biden explained that "more than 400,000 Americans have already died," exceeding our nation's World War II death toll. *Id.* In President Biden's view, fully vaccinating "300 million Americans" would be "enough . . . to beat this pandemic." *Id.*

88. On February 19, 2021, in remarks at a Pfizer manufacturing facility in Kalamazoo, Michigan, President Biden thanked Pfizer Chief Executive Officer Albert Bourla for "what you do." President Biden said. Remarks by President Biden at Pfizer Manufacturing Site, Feb. 19, 2021, https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/19/remarks-by-president-biden-at-pfizer-manufacturing-site/. "This is—this is a case of life and death. We're talking about people's lives." *Id.*

89. President Biden's senior advisors repeatedly attested to the safety and efficacy of the vaccines, and the life-and-death stakes regarding vaccination. At a March 29, 2021 press briefing, Mr. Slavitt introduced Dr. Rochelle Walensky, Director of the Centers for Disease Control and Prevention. Press Briefing by White House COVID-19 Response Team and Public Health Officials, Mar. 29, 2021, https://www.whitehouse.gov/briefing-room/press-briefings/2021/03/29/press-briefing-by-white-house-covid-19-response-team-and-public-health-

officials-21/. "Millions remain unvaccinated and are at risk," Mr. Slavitt said in his introductory remarks. *Id.* "[G]etting vaccinated saves lives—not just your own, but your family and friends and neighbors too." *Id.*

90. But the Biden Administration was well aware that vaccine hesitancy was concentrated in particular demographic groups—notably African-Americans and political conservatives. In February 2021, responding to a question regarding the fact that "less than 3 percent of blacks" had been vaccinated against COVID-19, President Biden said getting the vaccines to that group "is a priority, number one," while acknowledging African-Americans' hesitancy is based on "being used as guinea pigs and other experiments," a reference to the infamous federally-funded Tuskegee Syphilis Study, in which 399 African-American men with syphilis were allowed to go untreated for decades. Remarks by President Biden in a CNN Town Hall with Anderson Cooper, Feb. 16, 2021, https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/17/remarks-by-president-biden-in-a-cnn-town-hall-with-anderson-cooper/. President Biden raised similar issues in June 2021. Remarks by President Biden Highlighting the Importance of Getting Vaccinated and Kicking Off a Community Canvassing Event, June 24, 2021, https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/06/24/remarks-by-president-biden-highlighting-the-importance-of-getting-vaccinated-and-kicking-off-a-community-canvassing-event/.

91. In February 2021, while still serving in the White House, Mr. Slavitt observed that political conservatives were more likely to be skeptical of the COVID-19 vaccines. "I think the data is [sic] say that conservatives have a disproportionate, low disproportionate and lower acceptance of vaccines." Andy Slavitt, *Andy Slavitt from Inside the White House*, Feb. 2021,

https://lemonadamedia.com/podcast/andy-slavitt-from-inside-the-white-house/. Mr. Slavitt continued:

> But I don't know that that's necessarily a political thing. It might be it may be political, and that one of the reasons that people don't say that they don't like vaccines, they don't like the government telling them what to do. And it's [sic] feels heavy handed from government, so they're more reluctant or more skeptical. That's not necessarily political. It may be cultural. It may be other things. You know, I was on Hugh Hewitt show last week, and I've been talking to a lot of conservative evangelical leaders, and people who are all very pro-vaccine.

Id.

92. Shortly after leaving the White House, Mr. Slavitt attacked conservatives for their vaccine skepticism more aggressively. "But it's taken an ugly turn in the last week. In the last week, for some reason an element of the conservative wing or the right wing has decided that they want this to be their platform," Mr. Slavitt said. *Fox News Contributing to Declining Vaccine Rates*, The Mehdi Hasan Show, July 12, 2021, https://youtu.be/MmSOzs8v8U8 (starting at 2:25 mark). Commenting further on vaccine hesitancy, Mr. Slavitt said "[t]he reason is because their base, about three-quarters of their base, finds this kind of rhetoric appealing and muscular and anti-government and they can attach it to things like religious freedom. They're just being populist." *Id.*

93. In September 2021, with the Biden Administration's COVID-19 vaccine mandate beckoning, Mr. Slavitt took up the religious freedom issue, rejecting religious exemptions from the mandate. "A religious exemption to a vaccine. That's a big no. You can be both infectious and religious. I'm sure it happens all the time." Andy Slavitt (@ASlavitt), Twitter (Sept. 15, 2021, 3:18 AM, https://twitter.com/aslavitt/status/1438039417537523712.

B. The Early Days of the Biden Administration's Misinformation War

94. President Biden tackled COVID-19 vaccine "misinformation"—or skepticism—from the outset of his Administration. The day after his inauguration, President Biden issued an

executive order "to facilitate the gathering, sharing, and publication of COVID-19-related data with the Coordinator of the COVID-19 Response and Counselor to the President . . . to the extent permitted by law." Ensuring a Data-Driven Response to COVID-19 and Future High-Consequence Public Health Threats, Executive Order No. 13994, 86 Fed. Reg. 7189, 7189 (Jan. 21, 2021). "These efforts shall assist Federal, State, local, Tribal, and territorial authorities in developing and implementing policies to facilitate informed community decision-making, to further public understanding of the pandemic and the response, and *to deter the spread of misinformation and disinformation.*" *Id.* (emphasis added).

95. During an interview the very next day, Dr. Vivek Murthy, President Biden's future Surgeon General, said that "whether it's mis or disinformation, we find that too much incorrect information is being spread on social media sites and through other avenues." Transcript: Ezra Klein Interviews Vivek Murthy About His COVID-19 Plan, N.Y. Times, Feb. 4, 2021, https://www.nytimes.com/2021/02/04/podcasts/ezra-klein-podcast-vivek-murthy-transcript.html. "And we've got to work closely with those companies to make sure that whatever the platform may be, that they are doing everything they can to root out that misinformation and the disinformation campaigns because they literally cost lives." *Id.*

96. Dr. Fauci later echoed Dr. Murthy regarding the high stakes of social media misinformation and disinformation. During his deposition in separate litigation, in response to a question about social media platforms, Dr. Fauci said "misinformation and disinformation, particularly that encourages people to avoid lifesaving interventions, can certainly result in the unnecessary death of people whose lives would have been saved. So when misinformation and disinformation leads people to avoid a lifesaving intervention, *that is equivalent to contributing to the death of that person.*" Dep. of Dr. Anthony Fauci, at 345:8-15, *available at*

https://ago.mo.gov/docs/default-source/press-releases/135885afauci112322_full_redacted.pdf?sfvrsn=35f4a425_2 (emphasis added).

97. The Biden White House put these sentiments into action. On January 23, 2021, within three days of President Biden's inauguration, the White House contacted Twitter regarding a post by Robert F. Kennedy, Jr., about the COVID-19 vaccines and the death of baseball legend Hank Aaron. "Wanted to flag the below tweet and am wondering if we can get moving on the process for having it removed ASAP," wrote Clarke Humphrey, the Digital Director for the White House COVID-19 Response. "And then if we can keep an eye out for tweets that fall in the same ~genre that would be great." Twitter responded the next day, stating "[w]e recently escalated this." The e-mail exchange is shown below.

From: [redacted]@twitter.com]
Sent: 1/23/2021 1:08:36 AM
To: Humphrey, Clarke EOP/WHO [redacted]@who.eop.gov]
CC: [redacted]@twitter.com]; Flaherty, Robert EOP/WHO [redacted]@who.eop.gov]
Subject: [EXTERNAL] Re: Flagging Hank Aaron misinfo

Thanks. We recently escalated this.

On Fri, Jan 22, 2021 at 8:05 PM Humphrey, Clarke EOP/WHO [redacted]@who.eop.gov> wrote:

Hey folks —

Wanted to flag the below tweet and am wondering if we can get moving on the process for having it removed ASAP:

>https://twitter.com/RobertKennedyJr/status/1352748139665645569<

And then if we can keep an eye out for tweets that fall in this same ~genre that would be great.

Thanks!
Clarke
--
[redacted]
Twitter, Inc. | Public Policy
@TwitterGov & @Policy

98. In the winter of 2021, the White House and Pfizer were not overly concerned with COVID-19 vaccine hesitancy, because demand for the shots exceeded supply. At the time, messaging around the vaccines advised people to wait until "it's your turn." But the vaccine companies and government knew that more than 100 million adult Americans had concerns around taking the shots. They anticipated that demand would lag by early spring. For example,

on February 8, 2021, Dr. Gottlieb told the financial news channel CNBC that he expected vaccine supply to exceed demand by April. Kevin Stankiewicz, *Dr. Scott Gottlieb expects Covid vaccine appointments to be widely available by April in the U.S.*, CNBC, Feb. 8, 2021, https://www.cnbc.com/2021/02/08/covid-vaccine-scott-gottlieb-expects-wide-availability-by-april-in-us.html.

99. Thus, in March and April 2021, the Biden Administration pivoted to attacking vaccine skeptics more aggressively by increasing pressure on social media companies. In an April 22 e-mail to YouTube executives, the White House's Rob Flaherty explained that "we want to be sure that you have a handle on vaccine hesitancy generally and are working toward making the problem better." E-mail from Rob Flaherty, Director of Digital Strategy at the White House, to YouTube Executives (Apr. 22, 2021), *available at* https://ago.mo.gov/docs/default-source/press-releases/highest-level.pdf?sfvrsn=615f2fb1_2. "This is a concern that is shared at *the highest (and I mean the highest) levels* of the [White House]," directly referring to President Biden. *Id.* (emphasis added).

100. During the spring and summer of 2021, some vaccine skeptics made bizarre, inflammatory claims about the Pfizer and Moderna vaccines, including that they contained "nanochips" which would lead people who received them to be tracked by 5G mobile towers, and that they would cause people to become magnetized. These statements—which Mr. Berenson did not make—attracted significant attention and mockery.

101. But the White House's own internal discussions show that it was far more focused on critics like Mr. Berenson, who offered factually accurate and truthful criticisms of the vaccines. On March 22, Mr. Flaherty emailed Mr. Slavitt and Facebook executives, "[W]e are all aligned that the problem does not fit in 'microchips'-land." He went on, "it seems plausible that

the things that drive the most actual hesitancy sit in 'sensational' and 'skeptical . . . . What interventions are being taken on 'skepticism?' I could see a range of actions . . . ." E-mail from Rob Flaherty, Director of Digital Strategy at the White House, Facebook Executives (Mar. 22, 2021), *available at* https://ago.mo.gov/docs/default-source/press-releases/virality.pdf?sfvrsn=9081bccd_2.

C. The White House targets independent journalist Alex Berenson, demanding to know why Twitter had not banned him from the platform.

102. Throughout early 2021, Mr. Berenson continued building his audience on the Twitter platform. As of March 17, 2021, Mr. Berenson had more than 229,000 followers. He continued his reporting and commentary on both the public policy response to COVID-19 and the vaccines. In April 2021, his importance as a COVID-19 vaccine skeptic was highlighted by *The Atlantic* magazine, which proclaimed, "Berenson has a big megaphone. He has more than 200,000 followers on Twitter and millions of viewers for his frequent appearances on Fox News' most-watched shows"—appearances that were often driven by his tweets. Derek Thompson, *The Pandemic's Wrongest Man*, The Atlantic, April 1, 2021, https://www.theatlantic.com/ideas/archive/2021/04/pandemics-wrongest-man/618475/.

103. Mr. Berenson repeatedly used his platform on Twitter to interact with the Defendants in this action. As shown below, on March 6, 2021, while Mr. Slavitt was still serving in the White House, Mr. Berenson issued an acerbic tweet in which he tagged Mr. Slavitt, accusing President Biden's advisor of "lick[ing]" since-disgraced New York Governor Andrew Cuomo's "shiny boots." The tweet garnered tens of thousands of impressions.

Alex Berenson (@AlexBerenson), Twitter (Mar. 6, 2021, 11:14 PM), https://twitter.com/AlexBerenson/status/1368414849353592833.

104. Mr. Berenson trained his Twitter pen on incoming Surgeon General Vivek Murthy, criticizing President Biden's appointee for receiving substantial payments from healthcare entities for giving speeches prior to joining the government.

Alex Berenson (@AlexBerenson), Twitter (Feb. 8, 2021, 12:22 PM), https://twitter.com/AlexBerenson/status/1358828511088279557.

105. By mid-April, if not before, Mr. Berenson had the White House's attention. On April 21, 2021, as part of the government's efforts to crack down on COVID-19 skepticism, Biden Administration officials Mr. Flaherty, Mr. Slavitt, and Kelsey Fitzpatrick met with four Twitter employees, including Lauren Culbertson, Twitter's head of government affairs for the United States and Canada. Mr. Flaherty initiated the meeting. Culbertson would later write that "one of the first meeting requests from the Biden White House was about COVID-19 misinformation … Biden's staff focused on vaccines and high-profile anti-vaxxer accounts, including Alex Berenson." David Zweig (@DavidZweig), Twitter (Dec. 26, 2022, 9:26 AM), https://twitter.com/davidzweig/status/1607382379018190849.

106. The meeting, titled "Twitter Vaccine Misinfo Briefing," included discussion by Twitter about "trends seen generally about vaccine misinformation . . . and ways the White House (and our COVID-19 experts) can partner in product work" as well as "recent policy changes," which would include the company's COVID-19 misleading information, which is described further below. The body of the meeting invitation is shown below.

From: Flaherty, Rob EOP/WHO [redacted]@who.eop.gov]
Sent: 4/16/2021 4:25:15 PM
To: Flaherty, Rob EOP/WHO [redacted]@who.eop.gov]; Slavitt, Andrew M. EOP/WHO [redacted]@who.eop.gov]; [redacted]@twitter.com]; [redacted]@twitter.com]; [redacted]@twitter.com]; [redacted]@twitter.com
CC: Fitzpatrick, Kelsey V. EOP/WHO [redacted]@who.eop.gov]; [redacted](HHS/OASH) [redacted]@hhs.gov]

Subject: Twitter Vaccine Misinfo Briefing
Location: [redacted]

Start: 4/21/2021 2:00:00 PM
End: 4/21/2021 3:00:00 PM
Show Time As: Tentative

Recurrence: (none)

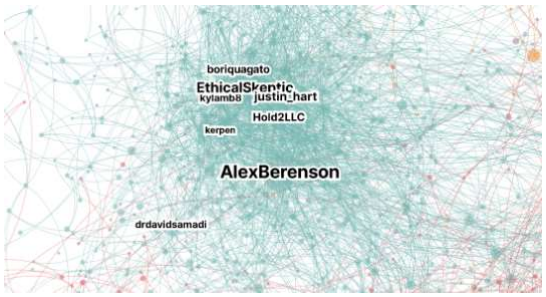
White House Staff will be briefed by Twitter on vaccine misinfo. Twitter to cover trends seen generally around vaccine misinformation, the tangible effects seen from recent policy changes, what interventions are currently being implemented in addition to previous policy changes, and ways the White House (and our COVID experts) can partner in product work.

107. The following day, Twitter employees discussed the meeting on a private, internal company Slack channel. A Twitter employee said the White House "had one really tough

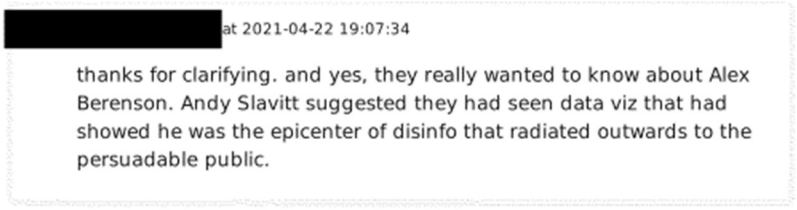
question about why Alex Berenson hadn't been kicked off the platform." The Twitter employee did *not* say the government had named any other users for suppression. Neither did Ms. Culbertson's later note. The employee distinguished the pressure the White House brought regarding Mr. Berenson from questions about other Twitter users, which the employee called "pointed but fair—and mercifully we had answers." The exchange is shown below.

108. The employee did not say why the White House had targeted Mr. Berenson specifically, but he noted that the White House had "done some data visualization that shows he's, like, ground zero for COVID-19 misinformation that radiates outward." The Slack channel comment is shown below.

Upon information and belief, researchers at the Massachusetts Institute of Technology created the data visualization referred to in this comment. Crystal Lee et al., *The Data Visualizations Behind COVID-19 Skepticism*, Mar. 1, 2021, http://vis.mit.edu/covid-story/. The authors derided Mr. Berenson as the "anchor" of a so-called "anti-mask" network. A true and accurate screenshot of the MIT data visualization is shown below.



109. In a separate discussion on Slack about the meeting, a Twitter employee mentioned Mr. Slavitt "really wanted to know about Alex Berenson" because of his impact on the "persuadable public." That comment is also shown below.



110. Notably, none of these officials presented Twitter with any evidence that Mr. Berenson's tweets were false, much less that he might be breaking any law. They could not, because what he was simply tweeting true information that was inconsistent with the government's preferred narrative regarding the COVID-19 vaccines.

111. Upon information and belief, Mr. Slavitt's targeting of Mr. Berenson was also retaliatory. As noted above, just weeks before the White House's secret meeting with Twitter, Mr. Berenson tagged Mr. Slavitt's Twitter account in a thread critical of Mr. Slavitt's treatment of New York Governor Andrew Cuomo's handling the COVID-19 pandemic. Alex Berenson (@AlexBerenson), Twitter (Mar. 6, 2021), https://twitter.com/AlexBerenson/status/1368414849353592833. Further, in May 2020, Mr. Berenson had criticized Mr. Slavitt for offering a "conspiracy theory" regarding the number of COVID-19 deaths in Florida. Alex Berenson (@AlexBerenson), Twitter (May 29, 2020, 11:06 AM), https://twitter.com/AlexBerenson/status/1266385386026291200. Within less than five

minutes, Mr. Slavitt responded, directly engaging with Mr. Berenson. Andy Slavitt (@ASlavitt), Twitter (May 29, 2020, 11:10 AM), https://twitter.com/ASlavitt/status/1266386495495168005.

112. As it had consistently since the beginning of the COVID-19 pandemic, Twitter said the company did not believe Mr. Berenson had violated its rules. "I've taken a pretty close look at his account and I don't think any of it's violative," an employee wrote in the Slack discussion. Yet, feeling pressure from Mr. Slavitt, Twitter agreed to examine the account again. "We told him," i.e., Mr. Slavitt, "that we'd ask you to take a look," the Slack discussion continued. "Have you given it a thorough vetting recently?" "Last month," the employee charged with reviewing Mr. Berenson account responded, before repeating that Mr. Berenson did not violate Twitter's rules and was "referencing science and statistics."

113. Mr. Flaherty corroborated this account recently. During the meeting, "Mr. Flaherty recalls Mr. Slavitt expressing his view Twitter was not enforcing its content guidelines with respect to Alex Berenson's tweets, and that employees from Twitter disagreed with that view." (Ex. A attached at 57.) "Mr. Slavitt suggested at the end of the meeting that Mr. Flaherty would follow up with Twitter employees about" Mr. Berenson." (*Id.*) Later, "a Twitter employee who Mr. Flaherty thinks was Todd O'Boyle," called Mr. Flaherty and "indicated that Twitter would not be removing Mr. Berenson because Mr. Berenson had not violated Twitter policies at that time." (*Id.*)

114. Mr. Slavitt has also stated that "I'm sure that [Mr. Berenson's] name was brought up as one of the examples" discussed during the White House's meeting with Twitter. Andy Slavitt, *The White House's Plan to Contain Monkey Pox*, Aug. 17, 2022, https://web.archive.org/web/20220826165119/https://lemonadamedia.com/podcast/the-white-houses-plan-to-contain-monkeypox/.

115. More meetings followed. As Twitter's Lauren Culbertson recounted, the pressure from the White House continued and actually increased after the April meeting. "The Biden White House was not satisfied with Twitter's enforcement approached as they wanted Twitter to do more and to de-platform several accounts," she wrote. David Zweig (@DavidZweig), Twitter (Dec. 26, 2022, 9:32 AM), https://twitter.com/davidzweig/status/1607383819287515137. "Because of this dissatisfaction, we were asked to join several other calls. *They were very angry in nature*." (emphasis added).

116. Yet Twitter continued to defend Mr. Berenson, and he continued to build his audience. He had previously used Twitter to market his *Unreported Truths* pamphlets on the pandemic, and he looked forward to leveraging his audience to promote his book *Pandemia*, which was set to be released in December 2021, on the same issues.

117. In May, the federal government escalated its campaign against free speech regarding COVID-19. The United States Department of Homeland Security included the promotion of "conspiracy theories concerning the origins of COVID-19 and effectiveness of vaccines" in one its summaries of major terrorist threats. U.S. Dep't of Homeland Security, Summary of Terrorism Threat to the U.S. Homeland, May 14, 2021, https://www.dhs.gov/ntas/advisory/national-terrorism-advisory-system-bulletin-may-14-2021.

118. Even so, Mr. Berenson continued reporting on COVID-19 and the vaccines on Twitter. He specifically criticized President Biden. As shown below, After President Biden tweeted "the rule" regarding COVID-19 vaccination, Mr. Berenson quote-tweeted the @JoeBiden "government official account," chiding President Biden, "Yes, boss. For sure, boss. Whatever you say, boss."

