

CAUSE NO. _____

BENJAMIN BRODY,
Plaintiff

VS.

ELON MUSK,
Defendant

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§

IN DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

_____ DISTRICT COURT

PLAINTIFF'S ORIGINAL PETITION

Plaintiff BENJAMIN BRODY files this original petition against Defendant ELON MUSK and alleges as follows:

PRELIMINARY STATEMENT

1. Ben Brody, a 22-year-old recent college graduate, has been forced to bring this lawsuit due to the astonishingly reckless conduct of the wealthiest man on the planet.

2. In yet another example of Elon Musk's serial pattern of slander, he falsely told the world that Ben Brody participated in a violent street brawl on behalf of a neo-Nazi extremist group.

3. Musk also falsely stated that that Ben Brody's alleged participation in the extremist brawl meant the incident was probably a "false flag" operation to deceive the American public.

4. Musk made these ridiculously false and damaging accusations based on a tweet he had seen from an anonymous far-right extremist Twitter account. After

amplifying the claim for two days, Musk personally leveled these accusations against Ben Brody, and it has led to severe personal harassment and permanent damage to his reputation.

PARTIES

5. Plaintiff Benjamin Brody is an individual residing in Los Angeles County, California.

6. Defendant Elon Musk is an individual residing in Travis County, Texas.

JURISDICTION & VENUE

7. The damages sought in this case exceed the minimum jurisdictional limits of Travis County District Courts.

8. Venue is proper in Travis County, Texas, because a suit for damages for defamation may be brought in the county in which the Plaintiff resided at the time of the accrual of the cause of action, or in the county in which a defendant resided at the time of filing, or the domicile of any corporate defendant, at the election of the plaintiff. *See* Tex. Civ. Prac. & Rem. Code §15.017.

BACKGROUND: ELON MUSK'S PATTERN OF RECKLESS FALSE STATEMENTS, PROMOTION OF DISINFORMATION, AND DENIAL OF NEO-NAZI VIOLENCE

9. There was once a time when Elon Musk was a relatively reclusive billionaire, hesitant to embrace the spotlight and seemingly content to dream up new speculative ventures.

10. However, over the past several years, Musk has settled into a consistent pattern of making reckless false statements to the detriment of innocent third parties while fostering disinformation and denying neo-Nazi violence.

11. Musk's actions appear to be fueled by his ever-growing addiction to posting on Twitter, the social media platform he bought in 2022. Yet Musk's pattern of making false statements on Twitter has been apparent for quite some time.

I. Musk's SEC Settlement for False Statements.

12. In 2018, the SEC brought charges against Musk for intentionally misleading investors with tweets stating that he was considering taking Tesla private at \$420 a share and had secured funding. The tweets had no basis in fact, and the ensuing market chaos hurt investors. Musk and Tesla both agreed to pay \$20 million each to financial regulators, and Musk agreed to step down as the company's chairman under the settlement.¹ When later taunted by a Twitter user about the fine, Musk tweeted: "Worth it."² The SEC settlement now requires that Musk's tweets about Tesla finances must be preapproved by a securities lawyer employed by the company.³

II. Musk's "Cave Diver" Defamation Lawsuit.

13. Also in 2018, Musk faced a defamation lawsuit filed on behalf of Vernon Unsworth, a British cave diver living in Thailand who had criticized Musk's proposal for an improvised submarine to rescue a youth soccer team stuck in Tham Luang

¹ <https://www.sec.gov/news/press-release/2018-226>

² <https://twitter.com/elonmusk/status/1056012218897059841>

³ <https://apnews.com/article/musk-sec-tesla-twitter-ruling-31bfb1c67e83645e87dd48b3df80fbd6>

cave. In response, Musk had mocked Unsworth and called him “pedo guy.” When defending the lawsuit, Musk assured the Court that he did not mean the term literally. Instead, Musk testified that “By referring to Mr. Unsworth as ‘pedo guy,’ I did not intend to convey any facts or imply that Unsworth had engaged in acts of pedophilia.” Musk claimed “pedo guy” was merely “a common insult used in South Africa when I was growing up,” and not meant as a true-or-false statement. Yet Musk’s testimony was not honest. In a separate tweet, Musk had responded to criticism of his allegation against Unsworth by stating, “Bet ya a signed dollar it’s true.”



14. Fortunately for Musk, Unsworth was represented at trial by Lin Wood, who is now chiefly known for his predilection for incoherent QAnon mythology, including his delusional rants about adrenochrome and deep-state “psyops.” Ironically, many of Wood’s claims are exactly the kind of absurd “conspiracy” fodder Musk has been increasingly fond of promoting. Musk’s growing affinity for reckless fabulism became obvious during the early stages of the COVID pandemic, but it has

markedly intensified over the past year in a string of bizarre and unsettling incidents.

III. Musk's Promotion of Misinformation about the Attack on Paul Pelosi.

15. In October 2022, Musk cited a widely discredited conspiracy garbage website that alleged the brutal attack on Nancy Pelosi's husband was not carried out by an unhinged political blogger, but instead claimed the attacker was Mr. Pelosi's lover in a drunken dispute.

16. When video of the incident later emerged in January 2023, Musk stated that he had apologized to the Pelosi family. But Musk did not dispel the lie. In fact, he entertained it. In a tweet on January 28, 2023, Juanita Broaddrick stated: "Idiots on the left want @elonmusk to apologize to the Pelosis. For what? It is still a questionable and bizarre situation between two men in their underwear."⁴ Musk responded to the tweet, stating, "Nonetheless, I apologize."⁵ Frustrated with Musk's response, former Trump adviser A.J. Delgado replied, "They were not in their underwear. We know this BECAUSE WE HAVE THE VIDEO ... Why are you still doubling down?"⁶ Hundreds of other users expressed similar disgust at Musk's actions. One Twitter user told Musk, "You're disgusting ... You're still promoting disinformation while pretending to apologize for it."⁷ Another user stated, "That was about as convincing an apology as one from my ten-year-old daughter to her

⁴ <https://twitter.com/atensnut/status/1619372491801255936>

⁵ <https://twitter.com/elonmusk/status/1619415871902056449>

⁶ <https://twitter.com/AJDelgado13/status/1619648676150022146>

⁷ <https://twitter.com/thomasafine/status/1619460288629321728>

younger sister.”⁸ Another stated, “What a pathetic apology for spreading lies.”⁹ However, hundreds of Musk’s fans expressed the opposite opinion, claiming that Musk was correct about the attack.

IV. Musk’s Reckless Accusations of Child Sexual Abuse.

17. One impression Musk has often encouraged is that individuals with whom he disagrees have facilitated child sexual abuse. For example, in December 2022, he made these accusations against three members of Twitter’s Safety Council who resigned in protest of Musk’s actions, labeling their alleged facilitation of child sexual abuse as “a crime.”¹⁰ Musk also elevated a comment noting that one of the members who resigned is related to John Podesta, a figure in the 2016 Pizzagate pedophile hoax. “Small world,” Musk replied, implying it could all be connected.¹¹ Musk also made similar allegations involving pedophilia against Twitter executive Yoel Roth, leading a wave of antisemitic and homophobic abuse.¹²

V. Musk’s False Statements about Haraldur Thorleifsson.

18. On March 8, 2023, Musk falsely attacked Haraldur Thorleifsson, a Twitter employee with muscular dystrophy who was unsure if he had been laid off by Musk. In a series of tweets, Musk mocked Thorleifsson and falsely stated that he

⁸ <https://twitter.com/bdpoyant/status/1620062571763228676>

⁹ <https://twitter.com/floridaSkyp/status/1620216461863313411>

¹⁰ <https://twitter.com/elonmusk/status/1601275244710621184>

¹¹ <https://twitter.com/elonmusk/status/1601314726839193602>

¹²

<https://fortune.com/2023/02/09/twitter-files-yoel-roth-defamatory-tweet-elon-musk-homophobic-antisemitic-threats/>

“did no actual work, claimed as an excuse that he had a disability that prevented him from typing.”¹³ Musk later retracted his statements and admitted they were false.¹⁴

VI. Musk’s False Statements about the May 2023 Neo-Nazi Mass Shooting.

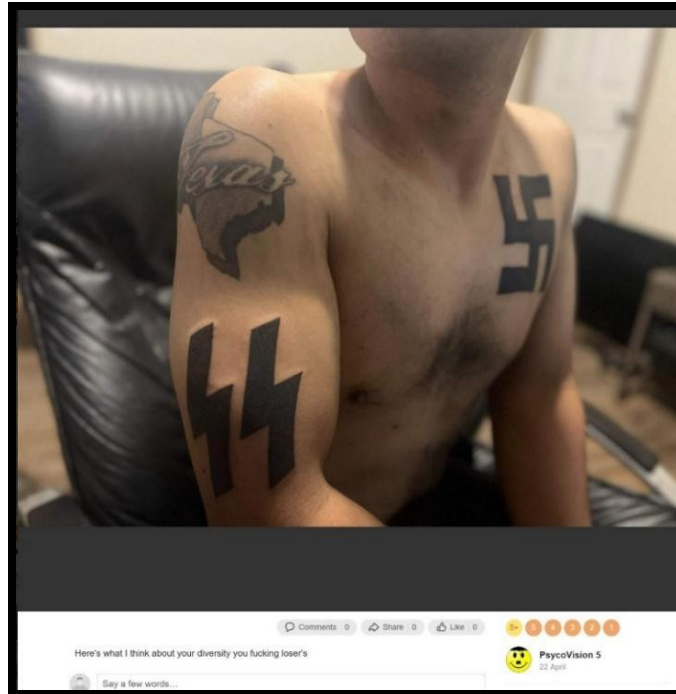
19. On May 6, 2023, a mass shooter killed eight people and wounded seven others at an outlet mall in Allen, Texas. The next day, *The New York Times* reported that law-enforcement sources stated the shooter showed signs of neo-Nazi sympathies and referenced far-right ideologies on a social media profile.

20. On May 8th, Aric Toler, a researcher for Bellingcat, revealed in a series of tweets that he had discovered the social media profile referenced by law enforcement by searching various platforms for the shooter’s birthday.¹⁵ The profile Toler located had verifiable evidence that the shooter operated the account, and it included photos of the shooter’s Nazi tattoos adorning his body, including one image captioned with “Here’s what I think about your diversity you fucking loser’s.”

