

1 BROWNE GEORGE ROSS LLP
Pete Wilson (State Bar No. 35742)
pwilson@bgrfirm.com
2 Eric M. George (State Bar No. 166403)
egeorge@bgrfirm.com
3 2121 Avenue of the Stars, Suite 2800
Los Angeles, California 90067
4 Telephone: (310) 274-7100
Facsimile: (310) 275-5697
5

6 BROWNE GEORGE ROSS LLP
Peter Obstler (State Bar No. 171623)
pobstler@bgrfirm.com
7 David S. Wakukawa (State Bar No. 262546)
dwakukawa@bgrfirm.com
8 101 California Street, Suite 1225
San Francisco, California 94111
9 Telephone: (415) 391-7100
Facsimile: (415) 391-7198
10

11 Attorneys for Plaintiff PRAGER UNIVERSITY

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 PRAGER UNIVERSITY,
15 Plaintiff,
16 vs.
17 GOOGLE INC., a Delaware corporation,
18 YOUTUBE, LLC, a Delaware limited liability
19 company, and DOES 1-25,
20 Defendants.

Case No.
**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, AND
DECLARATORY JUDGMENT**

JURY TRIAL DEMANDED

Trial Date: None Set

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1 Plaintiff Prager University (“PragerU”) brings this complaint for damages and equitable relief
2 against Defendants YouTube, LLC (“YouTube”) and its parent company, Google Inc. (Google),
3 collectively referred to as “Google/YouTube” or “Defendants,” unless otherwise specified.

4 **INTRODUCTION AND PREFATORY STATEMENT**

5 1. PragerU brings this lawsuit to stop Google/YouTube from unlawfully censoring its
6 educational videos and discriminating against its right to freedom of speech solely because of
7 PragerU’s political identity and viewpoint as a non-profit that espouses conservative views on current
8 and historical events. Google/YouTube have been discriminating and censoring, and continue to
9 discriminate and censor educational videos uploaded or posted to the YouTube platform through the
10 arbitrary and capricious use of “restricted mode” and “demonetization” viewer restriction filters that
11 purportedly are intended to prohibit or limit access of “inappropriate” content to prospective public
12 viewers based on certain viewer characteristics, including the age of the viewer.

13 2. Google/YouTube operate the largest forum for the general public to participate in
14 video based expression and exchange of speech in California, the United States, and the world.
15 Indeed, Google/YouTube has created the largest forum for video based speech by members of the
16 general public in the history of the United States and the world. The total number of people who
17 currently use the YouTube service exceeds 1.3 billion people and more than 30 million members of
18 the general public visit the platform every day. Four hundred (400) hours of videos are uploaded to
19 the service every hour and the total number of hours in which people watch videos on YouTube is
20 estimated to be 3.25 billion. One report estimated that 10,113 YouTube videos generated over
21 1 billion views and the average number of mobile YouTube views is estimated to be about 1 billion
22 per day and YouTube videos can be navigated in at least 76 different languages. Indeed more video
23 content has been uploaded to Google/YouTube by public users than has been created by the major
24 U.S. television networks in 30 years.

25 3. In so doing, Google/YouTube hold YouTube out to the public as a forum intended to
26 defend and protect free speech where members of the general public may speak, express, and
27 exchange their ideas. YouTube plays a role of a public forum where, based on the number of views,
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1 likes, and subscriptions, new celebrities emerge and new ideas are popularized. And
2 Google/YouTube have represented that their platforms and services are intended to effectuate the
3 exercise free speech among the public. According to Google/YouTube “voices matter” and YouTube
4 is “committed to fostering a community where everyone’s voice can be heard.”

5 4. As applied to PragerU, Google/YouTube use their restricted mode filtering not to
6 protect younger or sensitive viewers from “inappropriate” video content, but as a political gag
7 mechanism to silence PragerU. And Google/YouTube do this not because they have identified video
8 content that violates their guidelines or is otherwise inappropriate for younger viewers, but because
9 PragerU is a conservative nonprofit organization that is associated with and espouses the views of
10 leading conservative speakers and scholars. This is speech discrimination plain and simple:
11 censorship based entirely on the perceived identity and political viewpoint of the speaker not on the
12 content of the speech. Google/YouTube’s use of restricted mode filtering to silence PragerU violates
13 its fundamental First Amendment rights under both the California and United States Constitutions,
14 constitutes unlawful discrimination under California law, is a misleading and unfair business practice,
15 and breaches the warranty of good faith and fair dealing implied in Google/YouTube’s Terms of Use,
16 including their guidelines and policies for restricted access filtering of video content.

17 5. Furthermore, Google/YouTube’s purported use of vague, overbroad, and subjective
18 criteria, including YouTube’s Terms of Use and Community Guidelines, to justify their censorship
19 decisions constitute facially invalid restrictions on speech that lack objective criteria, are misleading,
20 and/or are discriminatory, and, as a result, allow Google/YouTube to censor or restrict political
21 speech at their whim based purely their subjective beliefs, political animus, and unfettered and
22 unbridled discretion in violation of federal and state law.

23 6. And while Google/YouTube may lawfully regulate or restrain speech in certain
24 circumstances to the extent that such restrictions constitute reasonable and objective time, manner,
25 place restrictions that comport with federal and California legal standards for the regulation of
26 speech, it may not do so at will without any restrictions or in an arbitrary or capricious manner that
27 provides them with unbridled discretion to discriminate against a speaker based on her or his identity
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1 or political viewpoint. Nor can Google/YouTube rely on criteria, like their Terms of Use or
2 Community Guidelines, that are so vague, broad, or undefined that they may serve or be used as a
3 pretext to censor or discriminate against speakers because of a bias or animus towards political
4 identity or viewpoint.

5 7. PragerU is an educational nonprofit founded in 2011 by Dennis Prager, a conservative
6 talk show host. Its mission is to provide educational and news based platforms to promote open and
7 balanced discussions of historical or current issues from a conservative perspective. There is
8 absolutely nothing “inappropriate” about the content of the PragerU videos censored by
9 Google/YouTube. The videos utilize news interview or animation formats to discuss current and
10 historical events and issues, including, by way of example only, discussions of the history of the
11 Korean War, legal decisions by courts including landmark rulings of the United States Supreme
12 Court, and trending current events such as foreign affairs, male-female differences, environmental
13 issues and other topics discussed on university campuses. The videos do not contain any profanity,
14 nudity, or otherwise inappropriate “mature” content. The censored videos fully comply with the
15 letter of YouTube’s Terms of Use and Community Guidelines.

16 8. As set forth below, a review and comparison of Prager U’s videos with unrestricted
17 videos produced and posted by other groups with different political identities shows that
18 Google/YouTube’s use of restricted mode filtering to censor PragerU is arbitrary, capricious, and
19 bears no relationship to the actual content of the videos. Indeed, one need only compare the censored
20 PragerU videos with those that are produced by speakers with different political identities or
21 viewpoints to understand just how arbitrary and discriminatory Google/YouTube’s conduct is. To
22 that end, a table¹ comparing the content and subject matter of the censored PragerU videos with
23 uncensored videos discussing the same issues by speakers and channels like Crash Course, NowThis,
24 AJ+ (Al Jazeera), BuzzFeed, Bill Maher, TedTalkx, the History Channel, and many others, some of
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26 _____
27 ¹ For convenience, two “Tables of Comparison” are embedded in Paragraphs 70 and 72, respectively
28 each of which provides a summary of the subject matter of both censored PragerU videos and non-
censored videos from other speakers along with website hyperlinks that allow the reader to view and
compare the full content of the respective videos.

1 which contain profanity and graphic depictions of mature content, leaves little doubt that
2 Google/YouTube are not restricting PragerU's videos because of noncompliance with any guidelines
3 or terms of use, but are discriminating against and censoring PragerU because of its political identity
4 or viewpoint not the content of its speech.

5 9. Since the inception of Google/YouTube's censorship of PragerU videos, first
6 discovered by PragerU staff members in July 2016, Google/YouTube have failed to offer any
7 reasonable or consistent explanation for why the content of those videos is subject to restricted
8 content filtering. Instead, Google/YouTube have repeatedly stated that Google/YouTube's automatic
9 filtering search algorithm and their "review teams" have flagged some unspecified or unidentified
10 video content as "inappropriate." This is telling because despite the existence of purported guidelines
11 and criteria utilized by both the algorithm and review teams, Google/YouTube's censoring criteria are
12 intentionally vague, undefined, and broad and are designed to allow it to exercise unfettered,
13 unilateral, unbridled, and purely subjective discretion as to what is and is not appropriate. In so
14 doing, Google/YouTube are censoring PragerU's videos not based on any objective finding of
15 inappropriate material, but on their purely subjective perception of what theydeems politically correct
16 and incorrect. In short, Google/YouTube created a purely subjective and unspecific criteria for
17 determining what is and is not appropriate in order to justify censorship based not on content, but the
18 political viewpoint and perceived identity of the speaker.

19 10. PragerU is not the first video blogger or "vlogger" to be discriminated against by
20 Google/YouTube because of the speaker's perceived identity. On March 19, 2017, Google/YouTube
21 publicly admitted that they improperly censored videos using their restricted mode filtering that were
22 posted or produced by members of the LGBTQ community based on the identity and orientation of
23 the speaker rather than the content of the video. In response to complaints from the LGBTQ
24 community and other civil rights critics, Google/YouTube removed all restricted filtering on videos
25 posted or produced by LGBTQ members and groups, and changed their policy, filtering algorithm,
26 and manual review policies to ensure that videos posted by LGBTQ vloggers were not being censored
27 solely because of the identity of the speaker.

1 11. Such a censorship regime cannot pass muster under the First Amendment and is
2 discriminatory and unlawful under California law. Among other things, it provides Google/YouTube
3 with unfettered and unbridled discretion to impose their own political views and values on speakers
4 without any objective criteria for evaluating what is and is not appropriate and thereby censors speech
5 based on animus towards the speaker’s political viewpoint rather than the appropriateness of the
6 content of the video. It also constitutes intentional discrimination by Google/YouTube based on the
7 religious, political, or sexual orientation beliefs of the speaker. It also violates the warranty of good
8 faith and fair dealing implied in the Terms of Use and video posting guidelines and policies that
9 PragerU was required to agree to in order to use the YouTube site. And they do all of this in
10 connection with their control and management of what is arguably the largest public forum for the
11 expression and exchange of ideas and speech that has ever been available to the public in California,
12 the United States, and ultimately the world—one to which Google/YouTube invite the public to
13 express themselves in all manner of speech, and to engage with such speech through viewing and
14 commenting.

