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19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**

21 MERCOLA.COM, LLC and Dr. JOSEPH)
22 MERCOLA,)

23 Plaintiffs,)

24 vs.)

25 GOOGLE LLC, YOUTUBE, LLC, ALPHABET)
26 INC., and DOES 1-10,)

27 Defendants.)

Case No.:

COMPLAINT FOR CONTRACT BREACH

TRIAL BY JURY DEMANDED

1 Plaintiff MERCOLA.COM, LLC and Dr. JOSEPH MERCOLA (collectively, “Mercola”)
2 bring this action against GOOGLE LLC, YOUTUBE, LLC, and ALPHABET INC. (collectively,
3 “YouTube”) for breach of terms of contract, and seeks damages, specific performance, and restitution.
4 YouTube, an online video sharing and social media platform, breached a contract with Mercola, a
5 provider of video content to the platform. In violation of the contract’s terms, YouTube unilaterally
6 amended the contract without notice and used this amendment to remove Mercola’s video content,
7 causing ongoing harm to Mercola. In addition, YouTube has converted Mercola’s intellectual
8 property and unjustly retained a benefit bestowed by Mercola. In support of its Complaint, Mercola
9 alleges as follows, based on its own experience and upon information and belief:

10 **PARTIES**

11 1. Defendant YouTube is an online video sharing and social media platform on which
12 users can watch, like, share, comment on, and upload videos.

13 2. YouTube is based in San Bruno, California, incorporated in Delaware, and since 2006,
14 owned by technology giant Google LLC, a subsidiary of Alphabet Inc. Since its founding in 2005,
15 YouTube has grown to the United States’ most popular video-sharing site and the second-most widely
16 accessed site, behind only the Google search engine.

17 3. Google LLC is a multinational technology company, incorporated in Delaware, and
18 headquartered in California.

19 4. Alphabet Inc. is a multinational technology conglomerate holding company,
20 incorporated in Delaware, and headquartered in California.

21 5. Plaintiff Mercola.com, LLC is a website which promotes natural health and provides
22 health articles, optimal wellness products, medical news, and a free newsletter from Dr. Joseph
23 Mercola, a board-certified physician and leader in the field of natural health.

24 6. Mercola.com, LLC’s predecessor organization was founded in 1997 by Dr. Joseph
25 Mercola, and Mercola.com LLC was incorporated in 2007. Mercola is headquartered in Cape Coral,
26 Florida and incorporated in Delaware.

1 **FACTUAL ALLEGATIONS**

2 **BACKGROUND**

3 7. YouTube houses billions of videos. Any user can upload video content, but doing so
4 is subject to an agreement, the terms of which are drafted by YouTube and must be accepted,
5 unaltered, by users.

6 8. The agreement as drafted by YouTube incorporates three separate components:
7 YouTube’s (1) Terms of Service, (2) Community Guidelines, and (3) Policy, Safety and Copyright
8 Policies. Those three agreements, collectively, are defined by YouTube as the “Agreement”: “Your
9 use of the Service is subject to these terms, the YouTube Community Guidelines and the Policy,
10 Safety and Copyright Policies which may be updated from time to time (together, this ‘Agreement’).”¹
11 This Complaint also refers to the three separate components—the Terms of Service, the Community
12 Guidelines, and the Policy, Safety and Copyright Policies—as the “Agreement” between YouTube
13 and its users, including Mercola.

14 9. Mercola was an early user of YouTube and began sharing video content in or around
15 2005, the year YouTube was founded.

16 10. As of September 2021, Mercola had more than 300,000 subscribers to its YouTube
17 channel, and its video content had garnered 50,000,000 or more separate views. These numbers are
18 approximations because, as set forth in this Complaint, Mercola has been unable to access its account
19 or its own content on the YouTube platform since September 29, 2021.

20 11. Mercola’s video content on YouTube is professionally produced and edited, and
21 constitutes valuable intellectual property.

22 12. Throughout its time on the platform, Mercola was conscientious to abide by the
23 Community Guidelines governing content on YouTube. For example, when in April 2021, YouTube
24 updated its policy governing what it deemed “COVID-19 misinformation” and “COVID-19 vaccine
25 info,” Mercola carefully avoided posting any content that mentioned COVID-19 vaccines or
26

27 ¹ This quotation, along with other quotations in this Complaint (unless otherwise noted), is taken from YouTube’s Terms
28 of Service effective March 17, 2021 through January 5, 2022, which encompasses the September 2021 events at issue in
this lawsuit.

