

# The State of New Hampshire

**MERRIMACK COUNTY**

**SUPERIOR COURT**

THE STATE OF NEW HAMPSHIRE

v.

TIKTOK INC.

Docket No.: 217-2024-CV-00399

## **ORDER**

The plaintiff, the State of New Hampshire, brings this action against the defendant, TikTok, Inc. (“TTI”), arising out of the alleged harms suffered by New Hampshire citizens from TTI’s design and operation of the social media platform, TikTok (“TikTok” or the “App”). TTI moves to dismiss. The State objects. The Court held a hearing on April 11, 2025. The parties filed notices of supplemental authority before and after the hearing. For the following reasons, TTI’s motion to dismiss is GRANTED as to Count VI but otherwise DENIED.

### **I. Standard**

In reviewing a motion to dismiss, the Court “assume[s] the truth of the facts as alleged in the plaintiff’s pleadings and construe[s] all reasonable inferences in the light most favorable to the plaintiff.” Barufaldi v. City of Dover, 175 N.H. 424, 427 (2022). The Court “need not assume the truth of statements in the plaintiff’s pleadings, however, that are merely conclusions of law.” Sanguedolce v. Wolfe, 164 N.H. 644, 645 (2013). “The standard of review in considering a motion to dismiss is whether the plaintiff’s allegations are reasonably susceptible of a construction that would permit recovery.”

Barufaldi, 175 N.H. at 427. “This threshold inquiry involves testing the facts alleged in the pleadings against the applicable law.” Id. The Court will grant the motion “if the facts pled do not constitute a basis for legal relief.” Id.

## **II. Background**

The Court derives the following facts from the State’s amended complaint.

TTI runs the application, TikTok. (Am. Compl. ¶ 4.) TTI is incorporated in California with its principal place of business also in California. (Id. ¶ 31.) TTI is a subsidiary of the Chinese company ByteDance, Ltd. (“ByteDance”). (Id. ¶ 4.) TikTok is one of the most popular and fastest-growing social media platforms in the world. (Id.) TikTok allows users to create, upload, and/or view 15 to 60-second-long videos. (Id. ¶ 53.)

### **A. TTI’s Connections with New Hampshire**

In New Hampshire, there are over 1.2 million registered TikTok accounts (close to 90% of the state’s population). (Id. ¶¶ 5, 36.) More than a quarter of all registered accounts in New Hampshire belong to users under the age of 23 and over 92,000 of the accounts belong to children aged 13 to 17. (Id.) Of the accounts registered to New Hampshire users, 620,404 of them are “content creators,” meaning users who actively publish videos and livestreams. (Id. ¶ 36.) Nationwide, TTI has reached a market penetration of 95% of users under the age of 17. (Id. ¶ 63.)

TTI promotes TikTok in New Hampshire through running television commercials designed to get New Hampshire residents to use the App. (Id. ¶ 37.) Between August 1, 2020 and December 31, 2023, TTI spent \$1,112,651 on advertising and promoting

TikTok in New Hampshire. (Id. ¶ 42.) From 2020 to 2023, the number of New Hampshire users boomed from 417,105 to over 1.2 million. (Id.)

TTI sells advertising space to marketers and allows them to tailor advertising to New Hampshire consumers. (Id. ¶ 43.) Between June 2022 and November 2023, TTI generated profits of \$221,015 from advertisements that businesses, including New Hampshire entities, selected to show only to New Hampshire users. (Id. ¶¶ 43–44.)

TTI also allows users, including New Hampshire users, to purchase products directly from the App. (Id. ¶ 45.) In September 2023, TTI launched the TikTok Shop, an e-commerce feature where consumers can find and purchase products. (Id.) TTI charges a service fee for each transaction. (Id.) The State alleges that TTI's collection of service fees is connected to the following cycle: TTI implements addictive design features, TTI's deceptive representations entice more New Hampshire children to use the App, the design features and misrepresentations encourage child users to spend more time on the App, which leads to them viewing more advertisements and engaging in e-commerce, which results in additional service fees TTI collects. (Id.) Between March 2022 and October 2023, TTI made \$1,676,645 from New Hampshire TikTok Shop sales. (Id. ¶ 47.) TTI also profited from New Hampshire sales through TikTok LIVE, totaling \$5,159,291 from March 2022 to October 2023. (Id. ¶ 48.)

TTI has also paid New Hampshire content creators a total of \$884,667 between September 2023 and November 2023. (Id. ¶ 50.)

TTI has built connections with New Hampshire entities including by awarding grants to Parent Teacher Associations in Derry, providing funding to Nashua public

services through the CDC, and consulting with the University of New Hampshire. (Id. ¶ 51.)

## B. TikTok

When a user signs up for a TikTok account, in exchange for access to the platform, the user must agree to TikTok's Terms of Services, including TikTok's Privacy Policy. (Id. ¶ 6.) The Privacy Policy alerts users to the fact that TikTok will show the user suggestions, promote the Platform, and customize the user's ad experience, using the user's information. (Id.)

TTI collects users' data while they use the App. (Id. ¶ 7.) The more time a user spends on the App, the more data TTI collects, and the more money TTI makes. (Id.)

TikTok's design features exploit children's underdeveloped psychological and neurological controls to compel them to spend more time on TikTok. (Id. ¶ 11.)

TikTok's addictive design features deliberately alter the physical brain chemistry of New Hampshire's child users. (Id. ¶ 39.) Children's dopamine systems' particular sensitivity coupled with the unfinished development of the prefrontal cortex makes 13 to 17-years-old TikTok users highly susceptible to risky behaviors, temptations, and manipulations of their reward system. (Id. ¶ 67.) The U.S. Surgeon General has warned that unchecked use of social media like TikTok has "a profound risk of harm to the mental health and well-being of children and adolescents." (Id. ¶ 16.)

Children aged 13 to 17 report using social media at a near universal rate and 30% of them characterize their usage as excessive. (Id. ¶ 13.) Specific to TikTok, users 13 to 17-years-old check the App nearly 17 times per day and spend, on average, almost 2 hours a day on TikTok. (Id. ¶¶ 14, 60, 75 (similar data for New Hampshire

users).) Many users are spending 4 or more hours on the App daily. (Id. ¶ 14.) In 2021, over 37% of New Hampshire high schoolers reported 5 hours or more of screen time on an average school day. (Id. ¶ 16.) The compulsive and prolonged use of TikTok increases the chances of experiencing poor mental health outcomes, including symptoms of depression and anxiety and experiencing lower life satisfaction. (Id. ¶¶ 70, 72–73.) In 2019, users aged 14 and under consumed more videos per user per day than any other age group on TikTok. (Id. ¶ 299.)

At the same time TikTok launched and grew, New Hampshire children’s mental health declined. (Id. ¶ 74.) In 2021, almost half of New Hampshire’s high school students self-reported feeling persistently sad or hopeless, which was a 75% increase from 2011 and a 57.8% increase from 2017. (Id.) Similarly, between 2017 and 2021, the percentage of New Hampshire high school students who reported seriously considering suicide jumped from 16.1% to 24.7%. (Id.) Lastly, the percentage of New Hampshire high school students who reported attempting suicide increased from 5.9% to 9.8%. (Id.)

Late night usage among child users is also problematic. Among TikTok users, more than 20% of children are active on TikTok late at night (between 12:00 a.m. and 5 a.m.), preventing sleep critical to healthy development. (Id. ¶¶ 15, 75.) In New Hampshire, children aged 13 to 17 spend over 2 hours a day on the App, with the average daily session time peaking at 3:00 a.m. to 4 a.m. (Id.) The use of technology, especially social media, within one hour of bedtime is associated with sleep disruptions and insufficient sleep is associated with interruptions to neurological development in adolescent brains. (Id. ¶ 71.)

TTI employs certain design features to manipulate users into staying on the App. (Id. ¶ 8.) Those features include: (1) algorithms that leverage user data to feed them personalized content recommendations; (2) infinite scroll; (3) push notifications with built in vibrations and “buzzes”; (4) filters and effects that create idealizations of unattainable appearances for users; and (5) a virtual currency system known as “TikTok Coins” that incentivizes spending and does not implement anti-money laundering safeguards. (Id.) TTI acknowledges how features like these are “powerful coercive design tactics that [it realized] tend to benefit companies and advertisers more than users.” (Id. ¶ 77.)

TikTok’s design features exploit children’s underdeveloped psychological and neurological controls to compel them to spend more time on TikTok. (Id. ¶ 11.) TikTok’s addictive design features deliberately alter the physical brain chemistry of New Hampshire’s child users. (Id. ¶ 39.) Children’s dopamine systems’ particular sensitivity coupled with the unfinished development of the prefrontal cortex makes 13 to 17-years-old TikTok users highly susceptible to risky behaviors, temptations, and manipulations of their reward system. (Id. ¶ 67.)

i. Recommendation Engine

TTI uses the data it collects from users to further its personalization algorithms to create a unique customized experience for each user. (Id. ¶ 38.) No two TikTok users have the same experience. (Id.) This customized recommendation engine is known as the “For You” feed. (Id. ¶ 79.) The recommendation engine collects data from the user and uses that data to rank content based on how likely a user is to engage with it and curates a personalized stream of videos to keep the user engaged. (Id.) TikTok’s recommendation engine is “content neutral,” meaning it does “not understand content”

and functions by “predict[ing] the likelihood of different user engagements with a video.” (Id. ¶ 80.) The goal of the recommendation engine is to find videos a user is most likely to watch to the end, like, or comment on, keeping them hooked on the App for as long as possible and coming back for more. (Id. ¶ 82.) A side effect of the recommendation engine is filter bubbles created when the engine learned a user’s video preferences and reinforces those preferences by recommending increasingly more extreme versions of those videos. (Id. ¶ 85.)