15 12. Despite telling the public that Google/YouTube “products are platforms for free
16 expression,” no such good faith treatment has been afforded PragerU. PragerU has endeavored with
17 patience and civility to navigate the red tape process for removing restricted filtering. PragerU has
18 fully complied with Google/YouTube’s demands that PragerU formally seek reconsideration of the
19 “inappropriate” designation of its videos. To that end, PragerU in good faith provided
20 Google/YouTube with specific examples of its videos along with comparisons of other similar
21 material that do not share an inappropriate designation from other producers. As of this date,
22 however, at least 37 PragerU videos continue to be censored by restricted mode filtering. And when
23 it requested that Google/YouTube treat these and other videos in the same manner as those from other
24 vloggers, including those of LGBTQ vloggers, Google/YouTube refused, on the pretextual ground
25 that manual reviewers had determined that educational content ranging from the legal creation of
26 Israel and the history of the Korean War to the idea of diversity of thought on college campuses
27 contained “inappropriate content.”
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1 13. That finding is absurd, arbitrary, capricious, and devoid of any rational basis. When
2 compared with the litany of unrestricted videos posted by other speakers that contain similar or
3 identical content and differ only in the perspective or identity of the speaker, Google/YouTube's
4 censorship of PragerU videos smacks of discrimination and animus arising solely from the political
5 identity and perspective of its speakers, some of whom are identified with and espouse views and
6 analysis that are considered to be "conservative" on the American political spectrum.

7 14. Not only is Google/YouTube's censorship not based on the content of the PragerU
8 videos but the "inappropriate" designation falsely and unfairly stigmatizes PragerU. It renders
9 prospective viewers ineligible to watch PragerU programming from public as well as private
10 workplace or home computer stations. It prevents access to educational content by students whose
11 computer use may be subject to parental controls intended to shield the student from truly
12 inappropriate material, not political or educational discourse of current or historical events. It
13 precludes PragerU from receiving any revenue from advertisements that would otherwise accompany
14 content not designated as "inappropriate." And it allows Google/YouTube's virtual monopoly power
15 over video posting and viewership market to manipulate, bully, and falsely denigrate legitimate
16 political and educational speakers by subjectively designating their speech as "inappropriate," solely
17 because Defendants do not like or agree with speakers' political identity or point of view.

18 15. This is free speech discrimination: censorship based not on the content of the speech
19 but the perceived identity and viewpoint of the speaker. The law categorically prohibits this type of
20 identity and viewpoint based discrimination and censorship. And the fact that this discrimination
21 emanates from a company that holds itself out to the public as a committed defender and protector of
22 free speech makes Google/YouTube's conduct that much more unacceptable and dangerous. In sum,
23 Google/YouTube's use of their unfettered power over the worldwide web to censor the thoughts and
24 speech of speakers based solely on their political identity or viewpoint is legally indefensible and
25 violates the California and United States Constitutions, unfair business practice laws, and their
26 policies and terms of use.

PARTIES

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2 16. Plaintiff PragerU alleges and incorporates all preceding allegations as fully set forth
3 above in paragraphs 1 through 15.

4 17. Plaintiff PragerU is an educational 501(c)(3) nonprofit company with its principal
5 place of business in the Los Angeles County, California.

6 18. Defendant Google Inc. is a for profit, public corporation incorporated under the laws
7 of the State of Delaware, with its principal place of business in Mountain View, California and
8 regularly conducts business throughout California, including Santa Clara County. PragerU is
9 informed and believes, that at all relevant times, Defendant Google Inc. acts as an agent of Defendant
10 YouTube, LLC, and controls or participates in controlling and restricting speech on the YouTube
11 service or platform.

12 19. Defendant YouTube, LLC is a for profit limited liability corporation, wholly owned by
13 Google Inc., and organized under the laws of the State of Delaware. YouTube's principal place of
14 business is Mountain View, California and it regularly conducts business throughout California,
15 including Santa Clara County, California. Defendant YouTube, LLC operates the largest and most
16 popular internet video viewer site, platform, and service in California, the United States, and the
17 world and holds itself out as one of the most important and largest public forums for the expression of
18 ideas and exchange of speech available to the public. PragerU is informed and believes that at all
19 relevant times Defendant YouTube, LLC acts as an agent of Defendant Google Inc. and uses, relies
20 on, and participates with Defendant Google Inc. in restricting speech on the YouTube site, platform,
21 or service.

22 20. The true names and capacities, whether individual, corporate, associate, or otherwise,
23 of Defendants Does 1 through 25, inclusive, are presently unknown to Plaintiff, and for that reason
24 these defendants are sued by such fictitious names. Plaintiff is informed and believes and thereon
25 alleges that each of the Doe defendants is in some way legally responsible for the violations of law
26 and injuries and harm caused as alleged herein. If and when appropriate, Plaintiff will seek leave of
27 court to amend this complaint when the true names and capacities of said defendants are known.
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1 Google/YouTube provide a forum for members of the public to connect, inform, and inspire others
2 across the globe and acts as a distribution platform for original content creators, viewers, and
3 advertisers large and small. YouTube is one of the top three most visited websites globally, (along
4 with Facebook and Google) and, as of 2017, the site effectively controls and regulates an internet
5 forum used by over one billion users each month—almost one out of every two people on the
6 Internet. Eighty-five percent (85%) of the U.S. internet audience watches videos online and more
7 than 500 million hours of videos are watched on YouTube each day. Indeed more video content has
8 been uploaded to Google/YouTube by public users than has been created by the major U.S. television
9 networks in 30 years.

10 28. In so doing, YouTube holds itself out as the largest public forum for video based
11 speech in California, the United States, and the world. YouTube plays a role of a public forum
12 where, based on the number of views, likes, and subscriptions, new celebrities emerge and new ideas
13 are popularized. Indeed, on its own “Official Blog,” YouTube has itself stated that its “mission” is to
14 “give people a voice” in a “place to express yourself” and in a “community *where everyone’s voice*
15 *can be heard.*” In totality, YouTube claims to be “one of the largest and most diverse collections of
16 self-expression in history,” giving “people opportunities to share their voice and talent *no matter*
17 *where they are from or what their age or point of view.*” See, e.g., <https://youtube.googleblog.com/>
18 (YouTube Official Blog: Broadcast Yourself).

19 29. Despite their control and regulation of one of the largest forums for public speech and
20 expression in California, the United States, and the world, Google/YouTube regulate and censor
21 speech as if the laws governing free speech and commerce do not apply to it. In so doing, Defendants
22 believe that they have unfettered, unbridled, and unrestricted power to censor speech or discriminate
23 against public speakers at their whim for any reason, including their animus toward and political
24 viewpoints of their public users and providers of video content, because Defendants are for profit
25 organizations rather than governmental entities.

26 30. Google/YouTube are wrong. As the California Supreme Court has stated: “[t]he idea
27 that private property can constitute a public forum for free speech if it is open to the public in a
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1 manner similar to that of public streets and sidewalks” has long been the law in California. *Fashion*
2 *Valley Mall, LLC v. N.L.R.B.* (2007) 42 Cal.4th 850, 858. The United States Supreme Court also
3 recognized more than a half-century ago that the right to free speech guaranteed by the First
4 Amendment to the United States Constitution can apply even on privately owned property. One of
5 the most important places to exchange and express views is cyberspace, particularly social media,
6 where users engage in a wide array of protected First Amendment activity on any number of diverse
7 topics. And because the “[i]nternet’s forces and directions are so new, so protean, and so far
8 reaching,” however, the U.S. Supreme Court warned that the law must be conscious that what it says
9 today about the characteristics of a forum or free speech medium may be obsolete tomorrow. *See*
10 *Packingham v. North Carolina*, 137 S.Ct. 1730, 1735-38 (2017).

11 31. Where, as in the case of Google/YouTube, a private party operates as one of the
12 largest internet forums for speech and expression in the history of the world and such forum is
13 accessible to and freely used by the public in general, there is nothing to distinguish it from any other
14 forum except the fact that title to the property on which the forum exists belongs to a private
15 corporation. As the highest court in the nation has made clear, “[t]he more an owner, for his
16 advantage, opens up his property for use by the public in general, the more do his rights become
17 circumscribed by the statutory and constitutional rights of those who use it.” *Marsh v. Alabama*
18 (1946) 326 U.S. 501, 502-03, 66 S. Ct. 276.

19 32. Google/YouTube are no exception. Based on these fundamental principles and
20 protections of liberty and free speech embedded in our laws, culture, and heritage, as well as the
21 unlawful practices and conduct alleged herein, PragerU challenges Google/YouTube’s arbitrary and
22 capricious use of their purported unfettered discretionary and unilateral authority to censor and
23 regulate PragerU’s speech. PragerU has a fundamental right to speak and express its views to
24 members of the public who visit or use YouTube in California (and elsewhere). Google/YouTube’s
25 denial of PragerU’s right and ability to do so, therefore, must be redressed because such a denial
26 violates the First Amendment of the California and U.S. Constitutions, the California Unruh Act and
27 unfair competition laws, and the implied covenant of good faith and fair dealing of YouTube’s
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1 policies and Terms of Use.

2 **A. Prager University**

3 33. Prager University, also known as PragerU, is a 501(c)(3) educational nonprofit digital
4 media organization founded in 2011, by radio talk show host Dennis Prager and radio producer and
5 screenwriter Allen Estrin. PragerU's mission is to present to and educate members of the public
6 about current and historical issues and events of public interest and concern. In so doing, PragerU
7 seeks to provide conservative viewpoints and perspectives on public issues that it believes are often
8 overlooked or ignored due to the dominance of liberal and left wing perspectives in higher education
9 in the United States. PragerU considers itself a resource for every American, and every person in the
10 world who values liberty, and promotes educational discourse on topics that help viewers to better
11 understand and explain the common values from the American conservative perspective.

12 34. The organization is not an academic institution and does not offer certifications or
13 diplomas. Instead, PragerU depends on charitable donations from the public to, among other
14 services, promote educational videos. The videos seek to take the best ideas from the best minds and
15 distill them down to short focused discussions, usually lasting about five minutes. Producers will also
16 add graphics and animation in an attempt to create the persuasive, entertaining, and educational based
17 video content that espouses viewpoints and perspectives based on conservative values, including core
18 values of freedom of speech, a free press, free markets and strong protections of those values. Since
19 its inception, PragerU has posted more than 250 of these videos on the YouTube channel.

20 **B. Google/YouTube**

21 35. The YouTube channel was founded in 2005 in San Bruno, California and is now the
22 largest video-sharing website in the world. In 2006, Defendant Google bought YouTube for \$1.65
23 billion and operates the channel as a Google subsidiary.

24 36. YouTube allows users to upload, view, rate, share, add to favorites, report, comment
25 on videos, and subscribe to other users. Available content includes video clips, TV show clips, music
26 videos, short and documentary films, audio recordings, movie trailers, live streams, and other content
27 such as video blogging, short original videos, and educational videos. Most of the content on
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1 YouTube is uploaded by individuals, but media corporations including CBS, the BBC, Vevo, and
2 Hulu also offer some of their material via YouTube as part of the YouTube partnership program.
3 Unregistered users can only watch videos on the site, while registered users are permitted to upload
4 an unlimited number of videos and add comments to videos.

5 37. Google/YouTube then monetize speakers' intellectual property and viewers' interests
6 by selling advertisements; some of those advertisements come from the speakers themselves, who
7 pay for their videos or channels to be "featured" or publicized. In addition, YouTube offers
8 subscriptions in which people pay ongoing fees to view videos on YouTube without advertisements.
9 In total, YouTube earned \$9 billion in revenue in 2015, and is estimated to earn \$27 billion annually
10 by 2020.