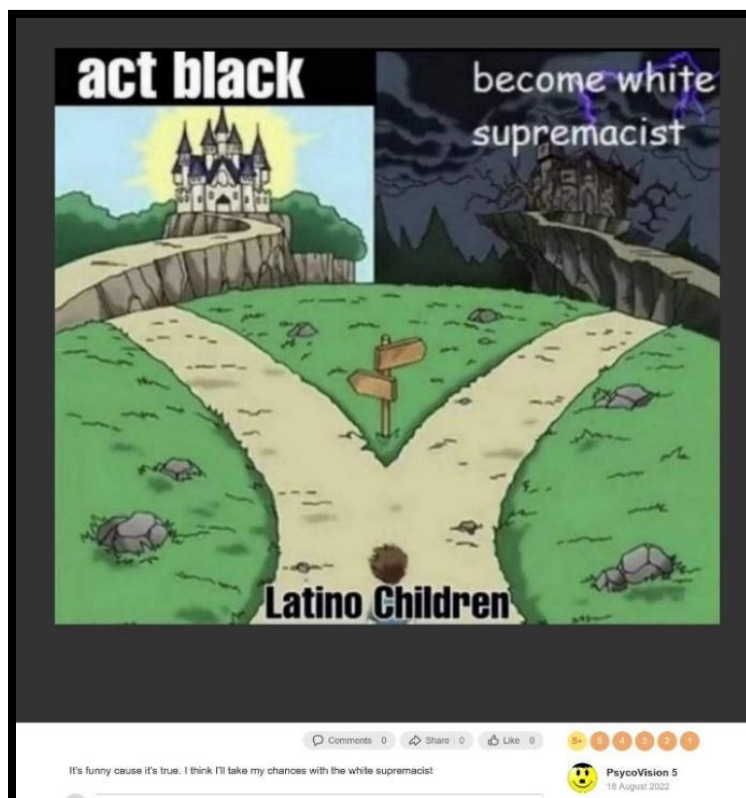
¹³ <https://www.cnn.com/2023/03/07/tech/elon-musk-twitter-employee-disability/index.html>

¹⁴ <https://twitter.com/elonmusk/status/1633253950198624257>

¹⁵ <https://twitter.com/AricToler/status/1655626460999155712>



21. The shooter's social media profile also included memes reflecting his affinity for white supremacy and far rightwing ideology, such as the following:



22. On the social media account, the shooter stated, “A lot of the stuff going on in fucking clown world. You better believe their would be we’ll convert your children drag queen story hour loser’s running around loose. No zog¹⁶ communist or liberal fake news media under Hitlers watch. Heil Hitler.”¹⁷

23. Elon Musk entered the discussion almost immediately. On May 7, 2023, verified Twitter user @WallStreetSilv quote-tweeted another verified Twitter user known as “The Redheaded libertarian” (@TRHofficial), who had tweeted a screenshot of a Washington Post article entitled “Gunman in Texas mall shooting may have had neo-Nazi beliefs.”¹⁸ A quote-tweet allows a user to reply to a tweet while placing it on their own account’s timeline for distribution to their followers, as well as sending a notification to the original user. A direct link to all quote-tweets is available at the bottom of every tweet. In the quoted tweet, Twitter user “The Redheaded libertarian” indicated sarcastic disbelief of the Washington Post story. In response, Twitter user @WallStreetSilv stated, “Now it is easier to discredit the legacy corporate media when they try to push a fake news narrative. Many accounts on Twitter version 2.0 are much larger than the obsolete news media. Without the censorship of Twitter version 1.0, the media doesn't have the same protection.” Musk responded by stating, “This platform is hell bent on being the least untrue source of information.”¹⁹

¹⁶ “ZOG” is a white supremacist acronym for “Zionist Occupied Government,” which reflects the common white supremacist belief that the U.S. government is controlled by Jews.

¹⁷ <https://twitter.com/AricToler/status/1655655306473488384>

¹⁸ <https://twitter.com/WallStreetSilv/status/1655313804660539393>

¹⁹ <https://twitter.com/elonmusk/status/1655316060508241924>

24. On May 8th, Musk responded to another tweet from “The Redheaded libertarian,” who stated, “It’s a Psyop and it’s not even good.”²⁰ Musk replied, “This gets weirder by the moment.”²¹

25. On May 8th, Musk responded to yet another tweet from “The Redheaded libertarian” that questioned whether the shooter, who was of Hispanic descent, could really be a neo-Nazi, and whether his account on a Russian social media website was legitimate.²² The tweet also asserted that Aric Toler was “a CIA operative.” Musk replied, “Very strange.”²³

26. On May 9th, Musk responded to yet another tweet by “The Redheaded libertarian,” this time containing a cartoon meme claiming that the Texas shooting was a “psyop.” In response, Musk stated, “Didn’t the story come from @bellingcat, which literally specializes in psychological operations? I don’t want to hurt their feelings, but this is either the weirdest story ever or a very bad psyop!”²⁴

27. On May 9th, the same day Musk tweeted his doubt about Aric Toler’s discovery of the shooter’s white supremacist and neo-Nazi affinities, Texas law enforcement reaffirmed that the shooter had neo-Nazi beliefs as confirmed by his social media account, patches on his clothing, and tattoos on his body. Despite all the contrary evidence, Musk doubled down on his denial about the shooter’s beliefs in a CNBC interview a week later. Musk stated, “I’m saying that I thought ascribing it to

²⁰ <https://twitter.com/TRHLOfficial/status/1655693811127918593>

²¹ <https://twitter.com/elonmusk/status/1655694121653137411>

²² <https://twitter.com/TRHLOfficial/status/1655794986502217729>

²³ <https://twitter.com/elonmusk/status/1655797123298869248>

²⁴ <https://twitter.com/elonmusk/status/1655977617583898637>

white supremacy was bullshit ... And, and that the information for that came from an obscure Russian website and was somehow magically found by Bellingcat, which is a company that does psyops ... [T]here's no proof that he is [a white supremacist] ... [W]e should not be ascribing things to white supremacy if there -- if it's false."²⁵ Musk was demonstrably, recklessly wrong.

VII. Musk's False Statements about Taylor Lorenz.

28. On May 18, 2023, as part of a long-running feud with Washington Post culture reporter Taylor Lorenz, Musk falsely asserted that Lorenz's uncle owns the Internet Archive "Wayback Machine" and deleted unfavorable information from the archive on her behalf.²⁶ This allegation was based on yet another tweet containing disinformation.

VIII. Musk's Alarming Favoritism to Conspiracy Peddler Dominick McGee.

29. On July 22, 2023, Dominick McGee, a conspiracy fantasy peddler who is known as "Dom Lucre" to his half-million followers on Twitter, posted a series of tweets about Peter Scully, an Australian man convicted for sexually abusing children. In the tweets, McGee posted images from a horrific video found on the dark web depicting Scully's abuse.²⁷ McGee told his followers that the child depicted in one of the images was a "one-year-old named Daisy."²⁸ McGee, who was previously praised by Musk for an absurdly inaccurate thread on the history of racial politics in

²⁵

<https://www.cnn.com/2023/05/16/cnn-exclusive-cnn-transcript-elon-musk-sits-down-with-cnns-david-faber-live-on-cnn-tonight-.html>

²⁶ <https://twitter.com/elonmusk/status/1659254437293039624>

²⁷ <https://www.vice.com/en/article/xgwa7z/twitter-elon-musk-dom-lucre-child-sexual-abuse>

²⁸ https://twitter.com/dom_lucre/status/1682888030552735744

America²⁹, is well known for his sensationalized tweets about child sexual abuse, presented in an alarmingly tawdry and distasteful manner, with no respect for the victims. Yet now McGee had openly posted actual images of child sexual abuse as outrage engagement bait.

30. Four days later, McGee's account was suspended with no announcement, causing significant anger among numerous right-wing influencers. In response to the controversy, Musk tweeted, "I'm told this account was suspended for posting child exploitation pictures associated with the criminal conviction of an Australian man in the Philippines."³⁰ However, in a bizarre twist, Musk reversed the suspension. Musk stated, "we will delete those posts and reinstate the account."³¹ Officially, Twitter has a "zero tolerance" policy towards material that features child sexual exploitation, which it calls "one of the most serious violations of the Twitter Rules,"³² but McGee's conspiracy-obsessed account was reactivated after intervention by Musk. Notably, McGee was among the first exclusive batch of users handpicked by Twitter to receive payment via its creator monetization program.³³

IX. Musk's Troubling History with Online Extremism.

²⁹ <https://twitter.com/elonmusk/status/1649372964926660615>

³⁰ <https://twitter.com/elonmusk/status/1684247923612057601>

³¹ <https://twitter.com/elonmusk/status/1684248597603155976>

Musk also stated, "Only people on our CSE team have seen those pictures." However, McGee's tweet remained visible for days prior to his suspension, and several screenshots of responses to his tweets also showed that many of the account's followers did in fact see the images.

³² <https://help.twitter.com/en/rules-and-policies/sexual-exploitation-policy>

³³ <https://mashable.com/article/x-twitter-linda-yaccarino-interview-illegal-content>

31. In addition to fostering and monetizing conspiracy nonsense, Musk's denial of neo-Nazi violence is particularly troubling given Twitter's complicated history with white-supremacist extremism on the platform and Musk's proximity to a series of controversies on this subject, often accompanied by Musk's frequent interactions with well-known bigots.

32. In one recent example, on August 8, 2023, multiple news outlets wrote about revelations that Richard Hanania, the director of rightwing think-tank Center for the Study of Partisanship and Ideology, had a secret career as "Richard Hoste," an identity he used to publish disgusting bigoted trash for white supremacist websites.³⁴ Later that evening, at 3:10 am, Elon Musk decided to start following Hanania³⁵, and the two have frequently interacted. The media coverage discussed how Hanania wrote tracts asserting that Black people are intellectually inferior, stating, "Telling a race with an IQ of 85 that they can do whatever they set their mind to is cruel ... The biggest enemies of the Black Man are not Klansmen or multinational corporations, but the liberals who have prevented an honest appraisal of his abilities and filled his head with myths about equality."³⁶ Hanania obsessed over "miscegenation," advocated for forced sterilization, and wrote repulsive rants

³⁴

<https://www.salon.com/2023/08/08/anti-woke-darling-richard-hanania-is-exposed-what-this-says-about-t-he-intellectual-right/>

³⁵ https://twitter.com/elon_alerts/status/1689187264478277632

³⁶

https://www.huffpost.com/entry/richard-hanania-white-supremacist-pseudonym-richard-hoste_n_64c93928e4b021e2f295e817

about racial eugenics.³⁷ His writings appeared in the neo-Nazi publication “Counter-Currents,” the white supremacist blog “VDare,” and the explicitly anti-Semitic website “The Occidental Observer.”³⁸

33. Another recent example occurred on August 30, 2023, when Twitter CEO Linda Yaccarino tweeted a response to Jonathan Greenblatt of the Anti-Defamation League (ADL), thanking him for a “productive” discussion about addressing hate on the platform.³⁹ Almost immediately, hordes of far-right extremist users descended on Greenblatt’s tweet, voicing their disapproval of the discussion with disgusting anti-Semitic abuse and bigoted memes. Greenblatt ultimately deleted his tweet.

34. Over the following hours, various far-right and neo-Nazi extremists promoted the hashtag “#BanTheADL,” which soon began trending on the platform. One of the primary individuals promoting the hashtag was Keith Woods, an anti-Semitic YouTuber who is an associate of neo-Nazi leader Richard Spencer and “Groyper” leader Nick Fuentes.⁴⁰ Woods, an Irish white nationalist and self-described “raging antisemite,”⁴¹ was previously banned from Twitter but reinstated after Musk bought the company.

³⁷

<https://www.salon.com/2023/08/08/anti-woke-darling-richard-hanania-is-exposed-what-this-says-about-the-intellectual-right/>

³⁸

https://www.huffpost.com/entry/richard-hanania-white-supremacist-pseudonym-richard-hoste_n_64c93928e4b021e2f295e817

³⁹ <https://twitter.com/lindayaX/status/1696889984337211870>

⁴⁰ <https://mashable.com/article/x-twitter-elon-musk-white-supremacist-ad-ban-adl-hashtag>

⁴¹ <https://www.jpost.com/diaspora/antisemitism/article-757593>

35. Musk liked and responded to Woods's tweet pushing the hashtag, telling the notorious bigot in apparently friendly banter that "ADL has tried very hard to strangle X/Twitter."⁴² After Musk liked and replied to Woods's tweet, Woods bragged that "Elon Musk likes my call to #BanTheADL."⁴³ These are far from the only instances of Musk engaging in friendly conversation with notable bigots, which has become an alarming pattern over the past few years.