TTI knows that the App’s Recommendation Engine promotes LIVE streams where users make sexual content in exchange for gifts. (Id. ¶ 25.) Despite TTI knowing that the Recommendation Engine “incentivizes sexual content,” it allows such incentivization because “[t]ransactional sexual content hits most of [TTI’s] business metrics of success & is pushed to TopLives.” (Id.)

ii. Infinite Scroll

TikTok employs “infinite scroll,” which continuously previews and suggests new content. (Id. ¶¶ 90, 92.) This feature provokes children’s fear of missing out (“FOMO”) by building anticipation of discovering something new which creates a feeling that others might be having rewarding experiences on the App when one is absent. (Id. ¶ 92.) The feeling of FOMO can trigger anxiety and result in sleep deprivation. (Id.) TTI has internally admitted that it wants to “create FOMO” because it generates “acquisition” and is therefore good for business. (Id. ¶ 93.)

iii. Push Notifications

Push notifications alert users of new messages, updates about “in-app news,” and new videos. (Id. ¶ 94.) TTI acknowledges that these notifications “encourage

users to open the App and stay longer.” (Id.) The push notifications use haptics which employ vibrations, buzzes, and light sounds to draw users’ attention back to the App. (Id. ¶ 95.) TTI has described these notifications as “an effective marketing tool as it helps to recall users.” (Id.) The notifications drive users into checking the App routinely at all hours of the day. (Id.) In particular, TTI has stated that it “send[s] notifications to users during the school day and in some cases, up until midnight, which could interfere with sleep.” (Id. ¶ 96.)

#### iv. Filters and Effects

TikTok offers “filters” and “effects” that alter a user’s appearance by lightening and smoothing their skin, changing their eye color, enlarging their lips, and modifying their facial features by creating a skinnier face or smaller nose. (Id. ¶ 99.) The filters use artificial intelligence to cosmetically reshape a user’s face in a hyper-realistic way, blurring the line between what is real and fake. (Id.) TikTok features hundreds, if not thousands, of these filters and, in some instances, turns them on for users and minors by default, without their consent. (Id. ¶ 103.)

Beauty filters pose a significant risk of causing severe psychological harm to minors. (Id. ¶ 102.) TTI has acknowledged that the filters have a “high risk of harming U18 [under 18 year old] users.” (Id.) This is because teenagers are “more susceptible to harm when it comes to the usage and consumption of beauty filters as they are developing their self-image, are at a critical period for developing body dysmorphia and eating disorders, and are more easily pressured by the opinions of others.” (Id.) TTI has also acknowledged that default beauty filters have a “high potential from a research



perspective to lead to negative body image and body dysmorphia symptoms, especially among teenage girls.” (Id. ¶ 104.)

TikTok’s filters in particular increase young female users’ risk for eating disorders, depression, anxiety, low self-esteem, and negative body image. (Id. ¶ 107.) The American Society of Plastic Surgeons has noted that platforms like TikTok are driving the popularity of plastic surgery overall and that there is a rise in teenagers seeking medical intervention to alter their appearance. (Id. ¶ 110.) TikTok’s recommendation engine is known to push plastic surgery videos and body altering videos to young users within minutes of using the App. (Id. ¶ 111.)

v. Currency System and TikTok LIVE

TikTok LIVE is a feature that allows a user (host) to begin a livestream with the touch of a button, offering live interaction with any user watching the livestream (followers). (Id. ¶ 18.) LIVE videos are not saved thus inducing a sense of urgency in children. (Id. ¶ 239.) By 2022, 20% of the 83 million daily TikTok users watched LIVE every day. (Id. ¶ 251.) In 2023, TTI netted 1.7 billion dollars in one quarter from LIVE with an expectation that it could capture up to 77 billion dollars a year from LIVE alone by 2027. (Id.)

The minimum age requirement to go LIVE and receive gifts is currently 18 years old but was formerly 16 years old until 2022. (Id. ¶ 243.) However, because users can provide a false birthdate when creating their account, minors are able to access LIVE. (Id.) Users 13 or older have always been able to view LIVE videos but, after 2019, only users 18 or old are able to purchase and send gifts on LIVE. (Id. ¶ 244.)

During a livestream, followers can send virtual gifts to the host using TikTok Coins. (Id. ¶¶ 18, 241.) Coins are an unmonitored and unregistered virtual currency purchased with U.S. dollars for use on the App. (Id.) TTI takes up to a 50% commission on these virtual gifts. (Id. ¶¶ 20, 253.) In 2023, TTI netted \$1.7 billion globally in a single quarter from LIVE. (Id. ¶¶ 20, 253.) TTI's 2022 internal investigation revealed that LIVE "enable[d the] exploitation of live hosts" and that TTI profited significantly from allowing users to use its virtual currency system for "transactional gifting" involving nudity and sexual activity. (Id. ¶ 24.)

TTI conducted an internal investigation which confirmed that users under the minimum age requirement could host LIVE sessions on TikTok, TTI received "significant revenue from "transactional gifting" generated through transactions for sexual content, and TikTok's algorithms were optimized to amplify gifting for sexual content. (Id. ¶¶ 234, 270–71.) The LIVE feature leads to financial harm, encourages addiction and impulsive purchasing, and exposes minors to repeated sexualized content. (Id. ¶ 235.) TTI has conceded that it is not able to age-gate livestreams because it lacks the functional capacity to do so. (Id. ¶ 246.)

Children also financially suffer from LIVE through predatory "giftbaiting" wherein LIVE hosts coerce users to purchase and donate digital gifts to the host in exchange for some future action the host never takes. (Id. ¶ 261.) The use of gifting through LIVE has also been linked to money laundering because criminals can use the gifting feature to engage in cross border capital transfers. (Id. ¶¶ 264, 278, 281.)

vi. Time Management and Parental Controls

TTI has marketed time control features as useful ways to keep users' usage of the App in control despite its awareness of the ineffectiveness of those features. (Id. ¶ 113.) Since at least October 2019, TTI deployed the "You're In Control" feature, described as an educational video series that presents TikTok's safety and privacy controls in an accessible and easy to understand fashion. (Id. ¶ 114.) One of the controls, "Take a Break," is a screen time tool that allows users to schedule a video reminder to take a break from using TikTok. (Id. ¶ 115.) TTI has internally acknowledged that the feature "has very low friction involved with it" and it "allows users to easily skip past it and not be mindful of their time spent on TikTok." (Id.) TTI knows that only 12% of users actually close TikTok within 5 minutes of watching a Take a Break video, while 55% of users stay longer than 45 minutes after seeing one. (Id. ¶ 117.)

TTI has also implemented parental controls into the App, including one called "Restricted Mode" which TTI markets as a way for parents to "limit the appearance of content that may not be appropriate for all audiences." (Id. ¶ 120.) Restricted Mode allows parents to enter a personal passcode to ensure their children are viewing content TTI represents as more age-appropriate. (Id.) However, TikTok feeds users under Restricted Mode content that is "often still too mature for that space" including material tagged for "Sexy Themes" and "Profanity." (Id. ¶ 121.) Further, users under Restricted Mode can "still search for and follow links that would be filtered out of the FYP [For You Page] by Restricted Mode." (Id. ¶ 122.) Those users also have access to live streams with mature content. (Id.) Another parental control feature, "Family Pairing" is intended

to allow parents to link their own TikTok account to their teens' to set controls. (Id. ¶ 123.) But, teen users can disable the feature without a PIN code. (Id. ¶ 124.)

### C. Allegations of Harm and Misrepresentations

TTI publishes Community Guidelines on its website, and they are available to users through the Terms of Service. (Id. ¶ 133.) The Community Guidelines assure users and the parents of minor users that TikTok is designed as a safe environment for all users. (Id.) Since TikTok's launch in the United States, the Community Guidelines have represented that TTI "takes child safety with the utmost seriousness" and is "deeply committed to TikTok being a safe and positive experience for people under the age of 18." (Id. ¶¶ 133, 195.) The Community Guidelines state that content in violation thereof will be removed, including content "showing, promoting, or engaging in youth sexual or physical abuse or exploitation," content "that may put young people at risk of exploitation, or psychological, physical, or developmental harm," content "showing, promoting, or sharing plans for suicide or self-harm," content "showing or promoting disordered eating and dangerous weight loss behaviors," content featuring "dares, games, tricks, inappropriate use of dangerous tools, and eating substances that are harmful to an individual's health," and content "showing, possessing, or using drugs." (Id. ¶ 135.)

TTI has made public statements, including through articles and posts published on its "Newsroom," in TikTok's Community Guidelines and in testimony to Congress about TikTok's moderation processes and their effectiveness (id. ¶¶ 136–39, 154), the prevalence of child sexual abuse material ("CSAM") (id. ¶¶ 169, 171) and content about drugs (id. ¶ 224), its efforts to quash predatory and grooming behavior toward child-

users (id. ¶ 182), the safety of its recommendation system (id. ¶ 195), its efforts to curb filter bubbles (id. ¶ 200), its disallowance of dangerous challenges (id. ¶¶ 204, 207, 210), and the effectiveness of its age-gating (id. ¶¶ 213–15, 218).