11 38. YouTube earns advertising revenue from Google AdSense, a program which targets
12 ads according to site content and audience. The vast majority of its videos are free to view, but there
13 are exceptions, including subscription-based premium channels, film rentals, as well as YouTube
14 Red, a subscription service offering ad-free access to the website and access to exclusive content
15 made in partnership with existing users. As of February 2017, there are more than 400 hours of
16 content uploaded to YouTube each minute, and one billion hours of content are watched on YouTube
17 every day. As of August 2017, the website is ranked as the second-most popular site in the world by
18 Alexa Internet, a web traffic analysis company, and retains a virtual monopoly power over the
19 domestic and international internet video posting markets.

20 39. Young people, who are disproportionately affected by the imposition of "restricted
21 mode" on PragerU videos, are particularly drawn to YouTube. In an average month, eight out of 10
22 18- to 49-year olds watch YouTube. Television watching time among that demographic dropped,
23 while it went up on YouTube by 74%. YouTube now reaches more of that demographic than any
24 broadcast or cable network. Millennials watch two-thirds of all premium online video content via
25 YouTube, across all devices.

26 40. Defendants' platform is now the world's largest public forum for the expression and
27 exchange of ideas and speech contained in video based formats. The YouTube internet channel is
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1 used by over one billion users, or almost one third of total internet viewers, to express ideas and
2 exchange speech through the posting videos by members of the public. YouTube is now one of the
3 top three most visited websites globally, (along with Facebook and Google). 85% percent of the U.S.
4 internet audience watches videos online and more than 500 million hours of videos are watched on
5 YouTube each day. And more video content has been uploaded to Google/YouTube by public users
6 than that created by the major U.S. television networks in 30 years.

7 **1. YouTube's Restricted Content Mode**

8 41. In 2010, Google/YouTube created and introduced "Restricted Mode." According to
9 the Defendants, Restricted Mode is an "optional feature to help institutions like schools as well as
10 people who wanted to better control the content they see on YouTube." It was created to "provide
11 viewers who wanted to better control the content they see on YouTube with an option to choose an
12 intentionally limited YouTube experience." Viewers can choose to turn Restricted Mode on for their
13 personal accounts. It may also be turned on for computers in libraries, schools, and other public
14 institutions by the institution's system administrator. Viewers who turn on Restricted Mode cannot
15 see comments on videos. Google/YouTube estimates that about 1.5-2 percent of YouTube's daily
16 views come from people who have Restricted Mode turned on. Google/YouTube asserts, however,
17 that Restricted Mode is not "about numbers," but "about the principle of anyone having access to
18 important content and different points of view."

19 42. Google/YouTube restrict content in Restricted Mode based on certain "Restricted
20 Mode Guidelines." Accordingly, the Guidelines ensure that videos containing potentially mature
21 content will not be shown to viewers who have Restricted Mode turned on. Google/YouTube use
22 five criteria for determining whether such content warrants exclusion from Restricted Mode:
23 (1) Talking about drug use or abuse, or drinking alcohol in videos; (2) Overly detailed conversations
24 about or depictions of sex or sexual activity; (3) Graphic descriptions of violence, violent acts, natural
25 disasters and tragedies, or even violence in the news; (4) Videos that cover specific details about
26 events related to terrorism, war, crime, and political conflicts that resulted in death or serious injury,
27 even if no graphic imagery is shown; (5) Inappropriate language, including profanity; and (6) Video
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1 content that is gratuitously incendiary, inflammatory, or demeaning towards an individual or
2 group. Google/YouTube concedes, as it must, that there is a risk that some important content could
3 be lost if these rules and criteria are applied without context.

4 43. According to Google/YouTube, Restricted Mode operates to restrict access to videos
5 in two ways. First, Defendants use an automated filtering algorithm that examines certain “signals”
6 like the video’s metadata, title, and the language used in the video. The algorithm looks for certain
7 “signals” to determine if rules or criteria are violated so as to warrant segregation in Restricted Mode.
8 Second, a video can be subject to Restricted Mode filtering if it is “flagged” as “inappropriate” by
9 public viewers, or what Google/YouTube call the “community.” According to Google/YouTube,
10 however, a video is not automatically filtered into Restricted Mode if it is flagged by the community.
11 Instead, flagged videos are reviewed by a “team” for “violations of our Community Guidelines.”

12 44. When it comes to content-based restrictions that result from community flagging,
13 Google/YouTube’s “Community Guidelines” are not a beacon of clarity. Rather, the Guidelines
14 provide what Google/YouTube describe as “some common-sense rules that’ll help you steer clear of
15 trouble.” The rules contain seven criteria: (1) “Nudity or sexual content” that contains pornography
16 or sexually explicit content; (2) “Violent or graphic content” intended to shock, sensationalize, or be
17 disrespectful; (3) “Harmful or dangerous content” that encourages others to do things that might hurt
18 someone, including harmful or dangerous acts; (4) “Hateful Content” that condones violence against
19 individuals or groups based on race or ethnic origin, religion, disability, gender, age, nationality,
20 veteran status, or sexual orientation/gender identity, or whose primary purpose is inciting hatred on
21 the basis of these core characteristics; (5) “Copyright” violations where the content was not made by
22 or authorized for use by the user; (6) “Threats” where content includes predatory behavior, stalking,
23 threats, harassment, intimidation, invading privacy, revealing other people’s personal information,
24 and inciting others to commit violent acts or to violate the Terms of Use; and (7) “Spam, misleading
25 metadata, and scams” creating or involving misleading descriptions, tags, titles, or thumbnails in
26 order to increase views. Defendants also discourage the posting of large amounts of untargeted,
27 unwanted or repetitive content.

1 45. Google/YouTube also admit that, on some occasions, a video may not violate the
2 Community Guidelines but may still be subject to restricted mode filtering because Google/YouTube
3 subjectively deems the content not to be appropriate for everyone. In such cases, Google/YouTube
4 may place an age restriction when notified of the content. Age-restricted videos are not visible to
5 users who are logged out, are under 18 years of age, or have Restricted Mode enabled. When
6 evaluating whether content is appropriate for all ages, Defendants restrict: (1) “Vulgar language”
7 involving sexually explicit language or excessive profanity in the video or associated metadata; (2)
8 Violence and disturbing imagery whether real, dramatized or fake violence that may not be suitable
9 for all ages; (3) Nudity and sexually suggestive content containing nudity or dramatized sexual
10 conduct may be age-restricted when the context is appropriately educational, documentary, scientific
11 or artistic and content featuring individuals in minimal or revealing clothing may also be age-
12 restricted if intended to be sexually provocative, but do not show explicit content.; and (4) Portrayal
13 of harmful or dangerous activities involving content that intends to incite violence or encourage
14 dangerous or illegal activities that have an inherent risk of serious physical harm or death. And to
15 further guide application of this criteria in deciding whether to age restrict a video, Google/YouTube
16 list some but not all of the factors considered.

17 46. Google/YouTube provide a limited appeal process for any users who believe that the
18 application of age restriction filtering to the user’s video contents is unwarranted or inappropriate.
19 According to Google/YouTube, users have the ability to appeal an age-restriction. If a video is age-
20 restricted, the user technically can appeal the decision to an account Video Manager page by clicking
21 on the “Appeals Link” next to the age-restricted video. A YouTube “team” will then review the
22 user’s request and take further action if, in their subjective view, further action is appropriate. But
23 Google/YouTube restrict a user’s ability to appeal the age restriction on the video only once.

24 **2. Google/YouTube’s Problems With Restricted Mode Filtering**

25 47. The Restricted Mode filtering review process, including the so called “appeals
26 process” are by no means beacons of clarity. Consequently, Google/YouTube have unfettered
27 authority to restrict or censor videos based on highly subjective judgments by their reviewers and the
28

1 programming of their algorithms and electronic review processes. Furthermore, Plaintiff PragerU is
2 informed and believes that algorithmic and manual review processes are impacted or driven by
3 Google/YouTube's political perspectives and agenda.

4 48. Consequently, Google/YouTube repeatedly make "mistakes in understanding context
5 and nuances when it assesses which videos to make available in Restricted Mode." And on May 19,
6 2017, Google/YouTube admitted that the Restricted Mode "feature isn't working the way it should
7 and we're going to fix it." For instance, Google/YouTube admit that it got "it wrong" when they
8 censored videos like Ash Hardell's "Her Vows," Calum McSwiggan's "Coming Out To Grandma,"
9 Jono and Ben's "Woman interrupted during BBC interview," and Tegan and Sara's "BWU
10 [OFFICIAL MUSIC VIDEO]."

11 49. Google/YouTube also admitted that they wrongly censored videos posted by members
12 of the LGBTQ community because of a purported engineering problem that was wrongly filtering
13 LGBTQ videos. Subsequent to that admission, Defendants went further to accommodate LGBTQ
14 users by having a team that included YouTube's CEO Susan Wojcicki meet with many of them and
15 then revising their policies and review protocols and rewriting guidelines that seek to "clarify its
16 position by specifically allowing personal accounts from victims of discrimination or violent hate
17 crimes, as long as they don't contain graphic language or content."

18 50. In response to growing criticism of arbitrary and capricious censorship decisions,
19 Google/YouTube have told the public that they "must and will do a better job" in determining which
20 videos should be segregated and censored from Restricted Mode. And, because of the subjective
21 nature of their review criteria, Google/YouTube concede that even though videos don't violate
22 policies, the video may still be restricted.

23 51. On April 27, 2017, Johanna Wright, VP of Product Management for YouTube, stated
24 that Google/YouTube wanted to "clarify that Restricted Mode should not filter out content belonging
25 to individuals or groups based on certain attributes like gender, gender identity, political viewpoints,
26 race, religion or sexual orientation." Wright further promised users that while "Restricted Mode will
27 never be perfect, [Google/YouTube] hope to build on [their] progress so far to continue making
28

1 [their] systems more accurate and the overall Restricted Mode experience better over time.”

2 **3. Google/YouTube’s Censorship Of PragerU’s Videos**

3 52. PragerU is the latest victim of Google/YouTube’s restricted content filtering practices.
4 Unlike other victims, however, the censorship of PragerU videos is not the result of an engineering
5 problem or a loophole in guidelines. Rather, PragerU is the victim of intentional discrimination by
6 Defendants based on Google/YouTube’s animus towards PragerU’s political identity and viewpoint.
7 Furthermore, Google/YouTube seek to justify that animus and bias not by claiming that PragerU has
8 violated YouTube’s restricted content guidelines or criteria, but by arguing that they retain unfettered
9 discretion to censor any video content that they deem “inappropriate,” no matter how subjective,
10 baseless, or arbitrary that decision is. Apparently Google/YouTube believe that they are exempt or
11 somehow immune from the First Amendment’s strict prohibition against content-based restrictions on
12 free speech under California as well as federal law. Google/YouTube are wrong and their policies
13 and conduct towards PragerU violate that law on both a facial and as applied basis when it comes to
14 censoring PragerU.