36. Nor was Musk done responding to Woods. On September 3, 2023, Woods tweeted a video of notorious con artist Alex Jones bashing the ADL and accusing the organization of "committing crimes against the public."⁴⁴ Woods wrote, "Alex Jones doesn't want to #BanTheADL because 'they're the most pro-Hitler organisation I've ever seen.'" At 3:34 am, Musk enthusiastically responded to Wood's tweet sharing the Alex Jones video, with Musk stating, "The ADL, because they are so aggressive in their demands to ban social media accounts for even minor infractions, are ironically the biggest generators of anti-Semitism on this platform!"⁴⁵

37. One minute later, a reply to Musk's tweet was posted by Ian Miles Cheong, an infamous disinformation troll in Malaysia known for his shocking bigotry as well as his long history promoting the internet's most asinine hoaxes. Cheong is notorious for leaked messages in which he wrote, "Hitler is my fucking idol," "fuck off jew," "why didn't the holocaust kill your parents," "holocaust isn't important

⁴² <https://twitter.com/elonmusk/status/1697655308946944257>

⁴³ <https://twitter.com/KeithWoodsYT/status/1697604997607792719>

⁴⁴ <https://twitter.com/KeithWoodsYT/status/1698500937982050439>

⁴⁵ <https://twitter.com/elonmusk/status/1698615533170557116>

enough to capitalize,” and “because jews=nothing.”⁴⁶ Recently, Cheong has reinvented himself as a mildly popular “anti-woke” influencer and conspiracy theory purveyor, and Musk and Cheong have grown friendly on Twitter over the past year.⁴⁷ In Cheong’s tweet to Musk on September 4th about the ADL, Cheong wrote, “They claim to represent the interests of Jewish people but they do not.”⁴⁸ Two minutes later, Musk responded to Cheong, stating, “Exactly.”⁴⁹

38. Later that day, Musk continued to banter with Keith Woods, boosting another tweet urging Musk to “#BanTheADL,”⁵⁰ and continuing a discussion with Woods in the same thread.⁵¹

39. Also that same day, Mario Nawfal, a controversial cryptocurrency influencer who has befriended Musk on the platform⁵², tweeted that “Elon rightly points out that the ADL ‘are ironically the biggest generators of anti-Semitism on this platform,’” and repeated Musk’s claim that the ADL “causes people to become anti-Semitic.”⁵³ Musk again responded: “Exactly.”⁵⁴

40. During the ADL controversy, Musk also responded with two exclamation points to a tweet from “The Redheaded libertarian” in which she complained about the ADL’s recent condemnation of the incendiary and baseless

⁴⁶ <https://medium.com/@drwallkick/a-thousand-ants-a-million-faces-ian-miles-cheong-b32d8c356114>

⁴⁷ [https://twitter.com/search?q=\(from%3Aelonmusk\)%20\(%40stillgray\)&src=typed_query&f=live](https://twitter.com/search?q=(from%3Aelonmusk)%20(%40stillgray)&src=typed_query&f=live)

⁴⁸ <https://twitter.com/stillgray/status/1698615862243295245>

⁴⁹ <https://twitter.com/elonmusk/status/1698616350615241145>

⁵⁰ <https://twitter.com/elonmusk/status/1698617766129873269>

⁵¹ <https://twitter.com/elonmusk/status/1698777346206015539>

⁵² <https://www.nbcnews.com/tech/tech-news/mario-nawfal-twitter-elon-musk-rise-allegations-rcna92132>

⁵³ <https://twitter.com/MarioNawfal/status/169877222276518397>

⁵⁴ <https://twitter.com/elonmusk/status/1698777887527047529>

claims of a “white genocide” or “mass killings” in South Africa.⁵⁵ Musk also later indicated he would be bringing a defamation lawsuit against the ADL “[t]o clear our platform’s name.”⁵⁶

41. The same day as the ADL controversy began, on August 30, 2023, it was reported that Twitter approved distribution of an advertised tweet with a Nazi slogan.⁵⁷ The ad, which was distributed to over 200,000 Twitter users, contained an image adorned with the so-called “14 Words,” a Nazi slogan stating, “We must secure the existence of our people and a future for White Children.”⁵⁸ Just two weeks earlier, on August 16, 2023, multiple companies suspended their advertising following revelations that Twitter had been placing ads for high-profile advertisers on neo-Nazi content.⁵⁹ Numerous high-profile ads were attached to a pro-Hitler account and the account of a leading neo-Nazi group that engages in violence, as well as content from white supremacists and Holocaust deniers.⁶⁰

42. One month later, on September 13, 2023, the Center for Countering Digital Hate published a report on the failure of Twitter to moderate neo-Nazi hate speech and bigoted harassment.⁶¹ Researchers collected a sample of 300 tweets in clear violation of at least one of Twitter’s policies against hateful conduct, which

⁵⁵ <https://twitter.com/elonmusk/status/1697328815494549621>

⁵⁶ <https://twitter.com/elonmusk/status/1698828606598734225>

⁵⁷ <https://mashable.com/article/x-twitter-elon-musk-white-supremacist-ad-ban-adl-hashtag>

⁵⁸ <https://twitter.com/Jason97321063/status/1695629714826678277>

⁵⁹ <https://www.vanityfair.com/news/2023/08/twitter-advertisers-dont-want-nazi-problem>

⁶⁰

<https://www.mediamatters.org/twitter/elon-musk-again-undermines-x-ceo-linda-yaccarino-reinforcing-why-advertisers-cant-trust-her>

⁶¹ <https://counterhate.com/research/twitter-x-continues-to-host-posts-reported-for-extreme-hate-speech/>

prohibit incitement and harassment of others due to protected characteristics. All 300 tweets were submitted to Twitter's abuse reporting system. One week later, researchers discovered that 86% of the tweets remained on the platform. These findings were consistent with a similar report earlier in the year which found that Twitter failed to act on 99 of 100 tweets from premium users which broke Twitter rules and were reported using the abuse system.⁶²

43. The resurgence of neo-Nazism, which Musk has been so eager to deny in his public statements, has all the while been incubating on his own platform, along with every other form of political extremism, not to mention every flavor of apolitical opportunism and paranoid delusion. This dangerous trend is propelled not only by fear and hate but also by a social media culture of recklessness and deceit, all based on the monetization of low-effort garbage masquerading as information.

44. In terms of monetization, a report from CCDH on February 9, 2023 found that Musk's decision to reinstate previously banned accounts would result in enormous revenue for the company. Indeed, CCDH identified "just ten reinstated accounts renowned for publishing hateful content and dangerous conspiracies [that] will generate up to \$19 million a year in advertising revenue for Twitter."⁶³

X. Musk's Personal Recklessness is an Intentional Choice.

⁶² <https://counterhate.com/research/twitter-fails-to-act-on-twitter-blue-accounts-tweeting-hate/>

⁶³ <https://counterhate.com/research/toxic-twitter/>

45. Despite once claiming that “Twitter needs to become by far the most accurate source of information about the world,”⁶⁴ Musk has been personally using the platform to spread false statements on a consistent basis while propping up and amplifying the most reprehensible elements of conspiracy-addled Twitter. At the same time, the platform has served as a haven for abuse. These examples are the tip of the iceberg. As stated by BBC reporter Shayan Sardarizadeh: “These days, if you want to find the latest conspiracy theories trending on Twitter, the easiest thing to do is to check the tweets Elon Musk replies to, you’ll find most of them.”

46. When CNBC reporter David Faber asked Musk about his promotion of disinformation in an interview on May 16th, Musk stated, “I’ll say what I want to say, and if the consequence of that is losing money, so be it.”⁶⁵

47. Musk’s reckless attitude, his unpunished pattern of false statements, and his flirtation with the most unreliable and extreme elements of his social media platform made it inevitable that he would falsely attack another innocent private citizen, turning their world upside down.

THE DEFAMATION OF BEN BRODY

I. June 24, 2023: The Portland Extremist Street Brawl.

48. On June 24, 2023, the city of Portland held its Pride Night event.

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<https://www.businessinsider.com/musk-twitter-must-be-most-accurate-source-of-information-earth-2022-1>

⁶⁵

<https://www.cnbc.com/2023/05/16/elon-musk-defends-inflammatory-tweets-ill-say-what-i-want.html>

49. For the most part, the event was a positive celebration of freedom and community festivities.

50. However, multiple rightwing extremist groups, irritated and triggered by the idea of public solidarity with queer people, decided to attend the event to vent their bigotry and intimidate Pride Night celebrants.

51. Over the past several years, Portland has been plagued by rightwing extremist gangs who attend public events seeking to instigate street fights or intimidate the city's overwhelmingly progressive citizenry.

52. However, on this occasion, two rightwing extremist groups ended up in a street brawl with each other.

53. A video shot during Pride Night shows members from the notorious "western chauvinist" gang known as the Proud Boys encountering members of the Rose City Nationalists, a Portland extremist group which openly espouses neo-Nazi views.

54. Some members of the Rose City Nationalists are former Proud Boys whose nakedly neo-Nazi rhetoric was viewed as an optics problem by Proud Boys leadership. As such, relations between the groups are hostile.

55. The Proud Boys have intentionally tried to soften their public image, with members noting in internal conversations that the neo-Nazi rhetoric used by the 2017 Unite the Right "tiki torch" rioters in Charlottesville was poorly received by

many mainstream conservatives and should be viewed as a lesson for reactionary movements hoping to attract mainstream adherents.

56. Rose City Nationalists, on the other hand, seek to continue in the direction originally set by Unite the Right organizer Richard Spencer by adopting neo-Nazi aesthetics.

57. In addition, there are non-political personal animosities between some of the two groups' members.

58. The video shot on June 24th shows that when the two groups encountered each other, the situation quickly escalated. It began with shouts and shoves, and it soon devolved into a street brawl. The brawl spilled from the sidewalk into the roadway, with the two groups engaged in a melee while motorists came to a stop and began honking their horns.

59. The members of the Rose City Nationalists had arrived at Pride Night wearing masks, obviously aware of the potential personal and professional ramifications of being publicly linked with a neo-Nazi hate group. During the street brawl, two members of the Rose City Nationalists had their masks removed by Proud Boy combatants. Near the end of the video shot on June 24th, the faces of the two Rose City Nationalists members are visible.

II. June 25, 2023: Online Rightwing Extremists Misidentify the Unmasked Brawlers, and the Misidentification is Amplified by Elon Musk.

60. Video of the brawl went viral on June 25, 2023.

61. Throughout the day, the video became a popular topic of discussion on social media.

62. In most segments of moderate and leftwing social media, the reaction was typically one of amusement.

63. However, a different discussion was occurring on rightwing social media. Numerous rightwing influencers were pushing the idea that the Rose City Nationalists, often incorrectly identified as Patriot Front, were not genuine neo-Nazis but were instead either federal agents or leftwing provocateurs engaged in fraudulent actions to manipulate the public.