1 discussed the COVID-19 outbreak in a manner that YouTube might determine was out of line with
2 official government positions on COVID-19, whether from the Centers for Disease Control and
3 Prevention or elsewhere.

4 13. From 2005 through September 28, 2021, Mercola never received any notice from
5 YouTube that it had posted harmful or dangerous content or had in any other manner violated
6 YouTube’s Community Guidelines. Mercola was an upstanding member of the YouTube community.

7 **SEPTEMBER 29, 2021**

8 14. In a letter dated August 25, 2021 and posted on YouTube under the title “Tackling
9 Misinformation on YouTube,” which remains available today, YouTube’s Chief Product Officer Neal
10 Mohan admits that an overly aggressive approach toward removal of content chills free speech, and
11 that content should not be taken down for political reasons: “An overly aggressive approach towards
12 removals would also have a chilling effect on free speech. Removals are a blunt instrument, and
13 if used too widely, can send a message that controversial ideas are unacceptable. We’re seeing
14 disturbing new momentum around governments ordering the takedown of content for political
15 purposes. And I personally believe we’re better off as a society when we can have an open
16 debate.”²

17 15. At 9:00 am EDT on September 29, 2021, *The Washington Post* published an article
18 titled “YouTube is banning Joseph Mercola and a handful of other anti-vaccine activists.”³ The article
19 begins this way:

20 YouTube is taking down several video channels associated with high-profile
21 anti-vaccine activists including Joseph Mercola

22 As part of a new set of policies aimed at cutting down on anti-vaccine content
23 on the Google-owned site, YouTube will ban any videos that claim that commonly
24 used vaccines approved by health authorities are ineffective or dangerous. The
25 company previously blocked videos that made those claims about coronavirus
26 vaccines, but not ones for other vaccines like those for measles or chickenpox.

26 ² Neal Mohan, *Perspective: Tackling Misinformation on YouTube*, YouTube Official Blog, (Aug. 25, 2021),
27 <https://blog.youtube/inside-youtube/tackling-misinfo/>.

28 ³ Gerrit De Vynck, *YouTube is banning prominent anti-vaccine activists and blocking all anti-vaccine content*, *The Washington Post*, <https://www.washingtonpost.com/technology/2021/09/29/youtube-ban-joseph-mercola/> (last visited September 28, 2022).

1 This article was the first time Mercola learned of a YouTube “ban” on videos with vaccine content.

2 16. Six minutes later, at 9:06 am EDT, Mercola received an email⁴ from YouTube stating
3 that the Mercola channel was de-platformed and banned—not particular videos, as stated in the
4 *Washington Post* article, but the entire channel and all Mercola videos, regardless of whether they
5 contained any vaccine-related content.

6 17. The purported ground for the action was a violation of YouTube’s Community
7 Guidelines, which were newly amended, in a material alteration, to add a policy on “vaccine
8 misinformation.”⁵ This new policy, unlike previous policies regarding COVID-19 or COVID-19
9 vaccines, purports to ban “harmful misinformation” about *any* “currently approved and administered
10 vaccines.”

11 18. On information and belief, the material change to YouTube’s Community Guidelines
12 had been underway for some time, and YouTube had worked with a reporter from *The Washington*
13 *Post* to create an article, which appears to have been embargoed until the morning of September 29,
14 in order to avoid giving any opportunity for Mercola (or anyone else affected by the changes) to
15 review or question the modified guidelines.

16 19. Mercola was neither informed of nor given any opportunity to review the amendment
17 of the Community Guidelines before the actions described herein were taken.

18 20. Mercola received no warning of harmful content before the actions described herein
19 were taken and had never previously been notified of a “strike” for any violation of Community
20 Guidelines.

21 21. Mercola was given no opportunity to move its 15+ years of video content to another
22 platform.

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27 ⁴ At the time of this Complaint, a copy of the email from YouTube to Mercola is unavailable to attach, due to a hacker
attack on Mercola’s servers.

28 ⁵ YouTube Help, *Vaccine misinformation policy*, Google, <https://support.google.com/youtube/answer/11161123?hl=en>
(last visted Sept. 28, 2022).