15 53. On or about August 5, 2016, PragerU, following Google/YouTube’s guidelines and
16 protocol contacted its Google/YouTube account manager to request that 16 of its videos be removed
17 from the age restricted content list and be made available to all viewers, including those who utilize
18 Restricted Mode settings. For over one year, PragerU has worked patiently and cooperatively to try
19 to resolve the censorship issues that comprise this Lawsuit. In response, Google/YouTube have
20 provided vague, misleading, confusing, and often contradictory information that not only has
21 prevented resolution of the issues, but constitutes further evidence and indicia that their restricted
22 mode filtering applied to PragerU is based on Defendants’ intentional discrimination and animus
23 towards users and speakers whose political identity and viewpoints do not comport with those of
24 Google/YouTube.

25 54. On August 5, 2017, Google/YouTube responded by email saying that “Our Product
26 Specialist reviewed this, and at this time the videos are not safe enough for Restricted Mode so they
27 will remain as is and were correctly classified.” In that email correspondence, Google/YouTube
28

1 admitted that they “aim to apply the same standards to everyone and we don’t censor anyone.”

2 Google/YouTube informed PragerU that they were “more than happy to fix anything for you which
3 might have been an error from our end.”

4 55. On September 21, 2016, PragerU followed up and requested information about what
5 “specific actions” it could take to remove what was at the time a total of 21 videos on the restricted
6 content list.

7 56. On that same day, Google/YouTube responded: “As mentioned in the previous emails,
8 at this time, your videos aren’t appropriate for the younger audiences and hence they’re not appearing
9 in the restricted mode search results. I’d recommend you to go through our Community Guidelines
10 and align them with your content to see where it has violated.”

11 57. Google/YouTube’s response that they would not change the age restriction on all 21
12 restricted PragerU videos was patently arbitrary, discriminatory, and an obvious pretext to justify
13 illegally discriminating against PragerU because of its conservative political perspective and identity.
14 As is obvious from a review of each of those videos (available by hyper link in the Table embedded
15 at paragraph 72, *infra*), the videos were entirely “aligned” with the Community Guidelines and did
16 not contain any content that could reasonably be construed as not appropriate for younger audiences.

17 58. Nonetheless, on October 19, 2016, PragerU in good faith followed up with
18 Google/YouTube to advise Google/YouTube of the obvious: “after months of trying to get our videos
19 removed from Restricted Mode (or at least get a clear explanation of what we can change to remove
20 them), PragerU decided that its only recourse was to make this issue public.” PragerU went on “to
21 once again ask that YouTube unrestrict the now 16 videos currently in Restricted Mode.”
22 Furthermore, in compliance with the Google/YouTube appeals process, PragerU also requested “an
23 explanation for why” certain videos were now “unrestricted,” including: “Why Are There Still
24 Palestinian Refugees?”, “Are 1 in 5 Women Raped at College?”, “Is America Racist?”, “Don’t Judge
25 Blacks Differently,” and “Commandment 6: Do Not Murder.”

26 59. On November 4, 2016, Google/YouTube responded: “The team is still investigating
27 the issue and it’s taking longer than usual. I have requested the team to expedite the process and
28

1 resolve as soon as possible.”

2 60. Then, on November 10, 2016, Google/YouTube responded only that “[a]t this time the
3 videos have been algorithmically included in Restricted Mode and no manual action was needed.”

4 61. On December 5, 2016, PragerU sent a new request to appeal a removed video by a
5 pro-Israeli Muslim activist entitled “Born to Hate Jews,” that discussed how best to resist hatred and
6 anti-Semitism. Incredibly, Google/YouTube restricted the video as “hate speech.” Indeed, the video
7 was anything but. In fact, it contained a thoughtful and important discussion of the origins and
8 remedies for combatting hate speech by a Muslim man who supported the right of Israel to exist.
9 Consequently, PragerU requested that the content restrictions be removed and that the failure to do so
10 “is de facto censorship” that “will prevent hundreds of thousands, or millions of people from hearing
11 its valuable message.”

12 62. Over the next year, multiple communications occurred between PragerU and
13 Google/YouTube about the restriction of PragerU videos. During that period, PragerU was seeing
14 more and more evidence that its videos were being restricted not for content, but for the political
15 viewpoint or identity of the speaker.

16 63. In communications beginning on or about July 31, 2017, Google/YouTube conceded
17 that they could not tell whether the PragerU videos had been restricted after a manual review or were
18 censored only by the automated algorithm. Among other things, at Google/YouTube’s request,
19 PragerU provided Defendants with a list of PragerU videos that had been restricted and a comparative
20 list of videos that discussed the same topics but from liberal or left wing perspectives that were not
21 restricted. Google/YouTube sent the comparative list of videos to a team for manual review.

22 64. On August 23, 2017, Max Pappas, a public policy staffer for Google/YouTube,
23 notified PragerU that YouTube was rolling out some changes to its restricted mode filtering process
24 but noted that the planned changes “should have no impact on your channel, and I double checked on
25 that, but if they inadvertently do, let me know so I can help with any appeal.” In response, PragerU
26 informed Google/YouTube that the “policies” were still impacting its content and the number of
27 restricted videos had actually increased to 34.

28

1 65. Google/YouTube then wanted to know if, in addition to restricting content, PragerU
2 videos were also being “demonitized” [sic] and prevented from running ads. PragerU responded
3 with a list of over 50 videos that had either or both been restricted as to content and demonitized:

4 **Currently restricted (As of October 20, 2017):**

5 PragerU Live: Alan Dershowitz

6 Ami Horowitz Do White Americans Have White Privilege?

7 What’s Wrong with E-Cigarettes?

8 Why Isn’t Communism as Hated as Nazism?

9 Where Are the Moderate Muslims?

10 Ami Horowitz How Is Muslim Immigration to Sweden Working Out?

11 The Least Diverse Place in America

12 Ami Horowitz What’s Wrong with Socialism?

13 Dennis Prager Talks Politics With Gloria Alvarez and Felipe Moura Brasil

14 Why America Must Lead

15 What’s Holding the Arab World Back?

16 What Should We Do About Guns?

17 Immigrants! Don’t Vote for What You Fled

18 Is Islam a Religion of Peace?

19 Are the Police Racist?

20 Why Don’t Feminists Fight for Muslim Women?

21 Why Did America Fight the Korean War?

22 Who’s More Pro Choice: Europe or America?

23 What ISIS Wants

24 Are 1 in 5 Women Raped at College?

25 Islamic Terror: What Muslim Americans Can Do

26 Did Bush Lie About Iraq?

27 Who NOT to Vote For

28

- 1 Israel: The World’s Most Moral Army
- 2 Radical Islam: The Most Dangerous Ideology
- 3 The Most Important Question About Abortion
- 4 Why Do People Become Islamic Extremists?
- 5 He Wants You
- 6 Israel’s Legal Founding
- 7 Pakistan: Can Sharia and Freedom Coexist?
- 8 The World’s Most Persecuted Minority: Christians
- 9 Why America’s Military Must Be Strong
- 10 Born to Hate Jews
- 11 PragerU Live: David French
- 12 Ten Commandments: 6. Do Not Murder
- 13 Israel: The World’s Most Moral Army
- 14 Why America Invade Iraq
- 15 Gender Identity: Why All the Confusion?
- 16 Gun Rights Are Women’s Rights
- 17 **Demonetized (As of October 2017):**
- 18 PragerU: Short Videos. Big Ideas — posted by Noah? 082517
- 19 Fireside Chat with Dennis Prager (8/4/17)
- 20 Fireside Chat with Dennis Prager! (7/20/17)
- 21 Is the Death Penalty Ever Moral?
- 22 Fireside Chat With Dennis Prager! (6/20/17)
- 23 Fireside Chat With Dennis Prager! (7/13/17)
- 24 PragerU Live: Sidney Powell (6/22/17)
- 25 PragerU Live: David French (6/20/17)
- 26 Interview with Nigerian Senator Ben MurrayBruce
- 27 Interview with Jason Kenney (5/26/17)
- 28

- 1 Islam and Terrorism (5/23/17)
- 2 Why Isn't Communism as Hated as Nazism?
- 3 PragerU: PragerU Live: Dana Perino (4/6)
- 4 Fireside Chat With Dennis Prager & Special Guest Ben Shapiro! (3/16/17)
- 5 PragerU Live with Dr. Jordan Peterson (3/16/17)
- 6 Fireside Chat with Dennis Prager (3/9/17)
- 7 PragerU Live: We're interviewing "Day Without a Woman" protesters! (3/8/17)
- 8 PragerU Live: It's Day Without a Woman! (3/8/17)
- 9 Fireside Chat with Dennis Prager! (Jan. 26, 2017)
- 10 PragerU Live: Bret Stephens (2/3/17)
- 11 PragerU Live: Tom Shillue (2/14/17)
- 12 PragerU Live: Christina Hoff Sommers (3/6/17)
- 13 PragerU Live: Dave Rubin (10/21/16)
- 14 PragerU Live: Felipe Moura Brasil (2/20/17)
- 15 PragerU Live: Raymond Ibrahim (2/17/17)
- 16 PragerU Live: Dennis Prager and Adam Carolla!
- 17 What's Holding the Arab World Back?
- 18 Joe Everson's Artistic National Anthem
- 19 Is Islam a Religion of Peace?
- 20 Are The Police Racist?
- 21 Why Don't Feminists Fight for Muslim Women?
- 22 Who's More ProChoice:
- 23 Europe or America?
- 24 What ISIS Wants
- 25 Radical Islam: The Most Dangerous Ideology
- 26 The Most Important Question About Abortion
- 27 Why Do People Become Islamic Extremists?
- 28

1 Should America be the World's Policeman?

2 Don't Judge Blacks Differently

3 Israel's Legal Founding

4 Pakistan: Can Sharia and Freedom Coexist?

5 Ten Commandments: 6. Do Not Murder

6 Aznar on Europe, America and Israel

7 66. On October 12, 2017, Google/YouTube admitted that the manual reviews they
8 conducted on some of these videos were in fact "human reviews," leaving little doubt that the
9 restrictions and demonetization of PragerU videos were not merely the result of an automated
10 algorithm error. But Google/YouTube declined to provide any explanation for why the videos were
11 restricted or demonetized because they purportedly "can't share more details about our review
12 process, as doing so could benefit channels that do not play by the rules (those who game the
13 system)."

14 67. This practice of arbitrary and capricious censorship and restriction of speech continues
15 to this day against PragerU. Indeed, in October, 2017, Google/YouTube discontinued PragerU's ad
16 grants account for over six days. When PragerU requested that Google/YouTube reconsider,
17 Google/YouTube responded: "No chance." Then, with an inconsistent and changed explanation,
18 Defendants reinstated PragerU's ad grants account but continued to restrict, demonetize, and/or
19 change restricted mode classifications of PragerU videos at their whim.