64. Many of these influencers also asked their followers to try and identify the unmasked brawlers.

65. On June 25, 2023 at 1:22 pm, Twitter user Amiri King (@AmiriKing), a Twitter influencer who is apparently the operator of an online store that sells synthetic cannabis products, tweeted screenshots from the video of the brawl showing two of the participants with their masks removed. King tweeted: "Two unmasked members of Patriot Front. These are either federal agents masquerading as racists -OR- Leftists masquerading as far right. Do you know who these people are?"⁶⁶

66. Just over an hour later, at 2:31 pm, anonymous Twitter user "Dr Frensor" (@drfrensor) quote-tweeted Amiri King's tweet, and they included a

⁶⁶ <https://twitter.com/AmiriKing/status/1673034066646515714>

screenshot of a social media post from Ben Brody's Jewish college fraternity, Alpha Epsilon Pi. The tweet posted by "Dr Frenson" repeated a line from the fraternity's social media post, stating, "After graduation he plans to work for the government."⁶⁷

That tweet is shown below:

⁶⁷ <https://twitter.com/drfrenson/status/1673051217780432896>



67. “Dr Fensor”⁶⁸ is an extreme rightwing “shitposting”⁶⁹ account affiliated with the bizarre “Groyper”⁷⁰ subculture. Like most Groyper social media accounts, “Dr Fensor” typically features extreme rightwing memes, neo-Nazi

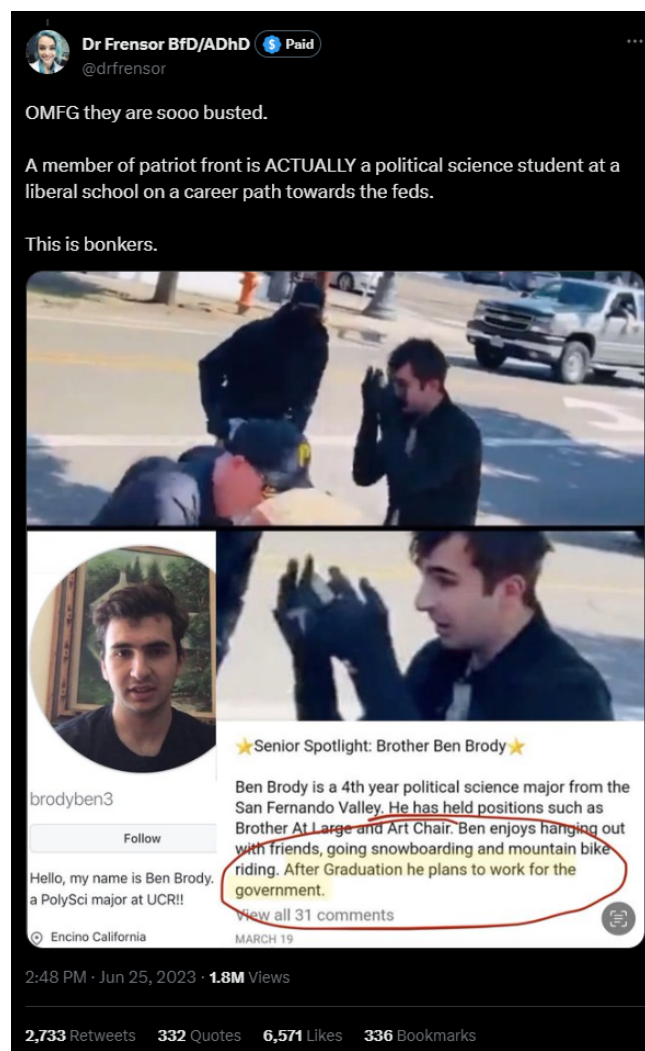
⁶⁸ It is believed that the account’s profile picture is stolen, AI generated, or a combination of both.

⁶⁹ <https://en.wikipedia.org/wiki/Shitposting>

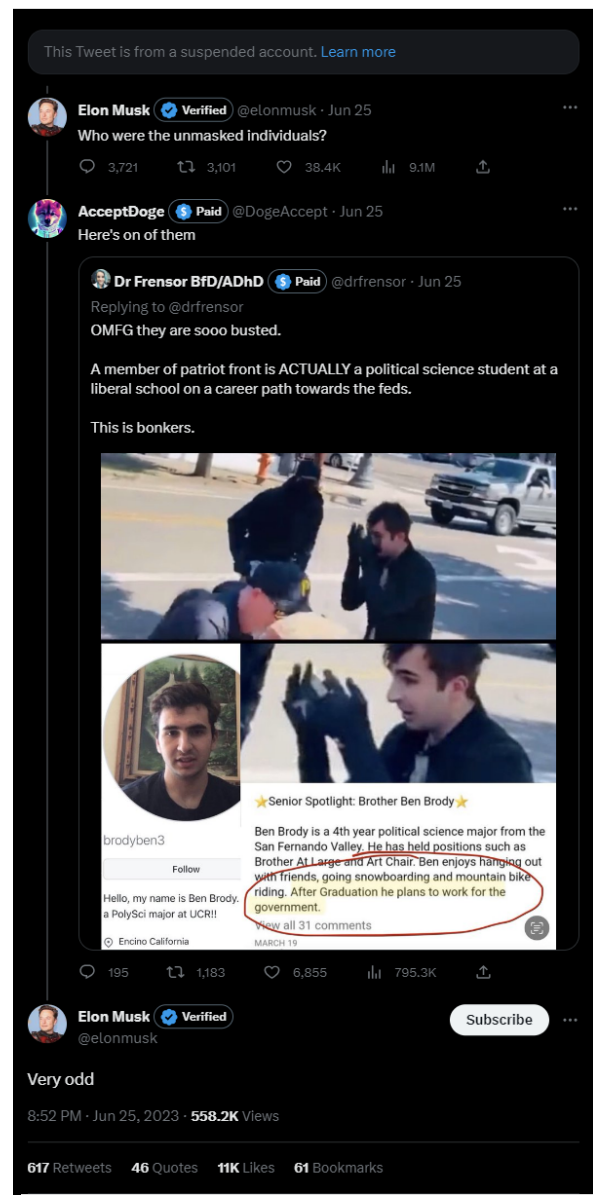
⁷⁰ <https://en.wikipedia.org/wiki/Groypers>

apologia/nostalgia, juvenile and cringe-worthy attempts at bigoted humor, low effort bait tweets, delusional panics over lazy hoaxes, and a cavalcade of absurdly false information. The account is the social media equivalent of gutter sludge.

68. Seventeen minutes after their initial tweet falsely identifying Ben Brody, “Dr Frensor” posted another tweet that also included Ben’s social media bio in addition to the screenshot from his fraternity’s social media stating that Ben plans to work for the government. That tweet is shown below:



69. That same day, at 8:52 pm, Twitter user @DogeAccept showed Elon Musk the second tweet posted by “Dr Frensor.” Replying to @DogeAccept, Musk remarked that it was “very odd.”⁷¹ That tweet is shown below:



70. In response to Musk’s tweet, Twitter users immediately began informing Musk that Ben Brody was innocent.

⁷¹ <https://twitter.com/elonmusk/status/1673147299428712449>

71. At 9:30 pm, Twitter user @Andrei_Dontov replied to Musk by stating, “It’s not Ben Brody,” followed by a crying emoji.”⁷²

72. At 9:37 pm, Twitter user @loganacus replied to Musk by stating, “It’s not Ben Brody.”⁷³

73. At 9:45 pm, Twitter user @Dayne_Nof replied to Musk by stating, “It is not Benjamin Brody! This is defamation!!”⁷⁴

74. At 10:30 pm, Twitter user @LuckyLewis5000 replied to Musk by stating, “Odd because that is not Brody. Looks like him but not him.”⁷⁵ In a follow-up reply at 10:31 pm, @LuckyLewis5000 stated, “Mistaken identity. Not Brody.”⁷⁶

75. At 11:09 pm, Twitter user @JacsonJanele replied to Musk by stating, “Some Republicans are saying that but this kid Ben Brody is legitimately a student at the University of California, Riverside. I don't even think he's a federal employee.”⁷⁷

76. At 11:30 pm, Twitter user @TheNews4Dummies replied to Musk by stating, “Its not Ben Brody, I spoke with him and a friend earlier, he was not there.”⁷⁸

77. At 3:26 am the following morning, Twitter user @genericbot123 replied to Musk by stating, “[T]he other guy is not Ben Brody. Of course the coward won’t come forward but in due time his identity will be revealed.”⁷⁹

⁷² https://twitter.com/Andrei_Dontov/status/1673156827914334209

⁷³ <https://twitter.com/loganacus/status/1673158503501012994>

⁷⁴ https://twitter.com/Dayne_Nof/status/1673160526493528064

⁷⁵ <https://twitter.com/LuckyLewis5000/status/1673171905770037250>

⁷⁶ <https://twitter.com/LuckyLewis5000/status/1673172127887892484>

⁷⁷ <https://twitter.com/JacsonJanele/status/1673181740024594438>

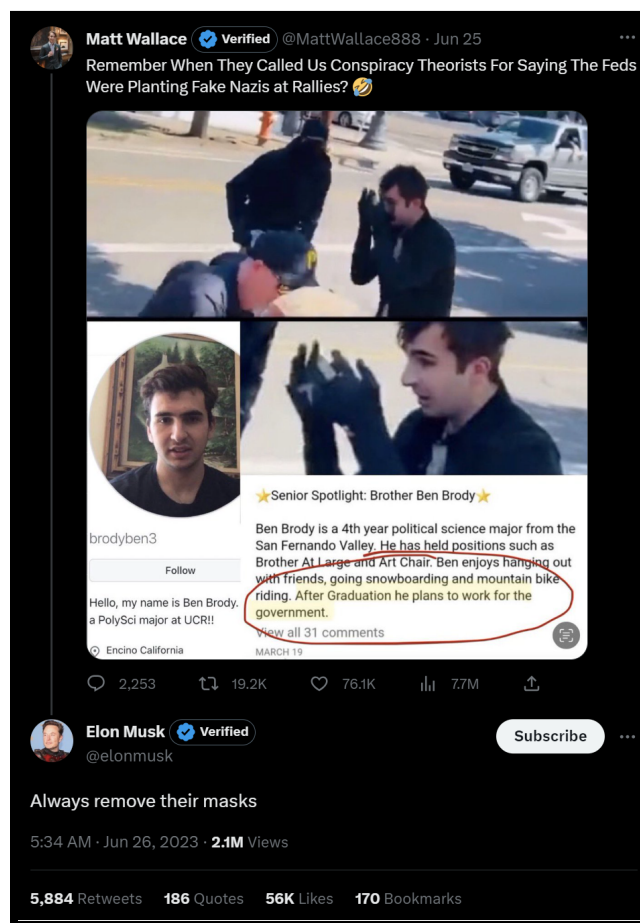
⁷⁸ <https://twitter.com/TheNews4Dummies/status/1673187028584869891>

⁷⁹ <https://twitter.com/genericbot123/status/1673246224689016832>

78. At 11:14 pm, about two hours after Musk's tweet, the same images originally posted by "Dr Frensor" were re-posted by Matt Wallace, a notoriously unreliable cryptocurrency YouTube influencer who frequently vies for Musk's attention.⁸⁰

III. June 26, 2023: Musk Continues to Amplify the Accusation Against Ben Brody.

79. The following morning at 5:34 am on June 26th, Musk replied to Matt Wallace's tweet. Musk stated, "Always remove their masks."⁸¹ That tweet is shown below:



⁸⁰ <https://twitter.com/MattWallace888/status/1673182896545230850>

⁸¹ <https://twitter.com/elonmusk/status/1673278655223480320>

80. “Dr Frensor” was pleased that the false accusation they made had reached Musk. “Dr Frensor” quote-tweeted Wallace’s tweet after Musk replied, stating, “Me famous. My memes best memes.”⁸²

81. Ben Brody woke up on the morning of June 26th and realized the situation was spiraling out of control. At the urging of his friends, he posted a video on his Instagram account trying to clear his name.