1 22. The communication to Mercola did not specify what content from its channel was in
2 violation of the Community Guidelines or deemed harmful, only that the entire channel was de-
3 platformed.

4 23. Also on September 29, 2021, YouTube posted an article under NEWS & EVENTS on
5 its website titled, “Managing harmful vaccine content on YouTube.”⁶ The author of the article is listed
6 as “The YouTube Team.”

7 24. The article states that YouTube has issued new “guidelines”: “Today, we're
8 expanding our medical misinformation policies on YouTube with new guidelines on currently
9 administered vaccines that are approved and confirmed to be safe and effective by local health
10 authorities and the WHO.” The new “guidelines,” which were linked in the article, amended
11 YouTube’s Community Guidelines.

12 25. The article further states that YouTube made this previously unannounced change to
13 the Community Guidelines in conjunction with “authorities,” presumably government and
14 administrative officials: “Working closely with health authorities, we looked to balance our
15 commitment to an open platform with the need to remove egregious harmful content. . . . As with
16 our COVID guidelines, we consulted with local and international health organizations and experts
17 in developing these policies.”

18 26. To this day, Mercola has been unable to re-access its account or any of its video content
19 on the YouTube platform.

20 27. To this day, Mercola has received no notification as to what content on its channel was
21 deemed harmful by YouTube or the unknown governmental authorities with whom YouTube works.

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27 ⁶ The YouTube Team, Managing harmful vaccine content on YouTube, YouTube Official Blog, (Sept. 29, 2021),
28 <https://blog.youtube/news-and-events/managing-harmful-vaccine-content-youtube/>
[<https://web.archive.org/web/20210929141259/https://blog.youtube/news-and-events/managing-harmful-vaccine-content-youtube/>].

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RELEVANT CONTRACT PROVISIONS

28. As set forth *supra*, YouTube defines its Agreement with users to include three separate components: the Terms of Service; the Community Guidelines; and the Policy, Safety and Copyright Policies.

Modification of Agreement

29. In a section titled “About This Agreement,” YouTube’s Terms of Service in effect in September 2021⁷ state that YouTube “will provide reasonable advance notice of any material modifications to this Agreement and the opportunity to review them”:

Modifying this Agreement

We may modify this Agreement, for example, to reflect changes to our Service or for legal, regulatory, or security reasons. YouTube will provide reasonable advance notice of any material modifications to this Agreement and the opportunity to review them, except that modifications addressing newly available features of the Service or modifications made for legal reasons may be effective immediately without notice. Modifications to this Agreement will only apply going forward. If you do not agree to the modified terms, you should remove any Content you have uploaded and discontinue your use of the Service.

Because the Agreement includes the Community Guidelines, YouTube contractually committed itself to provide reasonable advance notice and opportunity to review any material modifications to the Community Guidelines.

30. Per this provision, the only modifications to Community Guidelines that could be made effective immediately, without notice, were those “addressing newly available features of the Service or modifications made for legal reasons.”

31. Per this provision, any user not agreeing to the modified terms should, during the review period, have the opportunity to remove any content it housed on the YouTube platform.

32. YouTube violated this provision when, on September 29, 2021, it unilaterally made material modifications to the Community Guidelines, effective immediately, with no reasonable advance notice or opportunity for Mercola to review the changes.

⁷ *Terms of Service*, YouTube, <https://www.youtube.com/t/terms?archive=20210317> (last visited Sept. 28, 2022).

1 33. YouTube violated this provision when, on September 29, 2021, it de-platformed
2 Mercola’s channel and immediately denied Mercola further access to its account, including any
3 opportunity to remove its own content, which includes more than 15 years’ worth of professionally
4 produced videos.

5 **“Three Strikes” Warning Policy**

6 34. The Community Guidelines, which are part of YouTube’s Agreement with users,
7 include a “three-strike” policy that offers notice and opportunity to cure breaches before any
8 termination of account⁸:

9 **Community Guidelines strike basics on YouTube**

10 Community Guidelines are the rules of the road for how to behave on YouTube. If
11 your content violates our Community Guidelines, your channel will get a strike.

12 [. . .]