20 68. Even when Google/YouTube attempt to provide an explanation for why they are
21 restricting PragerU content, the explanations are vague and illogical pretexts that further confirm the
22 arbitrary and capricious nature of the censorship. By way of example only, Google/YouTube
23 informed PragerU that the videos "Why Isn't Communism as Hated as Nazism?" and "What's
24 Holding the Arab World Back?" were placed in Restricted Mode because they purportedly discussed
25 "hate and genocide" and "terrorism and genocide," respectively. No further explanation as to what
26 language constituted an inappropriate discussion of "hate and genocide" or "terrorism and genocide"
27 was given. But to the extent that Google/YouTube's policy is to restrict all videos that mention the
28

1 words “hate,” “terrorism,” or “genocide,” or any video that mentions those topics, then
2 Google/YouTube need to explain why thousands of videos that use or mention those terms are not
3 also restricted.

4 69. Furthermore, a review of those two videos (available by hyperlink in the Comparative
5 Table embedded at paragraph 72, *infra*) shows that Google/YouTube’s explanation for restricting
6 them is either false and misleading or is based on its discriminatory animus towards PragerU. Again,
7 each of those videos discusses topics in the same manner and using the same language and
8 educational format as other videos that are not restricted. Indeed, the only discernible difference
9 between the language and the format of the censored videos and non-censored videos is the political
10 viewpoint of the speaker: the former provides a conservative political perspective on the issues while
11 the latter uses those terms to provide a liberal bent.

12 70. Finally, PragerU is informed and believes that content from its restricted videos has
13 been copied and used by other speakers to post videos that are not restricted by Google/YouTube.
14 Specifically, PragerU is informed and believes that content from the following videos that it has
15 produced and uploaded to YouTube and that Google/YouTube has subsequently restricted, was not
16 restricted after it was copied and posted by other content providers or vloggers:

17 Why Don't Feminists Fight For Muslim Women?
18 https://www.youtube.com/watch?v=c_qV7ya03sU

19 The Least Diverse Place in America
<https://www.youtube.com/watch?v=mO-CrOvepU0>

20 Why America Must Lead
21 https://www.youtube.com/watch?v=IreFjN_J-l0

22 What's Holding the Arab World Back?
<https://www.youtube.com/watch?v=04UExojpgN0>

23 6th Commandment: Do Not Murder
24 <https://www.youtube.com/watch?v=rbTvXX3Csq8>

25 The World's Most Persecuted Minority: Christians
<https://www.youtube.com/watch?v=GHBu2aevyak>

26 Is Islam a Religion of Peace?
27 <https://www.youtube.com/watch?v=B-8f-FjLwRs>

1 Immigrants! Don't Vote for What You Fled
<https://www.youtube.com/watch?v=szwhSdd3Dno>

2 Who NOT to Vote For
<https://www.youtube.com/watch?v=Lnub5IDKUHc>

3 Are 1 in 5 Women Raped at College?
<https://www.youtube.com/watch?v=-HEe6JFRJn0>

4
 5 71. Consequently, identical content exists on YouTube in both restricted and unrestricted
 6 videos, the only difference being that the restricted video was posted by PragerU whereas the copycat
 7 video was posted by other speakers or posters of video content with differing political identities and
 8 viewpoints.

9 72. Unable to get a clear and consistent explanation of why certain videos were classified,
 10 PragerU undertook an extensive comparative analysis of its videos that were restricted and those on
 11 similar topics by different speakers that were not². As of the date of filing of this lawsuit, the analysis
 12 shows, there is no rational or reasonable basis to make the distinction:
 13

Video:	Link:	Channel:
PragerU Video Restricted: Are 1 in 5 women in college raped?	https://www.youtube.com/watch?v=K0mzqL50I-w&t=225s	PragerU
Similar YouTube videos not restricted:		
Real Time with Bill Maher: The Hunting Ground (HBO)	https://www.youtube.com/watch?v=JINxoR-S5To	Real Time With Bill Maher
Your vagina is not a car: Clementine Ford at TEDxSouthBankWomen	https://www.youtube.com/watch?v=ATISgVUKetI	TEDx Talks
Full Interview: Joe Biden on How to End the Rape Crisis Plaguing College Campuses	https://www.youtube.com/watch?v=Vkh_cY3-aTw	Mic
Author Jon Krakauer on new book "Missoula" and college rape epidemic	https://www.youtube.com/watch?v=nG19K20QCgs	CBS This Morning
A Life Of Rape Culture Brynne Thomas TEDxYouth@TCS	https://www.youtube.com/watch?v=oYppe9kyUxY	TEDx Talks
Lady Gaga sings about campus rape	https://www.youtube.com/watch?v=ogoq6ddJsMU	ABS-CBN News
PragerU Video Restricted: Why did America Fight the Korean War?	https://www.youtube.com/watch?v=t44SbOvjEUM	PragerU
Similar YouTube videos not restricted:		
Why Korea Split Into North and South Korea	https://www.youtube.com/watch?v=l0E9KeI8BtE	Wonder Why
Cold War in 9 Minutes	https://www.youtube.com/watch?v=wVqziNV7dGY	John D Ruddy

26 ² This chart was accurate as of October 23, 2017, however, due to the inconsistent application of
 27 Restricted Mode status, some of these videos may have become either restricted or non-restricted at
 28 the time of review.

	Video:	Link:	Channel:
1	Korean War overview The 20th century World history Khan Academy	https://www.youtube.com/watch?v=MEGyRgYJKE	Khan Academy
2	The Korean War: Every Day	https://www.youtube.com/watch?v=fBeiD6kGugE	EmperorTigerstar
3	The Korean "War" Explained: US History Review	https://www.youtube.com/watch?v=okQzZhL81tE	Keith Hughes
4	PragerU Video: Why don't feminists fight for muslim women?	https://www.youtube.com/watch?v=wJkFQohIKNI	PragerU
5	Similar YouTube videos not restricted:		
6	Are Islam and Feminism Mutually Exclusive Get Real Refinery29	https://www.youtube.com/watch?v=0Vduu3_c5xo	Refinery29
7	What Islam really says about women Alaa Murabit	https://www.youtube.com/watch?v=FETryXMpDI8	TED
8	ADVICE TO MUSLIM WOMEN (About Dajjal) - Tim Humble Animated	https://www.youtube.com/watch?v=KnBD7pTAqj8	Practical Islam
9	What Does It Mean To Be A Feminist In Islam?	https://www.youtube.com/watch?v=MpdXrKqWx14	NowThis World
10	What The West Gets Wrong About Muslim Women	https://www.youtube.com/watch?v=IzKyZS8Y6IY	NowThis World
11			
12	PragerU Video: Are the police racist?	https://www.youtube.com/watch?v=UQCQFH5wOJo	PragerU
13	Similar YouTube videos not restricted:		
14	How to Deal with the Police Parents Explain	https://www.youtube.com/watch?v=coryt8IZ-DE	WatchCut Video
15	Keith Lamont Scott's Brother-in-Law: The Role of Racism in Police Shootings	https://www.youtube.com/watch?v=M0sgKs7PUU8	OWN
16	Real Time with Bill Maher: A System of Racism (HBO)	https://www.youtube.com/watch?v=QNIkrnsZ5N0	Real Time with Bill Maher
17	FIRST PRESSER! Seahawks Michael Bennett speaks on racism and police brutality allegations	https://www.youtube.com/watch?v=HI6I1U-MsTw	ABC15 Arizona
18	Meeting addresses racism in police and fire departments	https://www.youtube.com/watch?v=AxPKW74EtAY	TheDay
19	Looking Back At Ferguson And Jon Stewart: Real Talk With AJ+	https://www.youtube.com/watch?v=XSx2TuuDB0	AJ+ (Al Jazeera)
20	PragerU Video: Who NOT to Vote For	https://www.youtube.com/watch?v=eE6ica0t95Q	PragerU
21	Similar YouTube videos not restricted:		
22	Vote For Jeremy Corbyn?	https://www.youtube.com/watch?v=wFs-HFSO3A8	Lex Croucher
23	PragerU Video: Do not murder	https://www.youtube.com/watch?v=0RENPaY043o	PragerU
24	Similar YouTube videos not restricted:		
25	Justice: What's The Right Thing To Do? Episode 01 "THE MORAL SIDE OF MURDER"	https://www.youtube.com/watch?v=kBdfcR-8hEY	Harvard University
26	6th Commandment: Do Not Murder (IDENTICAL VIDEO TO OURS UNRESTRICTED)	https://www.youtube.com/watch?v=rbTvXX3Csq8	Jack Kern
27	PragerU Video: Did Bush Lie About Iraq?	https://www.youtube.com/watch?v=LgQw8EhPJWw	PragerU
28			

	Video:	Link:	Channel:
1	PragerU Video: Why America Invaded Iraq	https://www.youtube.com/watch?v=T2tbpUqNwRU	PragerU
2	Similar YouTube videos not restricted:		
3	Stephen Gets A Straight Answer Out Of Donald Rumsfeld	https://www.youtube.com/watch?v=4Z3z7DvoA-M	The Late Show with Steven Colbert
4	Jon Snow interviews Alastair Campbell over Iraq WMD report being sexed up (2003)	https://www.youtube.com/watch?v=GBWE7QzADe8	Channel 4 news
5	Iraqi governing council president says Saddam was pursuing WMD	https://www.youtube.com/watch?v=XzEeoytICKs	AP Archive
6			
7	PragerU Video: What should we do about guns?	https://www.youtube.com/watch?v=wAXxQBIH7I	PragerU
8	Similar YouTube videos not restricted:		
9	Natalie Morales on gun control Larry King Now Ora.TV	https://www.youtube.com/watch?v=S0lZk2XGvPQ	Larry King
10	New York Passes 'Strictest' Gun Control Law	https://www.youtube.com/watch?v=PmxXikPUYIQ	David Pakman Show
11	Is It The 'Right' Time To Talk About Gun Control? The View	https://www.youtube.com/watch?v=FDbAHx0wBM4	The View
12	'We just gotta get guns out of people's hands' – Nevada state senator	https://www.youtube.com/watch?v=vEuwUnxQIRc	RT Nation
13	Who Should be Denied a Gun Permit?	https://www.youtube.com/watch?v=I0q3Jccj5Hg	Bloomberg
14	PragerU Video: He wants you	https://www.youtube.com/watch?v=dIZsGpWJmos	PragerU
15	Similar YouTube videos not restricted:		
16	Why Men Look At Other Women	https://www.youtube.com/watch?v=oFfMyxefC38	2Minutes2Know
17	Monogamy	https://www.youtube.com/watch?v=uH_rIT0juim	SciShow
18	What could be wrong with monogamy? Marc de Hond at TEDxEde	https://www.youtube.com/watch?v=9aKPy1SvYPs	TEDx Talks
19	Is He Looking at Other Women? - by Claire Casey (for Digital Romance TV)	https://www.youtube.com/watch?v=aaXMIMk48PE	DigitalRomanceInc
20	The Blog - Reasons Men Check Out Other Women And How To Handle It (Pt.2) Cool TV	https://www.youtube.com/watch?v=r5DjiWLFvPE	Wazobia Wax
21	PragerU Video: Why Isn't Communism as Hated as Nazism?	https://www.youtube.com/watch?v=nUGkKKAogDs	PragerU
22	Similar YouTube videos not restricted:		
23	Genocide: Worse Than War Full-length documentary PBS	https://www.youtube.com/watch?v=w7cZuhqSzzc	PBS
24	Communism vs. Socialism: What's The Difference?	https://www.youtube.com/watch?v=FrDZ-LOXFw	NowThis World
25	What Is Communism?	https://www.youtube.com/watch?v=qElx_EyTTKA	NowThis World
26	Communists, Nationalists, and China's Revolutions: Crash Course World History #37	https://www.youtube.com/watch?v=UUCEeC4f6ts	Crash Course
27	PragerU Video: Immigrants! Don't vote for what you fled	https://www.youtube.com/watch?v=10uX2EhSfLA	PragerU
28	Similar YouTube videos not restricted:		
	Immigrants On Voting As New Americans	https://www.youtube.com/watch?v=Qtfehx0V5ul	BuzzFeedVideo