82. Ben then posted debit card receipts showing his card was used in Riverside, California on the day of the Portland street brawl and even went as far as to contact one of the stores to request their video footage. Later that day, he posted the time-stamped video footage showing that he was in California at the time of the brawl.

⁸² <https://twitter.com/drfrnsor/status/1673309195645353984>

83. At 8:52 am on June 26, 2023, Brian Krassenstein, an influencer who has grown close to Musk on Twitter over the past year, posted a tweet sharing Ben Brody's Instagram video. Krassenstein stated, "This needs to stop before things get out of hand...Please share before this guy's life is ruined."⁸³

84. Throughout the day, Twitter users sent frantic replies to Musk's 5:34 am tweet informing him that Ben Brody was innocent.

85. At 6:46 am, verified Twitter user @PNWSelina replied to Musk by stating, "Those aren't the same kid though, Elon."⁸⁴

86. At 7:05 am, Twitter user @P8TRIOTALIDS replied to Musk by stating, "Brody has posted a video stating that it wasn't him."⁸⁵ The tweet included a link to Ben Brody's Instagram video.

87. At 7:28 am, Twitter user @InfiniteZonk replied to Musk by stating, "Hey @elonmusk what are your thoughts on Mr Brody's Instagram video where he says you're helping incite lunatics to harass him based on a video of someone else?"⁸⁶ The tweet included a link to Ben Brody's Instagram video.

88. At 7:48 am, Twitter user @SFLLoans replied to Musk by stating, "@elonmusk #benbrody has posted a video claiming he is not the man in the video. He has no bruising on his face, which the suspect in the video would have. Elon you

⁸³ <https://twitter.com/krassenstein/status/1673328317720657927>

⁸⁴ <https://twitter.com/PNWSelina/status/1673296578847846400>

⁸⁵ <https://twitter.com/P8TRIOTALIDS/status/1673301461529161728>

⁸⁶ <https://twitter.com/InfiniteZonk/status/1673307199714603008>

amplified this likely false claim and this young man's life is in danger because of it. What are you going to do?"⁸⁷

89. At 8:55 am, Twitter user @CentristMadness quote-tweeted Musk's tweet, stating, "Cannot overstate how much this isn't the same guy and how evil this whole fascist denial is."⁸⁸ The tweet included a link to Ben Brody's Instagram video.

90. At 9:07 am, Twitter user @DrJack84768529 replied to Musk by stating, "This is getting pathetic Elon. The kid released a video saying it isn't him. The amount of disinfo on twitter is getting ridiculous."⁸⁹

91. At 10:02 am, the Twitter account for *Artificial Intelligence Today* replied, "Has this been confirmed to be that person? This seems dangerous to be linking a persons information to a controversial event without clear evidence."⁹⁰

92. At 10:04 am, Twitter user @FrostZyzz replied to Musk by stating, "ELONG STOP BEING AN IDIOT PLEASE."⁹¹ The tweet included a quote-tweet of Brian Krassenstein's tweet embedding Ben Brody's Instagram video.

93. At 10:05 am, Twitter user @DrJack84768529 replied to Musk by stating, "Pretty sure Elon just helped fuck up some guy's life based on a conspiracy theorists social media post..."⁹² The tweet included a quote-tweet of a post by verified Twitter user @BlueyAnon which embedded Ben Brody's Instagram video.

⁸⁷ <https://twitter.com/SFLLoans/status/1673312222926233603>

⁸⁸ <https://twitter.com/CentristMadness/status/1673329033818382336>

⁸⁹ <https://twitter.com/RichardShhakes/status/1673332224010117121>

⁹⁰ https://twitter.com/AIToday_News/status/1673346065020469249

⁹¹ <https://twitter.com/FrostZyzz/status/1673346591674060802>

⁹² <https://twitter.com/DrJack84768529/status/1673346768665182213>

94. At 10:21 am, Twitter user @Gittelrock replied to Musk by stating, “Without the benefit of a positive ID, or any idea (whatsoever) of this person’s political affiliation, the sole owner of @Twitter suggests the person in the video is a govt/FBI operative. Elon Musk is incredibly reckless. He’s done this before.”⁹³

95. At 10:34 am, Twitter user @SFLLoans replied to Musk by stating, “Watch the video the person they are claiming is Brody has inflammation or blood on his right temple area once the mask is pulled off. Not the same guy in the tictok [sic] video. @elonmusk needs to set this right since he amplified this invalid claim.”⁹⁴

96. At 10:37 am, Twitter user @mommabear0922 replied to Musk with a quote-tweet of Brian Krassenstein’s tweet embedding Ben Brody’s Instagram video.⁹⁵

97. At 10:43 am, Twitter user @GTrumpism quote-tweeted Musk’s tweet, stating, “Lol... Elmo's busy boosting conspiracy peddling derps again. #StopTheStupid #ConfusedElmo.”⁹⁶

98. At 10:45 am, Twitter user @arfarfmaster replied to Musk by stating, “it’s not him.”⁹⁷ The tweet embedded Ben Brody’s Instagram video. In a follow-up reply, @arfarfmaster stated, “wouldn’t there be an abrasion on his forehead? the other dude got his shit fucked up in the video.”⁹⁸

⁹³ <https://twitter.com/Gittelrock/status/1673350790206062592>

⁹⁴ <https://twitter.com/SFLLoans/status/1673354047586283520>

⁹⁵ <https://twitter.com/mommabear0922/status/1673354712442187777>

⁹⁶ <https://twitter.com/GTrumpism/status/1673356214254682113>

⁹⁷ <https://twitter.com/arfarfmaster/status/1673356785091252224>

⁹⁸ <https://twitter.com/arfarfmaster/status/1673377672158916610>

99. At 10:46 am, Twitter user @FlierFire replied to Musk by stating, “Doesn’t look like the same guy. Different ethnicities. There are updated pictures/videos of the Brody dude. Not close.”⁹⁹

100. At 11:02 am, Twitter user @LazyJournalists replied to Musk by stating, “Stop. It’s not the same guy. Brody already made a video. It’s CLEARLY not him.”¹⁰⁰

101. At 12:01 pm, verified Twitter user @money_illusion replied to Musk by stating, “It’s not the same person.”¹⁰¹ The tweet also embedded Ben Brody’s Instagram video.

102. At 12:35 pm, Twitter user @MattGEdwards replied to Musk by stating, “It’s not even the same person lol... JFC.”¹⁰² The tweet also embedded with Ben Brody’s Instagram video.

103. At 12:35 pm, verified Twitter user @Johnnthelefty replied to Musk by stating, “So Elon is enabling the continued targeting of a Jewish kid that is being falsely labeled a Nazi.”¹⁰³ The user quote-tweeted a post discussing the harassment Ben and his family had been receiving.

104. At 12:45 pm, Twitter user @SeaTigerA replied to Musk with a quote-tweet of Brian Krassenstein’s tweet embedding Ben Brody’s Instagram video.¹⁰⁴

⁹⁹ <https://twitter.com/FlierFire/status/1673356952330727425>

¹⁰⁰ <https://twitter.com/LazyJournalists/status/1673361049825734658>

¹⁰¹ https://twitter.com/money_illusion/status/1673376046937440257

¹⁰² <https://twitter.com/MattGEdwards/status/1673746877295239168>

¹⁰³ <https://twitter.com/Johnnthelefty/status/1673384390095958016>

¹⁰⁴ <https://twitter.com/SeaTigerA/status/1673387055726952448>

105. At 12:56 pm, Twitter user @_jwall replied to Musk with a quote-tweet of Brian Krassenstein's tweet embedding Ben Brody's Instagram video.¹⁰⁵

106. At 2:06 pm, Twitter user @laurieluvsmolly replied to Musk by stating, "That's not him. Shame on you!" The tweet also included a link to Ben Brody's Instagram account.¹⁰⁶

107. At 2:14 pm, Twitter user @Shahid66696267 replied to Musk with a quote-tweet of Brian Krassenstein's tweet embedding Ben Brody's Instagram video.¹⁰⁷

108. At 6:07 pm, Twitter user @LucBernard replied to Musk with a quote-tweet from @ChudsOfTikTok embedding Ben Brody's Instagram video and discussing the harassment he was suffering.¹⁰⁸

109. At 6:30 pm, Twitter user @Scubea2 quote-tweeted Musk's tweet, stating, "Elon has finished his transformation into a low IQ schizo Maga boomer."¹⁰⁹

110. At 6:50 pm, Twitter user @laurieluvsmolly replied to Musk by stating, "You are without a doubt, either the most dishonest or most gullible dipshit on this site."¹¹⁰

111. At 8:13 pm, Twitter user @CentristMadness replied to Musk by stating, "It's not the same guy," while also including a link to Ben Brody's Instagram video.¹¹¹

¹⁰⁵ https://twitter.com/_jwall/status/1673382263139041280

¹⁰⁶ <https://twitter.com/laurieluvsmolly/status/167340750999692948>

¹⁰⁷ <https://twitter.com/Shahid66696267/status/1673409397706588160>

¹⁰⁸ <https://twitter.com/LucBernard/status/1673467953122246656>

¹⁰⁹ <https://twitter.com/Scubea2/status/1673473755165728769>

¹¹⁰ <https://twitter.com/LegateSprinkles/status/1673478935294664704>

¹¹¹ <https://twitter.com/CentristMadness/status/1673499775453528065>

In a series of follow-up replies in the same thread, @CentristMadeness stated, “Look at the video. Do you think he gained 20 pounds in a day”¹¹²; “It’s not him, you fucked up and slandered an innocent person”¹¹³; “You thought a political science major at a college was a secret federal agent pretending to be a Nazi.”¹¹⁴

112. At 9:38 pm, Twitter user @Brewlord95 replied to Musk by stating, “Sure, except it is a different guy, but why worry about that?”¹¹⁵

113. At 9:39 pm, Twitter user @sofieroverta stated, “That’s not Ben Brody. You are doxing the wrong person.”¹¹⁶

114. That day, Ben Brody had done everything he could think of to debunk the false accusations, and he went to bed on June 26th hoping that the attention he was receiving might dissipate.

IV. June 27, 2023: After Amplifying the Claim for Days, Elon Musk Personally Commits Defamation Against Ben Brody when Replying to a ZeroHedge Tweet.

115. Early in the morning on June 27th, a blog post was published on ZeroHedge titled “Patriot Front ‘White Supremacist’ Unmasked As Suspected Fed.”¹¹⁷

116. ZeroHedge is a notoriously unreliable blog that has trafficked in the ugliest smear campaigns on the internet. ZeroHedge is well known for the prominent role it played in gleefully spreading false facts about the victims and

¹¹² <https://twitter.com/CentristMadeness/status/1673500073777582081>

¹¹³ <https://twitter.com/CentristMadeness/status/1673501768616153089>

¹¹⁴ <https://twitter.com/CentristMadeness/status/1673501142809202689>

¹¹⁵ <https://twitter.com/Brewlord95/status/1673521087320031234>

¹¹⁶ <https://twitter.com/sofieroverta/status/1673521464295710722>

¹¹⁷ <https://web.archive.org/web/20230627131640/https://www.zerohedge.com/political/patriot-front-white-supremacist-unmasked-suspected-fed>

parents of the 2012 Sandy Hook Elementary School shooting. ZeroHedge worked in tandem with the reviled con artist Alex Jones to push the idea that the shooting was staged by the government and that the parents were paid actors.¹¹⁸ Indeed, InfoWars' response to a ZeroHedge blog post was the impetus of the lawsuit brought by Sandy Hook parents Neil Heslin and Scarlett Lewis, who are also represented by the undersigned counsel.¹¹⁹

117. ZeroHedge's June 27, 2023 blog post about the Portland street brawl, posted by "Tyler Durden,"¹²⁰ featured tweets embedding the video of two participants being unmasked.