13 **What happens when you get a strike**

14 When you get a strike, you’re told via email. You can also choose to have notifications
15 sent to you through your mobile and computer notifications, and in your channel
16 settings. We’ll also tell you:

- 16 • What content was removed
- 17 • Which policies it violated (for example harassment or violence)
- 18 • How it affects your channel
- 19 • What you can do next

19 If your content violates our Community Guidelines, here’s how it affects your channel:

20 **Warning**

21 We understand mistakes happen and you don’t mean to violate our policies—that’s
22 why the first violation is typically only a warning. You only get one warning, and this
23 warning remains on your channel. The next time your content is found to violate the
24 Community Guidelines, you’ll get a strike. Sometimes a single case of severe abuse
25 will result in channel termination without warning. If you think we made a mistake,
26 you can appeal the warning.

26 ⁸ The quoted portions herein are from YouTube’s Community Guidelines as currently posted, *see* YouTube Help,
27 *YouTube’s Community Guidelines*, Google, <https://support.google.com/youtube/answer/9288567> (last visited Sept. 28,
28 Help, *Community Guidelines strike basics on YouTube*, Google, <https://support.google.com/youtube/answer/2802032?hl=en> (last visited Sept. 28, 2022).

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First Strike

If we find your content doesn't follow our policies for a second time, you'll get a strike.

This strike means you will not be allowed to do the following for 1 week:

- Upload videos, live streams, or stories
- Start a scheduled live stream
- Schedule a video to become public
- Create a Premiere
- Add a trailer to an upcoming Premiere or live stream
- Create custom thumbnails or Community posts
- Create, edit, or add collaborators to playlists
- Add or remove playlists from the watch page using the "Save" button

Your scheduled public content is set to "private" for the penalty period duration. You have to reschedule it when the freeze period ends.

After the 1-week period, we restore full privileges automatically, but the strike remains on your channel for 90 days.

Second Strike

If you get a second strike within the same 90-day period as your first strike, you will not be allowed to post content for 2 weeks. If there are no further issues, after the 2-week period, we restore full privileges automatically. Each strike will not expire until 90 days from the time it was issued.

Third Strike

3 strikes in the same 90-day period results in your channel being permanently removed from YouTube. Each strike will not expire until 90 days from the time it was issued.

35. When YouTube announced its new "vaccine misinformation policy,"⁹ YouTube made the "three strikes" warning policy specifically applicable to "vaccine misinformation":

What happens if content violates this policy

If your content violates this policy, we'll remove the content and send you an email to let you know. If this is your first time violating our Community Guidelines, you'll likely get a warning with no penalty to your channel. If it's not, we may issue a strike against your channel. If you get 3 strikes within 90 days, your channel will be terminated. You can learn more about [our strikes system here](#).

⁹ See *supra* note 5.

1 We may terminate your channel or account for repeated violations of the Community
2 Guidelines or Terms of Service. We may also terminate your channel or account after
3 a single case of severe abuse, or when the channel is dedicated to a policy violation.
4 You can learn more about channel or account terminations here.

5 36. Both the “three strikes” warning policy and the “vaccine misinformation policy” are
6 part of YouTube’s Community Guidelines, and therefore incorporated into YouTube’s Agreement
7 with users, including Mercola.

8 37. The reason given by YouTube to Mercola on September 29, 2021 for termination of
9 its account was violation of YouTube’s Community Guidelines.

10 38. The only exception to the “three strikes” warning policy, as stated either there or in
11 the “vaccine misinformation policy,” is for a case of “severe abuse.”

12 39. Mercola has never been informed of any “severe abuse” that it committed of
13 YouTube’s policies. Nor could Mercola have committed any “severe abuse” of a policy not previously
14 announced or in effect, and which Mercola has no opportunity to review or even be made aware of.

15 40. YouTube violated its Agreement, specifically the “three strikes” warning policy and
16 the “vaccine misinformation policy,” when it summarily terminated Mercola’s entire channel and
17 denied Mercola access to its account without any warning.

18 41. YouTube violated its Agreement, specifically the “three strikes” warning policy and
19 the “vaccine misinformation policy,” when it failed to inform Mercola of what removed content
20 violated which policies, and why additional content was removed.