Despite these statements, TTI knows that gaps and flaws in its enforcement and detection system including policy grey areas, lack of time and resources for moderators, and lack of training for context in moderation, result in inconsistent and unequal application of the Community Guidelines. (id. ¶ 143; see also id. ¶¶ 144–46, 149–50.) This leads to the availability of content on TikTok promoting dangerous weight-loss activities (id. ¶¶ 155–58), featuring sexually explicit activities (id. ¶¶ 159–60), including hateful or harassing behavior (id. ¶¶ 166–68), featuring CSAM (id. ¶¶ 169–81), featuring child predatory behavior (id. ¶¶ 183–194), promoting dangerous challenges (id. ¶¶ 207–212), and depicting drugs or other controlled substances (id. ¶¶ 225–29). In particular, exploitative CSAM has a 26% leakage rate, or, in other words, 1 in 4 violative content appears on the App and is not caught by the moderation processes. (id. ¶ 173.) TikTok has also failed to curb the presence of filter bubbles, resulting in the presentation of graphic, violent, and distressing content to children. (id. ¶¶ 199–202.)

TikTok also fails to meaningfully enforce its age restrictions. (id. ¶ 213.) When users sign up for the App, they must self-report their date of birth before gaining access. (id. ¶ 216.) By relying on the user, the App incentivizes child users to input a false date of birth. (id.) TTI is aware that up to 70% of users aged 13 to 15 report their age at 18 or older to avoid the age-gating feature. (id. ¶ 217.) Until 2022, young users could also bypass the age verification process by using their Facebook or Google credentials to set up an account. (id. ¶¶ 308, 313.) Between September 2020 and March 2022, TTI

removed 71,021,950 accounts suspected to belong to users under the age of 13. (Id. ¶ 307.) TTI is aware of other accounts belonging to users under the age of 13. (Id. ¶¶ 310–12 318–25.)

One impact of TikTok’s ineffective age verification is TikTok’s collection of data from users under the age of 13. (Id. ¶¶ 27, 289.) TTI collects personal data, including the name, address, email address, persistent identifiers, geolocation information, advertising information, and photographs or videos from users. (Id. ¶ 287.) Since March 2019, two versions of the App have existed: (1) “Kids Mode” for the use of children who report their age to be under 13; and (2) the standard version of the App. (Id. ¶ 293.) Kids Mode is designed for younger users and features limited content, no access to direct messages, no ability to comment, and no ability to upload content. (Id.) TTI collects data from users on both versions of the App. (Id. ¶ 294.) TTI does not seek parental consent before collecting personal from users on the standard version of the App. (Id.) Because, as discussed above, users under 13 years old are able to access the standard version of TikTok, TTI collects their personal data without parental consent. (Id. ¶¶ 324, 338–341.)

TTI likewise allegedly misleads New Hampshire consumers by passing itself off as an American company. (Id. ¶¶ 28, 347–48.) In TikTok’s terms of service, it states that it is a “myth” that decisions about TikTok are made in Beijing and that TikTok is not available in mainland China and it has established Los Angeles and Singapore as headquarters. (Id. ¶ 348.) TTI’s CEO has also stated to Congress that TTI has never shared, or received a request to share United States user data with China. (Id. ¶ 349.) However, ByteDance originally developed the source code for TikTok’s

recommendation engine. (Id. ¶¶ 86, 356.) Further, ByteDance, which is headquartered in Beijing retains heavy control over TTI. (Id. ¶ 351.) ByteDance still directs TTI’s budget, operates its internal document storage platform, and handles media criticism directed at TikTok. (Id. ¶ 353.) The United States government has cited the risk that ByteDance and TikTok may pose to national security because China may coerce them to covertly manipulate TikTok’s recommendation engine to shape the information received by Americans, including children. (Id. ¶ 87.)

### **III. Analysis**

The State brings claims against TTI for six counts of Violations of the Consumer Protection Act (“CPA”), two counts of strict products liability, and one count of negligence. TTI moves to dismiss, arguing the Court lacks personal jurisdiction over it, Counts I–III and VII–IX must be dismissed because they seek to hold TTI liable for expressive conduct, and the State’s claims fail to state a cause of action.

#### **A. Personal Jurisdiction**

The standard of review on a motion to dismiss for lack of personal jurisdiction varies according to the case’s procedural posture. Seward v. Richards, 174 N.H. 401, 406 (2021). “While the general rule applicable to motions to dismiss is that all facts properly pleaded by the plaintiff are deemed true . . . when those facts relate to personal jurisdiction, the plaintiff must offer affirmative proof.” Staffing Network, Inc. v. Pietropaolo, 145 N.H. 456, 457 (2000). In the absence of an evidentiary hearing, the Court applies a prima facie standard to determine whether personal jurisdiction is met. Id.

“Determining whether a court may exercise personal jurisdiction over a defendant contemplates a two-part analysis.” Seward, 174 N.H. at 407. “First, the State’s long-arm statute must authorize such jurisdiction. Second, the requirements of the federal Due Process Clause must be satisfied.” Id. New Hampshire’s long-arm statute, RSA 510:4, authorizes the exercise of personal jurisdiction to the extent permissible under the Due Process Clause. Id. Accordingly, the Court’s analysis depends upon due process. Id.; RSA 510:4, I.

“Under the Federal Due Process Clause, a court may exercise personal jurisdiction over a non-resident defendant if the defendant has minimum contacts with the forum, such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” Seward, 174 N.H. at 407. “Minimum contacts is not necessarily a numbers game; in order to be subject to the jurisdiction of the forum state, a nonresident need only have one contact with the forum, so long as the contact is meaningful.” Id. “Jurisdiction can be ‘general,’ where the defendant’s contacts with the forum State are continuous and systematic, or ‘specific,’ where the cause of action arises out of or relates to the defendant’s forum-based contacts.” Id. The State asserts a theory of specific personal jurisdiction over TTI. Accordingly, the Court focuses its analysis on that inquiry.

“To determine whether exercising specific personal jurisdiction over the defendant[] comports with due process, [the Court] examine[s] whether: (1) the contacts relate to the cause of action; (2) the defendant[] ha[s] purposefully availed [itself] of the protection of New Hampshire’s laws; and (3) it would be fair and reasonable to require the defendant[] to defend the suit in New Hampshire.” Seward, 174 N.H. at 407–08.



“Each factor must be evaluated on a case-by-case basis, and all three factors must be satisfied for the exercise of jurisdiction to be constitutional.” Id. at 408. “Questions of specific jurisdiction are always tied to the particular claims asserted.” Id.

TTI disputes that the first two factors—relatedness and purposeful availment—are met.

i. Purposeful Availment

To satisfy the purposeful availment prong of the test, “the defendant’s in-state contacts must represent a purposeful availment of the privilege of conducting activities in the forum state, thereby invoking the benefits and protection of that state’s laws and making the defendant’s involuntary presence before the state’s courts foreseeable.” Id. at 412. “Purposeful availment requires both foreseeability and voluntariness.” Id. “Voluntariness requires that a defendant’s contacts with the forum state proximately results from actions by the defendant.” Id. “The contacts must be deliberate and not based on the unilateral actions of another party, and cannot be merely fortuitous, but rather, the defendants must have purposefully directed actions at New Hampshire.” Id. “Foreseeability requires that the contacts must be of a nature such that a defendant could reasonably anticipate being haled into court here.” Id.

TTI argues that, by making an interactive website generally accessible to users worldwide, it has not purposefully availed itself to the jurisdiction of New Hampshire in particular. The State responds that TTI purposefully directs commercial activities to New Hampshire, as evidenced by its ubiquitous presence in the State—over one million New Hampshire users representing nearly 90% of New Hampshire residents—and its customization of the App for each of those users combined with its cultivation and

exploitation of user data to target advertising to those users.

In Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 773–74 (1984), the Court found that there was specific jurisdiction over the defendant publisher where it had no employees or offices in the forum, did not expressly aim its publication or conduct at the forum, and magazine sales in the forum made up only a small fraction of the defendant's total sales, but the defendant circulated 10,000 to 15,000 copies of its magazine to subscribers in the forum each month. The Court reasoned that the defendant “continuously and deliberately exploited” the forum’s market. Keeton, 465 U.S. at 781. Because the defendant produced “a national publication aimed at a nationwide audience,” there was “no unfairness in calling it to answer for the contents of that publication wherever a substantial number of copies are regularly sold and distributed.” Id.

The Keeton Court’s reasoning applies here, despite the digital, rather than physical, nature of TTI’s connections with New Hampshire. TTI does not just operate an online platform accessible to New Hampshire residents. In exchange for access to the App, TTI harvests users’ personal information, sells that information to advertisers, who then use it to advertise on the App. See uBID, Inc. v. GoDaddy, Inc., 623 F.3d 421, 427–28 (7th Cir. 2010) (determining that website operator defendant had minimum contacts with the forum state because it exploited the forum’s market and engaged in extensive national advertising, even though it did not specifically target forum residents through advertising). Like the defendant publisher in Keeton, TTI has specific connections with New Hampshire and furthers those connections each time it contracts with users to offer its App in exchange for their data. This is voluntary contact with the

forum state and its residents. See Seward, 174 N.H. at 412. It should have been foreseeable to TTI that such contact with New Hampshire would cause it to be haled into court here. See id.