Alex Berenson (@AlexBerenson), Twitter (May 13, 2021, 5:04 PM), https://mobile.twitter.com/AlexBerenson/status/1392948912802181122.

119. In a foreshadowing of the COVID-19 vaccine mandates to come, Mr. Berenson quote-tweeted the official @POTUS Twitter account, accusing President Biden of trying to scare Americans into getting vaccinated. "The bribes aren't working," referring the various vaccination lotteries and offers of Shake Shack indulgences,[1] "so they're back to this nonsense." "Next up: Coercion," Mr. Berenson forecast.

Alex Berenson (@AlexBerenson), Twitter (June 8, 2021, 2:14 PM), https://twitter.com/alexberenson/status/1402328160851709957.

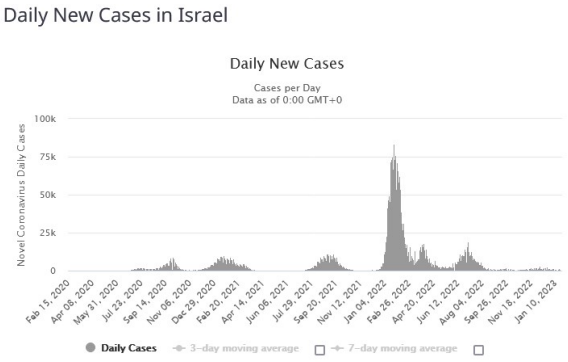
[1] Shake Shack, *NYC: Get Vaxed, Get Shack*, Sept. 18, 2021, https://shakeshack.com/blog/local-news/nyc-get-vaxed-get-shack#/.

120. Mr. Berenson also directly and aggressively criticized the CDC. On June 24, Mr. Berenson asked whether the CDC "is lying or just stupid?" On July 8, he accused the CDC of "lying again," "[j]ust like it lied when it said myocarditis wasn't a risk," he wrote. "Many fully vaccinated people are becoming severely ill and dying. To say flatly that vaccines protect against 'severe disease and death' is lie." Yet, consistent with its previous defense of Mr. Berenson's right to express his views, Twitter took no action against any of these tweets.

VI. Under continued, relentless government pressure, and following direct intervention by Andrew Slavitt and Pfizer board member Scott Gottlieb, Twitter takes away Alex Berenson's most important platform for speech and journalism as the federal government works to mandate COVID-19 vaccines, including Pfizer's.

A. The efficacy of the COVID-19 vaccines wane while the federal government's coercion campaign escalates.

121. During the spring of 2021, the COVID-19 vaccines seemed to be working well. Countries that utilized the mRNA vaccines saw a rapid plunge in cases. For example, as shown in the chart below, daily new cases in Israel, the first country to mass vaccinate its adult population with Pfizer's vaccine, dropped to near zero in spring 2021.



WorldOMeter, *Israel*, https://www.worldometers.info/coronavirus/country/israel/.

122. But in July 2021, the vaccines abruptly began to fail in Israel, the first country to vaccinate most adults with Pfizer's vaccines. Between June 15 and July 15, new coronavirus infections soared 75-fold in Israel, and they continued to rise throughout August.

Hospitalizations and deaths also rose. The sudden drop in vaccine effectiveness led public health officials to wonder whether it might be necessary to rapidly provide booster vaccines to previously vaccinated people. It also caused the Biden Administration to consider COVID-19 vaccine mandates, a possibility President Biden rejected prior to his inauguration. *Biden: COVID-19 vaccine should not be mandatory*, Reuters, Dec. 4, 2020, https://www.youtube.com/watch?v=e6QNsNMFH5s.

123. On Saturday, July 10, 2021, Mr. Berenson participated in a panel discussion at a political convention in Dallas, Texas. During the session, Mr. Berenson commented on the government's failure to persuade Americans to take COVID-19 vaccines.

124. The following day, Dr. Anthony Fauci, President Biden's Chief Medical Advisor, called Mr. Berenson's remarks "horrifying." Mr. Berenson had criticized repeatedly Dr. Fauci throughout the COVID-19 pandemic. According to Dr. Fauci, Mr. Berenson was "someone saying that it's a good thing for people not to try and save their lives." Olafimihan Oshin, *Fauci: 'Horrifying' to hear CPAC crowd cheering anti-vaccination remarks*, The Hill (July 11, 2021), https://thehill.com/homenews/sunday-talk-shows/562453-fauci-horrifying-to-hear-cpac-crowd-cheering-missed-vaccine-goal. Mr. Berenson was observing that many Americans, particularly younger Americans at low risk from COVID-19, had simply concluded the risks of taking a COVID-19 vaccine outweighed the benefits for them.

125. In his deposition in the Missouri lawsuit, Dr. Fauci did not deny discussing Mr. Berenson with other officials in the government. Instead, Dr. Fauci said such discussions "may have occurred, but I don't recall." Dep. of Dr. Anthony Fauci, at 343:22-23, *supra*.

126. Mr. Berenson's remarks in Dallas also caught Andrew Slavitt's attention. In June 2021, Mr. Slavitt left his post in the White House but remained in close contact with his former

colleagues in the Biden Administration, as well as Dr. Gottlieb, as explained further below. On Monday, July 12, Mr. Slavitt appeared on the Peacock network. *Fox News Contributing to Declining Vaccine Rates*, *supra*. Discussing the federal government's efforts to promote the COVID-19 vaccines, Mr. Slavitt referred to a need to "get rid of all this garbage coming out of CPAC," a reference to Mr. Berenson's remarks. *Id.*

127. The host played Mr. Berenson's comments and invited Mr. Slavitt to comment. Mr. Slavitt argued that "we" should be focused on the ten percent of the adult population, or roughly 25 million unvaccinated Americans, he viewed as being open to receiving a COVID-19 vaccine—an apparent reference to the "persuadable public" discussed during the April 21, 2021 White House meeting with Twitter. *Id.* "As for people like Alex Berenson," Mr. Slavitt continued, "I know nobody more worthy of being ignored than Alex Berenson." *Id.* Mr. Slavitt expressed further hostility toward Mr. Berenson, telling the audience that "they," meaning people like Mr. Berenson, "don't really care whether it's good for people or bad for people, so I think we're better off ignoring him." *Id.*

128. Mr. Slavitt played the clip of Mr. Berenson's remarks on his podcast several days later. Andy Slavitt, *Should I Get a Booster? And the Politics of Vaccines (with David Axelrod)*, July 14, 2021, https://lemonadamedia.com/podcast/should-i-get-a-booster-and-the-politics-of-vaccines-with-david-axelrod/. Again, expressing his animus, Mr. Slavitt maligned Mr. Berenson as "a conspiracy theorist," going so far as to characterize him as "[s]omeone who frankly I don't intend to dignify by mentioning his name." *Id.* During the same conversation, Mr. Slavitt noted his continued conversations with Biden Administration personnel, including White House Press Secretary Jen Psaki and the CDC's Dr. Rochelle Walensky. *Id.*

129. The next step in the public pressure campaign against social media companies came on July 15, when Surgeon General Vivek Murthy published a report titled "Confronting Health Misinformation." Vivek H. Murthy, *Confronting Health Misinformation: The U.S. Surgeon General's Advisory on Building a Healthy Information Environment* (2021), *available at* https://www.hhs.gov/sites/default/files/surgeon-general-misinformation-advisory.pdf. Dr. Murthy noted that "while there have been significant efforts to address health misinformation," specifically citing Twitter's COVID-19 policy, *id.* at n.49, "there is much more to be done." He explained that "[t]he threat of misinformation raises important questions we must answer **together**." *Id.* (emphasis in original). In this regard, later in the report, he called for social media platforms to "[p]rioritize early detection of misinformation 'super-spreaders' and repeat offenders," and recommended the companies "[i]mpose clear consequences for accounts that repeatedly violate platform policies." *Id.* at 12.

130. Showing his continuing connection to the federal government, Mr. Slavitt invited Dr. Murthy onto his podcast to discuss his report. Andy Slavitt, *Exposing the Biggest Vaccine Lies and Liars (with Surgeon General Vivek Murthy)*, July 19, 2021, https://lemonadamedia.com/podcast/exposing-the-biggest-vaccine-lies-and-liars-with-surgeon-general-vivek-murthy/. At the outset of the program, Mr. Slavitt took notice of "[a] small number of loud voices" whose aim is "to prevent people from getting vaccinated." *Id.* Mr. Slavitt characterized this speech as "a legitimate killer," and later referred to "misinformation" as "a public health crisis." *Id.*

131. On the podcast, Dr. Murthy elaborated on the platforms' duty to act:

> *And I think that comes with a responsibility to do something about it.* If you create a product, you should not only enjoy the benefits that it brings to the world, but you should be responsible for, you know, is certainly on a moral level for the harms that it may do society. And in this case, we see significant harm coming from social

> platforms that don't have strong enough guardrails and measures to reduce the flow of misinformation.

Id. (emphasis added). Dr. Murthy acknowledged some of the companies' steps, "[b]ut with that said, there are times when the urgency of the problem demands that we ratchet up our efforts, that we dramatically increase, you know, how aggressive we're being, and putting solutions in place and this is one of those moments." *Id.* Dr. Murthy explained that "my worry, my concern with some of our technology companies is that they're not doing enough, and they're certainly not doing it fast enough." *Id.*

132. Dr. Murthy raised the issue of censorship. "[F]ree speech is a bedrock value of our country," he said. *Id.* "We need to protect freedom of speech." *Id.* But he then went on to argue that free speech should not always be protected: "*But that doesn't mean that we need to allow misinformation that we know harms people's health to run rampant.*" *Id.* (emphasis added).

133. On the day he released his advisory, Dr. Murthy appeared at a White House press briefing to discuss it. Press Briefing by Press Secretary Jen Psaki and Surgeon General Dr. Vivek H. Murthy, July 15, 2021, https://www.whitehouse.gov/briefing-room/press-briefings/2021/07/15/press-briefing-by-press-secretary-jen-psaki-and-surgeon-general-dr-vivek-h-murthy-july-15-2021/. Asked about "actions that the federal government can take to ensure their [(social media companies')] cooperation," Press Secretary Psaki responded that "we are in regular touch with these social media platforms, and those engagements typically happen through members of our senior staff." *Id.* Press Secretary Psaki explained that the federal government had "proposed changes . . . to social media platforms." *Id.* Among them, Ms. Psaki said the government "recommended—proposed that they [(the companies)] create a robust enforcement strategy that bridges their properties and provides transparency." *Id.*

134. The following day, July 16, Ms. Psaki again explained that the government is "in regular touch with social media platforms . . . about areas where have concern." *Id.* Press Briefing by Press Secretary Jen Psaki, July 16, 2021, https://www.whitehouse.gov/briefing-room/press-briefings/2021/07/16/press-briefing-by-press-secretary-jen-psaki-july-16-2021/. Signaling that the White House was aware its actions might be unconstitutional, Ms. Psaki later offered a pro forma denial that the White House had asked for the removal of specific users. "[A]ny decision about platform usage and who should be on the platform is *orchestrated* and determined by private-sector companies." *Id.* (emphasis added). That is "their decision to do," Ms. Psaki explained. *Id.* "That is not the federal government doing that." *Id.* Ms. Psaki did not disclose that months before, the White House had asked Twitter a "really tough" question why it continued to allow Mr. Berenson to speak on its platform.

135. At around the same time of the briefing, in response to a reporter who asked, "On COVID-19 misinformation, what's your message to platforms like Facebook," President Biden said, "They're killing people." *President Biden: "They're killing people"*, C-SPAN, July 16, 2021, https://www.youtube.com/watch?v=gJoOtLn4goY. President Biden's statement caused other media to conclude that the government "blamed" social media companies "for spreading misinformation about the coronavirus and vaccines," creating "stalling U.S. vaccine rates." Lauren Egan, *'They're killing people': Biden blames Facebook, other social media for allowing COVID-19 misinformation*, NBC News (July 16, 2021, 4:10 PM EDT), https://www.nbcnews.com/politics/white-house/they-re-killing-people-biden-blames-facebook-other-social-media-n1274232.

136. Less than four hours after President Biden's comment and Press Secretary Psaki's briefing, Twitter locked Mr. Berenson's account for the first time. Under the five-strike policy,

the lock was his second strike, though the company had not previously informed him of the first strike.

137. In the following days, the Biden Administration continued its public pressure campaign. Four days after President Biden's comments, USA Today reported "[t]he White House is assessing whether social media platforms are legally liable for misinformation spread on their platforms." Matthew Brown, *'They should be held accountable': White House reviews platforms' misinformation liability*, USA Today, July 20, 2021, https://www.usatoday.com/story/news/politics/2021/07/20/white-house-reviews-section-230-protections-covid-misinformation/8024210002/. The report noted "[r]elations are tense between the Biden administration and social media platforms," and that the government was "examining how misinformation fits into the liability protections granted by Section 230 of the Communications Decency Act, which shields online platforms from being responsible for what is posted by third parties on their sites." *Id.*

138. White House Communications Director Kate Bedingfield went further, saying social media platforms "should certainly be held accountable," and that President Biden has spoken "very aggressively about" the issue. Jessica Bursztynsky, *White House says social media networks should be held accountable for spreading misinformation*, CNBC, July 20, 2021, https://www.cnbc.com/2021/07/20/white-house-social-networks-should-be-held-accountable-for-spreading-misinfo.html. Ms. Bedingfield also raised "reform" of the federal law known as Section 230 of the Communications Decency Act as a possibility. *Id.*

139. Section 230 provides Twitter and other social media companies with essentially absolute immunity for content that third parties post on them. The potential loss of the protection

that statute offers is such a significant threat to Twitter's business that the issue was listed as a risk factor in the company's annual report. Twitter described the risk as follows:

> [T]here are various Executive and Congressional efforts to restrict the scope of the protections from legal liability for content moderation decisions and third-party content posted on online platforms that are currently available to online platforms under Section 230 of the Communications Decency Act, and our current protections from liability for content moderation decisions and third-party content posted on our platform in the United States could decrease or change, potentially resulting in increased liability for content moderation decisions and third-party content posted on our platform and higher litigation costs.

Twitter, Annual Report (Form 10-K), at 29 (Feb. 16, 2022). The federal government's threats to change section 230 struck at the heart of Twitter's business model, putting additional pressure on the platform to censor Mr. Berenson.

B. Andrew Slavitt and former FDA Commissioner and Pfizer board member Scott Gottlieb, who maintained and cultivated contacts with Mr. Slavitt and the Biden Administration, secretly work to prevent Alex Berenson from reporting on Twitter about Pfizer's COVID-19 vaccine while the federal government moves to mandate the shots.

140. Scott Gottlieb joined the Pfizer board on June 27, 2019, three months after stepping down as the Commissioner of the Food and Drug Administration, where he oversaw the approval and regulation of Pfizer's drugs and vaccines in the United States. For his work as a director, Pfizer paid Dr. Gottlieb over $1.4 million from 2019 through 2022.

141. In 2020, Dr. Gottlieb became the head of the Board's "regulatory and compliance committee," which Pfizer created in 2010 as part of a settlement with its shareholders over the company's repeated violations of federal laws. Duff Wilson, *Pfizer plans $75 million fund to address shareholder lawsuits*, N.Y. Times, Dec. 3, 2010, https://www.nytimes.com/2010/12/04/business/04drug.html. The regulatory and compliance committee oversees Pfizer's compliance with healthcare laws and marketing programs for drugs and vaccines. Dr. Gottlieb is also one of only seven members of Pfizer's executive committee, where he serves alongside Pfizer Chief Executive Officer Albert Bourla.

142. After COVID-19's emergence in winter 2020, Dr. Gottlieb became prominent in the debate over ways to contain its threat. He frequently appeared on political talk shows and CNBC, where he is a contributor. He was also in contact with both the Trump and Biden Administrations. On December 7, 2020, he said had given "some advice" to the Biden Administration's transition team and added, "I'm available. I pick up the phone, I call people back, and I try to be helpful to whomever I can." *On COVID-19 vaccine, 'get as many shots in arms as possible, right away': ex-FDA chief Q&A*, USA Today, Dec. 7, 2020, https://www.usatoday.com/story/opinion/2020/12/07/covid-vaccine-get-many-shots-arms-possible-right-away-opinion/6483439002/.

143. Among Dr. Gottlieb's closest contacts was Andrew Slavitt. In April 2020, Dr. Gottlieb and Mr. Slavitt coauthored a letter to Congress calling for a $46.5 billion program for contact tracing and "voluntary self-isolation" for people with COVID-19. *Bipartisan Public Health Leaders Letter on COVID19 Tracking and Tracing*, NPR, Apr. 27, 2020, https://apps.npr.org/documents/document.html?id=6877567-Bipartisan-Public-Health-Leaders-Letter-on. Dr. Gottlieb and Mr. Slavitt also appeared on interviews together in 2020 and 2021, and when Mr. Slavitt was named senior advisor for the Biden Adminstration's COVID-19 response team, Dr. Gottlieb lauded the appointment on Twitter, focusing on Mr. Slavitt's ability to "improv[e] vaccine access and opportunity." Dr. Scott Gottlieb (@ScottGottliebMd), Twitter (Jan. 14, 2021, 5:26 PM), https://twitter.com/scottgottliebmd/status/1349845492860121091.

144. Dr. Gottlieb remained in "pretty regular" contact with Mr. Slavitt and other Biden Administration officials throughout the winter and spring of 2021, according to a comment Mr. Slavitt made on his podcast on July 7, 2021. Andy Slavitt, *The Latest Science of Fighting*

COVID-19 (with Dr. Scott Gottlieb), July 7, 2021, https://lemonadamedia.com/podcast/the-latest-science-of-fighting-covid-19-with-dr-scott-gottlieb/.

145. In November 2020, Pfizer and its corporate partner BioNTech reported results from their pivotal clinical trial of Comirnaty. The results appeared to show that Comirnaty was 95 percent effective at reducing infections with SARS-CoV-2. On December 11, 2020, the FDA authorized the use of the vaccine in the United States for people 16 and over. Comirnaty quickly became Pfizer's top-selling product. In 2021, Pfizer reported sales of $36.8 billion for the vaccine, the highest annual sales of *any* drug or vaccine ever.

146. As a Pfizer board member, Dr. Gottlieb was a vocal advocate for COVID-19 vaccinations. On December 7, 2020, even before the FDA authorized his company's vaccine, he called for the United States to "get as many shots in arms as possible, right away." USA Today, *supra*. On March 28, 2021, he said governments "should be looking at every single interaction that patients have with the medical system and trying to offer a vaccination at those points of care." *Transcript: Scott Gottlieb discusses coronavirus on 'Face the Nation,'* CBS News, Mar. 28, 2021, https://www.cbsnews.com/news/transcript-scott-gottlieb-discusses-coronavirus-on-face-the-nation-march-28-2021/.

147. As the government's public pressure campaign escalated, Twitter dutifully began to issue "strikes" against Mr. Berenson's account. Twitter issued the second strike within hours of President Biden's July 16 complaint—in response to a tweet that in its entirety read, "Something really odd is going on. The vaccines are failing." It issued a third strike on July 27.

148. At this point, the conspirators had reason to believe they were close to success. Mr. Slavitt secretly contacted Twitter about Mr. Berenson on July 28, between his third and

fourth strikes, arguing that Mr. Berenson "knows he's gone," and that he was "milk[ing] Twitter for audience."

149. Also on July 28, Albert Bourla, Pfizer's Chief Executive Officer, appeared on Mr. Slavitt's "In The Bubble" podcast. On July 7, Dr. Gottlieb had also appeared on the show. In a podcast recorded either July 24 or 25 and released in part on July 28, Mr. Slavitt interviewed Dr. Bourla for over an hour. "I know Albert somewhat from the work in the White House we did, rolling out the vaccines," Mr. Slavitt said. Andy Slavitt, *EXCLUSIVE: Pfizer CEO Albert Bourla on the Delta Variant, Boosters and Masks Indoors (Part 1)*, July 28, 2021, https://lemonadamedia.com/podcast/exclusive-pfizer-ceo-albert-bourla-on-the-delta-variant-boosters-and-masks-indoors-part-1/.

150. On the July 28 podcast, Mr. Slavitt lauded the first vaccine mandates and said he expected to see more soon. Vaccine mandates are "something that I have been working on slowly and in the background over the last couple of weeks," he said. "*Id.* And I think people are really priming that pump." *Id.* He went on to accuse people who opposed vaccine mandates of "slavish devotion to individual liberties." *Id.*

151. Sounding similar themes, Dr. Bourla would later express his contempt for free speech, accusing those who spoke skeptically about his company's COVID 19 vaccine, of being "criminals because they have cost literally millions of lives." Berkley Lovelace Jr., *Pfizer CEO says people who spread misinformation on Covid vaccines are 'criminals'*, CNBC, Nov. 9, 2021, https://www.cnbc.com/2021/11/09/covid-vaccines-pfizer-ceo-says-people-who-spread-misinformation-on-shots-are-criminals.html.