21 **LIMITATION ON LIABILITY**

22 42. YouTube’s Terms of Service, part of its Agreement with users, purports to incorporate
23 broad restrictions on its liability:

24 **Limitation of Liability**

25 EXCEPT AS REQUIRED BY APPLICABLE LAW, YOUTUBE, ITS AFFILIATES,
26 OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS WILL NOT BE RESPONSIBLE
27 FOR ANY LOSS OF PROFITS, REVENUES, BUSINESS OPPORTUNITIES,
28 GOODWILL, OR ANTICIPATED SAVINGS; LOSS OR CORRUPTION OF DATA;
INDIRECT OR CONSEQUENTIAL LOSS; PUNITIVE DAMAGES CAUSED BY:

1. ERRORS, MISTAKES, OR INACCURACIES ON THE SERVICE;

- 1 2. PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM
2 YOUR USE OF THE SERVICE;
- 3 3. ANY UNAUTHORIZED ACCESS TO OR USE OF THE SERVICE;
- 4 4. ANY INTERRUPTION OR CESSATION OF THE SERVICE;
- 5 5. ANY VIRUSES OR MALICIOUS CODE TRANSMITTED TO OR
6 THROUGH THE SERVICE BY ANY THIRD PARTY;
- 7 6. ANY CONTENT WHETHER SUBMITTED BY A USER OR
8 YOUTUBE, INCLUDING YOUR USE OF CONTENT; AND/OR
- 9 7. THE REMOVAL OR UNAVAILABILITY OF ANY CONTENT.

9 THIS PROVISION APPLIES TO ANY CLAIM, REGARDLESS OF WHETHER THE
10 CLAIM ASSERTED IS BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER
11 LEGAL THEORY.

11 YOUTUBE AND ITS AFFILIATES' TOTAL LIABILITY FOR ANY CLAIMS ARISING
12 FROM OR RELATING TO THE SERVICE IS LIMITED TO THE GREATER OF: (A) THE
13 AMOUNT OF REVENUE THAT YOUTUBE HAS PAID TO YOU FROM YOUR USE OF
14 THE SERVICE IN THE 12 MONTHS BEFORE THE DATE OF YOUR NOTICE, IN
15 WRITING TO YOUTUBE, OF THE CLAIM; AND (B) USD \$500.

15 43. This action does not rest upon any of the seven categories enumerated in the first
16 paragraph of this "Limitation on Liability," *i.e.*, (1) errors, mistakes, or inaccuracies on the Service;
17 (2) personal injury or property damage resulting from use of the Service; (3) unauthorized access to
18 or use of the Service; (4) interruption or cessation of the Service; (5) viruses or malicious code
19 transmitted to or through the Service by any third party; (6) content whether submitted by a user or
20 YouTube, including Mercola's use of content; or (7) removal or unavailability of any content. Instead,
21 this action concern's YouTube's violation of its own unilaterally drafted and imposed Agreement
22 with users.

23 44. YouTube's limitation of liability, as stated in its Terms of Service (a part of the
24 Agreement), does not apply to an action for YouTube's breach of its contract with Mercola.

25 45. In the event any component of this limitation did apply to this action, which it does
26 not, it would serve only (in theory) to cap the damages available to Mercola, and would not affect the
27 amount in controversy.

VENUE AND JURISDICTION

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2 46. YouTube, LLC is headquartered in San Bruno, California, which serves as the
3 corporation’s nerve center and principle place of business.

4 47. Google LLC is headquartered in Mountain View, California, which serves as the
5 corporation’s nerve center and principle place of business.

6 48. Alphabet Inc. is headquartered in Mountain View, California, which serves as the
7 corporation’s nerve center and principle place of business.

8 49. Mercola.com, LLC is incorporated in Delaware and headquartered in Florida, which
9 serves as the corporation’s nerve center and principle place of business.

10 50. Dr. Joseph Mercola is a resident of Florida.

11 51. YouTube’s Terms of Service, both the version currently in effect and the version in
12 effect on September 29, 2021, state: “All claims arising out of or relating to these terms or the Service
13 will be governed by California law, except California’s conflict of laws rules, and will be litigated
14 exclusively in the federal or state courts of Santa Clara County, California, USA. You and YouTube
15 consent to personal jurisdiction in those courts.”

16 52. By these terms, YouTube has consented to the jurisdiction of this Court.

17 53. By filing this action, Mercola consents to the jurisdiction of this Court.