118. The blog post also linked to a tweet by a Twitter user named Dillion Fillion, with the username @DillionFillionIA. On his Twitter account, Fillion appears to be a young teenage boy with political aspirations. Fillion's tweet stated: "BREAKING: The identities of the two FEDS have been found." Fillion attached a screenshot of a social media bio for Ben Brody. The bio identified his username as "brodyben3" and stated, "Hello, my name is Ben Brody. I am a PolySci major at UCR!!"

119. ZeroHedge's blog post did not reference the images posted by "Dr Frenson," nor did it contain any mention of Ben Brody wanting to work for the government.

¹¹⁸ <https://www.youtube.com/watch?v=x-lxTs9fwkw&t=3322s>

¹¹⁹ <https://www.youtube.com/watch?v=ptP2FbsYDDc&t=2824s>

¹²⁰ "Tyler Durden" is a pseudonym. It is the name of the sociopathic alter ego of the unnamed narrator in the 1999 film *Fight Club*.

120. On June 27, 2023, at an unknown time, ZeroHedge's Twitter account posted a tweet with a link to the ZeroHedge blog post.

121. Musk decided to reply to the ZeroHedge tweet, and he added his own accusation, which was based on false information which he had encountered from unvetted tweets in the days prior from "Dr Frensor" and Matt Wallace.

122. In a tweet posted at 8:22 am, Musk stated, "Looks like one is a college student (who wants to join the govt) and another is maybe an Antifa member, but nonetheless a probable false flag situation."¹²¹ That tweet is shown below.



¹²¹ <https://twitter.com/elonmusk/status/1673683343169159168>

123. In this context, the phrase “Looks like” is equivalent in meaning to “The information I have seen indicates.”

124. Importantly, the “information” Musk used to support his assertion was not contained in the ZeroHedge tweet, nor was it contained in the ZeroHedge blog post, nor did Musk disclose the source of his information in his June 27th tweet.

125. A reasonable reader of Musk’s tweet would conclude that undisclosed information served as the basis for Musk’s assertion. Indeed, multiple Twitter users asked Musk to provide the information on which he was basing his assertion.

126. Many readers of Musk’s June 27th tweet were already familiar with the rumor about Ben Brody and his plans to work for the government.

127. Many readers of Musk’s tweet immediately understood the tweet was referring to Ben Brody, who they understood was the “college student (who wants to join the govt).”

128. The assertion made by Musk was capable of being verified as true or false, not a matter of opinion.

129. Nor would it matter if Musk had couched his remarks as an opinion. “As the Supreme Court has explained, if a speaker says, ‘In my opinion John Jones is a liar,’ he implies a knowledge of facts which lead to the conclusion that Jones told an untruth. Even if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact. Simply couching such

statements in terms of opinion does not dispel these implications; and the statement, 'In my opinion Jones is a liar,' can cause as much damage to reputation as the statement, 'Jones is a liar.'" *Campbell v. Clark*, 471 S.W.3d 615, 627–28 (Tex. App.—Dallas 2015, no pet.), quoting *Milkovich*, 497 U.S. at 18-19.

130. Given the circumstances, the defamatory idea communicated to readers of Musk's statement is that one of the participants in the neo-Nazi group was Ben Brody.

131. Musk also used this false accusation about Ben Brody -- the "college student (who wants to join the govt)" -- to support his assertion that the event was "a probable false flag situation."¹²²

132. A "false flag" is a term that was popularized among conspiracy theory media figures to mean a hostile or harmful action (typically an attack or other act of violence) that is designed to look like it was perpetrated by someone other than the person or group responsible for it. A "false flag" is a type of "psyop" or "psychological operation," a concept which Musk has fixated on for several months.

¹²² Musk's other assertion -- that the other unmasked neo-Nazi brawler was "maybe an Antifa member" -- was qualified with a cautionary "maybe," unlike the accusation against Ben Brody. Nonetheless, that assertion was also based on ridiculously false information. A website of a Portland antifascist group, Rose City Antifa, posted a lengthy dossier including photographs and internet communications of Casey Knuteson, a well-known neo-Nazi who participated in various extremist rightwing demonstrations over the past few years. The website noted that hostility existed between Knuteson and the Proud Boys, as he had been removed from the group. A group of extremist rightwing social media users seemed to believe that Knuteson's photo on the Antifa website proved that Knuteson was a member of Antifa, and they began spreading a rumor to that effect.

133. Once again, many Twitter users began replying or quote-tweeting to Musk. Many of those users who replied to Musk understood he was referring to Ben Brody and accepted Musk's statement as true, while others tried to inform him of the erroneous and damaging nature of his accusations against Ben.

134. At 8:30 am, Twitter user @Teddo_p quote-tweeted Musk's tweet, stating, "lol how the fuck do you know any of that? You're not the Rod Serling of Twitter just cuz you comment on everything."¹²³

135. At 8:35 am, Twitter user @tonyp03877 replied to Musk by stating, "The kid made a video and said it isn't him (mistaken identity)."¹²⁴

136. Also at 8:35 am, Twitter user @sdemarco89 replied to Musk by stating, "That college kid should sue you for millions @elonmusk"¹²⁵

137. At 8:37 am, Twitter user @arabiansongs replied to Musk by posting a link to Ben Brody's Instagram video.¹²⁶

138. At 8:39 am Twitter user @AlterIntell replied to Musk by stating, "I saw a tik tok video where he says it wasn't him."¹²⁷

139. At 8:40 am, Twitter user @ChronTri replied to Musk by stating, "The guy in question has posted his bank records showing he was in Riverside when this was occurring. It would have been physically impossible for him to be in Oregon during this time frame."¹²⁸ In a separate tweet also at 8:40 am, @ChronTri posted the

¹²³ https://twitter.com/Teddo_p/status/1673685333655863296

¹²⁴ <https://twitter.com/tonyp03877/status/1673686372455002113>

¹²⁵ <https://twitter.com/sdemarco89/status/1673686561148534784>

¹²⁶ <https://twitter.com/arabiansongs/status/1673687043065667593>

¹²⁷ <https://twitter.com/AlterIntell/status/1673687544284807168>

¹²⁸ <https://twitter.com/ChronTri/status/1673687730025295873>

link to a post on Ben Brody's Instagram featuring a photo of his debit card transaction.¹²⁹

140. At 8:42 am, Twitter user @d_vwatts replied to Musk by stating, "Serious Elon? The guy wasn't even in the state."¹³⁰

141. At 8:49 am, Twitter user @notjonalt quote-tweeted Musk's tweet, stating, "Elon Musk ACTIVELY promotes misinformation on his own platform."¹³¹

142. At 8:53 am, verified Twitter user @Centrist4lyfe replied to Musk by stating, "@elonmusk you are getting people to doxx this innocent kid out there that is getting confused with this person. You need to cool your jets bro and get people to stop harassing this guy."¹³²

143. At 8:58 am, verified Twitter user @BlueyAnon replied to Musk by stating, "Seems highly unlikely the 'Ben Brody' ID was correct."¹³³ The tweet included a quote-tweet of an earlier tweet from @BlueyAnon embedding Ben Brody's Instagram video and discussing the harassment he was receiving.¹³⁴

144. At 9:05 am, Twitter user @WolfOfYobit replied to Musk by stating, "its almost always a false identification when the internet detectives find someone. thats why real news organizations wait for confirmation before they name someone."¹³⁵

¹²⁹ <https://twitter.com/ChronTri/status/1673687795146137600>

¹³⁰ https://twitter.com/d_vwatts/status/1673688213746077696

¹³¹ <https://twitter.com/notjonalt/status/1673689925080829952>

¹³² <https://twitter.com/Centrist4lyfe/status/1673691026215645187>

¹³³ <https://twitter.com/BlueyAnon/status/1673692363850665987>

¹³⁴ <https://twitter.com/BlueyAnon/status/1673692363850665987>

¹³⁵ <https://twitter.com/WolfOfYobit/status/1673694007761747969>

145. At 9:08 am, verified Twitter user @meemodoteth replied to Musk by quote-tweeting Brian Krassenstein's tweet embedding Ben Brody's Instagram video.¹³⁶

146. At 9:09 am, Twitter user @Stockmaninoff replied to Musk by stating, "Hey asshole, it's not him. What the actual fuck is wrong with you?"¹³⁷

147. At 9:12 am, Twitter user @Cocotweetssmile replied to Musk by stating, "Once again. Wrong. Antifa would never be a part of a group like this and the college kid has openly stated, not him. Now he and his family are being harassed. Nice work 'genius.'"¹³⁸

148. At 9:14 am, verified Twitter user @BlueyAnon posted another reply to Musk in the thread, stating, "This guy seems 20-30 pounds heavier with a rounder face. Plus that other guy had a bunch of cuts/bruises on his face. He was basically concussed from the punches."¹³⁹

149. Also at 9:14 am, Twitter user @Crispygai replied to Musk by stating, "Your brain has completely rotted. Seek help."¹⁴⁰

150. At 9:20 am, Twitter user @s8jep replied to Musk by stating, "This would be funny if you weren't so fxxking dangerous .. just get a room with Qanon will ya..ffs [ffs is an abbreviation: "for fuck's sake]."¹⁴¹

¹³⁶ <https://twitter.com/meemodoteth/status/1673694732076171268>

¹³⁷ <https://twitter.com/Stockmaninoff/status/1673695160998277123>

¹³⁸ <https://twitter.com/Cocotweetssmile/status/1673695721218797568>

¹³⁹ <https://twitter.com/BlueyAnon/status/1673696417578369024>

¹⁴⁰ <https://twitter.com/Crispygai/status/1673696317116231680>

¹⁴¹ <https://twitter.com/s8jep/status/1673697888596025344>

151. At 9:26 am, Twitter user @Sir_Goot replied to Musk by stating, “Elon the real Ben has posted on Instagram and it's clearly not the same person. You repeating this is dangerous.”¹⁴²

152. At 9:44 am, Twitter user @el_donald_chump replied in the same thread to Musk and @BlueyAnon in which he stated, “The guy doesn’t even look like him. I hope Ben Brody sues all these people for defamation and makes a killing.”¹⁴³

153. At 9:50 am, Twitter user @JordanHaag replied to Musk by stating, “This was disproven already. The guy that they say it is has come out and dented [sic] this and said that he was being harassed by far right extremists.”¹⁴⁴

154. At 9:54 am, Twitter user @helpmecodeswift replied to Musk by stating, “Elon on the tip of the conspiracy wave every day with this nonsense... I really wish people that have such a following and effect on social media had more sense of responsibility, if not decency.”¹⁴⁵

155. At 9:58 am, Twitter user @chacarr0n23 replied to Musk by stating, “I see you're still spreading fake news on your app that you overpaid by 44 billion dollars.”¹⁴⁶

156. At 9:59 am, Twitter user @chizenbread replied to Musk by stating, “He has spoken and it isn’t him. Just another kid with eyebrows.”¹⁴⁷