152. On the same day as the podcast was released, July 28, Dr. Bourla and Pfizer's general counsel, Douglas Lankler, traveled to the White House for a meeting that had been

scheduled only one day before and was not disclosed until the White House released its visitor logs months later. Upon information and belief, the agenda for that meeting included COVID-19 booster shots and vaccine skepticism.

153. On the same day, July 28, Pfizer released a "preprint" update to its pivotal clinical trial results for its COVID-19 vaccine. The pivotal clinical trial covered approximately 40,000 people; its November 2020 preliminary findings had led to the rapid approval of the vaccine. The updated findings included approximately six months of safety data. It showed that 15 people who received the vaccine during the trial had died from all causes, compared to 14 people who received placebo injections. In other words, the vaccine did not reduce "all-cause" mortality, a crucial measure of the success of any preventative measure. Stephen J. Thomas et al., *Six Month Safety and Efficacy of the BNT162b2 mRNA COVID-19 Vaccine*, July 28, 2021, https://www.medrxiv.org/content/10.1101/2021.07.28.21261159v1.full.pdf. The results also showed vaccine recipients had more cardiovascular deaths than placebo recipients. Because the placebo recipients had been offered the vaccine in early 2021, after the Food and Drug Administration authorized its use, no further direct comparisons of vaccine and placebo recipients would be possible.

154. The next day, July 29, Mr. Berenson tweeted the following about the preprint:

> The pivotal clinical trial for the @pfizer #COVID-19 vaccine shows it does nothing to reduce the overall risk of death. ZERO.
>
> 15 patients who received the vaccine died; 14 who received placebo died.
>
> The end.
>
> The trial blind is broken now. This is all the data we will ever have.

These statements were all factually accurate. The tweet received more than 2,000 retweets and more than 2.3 million views.

155. On July 30, Twitter gave Mr. Berenson his fourth COVID-19-related strike for the tweet about the preprint, even though it was neither false nor misleading. Under Twitter's rules, a fourth strike resulted in a one-week suspension and was the final warning before a permanent suspension.

156. The same day, July 30, a Twitter employee emailed Mr. Slavitt a link to Mr. Berenson's tweet about the Pfizer clinical trial and informed him Mr. Berenson had been suspended again and that "[f]urther violations of the rules will result in permanent suspension." The e-mail exchange is shown below.

From: [redacted]@twitter.com]
Sent: 7/30/2021 7:09:30 PM
To: Andy Slavitt [andy.slavitt@gmail.com]
Subject: Re: Screenshot 2021-07-28 at 12.37.29 PM

https://twitter.com/AlexBerenson/status/1420839456228118535

He's on a 7 day suspension. Further violations of the rules will result in permanent suspension.

On Wed, Jul 28, 2021 at 3:40 PM Andy Slavitt <andy.slavitt@gmail.com> wrote:
It turns out that without Twitter sub stack doesn't work. He knows he's gone. Now it's time to milk Twitter for audience but he can't seem to resist. Yikes

157. On July 31, the day after Mr. Berenson's fourth strike, Mr. Slavitt again secretly demanded Mr. Berenson to be banned from the platform. "If he doesn't go permanently after this," referring to a tweet by Mr. Berenson, "the outcry will be justified," Mr. Slavitt wrote to Twitter. Mr. Slavitt did not explain how or why anything Mr. Berenson said broke any of Twitter's rules or policies, including the company's COVID-19 misleading information policy. The e-mail is shown below.

From: Andy Slavitt [andy.slavitt@gmail.com]
Sent: 7/31/2021 7:13:43 PM
To: [redacted]@twitter.com]
Subject: Screenshot 2021-07-31 at 12.11.11 PM
Attachments: Screenshot 2021-07-31 at 12.11.11 PM.png; _; image0.jpeg; _.txt

[redacted] if he doesn't go permanently after this, the outcry will be justified.

158. By July 30, Twitter had given Mr. Berenson three strikes in just two weeks, including two in only three days. Mr. Slavitt, his former colleagues in the Biden Administration, and Pfizer's executives had every reason to believe Twitter would give Mr. Berenson a final strike and permanently suspend him almost immediately after his return to the platform on August 6—finishing the job the White House started in April 2021. But after August 6, Twitter took no action against Mr. Berenson's account for three weeks.

159. Throughout August, Mr. Berenson highlighted the rapidly declining effectiveness of the vaccines, pointing to data from Israel, Britain, and elsewhere. He also repeatedly discussed the Pfizer preprint on his Substack newsletter. *See, e.g.*, Alex Berenson, *On the Pfizer study that caused Twitter to block me*, Unreported Truths, Aug. 6, 2021, https://alexberenson.substack.com/p/on-the-pfizer-study-that-caused-twitter. Pfizer was fully aware of these stories. Not only was Pfizer acquainted with Mr. Berenson based on his previous critical coverage of the company while at *The New York Times*, members of Pfizer's government affairs team subscribed to Mr. Berenson's *Unreported Truths* Substack.

160. The conspirators needed a new way to pressure Twitter to terminate Mr. Berenson's account permanently and separate him from his audience. They found it in Pfizer itself. Upon information and belief, Dr. Gottlieb was aware of Mr. Berenson because the journalist quoted one of Dr. Gottlieb's tweets and questioned the role of the COVID-19 vaccines in reducing deaths from the disease. Alex Berenson (@AlexBerenson), Twitter (Jan. 17, 2021, 4:46 PM), https://twitter.com/AlexBerenson/status/1350922401505288196. These questions went against Dr. Gottlieb's interests as well as Dr. Bourla's.

161. On Tuesday, August 24, Dr. Gottlieb—a senior member of Pfizer's board of directors—waited no longer, and stepped in directly. Dr. Gottlieb complained to Twitter's Todd

O'Boyle that Twitter was not censoring Mr. Berenson. Mr. O'Boyle was not one of Pfizer's usual contacts at Twitter. Instead, he was a senior manager for public policy in Twitter's Washington office, and Twitter's primary point of contact with the White House and Andrew Slavitt.

162. Dr. Gottlieb's pretext for demanding Twitter censor Mr. Berenson was his supposed safety concerns for Dr. Anthony Fauci—who was, of course, at the time a federal employee as well as another former colleague of Dr. Gottlieb. Dr. Gottlieb forwarded one of Mr. Berenson's Substack articles regarding Dr. Fauci, whom Dr. Gottlieb causally referred to as "Tony," to a Twitter employee. "This is whats [sic] promoted on Twitter," Dr. Gottlieb complained. "This is why Tony needs a security detail." A copy of the e-mail is shown below.

From: **Scott Gottlieb, MD** <scott.gottlieb@gmail.com>
Date: Tue, Aug 24, 2021 at 3:26 PM
Subject: Fwd: Quite frankly
To: [redacted]@twitter.com>

This is whats promoted on Twitter. This is why Tony needs a security detail.

From: Alex Berenson from Unreported Truths <alexberenson@substack.com>
Date: August 24, 2021 at 3:04:38 PM EDT
Subject: Quite frankly
Reply-To: Alex Berenson from Unreported Truths
<reply+o0pj7&mzdty&&ac14e9c6f744799332435cdc1fcb904ef27f6d068eb41dad8165e3fd5788d762@mg1.substack.com>

163. To be clear, Dr. Gottlieb framed Mr. Berenson's reporting, an exercise of his First Amendment right to cover government officials, as inciting violence and threats of violence against Dr. Fauci. Mr. Berenson's Substack article did nothing of the sort, of course, but rather criticized Dr. Fauci. Nor did Dr. Gottlieb offer any explanation for how or why the article might be dangerous to Dr. Fauci. The truth is that Mr. Berenson's reporting was dangerous to Pfizer's multi-billion-dollar product. Nonetheless, Dr. Gottlieb's assertion got Twitter's attention. Within an hour of receiving Dr. Gottlieb's message, a Twitter employee proposed scheduling a call with Dr. Gottlieb with another Twitter colleague.

164. Three days later, Dr. Gottlieb and Twitter held a call for approximately thirty minutes. Prior to the call, a Twitter employee wrote on a private company Slack channel that "I plan on keeping this conversational—hearing what he has to say, listening to his concerns, etc." As shown below, the employee stated "hopefully we can hear him out and share a few steps we've taken on misinfo."

[redacted] at 2021-08-27 19:19:25

Hi [redacted] for the 4pm with Scott Gottlieb, I plan on keeping this conversational - hearing what he has to say, listening to his concerns etc. In fact, the email he sent my way was a substack, not a Tweet. I have a few slides to fall back on if necessary, but hopefully we can hear him out and share a few steps we've taken on misinfo

165. But Twitter's internal Slack channel shows the call was rapidly directed to discussion of Mr. Berenson. It contains a reference between Twitter employees to "Berenson 4th COVID-19 strike as of 7/27" approximately eleven minutes into Twitter's discussion with Dr. Gottlieb, demonstrating both that the Pfizer board member was targeting Mr. Berenson specifically, and that Dr. Gottlieb was fully aware of Twitter's COVID-19 misleading information policy. There is no record that Dr. Gottlieb ever explained how anything Mr. Berenson said violated any Twitter rule or policy or that Mr. Berenson's reporting was inaccurate regarding Pfizer's product.

166. Dr. Gottlieb had both political and financial leverage over Twitter. Not only was he a former FDA Commissioner close to the Biden Administration, but he was also a board member of Pfizer, which spent millions of dollars each year advertising on Twitter. If Twitter did not comply with Dr. Gottlieb's demands to censor speech about Pfizer's vaccine, Pfizer could pull back this advertising spend. This was not an academic issue for Twitter, which ran on razor thin margins. Ultimately, after Elon Musk acquired Twitter and reinstated banned accounts, to include accounts critical of Pfizer's COVID-19 vaccine, the company promptly stopped

advertising on the platform. Molly Schuetz & Bloomberg, *Twitter advertiser exodus deepens as Volkswagen, Pfizer and General Mills hit pause on ad spending*, Fortune, Nov. 4, 2022, https://fortune.com/2022/11/04/twitter-advertiser-exodus-deepens-volkswagen-pfizer-general-mills-pause-ad-spending/.

167. The next day, Saturday, August 28, Dr. Gottlieb took an even more active role in the conspiracy to force Twitter to silence Mr. Berenson. On Saturday afternoon, Mr. Berenson again criticized mandating the use of Pfizer's most valuable product when he tweeted:

> It doesn't stop infection. Or transmission.
>
> Don't think of it as a vaccine.
>
> Think of it—at best—as a therapeutic with a limited window of efficacy and terrible side effect profile that must be dosed IN ADVANCE OF ILLNESS.
>
> And we want to mandate it? Insanity.

Dr. Gottlieb e-mailed the text of this tweet to, upon information and belief, Todd O'Boyle.

Message

From: Scott Gottlieb, MD [scott.gottlieb@gmail.com]
Sent: 8/28/2021 7:31:32 PM
To: [redacted]@twitter.com]
Subject: It doesn't stop infection. Or transmission. Don't think of it as a vaccine. Think of it - at best - as a therapeutic with a limited window of efficacy and terrible side effect profile that must be dosed IN ADVANCE OF ILLNESS. And we want to mandate it? Insanity.

AlexBerenson (@Alex Berenson) Tweeted: It doesn't stop infection.
Or transmission.

Don't think of it as a vaccine.

Think of it - at best - as a therapeutic with a limited window of efficacy and terrible side effect profile that must be dosed IN ADVANCE OF ILLNESS.

And we want to mandate it?
Insanity. https://twitter.com/alexberenson/status/1431669119208787974?s=27
--
Scott Gottlieb, MD
Scott.Gottlieb@gmail.com

168. Mr. O'Boyle then sent Dr. Gottlieb's complaint to the Twitter moderators responsible for determining whether the tweet should be given a strike, referring to it as a "partner report." An internal Twitter report from February 2022 explained that the moderators were generally contract employees based in the Philippines who were treated as "second-class

citizens." Mr. O'Boyle—a senior manager at Twitter who reported directly to Lauren Culbertson, the company's head of U.S. government affairs—did not simply forward the tweet for review, but demanded that he be given an explanation if the moderators decided not to give it a strike. The tweet was then sent to a member of Twitter's "Strategic Response Team," who "labeled" the tweet as misleading. But Mr. O'Boyle insisted that it be given a strike, writing, "was it strike eligible?" When the employee did not respond immediately, he pressed again, writing "Is this not the fifth strike under the policy?"

169. Finally, at 4:36 p.m. Pacific time on August 28, 2021, the relentless pressure campaign succeeded. The employee reported to Mr. O'Boyle that Mr. Berenson's account has "been suspended for the fifth strike," permanently banning him from the platform. After almost five months, Dr. Gottlieb, Dr. Bourla, Pfizer, Mr. Slavitt, and the federal government had won.

170. Minutes after Twitter issued the ban, Dr. Gottlieb's co-author and co-conspirator Mr. Slavitt exulted by broadcasting his approval of Twitter's censorship, as shown below.

Andy Slavitt (@ASlavitt), Twitter (Aug. 28, 2021, 7:45 PM), https://twitter.com/ASlavitt/status/1431764823600029701.

171. As for Dr. Gottlieb, incredibly, the Pfizer board member did not stop trying to censor Mr. Berenson's criticism of Pfizer's product and of government mandates for its use.

After Twitter banned Mr. Berenson, he briefly activated an alternative account. Dr. Gottlieb quickly contacted Twitter about the new account. "[S]eems he switched accounts on you," Dr. Gottlieb wrote, forwarding a Substack post by Mr. Berenson to Mr. O'Boyle.

Message

From: Scott Gottlieb, MD [scott.gottlieb@gmail.com]
Sent: 8/29/2021 1:53:03 AM
To: [redacted]@twitter.com]
Subject: Fwd: Hello Twitter!

seems he switched accounts on you.

> **From:** Alex Berenson from Unreported Truths <alexberenson@substack.com>
> **Date:** August 28, 2021 at 8:21:32 PM EDT
> **To:**
> **Subject: Hello Twitter!**
> **Reply-To:** Alex Berenson from Unreported Truths
> <reply+o6ftg&mzdty&&ee648eb0cfd3601448f92e3309a72138946c072221a3563c33a1e16a7df6a92a@mg1.substack.com>

172. Mr. O'Boyle rapidly forwarded Dr. Gottlieb's complaint, and when Twitter's content moderators did not immediately respond, brought in Stacia Cardille, a senior lawyer at Twitter, to force action. After Twitter banned the new account, Mr. Slavitt retweeted that suspension as well.

173. Upon information and belief, Dr. Gottlieb, a close associate of both Mr. Slavitt and Dr. Bourla, acted with full knowledge and approval of Pfizer's Chief Executive Officer. From Dr. Bourla's vantage point, what Mr. Berenson was doing was "criminal," and it had to be stopped. Lovelace, *supra*.

174. After Mr. Berenson discovered and publicized the conspiracy through discovery that followed his December 2021 successful lawsuit against Twitter, Mr. Slavitt and Dr. Gottlieb both publicly attempted to explain their actions. Mr. Slavitt minimized his role. Despite publicly debating with Mr. Berenson on Twitter, cheering his suspension, inquiring about Mr. Berenson during a meeting with Twitter at the White House in April 2021, repeatedly discussing Mr. Berenson's reporting on his podcast and on the Peacock network, and repeatedly contacting Twitter about Mr. Berenson in July 2021, Mr. Slavitt would later tell *The Atlantic* he had "only

passing familiarity" with Mr. Berenson. Kaitlyn Tiffany, *A Prominent Vaccine Skeptic Returns to Twitter*, The Atlantic, Aug. 24, 2022, https://www.theatlantic.com/technology/archive/2022/08/alex-berenson-twitter-ban-lawsuit-covid-misinformation/671219/. In the article, Mr. Slavitt said, "I think his name was in a magazine article," and that "I don't remember anything else about him." *Id.*

175. In October 2022, Dr. Gottlieb tried to defend his lobbying effort. He did not deny that he was speaking on behalf of Pfizer. He did not explain how anything Mr. Berenson said violated Twitter's rules. Instead, the Pfizer board member told a national television audience that he was concerned with violent threats, impugning Mr. Berenson's character in the process. Squawk Box (@SquawkCNBC), Twitter (Oct. 14, 2022, 9:28 AM), https://twitter.com/SquawkCNBC/status/1580913476847177728. In reality, Dr. Gottlieb was concerned about silencing a critic of Pfizer's products—products which had generated tens of billions of dollars in revenue for the company. For his part, Dr. Bourla never addressed or otherwise distanced himself from Dr. Gottlieb's conduct.

176. The effect of the suspension on Mr. Berenson was immediate, concrete, and negative. Overnight, he lost access to his more than 300,000 Twitter followers, the primary outlet for his reporting. He lost the chance to engage with government and public health officials on Twitter, including President Biden and other Defendants employed by the federal government. Mr. Berenson also lost the opportunity to promote his longer form journalism on Substack. Further, unlike Dr. Gottlieb and Mr. Slavitt, who both used Twitter to promote their books on COVID-19, Mr. Berenson lost the opportunity to promote *Pandemia*, his book on the pandemic, which was released in December 2021.

177. Mr. Berenson's followers and the general public also lost. They lost the opportunity to obtain factual, critical information about the safety and efficacy of the COVID-19 vaccines and to share that reporting with others. The censorship of Mr. Berenson drove further polarization of the debate about the COVID-19 vaccines, pushing people off the global public square and into more isolated ideological communities. In this regard, even COVID-19 vaccine advocates and supporters of mandates lost. As a *New York Times* contributor wrote on March 28, 2023, "Those who seek to suppress disinformation may be destined, themselves, to sow it." Megan K. Stack, *Dr. Fauci Could Have Said a Lot More*, N.Y. Times, Mar. 28, 2023, https://www.nytimes.com/2023/03/28/opinion/covid-lab-leak-theory-disinformation.html.

178. Secure in victory, Defendants believed their actions would never see the light of day. In December 2021, however, Mr. Berenson sued Twitter in federal district court. In July 2022, nearly a year after his permanent suspension, Mr. Berenson and Twitter settled their lawsuit. Twitter reinstated Mr. Berenson to the platform. Twitter issued a public statement regarding Mr. Berenson's permanent ban. "Upon further review," the company publicly stated, "Twitter acknowledges Mr. Berenson's Tweets should not have led his suspension at that time." Tiffany, *supra*. Mr. Berenson obtained many of the above-cited internal Twitter e-mails and communications from his case against the company.

179. As for Defendants, Twitter's public statement demonstrates that, consistent with Twitter's prior, repeated findings regarding his reporting, *Mr. Berenson did nothing wrong*. He did not violate Twitter's COVID-19 misleading information policy. He did not advocate violence or incite violence. The nature, accuracy, and quality of Mr. Berenson's reporting did not change—Twitter's moderation decisions did under relentless political and financial pressure

from Defendants. Twitter's silencing of Mr. Berenson was forced by a public-private partnership aimed at censoring critics of the federal government and the COVID-19 vaccines.

180. Less than two weeks after Mr. Berenson was silenced, President Biden announced a federal vaccine mandate that attempted to compel tens of millions of American adults to choose between their livelihoods and their right to determine whether they should receive mRNA shots. President Biden's COVID-19 vaccine mandates covered "100 million Americans—close to two-thirds of the American workforce." Kevin Liptak & Kaitlan Collins, *Biden announces new vaccine mandates that could cover 100 million Americans*, CNN, Sept. 9, 2021, https://www.cnn.com/2021/09/09/politics/joe-biden-covid-speech/index.html. The mandate further enriched Pfizer, a company that had already raked in tens of billions of dollars in COVID-19 vaccine revenues. While debate raged about the mandates, Mr. Berenson was excluded from the world's largest, most important digital public forum, consigned there by a censorious, unconstitutional public-private partnership.

181. President Biden was right in 2017. Censorship is "simply wrong." Now Defendants must be held accountable for their misconduct.

182. Further, unless and until Defendants are enjoined, Mr. Berenson's rights remain under threat. President Biden and his Administration continue to view COVID-19 vaccination as a life-saving measure, and thus the federal government might continue or start anew its efforts to silence Mr. Berenson, who has since returned to Twitter.

183. The revelations within the Twitter Files, "Elon Musk's release of internal Twitter documents," provided the public insight into "the degree to which government officials, law enforcement and politicians regularly communicate with Twitter, along with other tech platforms, by flagging content that may violate the company's policies and sharing threat

assessments." Shannon Bond, *Ex-Twitter officials reject GOP claims of government collusion*, NPR, Feb. 8, 2023, https://www.npr.org/2023/02/08/1155491204/ex-twitter-officials-reject-gop-claims-of-government-collusion. Nothing in the Twitter files has caused Defendants, including President Biden, or any member of his Administration to cease their efforts with respect to influencing Twitter's moderation practices.

184. If anything, the Twitter Files have raised the ire of the federal government, as the Federal Trade Commission has demanded Twitter's communications with and the names of journalists involved in the project. Ryan Tracy, *FTC Twitter Investigation Sought Elon Musk's Internal Communications, Journalist Names*, Mar. 8, 2023, https://www.wsj.com/articles/twitter-investigation-ftc-musk-documents-db6b179e. Even with Twitter's new ownership, and Mr. Musk's stated commitment to free speech, the federal government appears to be using other tools in its regulatory oversight to impact moderation on the platform.