Video:	Link:	Channel:
TEENS REACT TO DACA (ILLEGAL IMMIGRATION POLICY)	https://www.youtube.com/watch?v=QyexzwiFE3U	FBE
The Economics of Immigration: Crash Course Econ #33	https://www.youtube.com/watch?v=4XQXiCLzyAw	Crash Course
Why a Wall Won't Stop Immigration	https://www.youtube.com/watch?v=K_P9PR5ckFk	College Humor
Why Walls Won't Secure The U.S.-Mexico Border AJ+	https://www.youtube.com/watch?v=Yh3fez9CyXg	AJ+
PragerU Video: Born to Hate Jews	https://www.youtube.com/watch?v=xCOEmeGfFmY	PragerU
Similar YouTube videos not restricted:		
Red news, blue news: Islamophobia	https://www.youtube.com/watch?v=rZKqxxoUoYs	CNN
Why Do People Hate Muslims? Ustadh Nouman Ali Khan	https://www.youtube.com/watch?v=1eJn8IT-fD8	DailyIslamicReminder
Dangers of Islamophobia Marc Scarcelli TEDxCPP	https://www.youtube.com/watch?v=ZASGOWgTYrk	TEDx Talks
Islamophobia and Islamophilia: An Unusual Connection Nazia Kazi TEDxStocktonUniversity	https://www.youtube.com/watch?v=nh-PdWBjkh4	TEDx Talks
Islamophobia: Melissa Boigon at TEDxGallatin 2013	https://www.youtube.com/watch?v=t8htxQmVyBM	TEDx Talks
PragerU Video: Why america must lead	https://www.youtube.com/watch?v=MSvWH-Y8eeY	PragerU
PragerU Video: Why America's Military Must Be Strong	https://www.youtube.com/watch?v=W5o_KdvC1c8	PragerU
Similar YouTube videos not restricted:		
How can the EU lead the world in human rights?	https://www.youtube.com/watch?v=moZbFNZItO8	The Graduate Institute Geneva
America Is Once Again Ready to Lead': Trump Lays Out Bold, Inspirational Vision	https://www.youtube.com/watch?v=Tg5YInftvEw	CBN News
Does India Need Strong Military? - Dr. Kiran Bedi with Sadhguru	https://www.youtube.com/watch?v=Yy_UOLD2bBE	Sadhguru
John McCain: America must lead	https://www.youtube.com/watch?v=s6jSpEr-yNw	Financial Times
Obama at West Point: America Must Lead the World	https://www.youtube.com/watch?v=ON00-kP2ssE	Bloomberg
PragerU Video: Where are the moderate muslims	https://www.youtube.com/watch?v=Y9Enx4XxO1E	PragerU
PragerU Video: Is islam a religion of peace?	https://www.youtube.com/watch?v=5AkAGc5nOXw	PragerU
PragerU Video: Islamic Terror: What Muslim Americans Can Do	https://www.youtube.com/watch?v=WXXlhKELxEo	PragerU
PragerU Video: Pakistan: Can Sharia and Freedom Coexist?	https://www.youtube.com/watch?v=nPG4H3XUX1Q	PragerU
PragerU Video: Radical Islam. The worlds most dangerous ideology	https://www.youtube.com/watch?v=L.GzrYUGXdI	PragerU
PragerU Video: Why do people become islamic extremists?	https://www.youtube.com/watch?v=-IchGuL501U	PragerU
Similar YouTube videos not restricted:		

	Video:	Link:	Channel:
1	Islam, the Quran, and the Five Pillars All Without a Flamewar: Crash Course World History #13	https://www.youtube.com/watch?v=TpcbfxtdoI8	Crash Course
2	Islam and Politics: Crash Course World History 216	https://www.youtube.com/watch?v=ka8csjsmX6I	Crash Course
3	Mansa Musa and Islam in Africa: Crash Course World History #16	https://www.youtube.com/watch?v=jvnU0v6hcUo	Crash Course
4	How Islam Began - In Ten Minutes	https://www.youtube.com/watch?v=PDxKxnVZtgo	TrueTube
5	Chris Hayes: If This Isn't Terrorism, What Is? All In MSNBC	https://www.youtube.com/watch?v=-Ux6MXQQLpA	MSNBC
6	The Untold History - How Islam Spread	https://www.youtube.com/watch?v=a8CbEzcOX3M	MercifulServent
7	What is Sharia Law and its Principles? Dr. Jasser Auda	https://www.youtube.com/watch?v=odmySgc9Qa8	Quran Speaks
8			
9	PragerU Video: Israel. The World's Most Moral Army	https://www.youtube.com/watch?v=tN1MkAGuVYy	PragerU
10	PragerU Video: Israel's legal founding	https://www.youtube.com/watch?v=12KJa4a0d64	PragerU
11	Similar YouTube videos not restricted:		
12	Who Recognizes The State Of Palestine?	https://www.youtube.com/watch?v=Idad9kZ5Ccw	AJ+ (Al Jazeera)
13	Why Ireland split into the Republic of Ireland & Northern Ireland	https://www.youtube.com/watch?v=dCJMQgfhXNI	WonderWhy
14	Why Korea Split Into North and South Korea	https://www.youtube.com/watch?v=l0E9Kel8BtE	WonderWhy
15	Geography Now! ISRAEL	https://www.youtube.com/watch?v=AWKmazrRlWA	Geography Now
16	Why Isn't Palestine A State Yet?	https://www.youtube.com/watch?v=Dyqx7CDGrTA	NowThis World
17			
18	PragerU Video: The least Diverse Place in America	https://www.youtube.com/watch?v=y0HKgs-0zDY	PragerU
19	Similar YouTube videos not restricted:		
20	Diversity Of Thought Vidya Spandana TEDxPortland	https://www.youtube.com/watch?v=-4mjDiGL-V0	TEDx Talks
21	Why is Hollywood so White? Colin Stokes TEDxBeaconStreet	https://www.youtube.com/watch?v=OyM-2_5cmkA	TEDx Talks
22	The Oscars' horrible lack of diversity, explained in 2 minutes	https://www.youtube.com/watch?v=oiets7KOnY4	Vox
23			
24	PragerU Video: The most important question on abortion	https://www.youtube.com/watch?v=AMwkQVpy98A	PragerU
25	PragerU Video: Who is more pro-choice? Europe or America?	https://www.youtube.com/watch?v=IHrihwWJv8o	PragerU
26	Similar YouTube videos not restricted:		
27	1st Trimester Medical Abortion: Abortion Pills	https://www.youtube.com/watch?v=IRDnVSMr5j0	Live Action
28	Aspen Baker: A better way to talk about abortion	https://www.youtube.com/watch?v=P5Mpo4JQZhw	TED
29	Stacey and Coleen Share Their Abortion Experiences Loose Women	https://www.youtube.com/watch?v=cMtCYVJ6trI	Loose Women
30	Abortion and Sex Malayalam Dr. Jose Joseph & Renjini Menon	https://www.youtube.com/watch?v=gw713r8tFiA	Sex and Health

	Video:	Link:	Channel:
1	PragerU Video: The worlds most persecuted minority. Christians.	https://www.youtube.com/watch?v=ytdMUddGe-U	PragerU
2			
3	Similar YouTube videos not restricted:		
4	Myanmar Muslims fear fate of persecuted Rohingya	https://www.youtube.com/watch?v=IOTy_A5fskI	Al Jazeera English
5	Obama: Christianity Causes A Lot Of Violence Too NowThis	https://www.youtube.com/watch?v=raqGgcsuDAw	NowThis News
6	Early Christian Persecution	https://www.youtube.com/watch?v=hJR0A9phBc8	Ryan Reeves
7	PragerU Video: What is holding the arab world back	https://www.youtube.com/watch?v=aAOzlinU94g	PragerU
8	PragerU Video: What ISIS Wants	https://www.youtube.com/watch?v=v7f0bKIOwys	PragerU
9	Similar YouTube videos not restricted:		
10	Not in my Name - Muslims against ISIS	https://www.youtube.com/watch?v=hAxIOC8Zisc	Conflict Studies
11	Islam and Politics: Crash Course World History 216	https://www.youtube.com/watch?v=ka8csjsmX6I	CrashCourse
12	Bishop Barron on ISIS and the Cross	https://www.youtube.com/watch?v=zHQP8INrV7M	Bishop Robert Barron
13	Who Is The Muslim Brotherhood?	https://www.youtube.com/watch?v=INm6DufrgEk	AJ+
14	Violent Buddhists Target Muslims in Myanmar: The Daily Show	https://www.youtube.com/watch?v=J2Qq-RPYb_I	The Daily Show with Trevor Noah
15	PragerU Video: What is wrong with cigarettes	https://www.youtube.com/watch?v=XW4duMgxEI_o&t=28s	PragerU
16	Similar YouTube videos not restricted:		
17	Smoking vs. Vaping	https://www.youtube.com/watch?v=haqi4xvjvKo	AsapSCIENCE
18	E-cigarettes linked to incurable 'Popcorn Lung' disease	https://www.youtube.com/watch?v=45j-kR_-jMo	WKBW TV Buffalo, NY
19	Banning E Cigarettes Loose Women	https://www.youtube.com/watch?v=CTGLSG85WQQ	Loose Women
20	Electronic cigarettes and health - the basics	https://www.youtube.com/watch?v=mToznqKD5Ac	Risk Bites
21	Is Marijuana Smoke Healthier Than Tobacco Smoke?	https://www.youtube.com/watch?v=fNBTD7awlno	Seeker
22	PragerU Video: Gender Identity: Why All the Confusion?	https://www.youtube.com/watch?v=yAAIFya89aw	PragerU
23	Similar YouTube videos not restricted:		
24	Celebrating the LGBT Community In Sports With GAME FACE FANDEMONIUM Quickie	https://www.youtube.com/watch?v=kUzTh7nIRLE	HitFix
25	That Moment You Realize You're Transgender	https://www.youtube.com/watch?v=P-hj5gZwzow	SoulPancake
26	Transgender dad and daughter transition together from mother and son	https://www.youtube.com/watch?v=ITTXE3K_0AY	ABC News
27	Jazz and Her Grandpa Argue About Being Transgender I Am Jazz	https://www.youtube.com/watch?v=NgG8vwRVtk	tlc uk
28	Jazz Debates With Tomi Lahren! I Am Jazz	https://www.youtube.com/watch?v=lxZG0oDQRbQ	tlc uk
	Bottom Surgery I Am Jazz	https://www.youtube.com/watch?v=IG-U8oFpa8o	tlc uk

Video:	Link:	Channel:
Transgender Teen Shares Powerful Message	https://www.youtube.com/watch?v=E0v_idyvjco	ABC News
Gun Rights Are Women's Rights	https://www.youtube.com/watch?v=2iKBEJp92CA&t=1s	PragerU
Similar YouTube videos not restricted:		
Women's Self-defense That Actually Works! (Gracie Jiu-Jitsu)	https://www.youtube.com/watch?v=pndPbpHLpos	Graciebreakdown
Simple Self Defense Moves You Should Know	https://www.youtube.com/watch?v=M4_8PoRQP8w	Buzzfeedvideo
Top 7 Self Defense Moves that Women Need to Know	https://www.youtube.com/watch?v=j_YOvLi06-0	Poway Personal Trainer
Self Defense Tips & Techniques for Women : Palm Heel Strike to Vital Areas in Women's Self Defense	https://www.youtube.com/watch?v=e8PMAa2NxFAQ	expertvillage
☆Pepper Spray, Personal Safety, Self Defense Tips for Women☆	https://www.youtube.com/watch?v=ION8QGej9To	Dr. Tracy Timberlake

73. As the Table demonstrates, there is no rational or reasonably objective basis for treating PragerU video content differently from other speakers. The only difference is that PragerU features speakers and scholars who bring a conservative viewpoint to the issues discussed while the non-restricted videos discuss the same topics from a liberal or left wing perspective. That is discrimination, a violation of the right to free speech, and an unfair business practice for which the law and equity can and will remedy.