¹⁴² https://twitter.com/Sir_Goot/status/1673699438307553281

¹⁴³ https://twitter.com/el_donald_chump/status/1673703963407839237

¹⁴⁴ <https://twitter.com/JordanHagg/status/1673705358995476480>

¹⁴⁵ <https://twitter.com/helpmecodeswift/status/1673706336272678912>

¹⁴⁶ <https://twitter.com/chacarr0n23/status/1673707268855193600>

¹⁴⁷ <https://twitter.com/chizenbread/status/1673707551244918784>

157. At 10:02 am, Twitter user @Richup2 quote-tweeted Musk's tweet, stating, "@elonmusk Using one of the most conspiracy ridden websites tells us all we need to know."¹⁴⁸

158. At 10:03 am, verified Twitter user @Anon2553 replied to Musk by quote-tweeting the tweet from verified user @BlueyAnon stating, "Seems highly unlikely the 'Ben Brody' ID was correct," and embedding Ben Brody's Instagram video.¹⁴⁹

159. At 10:06 am, Twitter user @leejackson47 replied to Musk by stating, "Leave it to internet sleuths to completely destroy an innocent person's life."¹⁵⁰

160. At 10:07 am, Twitter user @ShakaOz replied to Musk by stating, "WTF elon, why are putting somebody innocent in the line of fire. Proof is 'Trust me bro' you are not wrong risking a persons life with carelessness."¹⁵¹

161. At 10:15 am, Twitter user @lesuperburp quote-tweeted Musk's tweet, stating, "ZeroHedge? More like Zero Proof. Musk is just a straight up liar."¹⁵²

162. At 10:24 am, Twitter user @SPNHresident replied to Musk by stating, "You realize you are ruining the lives of individuals that have not been verified of these accusations!"¹⁵³

¹⁴⁸ <https://twitter.com/Richup2/status/1673708310942425089>

¹⁴⁹ <https://twitter.com/Anon2553/status/1673708616921014272>

¹⁵⁰ <https://twitter.com/leejackson47/status/1673709268002897925>

¹⁵¹ <https://twitter.com/ShakaOz/status/1673709695016779776>

¹⁵² <https://twitter.com/lesuperburp/status/1673711721989689346>

¹⁵³ <https://twitter.com/SPNHresident/status/1673713929397190656>

163. At 10:29 am, Twitter user @twylautism quote-tweeted Musk's tweet, stating, "what is wrong with you."¹⁵⁴

164. At 10:57 am, Twitter user @comicbooksmart replied to Musk by stating, "Jesus, you're such a dope @elonmusk. that college student has not been proven to be that patriot front member and has shown enough evidence to the contrary to clear his name."¹⁵⁵ In a follow-up reply at 10:59, @comicbooksmart stated, "[H]ere's the original video posted by him indicating it was the same Instagram account posting his video statement and the literal receipts to backup his alibi of being in Riverside, California."¹⁵⁶

165. At 11:05 am, Twitter user @druidbird quote-tweeted Musk's tweet, stating, "you are going to super hell for this."¹⁵⁷

166. At 11:11 am, Twitter user @dhxxghxx replied to Musk by stating, "Twitter has lost 66% of it's value because you are the worlds richest conspiracy monger cook crank homophobe liar."¹⁵⁸

167. At 11:22 am, Twitter user @CStradamus replied to Musk by stating, "You have to be the worst human..."¹⁵⁹

¹⁵⁴ <https://twitter.com/twylautism/status/1673715190725246976>

¹⁵⁵ <https://twitter.com/comicbooksmart/status/1673722249147236361>

¹⁵⁶ <https://twitter.com/comicbooksmart/status/1673722653289398274>

¹⁵⁷ <https://twitter.com/druidbird/status/1673724309033074690>

¹⁵⁸ <https://twitter.com/dhxxghxx/status/1673725803282956289>

¹⁵⁹ <https://twitter.com/CStradamus/status/1673728620743802880>

168. At 11:28 am, Twitter user @LongTrailNinja replied to Musk by stating, “He's literally 20lbs heavier in this video then [sic] the person is who got their mask torn off. You fucking moron, howd [sic] they gain all that weight in 2 days?”¹⁶⁰

169. At 11:36 am, Twitter user @BrentByard quote-tweeted Musk's tweet, stating, “The college student is in this very thread explaining that Elon is wrong, again.”¹⁶¹

170. At 11:59 am, Twitter user @Shonna198876 replied to Musk by stating, “[I]nnocent people could have their lives destroyed by mistaken identity.”¹⁶²

171. At 12:12 pm, Twitter user @avanova96 replied to Musk by stating, “This site has literally given you mental illness.”¹⁶³

172. At 12:13 pm, Twitter user @tingle_lou replied to Musk by stating, “You can always count on Elon for a daily dose of fake news. This time at the expense of some random young man who has already come forward with receipts showing he was a 1000 miles away.”¹⁶⁴

173. At 12:21 pm, Twitter user @UncleShitty replied to Musk by stating, “No, it doesn't...and by targeting him, you're not only harassing him, you're (hopefully) exposing yourself to at least one nice, fat, Alex-Jones-type lawsuit. Oh, and you don't have a single reliable shred of evidence on which to base the likelihood of a 'false flag situation.'”¹⁶⁵

¹⁶⁰ <https://twitter.com/LongTrailNinja/status/1673729927777058816>

¹⁶¹ <https://twitter.com/BrentByard/status/1673732053320318979>

¹⁶² <https://twitter.com/Shonna198876/status/1673737716469731330>

¹⁶³ <https://twitter.com/avanova96/status/1673743376611692546>

¹⁶⁴ https://twitter.com/tingle_lou/status/1673741450847330305

¹⁶⁵ <https://twitter.com/UncleShitty/status/1673740963519537152>

174. At 1:52 pm, verified Twitter user and BBC reporter Mike Wendling (@mwendling) quote-tweeted Musk's tweet, stating, "Elon Musk and far-right + conspiracy influencers are going nuts over rumours that members of Patriot Front are really working for the federal government. The rumour is based on a flimsy line in a bio and a possible case of mistaken identity."¹⁶⁶ In a follow-up tweet, Wendling noted the ZeroHedge blog post was "written by a 9/11 truther Covid denier Sandy Hook conspiracist."¹⁶⁷

175. At 2:13 pm, Twitter user @ConnyMor replied to Musk by stating, "i hope you and zerohedge get sued like infowars and alex jones did. you spread lies and disinformation that affects real people. you are a monster."¹⁶⁸

176. At 3:29 pm, Twitter user @OrsonRayson replied to Musk by stating, "You must really want your latest stupid conspiracy theory to be true since his nose, hairline, weight, ears, and skin color are all pretty different. The other unmasked guy is also the known leader of the Rose City Nationalist Club, a white nationalist neo-nazi organization."¹⁶⁹

177. At 3:33 pm, Twitter user @OrsonRayson replied again to Musk by stating the identification of Brody was "not confirmed and doesn't look to be him."¹⁷⁰ The tweet also stated, "The other unmasked guy was confirmed to be Casey Knuteson though. He is the leader of the Rose City Nationalist Club, a neo-nazi group

¹⁶⁶ <https://twitter.com/mwendling/status/1673766148293140502>

¹⁶⁷ <https://twitter.com/mwendling/status/1673772811930816512>

¹⁶⁸ <https://twitter.com/ConnyMor/status/1673771641665380352>

¹⁶⁹ <https://twitter.com/OrsonRayson/status/1673790672061726720>

¹⁷⁰ <https://twitter.com/OrsonRayson/status/1673791736659992576>

that has beef with the Proud Boys as Casey was kicked out of the group for being too extreme.” The tweet includes a screenshot of the Rose City Antifa website identifying Knuteson.

178. At 4:51 pm, Twitter user @TimFollows1776 replied to Musk by stating, “The fact you’re considered one of the foremost innovators of our time but fall for the dumbest shit online pretty much sums up America in 2023. Throw the whole country away. Neither antifa or the feds were present. Just right wing trump supporters like you.”¹⁷¹

179. At 5:55 pm, verified Twitter user @realDougStewart replied to Musk by stating, “Yeah that’s 100% wrong. It’s not Brody at all. That guy has been positively ID’ed and Brody is on camera a thousand miles away and has debit card receipts from the day. This is utterly ridiculous that Twitter ran with this.”¹⁷²

180. At 5:57 pm, Twitter user @PawlowskiMario replied to Musk by stating, “Why the original tweet was deleted?”¹⁷³ At 7:31 pm, Twitter user @LongTrailNinja responded to @PawlowskiMario and Musk by stating, “Probably so they aren't sued for slander for identifying the wrong guy and sicking an internet mob on his whole family.”¹⁷⁴

¹⁷¹ <https://twitter.com/TimFollows1776/status/1673811417395531776>

¹⁷² <https://twitter.com/realDougStewart/status/1673827465477910529>

¹⁷³ <https://twitter.com/PawlowskiMario/status/1673827874195816448>

¹⁷⁴ <https://twitter.com/LongTrailNinja/status/1673851480485380097>

181. At 6:32 pm, Twitter user @SNCCiMinaj quote-tweeted Musk's tweet, stating, "Wonder how many horses this is gonna cost him if proven false. Hope guy got a shot if it gets deleted like the ZH post."¹⁷⁵

182. The following day, on June 28, 2023, Twitter user @permakult1 replied to Musk by stating, "Yup. Lying lazy ass Musk. Scum raker. It took all of 5 minutes to prove you are again full of shit. Maybe your fraudulent AI falsely 'identified' Ben Brody. Sounds like he has a great lawsuit against you (like many others)."¹⁷⁶ The tweet included a quote-tweet of @TheNews4Dummies stating, "I spoke to Ben Brody yesterday [June 25th] – clearly the wrong person unless he grew a goatee in 6 hours... Sadly many still wont admit they were wrong. I was wrong and I apologized to Ben personally." The tweet also embedded Ben Brody's Instagram video.

183. On June 28, 2023, Twitter user @piccolohl replied to Musk by stating, "It's obviously not the sane [sic] guy (he was hundreds of miles away that day) so it's going to be lawsuit bait."¹⁷⁷

184. On June 29, 2023, Twitter user @TheJJChandler replied to Musk by stating that he "got it wrong," and that "now the mental retrogrades who still think they got it right are harassing an entire family."¹⁷⁸ The tweet included a link to Ben Brody's Instagram video, as well as a screenshot of Ben Brody's Instagram post.

¹⁷⁵ <https://twitter.com/SNCCiMinaj/status/1673836623665180678>

¹⁷⁶ <https://twitter.com/permakult1/status/1674063308389851136>

¹⁷⁷ <https://twitter.com/piccolohl/status/1673955827508559874>

¹⁷⁸ <https://twitter.com/TheJJChandler/status/1674293816835096577>

185. On July 11, 2023, Twitter user @mairE_keyL quote-tweeted Musk's tweet, stating, "Elon doxed an innocent man. Doesn't delete. Isn't suspended. Hypocrite of the worst kind."¹⁷⁹

186. On July 11, 2023, Twitter user @gustave_lechap quote-tweeted Musk's tweet, stating, "Incoming defamation suit in 3, 2..."¹⁸⁰

187. On July 12, 2023, Twitter user @DeedsWylie quote-tweeted Musk's tweet, stating, "The CEO of @Twitter fedjacketed a recent college grad to the point he had to hide from neo-Nazis. 16 days later & this tweet is still up, even after the 'news' outlet he replied to pulled their tweet. No retraction/apology. I hope Ben Brody sues @elonmusk & everyone else involved."¹⁸¹

V. The Aftermath.

188. Musk's June 27, 2023 tweet has been viewed more than 1.2 million times by logged-in Twitter users.¹⁸² The tweet has also been viewed by an unknown number of individuals who were not logged into Twitter or individuals who encountered Musk's statements as an embedded tweet, as neither type of view is included in Twitter's public view count.¹⁸³

189. Numerous online influencers and websites also featured screenshots of Musk's tweet in their articles and posts.

¹⁷⁹ https://twitter.com/mairE_keyL/status/1678846149745057792

¹⁸⁰ https://twitter.com/gustave_lechap/status/1678928444497772547

¹⁸¹ <https://twitter.com/DeedsWylie/status/1679195742705942541>

¹⁸² <https://twitter.com/elonmusk/status/1673683343169159168>

¹⁸³ <https://help.twitter.com/en/using-twitter/view-counts>

190. Musk's personal endorsement of the false accusation against Ben Brody reverberated across the internet, transforming the accusation from anonymous rumor to gospel truth for many individuals, and causing others to use Musk's endorsement to justify their desire to harass Ben Brody and his family.