185. A recent hearing of the House Judiciary Select Subcommittee on the Weaponization of the Federal Government corroborates this. During the hearing, members of Congress inquired regarding the sources for journalists Matt Taibbi and Michael Shellenberger's reporting. *See* Hearing on Twitter Documents About Content Moderation Decisions, H. Judiciary Select Subcomm. on the Weaponization of the Federal Government, Mar. 9, 2023, https://www.c-span.org/video/?526578-1/house-panel-examines-twitter-moderation-practices.

186. Since his return to Twitter, Mr. Berenson has continued to write about the COVID-19 vaccines and the public policy choices and failures of the last three years. He now has almost 500,000 followers on Twitter. He remains at risk from future government censorship efforts. And so does anyone else, journalist or citizen, who criticizes the federal government or posts facts that federal officials wish to suppress. Defendants targeted Mr. Berenson once before,

and there is no reason to think they will not do so again, unless this Court enjoins their Orwellian efforts once and for all.

187. This case is not just about the past, but the future. It is not just about Twitter, but all social media outlets. And it is not just about Mr. Berenson, but all Americans who wish to exercise their First Amendment rights in the face of corporate and government pressure to silence them.

CLAIMS FOR RELIEF

COUNT I
VIOLATION OF THE FIRST AMENDMENT
Free Speech
Right to Petition the Government
Freedom of the Press
Against President Biden, Mr. Slavitt, Mr. Flaherty, and Dr. Murthy

188. Mr. Berenson incorporates by reference and realleges the foregoing paragraphs.

189. The First Amendment guarantees freedom of speech, the right to petition the government, and freedom of the press.

190. At all relevant times, to include his time serving in the White House, Mr. Slavitt worked on behalf of and as a joint actor with the federal government's censorship efforts. Mr. Slavitt's actions make him a state actor in this case. Mr. Slavitt worked further with Dr. Gottlieb and Dr. Bourla to further the federal government's censorship agenda.

191. Throughout 2021, President Biden, Mr. Slavitt, Mr. Flaherty, and Dr. Murthy (the "government Defendants") created an atmosphere of censorship to facilitate Mr. Berenson's suspension from Twitter, including at least the following:

a. The Biden Administration threatening Twitter's protection under section 230 of the Communications Decency Act if the company did not censor more COVID-19 misinformation; and

b. Dr. Murthy issuing an advisory on COVID-19 misinformation to social media companies and urging the platforms to censor constitutionally protected speech.

192. The government Defendants specifically targeted Mr. Berenson's constitutionally protected speech and journalism in at least the following ways:

a. Making pointed inquiries to and veiled threats against Twitter during an April 21, 2021 meeting between White House Staff, including Mr. Flaherty and Mr. Slavitt, and Twitter regarding why Mr. Berenson had not been suspended from the platform;

b. Following Twitter's initial refusal to deplatform Mr. Berenson, the White House, including Mr. Flaherty and Mr. Slavitt, holding "very angry" phone calls with Twitter urging the platform to censor Mr. Berenson's speech;

c. Mr. Slavitt targeting Mr. Berenson's speech in July 2021, urging Twitter to deplatform the journalist, by arguing Mr. Berenson was "begging for it";

d. Dr. Gottlieb targeting Mr. Berenson's criticisms of Dr. Fauci on August 24, 2021, falsely accusing Mr. Berenson of inciting violence against Dr. Fauci to get Twitter to suspend Mr. Berenson;

e. Dr. Gottlieb engaging in a secret, private phone call with Twitter on August 27, 2021 in which he urged Twitter to censor Mr. Berenson;

f. Dr. Gottlieb sending Mr. Berenson's August 28, 2021 tweet regarding the COVID-19 vaccines, which Dr. Gottlieb falsely reported as violating Twitter's COVID-19 misleading information policy; and

g. Dr. Gottlieb urging Twitter to deplatform Mr. Berenson after he began posting on the platform under a different account.

193. The government Defendants, including President Biden, treated Twitter as a public forum. President Biden and his aides used Twitter as an important tool of governance and executive outreach by announcing policy initiatives and public awareness campaigns, including with respect to the COVID-19 vaccines.

194. Even though the government Defendants treated and continue to treat Twitter as a public forum, they engaged in viewpoint discrimination by working to completely censor Mr. Berenson from Twitter. In this regard, the government Defendants' conduct was even more censorious and unconstitutional than prior President Trump blocking accounts from responding to his tweets.

195. COVID-19 misinformation was a concern at the "highest levels" of the White House. The actions above were carried out under President Biden's direction and leadership.

196. The actions described above caused Mr. Berenson's deplatforming from Twitter, preventing him from speaking, engaging in journalism, and from speaking with, questioning, or otherwise interacting with the government officials who used Twitter as a public forum.

197. The actions cited above violated Mr. Berenson's First Amendment rights.

198. The violations described above may and are likely to recur unless the government Defendants are enjoined.

199. Mr. Berenson suffered damages on account of the government Defendants' actions.

COUNT II
VIOLATION OF THE KU KLUX KLAN ACT
CONSPIRACY TO VIOLATE CONSTITUTIONAL RIGHTS
42 U.S.C. § 1985(3)
Against All Defendants

200. Mr. Berenson incorporates by reference and realleges the foregoing paragraphs.

201. The Ku Klux Klan Act creates a private right of action "[i]f two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons equal protection of the laws, or equal privileges and immunities under the laws." 42 U.S.C. § 1985(3).

202. In his journalism and reporting, Mr. Berenson was speaking on behalf of an identifiable class of Americans who had chosen not to receive a COVID-19 vaccine. This class of unvaccinated Americans includes a disproportionate number of African-Americans, political conservatives, and evangelical Christians.[2]

203. Defendants bore animus against Mr. Berenson's reporting, which they directly and indirectly charged was leading to preventable deaths.

204. Defendants deliberately and specifically targeted Mr. Berenson's journalism and reporting.

205. As described above, Defendants conspired together to deprive Mr. Berenson of his First Amendment rights, causing him to be deplatformed from Twitter.

206. As alleged above, Mr. Berenson suffered damages on account of Defendants' conspiracy to deprive him of his First Amendment rights.

COUNTS III-V
TORTIOUS INTERFERENCE
Against Dr. Gottlieb, Mr. Slavitt, and Dr. Bourla

207. Mr. Berenson incorporates by reference and realleges the foregoing paragraphs.

208. Mr. Berenson is a resident of New York.

209. Mr. Slavitt is a resident of California. Dr. Gottlieb and Dr. Bourla are both residents of Connecticut.

[2] *See* Ewan Palmer, *The Least Vaccinated Groups in America*, Newsweek, Sept. 29, 2021, https://www.newsweek.com/least-vaccinated-groups-covid-poll-1633913.

210. The States of New York, California, and Connecticut all recognize tortious or intentional interference with contract.

211. A contract existed between Mr. Berenson and Twitter, the latter being headquartered in San Francisco.

212. Mr. Berenson and Twitter's contract was not an at-will contract. Though Twitter's operative terms of service at the time the company allowed the company to "suspend or terminate" an account for "any or no reason," Twitter, Terms of Service, https://twitter.com/en/tos/previous/version_16 (in force as of August 19, 2021), Twitter modified its contract with Mr. Berenson by, among other things, "establishing a specific, detailed five-strike policy regarding COVID-19 misinformation" which the company then violated, *Berenson v. Twitter, Inc.*, No. C 21-09818 WHA, 2022 WL 1289049, at *2 (N.D. Cal. Apr. 29, 2022).

213. At least Mr. Slavitt and Dr. Gottlieb were aware of that contract, including Twitter's COVID-19 misleading information policy. Upon information and belief, Dr. Bourla was also aware of Mr. Berenson's contract with Twitter.

214. Dr. Gottlieb and Mr. Slavitt intentionally interfered with Mr. Berenson's relationship with Twitter by secretly lobbying the platform to ban him, by falsely charging that Mr. Berenson's reporting was damaging, harming people, and causing or inducing threats of violence. Upon information and belief, Dr. Gottlieb acted with Dr. Bourla's knowledge and approval.

215. Neither Mr. Slavitt nor Dr. Gottlieb had any legitimate complaint against Mr. Berenson. Mr. Slavitt was motivated by his animus against Mr. Berenson, which is set forth in detail above, and further supported by the fact that Mr. Slavitt later falsely stated he had a limited

recollection of Mr. Berenson. Dr. Bourla and Dr. Gottlieb had both pecuniary motives for their conduct. They wanted to silence Mr. Berenson because he was criticizing Pfizer's vaccine.

216. As a result of their efforts, Twitter banned Mr. Berenson's account even though the company later acknowledged that none of his reporting should have led to his suspension.

217. Mr. Berenson incurred damages on account of Dr. Gottlieb, Dr. Bourla, and Mr. Slavitt's conduct, including but not limited to by losing access to his Twitter following as well as the opportunity to promote his Substack account and upcoming book.

PRAYER FOR RELIEF

WHEREFORE, Mr. Berenson respectfully prays that this Court:

A. Declare that the government Defendants' viewpoint-based targeting of Mr. Berenson's speech and journalism violated the First Amendment;

B. Enjoin Defendants and other persons acting in coordination or concert with them from further violating Mr. Berenson's First Amendment rights to free speech, right to petition the government, and freedom of the press;

C. Award Mr. Berenson damages arising out of Defendants' violation of 42 U.S.C. § 1985;

D. Award Mr. Berenson damages arising out of Dr. Bourla, Dr. Gottlieb, and Mr. Slavitt's interference with Mr. Berenson's contractual relationship with Twitter;

E. Award Mr. Berenson general and special damages;

F. Award Mr. Berenson punitive damages;

G. Award Mr. Berenson attorney's fees under the Equal Access to Justice Act; and

H. Award any other relief to Mr. Berenson which this Court deems necessary and proper.

DEMAND FOR TRIAL BY JURY

Mr. Berenson requests a jury trial on all issues so triable.

Respectfully submitted, this 12th day of April, 2023.

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

The State of Missouri and the State of Louisiana, *Plaintiffs*, v. **President Joseph R. Biden, Jr., in his official capacity as President of the United States of America, *et al.*,** *Defendants*.	Civil Action No. 22-cv-1213

DEFENDANTS' OBJECTIONS AND RESPONSES TO PLAINTIFFS' FIRST SET OF EXPEDITED PRELIMINARY-INJUNCTION RELATED INTERROGATORIES TO ROBERT FLAHERTY

Pursuant to Federal Rules of Civil Procedure 26 and 33 and the Local Rules of the U.S. District Court for the Western District of Louisiana, Defendants, by and through counsel, provide the following objections and responses to Plaintiffs' First Set of Expedited Preliminary-Injunction Related Interrogatories to Rob Flaherty ("Plaintiffs' First PI Interrogatories to Flaherty" or "Flaherty Interrogatories") served on December 12, 2022 on Defendants through counsel, after the Court in its Memorandum Order Regarding Depositions of December 7, 2022 ordered, *inter alia*, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

Defendants' objections and responses herein are based on information known to Mr. Flaherty at this time and are made without prejudice to additional objections or responses should Defendants subsequently identify additional grounds for objection or additional responsive information. The objections have been formulated in contemplation of Federal Rule of Civil

Procedure 26(b)(1), which generally permits discovery of matters not privileged that may be relevant to the claims or defenses in a civil action. In presenting the objections and responses herein, Defendants do not waive any further objection in pretrial motions practice or at trial as to the admissibility of evidence on the grounds of relevance, materiality, privilege, competency, or any other appropriate ground.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. Defendants object to the definitions of "Content Modulation," and the related term "Misinformation," including to the extent that Plaintiffs' definition of "Content Modulation" covers actions by Social Media Companies *beyond* those taken against content containing Misinformation and against users posting content containing Misinformation (such as actions taken as to any post on "efficacy of COVID-19 restrictions" or on "security of voting by mail"). For purposes of these Responses and Objections, Defendants generally define "Misinformation" in a manner consistent with Plaintiffs' definition of that term: "any form of speech . . . considered to be potentially or actually incorrect, mistaken, false, misleading, lacking proper context, disfavored, having the tendency to deceive or mislead . . . including but not limited to any content or speech considered by any federal official or employee or Social-Media Platform to be 'misinformation,' 'disinformation,' 'malinformation,' 'MDM,' 'misinfo,' 'disinfo,' or 'malinfo.'" *See* Interrogatories, Definition P.

2. Defendants object to the definitions of CDC, CISA, DHS, HHS, NIAID, and White House Communications Team to the extent those definitions include "any . . . agent," "contractors" and "any subordinate agency or entity" of those agencies on the ground that those definitions are overbroad, may render Plaintiffs' interrogatories vague and ambiguous, and may include persons and entities that are not under the supervision or control of any Defendant,

including Mr. Flaherty. Defendants also object to the definition of "White House Communications Team" for the additional reason that such a definition is not proportional to the needs of the case, particularly in light of the expedited nature of the discovery now ongoing, to the extent Plaintiffs seek information beyond the possession of Mr. Flaherty.

3. Defendants object to the definition of "communication" to the extent it is meant to cover anything beyond e-mail exchanges, as overbroad and disproportional to the needs of the case, particularly in light of the expedited nature of the discovery now ongoing.

4. Defendants object to the definition of "document" to the extent it includes "documents retained on personal devices and/or in personal e-mail accounts or other personal accounts." Documents found on personal devices or within electronic personal accounts would not be in the custody or control of any Defendant, and performing a full and comprehensive search for potentially responsive information on Mr. Flaherty's personal devices would be unduly burdensome.

5. Defendants object to the definition of "Federal Official" as overbroad, unduly burdensome, and disproportionate to the needs of the case, insofar as it purports to require a response outside the knowledge of Mr. Flaherty, where Mr. Flaherty's knowledge is the only appropriate basis for any response, given that the Court in its Memorandum Order Regarding Depositions of December 7, 2022 ordered, *inter alia*, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

6. Defendants object to the definition of "identify" to the extent it calls for disclosure of information covered by any applicable privilege or protection over, among other elements, a person's "email address, and present or last known address and telephone number."

7. Defendants object to the use of the undefined term "Meeting" in a manner

incompatible with, and calculated to expand the obligations imposed by, the Government in the Sunshine Act, 5 U.S.C. 552b.

8. Defendants object to the definition of "Social-Media Platform" as overbroad, because it includes "*any* organization that provides a service for public users to disseminate . . . content . . . to other users or the public," along with any "contractors, or any other person . . . acting on behalf of the Social-Media Platform . . . as well [as] subcontractors or entities used to conduct fact-checking or any other activities relating to Content Modulation." Such a definition is overbroad because the operative Complaint contains no nonconclusory allegation that Defendants communicated with each and every organization that allows users to "disseminate . . . content" to other users, along with any persons or entities affiliated with those organizations. Defendants will construe "Social-Media Platform" to encompass Facebook, Instagram, Twitter, LinkedIn, and YouTube, unless otherwise noted.

9. Defendants object to the definition of "You" and "Your" in each Interrogatory as overbroad, as it includes "any officers, officials, employees, agents, staff members, contractors, and other(s)" acting at the direction, or on behalf, of Mr. Flaherty. Such a definition also is not proportional to the needs of the case, especially given the expedited, abbreviated discovery process in which Defendants have only a limited amount of time to respond to Plaintiffs' Interrogatories. Defendants interpret any Interrogatory relying on this definition as applying solely to Mr. Flaherty insofar as a response to such Interrogatory by Mr. Flaherty is consistent with Rules 26 and 33. In particular, Plaintiffs' allegations against Mr. Flaherty concern actions taken in his official capacity, and the Court in its Memorandum Order Regarding Depositions of December 7, 2022 ordered service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

10. Defendants object to Instruction 1 as exceeding the requirements of Federal Rules of Civil Procedure 26, 33, and 34. Plaintiffs cite to no authority requiring a Defendant to "describe the efforts [it has] made to locate . . . document[s]" that are not in its custody and control "and identify who has control of the document and its location."

11. Defendants object to Instruction 2 to the extent it exceeds the requirements of Federal Rule of Civil Procedure 26(b)(6). Defendants specifically decline to produce privileged information. Defendants further object to any requirement that they produce a privilege log for privileged material not otherwise properly within the scope of discovery or as to which no privilege log would be required under Federal Rule of Civil Procedure 26(b)(5).

12. Defendants object to Instruction 3 as exceeding the requirements of Federal Rules of Civil Procedure 26, 33, and 34. Plaintiffs cite to no authority indicating that, if Defendants object to an Interrogatory on burden grounds, Defendants must "stat[e] the approximate number of documents to be produced, the approximate number of person-hours to be incurred in the identification, and the estimated cost of responding to the request." Further, it is unclear how Defendants could provide that type of information without conducting certain burdensome searches and reviews that Defendants sought to avoid through their objections.

13. Defendants object to Instruction 5 to the extent it requires Defendants to respond based on production of electronic documents "with all metadata and delivered in their original format." Plaintiffs may identify the precise categories of metadata they want Defendants' productions to contain, and Defendants can determine whether they can provide those categories of metadata without an undue burden.

14. Defendants object to Instruction 6 to the extent that it requires Defendants to respond based on production of documents in a format other than the format in which they are

"kept in the usual course of business." Fed R. Civ. P. 34(b)(2)(E). Defendants object to Instruction 6 to the extent that it requests the production of all e-mail "forwards" for e-mails produced to Plaintiffs. That Instruction may call for the production of documents that are not found in the governmental e-mail files of Mr. Flaherty.

15. Defendants object to Instruction 8, which applies these requests from January 1, 2020, to the present, as unduly broad. Mr. Flaherty began serving as Director of Digital Strategy at the White House on January 20, 2021. Defendants interpret these requests as applying from January 20, 2021, when Mr. Flaherty began serving as Director of Digital Strategy at the White House, through December 7, 2022, the date on which the Court in its Memorandum Order Regarding Depositions ordered service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9. Any broader period would be disproportional to the needs of the case. Such disproportionality is further aggravated by the discovery burden being placed on White House officials. *See Cheney v. U.S. District Court*, 542 U.S. 367, 385 (2004).

GENERAL OBJECTIONS APPLICABLE TO ALL INTERROGATORIES

1. The general objections set forth below apply to each and every Interrogatory discussed below. In asserting Defendants' objections to any particular Interrogatory, Defendants may assert an objection that is the same as, or substantially similar to, one or more of these objections. That Defendants may refer, with particularity, to some, but not all, of the general objections described immediately below in their objections to Plaintiffs' individual Interrogatories does not indicate that Defendants have waived any of these general objections as to any of Plaintiffs' Interrogatories.

2. Defendants object to any discovery taking place in this case to the extent Plaintiffs

assert cognizable claims seeking review of governmental agency action, including claims under the Administrative Procedure Act, because resolution of any such claims should be based upon the "administrative record" in this case. *See Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 743-44 (1985); *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971). That said, Defendants understand that the Court has allowed limited preliminary-injunction-related expedited discovery to proceed. *See* Order of July 12, 2022, ECF No. 34 at 13 (authorizing discovery requests concerning "the identity of federal officials who have been and are communicating with social-media platforms about [misinformation and] any censorship or suppression of speech on social media, including the nature and content of those communications"). Thus, while preserving their broad objection to any and all discovery, Defendants make objections stated below in light of the current procedural posture of the case.

3. Defendants object to each Interrogatory insofar as it is incompatible with *In re Paxton*, 53 F.4th 303 (5th Cir. 2022), where the U.S. Court of Appeals for the Fifth Circuit issued a writ of mandamus and directed quashal of subpoenas seeking testimony from the Texas attorney general, because the district court had "clearly erred by not first ensuring its own jurisdiction" given that "[a] court has a fundamental duty to examine its jurisdiction"—and a duty of "'making further inquiry'" when the court's jurisdiction is challenged. *Id.* at 307 (quoting *In re Gee*, 941 F.3d 153, 159 (5th Cir. 2019) (per curiam)). *Paxton* requires the Court to address the threshold issues raised in Defendants' currently pending motion to dismiss the Second Amended Complaint (which contends that the Court lacks jurisdiction because of an absence of Article III standing and because the Agency Defendants possess sovereign immunity) before proceeding with further discovery in this action. Defendants further object to each Interrogatory insofar as the Court should first resolve Defendants' pending motion to dismiss under Fed. R. Civ. P. 12(b)(6),

because those arguments, if accepted, would also obviate the need (and any justification) for further discovery. *See In re Murthy*, No. 22-30697 (5th Cir. Nov. 21, 2022) (directing the district court to give further consideration to "whether further discovery should be paused until a ruling on a timely filed motion by the Government to dismiss").

4. Defendants object to each Interrogatory as overbroad, unduly burdensome, and disproportional to the needs of the case, insofar as it purports to require a response concerning any governmental entity whose actions are not challenged in the Second Amended Complaint and whose information is not reasonably available to Mr. Flaherty, consistent with the Court's Memorandum Order Regarding Depositions of December 7, 2022, which ordered service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

5. Defendants object to the Interrogatories to the extent that they seek (a) attorney work product; (b) communications protected by the attorney-client privilege; (c) information protected by the deliberative process privilege or law enforcement privilege or other similar privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; (e) information protected by any form of executive privilege; or (f) information covered by any other applicable privilege or protection.