The decisions TTI relies on to distinguish this matter from the Court's order in State of New Hampshire v. Meta, Inc., 217-2023-CV-00594, Doc. 58 (Dec. 10, 2024) (Kissinger, J.)<sup>1</sup> do not feature the type of engagement with the forum state as alleged here. See (TTI's Memo. iso Mot. to Dismiss at 10); Hasson v. FullStory, Inc., 114 F.4th 181, 190 (3d Cir. 2024) (allegation that the defendant "knowingly armed its website with software that initiates a broad-spectrum wiretap" did not establish purposeful availment because the defendant targeted a national audience and the defendant simply operated a website accessible in the forum state); Johnson v. TheHuffingtonPost.com, Inc., 21 F.4th 314, 320 (5th Cir. 2021) (allegation that the defendant operated a universally accessible website and residents of the forum state visited the site, clicked ads, and bought things from the site, did not establish purposeful availment); Rosenthal v. Bloomigdales.com, LLC, 101 F.4th 90, 97 n.1 (1st Cir. 2024) (same). As stated, rather than just operating an interactive website in the forum, as was alleged in the cases TTI relies upon, TTI reached further into the forum by harvesting the personal data of its New Hampshire users, profiting from the sale of that data, and permitting advertisers to complete the cycle by using that data to advertise on the App based on users' preferences.

One of the decisions TTI relies upon warrants additional discussion. TTI cited

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<sup>1</sup> State of New Hampshire v. Meta, Inc., involves similar claims by the State against Meta for harms impacting New Hampshire children allegedly caused by Meta's social media platforms. The Court's December 10, 2024 Order addressed many of the same arguments raised in the briefing on TTI's motion to dismiss, and, for that reason, is cited by the parties in this matter.

AMA Multimedia, LLC v. Wanat, 970 F.3d 1201, 1211 (9th Cir. 2020) for the proposition that, in the online context, an alleged practice of collecting user data in a state and then selling advertisements to third parties does not show purposeful direction toward a forum. However, the Ninth Circuit overruled the relevant portion of AMA since TTI filed its memorandum. See Briskin v. Shopify, Inc., 135 F.4th 739, 756–58 (9th Cir. 2025). In Briskin, the plaintiff alleged that the defendant targeted forum consumers to “extract, collect, maintain, distribute, and exploit for its own profit,” consumer payment information and “all other personal identifying information that it extracts.” Id. at 755–56. In overruling AMA’s “forum-specific focus” and “differential targeting” concepts, the Ninth Circuit ruled that “an interactive program ‘expressly aims’ its wrongful conduct toward a forum state when its contacts are its ‘own choice and not random, isolated, or fortuitous,’ Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 592 U.S. 351, 359 (2021), even if that platform cultivates a ‘nationwide audience for commercial gain,’” id. at 758. The Briskin Court acknowledged that its analysis could result in personal jurisdiction in all 50 states: “[R]equiring differential targeting would have the perverse effect of allowing a corporation to direct its activities toward all 50 states yet to escape specific personal jurisdiction in each of those states for claims arising from or relating to their relevant contacts in the forum state that injure that state’s residents.” Id.

The Court agrees with the Briskin Court’s reasoning. TTI’s cyclical relationship with New Hampshire users—offering access to the App, operating it in such a way to keep users present on the App, harvesting users’ data, selling that data, and allowing advertisements targeted to users based on that data—is not “random, isolated, or fortuitous.” Id.

Accordingly, the State has alleged sufficient facts to meet the purposeful availment prong of the specific personal jurisdiction test.

ii. Relatedness

“To satisfy the relatedness factor, there must be more than just an attenuated connection between the contacts and the claim; the defendant’s in-state conduct must form an important, or at least material, element of proof in the plaintiff’s case.” Seward, 174 N.H. at 409. “The relatedness test is a flexible, relaxed standard, and the court’s assessment of relatedness is informed by the concept of foreseeability.” Id. For tort claims, the relatedness inquiry “focuses on whether the defendant’s in-forum conduct caused the injury or gave rise to the cause of action.” United States v. Swiss Am. Bank, Ltd., 274 F.3d 610, 622 (1st Cir. 2001). To satisfy specific personal jurisdiction, “a plaintiff must link the defendant’s suit-related conduct to the forum. Mere market exploitation will not suffice.” Johnson, 21 F.4th at 324.

In Walden v. Fiore, 571 U.S. 277, 279 (2014), the Supreme Court held that a Nevada court could not “exercise personal jurisdiction over a defendant on the basis that he knew his allegedly tortious conduct in Georgia would delay the return of funds to plaintiffs with connections to Nevada” where “the defendant had no other contacts with Nevada.” The Walden Court noted that its holding was consistent with Calder v. Jones, 465 U.S. 783 (1984). Walden, 571 U.S. at 289–90. In Calder, the Court held that a California court could exercise personal jurisdiction over Florida defendants whose “intentional, and allegedly tortious, actions were expressly aimed at California.” 465 U.S. at 785–86. Under Walden and Calder, the proper inquiry is not merely whether

New Hampshire residents suffered an injury but whether TTI's conduct connects it to New Hampshire in a "meaningful way." Walden, 571 U.S. at 290.

The Supreme Court has referred to the following as a "paradigm example": the defendant "extensively promoted, sold, and serviced" vehicles in the forum states and the plaintiffs resided in the forum states, used the allegedly defective vehicles in the forum states, and suffered injuries in the forum states. Ford Motor Co., 592 U.S. at 366. These facts created an "affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that t[ook] place." Id. at 370.

TTI argues that the State's claims arise out of alleged national contacts, rather than New Hampshire-specific contacts. It contends that the State's claims do not arise out of contacts TTI has directed to New Hampshire. The State explains that TTI's contacts with New Hampshire are directly related to the State's claims because TTI's purpose is to profit off of advertisement sales. To maximize that profit, TTI implements business practices designed to keep users on the App as long as possible to be able to show them more advertisements. The State argues that TTI's connections with New Hampshire—harvesting user data, selling it to advertisers, and then showing users advertisements based on that data—is intertwined with the alleged addictive design features and misrepresentations and omissions which are designed to keep child users on the App.

Generally, the State's claims against TTI arise out of TTI's alleged implementation of addictive design features which are harmful to children and TTI's alleged misrepresentations and omissions which entice young users to use the App and parents to authorize such use. In a similar manner to Ford Motor Co., TTI extensively

promotes TikTok in the forum state, enters service agreements and collects residents' data of the forum state, and those residents use the App in the forum state and suffered injuries in the forum state. Cf. 592 U.S. at 366. While TTI might use the same methods nationwide, it uses them in New Hampshire which is alleged to have harmed New Hampshire residents. Accordingly, TTI's in-state conduct is connected to the State's claims in a "meaningful way," Walden, 571 U.S. at 290, and forms an important, element of proof in the State's case, Seward, 174 N.H. at 409.

iii. Reasonableness

The third and final prong of the specific personal jurisdiction test asks, "whether it would be fair and reasonable to require the defendants to defend the suit in New Hampshire." Seward, 174 N.H. at 413. Because TTI does not argue that this prong is unmet, the Court need not address it in substance.

Having found TTI's arguments on personal jurisdiction unpersuasive, its motion to dismiss on that ground is DENIED.

B. Section 230 of the Communications Decency Act

TTI argues that Section 230 of the Communications Decency Act ("Section 230") bars Counts I–III and VII–IX because they treat TTI as a publisher of third-party content. Because Section 230 is an affirmative defense, dismissal is only proper if TTI's immunity is evident from the face of the complaint. Teatotaler, LLC v. Facebook, Inc., 173 N.H. 442, 449 (2020) (citing Force v. Facebook, Inc., 934 F.3d53, 63 n.15 (2d Cir. 2019)).

In 1996, Congress enacted Section 230 "to promote the continued development of the Internet" and "to remove disincentives for the development and utilization of

blocking and filtering technologies that empower parents to restrict their children’s access to objectionable or inappropriate online material,” among other policies. 47 U.S.C. § 230(b)(1), (4). To achieve these goals, Section 230 immunizes interactive computer service providers, like TTI, from legal claims that treat them as a publisher or speaker of third-party content. See 47 U.S.C. § 230(c)(1), (e)(3). While courts have interpreted Section 230 to “broadly immunize internet companies from liability . . . this immunity is not limitless.” Calise v. Meta Platforms, Inc., 103 F.4th 732, 736 (9th Cir. 2024).

To determine whether Section 230 immunity applies to a given case, courts employ a three-prong test. Under this test, Section 230 only protects “(1) a provider or user of an interactive computer service (2) whom a plaintiff seeks to treat, under a state law cause of action, as a publisher or speaker (3) of information provided by another information content provider.” Teatotaler, LLC, 173 N.H. at 450 (quoting Universal Commc’n v. Lycos, Inc., 478 F.3d 413, 418 (1st Cir. 2007)); see also Calise, 103 F.4th at 740; Lemmon v. Snap, Inc., 995 F.3d 1085, 1091 (9th Cir. 2021); Barnes v. YAHOO!, Inc., 570 F.3d 1096, 1100–01 (9th Cir. 2009).

TTI does not dispute that it is a provider of an interactive computer service (TikTok). Consequently, the Court must determine whether the State’s claims treat TTI as a publisher or speaker of information provided by another information content provider. See Teatotaler, LLC, 173 N.H. at 450. This determination rests upon the State’s theory of liability in each count. See id. at 451; Calise, 103 F.4th at 740 (stating that courts must “examine each claim to determine whether a plaintiff’s theory of liability would treat a defendant as a publisher or speaker of third-party content”) (emphasis in



the original). The Court must examine TTI's duty under the State's theories of liability. As the Ninth Circuit explains in Calise,

We must therefore examine two things in looking at duty. First, what is the "right" from which the duty springs? If it springs from something separate from the defendant's status as a publisher, such as from an agreement, or from obligations the defendant has in a different capacity, then [Section 230] does not apply. Second, we ask what is this duty requiring the defendant to do? If it obliges the defendant to "monitor third-party content"—or else face liability—then that too is barred by [Section 230].