18 54. Federal diversity jurisdiction exists pursuant to 28 U.S.C. § 1332, because (1) the
19 amount in controversy, which includes 15+ years worth of professionally produced videos and harm
20 to Mercola’s interests, exceeds \$75,000, and (2) Plaintiffs Mercola.com, LLC and Dr. Joseph Mercola
21 are citizens of Florida while Defendant YouTube, LLC is a citizen of California.

22 55. On information and belief, the actions that underlie this Complaint were taken by
23 YouTube at its headquarters in San Bruno, California. On that basis, this action is properly venued in
24 this Court.

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CAUSES OF ACTION

COUNT I

BREACH OF CONTRACT

MATERIAL MODIFICATION OF AGREEMENT WITHOUT NOTICE

(against all Defendants and DOES 1 -10)

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56. Plaintiff Mercola hereby realleges and incorporates each of the above paragraphs as if fully set forth herein.

57. As a user of YouTube services, Mercola was party to a contract with YouTube, known in YouTube's terminology as the Agreement.

58. The Agreement includes three separate components: the Terms of Service; the Community Guidelines; and the Policy, Safety and Copyright Policies.

59. The Agreement was in effect before and on September 29, 2021.

60. Through the Terms of Service provision titled "Modifying this Agreement," YouTube contractually committed itself to provide reasonable advance notice and opportunity to review any material modifications to the Community Guidelines. The only modifications to Community Guidelines that could be made effective immediately, without notice, were those "addressing newly available features of the Service or modifications made for legal reasons."

61. Through the contract provision titled "Modifying this Agreement," any user not agreeing to the modified terms should, during the review period, have the opportunity to remove any content it housed on the YouTube platform.

62. YouTube violated this provision when, on September 29, 2021, it unilaterally made material modifications to the Community Guidelines, made them effective immediately, and offered Mercola no reasonable advance notice or opportunity to review the changes.

63. YouTube violated this provision when, on September 29, 2021, it terminated Mercola's channel and immediately denied Mercola further access to its account, including any opportunity to access the content it housed on the platform.

COUNT II
BREACH OF CONTRACT
VIOLATION OF “THREE-STRIKE” WARNING POLICY
(against all Defendants and DOES 1 -10)

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4 64. Plaintiff Mercola hereby realleges and incorporates each of the above paragraphs as if
5 fully set forth herein.

6 65. As a user of YouTube services, Mercola was party to a contract with YouTube, known
7 in YouTube’s terminology as the Agreement.

8 66. The Agreement includes three separate components: the Terms of Service; the
9 Community Guidelines; and the Policy, Safety and Copyright Policies.

10 67. The Agreement was in effect before and on September 29, 2021.

11 68. The Community Guidelines, which are part of YouTube’s Agreement with users,
12 include a “three-strike” policy, by which YouTube contractually commits itself to provide multiple
13 notices of any violation of the Community Guidelines, and opportunity to cure, before any termination
14 of a user’s channel or account.

15 69. This “three-strike” policy is specifically incorporated into the change to Community
16 Guidelines that YouTube made on September 29, 2021.

17 70. YouTube’s Agreement with users, including Mercola, provides only one exception to
18 the “three-strike” policy, which is for “severe abuse.”

19 71. Mercola has never committed any “severe abuse” of Mercola’s policies, nor violated
20 any published Community Guideline in effect under the terms of the Agreement.

21 72. YouTube violated its Agreement, specifically the “three strikes” warning policy and
22 the “vaccine misinformation policy,” when it summarily terminated Mercola’s entire channel and
23 denied Mercola access to its account and content without any warning.

24 73. YouTube violated its Agreement, specifically the “three strikes” warning policy and
25 the “vaccine misinformation policy,” when it failed to inform Mercola of what removed content
26 violated which policies, and why additional content was removed.
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COUNT III
SPECIFIC PERFORMANCE

(against all Defendants and DOES 1 -10)

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4 74. Plaintiff Mercola hereby realleges and incorporates each of the above paragraphs as if
5 fully set forth herein.

6 75. YouTube entered into a valid and binding contract with users, including Mercola. This
7 contract is known, in YouTube’s terminology, as the Agreement.

8 76. The Agreement consists of definite and certain terms, which are written and
9 incorporate separate components: the Terms of Service; the Community Guidelines; and the Policy,
10 Safety and Copyright Policies.