6. Defendants object to any Interrogatory seeking discovery from the White House as unduly burdensome, and disproportional to the needs of the case. *See generally Cheney*, 542 U.S. at 367. Plaintiffs' Interrogatories create an undue burden, distract White House officials from their critical executive responsibilities, and raise separation of powers concerns. *See id.* at 382 (repeating "the paramount necessity of protecting the Executive Branch from vexatious litigation that might distract it from the energetic performance of its constitutional duties"); *see*

also id. at 385 (admonishing courts "that the Executive's 'constitutional responsibilities and status [are] factors counseling judicial deference and restraint' in the conduct of litigation against it"). That burden is especially unjustified at this stage of the litigation given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending (with briefing scheduled to close this month). Further, the Interrogatories seeking response from the White House are unduly burdensome and disproportional to the needs of the case when Plaintiffs have not first exhausted all available opportunities to seek related information from other sources. *See* Order, *Centro Presente*, No. 1:18-cv-10340 (D. Mass. May 15, 2019) (requiring plaintiff to exhaust all discovery on other defendants before considering whether there was "continuing need for discovery sought on the White House"); *cf. Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019) (vacating "district court's discovery orders because the district court did not fulfill its obligation 'to explore other avenues, short of forcing the Executive to invoke privilege'" (quoting *Cheney*, 542 U.S. at 390)).

7. Moreover, to the extent any Interrogatory calls for disclosure of internal governmental communications involving White House personnel, it is inappropriate because it may have the effect of revealing information protected by the presidential communications privilege, a "presumptive privilege" "fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution" that attaches to presidential communications. *United States v. Nixon*, 418 U.S. 683, 708 (1974); *see In re Sealed Case*, 121 F.3d 729, 743-44 (D.C. Cir. 1997). Although the presidential communications privilege can be overcome by showing a "specific need" in a criminal case, *Judicial Watch, Inc. v. Dep't of Justice*, 365 F.3d 1108, 1112 (D.C. Cir. 2004), the presumption against disclosure is even higher in a civil case like this one, *Am Historical Ass'n v. Nat'l Archives & Records Admin.*,

402 F. Supp. 2d 171, 181 (D.D.C. 2005). Such discovery violates the separation of powers and creates an undue burden and distraction from those individuals' critical executive responsibilities. *See Cheney*, 542 U.S. at 389; *see also id.* at 371 ("[P]recedents provide no support for the . . . requirement that the Executive Branch bear the burden of invoking executive privilege with sufficient specificity and of making particularized objections [to producing large numbers of individual documents]. Indeed, those precedents suggest just the opposite.").

8. Defendants object to each Interrogatory as beyond the requirements of the Federal Rules of Civil Procedure and the Court's December 7, 2022 Order to the extent it seeks information or documents that are not in the custody or control of Mr. Flaherty.

9. Defendants object to each Interrogatory as unduly burdensome to the extent it seeks, without limitation, responses based on all communications and documents in Mr. Flaherty's custody or control relating to the substantive topic identified in the Interrogatory. The parties are currently involved in an expedited, abbreviated discovery process in which Defendants have only a limited amount of time to respond.

10. Defendants specifically reserve the right to make further objections and responses as necessary to the extent additional issues arise regarding the meaning of or information sought by Plaintiffs' Interrogatories.

PRELIMINARY STATEMENT REGARDING EXCESSIVELY NUMEROUS INTERROGATORIES

1. Defendants object to the Flaherty Interrogatories as exceeding the numerical limit of 25 in the aggregate under Fed. R. Civ. P. 33(a) and LR33.1 of the Local Civil Rules.

2. Contrary to those rules, Plaintiffs erroneously and improperly served on July 18, 2022 First PI Interrogatories totaling 110 enumerated interrogatories as to 10 recipient Defendants. Even excluding duplicative interrogatories served on separate Defendants (at least

in substance, if not form), there would still have been 34 distinct interrogatories served. Either number exceeds the 25 interrogatories permitted. *Global Tubing, LLC v. Tenaris Coiled Tubes, LLC*, No. 17-cv-3299, 2020 WL 12443175 at *2 (S.D. Tex. Nov. 25, 2020) (quoting 8B Charles Alan Wright et al., *Federal Practice & Procedure* § 2168.1 (3d ed. 2020)); *accord Kleiman v. Wright*, No. 18-cv-80176, 2020 WL 1666787 at *1 (S.D. Fla. Apr. 3, 2020); *Vinton v. Adam Aircraft Indus., Inc.*, 232 F.R.D. 650, 664 (D. Colo. 2005); *see also Zito v. Leasecomm Corp.*, 233 F.R.D. 395, 399 (S.D.N.Y. 2006); *see, e.g.*, *Am. Council of Blind of Metro. Chi. v. Chi.*, No. 19-cv-6322, 2021 WL 5140475 at *1-2 (N.D. Ill. Nov. 4, 2021); *Fair Housing Ctr. of Centr. Ind. v. Welton*, No. 18-cv-01098, 2019 WL 2422594 at *5 (S.D. Ind. June 10, 2019). In a similar vein, LR33.1 of the Local Civil Rules, concerning "Number of Interrogatories," provides as follows (emphasis added): "No party shall serve on any other party *more than 25 interrogatories in the aggregate* without leave of court." Adherence to the 25-interrogatory limitation is especially appropriate at this stage of the instant action, where Defendants have already produced voluminous documents ahead of the Rule 26 conference for the limited purpose of providing Plaintiffs with additional information concerning the pending preliminary injunction motion. *Cf. Gray v. Price*, No. 19-cv-10383, 2020 WL 12721645 at *5 (E.D. Mich. Feb. 12, 2020).

3. After alerting Plaintiffs to the numerical limit issue in an August 1, 2022, letter, and following additional e-mail correspondence with Plaintiffs, the parties agreed on August 11, 2022 to resolve the excessive numerosity problem as follows: Plaintiffs requested that (***a***) each Defendant recipient is to answer Interrogatories 1 through 5 of the First PI Interrogatories directed to CDC, with the reference to the CDC (in Interrogatory 1) to "be adjusted to refer to the recipient of the interrogatory," and (***b***) certain Defendants are to answer additional interrogatories, totaling 20, specified by Plaintiffs, and Plaintiffs did not object to Defendants' proposal that all remaining

interrogatories be deemed withdrawn. Defendants responded to those interrogatories on August 17, 2022, as amended on September 27, 2022, and on December 19, 2022. Accordingly, any interrogatory that is not substantively identical to one served on other Defendants exceeds the numerical limit.

SIGNATURES FOR RESPONSES

1. Insofar as an Interrogatory is not objected to through the undersigned counsel, Defendants respond to it below, with the signatures of the following—for Mr. Flaherty: Robert Flaherty, White House Director of the Office of Digital Strategy.

OBJECTIONS AND RESPONSES TO SPECIFIC INTERROGATORIES

Flaherty Interrogatory No. 1:

Identify all Communications with Social-Media Platform(s), and describe in detail the nature and content of each Communication.

OBJECTIONS: Defendants incorporate by reference the above objections. Defendants further object to this Interrogatory as overbroad, unduly burdensome, and not proportional to the needs of this case. This Interrogatory calls for information regarding "all Communications with Social-Media Platform[s]," even if the Communications do not concern Misinformation as described in the Court's July 12, 2022 order authorizing expedited discovery (*see* ECF No. 34 at 13 (authorizing discovery requests concerning "the identity of federal officials who have been and are communicating with social-media platforms about [misinformation and] any censorship or suppression of speech on social media, including the nature and content of those communications")), and even as to platforms not at issue in the operative Complaint, and including each platform's "officers, agents, employees, contractors, or any other person employed by or acting on behalf of [such] Social-Media Platform."

Defendants cannot conduct an exhaustive search to uncover "all" possible responsive

information under the current, abbreviated expedited discovery schedule. Such expedited discovery is especially burdensome given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending. Further, given the expedited nature of the discovery, it would not be reasonable for Mr. Flaherty to attempt to ascertain every communication or meeting with social media platforms that are not documented in the extensive emails being produced in this litigation. To the extent an interrogatory asks about specific communications or meetings with social media platforms, or specific topics discussed with social media platforms, Mr. Flaherty responded to that interrogatory to the best of his recollection.

Defendants also understand this Interrogatory to seek only a response based on communications between Defendants and third parties outside the government. To the extent that this Interrogatory seeks internal information referring to such communications, Defendants object to the Interrogatory as not proportional to the needs of the case, as it would require an extensive search of internal records that would not be possible to complete in the expedited period provided for current discovery and would be unnecessary in light of Defendants' agreement to produce the external communications themselves. Defendants also object to the Interrogatory to the extent a response requires review of internal, deliberative documents discussing such communications, attorney client documents, or other privileged materials relating to agency communications. Defendants also object to this Interrogatory to the extent it seeks information protected by the deliberative process privilege, attorney-client privilege, law enforcement privilege, national security privileges, presidential communications privilege, or any other applicable privilege. Additionally, challenges to administrative agency action are ordinarily not subject to discovery outside the administrative record. *Lorion*, 470 U.S. at 743-44. Moreover, this Interrogatory is

overbroad, unduly burdensome, and disproportional to the needs of the case, insofar as it requires a response outside the knowledge of Mr. Flaherty, where Mr. Flaherty's knowledge is the only appropriate basis for any response, given that the Court in the Memorandum Order Regarding Depositions of December 7, 2022 ordered, *inter alia*, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

Further, Defendants object to this Interrogatory on the ground that any discovery on the White House at this stage of the litigation is unduly burdensome and disproportional to the needs of the case. Plaintiffs have not exhausted all other avenues of discovery before seeking discovery on the White House. *See, e.g.*, Order, *Centro Presente*, No. 1:18-cv-10340 (D. Mass. May 15, 2019); *Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019); *Cheney*, 542 U.S. at 390. Additionally, discovery propounded on White House officials creates an undue burden, distracts them from their critical executive responsibilities, and raises separation of powers concerns. *See Cheney*, 542 U.S. at 385. That burden is especially unjustified at this stage of the litigation given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending. Additionally, Defendants object to this Interrogatory to the extent a response requires review of information protected by the presidential communications privilege or other executive privileges. *See Nixon*, 418 U.S. at 708. Because Plaintiffs are not entitled to such information, the request imposes a burden on Defendant disproportionate to the minimal benefit (if any) that Plaintiffs might derive from the possibility of responsive, non-privileged information. *See Cheney*, 542 U.S. at 389.

Defendants further object to this Interrogatory as unreasonably cumulative and duplicative of Plaintiffs' Requests for Production of Documents served on Mr. Flaherty in his official capacity, in response to which Defendants are producing documents within a review population that contains

(i) non-privileged e-mail communications between Mr. Flaherty and email addresses with domain names of the Social-Media Platforms defined above and (ii) which are collected from Mr. Flaherty's governmental account. Defendants are producing e-mails within the aforementioned review population that contain one or more of the search terms identified by Plaintiffs, or that were otherwise identified by Defendants as being potentially responsive, and that concern misinformation, content modulation, or content on social media platforms about COVID-19. Defendants have included e-mails with social media platforms about COVID-19 regardless of whether those e-mails are related to misinformation or content modulation—notwithstanding that many of those e-mails would otherwise go beyond the scope of discovery authorized by the Court's July 12, 2022, discovery order—given the expedited, abbreviated discovery process in which Defendants have only a limited amount of time to respond to Plaintiffs' requests, and out of a desire to be transparent and responsive to the Court's supplemental discovery order. Additionally, Defendants are producing emails contained within the aforementioned review population that reflect a meeting invitation or a response to such an invitation between any White House official and any employee of any social-media platform (hereinafter "meeting invites"), regardless of whether a meeting invite includes one of Plaintiffs' search terms, and regardless of whether a meeting invite indicates that the topic of the meeting was misinformation or content modulation. The Requests for Production provide a more expeditious and significantly less burdensome method for Plaintiffs to obtain the information sought, considering the expedited nature of the discovery here and the broad scope of this Interrogatory.

RESPONSE: Subject to and without waiving the above objections, Defendants provide the following response: Defendants refer Plaintiffs to the documents being produced in response to Plaintiffs' First Set of Expedited Preliminary-Injunction Related Requests For Production to

Rob Flaherty and other documents produced in this litigation. Further, Defendants refer Plaintiffs to the response below to Interrogatory No. 2 regarding meetings with social media platforms.

Flaherty Interrogatory No. 2:

Identify and describe in detail all Meetings with Social-Media Platform(s), including the time, date, place, all participant(s), everyone who spoke at the meeting, and the nature and content of all Communications at each Meeting.

OBJECTIONS: Defendants incorporate by reference the above objections. Defendants further object to this Interrogatory as overbroad, unduly burdensome, and not proportional to the needs of this case. This Interrogatory calls for information regarding "all Meetings with Social-Media Platform[s]," even if the Meetings do not concern Misinformation as described in the Court's July 12, 2022 order authorizing expedited discovery (*see* ECF No. 34 at 13 (authorizing discovery requests concerning "the identity of federal officials who have been and are communicating with social-media platforms about [misinformation and] any censorship or suppression of speech on social media, including the nature and content of those communications")), and even as to platforms not at issue in the operative Complaint, and including each platform's "officers, agents, employees, contractors, or any other person employed by or acting on behalf of [such] Social-Media Platform."

Defendants cannot conduct an exhaustive search to uncover all possible responsive information under the current, abbreviated expedited discovery schedule. Such expedited discovery is especially burdensome given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending. Further, given the expedited nature of the discovery, it would not be reasonable for Mr. Flaherty to attempt to ascertain every communication or meeting with social media platforms that are not documented in the extensive emails being produced in this litigation. To the extent an interrogatory

asks about specific communications or meetings with social media platforms, or specific topics discussed with social media platforms, Mr. Flaherty responded to that interrogatory to the best of his recollection.

Defendants also understand this Interrogatory to seek only a response based on meetings between Defendants and third parties outside the government. To the extent that this Interrogatory seeks internal information referring to such meetings, Defendants object to the Interrogatory as not proportional to the needs of the case, as it would require an extensive search of internal records that would not be possible to complete in the expedited period provided for current discovery and would be unnecessary in light of Defendants' agreement to produce information concerning the external meetings themselves. Defendants also object to the Interrogatory to the extent a response requires review of internal, deliberative documents discussing such meetings, attorney client documents, or other privileged materials. Defendants also object to this Interrogatory to the extent it seeks information protected by the deliberative process privilege, attorney-client privilege, law enforcement privilege, national security privileges, presidential communications privilege, or any other applicable privilege. Additionally, challenges to administrative agency action are ordinarily not subject to discovery outside the administrative record. *Lorion*, 470 U.S. at 743-44. Moreover, this Interrogatory is overbroad, unduly burdensome, and disproportional to the needs of the case, insofar as it requires a response outside the knowledge of Mr. Flaherty, where Mr. Flaherty's knowledge is the only appropriate basis for any response, given that the Court in the Memorandum Order Regarding Depositions of December 7, 2022 ordered, *inter alia*, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

Further, Defendants object to this Interrogatory on the ground that any discovery on the White House at this stage of the litigation is unduly burdensome and disproportional to the needs

of the case. Plaintiffs have not exhausted all other avenues of discovery before seeking discovery on the White House. *See, e.g.*, Order, *Centro Presente*, No. 1:18-cv-10340 (D. Mass. May 15, 2019); *Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019); *Cheney*, 542 U.S. at 390. Additionally, discovery propounded on White House officials creates an undue burden, distracts them from their critical executive responsibilities, and raises separation of powers concerns. *See Cheney*, 542 U.S. at 385. That burden is especially unjustified at this stage of the litigation given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending. Additionally, Defendants object to this Interrogatory to the extent a response requires review of information protected by the presidential communications privilege or other executive privileges. *See Nixon*, 418 U.S. at 708. Because Plaintiffs are not entitled to such information, the request imposes a burden on Defendant disproportionate to the minimal benefit (if any) that Plaintiffs might derive from the possibility of responsive, non-privileged information. *See Cheney*, 542 U.S. at 389.

Additionally, Defendants object to this Interrogatory as overbroad and disproportional to the needs of the case, particularly in light of the expedited nature of the discovery, to the extent it demands—in vague and ambiguous terms—descriptions of "all meetings" "in detail" beyond the descriptions set forth in e-mails or meeting invites reflecting that a meeting was held or email exchanges describing such meetings.

Defendants further object to this Interrogatory as unreasonably cumulative and duplicative of Plaintiffs' Requests for Production of Documents served on Mr. Flaherty in his official capacity, in response to which Defendants are producing documents within a review population that contains (i) non-privileged e-mail communications between Mr. Flaherty and email addresses with domain names of the Social-Media Platforms defined above and (ii) which are collected from Mr.

Flaherty's governmental account. Defendants are producing e-mails within the aforementioned review population that contain one or more of the search terms identified by Plaintiffs, or that were otherwise identified by Defendants as being potentially responsive, and that concern misinformation, content modulation, or content on social media platforms about COVID-19. Additionally, Defendants are producing meeting invites. The Requests for Production provide a more expeditious and significantly less burdensome method for Plaintiffs to obtain the information sought, considering the expedited nature of the discovery here and the broad scope of this Interrogatory.

RESPONSE: Subject to and without waiving the above objections, Defendants provide the following response: Defendants refer Plaintiffs to the documents being produced in response to Plaintiffs' First Set of Expedited Preliminary-Injunction Related Requests For Production to Rob Flaherty and other documents produced in this litigation.

Additionally, although Mr. Flaherty cannot recall the exact nature and content of each meeting, Mr. Flaherty avers that he has had numerous meetings with social media companies in his role as the Director of the Office of Digital Strategy, which requires him to oversee the President's engagements on social media and outreach to digital creators, among other responsibilities. Some of those meetings Mr. Flaherty had with social media companies concerned misinformation or disinformation. These meetings Mr. Flaherty had with social media companies concerning misinformation or disinformation largely, if not entirely, focused on misinformation and disinformation as it relates to COVID-19 and the safety and efficacy of COVID-19 vaccines. That focus was consistent with the current Administration's concern that misinformation and disinformation related to COVID-19 vaccines poses a critical threat to public health and contributes to preventable hospitalizations and deaths. In these meetings, Mr. Flaherty generally

sought to better understand the companies' existing policies to address the spread of misinformation or disinformation on their platforms, what the companies were doing to enforce those policies, and what the government could do to assist social media companies in their efforts to address the spread of misinformation or disinformation on their platforms. Mr. Flaherty avers that he has also encouraged social media companies to be transparent and share data concerning the prevalence of misinformation and disinformation on their platforms. At times he expressed frustration when he perceived platforms to be applying their policies inconsistently or to not be forthcoming in their assessment of the problems with misinformation and disinformation on their platforms.

Flaherty Interrogatory No. 3:

Identify every Federal Official for whom you have any reason to believe is or has been involved in any Communication(s) and/or Meeting(s) with any Social-Media Platform(s), and describe in detail the nature and content of the Communication(s) and Meeting(s).

OBJECTIONS: Defendants incorporate by reference the above objections. Defendants further object to this Interrogatory as overbroad, unduly burdensome, and not proportional to the needs of this case. This Interrogatory calls for a response based on "Communication(s) and/or Meeting(s)" in which "every Federal Official" is "involved," even if the "Communication(s) and/or Meeting(s)" do not concern Misinformation as described in the Court's July 12, 2022 order authorizing expedited discovery (*see* ECF No. 34 at 13 (authorizing discovery requests concerning "the identity of federal officials who have been and are communicating with social-media platforms about [misinformation and] any censorship or suppression of speech on social media, including the nature and content of those communications")), and "with" any and all Social-Media Platforms, even if those platforms are not at issue in the operative Complaint, and including each platform's "officers, agents, employees, contractors, or any other person employed by or acting on

behalf of [such] Social-Media Platform."

Defendants cannot conduct an exhaustive search to uncover all possible responsive information under the current, abbreviated expedited discovery schedule. Such expedited discovery is especially burdensome given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is pending. Further, given the expedited nature of the discovery, it would not be reasonable for Mr. Flaherty to attempt to ascertain every communication or meeting with social media platforms that are not documented in the extensive emails being produced in this litigation. To the extent an interrogatory asks about specific communications or meetings with social media platforms, or specific topics discussed with social media platforms, Mr. Flaherty responded to that interrogatory to the best of his recollection.