Id. (cleaned up).

In Lemmon, the Ninth Circuit examined the duty of social media companies to design reasonably safe products. The parents of two boys who died in a high-speed car accident sued Snap, Inc. ("Snap"), alleging that Snap negligently designed its social media platform, Snapchat. Lemmon, 995 F.3d at 1087. Like Instagram and Facebook, Snapchat is a social media platform that allows users to share photos and videos with other Snapchat users. See id. at 1088. To promote user engagement, Snapchat provides users with rewards such as "trophies, streaks, and social recognitions." Id. At the time, Snapchat had developed a "speed filter," which allowed users to superimpose their real-life speed atop user-created content. Id. The plaintiffs alleged Snapchat knew or should have known that its users believed that Snapchat would reward them for posting a "snap" at 100 miles per hour or over. Id. at 1089. While Snapchat warned users not to use the filter while driving, the warnings proved ineffective. Id. at 1090. The trial court dismissed the plaintiffs' amended complaint, ruling that Section 230 barred their claim. Id.

On appeal, the Ninth Circuit reversed the trial court's decision and concluded that the plaintiffs' claim did not treat Snap as a publisher or speaker of third-party content

because the cause of action focused on Snap’s duty, as a manufacturer, to design a reasonably safe product. Id. at 1091–92. The court explained,

[The plaintiffs’] negligent design lawsuit treats Snap as a products manufacturer, accusing it of negligently designing a product (Snapchat) with a defect (the interplay between Snapchat’s reward system and the Speed Filter). Thus, the duty that Snap allegedly violated “springs from” its distinct capacity as a product designer. This is further evidenced by the fact that Snap could have satisfied its “alleged obligation”—to take reasonable measures to design a product more useful than it was foreseeably dangerous—without altering the content that Snapchat’s users generate. Snap’s alleged duty in this case thus “has nothing to do with” its editing, monitoring, or removing of the content that its users generate through Snapchat.

Id. at 1092 (cleaned up). In its analysis, the court conceded that Snap, in some capacity, acted as a publisher or speaker of third-party content, but concluded that was not enough to confer immunity under Section 230. Id. The court explained,

That Snap allows its users to transmit user-generated content to one another does not detract from the fact that the [plaintiffs] seek to hold Snap liable for its role in violating its distinct duty to design a reasonably safe product. As in Internet Brands, Snap “acted as the ‘publisher or speaker’ of user content by” transmitting [the boys’] snap, “and that action could be described as a ‘but-for’ cause of [the boys’] injuries.” This is unsurprising: Snap “is an internet publishing business. Without publishing user content, it would not exist. But though publishing content is “a but-for cause of just about everything” Snap is involved in, that does not mean that the [plaintiffs’] claim, specifically, seeks to hold Snap responsible in its capacity as a “publisher or speaker.” The duty to design a reasonably safe product is fully independent of Snap’s role in monitoring or publishing third-party content.”

Id. at 1092–93 (citing Doe v. Internet Brands, Inc., 824 F.3d 846, 853 (9th Cir. 2016)).

The Court finds this reasoning persuasive and applicable here. While true that the State’s allegations discuss New Hampshire children’s exposure to harmful content on the App, the thrust of the State’s allegations in Counts I, II, VII–IX is its contention that TTI designed an unsafe product and provided it to children, causing harm. The State points to features such as the recommendation engine, push notifications, infinite

scroll, and TikTok LIVE, not in the way they publish certain content, but in the way they manipulate young minds causing addiction, FOMO, and other psychological effects. TTI has a duty to design a reasonably safe product. The State alleges that it failed this duty. TTI's duty to design a reasonably safe product is independent from its role as a publisher of third-party content. While the Northern District of California decided differently in the MDL Litigation, see In re Social Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig., 702 F. Supp. 3d 809, 830–33 (N.D. Cal. 2023), the Court's decision is consistent with persuasive authority, as well as the language and purpose of Section 230, see 47 U.S.C. § 230(b)(3), (4); Calise, 103 F.4th at 736 (reasoning that immunity under Section 230 is not limitless); Lemmon, 995 F.3d at 1092–93 (holding that Section 230 did not bar negligent design claim); Internet Brands, 824 F.3d at 853 (holding that Section 230 did not bar failure to warn claim).

To be clear, Section 230 protects TTI against any claims where the alleged harm arises from the substance of third-party content posted on TikTok. See Force, 934 F.3d at 66 (finding Facebook was protected under Section 230 for harm resulting from Hamas content); Dyroff v. Ultimate Software Grp., Inc., 934 F.3d 1093, 1098 (9th Cir. 2019) (finding the defendant was protected under Section 230 when a user died from fentanyl toxicity after purchasing fentanyl from another user on the defendant's online service). However, the State alleges that the App's product design features, in and of themselves, are harmful to New Hampshire children regardless of the substance of the third-party content displayed. (Am. Compl. ¶¶ 366–75, 379, 392, 402, 497–500, 503–06, 517–20, 530.) The State makes this clarification in its complaint. (Id. ¶ 382 (“While users may also suffer other harms from third-party content on TikTok's App, the harms

to children in New Hampshire . . . result, at least in part, from TikTok’s unilateral and intentionally addictive design choices, and not from third-party content on the App.”). The Court determines that Section 230 does not bar Counts I, II, VII, VIII, and IX.

The State’s other claims, Counts III, V, VI, arise out of TTI’s alleged misrepresentations and omissions, or, in the case of Count IV, how TTI collects certain data. These counts are not based on TTI’s role as a publisher of third-party content. Thus, Section 230 does not bar these claims. See Internet Brands, Inc., 824 F.3d at 852–53 (finding that Section 230 does not bar failure to warn claims); In re Social Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig., 702 F. Supp. 3d at 834 (same); Hiam v. HomeAway.com, Inc., 267 F. Supp. 3d 338, 346–47 (D. Mass 2017); aff’d, 887 F.3d 542 (1st Cir. 2018) (reasoning that claims based on publisher’s own speech are not barred by Section 230).

### C. First Amendment

TTI argues that the First Amendment of the United States Constitution and Part I, Article 22 of the New Hampshire Constitution bar the State’s claims by protecting TTI’s editorial discretion to disseminate third-party speech. The State disputes TTI’s argument, clarifying that its claims relate to TTI’s implementation of addictive design features and misrepresentations and omissions about the safety of those features. The State contends that such claims do not seek to impose liability for TTI’s First Amendment protected activity. TTI argues that the State’s claims for alleged deception and failure-to-warn are constitutionally barred because they essentially seek to compel TTI’s speech by warning users about the alleged risks and harms of the App.

Like Section 230, the First Amendment protects publishers' discretion to disseminate third-party speech and categorically protects publishers from liability for injuries arising out of that speech. See Miami Herald Pub'g Co. v. Tornillo, 418 U.S. 241, 258 (1974); Moody v. NetChoice, LLC, 603 U.S. 707, 713 (2024) (comparing social media company's content moderation to traditional publishers' editorial choices, which "also select and shape other parties' expression into their own curated speech products"). Many courts, including the MDL court, have held that certain publishing decisions made by social media companies trigger First Amendment scrutiny. See In re Social Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig., 702 F. Supp. 3d at 836 (applying First Amendment protection to the timing and clustering of notifications of Meta's own content); NetChoice, LLC v. Florida, 34 F.4th 1196, 1203–04, 1210 (11th Cir. 2022) (finding that social media companies engaged in protected speech when they expressed their political views through content moderation practices).

The First Amendment, like Section 230, immunizes TTI against any claims alleging harm arising from the substance of third-party content, as that conduct falls within a traditional publishing role. See Tornillo, 418 U.S. at 258; Reno v. ACLU, 521 U.S. 844, 870 (1997). TTI has a First Amendment right to decide what content to include, exclude, moderate, filter, label, restrict, or promote. O'Handley v. Padilla, 579 F. Supp. 3d 1163, 1186–87 (N.D. Cal. 2022). However, because the Court has concluded that the thrust of the State's claims seeks to hold TTI accountable for the harm caused by the alleged addictive design features themselves, regardless of the substance or organization of the third-party content disseminated, the Court similarly finds that the First Amendment does not bar the State's claims. See In re Social Media

Adolescent Addiction/Pers. Inj. Prods. Liab. Litig., 702 F. Supp. 3d at 836 (stating that Meta’s briefing ignored that “much of the conduct alleged by plaintiff does not constitute speech or expression” and “d[id] not explain how holding them liable in that context would be akin to making them liable for speech”).

The First Amendment likewise does not bar the State’s deception and failure-to-warn claims. There is no First Amendment protection for false, misleading, or unlawful commercial speech. See Fla. Bar v. Went For It, Inc., 515 U.S. 618, 623–24 (1995) (“[T]he government may freely regulate commercial speech that concerns unlawful activity or is misleading.”). Under this principle, TTI has no First Amendment protection for its allegedly misleading statements, misrepresentations, or omissions.

Turning to TTI’s argument that the State’s failure-to-warn claim seeks to compel TTI’s speech in violation of the First Amendment, the Court disagrees. TTI relies on NetChoice, LLC v. Bonta, 113 F.4th 1101, 1117 (9th Cir. 2024) for the proposition that businesses cannot be compelled to “opine on potential harm to children” caused by its product. In Bonta, the defendant challenged a state law requirement mandating covered entities create reports for each online service, product, or feature likely to be accessed by children and identifying “any risk of material detriment to children that arise from the data management practices of the business.” Id. at 1116. Because the law compelled specific speech, the Ninth Circuit concluded that it triggered First Amendment review and that the report requirement likely failed strict scrutiny. Id. at 1121.