FIRST CAUSE OF ACTION

(California Constitution Article I, section 2)

74. Plaintiff realleges and incorporates herein by reference, as though set forth in full, each of the allegations set forth in paragraphs through 1 through 73 above.

75. Article I, section 2 of the California Constitution protects the liberty of speech and association, especially in public, quasi-public, and limited public spaces.

76. In YouTube, Defendants created and maintain a public forum or its functional equivalent for the public to express and exchange views and ideas, or in the alternative at least a quasi- or limited public forum. Defendants further act as state actors because Defendants and the YouTube site perform an exclusively and traditionally public function by regulating free speech within a public forum. Accordingly, speech cannot be arbitrarily, unreasonably, or discriminatorily excluded, regulated, or restricted on the basis of viewpoint or the identity of the speaker.

1 77. Plaintiff's videos, which are designed to educate the public, adults and minors alike,
2 on historical events, philosophy, economics, and current events, constitute expressive speech and
3 activity protected by Article I, section 2 of the California constitution.

4 78. Defendants have restricted Plaintiff's speech and expressive conduct based on
5 subjective, vague, and overbroad criteria that give Defendants unfettered and unbridled discretion to
6 censor speech for any or no reason, no matter how arbitrary or capricious. Those criteria further fail
7 to convey a sufficiently definite warning to Plaintiff and the public as to what is prohibited or
8 restricted. Defendants' adoption and application of those criteria on its face violates PragerU's right
9 to free speech as guaranteed by Article I, section 2 of the California Constitution. Further, that
10 invidious potential has been borne out and evidenced by Defendants' application of those policies and
11 procedures to censor PragerU. PragerU has repeatedly asked what it could do differently, or how it
12 could change its videos so that they could be unrestricted or re-monetized, but Google/YouTube have
13 never meaningfully answered those questions.

14 79. Defendants also apply their censorship criteria, including the Terms of Use and
15 Community Guidelines, as a pretext to censor and restrict PragerU's speech, based not on the content
16 of the speech but because of PragerU's identity and political viewpoints. Defendants have restricted
17 content posted by PragerU to the YouTube platform but not restricted similar or identical video
18 content, including identical video content initially produced by PragerU but subsequently copied and
19 then uploaded and posted on the YouTube site by other speakers. Defendants' application of criteria
20 and corresponding restraints on PragerU's speech is arbitrary and capricious and/or is based on
21 political, religious, or other animus towards the identity and viewpoints of the speaker, not the actual
22 content of the speech.

23 80. Further, because Plaintiff is so restrained and punished because of the speakers
24 featured in its videos, as well as those speakers' opinions, Defendants' actions impinge on and violate
25 Plaintiff's right to free association and assembly. Defendants' actions also violate Plaintiff's right to
26 free association and assembly by blocking viewers' access to videos and comments.

27 81. No compelling, significant, or legitimate reason justifies Defendants' actions. Even if
28

1 such interests did exist to justify Google/YouTube's restriction and demonetization rules generally,
2 the restrictions imposed on Plaintiff's speech are not narrowly or reasonably tailored to further such
3 interests, because they sweep within their ambit inoffensive and non-graphic discussions intended and
4 designed for educational purposes. Given Google/YouTube's monopolistic control over search
5 results, including video search results as well as online video streaming, Plaintiff has no alternative
6 affording it a reasonable opportunity to reach its full intended audience.

7 82. Google/YouTube's discriminatory policies and application of those policies are not
8 viewpoint neutral, are unreasonable in time, place, and manner, and are unreasonable in relation to
9 the nature, purpose, and use of the forum. They impose an unreasonable prior restraint on Plaintiff's
10 protected political speech, motivated by impermissible discrimination against Plaintiff's identity and
11 viewpoint.

12 83. Defendants' wrongful actions were taken with oppression, fraud, malice and/or are
13 arbitrary and capricious, and as part of Defendants' normal course of business, effectuated through
14 both the Google/YouTube algorithms as well as human agents. And Defendants' actions were done
15 with the intent to deprive Plaintiff and their viewers of their rights under the California constitution.

16 84. As a direct and proximate result of Defendants' violations of clearly established law
17 regarding public fora, Plaintiff has suffered, and continues to suffer, immediate and irreparable injury
18 in fact, including lost income, reduced viewership, and damage to brand, reputation, and goodwill, for
19 which there exists no adequate remedy at law.

20 **SECOND CAUSE OF ACTION**

21 **(First Amendment of the United States Constitution and/or 42 U.S.C. § 1983)**

22 85. Plaintiff realleges and incorporates herein by reference, as though set forth in full, each
23 of the allegations set forth in paragraphs through 1 through 84 above.

24 86. The First Amendment of the United States Constitution protects the freedom of speech
25 and association, and against viewpoint discrimination in the access and use of public spaces, quasi-
26 public spaces, and limited public spaces. It also protects the rights of all Americans to free
27 association with others.

1 87. Defendants created, operate and control the YouTube site, platform and services as a
2 public forum or its functional equivalent by intentionally and openly dedicating YouTube for public
3 use and public benefit, inviting the public to utilize YouTube as a forum for free speech. Defendants
4 further act as state actors because Defendants and the YouTube site perform an exclusively and
5 traditionally public function by regulating free speech within a public forum. Accordingly, speech
6 cannot be arbitrarily, unreasonably, or discriminatorily excluded, regulated, or restricted on YouTube
7 on the basis of viewpoint or the identity of the speaker.

8 88. Defendants' actions, and the actions of their agents, deprive Plaintiff of its
9 constitutional rights. Defendants have restricted Plaintiff's speech and expressive conduct by
10 adopting and applying subjective, vague, and overbroad criteria that give Defendants unfettered and
11 unbridled discretion to censor speech for arbitrary, capricious, or nonexistent reasons. Those criteria
12 further fail to convey a sufficiently definite warning to Plaintiff and the public as to what is prohibited
13 or restricted and, as a result, allow Defendants to censor speech at their whim and based on their
14 subjective animus towards the speaker or her particular political or religious viewpoint.

15 89. Defendants also apply their censorship criteria, including the Terms of Use and
16 Community Guidelines, as a pretext to censor and restrict PragerU's speech, based not on the content
17 of the speech but because of PragerU's identity and political viewpoints. Defendants have restricted
18 content posted by PragerU to the YouTube platform but not restricted similar or identical video
19 content, including identical video content initially produced by PragerU but subsequently copied and
20 then uploaded and posted on the YouTube site by other speakers. Defendants' application of criteria
21 and corresponding restraints on PragerU's speech is arbitrary and capricious and/or is based on
22 political, religious, or other animus towards the identity and viewpoints of the speaker, not the actual
23 content of the speech.

24 90. Further, because Plaintiff is so restrained and punished because of the speakers
25 featured in its videos, as well as those speakers' opinions, Defendants' actions impinge on and violate
26 Plaintiff's right to free association and assembly. Defendants' actions also violate Plaintiff's right to
27 free association and assembly by blocking viewers' access to videos and comments. And
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1 Defendants' actions were done with the intent to deprive Plaintiff and other conservative voices of
2 their First Amendment rights.

3 91. No compelling, significant, or legitimate reason justifies demonetizing or restricting
4 Plaintiff's videos. Even if such interests did exist to justify Google/YouTube's restriction and
5 demonetization rules generally, the restrictions imposed on Plaintiff's speech are not narrowly or
6 reasonably tailored to further such interests, because they sweep within their ambit inoffensive and
7 non-graphic discussions intended and designed for educational purposes. Given Google/YouTube's
8 monopolistic control over search results, including video search results, as well as online video
9 streaming, Plaintiff has no alternative channel affording a reasonable opportunity to reach its full
10 intended audience.

11 92. Google/YouTube's discriminatory policies and application of those policies are not
12 viewpoint neutral, are unreasonable in time, place, and manner, and are unreasonable in relation to
13 the nature, purpose, and use of the forum. Rather, they impose an unreasonable prior restraint on
14 Plaintiff's protected political speech, motivated by impermissible discrimination against Plaintiff's
15 identity and viewpoint.

16 93. As a direct and proximate result of Defendants' violations of the clearly established
17 law of public fora, Plaintiff suffered and continues to suffer immediate and irreparable injury in fact,
18 including lost income, decreased viewership, and damage to brand and reputation, for which there
19 exists no adequate remedy at law.

20 94. Defendants' wrongful actions were taken with oppression, fraud, malice and/or are
21 arbitrary and capricious, and as part of Defendants' normal course of business, effectuated through
22 both the Google/YouTube algorithms as well as human agents.

23 **THIRD CAUSE OF ACTION**

24 **(California Unruh Civil Rights Act—Civil Code §§ 51, et seq.)**

25 95. Plaintiff realleges and incorporates herein by reference, as though set forth in full, each
26 of the allegations set forth in paragraphs through 1 through 94 above.

27 96. Defendants YouTube and Google host business establishments under the Unruh Civil
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1 Rights Act, California Civil Code § 51 et seq. Defendants grant the public unrestricted access to
2 YouTube for commercial reasons that are at the core of their business model and the source of
3 virtually all of their revenue.

4 97. Despite their promises of neutrality and a diversity of viewpoints, Defendants engage
5 in a pattern and practice of intentional discrimination in the provision of their services, including
6 discriminating against and censoring Plaintiff PragerU's speech based not on the content of speech
7 but on its political identity and viewpoint. Through the acts complained of herein, Defendants
8 intentionally denied, and aided or incited in denying, Plaintiff full and equal accommodations,
9 advantages, privileges, and services by refusing discriminating against it in administering the
10 YouTube grants program, demonetizing Plaintiff's content, and by placing Plaintiff's videos in
11 Restricted Mode.