Defendants also object to this Interrogatory to the extent it seeks information protected by the deliberative process privilege, attorney-client privilege, law enforcement privilege, national security privileges, presidential communications privilege, or any other applicable privilege. Additionally, challenges to administrative agency action are ordinarily not subject to discovery outside the administrative record. *Lorion*, 470 U.S. at 743-44. Moreover, this Interrogatory is overbroad, unduly burdensome, and disproportional to the needs of the case, insofar as it purports, via the definition of "Federal Official" and the phrase "any reason to believe," to require a response outside the knowledge of Mr. Flaherty, where Mr. Flaherty's knowledge is the only appropriate basis for any response, given that the Court in the Memorandum Order Regarding Depositions of December 7, 2022 ordered, *inter alia*, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

Further, Defendants object to this Interrogatory on the ground that any discovery on the

White House at this stage of the litigation is unduly burdensome and disproportional to the needs of the case. Plaintiffs have not exhausted all other avenues of discovery before seeking discovery on the White House. *See, e.g.*, Order, *Centro Presente*, No. 1:18-cv-10340 (D. Mass. May 15, 2019); *Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019); *Cheney*, 542 U.S. at 390. Additionally, discovery propounded on White House officials creates an undue burden, distracts them from their critical executive responsibilities, and raises separation of powers concerns. *See Cheney*, 542 U.S. at 385. That burden is especially unjustified at this stage of the litigation given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending. Additionally, Defendants object to this Interrogatory to the extent a response requires review of information protected by the presidential communications privilege or other executive privileges. *See Nixon*, 418 U.S. at 708. Because Plaintiffs are not entitled to such information, the request imposes a burden on Defendant disproportionate to the minimal benefit (if any) that Plaintiffs might derive from the possibility of responsive, non-privileged information. *See Cheney*, 542 U.S. at 389.

Additionally, Defendants object to this Interrogatory as overbroad and disproportional to the needs of the case, particularly in light of the expedited nature of the discovery, to the extent it demands—in vague and ambiguous terms—descriptions of "communications" and "all meetings" "in detail" beyond the descriptions set forth in e-mails or meeting invites reflecting that a communication occurred or a meeting was held or email exchanges describing such meetings or communications.

Defendants further object to this Interrogatory as unreasonably cumulative and duplicative of Plaintiffs' Requests for Production of Documents served on Mr. Flaherty in his official capacity, in response to which Defendants are producing documents within a review population that contains

(i) non-privileged e-mail communications between Mr. Flaherty and email addresses with domain names of the Social-Media Platforms defined above and (ii) which are collected from Mr. Flaherty's governmental account. Defendants are producing e-mails within the aforementioned review population that contain one or more of the search terms identified by Plaintiffs, or that were otherwise identified by Defendants as being potentially responsive, and that concern misinformation, content modulation, or content on social media platforms about COVID-19. Additionally, Defendants are producing meeting invites. The Requests for Production provide a more expeditious and significantly less burdensome method for Plaintiffs to obtain the information sought, considering the expedited nature of the discovery here and the broad scope of this Interrogatory.

RESPONSE: Subject to and without waiving the above objections, Defendants provide the following response: Defendants refer Plaintiffs to the documents being produced in response to Plaintiffs' First Set of Expedited Preliminary-Injunction Related Requests For Production to Rob Flaherty and other documents produced in this litigation.

Flaherty Interrogatory No. 4:

Identify all Communication(s) and Meeting(s) involving any of the following people that refer or relate in any way to Content Modulation, Misinformation, and/or any Social-Media Platform(s). For each such Meeting or Communication, in response to this interrogatory, identify the time, date, place, method of communication (phone, email, videoconference, etc.), duration, participants, and general topic of the Meeting or Communication: Dr. Anthony Fauci, Francis Collins, Clifford Lane, Vivek Murthy, Eric Waldo, Max Lesko, Deborah Birx, Rochelle Walensky, Richard Hatchett, Jen Psaki, Karine Jean-Pierre, Brian Scully, Andy Slavitt, Matthew Masterson, Jen Easterly, Christopher C. Krebs, Carol Crawford, Alex Stamos, Renee DiResta, Kate Starbird, Elvis Chan, Laura Dehmlow, Leah Bray, Nina Jankowicz, Lea Gabrielle, Jiore Craig, Theo LeCompte, Joshua Peck, Alejandro Mayorkas, Robert Silvers, Samantha Vinograd, Nina Jankowicz, Kyla Fullenwider, Courtney Billet, Samaruddin Stewart, Daniel Kimmage.

OBJECTIONS: Defendants incorporate by reference the above objections. Defendants

further object that the Interrogatory is vague and ambiguous, including through the use of the term "refer or relate in any way to Content Modulation, Misinformation, and/or any Social-Media Platform(s)," where, among other defects, the ambiguous term "and/or" could be construed to extend even to those "Communication(s) and/or Meeting(s)" that do not concern Misinformation as described in the Court's July 12, 2022 order authorizing expedited discovery (*see* ECF No. 34 at 13 (authorizing discovery requests concerning "the identity of federal officials who have been and are communicating with social-media platforms about [misinformation and] any censorship or suppression of speech on social media, including the nature and content of those communications")).

Defendants further object to this Interrogatory as overbroad, unduly burdensome, and not proportional to the needs of this case. This Interrogatory calls for a response based on "Communication(s) and/or Meeting(s)" in which each named individual—including not only current Federal Government officials but also former Federal Government officials and individuals *not* alleged to have been employed by the Federal Government—is "involv[ed]," and "with" any and all Social-Media Platforms, even if those platforms are not at issue in the operative Complaint, and including each platform's "officers, agents, employees, contractors, or any other person employed by or acting on behalf of [such] Social-Media Platform."

Defendants cannot conduct an exhaustive search to uncover all possible responsive information under the current, abbreviated expedited discovery schedule. Such expedited discovery is especially burdensome given that Defendants' motion to dismiss the Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending. Further, given the expedited nature of the discovery, it would not be reasonable for Mr. Flaherty to attempt to ascertain every communication or meeting with social media platforms that are not

documented in the extensive emails being produced in this litigation. To the extent an interrogatory asks about specific communications or meetings with social media platforms, or specific topics discussed with social media platforms, Mr. Flaherty responded to that interrogatory to the best of his recollection.

Defendants also object to this Interrogatory to the extent it seeks information protected by the deliberative process privilege, attorney-client privilege, law enforcement privilege, national security privileges, presidential communications privilege, or any other applicable privilege. Additionally, challenges to administrative agency action are ordinarily not subject to discovery outside the administrative record. *Lorion*, 470 U.S. at 743-44. Moreover, this Interrogatory is overbroad, unduly burdensome, and disproportional to the needs of the case, insofar as it purports to require a response outside the knowledge of Mr. Flaherty, where Mr. Flaherty's knowledge is the only appropriate basis for any response, given that the Court in the Memorandum Order Regarding Depositions of December 7, 2022 ordered, *inter alia*, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

Further, Defendants object to this Interrogatory on the ground that any discovery on the White House at this stage of the litigation is unduly burdensome and disproportional to the needs of the case. Plaintiffs have not exhausted all other avenues of discovery before seeking discovery on the White House. *See, e.g.*, Order, *Centro Presente*, No. 1:18-cv-10340 (D. Mass. May 15, 2019); *Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019); *Cheney*, 542 U.S. at 390. Plaintiffs have not exhausted all other avenues of discovery before seeking discovery on the White House. *See, e.g.*, Order, *Centro Presente*, No. 1:18-cv-10340 (D. Mass. May 15, 2019); *Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019); *Cheney*, 542 U.S. at 390. Additionally, discovery propounded on White House officials creates an undue burden, distracts them from their critical

executive responsibilities, and raises separation of powers concerns. *See Cheney*, 542 U.S. at 385. That burden is especially unjustified at this stage of the litigation given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending. Additionally, Defendants object to this Interrogatory to the extent a response requires review of information protected by the presidential communications privilege or other executive privileges. *See Nixon*, 418 U.S. at 708. Because Plaintiffs are not entitled to such information, the request imposes a burden on Defendant disproportionate to the minimal benefit (if any) that Plaintiffs might derive from the possibility of responsive, non-privileged information. *See Cheney*, 542 U.S. at 389.

Additionally, Defendants object to this Interrogatory as overbroad and disproportional to the needs of the case, particularly in light of the expedited nature of the discovery, to the extent it demands—in vague and ambiguous terms—descriptions of "communications" and "all meetings" "in detail" beyond the descriptions set forth in e-mails or meeting invites reflecting that a communication occurred or a meeting was held or email exchanges describing such meetings or communications.

Defendants further object to this Interrogatory as unreasonably cumulative and duplicative of Plaintiffs' Requests for Production of Documents served on Mr. Flaherty in his official capacity, in response to which Defendants are producing documents within a review population that contains (i) non-privileged e-mail communications between Mr. Flaherty and email addresses with domain names of the Social-Media Platforms defined above and (ii) which are collected from Mr. Flaherty's governmental account. Defendants are producing e-mails within the aforementioned review population that contain one or more of the search terms identified by Plaintiffs, or that were otherwise identified by Defendants as being potentially responsive, and that concern

misinformation, content modulation, or content on social media platforms about COVID-19. Additionally, Defendants are producing meeting invites. The Requests for Production provide a more expeditious and significantly less burdensome method for Plaintiffs to obtain the information sought, considering the expedited nature of the discovery here and the broad scope of this Interrogatory.

RESPONSE: Subject to and without waiving the above objections, Defendants provide the following response: Defendants refer Plaintiffs to the documents produced in this litigation. Further, Defendants refer Plaintiffs to responses below to Interrogatories Nos. 6 and 8.

Flaherty Interrogatory No. 5:

For each Meeting and Communication identified in the previous Interrogatory, identify and describe in detail the nature and content of every Communication involved in the Meeting or Communication.

OBJECTIONS: Defendants incorporate by reference the above objections. Defendants further object that the Interrogatory is vague and ambiguous, including through the use of the term "refer or relate in any way to Content Modulation, Misinformation, and/or any Social-Media Platform(s)," where, among other defects, the ambiguous term "and/or" could be construed to extend even to those "Communication(s) and/or Meeting(s)" that do not concern Misinformation as described in the Court's July 12, 2022 order authorizing expedited discovery (*see* ECF No. 34 at 13 (authorizing discovery requests concerning "the identity of federal officials who have been and are communicating with social-media platforms about [misinformation and] any censorship or suppression of speech on social media, including the nature and content of those communications")).

Defendants further object to this Interrogatory as overbroad, unduly burdensome, and not proportional to the needs of this case. This Interrogatory calls for a response based on

"Communication(s) and/or Meeting(s)" in which each named individual—including not only current Federal Government officials but also former Federal Government officials and individuals *not* alleged to have been employed by the Federal Government—is "involv[ed]," and "with" any and all Social-Media Platforms, even if those platforms are not at issue in the operative Complaint, and including each platform's "officers, agents, employees, contractors, or any other person employed by or acting on behalf of [such] Social-Media Platform."

Defendants cannot conduct an exhaustive search to uncover all possible responsive information under the current, abbreviated expedited discovery schedule. Such expedited discovery is especially burdensome given that Defendants' motion to dismiss the Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending. Further, given the expedited nature of the discovery, it would not be reasonable for Mr. Flaherty to attempt to ascertain every communication or meeting with social media platforms that are not documented in the extensive emails being produced in this litigation. To the extent an interrogatory asks about specific communications or meetings with social media platforms, or specific topics discussed with social media platforms, Mr. Flaherty responded to that interrogatory to the best of his recollection.

Defendants also object to this Interrogatory to the extent it seeks information protected by the deliberative process privilege, attorney-client privilege, law enforcement privilege, national security privileges, presidential communications privilege, or any other applicable privilege. Additionally, challenges to administrative agency action are ordinarily not subject to discovery outside the administrative record. *Lorion*, 470 U.S. at 743-44. Moreover, this Interrogatory is overbroad, unduly burdensome, and disproportional to the needs of the case, insofar as it purports to require a response outside the knowledge of Mr. Flaherty, where Mr. Flaherty's knowledge is

the only appropriate basis for any response, given that the Court in the Memorandum Order Regarding Depositions of December 7, 2022 ordered, *inter alia*, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

Further, Defendants object to this Interrogatory on the ground that any discovery on the White House at this stage of the litigation is unduly burdensome and disproportional to the needs of the case. Plaintiffs have not exhausted all other avenues of discovery before seeking discovery on the White House. *See, e.g.*, Order, *Centro Presente*, No. 1:18-cv-10340 (D. Mass. May 15, 2019); *Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019); *Cheney*, 542 U.S. at 390. Additionally, discovery propounded on White House officials creates an undue burden, distracts them from their critical executive responsibilities, and raises separation of powers concerns. *See Cheney*, 542 U.S. at 385. That burden is especially unjustified at this stage of the litigation given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending. Additionally, Defendants object to this Interrogatory to the extent a response requires review of information protected by the presidential communications privilege or other executive privileges. *See Nixon*, 418 U.S. at 708. Because Plaintiffs are not entitled to such information, the request imposes a burden on Defendant disproportionate to the minimal benefit (if any) that Plaintiffs might derive from the possibility of responsive, non-privileged information. *See Cheney*, 542 U.S. at 389.

Defendants further object to this Interrogatory as unreasonably cumulative and duplicative of Plaintiffs' Requests for Production of Documents served on Mr. Flaherty in his official capacity, in response to which Defendants are producing documents within a review population that contains (i) non-privileged e-mail communications between Mr. Flaherty and email addresses with domain names of the Social-Media Platforms defined above and (ii) which are collected from Mr.

Flaherty's governmental account. Defendants are producing e-mails within the aforementioned review population that contain one or more of the search terms identified by Plaintiffs, or that were otherwise identified by Defendants as being potentially responsive, and that concern misinformation, content modulation, or content on social media platforms about COVID-19. Additionally, Defendants are producing meeting invites. The Requests for Production provide a more expeditious and significantly less burdensome method for Plaintiffs to obtain the information sought, considering the expedited nature of the discovery here and the broad scope of this Interrogatory.

RESPONSE: Subject to and without waiving the above objections, Defendants provide the following response: Defendants refer Plaintiffs to the documents produced in this litigation. Further, Defendants refer Plaintiffs to responses below to Interrogatories Nos. 6 and 8.

Flaherty Interrogatory No. 6:

Identify and describe in detail the involvement of any Federal Official and/or federal agency in the Election Integrity Partnership and/or the Virality Project.

OBJECTIONS: Defendants incorporate by reference the above objections. Defendants further object that the Interrogatory is vague and ambiguous, including through the use of the term "the involvement of any Federal Official and/or federal agency" where, among other defects, the ambiguous term "involvement" could be construed to include communications that do not concern Misinformation as described in the Court's July 12, 2022 order authorizing expedited discovery (*see* ECF No. 34 at 13 (authorizing discovery requests concerning "the identity of federal officials who have been and are communicating with social-media platforms about [misinformation and] any censorship or suppression of speech on social media, including the nature and content of those communications")).

Defendants cannot conduct an exhaustive search to uncover all possible responsive information under the current, abbreviated expedited discovery schedule. Such expedited discovery is especially burdensome given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is pending. Defendants also object to this Interrogatory to the extent it seeks information protected by the deliberative process privilege, attorney-client privilege, law enforcement privilege, national security privileges, presidential communications privilege, or any other applicable privilege. Additionally, challenges to administrative agency action are ordinarily not subject to discovery outside the administrative record. *Lorion*, 470 U.S. at 743-44. Moreover, this Interrogatory is overbroad, unduly burdensome, and disproportional to the needs of the case, insofar as it purports, via the definition of "Federal Official," to require a response outside the knowledge of Mr. Flaherty, where Mr. Flaherty's knowledge is the only appropriate basis for any response, given that the Court in the Memorandum Order Regarding Depositions of December 7, 2022 ordered, *inter alia*, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

Further, Defendants object to this Interrogatory on the ground that any discovery on the White House at this stage of the litigation is unduly burdensome and disproportional to the needs of the case. Plaintiffs have not exhausted all other avenues of discovery before seeking discovery on the White House. *See, e.g.*, Order, *Centro Presente*, No. 1:18-cv-10340 (D. Mass. May 15, 2019); *Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019); *Cheney*, 542 U.S. at 390. Additionally, discovery propounded on White House officials creates an undue burden, distracts them from their critical executive responsibilities, and raises separation of powers concerns. *See Cheney*, 542 U.S. at 385. That burden is especially unjustified at this stage of the litigation given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter

jurisdiction and other deficiencies is currently pending. Additionally, Defendants object to this Interrogatory to the extent a response requires review of information protected by the presidential communications privilege or other executive privileges. *See Nixon*, 418 U.S. at 708. Because Plaintiffs are not entitled to such information, the request imposes a burden on Defendant disproportionate to the minimal benefit (if any) that Plaintiffs might derive from the possibility of responsive, non-privileged information. *See Cheney*, 542 U.S. at 389.

Additionally, Defendants object to this Interrogatory as overbroad and disproportional to the needs of the case, particularly in light of the expedited nature of the discovery, given that this Interrogatory demands, in vague and ambiguous terms, a description "in detail" of the communications at issue.

RESPONSE: Subject to and without waiving the above objections, Defendants provide the following responses: Mr. Flaherty is not aware of any direct involvement by federal agencies or employees in either the Election Integrity Partnership or the Virality Project. Mr. Flaherty, however, recalls meeting with Ms. DiResta, in or around March 2021, to talk about her research on misinformation and disinformation, including the work of the Virality Project to address COVID-19-related misinformation and disinformation. It is Mr. Flaherty's understanding that Renée DiResta is or was involved with the Virality Project, which was associated with Stanford University, where Ms. DiResta works. Mr. Flaherty specifically recalls one initial meeting and a follow up conversation. In Ms. DiResta's communications, Mr. Flaherty recalls Ms. DiResta suggesting that the federal government should create a "Mythbusters" webpage as part of a strategy to address misinformation and disinformation before it had a large impact. More generally, Mr. Flaherty recalls Ms. DiResta suggesting that the primary role of the federal government in combating misinformation and disinformation related to the COVID-19 vaccines was to provide

expert information.

Flaherty Interrogatory No. 7:

Identify every action to change policies and/or increase enforcement of existing policies relating to Misinformation and/or Content Modulation that any Social-Media Platform has reported to You or to any other Federal Official.

OBJECTIONS: Defendants incorporate by reference the above objections. Defendants further object that the Interrogatory is vague and ambiguous, including through the use of the terms "action to change policies," "and/or increase enforcement," and "relating to Misinformation and/or Content Modulation."

Defendants cannot conduct an exhaustive search to uncover all possible responsive information under the current, abbreviated expedited discovery schedule. Such expedited discovery is especially burdensome given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is pending. Defendants also object to this Interrogatory to the extent it seeks information protected by the deliberative process privilege, attorney-client privilege, law enforcement privilege, national security privileges, presidential communications privilege, or any other applicable privilege. Additionally, challenges to administrative agency action are ordinarily not subject to discovery outside the administrative record. *Lorion*, 470 U.S. at 743-44. Moreover, this Interrogatory is overbroad, unduly burdensome, and disproportional to the needs of the case, insofar as it purports, via the definition of "Federal Official," to require a response outside the knowledge of Mr. Flaherty, where Mr. Flaherty's knowledge is the only appropriate basis for any response, given that the Court in the Memorandum Order Regarding Depositions of December 7, 2022 ordered, *inter alia*, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

Further, Defendants object to this Interrogatory on the ground that any discovery on the

White House at this stage of the litigation is unduly burdensome and disproportional to the needs of the case. Plaintiffs have not exhausted all other avenues of discovery before seeking discovery on the White House. *See, e.g.*, Order, *Centro Presente*, No. 1:18-cv-10340 (D. Mass. May 15, 2019); *Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019); *Cheney*, 542 U.S. at 390. Additionally, discovery propounded on White House officials creates an undue burden, distracts them from their critical executive responsibilities, and raises separation of powers concerns. *See Cheney*, 542 U.S. at 385. That burden is especially unjustified at this stage of the litigation given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending. Additionally, Defendants object to this Interrogatory to the extent a response requires review of information protected by the presidential communications privilege or other executive privileges. *See Nixon*, 418 U.S. at 708. Because Plaintiffs are not entitled to such information, the request imposes a burden on Defendant disproportionate to the minimal benefit (if any) that Plaintiffs might derive from the possibility of responsive, non-privileged information. *See Cheney*, 542 U.S. at 389.

RESPONSE: Subject to and without waiving the above objections, Defendants provide the following response: Defendants refer Plaintiffs to the documents being produced in response to Plaintiffs' First Set of Expedited Preliminary-Injunction Related Requests For Production to Rob Flaherty and other documents produced in this litigation.

Additionally, Mr. Flaherty avers that he cannot recall every specific communication from a social media platform on the subject of this interrogatory. Mr. Flaherty, however, specifically recalls that he has received notifications from social media companies, such as Facebook, when they were preparing to make a public announcement about enforcement of or changes to their content policies relating to misinformation or disinformation. Mr. Flaherty generally recalls that

he received such notifications shortly before or shortly after the public announcement.

Flaherty Interrogatory No. 8:

Identify and describe in detail all Communications relating to Your action in connecting Vivek Murthy and Eric Waldo with Jiore Craig, as reflected in Bates page MOLA_DEFSPROD_00007437, including an explanation of what Ms. Craig does and/or did to "help[] [You] think through mis/dis on the COVID side."

OBJECTIONS: Defendants incorporate by reference the above objections. Defendants further object that the Interrogatory is vague and ambiguous, including through the use of the terms "relating to Your action in connecting," and "explanation."