The State’s allegations and failure-to-warn claim are distinct from the law at issue in Bonta. The State does not seek to compel TTI to opine about the potential harm to

children caused by their use of the App. The State alleges that TTI is liable because there are foreseeable harms which could have been reduced or avoided by providing reasonable warnings, omission of those warnings rendered the App not reasonably safe, and TTI's failure to warn caused children serious harm. (Am. Compl. ¶¶ 521–24.) In its prayer for relief, the State does not seek to compel any particular speech from TTI. (See id. at 146.) A First Amendment bar to a claim like the State's would essentially bar all failure-to-warn claims. The Court finds no support in the law for such an application. See Social Media Cases, No. JCCP5255, 22STCV21355, 2025 WL 1364052, at \*10–11 (Cal. Jan. 8, 2025) (“The First Amendment does not bar the Plaintiffs’ duty to warn claims based on dangers allegedly created by Defendants in the operation of their platforms.”).

For these reasons, dismissal of the State's claims on First Amendment grounds is not appropriate.

#### D. Consumer Protection Act

TTI moves to dismiss the State's claims under the CPA, RSA 358-A (Counts I–VI), arguing: (1) the State fails to allege a business or commercial transaction; (2) Counts I and II fails because the App can reasonably be avoided by users; (3) Count III and VI fail because the State does not allege actionable deception with particularity; and (4) Counts IV and V fail because they are preempted by federal law. The Court addresses each argument in turn.

##### i. Commercial or Business Transaction

TTI argues that the State's CPA claims fail because the CPA applies only to business or commercial transactions, and the State does not allege any such

“transaction.” TTI bases its argument on the fact that the App is free to users—in that it does not charge a fee for use. The State responds that there is a transaction between TTI and users: TTI provides use of the App in exchange for users’ personal data. The State contends that the App is not truly “free.”

“To determine whether the [CPA] applies to a particular transaction, [the Court] analyze[s] the activity involved, the nature of the transaction, and the parties to determine whether a transaction is a personal or business transaction.” Hughes v. DiSalvo, 143 N.H. 576, 578 (1999) (declining to extend to the CPA to isolated sales of property by owners). The CPA defines “trade” and “commerce” as, “the advertising, offering for sale, sale, or distribution of any services or any property . . . .” RSA 358-A:1. The Court must engage in statutory interpretation of the term “sale” in the CPA.

When engaging in statutory interpretation, the Court “first look[s] to the language of the statute itself, and, if possible, construe[s] that language according to its plain and ordinary meaning.” State v. Doyle, 176 N.H. 594, 597 (2024). The Court “give[s] effect to every word of a statute whenever possible and will not consider what the legislature might have said or add language that the legislature did not see fit to include.” Id. The Court “construe[s] all parts of a statute together to effectuate its overall purpose” and attempts to construe all parts “in harmony with the overall statutory scheme.” Id.

“Sale” is defined as “[t]he action or an act of selling or making over to another for a price; the exchange of a commodity for money or other valuable consideration.” Oxford English Dictionary, “Sale,” July 2023; Matter of Carter, 2024 N.H. 30, ¶ 9 (“When a term is not defined in a statute, [the Court] look[s] to its common usage, using the dictionary for guidance.”). It is also defined as, “[t]he transfer of property or title for a



price.” Black’s Law Dictionary, “Sale,” (12th ed. 2024). Upon review of the plain meaning of “sale,” the Court cannot say that it requires an exchange of money. The Court declines to read words into the statute the legislature did not see fit to include. See Doyle, 176 N.H. at 597.

A sale could be an exchange wherein consumers are able to access the App in exchange for a price—TTI’s collection of their personal data. See In re Social Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig., 753 F. Supp. 3d 849, 909–10 (N.D. Cal. 2024) (“A social media company cannot exempt itself from consumer-protection law because its consumers exchange their personal data and time for a product or service rather than cash for goods”); State v. Meta Platforms, Inc., No. 23-cv-4453, 2024 WL 3741424, at \*15 (Vt. Sup. Ct. July 28, 2024) (“Instagram is clearly engaging in commerce when it provides Instagram to Vermonters”). While TTI does not charge for its product, it receives valuable consideration in the form of personal information. The State has alleged such an exchange, satisfying the “trade or commerce” element of the CPA at the pleading stage. (See Am. Compl. ¶ 494.) To exclude in-kind transactions such as that between TikTok users and TTI from the definition of “sale” would be to ignore the reality of modern transactions. The Court’s conclusion is in accordance with the purpose of the CPA: “to ensure an equitable relationship between consumers and persons engaged in business.” Hughes, 143 N.H. at 578.

ii. “Unfair” Act or Practice

TTI argues that the State fails to state a claim under the CPA for Counts I and II. The State responds that its allegations of TTI’s profiting from its purposeful

implementation of addictive design features which harm child users support its CPA claims.

The CPA proscribes unfair and deceptive trade practices in general, RSA 358-A:2, and sets forth a list of specific types of conduct that qualify as unfair or deceptive trade practices, RSA 358-A:2, I–XVIII. Fat Bullies Farm, LLC v. Devenport, 170 N.H. 17, 24 (2017). Although the general provision is broadly worded, the New Hampshire Supreme Court has recognized that not all conduct in the course of trade or commerce falls within the scope of the CPA. Id.

“In determining which commercial actions not specifically delineated are covered by the act,” the Court employs the “rascality” test. Id. “Under the rascality test, the objectionable conduct must attain a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce.” Id. In addition to the rascality test, New Hampshire courts look to the federal courts’ interpretation of the Federal Trade Commission Act for guidance. Id. The Federal Trade Commission considers: “(1) Whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise—whether, in other words, it is within at least the penumbra of some common-law, statutory or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers . . . .” Id. The New Hampshire Supreme Court has found the rascality test unmet when a defendant was alleged to have engaged in conduct common in the particular industry in which the parties engaged. See Hair Excitement, Inc. v. L’Oreal U.S.A., Inc., 158 N.H. 363, 371 (2009).

TTI contends that the State's allegations fail the rascality test because they "boil down to the fact that [the State] does not like the [App] and would prefer that younger users spend less time on it." (TTI's Memo. iso Mot. to Dismiss at 31.) TTI misconstrues the State's allegations and ignores the standard the Court must apply on a motion to dismiss. Viewing all inferences in the State's favor, it alleges that TTI knowingly implemented addictive design features attractive to minors, ignored the psychological impacts on minor users, and profited from minors' continued and obsessive use of the App while their mental health suffered as a result of the use. The State's allegations go far beyond that it does not like the time children spend on the App. This conduct reaches a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce." Fat Bullies Farm, 170 N.H. at 24; cf. Beer v. Bennett, 160 N.H. 166, 171 (2010) (defendant's acts met the rascality test where "he made representations, knowing he lacked sufficient knowledge to substantiate them, to induce the plaintiff's purchase"). The profiting off of children to their detriment offends public policy, satisfying the first prong of the FTC considerations. See id.

TTI also argues that the State cannot meet the second prong of the FTC considerations because TTI's conduct was not coercive. To the extent the second prong requires coercion, the State has alleged it here. There is no doubt, as TTI argues, that users voluntarily download and sign up to use the App. However, once they begin using the App, construing all inferences in favor of the State, they are coerced to continue using the App by the addictive design features that prey on minor users' psychological vulnerabilities. For this reason and those articulated previously, TTI's alleged conduct is immoral, unethical, oppressive, and/or unscrupulous. See id.

Finally, the Court turns to the third FTC consideration: whether TTI's conduct causes substantial injury to consumers. TTI argues that any injury sustained by TikTok consumers was reasonably avoidable and, therefore, the State's CPA claim fails. See 15 U.S.C. § 45(n) (" . . . act or practice is unfair unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves . . . "). "In determining whether consumers' injuries were reasonably avoidable, courts look to whether the consumers had a free and informed choice." In re Social Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig., 753 F. Supp. 3d at 896. The cases TTI relies upon do not involve minors and their unique susceptibility to addictive designs. It is not whether New Hampshire children could have avoided the alleged harm by never downloading and signing up for TikTok. It is whether they could have avoided the harms posed by prolonged and obsessive use of the App, which, as alleged by the State, TTI induces them into with addictive design features. Construing all inferences in favor of the State, it is not reasonable to conclude that New Hampshire child users could have avoided the harms caused by the App.

For the foregoing reasons, the State has alleged sufficient facts to satisfy the "rascality" test under the CPA. See Fat Bullies Farm, 170 N.H. at 24.

iii. Deceptive Act or Practice

TTI contends that dismissal of Counts III and VI<sup>2</sup> is appropriate because the State failed to satisfy the heightened pleading standards for fraud, the relevant statements are not actionable because they are general, aspirational, corporate puffery, or non-verifiable statements of opinion, and the State's own allegations undercut and

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<sup>2</sup> TTI refers to "Count 8" which the Court infers as a typographical error. (See Def.'s Memo. iso Mot. to Dismiss at 36.)

contradict the contention that TTI acted deceptively.