12 98. A substantial motivating reason for Defendants' conduct is Defendants' subjective
13 perception of Plaintiff's political identity, viewpoints, and religious orientation, as well as those of
14 others with whom Plaintiff associated. Defendants' discrimination against Plaintiff is arbitrary,
15 capricious, pretextual, and discriminatory. It is also wholly without any legitimate, reasonable
16 business interest, as the content of the restricted and demonetized PragerU videos are completely
17 compliant with the letter and spirit of Defendants' Terms of Use and Community Guidelines.
18 Google/YouTube are censoring and treating Plaintiff and its videos differently out of animus towards
19 Plaintiff's identity and views.

20 99. Defendants' wrongful actions were taken with oppression, fraud and/or malice,
21 effectuated through both the Google/YouTube algorithms as well as manual human review of
22 Plaintiff's videos and appeals. PragerU has repeatedly attempted to remedy the situation, and
23 Defendants have repeatedly refused to unrestrict or re-monetize Plaintiff's videos. And not once have
24 Defendants articulated any good faith reason for their differential treatment.

25 100. As a direct and proximate result of Defendants' unlawful discriminatory actions,
26 Plaintiff suffered, and continues to suffer, irreparable injury in fact, including but not limited to lower
27 viewership, lost advertising opportunities otherwise available to other nonprofits, decreased ad
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1 revenue, and reputational damage, for which there exists no adequate remedy at law.

2 101. Defendants' violations of the Unruh Act further entitles Plaintiff to recover statutory
3 damages of up to three times the amount of actual damages in an amount to be proven at trial, or a
4 minimum of \$4,000 per violation.

5 **FOURTH CAUSE OF ACTION**

6 **(Business and Professions Code § 17200, et seq.)**

7 102. Plaintiff realleges and incorporates herein by reference, as though set forth in full, each
8 of the allegations set forth in paragraphs through 1 through 101 above.

9 103. Defendants have committed acts of unfair competition, as defined by Business and
10 Professions Code § 17200, by engaging in the practices described above.

11 104. Defendants' policies and practices, and their application of the same to Plaintiff,
12 constitute unlawful, unfair or fraudulent business acts or practices within the meaning of Business
13 and Professions Code § 17200. Defendants' policies, as well as their application, violate the policy
14 and spirit the Unruh Act, the Lanham Act, the California and federal Constitutions, and prior court
15 decisions. Those actions are likely to mislead the public, and do mislead the public, about YouTube,
16 Defendants' videos, Plaintiff, and Plaintiff's videos. Content creators, advertisers, and viewers trust
17 and rely on Defendants for an open marketplace of ideas and expression, and further that when videos
18 are restricted or demonetized, that those videos are truly and in good faith deemed inappropriate for
19 viewing by minors or sensitive viewers.

20 105. There is no utility to the public for Defendants' actions, where those restrictions
21 violate no laws or contractual terms of use and treat Plaintiff and others similarly situated simply
22 because of their perceived politics and identity of their speaker. And to the extent that any utility to
23 Defendants' arbitrarily- and discriminatorily-applied policies did exist, that utility is significantly
24 outweighed by the harm they impose on consumers and the public. Defendants have alternatives to
25 this conduct that would be less harmful to consumers, but do not adopt or apply them because of their
26 bias against Plaintiff and others similarly situated.

27 106. As a direct and proximate result of the aforementioned acts, Plaintiff has suffered, and
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1 continues to suffer, immediate and irreparable injury in fact, including lost income, reduced
2 viewership, and damage to brand, reputation, and goodwill, for which there exists no adequate
3 remedy at law.

4 107. Defendants’ wrongful actions were taken with oppression, fraud and/or malice.

5 **FIFTH CAUSE OF ACTION**

6 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

7 108. Plaintiff realleges and incorporates herein by reference, as though set forth in full, each
8 of the allegations set forth in paragraphs through 1 through 107 above.

9 109. Plaintiff and Defendants entered into written contracts in which Defendants agreed to
10 provide YouTube access, hosting, streaming, and advertising services to Plaintiff. Those contracts
11 give Google/YouTube vague, unfettered, and unilateral discretion to remove, restrict, demonetize, or
12 de-emphasize content as Defendants see fit.

13 110. Implied in those contracts is the implied covenant of good faith and fair dealing. This
14 is particularly true because, in those contracts, Defendants assumed for themselves unilateral and
15 unfettered discretionary control over virtually every aspect of their relationship with Plaintiff—
16 control that Defendants have exercised at their whim, repeatedly and without notice to Plaintiff, and
17 without an opportunity for meaningful discussion or appeal. To the extent that those discretionary
18 powers are valid, Defendants are obligated to exercise them fairly and in good faith.

19 111. Plaintiff did all or substantially all of the significant things required of it under its
20 agreements with Defendants, or was excused from having to do those things. None of Plaintiff’s
21 restricted or demonetized videos violates the letter or spirit of any term in Plaintiff’s contracts with
22 Defendants.

23 112. Defendants were bound by the implied covenant of good faith and fair dealing in their
24 agreements, terms, and policies, not to engage in any acts, conduct, or omissions that would impair or
25 diminish Plaintiff’s rights and benefits of the parties’ agreements. Pursuant to the terms of those
26 agreements, Plaintiff was supposed to have equal access to a wide audience to promote its messages,
27 and it was in reliance on Defendants’ representations to “help you grow,” “discover what works best
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1 for you,” and “giv[e] you tools, insights and best practices for using your voice and videos,” that it
2 chose YouTube as the host of its videos. Also pursuant to those agreements, it was entitled to some
3 portion of the profits that Defendants were making from Plaintiff’s content. Instead,
4 Google/YouTube have, by the acts and omissions complained of herein, intentionally and tortiously
5 breached the implied covenant of good faith and fair dealing by unfairly interfering with Plaintiff’s
6 rights to receive the benefits of those contracts.

7 113. The foregoing acts and omissions were engaged in by Defendants with the knowledge
8 that they were bound to act consistently with the covenant of good faith and fair dealing. Those acts
9 and omissions were not only failures to act fairly and in good faith, but they were acts of oppression,
10 fraud, and malice.

11 114. As a direct and proximate result of the aforementioned conduct of Defendants,
12 Plaintiff has suffered, and continues to suffer, immediate and irreparable injury in fact, including lost
13 income, reduced viewership, and damage to brand, reputation, and goodwill, for which there exists no
14 adequate remedy at law.

15 **SIXTH CAUSE OF ACTION**

16 **(Lanham Act—15 U.S.C. § 1125 et seq.)**

17 115. Plaintiff realleges and incorporates herein by reference, as though set forth in full, each
18 of the allegations set forth in paragraphs through 1 through 114 above.

19 116. Google/YouTube are engaged in interstate commerce and competition through
20 hosting, creating, advertising, and soliciting and receiving revenue for advertising, video streaming
21 services on YouTube.com. In addition, Google/YouTube compete with content creators like Plaintiff
22 in the market of online video streaming by creating, hosting, and promoting their own video content.

23 117. Defendants engage in a pattern and practice of knowingly misleading and deceptive
24 advertisement and unfair competition. Defendants advertise YouTube, as a word, term, name,
25 symbol, and device, as a forum for open expression by diverse speakers. Defendants unfairly and
26 deceptively misrepresent the nature, characteristics, and qualities of YouTube’s services and
27 commercial activities as an equal and diverse public forum. Defendants likewise unfairly enhance the
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1 image and goodwill of their content, while degrading Plaintiff and its videos by suggesting that
2 Plaintiff and its speech are offensive, hateful, or inappropriate.

3 118. Defendants' false representations and unfair competition deceived, and had a tendency
4 to deceive, substantial segments of Defendants' audiences, including content creators like Plaintiff,
5 viewers, and advertisers, who are induced to traffic and do business with YouTube, and to view (or
6 not view) particular videos. As a direct and proximate result of Defendants' actions complained of
7 herein, Plaintiff has suffered, and continues to suffer, immediate and irreparable injury in fact,
8 including in the form of lower viewership, decreased ad revenue, a reduction in advertisers willing to
9 purchase advertisements shown on Plaintiff's videos, diverted viewership, and damage to its brand,
10 reputation and goodwill.

11 119. Defendants' wrongful actions were taken with oppression, fraud and/or malice.
12 PragerU has repeatedly attempted to remedy the situation, and Defendants have repeatedly refused to
13 unrestrict or re-monetize Plaintiff's videos. And not once have Defendants articulated any reason for
14 their differential treatment. Their treatment of videos like those of PragerU's is part of their normal
15 course of business, effectuated through both the Google/YouTube algorithms as well as their agents
16 manually reviewing Plaintiff's videos and appeals.

17 **SEVENTH CAUSE OF ACTION**

18 **(Declaratory Relief)**

19 120. Plaintiff realleges and incorporates herein by reference, as though set forth in full, each
20 of the allegations set forth in paragraphs through 1 through 119 above.

21 121. An actual controversy exists between Plaintiff and Defendants as to whether
22 Defendants' policies and procedures, and their application thereof, violate the Unruh Civil Rights
23 Act, the Lanham Act, and the California and federal constitutions. The correct interpretation is that
24 Defendants' policies and procedures, facially and as applied, violate the Unruh Act, the Lanham Act,
25 and violate Plaintiff's speech and association rights under both the California and United States
26 constitutions.

27 122. Unless the court issues an appropriate declaration of rights, the parties will not know
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1 whether Defendants' policies and procedures, and Defendants' application of their policies and
2 procedures, comply with the law, including the federal and state constitutions, and there will continue
3 to be disputes and controversy surrounding Defendants' policies and procedures and application
4 thereof.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

7 1. For a declaratory judgment that Defendants have violated and continue to violate
8 PragerU's free speech rights, both facially and as applied, under the First Amendment of the United
9 States Constitution, and/or Article I, section 2 of the California Constitution;

10 2. For an injunction requiring Defendants to (i) cease and desist from capriciously
11 restricting, demonetizing, or otherwise censoring any content of PragerU videos uploaded to the
12 YouTube site and (ii) from censoring or restricting speech based on their unfettered discretion or the
13 use or application of arbitrary, capricious, vague, unspecified, or subjective criteria guidelines;

14 3. For compensatory, special, and statutory damages in an amount to be proven at trial,
15 including statutory damages pursuant to, *inter alia*, Civil Code § 51, 51.5, 52, Civil Procedure Code §
16 1021.5, 15 U.S.C. § 1117, 42 U.S.C. §§ 1981, 1983;

17 4. A civil penalty of \$2,500 for each violation pursuant to Business and Professions Code
18 §§ 17200, 17206, and 17536;

19 5. For punitive damages and exemplary damages in an amount to be proved at trial;

20 6. For restitution of financial losses or harm caused by Defendants conduct and in an
21 amount to be proven at trial;

22 7. Attorney's fees and costs of suit;

23 8. For prejudgment and post-judgment interest; and

24 9. For any and all other relief that the Court deems just and proper.

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