Defendants cannot conduct an exhaustive search to uncover all possible responsive information under the current, abbreviated expedited discovery schedule. Such expedited discovery is especially burdensome given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is pending. Defendants also object to this Interrogatory to the extent it seeks information protected by the deliberative process privilege, attorney-client privilege, law enforcement privilege, national security privileges, presidential communications privilege, or any other applicable privilege. Additionally, challenges to administrative agency action are ordinarily not subject to discovery outside the administrative record. *Lorion*, 470 U.S. at 743-44. Moreover, this Interrogatory is overbroad, unduly burdensome, and disproportional to the needs of the case, insofar as it purports to require a response outside the knowledge of Mr. Flaherty, where Mr. Flaherty's knowledge is the only appropriate basis for any response, given that the Court in the Memorandum Order Regarding Depositions of December 7, 2022 ordered, *inter alia*, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

Further, Defendants object to this Interrogatory on the ground that any discovery on the

White House at this stage of the litigation is unduly burdensome and disproportional to the needs of the case. Plaintiffs have not exhausted all other avenues of discovery before seeking discovery on the White House. *See, e.g.*, Order, *Centro Presente*, No. 1:18-cv-10340 (D. Mass. May 15, 2019); *Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019); *Cheney*, 542 U.S. at 390. Additionally, discovery propounded on White House officials creates an undue burden, distracts them from their critical executive responsibilities, and raises separation of powers concerns. *See Cheney*, 542 U.S. at 385. That burden is especially unjustified at this stage of the litigation given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending. Additionally, Defendants object to this Interrogatory to the extent a response requires review of information protected by the presidential communications privilege or other executive privileges. *See Nixon*, 418 U.S. at 708. Because Plaintiffs are not entitled to such information, the request imposes a burden on Defendant disproportionate to the minimal benefit (if any) that Plaintiffs might derive from the possibility of responsive, non-privileged information. *See Cheney*, 542 U.S. at 389.

Additionally, Defendants object to this Interrogatory as overbroad and disproportional to the needs of the case, particularly in light of the expedited nature of the discovery, given that this Interrogatory demands, in vague and ambiguous terms, a description "in detail" "all" of the communications at issue.

RESPONSE: Subject to and without waiving the above objections, Defendants provide the following responses: Mr. Flaherty understands Ms. Craig to be a researcher who has studied misinformation and disinformation. Mr. Flaherty avers that he has had conversations with Ms. Craig to understand what her research showed about vaccine hesitancy and how such hesitancy could best be addressed by the government. Mr. Flaherty recalls Ms. Craig organizing a meeting

in or around the Spring of 2021 on this topic in which Mr. Flaherty recalls attending with Andrew Slavitt and possibly others, and in which several misinformation-and-disinformation researchers outside of government also attended. Ms. Craig expressed an interest in meeting with Vivek Murthy. In light of that interest and her expertise in understanding misinformation and disinformation, as well as Dr. Murthy's work on the same topic, Mr. Flaherty recalls introducing Dr. Murthy to Ms. Craig. Mr. Flaherty does not recall taking any other action in connecting Vivek Murthy or Eric Waldo to Ms. Craig.

Flaherty Interrogatory No. 9:

Identify all Social-Media Platforms, including any of their officers, agents, or employees, with which You have communicated or are communicating relating to Content Modulation and/or Misinformation, or any other topic.

OBJECTIONS: Defendants incorporate by reference the above objections. This Interrogatory calls for information regarding "Communication(s)" with "all Social-Media Platforms," even if the Communications do not concern Misinformation as described in the Court's July 12, 2022 order authorizing expedited discovery (*see* ECF No. 34 at 13 (authorizing discovery requests concerning "the identity of federal officials who have been and are communicating with social-media platforms about [misinformation and] any censorship or suppression of speech on social media, including the nature and content of those communications")), and even as to platforms not at issue in the operative Complaint, and including each platform's "officers, agents, employees, contractors, or any other person employed by or acting on behalf of [such] Social-Media Platform." Defendants further object that the Interrogatory is vague and ambiguous, including through the use of the terms "relating to" and "any other topic."

Defendants further object to this Interrogatory as unduly burdensome and not proportional to the needs of the case. Defendants cannot conduct an exhaustive search to uncover all possible

responsive information under the current, abbreviated expedited discovery schedule. Such expedited discovery is especially burdensome given that Defendants' motion to dismiss the Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending.

Defendants also object to the Interrogatory to the extent a response requires review of internal, deliberative documents discussing such communications, attorney client documents, or other privileged materials. Defendants also object to this Interrogatory to the extent it seeks information protected by the deliberative process privilege, attorney-client privilege, law enforcement privilege, national security privileges, or any other applicable privilege. Additionally, challenges to administrative agency action are ordinarily not subject to discovery outside the administrative record. *Lorion*, 470 U.S. at 743-44. Moreover, this Interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case, insofar as it purports to require a response outside the knowledge of Mr. Flaherty, where Mr. Flaherty's knowledge is the only appropriate basis for any response, given that the Court in the Memorandum Order Regarding Depositions of December 7, 2022 ordered, *inter alia*, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

Additionally, Defendants object to this Interrogatory as overbroad and disproportional to the needs of the case, particularly in light of the expedited nature of the discovery, to the extent "communication" is meant to cover anything beyond e-mail exchanges.

RESPONSE: Subject to and without waiving the above objections, Defendants provide the following response: Defendants refer Plaintiffs to the documents being produced in response to Plaintiffs' First Set of Expedited Preliminary-Injunction Related Requests For Production to Rob Flaherty and other documents produced in this litigation. Mr. Flaherty further provides that

he recalls primarily discussing misinformation with Meta, Google, and Twitter. In addition, Mr. Flaherty recalls having conversations concerning misinformation with Pinterest and Snapchat. Mr. Flaherty recalls the primary points of contact from these companies being: Brian Rice and Carrie Adams from Facebook; Todd O'Boyle, Lauren Culbertson, and Caroline Strom from Twitter; Kevin Kane, Jan Antonaros, Brandon Feldman, and John Ruxton from Google; Charlie Hale from Pinterest; and Sofia Gross, Ben Schwerin, and possibly Rebecca Vangelos from Snapchat.

Flaherty Interrogatory No. 10:

Identify all "members of our senior staff" and/or "members of our COVID-19 team" who are "in regular touch with … social media platforms," as stated at a White House press briefing on or around July 15, 2021, including the nature of the communication and/or coordination.

OBJECTIONS: Defendants incorporate by reference the above objections. Defendants further object to this Interrogatory on the ground that it is vague because it relies on a characterization of a statement made by an individual no longer in government, and the statement does not specify the individuals at issue or the specific communications to which it refers. Defendants further object to this Interrogatory as unduly burdensome and not proportional to the needs of the case. This Interrogatory calls for a response based on all specified "communications" from Defendants or any employees or subordinates of Defendants. Defendants cannot conduct an exhaustive search to uncover all possible responsive information under the current, abbreviated expedited discovery schedule. Defendants also object to this Interrogatory as overbroad insofar as it is construed to include communications that do not concern Misinformation as described in the Court's July 12, 2022 order authorizing expedited discovery (*see* ECF No. 34 at 13 (authorizing discovery requests concerning "the identity of federal officials who have been and are

communicating with social-media platforms about [misinformation and] any censorship or suppression of speech on social media, including the nature and content of those communications")). This Interrogatory appears to call for a response based on communications with Social-Media Platforms regardless of whether they pertain to content modulation with respect to misinformation.

Defendants also object to this Interrogatory to the extent it seeks internal, deliberative documents discussing such communications, attorney client documents, or other privileged materials relating to such communications. Defendants also object to this Interrogatory to the extent it seeks information protected by the deliberative process privilege, attorney-client privilege, law enforcement privilege, national security privileges, presidential communications privilege, or any other applicable privilege. Additionally, challenges to administrative agency action are ordinarily not subject to discovery outside the administrative record. *Lorion*, 470 U.S. at 743-44. Moreover, this Interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case, insofar as it purports to require a response conceming the public statements of the former White House Press Secretary, and hence outside the knowledge of Mr. Flaherty, where Mr. Flaherty's knowledge is the only appropriate basis for any response, given that the Court in the Memorandum Order Regarding Depositions of December 7, 2022 ordered, inter alia, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

Further, Defendants object to this Interrogatory on the ground that any discovery on the White House at this stage of the litigation is unduly burdensome and disproportionate to the needs of the case. Plaintiffs have not exhausted all other avenues of discovery before seeking discovery on the White House. *See, e.g.*, Order, *Centro Presente*, No. 1:18-cv-10340 (D. Mass. May 15, 2019); *Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019); *Cheney*, 542 U.S. at 390. Additionally,

discovery propounded on White House officials creates an undue burden, distracts them from their critical executive responsibilities, and raises separation of powers concerns. *See Cheney*, 542 U.S. at 385. That burden is especially unjustified at this stage of the litigation given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending. Additionally, Defendants object to this request to the extent it is directed to information protected by the presidential communications privilege or other executive privileges. *See Nixon*, 418 U.S. at 708. Because Plaintiffs are not entitled to such information, the request imposes a burden on Defendant disproportionate to the minimal benefit (if any) that Plaintiffs might derive from the possibility of responsive, non-privileged information. *See Cheney*, 542 U.S. at 389.

Further, Defendants object to this Interrogatory as unreasonably cumulative and duplicative of Plaintiffs' previous Interrogatories to Defendants, to which Defendants responded on August 17, 2022, as amended on September 27, 2022, and on December 19, 2022

RESPONSE: Subject to and without waiving the above objections, Defendants provide the following responses: Defendants refer Plaintiffs to the public transcripts of the White House press briefings cited previously by Defendants in response to substantially similar interrogatories. Mr. Flaherty, however, understands these statements quoted in this interrogatory to include himself and Andrew Slavitt.

Flaherty Interrogatory No. 11:

Identify all Documents and Communications relating to "12 people who are producing 65 percent of the anti-vaccine misinformation on social-media platforms," as stated at a White House press briefing on or around July 15, 2021.

OBJECTIONS: Defendants incorporate by reference the above objections. Defendants further object to this Interrogatory as vague because it relies on a characterization of a statement

made by an individual no longer in government, and the statement does not specify the individuals at issue or the specific communications to which it refers.

Defendants also object to this Interrogatory to the extent it seeks information protected by the deliberative process privilege, attorney-client privilege, law enforcement privilege, national security privileges, or any other applicable privilege. Additionally, challenges to administrative agency action are ordinarily not subject to discovery outside the administrative record. *Lorion*, 470 U.S. at 743-44. Moreover, this Interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case, insofar as it purports to require a response concerning the public statements of the former White House Press Secretary, and hence outside the knowledge of Mr. Flaherty, where Mr. Flaherty's knowledge is the only appropriate basis for any response, given that the Court in the Memorandum Order Regarding Depositions of December 7, 2022 ordered, inter alia, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

Moreover, this Interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case, insofar as it purports to require a response outside the knowledge of Mr. Flaherty, where Mr. Flaherty's knowledge is the only appropriate basis for any response, given that the Court in the Memorandum Order Regarding Depositions of December 7, 2022 ordered, *inter alia*, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

Additionally, Defendants object to this Interrogatory as overbroad and disproportional to the needs of the case, particularly in light of the expedited nature of the discovery, to the extent "communication" is meant to cover anything beyond e-mail exchanges.

Further, Defendants object to this Interrogatory as unreasonably cumulative and

duplicative of Plaintiffs' previous Interrogatories to Defendants, to which certain Defendants responded on August 17, 2022, as amended on September 27, 2022, and on December 19, 2022.

RESPONSE: Subject to and without waiving the above objections, Defendants provide the following response: Defendants refer Plaintiffs to the documents being produced in response to Plaintiffs' First Set of Expedited Preliminary-Injunction Related Requests For Production to Rob Flaherty and other documents produced in this litigation.

Flaherty Interrogatory No. 12:

On or around July 15, 2021, the White House Press Secretary stated that "we engage with them [i.e., Social-Media Platforms] regularly and they certainly understand what our asks are." Identify what Social-Media Platform(s) are included in any such engagement(s), and identify "what our asks are," including all Communication(s) relating to such engagement(s) and ask(s).

OBJECTIONS: Defendants incorporate by reference the above objections. Defendants further object to this Interrogatory on the ground that it is vague because it relies on a characterization of a statement made by an individual no longer in government, and the statement does not specify the individuals at issue or the specific communications to which it refers. Defendants further object to this Interrogatory as unduly burdensome and not proportional to the needs of the case. This Interrogatory calls for a response based on any and all specified documents from Defendants or any employee or subordinate of Defendants, whereas the knowledge of Mr. Flaherty is the only appropriate basis for a response. Defendants cannot conduct an exhaustive search to uncover all possible responsive information under the current, abbreviated expedited discovery schedule. Such expedited discovery is especially burdensome given that Defendants' motion to dismiss the Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending.

Defendants also object to this Interrogatory as overbroad in that it appears to call for a response based on communications with Social-Media Platforms regardless of whether those communications pertain to Misinformation as described in the Court's July 12, 2022 order authorizing expedited discovery. *See* ECF No. 34 at 13 (authorizing discovery requests concerning "the identity of federal officials who have been and are communicating with social-media platforms about [misinformation and] any censorship or suppression of speech on social media, including the nature and content of those communications")).

Defendants also object to the Interrogatory to the extent a response requires review of internal, deliberative documents discussing such communications, attorney client documents, or other privileged materials relating to agency communications. Defendants also object to this Interrogatory to the extent it seeks information protected by the deliberative process privilege, attorney-client privilege, law enforcement privilege, national security privileges, presidential communications privilege, or any other applicable privilege. Additionally, challenges to administrative agency action are ordinarily not subject to discovery outside the administrative record. *Lorion*, 470 U.S. at 743-44. Moreover, this Interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case, insofar as it purports to require a response concerning the public statements of the former White House Press Secretary, and hence outside the knowledge of Mr. Flaherty, where Mr. Flaherty's knowledge is the only appropriate basis for any response, given that the Court in the Memorandum Order Regarding Depositions of December 7, 2022 ordered, inter alia, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

Further, Defendants object to this Interrogatory on the ground that any discovery on the White House at this stage of the litigation is unduly burdensome and disproportionate to the needs

of the case. Plaintiffs have not exhausted all other avenues of discovery before seeking discovery on the White House. *See, e.g.*, Order, *Centro Presente*, No. 1:18-cv-10340 (D. Mass. May 15, 2019); *Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019); *Cheney*, 542 U.S. at 390. Additionally, discovery propounded on White House officials creates an undue burden, distracts them from their critical executive responsibilities, and raises separation of powers concerns. *See Cheney*, 542 U.S. at 385. That burden is especially unjustified at this stage of the litigation given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending. Additionally, Defendants object to this Interrogatory to the extent it is directed to information protected by the presidential communications privilege or other executive privileges. *See Nixon*, 418 U.S. at 708. Because Plaintiffs are not entitled to such information, the request imposes a burden on Defendants disproportionate to the minimal benefit (if any) that Plaintiffs might derive from the possibility of responsive, non-privileged information. *See Cheney*, 542 U.S. at 389.

Further, Defendants object to this Interrogatory as unreasonably cumulative and duplicative of Plaintiffs' previous Interrogatories to Defendants, to which certain Defendants responded on August 17, 2022, as amended on September 27, 2022, and on December 19, 2022.

RESPONSE: Subject to and without waiving the above objections, Defendants provide the following responses: Defendants refer Plaintiffs to the documents being produced in response to Plaintiffs' First Set of Expedited Preliminary-Injunction Related Requests For Production to Rob Flaherty and other documents produced in this litigation, including to the public transcripts of the White House press briefings cited previously by Defendants in response to substantially similar interrogatories. Mr. Flaherty, however, understands these statements quoted in this interrogatory to include the discussions he and Andrew Slavitt have had with social media

companies regarding the scope of the problem with misinformation and disinformation on social media platforms, what social media platforms are doing to enforce their content policies, and what role government could play to assist in minimizing the negative impact of misinformation and disinformation.

Flaherty Interrogatory No. 13:

Identify all "government experts" who have partnered with Facebook or any Social-Media Platform(s) to address Misinformation and/or Content Modulation, including the nature of the partnership and any Communication(s) involved therein.

OBJECTIONS: Defendants incorporate by reference the above objections. Defendants further object to this Interrogatory as vague because it relies on a characterization of a statement attributed to a third-party Facebook employee, as reported in a July 15, 2021 *Reuters.com* article quoted at Compl. ¶ 163, and the statement does not sufficiently specify the individuals at issue or the specific communications to which it refers. Defendants lack information sufficient to establish the meaning of that third party's statement, including terms such as "partnered with." Defendants further object to this Interrogatory as unduly burdensome and not proportional to the needs of the case. Defendants cannot conduct an exhaustive search to uncover all possible responsive information under the current, abbreviated expedited discovery schedule. Such expedited discovery is especially burdensome given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending. Defendants also object to the Interrogatory to the extent a response requires review of internal, deliberative documents discussing such communications, attorney client documents, or other privileged materials relating to agency communications. Defendants also object to this Interrogatory to the extent it seeks information protected by the deliberative process privilege, attorney-client privilege, law enforcement privilege, national security privileges, or any other

applicable privilege. Additionally, challenges to administrative agency action are ordinarily not subject to discovery outside the administrative record. *Lorion*, 470 U.S. at 743-44. Moreover, this Interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case, insofar as it purports to require a response outside the knowledge of Mr. Flaherty, where Mr. Flaherty's knowledge is the only appropriate basis for any response, given that the Court in the Memorandum Order Regarding Depositions of December 7, 2022 ordered, *inter alia*, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

Additionally, Defendants object to this Interrogatory as overbroad and disproportional to the needs of the case, particularly in light of the expedited nature of the discovery, to the extent "communication" is meant to cover anything beyond e-mail exchanges.

Further, Defendants object to this Interrogatory as unreasonably cumulative and duplicative of Plaintiffs' previous Interrogatories to Defendants, to which certain Defendants responded on August 17, 2022, as amended on September 27, 2022, and on December 19, 2022.

RESPONSE: Subject to and without waiving the above objections, Defendants provide the following responses: Defendants refer Plaintiffs to the documents produced in this litigation.

Flaherty Interrogatory No. 14:

Identify all person(s) who "engage[s] regularly with all social media platforms about steps that can be taken" to address Misinformation on social media, which engagement "has continued, and … will continue," as stated at the April 25, 2022 White House press briefing, including all Communications with any Social-Media Platform involved in such engagement.

OBJECTIONS: Defendants incorporate by reference the above objections. Defendants further object to this Interrogatory on the ground that it is vague because it relies on a characterization of a statement made by an individual no longer in government, and the statement

does not specify the individuals at issue or the specific communications to which it refers. Defendants further object to this Interrogatory as unduly burdensome and not proportional to the needs of the case. This Interrogatory calls for a response based on any and all specified documents from Defendants or any employees or subordinates of Defendants, whereas the knowledge of Mr. Flaherty is the only appropriate basis for a response. Defendants cannot conduct an exhaustive search to uncover all possible responsive information under the current, abbreviated expedited discovery schedule. Such expedited discovery is especially burdensome given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending.

Defendants also object to this Interrogatory as overbroad in that it appears to call for a response based on communications with Social-Media Platforms regardless of whether those communications pertain to Misinformation as described in the Court's July 12, 2022 order authorizing expedited discovery. *See* ECF No. 34 at 13 (authorizing discovery requests concerning "the identity of federal officials who have been and are communicating with social-media platforms about [misinformation and] any censorship or suppression of speech on social media, including the nature and content of those communications")).

Defendants also object to the Interrogatory to the extent a response requires review of internal, deliberative documents discussing such communications, attorney client documents, or other privileged materials relating to agency communications. Defendants also object to this Request to the extent it seeks internal, deliberative documents discussing such communications, attorney client documents, or other privileged materials relating to such communications. Defendants also object to this Interrogatory to the extent it seeks information protected by the deliberative process privilege, attorney-client privilege, law enforcement privilege, national

security privileges, presidential communications privilege, or any other applicable privilege. Additionally, challenges to administrative agency action are ordinarily not subject to discovery outside the administrative record. *Lorion*, 470 U.S. at 743-44. Moreover, this Interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case, insofar as it purports to require a response concerning the public statements of the former White House Press Secretary, and hence outside the knowledge of Mr. Flaherty, where Mr. Flaherty's knowledge is the only appropriate basis for any response, given that the Court in the Memorandum Order Regarding Depositions of December 7, 2022 ordered, inter alia, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

Further, Defendants object to this Interrogatory on the ground that any discovery on the White House at this stage of the litigation is unduly burdensome and disproportionate to the needs of the case. Plaintiffs have not exhausted all other avenues of discovery before seeking discovery on the White House. *See, e.g.*, Order, *Centro Presente*, No. 1:18-cv-10340 (D. Mass. May 15, 2019); *Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019); *Cheney*, 542 U.S. at 390. Additionally, discovery propounded on White House officials creates an undue burden, distracts them from their critical executive responsibilities, and raises separation of powers concerns. *See Cheney*, 542 U.S. at 385. That burden is especially unjustified at this stage of the litigation given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending. Additionally, Defendants object to this Interrogatory to the extent it is directed to information protected by the presidential communications privilege or other executive privileges. *See Nixon*, 418 U.S. at 708. Because Plaintiffs are not entitled to such information, the request imposes a burden on Defendants

disproportionate to the minimal benefit (if any) that Plaintiffs might derive from the possibility of responsive, non-privileged information. *See Cheney*, 542 U.S. at 389.