First, the Court is not persuaded that the State's CPA claims must be alleged with particularity. TTI cites no authority wherein courts have applied a particularity pleading standard to CPA claims. The way in which the New Hampshire Supreme Court has treated CPA claims does not indicate to this Court that it would apply a heightened pleading standard. See LaChance v. U.S. Smokeless Tobacco Co., 156 N.H. 88, 93–100 (2007) (employing the typical motion to dismiss framework to resolve an appeal of a trial court's grant of the defendant's motion for judgment on the pleadings—which are treated like motions to dismiss in New Hampshire—of the plaintiff's CPA claim); Snierston v. Scruton, 145 N.H. 73, 80–81 (2000) (applying a specificity test to the plaintiff's fraud and negligent misrepresentation claims and then ruling that the plaintiff's CPA allegations “support[ed] a claim of unfair or deceptive trade practices” and not mentioning a specificity requirement).

Regarding Count III, the State has sufficiently alleged a violation of the CPA. It lays out the representations TTI has made about the safety of the App. (Am. Compl. ¶ 416 (a)–(j).) The State alleges statements TTI has made in the App's Community Guidelines, (id. ¶¶ 128, 133–35, 142), on its website, (id. ¶¶ 129, 136), and through its officers including its CEO, (id. ¶¶ 130, 137–39). The State then alleged, by category of information, how TTI's representations were misrepresentative of the truth. (See generally id. at 48–75.) TTI's statements were not “mere puffery.” See Private Jet Serv. Grp., Inc. v. Sky King, Inc., No. 05-cv-98-JD, 2006 WL 2864057, at \*5 (D.N.H. Oct. 4, 2006) (“Mere puffery that does not represent that the company adheres to particular standards or requirements is not actionable under [the New Hampshire

CPA].”); (Am. Compl. ¶¶ 135 (TTI’s statements affirmatively asserting what content it does not allow), 136 (TTI’s statements making promises and announcements about the App’s safety), 137 (TTI’s CEO discussing TTI’s strict prohibitions and removal policies). TTI’s alleged statements were specific and assertive. Taken as true, the State’s allegations are sufficiently specific and actionable under the CPA.

Briefly, regarding TTI’s arguments that the State’s allegations undercut its own claims, such arguments rely on information outside the scope of the amended complaint, (TTI’s Memo. in Mot. to Dismiss at 42–43), or fail to construe the State’s allegations in its favor, as the Court must when ruling on a motion to dismiss, see Barufaldi, 175 N.H. at 427. For those reasons, the Court finds TTI’s arguments unavailing.

Turning to Count VI, the Court is not persuaded that the State’s allegations state a claim under the CPA. In Count VI, the State alleges that TTI violated the CPA by “deceiv[ing] users about the geographic origin of its products . . . by misrepresenting in this State that [TTI] is a company located, controlled, and/or headquartered in the United States when it continues to be controlled by its China-based parent company, ByteDance.” (Am. Compl. ¶ 480.) The State does not allege a specific misrepresentation from TTI about its “geographic origin.” The State alleges that TikTok’s Terms of Service state that the App “is provided by TikTok Inc. in the United States,” that TikTok is not available in mainland China, that TTI’s headquarters are in Los Angeles and Singapore, and that TTI has never shared, or received a request to share, United States user data with the Chinese government and its data centers are located outside of China. (Id. ¶¶ 348–49, 358.) The State alleges that these statements

are deceptive because TTI remains heavily controlled by ByteDance, TTI instructs its employees to downplay ByteDance and “the China association, and TTI relies on access to ByteDance’s resources, expertise, and code to operate. (Id. ¶¶ 350–52.)

The State’s allegations are insufficient to allege that TTI misrepresented its geographic origin. TTI may have made efforts to publicly disentangle itself from ByteDance and the Chinese government. However, its efforts to appear independent do not go as far as actionable misrepresentations about its corporate connection to ByteDance, and through it, the Chinese Government. The State does not allege that TTI’s statements about the App being provided by TikTok Inc. in the United States, TikTok not being available in mainland China, TTI’s headquarters in Los Angeles and Singapore, and that TTI has never shared, or received a request to share, United States user data with the Chinese government, are false. Without specific representations tied with facts supporting the falsity of those representations, the State does not have an actionable CPA claim against TTI regarding its geographic origin. See Fat Bullies Farm, 170 N.H. at 24

For that reason, Count VI is DISMISSED.

iv. COPPA Preemption

TTI moves to dismiss the State’s CPA claims (Counts IV and V) arising out of TTI’s alleged improper collection of data from users under 13 years old because such claims are preempted by the federal Children’s Online Privacy Protection Act (“COPPA”). TTI argues that the State’s claims are “inconsistent” with COPPA and, thus, preempted. TTI also contends that the State’s claims are barred because COPPA specifically authorizes states to bring actions in federal court to enforce its provisions.

The State responds that its claims, brought under the CPA but which reference COPPA, are consistent with the COPPA scheme and, because they are CPA claims, may be brought in state court.

The Court agrees with the State in both respects. First, the State's claims are not "inconsistent" with COPPA. Under COPPA and its regulations, companies that operate websites and online services marketed toward children must provide certain disclosures about their data collection activities and must safeguard the confidentiality, security, and integrity of the children's personal online information. 15 U.S.C. § 6501–06; 16 C.F.R. §§ 312.1–13; see also Jones v. Google LLC, 73 F.4th 636, 641 (9th Cir. 2023). While COPPA does not provide a private right of action, it permits state attorneys general, who must notify the Federal Trade Commission ("FTC"), to bring civil actions in federal court as parens patriae. 15 U.S.C. § 6504(a). COPPA's preemption provision states: "No State or local government may impose any liability for commercial activities or actions by operators in interstate or foreign commerce in connection with an activity or action described in this chapter that is inconsistent with the treatment of those activities or actions under this section." Id. § 6502(d).

The State's CPA claims referring to COPPA are not preempted because they are not "inconsistent" with COPPA's requirements, but rather track them. Jones, 73 F.4th at 642 (reading the term "inconsistent" in the preemption context "to refer to contradictory state law requirements, or to requirements that stand as obstacles to federal objectives"). The Jones Court held that "COPPA's preemption clause does not bar state-law causes of action that are parallel to, or proscribe the same conduct forbidden by, COPPA." Id. at 644. Because the State's claims seek to hold TTI liable for conduct



COPPA hold companies liable for, the claims are substantively consistent with COPPA and, thus, not preempted.

The Court turns to TTI's argument that, because COPPA specifically outlines a procedure for state attorneys general suing in parens patriae to enforce COPPA, the State's suit, which does not comply with those requirements, is inconsistent with and, thus, preempted by COPPA. The Court disagrees. The State's CPA claims rely on TTI's alleged violations of COPPA to demonstrate TTI's allegedly unfair acts. (See Am. Compl. ¶¶ 433, 435–36, 444, 460, 470.) The State is not seeking to enforce COPPA or obtain relief under the Act. Thus, it need not comply with Section 6504(a)'s requirements, including filing in federal court and notifying the FTC. Again, permitting states to use COPPA violations as evidence supporting violations of state law is not inconsistent with COPPA. See Jones, 73 F.4th at 642 (“[P]reemption clauses did not bar state tort or contract laws imposing obligations similar or identical to the substantive federal requirements.”).

Accordingly, COPPA does not preempt Counts IV and V.

#### E. Products Liability

TTI moves to dismiss the State's claims for strict and negligent products liability (Counts VII–IX) arguing the State lacks standing to pursue these claims and that the App is not a “product.” The Court addresses its arguments in turn.

##### i. Standing

The State brings this suit under parens patriae standing. “Parens patriae literally means ‘parent of the country,’ and refers traditionally to the role of the state as sovereign and guardian of persons under legal disability.” State v. City of Dover, 153

N.H. 181, 185 (2006). The theory is “a concept of standing utilized to allow the state to protect ‘quasi-sovereign’ interests such as health, comfort and welfare of its citizens, interstate water rights, and the general economy of the state.” Id. at 185–86. To satisfy parens patriae standing, “[f]irst, the state must assert an injury to a ‘quasi sovereign’ interest, an interest apart from the interests of particular private parties. Second, the state must allege injury to a ‘substantial segment’ of its population.” Id. at 186. The Court addresses each inquiry in turn.

“Quasi-sovereign” interests are those “that the State has in the well-being of its populace,” which must be “sufficiently concrete to create an actual controversy between the State and the defendant.” Id. (citing Alfred L. Snapp & Son, Inc. v. Puerto Rico, 458 U.S. 592, 602 (1982)). For example, states have a quasi-sovereign interest “in the abatement of public nuisances, instances in which the injury to the public health and comfort is graphic and direct.” Id. Courts have “generally interpreted the health and well-being category of quasi-sovereign interests broadly.” Id. “A state also has a quasi-sovereign interest in preventing any injury or potential injury to the general health and well-being of its residents.” Id.

In Dover, the New Hampshire Supreme Court ruled that “the State has a quasi-sovereign interest in protecting the health and well-being, both physical and economic, of its residents with respect to the statewide water supply.” Id. The Court reasoned that “[t]he control and elimination of water pollution is a subject clearly within the scope of the State’s constitutional police power.” Id. The Court also relied on the State’s interest, as articulated by RSA 481:1, in providing “careful stewardship over all the

waters lying within its boundaries.” Id. Thus, the Court concluded that the State had a quasi-sovereign interest in protecting its waters from contamination. Id.

The State argues it has a quasi-sovereign interest in protecting the interests of New Hampshire children suffering from the consequences of TTI’s alleged addictively designed App and its misrepresentations and omissions about the App. TTI contends that the State’s interest is indistinguishable from those of the individual New Hampshire residents who could bring suit on the same grounds and that the State has not suffered unique damages but, rather, is seeking to collect damages for harms done to third parties (New Hampshire minor users of the App).