191. Ben had been disturbed by the initial rumor, but he found the courage to post a video to the public on June 26th in hopes of dispelling the accusation. Yet when Musk fully endorsed the accusation on June 27th, Ben felt like his life was over.

192. Ben spent the following days and weeks in a cycle of panic, fear, denial, disorientation, and depression.

193. Ben suffered physical manifestations of his emotional distress, including difficulty sleeping, panic attacks, headaches, and fatigue which disrupted his daily life and severely impacted his sense of wellbeing.

194. Ben and his family were repeatedly doxed and suffered an enormous wave of harassment from belligerent strangers.

195. Ben and his family's experience of seeing him defamed by one of the powerful men on earth warped their entire sense of reality, leaving them stunned, confused, and afraid.

196. Two weeks after Musk's statements, it was apparent to Ben that his reputation had been catastrophically damaged and that a huge number of people believed he was either a neo-Nazi or a provocateur involved in a deceptive "psyop" to commit political terrorism. Ben felt he needed to try harder to clear his name.

197. On July 11, 2023, Ben decided to give an interview to VICE News reporter Mack Lamoureux for a story about the incident.

198. In the interview, Ben told the reporter about his panic attacks over the idea that “my life is over” and “everything that I tried to work for and all this is just completely gone.” Ben described the experience as “terrifying.” He also could not stop thinking about the effect this incident could have on his future.

199. In the wake of the article, Ben realized that despite his efforts to publicize his innocence, it was likely his message would never reach the people who most needed to hear it.

200. An enormous audience followed Musk’s statements about the June 24th Portland street brawl, and many of them have adopted an extreme skepticism of commercial media. These audiences are distrustful of any information that does not originate in their specific bubble or involve one of their favored online influencers.

201. Elon Musk, the most-followed user on Twitter, is perhaps the most influential of all influencers, and his endorsement of the accusation against Ben galvanized other social media influencers and users to continue their attacks and harassment, as well as post accusations against Ben that will remain online forever.

202. Ben was put through intense terror because of Musk’s recklessness, and now Ben finds himself depressed, freaked out, and mentally distraught right at the crucial personal moment when he exits college and enters his career path.

203. Ben is also worried about the effects years down the road, and what jobs he might lose to other candidates due to the controversy or a misunderstanding. He worries that he may always have to live with that self-doubt.

204. Ben is fearful about the future consequences of forever having this event tied to his name and photograph on the internet. Ben worries that future employers may decide that it's simply not worth it to hire an employee in a public-facing position who is connected to a bizarre controversy involving a neo-Nazi group. Ben fears his applications for top-tier positions may get passed over in favor of applicants with unblemished personal histories. He fears he will always worry whether his life might have taken a more productive path without the reckless interference of Elon Musk.

205. Ben is also aware that fringe members of conspiracy-obsessed communities often fixate years later on individuals who were alleged to have participated in a "false flag," such as the parents of children murdered at Sandy Hook, the owner of Comet Ping Pong, the Sutherlands Springs pastor, the student activists from Stoneman Douglass High School, the alleged January 6th provocateur Ray Epps, and many, many lesser known alleged "crisis actors," all of whom suffer harassment to this day. Ben is worried about a confrontation from a member of those communities in the years to come.

206. Ben is also greatly disturbed that he was used by someone as influential as Musk to deny the reality of an event involving neo-Nazism, which is something Musk has done multiple times in the past few months.

207. Further, given his Jewish heritage, Ben was understandably horrified at being accused by Musk of donning neo-Nazi regalia, an act that would be utterly profane and blasphemous if it were true.

208. In sum, Ben has suffered severe emotional harm and enormous damage to his reputation and public image.

209. On August 9, 2023, Musk was informed through his attorneys of the circumstances supporting Ben's claim for defamation, as well as Ben's profound distress that Musk had not taken any steps to retract his accusation.

210. In response, Musk has refused to retract his accusation or even delete his tweets. In fact, Musk's attorney indicated that Musk would seek fee shifting if Ben attempts to hold Musk accountable in court.

211. In other words, if this 22-year-old victim tries to seek redress in court for what happened to him, he must risk having the wealthiest man on the planet seek to collect fees against him.¹⁸⁴

¹⁸⁴ Fee shifting under anti-SLAPP statutes was designed to provide a deterrent against burdensome frivolous lawsuits brought by the rich and powerful against far less rich and powerful critics who dared to speak poorly of them. It is frankly perverse to threaten fee shifting in the reverse scenario, in which the mega-powerful attempt to use the statute to deter lawsuits by regular people falsely accused of heinous acts. In most libel lawsuits against ultra-wealthy individuals and organizations, use of the statute in this way is foreclosed purely due to a sense of propriety and good taste held by those defendants, who do not pursue fee shifting despite their right to seek the statute's invocation.

212. Ben is undeterred by Musk's callous response because he understands that a lawsuit is the only way he will be able to truly clear his name. Ben knows that unless he confronts Musk and attempts to hold him accountable for his reckless false accusation, many people will continue to believe the accusation or view him with a cloud of suspicion.

213. The reality is that too many powerful people with enormous audiences are being reckless with their accusations against private people. The damage they cause is not easily repaired by apologies or counter-speech, no matter how persuasive. Repair of reputations, compensation for harm, and effective deterrence can only occur in our courts.

214. It is these courts to which Ben Brody now turns to uphold a very simple concept: What Elon Musk has been doing to Ben and others is not tolerable. It is necessary that Ben take a stand against Musk's conduct and have his case heard in the justice system, regardless of Musk's power or wealth.

215. It has become clear that Musk will not stop unless someone stops him. It seems that responsibility now falls upon a shy young man whose world has been shaken by Musk's reckless conduct.

CAUSES OF ACTION

I. Libel - *Per Se* or *Per Quod*.

216. Ben Brody is a private individual and is neither a public official nor a public figure for any purpose.

217. Musk's June 27, 2023 statements were of and concerning Ben Brody. Due to contemporary events, many readers were acquainted with Ben Brody such that they reasonably understood from reading Musk's June 27, 2023 statements that Musk was referring to Ben Brody.

218. Musk's June 27, 2023 statements were false, both in their particular facts and in their main point, essence, or gist in the context in which they were made.

219. The gist of Musk's statement on June 27, 2023 -- "Looks like one is a college student (who wants to join the govt)" -- was that Ben Brody was a participant in the June 24th Portland street brawl on behalf of the Rose City Nationalists.

220. Musk also used this false accusation against Ben Brody to support his assertion that the event was a probable false flag operation.

221. Musk's statements constitute defamation *per se*, as he made an accusation of unlawful conduct by reasonable implication or insinuation. Musk's accusation was calculated to induce those who heard them to understand that Ben Brody had acted unlawfully.

222. Musk's accusation constitutes defamation *per se* because it implicates Ben Brody in unlawful acts, including disorderly conduct, criminal mischief, assault, battery, conspiracy to riot,¹⁸⁵ and conspiracy to commit terrorism.¹⁸⁶

223. Alternatively, to the extent that Musk's June 27, 2023 statements do not constitute libel *per se*, they are actionable as libel *per quod*.

224. Musk's June 27, 2023 statements convey a defamatory meaning because of facts and circumstances expressed before or otherwise known to readers concerning Ben Brody and the June 24th Portland street brawl.

225. Musk's accusation that Ben Brody was a participant in the June 24th Portland street brawl as a member of a neo-Nazi group injured Ben Brody's reputation, exposed him to public hatred, contempt, and ridicule, and it impeached his honesty, integrity, and virtue.

226. Musk's accusation implied that he knew undisclosed information supporting his statements. There was no mention in the ZeroHedge tweet or blog post about the unmasked individual wanting to work for the government. When Musk referenced that fact, a reasonable reader would understand that Musk was basing his allegation on undisclosed information he had encountered elsewhere.

¹⁸⁵ In Oregon, a person commits the crime of riot if while participating with five or more other persons the person engages in tumultuous and violent conduct and thereby intentionally or recklessly creates a grave risk of causing public alarm.

¹⁸⁶ In Oregon, terrorism is defined as activities which involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; and appear to be intended (1) to intimidate or coerce a civilian population or (2) to influence the policy of a government by intimidation or coercion.

227. Musk's statement was not accompanied by the information purportedly justifying the accusation.

228. The undisclosed information purportedly justifying Musk's accusation was false.

229. Musk acted with negligence, failing to act as a reasonably prudent person in Musk's position would act given all the circumstances.

230. Musk further acted with actual malice because Musk's defamatory statements were made with reckless disregard for the truth or falsity of the statements at the time they were made. Alternatively, Musk knew the statements were false.

231. Musk's statements were not privileged.

232. Musk published the defamatory statements to an enormous audience causing significant harm to Ben Brody.

233. As a unique global celebrity, Musk's accusation was predictably republished by countless individuals across the world.

DAMAGES

234. Musk's defamatory statements have and will continue to cause harm to Ben Brody. Due to Musk's conduct, Ben Brody has suffered and continues to suffer substantial damages in an amount to be proven at trial.

235. Ben Brody has suffered and will continue to suffer general and special damages, including a severe degree of mental stress, anguish, fear, personal embarrassment, and psychological harm which disrupted his daily life.

236. Ben Brody has also suffered severe damage to his reputation and image, both up to the present and into the future.

237. Because Musk's conduct amounts to defamation *per se*, Ben Brody is also entitled to an award of presumed damages, nominal damages, and a judgment clearing his name.

238. Pursuant to Tex. Civ. Prac. & Rem. Code Sec. 73.059, Ben Brody is entitled to exemplary damages without a showing of actual malice because Musk failed to make a timely and sufficient correction, clarification, or retraction.

239. Regardless, Ben Brody is also entitled to exemplary damages because Musk acted with malice.

240. Ben Brody is also entitled to pre-judgment, post-judgment interest, and costs of court.

RULE 47 NOTICE

241. Pursuant to Rule 47 of the Texas Rules of Civil Procedure, the relief in this lawsuit will exceed \$1,000,000.

JURY DEMAND

242. Ben Brody demands a jury trial and tenders the appropriate fee with this Petition.

PRAYER

WHEREFORE PREMISES CONSIDERED, Plaintiff Ben Brody asks that the Court issue citation for the Defendant to appear and answer, and that Plaintiff be awarded all the damages set forth above, and to grant whatever further relief to which Plaintiff is justly entitled.

Respectfully submitted,

FARRAR & BALL, LLP

A handwritten signature in black ink, appearing to read 'M. Bankston', is written over a horizontal line.

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