Further, Defendants object to this Interrogatory as unreasonably cumulative and duplicative of Plaintiffs' previous Interrogatories to Defendants, to which certain Defendants responded on August 17, 2022, as amended on September 27, 2022, and on December 19, 2022.

RESPONSE: Subject to and without waiving the above objections, Defendants provide the following responses: Defendants refer Plaintiffs to documents produced in this litigation as well as to the public transcripts of the White House press briefings cited previously by Defendants in response to substantially similar interrogatories. Mr. Flaherty avers that he is unaware of whom Ms. Psaki was specifically referring to at the time of the press briefing.

Flaherty Interrogatory No. 15:

Identify all Documents and Communications that contain any of the Search Terms.

OBJECTIONS: Defendants incorporate by reference the above objections. Defendants further object to this Interrogatory as unduly burdensome, overbroad, and not proportional to the needs of this case. This Interrogatory calls for a response based on any and all specified documents from any Defendant or any employee or subordinate of any Defendant, whereas the knowledge of Mr. Flaherty is the only appropriate basis for a response. Defendants cannot conduct an exhaustive search to uncover all possible responsive information under the current, abbreviated expedited discovery schedule. Such expedited discovery is especially burdensome given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending.

Defendants also object to this Interrogatory as overbroad in that it appears to call for a response based on communications with Social-Media Platforms regardless of whether those

communications pertain to Misinformation as described in the Court's July 12, 2022 order authorizing expedited discovery. *See* ECF No. 34 at 13 (authorizing discovery requests concerning "the identity of federal officials who have been and are communicating with social-media platforms about [misinformation and] any censorship or suppression of speech on social media, including the nature and content of those communications")). In that regard, Plaintiffs' Search Terms include many broad terms that could be found in e-mails that have nothing to do with misinformation—such as "mask," "election," "antitrust," "globalization," and "Federalist."

Defendants also understand this Interrogatory to seeks a response based on only communications between Defendants and third parties outside the government. To the extent that this Interrogatory seeks internal information referring to such communications, Defendants object to the Interrogatory as not proportional to the needs of the case, as it would require an extensive search of internal records that would not be possible to complete in the expedited period provided for current discovery and would be unnecessary in light of Defendants' agreement to produce the external communications themselves.

Defendants also object to the Interrogatory to the extent a response requires review of internal, deliberative documents discussing such communications, attorney client documents, or other privileged materials relating to agency communications. Defendants also object to this Interrogatory to the extent it seeks information protected by the deliberative process privilege, attorney-client privilege, law enforcement privilege, national security privileges presidential communications privilege, or any other applicable privilege. Additionally, challenges to administrative agency action are ordinarily not subject to discovery outside the administrative record. *Lorion*, 470 U.S. at 743-44. Moreover, this Interrogatory is overbroad, unduly burdensome, and disproportional to the needs of the case, insofar as it purports to require a response outside the

knowledge of Mr. Flaherty, where Mr. Flaherty's knowledge is the only appropriate basis for any response, given that the Court in the Memorandum Order Regarding Depositions of December 7, 2022 ordered, *inter alia*, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

Further, Defendants object to this Interrogatory on the ground that any discovery on the White House at this stage of the litigation is unduly burdensome and disproportional to the needs of the case. Plaintiffs have not exhausted all other avenues of discovery before seeking discovery on the White House. *See, e.g.*, Order, *Centro Presente*, No. 1:18-cv-10340 (D. Mass. May 15, 2019); *Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019); *Cheney*, 542 U.S. at 390. Additionally, discovery propounded on White House officials creates an undue burden, distracts them from their critical executive responsibilities, and raises separation of powers concerns. *See Cheney*, 542 U.S. at 385. That burden is especially unjustified at this stage of the litigation given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending. Additionally, Defendants object to this Interrogatory to the extent a response requires review of information protected by the presidential communications privilege or other executive privileges. *See Nixon*, 418 U.S. at 708. Because Plaintiffs are not entitled to such information, the request imposes a burden on Defendant disproportionate to the minimal benefit (if any) that Plaintiffs might derive from the possibility of responsive, non-privileged information. *See Cheney*, 542 U.S. at 389.

Additionally, Defendants object to this Interrogatory as overbroad and disproportional to the needs of the case, particularly in light of the expedited nature of the discovery, to the extent "communication" is meant to cover anything beyond e-mail exchanges.

Defendants further object to this Interrogatory as unreasonably cumulative and duplicative

of Plaintiffs' Requests for Production of Documents served on Mr. Flaherty in his official capacity, in response to which Defendants are producing documents within a review population that contains (i) non-privileged e-mail communications between Mr. Flaherty and email addresses with domain names of the Social-Media Platforms defined above and (ii) which are collected from Mr. Flaherty's governmental account. Defendants are producing e-mails within the aforementioned review population that contain one or more of the search terms identified by Plaintiffs, or that were otherwise identified by Defendants as being potentially responsive, and that concern misinformation, content modulation, or content on social media platforms about COVID-19. Additionally, Defendants are producing meeting invites. Thee Requests for Production provide a more expeditious and significantly less burdensome method for Plaintiffs to obtain the information sought, considering the expedited nature of the discovery here and the broad scope of this Interrogatory.

RESPONSE: Subject to and without waiving the above objections, Defendants provide the following response: Defendants refer Plaintiffs to the documents being produced in response to Plaintiffs' First Set of Expedited Preliminary-Injunction Related Requests For Production to Rob Flaherty and other documents produced in this litigation.

Flaherty Interrogatory No. 16:

Identify and describe in detail all "concern[s] about mis-and-disinformation on feeds and in groups," as stated in Bates page MOLA_DEFSPROD_00007250.

OBJECTIONS: Defendants incorporate by reference the above objections. Defendants also object because the undefined instruction to describe "in detail" as used in this Interrogatory is vague and ambiguous.

Defendants further object to this Interrogatory as unduly burdensome and not proportional to the needs of the case. Defendants cannot conduct an exhaustive search to uncover "all" possible

responsive information under the current, abbreviated expedited discovery schedule. Such expedited discovery is especially burdensome given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending.

Defendants also object to the Interrogatory to the extent a response requires review of internal, deliberative documents discussing such communications, attorney client documents, or other privileged materials relating to agency communications. Defendants also object to this Interrogatory to the extent it seeks information protected by the deliberative process privilege, attorney-client privilege, law enforcement privilege, national security privileges, or any other applicable privilege. Additionally, challenges to administrative agency action are ordinarily not subject to discovery outside the administrative record. *Lorion*, 470 U.S. at 743-44. Moreover, this Interrogatory is overbroad, unduly burdensome, and disproportional to the needs of the case, insofar as it purports to require a response outside the knowledge of Mr. Flaherty, where Mr. Flaherty's knowledge is the only appropriate basis for any response, given that the Court in the Memorandum Order Regarding Depositions of December 7, 2022 ordered, *inter alia*, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

Further, Defendants object to this Interrogatory on the ground that any discovery on the White House at this stage of the litigation is unduly burdensome and disproportional to the needs of the case. Plaintiffs have not exhausted all other avenues of discovery before seeking discovery on the White House. *See, e.g.*, Order, *Centro Presente*, No. 1:18-cv-10340 (D. Mass. May 15, 2019); *Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019); *Cheney*, 542 U.S. at 390. Additionally, discovery propounded on White House officials creates an undue burden, distracts them from their critical executive responsibilities, and raises separation of powers concerns. *See Cheney*, 542 U.S. at 385. That burden is especially unjustified at this stage of the litigation given

that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending. Additionally, Defendants object to this Interrogatory to the extent a response requires review of information protected by the presidential communications privilege or other executive privileges. *See Nixon*, 418 U.S. at 708. Because Plaintiffs are not entitled to such information, the request imposes a burden on Defendant disproportionate to the minimal benefit (if any) that Plaintiffs might derive from the possibility of responsive, non-privileged information. *See Cheney*, 542 U.S. at 389.

RESPONSE: Subject to and without waiving the above objections, Defendants provide the following response: Mr. Flaherty recalls that, at the time this email was sent, it was his understanding that misinformation and disinformation about COVID-19 vaccines was circulating on feeds and groups on Facebook in violation of Facebook policy. Mr. Flaherty recalls being concerned that such misinformation and disinformation could negatively impact the rollout of vaccines for children aged 5-11, and that he wanted to understand whether those concerns were accurate.

Flaherty Interrogatory No. 17:

Identify and describe in detail everything that was stated by any and all participant(s) in the April 21, 2021 Meeting in which You participated with Twitter officials at which Alex Berenson was discussed.

OBJECTIONS: Defendants incorporate by reference the above objections. Defendants also object because the undefined instruction to describe "in detail everything that was stated" as used in this Interrogatory is vague and ambiguous.

Defendants further object to this Interrogatory as unduly burdensome and not proportional to the needs of the case. Defendants cannot conduct an exhaustive search to uncover all possible responsive information under the current, abbreviated expedited discovery schedule. Such expedited

discovery is especially burdensome given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending. Additionally, challenges to administrative agency action are ordinarily not subject to discovery outside the administrative record. *Lorion*, 470 U.S. at 743-44. Moreover, this Interrogatory is overbroad, unduly burdensome, and disproportional to the needs of the case, insofar as it purports to require a response outside the knowledge of Mr. Flaherty, where Mr. Flaherty's knowledge is the only appropriate basis for any response, given that the Court in the Memorandum Order Regarding Depositions of December 7, 2022 ordered, *inter alia*, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

Further, Defendants object to this Interrogatory on the ground that any discovery on the White House at this stage of the litigation is unduly burdensome and disproportional to the needs of the case. Plaintiffs have not exhausted all other avenues of discovery before seeking discovery on the White House. *See, e.g.*, Order, *Centro Presente*, No. 1:18-cv-10340 (D. Mass. May 15, 2019); *Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019); *Cheney*, 542 U.S. at 390. Additionally, discovery propounded on White House officials creates an undue burden, distracts them from their critical executive responsibilities, and raises separation of powers concerns. *See Cheney*, 542 U.S. at 385. That burden is especially unjustified at this stage of the litigation given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending. Additionally, Defendants object to this Interrogatory to the extent a response requires review of information protected by the presidential communications privilege or other executive privileges. *See Nixon*, 418 U.S. at 708. Because Plaintiffs are not entitled to such information, the request imposes a burden on Defendant disproportionate to the minimal benefit (if any) that Plaintiffs might derive from the possibility of

responsive, non-privileged information. *See Cheney*, 542 U.S. at 389.

Moreover, this Interrogatory is especially untimely within the expedited discovery context, given that the Amended Complaint filed August 2, 2022 included allegations regarding Alex Berenson's alleged "deplatforming" in 2021 (ECF No. 45, ¶¶ 187, 309), which was publicly known in 2021, but Plaintiffs omitted any interrogatory regarding Berenson from prior interrogatories to Defendants.

RESPONSE: Subject to and without waiving the above objections, Defendants provide the following responses: Mr. Flaherty recalls participating in a meeting with Twitter employees on Zoom, in or around the Spring of 2021, at which Alex Berenson was mentioned. Mr. Flaherty recalls Andrew Slavitt also attending that meeting and he believes, but is not sure, that Lauren Culbertson from Twitter attended the meeting. Mr. Flaherty further recalls the meeting was about vaccine hesitancy and Twitter's efforts to combat disinformation and misinformation on the platform. As the meeting was ending, Mr. Flaherty recalls Mr. Slavitt expressing his view that Twitter was not enforcing its content guidelines with respect to Alex Berenson's tweets, and that employees from Twitter disagreed with that view. Mr. Flaherty also recalls that Mr. Slavitt suggested at the end of the meeting that Mr. Flaherty would follow up with Twitter employees about that subject. Mr. Flaherty does not recall following up with Twitter on the subject of Mr. Berenson, but he does recall being later called within probably a week or two by a Twitter employee, who Mr. Flaherty thinks was Todd O'Boyle, who indicated that Twitter would not be removing Mr. Berenson because Mr. Berenson had not violated Twitter policies at that time. That is the last time that Mr. Flaherty recalls discussing Mr. Berenson with employees from Twitter.

Flaherty Interrogatory No. 18:

Identify every alternative channel of communication used by any Federal Official(s) for communication with any Social-Media Platform(s) other than telephone, email, or videoconference, including but not limited to any online channel(s) for reporting misinformation, "trusted flagger" portal(s), self-deleting messaging app(s), text messaging, and/or encrypted messaging program(s), among others.

OBJECTIONS: Defendants incorporate by reference the above objections. Defendants also object because the undefined terms "every" and "alternative channel" are vague and ambiguous.

Defendants also object to this Interrogatory as overbroad in that it appears to call for a response based on communications with Social-Media Platforms regardless of whether those communications pertain to Misinformation as described in the Court's July 12, 2022 order authorizing expedited discovery. *See* ECF No. 34 at 13 (authorizing discovery requests concerning "the identity of federal officials who have been and are communicating with social-media platforms about [misinformation and] any censorship or suppression of speech on social media, including the nature and content of those communications")). Additionally, challenges to administrative agency action are ordinarily not subject to discovery outside the administrative record. *Lorion*, 470 U.S. at 743-44. Moreover, this Interrogatory is overbroad, unduly burdensome, and disproportional to the needs of the case, insofar as it purports to require a response outside the knowledge of Mr. Flaherty, where Mr. Flaherty's knowledge is the only appropriate basis for any response, given that the Court in the Memorandum Order Regarding Depositions of December 7, 2022 ordered, *inter alia*, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

Further, Defendants object to this Interrogatory on the ground that any discovery on the White House at this stage of the litigation is unduly burdensome and disproportional to the needs of the case. Plaintiffs have not exhausted all other avenues of discovery before seeking discovery on the White House. *See, e.g.*, Order, *Centro Presente*, No. 1:18-cv-10340 (D. Mass. May 15,

2019); *Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019); *Cheney*, 542 U.S. at 390. Additionally, discovery propounded on White House officials creates an undue burden, distracts them from their critical executive responsibilities, and raises separation of powers concerns. *See Cheney*, 542 U.S. at 385. That burden is especially unjustified at this stage of the litigation given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending. Additionally, Defendants object to this Interrogatory to the extent a response requires review of information protected by the presidential communications privilege or other executive privileges. *See Nixon*, 418 U.S. at 708. Because Plaintiffs are not entitled to such information, the request imposes a burden on Defendant disproportionate to the minimal benefit (if any) that Plaintiffs might derive from the possibility of responsive, non-privileged information. *See Cheney*, 542 U.S. at 389.

Moreover, this Interrogatory is overbroad, unduly burdensome, and disproportional to the needs of the case, insofar as it purports, via the definition of "Federal Official," to require a response outside the knowledge of Mr. Flaherty, where Mr. Flaherty's knowledge is the only appropriate basis for any response, given that the Court in the Memorandum Order Regarding Depositions of December 7, 2022 ordered, *inter alia*, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

Additionally, Defendants object to this Interrogatory as overbroad and disproportional to the needs of the case, particularly in light of the expedited nature of the discovery, to the extent "communication" is meant to cover anything beyond e-mail exchanges.

RESPONSE: Subject to and without waiving the above objections, Defendants provide the following responses: Defendants refer Plaintiffs to the documents being produced in response to Plaintiffs' First Set of Expedited Preliminary-Injunction Related Requests For Production to

Rob Flaherty and other documents produced in this litigation.

Mr. Flaherty further avers that, aside from telephone, email, and videoconference, he does not recall personally using alternative channels of communications to discuss misinformation with social media platforms while in government service. It is Mr. Flaherty's understanding, however, that Twitter has a Partner Support Portal that the company operates to allow certain users to raise issues with their accounts and that members of his White House staff have used the Portal to report issues such as imposter accounts or problems accessing accounts. While Twitter has sent Mr. Flaherty a link to the Portal, Mr. Flaherty does not recall using the Portal himself or using any similar tool operated by other social media platforms.

Flaherty Interrogatory No. 19:

Identify every Communication and Document referring or relating to the Washington Post article that You sent to a Facebook official by email on October 28, 2021, with the subject line "not even sure what to say any more," and describe in detail what You meant in sending that message and what follow-up, if any, resulted from that message.

OBJECTIONS: Defendants incorporate by reference the above objections. Defendants also object because the undefined terms "referring or relating to," "describe in detail," and "follow-up" are vague and ambiguous.

Defendants also object to this Interrogatory as overbroad in that it appears to call for a response based on communications with Social-Media Platforms regardless of whether those communications pertain to Misinformation as described in the Court's July 12, 2022 order authorizing expedited discovery. *See* ECF No. 34 at 13 (authorizing discovery requests concerning "the identity of federal officials who have been and are communicating with social-media platforms about [misinformation and] any censorship or suppression of speech on social media, including the nature and content of those communications")). Additionally, challenges to

administrative agency action are ordinarily not subject to discovery outside the administrative record. *Lorion*, 470 U.S. at 743-44. Moreover, this Interrogatory is overbroad, unduly burdensome, and disproportional to the needs of the case, insofar as it purports to require a response outside the knowledge of Mr. Flaherty, where Mr. Flaherty's knowledge is the only appropriate basis for any response, given that the Court in the Memorandum Order Regarding Depositions of December 7, 2022 ordered, *inter alia*, service "upon" Mr. Flaherty of "written discovery," "in lieu of the deposition of" Mr. Flaherty. ECF No. 148 at 9.

Further, Defendants object to this Interrogatory on the ground that any discovery on the White House at this stage of the litigation is unduly burdensome and disproportional to the needs of the case. Plaintiffs have not exhausted all other avenues of discovery before seeking discovery on the White House. *See, e.g.*, Order, *Centro Presente*, No. 1:18-cv-10340 (D. Mass. May 15, 2019); *Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019); *Cheney*, 542 U.S. at 390. Additionally, discovery propounded on White House officials creates an undue burden, distracts them from their critical executive responsibilities, and raises separation of powers concerns. *See Cheney*, 542 U.S. at 385. That burden is especially unjustified at this stage of the litigation given that Defendants' motion to dismiss the Second Amended Complaint for lack of subject-matter jurisdiction and other deficiencies is currently pending. Additionally, Defendants object to this Interrogatory to the extent a response requires review of information protected by the presidential communications privilege or other executive privileges. *See Nixon*, 418 U.S. at 708. Because Plaintiffs are not entitled to such information, the request imposes a burden on Defendant disproportionate to the minimal benefit (if any) that Plaintiffs might derive from the possibility of responsive, non-privileged information. *See Cheney*, 542 U.S. at 389.

RESPONSE: Subject to and without waiving the above objections, Defendants provide

the following responses: Defendants refer Plaintiffs to the documents being produced in response to Plaintiffs' First Set of Expedited Preliminary-Injunction Related Requests For Production to Rob Flaherty and other documents produced in this litigation.

Mr. Flaherty further avers that prior to the email referenced in this interrogatory he had engaged with Facebook employees to understand their policies concerning misinformation and disinformation and how those policies are enforced on the platform. Mr. Flaherty recalls that, prior to this referenced email, he had been asking Facebook employees for more transparent information about their algorithms and how they were promoting misinformation or disinformation and had raised questions about research from the Center for Countering Digital Hate (CCDH) indicating that a small number of users were responsible for a significant percentage of COVID-19 vaccine-related misinformation spreading on certain social media platforms, including Facebook. In response to those inquiries, Mr. Flaherty recalls Facebook employees had informed him that, while misinformation and disinformation was a problem they were taking proactive steps to address, Facebook did not share Mr. Flaherty's concerns about the scope of the problem on Facebook, and they disputed the CCDH research. Mr. Flaherty understood the referenced article to indicate that Facebook was doing more intensive internal research into the problem of misinformation and disinformation than they had revealed in their conversations with him, and that this research confirmed that a small number of users were responsible for a significant percentage of COVID-19 vaccine-related misinformation spreading on Facebook. Mr. Flaherty recalls his October 28, 2021, email as intending to convey his frustration that Facebook employees had reportedly been less than transparent with him and the broader public about their full understanding of the problem with misinformation and disinformation on the platform.

Dated: January 5, 2023

Respectfully submitted,

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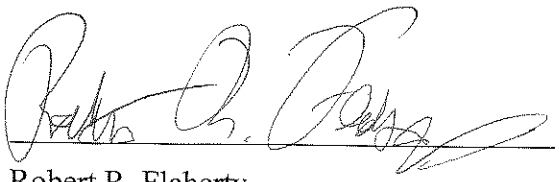
VERIFICATION

I, Robert R. Flaherty, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the responses to Plaintiffs' First Set of Expedited Preliminary-Injunction Related Interrogatories to Robert Flaherty served on December 12, 2022, contained in Defendants' Objections and Responses to Plaintiffs' First Set of Expedited Preliminary-Injunction Related Interrogatories to Robert Flaherty, are true and correct, to the best of my knowledge.

Dated: January 5, 2023



Robert R. Flaherty
Director, Office of Digital Strategy

CERTIFICATE OF SERVICE

I hereby certify that, on January 5, 2023, a true and correct copy of the foregoing was served by email to counsel of record for Plaintiffs.

/s/ Adam D. Kirschner