11 77. The Agreement confers mutuality of obligation—including, for Mercola, an
12 obligation to provide users with reasonable advance notice and an opportunity to review any
13 modifications to the Agreement—and of remedy, which is recognized, *inter alia*, in the Agreement’s
14 provision for claims and litigation.

15 78. The Agreement as a whole, without regard to specific terms, is free from fraud and
16 overreaching, and has been supported by adequate consideration, from Mercola in the uploading of
17 content and from YouTube in the display of that content.

18 79. At all relevant times, Mercola has performed its responsibilities under the Agreement.

19 80. With its actions on September 29, 2021 and thereafter, YouTube has failed to abide
20 by the Agreement.

21 81. YouTube’s actions have denied Mercola continued access to the content it uploaded
22 to YouTube in good faith per the terms of the Agreement.

23 82. The content uploaded by Mercola to YouTube is unique and valuable. No adequate
24 remedy at law exists for Mercola’s loss of access to that content.

25 83. Mercola is entitled to specific performance of the contract, in the form of (1) ongoing
26 use of the platform, its channel, and its account, and (2) opportunity to review changes to the
27 Agreement, and during that time, to remove any content from the platform.

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COUNT IV
UNJUST ENRICHMENT

(against all Defendants and DOES 1 -10)

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4 84. Plaintiff Mercola hereby realleges and incorporates each of the above paragraphs as if
5 fully set forth herein.

6 85. Over some 15 years, Mercola uploaded professionally produced video content to
7 YouTube, which generated 50 million or more visits to the YouTube platform, at great benefit to
8 YouTube, which was able to increase advertising revenue on the site, among other advantages.

9 86. On September 29, 2021, summarily and without warning, YouTube terminated
10 Mercola's account and denied Mercola further access to the video content, including the opportunity
11 to transfer the content to another platform.

12 87. Through the showing of Mercola's content, and attraction of users therewith, YouTube
13 received a benefit from Mercola. The possession and ability to display Mercola's video content is a
14 benefit.

15 88. Mercola has unjustly retained this benefit, at the expense of Mercola, which is denied
16 the access and use of its own video content.

17 89. YouTube has access to Mercola's video content, which it has denied Mercola the
18 opportunity to retrieve. Mercola has not consented to YouTube's unilateral access to this property,
19 through which YouTube has harmed Mercola.

20 90. YouTube has been unjustly benefitted at Mercola's expense.

COUNT V
CONVERSION

(against all Defendants and DOES 1 -10)

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23 91. Plaintiff Mercola hereby realleges and incorporates each of the above paragraphs as if
24 fully set forth herein.

25 92. Over some 15 years, Mercola uploaded professionally produced video content to
26 YouTube, which generated 50 million or more visits to the YouTube platform. Mercola is the rightful
27 owner of this video content, which is valuable intellectual property.
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1 93. Through its own wrongful conduct on September 29, 2021 and thereafter, YouTube
2 as converted Mercola's video content for YouTube's exclusive access and use in a manner that is
3 inconsistent with Mercola's property rights.

4 94. YouTube's conduct has resulted in harm to Mercola, in the form of loss of intellectual
5 property and professionally produced videos. As a result of this harm, Plaintiffs have incurred
6 damages in an amount to be proven at trial but is in excess of \$75,000.

7 **PRAYER FOR RELIEF**

8 Wherefore, plaintiffs pray for judgment and relief as follows:

9 95. For YouTube's specific performance on the Agreement, in a manner deemed
10 appropriate by the Court and including at least Mercola's access to its video content, the value of
11 which exceeds \$75,000;

12 96. For an injunction requiring YouTube to provide Mercola with access to its video
13 content, the value of which exceeds \$75,000;

14 97. For restitution to Mercola of the benefit by which YouTube was unjustly enriched,
15 which exceeds \$75,000;

16 98. For damages resulting from YouTube's wrongful acts as alleged herein;

17 99. For pre- and post-judgment interest;

18 100. For such other and further relief as the Court deems just and proper.

19 **JURY TRIAL DEMANDED**

20 101. Plaintiffs hereby demand a trial by jury

21 DATED: September 28, 2022

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24 P. Renée Wicklund
25 (SBN 200588, *pro hac vice* pending)
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Dated: September 28, 2022

JW HOWARD/ ATTORNEYS, LTD.

By: 

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