The State has a quasi-sovereign interest in the health of its residents, including mental health. The facts the State alleges support a quasi-sovereign interest in the mental health consequences experienced by minors using social media, including TikTok. Almost half of New Hampshire teenagers (44.2%) reported symptoms of clinical depression and feeling persistently sad or hopeless. (Am. Compl. ¶ 3.) This represented a 57.8% increase from 2017. (Id.) Also between 2017 and 2021, the percentage of New Hampshire high school students who reported seriously considering suicide increased by 53.4% and the amount who actually attempted suicide increased by 66.1%. (Id.) The total amount of TikTok users in New Hampshire increased from 417,105 in 2020 to over 1.2 million in 2023. (Id. ¶ 42.) As of 2023, 92,481 of those New Hampshire users were aged 13 to 17. (Id. ¶ 36.) The compulsive and prolonged use of TikTok that minors exhibit, (id. ¶ 69), increases the risk of experiencing poor mental health outcomes, including depression and anxiety, (id. ¶ 70).

The State has an interest in protecting the mental health of its youngest population. The Court sees no reason to distinguish between physical and mental health in this context. See Dover, 153 N.H. at 186 (stating that the State has a quasi-sovereign interest in the physical health of its citizens); Alfred L. Snapp & Son, Inc., 458 U.S. at 607 (same). The health and well-being category of quasi-sovereign interests has been interpreted broadly. Dover, 153 N.H. at 186. The State's interest is especially heightened when it is suing on behalf of children. See Dist. of Columbia v. ExxonMobil Oil Corp., 172 A.3d 412, 442 n.13 (D.C. 2017) (Easterly, J., dissenting) (referring to the general proposition that states have a common law parens patriae authority over children). TTI's argument that the State does not have a quasi-sovereign interest in the health of its citizens is antithetical to New Hampshire precedent. See Dover, 153 N.H. at 186. Therefore, the Court determines that the State has pleaded sufficient facts to satisfy the quasi-sovereign interest prong of the parens patriae standing test.

The second inquiry is "whether a sufficiently substantial segment of the population is affected by the challenged conduct." Dover, 153 N.H. at 187. In Dover, 13.2% of the statewide water supplies were contaminated, corresponding to hundreds of public water systems and approximately 40,000 private water supplies. Id. The Court determined that the foregoing data demonstrated that the contamination directly affected a substantial portion of the population of New Hampshire. Id. The Court noted that the State "clearly" met the substantial segment test. Id.

More than a quarter of all registered accounts in New Hampshire belong to users under the age of 23 and over 92,000 of the accounts belong to children aged 13 to 17. (Id. ¶¶ 5, 36.) While there is no particular number which satisfies the substantial

segment prong, see People v. Peter & John's Pump House, Inc., 914 F. Supp. 809, 812 (N.D.N.Y. 1996) ("There is no numerical talisman to establish parens patriae standing . . ."), the number of New Hampshire children using TikTok exceeds the number of New Hampshire residents impacted in Dover, see 153 N.H. at 187 (contamination impacted approximately 40,000 water supplies). If the State "clearly" met the prong in Dover, then the State has met the same prong under the facts alleged here. Further, while the State alleges minors' usage of the App in 2023, future users will also be impacted by the same alleged products liability and negligence, increasing the segment of the population affected. See New York, by James v. Niagara-Wheatfield Central Sch. Dist., 119 F.4th 270, 282–83 (2d Cir. 2024) (permitting consideration of future individuals who may be injured by the defendant's actions in the analysis of the substantial segment prong of the parens patriae test). Accordingly, the Court determines that the State has pleaded sufficient facts to satisfy the substantial segment of the parens patriae standing test.

TTI has asks the Court to consider a third prong of the parens patriae test, requiring the State to show that individuals could not obtain complete relief through private suits. Some jurisdictions include this additional step to determine whether standing is established. See Dover, 153 N.H. at 187. The reasoning underlying the third prong is to ensure that the State's interest is "sufficiently severe and generalized, it must stand apart from the interests of particular parties—in other words, the controversy must in substance implicate the state's interest in economic supervision, and not merely affect the fortunes of a limited class of her citizens." New York v. Facebook, Inc., 549 F. Supp. 3d 6, 22 (D.D.C. 2021) (citing Snapp, 458 U.S. at 607). However, the New

Hampshire Supreme Court has not applied this prong in its consideration of whether the State has standing. See Dover, 153 N.H. at 187 (declining to place the burden on the State to show whether the cities could obtain complete relief through the State's suit). The Court has only employed the test when determining what types of damages the State may recover in a parens patriae suit. See State v. Hess Corp., 161 N.H. 426, 436–37 (2011) (ruling on an interlocutory transfer of a partial motion for summary judgment). The Court declines to apply the third prong of the parens patriae test at the motion to dismiss stage. While the State's ability to recover certain categories of damages might ultimately be limited, those potential limitations do not impact the State's standing to pursue its products liability claims.

In sum, the Court concludes that the State has parens patriae standing to pursue its strict and negligent products liability claims.

ii. "Product"

Lastly, TTI argues that the App is not a "product" and, thus, TTI cannot be subject to products liability claims arising out of the design of the App. The State responds that treating social media as a product is consistent with New Hampshire law and the Restatement.

The New Hampshire Supreme Court has not defined what a product is for purposes of strict products liability. However, it has adopted the Restatement (Second) of Torts to analyze other questions under strict products liability. See Kelleher v. Marvin Lumber & Cedar Co., 152 N.H. 813, 831 (2005). Both parties additionally rely on the Restatement (Third) of Torts which specifically addresses what constitutes a product. The Court likewise relies on the Restatement (Third) of Torts because of the New

Hampshire Supreme Court's previous reliance on the Restatement's approach, the Restatement (Second) of Torts' silence on the issue of defining a product, and the parties' joint reliance on the Restatement (Third) of Torts.

The Restatement (Third) of Torts defines a product as, "tangible personal property distributed commercially for use or consumption." Restatement (Third) of Torts: Prod. Liab. § 19 (1998). Further, "[s]ervices, even when provided commercially, are not products." Id. However, items such as electricity are products "when the context of their distribution and use is sufficiently analogous to the distribution and use of tangible personal property that it is appropriate to apply the rules state in the Restatement." Id.

Given the nature of the State's claims, TikTok is a product. The State alleges that the App's design features harm minor users. TTI's business model is operating TikTok which is a social media platform that allows users to create, upload, and view 15 to 60-second videos. (Am. Compl. ¶ 53.) However, the App is the vehicle through which TTI effectuates that business model. TTI designs, develops, programs, markets, distributes, and profits from the App. (Id. ¶ 495.) For this reason, the App is akin to the distribution and use of tangible property. See Restatement (Third) of Torts: Prod. Liab. § 19 (1998). TTI's argument that products are limited to tangible, physical items, is contrary to the law. See id. Further, the App is not a service. While users may experience a customized display when engaging with it, the design features themselves are uniform. Consequently, TTI is not performing a unique service for every user of the App. Because the Restatement distinguishes between services and products, TTI is thus more likely a product.

Other jurisdictions are in accord with the Court's analysis. In Brookes v. Lyft Inc., the court ruled that the Lyft application was a product because, while Lyft's business model was a transportation network company in which it connects riders with drivers, Lyft designed and distributed the Lyft application to carry out that business model. No. 50-2019-CA-004782-MB, 2022 WL 19799628, at \*3 (Fla. Cir. Ct. Sept. 30, 2022). The court also noted that the plaintiff's claim was based on the design of the application which Lyft designed, distributed, and placed into the stream of commerce. Id. at \*4; see also In re Uber Technologies, Inc., Passenger Sexual Assault Litig., 745 F. Supp. 3d 869, 905 (N.D. Cal. Aug. 15, 2024) (finding the Uber application a product because the alleged defects in the application have similar plausible analogues in tangible products); T.V. v. Grinder, LLC, No. 3:22-cv-864-MMH-PDB, 2024 WL 4128796, at \*26 (M.D. Fla. Aug. 13, 2024)<sup>3</sup> (recommending a finding that the defendant social networking application is a product because it designed its app for its business, made design choices for the app, placed the app in the stream of commerce, distributed the app in the global marketplace, marketed the app, and generated revenue and profits from the app); cf. In re Social Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig., 702 F. Supp. 3d at 849 (adopting a defect-specific approach to determine whether the challenged functionalities of the defendants' social media were products). But see Social Media Cases, No. JCCP 525, 22STCV21355, 2023 WL 6847378, at \*16 (Cal. Super. Oct. 13, 2023) (determining that social media was not a product because applying the doctrine of products liability to social media does not align with the goals of the doctrine and interactions between social media companies and their users are

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<sup>3</sup> Grinder is an unadopted report and recommendation to which the defendant objected before the parties stipulated to dismissal with prejudice.



different from traditional product sales).

To the extent TTI argues that the State's claims arise out of harm caused by intangible information produced by third parties onto the App, which is then seen by New Hampshire minor users, the Court has already discussed and disagreed with that argument supra, Sections B and C. The State's claims are based on the App's alleged defective and dangerous features, not the information contained therein. Accordingly, the State's products liability claim is based on harm caused by the product: TikTok itself.

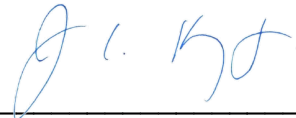
#### **IV. Conclusion**

For the foregoing reasons, TTI's motion to dismiss is GRANTED as to Count VI but is otherwise DENIED.

**SO ORDERED.**

July 8, 2025

**Date**



**John C. Kissinger, Jr.  
Presiding Justice**